Title: FEDERAL REGISTER.

Volume: 64 Issues: 151-164

PAGES:42823-46558

Date: AUGUST 06 - AUGUST 25, 1999

UMI Number: 2575.00

Notes: REEL: 3 OF 11

UMI

Bell & Howell Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

VOL
64
ISS
1
5
1
AG
6
1999
UMI

8-6-99
Vol. 64

United
Gover
Printi
SUPERIN
OF DOC
Washingt
OFFICIA
Penalty f

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

8-6-99
Vol. 64 No. 151

federal register

Friday
August 6, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
1
5
1
AG
6
999
UMI

8-6-99
Vol. 64 No. 151
Pages 42823–43042

federal register

Friday
August 6, 1999

ANN ARBOR MI 48106

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Contents

Federal Register

Vol. 64, No. 151

Friday, August 6, 1999

Agricultural Marketing Service
PROPOSED RULES
Bartlett pears (fresh) grown in—
Oregon and Washington, 42858–42860
Milk marketing orders:
Southwest Plains, 42860–42861

Agriculture Department
See Agricultural Marketing Service
See Forest Service
NOTICES
Meetings:
21st Century Production Agriculture Commission, 42900

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., 42962–42977

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Center for Infectious Diseases—
Blood-borne and other pathogens in hemodialysis settings; prevention and control recommendations, 42950

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 42901–42902

Customs Service
PROPOSED RULES
Customs bonds:
Importation and entry bond conditions regarding other agency documentation requirements, 42872–42873

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Binette, Mark J., M.D., 42977–42981
Cappiello, Rafael, M.D., 42981
Chancellor, Robert S., M.D., 42981–42982
Chomiak, Bryant D., M.D., 42982–42983
Dupont Pharmaceuticals, 42983
Kinney, Roger Lee, M.D., 42983–42986
Lawson & Associates, 42986
Noramco of Delaware, Inc., 42987
Rhoden, Vincent G., D.P.M., 42987–42988
Shultice, Robert W., M.D., 42988
Sketch, Clarence J., D.D.S., 42988–42989
Stepan Co., 42989–42990
Stoermer, Dietrich A., M.D., 42990–42991
Wodka, Richard M., M.D., 42991

Education Department
RULES
Postsecondary education:
Teacher Quality Enhancement Grants Program, 42837–42839
PROPOSED RULES
Postsecondary education:
Student assistance general provisions
Federal Family Education Loan Program, 43023–43042

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 42993–42995

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
N-[4-fluorophenyl)-N-(1-methylethyl)-2[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide, 42839–42846
Sodium chlorate, 42846–42849
Toxic substances:
Lead-based paint activities—
Target housing and child-occupied facilities; certification requirements and work practice standards for individuals and firms, 42849–42852
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 42892–42899
Minnesota, 42888–42891
Nevada, 42891–42892
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 42943
Weekly receipts, 42942
Pesticide programs:
Organophosphates; risk assessments and public participation in risk management—
Occupational users; pesticide registration notice, 42943–42945
Pesticide registration, cancellation, etc.:
Neurotoxic pesticides; Data Call-In notice, 42945–42947
Superfund program; response and remedial actions, proposed settlements, etc.:
Upper Tenmile Creek Watershed Site, MT, 42947

Federal Aviation Administration
RULES
Airworthiness directives:
MD Helicopters, Inc., 42824–42825
Airworthiness standards:
Rotorcraft; normal and transport category—
Rotorcraft load combination safety requirements, 43015–43021
PROPOSED RULES
Airworthiness directives:
Bombardier, 42866–42868
Fokker, 42870–42872
McDonnell Douglas, 42868–42870
NOTICES
Airport Privatization Pilot Program; applications:
Niagara Falls International Airport, NY, 43009–43010

Federal Communications Commission
RULES
Practice and procedure:
Regulatory fees (1999 FY); assessnent and collection, 42854–42855
Television broadcasting:
Telecommunications Act of 1996; implementation—
Cable Act reform provisions, 42855
Cable Act reform provisions; correction, 42855

Federal Deposit Insurance Corporation
PROPOSED RULES
Minority and women outreach program-contracting:
Contracting benefits for small disadvantaged businesses, 42862–42866
Individuals with disabilities outreach program, etc.; withdrawn, 42861–42862

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 42947–42948

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Various States, 42852–42854
NOTICES
Grants and cooperative agreements; availability, etc.:
Presidentially declared disaster-related needs unmet by Federal disaster relief programs; State allocations of funds, 42948–42949

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Bangor Energy Resale, Inc., et al., 42931–42935
Entergy Nuclear Holding Co., No.1, Inc., et al., 42935–42941
Environmental statements; availability, etc.:
PP&L, Inc., 42941–42942
Applications, hearings, determinations, etc.:
Minergy Neenah, L.L.C., et al., 42930–42931

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 42949
Meetings; Sunshine Act, 42949

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 42957–42958

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Nystatin, etc., 42831
Oxytetracycline injection, 42830–42831
PROPOSED RULES
Human drugs:
Abbreviated new drug applications; 180-day generic drug exclusivity, 42873–42887
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 42950
Food additive petitions:
Ciba Specialty Chemicals Corp., 42950–42951
Reports and guidance documents; availability, etc.:
Amoxicillin injection for sheep; safety and effectiveness data, 42951

Forest Service
NOTICES
Environmental statements; availability, etc.:
White River National Forest, CO, 42900–42901

Geological Survey
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42958

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 42955
High performing empowerment zones and communities list (SuperNOFA), 42955–42956
Reports and guidance documents; availability, etc.:
Public housing rent policies, 42956–42957

Immigration and Naturalization Service
NOTICES
Temporary protected status program designations:
Honduras and Nicaragua, 42991–42992

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Employment taxes and collection of income taxes at source:
Railroad employers; exception from supplemental annuity tax, 42831–42834

Practice and procedure:
Organizational and individual performance; balanced measurement system; establishment, 42834–42837

International Trade Administration
NOTICES
Antidumping:
Carbon steel butt-weld pipe fittings from—
Thailand, 42902–42905
Carbon steel wire rope from—
Mexico, 42905–42907
Corrosion-resistant carbon steel flat products from—
Japan, 42907–42908
Hot-rolled flat-rolled carbon-quality steel products from—
Brazil, 42908
Industrial nitrocellulose from—
United Kingdom, 42908–42911
Natural bristle paintbrushes from—
China, 42911–42912
Persulfates from—
China, 42912–42916
Porcelain-on-steel cookware from—
Mexico, 42916
Sebacic acid from—
China, 42916–42920
Sorbitol from—
France, 42920
Stainless steel bar from—
Japan, 42920–42922
Stainless steel plate from—
Sweden, 42922
Countervailing duties:
Stainless steel sheet and strip in coils from—
Various countries, 42923–42925
HEU natural uranium component in United States; delivery procedures, 42925–42930
Applications, hearings, determinations, etc.:
University of—
Texas et al., 42922–42923

International Trade Commission
NOTICES
Import investigations:
North American Free Trade Agreement (NAFTA)—
Modifications; probable effects, 42961–42962
Polychloroprene rubber from—
Japan, 42962

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Immigration and Naturalization Service

Labor Department
See Employment Standards Administration
See Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42992–42993

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Eastern Washington, 42958–42959
Withdrawal and reservation of lands:
Arizona, 42959–42960
California, 42960–42961

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Western Gulf of Mexico—
Lease sales; correction, 42961

Mine Safety and Health Administration
NOTICES
Kaiser Aluminum & Chemical Co. Gramercy Works facility, LA; explosion investigation; hearing, 42995–42996

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Fellowships Advisory Panel, 42996

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Ford Motor Co., 43010
General Motors Corp., 43011–43012

National Institutes of Health
NOTICES
Meetings:
National Institute of Child Health and Human Development, 42951–42952
Scientific Review Center, 42952

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
License limitation program, 42826–42830
Atlantic highly migratory species—
Atlantic bluefin tuna, 42855–42856
West Coast States and Western Pacific fisheries—
West coast salmon, 42856–42857

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domestic licensing:
Nuclear power reactors—
Quality assurance programs; routine and administrative changes, 42823–42824
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42996–42997–42998
Meetings:
Nuclear facilities decommissioning; license termination plans and other guidance development; workshop, 42998
Applications, hearings, determinations, etc.:
GPU Nuclear, Inc., 42998

Personnel Management Office
NOTICES
Internal Revenue Service broadbanding systems; interim OPM criteria; correction, 43014

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Meetings:
Trinity River Basin Fish and Wildlife Task Force, 42961

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline safety—
Cost-Benefit Analysis Framework Working Group; report, 43012–43013

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Deregistration applications—
Midwest Equity Trust, Financial Securities Series 1, et al., 43003–43004
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 43004–43006
Emerging Markets Clearing Corp., 43006–43007
New York Stock Exchange, Inc., 43007–43009
Applications, hearings, determinations, etc.:
American Skandia Advisors Funds, Inc., et al., 42999–43001
Public utility holding company filings, 43001–43003

State Department
NOTICES
Environmental statements; availability, etc.:
Portland Pipe Line Corp., North Troy, VT, 43009

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 42952–42954
Meetings:
Substance Abuse Treatment Center National Advisory Council, 42954–42955

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 42887–42888

Surface Transportation Board
NOTICES
Rail carriers:
Pooling agreements—
Transportacion Ferroviaria Mexicana, 43013

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Customs Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 43015–43021

Part III
Department of Education, 43023–43042

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
931.....42858
1106.....42860

10 CFR
50.....42823

12 CFR
Proposed Rules:
361 (2 documents).....42861, 42862

14 CFR
27.....43016
29.....43016
39.....42824
Proposed Rules:
39 (3 documents).....42866, 42868, 42870

15 CFR
902.....42826

19 CFR
Proposed Rules:
113.....42872

21 CFR
522.....42830
524.....42831
Proposed Rules:
314.....42873

26 CFR
31.....42831
801.....42834

30 CFR
Proposed Rules:
935.....42887

34 CFR
611.....42837
Proposed Rules:
668.....43024
682.....43024

40 CFR
180 (2 documents).....42839, 42846
745.....42849
Proposed Rules:
52 (3 documents).....42888, 42891, 42892

44 CFR
64.....42852

47 CFR
1.....42854
76 (2 documents).....42855

50 CFR
635.....42855
660.....42856
679.....42826

UMI

VOL
64

ISS
1
5
1

AG
6

999

Ru

This s
contai
applica
are ke
Federa
50 title

The C
the Su
new b
REGIS

NUCL
COMI

10 CF

RIN 31

Chan
Progr

AGEN
Comm

ACTIO
comm

SUMM
Comm
rule t
regula
licens
assur
witho
these
any si
respo
that w
Feder
receiv
deter
signif
respo
comm
docu

EFFEC
becam

FOR F
Harry
React
Regul
D.C. 2
3092;
MyInt
Regul
Comm
0001;
rpm1

SUPPL
Febru
NRC p
Feder
regula

Rules and Regulations

Federal Register
Vol. 64, No. 151
Friday, August 6, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG20

Changes to Quality Assurance Programs: Responses to Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Responses to comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) issued a direct final rule that amends the Commission's regulations to permit power reactor licensees to implement certain quality assurance (QA) program changes without obtaining prior NRC approval of these changes. The NRC did not receive any significant adverse comments in response to an identical proposed rule that was concurrently published in the **Federal Register**. The public comments received, the NRC's reasons for determining that the comments are not significant adverse comments, and responses to questions raised in the comments are discussed in this document.

EFFECTIVE DATE: The direct final rule became effective April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001; telephone, 301–415–3092; e-mail, hst@nrc.gov or Richard P. MyIntre, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001; telephone, 301–415–3215; e-mail, rpm1@nrc.gov.

SUPPLEMENTARY INFORMATION: On February 23, 1999 (64 FR 9029), the NRC published a direct final rule in the **Federal Register** that amended its regulations to permit power reactor licensees to implement certain quality assurance (QA) program changes without obtaining prior NRC approval of these changes. The NRC also concurrently published an identical proposed rule on February 23, 1999 (64 FR 9035). The direct final rule became effective on April 26, 1999, because no significant adverse comments were received by March 25, 1999. This direct final rule modifies 10 CFR 50.54(a) to provide six QA programmatic areas within which changes to the QA program will not be considered reductions in commitments and subject to prior NRC approval. Copies of the comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street, NW, Washington, DC.

The NRC received comments from six respondents, comprising three power reactor licensees, one industry group, and two anonymous sources. Three of the commenters either supported or had no objections to the direct final rule. Two commenters asked for a clarification or interpretation of the direct final rule, and did not explicitly object to the direct final rule. One commenter's issue pertained to sections of 10 CFR 50.54(a) that were not being changed by the direct final rule. The NRC does not consider any of the comments to be a significant adverse comment. Each of the NRC's responses to the questions in the comment, and the NRC's determination that the comment is not a significant adverse comment, are discussed below:

1. *Comment.* We endorse this rulemaking effort and support promulgation of the final rule .

Response. No response necessary.

2. *Comment.* This rule change represents a small step, but certainly in the correct direction. We have reviewed the comments submitted separately by the Nuclear Energy Institute (NEI) on behalf of the nuclear industry and endorse those comments. Therefore, we have no adverse comments on the direct final rule.

Response. No response necessary.

3. *Comment.* It is clear from the section-by-section analysis that 10 CFR 50.54(a)(3)(i) of the direct final rule is intended to apply to programmatic quality assurance standards, such as the American National Standards Institute (ANSI) standard N45.2 and its daughter standards, endorsed by NRC regulatory guides. However, a licensee may have referred to other national codes or standards in its QA program, either as primary references or approved alternatives, that contain specific QA guidance although they are not endorsed by regulatory guides. Are non-programmatic QA standards intended to come under the purview of 10 CFR 50.54(a)(3)(i) of the direct final rule if earlier editions are presently included by reference in a licensee's approved QA program?

Response. The comment does not directly or indirectly oppose the direct final rule (and therefore does not constitute a significant adverse comment), but rather asks a question. The NRC's position is that the direct final rule does not distinguish between "programmatic" and "non-programmatic" QA standards included by reference in the QA program described or referenced in the safety analysis report. Therefore, "non-programmatic" QA commitments contained in the approved QA program fall within the purview of 10 CFR 50.54(a)(3)(i) of the direct final rule. Under the direct final rule, revising an existing commitment to reference a "non-programmatic" QA standard approved by the NRC, which is more recent than the "non-programmatic" QA standard in the licensee's QA program at the time of the change, is not considered to be a reduction in commitment.

4. *Comment.* In 10 CFR 50.54(a)(3)(i) of the direct final rule, the Commission allows later editions of QA standards currently referenced in a licensee's QA program to be adopted by that licensee if they have been found to be acceptable by the NRC with respect to the requirements of 10 CFR part 50, Appendix B. Does inclusion of a later edition by reference in a licensee's approved licensing bases constitute acceptance by the NRC for adoption by another licensee under the direct final rule 10 CFR 50.54(a)(3)(i)?

Response. The comment does not directly or indirectly oppose the direct final rule (and therefore does not constitute a significant adverse comment), but rather asks a question. The NRC's position is that under § 50.54(a)(3)(i), a licensee may use later editions of QA standards under § 50.54(a)(3)(i) only if the NRC explicitly approved the later edition of the QA

standard. NRC approval consists of: (1) Endorsement in a regulatory guide; (2) approval of a plant-specific or topical report by the issuance of a safety evaluation report (SER), in which case the limitations and conditions stated in the plant-specific or topical report must be followed; and (3) approval by issuance of an SER for a license amendment changing the QA program, in which case the limitations and conditions stated in the SER must be followed.

By contrast, there is no NRC approval if a licensee unilaterally changes its QA program to use a later standard under § 50.54(a)(3) on the basis that the change did not constitute a "reduction in commitment." Accordingly, a second licensee could not use the later edition of a QA standard under § 50.54(a)(3)(i). Nor could that licensee use the later standard under § 50.54(a)(3)(ii) because the first licensee's change did not involve an NRC safety evaluation and approval.

5. *Comment.* The first and only page of a self-described two-page submittal was received from a commenter stating, "My main issues deal with not having the rule to address the use of old safety evaluations that may be general in nature as some were written in the 1970s and 1980s, and (2) the other public comments provided in early March at the information conference [Regulatory Information Conference in March 1999] addresses my other issues."

Response. The envelope containing the letter, which was addressed to the "Chief, Quality Assurance and Vendor Inspection," did not have a name or a return address. Therefore, the NRC is unable to contact the commenter to inquire about the substance of the comments. Based on the information submitted, it is unclear whether the commenter was simply asking if the rule permits the use of older QA standards approved by the NRC. However, assuming that the submittal was suggesting that the direct final rule should be modified to prohibit licensees from using an SER issued in the 1970s when a facility received its original license, the NRC disagrees with the comment. Section 50.54(a)(3)(ii) allows licensees to adopt any QA alternative or exception approved by an NRC safety evaluation, provided that the bases of the NRC approval are applicable to the licensee's facility. Licensees may use alternatives or exceptions approved for a facility during issuance of the operating licenses, provided that the bases of the NRC approval are applicable. Alternatives and exceptions approved in SERs were approved in the context of the entire QA program. In all cases, it is the licensee's responsibility to ensure that the QA program as revised contains all elements that formed the bases of the NRC approval of alternatives or exceptions so that compliance with Appendix B to 10 CFR part 50 is maintained. Therefore, the NRC does not consider this a significant adverse comment.

6. *Comment.* The NRC should consider clarifying or correcting the direct final rule, 10 CFR 50.54(a)(4)(ii), with respect to the required content of submitted letters requesting NRC review of proposed reductions in QA program descriptions. Although the comment may not be directly related to the specific changes that are proposed, it is directly related to the correct functioning of the rule being changed.

Response. The comment is not directly related to the specific changes that are proposed, as recognized by the commenter. Therefore, the NRC does not consider this to be a significant adverse comment on the direct final rule and will not take any action at this time to address this issue. However, the NRC is attempting to develop a performance-based option to 10 CFR 50.54(a). During the development of the performance-based option, the NRC will carefully consider this issue.

Dated at Rockville, MD, this 2nd day of August, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–20267 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–42–AD; Amendment 39–11246; AD 99–16–13]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. (MDHI) Model MD–900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to MDHI Model MD–900 helicopters, that currently requires applying specified serial numbers and establishing life limits for certain parts. This amendment is prompted by additional analysis that supports an increase in the life limit of certain parts. The actions specified by this AD are intended to increase the life limits for various parts.

DATES: Effective September 10, 1999.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of July 10, 1997 (62 FR 34163).

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, datafax 480–891–6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5231, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–13–09, Amendment 39–10056 (62 FR 34163, June 25, 1997), which is applicable to MDHI Model MD–900 helicopters, was published in the **Federal Register** on April 28, 1999 (64 FR 22818). That action proposed to require increasing the life limit of various parts and correcting an incorrect part number that was listed in AD 97–13–09. That action also proposed to require, as in AD 97–13–09, applying serial numbers to certain parts and establishing a life limit for the vertical stabilizer control system bellcrank assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed. However, since the publication of the Notice of Proposed Rulemaking, the name of the type certificate holder has changed from "McDonnell Douglas Helicopter Systems" to "MD Helicopter, Inc." This final rule reflects that change; the FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 27 helicopters will be affected by this AD, that it will take approximately 2.5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,050.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10056 (62 FR 34163, June 25, 1997), and by adding a new airworthiness directive (AD), Amendment 39–11248, to read as follows:

AD 99–16–13 MD HELICOPTERS, INC.: Amendment 39–11248. Docket No. 98–SW–42–AD. Supersedes AD 97–13–09, Amendment 39–10056, Docket No. 96–SW–35–AD.

Applicability: MD–900 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To establish appropriate life limits for various parts, accomplish the following:

(a) On or before attaining the following life limits, remove from service:

(1) The nonrotating swashplate assembly, part number (P/N) 900C2010192–105, –107, –109, or –111, on or before 1,800 hours time-in-service (TIS).

(2) The collective drive link assembly, P/N 900C2010207–101, on or before 3,307 hours TIS.

(3) The self-aligning, spherical/slider main rotor bearing, P/N 900C3010042–103, on or before 2,030 hours TIS.

(4) The vertical stabilizer control system (VSCS) bellcrank assembly, P/N 900FP341712–103, and bellcrank arm, P/N 900F2341712–101, on or before 2,700 hours TIS.

(b) On or before 100 hours TIS after July 10, 1997, or before October 31, 1999, whichever occurs first:

(1) For Model MD–900 helicopters with serial numbers (S/N) 900–00002 through 900–00012, apply the appropriate S/N to the mid-forward truss assembly, P/N 900F2401200–102, and the forward and aft deck-fitting assemblies, P/N 900F2401500–103 and 900F2401600–103.

(2) For Model MD–900 helicopters with S/N 900–00002 through 900–00048, apply S/N to the left and right VSCS bellcrank assemblies, P/N 900F2341712–101 and 900FP341712–103, and the mid-aft truss strut assembly, P/N 900F2401300–103.

(3) Apply the S/N as specified in paragraphs (b)(1) and (b)(2) of this AD adjacent to the existing P/N in accordance with the Accomplishment Instructions of MDHS Service Bulletin No. 900–039, Revision 2, dated March 12, 1997.

(c) This AD revises the Airworthiness Limitations Section of the MD–900 Maintenance Manual by increasing the retirement lives for certain parts.

Note 2: The Airworthiness Limitations Section of the MD–900 Rotorcraft Maintenance Manual, Reissue 1, Revision 2, dated July 24, 1998, pertains to the subject of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The application of the serial numbers shall be done in accordance with the Accomplishment Instructions of McDonnell Douglas Helicopter Systems Service Bulletin No. 900–039, Revision 2, dated March 12, 1997. This incorporation by reference of that document was previously approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of July 10, 1997 (62 FR 34163). Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, datafax 480–891–6782. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 10, 1999.

Issued in Fort Worth, Texas, on July 28, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–20182 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 990407088–9199–02; I.D. 030999A]

RIN 0648–AK69

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that amends regulations implementing the License Limitation Program (LLP) by adding an application process and a transfer process for LLP licenses. This action is necessary to complete final implementation of the LLP, and is intended to further the objectives of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, the FMP for Groundfish of the Gulf of Alaska, and the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands.

DATES: Effective September 7, 1999.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this final rule should be sent to Susan J. Salveson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) in the exclusive economic zone (EEZ) are managed by NMFS pursuant to the FMPs for groundfish in the respective management areas. The commercial king crab and Tanner crab fisheries in the Bering Sea and the Aleutian Islands Area are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The FMPs were prepared by the North Pacific Fishery Management Council (Council), pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.*, and are implemented by regulations at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

Fishing under the LLP for the commercial groundfish fisheries in the EEZ of the GOA and the BSAI and the commercial king crab and Tanner crab fisheries in the EEZ of the Bering Sea and the Aleutian Islands Area is scheduled to begin January 1, 2000. The LLP replaces the Vessel Moratorium Program, which expires on December 31, 1999 (64 FR 3651, January 25, 1999).

This rule establishes the application and transfer processes for LLP licenses. The proposed rule, on which this rule is based, was published April 19, 1999 (64 FR 19113). Further information on the purpose of and eligibility criteria for the LLP can be found in the preamble to the final rule implementing Amendment 39 to the FMP for the Groundfish Fishery of the BSAI, Amendment 41 to the FMP for Groundfish of GOA, and Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (63 FR 52642, October 1, 1998).

Application Process for LLP Licenses

This rule provides that a limited application period of no less than 90 days will be specified by notification in the *Federal Register*. A limited application period means that an applicant will have a specific time period to apply for an LLP license. An application for an LLP license postmarked after the ending date of the application period will be denied. NMFS anticipates that this application period will begin in August or September 1999.

NMFS currently is compiling a database containing information on vessels that participated in the groundfish and crab fisheries during the qualifying periods for LLP licenses. Sources of information for this database include weekly production reports and observer reports from NMFS and fish tickets, processor annual reports, and vessel registration information from the State of Alaska. NMFS will create the official LLP record from only complete and verifiable information from the database. The official LLP record will be presumed to be correct for the purpose of determining eligibility. An applicant that includes information in an application that is inconsistent with information in the official LLP record will have the burden of proving that the information submitted in the application is correct.

NMFS will develop a summary of qualifications from the official LLP record for each person who appears to be eligible for an LLP license. NMFS will send a copy of the summary of qualifications along with an application form to these persons. Applications also will be provided to persons on request. An applicant who agrees with the summary of qualifications may include that information in his or her application. Using the information from the summary of qualifications will expedite application processing because the information will be consistent with information in the official LLP record.

An applicant may include information in the application other than that contained in the summary of qualifications if an applicant disagrees with the information provided in the summary of qualifications or if that information is incomplete. However, the applicant must prove that the information submitted in the application that is inconsistent with, or in addition to, information provided in the summary of qualifications is correct.

An applicant can meet this burden of proof by submitting evidence along with the application to verify the inconsistent or additional information provided on the application form. Information provided on the application form that cannot be verified with this evidence will not be accepted. The applicant will be notified that the information provided in the application cannot be verified and will be provided with a 60-day evidentiary period to submit further evidence to prove the information contained in the application is correct. This 60-day period will also be provided for an applicant to provide further information if the information provided on his or her application form is incomplete. Only one 60-day period will be provided for each applicant.

Examples of evidence that can be used to verify information inconsistent with or in addition to information provided in the summary of qualifications are: (1) State fish tickets or weekly production reports to verify documented harvests not found in the official LLP record, (2) an abstract of title or sales contract to verify vessel ownership, and (3) a written contract transferring or retaining the fishing history of a qualified vessel. Other forms of evidence will be accepted if that evidence verifies submitted information.

Information provided on an application form that cannot be verified at the conclusion of the 60-day evidentiary period will not be accepted, and claims based on that information

will be denied. At that time, NMFS will issue an initial administrative determination (IAD) indicating why those claims are denied. An applicant may appeal the IAD pursuant to the provisions of § 679.43.

An applicant who held a license the previous year will be eligible for a non-transferable license pending the final resolution of his or her claims pursuant to the license renewal provisions of 5 U.S.C. 558. This non-transferable license will be issued to an applicant in the IAD, will authorize the applicant to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the license, and will have specific endorsements and designations based on verified and unverified claims of the applicant. The non-transferable license will be effective until final agency action.

If any of an applicant's claims are in dispute, the entire license received by the applicant will be non-transferable until final resolution of all the disputed claims, including portions of the license that are based on claims that can be verified. This will prevent an applicant from transferring away the portion of the license that was based on verified claims and keeping the non-transferable portion based on disputed claims. Such transfer activity could lead to additional participants in the affected fisheries. A non-transferable license expires on final agency action. At that time, the person who appealed will either receive a transferable license, or no license at all, depending on the final agency action.

Transfer Process for LLP Licenses

The transfer process for LLP licenses will enable a license holder to request a transfer of an LLP license to any person that meets the eligibility requirements. The following requirements must be met for eligibility: The designated transferee must meet the U.S. Citizenship requirements of Chapter 121, Title 46, U.S.C., the parties to the transfer cannot have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations, and the transfer cannot cause the designated transferee to exceed the license cap in § 679.7(i)(1).

A complete transfer application must be submitted to the Administrator, Alaska Region, NMFS (Regional Administrator), for approval before a transfer can occur. Transfer application forms will be available on request. An incomplete application will be returned to the applicant with identification of specific information that is necessary to make the application complete. Specific information for a transfer application includes (1) identification information for all parties to the transfer, (2) evidence of the eligibility of the designated transferee to document a fishing vessel, (3) a copy of the contract or sales agreement for the transfer, (4) the signatures of the parties to the transfer, and (5) identification information for the vessel to be deployed based on the transferred license. A transferee may choose not to designate a vessel at the time of transfer, in which case the license will be transferred but it cannot be used to deploy a vessel until one is designated. A designated vessel means any vessel named on the license, including the same vessel that was named on the license before the transfer.

The rule also provides for transfer requests by court order, by operation of law, or as part of a security agreement. This provision will accommodate a transfer that is not voluntarily requested by the permit holder. Under those circumstances, the Regional Administrator will review the information in the transfer application or other documents and determine whether the requested transfer conflicts with other provisions of the LLP regulations or other applicable law (e.g., transfer to a person who could not document a fishing vessel under Chapter 121, Title 46, U.S.C.). If the Regional Administrator determines that the transfer (1) is not in conflict with other provisions of the LLP and (2) is not voluntary, the transfer will be allowed notwithstanding the annual limit on LLP license transfers explained here.

A request to change the vessel designated on the license is closely related to a transfer of a license between two persons. A license holder may deploy only the vessel designated on the license; therefore, a person must request a change of that designated vessel if the license holder plans to deploy a vessel other than the one currently designated on the license. A request to change the vessel designated on the license can be done at the same time and on the same form as the license transfer. Alternatively, the transferee may choose to retain the vessel designated on the license before the transfer. These designations are considered part of the transfer and will not count separately towards the annual transfer limit explained here. If the transferee chooses not to designate a vessel at time of transfer (i.e., specifies "none" on the transfer form), the license cannot be used until a vessel is designated. The vessel designation that occurs after a transfer in which a person designates no vessel will not count separately towards the annual limit on transfers. Otherwise, a request to change the vessel designated on the license will be counted towards the annual limit on transfers.

Finally, a license holder is limited to one voluntary license transfer (or one designated vessel change not accompanying a transfer) per calendar year. This limit is designed to restrict the incidence of intraseason movement of licenses among operators and vessels. Intraseason movement of licenses was identified by the Council as behavior that could significantly contribute to overcapacity and excess effort in the affected fisheries.

Comments on and Changes to the Proposed Rule

NMFS received no comments on the proposed rule and made only non-substantive changes to the regulatory text as proposed. Besides changes for clarity and readability, a provision was added at § 679.4(k)(7)(v) indicating the transfer process must be used to change a vessel designated on an LLP license. The preamble to the proposed rule indicated that the transfer process would have to be used to change the vessel designated on the license. This activity, under both the proposed and final rules, would count toward the voluntary transfer limit.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0334 for § 679.4(k)(6) and (k)(7).

Under NOAA Administrative Order 25–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

The Regional Administrator has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and the Commercial king and Tanner crab fisheries in the Bering Sea and the Aleutian Islands and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation, Department of Commerce, certified to

the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule contains a revised collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This revision has approved by OMB under control number 0648–0334. The public reporting burden for this collection of information is estimated to average 2.5 hours per response for an application for initial issuance, 1 hour per response for an application for transfer, and 4 hours per response for an appeal. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS, P.O. Box 21668, Juneau, AK 99802, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). OMB approved the original collection of information requirement for the LLP under OMB control number 0648–0334. Please refer to this number in any correspondence regarding this request.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 30, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control (all numbers begin with 0648)
* * * * *	
50 CFR	
* * * * *	
679.4(k)(6)(iii)	–0334
679.4(k)(6)iv)	–0334
679.4(k)(7)(iii)	–0334
* * * * *	

50 CFR Chapter VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition for "Official LLP record" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Official LLP record means the information prepared by the Regional Administrator about vessels that were used to participate in the groundfish and crab fisheries during the qualifying peiods for the License Limitation Program (LLP). Information in the official LLP record includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the LLP will have the burden of proving that information submitted in an application that is inconsistent with the official LLP record is correct.

* * * * *

3. In § 679.4, reserved paragraphs (k)(6) and (k)(7) are added to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(6) *Application for a groundfish license or a crab species license.* (i) *General.* The Regional Administrator will issue a groundfish license or a crab species license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in paragraph (k) of this section. An application that is postmarked or delivered after the ending date for the application period for the License Limitation Program specified in the *Federal Register* will be denied. An application form will be sent to the last known address of a person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application period.* An application period of no less than 90 days will be specified by notification in the *Federal Register* and other information sources deemed appropriate by the Regional Administrator.

(iii) *Contents of application.* To be complete, an application for a groundfish license or a crab species license must be signed by the applicant, or the individual representing the applicant, and contain the following, as applicable:

(A) Name, business address, telephone number, and FAX number of the applicant;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel being used as the basis for eligibility for a license; and name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license if different than the vessel used as the basis of eligibility for a license;

(C) Name of the managing company, if any;

(D) Valid evidence of the documented harvests that are the basis of eligibility for a license, including harvest area, gear used, date of landing, and, if applying for a crab species license, species;

(E) Valid evidence of LOA on June 24, 1992, of the vessel used as the basis of eligibility for a license, except if that

vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed and valid evidence of when reconstruction began and ended;

(F) Valid evidence of LOA on June 17, 1995, of the vessel used as the basis of eligibility for a license, except if that vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed, and valid evidence of when reconstruction began and ended;

(G) Valid evidence to support the applicant's claim for a vessel designation of catcher vessel or catcher/processor vessel;

(H) Valid evidence of ownership of the vessel being used as the basis for eligibility for a license (for USCG documented vessels, valid evidence must be the USCG Abstract of Title), or if eligibility is based on a fishing history that has been separated from a vessel, valid evidence of ownership of the fishing history being used as the basis of eligibility for a license; and

(I) Valid evidence of the LOA of the vessel to be deployed by the license if different than the vessel used as the basis for eligibility for a license.

(iv) *Other information required for special circumstances.*

(A) *Successor-in-interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(*1*) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was or is an individual; or

(*2*) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(B) *Norton Sound crab species license endorsement.* If an applicant is applying for a crab species license endorsement for Norton Sound and if the applicant is a person, an application, to be complete, must contain valid evidence that the applicant was a State of Alaska permit holder for the Norton Sound king crab summer fishery in 1993 or 1994. If the applicant is a corporation, an application, to be complete, must contain valid evidence that the corporation owned or had a lease for a vessel on June 17, 1995, that participated in the Norton Sound king crab summer fishery in 1993 or 1994.

(C) *Extended general qualification period.* If an applicant is applying for a license based on meeting the general qualification period requirements of paragraph (k)(4)(i)(A)(*2*) or (k)(4)(i)(B)(*2*) of this section, the application, to be complete, must indicate which single endorsement area the applicant has selected for license. A license cannot be endorsed for more than one area, notwithstanding the fact that the applicant may have the documented harvests to qualify for more than one endorsement area.

(D) *Unavoidable circumstances.* If an applicant is applying for a license based on an unavoidable circumstance pursuant to paragraph (k)(8)(iv) of this section, an application, to be complete, must contain the information required by that paragraph and valid evidence of the date the vessel on which the application is based was lost, damaged, or otherwise unable to participate in the fishery, and the date a documented harvest was made from the replacement vessel.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. Pursuant to paragraph (k)(6)(vii) of this section, an applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application is correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (k)(6)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official LLP record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official LLP record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on

consistent information in the application.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant on issuance of an IAD if required by the license renewal provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(7) *Transfer of a groundfish license or a crab species license*—(i) *General.* The Regional Administrator will transfer a groundfish license or a crab species license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets the eligibility criteria as specified in paragraph (k)(7)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A groundfish license or crab species license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license caps in § 679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of application.* To be complete, an application for a groundfish license transfer or a crab species license transfer must be signed by the license holder and the designated transferee, or the individuals representing them, and contain the following, as applicable:

(A) Name, business address, telephone number, and FAX number of the license holder and the designated transferee;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license (i.e., the designated vessel) after the transfer is approved;

(C) Valid evidence that the designated transferee is a person eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer, and the signature of the license holder and the designated transferee; and

(E) Information regarding whether a broker was used for the transaction, whether the license was collateralized, and other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (k)(7) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a groundfish license or a crab species license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(vi) *Voluntary transfer limitation.* A groundfish license or a crab species license may be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a security agreement. An application for transfer that would cause a person to exceed the transfer limit of this provision will not be approved.

(vii) *Request to change the designated vessel.* A request to change the vessel designated on an LLP groundfish or crab species license must be made on a transfer application. If this request is approved and made separately from a license transfer, it will count towards the annual limit on voluntary transfers specified in paragraph (k)(7)(vi) of this section.

* * * * *

[FR Doc. 99–20206 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Food and Drug Administration

21 CFR Part 522

Implantation and Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to include a limitation in the approval of Pliva d.d.'s abbreviated new animal drug application (ANADA). The regulation did not state that use of Pliva d.d.'s oxytetracycline injection in cattle is limited to use in nonlactating dairy cattle. At this time, the regulation is amended to reflect the limitation.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 30, 1999 (64 FR 23186), FDA published a document reflecting approval of Pliva d.d.'s ANADA 200–232 for use of Geomycin 200 (oxytetracycline injection) in cattle and swine. The amendment to the regulation did not state that the product is not for use in lactating dairy cattle. At this time, the regulations in 21 CFR 522.1660(d)(1)(iii) are amended to reflect the limitation in the approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (d)(1)(iii) by adding in the eighth sentence the number "011722," after the number "000010,".

Dated: June 29, 1999.

George A. Mitchell,

Acting Deputy Director, Center for Veterinary Medicine.

[FR Doc. 99–20257 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Nystatin, Neomycin, Thiostrepton, and Triamcinolone Acetonide Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for use of nystatin, neomycin, thiostrepton, and triamcinolone acetonide vanishing cream base ointment for topical management of dermatologic disorders of dogs and cats.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed ANADA 200–245 that provides for veterinary prescription use of Derma-Vet Cream (nystatin, neomycin, thiostrepton, and triamcinolone acetonide) for topical management of dermatologic disorders in dogs and cats characterized by inflammation and dry or exudative dermatitis, particularly those caused, complicated, or threatened by bacterial or candidal (*Candida albicans*) infections.

Med-Pharmex's ANADA 200–245 is approved as a generic copy of Solvay's NADA 96–676 for Panalog® Cream. The ANADA is approved as of June 7, 1999. The basis for approval is discussed in the freedom of information summary.

The regulation in § 524.1600a (21 CFR 524.1600a) does not designate which approvals are for petrolatum base products (ointments) and which are for vanishing cream base products (creams). The regulation in § 524.1600a(b) is amended at this time to designate the base of each sponsor's product and to reflect this approval.

In addition, due to enactment of the Generic Animal Drug and Patent Term Restoration Act of 1988, the footnote concerning the National Academy of Sciences/National Research Council review is outdated. At this time, the footnote and the footnote references are removed.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.1600a is amended by revising paragraph (b) and by removing the footnote of paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(2)(i), and (c)(2)(ii) to read as follows:

§ 524.1600a Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment.

* * * * *

(b) *Sponsors.* For petrolatum base ointments see 000031, 000069, 000332, 025463, 051259, and 053501 in § 510.600(c) of this chapter. For vanishing cream base ointments see 051259 and 053501.

* * * * *

Dated: June 29, 1999

George A. Mitchell,

Acting Deputy Director, Center for Veterinary Medicine.

[FR Doc. 99–20254 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8832]

RIN 1545–AT56

Exception From Supplemental Annuity Tax on Railroad Employers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance to employers covered by the Railroad Retirement Tax Act. The Railroad Retirement Tax Act imposes a supplemental tax on those employers, at a rate determined by the Railroad Retirement Board, to fund the Railroad Retirement Board's supplemental annuity benefit. These regulations provide rules for applying the exception from the supplemental annuity tax with respect to employees covered by a supplemental pension plan established pursuant to a collective bargaining agreement and for applying a related excise tax with respect to employees for whom the exception applies.

DATES: *Effective Date:* These regulations are effective August 6, 1999.

Applicability Date: These regulations generally apply beginning on October 1, 1998, except as provided in § 31.3221–4(e)(2).

FOR FURTHER INFORMATION CONTACT: Linda S. F. Marshall, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Employment Tax Regulations (26 CFR part 31) under section 3221(d). On September 23, 1998, a notice of proposed rulemaking was published in the **Federal Register** (63 FR 50819) under section 3221(d). The proposed

regulations provide guidance regarding the section 3221(d) exception from the tax imposed under section 3221(c) with respect to employees covered by a supplemental pension plan of the employer established pursuant to an agreement reached through collective bargaining. Two written comments were received on the proposed regulations. A public hearing was held on the proposed regulations on January 20, 1999. After consideration of the comments, the proposed regulations under section 3221(d) are adopted as revised by this Treasury decision.

Under the Railroad Retirement Act of 1974, as amended, codified at 45 U.S.C. 231 *et seq.*, if an employee has performed at least 25 years of covered service with the railroad industry, including service with the railroad industry before October 1, 1981, the Railroad Retirement Board (RRB) will pay the employee a supplemental annuity at retirement. The monthly amount of the supplemental annuity ranges from $23 to $43, based on the employee's number of years of service. See 45 U.S.C. 231b(e). Under 45 U.S.C. 231a(h)(2), the employee's supplemental annuity is reduced by the amount of payments received by the employee from any plan determined by the RRB to be a supplemental pension plan of the employer, to the extent those payments are derived from employer contributions.

Section 3221(c) imposes a tax on each railroad employer to fund the supplemental annuity benefits payable by the RRB. The tax imposed under section 3221(c) is based on work-hours for which compensation is paid. The RRB establishes the rate of tax under section 3221(c) quarterly, and calculates the rate to generate sufficient tax revenue to fund the RRB's current supplemental annuity obligations.

Under section 3221(d), the tax imposed by section 3221(c) does not apply to an employer with respect to employees who are covered by a supplemental pension plan established pursuant to an agreement reached through collective bargaining between the employer and employees. However, if an employee for whom the employer is relieved of any tax under the section 3221(d) exception becomes entitled to a supplemental annuity from the RRB, the employer is subject to an excise tax equal to the amount of the supplemental annuity paid to the employee (plus a percentage determined by the RRB to be sufficient to cover administrative costs attributable to those supplemental annuity payments).

Section 3221(d) was enacted by Public Law 91–215, 84 Stat. 70, which amended the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act. The legislative history to Public Law 91–215 indicates that the exception under section 3221(d) from the tax imposed under section 3221(c) was "directed primarily at the situation existing on certain short-line railroads which are owned by the steel companies. The employees of these lines are, for the most part, covered by other supplemental pension plans established pursuant to collective bargaining agreements between the steel companies and the unions representing the majority of their employees. * * * [T]hese railroads will no longer be required to pay a tax to finance the supplemental annuity fund, but will be required to reimburse the Railroad Retirement Board for any supplemental annuities that their employees may be paid upon retirement." S. Rep. 91–650, 91st Cong., 2d Sess. 6 (February 3, 1970).

Explanation of Provisions

These regulations retain the rules set forth in the proposed regulations for determining whether a plan is a supplemental pension plan established pursuant to an agreement reached through collective bargaining. Under these regulations, a plan is a supplemental pension plan only if the plan is a pension plan within the meaning of § 1.401–1(b)(1)(i). Under this definition, a plan is a pension plan only if the plan is established and maintained primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. Thus, for example, a plan generally is not a supplemental pension plan if distributions from the plan that are attributable to employer contributions may be made prior to a participant's death, disability, or termination of employment. See Rev. Rul. 74–254 (1974–1 C.B. 90); Rev. Rul. 56–693 (1956–2 C.B. 282). A pension plan that is tax-qualified under section 401(a) is subject to special rules with respect to joint and survivor benefits under sections 401(a)(11) and 417.

One commentator requested clarification that these regulations do not preclude a plan from being a supplemental pension plan merely because the plan provides for a single sum distribution form (in addition to providing for periodic payments as described above). A plan is not precluded from being a pension plan within the meaning of § 1.401–1(b)(1)(i) merely because it provides for a single sum distribution form in addition to providing for the required periodic payment forms. See section 417(e)(1) and (2). Thus, the availability of a single sum distribution form (offered in addition to the periodic payment form or forms described above) does not preclude a plan from being a supplemental pension plan under these regulations.

Another commentator requested clarification that a plan in which the employer contribution is discretionary or conditioned on contributions made at the election of employees pursuant to a qualified cash or deferred arrangement described in section 401(k)(2) could not qualify as a supplemental pension plan under section 3221(d) and the regulations. A plan that provides for discretionary employer contributions cannot be a pension plan under § 1.401(b)–1(b)(1)(i) because it does not provide for the payment of definitely determinable benefits. Under section 401(k)(1), a qualified cash or deferred arrangement under section 401(k) must be part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan. Thus, a plan that provides for a section 401(k) qualified cash or deferred arrangement with employer matching contributions cannot be a pension plan under § 1.401(b)–1(b)(1)(i) (unless the plan is a pre-ERISA money purchase plan or a rural cooperative plan). Thus, apart from these narrow exceptions for certain pre-ERISA and rural cooperative plans, neither of the types of plans noted by the commentator could qualify as supplemental pension plans under section 3221(d) and these regulations.

As provided in the proposed regulations, these regulations also require that the RRB determine that a plan is a private pension under its regulations in order for the plan to be a supplemental pension plan under section 3221(d) and these regulations. This requirement is included because the section 3221(d) exception to the section 3221(c) tax is based on the assumption that any participant for whom the exception applies will receive a reduced supplemental annuity because of the supplemental pension plan on account of which the section 3221(c) tax is eliminated.

These regulations also retain the rules set forth in the proposed regulations for determining whether a plan is established pursuant to a collective bargaining agreement with respect to an employee. These rules generally follow the rules applicable to qualified plans for this purpose. Under these regulations, a plan is established pursuant to a collective bargaining agreement with respect to an employee

only if the employee is included in the collective bargaining unit covered by the collective bargaining agreement.

One commentator maintained that employers should also be exempted from supplemental annuity tax with respect to nonbargaining unit employees covered by a plan that is the subject of collective bargaining. The IRS and Treasury Department have determined that it is inappropriate to extend the exception to nonbargaining unit employees. This determination is consistent with the RRB's administrative rulings. As noted below, the final regulations include a delayed effective date for this requirement.

Section 3221(d) imposes an excise tax equal to the amount of the supplemental annuity paid to any employee with respect to whom the employer has been excepted from the section 3221(c) excise tax under the section 3221(d) exception. These regulations retain the rules set forth in the proposed regulations for applying this excise tax under section 3221(d).

Effective Date

These regulations generally apply beginning on October 1, 1998, as provided in the proposed regulations. However, the IRS and Treasury have determined that it is appropriate to provide a delayed applicability date with respect to the portion of the final regulations clarifying what constitutes a plan established pursuant to a collective bargaining agreement with respect to an employee for purposes of section 3221(d). Accordingly, the final regulations provide that the definition in § 31.3221–4(c) applies beginning on January 1, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.3221–4 is added under the undesignated center heading "Tax on Employers" to read as follows:

§ 31.3221–4 Exception from supplemental tax.

(a) *General rule.* Section 3221(d) provides an exception from the excise tax imposed by section 3221(c). Under this exception, the excise tax imposed by section 3221(c) does not apply to an employer with respect to employees who are covered by a supplemental pension plan, as defined in paragraph (b) of this section, that is established pursuant to an agreement reached through collective bargaining between the employer and employees, within the meaning of paragraph (c) of this section.

(b) *Definition of supplemental pension plan*—(1) *In general.* A plan is a supplemental pension plan covered by the section 3221(d) exception described in paragraph (a) of this section only if it meets the requirements of paragraphs (b)(2) through (b)(4) of this section.

(2) *Pension benefit requirement.* A plan is a supplemental pension plan within the meaning of this section only if the plan is a pension plan within the meaning of § 1.401–1(b)(1)(i) of this chapter. Thus, a plan is a supplemental pension plan only if the plan provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. A plan need not be funded through a qualified trust that meets the requirements of section 401(a) or an annuity contract that meets the requirements of section 403(a) in order to meet the requirements of this paragraph (b)(2). A plan that is a profit-sharing plan within the meaning of § 1.401–1(b)(1)(ii) of this chapter or a stock bonus plan within the meaning of § 1.401–1(b)(1)(iii) of this chapter is not a supplemental pension plan within the meaning of this paragraph (b).

(3) *Railroad Retirement Board determination with respect to the plan.* A plan is a supplemental pension plan within the meaning of this paragraph (b) with respect to an employee only during any period for which the Railroad Retirement Board has made a determination under 20 CFR 216.42(d) that the plan is a private pension, the payments from which will result in a reduction in the employee's supplemental annuity payable under 45 U.S.C. 231a(b). A plan is not a supplemental pension plan for any time period before the Railroad Retirement Board has made such a determination, or after that determination is no longer in force.

(4) *Other requirements.* [Reserved]

(c) *Collective bargaining agreement.* A plan is established pursuant to a collective bargaining agreement with respect to an employee only if, in accordance with the rules of § 1.410(b)–6(d)(2) of this chapter, the employee is included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, provided that there is evidence that retirement benefits were the subject of good faith bargaining between employee representatives and the employer or employers.

(d) *Substitute section 3221(d) excise tax.* Section 3221(d) imposes an excise tax on any employer who has been excepted from the excise tax imposed under section 3221(c) by the application of section 3221(d) and paragraph (a) of this section with respect to an employee. The excise tax is equal to the amount of the supplemental annuity paid to that employee under 45 U.S.C. 231a(b), plus a percentage thereof determined by the Railroad Retirement Board to be sufficient to cover the administrative costs attributable to such payments under 45 U.S.C. 231a(b).

(e) *Effective date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies beginning on October 1, 1998.

(2) *Delayed effective date for collective bargaining agreement*

provisions. Paragraph (c) of this section applies beginning on January 1, 2000.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: July 9, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–19936 Filed 8–5–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 801

[TD 8830]

RIN 1545–AW80

Establishment of a Balanced Measurement System

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the adoption by the IRS of a balanced system to measure organizational performance within the IRS. These regulations further prescribe rules relating to the measurement of employee performance and implement requirements that all employees be evaluated on whether they provided fair and equitable treatment to taxpayers and bar use of records of tax enforcement results to evaluate or to impose or suggest goals for any employee of the IRS. These regulations implement sections 1201 and 1204 of the Internal Revenue Restructuring and Reform Act of 1998. These regulations affect internal operations of the IRS and the systems that agency employs to evaluate the performance of organizations within IRS and individuals employed by IRS.

DATES: These regulations are effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Michael G. Gallagher, 202–283–7900 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999, the IRS published in the **Federal Register** (64 FR 457) a notice of proposed rulemaking regarding the establishment of a balanced system of measures for the IRS. Comments were received and a public hearing on the proposed regulations was held on May 13, 1999.

This document adopts, with modifications, the proposed regulations as final regulations.

Explanation of Revisions and Summary of Comments

A commentator suggested that certain organizational changes might add clarity to the regulation. We have adopted this suggestion and have reorganized the regulation to contain separate sections that describe the system for measuring organizational performance and the system for measuring employee performance. Consistent with the suggestion of the commentator, we have revised the heading on the latter performance measurement system to make it clear that it relates to measuring "employee" performance. The organizational changes required incidental reordering within the regulation, as well as the renumbering of additional sections.

A commentator suggested that the discussion of the performance criteria applicable to Senior Executive Service (SES) employees make explicit reference to 5 U.S.C. 4313, which contains certain performance criteria. We have adopted this suggestion and included references to 5 U.S.C. 4313 in section 801.3. The same commentator also suggested that the regulation be modified to provide that SES and managerial employees of the IRS will be evaluated on the basis of organizational performance, as measured under the balanced measurement system for organizational performance. While the IRS will modify the performance criteria for all employees to ensure that they support the organizational measures adopted in this regulation, it will evaluate employees on the basis of the performance criteria made applicable to the positions those employees occupy. Accordingly, this suggestion was not adopted.

A commentator suggested that, while it would be appropriate to gather data regarding customer and employee satisfaction via "questionnaires, surveys and other types of information gathering mechanisms" and a "questionnaire," respectively, as the proposed regulation provides, the IRS might in the future find other appropriate means to gather such data and should not be confined by the regulation from adopting such other information gathering techniques. Although the IRS intends in the near term to gather such customer and employee satisfaction data via questionnaires and surveys, it may in the future determine that other methods of information gathering can provide accurate data. Accordingly, we have adopted the commentator's suggestion and made it clear that questionnaires and surveys are only examples of the information gathering techniques the IRS may employ to measure customer and employee satisfaction. Sections 801.4 and 801.5 of the regulations reflect the changes. A commentator suggested that since certain organizations within the IRS provide service to customers other than taxpayers, the final regulation should make clear that information gathered from persons other than taxpayers could be used in measuring customer satisfaction. We have adopted this suggestion and modified § 801.5.

A commentator suggested that the quantity element of the business results measure be eliminated because, in an attempt to improve organizational performance with respect to that quantity element; managers might exert pressure upon employees to dispose of taxpayer cases too quickly or without regard to merits of the issues presented. The fundamental premise of the balanced system of organizational measures is that the presence of measures that evaluate the quality of the work done by the unit, the satisfaction of customers served by the unit (including taxpayers), and the satisfaction of employees working in the unit will obviate the risk that managers place undue emphasis upon the quantity of work completed. The absolute prohibitions (1) on the use of tax enforcement results and (2) on the use of quantity data to evaluate non-supervisory employees who exercise judgment with respect to tax enforcement results operate as effective checks against the overzealous use of enforcement authority. Accordingly, we have not adopted this suggestion. We have slightly modified the description of the quantity measure to include customer education, assistance and outreach efforts.

A commentator suggested that taxpayers against whom collection actions have been taken would be unable to provide objective information regarding their interactions with IRS personnel and therefore should not be included among the taxpayers requested to provide information regarding customer satisfaction. IRS experience with customer satisfaction surveys, including those taken at Problem Solving Day events, indicates that this commentator's comments are not well founded. Accordingly, the suggestion was not adopted.

Finally, a commentator suggested that IRS should limit the authority delegated to lower-level employees. This suggestion was beyond the scope of the current regulation and was not adopted.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Michael G. Gallagher, Office of the Assistant Chief Counsel (General Legal Services). However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 801

Government employees, Organization and functions (Government agencies).

Amendments to the Regulations

Accordingly, 26 CFR Chapter I is amended by adding part 801 to Subchapter H to read as follows:

PART 801—BALANCED SYSTEM FOR MEASURING ORGANIZATIONAL AND EMPLOYEE PERFORMANCE WITHIN THE INTERNAL REVENUE SERVICE

Sec.

801.1 Balanced performance measurement system; in general.
801.2 Measuring organizational performance.
801.3 Measuring employee performance.
801.4 Customer satisfaction measures.
801.5 Employee satisfaction measures.
801.6 Business results measures.

Authority: 5 U.S.C 9501 *et seq.*; secs. 1201, 1204, Pub. L. 105–206, 112 Stat. 685, 715–716, 722 (26 U.S.C. 7804 note).

§ 801.1 Balanced performance measurement system; in general.

(a) *In general*—(1) The regulations in this part 801 implement the provisions of sections 1201 and 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–106, 112 Stat. 685, 715–716, 722) and provide rules relating to the establishment by the Internal Revenue Service of a balanced performance measurement system.

(2) Modern management practice and various statutory and regulatory provisions require the IRS to set performance goals for organizational units and to measure the results achieved by those organizations with respect to those goals. To fulfill these requirements, the IRS has established a balanced performance measurement system, composed of three elements: Customer Satisfaction Measures; Employee Satisfaction Measures; and Business Results Measures. The IRS is likewise required to establish a performance evaluation system for individual employees.

(b) *Effective date.* This part 801 is effective September 7, 1999.

§ 801.2 Measuring organizational performance.

(a) *In general.* The performance measures that comprise the balanced measurement system will, to the maximum extent possible, be stated in objective, quantifiable and measurable terms and, subject to the limitation set forth in paragraph (b) of this section, will be used to measure the overall performance of various operational units within the IRS. In addition to implementing the requirements of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206, 112 Stat. 685), the measures described here will, where appropriate, be used in performance goals and performance evaluations established, inter alia, under Division E, National Defense Authorization Act for Fiscal Year 1996 (the Clinger-Cohen Act of 1996) (Public Law 104–106, 110 Stat. 186, 679); the Government Performance and Results Act of 1993 (Public Law 103–62, 107 Stat. 285); and the Chief Financial Officers Act of 1990 (Public Law 101–576, 108 Stat. 2838).

(b) *Limitation.* Quantity measures (as described in § 801.6) will not be used to evaluate the performance of or to impose or suggest production goals for any organizational unit with employees who are responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.6) except in conjunction with an evaluation or goals based also upon Customer Satisfaction Measures, Employee Satisfaction Measures, and Quality Measures.

§ 801.3 Measuring employee performance.

(a) *In general.* All employees of the IRS will be evaluated according to the critical elements and standards or such other performance criteria as may be established for their positions. In accordance with the requirements of 5 U.S.C. 4312, 4313 and 9508 and section 1201 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206, 112 Stat. 685) (as is appropriate to the employee's position), the performance criteria for each position will be composed of elements that support the organizational measures of Customer Satisfaction, Employee Satisfaction and Business Results; however, such organizational measures will not directly determine the evaluation of individual employees.

(b) *Fair and equitable treatment of taxpayers.* In addition to all other criteria required to be used in the evaluation of employee performance, all employees of the IRS will be evaluated on whether they provided fair and equitable treatment to taxpayers.

(c) *Senior Executive Service and special positions.* Employees in the Senior Executive Service will be rated in accordance with the requirements of 5 U.S.C. 4312 and 4313 and employees selected to fill positions under 5 U.S.C. 9503 will be evaluated pursuant to workplans, employment agreements, performance agreements or similar documents entered into between the Internal Revenue Service and the employee.

(d) *General workforce.* The performance evaluation system for all other employees will:

(1) Establish one or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance—

(i) Require periodic determinations of whether each employee meets or does not meet the employee's established retention standards; and

(ii) Require that action be taken, in accordance with applicable laws and regulations, with respect to employees whose performance does not meet the established retention standards.

(2) Establish goals or objectives for individual performance consistent with the IRS's performance planning procedures—

(i) Use such goals and objectives to make performance distinctions among employees or groups of employees; and

(ii) Use performance assessments as a basis for granting employee awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions, in accordance with applicable laws and regulations.

(e) *Limitations.* (1) No employee of the Internal Revenue Service may use records of tax enforcement results (as defined in § 801.6) to evaluate any other employee or to impose or suggest production quotas or goals for any employee.

(i) For purposes of the limitation contained in this paragraph (e), employee has the meaning as defined in 5 U.S.C. 2105(a).

(ii) For purposes of the limitation contained in this paragraph (e), evaluate includes any process used to appraise or measure an employee's performance for purposes of providing the following:

(A) Any required or requested performance rating.

(B) A recommendation for an award covered by Chapter 45 of Title 5; 5 U.S.C. 5384; or section 1201(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, (Public Law 105–206, 112 Stat. 685, 713–716).

(C) An assessment of an employee's qualifications for promotion, reassignment or other change in duties.

(D) An assessment of an employee's eligibility for incentives, allowances or bonuses.

(E) Ranking of employees for release/recall and reductions in force.

(2) Employees who are responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.6) in cases concerning one or more taxpayers may be evaluated with respect to work done on such cases only on the basis of information derived from a review of the work done on the taxpayer cases handled by such employee.

(3) Performance measures based in whole or in part on Quantity Measures (as described in § 801.6) will not be used to evaluate the performance of or to impose or suggest goals for any non-supervisory employee who is responsible for exercising judgment with respect to tax enforcement results (as defined in § 801.6).

§ 801.4 Customer satisfaction measures.

The customer satisfaction goals and accomplishments of operating units within the Internal Revenue Service will be determined on the basis of information gathered via various methods. For example, questionnaires, surveys and other types of information gathering mechanisms may be employed to gather data regarding customer satisfaction. Information to measure customer satisfaction for a particular work unit will be gathered from a statistically valid sample of the customers served by that operating unit and will be used to measure, among other things, whether those customers believe that they received courteous, timely and professional treatment by the Internal Revenue Service personnel with whom they dealt. Customers will be permitted to provide information requested for these purposes under conditions that guarantee them anonymity. For purposes of this section, customers may include individual taxpayers, organizational units or employees within Internal Revenue Service and external groups affected by the services performed by the Internal Revenue Service operating unit.

§ 801.5 Employee satisfaction measures.

The employee satisfaction numerical ratings to be given operating units within the Internal Revenue Service will be determined on the basis of information gathered via various methods. For example, questionnaires, surveys and other information gathering mechanisms may be employed to gather data regarding employee satisfaction. The information gathered will be used to measure, among other factors bearing upon employee satisfaction, the quality of supervision and the adequacy of training and support services. All employees of an operating unit will have an opportunity to provide information regarding employee satisfaction within the operating unit under conditions that guarantee them anonymity.

§ 801.6 Business results measures.

(a) *In general.* The business results measures will consist of numerical scores determined under the Quality Measures and the Quantity Measures described elsewhere in this section.

(b) *Quality measures.* The quality measure will be determined on the basis of a review by a specially dedicated staff within the Internal Revenue Service of a statistically valid sample of work items handled by certain functions or organizational units determined by the Commissioner or his delegate such as the following:

(1) *Examination and Collection units and Automated Collection System units (ACS).* The quality review of the handling of cases involving particular taxpayers will focus on such factors as whether Internal Revenue Service personnel devoted an appropriate amount of time to a matter, properly analyzed the issues presented, developed the facts regarding those issues, correctly applied the law to the facts, and complied with statutory, regulatory and Internal Revenue Service procedures, including timeliness, adequacy of notifications and required contacts with taxpayers.

(2) *Toll-free telephone sites.* The quality review of telephone services will focus on such factors as whether Internal Revenue Service personnel provided accurate tax law and account information.

(3) *Other workunits.* The quality review of other workunits will be determined according to criteria prescribed by the Commissioner or his delegate.

(c) *Quantity measures.* The quantity measures will consist of outcome-neutral production and resource data, such as the number of cases closed, work items completed, customer education, assistance and outreach efforts undertaken, hours expended and similar inventory, workload and staffing information, that does not contain information regarding the tax enforcement result reached in any case involving particular taxpayers.

(d) *Definitions*—(1) *Tax enforcement result.* A *tax enforcement result* is the outcome produced by an Internal Revenue Service employee's exercise of judgment recommending or determining whether or how the Internal Revenue Service should pursue enforcement of the tax laws.

(i) *Examples of tax enforcement results.* The following are examples of a tax enforcement result: a lien filed; a levy served; a seizure executed; the amount assessed; the amount collected; and a fraud referral.

(ii) *Examples of data that are not tax enforcement results.* The following are examples of data that are not tax enforcement results: case closures; time per case; direct examination time/out of office time; cycle time; number or percentage of overage cases; inventory information; toll-free level of access; talk time; number and type of customer education, assistance and outreach efforts completed; and data derived from a quality review or from a review of an employee's or a work unit's work on a case, such as the number or percentage of cases in which correct examination adjustments were proposed or appropriate lien determinations were made.

(2) *Records of tax enforcement results. Records of tax enforcement results* are data, statistics, compilations of information or other numerical or quantitative recordations of the tax enforcement results reached in one or more cases, but do not include tax enforcement results of individual cases when used to determine whether an employee exercised appropriate judgment in pursuing enforcement of the tax laws based upon a review of the employee's work on that individual case.

(e) *Permitted uses of records of tax enforcement results.* Records of tax enforcement results may be used for purposes such as forecasting, financial planning, resource management, and the formulation of case selection criteria.

(f) *Examples.* The following examples illustrate the rules of this section:

Example 1. In conducting a performance evaluation, a supervisor may take into consideration information showing that the employee had failed to propose an appropriate adjustment to tax liability in one of the cases the employee examined, provided that information is derived from a review of the work done on the case. All information derived from such a review of individual cases handled by an employee, including time expended, issues raised, and enforcement outcomes reached may be considered in evaluating the employee.

Example 2. When assigning a case, a supervisor may discuss with the employee the merits, issues and development of techniques of the case based upon a review of the case file.

Example 3. A supervisor may not establish a goal for proposed adjustments in a future examination, based upon the tax enforcement results achieved in other cases.

Example 4. A headquarters unit may use records of tax enforcement results to develop methodologies and algorithms for use in selecting tax returns to audit.

Approved: July 22, 1999.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Dated: July 22, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–19769 Filed 8–5–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF EDUCATION

34 CFR Part 611

RIN 1840–AC67

Teacher Quality Enhancement Grants Program

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Final regulations

SUMMARY: The Assistant Secretary for Postsecondary Education (Assistant Secretary) issues regulations that apply the eight percent (8%) indirect cost limitation for the Department's educational training grants to all funds that States and local educational agencies receive under the Teacher Quality Enhancement Grants Program for States and Partnerships authorized by sections 201–205 of the Higher Education Act (HEA), as amended by the Higher Education Amendments of 1998. These regulations would ensure that the limited funding available to support program activities is concentrated on direct support for improvements in teacher licensing, certification, preparation, and recruitment, rather than for recipient "overhead."

DATES: These regulations are effective on September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, 400 Maryland Ave. SW., Portals Building, Room 6234, Washington, D.C. 20202–5131: Telephone: (202) 708–8847, or by FAX to: (202) 260–9272. Inquiries also may be sent by e-mail to: Louis__Venuto@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background

The Nation faces an immediate need for significant improvements in teacher licensure, certification, preparation, and recruitment. America's schools will need to hire 2.2 million teachers over the next decade, more than half of whom will be first-time teachers. As classrooms grow more challenging and diverse, these teachers will need to be well prepared to teach all students to the highest standards. Contemporary classrooms and social conditions confront teachers with a range of complex challenges previously unknown in the profession. New education goals and tougher standards, more rigorous assessments, site-based management, greater interest in parental involvement, the continuing importance of safety and discipline, and expanded use of technology increase the knowledge and skills that teaching demands.

On October 8, 1998, the President signed into law the Higher Education Amendments of 1998 (Pub. L. 105–244). Title II of this law addresses the Nation's need to ensure that new teachers enter the classroom prepared to teach all students to high standards by authorizing, as Title II of the HEA, Teacher Quality Enhancement Grants for States and Partnerships.

The new Teacher Quality Enhancement Grants Program consists of three different competitive grant programs: (1) The State Grants Program, which is designed to help States promote a broad array of improvements in teacher licensure, certification, preparation and recruitment, (2) the Partnership Grants for Improving Teacher Preparation Program, which is designed to have schools of education, schools of arts and sciences, high-need local educational agencies (LEAs) and others work together to ensure that new teachers have the content knowledge and skills their students need of them when they enter the classroom, and (3) the Teacher Recruitment Program, which is designed to help schools and school districts with severe teacher shortages to secure the high-quality teachers that they need. For Fiscal Year 1999, Congress appropriated $75 million for grants to States and partnerships to implement activities under these programs.

These three programs are designed to increase student achievement by implementing comprehensive approaches to improving teacher quality. They collectively provide an historic opportunity to make positive change in the recruitment, preparation, licensing, and on-going support of teachers in America. As such, the success of these programs is critical to the Nation's ability to succeed in increasing student achievement for all students. However, to achieve success those awarded Teacher Quality Enhancement Grants must ensure that they focus their grant funds on costs that are directly associated with securing needed improvements in teaching and the teaching profession. For this reason, on May 19, 1999, the Assistant Secretary published a Notice of Proposed Rulemaking (NPRM) for this program in the **Federal Register** (64 FR 27403) that proposed a limit of eight percent (8%) on the indirect cost rate that States and LEAs receiving Teacher Quality Program funds could use to pay for their overhead and other expenses that they could charge as "indirect costs." This eight-percent rate is the same maximum rate that the Department, under 34 CFR 75.562(a), now permits institutions of higher education (IHEs) and nonprofit agencies to use in charging indirect costs to education training grants. As the May 18, 1999 NPRM explained, by establishing this maximum eight-percent indirect cost for States and LEAs, these recipients will have the same limitation on their indirect costs as do those IHEs and nonprofit organizations that receive funds awarded under the programs' initial competitions. See the Notice Inviting Applications for New Awards and Final Procedures and Requirements for FY 1999 Competitions Under the Teacher Quality Enhancement Grant Programs, 64 FR 6139, 6145–46 (February 8, 1999). Therefore, this regulation will have all

recipients of program funds subject to the same maximum indirect cost rate.

The NPRM recognized that, absent a limitation of this kind, §§ 75.560–75.564 and 80.22 of the Education Department's General Administrative Regulations (EDGAR), which incorporate Federal cost principles developed by the Office of Management and Budget (OMB), permit grantees to claim these costs. However, it also explained that the best data available to the Department indicate that over 20 States have indirect cost rates of over 15 percent; two States have an indirect cost rates of 34 percent. Absent the establishment, through program regulations, of a limitation on recipient indirect cost rates, States with these indirect cost rates that are awarded State or Teacher Recruitment Program grants could devote 15 percent or more of their grant awards to support their overall overhead expenses and other indirect costs rather than the direct costs of improving teacher quality.

The Secretary continues to believe that allowing States, LEAs, and other Teacher Quality Enhancement grant recipients to use program funds to compensate themselves for these very high general overhead and related expenses is inconsistent with the vital purpose of the programs and the expectations that Congress and the Nation have for their success. Accordingly, for reasons explained more fully in the NPRM, given (1) the pivotal significance of the Teacher Quality Enhancement Grant programs, (2) the national need that these programs have a maximum impact on the quality and quantity of highly-qualified new teachers, and (3) the fact that these programs are competitive, the Secretary issues 34 CFR 611.41 (renumbered from proposed § 611.30 in the NPRM). Section 611.41 establishes a maximum indirect cost rate that a State or LEA receiving funds under any of the Teacher Quality Enhancement Grant Programs may use in charging program funds as indirect costs. Under this regulation, a State or LEA may charge Teacher Quality Enhancement Grants Program funds for indirect costs at a rate that is limited to eight percent or its negotiated rate, whichever is less.

Section 611.41 will apply to any funding that States and LEAs receive under the three Teacher Quality Enhancement Grant programs, both under the initial and any subsequent program. As explained above, the Department previously established this limitation for IHEs and nonprofit organizations that receive program funds awarded in the initial 1999 grant competitions. In proposed regulations that the Secretary will develop to govern future competitions under the three Teacher Quality Enhancement Grant programs, the Secretary intends to propose that this eight-percent limitation for IHEs and nonprofit organizations apply to future competitions as well. This proposal, if finalized, would make the eight-percent maximum indirect cost rate applicable to all grant funds awarded under all grant competitions held under these programs, regardless of the recipient.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted comments on the proposed regulation. An analysis of the comment and of the changes in the regulations since publication of the NPRM follows.

Comment: The commenter noted that the cost principles in OMB Circular A–87, which govern Federal grants to State and local governments, authorize grantees to recover indirect costs that are otherwise allowable. The commenter, a State official, acknowledged that the proposed rule for the Teacher Quality programs would itself have minimal impact on his state. However, the commenter expressed concern about what appeared to be a trend on the part of Federal programs to cap administrative costs, and thus create an "unfunded mandate."

Discussion: The three new Teacher Quality Enhancement Grant programs offer an opportunity to improve teacher quality in America by effectively addressing the immediate need for significant improvements in teacher licensure, certification, preparation, and recruitment. However, success will depend upon how well we use the resources that Congress provides to make sustained and meaningful improvements in teacher licensure, certification, preparation, and recruitment. For fiscal year 1999, Congress appropriated $75 million for these three component programs. If these funds, and funds that Congress will appropriate for use in future years, are to achieve their purposes, we need to ensure that they are used as effectively as possible. To do so, it is necessary to place a reasonable limitation on the amount of program funds that Title II grant recipients may use to reimburse themselves for the "indirect costs" of program activities.

Doing so does not create, as the commenter suggests, an unfunded mandate. Rather, § 611.41 strikes a reasonable balance between the need to focus as much funding for the Teacher Quality Enhancement Grant programs as possible on direct services to improve teacher licensure, certification, preparation, and recruitment, and the reality that, to do so, recipients will encounter some indirect costs. In this regard, the Secretary continues to believe that States and LEAs receiving Teacher Quality Enhancement Grant funds do not need to apply high general indirect cost rates in order to fairly compensate themselves for the overhead and other indirect costs associated with activities they will conduct.

Moreover, because these programs are competitive, States and LEAs (as well as IHEs and nonprofit agencies) that believe that they need additional indirect costs to implement these needed grant activities simply need not apply or accept grant awards. Therefore, this regulation does not impose any non-reimbursed indirect costs on unwilling recipients, and so does not establish an unfunded mandate.

The Department has no plans to apply this limitation on State and LEA indirect cost rates to other grant programs. However, any decision to propose doing so would come only after the Department weighs State and LEA interests in charging indirect costs authorized in both EDGAR regulations and OMB cost principles against the Nation's need to maximize the amount of grant funds supporting direct program services. In weighing these relative interests, one consideration must be whether a proposal to limit indirect cost rates can be expected to discourage submission of high-quality applications. In this regard, we note that the Department announced in the application packages used for the initial Teacher Quality Enhancement grant competitions its intent to propose the eight-percent limitation on State and LEA indirect cost rates. Nonetheless, 40 States applied for the State Program grants, and large numbers of LEAs are included as partners in the 220 partnerships that applied for the Partnership Program grants. Also relevant here is the fact that no State applicant for 1999 grant competitions requested an indirect cost reimbursement in excess of eight percent.

State and Teacher Recruitment grant awards have yet to be announced. However, the Secretary is pleased with the number of high-quality applications, and believes that this outpouring of interest in the new Teacher Quality Enhancement Grants Program demonstrates that the limitation on indirect costs has not discouraged high-quality applications for these important awards.

Change: None.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that the Nation's teaching force will have the content knowledge and teaching skills needed to instruct all American students for the next century.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of the document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.336: Teacher Quality Enhancement Grants Program)

List of Subjects in 34 CFR Part 611

Colleges and universities, Elementary and secondary education, Grant programs—education.

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: August 2, 1999.

Claudio F. Prieto,

Acting Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary amends Chapter VI of title 34 of the Code of Federal Regulations by adding a new part 611 to read as follows:

PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM

Sec.

Subpart A–D

Subpart E—Other Grant Conditions

611.41 What is the maximum indirect cost rate for States and local educational agencies?

Authority: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

Subpart A–D—[Reserved]

Subpart E—Other Grant Conditions

§ 611.41 What is the maximum indirect cost rate for States and local educational agencies?

Notwithstanding 34 CFR 75.560–75.562 and 34 CFR 80.22, the maximum indirect cost rate that a State or local educational agency receiving funding under the Teacher Quality Enhancement Grants Program may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent.

(Authority: 20 U.S.C. 1021 *et seq.*)

[FR Doc. 99–20156 Filed 8–5–99; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300897; FRL–6091–9]

RIN 2070–AB78

N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on wheat grain, wheat forage, wheat hay, wheat straw, and meat, fat, meat byproducts, and kidney of cattle, goats, horses, hogs, and sheep. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat. This regulation establishes a maximum permissible level for residues of *N*-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on July 31, 2001.

DATES: This regulation is effective August 6, 1999. Objections and requests for hearings must be received by EPA on or before October 5, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300897], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300897], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300897]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 284, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463; e-mail: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the herbicide *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine, in or on wheat grain at 1 part per million (ppm), wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat, kidney, and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm and meat byproducts (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.1 ppm. These tolerances will expire and are revoked on July 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on Wheat and FFDCA Tolerances

Italian ryegrass or annual ryegrass is one of the most difficult to control weeds in wheat. It is extremely competitive with wheat; as few as 20 plants per square meter can reduce wheat yield by 30%. Ryegrass is not a new species to the Pacific Northwest. It has been effectively controlled in past years by herbicides such as diclofop. However, resistance to diclofop was first identified in Oregon in the early 1980s. Diclofop is now ineffectual against controlling annual ryegrass in wheat. Other registered pesticides do not always provide adequate control of annual ryegrass. EPA has authorized under FIFRA section 18 the use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on wheat in Idaho, Oregon, and Washington. After having reviewed these submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in or on wheat. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in these tolerances remaining in or on wheat grain, wheat, forage, wheat hay, wheat, straw, and meat, fat, meat byproducts, and kidney of cattle, goats, horses, hogs, and sheep after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific

data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide meets EPA's registration requirements for use on wheat or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of (*N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Idaho, Oregon, and Washington to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine on wheat grain at 1 ppm, wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat, kidney, and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm and meat byproducts (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* An acute reference dose (aRfD) has been identified. The lowest observed adverse effect level (LOAEL) of 75 milligrams/kilograms/day (mg/kg/day) lowest dose tested (LDT) from an acute neurotoxicity study was selected for acute dietary risk assessment. At the LOAEL, the males displayed decreased motor activity. An uncertainty factor (UF) of (300 10x for interspecies extrapolation, 10x for intraspecies variability, and 3x for the lack of a no observed adverse effect level (NOAEL)) is appropriate. The 10x FQPA Safety factor to account for enhanced sensitivity of infants and children as required by FFDCA 408(b)(2)(C) was reduced to 3x for acute exposures. The acute Population Adjusted Dose (aPAD) is a modification of the aRfD to accommodate the FQPA Safety Factor. The aPAD is equal to the aRfD divided by the FQPA Safety Factor. Therefore, the dietary aPAD is 0.075 mg/kg/day. The dietary aPAD applies to all population subgroups, since the endpoint of concern neurotoxicity is a systemic effect.

2. *Short- and intermediate-term toxicity.* The systemic NOAEL of 20 mg/kg/day, based on the increased liver weight and decreased T3 and T4 at the LOAEL of 150 mg/kg/day in a 21–day dermal toxicity study in rats was identified as the short- and intermediate-term endpoints.

3. *Chronic toxicity.* EPA has established the chronic RfD (cRFD) for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide at 0.004 mg/kg/day. This RfD is based on the LOAEL of 1.2 mg/kg/day (LDT) in chronic toxicity/carcinogenicity study. At the LOAEL, the effects were methemoglobinemia and systemic effects in various organs. An UF of 300 (10x for interspecies extrapolation, 10x for intraspecies variability, and 3x for the lack of a NOAEL) is appropriate. The 10x FQPA Safety factor to account for enhanced sensitivity of infants and children as required by FFDCA 408(b)(2)(C) is not applicable because the endpoint used in deriving the cRfD is based on methemoglobinemia and multi-organ effects (not developmental or neurotoxic effects) in adult rats after chronic exposure and thus are not relevant for enhanced sensitivity to infants and children. The chronic Population Adjusted Dose (cPAD) is a modification of the cRfD to accommodate the FQPA Safety Factor. The cPAD is equal to the cRfD divided by the FQPA Safety Factor. Hence for chronic exposures, the cPAD and cRfD are the same (0.004 mg/kg/day).

4. *Carcinogenicity.* Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide was classified as a "not likely" human carcinogen.

C. Exposures and Risks

1. Tolerances have been established (40 CFR 180.527) for the combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety, in or on field corn forage, grain, stover, and soybean seed. Time-limited tolerances have also been established for indirect or inadvertent residues for alfalfa, clover, crop group 15 (cereal grains), crop group 16 (forage, stover, and hay of cereal grains), and crop group 17 (grass forage, and grass hay). Risk assessments were conducted by EPA to assess dietary exposures and risks from *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. At the 95th percentile exposure level, assuming

100% crop treated and tolerance level residues for all commodities, 10% of the aPAD was utilized for the U.S. Population and 16% of the aPAD was utilized for children (1–6 years old), the subgroup with the highest exposure. The results of this analysis indicate that the acute dietary risk associated with existing uses and the proposed use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide is below the Agency's level of concern.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 nationwide CSFII and accumulated exposure to the chemical for each commodity. Assuming tolerance level residues for all commodities and percent crop treated (PCT) values of 16% for corn, 26% for soybeans and 26% for cereal grains, 18% of the cPAD was utilized for the U.S. Population and 41% of the cPAD was utilized for children (1–6 years old), the subgroup with the highest exposure. The results of this analysis indicate that the acute dietary risk associated with existing uses and the proposed use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide is below the Agency's level of concern.

Section 408(b)(2)(F) states that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue, that the exposure estimate does not under estimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: PCT values of 16% for corn, 26% for soybeans and 26% for cereal grains.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be under estimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations, including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group, and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide may be applied in a particular area.

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on GENEEC and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and SCI-GROW, which predicts pesticide concentrations in ground water. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. Based on the GENEEC and SCI-GROW models the acute drinking water concentration values are estimated to be 12 parts per billion (ppb) for surface water, and 0.12 ppb for ground water. The chronic drinking water concentration values are estimated to be 2.7 ppb for surface water and 0.12 pbb for ground water.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore, EPA expects only dietary and occupational exposure from the use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-

(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Using the exposure assumptions of 100 PCT and tolerance level residues for all commodities, at the 95th percentile, 10% of the aPAD was utilized for the U.S. Population. The major identifiable subgroup with the highest aggregate exposure is children, 1–6 years old. EPA generally has no concern for exposures below 100% of the aPAD. Despite the potential for exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in drinking water, after calculating a DWLOC (2,400 ppb) for the U.S. population and comparing it to conservative model estimates of acute concentrations of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in surface and ground water (12 ppb and 0.12 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions of tolerance level residues for all commodities and PCT values of 16% for corn, 26% for soybeans and 26% for cereal grains, EPA has concluded that aggregate exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide from food will utilize less than 18% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children, 1–6 years old. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for chronic exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in drinking water, after calculating a DWLOC (120 ppb) for the U.S. population and comparing it to conservative model estimates of concentrations of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in surface and ground water (2.7 ppb and 0.12 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus other indoor and outdoor non-occupational exposure. Since there are no non-dietary, non-occupational exposures expected from the use of this chemical, no short- and intermediate-term risk assessments were conducted.

4. *Aggregate cancer risk for U.S. population. N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide has been classified as a "Not Likely" carcinogen therefore, a cancer risk assessment was not conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide, EPA considered data from developmental toxicity studies in the rat and rabbit, and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal NOAEL is 25 mg/kg/day based on decreased body-weight gain initially at 125 mg/kg/day (LOAEL). The developmental NOAEL is 25 mg/kg/day based on decreased fetal body weight, delayed development mainly delays in ossification in the skull, vertebrae, sternebrae, and appendages, and an increase in the incidence of extra ribs at 125 mg/kg/day (LOAEL).

In a developmental toxicity study in rabbits, the maternal NOAEL is 5 mg/kg/day based on histopathological findings in the liver at 25 mg/kg/day (LOAEL). The NOAEL for developmental toxicity is 25 mg/kg/day based on increased skeletal variations at 125 mg/kg/day (LOAEL).

iii. *Reproductive toxicity study.* In a 2–generation reproductive study in the rats, the NOAEL for maternal/paternal toxicity is 1.4 mg/kg/day based on increased liver weight absolute and relative in F1 females and hepatocytomegaly in F1 males at 7.4 and 8.2 mg/kg/day, respectively (LOAEL). The reproductive NOAEL is 1.3 mg/kg/day based on increased pup death in early lactation (including cannibalism) for F1 litters at 6.9 mg/kg/day (LOAEL).

iv. *Prenatal and postnatal sensitivity.* The Agency has determined that there is no indication of additional sensitivity to young rats or rabbits following prenatal and/or postnatal exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in the developmental and reproductive toxicity studies. However, the Agency is concerned that there was no assessment of susceptibility of the offspring in functional/neurological development.

v. *Conclusion.* There is a complete toxicity data base for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and exposure data are complete or is estimated based on data that reasonably accounts for potential exposures. Although the data indicate

that there is no additional sensitivity to young rats or rabbits, following prenatal and/or postnatal exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in the developmental and reproductive toxicity studies, the Agency has determined that the FQPA Safety Factor should not be removed, instead reduced because:

a. There was no assessment of susceptibility of the offspring in functional/neurological development in the developmental and reproductive studies.

b. There is evidence of neurotoxicity in mice, rats and dogs.

c. There is concern for endocrine (thyroid hormone) disruption as evidenced in several species (mice, rats, dogs and rabbits).

2. *Acute risk.* Using the exposure assumptions of 100% PCT and tolerance level residues for all commodities, at the 95th percentile, 16% of the aPAD was utilized for children, 1–6 years old, the major identifiable subgroup with the highest aggregate exposure. EPA generally has no concern for exposures below 100% of the aPAD. Despite the potential for exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in drinking water, after calculating a DWLOC (630 ppb) for children, 1–6 years old and comparing it to conservative model estimates of acute concentrations of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in surface and ground water (12 ppb and 0.12 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

3. *Chronic risk.* Using the exposure assumptions of tolerance level residues for all commodities and PCT treated values of 16% for corn, 26% for soybeans and 26% for cereal grains, EPA has concluded that aggregate exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide from food will utilize less than 41% of the cPAD for children, 1–6 years old, the major identifiable subgroup with the highest aggregate exposure. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for chronic exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in drinking water, after calculating a DWLOC (24 ppb) for children, 1–6 years old and comparing it to conservative model estimates of concentrations of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in surface and ground water (2.7 ppb and 0.12 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* There are no non-dietary, non-occupational exposures expected from the use of this chemical. Therefore, no short- and intermediate-term risk assessments were conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants and livestock has been adequately defined for this section 18. In plants, metabolism data are available for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on corn and soybeans. For both crops, the residues of concern are parent *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety. In livestock, metabolism data are available for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in goats and hens. The residues of concern in ruminants and poultry are parent *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

N-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and the metabolites FOE oxalate, FOE sulfonic acid (as its sodium salt, monohydrate), and FOE thioglycolate sulfoxide were tested through the FDA multi-residue methods B, C, D, and E. Testing through multi-residue method A is not required because *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites do not contain the *N*-methylcarbamate structure. FDA will review the multi-residue methods data to determine sufficiency.

D. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances for *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on wheat.

E. Rotational Crop Restrictions

A field accumulation in rotational crops study has been reviewed and found to support the plant-back intervals of 1 and 4 months for potatoes and carrots, respectively. No plant-back interval is needed for corn, soybeans, alfalfa, clover, cereal grains, and grasses since they already have temporary tolerances. No other crops may be rotated.

V. Conclusion

Therefore, tolerances are established for combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in wheat grain at 1 ppm, wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat, kidney, and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm and meat byproducts (other than kidney) at 0.10 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 5, 1999, file written objections to any aspect of this regulation and may also request a

hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300897] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.527, by adding paragraph (b) to read as follows:

§ 180.527 N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromehtyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following food commodities.

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.05	7/31/01
Cattle, kidney	0.50	7/31/01
Cattle, meat	0.05	7/31/01
Cattle, meat by-products	0.10	7/31/01
Goats, fat	0.05	7/31/01
Goats, kidney	0.50	7/31/01
Goats, meat	0.05	7/31/01
Goats, meat by-products	0.10	7/31/01
Hogs, fat	0.05	7/31/01
Hogs, kidney	0.50	7/31/01
Hogs, meat	0.05	7/31/01
Hogs, meat by-products	0.10	7/31/01
Horses, fat	0.05	7/31/01
Horses, kidney	0.50	7/31/01
Horses, meat	0.05	7/31/01
Horses, meat by-products	0.10	7/31/01
Sheep, fat	0.05	7/31/01
Sheep, kidney	0.50	7/31/01
Sheep, meat	0.05	7/31/01
Sheep, meat by-products	0.10	7/31/01
Wheat, forage	10.0	7/31/01
Wheat, grain	1.0	7/31/01
Wheat, hay	2.0	7/31/01
Wheat, straw	0.50	7/31/01

* * * * *

[FR Doc. 99–20317 Filed 8–5–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300895; FRL–6091–6]

RIN 2070–AB78

Sodium Chlorate; Extension of Exemption from Requirement of a Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited exemption from the requirement of a tolerance for residues of the desiccant sodium chlorate in or on wheat for an additional 1½-year period. This exemption from the requirement of a tolerance will expire and is revoked on July 31, 2001. This action is in connection with a crisis exemption declared under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on wheat. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption authorized under FIFRA section 18.

DATES: This regulation becomes effective August 6, 1999. Objections and requests for hearings must be received by EPA, on or before October 5, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300895], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300895], must also be submitted to:

Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2,) 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300895]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 3, 1997 (62 FR 63858) (FRL–5754–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited exemption from the requirement of a tolerance for the residues of sodium chlorate in or on wheat, with an expiration date of July 31, 1998. EPA extended the expiration date of this exemption to January 31, 2000 in a **Federal Register** notice published July 1, 1998 (63 FR 35844) (FRL–5795–8). EPA established the exemption from the requirement of a tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of sodium chlorate on wheat for this year's growing season due to the need for a harvest aid to desiccate winter weeds which developed in thin stands of an already diminished wheat crop.

EPA assessed the potential risks presented by residues of sodium chlorate in or on wheat. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 3, 1997 (62 FR 63858). Based on that data and information considered, the Agency reaffirms that extension of the time-limited exemption from the requirement of a tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited exemption from the requirement of a tolerance is extended for an additional 1½-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this exemption from the requirement of a tolerance will expire and is revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide remaining in or on wheat after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the exemption from the requirement of a tolerance. EPA will take action to revoke this exemption from the requirement tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 5, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300895] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the requirement of a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 26, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.1020 [Amended]

2. In § 180.1020, by amending paragraph (b) by changing the date "1/31/00" to read "7/31/01".

[FR Doc. 99–20318 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62128C; FRL–6097–5]

RIN 2070–AC64

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Certification Requirements and Work Practice Standards for Individuals and Firms; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the procedural requirements for training and certification of workers involved in lead-based paint activities in target housing and child-occupied facilities by extending the effective dates for certification of individuals and firms and use of work practice standards that are contained in the final regulations promulgated under section 402 of the Toxic Substances Control Act (TSCA). The extension applies only in those States and Indian Tribes where EPA is operating the Federal lead-based paint program. EPA is extending these effective dates in order to provide additional time for individuals to become trained and certified to conduct lead-based paint activities safely, reliably, and effectively. EPA believes that the extension of the effective dates will result in successful implementation of the Federal program and ensure the availability of a well-qualified workforce to perform risk assessments, abatements, and other lead-based paint activities.

DATES: This action is effective on August 6, 1999.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Ellie Clark, National Program Chemicals Division, Office of Pollution Prevention and Toxics (7404), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 202–260–3402; fax number: 202–260–0770; e-mail address: clark.ellie@epa.gov.

For general information contact: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are a professional, individual, or firm who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226. Potentially affected categories and entities may include, but are not limited to:

Type of Entity	SIC Code	Examples of Entities
Lead abatement professionals	1799, 8734	Workers, supervisors, inspectors, risk assessors and project designers engaged in lead-based paint activities. Firms engaged in lead-based paint activities.
Training programs	1799, 8331, 8742, 8748	Training programs providing training services in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The Standard Industrial Classification (SIC) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business are affected by this action, you should carefully examine this action and the applicability provisions in 40 CFR part 745, subpart L. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register– Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–62128B. The official record consists of the documents specifically referenced in this action and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. What Does this Amendment Do?

A. Background

In 1996, EPA published the final TSCA section 402/404 rule for training and certification of workers, accreditation of training programs, and model State programs for lead-based paint activities in target housing and child-occupied facilities (61 FR 45778, August 29, 1996) (FRL–5389–9). At that time, the implementation of the Federal program was delayed until August 29, 1998, to allow States and Indian Tribes to apply and receive authorization to run their own EPA-approved lead-based paint programs based on the model program.

The final rule provided for an additional phase-in period to allow the regulated community to come into compliance after the Federal program became effective in non-authorized States and Tribes on August 29, 1998. After March 1, 1999, training programs could no longer provide, offer, or claim to provide training or refresher training for lead-based paint activities defined at § 745.223 without being accredited by EPA according to the requirements of § 745.225. The rule also stated that after August 30, 1999, no individuals or firms could perform, offer, or claim to perform lead-based paint activities as defined at § 745.223 without certification from EPA under § 745.226 to conduct those activities. A special provision at § 745.226(d) was effective only until August 30, 1999, and allowed individuals to seek certification based on prior training and completion of a refresher course and a certification exam (if applicable). Additionally, after August 30, 1999, all lead-based paint activities were to be performed according to the work practice standards at § 745.227.

The Federal program under part 745, subpart L became effective August 31, 1998, in all non-authorized States and Tribes. The accreditation requirements at § 745.225 became effective March 1, 1999, and all training providers must now be accredited by EPA to offer lead-based paint activities courses in the Federal program.

B. Program Implementation

Although EPA has been reviewing applications for accreditation, there have been several unavoidable delays which have slowed the process of approving a sufficient number of training providers to accommodate the number of individuals seeking certification prior to the August 30, 1999 date. Two important items, the model training courses and the fee schedule, were not made available by EPA to training providers in a sufficiently timely fashion to allow them to prepare their application packages well in advance of the deadlines.

In the preamble to the final rule, EPA indicated that it would make model training courses available in advance for training providers to use in developing their programs (61 FR 45778, at 45783). Under § 745.225(b)(1)(iii), training providers who used EPA model training materials may submit an abbreviated application package for accreditation and thus potentially accelerate the accreditation process. However, EPA was unable to make all model training materials immediately available to training providers. The updating of some of these courses to reflect the course curricula in § 745.225(d) was initially delayed. The development of a new model course for the project designer discipline has not yet been completed. EPA has also changed distributors for the model training course materials. The course materials were not available to the regulated community while a new distributor was being sought and contract arrangements finalized.

EPA was also delayed in promulgating the final fee rule setting out the fee schedule for accreditation of training providers and certification of contractors. The final fee rule was effective June 11, 1999 (64 FR 31092, June 9, 1999) (FRL–6058–6). Prior to its publication, training providers were unsure as to the fee structure and may have delayed preparing accreditation applications while waiting for the fee rule to be finalized.

Because of these delays, some areas of the U.S. where EPA is running the Federal program have insufficient training courses currently available for the number of individuals seeking certification. In some areas this is due to a lack of training provider applicants to provide training. In other areas, this is due to a backlog of training provider applications needing review by EPA. Despite the fact that the August 30 deadline is nearing, EPA has received only a few certification applications because of the difficulty for many individuals to take the courses needed prior to applying for certification. The lack of refresher courses has been a particular problem for those who wish to use the certification based on prior training provisions at § 745.226(d) that require completion of an EPA-accredited refresher course. Additionally, EPA has not made the certification exam available for inspectors, risk assessors, and supervisors who are required by § 745.226(b)(1)(ii) to pass a certification exam after completing the training courses. Although EPA expects to start offering the exam before the August 30, 1999 deadline, there would not be adequate time before August 30 to accommodate the many individuals who must take the exam prior to certification.

C. Extension Necessary

EPA believes that it is necessary to extend the effective dates for certification and work practice standards to March 1, 2000, to allow for successful implementation of the Federal program. This will allow EPA time to accredit sufficient training providers to accommodate the many individuals who must be certified. In particular, EPA wishes to accommodate those individuals who have years of experience conducting lead-based paint activities and choose to use the certification based on prior training provisions at § 745.226(d), which would also be extended until March 1, 2000. These individuals must take refresher courses, which EPA expects to be available in greater numbers with the extended effective date. Once individuals take the appropriate courses, inspectors, risk assessors, and supervisors must also complete the appropriate certification exams. EPA will have those exams in place and available for all those who seek to take the exams prior to the March 1, 2000 deadline. This extension only applies in States and Tribes where EPA is operating the Federal lead-based paint program under part 745, subpart L. It does not affect States and Tribes operating EPA-authorized programs under part 745, subpart Q. Additionally, in the Federal program, the extension for use of work practice standards does not apply once an individual is certified by EPA, because § 745.226(a)(4) states that individuals who have received EPA certification must conduct lead-based paint activities in compliance with the appropriate work practice standards in § 745.227.

Without the extension of the effective dates, EPA does not believe that it is currently possible to have effective implementation of the Federal lead-based paint program and ensure that individuals are well-trained in conducting lead-based paint activities in target housing and child-occupied facilities. EPA is concerned that under the original deadline, individuals who could not be certified, because of the lack of available training courses and/or certification exams, would not be able to legally perform lead-based paint activities after August 30, 1999. This

would reduce the availability of a well-qualified workforce to conduct lead-based paint activities. EPA believes that it is more appropriate to extend the effective dates to allow an appropriate amount of time for individuals to complete the necessary prerequisites and receive certification. EPA will work to assist the regulated community in coming into compliance by the March 1, 2000 deadline.

IV. Why is this Amendment Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is impracticable, unnecessary and would be contrary to the public interest. EPA finds that there is good cause to issue a final rule, without utilizing all of the notice and public comment procedures in section 553(b) of the Administrative Procedure Act (APA). It is impracticable to utilize the full-scale notice and comment proceedings in section 553(b), because such proceedings would unnecesarily extend the rulemaking process beyond the August 30, 1999 effective date, and would further delay the implementation of certification requirements and work practice standards. Congress clearly intended that EPA act expeditiously to promulgate training and certification requirements for lead-based paint activities, and even established a deadline for their promulgation. EPA did not meet the deadline because of the time-consuming process that was necessary to develop the Federal accreditation, training and certification processes and the State and Tribal authorization program. If EPA were to develop and publish a notice of proposed rulemaking pursuant to section 553(b), the full implementation of the Federal training and certification requirements would be even further delayed. As explained above, the amendments contained in this action will only extend the effective dates for the Federal program certification requirements and work practice standards to March 1, 2000. EPA is not making any changes to the substantive requirements of the current part 745, subpart L provisions. EPA is extending these effective dates in order to provide additional time for individuals to become trained and certified to conduct lead-based paint activities safely, reliably, and effectively. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the APA (5 U.S.C. 553(b)(3)(B)) to make this amendment without prior notice and comment.

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule does not impose any new requirements. It only extends effective dates that are contained in the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice and comment requirements under the APA, or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the preamble for the final rule (61 FR 45778, at 45808).

VI. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. EPA has made such a good cause finding for this final rule, and established an effective date of August 6, 1999. Pursuant to 5 U.S.C 808(2), this determination is supported by the brief statement in Unit IV. of this preamble. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and reporting requirements.

Dated: July 29, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 745 is amended as follows:

PART 745 [AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

2. In § 745.226, by revising paragraphs (a)(5), (d)(2), and (f)(1) to read as follows:

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities; target housing and child-occupied facilities.

(a) * * *

(5) It shall be a violation of TSCA for an individual to conduct any of the lead-based paint activities described in § 745.227 after March 1, 2000, if that individual has not been certified by EPA pursuant to this section to do so.

* * * * *

(d) * * *

(2) Individuals shall have until March 1, 2000, to apply to EPA for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in paragraph (a), and paragraph (b) or (c) of this section, according to the discipline for which certification is being sought.

* * * * *

(f) * * *

(1) All firms which perform or offer to perform any of the lead-based paint activities described in § 745.227 after March 1, 2000, shall be certified by EPA.

3. In § 745.227, by revising paragraph (a)(1) to read as follows:

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

(a) * * *

(1) Beginning on March 1, 2000, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

* * * * *

4. In § 745.239, by revising paragraphs (b) and (c) to read as follows:

§ 745.239 Effective dates.

* * * * *

(b) No individual or firm shall perform, offer, or claim to perform lead-based paint activities, as defined in this subpart, without certification from EPA to conduct such activities pursuant to § 745.226 on or after March 1, 2000.

(c) All lead-based paint activities shall be performed pursuant to the work practice standards contained in § 745.227 on or after March 1, 2000.

[FR Doc. 99–20372 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7716]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Georgia: Madison, city of, Morgan County	130224	June 7, 1999	February 21, 1975
Maine: Pembroke, town of, Washington County	230143	June 9, 1999	October 29, 1976
Missouri: Airport Drive, village of, Jasper County	290761	.....do	February 14, 1975
Ohio: Clarksville, village of, Clinton County	390820	.....do	November 10, 1978
Michigan: Gun Plain, township of, Allegan County.	260614	June 23, 1999	
Minnesota: Lonsdale, city of, Rice County	270445	.....do	

State/location	Community No.	Effective date of eligibility	Current effective map date
Missouri: McDonald County, unincorporated areas.	290817	June 30, 1999	November 2, 1983
New Eligibles—Regular Program			
Ohio: Riverlea, village of, Franklin County	390692	June 9, 1999	April 21, 1999
California: El Monte, city of, Los Angeles County	060658	June 16, 1999	NFSHA
Missouri: Newton County, unincorporated areas	290820	June 30, 1999	April 17, 1985
Withdrawn			
Ohio: South Zanesville, village of, Muskingum County.	390860	June 9, 1999	October 20, 1978
Reinstatements			
Ohio: Dublin, city of, Delaware and Franklin Counties.	390673	June 21, 1974, Emerg.;June 4, 1980 Reg.; April 21, 1999 Susp.; June 15, 1999 Rein.	April 21, 1999
Missouri: Cobalt, village of, Madison County	290601	February 12, 1985 Emerg.; July 2, 1987 Reg.; March 5, 1990 Susp.; June 30, 1999 Rein.	July 2, 1987
Regular Program Conversions			
Region I			
Massachusetts: Wilmington, town of, Middlesex County.	250227	June 2, 1999; Suspension Withdrawn	June 2, 1999
Region II			
New Jersey: Point Pleasant Beach, borough of, Ocean County.	340388	do	Do.
New York:			
Deerfield, town of, Oneida County	360526	do	Do.
Newport, town of, Herkimer County	361111	do	Do.
Poland, village of, Herkimer County	360316	do	Do.
Russia, town of, Herkimer County	361121	do	Do.
Sylvan Beach, village of, Oneida County	361042	do	Do.
Puerto Rico:			
Bayamon (Municipality)	720100	do	Do.
Puerto Rico (Commonwealth)	720000	do	Do.
Region III			
West Virginia: Matewan, town of, Mingo County	545538	do	Do.
Region IV			
North Carolina: Bogue, town of, Carteret County	370491	do	Do.
Region V			
Michigan: Delta, charter township, Eaton County	260066	do	Do.
Minnesota: Centerville, city of, Anoka County	270008	do	Do.
Region VI			
Louisiana:			
LeCompte, town of, Rapides Parish	220150	do	Do.
Rapides Parish, unincorporated areas	220145	do	Do.
Region VIII			
North Dakota: Dickinson, city of, Stark County	380117	do	Do.
Region IX			
California: Palo Alto, city of, Santa Clara County	060348	do	Do.
Region X			
Oregon:			
Coburg, city of, Lane County	410119	do	Do.
Cottage Grove, city of, Lane County	410120	do	Do.
Creswell, city of, Lane County	410121	do	Do.
Dunes City, city of, Lane County	410262	do	Do.
Eugene, city of, Lane County	410122	do	Do.
Florence, city of, Lane County	410123	do	Do.
Junction City, city of, Lane County	410124	do	Do.
Lane County, unincorporated areas	415591	do	Do.
Lowell, city of, Lane County	410125	do	Do.
Oakridge, city of, Lane County	410126	do	Do.
Springfield, city of, Lane County	415592	do	Do.
Veneta, city of, Lane County	410128	do	Do.
Westfir, city of, Lane County	410289	do	Do.
Region VI			
Texas:			
Austin County, unincorporated areas	480704	June 16, 1999; suspension withdrawn	June 16, 1999.
Sealy, city of, Austin County	480017	do	Do.
Region VII			
Missouri:			
Alexandria, city of, Clark County	290080	do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Warren County, unincorporated areas	290443	....do	Do.
Region IX			
California:			
San Diego, city of, San Diego County	060295	....do	Do.
San Diego County, unincorporated areas	060284	....do	Do.
Shasta Lake, city of, Shasta County	060758	....do	Do.
Shasta County, unincorporated areas	060358	....do	Do.
Vista, city of, San Diego County	060297	....do	Do.
Region X			
Oregon:			
Clatsop County, unincorporated areas	410027	....do	Do.
Gearhart, city of, Clatsop County	410030	....do	Do.
Washington:			
Ferry County, unincorporated areas	530041	....do	Do.
Thurston County, unincorporated areas	530188	....do	Do.
Yelm County, unincorporated areas	530310	....do	Do.
Region I			
Connecticut:			
East Lyme, town of, New London County	090096	June 30, 1999; Suspension Withdrawn.	June 30, 1999
Westport, town of, Fairfield County	090019	....do	Do.
Massachusetts: Rowley, town of, Essex County	250101	....do	Do.
Region II			
New Jersey:			
Galloway, township of, Atlantic County	340008	....do	Do.
Little Egg Harbor, township of, Ocean County.	340380	....do	Do.
Region IV			
Florida:			
Cedar Key, city of, Levy County	120373	....do	Do.
Hillsborough County, unincorporated areas	120112	....do	Do.
Manatee County, unincorporated areas	120153	....do	Do.
Martin County, unincorporated areas	120161	....do	Do.
Okaloosa County, unincorporated areas	120173	....do	Do.
St. Lucie County, unincorporated areas	120285	....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: July 23, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–20347 Filed 8–5–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–200; DA 99–1491]

Assessment and Collection of Regulatory Fees For Fiscal Year 1999

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revised its Schedule of Regulatory Fees on June 11, 1999, in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1999. *See Report and Order in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999,* MD Docket 98–200, FCC 99–146, released June 18, 1999, 64 FR 35831 (July 1, 1999). The attached *Order* establishes the dates when these regulatory fees must be paid.

DATES: September 13, 1999, through September 22, 1999, for all annual fee payors. Beginning on September 13, 1999, for applicants who pay fees in advance in combination with their application fee for new, renewal and reinstatement authorizations in the private wireless services.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

Adopted: August 2, 1999.
Released: August 2, 1999.

1. The Managing Director has determined the dates for collection of the fees adopted in the above-captioned proceeding. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1999,* FCC 98–200, released June 18, 1999, 64 FR 35831 (July 1, 1999). We are establishing collection dates as indicated in paragraphs 2 and 3.

2. Annual regulatory fees for regulatees in the cable television, common carrier, international, mass media, and commercial wireless services are due during the period beginning *September 13, 1999,* and ending *September 22, 1999.* Parties paying these fees electronically must ensure that payment is received by Mellon Bank no later than *September 21, 1999,* however they are requested to submit them on *September 13th* or *September 14th* to facilitate their receipt and recording in a timely fashion.

3. Applicants for new, renewal and reinstatement licenses in the private wireless private mobile radio (PMRS) and the microwave radio services, which pay annual fees of $13.00 in advance for each year of their license term in combination with the appropriate application fee, are to begin paying the new fee on *September 13, 1999.* For private wireless licensees in the aviation, marine, general mobile (GMRS), and other land mobile radio services paying $7.00 in advance for

each year of their license term in combination with the appropriate application fee, they also are to begin paying the new fee on *September 13, 1999*. Applicants for amateur vanity call signs paying $1.40 in advance for each year of their license term in combination with the appropriate application fee, they too are to begin paying the new fee on *September 13, 1999*.

4. Since the time for collecting fees is extremely limited, we are unable to offer installment payments for fiscal year 1999.

5. Accordingly, It is ordered that the dates for collection of fiscal year 1999 regulatory fees are as provided in paragraphs 2 and 3. This action is taken under delegated authority pursuant to § 0.231(a) and § 1.1157(b)(1) of the Commission's rules. 47 U.S.C. 0.231(a) and 1.1157(b)(1).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20280 Filed 8–5–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–85; FCC 99–57]

Implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission's amendments to 47 CFR 76.952 and 47 CFR 76.990, which contain information collection requirements, will become effective on August 31, 1999. These amendments, which were published in the **Federal Register** on July 2, 1999, relate to implementation of provisions of the Telecommunications Act of 1996.

EFFECTIVE DATE: The amendments to 47 CFR 76.952 and 47 CFR 76.990, published at 64 FR 35948 will become effective on August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson or Marjorie Reed Greene, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

1. On March 29, 1999, the Commission released a Report and Order, a summary of which was published in the **Federal Register**. See 64 FR 35948, July 2, 1999. The Report and Order implements the Cable Act Reform provisions of the Telecommunications Act of 1996. Because the rules imposed new information collection requirements, the amendments to 47 CFR 76.952 and 47 CFR 76.990 could not become effective until approved by the Office of Management and Budget ("OMB"), and no sooner than August 31, 1999. OMB approved these rule changes on June 16, 1999.

2. The **Federal Register** summary stated that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval. The amendments to 47 CFR 76.952 and 47 CFR 76.990 become effective on August 31, 1999. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20244 Filed 8–5–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–85; FCC 99–57]

Implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On July 2, 1999, the Commission published a final rule which implemented provisions of the Telecommunications Act of 1996 that reform several parts of Title VI of the Communications Act of 1934, including a provision concerning notice by cable operators to subscribers of service and rate changes. This document corrects that rule by removing an incorrect amendment and publishing the correct amendment.

EFFECTIVE DATE: August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson or Marjorie Reed Greene, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

On March 29, 1999, the Commission released a Report and Order, a summary of which was published in the **Federal Register**. See 64 FR 35948, July 2, 1999. In that rule, published in the **Federal Register** on July 2, 1999, an amendment was made to 47 CFR 76.1603(e). The amendment to 47 CFR 76.1603(e) should have instead been made to 47 CFR 76.964(b). The Commission has released, and will soon publish in the **Federal Register**, a Report and Order (FCC 99–12) which redesignates 47 CFR 76.964(b) as 47 CFR 76.1603(e). The change the Commission made to the rule published on July 2, 1999 anticipated that the requirement had previously been moved. This document corrects that error.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

The rule published on July 2, 1999 at 64 FR 35948, is corrected as follows:

PART 76—[CORRECTED]

1. On page 35951, in the third column, amendatory instruction 17 and the amendment to § 76.1603(e) are removed.

2. The following amendatory instruction and amendment are added in its place:

17. Section 76.964 is amended by revising paragraph (b) to read as follows:

§ 76.964 Written notification of changes in rates and services.

* * * * *

(b) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

* * * * *

[FR Doc. 99–20243 Filed 8–5–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 072999A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of General category daily retention limit on previously designated restricted-fishing days.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category restricted-fishing day (RFD)

schedule should be adjusted, i.e., certain RFDs should be waived, in order to allow for maximum utilization of the General category June-August subquota. Therefore, NMFS increases the daily retention limit from zero to one large medium or giant BFT on the following previously designated RFDs for 1999: August 8, 9, 15, and 16.

DATES: Effective August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. General category effort controls (including time-period subquotas and RFDs) are specified annually under §§ 635.23(a) and 635.27(a). The 1999 General category effort controls were implemented June 1, 1999 (64 FR 29806, June 3, 1999).

Adjustment of Daily Retention Limit for Selected Dates

Under § 635.23 (a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that adjustment to the RFD schedule, and therefore an increase of the daily retention limit for selected previously designated RFDs, is necessary. Therefore, NMFS adjusts the daily retention limit for August 8, 9, 15, and 16, 1999, to one large medium or giant BFT per vessel. NMFS has selected these days in order give adequate advanced notice to fishery participants and NMFS enforcement.

The intent of this adjustment is to allow for maximum utilization of the June-August subquota (specified under § 635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Classification

This action is taken under § 635.23(a)(4) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 2, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20249 Filed 8–2–99; 5:06 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 99043–913–01; I.D. 072299C]

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Commercial Closure From Fort Ross to Point Reyes, CA; Inseason Adjustment from Cape Flattery to Leadbetter Point, WA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; inseason adjustment (transfer); request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Fort Ross to Point Reyes, CA, was closed at midnight, July 12, 1999. The Northwest Regional Administrator, NMFS (Regional Administrator), has determined that the commercial quota of 2,500 chinook salmon has been reached. In addition, 2,500 chinook salmon will be transferred from the May/June commercial troll fishery between the U.S.-Canada border and Cape Falcon, Oregon, to the July through September fishery between Cape Flattery and Leadbetter Point, WA. These actions are necessary to conform to the 1999 management measures and are intended to ensure conservation of chinook salmon.

DATES: Closure effective 2400 hours local time (l.t.), July 12, 1999. Transfer effective August 5, 1999. Comments will be accepted through August 20, 1999.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070; or to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206–526–6140, or Svein Fougner, 562–980–4030.

SUPPLEMENTARY INFORMATION:

Closure of the Test Fishery

Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that, when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, NMFS will, by notification issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the 1999 management measures for ocean salmon fisheries (64 FR 24078, May 5, 1999), NMFS announced that the commercial fishery for all salmon, except coho, in the area between Fort Ross (38°31'00" N. lat.) to Point Reyes, CA (test fishery inside 6 nm [11.1 km]) would open on July 1 through the earlier of July 14 or attainment of a 2,500 chinook quota.

Daily landings of chinook salmon from July 1 to 8 ranged from 0 to 300 fish, with 1 to 22 boats participating daily. On Friday, July 9, participation increased to 49 boats, with most boats catching the 30–fish limit early in the day, and total landings for the day were over 1,100 fish. California Department of Fish and Game (CDFG) staff recognized the increased effort and anticipated the quota would be met by Saturday but were unable to close the fishery until Monday, July 12, 1999. The information regarding the attainment of the quota was distributed to the commercial fish buyers and fishermen on Saturday morning, and a voluntary closure was encouraged by the CDFG. In response to CDFG concerns, most fishermen chose to respect the voluntary closure; participation dropped from 51 boats on Saturday to 4 boats on Sunday. As of July 11, 1999, the total landings of chinook were 3,144, 644 fish over the quota.

In order to provide notification to the fishing fleet, the fishery was closed at midnight, July 12. In making this decision, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and the CDFG. The State of California will manage the commercial fishery in state waters adjacent to this area of the exclusive economic zone (EEZ) in accordance with this Federal action. As provided by the inseason notification procedures of 50 CFR 660.411, actual

notice to fishermen of this action was given prior to 2400 hours l.t., July 12, 1999, by telephone hotline numbers 206–526–6667 and 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to close the fishery upon achievement of the quota, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Transfer of Chinook Salmon

In the 1999 management measures for ocean salmon fisheries (64 FR 24078, May 5, 1999), NMFS announced that the commercial fishery for all salmon except coho, from the U.S.-Canada border to Cape Falcon, Oregon, would open May 1 through the earlier of June 15 or attainment of a 24,000 chinook guideline, and that the commercial fishery for all salmon from Cape Flattery (48°23'00" N. lat.) to Cape Alava (48°10'00" N. lat.) West of 125°05'00" W. long. and Cape Alava to Leadbetter Point, WA, would open July 10 through the earliest of September 30 or attainment of the overall chinook quota (preseason 4,500 chinook guideline) or 20,000 coho quota.

The May/June commercial fishery for salmon from the U.S.-Canada border to Cape Falcon, Oregon, landed 11,116 chinook salmon of the 24,000 chinook salmon guideline, with 12,884 fish remaining. The Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and the Oregon Department of Fish and Wildlife to consider transferring all, or a portion of, the 12,884 fish remaining from the May/June fishery chinook guideline to the July through September season. The States of Washington and Oregon have recommended that any amount transferred should not result in increased impacts to Endangered Species Act (ESA) listed stocks from the level of impacts approved in the preseason regulations. Analysis of the transfer indicated that a transfer of 2,500 chinook salmon to the later season from Cape Flattery to Leadbetter Point, WA, could occur without increasing impacts to ESA-listed salmon. Therefore, NMFS is transferring 2,500 of the remaining 12,884 chinook salmon from the May/June commercial fishery to the July through September fishery from Cape Flattery to Leadbetter Point, WA, making the total guideline for this area for this period 7,000 chinook salmon.

Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i). All other restrictions that applied to this fishery remained in effect as announced in the annual management measures. The State of Washington will manage the commercial fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 2, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20349 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 151
Friday, August 6, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV99–931–1 PR]

Fresh Bartlett Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $0.02 to $0.025 per standard box of fresh Bartlett pears established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1999–2000 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh Bartlett pears grown in Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1999–2000 fiscal period began July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 7, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This rule is issued under Marketing Agreement No. 141 and Order No. 931 (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, fresh Bartlett pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable fresh Bartlett pears beginning July 1, 1999, and continue until modified, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.02 to $0.025 per standard box of fresh Bartlett pears handled.

The fresh Bartlett pear marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of eight grower members and six handler members, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.02 per standard box that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 3, 1999, and unanimously recommended 1999–2000 expenditures of $77,231 and an assessment rate of $0.025 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $97,000. The

assessment rate of $0.025 is $0.005 higher than the rate currently in effect. The Committee recommended an increased assessment rate because assessable 1999–2000 tonnage is expected to be less than the five-year average of 2,910,048 standard boxes, and the current rate would not generate enough income to adequately administer the program.

Major expenses recommended by the Committee for the 1999–2000 fiscal period include $40,433 for salaries, $5,323 for office rent, and $4,048 for health insurance. Budgeted expenses for these items in 1998–99 were $38,878, $5,323, and $4,062, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. Fresh Bartlett pear shipments for the year are estimated at 2,630,450 standard boxes, which should provide $65,761 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve and miscellaneous income, should be adequate to cover budgeted expenses. Funds in the reserve (currently $23,604) would be kept within the maximum permitted by the order of approximately one fiscal year's operational expenses (§ 931.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently, about 98.5 percent of the fresh Bartlett pear handlers ship less that $5,000,000 worth of fresh Bartlett pears and 1.5 percent ship more than $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of fresh Bartlett pear producers, the average annual producer revenue is approximately $12,250. In view of the foregoing, it can be concluded that the majority of fresh Bartlett pear producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.02 to $0.025 per standard box of fresh Bartlett pears handled. The Committee met on June 3, 1999, and unanimously recommended 1999–2000 expenditures of $77,231 and an assessment rate of $0.025 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $97,000. The assessment rate of $0.025 is $0.005 more than the rate currently in effect. The Committee recommended an increased assessment rate because assessable 1999–2000 tonnage is expected to be less than the five-year average of 2,910,048 standard boxes, and the current rate would not generate enough income to adequately administer the program.

Major expenses recommended by the Committee for the 1999–2000 fiscal period include $40,433 for salaries, $5,323 for office rent, and $4,048 for health insurance. Budgeted expenses for these items in 1998–99 were $38,878, $5,323, and $4,062, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. Fresh Bartlett pear shipments for the year are estimated at 2,630,450 standard boxes, which should provide $65,761 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve and miscellaneous income, should be adequate to cover budgeted expenses. The reserve is within the maximum permitted by the order of approximately one fiscal year's operational expenses (§ 931.42).

The Committee considered alternative levels of assessment but determined that, with the reduced estimate of assessable tonnage, increasing the assessment rate to $0.025 per standard box would be appropriate. The Committee decided that an assessment rate of more than $0.025 per standard box would generate income in excess of that needed to adequately administer the program.

A review of historical information and preliminary information pertaining to the upcoming crop indicates that the producer price for the 1999–2000 marketing season could range between $8.56 and $12.72 per standard box of fresh Bartlett pears handled. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue should range between 0.29 and 0.20 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 3, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large fresh Bartlett pear handlers. As with all

Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 1999–2000 fiscal period began on July 1, 1999, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is proposed to be amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 931.231 is revised to read as follows:

§ 931.231 Assessment rate.

On and after July 1, 1999, an assessment rate of $0.025 per western standard pear box is established for the Northwest Fresh Bartlett Pear Marketing Committee.

Dated: August 3, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–20289 Filed 8–5–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

[DA–99–06]

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend a portion of the supply plant shipping standard and a producer delivery requirement of the Southwest Plains Federal milk marketing order (Order 106) for the period of September 1999 through August 2000 or until implementation of Federal order reform. The action was requested by Kraft Foods, Inc. (Kraft), which contends the suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

DATES: Comments must be submitted on or before August 13, 1999.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202) 690–0552 or e-mailed to OFB_FMMO_Comments@usda.gov. Reference should be given to the title of the action and the docket number.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas.Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of June 1999, 2,045 dairy farmers were producers under Order 106. Of these producers, 2,001 producers (i.e., 98%) were considered small businesses. For the same month, there were 12 regulated handlers under Order 106. Five of these handlers were considered small businesses.

The supply plant shipping standard and the producer delivery requirement are designed to attract an adequate supply of milk to the market to meet fluid needs. Kraft, the proponent of this proposal, anticipates that there will be an adequate supply of milk available

within the general area to meet the needs to the Order 106 market and states supplemental milk supplies will not be needed.

The proposal would allow a supply plant that has been associated with the Southwest Plains market during the months of September 1998 through January 1999 to qualify as a pool plant without shipping any milk to a pool distributing plant during the following months of September 1999 through August 2000 or until implementation of Federal order reform. The proposed action would also suspend the requirement that a producer's milk must first be received at a pool distributing plant during the month before the milk is eligible to be diverted to nonpool plants. Thus, this rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of September 1, 1999, through August 31, 2000, or until implementation or Federal order reform:

In § 1106.6, the words "during the month".

In § 1106.7(b)(1), beginning with the words "of February through August" and continuing to the end of the paragraph.

In § 1106.13, paragraph (d)(1) in its entirety.

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend a portion of the supply plant shipping standard and the producer delivery requirement of the Southwest Plains order for the period of September 1999 through August 2000 or until completion of Federal order reform. The proposed suspension would allow a supply plant that has been associated with the Southwest Plains order during the months of September 1998 through January 1999 to qualify as a pool plant without shipping any milk to a pool distributing plant during the following months of September 1999 through August 2000 or until completion of Federal order reform. Without the suspension, a supply plant would be required to ship 50 percent of its producer receipts to pool distributing plants during the months of September through January and 20 percent of its producer receipts to pool distributing plants during the months of February through August to qualify as a pool plant under the order.

The proposed rule would also suspend the requirement that a producer's milk must be received at a pool plant during the month before it is eligible for diversion to a nonpool plant. By suspending this provision, producer milk would not be required to be delivered to pool plants before going to unregulated manufacturing plants.

According to Kraft, the proponent of the suspension, supplemental milk supplies will not be needed to meet the fluid needs of distributing plants. Kraft anticipates that there will be an adequate supply of direct-ship producer milk located in the general area of distributing plants available to meet the Class I needs of the market. The handler notes that the supply plant shipping provision and the producer delivery requirement have been suspended since 1993 and 1992, respectively.

Kraft states there is no need to require producers located some distance from pool distributing plants to deliver their milk to such plants when their milk can more economically be diverted directly to manufacturing plants in the production area. Thus, the handler contends the proposed suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure producers historically associated with Order 106 will continue to have their milk pooled under the order.

Accordingly, it may be appropriate to suspend the aforesaid provisions from September 1, 1999, through August 31, 2000, or until implementation of Federal order reform.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: August 3, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–20288 Filed 8–5–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 361

RIN 3064–AB95

Minority and Women Outreach Program—Contracting; and Individuals With Disabilities Outreach Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of proposed rule.

SUMMARY: On April 14, 1997, the FDIC published a proposed rule to provide that the FDIC certify the eligibility of businesses and law firms for the minority and women contracting program (62 FR 18059). The formal certification procedure would have replaced the current self-certification of minority- and women-owned businesses and law firms. As published elsewhere in this issue of the **Federal Register**, the FDIC is proposing to amend its outreach and procurement regulation to provide solely an outreach program that is consistent with the Constitution and applicable federal statutes, case law and regulations. As explained in that proposal, the FDIC will no longer grant a price evaluation adjustment in the procurement program based solely on race and gender criteria; thus, a formal certification procedure is no longer necessary. The proposed rule would have also established an outreach program for individuals with disabilities. In1997, the FDIC issued a policy including persons with disabilities in its outreach program. This policy prohibits discrimination against individuals with disabilities who participate, or are interested in participating, in FDIC-sponsored programs and activities, including its outreach program. Thus, although the FDIC as a matter of policy has expanded the outreach program to include individuals with disabilities, the regulation should conform to the statutory requirement and thus cover

only minorities and women. An FDIC statement of policy [1] provides that if a significant period of time elapses following the publication of a proposed rule or policy without final action, the Board will consider withdrawing the proposal. Pursuant to this policy, the FDIC is formally withdrawing the proposal.

FOR FURTHER INFORMATION CONTACT: Judith M. Wood, Chief, Diversity Branch, Office of Diversity and Equal Opportunity, (202) 416–2456; or Gladys C. Gallagher, Counsel, Legal Division, (202) 898–3833, FDIC, 550 17th Street, NW, Washington, DC 20429.

By order of the Board of Directors.

Dated at Washington, D.C., this 27th day of July 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–20127 Filed 8–5–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 361

RIN 3064–AC21

Minority and Women Outreach Program—Contracting

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) is proposing to amend its regulation establishing an outreach program for minority- and women-owned businesses and announcing its intention to utilize that portion of the Federal Affirmative Action Contracting Program, set forth in the Federal Acquisition Regulations, providing contracting benefits to Small Disadvantaged Businesses. The FDIC will no longer grant price evaluation adjustments based solely on race and gender criteria. The FDIC will, however, continue its outreach programs for minorities, women, and individuals with disabilities and entities owned by them.

DATES: Written comments must be received on or before October 5, 1999.

ADDRESSES: All written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), between the hours of 7:00 a.m. and 5:00 p.m. on business days. Comments may also be faxed: (202) 898–3838 or submitted via Internet: comments@FDIC.gov. Comments will be available for inspection and photocopying in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Counsel, Legal Division, Corporate Operations Branch, Corporate Legal Issues Section, Contracting Law Unit (202) 736–0756; David McDermott, Acquisition and Corporate Services Branch, Division of Administration, (202) 942–3434; Rita Wiles Ross, Counsel, Legal Division, Corporate Operations Branch, Legal Operations Section, Outside Counsel Unit, (202) 736–3072; or Judith M. Wood, Chief, Diversity Branch, Office of Diversity and Economic Opportunity, (202) 416–2456.

SUPPLEMENTARY INFORMATION:

I. Background

FDIC Minority- and Women-Owned Business Outreach Program

In 1989, with enactment of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), Congress mandated that the FDIC augment its program for contracting activities by prescribing

> "regulations to establish and oversee minority outreach program[s] * * * to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, * * * in all contracts entered into by the agency * * *" 12 USC 1833e(c).

In response, the FDIC adopted a regulation that obligates and requires the Corporation to engage in outreach efforts to identify and register minority- and women-owned businesses (MWOBs) that can provide the goods and services utilized by the FDIC. 12 CFR 361.6(b); Minority and Women Outreach Program—Contracting, 57 FR 15004 (April 24, 1992). In addition, to ensure that MWOBs are "being included in each solicitation, the solicitation process will include: * * * (3) Allowing qualified MWOBs a 3% price advantage and additional technical consideration for competitively bid services; * * *" 12 CFR 361.8(b)(3).[1]

In soliciting and awarding contracts for legal services, the Legal Division "actively seeks to engage firms owned by minorities and women, both directly and in association with other firms." 12 CFR 361.11(c). However, there is no price evaluation adjustment or other technical considerations available in contracting for legal services.

The Supreme Court has held that all racial classifications, whether imposed by federal, state, or local governments, must be analyzed by a reviewing court under strict scrutiny. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227; 115 S.Ct. 2097, 2113 (1995). To be sustained, federal racial classifications, like those of a State, must serve a compelling governmental interest and must be narrowly tailored to further that interest. 515 U.S. at 229. In this context, a compelling governmental interest may include past discriminatory barriers, whether such barriers were a result of intentional acts of the federal government or passive complicity in the acts of discrimination by the private sector. Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989). These decisions relate to programs that confer a benefit on the basis of race. They do not address outreach efforts where an agency only seeks to increase the pool of available MWOB contractors.

There does not appear to be a finding of discrimination underlying 12 U.S.C. 1833e. The FDIC does not believe such a finding is necessary to sustain an outreach program, because, unlike a program that awards financial benefits to contract with MWOBs, a pure outreach program has "no winners or losers." It only increases the potential pool of MWOB contractors, and it does not affect the award process or favor one group of contractors over another based on considerations of race, ethnicity, or gender.

However, as noted above, the FDIC program has gone beyond the pure outreach mandate of section 1833e, and through the regulation, applies a price evaluation adjustment to awards to MWOB contractors for non-legal services. To pass strict scrutiny, such a program requires findings of past discrimination establishing a compelling governmental interest, Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989), but there was no finding of past discrimination in the rulemaking adopting part 361. Thus, to the extent it included a price evaluation

---

[1] Development and Review of FDIC Regulations and Policies, 63 FR 25157 (May 7, 1998).

[1] The FDIC's Division of Administration has issued an Acquisition Policy Manual (APM) establishing policies and procedures in contracting for non-legal services. The APM provides for the application of the 3% price evaluation adjustment for awards of $50,000 or more. APM at Chapter 6, § D.6. There is no provision for the award of "additional technical consideration(s)."

adjustment for MWOB firms, the FDIC program could well fail the first half of the Adarand test.

Even assuming, *arguendo*, that there is an adequate compelling governmental interest, the next phase of the Adarand test requires consideration of whether the benefit conferred is sufficiently narrowly drawn to satisfy the constitutional standard. The Court lists five factors that may be relevant to the determination of whether an affirmative action remedy is narrowly drawn to achieve its goal. They are: "(i) the efficacy of alternative remedies; (ii) the planned duration of the remedy; (iii) the relationship between the percentage of minority group members in the relevant population or workforce; (iv) the availability of waiver provisions if the hiring plan could not be met; and (v) the effect of the remedy upon innocent third parties." United States v. Paradise, 480 U.S. 149, 187 (1986).

Applying these standards to the 3% price evaluation adjustment established in the regulation, it does not appear that alternative remedies have been attempted; there is no time limit on the price evaluation adjustment; the price evaluation adjustment is unrelated to the percentage of minority firms in the industry or area; the price evaluation adjustment is automatically awarded to all eligible firms in all circumstances; and the remedy may well result in the loss of a potential contract by non-MWOB firms despite more cost-effective bids. Thus, the 3% price evaluation adjustment may not be sufficiently narrow to satisfy the constitutional standard.

Affirmative Action in Federal Procurement

In 1996, the Department of Justice invited public comments on a system designed to reform affirmative action in federal procurement in response to Adarand. 61 FR 26042, May 23, 1996. Continuing in that vein, in 1998, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration published a revision to the Federal Acquisition Regulations (FAR) implementing a new program of affirmative action in federal procurement. 63 FR 52426, September 30, 1998.

In this program, each year, the Department of Commerce will make a determination as to which industries demonstrate the results of past discrimination and are thereby eligible for a benefit in federal contracting. The Department of Commerce will also determine the size of a price evaluation adjustment, not to exceed 10%, to be available in those industries. In the first year of the program, eligible industries that are generally used by FDIC include accounting firms, asset managers, information technology contractors, office services, and building services. The amount of the price evaluation adjustment for 1999 is 10%.

The price evaluation adjustment is available to firms certified as Small Disadvantaged Businesses (SDBs) by the Small Business Administration (SBA). An SDB is a small business firm that is at least 51% owned by individuals who are both socially and economically disadvantaged. Socially disadvantaged individuals include Black Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Native Americans as a class, as well as other groups that the SBA may from time to time designate, and individuals that can prove by a preponderance of the evidence previous discrimination on a case-by-case basis. Economically disadvantaged individuals have an individual net worth of less than $750,000.[2] The standard for determining whether a firm qualifies as "small" varies between industry classifications and may be based on revenue or number of employees.

The price evaluation adjustment of 10% is available to qualified SDBs bidding in competitive procurements over $100,000 for services within the eligible industries as determined by the Department of Commerce.

In lieu of the price evaluation adjustment, an SDB may take advantage of an SDB participation factor, if the contracting agency includes such a factor in the procurement. An SDB participation factor may be offered at the discretion of the contracting agency in competitive procurements over $500,000, or $1,000,000 for construction contracts. The contracting agency assigns a value to this factor.[3] A non-SDB may take advantage of the factor by proposing to partner with an SDB or to use SDB subcontractors. An SDB can also take advantage of this factor as the prime contractor. However, the SDB would only be eligible for the participation factor if it first waives the price evaluation adjustment. Utilization of SDBs as subcontractors may also be encouraged, at the discretion of the contracting agency, by offering prime contractors a financial incentive to exceed the proposed SDB subcontracting. An additional payment can be authorized where the prime contractor promises a particular monetary target of SDB subcontracting and its actual performance exceeds that promise. The monetary incentive can be up to 10% of the SDB subcontracting dollars in excess of the target amount.

II. Utilization of SDB Program

It is unlikely that the FDIC MWOB price evaluation adjustment, as implemented, would pass the Constitutional tests enunciated by the Supreme Court in Adarand. There has been no articulation of a compelling governmental interest as required by that case, and it does not appear that the benefit conferred by the program is sufficiently narrowly drawn to survive judicial scrutiny. On the other hand, the FAR program appears to satisfy the Adarand tests. The benefits are only available in industries where there is a compelling governmental interest based on findings of past discrimination, and the 10% price evaluation adjustment is related to the degree of under-representation within the industry. Moreover, the benefit is not solely available on the basis of race or ethnicity. Rather, to qualify, small firms must also be owned and operated by socially and economically disadvantaged individuals.

Although the FDIC is not subject to the FAR, the FDIC believes that the FAR's affirmative action contracting program provides a constitutionally sustainable means of enhancing the opportunities for SDBs in FDIC contracting. Accordingly, the FDIC intends to voluntarily utilize that program in lieu of the constitutionally questionable price evaluation adjustments based on race and gender that have been awarded in the past. With this in mind, the FDIC solicits public comment on whether the FDIC's proposed regulation should specifically reference the regulations that implement the federal government's SDB procurement program, in addition to such references in the FDIC's acquisition policies and procedures. We will, of course, continue to maintain an Outreach Program to ensure, to the maximum extent possible, that minorities and women and entities owned by minorities and women are given the opportunity to fully participate in contracts to provide both legal and other services. In addition, the FDIC will continue to follow its policy of including individuals with disabilities in the Outreach Program.

The program, to be included in the FDIC Acquisition Policy Manual (APM), will provide that, for goods and services

[2] The $750,000 excludes individual equity in a primary residence and the value of the individual's ownership interest in the firm seeking SDB status.

[3] Only SDB participation within eligible industries may be considered under this factor.

acquired under Formal Contracting Procedures, as defined in the APM, generally involving expenditures of $100,000 or more, a price evaluation adjustment will be available to technically qualified SDB bidders in the following circumstances: (a) The bidder has been certified as an SDB by the SBA under procedures set forth in 13 CFR part 124; and (b) the Standard Industrial Classification (SIC) code for the prime contract is one in which the Department of Commerce has authorized the use of a preference. The eligible SICs and amount of the price evaluation adjustment is established annually by the Department of Commerce pursuant to 48 CFR 19.201(b).

Moreover, solicitations issued under the Formal Contracting Procedures involving awards of $500,000 or more ($1,000,000 for construction contracts) may also include an evaluation factor for SDB participation in the performance of the contract. The value to be assigned this factor, if any, is determined by the contracting officer on a contract-by-contract basis. The prime contract need not be in an SIC code identified as authorized by the Department of Commerce for the use of preferences, but only SDB participation in authorized SIC codes would be considered in the evaluation of the participation factor. SDB participation may be in the form of subcontracts, joint ventures or teaming partners.[4] Where the SDB is bidding as a prime contractor in response to a solicitation that includes an SDB participation factor, the SDB will not be eligible for the participation factor unless it first waives its price evaluation adjustment.[5]

Utilization of SDBs as subcontractors may also be encouraged, at the FDIC's discretion, by offering prime contractors a financial incentive to exceed the proposed SDB subcontracting. An additional payment can be authorized where the prime contractor promises a particular monetary target of SDB subcontracting and its actual performance exceeds that promise. The monetary incentive can be up to 10% of the SDB subcontracting dollars in excess of the target amount.

The FDIC will not certify SDBs. That process will be carried out by the Small Business Administration under procedures established in the SBA's regulations, 13 CFR part 124. SDBs responding to FDIC solicitations are responsible for identifying themselves and certifying their current status as an SDB. An SDB that has applied for but not yet received SBA certification may be entitled to treatment as an SDB where certification can be obtained before the contract is awarded. It is the intention of the FDIC to enter into a memorandum of understanding with the SBA, to establish procedures whereby the SBA will treat FDIC contractors seeking SDB certification in the same manner as contractors with FAR agencies that are similarly situated. However, if certification cannot be obtained in a timely manner, the contract may be awarded to another bidder.[6]

III. Notice of Proposed Rule Making

To facilitate the implementation of the policy enunciated above, we propose to repeal the provisions of part 361 that confer a price evaluation adjustment, 12 CFR 361.8(b)(3), as well as make other conforming amendments to the regulations. The FDIC Office of Diversity and Economic Opportunity (ODEO) will continue to have overall responsibility for providing the FDIC with technical assistance and guidance to facilitate the identification, registration and solicitation of minority- and women-owned firms including minority- and women-owned law firms (MWOLFs). ODEO is also responsible for the Corporation's outreach efforts, such as:

(1) Identifying MWOBs and MWOLFs that can provide legal or other services to FDIC;

(2) Conducting seminars, meetings, workshops and other various functions to promote the identification of MWOBs and/or MWOLFs; and

(3) Participating in conventions, seminars, meetings, workshops and other functions to promote the identification and inclusion of MWOBs and MWOLFs.

Moreover, ODEO has specific responsibility for the Outreach Program with respect to providers of non-legal services, and in addition to the functions noted above, it will distribute information concerning the FDIC program for outreach to minority- and women-owned businesses. Generally, ODEO will work with contracting officials to ensure that minority- and women-owned firms are included on FDIC solicitation lists.

ODEO will also collect information from each FDIC office and division that performs contracting or outreach activities, on a quarterly basis or upon request, including statistical information on contract awards and solicitations by designated demographic categories and related outreach activities. The FDIC will request and maintain information on firms that have represented themselves as minority- or women-owned for purposes of outreach efforts and statistical reporting.

The Legal Division will perform outreach efforts targeted at providers of legal services. Generally, in addition to the functions listed above, the Legal Division's National Outreach Coordinator will require, at a minimum, quarterly submissions of statistical information on legal fees and expenses paid to outside counsel by designated demographic categories. FDIC will also encourage use of minority and women lawyers within other firms and partnering of firms with MWOLFs. Moreover, specific procedures and activities will be detailed in the Legal Division's Outside Counsel Deskbook as well as the FDIC's web site at: *www.fdic.gov*.

Proposed Rule Changes

In addition to a general editorial updating and simplification of the rule, the FDIC proposes to amend § 361.3 to remove unnecessary definitions and to conform the definition of a minority to the SBA definition. Section 361.4 would remain essentially unchanged.

The FDIC proposes to remove §§ 361.7–361.10 because the FDIC will no longer grant price evaluation adjustments based on race and gender criteria. Statistics based on self-certification of minorities and women and entities owned by them will be used in conjunction with survey efforts solely for monitoring the FDIC's outreach efforts.

The FDIC seeks public comment on these proposed rule changes.

---

[4] Any joint venture in which an SDB undertakes to perform a portion of the work could qualify for consideration under the SDB participation factor. The technical value assigned to such joint ventures under the SDB participation factor would, of course, depend on the proportion of the work to be performed by the SDB joint venturer. In other circumstances, a joint venture may itself qualify as an SDB under SBA regulations. Generally, for a joint venture to qualify, the SDB participant must have at least a 51% ownership share, perform 51% of the work, and the managing partner must be from the SDB participant.

[5] In evaluating this factor, the contracting officer may consider the specificity of the proposal, the enforceability of the commitments, the complexity and variety of the work to be performed by SDBs, the realism of the proposal, and the contractor's past performance in complying with SDB participation goals.

[6] The FDIC will communicate with the SBA to ensure that FDIC contractors seeking certification as SDBs are given the same consideration as other contractors seeking similar certification. In FAR contracting, the SBA has committed itself to expedited treatment of certification applications where an award is pending, and if certification is not granted within that fifteen-day period, the contracting officer may make the award to the next best bidder.

IV. Matters of Regulatory Procedure

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. Public comment and OMB approval has previously been obtained for an FDIC collection of information titled "Acquisition Services Information Requirements" which includes questions regarding contractors' minority status. This information collection, approved under OMB control number 3064–0072, is valid until August 31, 2001 and will not be changed by this proposed rulemaking.

Regulatory Flexibility Act

The FDIC has determined that this proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the amendment repeals the 3% price evaluation adjustment that FDIC rules had provided to minority- and women-owned businesses, including small businesses. Accordingly, this initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603.

In *Adarand Constructors, Inc.* v. *Pena*, 115 S.Ct. 2097 (1995), the Supreme Court applied strict judicial scrutiny to federal affirmative action programs that use racial or ethnic criteria as a basis for decision making. The FDIC has determined that its price evaluation adjustments for minority- and women-owned businesses may not pass the Constitutional tests enunciated by the Supreme Court in Adarand. Therefore, in this proposed rulemaking, the FDIC proposes to amend its regulation to repeal that part of the regulation which provides a 3% price evaluation adjustment to minority- and women-owned businesses that bid on FDIC contracts. The FDIC believes that this approach is the only readily apparent solution, because providing any price incentive without meeting the criteria of the Court would be constitutionally suspect.

The Federal Acquisition Regulations (FAR), 63 FR 52426, (September 30, 1998), Reform of Affirmative Action in Federal Procurement, provide a constitutionally sustainable means of enhancing opportunities for small and disadvantaged businesses. The FDIC will voluntarily utilize the FAR's affirmative action program.

The objective of this proposal is to implement an outreach and affirmative action procurement program consistent the Supreme Court's decision in Adarand.

The 3% price evaluation adjustment being proposed for repeal was available to minority- and women-owned firms without regard to whether such firms were also "small" businesses. 12 CFR 361.8(b)(3). In 1998, the FDIC awarded 4,628 contracts, including 1,287 (28%) to minority- or women-owned firms. However, the overwhelming majority of those contracts were awarded without reference to the price evaluation adjustment because the contract was for less than the $50,000 threshold in the rule, or the purchase was made off the Federal Supply Schedule. Of the 537 awards that were subject to the price evaluation adjustment, 75 (14%) went to minority- or women-owned firms. Based on a self-certification, the majority of those firms (about 62%) identified themselves as small business concerns. The FDIC anticipates that there will be no significant change in its contracting activity for 1999. Thus, there may be some adverse effect on small entities that enjoyed the price evaluation adjustment under the regulation, principally small, women-owned firms. However, given the FDIC's record of contract awards where the price evaluation adjustment was not applicable as well as the benefits being conferred on Small Disadvantaged Businesses under the federal affirmative action contracting program, it is anticipated that the economic impact on small businesses may be substantially attenuated.

Repeal of regulations establishing a 3% price evaluation adjustment will not impose any new paperwork burden. Public comment and Office of Management and Budget approval has previously been obtained for an FDIC collection of information titled "Acquisition Services Information Requirements" which includes questions regarding contractors' minority- and/or women-owned status. This information collection, approved under OMB control number 3064–0072 is valid until August 31, 2001 and will not be changed by the rule changes proposed herein. This rule does not duplicate, overlap, or conflict with any other federal rules.

Because the 3% price evaluation adjustment for minority- and women-owned businesses would likely fail the constitutionally mandated strict scrutiny test established in the Adarand case, the only readily apparent alternative is to repeal the regulation. Nevertheless, parties may wish to address the impact of repeal on contract awards to small businesses.

Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed amendment will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Public Law 105–277).

List of Subjects in 12 CFR Part 361

Government contracts, Lawyers, Legal services, Minority businesses, Reporting and recordkeeping requirements, Women businesses.

For the reasons set forth above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to revise part 361 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 361—MINORITY AND WOMEN OUTREACH PROGRAM CONTRACTING

Sec.

361.1 Purpose.
361.2 Policy.
361.3 Definitions.
361.4 Scope.
361.5 Oversight and monitoring.
361.6 Outreach.

Authority: 12 U.S.C. 1833e.

§ 361.1 Purpose.

The purpose of the FDIC Minority and Women Outreach Program (MWOP) is to ensure that minority- and women-owned businesses (MWOBs) are given the opportunity to participate fully in all contracts entered into by the FDIC.

§ 361.2 Policy.

It is the policy of the FDIC that minorities and women, and businesses owned by them have the maximum practicable opportunity to participate in contracts awarded by the FDIC.

§ 361.3 Definitions.

For purposes of this part:

(a) The term "minority" has the same meaning as the term "socially disadvantaged individuals" as set out in the Small Business Administration regulations at 13 CFR 124.103(b).

(b) *Legal Services* means all services provided by attorneys or law firms (including services of support staff).

§ 361.4 Scope.

The FDIC outreach program applies to all contracts entered into by the FDIC. The outreach program is incorporated into FDIC policies and guidelines governing contracting and the retention of legal services.

§ 361.5 Oversight and monitoring.

(a) The FDIC Office of Diversity and Economic Opportunity (ODEO) has overall responsibility for nationwide outreach oversight, which includes, but is not limited to, the monitoring, review and interpretation of relevant regulations. In addition, the ODEO is responsible for providing the FDIC with technical assistance and guidance to facilitate the identification, registration, and solicitation of minority- and women-owned businesses.

(b) Each FDIC office that performs contracting or outreach activities shall submit information to the ODEO on a quarterly basis, or upon request. Quarterly submissions will include, at a minimum, statistical information on contract awards and solicitations by designated demographic categories.

§ 361.6 Outreach.

(a) Each office engaged in contracting with the private sector will designate one or more MWOP coordinators. The coordinators will perform outreach activities for MWOP and act as liaison between the FDIC and the public on MWOP issues. On a quarterly basis, or as requested by the ODEO, the coordinators will report to the ODEO on their implementation of the outreach program.

(b) Outreach includes the identification and registration of MWOBs who can provide goods and services utilized by the FDIC. This includes distributing information concerning the MWOP.

(c) The identification of MWOBs and minority- and women-owned law firms (MWOLFs) will primarily be accomplished by:

(1) Obtaining various lists and directories of minority-and women-owned firms maintained by other federal, state, and local governmental agencies;

(2) Participating in conventions, seminars and professional meetings comprised of, or attended predominately by, MWOBs and/or MWOLFs;

(3) Conducting seminars, meetings, workshops and other various functions to promote the identification and registration of MWOBs and/or MWOLFs;

(4) Placing MWOP promotional advertisements indicating opportunities with FDIC in minority- and women-owned media; and

(5) Monitoring to assure that FDIC staff interfacing with the contracting community are knowledgeable of, and actively promoting, the MWOP.

By order of the Board of Directors.

Dated at Washington, D.C., this 27th day of July 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–20126 Filed 8–5–99; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–260–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to require the flight crew to check, and reset, if necessary, certain instrument settings prior to each takeoff and after any event during which generators are switched. This action would add a new revision to the AFM and would revise the applicability of the existing AD. This action also would require modification of the air data reference systems. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent uncommanded changes in certain instrument settings on the pilot's and co-pilot's instrument displays, which could result in confusion among the flight crew about the correct position and flight configuration of the airplane.

DATES: Comments must be received by September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98 NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–260–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 1, 1996, the FAA issued AD 96–21–02, amendment 39–9778 (61 FR 52688, October 8, 1996), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. That AD requires revision of the Airplane Flight Manual (AFM) to require the flight crew to check, and reset, if necessary, certain instrument settings prior to each takeoff and after any event during which generators are switched. That action was prompted by reports indicating that the co-pilot's air data reference system has intermittently failed following the switching of power between generators. The requirements of that AD are intended to prevent uncommanded changes in certain instrument settings on the co-pilot's instrument display, which, if not corrected, could result in confusion among the flight crew about the correct position and flight configuration of the airplane.

Actions Since Issuance of Previous Rule

In the preamble of AD 96–21–02, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary; this AD follows from that determination.

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, has notified the FAA that the pilot's air data reference system also may experience uncommanded changes following power transfer to the air driven generator or auxiliary power unit generator in the event that the primary electrical power is lost. Following from that, the manufacturer has developed a modification that positively addresses the unsafe condition by replacing the existing air data reference panels (ARP) and air data computers (ADC) with new, improved ARP's and ADC's, respectively. The manufacturer also has indicated that this modification would be incorporated on subsequent airplanes before delivery.

Explanation of Relevant Service Information

The manufacturer has issued Canadair Regional Jet Publication CSP A–012, Temporary Revision RJ/50–2, dated June 1, 1997. The temporary revision provides information for the flight crew concerning intermittent failures of the air data system resulting in uncommanded changes to the pilot's or co-pilot's flight instruments, and provides procedures for the flight crew to check and reset certain instrument settings as necessary.

Bombardier also has issued Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'B,' dated November 14, 1997, which describes procedures for modification of the air data reference systems. The modification involves replacing the ARP's and the ADC's with new, improved ARP's and ADC's, respectively. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–96–16R1, dated June 24, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–21–02 to continue to require revising the Limitations Section of the FAA-approved AFM to require the flight crew to check, and reset, if necessary, certain instrument settings prior to each takeoff and after any event during which generators are switched.

The proposed AD would add a new temporary revision to the Emergency, Normal, and Abnormal Procedures Sections and Supplements 4 and 8 of the FAA-approved AFM to provide information for the flight crew concerning intermittent failures of the air data system resulting in uncommanded changes to the pilot's or co-pilot's flight instruments, and to provide procedures for the flight crew to check and reset certain instrument settings. This proposed AD also would limit the applicability of the existing AD to exclude certain airplanes on which the modification was accomplished during manufacture. This action also would require modification of the air data reference systems, which, when accomplished, would terminate the requirement for revising the AFM. The actions would be required to be accomplished in accordance with the service bulletin and temporary revision to the AFM described previously.

Cost Impact

There are approximately 86 airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision that is currently required by AD 96–21–02, and is retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required AFM on U.S. operators is estimated to be $5,160, or $60 per airplane.

The new AFM revision that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new AFM revision proposed by this AD on U.S. operators is estimated to be $5,160, or $60 per airplane.

The new modification that is proposed in this AD action would take approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge to the operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $56,760, or $660 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action"

under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9778 (61 FR 52688, October 8, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 98–NM–260–AD. Supersedes AD 96–21–02, Amendment 39–9778.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, having serial numbers 7003 through 7207 inclusive; except those airplanes on which Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'B,' dated November 14, 1997, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded changes in the settings on the pilot's and co-pilot's instrument displays, which could result in confusion among the flight crew about the correct position and flight configuration of the airplane, accomplish the following:

Restatement of the Requirements of AD 96–21–02, Amendment 39–9778

(a) Within 3 days after October 15, 1996 (the effective date of AD 96–21–02, amendment 39–9778), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Prior to each takeoff and after any event during which generators are switched, check the settings of the barometric altimeter, altitude pre-selector, V-speed, and speed bug. If any discrepancy is detected, reset, as necessary."

New Requirements of This AD

AFM Temporary Revision

(b) Within 2 days after the effective date of this AD, revise the Emergency, Normal, and Abnormal Procedures Sections, and Supplements 4 and 8 of the FAA-approved AFM by inserting Canadair Regional Jet Publication CSP A–012, Temporary Revision RJ/50–2, dated June 1, 1997, into the applicable section of the AFM.

Note 2: The AFM revisions required by paragraph (b) of this AD are accomplished by inserting a copy of the Temporary Revisions into the applicable section of the AFM. When these Temporary Revisions have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the Temporary Revisions.

Replacement

(c) Within 18 months after the effective date of this AD, modify the air data reference systems in accordance with Canadair Regional Jet Service Bulletin S.B. 601R–34–094, Revision 'B,' dated November 14, 1997. After accomplishment of the modification, the AFM revisions required by paragraphs (a) and (b) of this AD may be removed from the AFM.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–96–16R1, dated June 24, 1998.

Issued in Renton, Washington, on July 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20328 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–382–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80 and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80 and C–9 (military) series airplanes, and Model MD–88 airplanes. This proposal would require revising the wiring of the air conditioning pneumatic supply control, if applicable, and revising the wiring of the pneumatic augmentation valve. This proposal is prompted by a report indicating that the pneumatic augmentation valve may go fully open when an engine fails during initial climb prior to deactivation of the second segment climb switch. The actions specified by the proposed AD are intended to prevent opening of the pneumatic augmentation valve, which could result in significant loss of thrust from the remaining engine and consequent inadequate initial climb performance of the airplane.

DATES: Comments must be received by September 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–382–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los AngelesAircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–382–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–382–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the results of an internal design review, conducted by McDonnell Douglas, of the design logic of the pneumatic augmentation valve wiring on McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, revealed that when an engine fails during initial climb prior to deactivation of the second segment climb switch, the pneumatic augmentation valve may go fully open. The opening of the augmentation valve combined with a pneumatic supply duct failure could result in a significant loss of thrust on the remaining engine. This condition, if not corrected, could result in inadequate initial climb performance of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–36–012, Revision 03, dated February 3, 1998, and Revision 04, dated October 16, 1998, which describes procedures for revising of the wiring of the air conditioning pneumatic supply control, if applicable, and revising the wiring of the pneumatic augmentation valve. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,500 airplanes of the affected design in the worldwide fleet. The FAA estimates that 700 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 1 to 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts cost would be nominal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $42,000 and $252,000, or between $60 and $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 98–NM–382–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in the McDonnell Douglas Service Bulletin DC9–36–012, Revision 04, dated October 16, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening of the pneumatic augmentation valve during initial climb following an engine failure, which could result in significant loss of thrust on the remaining engine and consequent inadequate initial climb performance of the airplane, accomplish the following:

Modification

(a) Within 3 years after the effective date of this AD, revise the wiring of the air conditioning pneumatic supply control, if applicable, and revise the wiring of the pneumatic augmentation valve, in accordance with McDonnell Douglas Service Bulletin DC9–36–012, Revision 03, dated February 3, 1998, or Revision 04, dated October 16, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20327 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes and Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes, that would have required revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. That proposal was prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by that proposed AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This new proposed action revises the proposed rule by specifying that, at the first signs of ice accumulation, "heavy" automatic cycling mode must be used during operation of the deicing boots. The actions specified by this new proposed AD are intended to prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received by August 31, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Aerospace Engineer, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–153–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 16, 1999 (64 FR 38345). That NPRM would have required revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. That NPRM was prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe

pneumatic deicing boots were not activated. That condition, if not corrected, could result in reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Actions Since Issuance of Previous Proposal

The FAA has determined that further definition is necessary to specify the automatic cycling mode of activation of the deicing boots. These airplanes may operate deicing boots in either a "light" or a "heavy" automatic cycling mode; however, the FAA finds that at the first sign of ice accumulation, required activation of the deicing boots in "heavy" mode is warranted. The FAA considers that the required activation in "heavy" mode is necessary to assure the capability of the system to shed ice with a low pressure indication setting of 8 pounds per square inch gage (psig).

However, the manufacturer has advised the FAA that requiring activation of the deicing boots in "heavy" automatic cycling mode would cause the boots to wear at a rate higher than anticipated. The manufacturer further states that, consequently, such a high wear rate would require replacement of the deicing boots sooner than anticipated. The manufacturer concludes, therefore, that the additional costs associated with such additional replacement of the deicing boots would impose an additional burden to operators.

The FAA acknowledges that the activation of the deicing boots using the "heavy" automatic cycling mode may require costs that were not originally anticipated. The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD. In this case, the FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

Therefore, this supplemental NPRM revises paragraph (a) of the original proposal by adding the words "heavy" to specify that in the Airplane Flight Manual revision the deicing boot system must be operated in the "heavy" automatic cycling mode. Additionally, since these airplanes are all equipped with an automatic cycling mode, the FAA has removed the phrase "if available" in the same AFM paragraph. The proposed actions will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,040, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 99–NM–153–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the "heavy" automatic cycling mode; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager,

International Branch, ANM–116, FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116 ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116 ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20326 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

RIN 1515–AC44

Importation and Entry Bond Conditions Regarding Other Agency Documentation Requirements

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations with regard to the basic importation and entry bond condition under which, if merchandise is conditionally released to the principal named in the bond, the principal agrees to furnish Customs with any document or evidence as required by law or regulation. The proposed amendment would extend this requirement, and consequently the potential liability for payment of liquidated damages for a breach of the bond condition, to documents and evidence submitted to other Government agencies under laws and regulations of those other agencies.

DATES: Comments must be received on or before October 5, 1999.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202–927–2344).

SUPPLEMENTARY INFORMATION:

Background

Section 113.62 of the Customs Regulations (19 CFR 113.62) sets forth the conditions that are incorporated by reference in a basic importation and entry bond (on Customs Form 301) that must be on file with Customs when merchandise is imported and entered in the United States. Those conditions involve the agreements on the part of the obligors under the bond (that is, the principal and/or the surety) to take specific actions required by statute or regulation in connection with the importation/entry process and to pay liquidated damages as a consequence of a default on any agreement in a bond condition.

Paragraph (c) of § 113.62 concerns the agreement to produce documents and evidence. This regulatory text provides that "[i]f merchandise is released conditionally to the principal before all required documents or other evidence is produced, the principal agrees *to furnish Customs* with any document or evidence as required by law or regulation, and within the time specified by law or regulations" (emphasis added). Since this bond condition refers only to documents or other evidence required to be furnished to Customs, it would not apply to documents and other evidence that are required by law or regulation to be submitted to another Government agency. Under paragraph (l)(1) of § 113.62, if the principal defaults on the paragraph (c) agreement, the obligors (that is, the principal and surety, jointly and severally) agree to pay liquidated damages in an amount generally equal to the value of the merchandise involved in the default or another amount that may vary depending on the nature of the merchandise or the terms of the specific substantive law or regulation at issue.

Basis for the Proposed Regulatory Change

On January 13, 1999, the Farm Service Agency (FSA) of the Department of Agriculture published in the **Federal Register** (64 FR 2152) a proposed rule to amend Part 782 of the FSA Regulations (7 CFR part 782), which pertains to the end-use certificate program. The end-use certificate program was established pursuant to section 321(f) of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057), which is codified at 19 U.S.C. 3391(f). The program applies to wheat or barley imported into the United States from any foreign country or instrumentality thereof that, as of April 8, 1994, required end-use certificates for imports of U.S.-produced wheat or barley. The purpose of the program is to ensure that foreign agricultural commodities do not benefit from U.S. export programs (*see* H. Rep. 103–361, 103d Cong., 1st Sess., at 68). The regulations under the program, which were promulgated by the FSA in consultation with Customs as required by the statute, currently affect only wheat originating in Canada (see 7 CFR 782.10(b)).

The amendments proposed by the FSA in the January 13, 1999 notice would affect §§ 782.2 and 782.12 (7 CFR 782.2 and 782.12), which set forth, respectively, the definitions that apply for purposes of Part 782 and the requirements for completing and filing the end-use certificate for imports of wheat originating in Canada. Specifically, the proposed regulatory changes would: (1) Amend the definition of "importer" to refer to the party qualifying as importer of record under 19 U.S.C. 1484(a); (2) reduce the time period for submission of the end-use certificate (form FSA–750) to the FSA from "within 15 workdays following the date of entry" to "within 10 workdays following the date of entry or release'; and (3) add several data elements to be set forth on the form FSA–750.

In addition to a discussion of the proposed regulatory amendments, the background portion of the January 13, 1999, FSA notice contains the following statement: "The U.S. Customs Service has informed the Department of Agriculture officials that it will be amending the provisions of their basic import bond to allow for the assessment of damages if there is a failure to provide the End-Use Certificate in the time period provided by FSA." This statement resulted from discussions that Customs personnel had with FSA personnel regarding ways to improve the administration and enforcement of the end-use certificate program, consistent with the statutory consultative mandate set forth in the statute and reflected in the FSA regulations (see 7 CFR 782.3), and reflected the fact that the text of present paragraph (c) of § 113.62 technically does not apply to the end-use certificate because it is not furnished to Customs but rather is submitted to the FSA.

Nature and Scope of the Proposed Regulatory Change

Based on the above, Customs is proposing in this document to revise paragraph (c) of § 113.62 to ensure that it will cover documents and other evidence required in connection with the importation/entry process that are prescribed by, and submitted to, Government agencies other than Customs. Although the need for this proposal arose in the specific context of the FSA end-use certificate program, Customs has drafted the proposed new regulatory language in broad terms because Customs believes that the basic principle at issue should be applicable to importation/entry-related requirements of all Government agencies.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendment will not require any additional action on the part of the public but rather is intended to facilitate Customs enforcement efforts involving existing import requirements under other Government agency laws and regulations. Accordingly, the proposed amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Part 113 of the Customs Regulations (19 CFR part 113) as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. Section 113.62(c) is revised to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(c) *Agreement to produce documents and evidence.* If merchandise is released conditionally to the principal before production of all documents or other evidence required by a law or regulation administered by Customs or another government agency, the principal agrees to furnish Customs or the other government agency with any such document or other evidence as required by, and within the time specified in, such law or regulation.

* * * * *

Raymond W. Kelly,
Commissioner of Customs.

Approved: June 17, 1999.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–20248 Filed 8–5–99; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 85N–0214]

180–Day Generic Drug Exclusivity for Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing 180-day generic drug exclusivity under the Federal Food, Drug, and Cosmetic Act (the act). The proposed rule clarifies existing eligibility requirements for abbreviated new drug application (ANDA) sponsors and describes new eligibility requirements. The proposed changes to the regulations are necessary because of recent court decisions invalidating portions of FDA's current regulations. The proposed regulations are intended to permit the prompt entry of generic drug products into the market while maintaining the incentive of market exclusivity for generic drug manufacturers.

DATES: Submit written comments by November 4, 1999. Submit written comments on the information collection requirements by September 7, 1999. See section VIII of this document for the effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Virginia G. Beakes, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the Hatch-Waxman Amendments) created section 505(j) of the act (21 U.S.C. 355(j)). Section 505(j) established the ANDA approval process, which allows a generic version of a previously approved innovator drug to be approved without submission of a full new drug application (NDA). An ANDA refers to a previously approved new drug application (the "listed drug") and relies upon the agency's finding of safety and effectiveness for that drug product.

Innovator drug applicants must include in an NDA information about patents for the drug product that is the subject of the NDA. FDA publishes this patent information as part of the agency's publication "Approved Drug

Products with Therapeutic Equivalence Evaluations" (the Orange Book).

Generic drug applicants must include in an ANDA a patent certification described in section 505(j)(2)(A)(vii) of the act for each patent listed in the Orange Book for the listed drug. The applicant must certify one of the following for each patent: (1) that no patent information on the drug product that is the subject of the ANDA has been submitted to FDA; (2) that such patent has expired; (3) the date on which such patent expires; or (4) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the drug product for which the ANDA is submitted. These certifications are known as "paragraph I," "paragraph II," "paragraph III," and "paragraph IV" certifications, respectively.

Notice of a paragraph IV certification must be provided to each owner of the patent (patent owner) that is the subject of the certification and to the holder of the approved NDA (NDA holder) to which the ANDA refers. The terms "patent owner" and "NDA holder" as used throughout this proposed regulation mean either those parties or their representatives, including exclusive licensees. The agency recognizes that different terms are used throughout other sections of the regulations for the idea expressed in section 505(j)(2)(B)(i)(I) and (j)(2)(B)(i)(II) of the act that notice must be given to the principals (patent owner and NDA holder) or their representatives. The agency has added a definitions section to the proposed regulation to clarify the meaning of these terms, as well as other terms, as used in this section.

The submission of an ANDA for a drug product that is claimed in a patent is an infringing act if the ANDA product is intended to be marketed before expiration of the patent. (See 35 U.S.C. 271(e)(2).) Therefore, the submission of an ANDA with a paragraph IV certification may be the basis for patent infringement litigation.

Given this risk of patent infringement litigation, section 505(j)(5)(B)(iv)[1] of the act provides an incentive for generic drug applicants to file paragraph IV certifications challenging patents that may be invalid, unenforceable, or not infringed by the product that is the subject of the ANDA.

In certain circumstances, the first applicant whose ANDA contains a paragraph IV certification is protected from competition from subsequent generic versions of the same drug product for 180 days from either the date the first applicant's drug product is first commercially marketed or the date of a final court decision holding the patent that is the subject of the paragraph IV certification invalid, unenforceable, or not infringed. This marketing protection is commonly known as "180-day exclusivity."

In the **Federal Register** of October 3, 1994 (59 FR 50338), FDA published the final rule implementing the patent and marketing exclusivity provisions of the Hatch-Waxman Amendments. Section 314.107(c)(1) (21 CFR 314.107(c)(1)), the regulation implementing section 505(j)(5)(B)(iv) of the act, provided:

> If an abbreviated new drug application contains a certification that a relevant patent is invalid, unenforceable, or will not be infringed and the application is for a generic copy of the same listed drug for which one or more substantially complete abbreviated new drug applications were previously submitted containing a certification that the same patent was invalid, unenforceable, or would not be infringed *and the applicant submitting the first application has successfully defended against a suit for patent infringement brought within 45 days of the patent owner's receipt of notice submitted under § 314.95*, approval of the subsequent abbreviated new drug application will be made effective no sooner than 180 days from whichever of the following dates is earlier:
>
> (i) The date the applicant submitting the first application first commences commercial marketing of its drug product; or
>
> (ii) The date of a decision of the court holding the relevant patent invalid, unenforceable, or not infringed.
>
> (Emphasis added)

FDA's requirements for 180-day exclusivity were successfully challenged in the courts in *Mova Pharmaceutical Corp.* v. *Shalala*, 140 F.3d 1060 (D.C. Cir. 1998), and *Granutec, Inc.* v. *Shalala*, No. 97–1873 and No. 97–1874, 1998 U.S. App. LEXIS 6685 (4th Cir. Apr. 3, 1998).

Following the *Mova* circuit court decision, on June 1, 1998, the district court entered an order stating that the successful defense requirement of § 314.107(c)(1) is invalid and permanently enjoined FDA from enforcing it. In the **Federal Register** of July 14, 1998 (63 FR 37890), FDA published a guidance for industry entitled "180–Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act" (June 1998), describing its approach to 180-day exclusivity in light of the court decisions. In the **Federal Register** of November 5, 1998 (63 FR 59710), the agency published an interim rule revoking the "successful defense" requirement. Since that time the agency has regulated directly from the statute when making exclusivity decisions on a case-by-case basis.

The agency is proposing new regulations to address the issues that have arisen as a result of the *Mova* and *Granutec* decisions and to respond to other matters related to 180-day exclusivity not currently addressed by the regulations. Consistent with the legislative purpose of section 505(j)(5)(B)(iv) of the act, the proposed regulations continue to provide an incentive for challenging a listed patent, while at the same time preventing prolonged or indefinite delays in the availability of generic drug products.

During litigation of the many cases related to 180-day exclusivity, the parties and courts have recognized the potential for the 180-day exclusivity process to substantially delay the entry of competitive generic drug products into the market. This situation can occur when the marketing of any subsequent generic drug product is contingent upon the occurrence of an event that is within the first ANDA applicant's control. Such delays could result, for example, from the inability of the first ANDA applicant with a paragraph IV certification to obtain timely approval of its application and begin commercial marketing of its product.

Licensing agreements and other arrangements between an innovator company and the generic drug company who is the first ANDA applicant to file a paragraph IV certification can be of considerable financial benefit to the companies involved, but also may contribute to delayed generic competition by forestalling the beginning, or triggering, of the 180-day exclusivity period. These arrangements can create almost insurmountable barriers to the final approval and marketing of generic drug products that are otherwise ready for final approval. These barriers thwart a major congressional goal underlying the

---

[1] Section 505(j)(5)(B)(iv) of the act states that:

> If the application contains a certification described in subclause (IV) of paragraph (2)(A)(vii) and is for a drug for which a previous application has been submitted under this subsection continuing [sic] such a certification, the application shall be made effective not earlier than one hundred and eighty days after—
>
> (I) the date the Secretary receives notice from the applicant under the previous application of the first commercial marketing of the drug under the previous application, or
>
> (II) the date of a decision of a court in action described in clause (iii) holding the patent which is the subject of the certification to be invalid or not infringed, whichever is earlier.

Prior to the enactment of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act), 180-day exclusivity was described at section 505(j)(4)(B)(iv) of the act. The Modernization Act added new provisions to section 505(j) that resulted in a renumbering of the sections.

passage of the Hatch-Waxman Amendments.

In developing the approach described in this proposal, the agency has been guided by the text of the statute, opinions rendered by courts that have addressed these issues, and concerns expressed to the agency in submissions commenting on the June 1998 guidance and November 1998 interim rule. The agency has also been guided by its 15 years of experience with the 180-day exclusivity provisions. This experience has provided FDA with valuable information regarding the influence of the 180-day exclusivity provisions on the ANDA approval process and the marketing of generic drug products.

II. Description of the Proposed Rule

This proposed rule would revise § 314.107 to clarify and modify eligibility requirements for ANDA applicants seeking 180-day marketing exclusivity for a generic drug product. This new approach is offered in light of the courts' rejection of the previous requirement that an ANDA applicant successfully defend against a patent infringement lawsuit before it is eligible for exclusivity.

A. 180–Day Exclusivity Eligibility

1. Only First Applicant is Eligible

The statutory language describing which applications are eligible for 180-day generic drug exclusivity is ambiguous. The current regulation interprets the statute as allowing eligibility for exclusivity only for the applicant that submits the first substantially complete ANDA with a paragraph IV certification. Although the agency has considered alternative interpretations, such as "rolling exclusivity" in which the next-in-line applicant is eligible for exclusivity should the previous applicant become ineligible, FDA proposes to maintain the current interpretation. The agency, however, invites comments related to exclusivity eligibility, both those supporting this interpretation and those suggesting other possibilities.

Under this proposed rule, only the applicant submitting the first substantially complete ANDA for a listed drug with a paragraph IV certification to any patent in the Orange Book for the listed drug (first applicant) would be eligible for exclusivity. A substantially complete application must contain all of the information required under section 505(j)(2)(A) of the act and under 21 CFR 314.50 and 314.94. These requirements include the submission of the results of any required bioequivalence studies, or, if appropriate, a request for a waiver of such studies. In order for an ANDA to be considered substantially complete for purposes of exclusivity, the bioequivalence studies submitted in the ANDA at the time it is initially submitted must, upon review by the agency, meet the appropriate standards for approval. If the applicant must conduct a new bioequivalence study to obtain approval of the ANDA, the application will not be considered to be substantially complete and the applicant will not be eligible for exclusivity. No other applicant with a paragraph IV certification will be eligible for exclusivity for that drug product. The agency is adopting this position out of concern that, in the rush to be the first ANDA with a paragraph IV, applicants will submit the results of the first completed bioequivalence study, whether or not the results meet the standards for approval. The bioequivalence study is a crucial component of the ANDA and conduct of the studies can be time consuming. In order to prevent the granting of exclusivity on the basis of submission of an inadequate bioequivalence study, FDA has determined that to be eligible for exclusivity, the ANDA applicant must submit, as part of the initial application, a bioequivalence study that meets the standards for approval.

To be eligible for exclusivity, an applicant must be the first to submit ANDA that is both substantially complete and contains a paragraph IV certification to any listed patent. The first applicant can be an applicant that submits an ANDA that initially contains a paragraph III certification, but later amends the certification to a paragraph IV certification, if at the time of the amendment that applicant's ANDA is the first substantially complete ANDA to contain a paragraph IV certification. If the first applicant subsequently withdraws its application or changes or withdraws its paragraph IV certification, either voluntarily or as a result of a settlement or defeat in patent litigation, no ANDA applicant will be eligible for 180-day exclusivity.

Limiting eligibility for exclusivity to the first applicant to submit a substantially complete ANDA with a paragraph IV certification is consistent with the goal of permitting earlier entry into the market of generic competitor products by encouraging prompt challenges to innovator patents. Granting exclusivity to a later applicant that submits a patent challenge, and that only becomes first in line because another applicant(s) has withdrawn its application or paragraph IV certification, would further delay the entry into the market of generic drug products with no countervailing public benefit.

In addition, if the first applicant submits a new paragraph IV certification because, for example, it makes a formulation change requiring a supplement or an amendment to its ANDA, it may no longer be accorded first applicant status. If there is another applicant with a paragraph IV certification for the same drug product, the first applicant will no longer be eligible for 180-day exclusivity. Also, no other applicant will be eligible for 180-day exclusivity.

As described in the preamble to the 1994 final rule (59 FR 50338 at 50348), there is one exception to this principle. If the agency accepted for filing a substantially complete ANDA prior to the NDA holder's submission of a late (untimely) filed patent, the ANDA applicant is not required to certify to this patent. However, if the ANDA applicant amends its ANDA to include a paragraph IV certification to the untimely filed patent, and the ANDA applicant later withdraws that paragraph IV certification, the next applicant to file a paragraph IV certification to the untimely filed patent will be eligible for exclusivity. The agency believes that in this situation it is appropriate to grant exclusivity to an applicant who was required to file a paragraph IV certification because the applicant filed its ANDA after the NDA holder submitted the patent information.

If there are multiple patents for the listed drug, the applicant submitting the first paragraph IV certification to any of the listed patents will be the only ANDA applicant eligible for exclusivity for that drug. The agency considered an approach that could have made multiple applicants eligible for exclusivity based upon the order of submission of paragraph IV certifications for each patent. Different ANDA's are most likely to have the first paragraph IV certifications to different patents when new patents are listed for the innovator drug after the submission of the first ANDA. Although the statute would support granting multiple exclusivities, the agency has determined that such multiple exclusivities for a single drug could further delay the entry of generic drugs onto the market. For example, if two different applicants were eligible for exclusivity because each was the first to file a paragraph IV certification for a different listed patent, and neither exclusivity could begin to run until first commercial marketing or a favorable court decision, it is possible that each exclusivity would block the final

approval of the other application for a substantial period of time. Moreover, the large number of patents listed for many drugs, the real possibility that different ANDA applicants may submit first paragraph IV certifications for these patents, and the relative ease with which an applicant now becomes eligible for exclusivity could combine to create an exclusivity program that is virtually unworkable in its complexity and which would create even more uncertainty for the industry.

If the ANDA applicant submitting the first substantially complete ANDA with a paragraph IV certification submits paragraph IV certifications to multiple patents at that time, any of those certifications will render the applicant eligible for exclusivity. The first court decision finding one of the patents invalid, not infringed, or unenforceable will trigger the running of the applicant's exclusivity.

2. First Applicant Eligible if Not Sued

The agency is proposing to amend § 314.107(c)(1) to state that the first applicant would be eligible for 180 days of market exclusivity even if the applicant is not sued for patent infringement by the patent owner or NDA holder. This is consistent with the policy established in FDA's June 1998 guidance. It is also consistent with the decision in *Purepac* v. *Friedman*, 162 F.3d 1201 (D.C. Cir. 1998), in which the court noted that section 505(j)(5)(B)(iv) of the act does not require the first applicant to be sued to be eligible for exclusivity.

The agency recognizes that neither the *Purepac* nor the *Mova* opinion expressly foreclosed the agency from adopting a requirement that an applicant be sued, and that in the 1989 proposed rule FDA considered a "litigation" requirement as a prerequisite for exclusivity eligibility. (See 54 FR 28872 at 28929, July 10, 1989.) However, in light of the removal of the "successful defense" requirement and subsequent reconsideration of the statutory language, the agency proposes that an applicant would be eligible for 180-day exclusivity even if it is not sued by a patent owner or NDA holder.

FDA believes that if the first applicant avoids a lawsuit and the related 30-month stay of final approval (see section 505(j)(5)(B)(iii) of the act), for example, by designing around a patent in such a way that its drug product is clearly noninfringing, then that applicant should not be denied eligibility for exclusivity. In addition, an ANDA applicant should not be encouraged to file a frivolous certification that invites litigation so as to qualify for exclusivity. Permitting an applicant who avoids a lawsuit to be eligible for exclusivity is consistent with the statutory language and goal of facilitating prompt entry of generic drug products into the market.

3. First Applicant Not Eligible if Sued and Loses Lawsuit

If the first applicant is sued and loses the patent litigation, proposed § 314.107(c)(4) would require the applicant to change its certification from a paragraph IV to a paragraph III. Upon the required certification change, the applicant would lose any claim to exclusivity eligibility.

Nothing in the statute or the regulations supports an award of exclusivity to an ANDA applicant that loses its lawsuit. In fact, such an award would run counter to the statutory goal of promoting earlier entry of generic drug products into the market.

If the agency were to interpret the statute to permit exclusivity for an ANDA applicant that lost its patent litigation, a subsequent applicant that is not sued for patent infringement because it managed to design around the patent nonetheless would not be able to enter the market until after patent expiration. The court decision trigger for the beginning of exclusivity would be unavailable to this subsequent applicant because it applies only when there has been patent litigation as a result of the paragraph IV certification and an ANDA applicant has won.

Additionally, if the agency permitted exclusivity for an applicant that lost its litigation and therefore could not market its product, the innovator might avoid generic competition for the life of its patent merely by refusing to sue any subsequent ANDA applicant. This outcome would not be justified by the first applicant's unsuccessful challenge to the patent.

The declaratory judgment provision discussed in section II.F of this document could prevent an innovator company from using this strategy to completely block ANDA approvals in some cases. However, it is unreasonable to expect subsequent ANDA applicants to obtain a declaratory judgment that triggers exclusivity for a first applicant who has not provided any benefit to the public, merely because the subsequent applicant wants to avoid being blocked for the life of the patent.

If a first applicant that loses its patent suit is not eligible for exclusivity, generic drug products may be able to enter the market prior to expiration of the innovator's patent in several situations. Market entry can occur if a subsequent ANDA applicant with a paragraph IV certification prevails in its patent litigation, settles its patent litigation, or is not sued as a result of the paragraph IV certification.

The agency recognizes that this approach requires a new interpretation of § 314.94(a)(12)(viii)(A). That provision states that when an applicant changes its paragraph certification from a IV to a III after losing a patent infringement suit, "the application will no longer be considered to be one containing a [paragraph IV] certification." Previously the agency had described that regulatory provision as fulfilling only the "housekeeping" function of informing the agency that the ANDA would not be approved until the patent expired, and explained that the provision had no implications for exclusivity eligibility. That interpretation was consistent with the entire regulatory scheme that was built around the successful defense requirement.

The removal of the successful defense requirement has resulted in a fragmented regulatory framework, forcing the agency to modify not only the regulatory language in certain parts but also, as in this case, its interpretation of language that is to remain. Under the new proposed approach, when a first applicant loses its patent litigation and changes its certification from a paragraph IV to a paragraph III under § 314.94(a)(12)(viii)(A), it would not be eligible for exclusivity. In addition, a voluntary change in patent certification from a IV to a III as described in § 314.94(a)(12)(viii) also would have the effect of rendering the first ANDA applicant ineligible for 180-day exclusivity. After the first applicant changed its patent certification to a III, no applicant would be eligible for exclusivity, and the agency could approve eligible subsequent applications.

4. Shared Exclusivity for Multiple ANDA's Filed on the Same Day

The agency is proposing that all applicants for ANDA's containing paragraph IV certifications for a particular drug product that are received on the same day will be eligible for exclusivity if no other ANDA with a paragraph IV certification for the drug product has been previously filed. All such applicants would be considered first applicants. Submission of ANDA's on the same day is most likely to occur when an innovator's 5-year exclusivity barring FDA acceptance of ANDA's expires, or when ANDA applicants wish to challenge a patent listed for an innovator product with 5 years of exclusivity and file ANDA's at the end of 4 years of exclusivity (see section

505(j)(5)(D)(ii) of the act). The applicable periods would be 5 1/2 years or 4 1/2 years when pediatric exclusivity has been granted (see section 505A(a) of the act (21 U.S.C. 355a(a)).

Under this proposal, the exclusivity period would be shared by all first applicants. Once the exclusivity period begins, it would run for all first applicants, protecting the group of first applicants from competition from later applicants during the 180-day period. The application of the triggering period, discussed in section II.B.1 of this document, would remain essentially the same, with a slight modification. After a triggering event (described in section II.B of this document) occurred, all eligible first applicants could be approved and would be eligible to share the 180-day exclusivity. Once the 180 days of exclusivity has run following the first triggering event, any ANDA that was not among the group of first applicants also would be eligible for final approval.

The agency believes the statutory language supports this approach, which would protect the incentive created by Congress for ANDA applicants to challenge patents. Further, this approach is preferable to alternative approaches. One alternative approach, which the agency does not propose because it does not preserve the incentive to challenge patents, would be for the agency to determine that no ANDA applicant is eligible for 180-day exclusivity if, on the same day, the agency receives more than one ANDA with a paragraph IV certification for the same drug product and no other ANDA with a paragraph IV certification for the drug product has been previously filed.

Another option is for the agency to attempt to determine which application it received first on the same day, an inquiry that is impractical and may result in an arbitrary ordering of applications. It may not be possible for the agency to determine which application was received first. If, for example, the agency received more than one eligible application in the same mail delivery on a particular day, it would be impossible to determine which application was received first. If applications were received by various means throughout the day, when the applications in the pile were retrieved to date-and time-stamp, the application that the agency received first might be stamped last. Although theoretically this particular problem could be avoided by stamping each document at the time of receipt, this solution is impractical given agency workload and resource constraints.

5. Patent Expiration and 180–Day Exclusivity

The agency is clarifying that once the patent for which the first applicant filed a paragraph IV certification expires, the first applicant is no longer eligible for exclusivity. When the first applicant is no longer eligible for exclusivity, FDA may approve all otherwise eligible ANDA's. FDA regulations at § 314.94(a)(12)(viii) currently provide that exclusivity cannot extend beyond the term of the patent.

B. The Results of the Patent Challenge

In general, once an ANDA applicant has submitted a paragraph IV certification and notified the NDA holder and patent owner of the patent challenge under § 314.95 (21 CFR 314.95), a number of outcomes are possible including: (1) The NDA holder or patent owner may sue the ANDA applicant within the 45-day period established by statute (section 505(j)(5)(B)(iii) of the act) and that suit may be litigated to final judgment, (2) the parties may reach a settlement either before or after a patent infringement lawsuit is filed, or (3) the NDA holder and patent owner may refrain from filing a patent infringement suit. Which of these events occurs will depend on many factors, including market considerations and the relative strength of the patent claims. However, in each of these cases, there is the potential for a substantial delay in the entry of generic drug products into the market. The agency is proposing a relatively simple approach to limiting this delay, one that applies generally to all of the outcomes described previously.

Under the current 180-day exclusivity approach, delays in the approval of competitive generic drug products are the result of delays in the occurrence of one of the two events (triggering events) that will trigger the beginning of the 180-day exclusivity period—either the first commercial marketing of the first applicant's product, or a decision of a court holding the patent invalid, not infringed, or unenforceable, whichever is earlier. The courts in the *Mova* and *Purepac* decisions suggested that, to prevent unreasonable delay in the final approval of subsequent generic drug applications, FDA could require that a first ANDA applicant bring its product to market—and thus begin the running of exclusivity—within a prescribed time period. The agency believes that such a requirement is appropriate.

1. Triggering Period

The agency proposes to adopt the approach suggested by the courts in the *Mova* and *Purepac* decisions and set a time limit for the exercise of exclusivity. The agency is proposing the use of a 180-day "triggering period," during which there must either be a favorable court decision regarding the patent or the first applicant must begin commercial marketing of its product. If neither of these events occur during the triggering period, the first applicant will lose its eligibility for exclusivity and subsequent ANDA's will be eligible for immediate approval.

The term "triggering period" is used throughout this proposed rule to refer to the 180-day period described previously; this is distinct from the 180-day exclusivity period (see section II.B.4 of this document) that may follow the triggering period. The term "trigger" as used throughout this proposed rule refers to the two statutory conditions, one of which must be met, for exclusivity to begin (see section 505(j)(5)(B)(iv) of the act). Those conditions, as discussed in sections I and II.B of this document, are: (1) A court decision finding the patent to be invalid, unenforceable, or not infringed by the ANDA product, and (2) first commercial marketing of the ANDA product. The term "triggering event" in this proposed rule refers to the occurrence of one of the two statutory triggers.

In most cases, the triggering period would begin to run on the day a subsequent ANDA applicant with a paragraph IV certification receives a tentative approval stating that but for the first applicant's exclusivity, the subsequent ANDA would receive final approval. In three instances the triggering period would not begin to run on the date of the tentative approval.

First, if the first applicant was sued for patent infringement as a result of its paragraph IV certification and the litigation is ongoing, the triggering period would not begin until expiration of the 30-month stay of ANDA approval (see section II.B.3 of this document). Similarly, if a court issued a preliminary injunction prohibiting the first applicant from commercially marketing its drug product, the triggering period would not begin until the injunction expired. Finally, the triggering period would not begin until expiration of the statutorily described time period corresponding with any existing exclusivity periods for the listed drug (see sections 505(j)(5)(D)(ii) and 505A(a) of the act).

To determine how a triggering period would work, the agency reviewed its experience with the 180-day exclusivity provision. In the past, delays in obtaining a court decision, or delays in the first applicant gaining approval for

its ANDA and/or bringing its product to market, have generally become a matter of concern when at least one subsequent ANDA applicant has obtained a tentative approval and the only barrier to final approval is the first applicant's eligibility for 180 days of exclusivity. Every day after the tentative approval during which the subsequent applicant can not market its product represents a lost opportunity both for the subsequent applicant and the consumer. The subsequent applicant can not benefit from having submitted an ANDA that meets the requirements of section 505(j) of the act, and the consumer does not have access to one or more lower cost generic products.

Where the first ANDA applicant is eligible for exclusivity and only that eligibility is blocking final approval of a subsequent ANDA, it is appropriate to begin the triggering period on the day that a subsequent applicant has received tentative approval for its ANDA. This is the first day that the absence of a generic drug product from the market is directly linked to the first applicant's eligibility for exclusivity.

a. *Length of triggering period.* The agency is proposing that the triggering period be 180 days. As described previously, the 180-day period would follow one of the following: (1) The tentative approval of a subsequent ANDA with a paragraph IV certification for the same drug product, (2) expiration of a 30-month stay of ANDA approval due to patent litigation, (3) expiration of a preliminary injunction prohibiting marketing of an ANDA product, or (4) expiration of the statutorily described exclusivity periods for the listed drug.

Once the triggering period begins, the ANDA applicant eligible for exclusivity would have 180 days to trigger its exclusivity. This may be done by beginning commercial marketing of its drug product or obtaining a favorable court decision (in its own or other litigation regarding the same patent). Once triggered, the ANDA applicant's exclusivity would then run for 180 days. If, within the 180-day triggering period, the beginning of exclusivity was not triggered, the first applicant would no longer be eligible for exclusivity and the agency could approve subsequent ANDA's at the end of the triggering period.

It is possible that there could be no generic drug product marketed during the triggering period if the first applicant does not begin commercial marketing of its product. In this case, at least one generic drug product—the product that had received the tentative approval—would receive final approval upon expiration of the triggering period and could begin marketing.

b. *Basis for length of triggering period.* The 180-day length of the triggering period is derived from the statutory provision governing 180 days of exclusivity. This provision quite clearly allows (and Congress, therefore, presumably contemplated) the possibility of a 180-day period during which there is no generic drug product on the market. This would occur when the running of the 180-day period of exclusivity has begun with a court decision finding the patent invalid, unenforceable, or not infringed, but the applicant that has the exclusivity does not begin marketing its product because it is not approved or for another reason.

There is no statutory requirement that the running of the exclusivity triggered by the court decision described in section 505(j)(5)(B)(iv)(II) of the act be accompanied by the commercial availability of the generic drug product. Even if no generic drug product is being marketed, the statute prohibits the agency from approving another ANDA until the 180-day exclusivity period has elapsed. After that period, however, the statute permits the approval of any otherwise eligible ANDA, even if the first applicant never marketed its product. It is therefore reasonable to assume that Congress thought that a 180-day period during which no generic drug product is marketed was acceptable.

At the same time, there is no indication that Congress would countenance an indefinite delay in the marketing of low cost generic drug products once the legal barriers to their approval have been removed. To the contrary, such a scenario directly conflicts with the goals of the Hatch-Waxman Amendments. Therefore, the agency is proposing a 180-day triggering period during which a triggering event must occur to commence the eligible ANDA applicant's period of exclusivity.

The agency recognizes that in very rare cases there could be a time period longer than 180 days during which no generic drug product is available. This may happen if, for example, a court decision triggering the exclusivity period is issued at the end of the 180-day triggering period, and the first applicant does not market its product or waive its right to exclusivity during the resulting 180-day exclusivity period. In the extreme case, this scenario could result in the inability of a subsequent ANDA applicant to market its product for a 360-day period (180-day triggering period plus 180-day exclusivity period) after its tentative approval.

The agency believes, however, that a first applicant that is unable to market its own product at the time a subsequent ANDA applicant receives a tentative approval would ordinarily waive its exclusivity (see section II.H of this document). This would permit final approval of the subsequent ANDA. Moreover, in contrast to the current regulatory structure, under which generic drugs may face almost insurmountable barriers to market entry, the proposed approach provides for much earlier market entry. Under the triggering period approach, there is certainty that one or more generic drug products will be able to enter the market after the 12-month period described previously, and in most cases, much more promptly.

2. Alternative Length of Triggering Period in Specific Cases

The agency is also specifically seeking comment on an alternative approach. The agency is considering shortening the length of the triggering period to 60 days in some cases. The 60-day triggering period would apply to an ANDA applicant that already has received final approval at the time of the tentative approval of a subsequent ANDA, and either has not been sued as a result of its patent certification, or has been sued and the case was settled or dismissed without a decision on the merits of the patent claim. The possible 60-day triggering period in this case is based upon limited data from a July 1998 Congressional Budget Office study entitled "How Increased Competition from Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry," and a March 1999 internal FDA study (available in Docket No. 85N–0214).

FDA does not consider this 60-day timeframe to be burdensome to ANDA applicants because the data suggest that, since passage of the Hatch-Waxman Amendments, first generic drug products generally reach the market promptly after approval. Specifically, the studies indicate that generic products are routinely marketed within a 2-month period following ANDA approval.

3. Relationship of Triggering Period to 30–Month Stay

When the first applicant to submit an ANDA with a paragraph IV certification is sued by the NDA holder or patent owner, it would be unreasonable to start the triggering period with the tentative approval of a subsequent applicant if the tentative approval was granted relatively soon after the first applicant's patent litigation began. The first

applicant could find it difficult or impossible to either obtain a final court decision in a patent infringement case or begin commercial marketing of its product within 180 days of the subsequent applicant's tentative approval. The first applicant who is sued for patent infringement is, however, provided with a statutory time period, as discussed in the following paragraphs of this document, during which to resolve the patent litigation before the triggering period will begin.

The generic drug product approval process described in the Hatch-Waxman Amendments establishes a 30-month period for resolution of patent litigation resulting from a patent certification. (See section 505(j)(B)(5)(iii) of the act.) During this period, FDA may not approve the ANDA that is the subject of the litigation. After the 30-month period, barring a court order, FDA may grant final approval to the ANDA that is the subject of the litigation. Therefore, the agency is proposing that when the first ANDA applicant is sued as a result of its paragraph IV certification and the patent litigation is ongoing, the triggering period would not begin at least until the 30-month period has lapsed. After the 30 months has passed, the triggering period would begin when a subsequent applicant received a tentative approval. If a subsequent applicant received a tentative approval during the 30-month stay, the 180-day triggering period would begin on the day the 30-month period expired. The first applicant then would have to begin marketing its product, or obtain a final court decision, during the 180-day triggering period to obtain its exclusivity.

4. Distinction Between Triggering Period and Exclusivity Period

Although the triggering period would not begin until expiration of the first applicant's 30-month stay, it is still possible for the exclusivity period to begin during that 30-month period. If, for example, a court issues a favorable final decision in litigation over a subsequent ANDA's patent challenge during the 30-month stay of the first applicant, the exclusivity period for the first applicant would start on the date of that decision.

In proposing this interpretation of the statute—that the triggering period does not begin until expiration of the 30-month stay—the agency is aware that in some cases patent litigation resulting from a paragraph IV certification does not result in a final court decision within 30 months. The agency is also aware that parties to patent litigation in some cases may not have strong incentives to resolve the litigation as promptly as possible. This proposed approach may alter those incentives and encourage swifter resolution of litigation.

Although the agency is proposing that the general rule will be that the first ANDA applicant has 30 months in which to resolve its patent litigation before the triggering period may start, the agency also would allow for a reasonable extension of this period under certain circumstances. This would occur when the court hearing the patent infringement case issues a preliminary injunction prohibiting the marketing of the drug product that is the subject of the challenged ANDA until there is a court decision finding the patent invalid, not infringed, or unenforceable. The issuance of such an order is contemplated in section 505(j)(5)(B)(iii)(III) of the act.

FDA expects that an injunction would issue upon a finding that it is warranted by the facts and law in the particular case, and that the parties have reasonably cooperated in expediting the action. In the event the court issues an injunction prohibiting the marketing of the drug product under the first ANDA, the triggering period would not begin at least until the injunction expires or is lifted by the court. If the 30-month stay is shortened or lengthened by the court because either party has failed to reasonably cooperate, the triggering period will begin with reference to the date ordered by the court.

While the triggering and exclusivity periods are related, they are also distinct. The exclusivity period starts with either first commercial marketing of the first applicant's generic drug product or with a court decision finding the patent invalid, unenforceable, or not infringed. The triggering period, in contrast, would be tied to the date of a subsequent ANDA's tentative approval, and in some cases to the completion of a 30-month stay. The triggering period may not result in an exclusivity period for the first applicant if no triggering event occurs during the triggering period. In contrast, an exclusivity period may begin independent of any triggering period, if no subsequent ANDA is given a tentative approval to begin the triggering period. Alternatively, the exclusivity period could begin during the triggering period.

C. A Decision of a Court

FDA's current regulations state that for purposes of applying the ANDA approval and exclusivity provisions of the statute, "the court" is the court that enters final judgment from which no appeal can be or has been taken (district or appellate court) (§ 314.107(e)). This interpretation was challenged in *TorPharm* v. *Shalala*, No. 97–1925, U.S. Dist. LEXIS 21983 (D.D.C. Sep. 15, 1997); appeal withdrawn and remanded, 1998 U.S. App. LEXIS 4681 (D.C. Cir. Feb. 5, 1998); vacated No. 97–1925 (D.D.C. April 9, 1998).

Plaintiffs in that case maintained that "the court" meant the district court and that final approval could be granted and exclusivity begin running upon the entry of a district court decision finding a patent invalid, unenforceable, or not infringed. Because the district court decision in *TorPharm* agreeing with plaintiffs was vacated (set aside or rendered void), the agency will not address it further in this proposed rule. FDA instead proposes to maintain its current interpretation. The agency believes this interpretation is most consistent with the statutory scheme.

The agency is also proposing that the decision of a court that may begin the running of exclusivity is the final decision of a court hearing any litigation involving the patent at issue. Current § 314.107(c)(1)(ii) states that one of the two exclusivity triggers is the "date of the decision of the court holding the relevant patent invalid, unenforceable, or not infringed." FDA proposes to modify § 314.107(c)(1)(ii) to read the "date of the decision of a court * * *."

This modification is consistent with the statutory language in section 505(j)(5)(B)(iv) of the act. The agency is clarifying that for purposes of both the modified regulatory provision and section 505(j)(5)(B)(iv)(II) of the act, " a decision of a court in an action described in [section 505(j)(5)(B)(iii) of the act] holding the patent which is the subject of the certification to be invalid or not infringed" can be a decision of any court hearing a patent infringement or declaratory judgment case involving the patent at issue. The decision triggering exclusivity need not come from the court hearing the patent litigation involving the first ANDA. (See also *Granutec, Inc.* v. *Shalala*, 1998 U.S. App. LEXIS 6685, Nos. 97–1873, 97–1874, slip op. at 14–18 (4th Cir. Apr. 3, 1998) (unpublished opinion discussing the agency's interpretation of "a" court decision).)

The use of different language in subsections (I) and (II) of section 505(j)(5)(B)(iv) of the act supports this interpretation. In subsection (I), the statutory trigger is specifically tied to the date that "the applicant under the previous application" gives notice that its product is being commercially marketed. In contrast, the trigger in subsection (II) relates only to the date of "a decision of a court" in patent

litigation described in section 505(j)(5)(B)(iii) of the act.

The language of the first trigger refers to a particular applicant. In contrast, the language of the second trigger does not attach importance to the specific applicant. It instead refers generally to a type of court decision. In the absence of specific, controlling language to the contrary, the agency continues to interpret "a decision of a court" in subsection (II) to mean a decision of any court hearing a patent infringement or declaratory judgment case involving the patent at issue.

This interpretation of the court decision trigger encourages prompt litigation of patent issues by all ANDA applicants, and under some circumstances could result in a corresponding earlier start of the 180-day exclusivity period. This could result in situations where, although the first applicant was sued first, its litigation is not completed first, and its exclusivity begins to run while it is still in litigation.

The agency is aware that in some instances the first applicant may be unable or unwilling to market its product upon satisfaction of the court decision trigger involving another applicant. For example, the first applicant's own patent litigation may be ongoing and its ANDA may have been finally approved at the completion of a 30-month stay under section 505(j)(5)(B)(iii) of the act. However, the applicant may be unwilling to assume the risk of liability for damages by marketing before patent expiration or a court decision finding the applicant's product does not infringe the patent. The agency notes, however, that in such a situation the first applicant may obtain a financial benefit from the award of exclusivity by waiving its exclusivity with respect to a subsequent applicant (see section II.H of this document).

A contrary interpretation that required the court decision be a decision in patent litigation against the first applicant could, under some circumstances, delay entry into the market of drug products by all ANDA applicants. For example, the patent owner or NDA holder may elect not to sue the first ANDA applicant, in which case the court decision trigger would never apply to that applicant's patent challenge, and exclusivity could therefore begin running only with the first applicant's commencement of commercial marketing. If the first applicant's marketing is delayed because it cannot obtain final approval of its ANDA or, having obtained final approval, the first applicant either cannot or will not bring its product to market, there could be a substantial delay in marketing of any generic drug product. This delay would result even if a subsequent applicant is successful in challenging the patent, either in a lawsuit brought by the innovator or in a declaratory judgment action.

As described in section II.B.3 of this document, under the approach proposed in this rule, the triggering period would not apply when a subsequent applicant obtains a court decision that begins the period of exclusivity. In such cases the first applicant's exclusivity would begin to run on the date of the final court decision in the subsequent applicant's litigation. The triggering period applies only when a subsequent applicant has obtained a tentative approval where final approval is blocked by the first ANDA applicant's eligibility for exclusivity. Under these circumstances, the subsequent applicant would have been eligible for final approval because either: (1) It wasn't sued by the innovator, (2) it was sued but the litigation was settled or dismissed without a favorable court decision, or (3) it was sued and the 30-month stay had elapsed.

D. Settlement Agreements

Settlement agreements are not addressed in current regulations but were discussed in the preamble to the proposed rule of July 10, 1989 (54 FR 28872). In the preamble, FDA explained that the "date of a decision of a court holding the patent invalid or not infringed" in § 314.107(c)(1)(ii) is the "date of a final decision of a court from which no appeal can or has been taken, or the *date of a settlement order or consent decree signed by a Federal judge, which enters final judgment and includes a finding that the patent is invalid or not infringed*" (54 FR 28872 at 28895 (emphasis added)).

FDA is proposing regulations in part to address the most challenging issue with respect to 180-day exclusivity: settlement and licensing agreements between innovator and generic drug companies. These agreements potentially can be made at any stage in the ANDA process, including before an ANDA is filed, after ANDA filing but during the 45-day period within which a patent infringement suit must be brought, after the 45-day period expires but before the first applicant commences commercial marketing, or during patent litigation.

The proposed regulations, by applying the triggering period, would reduce the delay in market entry of generic drug products that can result from such agreements. Although agreements may still be made, their effect on generic competition would be limited by the requirement that, within 180 days of the first tentative approval of a subsequent ANDA, the first ANDA applicant begin commercially marketing its own product or obtain a favorable court decision.

The agency has seriously considered the suggestions made in comments on the November 1998 interim rule (Docket No. 85N–0214) and the June 1998 guidance (Docket No. 98D–0481). Comments suggested that the agency require that it be promptly notified of a settlement or other agreement that either alters the adversarial relationship between the first ANDA applicant and the patent owner or NDA holder, or from which the first ANDA applicant derives an economic benefit. A number of comments suggested that the agency consider such arrangements as either rendering the first applicant ineligible for exclusivity, or triggering the running of the exclusivity period on the theory that such agreements are akin to commercial marketing.

The agency, however, believes the "triggering period" approach is preferable. This approach would not require FDA to inquire into the business arrangements between pharmaceutical companies, it would not require the submission of any additional information by the ANDA applicant, and it is a clear and definite approach that relies upon publicly available information, i.e., the issuing of a tentative approval letter.

E. Prompt Approval and Marketing

Current § 314.107(c)(3) requires a first applicant to actively pursue approval of its ANDA, or the agency may immediately approve any subsequent ANDA eligible for final approval. The agency proposes to delete this requirement because it is unnecessary under the regulatory scheme described in this proposed rule. The new scheme would provide a specific, clearly defined 180-day triggering period, during which the first ANDA applicant must either: (1) Commercially market its drug product, or (2) obtain a favorable court decision regarding the patent.

Given this approach, the issue of whether an ANDA applicant actively pursues approval of its product would not be relevant. The proposed approach, therefore, also has the advantage of eliminating the requirement for the agency to scrutinize applicants' progress and responses during the ANDA approval process, as well as to maintain a standard for active pursuit of approval.

F. Declaratory Judgment

Current regulations implementing the Hatch-Waxman Amendments do not address the application of section 505(j)(5)(B)(iv) of the act to declaratory judgment actions as referred to in section 505(j)(5)(B)(iii) of the act. These proposed regulations address the issue of whether a ruling in a declaratory judgment action brought by the ANDA applicant is a "decision of a court in [an] action described in [section 505(j)(5)(B)(iii)] holding the patent which is the subject of the certification to be invalid or not infringed" (section 505(j)(5)(B)(iv) of the act).

FDA proposes in § 314.107(f)(2)(ii) that a "decision of a court" should include a nonappealable decision of a court in a declaratory judgment action finding the patent invalid, unenforceable, or not infringed.

The agency has considered the suggestion that a dismissal of a declaratory judgment action under certain circumstances be treated as a decision of a court and trigger the 180-day exclusivity period under section 505(j)(5)(B)(iv)(II) of the act. Specifically, the agency considered whether dismissal for lack of jurisdiction on the grounds that no "case or controversy" exists because, for example, a party has no reasonable apprehension of a patent infringement action, could be considered a triggering court decision. The agency has rejected this interpretation of the statute. It places a burden on the agency to inquire into the facts underlying the dismissal of a case, and would be unnecessary under the "triggering period" approach. With the application of the 180-day triggering period, a subsequent applicant who is not sued for patent infringement and obtains a tentative approval with just the first applicant's eligibility for exclusivity serving as a bar to final approval will not be blocked indefinitely from approval.

G. Effect of Dismissal of Litigation

Proposed § 314.107(g) states that the 30-month stay of ANDA approval would not apply once paragraph IV related patent litigation involving the ANDA applicant and patent owner or NDA holder is dismissed without a court decision on the merits of the patent claim, regardless of whether such dismissal is with or without prejudice (whether the claims may be relitigated). The 30-month period, described in section 505(j)(5)(B)(iii) of the act and § 314.107(b)(3)(A) of the regulations, is intended to give innovator companies assurance that generic manufacturers would not file ANDA's with paragraph IV certifications and then immediately market the approved generic drug product. (See 130 Congressional Record H9118 (daily ed. Sept. 6, 1984) (statement of Rep. Waxman).)

The legislative history of the amendments makes clear that the 30-month stay of approval was intended to correspond as closely as possible with the expected duration of a patent infringement suit, and to provide protection to innovator companies during that time. (See 130 Congressional Record S10504 (daily ed. Aug. 10, 1984) (statement of Sen. Hatch). Those concerns are not implicated when the litigation is dismissed either as a result of a settlement or licensing agreement, or because the patent owner or NDA holder has determined not to pursue the litigation. Once the litigation is settled, the application can be approved immediately.

H. Waiver of 180–Day Exclusivity and Relinquishing Eligibility

Although current regulations do not address an ANDA applicant's ability to waive its 180-day exclusivity to permit approval of the ANDA of a subsequent applicant(s), the general issue of exclusivity waivers was addressed in the preamble to the 1994 final rule with respect to analogous provisions. There the agency stated that new drug exclusivity under the Hatch-Waxman Amendments can be waived by the holder of the exclusivity (59 FR 50338 at 50359).

Since publication of the 1994 regulations addressing 180-day exclusivity, FDA has been asked to determine whether an applicant who has obtained 180 days of exclusivity can waive such exclusivity to permit approval during the exclusivity period of a subsequent ANDA, or ANDA's, containing a paragraph IV certification. The agency has determined that waiver of 180-day exclusivity, like waiver of new drug exclusivity, is permitted under the act and at least one ANDA applicant has successfully effected a waiver. That waiver was challenged unsuccessfully in *Boehringer Ingelheim Corp.* v. *Shalala*, 993 F. Supp. 1 (D.D.C. 1997).

Proposed § 314.107(e) would permit the ANDA applicant that has obtained 180 days of exclusivity with the occurrence of a triggering event under section 505(j)(5)(B)(iv)(I) or (j)(5)(B)(iv)(II) of the act to notify FDA during the period of exclusivity that it will waive its exclusivity in favor of a subsequent ANDA or ANDA's containing a paragraph IV certification. After receiving such notification, the agency may approve the eligible named ANDA or ANDA's as of the date(s) identified in the notice. Waiver of exclusivity permits ANDA applicants that have been awarded exclusivity, but are either unwilling or unable to market their products, to nonetheless obtain a benefit from that exclusivity. A waiver may be particularly appropriate, for instance, when the first ANDA applicant is sued and, while its litigation is ongoing, a favorable court decision is rendered in a case involving a subsequent applicant. Exclusivity would be awarded to the first applicant, with the 180-day period starting on the date of a final court decision in the subsequent applicant's litigation. The first applicant's ANDA may not be finally approved, however, and the applicant could not market its product. Under these circumstances, the first applicant may obtain a benefit by waiving its exclusivity period in favor of a subsequent applicant.

It should be noted that an applicant may selectively waive its exclusivity only after the 180-day exclusivity period has begun to run with the occurrence of one of the triggering events described in section 505(j)(5)(B)(iv) of the act and in the regulations. Before that time, the first applicant is only eligible for exclusivity and might not obtain exclusivity if, for example, it failed to trigger the exclusivity before the expiration of the triggering period.

Prior to the occurrence of a triggering event, the first applicant may relinquish its eligibility for exclusivity entirely, and by so doing would permit the agency to approve immediately any subsequent ANDA's that are eligible for approval. It may not, however, waive its exclusivity in favor of a specific applicant(s).

I. Multiple Strength/Drug Product Exclusivity

The question of whether the agency will grant a separate period of exclusivity for each strength of a drug product is not addressed in the preambles to the 1989 proposed or 1994 final rules, or in current regulations. A citizen petition (Docket No. 99P–0792) that pertains to this issue was filed on March 31, 1999. The agency has determined that each strength of a drug product can be independently eligible for exclusivity. Applicants may be eligible for a separate exclusivity period for each particular strength of the drug product in an ANDA when each strength refers to a different listed drug.

FDA believes that this form of exclusivity is consistent with the statutory framework and public policy. Under the Hatch-Waxman Amendments, the agency requires that

an ANDA reference a particular listed drug product. Among other requirements, an ANDA applicant must include in the ANDA "information to show that the route of administration, the dosage form, and the *strength* of the new drug are the same as those of the listed drug * * *" (section 505(j)(2)(A)(iii) of the act, emphasis added). The agency, therefore, has determined that each strength of a drug product is itself a listed drug.

FDA's current regulations treat each strength of a drug product as a separate listed drug. Section 314.92(a)(1) (21 CFR 314.92 (a)(1)) states that ANDA's are suitable for "drug products that are the same as a listed drug." The regulation further explains that "the term 'same as' means identical in active ingredient(s), dosage form, strength, route of administration, and conditions of use * * *."

FDA recognizes that different strengths of the same drug product in the same dosage form may be formulated differently for a variety of reasons. Varying formulations of the different strengths may provide separate and distinct bases for patent challenges. Consequently, the result of patent infringement litigation related to one strength of a particular drug product may not be applicable to another strength of the same drug product, even for the same ANDA applicant.

When the agency grants exclusivity to an ANDA applicant under the provisions of section 505(j)(5)(B)(iv) of the act, it may not grant final approval to other ANDA applicants for a period of 180 days. Exclusivity, therefore, affects the remaining applicants by essentially imposing a block on their immediate entry into the market.

The agency's interpretation of the statute to render ANDA's eligible for exclusivity for each particular strength of a drug product would have two results. First, it would encourage applicants vying for submission of the first application, and the concomitant reward of exclusivity, to submit ANDA's that cover the greatest number of strengths in an attempt to obtain maximum protection from other generic competitors. Second, it would prevent an ANDA applicant for only one strength of a drug product from blocking subsequent applicants with other strengths of the drug product from entering the market. Thus, FDA's interpretation would encourage prompt entry into the market of the greatest number of strengths of a particular drug product.

FDA has also determined that when the submission of a new strength of a drug is approved as a result of a suitability petition, the first ANDA referring to the approved petition that contains a paragraph IV certification to any patent for the listed drug referred to in the petition under § 314.93(d) will be eligible for exclusivity. The new strength of the drug product may have an independent basis for challenging the applicability of a listed patent and therefore should be eligible for the incentive provided by exclusivity.

III. Proposed Implementation Plan

The agency proposes that any final rule based on this proposal take effect 30 days after its publication in the **Federal Register**. The agency proposes to apply the provisions of any final rule to ANDA's pending as of the effective date and to ANDA's that are submitted after that date.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act requires that agencies prepare a written assessment and economic analysis of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year.

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles set out in the Executive Order. Because the proposed rule does not impose any mandates on State, local, or tribal governments or the private sector, that will result in an expenditure in any one year of $100 million or more, FDA is not required to perform a cost/ benefit analysis according to the Unfunded Mandates Reform Act. With respect to the Regulatory Flexibility Act, because this proposed rule may have a significant economic effect on a substantial number of small entities, the analysis set forth below constitutes the agency's Initial Regulatory Flexibility Analysis. Discussion of the expected aggregate costs of this proposed rule and the anticipated impact of the rule on small entities is provided in the analysis. FDA has not identified any other Federal rules that duplicate, overlap, or conflict with the proposed rule.

A. Background

The Hatch-Waxman Amendments benefit consumers by bringing lower priced generic versions of previously approved drugs to market, while simultaneously promoting new drug innovation through the restoration of patent life lost during regulatory proceedings. The award of a 180-day period of market exclusivity for certain ANDA applicants with paragraph IV certifications was designed to maintain this balance by rewarding generic firms for their willingness to challenge unenforceable and invalid innovator patents, or design noninfringing drug products. Recently, however, this balance has been upset and generic competition impeded, in part through the establishment of certain licensing agreements or other commercial arrangements between generic and innovator companies.

Under current regulatory provisions, the first generic applicant to file a substantially complete ANDA with a paragraph IV certification can delay generic competition by entering into certain commercial arrangements with an innovator company. The result may be that, notwithstanding the intent of the Hatch-Waxman Amendments, rewards are directed to generic companies for hindering rather than speeding generic competition. A necessary condition for such arrangements is that the economic gains to the innovator from delaying generic competition exceed the potential economic gains to the generic applicant from 180 days of market exclusivity. Such instances are becoming more frequent because a successful strategy to extend market exclusivity can mean tens of millions of dollars in increased revenue for an innovator firm. Under such circumstances, it can be mutually beneficial for the innovator and the generic company that is awarded 180

days of generic exclusivity to enter into agreements that block generic competition for extended periods. This delayed competition harms consumers by slowing the introduction of lower priced products into the market and thwarts the intent of the Hatch-Waxman Amendments.

FDA's proposal to establish a 180-day triggering period addresses this problem in several ways. In most cases, the first generic applicant with a paragraph IV certification would lose its claim to 180-day exclusivity if it withheld its drug product from the market, or failed to obtain a favorable court decision, for more than 180 days after the tentative approval of a subsequent generic applicant for the same drug product. Also, a subsequent generic applicant could not be blocked from marketing its drug product for longer than, at most, 1 year from when it received tentative approval (the 180-day triggering period plus the 180-day exclusivity period). As a result, the potential economic losses to consumers from the increased unavailability of lower priced generic products would be reduced significantly.

Moreover, decreasing the length of time that these commercial arrangements could block generic competition lessens the market incentive for entering into such agreements. Limiting the period during which an agreement between an innovator and the first generic ANDA applicant with a paragraph IV certification could block generic competition provides less incentive, and therefore makes it less likely, that an innovator and a generic company would enter into such an agreement. Consequently, consumers would benefit because commercial arrangements to block generic competition would be not only less damaging, but would be less likely to occur.

B. Affected Entities

FDA does not know the precise number of businesses, either large or small, that engage in the types of business arrangements that would be significantly affected by the proposed rule. According to standards established by the Small Business Administration, a small pharmaceutical manufacturer employs fewer than 750 employees. While the innovator firms that are affected by the rule are likely to be large businesses, some of the affected generic firms may be small businesses. In 1997, 431 generic product approvals (including different product strengths) were distributed among 96 pharmaceutical companies. The 64 applications that became first generic approvals for a specific brand name drug, however, were submitted by only 30 firms. Moreover, the 14 first generic approvals that included a paragraph IV certification were submitted by only 5 firms. Therefore, FDA estimates that up to five generic firms and a similar number of innovator firms per year could be financially harmed by the accelerated competition brought about by this rule. Based on a sample of 150 generic firms, the agency could identify fewer than 10 percent that employed over 750 employees. Thus, FDA tentatively projects that approximately five small firms per year, those with first generic approvals containing paragraph IV certifications, could be adversely affected by the increased generic competition. Because this estimate is uncertain, however, FDA invites comments from firms that believe they would be affected by the proposed rule.

C. Compliance Requirements and Costs

To comply with this rule, affected firms will need to learn the new regulatory approach described in this proposed rule. The cost of this proposed rule is difficult to estimate because the number of firms affected is uncertain.

The agency expects, however, that many more firms would benefit from this new approach than would be adversely affected. Because the primary result of the rule would be to speed the start of the 180-day exclusivity period, only those relatively few innovator and generic firms that would profit from delayed competition would be disadvantaged. In contrast, a substantial number of generic competitors would benefit from the earlier sales revenues generated by the quicker introduction of generic competition.

Any professional skills necessary for implementation of this proposal should already exist within the firms and should not need to be newly acquired.

D. Minimizing the Impact on Small Entities

FDA has considered alternatives to regulating 180-day generic drug marketing exclusivity that may have a lesser or different impact on small businesses. Specifically, the agency considered continuing to regulate directly from the statute as it has done since June 1, 1998, when the D.C. District Court enjoined FDA from enforcing its "successful defense" regulation. The agency also considered proposing several modifications to the existing regulations to limit the ability of innovator and generic drug companies to enter into agreements that could thwart congressional intent to facilitate prompt entry of generic drugs into the market.

The agency considered retaining its current regulations and addressing new regulatory issues by reference directly to the statute. Because of the significant disadvantages associated with this alternative, the agency has rejected it. This alternative would create uncertainty in the generic drug manufacturing industry because the agency anticipates it may take years to provide sufficient guidance while addressing each scenario on an individual basis.

Regulating from the statute on a case-by-case basis also could result in significant delays in entry of generic drug products into the market, because it could limit the means for FDA to prevent such delays. For example, in cases where the first ANDA applicant with a paragraph IV certification was sued by the patent owner or NDA holder, the ANDA applicant and the patent owner/NDA holder could enter into an agreement that resulted in delayed resolution of the patent litigation. If the patent owner/NDA holder did not sue subsequent applicants, there would not be another court decision to act as an exclusivity trigger. The first applicant might not get a court decision for a long time and also might not market its product. Under these circumstances, no triggering events would occur and the first ANDA would block entry of subsequent ANDA applicants into the market.

The same blocking effect could occur even if the patent owner/NDA holder chose not to sue the first applicant with the paragraph IV certification, but instead entered into an agreement under which the first applicant would not market its product and trigger exclusivity. If the patent owner/NDA holder did not sue subsequent applicants, there also would not be a possibility of a favorable court decision to start the exclusivity period running.

The second alternative, proposing several regulatory modifications, was also rejected by the agency. Satisfactorily accomplishing the goal of promoting prompt entry of generic drug products into the market by inhibiting entry barriers would require many changes to the regulations. Additionally, it would impose a significant paperwork burden on applicants not present in the proposed rule.

The regulatory modifications would include provisions as follows: (1) An ANDA applicant would be required to notify the agency of a settlement agreement with a patent owner/NDA holder and whether it permitted immediate marketing of the drug

product; (2) an ANDA applicant would be required to market its drug product within 60 days of final approval or the agency would determine the exclusivity period commenced on the date of final approval; (3) the agency would determine that if the first applicant entered into an agreement with the patent owner/NDA holder under which it received a commercial benefit, the applicant had commercially marketed its drug product; and (4) if an ANDA applicant brought a declaratory judgment action against the patent owner/NDA holder that was dismissed for lack or case or controversy, the agency would determine that the court decision exclusivity trigger was satisfied.

These proposed regulatory modifications all have the advantage of limiting barriers to entry of generic drug products into the market by permitting earlier satisfaction of the exclusivity triggers in some cases. However, they also are associated with significant disadvantages. This alternative would impose a substantial paperwork burden on ANDA applicants by requiring them to notify the agency of settlements and submit documents relevant to settlement and declaratory judgment actions. Additionally, the approach would require the agency to collect and assess paperwork associated with financial agreements between an ANDA applicant and patent owner/NDA holder to determine if the applicant received a commercial benefit.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of the provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: 180–Day Generic Drug Exclusivity for Abbreviated New Drug Applications.

Description: FDA regulations at § 314.107 govern 180-day generic drug exclusivity under the act. This proposed rule would revise § 314.107 to clarify and modify eligibility requirements for ANDA applicants seeking 180-day marketing exclusivity for a generic drug product. This new approach is necessary because of recent court decisions rejecting the previous requirement that an ANDA applicant successfully defend against a patent infringement lawsuit before it is eligible for exclusivity.

Under proposed § 314.107(e), if the first ANDA applicant for which 180-day exclusivity has sarted wants to waive its exclusivity in favor of a subsequent ANDA applicant, it must so notify the agency in writing before the agency would approve the subsequent application. The first applicant would be required to notify the agency as to which subsequent applicant(s) it wants to waive the exclusivity in favor of and the effective date(s) of the waiver.

The only new information collection requirement in this proposed rule is in § 314.107(e). The industry burden for all other information collection requirements under these regulations has been estimated by FDA and approved under OMB Control Numbers 0910–0001 (approval expires November 30, 2001) and 0910–0305 (approval expires May 31, 2001).

Description of Respondents: Business or other for-profit organizations.

In 1997, 431 generic drug product approvals (including different product strengths) were distributed among 96 pharmaceutical companies. The 64 applications that became first generic approvals for a specific brand name drug, however, were submitted by only 30 firms. Moreover, the 14 first generic approvals that included a paragraph IV certification were submitted by only 5 firms. Based on this data concerning the number of first generic approvals with paragraph IV certifications for a particular drug product received by the agency in 1997, FDA estimates that approximately 14 waivers may be submitted annually under proposed § 314.70(e). FDA estimates that approximately five applicants may submit such waivers and that it will take approximately 2 hours to prepare and submit each waiver to FDA. The following table indicates the estimated annual reporting burden for the preparation of notices of exclusivity waivers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.107(e)	5	approx. 3	14	2	28
Total					28

[1]There are no capital costs associated with this collection of information.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs (address above). Submit written comments on the information collection by September 7, 1999.

VII. Request for Comments

Interested persons may, on or before November 4, 1999, submit to the Dockets Management Branch (address above) written comments on this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days from publication of the final rule.

IX. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Congressional Budget Office, *How Increased Competition from Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry*, 1998. Also available on the Congressional Budget Office web site at: "http://www.cbo.gov".

2. FDA, Internal FDA Study, 1999.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 314 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 374, 379e.

2. In § 314.107, redesignate paragraph (e) as paragraph (f) and paragraph (f) as paragraph (h); revise paragraphs (a), (b) introductory text, (b)(3)(i), (c), (d) and newly redesignated paragraphs (f) and (h); and add new paragraphs (e) and (g) to read as follows:

§ 314.107 Effective date of approval of a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act.

(a) *General.* (1) A drug product may be introduced or delivered for introduction into interstate commerce when approval of the application or abbreviated application for the drug product becomes effective. Except as provided in this section, approval of an application or abbreviated application for a drug product becomes effective on the date FDA issues an approval letter under § 314.105 for the application or abbreviated application.

(2) *Definitions.* The following definitions of terms apply to this section:

180-day exclusivity means the 180-day period, under section 505(j)(5)(B)(iv) of the act, during which the first applicant is protected from competition of subsequent applicants.

ANDA means an abbreviated application, as defined under § 314.3.

Decision of a court refers to a final court decision finding the patent to be invalid, unenforceable, or not infringed, resulting from patent litigation brought against the first applicant or against any subsequent applicant. This includes a final court decision in a declaratory judgment action finding the patent to be invalid, unenforceable, or not infringed.

Final court decision means a final judgment from which no appeal can be or has been taken.

First applicant means the applicant submitting the first substantially complete abbreviated new drug application (ANDA) for a particular listed drug that contains "a paragraph IV certification"[1] to any patent for the listed drug submitted to FDA and published under section 505(b) of the act. The first applicant includes all applicants filing substantially complete ANDA's with paragraph IV certifications for the same drug product on the first day that the agency receives applications with a paragraph IV certification for the drug product.

NDA means a new drug application approved under section 505(c) of the act.

NDA holder means the applicant that owns an approved NDA, or its representative or exclusive licensee. An NDA holder may also be the exclusive licensee or representative of the patent owner.

Obtains a favorable court decision means either a first applicant receives a final court decision in its patent litigation that the patent is invalid, unenforceable, or not infringed; or in litigation of a subsequent applicant involving the same patent there is a final court decision that the patent is invalid, unenforceable, or not infringed.

Paragraph IV certification means a certification under section 505(j)(2)(A)(vii) of the act that a relevant patent is invalid, unenforceable, or will not be infringed.

Patent owner means the owner of the patent which is the subject of the paragraph IV certification, or the patent owner's representative or exclusive licensee.

Subsequent applicant means any applicant filing a subsequent ANDA.

Subsequent ANDA means an ANDA that contains a paragraph IV certification and refers to the same listed drug as the first substantially complete ANDA containing a paragraph IV certification.

Substantially complete means an ANDA that contains information required by section 505(j)(2)(A) of the act and §§ 314.50 and 314.94, including the results of any required bioequivalence studies or, if applicable, a request for a waiver of such studies, and a complete statistical analysis of required bioequivalence studies demonstrating that the drug product proposed in the ANDA meets the appropriate bioequivalence standard.

A triggering event occurs when, during a triggering period, a first applicant commercially markets its drug product or obtains a favorable court decision.

Triggering period means a 180-day time period, usually beginning on the date of the tentative approval of a subsequent ANDA, during which 180-day exclusivity may begin for the first applicant if a triggering event occurs.

(b) *Effect of patent on the listed drug.* If approval of an ANDA submitted under section 505(j) of the act or of a 505(b)(2) application is granted, that approval will become effective in accordance with the following:

* * * * *

(3) *Disposition of patent litigation.* (i)(A) Except as provided in paragraphs (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv) of this section, if the applicant certifies under § 314.50(i) or § 314.94(a)(12) that the relevant patent is invalid, unenforceable, or will not be infringed, and the patent owner or NDA holder brings suit for patent infringement within 45 days of receipt by the patent owner or NDA holder of the notice of certification from the applicant under § 314.52 or § 314.95, approval may be made effective 30 months after the date of the receipt of the notice of certification by the patent owner or NDA holder unless the court has extended or reduced the period because of a failure of either the plaintiff or defendant to cooperate reasonably in expediting the action; or

(B) If the patented drug product qualifies for 5 years of exclusive marketing under section § 314.108(b)(2) and the patent owner or NDA holder brings suit for patent infringement during the 1-year period beginning 4 years after the date the patented drug was approved and within 45 days of receipt by the patent owner or NDA holder of the notice of certification, the approval may be made effective at the expiration of 7 1/2 years from the date of approval of the application for the patented drug product.

* * * * *

(c) *Exclusivity and triggering period for ANDAs.* (1) Approval of a subsequent ANDA will be made effective no sooner than 180 days from

[1] As defined elsewhere in this section.

whichever of the following dates occurs first:

(i) The date the first applicant first commences commercial marketing of its drug product; or

(ii) The date of a decision of a court holding the relevant patent invalid, unenforceable, or not infringed.

(2) For purposes of paragraph (c)(1) of this section, FDA will delay the effective date of approval of a subsequent ANDA for up to 180 days from the date described in paragraph (c)(1) of this section only when the first applicant is eligible for 180-day exclusivity. FDA will not award 180-day exclusivity to any applicant if the first applicant is no longer eligible to receive 180-day exclusivity.

(3) If the patent owner or NDA holder sues the first applicant within 45 days of receipt of the first applicant's notice of paragraph IV certification under § 314.95, and the first applicant loses the patent litigation, the first applicant must amend its certification in accordance with § 314.94(a)(12)(viii)(A) within 10 working days of the court decision finding the patent infringed. The first applicant's ANDA then no longer contains a paragraph IV certification and is not eligible for 180-day exclusivity. Immediately after such an amendment, FDA may approve eligible subsequent ANDA's.

(4) The first applicant must notify FDA of the date it commences commercial marketing of its drug product. Commercial marketing commences with the first date of introduction or delivery for introduction into interstate commerce outside the control of the manufacturer of a drug product, except for investigational use under part 312 of this chapter, but does not include transfer of the drug product for reasons other than sale within the control of the manufacturer or application holder. If the first applicant does not notify FDA within 10 working days of the date on which it began commercial marketing of its drug product, FDA may regard the effective date of approval as the date of the commencement of first commercial marketing.

(5)(i) If, before the 180-day exclusivity period for the first applicant has started, a subsequent applicant receives a tentative approval letter for its drug product stating that the first applicant's eligibility for 180-day exclusivity is the only obstacle to final approval of the subsequent ANDA, the first applicant will receive the 180-day exclusivity for which it is eligible if any of the following circumstances apply:

(A) The first applicant has received approval for its drug product, and,

within 180 days from the date of the subsequent applicant's tentative approval, a triggering event occurs.

(B) The first applicant has not received approval for its drug product; and the first applicant was not sued by the patent owner or NDA holder for patent infringement; and, within 180 days from the date of the subsequent applicant's tentative approval, a triggering event occurs.

(C) The first applicant's drug product is not yet eligible for approval because the first applicant was sued by the patent owner or NDA holder for patent infringement; and, under paragraph (b)(3)(i)(A) of this section, 30 months have not elapsed since the date the patent owner or NDA holder received notice of the patent certification; and, within 180 days after the expiration of the 30 months described in paragraph (b)(3)(i)(A) of this section, a triggering event occurs.

(D) The first applicant's drug product is not yet eligible for approval because the first applicant was sued by the patent owner or NDA holder for patent infringement and a court granted a preliminary injunction, as described in paragraph (b)(3)(iv) of this section, prohibiting the first applicant from engaging in the commercial manufacture or sale of the drug product; and, within 180 days from the date the injunction expires, a triggering event occurs.

(E) The first applicant does not have a full approval for its drug product; and the first applicant was sued by the patent owner or NDA holder for patent infringement and is eligible for approval under paragraph (b)(3) of this section; and, within 180 days from the date of the subsequent applicant's tentative approval, a triggering event occurs.

(ii) If the first applicant does not begin its period of 180-day exclusivity by the end of the appropriate 180-day period (triggering period) described in paragraphs (c)(5)(i)(A) through (c)(5)(i)(E) of this section, FDA will approve otherwise eligible ANDA's for the drug product.

(d) *Delay due to § 314.108 exclusivity.* The agency will delay the effective date of the approval of an ANDA or a 505(b)(2) application if delay is required by the exclusivity provisions in § 314.108. When the effective date of an application is delayed under both this section and § 314.108, the effective date will be the later of the two dates specified under this section and § 314.108.

(e) *Waivers of exclusivity by abbreviated new drug applicants.* For purposes of paragraph (c)(1) of this section, a first applicant for which the 180-day exclusivity has started with a triggering event may waive its exclusivity to permit FDA to approve one or more subsequent ANDA's during the 180-day exclusivity period. FDA may approve a subsequent applicant's ANDA only after the first applicant notifies the agency in writing that it is waiving its 180-day exclusivity with respect to a particular subsequent applicant(s) or application(s), and identifies the effective date(s) of the waiver.

(f) *Court actions.* (1) For purposes of establishing the effective date of approval based on a court judgment, the following dates will be deemed to be the date of the final court decision on the patent issues:

(i) If the district court enters a decision that the patent is invalid, unenforceable, or not infringed, and the decision is not appealed, the date on which the right to appeal lapses;

(ii) If the district court enters a decision that the patent is invalid, unenforceable, or not infringed, and the decision is appealed, the date of the first decision or order by a higher court holding or affirming the decision of the district court that the patent is invalid, unenforceable, or not infringed;

(iii) If the district court enters a decision that the patent is infringed, and the decision is appealed, the date on which the district court enters a judgment that the patent is invalid, unenforceable, or not infringed under a mandate issued by a court of appeals; and

(iv) The date of a settlement order or consent decree signed by a Federal judge that enters final judgment and includes a finding that the patent is invalid, unenforceable, or not infringed.

(2) The applicant must submit a copy of the entry of the order or judgment to the Office of Generic Drugs (HFD–600) or to the appropriate division in the Office of Review Management (HFD–20) within 10 working days of a final judgment. The patent owner and NDA holder may also submit this information.

(g) *Effect of dismissal of litigation on 30-month stay.* If the patent litigation between the ANDA applicant and the patent owner or NDA holder described in paragraph (b)(3)(A) of this section is dismissed without a court decision on the merits of the patent claim, whether the dismissal is with or without prejudice, the agency may immediately approve the ANDA that was the subject of the litigation, if it is otherwise eligible for approval.

(h) *Computation of 45-day time clock.* (1) The 45-day clock described in paragraph (b)(3) of this section begins

on the day after the date of receipt of the applicant's notice of certification by the patent owner or NDA holder, whichever date is later. When the 45th day falls on Saturday, Sunday, or a Federal holiday, the 45th day will be the next day that is not a Saturday, Sunday, or Federal holiday.

(2) The ANDA applicant or 505(b)(2) applicant must notify FDA immediately in writing of the filing of any legal action for patent infringement filed within 45 days of receipt of the notice of certification. If FDA is not so notified by the ANDA or 505(b)(2) applicant, or by the patent owner or NDA holder, before the expiration of the 45-day time period or the completion of the agency's review of the application, whichever occurs later, approval of the ANDA or the 505(b)(2) application will be made effective immediately upon expiration of the 45 days or completion of the agency's review and approval of the application, whichever date is later. The notification to FDA of the legal action must include the information in paragraphs (h)(2)(i) through (h)(2)(iv) of this section and be submitted according to paragraph (h)(2)(v) of this section as follows:

(i) The ANDA or 505(b)(2) application number;

(ii) The name of the applicant;

(iii) The established name of the drug product or, if no established name exists, the name(s) of the active ingredient(s), the drug product's strength, and the dosage form;

(iv) A certification that an action for patent infringement, identified by number, has been filed in an appropriate court on a specified date; and

(v) An ANDA applicant must notify FDA's Office of Generic Drugs (HFD–600). A 505(b)(2) applicant must notify the appropriate review division in the Center for Drug Evaluation and Research or the Office of Generic Drugs if it is reviewing the application. A patent owner or NDA holder may also notify FDA of the filing of any legal action for patent infringement.

(3) If the patent owner or NDA holder waives its opportunity to file a legal action for patent infringement within 45 days of a receipt of the notice of certification and the patent owner or NDA holder submits to FDA a valid waiver before the 45 days elapse, approval of the ANDA or the 505(b)(2) application will be made effective upon completion of the agency's review and approval of the application. FDA will only accept a waiver in the following form:

(*Name of patent owner or NDA holder*) has received notice from (*name of applicant*) under (*section 505(b)(3) or (j)(2)(B) of the act*) and does not intend to file an action for patent infringement against (*name of applicant*) concerning the drug (*name of drug*) before (*date on which 45 days elapses*). (*Name of patent owner or NDA holder*) waives the opportunity provided by (*section 505(c)(3)(C) or (j)(B)(2)(iii) of the act*) and does not object to FDA's approval of (*name of applicant*)'s (505(b)(2) or ANDA) for (*name of drug*) with an immediate effective date on or after the date of this letter.

Dated: July 29, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20353 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–264–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Ohio regulatory program (Ohio program) under the surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to Section 1501:13–1–04 of the Ohio Administrative Code (OAC) as it relates to exemptions for coal extraction incidental to government-financed highway or other construction. The amendment is intended to revise the Ohio program to include counterparts to the recently promulgated "AML Enhancement Rule," which revised the Federal regulations as 30 CFR 707.5 and added a new provision, at 30 CFR 874.17.

DATES: Written comments must be received by 4:00 p.m., [E.S.T.], August 23, 1999.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to George Rieger, Field Branch Chief, at the address listed below.

You may review copies of the Ohio program, the proposed amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220, Telephone: (412) 937–2153.

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43244, Telephone: (614) 265–1076.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated March 16, 1999 (Administrative Record No. OH–2178–00) Ohio submitted a proposed amendment to its program concerning exemptions for coal extraction incidental to government-financed highway or other construction. Ohio submitted the proposed amendment at its own initiative, in order to incorporate into its program the expanded exemption recently promulgated in the Federal regulations at 30 CFR 707.5, as part of the "AML Enhancement Rule." Under this rule, approved Title IV abandoned mine land (AML) projects under SMCRA which involve incidental coal extraction and are less than 50 percent government financed may qualify for exemption. Projects which qualify for this expanded exemption must also meet the newly promulgated requirements contained in 30 CFR 874.17. (64 FR 7470, February 12, 1999). The proposed amendment was announced in the April 16, 1999, **Federal Register** (64 FR 18857). The initial comment period closed on May 17, 1999.

By letter dated July 9, 1999 (Administrative Record No. OH–2178–06) Ohio submitted a revised and final version of the proposed amendment. Ohio made this more recent submittal in

response to an OSM, July 1, 1999, issue letter (Administrative Record No. OH–2178–05). In the letter, OSM had requested that the amendment clearly restrict exemptions to projects that are AML eligible; and clearly require that the exempted reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R. The following are changes to OAC Section 1501:13–1–04 made in the final submission and not previously described in the April 16, 1999, **Federal Register** notice. Revisions concerning nonsubstantive wording, format, or organizational changes will not be described in this notice.

The last sentence of Subsection (A)(3) in the original amendment read as follows: "Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Section 1513.30 or 1513.37 of the revised code." This sentence has been revised as follows: "Funding at less than 50 percent may qualify if the project is eligible under 1513.37 of the revised code and the construction is undertaken as an approved reclamation project under Section 1513.30 or 1513.37 of the Revised Code."

Subsection (C)(4)(ii) in the original amendment read as follows: "Ensure that the reclamation project is conducted in accordance with the provision of the approved AML program and procedures." This subsection has been revised as follows: "Ensure that the reclamation project is conducted in accordance with the provisions of the AML program and procedures as approved by the U.S. Secretary Of Interior under 30 CFR Subchapter R."

III. Public Comment Procedures

According to the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, we are seeking comments on the clarification to the State's amendment submitted on July 9, 1999. Comments should address whether the proposed amendment with these clarifications satisfies the applicable program approval criteria of 30 CFR 732.15. If we determine the amendment to be adequate, it will become part of the Ohio program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCR and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 611 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 27, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–20273 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN42–01–7267; FRL–6415–2]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed approval.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve an amendment to the carbon monoxide (CO) State Implementation Plan (SIP) for Minnesota. Minnesota submitted this amendment to the SIP to the EPA in four separate submittals, dated November 14, 1995, July 8, 1996, September 24, 1996, and June 30, 1999.

The submittals include revisions to the motor vehicle inspection and maintenance (I/M) program currently in operation in the Minneapolis/St. Paul CO nonattainment area. The revisions make changes to the State's I/M program, including model year coverage, vehicle waiver provisions, and other program deficiencies identified by the EPA. The revision also contains provisions for the discontinuation of the I/M program if EPA redesignates the area to attainment for CO.

DATES: Comments on this proposed action must be received by September 7, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Mooney at 312–886–6043 before visiting the Region 5 Office.)

A copy of these SIP revisions are available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: John Mooney, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6043.

SUPPLEMENTARY INFORMATION:

I. Overview

The Minnesota Pollution Control Agency (MPCA) submitted its initial I/M submittals to EPA in November and December of 1993. As described below, the EPA conditionally approved Minnesota's initial submittal on October 13, 1994 (59 FR 51860). Subsequently, Minnesota submitted to the EPA four additional revisions to the State's I/M program. The changes proposed since 1993 reflect actions taken by the State Legislature pertaining to model year coverage, waiver provisions, and other program changes required by EPA's conditional approval.

The information in this section is organized as follows:

A. What SIP amendments is EPA proposing to approve?

B. Why is EPA requiring the State to change its I/M program?

C. How has the State addressed EPA's requirements?

D. What does the State need to do to receive full approval?

E. What happens if the Minneapolis/St. Paul area is redesignated to attainment for CO?

A. What SIP Amendments Is EPA Proposing To Approve?

The following table outlines the revisions submitted by the State to EPA subsequent to the State's initial I/M submittal in 1993. The State's most recent submittal identifies those provisions of their earlier submittals that address EPA's conditional approval. In this submittal, the State also withdraws Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C), and Part 7023.1055, Subp. 1 (E)(2) of the Minnesota Rules. The State is withdrawing these provisions because they have been superceded by recent amendments to the State I/M program. EPA proposes to approve the relevant portions of each of these submittals as requested by the State on June 30, 1999.

Date of submittal to EPA	Items received
November 14, 1995	—Basic I/M performance standard modeling. —I/M legislation with changes to model year coverage. —Response to EPA's October 13, 1994 conditional approval (59 FR 51860).
July 8, 1996	—Notification of public hearing.
September 24, 1996	—Administrative materials for the November 14, 1995, and July 6, 1996 submittals, including proof of public hearing.
June 30, 1999	—Minnesota Statute Sections 116.60 to 116.65 as amended by the 1999 Minnesota State Legislature. —Letter from the Minnesota Attorney General detailing the prevalence of statute over rules. —Letter from the Minnesota Pollution Control Agency (MPCA) requesting approval of I/M legislation, certain portions of Minnesota's I/M regulation, and performance standard modeling from earlier submittals. This letter also withdraws certain obsolete sections of the State's earlier submittals.

As requested by the State, the EPA is proposing to approve: Minnesota Statutes Sections 116.60 to 116.65; Minnesota Rules 7023.1010–7023.1105 (except Part 7023.1010, Subp. 35(B), Part 7023.1030, Subp. 11(B,C), and Part 7023.1055, Subp. 1 (E)(2)); and technical materials showing that the program meets EPA's basic I/M performance standard, as well as the conditions of EPA's October 13, 1994 conditional approval.

B. Why Is EPA Requiring the State To Change Its I/M Program?

Section 187(a)(4) of the Clean Air Act requires states with moderate CO nonattainment areas to improve existing I/M programs or implement new ones. EPA designated the Minneapolis/St. Paul area as a moderate CO nonattainment area on November 16, 1991 (56 FR 56694). Therefore, the State of Minnesota was required to develop a State Implementation Plan to meet the I/M requirements contained in the Clean Air Act, and in the corresponding regulations for I/M, codified at 40 CFR Part 51, Subpart S.

On November 10, 1992, the State submitted its initial I/M plan to the EPA, which it supplemented on November 12, 1993, and December 15, 1993. On October 13, 1994, the EPA published a rulemaking action conditionally approving Minnesota's I/M plan. As part of this rulemaking action, the EPA identified a number of deficiencies in the State's plan and issued a conditional approval, which required that the State submit a revised plan within one year from the conditional approval date. A detailed discussion of EPA's rulemaking action can be found in the final rule at 59 FR 51860 (October 13, 1994). In 1995, the Minnesota Legislature amended its I/M program to make changes to the vehicle model years tested in the program. In 1999, the Minnesota Legislature amended its I/M program to address the deficiencies identified in EPA's October 13, 1994 rulemaking action (59 FR 51860). The State has submitted all of these changes in the series of submittals noted above.

C. How Has the State Addressed EPA's Requirements?

EPA's conditional approval noted four specific deficiencies in Minnesota's I/M plan. All other parts of the plan comply with EPA's requirements. EPA's technical support documents dated June 23, 1994, September 7, 1994, and July 19, 1999 contain a more detailed analysis of the I/M review. The four deficiencies identified in EPA's conditional approval and the manner in which the State has addressed them follow:

1. The Requirement That Only Certified Automotive Repair Technicians Perform Repairs in Order for a Vehicle To Obtain a Waiver

In its November 15, 1995 SIP submittal, the State described its

technician assistance program. In general, the State of Minnesota does not require certification or licensing in order to perform automotive repairs in the State. Minnesota offers a variety of assistance and training programs in the State and offers a Consumer Advocacy Program to technicians and the public as part of its I/M program. In addition, the State publishes a number of newsletters and a technician training curriculum specifically focused on automobile emissions. Further, the State publishes a Repair Report that lists names and addresses of repair facilities, average cost of repair, and the percentage of pass and fail inspections based on the number of vehicles repaired at the facility. All of these programs provide the public and the repair community with the opportunity for feedback and training necessary to improve repair effectiveness without a formal certification process. Minnesota has demonstrated that their system, despite the lack of a certification process, does not cause an increase in the waiver rate or a reduction in the emission reductions achieved by the program. The waiver rates in Minnesota remain consistent with those seen in similar areas around the country. Overall, the program continues to meet EPA's basic I/M performance standard, the computer model based analysis of the emissions impact of the program. As a result, EPA believes that the State has addressed this deficiency.

2. The Requirement That the State's Minimum Repair Cost Limit Be Actually Spent Before a Vehicle is Eligible To Receive a Waiver

The legislation enacted during the 1999 Minnesota State Legislature, and submitted by the State on June 30, 1999, requires motorists to spend at least $75 in repair for vehicles manufactured before 1981, and $200 in repair for vehicles manufactured in 1981 and after in order to receive a waiver. Unlike prior statute, the new legislation does not allow repair estimates to qualify for waivers. This legislation is consistent with EPA's I/M regulations. It should be noted that this legislation conflicts with Minnesota State Rule 7023.1055, Subp. 1(E)(2) promulgated by the MPCA. In its June 30, 1999 submittal, the State submitted a letter from the Minnesota Attorney General which states that where a State statute is in conflict with a State rule, the statute takes precedence. Further, the State has formally withdrawn Rule 7023.1055, Subp. 1(E)(2) from its formal SIP submittal. Therefore, the EPA is proposing to approve the legislation.

3. The Requirement That Vehicles With Switched Engines Be Tested With Emissions Standards Based on the Model Year of the Chassis Rather than the Engine Year

The legislation enacted during the 1999 Minnesota State Legislature, and submitted by the State on June 30, 1999, requires vehicles to be tested based on chassis model year, rather than engine model year. This legislation is consistent with EPA's I/M regulations. It should be noted that this legislation conflicts with Minnesota State Rule 7023.1010, Subp. 35(B), and Rule 7032.1030, Subp. 11(B,C). In its, June 30, 1999 submittal, the State submitted a letter from the Minnesota Attorney General which states that where a State statute conflicts with a State rule, the statute takes precedence. Further, the State has formally withdrawn Rule 7023.1010, Subp. 35(B), and Rule 7032.1030, Subp. 11(B,C) from its formal SIP submittal. Therefore, EPA is proposing to approve the legislation.

4. The Requirement To Change the Re-inspection Procedure To Include a Determination That an Emission Control Device is the Correct Type for the Certified Configuration of the Vehicle Inspected

In its November 14, 1995 submittal, the MPCA fully described its inspection procedures, noting that inspection staff perform visual checks to ensure that emissions system for vehicles are correctly configured. The EPA believes that this procedure is sufficient to meet the requirements of EPA's I/M regulations and is approvable.

In 1995, the Minnesota Legislature passed a bill exempting cars five years old and newer from the I/M testing requirement. EPA's I/M regulations give States the flexibility to change various program elements, including model year coverage, as long as the overall program meets the EPA's basic I/M performance standard, which is a computer model based analysis of the emissions impact of the program. In its November 14, 1995, the MPCA included new I/M performance standard computer modeling reflecting the model year changes made by the Minnesota Legislature. The EPA has reviewed the State's computer modeling and finds that it complies with applicable modeling guidance. This modeling shows that the I/M program continues to meet EPA's basic I/M performance standard, even with the five model year exemption. Therefore, the changes made to the program are acceptable under EPA's I/M regulations.

D. What Does the State Need To Do To Receive Full Approval?

The State has provided the necessary technical materials to meet EPA's I/M requirements. At present, however, the State has not held a public hearing and submitted its response to comments to the EPA as part of its SIP submittal. The State must submit this information to EPA to receive full approval of its I/M SIP. If the State submits this information during the public comment period on today's action, the State's SIP submittal will be deemed complete and the EPA will move forward to fully approve the revision.

E. What Happens if the Minneapolis/St. Paul Area Is Redesignated to Attainment for CO?

As noted in EPA's technical support document for the State's CO redesignation request dated May 3, 1999, as well as in EPA's proposed approval of the State's redesignation request, the MPCA has performed computer photochemical modeling which shows that in the future the I/M program will not be necessary to attain or maintain the National Ambient Air Quality Standard (NAAQS) for CO. In its redesignation request, the State also included the I/M program as a contingency measure if the program is subsequently needed to correct a violation of the CO NAAQS. The EPA has reviewed the modeling submitted with the redesignation and has found that it meets EPA's technical modeling criteria. The EPA has also reviewed the State's redesignation request and has found that it meets the redesignation requirements in the Clean Air Act and EPA guidance (see 64 FR 25855, May 13, 1999). As a result, once the Minneapolis/St. Paul CO nonattainment area is redesignated to attainment, the State may discontinue operation of its I/M program and request its removal from the SIP. If EPA does not approve the redesignation request for the area, I/M will remain as an applicable requirement and EPA will work with the State to ensure that all nonattainment control programs are implemented in accordance with the requirements of the Act.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act (Act) preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon Monoxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–20310 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6414–5]

Assessment of Visibility Impairment at the Grand Canyon National Park: Advance Notice of Proposed Rulemaking; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking; Extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for an advance notice of proposed rulemaking published June 17, 1999 (64 FR 32458), regarding visibility impairment at the Grand Canyon National Park (GCNP) and the possibility that the Mohave Generating Station (MGS) in Laughlin, Nevada may contribute to that impairment. In the June 17 notice, EPA requests

information that it should consider in determining whether visibility problems at the GCNP can be reasonably attributed to MGS, and if so, what, if any, pollution control requirements should be applied.

At the request of Southern California Edison Company, EPA is extending the comment period for 30 days.

DATES: The comment period on the advance notice of proposed rulemaking is extended until September 15, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: EPA Region IX, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn: Regina Spindler (Phone: 415–744-1251).

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251, Planning Office (AIR2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: July 30, 1999.

David Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–20309 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–164; FRL–6415–4]

Approving Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control Agency

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern New Source Review permitting requirements for stationary sources in San Diego County. EPA also proposes to eliminate approval conditions created in 1981 that are no longer relevant.

The intended effect of proposing limited approval and limited disapproval is to ensure San Diego County's New Source Review rules are consistent with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action will incorporate these rules into the federally approved SIP. Although strengthening the SIP, these rules do not fully meet the CAA requirements for nonattainment areas. The rules have been evaluated based on CAA guidelines for EPA action on SIP submittals and general rulemaking authority.

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Comments may be mailed to: David Wampler, Permits Office [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123–1096

California Air Resources Board, 2020 "L" Street, Sacramento, California 95812

FOR FURTHER INFORMATION CONTACT: David Wampler, Permits Office, [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1256; E-mail: wampler.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

I. What Action is EPA Proposing?
A. New Source Review Rules
B. Remove Conditions in 1981 NSR SIP Approval
II. How Did EPA Arrive at the Proposed Action?
A. Overview
1. New Source Review Rules
2. How EPA Evaluates Past NSR Submittals
3. Removing Conditions in 1981 NSR SIP Approval
B. Rule Deficiencies
1. Deficiencies with Rule 20.1
2. Deficiency with Rules 20.3 and 20.4
3. Deficiency with Rule 20.2
4. Deficiency with Rules 20.1 through 20.4
III. EPA Solicits Comment on Two Special Issues:
A. Provision 20.1(d)(1)(ii)(C)—Exclusion of emissions from portable equipment from a stationary source's potential to emit.
1. Overview
2. History of Portable Equipment Regulations in San Diego
3. Summary of the District's Current NSR Requirements for Portable Emission Units in San Diego
a. Portable Emission Unit is Defined in rule 20.1(c)(49)
b. Offset Requirements for Type I and Type III units
c. LAER Requirements for Type I and Type III units
d. Air Quality Impact Analysis (AQIA) for Portable Equipment
e. Public notification requirements for Portable Equipment
4. Title V Consistency and Enforcement
B. Minor New Source Review Requirements in San Diego—Rule 20.2
1. Overview of Federal Minor NSR Requirements
2. San Diego Minor NSR Program
a. Minor source NSR public notification requirements
b. Air quality impact analysis
3. Federal Enforceability of Terms and Conditions of Minor NSR Permits
4. Discussion on Minor NSR
IV. Overview of Limited Approval/Disapproval
V. Administrative Requirements
A. Executive Order 12866
B. Executive Order 12875
C. Executive Order 13045
D. Executive Order 13084
E. Regulatory Flexibility Act
F. Unfunded Mandates

I. What Action Is EPA Proposing?

A. New Source Review Rules

EPA today proposes a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for San Diego Air Pollution Control District (District or SDCAPCD) rules 20.1, 20.2, 20.3, and 20.4. Table 1 lists the number and title of the rules. The rules were submitted to EPA by the California Air Resources Board (CARB) on May 13, 1999 and found complete by EPA on June 10, 1999.

TABLE 1.—RULES INCLUDED IN TODAY'S PROPOSED RULEMAKING

Rule No.	Rule Title—New Source Review
20.1	General Provisions.
20.2	Non-Major Stationary Sources.
20.3	Major Stationary Sources and PSD Stationary Sources.
20.4	Portable Emission Units.

Upon final action, the rules will replace existing SIP rules of the same number approved by EPA into the SIP on April 14, 1981. See 46 FR 21757 and 40 CFR 52.220(c)(64)(i)(A).[1]

We evaluated the rules for consistency with the CAA, EPA regulations, and EPA policy. We've found that the revisions are overall more stringent than the rules of the same number that exist in the SIP.

Even though San Diego County APCD rules 20.1, 20.2, 20.3 and 20.4 will strengthen the SIP, these rules still contain deficiencies (discussed below)

[1] In addition to the approval for rules 20.1 through 20.4, EPA's April 14, 1981 final rulemaking action also approved SDCAPCD rules 20.5, "Power Plants;" 20.6, "Standards for Permit to Operate—Air Quality Analysis;" and 20.7, "Standards for Authority to Construct: Significant Deterioration." The 4/14/81 approval of Rule 20.7 was found to be incorrect and it was later rescinded from the SIP in a final rulemaking on June 4, 1982 (47 FR 24308). Rules 20.5 and 20.6 remain fully approved into the SIP today and are unaffected by this rulemaking.

and are not fully approvable under Part D of the CAA. Therefore, EPA today proposes a limited approval and limited disapproval of these four rules. If our final action remains a limited approval and limited disapproval, San Diego County APCD will have—from the date of the final action—18 months to correct any deficiencies to avoid federal sanctions. See CAA § 179(b). Further the final disapproval triggers the Federal implementation plan requirements under 110(c). A detailed discussion of the rule deficiencies is included in the Technical Support Document (TSD) for this rulemaking. The TSD is available from the EPA Region IX office.

B. Remove Conditions in 1981 NSR SIP Approval

In addition to our action on the NSR rules, we propose to delete the District NSR rule conditions identified when EPA finalized the NSR rules in 1981. See 46 FR 21757 and 40 CFR 52.232(a)(4).

II. How Did EPA Arrive at the Proposed Action?

A. Overview

1. New Source Review Rules

EPA evaluated the rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Our interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents.

EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

The Act requires States to comply with certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act require that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

2. How EPA Evaluates Past NSR Submittals

Since 1981, numerous revisions to rules 20.1 through 20.4 have been adopted by SDCAPCD and submitted by CARB to EPA for SIP approval. See the TSD for a list of all previous NSR rule submittals for San Diego County. Although EPA is acting only on the most recently submitted version of May 13, 1999, EPA has reviewed materials associated with the two most recent NSR SIP submittals dated July 13, 1994 and July 22, 1998.

Once approved as new rules into the California SIP for San Diego County, the May 13, 1999, submitted SDCAPCD rules 20.1, 20.2, 20.3 and 20.4 will strengthen the existing SIP by:

- Including major source and major modification thresholds that are consistent with the 1990 Clean Air Act Amendments for major stationary sources and major modifications locating in serious ozone non-attainment areas;
- Establishing the appropriate emissions offset ratio for major stationary sources and major modifications locating in serious ozone non-attainment areas.

3. Removing Conditions in 1981 NSR SIP Approval

In addition to our proposed limited action to approve SDCAPCD rules 20.1 through 20.4, we also propose to delete the District NSR rule conditions identified when EPA finalized the NSR rules in 1981. See 46 FR 21757 and 40 CFR 52.232(a)(4). These conditions are moot today for the following reasons:

- The current rules will, upon final approval, supercede the 1980 rules.
- EPA has not taken action on any revisions to SDCAPCD NSR rules 20.1 through 20.6.
- We have not issued final rulemaking to correct the deficiencies of SDCAPCD NSR rules discussed in the April 14, 1981 final rulemaking.
- The District has revised and submitted new NSR rules to comply with the 1990 CAA amendments.

B. Rule Deficiencies

The following rule deficiencies prevent EPA from being able to fully approve SDCAPCD rules 20.1, 20.2, 20.3 and 20.4 contained in today's action. In addition to identifying the deficiencies, we have provided information on how to correct some of the deficiencies.

1. Deficiencies With Rule 20.1

- 20.1(b)(4) provides for an exemption from the offset requirements of rule 20.2(d)(5)[2] or of rules 20.3(d)(5) and (d)(8) for NO_X emission increases from new, modified or replacement emission units subject to the requirements of rule 69(d)(6). Rule 69, "Electrical Generating Steam Boilers, Replacement Units and New Units," is not SIP approved and CARB, on behalf of SDCAPCD, does not intend to submit it to EPA for SIP approval. This exemption from the offset requirements is a deficiency because CAA section 173(c) requires offsets for all new major stationary sources or major modifications as defined in CAA 182(c) for serious ozone non-attainment areas. Rule 69 does not provide a recognized alternative to the offset requirement because it is not a SIP-approved rule.
- Rule 20.1(c)(26) definition of "Federally Enforceable." There are two reasons why this definition is a rule deficiency. First, the definition allows Authority to Construct (ATC) terms and conditions imposed pursuant to the SDCAPCD rules and regulations or state law to be deemed "non-federally enforceable" unless otherwise requested by the owner. SDCAPCD has not defined which "rules and regulations" could create permit terms and conditions that are not federally enforceable. It is our position that SIP-approved rule 10[3]—"Permits Required," and rule 21—"Permit Conditions" create a SIP-approved permitting program for subject sources in San Diego County. Additional SIP NSR rules for major and minor sources add—or will add, upon SIP approval—more specific pre-construction permitting requirements. Given the broad authority of SIP rules 10 and 21, it is our position that all permit terms and conditions in SIP-approved permits are federally enforceable.[4] The Air Pollution Control Officer (APCO) cannot unilaterally deem a such a permit condition "non-federally-enforceable."

Second, the definition incorrectly states, "* * * which term or condition is imposed pursuant to * * * 40 CFR part 51, subpart I." Part 51, subpart I is not a permitting program that, on its own, provides a state authority to impose permit terms and conditions. Rather, part 51, subpart I contains

[2] Subsection (d)(5) of rule 20.2 was adopted locally by SDCAPCD on 11/4/98 but not included in the May 13, 1999 CARB SIP-submittal.

[3] Rule 10 "Permits Required" is a broad rule that states in subsection (a) "Authority to Construct': "Any person building, erecting, altering or replacing any article, machine, equipment or other contrivance * * * shall first obtain written authorization for such construction from the Air Pollution Control Officer."

[4] See 40 CFR 52.23 and letter dated March 31, 1999 from John Sietz to Mr. Doug Allard, President of CAPCOA.

federal minor NSR (sections 51.160 through 51.166) and major non-attainment NSR (sections 51.160 through 51.165) requirements that state programs (i.e., rules) must contain before they can be SIP-approved. Once SIP-approved pursuant to part 51, subpart I, the NSR rules, and all terms and conditions of ATC permits issued pursuant to those rules, become federally enforceable.

To correct the deficiencies, the District must do either of the following:

1. The District could require all terms and conditions to be federally enforceable. To create this, the District must eliminate the entire paragraph that allows non-federally enforceable conditions to be created and revise the statement in rule 20.1(c)(26)(ii) to state, "* * * which term or condition is imposed pursuant to * * * District rule 10, 21, 20.1 through 20.4 * * *" EPA believes this option is the best way to correct the deficiencies and would eliminate any ambiguity surrounding the enforceability of the terms and conditions NSR permits.

2. Alternatively, if SDCAPCD would like the ability to separate NSR permit terms into federally enforceable and non-federally enforceable terms, SDCAPCD must revise and submit for SIP approval rules 10 and 21 and revise the statement in rule 20.1(c)(26)(ii) to state, "* * * which term or condition is imposed pursuant to * * * District rule 10, 21, 20.1 through 20.4 * * *"

• 20.1(d)(5) requires that offsets be "actual emission reductions" but does not require offsets to be surplus at the time of use. Further, rule 20.1(d)(4)(ii) and (iii) prescribe how actual emission reductions are calculated (including any necessary adjustments), at the time of generation, not at the time of use. EPA requires that the emissions reductions used to offset any new or modified major stationary source be surplus at the time of use.[5]

To correct the deficiency the District must require offsets to be surplus at the time of use.

• 20.1(d)(5) is deficient because the subsection contains a reference to rule 27. Rule 27 has been submitted but contains a deficiency at 27(c)(1)(vi)—"Other Emission Reduction Strategies." Rule 27(c)(1)(vi) would allow emissions reduction credits (ERCs) to be created upon approval of the APCO and concurrence from ARB. EPA cannot approve into the SIP a reference to a rule that allows such broad APCO discretion as to how ERCs are created. Because the emission reductions are used to offset emission increases from new or modified major stationary sources, the district rules must be amended to assure that emission increases from new and modified stationary sources are offset by real reductions in actual emissions as required by Clean Air Act section 173(c)(1).

The following are two possible options to correct the deficiency:

(1) Remove the reference to rule 27 in the subsections of 20.1(d)(5).

(2) Revise and submit to EPA for SIP approval a new version of rule 27 that is approvable. Such approval must occur within 18 months from final approval of today's action.

2. Deficiency with Rules 20.3 and 20.4

• Rules 20.3(d)(5)(vi) and 20.4(d)(5)(vi) allow the APCO to authorize interpollutant[6] trading to satisfy the federal offset requirements. Specific ratios are provided in the rule. For example, a source may acquire, for every ton of NO_X increase, 2.0 tons of VOC emission reduction. Conversely, a one ton VOC increase may be offset with one ton of NO_X decrease. SDCAPCD has not provided a justification as to how the interpollutant offset ratios were obtained. Furthermore, to date, EPA has not developed a policy that describes how a state could establish appropriate basin-wide interpollutant offset ratios.

To correct the deficiency in Rules 20.3 and 20.4 the District must either delete the interpollutant ratios and add the requirement that interpollutant ratios will be evaluated on a case-by-case basis with public notice and EPA concurrence or provide modeling studies to adequately support the ratio in the rule.

3. Deficiency with Rule 20.2

• 20.2(d)(2) establishes the air quality impact analysis requirements for non-major (minor) sources in San Diego County. This section does not require an analysis of the available increment as required in 51.166(a)(1).

To correct the deficiency the District must revise the rule to add the requirement that minor sources subject to the AQIA requirements must evaluate their impact on the increment.

4. Deficiency with Rules 20.1 through 20.4

• Rules 20.1 through 20.4 do not provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice. Although subsection of 20.3(d)(3)—Prevention of Significant Deterioration—of the locally adopted rule contains this requirement, rule 20.3(d)(3) has not been submitted to EPA to be included in the SIP.

To correct this deficiency the District must revise the rules to require that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice.

III. EPA Solicits Comment on Two Special Issues

In addition to the above deficiencies, there are two provisions in the submitted rules for which EPA solicits comment:

(1) The provision in 20.1(d)(1)(ii)(C) that allows a stationary source to exclude emissions from portable equipment from its aggregate potential to emit; and

(2) The overall adequacy of the SDCAPCD minor source NSR program requirements contained in submitted rule 20.2.

EPA is not proposing its limited approval, limited disapproval on the basis of these two deficiencies.[7] We are soliciting comment on the provisions and will, after evaluating the comments, either approve the above listed provisions, or cite the provisions as a deficiency and as a further basis for limited disapproval in the final rulemaking. The Agency's evaluation of the two provision are provided below.

A. Provision 20.1(d)(1)(ii)(C)—Exclusion of emissions from portable equipment from a stationary source's potential to emit (PTE)

1. Overview

By excluding the emissions from portable equipment from a stationary source's aggregate PTE, major stationary sources could be improperly classified as minor sources and avoid applicable requirements.[8] On the surface, it appears that 20.1(d)(1)(ii)(C) is not consistent with federal law. However, CARB has submitted to EPA for SIP approval SDCAPCD rule 20.4 which is

[5] CAA section 173(c)(2) prohibits the use of emission reductions that are "otherwise required by this chapter."

[6] Although the term "interpollutant" is used, the District rules only allow for trades between the ozone precursors NO_X and VOC.

[7] Except that San Diego's minor NSR rule contains one deficiency in that rule 20.2 does not require minor sources to analyze the impact on the available increment.

[8] SDCAPCD provided EPA an internal memo dated May 17, 1999 that explained how the District regulations would prevent a stationary source from abusing portable equipment to avoid major NSR requirements.

dedicated entirely to the NSR regulation of portable equipment.

EPA solicits comment on whether it is appropriate to exclude emissions from portable equipment from a stationary source's PTE. In general, EPA believes it could be appropriate if the portable equipment is subject to NSR regulations separate from, and equivalent to, stationary source NSR regulations. Without separate regulations, however, EPA believes emissions from portable equipment should not be excluded from the stationary source's PTE.

On a side note, Rule 20.1 (d)(1)(ii)(D) allows emissions from military tactical support equipment, including gas turbines, to be exempt from a stationary source's aggregate potential to emit. Based on conversations with District staff and data provided by representatives of the Department of Defense, EPA believes this is allowable in San Diego County because: (1) Most of the emissions from military tactical support equipment are from piston engines that are non-road engines and are therefore not required to be considered part of a stationary source; and (2) emissions from gas turbines (emission units that are not covered under non-road engine regulations) are *de minimus*. If the emissions from gas turbines exceed *de minimus* levels after approval of this rule, the District must submit a revision deleting this exemption or EPA will use its authority under section 110(k)(5) of the Act to require the District to submit a SIP revision.

2. History of Portable Equipment Regulations in San Diego

Rule 20.1(d)(1)(ii)(C) allows emissions from all portable emission units to be excluded from a stationary source's PTE. The exemption does not distinguish between portable units that were previously permitted (before regulations for portable units were adopted by SDCAPCD on May 17, 1994)[9] and those permitted after 1994. EPA solicits comment on whether such a distinction is necessary for the exclusion to be allowed. EPA believes that only portable equipment permitted after May 17, 1994 should be eligible for the exclusion because portable units permitted prior to that date were regulated as part of a stationary source and may not have met appropriate federal NSR requirements at that time.

In addition, EPA solicits comment on specific portable equipment NSR requirements contained in rule 20.4 as identified below.

3. Summary of the District's Current NSR Requirements for Portable Emission Units in San Diego

a. Portable emission unit is defined in rule 20.1(c)(49). The District's definition generally limits the amount of time a portable unit could operate at one location (stationary source) to no more than 12 consecutive months. If the portable unit exceeds this time limit or is otherwise operated in a manner to circumvent NSR, the portable unit is considered "relocated" and subject to the requirements for relocated units under 20.1, 20.2 and 20.3.

District rule 20.4 further defines two types of portable emissions units: Type I and Type III. Type I portable units can locate at stationary sources with an aggregate PTE less than 50 tpy and Type III portable units can locate at any stationary source regardless of the stationary source's aggregate PTE.

b. Offset Requirements for Type I and Type III units: According to rule 20.4(d)(5), Type III units are required to obtain offsets at a 1.2:1 ratio for any emission increase prior to operation at a major stationary source. Type I emission units are generally limited to operation at non-major stationary sources only. However, they are allowed, according to the District's definition of Type I, to operate at a major stationary source if they provide emission offsets prior to operation. Sources of emissions offsets may include same-pollutant or interpollutant reductions,[10] or emission reductions obtained from the "emission offset pool" as allowed in 20.4(d)(5)(v).

We solicit comment on the definition of Type I Portable Emission Unit (rule 20.4(c)(3)) that would allow Type I units to only obtain offsets (at the levels required for Type III portable units) before it locates at a major stationary source. This definition creates an apparent loophole by allowing Type I portable equipment to locate at a major stationary source without meeting the same LAER requirement as Type III portable equipment.

Finally, we solicit comment on rule 20.4(d)(5)(v) that would allow offsets from portable equipment to come from an "emission offset pool." According to the rule, the offset pool consists of emission offsets which are designated for use by any number of portable emission units. EPA believes this alternative mechanism is workable as outlined in the rule provided the offsets are surplus emission reductions at the time of use,[11] enforceable, quantifiable, and permanent.

c. LAER Requirements for Type I and Type III units: Only Type III emission units are required to comply with LAER. See 20.4(d)(1)(ii). In lieu of complying with LAER, this subsection allows Type III portable units to obtain offsets at a 1.3:1 ratio from the stationary source at which the portable unit will locate.[12 13]

We solicit comment on rule 20.4(d)(1)(ii) that allows Type III portable units to obtain additional offsets from a stationary source in lieu of LAER. While the CAA allows internal offsets to be used in lieu of LAER for stationary sources, SDCAPCD's portable equipment rule—in EPA's view—has decoupled portable equipment from the stationary source, and therefore, stationary source reductions cannot be extended to independent portable equipment.

d. Air Quality Impact Analysis (AQIA) for Portable Equipment: Type III and Type I emission units are required to perform an AQIA if a portable emission unit's proposed emissions are above the AQIA thresholds specified in table 20.4–1 (reproduced below in Table 2). See rule 20.4(d)(2). The AQIA requires that the portable unit perform such analyses based on the location at which the unit will locate. Furthermore, the APCO may require an AQIA even if the thresholds are not exceeded. Finally, rule 20.4(d)(2)(ii) does not require an AQIA for NO_X and VOC impacts on ozone.

In general, an example of how the AQIA analysis will be performed for portable equipment is discussed by the District in response to written comment #96 in the District's 1992 NSR rule Workshop Report:

> An applicant for a portable emission unit can perform a "worst-case" AQIA, where the impact of an emission unit's maximum emissions is analyzed and added to the maximum background concentration in the County. If the applicant can demonstrate that the proposed emissions do not cause or contribute to a violation of any Ambient Air Quality Standard (AAQS), then further analysis would not be required for that unit

---

[9] For example, many pre-1994 permits limited the portable unit *and* the stationary source to less than 100 #/day NO_X to avoid BACT requirements.

[10] Interpollutant ratios established in the rule for Type III (or Type I) portable units has been identified as a rule deficiency.

[11] The District rules do not require that NSR offsets are surplus at the time of use. See rule Deficiency section and the TSD for more information.

[12] Type I portable units are not required to comply with LAER even if they plan to locate at a major stationary source (as allowed in the definition of Type I).

[13] The provision to allow "internal" offsets at a 1.3:1 ratio to be used in lieu of LAER is allowed under CAA section 182(c)(7) and (8) for major stationary source modifications in serious ozone non-attainment areas. See SDCAPCD rule 20.3(d)(7) for stationary source LAER requirements.

when it is moved from one site to another. If a worst case analysis cannot be made * * * then an AQIA would be required each time the equipment moves from one site to another.

As with the other provisions in the portable equipment rule, EPA solicits comment on the provisions for AQIA in 20.4(d)(2). In particular, because 20.4(d)(2) does not require any analysis for impacts related to a portable unit's potential VOC emissions, we solicit comments on how to evaluate ambient air quality impacts from a high VOC emitting portable source that moves from one location to another within San Diego the County. Furthermore, EPA is soliciting comment on whether or not there is any potential for this rule's implementation to cause or contribute to any disparate impact in local communities. We are not suggesting that this rule does have such an impact, but we are aware of community concerns surrounding these issues in San Diego and want to ensure that such concerns are not associated with this rule.

Also, although 20.4(d)(2)(iv) gives the APCO the authority to require an AQIA at any time—regardless of the portable unit's emission rates—the District, through CARB, has not submitted any analyses to justify the AQIA trigger levels in Table 20.4–1 (reproduced below in Table 2). EPA is concerned that the trigger levels in Table 20.4–1 do not account for multiple emission units that may independently locate at a single stationary source. EPA, therefore, solicits comment on whether the trigger levels in Table 20.4–1 are appropriate considering that multiple emission units may independently locate at a single stationary source.

e. Public Notification Requirements for Portable Equipment: If the owner or operator of a portable unit, with proposed emission increases above the thresholds in table 20.4–1, requests a permit, the APCO is required to provide at least a 40 day public comment period. Within that period, the APCO shall provide at least 30 days during which comment on the proposed project may be received. All comments will be considered prior to the APCO taking final action.

Federal regulations require at 40 CFR 51.161 public notification requirements for minor and major stationary sources. While section 51.161 does not establish a deminimus threshold below which no public notification is needed, 40 CFR 51.160(e) requires states to "identify types and sizes of facilities that will be subject to review * * *" and "discuss the basis for determining which facilities will be subject to review." SDCAPCD, through CARB has not provided an analysis that the sizes and types of emissions units regulated—and for which public notice will be provided—will ensure the federal requirements of section 51.160 are met.

EPA solicits comment on whether the trigger levels are appropriately established in Table 20.4–1 to ensure the public has the opportunity to review the proposed portable equipment permits.

4. Title V Consistency and Enforcement

The title V program in San Diego County does not allow a stationary source to exclude emissions from portable equipment. See definition of stationary source at SDCAPCD Regulation XIV, rule 1401(c)(45). Further, the District requires emissions from insignificant emission units to be included in the title V applicability determination of a stationary source.

If the emissions from portable equipment are not required for NSR applicability determinations, EPA is concerned that the separate applicability determination requirements could create a source that is non-major under NSR and major under title V. While EPA generally promotes consistency across programs, an alternative may be acceptable if there is a rational basis for treatment under one program compared to the other. The EPA solicits comment on whether a separate permitting requirement for portable units will lead to confusion for sources, contractors operating portable units at those sources, the public and the District.

Furthermore, EPA solicits comment on whether possible confusion would lead to ill-informed, and incorrect compliance certifications under title V because a stationary source operator may not examine the Title V compliance requirements for certain portable equipment if the equipment has been excluded under NSR.

B. Minor New Source Review Requirements in San Diego—Rule 20.2

EPA also requests comment on whether the minor source NSR regulations contained in SDCAPCD rule 20.2—combined with the requirements in existing SIP rules 10 and 21—are sufficient to assure that the national air quality standards are achieved as required in CAA section 110(a)(2)(C).

1. Overview of Federal Minor NSR Requirements

In addition to the regulation of major stationary sources as required in part C (attainment areas) and part D (non-attainment areas) of the Clean Air Act, states are also required to include in the SIP a program to provide for the "regulation of the modification and construction of *any* stationary source * * * as necessary to assure that national ambient air quality standards are achieved * * *" [emphasis added]. See CAA section 110(a)(2)(C).

The implementing regulations require states to develop "legally enforceable procedures" to enable the state "to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in—(1) a violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard * * *" See 40 CFR 51.160(a). However, instead of establishing sizes and types of stationary sources that will be subject to minor new source review, EPA allows states some discretion. This discretion is not unbounded, however, and states are required to, "discuss the basis for determining which facilities will be subject to review."

2. San Diego's Minor NSR Program

Rule 20.2, "New Source Review—Non-Major Stationary Sources," is part of the District's minor NSR rule. This rule supplements existing SIP [14] rule 10, "Permits Required," and rule 21, "Permit Conditions." Rule 20.2 applies to sources that are, after completion of a project, not a major source. See rule 20.2(a). Rule 20.2 contains two basic requirements: (1) an air quality impact analysis at subsection (d)(2); and (2) the public notification requirements at subsection (d)(4). The following is a discussion of the two substantive requirements both of which are triggered if the emissions increase from a project is greater than the levels indicated in the Table 2 below.

[14] See 60 FR 62756 for discussion on minor NSR as it applies to Title V permitting. In the discussion of the District's definition of "Federally Mandated New Source Review" in Regulation XIV, EPA identified—and SDCAPCD concurred—that SIP-approved rules 10 and 21 constitute the District minor NSR program, at that time. On a side note, today's proposed rulemaking does not alter the status of EPA's Title V interim approval in San Diego as it relates to minor NSR.

TABLE 2.—SAN DIEGO'S AQIA AND PUBLIC NOTIFICATION TRIGGER LEVELS FOR MINOR SOURCES AND PORTABLE EMISSION UNITS

Air contaminant	Lb/hr	Lb/day	Tons/yr
Particulate matter(PM–10)	.....	100	15
NO_x	25	250	40
SO_x	25	250	40
CO	100	550	100
Lead and Lead compounds	.....	3.2	0.6

a. Minor source NSR public notification requirements: Rule 20.2(d)(4) requires that the APCO shall not issue an ATC or modified PTO for any project subject to the AQIA requirements unless the APCO provides the public with at least 40 days notice of the proposed action. Within that time period, the APCO shall make available all information relevant to the proposed action and provide at least 30-days during which comments may be submitted.

b. Air quality impact analysis: An air quality impact analysis is required for any project (including relocated and replacement emission units) that has an emissions increase greater than or equal to the applicable thresholds in table 20.2–1. See 20.2(d)(2). If an AQIA is required, the applicant of a new, modified, replacement, or relocated emission unit shall demonstrate to the satisfaction of the APCO that the project will not:

"(A) cause a violation of a state or national ambient air standard anywhere that does not already exceed such standard; nor [15]

(B) cause additional violations of a national ambient air quality standard anywhere the standard is already being exceeded, nor

(C) cause additional violations of a state ambient air quality standard anywhere the standard is already being exceeded, except as provided for in Subsection (d)(2)(v), nor

(D) prevent or interfere with the attainment or maintenance of any state or national ambient air quality standard."

As discussed in the Rule Deficiencies Section of this proposed rulemaking, San Diego's NSR rule for minor and major sources must require an analysis of the source's impact on the air quality increment.

[15] The District rule requires that the applicant analyze the project's impact on state air quality standards. CARB has requested that this subsection "be submitted for inclusion in the SIP only with respect to the NAAQS." EPA interprets this to mean that sources are not required to assure compliance with the state air quality standards for purposes of fulfilling the federal permitting standards contained in the SIP.

3. Federal Enforceability of Terms and Conditions of Minor NSR Permits

As discussed in the Rule Deficiencies section above, EPA has identified the District's definition of "federally enforceable" as a rule deficiency. It is important to discuss how EPA interprets the District's definition of "federally enforceable" as it applies to terms and conditions of minor NSR permits.

For minor NSR, EPA interprets, and the District concurs,[16] that SIP-approved rules 10 and 21, combined with new rule 20.2 (upon SIP-approval) constitute the District's minor NSR rule. EPA recognizes that the District would like the ability to separate minor and major NSR terms and conditions into federally enforceable and non-federally enforceable terms and conditions.[17] EPA is concerned about the practical implementation of a program that allows for separation of permit terms and conditions because sources, the public, and regulators may experience confusion if competing compliance obligations reside within the same permit. Please see the Rule Deficiencies section for options on how the District could change the definition of "federally enforceable."

4. Discussion on Minor NSR

EPA solicits comment today on whether the thresholds for AQIA and public notice contained in 20.2 are sufficient and/or whether additional requirements are necessary in addition to the AQIA and public notice requirements.

SDCAPCD, through CARB has not provided an analysis, as required in section 51.160(e) that discusses the basis for determining which (minor) facilities will be subject to review. This analysis is important because it supports the "legally enforceable procedures" established in rule 20.2 (e.g., AQIA analysis). These "procedures," in turn, must enable the District to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these, will result in a violation of the applicable control strategy or interfere with attainment of the NAAQS. See section 51.160(a).

While the District AQIA analysis requires an individual source with expected emissions above the AQIA thresholds to analyze its air quality impact, EPA is concerned that the District has not accounted for the combined impact from multiple sources with emissions below the AQIA thresholds.

Furthermore, in the past, EPA has accepted control requirements for minor sources (e.g. minor source BACT) to support a state's demonstration that minor source construction will not interfere with attainment or violate an applicable portion of the control strategy. Many air pollution control districts within the state of California require air pollution controls on non-major (minor) sources. CARB, however, has elected to not submit for SIP approval the state BACT requirements at SDCAPCD rule 20.2(d)(1). San Diego explicitly requested CARB to exclude the state BACT requirement (and other state requirements) from the submittal. For a complete list of the sections and subsections of this rule that are not included, please refer to the TSD.

To conclude, EPA solicits comment on whether the requirements for minor sources are adequate to assure that national ambient air quality standards are achieved. EPA has not received a demonstration from San Diego that shows the air quality impacts from individual or combined minor sources will not interfere with attainment of the NAAQS or result in a violation of the control strategy. We believe such a demonstration is necessary and we solicit comments on what should be required (e.g., minor source BACT). Furthermore. EPA solicits comment on the practical implementation of a minor source permitting program that allows for separation of permit terms and conditions into federally enforceable and non-federally enforceable. EPA believes such a permit program could be

[16] See Footnote 14.

[17] See second to last paragraph of the district's definition of federally enforceable that would allow for such separation provided the term or condition is not created to fulfill a federal requirement.

confusing to sources, regulators and the public.

IV. Overview of Limited Approval/ Disapproval

A detailed discussion of rule 20.1 through 20.4 deficiencies, a discussion of SDCAPCD's minor NSR program and portable emission unit NSR rule, as well as other rule clarifications and EPA interpretations, can be found in the Technical Support Document for Rules 20.1, 20.2, 20.3 and 20.4 which is available from the U.S. EPA, Region 9 office.

Because of the deficiencies identified in this rulemaking, rules 20.1, 20.2, 20.3 and 20.4 are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of sections 110(a)(2)(C) and 173 of the CAA, and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rule(s) under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of San Diego County Air Pollution Control District's submitted rule 20.1, 20.2, 20.3 and 20.4 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of San Diego County Air Pollution Control District's rules 20.1, 20.2, 20.3 and 20.4 because they contain deficiencies and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this proposed rulemaking have been adopted by the SDCAPCD and are currently in effect in the SDCAPCD. EPA's final limited disapproval action will not prevent San Diego County Air Pollution Control District or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any

rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 29, 1999.

Nara L. McGee,

Acting Regional Administrator, Region 9.

[FR Doc. 99–20311 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 64, No. 151
Friday, August 6, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture

ACTION: Notice of public listening sessions.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of three public listening sessions in August of the Commission on 21st Century Production Agriculture. The purpose of these sessions is to gather public input on the future role of the Federal Government in support of production agriculture. These sessions will be open to the public.

PLACE, DATE, AND TIME OF MEETINGS: These sessions will be held on August 12, 1999, at the Radisson Hotel and Conference Room, 2233 Ventura Street, Fresno, California 93721, from 9:00 PDT—5:00 PDT; August 14, 1999, at the Spokane Center, 334 West Spokane Falls Boulevard, Spokane, Washington 99201, from 9:00 PDT—5:00 PDT; and August 16, 1999, at the Holiday Inn Denver Southeast, 3200 South Parker Road, Aurora, Colorado, 80014, from 9:00—5:00 PDT.

FOR FURTHER INFORMATION CONTACT: Timothy M. Peters (202–720–4860), Assistant Director, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: July 30, 1999.

Keith J. Collins,

Chief Economist.

[FR Doc. 99–20247 Filed 8–5–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Proposed Revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Availability of the proposed revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement.

SUMMARY: The proposed revised Land and Resource Management Plan (Forest Plan), the Draft Environmental Impact Statement (DEIS), and associated documents are being released for public review and comment on August 6, 1999.

Six separate documents, and a set of maps have been prepared in conjunction with the proposed revised Forest Plan. These documents are:

- Proposed Revised Land and Resource Management Plan.
- Draft Environmental Impact Statement.
- Draft Environmental Impact Statement Appendices A–M.
- Draft Environmental Impact Statement Appendix N—Biological Assessment and Biological Evaluation.
- Draft Environmental Impact Statement Appendix O—Travel Management.
- Summary of the Draft Environmental Impact Statement.
- Map packet.

DATES: Public comment will be 90 calendar days from August 6, 1999, ending on November 4, 1999.

ADDRESSES: Interested parties are invited to send written comments regarding the proposed revised Forest Plan and Draft EIS to the address below: Forest Supervisor, Forest Plan Revision Comments, White River National Forest, PO Box 948, Glenwood Springs, CO 81602.

FOR FURTHER INFORMATION CONTACT: Questions about this action or requests for the documents listed above should be addressed to: Carolyn Upton, Team Leader, White River National Forest, PO Box 948, Glenwood Springs, CO 81602, Telephone Number: (970) 945–3226.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement identifies alternative D as the preferred alternative. This is a draft document that may change between now and the final decision. Any changes may be based, in part, on public comments received during the 90-day comment period.

When the Final Environmental Impact Statement is completed, there will be three decisions associated with it. These three decisions are listed below with the corresponding deciding officer:

1. Final EIS selected alternative and associated Forest Plan decision—Lyle Laverty, Regional Forester for the Rocky Mountain Region of the Forest Service.
2. Travel Management Plan—Martha Ketelle, Forest Supervisor for the White River National Forest.
3. Management decisions on vacant range allotments—Martha Ketelle, Forest Supervisor for the White River National Forest.

Comments on all three decisions will be received during the comment period identified above.

The Forest Interdisciplinary team prepared the DEIS and the proposed revised Forest Plan with continuous public involvement. Public involvement included people within the vicinity of the Forest as well as extensive mailings to keep people informed and to allow dialogue with the public. A collaborative work group process was held in the winter of 1997/1998 to receive input on a variety of forest plan issues.

The DEIS and proposed revised Forest Plan were formulated around resolution of 6 revision topics. They are:

1. Biological diversity
2. Recreation
3. Travel management
4. Recommended wilderness and roadless areas
5. Special interest areas
6. Timber harvest/allowable sale quantity

Public open houses are scheduled in various communities within and adjacent to the Forest. Dates, locations and times of meetings will be published in the Glenwood Post, and sent to recipients of the proposed revised Forest Plan documents.

The documents may be revised in response to public comments prior to the publication of the Final Environmental Impact Statement and Final Revised Land and Resource Management Plan in 2000.

Dated: July 26, 1999.
Martha Ketelle,
Forest Supervisor.
[FR Doc. 99–19922 Filed 8–5–99; 8:45 am]
BILLING CODE 3410–BW–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: September 7, 1999

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 22, February 26, June 4 and 25, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 3483, 9470, 29992, 34187 and 34188) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Skin Protectant, Plus
9999–00–NSH–0001

Services

Base Supply Center

Fallon Naval Air Station, Fallon, Nevada

Janitorial/Custodial

U.S. Army Reserve Center, Danbury, Connecticut

Janitorial/Custodial

Centers for Disease Control and Prevention, Chamblee and Lawrenceville, Georgia

Janitorial/Custodial

U.S. Fish and Wildlife Service, Wallkill River National Wildlife Refuge Office, 1547 County Rte. 565, Sussex, New Jersey

Mailroom Operation

Department of Housing and Urban Development, Russell Federal Building, Atlanta, Georgia

Management Services

U.S. Department of Housing & Urban Development, 1600 North Broadway, Santa Ana, California

Operation of Individual Equipment Element Store

Davis-Monthan Air Force Base, Arizona

Operation of Postal Service Center

MacDill Air Force Base, Florida

Recycling Service

Davis-Monthan Air Force Base, Arizona

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Pillowcase—Disposable
6532–01–125–3269
Blanket, Bed/Bath (Flame Resistant)
7210–01–141–2458
Cover, Mattress (Plastic)
7210–00–082–5739

Louis R. Bartalot,
Deputy Director (Operations).
[FR Doc. 99–20291 Filed 8–5–99; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 7, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41

U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center and Operation of Individual Equipment Element Store

Beale Air Force Base, California
NPA: The Lighthouse of Houston, Houston, Texas

Base Supply Center and Operation of Individual Equipment Element Store

Cannon Air Force Base, New Mexico
NPA: San Antonio Lighthouse, San Antonio, Texas

Full Food & Dining Facility Attendant

Fort Polk, Louisiana
NPA: The RC Foundation, Corpus Christi, Texas

Janitorial/Custodial

Denver Federal Center, Building 95, Denver, Colorado
NPA: North Metro Community Services for Developmentally Disabled, Westminister, Colorado

Janitorial/Custodial

Kennesaw National Battlefield Park Visitor Center, Kennesaw, Georgia
NPA: Nobis Enterprises, Inc., Marietta, Georgia

Switchboard Operation

Department of Veterans Affairs, New Jersey Health Care System, Lyons, New Jersey
NPA: New Jersey Association for the Deaf-Blind, Inc., Somerset, New Jersey

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–20292 Filed 8–5–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a timely request by Thai Benkan Corporation, Ltd., (TBC), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings (pipe fittings) from Thailand. This review covers TCB, a manufacturer/exporter of this merchandise to the United States, during the period July 1, 1997, through June 30, 1998. We have preliminarily determined that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and the normal value. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) a statement of the issues; and (2) a brief summary of the arguments.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Wendy Frankel, Antidumping/Countervailing Duty Enforcement, Office 4 Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114 or 482–5849, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, (the Act) as amended, by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1992, the Department published in the **Federal Register** an antidumping duty order on pipe fittings from Thailand (57 FR 29702). On July 30, 1998, the respondent requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on pipe fittings from Thailand covering the period July 1, 1997, through June 30, 1998. We published a notice of initiation of the review on August 27, 1998 (63 FR 45796). On September 15, 1998, the Department sent an antidumping questionnaire to TBC. The Department received questionnaire responses in October and November of 1998. On May 7, 1999, we issued a supplemental questionnaire and received a response to that questionnaire on May 27, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Extension of Deadlines

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of preliminary review results if it determines that it is not practicable to complete the review within the statutory time limit. On March 10, 1999, the Department extended the time limit for the preliminary results of this case (*Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 11824).

Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe

fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings.) Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. The review covers TBC and the period of review (POR) July 1, 1997, through June 30, 1998.

Verification

As provided in section 782(i) of the Act, we verified information provided by TBC. We used standard verification procedures, including on-site inspection of the respondent's facilities, the examination of relevant sales, financial, and/or cost records, and selection of original documentation containing relevant information. Our verification results are outlined in the verification reports placed on file in the Central Records Unit (CRU).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products within the scope of this review that were produced by the respondent, and sold in the ordinary course of trade in the comparison market during the POR, to be foreign like products for purposes of determining the appropriate product comparisons to U.S. sales.

Fair Value Comparisons

With respect to TBC, in determining whether this respondent's sales of pipe fittings to customers in the United States were made at less than fair value, we compared export price (EP) to normal value (NV), as described in the "*Export Price*," and "*Normal Value*" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to the prices of individual U.S. transactions.

During the POR, TBC reported that it made all of its sales to the United States through its affiliate, Benkan America, Inc. (BA), which is the importer of record for the subject merchandise. When sales are made prior to the date of importation through an affiliate in the United States, the Department uses the following criteria to determine whether U.S. sales should be classified as EP sales: (1) whether the merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; (2) whether direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and (3) whether the affiliate in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer. Where the factors indicate that the activities of the selling entity in the United States are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.*, negotiating prices and key sales terms), we treat the transactions as CEP sales. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea*, 63 FR 40404, 40417–19 (July 29, 1998).

According to TBC, the imported merchandise was delivered directly to the unaffiliated customers' warehouses without being moved into BA's inventory. *See* TBC's October 22, 1998, questionnaire response at A–12. Additionally, in its supplemental questionnaire response, dated May 27, 1999, TBC reiterated that BA never moved the subject merchandise into its inventory or otherwise took possession of the merchandise. Furthermore, TBC states that BA merely acted as a processor of paper and a communication link between the foreign producer and unaffiliated U.S. customers. At no point, according to TBC, was BA involved in any pricing decisions; rather BA served only as a paper facilitator ensuring that purchasing orders from the unrelated U.S. customers were transferred to TBC and that TBC's sales invoices were properly delivered to U.S. customers. Finally, TBC stated that the above method of transaction represents BA's normal practice of facilitating the sale of merchandise produced by foreign affiliates. Accordingly, TBC reported these sales as EP sales. *See* TBC's supplemental questionnaire response, dated May 27, 1999, at S–5.

Based on our review of the record information concerning TBC's sales to the United States and after conducting a sales verification, we determined that BA does not maintain warehousing facilities in the United States. Thus it is not able to store TBC's merchandise prior to a sale in the United States. Moreover, our verification of the sales transaction methods indicates that BA was not involved in any part of the price negotiation process nor did it provide any additional services to the U.S. customers. *See* Memorandum to the File regarding *Verification of the Sales Questionnaire Responses of Thai Benkan, Ltd., Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand, Administrative Review (1997–1998) (TBC Verification Report)* dated July 31, 1999. As such, we have concluded that the subject merchandise was sold prior to importation (outside of the United States) to the unaffiliated U.S. purchaser. Consequently, we preliminary determine that these sales are EP transactions.

Export Price

We calculated EP in accordance with sections 772(a) and (c) of the Act where the respondents sold the subject merchandise directly to the first unaffiliated purchasers in the United States prior to importation. Specifically, we calculated EP based on the packed prices to unaffiliated customers in the United States. We made deductions, where appropriate, for foreign inland freight from the plant to the port, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. customs brokerage and duties, and U.S. inland freight because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery. We also increased EP by the allocated amount of duty drawback.

Normal Value

1. Viability

In accordance with section 773(a)(1)(C)(ii) of the Act, we determine that the home market for the respondent serves as a viable basis for calculating normal value (NV) because the aggregate volume of the respondent's home market sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.

2. Arm's-Length Transactions

A significant number of home market sales was made through TBC's affiliates: Marubeni Thailand Co., Ltd./Benkan Corporation of Japan and Bensho Corporation, Ltd. However, in all cases, TBC reported home market sales from its affiliates to the first unrelated home market customer. Consequently, no sales to affiliated parties were considered in our analysis.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or the CEP transaction. The NV LOT for EP sales is that of the starting-price sales in the comparison market, or when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the different affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997).

Based on our analysis of these factors, we found that for TBC no LOT difference existed between its respective U.S. and home market sales. Therefore, we have made no LOT adjustment under section 773(a)(7)(A) of the Act. For a detailed discussion of these LOT issues, see Memorandum to the File regarding *Level of Trade Analysis of Thai Benkan, Ltd.; Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand, Administrative Review (1997–1998) (TBC LOT Analysis)*, dated July 30, 1999.

Constructed Value

In this case, we preliminarily determined NV for all U.S. sales based on contemporaneous home market sales. Consequently, we did not use CV in our analysis.

Price-to-Price Comparisons

In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and at the same level of trade as the EP sale. In accordance with section 773(a)(6) of the Act, where applicable, we made adjustments to home market prices for movement expenses (inland freight) and billing adjustments. To adjust for differences in circumstances of sales (COS) between the home market and the EP transactions in the United States, we reduced home market prices by an amount for home market imputed credit expenses, where applicable, and made an upward adjustment for U.S. credit, where appropriate. To adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs. In addition, we made adjustments, where appropriate, for differences in costs attributable to physical differences of the merchandise (DIFMER) pursuant to section 773(a)(6)(C) of the Act.

Currency Conversion

Pursuant to section 773A(a) of the Act, for purposes of the preliminary results, we converted foreign currencies into the U.S. dollars using the official exchange rates in effect on the date of the U.S. sales. These official exchange rates are based on the daily rates identified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a "fluctuation" It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 35188, 35192 (July 5, 1996). The benchmark rate is defined as the moving average of the rates for the past 40 business days. Where we determined that the daily rates applicable to this review fluctuated, as defined above, we converted foreign currencies into U.S. dollars using the benchmark exchange rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-averaged dumping margins exist for the period July 1, 1997 through June 20, 1998:

Manufacturer/exporter	Weighted-average margin (percent)
Thai Benkan Corporation, Ltd.	0.94

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For assessment of EP sales we calculated a per-unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pipe fittings from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the

original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original LTFV investigation, the cash deposit rate will be 39.10 percent, the "All Others" rate which is based on the LTFV investigation (57 FR 29702, July 6, 1992). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20344 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Final Results of Expedited Sunset Review: Carbon Steel Wire Rope From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: carbon steel wire rope from Mexico.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on carbon steel wire rope from Mexico (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

Effective Date: August 6, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of *Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping duty order is carbon steel wire rope from Mexico. Carbon steel wire rope includes ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire. The subject merchandise is classifiable under subheadings 7312.10.9030, 7312.10.9060 and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

The review covers all manufacturers and exporters of Mexican carbon steel wire rope.

History of the Order

The antidumping duty order on carbon steel wire rope from Mexico was published in the **Federal Register** on March 25, 1993 (58 FR 16173). The Department, in the antidumping duty order, established a deposit rate of 111.68 percent for Aceros Camesa S.A. de C.V. (Camesa). In addition, the Department established a rate of 111.68 percent on all other imports of the subject merchandise from Mexico (58 FR 16173, March 25, 1993).

Since that time, the Department has conducted one administrative review.[1] We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping order on carbon steel wire rope from Mexico (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers ("the Committee") on January 19, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.[2] The Committee claimed interested party status, under 19 U.S.C. 1677(9)(C) and (F), as a trade association, the majority of whose members manufacture, produce, or wholesale carbon steel wire rope in the United States. We received a complete substantive response from the Committee on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In its response, the Committee indicated that it was the petitioner in the original investigation and participated in the first administrative review of this order and is currently participating in the ongoing second administrative review. We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the antidumping duty order on steel wire rope from Mexico is extraordinarily complicated. In accordance with section 751(c)(6)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995).

---

[1] *See Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review*, 63 FR 46735, September 2, 1998.

[2] The Committee's members include: Bergen Cable Technology, Inc., Bridon American Corporation, Carolina Steel & Wire Corporation, Continental Cable Company, Loos & Co., Inc., Macwhyte Company, Paulsen Wire Rope Corporation, Sava Industries Inc., Strandflex (Division of MSW) and the Wire Rope Corporation of America, Inc.

(*See* section 751(c)(6)(C) of the Act.) Therefore, on May 3, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the Committee's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, the Committee argues that revocation of the antidumping duty order on carbon steel wire rope from Mexico would be likely to lead to continuation or recurrence of dumping (*see* February 3, 1999 Substantive Response of the Committee at 11). With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, the Committee asserts that a deposit rate of 111.68 percent has been in effect on all imports of the subject merchandise since the issuance of the order. The Committee notes, however, that in the Department's final determination in the sole administrative review (dated September 2, 1998), the Department reduced the deposit rate for one Mexican manufacturer, Camesa, to zero (*see* February 3, 1999 Substantive Response of the Committee at 7).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, the Committee asserts that, following the imposition of the order, imports of carbon steel wire rope from Mexico all but ceased (*see* February 3, 1999 Substantive Response of the Committee at 3). Citing U.S. Census Bureau trade statistics, the Committee asserts that imports of the subject merchandise decreased from 2,882 net tons in the year preceding the imposition of the order to 112 tons in the year of the order. The Committee asserts that import values have not risen above this level in any succeeding year.[4]

In summary, the Committee argues that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) dumping margins above *de minimis* levels have been in place since the imposition of the order and (2) imports of the subject merchandise have been sporadic and extremely limited and do not reflect actual commercial conditions under which Mexican producers would operate in the absence of the order.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above *de minimis* levels have continued to exist for shipments of the subject merchandise from Camesa and all other Mexican producers/exporters throughout most of the life of the order.[5]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The Department, utilizing U.S. Census Bureau IM146 reports and information concerning imports of subject merchandise from our original investigation and subsequent administrative review, can confirm that imports of the subject merchandise decreased sharply following the imposition of the order and remain sporadic and limited. These facts strongly support a finding that dumping is likely to continue in the foreseeable future.

The Department notes that in the sole administrative review of this order we calculated a dumping margin of zero for Camesa, who the Department believes to be the sole producer/exporter of the subject merchandise. However, the Department does not find this zero dumping margin, in and of itself, to be indicative of the Camesa's behavior in the absence of the order for several reasons. First, a single *de minimis* dumping margin does not demonstrate that Camesa can continuously and consistently sell subject merchandise in the United States without dumping. This finding is also supported by the fact that imports of subject merchandise from Mexico decreased dramatically

---

[3] *See Steel Wire Rope From Japan, Shop Towels From the People's Republic of China, Shop Towels From Bangladesh, Candles From the People's Republic of China, Steel Wire Rope From Mexico, Shop Towels From Pakistan, Steel Wire Rope From South Korea, Malleable Cast Iron Pipe Fittings From South Korea, Malleable Cast Iron Pipe Fittings From Taiwan, Malleable Cast Iron Pipe Fittings From Japan: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 24573 (May 7, 1999).

[4] The Committee asserts that imports of non-subject merchandise were misclassified as subject merchandise in both 1995 and 1998. It has requested verification of the import volumes of subject merchandise from the U.S. Census Bureau. As of the publication of this notice, the U.S. Census Bureau has not issued any correction to its previously published import statistics for this product. If this report were to confirm the Committee's assertions, the import volumes of subject merchandise for 1995 and 1998 would be 0 and 39 tons per year, respectively.

[5] *See Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review*, 63 FR 46735, September 2, 1998.

following the issuance of the order and have remained limited and sporadic, including during the review period. Therefore, as set forth in the *Sunset Policy Bulletin* (section II.A.3), and consistent with the SAA at 889–90, and the House Report at 63, the Department finds that where dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly, we normally will determine that revocation of the antidumping duty order would be likely to lead to recurrence of dumping. As such, given that import volumes have fallen significantly since the imposition of the order and that respondent interested parties have waived their right to participate in this review before the Department, and, absent argument and evidence to the contrary, the Department determines that, consistent with Section II.A.3 of the *Sunset Policy Bulletin*, dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in the antidumping duty order on carbon steel wire rope from Mexico, established a deposit rate of 111.68 percent for Camesa. In addition, the Department established a rate of 111.68 percent on all other imports of the subject merchandise from Mexico (58 FR 16173, March 25, 1993). We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, the Committee argues that the Department should report to the Commission the rate established in the original investigation because, as stated in the *Sunset Policy Bulletin*, it is the only calculated rate that reflects the behavior of exporters without the discipline of the order. The Committee states that the 111.68 percent rate has been in effect for all imports of the subject merchandise and, only recently, was the deposit rate reduced to zero with respect to Camesa. Further, the Committee argues that this latest rate is based on an extremely limited and controlled shipment made by Camesa in order to establish the basis for an administrative review (*see* February 3, 1999 Substantive Response of the Committee at 6).

The Department agrees with the Committee. We find that the dumping margin calculated in the original investigation is the only calculated rate that reflects the behavior of exporters without the discipline of the order. Consistent with the *Sunset Policy Bulletin*, we determine that the margin calculated in the Department's original investigation is probative of the behavior of Mexican producers and exporters of carbon steel wire rope if the order were revoked. Therefore, we will report to the Commission the company-specific and "all others" rate from the original investigation contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/exporter	Margin (percent)
Camesa	111.68
All Other Mexican Manufacturers/Exporters	111.68

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20341 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping administrative review.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Brandon Farlander, or Rick Johnson, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0408, (202) 482–0182 or (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997)

Background

On July 19, 1993, the Department published in the **Federal Register** (58 FR 37154) the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. On September 29, 1998, the Department published its initiation of this antidumping duty administrative review covering the period of August 1, 1997 through July 31, 1998 (63 FR 51893). On February 24, 1999, the Department published a notice of extension of the time limit for the preliminary results of this review to August 1, 1999. *See Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 64 FR 9127 (February 24, 1999).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from

Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Preliminary Results of Antidumping Administrative Reviews: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, dated August 2, 1999, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results 7 days to August 9, 1999. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20332 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Amended Final Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In the Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38792 (July 19, 1999) (Hot-Rolled Steel Final Determination) the Department of Commerce (the Department) made an inadvertent error in the suspension of liquidation section. The Department is amending its final determination to clarify that we will instruct Customs to continue the suspension of liquidation of all entries of hot-rolled, flat-rolled, carbon-quality steel products from Brazil pursuant to section 734(h)(2)(B) of the Act.

FOR FURTHER INFORMATION CONTACT: Barbara Chaves at (202) 482–0414 or Linda Ludwig at (202) 482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Background

On July 6, 1999, the Department signed a suspension agreement with CSN, USIMINAS, and COSIPA suspending this investigation. Also on July 6, 1999, the Department issued its Hot-Rolled Steel Final Determination as well as the Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38792, (July 19, 1999), (Notice of Suspension of Investigation). As correctly stated in the Notice of Suspension of Investiation, we are continuing the suspension of liquidation in accordance with section 734(h)(2)(B). Since the Hot-Rolled Steel Final Determination inadvertently indicated that suspension of liquidation would be terminated, we are issuing this amended final determination to correct the error.

Amendment

We are amending the Hot-Rolled Steel Final Determination as follows: In accordance with section 734(f)(2)(B) of the Act, the suspension of liquidation of entries of the subject merchandise in effect since the publication of the affirmative preliminary determination of the same case on February 19, 1999, shall continue. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 8299 (February 19, 1999). Pursuant to section 734(f)(3) of the Act, the suspension of liquidation of entries of the subject merchandise will terminate at the close of the 20-day period beginning on the day of publication of the Notice of Suspension of Investigation, July 19, 1999 (unless an interested party files a petition with the International Trade Commission for a review of the suspension agreement under such section). In addition, any cash deposits of entries of subject merchandise shall be refunded and any bonds shall be released after the close of such 20-day period.

As provided in section 734(f)(2)(B) of the Act, the Department may adjust the required security to reflect the effect of the agreement. Pursuant to this provision, the Department has found that the Agreement eliminates completely the injurious effect of imports of subject merchandise. Accordingly, effective as of July 19, 1999, the Department has adjusted the security required from producers and/or exporters to zero. The security rates in effect for nonsignatory producers/exporters remain as published in our final determination.

This amended final determination is issued and published in accordance with sections 735(d) and (e) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20343 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom in response to a request by the petitioner, Hercules Incorporated. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of July 1, 1997 through June 30, 1998. Based on our analysis, the Department has preliminarily determined that a dumping margin exists for the manufacturer/exporter during the period of review (POR). If these preliminary results are adopted in our final results of administrative review, we will instruct the United States Customs Service (Customs) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each comment (1) a statement of the issue, and (2) a brief summary of the comment.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner or Ron Trentham, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3814 and (202) 482–6320, respectively.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified in 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28270) the antidumping duty order on INC from the United Kingdom. On July 1, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period of July 1, 1997 through June 30, 1998 (63 FR 35909).

In accordance with 19 CFR 351.221, the petitioner requested that the Department conduct an administrative review of sales of subject merchandise made by respondent, Imperial Chemical Industries PLC (ICI). We published a notice of initiation of this antidumping duty administrative review on August 27, 1998. *See initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 63 FR 45796, August 27, 1998.

Under Section 751(a) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the established time limit. On April 6, 1999, the Department published in the **Federal Register** a notice extending the time for the preliminary results from April 2, 1999, until July 31, 1999. *See Industrial Nitrocellulose From the United Kingdom: Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 16707, April 6, 1999.

Scope of the Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white, amorphous, synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent. INC is currently classified under Harmonized Tariff System (HTS) item number 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Fair Value Comparisons

To determine whether sales of INC from the United Kingdom to the United States were made at less than fair value (LTFV), we compared the constructed export price (CEP) to the normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. When making produce comparisons in accordance with section 771(16) of the Act, we considered all products as covered by the "Scope of Review" section of this notice, above, that were sold by the respondent in the home market in the ordinary course of trade during the POR for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of the identical or the most similar merchandise made in the home market that were suitable for comparison, we compared U.S. sales to sales of the next most similar foreign like product, based on the characteristics listed in Section B and C of our antidumping questionnaire.

Constructed Export Price

ICI initially reported U.S. sales as export price (EP) sales. However, in a previous segment of this proceeding, the Department determined that ICI's U.S. sales were CEP transactions. *See Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6609, February 10, 1999. In response to the Department's supplemental questionnaire of February 17, 1999, ICI reported all of its U.S. sales as CEP transactions.

In calculating price to the United States price for ICI, the Department used CEP, as defined in section 772(b) of the Act because all sales to the first unaffiliated purchaser in the United States took place after importation. We calculated CEP based on packed, factory prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for rebates, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. duties, and direct and indirect selling expenses to the extent that they were associated with economic activity in the United States. These included credit expenses and commissions as applicable, in accordance with sections 772(c)(2) and 772(d)(1) of the Act. Finally, we made an adjustment for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

For INC that was imported by a U.S. affiliate of ICI and then further processed into lacquer, sealer, and primer products before being sold to unaffiliated parties in the United States, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied. Where appropriate, in accordance with Section 772(d)(2) of the Act, the Department also deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule provided in Section 772(e) of the Act is applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold in the United States if there is a sufficient quantity of sales to provide a reasonable basis for comparison. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added, pursuant to § 351.401(c)(2) of the Department's regulations, based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we determined that the estimated value added in the United States by ICI's U.S. affiliate accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, in accordance with § 351.402(c)(2), we determined that the value added is likely to exceed substantially the value of the subject merchandise. We also

determined that there was a sufficient quantity of sales of identical merchandise available in the U.S. market to provide a reasonable basis for comparison and that the use of such sales is appropriate in accordance with 772(e). Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical merchandise sold to unaffiliated persons in the United States. *See* § 351.402(c)(3). Discussion of the information which the Department used in making these determinations is not possible due to its proprietary nature. For a complete discussion, *see* Memorandum on Whether to Determine the Constructed Export Price for Certain Further-Manufactured Sales Sold by Imperial Chemical Industries PLC (ICI) in the United States During the Period of Review Under Section 772(e) of the Act dated July 31, 1999.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transactions. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*).

To evaluate the LOT, we examined information regarding the distribution systems in both the U.S. and U.K. markets, including the selling functions, classes of customer, and selling expenses for the respondent. Customer categories such as distributors, retailers, or end-users are commonly used by petitioners and respondents to describe different LOT's but, without substantiation, they are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and the selling functions substantiates or invalidates the claimed LOTs.

Our analysis of the marketing process in both the home market and the United States begins with goods being sold by the producer and extends to the sale of the final user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. We review and compare the distribution systems in the home market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT.

Unless we find that there are different selling functions for sales to the U.S. and home market sales, we will not determine that there are different LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not sufficient alone to establish a difference in the LOTs. Differences in LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively different functions in selling to them. If the comparison-market sale is at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision).

ICI did not claim a LOT adjustment. Nevertheless, we evaluated whether a LOT adjustment was necessary by examining the ICI's distribution system, including selling functions, classes of customers, and selling expenses. In reviewing ICI's home market distribution channels, we found that the POR sales of the merchandise under review in the comparison market were made at only one LOT. With respect to U.S. sales, after making deductions to the CEP sales pursuant to section 772(d) of the Act, we found the selling activities performed by ICI for the CEP sales to its affiliate were limited to order processing and arranging transportation. Therefore, we found that the selling functions performed at the CEP LOT were sufficiently different from the selling functions performed at the NV LOT (*i.e.*, sales solicitation, price negotiation, customer visits, advertising, technical support, invoicing, and billing adjustment) to consider these to be different LOTs. We, therefore, evaluated whether the difference in LOT affected price comparability. The effect on price comparability must be demonstrated by a pattern of consistent price differences between sales at the two relevant LOTs in the comparison market. Because there was only one home market LOT, we were unable to determine whether there was a pattern of consistent price differences based on home market sales of subject merchandise.

The Statement of Administrative Action (SAA) provides that, "if information on the same products and company is not available, the LOT adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different LOTs by the exporter or producer under investigation, the Department may further consider the selling expenses of other producers in the foreign market for the same product or other products." *See* SAA at 830. In accordance with the SAA, we have considered alternative sources of information to make the necessary LOT adjustment, but we did not have information on the record that would allow us to examine or apply these alternative methods for calculating a LOT adjustment. Therefore, we do not have an appropriate basis to determine a LOT adjustment.

Because we have found that all of the comparison sales in the home market were at a more advanced LOT than the sales to the United State, we were unable to qualify a LOT adjustment based on a pattern of consistent price differences, in accordance with section 773(a)(7)(B) of the Act. Therefore, we have preliminarily determined to grant a CEP offset to ICI. *See* Memorandum Regarding industrial Nitrocellulose from the United Kingdom-Level of Trade Analysis-Imperial Chemical Industries, PLC, August 2, 1999.

Normal Value

1. Home-Market Viability

In order to determine whether there was a sufficient volume of sales of INC in the home market to serve as a viable basis for calculating normal value, we compared ICI's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the aggregate volume of home market sales of the foreign like product by ICI was greater than five percent of the respective aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for ICI's home market sales.

2. Arm's-Length Transactions

Sales to an affiliated customer in the home market which were determined

not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to section 351.403 of the Department's regulations, where prices to the affiliated party were on average less than 99.5 percent of the price to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. Therefore, we disregarded all sales to that home market customer. *See* 19 CFR 351.403(c) and Preamble to the Department's regulations, 62 FR at 27355.

Price-to-Price Comparisons

In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same LOT as the CEP sale. In accordance with section 773(a)(6) of the Act, where applicable, we made adjustments to home market prices for discounts and movement expenses (inland freight). Under section 773(a)(6)(C)(iii) of the Act, the Department adjusts for differences in circumstances of sales (COS) between the home market and CEP transactions in the United States. We reduced home market prices by an amount for home market credit pursuant to section 351.410(c) of the Department's regulations. We also made adjustments for indirect selling expenses incurred in the comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset), pursuant to section 351.410(e). In addition, based on our determination as the ICI's LOT (*see* "Level of Trade" section of this notice), we made a CEP offset adjustment pursuant to section 773(a)(7)(B) of the Act. *See Carbon Steel Plate*, 62 FR at 61732. To adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs under section 773(a)(6) of the Act. In addition, we made adjustments, where appropriate, for differences in costs attributable to physical differences of the merchandise (DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Act.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period covering July 1, 1997 through June 30, 1998:

Manufacturer/exporter	Margin (percent)
Imperioal Chemical Industries PLC	19.87

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party participating in the proceeding may request a hearing within 30 days of the date of publication of this notice. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

Upon issuance of the final results of this review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. We have calculated importer-specific *ad valorem* duty assessment rates for the subject merchandise based on the ratio of the total amount of importer-specific antidumping duties calculated for the examined sales to the total entered value of the sales used to calculate those duties. These rates will be assessed uniformly on all entries made by particular importers during the POR.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of INC from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash deposit rate will be 11.13 percent, the "all-others" rate established in the LTFV investigation. *See* 55 FR 21058, May 22, 1990. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20345 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Continuation of Antidumping Duty Order: Natural Bristle Paint Brushes From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Natural bristle paint brushes from the People's Republic of China.

SUMMARY: On May 10, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on natural bristle paint brushes from the People's Republic of China ("China") would be likely to lead to continuation or recurrence of dumping (64 FR 25011 (May 10, 1999)). On June 3, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 29885 (June 3, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on natural bristle paint brushes from China.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: June 10, 1999.

Background

On December 2, 1998, the Department initiated, and the Commission instituted, a sunset review (64 FR 364 and 64 FR 374, respectively) of the antidumping duty order on natural bristle paint brushes from China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Natural Bristle Paint Brushes from China*, 64 FR 25011 (May 10, 1999)).

On June 3, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see* Natural Bristle Paint Brushes from China, 64 FR 29885 (June 3, 1999) and USITC Pub. 3199, Inv. No. 731–TA–244 (Review) (June 1999)).

Scope

The merchandise covered by this antidumping duty order is shipments of natural bristle paint brushes and brush heads from the China. Excluded from the order are paint brushes with a blend of 40 percent natural bristles and 60 percent synthetic filaments. This merchandise is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on natural bristle paint brushes from China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is June 10, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than May 2004.

Dated: August 2, 1999.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20335 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China in response to requests by the petitioner, FMC Corporation, and by two manufacturers/exporters of the subject merchandise. The period of review is December 27, 1996, through June 30, 1998.

With respect to Guangdong Petroleum Chemical Import & Export Trade Corporation, this review has now been rescinded as a result of the withdrawal request for administrative review by the petitioner, the interested party that requested review of Guangdong Petroleum.

We have preliminarily found that sales of subject merchandise by Shanghai Ai Jian Import & Export Corporation and Sinochem Jiangsu Wuxi Import & Export Corporation have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and the normal value.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or James Nunno, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2613 or (202) 482–0783, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the

provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 22, 1997, the Department published in the **Federal Register** an amended antidumping duty order on persulfates from the People's Republic of China (PRC). *See* 62 FR 39212. On July 31, 1998, in accordance with 19 CFR 351.213(b), the petitioner requested an administrative review of Shanghai Ai Jian Import & Export Corporation (Ai Jian), Sinochem Jiangsu Wuxi Import & Export Corporation (Wuxi), and Guangdong Petroleum Chemical Import & Export Trade Corporation (Guangdong Petroleum). We also received requests for a review from Ai Jian and Wuxi on July 31, 1998. We published a notice of initiation of this review on August 27, 1998 (63 FR 45796).

On September 9, 1998, we issued an antidumping questionnaire to Ai Jian and Wuxi. On September 10, 1998, we issued an antidumping questionnaire to Guangdong Petroleum. The Department received responses from the three exporters in November 1998. In addition, the Department received responses from Shanghai Ai Jian Reagent Works (AJ Works) (producer for Ai Jian and Wuxi) and Guangzhou Zhujian Electrochemical Factory (producer for Guangdong Petroleum). On November 23, 1998, the petitioner withdrew its request for an administrative review with respect to Guangdong Petroleum. *See Partial Rescission of Administrative Review* section of the notice below.

We issued supplemental questionnaires to Ai Jian, Wuxi, and AJ Works in December 1998. Responses to these questionnaires were received in February 1999.

In January 1999, the two exporters and the petitioner submitted publicly available information and comments for consideration in valuing the factors of production. In February 1999, the parties submitted rebuttal comments.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On March 4, 1999, the Department published a notice of extension of the time limit for the preliminary results in this case to August 2, 1999. *See Persulfates From the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 10444 (March 4, 1999).

In May 1999, we verified the respondents' questionnaire responses.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, (NH sub4) sub2 S sub2 O sub8, K sub2 S sub2 O sub8, and Na sub2 S sub2 O sub8. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondents. We used standard verification procedures, including on-site inspection of the respondents' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Based on verification, we made certain original documentation containing relevant information. Based on verification, we made certain changes to the data in the sales and factors of production listings submitted by Ai Jian and AJ Works, respectively, and used the revised data to calculate the preliminary margins. *See* the U.S. Price and Factors of Production Adjustments for the Preliminary Results Memorandum from the Team to the File, dated August 2, 1999. Our verification results are outlined in the verification reports placed on file in the Central Records Unit (CRU) in room B–099 of the Main Commerce Building.

Partial Rescission of Administrative Review

On November 23, 1998, the petitioner withdrew its request for an administrative review with respect to Guangdong Petroleum. Pursuant to 19 CFR 351.213(d)(1), the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review. The petitioner's request for withdrawal was timely and there were no requests for review from other interested parties. Therefore, the Department is rescinding this review with respect to Guangdong Petroleum.

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991((*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Evidence relevant to a *de facto* absence of government control with respect to exports is based on four factors, whether the respondent: (1) sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

With respect to Ai Jian and Wuxi, for purposes of our final determination for the less than fair value (LTFV) investigation covering the period January through June 1996, the Department determined that there was *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. *See Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222 (May 19, 1997) (*Persulfates Final Determination*). For this administrative review, Ai Jian and Wuxi have

responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is identical with the evidence on the record of the LTFV investigation of persulfates from the PRC (*see Persulfates Final Determination*, 62 FR at 27222), and continues to demonstrate an absence of government control, both in law and in fact, with respect to their exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. In addition, during verification, we examined Ai Jian and Wuxi's business and financial activities, and found that both exporters operate independently with respect to exports. *See Sales Verification Report* for both Ai Jian and Wuxi, dated June 24, 1999.

Export Price

For both AJ and Wuxi, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted, based on the facts of record. We calculated EP based on packed, CIF U.S. port, or FOB PRC port, prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for ocean freight services which were provided by market economy suppliers. We also deducted from the starting price, where appropriate, an amount for foreign inland freight, foreign brokerage and handling, and marine insurance. As these movement services were provided by NME suppliers, we valued them using Indian rates. *See* "Normal Value" section for further discussion.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) the merchandise is exported from an NME county; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is economically comparable to the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is a comparable economy to the PRC. *See* Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group I, Office 2, dated December 21, 1998.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to persulfates. For purposes of the LTFV investigation, we found that India was a significant producer of comparable merchandise. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Persulfates from the People's Republic of China*, 61 FR 68232, 68233 (December 27, 1996) (*Persulfates Preliminary Determination*). For purposes of this administrative review, we find that India is a producer of persulfates based on information submitted by the respondents in their January 25, 1999, submission. Therefore, we have continued to use India as the surrogate country and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, *see* the Preliminary Results Factors Valuation Memorandum from the Team to the File, dated August 2, 1999 (*Factors Memorandum*). In accordance with this methodology, we valued the factors of production as follows:

To value ammonium sulfate, caustic soda, and sulfuric acid, we used public information from POR issues of the Indian publication *Chemical Weekly*, as provided by the respondents in their January 25, 1999, submission. For caustic soda and sulphuric acid, because price quotes reported in the *Chemical Weekly* are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulphuric acid used by respondents. For potassium sulfate and anhydrous ammonia, we relied on import prices contained in the March and December 1997 issues of Monthly Statistics of the Foreign Trade of India (*Monthly Statistics*), as provided by the respondents in their January 25, 1999, submission. Consistent with our methodology used in the LTFV investigation of this proceeding, we used AJ Works' calculated cost of manufacturing based on the information submitted on February 4, 1999, as revised at verification, to value the cost of ammonium persulfates. Where necessary, we adjusted the values reported in the *Chemical Weekly* to exclude sales and excise taxes. For those values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices (WPI) published by the International Monetary Fund (IMF). We made further adjustments to account for freight costs between the suppliers and AJ Works' manufacturing facilities.

In accordance with our practice, we added to CIF import values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61977 (November 20, 1997).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

For electricity, we relied upon public information from an August 6, 1996, article in *Business World* to obtain an average price for electricity provided to industries in India. To value water we relied on public information reported in the October 1997 publication of the *Second Water Utilities Data Book: Asian and Pacific Region*. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

As noted in the verification report for AJ Works, company officials indicated that the factory used coal in its production of persulfates. *See Memorandum for the File* for AJ Works, dated June 24, 1999, at page 9. Because the factory had not previously reported factors of production for coal, we used, as facts available, the consumption amounts reported during the LTFV investigation (for the period January through June, 1996). The respondents placed this data on the record of this administrative review on July 13, 1999. To value coal, we relied on public information reported in the antidumping new shipper review for Freshwater Crawfish Tail Meat from the PRC. *See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543, 8545 (February 22, 1999), and *Factors Memorandum* at page 2. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted the value for coal to account for freight costs incurred between the suppliers and AJ Works.

For the reported packing materials (*i.e.*, polyethylene and woven bags, polyethylene sheet, wood pallets, fiberboard, and polypropylene sacks), we relied upon Indian import data from the March and December 1997 issues of *Monthly Statistics*. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted these values to account for freight costs incurred between the suppliers and AJ Works.

For foreign inland freight, we use the April 1994 truck rate from the *Times of India*. For ocean freight we used the verified per-unit expense reported by Ai Jian in its February 4, 1999, section C supplemental submission because Ai Jian incurred ocean freight expenses that were paid in U.S. dollars to a market economy supplier. For marine insurance and foreign brokerage and handling expenses, we used public information reported in the antidumping duty investigations of sulfur dyes, including sulfur vat dyes, from India and stainless steel bar from India, respectively. *See Final Determination of Sales at Lesser Than Fair Value: Sulphur Dyes, Including Vat Dyes from India*, 58 FR 11385 (March 1, 1993); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (December 28, 1994); *Factors Memorandum* at page 5. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For factory overhead (FOH), selling, general, and administrative expenses (SG&A), and profit, relied on the financial statements of Calibre Chemicals Pvt. Limited (Calibre), an Indian producer of potassium persulfates and other chemicals, which were submitted by the respondents, because this company is a producer of subject merchandise.

Due to the differing cost structures between Calibre's production of subject and non-subject merchandise, it is more reliable to calculate FOH as a percentage of the total raw material costs for subject merchandise, as opposed to calculating FOH as a percentage of total materials, labor, and energy costs for all products. Therefore, we used the methodology proposed by the petitioner in its February 16,1999, submission in order to calculate FOH. *See Factors Memorandum* at page 6. We adjusted the SG&A percentage that the respondents calculated from Calibre's financial statements as follows: (1) we used data from both Calibre's 1997 and 1998 fiscal years; (2) we considered Calibre's "transportation and distribution" expenses to be tied to the movement of finished goods and, therefore, excluded them from Calibre's cost of manufacturing; (3) we reclassified Calibre's "service and job work" expenses as SG&A expenses; (4) we excluded all depreciation cost, as we considered them to be part of FOH; and(5) we used Califbre's sale of scrap to offset its cost of manufacturing, not its SG&A expenses. We adjusted the profit percentage calculated by the respondents to reflect the average profit from both Calibre's 1997 and 1998 fiscal years. In addition, we removed from the profit calculation the excise duties and sales taxes. *See Persulfates Preliminary Determination*, 61 FR at 68236.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the period December 27, 1999, through June 30, 2998.

Manufacturer/exporter	Martin (percent)
Shanghai Ai Jian Import & Export Corporation	4.27
Sinochem Jiangsu Wuxi Import & Export Corporation	5.34

Interested parties may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issues and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statues, regulations, and cases cited.

The Department will subsequently issue the final results of thus administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each reviewed company will be that established in the final results of this administrative review; (2) the cash deposit rate for Guangdong Petroleum will continue to be 34.97 percent, the company-specific rate from the LTFV investigation; (3) the cash deposit rate for all other PRC exporters will continue to be 119.02 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interest Parties.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20337 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Notice of Panel Decision and Amended Final Results of Antidumping Duty Administrative Review in Accordance With Decision Upon Remand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of panel decision and amendment to final results of antidumping duty administrative review in accordance with decision upon remand.

SUMMARY: As a result of a remand from a Binational Panel, convened pursuant to the North American Free Trade Agreement, the Department of Commerce is amending its final results in the ninth antidumping duty administrative review of Porcelain-on-Steel Cookware from Mexico (December 1, 1994–November 30, 1995). The Department of Commerce has determined, in accordance with the instruction of the Binational Panel, the dumping margin for entries of porcelain-on-steel cookware from Mexico produced by Esmaltaciones de Norte America, S.A. de C.V. to be 16.97 percent. The margin for Cinsa, S.A. de C.V. is not affected by this remand.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or David J. Goldberger, Office 2, AD/CVD Enforcement Group I, Import Administration, Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4929, or 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** (62 FR 42496) the final results of antidumping duty administrative review for Porcelain-on-Steel Cookware from Mexico. Subsequent to the final results, Columbian Home Products (the petitioner), Cinsa, S.A. de C.V. (Cinsa) and Esmaltaciones de Norte America, S.A. de C.V. (ENASA) challenged the Department's findings and requested that the Binational Panel (the Panel) review the final results.

Thereafter, the Panel remanded the Department's final results with respect to one issue—whether the Department should utilize the indirect selling expense ratio submitted by Yamaka China (Yamaka) in determining Yamaka's indirect selling expenses on its sales of porcelain-on-steel cookware produced by ENASA. Specifically, the Panel directed the Department (1) to determine, after addressing both the petitioner's ministerial error letter and Cinsa's submission opposing the petitioner's letter, whether the Department did in fact make a ministerial error; (2) if it did, to correct the error, and (3) in making any correction, to consider comments from the parties on the proper calculation, specifically address those comments in its remand determination, and explain the basis for the correction in detail.[1]

We have determined that the use of an indirect selling expense ratio for affiliated importer Global Imports, Inc., rather than the indirect selling expense ratio for affiliated importer and reseller Yamaka in calculating the margin for Yamaka's sales of porcelain-on-steel cookware produced by ENASA, was in fact a ministerial error and have, therefore, corrected that error. The Department submitted its remand determination on June 4, 1999.

On July 20, 1999, the Panel affirmed the remand determination of the Department. (*See* Porcelain-on-Steel Cookware from Mexico (9th Administrative Review), USA–97–1904–07 (Final Panel Order).) As a result, the margin for ENASA increased from 2.74 to 16.97 percent. The margin for Cinsa is not affected by this remand because the sales through Yamaka consisted solely of ENASA-produced merchandise. Because the Department has since concluded additional administrative reviews, the cash deposit rate for ENASA remains that established by the most recently completed administrative review. The Department will issue appraisement instructions directly to the Customs Service.

This amendment to the final results of antidumping duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)), and 19 CFR 351.221.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20342 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] For a complete discussion of the Department's reasoning in the selection of an indirect selling expense ratio, see Redetermination on Remand: Certain Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review (June 3, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of Sebacic Acid from the People's Republic of China.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China in response to requests from the petitioner, Union Camp Corporation, and the following three respondents: Tianjin Chemicals Import and Export Corporation, Guangdong Chemicals Import and Export Corporation, and Sinochem International Chemicals Company, Ltd. In addition to these three respondents, the petitioner also requested a review of Sinochem Jiangsu Import and Export Corporation. This review covers four exporters of the subject merchandise. The period of review is July 1, 1997, through June 30, 1998.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to

comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or Christopher Priddy, Office 2, AD/CVD Enforcement Group I, Import Administration'Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2613 or (202) 482–1130, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the current regulations at 19 CFR part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1998, the Department published in the **Federal Register** at 63 FR 35909 a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) covering the period July 1, 1997, through June 30, 1998.

On July 30, 1998, in accordance with 19 CFR 351.213(b), the petitioner requested that we conduct an administrative review of Tianjin Chemicals Import and Export Corporation (Tianjin), Guangdong Chemicals Import and Export Corporation (Guangdong), Sinochem International Chemicals Company, Ltd. (SICC) and Sinochem Jiangsu Import and Export Corporation (Jiangsu). On July 29, 1998, Tianjin, Guangdong, and SICC also requested that we conduct an administrative review. We published a notice of initiation of this antidumping duty administrative review on August 27, 1998, at 63 FR 45796. On September 1, 1998, we issued questionnaires to the four respondents. Tianjin, SICC, and Guangdong submitted responses to sections A, C, and D of the antidumping questionnaire on October 9, 1998, and November 2, 1998. The Department issued its supplemental questionnaires on January 8, 1999, and received responses to the questionnaires in February and March 1999. Jiangsu did not respond to the Department's questionnaire.

On December 29, 1998, the Department invited interested parties to provide publicly available information (PAI) for valuing the factors of production and for surrogate country selection. We received responses from the interested parties on January 25, 1999, and February 18, 1999, and additional comments on March 1, 1999. On March 12, 1999, in accordance with section 751(a)(3)(A) of the Act, the Department postponed the deadline for issuing the preliminary results of this review. *See Sebacic Acid from the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 13771 (March 22, 1999).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Evidence relevant to a *de facto* absence of government control with respect to exports is based on the four factors of whether the respondent: (1) Sets its own export prices independently from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587 and *Sparklers* at 20589.

With respect to SICC, Tianjin, and Guangdong, in our final results for the period of review (POR) covering July 1, 1996, through June 30, 1997, the Department determined there was both *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. *See Final Results of Antidumping Administrative Review: Sebacic Acid From the People's Republic of China*, 63 FR 43373 (August 13, 1998) (*Sebacic Acid Third Review*). For this review, SICC, Tianjin, and Guangdong have responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in the previous administrative review and continues to demonstrate an absence of both *de jure* and *de facto* government control with respect to their exports in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

With respect to Jiangsu, which did not respond to the questionnaire, we preliminarily determine that this company does not merit a separate rate. Because the Department assigns a single

rate to companies in an NME country unless an exporter can demonstrate absence of government control, we preliminarily determine that Jiangsu is subject to the country-wide rate for this case.

Export Price

For SICC, Tianjin, and Guangdong, we calculated export price (EP), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price (CEP) methodology was not otherwise warranted based on the facts of record. We calculated EP based on packed CIF prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance. Because all reported movement services were provided by NME companies, we based the charges associated with these services on surrogate rates from India. *See* "Normal Value" section for further discussion.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is economically comparable to the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is a comparable economy to the PRC. *See* "Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group I, Office 2," dated December 21, 1998.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to sebacic acid. Although we do not have information about the quantity of sebacic acid produced in India, we found that information contained in the respondents' February 18, 1999, submission indicates that India was a producer of sebacic acid during the POR. In addition, we determined in prior reviews of this order that India was a significant producer of comparable merchandise (*i.e.*, oxalic acid). *See Sebacic Acid Third Review*. We find that India fulfills both statutory requirements for use of a surrogate country and continue to use India as the surrogate country in this administrative review. We have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices either within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating the various surrogate values, see "Memorandum to the File from Case Analyst: Calculations for the Preliminary Results," dated August 2, 1999. In accordance with this methodology, we valued the factors of production as follows:

We valued castor oil and castor seed using 1998 price data from the Solvent Extractors Association of India provided by the petitioner in its January 25, 1999, submission. For the castor oil that Hengshui Dongfeng Chemical Factory purchased from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance with 19 CFR 351.408(a)(1). Handan Fuyang Sebacic Acid Factory (Handan) claimed it obtained castor oil from a market economy source and paid market economy prices for this factor, but Handan did not provide the necessary price data. Therefore, we have valued Handan's castor oil consumption based on the Indian surrogate value for castor oil.

For macropore resin, we used the value for activated carbon. Consistent with our methodology used in the third review of this proceeding, we valued activated carbon using export prices as quoted in the *Chemical Weekly*. For caustic soda, cresol, phenol, sulfuric acid, and zinc oxide, we used published market prices reported in the *Chemical Weekly*. For caustic soda and sulfuric acid, because price quotes reported in the *Chemical Weekly* are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulfuric acid used by the respondents. For sodium chloride (also referred to as sodium chlorite or vacuum salt), we used Indian import values from the *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*) for the period April 1996 though February 1997.

Where appropriate, we adjusted the values reported in the *Chemical Weekly* to exclude sales and excise taxes. For those values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices (WPI) published by the International Monetary Fund (IMF). We made further adjustments to account for freight costs between the suppliers' buildings and the respondents' sebacic acid manufacturing facilities.

In accordance with our practice, we added to CIF import values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964, 61977 (November 20, 1997).

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

To value electricity, we used the average rate applicable to medium industrial users throughout India as obtained from the "Our India" website compiled by the Indian Industrial and Management Services. We adjusted the values to reflect inflation up to the POR using the WPI factors published by the IMF. We based the value of steam coal on April 1996 through February 1997

import values from the *Monthly Statistics*. We adjusted the steam coal values for inflation using the WPI factors published by the IMF.

We based our calculation of factory overhead, selling, general and administrative (SG&A) expenses, and profit on data contained in the April 1995 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. To value factory overhead, we summed those components which pertain to overhead expenses and divided them by the sum of those components pertaining to the cost of manufacturing. We multiplied this factory overhead rate by the cost of manufacture divided by one minus the factory overhead rate. Using the same source, we also calculated the SG&A rate as a percentage of the cost of manufacturing. We calculated profit as a percentage of the cost of production (*i.e.*, materials, energy, labor, factory overhead, and SG&A).

To value plastic and woven bags, we used import values from the *Monthly Statistics*. For jumbo bag valuation, we used a value from *Monthly Statistics* as found in the Department's Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China (*Index of Factor Values*). We adjusted these three values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted these values to account for freight costs incurred between the suppliers and sebacic acid producers.

In valuing foreign inland trucking freight, the Department relied upon data from the *Times of India* as found in the Department's *Index of Factor Values;* for foreign inland rail rates the Department relied upon data from *Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 13401 (March 18, 1999). To value ocean freight, we used a price quote from Sealand Shipping, Inc., for merchandise comparable to sebacic acid (*i.e.*, oxalic acid). For marine insurance and foreign brokerage and handling expenses, we used public information reported in the antidumping duty investigations of sulfur dyes and stainless steel bar from India, respectively. *See Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Vat Dyes from India*, 58 FR 11835 (March 1, 1993); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (December 28, 1994).

Consistent with the methodology employed in the previous administrative review for sebacic acid, we have determined that fatty acid, glycerine, and castor seed cake (when castor oil is self-produced) are by-products. Because they are by-products, we subtracted the sales revenue of fatty acid, glycerine, and, where applicable, castor seed cake, from the estimated production costs of sebacic acid. This treatment of by-products is also consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis* (1991) at pages 539–544. To value fatty acid and glycerine, we used prices published in *Chemical Weekly*. We valued castor seed cake using market prices quoted in *The Economic Times of India (Mumbai)* for certain months within the POR.

We also allocated a by-product credit for glycerine to the production cost for the co-product capryl alcohol. We deducted a by-product credit for glycerine from both sebacic acid and capryl alcohol based on the ratio of the value of sebacic acid to the total value of both sebacic acid and capryl alcohol.

Consistent with the methodology employed in the previous administrative review, we have determined that capryl alcohol is a co-product and have allocated the factor inputs based on the relative quantity of output of this product and sebacic acid. Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the co-product(s). This treatment of co-products is consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis* (1991) at pages 528–533. To value capryl alcohol, consistent with our methodology from the previous administrative review, we used market prices reported in the *Chemical Weekly* for November 1997 and January 1998 and adjusted the prices for sales and excise taxes.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for the period July 1, 1997, through June 30, 1998:

Manufacturer/Exporter	Margin (percent)
Tianjin Chemicals I/E Corp.	6.16
Sinochem International Chemicals Corp.	0.00
Guangdong Chemicals I/E Corp.	15.01
Country-Wide Rate	243.40

Interested parties may request a hearing within 30 days of the publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue a notice of the final results of this administrative review which will include the results of its analysis of issues raised in any such written briefs no later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) For the reviewed companies named above which have separate rates (SICC, Tianjin, and Guangdong), the cash deposit rates will be the rates for those firms established in the final results of this administrative review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rates will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rates will be the PRC country-wide rate indicated above; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the

final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20338 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–001]

Continuation of Antidumping Duty Order: Sorbitol From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Sorbitol from France.

SUMMARY: On February 4, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of dumping (64 FR 5636 (February 4, 1999)). On March 10, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 11948 (March 10, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on sorbitol from France.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

Effective Date: March 17, 1999.

Background

On October 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 52683 and 63 FR 52757, respectively) of the antidumping duty order on sorbitol from France pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Sorbitol from France*, 64 FR 5636 (February 4, 1999)).

On March 10, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sorbitol from France*, (64 FR 11948 (March 10, 1999) and USITC Pub. 3165, Inv. No. 731–TA–44 (Review) (March 1999)).

Scope

The merchandise covered by this antidumping duty order is crystalline sorbitol from France, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals and currently classifiable under HTS item number 2905.44.00. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on sorbitol from France. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is March 17, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than February 2004.

Dated: August 2, 1999.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20334 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar From Japan: Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed-circumstances antidumping duty administrative review, and intent to revoke order in part.

SUMMARY: In response to a request by Tohoku Steel Co., Ltd. (Tohoku), the Department of Commerce (the Department) is initiating a changed-circumstances antidumping duty

administrative review and issuing an intent to revoke in part the antidumping duty order on stainless steel bar from Japan. Tohoku requested that the Department revoke the order in part with regard to imports of K–M35FL steel bar. Based on the fact that Al Tech Specialty Steel Corp., Dunkirk, NY, Carpenter Technology Corp., Reading, PA, Republic Engineered Steels, Inc., Massillon, OH, Slater Steels Corp., Fort Wayne, IN, Talley Metals Technology, Inc., Hartsville, SC, and the United Steel Workers of America, AFL–CIO/CLC, collectively petitioners in the less-than-fair-value (LTFV) investigation and also in this review, support Tohoku's request for a changed-circumstances review and revocation in part of the order with regard to K–M35FL steel bar, we are initiating this review and we preliminarily determine to revoke the order in part with regard to this merchandise.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Robin Gray, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1690 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 17, 1999, Tohoku requested that the Department conduct a changed-circumstances administrative review to determine whether to revoke the antidumping duty order in part with regard to K–M35FL steel bar, which is currently covered by the scope of the order. Tohoku stated that the leaded steel product in question is not produced in commercial quantities in the United States. With its June 17, 1999 submission, Tohoku included a letter from the petitioners agreeing to Tohoku's request to have K–M35FL steel bar excluded from the scope of the antidumping duty order on stainless steel bar from Japan. As the parties to this proceeding agree on the outcome of the review, Tohoku requests that the Department issue its determination with respect to the changed-circumstances review in an expedited fashion pursuant to 19 CFR 351.216(e).

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Scope of Review

The products covered by this changed-circumstances review are imports of K–M35FL steel bar manufactured by Tohoku and exported from Japan.

The scope of the order covers stainless steel bar (SSB). For purposes of this review, the term SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, groves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order In Part

Pursuant to section 751(d)(1) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed-circumstances review). Section 751(b)(1) of the Act requires a changed-circumstances administrative review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

The Department's regulations at 19 CFR 351.216 provide that the Department will conduct a changed-circumstances administrative review under 19 CFR 351.216(e) based upon an affirmative statement of no interest from the petitioner in the proceeding (*i.e.*, such a statement constitutes "changed circumstances sufficient to warrant a review"). Section 782(h) of the Act and 19 CFR 351.222(g)(1)(i) provide further that the Department may revoke an order, or revoke an order in part, if it determines that the order under review is no longer of interest to domestic interested parties. In addition, in the event that the Department concludes that expedited action is warranted, section 351.216(e) of the regulations permits the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with sections 751(d) and 782(h) of the Act and 19 CFR 351.216 and 351.216(e), based on petitioners' affirmative statement of no interest in the continued application of the order to K–M35FL steel bar, we are initiating this changed-circumstances administrative review. Based on the fact that no other domestic interested parties have objected to the position taken by petitioners that they have no further interest in the application of the order to imports of K–M35FL steel bar from Japan, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant partial revocation of the order on stainless steel bar from Japan. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order as it relates to imports of K–M35FL from Japan. This partial revocation will apply to all entries of K–M35FL from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of

publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20336 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Revocation of Antidumping Finding: Stainless Steel Plate From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of revocation of antidumping finding: Stainless steel plate from Sweden.

SUMMARY: Pursuant to section 751(c) of the Tariff Act from 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the antidumping finding on stainless steel plate from Sweden is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 37167 (July 9, 1999)). Therefore, pursuant to section 19 CFR 351.222(i)(1)(iii), the Department of Commerce ("the Department") is publishing notice of the revocation of the antidumping finding on stainless steel plate from Sweden. Pursuant to section 751(c)(6)(A)(iv) of the Act, the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–6397 or (202) 482-1560, respectively.

EFFECTIVE DATE: January 1, 2000.

Background

On August 3, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 41227 and 63 FR 63748, respectively) of the antidumping finding on stainless steel plate from Sweden pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked. (*See Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden,* 63 FR 67658 (December 8, 1998)).

On July 9, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on stainless steel plate would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (*See Stainless Steel Plate from Sweden,* 64 FR 37167 (July 9, 1999) and USITC Pub. 3204, Inv. No. AA1921–114 (Review) (July 1999)).

Scope

The merchandise covered by this determination is stainless steel plate from Sweden. Stainless steel plate is commonly used in scientific and industrial equipment because of its resistance to staining, rusting and pitting.

Stainless steel plate is classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers:7219.11.00.00, 7219.12.00.05, 7209.12.00.15, 7219.12.00.45, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.21.00.05, 7219.21.00.50, 7219.22.00.05, 7219.22.00.10, 7219.22.00.30, 7209.22.00.60, 7219.31.00.10, 7219.31.00.50, 7220.11.00.00, 7222.30.00.00, and 7228.40.00.00. Although the subheading is provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Determination

As a result of the determination by the Commission that revocation of this antidumping finding is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, is revoking the antidumping finding on stainless steel plate from Sweden. Pursuant to section 751(c)(6)(A)(iv) of the Act, this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: August 2, 1999.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20333 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Texas, et al., Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 99–013. Applicant: University of Texas, Houston, TX 77030. Instrument: Electron Microscope, Model JEM–1010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 64 FR 35127, June 30, 1999. Order Date: April 26, 1999.

Docket Number: 99–017. Applicant: The Burnham Institute, La Jolla, CA 92037. Instrument: Cryo Electron Microscope, Model Tecnai 12 Twin. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 64 FR 36338, July 6, 1999. Order Date: December 11, 1998.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United

States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–20346 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815, C–475–825, and C–580–835]

Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Marian Wells (France), Cynthia Thirumalai (Italy), and Eva Temkin (Republic of Korea), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6309, (202) 482-4087, and (202) 482–1167, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (April 1998).

Scope of Orders

The products covered by these orders are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to these orders is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise covered by these orders is dispositive.

Excluded from the scope of these orders are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of these orders. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of these orders. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of these orders. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of these orders. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of these orders. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of these orders. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Amended Final Determination

Republic of Korea

On May 20, 1999, the Department released its final determination in the countervailing duty investigation of stainless steel sheet and strip in coils from the Republic of Korea ("Korea"). Subsequently, on June 2, 1999, the petitioners in this investigation alleged that the Department had made two ministerial errors in calculating the estimated net countervailable subsidy rate. We disagree with one of the petitioners' allegations that we made a ministerial error; the allegation constituted a methodological argument. We agree with the petitioners that we made a ministerial error with regard to their second allegation and we have, therefore, made a correction in the calculations. This correction resulted in the estimated net countervailable subsidy rate attributable to Inchon Iron & Steel Company's ("Inchon") post-1991 variable rate loans increasing from 2.64 percent *ad valorem* to 2.65 percent *ad valorem*. The ministerial error allegations and the Department's analysis are detailed in a June 17, 1999 memorandum to Bernard Carreau, Deputy Assistant Secretary for AD/CVD Enforcement II, from David Mueller, Director, Office CVD/AD Enforcement VI ("Allegations of Ministerial Errors in the Final Results of the Countervailing Duty Investigation: Stainless Steel Sheet and Strip in Coils from the Republic of Korea"), a public version of which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building). Thus, the total estimated net countervailable subsidy rate is 2.65 percent *ad valorem* for Inchon. This change does not alter the "all others" rate.

Countervailing Duty Orders

In accordance with section 705(d) of the Act, on June 8, 1999, the Department published its final determinations in the countervailing duty investigations of certain stainless steel sheet and strip in coils from France (64 FR 30774), Italy (64 FR 30624), and Korea (64 FR 30636). On July 19,1999, the International Trade Commission ("ITC") notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States suffered material injury as a result of subsidized imports of stainless steel sheet and strip in coils from France, Italy, and Korea.

Therefore, countervailing duties will be assessed on all unliquidated entries of stainless steel sheet and strip in coils from France, Italy, and Korea entered, or withdrawn from warehouse, for consumption on or after November 17, 1998, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before March 17, 1999, the date the Department instructed the U.S. Customs Service to discontinue the suspensions of liquidation in accordance with section 703(d) of the Act, and on all entries and withdrawals on or after the date of publication of these countervailing duty orders in the **Federal Register**. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of stainless steel sheet and strip in coils made on or after March 17, 1999, and prior to the date of publication of these orders in the **Federal Register** are not liable for the

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

assessment of countervailing duties due to the Department's discontinuation, effective March 17, 1999, of the suspensions of liquidation.

In accordance with section 706 of the Act, the Department will direct U.S. Customs officers to reinstitute the suspensions of liquidation and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the countervailable subsidy rates noted below. The All Others rates apply to all producers and exporters of stainless steel sheet and strip in coils from France, Italy, and Korea not specifically listed below. The cash deposit rates are as follows:

Producer/exporter	Net subsidy rate (percent *ad valorem*)
France:	
Usinor	5.38
All Others	5.38
Italy:	
Acciai Speciali Terni S.p.A.	12.22
Arinox S.r.L.	1.03
All Others	12.09
Korea:	
Inchon	2.65
Dai Yang	1.58
Taihan	7.00
Sammi	59.30
All Others	1.68

The Korean steel producer POSCO is excluded from these orders because it received a *de minimis* net subsidy rate of 0.65 percent *ad valorem*.

This notice constitutes the countervailing duty orders with respect to stainless steel sheet and strip in coils from France, Italy, and Korea, pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

These countervailing duty orders and amended final determination are published in accordance with section 706(a) and 705 of the Act and 19 CFR 351.211 and 351.224.

Dated: August 2, 1999.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–20340 Filed 8–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Procedures for Delivery of HEU Natural Uranium Component in the United States

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is announcing the final Procedures for Delivery of HEU Natural Uranium Component in the United States.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Sally C. Gannon, Enforcement Group III, Office IX, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. and Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–3793.

Background:

On April 25, 1996, Congress passed the United States Enrichment Corporation Privatization Act ("USEC Privatization Act"), 42 U.S.C. 2297h, *et seq.* The USEC Privatization Act requires the U.S. Department of Commerce ("Department") to administer and enforce the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act. On January 7, 1998, in order to implement this statutory mandate, the Department issued the Procedures for Delivery of HEU Natural Uranium Component in the United States ("HEU Procedures"). The purpose of issuing the HEU Procedures is to enhance the predictability and transparency of the administration and enforcement of the above-referenced limitations.

On March 20, 1998, the Department issued Annex 1 to the HEU Procedures to clarify certain requirements detailed in the HEU Procedures. On July 6, 1998, the Department provided public notification of the HEU Procedures and Annex 1 to the HEU Procedures (see 63 FR 36391 (July 6, 1998)). On July 23, 1998, the Department issued a proposed Annex 2 to the HEU Procedures regarding re-importation requirements and requested public comment on Annex 2. The Department received comments from eight parties.

On October 8, 1998, in accordance with Section F of the January 7, 1998, HEU Procedures, the Department requested comments from parties on necessary or desirable changes to the HEU Procedures (see 63 FR 54108 (October 8, 1998)). The Department received comments from eight parties regarding the HEU Procedures. After careful review of the comments, and after consultations with various parties, the Department determined that revision and clarification of the HEU Procedures were warranted. On March 26, 1999, the Department provided public notification of the draft revised HEU Procedures and invited parties to provide comments (see 64 FR 14697 (March 26, 1999)).

Because the Department made substantive changes, in part as a result of parties' comments, the Department determined on May 7, 1999, that an additional opportunity to comment on the draft revised HEU Procedures was appropriate (see 64 FR 25867 (May 13, 1999)). The Department received comments from eleven parties. After careful review of these comments and consultations with various parties, the Department has made further revisions to the draft HEU Procedures. The Department hereby provides public notification of the final Procedures for Delivery of HEU Natural Uranium Component in the United States, the text of which follows in the Annex to this notice. These final HEU Procedures replace all prior versions of the HEU Procedures, including any annexes, as detailed above in the "Background" section of this notice.

Dated: July 26, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Annex—Procedures for Delivery of HEU Natural Uranium Component in the United States

The United States Enrichment Corporation Privatization Legislation, 42 U.S.C. 2297h, *et seq.* ("USEC Privatization Act"), directs the Secretary of Commerce to administer and enforce Russian-origin uranium limitations set forth in 42 U.S.C. 2297h–10(b). Accordingly, the U.S. Department of Commerce ("Department") is implementing 42 U.S.C. 2297h–10(b) of the USEC Privatization Act by issuing these revised Highly-Enriched Uranium ("HEU") Procedures. The authority to implement the HEU Procedures does not derive from the Tariff Act of 1930, as amended. Therefore, these revised HEU Procedures are not subject to the Agreement Suspending the

Antidumping Investigation on Uranium from the Russian Federation ("Russian Suspension Agreement"), 57 FR 79235 (October 30, 1992), as amended.

A. Coverage

The uranium covered by the revised HEU Procedures is the U_3O_8 or U_3O_8 equivalent contained in the UF_6 component of the low-enriched uranium derived from the HEU taken from dismantled nuclear warheads, deemed under United States law for all purposes to be of Russian origin, and delivered to the Russian Executive Agent pursuant to 42 U.S.C. 2297h–10(b) of the USEC Privatization Act ("HEU Natural Uranium Component").

B. Definitions

The following definitions apply to the terms of the HEU Procedures, including all Attachments thereto, and any documentation submitted to, or released by, the Department in connection with deliveries of HEU Natural Uranium Component.

1. Account Administrator—means the party that administers an account into which the Russian Executive Agent or a Designated Agent takes delivery of, and provides account balance information for, the HEU Natural Uranium Component prior to its sale pursuant to the USEC Privatization Act.

2. Annual Maximum Deliveries—means the delivery limitations to End-Users as set forth at 42 U.S.C. 2297h–10(b)(5):

ANNUAL MAXIMUM DELIVERIES TO END-USERS

Year	Millions lbs. U_3O_8 equivalent
1998	2
1999	4
2000	6
2001	8
2002	10
2003	12
2004	14
2005	16
2006	17
2007	18
2008	19
2009 and each year thereafter	20

3. Consumption—means for use as nuclear fuel.

4. Delivery—means the physical or book transfer of the HEU Natural Uranium Component to the account of an End-User in the United States.

5. Designated Agent—means any party that has been authorized by the Ministry of Atomic Energy of the Russian Federation ("MINATOM") to sell the HEU Natural Uranium Component.

6. Designated Agent's Account—means the account held in the name of the Designated Agent, or its wholly-owned subsidiary, into which only the HEU Natural Uranium Component is delivered pursuant to the USEC Privatization Act.

7. End-User—means an entity that purchases natural uranium for consumption in a nuclear reactor in the United States, owned or operated by itself or a parent, subsidiary, or other entity under common ownership or control.

8. Executive Agent—means either the United States or Russian Federation executive agent with the authority to implement the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 19, 1993 ("HEU Agreement").

9. Secretary—means the Secretary of Commerce or a designee. The Secretary has responsibility for the administration and enforcement of the limitations set forth in 42 U.S.C. § 2297h–10(b).

10. U_3O_8 to UF_6 Conversion—1 KgU in UF_6 = 2.61283 lbs. U_3O_8e.

11. Verification—The process by which the Department examines the records of the party that provided the information being examined, and interviews company personnel who prepared such information and who are familiar with the sources of the data in the information, in order to establish the adequacy and accuracy of submitted information.

12. Importer of Record—means the person by whom, or for whose account, HEU Natural Uranium Component is imported.

13. Resale Party—means a seller of HEU Natural Uranium Component pursuant to Paragraph G.2.

C. Record Procedures and Commercial Confidentiality

1. Public Record and Access

a. HEU Record: A separate record for documents and information generated under the HEU Procedures shall be created under the identifying title "HEU File" and maintained in the Central Records Unit.

b. Central Records Unit: Import Administration's Central Records Unit is located at B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230. The office hours of the Central Records Unit are between 8:30 A.M. and 5:00 P.M. on business days.

c. The Central Records Unit is responsible for maintaining a public and an official record for the HEU File. The public record will consist of all material contained in the official record that the Secretary determines is subject to release under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, *et seq.* (1998), and disclosed to the general public in the Central Records Unit. The Secretary will charge an appropriate fee for providing copies of documents. The official record will contain the foregoing information and information for which the submitter has claimed an exemption to release under FOIA. To the extent permitted by law, such official record will be accessible only to authorized government officials.

d. FOIA Release and Treatment of Commercial and Financial Information: Documents submitted to the Department are subject to release under FOIA, unless a party claims protection from release under a FOIA exemption. In order to claim protection from release, a party must specify the information which the party seeks to protect from release, provide an explanation as to why it should be protected, and bracket such information. See section 4.7 of the Department's FOIA regulations, set forth in 15 CFR Part 4 (1998). A party making a submission may not claim its own identity as protected from release under FOIA. Although the party making the submission is responsible for seeking protection from release under FOIA for any third-party information in its submission, and for identifying such information, the Department will endeavor to protect price, quantity, and customer identity information from release under all FOIA requests for the life of the HEU Agreement to the extent allowed under the FOIA statute. The party submitting such documentation may provide a releaseable public version along with the non-releaseable version. Further information on FOIA may be accessed at *http://www.usdoj.gov/foia*.

e. Interim Record: The Department will create the public record of the HEU File. Within 90 days from publication of the final revised HEU Procedures, the Department will return to parties any contracts and related contractual information submitted pursuant to the January 7, 1998, HEU Procedures and will notify parties who submitted additional information to the Department, pursuant to the January 7, 1998, HEU Procedures, of the opportunity to claim that documents are exempt from release under FOIA. The Department will also transfer other documentation relating to the HEU Procedures from the records of the

Russian Suspension Agreement (A–821–802) to the HEU File.

2. Record Submission Instructions

a. Where to file: For the Department to consider a submission to the record, persons must address and submit all documents to: The Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Submissions may be made between 8:30 A.M. and 5:00 P.M. on business days. Courtesy copies addressed to the appropriate employee, and designating the employee's mail stop room number, may be delivered to Room 1874 (Courier Delivery Entrance).

b. Required Header Information: Any submission made to the HEU File must contain the following information in the upper right hand corner of the document in the order presented below: HEU File, Number of Pages, Fully Releaseable under FOIA, or, Not Fully Releaseable under FOIA, Attn: Uranium Program, Room 7866.

c. Number of Copies: Each submission to the Department must be accompanied by three copies of the submission. Where claim of exemption from release under FOIA is made, the specific portion(s) of the submission for which exemption is claimed must be clearly identified when the submission is made. Upon receipt, the Central Records Unit will stamp the official date of filing on the submission.

D. Allocation of Annual Maximum Deliveries to Designated Agents

The Department recognizes that MINATOM may allocate the Annual Maximum Deliveries of HEU Natural Uranium Component among any Designated Agent(s) which it authorizes to sell the HEU Natural Uranium Component. For each Designated Agent receiving a delivery allocation, MINATOM will issue a certificate identifying such Designated Agent, the duration of time for which the allocation is valid, and the maximum annual amount to be delivered under that certificate. The certificate(s) will also contain a statement that the material to be delivered to the Designated Agent(s) may be sold in the United States in accordance with 42 U.S.C. 2297h–10(b). No such certificate shall be valid and effective until such time as the Department receives a copy of such certificate. The cumulative quantities authorized by all such certificates for each year may not exceed the Annual Maximum Deliveries for such year.

E. Re-Allocation

Annual deliveries allocated to a Designated Agent may be re-allocated to any other Designated Agent or to MINATOM within the same annual period subject to the Annual Maximum Deliveries, provided that MINATOM submits to the Department a copy of the amended and/or terminated certificate(s) from which the annual delivery allocation is to be withdrawn and a copy of the new certificate(s) re-allocating the annual delivery allocation.

F. Delivery Forfeit and Flexibility

On December 31 of each year, any portion of the Annual Maximum Deliveries not delivered that year will be forfeited. In the unlikely event that there are transfer, transportation, or other difficulties beyond the control of the Designated Agent, the Department may provide for a 30-day grace period to complete the delivery. The Department must be notified in writing of a request for a 30-day grace period, detailing the reasons for the delivery delay.

G. Swaps, Exchanges, Loans, or Resales of Material

1. Swaps, Exchanges or Loans: Swaps, exchanges or loans of HEU Natural Uranium Component may be conducted solely for the purpose of facilitating delivery, further processing and end-use as nuclear fuel. Notification of such permitted swaps, exchanges or loans is required to be provided to the Department at the time of the transactions, in the format set forth in Attachment One; however, no prior approval by the Department is required to proceed.[1] Examples of such permitted swaps, exchanges or loans are those designed to avoid transportation costs. The Department considers swaps, exchanges or loans that will result in sales for consumption in the United States, directly or indirectly, in excess of the Annual Maximum Deliveries to be circumvention. Swaps, exchanges or loans are subject to verification by the Department at any time and at its discretion.

2. Resales:

a. The Department will permit parties to resell the HEU Natural Uranium Component. If the HEU Natural Uranium Component is resold, the End-User (or any other entity) making the resale must notify the Department of the date of the resale, the entity to whom it was sold, and the volume resold, in the format provided in Attachment One; however, no prior approval by the Department is required to proceed.

b. If an End-User resells the HEU Natural Uranium Component to any party other than another End-User, the material must be held in a separate account and quarterly reports on the account balance, in the format provided in Attachment Two, are required from the purchaser of the resold material.

c. An End-User may purchase HEU Natural Uranium Component on resale only from another End-User or an entity utilizing a separate account and providing quarterly reports to the Department as noted in Paragraph G.2.b above.

d. Resales remain subject to the requirements of 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, these HEU Procedures, and are also subject to verification by the Department at any time and at its discretion. Resold material will not be subject to the Annual Maximum Deliveries in the year in which it is resold.

H. Post-Delivery Notification

For all deliveries of HEU Natural Uranium Component, Designated Agents must submit to the Department, within ten (10) days of receipt, copies of all delivery confirmations provided to the Designated Agents from the appropriate Account Administrator. Such confirmations must contain the identity of the account holders from and to which the material was transferred, the quantity transferred, and the date of delivery.

I. Quarterly Reports

1. Designated Agents

Designated Agents must submit for the HEU File quarterly reports and certifications detailing all activity relating to the movement of HEU Natural Uranium Component into and out of their respective accounts, in the format set forth in Attachment Two. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters

[1] Parties need not report as a swap or exchange hereunder a routine adjustment in nuclear material accounting documentation which is intended only to account for the delivery by an End-User, in the normal course of a processing transaction, of HEU Natural Uranium Component to be used in the production of a processed uranium product where: (i) prior to delivery of the HEU Natural Uranium Component, the processor produced the product using natural uranium other than the End-User's natural uranium to fulfill the contractual processing obligation to such End-User and delivered it to a downstream processor; (ii) the adjustment is intended only to ascribe the HEU Natural Uranium Component to the product delivered to the downstream processor and to return to the upstream processor natural uranium of the origin used to produce the product; and (iii) no monetary or other consideration is paid or given for the exchange of origins affected by the adjustment.

ending March 31, June 30, September 30, and December 31, respectively.

2. Account Administrators

Account Administrators must submit quarterly reports regarding the accounts holding the HEU Natural Uranium Component, in the format set forth in Attachment Three. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters ending March 31, June 30, September 30, and December 31, respectively.

J. Verification

The Department reserves the right to verify any information submitted to the Department relating to deliveries under the USEC Privatization Act. Furthermore, the Department may restrict future deliveries from any account in which the reported activity is found to be in violation of these HEU Procedures and/or the Annual Maximum Deliveries if such violations are not rectified to the satisfaction of the Department and MINATOM.

K. Consultations

Upon request, MINATOM and the Department will hold consultations subsequent to the filing of the quarterly reports due February 1 of each year for the purpose of exchanging/reviewing all data pertaining to deliveries of HEU Natural Uranium Component under these revised HEU Procedures during the previous year. Consultations may be held at other times as necessary.

L. Importation/Re-Importation Requirements[2]

1. HEU Natural Uranium Component exported from the United States for further processing and subsequently re-imported:

The End-User, or its agent, or the importer of record must submit a notification letter and certifications as set forth in Attachment Four.

2. HEU Natural Uranium Component sold for delivery outside the territory of the United States to an End-User and subsequently imported to be consumed by an End-User in accordance with Annual Maximum Deliveries:

The End-User or its agent must submit a notification letter and certifications as set forth in Attachment Four.

3. HEU Natural Uranium Component sold for consumption outside the United States to be imported into the United States for further processing and exportation:

The entity or importer of record must provide the information set forth in Attachment Five. In addition, the owner, or the importer of record, of this material must certify to the Department that the material will not be used in (and was not obtained under) any arrangement, swap, exchange, or other transaction designed to circumvent any of the Agreements while in the United States and that the owner, or the importer of record, will not circumvent (and has not circumvented) the Annual Maximum Deliveries. The owner, or the importer of record, must also provide the Department with the expected quantity (U_3O_8 equivalent, less any processing losses) that will be exported from the United States. There will be no time or quantity limitations on the import of HEU Natural Uranium Component under this provision.

4. In all cases noted above, the owner of the HEU Natural Uranium Component or its agent must provide the Department with the required information ten (10) days prior to its expected entry into the United States. Within ten (10) days of receipt of the required information, the Department will provide to the United States Customs Service the appropriate instructions to clear the imports. The Department will notify the importer of record of the issuance of such instructions.

M. Enforcement

If the Department finds that a Designated Agent has directly or indirectly exceeded its delivery allocation, the Department will require the Account Administrator or the appropriate entity to withhold any further release of HEU Natural Uranium Component from the Designated Agent's Account, until the issue has been satisfactorily resolved among the Department, MINATOM, and the relevant Designated Agent. The Department will notify both the Account Administrator and the affected Designated Agent in writing of its enforcement action.

N. Future Revisions

Any future changes to these HEU Procedures will be made only with public notice in the **Federal Register** and an opportunity for interested party comment.

O. Revised Uranium Import Certification

All uranium importers, regardless of declared country of origin, must continue to submit to the U.S. Customs Service upon importation the certification in the format set forth in Attachment Six, unless said importer is submitting certification information set forth in Attachments 4 or 5.

ATTACHMENT ONE

Swaps, Exchanges, Loans, and Resales Notification Format

For each swap, exchange, loan, or resale under a provision of the HEU Procedures, provide the following information to the Department:

1. The quantity and origin(s) of the material.
2. The location(s) of the transaction.
3. The parties involved in the transaction.
4. The purpose of the transaction.
5. The date of the swap, exchange, loan or resale.

ATTACHMENT TWO[3]

Designated Agent or Resale Party Quarterly Report Form

Quarterly Delivery Report for (INSERT DATES AND DESIGNATED AGENT OR RESALE PARTY) HEU Natural Uranium Component

Beginning Balance (in U_3O_8 equivalent): _____

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

[2] The certifications required under this Paragraph are independent of the general importer certification requirements of the agreements suspending the antidumping investigations on uranium, as amended ("the Agreements").

Certification number three on Attachment Four (page two) and certifications numbers two and four on Attachment Five (page two) will continue to be required only to the extent they are applicable. At such time when the Agreements are no longer in existence, the certifications under this Paragraph will be amended to reflect the absence of the Agreements.

[3] The

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

Ending Balance (in U_3O_8 equivalent): _____

(DESIGNATED AGENT OR RESALE PARTY) certifies that it holds an HEU Natural Uranium Component account at (STATE NAME OF ENTITY(IES)) and that all HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar quarter (INDICATE DATES) has been transferred for one of the following reasons: (1) for use under an approved matched sale under 42 U.S.C. § 2297h–10(b) of the USEC Privatization Act and Article IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended; (2) for use in overfeeding in U.S. enrichment facilities pursuant to 42 U.S.C. § 2297h–10(b)(7); (3) for delivery to an End-User, within the Annual Maximum Deliveries set forth in the USEC Privatization Act, at 42 U.S.C. § 2297h–10(b)(5); (4) for export out of the United States; (5) for further processing on behalf of (NAME OF ENTITY); or (6) for resale to (NAME OF ENTITY).

(DESIGNATED AGENT OR RESALE PARTY) further certifies that, for the time period during which the material was in its possession or control, none of the HEU Natural Uranium Component transferred from or into the account(s) during the calendar quarter (INDICATE DATES) has been loaned, swapped, exchanged or used in any arrangement that directly or indirectly circumvents the limitations set forth in 42 U.S.C. § 2297h–10(b) of the USEC Privatization Act, the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended, or the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Signature:

Printed Name:

Title:

ATTACHMENT THREE

Account Administrator Quarterly Report Form

Quarterly Report for (INSERT DATES AND ACCOUNT ADMINISTRATOR) HEU Natural Uranium Component

Beginning Balance (in U_3O_8 equivalent): _____

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

Ending Balance (in U_3O_8 equivalent): _____

(ACCOUNT ADMINISTRATOR) certifies that to the best of its knowledge, the foregoing information is true and correct.

Signature:

Printed Name:

Title:

ATTACHMENT FOUR (page one)

Importation/Re-Importation Notification Form and Certifications

TOPIC: Importation/Re-Importation of Uranium Under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act

Pursuant to Paragraph L of the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, we hereby submit information describing the importation or re-importation of Russian origin uranium subject to the limitations set forth in the USEC Privatization Act, at 42 U.S.C. 2297h–10(b):

Export (if Applicable)

1. Quantity of HEU Natural Uranium Component Exported (U_3O_8 equivalent) out of U.S.:
2. Date of Export out of U.S. (if available):

Importation/Re-Importation

1. (NUMBER) lbs. of U_3O_8 equivalent contained in (NUMBER) KgU with enrichment assay (NUMBER) wt % and tails assay (NUMBER) wt %, if applicable:
2. Port of Importation/Re-Importation:
3. Importer of Record:
4. Planned Date of Importation/Re-Importation:
5. End User:
6. Vessel/Airline Name:

Also, please find attached the importer of record declaration regarding country of origin, anti-circumvention and qualification of this material under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act. We also agree to verification of this information if requested.

Signature:

Printed Name:

Title:

ATTACHMENT FOUR (page two)

Importation/Re-Importation Notification Form and Certifications

CERTIFICATIONS TO U.S. CUSTOMS SERVICE

A. (END-USER or IMPORTER OF RECORD) hereby certifies that the HEU Natural Uranium Component of the uranium being imported into the United States is derived from Russian highly enriched uranium pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons. The uranium being imported was converted in (INSERT COUNTRY), enriched in (INSERT COUNTRY) and/or fabricated in (INSERT COUNTRY).

B. (END-USER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed

[3] The Department will amend this certification to reflect changes, if any, in the existence of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended.

to circumvent the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

C. (END-USER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

D. (END-USER or IMPORTER OF RECORD) hereby certifies that the uranium being imported into the United States is in compliance with 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.* The material being imported represents (NUMBER) lbs. U_3O_8 equivalent of (NUMBER) lbs. U_3O_8 equivalent exported for further processing on (DATE) or delivered to an End-User outside the United States.

Signature:
Printed Name:
Title:

ATTACHMENT FIVE (page one)

Importation Notification Form and Certifications

TOPIC: Importation of Uranium Under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act—Consumption Outside the United States

Pursuant to Section L of the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, we hereby submit information describing our scheduled importation of Russian origin uranium into the United States for subsequent export:

1. Scheduled Date of Importation:
2. (NUMBER) lbs. of U_3O_8 in (NUMBER) KgU with enrichment assay (NUMBER) wt % and tails assay (NUMBER) wt % (if applicable):
3. Port of Importation:
4. Importer of Record:
5. Vessel/Airline:
6. Parties Providing Further Processing and/or storage:
7. Anticipated Date of Export out of U.S. (if available):
8. Non-U.S. End-User:

Also, please find attached the importer of record declaration regarding country of origin, anticircumvention, and qualification of the material under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act. We also agree to verification of this information if requested.

Signature:
Printed Name:
Title:

ATTACHMENT FIVE (page two)

Importation Notification Form and Certifications

CERTIFICATIONS TO U.S. CUSTOMS SERVICE

1. (OWNER or IMPORTER OF RECORD) hereby certifies that the HEU Natural Uranium Component of the uranium being imported into the United States is derived from Russian highly enriched uranium pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons. The uranium being imported was converted in (INSERT COUNTRY), and/or enriched in (INSERT COUNTRY), and/or fabricated in (INSERT COUNTRY) and is not intended for consumption in the United States.

2. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

3. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

4. (OWNER or IMPORTER OF RECORD) hereby further certifies that the material being imported will not be used in any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

5. (OWNER or IMPORTER OF RECORD) hereby further certifies that the material being imported will not be used in any arrangement, swap, exchange, or other transaction designed to circumvent the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.* and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Signature:
Printed Name:
Title:

ATTACHMENT SIX

Certification For All Other Uranium Importers

CERTIFICATION TO U.S. CUSTOMS SERVICE

1. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended, or the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised (FR Cite).[4]

Signature:
Printed Name:
Title:

[FR Doc. 99–20339 Filed 8–5–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3125–000, Docket No. ER99–3143–000, Docket No. ER99–3248–000, Docket No. ER99–3207–000, Docket No. ER99–3118–000, Docket No. ER99–3168–000, Docket No. ER99–3165–000 and Docket No. ER99–3197–000 (Not Consolidated)]

Minergy Neenah, L.L.C., Reliant Energy Indian River, L.L.C., Consolidated Edison Energy Massachusetts, Inc., Capital Center Generating Company, L.L.C., Duke Energy St. Francis, L.L.C., Astoria Generating Company, L.P., Tenaska Georgia Partners, L.P. and BIV Generation Company, L.L.C.; Notice of Issuance of Order

August 2, 1999.

Minergy Neenah, L.L.C., Reliant Energy Indian River, L.L.C., Consolidated Edison Energy Massachusetts, Inc., Capital Center Generating Company, L.L.C., Duke St. Francis, L.L.C., Astoria Generating Company, L.P., Tenaska Georgia Partners, L.P., and BIV Generation Company, L.L.C. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may

[4] Please insert into the certification the citation of this **Federal Register** notice.

also have requested in their respective application that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On July 28, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's July 28, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under part 34, subject to the condition found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should filed a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the dealine for filing motions to intervene or protests, as set forth above, is August 27, 1999.

Copies of the full text of the Order are availabile from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. This issuance may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–20276 Filed 8–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–459–006, et al.]

Bangor Energy Resale, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 30, 1999.

Take notice that the following filings have been made with the Commission:

1. Bangor Energy Resale, Inc.

[Docket No. ER98–459–006]

Take notice that on July 23, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. North American Energy Conservation, Inc., Energy International Power Marketing, Corporation, ENMAR Corporation, Nine Energy Services, LLC, LS Power Marketing, LLC, Griffin Energy Marketing, L.L.C., J. Aron & Company, CSW Energy Services, Inc., Morgan Stanley Capital Group Inc., Unicom Power Marketing, Inc., Hinson Power Company

[Docket Nos. [ER94–152–022, ER98–2059–005, ER99–254–003, ER98–1915–005, ER96–1947–012, ER97–4168–007, ER95–34–020, ER98–2075–006, ER94–1384–025, ER97–3954–008, and ER95–1314–017]

Take notice that on July 28, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Cook Inlet Energy Supply, CNG Retail Services Corporation, CNG Power Services Corporation, NGTS Energy Services, Poco Petroleum, Inc., Poco Marketing Ltd., Detroit Edison Company, Genstar Energy, L.L.C., Novarco Ltd., Williams Energy Marketing & Trading Company, ProLiance Energy, LLC, NYSEG Solutions, Inc.

[Docket Nos. ER96–1410–015, ER97–1845–008, ER94–1554–021, ER96–2892–010, ER97–2197–007, ER97–2198–008, ER98–3026–003, ER99–2364–001, ER98–4139–003, ER99–1722–002, ER97–420–010, and ER99–220–002]

Take notice that on July 26, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. The Montana Power Trading & Marketing Company, Illinova Energy Partners, Inc., PanCanadian Energy Services Inc., INFINERGY Services, LLC, Amoco Energy Trading Corporation, Primary Power Marketing L.L.C., CLECO Corporation

[Docket Nos. ER97–399–011, ER94–1475–017, ER90–168–042, ER98–3478–003, ER99–2895–001, ER98–4333–001, and ER96–2677–000]

Take notice that on July 27, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. New York Independent System, Operator, Inc.,

[Docket Nos. ER97–1523–010, OA97–470–009, and ER97–4234–007 (not consolidated)]

Take notice that on July 26, 1999, the New York Independent System Operator, Inc. (NYISO), pursuant to ordering paragraph (N) of the Commission's Order in Central Hudson Gas & Electric Corp., *et. al.*, 86 FERC ¶61,062 (1999), tendered for filing a market monitoring plan.

The NY ISO requests an effective date of September 1, 1999 and waiver of the Commission's notice requirements and of any applicable filing requirements not otherwise satisfied.

A copy of this filing has been served upon all persons on the Commission's official service lists in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000 and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Company

[Docket No. ER99–1661–000]

Take notice that on July 27, 1999, West Texas Utilities Company (WTU), tendered for filing three amended executed agreements with Brazos Electric Cooperative, Inc. (Brazos), a long-term market-based power sales agreement, a service agreement under the Central and South West Open Access Transmission Tariff and an Interconnection Agreement.

WTU continues to seek an effective date of January 1, 1999, for the three agreements and, accordingly, seeks waiver of the Commission's notice requirement.

Copies of the filing were served on Brazos, the Public Utility Commission of Texas and all parties to this proceeding.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Erie Boulevard Hydropower, L.P.

[Docket No. ER99–1764–002]

Take notice that on July 26, 1999, Erie Boulevard Hydropower, L.P. (Applicant) tendered for filing its Amended Code of Conduct in compliance with the Commission's order issued in Docket No. ER99–1764–000.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Energy Cooperative of Western New York, Inc.

[Docket No. ER99–3411–000]

Take notice that on June 29, 1999, Energy Cooperative of Western New York, Inc. (ECWNY), petitioned the Commission for acceptance of ECWNY Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

ECWNY intends to engage in wholesale electric power and energy purchased and sales as a marketer. ECWNY is not in the business of generating or transmitting electric power.

The Energy Cooperative of Western New York, Inc., is a not-for-profit corporation created by a group of businesses (both industrial and commercial). The Co-op's sole mission is to buy energy for its members at a low cost. It has met all the requirements of the PSC, Public Service Commission, of New York to offer this service to its members.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER99–3707–000]

Take notice that on July 22, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and OGE Energy Resources, Inc. (OERI), replacing the unexecuted service agreement filed on September 4, 1998 under Docket No. ER99–170–000 per COC FERC Electric Power Sales Tariff, Original Volume No. 4, which has been replaced by the COC FERC Electric Cost-Based Power Sales Tariff, Original Volume No. 7–MB.

COC and OERI are requesting an effective date of one day after the original filing in Docket No. ER99–170–000.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Central Vermont Public Service Corporation

[Docket No. ER99–3720–000]

Take notice that on July 26, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Delmarva Power & Light Company for Short Term Market Based Rate Power Sales and the Resale of Transmission Rights under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on July 29, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Central Vermont Public Service Corporation

[Docket No. ER99–3721–000]

Take notice that on July 26, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with NRG Power Marketing, Inc., for Short Term Market Based Rate Power Sales and the Resale of Transmission Rights under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on July 29, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Monmouth Energy, Inc., Carthage Energy, LLC, UtiliCorp United Inc., Williams Generation Company-Hazelton

[Docket Nos. ER99–3722–000], ER99–3735–000, ER99–3736–000, and ER99–3737–000]

Take notice that on July 26, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Cleco Marketing & Trading LLC

[Docket No. ER99–3724–000]

Take notice that on July 26, 1999, Cleco Marketing & Trading LLC, formerly named Cleco Trading & Marketing LLC, tendered for filing its Notice of Succession in which it adopted, ratified, and made its own in every respect all applicable rate schedules, and supplements thereto, heretofore filed with the Commission by Cleco Trading & Marketing LLC.

Effective June 25, 1999, Cleco Trading & Marketing LLC changes its name to Cleco Marketing & Trading LLC.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER99–3725–000]

Take notice that on July 26, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Coral Power, L.L.C., for acceptance by the Commission.

The ISO states that this filing has been served on Coral Power, L.L.C., and the California Public Utilities Commission.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER99–3726–000]

Take notice that on July 26, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and the City of Santa Clara, California, d/b/a Silicon Valley

Power (Santa Clara) for acceptance by the Commission.

The ISO states that this filing has been served on Santa Clara and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective July 15, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER99–3727–000]

Take notice that on July 26, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and the City of Santa Clara d/b/a Silicon Valley Power (Santa Clara) for acceptance by the Commission.

The ISO states that this filing has been served on Santa Clara and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of July 15, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Yadkin, Inc.

[Docket No. ER99–3728–000]

Take notice that on July 26, 1999, Yadkin, Inc. (Yadkin), tendered for filing a service agreement between Yadkin and Carolina Power & Light Company under Yadkin's FERC Electric Tariff Original Volume 2—Market-Based Rate Tariff. This Tariff was accepted for filing by the Commission on September 30, 1996, effective as of October 1, 1996, in Docket No. ER96–2603–000.

The service agreement is proposed to be effective June 28, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER99–3729–000]

Take notice that on July 26, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and the City of Santa Clara, California, d/b/a Silicon Valley Power (Santa Clara) for acceptance by the Commission.

The ISO states that this filing has been served on Santa Clara and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of July 15, 1999.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER99–3730–000]

Take notice that on July 26, 1999, Arizona Public Service Company (APS), tendered for filing its Open Access Transmission Tariff, Revision 5 (Revised Tariff). APS proposed Revised Tariff is consistent with the Commission's Pro Forma Tariff and the proposed changes do not change the rates or Annual Transmission Revenue Requirement as accepted in the Commission's Order in the consolidated Docket Nos. OA96–153 and ER96–2401, dated June 17, 1999.

APS requests a waiver of the Commission's Notice Requirements in accordance with 18 CFR 35.11 to allow for an effective date of August 1, 1999.

A copy of this filing has been served on the Arizona Corporation Commission and all parties of the attached Service List.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Virginia Electric and Power Company

[Docket No. ER99–3731–000]

Take notice that on July 26, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an assignment letter indicating that Northeast Energy Services, Inc. (NORESCO), will replace Equitable Power Services Company (Equitable Power) as transmission customer in the Non-Firm Point-to-Point Transmission Service Agreement dated February 4, 1997 and originally filed under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. The original Service Agreement was approved by the FERC in Docket No. ER97–4199–000 in a Letter Order dated October 2, 1997.

Copies of this filing were served upon NORESCO, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Montaup Electric Company, Westchester RESCO Company, L.P., Avista Energy, Inc., Tucson Electric Power Company, Tucson Electric Power Company, Allegheny Power, Arizona Public Service Company, Maine Public Service Company, Medical Area Total Energy Plant, Inc., Florida Power Corporation, Golden Spread Electric Cooperative, Inc., GS Electric Generating Cooperative, Inc.

[Docket Nos. ER99–3738–000, ER99–3739–000, ER99–3740–000, ER99–3741–000, ER99–3742–000, ER99–3743–000, ER99–3745–000, ER99–3746–000, ER99–3748–000, ER99–3747–000, ER99–3785–000, and ER99–3786–000]

Take notice that on July 27, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3744–000]

Take notice that on July 27, 1999, Alliant Energy Corporate Services, Inc. (Alliant Energy), tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, establishing the Central Wisconsin Electric Cooperative as a network customer under the terms of Alliant Energy's transmission tariff.

Alliant Energy requests an effective date of July 7, 1999, for Network Load of this Network Customer. Alliant Energy, accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Carolina Power & Light Company

[Docket No. ER99–3749–000]

Take notice that on July 27, 1999, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service with Entergy Power Marketing Corp., and Consumers Energy and a Service Agreement for Non-Firm Point-to-Point Transmission Service with Consumers Energy. Service to the Eligible Customers will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of July 19, 1999, for the Agreement with Entergy and July 21, 1999 for the Agreements with Consumers.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Carolina Power & Light Company

[Docket No. ER99–3750–000]

Take notice that on July 27, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Southern Indiana Gas & Electric Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

CP&L is requesting an effective date of July 12, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. FirstEnergy System

[Docket No. ER99–3751–000]

Take notice that on July 27, 1999, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Duke Energy Trading and Marketing, L.L.C., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is July 21, 1999, for the above mentioned Service Agreement in this filing.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–3752–000]

Take notice that on July 27, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Williams Energy Marketing & Trading Company (WLM), dated July 26, 1999. This Service Agreement specifies that WLM has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and WLM to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 26, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Kansas City Power & Light Company

[Docket No. ER99–3753–000]

Take notice that on July 27, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated July 12, 1999, between KCPL and Utilicorp United. This Agreement provides for the rates and charges for Short-term Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of July 20, 1999 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3754–000]

Take notice that on July 27, 1999, Alliant Energy Corporate Services, Inc. (Alliant), tendered for filing an executed First Amendment to the Service Agreement for Network Integration Transmission Service between Alliant Energy Corporate Service, Inc., and Wisconsin Public Power, Inc.

Alliant Energy Corporate Services, Inc., requests an effective date of June 1, 1997 for the filed Amendment. Alliant Energy Corporate Services, Inc., accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Turner Energy, L.L.C.

[Docket No. ER99–3755–000]

Take notice that on July 27, 1999, Turner Energy, L.L.C., tendered for filing notice of cancellation of Turner Electric Energy, L.L.C.'s FERC Rate Schedule No. 1.

Turner Energy, L.L.C., request that the cancellation or termination be effective as of December 31, 1998.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Duke Energy Corporation

[Docket No. ER99–3756–000]

Take notice that on July 27, 1999, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Entergy Power Marketing Corp., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on July 20, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. California Independent System Operator Corporation

[Docket No. ER99–3757–000]

Take notice that on July 27, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Strategic Energy, L.L.C., for acceptance by the Commission.

The ISO states that this filing has been served on Strategic Energy, L.L.C., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective July 15, 1999.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Niagara Mohawk Power Corporation

[Docket No. ER99–3758–000]

Take notice that on July 27, 1999, Niagara Mohawk Power Corporation, tendered for filing its Interconnection Agreement with independent power producer Onondaga Cogeneration Limited Partnership. The Interconnection Agreement governs the interconnection between Niagara

Mohawk's transmission system and Carr Street's East Syracuse, New York facility.

Copies of the filing were served upon Carr Street and the New York Public Service Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Entergy Services, Inc.

[Docket No. ER99–3759–000]

Take notice that on July 27, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (EGS), tendered for filing a Long-Term Market Rate Service Agreement between EGS and the Cities of Erath, Louisiana and Kaplan, Louisiana for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Entergy Services, Inc.

[Docket No. ER99–3760–000]

Take notice that on July 27, 1999, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (the Entergy Operating Companies), tendered for filing a revised form of Network Integration Transmission Service Agreement between Entergy Services and Entergy Services acting as agent for the Entergy Operating Companies.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. GEN–SYS Energy

[Docket No. ER99–3780–000]

Take notice that on July 27, 1999, GEN–SYS Energy tendered for filing a revised market-based rate schedule for the sale of electric energy and capacity at wholesale pursuant to negotiated agreements pursuant to the Commission's May 5, 1999 order issued in Docket EC99–61–000.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. CSW Power Marketing, Inc., Avista Corporation, Western Resources, Inc., Consolidated Edison Company of New York, Inc., Old Dominion Electric Cooperative, Milford Power Limited Partnership, Otter Tail Power Company, Southern Energy NY-Gen, L.L.C., Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., Montana-Dakota Utilities Co., Commonwealth Edison Company

[Docket Nos. ER99–3788–000, ER99–3789–000, ER99–3790–000, ER99–3791–000, ER99–3792–000, ER99–3793–000, ER99–3794–000, ER99–3795–000, ER99–3796–000, ER99–3797–000, ER99–3798–000 and ER99–3799–000]

Take notice that on July 28, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. New York Independent System Operator, Inc.

[Docket No. ES99–50–000]

Take notice that on July 28, 1999, the New York Independent System Operator, Inc. (NYISO) submitted an application under Section 204 of the Federal Power Act for authorization to assume short-term indebtedness. The NYISO intends to establish a $12 million dollar credit facility to meet its working capital and short-term operating needs. The NYISO has requested that the Commission authorize it to establish the credit facility no later than August 25, 1999, so that it may commence operations, as scheduled, on September 1, 1999.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Soyland Power Cooperative, Inc.

[Docket No. ES99–51–000]

Take notice that on July 28, 1999, Soyland Power Cooperative Inc. (Soyland), submitted an application under Section 204 of the Federal Power Act for authorization to enter into Irrevocable Letters of Credit in an amount not to exceed $7,325,000. The Applicant also requested exemption from the competitive bidding and negotiated offer requirements. Soyland requests expedited treatment for its application.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Southwestern Public Service Company v. El Paso Electric Company

[Docket No. OA96–200–008]

Take notice that on July 26, 1999, El Paso Electric Company (EPE or Company) filed a letter dated July 20, 1999, from them to Southwestern Public Service Company (SPS) showing the results of EPE's recent re-evaluation of certain previous requests of SPS for firm transmission service.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–20278 Filed 8–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–187–000, et al.]

Entergy Nuclear Holding Company, No. 1, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 29, 1999.

Take notice that the following filings have been made with the Commission:

1. Entergy Nuclear Holding Company No. 1, Inc.

[Docket No. EG99–187–000]

Take notice that on July 13, 1999, Entergy Nuclear Holding Company No. 1, Inc. amended its Application for Determination of Exempt Wholesale Generator Status filed on July 9, 1999.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Commonwealth Edison Company, Unicom Investment Inc., Edison Mission Energy

[Docket Nos. EC99–96–000 and ER99–3691–000]

Take notice that on July 22, 1999, Commonwealth Edison Company (ComEd), Unicom Investment Inc. (UII), and Edison Mission Energy (Mission) (collectively, the Parties), filed an application under Section 203 of the Federal Power Act for authorization for the sale by ComEd of its fossil generating facilities to a special purpose subsidiary of Mission. On the same date, the Parties filed under Section 205 of the Federal Power Act forms of Facilities Agreements that ComEd and Mission will enter into to govern interconnection and operations subsequent to the sale by ComEd to Mission.

ComEd, UII, and Mission, request the Commission to allow the Facilities Agreements to become effective upon closing of the sale transaction, which the parties expect to occur on or shortly after September 30, 1999.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Sithe Energies, Inc., Sithe Pennsylvania Holdings LLC, Sithe New Jersey Holdings LLC, Sithe Maryland Holdings LLC, York Haven Power Company

[Docket No. EC99–97–000]

Take notice that on July 22, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as and collectively referred to as GPU Energy), Sithe Energies, Inc. (Sithe), and Sithe affiliates Sithe Pennsylvania Holdings LLC, Sithe New Jersey Holdings LLC, Sithe Maryland Holdings LLC and York Haven Power Company submitted for filing an application pursuant to Section 203 of the Federal Power Act (FPA) concerning both the sale of substantially all of GPU Energy's non-nuclear generating facilities to the above-mentioned Sithe affiliates and the related corporate reorganization of entities within the Sithe corporate family that are subject to the Commission's jurisdiction under Section 205 of the FPA.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, AmerGen Energy Company L.L.C.

[Docket Nos. EC99–98–000 and ER99–3804–000]

Take notice that on July 23, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), New York State Electric 7 Gas Corporation (NYSEG) and AmerGen Energy Company, LLC (collectively, the Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain limited jurisdictional facilities associated with the sale of Niagara Mohawk and NYSEG of their interests in the Nine Mile Point Unit Nos. 1 and 2 nuclear gathering facilities located in the Town of Scriba, Oswego County, New York.

The Applicants have served copies of this filing on the New York Public Service Commission.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Illinova Corporation, Dynegy Inc.

[Docket No. EC99–99–000]

Take notice that on July 23, 1999, Illinova Corporation (Illinova) and Dynegy Inc. (Dynegy), tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1994 & Supp. 1998) and Part 33 of the Commission's Regulations, 18 CFR 33.1, a Joint Application for Approval of Merger and Request for Expedited Consideration.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Sierra Pacific Power Company, Nevada Power Company

[Docket No. EC99–100–000]

Take notice that on July 23, 1999, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 203 of the Federal Power Act, a Joint Application for Authorization of Transfer of Control Over Transmission Facilities. This application intended to transfer control over the Applicants' transmission facilities to the Mountain West Independent System Administrator (Mountain West) as contemplated in the related filing in Docket No. ER99–3719–000.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Energy Alternatives, Inc.

[Docket No. EG99–200–000]

Take notice that on July 21, 1999, Energy Alternatives, Inc. (Energy Alternatives) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Energy Alternatives, a Minnesota corporation, is a wholly-owned subsidiary of Midwest Energy Services, Inc., a Minnesota corporation, which is a wholly-owned subsidiary of Dakota Electric Association, a Minnesota cooperative corporation, which owns and operates an electric distribution system.

Energy Alternatives will own and operate generating facilities with a nominal capacity of 20 MW located in distribution substations near the cities of Lakeville, Miesville, and Hastings, Minnesota and in the townships of Byllesby and Castle Rock in Dakota County, Minnesota, consisting of ten 2 MW Caterpillar diesel reciprocating engine generator sets, five 480 volt/12,470 volt step up transformers, and associated circuit breakers. The facilities will be interconnected with the distribution system of Dakota Electric Association.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. COSI Coldwater, Inc.

[Docket No. EG99–204–000]

Take notice that on July 27, 1999, COSI Coldwater, Inc. (Applicant), with its principal office at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Facilities are located on more than 20 rivers and streams throughout upstate New York and consist of 72 hydroelectric generating plants that have a combined capacity of approximately 660 MW. Electric energy produced by the Facilities is sold exclusively at wholesale.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. COSI Carr St., Inc.

[Docket No. EG99–205–000]

Take notice that on July 27, 1999, COSI Carr St., Inc. (Applicant), with its principal office at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will provide operation and maintenance services to the East Syracuse Station (the Facility) an approximately 101 MW natural gas-fired combined-cycle cogeneration facility, located in East Syracuse, New York. Electric energy produced by the Facility is sold exclusively at wholesale.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. Nordic Electric, L.L.C., Con Edison Solutions, Inc., AC Power Corporation, Sparc, L.L.C., Agway Energy Services, Inc., Total Gas & Electric, Inc., Metro Energy Group, LLC, Shell Energy Services Company, L.L.C.

[Docket No. ER96–127–008, ER97–705–009, ER97–2867–008, ER98–2671–002, ER97–4186–007, ER97–4202–008, ER99–801–001 and ER99–2109–001]

Take notice that on July 23, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

11. CoEnergy Trading Company, MAC Power Marketing, L.L.C., New Millennium Energy Corporation, Spokane Energy, L.L.C.

[Docket No. ER96–1040–015, ER98–575–004, ER97–2681–006 and ER98–4336–003]

Take notice that on July 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

12. DukeSolutions

[Docket No. ER98–3813–004]

Take notice that on July 21, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

13. Wisconsin Electric Power Company

[Docket No. ER99–2900–000]

Take notice that on July 23, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2) as directed in the July 2, 1999 letter order in this docket.

Wisconsin Electric respectfully requests an effective date June 1, 1999. Wisconsin Electric requests waiver of the Commission's advance notice requirements.

Copies of the filing have been served on all current customers under the Coordination Sales Tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Dayton Power and Light Company

[Docket No. ER99–3684–000]

Take notice that on July 22, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing TXU Energy Trading Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agréements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon TXU Energy Trading Company and the Public Utilities Commission of Ohio.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation on Behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3685–000]

Take notice that on July 22, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 25 to add Ameren Energy, Inc., (Customer) to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of June 21, 1999, to Ameren Energy, Inc..

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. The United Illuminating Company

[Docket No. ER99–3686–000]

Take notice that on July 22, 1999, The United Illuminating Company (UI), tendered for filing for informational purposes all individual Purchase Agreements and Supplements to Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, as amended, during the six-month period November 1, 1998, through April 30, 1999.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Indiana Gas and Electric Company

[Docket No. ER99–3687–0000]

Take notice that on July 22, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing the following agreement concerning the provision of electric service to Allegheny Power Service Corporation, as a umbrella-term service agreement under its market-based Wholesale Power Sales Tariff.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER99–3688–000]

Take notice that on July 22, 1999, Arizona Public Service Company (APS), tendered for filing revised Exhibits A and C to APS-FERC Rate Schedule No. 225 between APS and Citizens Utilities Company (Citizens).

Current rate levels are unaffected, revenue levels are unchanged from

those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on Citizens and the Arizona Corporation Commission.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER99–3689–000]

Take notice that on July 22, 1999, Cinergy Services, Inc. (Cinergy), acting as agent for and on behalf of The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc., and Cleveland Public Power (CPP), tendered for filing an executed Letter Amendment to the Third Party Limited Term Agreement. This Agreement has been designated by Federal Energy Regulatory Commission (FERC) as CG&E Rate Schedule FERC No. 47.

The Letter Amendment provides that CG&E will only use firm transmission service through the American Power System and CPP will reimburse CG&E for the additional cost.

Cinergy and CPP are requesting an effective date of one day after this filing.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Alliance Energy Services Partnership

[Docket No. ER99–3690–000]

Take notice that on July 22, 1999, Alliance Energy Services Partnership (AESP), pursuant to section 35.15 of the Commission's Regulations, tendered for filing a notice of cancellation of its Rate Schedule FERC No. 1.

AESP has requested an effective date for the proposed rate schedule cancellation of July 23, 1999. Accordingly, AESP requests waiver of the 60-day prior notice requirement.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Sithe New Jersey Holdings LLC, Sithe Pennsylvania Holdings LLC, Sithe Maryland Holdings LLC, Sithe Power Marketing, L.P. Sithe Energies, Inc.

[Docket No. ER99–3692–000]

Take notice that on July 22, 1999, Sithe New Jersey Holdings LLC and Sithe Pennsylvania Holdings LLC (together Applicants), tendered for filing a petition for Commission acceptance of proposed rate schedules. Applicants request authority to make wholesale power sales, including energy and capacity, at market-based rates, requests certain blanket authorizations, and waiver of certain of the Commission's Regulations.

The Applicants intend to engage in wholesale power sales. The Applicants do not own or control and are not affiliated with any entity that owns or controls electric transmission or distribution facilities in the United States. Applicants further state that it is not affiliated with any franchised electric utility in the Untied States. Applicants conclude that any interests that its affiliates have in domestic electric generation facilities do not raise any generation market power concerns.

Applicants request that the tendered rate schedules become effective as of closing of a divestiture transaction with Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. The closing is anticipated for September of 1999.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Midwest Generation, LLC

[Docket No. ER99–3693–000]

Take notice that on July 22, 1999, Midwest Generation, LLC (Seller), a limited liability company organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed market-based rate tariff; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is an indirect subsidiary of Edison International.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Southwest Power Pool

[Docket No. ER99–3694–000]

Take notice that on July 22, 1999, Southwest Power Pool (SPP), tendered for filing four service agreements for point-to-point transmission service and loss compensation service under the SPP Tariff with Western Resources Generation Services (Western Resources) and Public Service Company of Colorado (PSCo).

SPP requests an effective date of July 1, 1999, for these agreements.

Copies of this filing were served upon Western Resources and PSCo.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Puget Sound Energy, Inc.

[Docket No. ER99–3695–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Engelhard Power Marketing, Inc. (Engelhard).

A copy of the filing was served upon Engelhard.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Puget Sound Energy, Inc.

[Docket No. ER99–3696–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Enron Power Marketing, Inc. (EPMI).

A copy of the filing was served upon EPMI.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Puget Sound Energy, Inc.

[Docket No. ER99–3697–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Heartland Energy Services (Heartland).

A copy of the filing was served upon Heartland.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Puget Sound Energy, Inc.

[Docket No. ER99–3698–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Hetch-Hetchy Water & Power (Hetch-Hetchy).

A copy of the filing was served upon Hetch-Hetchy.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Puget Sound Energy, Inc.

[Docket No. ER99–3699–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff,

First Revised Volume No. 8, with Illinova Energy Partners, Inc. (Illinova).

A copy of the filing was served upon Illinova.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Puget Sound Energy, Inc.

[Docket No. ER99–3700–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Entergy Electric System (Entergy).

A copy of the filing was served upon Entergy.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Puget Sound Energy, Inc.

[Docket No. ER99–3701–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Engage Energy US, L.P. (Engage).

A copy of the filing was served upon Engage.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Rochester Gas and Electric Corporation

[Docket No. ER99–3702–000]

Take notice that on July 22, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and TransAlta Energy Marketing (U.S.) Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553–000 (80 FERC ¶ 61,284) (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of July 19, 1999, for TransAlta Energy Marketing (U.S.) Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Puget Sound Energy, Inc.

[Docket No. ER99–3703–000]

Take notice that on July 22, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Idaho Power Company (IPC).

A copy of the filing was served upon IPC.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Rochester Gas and Electric Corporation

[Docket No. ER99–3704–000]

Take notice that on July 22, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and American Electric Power Service Corporation. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553–000 (80 FERC ¶ 61,284) (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of July 1, 1999, for American Electric Power Service Corporation's Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Metropolitan Chicago Healthcare Council—Shared Services, Inc.

[Docket No. ER99–3705–000]

Take notice that on July 22, 1999, Metropolitan Chicago Healthcare Council—Shared Services, Inc. (MCHC—Shared Services, Inc.), tendered for filing its petition to the Commission for acceptance of MCHC—Shared Services, Inc.'s Rate Schedule FERC Tariff No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission Regulations.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Services, Inc.

[Docket No. ER99–3706–000]

Take notice that on July 22, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and OGE Energy Resources, Inc. (OERI), replacing the unexecuted service agreement filed on September 4, 1998 under Docket No. ER99–170–000 per COC FERC Electric Power Sales Tariff, Original Volume No. 4, which has been replaced by the COC FERC Electric Cost-Based Power Sales Tariff, Original Volume No. 6–CB.

COC and OERI are requesting an effective date of one day after the original filing in Docket No. ER99–170–000.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Northeast Utilities Service Company

[Docket No. ER99–3708–000]

Take notice that on July 23, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Consolidated Edison Energy, Inc. (CEEI) under the NU System Companies' Sale for Resale Tariff No. 7 Market Based Rates.

NUSCO states that a copy of this filing has been mailed to CEEI.

NUSCO requests that the Service Agreement become effective July 1, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Northeast Utilities Service Company

[Docket No. ER99–3709–000]

Take notice that on July 23, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Statoil Energy Trading, Inc. (Statoil) under the NU System Companies' Sale for Resale Tariff No. 7 Market Based Rates.

NUSCO states that a copy of this filing has been mailed to Statoil.

NUSCO requests that the Service Agreement become effective July 1, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Southwestern Public Service Company

[Docket No. ER99–3710–000]

Take notice that on July 23, 1999, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Tenaska Power Services Company (Tenaska). This umbrella service agreement provides for

Southwestern's sale and Tenaska's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Pennsylvania Electric Company

[Docket No. ER99–3711–000]

Take notice that on July 23, 1999, Pennsylvania Electric Company (doing business as and referred to as GPU Energy), tendered for filing the First Amended and Restated Interconnection Agreement by and between The Cleveland Electric Illuminating Company (CEI) and Pennsylvania Electric Company (Agreement). The Agreement is associated with the sale of GPU Energy's 20% interest in the Seneca Pumped Storage Generating Station (Seneca) to CEI.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Pacific Gas and Electric Company

[Docket No. ER99–3713–000]

Take notice that on July 23, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing an Interconnection Agreement Between Pacific Gas and Electric Company and Fresno Irrigation District (Fresno), dated May 28, 1999. The Interconnection Agreement (IA or Agreement) establishes the terms and conditions under which PG&E will provide electric system interconnection between PG&E and Fresno. In its filing letter, PG&E has explained that the IA in this docket is identical to the Interconnection Agreement pending before the Commission in Laguna Irrigation District, Docket No. EL98–46–000 and related Docket No. ER99–3145–000, with the exception of the contents of Appendix A (specifying the points of interconnection) and the name of the Irrigation District. PG&E also has explained that the IA contains a reservation of rights with respect to disputes arising under the FPA.

Copies of this filing have been served upon Fresno and the California Public Utilities Commission.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Duquesne Light Company

[Docket No. ER99–3714–000]

Take notice that on July 23, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Aquila Energy Marketing Corporation (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 24, 1998.

Copies of this filing were served upon Customer.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. Allegheny Power Service Corporation on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3715–000]

Take notice that on July 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment No. 2 to Supplement No. 8 to the Market Rate Tariff and Amendment No. 2 to Supplement No. 33 to the Standard Generation Service Tariff to incorporate Netting Agreements with New Energy Ventures, Inc. into the tariff provisions.

Allegheny Power requests a waiver of notice requirements to make the Amendments effective as of the effective dates therein, May 28, 1999 for Amendment No. 2 to Supplement No. 33 and June 2, 1999, for Amendment No. 2 to Supplement No. 8.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

43. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3716–000]

Take notice that on July 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 34 to the Standard Generation Service Tariff to incorporate Netting Agreements with Penn Power Energy into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, July 13, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

44. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3717–000]

Take notice that on July 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 3 to the Market Rate Tariff and Amendment Nos. 1 and 2 to Supplement No. 32 to the Standard Generation Service Tariff to incorporate Netting Agreements with Strategic Energy, L.L.C., into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, July 13, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

45. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3718–000]

Take notice that on July 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 22 to the Standard Generation Service Tariff to incorporate Netting Agreements with American Energy Trading, Inc., into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, July 7, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

46. Central Vermont Public Service Corporation

[Docket No. ER99–3723–000]

Take notice that on July 23, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Energy Atlantic, L.L.C., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on July 26, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

47. Bangor Hydro-Electric Company, Rochester Gas and Electric Corporation

[Docket No. ER99–3732–000 and ER99–3734–000]

Take notice that on July 23, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending, June 30, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

48. Cadillac Renewable Energy LLC

[Docket No. ER99–3733–000]

Take notice that on July 23, 1999, Cadillac Renewable Energy LLC filed its quarterly report for the quarter ending March 31, 1999.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–20250 Filed 8–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meeting and Soliciting Scoping Comments for an Applicant-Prepared Environmental Assessment Using the Alternative Licensing Process

August 2, 1999.

a. *Type of Application:* Alternative Licensing Process.

b. *Project No.:* 487.

c. *Applicant:* PP&L, Inc.

d. *Name of Project:* Wallenpaupack.

e. *Location:* On the Wallenpaupack Creek and Lackawaxen River, near the Borough of Hawley and the City of Scranton, in Wayne and Pike Counties, Pennsylvania. The project would not utilize federal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Gary Petrewski, PP&L, Inc., Two North Ninth Street (GENN5), Allentown, PA 18101–1179, (610) 774–4759.

h. *FERC Contact:* Any questions on this notice an the scoping process should be addressed to Patrick Murphy, E-mail address, patrick.murphyferc.fed.us, or telephone (202) 219–2659.

i. *Deadlines for Filing Scoping Comments:* October 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20416.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of the Project:* The project consists of an 870-foot-long, 67 foot-high concrete dam with a center spillway equipped with two 67.5-foot-long by 14-foot-high steel roller gates; a 13-mile-long, 5,700 acre reservoir at a full pool elevation of 1,190 feet msl; an 18,000-foot-long, 14-foot-diameter pipeline connecting the dam with the powerhouse; a powerhouse containing two generating units with a total installed capacity of 40,000 kW; and other appurtenances.

k. *Scoping Process:* PP&L, Inc. (PP&L) intends to use the Federal Energy Regulatory Commission's (Commission) alternative licensing procedures (ALP). Under the ALP, PP&L will prepare an Applicant Prepared Envirnmental Assessment (APEA) and license application for the Wallenpaupack Project.

On May 4, 1999, PP&L requested the Commission's approval to use the ALP. The Commission issued a notice of this request on June 25, 1999, with comments due by July 25, 1999. After receipt of comments on this notice, the Commission will issue an order addressing PP&L's request for approval to use the ALP. PP&L expects to file with the Commission, the APEA and license application for the Wallenpaupack Project by September 30, 1992. The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meeting identified below, and to solicit your scoping comments.

Scoping Meeting

PP&L and the Commission staff will hold a public scoping meeting to help

us identify the scope of issues to be addressed in the APEA. In addition to the public scoping meeting, PP&L is holding an "open house" that will feature information on project operation and existing project facilities as well as guided tours of the dam and lake. The open house is an ideal opportunity to meet the PP&L staff and informally discuss issues relating to the relicensing of the Lake Wallenpaupack Project.

Open House
Wednesday, September 1, 1999, 10:00 a.m.–3:00 p.m., Lake Wallenpaupack Conference Center, Hawley, PA

Evening Public Meeting
Wednesday, September 1, 1999, 7:00 p.m., Lake Wallenpaupack Area High School, Route 6, Hawley, PA

To help focus discussion, PP&L will mail Scoping Document 1 (SD1) outlining the subject areas to be addressed in the APEA to the parties on the PP&L mailing list. Copies of SD1 will also be available at the scoping meeting. Additionally, PP&L will mail an initial information package (IIP) that provides an in-depth description of the Wallenpaupack Project and surrounding environment.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping meeting.

Objectives

At the scoping meeting, PP&L will, with Commission staff's assistance: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA; (4) determine the resource issues to be addressed in the APEA; and (5) identify those resources that require a detailed study as well as those issues that do not require a detailed analysis.

Procedures

The meeting will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the public meeting and to assist staff in defining and clarifying the issues to be addressed in the APEA.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 99–20277 Filed 8–5–99; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements
Filed July 26, 1999 Through July 30, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990261, Draft EIS, USN, Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA), To Improved Capability to Detect Quieter and Harder-to-Find Foreign Submarines, Implementation, Due: October 28, 1999, Contact: Joseph Johnson (703) 601–1687. Published FR–06–11–99—Correction to Contact Person Name and Telephone.

EIS No. 990266, Draft EIS, AFS, WY, Squirrel Meadows—Grand Targhee Land Exchange Proposal, Implementation, Targhee National Forest, Teton County, WY, Due: September 20, 1999, Contact: Patty Bates (208) 354–2312.

EIS No. 990267, Final EIS, NRS, MN, Snake River Watershed Plan, Watershed Protection and Flood Prevention, NPDES Permit and COE Section 404 Permit, Marshall Pennington and Polk Counties, MN, Due: September 07, 1999, Contact: William Hunt (651) 602–7854.

EIS No. 990268, Draft EIS, NPS, AK, Spruce Creek Access Project, Construct and Operation. Denali National Park and Preserve, NPDES and COE Section 404 Permits, AK, Due: September 30, 1999, Contact: Nancy Swantton (907) 683–9500.

5EIS No. 990269, Final EIS, COE, CA, Morrison Creek Mining Reach Downstream (South) of Jackson Highway, Mining and Reclamation Project, COE Section 404 Permit Issuance. Sacramento County, CA, Due: September 07, 1999, Contact: Larry Vinzant (916) 557–5263.

EIS No. 990270, Draft EIS, AFS, AK, Skipping Cow Timber Sale, Harvesting Timber, South Half of Zarembo Island, Tongass National Forest, Wrangell, Contact: Jerry Jordan (907) 974–2323.

EIS No. 990271, Draft EIS, COE, FL, Herbert Hoover Dike Major Rehabilitation Evaluation Study, Improvements to the Breach of Reach One, Lake Okeechobee, FL, Due: September 24, 1999, Contact: Mark Ziminske (904) 232–1786.

EIS No. 990272, Final EIS, AFS, AZ, Grand Canyon/Tusayan Growth Area Improvements, General Management Plan (GMP), Special-Use-Permit, Approvals and Licenses Issuance, Coconino County, AZ, Due: September 07, 1999, Contact: R. Dennis Lund (520) 635–8200.

EIS No. 990273, Final EIS, GSA, TN, Volunteer Army Ammunition Plant, Disposal and Transfer Ownership of Property to Other Federal Agencies and Private Entities, City of Chattanooga's, Hamilton County, TN, Due: September 07, 1999, Contact: Phil Youngberg (404) 331–1831.

EIS No. 990274, Draft EIS, BLM, NV, South Pipeline Mine Project, Proposal to Extend Gold Mining Operations, Implementation, Lander County, NV, Due: October 05, 1999, Contact: Gary Foulkes (775) 635–4060.

EIS No. 990275, Draft EIS, FHW, ND, Interstate 29 Reconstruction Project, Improvements from Rose Coulee to Cass County Road No. 20, Funding, City of Fargo, ND, Due: September 20, 1999, Contact: Mr. J. Michael Bowen (701) 328–9550.

Amended Notices

EIS No. 990252, Final Supplement, FAA, IN, Indianapolis International Airport Master Plan Development, Updated/New Information, Establishing New Air Traffic Procedures to Restore, Construct and Operate, Runway 5L/23R Parallel to existing Runway 14/32 and connecting to Runways 5R/23L and 5L/23R, Airport Layout Plan Approval, Funding and US COE Section 404 Permit, Marion County, IN, Due: September 07, 1999, Contact: George M. Bebble (847) 294–7832. Published FR–07–16–99—The Agency inadvertently omitted the Executive Summary from the Final Supplemental EIS. Because of the Omission the Agency Extend the Comment Period from 8–16–99 to 9–7–99. Also, Changed the Contact Person Name and Phone.

Dated: August 3, 1999.
William D. Dickerson,
Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 99–20330 Filed 8–5–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 12, 1999 Through July 16, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–J65306–MT Rating EC2, Nevada/Dalton Project, Implementation of Fire Treatment, Timber Harvest, Travel Management of Road, Helena National Forest, Lincoln Ranger District, Lewis & Clark and Powell Counties, MT.

Summary: EPA expressed environmental concerns regarding lack of an air quality impact analysis to determine impacts from prescribed burning, the lack of information and commitment to carrying out a monitoring program to identify impacts from the implementation activities and the potential drift of herbicides to aquatic areas from aerial application. EPA noted that proposed actions need to be consistent with the State of Montana's TMDL development.

ERP No. D–FAA–K51038–CA Rating EO2, San Jose International Airport Master Plan Update, Improvements include Extension of Runway 12R/30L from 10,200 ft to 11,000 ft; Extension of Runway 12L/30R, Airport Layout Plan, City of San Jose, Santa Clara County, CA.

Summary: EPA expressed environmental objections due to a lack of full disclosure of noise impacts. EPA also suggested that opportunities may exist to reduce the use of hazardous materials, reduce hazardous waste generation, adopt more comprehensive solid waste recycling, reduce the use of pesticides and fertilizers, and protect water quality and groundwater. EPA expressed serious concern about the project's potential air quality impacts, including projected exceedances of a Federal air quality standard and projected emissions increases for at least eight hazardous air pollutants.

ERP No. DA–FHW–K40105–CA Rating LO, Devil's Slide Bypass Improvements, CA–1 To Half Moon Bay Airport to Linda Mar Boulevard, Updated Information, Funding and COE Section 404 Permit, Pacifica and San Mateo Counties, CA.

Summary: EPA reviewed the Devil's Slide Draft Supplemental EIS, expressed a lack of objections to the project.

ERP No. DS–DOE–A09828–00 Rating EC2, Surplus Plutonium Disposition (DOE/EIS–0283–DS) for Siting, New and Revised Information, Construction and Operation of three facilities for Plutonium Disposition, Possible Sites Hanford, Idaho National Engineering and Environmental Laboratory, Pantex Plant and Savannah River, CA, ID, NM, SC, TX and WA.

Summary: EPA continues to express concerns regarding effects on water and ecological resources and the presence of contamination in the existing environment and lack of assurance that the proposed operations would not lead to further adverse impacts.

ERP No. DS–FHW–K40220–CA Rating **3, CA–125 South Route Location, Adoption and Construction, between CA–905 on Otay Mesa to CA–54 in Spring Valley, Updated and Additional Information, Funding and COE Section 404 Permit, San Diego County, CA.

Summary: EPA determined that the SDEIS was greatly limited in it's discussion of potentially significant impact from the direct, indirect, secondary, and cumulative impacts to wetlands, waters of the U.S., water quality, air quality, and biological resources. EPA recommends that a supplemental EIS be prepared and circulated for comment.

Final EISs

ERP No. F–BLM–K65217–AZ Ray Land Exchange/Plan Amendment, Implementation, Exchange of Federal Lands for Public Lands, Pinal, Gila and Mohave Counties, AZ.

Summary: EPA continues to object to the proposed project based on its potential to cause significant, continued degradation of resources in the project area and has requested appropriate mitigation of impacts to wildlife, habitat, and water resources.

ERP No. F–FAA–D51026–00 Potomac Consolidated Terminal (PCT) Radar Approach Control Facility (TRACON), To consolidated four TRACON in Baltimore-Washington Metro Terminal Area, Possible Site is Vint Hill Farms, VA, DC and MD.

Summary: EPA's previous concerns have been adequately addressed therefore, EPA has no objection to the action.

Other

ERP No. LF–AFS–K65185–CA Tahoe National Forest and Portion of Plumas and EL Dorado National Forests, Implementation, Twenty-Two Westside Rivers for Suitability and inclusion in the National Wild and Scenic Rivers System, Wild and Scenic River Study, Placer, Nevada, Sierra, Plumas, EL Dorado and Yuba Counties, CA.

Summary: EPA continues to object to the Forest Service's decision to designate the Downieville complex or to actively seek Research Natural Area or Special Interest Area designation to ensure protection of its acknowledged, exceptional ecosystem values. EPA support the proposed designation of Canyon Creek, lower South Yuba River, and the North Yuba River.

Dated: August 3, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–20331 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34191; FRL–6093–8]

Organophosphate Pesticide; Pesticide Registration Notice; Availability for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability for public comment of a Pesticide Registration Notice that presents EPA's proposed approach for managing risks from organophosphate pesticides to occupational users. The approach described in this notice applies to both workers and handlers as defined by the Worker Protection Standard (WPS), and other persons not specifically covered by WPS, who nonetheless perform similar activities and are exposed to pesticides in a similar manner. In general, this proposed approach provides for baseline protective measures for all occupational situations where these measures are feasible and where current risk assessments show that they are necessary, including closed mixing and loading systems, enclosed cab equipment or equivalent protective clothing, and increased reentry intervals. Further, this notice outlines the steps that EPA will take to address situations when the baseline mitigation measures are not feasible, or situations where maximum feasible mitigation is

still inadequate to protect occupational users.

DATES: Comments, identified by docket control number OPP–34191, must be received by EPA on or before October 5, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34191 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Linda Werrell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (703) 308–8033 and fax number: (703) 308–8041; e-mail address: werrell.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To obtain electronic copies of the proposed Pesticide Regulation Notice mentioned in this notice, you can go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/ pesticides/op/fedreg.htm. You may access information about organophosphate pesticides at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34191. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34191 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption.Electronic submissions will be accepted in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34191. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

• Explain your views as clearly as possible.

• Describe any assumptions that you used.

• Provide copies of any technical information and/or data you used that support your views.

• If you estimate potential burden or costs, explain how you arrived at the estimate.

• Provide specific examples to illustrate your concerns.

• Offer alternative ways to improve the rule or collection activity.

• Make sure to submit your comments by the deadline in this notice.

• At the beginning of your comments, be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. Are There Issues on Which EPA is Particularly Interested in Receiving Comment?

Comments are encouraged on any aspect of the Pesticide Registration Notice mentioned in this notice. EPA is particularly interested in comments on the following matters:

1. Is EPA's definition of closed systems and closed cabs too broad or too specific? Should EPA adopt the same standards as California for closed systems?

2. What technologies are available or under development to reduce exposure to occupational users in green houses and during orchard applications? Are there other agricultural applications for which closed cabs are not currently feasible?

3. The Pesticide Registration Notice gives one example of the industry moving toward automated or technological replacements for human occupational users (the substitution of Geographic Positioning Systems (GPS) or mechanical flaggers for human flaggers in aerial applications). Are there other examples where agricultural work functions could be automated ?

4. In many cases, existing re-entry intervals (REIs) for organophosphate pesticide uses may be inadequate. Where feasible, EPA will seek to extend re-entry intervals, however, there are practical limits on the length of re-entry intervals. What other measures should EPA consider to protect occupational users re-entering treated fields? Is testing/monitoring of plant residues prior to harvest practical?

5. For retained uses where exposure to occupational users is still a concern, EPA may require biological monitoring for occupational user populations of concern. As many organophosphate pesticide uses are of concern, what is the most efficient approach to monitoring occupational user populations?

IV. What Action is EPA Taking in this Notice?

This notice announces the availability for public comment of a Pesticide Registration Notice that presents EPA's proposed approach for managing risks from organophosphate pesticides to occupational users. The approach described in this notice applies to both workers and handlers as defined by the Worker Protection Standard (WPS), and other persons not specifically covered by WPS, who nonetheless perform similar activities and are exposed to pesticides in a similar manner. The proposed risk management approach that is outlined in this Pesticide Registration Notice would be used in developing the individual organophosphate pesticide occupational risk management decisions, which will be proposed for public comment as part of the pilot public participation process that EPA and Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

The Agency is proposing this approach for managing risk to occupational users of organophosphate pesticide products at this time because the organophosphate pesticide occupational risk assessments developed thus far indicate, with few exceptions, that risk management measures beyond those specified by the Worker Protection Standard (40 CFR part 170) will be needed to adequately protect occupational users of these products. In many cases, the organophosphate pesticide risk assessments show that even when the maximum feasible protective clothing and engineering controls are used, risks to occupational users still exceed the Agency's levels of concern. In such instances, EPA is required by FIFRA to weigh these risks against the benefits of the pesticide's use. The Agency is outlining its proposed decision process in this notice because early notification to registrants will help to ensure that occupational risk management decisions for the organophosphate pesticides will be approached consistently and implemented equitably. The Agency also believes this early notification will encourage the voluntary adoption of measures to reduce risks to occupational users as soon as possible.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 2, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–20315 Filed 8–5–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34192; FRL–6097–9]

Neurotoxic Pesticides; Availability of Data Call-In Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is requiring registrants of neurotoxic pesticides to conduct acute, subchronic, and developmental neurotoxicity studies and submit the results to EPA. These studies are designed to show the effects of a chemical on the nervous system. EPA will issue Data Call-In Notices to registrants of all neurotoxic pesticides in phases over time, beginning with the cholinesterase-inhibiting organophosphates because of their known neurotoxicity concerns. EPA expects to receive the first studies within 2 years. This Data Call-In program was developed with the advice of the Children's Health Advisory Committee and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel.

DATES: The Data Call-In Notice will be available October 5, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34192 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (703) 308–8004 and fax number: (703) 308–8005; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To obtain electronic copies of the Neurotoxicity Data Call-In Notice mentioned in this notice, you can go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/ pesticides/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34192. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34192 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption.Electronic submissions will be accepted in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34192. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action is EPA Taking in this Notice?

EPA is requiring registrants of neurotoxic pesticides to conduct acute, subchronic, and developmental neurotoxicity studies and submit the results to EPA. These studies are designed to show the effects on the nervous system of a chemical with a one-time or very short-term dose (acute), with exposure over an extended period of time (sub-chronic), and before or shortly after birth (developmental). The data developed in response to this Data Call-In will help determine whether or not differences occur because of age or stage of nervous system development. (The differences could be measurable (or quantitative) or descriptive (qualitative)). EPA will use these data in making decisions in the implementation of certain aspects of the Food Quality Protection Act's (FQPA) tolerance-setting process.

EPA is implementing the Data Call-In in phases over the next several months to ensure that data from the highest priority neurotoxic pesticides are called in first and that the laboratory capacity available to pesticide registrants is adequate to perform the studies within the required timeframes. This program to call in data will apply to approximately 140 pesticides. The cholinesterase-inhibiting organophosphates have been selected to be the first chemical class to be called in, based on their known neurotoxicity concerns. EPA expects to receive the first studies within 2 years. This Data Call-In program was developed with the advice of the Children's Health Advisory Committee and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 2, 1999.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–20316 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6407–9]

Proposed Administrative Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Upper Tenmile Creek Watershed Site, Lewis and Clark County and Jefferson County, Montana

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), concerning the Upper Tenmile Creek Watershed site in Lewis and Clark County and Jefferson County, Montana (Site). The proposed settlement agreement (Agreement) requires the Chapter 7 bankruptcy estates of Pegasus Gold Montana Mining, Inc. (PGMMI) and Pangea Explorations, Inc. (PEI) to transfer an environmental protection easement and dedication of restrictive uses to property within the Basin Creek Mine, located within the Site, to Lewis and Clark County of the benefit of the United States Environmental Protection Agency (EPA). EPA intends to use a portion of the property, known as the Luttrell Pit, for a mine waste repository for abandoned mine removal actions which will be undertaken pursuant to EPA's CERCLA authorities.

The settlement resolves the Estates' CERCLA liability for the Luttrell Pit. Because of the Estates' obligations to reclaim the Basin Creek Mine pursuant to the Montana Metal Mine Reclamation Act, Mont. Code Ann. section 82–4–301 *et seq.*, the State of Montana, acting by and through the Department of Environmental Quality, is a party to the Agreement. Additionally, the Agreement is subject to the approval of the United States Bankruptcy Court, District of Nevada.

DATES: For a period of ten (10) days from the date of publication of this document, the public may submit comments to EPA relating to this proposed settlement.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado, (303) 312–6473. Comments should be addressed to Carol J. Pokorny, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, and should reference the Upper Tenmile Creek Watershed site Basin Creek Mine Agreement.

FOR FURTHER INFORMATION CONTACT: Suzanne Bohan, Enforcement Attorney, at (303) 312–6925.

Dated: July 12, 1999.

Andrew Michael Gaydosh,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 99–20307 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6407–8]

Proposed Agreement and Covenant Not to Sue Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—Upper Tenmile Creek Watershed Site, Lewis and Clark County and Jefferson County, MT

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLE) concerning the Upper Tenmile Creek Watershed Site, in Lewis and Clark and Jefferson Counties, Montana (the "Site"). Under the Agreement and Covenant Not to Sue (Agreement), Lewis and Clark County will acquire an environmental protection easement to a portion of the Site for the benefit of EPA. Lewis and Clark County does not intend to use the property. EPA intends to use the property as a repository for waste excavated from abandoned miles.

DATES: For a period of ten (10) days from the date of publication of this document, the public may submit comments to EPA relating to the Agreement. Copies of the Agreement may be obtained from the Superfund Records Center at the address listed below.

ADDRESSES: The Agreement is available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Carol Pokorny, Technical Enforcement Program, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, and should reference the Upper Tenmile Creek Watershed Site Agreement and Covenant Not to Sue with Lewis and Clark County.

FOR FURTHER INFORMATION CONTACT: Suzanne Bohan, Legal Enforcement Program, at 303/312–6925.

Dated: July 12, 1999.

Andrew Michael Gaydosh,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 99–20308 Filed 8–5–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Special Executive Session

Date & Time: Wednesday, August 4, 1999, 10:00 a.m.

Place: 999 E Street, NW., Washington, DC

Status: This meeting will be closed to the public pursuant to 11 CFR 2.4(b)(7).

Items To Be Discussed: Matters concerning participation in civil actions or proceedings or arbitration.

Person to Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–20392 Filed 8–4–99; 11:28 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Distribution of Funds to Address Unmet Needs Resulting From Presidentially Declared Disasters

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA announces the allocation of Fiscal Year (FY) 1999 funds for grants to States to address disaster-related needs not met by Federal disaster relief programs. The amount of $230 million is available to certain States for use in communities that have experienced Presidentially declared major disasters in FY 1998 and/or FY 1999. The funds will be allocated to States (grantees) for distribution in communities affected by the disasters.

EFFECTIVE DATE: This notice is effective August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Director, Program Support Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW, Room 417, Washington, DC 20472, (telephone) 202–646–4621, (facsimile) 202–646–3104, or (email) *robert.shea@fema.gov.*

SUPPLEMENTARY INFORMATION: Congress recently appropriated $230 million to the Federal Emergency Management Agency (FEMA) to address communities' unmet disaster assistance needs for Fiscal Years 1998 and 1999. Congress instructed FEMA to award these funds expeditiously to States for use in eligible communities. Pub. L. 106–31, Emergency Supplemental Appropriations Act for Fiscal Year 1999, requires the publication of a notice governing the allocation and use of these funds.

Authority: Pub. L. 106–31, Emergency Supplemental Appropriations Act for Fiscal Year 1999.

Eligible Applicants

States are to use these funds to benefit communities affected by Presidentially-declared major disasters, including Native American tribes. We surveyed States for their unmet needs related to disasters declared before January 1, 1999. We are currently requesting States to identify unmet needs related to disasters declared between January 1, 1999 and May 21, 1999. The later date is the date of enactment of the appropriations bill that provides the funds for this effort.

State emergency management organizations (grantees) will administer these grants in conjunction with their administration of FEMA disaster assistance programs.

Availability of Funds

We will initially allocate funding to States that meet the following criteria:

- Certain States affected by the January 1998 ice storms;
- Certain States affected by Hurricane Georges;
- States with major disasters declared between October 1, 1998 and January 1, 1999.

These States are: Louisiana, Mississippi, Puerto Rico, Alabama, New York, New Hampshire, Kansas, Washington, Florida, Texas, Vermont, and Missouri.

Allocations The initial allocations are as follows:

State	Disaster No.	Allocation
Alabama	1250	$7,112,000
Florida	1259	2,559,000
Florida [*]	1249	27,337,000
Kansas	1254	7,994,000
Kansas	1258	5,514,000
Louisiana	1246	5,840,000
Mississippi	1251	13,273,000
Missouri	1253	7,029,000
Missouri	1256	4,130,000
New Hampshire	1199	3,937,000
New York	1196	41,668,000
Puerto Rico	1247	15,600,000
Texas	1257	42,108,000
Vermont	1201	481,000
Washington	1252	836,000
Washington	1255	4,247,000
Total		189,665,000

[*] $40,000 of the allocation for disaster number 1249 is designated for the Poarch Band of Creek Indians (Florida).

We will provide an application package to States that receive allocations. States will submit applications to us indicating the proposed use of the funds. Awards will be made, up to the amount of the allocation, after an expedited review of the State application package.

The application will require additional information and data that was used by the States in identifying the amount of their unmet needs in the submission to HUD and FEMA. This additional information and data must be specific and include supporting documentation. To the extent the information and data is deemed insufficient or supports an ineligible activity, the amount of the initial allocation will be reduced accordingly.

Grant Requirements/Use of Funds

The purpose of these funds is to provide to the extent possible for unmet needs that are the direct result of Presidentially declared major disasters in Fiscal Years 1998 and 1999. States (grantees) and subrecipients must use these funds for activities for which there is no available funding through FEMA, the Small Business Administration, or the U.S. Army Corps of Engineers.

The funds can be used only for unmet needs for the purposes of mitigation, buyout assistance, disaster relief, and long-term recovery. We urge States to use funding in all categories in a manner that will reduce future disaster related costs.

The State must administer any funding used for buyouts or mitigation activities by the State consistent with the intent of the Hazard Mitigation Grant Program. For example, States must ensure that mitigation and buy-out activities are cost effective and that the use of acquired properties will be restricted in the same manner as under the Hazard Mitigation Grant Program.

Environmental Review

The State and FEMA will complete an environmental review for all activities. Generally these reviews must be completed before beginning projects. Applicants for funding under this program will be responsible for preparing environmental documentation, conducting appropriate consultation with authoritative State agencies, and forwarding the results of such documentation and consultation to us for final review and approval to enable us to ensure compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other Federal environmental statutes and Executive Orders. Costs to prepare documentation and conduct consultation are eligible project costs and should be included within the budgeted project cost.

Cost Share

Each State must provide an assurance that there will be not less than 25 percent in non-Federal funds, or equivalent value, to match unmet needs funds. Funds provided under this Act

cannot be used as the non-Federal match for other Federal funds nor can other Federal funds be used as the required non-Federal match for these funds.

Allowable Costs

States may use up to 7% of these funds for costs to administer or manage the grant. Administrative and management costs should be included in the State's application. Further guidance on allowable costs for states and subgrantees can be found in Office of Management and Budget (OMB) Circulars on the Cost Principles.

- State and local governments should consult OMB Circular A–87.
- Private Non-Profit organizations should consult OMB Circular A–122.
- Educational institutions should consult OMB Circular A–21.

Reports

States will provide quarterly progress and financial reports to FEMA within 30 days after the end of each Federal quarter. We will include the suggested format for these reports and exact due dates in the application package. The report will include specific information on actual projects funded during that quarter and the needs for which the funds were provided for each of those projects.

Evaluation Process

Our regional offices will review State applications and quarterly progress reports to determine whether activities fall within the four eligible categories and that other Federal disaster relief programs do not already address them.

Remaining Funds

The remaining funds will be allocated to States that have had a Presidentially declared major disaster between January 1, 1999 and May 21, 1999, after we complete our survey of their unmet needs. Those states are: Tennessee, Alabama, Maine, Mississippi, Louisiana, Arkansas, California, Wyoming, Missouri, Georgia, Oklahoma, Kansas, Texas, Colorado, and Iowa.

FEMA will implement a system in which mitigation (including buyout assistance) will be our priority, followed by long-term recovery and other unmet needs generally categorized as disaster relief. States may submit unmet needs in any category, but FEMA will place emphasis on mitigation and buyout assistance. FEMA will determine other unmet needs (disaster relief and long-term recovery) based on State submission. FEMA will ask for reviews by appropriate Federal agencies so as to avoid duplication of existing Federal programs.

Based on the congressional action to place these funds under FEMA's disaster authorities, E.O. 12372 review procedures do not apply.

Application Submission and Deadline

We will mail application packages to States that are allocated funds in this notice. States should complete the application package and return it to the FEMA regional office listed in the material that they receive.

Applications are due on or before 30 calendar days from the receipt of the application package sent by FEMA. Unless we receive a request for an extension, States that have not submitted an application by the due date will be considered for the next allocation of funds after this initial allocation is complete.

Dated: August 2, 1999.

James L. Witt,

Director.

[FR Doc. 99–20348 Filed 8–5–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *InterWest Bancorp, Inc.*, Oak Harbor, Washington; to merge with NBT Northwest Bancorp, Tukwila, Washington, and thereby indirectly acquire National Bank of Tukwila, Tukwila, Washington.

Board of Governors of the Federal Reserve System, August 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20259 Filed 8–5–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m., Wednesday, August 11, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20377 Filed 8–4–99; 10:51 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Infectious Diseases (NCID); Meeting

The National Center for Infectious Diseases (NCID), Hepatitis Branch of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Consultant Meeting to Update Recommendations for the Prevention and Control of Blood-Borne and other Pathogens in Hemodialysis Settings.

Times and Dates: 8 a.m.–5 p.m., October 5, 1999; 8 a.m.–5 p.m., October 6, 1999.

Place: Holiday Inn Select, 130 Clairmont Avenue, Decatur, Georgia, 30030 telephone 404/371–0204.

Status: Open to the public, limited only by the space available. Registration required. See contact person for more information. The meeting room accommodates approximately 150 people.

Purpose: The purpose of this working meeting is to review and discuss draft recommendations that will serve as a resource to individuals and organizations involved in prevention and control of blood-borne and other pathogens in hemodialysis settings.

Matters To Be Discussed: Participants will discuss recommendations for infection control and other practices to prevent transmission of hepatitis B virus, hepatitis C virus, and bacteria such as methicillin-resistant staphylococcus aureus (MRSA) and vancomycin-resistant enterococci (VRE) in hemodialysis settings.

The agenda will include an overview of issues related to prevention of transmission of these agents and management of infected patients in hemodialysis centers and work group sessions on current and updated recommendations for infection control practices including screening, vaccination, standard and dialysis unit precautions, isolation, and cleaning and disinfection.

The participants will consist of representatives from public, private, voluntary and non-governmental organizations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person(s) listed below prior to the opening of the meeting.

Contact Person for More Information: Mr. Wesley Hodgson or Mr. Rob Lyerla, Hepatitis Branch, NCID, CDC, M/S G–37, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–3048.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 2, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–20261 Filed 8–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0192]

Agency Information Collection Activities; Announcement of OMB Approval; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Infant Formula Recall Regulations" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 17, 1999 (64 FR 26765), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0188 The approval expires on July 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: August 2, 1999

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–20258 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2535]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer in olefin polymers, adhesives, pressure-sensitive adhesives, and ethylene-vinyl acetate copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4680) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer for olefin polymers complying with § 177.1520, adhesives complying with § 175.105, pressure-complying with § 177.1520, adhesives complying with § 175.105, pressure-sensitive adhesives complying with § 175.125 and ethylene-vinyl acetate copolymers complying with § 177.1350 intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 13, 1999.

Laura M. Tarantino,

Deputy Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–20256 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Amoxicillin Injection for Sheep; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of effectiveness, target animal safety, and human food safety data that may be used in support of a new animal drug application (NADA) or supplemental NADA for veterinary prescription use of amoxicillin injection for treatment of bacterial pneumonia in sheep. The data, contained in Public Master File (PMF) 5433, were compiled under National Research Support Project-7 (NRSP–7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

SUPPLEMENTARY INFORMATION: Amoxicillin injection, used for the treatment of sheep for bacterial pneumonia due to *Pasteurella* spp. and *Haemophilis* spp., is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, amoxicillin is subject to section 512 of the act (21 U.S.C. 360b), requiring that its uses in sheep be the subject of an approved NADA or supplemental NADA. Sheep are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The NRSP–7 Project, Western Region, University of California, Davis, CA 95616, has provided target animal safety, effectiveness, and human food safety data for veterinary prescription use of amoxicillin injection in sheep for treatment of bacterial pneumonia due to *Pasteurella* spp. and *Haemophilis* spp. NRSP–7 did not provide information concerning potential environmental impacts of the manufacturing process. Such information is required upon submission of an application relying on this file to support approval.

Data and information on safety and effectiveness are contained in PMF 5433. Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other information needed for approval, such as data supporting extrapolation from a major species in which the drug is currently approved or authorized reference to such data, data concerning manufacturing methods, facilities, and controls, and information addressing potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA or supplement may contact Naba K. Das (address above).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information provided in this PMF to support approval of an application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 1999.

George A. Mitchell,

Acting Deputy Director, Center for Veterinary Medicine.

[FR Doc. 99–20255 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel MSCDA (U10) NETWORK APPLICATIONS.

Date: August 6, 1999.

Time: 12:30 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 2, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH

[FR Doc. 99–20286 Filed 8–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Basic Science Research on Female Pelvic Floor Disorders.

Date: August 27–28, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Resorts and Hotels, 1550 Court Place, Denver, CO 80220.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–20287 Filed 8–5–99; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 1999.

Time: 11:30 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 10, 1999.

Time: 10:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. Mac Stiles, DDS, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, (301) 435–1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 16, 1999.

Time: 10:00 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. Mac Stiles, DDS, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, (301) 435–1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 16, 1999.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 16, 1999.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call.

Contact Person: Gloria B. Levin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 16, 1999.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call.

Contact Person: Timothy J. Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 17, 1999.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call.

Contact Person: Anthony C. Chung, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 2, 1999.

Anna P. Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20285 Filed 8–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories

will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (Formerly: Methodist Medical Center Toxicology Laboratory)

Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (Formerly: Cedars Medical Center, Department of Pathology)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (Formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (Formerly: NorthWest Toxicology, Inc.)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The following laboratory voluntarily withdrew from the National Laboratory Certification Program on July 15, 1999:

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

• The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–20360 Filed 8–5–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a Teleconference Meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in August 1999.

The meeting will include the review, discussion and evaluation of grant applications reviewed by IRGs. Therefore, the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, section 10(d).

A summary of the meeting and roster of council members may be obtained from: Mrs. Marjorie Cashion, CSAT, National Advisory Council, Rockwall II Building, Suite 619, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact below whose name and telephone number are listed.

SAMHSA:CSAT:OPCP:NAC:
cgraham:443–8390:07/30/99

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date: August 18, 1999.

Place: Center for Substance Abuse Treatment, 5515 Security Lane, 6th Floor Conference Room, Suite 617, Rockville, MD 20852.

Type: CLOSED: August 18, 1999–2–3 p.m.

Contact: Marjorie M. Cashion, Executive Secretary, Telephone: (301) 443–8923, and FAX: (301) 480–6077.

This notice is being published less than fifteen days prior to the meeting date, due to urgent needs to meet timing limitation imposed by review and funding cycle.

Dated: August 2, 1999.

Sandi Stephens,

Acting Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–20253 Filed 8–5–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 29, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–20018 Filed 8–5–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4410–N–05]

FY 1999 Super Notice of Funding Availability (SuperNOFA); List of High Performing Empowerment Zones and Empowerment Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On February 26, 1999, HUD published its Fiscal Year (FY) 1999 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment programs. In the FY 1999 SuperNOFA, HUD advised that it would publish in the **Federal Register** the list of high performing empowerment zones and enterprise communities. This notices provides that list.

FOR FURTHER INFORMATION CONTACT: For information about the list of high performing empowerment zones and empowerment communities, contact Dennis Kane, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–6339 (this is not a toll-free number).

For information about the programs listed in the SuperNOFA, please contact the office or individual listed in the **FOR FURTHER INFORMATION** portion of the section of the individual programs in the SuperNOFA, published on February 26, 1999 at 64 FR 9618. Individuals with hearing or speech impairments may access HUD telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1999 (64 FR 9618), HUD published its FY 1999 SuperNOFA for HUD's Housing, Community Development, and Empowerment programs. The FY 1999 SuperNOFA announced the availability of approximately $2.4 billion in HUD program funds covering 32 grant programs and program components administered by the following HUD offices: the Office of Community Planning and Development (CPD); the Office of Housing-Federal Housing Administration (FHA); the Office of Public and Indian Housing (PIH); the Office of Policy Development and Research (PD&R); the Office of Fair Housing and Equal Opportunity (FH&EO); and the Office of Lead Hazard Control.

On May 18, 1999 (64 FR 27120), HUD published a notice that, among other things, extended the deadline for certain programs in the SuperNOFA to accommodate areas that were designated disaster areas as a result of the tornados in early May 1999. The May 18, 1999 notice republished for the convenience of the readers the introduction section of the SuperNOFA to reflect updates to programs and application due date changes.

In both the February 26, 1999 SuperNOFA and in the May 18, 1999 extension notice, HUD advised, in the introduction section, that the SuperNOFA application rating system provides for up to two bonus points for eligible activities/projects that the applicant proposes to be located in high performing federally designated Empowerment Zones (EZs) or Enterprise Communities (ECs). HUD also advised that it would publish in the **Federal Register** the list of high performing EZs and ECs.

This notice provides the list of high performing EZ and ECs, both urban and rural.

The list is attached as Appendix A to this notice.

Dated: August 2, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

Appendix A—List of High Performing Empowerment Zones and Enterprise Communities for Purposes of FY 1999 Supernofa Funding Awards

Alabama
- Birmingham EC
- Chambers County EC—Chambers County, Anniston, Alabama

Alaska
- Metlakatla Indian EC

Arizona
- Arizona Border Region EC—Chochise, Santa Cruz, Yuma Counties
- Phoenix EC
- Four Corners EC (Arizona, New Mexico, Utah)

Arkansas
- Pulaski County EC

California
- Central California EC
- Desert Communities EZ
- Huntington Park EC
- Imperial County EC—Imperial County
- Los Angeles EZ
- Oakland EC
- San Diego EC
- San Francisco EC
- Santa Ana EZ
- City of Watsonville/County of Santa Cruz EC—Santa Cruz County

Colorado
- Denver EC

Connecticut

Bridgeport EC
New Haven EZ
New Haven EC
Delaware
Wilmington EC
District of Columbia
Washington EC
Florida
Empowerment Alliance of Southwest Florida EC
Jackson County, Florida EC—Jackson County
Miami/Miami Dade EZ
Miami EC
Tampa EC
Georgia
Albany EC
Atlanta EZ
Central Savannah River Area EC—Burke, Hancock, Jefferson, McDuffie, Tallafero, Warren Counties
Southwest Georgia United EZ
Hawaii
Molokai EC
Illinois
Chicago EZ
East St. Louis EC
Southernmost Illinois Delta EZ
St. Louis MO/East St. Louis IL EZ
Springfield EC
Indiana
Gary EZ
Indianapolis EC
Town of Austin EC
Iowa
Des Moines EC
Kansas
Kansas City MO/Kansas City KS EC
Wichita County EC
Kentucky
Bowling Green EC
Kentucky Highlands EZ—Clinton, Jackson, Wayne Counties
Louisville EC
Scott/McReary Area EC—Scott (TN), McCreary (KY) Counties
Louisiana
Macon Ridge EC—Catahoula, Concordia, Franklin, Morehouse, Tensas Counties
New Orleans EC
Northeast Louisiana Delta EC—Madison County
Oachita Parish EC
Maine
City of Lewiston EC
Maryland
Baltimore EZ
Massachusetts
Boston EZ
Boston EC
Lowell EC
Springfield EC
Michigan
Clare County EC
Detroit EZ
Flint EC
Muskegon EC
Minnesota
Minneapolis EZ
Minneapolis EC
St. Paul EC
Missouri
City of East Prairie/Mississippi County EC—Mississippi County
Kansas City MO/Kansas City KS EC
St. Louis MO/East St. Louis IL EZ
St. Louis EC
Mississippi
North Delta EC—Panola, Quitman, Tallahatchie Counties
Montana
Fort Peck Assiniboine and Sioux Tribe EC
Nebraska
Omaha EC
Nevada
Las Vegas EC
New Hampshire
Manchester EC
New Jersey
Cumberland County EZ
Newark EC
Philadelphia PA/Camden NJ EZ
New Mexico
Albuquerque EC
City of Deming EC
Four Corners EC (Arizona, New Mexico, Utah)
La Jicarita EC—Mora, Rio Arriba, Taos Counties
New York
Albany/Troy/Schenectady EC
Buffalo EC
New York EZ
Newburgh/Kingston EC
Rochester EC
North Carolina
Charlotte EC
Halifax, Edgecombe, Wilson EC—Halifax, Edgecombe, Wilson Counties
Robeson County EC—Robeson County
North Dakota
Griggs-Steele EZ
Ohio
Akron EC
Cincinnati EZ
Cleveland EZ
Columbus EZ
Columbus EC
Greater Portsmouth EC—Scioto County
Huntington WV/Ironton OH EZ
Oklahoma
Oklahoma City EC
Southeast Oklahoma EC—Choctaw, McCurtain Counties
Tri-County Indian Nations EC
Oregon
Josephine County EC—Josephine County
Portland EC
Pennsylvania
City of Lock Haven Federal EC—Clinton County
Fayette EC
Harrisburg EC
Philadelphia PA/Camden NJ EZ
Pittsburgh EC
Rhode Island
Providence EC
South Carolina
Allendale ALIVE EC
Charleston/North Charleston EC
Columbia/Sumter EZ
Willliamsburg, Lake City EC—Wiliamsburg, Florence Counties
South Dakota
Beadle/Spink Dakota EC—Beadle, Spink Counties
Oglala Sioux Tribe EZ
Tennessee
Clinch-Powell EC
Fayette County/Haywood County EC—Fayette, Haywood Counties
Knoxville EZ
Nashville EC
Scott/McReary Area EC—Scott (TN), McCreary (KY) Counties
Texas
Dallas EC
El Paso EZ
El Paso EC
FUTURO EC
Houston EC
Rio Grande Valley EZ—Cameron, Hidalgo, Starr, Willacy Counties
San Antonio EC
Waco EC
Utah
Four Corners EC (Arizona, New Mexico, Utah)
Ogden EC
Vermont
Burlington EC
Virginia
Accomack-Northampton EC—Northampton, Accomack Counties
Norfolk/Portsmouth EZ
Norfolk EC
Washington
Lower Yakima County Rural EC—Yakima County
Seattle EC
Tacoma EC
Tri-County Rural EC
West Virginia
Central Appalachia EC—Braxton, Clay, Fayette, Nicholas, Roane Counties
Huntington WV/Ironton OH EZ
Huntington EC
McDowell County EC—McDowell County
Upper Kanawha Valley EC
Wisconsin
Milwaukee EC
Northwoods Niijii EC

[FR Doc. 99–20297 Filed 8–3–99; 2:22 pm]
BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4434–N–03]

Public Housing Rent Policies; Guidance Pending Publication of Final Rule on Admissions and Occupancy Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Guidance.

SUMMARY: This document provides guidance on certain admissions and occupancy requirements for those public housing agencies that must implement changes in the United States Housing Act of 1937 regarding rents that are effective October 1, 1999.

DATES: *Effective Date:* August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4112,

Washington, DC, 20410; telephone (202) 708–0744, or the Public and Indian Housing Resource Center at 1–800–955–2232. (With the exception of the telephone number for the PIH Resource Center, these are not toll-free telephone numbers.) Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1999 (64 FR 8192), HUD published a Notice of Initial Guidance on the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (the "Public Housing Reform Act"). The Public Housing Reform Act makes significant changes to the rents charged for public housing units (see sections 508 and 523 of the statute). These changes are the subject of HUD's rulemaking on "Changes to Admission and Occupancy Requirements in Pubic Housing and Section 8 Housing Assistance Programs." HUD's proposed rule on this subject was published on April 30, 1999 (64 FR 23460), and the 60-day public comment period on this rule closed on June 29, 1999. Certain provisions of the Public Housing Reform Act are effective October 1, 1999, notwithstanding whether HUD has issued rules for effect on these statutory provisions. The statutory provisions that become effective October 1, 1999, include the changes to rents charged for public housing units.

HUD realizes the importance of this April 30, 1999 rule to public housing agencies (PHAs) in setting and describing their rent policies, as required by the PHA plans. HUD is making every effort to complete this rulemaking as quickly as possible, but believes that given the time to carefully review, consider and address the public comments received on the April 30, 1999 proposed rule, the earliest publication date will probably occur near the end of August. HUD recognizes that an end-of-August publication may not provide sufficient time for PHAs to obtain the guidance they need to put these rent provisions into effect for new admissions, re-examinations, and recertifications after October 1, 1999. Therefore, HUD is issuing this guidance now on rent determinations.

Guidance on Rent Provisions

1. As indicated in HUD's Notice of Initial Guidance, published February 18, 1999, the new rent provisions are effective for families as they are admitted, re-examined or recertified, on or after October 1, 1999.

2. In determining annual income and adjusted income (e.g., required earned income disallowance or the alternative individual savings account, exclusions versus deductions, permissive deductions) for such families, §§ 5.603, 5.611, 5.612 and 5.614(a)(2) and the corresponding sections of the preamble to the April 30, 1999 proposed rule serve as guidance for these determinations, with the exception of earned income of minors. PHAs must take all necessary steps to ensure that families eligible for new mandatory deductions receive those deductions.

3. For addressing earned income of minors, the existing regulations which exclude earned income of minors from the definition of income (24 CFR 5.609(c)(1)) serve as the appropriate guidance.

4. For choice of rents (flat rents, income-based rents), § 5.614 and the corresponding section of the preamble to the April 30, 1999 proposed rule serve as guidance for choice of rent requirements. As further clarification, the market value of a unit on which flat rents are based must be a rent which would allow the unit to be successfully rented if the development were not public housing (neither lower nor higher). In addition to the documentation required by the April 30, 1999 proposed rule, regarding the calculation and establishment of flat rents, PHAs should keep records documenting specific offers to families of the dollar amounts of tenant rent under each option.

PHAs that follow this guidance will not be penalized for any changes made by HUD to the proposed rule provisions at the final rule stage. If changes are made at the final rule stage to these provisions, the final rule will provide adequate time for PHAs to adjust their policies.

Dated: August 2, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–20298 Filed 8–5–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–014110–0

Applicant: The University of Texas-Pan American, Coastal Studies Lab, South Padre Island, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct specific activities for the Kemp's ridley sea turtle (*Lepidochelys kempii*), green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), hawksbill sea turtle (*Eretmochelys imbricata*), and leatherback sea turtle (*Dermochelys coriacea*) in various locations on the Texas Gulf coast.

Permit No. TE–14168

Applicant: Peter Sprouse, Austin, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the Tooth Cave spider (*Neoleptoneta myopica*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Coffin Cave mold beetle (*Batrisodes texanus*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), in Travis and Williamson Counties, Texas.

Permit No. TE–824714

Applicant: Bureau of Land Management, Farmington Field Office, Farmington, New Mexico

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) in San Juan and Rio Arriba Counties, New Mexico.

Permit No. TE–798998

Applicant: Horizon Environmental Services, Inc., Austin, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the following federally listed species in Texas:

Black-capped vireo (*Vireo atricapillus*)
Golden-cheeked warbler (*Dendroica chrysoparia*)
Tooth Cave spider (*Neoleptoneta myopica*)
Bee Creek Cave harvestman (*Texella reddelli*)
Bone Cave harvestman (*Texella reyesi*)
Tooth Cave ground beetle (*Rhadine persephone*)

Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
Coffin Cave mold beetle (*Batrisodes texanus*)
Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
Houston Toad (*Bufo houstonensis*)
Interior least tern (*Sterna antillarum*)

Permit No. TE–014994–0

Applicant: Hill Country Environmental, Inc., Austin, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the black-capped vireo (*Vireo atricapillus*) and golden-cheeked warbler (*Dendroica chrysoparia*) in central Texas.

Permit No. TE–14045–0

Applicant: University of Arizona, School of Renewable Natural Resources, Tucson, Arizona

Applicant requests authorization for scientific research and recovery purposes to attach tail-mount fitted radio transmitters to Mexican spotted owls (*Strix occidentalis lucida*) and monitor them in Pima County, Arizona.

Permit No. TE–820085–0

Applicant: The Nature Conservancy of Texas, Texas Conservation Data Center, San Antonio, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the black-capped vireo (*Vireo atricapillus*) and golden-cheeked warbler (*Dendroica chrysoparia*) throughout Texas.

DATES: Written comments on these permit applications must be received on or before September 7, 1999.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–20262 Filed 8–5–99; 8:45 am]

BILLING CODE 4510–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulartory Affairs, Office of Management and Budget, Washington, DC 20503, and to the Bureau Clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive., Reston, Virgina, 20192.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:
3. The quality, utility, and clarity of the information to be collected; and
4. How the minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB approval number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake hazards and earthquake prediction to earth-science data and information essential to mitigate losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected performances.

Bureau form number: None.

Frequency: Annaul proposals, annual or final reports.

Description of respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

Annual responses: 300.

Annual burden hours: 12,000 hours.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: July 30, 1999.

P. Patrick Leahy,

Chief Geologist.

[FR Doc. 99–20264 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–74–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00; GP9–0272]

Notice of Field tour of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Field tour of the Eastern Washington Resource Advisory Council; August 26, 1999; Whitman and Adams Counties, Washington.

SUMMARY: The Eastern Washington Resource Advisory Council will take a field tour on August 26, 1999. The tour will start at 8:30 a.m., at the Spokane District Office of the Bureau of Land Management, 1103 N. Fancher, Spokane, Washington 99212–1275. The Council will tour the recently-acquired Escure property in Whitman and Adams Counties, Washington. Topics to be addressed include recreation activities and natural resource issues. The tour will conclude no later than 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Clifford Ligons, Bureau of Land Management, 1103 N. Fancher Road, Spokane, Washington 99212–1275; or call 509–536–1200.

Dated: August 2, 1999.
Joseph K. Buesing,
District Manager.
[FR Doc. 99–20263 Filed 8–5–99; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–1430–01; AZA 31024]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The Department of the Interior, Bureau of Land Management proposes to withdraw approximately 112,790 acres of Federal lands and minerals to protect prehistoric archeological sites and other valuable resources of the Perry Mesa area in central Arizona. This notice segregates the lands described below for up to 2 years from location and entry under the general land laws, including the mining laws. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Gene Dahlem, BLM Phoenix Field Office, 623–580–5500.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal is to temporarily protect the prehistoric archeological sites and other valuable resources of the Perry Mesa area while various studies and analyses are completed to support a final decision on withdrawing the lands. The mineralization of the area is known to contain gold. The proposal, if finalized, would withdraw the following described Federal lands from location and entry under the general land laws, and the Federal minerals from location and entry under the mining laws, but not the mineral leasing laws, subject to valid existing rights:

Gila and Salt River Meridian

Federal Surface/Federal Minerals

T. 9 N., R. 2 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 to 12, inclusive;
Sec. 13, NW¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 14, E½, E½W½, W½NW¼, and NW¼SW¼;
Sec. 15, E½, NW¼, N½SW¼, N½SW¼SW¼, SW¼SW¼SW¼ excluding Patent No. 02–73–0047, SE¼SW¼SW¼, and SE¼SW¼;
Sec. 16;
Sec. 17, E½NE¼, NW¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, NW¼, and S½;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 21, N½, SW¼, N½SE¼, SW¼SE¼, and N½SE¼SE¼;
Sec. 22, E½, E½W½, E½NW¼NW¼, NW¼NW¼NW¼ excluding Patent No. 02–73–0047, SW¼NW¼NW¼, SW¼NW¼, and NW¼SW¼;
Sec. 23;
Sec. 24, W½NE¼, NW¼, N½SW¼, SW¼SW¼, N½SE¼, and SE¼SE¼.
T. 9½ N., R. 2 E.,
Sec. 19, lots 1 to 6, inclusive, E½SW¼, and SE¼;
Sec. 20, lots 1 to 6, inclusive, SW¼, and E½SE¼;
Sec. 21, lot 1 excluding Patent No. 380377, lot 2, SW¼, N½SE¼ excluding Patent No. 380377, and S½SE¼;
Sec. 22, lot 1, lot 2 excluding SS 14, SW¼, N½SE¼, SW¼SE¼, W½SE¼SE¼, and E½SE¼SE¼ excluding SS 14;
Sec. 23, lots 1 to 6, inclusive, E½SW¼, and SE¼;
Sec. 24, lots 1 to 7, inclusive, SW¼, and SW¼SE¼;
Secs. 25 and 26;
Sec. 27, lot 1 excluding Patent No. 1138507, lots 2 to 4, inclusive, SE¼NE¼ excluding Patent No. 1138507, SW¼NE¼, S½NW¼, and S½;
Sec. 28, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 29, lot 1, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 to 34, inclusive;
Sec. 35, N½, SW¼, N½SE¼, and SE¼SE¼;
Sec. 36.
T. 10 N., R. 2 E.,
Sec. 1, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 9, inclusive, S½NE, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 8, inclusive, E½, and E½W½;
Secs. 8 to 11, inclusive;
Sec. 12, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 13, lots 1 to 4, inclusive, W½E½, and W½;
Secs. 14 to 17, inclusive;
Sec. 18, lots 1 to 8, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 8, inclusive, E½, and E½W½;
Secs. 20 to 23, inclusive;
Sec. 24, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 25, lots 1 to 6, inclusive, W½E½, NW¼, and N½SW¼;
Sec. 26;
Sec. 27, E½, N½NW¼ excluding Patent No. 1085371, S½NW¼, and SW¼;
Sec. 28, N½, SW¼, N½SE¼ excluding Patent No. 1099067, and S½SE¼;
Sec. 29;
Sec. 30, lots 1 to 11, inclusive, NE¼, E½NW¼, E½SE¼, MS 3748, MS 3749, MS 3750, and MS 3645 excluding Patent No. 911367;
Sec. 31, lots 1 to 10, inclusive, E½NE¼, E½SW¼, SE¼, MS 3748, and MS 3750;
Sec. 32;
Sec. 33, E½NE¼ excluding Patent No. 1031935, W½NE¼, E½W½ excluding Patents No. 1031935 and 380377, W½W½, and SE¼ excluding Patents No. 1031935 and 426411;
Sec. 34, N½, SW¼, E½SE¼ excluding Patent No. 1082896, NW¼SE¼, and SW¼SE¼ excluding Patent No. 1082896;
Sec. 35;
Sec. 36, lots 1 to 12, inclusive, and NW¼NE¼.
T. 11 N., R. 2 E.,
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8, lots 1 and 2, W½NE¼ excluding IL 568, and W½;
Sec. 17, W½W½E¼, and W½;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 14, inclusive, E½SW¼, and SE¼;
Sec. 20, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 21, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 22, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 23, lot 4, SW¼NW¼, and W½SW¼;
Sec. 26, W½W½;
Sec. 27;
Sec. 28, lots 1 to 5, inclusive, E½, and NE¼NW¼;
Sec. 29, lots 1 to 4 inclusive, NW¼NE¼, W½, and SW¼SE¼;
Sec. 30, lot 1, NE¼, NE¼NW¼, and NE¼SE¼;
Secs. 32 to 34, inclusive;
Sec. 35, S½N½NE¼, S½NE¼, W½, and SE¼;
Sec. 36, lots 3 and 4, SW¼, and W½SE¼.
T. 9 N., R. 3 E.,
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;

Secs. 8 and 9;
Sec. 17;
Sec. 18, lots 1 and 4, E½, and E½W½;
Sec. 19, lots 3 and 4, E½, and E½W½;
Sec. 20.
T. 9½ N., R. 3 E.,
Sec. 19, lots 1 to 6, inclusive, E½SW¼, and SE¼;
Sec. 20, lots 1 to 4, inclusive, and S½;
Sec. 21, lots 1 to 4, inclusive, and S½;
Sec. 22, lots 1 to 4, inclusive, and S½;
Secs. 27 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 to 34, inclusive.
T. 10 N., R. 3 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 3, inclusive, lots 5 to 10, inclusive, S½NE¼, S½SW¼, and SE¼;
Sec. 5, lots 3 to 9, inclusive, S½NW¼, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SW¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8, excluding SS 16 and Patent No. 225;
Sec. 9, E½, E½NW¼, W½W½ excluding SS 16, E½SW¼, and SE¼;
Secs. 10 to 17, inclusive;
Sec. 18, lots 1 to 8, inclusive, E½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 19, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE½SE¼;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1 to 7, inclusive, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 to 36, inclusive.
T. 11 N., R. 3 E.,
Sec. 1, lots 2 to 4, inclusive, S½NW¼, and NW¼SW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1, 2, 5, and 6, S½NE¼, and SE¼;
Sec. 4, lots 1, 2, 4, 5, and lots 7 to 16, inclusive;
Sec. 5, lots 1 to 4, inclusive, S½N½, SW¼, and SE¼SE¼;
Sec. 7, lots 1 and 2, E½, and E½NW¼;
Sec. 8, NE¼NE¼, S½NE¼, W½, and SE¼;
Sec. 9, lots 1 to 16, inclusive;
Sec. 10, lots 3 and 4, E½, SE¼NW¼, and E½SW¼;
Sec. 11, N½NE¼, SW¼NE¼, W½, and S½SE¼;
Sec. 12, lots 3 and 4, SE¼NW¼, SW¼, and W½SE¼;
Sec. 13, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 14;
Sec. 15, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 16, lots 1 to 16, inclusive;
Sec. 20, lots 1 to 16, inclusive;
Sec. 21, lots 1 to 16, inclusive;
Sec. 22, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 23;
Sec. 24, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 25, lot 1, lot 2 excluding Patent No. 889734, lots 3 and 4 excluding Patent No. 832552, W½NE¼, W½, W½W½SE¼, and E½W½SE¼ excluding Patent No. 832552;
Sec. 26;
Sec. 27, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 28 and 29;
Sec. 30, SE¼SW¼ and S½SE¼;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 and 33;
Sec. 34, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 35, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.

The areas described aggregate approximately 112,637 in Yavapai County.

Federal Minerals

T. 9 N., R. 2 E.,
Sec. 15, Patent No. 02–73–0047;
Sec. 17, Patent No. 1138507;
Sec. 22, Patent No. 02–73–0047.
T. 9½ N., R. 2 E.,
Sec. 27, Patent No. 1138507.
T. 10 N., R. 2 E.,
Sec. 27, Patent No. 1085371;
Sec. 28, Patent No. 1099067;
Sec. 33, Patent No. 1031935;
Sec. 34, Patent No. 1082896.
T. 11 N., R. 3 E.,
Sec. 25, Patent No. 889734.

The areas described aggregate approximately 153 acres in Yavapai County.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from location and entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights, unless the proposal is canceled or unless the withdrawal is finalized prior to the end of the segregation period.

Existing uses of the segregated lands may be continued in accordance with their terms, except for the location or relocation of mining claims, during the pendency of the 2-year segregative period, including but not limited to livestock grazing, legal ingress and egress to any valid mining claims and patented claims that may exist, rights-of-way, access to non-Federal lands and interests in lands, current recreational uses, and commercial uses being conducted under special use permits.

Dated: August 3, 1999.
Ray Brady,
Manager, Lands and Realty Group.
[FR Doc. 99–20274 Filed 8–5–99; 8:45 am]
BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1430–00; CACA–39853]

Notice of Public Meeting on Proposed Withdrawal of Public Lands; Indian Pass Withdrawal, Imperial County, CA

AGENCY: Bureau of Land Management.
ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management has filed an application to withdraw 9,360.74 acres of public lands in Imperial County, California, to protect the archaeological and cultural resources located in the Indian Pass Area of Critical Environmental Concern and Expanded Management Area (collectively the "Indian Pass area"). The lands will be withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing, geothermal leasing, or the material sales laws, subject to valid existing rights. This notice advises that the Bureau of Land Management has scheduled a meeting to inform the public of the proposed withdrawal and to seek suggestions and information from the public and other agencies on the scope of issues related to the proposed withdrawal that should be considered in the environmental review document.

DATES: Written comments should be received on or before September 30, 1999. Comments previously submitted in response to the Notice of Proposed Withdrawal and Opportunity for Public Meeting, 63 FR 58752, November 2, 1998, will be considered. The meeting date is Tuesday, September 7, 1999, 7:00 p.m. to 9:00 p.m.

ADDRESSES: Written comments regarding the scope of the environmental review document should be sent to the Bureau of Land Management, 1661 South 4th Street, El Centro, California 92243. The meeting location is at the same address.

FOR FURTHER INFORMATION CONTACT: Lynda Kastoll, BLM, El Centro Field Office, (760) 337–4421.

SUPPLEMENTARY INFORMATION: On October 26, 1998, a petition was approved allowing the Bureau of Land Management to file an application to withdraw 9,360.74 acres of public lands

from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The lands have been and will remain open to the operations of the mineral leasing, geothermal leasing, and material sales laws. No private lands or valid existing mineral rights would be affected by the proposed withdrawal.

The purpose of the proposed withdrawal is to protect the archaeological and cultural resources in the Indian Pass area, which is considered to be a sacred site by the Quechan people.

The legal description of the lands proposed for withdrawal is as published in 63 FR 58752, November 2, 1998. A copy of the legal description is available by contacting Lynda Kastoll at the address or phone number listed above.

The lands have been temporarily segregated as specified above until November 2, 2000, to allow for various studies and analyses. No action as to the proposed withdrawal shall be taken until these studies and analyses are completed. This notice is published in accordance with the regulations set forth in 43 CFR part 2300, and pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) to obtain suggestions and information from other agencies and the public on the scope of issues that would be analyzed or considered in preparation of an environmental assessment.

Dated: August 2, 1999.

Robert Zimmer,

Acting Field Manager.

[FR Doc. 99–20260 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 174

AGENCY: Minerals Management Service.

ACTION: Correction to final Notice of Sale for Sale 174.

On July 16, 1999, the Minerals Management Service published in the **Federal Register** (64 FR 38468) a final Notice of Sale for Sale 174, Western Gulf of Mexico. The Notice of Sale identified blocks available for leasing in this sale as well as blocks unavailable for leasing.

This Notice corrects the Notice of Sale. In addition to the blocks identified in the July 16 Notice of Sale as unavailable for leasing, the following blocks are also unavailable for leasing: Mustang Island Area, Blocks 775, 798, 821, and 822. These blocks will be used by the U.S. Navy's mine warfare training program.

All other terms, conditions, and block availability remain as stated in the July 16 Notice of Sale.

Dated: August 2, 1999.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 99–20265 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force

AGENCY: Bureau of Reclamation (Reclamation), Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will be held on Wednesday, August 18, 1999, 8:00 a.m. to 5:00 p.m., and Thursday, August 19, 1999, 8:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be at Best Western's Victoria Inn, 1709 Main Street, Weaverville, California 96093. Telephone: 530/623–4432.

FOR FURTHER INFORMATION CONTACT: Mr. Russell P. Smith, Chief, Environmental and Natural Resource Division, Northern California Area Office, 1639 Shasta Dam Boulevard, Shasta Lake, California 96019. Telephone: 530/275–1554 (TDD 530/450–6000).

SUPPLEMENTARY INFORMATION: The Trinity River Basin Fish and Wildlife Task Force will meet to formulate and implement the ongoing Trinity River watershed ecosystem management program for fish and wildlife. This program considers the needs of multiple species and their interactions with physical habitats in restoring the natural function, structure, and species composition of the ecosystem, recognizing that all components are interrelated.

Dated: July 30, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–20118 Filed 8–5–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Request for written submissions.

EFFECTIVE DATE: July 28, 1999.

SUMMARY: The Commission received a request from the United States Trade Representative (USTR) on August 2, 1999, to provide probable effects advice on proposed modifications to the North American Free Trade Agreement (NAFTA) rules of origin. The United States, Canada, and Mexico negotiated these modifications. The Commission's confidential advice on the probable effects will be submitted to the USTR on September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from David Lundy, Office of Industries (202–205–3439); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal (202–205–1810).

Background

Chapter 4 of the NAFTA, which entered into force on January 1, 1994, contains the rules of origin for application of the tariff provisions of the NAFTA to trade in goods. Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice from the United States International Trade Commission.

The Commission was requested by the USTR, in a letter received on August 2, 1999, to provide advice on the probable effect on U.S. trade and domestic industries of the proposed modifications to the rules of origin. The modifications include changes to Annexes 401 and 403.1, which are part of chapter 4 of the NAFTA. The letter requested that the advice be forwarded to the USTR by September 10, 1999. A list of the proposed modifications, compiled by the Commission in consultation with the U.S. Department of Treasury, is

available from the Office of the Secretary of the Commission or by accessing the electronic version of this notice at the Commission's World Wide Web site (http://www.usitc.gov). A complete copy of Annexes 401 and 403.1 incorporating the modifications is also available from the Office of the Secretary or the Web site.

Written Submissions

No public hearing is being scheduled in connection with these proposed modifications. However, interested parties are invited to submit written statements (original and 14 copies) concerning any economic effects of the modifications. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and must be received no later than the close of business on August 31, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: August 2, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20321 Filed 8–5–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Review)]

Polychloroprene Rubber From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. [2]

Background

The Commission instituted this review on August 3, 1998 (63 FR 41282) and determined on November 5, 1998 that it would conduct a full review (63 FR 63748, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 16, 1998 (63 FR 69306). The hearing was held in Washington, DC, on June 3, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 26, 1999. The views of the Commission are contained in USITC Publication 3212 (July 1999), entitled Polychloroprene Rubber from Japan (Inv. No. AA1921–129 (Review)).

Issued: July 30, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20322 Filed 8–5–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Crawford and Askey dissenting.

DEPARTMENT OF JUSTICE

Antitrust Division

[Case No. 1: 99CV01962]

United States v. Allied Waste Industries, Inc. and Browning Ferris Industries, Inc., Civ. No. 99 CV 01962; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, Washington, DC, in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., Civ. No. 99 CV 01962.

On July 20, 1999, the United States filed a Complaint, which alleged that Allied's proposed acquisition of Browning-Ferris Industries, Inc. ("BFI") would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal in 18 markets around the country, including Akron/Canton, OH; Atlanta, GA; Boston, MA; Charlotte, NC; Chicago, IL; Dallas, TX; Davenport, IA; Denver, CO; Detroit, MI; Evansville, IN; Joplin/Lamar, MO; Kalamazoo/Battle Creek, MI; Moline, IL; Oakland, CA; Oklahoma City, OK; Rock Falls/Dixon, IL; Rockford, IL; and Springfield, MO. The proposed Final Judgment, filed on July 20, 1999, requires Allied and BFI to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 [telephone: (202) 307–0924].

Constance K. Robinson,

Director of Operations & Merger Enforcement.

JUDGE: Ricardo M. Urbina; DECK TYPE: Antitrust; DATE STAMP: 7/20/1999

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I

Definitions

As used in this Hold Separate Stipulation and Order:

A. *Allied* means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. *BFI* means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes it successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. *Relevant Disposal Assets* means, unless otherwise noted, with respect to each landfill, incinerator, or transfer station listed and described herein, all of defendants' rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed landfill, incinerator or transfer station; the garage and related facilities; offices; any related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of defendants' rights, titles and interests in any intangible assets, including any customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Incinerator and Landfills

a. Boston, MA

BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576.

b. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099, BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL 61432.

c. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO.

d. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northville, MI 48167.

e. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598.

f. Joplin/Lamar/Springfield, MO

Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri State Highway M, Township 30N, Range 32 West, Section 34, in Jasper County, MO, which option Allied must exercise or extend such that it will not expire any sooner than 12 months following the entry of the proposed Final Judgment:

g. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

h. Oakland, CA

BFI's, Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

i. Oklahoma City, OK

BFI's Oklahoma Landfill, located at 7600 SW 15th Street, Oklahoma City, OK 73128.

s. Transfer Stations

a. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 1800 19th Street, Canton, OH;

b. Atlanta, GA

(i) Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263;

(ii) Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayetteville, GA 30214; and

(iii) BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060;

c Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746; BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 01501; and BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintree, MA 02184;

d. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I–85 Service Road North, Charlotte, NC 28206;

e. Chicago, IL

BFI's Melrose Park 73300 Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160; BFI's Rolling Meadows Transfer Station, located at 3851 Berdnick Street, Rolling Meadows, IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer Station, located at 1712 Church Street, Evanston, IL 60201;

f. Denver CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road, Denver, CO;

g. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066; and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI 48126;

h. Evansville, IN

Allied's Koester Transfer Station, located at 12800 Warrick-County Line Road, Evansville, IL 47711;

i. Kalamazoo/Battle Creek, MI

BFI's Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001; and

j. Springfield, MO

Allied's Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

D. Relevant Hauling Assets, unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies, real property and improvements to real property (*i.e.*, buildings and garages); and it includes all intangible assets, including hauling-related customer lists, contracts, leasehold interests, and accounts.

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

i. Akron, OH

Allied's front-end and rear-end loader truck small container commercial routes (hereinafter, "commercial routes") that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio;

2. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA;

3. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC;

4. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL;

5. Dallas, TX

BFI's commercial routes that serve any nonfranchised or "open competition" areas of the City of Dallas and Dallas County, TX;

6. Davenport, IA/Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA;

7. Denver, CO

Allied's commercial routes that serve the City of Denver, and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO;

8. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI;

9. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities:

10. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI;

11. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK;

12. Rock Falls/Dixon, IL

BFI's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL;

13. Rockford, IL

Allied's commercial routes that serve the City of Rockford and Ogle and Winnebago counties, IL; and

14. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

E. *Hauling* means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers

F. *Waste* means municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

II

Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures of the Relevant Disposal Assets and the Relevant Hauling Assets for the purpose of establishing viable competitors in the waste disposal business or the commercial waste hauling business, or both, to remedy the effects that the United States alleges would otherwise result from Allied's acquisition of BFI. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and the Relevant Hauling Assets are independent, economically viable, and with the exception of assets listed in Sections I (C)(1)(f) and (2)(b)(iii), ongoing business concerns that will remain independent and uninfluenced by Allied (or BFI); and that competition is maintained during the pendency of the ordered divestitures.

III

Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV

Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V

Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and with the exception of assets listed in Sections I(C)(1)(f) and (2)(b)(iii), operate the Relevant Disposal Assets and the Relevant Hauling Assets as independent competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the marketing of, or negotiation or sales by, any Relevant Disposal Asset and Relevant Hauling Asset with defendants' other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this

Order, whichever is later, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Relevant Disposal Assets and the Relevant Hauling Assets will be maintained and, with the exception of the assets listed in Sections I(C)(1)(f) and (2)(b)(iii), operated as independent, ongoing, economically viable and active competitors in the waste disposal business or commercial waste hauling business, or both; (2) management of the Relevant Disposal Assets and the Relevant Hauling Assets will not be influenced by Allied (or BFI); and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Disposal Assets and the Relevant Hauling Assets will be kept separate and apart from defendants' other operations. Defendants' influence over the Relevant Disposal Assets and Relevant Hauling Assets shall be limited to that necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Disposal Assets, with the exception of assets listed in Sections I(C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets, and shall maintain at 1998 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Disposal Assets and Relevant Hauling Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Disposal Assets, with the exception of the assets listed in Sections I(C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Disposal Assets, with the exception of assets listed in Sections I(C)(1)(f) and (2)(b)(iii), and the Relevant Hauling Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Disposal Assets and the Relevant Hauling Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Disposal Assets or Relevant Hauling Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Disposal Assets and Relevant Hauling Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Allied or BFI employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Disposal Asset or Relevant Hauling Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Disposal Assets and Relevant Hauling Assets are divested pursuant to the terms of the Final Judgment, the Relevant Disposal Assets and Relevant Hauling Assets of Allied and BFI shall be managed by Richard J. Wojahn. Mr. Wojahn shall have complete managerial responsibility for the Relevant Disposal Assets and Relevant Hauling Assets of Allied and BFI, subject to the provisions of this Order and the proposed Final Judgment. In the event that Mr. Wojahn is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

Dated: July 19, 1999.

For Plaintiff United States of America

6Anthony E. Harris, Esquire,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20005, (202) 307–6583.

For Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971.

For Defendant Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615, (202) 662–4517.

Order

It Is So Ordered by the Court, this ____ day of _____

_____

United States District Judge

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint in this action on July 20, 1999, and plaintiff and defendants, Allied Waste Services, Inc. ("Allied") and Browning-Ferris Industries, Inc. ("BFT"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Relevant Disposal Assets and Relevant Hauling Assets to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of establishing one or more viable competitors in the waste disposal business, the commercial waste hauling business, or both, in the specified areas;

And whereas, defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the injunctive provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication or any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I

Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II

Definitions

As used in this Final Judgment:

A. *Allied* means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. BFI means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. Relevant Disposal Assets means, unless otherwise noted, with respect to each landfill, incinerator, or transfer station listed and described herein, all of defendants' rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed landfill, incinerator or transfer station; the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of defendants' rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills, Incinerators, and Airspace Disposal Rights

a. Boston, MA

(1) BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576;

(2) Airspace disposal rights at BFI's Fall River Landfill, located at 1080 Airport Road, Fall River, MA 02720, pursuant to which SEMASS may dispose of up to the maximum amount of ash and "bypass" waste, as now defined in the operating permit (or any modifications, amendments or extensions thereto) of Fall River Landfill, for a period of time up to the closure or attainment of permitted capacity of the landfill, provided however, that defendants must commit to operate BFI's Fall River Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Massachusetts, except as to price and credit terms; and

(3) Airspace disposal rights at Ogden Martin Systems Massburn incinerator, located at 100 Recovery Way, Haverhill, MA 01830, pursuant to which a purchaser or purchasers may dispose as much as 1,150 tons/day of waste, for a ten-year period of time.

b. Charlotte, NC

Allied's Lee County Landfill, located at 1301 Sumter Highway, Bishopville, SC 29010, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Sections IV or V of the Judgment, that the purchaser of Allied's Charlotte Transfer Station [*see* Section II(C)(2)(d) below] is unacceptable.

c. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099; BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL, 61432.

d. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO;

e. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northville, MI 48167;

f. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598;

g. Joplin/Lamar/Springfield, MO

(1) Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri State Highway M, Townsend 30N, Range 32 West, Section 34, in Jasper County, MO, which option Allied must exercise or extend so that it will not expire any sooner than 12 months following the entry of this Final Judgment; and

(2) Airspace disposal rights at Allied's Wheatland Regional Landfill, located at Columbus, KS, pursuant to which a purchaser or purchasers can dispose up to 700 tons/day of waste, for a period of time up to three months after the opening of Southwest Regional Landfill, *provided, however,* that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Wheatland Regional Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Missouri, except as to price and credit terms;

h. Kalamazoo/Battle Creek, MI

Airspace disposal rights at Allied's Ottawa Farms Landfill, located at 15550 68th Street, Coopersville, MI 49404, or BFI's C&C Landfill, located at 14800 P Drive North, Marshall, MI 49068, pursuant to which a purchaser may dispose up to 450 tons/day of waste for up to a ten-year period of time, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Sections IV or V of the Judgment, that the purchaser of Allied's Kalamazoo Transfer Station [*see* Section II(C)(2)(i) below] is unacceptable; *and provided, however,* that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Ottawa Farms landfill or BFI's C&C Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Michigan, except as to price and credit terms;

i. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

j. Oakland, CA

BFI's Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

k. Oklahoma City, OK

BFI's Oklahoma Landfill, Located at 7600 SW 15th Street, Oklahoma City, OK 73128.

2. Transfer Stations

a. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 180 19th Street, Canton, OH;

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

Allied's front-end and rear-end loader truck small container routes (hereinafter, "commercial routes") that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio;

2. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA;

3. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC;

4. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL;

5. Dallas, TX

BFI's commercial routes that serve any nonfranchised or open competition areas of the City of Dallas and Dallas County, TX;

6. Davenport, IA and Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA;

b. Atlanta, GA

Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263; Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayettevile, FA 30214; and BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060;

c. Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746; BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 01501; and BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintee, MA 02184;

d. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I–85 Service Road North, Charlotte, NC 28206;

e. Chicago, IL

BFI's Melrose Park 73300 Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160; BFI's Rolling Meadows Transfer Station, located at 3851 Berdnick Street, Rolling Meadows, IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer Station, located at 1712 Church Street, Evanston, IL 60201;

f. Denver, CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road, Denver, CO;

g. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066; and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI 48126;

h. Evansville, IN

Allied's Koester Transfer Station, located at 12800 Warrick-County Line Road, Evansville, IN 47711;

i. Kalamazoo/Battle Creek, MI

BFI's Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001; and

j. Springfield, MO

Allied's Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

D. Relevant Hauling Assets, unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies; and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). It also includes all intangible assets, including hauling/related customer lists, contracts, leasehold interests, and accounts.

7. Denver, CO

Allied's commercial routes that serve the City of Denver and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO;

8. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI;

9. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities;

10. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI;

11. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK;

12. Rock Falls/Dixon, IL

Allied's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL;

13. Rockford, IL

Allied's commercial routes that serve the City of Rockford, IL, and Ogle and Winnebago counties, IL; and

14. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

E. *Hauling* means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

F. *Waste* means municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

H. *Collection of small container solid waste* means collection of waste from customers by *inter alia*, providing a customer with a one to ten cubic yard container, which is picked up mechanically using a front- or rear-end loader truck. The term excludes hand pick-up collection service, and service using a compactor attached to, or part of, a container.

III

Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of a lesser business unit that includes defendants' Relevant Hauling and Relevant Disposal Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

Divestitures

A. In the event that Allied acquires BFI, defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell all Relevant Disposal Assets and Relevant Hauling Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture and additional period of time, not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Disposal Assets and the Relevant Hauling Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Disposal Assets and Relevant Hauling Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall not interfere with any negotiations by any purchaser to employ any Allied (or former BFI) employee who works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the Relevant Disposal Assets or Relevant Hauling Assets.

E. Defendants shall permit prospective purchasers of the Relevant Disposal Assets or Relevant Hauling Assets to have access to personnel and to any and all environmental, zoning, and other permit documents and information, and to make inspection of the Relevant Disposal Assets and Relevant Hauling Assets and of any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. With the exception of the facilities described in Section II(C)(1)(g), defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that each asset will be operational on the date of sale.

G. Defendants shall not take any action, direct or indirect, that will impede in any way the operation of the Relevant Disposal Assets or Relevant Hauling Assets.

H. Defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that defendants will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Judgment, shall include all Relevant Disposal Assets and Relevant Hauling Assets and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Relevant Disposal Assets or Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser (or purchasers) for whom it is demonstrated to the United States's sole satisfaction that: (1) The purchaser(s) has the capability and intent of competing effectively in the waste disposal or hauling business in each relevant area; (2) the purchaser(s) has the managerial, operational, and financial capability to compete effectively in the waste disposal or hauling business in each relevant area; and (3) none of the terms of agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in each relevant area.

V

Appointment of Trustee

A. In the event that defendants have not sold the Relevant Disposal Assets or Relevant Hauling Assets within the time specified in Section IV of this Final Judgment, the divestiture of each Relevant Disposal Asset or Relevant Hauling Asset not sold shall be accomplished by a trustee to be selected by the Uinted States, as its sole discretion. Defendants shall not object to the selection of the trustess on any grounds other than irremediable conflict of interest. Defendants must make any such objection within five (5) business days after the United States notifies defendants of the trustee selection.

B. After the United States's selection of the trustee, only the trustee shall have the right to divest the unsold Relevant Disposal Assets or Relevant Hauling Assets. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon all reasonable efforts of the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall divest the unsold Relevant Disposal Assets or Relevant Hauling Assets in the manner that is most conducive to creating, preserving and maintaining competition between Allied and BFI in the markets for the collection and disposal of municipal solid waste described in the Complaint. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, and shall have such other powers as this Court shall deem appropriate.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such

trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price obtained and the speed with which divestiture is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Disposal Assets or Relevant Hauling Assets, and shall assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities for the Relevant Disposal Assets or Relevant Hauling Assets, and to defendants' overall businesses as is reasonably necessary to effectuate the divestiture. Defendants shall provide financial or other information relevant to the Relevant Disposal Assets or Relevant Hauling Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Subject to customary confidentiality assurances, defendants shall permit prospective acquirers of any Relevant Disposal Assets or Relevant Hauling Assets to have reasonable access to the information provided to the trustee and to management personnel for the Relevant Disposal Assets or Relevant Hauling Assets, and to make inspection of any physical facilities for the Relevant Disposal Assets or Relevant Hauling Assets.

E. After the trustee's appointment, the trustee shall confer regularly with designated representatives of the parties and shall file biweekly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding period, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. The United States may object to a proposed divestiture by the trustee in the manner prescribed in Section VI of this Final Judgment. Defendants shall not object to a divestiture by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants shall be made in the manner prescribed in Section VI of this Final Judgment.

G. If the trustee has not accomplished such divestitures within one hundred and twenty (120) days after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations for completing the required divestiture; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. No less than three (3) days prior to filing such report with the Court, the trustee shall furnish a copy of such report to the parties. Upon the filing of such report with the Court, each party shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI

Notice of Proposed Divestitures

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice [or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later], the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(F) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section V(F), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Ban on Future Acquisitions

A. Without prior written approval of the United States, defendants shall not acquire, directly or indirectly, any interest in any business, assets, capital stock, or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, as engaged in waste disposal or collection of small container waste in any area listed in Section VII(B), where the person's annual revenues from waste disposal or collection of small container waste in the area were in excess of $1,000,000 in the 12 month period immediately preceding the proposed acquisition, or the sale price of the assets would be in excess of $1,000,000.

B. Unless otherwise noted, the injunctive provisions in Section VII (A) above apply whenever defendants seek to acquire any interest in any business, assets, capital stock, or voting securities of any person that was engaged in the disposal of waste from, or the collection

of small container solid waste in, any of the following areas:

AREAS FOR WHICH INJUNCTIVE PROVISION APPLIES

City	Counties
Atlanta, GA	Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinett, Henry, Newton, Paulding, Rockdale, Spalding, and Walton counties, GA (disposal only).
Boston, MA	Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA
Charlotte, NC	Mecklenburg County, NC
Chicago, IL	Will, Kane, Cook, DuPage, Lake and McHenry counties, IL
Davenport, IA and Moline, IL	Rock Island County, IL and Scott County, IA
Evansville, IN	Vanderburgh County, IN
Kalamazoo/Battle Creek, MI	Kalamazoo and Calhoun counties, MI
Joplin/Lamar, MO	Jasper and Newton counties, MO
Springfield, MO	Greene and Christian counties, MO

VIII

Defendants' Additional Obligations

Defendants are hereby ordered and directed to, in accordance with the terms of this Final Judgment:

A. Refrain from reacquiring any interest in any Relevant Disposal Assets or Relevant Hauling Assets divested pursuant to the terms of this Final Judgment, without prior written notice to, and written consent of, the United States;

B. Refrain from conditioning the sale of any landfill pursuant to this Final Judgment on any understanding, agreement or commitment, written or understood, that the purchase (or purchasers) will agree to sell airspace or otherwise permit defendants to dispose of waste in that landfill; and

C. Within sixty (60) days after entry of the Final Judgment, jointly move with the United States to modify each of the Final Judgments in *United States* v. *Allied Waste Industries, Inc.*, 7 Trade Reg. Rep. (CCH) ¶50,860 (D.D.C., filed and pending April 8, 1999); *United States* v. *Browning-Ferris Industries, Inc.*, 1996–2 Trade Cas. (CCH) ¶71,456 (D.D.C. 1996); and *United States* v. *Browning-Ferris Industries, Inc.*, 1995–2 Trade Cas. (CCH) ¶71,079 (D.D.C. 1995) (the "consent decrees"), to provide that, for the period of time and in the geographic areas specified in the consent decrees, defendants and any person acquired by defendants will neither offer nor enforce any provision of any current or future contract for the collection of small container solid waste, the terms of which do not conform to the injunctive provisions of the consent decrees.

IX

Affidavits

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every twenty (20) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all Relevant Disposal Assets and Relevant Hauling Assets and to provide requiring information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Relevant Disposal Assets and Relevant Hauling Assets pursuant to Section X of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each Relevant Disposal Asset and Relevant Hauling Asset as a viable active competitor; to maintain separate management, staffing, sales, marketing and pricing of each asset; and to maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Disposal Assets and Relevant Hauling Assets that were divested and to effect the ordered divestitures.

X

Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of any Relevant Disposal Asset or Relevant Hauling Asset.

XI

Financing

Defendants are ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

XII

Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the United States Department of Justice,

upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections IV, VI or XII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV

Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1999.

_____

United States District Judge

Certificate of Service

I, Anthony E. Harris, hereby certify that on July 20, 1999, I caused a copies of the foregoing Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and United State's Explanation of Consent Decree Procedures to be served on each defendants by hand-delivery and by mailing copies of the pleadings first-class, postage prepaid, to a duly authorized legal representative, as follows:

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day Reavis, & Pogue, 51, Louisiana Avenue, NW, Washington, DC 20001–2113.

Counsel for Defendant Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Anthony E. Harris, Esquire,

Illinois Bar #1133713, Department of Justice, Anitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 20, 1999, the United States filed a civil antitrust suit that alleges that the proposed acquisition by Allied Waste Industries, Inc. ("Allied") of Browning-Ferris Industries, Inc. ("BFI") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that in many markets throughout the United States, Allied and BFI are two of the most significant competitors in small container commercial waste collection, disposal of municipal solid waste ("MSW") (*i.e.*, the operation of landfills, transfer stations or incinerators), or both services.

The Complaint alleges that a combination of Allied and BFI would substantially lessen competition in the disposal of municipal solid waste in thirteen highly concentrated markets: Akron/Canton, Ohio; Atlanta, Georgia; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Joplin/Lamar and Springfield, Illinois; Kalamazoo/Battle Creek, Michigan; Moline, Illinois; Oakland, California; and Oklahoma City, Oklahoma.

The Complaint alleges that the merger also would substantially lessen competition in the provision of small container commercial waste collection services in fourteen highly concentrated, relevant geographic markets: Akron/Canton, Ohio; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Dallas, Texas; Davenport, Iowa/Moline, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Kalamazoo/Battle Creek, Michigan; Oklahoma City, Oklahoma; Rock Falls/Dixon, Illinois; Rockford, Illinois; and Springfield, Missouri.

According to the Complaint, the loss of competition would likely result in consumers paying higher prices and receiving fewer or lesser quality services for the collection and disposal of waste. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act and (2) a permanent injunction that would prevent Allied from acquiring control of or otherwise combining its assets with those owned by BFI.

At the time the Complaint was filed, the United States also filed a proposed settlement that would permit Allied to complete its acquisition of BFI, provided divestitures of certain waste collection and disposal assets are accomplished in such a way as to preserve competition in the affected markets. This settlement consists of a

proposal Final Judgment, a Hold Separate Stipulation and Order, and a letter that outlines a standard on which the United States and the defendants have agreed to decide whether waste collection routes that partially serve a given geographic area, or which contain a mix of residential and small container waste collection customers or franchise or nonfranchised business, should be divested pursuant to the terms of the proposed Final Judgment.[1]

The proposed Final Judgment orders Allied and BFI to divest commercial waste collection routes in each of the relevant areas in which the Complaint alleges the merger would substantially reduce competition in the provision of small container commercial waste collection services. In addition, the proposed Final Judgment orders Allied and BFI to divest an incinerator, landfills, transfer stations, or disposal rights in such facilities in each of the relevant markets in which the merger would substantially reduce competition in the disposal of municipal solid waste. (A summary of the commercial waste collection and waste disposal assets that defendants must divest pursuant to the Judgment appears below in Appendix A.) Allied and BFI must complete their divestitures of the waste collection and disposal assets within 120 days after July 20, 1999, or five days after entry of the proposed Final Judgment, whichever is later.

The Hold Separate Stipulation and Order ("Hold Separate Order") and the proposal Final Judgment ensure that until the divestitures mandated by the Judgment are accomplished, the currently operating collection and disposal assets that are to be divested will be maintained and operated as saleable, economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of the combined company. Allied and BFI, subject to the United States' approval, will appoint a person to manage the operations to be divested and ensure defendants' compliance with the requirements of the proposed Final Judgment and Hold Separate Order.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Violations Alleged in the Complaint

A. The Defendants and the Proposed Transaction

Allied is the third largest waste collection and disposal firm in the United States. Based in Scottsdale, Arizona, it provides waste collection and disposal services in over 20 states. In 1998, Allied's total operating revenues were in excess of $1.6 billion.

BFI, based in Houston, Texas, is the nation's second largest waste collection and disposal firm. It provides waste collection and disposal services throughout the country, often in direct competition with Allied. During its 1998 fiscal year, BFI had total domestic operating revenues of over $4.7 billion.

In March 1999, Allied announced its agreement to acquire BFI in a stock transaction worth nearly $9.4 billion. This transaction, which would combine two major waste industry competitors and substantially increase concentration in a number of already highly concentrated, difficult-to-enter waste markets, precipitated the United States's antitrust suit.

B. The Competitive Effects of the Transaction

Waste collection firms, or "haulers," contract to collect municipal solid waste ("MSW") from residential and commercial customers; they transport the waste to private and public disposal facilities (*e.g.*, transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. Allied and BFI compete in operating waste collection routes and waste disposal facilities.

1. The Effects of the Transaction on Competition in the Markets for Small Container Commercial Waste Collection Services

Small container commercial waste collection service is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard containers for waste storage, plus front-end (and sometimes, rear-end) loader vehicles for collection and transportation—is uniquely well suited to the provision of small container commercial waste collection service. Providers of other types of waste collection services (*e.g.*, residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (*e.g.*, garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.*, side-load trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by commercial accounts, and hence, are rarely used on small container commercial waste collection routes. For purposes of antitrust analysis, the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service, for analyzing the effects of the merger.

The Complaint alleges that the provision of small container commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimmize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Sheer distance may significantly limit a distant firm's ability to provide

[1] A copy of this correspondence appears in Appendix B. According to the proposed Final Judgment [§§ II(D)(1)–(14), IV and V], defendants must divest small container commercial waste collection routes that serve customers in certain geographic areas. Since some small container commercial waste collection routes may serve only part of an area defined in the proposed Final Judgment, or may contain a mix of small container commercial and other types of customers (*e.g.*, in Dallas, Texas franchised customers), the United States and the defendants agreed to apply a *de minimis* standard in determining whether a route may be subject to divestiture under the Judgment. The parties agreed that defendants must divest the entire waste collection route if, in its most recent year of operation, the route obtained 10 percent or more of its revenues from the provision of small container commercial waste collection services (and in the case of Dallas, Texas, such services from nonfranchised commercial customers), or 10 percent or more of such revenues are generated by customers located in a geographic area specified in the Judgment.

Applying this standard to the Boston area, for example, the proposed Final Judgment would require defendants to divest any Allied route (or any route that BFI acquired from Allied or any other person after January 1, 1999), if the route obtained 10 percent or more of its revenues from commercial waste collection customers who have business locations in the City of Boston, or Bristol, Essex, Middlesex, Norfolk, Suffolk, or Worcester counties, MA.

commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that fourteen areas—Akron/Canton, Ohio; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Dallas, Texas; Davenport, Iowa/Moline, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Kalamazoo/Battle Creek, Michigan; Oklahoma city, Oklahoma; Rock Falls/Dixon, Illinois; Rockford, Illinois; and Springfield, Missouri—constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Allied and BFI in the provision of small container commercial waste collection services. In each of these markets, Allied and BFI are two of the largest competitors, and the combined firm would command from 25 percent to 85 percent or more of total market revenues. These fourteen small container commercial waste collection markets generate from $2.5 million to over $200 million in annual revenues.

New entry into these markets would be difficult, time consuming, and is unlikely to be sufficient to constrain any post-merger price increase. Many customers of commercial waste collection firms have entered into "evergreen" contacts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, *i.e.*, selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be very unprofitable to serve. Taken together, the prevalence of long term contracts and the ability of market incumbents to price discriminate substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Compliant alleges that a combination of Allied and BFI would likely lead to an increase in prices charged to consumers of commercial waste, collection services. The acquisition would diminish competition by enabling the few remaining competitors to engage more easily, frequently, and effectively in coordinated pricing interaction that harms consumers. This is especially troublesome in markets where entry has not proved an effective deterrent to the exercise of market power.

2. The Effects of the Transaction on Competition in Other Markets for Disposal of Municipal Solid Waste

A number of federal, state and local safety, environmental, zoning and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. MSW can only be sent for disposal to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste, risks severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for disposal of MSW without losing significant sales to other firms. For these reasons, there are no good substitutes for disposing of MSW.

Disposal of MSW tends to occur in highly localized markets.[2] Disposal costs are a significant component of waste collection services, often comprising 40 percent or more of overall operating costs. it is expensive to transport waste significant distances for disposal. Consequently, waste collection firms strongly prefer to send waste to local disposal sites. Sending a vehicle to dump waste at a remote landfill increases both the actual and opportunity costs of a hauler's collection service. Natural and man-made obstacles (*e.g.*, mountains and traffic congestion), sheer distance and relative isolation from population centers (and collection operations) all substantially limit the ability of a remote disposal site to compete for MSW from closer, more accessible sites. Thus, waste collection firms will pay a premium to dispose of waste at more convenient and accessible sites. Operators of such disposal facilities can—and do—price discrimination, *i.e.*, charge higher prices to customers who have fewer local options for waste disposal.

For these reasons, the Complaint alleges that, for purposes of antitrust analysis, thirteen areas—Akron/Canton, Ohio; Atlanta, Georgia; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Joplin/Lamar/Springfield, Missouri; Kalamazoo/Battle Creek, Michigan; Moline, Illinois; Oakland, California; and Oklahoma City, Oklahoma—are relevant geographic markets for disposal of municipal solid waste. In each of these markets, Allied and BFI are two of only a few significant competitors. Their combination would command from 30 percent to well over 90 percent of disposal capacity for municipal solid waste in highly concentrated markets that each generate revenues of from $5 million to over $250 million annually.

Entry into disposal of municipal solid waste is difficult. Government permitting laws and regulations make obtaining a permit to construct or expand a disposal site an expensive and time-consuming risk. Significant new entry into these markets is unlikely to occur in any reasonable period of time, and hence, is not likely to prevent exercise of market power after the acquisition.

In each listed market, Allied's acquisition of BFI would remove a significant competitor in disposal of municipal solid waste. With the elimination of BFI, market incumbents will no longer compete as aggressively since they will not have to worry about losing business to BFI. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents likely to ensure that consumers will pay substantially higher prices for disposal of MSW, collection of small container commercial waste, or both, following the acquisition.

[2] Though disposal of municipal solid waste is primarily a local activity, in some densely populated urban area there are few, if any, local landfills or incinerators available for final disposal of waste. In these areas, transfer stations are the principal disposal option. A transfer station collects, processes and temporarily stores waste for later bulk shipment by truck, rail or barge to a more distant disposal site, typically a sanitary landfill, for final disposal. In such markets, local transfer stations compete for municipal solid waste for processing and temporary storage, and sanitary landfills may compete in a broader regional market for permanent disposal of area waste.

In this case, in several relevant areas (*e.g.*, Akron/Canton, Atlanta, Charlotte, Chicago, Kalamazoo/Battle Creek, and Springfield), distant landfills may compete with local disposal facilities (incinerators or landfills) through the use of transfer stations. Regional landfills also compete for permanent disposal of waste from these areas. In some areas, however, the proposed Final Judgment requires defendants to divest transfer stations because such divestitures may aid in the competitive viability of a companion landfill, the divestiture of which, the United States believes, is essential for effective relief.

III. Explanation of the Proposed Final Judgment

A. Divestiture Provisions of the Judgment

The divestiture relief described in the proposed Final Judgment will eliminate the anticompetitive effects of the defendants' acquisition in the provision of small container commercial waste collection services in, and the disposal of MSW from, the relevant markets by establishing new, independent and economically viable competitors in each affected market. The proposed Final Judgment requires Allied and BFI, within 120 days after July 20, 1999, or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell certain commercial waste collection assets ("Relevant Hauling Assets") and disposal assets ("Relevant Disposal Assests") as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion. The collection assets to be divested include small container commercial waste collection routes, trucks, customer lists, and if requested by the purchaser, garage facilities. The disposal assets to be divested include an incinerator, landfills, transfer stations, airspace disposal rights and an incinerator, and certain other assets critical to successful operation of such facilities (*e.g.*, leasehold and renewal rights in the particular landfill or transfer station, garages and offices, trucks and vehicles, scales, permits, and intangible assets such as landfill or transfer station-related customer lists and contracts).

If Allied and BFI cannot accomplish the divestitures within the prescribed period of time, the proposed Final Judgment provides that the United States may appoint a trustee to complete the divestiture of each relevant disposal asset or relevant hauling asset not sold. The proposed Final Judgment generally provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste collection or disposal that can compete effectively in the relevant area.[3]

Defendants must take all reasonable steps necessary to accomplish the divestitures, and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. Additional Injunctive Relief

1. United State's Prior Approval of Any Subsequent Acqusitions by Defendants of Commercial Waste Collection and Waste Disposal Competitors in Certain Highly Concentrated Markets

The Final Judgment, § VII, also requires that for a five-year period after its entry, defendants must seek and obtain written approval from the United States beforing acquiring any person engaged in the provision of small container waste collection service or the disposal of municipal solid waste in the Atlanta, Boston, Charlotte, Chicago, Davenport, IA/Moline, IL, Evansville, Kalamazoo/Battle Creek, Joplin/Lamar, or Springfield areas, where the acquired person had reported annual revenues of at least $1 million or the purchase price of the person's assets is at least $1 million. This notice and prior approval provision will assist the United States in preventing potentially significant acquisitions by Allied of smaller waste industry rivals in already highly-concentrated markets in transitions that otherwise would fall outside the reporting thresholds of the Hart-Scott-Rodino Act. Allied, BFI and other leading waste industry firms have already made a number of such acquisitions, which, taken together, have significantly increased concentration, and substantially reduced competition, in many local waste markets.

2. Modification of Consent Decrees in Prior Waste Cases Involving the Defendants

Finally, the Final Judgement, § VIII, requires Allied and BFI to join the United States in moving to modify the consent decrees in three earlier cases—*United States* v. *Allied Waste Industries, Inc.*, 7 Trade Reg. Rep. (CCH) ¶ 50,860 (D.D.C., *filed and pending* April 8, 1999); *United States* v. *Browing-Ferris Industries, Inc.*, 1996–2 Trade Cas. (CCH) ¶ 71,456 (D.D.C. 1996); and *United States* v. *Browing-Ferris Industries, Inc.*, 1995–2 Trade Cas. (CCH) ¶ 71,079 (D.D.C. 1995). In essence, the modification would prohibit Allied and BFI, and any person acquired by them, in the St. Louis, Missouri; Dubuque, Iowa, Memphis, Tennessee; Baltimore, Maryland and southern Florida areas from offering or enforcing evergreen clauses in small container commercial waste collection contracts. The modifications would clarify—and in some instances, extend—the scope of these consent decrees, and help eliminate contractual provisions that significantly deter entry, thus hindering competition in the provision of commercial waste collection services in these five major markets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment

[3] The proposed Final Judgment in this case, like the decree pending in *United States* v. *USA Waste Services, Inc.*, No. 98 CV 1616 (N.D. Ohio, filed July 17, 1998), also prohibits defendants from *reacquiring* any of the assets divested under the terms of the decree. *See* Judgment, § VIII(C). While the injunctive provisions of antitrust divestiture decrees logically and implicitly proscribe reacquisition of divested assets, the unique circumstances of this industry, which is rapidly consolidating and where there have been instances of the same assets changing hands several times as a result of such consolidation, dictated that the United States make this proscription explicit in this case.

within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

IV. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Allied and BFI. The United States could have continued the litigation to seek preliminary and permanent injunctions against Allied's acquisition of BFI. The United States is satisfied, however, that defendants' divestiture of the assets described in the Judgment will establish, preserve and ensure viable competitors in each of the relevant markets identified by the United States. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Allied's acquisition of BFI from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added).

As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[4] Rather,

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' (citations omitted)."[6]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case," Microsoft, 56 F. 3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bring a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 26, 1999.

---

[4] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[5] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. See also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[6] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States* 460 U.S. 1001 (1983) quoting *United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Respectfully submitted,

Anthony E. Harris,
Illinois Bar #1133713, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Appendix A—Summary of Waste Disposal and Collection Assets That Must Be Divested Under the Proposed Final Judgment

I. Waste Disposal Assets

The proposed Final Judgment, §§ II(C)(1) and (2), IV and V, requires Allied and BFI to divest certain "relevant disposal assets." In general, this means, with respect to each incinerator, landfill or transfer station, defendants must sell, to a purchaser acceptable to the United States, all of their rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed incinerator, landfill or transfer station; the garage and related facilities; offices, and any related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of their rights, titles and interests in any intangible assets, including customer lists, contracts, and accounts, or options to purchase any adjoining property. The list of disposal facilities that must be divested includes properties in the following locations, under the listed terms and conditions:

A. Incinerator, Landfills and Airspace Disposal Rights

1. Boston, MA

(a) BFI's American Refuel SEMASS waste-to-energy incinerator facility, located at 141 Cranberry Highway (Route 28), Rochester, MA 02576;

(b) Airspace disposal rights at BFI's Fall River Landfill, located at 1080 Airport Road, Fall River, MA 02720, pursuant to which SEMASS may dispose of up to the maximum amount of ash and "bypass" waste, as now defined in the operating permit (or any modifications, amendments or extension thereto) of Fall River Landfill, for a period of time up to the closure or attainment of permitted capacity of the landfill, provided however, that defendants must commit to operate BFI's Fall River Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Massachusetts, except as to price and credit terms; and

(c) Airspace disposal rights at Ogden Martin Systems Massburn incinerator, located at 100 Recovery Way, Haverhill, MA 01830, pursuant to which a purchaser or purchasers may dispose as much as 1,150 tons/day of waste, for a ten-year period of time.

2. Charlotte, NC

Allied's Lee County Landfill, located at 1301 Sumter Highway, Bishopville, SC 29010, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Section IV or V of the Final Judgment, that the purchaser of Allied's Charlotte Transfer Station [see Section II(B)(4) below] in unacceptable.

3. Chicago, IL

BFI's Zion Landfill, located at 701 Green Bay Road, Zion, IL 60099; BFI's Orchard Hills Landfill, located at 8290 Highway 251, Davis Junction, IL 60120; and BFI's Spoon Ridge Landfill, located at Route 1 and Highway 97, Fairview, IL, 61432.

4. Denver, CO

Allied's Denver Regional Landfill, located at 1141 Weld County Road #6, Erie, CO.

5. Detroit, MI

BFI's Arbor Hills Landfill, located at 10690 West Six Mile Road, Northview, MI 481667.

6. Evansville, IN

Allied's Blackfoot Landfill, located at 2726 East State Road, Winslow, IN 47598;

7. Joplin/Lamar/Springfield, MO

(a) Allied's option to purchase the proposed Southwest Regional Landfill, located at Missouri state Highway M, township 30N, Range 32 West, Section 34, in Jasper County, MO, which option allied must exercise or extend so that it will not expire any sooner than 12 months following the entry of the final Judgment; and

(b) Airspace disposal rights at Allied's Wheatland Regional Landfill, located at Columbus, KS, pursuant to which a purchaser or purchasers can dispose up to 700 tons/day of waste, for a period of time up to three months after the opening of southwest Regional Landfill, provided, however, that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Wheatland Regional Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Missouri, except as to price and credit terms.

8. Kalamazoo/Battle Creek, MI

Airspace disposal rights at Allied's Ottawa Farms Landfill, located at 15550 68th Street, Coopersville, MI or BFI's C&C Landfill, located at 14800 P drive North, Marshall, MI 49068, pursuant to which a purchaser may dispose up to 450 tons/day of waste for up to a ten-year period of time, the sale of which will be required only if the United States, in its sole discretion, concludes, pursuant to Section IV or V of the Final Judgment, that the purchaser of Allied's Kalamazoo Transfer Station *see* Section (B)(9) below] is unacceptable; and provided, however, that for each purchaser of airspace rights (or its designee), defendants must commit to operate Allied's Ottawa Farms Landfill or BFI's C&C Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Michigan, except as to price and credit terms;

9. Moline, IL

BFI's Quad Cities Landfill, located at 13606 Knoxville Road, Milan, IL 61264;

10. Oakland, CA

BFI's Vasco Road Landfill, located at 4001 North Vasco Road, Livermore, CA; and

11. Oklahoma City, OK

BFI's Oklahoma Landfill, located at 7600 SW 15th street, Oklahoma City, OK 73128.

B. Transfer Stations

1. Akron/Canton, OH

Allied's RC Miller Refuse Transfer Station, located at 1800 19th Street, Canton, OH;

2. Atlanta, GA

Allied's Southern States Environmental Transfer Station, located at 129 Werz Industrial Boulevard, Newnan, GA 30263; Allied's Fayette County Transfer Station, located at 211 First Manassas Mile Road, Fayetteville, GA 30214; and BFI's Marble Mill Road Transfer Station, located at 317 Marble Mill Road, Marietta, GA 30060.

3. Boston, MA

BFI's Holliston Transfer Station, located at 115 Washington Street, Holliston, MA 01746; BFI's Auburn Transfer Station, located at 15 Hardscrabble Road, Auburn, MA 02501; and BFI's Braintree Transfer Station, located at 257 Ivory Street, Braintree, MA 02184.

4. Charlotte, NC

Allied's Charlotte Transfer Station, located at 3130 I–85 Service Road North, Charlotte, NC 28206.

5. Chicago, IL

BFI's Melrose Park 7330 Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160; BFI's Rolling Meadows Transfer Station, located at 3851 Berdnick Street, Rolling Meadows, IL 60008; BFI's DuKane Transfer Station, located at 3 N 261 West Powis Road, West Chicago, IL 60185; BFI's Northbrook-Brooks Transfer Station, located at 2750 Shermer Road, Northbrook, IL 60062; and BFI's Active/Evanston Transfer Station, located at 1712 Church Street, Evanston, IL 60201.

6. Denver, CO

Allied's Summit Waste Jordan Road Transfer Station, located at 7120 S. Jordan Road, Denver, CO.

7. Detroit, MI

BFI's SDMA Transfer Station, located at 28315 Grosbeck Highway, Roseville, MI 48066; and BFI's Schaefer Road Transfer Station, located at 3051 Schaefer Road, Dearborn, MI 48126.

8. Evansville, IN

Allied's Koester Transfer Station, located at 12800 Warrick-County Line Road, Evansville, IN 47711.

9. Kalamazoo/Battle Creek, MI

BFI's Kalamazoo Transfer Station, located at 28002 Cork Street, Kalamazoo, MI 49001; and

10. Springfield, MO

Allied's Tates Transfer Station, located at Route 2, Box 69, Verona, MO 65769.

II. Commercial Waste Collection Assets

The Final Judgment, §§ II(D), IV and V, also orders Allied and BFI to divest certain

"relevant hauling assets" that may be used in the small commercial waste collection business. The assets primarily include routes, capital equipment trucks and other vehicles, containers, interests, permits, supplies, customer lists, contracts, accounts, and if requested by the purchaser of the assets, garages, used to service customers along the routes in the following locations:

A. Akron, OH

Allied front-end and rear-end loader truck small container routes (hereinafter, "commercial routes") that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio.

B. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA.

C. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC.

D. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL.

E. Dallas, TX

BFI's commercial routes that serve any nonfranchised or open competition areas of the City of Dallas and Dallas County, TX.

F. Davenport, IA and Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA.

G. Denver, CO

Allied's commercial routes that serve the City of Denver and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO.

H. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI.

I. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities.

J. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI.

K. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK.

L. Rock Falls/Dixon, IL

Allied's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL.

M. Rockford, IL

Allied's commercial routes that serve the City of Rockford, IL, and Ogle and Winnebago counties, IL; and

N. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

Appendix B—Agreement Regarding Routes that Partially Serve an Area in the Judgment or Obtain Revenues From Commercial and Other Types of Customers

July 19, 1999.

By Facsimile and U.S. Mail

Tom D. Smith, Esquire,
Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, DC 20005–2088.

David M. Foster, Esquire,
Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Re: Proposed Final Judgment in *United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.*

Dear Messrs. Smith and Foster: I write regarding several issues not explicitly resolved by language in the proposed Final Judgment.

Section II(D) of the Judgment defines "Relevant Hauling Assets" and does so by reference to whether a defendant's route: (a) is a front-end loader or rear-end loader small container route; (b) "serves" a city or county listed in the Judgment; and (c) solely with respect to Dallas, Texas [Judgment, Section II (D)(5)], serves a nonfranchised or "open competition" area.

The United States and the defendants agree that a defendant's waste collection route is a front-end loader or rear-end loader small container route, which must be divested pursuant to the terms of the Final Judgment, if the route, in its most recent year of operation, generated ten percent or more of its revenues from: (a) front-end loader and rear-end loader small container commercial customers; (b) whose businesses are located in a city or county listed in Section II of the Judgment; or (c) with respect to Section II(D)(5), whose businesses are located in a nonfranchised or open competition area of the Dallas area.

Please sign below if this letter accurately sets forth our agreements with respect to the Final Judgment and you agree that the terms set forth herein are enforceable pursuant to the terms of the Final Judgment.

Sincerely yours,

Anthony E. Harris,
Attorney, Litigation II Section.

On Behalf of Allied Waste Industries, Inc.

Tom D. Smith, Esquire,
Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113

For Browning-Ferris Industries, Inc.

David M. Foster, Esquire,
Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Certificate of Service

I, Anthony E. Harris, hereby certify that on July 26, 1999, I caused a copy of the foregoing Competitive Impact Statement to be served on the defendants Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. by facsimile and by mailing it first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,
Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113

Counsel for Defendant Browning-Ferris Industries, Inc.

David M. Foster, Esquire,
Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Anthony E. Harris, Esquire,
Illinois Bar # 1133713, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

[FR Doc. 99–20163 Filed 8–5–99; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No 98–8]

Mark Binette, M.D., Grant of Restricted Registration

On September 19, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mark J. Binette, M.D. (Respondent) of Mesa, Arizona, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated January 22, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Phoenix, Arizona on August 4 and 5, 1998, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On January 20, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for registration be granted without restrictions. Neither party filed exceptions to Judge Bittner's opinion, and on February 22, 1999, Judge Bittner

transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, except as specifically noted below. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent graduated from medical school in 1989. He previously possessed DEA Certificate of Registration BM3082283, however he let it expire on January 31, 1995, since he did not have an active state license at that time.

According to Respondent, he first smoked marijuana in the 1970s when he was a teenager. He was arrested in 1977 for selling marijuana to an undercover police officer for $25. A search of Respondent's home incident to the arrest revealed lysergic acid diethylamide (LSD); however Respondent testified that the LSD was not his but had been left at his home after a party several weeks earlier. It appears that Respondent was convicted of charges relating to these events, that he was sentenced to a period of probation, and that the record of the conviction was expunged in 1984. Respondent further testified that he occasionally used marijuana between 1977 and 1992, but that he did not believe that he had an addiction problem at that time.

In 1992, Respondent began an extramarital affair with a fellow resident who introduced him to methamphetamine, and who provided him with pharmaceutical methamphetamine. According to Respondent, his fellowship stipend was insufficient to make school loan payments and to support his wife and children, so he worked extra hours at several jobs and used the methamphetamine to help him stay awake. In early 1993, Respondent's relationship with the fellow resident ended when she tested positive for methamphetamine use and was forced to enter a drug treatment program. Respondent then began obtaining street methamphetamine from his cousin, and ultimately smoked methamphetamine several times a day.

On April 10, 1993, while working an overnight shift in an emergency room at an air force base, Respondent was followed to his car by base officers who discovered methamphetamine in Respondent's car. Respondent was not arrested at that time, but blood and urine samples were collected which ultimately tested positive for methamphetamine use. Respondent was subsequently charged with possession of a controlled substance and released on his own recognizance.

In November 1993, Respondent met informally with the executive director of the State of Arizona Board of Medical Examiners (Medical Board) and the co-director of the Medical Board's Monitored Aftercare Program. According to Respondent, he gave assurances that he no longer used amphetamines, and the Medical Board allowed Respondent to retain his medical license.

However, Respondent tested positive for methamphetamine use several times between August 1993 and January 1994. In February 1994, Respondent's recognizance release was revoked due to his continued methamphetamine use and he was incarcerated. Several days later he was released from jail and he went to a drug treatment center in Georgia, which is tailored to health care professionals. Respondent left this facility before completing his treatment because he could not afford the cost of the treatment.

Respondent met with the Medical Board again on April 15, and May 9, 1994, and was told that he could not practice medicine in Arizona until he completed his treatment at the facility in Georgia. On May 13, 1994, the Medical Board issued an order which, among other things, prohibited Respondent from using controlled substances that were not obtained pursuant to a valid prescription of a treating physician.

On May 17, 1994, a postal inspector was conducting a random profile of packages and identified a package that she suspected contained controlled substances. The package was opened pursuant to a search warrant and it contained a half ounce of methamphetamine with a street value of approximately $2,800. The package was then resealed and forwarded to Ohio for a controlled delivery. Law enforcement officers contacted a local prosecutor to review an affidavit for a search warrant to be executed after the controlled delivery of the package. During his conversation with the law enforcement officers, the prosecutor became suspicious because his brother had a friend with the same name as that of the addressee on the package. The prosecutor then learned that his brother's wife, from whom he was separated, lived in an apartment complex at the same address as the return address on the package. Later when the prosecutor saw the package, he recognized the handwriting on the package as his brother's and so informed the officers.

On May 19, 1994, there was a controlled delivery of the package and the recipient was arrested and interviewed. During the interview, he mentioned an individual named "Russ," but eventually told the officers that Respondent had mailed him the package. The individual also stated that Respondent had sent him a package of methamphetamine in April 1994, and that he had written Respondent a check for $500 as payment for the methamphetamine.

On several occasions, Respondent contacted his brother who advised him to cooperate with the authorities. Eventually, on May 27, 1994, Respondent did have a conversation with local law enforcement officers during which he indicated that his cousin was the source of the methamphetamine and that he was willing to cooperate in an investigation of his cousin. He indicated that his cousin had asked him to review a recipe for methamphetamine, and that his cousin moved about 40 pounds of methamphetamine per week.

At the hearing, Respondent testified that he had loaned his cousin approximately $20,000 for a business venture, that by April 1994, his cousin had repaid all but $7,000 or $8,000 of the loan, and that he received methamphetamine from his cousin in lieu of interest payments on the loan. Respondent further testified that in April 1994, Respondent went to his cousin's apartment on several occasions and collected $500 on each of two visits. On the third visit, his cousin paid him another $500 and convinced Respondent to mail a package of methamphetamine to a mutual friend and in return, the friend would send payment for the methamphetamine directly to Respondent. According to Respondent he mailed one package of methamphetamine to the mutual friend in late April 1994 and another package on May 17, 1994.

Respondent had another positive urine and was jailed for several days following his arrest on June 15, 1994. He was then released to go to Valley Hope Treatment Center where he stayed for thirty days. Thereafter, he was transferred to the House of Acceptance, Inc. (the House), a substance abuse treatment center.

On August 11, 1994, Respondent was indicted in the United States District Court for the District of Arizona on one count of conspiracy to distribute a controlled substance in violation of 21 U.S.C. 846, three counts of distribution and possession with intent to distribute a controlled substance in violation of 21 U.S.C. 841(a)(1), three counts of using a communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. 843(b), and one count of establishment of a distribution operation in violation of 21 U.S.C. 856(a)(2). On August 12, 1994, an Amended Information charged Respondent with one count of simple possession of a controlled substance in violation of 21 U.S.C. 844(a).

On October 31, 1994, Respondent pled guilty to one felony count of using a communication facility to facilitate the distribution of a controlled substance on May 19, 1994, and to one misdemeanor count of simple possession of a controlled substance. On February 6, 1995, Respondent was convicted of these offenses in the United States District Court for the District of Arizona and sentenced to 15 months incarceration to be served at a drug rehabilitation center, followed by probation for one year.

As part of the plea agreement, Respondent agreed to cooperate in the investigation and prosecution of others. However, Respondent testified that he was never asked to make any monitored telephone calls, asked to provide any additional documentation, or used in any manner in an investigation of his cousin.

On October 20, 1994, the Medical Board placed Respondent's license to practice medicine in Arizona on inactive status after Respondent admitted that he violated the Medical Board's May 1994 Order by continuing to use methamphetamine.

Respondent participated in in-patient treatment at the House from July 1994 until March 10, 1995. Thereafter, in August 1995, Respondent requested that his medical license be reactivated, and on January 18, 1996, the Medical Board reinstated Respondent's medical license and placed it on probation for five years under the condition that he perform at least 150 hours of community service each year. On February 13, 1996, the Medical Board issued a Rehabilitation Stipulation and Order that added conditions to its January 1996 order, including participation in the Medical Board's Monitored Aftercare Program; participation in a 12-step recovery program; obtaining a sole treating physician who was aware of his addiction; not consuming alcohol, poppy seeds, or controlled substances not prescribed by his treating physician; submission to random drug screening; maintenance of a log of all controlled substances prescribed by his treating physician; submission to periodic Medical Board ordered mental, physical, and medical competency examinations; participation in mental health treatment; attending meetings with the Medical Board; and participation in a treatment program in the event of a relapse.

On March 28, 1997, the Medical Board issued an Order terminating the January 1996 Order of Probation, and on April 9, 1997, the Medical Board issued a Stipulation and Order. The April 1997 action is considered a slightly lesser sanction against Respondent's medical license than probation, but it did not change the substantive requirements of the Medical Board's January and February 1996 Orders.

Respondent presented extensive evidence at the hearing regarding his treatment and rehabilitation. Respondent testified that he last used any illegal drug on or about June 10, 1994. As discussed above, he stayed at the House from July 1994 until March 10, 1995. Among other things, the House conducts classes addressing relapse prevention, anger management, life skills, and chemical dependency; requires participation in group therapy and 12-step programs; and provides extensive monitoring. In addition, the House performs drug screens on its participants approximately every four to five days. According to the director, Respondent's stay and performance at the House was "[a]bove reproach," and all of his urine screens were negative. Since his release from the House, Respondent has continued to offer his services there.

Respondent participates in the Medical Board's Monitored Aftercare Program which requires participation in group therapy, random urine testing, and regular attendance at 12-step meetings, such as Alcoholics Anonymous or Narcotics Anonymous. In addition, the medical director of the program meets with individual participants periodically and a staff therapist meets with the participants more regularly.

According to the program's medical director, he has collected between 25 to 30 urine samples from Respondent each year that he has been participating in the program and that they have all been negative. The medical director further testified that Respondent has complied with all of the terms of the program, that the quality of Respondent's recovery is excellent, that Respondent's prognosis for ongoing recovery is also excellent, and that he did not believe that any risk would result from granting Respondent a DEA registration.

Respondent's probation officer testified that Respondent came under his supervision on May 18, 1995, with standard conditions of release as well as special conditions tailored to his substance abuse problem. These special conditions included Respondent's agreement to submit to a search if requested by the probation officer, to participate in a substance abuse treatment program, a mental health treatment program and financial counseling; and to perform 200 hours of community service. According to the probation officer, Respondent complied with all of the standard and special conditions required by his supervised release, and he was released from supervision on May 17, 1996.

Respondent testified at the hearing that he was too proud and embarrassed to ask anyone for help with his addiction, and that had he not been arrested, he might not have received the help that he needed. He testified that upon accepting his addiction, he went to 180 Alcoholics Anonymous meetings in 180 days, followed by five meetings per week for the next year, then about four meetings per week, and now he sponsors others in their recovery programs. In addition to his community service at the House, Respondent testified that he does volunteer counseling at another treatment center.

Respondent further testified that he intends to continue working on his recovery after the conclusion of his five-year probationary period with the Medical Board because "[addiction]'s a disease that needs to be treated on a daily basis for the rest of your life, because if not, if allowed to go uncontrolled, it will kill you."

As of the date of the hearing, Respondent was working as an independent contractor for several insurance companies performing physical examinations. He also helped cover several local nursing homes, and worked as a physician in the urgent care department of several medical centers in Tucson, Arizona. Respondent testified that he hopes to work as an internist at a local hospital beginning in the fall of 1999, but that this position is contingent upon him receiving a DEA registration.

Respondent resumed practicing medicine in January 1996, and has experienced some difficulty as a result of not having a DEA registration. He has been unable to obtain staff privileges at some hospitals and to be designated as a provider by insurance companies. Respondent further testified that his

lack of a DEA registration has also affected his ability to treat patients at the urgent care facilities because he cannot prescribe them controlled substances without involving another physician.

The Government contends that Respondent's application for registration should be denied based upon his violation of the laws relating to controlled substances, his criminal convictions, and the relatively short period of time that he has been in recovery. In arguing that his application should be granted, Respondent does not deny that he violated controlled substance laws and that he was convicted of controlled substance related offenses. Instead, Respondent contends that he has overcome his substance abuse problem and that during the course of his controlled substance abuse, he never misused his former DEA registration to obtain drugs illegally.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the conjunctive; the Deputy Administrator may rely on any one or an combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application of registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, it is undisputed that in May 1994, the Medical Board issued a Rehabilitation Stipulation Order placing a number of probationary conditions on his license to practice medicine in Arizona. Thereafter, his medical license was inactivated in October 1994, and when it was reactivated in January 1996, Respondent was placed on probation for five years. Respondent is currently licensed to practice medicine in Arizona with no restrictions on his ability to handle controlled substances. But as Judge Bittner noted, "inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration, * * * this factor is not determinative."

As to Respondent's experience in dispensing controlled substances, there is no evidence in Respondent ever improperly dispensed controlled substances to his patients. Concerning his own abuse of methamphetamine, there is not evidence that Respondent used his DEA registration to obtain the methamphetamine that he abused.

Regardinig factor three, it is undisputed that Respondent was convicted in February 1995 for possession of a controlled substance in violation of 21 U.S.C. 844(a), a misdemeanor, and of the use of communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. 843(b), a felony. It also appears that Respondent was convicted of controlled substance related offenses in 1977 and that those convictions were later expunged. The Deputy Administrator agrees with Judge Bittner that as a general rule, convictions that have subsequently been expunged can be considered "convictions" for purposes of these proceedings. As Judge Bittner noted, "[a]ny other interpretation would mean that the conviction could be considered between the date it occurs and date it is expunged, but no thereafter, which is inconsistent with established rule in these proceedings that the lapse of time between conduct and the hearing effects only the weight to be given the evidence" citing Thomas H. McCarthy, D.O., 54 FR 20938 (1989), *aff'd*, No. 89–3496 (6th Cir. Apr. 5, 1990). However, unlike Judge Bittner, the Deputy Administrator finds that the record is unclear as to exactly what charges Respondent was convicted of in 1977 and therefore declines to consider these convictions is rendering his decision in this matter.

But, the Deputy Administrator does agree with Judge Bittner that convictions for possession of a controlled substance cannot be considered under this factor. Pursuant to 212 U.S.C. 823(f)(3), the Deputy Administrator shall consider an "applicant's conviction record * * * relating to the manufacture, distribution, or dispensing of controlled substances." Therefore, Respondent's 1995 misdemeanor conviction for possession of a controlled substance cannot be considered under this factor. Judge Bittner seems to suggest that this conviction can be considered under 21 U.S.C. 824(a)(2), however the Deputy Administrator disagrees since only felony convictions relating to controlled substances can be considered under 21 U.S.C. 824(a)(2).

However, the Deputy Administrator has considered Respondent's conviction in 1995 of using a communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. 843(b).

As to factor four, Respondent's compliance with applicable laws relating to controlled substances, it is clear that Respondent illegally possessed controlled substances in 1977 and 1993, and that he illegally mailed methamphetamine in 1994. Respondent also admitted that he self-administered methamphetamine between 1992 and 1994 fer no legitimate medical purpose and outside the scope of his medical practice.

Regarding factor five, the Deputy Administrator agrees with Judge Bittner that it is significant that Respondent was addicted to methamphetamine between June 1992 and June 1994, and that he abused methamphetamine while performing his duties as a physician. However, the Deputy Administrator also finds it noteworthy that Respondent has not illegally used controlled substances since June 1994, and that he has undergone significant treatment for his addiction, and continues with his recovery efforts.

The Deputy Administrator agrees with Judge Bittner that the Government has established a prima facie case for the denial of Respondent's application based upon Respondent's prior addiction to methamphetamine, his violation of controlled substance laws, his 1995 felony conviction, and his abuse of methamphetamine while performing the duties of a physician. Nonetheless, the Deputy Administrator concurs with Judge Bittner's conclusion that "[t]he record, however, establishes that Respondent has spent the last four years rehabilitating himself and has successfully remained sober during that time." In addition, Judge Bittner found Respondent's evidence regarding this rehabilitation and recovery to be credible. Judge Bittner found that "Respondent now understands the gravity of his actions and is remorseful." Judge Bittner concluded "that a preponderance of the evidence does not establish that it would be inconsistent with the public interest to grant Respondent's application for a new DEA registration," and therefore recommended that Respondent's application be granted.

The Deputy Administrator agrees with Judge Bittner that denial of Respondent's application is not warranted. However, the Deputy Administrator believes that some restrictions on Respondent's registration are necessary to protect the public health and safety in light of Respondent's fairly recent abuse of controlled substances, his violation of controlled substance laws and his felony conviction.

Therefore, the Deputy Administrator concludes that Respondent's application for registration should be granted subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration.

1. Respondent must continue his involvement with the Medical Board's Monitored Aftercare Program and abide by its requirements regardless of whether the Medical Board requires such involvement.

2. Respondent shall consent to periodic inspections by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the February 12, 1996 application for registration submitted by Mark Binette, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20232 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Rafael Cappiello, M.D., Revocation of Registration

On April 8, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rafael Cappiello, M.D., of Las Vegas, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC8554354 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada, the state in which he practices. The order also notified Dr. Cappiello that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Cappiello or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Cappiello is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR parts 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Cappiello currently possesses DEA Certificate of Registration AC8554354 issued to him in Nevada. The Deputy Administrator further finds that on June 6, 1998, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Cappiello's license to practice medicine in the State of Nevada.

The Deputy Administrator concludes that Dr. Cappiello is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Dr. Cappiello is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Cappiello is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC8554354, previously issued to Rafael S. Cappiello, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20237 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert S. Chancellor, M.D., Revocation of Registration

On April 8, 1999, the Deputy Assistant Administrator Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert S. Chancellor, M.D., of Las Vegas, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BC2622644 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada, the state in which he practices. The order also notified Dr. Chancellor that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Chancellor or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Chancellor is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without hearing pursuant to 21 CFR 1391.43 (d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Chancellor currently possesses DEA Certificate of Registration BC2622644 issued to him in Nevada. The Deputy Administrator further finds that on June 6, 1998, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Chancellor's

license to practice medicine in the State of Nevada.

The Deputy Administrator concludes that Dr. Chancellor is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the application or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Dr. Chancellor is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Chancellor is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate or Registration BC2622644, previously issued to Robert S. Chancellor, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20238 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–21]

Bryant D. Chomiak, Revocation of Registrations

On January 12, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Bryant D. Chomiak, M.D. (Respondent) of Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration BC2335912 and BC5019395 pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications for renewal of such registrations pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in Nevada, the state in which he practices. The order also notified Respondent that should not request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause that was sent to Respondent at his registered location in Henderson, Nevada was returned to DEA unclaimed. However, a signed receipt indicates that the Order to Show Cause sent to Respondent at his registered location in Las Vegas, Nevada was received on January 20, 1999. There was no response to the Order to Show Cause by Respondent or anyone purporting to represent him within 30 days of receipt of the order and the matter was transmitted to the Deputy Administrator on April 6, 1999, for final agency action.

On April 26, 1999, the DEA's Office of Administrative Law Judges received a letter from Respondent dated April 16, 1999, indicating that he was seeking reinstatement of his Nevada medical license; stating that the revocation of his Nevada medical license had noting to do with his professional conduct; and seeking advice regarding the proper procedure to be followed in this matter. by letter dated May 3, 1999, the Hearing Clerk for the Office of Administrative Law Judges advised Respondent that it was unclear from his April 16, 1999 letter whether or not he was requesting a hearing. The Hearing Clerk then stated "that although your response to the Order to Show Cause is outside the time period specific in 21 CFR 1301.43, you may file with this office a written request for a hearing by May 14, 1999. Otherwise, you will be deemed to have waived your right to a hearing."

On May 18, 1999, Administrative Law Judge Gail A. Randall issued an Order Terminating the Proceedings in this matter. Judge Randall found that there had been no response to the May 3, 1999 letter from the Hearing Clerk, and therefore concluded that Respondent had waived his right to a hearing.

Thereafter, on May 19, 1999, the Office of Administrative Law Judges received a letter from Respondent dated May 16, 1999, in which Respondent stated that "I suppose, the best course is to request a hearing to explain my position formally." Since Judge Randall had already terminated the proceedings before her, the Hearing Clerk forwarded Respondent's May 16, 1999 letter to Government counsel for appropriate action. the investigative file, including all of the above-referenced documents, has been transmitted to the Deputy Administrator.

The Deputy Administrator concludes that Respondent has waived his right to a hearing in this matter. The Order to show Cause specifically states that Respondent had 30 days from the date of receipt of the order to request a hearing. The Order to Show Cause was received on January 20, 1999, and no correspondence did not specifically request a hearing and was clearly outside the 30-day period for requesting a hearing. Nonetheless, Judge Randall gave Respondent a second chance to request a hearing. Respondent was give until May 14, 1999, yet Respondent's letter requesting the hearing was not filed with DEA until May 19, 1999, again outside the allotted time period. Therefore, Respondent is deemed to have waived his right to a hearing and the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Respondent currently possesses DEA Certificates of Registration BC23355912 and BC5019395, issued to him in Nevada. The Deputy Administrator further finds that on April 24, 1997, the Board of Medical Examiners of the State of Nevada (Board) ordered the summary suspension of Respondent's license to practice medicine in Nevada pending further proceedings. Thereafter, on July 15, 1997, the Board revoked Respondent's Nevada medical license. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in Nevada, and it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Respondent is not currently authorized to practice medicine and handle controlled substances in Nevada. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement

Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration BC2335912 and BC5019395, previously issued to Bryant D. Chomiak, M.D., be, and they hereby are, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registrations, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20239 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated Agril 26, 1999, and published in the **Federal Register** on May 7, 1999, (64 FR 24678), Dupont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances to make finished products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Dupont Pharmaceuticals to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Dupont Pharmaceuticals on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 22, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–20229 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–27]

Roger Lee Kinney, M.D.; Grant of Restricted Registration

On March 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Roger Lee Kinney, M.D. (Respondent) of Sapulpa, Oklahoma, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated April 15, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Tulsa, Oklahoma on July 21, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On January 22, 1999, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending that Respondent's application for registration be granted subject to various conditions. Neither party filed exceptions to Judge Randall's opinion, and on April 12, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues or conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent graduated from medical school in 1966, and entered private practice in Sapulpa, Oklahoma in 1967, as a general or family practitioner. He has been a staff member at the only local hospital for approximately 30 years. There are 14 active staff positions at the hospital and it serves a fairly rural area consisting of approximately 58,000 people.

During the early 1980s, Respondent purchased and ingested cocaine. The record is not clear as to the extent of Respondent's abuse of cocaine. However according to Respondent, he last ingested cocaine on August 8, 1985. There is also some evidence in the record that in 1981, Respondent dispensed and distributed Preludin, a Schedule II controlled substance, not in the usual course of his professional practice or for legitimate medical or research purposes.

In 1985, a federal grand jury charged Respondent with an 82-count indictment, which include counts for illegal distribution of a controlled substance, conspiracy to distribute cocaine, and income tax evasion. According to Respondent, he pled guilty to at least 14 felony counts, among them, conspiracy, illegal distribution, and tax evasion, and he was sentenced to four years incarceration. However, the Deputy Administrator is unable to determine exactly what charges Respondent was convicted of, since no judgment order was entered into evidence. Further, while Respondent pled guilty to some charges and he admitted in his 1990 application for a DEA Certificate of Registration that he has been convicted of illegal distribution of controlled substances "which stemmed from a problem of substance abuse," the Government did not present any evidence of the underlying fact of the investigation which led to Respondent's indictment and ultimate conviction. Therefore, the Deputy Administrator is unable to determine the extent and severity of Respondent's unlawful conduct.

Respondent consented to the suspension of his medical license during the period of his incarceration. Thereafter, on February 24, 1986, the Oklahoma State Board of Medical Examiners (Board) suspended Respondent's medical license. While incarcerated, Respondent participated in a drug rehabilitation program. His sentence was later reduced to three years incarceration because of his

cooperation with the Government, and he ultimately served approximately 20 to 22 months of his sentence before being released.

Upon his release, Respondent spent four months at a halfway house, where he was subject to random drug testing six times per month. Following his stay at the halfway house, Respondent was on court-ordered probation for four years, during which time he was randomly tested for drugs once or twice a month. According to Respondent, he never failed any of these drug tests, and the Government presented no evidence to the contrary. Following his incarceration, Respondent participated for several years in an impaired physicians group that met weekly. Respondent testified that he stopped participating in any drug rehabilitation programs or support groups in 1995, "because I didn't seem to have any inclination to do drugs anymore."

On May 19, 1987, the Board conditionally reinstated Respondent's medical license and placed it on probation for five years. Among the conditions imposed by the Board were that Respondent could not prescribe, administer or dispense controlled substances without specific approval from the Board; that he would submit to biological fluid testing at his expense; and that he would abstain from personally using alcohol or any controlled substance unless lawfully prescribed by his physician. Thereafter, on October 19, 1987, the Board modified its previous order, thereby allowing Respondent to prescribe, administer or dispense controlled substances "for emergency room in-patients under the conditions that a fully licensed physician countersign the order within 36 hours and * * * that no controlled dangerous substances may be taken off the premises of the emergency room by any patient." Respondent complied with these conditions.

As a result, the Board terminated Respondent's probation effective October 26, 1989. In its "Order Terminating Probation," the Board commended Respondent for his compliance with the terms and conditions of his probation. Once his probation was terminated, there were no restrictions on Respondent's ability to prescribe, dispense or administer controlled substances in the hospital, using the hospitals's DEA registration number. The pharmacist at the hospital testified that Respondent has never asked her to fill a controlled substance prescription for one of Respondent's outpatients.

On January 31, 1990, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBN) found that Respondent was addicted to cocaine and had been convicted of a felony; denied Respondent's request for a state controlled substance registration at that time; but granted the registration with an effective date of June 1, 1990. There is no evidence that Respondent has misused his state controlled substance license since it was reinstated.

On June 8, 1990, Respondent submitted an application for a DEA Certificate of Registration. In investigating this application, a DEA investigator visited 16 area pharmacies to gather information Respondent's prescribing habits. During the course of this pharmacy survey, the investigator discovered a prescription written by Respondent on December 11, 1991, for Tussi-Organidin, a Schedule V controlled substance. Tussi-Organidin is a cough syrup that contains codeine phosphate. There is also a non-controlled substance called Tussi-Organidin DM, which contains dextromethorphan rather than codeine. Since Tussi-Organidin is a controlled substance, Respondent was not authorized at that time to issue a prescription for it for a clinic patient; but, he was authorized to prescribe Tussi-Organidin DM. Further, Respondent was authorized at that time to issue a prescription for Tussi-Organidin in a hospital setting. Therefore, is it possible that Respondent simply forgot to put the "DM" on the prescription for Tussi-Organidin. Had "DM" been written on the prescription, it would have been for a non-controlled substance and it would have been lawfully prescribed by Respondent for his clinic patient.

In investigating the origin of this prescription, the investigator was told by an unnamed person "to discount it being written by Dr. Kinney * * * [it] was going to be changed to another physician's name and DEA number." Respondent was not informed that the prescription as written was inaccurate, and DEA did not contact the patient as part of the investigation. According to Respondent, the individual had been a patient of his for a number of years.

As a result of this investigation, an order to Show Cause was issued proposing to deny Respondent's 1990 application for a DEA Certificate of Registration. Before the case could proceed to a hearing however, Respondent withdrew his application. DEA has not conducted any investigation of Respondent since this 1991 investigation.

At some point following his reinstatement by the Board, Respondent practiced medicine part-time at a medical clinic owned by the local hospital. While there, Respondent prescribed injectable Nubain, a non-controlled substance, to his patients. At some point, the clinic manager told Respondent that she would no longer maintain a supply of Nubain because of Respondent's past licensing history. Because there are very few non-controlled analgesics that can be substituted for Nubain, Respondent began purchasing injectable Nubain from pharmacies to administer to his patients.

When Respondent left the clinic and only practiced at the hospital, he stopped purchasing Nubain, because the hospital pharmacy maintained a supply of it. In addition, the clinic where Respondent currently works also purchases Nubain for clinic use. According to Respondent, he has never self-administered Nubain, and the Government did not present any evidence that Respondent was using or abusing Nubain, or that he was unlawfully prescribing it for his patients.

Respondent submitted another application for registration with DEA dated October 16, 1996. According to Respondent, it is becoming increasingly difficult for him to treat patients, since he is unable to participate in many managed care programs without a DEA registration.

Currently, Respondent has staff privileges at the local hospital. At the hospital, Respondent also performs surgery, serves as anesthesiologist, works in the emergency room, and is the director of the Skilled Nursing Unit. Typically, Respondent is in surgery five days a week as the primary surgeon or the practicing anesthesiologist. Also, Respondent currently works at a clinic that is owned by the hospital.

Presently, Respondent tries to treat his clinic patients without the use of controlled substances. However, if a controlled substance is necessary, Respondent refers patients directly to another physician who is considered the "patriarch" of the hospital or Respondent asks him to consult on a case and to prescribe a controlled substance for the patient if necessary. However, this physician is 93 years old with significant health problems, and will likely not be practicing for too much longer. If Respondent does not have his own DEA registration and this other physician retires, Respondent will need to find another physician to examine his patients and prescribe controlled substances when necessary.

Respondent's handling of controlled substances at the hospital is subject to

several levels of review. Respondent's orders have never been questioned or reversed. Respondent has been "in good standing" with the hospital at all time.

The number of patients requiring medical care in the Sapulpa area has increased significantly in recent years. If Respondent is not granted a DEA registration, medical care in Sapulpa would suffer since he would be unable to treat a number of patients because he is not allowed to participate in managed care programs.

Based upon Respondent's testimony at the hearing, it is clear that he recognizes the unlawfulness of his prior conduct and appreciates the consequences of such activities.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, it is undisputed that the Board suspended Respondent's medical license in 1986, but hen conditionally reinstated it in 1987 and placed it on probation for five years. Then in 1989, the Board lifted the restriction from Respondent's medical license and terminated the probationary period. It is also undisputed that the OBN initially denied Respondent's application for a state controlled substance registration, but then granted him such a registration in June 1990. Thus, Respondent has had an unrestricted medical license in Oklahoma since 1989 and has been authorized to handle controlled substances in that state since 1990. As Judge Randall stated, "[b]y reinstating both these licenses, over eight years ago, the Board and the OBN have asserted their belief that the Respondent is not a threat to the health or safety of the citizens of Oklahoma."

Factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable controlled substance laws, are clearly relevant in determining the public interest in this matter. Respondent admitted that he purchased and abused cocaine in the early 1980's. However, according to Respondent he has been drug-free since 1985.

In addition, based upon his guilty pleas to a number of criminal charges, there is evidence that Respondent illegally distributed Preludin in the early 1980s. However, without any evidence of the underlying facts that led to Respondent's guilty pleas, the Deputy Administrator is unable to determine the extent and severity of this illegal activity. Nonetheless, the Government has established that at least to some extent, Respondent improperly handled controlled substances and violated relevant controlled substance laws in the early 1980s.

More recently, the Government presented evidence that in 1991, Respondent issued a prescription for the controlled substance Tussi-Organidin to a clinic patient, when he was not authorized to do so. As Judge Randall stated, "[c]onsiderd alone, this assertion satisfies the Government's *prima facie* burden." However like Judge Randall, the Deputy Administrator finds Respondent's evidence concerning this allegation compelling. Respondent was authorized to prescribe Tussi-Organidin in a hospital setting using the hospital's DEA registration number. Further, he was authorized to prescribe Tussi-Organidin DM, a non-controlled substance, to his clinic patients. Since this was the only improper prescription found during the DEA in investigator's survey of 16 pharmacies, Respondent's contention is credible that he simply forgot to write "DM" on the prescription for his clinic patients. As Judge Randall noted, "the seizure of only one prescription indicates that there was no pattern of unauthorized prescribing by the Respondent during this time frame." The Deputy Administrator agrees with Judge Randall that "the existence of this single prescription dated in 1991 for Tussi-Organidin lends little support to the Government's position that granting the Respondent's application in 1999 is inconsistent with the public interest."

The Deputy Administrator finds that while Respondent's behavior in the early 1980s is troubling, it is also significant that other than the one prescription in 1991, there have been no allegations of any improper handling of controlled substances. In fact, Respondent has been handling controlled substances in a hospital setting using the hospital's DEA registration number for a number of years without any problems or questionable conduct.

As to factor three, it is undisputed that Respondent was convicted of charges related to the illegal distribution of a controlled substance and conspiracy. Respondent was incarcerated for 20 to 22 months, and after spending four months in a halfway house, he was placed on probation for four years. Respondent successfully completed his probation.

Regarding factor five, the Government argues that Respondent's purchase of Nubain during 1990 and 1991, is evidence of other conduct which may threaten the public health and safety. The Government contends that Respondent's explanation, that he purchased the Nubain to administer to his patients, was not credible. However, the Government has the burden of proof in these proceedings. The mere fact that Respondent purchased Nubain is not evidenced of any wrongdoing. The Government did not present any evidence that Respondent's purchase of this non-controlled substance was improper. To the contrary, Respondent was authorized to handle Nubain at that time. Respondent explained that he purchased the Nubain because the clinic where he was then employed stopped stocking the drug, and he ceased purchasing Nubain once it became available to him to dispense to his patients at the hospital.

Also relevant under this factor is Respondent's abuse of cocaine. While it is troubling that Respondent stopped actively participating in a recovery program in 1995, he has not illegally used drugs since August 1985.

The Deputy Administrator concludes that Respondent's conduct in the early 1980s and his lack of ongoing participation in a recovery program warrants concern as to whether Respondent can be trusted to responsibly handle controlled substances. However, Respondent has accepted responsibility for his past misconduct; he has complied with all of the terms of his criminal probation, as well as the restrictions placed on his medical license by the Board; there is only one instance of questionable prescribing since the early 1980s; and he has not abused controlled since 1985.

Additionally, the Deputy Administrator finds it significant that without a DEA registration, Respondent is unable to effectively contribute to the medical care of the Sapulpa community. There are only 14 active physicians employed by the sole hospital responsible for the care and treatment of approximately 58,000 people. Because Respondent cannot independently handle controlled substances and is unable to participate in managed care programs, the other physicians at the hospital must handle more than their share of the patients.

The Deputy Administrator concludes that based upon a review of the record, denial of Respondent's application is not warranted. However, the Deputy Administrator concurs with Judge Randall's conclusion that although, "the Respondent should be allowed the opportunity to demonstrate that he can now handle the responsibilities of a DEA registrant, * * * the public interest would best be served by monitoring the Respondent's handling of controlled substances during the first registration period." Imposing conditions upon Respondent's registration, "will allow the Respondent to demonstrate that he can responsibly handle controlled substances in his medical practice, yet simultaneously protect the public by providing a mechanism for rapid detection of any improper activity related to controlled substances." Steven M. Gardner, M.D., 51 FR 12576 (1986).

Therefore, the Deputy Administrator agrees with Judge Randall's recommendation that Respondent's application for registration be granted, pursuant to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration:

(1) On a quarterly basis, Respondent shall provide the DEA Oklahoma City Resident Office with a log of his handling of controlled substances outside of the Bartlett Hospital setting. This log should include at a minimum the date the controlled substance was prescribed, administered, or dispensed; the patient's complaint; the name, dosage, and quantity of the controlled substance prescribed, administered, or dispensed; and the date that the medication was last prescribed, administered, or dispensed to that patient, as well as the amount last provided to that patient. If no controlled substance are prescribed, administered, or dispensed during a given quarter, Respondent shall indicate that fact in writing, in lieu of submission of the log.

(2) Respondent shall notify the DEA Oklahoma City Resident Office of any action taken by any state upon his medical license or upon his authorization to handle controlled substance in any state. Such notification shall occur within 30 days of any state action.

(3) Respondent shall notify the DEA Oklahoma City Resident Office within 30 days of any change in his employment.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Roger Lee Kinney, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20231 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lawson and Associations; Denial of Application

On November 5, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lawson and Associates, of Nashville, Tennessee, notifying it of an opportunity to show cause as to why DEA should not deny its application for a DEA Certificate of Registration as a researcher pursuant to 21 U.S.C. 823(f), for reason that is not currently authorized to handle controlled substances in the State of Tennessee. The order also notified Lawson and Associates that should no request for a hearing be filed within 30 days of receipt of the Order to Show Cause, its hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on November 23, 1998. No request for a hearing or any other reply was received by the DEA from Lawson and Associates or anyone purporting to represent it in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Lawson and Associates is deemed to have waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that DEA registers dog handlers as researchers pursuant to 21 U.S.C. 823(f). The Deputy Administrator further finds that there is a letter in the investigative file dated June 9, 1997, from the Tennessee Board of Pharmacy which indicates that Lawson and Associates was issued a license as a dog handler on November 15, 1995, but that the license expired on November 30, 1996, and has not been renewed. Lawson and Associates did not present any evidence to indicate that it was currently licensed in Tennessee as a dog handler.

The Deputy Administrator concludes that Lawson and Associates is not currently licensed as a dog handler in the State of Tennessee and therefore, it is reasonable to infer that it is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without states authority to handle controlled substances in the state in which it conducts its business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR. 16193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Lawson and Associates is not currently authorized to handle controlled substances in the State of Tennessee. As a result, it is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Lawson and Associates, be, and it hereby is, denied. This order is effective August 6, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20234 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 26, 1999, and published in the **Federal Register** on May 7, 1999, (64 FR 24679), Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The firm intends to import the listed controlled substances to produce codeine phosphate, codeine sulfate, morphine sulfate, oxycodone and hyrocodone.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Noramco of Delaware, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco of Delaware, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–20228 Filed 8–5–99; 8:45 am]

BILLING CODE 4140–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–18]

Vincent G. Rhoden, D.P.M.; Revocation of Registration

On January 21, 1999, the Deputy Assistant Administrator, Officer of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Vincent G. Rhoden, D.P.M. (Respondent) of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BR5050860 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California.

By letter dated March 1, 1999, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On March 8, 1999, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition on March 29, 1999, alleging that Respondent is currently registered with DEA to handle controlled substances in the State of California, however he is currently without state authority to handle controlled substances in that state. On April 19, 1999, Respondent filed his response to the Government's motion requesting that the proceedings be stayed for "at least 180 days so that [he] may explore all available judicial remed[ies] for a questionable decision that was rendered against [him]. In addition, Respondent stated that there have been no complaints regarding his use of his DEA Certificate of Registration and that he intends to return to the practice of medicine. However, Respondent did not deny that he was not currently authorized to handle controlled substances in California.

On April 22, 1999, Judge Bittner issued her Opinion and Recommended Ruling, finding that Respondent lacks authorization to handle controlled substances in the State of California; granting the Government's Motion for Summary Disposition; and recommending that Respondents DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on May 24, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Board of Pediatric Medicine, Department of Consumer Affairs, State of California, revoked Respondent's license to practice podiatric medicine effective January 14, 1998. Respondent does not deny that his medical license has been revoked. As a result, the Deputy Administrator concludes that Respondent is not currently authorized to practice medicine in the State of California, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the State of California. As a result, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is not currently authorized to handle controlled substances in California. Therefore, it is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial proceeding involving evidence and cross-examination of witnesses is not required. See Jesus R. Juarez, M.D., 62 FR 14945 (1997). The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. See Philip E. Kirk, M.D., 48 FR 32887 (1983), *aff'd; sub nom* Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); see also NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement

Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BR5050860, previously issued to Vincent G. Rhoden, D.P.M., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20236 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–6]

Robert W. Shultice, M.D.; Revocation of Registration

On October 16, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert W. Shultice, M.D. (Respondent) of Cedar Rapids, Iowa. The Order to Show Cause notified Dr. Shultice of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS0126272 pursuant to 21 U.S.C. 824(a)(1) and (a)(4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that his continued registration would be inconsistent with the public interest.

By letter dated November 12, 1998, Respondent, through counsel, filed a request for a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 24, 1998, Judge Bittner issued an Order for prehearing Statements. The Government filed its prehearing statement on December 15, 1998, and on January 4, 1999, Respondent filed a Motion of Continuance. In his motion, Respondent indicated that he had voluntarily surrendered his license to practice medicine with the Iowa Board of Medical Examiners (Medical Board), and asked for an indefinite continuance of the proceedings. Respondent attached to his motion a copy of a Statement of Charges, Settlement Agreement and Final Order which was approved by the medical Board of December 17, 1998, in which Respondent agreed to voluntarily surrender his medical license no later than December 11, 1998. On January 4, 1999, Judge Bittner denied Respondent's motion.

Thereafter, the Government filed a Motion for Summary Disposition on January 21, 1999, alleging that Respondent was no longer authorized to handle controlled substances in Iowa, where he is registered with DEA. The Government attached to its motion a copy of a letter dated January 14, 1999, from the Iowa Board of Pharmacy (Pharmacy Board) to Respondent informing him that based on the surrender of his medical license, the Pharmacy Board revoked his Iowa controlled substance registration. On February 5, 1999. Respondent filed his Response to the Government's Motion for Summary Disposition, indicating that he did not object to the Government's motion.

On February 8, 1999, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacks authorization to handle controlled substances in Iowa; granting the Government's Motion for Summary Disposition, and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on April 6, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent voluntarily surrended his license to practice medicine in December 1998, and on January 14, 1999, the Pharmacy Board revoked his Iowa controlled substance registration. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Iowa, where he is registered with DEA.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in the State of Iowa. Since Respondent lacks this authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in the State of Iowa. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); see also NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F. 2d 634 (9th Cir. 1977); United States v. Consolidated Mines & Smelting Co., 44 F. 2d 432 (9th Cir. 1971).

According, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BS0126272, previously issued to Robert W. Shultice, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20241 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–17]

Clarence J. Sketch, D.D.S.; Denial of Application

On February 2, 1999, the Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration (DEA) issued an Order to Show Cause to Clarence Sketch, D.D.S. (Respondent) of Costa Mesa, California, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest. In a letter to DEA dated February 25, 1999, Respondent admitted that he abused his previous DEA Certificate of Registration,

indicated that he would not abuse his privileges in the future, stated that he needs a DEA registration in his practice of dentistry, and asked that his registration be reinstated. However, Respondent did not request a hearing on the issues raised by the Order to Show Cause.

Thereafter, the matter was docketed before Administrative Law Judge Gail A. Randall. By letter dated March 15, 1999, Judge Randall advised Respondent that he did not request a hearing in his February 25, 1999 letter. Nonetheless, Judge Randall told Respondent that he had until March 31, 1999, to request a hearing, and that failure to request a hearing by that date, would be deemed a waiver of his right to a hearing pursuant to 21 CFR 1301.43(d).

On April 13, 1999, Judge Randall issued an Order; Notice of Waiver of Hearing advising that she had not received a response to her letter to Respondent dated March 15, 1999. As a result, Respondent was deemed to have waived his opportunity for a hearing and Judge Randall terminated the proceedings before her.

Subsequently the mater was transmitted to the Deputy Administrator for issuance of a final agency decision. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46

The Deputy Administrator finds that DEA initiated an investigation of Respondent in May 1996 after receiving reports that Respondent had purchased large quantities of Schedule III through V controlled substances from a single distributor. A review of the distributor's invoices revealed that Respondent purchased over 58,000 dosage units of Schedule III through V controlled substances from this distributor between May 28, 1994 and April 23, 1996.

On May 2, 1996, during an interview with investigators, Respondent admitted that he ordered and received controlled substances, but claimed that he dispensed them to his patients. When asked for records of receipt and dispensation, Respondent stated that he did not maintain any records, except what was noted in the patient charts. It was also discovered that Respondent did not have any controlled substances on hand as of the date of the interview. Upon further questioning, Respondent admitted that the controlled substances were not given to his patients, but instead, he sold them on a monthly basis for two to three dollars per pill to a Mexican national. Respondent indicated that he was experiencing financial difficulties at the time. On May 6, 1996, Respondent surrendered his previous DEA Certificate of Registration.

Respondent then submitted a new application for registration with DEA dated July 15, 1998. He indicated on this application that he surrendered his previous DEA registration because "[a]t that time I was not doing a proper job at keeping records."

On October 13, 1998, a DEA investigator had a conversation with Respondent regarding his application for registration. During this conversation, Respondent indicated that he needs limited controlled substance privileges for the treatment of his patients; that he needs a DEA registration in order to be accepted as a provider by insurance companies; that he has no contact with the Mexican national; and that his financial problems have been resolved through bankruptcy proceedings.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D. 54 FR 16422 (1989).

The Deputy Administrator finds that there is no evidence in the investigative file regarding factors one and three. However factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable controlled substance laws, are clearly relevant in determining whether Respondent's registration with DEA would be in the public interest. By Respondent's own admission in 1996, he ordered controlled substances and then sold them to a Mexican national for no legitimate medical purpose. This is clearly a violation of 21 U.S.C. 841(a)(1). In addition, Respondent failed to keep complete and accurate records of his controlled substance handling as required by 21 U.S.C. 827. Therefore, the evidence supports a finding that Respondent diverted over 58,000 dosage units of controlled substances between May 1994 and April 1996.

As to factor five, the Deputy Administrator finds it particularly troubling that Respondent was less than forthcoming on his application for registration dated July 15, 1998. Respondent indicated on the application that he surrendered his previous DEA registration based upon his failure to keep proper records. Respondent does not mention the fact that he illegally sold controlled substances to a Mexican national.

The Deputy Administrator concludes that there is substantial evidence in the record to support a conclusion that Respondent's registration with DEA would be inconsistent with the public interest. The Deputy Administrator recognizes that Respondent has indicated that he needs to be able to handle controlled substances in order to adequately treat his patients; however, the Deputy Administrator is not convinced based upon the evidence in the record that Respondent can be trusted to responsibly handle controlled substances.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Clearance J. Sketch, D.D.S. on July 15, 1998, be, and it hereby is, denied. This order is effective August 6, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20233 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 12, 1999, and published in the **Federal Register** on April 27, 1999, (64 FR 22645), Stepan Company Natural Products Department,

100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Stepan Company to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 22, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–20230 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–2]

Dietrich A. Stoermer, M.D.; Denial of Application

On June 5, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Dietrich A. Stoermer, M.D. (Respondent) of Las Vegas, Nevada. The Order to Show Cause notified Dr. Stoermer of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), based in part on the fact that he is not currently authorized to handle controlled substances in Nevada.

On October 26, 1998, Respondent filed a request for a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 2, 1998, Judge Bittner issued an Order requiring Respondent to file a written statement indicating why his more than four month delay in filing a request for a hearing should not be considered a waiver of his right to a hearing. On November 12, 1998, Respondent filed a written statement asserting that he received the Order to Show Cause on August 6, 1998, and since it was more than thirty days after the Order to Show Cause had been issued he believed that he was precluded from responding. Respondent asserted that he received a second Order to Show Cause on September 30, 1998, and timely filed his request for a hearing on October 26, 1998. The Government did not file an objection to Respondent's explanation. Thereafter, on November 25, 1998, Judge Bittner issued a Memorandum and Order for Prehearing Statements finding that Respondent did not waive his right to a hearing.

In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition and Request for Stay of Deadline to File Prehearing Statement on December 15, 1998, alleging that Respondent is not authorized to handle controlled substances in Nevada, where he has applied to be registered with DEA. On December 31, 1998, Respondent submitted his response to the Government's motion, in which he did not deny that he was not currently authorized to handle controlled substances in Nevada.

On February 1, 1999, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacks authorization to handle controlled substances in the State of Nevada; granting the Government's Motion for Summary Disposition; and recommending that Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to her opinion, and on April 6, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that attached to the Government's Motion for Summary Disposition was a letter dated March 5, 1998, from a licensing specialist with the Nevada State Board of Pharmacy (Pharmacy Board), which indicated that Respondent's state registration was not renewed in October 1994, and that while Respondent reapplied for registration in June of 1996, he did not complete the registration process. In his response to the Government's motion, Respondent did not deny that he was not currently authorized to handle controlled substances in Nevada. However, he asserted that when he applied for a state registration in June 1996, he was told not to pursue state registration "until the Federal problem is sorted out." Subsequently, by letter dated January 25, 1999, Respondent forwarded a copy of his application dated January 29, 1999, for a controlled substance registration filed with the Pharmacy Board.

The Deputy Administrator finds that Respondent does not dispute that he is not currently authorized to handle controlled substances in Nevada, where he has applied for registration with DEA. However, he asserts that the Pharmacy Board will not consider his application for state registration until he receives a DEA Certificate of Registration. Judge Bittner noted that "[t]his agency has neither the authority nor the obligation to discover why Respondent is not registered with the Pharmacy Board, but only to ascertain if Respondent is authorized to handle controlled substances in the State of Nevada." Therefore, the Deputy Administrator concludes that Respondent is not currently authorized to handle controlled substances in Nevada.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in the State of Nevada. Since Respondent lacks this authority, he is

not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in the State of Nevada. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Philip E. Kirk, M.D., 48 FR 32887 (1993), *aff'd sub nom* Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); see also NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977); United States v. Consolidated Mines & Smelting Co., 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Dietrich A. Stoemer, M.D., be, and it hereby is, denied. This order is effective August 6, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20235 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Richard M. Wodka, M.D., Revocation of Registration

On February 26, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard M. Wodka, M.D., of Arizona, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BW3512173 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Arizona. The order also notified Dr. Wodka that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by registered mail to Dr. Wodka's DEA registered address in Tucson, Arizona, but was returned to DEA with a notation that Dr. Wodka had moved without leaving a forwarding address. A copy of the Order to Show Cause was also sent by regular mail to Dr. Wodka at his last known address in Marana, Arizona. This copy has not been returned and therefore is considered to have been delivered.

No request for a hearing or any other reply was received by the DEA from Dr. Wodka or anyone purporting to represent him in this matter. It is evident that Dr. Wodka is no longer practicing medicine at the address listed on his DEA Certificate of Registration. Dr. Wodka is therefore deemed to have waived his opportunity for a hearing. The Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Wodka currently possesses DEA Certificate of Registration BW3512173, issued to him in Arizona. On July 17, 1996, the Arizona Board of Medical Examiners (Board) placed Dr. Wodka's license to practice medicine in inactive status and totally revoked his prescribing privileges.

The Deputy Administrator concludes that Dr. Wodka is not currently licensed to practice medicine in the State of Arizona, and is not authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Dr. Wodka is not currently authorized to handle controlled substances in the State of Arizona. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BW3512173, previously issued to Richard M. Wodka, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20240 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2009–99; AG Order No. 2239–99]

Extension of the Registration Period for Hondurans and Nicaraguans Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On January 5, 1999, the Attorney General designated Honduras and Nicaragua under the Temporary Protected Status (TPS) program for a period of 18 months. Under the terms of the designation, applicants could apply for TPS during the registration period lasting from January 5, 1999, through July 5, 1999. this notice extends the registration period until August 20, 1999. Applications must be received with the appropriate fee for a fee waiver request by the Immigration and Naturalization Service (Service) service center with jurisdiction over the applicant's place of residence by close of business on August 20, 1999. The extension of the registration period does not extend the period of the designation. In order to be eligible for TPS under the Honduras or Nicaragua designations, applicants must demonstrate that they have been continuously present in the United States since January 5, 1999, and have continuously resided in the United States since December 30, 1998. The Service is extending the registration period to allow eligible applicants who have not yet filed an application an additional 45 days to register for TPS. There will be no further extension of the registration deadline.

DATES: This notice is effective July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

When did the Attorney General designate Honduras and Nicaragua under the TPS Program?

On January 5, 1999, the Attorney General designated Honduras and

Nicaragua under the TPS program for a period of 18 months in two separate **Federal Register** notices. See 64 FR 524; 64 FR 526. The registration period for these designations was limited to 180 days, from January 5, 1999, to July 5, 1999.

What authority does the Service have to extend the registration period?

Section 244(c)(1)(A)(iv) of the Immigration and Nationality Act, as amended (Act), authorizes the Attorney General to provide TPS applicants a "registration period of not less than 180 days" and requires aliens to register "to the extent and in a manner which the Attorney General establishes." 8 U.S.C. 1254a(c)(1)(A)(iv). The registration period for Hondurans and Nicaraguans under the TPS Program initially lasted for 180 days, from January 5, 1999, to July 5, 1999. Under section 244(c)(1)(A)(iv) of the Act, the Attorney General has decided to extend the registration period for an additional 45 days, until August 20, 1999. 8 U.S.C. 1254a(c)(1)(A)(iv).

Why is the Attorney General extending the registration period?

The Attorney General is extending the registration period in order to provide those applicants hoe have not yet filed an application for TPS under the Honduras or Nicaragua programs with an additional 45 days in which to gather and submit the documentation necessary to provide eligibility for TPS. The Attorney General has been advised that Honduran and Nicaraguan applicants have been having difficulty obtaining nationality and identity documents. This action is not a redesignation of TPS and does not expand the designation to include Hondurans and Nicaraguans who entered the country after December 30, 1998. There will be no further extensions of the registration period.

Can I apply for TPS even if I do not have all of the necessary documentation?

Yes. Applicants do not need to wait to apply for TPS until they have obtained all of the evidence necessary to establish their eligibility. The application, Form I–821, Application for Temporary Protected Status, contains instructions for applicants who cannot obtain identity and nationality documentation. Applicants who do not submit appropriate documentation establishing identity or nationality with their applications must, under the regulations, submit an affidavit showing proof of unsuccessful efforts to obtain the documents, explaining why the consular process was unavailable to them, and affirming that they are nationals of Honduras or Nicaragua (or aliens having no nationality who last habitually resided in either Honduras or Nicaragua). Applicants who submit an affidavit and receive the proper documentation prior to adjudication may provide the missing documentation to the Service. While the Service encourages applicants to submit proper documentation with their applications, the Service will only accept and process applications received on or before the extended August 20, 1999, registration deadline. To be considered properly filed, an application must be received, with the appropriate fee or a fee waiver request, at the service center with jurisdiction over the applicant's place of residence by close of business on August 20, 1999.

What happens to an application that is submitted without the proper fee or the fee waiver request is denied?

Applications submitted without the proper fee will be rejected and returned to the applicant. The Service will also reject and return to the applicant any application in which a fee waiver request has been denied.

Can I apply for TSP after the end of the registration period?

In addition to timely registration, late registration is possible for some persons under 8 CFR 244.2. The requirements for late registration specify that at the time of the initial registration period the applicant must (1) have been in valid nonimmigrant status or been granted relief from removal, (2) have had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal, (3) have been a parolee or had a pending request for reparole, or (4) have been a spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2). An applicant for late registration must register no later than 60 days from the expiration or termination of the qualifying condition. 8 CFR 244.2(g).

Dated: July 25, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–20279 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 30, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E–Mail to Mills-Ira@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 295–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Revenue Quality Control-Tax Performance System.

OMB Number: 1205–0332.

Frequency: Annually.

Affected Public: State, Local, or Tribal govt.

Number of Respondents: 52.

Estimated Time Per Response: 1,750.

Total Burden Hours: 91,000.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Revenue Quality Control-Tax Performance System gathers and disseminates information on the timeliness and accuracy of State unemployment insurance tax operations. This submission proposes to extent the Revenue Quality Control program for three years.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–20319 Filed 8–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 29, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov. Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Noisc Data Rcport Form and Calibration Records.

OMB Number: 1219–0037.

Frequency: Annually.

Affected Public: Business or other for-profit.s

Number of Respondents: 196,463.

30 CFR	Respondent	Frequency	Total responses	Average time per response	Burden hours	Hourly salary	Burden hour costs
70.506:							
Calibrator	971	Annually	971	3 min	49	$17	$833
Dosimeter	971	Annually	971	3 min	49	17	833
70.508(a):							
Survey	47,998	Semi-ann	95,996	15 min	24,000	43	1,032,000
Report	47,998	Semi-ann	95,996	6 min	9,600	17	163,200
70.508(b):							
Survey/Report	485	Semi-ann	970	6 min	97	17	1,649
70.509:							
Survey	963	Annually	963	15 min	241	43	10,363
Report	963	Annually	963	6 min	96	17	1,632
71.803(a):							
Survey	47,340	Semi-ann	94,680	15 min	23,670	43	1,017,810
Report	47,340	Semi-ann	94,680	6 min	9,468	17	160,956
71.803(b): Certify	478	Semi-ann	956	6 min	96	17	1,632
71.804(a):							
Survey	478	Annually	478	15 min	120	43	5,160
Report	478	Annually	478	6 min	48	17	816
Totals	196,463		388,102		67,534		2,396,884

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $423,040.

Description: Coal mine operators are required to report to NSHA when noise exposure surveys show noncompliance with permissible levels. Records are also required to be kept at the mine of when and by whom doismeters and acoustical calibrators are recalibrated.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–20320 Filed 8–5–99; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be

enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. AK990009 dated March 12, 1999.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision AK990008. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
- NJ990003 (Mar. 12, 1999)
- NJ990004 (Mar. 12, 1999)

Volume II

West Virginia
- WV990002 (Mar. 12, 1999)
- WV990003 (Mar. 12, 1999)
- WV990005 (Mar. 12, 1999)
- WV990006 (Mar. 12, 1999)

Volume III

Alabama
- AL990017 (Mar. 12, 1999)
- AL990042 (Mar. 12, 1999)

Georgia
- GA990003 (Mar. 12, 1999)
- GA990022 (Mar. 12, 1999)
- GA990031 (Mar. 12, 1999)
- GA990032 (Mar. 12, 1999)
- GA990034 (Mar. 12, 1999)
- GA990040 (Mar. 12, 1999)
- GA990053 (Mar. 12, 1999)
- GA990065 (Mar. 12, 1999)
- GA990073 (Mar. 12, 1999)
- GA990084 (Mar. 12, 1999)
- GA990085 (Mar. 12, 1999)
- GA990086 (Mar. 12, 1999)
- GA990087 (Mar. 12, 1999)
- GA990088 (Mar. 12, 1999)

Kentucky
- KY990001 (Mar. 12, 1999)
- KY990002 (Mar. 12, 1999)
- KY990003 (Mar. 12, 1999)
- KY990004 (Mar. 12, 1999)
- KY990007 (Mar. 12, 1999)
- KY990025 (Mar. 12, 1999)
- KY990027 (Mar. 12, 1999)
- KY990029 (Mar. 12, 1999)

North Carolina
- NC990001 (Mar. 12, 1999)
- NC990003 (Mar. 12, 1999)

Volume IV

Illinois
- IL990001 (Mar. 12, 1999)
- IL990002 (Mar. 12, 1999)
- IL990003 (Mar. 12, 1999)
- IL990004 (Mar. 12, 1999)
- IL990007 (Mar. 12, 1999)
- IL990008 (Mar. 12, 1999)
- IL990012 (Mar. 12, 1999)
- IL990014 (Mar. 12, 1999)
- IL990016 (Mar. 12, 1999)
- IL990017 (Mar. 12, 1999)
- IL990023 (Mar. 12, 1999)
- IL990024 (Mar. 12, 1999)
- IL990025 (Mar. 12, 1999)
- IL990027 (Mar. 12, 1999)
- IL990032 (Mar. 12, 1999)
- IL990037 (Mar. 12, 1999)
- IL990042 (Mar. 12, 1999)
- IL990045 (Mar. 12, 1999)
- IL990046 (Mar. 12, 1999)
- IL990047 (Mar. 12, 1999)
- IL990048 (Mar. 12, 1999)
- IL990049 (Mar. 12, 1999)
- IL990050 (Mar. 12, 1999)
- IL990051 (Mar. 12, 1999)
- IL990052 (Mar. 12, 1999)
- IL990054 (Mar. 12, 1999)
- IL990059 (Mar. 12, 1999)
- IL990066 (Mar. 12, 1999)
- IL990070 (Mar. 12, 1999)

Michigan
- MI990004 (Mar. 12, 1999)
- MI990039 (Mar. 12, 1999)
- MI990042 (Mar. 12, 1999)
- MI990064 (Mar. 12, 1999)

Ohio
- OH990001 (Mar. 12, 1999)
- OH990002 (Mar. 12, 1999)
- OH990003 (Mar. 12, 1999)
- OH990018 (Mar. 12, 1999)
- OH990026 (Mar. 12, 1999)
- OH990027 (Mar. 12, 1999)
- OH990028 (Mar. 12, 1999)
- OH990029 (Mar. 12, 1999)
- OH990034 (Mar. 12, 1999)
- OH990035 (Mar. 12, 1999)
- OH990036 (Mar. 12, 1999)
- OH990039 (Mar. 12, 1999)

Volume V

Iowa
- IA990005 (Mar. 12, 1999)
- IA990009 (Mar. 12, 1999)

Kansas
- KS990006 (Mar. 12, 1999)
- KS990008 (Mar. 12, 1999)
- KS990012 (Mar. 12, 1999)
- KS990016 (Mar. 12, 1999)
- KS990022 (Mar. 12, 1999)
- KS990069 (Mar. 12, 1999)
- KS990070 (Mar. 12, 1999)

Oklahoma
- OK990013 (Mar. 12, 1999)
- OK990014 (Mar. 12, 1999)
- OK990016 (Mar. 12, 1999)
- OK990017 (Mar. 12, 1999)
- OK990018 (Mar. 12, 1999)
- OK990023 (Mar. 12, 1999)
- OK990024 (Mar. 12, 1999)
- OK990028 (Mar. 12, 1999)

OK990030 (Mar. 12, 1999)
OK990031 (Mar. 12, 1999)
OK990032 (Mar. 12, 1999)
OK990033 (Mar. 12, 1999)
OK990034 (Mar. 12, 1999)
OK990035 (Mar. 12, 1999)
OK990036 (Mar. 12, 1999)
OK990037 (Mar. 12, 1999)
OK990038 (Mar. 12, 1999)
OK990040 (Mar. 12, 1999)
OK990041 (Mar. 12, 1999)
OK990043 (Mar. 12, 1999)

Volume VI

Alaska
AK990001 (Mar. 12, 1999)
AK990002 (Mar. 12, 1999)
AK990003 (Mar. 12, 1999)
AK990005 (Mar. 12, 1999)
AK990006 (Mar. 12, 1999)
AK990008 (Mar. 12, 1999)
Utah
UT990004 (Mar. 12, 1999)
UT990005 (Mar. 12, 1999)
UT990006 (Mar. 12, 1999)
UT990007 (Mar. 12, 1999)
UT990008 (Mar. 12, 1999)
UT990010 (Mar. 12, 1999)
UT990011 (Mar. 12, 1999)
UT990013 (Mar. 12, 1999)
UT990015 (Mar. 12, 1999)
UT990020 (Mar. 12, 1999)
UT990023 (Mar. 12, 1999)
UT990033 (Mar. 12, 1999)
UT990034 (Mar. 12, 1999)

Volume VII

Arizona
AZ990001 (Mar. 12, 1999)
AZ990002 (Mar. 12, 1999)
AZ990003 (Mar. 12, 1999)
AZ990004 (Mar. 12, 1999)
AZ990005 (Mar. 12, 1999)
AZ990006 (Mar. 12, 1999)
AZ990010 (Mar. 12, 1999)
AZ990011 (Mar. 12, 1999)
AZ990012 (Mar. 12, 1999)
AZ990013 (Mar. 12, 1999)
AZ990014 (Mar. 12, 1999)
AZ990015 (Mar. 12, 1999)
AZ990016 (Mar. 12, 1999)
AZ990017 (Mar. 12, 1999)
AZ990018 (Mar. 12, 1999)
California
CA990001 (Mar. 12, 1999)
CA990002 (Mar. 12, 1999)
CA990004 (Mar. 12, 1999)
CA990009 (Mar. 12, 1999)
CA990026 (Mar. 12, 1999)
CA990027 (Mar. 12, 1999)
CA990028 (Mar. 12, 1999)
CA990029 (Mar. 12, 1999)
CA990030 (Mar. 12, 1999)
CA990031 (Mar. 12, 1999)
CA990032 (Mar. 12, 1999)
CA990033 (Mar. 12, 1999)
CA990034 (Mar. 12, 1999)
CA990035 (Mar. 12, 1999)
CA990036 (Mar. 12, 1999)
CA990037 (Mar. 12, 1999)
CA990038 (Mar. 12, 1999)
CA990039 (Mar. 12, 1999)
CA990040 (Mar. 12, 1999)
CA990041 (Mar. 12, 1999)
Nevada
NV990001 (Mar. 12, 1999)
NV990005 (Mar. 12, 1999)
NV990007 (Mar. 12, 1999)
NV990008 (Mar. 12, 1999)
NV990009 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those notes above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the US Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 29th day of July 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–19987 Filed 8–5–99; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice of Public Hearing

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of public hearing.

SUMMARY: This notice sets a date, time and place for a public hearing in connection with MSHA's accident investigation of the July 5, 1999 explosion at Kaiser Aluminum & Chemical Company's Gramercy Works facility in Gramercy, Louisiana.

The United States Department of Labor, Mine Safety & Health Administration will convene a public hearing as part of the Agency's accident investigation into the July 5, 1999 explosion at the Kaiser Aluminum & Chemical Company's Gramercy Works facility in Gramercy, Louisiana.

The hearing will begin at 9:00 A.M CDT on Wednesday, September 8, 1999, at the St. James Parish Courthouse, Council Chambers, 2nd Floor, 5800 LA 44, Convent, Louisiana 70723. It will continue at such time(s) and place(s) as MSHA designates.

The hearing is convened pursuant to Section 103(b) of the Federal Mine Safety & Health Act of 1977, 30 USC Section 813(b). The purpose of the hearing is to carry out MSHA's statutory responsibility to (1) determine the cause(s), including possible contributory causes, of the explosion; (2) identify and develop corrective actions, procedures and strategies to prevent the occurrence of similar accidents; and (3) determine whether federal safety standards were violated in relation to the explosion. The hearing will be non-adversarial and fact-finding in nature, and questioning will be limited to the statutory purposes. The hearing will not be subject to the provisions of the Administrative Procedure Act, 5 USC Section 554.

All of the questioning will be done by an MSHA panel comprised of Agency personnel, experts retained by MSHA, and representatives from the Department of Labor's Office of the Solicitor. Representatives of the operator, the miners or any other interested person may submit written questions or areas of inquiry for MSHA to consider. MSHA will determine—at its sole discretion—whether said supplemental questions will be asked. Such supplemental questioning will be conducted by the MSHA panel.

Representatives of the operator, representatives of miners at the facility, and any other interested persons are invited to provide the names of potential witnesses with relevant information concerning the accident. A brief description of the possible relevant testimony of the potential witness should be included when witness names are submitted. MSHA will make the final determination of which witnesses will be called to testify. Suggested questions and the names of potential witnesses should be provided to Edward Lopez at the address below.

Witnesses will be subpoenaed by the Agency. The subpoena will advise the witness of the date and time of his/her required appearance, as well as of the location of the hearing. Some witnesses

may be required to bring certain records with them at the time of their appearance. Witnesses are encouraged to review any records necessary to refresh or supplement their recollection prior to appearing to testify.

DATES: The hearing will begin at 9:00 A.M CDT, September 8, 1999.

ADDRESSES: The hearing will be held in St. James Parish Courthouse, Council Chambers, 2nd Floor, 5800 LA 44, Convent, Louisiana 70723.

FOR FURTHER INFORMATION CONTACT: Edward Lopez, Accident Investigations Program Manager, Mine Safety & Health Administration, 4015 Wilson Boulevard, Room 718, Arlington, VA 22203; telephone (703) 235–1565; Fax (703) 235–3686 (Arlington, Virginia) or telephone (225) 869–9636 (Lutcher, Louisiana).

Dated: August 3, 1999.

Marvin W. Nichols,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–20393 Filed 8–4–99; 2:06 pm]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Fellowships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Fellowship Panel, Literature section, to the National Council on the Arts will be held from September 13–16, 1999 in Room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. The Translation Projects in Prose section will meet from 9:00 a.m. to 7:00 p.m. on September 13th and the Fiction/Creative Non-Fiction section will meet from 9:00 a.m. to 7:00 p.m. on September 14th and 15th and from 9:00 a.m. to 5:00 p.m. on September 16th. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on September 16th, will be open to the public for policy discussions.

The remaining portions of these meetings, from 9:00 a.m. to 7:00 p.m. on September 13th–15th and from 11:00 a.m. to 5:00 p.m. on September 16th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 28, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–20296 Filed 8–5–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision

2. The title of the information collection: Proposed rule, "Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material" (10 CFR Parts 30, 31, 32, 170, and 171).

3. The form number if applicable: NRC Form 653, Transfers of Industrial Devices Report

4. How often is the collection required: Quarterly, Annually, On Occasion.

5. Who will be required or asked to report: NRC licensees and Agreement State licensees.

6. An estimate of the number of responses: NRC licensee responses are 20,320 and Agreement States responses are 18,670, for a total of 38,990 responses.

7. The estimated number of annual respondents: 6,340.

8. An estimate of the total number of hours needed annually to complete the requirement or request: NRC licensees = 511, Agreement States = 602 for a total of 1,113 hours.

9. An indication of whether section 3504(h), Pub. L. 96–511 applies: Applicable.

10. Abstract: The proposed rule would include the addition of more explicit requirements concerning a registration requirement that the NRC plans to initiate through an earlier proposed rule (December 2, 1998; 63 FR 66942). This action proposes to include in the regulations the specific criteria for inclusion in the registration program and details about the information required. The amendments would also modify the quarterly transfer reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices and provide clarifications concerning provisions of the regulations applicable to all general licensees for byproduct material. The proposed rule is intended to allow the NRC to better track general licensees so that they can be contacted or inspected, to make sure that the devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

Submit, by September 7, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room 2120 L Street NW, (lower level), Washington, DC. The proposed rule is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by September 7, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Md., this 12th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20271 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR PART 70—Domestic Licensing of Special Nuclear Material Revision, Proposed Rule.

3. The form number if applicable: Not applicable.

4. How often the collection is required:

(a) Event reports: NRC collects and evaluates required reports on a continuing basis as events occur.

(b) License applications: Certain existing licensees will make a one-time submittal of information in response to the revised rule. Applicants for new licenses may submit applications and licensees may submit amendments at any time. Generally, licensees submit applications for license renewals every 10 years.

(c) ISA Summary: Under the revised rule, licensees will also submit information about changes that they make to update information submitted in conjunction with their license applications. Licensees will submit revised pages to the integrated safety analysis summary within 90 days of a change. For the safety system required by 10 CFR 70.62 (*i.e.*, process safety information, integrated safety analysis, and management measures), every 12 months they will submit a summary of all changes made without prior Commission review and approval.

5. Who will be required or asked to report: Except for changes to § 70.50 [1], the proposed rule will apply to only certain licensees authorized to possess a critical mass of special nuclear material. The ones included are those that are or plan to be engaged in enriched uranium processing, fabrication of uranium fuel or fuel assemblies, uranium enrichment, enriched uranium hexafluoride conversion, plutonium processing, fabrication of mixed-oxide fuel or fuel assemblies, scrap recovery, decommissioning of facilities used for these activities, or any other activity that the Commission determines could significantly affect public health and safety. The licensees to which it applies at present operate the seven major fuel fabrication facilities. The rule does not apply to the U.S. Enrichment Corporation's (USEC) gaseous diffusion plants that are regulated under Part 76.

6. An estimate of the number of annual responses: 51.

7. The estimated number of annual respondents: 7.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 8,844 hours per year.

9. An indication of whether section 3507(d), Pub. L. 104–13 applies: Applicable.

[1] The proposed change to reporting requirements in § 70.50 could impact slightly a wider variety of part 70 licensees.

10. Abstract: The NRC is proposing to amend its regulations governing the domestic licensing of special nuclear material (SNM) for licensees authorized to possess a critical mass of SNM, that are engaged in one of the following activities: Enriched uranium processing; fabrication of uranium fuel or fuel assemblies; uranium enrichment (other than USEC's gaseous diffusion plants); enriched uranium hexafluoride conversion; plutonium processing; fabrication of mixed-oxide fuel or fuel assemblies; scrap recovery of special nuclear material; or any other activity involving a critical mass of SNM that the Commission determines could significantly affect public health and safety or the environment. The proposed amendments would identify appropriate consequence criteria and the level of protection needed to prevent or mitigate accidents that exceed these criteria; require affected licensees to perform an integrated safety analysis (ISA) to identify potential accidents at the facility and the items relied on for safety necessary to prevent these potential accidents and/or mitigate their consequences; require the implementation of measures to ensure that the items relied on for safety are available and reliable to perform their function when needed; require the inclusion of the safety bases, including a summary of the ISA, with the license application; and allow for licensees to make certain changes to their safety program and facilities without prior NRC approval.

Submit, by September 7, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. The proposed rule indicated in "The title of the information collection" will be or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of

the public may access the electronic OMB clearance package by following the directions for electronic access provided above and in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by September 7, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0009), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Md., this 21st day of July 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20272 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Inc.; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by GPU Nuclear, Inc. (the licensee) to partially withdraw its February 7, 1997, application for an amendment, as supplemented October 24, 1998, to Facility Operating License No. DPR–50, issued to the licensee for operation of the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on March 25, 1998, (63 FR 14486).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to incorporate certain improvements from the Revised Standard Technical Specifications for Babcock and Wilcox Plants, NUREG–1430, identify changes to plant systems and revisions to system descriptions not involving limiting conditions for operation, and make various editorial or typographical corrections.

Subsequently, the licensee informed the staff that the changes related to the hydrogen recombiner system on proposed TS page 4–38 in the amendment request were no longer required. Thus, that portion of the amendment application is considered to be partially withdrawn by the licensee.

For further details with respect to this action, see the application for amendment dated February 7, 1997, as supplemented October 24, 1998. The licensee's letter dated October 24, 1999, also partially withdrew the application for amendment.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, MD, this 8th day of July 1999.

For the Nuclear Regulatory Commission,

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20268 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of a Public Workshop to Discuss the Development of License Termination Plans and Other Guidance to Support the Decommissioning of Nuclear Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: This notice announces the schedule and agenda for a Public Workshop to address the issues associated with developing License Termination Plans (LTPs) to support the decommissioning of nuclear power reactors and guidance to support the decommissioning of all nuclear facilities. The purpose of this workshop is to provide a forum for NRC staff, the nuclear industry, other regulatory agencies, and interested stakeholders to discuss the issues that need to be addressed as nuclear power reactor licensees develop LTPs to support the termination of their NRC licenses, as well as the guidance being developed by the NRC to support the decommissioning of all nuclear facilities.

DATES: August 18 and 19, 1999.

ADDRESSES: Two White Flint North, 11545 Rockville Pike, Rockville, MD.

SUPPLEMENTARY INFORMATION: On October 21, 1998, (63 FR 56237) NRC announced that it was sponsoring a series of public workshops to support NRC staff's development of a Standard Review Plan (SRP) and other guidance for the decommissioning of nuclear facilities. On August 18 and 19, 1999, NRC staff will hold a workshop on the issues associated with the development of LTPs to support the decommissioning of nuclear power reactors and the guidance being developed by the NRC to support the decommissioning of all nuclear facilities. Presentations and discussions on August 18, 1999, will focus on LTPs, and on August 19, 1999, discussions and presentations will focus on decommissioning issues identified by State regulatory agencies and surveys to support decommissioning.

An agenda for the workshop, which was developed by NRC in conjunction with the Nuclear Energy Institute, the States, the Fuel Cycle Facility Forum and other industry stakeholders, has been posted on the NRC's Website at: *http://www.nrc.gov/NMSS/DWM/DECOM/decomm.htm* under the "NRC Standard Review Plan for Decommissioning" heading.

The workshop will be held at the NRC Headquarters Auditorium, at Two White Flint North, 11545 Rockville Pike, Rockville, MD. NRC strongly encourages interested stakeholders to attend and participate in this workshop, as it will offer a unique opportunity to provide NRC staff and the nuclear power industry with insights, perspectives, and information that stakeholders feel is important for the nuclear power industry to consider during the development of LTPs and for NRC to consider as it develops guidance for the decommissioning of licensed facilities.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6749; Clayton L. Pittiglio, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6702, or Richard S. Clement, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6625.

Dated at Rockville, Md., this 30th day of July 1999.

For the Nuclear Regulatory Commission,

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–20270 Filed 8–5–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23931; 812–11536]

American Skandia Advisors Fund, Inc. et al.; Notice of Application

July 30, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF THE APPLICATION: American Skandia Advisors Funds, Inc. ("ASAF"), American Skandia Trust ("AST"), American Skandia Master Trust ("ASMT") (each a "Fund" and collectively, the "Funds"), on behalf of their respective series ("Portfolios") and American Skandia Investment Services, Inc. ("Manager"), request an order that would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

FILING DATE: The application was filed on March 15, 1999 and amended on July 27, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 24, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC, 20549–0609. Applicants, c/o Eric Freed, Esquire, American Skandia Investment Services, Incorporated, One Corporate Drive, P.O. Box 883, Shelton, CT 06484.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. ASAF, a Maryland corporation, is registered under the Act as an open-end management investment company and is currently comprised of sixteen Portfolios, each of which has its own investment objectives, policies and restrictions.[1] Five ASAF Portfolios (the "Feeder Portfolios") invest all their assets in corresponding Portfolios of ASMT (the "Core Portfolios"). ASMT, a Delaware business trust, is registered under the Act as an open-end management investment company and currently consists of the five Core Portfolios. Each Core Portfolio serves as a master fund in the master/feeder structure. ASAF offers the shares of all of its Portfolios for sale to the public. AST, a Massachusetts business trust, is registered under the Act as an open-end management investment company. AST consists of twenty-nine Portfolios, and offers its shares for sale through separate accounts that fund variable annuity and variable life insurance contracts of life insurance companies and directly to qualified retirement plans. The Manager, a Connecticut corporation, serves as the investment adviser to each of the Portfolios and is registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Manager has entered into investment management agreements with respect to each of the Portfolios (each a "Management Agreement") that were approved by the board of directors or trustees of the Funds (the "Boards"), including a majority of the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors or Trustees"), and the shareholders of the Funds. Under the terms of each Management Agreement, the Manager supervises the general business, administrative, investment advisory and portfolio management operations of the Portfolios. For its services, the Manager receives a management fee at an annual rate based on a percentage of the applicable Portfolio's average net assets.

3. The Manager seeks to achieve the investment objective of each Portfolio by selecting, subject to the oversight and approval of the Boards, one or more subadvisers (each a "Subadviser") to manage the assets of each Portfolio ("Manager/Subadviser Structure"). Under the Manager/Subadviser Structure, the specific investment decisions for each Portfolio are made by one or more Subadvisers, each of which has discretionary authority to invest all or a portion of the assets of particular Portfolio, subject to the general supervision of the Manager and the applicable Board. The Subadvisers are investment advisers registered or exempt from registration under the Advisers Act. Currently, each Portfolio has a single Subadviser.

4. The Manager selects Subadvisers based on a process that includes researching each Subadviser's investment performance record, conformity to investment objectives and policies, organizational structure, management team, compliance and operational capabilities, and assets under management. The Manager recommends to the Board for selection those Subadvisers that have distinguished themselves and reviews, monitors and reports to the Board regarding the performance and procedures of the Subadvisers. The Manager may recommend to the Board the reallocation of assets of a Portfolio among Subadvisers, if necessary, and may recommend hiring additional Subadvisers or the termination of Subadvisers in appropriate circumstances. Each Subadviser performs services pursuant to a written agreement with the Manager (the "Sub-Advisory Agreement"). Subadvisers' fees are paid by the Manager out of its fees from the Funds.

5. Applicants request relief to permit the Manager, subject to the oversight of the applicable Board, to enter into and materially amend Sub-Advisory Agreements without shareholder approval.[2] The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Manager, other than by reason of serving as a Subadviser to one or more of the Portfolios (an "Affiliated Subadviser").

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment

[1] Applicants also request relief with respect to future portfolios of ASAF, AST and ASMT and any other registered open-end management investment companies that are: (a) advised by the Manager or any entity controlling, controlled by, or under common control with the Manager, and (b) which operate in substantially the same manner as the Funds and comply with the terms and conditions contained in the application. ASAF, AST and ASMT are the only existing investment companies that currently intend to rely on the other.

[2] The term "shareholder" includes variable life insurance policy and variable annuity contract owners that are unit holders of any separate account for which the Portfolios serve as a funding medium.

adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without shareholder approval.

3. Applicants assert that under the Manager/Subadviser Structure, each Portfolio's shareholders rely on the Manager's experience to select and monitor one or more Subadvisers best suited to achieve the Portfolio's desired investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements would impose expenses and unnecessary delays on the Portfolios, and may preclude the Manager from promptly acting in a manner considered advisable by the applicable Portfolio's Board. Applicants note that the Management Agreements between the Funds and the Manager will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities of the Portfolio, within the meaning of the Act, which in the case of a Core Portfolio will be pursuant to voting instructions provided by shareholders of the Feeder Portfolio investing in such Core Portfolio or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable, and in the case of a Portfolio of AST will be pursuant to voting instructions provided by annuity and life insurance policy contract owners that are unit holders in insurance company separate accounts investing in such Portfolio. Before a Fund or Portfolio that does not presently have an effective registration statement may rely on the order requested in the application, the operation of such Fund or Portfolio in the manner described in the application will be approved in the manner described above or, in the case of such Fund or Portfolio whose shareholders (or, in the case of a Core Portfolio, the shareholders of its corresponding Feeder Portfolio or, in the case of a Portfolio of AST, annuity and life insurance policy contract owners that are unit holders of separate accounts investing in the Portfolio) purchase shares on the basis of a prospectus containing the disclosure contemplated by Condition 2 below, by the initial shareholder(s) before the shares of such Fund or Portfolio are offered to the public.

2. A Portfolio's prospectus, or in the case of a Core Portfolio, its offering documents and the corresponding Feeder Portfolio's prospectus will disclose the existence, substance and effect of any offer granted pursuant to this application. In addition, the Portfolios will hold themselves out as employing he Manager/Subadviser Structure described in the application. A Portfolio's prospectus, or in the case of a Core Portfolio, its offering documents and the corresponding Feeder Portfolio's prospectus will prominently disclose that the Manager has ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Manager will provide management and administrative services to the Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio, and, subject to review and approval by a Portfolio's Board will (a) set each Portfolio's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Portfolio's assets; (c) when appropriate, allocate and reallocate a Portfolio's assets among multiple Subadvisers; (d) monitor and evaluate the investment performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Portfolio's investment objectives, policies, and restrictions.

4. At all times, a majority of the Board of each Fund will be Independent Directors or Trustees, and the nomination of new or additional Independent Directors or Trustees will be placed within the discretion of the then-existing Independent Directors or Trustees.

5. Neither the Manager nor any Portfolio will enter into a Sub-advisory Agreement with any Affiliated Subadviser, without such Sub-advisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio within the meaning of the Act, which in the case of Core Portfolio will be pursuant to voting instructions provided by shareholders of those Feeder Portfolios investing in such Core Portfolio that are registered under the Act, or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable, and in the case of a Portfolio of AST will be pursuant to voting instructions by annuity and life insurance contract owners that are unit holders in insurance company separate accounts investing in such Portfolio.

6. When a Subadviser change is proposed for a Portfolio with an Affiliated Subadviser, the applicable Board, including a majority of the Independent Directors or Trustees, will make a separate finding, reflected in the minutes of the meeting of the applicable Board, that such change is in the best interests of the applicable Portfolio and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives an inappropriate advantage.

7. No director, trustee, or officer of a Fund or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such director, trustee or officer) any interest in a Subadviser except for (i) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with Manager; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within 90 days of the hiring of any new Subadviser, the Manager will furnish shareholders of the applicable Portfolio (or, in the case of a Core Portfolio, the shareholders of its corresponding Feeder Portfolio or, in the case of a Portfolio of AST, annuity and life insurance policy contract owners that are unit holders of separate accounts investing in the Portfolio) all the information that would have been

included in a proxy statement. Such information will include any changes caused by the addition of a new Subadviser. To meet this obligation, the Manager will provide shareholders of the applicable Portfolio (or, in the case of a Core Portfolio, the shareholders of its corresponding Feeder Portfolio or, in the case of a Portfolio of AST, annuity and life insurance policy contract owners that are unit holders of separate accounts investing in the Portfolio) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20251 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27057]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

July 30, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by August 23, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 23, 1999, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70–6171)

Appalachian Power Company ("Appalachian'), 40 Franklin Road, Roanoke, Virginia 24011, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under sections 9(a), 10 and 12(d) of the Act and rule 54 under the Act to its application-declaration previously filed under the Act.

By order dated June 30, 1978 (HCAR No. 20610) ("Order"), Appalachian was authorized to enter into an agreement of sale ("Agreement") with Mason County, West Virginia ("County"). The Agreement provided for the construction, installation, financing and sale of certain pollution control facilities ("Facilities") at Appalachian's Philip Sporn and Mountaineer Plants. Under the Agreement, the County may issue and sell its pollution control revenue bonds ("Revenue Bonds") or pollution control refunding bonds ("Refunding Bonds"), in one or more series, and deposit the proceeds with the trustee ("Trustee") under an indenture ("Indenture") entered into between the County and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or in the case of proceeds from the sale of Refunding Bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded.

The Order also authorized Appalachian to convey an undivided interest in a portion of the Facilities to the County, and to reacquire that interest under an installment sales arrangement requiring Appalachian to pay as the purchase price semi-annual installments in an amount, together with other monies held by the Trustee under the Indenture for that purpose, will enable the County to pay, when due, the interest and principal on the Revenue Bonds.

The County has issued and sold ten series of bonds contemplated by the Order. The last issuance was the Series J. Refunding Bonds, in the aggregate principal amount of $50 million, authorized by supplemental Commission order on October 7, 1992 (HCAR No. 25659).

It is now proposed that, under the terms of the Agreement, Appalachian will cause the County to issue and sell its Series K Refunding Bonds in the aggregate principal amount of up to $30 million. The Series K Refunding Bonds will bear interest semi-annually at a rate of interest not exceeding 8% per annum and will mature at a date not more than forty years from the date of issuance.

The proceeds will be used to provide for the early redemption of the entire outstanding aggregate principal amount of $30 million of the County's Series G Revenue Bonds, 7.40%, January 1, 2014.

National Fuel Gas Company, et al. (70–7512)

National Fuel Gas Company ("National"), a registered holding company, and its nonutility subsidiary, Data-Track Account Services, Inc. ("Data-Track"), both located at 10 Lafayette Square, Buffalo, New York 14203, have filed a post-effective amendment to their application under section 9(a), 10 and 13 of the Act.

By order dated May 6, 1988 (HCAR No. 24639) ("Order"), the Commission authorized National to acquire all of the common stock of Data-Track for $500,000, which was to be used as working capital. Data-Track was acquired to provide certain customer account collection services, at cost, for National's other subsidiaries. Subsequently, by order dated March 5, 1991 (HCAR No. 25265), Data-Track was authorized to expand the scope of its collection services and to borrow up to $500,000 from the National system money pool as an alternative method of meeting its working capital needs. Data-Track now proposes to provide the same types of collection services for nonassociate clients.

American Electric Power Company, Inc., et al. (70–9145)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its wholly owned nonutility subsidiaries AEP Resources, Inc. ("AEPR"), AEP Energy Services, Inc. ("AEPES"), and AEP Resources Services Company ("Resco"), all located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration with this Commission under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and rules 45, 46, 54, 87 and 90 under the Act.

AEPR requests authority to establish, directly or indirectly, a company ("Management Company") that would provide energy-related services to industrial, commercial and institutional customers in the United States. AEPR also requests authority to establish, directly or indirectly, a company ("Capital Company," and together with Management Company, "New Ventures") that would provide

financing to Management Company's customers for certain energy-related assets (defined below as "Energy Facilities") and for the purchase of service from Management Company. AEPR may establish intermediate subsidiaries to hold its interests in the New Ventures ("Intermediate Subsidiaries"), and Management Company and Capital Company may establish special purpose subsidiaries ("Special Purpose Subsidiaries") to conduct the proposed activities.

Management Company Services

The energy-related services to be provided by Management Company would include energy facility management services, energy conservation services, procurement services, and other energy and incidental services. Energy facility management services include the day-to-day operations, maintenance, management, and other technical and administrative services required to operate, maintain and manage certain energy-related assets ("Energy Facilities"). Additionally, energy facility management services include long-term planning and budgeting for, and evaluation of, improvement to those assets. Energy Facilities includes facilities and equipment that are used by industrial, commercial and institutional entities to produce, convert, store, and distribute: (i) Thermal energy products, such as processed steam, heat, hot water, chilled water, and air conditioning; (ii) electricity; (iii) compressed air; (iv) processed and potable water; (v) industrial gases, such as nitrogen; and (vi) other similar products. Energy Facilities also include related facilities that transport, handle and store fuel, such as coal handling and oil storage tanks, and facilities that treat waste for these entities, such as scrubbers, precipitators, cooling towers and water treatment facilities.

Energy conservation services include: (1) Identification of energy and other resource efficiency opportunities; (2) design of facility or of process modifications or enhancements to realize identified energy and other resource opportunities; (3) management, or direct construction or installation, of conservation or efficiency equipment; (4) training of customer personnel in the operation of equipment; (5) maintenance of energy system; (6) design, management or direct construction and installation of new and retrofit heating, ventilating and air conditioning systems, electrical and power systems, motors, pumps, lighting, water and plumbing systems, and related structures, to realize energy and other resource efficiency goals or to otherwise meet a customer's energy-related needs; (7) system monitoring; (8) reporting of system results; (9) design and implementation of energy conservation programs; (10) provision of conditioned power services (i.e., services designed to prevent, control or mitigate adverse effects of power disturbances on a customer's electrical system to ensure the level of power quality required by the customer); and (11) other similar or related activities.

Procurement services include arranging as agent or broker for a customer to purchase electricity, natural gas, oil, propane and industrial gases ("Energy Commodities"). In addition, procurement services include purchasing other commodities and supplies used by, or distributed through, Energy Facilities on behalf of energy facilities management or energy conservation services customers described above. AEP and AEPR also request authority for Management Company to engage in the purchase and sale, as principal, of electricity, natural gas, and other Energy Commodities.

Other energy services include development, design, construction, ownership, sale of Energy Facilities, and of equipment used in, and improvements to, Energy Facilities. Incidental services include the sale of products and services incidental to the proposed sale of goods and services enumerated above and which are closely related to the consumption of energy and/or the maintenance of Energy Facilities; provided however, that Management Company would not be involved in the manufacture of energy related equipment.

Capital Company Services

Capital Company proposes to offer financing for existing Energy Facilities and improvements and to provide new capital for Energy Facilities for customers of Management Company through sale and leaseback, project financing or other creative financing mechanisms. Assets financed by Capital Company generally will be managed by Management Company. In addition, Capital Company will make its financing services available to customers of Management Company to assist Management Company in connection with its program to provide energy management and related services to its customers.

Financial Support

Resources will contribute the equity capital required by Management Company and Capital Company. Management Company may also obtain debt financing from American, Resources or unaffiliated third parties such as commercial banks. Loans from American or Resources to Management Company will be made at the cost of funds incurred by American or Resources, as the case may be, in accordance with rule 52.

Applicants state that Management Company, Capital Company and the Special Purpose Subsidiaries intend to issue ownership interests to third parties. In this regard, AEP requests authority, through December 31, 2002, to enter into guaranties of obligations that AEPR may incur under agreements with third parties to make capital investments of up to $250 million in Capital Company and $50 million in Management Company. In addition, AEP and AEPR request authority to enter into guarantees ("Subsidiary Guarantees") through December 31, 2002, of the debt and other obligations of Management Company, Capital Company and the Intermediate Subsidiaries in aggregate amounts up to $250 million ("Guarantee Limit"). Further, AEP, AEPR, Management Company and Capital Company request authority to guarantee the debt and other obligations of the Special Purpose Subsidiaries through December 31, 2002 [1] in an amount that, combined with the aggregate outstanding amount of Subsidiary Guarantees, will not exceed the Guarantee Limit. Debt financing of Capital Company, Management Company, any Intermediate Subsidiary or any Special Purpose Subsidiary which is subject to the proposed guaranties will not exceed a term of 15 years.

Affiliate Transactions

AEPES and Resco request an exemption from the at cost requirements of section 13(b) for the sale of certain goods and services by AEPES, Resco, and other subsidiaries of Resources to Management Company, Capital Company, and the Special Purpose Subsidiaries. Any sale of services by any utility subsidiary of AEP or by American Electric Power Services Corporation, a service company subsidiary of AEP, to Management Company, Capital Company, and the Special Purpose Subsidiaries would be at cost. In addition, Management Company requests authority to provide services at fair market value, under certain circumstances, to any associate

[1] Any guarantee of the obligations of Management Company, Capital Company, any Intermediate Subsidiary or any Special Purpose Subsidiary outstanding on December 31, 2002 would expire in accordance with its terms.

company in the AEP system that is an exempt wholesale generator or foreign utility company, as each are defined in section 32 and 33 of the Act, respectively, or that is a qualifying facility.

Payment of Dividends

Further, AEP and AEPR request authority for Management Company, Capital Company, the Intermediate Subsidiaries and the Special Purpose Subsidiaries to declare and pay dividends from time to time out of capital or unearned surplus.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20299 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23939]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 30, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, NW, Washington, DC 20549–0506.

Midwest Equity Trust, Financial Securities Series 1 [File No. 811–7058]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On June 3, 1998, applicant made a liquidating distribution to its unitholders at net asset value per share. Expenses of approximately $9,600 were incurred in connection with the liquidation and were paid by applicant and NatCity Investments, Inc., applicant's depositor.

Filing Date: The application was filed on June 22, 1999.

Applicant's Address: 251 North Illinois Street, Suite 500, Indianapolis, Indiana 46204.

internet.com(TM) Index Fund, Inc. [File No. 811–9343]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on July 2, 1999.

Applicant's Address: c/o Reich & Tang Asset Management L.P., 600 fifth Avenue, New York, New York 10020.

Van Kampen Foreign Securities Fund [File No. 811–7571]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 6, 1998, applicant made a liquidating distribution to its sole shareholder at net asset value per share. Expenses of $800 incurred in connection with the liquidation were paid by Van Kampen Investments Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on June 30, 1999.

Applicant's Address: Van Kampen Investments Inc., 1 Parkview Plaza, PO Box 5555, Oakbrook Terrace, Illinois 60181–5555.

MAP-Government Fund, Inc. [File No. 811–3548]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 2, 1999, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses of $26,035 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on July 15, 1999.

Applicant's Address: 520 Broad Street, Newark, New Jersey 07102.

The Emerging Mexico Fund, Inc. [File No. 811–6134]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 10, 1999, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses of $69,100 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on July 9, 1999.

Applicant's Address: c/o Mitchell Hutchins Asset Management, Inc., 1285 Avenue of the Americas, New York, New York 10019.

Putnam Advisory International Trust [File No. 811–2862]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 2, 1984, applicant made a liquidating distribution to its sole shareholder at net asset value per share. To the best of applicant's knowledge, no expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on July 12, 1999.

Applicant's Address: One Post Office Square, Boston, Massachusetts 02109.

The PanAgora Institutional Funds [File No. 811–7464]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 1998, applicant made a liquidating distribution to its shareholders of its two series at the net asset value per share. Expenses of $41,325 were incurred in connection with the liquidation, of which applicant's two series, Asset Allocation Fund and International Equity Fund, paid $13,408 and $27,917, respectively.

Filing Date: The application was filed on July 15, 1999.

Applicant's Address: 260 Franklin Street, Boston, Massachusetts 02110.

Investors' Governmental Securities Income Trust, Series 1 and Subsequent Series [File No. 811–2834]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On October 22, 1997, applicant made a final liquidating distribution to its shareholders at net asset value per share. Each series of applicant terminated in accordance with the terms of its trust indenture, and no expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on July 8, 1999.

Applicant's Address: One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

Fidelity Advisor Emerging Asia Fund, Inc. [File No. 811–8308]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 15, 1998, applicant transferred its assets to Fidelity Advisor Series VIII: Fidelity Advisor Emerging Asia Fund based on net asset value. Expenses of approximately $159,000 were incurred in connection with the reorganization, with applicant paying $150,000 of the expenses, and Fidelity Management & Research Company, applicant's investment adviser, paying the remaining expenses.

Filing Dates: The application was filed on June 24, 1999, and amended on July 23, 1999.

Applicant's Address: 82 Devonshire Street, Boston, Massachusetts 02109.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20252 Filed 8–5–99: 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41683; File No. SR–DTC–99–19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing the Fees for the Mortgage-Backed Securities Division

August 2, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on July 21, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II,and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Subetance of the Proposed Rule Change

The proposed rule change revises the service fee schedule of DTC's Mortgage-Backed Securities ("MBS") Division.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule

In its filing with the Commission, DTC included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change revises the service fees for the MBS Division of DTC effective August 1, 1999, in order to more closely align the fees with current estimated unit service costs.[3] The revised fee schedule will result in an overall fee reduction for MBS Division services of approximately 15.5 percent. The fee decrease is a result of increased transaction volumes and decreased costs.

For these reasons, DTC believes that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act,[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

(B) Self-Regulator Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance for the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and Rule 18b-4(f)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[2] The Commission has modified parts of these statements.

[3] A copy of the revised MBS Division service fee schedule is attached as Exhibit 2 of DTC's proposed rule change, which is available for inspection and copying at the Commission's Public Reference room or at DTC.

[4] 15 U.S.C. 78q–1(b)(3)(D).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning for foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at DTC. All submissions should refer to the File No. SR–DTC–99–19 and should be submitted by August 27, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20302 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41678; File No. SR–DTC–99–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Procedures When Settling Banks Fail To Settle

July 30, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] notice is hereby given that on June 11, 1999. The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–99–15) as described in Items, I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will restate and expand its procedures for a settling bank's failure to settle.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Each DTC participant pays or receives the net debit or net credit balance in its DTC money settlement account at the end of each day. A settling bank employed by the participant sends or receives the net payment over Fedwire to or from DTC's account at the Federal Reserve Bank of New York. On a small number of occasions, a settling bank that settles only for itself (and not for any other participants) has been unable to settle with DTC due to an operational problem. On each of those occasions when the settling bank has a net debit balance, DTC completed money settlement by using deposits from its participants fund, and the settling bank was able to settle with DTC on the next day. On a few occasions, money settlement at DTC has been delayed with respect to DTC's settlement schedule due to an operational problem at a settling bank.

Although such incidents or failure to settle are infrequent, DTC has reviewed its procedures for when a settling bank fails to settle with DTC due to a financial or operational problem. Those procedures are currently stated in memorandum dated July 29, 1994, which was issued jointly with the National Securities Clearing Corporation and which described the planned conversion of DTC's money settlement system to an entirely same day funds settlement system. The purpose of the proposed rule change is to restate in greater detail the procedures that DTC will follow if a settling bank fails to settle with DTC.[3]

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[4] and the rules and regulations thereunder applicable to DTC because the proposed rule chnge will facilitate completion of daily money settlement at DTC in the event of a settling bank's failure to settle with DTC. DTC has informed the Commission that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the settling bank failure to settle procedures supplement DTC's existing risk management controls.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC discussed the proposed rule change with several of its largest settling banks. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street. NW. Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of DTC submissions should refer to File No. SR–DTC–99–15 and should be submitted by August 27, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20303 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For example, the proposed procedures will (1) state the specific time by which settling banks must acknowledge settlement balances each day, (2) provide for notice of a settling bank's failure to settle to the participants that settle through the bank, and (3) set forth the extent to which DTC will require a participant to make settlement payment itself in the event of a settlement bank's continued failure to settle. A copy of the proposed procedures was attached as Exhibit 2 to DTC's filing, which is available for inspection and copying in the Commission's Public Reference Room and through DTC.

[4] 15 U.S.C. 78q–1(b)(3)(A).

[5] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41677; File No. SR–DTC–99–14]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Establishment of an Automated Foreign Tax Reclaim Service

July 30, 1999.

On May 27, 1999, The Depository Trust Company; ("DTC") filed with the Securities and Exchange Commission

("Commission") a proposed rule change (File No. SR–DTC–99–14) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on June 21, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the proposed rule change, DTC will establish a service called "TaxReclaim." Tax Reclaim is intended to assist DTC's participants in preparing foreign jurisdictions' tax reclaim forms that are required to reclaim tax withheld on income payments on foreign securities. Participants will access TaxReclaim through DTC's participant terminal system and will input data particular to the beneficial owner, foreign security, and payment details as required by the country of issuance. DTC will then process the information through a software application that includes the reclaim form and tax information template and will transmit back to the participant a file containing the completed tax reclaim form, reclaim calculation, and information on additional filing requirements and filing instructions. DTC will post a disclaimer of liability in connection with use of the TaxReclaim service.

DTC will charge a fee of $10 for each reclaim transaction on a printed reclaim form processed through TaxReclaim. A reclaim transaction will consist of the reclaim calculation applicable to one security, one beneficial owner, and one income payment date. For reclaim transactions that are not completed because the reclaimable amount fall below a threshold value established by the participant, the fee will be $2 per reclaim transaction.

II. Discussion

Section 17A(b)(3)(F) of the Act[3] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under section 17A(b)(3)(F) because it should improve the ability of DTC's participants to obtain tax reclaim payments with respect to positions in non-U.S. securities. As a result, the proposed rule change should increase the efficiency with which beneficial owners of positions in non-U.S. securities that are held at DTC are able to obtain tax reclaim payments to which they are entitled.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (Filed No. SR–DTC–99–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20304 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41673; File No. SR–EMCC–99–7]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Clearing Agency Cross-Guaranty Agreements

July 30, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 4, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–EMCC–99–07) as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to implement clearing agency cross-guaranty agreements between EMCC and other clearing agencies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

EMCC's Rule 21 authorizes EMCC to enter into "clearing agency cross guaranty agreements."[3] On June 2, 1999, EMCC entered into clearing agency cross-guaranty agreements with the National Securities Clearing Corporation ("NSCC"), the Government Securities Clearing Corporation ("GSCC"), and the International Securities Clearing Corporation ("ISCC"). According to EMCC, the form of agreement with each of these entities is substantially similar to the form of agreement approved by the Commission in rule changes previously submitted by NSCC, MBSCC, GSCC, and ISCC.[4]

Generally, the limited guaranty provided for by the clearing agency cross-guaranty agreements is invoked when a clearing entity ceases to act for a common member. This limited guaranty enables clearing agencies that have entered into limited cross guaranty agreements to benefit from a defaulting member's excess collateral at other clearing agencies in which the defaulting member was a participant. The guaranty provides that resources of the defaulting common member remaining after the defaulting common member's obligations to the guaranteeing clearing agency have been satisfied may be used to satisfy and unsatisfied obligations to the other clearing agencies. The guaranty is limited to the extent of the resources relative to the defaulting common

---

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41525 (June 14, 1999), 64 FR 33124.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Under EMCC's Rule 1, "clearing agency cross-guaranty agreement" means an agreement between EMCC and another clearing entity relating to the guaranty by EMCC of certain obligations of a member to such clearing agency.

[4] Securities Exchange Act Release Nos. 37616 (August 28, 1996), 61 FR 46887 (September 5, 1996), and 39020 (September 4, 1997), 62 FR 47862 (September 11, 1997).

member remaining at the guaranteeing clearing agency.

EMCC believes that the clearing agency cross-guaranty agreements should be beneficial because the funds that may be made available to it may provide resources that may make a pro rata charge against its clearing fund unnecessary or lesser in amount.

The benefits accruing to EMCC from a Clearing agency cross-guaranty agreement are illustrated by the following example:

Broker-dealer BD upon insolvency owes EMCC a net of $5 million and is owed a net of $3 million by Clearing Entity X. BD is a member of both clearing agencies. In the absence of a clearing agency cross-guaranty agreement, Clearing Entity X would be obligated to pay $3 million to BD's bankruptcy estate, and EMCC would have a claim for $5 million against BD's bankruptcy estate as a general creditor with no assurance as to the extent of recovery. Under an effective cross-guaranty agreement, however, Clearing Entity X would pay to EMCC the $3 million it owed to BD. As a result, EMCC's net exposure to the defaulting common member BD would be reduced.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it promotes the safeguarding of securities and funds in the clearing agency's custody or control and for which it is responsible and fosters cooperation and coordination with other entities engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–7 and should be submitted by August 27, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20300 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41669; File No. SR–NYSE–99–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

July 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 1999, the New York Stock Exchange, Inc. (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of the pilot fees ("Pilot Fee Structure") currently set forth in Exchange Rule 4512, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material," (collectively the "Rules"). The rules provide guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Fee Structure is presently scheduled to expire on August 31, 1999. The Exchange proposes to extend the Pilot Fee Structure through November 1, 1999.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As first adopted, the Pilot Fee Structure revised the Rules to lower certain reimbursement guidelines, create incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate multiple nominees.[3] The Pilot Fee Structure has been modified and extended several times,[4] most recently by Commission order dated March 16, 1999.[5]

The Exchange recently submitted a proposed rule change to the Commission ("June Filing") to further revise the Pilot Fee Structure and extend its effectiveness through August 31, 2001.[6] The June Filing proposes to reduce the basic processing fee and nominee coordination fee that NYSE member organizations and proxy distribution intermediaries may recover in connection with the distribution of proxy and shareholder communication materials to shareholders. The June Filing also proposes to define the term "nominee" as it relates to the calculation of the nominee coordination fee. Because the issues presented by the June Filing are important and likely to impact many market participants, the Commission provided a 60 day public comment period for the June Filing, ending August 30, 1999.

The Exchange believes that an extension of the Pilot Fee Structure through November 1, 1999, will give the Commission additional time to fully consider the June Filing and the public comment letters regarding the June Filing, without a lapse in the current Rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the Pilot Fee Structure (*i.e.*, the fees in effect prior to March 14, 1997) would return to effectiveness after August 31, 1999. The Exchange believes that such a result could be counterproductive and cause confusion among NYSE member organizations and issuers, especially given that the June filing, proposing to extend the revised Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirements under section 6(b)(5)[8] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statements Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days after the date of the filing;[9] and the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with text of the proposal, at least five business days prior to the filing date; the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C., will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–35 and should be submitted by August 27, 1999.

---

[3] *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Commission initially approved the Pilot Fee Structure as a one-year pilot, and designated May 13, 1998, as the date of expiration.

[4] *See* Securities Exchange Act Release Nos. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50) 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); and 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (order extending Pilot Fee Structure through March 15, 1999).

[5] *See* Securities Exchange Act Release No. 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999)

[6] *See* Securities Exchange Act Release No. 41549 (June 23, 1999), 64 FR 35229 (June 30, 1999).

[7] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[9] Although the proposed rule change seeking to extend the Pilot Fee Structure through November 1, 1999, is considered effective upon filing, it will not become operative until August 31, 1999, which is more than 30 days after the date of filing (July 27, 1999).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20301 Filed 8–5–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3106]

Finding of No Significant Impact: Portland Pipe Line Corporation Pipeline at North Troy, VT

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to convert, operate and maintain a pipeline to transport crude oil across the U.S.-Canada border.

SUMMARY: The Department of State has conducted an environmental assessment of the proposed conversion by Portland Pipe Line Corporation of an existing pipeline from natural gas service to crude oil service crossing the international boundary near North Troy, Vermont. Based on the environmental assessment, the Department of State has concluded that issuance of a Presidential Permit authorizing conversion of the existing pipeline will not have a significant effect on the existing vegetation and wildlife, water resources, land use, air quality and human populations within the United States. In reaching this conclusion, the Department of State considered several alternatives, including a no-action alternative. The return of the pipeline to crude oil transport would have no significant impact on the environment or population since no new construction or ground-disturbing activity is involved. The pipeline is constructed of steel and coated with coal tar to protect against corrosion. It is also cathodically protected with an impressed current system as a further protection against corrosion.

In accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13 and Department of State Regulations, 22 CFR 161.8(C), an environmental impact statement will not be prepared.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT APPLICATION, CONTACT: Bill Memler, Office of International Energy Policy, Room 3535, U.S. Department of State, Washington, DC, 20520, (202) 647–4557.

[12] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION: Portland Pipe Line Corporation, is a corporation formed under the laws of the State of Maine, with its principal place of business in South Portland, Maine. The proposed pipeline conversion involves a pipeline which is routed along an existing crude oil pipeline facility operated by Portland Pipe Line Corporation. Portland Pipe Line Corporation presently operates and maintains a 24-inch line for transporting crude oil between South Portland and the international boundary. The crude oil is transported and received by the applicant at a marine terminal in South Portland, Maine and is transferred at the US-Canada border into the pipeline owned and operated by MPL, which is regulated by the National Energy Board (NEB) of Canada.

Portland Pipe Line Corporation's earlier construction of the 18-inch pipeline transported crude oil successfully, safely and without any known detrimental environmental impact for throughout 35 years of service, period of 1951–1986. Since 1987, the 18-inch line has been operated in interstate natural gas transmission serve by Granite State Gas Transmission (Granite State) under the lease from Portland to Granite State. This current lease expires on April 30, 1999, with Portland to take custody of the line on June 1, 1999.

On April 7, 1999, the Department of State published a Notice of Application for a Presidential Permit in the **Federal Register**. No public comments were received and concerned agencies expressed no opposition to issuing the permit. A finding of no significant impact is adopted, and an environmental impact statement will not be prepared.

Dated: August 2, 1999.

Peter Bass,

Deputy Assistant Secretary of State, for Energy, Sanctions and Commodities.

[FR Doc. 99–20329 Filed 8–5–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28695]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of acceptance for review: Preliminary application for Niagara Falls International Airport, Niagara Falls, New York.

SUMMARY: The Federal Aviation Administration (FAA) has completed its review of the Niagara Falls International Airport (IAG) preliminary application for participation in the airport privatization pilot program. The preliminary application is accepted for review, with a filing date of July 1, 1999. The Niagara Frontier Transportation Authority (NFTA), the airport sponsor, may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption under the pilot program.

49 U.S.C. 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice in the **Federal Register** after review of a preliminary application. The FAA must publish a notice of receipt of the final application in the **Federal Register** for public review and comment for a sixty day period. The IAG preliminary application is available for public review in the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28695, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis (202–267–8741) Airport Compliance Division, AAS–400, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Section 149 of the Federal Aviation Administration Authorization Act of 1996, Pub. L. 104–264 (October 9, 1996) (1996 Reauthorization Act), adds a new section 47134 to Title 49 of the U.S. Code. Section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport

revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the Federal Aviation Administration issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (62 FR 48693). A request for participation in the Pilot Program must be initiated by the filing of either a preliminary or final application for exemption with the FAA.

NFTA issued its RFP on July 1, 1999, for Niagara Falls International Airport, Niagara Falls, New York and has not selected a private operator. The filing date of this preliminary application is July 1, 1999, the date the preliminary application was received by the FAA. NFTA may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption.

If FAA accepts the final application for review, the application will be published in the **Federal Register** for public review and comment for a sixty day period.

Issued in Washington, DC on July 30, 1999.

Paul Galis,

Acting Deputy Associate Administrator for Airports.

[FR Doc. 99–20293 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–4603; Notice 2]

Ford Motor Company; Grant of Application for Decision of Inconsequential Noncompliance

This notice grants the application by Ford Motor Company, of Dearborn, Michigan, to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d), and 30120(h) for a labeling noncompliance with 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection." The basis of the application is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on January 26, 1999, and an opportunity afforded for comment (64 FR 3997).

Paragraph S4.5.1 (b)(3) of FMVSS 208 specifies "Except for the information on an air bag maintenance label placed on the sun visor pursuant to S4.5.1(a) of this standard, no other information shall appear on the same side of the sun visor to which the sun visor warning label is affixed."

The noncompliance was created when Ford implemented a sun visor label running change on February 13, 1998, on 4x4 models of the Ford F-Series, Ford Expeditions, and Lincoln Navigators, and on 4x2 Navigators equipped with moonroofs. The sun visors are supplied to Ford by Lear Corporation, 21557 Telegraph Road, Southfield, Michigan. Prior to the change, the air bag alert label specified in FMVSS 208 S4.5.1(c), along with the utility vehicle label required by 49 CFR 575.105(c)(1) on 4x4 models and the garage door opener transmitter label on the moonroof equipped Navigator 4x4 and 4x2 models, were all affixed to the driver sun visor on the side visible with the visor in the stowed position. The air bag warning label on these vehicles (required by S4.5.1 (b)(2)) was affixed to the opposite side of the visor. The label running change eliminated the air bag alert, and the air bag warning label was relocated in its place on the side of the visor visible when stowed. However, the utility vehicle label already located on that side of the visor on the 4x4 models, and the garage door transmitter label located on the side directly below the transmitter controls on the moonroof-equipped Navigator visors, were not relocated away from the air bag warning label. This created a noncompliance which was not corrected until May 21, 1998.

Ford supported its application for inconsequential noncompliance with the following reasons:

The transmitter label on the Navigator vehicles (a stick-on label which directs the customer to the Owner Guide for instructions on the operation of the transmitter controls on the visor) is not intended to be permanent, but is designed as a temporary label with the expectation that it will be removed early in the life of the vehicle. Because its early removal is intended, Ford believes the stick-on label will be removed by the customer, or by the dealer after review with the customer during delivery of the vehicle. Ford suggests there is no need for a field action to remove the label.

In summary, Ford believes that the presence of the utility vehicle label or the garage door opener transmitter located two inches or more from the air bag warning label, does not constitute "information overload," nor does it present any risk to motor vehicle safety. Ford requests that the agency find this noncompliance to be inconsequential to motor vehicle safety, and accordingly that Ford be exempted from the notice and remedy requirements of the stature.

No comments were received on the application.

The agency published a final rule, (64 FR 11724) modifying the rollover warning currently required for certain utility vehicles (49 CFR Section 575.105) to require a more noticeable, understandable warning label and modifying the sun visor air bag warning label requirement, S4.5.1(b)(3) of FMVSS 208, to permit the utility vehicle label to be placed on the same side of the sun visor. The agency stated at 11730:

> In response to comments and in light of the results of its literature review, the agency is allowing the utility vehicle label to be placed on either (1) the driver's side sun visor (ether side) or (2) the driver's side window. The agency believes that this will allow manufacturers two alternatives if it is not possible to place both the air bag label and the utility vehicle label on the same side of the sun visor. Allowing manufacturers to put the utility vehicle label on either side of the sun visor, they could choose to put the air bag label on the front, increasing its prominence, if it is not possible to put both labels on the front. Based on its research, allowing both labels on the sun visor should not result in information overload because: (1) There are only 2 hazards being warned about; (2) actions that would avoid both rollover and air bag hazards can be avoided from the driver's seating position; and (3) both hazards have the same degree of seriousness.

Clearly, the action by Ford of placing both the air bag warning label and the rollover warning label on the same side of the sun visor is consistent with the agency's recent final rule, which requires that a rollover alert label, similar to the air bag alert label, be placed on the front of the sun visor if the utility vehicle label is put on the back of the sun visor.

Accordingly, for the reasons expressed above by Ford and stated by the agency in the March 9, 1999 labeling final rule, which amended S4.5.1(b)(3)) FMVSS No. 208, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety, and the agency grants Ford's application for exemption from notification of the noncompliance as required by 49 U.S.C. 30118 and from remedy as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: August 2, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–20351 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6034; Notice 1]

General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM), of Warren, Michigan, has determined that a number of 1998 bi-fueled compressed natural gas (CNG) Chevrolet Cavaliers do not meet the requirements of S5.3 and S5.4 of 49 CFR 571.303, Federal Motor Vehicle Safety Standard (FMVSS) No. 303, "Fuel System Integrity of Compressed Natural Gas Vehicles," and has filed an appropriate report pursuant to 49 CFR part 573, "Defects and Noncompliance Reports." GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

FMVSS No. 303, S5.3 requires that CNG vehicles shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2 of this section. The information shall be visible to a person standing next to the vehicle during refueling, in English, and in letters and numbers that are not less than 4.76 mm (3/16 inch) high. S5.3.1 requires the statement: "Service pressure _____kPa (_____psig)," and S5.3.2 requires the statement "See instructions on fuel container for inspection and service life."

S5.4 requires that, when a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide the purchaser with a written statement of the information in S5.3.1 and S5.3.2 in the owner's manual, or, if there is no owner's manual, on a one-page document. The information shall be in English and in not less than 10 point type.

GM has notified the National Highway Traffic Safety Administration that in model year 1998, it manufactured 385 bi-fueled CNG Chevrolet Cavaliers that did not fully comply with the labeling requirements specified in 49 CFR 571.303. GM stated that the noncompliance consists of deviations from the wording required on the CNG vehicle label and in the owner's manual.

GM supported its application for inconsequential noncompliance by stating that an out-of-date version of FMVSS No. 303, which did not contain specific requirements, was used by the supplier that prepared the label and owner's manual supplement. As a result the CNG vehicle label applied near the refueling connection, and the owner's manual for the subject vehicles, did not contain the exact statements required by FMVSS No. 303, S5.3 and S5.4.

GM stated that the refueling valve label clearly states the operating pressure and refers the user to the owner's manual for information about tank service life. GM also placed an additional label under the hood, on the fan shroud, that would be visible during more frequent routine service, such as fluid check and oil changes. This additional label again specifies the service pressure and the tank expiration date. GM further stated that the owner's manual indicates the service life, inspection information, and also provides a form to record the expiration date. GM believes that the labels and owner's manual supplement provided with these vehicles are responsive to and consistent with the rationale and intent of the requirements, even though the exact words required by the standard are not used.

The required words and actual words are shown as follows:

FMVSS paragraph	Required label wording	'98 CNG Cavalier label wording
S5.3	SERVICE PRESSURE 24820 kPa (3600 psig)	3600 PSI SYSTEM OPERATING PRESSURE.
S5.3	SEE INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	SEE CNG OWNERS MANUAL SUPPLEMENT FOR FUEL TANK SERVICE LIFE.
FMVSS paragraph	**Required owner's manual wording**	**'98 CNG Cavalier owner's manual wording**
S5.4	SERVICE PRESSURE 24820 kPa (3600 psig)	This system operates at pressures up to 3600 PSI (24.8 MPa). (p. iv) The CNG fuel system is designed to use a fill pressure of 3,600 psi (24.8 MPa). (P. 6–3)
S5.4	SEE INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	THE CNG FUEL TANK HAS A SERVICE LIFE OF 15 YEARS.

GM stated the following:

GM believes that the labels and owner's manual supplement information provided with these vehicles are responsive and consistent with the rationale and intent of the requirements, even though the exact words required by the standard are not used. The actual labels and the owner's manual supplement provide equivalent information required by FMVSS 303, S5.3 and S5.4. The CNG refueling valve label clearly states the operating pressure and refers the user to the owner's manual for information about tank service life. Both the refueling valve and the underhood labels include the service expiration date and the owners manual indicates the service life, inspection information, and provide a form to record the expiration date.

Additionally, virtually all CNG refueling stations incorporate an overfill protection system. Also, the subject vehicles are equipped with a CNG container validated up to 200 percent of the service pressure without leakage as required by FMVSS 304, S7.2.2 for such containers. GM has not received any reports of injuries or property damage associated with overfilling of these vehicles and believes it is extremely remote that these deviations from FMVSS 303 label and owner's manual requirements could contribute to an injury or property damage incident.

For all of these reasons, GM believes that this noncompliance is inconsequential to motor vehicle safety. Accordingly, GM petitions that it be exempted from the remedy and recall provisions of the Motor Vehicle Safety Act in this case.

Interested persons are invited to submit written data, views, and arguments on the application of described above. Comments should refer

to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 7, 1999.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 2, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–20350 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–6045]

Pipeline Safety: Report of the Cost-Benefit Analysis Framework Working Group

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: This notice announces a one day public meeting to be conducted by RSPA's Office of Pipeline Safety to review the final report of the Cost-Benefit Analysis Framework Working Group. This informal working group, consisting of representatives of the gas and hazardous liquid pipeline industry, the Federal government, and academics, developed a framework for use by RSPA to identify and compare the economic costs and benefits of alternative safety actions that could affect the regulated pipeline industry. RSPA invites representatives of the pipeline industry, state and local government, and the public to attend this meeting, make presentations, ask questions, and submit comments to the docket.

DATES: The public meeting will begin at 9:00 am on September 29, 1999, and end no later than 5:00 pm. Persons wishing to make a short presentation may pre-register by contacting Marvin Fell at (202) 366–6205 to be placed on the speakers list. Persons not pre-registered will be allowed to make comments after the registered speakers have completed their presentations.

ADDRESSES: The public meeting will be held at the U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Room 8236–40, Washington, DC. Non-federal employee visitors are admitted into the DOT headquarters building through the southwest entrance at Seventh and E Streets, SW.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting contact Marvin Fell at (202) 366–6205.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, or by e-mail (marvin.fell@rspa.dot.gov), regarding this notice. The report, A Collaborative Framework for Office of Pipeline Safety Cost-Benefit Analyses (Framework), will be available after August 11, 1999, for inspection and copying in the DOT Dockets Unit, 400 Seventh Street, SW, Washington, DC, between 8:30 am and 4:30 pm each business day. A copy of the Framework is also available over the Internet at the Office of Pipeline Safety's website, ops.dot.gov. A transcript of the public meeting will be available from the Dockets Unit approximately three weeks after the meeting.

Written comments may be mailed or hand-delivered to the DOT Dockets Unit, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments may also be sent by e-mail to dms.dot.gov. Please refer to the docket number in your submission. Comments must be submitted by November 1, 1999.

SUPPLEMENTARY INFORMATION: The Accountable Pipeline Safety and Partnership Act of 1996 requires RSPA to identify the costs and benefits associated with proposed gas and hazardous liquid pipeline regulations. Under the Act, the Secretary of Transportation must propose or issue a regulation only after making a reasoned determination that the benefits of the regulation justify its costs. OPS believes that a collaborative process is the optimal approach for meeting the statutory requirements for cost-benefit analysis and for improving the quality of information used in regulatory policy decisions.

In the spring of 1997, RSPA's Office of Pipeline Safety formed the Cost-Benefit Analysis Framework Working Group (Working Group) to collaboratively develop guidelines for performing cost-benefit analyses. Members in this working group included representatives of RSPA, the National Oceanic and Atmospheric Administration (NOAA), the Department of the Interior (DOI), the American Petroleum Institute (API), the Gas Research Institute (GRI), the American Gas Association (AGA), the Interstate Natural Gas Association (INGAA), the American Public Gas Association (APGA), and the Carnegie-Mellon Research Institute. A number of hazardous liquid, natural gas distribution, and natural gas transmission companies.

Members of the Working Group will discuss the cost-benefit framework report prepared by the Working Group at this public meeting. Members of the Working Group will also present a case study employing the cost-benefit framework to illustrate the application of the framework's process and guidance.

1. Potential Benefits for All Stakeholders

Initial objectives for the Working Group were to explore members' perspectives and experiences with government cost-benefit analyses and to provide members with enough background and knowledge to enable effective participation. In meeting these objectives, the Working Group concluded that RSPA needed a documented framework with which to carry out pipeline safety cost-benefit analyses. Such a framework, its process and guidance, the Working Group believed, is necessary to enable all stakeholders to participate effectively in future pipeline safety initiatives. The Working Group anticipates that the framework will produce the following results:

- More informed decision making in public policy transactions.
- Clearer regulatory priorities and transparent tradeoffs between alternative outcomes.
- Identification of important factors besides economic efficiency for decision makers to consider, such as distributional equity or the potential for irreversible or unintended consequences.
- More efficient regulations that solve actual problems.
- More informed stakeholders, more efficient and effective interactions among stakeholders, and decreased

potential for prolonged conflicts and litigations.

• Promotion of mutual understanding and interests.

2. Guiding Principles

In the early stages of their effort, the Working Group crafted a set of guiding principles for pipeline cost-benefit analyses. The Working Group agreed on fourteen principles that should guide the evaluation of pipeline safety cost-benefit analyses. RSPA intends to refine or modify these guiding principles whenever needed to be consistent with changes in economic theory and methods. Throughout the effort, the Working Group exercised care to ensure that the guiding principles and the cost-benefit framework reflect and are consistent with standard accepted economic concepts and practices. One major reference for the Working Group in developing the guiding principles and framework is the Office of Management and Budget's (OMB) guidance for economic analyses.

3. Framework

As envisioned by the Working Group, the framework consists of a process for interaction among stakeholders representing the government, industry, environmental, and safety constituencies, and the public. The Working Group's report, A Collaborative Framework for Office of Pipeline Safety Cost-Benefit Analyses, describes each of the major process components of the framework and gives detailed guidance to carry out each process component. The major process components in the framework are:

• Identifying and defining the target problem.

• Identifying all available alternatives for addressing the target problem.

• Defining the analytical baseline.

• Defining the scope of the analysis.

• Analyzing costs.

• Analyzing benefits.

• Interpreting and using cost-benefit results.

• Evaluating the value and effectiveness of the cost-benefit process.

4. Illustrative Case Study—Pipeline Mapping

Since extensive cost data are available for RSPA's voluntary pipeline mapping initiative, the Working Group elected to do a cost-benefit analysis of this initiative. This case study provided the Working Group a way to illustrate, test, and refine the framework. The Working Group report presents the analytical results of this case study, reviews the challenges inherent to the application of the framework to analyze the costs and benefits of the initiative, and describes the "lessons learned."

RSPA invites discussions and comments on the Cost-Benefit Analysis Framework Working Group's final report, A Collaborative Framework for Office of Pipeline Safety Cost-Benefit Analyses.

Issued in Washington, DC on August 2, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–20295 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 29653 (Sub-No. 7)]

Transportacion Ferroviaria Mexicana—Pooling of Car Service Regarding Multilevel Cars

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of application.

SUMMARY: Transportacion Ferroviaria Mexicana (TFM) has filed an application seeking approval for its participation in an existing railroad agreement for the pooling of services related to multilevel cars used to transport motor vehicles and boxcars used to transport automobile parts. TFM is a common carrier engaged in the transportation of property by railroad in Mexico. Its participation in the pooling agreement will be limited to international traffic moving between points in Mexico, the United States, and Canada.

DATES: Any comments on the application must be filed by September 7, 1999.

ADDRESSES: Send an original plus 10 copies of any comments, referring to STB Finance Docket No. 29653 (Sub-No. 7), to the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of any comments to: (1) The U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (2) Jamie J. Rainey, 100 West Big Beaver, Suite 200, Troy, MI 48084.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 11322, the Board may approve pooling agreements that are voluntarily entered into by carriers, provided that the pooling or division of traffic, services, or earnings will be in the interest of better service to the public or of economy of operation and will not unreasonably restrain competition. The pooling agreement that TFM seeks to join was originally approved by the Board's predecessor, the Interstate Commerce Commission (ICC), in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multi-Level Cars*, Finance Docket No. 29653 (ICC served Aug. 29, 1981). That agreement applied only to multilevel cars. Subsequently, the ICC approved amendments to the agreement authorizing the pooling of railroad services in auto-parts boxcars in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multi-Level Cars*, Finance Docket No. 29653 (Sub-No. 3) (ICC served Apr. 18, 1986). Other modifications included adding additional carriers to the pool, such as Canadian Pacific Limited in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multi-Level Cars*, Finance Docket No. 29653 (Sub-No. 1) (ICC served Apr. 12, 1983), and Canadian National Railway Company in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multi-Level Cars*, Finance Docket No. 29653 (Sub-No. 2) (ICC served May 12, 1983). The agreement was last amended in *The Baltimore and Ohio Railroad Company, et al.—Pooling of Car Service Regarding Multilevel Cars*, Finance Docket No. 29653 (Sub-No. 6) (ICC served June 30, 1995). It was revised to enable railroads and shippers to obtain and use information that they otherwise would not have, thereby allowing pool members to increase the efficiency of distribution of the multilevel car fleet and minimize unnecessary investment.[1]

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: July 29, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–20053 Filed 8–5–99; 8:45 am]

BILLING CODE 4915–00–P

---

[1] The U.S. Department of Justice (DOJ) initially objected to the amendment as it was originally proposed, but withdrew its objection after the railroads revised the amendment to meet DOJ's concerns.

Corrections

Federal Register
Vol. 64, No. 151
Friday, August 6, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF PERSONNEL MANAGEMENT

Interim OPM Criteria for IRS Broadbanding System

Correction

In notice document 99–18191 beginning on page 38486, in the issue of Friday, July 16, 1999, make the following correction(s):

1. On page 38489, in the second column, under the heading **Appendix A—Staffing Supplements**, in the paragraph designated C. 1., "Staffing Factor = Maximum special rate for banded grades Unadjusted GS rate corresponding to that special rate" should read as follows:

$$1.\ \text{Staffing Factor} = \frac{\text{Maximum special rate for banded grades}}{\text{Unadjusted GS rate corresponding to that special rate}}$$

2. On the same page, in the same column, under the same heading, in the paragraph designated C. 2., "Broadbanding Basic Rate = Old GS adjusted rate (special or locality rate) Staffing Factor" should read as follows:

$$2.\ \text{Broadbanding Basic Rate} = \frac{\text{Old GS adjusted rate (special or locality rate)}}{\text{Staffing Factor}}$$

[FR Doc. C9–18191 Filed 8–5–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Friday
August 6, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29
Rotorcraft Load Combination Safety Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 29277; Amendment No. 27–36 and 29–43]

RIN 2120–AG59

Rotorcraft Load Combination Safety Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airworthiness standards to provide improved safety standards for rotorcraft load combination (RLC) certification. Several accidents occurred in the past 15 years involving the carriage of humans external to the rotorcraft. These amendments provide an increased level of safety in the carriage of humans. Also, significant changes in equipment employed in external load operations have occurred. This document addresses those advances in technology and is harmonized to international standards.

EFFECTIVE DATE: October 5, 1999.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Rotorcraft Directorate, Aircraft Certification Service, Regulations Group, FAA, Fort Worth, Texas 76193–0111, telephone (817) 222–5123, fax 817–222–5959.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

Using a modern and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access/gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on a mailing list for future Notices of Proposed Rulemaking (NPRM's) and final rules should request from ARM–1 a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Small Entity Inquiries

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page under "Rulemaking (ARM)" at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREF@faa.gov.

Background

On November 27, 1991, following an announcement in the **Federal Register** (56 FR 63546, December 4, 1991), the ARAC charged the External Load Working Group to recommend new or revised airworthiness standards for Class D rotorcraft external loads. The Working Group assigned to this task included technical specialists knowledgeable in all areas of external load design and operational requirements. This broad participation is consistent with FAA policy to involve all known interested parties early in the rulemaking process.

The working group researched a wide range of data developed by the FAA, the military, and other nations' airworthiness authorities. Copies of the research documents are included in the docket.

Although rotorcraft external load operations are routinely conducted in a safe manner, several preventable accidents and incidents have occurred during the preceding 15 years. For example, several preventable inadvertent releases of humans carried external to the rotorcraft have occurred. Also, significant changes in the equipment employed in external load operations have occurred such as new rigging devices. Rotorcraft are now more diverse in design, more maneuverable, and more powerful.

A study of the issues prompted the Working Group to recommend updated requirements for modern external load equipment and operational practices. The working group proposed requirements to (1) decrease the potential for future accidents and incidents; (2) provide that external cargo load carrying devices, their release mechanisms, their load carrying systems, and their flight performance reflect modern operational needs; (3) provide separate and increased levels of safety for nonhuman external cargo (NHEC) and human external cargo (HEC) RLC's; and (4) provide updated standards that harmonize with the Joint Airworthiness Regulations (JAR).

The FAA evaluated the ARAC recommendations and proposed external load standards for rotorcraft certificated under 14 CFR parts 27 and 29 in NPRM 98–6 published on July 13, 1998 (63 FR 37745). The FAA received comments from four commenters. All commenters were generally in favor of the proposals but offered the following comments:

Discussion of Comments

14 CFR 27.865(b) and 29.865(b)

A commenter recommended that §§ 27.865(b), 29.865(b), 27.865(b)(3)(ii), and 29.865(b)(3)(ii) be expanded to better define the lightning requirements for external loads. The commenter further recommended that operational limitations be required, particularly when environmental forecasts involve lightning. The FAA believes that the commenter's concerns are fully and adequately addressed by the current certification regulations and these proposals. The level of protection from lightning provided by the current certification regulations, §§ 27.610 and 29.610, and proposals §§ 27.865(b)(3)(ii) and 29.610(b)(3)(ii), clearly defines a reasonable level of safety for the entire RLC from random lightning strikes during operations. Any specific operational restriction for a given RLC that clearly relates to potential lightning strikes will become a flight manual limitation under current §§ 27.1583, 29.1583, and 133.45.

Another commenter states that the wording in proposed §§ 27.865(b)(3)(i) and 29.865(b)(3)(i) implies that the quick release system (QRS) must only be capable of releasing the rated load at 1G. The commenter recommended an improvement to the wording to require that the QRS be certified to the full limit load capability. The FAA intends that the QRS must function up to the applicable limit load defined by the vertical limit load factors and their application proposed in §§ 27.865(a) and 29.865(a). The proposal in §§ 27.865(b)(3)(i) and 29.865(b)(3)(i) is identical to current §§ 27.865(b)(3) and 29.865(b)(3). The wording is commonly understood and is defined in current advisory material as the maximum external limit load. However, the FAA agrees that the wording could be

improved and will insert the word "limit" in §§ 27.865(b0(3)(i) and 29.865(b)(3)(i).

14 CFR 27.865(c) and 29.865(c)

A commenter stated that § 29.865(c)(5) would require special procedures and abnormal piloting techniques and should be removed. The FAA disagrees. Special procedures are not required for any external load operation involving human external cargo. The only procedures necessary for external load operations (current or proposed) are those now required under current regulations such as §§ 29.1585 and 133.45. No abnormal piloting techniques are intended or foreseen.

A commenter stated that the requirement for performance information in the proposed § 29.865(c)(6) would be better placed in § 29.1587, *Performance information*. The FAA disagrees. Placing the performance criteria as proposed by the commenter was considered during formulation of the proposals and rejected. Specific external loads performance criteria is most readily available and useful in §§ 27.865(c)(6) and 29.865(c)(6). The FAA considers the proposed placement best for clarity, efficiency, and commonality with 14 CFR part 133 (part 133).

Two commenters recommended creating a new § 27.865(c)(6). The first commenter noted that part 27 has recently been amended (Amendment 27–33) to add a Category A performance provision and recommended that § 27.865(c)(6) be added to part 27. The second commenter recommended revising § 29.865(c)(6) to include multi-engine rotorcraft having Category A engine isolation design features and adding an identical § 27.865(c)(6) requirement. The second commenter also recommended that § 133.45(e)(1) be revised to include Class D operations with multi-engine part 27 rotorcraft having Category A engine isolation design features. The FAA agrees in principle that a multi-engine part 27 Category A rotorcraft could provide an adequate level of performance that would permit a safe Class D operation; however, changing § 133.45(e)(1) to permit this is beyond the scope of the proposals. The FAA will consider these changes for future rulemaking.

14 CFR 27.865(d) and 29.865(d)

One commenter was concerned that the proposed wording of §§ 27.865(d) and 29.865(d) would mandate flight testing of each critical configuration and airspeed for each proposed external load. The FAA did not intend such a requirement. When deemed sufficient, analysis alone or analysis supported by bench tests may be used for a given critical configuration and airspeed without the necessity for flight tests.

General Comments

A commenter stated that a number of the proposed requirements could benefit from an indication of what an "acceptable means of compliance" would be. The commenter recommended that AC 25.1309–1A be revised to include these elements. The FAA disagrees. Advisory Circular (AC) 25.1309–1A contains advisory material for part 25 airplanes. The AC's for parts 27 and 29 contain an acceptable means of compliance for rotorcraft.

The FAA adopts the proposals as proposed in NPRM 98–6 except for adding the word "limit" to §§ 27.865(b)(3(i) and 29.865(b)(3)(i) as previously discussed.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this final rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and JAA regulations, where they exist, and has identified or discussed similarities and differences in these amendments and foreign regulations.

Regulatory Evaluation Summary

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). In conducting these analyses, which are summarized below (and available in the docket), the FAA has determined that this final rule will generate benefits exceeding its costs and is not "a significant regulatory action" as defined in Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. In addition, this final rule will not have a significant impact on a substantial number of small entities, will not constitute a barrier to international trade, and will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually.

The FAA invited the public to provide comments (and related data) on the assumptions made in the regulatory evaluation for the NPRM. No comments were received on the preliminary regulatory evaluation.

Costs and Benefits

Costs

The costs of the rule, which will be borne by manufacturers and operators, are evaluated for the time period extending from its implementation date through the operating lives of 75 rotorcraft assumed to be produced under 4 new type certificates (involving 15-year production runs of 5 rotorcraft per year total under all 4 new type certificates) and placed into part 133 service. Over the course of this evaluation period, incremental costs will total approximately $679,000 (1998 dollars) or $449,000 discounted to present value (using an interest rate of 7 percent and letting "present" be the date of initial type certification application). Of the $679,000 total cost, $447,000 is attributable to incremental design, analysis, test, and other certification costs, $30,000 to incremental production costs (75 rotorcraft at $400 each), and $202,500 to incremental weight penalty fuel costs ($180 per year per rotorcraft over 15-year operating lives of 75 rotorcraft). On a per-rotorcraft basis, costs will average approximately $9,000 or $6,000 discounted. These incremental costs will be offset to some extent by potential cost savings associated with harmonizing these airworthiness standards with the JAA, streamlining certification approvals for part 133 operators, and relaxing some of the requirements for parts 27 and 29 manufacturers (see Benefits section, below).

Benefits

To estimate the safety benefits of the rule, the FAA reviewed records of accidents involving part 133 operators that occurred between mid-1983 and

1998 that could have been prevented or the losses reduced if the changes in the rule had been in effect. During this 15-year period, there were 22 such accidents involving fatal and/or non-fatal injuries or damage to equipment or both. Ten of the accidents resulted in harm to persons (either inside or outside of the rotorcraft), totaling nine fatalities and two serious injuries. Twenty of the 22 accidents involved either substantial damage (8) or destruction of the rotorcraft (12).

To provide a basis for comparing the safety benefits and costs of rulemaking actions, the FAA currently uses a minimum statistical value of $2.7 million for fatality avoided and $521,800 for a serious injury avoided. Applying these standards to the casualty losses summarized above and making allowances for the costs of rotorcraft damage, the total cost of the 22 accidents was approximately $31.1 million.

The FAA estimates that the final rule could prevent at least 50 percent of the type of accidents summarized above. Applying it retrospectively yields dollar benefits of approximately $15.5 million (One-half of $31.1 million). Over the 15-year accident evaluation period, the part 133 fleet averaged approximately 300 active rotorcraft. Therefore, the benefits averaged approximately $3,400 per year per rotorcraft ($15.5 million/15years/300 operating part 133 rotorcraft per year). Applying this per-rotorcraft safety benefit to the cumulative number of complying rotorcraft results in total safety benefits of $3.8 million (or $1.1 million discounted to present value). On a per-rotorcraft basis, these benefits average approximately $51,000 or $14,300 discounted to the present.

In addition to improving safety, the final rule provides some cost-relief in certain respects. New production rotorcraft will be delivered with standardized procedures for external load operations, and these procedures could result in a small savings to part 133 operators. Further, changes to the preceding regulations that relate to the primary and backup quick-release devices will reduce production costs for parts 27 and 29 rotorcraft manufacturers. The changes will also increase harmonization and commonality between U.S. and European airworthiness standards. Harmonization will eliminate unnecessary differences in airworthiness requirements, thus reducing manufacturers' certification costs.

Comparison of Costs and Benefits

The rule will generate benefits in the form of increased safety and cost relief (see preceding paragraph—the potential production cost relief has not been included in the cost/benefit calculation). On a per-rotorcraft basis, the life-cycle safety benefits will average approximately $14,300 (discounted) and the costs will average approximately $6,000 (discounted), yielding a benefit-to-cost ratio of 2.4 to 1. On this basis alone, the rule is cost-beneficial; additional quantified efficiency and harmonization benefits will increase this ratio.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The entities that will be affected by this rule consist of rotorcraft manufacturers (included in Standard Industrial Classification (SIC) 3721, Aircraft and Aircraft Parts Manufacturers) and external load operators (SIC 4512, 3413, 4522). Manufacturers will incur additional development, certification, and production costs. In addition to indirectly incurring all or part of these costs in the form of higher rotorcraft acquisition costs, operators will incur increased fuel costs resulting from weight penalties. Although the certification costs (non-recurring) will be either fully absorbed by the manufacturer(s), passed on in-total to operator(s) (purchasers), or more likely, absorbed in some proportion by both, the FAA in this analysis adopts a conservative approach and allocates total certification costs to each category in assessing significant economic impact. Incremental per-unit production costs, however, are assumed to be fully passed on to purchasers (operators.)

For manufacturers, a small entity is one with 1,500 or fewer employees. Only 5 rotorcraft manufacturers have 1,500 or fewer employees and therefore qualify as small entities. However, three of these are not currently producing new type-certificated rotorcraft, and a fourth does not produce rotorcraft used for external loads. The fifth small manufacturer produces specialized smaller rotorcraft, a minority of which are configured for external load operations. This producer does not compete with the larger manufacturers. The annualized certification costs imposed by the rule are estimated to be $10,800 per manufacturer for each certification and are not considered significant within the meaning of the RFA.

There are numerous external load operators. The FAA has not determined how many of these are small operators and if a substantial number will potentially be impacted by the rule. However, most external load operations involve specialized activities such as logging, offshore oil drilling, or emergency rescue operations. The demand for such operations is highly price-inelastic; the operators can readily pass on the incremental costs to their customers. Notwithstanding, the maximum annualized cost per rotorcraft will most likely not be greater than $618 (discounted) (includes manufacturers' certification and production costs passed on to the purchaser and increased fuel costs but excludes potential offsetting cost-savings). This amount probably equates to less than the cost of 4 hours' operating time (representing a de minimus portion of annual revenues) and is not considered significant within the meaning of the Act. In addition, no small manufacturer or small operator will bear a disproportionate cost burden nor have a greater likelihood of failing in business compared to larger entities.

Based on the findings delineated above and consistent with the objectives and requirements of the RFA as amended, the FAA certifies that this final rule will not have a significant

economic impact on a substantial number of small entities.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to United States' companies doing business in foreign markets, and foreign companies doing business in the United States. This final rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European JAR. The result will be a positive step toward removing impediments to international trade.

Federalism Implications

The regulations herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this final rule does not contain a significant intergovernmental or private sector mandate as defined by the Act.

Energy Impact

The energy impact of the rulemaking document has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

List of Subjects

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends parts 27 and 29 of Chapter I, Title 14, of the Code of Federal Regulations as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Amend § 27.25 by revising paragraph (c) to read as follows:

§ 27.25 Weight limits.

* * * * *

(c) *Total weight with jettisonable external load.* A total weight for the rotorcraft with a jettisonable external load attached that is greater than the maximum weight established under paragraph (a) of this section may be established for any rotorcraft-load combination if—

(1) The rotorcraft-load combination does not include human external cargo,

(2) Structural component approval for external load operations under either § 27.865 or under equivalent operational standards is obtained,

(3) The portion of the total weight that is greater than the maximum weight established under paragraph (a) of this section is made up only of the weight of all or part of the jettisonable external load,

(4) Structural components of the rotorcraft are shown to comply with the applicable structural requirements of this part under the increased loads and stresses caused by the weight increase over that established under paragraph (a) of this section, and

(5) Operation of the rotorcraft at a total weight greater than the maximum certificated weight established under paragraph (a) of this section is limited by appropriate operating limitations under § 27.865(a) and (d) of this part.

3. The undesignated center heading preceding § 27.865 is revised as set forth below; and in § 27.865 the section heading, paragraph (a) introductory text and paragraph (b) are revised; paragraphs (c) and (d) are redesignated as (e) and (f) and revised; and new paragraphs (c) and (d) are added to read as follows:

External Loads

§ 27.865 External loads.

(a) It must be shown by analysis, test, or both, that the rotorcraft external load attaching means for rotorcraft-load combinations to be used for nonhuman external cargo applications can withstand a limit static load equal to 2.5, or some lower load factor approved under §§ 27.337 through 27.341, multiplied by the maximum external load for which authorization is requested. It must be shown by analysis, test, or both that the rotorcraft external load attaching means and corresponding personnel carrying device system for rotorcraft-load combinations to be used for human external cargo applications can withstand a limit static load equal to 3.5 or some lower load factor, not less than 2.5, approved under §§ 27.337 through 27.341, multiplied by the maximum external load for which

authorization is requested. The load for any rotorcraft-load combination class, for any external cargo type, must be applied in the vertical direction. For jettisonable external loads of any applicable external cargo type, the load must also be applied in any direction making the maximum angle with the vertical that can be achieved in service but not less than 30°. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(b) The external load attaching means, for jettisonable rotorcraft-load combinations, must include a quick-release system to enable the pilot to release the external load quickly during flight. The quick-release system must consist of a primary quick release subsystem and a backup quick release subsystem that are isolated from one another. The quick-release system, and the means by which it is controlled, must comply with the following:

(1) A control for the primary quick release subsystem must be installed either on one of the pilot's primary controls or in an equivalently accessible location and must be designed and located so that it may be operated by either the pilot or a crewmember without hazardously limiting the ability to control the rotorcraft during an emergency situation.

(2) A control for the backup quick release subsystem, readily accessible to either the pilot or another crewmember, must be provided.

(3) Both the primary and backup quick release subsystems must—

(i) Be reliable, durable, and function properly with all external loads up to and including the maximum external limit load for which authorization is requested.

(ii) Be protected against electromagnetic interference (EMI) from external and internal sources and against lightning to prevent inadvertent load release.

(A) The minimum level of protection required for jettisonable rotorcraft-load combinations used for nonhuman external cargo is a radio frequency field strength of 20 volts per meter.

(B) The minimum level of protection required for jettisonable rotorcraft-load combinations used for human external cargo is a radio frequency field strength of 200 volts per meter.

(iii) Be protected against any failure that could be induced by a failure mode of any other electrical or mechanical rotorcraft system.

(c) For rotorcraft-load combinations to be used for human external cargo applications, the rotorcraft must—

(1) For jettisonable external loads, have a quick-release system that meets the requirements of paragraph (b) of this section and that—

(i) Provides a dual actuation device for the primary quick release subsystem, and

(ii) Provides a separate dual actuation device for the backup quick release subsystem;

(2) Have a reliable, approved personnel carrying device system that has the structural capability and personnel safety features essential for external occupant safety;

(3) Have placards and markings at all appropriate locations that clearly state the essential system operating instructions and, for the personnel carrying device system, the ingress and egress instructions;

(4) Have equipment to allow direct intercommunication among required crewmembers and external occupants; and

(5) Have the appropriate limitations and procedures incorporated in the flight manual for conducting human external cargo operations.

(d) The critically configured jettisonable external loads must be shown by a combination of analysis, ground tests, and flight tests to be both transportable and releasable throughout the approved operational envelope without hazard to the rotorcraft during normal flight conditions. In addition, these external loads must be shown to be releasable without hazard to the rotorcraft during emergency flight conditions.

(e) A placard or marking must be installed next to the external-load attaching means clearly stating any operational limitations and the maximum authorized external load as demonstrated under § 27.25 and this section.

(f) The fatigue evaluation of § 27.571 of this part does not apply to rotorcraft-load combinations to be used for nonhuman external cargo except for the failure of critical structural elements that would result in a hazard to the rotorcraft. For rotorcraft-load combinations to be used for human external cargo, the fatigue evaluation of § 27.571 of this part applies to the entire quick release and personnel carrying device structural systems and their attachments.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

4. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

5. Amend § 29.25 by revising paragraph (c) to read as follows:

§ 29.25 Weight limits.

* * * * *

(c) *Total weight with jettisonable external load.* A total weight for the rotorcraft with a jettisonable external load attached that is greater than the maximum weight established under paragraph (a) of this section may be established for any rotorcraft-load combination if—

(1) The rotorcraft-load combination does not include human external cargo,

(2) Structural component approval for external load operations under either § 29.865 or under equivalent operational standards is obtained,

(3) The portion of the total weight that is greater than the maximum weight established under paragraph (a) of this section is made up only of the weight of all or part of the jettisonable external load,

(4) Structural components of the rotorcraft are shown to comply with the applicable structural requirements of this part under the increased loads and stresses caused by the weight increase over that established under paragraph (a) of this section, and

(5) Operation of the rotorcraft at a total weight greater than the maximum certificated weight established under paragraph (a) of this section is limited by appropriate operating limitations under § 29.865 (a) and (d) of this part.

6. The undesignated center heading preceding § 29.865 is revised as set forth below; and in § 29.865 the section heading, paragraph (a) introductory text and paragraph (b) are revised; paragraphs (c) and (d) are redesignated as (e) and (f) and revised; and new paragraphs (c) and (d) are added to read as follows:

External Loads

§ 29.865 External loads.

(a) It must be shown by analysis, test, or both, that the rotorcraft external load attaching means for rotorcraft-load combinations to be used for nonhuman external cargo applications can withstand a limit static load equal to 2.5, or some lower load factor approved under §§ 29.337 through 29.341, multiplied by the maximum external load for which authorization is requested. It must be shown by analysis, test, or both that the rotorcraft external load attaching means and corresponding personnel carrying device system for rotorcraft-load combinations to be used for human external cargo applications can withstand a limit static load equal to 3.5 or some lower load factor, not less than 2.5, approved under §§ 29.337

through 29.341, multiplied by the maximum external load for which authorization is requested. The load for any rotorcraft-load combination class, for any external cargo type, must be applied in the vertical direction. For jettisonable external loads of any applicable external cargo type, the load must also be applied in any direction making the maximum angle with the vertical that can be achieved in service but not less than 30°. However, the 30° angle may be reduced to a lesser angle if—

* * * * *

(b) The external load attaching means, for jettisonable rotorcraft-load combinations, must include a quick-release system to enable the pilot to release the external load quickly during flight. The quick-release system must consist of a primary quick release subsystem and a backup quick release subsystem that are isolated from one another. The quick release system, and the means by which it is controlled, must comply with the following:

(1) A control for the primary quick release subsystem must be installed either on one of the pilot's primary controls or in an equivalently accessible location and must be designed and located so that it may be operated by either the pilot or a crewmember without hazardously limiting the ability to control the rotorcraft during an emergency situation.

(2) A control for the backup quick release subsystem, readily accessible to either the pilot or another crewmember, must be provided.

(3) Both the primary and backup quick release subsystems must—

(i) Be reliable, durable, and function properly with all external loads up to and including the maximum external limit load for which authorization is requested.

(ii) Be protected against electromagnetic interference (EMI) from external and internal sources and against lightning to prevent inadvertent load release.

(A) The minimum level of protection required for jettisonable rotorcraft-load combinations used for nonhuman external cargo is a radio frequency field strength of 20 volts per meter.

(B) The minimum level of protection required for jettisonable rotorcraft-load combinations used for human external cargo is a radio frequency field strength of 200 volts per meter.

(iii) Be protected against any failure that could be induced by a failure mode of any other electrical or mechanical rotorcraft system.

(c) For rotorcraft-load combinations to be used for human external cargo applications, the rotorcraft must—

(1) For jettisonable external loads, have a quick-release system that meets the requirements of paragraph (b) of this section and that—

(i) Provides a dual actuation device for the primary quick release subsystem, and

(ii) Provides a separate dual actuation device for the backup quick release subsystem;

(2) Have a reliable, approved personnel carrying device system that has the structural capability and personnel safety features essential for external occupant safety;

(3) Have placards and markings at all appropriate locations that clearly state the essential system operating instructions and, for the personnel carrying device system, ingress and egress instructions;

(4) Have equipment to allow direct intercommunication among required crewmembers and external occupants;

(5) Have the appropriate limitations and procedures incorporated in the flight manual for conducting human external cargo operations; and

(6) For human external cargo applications requiring use of Category A rotorcraft, have one-engine-inoperative hover performance data and procedures in the flight manual for the weights, altitudes, and temperatures for which external load approval is requested.

(d) The critically configured jettisonable external loads must be shown by a combination of analysis, ground tests, and flight tests to be both transportable and releasable throughout the approved operational envelope without hazard to the rotorcraft during normal flight conditions. In addition, these external loads—must be shown to be releasable without hazard to the rotorcraft during emergency flight conditions.

(e) A placard or marking must be installed next to the external-load attaching means clearly stating any operational limitations and the maximum authorized external load as demonstrated under § 29.25 and this section.

(f) The fatigue evaluation of § 29.571 of this part does not apply to rotorcraft-load combinations to be used for nonhuman external cargo except for the failure of critical structural elements that would result in a hazard to the rotorcraft. For rotorcraft-load combinations to be used for human external cargo, the fatigue evaluation of § 29.571 of this part applies to the entire quick release and personnel carrying device structural systems and their attachments.

Issued in Washington, DC, on August 3, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–20294 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–M

UMI

VOL
64

ISS
1
5
1

AG
6

999

UMI

federal register

Friday
August 6, 1999

Part III

Department of Education

34 CFR Parts 668 and 682
Student Assistance General Provisions, Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

RIN 1845–AA02

Student Assistance General Provisions, Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs) and the Federal Family Education Loan (FFEL) Program regulations. The student financial assistance programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The Federal Family Education Loan Program regulations govern the Federal Stafford Loan Program (subsidized and unsubsidized), the Federal Supplemental Loans for Students Program (no longer active), the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly collectively known as the Guaranteed Student Loan Programs).

These proposed regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 Public Law 105–244, (the 1998 Amendments) for the treatment of Title IV, HEA program funds when a student withdraws from an institution.

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Wendy Macias, U.S. Department of Education, P.O. Box 23272, Washington, DC 20202–3272. If you prefer to send your comments through the Internet, use the following address: returntiv@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Wendy Macias, U.S. Department of Education, 7th and D Street, SW, ROB–3, Room 3013, Washington, DC 20202. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or

groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations, over the course of several months, beginning in January.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of negotiating Committee III on the issues addressed in this package of proposed rules. Committee III was made up of the following members:

Accrediting Commission of Career Schools and Colleges of Technology
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Career College Association
Coalition of Higher Education Assistance Organizations
Education Finance Council
Legal Services Counsel (a coalition)
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Graduate/Professional Students
National Association of Independent Colleges and Universities
National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition)
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Direct Student Loan Coalition
The College Board
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document, except for the proposed implementation of the "50% discount" on Title IV, HEA program grant funds that a student must return in § 668.22(h)(3)(ii).

Background

Section 485 of the Higher Education Amendments of 1998, Public Law 105–244, enacted October 7, 1998 (the 1998 Amendments) substantially revised the requirements of section 484B of the Higher Education Act of 1965, as amended (the HEA).

Prior to the 1998 Amendments, section 484B required all schools participating in the Title IV, HEA programs to use specific refund policies when a student who receives Title IV, HEA program funds ceases attendance. The refund policies determined the amount of institutional charges that an institution had earned when a student withdrew, and the amount that was unearned and had to be refunded. In addition, section 485(a) of the HEA specified an order of return of unearned funds from all sources of financial aid, not just the Title IV, HEA programs.

Under the 1998 Amendments, section 484B of the HEA does not dictate an institutional refund policy. Instead, section 484B prescribes the amount of Title IV, HEA program assistance a student has earned as of the time he or she ceases attendance. The amount of Title IV, HEA program assistance earned is based on the amount of time the student spent in academic attendance; it has no relationship to the student's incurred institutional charges.

Because section 484B now deals with only the earning of Title IV, HEA program funds, the order of return of unearned funds no longer includes funds from sources other than the Title IV, HEA programs.

The new requirements do not prohibit an institution from developing its own refund policy or complying with refund policies required by outside agencies.

Summary of Proposed Changes

A summary of the proposed changes to the regulations to implement these statutory changes and issues on which the Secretary particularly invites comments follows.

Section 668.22(a) General

The statute requires that if a recipient of Title IV grant or loan funds withdraws from an institution after beginning attendance, the amount of Title IV, HEA program assistance earned by the student must be determined. If the amount the student was disbursed is greater than the amount the student earned, unearned funds have to be returned. If the amount the student was disbursed is less than the amount the student earned, the student is eligible to receive a late disbursement in the amount of the earned aid that the student had not received.

At the negotiated rulemaking sessions, the Department's negotiator stated the Department's belief that this change to the statute makes clear that Title IV, HEA program funds are awarded to a student under the assumption that the student will attend an institution for the entire period for which the assistance is awarded. When a student ceases academic attendance prior to the end of that period, the student may no longer be eligible for the full amount of Title IV, HEA program funds that the student was originally scheduled to receive.

Title IV Grants and Loans

The statute requires that the calculation of earned Title IV, HEA program assistance include all Title IV grant and loan funds that were disbursed or that could have been disbursed to a student. The statute specifies that Federal Work-Study (FWS) funds are not included in the calculation. These proposed regulations would clarify when Federal Supplemental Educational Opportunity Grant (FSEOG) program funds should and should not be included in the calculation.

The committee agreed that only funds that are clearly Title IV, HEA grant or loan funds must be included in the calculation. These proposed regulations would exclude from the calculation the non-Federal share of FSEOG awards when an institution meets its FSEOG matching share by either the individual recipient method or the aggregate method. In other words, if an institution meets its matching share requirement by putting funds in the FSEOG fund (otherwise known as the fund-specific matching method), those funds must be included in the calculation; otherwise, the non-Federal share of FSEOG awards is excluded from the calculation.

Several negotiators asked for clarification of the treatment of funds from the Leveraging Education Assistance Partnership (LEAP) program, formerly known as the State Student Incentive Grant (SSIG) program. The Department's negotiator stated the Department's view that the guidance of Dear Colleague Letter GEN–89–38, which addresses the treatment of LEAP funds when a student withdraws, is still applicable. Although not specified in the proposed regulations, this longstanding policy provides that, if a State agency specifically identifies a student's State grant as LEAP funds, the State grant funds must be considered Title IV, HEA grant funds for purposes of this calculation. If an institution does not know whether a particular student's State grant contains LEAP funds, the

grant would not have to be included in the calculation. The committee agreed that this policy facilitates the accurate identification of Federal funds and agreed that the continuation of this policy was reasonable. The Department will provide updates to the guidance of GEN–89–38 once these regulations are final.

Title IV Aid Disbursed

For consistency and administrative clarity, the committee agreed that it is necessary to identify a point in time that institutions would use for all students who withdraw to determine the amount of aid that was disbursed, since this amount is critical to determining if a return of Title IV, HEA program assistance is required. During negotiated rulemaking, the committee discussed whether this "snap shot" should occur as of the student's withdrawal date. Some negotiators pointed out that an institution sometimes inadvertently disburses funds to a student who is no longer in attendance. For example, a student drops out on Friday. Because the institution is unaware that the student is no longer in attendance, the institution makes a scheduled disbursement of aid to the student on the next Monday. Some negotiators felt that this inadvertent overpayment should be included as disbursed aid in the calculation of the amount of aid earned. They felt it was unduly burdensome to require an institution to immediately return the inadvertent overpayment since a portion of those funds may have been earned and would have to be re-disbursed. If any of the overpayment were not earned, they suggested that it could be returned in accordance with the requirements of this section for the return of unearned funds.

The committee agreed to move the snap-shot point to the date of the institution's determination that the student withdrew to allow such inadvertent overpayments to be counted as disbursed aid. (The proposed definition of the "date of the institution's determination that the student withdrew" is addressed in the discussion of § 668.22(l).) Institutions are expected to have the administrative capability to prevent these types of overpayments on a routine basis, particularly if funds are being paid to the student rather than credited to a student's account. A pattern or practice of making these inadvertent overpayments would be questioned in a program review. The Secretary agreed to include these overpayments in the calculation of total aid disbursed only for purposes of easing an institution's administrative burden in what should be a very limited number of circumstances. This provision would not supercede the requirements of § 668.164(b)(1) and the applicable program regulations which require that an institution may disburse Title IV, HEA program funds only if the student is enrolled for classes for the payment period and is eligible to receive those funds.

In keeping with this snap-shot approach, when a return of Title IV, HEA program funds is due, these proposed regulations would prohibit additional disbursements to the student after the date of the institution's determination that the student withdrew. The negotiators discussed the possibility of permitting an institution to adjust a student's disbursed aid by making late disbursements of aid *before* applying the requirements for determining and returning any unearned Title IV, HEA program assistance. Some negotiators felt that this could benefit the student in some cases. For example, if the institution had disbursed loan funds before the student withdrew and could have also disbursed grant funds, the institution could disburse the grant funds after becoming aware that the student withdrew in order to replace the loan funds, thereby reducing the student's loan debt.

After much discussion by the committee, it was decided that there are too many variables involved to permit institutions to make case-by-case determinations of whether post-withdrawal adjustments to a student's aid disbursement are appropriate. The committee agreed that it is not appropriate for an institution to disburse additional funds to a student or to a student's account after the institution becomes aware that the student has withdrawn, unless the institution determines that more funds were earned than had been disbursed. The Title IV, HEA program funds were made available to the student with the expectation that the student would complete the period for which the funds were provided, and that expectation is no longer present once a student has withdrawn. Before disbursing any additional funds on behalf of a withdrawn student, the proposed regulations would require the institution to determine that the student has earned those funds under the provisions of these proposed regulations.

Late Disbursements

The committee agreed that the requirements for a late disbursement due under section 484B of the HEA should be as similar as possible to the requirements under Subpart K—Cash Management of the Student Assistance General Provisions regulations. However, in some cases, the committee acknowledged that the existing cash management provisions are inappropriate in this context, or are superceded by section 484B of the HEA.

These proposed regulations contain a provision that any late disbursement due under this section must meet the current required conditions for late disbursements found in § 668.164(g)(2). This cash management provision lists the conditions that must have been met prior to the date that the student became ineligible in order for an institution to make a late disbursement. For example, the institution must have received the student's Student Aid Report (SAR) or Institutional Student Information record (ISIR) with an official expected family contribution (EFC).

The committee agreed that § 668.164(g)(1) and (g)(3) are not applicable to a late disbursement resulting from a student's withdrawal. Section 668.164(g)(1) currently states that an institution *may* make a late disbursement to a student who became ineligible solely because of a change in enrollment status. The requirements of section 484B remove the discretion that is provided in § 668.164(g)(1) for an institution to determine whether a late disbursement should be made.

Section 668.164(g)(3) currently specifies that a late disbursement must be for incurred educational costs, and must be made within 90 days of the date that the student becomes ineligible. The committee agreed that this provision was inapplicable because, as mentioned previously, the determination of the amount of Title IV, HEA program assistance that the student has earned has no relationship to incurred educational costs. The committee agreed that 90 days is a reasonable amount of time for an institution to make a late disbursement. However, the committee believed that a late disbursement made as the result of a withdrawal should be made within 90 days of the date of the institution's determination that the student withdrew, rather than within 90 days of the date that the student becomes ineligible. This proposed timeframe is addressed later in this discussion.

These proposed regulations would reflect the cash management requirements for disbursing Title IV, HEA program funds. Specifically, these proposed regulations would allow an institution to credit a student's account with a late disbursement without the

student's (or parent's, in the case of a PLUS loan) permission for current charges for tuition, fees, and room and board (if the student contracts with the institution) up to the amount of outstanding charges. For other current charges for educationally-related activities, the institution would need a student's (or parent's for PLUS loan funds) authorization to credit the student's account. These proposed regulations would allow an institution to use a student's or parent's authorization that is obtained prior to the student's withdrawal date for this purpose, so long as that authorization meets the requirements of § 668.165(b). If the institution did not obtain authorization prior to the student's withdrawal, the institution would have to obtain authorization in accordance with § 668.165(b)(2) before the institution could credit the student's account for other current charges for educationally-related activities. The institution's request for the student's or parent's authorization must make clear that if the student or parent does not give permission for the institution to credit the student's account with the Title IV, HEA program funds, these funds will be disbursed directly to the student or parent, as applicable, if the student or parent accepts the funds.

The committee considered whether to require an institution to make a late disbursement directly to a student. They also discussed whether prior authorizations from the student to permit the institution to credit his or her account would apply or if the institution would have to obtain authorization from the student after the student's withdrawal. However for consistency between this section and the existing cash management requirements, the committee decided that the proposed regulation should generally mirror the current cash management requirements for the disbursement of funds.

However, these proposed regulations would deviate from the cash management provisions in Subpart K for the disbursement of Title IV, HEA program funds by not permitting an institution to credit a student's account for any prior award year charges. This is because section 484B of the HEA specifies that earned Title IV, HEA program funds must be determined for the payment period or period of enrollment in which a student withdraws. Therefore, Title IV, HEA program funds that are earned under section 484B are earned for current charges only.

These proposed regulations would mirror the current cash management provisions in § 668.165 that require an institution to provide notice to a student, or parent in the case of a PLUS loan, when the institution credits a student's account with Direct Loan, FFEL or Federal Perkins Loan Program funds.

The statute requires that earned funds in excess of those credited to a student's account must be provided to the student. However, in recognition of the difficulty an institution may have in trying to locate a student who has ceased attendance at the institution, these proposed regulations would require that an institution would have to offer in writing to the student (or parent for PLUS loan funds) any amount of a late disbursement that is not credited to a student's account. The committee agreed that the written notification must include the information necessary for the student or parent to make an informed decision as to whether the student or parent would like to accept any of the disbursement. These proposed regulations would base the requirements for notification on the cash management requirements for an institution's notification to a student or parent when an institution credits a student's account with Title IV, HEA loan funds (§ 668.165(a)). This notification would have to be provided for late disbursements of both Title IV grant and loan funds that are available for direct disbursement. The Secretary specifically requests comments on whether the proposed timeframes discussed below, which are based on the timeframes established in the cash management regulations, are appropriate for a student who has withdrawn from school.

The committee agreed that, although a student or parent always has the option of declining a direct disbursement of loan funds by returning or not endorsing the loan check, it is essential that this option be brought to the student's or parent's attention when the student has ceased attendance and may have compromised his or her ability to earn the funds necessary to repay additional loan debt.

Under these proposed regulations, an institution would be expected to send the notification as soon as possible, but no later than 30 calendar days after the date that the institution determines that the student withdrew. The notice would have to identify the type and amount of the Title IV, HEA program funds that make up the late disbursement, and explain that the student or parent may decline all or a portion of those funds. This information must be provided to permit a student or parent to determine which funds, if any, he or she wishes to decline.

The institution would have to advise the student or parent in the notification that the student or parent would have 14 calendar days from the date that the institution sent the notification to accept a late disbursement. The notification would have to make it clear that if the student or parent did not respond to the notification within the timeframe, the institution would not be required to make the late disbursement. However, an institution could choose to make a late disbursement based on acceptance by a student or parent after the 14 calendar days. Fourteen days is the same period of time that is permitted for a student or parent to respond to a notification of the ability to cancel a loan disbursement that is credited to the student's account. The committee agreed that this period of time provides sufficient response time for a student or parent and also meets the administrative needs of the institution.

This NPRM proposes that if a student or parent submits a timely response, accepting all or a portion of a late disbursement, the institution must disburse the funds within 90 days of the date of the institution's determination that the student withdrew. The committee agreed that an institution's responsibility for paying a late disbursement should start when the institution first becomes aware that a student has ceased attendance at the institution. The proposed definition of the term "date of the institution's determination that the student withdrew" is addressed in the discussion of § 668.22(l). The Secretary notes that the date of the institution's determination that the student withdrew is the same date that would trigger the 30-day period that the institution has for notifying the student or parent of any late disbursement available for direct disbursement. Consequently, under this proposal, the sooner an institution sends the notification to a student or parent, the more time the institution would have to make any accepted late disbursement.

The Secretary believes that it would be reasonable to permit an institution to use one notification to (1) notify the student or parent that loan funds were credited to the student's account; (2) request permission to credit the student's account for other current charges for educationally-related activities, if prior authorization had not been obtained; and (3) notify the student or parent of the availability of any remaining earned Title IV, HEA program assistance.

To keep the student or parent properly informed about the Title IV, HEA program assistance that he or she received or did not receive, this NPRM proposes that an institution must inform a student or parent in writing or electronically concerning the outcome of any late disbursement request. For example, an institution must inform a student if it will not make a late disbursement because the student's request was not received within the 14-day timeframe.

Finally, this NPRM proposes that a late disbursement, whether credited to the student's account or disbursed to the student or parent directly, must be made from available grant funds before available loan funds since it is in the best interest of the student to minimize loan debt. "Available" grant or loan funds refers to Title IV, HEA program assistance that could have been disbursed to the student, but was not disbursed as of the date of the institution's determination that the student withdrew. For example, if a student is due a late disbursement of $500, and the student has received $400 of $1,000 in Federal Pell Grant funds that could have been disbursed, and $1,200 of the $2,000 in Federal Stafford Loan funds that could have been disbursed, the available undisbursed funds are $600 in Federal Pell Grant funds, and $800 in Federal Stafford loan funds. Any portion of the $500 late disbursement that the institution makes must be made from the $600 in available Federal Pell Grant funds.

The following example illustrates the major principles of the proposed late disbursement procedures. Michael drops out of school on November 5. On November 10, the institution becomes aware that Michael ceased attendance. Using these proposed regulations, the institution determines that because Michael has earned $900 in Title IV, HEA program assistance that he has not received, Michael is due a late disbursement of $900. When Michael withdrew, only $600 of the $1,000 in Federal Pell Grant funds that could have been disbursed to him had been disbursed. Of the $2,000 in Federal Stafford Loan funds that could have been disbursed, only $1,200 had been disbursed. The institution determines that Michael has $50 in outstanding tuition charges and $100 in outstanding parking fines for the payment period. The institution credits Michael's account with $50 of Michael's Federal Pell Grant funds. The institution wants to use another $100 of Michael's late disbursement to cover the outstanding parking fines. However, the institution has not received permission from Michael prior to his withdrawal to credit his account for educationally-related charges other than tuition and fees and room and board.

On November 12, the institution sends a notification to Michael that states that (1) he is due a late disbursement of $900, that comprises $400 in Federal Pell Grant funds and $500 in Federal Stafford Loan funds; (2) $50 of the Federal Pell Grant funds were credited to his account for tuition charges, so Michael has a remaining potential late disbursement of $850; (3) Michael may accept all, a portion, or none of the $850; (4) the institution is obligated to make a late disbursement of funds only if Michael accepts the funds by November 26, 14 days after the institution sent the notification; (5) the institution is requesting Michael's permission to credit his account with an additional $100 of the Federal Pell Grant funds to cover his unpaid parking fines; and (6) if Michael does not authorize the institution to credit his account with the $100 of Federal Pell Grant funds, those funds will be disbursed to Michael if he chooses to accept them. The institution could have sent the notification no later than December 10; that is, 30 days after the date of the institution's determination that the student withdrew.

Michael responds on November 19. Michael authorizes the institution to apply $100 of the Federal Pell Grant funds to his outstanding parking fines. Michael accepts the remaining $250 in Federal Pell Grant funds, but declines the $500 in Federal Stafford Loan funds to minimize his overall loan debt.

The institution sends Michael a check for the $250 in Federal Pell Grant funds and a letter confirming that $100 of the Federal Pell Grant funds will be credited to his account and no additional loan funds will be disbursed. The institution has until February 8, which is 90 days from the date of the institution's determination that the student withdrew, to disburse the $250 in Federal Pell Grant funds to Michael and to credit his account with the $100 of Federal Pell Grant funds to cover his outstanding parking fines.

Section 668.22(b) Determining a Student's Withdrawal Date at an Institution That Is Required To Take Attendance

These proposed regulations would limit the definitions of withdrawal date in § 668.22(b) and (c) to the determination of the amount of Title IV, HEA program assistance that a student has earned upon withdrawal. An institution would not be required to use these withdrawal dates for their own institutional refund policies or for any other purpose. The committee agreed that this approach is consistent with the view that an institution's refund policy and other academic procedures are separate from these new procedures for determining the amount of Title IV, HEA program assistance earned when a student withdraws.

This proposed definition of withdrawal date (and the proposed definition of withdrawal date in § 668.22(c)) is for purposes of determining the amount of aid a student has earned. It is not necessarily the date that "starts the clock" for the return of the Title IV, HEA program funds by the institution. In § 668.22(j), this NPRM proposes a timeframe, beginning on the date of the institution's determination that the student withdrew, for the return of unearned Title IV, HEA program funds. The term "date of the institution's determination that the student withdrew" is discussed under § 668.22(l).

Last Date of Academic Attendance

Section 484B(c)(1)(B) of the HEA provides that, for institutions that are required to take attendance, the day the student withdrew is determined by the institution from the institution's attendance records. These proposed regulations would define this withdrawal date as the last date of academic attendance, as determined by the institution from its attendance records.

The committee discussed whether the statute could be interpreted to allow an institution to use a student's last date of attendance from the institution's attendance records as a *basis* for determining the student's withdrawal date, rather than as the actual withdrawal date. For example, if an institution's records show that a student's last date of academic attendance is November 15, but the institution is not aware that the student left until November 22, the institution might use November 22 as the student's withdrawal date. One negotiator felt that this approach was more equitable because it would take into account costs that are incurred by the student after the student's last date of attendance.

At the negotiated rulemaking sessions, the Department's negotiator made clear that the Department's view is that the goal in defining a student's withdrawal date is to identify the date that most accurately reflects the point when the student ceased academic attendance, and that this goal is best met by using the student's last date of academic attendance. The amount of Title IV, HEA program assistance that is

earned is a reflection of the amount of time a student spent in academic attendance, not a reflection of institutional costs that are incurred by the student. The committee agreed to define the withdrawal date for an institution that is required to take attendance as the last date of academic attendance as determined by the institution from its attendance records. Thus, in the example just cited, the withdrawal date would be November 15, not November 22.

Required To Take Attendance

At the negotiated rulemaking sessions, the committee discussed whether an institution that elects to take attendance should be considered an institution that is required to take attendance for purposes of calculating the amount of Title IV, HEA program assistance when a student withdraws. The committee decided that only an institution that is required to take attendance by an outside entity would be considered an institution that is required to take attendance. Examples of outside agencies that may require an institution to take attendance are an institution's accrediting agency or an institution's state licensing agency.

At the negotiated rulemaking sessions, the Department's negotiator also suggested that an institution that is required to take attendance for even a portion of the payment period or period of enrollment should be considered an institution that is required to take attendance. Some negotiators thought that the Department's interpretation was too restrictive. The negotiators cited an example in which an institution's State agency requires the institution to take attendance for the first two weeks of a program to establish a census of students. The negotiators did not believe that attendance records for census purposes would be appropriate for determining a student's withdrawal date. For this reason, the committee agreed that the proposed regulations should not include a reference to institutions that are required to take attendance for only a portion of the period. The Secretary requests comment on whether an institution that is required to take attendance for a longer portion of the payment period or period of enrollment should be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date under these proposed regulations. For example, should an institution that is required to take attendance just beyond the 60 percent point of the period (the point at which the student would earn 100 percent of his or her Title IV, HEA program assistance) have to use its attendance records to determine a student's withdrawal date?

Student Does Not Return From a Leave of Absence

The committee agreed that if a student does not return to the institution at the expiration of an approved leave of absence, the most appropriate withdrawal date for the student is also the last date of academic attendance as determined by the institution from its attendance records. Leaves of absence are addressed in the discussion of proposed § 668.22(d).

Section 668.22(c) Determining a Student's Withdrawal Date at an Institution That Is Not Required To Take Attendance

As mentioned in the discussion of proposed § 668.22(b), this NPRM proposes that the definitions of withdrawal date in §§ 668.22(b) and (c) apply only to the determination of the amount of Title IV, HEA program assistance that a student has earned upon withdrawal.

The statute lists four types of withdrawal situations for students who withdraw from institutions that are not required to take attendance and defines a withdrawal date for each type. The four situations are: (1) the student began the withdrawal process prescribed by the institution; (2) the student otherwise provided official notification to the institution of his or her intent to withdraw; (3) the student leaves without beginning the institution's withdrawal process or otherwise providing official notification of his or her intent to withdraw (an "unofficial withdrawal"); and (4) the student does not return to the institution by the expiration of a leave of absence. In addition, the statute contains a "special rule" definition of withdrawal date for withdrawals that occur because of circumstances that are beyond the student's control.

Last Date of Attendance at an Academically-Related Activity

The statute does not specifically allow an institution to use an earlier or later date than those described above, except in the case of a student who withdraws without providing official notification, in which case the midpoint is the withdrawal date (situation number 3, discussed above). In such cases, the statute allows an institution to document and use a date that is later than the midpoint of the period. However, as stated previously, the Secretary believes that a student's withdrawal date should reflect as accurately as possible the point when the student ceased academic attendance. The Secretary also believes that an institution should base its determination of that point on the best information available. Therefore, the committee agreed that these proposed regulations should allow an institution that is not required to take attendance always to be able to use a student's last date of attendance at an academically-related activity, as documented by the institution, as the student's withdrawal date, in lieu of the withdrawal dates listed above. Thus, if a student begins the institution's withdrawal process or otherwise provides official notification of his or her intent to withdraw and then attends an academically-related activity after that date, the institution would have the option of using that last actual attendance date as the student's withdrawal date provided that the institution documents that the student attended the activity. Similarly, an institution could choose to use an earlier date if it believes the last documented date of attendance at an academically-related activity is a more accurate reflection of the student's withdrawal date than the date on which that student began the institution's withdrawal process or otherwise provided official notification of his or her intent to withdraw.

The concept of using a last date of attendance at an academically-related activity as a student's withdrawal date is a longstanding one for the Title IV programs. Consistent with this longstanding policy, the proposed regulations would not require an institution to take class attendance in order to demonstrate academic attendance for this purpose. The regulations would define "academically-related activity" and list several examples of activities that meet the definition. An institution would be permitted to use documentation of a student's attendance at other activities if those activities met the definition of an academically-related activity.

An institution would be responsible for determining that the activity that the student attended is, in fact, academically-related. The committee agreed that an institution has demonstrated this responsibility if an employee of the school confirms that the activity is academically-related. The Secretary does not consider proof that a student is living in institutional housing nor proof that a student is participating in a student organized study group to be proof of academic attendance.

The Secretary notes that activities that meet this definition of an academically-related activity would not necessarily count as instructional time for purposes

of the "12-hour rule" found in the definition of "academic year" in § 668.2(b)(2) and in the definition of an eligible program in § 668.8(b).

Withdrawal Process Prescribed by the Institution

During negotiated rulemaking, the committee discussed whether to regulate the concept of "began the withdrawal process." Some negotiators felt that the statute gave the institutions discretion to define the beginning of their own withdrawal procedure. The committee agreed to leave the definition of this term up to each institution. The Secretary notes that section 485(a)(1)(F) of the HEA, as modified by the 1998 Amendments, requires an institution to make available to students a statement of the requirements for officially withdrawing from the institution. The Secretary expects an institution to identify the beginning of its process as a part of this information. The Secretary also expects an institution to be able to demonstrate consistent application of its process, including its determination of the beginning of the process.

Official Notification

These proposed regulations would define "official notification to the institution." The committee agreed that "official notification to the institution" occurs when a student notifies an office of the institution of his or her intent to withdraw. However, the committee noted that it could be administratively burdensome for an institution to have to track withdrawal notifications that could be made to any unspecified office of the institution. Therefore, these proposed regulations would allow an institution to designate the office or offices that a student must notify in order for the notification to count as official notification. An institution would have to designate at least one office for this purpose. For example, an institution could designate a dean's, registrar, or financial aid office.

Under these proposed regulations, official notification from the student could be written or oral. Under this proposal, acceptable notification would include notification by a student via telephone, through a designated web site, or notification that is provided orally in person. If provided orally, the Secretary would expect the institution to document the conversation with the student.

Resolving Instances Where Student Triggers Two Dates

During the negotiations, the Department's negotiator noted that a student might both begin the institution's withdrawal process and otherwise provide official notification to the institution of his or her intent to withdraw. For example, on November 1, a student calls the institution's designated office and states his or her intent to withdraw. Later, on December 1, the student begins the institution's withdrawal process by submitting a withdrawal form. The Department's negotiator stated that it is the Department's view that the earlier date more accurately reflects when the student withdrew. Ultimately, the committee agreed that if both dates are triggered, the earlier date would be the student's withdrawal date.

Several negotiators felt that the institution should have the discretion to choose the more appropriate date. The negotiators felt it was unfair to require the earlier date if the student continued to attend the institution after the first notification. Although the proposed regulations would permit an institution to document a later "last date of academically-related attendance," negotiators felt that in this situation it was unreasonable to require the institution to confirm and document the later attendance. The committee agreed to extend negotiations beyond the five originally-scheduled sessions in order to continue to address this issue (and the issue of the determination of the amount of unearned aid to be returned). The committee agreed that the extension was necessary to continue its attempts to resolve differences between the Department's negotiator and other negotiators. After extensive discussions and consideration of several alternatives, the committee ultimately agreed to the original interpretation that the withdrawal date should be the earlier of the two dates (unless the institution chooses to document another last date of attendance at an academically-related activity), in conjunction with a provision that clarifies how a student's rescission of his or her notification of intent to withdraw would be treated (discussed below).

Student Does Not Return From a Leave of Absence

This NPRM proposes that if a student does not return to the institution at the expiration of an approved leave of absence, the student's withdrawal date is the date that the student began the leave of absence. The committee agreed that the date that the student began the leave of absence most accurately reflects the point when a student who does not return from the leave ceases academic attendance. Leaves of absence are addressed in the discussion of proposed § 668.22(d).

Circumstances Beyond the Student's Control

The committee's view was that the special rule that defines a withdrawal date for students who withdraw due to circumstances beyond the student's control should apply in two circumstances: (1) a student who would have provided official notification to the institution of his or her intent to withdraw was prevented from doing so due to those circumstances; and (2) a student withdrew due to circumstances beyond the student's control and a second party provided notification of the student's withdrawal on the student's behalf.

The committee agreed that for such students the institution should determine the withdrawal date that most accurately reflects when the student ceased academic attendance due to the circumstances beyond the student's control. This date would not necessarily have to be the date of the occurrence of the circumstance beyond the student's control. For example, if a student is assaulted, he or she may continue to attend school, but ultimately not be able to complete the period because of the trauma experienced. Because the student's withdrawal was the result of the assault, the withdrawal date would be the date that the student actually left the institution, not the date of the assault. The Secretary would expect the institution to document that the student left at the later date because of issues related to the assault.

Rescission of Intent To Withdraw

These proposed regulations would specify how a student's rescission of an intent to withdraw would affect the withdrawal date. A student's rescission would be valid only if the student attends through the end of the payment period or period of enrollment. As part of the rescission notification, a student would have to attest that he or she was continuing academic attendance and that he or she intends to complete the period. If the student did not complete the payment period or period of enrollment after the rescission, the withdrawal date would be the date when the student first provided notification to the school or began the withdrawal process, unless an institution chooses to use a documented last date of attendance at an academically-related activity as the student's withdrawal date.

This language was added to the proposed regulations to clarify how a

student's rescission would be treated. The negotiation of this proposed regulatory language occurred through discussions within a subgroup of the committee, including the Department's negotiator, after the final negotiating session (but prior to the reaching of consensus). Although the committee reached consensus on the proposed regulatory language, the Secretary wishes to explain the reasons for this provision. The Secretary is particularly concerned with a situation in which a student notified the institution of an intent to withdraw, decided to continue to attend the school, and then withdrew without providing further notification. The Secretary believes that a student who provides official notification of his or her intent to withdraw and actually withdraws should never be treated as a student who left the institution without providing notification, even if there was a rescission of the first notification.

Likewise, the Secretary does not believe that a student who provided notification, decided to continue to attend the school, and then provided subsequent notification of an intent to withdraw should have earned aid determined based on the later notification date.

The Secretary is concerned that some students, either on their own or in response to encouragement by the institution, would attend for a short period of time after their first notification and then drop out or provide a second notification in order to increase artificially the amount of Title IV, HEA program assistance earned.

Acceptable Documentation

During the negotiated rulemaking sessions, the committee considered whether to specify in the regulations what documentation would be acceptable to support an institution's determination of a student's withdrawal date. Several of the negotiators felt that institutions should have the flexibility to determine the type of documentation that would best support their determination of the student's withdrawal date. The negotiating committee agreed that acceptable documentation should not be delineated in the regulations. However, an institution would still be required to document all withdrawal dates and maintain the documentation. The committee agreed that it is reasonable to expect an institution to have such documentation available as of the date of the institution's determination that the student withdrew. The proposed definition of the "date of the institution's determination that the student withdrew" is addressed in the discussion of § 668.22(l).

Unapproved Leave of Absence

The Secretary notes that neither the statute nor the proposed regulations specify a withdrawal date for a student who takes an unapproved leave of absence. The Secretary requests comment on whether such a date should be specified in the regulations.

Section 668.22(d) Treatment of Leaves of Absence

The statute provides that a leave of absence must meet certain conditions to be counted as a temporary interruption in a student's education, rather than as a withdrawal. If a leave of absence does not meet the conditions, the student is considered to have ceased attendance at the institution (and therefore to have withdrawn from the institution) and the requirements of section 484B of the HEA would apply.

For purposes of § 668.22, a leave of absence refers to circumstances in which a student is not in academic attendance for a period for which academic attendance is scheduled as part of the student's program. It does not refer to non-attendance for a scheduled break in a student's program.

These proposed regulations refer to a leave of absence that does not have to be considered a withdrawal as an "approved leave of absence." The statute gives an institution discretion in determining whether to treat an approved leave of absence as a withdrawal. That is, a student's leave of absence may meet all the requirements for an approved leave of absence, but the institution may still treat the leave of absence as a withdrawal.

The committee noted that term-based credit hour schools allow students to receive an "incomplete" status for coursework that can be, and is expected to be, completed within a reasonable timeframe after the term is over. For example, a student may request and receive an "incomplete" because the student failed to turn in an assigned paper. If a student is assigned an "incomplete" status but the institution determines that the student will likely complete the required coursework, the student could be considered not to have withdrawn. If the institution assigns a student a leave status other than a leave of absence as defined in these proposed regulations just to keep the student from having to re-apply the next semester, the student would be considered to have withdrawn, unless he or she was granted an approved leave of absence under the provisions of this section. The Secretary notes that under these proposed regulations, a student on an approved leave of absence must be permitted to complete the coursework he or she began prior to the leave of absence.

The Secretary specifically requests comment on whether the proposed definition of a leave of absence for purposes of this section should apply for purposes of determining whether a student's in-school status continues for Title IV, HEA program loan purposes.

Number of Leaves of Absence

The statute refers to a student who takes "a" leave of absence from an institution. The committee considered whether a student should be granted only one leave of absence in a 12-month period or whether the statute permits a student to take multiple leaves of absence in a 12-month period, as long as the total number of days did not exceed 180. The committee agreed that in some limited instances, it may be appropriate to permit a student to take more than one leave of absence within a 12-month period, as long as the total number of days of the leaves of absence does not exceed 180. This proposal seeks to strike a balance recognizing that it is often not in the best interest of most students to have multiple interruptions to their education, but that one leave of absence may not be sufficient to address the needs of some students. These proposed regulations do not specify the reasons for which a single leave of absence may be granted; rather, the institution would determine if the student's reason for requesting a single leave of absence is appropriate. Generally, the committee agreed that more than one leave of absence should be granted for unforeseen circumstances only. For example, an institution would be able to grant more than one leave of absence to a student who is unexpectedly called up for military-reserve duty, or for a student who meets the criteria covered under the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103–3), enacted February 5, 1993.

The circumstances that are covered under the FMLA, as applied to students, are:

- Birth of a son or daughter of the student and the need to care for that son or daughter (for 12 months beginning from the date of birth of the child),
- Placement of a son or daughter with the student for adoption or foster care (for 12 months beginning on the date of the placement),
- Need to care for the student's spouse, or a son, daughter, or parent, if the spouse, son, daughter, or parent has a serious health condition, and

• Serious health condition that makes the student unable to function as a student.

These proposed regulations would use definitions of terms taken from the FMLA and its implementing regulations (29 CFR part 825). The statutory language, with links to the implementing regulations, can be found on the Internet at http://www.dol.gov/dol/esa/public/regs/statutes/whd/fmla.htm

The Secretary specifically requests comments on other categories that commenters believe would warrant the granting of more than one approved leave of absence in a 12-month period.

The Secretary believes that it would be appropriate for a student to make only one request for multiple leaves of absence when those leaves are all requested for the same reason. For example, a student who will be receiving multiple chemotherapy treatments over the course of the student's enrollment could submit one request to cover the recovery time needed for each session.

12-Month Period

The statute requires that the leave of absence not exceed 180 days in any 12-month period. This NPRM proposes that the 12-month period would begin on the first day of the student's leave of absence. This proposal reflects the view that the use of a calendar year or academic year would not be appropriate. For example, if the use of a calendar year was permitted, an institution could grant one leave of absence of 180 days from July to December of one year and another leave of absence for 180 days from January to June of the following year. The committee did not believe that it would be appropriate to give a student more than 180 days on a leave of absence within any 12-month period.

Reasonable Expectation of Return

These proposed regulations set conditions for an approved leave of absence in addition to the minimum conditions required by the statute. The committee agreed that a leave of absence is an approved leave of absence if there is a reasonable expectation on the part of the institution that the student will be able to return to the institution. It was agreed that it is necessary to specify this condition in the regulations to prevent an institution from granting a student a leave of absence merely to delay the return of unearned Title IV, HEA program funds.

No Additional Charges

This NPRM proposes that an approved leave of absence may not involve additional charges by the institution. A leave of absence is a temporary break in the student's attendance during which, for purposes of determining if the provisions of this proposed rule apply, the student is considered to be enrolled. Since students are not assessed additional charges for continuing enrollment, any additional charges to a student, even *de minimis* re-entry charges, indicate that the student is not considered to be on an approved leave of absence.

Completion of Coursework Upon Return

This NPRM proposes that in order for a leave of absence to be an approved leave of absence, the institution must permit the student to complete the coursework that he or she began prior to the leave of absence. Approved leaves of absence are viewed as temporary interruptions in a student's attendance. Therefore, when a student returns from a leave of absence, the student should be continuing his or her education where he or she left off.

Formal Policy

The statute provides that in order for a leave of absence not to be treated as a withdrawal, the institution has to have a formal policy regarding leaves of absence, the student has to follow the institution's policy in requesting a leave of absence, and the institution has to approve the student's request in accordance with the institution's policy.

For documentation purposes, these proposed regulations would further define a "formal policy" as one that requires a student to provide a written, signed, and dated request for a leave of absence prior to the leave of absence, unless unforeseen circumstances prevent the student from doing so. The committee agreed that, in most cases, it is possible to obtain a written request from a student prior to a leave of absence. However, in some cases, a student will not be able to provide a written, signed, and dated request prior to the beginning of the leave of absence. For example, if a student was injured in a car accident and needed a few weeks to recover before returning to school, the student would not have been able to request the leave of absence in advance. The regulations would permit the institution to grant the leave of absence if the institution documents its decision and collects the request from the student at a later date.

In addition, these proposed regulations would require that the institution put the policy in writing and publicize it to students. Because of the consequences of withdrawal, the committee agreed it is essential to provide students with the information they need to request and receive approval for an approved leave of absence. This requirement would be met by including the policy with the one-time dissemination of other consumer information under § 668.41.

Section 668.22(e) Calculation of Amount of Title IV, HEA Program Funds Earned by the Student

These proposed regulations would repeat (with minor changes for clarity) the statutory language that delineates the calculation of the amount of Title IV, HEA program funds earned, with the modifications discussed below.

The most significant modification is the addition of language in the calculation of the percentage earned to make clear that a student in a clock hour program cannot earn 100 percent of his or her Title IV, HEA program assistance unless the student actually completes more than 60 percent of the total clock hours in the payment period or period of enrollment. This is addressed in detail in the discussion of the percentage of the payment period or period of enrollment completed for a clock hour program in § 668.22(f).

Unearned Title IV Assistance To Be Returned

These proposed regulations would clarify the intent of the statute by defining the "total amount of unearned Title IV assistance to be returned." The statute defines the percentage and amount of Title IV, HEA program assistance that is unearned. The statute requires that the unearned amount must be returned to the Title IV, HEA programs. However, the statute defines the total amount unearned by applying the percentage unearned to the total amount of program assistance that was disbursed or that could have been disbursed.

Negotiators pointed out that in situations in which all the Title IV, HEA program assistance that could have been disbursed was *not* disbursed, the only amount that needs to be returned is the amount of disbursed aid that exceeds the amount of earned aid. For example, a student's total "disburseable aid" (aid that was disbursed or could have been disbursed) is $3,250. It includes a $1,500 Pell Grant and $1,750 in a subsidized Stafford loan. When the student withdraws, the full amount of the loan ($1,750) has been disbursed, but only $1,000 of the Pell Grant has been disbursed. The total Title IV, HEA

program assistance that is earned by the student is calculated by multiplying total disburseable aid ($3,250) by the percentage earned. Assuming a percentage earned of 25%, the total earned Title IV, HEA program assistance would be $813 ($3,250×25%). If all the disbursable aid had been disbursed, the total unearned amount of Title IV, HEA program assistance of $2,437 ($3,250−$813) would have to be returned to the Title IV, HEA programs. However, because only $1,000 of the $1,500 Pell Grant was actually disbursed, only $2,750 in Title IV, HEA program assistance was actually disbursed, so only $1,937 would have to be returned to the Title IV, HEA programs. This amount, $1,937, is the amount actually disbursed that exceeds the amount of Title IV, HEA program assistance that was earned by the student ($2,750−$813).

The committee agreed that replacing total unearned aid with the total amount of unearned Title IV assistance to be returned clarifies that the only amount that needs to be returned is the amount of aid that was actually disbursed that exceeded the amount of earned aid.

Payment Period or Period of Enrollment

For students who withdraw from term-based educational programs, this NPRM proposes that an institution would always have to determine the treatment of the student's Title IV, HEA program assistance on a payment period basis. For students who withdraw from a non-term based educational program, the institution would have the choice of determining the treatment of the student's Title IV, program assistance on either a payment period basis or a period of enrollment basis. The committee believed that allowing an institution a choice of a period for non-term based educational programs only is consistent with the conference report language for the 1998 Amendments. The conference report states that the choice of using a period of enrollment, rather than a payment period, was added "to provide that the earned amount may be the proportion of the period of enrollment at non-term based institutions." The Department's negotiator stated in negotiated rulemaking the Department's view that, generally, a payment period is the most appropriate period for most educational programs, including non-term based programs, because Title IV, HEA program funds are disbursed on a payment period basis. However, the committee recognized that in some cases, for an institution with non-term based programs, a period of enrollment may be the most appropriate period.

This NPRM proposes that an institution would have to choose either a payment period or period of enrollment for each non-term based educational program and use that period consistently for all students in the program. This provision is intended to prevent the potential for abuse that could otherwise occur if a school were permitted to choose a period on a student-by-student basis. If this were permitted, a payment period could be used when it results in the most aid earned for the students, but a period of enrollment could be used when that is the period that maximizes the amount of aid earned. For example, absent this provision, a school with a 900 clock hour program of two payment periods of 450 clock hours could choose to use payment periods for students who withdraw in the first payment period so that the point beyond 60 percent of the period (the point at which a student would earn 100 percent of his or her Title IV, HEA program assistance) occurs at hour 271. However, the institution could then choose to use the period of enrollment of 900 hours for all students who withdraw in the second payment period, so that the point beyond 60 percent for those students occurs at hour 541 of the program, rather than hour 721 (the point beyond the 60 percent point for the second payment period of 450 hours plus the first payment period of 450 hours). This approach could artificially inflate the amount of Title IV, HEA program assistance that a student has earned upon withdrawal from the institution.

The Secretary believes that the regulations implementing section 484B of the HEA should provide for accurately determining when a student ceased academic attendance and the corresponding amount of Title IV, HEA program assistance earned; not maximize that assistance. This approach requires that the same period be used for all students who withdraw from the same program.

The Secretary specifically requests comment on how the calculation of earned Title IV, HEA program assistance should be determined for students who transfer-in or re-enter an institution. For example, Matthew transfers into a 900 clock hour program. The payment periods for the program are two periods of 450 clock hours. Because of transfer credits, Matthew has only 300 hours to complete the program. Matthew withdraws from the program on the same date as Thomas, who had been in attendance since the beginning of the program. If the institution uses payment periods for determining earned Title IV, HEA program funds, what clock hours should be used to calculate Matthew's earned aid?

When discussing a non-term based institution's use of a period of enrollment, some of the negotiators pointed out that it was not possible to use the entire amount of Title IV, HEA program funds that the student would receive for the period of enrollment in the calculation if the withdrawal occurred during any payment period other than the last payment period of the period of enrollment. This is because Title IV, HEA program assistance that could have been disbursed does not include assistance that the student was not otherwise eligible to receive at the time he or she withdrew (the term "could have been disbursed" is addressed in the discussion of § 668.22(d)). If a student does not begin attendance in a subsequent payment period, the student is not eligible to receive Title IV, HEA program assistance for that payment period. For example, if a student withdrew in the first of two payment periods, the Title IV, HEA program assistance that the student would have received for the second payment period would not be included in the calculation of earned Title IV, HEA program assistance because the student did not begin attendance in the second payment period. Under these restrictions, the percentage of Title IV, HEA program assistance earned would be based on the period of enrollment, but that percentage would be applied only to the Title IV, HEA program funds that were disbursed or that could have been disbursed for the payment periods in which the student began attendance. The committee discussed this issue and acknowledged that using the full period of enrollment for determining the percentage of Title IV aid earned, but a shorter period (payment period(s)) for calculating the amount of Title IV aid that was disbursed or could have been disbursed, produces an "apples and oranges" situation and limits the desirability for an institution to choose to use a period of enrollment when calculating the amount of Title IV, HEA program assistance earned.

Some negotiators believed that the statute's use of aid "awarded" in some places allows an institution to use the amount awarded for the entire period of enrollment in the determination of the earned amount of Title IV, HEA program funds. The Department's negotiator pointed out that the statutory language that delineates how earned Title IV, HEA program assistance is calculated requires that the percentage earned be applied to "the total amount of such grant and loan assistance that was

disbursed (and that could have been disbursed)." As discussed above, aid that "could have been disbursed" does not include assistance that the student was not otherwise eligible to receive at the time of withdrawal.

The committee also discussed how institutional charges incurred for a payment period would be determined when the institution charges for a longer period. This issue is addressed in the discussion of proposed § 668.22(f).

Section 668.22(f) Percentage of Payment Period or Period of Enrollment Completed

The percentage of the payment period or period of enrollment completed determines the percentage of aid earned by the student.

Credit Hour Programs

The statute defines the calculation of the percentage of the period completed for a credit hour program as the number of calendar days completed in the payment period or period of enrollment divided by the total number of calendar days in the same period, as of the day the student withdrew. The simplest approach would be to include all days in the period in the total number of calendar days. However, the committee agreed to exclude extended breaks when the institution had not scheduled academic attendance for the student.

Accordingly, this NPRM proposes that the total number of calendar days in a payment period or period of enrollment includes all days within the period, except for scheduled breaks of at least five consecutive days. Days in which the student was on an approved leave of absence would also be excluded. Scheduled breaks of at least five consecutive days and days in which a student was on an approved leave of absence would be excluded from both the number of calendar days completed in the payment period or period of enrollment (the numerator), and from the total number of calendar days in the same period (the denominator).

Clock Hour Programs

The statute provides two calculations for determining the percentage of the period completed for a student who withdraws from a clock hour program. The denominator, the total number of clock hours in the payment period or period of enrollment, is the same for both calculations. The numerator is the number of clock hours completed by the student in that period as of the day the student withdrew, or, if the clock hours completed are not less than a certain percentage, it is the hours that were *scheduled* to be completed by the student in the period. The statute specifies that this percentage is to be determined by the Secretary in regulations.

The determination of this percentage was the subject of intense negotiations by the committee. The NPRM is proposing to establish an attendance threshold that will permit students who withdraw from clock hour institutions to earn Title IV, HEA program funds based upon the hours that were scheduled to be completed at the time they withdrew, so long as the actual hours attended were at least 70 percent of the hours that were scheduled to have been completed at the time they withdrew.

The Department's negotiator initially proposed that 90 percent be the measure used to determine whether scheduled hours could be used. Some negotiators argued for an alternative application of this portion of the law, under which a student would be paid for all scheduled hours at the time the student withdrew, provided that a specified minimum percentage of the total hours in the program were completed. Some negotiators described this measure as a type of "cooling-off" period for a student because the student would be paid only for completed hours during the early part of the payment period. For example, if the threshold were 10 percent, any student completing at least 45 hours of a 450 hour payment period would be paid for the hours scheduled to be completed at the time the student withdrew.

The Department's negotiator pointed out that this proposal would permit students with very low attendance rates to be paid a bonus for the scheduled hours they had not attended simply because the student managed to complete the relatively low number of hours during the time the student was enrolled. A student completing the 10 percent minimum number of hours would therefore continue earning Title IV, HEA program funds without further class attendance until he or she withdrew or was terminated by the institution. Some of the negotiators felt that this was not likely to happen because satisfactory academic progress requirements and accrediting agency oversight would limit the potential for abuse. The committee used a workgroup to focus on these issues, and the workgroup and committee reached agreement on the use of the 70 percent proposal.

Under this proposal, students who complete at least 70 percent of their scheduled hours before they withdraw would earn Title IV, HEA funds based upon their total scheduled hours for the time they were enrolled, rather than the hours the student completed. However, only students who actually completed more than 60 percent of the hours in the payment period or period of enrollment would earn 100 percent of the Title IV, HEA program funds. For example, if a student withdrew after completing 230 hours in a 450 clock hour payment period, and the student was scheduled to have completed 280 hours of the program at the time he or she withdrew, that student would have completed 82 percent of the scheduled hours (230/280) for the time he or she was enrolled. In this case, the student met the attendance threshold of 70 percent and, therefore, the institution would use the 280 scheduled hours, rather than the 230 hours that were actually completed, in the calculation of the percentage the period completed. If the same student had completed 230 clock hours while he or she was scheduled to have completed 335 hours at the point of withdrawal, the student's attendance rate would have been less than 70 percent (230/335=69 percent) and only the 230 completed hours would be used in the calculation.

The committee also considered an alternative proposal whereby the point for earning all of the Title IV, HEA program assistance (that is, the point beyond the 60 percent point) would have been based upon scheduled clock hours rather than completed clock hours. This alternate method was ultimately rejected by the committee because it would have effectively lowered the threshold for earning 100 percent of the aid by coupling it with the attendance percentage, and would have resulted in a student being able to earn 100 percent of the Title IV, HEA program assistance for a payment period or period of enrollment by exceeding as little as 42 percent of the total hours (60 percent × 70 percent = 42 percent).

The proposal in the regulations reflects the determination that the trigger for earning the last 40 percent of the Title IV, HEA program funds for a payment period or period of enrollment should be tied to the actual hours completed. In the example above in which the institution determined that the student may be paid for 280 scheduled hours in the 450 clock hour payment period, the percentage of the payment period completed would be 62 percent (280/450), even though the student actually completed only 51 percent of the total hours (230/450). However, the student would not earn 100 percent of the Title IV, HEA program funds because the 230 clock hours completed were less than 60 percent of the 450 clock hours in the

payment period, even though the 280 scheduled clock hours at the time of withdrawal were above the 60 percent point. The student would earn 62 percent of the Title IV, HEA program funds that were disbursed or that could have been disbursed.

The issue of whether excused absences should be counted as completed hours was not discussed with the committee during the negotiated rulemaking sessions. The Secretary believes that excused absences should not be counted as completed hours. The Secretary believes that the 70 percent scheduled to completed ratio measure is an extremely tolerant threshold and no additional adjustments should be made. The Secretary specifically requests comments on the treatment of excused absences.

The Secretary specifically requests comments on whether the proposed definitions of the percentage of the payment period or period of enrollment completed create problems for non-term credit hour programs, correspondence programs, or non-traditional programs.

Section 668.22(g) Responsibility of an Institution To Return Unearned Title IV, HEA Program Funds

When there is an amount of Title IV, HEA program assistance to be returned, the statute requires that the responsibility for the return be shared by the institution and the student. The statute defines the amount due from the institution as the lesser of the total unearned amount of aid, or the institutional charges incurred by the student multiplied by the percentage of unearned Title IV, HEA program assistance.

The committee considered whether an institution should be allowed to decide whether the institution or the student should return funds first. Some negotiators believed that this would allow the institution to minimize some students' immediate grant overpayment when a student has unearned Title IV, HEA program funds that must be returned. They also noted that many students will not have the immediate cash to repay the grant overpayment and will be prevented from receiving additional Title IV assistance if the students return to school. They further noted that if the student was permitted to return Title IV, HEA program funds before the institution, the student would be responsible for returning funds to the loan, which he or she would pay back over time in accordance with the promissory note, as specified in the statute. The institution would pay off, or pay down, the student's grant overpayment. These negotiators argued that a grant overpayment is more of a hardship for a student because there is a more immediate demand for repayment.

The Department's negotiator noted that the statute provides that the student's responsibility is the amount of unearned Title IV, HEA program funds minus the amount that the institution is required to return. The Department's negotiator explained that the statute therefore requires the student's repayment obligation to be determined after the institution's share is calculated. The committee ultimately agreed that the institution is required to return funds before the student. As a result, because the institution will return loan funds first, in some cases, a student must return grant funds in an overpayment situation rather than paying back loans in accordance with the terms of the promissory note. The Department believes this result is also consistent with the law, because the 50 percent "discount" of the grant repayment (discussed under § 668.22(h)) is available only to students and could not be used if the institution were required to return excess grant funds.

Although the statute and these proposed regulations use the term "return of funds," the committee also agreed that an institution was not required to actually return its share before the student; rather, the amount of assistance that the institution is responsible for returning must be allocated between the Title IV, HEA program accounts first.

Institutional Charges

On January 7, 1999, the Secretary published guidance on the definition of institutional charges for the purpose of refund calculations. This guidance was published in the form of a policy bulletin on the Education Department's Information for Financial Aid Professionals (IFAP) web site. The guidance was initially developed to address requests for clarification of the definition of institutional charges as used in the pre-1998 Amendments refund requirements.

Some of the negotiators noted that in the pre-1998 Amendments requirements in section 484B of the HEA, refund provisions are used to determine the portion of institutional charges that an institution must return when a student withdraws. In the 1998 Amendments, institutional charges are used only to determine the portion of unearned Title IV, HEA program assistance that the institution is responsible for returning. Institutional charges do not affect the amount of Title IV, HEA program assistance that a student earns when he or she withdraws.

Some negotiators suggested that, because the impact of institutional charges is different under the new law, the guidance on the definition of institutional charges should be modified. The Secretary agreed to revisit the current guidance to determine whether revisions would be appropriate. Until further guidance is issued, the guidance of the January 7, 1999, policy bulletin remains in effect.

As stated in the discussion of § 668.22(e), for students who withdraw from a non-term based educational program, the institution would have the choice of determining the treatment of the student's Title IV, HEA program assistance on either a payment period basis or a period of enrollment basis. The committee also considered the situation in which an institution chooses to calculate the treatment of Title IV, HEA program assistance on a payment period basis for a non-term program, but the institution charges for a period longer than the payment period (most likely the period of enrollment) and there may not be a specific amount that reflects the actual institutional charges incurred by the student for the payment period.

These proposed regulations would address this issue by defining the institutional charges incurred by the student for the payment period when the student is charged for a period that is longer than the payment period. In general, a pro-rated amount of institutional charges for the longer period would most accurately reflect the charges incurred by the student for the payment period. However, the committee agreed that if an institution has retained Title IV, HEA program funds in excess of the pro-rated amount to cover institutional charges, then those charges are attributable to the payment period and are a better indicator of the student's incurred institutional charges. For example, institutional charges are $8,000 for a non-term based program that spans two payment periods of 450 clock hours each. The institution chooses to calculate the treatment of Title IV, HEA program funds on a payment period basis. A student withdraws in the first payment period. The pro-rated amount of institutional charges for each payment period is $4,000. However, the institution has retained $5,000 of the Title IV, HEA program funds for institutional charges for the payment period. Therefore, the institutional charges for the payment period are $5,000.

Several negotiators asked the Department to clarify the meaning of the

phrase, "institutional charges incurred by the student." For purposes of this section, "institutional charges incurred by the student" would be charges for which the student was responsible that were initially assessed by the institution for the payment period or period of enrollment.

Section 668.22(h) Responsibility of a Student To Return Unearned Title IV, HEA Program Funds

The statute specifies that the student is responsible for all unearned Title IV, HEA program assistance that the institution is not required to return. Although this NPRM proposes that an institution must pay back any amount due to a Title IV loan program within the timeframe established in paragraph (j), the statute allows a student to pay back his or her portion of any unearned loan funds in accordance with the terms of the promissory note. In other words, the student will be repaying any unearned loan funds in the same manner that he or she will be repaying earned loan funds. These proposed regulations would not require the student to provide any additional assurances or affirmations.

The statute states that a student's unearned grant funds are an overpayment and are subject to repayment arrangements satisfactory to the institution or overpayment collection procedures prescribed by the Secretary. The negotiators reached consensus that these proposed regulations would apply the current regulatory requirements and corresponding sub-regulatory guidance for the collection of Federal Pell Grant and FSEOG overpayments for this purpose. Additional subregulatory guidance may be issued if further clarification is needed when institutions start applying these existing regulations in the return of funds context. Any future changes to these requirements will be made by proposing changes to the Federal Pell Grant and FSEOG regulations in accordance with applicable requirements of the Administrative Procedures Act.

Fifty Percent Discount

Section 484B(b)(2)(C) of the HEA states, "a student shall not be required to return 50 percent of the grant assistance received by the student under this title, for a payment period or period of enrollment, that is the responsibility of the student to repay under this section."

The implementation of this provision was the subject of extensive discussion among the negotiators. Because the difference between the Department's interpretation of the statute and most of the other negotiators' interpretation of the statute was so great, the committee agreed to exclude this provision from the call for consensus on the draft regulations. Because no consensus was reached on this issue, the proposed regulatory provision on this issue reflects the Secretary's view.

The Secretary interprets the statute to provide that a student does not have to repay 50 percent of the student's grant repayment amount. The Secretary believes that 50 percent of the student's grant repayment amount provides the level of relief to the student that the statute intended, while it requires a student to return a portion of the unearned grant assistance.

Some negotiators felt that the statute provided a student with a higher level of relief. These negotiators read the statute to relieve the student of 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed to the student.

The Secretary did not agree with the negotiators' reading of the statute because he believes that it is inconsistent with the conference report for the 1998 Amendments which states that this statutory provision was added to "[reduce] by half the amount of unearned grant assistance the student is responsible for returning."

The following example illustrates the Secretary's interpretation of the statute. When Amanda withdrew, the amount of Title IV assistance that was disbursed or that could have been disbursed was $1,000 in Federal Pell Grant funds. Total Title IV funds to be returned is $750. The institution is responsible for returning $300 to the Federal Pell Grant. Amanda is responsible for returning the balance of the unearned funds, which is $450. However, because Amanda must return these funds to a Title IV grant program, she is not required to return 50 percent of the grant assistance received that it is her responsibility to repay. Under the Secretary's proposal, Amanda would have to repay $225 to the Federal Pell Grant program (50 percent of the amount that she is initially required to repay [$450]).

If the interpretation supported by several of the negotiators was used, Amanda's repayment amount would be "discounted" by 50 percent of the amount of Pell Grant funds that was disbursed or that could have been disbursed, 50 percent of $1,000, which is $500. Because this discount exceeds the initial amount that Amanda is required to repay ($450), she would not have to return any funds to the Federal Pell Grant program.

Section 668.22(i) Order of Return of Title IV, HEA Program Funds

The statute specifies by program the order in which an institution and a student must return Title IV, HEA program funds. Unearned Title IV, HEA program assistance is returned first to the Title IV loan programs (first to unsubsidized loans, then subsidized, Federal Perkins, and PLUS), and then to the Title IV grant programs. This provision continues the approach of the pre-1998 Amendments requirements of section 485(a) of the HEA that a student's Title IV loan debt should be reduced first when returning funds to the Title IV, HEA programs when a student withdraws.

Section 668.22(j) Timeframe for the Return of Title IV, HEA Program Funds.

The statute does not specify a timeframe for the return of Title IV, HEA program funds. However, the committee agreed that such a timeframe should be specified in the regulations. This NPRM proposes that an institution have 30 days from the date that the institution determines that the student withdrew to return all unearned funds for which it is responsible. Under the existing refund regulations, an institution must return Title IV funds within 30 days for all Title IV, HEA program funds except for most FFEL program funds, which must be returned within 60 days. The committee agreed that it is reasonable to expect institutions to return all Title IV, HEA program funds, including all FFEL funds, within 30 days because most FFEL funds are now delivered electronically.

These proposed regulations would set a timeframe for an institution to determine the withdrawal date for a student who withdrew without providing notification to the institution. An institution would have 30 days from the earlier of (1) the end of the payment period or period of enrollment as, applicable, (2) the end of the academic year, or (3) the end of the student's educational program. These proposed regulations would mirror the provisions of the current § 668.22 to recognize that some institutions may not know about drop-outs until the institution checks its records at the end of an academic period. However, the committee agreed that a timeframe is necessary so that unearned funds will be returned within a reasonable period of time.

Section 668.22(k) Consumer Information

The 1998 Amendments made modifications to section 485(a)(F) of the

HEA to address the changes to section 484B. Section 485(a)(F) describes the consumer information that an institution must provide to its students regarding the requirements of section 484B, any refund policies that the institution uses, and the requirements for officially withdrawing from the institution. The proposed regulations implementing section 485(a)(F) are included in a separate NPRM proposing changes to Subpart D-Institutional and Financial Assistance Information for Students of the Student Assistance General Provisions. These proposed regulations for § 668.22 would cross-reference the regulations for Subpart D.

Section 668.22(l) Definitions

Aid That Could Have Been Disbursed

The statute requires an institution to calculate the amount of earned Title IV, HEA program funds by applying a percentage to the total amount of Title IV, HEA program assistance that was disbursed, or that could have been disbursed. The committee agreed that the term "could have been disbursed" should be defined in the regulations. The amount of Title IV, HEA program funds that could have been disbursed does not include Title IV, HEA program funds that the student was not otherwise eligible to receive at the time he or she withdrew. For example, a first-year, first-time borrower who withdraws before the 30th day of the student's program of study would not have been eligible to receive any FFEL or Direct Loan funds at the time he or she withdrew (unless the institution is exempt from the "30-day delay" provisions in section 428G of the HEA). Therefore, for this student, no amount of an FFEL or Direct Loan may be included in the calculation of the treatment of Title IV, HEA program assistance.

The committee agreed that the amount of Title IV, HEA program funds that could have been disbursed would not include second or subsequent disbursements of FFEL or Direct loans that are prohibited under § 668.164(g)(2)(ii). Section 668.164(g)(2)(ii) prohibits late second or subsequent disbursements of FFEL or Direct Loan funds unless the student has graduated or successfully completed the period of enrollment for which the loan was intended.

In addition, the committee agreed that Title IV, HEA program funds that could have been disbursed would not include a second disbursement of a Title IV, HEA FFEL or Direct loan that is prohibited under § 682.604(c)(7) or (8) or § 685.301(b)(5) or (6). These sections provide that an institution may not make a second disbursement of a loan for attendance in a clock hour or non-standard term credit hour educational program until the later of the calendar midpoint of the loan period or the date that the student has completed half of the academic coursework or clock hours (as applicable) in the loan period.

The committee agreed that Title IV, HEA program funds would also not include subsequent disbursements of Federal Pell Grant funds that are prohibited under § 690.75(a). Section 690.75(a) prohibits subsequent disbursements of Federal Pell Grant funds for attendance in a clock hour or non-term credit hour program until the student has completed the required clock hours or credit hours for which he or she has already been paid a Federal Pell Grant.

Period of Enrollment

For consistency, the committee agreed that the term "period of enrollment" should be defined in the same manner as the term is defined for the FFEL and Direct Loan programs in § 682.200(b) and § 685.102.

Date of the Institution's Determination That the Student Withdrew

As noted in the discussion of the determination of a student's withdrawal date, some aspects of the withdrawal process cannot occur until the institution is aware that the student has withdrawn. For example, an institution cannot be expected to return Title IV funds for a withdrawn student unless the institution knows that the student is no longer in attendance. This NPRM proposes to define the "date of the institution's determination that the student withdrew" for all possible types of withdrawals. As noted previously, the "date of the institution's determination that the student withdrew" is not necessarily the same as a student's withdrawal date. The proposed definition of withdrawal date in § 668.22(b) and (c) is for purposes of determining the percentage of the payment period or period of enrollment completed and thus the amount of aid a student has earned. The "date of the institution's determination that the student withdrew" is the date that is used to determine the amount of Title IV aid that has been disbursed. The amount of Title IV assistance that had been earned is subtracted from the amount disbursed or could have been disbursed in order to determine the amount of Title IV assistance that is to be returned. The "date of the institution's determination that the student withdrew" is also the date that "starts the clock" for the return of the Title IV, HEA program funds by the institution.

For a student who provided notification of his or her withdrawal, the date of the institution's determination that the student withdrew would be the later of the student's withdrawal date or the date of notification of withdrawal. For a student who did not provide notification of his of her withdrawal, this date would be the date that the institution becomes aware that the student has ceased attendance. For a student who does not return from an approved leave of absence, this date would be the earlier of the date of the expiration of the leave of absence or the date the student notifies the institution that he or she will not be returning. For a student who rescinds his or her intent to withdraw, but does not complete the payment period or period of enrollment, this date would be the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment. (These withdrawal situations are addressed in the discussions of §§ 668.22(b) and (c)). The committee believes that this proposed definition of the date of the institution's determination that the student withdrew captures the point when an institution could reasonably be expected to know that a student has ceased attendance.

Section 682.207 Due Diligence in Disbursing a Loan

Foreign institutions that participate in the Title IV, HEA programs are also subject to the requirements of section 484B of the HEA for the treatment of Title IV, HEA program funds when a student withdraws. However, the statute allows lenders to make FFEL program loan disbursements directly to a student who is attending a foreign school. As a result, a foreign school may not know if an FFEL program loan has been disbursed to a student. These proposed regulations would require a lender making a direct disbursement to a student attending a foreign school to notify the foreign school that the disbursement was made. These proposed regulations also would require that the notification provide the information necessary for the institution to determine the amount of Title IV, HEA program funds that the student has earned if the student withdraws.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

- The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:
- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.22 *Treatment of Title IV funds when a student withdraws.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESS** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these regulations are institutions of higher education that participate in the Title IV, HEA programs and individual recipients of Title IV, HEA program funds. Institutions are defined as small entities, according to the U.S. Small Business Administration, if they are for-profit or nonprofit entities with total revenue of $5,000,000 or less, or entities controlled by governmental entities with populations of 50,000 or less. Individuals are not considered small entities for this purpose. These proposed regulations would not have a significant economic impact on small institutions. These proposed regulations would incorporate clarifying definitions and provisions, and institute timeframes consistent, to the maximum extent possible, with existing program rules, for the most practical and uniform implementation of the new statutory requirements for the return of Title IV aid when a student withdraws.

These proposed regulations would specify when FSEOG program funds must be included in the calculation of the amount of title IV, HEA program assistance earned by a student as of the time he or she ceases enrollment. The regulations would define "the date of the institution's determination that the student withdrew" to simplify the institution's calculation of total aid disbursed. To minimize administrative burden, these regulations would adopt late disbursement procedures fundamentally consistent with current Cash Management rules when a student is determined to have earned more title IV, HEA program assistance than had been disbursed at the time the institution determines the student withdrew. These regulations would also provide flexibility in the granting of approved leaves of absence for exceptional circumstances, for military service, and for circumstances covered by the Family and Medical Leave Act of 1993.

The proposed regulations would enable the Secretary to better safeguard the Federal fiscal interest and the interests of students without imposing administrative burden or having a significant economic impact on small institutions.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Sections 668.22 and 682.207 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collection(s) of information in—

- Deciding whether the proposed collection(s) is [are] necessary for the proper performance of the functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection(s), including the validity of the methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Opportunity Grant (FSEOG) programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) programs, the Federal Pell Grant Program, and the LEAP Program are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb—html/fedlreg.htm
http://www.ed.gov/legislation/HEA/rulemaking/

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program)

List of Subjects in 34 CFR parts 668 and 682

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements, education, Loan programs—education, vocational education.

Dated: August 3, 1999.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 668 and 682 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c–1, unless otherwise noted.

2. Section 668.22 is revised to read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

(a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance (not including Federal Work-Study or the non-Federal share of FSEOG awards when an institution meets its matching share by the individual recipient method or the aggregate method) that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

(2) If the amount of title IV grant and/or loan assistance that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—

(i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and

(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.

(3) If the amount of title IV grant or loan assistance that the student earned as calculated under paragraph (e)(1) of this section is greater than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a late disbursement in accordance with paragraph (a)(4) of this section and § 668.164(g)(2).

(4)(i)(A) If outstanding current charges exist on the student's account, the institution may credit the student's account in accordance with § 668.164(d)(1), (d)(2)(i), and (d)(3) with all or a portion of the late disbursement described in paragraph (a)(3) of this section, up to the amount of the outstanding charges.

(B) If Direct Loan, FFEL, or Federal Perkins Loan Program funds are used to credit the student's account, the institution must notify the student, or parent in the case of a PLUS loan, and provide an opportunity for the borrower to cancel all or a portion of the loan, in accordance with § 668.165(a)(2), (a)(3), (a)(4) and (a)(5).

(ii)(A) The institution must offer any amount of a late disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section to the student, or the parent in the case of a PLUS loan, within 30 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section, by providing a written notification to the student, or parent in the case of PLUS loan funds. The written notification must—

(*1*) Identify the type and amount of the title IV funds that make up the late disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section;

(*2*) Explain the ability of the student or parent to accept or decline some or all of the late disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section; and

(*3*) Advise the student or parent that no late disbursement will be made to the student or parent if the student or parent does not respond within 14 days of the date that the institution sent the notification, unless the institution chooses to make a late disbursement in accordance with paragraph (a)(4)(ii)(D) of this section.

(B) If the student or parent submits a timely response that instructs the institution to make all or a portion of the late disbursement, the institution must disburse the funds in the manner specified by the student or parent within 90 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(C) If the student or parent does not respond to the institution's notice, no portion of the late disbursement that is not credited to the student's account in

accordance with paragraph (a)(4)(i) of this section may be disbursed.

(D) If a student or parent submits a late response to the institution's notice, the institution may make the late disbursement as instructed by the student or parent or decline to do so in accordance with applicable program regulations.

(E) An institution must inform a student or parent electronically or in writing concerning the outcome of any late disbursement request.

(iii) A late disbursement must be made from available grant funds before available loan funds.

(b) *Withdrawal date for a student who withdraws from an institution that is required to take attendance.* (1) For purposes of this section, for a student who ceases attendance or for a student who does not return from an approved leave of absence, as defined in paragraph (d) of this section, at an institution that is required to take attendance, the student's withdrawal date is the last date of academic attendance as determined by the institution from its attendance records.

(2) An institution must document a student's withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(3) An institution is "required to take attendance" if the institution is required to take attendance by an entity outside of the institution (such as the institution's accrediting agency or state agency).

(c) *Withdrawal date for a student who withdraws from an institution that is not required to take attendance.* (1) For purposes of this section, for a student who ceases attendance at an institution that is not required to take attendance, the student's withdrawal date is—

(i) The date, as determined by the institution, that the student began the withdrawal process prescribed by the institution;

(ii) The date, as determined by the institution, that the student otherwise provided official notification to the institution of his or her intent to withdraw;

(iii) If the student ceases attendance without providing official notification to the institution of his or her withdrawal in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the mid-point of the payment period (or period of enrollment, if applicable);

(iv) If the institution determines that a student did not begin the institution's withdrawal process or otherwise provide official notification (including notice from an individual acting on the student's behalf) to the institution of his or her intent to withdraw because of illness, accident, grievous personal loss, or other such circumstances beyond the student's control, the date that the institution determines is related to such circumstance; or

(v) If a student does not return from an approved leave of absence as defined in paragraph (d) of this section, the date that the institution determines the student began the leave of absence.

(2)(i)(A) An institution may allow a student to rescind his or her official notification to withdraw under paragraph (c)(1)(i) or (ii) by filing a written statement that he or she is continuing to participate in academically-related activities and intends to complete the payment period or period of enrollment.

(B) If the student subsequently ceases to attend the institution prior to the end of the payment period or period of enrollment, the student's rescission is negated and the withdrawal date is the student's original date under paragraph (c)(1)(i) or (ii), unless a later date is determined under paragraph (c)(3).

(ii) If a student both begins the withdrawal process prescribed by the institution and otherwise provides official notification of his or her intent to withdraw in accordance with paragraphs (c)(1)(i) and (c)(1)(ii) of this section respectively, the student's withdrawal date is the earlier date unless a later date is determined under paragraph (c)(3) of this section.

(3)(i) Notwithstanding paragraphs (c)(1) and (2) of this section, an institution that is not required to take attendance may use as the student's withdrawal date a student's last date of attendance at an academically-related activity as documented by the institution.

(ii) An "academically-related activity" is one that has been confirmed by an employee of the school (such as an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment or attending a study group that is assigned by the institution);

(4) An institution must document a student's withdrawal date determined in accordance with paragraph (c)(1), (2), and (3) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(5)(i) "Official notification to the institution" is a notice of intent to withdraw that a student provides to an office designated by the institution.

(ii) An institution must designate one or more offices at the institution that a student may readily contact to provide official notification of withdrawal.

(d) *Approved Leave of Absence.* (1) For purposes of this section, an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

(i) It is the only leave of absence granted to the student in a 12-month period;

(ii) The leave of absence does not exceed 180 days in any 12-month period;

(iii) The institution has a formal policy regarding leaves of absence;

(iv) The student followed the institution's policy in requesting the leave of absence;

(v) The institution determines that there is a reasonable expectation that the student will be able to return to the school;

(vi) The institution approved the student's request in accordance with the institution's policy;

(vii) The leave of absence does not involve additional charges by the institution; and

(viii) Upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence.

(2) Notwithstanding paragraph (d)(1)(i), an institution may treat subsequent leaves of absence as approved leaves of absence if the institution documents that the leaves of absence are granted for military reasons or circumstances covered under the Family and Medical Leave Act of 1993.

(3) If a student does not resume attendance at the institution on or before the expiration of a leave of absence that meets the requirements of paragraph (d)(1) of this section, the institution must treat the student as a withdrawal in accordance with the requirements of this section.

(4) For purposes of this paragraph—

(i) The number of days in a leave of absence are counted beginning with the first day of the student's leave of absence.

(ii) A "12-month period" begins on the first day of the student's leave of absence.

(iii) An institution's leave of absence policy is a "formal policy" if the policy—

(A) Is in writing and publicized to students; and

(B) Requires students to provide a written, signed, and dated request for a leave of absence prior to the leave of

absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence, provided that the institution documents its decision and collects the request at a later date.

(e) *Calculation of the Amount of title IV assistance earned by the student.*

(1) *General.* The amount of title IV grant or loan assistance that is earned by the recipient is calculated by—

(i) Determining the percentage of title IV grant or loan assistance that has been earned by the student, as described in paragraph (e)(2) of this section; and

(ii) Applying this percentage to the total amount of title IV grant or loan assistance that was disbursed (and that could have been disbursed, as defined in paragraph (l)(1) of this section) to the student, or on the student's behalf, for the payment period or period of enrollment as of the student's withdrawal date.

(2) *Percentage earned.* The percentage of title IV grant or loan assistance that has been earned by the student is—

(i) Equal to the percentage of the payment period or period of enrollment that the student completed (as determined in accordance with paragraph (f) of this section) as of the student's withdrawal date, if this date occurs on or before completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours, or

(B) Clock hours completed during the payment period or period of enrollment for a program that is measured in clock hours; or

(ii) 100 percent, if the student's withdrawal date occurs after completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours, or

(B) Clock hours completed during the payment period or period of enrollment for a program measured in clock hours.

(3) *Percentage unearned.* The percentage of title IV grant or loan assistance that has not been earned by the student is calculated by determining the complement of the percentage of title IV grant or loan assistance earned by the student as described in paragraph (e)(2) of this section.

(4) *Total Amount of Unearned title IV Assistance to be Returned.* The unearned amount of title IV assistance to be returned is calculated by subtracting the amount of title IV assistance earned by the student as calculated under paragraph (e)(1) of this section from the amount of title IV aid that was disbursed to the student as of the date of the institution's determination that the student withdrew.

(5) *Use of payment period or period of enrollment.* (i) The treatment of title IV grant or loan funds when a student withdraws must be determined on a payment period basis for a student who attended a term-based educational program.

(ii)(A) The treatment of title IV grant or loan funds when a student withdraws may be determined on either a payment period basis or a period of enrollment basis for a student who attended a non-term based educational program.

(B) An institution must consistently use either a payment period or period of enrollment for all purposes of this section for all students who withdraw from the same non-term based education program.

(f) *Percentage of Payment Period or Period of Enrollment Completed.* (1) For purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined—

(i) In the case of a program that is measured in credit hours, by dividing the total number of calendar days in the payment period or period of enrollment into the number of calendar days completed in that period as of the student's withdrawal date; and

(ii) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours—

(A) Completed by the student in that period as of the student's withdrawal date; or

(B) Scheduled to be completed as of the student's withdrawal date, if the clock hours completed in the period are not less than 70 percent of the hours that were scheduled to be completed by the student as of the student's withdrawal date.

(2)(i) The total number of calendar days in a payment period or period of enrollment includes all days within the period except for scheduled breaks of at least five consecutive days.

(ii) The total number of calendar days in a payment period or period of enrollment does not include days in which the student was on an approved leave of absence.

(g) *Return of Unearned Aid, Responsibility of the Institution.* (1) The institution must return, in the order specified in paragraph (i) of this section, the lesser of—

(i) The total amount of unearned title IV assistance to be returned as calculated under paragraph (e)(4) of this section; or

(ii) An amount equal to the total institutional charges incurred by the student for the payment period or period of enrollment multiplied by the percentage of title IV grant or loan assistance that has not been earned by the student, as described in paragraph (e)(3) of this section.

(2) For purposes of this section, "institutional charges" are tuition, fees, room and board (if the student contracts with the institution for the room and board) and other educationally-related expenses assessed by the institution.

(3) If, for a non-term program an institution chooses to calculate the treatment of title IV assistance on a payment period basis, but the institution charges for a period that is longer than the payment period, "total institutional charges incurred by the student for the payment period" is the greater of—

(i) The pro rated amount of institutional charges for the longer period; or

(ii) The amount of title IV assistance retained for institutional charges as of the student's withdrawal date.

(h) *Return of Unearned Aid, Responsibility of the Student.* (1) After the institution has returned the unearned funds for which it is responsible in accordance with paragraph (g) of this section, the student must return assistance for which the student is responsible in the order specified in paragraph (i) of this section.

(2) The amount of assistance that the student is responsible for returning is calculated by subtracting the amount of unearned aid that the institution is required to return under paragraph (g) of this section from the total amount of unearned title IV assistance to be returned under paragraph (e)(4) of this section.

(3) The student (or parent in the case of funds due to a PLUS Loan) must return or repay, as appropriate, the amount determined under paragraph (h)(1) of this section to—

(i) Any title IV loan program in accordance with the terms of the loan; and

(ii) Any title IV grant program as an overpayment of the grant; however, a student is not required to return 50 percent of the grant assistance received by the student for a payment period or period of enrollment that is the responsibility of the student to repay under this section.

(4)(i) An overpayment must be repaid to the institution or to the title IV, HEA programs and is subject to—

(A) Repayment arrangements satisfactory to the institution; or

(B) Overpayment collection procedures prescribed by the Secretary.

(ii) An institution must make reasonable efforts to contact the student and recover the overpayment in accordance with program regulations (34 CFR 673.5 for Federal SEOG funds and 34 CFR 690.79 for Federal Pell Grant funds).

(i) *Order of Return of title IV funds.* (1) *Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraphs (g) or (h) of this section respectively, must be credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Such funds shall be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Unsubsidized Federal Stafford loans.

(ii) Subsidized Federal Stafford loans.

(iii) Unsubsidized Federal Direct Stafford loans.

(iv) Subsidized Federal Direct Stafford loans.

(v) Federal Perkins loans.

(vi) Federal PLUS loans received on behalf of the student.

(vii) Federal Direct PLUS received on behalf of the student.

(2) *Remaining funds.* If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess shall be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Federal Pell Grants.

(ii) Federal SEOG Program aid.

(iii) Other grant or loan assistance authorized by title IV of the HEA.

(j) *Timeframe for the return of title IV funds.* (1) An institution must return the amount of title IV funds for which it is responsible under paragraph (g) of this section as soon as possible but no later than 30 days after the date that the institution determines that the student withdrew as defined in paragraph (l)(3) of this section.

(2) An institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 30 days after the expiration of the earlier of the—

(i) Payment period or period of enrollment;

(ii) Academic year in which the student withdrew; or

(iii) Educational program from which the student withdrew.

(k) *Consumer Information.* An institution must provide students with information about the requirements of this section in accordance with § 668.44.

(l) *Definitions.* For purposes of this section—

(1) Title IV grant or loan funds that "could have been disbursed" are determined in accordance with the late disbursement provisions in § 668.164(g).

(2) A "period of enrollment" is the academic period established by the institution for which institutional charges are generally assessed (i.e. length of the student's program or academic year).

(3) The "date of the institution's determination that the student withdrew" is—

(i) For a student who provided notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;

(ii) For a student who did not provide notification of his of her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance;

(iii) For a student who does not return from an approved leave of absence, the earlier of the date of the expiration of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

(iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.

(Authority: 20 U.S.C. 1091b)

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

3. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071, to 1087–2, unless otherwise noted.

4. Section 682.207 is amended by adding a new paragraph (b)(1)(v)(E) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(E) If a lender disburses a loan directly to the borrower for attendance at an eligible foreign school, as provided in paragraph (b)(1)(v)(D)(1) of this section, the lender must, at the time of disbursement, notify the school of—

(*1*) The name and social security number of the student;

(*2*) The name of the parent borrower, if the loan disbursed is a PLUS loan;

(*3*) The type of loan;

(*4*) The amount of the disbursement, including the amount of any fees assessed the borrower;

(*5*) The date of the disbursement; and

(*6*) The name, address, telephone and fax number or electronic address of the lender, servicer, or guaranty agency to which any inquiries should be addressed.

[FR Doc. 99–20352 Filed 8–5–99; 8:45 am]

BILLING CODE 4000–01–U

Reader Aids

Federal Register

Vol. 64, No. 151

Friday, August 6, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998 2
41999–42264 3
42265–42578 4
42579–42822 5
42823–43042 6

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

7 CFR

610 41999
1728 42005
Proposed Rules:
6 42288
931 42858
932 42619
1106 42860
3419 42576

8 CFR

217 42006

10 CFR

31 42269
50 42823

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
Proposed Rules:
361 ..... 42861, 42862

14 CFR

27 43016
29 43016
39 ..... 41775, 41776, 41778, 42007, 42275, 42824
71 ..... 41780, 42276, 42432, 42585, 42591, 42592
254 41781
382 41781
Proposed Rules:
39 ..... 41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870
65 42810
66 42810
71 ..... 42300, 42301
147 42810

15 CFR

734 42009
738 42009
740 42009
742 42009
902 42826

16 CFR

5 42594
Proposed Rules:
1212 42302

17 CFR

200 42594
240 ..... 42031, 42594
249 42594
Proposed Rules:
4 41843

18 CFR

Proposed Rules:
101 42304
357 42623
385 42307

19 CFR

24 42031
Proposed Rules:
12 41851
113 ..... 41851, 42872
141 41851

20 CFR

Proposed Rules:
404 42310
416 42310

21 CFR

101 42277
510 42596
520 42596
522 ..... 42596, 42830
524 42831
558 42596
1308 42432
1312 42432
Proposed Rules:
101 42315
314 ..... 42625, 42873

22 CFR

41 42032

26 CFR

1 41783
31 42831
301 41783
602 41783
801 42834

29 CFR

2570 42246
2575 42246
Proposed Rules:
2520 ..... 42792, 42797

2560.....42792, 42797
2570.....42797

30 CFR

250.....42597

Proposed Rules:

935.....42887

31 CFR

538.....41784
550.....41784
560.....41784

Proposed Rules

375.....42626

33 CFR

100.....42278, 42598
110.....42279
117.....42033, 42599
160.....41794

Proposed Rules:

100.....41853

34 CFR

611.....42837

Proposed Rules:

668.....42206, 43024
673.....42206
674.....42206
675.....42206
676.....42206
682.....42176, 43024
690.....42206

36 CFR

Proposed Rules:

13.....41854
1191.....42056

37 CFR

Proposed Rules:

201.....42316

40 CFR

9.....42432
52.....42600
58.....42530
63.....42764
122.....42432
123.....42432
124.....42432
180.....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846
186.....41818
261.....42033
271.....41823, 42602
403.....42552
501.....42432
503.....42552
745.....42849

Proposed Rules:

52.....42629, 42888, 42891, 42892
261.....42317
271.....42630
300.....41875, 42328, 42630
372.....42222

41 CFR

Proposed Rules:

51-2.....41882
51-5.....41882

42 CFR

413.....42610
1001.....42174

44 CFR

61.....41825
64.....42852
206.....41827

Proposed Rules:

61.....42632
62.....42633

45 CFR

801.....42039

46 CFR

10.....42812
12.....42812

Proposed Rules:

535.....42057

47 CFR

1.....42854
73.....41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616
76.....42617, 42855

Proposed Rules:

Ch. 1.....41883, 42635
1.....41884, 41887
2.....41891
15.....41897
51.....41897
68.....41897
73.....41899
76.....41887
78.....41899
95.....41891

48 CFR

701.....42040
702.....42040
703.....42040
705.....42040
706.....42040
709.....42040
714.....42040
716.....42040
719.....42040
726.....42040
732.....42040
733.....42040
734.....42040
749.....42040
750.....42040
752.....42040
5416.....41834

49 CFR

Proposed Rules:

571.....42330

50 CFR

17.....41835
600.....42286
635.....42855
648.....42042, 42045
660.....42286, 42856
679.....41839, 42826

Proposed Rules:

17.....41903, 42058, 42250
600.....42335
622.....41905, 42068
648.....42071
679.....42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 6, 1999

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:

Insured and guaranteed loans; general and pre-loan policies and procedures; published 6-22-99

DEFENSE DEPARTMENT

Engineers Corps

Administrative appeal process; published 3-9-99

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

N-(4-fluorophenyl)-N-(1-methylethyl)-2[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; published 8-6-99

Sodium chlorate; published 8-6-99

Toxic substances:

Lead-based paint activities—

Target housing and child-occupied facilities; certification requirements and work practice standards for individuals and firms; published 8-6-99

Water pollution; effluent guidelines for point source categories:

Pulp, paper, and paperboard industries; bleached papergrade kraft and soda subcategory; published 7-7-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

New drug applications—

Nystatin, etc.; published 8-6-99

Oxytetracycline injection; published 8-6-99

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Canadian border boat landing permit program; application and issuance procedures; published 7-7-99

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Inmate personal property; published 7-7-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Saab; published 7-22-99

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:

Railroad employers; exception from supplemental annuity tax; published 8-6-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Egg, poultry, and rabbit products; inspection and grading:

Fees and charges increase; comments due by 8-13-99; published 7-14-99

Milk marketing orders:

Southwest Plains; comments due by 8-13-99; published 8-6-99

Oranges and grapefruit grown in—

Texas; comments due by 8-9-99; published 7-19-99

Organic certifying agencies; assessments by Livestock and Seed Program; comments due by 8-9-99; published 6-9-99

Potatoes (Irish) grown in—

Colorado; comments due by 8-13-99; published 7-14-99

Prunes (fresh) grown in—

Washington and Oregon; comments due by 8-13-99; published 7-14-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Mexican fruit fly; comments due by 8-10-99; published 7-26-99

Mexican fruit fly, etc.; high-temperature forced-air treatments for citrus fruits; comments due by 8-12-99; published 7-13-99

Plant-related quarantine, foreign:

Unmanufactured wood articles—

Mexico; comments due by 8-10-99; published 6-11-99

COMMERCE DEPARTMENT

Export Administration Bureau

Export licensing:

Commerce control list—

Microprocessors controlled by Export Control Classification Number (ECCN); License Exception CIV eligibility expansion; comments due by 8-9-99; published 7-8-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific halibut; comments due by 8-11-99; published 7-29-99

DEFENSE DEPARTMENT

Acquisition regulations:

Congressional Medal of Honor; comments due by 8-13-99; published 6-14-99

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Electric refrigerator; definition; comments due by 8-12-99; published 7-13-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Halogenated solvent cleaning; comments due by 8-12-99; published 7-13-99

Polymer and resin production facilities (Group IV); comments due by 8-9-99; published 6-8-99

Air programs:

Stratospheric ozone protection—

Nonessential products ban; reconsideration; comments due by 8-13-99; published 6-14-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Massachusetts; comments due by 8-13-99; published 7-14-99

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 8-13-99; published 7-14-99

New Mexico; comments due by 8-9-99; published 7-8-99

Ohio; comments due by 8-11-99; published 7-12-99

Texas; comments due by 8-9-99; published 7-8-99

West Virginia; comments due by 8-12-99; published 7-13-99

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Tennessee; comments due by 8-11-99; published 7-12-99

Clean Air Act:

Interstate ozone transport reduction—

Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; comments due by 8-9-99; published 6-24-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Cytokinins, etc. (plant regulators); comments due by 8-10-99; published 6-11-99

Toxic substances:

In vitro dermal absorption rate testing of certain chemicals of interest to Occupational Safety and Health Administration; comments due by 8-9-99; published 6-9-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Telecommunications Act of 1996; implementation—

Competitive networks promotion in local telecommunications markets; comments due by 8-13-99; published 8-2-99

Competitive networks promotion in local

telecommunications markets; comments due by 8-13-99; published 8-2-99
Competitive networks promotion in local telecommunications markets; comments due by 8-13-99; published 8-2-99
Radio stations; table of assignments:
Montana; comments due by 8-9-99; published 6-29-99
Nevada; comments due by 8-9-99; published 6-29-99
Utah; comments due by 8-9-99; published 6-29-99
FEDERAL TRADE COMMISSION
Trade regulation rules:
Funeral industry practices; comments due by 8-11-99; published 7-2-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Dietary supplements; Center for Food Safety and Applied Nutrition; meeting; comments due by 8-12-99; published 6-18-99
Medical devices; premarket approval:
Obstetrical and gynecological devices—
Glans sheath devices; comments due by 8-9-99; published 5-10-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Privacy Act; implementation; comments due by 8-9-99; published 7-9-99
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Risk-based capital:
Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 8-11-99; published 4-13-99
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Arkansas; comments due by 8-9-99; published 7-9-99
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Agency structured approach for profit or fee objective; comments due by 8-9-99; published 6-8-99
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Year 2000 airport safety inspections; comments due by 8-9-99; published 7-8-99
Airworthiness directives:
Airbus; comments due by 8-13-99; published 7-14-99
Airworthiness Directives:
Boeing; comments due by 8-9-99; published 6-23-99
Airworthiness directives:
Boeing; comments due by 8-9-99; published 6-23-99
Bombardier; comments due by 8-13-99; published 7-14-99
Cessna; comments due by 8-9-99; published 7-6-99
Lockheed; comments due by 8-9-99; published 6-25-99
Saab; comments due by 8-9-99; published 7-15-99
Class D airspace; comments due by 8-12-99; published 7-13-99
Class E airspace; comments due by 8-9-99; published 6-22-99
TREASURY DEPARTMENT
Comptroller of the Currency
Investment securities; corporate activities rules, policies, and procedures; and interpretive rulings; comments due by 8-13-99; published 6-14-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 4/P.L. 106–38

National Missile Defense Act of 1999 (July 22, 1999; 113 Stat. 205)

H.R. 2035/P.L. 106–39

To correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration. (July 28, 1999; 113 Stat. 206)

Last List July 22, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L
Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

20402
The
from
ay
Act
113
y the
ly
ic
c mail
wly
with
-L
ctly
new
laws
this
spond
to

UMI

VOL
64

ISS
1
5
1

AG
6

1999

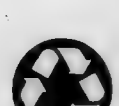

Printed on recycled paper

UMI

VOL
64
ISS
1
5
2
AG
9
999
UMI

8-9-99
Vol. 64

United
Goverr
Printing
SUPERINT
OF DOCU
Washingtor
OFFICIAL
Penalty for

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

8-9-99
Vol. 64 No. 152

federal register

Monday
August 9, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
1
5
2
AG
9
999
UMI

PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

8-9-99
Vol. 64 No. 152
Pages 43043–43254

Federal Register

Monday
August 9, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Contents

Federal Register

Vol. 64, No. 152

Monday, August 9, 1999

Agency for Health Care Policy and Research
NOTICES
Meetings:
Technical Review Committee, 43187

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service
RULES
National Appeals Division procedure rules:
Adverse decisions appeals procedures and jurisdiction and records authentication
Correction, 43043
NOTICES
Emergency declarations:
Southern pine beetle, 43139
Privacy Act:
Systems of records, 43139–43140

Animal and Plant Health Inspection Service
RULES
Organization, functions, and authority delegations:
Veterinary biologics functions transfer, 43043–43045
PROPOSED RULES
User fees:
Agricultural quarantine and inspection services, 43103–43114
NOTICES
Meetings:
National Wildlife Services Advisory Committee, 43140–43141

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43187–43188
Submission for OMB review; comment request, 43188

Commerce Department
See Economic Analysis Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Commodity Exchange Act:
Alternative methods of compliance with requirements for disclosure of exchange disciplinary information and access denial actions
Correction, 43254
National Futures Association; performance of certain functions with respect to exchange disciplinary and access denial actions
Correction, 43254
Practice and procedure:
Miscellaneous amendments; correction, 43071–43072
NOTICES
Meetings; Sunshine Act, 43173

Defense Department
See Navy Department
RULES
Acquisition regulations:
Multiyear contracting, 43096–43098
Taxpayer identification numbers and commercial and government entity codes, 43098–43101
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43173–43175

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
ISP Freetown Fine Chemicals, Inc., 43224–43225
Research Triangle Institute, 43225
Sigma Chemical Co., 43225

Economic Analysis Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43144–43145

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43226

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York, 43091–43094
Air quality implementation plans; approval and promulgation; various States:
Rhode Island, 43083–43091
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York, 43123–43124
Clean Air Act:
Interstate ozone transport reduction—
Nitrogen oxides budget trading program; Sections 126 and 110 rulemakings; unit-specific information for affected sources, 43124–43129
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 43129–43132
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43177–43178
Clean Air Act:
Citizens suits; proposed settlements—
Ayers v. Browner, 43178
Hazardous waste:
Land disposal restrictions; exemptions—
Celanese Ltd., 43178
Toxic and hazardous substances control:
New chemicals; receipt and status information, 43178–43184

Executive Office of the President
See Trade Representative, Office of United States

Farm Credit Administration
RULES
Farm credit system:
Leasing activities, 43049
Miscellaneous amendments, 43046–43049

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 43050–43051, 43061–43063
Bell, 43058–43060
Boeing, 43051–43058
Raytheon, 43060–43061
Class E airspace, 43063–43069
VOR Federal airways, 43069–43071
NOTICES
Civil penalty actions; Administrator's decisions and orders; index availability, 43236–43251
Environmental statements; availability, etc.:
Indianapolis International Airport, IN, 43251
Rickenbacker International Airport, IL; noise abatement measures, 43251–43252

Federal Communications Commission
RULES
Common carrier services:
International common carriers; biennial regulatory review
Correction, 43095
Radio services, special:
Experimental radio service rules; correction, 43094–43095
Radio stations; table of assignments:
Texas, 43095–43096
PROPOSED RULES
Digital television stations; table of assignments:
Louisiana, 43132
NOTICES
Meetings; Sunshine Act, 43184

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43184–43185

Federal Financial Institutions Examination Council
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43185–43186

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Chiricahua or Blumer's dock; withdrawn, 43132–43137
NOTICES
Endangered and threatened species:
Critical habitat designations—
Woundfin and Virgin River chub, 43206–43207
Environmental statements; availability, etc.:
California; Central Valley Improvement Act; implementation, 43207–43208

Food and Drug Administration
RULES
Food additives:
Sucrose acetate isobutyrate
Correction, 43072
PROPOSED RULES
Human drugs, animal drugs, biological products, and devices; foreign establishments registration and listing, 43114
Medical devices:
Cardiovascular, orthopedic, and physical medicine diagnostic devices—
Cardiopulmonary bypass accessory equipment, goniometer device, and electrode cable devices, 43114–43117
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43188–43189
Food additive petitions:
Asahi Denka Kogyo K.K., 43189–43190
Ciba Specialty Chemicals Corp., 43190
Human drugs:
Drug products discontinued from sale for reasons other than safety or effectivenesss—
Pyroxidine hydrochloride, etc., 43190–43191
Meetings:
Ranch Hand Advisory Committee, 43191–43192
Memorandums of understanding:
Illinois Nuclear Safety Department; State mammography certification program, 43192–43196
Reports and guidance documents; availability, etc:
Consumer-directed broadcast advertisements, 43197–43198
Global Harmonization Task Force—
Medical devices; premarket documentation, assessment, and classification recommendation (three documents), 43196–43197

Forest Service
NOTICES
Environmental statements; notice of intent:
Beaverhead-Deerlodge National Forest, MT, 43141
Caribou National Forest, ID and WY, 43142–43144

General Services Administration
RULES
Federal travel:
Travel charge card; mandatory use
Correction, 43254

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43186
Submission for OMB review; comment request, 43186

Health Care Financing Administration
NOTICES
Medicare and Medicaid:
Organ procurement organizations (OPOs) in designated areas; hospitals requesting waivers; list, 43198–43200

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43205–43206

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43206

Internal Revenue Service
RULES
Income taxes:
Corporations; treatment of distributions to foreign persons, 43072–43083
PROPOSED RULES
Income taxes:
Capital gains, partnership, Subchapter S, and trust provisions, 43117–43123

International Trade Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43145–43146
Antidumping:
Hot-rolled lead and bismuth carbon steel products from—
Germany, 43146–43149
United Kingdom, 43149–43152
Pasta from—
Italy, 43152–43157
Turkey, 43157–43160
Silicomanganese from—
Ukraine, 43161
Silicon metal from—
Brazil, 43161–43166
Steel wire rope from—
Korea, 43166–43170
Export trade certificates of review, 43170–43171
Showcase exhibit of exported U.S. products and services at ITA headquarters, 43171

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
ALCOA et al., 43224

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Chugach Alaska Corp., 43208
Meetings:
Resource Advisory Councils—
Western Montana, 43208
Withdrawal and reservation of lands:
Nevada, 43208–43209
Wyoming, 43209

Minerals Management Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43209–43210

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 43200–43204
Meetings:
National Institute of Environmental Health Sciences, 43204
National Institute on Aging, 43204–43205
Patent licenses; non-exclusive, exclusive, or partially exclusive:
American Home Products Corp., 43205

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Vessel monitoring system, 43101–43102
PROPOSED RULES
Fishery conservation and management:
Magnuson-Stevens Act provisions and Northeastern United States fisheries—
Atlantic herring; correction, 43137–43138
Northeastern United States fisheries—
Mid-Atlantic Fishery Management Council; hearings, 43138
NOTICES
Permits:
Endangered and threatened species, 43171–43173

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Minnesota Indian Affairs Council, Bemidji, MN; inventory, 43211–43222
University of North Carolina at Chapel Hill, NC; inventory, 43222–43223

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Indiana, 43144

Navy Department
NOTICES
Meetings:
Historical Advisory Committee, 43175
Senior Executive Service:
Performance Review Boards; membership, 43175–43177

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Tennessee Valley Authority, 43228–43229
Texas Utilities Electric Co., 43229
Reports and guidance documents; availability, etc.:
Nuclear power reactors—
Oversight process pilot plant study; interim enforcement policy, 43229–43232
Applications, hearings, determinations, etc.:
North Atlantic Energy Service Corp. et al., 43227–43228

Occupational Safety and Health Administration
NOTICES
Meetings:
Construction Safety and Health Advisory Committee, 43226–43227

Office of United States Trade Representative
See Trade Representative, Office of United States

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
CALFED Bay-Delta Program, CA, 43223–43224
California; Central Valley Improvement Act; implementation, 43207–43208

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43232
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 43233–43235
Applications, hearings, determinations, etc.:
Tektronix, Inc., 43232

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Recommendations—
European Communities; meat and meat products; correction, 43254

Transportation Department
See Federal Aviation Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 43235–43236
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 43236
Meetings:
Amtrak Reform Council, 43236

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43252–43253

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
11 43043
Proposed Rules:
354 43103
9 CFR
101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043
12 CFR
612 43046
614 (2 documents) 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
14 CFR
39 (7 documents) 43050, 43051, 43053, 43056, 43058, 43060, 43061
71 (6 documents) 43063, 43065, 43066, 43068, 43069
17 CFR
9 (2 documents) 43254
10 43071
12 43071
21 CFR
172 43072
Proposed Rules:
207 43114
607 43114
807 43114
870 43114
886 43114
890 43114
26 CFR
1 43072
602 43072
Proposed Rules:
1 43117
40 CFR
52 43083
62 43091
Proposed Rules:
62 43123
97 43124
300 43129
41 CFR
301 43254
47 CFR
5 43094
63 43095
73 43095
90 43094
Proposed Rules:
73 43132
48 CFR
202 43096
204 43098
212 43098
213 43098
217 43096
252 43098
253 43098
50 CFR
635 43101
Proposed Rules:
17 43132
600 43137
648 (2 documents) 43137, 43138

VOL
64
ISS
1
5
2
AG
9
999
UMI

Ru

This s
contain
applica
are ke
Federa
50 title

The C
the Su
new bo
REGIS

DEPA

Office

7 CFR

Nation
Proce

AGENC
Nation

ACTION

SUMMA
Agricu
Federa
docum
the Na
rules o
rule re
of only

DATES:

FOR FU
Benjam
Divisio
United
Agricu
Indepe
DC 20
benjam

SUPPLE
publis
proced
33367)
CFR pa
11, sub
interim
This c
the NA
on Jun
part 11

In th
proced
(64 FR
correct
columr
instruc

(1) 1
to read
DIVISI

Rules and Regulations

Federal Register
Vol. 64, No. 152
Monday, August 9, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 11

National Appeals Division Rules of Procedure; Correction

AGENCY: Office of the Secretary, National Appeals Division, USDA.

ACTION: Final rule; correction.

SUMMARY: The Department of Agriculture (USDA) published in the **Federal Register** of June 23, 1999, a document promulgating a final rule for the National Appeals Division (NAD) rules of procedure. Inadvertently the rule revised all of 7 CFR part 11 instead of only 7 CFR part 11, subpart A.

DATES: Effective on July 23, 1999.

FOR FURTHER INFORMATION CONTACT: L. Benjamin Young, Jr., General Law Division, Office of the General Counsel, United States Department of Agriculture, STOP 1415, 1400 Independence Avenue SW, Washington, DC 20250–1415; 202/720–4076; e-mail: benjamin.young@usda.gov.

SUPPLEMENTARY INFORMATION: USDA published the final NAD rules of procedure on June 23, 1999, (64 FR 33367), inadvertently revising all of 7 CFR part 11 instead of only 7 CFR part 11, subpart A, which contained the interim final NAD rules of procedure. This correction revises the final rule for the NAD rules of procedure published on June 23, 1999 to revise only 7 CFR part 11, subpart A.

In the final rule for the NAD rules of procedure published on June 23, 1999, (64 FR 33367),make the following corrections. On page 33373, in the first column, revise the amendatory instructions to read as follows:

(1) 1. The heading of part 11 is revised to read "NATIONAL APPEALS DIVISION".

(2) 2. Subpart A of Part 11 is revised to read as follows:

On page 33373, in the first column, make the following editorial corrections:

(1) Add "Subpart A—National Appeals Division Rules of Procedure" following the heading of the part in the table of contents;

(2) Add "Subpart A—National Appeals Division Rules of Procedure" before the authority citation.

Done at Washington, DC, this 30th day of July, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–20290 Filed 8–6–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101, 102, 105, 112, 113, 116, and 124

[Docket No. 97–117–1]

Viruses, Serums, Toxins, and Analogous Products and Patent Term Restoration; Nonsubstantive Technical Changes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations regarding veterinary biological products to reflect the transfer of the Animal and Plant Health Inspection Service's veterinary biologics functions to the Veterinary Services program area and to update the addresses provided for staffs within the Center for Veterinary Biologics. We are also making several nonsubstantive changes to the regulations to correct errors, omissions, or inconsistencies.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Special Assistant to the Deputy Administrator, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 101 through 118 (referred to below as the regulations) contain provisions implementing the Virus-Serum-Toxin Act, as amended (21 U.S.C. 151–159). The regulations in 9 CFR part 124 contain procedural requirements for patent extensions for veterinary biologics under 35 U.S.C. 156. We have made several nonsubstantive technical changes to those regulations to update their provisions and correct errors, omissions, or inconsistencies. As part of this rule, we have made the following changes:

1. We have amended the addresses throughout the regulations to reflect the current organizational affiliation of the Center for Veterinary Biologics (CVB) staff within the Animal and Plant Health Inspection Service and the relocation of most of the CVB's Licensing and Policy Development staff to new offices in Ames, IA.

2. In part 101, we have amended the definition of *regulations* to reflect the 1987 addition of part 118 and the definition of *Virus-Serum-Toxin Act* to reflect the 1987 amendments to that act.

3. We have amended § 113.35(f) so that it refers to the labeling requirements that are set forth in § 112.7(g). That paragraph had incorrectly stated that those requirements were in § 112.7(h).

4. In §§ 113.327 and 113.452, information was missing from the tables found in each section. In the table in § 113.327, the words "or less" were not included after each of the numbers provided in the column titled "Failures for satisfactory serials" and the words "or more" were not included after each of the numbers provided in the column titled "Failures for unsatisfactory serials." In § 113.452, the numbers indicating which stage of testing (i.e., 1 or 2) and the number of vaccinates in each stage (40) were missing from the table despite the presence of titled columns for each set of numbers. We have corrected both tables in this rule.

5. In §§ 113.331 and 113.332, we have removed the word "log" from where it appeared incorrectly before the numbers $10^{0.7}$ and $10^{0.2}$.

6. Paragraph (a) of § 113.451 referred to the National Bureau of Standards. We have updated the reference to reflect that agency's current name, the National Institute of Standards and Technology.

7. Paragraph (b) of § 124.1 refers to the Patent and Trademark Office (PTO) regulations concerning patent term extension. We have updated the citation provided for those PTO regulations to

reflect the 1995 addition of two sections to "Subpart F—Extension of Patent Term" (37 CFR 1.710 through 1.791).

8. In §§ 124.32 and 124.43, we have removed outdated references to the "Assistant Secretary for Marketing and Inspection Services" and have replaced them with the current title, "Under Secretary for Marketing and Regulatory Programs."

This rule relates to internal agency management and includes technical amendments. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management and includes technical corrections, it is exempt from the provisions of Executive Order 12866 and Executive Order 12988. Finally, this subject is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 102

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 105

Animal biologics.

9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

9 CFR Part 116

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 124

Animal biologics, Patents.

Accordingly, we are amending 9 CFR parts 101, 102, 105, 112, 113, 116, and 124 as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 101.2, the definitions of *Regulations* and *Virus-Serum-Toxin Act* are revised to read as follows:

§ 101.2 Administrative Terminology.

* * * * *

Regulations. The provisions in parts 101 through 118 of this subchapter.

* * * * *

Virus-Serum-Toxin Act. The Act of March 4, 1913, 37 Stat. 832–833; as amended December 23, 1985, Public Law 99–198, 99 Stat. 1654–1655; and as further amended September 28, 1988, Public Law 100–449, 102 Stat. 1868; 21 U.S.C. 151–159.

* * * * *

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

3. The authority citation for part 102 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

§ 102.5 [Amended]

4. In § 102.5(e), in the second sentence, remove the words "Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, Maryland 20737–1237" and add, in their place, the words "Director, Center for Veterinary Biologics, Licensing and Policy Development, 510 South 17th Street, Suite 104, Ames, IA 50010–8197".

PART 105—SUSPENSION, REVOCATION, OR TERMINATION OF BIOLOGICAL LICENSES OR PERMITS

5. The authority citation for part 105 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

§ 105.1 [Amended]

6. In § 105.1(a)(1), remove the number "117" and add, in its place, the number "118".

PART 112—PACKAGING AND LABELING

7. The authority citation for part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

§ 112.5 [Amended]

8. In § 112.5(d)(2)(ii), in the first sentence, remove the words "Two-or-three part" and add, in their place, the words "Two-or three-part".

§ 112.6 [Amended]

9. In § 112.6(c), introductory text, in the fourth sentence, remove the words "more then" and add, in their place, the words "more than".

PART 113—STANDARD REQUIREMENTS

10. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

§ 113.35 [Amended]

11. In § 113.35(f), remove the citation "§ 112.7(h)" and add, in its place, the citation "§ 112.7(g)".

§ 113.70 [Amended]

12. Section 113.70 is amended as follows:

a. In the introductory text, at the end of the first sentence, remove the words "Pasteurella Multocida" and add, in their place, the words "*Pasteurella multocida*".

b. In paragraph (b)(1) remove the words "Pasteurella Multocida" and add, in their place, the words "*Pasteurella multocida*".

c. In paragraph (b)(3) remove the words "Pasteurella multocida" and add, in their place, the words "*Pasteurella multocida*".

§ 113.113 [Amended]

13. Section 113.113 is amended as follows:

a. In paragraph (a)(2), in the third sentence, remove the words "the Deputy Director, VBFO, 223 South Walnut Avenue, Ames, Iowa 50010" and add, in their place, the words "Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197".

b. In paragraph (a)(3), in the second sentence, remove the words "the Deputy Director, VBFO, 223 South Walnut Avenue, Ames, Iowa 50010" and add, in their place, the words "Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197".

c. In paragraph (c)(2)(iv)(A) in the second sentence, remove the words "Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, Maryland 20737–1237" and add, in their place, the words "Director, Center for Veterinary Biologics,

Licensing and Policy Development, 510 South 17th Street, Suite 104, Ames, IA 50010–8197".

d. In paragraph (c)(2)(iv)(B), at the beginning of the first sentence, remove the words "Bulk of" and add, in their place, the words "Bulk or".

14. In § 113.327(d)(2)(ii), the table is revised to read as follows:

§ 113.327 Bronchitis Vaccine.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

CUMULATIVE TOTALS

Stage	Number of chickens	Failures for satisfactory serials	Failures for unsatisfactory serials
1	25	2 or less	4 or more.
2	50	5 or less	6 or more.

* * * * *

§ 113.331 [Amended]

15. In § 113.331(d)(3), in the second sentence, remove the word "log" both times it appears, and add the word "times" after the number "$10^{0.7}$".

§ 113.332 [Amended]

16. In § 113.332(d)(3), in the second sentence, add the word "times" after the number "$10^{0.7}$ " and remove the word "log" before the number "$10^{2.0}$".

§ 113.451 [Amended]

17. In § 113.451, in the introductory text of paragraph (a), remove the words "Bureau of Standards" and add the words "Institute of Standards and Technology" in their place.

18. In § 113.452(b)(4), the table is revised to read as follows:

§ 113.452 Erysipelothrix Rhusiopathiae Antibody.

* * * * *

(b) * * *

(4) * * *

Stage	Number of vaccinates	Cumulative number of vaccinates	Cumulative total number of deaths for a satisfactory test	Cumulative total number of deaths for an unsatisfactory test
1	40	40	6 or less	11 or more.
2	40	80	12 or less	13 or more.

PART 116—RECORDS AND REPORTS

19. The authority citation for part 116 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

20. In § 116.5, paragraph (b) is revised to read as follows:

§ 116.5 Reports.

* * * * *

(b) If, at any time, there are indications that raise questions regarding the purity, safety, potency, or efficacy of a product, or if it appears that there may be a problem regarding the preparation, testing, or distribution of a product, the licensee, permittee, or foreign manufacturer must immediately notify the Animal and Plant Health Inspection Service concerning the circumstances and the action taken, if any. Notification may be made by mail to Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; by electronic mail to cvb@usda.gov; by fax to (515) 232–7120; or by telephone to (515) 232–5785.

* * * * *

PART 124—PATENT TERM RESTORATION

21. The authority citation for part 124 continues to read as follows:

Authority: 35 U.S.C. 156; 7 CFR 2.22, 2.80, and 371.2(m).

§ 124.1 [Amended]

22. In § 124.1(b), remove the number "1.785" and add the number "1.791" in its place.

§ 124.22 [Amended]

23. In § 124.22, in the introductory text of paragraph (a), remove the words "the Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, Maryland 20737–1237" and add, in their place, the words "Director, Center for Veterinary Biologics, Licensing and Policy Development, 510 South 17th Street, Suite 104, Ames, IA 50010–8197".

§ 124.32 [Amended]

24. In § 124.32(a), in the first sentence, remove the words "Assistant Secretary for Marketing and Inspection Services" and add, in their place, the words "Under Secretary for Marketing and Regulatory Programs".

§ 124.40 [Amended]

25. In § 124.40(b)(3), remove the words "Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, Maryland 20737–1237" and add, in their place, the words "Director, Center for Veterinary Biologics, Licensing and Policy Development, 510 South 17th Street, Suite 104, Ames, IA 50010–8197".

§ 124.43 [Amended]

26. In § 124.43, in the first sentence, remove the words "Assistant Secretary for Marketing and Inspection Services" and add, in their place, the words "Under Secretary for Marketing and Regulatory Programs".

Done in Washington, DC, this 4th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–20444 Filed 8–6–99; 8:45 am]

BILLING CODE 3410–34–U

FARM CREDIT ADMINISTRATION

12 CFR Parts 612, 614 and 618

RIN 3052–AB85

Standards of Conduct; Loan Policies and Operations; General Provisions; Regulatory Burden

AGENCY: Farm Credit Administration (FCA).

ACTION: Direct final rule with opportunity to comment.

SUMMARY: This direct final rule reduces regulatory burden on the Farm Credit System (FCS or System) by repealing or amending 16 regulations. These revisions provide System banks and associations with greater flexibility concerning loan sales, agricultural secondary market activities, loans to insiders, letters of credit, information programs, travel expenses, and disclosing borrower information during litigation.

DATES: Unless we receive significant adverse comment by September 8, 1999, these regulations will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**. If we receive significant adverse comment on an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, we will withdrawal that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant adverse comment. In such a case, we would then tell you how we expect to continue with further rulemaking on the provisions that were the subject of significant adverse comment.

ADDRESSES: You may send comments by electronic mail to "*reg-comm@fca.gov*" or through the Pending Regulations section of our website at "*www.fca.gov*." You may also mail or deliver written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or fax them to (703) 734–5784. You may review copies of all communications that we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:
Eric Howard, Senior Policy Analyst, or Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On August 18, 1998, we published a notice in the **Federal Register** that invited you to identify existing regulations and policies that impose unnecessary burdens on the FCS. *See* 63 FR 44176 (Aug. 18, 1998).[1] We specifically asked you to focus on those regulations and policies that are ineffective, duplicate other governmental requirements, or impose burdens that are greater than the benefits received. We took this action in our continuing effort to improve the regulatory environment so the System can better serve farmers and ranchers.

We received 30 responses. Of this total, 20 comment letters came from Farm Credit associations. Six Farm Credit banks sent us seven comment letters. The Farm Credit Council (FCC) commented on behalf of its membership. We also received responses from the Federal Farm Credit Banks Funding Corporation and the Federal Agricultural Mortgage Corporation (Farmer Mac).

In this first phase of our effort to reduce regulatory burden on the FCS, we are repealing or revising 16 regulations. These regulations govern:

- Loan sales by agricultural credit banks (ACBs);
- Subordinated participation interests in Farmer Mac loan pools;
- Loans to institution-affiliated parties;
- Letters of credit that finance international trade;
- Informational programs at FCS institutions;
- Purchases and sales of personal property;
- Travel and subsistence expenses for directors, officers, and employees; and
- Disclosure of confidential information in litigation.

We plan to respond to your other concerns in future phases of this project, and currently, we are analyzing all the issues that you raised.

[1] On November 18, 1998, we extended the comment period to January 19, 1999. *See* 63 FR 64013 (Nov. 18, 1998).

II. Analysis of Changes and Comments by Section

A. Sale of Interests in Loans by ACBs

We are correcting § 614.4010(f)(1) so it accurately reflects the statutory authority of ACBs to sell interests in loans. The amended regulations confirm that ACBs may sell interests in the type of long-term real estate mortgages that they can make under section 1.7(a) of the Farm Credit Act of 1971, as amended (Act), to:

- System banks and associations that have authority to purchase such interests;
- Non-System lenders; and
- Certified agricultural mortgage marketing facilities for Farmer Mac.

We emphasize that revised § 614.4010(f)(1) also permits ACBs to sell interests in long-term mortgages that they purchase from other System lenders. Section 3.1(13)(B) of the Act and amended § 614.4010(f)(1) allow ACBs to sell interests in cooperative, rural utility, and international loans only to other Farm Credit banks and associations that have authority to purchase such loan interests.

B. Subordinated Participation Interests in Farmer Mac Pools

We are repealing five separate regulatory provisions (§§ 614.4000(e)(4), 614.4010(f)(4), 614.4030(c)(4), 614.4040(c)(4), and 614.4050(d)(4)) that authorize Farm Credit banks and associations to purchase subordinated participation interests in pools of loans that are sold into the Farmer Mac secondary market. The existing regulations carry out provisions of title VIII of the Act that Congress repealed in 1996.[2] Prior to 1996, title VIII of the Act required Farm Credit banks and associations to pledge cash reserves or hold subordinated participation interests in loans that they pooled and securitized for Farmer Mac. As amended, title VIII of the Act now permits, but no longer requires, Farm Credit banks and associations to retain subordinated participation interests in Farmer Mac pools. With the removal of these regulations, we will continue to review policy as well as safety and soundness issues related to subordinated participation interests in Farmer Mac loan pools.

C. Loan Approvals

We received 11 comments about §§ 614.4460 and 614.4470, which govern loans to insiders. Although the Agricultural Credit Technical

[2] Farm Credit System Reform Act of 1996; Pub. L. No. 104–105, 110 Stat. 162 (Feb. 10, 1996).

Corrections Act of 1988 [3] abolished the district boards, § 614.4460 refers to the defunct boards. Under this regulation, district boards were required to approve loans that System banks make to:

- Their directors and employees; and
- FCA Board members and staff.

Currently, § 614.4470 requires Farm Credit banks to approve loans that their affiliated associations make to:

- The association's own directors and employees;
- Directors and employees of a jointly managed association; or
- Bank employees.

System banks and associations asked us to update § 614.4460 and repeal the bank approval requirement in § 614.4470. These commenters believe that our regulations should only apply to large insider loans.

We respond by replacing §§ 614.4460 and 614.4470 with a single regulation. Final § 614.4460 requires your board to approve all loans to:

- Certain FCA and Farm Credit System Insurance Corporation (FCSIC) employees who are permitted to borrow from your institution under our Supplemental Standards of Ethical Conduct regulations at 5 CFR parts 4101 and 4001, respectively; [4]
- Your directors and employees;
- The directors and employees of another System bank or association that is under a joint management agreement with your institution;
- The directors and employees of your association's funding bank; and
- A cooperative or other legal entity if any of its directors, partners, or employees are also members of your board of directors.

Your board must also approve loans to other borrowers if any of these parties has a substantial beneficial interest in the proceeds or collateral of the loan.

When you extend credit to insiders you must comply with the Standards of Conduct regulations in part 612, the Disclosure regulations in part 621, and your board's policies. We also require your institution to document all material facts about your credit relationships with any of these parties and make it available, on request, to the FCA's Office of Examination and to the appropriate officials of your funding bank.

[3] Pub. L. 100–399, 102 Stat. 1003 (Aug. 17, 1988).

[4] The new regulation explicitly refers to the Supplemental Standards of Ethical Conduct regulations that the FCA and FCSIC Boards enacted in 1995. *See* 60 FR 30781 (June 12, 1995). Those regulations specifically prohibit most FCA and FCSIC employees from borrowing from System institutions. For example, FCA and FCSIC Board members, examiners, procurement personnel, and all employees over a certain civil service grade level cannot legally borrow from Farm Credit banks and associations.

The final regulation repeals the requirement that bank boards approve loans that their affiliated associations make to insiders. Our new approach retains adequate controls on loans that Farm Credit banks and associations make to their directors and employees. Currently, the boards of Farm Credit banks approve loans to insiders. Under the new regulation, boards of associations are similarly responsible for approving loans to their insiders.

The commenters suggested that our regulation should require System boards to approve only insider loans that are above a minimum amount established by the institution's policy. We did not adopt this approach because board approval of all insider loans provides the most independent and objective approval process for such loans at each bank or association. Board approval also avoids the appearance of misconduct and impropriety. Board approval of even small insider loans is appropriate and reassures customers, shareholders, and investors that the System boards exercise diligence and independent judgment when they carry out their duties and obligations. Another regulation, § 612.2140(a), requires directors of Farm Credit banks and associations to recuse themselves from board deliberations on their own loans.

We are repealing § 614.4450 on our own initiative. This regulation originally carried out provisions of the Act that authorized the FCA to supervise and approve the lending activities of all System banks and associations.[5] After the Farm Credit Act of 1985 [6] repealed this authority and converted the FCA into an arms-length regulator, we amended § 614.4450 to state that "authority for loan approval is vested in the Farm Credit banks and associations." This rule is no longer needed because it neither implements the Act nor promotes the System's safety and soundness.

D. Letters of Credit

Existing § 614.4720 allows banks for cooperatives (BCs) and ACBs to issue and confirm letters of credit that finance international trade in agricultural commodities and farm supplies. The final provision of this regulation, § 614.4720(g), requires BCs and ACBs to charge fees for issuing letters of credit. We repeal it because we believe that this should be a business decision of BCs and ACBs. We retain all other provisions of this regulation because we believe they continue to promote safe and sound international banking practices at BCs and ACBs.

[5] *See* 38 FR 27837 (Oct. 9, 1973).

[6] Pub. L. No. 99–205, 99 Stat. 1678 (Dec. 23, 1985).

E. Conducting Information Programs

The FCC, one association, and two Farm Credit Banks asked us to repeal § 618.8210, which requires FCS institutions to maintain programs that inform farmers and other members of the public about FCS organization, functions, and services. The commenters believe that our regulations should not tell System institutions to conduct informational programs. Instead, they suggested that each System bank or association address this issue in its operational program. We agree that business goals provide an effective incentive for System banks and associations to market their services to potential customers. We repeal § 618.8210 because it is no longer needed.

F. Purchases and Sales of Personal Property

The FCC, two System banks, and an association want us to repeal § 618.8250. The commenters remarked that operational programs of System lenders, not FCA regulations, should govern the purchases and sales of personal property.

We respond by adjusting the regulatory requirements that apply to the purchases and sales of personal property by your banks and associations. One provision of § 618.8250 is obsolete because it contains a reference to the defunct district boards. Moreover, we agree that your policies and operational programs, rather than FCA regulations, should cover all purchases and most sales of personal property by your bank or association. However, we believe that our Standards of Conduct regulations in part 612 should continue to govern the sale of personal property to your directors, officers, or other employees. Our regulatory requirements in part 612 help your institution avoid allegations of favoritism or fraud when you sell personal property to insiders. We rewrote the final sentence of § 618.8250 in plain language and transferred it to § 612.2165(b)(7) in the Standards of Conduct section of the regulations. This provision requires your institution to sell surplus personal property above a stated value to your employees through open competitive bidding.

G. Travel, Subsistence, and Other Related Expenses

Four commenters suggested that we repeal § 618.8270. This regulation requires the boards of FCS banks and associations to develop written policies,

keep records, and audit the travel, subsistence, and other related expenses of their directors, officers, and employees. The commenters assert that this regulation imposes unnecessary burdens on FCS institutions. They point out that System banks and associations already address this issue in their operational plans.

We have decided to repeal § 618.8270 because other regulations already cover the travel and subsistence expenses of directors, officers, and employees of your institutions. For example, § 618.8430 requires your bank or association to establish effective internal controls over their operations. Additionally, § 611.400 implements section 4.21 of the Act, which governs compensation for the FCS bank directors. Our examiners will continue to review the travel, subsistence, and related expenses of System bank directors in the normal examination process.

H. Production of Documents and Testimony

One Farm Credit bank asked us to amend § 618.8320(b)(7), and two Farm Credit banks and two associations wanted us to repeal § 618.8330. These regulations govern the disclosure of documents and testimony in litigation. Some commenters objected to the cost of hiring an attorney to contest orders to produce documents or testimony. All commenters believe that our regulations should not limit their options on how best to respond to court orders.

We continue to believe that regulations governing the production of confidential information during litigation are necessary. However, we revised our regulations to better balance your borrowers' rights to confidentiality with your need for greater flexibility in disclosing information during litigation. We combined both provisions into a single regulation, § 618.8330, and rewrote it in plain language.

Final § 618.8330(a) allows your bank or association to disclose confidential information about a borrower (or a successor in interest) if your institution is in litigation with that borrower or his or her successor. Without this provision, your institution would have no authority to produce confidential information about a borrower who is in litigation with you.

Final § 618.8330(b) allows your bank or association to disclose confidential information under the lawful order of a court if the Government or your institution is not a party to the litigation. As a result, you do not automatically have to contest every order to produce documents or testimony. You may release confidential borrower information as defined by § 618.8320(a) only if a judge issues the order. We believe that this requirement is important because the judge is impartial and can fairly decide whether the litigant needs the confidential information in your possession.

III. Direct Final Rule

We are revising or repealing these regulations by a direct final rulemaking. The Administrative Procedure Act, 5 U.S.C. 551–59, *et seq.* (APA), supports direct final rulemaking, which is a streamlined technique for Federal agencies to enact noncontroversial regulations more quickly, without the usual notice and comment period. This process enables us to reduce the time and resources we need to develop, review, clear, and publish a final rule while still affording the public an opportunity to comment on or object to the rule.

In a direct final rulemaking, we notify you the rule will become final on a specified future date unless we receive significant adverse comment during the comment period. If we receive significant adverse comment on an amendment, paragraph, or section of this rule, and that provision may be addressed from the remainder of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant adverse comment. In such a case, we would then tell you how we expect to continue with further rulemaking on the provisions that were the subject of significant adverse comment.

A significant adverse comment is one where a commenter explains why the rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the agency in a notice-and-comment rulemaking.

Direct final rulemaking is justified under section 553(b)(B) of the APA. Section 553(b)(B) is the APA's "good cause" exemption that allows an agency to omit notice and comment on a rule when it finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In direct final rulemaking, the agency finds the rule is straightforward and noncontroversial to make normal notice and comment unnecessary under the APA. However, rather than eliminating public comment altogether, which is permissible under section 553(b)(B), the agency gives the public an opportunity to rebut the agency's conclusion that public input on the rule is unnecessary.

We believe that a direct final rulemaking is the proper method for repealing or revising these regulations that place unnecessary regulatory burden on FCS institutions. For these reasons, we do not anticipate significant adverse comment on this rule. If we receive no significant adverse comment, we will publish our regular notice of the effective date of the rule following the required Congressional waiting period under section 5.17(c)(1) of the Act.

List of Subjects

12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, the Farm Credit Administration amends parts 612, 614, and 618 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 612—STANDARDS OF CONDUCT

1. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

2. Amend § 612.2165 by adding the following sentence to the end of paragraph (b)(7):

§ 612.2165 Policies and procedures.

* * * * *

(b) * * *

(7) * * * Farm Credit institutions must use open competitive bidding whenever they sell surplus property above a stated value (as established by the board) to their employees.

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

3. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C,

4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

§ 614.4000 [Amended]

4. Remove § 614.4000(e)(4).

5. Amend § 614.4010 by removing paragraph (f)(4) and revising paragraph (f)(1) to read as follows:

§ 614.4010 Agricultural credit banks.

* * * * * *

(f) * * *

(1) Subject to subpart H of this part, agricultural credit banks may sell interests in real estate mortgage loans identified in paragraph (a) of this section to Farm Credit System institutions authorized to purchase such interests, other lenders, and certified agricultural mortgage marketing facilities for the Federal Agricultural Mortgage Corporation. Agricultural credit banks may also sell interests in the types of loans listed in paragraph (d) of this section to other Farm Credit System institutions that are authorized to purchase such interests.

* * * * *

§ 614.4030 [Amended]

6. Remove § 614.4030(c)(4).

§ 614.4040 [Amended]

7. Remove § 614.4040(c)(4).

§ 614.4050 [Amended]

8. Remove § 614.4050(d)(4).

9. Revise subpart M to read as follows:

Subpart M—Loan Approval Requirements

§ 614.4460 Approval of loans to affiliated parties.

(a) With approval of your board, your bank or association may lend to the following parties in accordance with part 612 of this chapter and the policies of your board of directors:

(1) Farm Credit Administration employees permitted to borrow from your institution under 5 CFR 4101.104;

(2) Farm Credit System Insurance Corporation employees permitted to borrow from your institution under 5 CFR 4001.104;

(3) Your directors and employees;

(4) The directors or employees of another bank or association under a joint management agreement with your institution;

(5) The directors or employees of your funding bank if you are an association;

(6) A cooperative or other legal entity if any of its directors, partners, or employees are also members of your board of directors; and

(7) Other borrowers if any of the parties identified in this section are:

(i) Recipients of the loan proceeds;

(ii) Stockholders or other equity owners of the borrower and they have a significant interest in the loan funds or collateral; or

(iii) Endorsers, guarantors or comakers on the credit.

(b) Your bank or association must document all material facts about the credit relationship with any of these parties and make the documentation available, on request, to our Office of Examination and to the funding bank.

Subpart Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

§ 614.4720 [Amended]

10. Remove § 614.4720(g).

PART 618—GENERAL PROVISIONS

11. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart F—Miscellaneous Provisions

§§ 618.8210–618.8270 [Removed and Reserved]

12. Remove and reserve subpart F, consisting of §§ 618.8210 through 618.8270.

Subpart G—Releasing Information

§ 618.8320 [Amended]

13. Amend § 618.8320 as follows:

a. Remove paragraph (b)(7); and

b. Redesignate paragraphs (b)(8), (b)(9) and (b)(10) as paragraphs (b)(7), (b)(8), and (b)(9).

14. Revise § 618.8330 to read as follows:

§ 618.8330 Production of documents and testimony during litigation.

(a) If your bank or association is a party to litigation with a borrower or a successor in interest, you or your directors, officers, or employees may disclose confidential information about that borrower or the successor in interest during the litigation.

(b) If the Government or your bank or association is not a party to litigation, you or your directors, officers, or employees may produce confidential documents or testimony only if a court of competent jurisdiction issues a lawful order signed by a judge.

Dated: August 2, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–20323 Filed 8–6–99; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 616, 618 and 621

RIN 3052–AB63

Loan Policies and Operations; Leasing; General Provisions; Accounting and Reporting Requirements; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 614, 616, 618 and 621 on June 28, 1999 (64 FR 34514). This final rule clarifies existing regulations and provides Farm Credit System institutions with more regulatory guidance about leasing activities. The rule reflects comments received from two public comment periods. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is August 6, 1999.

EFFECTIVE DATE: The regulation amending 12 CFR parts 614, 616, 618 and 621 published on June 28, 1999 (64 FR 34514) is effective August 6, 1999.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: August 3, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–20427 Filed 8–6–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–17–AD; Amendment 39–11242; AD 99–16–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires repetitive inspections to detect cracked or broken support brackets of the upper wing-to-fuselage fairings, and replacement of any discrepant support brackets with new brackets. This amendment also requires replacement of the fairing seals with new, improved seals; modification of the fairing panels; and installation of new bulkheads; which constitutes terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced structural integrity of the fairing support brackets, which could result in loss of the wing-to-fuselage fairings during flight, and consequent structural damage to the airplane.

DATES: Effective September 13, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes was published in the **Federal Register** on April 28, 1999 (64 FR 22816). That action proposed to require repetitive inspections to detect cracked or broken support brackets of the upper wing-to-fuselage fairings, and replacement of any discrepant support brackets with new brackets. That action also proposed to require replacement of the fairing seals with new, improved seals; modification of the fairing panels; and installation of new bulkheads; which would constitute terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $5,640, or $120 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the required replacement, modification, and installation, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,690 per airplane. Based on these figures, the cost impact of the replacement, modification and installation required by this AD on U.S. operators is estimated to be $96,350, or $2,050 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–16–07 Airbus Industrie: Amendment 39–11242. Docket 99–NM–17–AD.

Applicability: Model A310–200 series airplanes, on which Airbus Modification 4800 or 4906 has been accomplished; and Model A310–300 series airplanes on which Airbus Modification 11758 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the support brackets of the upper wing-to-fuselage fairing, which could result in loss of the wing-to-fuselage fairings during flight, and consequent structural damage to the airplane, accomplish the following:

Initial/Repetitive Inspections

(a) Prior to the accumulation of 5,000 total flight hours or within 1,200 flight hours after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracked or broken support brackets of the upper wing-to-fuselage fairings, in accordance with Airbus Service Bulletin A310–53–2078, Revision 1, dated March 24, 1997. Repeat the detailed visual inspection thereafter at intervals not to exceed 2,500 flight hours.

Corrective Action

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD, prior to further flight, replace the discrepant support bracket with a new bracket in accordance with Airbus Service Bulletin A310–53–2078, Revision 1, dated March 24, 1997. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 2,500 flight hours.

Terminating Action

(c) Within 2 years after the effective date of this AD, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD.

(1) Perform the initial inspection required by paragraph (a) of this AD in accordance with Airbus Service Bulletin A310–53–2078, Revision 1, dated March 24, 1997.

(2) Replace the fairing seals with new, improved seals; modify the fairing panels; and install new bulkheads; in accordance with Airbus Service Bulletin A310–53–2083, Revision 02, dated May 5, 1998.

Accomplishment of these actions constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A310–53–2078, Revision 1, dated March 24, 1997, and Airbus Service Bulletin A310–53–2083, Revision 02, dated May 5, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 97–175–228(B) R1 and 98–450–261(B), both dated November 18, 1998.

(g) This amendment becomes effective on September 13, 1999.

Issued in Renton, Washington, on July 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20061 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–180–AD; Amendment 39–11243; AD 99–16–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This action requires repetitive inspections of the doubler on the upper rudder pedal cover to determine whether it is securely bonded to the upper rudder pedal cover, and corrective action, if necessary. For airplanes on which the doubler is securely attached to the upper rudder pedal cover, this AD also provides for installation of two rivets to retain the doubler, as an optional terminating action for the repetitive inspections. This amendment is prompted by reports that a disbonded doubler interfered with rudder pedal movement. The actions specified in this AD are intended to detect and correct disbonding of the doubler on the upper rudder pedal cover, which could result in restricted rudder pedal movement and reduced controllability of the airplane.

DATES: Effective August 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–180–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that a disbonded doubler on the upper rudder pedal cover interfered with the rudder pedal arm. The loose doubler restricted rudder pedal travel to about one-third of the normal limits. The doubler disbonding may have been caused by a manufacturing problem. This condition, if not corrected, could result in restricted rudder pedal movement and reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2378, dated July 15, 1999, which describes procedures for repetitive inspections of the doubler on the upper rudder pedal cover to determine

whether it is securely bonded to the upper rudder pedal cover. If the doubler is securely attached to the upper rudder pedal cover, the alert service bulletin recommends performing repetitive inspections every 500 flight hours until 2 rivets are installed in the doubler, which provides secondary retention for the doubler and eliminates the need for the repetitive inspections. For airplanes where the doubler is not securely attached to the upper rudder pedal cover, the alert service bulletin recommends removal of the doubler from the upper rudder pedal cover, and corrective action within 10 operating days. One method of corrective action is to repair by bonding a new or serviceable doubler to the upper rudder pedal cover, and installing 2 rivets in the doubler, which eliminates the need for the recommended actions of the alert service bulletin. Another method of corrective action is to replace the upper rudder cover assembly with a modified upper rudder cover assembly that has 2 rivets installed in the doubler on the upper rudder pedal cover. Installation of the modified upper rudder cover assembly eliminates the need for the recommended actions of the alert service bulletin. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct disbonding of the doubler on the upper rudder pedal cover, which could result in restricted rudder pedal movement and reduced controllability of the airplane. This AD requires repetitive inspections of the doubler on the upper rudder pedal cover to determine whether it is securely bonded to the upper rudder pedal cover, and corrective action, if necessary. For airplanes on which the doubler is securely attached to the upper rudder pedal cover, this AD also provides for installation of two rivets to retain the doubler as an optional terminating action for the repetitive inspections. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Differences Between This AD and Alert Service Bulletin

Operators should note that the alert service bulletin recommends installation of rivets in the doubler on the upper rudder pedal cover within 5,000 flight hours; however, that action is considered optional in this AD. The FAA is considering further rulemaking action to require installation of rivets in the doubler on the upper rudder pedal cover. However, the planned compliance time to require installation of the rivets is sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–180–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–16–08 Boeing: Amendment 39–11243. Docket 99–NM–180–AD.

Applicability: Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–27A2378, dated July 15, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To detect and correct disbonding of the doubler on the upper rudder pedal cover, which could result in restricted rudder pedal movement and reduced controllability of the airplane, accomplish the following:

Inspection

(a) Within 500 flight hours after the effective date of this AD, perform an inspection of the doubler on the upper rudder pedal cover to determine whether the doubler is securely attached to the upper rudder pedal cover, in accordance with Boeing Alert Service Bulletin 747–27A2378, dated July 15, 1999. If the doubler is securely attached to the upper rudder pedal cover, repeat the inspection at intervals not to exceed 500 flight hours.

Corrective Action

(b) If the doubler is not securely attached to the upper rudder pedal cover during the inspections specified by paragraph (a) of this AD, prior to further flight, remove the doubler from the upper rudder pedal cover in accordance with Boeing Alert Service Bulletin 747–27A2378, dated July 15, 1999. Within 10 operating days after removal of the doubler, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, in accordance with the alert service bulletin.

Note 2: Operation of the airplane is allowed for a period of 10 operating days with the doubler removed from the upper rudder pedal cover.

(1) Repair by bonding the doubler to the upper rudder pedal cover and installing 2 rivets in the doubler. This constitutes terminating action for the requirements of this AD.

(2) Replace the upper rudder pedal cover assembly with a modified upper rudder pedal cover assembly having part number 253U3401–15 through -18, as applicable. Such replacement constitutes terminating action for the requirements of this AD.

Spares

(c) As of the effective date of this AD, no person shall install an upper rudder pedal cover assembly having part number 253U3401–7, 253U3401–10, 253U3401–11 or 253U3401–13.

Optional Terminating Action

(d) Installation of 2 rivets in the doubler on the upper rudder pedal cover in accordance with Boeing Alert Service Bulletin 747–27A2378, dated July 15, 1999, constitutes terminating action for the repetitive inspections of paragraph (a) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The inspections and repairs shall be done in accordance with Boeing Alert Service Bulletin 747–27A2378, dated July 15, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 24, 1999.

Issued in Renton, Washington, on July 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20060 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–61–AD; Amendment 39–11245; AD 99–16–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes. This action requires repetitive inspections of the E–42 satellite communications (SATCOM) rack and fuselage (supporting) structure to detect fatigue cracking of the area surrounding the fastener holes, and to detect broken or missing fasteners; and corrective actions, if necessary. This amendment is prompted by reports indicating that fatigue cracking and broken and/or missing fasteners were found on the E–42 SATCOM equipment rack structure that attaches to the fuselage structure. The actions specified in this AD are intended to detect and repair fatigue cracking of the E–42 SATCOM rack and its supporting structure, which could result in the SATCOM equipment falling from the rack, loss of SATCOM capabilities, injury to passengers, and reduced controllability of the airplane.

DATES: Effective August 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Flight Structures Inc., 4407 172nd Street NE, Arlington, Washington 98223. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that cracking and broken and/or missing fasteners were found on the E–42 SATCOM equipment rack structure that attaches to the fuselage structure on several Boeing Model 747–300 and –400 series airplanes. Investigation revealed that one of the four stanchions (i.e., a

supporting prop or brace) was found completely broken on two airplanes (one that had accumulated 23,693 total flight hours and the other with 24,752 total flight hours). Further investigation revealed that the rigid joints of the supporting structure of the E–42 SATCOM rack, coupled with environmental vibration of the airplane, may have caused the cracking to initiate in the area surrounding the fastener holes (located at the rigid joints) of the supporting structure of the E–42 SATCOM rack. The FAA also has received a report indicating that cracking has been detected on four freighter airplanes; one of the airplanes had accumulated less than 1,500 total flight hours.

On all airplanes, the E–42 SATCOM rack hangs above the main deck ceiling. On freighter airplanes and "combi" airplanes (i.e., configurations with provisions for passenger seating and cargo on the main deck), the E–42 SATCOM rack is located near rudder and elevator control cables, and the SATCOM wires run above the rudder and elevator control cables.

On all airplanes, failure of the rack and its supporting structure could result in loss of support for the E–42 SATCOM equipment, which could lead to chafing and arcing of the electrical wires and loss of SATCOM capabilities. Such failure also could result in the following unsafe conditions:

- On passenger-only airplanes, the E–42 SATCOM equipment could break through the ceiling, which could result in injury to passengers.
- On freighter and "combi" airplanes, the E–42 SATCOM equipment could fall and cause the SATCOM wires to pull and possibly break the rudder and/or elevator control cables, which could result in reduced controllability of the airplane. Failure of the SATCOM rack on "combi" airplanes carrying passengers also could result in injury to the passengers.

Related Rulemaking

On June 22, 1999, the FAA issued AD 99–14–04, amendment 39–11212 (64 FR 34707, June 29, 1999), applicable to certain Boeing Model 747–300 and –400 series airplanes, that requires repetitive inspections of the E–42 SATCOM rack and fuselage (supporting) structure to detect cracking in the area surrounding the fastener holes, and to detect broken and missing fasteners; and corrective actions, if necessary.

Explanation of Relevant Service Information

The FAA has reviewed and approved Flight Structures Alert Service Bulletins 92FS024–53–A1, 92FS082–53–A1, and 94FS409–53–A2, all dated March 2, 1999, and 94FS448–53–A1, dated February 12, 1999. These alert service bulletins describe, among other things, procedures for a one-time close visual inspection of the E–42 SATCOM rack and fuselage (supporting) structure to detect fatigue cracking of the area surrounding the fastener holes, and to detect broken or missing fasteners.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and repair fatigue cracking of the E–42 SATCOM rack and its supporting structure due to environmental vibration of the airplane. Such fatigue cracking could result in the SATCOM equipment falling from the rack, loss of SATCOM capabilities, injury to passengers, and reduced controllability of the airplane. This AD requires repetitive inspections of the E–42 SATCOM rack and fuselage (supporting) structure to detect fatigue cracking of the area surrounding the fastener holes, and to detect broken or missing fasteners; and corrective actions, if necessary. The actions are required to be accomplished in accordance with the applicable alert service bulletin described previously, except as discussed below. This AD also would require reporting the findings of the initial inspection to the FAA.

Differences Between AD and Service Information

While the alert service bulletins do not specify that the inspection of the E–42 SATCOM rack and fuselage (supporting) structure be repeated, this AD would require repetitive inspections of the E–42 SATCOM rack and fuselage (supporting) structure, even if fatigue cracking has been detected and repaired. As stated previously, the rigid joints of the SATCOM rack coupled with environmental vibration of the airplane could cause fatigue cracking to initiate in the area surrounding fastener holes. Furthermore, an isolated repair of an area and/or replacement of any fastener does not remove the unsafe condition for the entire E–42 SATCOM rack and fuselage (supporting) structure. In light of these factors, the FAA has determined that repetitive inspection at intervals not exceeding 3,000 flight hours, is warranted, and that it represents an appropriate means of addressing the unsafe condition while allowing affected airplanes to continue to operate without comprising safety.

Operators should note that, although the alert service bulletins specify repair instructions for certain conditions and recommend that the manufacturer of the SATCOM rack be contacted for disposition of certain other conditions, this AD will require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Explanation of Compliance Time

This AD would require compliance in terms of the number of days after the effective date of this AD, whereas the alert service bulletins (previously described) recommend compliance based on the number of flight hours, as specified below:

- For airplanes identified in the alert service bulletin as Group 1: Within 500 flight hours from receipt of alert service bulletin, or 12,000 flight hours since the E–42 SATCOM rack was installed and populated with equipment.
- For airplanes identified in the alert service bulletin as Group 2: Within 1,000 flight hours from receipt of alert service bulletin, or 20,000 flight hours since the E–42 SATCOM rack was installed and populated with equipment.

This AD would require that the initial inspection be performed at the applicable time, as specified below:

- For airplanes identified in the alert service bulletin as Group 1: Within 30 days after the effective date of this AD.
- For airplanes identified in the alert service bulletin as Group 2: Within 90 days after the effective date of this AD.

The FAA finds that, in view of a recent report indicating that cracking has been detected on an airplane that had accumulated less than 1,500 total flight hours, and because of the safety implications and consequences associated with such cracking, the initial compliance time specified in this AD is appropriate.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

None of the Model 747–400 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they

are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $180 per airplane, per inspection cycle.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–61–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–16–10 Boeing: Amendment 39–11245. Docket 99–NM–61–AD.

Applicability: Model 747–400 series airplanes as listed in Flight Structures Alert Service Bulletins 92FS082–53–A1, 92FS024–53–A1, and 94FS409–53–A2, all dated March 2, 1999, and 94FS448–53–A1, dated February 12, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and repair fatigue cracking of the E–42 satellite communications (SATCOM) rack and its supporting structure, which could result in the SATCOM equipment falling from the rack, loss of SATCOM capabilities, injury to passengers, and reduced controllability of the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) Perform a detailed visual inspection of the E–42 SATCOM rack and fuselage (supporting) structure to detect fatigue cracking of the area surrounding the fastener holes, and to detect broken or missing fasteners, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable; in accordance with Flight Structures Alert Service Bulletin 92FS082–53–A1, 92FS024–53–A1, or 94FS409–53–A2, all dated March 2, 1999; or 94FS448–53–A1, dated February 12, 1999, as applicable. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight hours.

(1) For all airplanes identified as Group 1 in the applicable alert service bulletin: Inspect within 30 days after the effective date of this AD.

(2) For all airplanes identified as Group 2 in the applicable alert service bulletin: Inspect within 90 days after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any fatigue cracking is found, or if any fastener is broken or missing during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Thereafter, repeat the inspection required by paragraph (a) of this AD, at intervals not to exceed 3,000 flight hours.

Reporting Requirements

(c) Submit a report of the initial inspection findings (positive and negative) to the

Manager, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210; at the applicable time specified in paragraph (c)(1) or (c)(2) of the AD, as applicable. The report must include the initial inspection results, a description of any discrepancy found, the airplane serial number, number of landings, and flight hours on the airplane, and, when possible, sketches and photographs of the inspected area. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the initial inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the initial inspection has been accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that all the equipment is removed from the E–42 SATCOM rack.

Incorporation by Reference

(f) The inspections shall be done in accordance with Flight Structures Alert Service Bulletin 92FS082–53–A1, dated March 2, 1999; Flight Structures Alert Service Bulletin 92FS024–53–A1, dated March 2, 1999; Flight Structures Alert Service Bulletin 94FS409–53–A2, dated March 2, 1999; or Flight Structures Alert Service Bulletin 94FS448–53–A1, dated February 12, 1999, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Flight Structures Inc., 4407 172nd Street NE, Arlington, Washington 98223. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 24, 1999.

Issued in Renton, Washington, on July 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20059 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–188–AD; Amendment 39–11246; AD 99–16–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, and –800 series airplanes. This action requires a test of the squib circuit ground studs of the engine fire extinguisher bottles to measure the resistance, and repair or replacement of the ground stud with a new ground stud, if necessary. This amendment is prompted by reports of improper grounding of the squib circuit. Such a condition would prevent the engine fire extinguisher bottle from discharging when commanded, which could result in the inability to extinguish an engine fire.

DATES: Effective August 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–188–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2682; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that the flight crew of a Boeing Model 737–800 series airplane pulled the engine fire handle in response to an elevated exhaust gas temperature indication on the right engine. Maintenance personnel found the fire handle turned to the right, indicating that the flight crew had attempted to discharge the right engine fire extinguisher bottle. Flight crew reports state that the pilot did not intend to discharge the bottle. It is not known if the fire handle was held in position long enough to discharge the bottle; however, ground resistance measurements revealed an open circuit from the right bottle squib and the ground stud to structure. Subsequent investigation determined that the open circuit was caused by an improperly installed ground stud during production. The engine fire extinguisher bottle installations on certain Model 737–600 and –700 series airplanes are identical to those installed on the affected Model 737–800 series airplanes. Since the initial event, the FAA has received reports indicating that approximately 25 percent of the squib ground studs installed on these Model 737–600, –700, and –800 series airplanes have improper grounding of the squib circuit. Such a condition would prevent the engine fire extinguisher bottle from discharging when commanded, which could result in the inability to extinguish an engine fire.

Explanation of Relevant Service Information

The FAA has reviewed Boeing Telex M–7200–99–01098, dated February 5, 1999, which describes procedures for a test of the squib circuit ground studs of the engine fire extinguisher bottles to measure the resistance, and repair or replacement of the ground stud with a new ground stud, if necessary. Accomplishment of the actions specified in the telex is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct improper grounding of the squib circuit. Such a condition would prevent the engine fire extinguisher bottle from discharging when commanded, which could result in inability to extinguish an engine fire. This AD requires accomplishment of the actions specified in the telex described previously, except as discussed below.

Differences Between This AD and the Telex

The telex recommends accomplishing the test at the earliest opportunity where manpower and facilities are available, not to exceed two weeks from February 5, 1999, and specifies that operators should report the findings of the test to the airplane manufacturer. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the extent of the problem in the fleet based on findings from operators' reports, and the time necessary to perform the test (less than one hour). In light of all of these factors, the FAA finds a 90-day compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. Operators should also note that this AD does not require reporting of test findings.

Operators should note that, although the telex only describes procedures for replacement of the squib circuit ground stud with a new squib circuit ground stud, the airplane manufacturer has advised the FAA that replacement with a standard built-up ground stud (nut and bolt type) is an acceptable alternative to replacement with a squib circuit ground stud. Therefore, the FAA has included the option of replacing the squib circuit ground stud with a standard built-up ground stud as an acceptable method of compliance with the requirements of this AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–188–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–16–11 Boeing: Amendment 39–11246. Docket 99–NM–188–AD.

Applicability: Model 737–600, –700, and –800 series airplanes; line numbers 1 through 110 inclusive, 112 through 183 inclusive, 185, 186, 188, 189, 191, 193, and 195; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct improper grounding of the squib circuit, which would prevent the engine fire extinguisher bottle from discharging when commanded and could result in inability to extinguish an engine fire, accomplish the following:

Test

(a) Within 90 days after the effective date of this AD, perform a test of the squib circuit ground studs of the engine fire extinguisher bottles to measure the resistance, in accordance with Boeing Telex M–7200–99–01098, dated February 5, 1999.

Repair/Replacement

(b) If the resistance is greater than 0.5 milliohms, prior to further flight, repair in accordance with Boeing Telex M–7200–99–01098, dated February 5, 1999; or replace the ground stud with a new ground stud, in accordance with either paragraph (b)(1) or (b)(2) of this AD.

(1) Install a ground stud having Boeing part number BACS53B, in accordance with Boeing Telex M–7200–99–01098, dated February 5, 1999; or

(2) Install a standard built-up ground stud (nut and bolt type), in accordance with Subject 20–20–00 of Boeing Document No. D6–54446, "Standard Wiring Practices Manual."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b)(2) of this AD, the actions shall be done in accordance with Boeing Telex M–7200–99–01098, dated February 5, 1999. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 24, 1999.

Issued in Renton, Washington, on July 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20058 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–52–AD; Amendment 39–11244; AD 99–16–09]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 230 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron Canada (BHTC) Model 230 helicopters. This action requires verifying the torque on the vertical fin attachment bolts (bolts); inspecting the vertical fin and tailboom fittings for cracks, elongation of bolt holes, distortion and corrosion; and re-verifying the torque on the bolts after inspecting the fittings. This amendment is prompted by a report of a loose vertical fin, which was discovered during a post-flight inspection. The actions specified in this AD are intended to prevent loss of torque of the bolts, which could lead to fracture of the bolts, separation of the vertical fin from the helicopter, and loss of control of the helicopter.

DATES: Effective August 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 24, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–52–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry Edmiston, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5158, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on BHTC Model 230 helicopters. Transport Canada advises that, in one instance, loss of torque on the bolts resulted in the fracture of four of the eight bolts and a loose vertical fin on a Model 230 helicopter.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 230–98–14, Revision A, dated June 9, 1998 (ASB), which specifies a bolt torque check within 25 hours after receipt of the ASB; removal, inspection, and installation of the vertical fin at the next scheduled 150-hour inspection after receipt of the ASB; and verifying the bolt torque within 5 to 10 hours after each fin removal and installation, and at every 150 hours of operation. BHTC also issued Bell Helicopter Textron Technical Bulletin No. 230–98–23, Revision A, dated July 1, 1998, which specifies a modification of the vertical fin attachment fitting and tail boom fitting to permit installation of increased diameter fin attachment hardware. Transport Canada classified these service bulletins as mandatory and issued AD CF–98–22, dated August 7, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of the Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or

develop on other BHTC Model 230 helicopters of the same type design registered in the United States, this AD is being issued to prevent loss of torque of the bolts, which could lead to fracture of the bolts, separation of the vertical fin from the helicopter, and subsequent loss of control of the helicopter. This AD requires verifying the torque on the bolts; inspecting the vertical fin and tail boom fittings for cracks, elongation of bolt holes, distortion and corrosion; and re-verifying the torque on the bolts after inspecting the fittings. The bolt torque must also be verified at specified intervals after accomplishing the initial inspections. The actions are required to be accomplished in accordance with the bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, verifying the torque is required within 25 hours time-in-service, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Cost Impact

The FAA estimates that 17 helicopters will be affected by this AD, that it will take approximately 8 work hours to accomplish the initial torque verifications and vertical fin inspection, 1 work hour to accomplish repetitive torque verification and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators for the initial inspection and 1 recurring inspection is estimated to be $9,180, assuming no helicopters require modification due to elongated bolt holes.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–52–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–16–09 Bell Helicopter Textron Canada: Amendment 39–11244. Docket No. 98–SW–52–AD.

Applicability: Model 230 helicopters, serial numbers 23001 through 23038, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of torque of the vertical fin attachment bolts (bolts), which could lead to fracture of the bolts, separation of the vertical fin from the helicopter, and subsequent loss of control of the helicopter accomplish the following:

(a) Within 25 hours time-in-service (TIS), verify the torque on the bolts in accordance with Part I of the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletin No. 230–98–14, Revision A, dated June 9, 1998 (ASB).

(b) On or before the next 150 hour TIS inspection, inspect the vertical fin fitting and tail boom fitting for cracks, elongated bolt holes, distortion, and corrosion in accordance with Part II of the Accomplishment Instructions in the ASB. If elongation of a bolt hole is detected, incorporate the modifications specified in Bell Helicopter Textron Technical Bulletin No. 230–98–23, Revision A, dated July 1, 1998.

(c) After the inspection required by paragraph (b) and after at least 5 hours TIS but within 10 hours TIS, re-verify the torque on the bolts in accordance with Part III, Special Inspections, Step 1 of the Accomplishment Instructions in the ASB.

(d) Thereafter, at intervals not to exceed 150 hours TIS, verify the torque of the vertical fin attachment bolts in accordance with the 150 flight hour scheduled inspections, Part III, of the Accomplishment Instructions in the ASB.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin No. 230–98–14, Revision A, dated June 9, 1998 and Bell Helicopter Textron Technical Bulletin No. 230–98–23, Revision A, dated July 1, 1998. These incorporations by reference were approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 24, 1999.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–22, dated August 7, 1998.

Issued in Fort Worth, Texas, on July 28, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–20057 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–123–AD; Amendment 39–11247; AD 99–16–12]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model Beech 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model Beech 1900D airplanes that are equipped with the electric elevator trim option. This AD requires installing electric elevator trim servo covers. This AD is the result of reports of the affected airplanes leaving the factory without electric elevator trim servo covers installed. If the covers are not installed, moisture could freeze on parts of the electric actuator. The actions specified by this AD are intended to prevent failure of the electric elevator trim and difficulty operating the manual elevator trim caused by moisture freezing on parts of the electric actuator installation, which would result in the pilot having to apply constant pressure to the control wheel during flight.

DATES: Effective September 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 27, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–123–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Dixon, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4152; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model Beech 1900D airplanes that are equipped with the electric elevator trim option was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 3, 1999 (64 FR 10237). The NPRM proposed to require installing electric elevator trim servo covers. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with the instructions to Raytheon Kit No. 129–5035–1, as referenced in Raytheon Mandatory Service Bulletin SB 27–3080, Issued: October, 1998, and Raytheon Mandatory Service Bulletin SB 27–3080, Revision 1, Issued: December, 1998.

The NPRM was the result of reports of the affected airplanes leaving the factory without electric elevator trim servo covers installed. If the covers are not installed, moisture could freeze on parts of the electric actuator.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 205 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to accomplish the installation, and that the average labor rate is approximately $60 an hour. Raytheon will provide parts free of charge under warranty credit. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to $61,500.

Raytheon will also give warranty credit for labor until October 31, 1999.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–16–12 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Amendment 39–11247; Docket No. 98–CE–123–AD.

Applicability: Model Beech 1900D airplanes, serial numbers UE–1 through UE–246, certificated in any category, that incorporate the electric elevator trim option.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 600 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent failure of the electric elevator trim and difficulty operating the manual elevator trim caused by moisture freezing on parts of the electric actuator installation, which would result in the pilot having to apply constant pressure to the control wheel during flight, accomplish the following:

(a) Install electric elevator trim servo covers in accordance with the instructions in Kit No. 129–5035–1, as referenced in Raytheon Mandatory Service Bulletin SB 27–3080, Issued: October, 1998, and Raytheon Mandatory Service Bulletin SB 27–3080, Revision 1, Issued: December, 1998.

Note 2: The compliance time of this AD takes precedence over the compliance time specified in Raytheon Mandatory Service Bulletin SB 27–3080, Revision 1, Issued: December, 1998.

(b) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The installation required by this AD shall be done in accordance with the instructions in Kit No. 129–5035–1, as referenced in Raytheon Mandatory Service Bulletin SB 27–3080, Issued: October, 1998, and Raytheon Mandatory Service Bulletin SB 27–3080, Revision 1, Issued: December, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on September 27, 1999.

Issued in Kansas City, Missouri, on July 29, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20056 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–189–AD, Amendment 39–11249, AD 99–16–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes. This action requires a one-time inspection of the autopilot systems for proper engagement to determine if the main electro valve electrical connectors of the yaw, roll, and pitch autopilot actuators are correctly installed; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent erratic movements of the ailerons, elevator, and/or rudder that are commanded by discrepant autopilot actuators, which could result in reduced controllability of the airplane.

DATES: Effective August 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in this AD may be obtained from Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Model A300, A310, and A300–600 series airplanes. One operator of an Airbus Model A300–600 reported high rudder forces and uncommanded rudder inputs during final approach. The uncommanded rudder inputs caused deflections of the rudder control surface resulting in yawing of the airplane. Investigation of the incident is ongoing, but preliminary results indicate that failure of both the main valve and the clutch valve of the autopilot yaw actuator can lead to the actuator generating uncommanded rudder deflections. The DGAC advises that the same autopilot actuator is used for roll and pitch control during autopilot operation, and this failure scenario can result in uncommanded deflections of the aileron and elevator control surfaces.

Preliminary results of the investigation of the incident airplane's autopilot yaw actuator indicate that the electrical connectors between the actuator's two main valves and the airplane's two flight control computers (FCC) were crossed between side 1 and side 2. This hidden failure in combination with a failure of the clutch valve resulted in the autopilot yaw actuator remaining engaged when the crew disconnected the autopilot, allowing the actuator to remain hydraulically pressurized and provide inputs to the rudder and the rudder pedals.

This condition, if not corrected, could result in uncommanded deflections of the ailerons, elevator, and/or rudder, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus Industrie has issued All Operator Telexes (AOT) A300–22A0114 (for Model A300 series airplanes), A310–22A2050 (for Model A310 series airplanes), and A300–600–22A6039 (for Model A300–600 series airplanes); each dated May 27, 1999. These AOT's describe procedures for a one-time inspection of the autopilot systems for proper engagement to determine if the main electro valve electrical connectors of the yaw, roll, and pitch autopilot actuators are correctly installed. If autopilot systems 1 and 2 cannot be engaged, then the AOT's describe a visual inspection of the main electro valve electrical connectors of all autopilot actuators to determine whether any electrical connection is incorrectly installed; and corrective action by restoring the correct installation, if necessary. The DGAC classified these AOT's as mandatory and issued French airworthiness directive 1999–268–292(B), dated June 30, 1999; in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent erratic movements of the ailerons, elevator, and/or rudder commanded by discrepant autopilot actuators, which could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the AOT's described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–189–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant

regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–16–14 Airbus Industrie: Amendment 39–11249. Docket 99–NM–189–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent erratic movements of the ailerons, elevator, and/or rudder that are commanded by discrepant autopilot actuators, which could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) Within 10 days after the effective date of this AD, perform a one-time inspection of the auto pilot systems for proper engagement to determine if the main electro valve electrical connectors of the yaw, roll, and pitch autopilot actuators are correctly installed, in accordance with the procedure specified in paragraph 4.2 of Airbus Industrie All Operators Telex (AOT) A300–22A0114 (for Model A300 series airplanes), A310–22A2050 (for Model A310 series airplanes), or A300–600–22A6039 (for Model A300–600 series airplanes); each dated May 27, 1999; as applicable. If autopilot systems 1 and 2 cannot be engaged: Prior to further flight, perform a detailed inspection of the main electro valve electrical connectors of the yaw, roll, and pitch autopilot actuators for proper installation, and correct any discrepancy; in accordance with paragraph 4.2 of the applicable AOT.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus All Operators Telex A300–22A0114, dated May 27, 1999; Airbus All Operators Telex A310–22A2050, dated May 27, 1999; and Airbus All Operators Telex A300–600–22A6039, dated May 27, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–288–292(B) dated June 30, 1999.

(e) This amendment becomes effective on August 24, 1999.

Issued in Renton, Washington, on July 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20325 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–27]

Amendment to Class E Airspace; Hebron, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Hebron Municipal Airport, Hebron, NE. The FAA has developed Global Positioning System (GPS) Runway (RWY) 12 and GPS RWY 30 Standard Instrument Approach Procedures (SIAPs) to serve Hebron Municipal Airport, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 12 and GPS RWY 30 SIAPs in controlled airspace.

In addition a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 12 and GPS RWY 30 SIAPs, amend the ARP, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation

Administration, Docket Number 99–ACE–27, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 12 and GPS RWY 30 SIAPs to serve the Hebron Municipal Airport, Hebron, NE. The amendment to Class E airspace at Hebron, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. An amendment to the ARP is included in this document. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the adddress specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–27." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the varous levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1958–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Hebron, NE [Revised]

Hebron Municipal Airport, NE
(Lat. 40°09′08″ N., long. 97°35′13″ W.)
Hebron NDB
(Lat. 40°09′01″ N., long. 97°35′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Hebron Municipal Airport and within 2.6 miles each side of the 315° bearing from the Hebron NDB extending from the 6.3-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on July 27, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–20421 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–29]

Amendment to Class E Airspace; Wayne, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Wayne Municipal Airport, Wayne, NE. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17 and GPS RWY 35 Standard Instrument Approach Procedures (SIAPs) to serve Wayne Municipal Airport, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 17 and GPS RWY 35 SIAPs in controlled airspace.

In addition, a minor revision to the Airport Reference Point (ARP) and revised coordinates for the Wayne Nondirectional Radio Beacon (NDB) are included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 17 and GPS RWY 35 SIAPs, revise the ARP and NDB coordinates, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–29, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17 and GPS RWY 35 SIAPs to serve the Wayne Municipal Airport, Wayne, NE. The amendment to Class E airspace at Wayne, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules.

The amendment at Wayne Municipal Airport, NE, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–29." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and

unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Wayne, NE [Revised]

Wayne Municipal Airport, NE
(Lat. 42°14′31″N., long 96°58′53″W.)
Wayne NDB
(Lat. 42°14′10″N., long 96°59′09″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Wayne Municipal Airport and within 2.6 miles each side of the 047° bearing from the Wayne NDB extending from the 6.5-mile radius to 7.4 miles northeast of the airport.

* * * * *

Issued in Kansas City, MO, on July 27, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–20420 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–17]

Amendment to Class E Airspace; Clarinda, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E at Clarinda, IA.

DATES: The direct final rule published at 64 FR 19266 was effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 20, 1999 (64 FR 19266). Due to an administrative error the Direct final rule; confirmation of effective date was not published in the **Federal Register** prior to the effective date of July 15, 1999. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule became effective on that date.

Issued in Kansas City, MO on July 27, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–20419 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–31]

Amendment to Class E Airspace; Jefferson, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Jefferson Municipal Airport, Jefferson, IA. The FAA has developed Global Positioning System (GPS) Runway (RWY) 14, GPS RWY 32 and Nondirectional Radio Beacon (NDB) RWY 32, Standard Instrument Approach Procedures (SIAPs) to serve Jefferson Municipal Airport, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 14, GPS RWY 32, and NDB RWY 32 SIAPs in controlled airspace.

In addition, a minor revision to the Airport Reference Point (ARP) and revised coordinates for the Jefferson NDB are included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 14, GPS RWY 32, and NDB RWY 32 SIAPs, revised the ARP, revise the NDB coordinates, and to segregate aircraft using instrument approach procedures in instrument conditions from Aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 16, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–31, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division,

Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 14, GPS RWY 32, and NDB RWY 32 SIAPs to serve the Jefferson Municipal Airport, Jefferson, IA. The amendment to Class E airspace at Jefferson, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules.

The amendment at Jefferson Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–31." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Jefferson, IA [Revised]

Jefferson Municipal Airport, IA
(Lat. 42°00′37″N., long. 94°20′33″W.)
Jefferson NDB
(Lat. 42°00′49″N., long. 94°20′34″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Jefferson Municipal Airport and within 1.3 miles each side of the 152° bearing from the Jefferson NDB extending from the 6.3-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on July 27, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–20418 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–32]

Amendment to Class E Airspace; Smith Center, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Smith Center Municipal Airport, Smith Center, KS. The FAA has developed Global Positioning system (GPS) Runway (RWY) 17, GPS RWY 35 and VOR Omnidirectional Range/Distance Measuring Equipment (VOR/DME) or GPS–A Standard Instrument Approach Procedures (SIAPs) to serve Smith Center Municipal Airport, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 17, GPS RWY 35, and VOR/DME or GPS–A SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 17, GPS RWSY 35, and VOR/DME or GPS–A SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 16, 1999.

ADDRESSES: send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–32, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17, GPS RWY 35, and VOR/DME or GPS–A SIAPs to serve the Smith Center Municipal Airport, Smith Center, KS. The amendment to Class E airspace at Smith Center, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Smith Center Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in pargraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–32." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparpation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of

Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Smith Center, KS [Revised]

Smith Center Municipal Airport, KS
(Lat. 39°45′40″N., 98°47′36″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Smith Center Municipal Airport.

* * * * *

Issued in Kansas City, MO, on July 27, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–20417 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–14]

RIN 2120–AA66

Modification of VOR Federal Airways, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the legal descriptions of eight Very High Frequency Omnidirectional Range (VOR) Federal airways: V–10, V–12, V–13, V–61, V–116, V–159, V–502, and V–508. This action also removes V–65 because the modification to V–13 is a more expedient route, therefore, V–65 is no longer required. The FAA is taking these actions due to the relocation of the Kansas City Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), from its current location to the Kansas City International Airport, MO.

DATES: Effective 0901 UTC, September 9, 1999.

Comment date: Comments for inclusion in the Rules Docket must be received on or before September 8, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ACE–500, Docket No. 99–ACE–14, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Since previous rulemaking actions similar to this one have not been controversial, the FAA does not anticipate any adverse comments on this case. Therefore, unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the specified closing date for comments will be considered, and this rule may be amended or withdrawn in light of comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Airspace Docket No. 99–ACE–14." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to 14 CFR part 71 modifies the legal descriptions of eight VOR Federal airways: V–10, V–12, V–13, V–61, V–116, V–159, V–502, and V–508. This action also removes V–65 because the modification to V–13 is a more expedient route, therefore, V–65 is no longer required. The FAA is taking these actions due to the relocation of the Kansas City VORTAC from its current location to the Kansas City International Airport, approximately seven miles west.

Domestic VOR Federal Airways are published in paragraph 6010(a) of the FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is not controversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–10 [Revised]

From Pueblo, CO; 18 miles, 48 miles, 60 MSL, Lamar, CO; Garden City, KS; Dodge City, KS; Hutchinson, KS; Emporia, KS; Johnson County, KS; Napoleon, MO; Kirksville, MO; Burlington, IA; Bradford, IL; INT Bradford 058° and Joliet, IL, 287° radials. From INT Chicago Heights, IL, 358° and Gipper, MI, 271° radials; Gipper; Ltichfield, MI; INT Litchfield 101° and Carleton, MI, 262° radials; Carleton; INT Jefferson, OH, 279° and Youngstown, OH, 320° radials; Youngstown; INT Youngstown 116° and Revloc, PA, 300° radials; Revloc; INT Revloc; INT Revloc 107° and Lancaster, PA, 280° radials; Lancaster. The airspace within Canada is excluded.

* * * * *

* * * * *

V–12 [Revised]

From Gaviota, CA, via San Marcus, CA; Palmdale, CA; 38 miles, 6 miles wide, Hector, CA; 12 miles, 38 miles, 85 MSL, 14 miles, 75 MSL, Needles, CA; 45 miles, 34 miles, 95 MSL, Drake, AZ; Winslow, AZ; 30 miles 85 MSL, Zuni, NM; Albuquerque, NM; Otto, NM; Anton Chico, NM; Tucumcari, NM; Amarillo, TX; Gage, OK; Anthony, KS; Wichita, KS; Emporia, KS; Johnson County, KS; Napoleon, MO; INT Napoleon 095° and Columbia, MO, 292° radials; Columbia; Foristell, MO; Troy, IL; Bible Grove, IL; Shelbyville, IN; Richmond, IN; Dayton, OH; Appleton, OH, Newcomerstown, OH; Allegheny, PA; Johnstown, PA; Harrisburg, PA; INT Harrisburg 092° and Pottstown, PA, 278° radials; to Pottstown.

V–13 [Revised]

From McAllen, TX, via Harlingen, TX; INT Harlingen 033° and Corpus Christi, TX, 178° radials; Corpus Christi; INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios; Humble, TX; Lufkin, TX; Belcher, LA; Texarkana, AR; Rich Mountain, OK; Fort Smith, AR; INT Fort Smith 006° and Razorback, AR, 190° radials; Razorback; Neosho, MO; Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Farmington, MN; INT Farmington 017° and Siren, WI, 218° radials; Siren; Duluth, MN; to Thunder Bay, ON, Canada. The airspace outside the United States is excluded.

* * * * *

V–61 [Revised]

From Grand Island, NE; Pawnee City, NE; Robinson, KS; to INT Robinson 141° and St. Joseph, MO, 211° radials.

* * * * *

V–65 [Removed]

* * * * *

V–116 [Revised]

From INT Kansas City, MO, 077° and Napoleon, MO 005° radials, via Macon, MO; Quincy, IL; Peoria, IL; Pontiac, IL; Joliet, IL. From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials; INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler; Kalamazoo, MI; INT Kalamazoo 089° and Jackson, MI, 265° radials; Mackson; INT Jackson 089° and Salem MI, 252° radials; Salem; Windsor, ON, Canada; INT Windsor 092° and Erie, PA, 281° radials; Erie; Bradford, PA; Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta. The airspace within Canada is excluded.

* * * * *

V–159 [Revised]

From Virginia Key, FL: INT Virginia Key 344° and Vero Beach, FL, 178° rdials; Vero Beach; INT Vero Beach 318° and Orlando, FL, 140° radials; Orlando; Ocala, FL; Cross City, FL; Greenville, FL; Pecan, GA; Eufaula, AL; Tuskegee, AL; Valcan, AL; Hamilton, AL; Holly Springs, MS; Gilmore, AR; Walnut Ridge, AR; Dogwood, MO; Springfield, MO; Napoleon, MO; INT Napoleon 005° and St. Joseph, MO, 122° radials; St. Joseph; Omaha, NE; Sioux City, IA; Yankton, SD; Mitchell, SD; to Huron, SD.

* * * * *

V–502 [Revised]

From Dodge City, KS; INT Dodge City 060° and Hutchinson, KS, 296° radials; Hutchinson; Emporia, KS; Kansas City, MO; Braymer, MO; to Kirksville, MO.

* * * * *

V–508 [Revised]

From Hill City, KS; Hays, KS; Salina, KS, INT Salina 082° and Manhattan, KS, 207° radials; Manhattan; INT Manhattan 078° and Topeka, KS, 293° radials; Topeka; INT Topeka 112° and Johnson County, KS, 298° radials; to Johnson County.

* * * * *

Issued in Washington, DC, on August 2, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–20394 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 10 and 12

Rules of Practice and Reperation Rules; Final Rules; Corrections

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rules; technical corrections.

SUMMARY: On October 19, 1998, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** (63 FR 55784) final regulations amending its rules of practice ("Rules"), 17 CFR part 10 (1998), which govern most adjudicatory proceedings brought under the Commodity Exchange Act, as amended ("Act"), other than reparations proceedings. The Commission has determined to make certain technical corrections to the rules to clarify its delegation of authority and to eliminate an obsolete retroactivity provision.

In addition, the Commission has determined to make a technical correction to its Reparation Rules, 17 CFR part 12 (1994), to clarify its delegation of authority.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Assistant General Counsel, Office of General Counsel, (202) 418–5120.

SUPPLEMENTARY INFORMATION: The Commission recently has undertaken a reexamination of its part 10 and part 12 rules and has identified those rules that require amendment to effect technical or conforming changes.

I. Rules Being Amended

The following Commission rules are being amended.

A. 17 CFR 10.109

Commission Rule 10.109 delegates certain authority to the Chief of the Opinions Section. As adopted, the rule authorizes the Chief or a person under his direction to handle particular procedural and technical matters and, in his discretion, to submit any matters otherwise falling within the terms of this rule to the Commission for its consideration. There is no longer an "Opinions Section." Consequently, references in Rule 10.109 to "the Chief of the Opinions Section" have been changed to "the General Counsel."

The current Rules became applicable to all proceedings pending as of August 20, 1985. Since there are no matters pending before the Commission which date back to August 20, 1985, that provision is unnecessary and is being deleted.

B. 17 CFR 12.408

Commission Rule 12.408 delegates certain authority to the Deputy General Counsel for Opinions. As adopted, the rule authorizes the Deputy General Counsel for Opinions or a person under his direction designated by him to perform specific procedural and technical functions and, in his discretion, to submit any matters otherwise falling within the terms of this rule to the Commission for its consideration. There is no longer a Deputy General Counsel for Opinions. Consequently, references in Rule 12.408 to "the Deputy General Counsel for Opinions" have been changed to "the General Counsel."

C. Administrative Procedure Act

The Commission has determined that the Administrative Procedure Act, 5 U.S.C. 553, does not require notice of proposed rulemaking and an opportunity for public participation in connection with these corrections. In this regard, the Commission notes that such notice and opportunity for comment is unnecessary because these technical corrections are related solely to agency organization, procedure and practice and make technical corrections. Accordingly, the Commission finds good cause to make these corrections effective August 2, 1999, 5 U.S.C. 553(b)(B), 553(d)(3).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(4) and 2(a)(11), the Commission corrects Chapter I of Title 17 of the Code of Federal Regulations as follows:

List of Subjects

17 CFR Part 10

Administrative practice and procedure, Commodity exchanges, Commodity futures, Rules of practice before administrative agency.

17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations.

PART 10—RULES OF PRACTICE

1. The authority citation for part 10 continues to read as follows:

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391; 7 U.S.C. 4a(j), unless otherwise noted.

2. Section 10.109 is amended by revising the introductory text, paragraph (a)(2)(ii) and (b) and by removing paragraph (d) to read as follows:

§ 10.109 Delegation of authority to the General Counsel.

The Commodity Futures Trading Commission hereby delegates, until such time as it orders otherwise, the following function to the General Counsel, to be performed by him or by such person or persons under his direction as he may designate from time to time:

(a) * * *

(2) * * *

(ii) Where, in his judgment, clarification or supplementation of the initial decision or other order disposing of the entire proceeding prior to Commission review is appropriate; however, the General Counsel or his designee may not direct that the record be reopened;

* * * * * *

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which the General Counsel or his designee believes it appropriate, he may submit the matter to the Commission for its consideration;

* * * * *

PART 12—RULES RELATING TO REPARATION PROCEEDINGS

1. The authority citation for part 12 continues to read as follows:

Authority: 7 U.S.C. 4a(j), 12a(5), and 18.

2. Section 12.408 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 12.408 Delegation of authority to the General Counsel.

Pursuant to the authority granted under section 2(a)(4) and 2(a)(11) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(c) and 4a(j), the Commission hereby delegates, until such time as it orders otherwise, the following functions to the General Counsel, to be performed by him or such person or persons under his direction as he may designate from time to time:

* * * * *

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which he believes it appropriate, the General Counsel or his designee may

submit the matter to the Commission for its consideration.

* * * * *

Issued in Washington, DC this 2nd day of August, 1999, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–20275 Filed 8–6–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 91F–0228]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucrose Acetate Isobutyrate; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 4, 1999 (64 FR 29949). The document amended the food additive regulations to provide for the safe use of sucrose acetate isobutyrate (SAIB) as a stabilizer of emulsions of flavoring oils used in nonalcoholic beverages. The document was published with an error. This document corrects that error.

EFFECTIVE DATE: June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3106.

In FR Doc. 99–14147, appearing on page 29949 in the **Federal Register** of Friday, June 4, 1999, the following correction is made:

§ 172.833 [Corrected]

On page 29958, in the second column, in § 172.833 *Sucrose acetate isobutyrate*, in paragraph (c), in the second line, the citation "§ 170.3(o)(8)" is corrected to read "§ 170.3(o)(28)".

Dated: August 3, 1999

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation

[FR Doc. 99–20366 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8834]

RIN 1545–AU22 and 1545–AX30

Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the Income Tax Regulations by removing temporary regulations on the treatment of distributions to foreign persons under section 367(e) of the Internal Revenue Code and adding final regulations under section 367(e). These final regulations are necessary to implement section 367(e)(1) and (2), as added to the Internal Revenue Code by the Tax Reform Act of 1986, which affects U.S. corporations.

DATES: These regulations are effective August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Guy A. Bracuti, 202–622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this final rule has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1487.

The collections of information in this regulation are in §§ 1.367(e)–1(d)(2), 1.367(e)–1(d)(3), 1.367(e)–2(b)(2), and 1.6038B–1(e). This information is required to obtain certain exemptions from taxation and to satisfy other information reporting requirements imposed by the Internal Revenue Code (Code). This information will be used by the Internal Revenue Service to verify whether a taxpayer is entitled to an exemption from income tax. The likely respondents are large corporations.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by October 8, 1999.

Comments are specifically requested concerning: Whether the collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; The accuracy of the estimated burden associated with the collection of information (see below); How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. The estimated total annual reporting and/or recordkeeping burden is 2,471 hours. The estimated average annual burden hours per respondent and/or recordkeeper is 11 hours. The estimated number of respondents and/or recordkeepers is 217. The estimated annual frequency of responses is once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 367(e)(1) amended the Code by providing regulatory authority to tax gain on a domestic distributing corporation's section 355 distribution of stock or securities to foreign persons. Section 367(e)(2) amended the Code by requiring a liquidating corporation to recognize gain (or loss) attributable to property distributed in a section 332 liquidation to a foreign parent corporation, except to the extent regulations provide otherwise.

On January 16, 1990, temporary regulations under section 367(e)(1) and (2) were published in the **Federal Register** (55 FR 1406 (TD 8280, 1990–1 C.B. 80)). A cross-referenced Notice of Proposed Rulemaking was published on that same date under RIN 1545–AL35 (55 FR 1472 (1990–1 C.B. 678)). The temporary regulations were proposed and issued to implement section 367(e) of the Internal Revenue Code of 1986 (Code), as amended by sections 631(d)(1) and 1810(g) of the Tax Reform Act of 1986 (100 Stat. 2085, 2272, Public

Law 99–514 (1986–3 C.B.)). On January 25, 1993, final regulations under section 367(e)(1) were published in the **Federal Register** (58 FR 5927 (TD 8472, 1993–1 C.B. 51)). RIN 1545–AL35 was thereby closed. The preamble of TD 8472 stated that final regulations under section 367(e)(2) would be promulgated in a separate Treasury decision and that taxpayers could apply the provisions contained in § 1.367(e)–2T to distributions occurring on or after January 16, 1993, and prior to the date that is 30 days after final regulations under section 367(e)(2) are published in the **Federal Register**. The final regulations under section 367(e)(1) were removed and replaced with temporary regulations that were published in the **Federal Register** on August 14, 1996 (61 FR 42165 (TD 8682, 1996–2 C.B. 12)). A cross-referenced Notice of Proposed Rulemaking was published on August 14, 1996 under RIN 1545–AU22 (61 FR 42217). A new RIN (RIN 1545–AX30) has been issued under which the section 367(e)(2) proposed regulations will be finalized.

No significant comments were received with respect to the 1996 Notice of Proposed Rulemaking with respect to section 367(e)(1). Comments were received with respect to the 1990 Notice of Proposed Rulemaking with respect to sections 367(e)(1) and 367(e)(2). No hearings were held on either Notice of Proposed Rulemaking.

Explanation of Revisions and Summary of Comments

I. Overview

These final regulations address the tax consequences of a distribution by a domestic corporation of its subsidiary's stock to foreign shareholders in a transaction described in section 355 (outbound section 355 distribution), a liquidation of a domestic corporation into a foreign parent corporation in a transaction described in section 332 (outbound liquidation), and a liquidation of a foreign corporation into a foreign parent corporation in a transaction described in section 332 (foreign-to-foreign liquidation).

Section 367(e) grants the Secretary authority to provide the extent to which a distributing corporation in an outbound section 355 distribution or liquidation or foreign-to-foreign liquidation may obtain the benefit of nonrecognition treatment when it makes the distribution to a foreign shareholder. The purpose of section 367 is to prevent the inappropriate avoidance of U.S. tax that can arise from the application of nonrecognition provisions in the cross-border context.

A. Outbound Section 355 Distributions

Section 367(e)(1) provides that a distribution under section 355 (or so much of section 356 as relates to section 355) by a U.S. corporation to its foreign shareholders is accorded nonrecognition treatment except to the extent provided in regulations. Section 1.367(e)–1 provides the circumstances under which such a distribution is taxable.

The legislative history to section 367(e)(1) provides that "transfers of stock by domestic corporations to foreign persons pursuant to Code section 355 * * * will give rise to the recognition of gain under Code section 367(e), to the extent provided in regulations. The committee expects that the Secretary will carefully consider the extent to which it is appropriate, in view of the purpose of section 367(e), to require the recognition of gain upon the transfer of the stock of a domestic corporation to foreign persons under section 355." H.R. Rep. 426, 99th Cong., 1st Sess. 931 (1985); S. Rep. 313, 99th Cong., 2nd Sess. 950 (1986).

The temporary regulations under section 367(e)(1) provide a general rule that a domestic distributing corporation is taxed on a distribution of controlled stock to foreign shareholders, regardless of whether the controlled corporation is a domestic corporation or a foreign corporation. Several exceptions are provided in the current temporary regulations in the case of an outbound distribution of stock of a domestic controlled corporation.

Consistent with the legislative history above and the temporary regulations, the final regulations continue to provide that an outbound section 355 distribution of a foreign controlled corporation is taxable to the distributing corporation. See also sections 367(b) and 1248(f) of the Code. In the case of an outbound section 355 distribution of a domestic controlled corporation, however, the final regulations amend the temporary regulations by providing that the distributing corporation shall obtain the benefit of nonrecognition treatment. In weighing the administrative burdens to taxpayers and the Government in connection with rules requiring gain recognition agreements and similar arrangements, the IRS and Treasury believe that adequate protections are in place to protect the policies of section 367(e)(1). Specifically, significant protections are provided in sections 355(d) and (e) and the device and continuity of interest requirements of section 355.

B. Outbound and Foreign-to-Foreign Liquidations

Generally, a liquidating corporation does not recognize gain or loss on a distribution in complete liquidation into a parent corporation that meets the ownership requirements of section 332(b). See Section 337(a) of the Code. Section 367(e)(2) provides that a section 332 liquidation into a foreign parent is taxed to the liquidating corporation, except to the extent provided in regulations. Section 1.367(e)–2 provides the circumstances under which gain or loss on assets distributed in a section 332 liquidation into a foreign parent is not currently recognized.

Section 332 was enacted in 1935 to encourage the simplification of corporate structures and was retained in 1986 as an exception to the repeal of the *General Utilities* doctrine. Consistent with the policies of section 332, the final regulations generally tax the distribution of assets in an outbound liquidation but provide exceptions for assets over which the United States retains adequate taxing jurisdiction. The final regulations retain the exceptions in the proposed regulations for a distribution of assets used in the conduct of a U.S. trade or business and for a distribution of a U.S. real property interest (USRPI). In addition, the final regulations provide a new exception for a distribution of stock of a domestic subsidiary that is 80 percent owned by vote and value directly by the liquidating corporation.

In a foreign-to-foreign liquidation, the final regulations generally adopt the rules provided in the proposed regulations. Thus, the regulations generally provide that the liquidation is not taxable, except to the extent that assets used in a U.S. trade or business are distributed and not used in a U.S. trade or business over the subsequent ten-year period. The ten-year period (which is also used in the U.S. trade or business exception for outbound liquidations) supplements the principles contained in section 864(c)(7). The regulations also tax a distribution of assets that had formerly been used in the conduct of a U.S. trade or business by the liquidating corporation.

II. Details of Provisions

A. Outbound Section 355 Distributions

The final regulations amend the rule in the temporary regulations and do not require gain recognition on an outbound section 355 distribution of the stock or securities of a domestic corporation. The final regulations continue to require gain recognition on an outbound section

355 distribution of the stock or securities of a foreign corporation.

Where gain recognition is required, the final regulations amend the rules for determining the residency status of distributees of stock or securities in an outbound section 355 distribution. A distributee is presumed to be a person who is not a qualified U.S. person (i.e., a person that is not a U.S. citizen, resident, or corporation), except to the extent that the distributing corporation certifies that the distributee is a qualified U.S. person. A publicly traded distributing corporation may use a reasonable analysis with respect to distributees who are not five percent shareholders of publicly traded stock to demonstrate the number of distributees that are qualified U.S. persons. A reasonable analysis includes a determination of the actual number of distributees that are qualified U.S. persons or a reasonable statistical analysis of shareholder records and other relevant information. The final regulations also broaden the look-through rule in the temporary regulations for determining the identity of the distributees of stock or securities of a controlled corporation received by a partnership, trust or estate to include stock or securities received by a disregarded entity.

Section 1.367(e)–1 is applicable to distributions occurring in taxable years ending after August 8, 1999.

B. Outbound and Foreign-to-Foreign Liquidations

1. General Rule

The final regulations under section 367(e)(2) contain two sets of rules, depending upon whether the liquidating corporation is domestic or foreign. The final regulations retain the rules of the proposed regulations with respect to foreign-to-foreign liquidations with only minor modification.

In the case of an outbound liquidation, a domestic liquidating corporation is generally required to recognize gain (or loss) on the distributed assets. In determining the amount of gain or loss recognized under the general rule, the proposed regulations contain an anti-netting rule and an anti-stuffing rule that limit the domestic liquidating corporation's ability to recognize losses.

Several commentators criticized the anti-netting rule contained in the proposed regulations as overly broad because the rule prohibits the netting of ordinary losses against capital gains. The final regulations take this into account and allow the netting of ordinary or capital losses against ordinary or capital gains to the same extent allowed under general rules of the Code, including section 1211.

Commentators also questioned the propriety of the anti-stuffing rule in the proposed regulations and argued that the anti-stuffing rules contained in section 336(d) and the loss limitation rules of section 382 should sufficiently address loss trafficking concerns. The anti-stuffing rule contained in the proposed regulations disallows the recognition of losses attributable to property acquired in capital contributions, section 332 liquidations, and exchanges under sections 351 and 361 within five years of the distribution.

The IRS and Treasury do not believe that sections 336(d) and 382 alone adequately address the Government's loss trafficking concerns. For example, neither section 336(d) nor 382 would limit a liquidating corporation's ability to recognize a loss that is acquired in a reorganization among affiliates even though the loss could not have been recognized if those corporations were liquidated individually. The anti-stuffing rule in the proposed regulations also does not adequately protect against the use of losses to offset gains where the loss corporation acquires the gain property.

After considering the issue, the Treasury and the IRS have amended the anti-stuffing rule in the final regulations to limit the recognition of built-in gains and losses attributable to property received by the domestic liquidating corporation in a reorganization or liquidation occurring within two years prior to the distribution. Sections 336(d) and 382 also limit loss recognition in applicable circumstances.

Comments also requested clarification on the treatment of a distribution of an interest in a publicly traded partnership (PTP). The final regulations provide that an interest in a PTP that is treated as a corporation under section 7704(a) shall be treated in the same manner as stock.

The final regulations retain the look-through rule for a domestic liquidating corporation's distribution of a partnership interest to its foreign parent. The look-through rule provides that, for purposes of the regulation, a domestic liquidating corporation is treated as distributing its proportionate share of the partnership property. The Treasury and the IRS hereby request comments on the proper method of calculating such gain or loss and reserve a section in the final regulations with respect to this issue. Comments should consider the application of similar rules in other cross-border contexts, such as Treas. Reg. § 1.367(a)–1T(c)(3).

2. Exceptions to General Rule

The proposed regulations contain exceptions to the general gain recognition rule for the distribution of property used in a U.S. trade or business and the distribution of a USRPI. The final regulations retain the two exceptions with some modifications and add an additional exception for stock of a domestic subsidiary corporation.

Under the proposed regulations, a domestic liquidating corporation does not recognize gain (or loss) on the distribution of property used in a U.S. trade or business, if: (1) The foreign parent is not a controlled foreign corporation; (2) the foreign parent continues to use the property in a U.S. trade or business for a ten-year period following the distribution of such property; and (3) the domestic liquidating corporation and the foreign parent attach a statement to their U.S. income tax returns for the year of distribution. If within the ten-year period following a distribution, the property ceases to be used in the foreign parent's U.S. trade or business other than by a disposition, then the foreign parent is required to file an amended U.S. income tax return on behalf of the domestic liquidating corporation and recognize gain thereon. If the foreign parent disposes of such property, then the foreign parent recognizes gain (or loss) on its U.S. income tax return for the year of disposition in lieu of the domestic liquidating corporation recognizing gain on an amended return for the year of distribution. Also, under the proposed regulations, gain recognition is not triggered on involuntary conversions of such property under section 1033, like-kind exchanges of such property under section 1031, and the abandonment of obsolete or worthless property.

The final regulations modify the U.S. trade or business property exception in response to comments in several respects. First, the final regulations make the exception available to a domestic liquidating corporation that liquidates into a controlled foreign corporation. Second, the final regulations no longer require that the foreign parent file an amended return on behalf of the liquidating corporation when property ceases to be used in the conduct of a U.S. trade or business (whether by disposition or otherwise), provided that the foreign parent properly recognizes gain (or loss in the case of a disposition) as if the property had been sold for fair market value at the time the property ceases to be used in the conduct of a U.S. trade or business. Third, the final regulations

expand the types of dispositions that will not trigger gain recognition. U.S. trade or business property may be transferred to another person without gain recognition, if the transfer is a disposition normally entitled to nonrecognition under the Code and the transferor and transferee satisfy various procedural requirements.

The final regulations retain the exception for a distribution of a USRPI contained in the proposed regulation with only minor modification.

The final regulations add a new exception that allows for nonrecognition of gain on a distribution of stock of a domestic subsidiary that is 80 percent owned (by vote and value) directly by the domestic liquidating corporation, provided that the liquidation does not have as a principal purpose the avoidance of U.S. tax on a subsequent disposition of the domestic subsidiary.

3. General Anti-abuse Rule

The final regulations contain a new anti-abuse rule that allows the Commissioner to require the liquidating corporation to recognize gain (or treat the liquidating corporation as if it had recognized loss) on the distribution of property pursuant to the liquidation if a principal purpose of the liquidation is the avoidance of U.S. tax. The rule would apply, for example, if a principal purpose of a liquidation is the distribution of a domestic liquidating corporation's earnings and profits without a U.S. withholding tax. In certain circumstances, the Service is also concerned about a liquidation of a domestic corporation into a U.S. branch of a foreign corporation in a manner that facilitates the avoidance of U.S. tax, including the inappropriate use of attributes such as net operating losses. Liquidations used to facilitate the avoidance of tax may be challenged under existing law. The Treasury and the IRS hereby solicit comments, however, as to other measures that should be taken to adequately address such transactions, including the more specific identification of the conditions under which liquidated property, particularly securities and other financial instruments, may be considered to be used in a U.S. trade or business.

4. Effective Date

Section 1.367(e)–2 is applicable to distributions occurring 30 days after August 9, 1999 or, if a taxpayer elects, to distributions in taxable years ending after August 8, 1999. In addition, taxpayers may rely on the principles contained in the temporary regulations issued under section 367(e)(2) on January 16, 1990 for distributions occurring prior to 30 days after August 9, 1999.

C. Section 6038B

The regulations under section 6038B are also revised to require reporting for transactions described in section 367(e)(1) and (2) in accordance with the final regulations under section 367(e)(1) and (2).

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collections of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the number of section 367(e) distributions that require reporting under these regulations is estimated to be only 400 per year. Moreover, because these regulations will primarily affect large multinational corporations, it is estimated that out of the 400 transactions very few, if any, will involve small entities. Thus, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small business.

Drafting Information: The principal author of these regulations is Guy A. Bracuti of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for 1.367(e)–1T and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.367(e)–1 also issued under 26 U.S.C. 367(e)(1). Section 1.367(e)–2 also issued under 26 U.S.C. 367(e)(2). * * *

§ 1.367(e)–0T through § 1.367(e)–2T [Removed]

Par. 2. Sections 1.367(e)–0T, 1.367(e)–1T, and 1.367(e)–2T are removed.

Par. 3. Sections 1.367(e)–0, 1.367(e)–1, and 1.367(e)–2 are added to read as follows:

§ 1.367(e)–0 Outline of §§ 1.367(e)–1 and 1.367(e)–2.

This section lists captioned paragraphs contained in §§ 1.367(e)–1 and 1.367(e)–2 as follows:

§ 1.367(e)–1 Distributions described in section 367(e)(1).

(a) Purpose and scope.
(b) Gain recognition.
(1) General rule.
(2) Stock owned through partnerships, disregarded entities, trusts, and estates.
(3) Gain computation.
(4) Treatment of distributee.
(c) Nonrecognition of gain.
(d) Determining whether distributees are qualified U.S. persons.
(1) General rule—presumption of foreign status.
(2) Non-publicly traded distributing corporations.
(3) Publicly traded distributing corporations.
(i) Five percent shareholders.
(ii) Other distributees.
(4) Qualified exchange or other market.
(e) Reporting under section 6038B.
(f) Effective date.

§ 1.367(e)–2 Distributions described in section 367(e)(2).

(a) Purpose and scope.
(1) In general.
(2) Nonapplicability of section 367(a).
(b) Distribution by a domestic corporation.
(1) General rule.
(i) Recognition of gain and loss.
(ii) Operating rules.
(A) General rule.
(B) Overall loss limitation.
(*1*) Overall loss limitation rule.
(*2*) Example.
(C) Special rules for built-in gains and losses attributable to property received in liquidations and reorganizations.
(iii) Distribution of partnership interest.
(A) General rule.
(B) Gain or loss calculation. [Reserved]
(C) Basis adjustments.
(D) Publicly traded partnerships.
(2) Exceptions.
(i) Distribution of property used in a U.S. trade or business.
(A) Conditions for nonrecognition.
(B) Qualifying property.
(C) Required statement.
(*1*) Declaration and certification.
(*2*) Property description.

(3) Distributee identification.
(4) Treaty benefits waiver.
(5) Statute of limitations extension.
(D) Failure to file statement.
(E) Operating rules.
(1) Gain or loss recognition by the foreign distributee corporation.
(i) Taxable dispositions.
(ii) Other triggering events.
(2) Gain recognition by the domestic liquidating corporation.
(i) General rule.
(ii) Amended return.
(iii) Interest.
(iv) Joint and several liability.
(3) Schedule for property no longer used in a U.S. trade or business.
(4) Nontriggering events.
(i) Conversions, certain exchanges, and abandonment.
(ii) Amendment to Master Property Description
(5) Nontriggering transfers to qualified transferees.
(ii) Distribution of certain U.S. real property interests.
(iii) Distribution of stock of domestic subsidiary corporations.
(A) Conditions for nonrecognition.
(B) Exceptions when the liquidating corporation is a U.S. real property holding corporation.
(C) Anti-abuse rule.
(D) Required statement.
(3) Other consequences.
(i) Distributee basis in property.
(ii) Reporting under section 6038B.
(iii) Other rules.
(c) Distribution by a foreign corporation.
(1) General rule—gain and loss not recognized.
(2) Exceptions.
(i) Property used in a U.S. trade or business.
(A) General rule.
(B) Ten-year active U.S. business exception.
(C) Required statement.
(D) Operating rules.
(ii) Property formerly used in a U.S. trade or business.
(3) Other consequences.
(i) Distributee basis in property.
(ii) Other rules.
(d) Anti-abuse rule.
(e) Effective date.

§ 1.367(e)–1 Distributions described in section 367(e)(1).

(a) *Purpose and scope.* This section provides rules for recognition (and nonrecognition) of gain by a domestic corporation (distributing corporation) on a distribution of stock or securities of a corporation (controlled corporation) to foreign persons that is described in section 355. Paragraph (b) of this section contains the general rule that gain is recognized on the distribution to the extent stock or securities of controlled are distributed to foreign persons. Paragraph (c) of this section provides an exception to the gain recognition rule for distributions of stock or securities of a domestic corporation. Paragraph (d) of this section contains rules for determining whether distributees of stock or securities in a section 355 distribution are qualified U.S. persons. Paragraph (e) of this section cross-references section 6038B for certain reporting obligations. Finally, paragraph (f) of this section specifies the effective date of this section.

(b) *Gain recognition*—(1) *General rule.* If a domestic corporation makes a distribution of stock or securities of a corporation that qualifies for nonrecognition under section 355 to a person who is not a qualified U.S. person, then, except as provided in paragraph (c) of this section, the distributing corporation shall recognize gain (but not loss) on the distribution under section 367(e)(1). A distributing corporation shall not recognize gain under this section with respect to a section 355 distribution to a qualified U.S. person. For purposes of this section, a qualified U.S. person is—

(A) A citizen or resident of the United States; or

(B) A domestic corporation.

(2) *Stock owned through partnerships, disregarded entities, trusts, and estates.* For purposes of this section, distributing corporation stock or securities owned by or for a partnership (whether foreign or domestic) are owned proportionately by its partners. A partner's proportionate share of the stock or securities of the distributing corporation shall be equal to the partner's distributive share of the gain that would have been recognized had the partnership sold the stock or securities (at a taxable gain) immediately before the distribution. The partner's distributive share of gain shall be determined under the rules and principles of sections 701 through 761 and the regulations thereunder. For purposes of this section, stock or securities owned by or for an entity that is disregarded as an entity (disregarded entity) under § 1.7701–3(b)(1)(ii) or (b)(2)(i)(C) are owned directly by the owner of such disregarded entity. For purposes of this section, stock or securities owned by or for a trust or estate (whether foreign or domestic) are owned proportionately by the persons who would be treated as owning such stock or securities under section 318(a)(2)(A) and (B). In applying section 318(a)(2)(B)(i), if a trust includes interests that are not actuarially ascertainable, all such interests shall be considered to be owned by foreign persons. In a case where an interest holder in a partnership, a disregarded entity, trust, or estate that (directly or indirectly) owns stock of the distributing corporation is itself a partnership, disregarded entity, trust, or estate, the rules of this paragraph (b)(2) apply to such interest holder.

(3) *Gain computation.* Gain recognized under paragraph (b)(1) of this section shall be equal to the excess of the fair market value of the stock or securities distributed to persons who are not qualified U.S. persons (determined as of the time of the distribution) over the distributing corporation's adjusted basis in the stock or securities distributed to such distributees. For purposes of the preceding sentence, the distributing corporation's adjusted basis in each unit of each class of stock or securities distributed to a distributee shall be equal to the distributing corporation's total adjusted basis in all of the units of the respective class of stock or securities owned immediately before the distribution, divided by the total number of units of the class of stock or securities owned immediately before the distribution.

(4) *Treatment of distributee.* If the distribution otherwise qualifies for nonrecognition under section 355, each distributee shall be considered to have received stock or securities in a distribution qualifying for nonrecognition under section 355, even though the distributing corporation may recognize gain on the distribution under this section. Thus, the distributee shall not be considered to have received a distribution described in section 301 or a distribution in an exchange described in section 302(b) upon the receipt of the stock or securities of the controlled corporation, and the domestic distributing corporation shall have no withholding responsibilities under section 1441. Except where section 897(e)(1) and the regulations thereunder cause gain to be recognized by the distributee, the basis of the distributed domestic or foreign corporation stock in the hands of the foreign distributee shall be the basis of the distributed stock determined under section 358 without any increase for any gain recognized by the domestic corporation on the distribution.

(c) *Nonrecognition of gain.* A domestic distributing corporation shall not recognize gain under paragraph (b)(1) of this section on the distribution of stock or securities of a domestic corporation.

(d) *Determining whether distributees are qualified U.S. persons*—(1) *General rule—presumption of foreign status.* Except as provided in paragraphs (d)(2) and (3) of this section, all distributions of stock or securities in a distribution described in paragraph (b)(1) of this section are presumed to be to persons who are not qualified U.S. persons, as

defined in paragraph (b)(1) of this section.

(2) *Non-publicly traded distributing corporations.* If the class of stock or securities of the distributing corporation (in respect to which stock or securities of the controlled corporation are distributed) is not regularly traded on a qualified exchange or other market (as defined in paragraph (d)(4) of this section), then the distributing corporation may only rebut the presumption contained in paragraph (d)(1) of this section by identifying the qualified U.S. persons to which controlled corporation stock or securities were distributed and by certifying the amount of stock or securities that were distributed to the qualified U.S. persons.

(3) *Publicly traded distributing corporations.* If the class of stock or securities of the distributing corporation (in respect to which stock or securities of the controlled corporation are distributed) is regularly traded on a qualified exchange or other market (as defined in paragraph (d)(4) of this section), then the distributing corporation may only rebut the presumption contained in paragraph (d)(1) of this section as described in this paragraph (d)(3).

(i) *Five percent shareholders.* A publicly traded distributing corporation may only rebut the presumption contained in paragraph (d)(1) of this section with respect to distributees that are five percent shareholders of the class of stock or securities of the distributing corporation (in respect to which stock or securities of the controlled corporation are distributed) by identifying the qualified U.S. persons to which controlled corporation stock or securities were distributed and by certifying the amount of stock or securities that were distributed to the qualified U.S. persons. A five percent shareholder is a distributee who is required under U.S. securities laws to file with the Securities and Exchange Commission (SEC) a Schedule 13D or 13G under 17 CFR 240.13d-1 or 17 CFR 240.13d-2, and provide a copy of same to the distributing corporation under 17 CFR 240.13d-7.

(ii) *Other distributees.* A distributing corporation that has made a distribution described in paragraph (d)(3) of this section may rebut the presumption contained in paragraph (d)(1) of this section with respect to distributees that are not five percent shareholders (as defined in this paragraph (d)(3)) by relying on and providing a reasonable analysis of shareholder records and other relevant information that demonstrates a number of distributees that are qualified U.S. persons. Taxpayers may rely on such analysis, unless it is subsequently determined that there are actually fewer distributees who are qualified U.S. persons than were demonstrated in the analysis.

(4) *Qualified exchange or other market.* For purposes of paragraph (d) of this section, the term qualified exchange or other market means, for any taxable year—

(i) A national securities exchange which is registered with the SEC or the national market system established pursuant to section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) A foreign securities exchange that is regulated or supervised by a governmental authority of the country in which the market is located and which has the following characteristics—

(A) The exchange has trading volume, listing, financial disclosure, and other requirements designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors; and the laws of the country in which the exchange is located and the rules of the exchange ensure that such requirements are actually enforced; and

(B) The rules of the exchange ensure active trading of listed stocks.

(e) *Reporting under section 6038B.* See the regulations under section 6038B for reporting requirements for distributions under this section.

(f) *Effective date.* This section shall be applicable to distributions occurring in taxable years ending after August 8, 1999.

§ 1.367(e)–2 Distributions described in section 367(e)(2).

(a) *Purpose and scope*—(1) *In general.* This section provides rules requiring gain and loss recognition by a corporation on its distribution of property to a foreign corporation in a complete liquidation described in section 332. Paragraph (b)(1) of this section contains the general rule that gain and loss are recognized when a domestic corporation makes a distribution of property in complete liquidation under section 332 to a foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in the domestic corporation. Paragraph (b)(2) of this section provides the only exceptions to the gain and loss recognition rule of paragraph (b)(1) of this section. Paragraph (b)(3) of this section refers to other consequences of distributions described in paragraphs (b)(1) and (2) of this section. Paragraph (c)(1) of this section contains the general rule that gain and loss are not recognized when a foreign corporation makes a distribution of property in complete liquidation under section 332 to a foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in the foreign liquidating corporation. Paragraph (c)(2) of this section provides the only exceptions to the nonrecognition rule of paragraph (c)(1) of this section. Paragraph (c)(3) of this section refers to other consequences of distributions described in paragraphs (c)(1) and (2) of this section. Paragraph (d) of this section contains an anti-abuse rule. Finally, paragraph (e) of this section specifies the effective date for the rules of this section. The rules of this section are issued pursuant to the authority conferred by section 367(e)(2).

(2) *Nonapplicability of section 367(a).* Section 367(a) shall not apply to a complete liquidation described in section 332 by a domestic liquidating corporation into a foreign corporation that meets the stock ownership requirements of section 332(b).

(b) *Distribution by a domestic corporation*—(1) *General rule*—(i) *Recognition of gain and loss.* If a domestic corporation (domestic liquidating) makes a distribution of property in complete liquidation under section 332 to a foreign corporation (foreign distributee) that meets the stock ownership requirements of section 332(b) with respect to stock ir the domestic liquidating corpora ion, then—

(A) Pursuant to section 367(e)(2), section 337(a) and (b)(1) shall not apply; and

(B) The domestic liquidating corporation shall recognize gain or loss on the distribution of property to the foreign distributee, except as provided in paragraph (b)(2) of this section.

(ii) *Operating rules*—(A) *General rule.* Except as provided in paragraphs (b)(1)(ii) (B) and (C) of this section, the rules contained in section 336 will apply to the gain and loss recognized pursuant to this section.

(B) *Overall loss limitation—(1) Overall loss limitation rule.* Loss in excess of gain from the distribution shall not be recognized. If realized losses exceed recognized losses, the losses shall be recognized on a pro rata basis with respect to the realized loss attributable to each distributed loss asset in the category of assets (i.e., capital or ordinary) to which the realized but unrecognized loss relates. For additional limitations on the

recognition of losses, see, e.g., section 1211.

(2) *Example.* The following example illustrates the overall loss limitation rule, the pro rata loss allocation method, and the general capital loss limitation rule in section 1211(a):

Example. F, a foreign corporation, owns all stock of US1, a domestic corporation. US1 owns the following capital assets: Asset A, which has a fair market value of $100 and an adjusted basis of $40; Asset B, which has a fair market value of $60 and an adjusted basis of $80; and, Asset C, which has a fair market value of $40 and an adjusted basis of $100. US1 also owns the following business assets that will generate ordinary income (or loss) upon disposition: Asset D, which has a fair market value of $100 and an adjusted basis of $40; Asset E, which has a fair market value of $60 and an adjusted basis of $100; and, Asset F, which has a fair market value of $40 and an adjusted basis of $80. US1 liquidates into F and distributes all assets to F in liquidation. None of the assets qualify for nonrecognition under paragraph (b)(2) of this section. US1's total realized capital loss is $80, but it may only recognize $60 of that loss. See section 1211(a). US1's total realized ordinary loss is $80, but it may only recognize $60 of that loss. See paragraph (b)(1)(ii)(B)(*1*) of this section. US1 will allocate $45 (60 X .75) of the recognized capital loss to Asset B and will allocate the remaining $15 (60 X .25) of recognized capital loss to Asset C. See paragraph (b)(1)(ii)(B)(*1*) of this section. US1 will allocate $30 (60 X .50) of the recognized ordinary loss to Asset E and will allocate the remaining $30 (60 X .50) to Asset F. See paragraph (b)(1)(ii)(B)(*1*) of this section.

(C) *Special rules for built-in gains and losses attributable to property received in liquidations and reorganizations.* Built-in losses attributable to property received in a transaction described in sections 332 or 361 (during the two-year period ending on the date of the distribution in liquidation covered by this section) shall not offset gain from property not received in the same transaction. Built-in gains attributable to property received in a transaction described in sections 332 or 361 (during the two-year period ending on the date of the distribution in liquidation covered by this section) shall not offset loss from property not received in the same transaction. Built-in gain or loss is that amount of gain or loss on property that existed at the time the domestic liquidating corporation acquired such property. See sections 336(d) and 382 for additional limitations on the recognition of losses.

(iii) *Distribution of partnership interest*—(A) *General rule.* If a domestic corporation distributes a partnership interest (whether foreign or domestic) in a distribution described in paragraph (b)(1)(i) of this section, then for purposes of applying this section the domestic liquidating corporation shall be treated as having distributed a proportionate share of partnership property. Accordingly, the applicability of the recognition rules of paragraphs (b)(1) (i) and (ii) of this section, and of any exception to recognition provided in this section shall be determined with reference to the partnership property, rather than to the partnership interest itself. Where the partnership property includes an interest in a lower-tier partnership, the applicability of any exception with respect to the interest in the lower-tier partnership shall be determined with reference to the lower-tier partnership property. In the case of multiple tiers of partnerships, the applicability of an exception shall be determined with reference to the property of each partnership, applying the rule contained in the preceding sentence. A domestic liquidating corporation's proportionate share of partnership property shall be determined under the rules and principles of sections 701 through 761 and the regulations thereunder.

(B) *Gain or loss calculation.* [Reserved]

(C) *Basis adjustments.* The foreign distributee corporation's basis in the distributed partnership interest shall be equal to the domestic liquidating corporation's basis in such partnership interest immediately prior to the distribution, increased by the amount of gain and reduced by the amount of loss recognized by the domestic liquidating corporation on the distribution of the partnership interest. Solely for purposes of sections 743 and 754, the foreign distributee corporation shall be treated as having purchased the partnership interest for an amount equal to the foreign corporation's adjusted basis therein.

(D) *Publicly traded partnerships.* The distribution by a domestic liquidating corporation of an interest in a publicly traded partnership that is treated as a corporation for U.S. income tax purposes under section 7704(a) shall not be subject to the rules of paragraphs (b)(1)(iii) (A) and (B) of this section. Instead, the distribution of such an interest shall be treated in the same manner as a distribution of stock. Thus, a transfer of an interest in a publicly traded partnership that is treated as a U.S. corporation for U.S. income tax purposes shall be treated in the same manner as stock in a foreign corporation.

(2) *Exceptions*—(i) *Distribution of property used in a U.S. trade or business*—(A) *Conditions for nonrecognition.* A domestic liquidating corporation shall not recognize gain or loss under paragraph (b)(1) of this section on its distribution of property (including inventory) used by the domestic liquidating corporation in the conduct of a trade or business within United States, if—

(*1*) The foreign distributee corporation, immediately thereafter and for the ten-year period beginning on the date of the distribution of such property, uses the property in the conduct of a trade or business within the United States;

(*2*) The domestic liquidating corporation attaches the statement described in paragraph (b)(2)(i)(C) of this section to its U.S. income tax returns for the taxable years that include the distributions in liquidation; and

(*3*) The foreign distributee corporation attaches a copy of the property description contained in paragraph (b)(2)(i)(C)(*2*) of this section to its U.S. income tax return for the tax year that includes the date of distribution.

(B) *Qualifying property.* Property is used by the foreign distributee corporation in the conduct of a trade or business in the United States within the meaning of this paragraph (b)(2)(i) only if all income from the use of the property and all income or gain from the sale or exchange of the property would be subject to taxation under section 882(a) as effectively connected income. Also, stock held by a dealer as inventory or for sale in the ordinary course of its trade or business shall be treated as inventory and not as stock in the hands of both the domestic liquidating corporation and the distributee foreign corporation. Notwithstanding the foregoing, the exception provided in this paragraph (b)(2)(i) shall not apply to intangibles described in section 936(h)(3)(B).

(C) *Required statement.* The statement required by paragraph (b)(2)(i)(A) of this section shall be entitled "Required Statement under § 1.367(e)–2(b)(2)(i)" and shall be prepared by the domestic liquidating corporation and signed under penalties of perjury by an authorized officer of the domestic liquidating corporation and by an authorized officer of the foreign distributee corporation. The statement shall contain the following items:

(*1*) *Declaration and certification.* A declaration that the distribution to the foreign distributee corporation is one to which the rules of this paragraph

(b)(2)(i) apply and a certification that the domestic liquidating corporation and the foreign distributee corporation agree to all of the terms and conditions set forth in this paragraph (b)(2)(i).

(*2*) *Property description.* A description of all property distributed by the domestic liquidating corporation (irrespective of whether the property qualifies for nonrecognition). Such description shall be entitled "Master Property Description" and shall identify the property that continues to be used by the foreign distributee corporation in the conduct of a trade or business within the United States, including the location, adjusted basis, estimated fair market value, a summary of the method (including appraisals if any) used for determining such value, and the date of distribution of such items of property. The description shall also identify the property excepted from gain recognition under paragraphs (b)(2)(ii) and (iii) of this section.

(*3*) *Distributee identification.* An identification of the foreign distributee corporation, including its name and address, taxpayer identification number, residence, and place of incorporation.

(*4*) *Treaty benefits waiver.* With respect to property entitled to nonrecognition pursuant to this paragraph (b)(2)(i), a declaration by the foreign distributee corporation that it irrevocably waives any right under any treaty (whether or not currently in force at the time of the liquidation) to sell or exchange any item of such property without U.S. income taxation or at a reduced rate of taxation, or to derive income from the use of any item of such property without U.S. income taxation or at a reduced rate of taxation.

(*5*) *Statute of limitations extension.* An agreement by the domestic liquidating corporation and the foreign distributee corporation to extend the statute of limitations on assessments and collections (under section 6501) with respect to the domestic liquidating corporation on the distribution of each item of property until three years after the date on which all such items of property have ceased to be used in a trade or business within the United States, but in no event shall the extension be for a period longer than 13 years from the filing of the original U.S. income tax return for the taxable year of the last distribution of any such item of property. The agreement to extend the statute of limitation shall be executed on a Form 8838, "Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement."

(*D*) *Failure to file statement.* If a domestic liquidating corporation that would otherwise qualify for nonrecognition on the distribution of property under this paragraph (b)(2)(i) fails to file the statement described in paragraph (b)(2)(i)(C) of this section or files a statement that does not comply with the requirements of paragraph (b)(2)(i)(C) of this section, the Commissioner may treat the domestic liquidating corporation as if it had claimed nonrecognition under this paragraph (b)(2)(i) and met all the requirements of paragraph (b)(2)(i)(C) of this section, if such treatment is necessary to prevent the domestic liquidating corporation or the foreign distributee corporation from otherwise deriving a tax benefit by such failure.

(E) *Operating rules.* By the domestic liquidating corporation's claiming nonrecognition under this paragraph (b)(2)(i) and filing a statement described in paragraph (b)(2)(i)(C) of this section, the domestic liquidating corporation and the foreign distributee corporation agree to be subject to the rules of this paragraph (b)(2)(i)(E).

(*1*) *Gain or loss recognition by the foreign distributee corporation—*(*i*) *Taxable dispositions.* If, within the ten-year period from the date of a distribution of qualifying property, the foreign distributee corporation disposes of any qualifying property in a transaction subject to tax under section 882(a), then the foreign distributee corporation shall recognize such gain (or loss) and properly report it on a timely filed U.S. income tax return. If the foreign distributee corporation recognizes gain (or loss) under this paragraph (b)(2)(i)(E)(*1*)(*i*) and properly reports such gain (or loss) on its U.S. income tax return, then the domestic liquidating corporation shall not recognize gain attributable to such property under paragraph (b)(2)(i)(E)(*2*) of this section.

(*ii*) *Other triggering events.* If, within the ten-year period from the date of distribution, any qualifying property ceases to be used by the foreign distributee corporation in the conduct of a trade or business in the United States (other than by reason of a taxable disposition described in paragraph (b)(2)(i)(E)(*1*)(*i*) of this section, a nontriggering event described in paragraph (b)(2)(i)(E)(*4*) of this section, or a nontriggering transfer described in paragraph (b)(2)(i)(E)(*5*) of this section), then the foreign distributee corporation shall recognize gain (but not loss) attributable to such property and properly report it on a timely filed U.S. income tax return. If the foreign distributee corporation properly reports gain under this paragraph (or if such qualified property is not gain property on the date that it ceases to be used in the foreign distributee corporation's U.S. trade or business), then the domestic liquidating corporation shall not recognize gain attributable to such property under paragraph (b)(2)(i)(E)(*2*) of this section. The gain recognized under this paragraph (b)(2)(i)(E)(*1*)(*ii*) shall be an amount equal to the fair market value of the property on the date it ceases to be used in the foreign distributee corporation's U.S. trade or business less the foreign distributee corporation's adjusted basis in such property.

(*2*) *Gain recognition by the domestic liquidating corporation—*(*i*) *General rule.* If, within the ten-year period from the date of distribution, any qualifying property described in paragraph (b)(2)(i)(B) of this section ceases to be used by the foreign distributee corporation (or a qualifying transferee described in paragraph (b)(2)(i)(E)(*5*) of this section) in the conduct of a trade or business in the United States for any reason (including but not limited to the sale or exchange of such property or the removal of the property from conduct of the trade or business), then, except to the extent gain (or loss) is recognized under paragraph (b)(1)(i)(E)(*1*) of this section, the domestic liquidating corporation shall recognize the gain (but not loss) realized but not recognized upon the initial distribution of such item of property. The domestic liquidating corporation shall recognize gain pursuant to this paragraph (b)(2)(i)(E)(*2*)(*i*) on the amended U.S. income tax return described in paragraph (b)(2)(i)(E)(*2*)(*ii*) of this section.

(*ii*) *Amended return.* If gain recognition is required pursuant to paragraph (b)(2)(i)(E)(*2*)(*i*) of this section, the foreign distributee corporation shall file an amended U.S. income tax return on behalf of the domestic liquidating corporation for the year of the distribution of such item of property. On the amended return, the domestic liquidating corporation may use any losses (or credits) existing in the year of the distribution to offset the gain recognized pursuant to paragraph (b)(2)(i)(E)(*2*)(*i*) of this section (or the tax thereon), provided that the losses (or credits) were otherwise available in the year distribution and were not used in another year. The amended return shall be filed no later than the due date (including extensions) for the return of the foreign distributee corporation for the taxable year in which the property ceases to be used by the foreign distributee corporation in the conduct of a trade or business in the United States.

(*iii*) *Interest.* If the domestic liquidating corporation owes additional

tax pursuant to paragraph (b)(2)(i)(E)(*2*)(*i*) of this section for the year of liquidation, then interest must be paid on that amount at the rates determined under section 6621. The interest due will be calculated from the due date of the domestic liquidating corporation's U.S. income tax return for the year of the distribution to the date on which the additional tax for that year is paid.

(*iv*) *Joint and several liability.* The foreign distributee corporation shall be jointly and severally liable for any tax owed by the domestic liquidating corporation as a result of the application of this section, and shall succeed tc the domestic liquidating corporation's agreement to extend the statute of limitations on assessments and collections under section 6501.

(*3*) *Schedule for property no longer used in a U.S. trade or business.* If qualifying property (other than inventory) ceases to be used by the foreign distributee corporation in the conduct of a U.S. trade or business in the ten-year period beginning on the date of distribution of such property from the domestic liquidating corporation to the foreign distributee corporation, then the foreign distributee corporation shall list on a separate schedule (attached to its U.S. income tax return for the year of cessation) all such qualifying property. For purposes of this paragraph (b)(2)(i)(E)(*3*), property ceases to be used in a U.S. trade or business whenever such property is sold, exchanged, or otherwise removed from the U.S. trade or business, irrespective of whether the domestic liquidating corporation filed an amended return under paragraph (b)(2)(i)(E)(*2*) of this section, and irrespective of whether the property ceases to be used in the foreign distributee corporation's U.S. trade or business by virtue of a nontriggering event described in paragraph (b)(2)(i)(E)(*4*) of this section or a nontriggering transfer described in paragraph (b)(2)(i)(E)(*5*) of this section.

(*4*) *Nontriggering events—*(*i*) *Conversions, certain exchanges, and abandonment.* Gain (or loss) under this paragraph (b)(2)(i)(E) shall not be triggered if qualifying property described in paragraph (b)(2)(i)(B) of this section is involuntarily converted into, or exchanged for, similar qualifying property used in the conduct of a trade or business in the United States, to the extent such conversion or exchange qualifies for nonrecognition under section 1033 or 1031. Also, the abandonment or disposal of worthless or obsolete property shall not trigger gain (or loss) under this paragraph (b)(2)(i)(E).

(*ii*) *Amendment to Master Property Description.* If the foreign distributee corporation acquires replacement property by virtue of a conversion or exchange of the qualifying property under this paragraph (b)(2)(i)(E)(*4*), then the foreign distributee corporation shall attach to its U.S. income tax return for the year of the acquisition such replacement property a schedule entitled "Amendment to Master Property Description Required by § 1.367(e)–2(b)(2)(i)" that lists the replacement property and the property being replaced.

(*5*) *Nontriggering transfers to qualified transferees.* Gain (or loss) under this paragraph (b)(2)(i)(E) will not be triggered if qualifying property described in paragraph (b)(2)(i)(B) of this section is transferred to another person (qualified transferee) in a transaction qualifying for nonrecognition under the Internal Revenue Code (other than transactions described in paragraphs (b)(2)(i)(E)(*4*)(*i*) and (c)(1) of this section), if—

(*i*) The qualified transferee (and all other subsequent qualified transferees), immediately thereafter and for the ten-year period beginning on the date of the initial distribution of such qualifying property from the domestic liquidating corporation to the foreign distributee corporation, uses the property in the conduct of a trade or business in the United States;

(*ii*) The foreign distributee corporation (or its successor in interest) prepares and attaches to its U.S. income tax return for the year of transfer a statement entitled "Required Statement under § 1.367(e)–2(b)(2)(i)(E)(*5*) for Property Transferred to a Qualified Transferee" that is signed under penalties of perjury by an authorized officer of the foreign distributee corporation and by a person similarly authorized by the qualified transferee;

(*iii*) The statement described in paragraph (b)(2)(i)(E)(*5*)(*ii*) of this section shall contain a description of all qualifying property transferred by the foreign distributee corporation (or qualified transferee) to the qualified transferee (or subsequent qualified transferee);

(*iv*) The statement described in paragraph (b)(2)(i)(E)(*5*)(*ii*) of this section shall also contain an identification of the qualified transferee (or subsequent qualified transferee), including its name and address, taxpayer identification number, residence, and place of incorporation (if applicable);

(*v*) The statement described in paragraph (b)(2)(i)(E)(*5*)(*ii*) of this section shall also contain a declaration by the qualifying transferee (or subsequent qualifying transferee) that it irrevocably waives any right under any treaty (whether or not currently in force at the time of the liquidation) to sell or exchange any item of such property without U.S. income taxation or at a reduced rate of taxation, or to derive income from the use of any item of such qualifying property without U.S. income taxation or at a reduced rate of taxation; and

(*vi*) A declaration that the transfer to the qualifying transferee (or subsequent qualifying transferee) is one to which the rules of this paragraph (b)(2)(i)(E)(*5*) apply and a certification that the foreign distributee corporation (or its successor in interest) and the qualifying transferee (or subsequent qualifying transferee) agree to all of the terms and conditions set forth in paragraph (b)(2)(i)(E)(*1*) of this section, replacing "foreign distributee corporation" with "qualifying transferee" and replacing references to "section 882(a)" with "section 871(b)" (as the case may be).

(ii) *Distribution of certain U.S. real property interests.* A domestic liquidating corporation shall not recognize gain (or loss) under paragraph (b)(1) of this section on the distribution of a U.S. real property interest (other than stock in a former U.S. real property holding corporation that is treated as a U.S. real property interest for five years under section 897(c)(1)(A)(ii)). If property distributed by the domestic liquidating corporation is a U.S. real property interest that qualifies for nonrecognition under this paragraph (b)(2)(ii) in addition to nonrecognition provided by paragraph (b)(2)(i) of this section, then the domestic liquidating corporation shall secure nonrecognition pursuant to this paragraph (b)(2)(ii) and not pursuant to the provisions of paragraph (b)(2)(i) of this section.

(iii) *Distribution of stock of domestic subsidiary corporations—*(A) *Conditions for nonrecognition.* A domestic liquidating corporation shall not recognize gain or loss under paragraph (b)(1) of this section on a distribution of stock of an 80 percent domestic subsidiary corporation, if the domestic liquidating corporation attaches a statement described in paragraph (b)(2)(iii)(D) of this section to its U.S. income tax return for the year of the distribution of such stock. For purposes of this paragraph (b)(2)(iii), a corporation is an 80 percent domestic subsidiary corporation, if—

(*1*) The subsidiary corporation is a domestic corporation (but not a foreign

corporation that has made an election under section 897(i) to be treated as a U.S. corporation for purposes of section 897);

(*2*) The domestic liquidating corporation owns (directly) at least 80 percent of the total voting power of the stock of such corporation; and

(*3*) The domestic liquidating corporation owns (directly) at least 80 percent of the total value of all stock of such corporation.

(B) *Exceptions when the liquidating corporation is a U.S. real property holding corporation.* If the domestic liquidating corporation is a U.S. real property holding corporation (as defined in section 897(c)(2)) at the time of liquidation (or was a U.S. real property holding corporation with respect to the foreign distributee corporation during the five year period ending on the date of liquidation), then the exception in paragraph (b)(2)(iii)(A) of this section shall apply only to the distribution of stock of an 80 percent domestic subsidiary corporation that is a U.S. real property holding corporation (as defined in section 897(c)(2)) at the time of the liquidation and immediately thereafter.

(C) *Anti-abuse rule.* (*1*) The exception in paragraph (b)(2)(iii)(A) of this section shall not apply, if a principal purpose of the distribution of the 80 percent domestic subsidiary corporation's stock is the avoidance of U.S. tax that would have been imposed on the domestic liquidating corporation's disposition of such stock (directly or indirectly) to an unrelated party. A distribution may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes (taken together or separately).

(*2*) For purposes of paragraph (b)(2)(iii)(C)(*1*) of this section, a distribution of stock of the 80 percent domestic subsidiary corporation will be deemed to have been made pursuant to a plan, one of the principal purposes of which was the avoidance of U.S. tax, if the foreign distributee corporation disposes of any such stock within two years of such distribution. The rule in this paragraph (b)(2)(iii)(C)(*2*) will not apply if the foreign distributee corporation can demonstrate to the satisfaction of the Commissioner that a principal purpose of the liquidation was not the avoidance of U.S. tax.

(D) *Required statement.* The statement required by paragraph (b)(2)(iii)(A) of this section shall be entitled "Required Statement under § 1.367(e)–2(b)(2)(iii) for Stock of 80 Percent Domestic Subsidiary Corporations" and shall be prepared by the domestic liquidating corporation and shall be signed under penalties of perjury by an authorized officer of the domestic liquidating corporation and by an authorized officer of the foreign distributee corporation. The required statement shall contain a certification that states that if the foreign distributee corporation disposes of any stock subject to paragraph (b)(2)(iii)(A) of this section in a transaction described in paragraph (b)(2)(iii)(C) of this section, then the domestic liquidating corporation shall recognize all realized gain attributable to such stock at the time of distribution, and the domestic liquidating corporation (or the foreign distributee corporation on behalf of the domestic liquidating corporation) shall file a U.S. income tax return (or amended U.S. income tax return, as the case may be) for the year of distribution reporting the gain attributable to such stock.

(3) *Other consequences*—(i) *Distributee basis in property.* The foreign distributee corporation's basis in property subject to this paragraph (b) shall be the same as the domestic liquidating corporation's basis in such property immediately before the liquidation, increased by any gain, or reduced by any loss recognized by the domestic liquidating corporation on such property pursuant to paragraph (b)(1) of this section. In no case, however, will the foreign distributee corporation's adjusted basis in distributed property exceed the fair market value of such property at the time of liquidation.

(ii) *Reporting under section 6038B.* Section 6038B and the regulations thereunder apply to a domestic liquidating corporation's transfer of property to a foreign distributee corporation under section 367(e)(2).

(iii) *Other rules.* For other rules that may be applicable, see sections 1248, 897, and 381.

(c) *Distribution by a foreign corporation*—(1) *General rule—gain and loss not recognized.* If a foreign corporation (foreign liquidating) makes a distribution of property in complete liquidation under section 332 to a foreign corporation (foreign distributee) that meets the stock ownership requirements of section 332(b) with respect to stock in the foreign liquidating corporation, then, except as provided in paragraph (c)(2) of this section, section 337 (a) and (b)(1) shall apply and the foreign liquidating corporation shall not recognize gain (or loss) on the distribution under section 367(e)(2). If a foreign liquidating corporation distributes a partnership interest (whether foreign or domestic), then such corporation shall be treated as having distributed a proportionate share of partnership property in accordance with the principles of paragraph (b)(1)(iii) of this section.

(2) *Exceptions*—(i) *Property used in a U.S. trade or business*—(A) *General rule.* A foreign liquidating corporation (including a corporation that has made an effective election under section 897(i)) that makes a distribution described in paragraph (c)(1) of this section shall recognize gain on the distribution of qualified property, as described in paragraph (b)(2)(i)(B) of this section (other than U.S. real property interests), that is used by the foreign liquidating corporation in the conduct of a trade or business within the United States at the time of distribution.

(B) *Ten-year active U.S. business exception.* A foreign liquidating corporation shall not recognize gain under paragraph (c)(2)(i)(A) of this section, if—

(*1*) The foreign distributee corporation, immediately thereafter and for the ten-year period beginning on the date of the distribution of such property, uses the property in the conduct of a trade or business in the United States;

(*2*) The foreign distributee corporation is not entitled to benefits under a comprehensive income tax treaty (this requirement shall apply only if the foreign liquidating corporation (or predecessor corporation) was not entitled to benefits under a comprehensive income tax treaty); and

(*3*) The foreign liquidating corporation and foreign distributee corporation attach the statement described in paragraph (c)(2)(i)(C) of this section to their U.S. income tax returns for their taxable years that include the distribution.

(C) *Required statement.* The statement required by paragraph (c)(2)(i)(B)(*3*) of this section shall be entitled "Required Statement under § 1.367(e)–2(c)(2)(i)," shall be prepared by foreign liquidating corporation, shall be signed under penalties of perjury by an authorized officer of the foreign liquidating corporation and by an authorized officer of the foreign distributee corporation, and shall be identical to the statement described in paragraph (b)(2)(i)(C) of this section, except that "§ 1.367(e)–2(c)(2)(i)(B)" shall be substituted for references to "§ 1.367(e)–2(b)(2)(i)" and "foreign liquidating corporation" shall be substituted for "domestic liquidating corporation" each time it appears. References in the rules of paragraph (b)(2)(i)(C) of this section to various rules in paragraph (b) of this section shall be applied as if such references were to this paragraph (c). However, the

statement described in this paragraph (c)(2)(i)(C) shall be modified as follows:

(*1*) The foreign distributee corporation shall not be required to waive its income tax treaty benefits as required by § 1.367(e)–2(b)(2)(i)(C)(*4*), unless—

(*i*) The foreign liquidating corporation was required to waive its treaty benefits under paragraph (b)(2)(i)(C)(4) of this section in connection with the distribution of such property in a prior liquidation distribution subject to the provisions of this section; or (*ii*) The foreign distributee corporation is entitled benefits under a treaty to which the foreign liquidating corporation was not entitled.

(*2*) If the foreign distributee is required to waive treaty benefits because of paragraph (c)(2)(i)(C)(*1*)(*ii*) of this section, then the foreign distributee shall only be required to waive benefits that were not available to the foreign liquidating corporation (or a predecessor corporation) prior to liquidation.

(*3*) The property description described in paragraph (b)(2)(i)(C)(*2*) of this section shall include only the qualified U.S. trade or business property described in paragraph (c)(2)(i) of this section.

(D) *Operating rules.* By the foreign liquidating corporation's claiming nonrecognition under paragraph (c)(2)(i)(B) of this section and filing a statement described in paragraph (c)(2)(i)(C) of this section, the foreign liquidating corporation and the foreign distributee corporation agree to be subject to the rules of paragraph (c)(2)(i) of this section, as well as the rules of paragraphs (b)(2)(i)(D) and (E) of this section. In applying the rules of paragraphs (b)(2)(i)(D) and (E) of this section, "foreign liquidating corporation" shall be used instead of "domestic liquidating corporation" each time it appears. References in the rules of paragraphs (b)(2)(i)(D) and (E) of this section to various rules in paragraph (b) of this section shall be applied as if such references were to this paragraph (c).

(ii) *Property formerly used in a United States trade or business.* A foreign liquidating corporation that makes a distribution described in paragraph (c)(1) of this section shall recognize gain (but not loss) on the distribution of property (other than U.S. real property interests) that had ceased to be used by the foreign liquidating corporation in the conduct of a U.S. trade or business within the ten-year period ending on the date of distribution and that would have been subject to section 864(c)(7) had it been disposed. Section 864(c)(7) shall govern the treatment of any gain recognized on the distribution of assets described in this paragraph as income effectively connected with the conduct of a trade or business within the United States.

(3) *Other consequences*—(i) *Distributee basis in property.* The foreign distributee corporation's basis in property subject to this paragraph (c) shall be the same as the foreign liquidating corporation's basis in such property immediately before the liquidation, increased by any gain, or reduced by any loss recognized by the foreign liquidating corporation on such property, pursuant to paragraph (c)(2) of this section. In no event, however, will the foreign distributee corporation's adjusted basis in distributed property exceed the fair market value of such property at the time of liquidation.

(ii) *Other rules.* For other rules that may apply, see sections 367(b) and 381.

(d) *Anti-abuse rule.* The Commissioner may require either a domestic liquidating corporation or a foreign liquidating corporation to recognize gain on a distribution in liquidation described in paragraph (b) or (c) of this section (or treat the liquidating corporation as if it had recognized loss on a distribution in liquidation), if a principal purpose of the liquidation is the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax). A liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes (taken together or separately).

(e) *Effective date.* This section shall be applicable to distributions occurring 30 days after August 9, 1999 or, if taxpayer so elects, to distributions in taxable years ending after August 8, 1999.

Par. 4. Section 1.6038B–1 is amended by revising the fourth sentence of paragraph (a), the first sentence of paragraph (b)(1)(i), and paragraphs (d), (e), and (g) to read as follows:

§ 1.6038B–1 Reporting of certain transactions to foreign corporations.

(a) * * * Section 1.6038B–1(e) describes the filing requirements for property transfers described in section 367(e). * * *

(b) *Time and manner of reporting*—(1) *In general*—(i) *Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of paragraph (b)(2) of this section, or cash, which is subject to special rules contained in paragraph (b)(3) of this section, any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d), or 367(e), is required to report pursuant to section 6038B and the rules of this section and must attach the required information to Form 926, "Return by Transferor of Property to a Foreign Corporation."

* * *

* * * * *

(d) [Reserved]. For further guidance, see § 1.6038B–1T(d).

(e) *Transfers subject to section 367(e)*—(1) *In general.* If a domestic corporation (distributing corporation) makes a distribution described in section 367(e)(1) or section 367(e)(2), the distributing corporation must comply with the reporting requirements of this paragraph (e). Unless otherwise provided in this section, a distributing corporation making a distribution described in sections 367(e)(1) or 367(e)(2) must file a Form 926, "Return by a U.S. Transferor of Property to a Foreign Corporation (under section 367)," as amended and modified by this section.

(2) *Reporting requirements for section 367(e)(1) distributions of domestic controlled corporations.* A domestic distributing corporation making a distribution of the stock or securities of a domestic corporation under section 355 is not required to file a Form 926, as described in paragraph (e)(1) of this section, and shall have no other reporting requirements under section 6038B.

(3) *Reporting requirements for section 367(e)(1) distributions of foreign controlled corporations.* If the distributing corporation makes a section 355 distribution of the stock or securities of a foreign controlled corporation to distributee shareholders who are not qualified U.S. persons, as defined in § 1.367(e)–1(b)(1), then the distributing corporation shall complete Part 1 of the Form 926 and attach a signed copy of such form to its U.S. income tax return for the year of the distribution. The distributing corporation shall also attach to its U.S. income tax return for the year of distribution a statement signed under the penalties of perjury entitled, "Addendum to Form 926." The addendum shall contain a brief description of the transaction, state the number of shares distributed to distributees who are not qualified U.S. persons (applying the rules contained in § 1.367(e)–1(d)), and state the basis and fair market value of the distributed stock or securities (including a list stating the amounts that were distributed to distributees who were not qualified U.S. persons and distributees who were qualified U.S. persons).

(4) *Reporting rules for section 367(e)(2) distributions by domestic*

liquidating corporations. If the distributing corporation makes a distribution of property in complete liquidation under section 332 to a foreign distributee corporation that meets the stock ownership requirements of section 332(b) with respect to the stock of the distributing corporation, then the distributing corporation shall complete a Form 926 and attach a signed copy of such form to its U.S. income tax return for the year of the distribution. The property description contained in Part III of the Form 926 shall contain a description of all property distributed by the liquidating corporation (regardless of whether the property qualifies for nonrecognition). The description shall also identify the property excepted from gain recognition under § 1.367(e)–2(b)(2)(ii) and (iii). If the distributing corporation distributes property that will be used by the foreign distributee corporation in a U.S. trade or business and the distributing corporation does not recognize gain on such distribution under § 1.367(e)–2(b)(2)(i), then the distributing corporation may satisfy the requirements of this section by completing Part 1 of the Form 926, noting thereon that the information required by the Form 926 is contained in the statement required by § 1.367(e)–2(b)(2)(i)(C)(*2*), and attaching a signed copy of the Form 926 to its U.S. income tax return for the year of the distribution.

* * * * *

(g) *Effective dates.* This section applies to transfers occurring on or after July 20, 1998, except paragraph (e) of this section, which applies to transfers that are subject to §§ 1.367(e)–1(f) and 1.367(e)–2(e). See § 1.6038B–1T for transfers occurring prior to July 20, 1998– See also § 1.6038B–1T(e) in effect prior to August 9, 1999, (as contained in 26 CFR part 1 revised April 1, 1999) for transfers described in section 367(e) that are not subject to §§ 1.367(e)–1(f) and 1.367(e)–2(e).

Par. 5. Section 1.6038B–1T is amended by revising the section heading, revising paragraph (e) and revising the first sentence of paragraph (g), to read as follows.

§ 1.6038B–1T Reporting of certain transactions to foreign corporations (temporary).

* * * * *

(e) [Reserved] For further guidance, see § 1.6038B–1(e).

* * * * *

(g) *Effective date.* This section applies to transfers occurring after December 31, 1984. * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (b) is amended in the table by removing the entries for 1.367(e)–1T and 1.367(e)–2T, revising the entry for 1.6038B–1, and adding entries in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * *	*
1.367(e)–1	1545–1487
1.367(e)–2	1545–1487
* * *	*
1.6038B–1	1545–1487 1545–1615
* * *	*

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 29, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–20092 Filed 8–6–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–38–6985a; A–1–FRL–6411–3]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference for Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by Rhode Island that are incorporated by reference (IBR) into its respective State implementation plan (SIP). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA.

EFFECTIVE DATE: This action is effective August 9, 1999.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 1, One Congress Street, Boston, MA 02203; Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Donald O. Cooke, Environmental Scientist, at the above Region 1 address or at (617) 918–1668.

SUPPLEMENTARY INFORMATION: This format revision will primarily affect the "Identification of plan" sections of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review remain unchanged.

Background

Each State is required to have a SIP which contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The actual State Regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and insures that the State is enforcing the regulations. It also allows EPA and

the public to take enforcement action, should a State not enforce its SIP-approved regulations.

The SIP is a living document which can be revised by the State as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions which may contain new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. EPA began the process of developing (1) a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR, and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

Content of Revised IBR Document

The new SIP compilations contain the Federally-approved portion of regulations and source specific permits submitted by each State agency. These regulations and source specific permits have all been approved by EPA through previous rule making actions in the **Federal Register**. The compilations are stored in 3-ring binders and will be updated, primarily on an annual basis.

Each compilation contains two parts. Part 1 contains the regulations and part 2 contains the source specific permits that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these States. The Regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 1 EPA Office developed and will maintain the compilations for Rhode Island. A copy of the full text of each State's current compilation will also be maintained at the Office of the Federal Register and EPA's Air Docket and Information Center.

EPA is continuing, with this document, the phasing in of SIP compilations for individual States. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Clean Air Act.

Revised Format of the "Identification of Plan" Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section and including additional information which will make it clearer as to what provisions constitute the enforceable elements of the SIP.

The revised Identification of plan section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific permits, and (e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

Enforceability and Legal Effect

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraph (c), (d) or (e) of the applicable identification of plan found in each subpart of 40 CFR part 52. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original Identification of Plan section, previously appearing in the CFR as the first or second section of part 52 for each State subpart. After an initial two year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures, and will decide whether or not to retain the Identification of plan appendices for some further period.

Notice of Administrative Change

Today's rule constitutes a "housekeeping" exercise to ensure that all revisions to State programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Rhode Island SIP compilation has previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 19, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart OO—Rhode Island

2. Section 52.2070 is redesignated as § 52.2087 and the heading and paragraph (a) are revised to read as follows:

§ 52.2087 Original identification of plan section.

(a) This section identifies the original "Air Implementation Plan for the State of Rhode Island" and all revisions submitted by Rhode Island that were federally approved prior to August 9, 1999.

* * * * *

3. A new § 52.2070 is added to read as follows:

§ 52.2070 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for Rhode Island

under section 110 of the Clean Air Act, 42 U.S.C. 7401–7671q and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference. (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 9, 1999 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after August 9, 1999, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of August 9, 1999.

(3) Copies of the materials incorporated by reference may be inspected at the Region 1 EPA Office at One Congress Street, Boston, MA 02203; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460.

(c) EPA approved regulations.

EPA APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 1.	Visible emissions.	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 2.	Handling of soft coal.	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 3.	Particulate emissions from industrial processes..	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 4.	Open fires.	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 5.	Fugitive dust.	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 6.	Opacity monitors.	11/22/89	09/30/91, 56 FR 49416.	
Air Pollution Control Regulation 7.	Emission of air contaminants detrimental to persons or property..	07/19/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 8.	Limitation of sulfur in fuels..	05/02/85	01/08/86, 51 FR 756.	
Air Pollution Control Regulation 9.	Air pollution control permits..	08/19/96	06/02/99, 64 FR 29563	Except for Chapters 9.13, 9.14, 9.15, and Appendix A.
Air Pollution Control Regulation 10.	Air pollution episodes. ..	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 11.	Petroleum liquids marketing and storage..	01/31/93	12/17/93, 58 FR 65933.	
Air Pollution Control Regulation 12.	Incinerators.	04/22/81	04/26/82, 47 FR 17817.	
Air Pollution Control Revisions to Regulation 13.	Particulate emissions from fossil fuel fired steam or hot water generating units..	10/05/82	03/29/83, 48 FR 13027.	
Air Pollution Control Regulation 14.	Record keeping and reporting..	01/31/93	01/10/95, 60 FR 2526.	
Air Pollution Control Regulation 15.	Control of organic solvent emissions..	12/10/89	09/30/91, 56 FR 49416	Except subsections 15.1.16 and 15.2.2.
Air Pollution Control Regulation 16.	Operation of air pollution control system..	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 17.	Odors.	02/22/77	05/07/81, 46 FR 25446.	
Air Pollution Control Regulation 18.	Control of emissions from solvent metal cleaning..	12/10/89	09/30/91, 56 FR 49416	Except subsections 18.1.6, 18.2.1, 18.3.2(d), 18.3.3(f), and 18.5.2.
Air Pollution Control Regulation 19.	Control of VOCs from surface coating operations..	10/30/92	10/18/94, 59 FR 52429	Except 19.2.2, and the last sentence of 19.1.1, which RI did not submit as part of the SIP.
Air Pollution Control Regulation 21.	Control of VOCs from printing operations..	12/10/89	09/30/91, 56 FR 49416	Except subsections 21.1.15, and 21.2.2, and portion of subsection 21.5.2(h) which states "equivalent to" in the parenthetical.
Air Pollution Control Regulation 25.	Control of volatile organic compound emissions from cutback and emulsified asphalt..	10/30/92	10/18/94, 59 FR 52429	Except 25.2.2, which RI did not submit as part of the SIP.

EPA APPROVED RHODE ISLAND REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 26.	Control of organic solvent emissions from manufacture of synthesized pharmaceutical products..	10/30/92	10/18/94, 59 FR 52429	Except 26.2.3, which RI did not submit as part of the SIP.
Air Pollution Control Regulation 27.	Control of nitrogen oxide emissions..	01/16/96	09/02/97, 62 FR 46202.	
Air Pollution Control Regulation 29.3.	Emissions.	04/28/95	03/22/96, 61 FR 11735	This rule limits a source's potential to emit, therefore avoiding RACT, Title V Operating Permit.
Air Pollution Control Regulation 30.	Control of VOC from automotive refinishing operations..	06/27/95	02/02/96, 61 FR 3827.	
Air Pollution Control Regulation 31.	Consumer and commercial products..	03/31/94	10/30/96, 61 FR 55903	Except Section 31.2.2. and Section 31.5.2.
Air Pollution Control Regulation 32.	Marine vessels.	03/31/94	04/04/96, 60 FR 14978	Except Section 32.2.2 which Rhode Island did not submit as part of the SIP revision.
Air Pollution Control Regulation 33.	Architectural and industrial maintenance coatings..	03/31/94	10/30/96, 61 FR 55903	Except Section 33.2.2, and Section 33.5.2.
Air Pollution Control Regulation 38.	Nitrogen Oxides Allowance Program..	06/10/98	06/02/99, 64 FR 29567.	

(d) EPA-approved State Source specific requirements.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Narragansett Electric Company South Street Station in Providence.	A.H. File No. 83–12–AP	08/29/83	07/27/84, 49 FR 30177	Revisions to Air Pollution Control Regulation 8, "Sulfur Content of Fuels," specifying maximum sulfur-in-coal limits (1.21 lbs/MMBtu on a 30-day rolling average and 2.31 lbs/MMBtu on a 24-hour average). These revisions approve Section 8.3.4, "Large Fuel Burning Devices Using Coal," for South Street Station only.
Stanley Bostitch, Bostitch Division of Textron.	A.H. File No. 85–8–AP	06/06/85	12/11/86, 51 FR 44604	RI DEM and Bostitch administrative consent agreement effective 6/6/85. Requires Bostitch to reformulate certain solvent-based coatings to low/no solvent formulation by 12/31/86. Also addendum dated 9/20/85 defining emission limitations reformulated coatings must meet. (A) An administrative consent agreement between the RI DEM and Bostitch Division of Textron. (B) A letter to Bostitch Division of Textron from the RI DEM dated September 20, 1985 which serves as an addendum to the consent agreement. The addendum defines the emission limitations which Bostitch's Division of Textron reformulated coatings must meet.
Keene Corporation, East Providence, RI.	A.H. File No. 85–10–AP	09/12/85	08/31/87, 52 FR 2793 ...	RI DEM and Keene Corporation administrative consent agreement effective 9/12/85. Granting final compliance date extension for the control of organic solvent emissions from six paper coating lines. (A) Letter from the RI DEM dated November 5, 1985 submitting revisions to the RI SIP. (B) An administrative consent agreement between the RI DEM and Keene Corporation.
Tech Industries	File No. 86–12–AP	11/24/87	03/10/89, 54 FR 10147	RI DEM and Tech Industries original administrative consent agreement (86–12–AP) [except for provisions 7 and 8] effective 6/12/86, an addendum effective 11/24/87, defining and imposing reasonably available control technology to control volatile organic compounds.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
				(A) An administrative consent agreement (86–12–AP), except for Provisions 7 and 8, between the RI DEM and Tech Industries effective June 12, 1986. (B) An addendum to the administrative consent agreement (86–12–AP) between the RI DEM and Tech Industries. The addendum was effective November 24, 1987. (C) Letters dated May 6, 1987; October 15, 1987; and January 4, 1988 submitted to the EPA by the RI DEM.
University of Rhode Island.	A.P. File No. 87–5–AP ..	03/17/87	09/19/89, 54 FR 38517	Revisions to the SIP submitted by the RI DEM on April 28, 1989, approving a renewal of a sulfur dioxide bubble for the University of Rhode Island.
University of Rhode Island.	File No. 95–50–AP	03/12/96	09/02/97, 62 FR 46202	An administrative consent agreement between RIDEM and University of Rhode Island, Alternative NO_X RACT (RI Regulation 27.4.8)
Providence Metallizing in Pawtucket, Rhode Island.	File No. 87–2–AP	04/24/90	09/06/90, 55 FR 36635	Define and impose RACT to control volatile organic compound emissions. (A) Letter from the RIDEM dated April 26, 1990, submitting a revision to the RI SIP. (B) An administrative consent agreement (87–2–AP) between the RI DEM and Providence Metallizing effective July 24, 1987. (C) An amendment to the administrative consent agreement (87–2–AP) between the RI DEM and Providence Metallizing effective May 4, 1989. (D) An addendum to the administrative consent agreement (87–2–AP) between the RI DEM and Providence Metallizing effective April 24, 1990.
Tillotson-Pearson in Warren, Rhode Island.	File No. 90–1–AP	06/05/90	08/31/90, 55 FR 35623	Revisions to the SIP submitted by the RI DEM on May 24, 1990, to define and impose RACT to control volatile organic compound emissions. (A) Letter from the RI DEM dated May 24, 1990 submitting a revision to the RI SIP. (B) An Administrative consent agreement (90–1–AP) between the RI DEM and Tillotson-Pearson.
Rhode Island Hospital ...	File No. 95–14–AP	11/27/95	09/02/97, 62 FR 46202	Alternative NO_X RACT. An administrative consent agreement between the RI DEM and RI Hospital.
Osram Sylvania Incorporated.	File No. 95–14–AP ..... Air Pollution Permit Approval, No. 1350.	09/04/96	09/02/97, 62 FR 46202	Alternative NO_X RACT. (A) An Administrative consent agreement between the RI DEM and Osram Sylvania Incorporated, file no. 95–14–AP, effective September 4, 1996. (B) An air pollution Permit approval, no. 1350 Osram Sylvania Incorporated issued by RIDEM effective May 14,1996.
Algonquin Gas Transmission Company.	File No. 95–52–AP	12/05/95	09/02/97, 62 FR 46202	Alternative NO_X RACT. (A) Letter from the RI DEM dated September 17, 1996 submitting a revision to the RI SIP. (B) An administrative consent agreement between RIDEM and Algonquin Gas Transmission Company, effective on December 5, 1995.
Bradford Dyeing Association, Inc.	File No. 95–28–AP	11/17/95	09/02/97, 62 FR 46202	Alternative NO_X RACT. An administrative consent agreement between RIDEM and Bradford Dyeing Association, Inc.
Hoechst Celanese Corporation.	File No. 95–62–AP	11/20/95	09/02/97, 62 FR 46202	Alternative NO_X RACT. An administrative consent agreement between RIDEM and Hoechst Celanese Corporation.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Naval Education and Training Center in Newport.	File No. 96–07–AP	03/04/96	09/02/97, 62 FR 46202	Alternative NO_X RACT. An administrative consent agreement between RIDEM and Naval Education and Training Center in Newport.
Rhode Island Economic Development.	File No. 96–04–AP	09/02/97	06/02/99, 64 FR 29567	Alternative NO_X RACT. A consent agreement between RIDEM and Rhode Island Economic Development Corporation's Central Heating Plant in North Kingstown.

(e) Nonregulatory.

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
Notice of public hearing..	Statewide	Submitted 02/09/72	06/15/72, 37 FR 11911.	Proposed Implementation Plan Regulations, RI Department of Health.
Miscellaneous nonregulatory additions to the plan correcting minor deficiencies.	Statewide	Submitted 02/29/72	07/27/72, 37 FR 15080.	Approval and promulgation of Implementation Plan Miscellaneous Amendments, RI Department of Health.
Compliance schedules	Statewide	Submitted 04/24/73	06/20/73, 38 FR 16144.	Submitted by RI Department of Health.
AQMA identifications for the State of Rhode Island.	Statewide	Submitted 04/11/74	04/29/75, 40 FR 18726.	Submitted by RI Department of Health.
Letter identifying Metropolitan Providence as an AQMA.	Metropolitan Providence.	Submitted 09/06/74	04/29/75, 40 FR 18726.	Submitted by the Governor.
A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR part 58.	Statewide	Submitted 01/08/80	01/15/81, 46 FR 3516	Submitted by the RI Department of Environmental Management Director.
Attainment plans to meet the requirements of Part D of the Clean Air Act, as amended in 1977, included are plans to attain the carbon monoxide and ozone standards and information allowing for the re-designation of Providence to non-attainment for the primary TSP standard based on new data.	Statewide	Submitted 05/14/79, 06/11/79, 08/13/79, 01/08/80, 01/24/80, 03/10/80, 03/31/80, 04/21/80, 06/06/80, 06/13/80, 08/20/80, 11/14/80, 03/04/81, 03/05/81 and, 04/16/81.	05/07/81, 46 FR 25446.	Attainment plans to meet the requirements of Part D of the Clean Air Act, as amended in 1977.
A program for the review of construction and operation of new and modified major stationary sources of pollution in non-attainment areas.				
Certain miscellaneous provisions unrelated to Part D are also included.				
Section VI, Part II, "Stationary Source Permitting and Enforcement" of the narrative.	Statewide	Submitted 05/14/82; and 07/01/82.	06/28/83, 48 FR 29690.	As submitted by RI DEM on May 14, 1982 and July 1, 1982 for review of new major sources and major modifications in non-attainment areas. Also included are revisions to add rules for banking emission reductions.

RHODE ISLAND NON REGULATORY—Continued

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
Revisions to the Rhode Island State Implementation Plan for attainment of the primary National Ambient Air Quality Standard for ozone 1982 Ozone Attainment Plan.	Statewide	Submitted 05/14/82; 07/01/82; 07/07/82; 10/04/82; and 03/02/83.	07/06/83, 48 FR 31026.	Submitted by the Department of Environmental Management.
Revisions to attain and maintain the lead NAAQS.	Statewide	Submitted 07/07/83	09/15/83, 48 FR 41405.	Submitted by the Department of Environmental Management.
Section VI, Part II of the associated narrative of the RI SIP.	Statewide	Submitted 02/06/84; 01/27/84; and 06/06/84.	07/06/84, 49 FR 27749.	To incorporate the requirements for the Prevention of Significant Deterioration of 40 CFR 51.24, permitting major stationary sources of lead and other miscellaneous changes.
Letter from RI DEM submitting an amendment to the RI State Implementation Plan. Section VII of the RI SIP Ambient Air Quality Monitoring.	Statewide	Submitted 01/14/94; and 06/14/94.	10/30/96, 61 FR 55897.	A revision to the RI SIP regarding ozone monitoring. RI will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The State's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.
Letter from RI DEM submitting revisions.	Statewide	Submitted 03/15/94	10/30/96, 61 FR 55903.	Revision to the RI SIP regarding the States' Contingency Plan.
Letter from RI DEM submitting revision—Rhode Island's 15 Percent Plan and Contingency Plan.	Statewide	Submitted 03/15/94	04/17/97, 62 FR 18712.	The revisions consist of the State's 15 Percent Plan and Contingency Plan. EPA approved only the following portions of these submittals: 15 Percent Plan—the EPA approved the calculation of the required emission reductions, and the emission reduction credit claimed from surface coating, printing operations, marine vessel loading, plant closures (0.79 tons per day approved out of 0.84 claimed), cutback asphalt, auto refinishing, stage II, reformulated gas in on-road and off-road engines, and tier I motor vehicle controls. Contingency Plan—the EPA approved the calculation of the required emission reduction, and a portion of the emission reduction credits claimed from Consumer and Commercial products (1.1 tons per day approved out of 1.9 tons claimed), and architectural and industrial maintenance (AIM) coatings (1.9 tons per day approved out of 2.4 tons claimed). EPA concurrently disapproved portions of these SIP submissions, as discussed within Section 52.2084(a)(2).

[FR Doc. 99–20312 Filed 8–6–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY 32–194a, FRL–6414–1]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Plan submitted by New York to implement and enforce the Emission Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The EG require states to develop plans to reduce toxic air emissions from all HMIWIs.

DATES: This direct final rule is effective on October 8, 1999 without further notice, unless EPA receives adverse comment by September 8, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Ted Gardella or Craig Flamm, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892 or (212) 637–4021, respectively.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA taking today?
II. Why is EPA approving New York's State Plan?
III. Why does EPA want to regulate air emissions from HMIWIs?
IV. What are EPA's requirements for HMIWIs?
V. Are any sources exempt from the federal requirements?
VI. What is a State Plan?
VII. What does New York's State Plan contain?
VIII. What sources are affected by New York's State Plan?
IX. What steps do affected sources need to take?
X. What are EPA's conclusions?
XI. Administrative Requirements

I. What Action Is EPA Taking Today?

EPA is approving New York's State Plan submitted on September 9, 1998, and supplemented on March 11, May 12, and May 15, 1999, for the control of air emissions from HMIWIs throughout the State, except for those HMIWIs located on Indian Nation land. When EPA developed the New Source Performance Standards (NSPS) for HMIWIs, we simultaneously developed the Emission Guidelines (EG) to control air emissions from older HMIWIs (see 62 FR 48348–48391, September 15, 1997). New York State developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve New York's State Plan.

Under section 129 of the Act, the EG are not federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA. The procedures for adopting and submitting State Plans are located in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules, see 60 FR 65414 (December 19, 1995). This action approves the State Plan submitted by New York to implement and enforce the EG, as it applies to older HMIWI units.

II. Why Is EPA Approving New York's State Plan?

EPA has evaluated the HMIWI State Plan submitted by New York for consistency with the Act, EPA guidelines and policy. EPA has determined that New York's State Plan meets all requirements and, therefore, EPA is approving New York's Plan to implement and enforce the EG, as it applies to older HMIWIs.

III. Why Does EPA Want To Regulate Air Emissions From HMIWIs?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

IV. What Are EPA's Requirements for HMIWIs?

On September 15, 1997, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new HMIWIs and the EG applicable to older HMIWIs. The NSPS and EG are codified at 40 CFR part 60, subparts Ec and Ce, respectively, see 62 FR 48348 (September 15, 1997).

Under the EG, EPA requires that affected older HMIWIs do the following:

(1) Control emissions for the following designated pollutants:

particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

(2) Control stack opacity.

(3) Include operator training/qualification, waste management plans, and testing/monitoring of pollutants and operating parameters.

(4) Inspect small incinerator equipment located in rural areas.

The Federal NSPS and EG define an HMIWI as any device that combusts any amount of medical/infectious waste or hospital waste. The terms medical infectious waste or hospital waste are defined in 40 CFR 60.51c.

The HMIWI source category is divided into three subcategories based on waste burning capacity: small (less than or equal to 200 pounds per hour (lb/hr)), medium (more than 200 lb/hr up to 500 lb/hr), and large (more than 500 lb/hr).

V. Are Any Sources Exempt From the Federal Requirements?

The following incinerator source categories are exempt from the federal requirements for HMIWIs:

(1) Incinerators that burn only pathological, low-level radiation, and/or chemotherapeutic waste (all defined in section 60.51c). However, the owner or operator must notify the EPA Administrator of an exemption claim and the owner or operator must keep records of the periods of time when only pathological, low-level radioactive, and/or chemotherapeutic waste is burned.

(2) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act.

(3) Incinerators that are subject to the NSPS and EG for Municipal Waste Combustors.

(4) Existing incinerators, processing operations, or boilers that co-fire medical/infectious waste or hospital waste with other fuels or wastes and that combust less than ten percent or less medical/infectious waste and hospital waste by weight (on a calendar quarter basis). However, the owner or operator must notify the EPA Administrator of an exemption claim and the owner or operator must keep records of the amount of each fuel and waste fired.

VI. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under NSPS must also be controlled at older sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in their State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

VII. What Does New York's State Plan Contain?

On September 9, 1998, the New York State Department of Environmental Conservation (NYSDEC) submitted its section 111(d) State Plan for implementing EPA's EG for older HMIWI units located in New York State. This submittal was supplemented by the NYSDEC on March 11, May 12, and May 15, 1999.

New York has adopted by reference the requirements of the EG in Part 200 of title 6 of the New York Code of Rules and Regulations (6NYCRR) of the State of New York, entitled, "General Provisions" and in Subpart 219–1 of 6NYCRR entitled "Incineration-General Provisions." These adoptions were effective on October 1, 1998. New York will enforce the requirements under Part 201, entitled, "Permits and Registration" which was also effective on October 1, 1998. By incorporating the EG by reference into Part 200, NYSDEC has the authority to include them as applicable requirements in the permits for the designated facilities and to enforce such requirements. For consistency, Subpart 219–1, which addresses the applicability of the various Part 219 Subpart requirements (New York's incineration rules) now includes the new requirements and necessary definition changes.

New York's State Plan contains the following:

(1) A demonstration of the State's legal authority to implement the section 111(d) State Plan;

(2) State rules adopted into 6NYCRR as the mechanism for implementing and enforcing the State Plan;

(3) An inventory of fifteen known HMIWI facilities, including eighteen incinerator units, along with measurements of their toxic air emissions;

(4) Emission limits that are as protective as the EG;

(5) Enforceable compliance schedules incorporated into each facility's existing State operating permit. Compliance dates vary from one year from the effective date of EPA approval of New York's State Plan to not later than September 15, 2002;

(6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

(7) Records for the public hearing; and

(8) Provisions for progress reports to EPA.

New York's State Plan was reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, "Subpart B—Adoption and Submittal of State Plans for Designated Facilities"; and, 40 CFR 60.30e through 60.39e, "Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators."

VIII. What Sources Are Affected by New York's State Plan?

New York's State Plan regulates all the sources covered by EPA's EG for older HMIWIs for which construction commenced on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

IX. What Steps Do Affected Sources Need To Take?

Affected sources must meet the requirements listed in the EG, summarized as follows:

(1) Determine the size of your incinerator by establishing its maximum design capacity.

(2) Determine the specific emission limits that apply to you. Each size category of HMIWI has certain emission limits established that your incinerator must meet (see Table 1 of 40 CFR part 60, subpart Ce). The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. (40 CFR 60.33e, as listed at 62 FR 48382, September 15, 1997).

(3) Meet the provisions required of small rural incinerators, if applicable. (See 40 CFR 60.33e(b), 60.36e, 60.37e(c)(d), and 60.38e(b), as listed at 62 FR 48380, September 15, 1997).

(4) Meet a 10% opacity limit on your discharge, averaged over a six-minute block (see 40 CFR 60.33e(c), as listed at 62 FR 48380, September 15, 1997).

(5) Provide for a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c) (see 40 CFR 60.34e, as listed at 62 FR 48380).

(6) Provide for operator certification, as discussed in (5) above, no later than one year after we approve New York's State Plan (see 40 CFR 60.39e(e), as listed at 62 FR 48382).

(7) Develop and submit to NYSDEC a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to NYSDEC no later than sixty days following the initial performance test (see 40 CFR 60.35e, as listed at 62 FR 48380; and 40 CFR 60.38e, as listed at 62 FR 48381).

(8) Conduct an initial performance test to determine your incinerator's compliance with these emission limits. This performance test must be completed by the date specified at 40 CFR 60.37e and 60.8, as listed at 62 FR 48380.

(9) Install and maintain devices to monitor the parameters listed under Table 3 to Subpart Ec (see 40 CFR 60.37e(c), as listed at 62 FR 48381).

(10) Document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years (see 40 CFR 60.38e, as listed at 62 FR 48381).

(11) Report to NYSDEC the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager (see 40 CFR 60.38e, as listed at 62 FR 48381).

(12) Comply with all the requirements of this State Plan within one year after we approve it; however, there are provisions to extend your compliance date (see 40 CFR 60.39e, as listed at 62 FR 48381). Those sources who have modified their state operating permits to include a compliance schedule to come into compliance with the State Plan within a year or more of our approval, must do so by the dates specified in their individual compliance schedules.

X. What Are EPA's Conclusions?

EPA has determined that New York's State Plan meets all requirements and, therefore, EPA is approving New York's Plan to implement and enforce the EG, as it applies to older HMIWIs.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective October 8, 1999 without further notice unless the Agency receives relevant adverse comments by September 8, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 8, 1999 and no further action will be taken on the proposed rule.

XI. Administrative Requirements

Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order (E.O.) 12866 entitled "Regulatory Planning and Review."

Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule implements requirements specifically set forth by the Congress in sections 111 and 129 of the Clean Air Act, as amended in 1990, without the exercise of any discretion by EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant action under Executive Order 12866 and does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule implements requirements specifically set forth by the Congress in sections 111 and 129 of the Clean Air Act, as amended in 1990, without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not

have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under section 111 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not create any new requirements, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning State Plans on such grounds. Union Electric Co., v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Hospital/Medical/Infectious Waste Incinerators, Reporting and recordkeeping requirements.

Dated: July 23, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

2. Part 62 is amended by adding § 62.8105 and an undesignated heading to subpart HH to read as follows:

Metals, Acid Gases, Organic Compounds, Particulates and Nitrogen Oxide Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

§ 62.8105 Identification of plan.

(a) The New York State Department of Environmental Conservation submitted to the Environmental Protection Agency a "State Plan for implementation and enforcement of 40 CFR part 60, subpart CE, Emissions Guidelines for Hospitals/Medical/Infectious Waste Incinerators" on September 9, 1998 and supplemented on March 11, May 12, and May 15, 1999.

(b) Identification of sources: The plan applies to all existing HMIWI facilities for which construction was commenced on or before June 20, 1996, as described in 40 CFR Part 60, Subpart Ce.

(c) The effective date for the portion of the plan applicable to existing Hospital/Medical/Infectious Waste Incinerators is October 8, 1999.

[FR Doc. 99–20305 Filed 8–6–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5 and 90

[ET Docket No. 96–256, FCC 98–283]

Revision of the Experimental Radio Service Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On November 19, 1998 (63 FR 64199), the Commission published final rules in the Report and Order, which revised the rules governing the Experimental Radio Service. This document contains corrections to that rule.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending parts 5 and 90 of the Commission's rules in the **Federal Register** on November 19, 1998, (63 FR 64199). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 98–30381, published on November 19, 1998, 63 FR 64199, the Commission is correcting §§ 5.3(f), 5.59(d), 5.59(f), 5.61(c), 5.61(c)(6), 5.61(c)(9), 5.89(c), 5.105, 5.109(b), and 90.203 of the Commission's rules.

In rule FR Doc. 98–30381 published on November 19, 1998 (63 FR 64199) make the following corrections.

1. On page 64202, in the third column of § 5.3 paragraph (f) is corrected to read as follows:

§ 5.3 Scope of service.

* * * * *

(f) Demonstration of equipment to prospective purchasers by persons

engaged in the business of selling radio equipment.

* * * * *

§ 5.59 [Corrected]

2. On page 64204, in the second column, the first sentence of § 5.59 paragraph (d) is corrected by removing the term "to construct or"; and in the same column, paragraph (f) should be removed.

3. On page 64204, in the third column, in § 5.61, paragraphs (c) introductory text, (c)(6) and (c)(9) are corrected to read as follows:

§ 5.61 Procedure for obtaining a special temporary authorization.

* * * * *

(c) An application for special temporary authorization may be filed in letter form and shall contain the following information:

* * * * *

(6) Description of the location(s) and, if applicable, geographical coordinates of the proposed operation.

* * * * *

(9) Maximum effective radiated power (ERP) or equivalent isotrophically radiated power (EIRP).

* * * * *

4. On page 64207, in the first column, in § 5.89, the first sentence in paragraph (c) is corrected to read as follows:

§ 5.89 School and student authorizations.

* * * * *

(c) Operations under this section are limited to 4 watts equivalent isotropically radiated power (EIRP).

* * *

* * * * *

5. On page 64207, in the third column, in § 5.105, the first sentence is corrected to read as follows:

§ 5.105 Authorized bandwidth.

Each authorization issued to a station operating in this service will show, as the prefix to the emission classification, a figure specifying the maximum necessary bandwidth for the emission used. * * *

6. On page 64208, in the first column, in § 5.109, paragraph (b) is corrected to read as follows:

§ 5.109 Antenna and tower requirements.

(b) The licensee of any radio station that has an antenna structure required to be painted and illuminated pursuant to the provisions of section 303(q) of the Communications Act of 1934, as amended, and part 17 of this chapter, shall perform the inspections and maintain the tower marking and lighting, and associated control equipment, in accordance with the requirements of part 17, subpart C, of this chapter.

7. On page 64208, in the third column, in § 90.203, the section heading, paragraph (a) introductory text and paragraph (l) are corrected to read as follows:

§ 90.203 Certification required.

(a) Except as specified in paragraphs (b) and (l) of this section, each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be of a type which has been certificated for use under this part.

* * * * *

(l) Ocean buoy and wildlife tracking transmitters operating in the band 40.66–40.70 MHz or 216–220 MHz under the provisions of § 90.243 of this part shall be authorized under verification procedure pursuant to subpart J of part 2 of this chapter.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20388 Filed 8–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 98–118, FCC 99–51]

Biennial Review of International Common Carrier Regulations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of April 19, 1999, a document concerning the biennial review of international common carrier regulations. Inadvertently amendatory instruction 10 contained errors. This document corrects those instructions.

DATES: Effective August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas Klein or Peggy Reitzel, Policy and Facilities Branch, Telecommmunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document in the **Federal Register** of April 19, 1999, (64 FR 19063). This correction revises amendatory instruction 10.

In the **Federal Register** Doc. 99–9480 published on April 19, 1999, (64 FR 19063) make the following correction.

On page 19063, in the first column, correct amendatory instruction 10 to read as follows:

§ 63.12 [Corrected]

10. Section 63.12, paragraph (c)(2) is amended by removing the words "within the meaning of § 63.18(h)(1)", removing paragraph (c)(4), redesignating paragraph (c)(5) as new paragraph (c)(4), and revising it, and revising paragraphs (a), (b), (c)(1) and (d) to read as follows:

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20391 Filed 8–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1508; MM Docket No. 98–135; RM–9300 & RM–9383]

Radio Broadcasting Services; Corrigan and Lufkin, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 261A to Lufkin, Texas, in response to a petition filed by Russell L. Lindley, *see* 63 FR 41765, August 5, 1998. The coordinates for Channel 261A at Lufkin are 31–16–13 NL and 94–43–50 WL. There is a site restriction 8.5 kilometers (5.3 miles) south of the community. In response to a counterproposal filed by Corrigan Broadcasting Company, we shall allot Channel 232A to Corrigan, Texas, at coordinates 30–59–30 NL and 94–59–41 WL. There is a site restriction 15.7 kilometers (9.8 miles) west of the community. With this action, this proceeding is terminated. A filing window for Channel 261A at Lufkin and Channel 232A at Corrigan will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–135, adopted July 21, 1999, and released July 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW,

Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Corrigan, Channel 232A, and by adding Channel 261A at Lufkin.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–20390 Filed 8–6–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202 and 217

[DFARS Case 97–D308]

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update guidance pertaining to multiyear contracting. The rule contains statutory requirements related to the award of multiyear contracts for supplies, services, and weapon systems.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 97–D308.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Subpart 217.1 to update guidance pertaining to the award of multiyear contracts. The rule adds requirements to reflect the provisions of 10 U.S.C. 2306(g)(2)(B), 10 U.S.C. 2306b(i)(3), and Section 8008(b) of Public Law 105–56; updates other statutory references throughout the subpart; and makes editorial revisions for clarity. In addition, the rule adds a definition of "Congressional defense committees" at DFARS 202.101

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D308.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 202 and 217

Government procurement.

Michele P. Peterson,

Executive Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 202 and 217 are amended as follows:

1. The authority citation for 48 CFR Parts 202 and 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

2. Section 202.101 is amended by adding, in alphabetical order, a definition of "Congressional defense committees" to read as follows:

§ 202.101 Definitions

"Congressional defense committees" means—

(1) The Committee on Armed Services of the Senate;

(2) The Subcommittee on Defense of the Committee on Appropriations of the Senate;

(3) The Committee on Armed Services of the House of Representatives; and

(4) The Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

3. Sections 217.170 through 217.714 are revised to read as follows:

217.170 General

(a) Before awarding a multiyear contract, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis. Do not award the multiyear contract unless the analysis shows that the multiyear contract will result in the lower cost (10 U.S.C. 2306(1)(5)).

(b) The head of the agency must provide written notice to the congressional defense committees at least 10 days before termination of any multiyear contract (10 U.S.C. 2306(1)(4)).

(c) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

(d) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

(e)(1) DoD must receive authorization from, or provide notification to, Congress before entering into a multiyear contract for certain procurements, including those expected to—

(i) Exceed $500 million for any particular system or system component (see 217.173(b)(4));

(ii) Employ economic order quantity procurement in excess of $20 million in any one year (see 217.174(a)(1));

(iii) Employ an unfunded contingent liability in excess of $20 million (see 217.172(c)); or

(iv) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any one year (see 217.174(a)(2)).

(2) A DoD component must submit a request for authority to enter into such multiyear contracts as part of the component's budget submission for the fiscal year in which the multiyear contract will be initiated. DoD will include the request, for each candidate it supports, as part of the President's Budget for that year and in the

Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (Section 8008(b) of Pub. L. 105–56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (e)(2) of this section, the request for authority to enter into a multiyear contract must be—

(i) Formally submitted by the President as a budget amendment; or

(ii) Made by the Secretary of Defense, in writing, to the congressional defense committees (Section 8008(b) of Pub. L. 105–56).

217.171 Multiyear contracts for services.

(a) *10 U.S.C. 2306(g).*

(1) The head of the agency may enter into multiyear contracts for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:

(i) Operation, maintenance, and support of facilities and installations.

(ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(iii) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training).

(iv) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(2) The head of the agency may use this authority only if the term of the contract does not exceed 5 years. However, the head of the agency may extend the term of the contract by exercising an option that does not—

(i) Exceed 3 years; or

(ii) Include charges for plant, equipment, or other nonrecurring costs already amortized.

(3) Before entering into a multiyear contract for services, the head of the agency must make a written determination that—

(i) There will be a continuing need for the services and incidental supplies consistent with current plans for the proposed contract period;

(ii) Furnishing the services and incidental supplies will require—

(A) A substantial initial investment in plant or equipment; or

(B) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(iii) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations (e.g., economic lot purchases and more efficient production rates).

(b) *10 U.S.C. 2829.*

(1) The head of the agency may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year.

(2) The head of the agency may use this authority only if the term of the contract does not exceed 4 years.

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105–1(b), the use of such a contract will promote the national security of the United States.

(c) The head of the agency must provide written notice to the congressional defense committees at least 30 days before the contracting officer awards a multiyear contract including an unfunded contingent liability in excess of $20 million (10 U.S.C. 2306b(l)(1)(A)).

(d) Agencies must establish reporting procedures to meet the requirements of paragraph (c) of this section. The head of the agency must submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)DP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

217.173 Multiyear contracts for weapon systems.

(a) As authorized by 10 U.S.C. 2306b(h) and subject to the conditions in paragraph (b) of this section, the head of the agency may enter into a multiyear contract for—

(1) A weapon system and associated items, services, and logistics support for a weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see 217.174 regarding economic order quantity procurement).

(b) The head of the agency must ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (a) of this section:

(1) The multiyear exhibits required by DoD 7000.14–R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A)). The head of the agency must submit information supporting this certification to USD(C) (P/B) for transmission to Congress through the Secretary of Defense.

(3) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B)). The head of the agency must submit to USD(C) (P/B) information supporting the agency's determination that this requirement has been met.

(4) If the value of a multiyear contract for a particular system or component exceeds $500 million, use of a multiyear contract is specifically authorized by—

(i) An appropriations act (10 U.S.C. 2306b(l)(3)); and

(ii) A law other than an appropriations act (10 U.S.C. 2306b(i)(3)).

(5) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency must assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request must—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD (A&T) DP for transmission to Congress via the Secretary of Defense and the President.

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) The head of the agency must provide written notice to the congressional defense committees at least 30 days before awarding—

(1) A multiyear contract providing for economic order quantity procurement in excess of $20 million in any one year; or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any one year (10 U.S.C. 2306b(l)(1)(A)).

(b) Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (e.g., Part 3 of DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14–R, Financial Management Regulation).

[FR Doc. 99–20284 Filed 8–6–99; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 212, 213, 252, and 253

[DFARS Case 98–D027]

Defense Federal Acquisition Regulation Supplement; Taxpayer Identification Numbers and Commercial and Government Entity Codes

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add procedures for reporting payment information to the Internal Revenue Service (IRS); to revise the procedures for obtaining Taxpayer Identification Numbers (TINs) and Commercial and Government Entity (CAGE) codes when contractors are required to register in the Central Contractor Registration (CCR) database; and to make editorial changes.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; telefax (703) 602–0350. Please cite DFARS Case 98–D027.

SUPPLEMENTARY INFORMATION:

A. Background

1. *Reporting payment information to the IRS.* This rule supplements the final FAR rule published as Item I of Federal Acquisition Circular 97–12 on June 17, 1999 (64 FR 32741).

a. The FAR rule renumbered and retitled FAR 4.903, Payment information, as FAR 4.904, Reporting payment information to the IRS; and deleted the list, previously located at FAR 4.903(b), of the types of payments that are exempt from reporting payment information to the IRS on Form 1099. The list was considered unnecessary for including in the FAR, because the payment office is responsible for submitting Form 1099 reports to the IRS.

b. This rule adds a new section at DFARS 204.904, Reporting payment information to the IRS. The new section contains a list that is similar to the one previously found in the FAR, but the list has been updated to comply with the Taxpayer Relief Act of 1997 (Pub. L. 105–32). Section 1022 of the Act amended 26 U.S.C. 6041A to add payments under certain classified contracts to the list of exceptions, and to remove payments for services provided by corporations from the list. DFARS 204.904 also adds a requirement for the contracting officer to provide a statement to the payment office if the contractor is providing services subject to Form 1099 reporting to the IRS. The statement is not required if the contracting officer concludes that one of the exceptions listed at DFARS 204.904(1) applies. This procedure is added to the DFARS to facilitate issuance of Form 1099 reports by the payment office.

2. *Procedures for obtaining TINs and CAGE code numbers when CCR applies.* The FAR rule also modified the process for obtaining TINs, by permitting agencies to prescribe their own procedures for obtaining TINs from contractors and for providing the TINs to the payment office. DoD uses the CCR database for these purposes. This DFARS rule clarifies that the contracting officer must not use the solicitation provisions at FAR 52.204–3, Taxpayer Identification, and DFARS 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting; or paragraph (b) of the provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, when the contractor is required to register in the CCR database, since the information that these provisions request is duplicative of the information that the contractor must provide during the CCR process.

3. *Editorial changes.* This DFARS rule makes a number of editorial changes, including updating CAGE code information in Subpart 204.72, Contractor Identification, and clarifying certain requirements in Subpart 204.73, Central Contractor Registration.

4. *Proposed rule.* A proposed DFARS rule was published in the **Federal Register** on January 15, 1999 (64 FR 2617). Three sources submitted comments on the proposed rule. All comments were considered in the development of the final rule.

5. This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the FAR and DFARS already contain requirements for offerors and contractors to provide TINs and CAGE codes and to register in the CCR database. This rule simply clarifies that, if a prospective contractor is required to register in the CCR database, it does not have to provide a TIN or a CAGE code to the contracting officer.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) applies because the rule contains information collection requirements. The final rule decreases the collection requirements currently approved under Office of Management and Budget Control Number 0704–0225, since the rule limits use of the solicitation provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, to contractors that are not required to register in the CCR database. Therefore, the final rule reduces the number of respondents by 89,545, and the number of burden hours by 22,386.

List of Subjects in 48 CFR Parts 204, 212, 213, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 204, 212, 213, 252, and 253 are amended as follows:

1. The authority citation for 48 CFR parts 204, 212, 213, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.203 is added to read as follows:

204.203 Taxpayer identification information.

(1) The procedures at FAR 4.203(a) and (b) do not apply to contracts that include the clause at 252.204–7004, Required Central Contractor Registration.

(2) For a DoD basic ordering agreement or indefinite-delivery contract that requires the contractor to register in the Central Contractor Registration (CCR) database (see subpart 207.73)—

(i) The contracting officer issuing the agreement or contract need not provide a copy of the completed solicitation provision at FAR 52.204–3 or 52.212–3(b) to DoD contracting officers placing orders under the agreement or contract; and

(ii) A DoD contracting officer placing an order under the agreement or contract need not provide the TIN or type of organization information to the payment office.

(3) For a non-DoD basic ordering agreement or indefinite-delivery contract, a DoD contracting officer placing an order under the agreement or contract must use the procedures at 204.7303(a)(2) to determine if the contractor is registered in the CCR database.

(i) If the contractor is registered, the contracting officer need not provide the TIN or type of organization information to the payment office.

(ii) If the contractor is not registered, the contracting officer must follow the procedures at 204.7303(b).

204.602–70 [Removed]

3. Section 204.602–70 is removed.

4. Section 204.603 is added to read as follows:

204.603 Solicitation provisions.

(1) Use the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, in solicitations when—

(i) The solicitation does not include the clause at 252.204–7004, Required Central Contractor Registration; and

(ii) The CAGE codes for the potential offerors are not available to the contracting office.

(2) Use the provision at FAR 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(i) Have an estimated value exceeding $25,000; or

(ii) Have an estimated value of $25,000 or less and include the clause at $252.204–7004, Required Central Contractor Registration.

5. Subpart 204.9 is revised to read as follows:

Subpart 204.9—Taxpayer Identification Number Information

Sec.

204.902 General.
204.904 Reporting payment information to the IRS.
204.905 Solicitation provision.

204.902 General

(b) DoD uses DD Form 350, Individual Contracting Action Report, (see 204.670) to meet these reporting requirements.

204.904 Reporting payment information to the IRS.

(1) 26 U.S.C. 6041 and 6041A and 26 CFR 1.6041 require Government payors to report to the IRS, on IRS Form 1099, payments of an annual cumulative value of $600 or more provided to a contractor, except payments for—

(i) Supplies, unless the supplies are incidental to the furnishing of services;

(ii) Telegram, telephone, freight, storage, or similar charges;

(iii) Income that the payor must report on IRS Form W–2 (e.g., payments to employees or payments under contracts for personal services);

(iv) Any contract with a Federal agency;

(v) Any contract with a State, the District of Columbia, or a possession of the United States; or a political subdivision, agency, or instrumentality of any of the foregoing;

(vi) Any contract with an organization exempted from taxation by 26 U.S.C. 501(a). Such organizations may include charitable, social welfare, labor, agricultural, veterans', and political organizations; business leagues; social clubs; fraternal societies; and employees' associations. Contracting officers may obtain additional information to assist in determining an organization's tax-exempt status via the Internet at http://www.irs.ustreas.gov/prod/bus_info/eo/eo-types.html;

(vii) Any contract with a foreign government or a political subdivision of a foreign government;

(viii) Any contract with an international organization listed in 22 U.S.C. 288;

(ix) Any classified contract excepted by 26 U.S.C. 6050M. As used in this section only, a contract is classified if—

(A) DoD designates the existence of the contract or the contract subject matter as classified (i.e., the contract requires a specific degree of protection against unauthorized disclosure for reasons of national security); or

(B) The head of the agency determines that filing IRS Form 1099 would interfere with the effective conduct of a confidential law enforcement or foreign intelligence activity; or

(x) Such other services as the IRS may specify in regulations.

(2) Unless an exception in paragraph (1) of this section applies, the contracting officer must provide, as the last page of the copy of the contract sent to the payment office—

(i) A statement that the contractor is providing services subject to Form 1099 payment information reporting to the IRS, as required by 26 U.S.C. 6041 and 6041A; and

(ii) The contractor's Taxpayer Identification Number and type of organization, if the contract does not include the clause at 252.204–7004, Required Central Contractor Registration.

204.905 Solicitation provision.

Do not use the provision at FAR 52.204–3, Taxpayer Identification, in solicitations that include the clause at 252.204–7004, Required Central Contractor Registration.

6. Sections 204.7200 through 204.7204 are revised to read as follows:

204.7200 Scope of subpart

This subpart prescribes uniform policies and procedures for identification of commercial and Government entities when it is necessary to—

(a) Exchange data with another contracting activity, including contract administration activities and contract payment activities, or comply with the reporting requirements of subpart 204.6; or

(b) Identify contractors for the purpose of developing computerized acquisition systems or solicitation mailing lists.

204.7201 Definitions.

(a) "Commercial and Government Entity (CAGE) code" means—

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization (NATO) that DLIS records and maintains in the CAGE master file. This type of code is known as an "NCAGE code."

(b) "Contractor identification code" means a code that the contracting office uses to identify an offeror. The three types of contractor identification codes are CAGE codes, Data Universal Numbering System (DUNS) numbers, and Taxpayer Identification Numbers (TINs).

204.7202 General.

204.7202–1 CAGE codes.

(a) DLIS assigns or records and maintains CAGE codes to identify commercial and Government entities. DoD 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP); Volume 7 of DoD 4100.39–M, Federal Logistics Information System (FLIS) Procedures Manual; and 253.204–70(b)(5)(ii)(C) prescribe use of CAGE codes.

(b)(1) If a prospective contractor must register in the Central Contractor Registration (CCR) database (see subpart 204.73) and does not have a CAGE code, DLIS will assign a CAGE code when the prospective contractor submits its request for registration in the CCR database.

(2) If registration in the CCR database is not required, the prospective contractor's CAGE code is not already available in the contracting office, and the prospective contractor does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the following procedures:

(i) To identify the prospective contractor's CAGE code, use—

(A) The monthly H-series CD ROM that contains the H–4/H–8 CAGE master file issued by DLIS (Their address is: Customer Service, Federal Center, 74 Washington Avenue, North, Battle Creek, MI 49017–3084. Their telephone number is: toll-free 1–888–352–9333);

(B) The on-line access to the CAGE file through the Defense Logistics Information System;

(C) The on-line access to the Defense Logistics Agency (DLA) CAGE file through the DLA Network or dial-up capability; or

(D) The Internet to access the CAGE Lookup Server at http://www.dlis.dla.mil/cageserve.htm.

(ii) If no CAGE code is identified through use of the procedures in paragraph (b)(2)(i) of this subsection, ask DLIS to assign a CAGE code. Submit a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, (or electronic equivalent) to the address in paragraph (b)(2)(i)(A) of this subsection, ATTN: DLIS–SBB. The contracting office completes Section A of the DD Form 2051, and the contractor completes Section B. The contracting office must verify Section B before submitting the form.

(c) Direct questions on obtaining computer tapes, electronic updates, or code assignments to DLIS (DLIS–SBB) at DSN 932–4381, or commercial (616) 961–4381.

204.7202–2 DUNS numbers.

Requirements for use of DUNS numbers are in FAR 4.602(d) and 4.603.

204.7202–3 TINs.

Requirements for use of TINs are in FAR subpart 4.9.

204.7203 Responsibilities of contracting officers.

(a) Assist offerors in obtaining the required CAGE codes.

(b) Do not deny a potential offeror a solicitation package because the offeror does not have a contractor identification code.

(c) Consider requesting a CAGE code at the time a potential offeror is sent a solicitation package or added to the mailing list to ensure that a code is assigned in sufficient time to process the DD Form 350, Individual Contracting Action Report, without delay.

204.7204 Maintenance of the CAGE file.

(a) DLIS will accept written requests for changes to CAGE files, other than name changes, from the following entities:

(1) The entity identified by the code. The entity must use company letterhead to forward the request.

(2) The contracting office.

(3) The contract administration office.

(b) Submit requests for changes to CAGE files on DD Form 2051, or electronic equivalent, to—Defense Logistics Information Service, DLIS–SBB, Federal Center, 74 Washington Avenue, North Battle Creek, MI 49017–3084. Telephone Numbers: DSN 932–4381, commercial (616) 961–4381. Facsimile: (616) 961–4528, 4388, 4485.

(c) The contracting officer responsible for execution of a change-of-name agreement (see FAR subpart 42.12) must submit the agreement to DLIS–SBB. If there are no current contracts, each contracting and contract administration office receiving notification of changes from the commercial entity must forward a copy of the change notice annotated with the CAGE code to DLIS–SBB unless the change notice indicates that DLIS–SBB already has been notified.

(d) Additional guidance for maintaining CAGE codes is in Volume 7 of DoD 4100.39–M, Federal Logistics Information System (FLIS) Procedures Manual.

7. Sections 204.7302 through 204.7304 are revised to read as follows:

204.7302 Policy.

Prospective contractors must be registered in the CCR database prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, except for—

(a) Purchases paid for with a Governmentwide commercial purchase card;

(b) Awards made to foreign vendors for work performed outside the United States;

(c) Classified contracts or purchases (see FAR 4.401) when registration in the CCR database, or use of CCR data, could comprise the safeguarding of classified information or national security;

(d) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies; and

(e) Purchases to support unusual or compelling needs of the type described in FAR 6.302–2.

204.7303 Procedures.

(a)(1) Except as provided in 204.7302, the contracting officer must require each offeror to provide a DUNS number (see 204.603(2)) or, if applicable, a DUNS+4 number, with its verbal or written offer, regardless of the dollar amount of the offer.

(2) Before awarding a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, the contracting officer must verify that the prospective contractor is registered in the CCR database (but see paragraph (b) of this section). The contracting officer may verify registration using the DUNS number or, if applicable, the DUNS+4 number, by calling toll-free: 1–800–841–4431, commercial: (616) 961–5757, or DSN: 932–5757; via the Internet at http://ccr.edi.disa.mil/ccr/cgi-bin/status.pl; or as otherwise provided by agency procedures.

(3) The contracting officer need not verify registration before placing an order or call under a DoD contract or agreement.

(4) The contracting officer must verify registration before placing an order or call under a non-DoD contract or agreement. If the contracting is not registered, the contracting officer must follow the procedures in paragraph (b) of this section.

(5) As part of the annual review of basic agreements, basic ordering agreements, and blanket purchase agreements, contracting officers must modify these agreements to incorporate the clause at 252.204–7004, Required Central Contractor Registration.

(b) If the contracting officer determined that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the awarded does not apply (see 204.7302), the contracting officer must—

(1) If the needs of the requiring activity allow for a delay, proceed toward after the contractor is registered; or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(c) Agencies must protect against improper disclosure of contractor CCR information.

(d) The contracting officer must, on contractual documents transmitted to the payment office, provide either the Commercial and Government Entity code or the DUNS number in accordance with agency procedures.

§ 204.7304 Contract clause.

Except as provided in 204.7302, use the clause at 252.204–7004, Required Central Contractor Registration, in solicitations and contracts.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

8. Section 212.301 is amended by adding paragraph (b)(2) to read as follows:

§ 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(b)(2) Paragraph (b) of the provision at FAR 52.212–3 does not apply when the solicitation includes the clause at 252.204–7004, Required Central Contractor Registration.

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

9. Subpart 213.1 is added to read as follows:

Subpart 231.1—Procedures

Sec.
213.106–3 Award and documentation.

§ 213.106–3 Award and documentation.

(e) The procedures at FAR 13.106–3(e) do not apply when the contract includes the clause at 252.204–7004, Required Central Contractor Registration.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 252.204–7001 is revised to read as follows:

§ 252.204–7001 Commercial and Government Entity (CAGE) Code Reporting.

As prescribed in 204.603(1), use the following provision:

Commercial and Government Entity (CAGE) Code Reporting (Aug 1999)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter "CAGE" before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will—

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLIS; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(End of provision)

PART 253—FORMS

11. Section 253.204–70 is amended by revising paragraph (b)(5)(ii)(F) *(3)* to read as follows:

§ 253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(F) * * *

(3) An agency or instrumentality of the Federal Government.

* * * * *

[FR Doc. 99–20283 Filed 8–6–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. I.D. 071698B]

RIN 0648–AJ67

Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring Systems

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Delay of effectiveness.

SUMMARY: NMFS delays the effective date of the Vessel Monitoring System established by 50 CFR 635.69, published May 28, 1999, from September 1, 1999 until January 1, 2000.

DATES: The effective date of the addition of 50 CFR 635.69, published May 28, 1999 (64 FR 29090), is delayed until January 1, 2000.

ADDRESSES: Copies of the Highly Migratory Species Fishery Management Plan (HMS FMP), the final rule and supporting documents can be obtained from Rebecca Lent, Chief, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, NMFS, (301) 713–2347, or Buck Sutter (727) 570–5447.

SUPPLEMENTARY INFORMATION: The final regulations to implement the HMS FMP, and Amendment 1 to the Atlantic Billfish Fishery Management Plan included a provision requiring an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic longline to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board. The VMS requirement of the final rule is effective September 1, 1999.

At the time of publication of the final rule (May 28, 1999), NMFS indicated that a **Federal Register** announcement would be forthcoming listing the hardware specifications for approved VMS units. Due to unforseen circumstances, NMFS has experienced a delay in type approving suitable units and service providers. Once the type approval process has been completed, NMFS will publish a **Federal Register** document listing NMFS-approved VMS

units and communication service providers. In order to allow affected Atlantic HMS pelagic longline fishermen an opportunity to receive adequate notification of approved VMS units (the swordfish fishery is currently active, and trips in excess of 4 weeks are typical of this fishery), as well as time to purchase and properly install a VMS unit for operation consistent with provisions provided under § 635.69, NMFS is delaying until January 1, 2000, the effective date of § 635.69.

Dated: August 3, 1999.

Gary C. Matlock, Director,

Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20354 Filed 8–3–99; 4:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 152
Monday, August 9, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 98–073–1]

RIN 0579–AB05

User Fees; Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the user fee regulations by adjusting the fees charged for certain agricultural quarantine and inspection services we provide in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The adjusted fees would cover fiscal years 2000 through 2002. We have determined that the fees must be adjusted to reflect the anticipated actual cost of providing these services through FY 2002.

DATES: We invite you to comment. We will consider all comments that we receive by October 8, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–073–1, Regulatory Analysis and Development, PPD, APHIS, suite 3CO3, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–073–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning program Operations, contact Mr. Jim Smith, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236, (301) 734–8295. For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FSSB, BASE, ABS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a), referred to below as the FACT Act, authorizes the Animal and Plant Health Inspection Service (APHIS) to collect user fees for agricultural quarantine and inspection (AQI) services. The FACT Act was amended by § 504 of the Federal Agricultural Improvement and Reform Act of 1996 (Pub. L. 104–127), on April 4, 1996.

The FACT Act, as amended, authorizes APHIS to collect user fees for providing AQI services in connection with the arrival, at a port in the customs territory of the United States, of:

- Commercial vessels,
- Commercial trucks,
- Commercial railroad cars,
- Commercial aircraft, and
- International airline passengers.

According to the FACT Act, as amended, these user fees should recover the costs of:

- Providing the AQI services listed above,
- Providing preclearance or preinspection at a site outside the customs territory of the United States to such passengers and vehicles,
- Administering the user fee program, and
- Maintaining a reasonable balance in the Agricultural Quarantine Inspection User Fee Account (AQI account).

Introduction

On July 24, 1997, we published in the **Federal Register** (62 FR 39747–39755, Docket No. 96–038–3) a rule amending the user fees and setting user fees in advance for AQI services for fiscal years 1997 through 2002.

APHIS has had to provide AQI services beyond what we anticipated when the currently scheduled fees were set in 1997. The increases in services stem from an increase in international trade and travel, necessitating more inspections at ports of arrival, changes in our regulations that result in our having to inspect additional imported articles, and enhanced efforts to crack down on the smuggling of agricultural commodities. These increases in service are discussed in more detail below, under the heading "*New AQI Program Costs.*"

In this document, we are proposing to amend those fees for fiscal years 2000 through 2002 in order to compensate for increased AQI program costs and to reestablish a reasonable reserve in the AQI account.

Because rulemaking takes time, we anticipate that the revised user fees will not take effect until at least the second quarter of FY 2000. Therefore, some of the calculations on the following pages, which assume an implementation date of October 1, 1999, will have to be revised when the final rule is published.

We plan to publish a notice in the **Federal Register** prior to the beginning of each fiscal year to remind or notify the public of the user fees for that particular fiscal year.

We also intend to monitor our fees throughout each year and look closely at adjustments to fees that may be needed in future years. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will publish lower fees in the **Federal Register** and make them effective as quickly as possible. If it becomes necessary to increase any fees because reserve levels are being drawn too low, we will publish, for public comment, proposed fee increases in the **Federal Register**.

New AQI Program Costs

APHIS is continually requested to process international airline passengers faster, although we need to inspect passengers and their baggage thoroughly to safeguard against the introduction of harmful pests and diseases of animals and plants. We are committed to processing passengers as quickly as possible, without jeopardizing the success of AQI, whose purpose is to prevent the introduction of foreign plant and animal pests and diseases which are harmful to this country's agriculture; however, faster processing requires more officers, additional canine teams, and the purchase of state-of-the-art high definition x-ray machines at the medium and large ports throughout the country. The new high definition x-ray machines, estimated to cost $600,000

each, will greatly enhance the processing of passengers and reduce further need for more inspectors. Due to the expense involved, we plan to purchase these machines for the busiest ports to make optimal use of the machines.

New and expanding airport terminals are also increasing the demand for AQI services at areas in airports where we do not currently have officers located. In the past, we were able to quickly clear passengers, because most passengers arrived in the same general area of the airport. Not only is the number of passengers increasing, but additional international terminals are being built in new locations, requiring additional officers and canine teams to keep up with demand for service.

At the same time, we are trying to meet the constant demands from brokers and shippers to clear cargo faster at various locations. In many instances, in order to move cargo quickly, we must conduct both initial and final inspections. Since we cannot hold cargo up at the port to conduct a full inspection, we inspect a sampling of cargo at the port of first arrival and conduct a more thorough inspection at the final destination when the cargo is off-loaded. This requires additional officers at the port of first arrival to cover the increasing numbers of inspection locations, and new officers at final destination points to conduct additional inspection services.

Further, inspection activities have increased as a result of recent rulemakings. For example, additional inspections are necessary to implement new regulations intended to prevent the introduction of pests in imported solid wood packing material (see 63 FR 50100–50111 and 63 FR 69539–69543).

AQI services related to enforcing our regulations have also expanded. APHIS compliance officers work in teams with local authorities to detect, investigate, and prosecute violators. Recent increased efforts include both border blitzes and market surveys.

Border blitzes involve unannounced, targeted inspections, as well as random searches of cargo containers entering the United States where no AQI staffing exists, at times when staffing is not usually provided, or where existing staff must be supplemented. Market surveys consist of searches in grocery stores, plant stores, and fruit and vegetable markets for prohibited items.

When prohibited items are detected, follow-up investigations are conducted to identify the item's origin and the responsible shippers, importers, and brokers. Previous shipments and their destination points are researched, located, and investigated for other prohibited items and infested materials. This information is being used to develop a violation database to help the teams target specific commodities and importers who have a history of smuggling prohibited commodities, and allow legitimate importers and exporters to move their products through commerce without undue delay.

These activities are supported by many agricultural industries, who see them as positive steps toward detecting and eliminating plant and animal pests and diseases before they can become established in the United States.

Projected AQI Program Costs for Fiscal Years 1999–2002

The following table shows the total projected costs of administering the AQI program for fiscal years 1999 through 2002. When we projected costs for fiscal years 1999 through 2002, we began with the base need of $130,001,000 for Plant Protection and Quarantine (PPQ), the APHIS unit that administers the AQI program in the United States. The base need of PPQ is an increase of approximately $3.6 million in PPQ's base need as identified in the July 14, 1997, final rule, and is due to unanticipated personnel compensation of $1.6 million for additional Civil Service Retirement assessments, higher overtime costs of approximately $1.4 million, and additional pay cost increases of $600,000. (The base need of PPQ simply reflects the cost required for APHIS to be prepared to provide AQI services at all international ports in the United States, without taking into account the additional annual costs shown in the following table. The base need is not affected by projected changes in the volumes of each category of service.)

We then added new annual costs associated with increased PPQ activities in the United States to project the total AQI program costs to PPQ for fiscal years 1999 through 2002.

International Services is the APHIS program that administers the AQI program in foreign regions. We projected the annual costs to International Services of providing international preclearance services for fiscal years 1999 through 2002 based on FY 1998 program costs plus new costs associated with preclearance activities in Bermuda and the Bahamas. The projected International Services annual costs were then added to PPQ's annual costs to arrive at projected AQI annual program cost subtotals.

We then added agency support costs and departmental charges to the projected annual costs for PPQ and International Services to arrive at projected annual AQI program costs.

The projected annual program costs take into account the costs of providing AQI services only. They do not contain a reserve-building component. The projected cost for each fiscal year simply reflects the amount we anticipate it will cost to run the AQI program for that year.

As shown in the following table, we are proposing to phase in new AQI services over fiscal years 1999 through 2002 in order to supplement our existing work force at expanding and new ports.

AGRICULTURAL QUARANTINE INSPECTION (AQI) PROGRAM PROJECTED COSTS FY 1999–2002

Basis for calculating funding need	FY 1999 estimate	FY 2000 estimate	FY 2001 estimate	FY 2002 estimate
Plant Protection and Quarantine (PPQ)				
Base Need (FY 1998 costs + FY 1999 pay costs)	$130,001,000	$130,001,000	$130,001,000	$130,001,000
Personnel Increase:				
116 New positions @ 2 months	2,779,000			
315 New positions + 116 in FY 99		32,149,000		
40 New positions + 116 in FY 99; + 315 in FY 00			41,003,000	
40 New positions + 116 in FY 99; + 315 in FY 00; + 40 in FY 01				50,027,000
Automation/Maintenance	1,900,000	4,500,000	4,500,000	1,000,000
Upgrade/Replace X-Ray Equipment:				
20 machines	1,540,000			
20 machines		1,540,000		
16 machines			1,232,000	

AGRICULTURAL QUARANTINE INSPECTION (AQI) PROGRAM PROJECTED COSTS FY 1999–2002—Continued

Basis for calculating funding need	FY 1999 estimate	FY 2000 estimate	FY 2001 estimate	FY 2002 estimate
New X-Ray Equipment:				
5 machines	3,000,000			
10 machines		6,000,000		
5 machines			3,000,000	
5 machines				3,000,000
New and Replacement Vehicles:				
50 vehicles	800,000			
50 vehicles		800,000		
50 vehicles			800,000	
32 vehicles				512,000
New and Expanding Facility Costs:				
JFK (NY); Laredo IV and Eagle Pass II (TX)	500,000			
Miami and Sanford (FL); Atlanta (GA), Brownsville, El Paso, and Los Tomates (TX); Santa Teresa (NM)		1,900,000		
PPQ Subtotal	140,520,000	176,890,000	180,536,000	184,540,000
International Services (IS)	1,099,072	1,826,112	1,991,918	2,132,275
Program Subtotal	141,619,072	178,716,112	182,526,918	186,672,275
Support Costs:				
Agency Overhead & Departmental Charges @ 10.63%	16,838,508	21,249,346	21,702,451	22,195,333
AQI Program Cost	158,457,580	199,965,458	204,229,369	208,867,608

Reserve Funds

In order to provide adequate AQI services, we have been forced to use reserve funds to cover our costs for fiscal years 1997 through 1999. This has reduced our reserve levels at an alarming rate. Since the current fees do not contain a reserve component, the potential to run out of reserve funds entirely could become a reality in FY 2001 if we do not add a reserve component to the fees. The following table shows our use of reserve funds to recover costs that were higher than available user fee collections in FY 1998.

FY 1998 RESERVE USAGE

Total user fee collections	$150,804,661
Unavailable collections [1]	−13,829,975
Available fee collections	136,974,686
Cost of AQI program administration	−140,094,753
Funding shortage	−3,120,067
FY 1998 available reserve	+17,785,662

FY 1998 RESERVE USAGE—Continued

FY 1999 available reserve	14,665,595

[1] These collections were unavailable to pay for services provided in FY 1998 because they were either not collected until after the close of FY 1998, or are unavailable for expenditure until FY 2003 under certain provisions of the FACT Act.

Further, for FY 1999, we are projecting the need to cover $10.2 million in costs from our reserve. As a result, the reserve would contain a balance of less than $3.9 million at the start of FY 2000 (2 percent of the cost of running the program for that year), as shown in the following table.

AQI USER FEE PROJECTED RESERVE—CASH BASIS ACCOUNTING METHOD

	Fiscal Year				
	1998	1999	2000	2001	2002
Fee Collections	$150,804,661	$159,727,857	$201,066,541	$214,822,796	$217,421,963
Unavailable collections [1]	13,829,975	12,000,000	5,000,000		
Available collections	136,974,686	147,727,857	196,066,541	214,822,796	217,421,963
AQI Program Cost	140,094,753	158,457,580	199,965,458	204,229,369	208,867,608
Shortage/surplus	−3,120,067	−10,729,723	−3,898,917	10,593,427	8,554,355
Projected available reserve BEGIN FY	17,785,662	14,665,595	3,935,872	36,955	10,630,382
Projected available reserve END FY	14,665,595	3,935,872	36,955	10,630,382	19,184,737
Unavailable until FY 2003 [1].					
FY 1997 carry-over	2,000,000				
Annual	13,829,975	12,000,000	5,000,000		

AQI USER FEE PROJECTED RESERVE—CASH BASIS ACCOUNTING METHOD—Continued

	Fiscal Year				
	1998	1999	2000	2001	2002
Cumulative	15,829,975	27,829,975	32,829,975	32,829,975	32,829,975

[1] These collections are unavailable to pay for services provided because they were either not collected until after the close of the fiscal year in which they were earned, or are unavailable for expenditure until FY 2003 under provisions of the FACT Act.

Rebuilding the Reserve

While our spending authority is on a fiscal year basis, the accounting method used by the Department of Treasury for user fee collections is based on the date the funds are received and recorded in the Treasury (cash basis—see the table above), not when they are earned (accrual basis). The final amount that is available to us from the AQI account each year is based on the amount collected and recorded in the account between October 1 and September 30 of each fiscal year. Since most of the fourth quarter payments are not due and therefore not received until after the fiscal year is over, we are not able to use those funds to pay for providing services in the fiscal year when they are earned.

In the July 1997 final rule, we explained that it is necessary to maintain a reasonable reserve balance in the AQI account in order to account for fees earned for providing AQI services in a given fiscal year that were not received until after that fiscal year ended. The reserve also provides us with a means to ensure the continuity of AQI service in cases of bad debt, carrier insolvency, and fluctuations in activity volumes.

When we set the current user fees, we did not include a reserve-building component in them because we believed that the reserve levels would be maintained with fees we collected in excess of the program costs. Although our user fees are designed to recover the cost of providing services, in some instances, due to the fact that fees are rounded up to the nearest quarter or nickel, we may collect additional funds that are applied to the individual activity reserve balances. The reserve levels have been maintained in the past through such additional collections.

However, due to increasing costs, we cannot maintain our reserve with the current user fees. Therefore, we are proposing to include a reserve-building component in the user fees to rebuild the reserve levels for each activity over fiscal years 2000 through 2002. Under this proposal, the reserve levels for each category of service have been calculated to reflect approximately 25 percent of each activity's annual cost. The proposed reserve component would gradually rebuild the reserve balance to a reasonable level of approximately 25 percent of the AQI annual program costs to ensure that the reserve is fully funded by fiscal year 2002.

The table below shows the final annual cost of the AQI program once costs to rebuild the reserve are added. The final annual costs are the figures on which we based our proposed fees. The fees are designed to recover the full cost of the AQI program.

TOTAL AQI PROGRAM COSTS

	FY 2000	FY 2001	FY 2002
Cost of AQI program services	199,965,458	204,229,369	208,867,608
Cost of rebuilding the reserve	17,125,000	17,550,000	21,480,000
(% of total program cost)	(8.56%)	(8.59%)	(10.28%)
Total AQI program costs	217,090,458	221,779,369	230,347,608

Calculation of Fees

Once we established the total annual costs to administer the AQI program, including an amount to rebuild the AQI account reserve to a reasonable level, we began the calculation of our proposed fees.

Volumes

First, we estimated the annual volume for each category of service that would be subject to inspection. The estimates were based on annual rates of activity for each service category shown in our FY 1992 through FY 1997 collection history.

In our commercial aircraft, commercial vessel, and commercial truck service categories, we calculated the percentage of change in volume between FY 1995 and FY 1996, and FY 1996 and FY 1997. Then we calculated the average percentage of change for those years. We used this average percentage of change to project volumes for fiscal years 1999 through 2002. We have collection data for FY 1998 available, but decided not to use it in our calculations because numerous adjustments to the FY 1998 collection data could be made through the end of FY 2000 (i.e., we will have to account for funds for overpaid vessels and adjustments to aircraft fees remittances resulting from audit findings). Therefore, we will review the FY 1998 collection data prior to publishing a final rule and make necessary adjustments to the calculations.

For commercial trucks, however, we had to revise our projected volume for FY 1998 because the actual volume appeared to be much higher. The average percentage of change from FY 1995 to FY 1996, and from FY 1996 to FY 1997, was −1.27 for commercial trucks. The actual volume for FY 1998 shows a 10.22 percent increase over the volume in FY 1997. Nevertheless, we believe the volume increase for FY 1998 is misleading. During the first quarter of FY 1998, the wrong fee was originally assessed for individual border crossings ($2.00 instead of $4.00). In many cases, the corrected fee was eventually collected, but was recorded in the system as an individual crossing, thus inflating the actual volumes for FY 1998. Furthermore, a review of commercial truck volumes for fiscal years 1993 through 1997 shows that the percentage of change ranged from 2.59 percent to −2.77 percent. Based on these relatively stable but slightly negative changes in volume, we are projecting commercial truck volumes for fiscal

years 1999 through 2002 based on the percentage of change we calculated for fiscal years 1995 through 1997 (–1.27 percent). These volumes are shown in the following table:

VOLUMES/PERCENTAGE OF CHANGE FROM PREVIOUS YEAR

Fiscal Year	Commercial aircraft		Commercial vessel		Commercial truck	
	Volume	Change	Volume	Change	Volume	Change
1995	361,657	.....	48,098	.....	612,743	.....
1996	351,989	–2.67%	47,655	–0.92%	614,214	0.24%
1997	380,911	8.22%	48,758	2.31%	597,173	–2.77%
1998	391,469	2.77%	51,098	4.80%	658,204	10.22%
Average: FY 1996 & FY 1997 percentage of change	(–2.67% + 8.22%)/2= 2.77%		(–0.92% + 2.31%)/2= 0.70%		(0.24% + (–2.77%))/2= –1.27%	
Fiscal year	Projected volume	Change	Projected volume	Change	Projected volume	Change
1999	402,320	2.77%	51,454	0.70%	649,863	–1.27%
2000	413,472	2.77%	51,813	0.70%	641,628	–1.27%
2001	424,933	2.77%	52,173	0.70%	633,498	–1.27%
2002	436,711	2.77%	52,537	0.70%	625,471	–1.27%

In our commercial truck decal service category, we found that the volume of users continued to increase, but at a decreasing rate. We determined that the volume would most likely continue to increase slightly, but that the increase in the number of decals would most likely be limited to new or additional growth in trade. The decal program has been in operation for several years now, and we believe that the companies interested in buying them are doing so now. Therefore, we are projecting a modest 5 percent growth increase for each year, as shown in the following table:

VOLUMES OF COMMERCIAL TRUCK DECALS/PERCENTAGE OF CHANGE FROM PREVIOUS YEAR

Fiscal year	Volume	Percentage of change
1992	9,256	.....
1993	12,403	34.00%
1994	13,476	8.66%
1995	14,317	6.24%
1996	15,758	10.07%
1997	18,003	14.24%
1998	19,298	7.20%
1999 (projected)	20,263	5.00%
2000 (projected)	21,276	5.00%
2001 (projected)	22,340	5.00%
2002 (projected)	23,457	5.00%

In our international air passenger service category, we found that the volume of users continued to increase each fiscal year 1992 through 1998, but at a decreasing rate. Using the international air passenger volumes listed below, we estimated percentage of increase in volume for FY 1999 in the following manner:

1. First, we subtracted the percentage of change in volume from FY 1996 to FY 1997 (4.39%) from the percentage of change in volume from FY 1997 to FY 1998 (3.28%), yielding a rate of decline of −1.11.

2. We then divided this figure by the percentage of change in volume from FY 1996 to FY 1997 (4.39%) to obtain a rate of decline from FY 1996 to FY 1997 of −25.28.

3. We then multiplied this rate of decline by the percentage of change in volume from FY 1997 to FY 1998 (3.28%), yielding a rate of decline of −0.8293.

4. Finally, we added this result to the percentage of change in volume from FY 1997 to FY 1998 (3.28%), yielding a projected increase in volume of 2.45 percent for FY 1999.

This process was repeated to estimate growth for each fiscal year from 2000 through 2002. These volumes are shown in the table below.

VOLUMES OF INTERNATIONAL AIR PASSENGERS/ PERCENTAGE OF CHANGE FROM PREVIOUS YEAR

Fiscal year	Volume	Percent change
1992	35,442,923	.....
1993	39,630,213	11.81%
1994	41,784,350	5.44%
1995	44,710,181	7.00%
1996	48,296,322	8.02%
1997	50,414,566	4.39%

VOLUMES OF INTERNATIONAL AIR PASSENGERS/ PERCENTAGE OF CHANGE FROM PREVIOUS YEAR—Continued

Fiscal year	Volume	Percent change
1998	52,068,452	3.28%
1999 (projected)	53,346,102	2.45%
2000 (projected)	54,325,203	1.84%
2001 (projected)	55,070,989	1.37%
2002 (projected)	55,636,477	1.03%

The volumes in our loaded railroad car service category increased from 74,006 in 1994 to 102,265 in 1995 to 147,315 in 1996 as a result of the North American Free Trade Agreement. The volume decreased in 1997, but for 1998, there was a slight increase in volume over 1996. However, one of the five railroad companies transiting goods across the U.S.-Mexican border has ceased operations indefinitely. In addition, due to recent business consolidations, the number of railroad companies crossing the border has decreased from five to three. Since our fee is assessed to loaded railroad cars only, we do not anticipate much increase in individual loaded railroad cars, but better utilization of the cars by railroad companies. We believe that future increases above the FY 1998 level will be minimal, and are projecting a zero percent increase each fiscal year through 2002. We will watch the railroad car volumes carefully, and if our volume assumption is incorrect, we will take steps immediately to adjust the fees accordingly. The volumes are shown in the following table.

VOLUMES OF LOADED RAILROAD CAR/PERCENTAGE OF CHANGE FROM PREVIOUS YEAR

Fiscal year	Volume	Percent change
1992	56,688	
1993	64,023	12.94%
1994	74,006	15.59%
1995	102,265	38.18%
1996	147,315	44.05%
1997	141,717	−3.80%
1998	148,300	4.65%
1999 (projected)	148,300	0.00%
2000 (projected)	148,300	0.00%
2001 (projected)	148,300	0.00%
2002 (projected)	148,300	0.00%

Distribution of Costs

Next, we projected the direct costs of providing AQI services in fiscal years 1999 through 2002 for each category of service: Commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers. The cost of providing these services in prior fiscal years served as a basis for calculating our projected costs.

In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs. We published a detailed description of these procedures in the **Federal Register** on December 31, 1992 (57 FR 62468–62473, Docket No. 92–148–1), as part of a document amending some of our user fees.

As part of our accounting procedures, we established distinct accounting codes to record costs that can be directly related to each inspection activity. At the State level and below, the following costs are direct-charged to the AQI User Fee Account: Salaries and benefits for inspectors and canine officers, supervisors (such as port directors) and clerical staff; equipment used only in connection with services subject to user fees; contracts; and large supply items such as x-ray equipment or uniforms.

Other costs that cannot be directly charged to individual accounts are charged to "distributable" accounts established at the State level. The following types of costs are charged to distributable accounts: Utilities, rent, telephone, vehicles, office supplies, etc. The costs in these distributable accounts are prorated (or distributed) among all the activities that benefit from the expense, based on the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level. For example, if a State office performs work on domestic programs, AQI user fee programs, and AQI appropriated programs, the costs are distributed among the programs, based on the percentage of the direct costs for that activity at the field level that are charged to that activity. Costs incurred at the regional-, headquarters program staff-, and agency-level support offices are also prorated to the separate AQI activities based on the percentage of the costs that were directly charged to each activity at the field level, as discussed above.

Using these accounting procedures, we calculated the total cost of providing AQI services in each past fiscal year by determining the amounts in each direct-charge account, then adding the pro rata share of the distributable accounts maintained at the State, regional, headquarters, and agency levels.

We then projected total costs to provide each category of service during each future fiscal year. Each projection included the costs of program delivery, which are incurred at the State level and below. Also included was a pro rata share of the program direction and support costs, as explained above, which include items at the regional and headquarters program staff levels. Finally, each projection included a pro rata share of agency-level support costs, as discussed above, which includes activities that support the entire agency, such as recruitment and development, legislative and public affairs, regulations development, regulatory enforcement, budget and accounting services, and payroll and purchasing services. Costs for billing and collection services, legal

counsel, and rate development services that are directly related to user fee activities are directly added to the user fee activities they support and are not included in the proration of agency-level costs.

User Fee Calculation

The following tables show our user fee calculations. To calculate the user fees, we divided the sum of the costs for each service by the projected volume subject to inspection for that service, thereby arriving at "raw" fees. We then rounded the raw fees.

As in the past, we rounded raw fees up, rather than down, to ensure that we collect enough revenue to cover the costs of providing services and enough revenue to maintain a reasonable reserve. Any excess collections due to rounding would be added to the reserve balance for each individual fee category. If an increase in volume results in additional revenue from user fees, this revenue would not necessarily increase the reserve because the additional money would be used to service the increased volume.

We rounded all user fees up to the nearest quarter, except for the international airline passenger user fee. Given the large volume of passengers, if we rounded up to the nearest quarter we would recover far more than is necessary. Therefore, we rounded the passenger user fee up to the nearest nickel.

AQI USER FEE CALCULATIONS, FY 2000

AQI activity	Estimated total costs [1]	Projected volume	Raw fee	Rounded fee	Projected revenue
Commercial vessel	24,115,749	51,813	465.44	465.50	24,118,952
Commercial truck [2]	4,442,247	1,067,156	4.16	4.25	4,535,413
Loaded railroad cars	977,907	148,300	6.59	6.75	1,001,025
Commercial aircraft	26,397,363	413,472	63.84	64.00	26,462,208
Airline passengers	161,157,192	54,325,203	2.97	3.00	162,975,609
Total	217,090,458				219,093,206

[1] Total program costs include the cost of rebuilding the AQI account available reserve.
[2] Decals could be purchased at 20 times the individual crossing rate, or $85.00 per decal, and would be valid from January 1 through December 31, 2000.

AQI USER FEE CALCULATIONS, FY 2001

AQI activity	Estimated total costs [1]	Projected volume	Raw fee	Rounded fee	Projected revenue
Commercial vessel	24,755,100	52,173	474.48	474.50	24,756,089
Commercial truck [2]	4,832,670	1,080,302	4.47	4.50	4,861,359
Loaded railroad cars	1,018,647	148,300	6.87	7.00	1,038,100
Commercial aircraft	27,476,799	424,933	64.66	64.75	27,514,412
Airline passengers	163,696,152	55,070,989	2.97	3.00	165,212,967
Total	221,779,368				223,382,926

[1] Total program costs include the cost of rebuilding the AQI account available reserve.
[2] Decals could be purchased at 20 times the individual crossing rate, or $90.00 per decal, and would be valid from January 1 through December 31, 2001.

AQI USER FEE CALCULATIONS, FY 2002

AQI activity	Estimated total costs [1]	Projected volume	Raw fee	Rounded fee	Projected revenue
Commercial vessel	25,242,791	52,537	480.48	480.50	25,244,029
Commercial truck [2]	5,046,927	1,094,614	4.61	4.75	5,199,417
Loaded railroad cars	1,024,546	148,300	6.91	7.00	1,038,100
Commercial aircraft	28,402,958	436,711	6.504	6.525	28,495,393
Airline passengers	170,630,386	55,636,477	3.07	3.10	172,473,079
Total	230,347,608				232,450,016

[1] Total program costs include the cost of rebuilding the AQI account available reserve.
[2] Decals could be purchased at 20 times the individual crossing rate, or $95.00 per decal, and would be valid from January 1 through December 31, 2002.

Current and Proposed User Fees

Our current user fees for AQI services for fiscal years 1999 through 2002 and the user fees we are proposing to charge for these services for FY 2000 through FY 2002 are shown in the table below. Also, below, we describe each AQI service, and explain additional activities and costs as they pertain to each service individually.

AGRICULTURAL QUARANTINE INSPECTION (AQI) USER FEES

Service	Current FY 1999	Currently scheduled FY 2000	Proposed FY 2000	Currently scheduled FY 2001	Proposed FY 2001	Currently scheduled FY 2002	Proposed FY 2002
Commercial Vessel	454.50	461.75	465.50	471.25	474.50	480.25	480.50
Commercial Truck	4.00	4.00	4.25	4.00	4.50	4.25	4.75
Commercial Truck Decal	80.00	80.00	[1] 85.00	80.00	[1] 90.00	85.00	[1] 95.00
Loaded Railroad Car	6.50	6.75	6.75	6.75	7.00	7.00	7.00
Commercial Aircraft	59.75	60.25	64.00	61.25	64.75	62.25	65.25
Airline Passenger	2.00	2.05	3.00	2.10	3.00	2.15	3.10

[1] Commercial truck decals are issued on a calendar year basis. Decal rates would be effective January 1 of each year.

Commercial Vessels

We inspect commercial vessels of 100 net tons or more arriving at ports of entry into the customs territory of the United States. Vessels pay a user fee for the first 15 arrivals at ports. The US Customs Service (Customs) collects this user fee for APHIS.

The proposed fees for fiscal years 2000, 2001, and 2002 are approximately 0.8, 0.7, and 0.05 percent higher than the respective currently scheduled fees. The proposed fees would allow us to recover increased costs attributed to:

- Anticipated new hires in fiscal years 1999 and 2000 of at least 51 inspection personnel at seaports throughout the United States, including Miami, FL; Elizabeth, NJ; San Juan, PR; and Charleston, SC.
- New and replacement vehicles, equipment, and additional x-ray equipment.
- The addition of a reserve component to the fees to gradually rebuild the vessel reserve to a reasonable level of approximately 25 percent of annual operating costs by the end of FY 2002.

For fiscal years 2001 and 2002, the proposed fees are less than one half of one percent higher than the currently scheduled fees. This is attributed to conducting the increased volume of vessel inspections with the same number of personnel and new and improved technology.

Commercial Trucks

We inspect commercial trucks arriving at land ports in the customs territory of the United States from Mexico.[1] Customs also collects our truck user fees.

The proposed fees for fiscal years 2000, 2001, and 2002 are approximately 6.25, 12.5, and 11.8 percent higher than the respective currently scheduled fees. The proposed fees would allow us to recover increased costs attributed to:

- Anticipated new hires in fiscal years 1999 through 2002 of approximately 39 additional inspection personnel at various land border ports, including Brownsville and El Paso, TX, and Santa Teresa, NM.
- New and replacement vehicles, equipment, and additional x-ray equipment.
- The addition of a reserve component to the fees to gradually rebuild the depleted truck reserve to a reasonable level of approximately 25 percent of the annual operating costs by the end of FY 2002.

The regulations currently require that commercial trucks pay the APHIS user fee each time they enter the customs territory of the United States from Mexico at the same time they pay the Customs user fee. Our regulations also allow commercial trucks to prepay the APHIS user fee; however, this only applies if they are prepaying the Customs user fee. In that case, the required APHIS user fee is 20 times the user fee for each arrival, and is valid for an unlimited number of entries during the calendar year (see 7 CFR 354.3(c)(3)(i) of the regulations). The truck owner or operator, upon payment of the APHIS and the Customs user fees, receives a decal to place on the truck windshield. This is a joint decal, indicating that both the Customs and APHIS user fees for the truck have been paid for that calendar year.

Commercial Railroad Cars

We inspect loaded commercial railroad cars arriving at land ports in the customs territory of the United States from Mexico.[2] The fees for this service are calculated and remitted by the individual railroad companies within 60 days after the end of each calendar month.

The proposed fee for fiscal year 2001 is approximately 3.7 percent higher than the currently scheduled fee. The fees for fiscal years 2000 and 2002 will not change. The proposed fees would allow us to recover increased costs attributed to:

- Anticipated new hires in fiscal years 2000 through 2002 of approximately 18 additional inspection personnel at various land border ports, including Los Tomates and Brownsville, TX, and Nogales, AZ.
- New and replacement vehicles and equipment.
- The addition of a reserve component to the fees to gradually rebuild the railroad car reserve to a reasonable level of approximately 25 percent of the annual operating costs by the end of FY 2002.

Commercial Aircraft

We also inspect international commercial aircraft arriving at airports in the customs territory of the United States. The fees for this service are calculated and remitted by the individual airline companies within 31 days after the end of each calendar quarter.

The proposed fees for fiscal years 2000, 2001, and 2002 are approximately 6.2, 5.7, and 4.8 percent higher than the respective currently scheduled fees. The proposed fees would allow us to recover increased costs attributed to:

- Anticipated new hires in fiscal years 1999 through 2002 of approximately 137 additional inspection personnel at various existing and expanding or new airport facilities, including Miami, Orlando, and Ft. Lauderdale, FL; Atlanta and Savannah, GA; Chicago, IL; JFK International Airport, NY; Dallas, San Antonio, and Houston, TX; Los Angeles and San Francisco, CA; Honolulu, HI; and San Juan, PR.
- New and replacement vehicles, equipment, and additional x-ray equipment.
- The addition of a reserve component to the fees to gradually rebuild the commercial aircraft reserve to a reasonable level of approximately 25 percent of the annual operating costs by the end of FY 2002.

[1] 7 CFR 354.3(c)(2)(i) of the regulations exempts commercial trucks entering the customs territory of the United States from Canada from paying this APHIS user fee.

[2] Section 354.3(c)(2)(i) of the regulations exempts loaded commercial railroad cars entering the customs territory of the United States from Canada from paying the APHIS user fee.

In addition, we are working closely with Customs on the development and installation at major airports of a joint automated cargo tracking system, which would greatly improve the paper tracking cargo system currently used at most airports.

International Airline Passengers

We also inspect international airline passengers arriving at airports in the customs territory of the United States.

Millions of travelers pass through U.S. airports daily. APHIS' overall goal is a timely, seamless inspection process, integrated with clearance processes of other agencies in the Federal Inspection Service (FIS) that will ensure the fastest passenger clearance time while safeguarding against the introduction of harmful pests and diseases of animals and plants. Our joint goal is to improve enforcement and regulatory processes in order to clear most international air passengers through the FIS inspection process in 30 minutes or less. In partnership with the airline industry, advanced information will be obtained on 80 percent of international air passengers through the use of the Advance Passenger Information System to expedite the overall processing of passengers with no loss in enforcement.

To accomplish these goals and to ensure adequate coverage, we anticipate additional costs that would result from:

- Hiring approximately 216 additional inspection personnel in fiscal years 1999 through 2002 at various new and expanding airport facilities, including Miami, Sanford, and Tampa, FL; New Orleans, LA; Atlanta and Savannah, GA; Chicago, IL; JFK International Airport and Brooklyn, NY; Dallas, Houston, San Antonio, El Paso, Galveston, and Brownsville, TX; Los Angeles, Fresno, Sacramento, and San Francisco, CA; Honolulu and Maui, HI; San Juan, PR; Bermuda, and the Bahamas.
- Purchasing new and replacement vehicles, equipment, and additional x-ray equipment.
- Purchasing and installing new high definition x-ray machines with luggage tracking and marking capability at most of the larger airports throughout the country.
- Adding about 50 new canine teams (one officer and one dog per team) at airports throughout the country, including JFK International Airport, NY; Newark, NJ; Chicago, IL; Honolulu, HI; Miami and Ft. Lauderdale, FL; Atlanta, GA; Houston, Dallas, Pharr, Laredo, and El Paso, TX; Los Angeles, Oakland, and San Francisco, CA.
- The addition of a reserve component to the fees to gradually rebuild the international airline passenger reserve to a reasonable level of approximately 25 percent of the annual operating costs by the end of FY 2002.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The economic analysis prepared for this proposed rule provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of economic effects on small entities as required by the Regulatory Flexibility Act. The analysis is summarized below. Copies of the full analysis are available by contacting Ms. Donna Ford at the address listed under **FOR FURTHER INFORMATION CONTACT**.

Introduction

APHIS is proposing to revise existing agricultural quarantine and inspection (AQI) user fees to recover additional and unanticipated program costs and to rebuild the AQI reserve. The proposed AQI user fee revisions would become effective in the first quarter of FY 2000 and would be in effect through FY 2002.

International air passengers, commercial aircraft, commercial vessels, commercial trucks, and commercial railroad cars arriving at ports in the customs territory of the United States would be affected by the increase in AQI user fees.

The FACT Act, as amended, provides that APHIS may prescribe and collect fees to cover the cost of providing quarantine and inspection services in connection with the arrival of international airline passengers, commercial aircraft, commercial vessels, commercial trucks, and commercial railroad cars at ports in the customs territory of the United States. The FACT Act further states that the fees should be sufficient to cover the cost of administering the program and sufficient to maintain a reasonable balance (or reserve) in the AQI User Fee Account.

Need for Regulation

The purpose of AQI inspections at United States ports of entry is to prevent international travelers and conveyances from introducing harmful plant and animal pests that could damage U.S. agriculture and cause substantial economic losses to domestic producers, consumers, exporters, and to a range of allied agricultural industries. In the case of AQI user fees, those international travelers or conveyances who may carry agricultural pests or diseases from abroad are required to pay for AQI program activities.

Generating revenues to operate public programs by charging users is widely practiced by Federal, State and local government agencies, and is based on the premise that the beneficiaries or users of a public system, and not the public at large, should pay for its operation. User fees can be an equitable way of matching program costs to program users or beneficiaries.

Composition of Proposed Fees

Computation of AQI user fees is based on direct program delivery costs, program support costs, Agency-level support costs, anticipated user fee administrative costs, and reserve fund costs.

Direct Program Costs

Direct program costs include, but are not limited to: Salary and benefits for inspectors, canine officers, supervisory and clerical staff, uniform allowances, local travel expenses, and specialized equipment purchases.

Program Support Costs

Program support costs include all expenditures necessary to maintain regional and headquarters support staffs and offices, including APHIS program staff, detection methods development, plant risk assessments, and automatic data processing (ADP) support.

Agency-level Costs

In addition to salary and benefit costs, Agency-level support costs include, but are not limited to: Recruitment and development, legislative and public affairs, regulatory enforcement, communications, postage, budget and accounting services, and the cost for USDA's National Finance Center to provide payroll, purchasing, and other related financial services.

Administrative Costs

The FACT Act, as amended, allows the Agency to recover administrative costs that the Agency incurs as a direct result of developing, collecting, and monitoring AQI user fees.

The Reserve Fund

The FACT Act allows for a reasonable balance in the AQI User Fee Account. The reserve serves several purposes. The reserve insures that the Agency has access, through the AQI User Fee Account, to funds for normal operating expenses. Second, the reserve fund will insure that the Agency has sufficient

operating funds in cases of bad debt, carrier insolvency, or fluctuations in activity volumes. Further, in the July 1997 final rule, we explained that it is also necessary to maintain a reasonable reserve balance in the AQI account in order to account for fees earned for providing AQI services in a given fiscal year that were not received until after that fiscal year ended.

Regulatory Flexibility Analysis

The effects of increased fees on small entities in each of the affected industries are discussed separately below. The proposed fee changes will also affect international airline passengers arriving at ports in the customs territory of the United States; however, passengers are not included in this analysis because the Regulatory Flexibility Act does not cover individuals.

Commercial Vessels

We are proposing to amend the scheduled user fees for inspecting commercial vessels by increasing the fees by $3.75 in FY 2000, by $3.25 in FY 2001, and by $0.25 in FY 2002. APHIS inspects vessels of 100 net tons or more arriving from all foreign ports, except Canada. Typically, APHIS inspects (and charges) dry cargo vessels operating between the United States and foreign ports. At the beginning of 1996 there were 192 U.S. dry cargo vessels.

Bureau of the Census data compiled by the Small Business Administration (SBA) in 1995 show that the affected industry, U.S. commercial vessels engaged in deep sea foreign transportation of freight, was composed mostly of small firms (less than 500 employees, according to the SBA definition). In 1995, there were 125 firms engaging in deep sea transportation of freight and 111 of them, or 89 percent of the affected industry, employed less than 500 employees. Also in 1995, the average or typical small U.S. firm engaged in deep sea transportation of freight had roughly 31 employees, a payroll of less than $1.6 million, and annual receipts of $28 million. Data on number of dry cargo vessels per firm or firms exclusively operating dry cargo vessels are not available.

Anecdotal information suggests that many of the companies that are subject to AQI inspections are not U.S. firms. Further, it is unclear how many of the 125 U.S. firms would actually be affected by the increase in AQI user fees, and how many of the affected firms would be small entities. We do know that total daily operating costs for dry cargo vessels idle in port average between $23,600 and $26,800. The proposed user fee increases of $3.75 in FY 2000, $3.25 in FY 2001, and $0.25 in FY 2002 are very insignificant fractions of daily operating costs, suggesting that the proposed fee revision will not have a significant economic impact on small firms operating vessels.

Commercial Trucks

APHIS inspects trucks entering the United States from Mexico. It is unclear how many of these trucks entering the United States from Mexico are owned and operated by U.S. firms. According to a recent General Accounting Office report, roughly 11,000 trucks cross the border each week day (a total of 3,113,091 in FY 1996) from Mexico into the United States. The bulk (93 percent) of northbound truck traffic comes through seven major customs ports: Otay Mesa, California; Calexico, California; Nogales, Arizona; El Paso, Texas; Laredo, Texas; McAllen, Texas; and Brownsville, Texas. Many of these trucks are owned and operated by Mexican firms. At present, trucks from Mexico are limited to commercial zones along the border and many make multiple daily crossings. Mexican brokers tend to control much of the truck traffic at some border locations. Reliable data on future traffic patterns are not available.

It is unclear how many U.S. trucking firms would be affected by the proposed increase in AQI user fees. Anecdotal evidence from APHIS employees indicates that many of the AQI truck decals, which are good for multiple inspections, are being purchased by U.S. trucking firms operating in Texas, California, and Arizona. 1995 Bureau of the Census data show that the overwhelming majority of trucking firms in these States would be considered small firms by SBA standards (less than $18.5 million in receipts annually). SBA data also show that the typical small trucking firm in one of these border States had 10 employees and earned a little less than $1 million in receipts annually.

If we assume that any small U.S. trucking firm that regularly transports freight from Mexico would purchase an APHIS truck decal, which is good for an unlimited number of entries during the calendar year, the proposed increase in user fees could cost a small firm, at most, an additional $5 per truck or an estimated $55 per firm in FY 2000; and $10 per truck or an estimated $110 per firm in FY 2001 and FY 2002. This estimate is based on the assumption that a small firm owns a maximum of 11 trucks. There are no official statistics on the fleet size of small trucking firms either for selected border States, or for the United States as a whole. This assumption is based on private sector trucking industry data on 256,223 U.S. trucking firms representing a combined fleet of over 2.3 million vehicles. This data shows that 91 percent of firms own 11 or fewer trucks.

SBA data show that the typical small trucking firm in Arizona, California, or Texas has annual receipts of $932,000. We therefore believe that the proposed increase in cost, as explained above ($110 for the average small firm), would not result in a significant new burden on small commercial trucking firms.

Loaded Commercial Railroad Cars

There are four U.S. railroad companies currently transporting goods across the U.S.-Mexican border. Two of these railroad companies meet the SBA criteria for small entities (fewer than 1,500 employees). As of 1991, the smaller railroad companies transported between 960 and 2,000 loaded rail cars into the United States from Mexico annually. Data on operating expenses and profit margins for these companies are not available; but proposed user fees would not increase in FY 2000 and FY 2002, and would only increase by $0.25 in FY 2001, suggesting that there would not be a significant economic impact on these two small U.S. railroad companies.

Commercial Airlines

We are proposing to amend the scheduled user fees for inspecting commercial aircraft by increasing the fees by $3.75 in FY 2000, $3.50 in FY 2001, and $3.00 in FY 2002. International scheduled and unscheduled (chartered) air passenger, air cargo, and air courier carriers arriving at U.S. customs ports are subject to AQI inspections. Bureau of the Census data compiled by the SBA show that there were a total of 6107 firms in the U.S. air transportation industry in 1995, and that more than 5893 (or more than 96.5 percent) would have met the SBA criteria for small entity (employing fewer than 1500 employees). The typical small firm in the air transportation industry had 15 employees, an annual payroll of $398 thousand, and estimated annual receipts of $2.1 million.

APHIS regulations affect international flights, many of which are operated by foreign-owned firms. Those U.S. air transport firms that do not operate international flights are not subject to the proposed rule. Agency records show that, in 1995, only 123 of the 6107 firms in the air transportation industry were subject to AQI inspections because they

operated international flights. This data suggests that the increased user fees will not affect a substantial number of small air transportation companies. Even if all 123 U.S. airline firms were small entities (which they are not), the proposed fee revision would be applicable to only 2 percent of small firms in the industry. Using information on the number of firms inspected, the number of projected inspections, and the assumption that firms subject to inspection are distributed by size in a fashion consistent with the industry as a whole, we can develop very rough estimates of impact on small firms.

Each of the 123 U.S. companies would have had an airplane inspected between 1600 and 1700 times per year if inspections were prorated equally between large and small firms. In practice, small firms with fewer aircraft would probably have substantially fewer annual inspections, so we are overestimating the impact of fee revisions on small firms. Given the assumptions above, the increased fees listed above would translate into additional costs per firm of between $5,000 and $6,000 per year, which are less than three tenths of one percent of estimated annual receipts for the average small air transportation firm.

Given the data, assumptions, and calculations above, it is reasonable to conclude that proposed fee revisions will not have significant economic impact on a substantial number of small air transportation firms.

Other Costs and Benefits

Additional reporting costs to private airlines associated with revising user fees are likely to be very small because mechanisms are already in place for collecting fees. There should be no additional recordkeeping costs for ticketing agents and tour operators, who are not involved in remitting fees and are not expected to remit fees in future. Further there will be no additional reporting burdens on vessel, aircraft, rail car, and truck operators as a result of the proposed changes in user fees.

The benefit of user fees is the shift in the payment of services from taxpayers as a whole to those persons who are receiving the government services. While taxes may not change by the same amount as the change in user fee collections, there is a related shift in appropriations, which allows tax dollars to be applied to other programs that benefit the public in general.

The administrative cost involved in obtaining these savings would be minimal. APHIS already has a user fee program and a mechanism for collecting user fees in place, and since this proposal would simply update existing user fees, increases in administrative costs would be small. Because the savings are sufficiently large, and the administrative costs would be small, it is likely that the net gain in reducing the burden on taxpayers as a whole would outweigh the cost of administering the revisions of the user fees.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we propose to amend 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 354.3 would be amended by revising the tables in paragraphs (b)(1), (c)(1), (d)(1), (e)(1), and (f)(1) to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(b) * * *

(1) * * *

Effective dates	Amount
October 1, 1998 through September 30, 1999	454.50
October 1, 1999 through September 30, 2000	465.50
October 1, 2000 through September 30, 2001	474.50
October 1, 2001 through September 30, 2002	480.50

* * * * *

(c) * * *

(1) * * *

Effective dates	Amount
October 1, 1998 through September 30, 1999	4.00
October 1, 1999 through September 30, 2000	4.25
October 1, 2000 through September 30, 2001	4.50
October 1, 2001 through September 30, 2002	4.75

* * * * *

(d) * * *

(1) * * *

Effective dates	Amount
October 1, 1998 through September 30, 1999	6.50
October 1, 1999 through September 30, 2000	6.75
October 1, 2000 through September 30, 2001	7.00
October 1, 2001 through September 30, 2002	7.00

* * * * *

(e) * * *

(1) * * *

Effective dates	Amount
October 1, 1998 through September 30, 1999	59.75
October 1, 1999 through September 30, 2000	64.00
October 1, 2000 through September 30, 2001	64.75
October 1, 2001 through September 30, 2002	65.25

* * * * *

(f) * * *

(1) * * *

Effective dates	Amount
October 1, 1998 through September 30, 1999	2.00
October 1, 1999 through September 30, 2000	3.00
October 1, 2000 through September 30, 2001	3.00
October 1, 2001 through September 30, 2002	3.10

* * * * *

3. In § 354.3, paragraph (c)(3)(i) would be amended by removing the words ", *except*, that through September 30, 1997, the amount to be paid is $40.00".

Done in Washington, DC, this 30th day of July 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–20113 Filed 8–6–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 207, 607, and 807

[Docket No. 98N–1215]

Foreign Establishment Registration and Listing; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 60 days the comment period for the proposed rule that appeared in the **Federal Register** of May 14, 1999 (64 FR 26330). The proposed rule would require foreign establishments whose products are imported or offered for import into the United States to register with FDA and to identify a U.S. agent. The proposal would also describe some of the agent's responsibilities. FDA is taking this action in response to a request from the Canadian Embassy.

DATES: Written comments by October 8, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 14, 1999 (64 FR 26330), FDA published a proposed rule that would require foreign establishments whose products are imported or offered for import into the United States to register with FDA. The proposal would also require foreign establishments to identify a U.S. agent and would describe some of the agent's responsibilities. FDA issued the proposed rule in order to implement section 417 of the Food and Drug Administration Modernization Act of 1997. Interested persons were given until July 28, 1999, to comment on the proposed rule.

On July 23, 1999, the Government of Canada requested an extension of the comment period, stating that the proposed requirement could present significant cost and compliance burdens to small and medium-sized Canadian establishments. The Canadian Government requested the extension so that it could: (1) Ensure that affected Canadian establishments are aware of the proposal and (2) prepare informed comments. The requested extension was 60 days.

The agency considered the Canadian Government's request and because the request was submitted too late to permit an extension of the comment period the agency is reopening the comment period until October 8, 1999.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the proposed rule and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 1, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20363 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 870, 888, and 890

[Docket No. 99N–2210]

Cardiovascular, Orthopedic, and Physical Medicine Diagnostic Devices; Reclassification of the Cardiopulmonary Bypass Accessory Equipment, Goniometer Device, and the Electrode Cable Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the cardiopulmonary bypass accessory equipment device that involves an electrical connection to the patient, the goniometer device, and the electrode cable from class I into class II. FDA is also proposing to exempt these devices from the premarket notification requirements. This classification is being proposed on FDA's own initiative based on new information. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices.

DATES: Written comments by November 8, 1999. See section IX of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration,9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and the FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act (21 U.S.C. 360c(f)) into class III without any FDA rulemaking process. Those devices

remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act (21 U.S.C. 360c(e)). This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon "new information." The reclassification can be initiated by FDA or by the petition of an interested person. The term "new information," as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F. 2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell v. Goddard*, 366 F.2d 177 (7th Cir. 1966).).

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F. Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the "new information" upon which reclassification under section 513(e) of the act is based must consist of "valid scientific evidence," as defined in section 513(a)(3) of the act (21 U.S.C. 360c(a)(3)) and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C.Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), *cert. denied*, 474 U.S. 1062 (1985)). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application. (See section 520 of the act (21 U.S.C. 360j(c)).

II. Regulatory History of Devices

In accordance with section 513(e) of the act and 21 CFR 860.130(a)(1), based on new information with respect to the devices, FDA, on its own initiative, is proposing to reclassify the following devices from class I, to class II: (1) Cardiopulmonary bypass accessory equipment, when intended to be used in the cardiopulmonary bypass circuit to support, adjoin, or connect components, or to aid in the setup of the extracorporeal line; (2) the goniometer device, which is an ac-powered device, when intended to evaluate joint function by measuring and recording ranges of motion, acceleration, or forces exerted by a joint; and (3) the electrode cable device, which is a electrode cable device composed of strands of insulated electrical conductors laid together around a central core and intended for medical purposes to connect an electrode from a patient to a diagnostic machine.

III. Device Description

FDA is maintaining the following device descriptions and intended uses:

(1) The cardiopulmonary bypass accessory equipment are devices that have no contact with blood and are intended in the cardiopulmonary bypass circuit to support, adjoin, or connect components or to aid in the setup of the extracorporeal line, e.g., an oxygenator mounting bracket or system-priming equipment. FDA is reclassifying into class II only cardiopulmonary bypass accessory equipment that involves an electrical connection to the patient. Other accessory equipment remains in class I.

(2) The goniometer is an ac-powered device intended to evaluate joint function by measuring and recording ranges of motion, acceleration, or forces exerted by a joint.

(3) The electrode cable device is a device composed of strands of insulated electrical conductors laid together around a central core and intended for medical purposes to connect an electrode from a patient to a diagnostic machine.

IV. Risk to Health

After several incidents were reported to FDA, pertaining to the risk of patient exposure to macro shock or electrocution, FDA took action to address the problem. A summary of the incidences was published in a final rule that established a performance standard for electrode lead wires and patient cables (62 FR 25477, May 9, 1997). Industry also took steps to prevent electrode lead wires from being connected to electrical power sources; a public conference sponsored by Health Industry Manufacturers Association and the American Hospital Association, held on July 15, 1994, provided a forum for device users, manufacturers, and other health care professionals to offer and hear comments for FDA's consideration during the rulemaking process.

V. Summary of Reasons for Reclassification

Based on new information with respect to the devices and in accordance with section 513 (e) of the act and 21 CFR 860.130(a)(1), FDA, on its own initiative, is proposing to reclassify the cardiopulmonary bypass accessory equipment devices that involve an electrical connection to the patient, the goniometer ac-powered device, and the electrode cable device from class I into class II. The agency is taking this action because the new information shows that these products present a degree of health risk to the patient that cannot be addressed by class I general controls. The agency established a performance standard for electrode lead wires and patient cables to prevent electrical connections between patients and electrical power sources. FDA believes the cardiopulmonary bypass accessory equipment, the ac-powered goniometer, and the electrode cable should be reclassified into class II because special controls in addition to general controls, provide reasonable assurance of safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

VI. Summary of Data Upon Which the Reclassification is Based

FDA believes that, in order to eliminate the risk of macro shock and electrocution in the future, a mandatory performance standard must apply to all electrode lead wires and patient cables intended for use with medical devices.

Based on the available information, FDA believes that the special controls discussed below are capable of providing reasonable assurance of the safety and effectiveness of the cardiopulmonary bypass accessory equipment that involves an electrical connection to the patient, the goniometer device, and the electrode cable with regard to the identified risks to health of these devices.

VII. Special Controls

In addition to general controls, FDA believes that the special controls identified in this document are adequate to control the risks to health described for these devices. (1) On May 9, 1997, FDA issued a final rule establishing a performance standard for electrode lead wires and patient cables. The agency determined that the performance standard is needed to prevent electrical connections between patients and electrical power sources. (2) Based on the available information, FDA also identified a guidance document entitled, "Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables." The guidance provides information on electrocution hazards posed by unprotected patient electrical connectors. The guidance is intended to help affected parties understand the steps needed to achieve compliance with the performance standard for electrode lead wires and patient cables.

Since May 11, 1998, electrode lead wires or patient cables have been required to comply with the ECG Cables and Lead Wires, ANSI/AAMI EC 53–1995 standard if they are intended for use with any of the following devices:

(1) Breathing frequency monitors,
(2) Ventilatory effort monitors (Apnea detectors),
(3) Electrocardiographs (ECG's),
(4) Radio frequency physiological signal transmitters and receivers,
(5) Cardiac monitors,
(6) Electrocardiograph electrodes (including pre-wired ECG electrodes),
(7) Patient transducer and electrode cables (including connectors),
(8) Medical magnetic tape recorders (e.g. Holter monitors),
(9) Arrhythmia detectors and alarms,
(10) Telephone Electrocardiograph transmitters and receivers.

Manufacturers and users had an additional 2 years to prepare for the second phase of implementation of the standard. Beginning on May 9, 2000, any electrode lead wire or patient cable lead intended for use with any medical device must comply with the standard.

The performance standard incorporates the specific requirements of international standard, IEC–60601, clause 56.3(c), which requires leads to be constructed in such a manner as to preclude patient contact with hazardous voltages or, for certain devices, contact with electrical ground. Design changes and labeling changes need to be considered by manufacturers and importers of these devices.

Adapters can be used to convert devices already in the marketplace so they can accept electrode wires and patient cables that comply with the new performance standard.

VIII. Exemption from Premarket Notification

A. FDA is proposing to exempt these devices from premarket notification.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act (21 U.S.C. 360(m). Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act (21 U.S.C. 360(k)) to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the Federal Register of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after the date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device.

FDA has determined that, for the devices proposed for class II in this rule, the special controls along with general controls other than premarket notification will provide reasonable assurance of the safety and effectiveness of these devices. Therefore, FDA is proposing to exempt these devices from the premarket notification requirements subject to the applicable limitations on exemptions.

B. Certain cardiopulmonary bypass equipment will remain in class I

FDAMA also added a new section 510(l) to the act which provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. FDA refers to the devices that meet these criteria as "reserved."

In the **Federal Register** of February 2, 1998 (63 FR 5387), FDA published a list of devices it considered reserved and that require premarket notification and a list of devices it believed met the exemption criteria in FDAMA. FDA invited comments on the February 2, 1998, notice.

In the **Federal Register** of November 12, 1998 (63 FR 63222), after reviewing the comments submitted on the February 2, 1998, **Federal Register** notice, FDA proposed to designate which devices require premarket notification, and which are exempt, subject to limitations, under notice and comment rulemaking proceedings under new section 510(l). One comment on the proposed rule stated that, for cardiopulmonary bypass accessory equipment, the "reserved" designation should be limited to accessory equipment that involves an electrical connection to the patient. FDA agrees with this comment and intends to change the final rule on exemptions from premarket notification to adopt this comment. In this proposed rule, FDA is stating that cardiopulmonary bypass accessory equipment that does not involve electrical connection to the patient is a class I device and is exempt from the premarket notification requirements.

IX. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

X. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Based on the May 9, 1997 (62 FR 25477), **Federal Register**, a final rule was issued establishing a performance standard for electrode lead wires and patient cables, which included and applied to the cardiopulmonary bypass accessory equipment that involves an electrical connection to the patient, the goniometer, and the electrode cable. The FDA's analysis determined that the imposition of the performance standard would not have a significant economic impact on a substantial number of small entities. This reclassification, if finalized, will have no economic effect other than the imposition of this standard. In addition, the proposed rule, if finalized, will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202 (a) of the Unfunded Mandates Reform Act of 1995 is not required.

XII. Paperwork Reduction Act of 1995

FDA has tentatively determined that this proposed rule contains no collections of information. Therefore, clearance from the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XIII. Submission of Comments

Interested persons may, on or before November 8 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Parts 870, 888, and 890

Medical Devices,

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 870, 888, and 890 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 870.4200 is revised to read as follows:

§ 870.4200 Cardiopulmonary bypass accessory equipment

(a) *Identification.* Cardiopulmonary bypass accessory equipment is a device that has no contact with blood and that is used in the cardiopulmonary bypass circuit to support, adjoin, or connect components, or to aid in the setup of the extracorporeal line, e.g., an oxygenator mounting bracket or system-priming equipment.

(b) *Classification.* (1) Class I. The device is classified as class I if it does not involve an electrical connection to the patient. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 870.9.

(2) Class II (special controls). The device is classified as class II if it involves an electrical connection to the patient. The special controls are as follows:

(1) The performance standard under part 898 of this chapter and

(2) The guidance document entitled, "Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables." The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 870.9.

PART 888—ORTHOPEDIC DIAGNOSTIC DEVICES

3. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

4. Section 888.1500 is amended by revising paragraph (b) to read as follows:

§ 888.1500 Goniometer.

* * * * *

(b) Classification. Class II (special controls). The special controls consist of:

(1) The performance standard under part 898 of this chapter and

(2) The guidance entitled, "Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables." This device is exempt from the premarket notification procedures of subpart E of part 807 of this chapter subject to § 888.9.

PART 890—PHYSICAL MEDICINE PROSTHETIC DEVICES

5. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

6. Section 890.1175 is amended by revising paragraph (b) to read as follows:

§ 890.1175 Electrode cable.

* * * * *

(b) Classification. Class II (special controls). The special controls consist of:

(1) The performance standard under part 898 of this chapter and

(2) The guidance document entitled, "Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables." This device is exempt from the premarket notification procedures of subpart E of part 807 of this chapter subject to § 890.9.

Dated: July 25, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–20357 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106527–98]

RIN 1545–AW22

Capital Gains, Partnership, Subchapter S, and Trust Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to sales or exchanges of interests in partnerships, S corporations, and trusts. The proposed regulations interpret the look-through provisions of section 1(h), added by section 311 of the Taxpayer Relief Act of 1997 and amended by sections 5001 and 6005(d) of the Internal Revenue Service Restructuring and Reform Act of 1998, and explain the rules relating to the division of the holding period of a

partnership interest. The proposed regulations affect partnerships, partners, S corporations, S corporation shareholders, trusts, and trust beneficiaries.

DATES: Written comments must be received by November 8, 1999. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 18, 1999, must be received by October 28, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–106527–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–106527–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jeanne Sullivan (202) 622–3050; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the IRS, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by October 8, 1999. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the collections will have a practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in § 1.1(h)–1(e). This information is required by the IRS to implement section 311 of the Taxpayer Relief Act of 1997, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998. The collections of information are required to provide information to the IRS regarding the capital gain attributable to collectibles and section 1250 property held by a partnership when a partner sells or exchanges an interest in that partnership and the capital gain attributable to collectibles when a shareholder sells or exchanges an interest in an S corporation or a trust beneficiary sells or exchanges an interest in a trust. This information will be used to verify compliance with section 1(h) and to determine that the tax on capital gains has been computed correctly. The collection of information is mandatory. The likely respondents are individuals and businesses.

Respondent taxpayers provide information by attaching a statement to the appropriate tax return. The burden for this requirement is reflected in the burden estimates for: Form 1040, U.S. Individual Income Tax Return; Form 1065, U.S. Partnership Return of Income; Form 1041, U.S. Income Tax Return for Estates and Trusts; and Form 1120S, U.S. Income Tax Return for an S Corporation. The estimated burden of information collection for the statement required is 10 minutes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to taxation of capital gains in the case of sales or exchanges of interests in partnerships, S corporations, and trusts. The Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788, 831 (1997 Act), amended section 1(h) of the Internal Revenue Code to reduce the maximum statutory tax rates for long-term capital gains of individuals in general. Certain technical corrections and other amendments to section 1(h) were enacted as part of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685, 787, 800 (1998 Act).

Section 1(h) provides that intermediate level rates apply to long-term capital gains from certain transactions, such as sales or exchanges of collectibles, section 1202 stock (with respect to a portion of the gain), and section 1250 property with gain attributable to straight-line depreciation. Section 1(h)(11) provides authority to the Secretary to issue such regulations as are appropriate to apply these rules in the case of sales or exchanges by pass-thru entities and of interests in pass-thru entities. This document provides rules for sales or exchanges of interests in partnerships, S corporations, and trusts. This document also provides rules relating to dividing the holding period of a partnership interest.

Explanation of Provisions

In general, prior to the 1997 Act, individuals were taxed on capital gains at the same rate as ordinary income, except that the rate for net capital gain was capped at 28 percent. The 1997 Act provided for lower maximum rates of taxation on gain from the sale or exchange of certain types of property. As amended by the 1998 Act, section 1(h) currently provides for maximum capital gains rates on the sale or exchange of certain types of property in three categories: 20-percent rate gain, 25-percent rate gain, and 28-percent rate gain. Twenty percent rate gain is net capital gain from the sale or exchange of capital assets held for more than one year, reduced by the sum of 25-percent rate gain and 28-percent rate gain. Twenty-five percent rate gain is limited to unrecaptured section 1250 gain. Unrecaptured section 1250 gain is the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were

100 percent, reduced by any net loss in the 28-percent rate gain category.Twenty-eight percent rate gain is capital gains and losses from the sale or exchange of collectibles (as defined in section 408(m) without regard to section 408(m)(3)) held for more than one year, a portion of the gain attributable to the sale of section 1202 stock, and capital gains and losses determined under the rules of section 1(h)(13), reduced by net short-term capital loss for the taxable year and any long-term capital loss carryover under section 1212(b)(1)(B).

Collectibles Gain and Unrecaptured Section 1250 Gain

The sale or exchange of an interest in a partnership with a long-term holding period generally will result in capital gain in the 20-percent rate gain category to the extent that section 751(a) is not applicable. Section 751(a) generally provides that an amount received in exchange for a partnership interest, to the extent attributable to unrealized receivables and inventory, shall be considered as an amount realized from the sale or exchange of property other than a capital asset. Section 1250 property is treated as an unrealized receivable for purposes of section 751 to the extent of the amount that would be treated as gain to which section 1250(a) would apply.

The sale or exchange of stock in an S corporation with a long-term holding period generally will result in gain or loss in the 20-percent rate gain category, unless an exception to capital gain treatment applies. Certain of those exceptions are provided in sections 304, 306, 341, and 1254.

The sale or exchange of an interest in a trust with a long-term holding period generally will result in gain or loss in the 20-percent rate gain category. However, if the transferor is treated as the owner of the portion of the trust attributable to an interest under sections 673 through 679, the transferor is treated as transferring an undivided interest in the assets of the trust rather than an interest in the trust itself.

Effective for taxable years ending after May 6, 1997, when an interest in a partnership, an S corporation, or a trust held for more than one year (or more than 18 months during certain periods in 1997) is sold or exchanged, section 1(h) provides special treatment for "collectibles gain" in property held by a partnership, S corporation, or trust and for "section 1250 capital gain" in property held by a partnership. Specifically, section 1(h)(6)(B) provides that any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible, applying rules similar to section 751(a) to determine the amount of the gain. In addition, under section 1(h)(7)(A) (in conjunction with sections 751(a) and (c)), the amount of long-term capital gain (not otherwise treated as ordinary income under section 751(a)) that would be treated as ordinary income under section 751(a) if section 1250 applied to all depreciation (section 1250 capital gain) must be taken into account in computing unrecaptured section 1250 gain when an interest in a partnership (with a holding period of more than one year, or more than 18 months during certain periods in 1997) is sold or exchanged. See H. Rep. No. 105–356, 105th Cong. 1st Sess. (1997), at 16, fn. 11; S. Rep. No. 105–174, 105th Cong. 2d Sess. (1998), at 149, fn. 65.

The proposed regulations provide guidance with respect to the application of these rules to a sale or exchange of an interest in a partnership, S corporation, or trust holding assets with collectibles gain and a partnership holding assets with section 1250 capital gain. Generally, the amount of such gain is determined by reference to the gain that would be allocated to the selling partner, shareholder, or beneficiary (to the extent attributable to the portion of the transferred interest that is subject to long-term capital gain) if the partnership, S corporation, or trust had sold all of its collectibles or if the partnership had sold all of its section 1250 property in a fully taxable transaction immediately before the transfer of the partnership, S corporation, or trust interest. Special rules are provided where the partner, S corporation shareholder, or trust beneficiary recognizes less than all of the gain upon the sale or exchange of its interest.

In addition, for purposes of applying section 1(h)(7)(B), which provides that a taxpayer's unrecaptured section 1250 gain cannot exceed the taxpayer's net section 1231 gain, gain from the sale of a partnership interest that results in section 1250 capital gain is not treated as section 1231 gain even if section 1231 could apply to the disposition of the underlying partnership property. Although section 1(h)(7) (in combination with section 751) applies a limited look-thru rule for purposes of determining the capital gain rate applicable to the sale of a partnership interest, no similar look-thru rule applies for purposes of applying section 1231. Anomalous results would follow if section 1250 capital gain derived from the sale of a partnership interest were treated as section 1231 gain for purposes of applying the limitation in section 1(h)(7)(B) but not for purposes of actually applying section 1231.

Determination of Holding Period in a Partnership

In view of the long-established principle that a partner has a single basis in a partnership interest (see Rev. Rul. 84–53 (1984–1 C.B. 159)), there is some confusion under current law as to how the principles of section 1223 apply to the sale of an interest, or a portion of an interest, in a partnership. The proposed regulations provide rules relating to the allocation of a divided holding period with respect to an interest in a partnership. These rules generally provide that the holding period of a partnership interest will be divided if a partner acquires portions of an interest at different times or if an interest is acquired in a single transaction that gives rise to different holding periods under section 1223. The holding period of a portion of a partnership interest shall be determined based on a fraction that is equal to the fair market value of the portion of the partnership interest to which the holding period relates (determined immediately after the acquisition) over the fair market value of the entire partnership interest. A selling partner may use the actual holding period of the portion of a partnership interest sold if the partnership is a "publicly traded partnership" (as defined under section 7704(b)), the partnership interest is divided into identifiable units with ascertainable holding periods, and the selling partner can identify the portion of the interest transferred. Otherwise, the holding period(s) of the transferred interest must be divided in the same ratio as the holding period(s) of the partner's entire partnership interest.

These proposed regulations do not contain a specific anti-abuse rule regarding holding periods. However, there may be situations where taxpayers will attempt to undertake abusive transactions using the rules in these regulations. For instance, taxpayers may attempt to shift gain from property with a short-term holding period to property with a long-term holding period by contributing the short-term property to a partnership and selling the partnership interest. Because the basis of a partnership interest cannot be segregated to a portion of an interest, basis in the portion of a partnership interest with a long-term holding period could reduce gain attributable to the portion of a partnership interest with a short-term holding period in situations

where such interest was recently received in exchange for contributed short-term capital gain property. In appropriate situations, the IRS may attack such abusive transactions under a variety of judicial doctrines, including substance over form or step transaction, or under § 1.701–2 of the regulations.

Proposed Effective Date

The amendments are proposed to be effective for all transfers of interests in a partnership, S corporation, or trust and for all distributions from a partnership on or after the date the regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the facts that: (1) the time required to prepare and file the statement is minimal (currently estimated at 10 minutes per statement); and (2) it is anticipated that, as a result of these regulations, small entities will file no more than one statement per year. Furthermore, taxpayers will have to respond to the requests for information contained in § 1.1(h)–1(e) only if there is a sale or exchange of an interest in a partnership, an S corporation, or a trust that holds certain property. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 18, 1999, beginning at 1 p.m. in room 3411 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must request to speak and submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 28, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information. The principal author of these proposed regulations is Jeanne Sullivan, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

PARAGRAPH 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

PAR. 2. SECTION 1.1(H)–1 IS ADDED TO READ AS FOLLOWS:

§ 1.1(h)–1 Capital gains look-through rule for sales or exchanges of interests in a partnership, S corporation, or trust.

(a) *In general.* When an interest in a partnership held for more than one year is sold or exchanged, the transferor may recognize ordinary income (e.g., section 751(a)), collectibles gain, section 1250 capital gain, and residual long-term capital gain or loss. When stock in an S corporation held for more than one year is sold or exchanged, the transferor may recognize ordinary income (e.g., sections 304, 306, 341, 1254), collectibles gain, and residual long-term capital gain or loss. When an interest in a trust held for more than one year is sold or exchanged, a transferor who is not treated as the owner of the portion of the trust attributable to the interest sold or exchanged (sections 673 through 679) (a non-grantor transferor) may recognize collectibles gain and residual long-term capital gain or loss.

(b) *Look-through capital gain*—(1) *In general.* Look-through capital gain is the share of collectibles gain allocable to an interest in a partnership, S corporation, or trust, plus the share of section 1250 capital gain allocable to an interest in a partnership, determined under paragraphs (b)(2) and (3) of this section.

(2) *Collectibles gain and collectibles loss*—(i) *Definitions.* For purposes of this section, *collectibles gain* and *collectibles loss* mean gain or loss, respectively, from the sale or exchange of a collectible (as defined in section 408(m) without regard to section 408(m)(3)) that is a capital asset held for more than 1 year, but only to the extent such gain is taken into account in computing gross income, and such loss is taken into account in computing taxable income.

(ii) *Share of collectibles gain allocable to an interest in a partnership, S corporation, or trust.* When an interest in a partnership, S corporation, or trust held for more than one year is sold or exchanged in a transaction in which all realized gain is recognized, the transferor shall recognize as collectibles gain the amount of net collectibles gain (but not net collectibles loss) that would be allocated to that partner (taking into account any remedial allocation under § 1.704–3(d)), shareholder, or beneficiary (to the extent attributable to the portion of the partnership interest, S corporation stock, or trust interest transferred that was held for more than one year) if the partnership, S corporation, or trust transferred all of its collectibles in a fully taxable transaction immediately before the transfer of the interest in the partnership, S corporation, or trust. If less than all of the realized gain is recognized upon the sale or exchange of an interest in a partnership, S corporation, or trust, the same methodology shall apply to determine the collectibles gain recognized by the transferor, except that the partnership, S corporation, or trust shall be treated as transferring only a proportionate amount of each of its collectibles determined as a fraction that is the amount of gain recognized in the sale or exchange over the amount of

gain realized in the sale or exchange. With respect to the transfer of an interest in a trust, this paragraph applies only to transfers by non-grantor transferors (as defined in paragraph (a) of this section).

(3) *Section 1250 capital gain*—(i) *Definition.* For purposes of this section, *section 1250 capital gain* means the long-term capital gain (not otherwise treated as ordinary income) that would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent.

(ii) *Share of section 1250 capital gain allocable to interest in partnership.* When an interest in a partnership held for more than one year is sold or exchanged in a transaction in which all realized gain is recognized, there shall be taken into account under section 1(h)(7)(A)(i) in determining the partner's unrecaptured section 1250 gain the amount of section 1250 capital gain that would be allocated (taking into account any remedial allocation under § 1.704–3(d)) to that partner (to the extent attributable to the portion of the partnership interest transferred that was held for more than one year) if the partnership transferred all of its section 1250 property in a fully taxable transaction immediately before the transfer of the interest in the partnership. If less than all of the realized gain is recognized upon the sale or exchange of an interest in a partnership, the same methodology shall apply to determine the section 1250 gain recognized by the transferor, except that the partnership shall be treated as transferring only a proportionate amount of each section 1250 property determined as a fraction that is the amount of gain recognized in the sale or exchange over the amount of gain realized in the sale or exchange.

(iii) *Limitation with respect to net section 1231 gain.* In determining a transferor partner's net section 1231 gain (as defined in section 1231(c)(3)) for purposes of section 1(h)(7)(B), the transferor partner's allocable share of section 1250 capital gain in partnership property shall not be treated as section 1231 gain, regardless of whether the partnership property is used in the trade or business (as defined in section 1231(b)).

(c) *Residual long-term capital gain or loss.* The amount of residual long-term capital gain or loss recognized by a partner, shareholder of an S corporation, or beneficiary of a trust on account of the sale or exchange of an interest in a partnership, S corporation, or trust shall equal the amount of long-term capital gain or loss that the partner would recognize under section 741, that the shareholder would recognize upon the sale or exchange of stock of an S corporation, or that the beneficiary would recognize upon the sale or exchange of an interest in a trust (pre-look-through long-term capital gain or loss) minus the amount of long-term capital gain determined under paragraph (b) of this section (look-through capital gain).

(d) *Special rule for tiered entities.* In determining whether a partnership, S corporation, or trust has collectibles gain and whether a partnership has section 1250 capital gain, such partnership, S corporation, or trust shall be treated as owning its proportionate share of the property of any partnership, S corporation, or trust in which it owns an interest, either directly or indirectly through a chain comprised exclusively of such entities.

(e) *Notification requirements.* Rules similar to those that apply to the partners and the partnership under section 751(a) shall apply in the case of sales or exchanges of interests in a partnership, S corporation, or trust that holds property with collectibles gain and in the case of sales or exchanges of interests in a partnership that holds property with section 1250 capital gain. See § 1.751–1(a)(3).

(f) *Examples.* The following examples illustrate the requirements of this section:

Example 1. Collectibles gain. (i) *A* and *B* are equal partners in a personal service partnership (*PRS*). *B* transfers *B*'s interest in *PRS* to *T* for $15,000 when *PRS*'s balance sheet (reflecting a cash receipts and disbursements method of accounting) is as follows:

	Assets	
	Adjusted basis	Market value
Cash	$3,000	$3,000
Loans owed to partnership	10,000	10,000
Collectibles	1,000	3,000
Other capital assets	6,000	2,000
Capital assets	7,000	5,000
Unrealized receivables	0	14,000
Total	$20,000	$32,000
	Liabilities and capital	
Liabilities	$2,000	$2,000
Capital:		
A	9,000	15,000
B	9,000	15,000
Total	$20,000	$32,000

(ii) At the time of the transfer, *B* has held the interest in *PRS* for more than one year, and none of the property owned by *PRS* is section 704(c) property. The total amount realized by *B* is $16,000, consisting of the cash received, $15,000, plus $1,000, *B*'s share of the partnership liabilities assumed by *T*. See section 752. *B*'s basis for the partnership interest is $10,000 ($9,000 plus $1,000, *B*'s share of partnership liabilities). *B*'s undivided one-half interest in *PRS* includes a one-half interest in the partnership's unrealized receivables and a one-half interest in the partnership's collectibles.

(iii) If *PRS* were to sell all of its section 751 property in a fully taxable transaction immediately prior to the transfer of *B*'s partnership interest to *T*, *B* would be allocated $7,000 of ordinary income from the sale of *PRS*'s unrealized receivables. Therefore, *B* will recognize $7,000 of ordinary income with respect to the unrealized receivables. The difference between the amount of capital gain or loss that the partner would realize in the absence of section 751 ($6,000) and the amount of ordinary income or loss determined under § 1.751–1(a)(2) ($7,000) is the partner's capital gain or loss on the sale of the partnership interest under section 741. In this case, the transferor has a $1,000 pre-look-through long-term capital loss.

(iv) If *PRS* were to sell all of its collectibles in a fully taxable transaction immediately prior to the transfer of *B*'s partnership interest to *T*, *B* would be allocated $1,000 of collectibles gain from the sale of the collectibles. Therefore, *B* will recognize $1,000 of collectibles gain on account of the collectibles held by *PRS*.

(v) The difference between the transferor's pre-look-through long-term capital gain or loss (−$1,000) and the look-through capital gain determined under this section ($1,000) is the transferor's residual long-term capital gain or loss on the sale of the partnership interest. Under these facts, *B* will recognize a $2,000 residual long-term capital loss on account of the sale or exchange of the interest in *PRS*.

Example 2. Special allocations. Assume the same facts as in *Example 1*, except that under the partnership agreement, all gain from the sale of the collectibles is specially allocated to *B*, and *B* transfers *B*'s interest to *T* for $16,000. All items of income, gain, loss, or deduction of *PRS*, other than the collectibles gain, are divided equally between *A* and *B*. Under these facts, *B*'s pre-look-through long-term capital gain would be $0. If *PRS* were to sell all of its collectibles in a fully taxable transaction immediately prior to the transfer of *B*'s partnership interest to *T*, *B* would be allocated $2,000 of collectibles gain from the sale of the collectibles. Therefore, *B* will recognize $2,000 of collectibles gain on account of the collectibles held by *PRS*. *B* also will recognize $7,000 of ordinary income (determined under § 1.751–1(a)(2)) and a $2,000 long-term capital loss on account of the sale of *B*'s interest in *PRS*.

Example 3. Net collectibles loss ignored. Assume the same facts as in *Example 1*, except that the collectibles held by *PRS* have an adjusted basis of $3,000 and a fair market

value of $1,000, and the other capital assets have an adjusted basis of $4,000 and a fair market value of $4,000. If *PRS* were to sell all of its collectibles in a fully taxable transaction immediately prior to the transfer of *B*'s partnership interest to *T*, *B* would be allocated $1,000 of collectibles loss. Because none of the gain from the sale of the interest in *PRS* is attributable to unrealized appreciation in the value of collectibles held by *PRS*, the net loss in collectibles held by *PRS* is not recognized at the time *B* transfers the interest in *PRS*. *B* will recognize $7,000 of ordinary income (determined under § 1.751–1(a)(2)) and a $1,000 long-term capital loss on account of the sale of *B*'s interest in *PRS*.

Example 4. Collectibles gain in an S corporation. (i) A corporation (*X*) has always been an S corporation and is owned by individuals *A*, *B*, and *C*. In 1996, *X* invested in antiques. Subsequent to their purchase, the antiques appreciated in value by $300. *A* owns one-third of the shares of *X* stock and has held that stock for more than one year. *A*'s adjusted basis in the *X* stock is $100. If *A* were to sell all of the *X* stock to *T* for $150, *A* would realize $50 of pre-look-through long-term capital gain.

(ii) If *X* were to sell its antiques in a fully taxable transaction immediately before the transfer to *T*, *A* would be allocated $100 of collectibles gain on account of the sale. Therefore, *A* will recognize $100 of collectibles gain (look-through capital gain) on account of the collectibles held by *X*.

(iii) The difference between the transferor's pre-look-through long-term capital gain or loss ($50) and the look-through capital gain determined under this section ($100) is the transferor's residual long-term capital gain or loss on the sale of the S corporation stock. Under these facts, *A* will recognize $100 of collectibles gain and a $50 residual long-term capital loss on account of the sale of *A*'s interest in *X*.

(g) *Effective date.* This section applies to transfers of interests in partnerships, S corporations, and trusts that occur on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 3. Section 1.1223–3 is added to read as follows:

§ 1.1223–3 Rules relating to the holding periods of partnership interests.

(a) *In general.* A partner shall have a divided holding period in an interest in a partnership if:

(1) The partner acquired portions of an interest at different times; or

(2) The partner acquired portions of the partnership interest in exchange for property transferred at the same time but resulting in different holding periods determined under section 1223.

(b) *Accounting for holding periods of an interest in a partnership.* The portion of a partnership interest to which a holding period relates shall be determined by reference to a fraction that is the fair market value of the portion of the partnership interest received in the transaction to which the holding period relates over the fair market value of the entire partnership interest (determined immediately after the transaction).

(c) *Sale or exchange of all or a portion of an interest in a partnership*—(1) *Sale or exchange of entire interest in a partnership.* If a partner sells or exchanges the partner's entire interest in a partnership, any capital gain or loss recognized shall be divided between long-term and short-term capital gain or loss in the same proportions as the holding period of the interest in the partnership is divided between the portion of the interest held for more than one year and the portion of the interest held for one year or less.

(2) *Sale or exchange of a portion of an interest in a partnership.* (i) If the ownership interest in a publicly traded partnership (as defined under section 7704(b)) is divided into identifiable units with ascertainable holding periods, and the selling partner can identify the portion of the partnership interest transferred, the selling partner may use the actual holding period of the portion transferred.

(ii) If a partner has a divided holding period in a partnership interest, and paragraph (c)(2)(i) of this section does not apply, then the holding period of the transferred interest shall be divided between long-term and short-term capital gain or loss in the same proportions as the long-term and short-term capital gain or loss that the transferor partner would realize if the entire interest in the partnership were transferred in a fully taxable transaction immediately before the actual transfer.

(d) *Distributions*—(1) *In general.* A partner's holding period in a partnership interest is not affected by distributions from the partnership.

(2) *Character of capital gain or loss recognized as a result of a distribution from a partnership.* If a partner is required to recognize capital gain or loss as a result of a distribution from a partnership, then the capital gain or loss recognized shall be divided between long-term and short-term capital gain or loss in the same proportions as the long-term and short-term capital gain or loss that the distributee partner would realize if such partner's entire interest in the partnership were transferred in a fully taxable transaction immediately before the distribution.

(e) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Division of holding period—contribution of money and a capital asset. (i) *A* contributes $5,000 of cash and *a* nondepreciable capital asset *A* has held for two years to a partnership (*PRS*) for *a* 50% interest in *PRS*. *A*'s basis in the capital asset is $5,000, and the fair market value of the asset is $10,000. After the exchange, *A*'s basis in *A*'s interest in *PRS* is $10,000, and the fair market value of the interest is $15,000. *A* received one-third of the interest in *PRS* for *a* cash payment of $5,000 ($5,000/$15,000). Therefore, *A*'s holding period in one-third of the interest received (attributable to the contribution of money to the partnership) begins on the day after the contribution. *A* received two-thirds of the interest in *PRS* in exchange for the capital asset ($10,000/$15,000). Accordingly, pursuant to section 1223(1), *A* has a two-year holding period in two-thirds of the interest received in *PRS*.

(ii) Six months later, when *A*'s basis in *PRS* is $12,000 (due to *a* $2,000 allocation of partnership income to a), *A* sells the interest in *PRS* for $15,000. Assuming *PRS* holds no inventory or unrealized receivables (as defined under section 751(c)) and no collectibles or section 1250 property, *a* will realize $3,000 of capital gain. As determined above, one-third of *A*'s interest in *PRS* has *a* holding period of one year or less, and two-thirds of *A*'s interest in *PRS* has *a* holding period equal to two years and six months. Therefore, one-third of the capital gain will be short-term capital gain, and two-thirds of the capital gain will be long-term capital gain.

Example 2. Division of holding period—contribution of money, section 1231 property, and other property. In exchange for *a* 30% interest in *a* partnership (*ABC*), *A* contributes to *ABC* $50,000 cash and equipment used in a trade or business and held for more than one year with a fair market value of $100,000 and an adjusted basis of $40,000. The equipment has a recomputed basis under section 1245 of $60,000. Accordingly, a portion of the equipment equal in value to $20,000 is section 1245 property that is not section 1231 property. See § 1.1245–6(a). *A*'s partnership interest has a fair market value of $150,000, a basis of $90,000, and a divided holding period. *A* received 46.67% ($70,000/$150,000) of the interest in *ABC* in exchange for property that is neither a capital asset nor section 1231 property (that is, cash of $50,000 and a portion of the equipment attributable to section 1245 recapture in an amount equal to $20,000). Therefore, *A*'s holding period for 46.67% of *A*'s interest begins on the day after the exchange of the property for the partnership interest. *A* received 53.33% ($80,000/$150,000) of *A*'s interest in *ABC* in exchange for section 1231 property.

Accordingly, *A*'s holding period for 53.33% of *A*'s interest includes *A*'s holding period for the section 1231 property.

Example 3. Division of holding period when capital account is increased by contribution. A, B, C, and D are equal partners in a partnership (*PRS*), and the fair market value of a 25% interest in *PRS* is $90x. *A*, *B*, *C*, and *D* each contribute an additional $10x to partnership capital, thereby increasing the fair market value of each partner's interest to $100x. As a result of the contribution, each partner has a new holding period in the portion of the partner's

interest in *PRS* that is attributable to the contribution. That portion equals 10% ($10x/$100x) of each partner's interest in *PRS*.

Example 4. Sale or exchange of a portion of an interest in a partnership. (i) *A* contributes $5,000 in cash and a capital asset with a fair market value of $5,000 and a basis of $2,000 to a partnership (*PRS*) in exchange for an interest in *PRS*. At the time of the contribution, *A* had held the contributed property for two years. Six months later, when *A*'S basis in *PRS* is $7,000, *A* transfers one-half of *A*'S interest in *PRS* to *T* for $6,000 at a time when *PRS*'s balance sheet (reflecting a cash receipts and disbursements method of accounting) is as follows:

	Assets	
	Adjusted basis	Market value
Cash	$5,000	$5,000
Unrealized Receivables	0	6,000
Capital Asset 1	3,000	8,000
Capital Asset 2	2,000	5,000
Capital Assets	5,000	13,000
Total	$10,000	$24,000

(ii) Although at the time of the transfer *A* has not held A's interest in *PRS* for more than one year, 50% of the fair market value of *A*'S interest in *PRS* was received in exchange for property with a long-term holding period. Therefore, 50% of *A*'S interest in *PRS* has a long-term holding period.

(iii) If *PRS* were to sell all of its section 751 property in a fully taxable transaction immediately before *A*'S transfer of the partnership interest, *A* would be allocated $3,000 of ordinary income. One-half of that amount ($1,500) is attributable to the portion of *A*'S interest in *PRS* transferred to *T*. Accordingly, *A* will recognize $1,500 ordinary income and $1,000 ($2,500 -$1,500) of capital gain on account of the transfer to *T* of one-half of *A*'S interest in *PRS*. Fifty percent ($500) of that gain is long-term capital gain and 50% ($500) is short-term capital gain.

Example 5. Sale or exchange of a portion of an interest in a partnership. (i) The facts are the same as in *Example 4*, except that capital asset 1 is a collectible that was purchased by *PRS* more than one year earlier. If capital asset 1 were sold or exchanged in a fully taxable transaction immediately before *A*'s transfer of the partnership interest, *A* would be allocated $2,500 of collectibles gain. Fifty percent of that amount ($1,250) is attributable to the portion of *A*'s interest in *PRS* sold to *T*. The collectibles gain allocable to the portion of the transferred interest in *PRS* with a long-term holding period is $625 (50% of $1,250). Accordingly, *A* will recognize $625 of collectibles gain on account of the transfer of one-half of the interest in *PRS*.

(ii) The difference between the amount of pre-look-through long-term capital gain or loss ($500) and the look-through capital gain ($625) is the amount of residual long-term capital gain or loss that *A* will recognize on account of the transfer of one-half of the interest in *PRS*. Under these facts, *A* will recognize a residual long-term capital loss of $125 and a short-term capital gain of $500.

Example 6. Sale of units of interests in partnership. A publicly traded partnership (*PRS*) has ownership interests that are segregated into identifiable units of interest. *A* owns 10 limited partnership units in *PRS* for which *A* paid $10,000 three years ago. Later, *A* purchases five additional units for $10,000 at a time when the fair market value of each unit has increased to $2,000. *A*'s holding period for one-third ($10,000/$30,000) of the interest in *PRS* begins on the day after the purchase of the five additional units. Less than one year later, *A* sells five units of ownership in *PRS* for $11,000. At the time, *A*'s basis in the 15 units of *PRS* is $20,000, and *A*'s capital gain on the sale of 5 units is $4,333 (amount realized of $11,000—one-third of the adjusted basis or $6,667). For purposes of determining the holding period, *A* can designate the specific units of *PRS* sold. If *A* properly identifies the five units sold as five of the ten units for which *A* has a long-term holding period, the capital gain realized will be long-term capital gain.

Example 7. Disproportionate distribution. In 1997, *A* and *B* each contribute cash of $50,000 to form and become equal partners in a partnership (*PRS*). Sometime later, *A* receives a distribution worth $22,000 from *PRS*, which reduces *A*'s interest in *PRS* to 36%. After the distribution, *B* owns 64% of *PRS*. The holding periods of *A* and *B* in their interests in *PRS* are not affected by the distribution.

Example 8. Gain or loss as a result of a distribution. In 1996, *A* contributes property with a basis of $10 and a fair market value of $10,000 in exchange for an interest in a partnership (*ABC*). In 1999, when *A*'s interest in *ABC* is worth $12,000, *A* contributes $6,000 cash in exchange for an additional interest in *ABC*, bringing the fair market value of *A*'s interest to $18,000. The holding period of *A*'s interest in *ABC* is determined immediately after that exchange. *A*'s holding-period in one-third of *A*'s interest in *ABC* ($6,000 cash contributed over the $18,000 value of the entire interest) begins on the day after the cash contribution. (*ABC* holds no inventory or unrealized receivables.) Later in 1999, *ABC* makes a cash distribution to *A* of $10,000. *A*'s basis in *ABC* immediately before the distribution is $6,010. Accordingly, *A* must recognize $3990 of capital gain as a result of the distribution. See section 731(a)(1). One-third of the capital gain recognized as a result of the distribution is short-term capital gain, and two-thirds of the capital gain is long-term capital gain. After the distribution, *A*'s basis in the interest in *PRS* is $0, and the holding period for the interest in *PRS* continues to be divided in the same proportions as before the distribution.

(f) *Effective date.* This section applies to transfers of partnership interests and distributions of property from a partnership that occur on or after the date final regulations are published in the **Federal Register**.

Par. 4. Section 1.741–1 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1.741–1 Recognition and character of gain or loss on sale or exchange.

* * * * *

(e) For rules relating to the capital gain or loss recognized when a partner sells or exchanges an interest in a partnership that holds appreciated collectibles or section 1250 property with section 1250 capital gain, see § 1.1(h)–1.

(f) For rules relating to dividing the holding period of an interest in a partnership, see § 1.1223–3.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–20368 Filed 8–6–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY 32–194b, FRL–6414–2]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Plan submitted by New York to implement and enforce the Emission Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The EG require states to develop plans to reduce toxic air emissions from all HMIWIs. In the final rules section of this **Federal Register**, EPA is approving New York's HMIWI State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments to that direct final rule, EPA will not take action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before September 8, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Ted Gardella or Craig Flamm, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–3892 or (212) 637–4021, respectively.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 23, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–20306 Filed 8–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[FRL–6416–7]

Notice of Availability of Unit-Specific Information for Affected Sources Under the Section 126 and Proposed Section 110 FIP Rulemakings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is making available to the public three sets of data relating to our proposed Federal NO__ Budget Trading Program. We proposed the program in rulemakings under sections 126 and 110 of the Clean Air Act. The program aims to reduce interstate transport of ozone by controlling emissions of nitrogen oxides (NO__). NO__ emissions significantly contribute to violations of the National Ambient Air Quality Standard for ozone in downwind states. This document is a notice of availability and request for comment on the following data related to the allocation of NO__ allowances under the Federal NO__ Budget Trading Program: electric generation data from May through September for the years 1995 through 1998, for electric generating units (EGUs); heat input data from May through September for the year 1998 for all EGUs reporting under EPA's Acid Rain Program; heat input data from May through September for the years 1997 and 1998 and heat rate data for EGUs not reporting under EPA's Acid Rain Program; and heat input data for May through September for the year 1995 for certain non-electric generating units (non-EGUs). We may use these data in the future to allocate NO__ allowances under the Federal NO__ Budget Trading Program. Therefore, EPA is providing an opportunity for public comment on these data.

Readers should note that we will only consider comments about the data discussed in this notice and are not soliciting comments on any other topic. In particular, we are not reopening the comment period for the October 21, 1998 proposed rule on the section 126 rulemaking or the October 21, 1998 proposed rule on the section 110 Federal Implementation Plans (FIPs) through this Notice of Data Availability. Neither are we soliciting comments on inventory data for 1995 and 1996 that we used to develop Statewide emission budgets.

DATES: Comments on the data will be accepted through September 8, 1999.

ADDRESSES: You may submit comments to the Air and Radiation Docket and Information Center (6102), Docket Nos. A–97–43 (section 126 rulemaking) and A–98–12 (section 110 FIP rulemaking), U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Identify your comments with these docket numbers. Submit two originals or exact duplicates of your comments to each docket. Please submit your comments on paper, not in electronic format. We request this so that we do not receive multiple versions of the same comment that might contradict each other.

Documents relevant to this action are available for inspection at the Air Docket and Information Center, at the above address, between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action and technical questions concerning electrical generation data should be addressed to Margaret Sheppard, Acid Rain Division, EPA, Mail Code 6204 J, 401 M Street SW, Washington, D.C. 20460, telephone 202–564–9163, email address sheppard.margaret@epa.gov. For technical questions concerning heat input data, contact Kevin Culligan at telephone 202–564–9172, email address culligan.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

Outline:

1. *What is today's action?*
2. *Where can I get the data?*
3. *How are these data related to the proposed Section 126 and Section 110 FIP NO_X allowance allocations?*
4. *Why is EPA requesting comment on these data?*
5. *What data are EPA making available for review and comment?*
6. *What things is EPA not requesting comment on?*
7. *What are the sources of EPA's data?*
   a. Electric generation data for utilities
   b. Heat input data for EGUs
   c. Electric generation and heat input data for non-utility generators
   d. Heat input for non-EGUs
8. What other data sources did EPA consider?
9. What supporting documentation do I need to provide with my comments?
10. How is this action related to the Section 126 and proposed Section 110 FIP rulemakings?
11. How is this action related to the NO_X SIP Call?

1. What is Today's Action?

Today, we are making available data on heat input and electrical generation for units that could potentially be affected by a Federal action under section 126 or by a FIP under section 110 of the Clean Air Act. The purpose of making the data available for comment is to ensure that we have accurate information to help us develop NO_X allowance allocations for the Federal NO_X Budget Trading Program. For example, the data referenced by this document could be used as the basis for NO_X emission allowance allocations to be finalized under the section 126 rulemaking. Also, a number of Northeastern States have stated that they intend to submit SIPs in response to EPA's NO_X SIP Call by September 30, 1999. Data referenced in this notice could aid States in developing NO_X allowance allocations for their SIPs.

2. Where Can I Get the Data?

These data are available in files on the Regional Transport of Ozone webpage at http://www.epa.gov/ttn/rto/. You will find links to the data under "What's New" and under the "Related Documents and Data" subheadings

under the "Transport FIPs" and "Section 126 Petitions" headings on the Regional Transport of Ozone webpage. The files are in a compressed file labeled "allodata.zip"; this compressed file contains three files labeled "egufinal.txt," "zegout.txt," and "nonegu.txt." In addition, these data are in Docket Nos. A–97–43 (section 126 rulemaking) and A–98–12 (section 110 FIP rulemaking). We describe the contents of these data files below under section 5, "What data are EPA making available for review and comment?".

3. How Are These Data Related to the Proposed Section 126 and Section 110 FIP NO_X Allowance Allocations?

In the section 126 and section 110 FIP proposed rulemakings (63 FR 56291 and 63 FR 56393, October 21, 1998), we requested comment on appropriate ways to allocate NO_X allowances for the Federal NO_X Budget Trading Program. We also proposed three different methods for allocating NO_X allowances for EGUs using the following data:

a. Heat input data during May through September (the ozone season) for the years 1995 through 1997 for fossil fuel-fired units.

b. Estimated electric generation for fossil fuel-fired units during May through September for the years 1995 through 1997. We calculated electric generation using the historical heat input data in million British thermal units (mmBtu) and heat rate data in kilowatt hours (kWh) per Btu.

c. Estimated electric generation for all electricity generators during May through September for the years 1995 through 1997. We calculated electric generation for fossil fuel-fired units using the historical heat input and heat rate data. This option differed from the second option because it also included allocations for electric generating plants that do not burn fuel, such as nuclear and hydroelectric power plants. For electric generating plants that did not burn fuel, we used electric generation data calculated using outputs from the Integrated Planning Model (IPM). (IPM is an economic model used by industry and government. EPA used this model to estimate the costs and emission reductions that would result from controlling NO_X emissions under the NO_X SIP call. *See* 63 FR 57356, October 27, 1998.)

During the public comment periods for the proposed section 126 and section 110 FIP rulemakings, commenters suggested that we rely on additional, and in some cases different, sources of data than those we proposed for the allocations for EGUs. In particular, commenters suggested using data for 1998 and using electric generation data from the Energy Information Administration (EIA).

In the proposed section 126 and section 110 FIP rulemakings, we also proposed one method for allocating NO_X allowances for large non-EGUs (that is, units with a maximum design heat input greater than 250 mmBtu/hr). For this notice, non-EGUs are only fossil-fuel fired industrial boilers and turbines. We proposed using heat input data for non-EGUs during May through September for the year 1995. Commenters suggested that we use more than one year's worth of data to allocate NO_X allowances for non-EGUs, but they did not suggest where we could find other data.

4. Why is EPA Requesting Comment on These Data?

We are soliciting comment to ensure that we can use current, high quality data for allocating NO_X allowances, regardless of the methodology we will choose for the allocation. We are requesting comments on unit-specific output data for EGUs from May through September for the years 1995 through 1998. We also are requesting comments on unit-specific heat input data for all EGUs for May through September for the year 1998. We request comments submitting data for EGUs that do not report under the Acid Rain Program for May through September for the years 1997 and 1998. Finally, we are requesting comment on unit-specific heat input data for non-EGUs from May through September for the year 1995. Where the heat input from May through September for the year 1995 is not representative of a non-EGU's operation over the last several years, we also will take comments providing us with heat input data from May through September for the years 1996, 1997, and/or 1998. We may use the data referenced in this document for allocating allowances. As explained further below in the section entitled, "What supporting documentation do I need to provide with my comments?", EPA expects to change the data in response to comment only if the commenter provides appropriate supporting documentation.

5. What Data are EPA Making Available for Review and Comment?

We are providing data for units and generators in the following states which may be subject to the Federal NO_X Budget Trading Program under a section 126 action or under a FIP: Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. We are making the following data available for review:

a. EGU electric generation data from May through September for the years 1995 through 1998, which we may use in an electricity output-based allocation. In addition, there are heat rate data that we used to calculate the electric generation for non-utility generators. We request comment on these heat rate values. See section 7, "What are the sources of EPA's data?", subsection c. for further discussion about how we used heat rate data to determine electric generation.

b. Heat input data for May through September for the year 1998 for all EGUs reporting under the Acid Rain Program, which we may use in a heat input-based allocation. We do not have heat input data for EGUs that are not reporting under the Acid Rain Program for 1998, and we have only limited data for these units for 1997. We are recording zero heat input for these units for those years where the data are not available. We request comment on heat input data from May through September for the years 1997 and 1998, which EPA could use for the heat input-based allocation for specific EGUs that are not reporting under the Acid Rain Program.

c. Heat input data for May through September for the year 1995 for non-EGUs, which we may use in a heat input-based allocation. If you find that the heat input for your unit during May through September for the year 1995 is not representative of your unit's operation over the last several years, then you may comment and provide us heat input data for May through September for the years 1996, 1997, and/or 1998. See section 4, "What supporting documentation do I need to provide with my comments?" for details on the supporting information you should provide.

The data files include information for fossil fuel-fired units which are listed in our updated emission inventory and for electric generators that do not burn fuel for which we previously proposed output-based allocations under the Federal NO_X Budget Trading Program. During preparation of the proposed NO_X allowance allocations, we did not have a reliable source of nameplate capacity data for generators that do not burn fuel. Recently, we have obtained reliable nameplate capacity data for more of these generators from EIA that we could use to identify whether or not generators are greater than 25 MWe. Thus, we also request comments on nameplate capacity of electric generators that do not burn fuel.

You will find the data in three files:

• "eguburn.txt"—This data file contains unit and source identification information, nameplate capacity, identification of which units are reporting under the Acid Rain Program, heat rate, electric generation data, and heat input data for fossil fuel-fired EGUs serving generators with a nameplate capacity greater than 25 MWe.

• "egunonox.txt"— This data file contains generator and source identification information, nameplate capacity, source of energy, and electric generation data for electric generators that do not burn fuel.

• "nonegu.txt"— This data file contains unit and source identification information and heat input data for fossil fuel-fired non-EGUs with a maximum design heat input greater than 250 mmBtu/hr.

See section 2 above, "Where can I get the data?" for the location of the data on the Internet.

6. What Things EPA Not Requesting Comment on?

We are soliciting comment only on the data presented through this document. We are not requesting comment on any other issue or data. For example, we are not requesting comment on:

• The October 21, 1998 proposed section 126 rule.

• The October 21, 1998 proposed section 110 FIP rule.

• Issues related to the Statewide emission budgets and to the 1995 and 1996 emission inventories (e.g., heat input values for EGUs for 1995 and 1996, or NO_X emission values for non-EGUs for 1995).

• The May 14, 1999 updated emission inventory.

• Allocation methods for EGUs or non-EGUs in the proposed Federal NO_X Budget Trading Program.

• The April 30, 1998 final section 126 rule.

• The June 14, 1999 interim final and proposed section 126 rules.

Please note that we have not made any decision on the methodology for allowance allocations. We solicited comment on the appropriate allocation methodology in the proposed section 126 and section 110 FIP rulemakings and are considering the comments we have received.

7. What are the Sources of EPA's Data?

a. Electric Generation Data for Utilities

Electric utilities reported electric generation data to the Energy Information Administration (EIA) on EIA form 759. We obtained net electric generation data in megawatt hours (MWh) for the ozone season (May through September) during the years 1995 through 1998, for each utility power plant that submitted EIA form 759. These data are available through the EIA's webpage at ftp://ftp.eia.doe.gov/pub/electricity/.

We apportioned the plant-level net electric generation data in EIA Form 759 to each unit at the plant. For electric generators that did not burn fuel, we generally divided the plant-level generation using each generator's portion of the total nameplate capacity of all generators at the plant. For certain plants, we found that generator-specific nameplate capacity data were unclear. In these cases, we apportioned the data from EIA form 759 to each generator at the plant equally. These plants included nuclear power plants, hydroelectric plants, and other facilities that did not combust fuel to generate electricity. For generators at plants that did not combust fuel for which data from EIA form 759 are not available, EPA used generation calculated using IPM. The data file includes this average value for the ozone season during all four years (1995 through 1998) for these units.

For fossil fuel-fired units, generally we divided the plant-level generation in EIA form 759 using each unit's portion of the plant's total heat input during the ozone season. We describe this calculation further below. For plants at which we had heat input data for some units but were uncertain about the heat input data for other units at the plant, we apportioned the data from EIA form 759 data on the basis of each unit's nameplate capacity. This situation arose generally in 1997 and 1998 for plants which had some units reporting under the Acid Rain Program and some units that were not reporting under the Acid Rain Program.

b. Heat Input Data for EGUs

To apportion plant-level electric generation data to individual units for 1995 and 1996, we used the heat input in the May 14, 1999 updated inventory (*see* 64 FR 28250). For units that reported emissions and heat input data under the Acid Rain Program, these heat input data came from reports submitted to EPA to demonstrate compliance under the Acid Rain Program. For units that did not report emissions and heat input data under the Acid Rain Program, we collected heat input data while developing our May 14, 1999 updated inventory. Values in the May 14, 1999 updated inventory were either reported to the Agency by sources or by State environmental agencies. The heat input data for the ozone seasons during 1995 and 1996 have been subject to multiple public reviews. Thus, we are not requesting further comments on these data.

To apportion plant-level electric generation data to individual units for 1997, we are using heat input data that we used to develop proposed NO_X allowance allocations in the October 21, 1998 proposed section 126 and section 110 FIP rulemakings. We modified these heat input values in response to comments. You can find an explanation of the changes we made to the heat input data in the response to comments document in the docket for the NO_X SIP Call (Docket No. A–96–56). We based most of the heat input data for the 1997 ozone season upon the data reported to us under the Acid Rain Program. In addition, for some EGUs that did not report under the Acid Rain Program, we used heat input values for 1997 which we received in public comments in connection with the May 14, 1999 updated inventory. (We did not use heat input data for the year 1997 to establish emission budgets.) EPA again requests comment on heat input data for the 1997 ozone season for sources that do not report under the Acid Rain Program.

For May through September of 1998, we used the heat input reported by sources for compliance purposes under the Acid Rain Program. Under the Acid Rain Program, the designated representative for the affected source has certified the data in these reports as accurate. Because we do not have heat input data for units that are not reporting under the Acid Rain Program, we include heat input values of zero for them in the data files for 1998. See the discussion below for "electric generation data for non-utility generators." We used the 1998 heat input data both:

• To apportion electric generation data to units within a plant; and

• To create the separate set of 1998 heat input data that we are offering for comment in today's action.

c. Electric generation and heat input data for non-utility generators

We do not have measured electric generation data for non-utility generators. Although EIA gathers generation data from these units, EIA kept those plant-specific data confidential for 1995 through 1997. Although EIA will be making the 1998 generation data publicly available, it has not yet done so.

Where commenters provided heat rate or heat input information for their non-utility units, we used those values instead to calculate electric generation. Commenters could have provided comments on heat input data or heat

rate data with their comments on the October 21, 1998 proposed section 126 and section 110 FIP rules or could have provided comments on heat input data with their comments on the October 27, 1998 version of the emission inventory used to develop State NO_X emission budgets under the final NO_X SIP Call rule. If commenters did not provide heat rate information for their non-utility units, then we used the generic heat rate value used in the Integrated Planning Model (IPM) for the unit type and nameplate capacity (for these heat rate values, *see* the October 21, 1998 proposed section 126 rule, 63 FR 56316). In cases where commenters did not send us heat input information, we used calculated average values for heat input from IPM for 1995 and 1996 (the years that could be used to calculate States' emission budgets). This means that in some cases, you will see the same heat input for 1995 and 1996 and no heat input or generation for 1997 or 1998 in EPA's data files. We then used the heat rate and heat input values from IPM to calculate generation values for 1995 and 1996 at these units. We also did this for 1997 if a commenter provided 1997 heat input data for a non-utility unit. We have not included 1998 heat input values or 1998 generation values in the data file for these units.

For non-utility generators that did not burn fuel, such as hydroelectric plants, we used IPM to calculate average values for generation for the ozone seasons from 1995 through 1997. In the data file for the generators that did not burn fuel, this average electric generation for each generator is the generation value for each of the four ozone seasons from 1995 through 1998.

d. Heat Input Data for non-EGUs

For heat input data for non-EGUs, we used data for 1995 developed from the October 27, 1998 version of the emission inventory used to develop State NO_X emission budgets under the final NO_X SIP call rule. We also used data submitted during multiple public comment periods on the inventory underlying the NO_X SIP call and section 126 actions. The last public comment period was open from October 27, 1998 to February 22, 1999 and resulted in the May 14, 1999 updated inventory. *See* 64 FR 26298.

7. What Other Data Sources Did EPA Consider?

We also considered using unit-specific generation data reported to EIA on EIA form 767. A commenter provided this data for many units which were listed in the October 27, 1998 version of the emission inventory used to develop State NO_X emission budgets under the final NO_X SIP call rule. Form 767 is for steam-electric generators with a nameplate capacity of 10 MWe or more. It does not apply to turbines or combined cycle systems. We did not use the data from EIA form 767 because we did not have these data for turbines, combined cycle systems, or units added to EPA's May 14, 1999 updated inventory based on comments received during the October 27, 1998 to February 22, 1999 public comment period. In addition, data from EIA form 767 are not yet available for 1998.

In order to treat all unit types consistently and in order to use the same approach for all years from 1995 through 1998 for as many units as possible, we instead chose to use data from EIA form 759. However, we would consider comments that provide data from EIA form 767 for specific units as a way of apportioning generation from the plant level, as reported on EIA form 759, rather than using heat input or nameplate capacity. We recognize that the electric generation data from EIA form 767 is a measured value and thus provides a more precise and more accurate electric generation value than using heat input or nameplate capacity to apportion generation from the plant level. However, we also note that the electric generation data from EIA form 767 are not available at all for many units and are not available for 1998 for any unit at this time. You can find the unit-level data from EIA form 767 that a commenter provided to the Agency for most fossil fuel-fired boilers in the file "eguout.xls" on the Regional Transport of Ozone webpage in the same locations as for the data files mentioned above under section 2, "Where can I get the data?".

8. What supporting documentation do I need to provide with my comments?

While we will consider all comments we receive during the public comment period on the topics for comment in this notice, we expect to change the data in response to comment only if the commenter sends appropriate supporting documentation. Therefore, you should send supporting documentation from prior to the date this document was signed with your comments if you want us to change or add data for electric generation or heat input. Please submit your comments and supporting documentation on paper, not in electronic format. We request this so that we do not receive multiple versions of the same comment that might contradict each other.

For electric generation data from EGUs (May through September, 1995–1998), we will accept data that was already reported to EIA. For utilities, we will accept copies of EIA form 767 for all steam generating units at a source. If you have already submitted a new or revised EIA form 759 to EIA, also send a copy with any comment to EPA. For non-utility generators, we will accept data the source used to report on EIA form 867 for the years 1995 through 1997 or EIA form 860B for the year 1998. If the form requires annual generation data, you will also need to include an explanation and documentation for apportioning the annual generation to the ozone season (May 1 through September 30). If you own or operate an EGU and you want to use data other than what you previously reported to EIA, you should:

- State the source of the new data;
- Thoroughly explain and document why the data reported previously was incorrect; and
- Explain why the new data is more accurate.

For heat input data for units that do not report under the Acid Rain Program, including non-EGUs, we will consider corroborating data. This would include fuel purchase records or information reported to a State environmental agency or a State utility commission.

In general, we do not expect to change heat input data for units reporting under the Acid Rain Program since the source's designated representative under the Acid Rain Program has already submitted the heat input data and certified their accuracy for compliance purposes. However, we will consider changes if the source's designated representative provides evidence that we improperly calculated heat input at the unit level, where the heat input was actually measured at another location (such as a common stack). We will also consider changing heat input data for a unit reporting under the Acid Rain Program if the source's designated representative demonstrates that the data we are providing for comment here do not agree with the data reported to EPA for compliance with the Acid Rain Program. You should explain why the data values in EPA's data file(s) are incorrect and document and explain the new data values. *See* Table 1 below.

TABLE 1.—SUPPORTING DOCUMENTATION YOU SHOULD SEND TO EPA WITH YOUR COMMENTS

If you have this source type:	and you are commenting on this type of data:	Then you should submit this documentation:
EGU boiler reporting under the Acid Rain Program.	electrical generation.	(May-Sept. of 1995, 1996, 1997, or 1998) • Updated EIA form 759 or EIA form 767.
	heat input	(May-Sept. 1998) • Explanation and documentation of why heat input was incorrect and • Explanation of new values.
EGU turbine or combined cycle unit reporting under the Acid Rain Program.	electrical generation.	(May-Sept. 1995, 1996, 1997, or 1998) • Updated EIA form 759.
	heat input	(May-Sept. 1998) • Explanation and documentation of why heat input was incorrect and • Explanation of new values.
EGU non-utility generator (not reporting under the Acid Rain Program).	electrical generation.	(May-Sept. 1995, 1996, or 1997) • EIA form 867 and • Explanation and documentation for apportioning the annual generation to the ozone season or (May-Sept. 1998) • EIA form 860B.
	heat input	(May-Sept. 1998) • Fuel purchase records or • Information reported to a State environmental agency or a State utility commission.
Non-EGU	heat input	(May-Sept. 1995 [1]) • Fuel purchase records or • Information reported to a State environmental agency or a State utility commission.

[1] If heat input during May through September for the year 1995 is not representative of your unit's operation over the last several years, then you may provide us heat input data for May through September for the years 1996, 1997, and/or 1998 with the same type of supporting documentation.

9. How is this action related to the Section 126 and proposed Section 110 FIP rulemakings?

On October 21, 1998, in accordance with section 126, we proposed action on the petitions filed by eight Northeastern States seeking relief from the transport of NO_X across State boundaries. *See* 63 FR 56291. NO_X is one of the main precursors of ground-level ozone. We also proposed FIPs that may be needed if any State fails to revise its State Implementation Plan (SIP) to comply with the NO_X SIP call. *See* 63 FR 56393, October 21, 1998. In these actions, we proposed to control emissions from large boilers, turbines, and combined cycle systems through the Federal NO_X Budget Trading Program.

The Federal NO_X Budget Trading Program is a multi-state NO_X air pollution control and emission reduction program. We proposed the Federal trading program in part 97 as a way to reduce the interstate transport of ozone and NO_X. We are developing this program to control NO_X emissions cost-effectively from large stationary sources. These large sources, mostly power plants and industrial boilers and turbines, significantly contribute to violations of the National Ambient Air Quality Standards for ozone in States downwind of the sources.

The section 126 and section 110 FIP Notices of Proposed Rulemaking are contained in the rulemaking dockets. They are also currently available on EPA's Website at http://www.epa.gov/ttn/rto under "Section 126 Petitions" and "Transport FIPs."

On April 30, 1999 we issued a final section 126 action that determined that portions of the petitions are approvable based on their technical merits (64 FR 28250, May 5, 1999). We deferred making final findings under section 126, which would trigger control requirements for sources, pending certain actions by States and EPA with respect to the NO_X SIP call. We also delayed finalizing the details of the Federal NO_X Budget Trading Program. On May 14, 1999, the District of Columbia Circuit Court of Appeals remanded the 8-hour National Ambient Air Quality Standard for ozone, which formed part of the underlying technical basis for EPA's determinations on certain section 126 petitions. In a separate action, the same court granted a motion to stay the SIP submission deadline for the NO_X SIP call. This action, in effect, also stays the potential for a related FIP. In addition, the court action impacts the section 126 final rule, because we had linked our final findings under section 126 with the NO_X SIP call schedule.

In light of the court rulings, we issued an interim final rule (64 FR 33956, June 24, 1999). The interim final rule temporarily stays the April 30, 1999 Section 126 rule while we conduct notice-and-comment rulemaking to modify certain aspects of that rule. On June 24, 1999, we also issued a proposed rule, which proposed to:

(1) indefinitely stay the portion of the April 30, 1999 rule that relied on the 8-hour ozone standard, and

(2) remove the automatic trigger mechanism for making section 126 findings that was linked with the NO_X SIP call deadlines; instead, we would simply take an independent action making the findings in a final rule (64 FR 33962). Under this new schedule, we will move forward with the portion of the section 126 rulemaking that is based on the 1-hour ozone standard. We intend to finalize the Federal NO_X Budget Trading Program and allowance allocations for sources that will be subject to section 126 control requirements at the same time that we make the section 126 findings. In the June 24, 1999 proposal, we indicated that we expected to issue the section 126 final rule by November 30, 1999 or soon thereafter. We also would use the Federal NO_X Budget Trading Program

for certain source categories if we ultimately issue a FIP in conjunction with the NO_X SIP call.

10. How is This Action Related to the NO_X SIP Call?

This action is not directly related to the NO_X SIP Call, but is related indirectly. The data could be used to determine NO_X allowance allocations if we issue a FIP because a State fails to respond adequately to the NO_X SIP Call. States could also use the data to prepare NO_X allowance allocations for their SIPs. Some Northeastern States have stated that they intend to submit SIPs in response to EPA's NO_X SIP Call by September 30, 1999.

Dated: July 30, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–20465 Filed 8–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6413–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Smuggler Mountain Superfund site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency, Region 8 announces its intent to delete the Smuggler Mountain Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Colorado (State) have determined that the Site as remediated poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before September 8, 1999.

ADDRESSES: Comments may be mailed to: Armando Saenz, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Mail Stop EPR–SR, Denver, Colorado 80202–2466.

Comprehensive information on this Site is available through the public docket which is available for viewing at the Smuggler Mountain Superfund Site information repositories at the following locations:

Superfund Records Center, U.S. Environmental Protection Agency, Region 8, 999 18th Street, 5th Floor, Denver, Colorado 80202–2466, (303) 312–6473. Hours of operation are 8:00 AM to 4:30 PM.

Aspen/Pitkin Environmental Health Department, 130 S. Galena Street, Aspen, Colorado 81611, (970) 920–5070. Hours of operation are 8 AM to 5 PM.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Mail Stop EPR–SR, Denver, Colorado 80202–2466, (303) 312–6559.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Summary

I. Introduction

The Environmental Protection Agency (EPA), Region 8 announces its intent to delete the Smuggler Mountain Superfund Site (Site) located in Aspen, Colorado from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on this proposed deletion for thirty days following publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Smuggler Mountain Superfund Site and explains how the Site meets the deletion criteria. Section V summarizes this document.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA will conduct a five-year review of the site five years after the initiation of the remedial action to ensure that the site remains protective of public health and the environment. A statutory five-year review was completed at this site on November 11, 1997. In the case of this Site, the selected remedy is protective of human health and the environment. A subsequent five-year review will be completed prior to November 11, 2002. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 8 has recommended deletion of the Smuggler Site and has prepared the relevant documents; (2) The State of Colorado has concurred with EPA's intent to delete the Smuggler Site; (3) Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) The Region has made all relevant documents available in the Regional Office and local Site information repositories.

Deletion of the Site from the NPL does not in itself create, alter, or revoke any

individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a Site from the NPL does not preclude eligibility for future response actions should future Site conditions warrant such action.

Prior to deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice.

IV. Basis for Intended Site Deletion

The following summary provides EPA's rationale for recommending deletion of the Smuggler Mountain Superfund Site.

A. Site Background

The Smuggler Mountain Superfund Site is located in northeastern Aspen, Pitkin County, Colorado. It is in the Roaring Fork River valley, on the southwestern flank of Smuggler Mountain. The Site is largely developed, containing large and small condominiums, mobile home parks, a tennis club and numerous single family residences. The Site was placed on the National Priorities List (NPL) on June 10, 1986 (51 FR 21073).

Soil analyses in the early 1980's, conducted first by residents and later by EPA and the Potentially Responsible Parties (PRP's), identified concentrations of lead as high as 46,000 parts per million (ppm), well above EPA's cleanup level of 1,000 ppm. Elevated levels of cadmium were also found in the soils of the site. The sources of the lead and cadmium are the waste rock and tailings (mine wastes) from the mines on Smuggler Mountain. These wastes are exposed, covered or mixed with native soils across the site.

The Site has been divided into two study areas or Operable Units (OUs)—OU1 and OU2. OU1 is mainly a residential area on the northeastern edge of the town of Aspen and covers approximately 300 acres. OU2 includes the mine site on the upward slope of Smuggler Mountain just north of OU1 and covers approximately 25 acres.

Three mine waste dumps, containing an estimated 22,000 cubic yards of mine wastes, are located on the mine site. Potential future mining activities at OU 2 are expected to produce as much as 2,100 cubic yards of additional waste rock per year. These wastes will be placed on the existing dumps. The mine site dumps can accommodate the projected quantities of waste for the projected life of the mine without significantly changing the character of the dumps.

B. Early Actions Performed

A number of investigations have been undertaken at the site. An EPA Field Investigation Team sampled the site in 1983. This study was the result of a request by Pitkin County to characterize any human or environmental threat posed by abandoned mine tailings in the northeast quarter of the Aspen townsite.

Another study was sponsored by Western Slope Development Company on behalf of the Hunter Creek Condominiums, and a plan for surface covering and revegetation was developed for the areas surrounding the development (1985). Similar studies were conducted by other condominium developments in the area. In July 1985, discussions were held between a number of potentially responsible parties and EPA resulting in a Remedial Investigation/Feasibility Study (RI/FS). The RI/FS was conducted by Fred C. Hart Associates, Inc.

C. Remedial Investigation/Feasibility Study (RI/FS)

The RI/FS Report was finished and released in March 1986. Environmental protection goals and remedial objectives used to analyze potential remedial alternatives called for an isolation of the source of the contamination (lead in mine wastes) to prevent direct contact and the distribution of windblown dusts. The recommended remedial action from the selection of two alternatives was surface sealing (capping) and grading. An RI/FS Addendum for OU 2 was issued on May 7, 1986, to characterize the nature and extent of contamination and determine the appropriate extent of remedy at the Smuggler-Durant Mine Site.

The contaminants of concern at the Smuggler site are primarily lead and cadmium in soils. Lead and cadmium are hazardous substances within the meaning of CERCLA section 101(14), 42 U.S.C. 9604(14). Potential and/or actual routes of exposure are direct ingestion of contaminated soils and inhalation of wind blown dust.

There are no surface water sources on or flowing through the area. Nor are there any significant gullies entering or leaving the area. Thus, there is little opportunity for exposure to potentially contaminated runoff. Additionally, there are no known threatened or endangered wildlife or plant species inhabiting the site.

D. ROD & ESD Findings & Cleanup Activities Performed

In September 1986, a Record of Decision (ROD) was issued that divided the Site into two OUs. The OU 1 remedy was modified by several Explanations of Significant Differences (ESDs), the last of which was dated June, 1993. OU 1 is mostly residential. The remedy selected in the ROD was solely for OU 1, but OU 2 was briefly discussed. The mine site (OU 2) is not developed for residential use, but does include the Smuggler Mine on Smuggler Mountain. OU 2 is an ongoing mining operation and operations are expected to continue for the next 25–30 years and perhaps indefinitely. The remedy selection for OU 2 was documented in an Action Memorandum.

Operable Unit 1. During the OU1 Remedial Design (RD), additional technical information showed that the OU 1 remedy was not implementable due to the unexpectedly high volume of soils. The ROD was modified in the March 1989 ESD. This ESD described a plan to remove the top two feet of soils containing more than 1,000 ppm lead in the residential areas, an additional on-site repository for the extra volume of soil, and institutional controls to ensure the permanence of the remedy. However, the Aspen community found this remedy unacceptable and the plan was put on hold pending further investigation.

The Aspen community submitted an alternative proposal to EPA which resulted in a second ESD issued in May 1990. The May 1990 ESD included a greater reliance on Institutional Controls (ICs) and removal of 6 inches of contaminated soil in the Hunter Creek and Centennial Condominium areas. For individual properties, the protective cover of clean soil, placed over contaminated areas, would be reduced from two feet to a geotextile liner overlain with one foot of clean soil. Pitkin County adopted ICs in May, 1991, but they were repealed based upon citizen concerns about the need for any remedy at all.

EPA issued a Minor Modification to the remedy in October of 1991 that recognized that landowners could implement land use controls rather than local government. The modification provided for implementation of ICs by the adoption and enforcement of local ordinances by Pitkin County or the City of Aspen, by compliance with EPA approved Operation and Maintenance

plans by private parties or by the use of EPA's enforcement authority.

Some citizens contended that the cleanup, with heavy equipment and dust, would be more hazardous than living with the health risk at the Site. To address the community's concerns, an independent panel, called a Technical Advisory Committee (TAC), was convened in October of 1992. The TAC included six nationally recognized lead experts and three technical advisors. It released a final report in January 1993. The June 1993 ESD was based on the TAC report.

The June 1993 ESD modified the ROD and previous ESDs. The OU 1 actions were to be implemented through a Partial Consent Decree with Pitkin County filed with the United States District Court for the District of Colorado on March 24, 1995, for civil action No. 89–C–1802. The final OU 1 remedy selected and ultimately implemented was: (1) The Pitkin County Health Department agreed to a blood lead surveillance program for young children and implemented an indoor dust sampling program over a two year period; (2) The berm area was to be capped with clean soil and revegetated. Other common-use areas of exposed mine waste, including Mollie Gibson Park, were to be covered, revegetated and monitored; (3) Vegetable gardens were required to be planted in at least 12 inches of clean soil; and (4) The Aspen/Pitkin Environmental Health Department was required to evaluate site construction projects or land use changes to determine whether they present a threat of soil exposure to young children.

The ESD also stated that groundwater monitoring would cease and that a ground-water corrective action was not necessary. Site conditions suggested that the groundwater contamination identified earlier was due to the high natural metals content in the soils, or the result of well materials and ultimately not a health threat.

EPA was also to make a final determination regarding remediation of the OU 1 residential soils based on EPA's review of completed lead speciation, bioavailability, and blood lead monitoring studies. Please see the "Monitoring Results" section.

Operable Unit 2. An Engineering Evaluation/Cost Analysis (EE/CA) was conducted for OU2 to determine the necessary removal actions. The EE/CA was completed on January 25, 1995 and stated the following removal objectives: abate the threat of direct contact with lead contaminated soils and waste rock in mine waste dumps; abate the threat of inhalation of contaminated dust; abate the threat of migration of contamination via air and surface water; and attain applicable or relevant and appropriate requirements (ARARS).

The removal actions, outlined in an Action Memorandum dated April 19, 1995, were eventually made part of an Administrative Order on Consent with the mine owners in May 1995. An Action Memorandum was used because of the simplicity of the response action. The removal action selected in the OU2 Action Memorandum included the following: (1) Regrading a part of mine dump #2 to drain back into the mountain; (2) Cribbing the unstable, if any, portions of the toe of Dump #2. (This has turned out to be unnecessary.); (3) Regrading the lower parking area to drain back into the mountain; (4) Controlling dust emissions from dirt roads and the parking area by periodic spraying of a magnesium chloride dust suppressant solution; and (5) Extending the existing fence to restrict entry to the lower portion of the mine site. All of the work was completed by September 1996, except for the second activity. The toe of Dump #2 was not unstable, therefore cribbing was not necessary.

E'. Protectiveness

Monitoring Results. Under the OU 1 June 1993 ESD, EPA was to make a final determination regarding remediation of the OU 1 residential soils based on EPA's review of completed lead speciation, bioavailability, and blood lead monitoring studies. The results of the soil bioavailability study may be found in the May 1996 preliminary report, "Bioavailability Of Lead In Soil Samples From The Smuggler Mountain NPL Site Aspen, Colorado." This study showed that bioavailability of predominately lead carbonate was near the EPA default of 30% (absolute) which further substantiated the need for a blood lead assessment to help ascertain potential future risks.

In 1996, the Pitkin County Health Department's contractor, the University of Cincinnati (UC), and EPA Region 8 designed a biological and environmental sampling study to identify blood lead levels in children associated with lead levels found in the children's play environment. This biomonitoring study was recommended by the TAC and included in the 1993 ESD. Children between the ages of 1 and 7 years were identified who lived in the more contaminated yards, and venous blood samples were obtained. At the same time the biological samples were obtained, environmental samples were taken (indoor and exterior dust, soil, water, and hand-wipes from the children).

To complete the requirement of identifying all pertinent facts surrounding the demographic element for the study, a survey was created to document all variables that might affect the results found in the blood study. In other words, all major sources and factors that might impact the blood lead levels found in the children were identified.

The schedule of events focused on obtaining the biological and environmental samples in the late Summer and early Fall of 1996 (and was partially repeated in the early Fall of 1997). This was done to optimize the time when the children had been exposed to their outside environment, and to maximize the level of lead they had obtained throughout the summer.

The final report summarizing the results of the blood lead study and incorporating data from previous studies was completed in October 1998. The report, titled "Blood Lead Surveillance and Exposure of Young Children to Elevated Soil Lead at the Smuggler Superfund Site, Aspen, CO—Final Report," was prepared by UC.

Additional analyses of the study were conducted by EPA Region 8 toxicologist. These findings can be found in a report titled "Further Assessment of Risks from Exposure to Lead in Soils at the Smuggler Superfund Site, Aspen, CO, Using a Weight of Evidence Approach," EPA Region 8, Denver, CO, May 1999 (Gerry Henningsen, Region 8 Toxicologist).

Both reports conclude that children living on the Site are not at unacceptable risk due to exposure to lead in the soil. Although environmental lead levels are slightly elevated, and the EPA IEUBK modeling indicates some potential risk to children who are in contact with this lead, repeated screening of children shows no impact of this exposure on blood lead levels of children at the Site. Consequently, EPA has concluded that further remediation of the OU 1 soils is not needed to adequately protect human health.

O&M Assurances. The OU 1 Operations and Maintenance Plan (O&M Plan) is represented in its entirety by the Institutional Controls (ICs) enacted for OU1 under the Consent Decree. After the signing of the Consent Decree, Pitkin County proposed amendments to the Pitkin County Code to enact ICs (Land Use Restrictions) for the Site. These ICs were reviewed and approved by EPA and enacted by the City of Aspen and Pitkin County to restrict the movement of contaminated soils in and from the Site and to aid in preserving the

integrity of the remedy constructed at the Site.

With the OU 1 Consent Decree, The Aspen/Pitkin Environmental Health Department has assured EPA and the State that all necessary ICs are in full force and effect within the Site boundary. The Consent Decree also includes reopeners in the event that the County were to repeal or disregard these ordinances. A Five-year Review conducted by EPA and completed on November 7, 1997, confirmed that these controls are in force and that the program is working.

A recent amendment to the OU 2 AOC has provided EPA and the State with indefinite O&M assurances. As stated in the AOC Amendment, the O&M Plan, as defined by the EE/CA, Action Memorandum and original workplan, will provide for maintenance of runoff control, dust control, restricted site access and site reclamation measures. This O&M Plan will become effective upon the termination of the permit with the Colorado Mined Land Reclamation Board and will be implemented by the PRP, Wright and Preusch Mining, LTD.

F. Community Relations

Community outreach at the Smuggler Mountain Superfund Site included: timely information about the Superfund process, ongoing communications, and opportunities for community participation in the decision-making process for the Site remedy. Specific activities included monitoring community concerns, preparation and mailing of fact sheets, coordination of community meetings and providing communication between EPA, the community and Pitkin County (and the other PRPs). EPA's outreach efforts to meet community needs and interests resulted in integral participation by the Aspen community and periodic revision(s) to the Site remedy.

V. Summary

The responsible parties have implemented all appropriate response actions required to sufficiently protect human health and the environment. Reports on lead speciation, bioavailability, and blood lead monitoring studies have concluded that children living on the Site are not at unacceptable risk due to exposure to lead in the soil. Also, this Site meets all the site completion requirements as specified in Close Out Procedures for National Priorities List Sites (OSWER Directive 9320.2–09). Further, O&M of the Site is assured via the OU 1 Consent Decree and the OU 2 AOC and AOC Amendment.

Because hazardous substances will remain at the site, EPA will conduct periodic inspections of the site to ensure that the remedy remains protective of human health and the environment. EPA is required to conduct such reviews under section 121(c) of CERCLA and the NCP.

EPA, with the concurrence of the State of Colorado, has determined that all appropriate response actions required by CERCLA at the Smuggler Mountain Site have been completed, and that no further cleanup by responsible parties is appropriate.

Dated: July 27, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 99–20199 Filed 8–6–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1525, MM Docket No. 99–265, RM–9660]

Digital Television Broadcast Service; Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Noe Corporation, licensee of station KNOE–TV, NTSC Channel 9, Monroe, Louisiana, seeking the substitution of DTV Channel 7 for its assigned DTV Channel 55. DTV Channel 7 can be allotted to Monroe in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 32–11–45 N. and 92–04–10 W. As requested, we also propose to modify KNOE–TV's authorization to specify operation on DTV Channel 7 at Monroe, Louisiana, with a power of 5.0 (kW) and a height above average terrain (HAAT) of 519 meters.

DATES: Comments must be filed on or before September 24, 1999, and reply comments on or before October 12, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert B. Jacobi, Esq., Cohn and Marks, 1920 N Street, NW, Suite 300, Washington, DC, 20036 (Counsel for Noe Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–265, adopted July 30, 1999, and released August 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–20389 Filed 8–6–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE69

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Plant Rumex orthoneurus (Chiricahua Dock) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule to list the plant *Rumex orthoneurus* (Chiricahua dock or Blumer's dock) as a threatened species under the Endangered Species Act of

1973, as amended (Act). We find that the available information does not support the listing of this species as threatened. Although threats to some populations of this plant may persist, these threats are not sufficiently widespread to pose a significant risk to *R. orthoneurus* within the foreseeable future. Recent genetic research and survey efforts indicate that *R. orthoneurus* has a much larger distribution than previously thought. We, therefore, find that *R. orthoneurus* does not meet the definition of a threatened or endangered species.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Rd., Suite 103, Phoenix, Arizona 85021.

FOR FURTHER INFORMATION CONTACT: Dave Harlow, Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section) (telephone 602–640–2720, ext. 244; facsimile 602–640–2730).

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1998, we published in the **Federal Register** a proposed rule to list Chiricahua dock *Rumex orthoneurus* as threatened (63 FR 15813). An herbaceous, robust perennial within the Polygonaceae family, *R. orthoneurus* is known from the mountains of Arizona, New Mexico, and Mexico. Plants grow to 1 meter (m) (3.3 feet (ft)) in height with inflorescence stalks up to 2 m (6.6 ft) in height on more vigorous specimens. The large oblong to oblong-lanceolate basal leaves are up to 50 centimeters (cm) (19.7 inches (in)) long, and 18 cm (7.1 in) wide. Characteristics differentiating this plant from other members in its genus include woody rhizomes (a rootlike horizontal stem, as opposed to taproots) on mature plants which appear banded, the color of which can vary (Robert Bellsey, University of Arizona, pers. comm. 1999); lateral leaf veins almost perpendicular to the middle vein of the leaf (but that are often at less than right angles); and a lack of callosities or swellings on the valves or midribs of fruiting capsules (Dawson 1979, Phillips *et al.* 1980, Coronado National Forest 1993).

Rumex orthoneurus occurs in moist, loamy soils within riparian and wetland habitats, and in cienegas (desert wetlands), springs, and streams. It is also known to occur in the drier headwaters of some areas (Robert Bellsey, University of Arizona, pers. comm. 1999). *R. orthoneurus* is found at elevations primarily between 2,000 and 3,500 m (approximately 6.500–11,500 ft). While many sites are in open meadows or along streams with open canopies, *R. orthoneurus* frequently occurs in shaded forests. Surrounding habitats are generally mixed conifer forest. The dominant species associated with *R. orthoneurus* include sneeze weed (*Helenium hoopesii*), larkspur (*Delphinium andesicola*), monkeyflower (*Mimulus* spp.) and various sedges (*Carex* spp.) (Phillips *et al.* 1980).

Rumex orthoneurus is distributed in areas scattered throughout Arizona and New Mexico, and is known to occur at two locations in the State of Sonora, Mexico. In Arizona, the plant is present on the Coronado, Apache-Sitgreaves, Coconino, and Tonto National Forests. On the Coronado National Forest, *R. orthoneurus* occurs in the Chiricahua and Huachuca mountains in Cochise County, and the Pinaleño Mountains in Graham County. On the Apache-Sitgreaves National Forests, *R. orthoneurus* is located in the White Mountains in Apache County and along the north side of the Mogollon Rim in Coconino County. On the Coconino National Forest, *R. orthoneurus* was recently found in the San Francisco Peaks and Barbershop Canyon in Coconino County. On the Tonto National Forest, *R. orthoneurus* occurs in the Sierra Ancha Mountains in Gila County, and was introduced in the south drainage of the Mogollon Rim (also in Gila County).

In New Mexico, *Rumex orthoneurus* is distributed on the Santa Fe, Lincoln, Gila, and Carson National Forests. On the Santa Fe National Forest, *R. orthoneurus* was recorded in Mora County, including the Pecos Wilderness. *R. orthoneurus* was found in Catron and Grant counties on the Gila National Forest, including the Gila Wilderness Area. Plants are documented in numerous locations on the Carson National Forest, and specimens were recently collected from the Lincoln National Forest.

Recent genetic work has clarified the distinction between *Rumex orthoneurus* and the closely related species, *R. occidentalis*. Bellsey (1998, in prep.) compared DNA among *R. orthoneurus*, *R. occidentalis*, and *R. obtusifolius* (a species known to be distantly related to *R. orthoneurus*) using the Random Amplified Polymorphic DNA (RAPD) technique. Bellsey discovered that the presumed *R. orthoneurus* from Arizona were significantly different from *R. occidentalis*, and that all three species shared less than 15% of the RAPD markers. The genetic analyses resulted in classification of the White and Gila mountains populations as *R. orthoneurus* and not *R. occidentalis*, which they resemble morphologically. Morphological characteristics of specimens from the Carson and Lincoln National Forests now indicate that they are *R. orthoneurus* and not *R. occidentalis*, (Robert Bellsey, University of Arizona, pers. comm. 1999). However, genetic analysis has yet to be performed on these plants.

Summary of Comments and Recommendations

In the proposed rule we requested all interested parties to submit factual reports or information that might contribute to development of a final rule. We also contacted all appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties and requested comments.

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions of three appropriate and independent specialists regarding the proposed rule. We invited these peer reviewers to comment during the public comment period upon the specific assumptions and conclusions regarding the proposed listing. In response to our solicitation one reviewer provided comments that we considered in the preparation of this notice.

We published newspaper notices inviting public comment in the Silver City Daily Press (Silver City, NM) on April 7, 1998; the Arizona Republic (Phoenix, AZ), Tucson Citizen (Tucson, AZ), and Arizona Daily Star (Tucson, AZ) on April 9, 1998; and the White Mountain Independent (Pinetop, AZ), Sierra Vista Herald (Sierra Vista, AZ), Albuquerque Journal (Albuquerque, NM), Albuquerque Tribune (Albuquerque, NM), and Santa Fe New Mexican (Sante Fe, NM), on April 10, 1998. The comment period closed on July 30, 1998.

To provide for a requested public hearing, encourage participation from the public in the species listing process, and to await the submission of current species status information, we reopened and extended the comment period from July 30, 1998 until October 1, 1998 (63 FR 40389; July 29, 1998). We also held informational meetings with interested parties about the proposed rule in Silver City, NM on August 18, 1998.

We received 37 comments (e.g., letters, phone calls, facsimiles, and oral testimony) from individuals or agency or group representatives concerning the proposed rule to list *Rumex*

orthoneurus. Seven people provided comments supporting the proposed listing of the species, 13 people opposed the proposed listing, and 17 people provided informational comments. Several commenters provided additional information that we incorporated into this withdrawal, along with other clarifications. We organized all opposing and technical comments into five specific issues, and these along with our response are summarized below.

Issue 1—Known Distribution of Rumex orthoneurus

Comment: Several commenters stated that listing is not warranted because the plant has a much wider distribution than previously thought.

Service Response: Our knowledge of *Rumex orthoneurus* distribution has increased considerably since the proposed rule. At the time of the proposed rule, although *R. orthoneurus* was thought to occur in New Mexico and east-central Arizona, data from only 10 sites in southeastern Arizona were available to evaluate the status of the plant. We have since become aware of approximately 134 additional *R. orthoneurus* locations (non-introduced), many of which contain high numbers of plants with low levels of threats. See Factor A of "Summary of Factors Affecting the Species" section for additional information.

Comment: Several commenters stated that *Rumex orthoneurus* inhabits areas inaccessible to cattle, and thus is not exposed to threats from grazing.

Service Response: Although it is true that *Rumex orthoneurus* is located in some areas that are inaccessible to cattle, the plant is also located in many areas where cattle roam freely. In those areas, cattle grazing is documented to have substantial detrimental effects on smaller populations of the plant. Despite this, the range of *R. orthoneurus* is much larger than previously thought, and many populations have low levels of threats.

Comment: One commenter suggested that listing is warranted because the previous known range at the time of the proposed rule constitutes a significant portion of the species' range.

Service Response: At the time of the proposed rule, site-specific information was available for 10 *Rumex orthoneurus* locations. Although we were aware that the species occurred in other areas, data were not available for those sites. We have current information from approximately 134 additional sites containing natural populations of *R. orthoneurus*. The size of populations within these sites ranges from just a few individuals to tens of thousands.

Site-specific information is available for four National Forests in Arizona and three National Forests in New Mexico (excluding the Lincoln National Forest). The plant is also known to occur in Mexico. Impacts to the plant in southeast Arizona (the previously known sites) continue, and these populations are important to the genetic variation of the species. However, conservation strategies for most southeast Arizona populations are already established and in place (See Factors A and D of the "Summary of Factors Affecting the Species" section) and threats within the balance of its range are not severe enough to threaten the continued existence of the species. Changes in our assessment of the level of threats to the plant are the result of new information indicating a larger known distribution of the plant, higher densities of populations, and diminished levels of overall threats stemming from the discovery of new populations.

Issue 2—Adaptability and Resiliency of Rumex orthoneurus

Comment: Several commenters stated that physiological adaptations such as asexual reproduction and dormancy during drought allow the plant to survive disturbance and stochastic (randomly occurring natural) events. Other commenters suggested that perceived declines in plant abundance may not be real because plants that are not visible one year may sometimes reappear in subsequent years.

Service Response: We recognize that *Rumex orthoneurus* may be tolerant of certain disturbance events because of its physiological adaptations. We are also aware that the plant has regenerated in areas where it appeared to have been destroyed. However, threats such as grazing, wildfire, water diversion, and recreation are known to cause irreparable damage to *R. orthoneurus* and the riparian areas it inhabits. These threats can cause stream-bank erosion, head-cutting (streambed erosion that migrates upstream resulting in channel destabilization and accelerated streambank erosion), and soil compaction, all from which the plant has difficulty recovering despite its physiological characteristics.

Water is a primary vector of seed dispersal for *Rumex orthoneurus*. Thus, if the plant is extirpated from upstream reaches, there is a lower probability that it can re-colonize those areas. Furthermore, unabated grazing can reduce plants to 1–2 cm (less than 1 in.) in height, when they are otherwise able to grow up to 1 m (3.3 ft) tall. This prevents the plant from producing flowering stalks, which are necessary for sexual reproduction and the mixing of genetic material from unique individuals. The reduction of plant size also hampers the plant's ability to generate vital nutrients from photosynthesis, as the surface area of the plant is diminished by approximately two orders of magnitude. If the plant is forced to remain in this retarded growth form continuously, it may be destroyed. However, these threats, although they are in certain locations,significant, are not manifested to a significant degree throughout the range of *R. orthoneurus*. Consequently, we find that listing is not warranted at this time (see Factor A of the "Summary of Factors Affecting the Species" section).

Issue 3—Fire as a Threat

Comments: Numerous commenters stated that fire is not a threat to the plant, because fire can thin vegetation and allow *Rumex orthoneurus* to colonize and grow in riparian areas where other woody plant species are encroaching.

Service Response: Wildfires are detrimental to *R. orthoneurus*, especially when they result in increased stream sedimentation and the scouring of drainages. The resultant soil loss can translate into long term, if not permanent, loss of habitat for *R. orthoneurus*. In the Tonto National Forest, wildfire has caused the extirpation of two introduced populations, and the potential for wildfire on National Forest lands remains a threat to *R. orthoneurus*. Despite this, wildfire is largely an isolated event, and for the vast majority of known *R. orthoneurus* populations, there is no indication of it being a significant threat.

Issue 4—Genetic Diversity of Populations

Comment: One commenter indicated that because *Rumex orthoneurus* populations from each mountain range are unique genetically, that maintaining these populations and their genetic diversity is important to the overall health of the species.

Service Response: Because *R. orthoneurus* can reproduce asexually, a population with many plants may actually be just a few individuals that developed from rhizomes. Asexual reproduction in *R. orthoneurus* may limit the level of diverse genetic information in some populations. Thus, preserving populations from each mountain range is important in

maximizing the genetic variation available to the overall gene pool of the species.

Summary of Factors Affecting the Species

We must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to our decision to withdraw the proposal to list Chiricahua dock (*Rumex orthoneurus* Rech F.), are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

The proposed rule (63 FR 15813) identified livestock grazing, recreation, water development and diversion, road construction and maintenance, logging, mining and associated activities, and wildfire as causing the loss and degradation of riparian and cienega habitat for *Rumex orthoneurus*. In the proposed rule, we identified some populations as extirpated because of these activities. It was believed that the extirpation of some natural populations in the Chiricahua and Huachuca mountains were possibly caused by water development and diversion, grazing, and mining activities. Frequent road maintenance in the Pinaleño Mountains was found to regularly impact one population. The Tonto National Forest (1993) noted evidence of soil compaction and unstable banks at the Workman Creek sites in the Sierra Ancha Mountains caused by recreational activities. In the Coronado National Forest (1993) Conservation Strategy for the Chiricahua Dock, the Forest Service addressed the possible extirpation of the type locality (the location where the plant was originally described) as a result of water diversions. Hodges attributed impacts to *R. orthoneurus* at Hospital Flat (Pinaleño Mountains) to trampling by recreationists and damming of the creek (David Hodges, Southwest Center for Biological Diversity, pers. comm. 1995).

At the time of the proposed rule, grazing was thought to impact *Rumex orthoneurus* at the system, population, and individual plant levels, as grazed populations often do not produce seeds. Also at the time of the proposed rule, it was thought that continued grazing could eventually preclude the plant's continued existence due to a lack of seed production, compacted soils discouraging seedling establishment, severe trampling of plants and underground rhizomes, and destabilization of streambanks resulting in habitat loss. At the time we prepared the proposed rule, the population at Ramsey Canyon in the Huachuca Mountains was thought to be extirpated by grazing, which took place in the early 1900s (Van Devender 1980). The species is now known to occur in three different areas in upper Ramsey Canyon. The available information at the time of the proposed rule, indicated that virtually all reported occurrences of *R. orthoneurus* on the Apache-Sitgreaves National Forests were adversely affected by grazing activities. However, many newly discovered occurrences of *R. orthoneurus* on the Apache-Sitgreaves National Forests are not being adversely affected by livestock grazing, and because we have found many plant locations to be free of grazing, we cannot conclude that impacts to *R. orthoneurus* are occurring range-wide by this threat.

The proposed rule also cited Phillips *et al.* (1980), who reported a proposed uranium mining and milling operation as a threat to the Workman Creek population of *Rumex orthoneurus* in the Sierra Ancha Mountains. Plans called for the construction of a campsite, and the development of the bowl area of Carr Mountain (the watershed for the site) into a uranium mill. Although the Workman Creek drainage remains available for mineral entry, and mining continues to be a potential threat in that area, logging and mining operations are not widely documented as having adverse effects on *R. orthoneurus* populations. Finally the proposed rule identified that wildfire in the Tonto National Forest caused the extirpation of two introduced populations, and the decline of a third. Although wildfire continues to be a threat to some populations of the Chiricahua dock, its effects are localized.

While grazing, recreation, wildfire, and water diversions can adversely affect the plant in some areas, recent genetic research (see "Background" section) and survey efforts indicate that *Rumex orthoneurus* has a much larger distribution than previously thought, and not all populations are imperiled by the above threats.

Our decision to propose *Rumex orthoneurus* as a threatened species was based on the best scientific information available to us at the time of the proposed rule, and consisted of information from only 10 sites in southeastern Arizona (most with only a few individuals). *Rumex orthoneurus* is now known from approximately 144 sites in Arizona and New Mexico, and at least two sites in the State of Sonora, Mexico, within the forest reserve "Sierra de los Ajos." Numbers of plants at sites containing *R. orthoneurus* range from just a few to tens of thousands of individuals. In Arizona, on the Coronado National Forest, *R. orthoneurus* occurs at 12 sites as natural populations in the Chiricahua, Pinaleño, and Huachuca mountains. There are four introduced sites in the Chiricahua mountains, most of which are either stable or increasing in number. Originally, plants from the White (AZ), Mogollon (NM), and San Francisco (NM) mountains were thought to be *R. occidentalis*. However, recent research indicates that plants in these mountains are, in fact, *R. orthoneurus* (see "Background" section; Mount and Logan 1993, Friar *et al.* 1994, Bellsey and Mount 1995, Bellsey 1998, in prep.).

On the Apache-Sitgreaves National Forests, *Rumex orthoneurus* is located in the White Mountains and along the north side of the Mogollon Rim. A total of 67 sites, many with thousands of plants, are documented thus far, and many areas have yet to be surveyed. Current genetic information, has revealed that four sites in the San Francisco Peaks on the Coconino National Forest currently support *R. orthoneurus*. A fifth site was discovered in Barbershop Canyon (Coconino National Forest), a site previously surveyed without *R. orthoneurus* detections (Barbara Phillips, Coconino National Forest, pers. comm. 1999). Additional locations are suspected to contain *R. orthoneurus*, but lack surveys. Four sites containing natural populations of *R. orthoneurus* were found on the Tonto National Forest in the Sierra Ancha Mountains and receive some protection, and many other sites contain introduced populations in the south drainage of the Mogollon Rim.

In New Mexico, the presence of *Rumex orthoneurus* is documented from recent survey efforts (Bellsey, pers. comm. 1999) on the Carson, Santa Fe, Lincoln, and Gila National Forests. On the Carson National Forest, 2 days of cursory surveys conducted from a vehicle found seven locations containing *R. orthoneurus*. On the Santa Fe National Forest, *R. orthoneurus* presence was recorded during approximately 4 days of surveys for Arizona willow (*Salix arizonica*). This effort resulted in the detection of 14 locations, many of which contain tens of thousands of plants. At the time of the proposed rule, *R. orthoneurus* was thought to be extinct on the Lincoln National Forest, but specimens were recently collected whose morphological characteristics indicate the plants are *R. orthoneurus* (Bellsey, pers. comm. 1999). The vast majority of habitat on these forests still remain unsurveyed.

Surveys and genetic analysis of *R. orthoneurus* specimens indicate that there are 34 sites containing natural populations on the Gila National Forest.

In contrast to the proposed rule, we are now aware of so many sites (many with low levels of threats), that despite the threats stated in the proposed rule, we cannot conclude that *Rumex orthoneurus* is threatened throughout all or a significant portion of its range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a significant threat at the present time.

C. Disease or Predation

The primary predation threat to *Rumex orthoneurus* is from livestock or wild ungulate grazing due to its high palatability and occurrence in wetland habitats attractive to herbivores. Permitted grazing occurs at *R. orthoneurus* sites in the White Mountains on the Apache-Sitgreaves National Forests and at sites on the Tonto National Forest. The Gila Wilderness has not permitted grazing since 1952 (Paul Boucher, Gila National Forest, pers. comm. 1997), and grazing by cattle has not occurred since 1947 on *R. orthoneurus* sites in the Pinaleño Mountains (Coronado National Forest 1993). Sites on the Coconino and the Apache-Sitgreaves National Forests are affected by wild ungulates. There is documentation of both cattle and elk grazing at *R. orthoneurus* sites in the Carson and Santa Fe National Forests.

Despite the documented grazing on most of the forests where *Rumex orthoneurus* is found, the plant is protected in many areas by exclosures (barriers to exclude animals), by management efforts, or by virtue of its location. At the time of the proposed rule, there was reason to believe that grazing was a much more serious threat to *R. orthoneurus* because known sites were fairly small, and the proportion of sites affected was thought to be high. New information indicates that there are numerous secure sites with hundreds, thousands, or tens of thousands of plants. In some cases, sites are considered secure because population sizes are large, and in others grazing is absent or of little consequence (i.e., grazing periods are brief or there are few ungulates). In addition to the information that many sites appear secure, the proportion of affected sites decreased as we became aware of more non-threatened sites. These positive developments for the status of *R. orthoneurus* lead us to conclude that listing is no longer warranted.

D. The Inadequacy of Existing Regulatory Mechanisms

Many Federal and State laws and regulations can protect *Rumex orthoneurus* and its habitat. However, Federal and state agency discretion allowed under these laws still permits adverse effects on listed and rare species. *Rumex orthoneurus* is not included in either of the three Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and it is unlikely to require the trade protections of CITES.

The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. Forest plans generally include a commitment to maintain viable populations of all native wildlife, fish and plant species within the Forest's jurisdiction. However, such general commitments do not, in themselves, preclude adverse effects to rare species by any National Forest.

The Coronado and Tonto National Forests developed assessments with management strategies for *Rumex orthoneurus* in 1993. To date, cattle grazing is somewhat limited on *R. orthoneurus* sites in both forests. The Tonto National Forest has taken extensive measures to keep cattle and recreation out of riparian areas inhabited by *R. orthoneurus*. The Forest has closed roads where vehicles and hikers could impact the plant, and they have moved gates to redirect traffic to areas not occupied by *R. orthoneurus*. Although the Coronado National Forest has a conservation strategy which has limited livestock grazing, some sites are grazed by horses, and recreation is still a problem at many sites. The Apache-Sitgreaves Forests are implementing a monitoring program in 1999 (John Bedell, Apache-Sitgreaves National Forest, *in litt.* 1999), and the Carson National Forest has designated funds for additional surveys in 1999 (Dick Braun, Carson National Forest, pers. comm. 1999). Management strategies were not developed for sites at other National Forests or the Ft. Huachuca Army Post.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. Sec. 4321–4370a) requires Federal agencies to consider the environmental impacts of their actions. The NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. It does not require Federal agencies to select the alternative having the least significant environmental impact. The NEPA does not prohibit a Federal action agency from choosing an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

The wetland habitats supporting *Rumex orthoneurus* have a degree of protection under section 404 of the Clean Water Act and under Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). These authorities can only protect *R. orthoneurus* indirectly and have not curtailed population decline, extirpation, or habitat losses for *R. orthoneurus* in some locations.

Under the Lacey Act (16 U.S.C. 3371 *et seq.*), as amended in 1982, it is unlawful for any person to import, export, sell, receive, acquire, purchase, or engage in interstate or foreign commerce in any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any state. The Lacey Act can provide a degree of protection to *Rumex orthoneurus* to the extent that the species is protected by Arizona State law (described below).

The Arizona Native Plant Law (A.R.S. Chapter 7, Article 1) protects *Rumex orthoneurus* as "highly safeguarded." A permit from the Arizona Department of Agriculture (ADA) must be obtained to legally collect this species from public or private lands in Arizona. Permits may be issued for scientific and educational purposes only. It is unlawful to destroy, dig up, mutilate, collect, cut, harvest, or take any living "highly safeguarded" native plant from private, State, or Federal land without a permit. However, private landowners and Federal and State agencies may clear land and destroy habitat after giving the ADA sufficient notice to allow plant salvage. Damage to plants and habitat occur under the Arizona Native Plant Law.

Despite the potential inadequacies in existing regulatory mechanisms, we find insufficient evidence that the existing levels of threats to *Rumex orthoneurus* warrant its listing as a threatened or endangered species under the Act. In light of the expanded numbers and distribution of *R. orthoneurus*, the potential inadequacies of these regulatory mechanisms is no longer a significant factor.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

At the time of the proposed rule, a high proportion of known *Rumex orthoneurus* populations occurred as small sites in isolated mountain ranges. *Rumex orthoneurus* was thought to be vulnerable to chance extirpations because of the perceived low numbers of individuals in mostly scattered, isolated populations.

Any loss of such sites would have resulted in a significant curtailment of the species' range, and may have affected the species' ability to sustain itself over time. Wildfire was also thought to pose a significant threat, as it could be catastrophic to smaller, confined populations.

We now know that *Rumex orthoneurus* is well distributed in areas of Arizona and New Mexico. Many sites where *R. orthoneurus* is found contain thousands of plants. The present distribution and abundance of *R. orthoneurus* precludes a finding that listing the plant is warranted because chance, localized extirpations would not necessarily result in a significant curtailment of the species' range. Additionally, although wildfire can be detrimental to localized populations, wildfire is largely an isolated event. For the vast majority of known *R. orthoneurus* populations, there is no indication that wildfire is a significant threat. We find no indication of any other natural or manmade factors affecting the continued existence of *R. orthoneurus*.

Finding and Withdrawal

Based on our review and consideration of the best scientific and commercial information available, we find that *Rumex orthoneurus* does not meet the definition of a threatened or endangered species and that its listing as a threatened species is not warranted. Recent genetic research (see Background section) and survey efforts indicate that *R. orthoneurus* has a much larger distribution than previously thought (see Factor A of the "Summary of Factors Affecting the Species" section), and not all populations are imperiled. Although mining and logging activities are suspected of affecting *R. orthoneurus*, the impacts of such activities are not widely documented, and wildfire is localized in its impacts on the plant. We can no longer conclude that *R. orthoneurus* is impacted throughout its range by the remaining threats of livestock and wildlife grazing in a manner that would threaten its continued existence.

Recognizing the need to ensure the continued existence of *Rumex orthoneurus*, the Forest Service established numerous monitoring and survey programs. Conservation strategies for the Tonto and Coronado National Forests were in place in 1993. In 1999, the Apache-Sitgreaves National Forests initiated a monitoring program (John Bedell, Apache-Sitgreaves National Forests, *in litt.* 1999), and the Carson National Forest has budgeted for additional survey efforts (Dick Braun, Carson National Forest, pers. comm. 1999). Due to the current distribution and associated level of threats to *R. orthoneurus*, we find that there is not substantial evidence to indicate that *R. orthoneurus* is threatened under the Act (likely to become endangered within the foreseeable future throughout all or a significant portion of its range).

References Cited

Bellsey, R. A. 1998. Summary of genetic work performed on *Rumex orthoneurus*, the Chiricahua dock. Unpublished report to the National Forest Service. 16 pp.

Bellsey, R. and D. Mount. 1995. Analysis of *Rumex orthoneurus*, a rare species in Arizona, using RAPD markers and polymorphisms in "rbcL". In: Maschinski, J., D. H. Hammond, and L. Holter, tech. Eds. Southwestern rare and endangered plants: proceedings of the second conference. Gen Tech. Rep. RM–GTR–283. Fort Collins, CO.

Coronado National Forest. 1993. Conservation strategy for Chiricahua dock (*Rumex orthoneurus*). U.S. Department of Agriculture, Forest Service. Tucson, Arizona. 24 pp.

Dawson, J. E. 1979. A biosystematic study of *Rumex* in Canada and the United States. Unpublished thesis. Carleton University.

Friar, E., H. Nam, and D. Mount. 1994. *Lilium parryi, Rumex orthoneurus* genetic study. University of Arizona, Tucson, Arizona. 16 pp.

Mount, D. and B. Logan. 1993. Genetic analysis of *Rumex orthoneurus* and *Rumex occidentalis* species by the RAPD marker technique. University of Arizona, Tucson, Arizona. 15 pp.

Phillips, A. M. III, L. T. Green III, and J. Mazzoni. 1980. Amendment to the status report on *Rumex orthoneurus*. Unpublished report to U.S. Department of Interior, Fish and Wildlife Service, Albuquerque, NM. 15 pp.

Tonto National Forest. 1993. A conservation assessment for Blumer's dock (*Rumex orthoneurus*). Unpublished report. U.S. Department of Agriculture, Forest Service, Phoenix, Arizona. 26 pp.

Author: The primary author of this withdrawal notice is Darrin Thome, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authority: The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 28, 1999.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–20404 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 063099A]

RIN 0648–AI78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Atlantic Herring Fishery Management Plan; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan; correction.

SUMMARY: On July 27, 1999, NMFS published a notice of availability (NOA) announcing that the New England Fishery Management Council had submitted the Atlantic Herring Fishery Management Plan for Secretarial review. Under its stated Management Measures of Concern, the NOA contained an error in its description of restrictions on the size of domestic fishing and processing vessels that would be prohibited from fishing for Atlantic herring in the exclusive economic zone (EEZ). This document corrects the error.

DATES: Comments must be received on or before September 27, 1999.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION:

Background

The NOA for the Atlantic Herring FMP was published on Tuesday, July 27, 1999 (64 FR 40542). The NOA described restrictions on the size of domestic fishing and processing vessels. One measure would prohibit domestic vessels greater than or equal to 165 ft (50.3m) in length, or > 750 gross registered tons (GRT) (680.4 mt), or > 3,000 horsepower from fishing for Atlantic herring in the EEZ, but would allow domestic vessels > 165 ft (50.3m), or > 750 GRT (680.4 mt) to process herring if U.S. at-sea processing is

specified in a given year. However, the NOA inadvertently indicated that only domestic vessels greater than 165 ft (50.3m) in length, rather than equal to or greater than 165 ft (50.3m) in length, would be prohibited from fishing for Atlantic herring in the EEZ.

Correction

Accordingly, the publication on July 27, 1999, of the NOA (I.D. 063099A), which was the subject of document FR Doc. 99–19171, is corrected as follows:

On page 40543, in column 2, under the heading, "Restrictions on the Size of Domestic Fishing and Processing Vessels", the second line of the first sentence is corrected to read as follows:

"domestic vessels greater than or equal to 165 ft (50.3m) in"

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 3, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20432 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

(I.D. 073099E)

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings, request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings to allow for input on its Draft Tilefish Fishery Management Plan (FMP) and the Draft Environmental Assessment and Draft Regulatory Impact Review for this FMP. This FMP is designed to eliminate overfishing and rebuild the tilefish resource to the biomass that would support maximum sustainable yield (MSY) through a constant harvest strategy within a 10-year rebuilding period.

DATES: Written comments will be accepted through September 7, 1999. See **SUPPLEMENTARY INFORMATION** for dates and times.

ADDRESSES: Send comments to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

The hearings will be held in Rhode Island, New York and New Jersey. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director of the Mid-Atlantic Fishery Management, 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Background

This FMP is proposed to eliminate overfishing and rebuild the tilefish resource to the biomass that would support the MSY through a constant harvest strategy within a 10-year rebuilding period. The projection associated with the preferred alternative would allow for total allowable landings of 1.76 million lb (798 mt) with a 50 percent probability of achieving the biomass target at the end of 10 years. The default alternative assumes a total allowable level of catch of 1.412 million lb (640 mt) with a 75 percent probability of reaching the target biomass at the end of 10 years. Commercial quotas and a time period closure are included as options in the FMP. The commercial quota would be divided into full-time, part-time, and incidental categories. A limited access program would be applied to the full-time and part-time quota categories.

The Council established a control date for the possible limitations of entrants into this fishery of June 15, 1993, published at 58 FR 33081, June 15, 1993. The Council's preferred alternative for the full-time category would require that a vessel had landed more than 50,000 lb (22.68 mt) in any 1 year between 1988 and 1993 as well as landed at least 25,000 lb (11.34 mt) per year for any 2 years between 1994 and 1998. To qualify as a part-time participant, the preferred option indicates that a vessel had to land at least 10,000 lb (4.536 mt) in any year between 1988 and June 15, 1993. The preferred alternative would add a closure to the directed (part-time and full-time vessels) tilefish fishery for a 1 calendar month period from May through September.

Recreational fisheries management measures are addressed in the FMP as framework measures, so that no specific measures are proposed for implementation immediately upon approval of the FMP. Identification and description of essential tilefish habitat are included in the FMP as are management measures to minimize adverse gear impacts to that habitat. The preferred alternative to minimize adverse gear impacts is to prohibit directed tilefish fishing with bottom tending mobile gear and require that gear fishing in statistical areas 616 and 537 between bottom depths of 300 and 850 ft (91 and 259 m) must be modified to reduce impacts on bottom habitat.

Hearings

The dates, times and locations of the hearings are scheduled as follows:

1. Monday, August 23, 1999, 7:00–10:00 p.m. - Crown Plaza at the Crossings (old Holiday Inn), 801 Greenwich Avenue, Warwick, RI, telephone 401–732–6000.

2. Tuesday, August 24, 1999, 7:00–10:00 p.m. - Ramada Inn, Exit 72, Long Island Espressway & Route 25, Riverhead, NY, telephone 516–369–2200.

3. Wednesday, August 25, 1999, 7:00–10:00 p.m. - Sheraton Atlantic City West, 6841 Black Horse Pike (Route 40), Atlantic City West, NJ, telephone 609–272–0200.

The hearings will be tape recorded with the tapes filed as the official transcript of the hearings.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council at least 5 days prior to the hearing date.

Dated: August 3, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20434 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 152
Monday, August 9, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forest Pest Outbreaks; Declaration of Emergency Because of Forest Pest Outbreaks

Whereas, serious infestations of southern pine beetle are present in many parts of the United States, and

Whereas, these pests are capable of causing loss of tree growth, increased tree mortality, increased fire hazard, and loss of production on large segments of Federally and privately owned forest land,

Now, therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency which threatens segments of agricultural production industries of this country, particularly the wood and forest products industries, and I authorize the transfer and use of such sums as may be necessary from appropriations or other funds available to the agencies or corporations of the Department of Agriculture for the conduct of programs to reduce forest resource damage causes by these forest insects and diseases.

Effective Date: This declaration of emergency shall become effective July 20, 1999.

Dan Glickman,
Secretary of Agriculture.

[FR Doc. 99–20446 Filed 8–6–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of New Privacy Act System of Records.

SUMMARY: Notice is hereby given that USDA proposes to create a new Privacy Act system of records, USDA/NOO–1, entitled "The USDA Voluntary Minority Farm Register.".

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on September 20, 1999, unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, NASS, Room 4117 South Building, 1400 Independence Avenue, SW, Washington DC, 20250, Telephone: (202) 720–4333.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records to be maintained by the USDA Office of Outreach. The Voluntary Minority Farm Register is a listing of minority owners and operators of farmland.

The purpose of the Voluntary Minority Farm Register is to establish a baseline for the amount of farmland owned by minority land owners in order to help the USDA set goals to halt the reduction in minority-owned farm land, monitor the loss of minority owned farms, and locate minority farmers for the purpose of informing them of USDA and other programs that may benefit them. The concept was generated by Recommendation #28 of the Report of the Civil Rights Action Team to the Secretary of Agriculture entitled Civil Rights at the United States Department of Agriculture, dated February 1997.

The Voluntary Minority Farm Register will be administered by the Office of Outreach. A specific register sign-up form will be issued in Spanish and English. Informational registration materials will be distributed to Community Based Organizations, educational institutions, and government agencies assisting minorities with land retention and acquisition to ensure the program is widely publicized and accessible to all.

A "Report on New System," required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chairman, Committee on Government Affairs, United States Senate, the Chairman, Committee on Government Reform and Oversight, House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on July 30, 1999.

Signed at Washington, DC, on July 30, 1999.

Dan Glickman,
Secretay of Agriculture.

USDA/NOO–1

SYSTEM NAME:

USDA Voluntary Minority Farm Register.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USDA Office of Outreach, 1400 Independence Avenue, Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Minority farmland owners and operators who voluntarily request to be included on the Register.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes name, address, race/ethnic coding provided by the individual, and farmland acreages owned and operated for each individual who requested to be included on the Register. Acreage data are extracted from Farm Service Agency records for the requesting individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 2501 of Public Law 101–624 (the 1990 Farm Bill), entitled Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers, provides authority for the USDA to enter into special arrangements to aid limited resource and under-served farmers. The Voluntary Minority Farm Register was one specific action requested during Civil Rights Action Team Public Meetings and documented in the Civil Rights Action Team Report of February 1997.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records in the system will be disclosed and distributed to Community Based Organizations, educational institutions, and government agencies assisting minorities with land retention

and acquisition. The purpose of such releases is to ensure that the program of outreach and assistance for socially disadvantaged farmers and ranchers is widely publicized and accessible to all.

(2) USDA will disclose information in the system to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose compatible with the purpose for which the agency collected the records.

(3) When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prospective responsibility of the receiving entity.

(4) USDA will disclose information in the system to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

(5) Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Service Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

(6) USDA will disclose information in the system to agency contractors, grantees, experts, consultants or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored by the USDA Office of Outreach as electronic files; from time to time portions may be converted to and maintained in paper format.

RETRIEVABILITY:

Files will be referenced by county location of farmland.

SAFEGUARDS:

Records, both paper and electronic, are accessible only to authorized personnel and are maintained in offices that are locked during non-duty hours. Organizations requesting access to the Voluntary Minority Farm Register records for specific farmland retention related activities must make application to the USDA Office of Outreach, outlining their proposed use of the records. If the proposal is approved, the Office of Outreach will create the appropriate print or electronic files to meet the request. In case of requests for names and addresses in just a few counties, an alternative access procedure may be used in which the USDA Office of Outreach informs USDA County Service Centers what organizations have been approved. In those cases, an approved organization can obtain printed files at the appropriate county offices.

RETENTION AND DISPOSAL:

The current Voluntary Minority Farm Register will be recreated at biennial intervals, in order to update name and address information and to ensure the inclusion of any changes in farmland ownership recorded in Farm Service Agency records. A letter will be sent to all Register participants. The letter will clarify that there is no need for action if name, address or farmland circumstances have not changed. A master file of each generation of the Voluntary Minority Farm Register will be kept in locked file cabinets until 6 years after creation and then destroyed by shredding or burning in accordance with approved record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director, Office of Outreach, USDA, James L. Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records from the system manager.

RECORD ACCESS PROCEDURES:

Any individual who has volunteered to be included on the Voluntary Minority Farm Register may gain access to register records which pertain to him or her by submitting a written request to the system manager or by visiting his or her local USDA Service Center and submitting a written request.

CONTESTING RECORD PROCEDURES:

Any individual may contest a record in the Register that pertains to him or her by submitting pertinent written information to the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes only from the individuals who voluntarily sign up for the Register.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–20445 Filed 8–6–99; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–058–1]

National Wildlife Services Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Wildlife Services Advisory Committee.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held at the USDA Center at Riverside in the Conference Center, 4700 River Road, Riverdale, MD 20737. The meeting will be held on August 24–25, 1999, from 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Martin Mendoza, Jr., Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Wildlife Services (WS) program. The Committee also serves as a public forum enabling those affected by the WS program to have a voice in the program's policies.

The meeting will focus on operational and research activities and will be open to the public. Due to time constraints, the public will not be able to participate in the Committee's discussions. However, written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. Martin Mendoza at the address listed under **FOR FURTHER INFORMATION CONTACT**, or may be filed at the meeting. Please refer to Docket No. 99–058–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 4th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–20443 Filed 8–6–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forestwide Noxious Weed Control, EIS, Beaverhead-Deerlodge National Forest, Beaverhead, Madison, Jefferson, Silver Bow, Granite, and Powell Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to document the analysis and disclose the environmental impacts of mechanical, manual, biological, ground-based chemical, and aerial chemical noxious weed control methods across the Beaverhead-Deerlodge National Forest.

The proposed action authorizes treatment of 37,762 acres; 15,082 acres by aerial application of chemicals, 22,640 acres by ground-based application of chemicals, 34 acres by biological methods, and 6.6 acres by mechanical methods. The objectives of the proposal are to: Protect the biodiversity of the Beaverhead-Deerlodge National Forest by preventing or limiting the spread of noxious weeds; eliminate new invaders before they become established; reduce known and potential weed seed sources; prevent or limit the spread of established weeds into areas containing little or no infestation; and protect sensitive and unique habitats.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than September 15, 1999.

ADDRESSES: The responsible official is Mike Paterni, acting Forest Supervisor, Beaverhead-Deerlodge National Forest, 420 Barrett Street, Dillon, MT 59725. Send written comments to the responsible official.

FOR FURTHER INFORMATION CONTACT: Diane Petroni, Interdisciplinary Team Leader, also at the Supervisor's Office in Dillon, or phone: (406) 683–3900.

SUPPLEMENTARY INFORMATION: Aerial application of herbicides would be authorized to treat about 40% of the identified infestations. An integration approach would be used to treat all infestations, including biological, mechanical, and ground-based chemical control methods. New infestations would be evaluated to determine if the site fits within the scope of the EIS and then prioritized for treatment. Sites selected for control would be treated using the parameters established and the analysis conducted in this EIS. Treatment of additional sites would be based on a site type stratification process which defined each site by landscape position, soil type and depth, habitat type or community, slope, and aspect. Pretreatment surveys would be conducted to determine management objectives for the site, special considerations (sensitive plants, presence of live water, threatened and sensitive fish, etc.), recommended treatment methods, and other site-specific information.

The project areas are located throughout the Beaverhead-Deerlodge National Forest. The scope of this proposal is limited to noxious weed control measures on known infestations and new infestations as they are identified, and related mitigation requirements within the Beaverhead-Deerlodge National Forest.

Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues. A scoping notice describing the project was mailed to those who requested information about noxious weed control on the Beaverhead-Deerlodge National Forest. Coordination with Montana Department of Environmental Quality/Water Quality Division will occur regarding effects to water quality. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species.

Preliminary issues identified by Forest Service specialists include effects to soils, water quality, and potential public concerns about aerial application of herbicides. The analysis will consider all reasonably foreseeable activities, including actions on lands adjacent to the National Forest.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS period.

During the scoping process, the Forest Service is seeking additional information and comments from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

The draft EIS should be available for review in May, 2000. The final EIS is scheduled for completion in September, 2000.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be document in a Record of Decision.

Dated: July 30, 1999.

Mike Paterni,

Acting Forest Supervisor.

[FR Doc. 99–20438 Filed 8–6–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan, Caribou National Forest, ID

AGENCY: Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement in conjunction with revision of the Land and Resource Management Plan for the Caribou National Forest, located in Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Oneida, and Power counties, Idaho; Box Elder and Cache counties, Utah; and Lincoln County, Wyoming.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement in conjunction with a revision of the Land and Resource Management Plan (hereinafter referred to as Forest Plan) for the Caribou National Forest.

This notice describes the needs "for change" identified to date in the current Forest Plan to be revised, environmental issues considered, estimated dates for filing the Environmental Impact Statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information. The purpose of the notice is to begin the scoping phase of public involvement in the revision process.

DATES: Comments concerning the intent to prepared a revised Forest Plan should be received in writing by October 2, 1999. The agency expects to file a Draft Environmental Impact Statement in the Spring of 2000 and a Final Environmental Impact Statement in the Spring of 2001.

ADDRESSES: Send written comments to: Jerry Reese, Forest Supervisor, Caribou National Forest, 250 South 4th Avenue, Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: Paul Oakes, Planning Team Leader, Caribou National Forest (208) 236–7500.

Responsible official: Jack Blackwell, Intermountain Regional Forester, at 324 25th Street, Ogden, UT 84401.

SUPPLEMENTARY INFORMATION: Pursuant to part 36 Code of Federal Regulations (CFR) 219.10(f) and (g), the Regional Forester for the Intermountain Region gives notice of the agency's intent to prepare an Environmental Impact Statement for the revision of the Caribou National Forest Land and Resource Management Plan. According to 36 CFR 219.10(g), Land and Resource Management Plans shall ordinarily be revised on a 10- to 15-year cycle. The existing Forest Plan for the Caribou National Forest was approved on September 27, 1985.

The Regional Forester gives notice that the Caribou National Forest is beginning an environmental analysis and decision-making process for the proposed programmatic action to revise the Caribou Forest Plan. Opportunities will be provided to discuss the Forest Plan revision with the public. The public is invited to help identify issues that will be considered in defining the range of alternatives in the Environmental Impact Statement.

Forest plans describe the long-term direction for managing National Forests. Agency decisions in these plans do the following:

- Establish multiple-use goals and objectives (36 CFR 219.11);
- Establish forest-wide management requirements (standards and guidelines);
- Establish management areas and management area direction through the application of management prescriptions;
- Identify lands not suited for timber production (36 CFR 219.3);
- Establish monitoring and evaluation requirements; and
- Recommend areas for official designation of wilderness.

The authorization of project-level activities on the Forest occurs through project, or site-specific, decision-making. Project-level decisions must comply with National Environmental Policy Act (NEPA) procedures and must include a determination that the project is consistent with the Forest Plan.

Linkage to the Interior Columbia Basin Ecosystem Management Project

The northern portion of the Caribou National Forest is within the area of land covered by the Interior Columbia Basin Ecosystem Management Project (ICBEMP). Two sources of information from the ICBEMP will influence the development of the Forest Plan: (1) The integrated science assessment and (2) the Interior Columbia Basin Ecosystem Management Project Final Environmental Impact Statement (ICBEMP FEIS) and Record of Decision.

The integrated science assessments contain information that provide context at a broad, multiple-state area scale. The information on forestlands, rangelands, aquatic and hydrologic integrity, ecosystem pathways and disturbance patterns, and the current and projected conditions of fish, wildlife and plant species were used to help identify need for change topics. This information will continue to be used in defining the extent of the need for change and in the development and evaluation of alternatives for the Revised Forest Plan.

The other primary document that will influence this revision is the ICBEMP FEIS. The Draft EIS was issued for public comments in June 1997, and a final document is expected in Spring 2000. This document, which incorporates the results of the science assessments, will amend portions of the Forest Plan when the Record of Decision is issued. This amendment will establish new goals, desired range of future conditions, objectives and standards for management for that portion of the Forest within the ICBEMP assessment area. This amendment will simplify the scope of the planning effort, but will not replace the need for the revision of these reasons.

- The ICBEMP effort is at a much broader scale. The application of the information and decisions will need to be refined for the Forest-level scale.
- The ICBEMP will provide some standards that are only to be used until such time as better local standards are developed. The planning effort will refine these standards to local conditions.
- The ICBEMP FEIS will not provide all of the analysis or decisions required by the National Forest Management Act regulations. The planning effort will need to evaluate land allocations, timber suitability, wilderness recommendations and other factors that the ICBEMP did not address.
- The Ecosystem Management Goals from ICBEMP will provide a framework for Forest planning that merges science and ecosystem capability with societal values to help make choices about dynamic systems on the Forest. These overarching forest-wide goals will be the ecological centerpiece for Plan revision.

Need for Change in the Current Forest Plan

The Forest completed two monitoring reports, one in 1992 and a second in 1997. The results for the monitoring reports, in addition to public input and Forest Plan implementation experience, indicated that there is a need for change in some management direction in the Forest Plan. Several sources were used in determining the need changes in the current Forest Plan. These sources include:

- Public comments concerning implementation of current direction;
- Findings from the two Forest Plan monitoring reports;
- Regulatory, manual, and handbook requirements;
- Forest Service Natural Resource Agenda, 1998;

• Draft 1995 Resources Planning Act (RPA) Program;

• New Information, such as the Interior Columbia Basin Ecosystem Management Project scientific assessment and other research, and

• Public comments received regarding the findings in the Initial Analysis of the Management Situation.

Initial Analysis of the Management Situation

In April, 1999, the Caribou National Forest published an Initial Analysis of the Management Situation (Initial AMS). The Initial AMS summarized the current management and resource conditions of the Forest, proposed a desired range of future conditions for forest resources, and disclosed significant "needs for change" forest managers and resource specialists identified. The Initial AMS was mailed to more than 500 interested individuals, non-government organizations, city, county, state and other federal agencies. Public comments were encouraged regarding the findings disclosed in the Initial AMS. As a result of the analysis of the comments received, the Forest Supervisor has determined the public has identified additional "needs for change" that will be included in the revision of the Forest Plan. The "needs for change" topics, along with preliminary proposed programmatic actions, include:

1. Timberland Suitability and Wilderness Recommendations

• A reassessment of timberland suitability will be conducted.

• All inventoried roadless areas on the Forest will be reevaluated for possible wilderness recommendation.

2. Aquatic and Riparian Resources

• Develop goals, objectives, standards and guidelines and monitoring strategies for the management of riparian and aquatic ecosystems.

3. Economic and Social Concerns

• Changes in Forest management may have social and economic effects. During the analysis, effects on local, regional and national entities, agencies and Tribes will be assessed, considered and disclosed.

4. Fire Management

• Develop goals, objectives, standards, guidelines and monitoring requirements for the use of prescribed fire and wildfire for resource benefit to improve ecosystem health and reduce the risk of uncharacteristically large or intense fires.

5. Minerals Development

• Incorporate new best management practices or other new information as they are developed or become available to address selenium releases into the environment.

• Develop improved goals, objectives, standards and guidelines to address reclamation of land disturbed by mineral development.

6. Noxious Weeds

• Develop improved multi-program goals, objectives, standards, guides and monitoring strategies for prevention, containment and control of noxious weeds.

7. Rangeland Resources

• Evaluate rangeland capability and reassess areas suitable for livestock grazing through the application of management prescriptions.

• Develop standards and guidelines, including forage utilization standards for native range and seeded areas. Monitoring protocols that will promote adaptive management will also be included.

8. Recreation/Travel Management

• Establish open road and motorized trail density levels and determine which areas will be designated open to off road motorized use.

9. Special Management Areas

• Develop management direction to protect the outstandingly remarkable values of St. Charles Creek and Elk Valley Marsh, areas previously determined to be eligible for study under the Wild and Scenic Rives Act. A suitability study will not be completed as a part of this effort.

• Develop direction to provide for consistent management of all eight RNAs on the Forest. Include direction for the use of prescribed fire and wildfire for resource benefit as appropriate to meet the objectives for which the RNA was established.

10. Vegetation (Forestlands and Rangelands)

• Develop improve management direction for desired vegetation structure, composition, disturbance and patterns for each cover type which could include restoring historic fire regimes through prescribed fire or allowing wildfires to burn under appropriate conditions, harvest or thinning of dense stands to reduce ladder fuels.

11. Wildlife Habitat

• Develop management direction to conserve or restore key wildlife, fish and rare habitats including those species federally listed under the Endangered Species Act, those identified as sensitive by the Regional Forester, and those identified as rare or scarce species. This will also include monitoring for habitat trends.

More detailed information on the "need for change" topics is available upon request at the address displayed above.

Framework for Alternatives To Be Considered

Through a range of alternatives economic and social community stability will be considered in revising the Forest Plan. The alternatives will address different options to resolve the issues identified in the revision topics listed above. Alternatives must meet the purpose and need for revision to be considered valid. One of the alternatives to be examined is the "no-action alternative." This is a required alternative that represents continuation of management under the 1985 Forest Plan, as amended. Alternatives are developed in response to public issues, management concerns, and resource opportunities identified during the scoping process. In describing alternatives, desired vegetation and resource condtions will be defined.

Involving the Public

The Forest Service is seeking information, comments and assistance from individuals, organizations and federal, state, and local agencies who may be interested in or affected by the proposed action (36 CFR 219.6) The Forest Service is also looking for collaborative approaches with members of the public who are interested in forest management.

Public participation will be solicited by notifying in person and/or by mail, known interested and affected publics. News releases will be used to give the public general notice, and public involvement opportunities will be offered at various locations. Public participation activities may include written comments, open houses, focus groups and collaborative forums.

Public participation will be sought throughout the revision process and will be especially important at several points along the way. The first formal opportunity to comment is during the scoping process (40 CFR 1501.7). Public meets will be arranged locally. Specific dates, times and locations of meetings will be identified at a later date. The public will be notified at that time.

Release and Review of the EIS

The Draft Environmental Impact Statement (EIS) is expected to be filed with the Environmental protection Agency (EPA) and to be available for public comment in the Spring of 2000. At that time, the EPA will publish a notice of availability in the **Federal Register**. The comment period on the Draft EIS will be at least 90 days from the date the EPA publishes the notice of availability in the **Federal Register**, as required by the planning regulations.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp* v. *NRDC*. 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (Final EIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed programmatic actions, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Counsel on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the Draft EIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The Final EIS is scheduled to be completed in the Spring of 2001. The responsible official will consider the comments, responses, and environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies in making decisions regarding the revision. The responsible official will document the decisions and reasons for the decisions in a Record of Decision for the revised plan. The decisions will be subject to appeal in accordance with 36 CFR part 217. Jack A. Blackwell, Intermountain Regional Forester, is the responsible official for this EIS.

Dated: August 3, 1999.

Jerry B. Reese,

Forest Supervisor, Caribou National Forest.

[FR Doc. 99–20378 Filed 8–6–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a revised conservation practice standard in Section IV of the FOTG. The revised standard is Residue Management, No Till/Strip Till (Code 329A). This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments must be received on or before September 8, 1999.

ADDRESSES: Address all requests and comments to Robert L. Eddleman, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the 2 next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: July 27, 1999.

Robert L. Eddleman,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 99–20373 Filed 8–6–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Institutional Remittances to Foreign Countries—BE–40; Proposed Collection; Comment Request

AGENCY: Bureau of Economic Analysis, Department of Commerce.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 8, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Michael Mann, Chief, Current Account Services Branch, Room 8018, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9573; and fax: (202) 606–5314.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Economic Analysis is responsible for the computation and publication of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the "private remittances" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA.

The accounts provide a statistical summary of U.S. international transactions. They are used by government and private organizations for national and international policy formulation, and analytical studies. Without the information collected in this survey, an integral component of the private remittances account would be omitted. No other Government agency collects comprehensive annual data on private unilateral transfers of funds and commodities to foreign countries.

The survey requests information from U.S. religious, charitable, educational, scientific, and similar organizations on the transfer of cash grants to foreign countries and their expenditures in foreign countries. Information is collected on a quarterly basis from institutions transferring $1 million or more each year, and annually for all others. Nonprofit organizations with total remittances of less than $25,000 annually are exempt from reporting.

II. Method of Collection

Information is obtained from U.S. religious, charitable, educational, scientific, and similar organizations who voluntarily agree to provide data regarding transfers of cash grants to foreign countries and their expenditures in foreign countries. Submission of the completed report form, or computer printouts in the format of the report form, are the most expedient and economical methods of reporting the information.

III. Data

OMB Number: 0608–0002.
Form Number: BE–40.
Type of Review: Renewal-regular submission.
Affected Public: U.S. religious, charitable, educational, scientific, and similar organizations which transfer cash grants to foreign countries and their expenditures in foreign countries.
Estimated Number of Respondents: 480.
Estimated Time Per Response: 1.5 hours per annual reporter. 6.0 hours per quarterly reporter.
Estimated Time Per Response: 1.5 hours per annual reporter. 6.0 hours per quarterly reporter.
Estimated Total Annual Burden Hours: 1,521 hours.
Estimated Total Annual Cost: The estimated annual cost to the government is $16,000. The estimated annual cost to the public is $45,630 based on total number of hours estimated as the reporting burden and an estimated hourly cost of $30.
Respondent's Obligation: Voluntary.
Legal Authority: Bretton Woods Agreement Act, Section 8, and E.O. 10033, as amended.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 3, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20442 Filed 8–6–99; 8:45 am]
BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

International Trade Administration

Commerce Trade Fair Privatization Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c) (2) (A)).

DATES: Written comments must be submitted on or before October 8, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272 or Email: LEngelme@doc.gov.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Don Huber, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2810, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–2525, and fax number: (202) 482–0872.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trade Fair Certification (TFC) program is a service of the U.S. Department of Commerce (DOC) that provides DOC endorsement and support for private sector firms that organize high quality international trade fairs. The TFC program seeks to broaden the base of U.S. firms, particularly new-to-market companies by introducing them to key international trade fairs where they can achieve their export objectives. Those objectives include one or more of the following: direct sales, identification of local agents or distributors, market research and exposure, and joint venture licensing opportunities for their products and services. The objective of the application is to make a determination that we qualify the trade fair organizer to organize and manage U.S. exhibitions at a foreign trade show.

II. Method of Collection

Form ITA–4134P is sent by request to U.S. firms.

III. Data

OMB Number: 0625–0222.
Form Number: ITA–4134P.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit firms.
Estimated Number of Respondents: 10.
Estimated Time Per Response: 12 hours.
Estimated Total Annual Burden Hours: 120 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $5,440.00 ($4,200.00 for respondents and $1,240.00 for federal government).

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to reduce the burden of the collection of information on respondents, including by automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public records.

Dated: August 3, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20441 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 6, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain lead and bismuth carbon steel products from Germany (64 FR 16703). This review covers Saarstahl AG, a manufacturer/exporter of the subject merchandise to the United States, and the period March 1, 1997, through February 28, 1998. We conducted a verification of Saarstahl's antidumping duty questionnaire responses and gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain data, we have revised our margin calculation; however, the final results do not differ from the preliminary results. The final results are listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Rebecca Trainor, Office 2, AD/CVD Enforcement Group I, Import Administration, Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4136, or 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1997–1998 administrative review of the antidumping duty order on certain lead and bismuth carbon steel products from Germany (64 FR 16703) (*Preliminary Results*). We conducted verification of Saarstahl AG's (Saarstahl) antidumping duty questionnaire responses from April 27 through May 7, 1999, and issued our report on June 1, 1999 (*see* Memorandum to the File: Sales and Cost of Production Verification) (Verification Report). On June 17, 1999, and June 23, 1999, Ispat Inland Inc. and USS/KOBE Steel Co. (the petitioners), and Saarstahl submitted case and rebuttal briefs, respectively. Following the return to the petitioners of their June 10, 1999, submission, which contained untimely submitted factual information, on June 29, 1999, the petitioners resubmitted their June 17, 1999, brief with references to the June 10 submission redacted, in accordance with the Department's instructions. Both parties withdrew their respective requests for a hearing.

The Department has now completed its administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Duty Absorption

On April 28, 1998, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the period of review (POR). Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, Saarstahl sold to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (*i.e.*, orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, a duty absorption determination in this segment of the proceeding is necessary. As we have found that there is no dumping margin for Saarstahl with respect to its U.S. sales, we have also found that there is no duty absorption.

Changes Since the Preliminary Results

We have made the following changes from the preliminary results:

1. We included payment dates for certain home market sales that were not included in the preliminary results, according to Saarstahl's April 28, 1999, submission and the verification results. Accordingly, we revised the imputed credit expenses for those sales.

2. We reallocated the materials, labor, and overhead costs reported by Saarstahl, in accordance with our verification findings (*see* Verification Report at pages 5–6). The reallocation did not change the total cost of manufacturing reported. We used the computer programming language

supplied by Saarstahl in its case brief to accomplish the reallocation.

3. We revised the reported depreciation, general and administrative (G&A), and financial expense ratios to reflect corporate-wide costs, rather than rolled products division expenses, based on our verification findings.

4. We corrected the reported billing adjustments for two home market sales, based on verification findings.

5. We added an early payment discount for one home market sale, based on verification findings.

6. We revised the payment dates for certain home market and U.S. sales to reflect the actual date Saarstahl received payment, based on verification findings. Accordingly, we revised the imputed credit expenses for those sales. (A separate issue concerning payment dates is discussed below at Comment 5.)

7. We revised the reported home market and U.S. indirect selling expenses to exclude bank fees reported separately.

8. We revised the arm's length test to affiliated customers to account for level of trade in making affiliated to unaffiliated price comparisons, in accordance with the Department's practice (*see, e.g., Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68432, December 11, 1998). We also corrected an error in the programming language which prevented the program from performing a complete comparison of affiliated to unaffiliated customer prices. We did not make the programming change suggested in Saarstahl's case brief at page 6, as we determined that Saarstahl's proposal did not correct the error.

9. We revised the reported production quantity for one product, based on our verification findings, for purposes of weight-averaging the costs of production. See Comment 4 below for further discussion.

Interested Party Comments

Comment 1: Casting Type as a Product Matching Criterion

The petitioners contend that casting type—*i.e.*, whether a product is produced from bloom-cast billets or continuous cast billets—should be included in the Department's model matching hierarchy as the second most important criterion. The petitioners argue that the type of casting has a much greater impact on cost and commercial value than any of the remaining product characteristics, as indicated, according to the petitioners, by Saarstahl's own cost information.

Saarstahl responds that the petitioners failed to introduce any timely information concerning quantifiable physical differences between bloom-cast and billet-cast products: Therefore, Saarstahl states that the Department must maintain the determination made in the preliminary results and decline to add casting type as a product matching characteristic.

DOC Position: We disagree with the petitioners and we continue to make product comparisons based on chemical composition, shape, cut (i.e., coil or cut-to-length), size, and grade, as in our preliminary results and in the underlying less-than-fair value (LTFV) investigation.

As discussed in the preliminary results Model Match Methodology Memorandum from the Team to Irene Darzenta Tzafolias, dated March 22, 1999 (Model Match Methodology Memorandum), for purposes of selecting model match criteria, the Department normally relies on physical characteristics of the merchandise that are identifiable and/or quantifable (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products From Indonesia*, 61 FR 43333, 43334, August 22, 1996, and *Notice of Preliminary Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cookware From Mexico*, 63 FR 1430, 1431, January 9, 1998). Casting type is a production method, not a physical characteristic of the merchandise. As such, it is not an appropriate criterion for inclusion in our model match methodology.

Throughout this segment of the proceeding, the petitioners have argued that bloom casting makes the finished merchandise "better." The physical characteristic that makes the product better, say petitioners in their July 2, 1998, and August 6, 1998, letters, is the more uniform distribution of lead and bismuth within the steel, and enhanced manganese sulfide formation. In effect, the petitioners contend that these factors, as apparently determined by the casting method, are so important that they outweigh the shape, cut form, size, and grade of the merchandise in determining the most similar match. We find no basis on the record to support this contention.

No party has provided any information, nor did we find any evidence at verification, to indicate that customers order products specifying, among other things, lead and bismuth distribution and manganese sulfide formation. No party has provided any timely information, nor did we find any evidence at verification, that lead and bismuth distribution and manganese sulfide formation are measured, quantified, and tracked through the production process. Instead, the evidence on the record, as we verified, shows that customers order the subject merchandise by chemical composition (including grade), shape, cut form, and size. We found no evidence that either casting type, lead and bismuth distribution, or sulfide qualities were specified as part of a customer order. The only link between a customer order specification and the production process that we observed at verification was that, where ultrasound testing of the billet was requested, Saarstahl had to utilize a bloom cast billet (*see* Verification Report at pages 9–10). There is no information on the record of this proceeding, however, that a customer specification for ultrasound testing is equivalent to a specification for bloom casting.

We recognize that bloom casting results in a higher cost for producing the subject merchandise. However, a cost difference alone is not a sufficient basis to establish a model matching characteristic. As we noted in the last segment of the administrative review of the companion antidumping duty order on the subject merchandise from the United Kingdom, "the creation of a product concordance inherently relies upon the matching of significant physical characteristics, not on cost groupings in a company's cost accounting system." (*See, Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 63 FR 18879, 18881, April 16, 1998.) Consistent with our usual practice to compute weighted-average costs for identical (in terms of the Department's matching characteristics) merchandise produced at multiple production lines or facilities with different costs (*see, e.g.*, the Department's standard antidumping duty administrative review questionnaire at page D–2), we have followed our preliminary results methodology and calculated a weighted-average cost of bloom-cast and billet-cast models with the same physical characteristics.

Comment 2: Casting Type of Saarstahl's U.S. Sales

The petitioners contend that Department practice considers the data on mill test certificates to be definitive evidence of the physical characteristics of the merchandise sold. Therefore, based on the statement in the mill certificate that Saarstahl's U.S. sales

were produced from billets made from continuous cast blooms, the petitioners argue that, in fact, the U.S. sales were produced from continuous cast blooms. As such, the petitioners assert that the Department should apply facts available in calculating the margins for these sales due to the misreporting of the product and its attendant costs. In the alternative, should the Department conclude that the sales in question were actually produced from continuous cast billets, rather than blooms, the petitioners contend that the Department should disregard the U.S. sales in this review. According to the petitioners, because the mill certificates indicate that the merchandise was made from blooms, Saarstahl misled its customer as to the production of the merchandise and provided it with an inferior product than that indicated on each mill certificate. Thus, the petitioners continue, the U.S. sales cannot form an appropriate basis for the calculation of a dumping margin.

Saarstahl notes that its submissions in the course of this proceeding and the Department's examination of this issue at verification, including examination of production certificates, casting records and production instructions, all conclusively confirm that Saarstahl's U.S. sales were produced from continuous cast billets and not bloom-cast billets. Saarstahl adds that the petitioners fail to mention that directly below the statement in question on the mill test certificates is a reduction ratio that shows that the merchandise could not possibly have been made from blooms. Saarstahl continues that there is no basis on the record to support the petitioners' bald assertion that Saarstahl misled its customers about the nature of the merchandise. Saarstahl states that it produced the merchandise using its normal production process for leaded steels (i.e., billet-casting), and that there is no evidence that Saarstahl's production from continuous cast billets is in any way deficient or inferior.

DOC Position: We agree with Saarstahl. As Saarstahl notes, the Department thoroughly examined this issue at verification. While the mill certificates for the sales in question contain language that suggests the sales were produced from blooms, as cited by the petitioners, the same mill certificates also include the reduction ratio, which, as Saarstahl states, provides a quantifiable measure of the rolling process. As Saarstahl claimed and we verified, the reduction ratio on the mill certificate indicates a billet-cast product. All of the other evidence examined at verification, including customer purchase orders, invoices, heat certificates, heat production logs, and production "recipes," showed that the sales were produced from continuous cast billets (see Verification Report at pages 9–11). In light of the substantial evidence in support of Saarstahl's characterization of the U.S. sales as produced from continuous cast billets, as opposed to the petitioners' reliance on a single line in the mill certificate referencing continuous cast blooms, we conclude that the U.S. sales were produced from continuous cast billets. Thus, application of facts available in lieu of the use of the reported and verified data, as urged by the petitioners, is not warranted in this case.

We also find no factual basis on the record for the petitioner's contention that, if the sales were not produced from blooms, Saarstahl misled its customer. The customer's purchase order did not specify production method. Further, none of the sales documentation reported and reviewed at verification misrepresented the production of Saarstahl's sales to its customer. As discussed previously, the bloom-cast notation on the mill certificate is followed by the reduction ratio, which shows that cast billets were used in the production process. Thus, it appears that the customer received sufficient information to determine if its specifications were met. We also found no indication that Saarstahl's customer rejected the merchandise or otherwise complained about the product for alleged misrepresentation. In sum, there is no basis on the record to reject Saarstahl's reported POR sales.

Comment 3: Adjusting Saarstahl's Costs for Over-reporting

Saarstahl states that, at verification, it demonstrated that it over-reported certain costs of production because it reported costs based on exchange rate loss estimates and imputed personnel expenses for fringe benefits, as recorded in its cost accounting system. According to Saarstahl, its actual expenses for these items were lower than reported, as it experienced an exchange rate gain during the POR, and its actual personnel expenses were lower than the imputed amount. Therefore, Saarstahl contends that the Department should adjust its costs downward to reflect these actual costs.

The petitioners respond that these adjustments should not be made because they represent new information provided by Saarstahl for the first time at verification. The petitioners state that these adjustments are inconsistent with Saarstahl's own cost accounting system and should be rejected.

DOC Position: We agree with the petitioners that the information is untimely. While we successfully verified Saarstahl's costs, as reported to the Department in a timely manner, the claimed adjustments between the cost and financial accounting systems were never reported to the Department prior to verification. Thus, these adjustments were not part of the cost of production questionnaire response that was the subject of verification.

Comment 4: Correction of Production Quantities for Weight-Averaging of Costs

The petitioners state that, if the Department declines to include casting method as a product characteristic, as discussed above, then it should correct the reported production quantities used for the weight-averaging of costs. The petitioners refer to the Department's finding at verification that Saarstahl did not subtract the production quantities of bloom-cast and secondary merchandise from the billet-cast total, resulting in the double-counting of some products and the understatement of costs in the weighted-average total. Accordingly, the petitioners contend that the Department should adjust the production quantities in calculating the weighted-average costs.

Saarstahl states that it properly reported its cost of production based upon the explicit directions given by the Department. Saarstahl claims that the Department's observation that, for sales sampled at verification, Saarstahl over-reported the production quantity for billet-cast products is not universally true for all of Saarstahl's reported products. Should the Department combine and weight-average its reported costs, as it did for the preliminary results, Saarstahl contends that the Department should do so in a way that does not negatively impact Saarstahl.

DOC Position: Although we stated in the Verification Report at pages 18–19 that the double-counting of production quantities for a billet-cast product observed at verification appeared to apply to all of Saarstahl's billet-cast products, further analysis of the cost of production data indicates that this situation is not necessarily the case. For example, the cost of production data base includes products where the reported production quantity for a bloom-cast product is greater than the production quantity reported for a billet-cast product with identical physical characteristics. Therefore, we have revised the reported production quantity only for the product identified in the Verification Report for which we

verified that the production quantity was double counted.

Comment 5: Bill of Exchange Payment Date

Saarstahl asserts that it properly reported the date it received a bill of exchange from a home market customer as the payment date for purposes of calculating imputed credit. Saarstahl states that a bill of exchange is a negotiable monetary instrument that has a cash value on the date of its receipt, thus Saarstahl's reporting of the bill receipt in the same manner as a cash payment was proper.

DOC Position: We have made no changes to Saarstahl's reporting of sales paid by a bill of exchange. Even if a bill of exchange receipt were considered to be equivalent to a cash payment, in these particular circumstances, there is no significant difference in calculating imputed credit between Saarstahl's reporting method, which includes an extra fee charged to the customer to account for either the extra payment period or discounting of the bill at a bank (*see* Verification Report at pages 23–24), and a methodology based on the actual date cash was received. Therefore, for purposes of this review, we have made no adjustment.

Final Results of the Review

As a result of this review, we have determined that the following margins exist for the period March 1, 1997 through February 28, 1998:

Manufacturer/ exporter	Period	Margin (percent)
Saarstahl AG (Saarstahl)	3/1/97–2/28/98	0.00

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those same sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of the subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

Further, the following deposit requirements shall be effective for all shipments of the subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Saarstahl will be the rate established above in the "Final Results of Review" section; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 85.05 percent, the all others rate established in the final determination of the LTFV investigation (58 FR 6205, January 27, 1993).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20449 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 6, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (64 FR 16699). This review covers British Steel Engineering Steels Limited, a manufacturer/exporter of the subject merchandise to the United States, and the period March 1, 1997, through February 28, 1998. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain data, the final results differ from the preliminary results. The final results are listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration, Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4007, or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1997–1998 administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (64 FR 16699) (*Preliminary Results*). On June 15, 1999, British Steel Engineering Steels Limited (BSES) submitted its case brief. On June 23, 1999, Ispat Inland Inc. and USS/KOBE Steel Co. (the petitioners), submitted their rebuttal brief. The Department held a hearing on June 25, 1999. The Department has now completed its administrative review in accordance

with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Duty Absorption

On April 28, 1998, the petitioners requested that the Department determine whether antidumping duties had been absorbed by BSES during the period of review (POR), pursuant to section 751(a)(4) of the Act. Section 751(a)(4) of the Act provides that the Department, if requested, will determine during an administrative review initiated two years or four years after publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. In this case, BSES sold to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect on January 1, 1995, the Department will make a duty absorption determination upon request in administrative reviews initiated in 1996 or 1998. *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27394, May 19, 1997. This approach ensures that interested parties will have the opportunity to request a duty absorption determination prior to sunset reviews for entries for which the second and fourth years following an order have already passed. Because the order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom has been in effect since 1993, this is a transition order within the meaning of section 751(c)(6)(C) of the Act. Thus, as there has been a request for an absorption determination in this review (initiated in 1998), we are making a duty-absorption determination.

On January 29, 1999, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. BSES did not respond to the Department's request for information. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will pay the ultimately assessed duty. Therefore, we find that antidumping duties have been absorbed by the producer or exporter during the POR.

We have determined that there is a dumping margin on 63.37 percent of BSES's U.S. sales during the POR. Under these circumstances, therefore, we find that antidumping duties have been absorbed by BSES on 63.37 percent of its U.S. sales of subject merchandise.

Interested Party Comments

Comment 1: Model Matching Methodology

BSES argues that the Department should use dimension ranges rather than exact sizes to match products in this review. According to BSES, matching by size range has the advantage of including more home market sales in normal value (NV), which lessens the possibility that NV will be based on small quantities of non-representative sales. BSES further states that there is an objective and relevant system of dimension ranges inherent in its published price list. Moreover, because the Department has decided to employ dimension ranges in the matching methodology in future reviews, BSES asserts that such ranges should also be used in the present review. BSES adds that the petitioners supported matching dimension ranges in past reviews.

BSES also suggests that in order to decrease distortion and improve its matching methodology, the Department should place the product characteristic that identifies whether the product is in coils or straight (cut) ahead of the product characteristic that identifies the cross-sectional shape of the steel (shape). BSES argues that, because shape is preferred under the Department's current methodology, the Department might match, for example, a hexagonal bar in coil to a hexagonal straight bar, even though coiled bar has different costs, and thus prices, than straight bar of the same diameter and shape. Accordingly, BSES contends that it is important to match coiled bar to coiled bar, and straight bar to straight bar.

The petitioners argue that the Department should not change its model matching methodology at this late point in the current administrative review. The petitioners assert that the Department apparently has not yet decided whether to use actual sizes or size ranges in the 1998–1999 review, nor has it had the opportunity to test the suggested size ranges during a review, such as at a verification. Accordingly, the petitioners urge the Department to reject BSES's request and to continue to use actual size rather than size ranges for model matching purposes in this review.

Furthermore, the petitioners argue that the Department should reject BSES's proposed ranking of cut over shape in the model matching methodology. The petitioners claim that shape is a much more significant matching characteristic than cut, because any shape other than round requires a significant slowdown of the mill, which greatly increases production costs. The petitioners contend that this cost increase is a much more significant cost difference than that involved in the production of coiled versus straight bar. Finally, the petitioners argue that the Department apparently has rejected any revised ranking of cut and shape for purposes of the 1998–1999 review. Therefore, according to the petitioners,

the Department should maintain its ranking of shape before cut in the model matching hierarchy.

DOC Position: In the preliminary results of this review, we matched products by exact size rather than by dimension range, and prioritized cut before shape in the model match hierarchy, as we have done throughout the history of this case. The issue of revising the model matching methodology was first raised during the briefing stage of this administrative review, and was precipitated by our solicitation of comments on model matching for the purposes of the 1998–1999 review, and our issuance of a questionnaire for that review period. (See Letters from Irene Darzenta Tzafolias dated April 14, 1999 and June 10, 1999, placed on the record of the 1998–1999 administrative review.) Although we have requested dimension range information for purposes of the 1998–1999 review, we have not yet received and analyzed such information. Furthermore, there is insufficient information on the record of the 1997–1998 review with respect to cut and shape to compel us to change the established matching hierarchy at this late stage of the review. Therefore, we have not revised the model matching methodology in these final results.

Comment 2: Arm's -Length Test

BSES argues that the Department's arm's-length test program ignores the levels of trade that the Department identified in the preliminary results, comparing prices between affiliated and unaffiliated customers regardless of level of trade. In so doing, BSES claims that the program erroneously causes some customers to fail the arm's-length test. BSES states that the Department has accounted for the effect of level of trade on price, and has performed the arm's-length test by level of trade in other recent cases, such as *Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68432, December 11, 1998 (*Pasta from Turkey*). BSES adds that, by comparing sales prices to unaffiliated customers with sales prices to affiliated customers at the same level of trade, the arm's-length test is not distorted by comparing prices at different levels of trade. Accordingly, BSES asserts, the Department should follow its standard practice in the final results, and account for level of trade in performing the arm's-length test. BSES submits computer programming language to accomplish this change.

BSES also argues that the preliminary margin program contains a clerical error that caused the inadvertent exclusion of customers from the arm's-length test before the price comparisons were complete. Specifically, when the program failed to find an unaffiliated product match for an affiliated customer, it disqualified that affiliated customer from the test before testing whether the other products sold to that affiliated customer are also sold to unaffiliated customers. BSES contends that if the test is performed correctly, additional affiliated customers pass the arm's-length test. Accordingly, BSES argues, the Department should correct this clerical error for purposes of the final results. BSES submits computer programming language that would correct this error.

The petitioners argue that BSES's suggested computer programming language incorporating level of trade into the arm's-length test appears to be incomplete, because it does not allow for price comparisons at different levels of trade if no product match can be found at the same level of trade. Accordingly, the petitioners contend that the Department should not implement BSES" suggested programming language.

With regard to the clerical error that BSES alleges erroneously excludes customers from the data base before completion of the arm's-length test on all sales to those customers, the petitioners do not object to the correction of this error.

DOC Position: We agree with BSES that the preliminary arm's-length test should have accounted for level of trade in making affiliated to unaffiliated price comparisons, in accordance with the Department's practice. *See Pasta from Turkey* at 63 FR at 68432. We also agree with BSES" suggested programming language in this regard, and have changed the arm's-length test program accordingly in the final results.

We disagree with the petitioners that BSES's suggested programming language is incomplete because it does not allow for price comparisons at different levels of trade if no product match can be found at the same level of trade. The purpose of the methodology employed in the Department's arm's-length test is to compare sales prices to unaffiliated customers to sales prices to affiliated customers at the same level of trade. *See Pasta from Turkey*. As BSES points out in its case brief, in this way the arm's-length test measures the true relationship between these prices and is not distorted by price differences attributable to differentiation in levels of trade. Therefore, we have used only those sales of identical products at the same level of trade in making the arm's-length price comparisons.

Finally, we agree with BSES that a clerical error in the arm's-length test prevented the program from performing a complete comparison of affiliated to unaffiliated customer prices. We concur with BSES" suggested programming language in this regard, and have made the necessary corrections to the computer program for the final results.

Final Results of the Review

As a result of this review, we have determined that the following margin exists for the period March 1, 1997 through February 28, 1998:

Manufacturer/exporter	Period	Margin (percent)
BSES	3/1/97–2/28/98	6.17

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all examined sales and dividing this amount by the total quantity sold. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements shall be effective for all shipments of the subject merchandise from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for BSES will be the rate established above in the "Final Results of Review" section; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 25.82 percent, the all others rate established in the final determination of the less-than-fair-value investigation (58 FR 15324, March 22, 1993). The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility

under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20450 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Italy. This review covers shipments to the United States by seven respondents during the period of review (POR) July 1, 1997, through June 30, 1998.

We preliminarily find that, for certain respondents, sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in the final results, we will instruct the Customs Service to assess antidumping duties on the subject merchandise exported by these companies.

For three respondents, we preliminarily find that sales of the subject merchandise have not been made below normal value. If these preliminary results are adopted in the final results, we will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5288.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (1998).

Case History

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on certain pasta from Italy (61 FR 38547). On July 1, 1998, we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order, for the period July 1, 1997 through June 30, 1998 (63 FR 35909).

In accordance with 19 CFR 351.213(b), on July 31, 1998, Borden, Inc., Hershey Pasta and Grocery Group, Inc.,[1] and Gooch Foods, Inc. (the petitioners) requested a review of the following producers and exporters of pasta from Italy: Pastificio Antonio Pallante (Pallante); Arrighi S.p.A. Industrie Alimentari (Arrighi); Barilla Alimentari S.R.L. (Barilla); N. Puglisi & F. Industria Paste Alimentare S.p.A. (Puglisi); La Molisana Industrie Alimentari S.p.A. (La Molisana); Pastificio Fratelli Pagani S.p.A. (Pagani); and Rummo S.p.A. Molino e Pastificio (Rummo). The petitioners subsequently withdrew their request for a review of Arrighi, Barilla and Pagani prior to initiation. In addition, the following producers and/or exporters of pasta from Italy requested an administrative review in accordance with 19 CFR 351.213(b)(2): Rummo; La Molisana; Puglisi; Pallante; F.lli De Cecco di Filippo Fara S. Martino S.p.A. (De Cecco); Pastificio Maltagliati S.p.A. (Maltagliati); Riscossa F.lli Mastromauro S.r.l. (Riscossa); Commercio-Rappresentanze-Export S.r.l. (Corex); Pastificio Fabianelli S.p.A. (Fabianelli); Industria Alimentari Colavita S.p.A. (Indalco); and F. Divella Molina e Pastificio (Divella). On August 27, 1998, we published the notice of initiation of this antidumping duty administrative review covering the period of July 1, 1997 through June 30, 1998 (*Notice of Initiation*, 63 FR 45796). After initiation, Divella, Fabianelli, Indalco, and Riscossa withdrew their requests for review. *See* Partial Rescission of Antidumping Duty Administrative Review section, below.

Because the Department had disregarded sales that failed the cost test during the preceding review of De Cecco, La Molisana, Puglisi and Rummo, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP). Therefore, we initiated cost investigations on these four companies at the time we initiated the antidumping review.

On September 1, 1998, we issued an antidumping questionnaire[2] to all of the companies subject to review. After several extensions, the respondents submitted their responses to sections A through C (or D, where applicable) of the questionnaire by November 5, 1998.

On November 12, 1998, the petitioners alleged that Corex and Maltagliati had sold the foreign like product at prices below the COP. On December 22, 1998, we initiated a sales-below-cost investigation with respect to both companies. On December 14, 1998, the petitioners also alleged that Pallante had also sold the foreign like product at prices below the COP. We initiated a sales below cost investigation with respect to Pallante on January 4, 1999. All the companies submitted their COP responses by February 2, 1999.

The Department issued its supplemental section A questionnaires in November 1998, and supplemental sections B and C questionnaires in

---

[1] Effective January 1, 1999, Hershey Pasta and Grocery Group, Inc., became New World Pasta, Inc.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively. Section D requests additional information about the cost of production of the foreign like product and constructed value of the merchandise under review.

January 1999. Supplemental section D questionnaires were issued in February 1999. Responses to all supplemental questionnaires were received by March 23, 1999.

We verified the sales and cost information submitted by Rummo from April 12 through April 20, 1999 and May 17 through 19, 1999. From April 22 through April 30, 1999, we verified the sales and cost information submitted by Maltagliati.

On March 12, 1999, the Department published a notice postponing the preliminary results of this review until June 30, 1999 (64 FR 12287). On June 16, 1999, the Department published a notice further postponing the preliminary results of this review until August 2, 1999 (64 FR 32213).

Partial Rescission of Antidumping Duty Administrative Review

On September 25, 1998, Divella and Fabianelli withdrew their requests for a review. Indalco withdrew its request for a review on September 29, 1998. Riscossa withdrew its request on November 17, 1998. Because there were no other requests for reviews of these companies, and because the companies' letters withdrawing their requests for review were timely filed, we are rescinding the review with respect to these companies in accordance with 19 CFR 351.213(d)(1).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione (IMC), by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation against Barilla, an Italian producer and exporter of pasta. On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Act, circumvention of the antidumping duty order is occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently are repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta From Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum From John Brinkmann to Richard Moreland*, dated May 24, 1999.

Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by Maltagliati and Rummo. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports placed in the case file.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV). We first attempted to compare contemporaneous sales of products sold in the U.S. and comparison markets that were identical with respect to the following characteristics: pasta shape; type of wheat; additives; and enrichment. However, we did not find any comparison market sales of merchandise that were identical in these respects to the merchandise sold in the United States. Accordingly, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773 (a)(4) of the Act.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP where the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts on our record. We calculated CEP where sales to the first unaffiliated purchaser took place after importation. We based EP and CEP on the packed CIF, ex-factory, FOB, or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. Where appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage handling and loading

charges, export duties, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight from port to the customer). In addition, where appropriate, we increased the EP and CEP by the amount of the countervailing duties paid that were attributable to an export subsidy, in accordance with section 772(c)(1)(C).

For CEP, in accordance with section 772(d)(1) of the Act, where appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, credit costs, warranties, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred in the exporting country and the indirect selling expenses of affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with section 772 (d)(3) and (f) of the Act.

Certain respondents reported the resale of subject merchandise purchased in Italy from unaffiliated producers. Where an unaffiliated producer of the subject pasta knew at the time of the sale that the merchandise was destined for the United States, the relevant basis for the export price would be the price between that producer and the respondent. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50876 (September 23, 1998). In this review, the unaffiliated producers knew or had reason to know at the time of sale that the ultimate destination of the merchandise was the United States because virtually all enriched pasta is sold to the United States. Accordingly, such transactions were disregarded for purposes of our analysis.

Consistent with our methodology in prior reviews (*Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615, 6617 (February 10, 1999)), when respondents purchased pasta from other producers and we were able to identify resales of this merchandise to the United States, we excluded sales of the purchased pasta from the margin calculation. Where the purchased pasta was commingled with the respondent's production and we could not identify the resales, we examined both sales of produced pasta and resales of purchased pasta. Inasmuch as the percentage of pasta purchased by any single respondent was an insignificant part of its U.S. sales data base, we included the sales of commingled purchased pasta in our margin calculations.

Normal Value

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because, with the exception of Corex, each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers, except Corex.

Corex reported that it made no home market sales during the POR. Therefore, in accordance with section 773(a)(1)(B)(ii) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the respondent's largest third-country market, Sweden, which had an aggregate sales quantity greater than five percent of the aggregate quantity sold in the United States.

B. Cost of Production Analysis

Before making any comparisons to normal value, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the cost of production. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A) and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted, except in the specific instances discussed below.

Corex

We reclassified certain expenses reported as indirect selling expenses as G&A and revised Corex's G&A ratio. *See* Memorandum from Cindy Robinson to John Brinkmann dated August 2, 1999 (Corex Analysis Memo).

Maltagliati

For semolina cost we used the weighted-average cost of semolina, adjusted for loss in processing, found at verification. We also recalculated G&A to include payments Maltagliati made to an affiliate for financial services. *See* Memorandum from Constance Handley to John Brinkmann dated August 2, 1999 (Maltagliati Analysis Memo).

Rummo

We recalculated G&A to include rental and amortization expenses found at verification. *See* Memorandum from James Kemp to John Brinkmann dated August 2, 1999 (Rummo Analysis Memo).

Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared the weighted-average COP for each respondent to their comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the 12 month period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2) (B) and (C) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For one company, Corex, we found that all comparison market sales were below the COP.

Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with section 773(a)(6) (A) and (B) of the Act, we deducted comparison market packing costs and added U.S. packing costs. In addition, we made circumstance of sale (COS) adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges and interest revenue, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using POR-average costs.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to normal value for the lesser of (1) The amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to normal value following the same methodology.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were treated in the same manner described above in the "Export Price and Constructed Export Price" section of this notice.

Normal Value Based on Constructed Value

For Corex, we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade. Therefore, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. We calculated Corex's CV based on the methodology described in the "Cost of Production Analysis" section of this notice, above.

Because there were no above-cost comparison market sales and hence no actual company-specific profit data available for Corex's sales of the foreign like product to the comparison market, we calculated profit expenses in accordance with section 773(e)(2)(B)(i) of the Act. Section 773(e)(2)(B)(i) states that SG&A and profit may be determined on the basis of the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise. In this case, for CV profit, we used Corex's 1997 financial statement profit margin. For SG&A, we have used Corex's actual expenses incurred in Italy on comparison market sales because this data reflects Corex's actual experience in selling the foreign like product. (*See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, 56615 (October 22, 1998)).

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade as the U.S. EP and CEP sales, to the extent practicable. When there were no sales at the same level of trade, we compared U.S. sales to comparison market sales at a different level of trade. When NV is based on CV, the level of trade is that of the sales from which we derive SG&A expenses and profit.

To determine whether comparison market sales were at different levels of trade we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales were at a different level of trade and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV level was more remote from the factory than the CEP level and there was no basis for determining whether the difference in levels between NV and CEP affected price comparability, we granted a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For a detailed description of our level-of-trade methodology and company-specific level of trade findings for these preliminary results, *see* the August 2, 1999, *97/98 Administrative Review of Pasta from Italy and Turkey: Level of Trade Findings Memoranda* on file in the Import Administration's Central Records Unit (Room B–099) of the main Commerce building. The company-specific level of trade analysis is included in the analysis memorandum for each company.

The U.S. Court of International Trade (CIT) has held that the Department's practice of determining LOTs for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.*, v. *United States*, 4 F. Supp.2d 1221, 1241–42 (CIT March 26, 1998) (*Borden*); *see also, Micron Technology, Inc.* v. *United States*, Court No. 96–06–01529, Slip Op. 99–02 at 8–15 (CIT, January 28, 1999). The Department believes, however, that its practice is in full compliance with the statute and that these CIT decisions do not contain persuasive statutory analysis. On June 4, 1999, the CIT entered final judgment in *Borden* on the LOT issue. *See Borden, Inc.*, v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government is considering an appeal of *Borden*. The *Micron* case is on remand to the Department for application of the *Borden* LOT decision in the underlying administrative proceeding. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated in the Department's regulations at § 351.412.

Company-Specific Issues

Corex

We recalculated the indirect selling expense ratio based on information

submitted in January 21, 1999 section D response. *See* Corex Analysis Memo.

Maltagliati

We made corrections to both the U.S. and home market databases based on our verification findings. Specifically, we recalculated credit, inventory carrying costs, home market freight from plant to customer, home market commissions and U.S. bank charges, and indirect selling expenses and advertising in both markets. In addition, certain allocated expenses, including inland freight from plant to warehouse for U.S. sales, warehousing expense for U.S. sales, were reported correctly in the narrative portion of the response, but not in the database. We have incorporated the correct amount for those expenses into the database.

In addition, Maltagliati included a small quantity of sales in its database which it described as "free pasta but billed to parent at full price." At verification, we determined that these transactions involved Maltagliati providing pasta to affiliated companies to give away as gifts. We have determined that these sales were outside the ordinary course of trade and removed them from our calculation of normal value. *See* Maltagliati Analysis Memo.

La Molisana

La Molisana claimed a level of trade adjustment on the basis of different selling activities associated with their La Molisana ("LM") brand and private label ("PL") products sold in both the home market and the United States. Consistent with the first review, we found that different brands are not an appropriate basis for establishing different levels of trade. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615, 6624 (February 10, 1999) (Comment 10A).

Pallante

We recalculated home market warranty expenses, advertising, and imputed credit expenses. We recalculated inventory carrying costs for the U.S. and home market based on the cost of manufacture. *See Memorandum from Dennis McClure to John Brinkmann* dated August 2, 1999 (Pallante Analysis Memo).

Rummo

We recalculated U.S. credit expenses, based on the corrected pay-dates which Rummo supplied at verification. We also removed warehousing expenses and certain advertising expenses from indirect selling expenses incurred in the United States and treated them as a movement expenses and direct advertising expenses, respectively. Indirect selling expenses incurred in the United States were recalculated to reflect this change and to include other applicable expenses found at verification. We disallowed two home market billing adjustments because we were unable to tie the adjustments claimed to the sales made during the POR. *See* Rummo Analysis Memo.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 1997 through June 30, 1998:

Manufacturer/exporter	Margin (percent)
Corex	0.00
De Cecco	[1]0.48
La Molisana	18.38
Maltagliati	19.19
Pallante	3.44
Puglisi	[1]0.19
Rummo	2.99

[1] Deminimus.

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the date of filing of case briefs. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments, within 120 days from the publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service not to assess antidumping duties on Corex's, De Cecco's or Puglisi's entries of the merchandise subject to the review.

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.26

percent, the "All Others" rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration

[FR Doc. 99–20447 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Pasta From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Turkey. This review covers shipments to the United States by two respondents during the period of review (POR) July 1, 1997, through June 30, 1998.

We preliminarily find that, for one respondent, sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in the final results, we will instruct the Customs Service to assess antidumping duties on the subject merchandise exported by this company.

For the other respondent, we preliminarily find that sales of the subject merchandise have not been made below normal value. If these preliminary results are adopted in the final results, we will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5288.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (1998).

Case History

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Turkey (61 FR 38545). On July 1, 1998, we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order for the period July 1, 1997 through June 30, 1998 (63 FR 35909).

In accordance with 19 CFR 351.213(b), on July 31, 1998, Borden, Inc., Hershey Pasta and Grocery Group, Inc.,[1] and Gooch Foods, Inc. (the petitioners) requested a review of Pastavilla Kartal Makarnacilik Sanayi ve Ticaret A.S. (Pastavilla). On July 31, 1998, Maktas Makarnacilik ve Tic. A.S. (Maktas) and Pastavilla, requested an administrative review, in accordance with 19 CFR 351.213(b)(2). On August 27, 1998, we published the notice of initiation of this antidumping duty administrative review covering the period of July 1, 1997 through June 30, 1998 (*Notice of Initiation*, 63 FR 45796).

Because the Department had disregarded sales that failed the cost test during the preceding review of Pastavilla and during the investigation of Maktas, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production. Therefore, we initiated cost investigations on these two companies at the time we initiated the antidumping review.

On September 1, 1998, we issued an antidumping questionnaire to Maktas and Pastavilla.[2] Pastavilla submitted its section A questionnaire response on October 6, 1998, and sections B, C, and D on November 5, 1998. We received Maktas's response to section A on September 23, 1998, and sections B, C, and D on October 26, 1998.

The Department issued supplemental questionnaires to Pastavilla for sections B and C on January 27, 1999, and section D on February 8, 1999. On February 17, 1999, we issued to Maktas a supplemental questionnaire for sections A, B, C, and D. Pastavilla submitted its response to our supplemental questionnaires for sections B, C, and D on February 24, 1999. Maktas submitted its response to our supplemental questionnaire on March 23, 1999.

We issued a second supplemental questionnaire to Pastavilla for sections B and D on March 11, 1999. Pastavilla submitted its response to our second supplemental questionnaire on March 18, 1999.

On March 12, 1999, the Department published a notice postponing the preliminary results of this review until June 30, 1999 (64 FR 12287). On June 16, 1999, the Department published a notice further postponing the preliminary results of this review until August 2, 1999 (64 FR 32213).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or

---

[1] Effective January 1, 1999, Hershey Pasta and Grocery Group, Inc., became New World Pasta, Inc.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively. Section D requests additional information about the cost of production of the foreign like product and constructed value of the merchandise under review.

canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pound four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999.

Comparisons to Normal Value

To determine whether sales of pasta from Turkey were made in the United States at less than fair value, for Pastavilla, we compared the constructed export price (CEP) to the normal value (NV); for Maktas, we compared the export price (EP) to the NV. Because Turkey's economy experienced high inflation during the POR (over 60 percent), as is Department practice, we limited our comparisons to comparison market sales made during the same month in which the U.S. sale occurred and did not apply our "90/60 contemporaneity rule" (*see, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68430 (December 11, 1998) and *Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42503 (August 7, 1997)). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and comparison market sales. We attempted to compare sales of products sold in the U.S. and comparison market within the same month that were identical with respect to the following characteristics: pasta shape; type of wheat; additives; and enrichment. When we did not find any comparison market sales of merchandise that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order of priority.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP where the merchandise was sold directly to the first unaffiliated purchaser in the United States or to an unaffiliated trading company in Turkey prior to importation and CEP was not otherwise warranted based on the facts on our record. We calculated CEP where sales to the first unaffiliated purchaser took place after importation into the United States. We based EP and CEP on packed CIF, ex-factory, FOB or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. Where appropriate, we reduced these prices to reflect discounts.

In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage and handling, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight from port to the customer). In accordance with section 772(c)(1)(B) of the Act, for Maktas, we added to the EP the amount of duty drawback on imported durum wheat. In addition, we increased the EP and CEP by the amount of the countervailing duties paid that were attributable to an export subsidy, in accordance with section 772(c)(1)(C) of the Act.

For CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including imputed credit costs and indirect selling expenses that related to economic activity in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) and (f) of the Act.

Normal Value

A. Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the comparison market to serve as a viable basis for calculating NV, we compared Pastavilla's and Maktas' volume of comparison market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1) (B) and (C) of the Act, because each respondent's aggregate volume of comparison market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the comparison market was viable for both Pastavilla and Maktas.

B. Cost of Production Analysis

Before making any comparisons to normal value, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether Pastavilla's and Maktas' comparison market sales were made below the cost of production. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A) and packing, in accordance with section 773(b)(3) of the Act. We relied on Pastavilla's and Maktas' information as submitted, except in the specific instances discussed below.

As noted above, we determined that the Turkish economy experienced high inflation during the POR. Therefore, to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Pastavilla and Maktas submit the product-specific cost of manufacturing (COM) incurred during each month of the POR. We calculated a POR-average COM for each product after indexing the reported monthly costs during the POR to an equivalent currency level using the Turkish wholesale price index from the *International Financial Statistics* published by the International Monetary Fund (IMF). We then restated the POR-average COM to the cost respective of each month.

Pastavilla

We recalculated the G&A and interest factors, using the wholesale price index from the *International Financial Statistics* published by the IMF, to be consistent with our indexation of other costs used in calculating cost of production and constructed value. (*See Analysis Memorandum to John Brinkmann from Dennis McClure* dated August 2, 1999, for further details.)

Maktas

Maktas was not able to provide the requested production quantities for its revised control numbers. Therefore, we have calculated a weighted-average cost based on the production quantities

originally reported for each control number. (*See Analysis Memorandum to John Brinkmann from Cindy Robinson* dated August 2, 1999, for further details.)

Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared the product-specific monthly COPs (less selling expenses) to comparison market sales of the foreign like product in order to determine whether sales had been made at prices below the COP. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the 12 month period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POR-average costs (indexed for inflation), we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-factory or delivered prices to comparison market customers. We made deductions from the starting price for loading, inland freight, inland insurance, discounts, and rebates. In accordance with section 773(a)(6)(A) and (B) of the Act, we deducted comparison market packing costs and added U.S. packing costs. In addition, we made circumstance of sale adjustments for direct expenses, including imputed credit expenses, advertising, Export/Import Bank insurance against non-payment, and warranty expenses, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR-average costs indexed for inflation.

Consistent with our methodology in prior reviews (*Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615, 6617 (February 10, 1999)), where possible we excluded sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market from our analysis. However, where the purchased pasta was commingled with the respondent's production and we could not identify the resales, we examined both sales of the produced pasta and resales of the purchased pasta in the comparison market. Since we found the percentage of pasta purchased by any single respondent to be an insignificant part of its comparison market sales data base, we included the sales of commingled purchased pasta in our margin calculations.

Sales to Affiliated Parties

Pastavilla and its affiliated comparison market distributor made home-market sales to certain affiliated grocery stores during the POR. The individual sales of pasta by these affiliated grocery stores to their unaffiliated customers were not available. Therefore, in accordance with § 351.403(c) of the Department's regulations, we performed an analysis to determine whether the prices to the affiliated grocery stores were comparable to the prices to unaffiliated parties. Examining identical products only, we compared Pastavilla's and its comparison market distributor's prices to each affiliated party to prices charged to all unaffiliated customers, net of all movement charges, discounts, rebates, direct expenses, and packing. Where prices to an affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to that affiliated party were at arm's length (*see* 19 CFR 351.403(c) and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68430 (December 11, 1998)). We only included in our margin analysis sales to affiliated parties that were made at arm's length.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade as the U.S. EP and CEP sales, to the extent practicable. When there were no sales at the same level of trade, we compared U.S. sales to comparison market sales at a different level of trade.

To determine whether comparison market sales were at different levels of trade we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales were at a different level of trade and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV level was more remote from the factory than the CEP level and there was no basis for determining whether the difference in levels between NV and CEP affected price comparability, we granted a CEP offset, as provided in section 773(a)(7)(B) of the Act. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).)

For a detailed description of our level-of-trade methodology and company-specific level of trade findings for these preliminary results, *see* the August 2, 1999, *97/98 Administrative Review of Pasta from Italy and Turkey: Level of Trade Findings Memoranda* on file in the Import Administration's Central Records Unit (Room B–099) of the main Commerce building. The company-specific level of trade analysis is included in the analysis memorandum for each company.

The U.S. Court of International Trade (CIT) has held that the Department's practice of determining LOTs for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.*, v. *United States*, 4 F. Supp.2d 1221, 1241–42 (CIT 1998) (*Borden*); *see also, Micron Technology, Inc.* v. *United States*, Court No. 96–06–01529, Slip Op. 99–02 at 8–15 (CIT, January 28, 1999). The Department believes, however, that its practice is in full compliance with the statute and that these CIT decisions do

not contain persuasive statutory analysis. On June 4, 1999, the CIT entered final judgment in *Borden* on the LOT issue. *See Borden, Inc.*, v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government is considering an appeal of *Borden*. The *Micron* case is on remand to the Department for application of the *Borden* LOT decision in the underlying administrative proceeding. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated in the Department's regulations at § 351.412.

Company-Specific Issues

Maktas

We recalculated comparison market credit expenses to account for both reported billing adjustments, where appropriate. We also recalculated inventory carrying costs for the comparison market. *See Analysis Memorandum to John Brinkmann from Cindy Robinson* dated August 2, 1999, for further details.

Pastavilla

We reclassified Pastavilla's comparison market channel of trade and customer category for one observation. We recalculated comparison market imputed credit expenses, indirect selling expenses, and inventory carrying costs. In addition, we have recalculated inventory carrying costs for U.S. sales. *See Analysis Memorandum to John Brinkmann from Dennis McClure* dated August 2, 1999, for further details.

Currency Conversion

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and comparison market sales to those occurring in the same month (as described above) and used daily exchange rates. (*See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68430 (December 11, 1998).)

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 1997 through June 30, 1998:

Manufacturer/exporter	Margin (percent)
Maktas	1.57
Pastavilla	0.00

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice (*see* 19 CFR 351.224(b)). Any interested party may request a hearing within 30 days of the date of publication of this notice. (*see* 19 CFR 351.310(c)). Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date of filing of case briefs. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments, within 120 days from the publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries by applying the assessment rate to its entered value of the merchandise. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties on Maktas' entries of the merchandise subject to the review. We will instruct Customs Service not to assess antidumping duties on Pastavilla's entries of the merchandise subject to the review.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for Pastavilla and Maktas will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 51.49 percent, the "All Others" rate established in the LTFV investigation (*See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38546 (July 24, 1996)).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20448 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–805]

Notice of Extension of Time Limits for the Preliminary Results of Administrative Review of the Suspension Agreement on Silicomanganese From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for the preliminary results of administrative review of the suspension agreement on silicomanganese from Ukraine.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits for the preliminary results of the administrative review on the suspension agreement on silicomanganese from Ukraine.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Rick Johnson; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0165 or (202) 482–3818, respectively.

Extension of Preliminary Results

The Department published its notice of initiation of this review in the **Federal Register** on December 23, 1998 (63 FR 71091). Because it is not practicable to issue the preliminary results of review by the current deadline of August 2, 1999, the Department is extending the time limits for the preliminary results of the aforementioned review 120 days, to November 30, 1999, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended by the Uruguay Round Agreements Act of 1994 (for a further discussion, *see* the August 2, 1999 *Decision Memorandum from Joseph A. Spetrini to Robert S. LaRussa: Request to Extend Preliminary Results in the Review of the Antidumping Duty Suspension Agreement on Silicomanganese from Ukraine*).

This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 99–20453 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Preliminary Results, Intent To Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results, intent to revoke in part, partial rescission of antidumping duty administrative review, and extension of time limits.

SUMMARY: In response to requests by American Silicon Technologies, Elkem Metals Company, and Globe Metallurgical, Inc. (petitioners), and by Companhia Brasileira Carbureto De Calcio (CBCC), Ligas de Aluminio S.A. (LIASA), and RIMA Industrial S/A (RIMA), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicon metal from Brazil. The period of review (POR) is July 1, 1997 through June 30, 1998.

We preliminarily determine that one respondent (Eletrosilex S.A. (Eletrosilex)) sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs to assess antidumping duties on all appropriate entries. We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument: (1) A statement of the issue(s), and (2) a brief summary of the argument (not to exceed five pages).

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor (RIMA), telephone: (202) 482–5831; Jack Dulberger (Eletrosilex), 482–5505; Mark Manning (LIASA), 482–3936, Zev Primor (CBCC), 482–4114; AD/CVD Enforcement, Office Four, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1998).

Background

On July 31, 1991, the Department published in the **Federal Register** the antidumping duty order on silicon metal from Brazil (56 FR 36135). On July 1, 1998, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1997 through June 30, 1998 (63 FR 35909). On July 29, 1998, in accordance with 19 CFR 351.213(b)(1), LIASA and RIMA requested that the Department conduct an administrative review of their respective sales. On July 30, 1998, CBCC requested that the Department conduct an administrative review of its sales and revoke the order with respect to CBCC pursuant to 19 CFR 351.222(e). On July 31, 1998, petitioners requested that the Department conduct an administrative review of sales made by CBCC, Eletrosilex, LIASA, Companhia Ferroligas Minas Gerais—Minasligas (Minasligas), and RIMA. On August 27, 1998, in accordance with 19 CFR 351.221(b)(1), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review (63 FR 45796). On September 18, 1998, the Department issued the antidumping administrative review questionnaire (antidumping questionnaire) to the respondents. The Department is conducting this review in accordance with section 751 of the Act.

The Department received questionnaire responses in October, November, and December 1998. We issued supplemental questionnaires to the parties in April, May, and June 1999, and received responses to these supplemental questionnaires in April, May, June, and July 1999.

Extension of Time Limits

On February 9, 1999 in accordance with section 751(a)(3)(A) of the Act, the Department published in the **Federal Register** its notice extending the deadline for the preliminary results until July 31, 1999 (64 FR 6325).

Additionally, because it is not practicable to complete the final results of this review within the initial time limit established by the URAA (120 days after the date on which the preliminary results are published), in

accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the final results until 180 days after the date of publication of these preliminary results. See the Memorandum from Bernard T. Carreau to Robert S. LaRussa, dated August 2, 1999, on file in the Central Records Unit (CRU) located in room B–099 of the main Department of Commerce building.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Period of Review

The POR is July 1, 1997 through June 30, 1998.

Verification

Following the publication of these preliminary results, we plan to verify, as provided in section 782(i) of the Act, sales and cost information submitted by CBCC. At that verification, we will use standard verification procedures, including on-site inspection of the manufacture's facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. We plan to prepare a verification report outlining our verification results and place this report on file in the CRU.

Partial Rescission: Minasligas

Minasligas claimed to have made no shipments of silicon metal from Brazil to the United States during the POR. As a result of our analysis of factual information submitted to us during the course of this review, we have determined that Minasligas made no shipments of silicon metal from Brazil to the United States during the POR. We confirmed with the United States Customs Service (Customs) that Minasligas did not have entries of subject merchandise during the POR. Therefore, we are rescinding the review with respect to Minasligas.

Intent To Revoke

On July 30, 1998, CBCC submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the order covering silicon metal from Brazil with respect to its sales of this merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from CBCC that for a consecutive three-year period, including this review period, it had sold the subject merchandise in commercial quantities at not less than normal value (NV), and would not do so in the future. CBCC also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, it sold the subject merchandise at less than NV.

On January 28, 1999, the Department requested additional information from CBCC and interested parties regarding CBCC's revocation request. We received comments from CBCC and from petitioners in June 1999.

The Department's regulations at 19 CFR 351.222(e)(1) require, inter alia, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities during each of the three years forming the basis of the request; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than NV; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. See 19 CFR 351.222(b)(2).

Petitioners do not challenge CBCC's fulfilment of the certification requirements. However, petitioners oppose CBCC's claims that it sold silicon metal in the United States in commercial quantities during the last three PORs and that it is not likely to sell its merchandise in the future at less than NV.

In determining whether the three years of no dumping are a sufficient basis to make a revocation determination, the Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Pure Magnesium from Canada: Final Results of Antidumping Duty Administrative Reviews and Determination Not To Revoke in Part*, 64 FR 12977 (March 16, 1999) (*Pure Magnesium from Canada*). This practice is codified at 19 CFR 351.222(d)(1), which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply." For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

After review of the record, in the present case, the Department has preliminarily found that CBCC has had zero or *de minimis* dumping margins for four consecutive reviews. Although in one of the four years the sales were not as extensive as in the other three years, we note that sales in the remaining three years were all made in commercial quantities. Furthermore, CBCC shipped progressively more silicon metal to the United States in each of those three years (*i.e.*, these three years represent, respectively, approximately 30, 45, and 70 percent in comparison with the quantity shipped during the period of investigation). Moreover, while increasing its sales volume, CBCC maintained zero or *de minimis* margins despite the fact that the last three years were marked with depressed prices and global oversupply of silicon metal. CBCC has also agreed to its immediate reinstatement in the order if we conclude, subsequent to the revocation, that CBCC has sold the subject merchandise at less than NV.

Based on its four consecutive years of zero or *de minimis* margins, three of which had exports to the United States in significant commercial quantities, CBCC's reinstatement agreement, and the absence of evidence to the contrary, we conclude that it is not likely that CBCC will sell subject merchandise in the United States at less than normal value. Consequently, as a result of our analysis of factual information submitted to us during the course of this review, we have preliminarily determined to revoke this order with respect to CBCC.

Normal Value Comparisons

To determine whether sales of silicon metal by the Brazilian respondents to the United States were made at less than normal value, we compared export price (EP) to the NV, as described in the "*Export Price*" and "*Normal Value*" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the "*Scope of Review*" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Further, based on comments submitted by the respondents and petitioners in this segment of the proceeding, we have preliminarily determined all silicon metal meeting the description of the merchandise under the "*Scope of Review*" section, above (with the exception of slag and contaminated products) to be identical products for purposes of model-matching. Therefore, where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In determining whether separate LOTs actually existed in the home and U.S. markets for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

CBCC reported sales through one LOT, consisting of three customer categories (*i.e.*, original equipment manufacturers, distributors and silicon metal producers) which also represent three channels of distribution for its home market sales. CBCC reported only EP sales in the U.S. market. For EP sales, CBCC reported one customer category and one channel of distribution (*i.e.*, direct sales to an unaffiliated trading company, for sale to the U.S. market). CBCC claimed in its response that EP sales were made at the same LOT as home market sales to unaffiliated customers. For this reason, CBCC has not asked for a LOT adjustment to NV for comparison to its EP sales.

In analyzing CBCC's selling activities for the home and U.S. market, we determined that essentially the same services were provided for both markets. These selling activities in both markets were minimal in nature and usually limited to arranging for freight, if requested by the customer. No other services were rendered for either home market or EP sales. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for CBCC.

Rima reported sales through one channel of distribution to one customer category (*i.e.*, original equipment manufacturers) for home market sales. In the U.S. market, Rima reported EP sales through one channel of distribution to one customer category (*i.e.*, end users). In its response, Rima stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, Rima has not requested a LOT adjustment.

In analyzing Rima's selling activities for the home and U.S. market, we determined that essentially the same services were provided for both markets. These selling activities in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for CBCC.

Eletrosilex reported sales through one LOT consisting of two customer categories (i.e., original equipment manufacturers and retailers) which represent one channel of distribution for its home market sales. Eletrosilex reported only EP sales in the U.S. market. For EP sales, Eletrosilex reported one customer category and one channel of distribution (*i.e.*, direct sales to original equipment manufacturers). Eletrosilex claimed in its response that its U.S. and home market sales were made at the same LOT. For this reason, Eletrosilex has not asked for a LOT adjustment to NV for comparison to its EP sales.

In analyzing Eletrosilex's selling activities for the home and U.S. market, we determined that essentially the same services were provided for both markets. These selling activities in both markets were minimal in nature and limited to arranging for freight and delivery. No other services were rendered for either home market or EP sales. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for Eletrosilex.

LIASA reported one customer category (*i.e.*, "end-user") and one channel of distribution for its home market sales. LIASA reported only EP sales in the U.S. market. For EP sales, LIASA reported one customer category and one channel of distribution (i.e., direct sales to unaffiliated "end-users" in the U.S. market). LIASA claimed in its response that EP sales were made at the same LOT as home market sales to

unaffiliated customers. For this reason, LIASA has not asked for a LOT adjustment to NV for comparison to its EP sales.

In analyzing LIASA's selling activities for its EP sales, we noted that the sales involved basically the same selling functions associated with the home market LOT described above. These selling activities in both markets were minimal in nature and usually limited to arranging for freight, if requested by the customer. No other services were rendered for either home market or EP sales. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for LIASA.

Export Price

For CBCC, Eletrosilex, LIASA, and RIMA, we used the Department's EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by each producer outside the United States directly to the first unaffiliated purchaser in the United States prior to importation (or to unaffiliated trading companies for export to the United States) and CEP methodology was not otherwise warranted. We made deductions from the starting price for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, foreign inland freight, brokerage and handling, and international freight.

Normal Value

1. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for each respondent. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

2. Cost of Production (COP) Analysis

In the most recently completed review of this proceeding, we disregarded home market sales found to be below the cost of production for CBCC, Eletrosilex, LIASA and Rima. Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Consequently, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether these respondents made home market sales during the POR at prices below their COP.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a product-specific COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses, including interest expenses and packing costs.

We relied on the home market and COP information submitted by each respondent in its questionnaire responses, except for the following company-specific adjustments described below.

Eletrosilex

We adjusted Eletrosilex's G&A by calculating on an annual basis a ratio of its G&A expenses to its cost of goods sold.

We recalculated Eletrosilex's financial expense ratio. Eletrosilex incorrectly applied certain offsets to its reported financial expense. We denied the offsets in question and adjusted its financial expenses accordingly. Thus, we recalculated Eletrosilex's financial expense ratio using its financial expenses and the costs of goods sold as reported on its most recent financial statements.

Rima

We adjusted Rima's reported G&A expense, financial expense and depreciation. We recalculated Rima's G&A expense ratio using its G&A expenses and annual cost of goods sold from its financial statements.

We recalculated Rima's financial expense ratio. Rima incorrectly applied certain offsets to its reported financial expense. We denied Rima's reported offsets and adjusted its financial expenses accordingly. Thus, we recalculated Rima's financial expense ratio using its financial expenses and costs of goods sold as reported on its most recent financial statements.

Rima reported depreciation expenses based on a period of time greater than the POR. Therefore, we recalculated Rima's depreciation expenses based on expenses incurred during the POR.

B. Test of Home Market Sales Prices

We compared the weighted-average, per-unit COP figures for the POR to home market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and discounts.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POR were made at prices below the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Therefore, we disregarded the below-cost sales.

We found less than 20 percent of RIMA's and CBCC's home market sales to be below cost. Therefore, we did not disregard any of their home market sales from our analysis. However, we found that all of Eletrosilex's home market sales and 20 percent or more of LIASA's home market sales, within an extended period of time, were at prices below the COP. We therefore disregarded LIASA's below-cost sales from our analysis and used the remaining home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For Eletrosilex, because there were

no sales of the foreign like product made at prices at or above cost in the comparison market, in accordance with section 773(a)(4) of the Act, we used CV as the basis for NV. We calculated CV in accordance with section 773(e) of the Act. (*See* below.)

Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the respondents' cost of materials and fabrication in producing the subject merchandise, SG&A expenses, the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the cost of materials, fabrication, and SG&A expenses as reported in the CV portion of the questionnaire response, adjusted as discussed in the "*Calculation of COP*" section, above. We used the U.S. packing costs as reported in the U.S. sales portion of the questionnaire responses. For selling expenses, we used the average of the direct and indirect selling expenses reported for HM sales, weighted by the total quantity of those sales. We were unable to derive actual profit based on home market sales for Eletrosilex because all of its home market sales were below cost. Therefore, in accordance with section 773(e)(2)(B)(ii) of the Act, we calculated profit for Eletrosilex by using the weighted average profit realized by the other respondents in this review.

Price-to-Price Comparisons

For those comparison products for which there were sales at prices above the COP (*i.e.*, sales by CBCC, LIASA and RIMA), we based the respondents' NV on the prices at which the foreign like product was first sold to unaffiliated parties for consumption in Brazil, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act. We based NV on sales at the same level of trade as the EP sales. For level of trade, please see the "*Level of Trade*" section above. In accordance with section 773(a)(6) of the Act, we made adjustments to home market price, where appropriate for inland freight, brokerage and handling charges, and rebates. To account for differences in circumstances of sale between the home market and the United States, where appropriate, we adjusted home market prices by deducting home market direct selling expenses (including credit) and commissions and by adding an amount for late payment fees earned on home market sales, and adding U.S. direct selling expenses (including U.S. credit expenses and where appropriate, less an amount for late payment fees earned on U.S. sales). Where commissions were paid on home market sales and no commissions were paid on U.S. sales, we increased NV by the lesser of either (1) the amount of commission paid on the home market sales or (2) the indirect selling expenses incurred on U.S. sales. In order to adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act. Where home market prices were reported exclusive of value added taxes (VAT) we made no adjustment. However, where home market prices were reported inclusive of VAT, we deducted the VAT from the gross home market price.

Price-to-CV Comparisons

With respect to Eletrosilex, where we could not determine NV based on home market sales because there were no contemporaneous home market sales of the silicon metal made in the ordinary course of trade, we compared U.S. prices to CV.

Where we compared EP to CV, we made circumstance-of-sale adjustments by deducting from CV the weighted-average home market direct selling expenses and adding the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and section 351.410(c) of the Department's regulations.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See Change in Policy Regarding Currency Conversions,* 61 FR 9434 (March 8, 1996).

Use of Partial Fact Available

LIASA

Upon reviewing LIASA's response to the Department's questionnaire in this review, we determined that LIASA reported a credit expense for U.S. sales using Brazilian interest rates. LIASA stated in its questionnaire response that it had no U.S. dollar borrowings during the POR. Therefore, the Department recalculated LIASA's imputed credit expense for U.S. sales using the facts available (FA). Pursuant to the Department's practice, we recalculated LIASA's U.S. imputed credit expenses using a weighted-average U.S. dollar short-term interest rate from the Federal Reserve based on quarterly rates for the POR. *See* Policy Bulletin, Number 98.2, February 23, 1998, regarding Imputed Credit Expenses and Interest Rates.

We also noted that LIASA, in reporting foreign inland freight for its U.S. sales, inappropriately converted this expense, which was incurred in Reais, into U.S. dollars. In the exhibits to its questionnaire response LIASA provided the actual Reais expense for only one of its U.S. sales. As FA, we have applied the per-unit Reais expense reported for that sale to all of LIASA's U.S. sales and converted the expense to U.S. dollars using the daily exchange rate from the U.S. Federal Reserve.

Rima

Upon reviewing Rima's response to the Department's antidumping questionnaire in this review, we determined that Rima did not calculate indirect selling expenses using the methodology requested by the Department. Rima reported indirect selling expenses based on selling expenses that were not specific to the sale of silicon metal. In addition, Rima divided these selling expenses by quantity, as opposed to the total sales value of silicon metal sold in either the home or foreign market. Because Rima failed to provide the requested information using the required methodology, we are applying the FA to calculate Rima's indirect selling expenses, in accordance with section 776(a)(2) of the Act. As FA, we used Rima's most recent financial statement and divided Rima's selling expenses by its gross revenue.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period July 1, 1997 through June 30, 1998, and we preliminarily determine to revoke the order covering silicon from Brazil with respect to CBCC's sales of this merchandise.

Manufacturer/exporter	Weighted-average margin percentage
CBCC	0.06
Eletrosilex	17.44
LIASA	zero
RIMA	zero

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing

within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 180 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated a per unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other manufacturers and/or exporters of this merchandise, the cash deposit rate will continue to be 91.06 percent, the "all others" rate established in the LTFV investigation, 56 FR 36135 (July 31, 1991). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. sections 1675(a)(1) and 1677f(i)(1)), and 19 CFR 351.221.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20451 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–811]

Final Results of Expedited Sunset Review: Steel Wire Rope From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: steel wire rope from the Republic of Korea.

SUMMARY: On January 4, 1999, the U.S. Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on steel wire rope from the Republic of Korea ("Korea") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and inadequate response from respondent interested parties, the Department conducted an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Result of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 9, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Scope

The product covered by this order is steel wire rope from Korea. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

History of the Order

On February 23, 1993, the Department published in the **Federal Register** the final determination of sales at less than fair value on steel wire rope from Korea (*see* 58 FR 11029). In the original investigation, three companies were investigated and found to be dumping at the following weighted-average dumping margins: Korean Iron & Steel Wire, Ltd., (now KISWIRE, Ltd. ("KIS")), 0.23 percent; Young Heung Iron & Steel Co., Ltd., ("YHC"), 0.10

percent; and Manho Mfg., Ltd. ("Manho"), 1.51 percent. In addition an "all others" rate of 1.51 percent was established. On March 26, 1993, the Department's antidumping duty order on steel wire rope from Korea was published in the **Federal Register** (*see* 58 FR 16397). As a result of the *de minimis* margins, entries of steel wire rope produced and sold by KIS and entries produced either by YHC or Dae Heung Industrial Co., Ltd. and sold by YHC were excluded from the application of the antidumping duty order.

The Department has conducted several administrative reviews of this antidumping duty order.[1] The antidumping duty order was subsequently revoked for Manho Rope Mfg., Ltd., and Chun Kee Steel & Wire Rope Co., Ltd., effective March 1, 1996 (*see* 62 FR 17171 (April 9, 1997)). The antidumping duty order was revoked for Chung Woo Rope Co., Ltd., Ssang Yong Cable Manufacturing Co., Ltd. and Sung Jin Co., effective March 1, 1997 (*see* 63 FR 17986 (April 13, 1998)).

To date, no duty absorption findings have been made with respect to this case.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping duty order on steel wire rope from Korea, pursuant to section 751(c) of the Act, as amended. On January 19, 1999, the Department received a Notice of Intent to Participate from the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers ("the Committee"), within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulation*.

On February 3, 1999, the Department received a complete substantive response from the Committee within the deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). The Committee claimed interested party status under section 19 U.S.C. 1677(9)(C) and (F). The Committee asserts that it was the petitioner in the original investigation and has actively participated in the administrative reviews conducted by the Department since that time.

On February 3, 1999 the Department received a substantive response from respondent, Kumho Wire Rope Manufacturer Co., Ltd. ("Kumho"), within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). Kumho asserts that it is a foreign manufacturer and exporter of the subject merchandise and is therefore, an interested party within the meaning of section 771(9)(A) of the Act. Kumho asserts that it was not a participant in the Department's original investigation, although it has participated in the four completed administrative reviews and is currently participating in the on-going fifth administrative review.

On February 23, 1999, the Department informed the Commission that, on the basis of inadequate response from respondent interested parties, we were conducting an expedited sunset review of this order consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). (*See* Letter to Lynn Featherstone, Director, Office of Investigations from Barbara E. Tillman, Director for Policy and Analysis.) On March 12, 1999, we extended the deadline for filing comments on our adequacy determination. On March 18, 1999, we received comments from Kumho and the Committee regarding our adequacy determination. The Department determined on May 7, 1999, that the sunset review of the antidumping duty order on steel wire rope from Korea is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, the Department extended the time limit for completion of the final results of this review until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[2]

Adequacy

Kumho argues that despite the fact that it accounts for significantly less than 50 percent of total imports from Korea of steel wire rope, Kumho accounts for significantly more than 50 percent of covered merchandise. Kumho asserts that the Department failed to consider that seven of the largest producers/exporters have already been excluded from the order. As a result, total import statistics overstate the volume and value of imports of subject merchandise.

In its comments, the Committee agrees with the Department's original adequacy determination. The Committee argues that the Department's calculation of adequacy is correctly based on total imports of steel wire rope from Korea. The Committee asserts that companies that were excluded from the order, or for which the order has been revoked, may be brought back within the scope of the order if they were subsequently found to be selling at less than fair value (or below normal value) so long as the order continues to exist.

The Department continues to find that Kumho's response does not form an adequate basis for conducting a full review, *i.e.*, because Kumho does not account for enough of the total exports of subject merchandise (*see* 19 CFR 351.218(e)(1)(ii)(A)). However, we disagree with the Committee that the determination should be based on total imports of steel wire rope from Korea. We agree with Kumho that the total value of imports used in our determination of adequacy should not include imports from revoked or excluded companies. The U.S. Customs Service, in its annual reports to Congress on the administration of the antidumping and countervailing duty, reports the value of entries subject to orders on an order-specific basis.[3] As noted above, on May 12, 1997, the order was revoked with respect to two companies and on April 13, 1998, the order was revoked with respect to an additional three companies. Therefore, the value of imports reported by Customs for the fiscal years 1993 through 1997 include the value of imports from companies for which the order has been revoked. The fiscal year 1998 import values reported by Customs would, however, include only half-year imports from the three companies for which revocation notice was published in April 1998. We note that the value of imports on which Customs was collecting antidumping duty deposits in fiscal 1998 (approximately $16 million) declined by approximately five million dollars from the value in fiscal 1997 (approximately $21 million). We therefore considered that decline could be attributed to the April 1998 revocation of the order with respect to three companies. We doubled the five

---

[1] *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review;* 60 FR 63499 (December 11, 1995), *Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review;* 61 FR 55965 (October 30, 1996), *Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review;* 62 FR 17171 (April 9, 1997), *Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Review and Revocation in Part of Antidumping Duty Order;* 63 FR 17986 (April 13, 1998); and *Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review,* 64 FR 17995 (April 13, 1999).

[2] *See Steel Wire Rope From Japan, et. al.: Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 24573 (May 7, 1999).

[3] As reported in Kumho's substantive response, exhibit 2. As a courtesy we make these statistics available to the public on the Import Administration sunset website at "http://www.ita.doc.gov/import—admin/records/sunset".

million dollar decline to take into account full year imports from the three companies for which the order was revoked in 1998, and, therefore, determine that entries subject to the order during fiscal 1998 were approximately $10 million. Comparing the value of Kumho's exports [4] and the estimated value of imports subject to the antidumping duty order on steel wire rope from Korea in fiscal 1998, we continue to find that Kumho accounted for significantly less than 50 percent of the value of imports of subject merchandise.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, the parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In its substantive response, the Committee argues that revocation of the antidumping duty order of the subject merchandise would be likely to lead to continuation or recurrence of dumping. The Committee asserts that as many as 20 companies remain subject to the order. Further, the Committee argues that most of these companies have failed to respond to the Department's questionnaires in any of the administrative reviews to which they were subject. In addition, the Committee argues that most of the Korean companies that are presently subject to the order have been assigned dumping margins based on the best information available (or facts otherwise available). Because the Department assigned dumping margins to these non-responding companies, the Committee argues that, in the instant proceeding, the Department must assume that these companies will continue to sell at dumped prices if the order is revoked.

Additionally, the Committee argues that Korea is by far the largest foreign supplier of carbon steel wire rope to the U.S. market. Specifically, based on U.S. Department of Commerce, Bureau of the Census, Report IM 146, the Committee asserts that for the period January through November 1998, imports from Korea accounted for nearly 48 percent of the total imports of carbon steel wire rope. The Committee further asserts that the companies that remain subject to the order account for upwards of one third of the total volume of carbon steel wire rope imports from Korea.

The Committee notes that the Korean won appreciated 24 percent against the U.S. dollar between the beginning of the second quarter of 1998 and the present, and argues that current exchange rate trends give rise to the probability that revocation of the order is likely lead to continuation or recurrence of dumping. The Committee argues that the marked appreciation of the Korean won over the past several months makes it likely that Korean companies will sell subject merchandise in the United States at dumped prices since the strengthening won will make home market prices in Korea higher relative to U.S. prices. Using import volume and value statistics, the Committee asserts that over the past several months the average unit value of imports from Korea classified under one of the covered HTSUS item numbers has decreased from $1,020 per net ton in January 1998 to $818 per net ton in November 1998.

In its substantive response, Kumho argues that revocation of the order would not likely lead to a recurrence of material injury or dumping. Kumho asserts that it is the only Korean company subject to the order actively shipping steel wire rope to the United States and it has never been found to sell the subject merchandise at less than fair value. Kumho further argues that since the major Korean wire rope companies have already been excluded from the order, and Kumho has never been found to be dumping, there are no grounds to believe that revocation would likely to lead to a continuation of injury or a recurrence of dumping. Additionally, Kumho argues that there is no evidence that any other Korean company subject to the order is actively shipping subject merchandise or, indeed, would be likely to ship subject merchandise in the event of revocation. Kumho argues that, of the 19 companies (including Kumho) for which petitioners requested administrative reviews in March 1998, three had previously been excluded from the order, five did not ship subject merchandise, four had gone out of business, and Kumho responded. While the remaining six companies did not respond to the Department's questionnaire, Kumho asserts that two had ceased operations, two had no shipments to the United States, and one had only one shipment to the United States and is not actively producing and shipping subject merchandise to the United States. As to the sixth company, Kumho asserts that it has no reason to believe that this company has ever shipped subject merchandise to the United States. In conclusion, Kumho argues that it is the only company that would be affected by the revocation of the order.

In its rebuttal comments the Committee argues that Kumho's assertion that it is the only exporter of steel wire rope from Korea still subject to the order is mere conjecture. The Committee asserts that Kumho would like the Department to believe that Kumho is the only company subject to the order because, under the sunset mechanism, an order cannot be revoked on a company-specific basis. The Committee argues that, during the fifth administrative review, the Department found that both Kwangshin Rope and

[4] As reported in Kumho's substantive response, exhibit 2.

Sungsan Special Steel Processing shipped subject merchandise to the United States. In addition, the Committee argues that the Department applied adverse facts available to four additional Korean companies that received, but did not respond to the Department's questionnaire. Thus the Committee concludes that the Department must find at least seven Korean companies remain subject to the order. Further, the Committee argues that the fact that some companies did not ship subject merchandise during the most recent administrative review, or declared bankruptcy, does not mean that these companies cannot or will not again sell subject merchandise to the United States.

Finally, the Committee argues that a zero or *de minimis* dumping margin shall not by itself require the Department to determine that revocation of the order would not likely lead to continuation or recurrence of dumping. Rather, in many instances, a zero or *de minimis* dumping margin is likely a result of the antidumping duty order. Therefore, the Committee submits that the recent zero and *de minimis* margins are a testament to the remedial purpose of the antidumping duty order.

In its rebuttal comments Kumho argues that the Committee's assertion that several Korean companies remain subject to the order is not supported by any evidence whatsoever in the history of this case. With respect to the two companies identified by the Committee as having exported during the most recent completed administrative review, Kumho argues that in the preliminary determination of that administrative review, the Department found that Sungsan had sold a quantity of merchandise purchased from another producer and that Kwangshin had some shipments during the period of review. Kumho asserts that with respect to the remaining companies that have recently received adverse facts available margins, the Committee has not provided any evidence that these companies actually exist, that they produce subject merchandise, that they ship merchandise, or that they would ship merchandise in the event of revocation. Kumho argues that it would be wrong for the Department to place on Kumho an affirmative burden of establishing that the companies named in the Committee's requests for administrative reviews do not ship to the United States. Kumho further argues that, given that the Department's role in the sunset review process is to determine whether dumping margins would exist in the event of revocation, such a determination must be based on actual and projected shipments rather than conjecture or automatic inferences regarding companies that may not even exist.

Additionally, with respect to the Committee's arguments related to exchange rates, Kumho asserts that the Committee ignores the fact that Kumho and other respondents were nonetheless found to be selling at zero or *de minimis* dumping margins in the Department's recent administrative reviews. Finally, Kumho argues that the Committee's reliance on import statistics is misplaced. Specifically, Kumho asserts that its exports enter the United States under a different HTSUS item number than that relied on by the Committee and, that the unit values for the HTSUS item number under which Kumho imports have remained relatively stable.

In compliance with section 752(c) of the Act, the Department examined the volume of imports before and after the issuance of the antidumping duty order on steel wire rope from Korea. Import data provided by Kumho, for the period covering 1992 through 1998, and confirmed by the Department's U.S. Census data, demonstrate that imports of steel wire rope from Korea have remained relatively steady.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were removed.

In the instant proceeding, although the order has been revoked with respect to imports from several Korean producers/exporters of steel wire rope, and Kumho has maintained a zero or *de minimis* margin in each of the four completed administrative reviews, deposit rates above *de minimis* continue in effect for several producers/exporters of steel wire rope from Korea. Therefore, given that dumping has continued over the life of the order, the Department determines that dumping is likely to continue if the order were revoked.

Because the Department has based this determination on the fact that dumping continued at levels above *de minimis*, we have not addressed the Committee's and Kumho's arguments concerning factors other than previously calculated margins and import volumes.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will provide to the Commission a margin from the investigation because that is the only calculated rate that reflects the behavior or exporters without the discipline of an order in place. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Committee argues that, in this case, where the Department has applied adverse facts available to uncooperative respondents in a recent administrative review (1996/1997 review (*see* 63 FR 17986 (April 13, 1998)), the use of the more recently calculated margin is appropriate. As it did in the fifth administrative review, however, the Committee asserts that rate is likely to be much higher.

Kumho argues that the magnitude of the margin likely to prevail is zero. Kumho asserts that its margin has been *de minimis* for five consecutive administrative reviews. Therefore, Kumho argues that there is no reasonable basis to conclude that the dumping margin would increase in the event of revocation of the order.

The Department disagrees with the Committee's argument that we should select the margin from the most recently completed administrative review as the margin likely to prevail if the order is revoked. As noted above, the Department normally will provide a margin from the original investigation because that is the rate that reflects the behavior of exporters absent the discipline of the order. The *Sunset Policy Bulletin* suggests that the Department select, as one alternative, a recently calculated rate, in cases where companies choose to increase dumping in order to maintain or increase market share. However, in the instant case, the Committee did not argue or provide evidence that the uncooperative exporters from the administrative reviews have increased dumping in order to maintain or increase market share. Review of import statistics complied from tariff and trade data from the U.S. Department of Commerce, the U.S. Treasury, and the Commission demonstrate that imports of steel wire rope from Korea have remained relatively stable over the life of the

order. Therefore, we find no reason to deviate from our policy of selecting margins from the original investigation as probative of the behavior of absent the discipline of the order.

With respect to the magnitude of the margin likely to prevail on exports by Kumho, we agree with Kumho. Although Kumho was not a participant in the original investigation, Kumho has participated in each of the administrative reviews of this order conducted by the Department. In each review, Kumho received a zero or *de minimis* margin. Although we acknowledge the Committee's assertion that the discipline of an order will, in many instances, lead to a zero or *de minimis* margin, we are not persuaded that Kumho is likely to begin dumping were the order revoked.

Based on the above analysis, we will report to the Commission the margins indicated in the Final Results of the Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturers/exporters	Margin (percent)
Kumho Wire Rope Manufacturer Co., Ltd	0
All Korean Manufacturers/Exporters	1.51

In addition, as noted above, entries of steel wire rope produced and sold by Korean Iron & Steel Wire, Ltd. (KIS) were excluded from the scope of the order, as were entries produced by either Young Heung Iron & Steel Co., Ltd., (YHC) or Dae Heung Industrial Co., Ltd. and sold by YHC. Finally, the order has been revoked with respect to Manho Rope Mfg., Ltd.; Chun Kee Steel & Wire Rope Co., Ltd.; Chung Woo Rope Co., Ltd.; Ssang Yong Cable Manufacturing Co., Ltd.; and Sung Jin Co.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 19 CFR 351.305 of the Department's regulation. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation.

This five-year ("sunset") review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-20452 Filed 8-6-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 87–14A04."

The Association for Manufacturing Technology's ("AMT") original Certificate was issued on May 19, 1987 (52 FR 19371, May 22, 1987) and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987); January 3, 1989 (54 FR 837, January 10, 1989); April 20, 1989 (54 FR 19427, May 5, 1989); May 31, 1989 (54 FR 24931, June 12, 1989); May 29, 1990 (55 FR 23576, June 11, 1990); June 7, 1991 (56 FR 28140, June 19, 1991); November 27, 1991 (56 FR 63932, December 6, 1991); July 20, 1992 (57 FR 33319, July 28, 1992); May 10, 1994 (59 FR 25614, May 17, 1994); December 1, 1995 (61 FR 13152, March 26, 1996); October 11, 1996 (61 FR 55616, October 28, 1996; May 6, 1998 (63 FR 31738, June 10, 1998); and November 10, 1998 (63 FR 63909, November 17, 1999). A summary of the application for an amendment follows.

Summary of the Application

Applicant: AMT—The Association For Manufacturing Technology, 7901 Westpark Drive, McLean, Virginia 22102–4269.

Contact: Cara Maggioni, Legal Counsel, Telephone: (202) 662–6000.

Application No.: 87–14A04.

Date Deemed Submitted: August 2, 1999.

Proposed Amendment: AMT seeks to amend its Certificate to:

1. Add the following companies as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Ex-Cell-O Machine Tools, Inc., Sterling Heights, MI; HYD–MECH Inc., Pueblo, CO; Fryer Machine Systems, Paterson, NJ; Denford Machine Tools USA, Inc., Medina, OH; and Flow International Corporation, Kent, WA;

2. Delete The Dunham Tool Company, Inc.; Excel/Control; Goldcrown Machinery; Hypneumat Inc.; The J.L. Wickham Co., Inc.; Oliver Machinery Co.; Perfecto Industries, Inc.; Lynn

Electronics Corporation; Nacto/Carlton L.P.; Durant Tool Company; and Williams, White & Co. as "Members" of the Certificate; and

3. Change the listing of the company name for the current "Members" cited in this paragraph to the new listing cited in parentheses as follows: Saginaw Machine Systems, Inc. (SMS Group Incorporated); and Cincinnati Milacron (Milacron, Inc.).

Dated: August 4, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–20462 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Showcase Exhibit of U.S. Exports

AGENCY: DOC, International Trade Administration.

ACTION: Notice of showcase exhibit of U.S. exports.

DATES: August 9, 1999.

SUMMARY: The International Trade Administration ("ITA") of the Department of Commerce announces an exhibition focusing on the importance of U.S. exports relating to biotechnology products and services. The exhibition will showcase U.S. biotechnology exports by displaying successfully exported products and services at ITA headquarters in Washington, DC, to highlight the benefits of exporting and the impact of these exports on the U.S. economy. Companies and trade associations are encouraged to express interest in providing exhibit material. The exhibition will be coordinated through the Chemicals, Pharmaceuticals and Biotechnology Division.

FOR FURTHER INFORMATION CONTACT: Ms. Emily Arakaki, Chemicals, Pharmaceuticals and Biotechnology Division; U.S. Department of Commerce/ITA; Room 4053; Washington, DC 20230; Telephone (202) 482–0130; fax (202) 482–2565; e-mail: "emily__arakaki@ita.doc.gov".

SUPPLEMENTARY INFORMATION:

Background: ITA is showcasing U.S. exports by exhibiting successfully exported products and services at its headquarters in Washington, DC, to highlight the benefits of exporting and the impact of exports on the U.S. economy. The exhibit, which represents a series of industries and a variety of companies, is located in the Office of the Under Secretary for International Trade. The exhibit is rotated approximately every four months.

The next sector to be displayed is the biotechnology sector. Companies and trade associations in this sector are encouraged to express interest in showcasing their exports of goods and/or services by contacting ITA through the individual listed above. Displayed items may include three-dimensional models, illustrations, in addition to samples of actual U.S. products that are being successfully exported.

Extensive shelf-, wall- and floor-space are available in this large, executive-style office.

Selection Process: Items will be selected for exhibition on the basis of the following factors:

(1) Items must be produced in, or representative of services exported from, the United States and have at least a 51% U.S. content, including materials, equipment and labor (in the case of large development projects, the applicant should identify substantial U.S. products or services into the completed project). To highlight the impact of exports on small businesses, items will also be considered that are produced by U.S. companies that do not directly export but rather whose goods or services are incorporated into another company's for export.

(2) The items must relate to the industry selected by ITA and be suitable for exhibition in a limited space.

(3) The company must not be owned or controlled, indirectly or directly, by a foreign government.

(4) Items chosen should reflect diversity of company size, location, demographics, and traditional under-representation in business.

Other conditions: Displayed items will be considered loans to the Department. Companies will be responsible for shipment of the item to and from the Commerce Department, for obtaining appropriate insurance, and for all related costs.

Time Frame for Applications: Expressions of interest from the biotechnology sector should be received by September 1, 1999. Expressions of interest should be sent to the ITA official identified above.

A **Federal Register** notice will be published subsequently to announce the next sector to be highlighted.

Authority: 15 U.S.C. 1512.

Dated: August 2, 1999.

Ambassador David L. Aaron,

Under Secretary for International Trade.

[FR Doc. 99–20395 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072699E]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Issuance of permits (1194, 1205, 1218) and modifications to existing permits (1056, 1126, 1131).

SUMMARY: Notice is hereby given that NMFS has issued permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement to: Fish Ecology Division, Northwest Fisheries Science Center, NMFS at Seattle, WA (NWFSC)(1194), Oregon Department of Environmental Quality (ODEQ) (1205), and Washington Department of Fish and Wildlife (WDFW) (1218). Notice is also given that NMFS has issued modifications to scientific research permits to: NWFSC (1056), WDFW (1126), and the Port of Portland at Portland, OR (POP) (1131).

ADDRESSES: The applications and related documents are available for review in the following office, by appointment:

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permits 1056, 1126, 1131, 1194: Leslie Schaeffer, Portland, OR (503–230–5433).

For permits 1205, 1218: Tom Lichatowich, Portland, OR (503–230–5438).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the

permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) fall, threatened SnR spring/summer, endangered upper Columbia River (UCR) spring.

Coho salmon (*O. kisutch*): threatened Southern Oregon/Northern California Coast (SONCC).

Cutthroat trout (*O. clarki clarki*): endangered Umpqua River (UmR).

Sockeye salmon (*O. nerka*): endangered SnR.

Steelhead trout (*O. mykiss*): endangered UCR.

Permits Issued

Notice was published on February 11, 1999 (64 FR 6880), that NWFSC applied for a 4-year scientific research permit. Permit 1194 was issued on July 23, 1999, authorizing take of the ESA-listed species associated with an evaluation of passive integrated transponder (PIT) tag interrogation systems at Bonneville Dam on the lower Columbia River in the Pacific Northwest. The objectives of the study are to evaluate the ability of the prototype PIT-tag detection systems to detect PIT-tagged adult salmon passing through the facility, and evaluate the effects of the detection system on adult behavior as they approach and pass through the system. Indirect mortalities of ESA-listed adult fish are authorized. Permit 1194 expires on December 31, 2003.

Notice was published on March 25, 1999 (64 FR 14432), that ODFQ applied for a 4-year scientific research permit. Permit 1205 was issued on June 16, 1999, authorizing take of listed species. ODEQ is authorized annual direct takes of juvenile SONCC coho salmon and adult and juvenile UmR cutthroat trout associated with water quality assessment studies in southwestern Oregon. ODEQ will capture ESA-listed fish in the Rogue and Umpqua River Basins with backpack electrofishing equipment, anesthetize them, collect biological information, allow them to recover from the anesthetic and release them. Data collected from these studies will be used in assessing the productivity status of these streams and the effectiveness of measures being taken to restore fish populations. Permit 1205 expires December 31, 2002.

Notice was published on April 21, 1999 (64 FR 19515), that WDFW applied for a 5-year scientific research permit. Permit 1218 was issued on July 23, 1999, authorizing take of listed species. WDFW is authorized annual direct takes of adult and juvenile, naturally produced and artificially propagated, UCR steelhead associated with two research studies in the upper Columbia River in Washington. Information from the studies will be used to verify the spawning regime, migratory behavior, and exact stock of steelhead in the Hanford Reach and upper river watersheds above Priest Rapids Dam. This information will be valuable in developing future recovery plans for that section of the Columbia River. In Study 1, adult steelhead will be captured by angling, anesthetized, sampled for biological data, sampled for tissues, allowed to recover from anesthetic and released. Eggs and alevin steelhead will be collected by excavating redds and sacrificed for genetic analysis. Steelhead fry will be collected with seines, sampled for biological data, sampled for tissues, and released. In Study 2, ESA-listed adult steelhead will be captured at Priest Rapids Dam, tagged with radiotransmitters, released, and tracked electronically as they migrate upstream. Permit 1218 expires December 31, 2003.

Modifications Issued

Notice was published on April 30, 1999 (64 FR 23281), that NWFSC applied for a modification to scientific research permit 1056. Modification 2 to permit 1056 was issued on July 23, 1999, authorizing the take of ESA-listed species. Modification 2 authorizes annual takes of adult and juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon associated with two studies designed to monitor wild salmon smolt migration timing, genetic change, and population structure over time. For Modification 2, NWFSC is authorized to take adult SnR spring/summer chinook salmon carcasses and to increase the annual take of juvenile, artificially-propagated, SnR spring/summer chinook salmon for study 2. Also for modification 2, NWFSC is authorized to add rotary screw traps as a capture method. Modification 2 is valid for the duration of the permit, which expires on December 31, 2001.

Modification 1 to permit 1126 was issued on June 25, 1999, authorizing take of the ESA-listed species. Modification 1 authorizes WDFW to collect tissue samples and biological information from carcasses during spawning ground surveys and snorkeling activities. Modification 1 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on March 25, 1999 (64 FR 14432), that POP applied for a modification to scientific research permit 1131. Modification 1 to permit 1131 was issued on July 23, 1999, authorizing take of the ESA-listed species. Modification 1 authorizes an increase in the annual take of juvenile, naturally produced and artificially propagated, SnR spring/summer chinook salmon and juvenile SnR fall chinook salmon associated with research designed to determine the presence and distribution of fish in shallow water habitats between the lower end of Hayden Island and the Sandy River delta on the Columbia River. Modification 1 is valid for the duration of the permit, which expires on December 31, 2001.

Dated: July 30, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–20431 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080399E]

Permits for Taking of Endangered or Threatened Species for Research/Enhancement Purposes.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (N)AA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 8, 1999..

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Salvini - F/PR3, Office of Protected Resources, Room 13603, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301) 713-1401 (x130).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) imposed prohibitions against the taking of endangered species. Section 10 of the ESA allows permits authorizing the taking of endangered species for research/enhancement purposes. The corresponding regulations established procedures for persons to apply for such permits. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain two sets of information collections: (l) applications for research/enhancement permits, and (2) reporting requirements for permits issued.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions. In order to issue permits as under ESA section 10(a)(1)(A), NMFS must determine that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of the ESA.

II. Method of Collection

Permit applicants must submit a written application to NMFS, including all appropriate information listed on the instructions. These instructions are a user-friendly version of the requirements at 50 CFR § 222.23(b) for applications for research/enhancement permits.

Once issued, the permit requires that permit holders submit an annual report on activities, including information on the species, stocks, dates, location, and condition of animals taken.

III. Data

OMB Number: 0648–0084.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Federal, State, local, or tribal government; business or other for-profit; individuals; universities and research institutions; not-for-profit institutions.

Estimated Number of Respondents: Permits: 60; Modification Requests: 60; Reports: 60 Annual Reports and 20 Final Reports.

Estimated Time Per Response: Permits: 40 hours; Modification Requests: 10 hours; Annual Reports: 10; Final Reports: 20 hours.

Estimated Total Annual Burden Hours Per Year: Permits: 2,400 hours; Modification Requests: 600 hours; Annual Reports: 600 hours; Final Reports: 400 hours.

Estimated Total Annual Cost to Public: $290 annual for printing and mailing of submissions.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 2, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–20433 Filed 8–6–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Thursday, August 19, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–20510 Filed 8–5–99; 11:36 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Thursday, August 26, 1999.

PLACE: 1155 21st., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–20511 Filed 8–5–99; 11:36 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0250]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Administration

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through December 31, 1999: DoD proposes that OMB extend its approval for use through December 31, 2002.

DATES: DoD will consider all comments received by October 8, 1999.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

Address E-mail comments submitted via the Internet to: dfars@acq.osd.mil.

Please cite OMB Control Number 0704–0250 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0250 in the subject line.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, at (703) 602–0293. The referenced information collection requirements are available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars.html.

Paper copies are available from Mr. Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 242, Contract Administration, and related clauses in DFARS Part 252; DD Form 375, Production Progress Report; DD Form 375C, Production Progress Report; (Continuation); and DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions; OMB Control Number 0704–0250.

Needs and Uses: DoD needs this information to perform contract administration functions. DoD uses the information as follows:

a. Contract administration offices use the information required by DFARS Subpart 242.11, and submitted on DD Forms 375 and 375C, to determine contractor progress and to identify any factors that may delay contract performance.

b. Administrative contracting officers use the information required by DFARS Subpart 242.73 to determine the allowability of insurance/pension costs under Government contracts.

c. Contract administration offices and transportation officers use the information required by DFARS 252.242–7003, and submitted on DD Form 1659, in providing Government bills of lading to contractors.

d. Contracting officers use the information required by DFARS 252.242–7004 to determine if contractor material management and accounting systems conform to established DoD standards.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 537,590.

Number of Respondents: 109,560.

Responses Per Respondent: Approximately 2.

Annual Responses: 172,430.

Average Burden Per Response: Approximately 3 hours.

Frequently: On occasion.

Summary of Information Collection

This information collection includes requirements relating to DFARS part 242, Contract Administration.

a. DFARS Subpart 242.11 requires DoD contract administration personnel to conduct production reviews to determine contractor progress and to identify any factors that may delay contract performance. Contractors must provide information needed to support the reviews and must submit production progress reports on DD Forms 375 and 375c.

b. DFARS Subpart 242.73 contains requirements for Government conduct of Contractor Insurance/Pension Reviews. Contractors must provide documentation needed to support the reviews.

c. DFARS 252.242–7003 requires contractors to request Government bills of lading by submitting DD Form 1659 to the transportation officer or the contract administration office.

d. DFARS 252.242–7004 requires contractors to establish, maintain, disclose, and demonstrate material management and accounting systems.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99–20281 Filed 8–6–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0246]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Government Property

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DOD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimates of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected, and (b) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through December 31, 1999. DoD proposes that OMB extend its approval for use through December 31, 2002..

DATES: DoD will consider all comments received by October 8, 1992.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

Address E–mail comments submitted via the Internet to: dfars@acq.osd.mil.

Please cite OMB Control Number 0704–0246 in all correspondence related to this issue. E–mail comments should cited OMB Control Number 0704–0246 in the subject line.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, at (703) 602–0293. The referenced information collection requirements are available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars.html.

Paper copies are available from Mr. Rick Layser, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: .

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulations Supplement (DFARS) Part 245, Government Property, and related clauses in DFARS Part 252; DD Form 1149, Requisition and Invoice/Shipping

Document; DD Form 1342, Property Record; DD Form 1419, Industrial Plant Equipment Requisition; DD Form 1637, Notice of Acceptance of Inventory Schedules, DD Form 1639, Scrap Warrantly, DD Form 1640, Request for Plant Clearance, and DD Form 1662, Property in the Custody of Contractors; OMB Control Number 0704–0246.

Needs and Uses: DoD needs this information to keep an account of Government property in the possession of contractors. Property administrators, contracting officers, and contractors use this information to maintain property records and material inspection, shipping, and receiving report.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 50,590.

Number of Respondents: 14,862.

Responses Per Respondent: Approximately 3.

Annual Responses: 42,925.

Average Burden Per Response: 1.2 hours.

Frequency: On occasion.

Summary of Information Collection

This requirement provides for the collection of information related to providing Government property to contractors; contractor use and management of Government property; and reporting, redistribution, and disposal of contractors inventory. This information collection covers the requirements relating to DFARS Part 245 and related clauses and forms.

a. DFARS 245.302–1 (b) (1) (A) *(1)* requires contractors to submit DD Form 1419 to the Defense Supply Center Richmond, before acquiring industrial plant equipment (IPE), to determine whether existing reallocable Government-owned facilities can be used.

b. DFARS 245.302–1(b) (1) (B) requires contractors to submit requests for proposed acquisition of automatic data processing equipment through the administrative contracting officer.

c. DFARS 245.405(1) requires contractors to obtain contracting officer approval before using Government production and research property on work for foreign governments or international organizations.

d. DFARS 245.407(a) (iv) requires contractors to submit requests for non-Government use of IPE to the contract administration office.

e. DFARS 245.505–5, 245.505–6, and 245.606–70 require contractors to use DD Form 1342 as a source document for establishing property records; to report information concerning IPE; and to list excess IPE.

f. DFARS 245.603–70(c) requires contractors that perform plant clearance duties to ensure that inventory schedules are satisfactory for storage or removal purposes. Contractors may use DD Form 1637 for this function.

g. DFARS 245.607–1(a)(i) permits contractors to request a pre-inventory scrap determination, made by the plant clearance officer after an on-site survey, if inventory is considered without value except for scrap.

h. DFARS 245.7101–2 permits contractors to use DD Form 1149 for transfer and donation of excess contractor inventory.

i. DFARS 245.7101–4 requires contractors to use DD Form 1640 to request plant clearance assistance or to transfer plant clearance.

j. DFARS 245.7303 and 245.7304 require contractors to use invitations for bid for the sale of surplus contractor inventory.

k. DFARS 245.7308 (a) requires contractors to send certain information to the Department of Justice and the General Services Administration when the contractor sells or otherwise disposes of inventory with an estimated fair market value of $3 million or more, or disposes of any patents, processes, techniques or inventions, regardless of costs.

l. DFARS 245.7310–7 requires the purchaser of scrap to represent and warrant that the property will be used only as scrap. The purchaser also must sign DD Form 1639.

m. DFARS 252.245–7001 requires contractors to provide an annual report for contracts involving Government property in accordance with the requirements of DD Form 1662.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99–20282 Filed 8–6–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of the Secretary of the Navy's Advisory Subcommittee on Naval History; Open Meeting

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee, will meet. The meeting will be open to the public.

DATES: The time of the meeting will be from 0800–1600 on September 16 and 0800–1600 on September 17, 1998.

ADDRESSES: The meeting will be held in Building 76 of the Naval Historical Center, Washington Navy Yard, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Director of Naval History, 805 Kidder Breese Street, SE, Bldg. 57 WNY, Washington, DC, 20374–5060, or call Dr. William S. Dudley at (202) 433–2210.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History on 17 and 18 September 1998, and to make comments and recommendations on these activities to the Secretary of the Navy.

Dated: July 29, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–20440 Filed 8–6–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for monetary performance awards. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

ALTWEGG, D. M. MR.
ANGRIST, E. P. MR.
ANTOINE, C. S. MR.
ATKINS, J. A. MR.
BAILEY, W. C. MR.
BALISLE, P. M. RADM
BAUMAN, D. M. MR.
BECRAFT, C. H. HON
BICE, D. F. MAJGEN
BLICKSTEIN, I. N. MR.

BONWICH, S. M. MR.
BRANCH, E. B. MR.
BRIANT, C. C. MR.
BRANT, D. L. MR.
BROOKE, R. K. MR.
BROWN, P. F. MR.
BUCHANAN III, H. L. HON
BUCKLEY, B. CAPT
BUONACCORSI, P. P. MR.
CALI, R. T. MR.
CAMP, J. R. MR.
CARPENTER, A. W. MS.
CASSIDY JR, W. J. MR.
CATRAMBONE, G. P. MR.
CHENEVEY, J. RADM
CHURCH, A. T. RADM
CIPRIANO, J. MR.
COBB, W. RADM
COCHRANE JR, E. R. MR.
COFFEY, T. DR.
COHN, H. MR.
COLE, D. A. MR.
COMMONS, G. L. MS.
COOK, J. RADM
CRAINE, J. W. VADM
CROSS, B. RADM
CUDDY, J. V. MR.
DANZIG, R. HON
DAVIDSON, M. H. MR.
DAVIS, J. P. RADM
DEMARCO, R. DR.
DIXSON, H. L. MR.
DRAIM, R. P. MR.
DOHERTY, L. M. DR.
DOMINIQUE, L. CAPT
DOUGLASS, T. E. MR.
DUDLEY, W. S. DR.
DURHAM, D. L. DR.
EATON, W. D. MR.
EHRLER, S. M. MR.
ESSIG, T. MR.
EVANS, G. L. MS.
FEIGLEY, J. M. BGEN
FILIPPI, D. M. MS.
FIOCCHI, T. C. MR.
FLORIP, T. F. MR.
FORD, F. B. MR.
GAFFNEY, P. RADM
GERRY, D. F. MR.
GISCH, R. G. MR.
GIST, W. J. MR.
GLASCO, L. M. MR.
GOTTFRIED, J. M. MS.
HAGEDORN, G. D. MR.
HAMMES, M. C. MR.
HAMMOND, R. E. MR.
HANNAH, B. W. DR.
HARTWIG, E. DR.
HAUENSTEIN, W. H. MR.
HAYNES, R. S. MR.
HEATH, K. S. MS.
HEFFERON, J. J. MR.
HENRY, M. G. MR.
HICKS, S. N. MR.
HIGGINBOTHAM, G. B. MAJGEN
HIGGINS, K. L. DR.
HILDEBRANDT, A. H. MR.
HOLADAY, D. A. MR.
HOUGH, M. MAJGEN
HOWELL, D. S. MS.
HOWIE, H. K. MR.
HUBBELL, P. C. MR.
HUDSON, JOHN BGEN
HULTIN, J. M. HON
JENKINS, W. RADM
JOHNSTON, K. J. DR.
JOSEPHSON, D. H. MS.
JUNKER, B. DR.
KASKIN, J. D. MR.
KELLY, L. J. MR.
KEMP, C. RADM
KLIMP, J. W. LTGEN
KNUDSEN, R. E. MR.
KOLB, R. C. MR.
KOTZEN, P. S. MS.
KRASIK, S. A. MS.
KREITZER, L. P. MR.
LACEY, M. E. MRS.
LAMADE, S. K. MS.
LARSEN JR, D. P. MR.
LAUX, T. E. MR.
LEACH, R. A. MR.
LEBOEUF, G. G. MR.
LEFANDE, R. DR.
LEGGIERI, S. R. MS.
LENGERICH, A. W. RADM
LEWIS, R. D. MS.
LISIEWSKI, R. S. MR.
LOFTUS, J. V. MS.
LONG, T. MS.
LOPATA, F. A. MR.
LYNCH, J. G. MR.
MARQUIS, S. L. DR.
MARTIN, R. J. MR.
MASCIARELLI, J. R. MR.
MATTHEIS, W. G. MR.
MCELENY, J. F. MR.
MCKISSOCK, G. S. MAJGEN
MCMANUS, C. J. MR.
MCNAIR, J. W.
MEADOWS, L. J. MS.
MERRITT, D. L. MR.
MERRITT, M. M. MR.
MESEROLE JR., M. MR.
MILAN, L. F. MR.
MILLER, K. E. MR.
MOHLER, M. K. MR.
MOLZAHN, W. R. MR.
MONTGOMERY JR., H. E. MR.
MOORE, S. B. MR.
MOY, G. W. DR.
MUNSELL, E. L. MS.
MURPHY, P. M. MR.
MUTH, C. C. MS.
NEERMAN, D. W. MR.
NEHMAN, J. MR.
NEMFAKOS, C. P. MR.
NEWSOME, D. RADM
NEWTON, L. A. MS.
NICKELL JR, J. R. MR.
NUSSBAUM, D. A. MR.
O'DRISCOLL, M. J. MR.
OLSEN, M .A. MS.
PAIGE, K. RADM
PANEK, R. L. MR.
PAULK, R. D. MS.
PAYNE, T. MR.
PENNISI, R. A. MR.
PHELPS, F. A. MR.
PIRIE JR, R. B. HON
PORTER, D. E. MR.
POWERS, B. F. MR.
PRESTON, S. W. HON
RAMBERG, S. DR.
RATH, B. DR.
RHODES, J .E. LTGEN
ROARK JR., J. E. MR.
ROBERTSON, B. COL
ROBUSTO, J. D. MR.
RIEGEL, K. W. DR.
ROBERSON, E. S. MS.
RODERICK, B. A. MR.
RYZEWIC, W. H. MR.
SAALFELD, FRED DR.
SANDERS, R. L. MS.
SARGENT JR, D. RADM
SAUL, E. L. MR.
SAVITSKY, W. D. MR.
SCHAEFER, J. C. MR.
SCHAEFER JR, W. J. MR.
SCHNEIDER, P. A. MR.
SCHUSTER JR., J. G. MR.
SHAFFER, R. L. MR.
SHEA, R. M. BGEN
SHEPHARD, M. R. MS.
SHIPWAY, J. RADM
SHOUP, F. E. DR.
SIRMALIS, J. E. DR.
SLAGHT, K. D. RADM
SMITH, L. M. RADM
SOMOROFF, A. R. DR.
SPARKS JR, J. E. MR.
SPINRAD, R. DR.
STEIDLE, C. RADM
STELLOH-GARNER, C. MS.
STUSSIE, W. A. MR.
SZEMBORSKI, S. R. RADM
TAMBURRINO, P. M. MR.
THOMAS, R. O MR.
THORNETT, R. MR.
THROCKMORTON JR., E. L. MR.
TISONE, A. A. MR.
TOMPKINS, C. L. MR.
TOWNSEND, D. K. MS.
TRAMMELL, R. K. MR.
TURNQUIST, C. J. MR.
UHLER, D. G. DR.
VANDER LINDEN, G. M. BGEN
VERKOSKI, J. E. MR.
WELCH, B. S. MS.
WEYMAN, A. S. MR.
WHITON, H. W. RADM
WHITTEMORE, A. MS.
WILLIAMS, G. P. MR.
WILLIAMS, M. J. LTGEN
WRIGHT, J. DR.
YOUNT, G. R. RADM
ZANFAGNA, P. E. MR.
ZEMAN, A. R. DR.
ZIMET, E. DR.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Arrowood, Office of the Assistant Secretary, Manpower and Reserve Affairs, 1000 Navy Pentagon, Washington, DC 20350–1000, telephone (703) 696–5165.

Dated: July 26, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Head, Complaint of Wrongs Branch.

[FR Doc. 99–19816 Filed 8–6–99; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6414–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; See List of ICRs Planned To Be Submitted in Section A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following two continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

DATES: Comments must be submitted on or before October 8, 1999.

ADDRESSES: 401 M Street, S.W., Attn: 3802R, Washington, D.C. 20460.

FOR FURTHER INFORMATION OR A COPY CONTACT: Leigh Pomponio, (202) 564–4364, e-mail: pomponio.leigh@epamail.epa.gov. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following two continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) Contractor Cumulative Claim and Reconciliation, EPA ICR No. 0246.07, OMB Control No. 2030–0016, expires 1/31/00.

(2) Monthly Progress Reports, EPA ICR No. 1039.09, OMB Control No. 2030–0005, expires 1/31/00.

B. Contact Individuals for ICRs

(1) Contractor Cumulative Claim and Reconciliation and Monthly Progress Reports: Leigh Pomponio, (202) 564–4364, FAX (202) 565–2475, e-mail, pomponio.leigh@epamail.epa.gov.

C. Individual ICRs

(1) Contractor Cumulative Claim and Reconciliation, EPA ICR No. 0246.07, OMB Control No. 2030–0016, expires 1/31/00.

Affected Entities: Entities potentially affected by this action are those holding cost reimbursable contracts with the Agency.

Abstract: At the completion of a cost reimbursement contract, contractors will report final costs incurred, including direct labor, materials, supplies, equipment, and other direct charges, subcontracting, consultant fees, indirect costs, and fixed fee. Contractors will report this information on EPA Form 1900–10. EPA will use this information to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary to close out the contract. Responses to the information collection are mandatory for those completing work under a cost reimbursement contract, and are required to receive final payment. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

Burden Statement: EPA estimates that the annual hourly burden will be 42.9 hours based on the following: Each response will take approximately 40 minutes, and EPA closes out approximately 65 contracts per year. The annual dollar burden is estimated at $1,151.15 based on a combination of contractor employees providing the information at an average total cost of $17.71 for the 40 minute period. Minimal operation and maintenance costs are expected for photocopying and postage.

(2) Monthly Progress Reports, EPA ICR No. 1039.09, OMB Control No. 2030–0005, expires 1/31/00.

Affected Entities: Entities potentially affected by this action are those holding cost reimbursable contracts with EPA.

Abstract: Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor the contractor's progress under the contract. Responses to the information collection are mandatory for contractors performing under a cost reimbursement contract, and are required to receive monthly reimbursement. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

Burden statement: EPA estimates that the annual hourly burden for this collection will be 177,045 hours. Each response is expected to take approximately 36.25 hours. Based on current active cost reimbursable contracts numbering 407, times 12 submissions per year, EPA anticipates 4884 annual collections. Each collection is estimated to cost $2,591.50 based on a variety of contractor personnel performing the individual tasks required

for information gathering and submission. With 4884 annual submissions, total annual cost is estimated at $12,656,886. Minimal operation and maintenance costs are expected for photocopying and postage.

Dated: July 30, 1999.

Thomas D. McEntegart,

Manager, Policy Service Center.

[FR Doc. 99–20466 Filed 8–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6416–3]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: EPA hereby gives notice of a proposed settlement agreement in the case *Ayers* v. *Browner*, No. 97–1464 (consolidated with 98–1073) (D.C. Cir.). This notice complies with section 113(g) of the Clean Air Act, as amended ("Act"), which requires EPA to give notice and provide an opportunity for public comment on proposed settlement agreements. The litigation concerns EPA's promulgation of the National Low Emission Vehicle (National LEV) program in two related final rules. See 62 FR 31192 (June 6, 1997); 63 FR 925 (Jan. 7, 1998). The Petitioners filed petitions for review of these Agency rulemakings under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1).

The proposed Settlement Agreement provides that EPA will take certain actions regarding alternative fuel vehicles. These include holding two public workshops and preparing several reports. The agreement does not call for making any changes to the National LEV program.

Persons who were not named as parties or interveners to this litigation may submit written comments on the proposed settlement agreement to EPA. Any comments must be submitted within thirty days after the date of publication of this notice. EPA or the Department of Justice may withhold or withdraw consent to the proposed agreement if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed settlement agreement is available from Phyliss J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Alexandra Teitz, Esq. at the above address and must be submitted on or before September 8, 1999.

Dated: July 28, 1999.

Gary S. Guzy,

General Counsel.

[FR Doc. 99–20463 Filed 8–6–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6416–5]

Underground Injection Control Program, Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Celanese Ltd.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on no migration petition reissuance.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Celanese Ltd., (Celanese) for its Class I injection well located at the Clear Lake Plant, Houston, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Celanese, of the specific restricted hazardous wastes identified in the exemption, into the Class I hazardous waste injection well WDW–33 at the Clear Lake Plant Houston, Texas facility, until December 31, 2010, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued June 7, 1999. The public comment period closed on July 22, 1999. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of August 2, 1999.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 99–20467 Filed 8–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51931; FRL–6094–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 14, 1999, to July 2, 1999, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not

attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51931. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

C. *By phone.* If you need additional information about this action, you may also contact the person identified in the "FOR FURTHER INFORMATION CONTACT " section.

III. Why is EPA taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME, and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 14, 1999, to July 2, 1999, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 72 Premanufacture Notices Received From: 06/14/99 to 07/02/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0901	06/14/99	09/12/99	CBI	(G) Flame retardant; open, non-dispersive use	(G) Magnesium borate
P–99–0916	06/14/99	09/12/99	Clariant Corporation	(G) Destructive end-use	(G) Telogen, telomer with alkenes and alkenyl acetate
P–99–0917	06/14/99	09/12/99	NOF America Corporation	(S) Cosmetic	(G) Methacrylate polymer
P–99–0918	06/14/99	09/12/99	Great Lakes Chemical Corporation	(S) Flame retardant additive for polymers	(G) Halogenated polystyrene copolymer
P–99–0919	06/14/99	09/12/99	Nof America Corporation	(S) Contact lens solution cosmetic	(G) Methacrylate copolymer
P–99–0920	06/14/99	09/12/99	Condea Servo LLC	(S) Dispersing agent for pigment paste	(S) Poly(oxy-1,2-ethanediyl), α-(9z)-9-octadecenyl-omega-hydroxy-, phosphate, ammonium salt*
P–99–0921	06/16/99	09/14/99	Nova Molecular Technologies, Inc.	(G) Our prospective customer will probably use this to modify polymer properties for polymers produced by emulsion polymerization. We believe it will be used for styrene-butadiene rubber and polyacrylate polymer production	(G) Cyclic nitroxyl
P–99–0923	06/15/99	09/13/99	Westvaco Corporation - Chemical Division	(S) Rosin/acrylic salt solution for printing inks	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid, ammonium salt
P–99–0924	06/15/99	09/13/99	Westvaco Corporation - Chemical Division	(S) Rosin/acrylic salt solution for printing inks	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid, sodium salt
P–99–0925	06/15/99	09/13/99	Westvaco Corporation - Chemical Division	(S) Rosin/acrylic salt solution for printing inks	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid, zinc salt

I. 72 Premanufacture Notices Received From: 06/14/99 to 07/02/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0926	06/15/99	09/13/99	Westvaco Corporation - Chemical Division	(S) Rosin/acrylic salt solution for printing inks	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid, dimethylethanolamine salt
P–99–0927	06/15/99	09/13/99	Westvaco Corporation - Chemical Division	(S) Rosin/acrylic salt solution for printing inks	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid, aminomethylpropanol salt
P–99–0928	06/15/99	09/13/99	Zschimmer & Schwarz Inc., Chem-Tex Division	(S) Surfactact used in toilet bowl cleaner	(S) Ethanol, 2-[2-(C_{12-14}-alkyloxy) ethoxy] derivs., hydrogen sulfates, compds. with triisopropanolamine*
P–99–0929	06/15/99	09/13/99	Tomah Products, Inc.	(G) Surfactant	(G) Alkoxylated alkyloxy propylamine oxide
P–99–0930	06/15/99	09/13/99	Westvaco Corporation - Chemical Division	(S) Rosin/acrylic support resin for printing inks	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid
P–99–0931	06/14/99	09/12/99	The Dow Chemical Company	(S) Rigid packaging barrier layer; flexible packaging barrier layer; hot melt adhesive; pipe coating; non woven fibers; starch packing peanuts	(G) Polyhydroxyaminoethers
P–99–0932	06/14/99	09/12/99	The Dow Chemical Company	(S) Rigid packaging barrier layer; flexible packaging barrier layer; hot melt adhesive; pipe coating; non woven fibers; starch packing peanuts	(G) Polyhydroxyaminoethers
P–99–0933	06/16/99	09/14/99	CBI	(G) Viscosity index improver	(G) Alkyl methacrylate copolymer
P–99–0934	06/16/99	09/14/99	CBI	(G) Open destructive use as a gas generant for automotive inflator	(G) Metal ethylene diammine nitrate complex
P–99–0935	06/16/99	09/14/99	CBI	(G) Open non dispersive (pre polymer)	(G) Aliphatic diisocyanate pre polymer
P–99–0936	06/14/99	09/12/99	Henkel Corporation	(S) Drilling fluid	(S) Fatty acids, C_{8-10}, reaction products with epoxidized soybean oil, ethoxylated*
P–99–0937	06/17/99	09/15/99	CBI	(G) Resin for coating	(G) Modified epoxy resin
P–99–0938	06/17/99	09/15/99	CBI	(G) Crosslinking agent	(G) Urethane resin
P–99–0939	06/17/99	09/15/99	CBI	(G) Epoxy resin for metal coating	(G) Amine modified epoxy resin
P–99–0940	06/17/99	09/15/99	CBI	(G) Epoxy resin coating	(G) Modified epoxy resin
P–99–0941	06/17/99	09/15/99	CBI	(G) Additive, open, non-dispersive use	(G) Salt of an acrylic polymer
P–99–0942	06/17/99	09/15/99	CBI	(G) Additive, open, non-dispersive use	(G) Fluorinated polyurethane, modified with acrylate groups and siloxanes
P–99–0943	06/17/99	09/15/99	Reichhold, Inc.	(G) Purge for hot melt polyurethane adhesives	(G) Polyurethane adhesive purge
P–99–0944	06/16/99	09/14/99	CBI	(G) Additive to plastics	(G) Xylyl phosphate
P–99–0945	06/14/99	09/12/99	Loctite corporation	(S) Hotmelt adhesive for the woodworking industry; hotmelt adhesives for general industrial structural bonding	(S) Hexanedioic acid, polymer with butyl 2-methyl-2-propenoate, 1,6-hexanediol, α-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 2-hydroxyethyl 2-methyl-2-propenoate, 1,1′-methylenebis[4-isocyanatobenzene], methyl 2-methyl-2-propenoate and 2-methyl-2-propenoic acid*
P–99–0946	06/14/99	09/12/99	Loctite Corporation	(S) Hotmelt adhesive for the woodworking industry; hotmelt adhesives for general industrial structural bonding	(S) Is a polymer of: poly[oxy(methyl-1,2-ethanediyl)], a-hydro-w-hydroxy-; benzene, 1,1′-methylenebis[4-isocyanato-; hexanedioic acid, polymer with 1,6-hexanediol; dodecanedioic acid, polymer with 1,6-hexanediol; dynacoll 7250 m; 1,3-benzenedicarboxylic acid, polymer with hexanedioic acid and 1,6-hexanediol*

I. 72 Premanufacture Notices Received From: 06/14/99 to 07/02/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0947	06/14/99	09/12/99	Loctite Corporation	(S) Hotmelt adhesive for the wood-working industry; hotmelt adhesives for general industrial structural bonding	(S) Is a polymer of: 1,3-isobenzofurandione, polymer with 2,2′-oxybis[ethanol]; benzene, 1,1′-methylenebis[4-isocyanato-; hexanedioic acid, polymer with 1,6-hexanediol; dodecanedioic acid, polymer with 1,6-hexanediol; dynacoll 7140; decanedioic acid, polymer with 1,6-hexanediol; dynacoll 7250*
P–99–0948	06/14/99	09/12/99	Loctite Corporation	(S) Hotmelt adhesive for the wood-working industry; hotmelt adhesives for general industrial structural bonding	(S) Dodecanedioic acid, polymer with 1,4-butanediol, hexanedioic acid, 1,6-hexanediol, α-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,1′-methylenebis[4-isocyanatobenzene] and 2-oxepanone*
P–99–0949	06/14/99	09/12/99	Loctite Corporation	(S) Hotmelt adhesives for the wood-working industry; hotmelt adhesives for general industrial structural bonding	(S) 1,3-benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,4-butanediol, dodecanedioic acid, hexanedioic acid, 1,6-hexanediol, 1,1′-methylenebis[isocyanatobenzene] and 2,2′-oxybis[ethanol]*
P–99–0950	06/14/99	09/12/99	Loctite Corporation	(S) Hotmelt adhesive for the wood-working industry; hotmelt adhesives for general industrial structural bonding	(S) 1,3-benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,4-butanediol, dodecanedioic acid, hexanedioic acid, 1,6-hexanediol, 1,1′-methylenebis[isocyanatobenzene] ,2,2′-oxybis[ethanol] and α,α′,α″-1,2,3-propanetriyltris[omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)]*
P–99–0951	06/18/99	09/16/99	CBI	(G) Destructive, chemical intermediate for production of organic compounds	(G) Polyisobutene epoxide
P–99–0952	06/18/99	09/16/99	CBI	(G) Destructive, chemical intermediate for production of organic compounds	(G) Polyisobutene epoxide
P–99–0953	06/18/99	09/16/99	CBI	(G) Destructive fuel additive	(G) Polyisobutylene amine
P–99–0954	06/18/99	09/16/99	Zeon Chemicals L.P.	(S) Composites reinforcement; thermoset reinforcement ;adhesives	(G) Modified polyacrylate
P–99–0955	06/18/99	09/16/99	CBI	(S) Flame retardant for polyurethane	(G) Phosphoric acid ester oligomer
P–99–0956	06/18/99	09/16/99	CBI	(G) Polymeric colorant/uv screen for plastics	(G) Chromophore substituted polyoxyalkylene
P–99–0957	06/18/99	09/16/99	CBI	(G) Polymeric colorant/uv screen for plastics	(G) Chromophore substituted polyoxyalkylene
P–99–0958	06/18/99	09/16/99	CBI	(S) Microelectronics coating	(G) Substituted tetracyclic olefin
P–99–0959	06/21/99	09/19/99	CBI	(G) Resin coating	(G) Polyester methacrylate
P–99–0960	06/23/99	09/21/99	Reichhold, Inc.	(S) Fiber bonding	(G) Cationic styrene butadiene polymer
P–99–0961	06/22/99	09/20/99	CBI	(G) Open non-dispersive (release agent)	(G) Modified fatty acid ester
P–99–0962	06/23/99	09/21/99	CBI	(S) Resin for ultraviolet/electron beam curable coatings and adhesives	(G) Poly(oxy-1,4-butanediyl), -hydro--hydroxy-polymer with a substituted alcohol and 1,1′-methylenebis[4-isocyanatocyclohexane], 2-hydroxyethyl acrylate-blocked
P–99–0963	06/22/99	09/20/99	CBI	(G) Emulsifier	(G) Alkylether sulfate, sodium salt
P–99–0964	06/22/99	09/20/99	Stim-Lab, Inc.	(S) Scale inhibitor for use in stimulation of oil wells	(S) Phosphonic acid, [(phosphonomethyl)imino]bis[2,1-ethandiylnitrilobis (methylene)]]tetrakis, monocalcium pentasodium salt*
P–99–0965	06/22/99	09/20/99	3M Company	(S) Plasma cleaning	(S) Furan, octafluorotetrahydro-*

I. 72 Premanufacture Notices Received From: 06/14/99 to 07/02/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0966	06/22/99	09/20/99	Eastman Kodak Company	(G) Contained use in an article	(G) Polymer of vinylbenzene, substituted vinylbenzene, and substituted amine
P–99–0967	06/22/99	09/20/99	CBI	(G) Colorant	(G) Colorant intermediate
P–99–0968	06/22/99	09/20/99	CBI	(G) Chemical intermediate	(G) Substituted amino aromatic diol
P–99–0969	06/22/99	09/20/99	CBI	(G) Colorant	(G) Polyoxyalkylene substituted chromophore
P–99–0970	06/22/99	09/20/99	CBI	(G) Colorant	(G) Polyoxyalkylene substituted chromophore
P–99–0971	06/22/99	09/20/99	CBI	(G) Colorant	(G) Polyoxyalkylene substituted chromophore
P–99–0972	06/22/99	09/20/99	CBI	(G) Colorant	(G) Polyoxyalkylene substituted chromophore
P–99–0973	06/22/99	09/20/99	CBI	(G) Colorant	(G) Polyoxyalkylene substituted chromophore
P–99–0974	06/18/99	09/16/99	CBI	(G) Additive	(G) Substituted urea
P–99–0975	06/18/99	09/16/99	CBI	(G) Additive	(G) Substituted urea
P–99–0976	06/18/99	09/16/99	CBI	(G) Additive	(G) Substituted urea
P–99–0977	06/18/99	09/16/99	CBI	(G) Additive	(G) Substituted urea
P–99–0978	06/18/99	09/16/99	CBI	(G) Additive	(G) Substituted urea
P–99–0979	06/18/99	09/16/99	CBI	(G) Additive	(G) Substituted urea
P–99–0980	06/23/99	09/21/99	CBI	(G) Adhesive for various substrates	(G) Polyester/aliphatic polyurethane dispersion in water
P–99–0981	06/24/99	09/22/99	CBI	(G) Destructive fuel additive	(G) Polyisobutylene amine
P–99–0982	06/24/99	09/22/99	CBI	(S) Acid dye for the coloring of anodized aluminum	(G) Chromate, bis[[[(substitued)(phenylamino)ethyl] azo](substituted) benzenedisulfonato]-, potassium tetrasodium
P–99–0983	06/24/99	09/22/99	CBI	(G) Coating additive	(G) Alkylol ammonium salt of a high-molecular weight carboxylic acid
P–99–0984	06/24/99	09/22/99	CBI	(G) Coating component	(G) Urethane acrylate oligomer
P–99–0985	06/25/99	09/23/99	CBI	(G) Component of manufactured consumer article	(G) 1,3,6-substitutednapthalene-7-[[4,5-dihydro-3-methyl -5-oxo-1-(4-substitutedphenyl) -1*h*-pyrazol-4-yl]azo]-, tetrasodium salt
P–99–0986	06/25/99	09/23/99	CBI	(G) Component of manufactured consumer article	(G) 1,3,6-substitutednapthalene-7-[[4,5-dihydro-3-methyl -5-oxo-1-(4-substitutedphenyl) -1*h*-pyrazol-4-yl]azo]-, tetrapotassium salt
P–99–0987	06/25/99	09/23/99	CBI	(S) Water and oil repellent finish for clothes of cotton, polyester, and others	(G) Poly - beta - fluoroalkyl acrylate and alkyl acrylate
P–99–0988	06/25/99	09/23/99	CBI	(S) Water and oil repellent finish for clothes of cotton, polyester, and others	(G) Poly - beta - fluoroalkyl acrylate and alkyl acrylate
P–99–0989	06/25/99	09/23/99	CBI	(G) Open non-dispersive (resin)	(G) Cyclohexyl fatty acid amide
P–99–0990	06/29/99	09/27/99	CIBA Specialty Chemicals Corporation, colors division	(S) Colorant for wood stain/metal deco formulations	(G) Cobaltate(5-, bis[4-[[6-[(substituted) ,-1,3,5-triazin-2-yl) amino]-1-hydroxy-3-sulfo- 2-naphthalenyl]azo] -3-hydroxy-7-substituted-1-naphthalenesulfonato(4-)]-, pentasodium
P–99–0991	06/25/99	09/23/99	CBI	(G) Destructive use	(G) Calcium long chain alkaryl phenate sulfide
P–99–0992	06/28/99	09/26/99	CBI	(G) Coating additive	(G) Modified polysiloxane
P–99–0993	06/28/99	09/26/99	Reichhold, Inc.	(S) Binder in uv curble inks & coatings	(G) Urethane acrylate ester
P–99–0995	06/28/99	09/26/99	CBI	(S) Microelectronics coating polymers	(G) Substituted bicyclic olefin
P–99–0996	06/28/99	09/26/99	CBI	(G) Resin coating	(G) Urethane acrylate
P–99–0997	06/28/99	09/26/99	CBI	(G) Processing aid for plastics	(G) Organomodified polysiloxanes
P–99–0998	06/28/99	09/26/99	CIBA Specialty Chemicals Corp.	(G) Recycle material, contained use	(S) Butanedioic acid, ethyl methyl ester (9ci)*
P–99–0999	06/28/99	09/26/99	Inabata America Corporation	(G) Surfactant	(G) Polyoxyethylene derivative
P–99–1000	06/29/99	09/27/99	Reichhold, Inc.	(S) Paint resin	(G) Polyester polyol
P–99–1001	06/30/99	09/28/99	CBI	(G) Polymer film component; polymer coextrusion component; adhesives	(G) Ethylene acrylate copolymer

I. 72 Premanufacture Notices Received From: 06/14/99 to 07/02/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1002	06/30/99	09/28/99	3M Company	(G) Epoxy coating component	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane and α,α′,α″-1,2,3-propanetriyltris [omega-(oxiranylmethoxy)poly [oxy(methyl-1,2-ethanediyl)]*
P–99–1003	06/25/99	09/23/99	CBI	(G) Chemical intermediate	(G) Long chain alkyphenol
P–99–1004	06/21/99	09/19/99	Polycoat Products Co.	(S) Prepolymer for adhesives, coatings, cast elastomer & spray urethane	(G) Modified diphenylmethane diisocyanate prepolymer
P–99–1005	06/21/99	09/19/99	Polycoat Products Co.	(S) Prepolymer for adhesives, coatings, cast elastomer & spray urethane	(G) Modified diphenylmethane diisocyanate propolymer
P–99–1006	07/01/99	09/29/99	Cytec Fiberite, Inc.	(S) As precursor mixtures, composite prepregs, adhesive mixtures; as converted to polymer, neat polymer, polymer/filler mixtures	(G) Polyimide precursor solution
P–99–1007	07/01/99	09/29/99	Cytec Fiberite, Inc.	(S) As precursor mixtures, composite prepregs, adhesive mixtures; as converted to polymer, neat polymer, polymer/filler mixtures	(G) Polyimide precursor solution
P–99–1008	07/01/99	09/29/99	Cytec Fiberite, Inc.	(S) As precursor mixtures, composite prepregs, adhesive mixtures; as converted to polymer, neat, polymer, polymer/filler mixtures	(G) Polyimide precursor solution
P–99–1010	07/01/99	09/29/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted butanoic acid
P–99–1011	07/01/99	09/29/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted halo butanoic acid, ester
P–99–1012	07/01/99	09/29/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted butanoic acid, ester
P–99–1013	07/02/99	09/30/99	Dystar L. P.	(S) Dyeing of cellulosic fiber	(G) Sulfurous acid, monosodium salt, reaction products with (substituted)amine and sodium sulfide
P–99–1014	07/02/99	09/30/99	CBI	(G) Ink component	(G) Cycloaliphatic olefin distillate stream polymerized with substituted alkyl phenol
P–99–1015	07/02/99	09/30/99	CBI	(S) Resin for rubber	(G) Modified hydrocarbon resin
P–99–1016	07/02/99	09/30/99	CBI	(S) Resin for rubber	(G) Modified hydrocarbon resin
P–99–1017	07/02/99	09/30/99	CBI	(S) Resin for rubber	(G) Modified hydrocarbon resin
P–99–1018	07/02/99	09/30/99	CBI	(S) Resin for rubber	(G) Modified hydrocarbon resin
P–99–1019	07/02/99	09/30/99	CBI	(S) Resin for rubber	(G) Modified hydrocarbon resin
P–99–1020	07/02/99	09/30/99	CBI	(S) Resin for rubber	(G) Modified hydrocarbon resin

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 35 Notice of Commencement From: 06/14/99 to 07/02/99

Case No.	Received Date	Commencement/ Import Date	Chemical
P–95–0734	06/21/99	05/21/99	(G) Polyolefin-modified polyphthalamide
P–97–0187	06/14/99	05/20/99	(G) 2,6-dinitro-1,4-benzenedimethanol, polymer with aliphatic diisocyanate and 1,6 hexanediol, bisphenol a ethoxylate and acid functional diol
P–97–0572	06/28/99	06/10/99	(S) 2-propenoic acid, 2-methyl-2-isocyanatoethyl ester, polymer with methyl 2-methyl-2-propenoate*
P–97–0816	06/14/99	05/31/99	(G) C.i. reactive blue 15:1
P–97–0819	06/14/99	05/31/99	(G) C.i.reactive orange 99
P–97–0820	06/14/99	05/31/99	(G) C.i. disperse red 152
P–97–0961	06/22/99	05/31/99	(G) Polyurethane adhesive
P–98–0344	06/28/99	06/07/99	(G) Epoxy resin polymer adduct
P–98–0411	07/02/99	06/26/99	(G) Polyester polyol
P–98–0496	06/16/99	06/08/99	(G) Bis azo dyestuff
P–98–0594	07/02/99	06/22/99	(G) Polyester amide
P–98–0611	06/15/99	06/08/99	(G) Derivatized tetrasubstituted alkane
P–98–0618	07/02/99	06/23/99	(G) Poly(ester-ether)

II. 35 Notice of Commencement From: 06/14/99 to 07/02/99—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–98–0979	06/14/99	05/11/99	(G) Alkanedioic acid, diester with branched alcohols
P–98–1032	06/14/99	06/07/99	(G) Benzenepolycarboxylic acid alkyl ester
P–99–0049	06/23/99	06/03/99	(G) 2-naphthalenesulfonic acid, 4-hydroxy-substituted amino - substituted phenylazo, mixed salt
P–99–0089	06/22/99	06/07/99	(G) Polyalkoxylated aromatic amine tint
P–99–0124	06/24/99	06/01/99	(G) Tetra alkyl thiuram disulfide
P–99–0155	06/28/99	06/07/99	(G) Modified acrylic resin
P–99–0156	06/28/99	06/07/99	(G) Modified acrylic resin
P–99–0211	06/14/99	06/07/99	(G) Polyester polyurethane
P–99–0382	06/16/99	05/24/99	(G) Copolymer of acrylic esters and styrene
P–99–0433	06/14/99	05/18/99	(G) Alkoxylated alkyloxypropylamine
P–99–0434	06/14/99	05/16/99	(G) Alkoxylated alkyloxypropylamine
P–99–0436	06/14/99	05/17/99	(G) Alkoxylated alkyloxy propylamine oxide
P–99–0437	06/14/99	05/20/99	(G) Alkoxylated alkyloxy propylamine oxide
P–99–0447	06/17/99	05/23/99	(G) Substituted heterocyclic benzoic acid
P–99–0452	06/17/99	05/25/99	(G) Heterocyclic substituted heterocyclic benzoic acid salt
P–99–0456	06/17/99	06/08/99	(S) Carbamic acid, 1,6-hexanediylbis-, bis[2-[2-(1-ethylpentyl)-3-oxazolidinyl] ethyl] ester*
P–99–0459	06/17/99	06/08/99	(S) Oxirane, methyl-, polymer with α-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,1′-methylenebis[4-isocyanatobenzene] and oxirane*
P–99–0490	07/02/99	06/03/99	(G) Modified styrene/butadiene/acrylate latex
P–99–0542	07/01/99	06/25/99	(S) Silicic acid, diethoxyoctylsilyl trimethylsilyl ester*
P–99–0558	06/29/99	06/09/99	(G) Phenolic resin
P–99–0610	06/29/99	06/22/99	(G) Polyhydroxystyrene compound
Y–91–0201	06/25/99	06/11/99	(S) Polymer of 1,4-benzenedicarboxylic acid, dimethyl ester; 1,2-ethanediol; 1,4-cyclohexanedimethanol; ethanol, 2,2′-oxybis-; [isopropanol, ti(4+)salt]

List of Subjects

Environmental protection, Premanufacture notices.

Dated: July 22, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–20468 Filed 8–6–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

August 4, 1999.

Additional Subject To Be Considered at Open Meeting Thursday, August 5, 1999

The Federal Communications Commission will consider the Petition of US West Communications, Inc. in conjunction with the item listed below at the Open Meeting Scheduled for 9:30 a.m., Thursday, August 5, 1999, in Room TW–C305, at 445 12th Street, SW., Washington, D.C.

Item No.	Bureau	Subject
3	Common Carrier	Title: Access Charge Reform (CC Docket No. 96–262); Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1); and Interchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers (CCB/CPD File No. 98–63). Petition of US West Communications, Inc., for Forbearance from Regulaton as a Dominant Carrier in the Phoenix, Arizona MSA (CC Docket No. 98–157). Summary: The Commission will consider a Fifth Report and Order and Further Notice of Proposed Rulemaking concerning issues relating to interstate access charge reform. The Commission will consider extending the statutory deadline applicable to the above-referenced petition.

The prompt and orderly conduct of the Commission business requires that less than 7-days notice be given consideration of this additional subject.

Action by the Commission August 3, 1999, Chairman Kennard and Commissioners Ness, Furchtgott-Roth, Powell and Tristani voting to consider this subject.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Federal Communications Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 99–20602 Filed 8–5–99; 3:44 pm]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Acquisition Services Information Requirements."

DATES: Comments must be submitted on or before October 8, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to "Acquisition Services Information Requirements." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (FAX number (202) 898–3838; Internet address: comments@fdic.gov).

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to review the following currently approved collection of information:

Title: Acquisition Services Information Requirements.

OMB Number: 3064–0072.

Form Number: 3700/04A.

Frequency of Response: Occasional.

Affected Public: Contractors and vendors who wish to do business with the FDIC.

Estimated Number of Respondents: 31,528.

Estimated Time per Response: 0.42 hours.

Estimated Total Annual Burden: 13,241 hours.

General Description of Collection: The collection involves the submission of information on Form 3700/04A by contractors who wish to do business with the FDIC. The form is used to examine a contractor's compliance with FDIC contracting regulations for potential FDIC contract awards, including whether the contractor is a minority-owned business or women-owned business.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 3rd day of August, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–20371 Filed 8–6–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Apraisal Subcommittee; Information Collection Activities Under OMB Review

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of information collection extension submitted to OMB for review under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") has sent to the Office of Management and Budget ("OMB") for review the following information collection.

DATES: Comments on this information collection must be received on or before September 8, 1999.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW, Suite 310, Washington, DC 20006; and Alexander T. Hunt, Clearance Officer, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2000 K Street, NW, Suite 310, Washington, DC 20006, from whom copies of the information collection and supporting documents are available.

SUMMARY OF REVISION:

Title: 12 CFR part 1102, subpart C; Rules pertaining to the privacy of individuals and systems of records maintained by the Appraisal Subcommittee.

Type of Review: Regular submission.

Description and Summary: The information will be used by the ASC and its staff in determining whether to grant to an individual access to records pertaining to that individual and whether to amend or correct ASC records pertaining to that individual under the Privacy Act of 1974 (5 U.S.C. 552a).

Form Number: None.

OMB Number: 3139–0004.

Affected Public: Individuals and Households.

Number of Respondents: 50 respondents.

Total Annual Responses: 50 responses.

Average Hours Per Response: 33 hours.

Total Annual Burden Hours: 16.67 hours.

Dated: August 4, 1999.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Marc L. Weinberg,

Acting Executive Director and General Counsel.

[FR Doc. 99–20425 Filed 8–6–99; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Information Collection Activities Under OMB Review

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of information collection extension submitted to OMB for review under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Appraisal

Subcommittee of the Federal Financial Institutions Examination Council ("ASC") has sent to the Office of Management and Budget ("OMB") for review the following information collection.

DATES: Comments on this information collection must be received on or before September 8, 1999.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW, Suite 310, Washington, D.C. 20006; and Alexander T. Hunt, Clearance Officer, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2000 K Street, NW, Suite 310, Washington, DC 20006, from whom copies of the information collection and supporting documents are available.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR part 1102, subpart B; Rules of Practice for Proceedings.

Type of Review: Regular submission.

Summary and Need: Procedures for ASC non-recognition and "further action" proceedings against State appraiser regulatory agencies and other persons under section 1118 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347).

Form Number: None.

OMB Number: 3139–0005.

Affected Public: State, local or tribal government.

Number of Respondents: 55 respondents.

Total Annual Reponses: 2 responses.

Average Hours Per Response: 60 hours.

Total Annual Burden Hours: 120 hours.

Dated: August 4, 1999.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Marc L. Weinberg,

Acting Executive Director and General Counsel.

[FR Doc. 99–20426 Filed 8–6–99; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit pubic comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Survey of Opinions of Principal Investigators on Managing a Biomedical Research Laboratory—NEW—The Office of Research Integrity is proposing an informal survey of principal investigators to obtain anecdotal information on experiences associated with the management of a Biomedical Research Laboratory. The information will be shared with the research community to promote good laboratory management practices. *Respondents:* Principal Investigators—Reporting Burden Information; *Number of Respondents:* 200; *Annual Frequency of Response:* one time; *Average Burden per Response:* 3.5 hours; *Total Annual Burden:* 700 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. Written comments should be received within 60 days of this notice.

Dated: August 2, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–20454 Filed 8–6–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Second Mail Survey for the Multi-site Evaluation of the Welfare-to-Work Grant Program—New—This data collection will support the Office of the Assistant Secretary for Planning and Evaluation in its efforts to further document the status of Welfare-to-Work formula and competitive grantees and provide information in implementation issues as part of the Congressionally mandated evaluation of the Welfare-to-Work grants program. *Respondents:* Non-profit Institutions, State, local or Tribal Governments; *Number of Responses:* 578; *Burden per Response:* 1.24 hours; *Total Burden:* 714 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Office on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: July 30, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–20355 Filed 8–6–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research; Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Health Care Policy and Research (AHCPR) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Administrator, AHCPR, on the technical merit of proposals submitted in response to a Request for Proposals (RFPs) on "Technical, Analytical and Logistical Support Services for the Office of Research Review, Education and Policy". The RFP was published in the Commerce Business Daily on May 11, 1999.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, 41 CFR 101–6.1023, and procurement regulations, 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that protects the contract proposal evaluation process.

Name of TRC: The Agency for Health Care Policy and Research—"Technical, Analytical and Logistical Support Services for the Office of Research Review, Education and Policy."

Date: August 19–20, 1999 (Closed to the public).

Place: Agency for Health Care Policy and Research, Conference Center, Conference Room B, 6010 Executive Boulevard, 4th Floor, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Bonnie Campbell, Office of Research Review, Education and Policy, Agency for Health Care Policy and Research, 2101 Executive Boulevard, Suite 400, Rockville, Maryland, 20852, 301–594–1846.

This notice is being published less than 15 days prior to the August 19–20 meeting due to the timing limitations imposed by the review and funding cycle.

Dated: August 3, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–20428 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–25]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Antimalarial Drugs—New—The Division of Parasitic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), is proposing a survey of pharmacy directors of inpatient health facilities to gain information about the availability of antimalarial medications in their pharmacies. In recent years, CDC has received increasing numbers of reports from health care providers and patients who have been unable to obtain, or experienced delays in obtaining, antimalarial drugs which were needed for patients in the United States who have been diagnosed with malaria. In the case of injectable quinidine gluconate, which is the treatment of choice for severe malaria, these delays in initiating appropriate therapy have been life threatening. The reasons for these shortages have varied from problems in drug supply and distribution from the manufacturer to decisions made by pharmacies to no longer stock the drugs. The American Society of Health System Pharmacists (ASHP) will provide CDC with a list of approximately 7,400 pharmacy directors of inpatient institutions in the U.S. Those listed will be surveyed through a mailed questionnaire. Participation in completing the proposed questionnaire will be voluntary. Information collected will include the pharmacy name and location, name of the pharmacy director, number of inpatient beds in the health facility, a list of antimalarial medications currently on formulary and in stock, the procedure and anticipated delay in obtaining injectable quinidine if needed and not currently in stock, and, if quinidine is no longer on formulary, the date it was taken off. Such information is essential for CDC to determine the potential need for and various options to improve the availability of critical antimalarial drugs in the United States. The total estimated cost to respondents is 0.

Form	Number of respondents	Number of responses per respondent	Average burden per respondent (in hrs.)	Response burden (total hrs. in study)
Questionnaire	7,400	1	0.16	1184

Nancy Cheal,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–20381 Filed 8–6–99; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–16–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. National Surveillance of Dialysis-Associated Diseases (0920–0009)—Reinstatement—National Center for Infectious Diseases (NCID). The Hospital Infectious Program, NCID is proposing renewal of a yearly mail survey of dialysis practices and dialysis-associated diseases at U.S. outpatient hemodialysis centers. The rehabilitation of individuals in the United States who suffer from chronic renal failure has been identified as an important national priority; and since 1973, chronic hemodialysis patients have been provided financial support by the Federal Government. The Hospital Infections Program and the Hepatitis Branch, Division of Viral and Rickettsial Diseases, Centers for Disease Control and Prevention, have responsibility for formulating strategies for the control of hepatitis, bacteremia, pyrogenic reactions, and other hemodialysis-associated disease.

In order to devise such control measures, it is necessary to determine the extent to which the incidence of these dialysis-associated diseases changes over time. This request is to continue surveillance activities among chronic hemodialysis centers nationwide. In addition, once control measures are recommended it is essential that such measures be monitored to determine their effectiveness. The survey is conducted once a year by mailing it to all chronic hemodialysis centers licensed by the Health Care Financing Administration (HCFA). Dialysis practices surveyed include the use of hepatitis B vaccine in patients and staff members, whether isolation rooms are used to treat hepatitis B surface antigen-positive patients, the types of vascular access and dialyzers used, whether certain dialysis items are disinfected for reuse, and whether the dialysis center has any policy for insuring judicious use of antimicrobial agents. Among dialysis-associated diseases, the survey includes hepatitis B virus infection, antibody to hepatitis C virus, antibody to human immunodeficiency virus, pyrogenic reactions, and vancomycin-resistant enterococci. The total annual burden hours are 3200.

Respondents	Number of respondents	Number of responses/respondent	Avg. Burden/response (in hrs.)
Chronic Hemodialysis Centers	3,200	1	1

Dated: August 3, 1999.

Nancy Cheal,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–20380 Filed 8–6–99; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0185]

Agency Information Collection Activities: Proposed Collection; Comment Request; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Cosmetic Product Voluntary Reporting Program.

DATES: Submit written comments on the collection of information by October 8, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of

information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Cosmetic Product Voluntary Reporting Program—21 CFR 720.4, 720.6, and 720.8(b) (OMB Control Number 0910–0030—Extension)

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file with the agency an ingredient statement for each of their products (§ 720.4). Ingredient statements for new submissions (§ 720.1) are reported on Form FDA 2512 entitled "Cosmetic Product Ingredient Statement," and Form FDA 2512a, a continuation form. Changes in product formulation (§ 720.6) are also reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514 entitled "Discontinuance of Commercial Distribution of Cosmetic Product Formulation" (§ 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA uses the information received on these forms as input for a computer-based information storage and retrieval system. These voluntary formula filings provide FDA with the best information available about cosmetic product formulations, ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. FDA's data base also lists cosmetic products containing ingredients suspected to be carcinogenic or otherwise harmful to the general public health. The information provided under the Cosmetic Product Voluntary Reporting Program assists FDA scientists in evaluating reports of alleged injuries and adverse reactions to the use of cosmetics. The information also is utilized in defining and planning analytical and toxicological studies pertaining to cosmetics.

FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry. For example, by submitting a Freedom of Information Act request, consumers can obtain information about which products do or do not contain a specified ingredient and about the levels at which certain ingredients are typically used. Dermatologists use FDA files to cross-reference allergens found in patch-test kits with cosmetic ingredients. The Cosmetic, Toiletry, and Fragrance Association, which is conducting a review of ingredients used in cosmetics, has relied on data provided by FDA in selecting ingredients to be reviewed based on frequency of use.

The Cosmetic Product Voluntary Reporting Program was suspended during fiscal year (FY) 1998 because of a lack of funding and was reinstated at the beginning of FY 1999. Participation returned to the previous level. Thus, FDA estimates that the burden of this collection of information will remain the same as the estimate presently on file with OMB.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.4 (New submissions)	FDA 2512/FDA 2512a	550	4.2	2,310	0.5	1,155
720.6 (Amendments)	FDA 2512/2512a	550	1.4	770	0.33	254
720.6 (Notices of discontinuance)	FDA 2514	550	4.5	2,500	0.1	250
720.8 (Requests for confidentiality		2	1.0	2	1.5	3
Total						1,662

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: August 2, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–20359 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. [99F–2552]]

Asahi Denka Kogyo K.K.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Asahi Denka Kogyo K.K. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl) ester as an antioxidant and/or stabilizer in polyolefins intended to contact food.

FOR FURTHER INFORMATION CONTACT: Vivian Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4679) has been filed by Asahi Denka Kogyo K.K., c/o Japan Technical Information Center, Inc., 775

S. 23rd St., Arlington, VA 22202. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl) ester for use at levels not to exceed 0.15 percent by weight in polyolefins complying with § 177.1520 Olefin polymers (21 CFR 177.1520).

The agency has determined under 21 CFR 25.32(I) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 2, 1999

Alan M. Rulis

Director of Premarket Approval, Center for Food Safety and Applied Nutrition

[FR Doc. 99–20356 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2534]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of di(*n*-octyl)phosphite as an extreme pressure-antiwear adjuvant for lubricants intended for incidental contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4683) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) to provide for the safe use of di(*n*-octyl)phosphite as an extreme pressure-antiwear adjuvant for lubricants intended for incidental contact with food.

The agency has determined under 21 CFR 25.32(j) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 20, 1999.

Laura M. Tarantino,

Deputy Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–20361 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 92P–0274 and 97P–0437]

Determination That Bendectin Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the drug product Bendectin, a tablet composed of pyroxidine hydrochloride, 10 milligram (mg), and doxylamine succinate, 10 mg, for the prevention of nausea during pregnancy was not withdrawn from sale for reasons of safety or effectiveness. This determination will permit FDA to approve abbreviated new drug applications (ANDA's) for the combination product pyroxidine hydrochloride, 10 mg, and doxylamine succinate, 10 mg, tablets.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984 Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of approved innovator drug products under an ANDA procedure. ANDA sponsors generally must show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's are not required to repeat the extensive clinical testing necessary to gain approval of an NDA. The only data from investigations required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Although they are technically drugs that should be listed under section 505(j)(7) of the act, certain drug products, including Bendectin, that were approved for safety and effectiveness but were no longer marketed on September 24, 1984, are not included in the Orange Book. In implementing the 1984 amendments, FDA decided not to retrospectively review products withdrawn from the market prior to the passage of the amendments. Rather, the agency decided to determine whether such drugs were withdrawn from the market for safety or effectiveness reasons on a case-by-case basis. A person interested in obtaining marketing approval for such a drug product through the ANDA process must petition the agency for a determination (21 CFR 314.122(d)).

Under FDA's regulations, drugs are withdrawn from the list if the agency withdraws or the Secretary of Health and Human Services suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). FDA must make a determination as to whether a listed drug was withdrawn for reasons of safety or effectiveness when a person petitions for such a determination (§ 314.161(a)(3) (21 CFR 314.161(a)(3))). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1)). FDA may not approve an ANDA that does not refer to a listed drug.

Bendectin is the subject of approved NDA 10–598, currently held by Hoechst Marion Roussel, Inc. (HMR). In 1956, FDA approved the NDA for Bendectin tablets for use in the prevention of

nausea during pregnancy. The original formulation of the antinauseant included dicyclomine hydrochloride, pyroxidine hydrochloride, and doxylamine succinate. The drug was reviewed in the agency's Drug Efficacy Study Implementation program, in which FDA concluded that dicyclomine hydrochloride did not contribute to the effectiveness of the other two ingredients in Bendectin tablets. Therefore, the drug product was reformulated in 1976 to include only pyroxidine hydrochloride, 10 mg, and doxylamine succinate, 10 mg.

On June 9, 1983, Merrell Dow, HMR's predecessor in interest, withdrew Bendectin tablets from sale in the United States and worldwide. Other companies have continued to market this product in other areas of the world. To FDA, to the press, and in letters to customers using Bendectin tablets, Merrell Dow, in explaining its decision, stated that the withdrawal of the drug product was due to nonmedical reasons, noting significant adverse publicity and the burdens of litigation. At the same time, Merrell Dow asserted its view that "available medical evidence does not demonstrate a cause and effect relationship between the use of Bendectin and birth defects." In an FDA Talk Paper issued on the day Bendectin was withdrawn from sale, the agency stated that Merrell Dow's decision was "independent" of action by FDA. HMR and predecessors in interest to HMR have continually maintained that the withdrawal of Bendectin tablets was for reasons other than safety or effectiveness.

On June 24, 1992, Townley & Updike, on behalf of Pharmaceutical Development and Licensing, Inc., submitted a citizen petition under 21 CFR 10.30 (Docket No. 92P–0274/CP1) regarding the status of Bendectin. A similar citizen petition was filed by Cato Research on behalf of Duchesnay Inc., on October 20, 1997 (Docket No. 97P–0437/CP1). Both petitions request that the agency determine whether Bendectin was withdrawn from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not withdrawn from sale for reasons of safety or effectiveness, relist the drug in the Orange Book.

Under § 314.161, the relevant inquiry is whether the manufacturer withdrew the drug from the market for reasons of safety or effectiveness. Where, as here, a substantial amount of time has elapsed since a drug was withdrawn from the market, the agency's inquiry considers not only the reasons the manufacturer initially ceased marketing the product, but also any relevant information that has become available since the market withdrawal. Because a finding that a product was not withdrawn for safety or effectiveness reasons will permit the approval of ANDA's for the drug, the agency considers all relevant information, not just information available at the time of the initial withdrawal, to determine whether a drug is no longer on the market due to safety or effectiveness concerns.

The agency's review of the withdrawal of Bendectin from the market has considered the sponsor's explanation of the basis for the withdrawal of the product in 1983 and information available to the agency regarding safety or effectiveness concerns for Bendectin. As noted previously, the sponsor has consistently maintained that it withdrew Bendectin from the market for reasons other than safety or effectiveness. The agency has reviewed information submitted with the petitions, published studies, U.S. and foreign adverse event reports, and FDA records. The current evidence supports the conclusion that Bendectin was not withdrawn from the market for reasons of safety or effectiveness.

Doxylamine succinate is an active ingredient in several over-the-counter (OTC) antihistamines and sleep aids. The labeling of these OTC products bears statements that pregnant women should seek the advice of a health professional before using the products or that the products should not be taken by pregnant women. These statements do not contradict FDA's present determination because the combination product pyroxidine hydrochloride, 10 mg, and doxylamine succinate, 10 mg, is a prescription drug product. As with all prescription drug products that are being considered for use in a pregnant woman, a health professional may appropriately assess the risks and benefits of pyroxidine hydrochloride and doxylamine succinate for its intended use.

Pyroxidine hydrochloride is also known as vitamin B_6. As an individual product, it is readily available to U.S. consumers without the requirement of a prescription.

The agency has determined under § 314.161 that Bendectin was not withdrawn from the market for reasons of safety or effectiveness. Accordingly, the agency will list Bendectin tablets in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to the combination product pyroxidine hydrochloride, 10 mg, and doxylamine succinate, 10 mg, tablets may be approved by the agency.

Dated: July 28, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20362 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee); Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).

General Function of the Committee: To advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the ranch hand study by the U.S. Air Force and to provide scientific oversight of the Department of Veterans Affairs Army Chemical Corps Vietnam Veterans Health Study, and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the committee is desirable.

Date and Time: The meeting will be held on August 26 and 27, 1999, 8:30 a.m. to 5 p.m.

Location: Parklawn Bldg., 5600 Fishers Lane, conference room K, Rockville, MD.

Contact Person: Ronald F. Coene, Food and Drug Administration, 5600 Fishers Lane, rm. 16–53, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12560. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review the draft report of the Air Force Health Study–Cycle 5.

Procedure: Interested persons may present data, information, or views,

orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 6, 1999. Oral presentations from the public will be scheduled on August 27, 1999, between approximately 11 a.m. to 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 6, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 30, 1999

Linda A. Suydam,

Senior Associate Commissioner

[FR Doc. 99–20365 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–98–6000]

Memorandum of Understanding Between the Food and Drug Administration and States of Illinois

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a Memorandum of Understanding (MOU) between FDA and the State of Illinois Department of Nuclear Safety. The purpose of the MOU is to authorize the State to implement a State certification program under the Mammography Quality Standards Act.

DATES: The agreement became effective August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Lireka P. Joseph, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 2094 Gaither Rd., Gaithersburg, MD 20850, 301–443–2845. **SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

BILLING CODE 4160–01–F

Control No. 225-98-6000

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF HEALTH AND INDUSTRY PROGRAMS

I. PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to authorize the State of Illinois, through the Department of Nuclear Safety (Department), to implement a State certification program in Illinois under the Mammography Quality Standards Act (MQSA). The MOU will authorize the Department to implement MQSA certification standards as approved by the United States Food and Drug Administration (FDA), and to issue certificates to mammography facilities to ensure safe, reliable, and accurate mammography in Illinois. FDA recognizes that the Radiation Protection Act of 1990 and Department emergency/proposed rules, to be filed and effective upon execution of this MOU, meet the requirements of the MQSA for approval by FDA of a State certification program in Illinois.

II. BACKGROUND:

The MQSA (Pub. L. 102-539) was enacted on October 27, 1992, to establish national quality standards for mammography. Pursuant to MQSA, the authority to approve accreditation bodies and to certify facilities was delegated by the Secretary of Health and Human Services (Secretary) to the FDA.

Subsection (q) of the MQSA authorized the Secretary to authorize State programs to carry out certain MQSA certification program requirements. Section 24.5 of the Radiation Protection Act of 1990 authorizes the Department to enter agreements and promulgate rules as necessary to implement such a State program in Illinois.

FDA has developed a States as Certifiers Demonstration Project (Project) to allow a limited trial of State Programs under Subsection (q) of the Act. The State of Illinois has applied and been approved by the FDA to participate in the Project. The Project is for one year, but may be renewed by mutual agreement. FDA anticipates that the Demonstration Project will lead to a national States as Certifiers program which will be

open to all states that apply and are approved by FDA.

III. AUTHORITY:

FDA has been delegated authority by the Secretary to authorize, under Subsection (q) of the MQSA, State MQSA certification programs. Pursuant to Section 24.5 of the Radiation Protection Act of 1990, the Department is authorized to enter into agreements to carry out the State Certification program requirements provided for in the MQSA.

IV. TERMS:

1. FDA, under the Project, hereby authorizes the State of Illinois, through the Department, to implement a program to carry out the certification requirements of subsections (b), (c), (d), (g)(1), (h), (i), and (j) of the MQSA (including the requirements under regulations promulgated pursuant to such subsections). The Department shall implement the program in accordance with its application dated February 9, 1998 and its response to the FDA review letter of April 7, 1998, submitted with the Department's letter of April 20, 1998.

2. FDA shall continue to carry out subsections (e) and (f), may take action under subsections (h), (i), and (j), and shall conduct oversight functions under subsections (g)(2) and (g)(3) of the MQSA.

3. The State of Illinois will provide the FDA with the results of all MQSA inspections conducted by the State during the Project. Based on this information, the FDA will bill and charge each inspected mammography facility a fee of $509 to cover the FDA's costs for the annual inspection. This fee may be subject to change.

4. Under the MQSA, all certified mammography facilities except governmental entities are subject to the payment of inspection fees. During the period of time the State of Illinois is participating in the Project, facilities that qualify as government entities will not be required to pay the FDA inspection fee but will be required to recertify their government entity status using the form provided when billed by FDA

During the period of time Illinois is participating in the Project, the Department will directly bill and charge all facilities certified by the Department to perform mammography under MQSA an annual certification fee of $750.

V. NAME AND ADDRESSES OF PARTICIPATING AGENCIES:

FDA:

Office of Health and Industry Programs
1350 Piccard Drive
Rockville, MD 20850

State of Illinois

Department of Nuclear Safety
1035 Outer Park Drive
Springfield, IL 62704

VI. LIAISON OFFICERS:

For matters and notices related to this MOU, the contact person for FDA is:

Al Van De Griek
Division of Mammography Quality and Radiation Programs
Food and Drug Administration, HFZ-240
1350 Piccard Drive
Rockville, Maryland 20850
(301) 594-0866

The contact person for the Department is:

Paul Brown, Chief
Illinois Department of Nuclear Safety
Division of Electronic Products
1035 Outer Park Drive
Springfield, Illinois 62704
(217) 785-9978

Either party may, from time to time, designate in writing different contact persons or addresses.

VII. PERIOD OF AGREEMENT:

After acceptance by both parties, this MOU will be become effective on the effective date of 32 Illinois Administrative Code 370 (Quality Standards and Certification Requirements for Facilities Performing Mammography) and continue until the completion of the Project or upon termination in writing by either party with a 30-day prior notice (such notice shall be sent to the addresses listed in Section VI). This MOU may be modified by mutual written consent at any time.

NOW THEREFORE, the parties hereto mutually agree to the terms and conditions set forth above.

FDA:

8/3/98

(Signature and date)

Lireka P. Joseph, Dr.P.H.
Director
Office of Health and Industry Programs
Center for Devices and Radiological Health
Food and Drug Administration

State of Illinois:

8/3/98

(Signature and date)

Thomas W. Ortciger
Director
Department of Nuclear Safety
State of Illinois

Dated: August 2, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–20358 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2359]

Medical Devices; Global Harmonization Task Force: Summary Technical File Documents for Premarket Documentation of Conformity With Requirements for Medical Devices; Recommendations on the Role of Standards in the Assessment of Medical Devices; and a Recommendation on Medical Device Classification; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of three documents entitled "Summary Technical File for Premarket Documentation of Conformity With Requirements for Medical Devices;" "Recommendation: Role of Standards in the Assessment of Medical Devices;" and "Recommendation on Medical Devices Classification." Study group 1 of the Global Harmonization Task Force (GHTF) has prepared these documents on premarket regulation of medical devices. These documents are intended to provide information only and represent harmonized proposals and recommendations that may be used by governments developing or updating their premarket regulation schemes for medical devices. Elements of the approach set forth in these documents may not be consistent with current U. S. regulatory requirements. FDA is requesting comments on these documents.

DATES: Written comments by September 30, 1999. After the close of the comment period, written comments may be submitted at any time to Kimber C. Richter (address below).

ADDRESSES: Submit written comments on the documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. If you do not have access to the World Wide Web (WWW), submit written requests for single copies on a 3.5″ diskette of the document listed above to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to these documents.

FOR FURTHER INFORMATION CONTACT: Kimber C. Richter, Office of Device Evaluation (HFZ–400), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has participated in a number of activities to promote the international harmonization of regulatory requirements. In September 1992, a meeting was held in Nice, France, by senior regulatory officials to evaluate international harmonization. At this time it was decided to form GHTF to facilitate harmonization. Subsequent meetings have been held on a yearly basis in various locations throughout the world. The most recent GHTF meeting was held in June and July 1999, in Bethesda, MD, in the United States.

The objective of the GHTF is to encourage convergence at the global level of regulatory systems of medical devices in order to facilitate trade while preserving the right of participating members to address the protection of public health by regulatory means considered most suitable. One of the ways this objective is achieved is by identifying and developing areas of international cooperation in order to facilitate progressive reduction of technical and regulatory differences in systems established to regulate medical devices. In an effort to accomplish these objectives, the GHTF has formed four study groups to draft documents and carry on other activities designed to facilitate global harmonization. This notice is a result of documents that have been developed by study group 1.

Study group 1 was formed in January 1993, and was originally tasked with identifying differences between various regulatory systems. In 1995, the group was asked to propose areas of potential harmonization for premarket device regulations and possible guidance that could help lead to harmonization. As a result of their efforts, this group has developed three draft documents that are described briefly in the following paragraphs.

(1) "Summary Technical File for Premarket Documentation of Conformity With Requirements for Medical Devices" (GHTF.SG1.NO11R7). Study group 1 suggests that this document should be used with the document

entitled "Essential Principles of Safety and Performance of Medical Devices on a Global Basis; Final Working Draft" (63 FR 46227, August 31,1998).

This document has been developed to encourage global convergence of regulatory systems and provide one means of potential future achievement. It is intended for use by medical device regulators, conformity assessment bodies, and industry, and offers an economic and effective approach to the control of medical devices in the interest of public health. The document will be of value to countries developing or amending regulations. The regulatory requirements of some countries may not, at present, reflect the contents of this document.

The purpose of this document is to propose a format and harmonized content for a summary technical file to be held by the sponsor or submitted, as required by the regulatory authority, for premarket clearance/approval. It proposes a format that may be used as an alternative to country-specific current submission formats by GHTF member states. This document summarizes the technical information needed to demonstrate conformity to premarket requirements that are consistent across various regulatory systems. Users of this document may submit it to various regulatory authorities with country specific additions as needed. (These will be defined in a second volume still under development.) Study group 1 may focus on these differences for future harmonization efforts. It should be noted that the amount of detail and information that will be needed in the summary technical file may vary considerably with the risk class of the product concerned.

(2)"Recommendation: Role of Standards in the Assessment of Medical Devices" (GHTF.SG1.NO12R7). This GHTF document provides harmonized guidance for regulatory authorities on the use of standards in premarket regulation of devices. It suggests that international standards may assure the safety, quality and performance of medical devices and should serve as the building blocks for a harmonized regulatory process. Additionally, it recommends that regulatory authorities and industry should encourage and support the development of international standards for medical devices to demonstrate compliance with the essential principles of safety and performance of medical devices. It suggests that the use of standards is voluntary, except in those particular cases where the regulatory authority has deemed certain standards mandatory.

(3)"Recommendation on Medical Devices Classification." This GHTF document suggests some general guidelines for classification of medical devices to achieve eventual harmonization. It recommends that there is a need to classify medical devices based on their risk to patients, users and other persons; and that there is a benefit for manufacturers and regulatory authorities if a globally harmonized classification system is developed. This document goes on to say that there is a risk presented by a particular device and that the risk depends on its intended purpose and the effectiveness of the risk management techniques applied during the design, manufacture, and use of that device. The document also suggests that the regulatory controls applied should be proportional to the level of risk associated with a medical device and should increase with the associated degree of risk presented by the medical device. The GHTF Study Group suggests four global classifications of devices. This document also presents a Decision Tree Logic that may help regulatory authorities develop different parameters that might be used to classify specific devices.

These documents are presented for review and comment so that industry and other members of the public may express their views and opinions on these matters.

II. Electronic Access

Persons interested in obtaining copies of these draft documents may also do so using the WWW. Updated on a regular basis, the CDRH home page includes the document entitled "Essential Principles for Safety and Performance of Medical Devices on a Global Basis; Final Working Draft," device safety alerts, (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video-oriented conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/CDRH". Information on the GHTF may be accessed at http://www.GHTF.org".

III. Comments

Interested persons may, on or before September 30, 1999, submit to the Dockets Management Branch (address above) written comments regarding the draft documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number found in brackets in the heading of this document and with the full title of these documents. The draft documents and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

After September 30, 1999, written comments regarding the draft documents may be submitted at any time to the contact person (address above).

Dated: July 25, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–20367 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0302]

Guidance For Industry on Consumer-Directed Broadcast Advertisements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a final guidance for industry entitled "Consumer-Directed Broadcast Advertisements." The agency sought public comment on a draft version of this guidance, which was announced in the **Federal Register** of August 12, 1997. The agency considered the comments received and, where appropriate, revised the draft guidance. The final guidance describes how consumer-directed broadcast advertisements for prescription drugs for humans and animals, and human biological products, may comply with the requirement that they make adequate provision for dissemination of the approved package labeling.

DATES: Written comments on the final guidance may be submitted at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for copies of the final guidance to the Office of Training and Communications, Division of Communications Management, Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, http://www.fda.gov/cder/guidance/index.htm; or Office of Communication, Training,

and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, http://www.fda.gov/cber/guidelines.htm, FAX 1–888–CBERFAX or 301–827–3844, Mail: the Voice Information System at 800–835–4709 or 301–827–1800; or Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, http://www.fda.gov/cvm.

FOR FURTHER INFORMATION CONTACT:

Regarding prescription human drugs: Nancy M. Ostrove, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828, or via e-mail at "ostrove@cder.fda.gov".

Regarding prescription human biological products: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028, or via e-mail at "stifano@cber.fda.gov".

Regarding prescription animal drugs: Mukund R. Parkhie, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6642, or via e-mail at "mparkhie@bangate.fda.gov".

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 12, 1997 (62 FR 43171), FDA announced the availability of a draft guidance for industry concerning consumer-directed broadcast advertisements. The draft guidance was intended to describe how advertisers could fulfill their obligations under the regulations to provide consumers with necessary risk information in connection with prescription drug advertisements broadcast through general public media such as radio, television, and telephone communications systems. The prescription drug advertising regulations (§ 202.1 (21 CFR 202.1)) distinguish between print and broadcast advertisements. Print advertisements must include a "brief summary," which generally contains each risk concept in the product's approved package labeling. In contrast, advertisements broadcast through media such as television, radio, or telephone communications systems must disclose the product's major risks in either the audio or audio and visual parts of the presentation; this is sometimes called the "major statement." Sponsors of broadcast advertisements are also required to present a brief summary, or alternatively, may make "adequate provision * * * for dissemination of the approved or permitted package labeling in connection with the broadcast presentation" (§ 202.1(e)(1)). The draft guidance described and explained the rationale behind one possible multifaceted approach that would fulfill the "adequate provision" requirement.

After considering comments received by the public, FDA has revised the draft guidance and is publishing it as a final guidance. FDA notes that although the comments did not address the specific issue of telephone advertisements, the lack of a specific discussion concerning such advertisements may have led to the assumption that the same multifaceted approach appropriate for television and radio advertisements was also appropriate for telephone advertisements. Therefore, in the final guidance FDA clarified its position with regard to fulfilling the "adequate provision" requirement for telephone advertisements. Aside from the addition of this clarification and the revision of introductory language to reinforce the importance in broadcast advertisements of complying with the more general requirements of the advertising regulations, there were no major revisions to the draft guidance.

As specified in its good guidance practices policy (62 FR 8961, February 27, 1997), the agency is not obliged to specifically address every comment on a draft or final guidance. However, because this draft guidance had a substantial impact on the direct-to-consumer broadcast environment, FDA believes that discussion of the agency's response to some of the issues raised in the comments will be helpful to certain individuals and groups. Therefore, FDA has placed a document entitled "Consumer-Directed Broadcast Advertisements Guidance: Questions and Answers" in the docket with this final guidance (see docket number in brackets in the heading of this document), as well as on FDA's website at "www.fda.gov/cder/guidance/index.htm".

As discussed in the August 12, 1997, **Federal Register** notice announcing availability of the draft guidance, within 2 years of publication of this final guidance, FDA intends to evaluate its effects on the public health. At the end of this evaluation period, FDA will determine whether this guidance should be withdrawn, continued, or modified to reflect the agency's current thinking.

This guidance for industry represents the agency's current thinking on consumer-directed broadcast advertisements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the final guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The final guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20364 Filed 8–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1055–NC]

Medicare and Medicaid Programs; Announcement of Additional Applications From Hospitals Requesting Waivers for Organ Procurement Service Areas

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces additional applications that we have received from hospitals requesting waivers from entering into agreements with their designated organ procurement organizations. Section 1138(a)(2) of the Social Security Act allows the Secretary of the Department of Health and Human Services to grant waivers to hospitals that want to enter into an agreement with a specific OPO that is not the designated OPO for the hospital's service area. This notice requests comments from OPOs and the general public for our consideration in determining whether these waivers should be granted.

COMMENT DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 8, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health

and Human Services, Attention: HCFA–1055–NC, P.O. Box 9016, Baltimore, MD 21244–9016.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1055–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, Monday through Friday from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Mark A. Horney, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1138(a)(1)(A)(iii) of the Social Security Act (the Act) provides that a participating hospital must notify its designated organ procurement organization (OPO) of potential organ donors. The designated OPO, as defined under section 1138(a)(3)(B) of the Act, is determined by the service area in which the hospital is located. Under section 1138(a)(1)(C) of the Act, the hospital must have an agreement with only that designated OPO to identify potential organ donors.

Section 1138(a)(2) of the Act provides that a participating hospital may obtain a waiver of these requirements from the Secretary of the Department of Health and Human Services (the Secretary). A waiver allows the hospital to have an agreement with an OPO other than the designated OPO if the conditions specified in section 1138(a)(2)(A) of the Act are met.

Section 1138(a)(2)(A) states that in granting a waiver, the Secretary must determine that the waiver: (1) Is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver.

In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO service area due to the changes made on or after December 28, 1992, in definition of metropolitan statistical areas (MSAs); and (4) the length and continuity of a hospital's relationship with the OPO other than the designated OPO.

Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application within 30 days of receiving the application and offer interested parties an opportunity to comment in writing within 60 days of the published notice.

The regulations at 42 CFR 486.316(d) provide that if we change the OPO designated for an area, hospitals located in that area must enter into agreements with the newly designated OPO or submit a request for a waiver within 30 days of notice of the change in designation. The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under section 1138(a)(2)(A) of the Act and have been incorporated into the regulations at § 486.316(e). Section 486.316(g) further specifies that a hospital may continue to operate under its existing agreement with an out-of-area OPO while we process its waiver request it submitted in accordance with § 486.316(d).

This notice supplements previous notices announcing OPO waivers published in the **Federal Register** on January 19, 1996 (61 FR 1389), May 17, 1996 (61 FR 24941), November 8, 1996 (61 FR 57876), April 21, 1997 (62 FR 19326), September 17, 1997 (62 FR 48872), September 23, 1998 (63 FR 50919), and January 12, 1999 (64 FR 1811).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) that was supplied to each hospital. This Program Memorandum detailed the waiver process and discussed the information that hospitals must provide in requesting a waiver. We indicated that upon receipt of the waiver requests, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

We will review the requests and comments received. During the review process, we may consult, on an as-needed basis, with the Health Resources and Services Administration's Division of Transplantation; the Organ Procurement and Transplantation Network Contractor, United Network for Organ Sharing; and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver requests and notify the affected hospitals and OPOs.

III. Hospital Waiver Requests

As allowed under § 486.316(e), each of the following hospitals has requested a waiver to have an agreement with an alternative, out-of-area OPO. The listing includes the name of the facility, the city and state of the facility, the currently designated area OPO and the requested OPO.

Name of facility	City	State	Designated OPO	Requested OPO
Keweenaw Memorial Hospital	Laurium	MI	WIWU	MIOP
Jefferson Memorial Hospital	Ranson	WV	DCTC	VAOP
Dickinson County Healthcare System	Iron Mountain	MI	WIWU	MIOP

The following two hospitals have requested a waiver under § 486.316 (e) for a reason unrelated to a change in the designated service area of an OPO. These waivers will only be effective upon completion of our review if the provider meets the requirement of § 486.316 (e).

Name of facility	City	State	Designated OPO	Requested OPO
Fairview Hospital	Great Barrington	MA	MAOB	NYAP
Elko General Hospital	Elko	NV	NVLV	UTOP

IV. Key to the OPO Codes

The key to the acronyms used in the listings to identify OPOs and their addresses are as follows:

DCTC—WASHINGTON REGIONAL TRANSPLANT CONSORTIUM, 8110 Gatehouse Road, Suite 101 W, Falls Church, VA 22042
MAOB—NEW ENGLAND ORGAN BANK, One Gateway Center, Newton, MA 02458
MIOP—ORGAN PROCUREMENT AGENCY OF MICHIGAN, 2203 Platt Road, Ann Arbor, MI 48104
NVLV—NEVADA DONOR NETWORK, 4850 Southeastern Avenue, Suite 33, Las Vegas, NV 89119
NYAP—CENTER FOR DONATION AND TRANSPLANT, 218 Great Oaks Blvd., Albany, NY 12203
UTOP—INTERMOUNTAIN ORGAN PROCUREMENT AGENCY, 230 South 500 East, Suite 290, Salt Lake City, UT 84102
VAOP—VIRGINIA ORGAN PROCUREMENT AGENCY, 1527 Houguenot Road, Midlothian, VA 23113
WIWU—UNIVERSITY OF WISCONSIN OPO, University of Wisconsin Hospitals and Clinics, 600 Highland Avenue, Madison, Wisconsin 53792

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection requirement should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on the following issue for the information collection requirements described below.

Designation of one OPO for each service area:

Section 486.316(e) states the requirements for a Medicare or Medicaid participating hospital to qualify for a waiver permitting the hospital to have an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located. The burden associated with these requirements is currently approved under OMB 0938–0688, HCFA–R–13, Conditions of Coverage for Organ Procurement Organizations, with an expiration date of November 30, 1999.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Groups, Division of HCFA Enterprise Standards, Attention: Louis Blank, HCFA–1055–NC, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Allison Eydt, HCFA Desk Officer, Room 10235, New Executive Office Building, Washington, DC 20503.

Authority: Section 1138 of the Social Security Act (42 U.S.C. 1320b–8).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774 Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: August 2, 1999.

Robert A. Berenson,

Director, Center for Health Plans and Providers, Health Care Financing Administration.

[FR Doc. 99–20403 Filed 8–6–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing: "Novel Method and Composition to Induce Apoptosis in Tumor Cells"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J. R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; E-Mail: jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION: Invention Title: "Apoptosis Inducing Agents and Methods" Inventors: Drs. Lucio Miele (U.S.F.D.A.) and Leslie L. Shelly (NICHD) USPA SN: 60/102,816 [=DHHS Ref. No. E–176–98/0]—Filed with the U.S.P.T.O. October 2, 1998.

Apoptosis or programmed cell death is caused by many anti-tumor drugs and by radiation therapy. These treatment modalities cause apoptosis in tumor cells and in many normal cells in the body. As cancer cells progress towards more aggressive forms, they often become highly resistant to drug- or radiation-induced apoptosis, generally through the loss of function p53, a gene which can trigger apoptosis in response to DNA damage. Thus, novel strategies to induce apoptosis in tumor cells, especially p53-deficient cells, is an attractive and an active area of research.

An antisense molecule is a DNA or RNA which has the opposite beginning to end orientation compared to the "normal" gene. These molecules reduce the expression of the target gene by forming pairs with its "normal" DNA and RNA. Notch-1 is a gene which is known to be important in controlling cell differentiation in many organisms. Notch-1 is expressed at high levels in several human tumors. However, its function in tumor cells has not been characterized. So far, its role in maintaining tumor cell survival has not been identified. Using a model constituted by a p53-deficient mouse leukemia cell line, NIH scientists found that: 1.) Antisense synthetic DNA oligonucleotides and stable incorporation of an antisense gene (a model for gene therapy) targeting notch-1, when given together with a differentiation-inducing antitumor drug, cause the cells to respond by massive apoptosis rather than differentiation; 2.) stable incorporation of an antisense notch-1 gene increases apoptosis in these cells even in the absence of any antitumor drugs. This suggests that antisense notch-1 treatment, by antisense oligonucleotides or by gene therapy, may be used alone or together with anti-cancer drugs to cause apoptosis in tumor cells.

The notch gene belongs to a family of epidermal growth factor ("EGF") like homeotic genes, which encode transmembrane proteins with a variable number of cystgeine-rich EGF-like repeats in the extracellular region. Four notch genes have been described in mammals, which include notch-1, notch-2, notch-3, and notch-4 (Int-3), which have been implicated in the differentiation of the nervous system and other structures. The EGF-like proteins Delta and Serrate have been identified as ligands of notch-1.

Mature notch proteins are heterodimeric receptors derived from the cleavage of notch pre-proteins into an extracellular subunit (N^{EC}) containing multiple EGF-Like repeats and a transmembrane subunit including intracellular region (N^{tm}). Notch activation results from the binding of ligands expressed by neighboring cells, and signaling from activated notch involves a network of transcription regulators.

Alteration of notch-1 signaling or expression may contribute to tumorigenesis. Deletions of the extracellular portion of human notch-1 are associated with about 10% of the cases of T-Cell acute lymphoblastic leukemia. Truncated forms of notch-1 cause T-Cell lymphomas when introduced into mouse bone marrow stem cells and are onogenic in rat kidney cells. The human notch-1 gene is in a chromosomal region (9q34) associated with hematopoietic malignancies of lymphoid, myeloid, and erythroid lineage. Additionally, strikingly increased expression of notch-1 has been documented in a number of human tumors including cervical cancer, colon tumors, lung tumors, and pre-neoplastic lesions of the uterine cervix.

Notch antisense oligonucleotides (or other molecules that interfere with the expression or function of notch) could be therapeutically administered to treat or prevent tumors. It has not been found that administration of notch antisense oligonucleotide alone is ineffective as an anti-neoplastic treatment. The present invention has overcome this problem by combining the administration of a cell differentiation agent with a molecule that interferes with the expression or function of a notch protein (such as the notch-1 protein). This combination of approaches has unexpectedly been found to induce apoptosis in neoplastic cells, and provide a useful therapeutic application of this technology. The method of the present invention includes inducing apoptosis in a target cell by inhibiting a cell fate determining function of a notch protein in the target cell at a time when the cell is undergoing differentiation. In particular, the target cell is induced to differentiate and upregulate notch expression, so that interference with notch expression or function causes the target cell to commit to an apoptotic pathway. Inhibition of notch expression or interference with its function can include exposing the cell to a notch protein antisense oligonucleotide that includes at least six nucleotides that comprise a sequence complementary to at least a portion of the RNA transcript of a notch gene (such as the notch-1 gene), and is hybridizable to the RNA transcript. Although the antisense oligonucleotide can be hybridizable to any region of the RNA transcript, particular oligonucleotides that have been found to be useful are antisense oligonucleotides to the notch-1 EGF repeat region, Lin/notch region, or ankyrin region. Alternatively the molecule can be a monoclonal antibody that antagonizes the function of a notch protein in the cell.

In particular the tumor cell is one that is characterized by increased activity or increased expression of a notch protein, such as a notch-1 or notch-2 protein. Examples of tumor types that over express notch-1 include cervical cancer, breast cancer, colon cancer, melanoma, seminoma, lung cancer and hematopoietic malignancies, such as erythroid leukemia, myeloid leukemia, (such as chronic or acute myelogenous leukemia), neuroblastoma and medulloblastoma. The differentiation inducing agent to which the cell is exposed can be selected from a broad variety of agents, including retinoids, polar compounds (such as hexamethylene bisacetanmide), short chain fatty acids, organic acids, Vitamin D derivatives, cyclooxygenase inhibitors, arachidonate metabolism inhibitors, ceramides, diacylglycerol, cyclic nucleotide derivatives, hormones, hormone antagonists, biologic promoters of differentiation, and derivatives of any of these agents.

Technology

This invention provides a method and pharmaceutical composition for treating a tumor by causing apoptosis in tumor cells that expresses notch-1 protein, and in particular cells that exhibit increased expression of notch-1. Hence, this technology discloses methods and compositions to induce apoptosis in cells that over express the notch proteins. A cell fate determining function of notch is specifically disrupted at a time when the cell is undergoing differentiation, which causes the cell to undergo apoptosis. The invention includes therapies for tumors that over express a notch protein (such as notch-1) by inducing differentiation of the cells in the tumor with a differentiation inducing agent such as hexamethylene bisacetamide and other such differentiation agents. At a time during which differentiation has been promoted, and the cell is susceptible to interference with the anti-apoptosis effect of notch, the function of the notch protein is disrupted. Disruption of notch function can be achieved, for example, by the expression of antisense oligonucleotides that specifically interfere with expression of the notch protein on the cell, or by monoclonal antibodies that specifically bind to notch and inactivate it. This technology represents a novel method to induce apoptosis in tumor cells.

The above mentioned invention is available, including any available foreign intellectual property rights, for licensing.

Dated: August 3, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–20455 Filed 8–6–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

Direct C–14 Oxidation of Opioids

A Coop and KC Rice (NIDDK)

Serial No. 60/132,628 filed 05 May 1999, Licensing Specialist: Leopold J. Luberecki, Jr.; 301/496–7735 ext. 223; e-mail: leo__luberecki@nih.gov.

This application describes a simple one-step method for the direct oxidation of 14-H opioids into the desired 14-hydroxy opioid derivatives, providing a quicker and less expensive means for the manufacture of these compounds. For example, this process converts codeinone into 14-hydroxycodeinone, eliminating the need for using thebaine, the currently used common starting material, whose price is increasing at 10% annually. The invention claims a process of employing certain oxidizing agents, using much less reagent volume than the present standard. The invention also circumvents diene intermediate formation, thus eliminating the need for expensive chromatographic isolation. The process takes much less time than the industry standard and produces high yields between 50% and 80% at higher cost-effectiveness than current methods. The 14-hydroxyl substituted opioid antagonists are useful in a number of medicinal applications. For instance, the antagonists naltrexone and naloxone are drugs used in the treatment of opiate abuse, opiate overdose, and alcohol addiction. In addition, certain derivatives of these compounds have been found useful in the prevention of tolerance to morphine and as immunosuppressants.

Methods for Detecting Cancer Cells

Thomas Ried, Evelin Schrock, Bijan M. Ghadimi (NHGRI)

DHHS Reference No. E–211–98/0 filed 01 Apr 1999, Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; e-mail: jf36z@nih.gov

The present application describes a highly sensitive assay for distinguishing between cancer and non-cancer epithelial cells in the blood. It provides an improved diagnostic technique for detecting cancer and determining the organ-origin of the cancer. This assay can be used to prove the neoplastic nature of cells and predict when shed tumor cells have or will become metastatic. A major advantage of the present invention is that tumor cells can also be recovered as viable cells. Thus, the tumor cells can be kept alive in vitro for a sufficient period of time to determine the effect of particular anti-tumor pharmaceuticals on the cells. Furthermore, the assay provides an early detector of treatment success or failure and thereby allows a treatment regimen to be customized for an individual patient with advanced primary cancer.

Replication-Defective Dengue Viruses that are Replication-Defective in Mosquitoes for Use as Vaccines

L Zeng, L Markoff (FDA)

Serial No. 60/098,981 filed 01 Sep 1998, Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail cs253n@nih.gov

Although flaviviruses cause a great deal of human suffering and economic loss, there is a shortage of effective vaccines. The present invention is directed toward vector stage replication-defective flaviviruses that are replication-defective in mosquito vectors that transmit them to humans. The replication-defective flaviviruses of the present invention demonstrate a limited ability to replicate in the vector organisms that transmit flaviviruses from one host to another. More specifically, the present invention is directed toward the construction and propagation of flaviviruses that possess 3'-noncoding regions altered in such a way as to prevent or severely limit viral reproduction in a vector organism. Such mutant flaviviruses may be useful as vaccines.

Vaccine Against Escherichia coli 0157 Infection, Composed of Detoxified LPS Conjugated to Proteins

Shousun C. Szu, Edward Konadu, and John B. Robbins (NICHD) DHHS Reference No. E–158–98/0 filed 20 July 1998 (PCT/US98/14976)

Licensing Contact: Robert Benson; 301/496–7056 ext. 267; e-mail: rb20m@nih.gov

This invention is a conjugate vaccine to prevent infection, in particular in young children under 5 years of age, by E. coli 0157:H7, an emerging human pathogen which causes a spectrum of illnesses with high morbidity and mortality, ranging from diarrhea to hemorrhagic colitis and hemolytic-uremic syndrome (HUS). Infection is due to the consumption of water or meat contaminated by feces from infected animals, such as cattle. The conjugate is composed of the O-specific polysaccharide isolated from E. coli 0157, or other Shiga-toxin producing bacteria, conjugated to carrier proteins, such as non-toxic P. aeruginosa exotoxin A or Shiga toxin 1. A Phase I clinical trial, involving adult humans, showed the vaccine is safe and highly immunogenic. Adults, after one injection containing 25 (g of antigen, responded with high titers of bactericidal antibodies. Thus the conjugates of the invention are promising vaccines, especially for children and the elderly, who are most likely to suffer serious consequences from infection. The clinical study is described in J. Infectious Diseases 177, 383–387, 1998.

Applicator System and Method of Use

Michael J. Lenardo, Galen Fisher (NIAID)

Serial No. 09/005,475 filed 12 Jan 1998, Licensing Contact: John Fahner-Vihtelic, 301/496–7735 ext. 270

The present application describes a novel microcentrifuge tube and tube cap and research method, which allows for dispensing the contents of a microcentrifuge tube without pipetting. The design eliminates pipetting volume error and prevents the cross-contamination which can be experienced in conventional pipetting. This invention is particularly useful for such applications as loading tube contents into an electrophoresis gel after a reaction such as PCR. Using the disclosed apparatus and methods increases the speed of a variety of routine procedures and prevents contamination of samples due to soiled lab apparatus.

Method To Reduce the Bias in the Mean and Variance of Indices of Water Diffusion Anisotropy as Measured by Diffusion Tensor MRI

Carlo Pierpaoli (NINDS/NICHD), Peter J. Basser (NICHD)

Serial No. 08/824,706 filed 14 Apr 1997; Licensing Contact: John Fahner-Vihtelic; 301/496–7735, ext. 270; e-mail: jf36z@nih.gov.

This invention describes several novel MRI "stains" to measure and display water diffusion anisotropy data obtained by diffusion tensor MRI (DT–MRI). One problem that this invention overcomes is that it significantly reduces the statistical bias in the mean and variance of the measured anisotropy of water diffusion caused by background noise in the MR images. These benefits are achieved by exploiting the idea that fiber tracts exhibiting diffusion anisotropy vary continuously in most regions. Thus, the principal axes of the diffusion tensor (or eigenvectors) can be used to improve the estimate of the principal diffusivities (or eigenvalues) within a local region of interest. These eigenvalues, in turn, are used to

compute our improved local measures of diffusion anisotropy. Images or maps of water diffusion anisotropy are increasingly being used to gather structural information about fibrous tissue, such as white matter fibers as well as cardiac and skeletal muscle fibers in vivo, in health, disease, development, and aging. This invention results not only in a more accurate measurement of diffusion anisotropy, but it improves image quality and reduces scanning time in clinical and biological applications of DT–MRI. Since the reduction in diffusion anisotropy has been shown to be sensitive to nerve fiber degeneration, this new data should be useful in studies to screen for and determine the efficacy of neuroprotective agents, as well as streamline multi-site and longitudinal clinical trials designed to assess their safety and efficacy.

A New Class of Anti-Tumor Agents

Christopher J. Michejda (NCI), Richard H. Smith, Jr.

Serial No. 07/179,622 filed 29 Mar 1988; U.S. Patent 4,9023,970 issued 08 May 1990; Licensing Contact: Girish Barua; 301/496–7056, ext. 263; e-mail: gb18t@nih.gov

Substituted triazenes are potentially useful anti-tumor agents. Examples of substituted triazenes in clinical use include 5-(dimethyltriazeno)imidazole-4-carboxamide (DTIC), which is used in the treatment of metastatic melanoma and some soft tissue sarcomas, and the recently approved temozolomide, which is used in brain cancer. The National Institutes of Health has developed compounds which have many advantages over known triazene anti-cancer compounds. Advantages include a novel mechanism of action for at least one of them, namely, 1-(2-chloroethyl)-3-(N-methylcarbamoyl)-methyltriazene, which is a highly selective, non-toxic anti-tumor compound, their well understood chemistry, and ease of synthesis of new analogs.

The technology covers compounds of the series of 1-(2-chloroethyl)-3-acyl-3-alkyltriazenes and a method for their synthesis. Some of the subject acyl triazenes generate 2-chloroethyldiazonium ions at very easily controlled rates, while others require metabolic activation to release the electrophilic agent.

Several of the acyltriazenes have shown excellent in vivo activity against human tumor xenografts in nude mice and low toxicity. These compounds are good candidates for development as anti-tumor drugs.

Dated: August 3, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–20456 Filed 8–6–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Susan S. Rucker, J.D., Patent and Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057 ext. 245; fax: 301/402–0220; e-mail: sr156v@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Lentivirus Vector System

SK Arya (NCI)

Serial No. 60/115,247 filed 07 Jan 1999

This application relates to the field of gene therapy. More, particularly the application describes a vector system useful in gene therapy. The vectors employed in this system are lentiviral vectors, particularly retroviral vectors based on HIV2. Retroviral vectors based on HIV2, unlike most other retroviral vectors such as MuLV, are capable of infecting non-proliferating cells thereby making them useful in situations where other retroviral vectors are not. The vector system uses a two vector approach to minimize the possibility of HIV infection and comprises a transfer vector, for carrying the foreign gene of interest, and a packaging vector. The vector system demonstrates an improved ability to package the gene of interest when compared to a control without a loss in production of the transgene. In the experimental system this increase was 25 fold. This improved packaging ability is one means to address current low viral titers which are problematic in the gene therapy field.

This research has been published, in part, in Human Gene Therapy 1998 June 10; 9(9): 1371–86.

Thymosin β4 Promotes Wound Repair

KM Malinda, HD Kleinman (NIDCR) and A Goldstein

Serial No. 60/094,690 filed 30 Jul 1998

This application describes the use of the compound thymosin β4 as an agent for promoting wound healing. Thymosin β4 is a small, 43 mer, 4.9 kDa, peptide which can be produced by chemical synthesis or recombinantly. Studies using a punch model for wounds in rats have shown that providing thymosin β4 either by systemic delivery (intraperitoneal) or topical delivery accelerates wound healing and that extracellular matrix deposition occurs in the wound bed. In addition, thymosin β4 has been shown previously to promote endothelial cell migration and to promote angiogenesis.

Mammalian Selenoprotein Differentially Expressed in Tumor Cells

VN Gladyshev (NCI), DL Hatfield (NCI), JC Wooten (NLM) and K Jeang (NIAID)

PCT/US99/07560 filed 06 Apr 1999 and Serial No. 60/080,850 filed 06 Apr 1998

This application describes the identification, cloning, and sequencing of a human protein which contains selenium. A murine homolog has also been identified. The gene encoding the protein has been localized to the short arm of chromosome 1 at 1p31. Early work indicates that levels of the protein and/or mRNA are decreased in prostate, liver, ovarian and fallopian tube cancers and in lymphoma. Thus, levels of the protein or mRNA may be useful clinically as diagnostic or prognostic tools. The fact that other selenium proteins are known to be involved in the immunological response and the fact that this protein was originally detected in T cells leads to a hypothesis that the protein may play a role in the immunological response. Antibodies and tools for expressing the protein recombinantly may be useful in conducting further research on the functionality of this protein. This selenoprotein may potentially mediate a chemopreventative effect of selenium in prostate cancer.

This research has been published, in part, in JBC 1998 Apr 10; 272(15): 8910–15.

Methods of Stimulating Proliferation and Differentiation of Human Pancreatic Cells Ex Vivo

JS Rubin (NCI), A Hayek, GM Beattie, T Otonkoski, V Quaranta

Serial Nos. 08/732,230 filed 14 Apr 1997; U.S. Patent 5,888,705 issued 30 Mar 1999; PCT/US9/05521 filed 28 Apr 1995, and 08/235,394 filed 29 Apr 1994; U.S. Patent 5,857,309 issued 24 Dec 1996

These patents and applications generally relate to methods which may be used in treating diabetes. In particular, they describe methods for culturing pancreatic islet cells which will later be transplanted into patients. The culture of the pancreatic islet cells is carried out in the presence of hepatocyte growth factor/scatter factor (HGF/SF) under conditions such that differentiation and/or proliferation of the pancreatic islet cells occurs and insulin production is stimulated or increased. These insulin-producing pancreatic islet cells can then be transplanted into patients having diabetes mellitus (Type I diabetes).

This work has also been published in Otonkoski T et al. Diabetes 43(7): 947–53 (Jul 1994), Hayek A et al. Diabetes 44(12): 1458–60 (Dec 1995), Otonkoski T et al. Endocrinology 137(7): 3131–9 (Jul 1996), and Beattie, GM et al. Diabetes 45(9): 1223–8 (Sep 1996).

Date: August 3, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer Office of Technology Transfer National Institutes of Health.

[FR Doc. 99–20458 Filed 8–6–99; 8:45 am]

BILLING CODE 4140–01–P 5

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel R13 Review Mtg.

Date: August 10, 1999.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Contract Review on Pathology Support.

Date: August 12, 1999.

Time: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: David Brown, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institute of Health, HHS).

Dated: August 3, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20459 Filed 8–6–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 23–24, 1999.

Open: September 23, 1999, 1:00 p.m. to 5:30 p.m.

Agenda: Call to Order; Report of Review of NIA Minority Research Program; Program Highlights and Presentation on Perspectives on Minority Aging.

Place: National Institutes of Health, Shannon Building, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.

Open: September 24, 1999, 8:00 a.m. to 10:15 a.m.

Agenda: Report on Working Group on Program and Discussion on NIA Strategic Plan.

Place: National Institutes of Health, Shannon Building, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.

Closed: September 24, 1999, 10:30 a.m. to Adjournment.

Agenda: To review and evaluate review of Applications.

Place: National Institutes of Health, Shannon Building, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National institutes of Health, HHS)

Dated: August 3, 1999.
Anna Snouffer,
Acting, Committee Management Officer, NIH.
[FR Doc. 99–20460 Filed 8–6–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Vaccine to Treat and Prevent Disease Caused by Human Papillomaviruses, Particularly Cervical Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.
ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a exclusive license worldwide to practice the invention embodied in: PCT Patent Application Number PCT/US97/12115 (NIH Reference Number E–032–96/1), entitled "Infectious Papillomavirus Pseudoviral Particles", filed July 14, 1997, to American Home Products Corporation through its Wyeth-Ayerst Laboratories Division, Wyeth-Lederle Vaccines business unit, having a place of business in Madison, N.J. The patent right in this invention has been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before October 8, 1999 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Robert Benson, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 267; Facsimile: (301) 402–0220, e mail: rb20m@nih.gov..

SUPPLEMENTARY INFORMATION: The patent application describes pseudoviral particles of papillomavirus capsids encapsidating DNA useful for gene therapy and as vaccines. The pseudoviral particles are made by co-expressing the papillomavirus L1, L2 and E2 genes in a cell line along with a vector comprising the useful DNA and DNA containing E2 protein binding sites (E2BS). The presence of the E2BS containing DNA results in the encapsidation of the DNA. The encapsidated DNA can be a gene to replace a defective gene, or can encode an antigen, for gene therapy or immunization respectively. Since papillomaviruses selectively multiply in epithelial cells, the capsids may be particularly useful for mucosal vaccines, and for delivering genes to epithelial tissues. The existence of many non-crossreacting serotypes of human and other animal papillomaviruses can be taken advantage of to eliminate the problem of immune rejection upon the second injection of a pseudoviral particle. The same gene or antigen encoding DNA can be incorporated in pseudoviral particles of different serotypes for multiple dosing.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the development of vaccines for the prevention or treatment of diseases in humans caused by infection with human papillomaviruses.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Date: August 3, 1999
Jack Spiegel,
Director, Division of Technology Development and Transfer, Office of Technology Transfer.
[FR Doc. 99–20457 Filed 8–6–99; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–44]

Submission for OMB Review: HMDA Loan/Application Register

AGENCY: Office of the Assistant Secretary for Administration, HUD.
ACTION: Notice.

SUMMARY: This report collects information for mortgage lenders on application for, and originations and purchases of, mortgage and home improvement loans. Non-depository mortgage lending institutions are required to use the report as a running log throughout the calendar year and send it to HUD by March 1 of the following calendar year.

DATES: *Comments Due Date:* September 8, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hour of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1955, 44 U.S.C. 35, as amended.

Dated: August 3, 1999.
David S. Cristy,
Director, Investment Strategies, Policy, and Management.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: HMDA Loan/ Application Register.

Office: Housing.

OMB Approval Number: 2502–XXXX.

Description of the Need for the Information and its Proposed Use: This report collects information for mortgage lenders on application for, and originations and purchases of, mortgage and home improvement loans. Non-depository mortgage lending institutions are required to use the report as a running log throughout the calendar year and send it to HUD by March 1 of the following calendar year.

Form Number: None.

Respondents: Business or Other For-Profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Non-Depository Institutions	1,800		1		148		266,666

Total Estimated Burden Hours: 266,666.

Status: New.

Contact: Janet Tasker, HUD, (202) 708–7500 ext. 101. Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–20461 Filed 8–6–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of the Interior, Office of the Secretary is announcing its intention to request re-approval for the collection of information for the DI-Form 381, Claim for Relocation Payments—Residential and DI-Form 382, Claim for Relocation Payments—Nonresidential.

DATES: Comments on the proposed information collection must be received by October 8, 1999 to be assured of consideration.

ADDRESSES: Comments may be mailed to John Moresko, Department of the Interior, Office of Acquisition and Property Management, 1849 C Street NW, Mail Stop 5512, Washington, DC 20240. Comments may also be submitted electronically to john__moresko@ios.doigov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John Moresko, at (202) 208–5704.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implements the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Secretary will be submitting to OMB for extension or re-approval.

Form DI–381 and Form DI–382 were created because of the amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100–17.

The Office of the Secretary has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. The Office of the Secretary will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the Office of the Secretary's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Claim for Relocation Payments-Residential; Claim for Relocation Payments-Nonresidential.

OMB Control Number: 1084–0010.

Summary: The information required is obtained through application made by displaced person(s) or business(es) to the funding agency for determination as to specific amount of monies due under the law.

Bureau Form Numbers: DI–381, DI–382.

Frequency of Collection: On occasion.

Description of Respondents: Individuals and businesses who are displaced because of Federal acquisitions of their real property.

Total Annual Responses: 200.

Total Annual Burden Hours: 88 hours.

Dated: August 3, 1999.

Wiley W. Horsley, Jr.,

Acting Director, Office of Acquisition and Property Management.

[FR Doc. 99–20411 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Assessment of Designation of Critical Habitat for the Woundfin (Plagopterus argentissimus) and Virgin River Chub (Gila seminuda) Within the Virgin River Basin

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the Draft Environmental Assessment for Designation of Critical Habitat for the Woundfin (*Plagopterus argentissimus*) and Virgin River Chub (*Gila seminuda*) within the Virgin River Basin. The purpose of the proposed federal action described in the environmental assessment is to formally designate critical habitat for two endangered fishes inhabiting the Virgin River. Both woundfin and Virgin River chub are listed as endangered species under provisions of the Endangered Species Act of 1973, as amended (Act). The designation of critical habitat for woundfin and Virgin River chub is needed pursuant to the non-discretionary legal requirement under the Act to designate critical habitat when a species is listed, and to comply with a court order to make a determination with regard to these

species. We are seeking comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties on this Draft Environmental Assessment.

DATES: We must receive comments on the Draft Environmental Assessment on or before September 8, 1999 to be considered. All comments received by the above date will be considered in our final determination whether to prepare an environmental impact statement or a finding of no significant impact on designation of critical habitat within the Virgin River Basin.

ADDRESSES: Written comments and other materials regarding the Draft Environmental Assessment should be directed to the Field Supervisor, Utah Ecological Services Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Copies of the draft document are also available from the Field Office. All comments and materials received will be available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Reed E. Harris, Utah Field Supervisor (see ADDRESS above), or at (801) 524–5001 extension 126.

SUPPLEMENTARY INFORMATION

Background

In March of 1994, in response to complaint filed in U.S. District Court, District of Colorado, the Court ordered us to designate critical habitat for the endangered woundfin and Virgin River chub, and for the Virgin spinedace (if listed before December 31, 1994). The Court further ordered that critical habitat be proposed no later than April of 1995, and finalized by December of 1995. In April of 1995 (60 FR 17296) we proposed designation of critical habitat for the woundfin, Virgin River chub, and Virgin spinedace. Shortly after that proposal we entered into a Conservation Agreement with other Federal, State, and private entities to eliminate or reduce impacts threatening the continued existence of the Virgin spinedace. We then withdrew the proposed listing and designation of critical habitat for the Virgin spinedace on February 6, 1996 (61 FR 44010. Subsequent to the proposed designation of critical habitat, and prior to the publishing of a final rule, we were precluded from completing the designation by a Congressional moratorium prohibiting listing species as endangered or threatened, and designating critical habitats for species already listed. Beginning in April 1995 and extending well into 1996, Congress passed a number of spending moratoria prohibiting us from using funds previously allocated for such purposes. These budgetary restrictions created a significant backlog of proposed listing actions, including designation of critical habitat. For this reason, we developed Listing Priority Guidance for fiscal years 1997 (62 FR 55268), and 1998 and 1999 (63 FR 25502) to help prioritize the backlog of listing activities. The designation of critical habitat was given the lowest priority in this Guidance. However, in December, 1998, the 10th circuit court ruled that the Service can no longer use this justification for not designating critical habitat and ordered designation of critical habitat for the Rio Grande silvery minnow *(Hybognathus amarus)*. Shortly after the silvery minnow decision, the plaintiffs in the Virgin River case filed a motion for the Service to finalize critical habitat designation. A hearing is scheduled in August 1999 on this issue. We are in the process of proposing a schedule to the Plaintiffs for finalization of critical habitat for the woundfin and Virgin River chub in the Virgin River.

We are proceeding with steps necessary to finalize critical habitat designation for these two species in the Virgin River Basin and are providing notice of availability of an Environmental Assessment for this critical habitat designation.

Public Comments Solicited

We are seeking public input on the Draft Environmental Assessment for critical habitat designation within the Virgin River basin for the woundfin and Virgin River chub. Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry and/or any interested party regarding the Draft Environmental Assessment are hereby solicited. All comments received will be fully considered prior to a determination whether to prepare a finding of no significant impact or an environmental impact statement on designation of critical habitat within the Virgin River Basin.

Author: The primary author of this notice is Keith L. Rose, U.S. Fish and Wildlife Service, 764 Horizon Drive, Room 227, Grand Junction, Colorado 81506, or at (970) 243–4552.

Authority

The authorities for this action are the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C.. 1532 *et seq.*.)

Dated: August 3, 1999.

Terry Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 99–20379 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

Central Valley Project Improvement Act, Central Valley, CA

AGENCIES: Bureau of Reclamation and Fish and Wildlife Service, Interior.

ACTION: Addition of Fish and Wildlife Service as co-lead agency for Programmatic Environmental Impact Statement.

SUMMARY: The role of the Fish and Wildlife Service (Service) has been changed from cooperating to co-lead agency, as defined under the National Environmental Policy Act (NEPA) pursuant to the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), in on-going efforts to prepare the Programmatic Environmental Impact Statement (PEIS) on implementation of the Central Valley Project Improvement Act (CVPIA).

FOR FURTHER INFORMATION CONTACT: Alan Candlish, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, (916) 978–5197; or James McKevitt, Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340, (916) 979–2760.

SUPPLEMENTARY INFORMATION: On October 30, 1992, the President signed into law the Reclamation Projects Authorization and Adjustment Act of 1992 (Pub. L. 102–575) that included Title XXXIV, the CVPIA. The CVPIA amends the previous authorizations of the California Central Valley Project (CVP) to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic uses and fish and wildlife enhancement as a project purpose equal to power generation. The CVPIA identifies a number of specific measures to meet these new purposes and directs the Secretary of the Interior (Secretary) to operate the CVP consistent with these purposes, to meet the Federal trust responsibilities to protect the fishery resources of affected federally recognized Indian tribes, and to meet all requirements of Federal and California law and to achieve a reasonable balance among competing demands for use of

CVP water. Section 3409 directs the Secretary to complete a PEIS to analyze the direct and indirect impacts and benefits of implementing the CVPIA.

On February 25, 1993, the Secretary approved a memorandum signifying roles of the Bureau of Reclamation (Reclamation) and the Service in regards to implementing the CVPIA. The Service's role was defined as having "* * *primary responsibility for decisions on biological resource issues; for studies on fish and wildlife, their populations and habitat requirements; for fishery restoration program direction; and for the planning, design, and decisions on the administration of fish and wildlife facilities." Because of this language and other specifications in the CVPIA, the Service began implementing, in an interim manner and jointly with Reclamation, provisions of the CVPIA which met the definition of its responsibility. It also began participating in efforts to complete the PEIS for implementing the CVPIA, supporting complete environmental analysis of long-term program implementation efforts for both Reclamation and the Service.

Since 1993, the Service has participated in efforts leading to release of the Draft PEIS for the CVPIA in 1997. Efforts to date suggest the Service was more a de-facto co-lead agency than cooperating agency. Service efforts included such things as attending public and agency meetings, providing responses from the Department of the Interior perspective on fish and wildlife issues; participating in decisions regarding assumptions, model usage, and analysis in the PEIS; and participating in preparation of documentation. Additionally, possible programmatic-level actions that the Service might take to implement the CVPIA were discussed and evaluated during scoping processes associated with completion of the draft NEPA document.

Dated: July 24, 1999.

Michael J. Spear,

Manager, California/Nevada Operations Office, Fish and Wildlife Service.

Dated: July 30, 1999.

Kirk C. Rodgers,

Acting Regional Director, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 99–20385 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P and AA–8096–03]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Chugach Alaska Corporation, notice of which was published in the **Federal Register** on June 24, 1999, is modified to add the right-of-way interest in Federal Aid Secondary Route No. 851 (FAS 851) as to T. 8 S., R. 3 E., Copper River Meridian.

A notice of the modified decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the modified decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 8, 1999 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given June 24, 1999, is final.

Christine Sitbon,

Land Law Examiner, Branch of 962 Adjudication.

[FR Doc. 99–20382 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–99–1990–00]

Resource Advisory Council Meeting, Butte, MT

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will convene at 9 a.m., Wednesday, September 1, 1999, at the Dillon Field Office, 1005 Selway Drive, Dillon, Montana. Issues will include an update on the Whitetail-Pipestone (Tailpipe) Environmental Impact Statement and a review of the Muddy Creek Allotment Decision.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11:30 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact the Butte Field Office, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: BLM Butte Field Manager Merle Good at the above address or telephone number.

Dated: July 30, 1999.

Merle Good,

Field Manager.

[FR Doc. 99–20439 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; NVN–62570]

Partial Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has cancelled its withdrawal application N–62570 for the protection of Ash Springs in Lincoln County, Nevada, as to 4.24 acres. The original Notice of Proposed Withdrawal was published as FR Doc. 98–23426, 63 FR 46467, September 1, 1998. The Bureau of Land Management has determined the 4.24 acres are not needed for the protection of Ash Springs.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 775–861–6532.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has cancelled withdrawal application N–

62570 (FR Doc. 98–2346, 63 FR 46467, September 1, 1998) as it affects the following described land:

Mount Diablo Meridian

T. 6 S., R. 61 E.,
Sec. 6, lot 9 (formerly a portion of lot 4).

The area described contains 4.24 acres in Lincoln County.

The land is not needed for the protection of Ash Springs. The land remaining in the application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

At 9 a.m. on September 8, 1999, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 8, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9 a.m. on September 8, 1999, the land will be opened to location and entry under the United States mining laws subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: July 27, 1999.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 99–20383 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–06; WYW 142589]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw 3759.12 acres of public land in Fremont County, to protect the habitat of the Desert yellowhead, *Yermo xanthocephalus*. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by November 8, 1999.

ADDRESSES: Comments and requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 307–775–6124, or Jack Kelly, BLM Lander Field Office Manager, 1335 Main Street, Lander, Wyoming 82520, 307–332–8400.

SUPPLEMENTARY INFORMATION: On July 8, 1999, a petition/application was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 30 N., R. 95 W.,
Sec. 2, lots 1–3, incl.
T. 31 N., R. 95 W.,
Sec. 22, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 23, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, E½E½;
Sec. 33, E½NE¼;
Sec. 34, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 35, all.

The area described contains 3759.12 acres in Fremont County.

The purpose of the proposed withdrawal is to protect the habitat of the *Yermo xanthocephalus*, a plant species officially classified as a Candidate species, Priority 1, under the Endangered Species Act (ESA) by the U.S. Fish and Wildlife Service. The only known location is within the Beaver Rim area of central Wyoming.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the plant habitat may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Dated: July 26, 1999.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 99–20384 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of currently approved information collection (1010–0079).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the Office of Management and Budget (OMB) for review and approval. We are also inviting your comments on this ICR.

DATES: Submit written comments by September 8, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0079), 725 17th Street, NW, Washington, DC 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules

Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart G, Abandonment of Wells.

OMB Control Number: 1010–0079.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*) gives the Secretary of the Interior the responsibility to preserve, protect, and develop oil and gas resources in the OCS consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. In 1978, section 3(6) of the OCS Lands Act was amended to state that "operations in the outer Continental Shelf should be conducted * * * using technology, precautions, and techniques sufficient to prevent or minimize * * * physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." To carry out these responsibilities, we established regulations at 30 CFR 250, subpart G, "Abandonment of Wells."

Respondents submit requests to abandon operations and procedures for site clearance. They also submit annual reports describing plans for reentry to complete or permanently abandon a well. For us to decide the necessity for allowing a well to be temporarily abandoned, the lessee/operator must show that there is a reason to not permanently abandon the well and the temporary abandonment is not a significant threat to fishing, navigation, or other uses of the seabed. If we did not collect the information, we could not determine: (a) the intent of the lessee, (b) if the final disposition of the well is being diligently pursued, (c) any deviations from the approved Exploration or Development and Production Plan, and (d) if the lessee/operator has documented the temporary plugging of the well and marked the location.

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on January 14, 1999 (64 FR 2501).

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion and annual.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 650 burden hours, averaging approximately 3.25 hours per response. See following chart.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart G	Requirement	Average number per year	Burden	Annual burden hours
701	Request approval to abandon operations (form MMS–124)	(40)(1)	Burden included with 1010–0045.	0
703(c)	Submit annual report on plans for reentry to complete or permanently abandon the well..	75 reports	2 hours	150
704(a)	Request approval of site clearance method.	125 requests	4 hours	500
704(b)	Certify location cleared of obstructions (form MMS–124).	(40)(1)	Burden included with 1010–0045..	0
Total Reporting		200 responses		650

Estimated Annual Reporting and Recordkeeping "Cost" Burden: We have identified no information collection cost burdens for this collection of information.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. . . ." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 8, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 3, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–20387 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from the State of Minnesota in the Possession of the Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from the State of Minnesota in the possession of the Minnesota Indian Affairs Council, Bemidji, MN.

A detailed assessment of the human remains was made by the Minnesota Indian Affairs Council professional staff in consultation with representatives of Prairie Island Community Council, Shakopee Mdewakanton Sioux Community of Minnesota, Grand Portage Reservation Business Committee, Fond du Lac Reservation Business Committee, Nett Lake Reservation (Bois Forte) Tribal Council, Upper Sioux Community of Minnesota, Lower Sioux Mdewakanton Community, Mille Lacs Band of Chippewa Indians, White Earth Band of Minnesota Chippewa, Leech Lake Tribal Council, Minnesota Chippewa Tribe, Red Lake Nation, Iowa Tribe of Oklahoma, Iowa Tribe of Kansas and Nebraska, Ho-Chunk Nation of Wisconsin, Santee Sioux Tribe of the Santee Reservation of Nebraska, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, Yankton Sioux Tribe of South Dakota, Chippewa-Cree Indians of the Rocky Boy's Reservation, Turtle Mountain Band of Chippewa Indians, Assinaboine and Sioux Tribes of the Fort Peck Reservation and Winnebago Tribe of Nebraska, and the non-Federally recognized Indian groups the Mendota Mdewakanton Dakota Community and the Kah-Bay-Kah-Nong (Warroad Chippewa).

In 1934, human remains representing 26 individuals were recovered from site 21-PL-6, Warner Mounds 1 and 2, also known as the Peter Lee Mound (21-PL-13) near Fertile, Polk County, MN during an archeological excavation conducted by A.E. Jenks and L.A. Wilford of the University of Minnesota. No known individuals were identified. The 15 associated funerary objects include an arrowshaft "polisher", projectile points, a shell bead necklace, bone bracelet fragments, shell rings, bone beads, beaver teeth fragments, red ochre, and a soil sample.

Site 21-PL-6/13 has been identified as Arvilla Complex, an archeological culture which cannot be identified with any present-day Indian tribe or group.

In 1941, human remains representing 37 individuals were recovered from site 21-MU-3, Lake Shetek Mounds, Murray County, MN during an archeological excavation conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The two associated funerary objects include a ceramic vessel and an end scraper.

Site 21-MU-3 has been identified only as Woodland, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1954, human remains representing 27 individuals were recovered from site 21-BW-2, Sievert Mound site, Brown County, MN during an archeological excavation conducted by L.A. Wilfor of the University of Minnesota. No known individuals were identified. No associated funerary object are present.

Site 21-BW-2 has been identified only as Woodland, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1978, human remains representing 58 individuals were recovered from site 21-PO-14, Noyes site, Pope County, MN during a rescue excavation conducted by S. Anfinson of the Minnesota Historical Society after construction had removed a burial mound. No known individuals were identified. No associated funerary objects were present.

Site 21-PO-14 has been identified only as Woodland, possibly Onamia, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1970, human remains representing 27 individuals were recovered from site 21-SN-11, Syl Sand site, Stearns County, MN during archeological excavations conducted by D. Birk and C. Tiling of the Minnesota Historical Society. No known individuals were identified. The 15 associated funerary objects include two antelope antlers with pierced holes, two bird-bone flutes, beaver incisors, a quartz flake, a black stone with modified grooves, a clay pipe bowl, four modified turtle shell squares, numerous flakes, and two lithics.

Site 21-SN-11 has been identified as a Middle to Late Woodland site, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

At an unknown date, human remains representing 13 individuals were most likely removed from site 21-PO-3, the Pelican Lake Gravel Pit site, Pope County, MN by unknown person(s) and donated to the University of Minnesota Geology Laboratory. No known individuals were identified. No associated funerary objects are present.

Site 21-PO-3 is associated with the Archaic Tradition, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1963, human remains representing a minimum of 36 individuals were recovered from site 21-DK-41, River Hills Housing Development site, Dakota County, MN by V. Helmen of the Science Museum of Minnesota when they were encountered during construction. No known individuals were identified. No associated funerary objects are present.

Site 21-DK-41 has been identified as possibly an Archaic site, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1964, human remains representing 33 individuals were recovered from site 21-HE-98, the Macmillan site, Hennepin County, MN during an archeological excavation conducted by K. Day of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

Site 21-HE-98 is associated with the Woodland Tradition, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1934, human remains representing 19 individuals were recovered from a destroyed mound in Freeborn County, MN by person(s) unknown. These human remains were turned over to the County sheriff who donated them to the University of Minnesota. No known individuals were identified. The three associated funerary objects include a copper ring-pendant, pieces of turtle shell, and a chert knife.

Based on the associated funerary objects, the human remains from Freeborn County are associated with the Woodland Tradition, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1936, human remains representing 26 individuals were recovered from site 21-RL-1, Red Lake River Mounds, Red Lake County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. The 41 associated funerary objects include clam shells, worked and unmodified flakes, projectile points, worked bone, broken bifaces, scrapers, a hafted antler-beaver tooth tool, shell beads, black quartz, a

spiral shell pendant, a small core, worked shell, a moose metapodial tool, elk antler tool, three blades, a hammerstone, a slate tool, a knife, and a maul.

Site 21-RL-1 has been identified as Arvilla Complex, an archeological culture which cannot be associated with any present-day Indian tribe or group.

In 1932, human remains representing ten individuals were recovered from site 21-CW-1, Pine River Mounds site, Crow Wing County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. No associated funerary objects were present.

Site 21-CW-1 has been identified as part of the Woodland Tradition, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1961, human remains representing 11 individuals were recovered from site 21-WN-15, Vaigt or Voight site, Winona County, MN during archeological excavations conducted by T. Fiske and D. Hume of the University of Minnesota. No known individuals were identified. The nine associated funerary objects include cclamshells, animal bone and antler, a beaver tooth, and a point fragment.

Site 21-WN-15 has been identified as part of the Archaic Tradition, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual identified as being from Kandiyohi County, MN were donated to the Minnesota Historical Society from an unknown person. No known individual was identified. No associated funerary objects are present.

These remains from Kandiyohi County have no archeological associations and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual identified as having come from site 21DL9, Douglas County, MN were donated to the Minnesota Historical Society by an unknown person. No known individual was identified. No associated funerary objects are present.

These remains from Douglas County have no archeological associations and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual identified as having come from site 21-AN-16, Anoka County, MN were donated to the Minnesota Indian Affairs Council's laboratory at Hamline University by an unknown person. No known individual was identified. No associated funerary objects are present.

Site 21-AN-16 has been identified as part of the Woodland Tradition, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

At an unknown date, human remains representing four individuals were recovered form 21-OT-78, Clitheral site, Otter Tail County, MN by unknown person(s) and donated to the Minnesota Indian Affairs Council's laboratory at Hamline University. No known individuals were identified. No associated funerary objects are present.

Site 21-OT-78 has been identified as part of the Archaic Tradition, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

At an unknown date, human remains representing four individuals from site 21-DL-72, Burkey Farm, Douglas County, MN were removed following their disturbance during construction. No known individuals were identified. No associated funerary objects were present.

Site 21-DL-72 has no archeological identification and cannot be associated with any present-day Indian tribe or group.

In 1977, human remains representing one individual were recovered from 21-CA-22, Pine River Resort, Cass County, MN during archeological excavations conducted by D. Birk, who donated these remains to the Minnesota Indian Affairs Council. No known individual was identified. The associated funerary objects were not included in the donation.

Site 21-CA-22 has been identified as Woodland, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1985, human remains representing three individuals were recovered from Long Lake (Union) Cemetery, Hennepin County, MN. These human remains were recovered by representatives of the Minnesota Indian Affairs Council from two spoil piles where recent graves had been dug. No known individuals were identified. No associated funerary objects were present.

These Hennepin County human remains have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1985, human remains representing three individuals were recovered from site 21-BK-37, the Hildebrand site, Becker County, MN by representatives of the Minnesota Indian Affairs Council following their disturbance during construction. No known individuals were identified. No associated funerary objects were present.

Site 21-BK-37 has no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were removed from Traverse County, MN by W. Jensen and donated to the Minnesota Indian Affairs Council by J. Presley. No known individual was identified. No associated funerary objects are present.

These human remains from Traverse County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

During the 1940s, human remains representing one individual were removed from a WPA road construction site near Sauk Centre, Stearns County, MN and donated to the University of Minnesota. No known individual was identified. No funerary objects are present.

These human remains have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1987, human remains representing three individuals were recovered from the Longville area of Cass County, MN during housing construction by unknown person(s) and turned over to the Minnesota State Archeologist acting on behalf of the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

These human remains have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1989, human remains representing one individual were recovered from Crow Wing County, MN and turned over to the Minnesota Indian Affairs Council by the Crow Wing County sheriff. No known individual was identified. No associated funerary objects are present.

These human remains from Crow Wing County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1991, human remains representing one individual were recovered from Minnetonka Regional Park, Hennepin County, MN during an archeological survey conducted by R. Thompson. No known individual was identified. No associated funerary objects were present.

These human remains from Hennepin County have no archeological

classification and cannot be associated with any present-day Indian tribe or group.

In 1991, human remains representing two individuals were recovered from private land in Kanabec County, MN during housing construction and were turned over to the Minnesota Indian Affairs Council by the Kanabec County sheriff. No known individuals were identified. No associated funerary objects are present.

These human remains have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1992, human remains representing one individual were recovered from site 21-KC-25, Hannaford, Koochiching County, MN during an archeological excavation conducted by C. Caine, State Archeologist. No known individual was identified. No associated funerary objects were present.

These human remains from site 21-KC-25 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1992, human remains representing one individual were donated to the Minnesota Indian Affairs Council by S. Simon of Winona, MN. The skull had been in the possession of his grandfather, a physician, who received it from someone who reported that it came from a mound, possibly in Freeborn County, MN. No known individual was identified. No associated funerary objects are present.

The human remains from Freeborn County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1993, human remains representing one individual were removed from site 21-PO-13, Pope County, MN by person(s) unknown. These human remains were turned over to the Minnesota Indian Affairs Council by the Science Museum of Minnesota. No known individual was identified. No associated funerary objects are present.

These human remains from site 21-PO-13 may be associated with the Archaic Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1992, human remains representing one individual were recovered from the east shore of Otter Tail Lake, Otter Tail County, MN by R. Clouse of the Minnesota Historical Society acting on behalf of the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

The human remains from Otter Tail County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1989-1990, human remains representing one individual were removed from site 21-WR-176, Wright County, MN by R. Andrews and sent to the Minnesota Indian Affairs Council through M. Galvin. No known individual was identified. No associated funerary objects are present.

The human remains from site 21-WR-176 have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1993, human remains representing two individuals were removed from site 21-BE-135, Malvin site, Blue Earth County, MN during archeological excavations conducted by R. Strachan and K. Roetzel of Mankato State University and transferred to the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects were present.

These human remains from site 21-BE-135 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1993, human remains representing one individual were removed from site 21-NL-47, Minnemishinona Falls, Nicollet County, MN by C.L. Smith and turned over to the Nicollet County Sheriff's department. No known individual was identified. No associated funerary objects are present.

Site 21-NL-47 has been identified as Woodland Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1989, human remains representing one individual were recovered from near Pickeral Lake, Freeborn County, MN and turned over to the Science Museum of Minnesota by E.R. Feikema. In 1994, the Science Museum of Minnesota transferred these remains to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

These human remains from Freeborn County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were recovered from a cave on Grey Cloud Island, Washington County, MN and transferred to the Ramsey County Medical Examiner's Office. In 1994, these human remains were transferred to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

These human remains from Washington County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1994, human remains representing one individual were recovered from site 21-MU-10, Lake Shetek State Park, Murray County, MN during an archeological survey conducted by D. Radford, Minnesota Department of Natural Resources. No known individual was identified. No associated funerary objects are present.

These human remains from site 21-MU-10 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing one individual were removed from site 21-RA-7, Big Mound, White Bear Lake, Ramsey County, MN by unknown individuals and turned over to the Minnesota Historical Society. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these human remains (H319.2- Female, 18-20 years old) have been identified as Native American. These human remains from site 21-RA-7 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing one individual were removed from an unknown site in Wabasha County, MN by J.V. Brower. In the 1970s, these human remains were catalogued into the collections of the Minnesota Historical Society. No known individual was identified. No associated funerary objects are present.

These human remains from Wabasha County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing one individual were removed from site 21-MA-3, Marshall County, MN during excavations conducted by A.J. Hill. In 1905, these human remains were donated to the Minnesota Historical Society as part of the Mitchell collection. No known individual was identified. No associated funerary objects are present.

These human remains from site 21-MA-3 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing four individuals were removed from site 21-WN-14, Winona County, MN during excavations conducted by T.H. Lewis. In 1905, these human remains were donated to the Minnesota Historical Society as part of the Mitchell collection. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-WN-14 may be associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing four individuals from an unknown site in Clearwater County, MN were removed by J.V. Brower and donated to the Minnesota Historical Society. No known individuals were identified. No associated funerary objects are present.

These human remains from Clearwater County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing five individuals were removed from site 21-RA-5, Mounds Park, Ramsey County, MN during excavations by T.H. Lewis and cataloged into the collections of the Minnesota Historical Society. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-RA-5 are associated with the Middle Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing one individual were removed from site 21-BL-30, Beltrami County, MN during excavations by T.H. Lewis and cataloged into the collections of the Minnesota Historical Society. No known individual was identified. No associated funerary objects are present.

These human remains from site 21-BL-30 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing one individual were removed from an unidentified location in Traverse County, MN by T.H. Lewis and later cataloged into the collections of the Minnesota Historical Society. No known individual was identified. No associated funerary objects are present.

These human remains from Traverse County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1938, human remains representing 22 individuals were removed from an undesignated site in Anoka County, MN by R. Golden who donated them to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Anoka County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1952, human remains representing 48 individuals were removed from site 21-BW-1, Synsteby Mound and Village site, Brown County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The two associated funerary objects include a clam shell and a broken chert knife.

These human remains from site 21-BW-1 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1950, human remains representing 16 individuals were removed from site 21-AN-1, the Howard Lake site, Anoka County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects were present.

These human remains from site 21-AN-1 are associated with the Middle Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1946, human remains representing 42 individuals were removed from site 21-BS-3, Lindholm Mounds site, Big Stone County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The four associated funerary objects include one shell bead, a bone pin, a ceramic vessel, and worked bone.

These human remains from site 21-BS-3 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1952, human remains representing 16 individuals were removed from site 21-KH-2, Nest Lake Mound site, Kandiyohi County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects were present.

These human remains from site 21-KH-2 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

During the 1970s, human remains representing eight individuals were removed from a location in the vicinity of Cambria, Blue Earth County, MN by an unknown donor who gave them to the Minnesota Historical Society. No known individuals were identified. No associated funerary objects are present.

These human remains from Blue Earth County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

During the early 1970s, human remains representing 69 individuals were removed from site 21-WW-4, Alton Anderson site, Watonwan County, MN during archeological excavations conducted by A.G. Lothson of the Minnesota Historical Society. No known individuals were identified. No associated funerary objects are present.

These human remains from 21-WW-4 are probably associated with the Besant and Avonlea Phases, archeological classifications for certain Plains-oriented groups which cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing one individual were removed form 21-RA-7, the Big Mound site at White Bear Lake, Ramsey County, MN by person(s) unknown. No known individual was identified. No associated funerary objects are present.

These human remains (H319.19) from 21-RA-7 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

During the 1970s, human remains representing two individuals were removed from an unknown location in Hennepin County, MN by an unknown person who donated these remains to the Minnesota Historical Society. No known individuals were identified. No associated funerary objects are present.

These human remains from Hennepin County have no archeological classification and cannot be associated

with any present-day Indian tribe or group.

In 1974, human remains representing one individual were removed from an unknown location in Koochiching County, MN by J. Oothoudt of the Minnesota Historical Society. No known individual was identified. No associated funerary objects are present.

These human remains from Koochiching County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

During the late 19th century, human remains representing four individuals were removed from an unknown location in Mille Lacs County, MN by J.V. Brower and donated to the Minnesota Historical Society. No known individuals were identified. No associated funerary objects are present.

These human remains from Mille Lacs County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were removed form a site at Sandy Lake, Aitkin County, MN by unknown persons and donated to the Science Museum of Minnesota. No known individual was identified. No associated funerary objects are present.

These human remains (SMMA 6662) from Aitkin County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing three individuals were removed from an unknown location in Minneapolis, Hennepin County, MN by unknown persons and donated to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Hennepin County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1970, human remains representing one individual were removed from 21-YM-19, Yellow Medicine County, MN during a survey conducted by D. Nystuen of the Minnesota Historical Society. No known individual was identified. No associated funerary objects are present.

These human remains from site 21-YM-19 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing two individuals were removed from an unknown location in Hennepin County, MN and donated by unknown persons to the Minnesota Historical Society. No known individuals were identified. No associated funerary objects are present.

These human remains from Hennepin County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1933, human remains representing one individual were recovered from site 21–TR–5, Brown's Valley Man site, Traverse County, MN by W. Jensen and later donated to the Minnesota Indian Affairs Council by E. Weeks, and J.J. Presley. No known individuals were identified. The associated funerary objects were not donated.

These human remains from site 21-TR-5 are associated with the Paleoindian Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing two individuals were removed from site 21–BK–5, Becker County, MN and donated to the Minnesota Historical Society by a survey crew. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-BK-5 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual (SMMA 6665) were removed from an unknown location near Sandy Lake, Aitkin County, MN by unknown persons and donated to the Science Museum of Minnesota. No known individual was identified. No associated funerary objects are present.

These human remains from Aitkin County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were removed from an unknown location, possibly a mound near Rice Lake, Mille Lacs County, MN by unknown persons and donated to the Minnesota Historical Society where they were registered in 1976. No known individual was identified. No associated funerary objects are present.

These human remains from Mille Lacs County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1976, human remains representing four individuals were removed from site 21-MA-10, Marshall County, MN during archeological excavations conducted by the University of North Dakota and donated to the Minnesota Historical Society by K. Lund. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-MA-10 are assoicated with the Late Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were removed from site 21-RA-5, Mound Park, Ramsey County, MN by unknown person(s) and became part of the Mitchell collection which was donated to the Minnesota Historical Society. No known individual was identified. No associated funerary objects are present.

These human remains from site 21-RA-5 are associated with the Middle Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1971, human remains representing five individuals were removed from site 21-OT-31, Otter Tail County, MN during an archeological survey conducted by D. Nystuen of the Minnesota Historical Society. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-OT-31 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1931, human remains representing seven individuals were removed form an undesignated site at Gray's Bay, Lake Minnetonka, Hennepin County, MN by H. Fuhs and donated to the Minnesota Historical Society. No known individuals were identified. No associated funerary objects are present.

These human remains from Hennepin County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1970, human remains representing 12 individuals were removed from a gravel pit at Lake Minnetonka, Hennepin County, MN and donated to the Minnesota Historical Society by L. Studlareck. No known individuals were identified. No associated funerary objects are present.

These human remains from Hennepin County have no archeological classification and cannot be associated

with any present-day Indian tribe or group.

At an unknown date, human remains representing two individuals were removed from an unknown site in Koochiching County, MN by unknown persons and donated to the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

These human remains from Koochiching County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were removed from an unknown location in Beltrami County, MN by unknown persons and donated to the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

These human remains from Beltrami County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were removed from an unknown location in Blue Earth County, MN by unknown persons and donated to the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

These human remains from Blue Earth County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were removed from an unknown location near Sandy Lake in Aitkin County, MN by unknown persons and donated to the Science Museum of Minnesota. No known individual was identified. No associated funerary objects are present.

These human remains (SMMA 6666) from Aitkin County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing two individuals were removed from site 21-BK-14, Becker County, MN by unknown persons and donated to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-BK-14 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing two individuals were removed from site 21-ME-3, Clear Lake, Meeker County, MN by unknown persons and donated to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-ME-3 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were removed from an unknown location near Litchfield, Meeker County, MN by unknown persons and donated to the University of Minnesota. No known individual was identified. No associated funerary objects are present.

These human remains from Meeker County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1933, human remains representing one individual were removed from site 21-OT-3, Minnesota Woman site (formerly Minnesota Man site), Otter Tail County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individual was identified. The three associated funerary objects include one pendant, one "dagger" and soil samples.

These human remains and associated funerary objects are associated with the Archaic Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1933, human remains representing three individuals were removed from site 21-ML-1 the Brower/Anderson/Vanderbloom/Kern site, Mille Lacs County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. The one associated funerary object are samples of ochorous clay.

These human remains and associated funerary object from site 21-ML-1 are associated with the Malmo Culture of the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1930, human remains representing four individuals were removed from an undesignated site in Otter Tail County on the property of O.M. Carr, who donated these remains to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Otter Tail County are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1931, human remains representing nine individuals were removed from an undesignated site along the north bank of the Minnesota River in Hennepin County, MN by D.H. Nordenson and donated to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Hennepin County are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1934, human remains representing 33 individuals were removed from site 21-TR-1, Round Mound site, Traverse County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-TR-1 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1934, human remains representing five individuals were removed from site 21-TR-2, Wilson Mound site, Traverse County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The 17 associated funerary objects include shell pendants, a scraper, columnella beads, four bone bracelets, seven bone beads, and a shell.

These human remains from site 21-TR-2 are associated with the Arvilla Complex, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1934, human remains representing one individual were removed from site 21-TR-3, K Group Mound site, Traverse County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individual was identified. The one associated funerary object is a projectile point.

These human remains and associated funerary object from site 21-TR-3 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1935, human remains representing four individuals were removed from site

21-BS-2, Schoen Mound site, Mound 1, Big Stone County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-BS-2 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1935, human remains representing nine individuals were removed from site 21-BS-1, Schoen Mound site, Mound 2, Big Stone County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. The one associated funerary object is a bison bone.

These human remains and associated funerary object from site 21-BS-1 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1946, human remains representing one individual were removed from site 21-BS-4, Lou Miller Mounds site, Big Stone County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individual was identified. The two associated funerary objects are a scraper and a ceramic vessel.

These human remains and associated funerary objects from site 21-BS-4 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1935, human remains representing nine individuals were removed from site 21-BS-5, Holtz Mound site, Big Stone County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-BS-5 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1936, human remains representing four individuals were removed from an unknown location in Polk County, MN and donated to the University of Minnesota by M. Nelson. No known individuals were identified. No associated funerary objects are present.

These human remains from Polk County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1936, human remains representing three individuals were removed from an undesignated site on Big Split Hand Lake near Grand Rapids, Itasca County, MN by H.P. Hulin who donated these remains to the University of Minnesota. No known individuals were identified. The 44 associated funerary objects are ceramic sherds.

These human remains and associated funerary objects from the site on Big Split Hand Lake are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1936, human remains representing ten individuals were removed from site 21-KT-1, Lake Bronson site, Kittson County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. The two associated funerary objects are a ceramic vessel and a necklace of canine teeth.

These human remains from site 21-KT-1 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1936, human remains representing four individuals were removed from site 21-MA-1, Snake River Mounds site, Marshall County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. The 21 associated funerary objects include bear claws, a flat rocke, bone pins, stone tools, two pieces of flat bone, flakes, a projectile point, a clay pipe, and a perforated antler handle.

These human remains from site 21-MA-1 are associated with the Arvilla Complex, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1936, human remains representing 27 individuals were removed from site 21-AK-1, Malmo Mounds site, Aitkin County, MN during archeological excavations conducted by G. Ekhom of the University of Minnesota. No known individuals were identified. The three associated funerary objects include red ochre, clay pieces, and fragments of logs surrounding the burials.

These human remains from site 21-AK-1 are associated with the Middle Woodland Malmo Culture, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1933, human remains representing three individuals were removed from an unknown location near Hugo, Washington County, MN by P.F. Flaskerd who donated these remains to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site Washington County are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1936, human remains representing two individuals were removed from site 21-BK-14, Shell Lake, near Ponsford, Becker County, MN by J.W. Nunn who donated these remains to the University of Minnesota. No known individuals were identified. The one associated funerary object is a shell pendant.

These human remains and associated funerary object from site 21-BK-14 have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing four individuals were removed from site 21-OT-1, Peterson Mound Group site, Otter Tail County, MN by unknown person(s) and donated to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-OT-1 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1937, human remains representing two individuals were removed from site 21-OT-1, Peterson Mound Group site, Otter Tail County, MN during archeological excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-OT-1 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1938, human remains representing one individual were removed from an unknown location near Verndale, Wadena County, MN by a road crew and donated to the University of Minnesota by H.G. Bosland. No known individual was identified. The one associated funerary object is a stemmed projectile point.

These human remains and associated funerary object from Wadena County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1938, human remains representing 13 individuals were removed from site

21-BE-2, Cambria site and Mounds, Blue Earth County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The nine associated funerary objects include flakes, pottery sherds, unfired clay pellets, a scraper, two notched arrowheads, and red ochre.

These human remains and associated funerary objects from site 21-BE-2 are associated with the Woodland or Mississippian Traditions, broad archeological classifications which cannot be associated with any present-day Indian tribe or group.

In 1938, human remains representing four individuals were removed from an unknown location near Perham, Otter Tail County, MN and collected by E. Weber who donated these human remains to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Otter Tail County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1940, human remains representing nine individuals were removed from site 21-SL-1, Pike Bay Mound, St. Louis County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The six associated funerary objects include a ceramic vessel and bone harpoons.

These human remains and associated funerary objects from site 21-SL-1 are associated with the Late Woodland Blackduck Culture, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1941, human remains representing five individuals were removed from site 21-BS-2, Schoen Mound site, Mound 1, Big Stone County, MN during archeological excavations conducted by G.H. Smith of the University of Minnesota. No known individuals were identified. The eight associated funerary objects include dog skulls, animal bones, pottery sherds, clamshells, a chert core and limestone fossil, groundstone hammer, and worked bone.

These human remains and associated funerary objects from site 21-BS-2 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1941, human remains representing five individuals were removed from 21-BE-2, Cambria, Blue Earth County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-BE-2 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1942, human remains representing two individuals were removed from an unknown location along Lake Vermillion, St. Louis County, MN by J. Peil and donated to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from St. Louis County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

During the 1930s, human remains representing one individual were removed from an unknown location, possibly a burial mound in Aitkin County, MN and collected by F. Swain who donated these remains to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Aitkin County have been tentatively associated with the Archaic Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1944, human remains representing one individual were removed from site 21-TO-1, Sauk Valley Man site, Todd County, MN during archeological excavations conducted by H. Retzek and donated to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-TO-1 have been tentatively associated with the Archaic Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1947, human remains representing four individuals were removed from an unnumbered site, the Prairie Lake Mound site, near Pelican Rapids, Otter Tail County, MN by O. Kopperud and donated to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Otter Tail County are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1947, human remains representing one individual were removed from site 21-WA-2, Michaud Mounds/Grey Cloud Island Mounds, Washington County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-WA-2 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1947, human remains representing 13 individuals were removed from site 21-HE-3, Halpin Mounds, Hennepin County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The three associated funerary objects are projectile points.

These human remains from site 21-HE-3 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1947, human remains representing five individuals were removed from an unnumbered site at the Crow Lake gravel pit, Belgrade, Stearns County, MN by H. Retzek who donated these remains to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Stearns County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1947, human remains representing three individuals were removed from the Mankato gravel pit, Mankato, Blue Earth County, MN by F. Hicks who donated these remains to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Blue Earth County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1948, human remains representing one individual were removed from an unnumbered site at the Davidson Farm, Beardsley, Big Stone County, MN by J. Davidson and donated to the Unversity of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Big Stone County have no archeological classification and cannot be associated

with any present-day Indian tribe or group.

In 1949, human remains representing two individuals were removed from the property of Lamphrey Gun Club, Forest Lake, Washington County, MN by J.A. Houle who donated these remains to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Washington County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1949, human remains representing two individuals were removed from site 21-ME-3 on Clear Lake, Meeker County, MN by H.E. Wilmot who donated these human remains to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from Meeker County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1903, human remains representing two individuals were removed from site 21-WL-1, Femco Mound site, Wilkin County, MN and donated in 1949 by SE. Mathews to the University of Minnesota. No known individuals were identified. The one associated funerary object is a partial ceramic vessel.

In 1940, human remains representing 38 individuals were removed from 21-WL-1, Femco Mound site, Wilkin County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The one associated funerary object includes a shell bead.

These human remains and associated funerary object from site 21-WL-1 are associated with the Arvilla Complex, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1949, human remains representing three individuals were removed from site 21-OT-5, Graham Lake site, Otter Tail County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The eight associated funerary objects include flakes, scrapers, stone knives, projetile points, and a ceramic vessel.

The human remains and associated funerary objects from site 21-OT-5 are associated with the Middle Woodland Malmo Culture, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1951, human remains representing seven individuals were removed from site 21-BE-6, Lewis Mounds, Blue Earth County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The five associated funerary objects include pottery sherds, a biface base, a knife/blade, and a ceramic vessel.

The human remains and associated funerary objects from 21-BE-6 are associated with the Mississippian Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1952, human remains representing two individuals were removed from site 21-ML-1, Brower/Anderson/Vanderbloom/Kern site, Mille Lacs County, MN during archeologicial excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The six associated funerary objects include potsherds, flakes, and burned red clay.

The human remains and associated funerary objects from site 21-ML-1 are associated with the Middle Woodland, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1953, human remains representing one individual were removed from site 21-WN-2, Volkart Mound site, Winona County, MN during an archeological excavation conducted by L.A. Wilford of the University of Minnesota. No known individual was identified. No associated funerary objects are present.

These human remains from site 21-WN-2 are associated with the Woodland Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1954, human remains representing six individuals were removed from site 21-PO-3, Pelican Lake Gravel Pit site, Pope County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The nine associated funerary objects include a side-notched point, copper objects, shell beads, shell ornament, tubular pipe, a knife, an antler with beaver tooth, and red ochre.

The human remains and associated funerary objects from site 21-PO-3 are associated with the Archaic Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1955, human remains representing three individuals were removed from site 21-WB-1, Brostrom site, Wabasha County, Mn during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-WB-1 are associated with the Woodland Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1956, human remains representing one individual were removed from site 21-CW-207, Tip-Top Resort site, Crow Wing County, MN by A. Schwantes who donated these remains to the University of Minnesota. No known individual was identified. The one associated funerary object is a partial ceramic vessel.

These human remains from site 21-CW-207 are associated with the Late Woodland Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1957, human remains representing three individuals were removed from site 21-CW-3, McAloon Mound site, Crow Wing County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The one associated funerary object are ceramic sherds.

These human remains and associated funerary object from site 21-CW-3 are associated with the Woodland Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1957, human remains representing six individuals were removed form site 21-SH-2, Moorhouse Mound site, Sherburne County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The eight associated funerary objects include worked bone, a sherd, a hammerstone, bone, an end scraper, a pottery pipe, a rasp or stamp, and a knife.

These human remains and associated funerary objects from site 21-SH-2 are associated with the Woodland Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1937, human remains representing 21 individuals were removed from the Morrison Mound site (21-OT-2), Otter Tail County, MN during excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. The one associated funerary object is an end scraper.

The Morrison Mound site is associated with the Woodland Tradition, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1987, human remains representing three individuals from unspecified public lands in Beltrami County, MN were donated to the Minnesota Indian Affairs Council from the Bemidji Chamber of Commerce. No known individuals were identified. No associated funerary objects are present.

These human remains from Beltrami County date from the Archaic period, an archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1958, human remains representing one individual were removed from an unnumbered site near Porter, Yellow Medicine County, MN by E. Prenevast who donated these remains to the University of Minnesota. No known individual was identified. The one associated funerary object is a projectile point.

The human remains from Yellow Medicine County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1960, human remains representing one individual were removed from an unknown location at Big Stone Lake, Big Stone County, MN by unknown person(s) and donated to the University of Minnesota. No known individual was identified. No associated funerary objects are present.

The human remains from Big Stone County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1961, human remains representing one individual were removed from site 21-MA-6, Haarstad Mound site, Marshall County, MN during an archeological excavation conducted by O.E. Johnson of the University of Minnesota. No known individuals were identified. The 32 associated funerary objects include miscellaneous material, three claws, bone and bone fragments, bird bones, limestone rock, antler, beaver incisors, clay elbow pipe, carbon and material from pipe, snail shell beads, tubular shell beads, quartz pebbles, red and yellow ochre, scrapers, flakes, clamshell, bone awls, soil sample, small vertebra and tooth.

These human remains and associated funerary objects from site 21-MA-6 are associated with the Arvilla Complex, an archeological classification which cannot be associated with any present-day Indian tribe or group.

During the 1960s, human remains representing one individual were removed from a highway construction site and deposited at Central Jr. High School, Alexandria, Douglas County, MN. During the 1990s, these human remains were turned over to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

These human remains from Douglas County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1963, human remains representing 32 individuals were removed from site 21-DL-1, Hoffman Mound site, Douglas County, MN duirng an archeological excavation conducted by O.E. Johnson of the University of Minnesota. No known individuals were identified. The five associated funerary objects include a projectile point, shell, flakes, a sherd, and birch bark grave lining.

These human remains and associated funerary objects from site 21-DL-1 are associated with the Woodland Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1966, human remains representing one individual were removed from site 21-AK-9, Battle Island site, Aitkin County, MN by Mr. and Mrs. E.T. Grolla who donated these remains to the University of Minnesota. No known individual was identified. No associated funerary objects are present.

These human remains from site 21-AK-9 are associated with the Woodland Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1966, human remains representing four individuals were removed from site 21-BE-2, Cambria site, Blue Earth County, MN by W. Jones who donated these remains to the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

These human remains from site 21-BE-2 are associated with the Mississippian Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1967, human remains representing four individuals were removed from site 21-BS-16 in Big Stone State Park, Big Stone County, MN by K. Sanders who donated these remains to the University of Minnesota. No known individual was identified. No associated funerary objects are present.

The human remains from site 21-BS-16 have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1971, human remains representing one individual were removed from site 21-SL-12, Cemetery Island, St. Louis County, MN by H.W. McClusky who donated these remains to the University of Minnesota. No known individual was identified. No associated funerary objects are present.

The human remains from site 21-SL-12 are tentatively associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

In 1992, human remains representing two individuals were recovered from a gravel pit in Otter Tail County, MN by G. Goltz and J. Harrison acting on behalf of the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

These human remains from Otter Tail County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

In 1992, human remains representing four individuals were recovered from a bank of the Minnesota River across from Murphy's Landing, Hennepin County, MN by T. Hein, B. O'Connell, and S. Myster on behalf of the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

These human remains from Hennepin County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing 12 individuals were recovered from site 21-CA-3, Pillager Mounds, Cass County, MN by an unidentified person. No known individuals were identified. No associated funerary objects are present.

Site 21-CA-3 has been identified only as Woodland, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1963, human remains representing one individual were removed from site 21-DL-2, Lake Carlos Beach, Douglas County, MN during excavations conducted by Elden Johnson of the University of Minnesota. No known individual was identified. No associated funerary objects are present.

Site 21-DL-2 has been identified as Woodland Tradition, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1946, human remains representing two individuals were removed from site 21-NR-2, the Habben Mound site, Norman County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

Site 21-NR-2 has been identified as Arvilla Complex, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1946, human remains representing 15 individuals were removed from site 21-NR-1, the Slininger Mound site, Norman County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

Site 21-NR-1 has been identified as Arvilla Complex, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

During the 1950s, human remains representing one individual were removed from private property in Eden Prairie, Carver County, MN during capping of a well. In 1992, Mrs. Fowler, the property owner, transferred these human remains to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

These human remains from Carver County have no archeological classification and cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were removed from 21-SL-9, Esquagama, St. Louis County, MN by W.D. Wright and donated to the Minnesota Indian Affairs Council (H135). No known individual was identified. No associated funerary objects are present.

Site 21-SL-9 has been identified as a Woodland Tradition site, a broad archeological tradition which cannot be identified with any present-day Indian tribe or group.

In 1935, human remains representing two individuals were removed from site 21-BS-16, Big Stone State Park, Big Stone County, MN by M. Matthews and M. Finberg and donated to the University of Minnesota. No known individuals were identified. The minimum of five associated funerary objects include bear skulls, a pottery sherd, and carnivore skulls.

These human remains from site 21-BS-16 are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were donated by an unknown person to the Traverse County Historical Society, MN for a display. No known individual was identified. No associated funerary objects are present.

These human remains have no further documentation, but are most likely to have come from a site in Traverse County, MN.

In 1948, human remains representing seven individuals were removed from site 21-SH-01, Christensen Mound, Sherburne County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The eight associated funerary objects includ a lithic tool, flakes, a projectile point, a pottery pipe, bear skulls, and a projectile point tip.

In 1995, these human remains were reburied under Minnesota statute 307.08. The associated funerary objects were transferred to the Minnesota Indian Affairs Council in 1997–1998 for reburial with their human remains. These human remains and associated funerary objects from site 21–SH–01 are associated with the Woodland Tradition, an archeological classification which cannot be associated with any present-day Indian tribe or group.

Based on the above mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 1,059 individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 43 CFR 10.2 (d)(2), the approximately 306 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, and in accordance with the recommendations of the NAGPRA Review Committee, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and any present-day Indian tribe or group; and the disposition of these Native American human remains and associated funerary objects will follow Minnesota Statute 307.08.

This notice has been sent to officials of Prairie Island Community Council, Shakopee Mdewakanton Sioux Community of Minnesota, Grand Portage Reservation Business Committee, Fond du Lac Reservation Business Committee, Nett Lake Reservation (Bois Forte) Tribal Council, Upper Sioux Community of Minnesota, Lower Sioux Mdewakanton Community, Mille Lacs Band of Chippewa Indians, White Earth Band of Minnesota Chippewa, Leech Lake Tribal Council, Minnesota Chippewa Tribe, Red Lake Nation, Iowa Tribe of Oklahoma, Iowa Tribe of Kansas and Nebraska, Ho-Chunk Nation of Wisconsin, Santee Sioux Tribe of the Santee Reservation of Nebraska, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, Yankton Sioux Tribe of South Dakota, Chippewa-Cree Indians of the Rocky Boy's Reservation, Turtle Mountain Band of Chippewa Indians, Assinaboine and Sioux Tribes of the Fort Peck Reservation and Winnebago Tribe of Nebraska, and the non-Federally recognized Indian groups the Mendota Mdewakanton Dakota Community and the Kah-Bay-Kah-Nong (Warroad Chippewa). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James L. (Jim) Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 Bemidji Ave. Bemidji, MN 56601; telephone: (218) 755-3825, before September 8, 1999. Repatriation of the human remains and associated funerary objects to the Prairie Island Community Council, Shakopee Mdewakanton Sioux Community of Minnesota, Grand Portage Reservation Business Committee, Fond du Lac Reservation Business Committee, Nett Lake Reservation (Bois Forte) Tribal Council, Upper Sioux Community of Minnesota, Lower Sioux Mdewakanton Community, Mille Lacs Band of Chippewa Indians, White Earth Band of Minnesota Chippewa, Leech Lake Tribal Council, Minnesota Chippewa Tribe, Red Lake Nation, Iowa Tribe of Oklahoma, Iowa Tribe of Kansas and Nebraska, Ho-Chunk Nation of Wisconsin, Santee Sioux Tribe of the Santee Reservation of Nebraska, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, Yankton Sioux Tribe of South Dakota, Chippewa-Cree Indians of the Rocky Boy's Reservation, Turtle Mountain Band of Chippewa Indians, Assinaboine and Sioux Tribes of the Fort Peck Reservation and Winnebago Tribe of Nebraska, and the non-Federally recognized Indian groups the Mendota Mdewakanton Dakota Community and the Kah-Bay-Kah-Nong (Warroad

Chippewa) may begin after that date if no additional claimants come forward.

Dated: August 2, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–20369 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from North Carolina in the Possession of the University of North Carolina at Chapel Hill, Chapel Hill, NC

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from North Carolina in the possession of the University of North Carolina at Chapel Hill, Chapel Hill, NC.

A detailed assessment of the human remains was made by Research Laboratories of Archaeology, University of North Carolina at Chapel Hill professional staff in consultation with representatives of the Eastern Band of Cherokee Indians, the Cherokee Nation of Oklahoma, and the United Keetoowah Band of Cherokee Indians.

In 1880, human remains representing two individuals from the Peachtree Mound site (31Ce1), Cherokee County, NC were excavated by B.D. McCombs for Mann S. Valentine of Richmond, VA. In 1969, these human remains were transferred from the Valentine Museum in Richmond, VA to the Research Laboratories of Archaeology, UNC-Chapel Hill. No known individuals were identified. No associated funerary objects are present.

Based on the archeological context, these individuals have been identified as Native American. Artifacts recovered at the Peachtree Mound site are attributed to the Qualla phase which has been identified with both the protohistoric and historic Cherokee in western North Carolina.

In 1964, human remains representing a minimum of one individual from the Townson site (31Ce15), Cherokee County, NC were recovered during excavations conducted by UNC-Chapel Hill archeologists. No known individual was identified. No associated funerary objects are present.

Based on historical documents and archeological evidence, the Townson site has been tentatively identified as a Cherokee village burned by the Rutherford expedition in 1776. These human remains were found within the remains of a burned house at the site. Artifacts recovered at the Townson site have been attributed to the Qualla phase which has been identified with both the protohistoric and historic Cherokee in western North Carolina.

During the early 1880s, human remains representing seven individuals from the Cullowhee Mound (31Jk2), Jackson County, NC were excavated by G.G. Valentine and E.P. Valentine for Mann S. Valentine of Richmond, VA. In 1969, these human remains were transferred from the Valentine Museum to the Research Laboratories of Archaeology, UNC-Chapel Hill. No known individuals were identified. No associated funerary objects are present.

In 1966, human remains representing at least one individual from the Cullowhee Mound (31Jk2), Jackson County, NC were recovered by UNC-Chapel Hill archeologists while conducting salvage excavations during a building construction project. No known individuals were identified. No associated funerary objects were present.

Based on archeological context, these individuals have been identified as Native American. Artifacts recovered at the Cullowhee Mound have been attributed to the Qualla phase which has been identified with both the protohistoric and historic Cherokee in western North Carolina.

In 1961, human remains representing one individual from the Nikwasi Mound (31Ma2), Macon County, NC were given to UNC-Chapel Hill archeologists. These remains had been found in a previously dug drainage ditch near the mound. No known individual was identified. No associated funerary objects are present.

Based on archeological context, this individual has been identified as Native American. Artifacts recovered at the Nikwasi Mound site have been attributed to the Qualla phase which has been identified with both the protohistoric and historic Cherokee in western North Carolina.

Between 1965 and 1971, human remains representing 87 individuals from the Coweeta Creek site (31Ma34), Macon County, NC were recovered during excavations conducted by UNC-Chapel Hill archeologists. No known individuals were identified. The 391 associated funerary objects include shell ornaments, shell and glass beads, stone and clay pipes, stone disks and celts, objects of worked animal bone, and a clay pot.

Based on the archeological context and funerary objects, these individuals have been identified as Native American. Artifacts recovered at the Coweeta Creek site have been attributed to the Qualla phase which has been identified with both the protohistoric and historic Cherokee in western North Carolina.

In 1882, human remains representing five individuals from the Nununyi Mound (31Sw3) in Swain County, NC were excavated by E.P. Valentine for Mann S. Valentine of Richmond, VA. In 1969, these human remains were transferred from the Valentine Museum in Richmond, VA to the Research Laboratories of Archaeology, UNC-Chapel Hill. No known individuals were identified. No associated funerary objects are present.

Based on the archeological context, these individuals have been identified as Native American. Artifacts recovered at the Nununyi Mound have been attributed to the Qualla phase which has been identified with both the protohistoric and historic Cherokee in western North Carolina.

In 1883, human remains representing one individual from the Birdtown Mound (31Sw7), Swain County, NC were excavated by E.P. Valentine for Mann S. Valentine of Richmond, VA. In 1969, these human remains were transferred from the Valentine Museum in Richmond, VA to the Research Laboratories of Archaeology, UNC-Chapel Hill. No known individual was identified. No associated funerary objects are present.

Based on the archeological context, this individual has been identified as Native American. Artifacts recovered at the Birdtown Mound have been attributed to the Qualla phase which has been identified with both the protohistoric and historic Cherokee in western North Carolina.

Between 1966 and 1985, human remains representing 58 individuals from the Warren Wilson site (31Bn29), Buncombe County, NC were recovered during excavations conducted by UNC-Chapel Hill archeologists and Warren Wilson College students. No known individuals were identified. The 1,034 associated funerary objects include shell ornaments, shell beads, cut mica ornaments, and objects of worked animal bone.

Based on the archeological context and funerary objects, these individuals have been identified as Native American. Artifacts recovered at the Warren Wilson site have been attributed

to the Pisgah phase (A.D. 1000-1450), which has been identified as likely ancestral to the Qualla phase and protohistoric and historic Cherokee.

In 1964, human remains representing one individual from site 31Cy42 in Clay County, NC were recovered in a test excavation during a county-wide archeological survey conducted by UNC-Chapel Hill archeologists. No known individual was identified. The 475 associated funerary objects include shell beads, nine fragments of a shell dipper, and a shell ornament.

Based on the archeological context and funerary objects, this individual has been identified as Native American. Artifacts recovered at site 31Cy42 have been attributed to the early Qualla phase which has been identified as likely ancestral to protohistoric and historic Cherokee.

In 1965 and 1966, human remains representing nine individuals from the Garden Creek Mound No. 2 (31Hw2) were recovered during excavations conducted by UNC-Chapel Hill archeologists. No known individuals were identified. The 50 associated funerary objects include a shell ornament, shell beads, and two pieces of copper.

Based on the archeological context and funerary objects, these individuals have been identified as Native American. Associated artifacts indicate that the Garden Creek Mound No. 2 was a burial location dating to the Pisgah phase (A.D. 1000-1450), which has been identified as likely ancestral to the Qualla phase and to protohistoric and historic Cherokee.

Between 1879 and 1883, human remains representing ten individuals from unknown site(s) in Haywood County or Swain County, NC were excavated by A.J. Osborne or E.P. Valentine for Mann S. Valentine of Richmond, VA. While the exact locations of these burials are unknown, they probably came from one or more of the following sites: Garden Creek Mound No. 2 (31Hw2), Kituwah Mound (31Sw2), or Karr Mound. In 1969, these human remains were transferred from the Valentine Museum, Richmond, VA to the Research Laboratories of Archaeology, UNC-Chapel Hill. No known individuals were identified. No associated funerary objects are present.

Based on the condition of the remains and their probable burial locations, these individuals have been identified as Native American. The preponderance of the evidence indicates these remains are attributable to either the Pisgah phase (A.D. 1000-1450) or the Qualla phase (after A.D. 1450), both earlier cultural groups which have been identified as likely ancestral to the historic Cherokee.

Between 1965 and 1967, human remains representing 26 individuals from the Garden Creek Mound No. 1 (31Hw1) in Haywood County, NC were recovered during excavations conducted by UNC-Chapel Hill archeologists. No known individuals were identified. The 738 associated funerary objects include shell ornaments, shell beads, shell dipper fragments, stone disks, and stone celts.

Based on the archeological context and funerary objects, these individuals have been identified as Native American. Associated artifacts indicate that the Garden Creek Mound No. 1 was a burial location dating to the Pisgah phase (A.D. 1000-1450), which has been identified as likely ancestral to the Qualla phase and to protohistoric and historic Cherokee.

In 1964, human remains representing two individuals from the Men's Dormitory site (31Jk129) in Jackson County, NC were donated to the Research Laboratories of Archaeology, UNC-Chapel Hill by officials at Western Carolina University following their recovery during a construction project on the WCU campus. No known individuals were identified. The one associated funerary object is a clay pot.

Based on the archeological context and funerary object, these individuals have been identified as Native American. The associated artifact indicates that these burials date to the Pisgah phase (A.D. 1000-1450), which has been identified as ancestral to the Qualla phase and to protohistoric and historic Cherokee.

Based on the above mentioned information, officials of the University of North Carolina at Chapel Hill have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 211 individuals of Native American ancestry. Officials of the University of North Carolina at Chapel Hill have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 2,689 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of North Carolina at Chapel Hill have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Eastern Band of Cherokee Indians, the Cherokee Nation of Oklahoma, and the United Keetoowah Band of Cherokee Indians.

This notice has been sent to officials of the Eastern Band of Cherokee Indians, the Cherokee Nation of Oklahoma, and the United Keetoowah Band of Cherokee Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Vincas P. Steponaitis, Director, Research Laboratories of Archaeology, University of North Carolina at Chapel Hill, Chapel Hill, NC 27599-3120; telephone: (919) 962-6574, before September 8, 1999. Repatriation of the human remains and associated funerary objects to the Eastern Band of Cherokee Indians, the Cherokee Nation of Oklahoma, and the United Keetoowah Band of Cherokee Indians may begin after that date if no additional claimants come forward.

Dated: August 3, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–20370 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

CALFED Bay-Delta Program, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearings for the Draft Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (as amended) and the California Environmental Quality Act, the Bureau of Reclamation, Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, Natural Resources Conservation Service, Army Corps of Engineers, and the California Resources Agency, as co-lead agencies, have prepared a Draft EIS/EIR for the CALFED Bay-Delta Program. A notice of availability appeared in the **Federal Register** (64 FR 34677–34678, June 28, 1999). This notice stated that additional information would be provided on the specific locations and times for public hearings. All hearings will start at 6 p.m., with a 1-hour question and answer period, and the formal hearing will start at 7 p.m.

DATES: See Supplementary Information section for hearing dates.

ADDRESSES: See Supplementary Information section for hearing locations.

FOR FURTHER INFORMATION CONTACT: For further information regarding the public hearings, contact Mr. Rick Breitenbach, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento CA 95814; telephone (800) 900–3587.

SUPPLEMENTARY INFORMATION: The dates and addresses for the public hearings are:

- Wednesday, August 18, 1999, at 6 p.m., University of California Cooperative Extension, South Wilson Way, Stockton CA.
- Thursday, August 19, 1999, at 6 p.m., City Council Chambers, 300 North D Street, San Bernardino CA.
- Tuesday, August 24, 1999, at 6 p.m., Huntington Park Family Center, 3355 E. Gage Avenue, Huntington Park CA.
- Wednesday, August 25, 1999, at 6 p.m., Rodeo Inn, 808 North Main Street, Salinas CA.
- Thursday, August 26, 1999, at 6 p.m., Preservation Park, Nile Hall, 1233 Preservation Park Way, Oakland CA.
- Tuesday, August 31, 1999, at 6 p.m., Holiday Inn, Magnolia Room, 303 East Cordoba Street, Pasadena CA.
- Wednesday, September 1, 1999, at 6 p.m., Ruben H. Fleet Science Center, Balboa Park, 1875 El Prado, San Diego CA.
- Thursday, September 2, 1999, at 6 p.m., Westin Southcoast Plaza Hotel, 1400 Bristol Street, Costa Mesa CA.
- Tuesday, September 7, 1999, at 6 p.m., San Jose Unified School District Board Room, 855 Lenzen Avenue, San Jose CA.
- Wednesday, September 8, 1999, at 6 p.m., Rodriguez Community Center Theater, 213 F Street, Antioch CA.
- Thursday, September 9, 1999, at 6 p.m., Burbank Center for the Arts, Merlot Theater, 50 Mark West Springs Road, Santa Rosa CA.
- Tuesday, September 14, 1999, at 6 p.m., Visalia Convention Center, San Joaquin Room, 303 E. Acequia, Visalia CA.
- Wednesday, September 15, 1999, at 6 p.m., Community Center, 545 Vallombrosa Avenue, Chico CA.
- Tuesday, September 21, 1999, at 6 p.m., Doubletree Hotel, Sierra Room, 1830 Hilltop Drive, Redding CA.
- Wednesday, September 22, 1999, at 6 p.m., Convention Center, Room 203 , 1030 15th Street, Sacramento CA.

Dated: July 30, 1999.

Kirk C. Rodgers,

Acting Regional Director, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 99–20386 Filed 8–6–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Notice of Consent Decrees in Comprehensive Environmental Response, Compensation and Liability Act Action

Notice is hereby given that two consent decrees in *United States et al.* v. *ALCOA et al.*, Civil Action No. 89–7421, was lodged with the United States District Court for the Eastern District of Pennsylvania on July 26, 1999.

On October 16, 1989, the United States filed a complaint against 18 generator and owner/operator defendants under section 108(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607(a), for response costs incurred and to be incurred by the United States at the Moyer Landfill Superfund Site in Collegeville, Pennsylvania (the "Site"). The Commonwealth of Pennsylvania joined the action as plaintiff seeking reimbursement of its response costs incurred and to be incurred at the Site. The proposed consent decree resolves the liability of the City of Philadelphia and three agencies of the Commonwealth of Pennsylvania, subject to reopeners for new information and new site conditions. The City of Philadelphia agrees to pay $4 million in reimbursement of response costs at the Site. The Commonwealth of Pennsylvania agencies agree to pay a total of $639.347 in reimbursement of response costs at the Site and to contribute approximately $112,000 worth of operation and maintenance activities at the Site.

The Department of Justice will accept written comments relating to the proposed Consent Decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States et al.* v. *ALCOA et al.*, DOJ No. 90–11–3–145. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

Copies of the proposed Consent Decrees may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202) 624–0892. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). When requesting copies by mail, please enclose a check in the amount of $6.00 for the City of Philadelphia consent decree and a check in the amount of $7.00 for the Commonwealth agencies consent decree (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 99–20160 Filed 8–6–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 25, 1999, ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Assonct, Massachusetts 02702, made application to the Drug Enforcement Administration to be registered as an importer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed Schedule I.

The firm plans to import 2,5-dimethoxyamphetamine for the manufacture of a photographic dye.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed,

in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 8, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 28, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–20435 Filed 8–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 12, 1999, and published in the **Federal Register** on May 25, 1999, (64 FR 28215), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances for the National Institute of Drug Abuse and other clients.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Triangle Institute to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Triangle Institute on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–20437 Filed 8–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 14, 1999, and published in the **Federal Register** on May 25, 1999 (64 FR 28215), Sigma Chemical Company, Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315).	I
Tetrahydrocannabinols (7370)	I
Mescaline 7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocyn (7438)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	II
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	I
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to repackage and offer as pure standards controlled substances in small milligram quantities for drug testing and analysis.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Sigma Chemical Company to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Sigma Chemical Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–20436 Filed 8–6–99; 8:45 am]

BILLING CODE 4401–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA 204, Experience Rating Report. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before October 8, 1999.

ADDRESSES: Edward M. Dullaghan, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S4231, 200 Constitution Ave. N.W., Washington, DC, 20210; Telephone number (202) 219–5312 (This is not a toll-free number); fax (202) 219–8506.

SUPPLEMENTARY INFORMATION:

I. Background

The data submitted annually on the ETA 204 report enables the Employment and Training Administration to project revenues for the Unemployment Insurance program on a State by State basis and to measure the variations in assigned contribution rates which result from different experience rating systems. Used in conjunction with other data, the ETA 204 assists in determining the effects of certain factors (e.g., seasonality, stabilization, expansion, or contraction in employment, etc.) on the unemployment experience of various groups of employers. The data also provide an early signal for potential solvency problems, are useful in analyzing factors which give rise to these potential problems and permit an evaluation of the effectiveness of the various approaches available to correct the detected problems. Further, the data are the basis for determining the Experience Rating Index; the index allows for the evaluation of the extent to which benefits in States are effectively charged, noncharged, and ineffectively charged.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The extension of the Experience Rating Report will allow for the continued calculation of the Experience Rating Index and to continue experience rating analysis and research on a national, regional or state level.

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Experience Rating Report.
OMB Number: 1205–0164.
Affected Public: State Government.
Cite/Reference/Form/etc: ETA 204.
Frequency: Annually.
Total Responses: 53.
Average Time per Response: 15 minutes.
Estimated Total Burden Hours: 14.
Total Burden Cost (operating/maintaining): $350.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 3, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service, Employment and Training Administration.

[FR Doc. 99–20405 Filed 8–6–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

SUMMARY: Notice is hereby given that the Advisory Committee on Construction Safety and Health (ACCSH) will meet September 2 and 3, 1999, at the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC. This meeting is open to the public.

TIMES, DATES, ROOMS: ACCSH will meet from 9 a.m. to 4:30 p.m., Thursday, September 2 and from 9 a.m. to Noon, Friday, September 3, in room C–5521. ACCSH work groups will meet August 31 and September 1 and, if necessary, after Noon on September 3.

SUPPLEMENTARY INFORMATION: For further information contact Theresa Berry, Office of Public Affairs, Room N–3647, telephone (202) 693–1999 at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Washington, DC 20210.

An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, telephone 202–693–2350. All ACCSH meetings and those of its work groups are open to the public. Individuals needing special accommodation should contact Theresa Berry by August 25, 1999, at the above address.

ACCSH was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

The agenda items include:

- Remarks by the Assistant Secretary for the Occupational Safety and Health Administration, Charles N. Jeffress.
- ACCSH Work Group Updates, including:
  - Data Collection/Targeting,
  - Musculoskeletal Disorders,
  - Subpart N-Cranes,
  - Fall Protection,

- Diversified Workforce Initiatives,
- Construction Certification and Paper-work Reduction Review
- OSHA Form 170

Reports on construction standards updates.

Special presentations including:

- Silica,
- Construction Advisory and the ACCSH Web Page,
- Strategic Plan Update, and
- Health Standards Technical Updates.

The following ACCSH Work Groups are scheduled to meet in the Frances Perkins Building:

Musculoskeletal Disorders—9:30 a.m.–5:00 p.m., Tuesday, August 31, in room C55521.

Construction Certification and Paper-work Reduction Review—8:30 a.m.–12:30 p.m., Tuesday, August 31, in room C–5515 Conference Room 2.

OSHA Form 170–1–5 p.m., Tuesday, August 31, in room C–5515, Conference Room 2.

Data Collection/Targeting—8:30 a.m.–12:30 p.m., Wednesday, September 1, in room C–5521.

Subpart N—Cranes—1–5 p.m., Wednesday, September 1, in room C–5515, Conference Room 2.

Diversified Workforce Initiatives—8:30 a.m.–12:30 p.m., Wednesday, September 1, in room C–5515, Conference Room 2.

Fall Protection—1–5 p.m., Wednesday, September 1, in room C–5521.

Other workgroups may meet after the adjournment of the ACCSH meeting on September 3, 1999.

Interested persons may submit written data, views or comments, preferably with 20 copies, to Theresa Berry, at the address above. Submissions received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Interested persons may also request to make an oral presentation by notifying Theresa Berry before the meeting. The request must state the amount of time desired, the interest that the person represents, and a brief outline of the presentation. ACCSH may grant requests, as time permits, at the discretion of the Chair of ACCSH.

Signed at Washington, DC this 3rd day of August, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–20406 Filed 8–6–99; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation, et al. (Seabrook Station Unit 1); Order Approving Transfer of License and Conforming amendment

I

North Atlantic Energy Service Corporation (North Atlantic) is authorized to act as agent for the joint owners of the Seabrook Station Unit 1 (Seabrook) and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Operating License NPF–86. Montaup Electric Company (Montaup), one of the joint owners, holds a 2.9 percent possessory interest in Seabrook. The Nuclear Regulatory Commission issued Operating License NPF–86 on March 15, 1990, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in Seabrook Township, Rockingham County, on the southeast coast of the State of New Hampshire.

II

Under cover of a letter dated September 29, 1998, North Atlantic forwarded an application by Montaup and Little Bay Power Corporation (Little Bay) requesting approval of the proposed transfer of Montaup's rights under the operating license for Seabrook to Little Bay. The application was supplemented March 8, 1999, and April 7, 1999. In addition, the application requested approval of a conforming amendment to reflect the transfer.

Little Bay is a newly formed and wholly owned subsidiary of BayCorp Holdings, Ltd., which is the holding company that also owns Great Bay Power Corporation, an existing joint owner of Seabrook. According to the application, Montaup has agreed to sell its 2.9 percent ownership interest in Seabrook to Little Bay, subject to obtaining all necessary regulatory approvals. North Atlantic would remain as the Managing Agent for the joint owners of the facility and would continue to have exclusive responsibility for the management, operation, and maintenance of Seabrook. The conforming amendment would remove Montaup from the facility operating license and would add Little Bay in its place.

Approval of the transfer and conforming license amendment was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on December 14, 1998 (63 FR 68801). Pursuant to such notice, joint Seabrook owners New England Power Company (NEP) and United Illuminating Company (United) filed, respectively, a timely intervention petition and hearing request, and an untimely intervention petition, and Massachusetts Municipal Wholesale Electric Company (MMWEC) filed written comments. In an order dated March 5, 1999, the Commission denied United's petition and granted NEP's intervention petition and hearing request. However, NEP's petition to intervene and hearing request were subsequently withdrawn, and an order was issued on April 26, 1999, terminating the proceeding. The March 5, 1999, order also referred MMWEC's comments to the staff. MMWEC's comments are addressed in the safety evaluation.

Under 10 CFR 50.80, no license, of any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application submitted by Montaup and Little Bay dated September 29, 1998, the supplements dated March 8, and April 7, 1999, and other information before the Commission, the NRC staff has determined that Little Bay is qualified to hold the license to the same extent the license is now held by Montaup and that the transfer of the license to the extent it is held by Montaup to Little Bay is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the

proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated August 3, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the license transfer referenced above is approved, subject to the following conditions:

1. For purposes of ensuring public health and safety, Little Bay shall provide decommissioning funding assurance of no less than $11.8 million, after payment of any taxes, in the Seabrook Decommissioning Trust Fund maintained and administered by the State of New Hampshire under its applicable law upon the transfer of Montaup's interest in Seabrook to Little Bay.

2. After they have received all required regulatory approvals of the transfer, Montaup and Little Bay shall inform the Director, Office of Nuclear Reactor Regulation, in writing of the date of the closing of the transfer no later than two business days prior to the date of closing. Should the transfer not be completed by August 1, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes to conform the license to reflect the subject license transfer is approved. Such amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated September 29, 1998, and supplements dated March 8, 1999, and April 7, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 3d day of August, 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 99–20400 Filed 8–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority

[Docket No. 50–259]

Browns Ferry Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

Introduction

The US Nuclear Regulatory Commission (NRC, or the Commission) is considering issuance of an exemption to Facility Operating License No. DPR–33, issued to the Tennessee Valley Authority (TVA) for operation of the Browns Ferry Nuclear Plant (BFN) Unit 1, located in Limestone County, Alabama.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in response to TVA's application dated February 4, 1999, for a temporary exemption from certain requirements of 10 CFR 50.65 (Maintenance Rule). Specifically, this action would exempt TVA from the explicit scoping requirements of 10 CFR 50.65(b), and instead it would allow TVA to consider the defueled and long-term layup status of BFN Unit 1 when establishing the scope of TVA's Maintenance Rule Program. Structures, systems, and components (SSCs) that perform a required function for Unit 1 in its present defueled status or that directly support the operation of Unit 2 or Unit 3 would be included in the scope of the BFN Maintenance Rule Program, but Unit 1 systems and components not required to be operational would not be required to be included in the Maintenance Rule Program.

The Need for the Proposed Action

10 CFR 50.65(a)(1) requires, in part, that, power reactor licensees shall monitor the performance or condition of SSCs against licensee-established goals to provide reasonable assurance that the SSCs, defined in 10 CFR 50.65(b), are capable of fulfilling their intended functions.

TVA requested the exemption to resolve a 10 CFR 50.65 compliance issue that was identified during an NRC inspection at the facility (cf., NRC combined Inspection Reports 50–259/97–04; 50–260/97–04; and 50–296/97–04, (IR 97–04) dated May 21,1997). The issue relates to the acceptability of TVA's approach to addressing the SSCs required to be within the scope of the regulation as specified in 10 CFR 50.65(b). As a result of the inspection finding, the NRC informed TVA by letter dated July 30, 1997, that the scope of the BFN maintenance rule program for Unit 1 was not consistent with the requirements 10 CFR 50.65, and identified three options available to TVA to resolve the issue. One of the options identified was for TVA to request an exemption from the requirements of the rule that are not currently being met.

Environmental Impacts of the Proposed Action

No changes are being made in the types or amounts of any radiological effluent that may be released off site. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. The Commission concludes that granting the proposed exemption would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. The Commission concludes that there are no significant non-radiological impacts associated with the proposed exemption.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (no alternative action). Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and this alternative are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated September 1, 1972 for BFN Units 1, 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on June 23, 1999, the NRC staff consulted with the Alabama State official, Mr. David Walter of the State Office of Radiation Control, regarding the environmental impact of the proposed action. Mr. Walter had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to

prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for exemption dated February 4, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 29th day of July 1999.

For the Nuclear Regulatory Commission.

William O. Long,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20399 Filed 8–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Texas Utilities Electric Company

[Docket Nos. 50–445 and 50–446]

Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of license amendments to Facility Operating Licenses Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company (TU Electric, or the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the licenses to reflect the change of the name of the CPSES licensee from "Texas Utilities Electric Company."

The Need for the Proposed Action

The proposed action is needed to accurately reflect the legal name of the licensee. The CPSES licensee has already changed its name for business purposes.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action is solely administrative in nature and will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for CPSES, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on June 24, 1999, the staff consulted with the Texas State official, Arthur C. Tate, of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated May 14, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, 702 College, P.O. Box 19497, Arlington, Texas.

Dated at Rockville, Maryland, this 2nd day of August, 1999.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV and Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20398 Filed 8–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600, Rev. 1]

Interim Enforcement Policy for Use During the NRC Power Reactor Oversight Process Pilot Plant Study

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG–1600, Rev. 1, by adding Appendix F. This amendment revises the treatment of violations of 10 CFR Part 50 and associated license conditions during the pilot plant study of the new NRC power reactor oversight process. The Commission is applying this new oversight process to the nine reactor sites that are part of a pilot plant study scheduled to begin in June 1999.

DATES: This amendment becomes effective on (the implementation date of the pilot plant study). Comments on this amendment should be submitted by September 8, 1999 and will be considered by the NRC as it evaluates lessons learned from the pilot plant study.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11545 Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: R. William Borchardt, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–2741.

SUPPLEMENTARY INFORMATION: As described in NUREG–1600, Revision 1, "General Statement of Policy and Procedures for NRC Enforcement Actions," the purpose of the Commission's current enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. The Enforcement Policy provides that prompt and vigorous enforcement action should be taken when dealing with licensees, contractors, and their employees who did not achieve the necessary attention to detail and did not achieve the high standards of compliance that the Commission expects. Enforcement actions have been used as a deterrent to emphasize the importance of compliance with requirements and to encourage prompt identification and prompt, comprehensive correction of violations.

The current Enforcement Policy successfully focuses attention on compliance issues to improve safety. The process uses enforcement to—

(1) Assess the safety significance of individual inspection findings and events;

(2) Formulate the appropriate agency response to these findings and events;

(3) Emphasize good performance and compliance;

(4) Provide incentives for performance improvement; and

(5) Provide public notification of the Commission's views on licensees' performance and actions.

The Commission has made substantial changes to the Enforcement Policy since 1980. However, the Commission has continued to employ a basic theory of using sanctions, including the use of civil penalties, to deter noncompliance. Escalated enforcement actions have provided regulatory messages to encourage improved licensee performance. However, the Commission has not always integrated decision making in the performance assessment program with the enforcement program. This has resulted in mixed regulatory messages regarding performance and approaches to improve it. Further, the enforcement process has been criticized as being difficult to understand, subjective, inconsistent, unpredictable, and not being sufficiently risk-informed. Licensee's have indicated that this has resulted in setting high priorities for issues of low risk significance at the expense of more risk-significant items.

The Commission has developed a new reactor oversight process and is applying it to nine reactor sites as part of a pilot plant study scheduled to begin in June 1999. The new reactor oversight process which includes a structured performance assessment process and evaluates the significance of individual findings provides an opportunity to reconsider the existing Enforcement Policy. In considering a new approach to enforcement, the Commission is not suggesting that the existing policy which used civil penalties has not served the agency or is ineffective. However, because of the new oversight process, a greater agency focus on risk and performance, and the overall improved industry performance, an opportunity now exists to better integrate the enforcement policy and the reactor oversight process. Based on the following, the new assessment process and the current Enforcement Policy provides similar functions:

- Both the current enforcement and the new oversight processes result in formulating NRC responses to violations and performance issues. The enforcement process uses sanctions such as citations and penalties. Both use actions such as meetings to discuss performance, 10 CFR 50.54(f) letters, Demands for Information, Confirmatory Action Letters, and Orders as NRC responses.
- They evaluate individual compliance findings for significance under each process.
- Both processes provide incentives to improve performance, compliance and deterrence since licensees normally strive to avoid regulatory actions and enforcement sanctions.
- Both approaches give the public the Commission's views on the status of licensee's performance and compliance.

Given the similarities in the purpose of the two programs, the Commission seeks to discontinue having two separate and independent processes. The interim Enforcement Policy will complement the assessment program by focusing on individual violations. The Agency Action Matrix[1] will dictate the Commission's response to declining performance whether caused by violations or other concerns. The result will be a unified agency approach for determining and responding to performance issues of a licensee that—

(a) Maintains a focus on safety and compliance;

(b) Is more consistent with predictable results;

(c) Is more effective and efficient;

(d) Is easily understandable; and

(e) Decreases unnecessary regulatory burden.

In most cases, this approach should provide similar deterrence to that provided by issuing civil penalties. Having a more consistent approach should also promote public confidence in the regulatory process.

The new assessment process will use a Significance Determination Process (SDP) to characterize inspection findings based on their risk significance and performance impact. The SDP will assign a color band of green, white, yellow, or red to each violation (or plant issue) to reflect its significance. To support a unified approach to significance, the Enforcement Policy will use the results of the SDP, where applicable, to disposition violations.

The enforcement approach for the pilot program divides violations into two groups. The first group includes violations that the SDP can evaluate, where the Agency Action Matrix will determine appropriate action. The second group includes violations associated with actual consequences; violations that the SDP does not evaluate, such as willful violations; and those that may impact the regulatory process for oversight of reactors.

I. Violations Evaluated by the Significance Determination Process

The first group consists of those violations that the SDP evaluates, where the Agency Action Matrix will determine appropriate action. Violations will be either cited or non-cited. Normally, severity levels and civil penalties will not be used.

A. Violations of Low Significance

Violations that the SDP has evaluated as of low significance (*i.e.*, green) will be information for the assessment process and considered within the licensee response band according to the Agency Action Matrix. These violations will be documented in inspection reports as Non-Cited Violations (NCVs). However, a Notice of Violation (NOV) will be issued for the following three exceptions:

(1) The licensee fails to restore compliance within a reasonable time after identification of the violation;

(2) The licensee fails to place the violation into the corrective action program; or

(3) The violation was willful. An NCV may be appropriate if the violation meets the criteria in Section VII.B.1.(d) of the Enforcement Policy which addresses the exercise of enforcement discretion for certain willful violations.

The guidance of Appendix C: Interim Enforcement Policy for Severity Level

[1] The Agency Action Matrix as described in SECY–99–007, "Recommendations for Reactor Oversight Process Improvements," provides guidance for consistent agency action in response to licensee performance. These actions are graded across the range of licensee performance and are triggered by threshold assessments of the performance indicators and inspection findings.

IV Violations Involving Activities of Power Reactor Licensees (64 FR 6388; February 9, 1999), is applicable to these three exceptions.

B. Significant Violations

Violations that the SDP evaluates as risk significant (*i.e.*, white, yellow, or red) will be information for the assessment process and considered in the regulatory response band according to the Agency Action Matrix. Such violations, being risk significant, will result in issuing a formal NOV requiring a written response, unless sufficient information is already on the docket. The Agency Action Matrix and not the Enforcement Policy will guide the agency response, to determine root causes if warranted, and to emphasize the need to improve performance for safety significant violations. The Agency Action Matrix will specify whether regulatory conferences and other actions will be taken if merited by the specific violations or overall licensee performance. The Commission reserves the use of discretion for particularly significant violations (*e.g.* an accidental criticality) to assess civil penalties in accordance with Section 234 of the Atomic Energy Act of 1954, as amended.

II. Violations Not Evaluated by the SDP and Those Having Actual Consequences

The current Enforcement Policy will be applied for the second group of violations. This includes the use of severity levels to characterize the significance of violations and the use of civil penalties or other appropriate enforcement action. Three categories of violations are within this group:

(A) Violations that involve willfulness including discrimination;

(B) Violations that may impact the NRC's ability for oversight of licensee activities, such as those associated with reporting requirements; failure to obtain NRC approvals, such as required by 10 CFR 50.59, 10 CFR 50.54(a), 10 CFR 50.54(p); and failure to provide the NRC with complete and accurate information or to maintain complete and accurate records ; and

(C) Violations that involve actual consequences. These violations include an overexposure to the public or plant personnel, the failure to make the required notifications that impact the ability of federal, state and local agencies to respond to an actual emergency preparedness or transportation event, or a substantial release of radioactive material.

The guidance in Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactor Licensees, will be applicable to Severity Level IV violations in this group.

Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, adding Appendix F amends the NRC Enforcement Policy as follows:

General Statement of Policy and Procedure for NRC Enforcement Actioins

* * * * *

Appendix F: Interim Enforcement Policy for Use During the NRC Power Reactor Oversight Process Pilot Plant Study

The Commission is issuing this Appendix to revise the Policy and Procedure for NRC Enforcement Actions (Enforcement Policy) NUREG 1600, Rev. 1. The Appendix affects violations of the requirements of 10 CFR Part 50 and associated license conditions at nine power reactor sites participating in the NRC reactor oversight process pilot plant study beginning in June 1999. The Commission is issuing as an appendix to the Enforcement Policy and characterizing this policy amendment as interim because the Commission may make additional changes to the Enforcement Policy following a review of the results from the pilot plant study. Then, assuming an acceptable outcome from the pilot plant study, the Enforcement Policy for all power reactors will be changed. This Appendix revises the NRC's Enforcement Policy for the plants participating in the pilot plant study by dividing identified violations into two groups.

I. Violations Evaluated by the Significance Determination Process

The first group consists of those violations that the Reactor Oversight Program's Significance Determination Process (SDP) can evaluate. For these violations, the SDP will determine the significance of the violation and the Agency Action Matrix will determine the appropriate agency response. These violations will be cited or non-cited. Normally, no severity levels and civil penalties will be used to characterize these violations.

A. Violations of Low Significance

Violations that the SDP evaluates as not being risk significant (*i.e.*, green) will be described in inspection reports as Non-Cited Violations (NCVs) and be categorized by the assessment process within the licensee response band. However, a Notice of Violation (NOV) will be issued:

(1) The licensee fails to restore compliance within a reasonable time after they identified the violation;

(2) The licensee fails to place the violation into the corrective action program; or

(3) The violation was willful. An NCV may be appropriate if the violation meets the criteria in Section VII.B.1. (d) of the Enforcement Policy.

The three exceptions are consistent with items (1), (2), and (4) of Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactor Licensees (64 FR 6388; February 9, 1999).

B. Significant Violations

Violations that the SDP evaluates as risk significant (*i.e.*, white, yellow, or red) will be assigned a color band related to its significance for use by the assessment process. Because of being risk significant, an NOV will be issued requiring a formal written response unless sufficient information is already on the docket. The Commission reserves the use of discretion for particularly significant violations (*e.g.* an accidental criticality) to assess civil penalties in accordance with Section 234 of the Atomic Energy Act of 1954, as amended.

II. Violations Not Evaluated by the SDP and Those Having Actual Consequences

In the second group of violations, the Enforcement Policy will be retained, along with severity levels and the potential for the imposition of civil penalties or other appropriate enforcement action. Three categories of violations are within this group:

(A) Violations that involve willfulness including discrimination,

(B) Violations that may impact the NRC's ability for oversight of licensee activities such as those associated with reporting issues, failure to obtain NRC approvals such as for changes to the facility as required by 10 CFR 50.59, 10 CFR 50.54(a), 10 CFR 50.54 (p), and failure to provide the NRC with complete and accurate information or to maintain accurate records, and

(C) Violations that involve actual consequences such as an overexposure to the public or plant personnel, failure to make the required notifications that impact the ability of federal, state and local agencies to respond to an actual emergency preparedness or transportation event, or a substantial release of radioactive material.

To the extent the above does not modify the NRC Enforcement Policy, the

Enforcement Policy remains applicable to power reactor licensees.

Dated at Rockville, Maryland, this 3rd day of August, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–20396 Filed 8–6–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17f–2(d), SEC File No. 270–36, OMB Control No. 3235–0028

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following rule:

Rule 17f-2(d) was adopted on March 16, 1976, and was last amended on November 18, 1982. Paragraph (d) of rule (i) requires that records produced pursuant to the fingerprinting requirements of Section 17(f)(2) of the Securities Exchange Act of 1934 ("Exchange Act") be maintained, (ii) permits the designating examining authorities of broker-dealers or members of exchanges, under certain circumstances, to store and to maintain records required to be kept by this rule, and (iii) permits the required records to be maintained on microfilm.

The general purposes for Rule 17f-2 are: (i) To identify security risk personnel; (ii) to provide criminal record information so that employers can make fully informed employment decisions; and (iii) to deter persons with criminal records from seeking employment or association with covered entities.

Retention of fingerprint records, as required under paragraph (d) of the Rule, enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprinting are being followed. Retention of these records for the term of employment of all personnel plus three years ensures that law enforcement officials will have easy access to fingerprint cards on a timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 9,614 respondents are subject to the recordkeeping requirements of the rule. Each respondent keeps approximately 32 new records per year, which takes approximately 2 minutes per record for the respondent to maintain, for an annual burden of 64 minutes per respondent. All records subject to the rule must be retained for the term of employment plus 3 years. The Commission estimates that the total annual cost to submitting entities is approximately $196,850. This figure reflects estimated costs of labor and storage of records.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 30, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20412 Filed 8–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Application To Withdraw From Listing and Registration; (Tektronix, Inc., Common Stock, No Par Value, and Attached Preferred Stock Purchase Rights) File No. 1–4837

August 2, 1999.

Tektronix, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities are currently listed for trading on the PCX and the New York Stock Exchange ("NYSE"). In making the decision to withdraw its Securities from listing and registration on the PCX, the Company has considered all the direct and indirect costs and expenses arising from maintaining dual listings. The Company has determined that there is no particular advantage to having its Securities listed simultaneously on two exchanges and has accordingly sought to withdraw them from listing on the PCX and maintain their listing on the NYSE.

The Company has complied with the rules of the PCX by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing withdrawal of its Securities from listing on the PCX as well as correspondence setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the PCX.

This application relates solely to the withdrawal by the Company of the Securities' listing on the PCX and shall have no effect upon the continued listing of such Securities on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before August 23, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–20413 Filed 8–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41682; File No. SR–AMEX–99–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Specialist Capital Requirements

August 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 2, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Amex. On June 11, 1999, and July 16, 1999, the Amex filed with the Commission Amendment Nos. 1 and 2 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Amendment No. 1 revised the proposal to: (1) provide an example comparing the financial requirements for options specialists under the rules of the Amex, the Pacific Exchange ("PCX"), and the Chicago Board Options Exchange ("CBOE"); and 92) provide examples demonstrating the calculation of the capital requirements for joint equity/options specialists. *See* letter from Scott G. Van Hatten, Legal Counsel, Derivatives and Securities, Amex, to Richard Strasser, Division of Market Regulation ("Division"), Commission, dated June 10, 1999 ("Amendment No. 1"). Amendment No. 2 to the proposal provides two charts setting forth specialist financial requirements as of two dates in May 1999. *See* letter from Scott G. Van Hatten, legal Counsel, Derivatives and Securities, Amex, to Richard Strasser, Division, Commission, dated July 23, 1999 ("Amendment No. 2").

In addition, the Amex filed a letter describing financial safeguards applicable to specialists, including the clearing firm guarantee of specialists' transactions (for specialists who are not self-clearing), the Amex's daily review of each specialist's financial condition, and the procedures the Amex follows when the Exchange determines that a specialist is approaching the early warning financial requirements level (120% of the minimum specialist financial requirement). *See* letter form Scott G. Van Hatten, Legal Counsel, Derivatives and Securities, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated June 10, 1999("June 10 Letter").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 950(h) to revise the financial requirements for options specialists. Specifically, the Amex proposes to amend Amex Rule 950(h) to provide that the minimum financial requirement for an options specialist will be $600,000 plus $25,000 for each option issue in excess of the initial ten issues in which the specialist is registered. In addition, the Amex proposes to revise Amex Rule 950(h), Commentary .01 to specify that for an option specialist that is also an equity specialist, the minimum financial requirement of $600,000 specified in Amex Rule 171 [4] will apply to the entirety of the specialist's business, in both equities and options. Under Amex Rule 950(h), Commentary .01, as amended, the minimum financial requirement for an options specialist also serving as an equity specialist will be $600,000, provided that the financial requirement for either the equity allocation or the options allocation does not exceed $600,000. If the financial requirement for either the equity allocation or the options allocation exceeds $600,000, then the specialist's financial requirement will be calculated by combining the financial requirement for equity specialists under Amex Rule 171 and the financial requirement for options specialists under Amex rule 950(h).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[4] Amex Rule 171, "Specialist Financial Requirements," requires every registered specialist to maintain a cash or liquid asset position in the amount of $600,000 or an amount sufficient to assume a position of 60 trading units of each security in which the specialist is registered, whichever is greater.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to amend Amex Rule 950(h), which governs options specialist financial requirements. Currently, Amex Rule 950(h), which incorporates by reference the specialist financial requirements set forth in Amex Rule 171, requires that every registered options specialist maintain cash or liquid assets equal to the greater of $600,000 or an amount sufficient to assume a position of 60 units of the highest priced puts and calls for each option in which the specialist is registered.[5] Because the financial requirement is in some cases based on current market prices of puts and calls, it generally fluctuates from day to day. The Amex maintains that, with the recent increases in premiums for certain stock options, specialist financial requirements have increased dramatically beyond the level of risk associated with a specialist's market making activities. This situation occurs because the financial requirements for specialists do not take into consideration the extent to which specialists maintain hedged positions in their registered option issues.

The following charts provided in Amendment No. 2 illustrate the fluctuations in the capital requirement for an options specialist as calculated under current Amex Rule 950(h). Both charts are based on actual capital requirements for options traded on the Amex. The calculations in the first chart are based on premiums for six options as of the close of business on May 6, 1999, while the calculations in the second chart show the premiums for the same options as of the close of business on May 13, 1999. The charts demonstrate the effect that premium appreciation has on a specialist's minimum financial requirements. Specifically, because of the rise in premiums, the specialist's minimum capital requirement increased from $882,750 in Week 1 to $993,000 in Week 2.

[5] The "cost to carry" 60 option contracts is determined pursuant to rule 15c3–1a(b)(2)(iii)(C) under the Act, 17 CFR 15c3–1a(b)(2)(iii)(C), which provides that a broker or dealer that is long puts or calls must deduct 50 percent of the market value of the net long put and call positions in the same options series.

WEEK 1

Option	CALL		PUT		Total
	Premium	Requirement	Premium	Requirement	
1	56⅞	$5,687.50 × 60 / 2	67¼	$6,725.00 × 60 / 2	$372,375
2	14½	1,450.00 × 60 / 2	7⅝	762.30 × 60 / 2	66,375
3	4⅛	412.50 × 60 / 2	17	1,700 × 60 / 2	63,375
4	9	900.00 × 60 / 2	5¼	525.00 × 60 / 2	42,750
5	15¼	1,525.00 × 60 / 2	5¼	525.00 × 60 / 2	61,500
6	58½	5,850.00 × 60 / 2	33⅝	3,362.50 × 60 / 2	276,375
Total					882,750

WEEK 2

Option	CALL		PUT		Total
	Premium	Requirement	Premium	Requirement	
1	75⅜	$7,537.50 × 60 / 2	55¾	$5,575.00 × 60 / 2	$393,375
2	13⅞	1,387.50 × 60 / 2	16⅛	1,612.50 × 60 / 2	90,000
3	5¼	525.00 × 60 / 2	22¼	2,225.00 × 60 / 2	82,500
4	9⅛	912.50 × 60 / 2	8⅜	837.50 × 60 / 2	52,500
5	14⅞	1,487.50 × 60 / 2	8⅜	837.50 × 60 / 2	69,750
6	61¾	6,175.00 × 60 / 2	39⅞	3,987.50 × 60 / 2	304,875
Total					993,000

Before the Amex's current specialist financial requirements took effect in June 1988, Amex rules required specialists to maintain cash or net liquid assets equal to the grater of $100,000 or an amount sufficient to assume a position of 20 trading units of each speciality issue. As noted above, the Amex proposes to amend Amex Rule 950(h) to require every registered options specialist to maintain cash or liquid assets in the amount of $600,000 plus $25,000 for each option issue in excess of ten option issues in which such specialist is registered. Under the proposal, a specialist's financial requirement would not fluctuate with the premiums of the highest priced option series, but would change only when the specialist unit voluntarily changes the number of option issues it trades. The equity specialist financial requirements will remain at their current levels as set forth in Amex Rule 171.

The Exchange notes the existence of additional safeguards, such as circuit breakers, which became operative since the Exchange's last revision to Amex Rule 171.[6] In addition, the Exchange's daily review of specialist capital reserves and the Exchange's early warning signals, which trigger a more intense level of surveillance of exchange specialists during volatile market situations, continue to remain in place. Further, the proposal will permit options specialists to maintain relative control over their level of financial requirements by determining their respective number of options allocations.

As noted above, under the Amex's current rules, financial requirements for options specialists do not take into consideration the extent to which the specialists maintain hedged positions in their registered option issues. The Amex recently compared its financial requirements for options specialists to similar capital requirements maintained by other exchanges. In contrast to the Amex's capital requirements, the Exchange notes that a Lead Market Maker ("LMM") on the Pacific Exchange ("PCX") that performs the function of an Order Book Official ("OBO") must maintain minimum net capital of $500,000 plus $25,000 for each issue over five issues for which the LMM performs the function of an OBO.[7] An LMM that does not perform the function of an OBO must maintain minimum net capital of $350,000 plus $25,000 for each issue over eight issues that has been allocated to the LMM.[8] Accordingly, to carry the same options book noted in the Amex's example above, an LMM that functions as an OBO in each of his options allocations would be required to maintain minimum net capital of $525,000, while an LMM that does not function as an OBO would be required to maintain minimum net capital of $350,000. The Exchange has also compared its current financial requirements for option specialists with those of the Chicago Board Options Exchange and the Philadelphia Stock Exchange. These comparisons have led the Amex to conclude that revisions to Amex Rule 950(h) are necessary.

In the Exchange's view, the cost for options specialists to maintain financial reserves sufficient to satisfy the Exchange's financial requirements has been increasing for Amex options specialists relative to competing options specialists or market makers at other exchanges. These financial requirements effectively reduce the number of option

[6] The Amex's June 10 Letter describes additional safeguards relating to specialists' financial requirements. Among other things, the June 10 Letter notes that a specialist unit that is not self-clearing maintains an agreement with a clearing firm that guarantees the specialist's transactions. A specialist that is self-clearing guarantees the transactions effected by its specialists on the Amex floor. In addition, the June 10 Letter states that the Amex reviews all specialist financial requirements each day and contacts the specialist's principal(s) to request the deposit of additional funds on any day when the specialist approaches the early warning financial requirement level (120% of the minimum specialist financial requirement). If the specialist is unable to deposit additional capital, the Amex obtains a written guarantee from the specialist's clearing firm stating that the clearing firm will guarantee the specialist's transactions. The process of obtaining a written guarantee serves to notify the clearing firm of the specialist's current financial condition. Finally, the Amex notes that the Exchange may reallocate the specialist's allocation to another specialist unit if the specialist fails to satisfy the Amex's financial requirements. *See* June 10 Letter, *supra* note 3.

[7] *See* PCX Rule 6.82(h), Commentary .04.

[8] *See* PCX Rule 6.82(c)(11).

issues that may be allocated to an Amex options specialist and provide an incentive for Amex members to consider moving their business operations to exchanges with less restrictive financial requirements. The Exchange believes that the proposed change is necessary to address any potential and significant increase in the number of option issues traded on the Exchange that may occur as a result of competitive marketplace conditions. The Exchange believes that the proposed change in the specialist financial requirements will help to ensure that Amex options specialists continue to maintain adequate capital reserves while remaining competitive with their counterparts at other exchanges.

The Amex also proposes to amend Amex Rule 950(h), Commentary .01, to specify the minimum capital requirement for a specialist that maintains a book in both equity securities and options ("an equity/option book"). Specifically, Amex Rule 950(h), Commentary .01, as amended, will provide that, for an options specialist also serving as an equity specialist, the minimum $600,000 requirement specified in Amex Rule 171 will apply to the entirety of the specialist's business in both equities and options. The minimum financial requirement for a specialist with an equity/option book will be $600,000, provided that the financial requirement for neither the equity allocation nor the option allocation exceeds $600,000. Thus, under Commentary .01, the minimum financial requirement for a specialist who is allocated one equity issue and one option issue would be $600,000, provided that the financial requirement for neither the equity allocation nor the options allocation exceeds $600,000.[9]

For an equity/option book where the financial requirement of either the equity allocation or the options allocation exceeds $600,000, the minimum financial requirement will be calculated by combining the equity and optional financial requirement (*i.e.*, the financial requirements for equity specialists under Amex Rule 171 and the financial requirements for options specialists under Amex Rule 950(h)). For example, a specialist with three equity allocations and two options allocations, where the financial requirement for the three equity allocations exceeds $600,000, would be required to maintain capital sufficient to assume a position of 60 trading units of each equity allocation plus $50,000 for the two options allocations. Similarly, a specialist allocated 11 options and one equity security would be required to maintain capital of $625,000 for the 11 option allocations plus the amount required to assume a position of 60 trading units of the equity security.[10] The Amex indicated that Commentary .01 is designed to encourage new specialist books.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld form the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex–99–13 and should be submitted by August 30, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20414 Filed 8–6–99; 8:45 am]

BILLING CODE 8010–01–M

[9] *See* Amendment No. 1, *supra* note 3.

[10] *Id.*

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 30, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6027
Date Filed: July 27, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC12 USA–EUR 0080 dated 2 July 1999
PTC12 USA–EUR 0085 dated 27 July 1999
Mail Vote 020—TC12 North Atlantic USA–Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland
Minutes—PTC12 USA–EUR 0084 dated 9 July 1999
Tables—PTC12 USA–EUR Fares 0037 dated 27 July 1999
Intended for effective date: 1 November 1999.

Docket Number: OST–99–6037
Date Filed: July 30, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC COMP 0486 dated 30 July 1999
Composite Expedited Resolution 017d

(Amending)

(Extract of Minutes and Summary included)

Intended effective date: 15 September 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–20415 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 30, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6026.

Date Filed: July 27, 1999.

Due Date for Answers, Conforming Applications, or Motions To Modify Scope: August 24, 1999.

Description: Application of Avialeasing Aviation Company pursuant to 49 U.S.C. 41302 and Subpart Q, applies for a foreign air carrier permit to engage in all-cargo charter service between the Republic of Uzbekistan and the United States.

Docket Number: OST–99–6033.

Date Filed: July 28, 1999.

Due Date for Answers, Conforming Applications, or Motions To Modify Scope: August 25, 1999.

Description: Application of MK Airlines Limited ("MK Ghana") pursuant to 49 U.S.C. Section 41302 and Subpart Q, applies for a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of property and mail between a point or points in Ghana and a point or points in the United States. MK Ghana also requests authority to conduct Fifth Freedom cargo charter flights between the United States and points in third countries.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–20416 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of Business Meeting.

SUMMARY: As provided in section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a business meeting of the Council. At its business meeting the Council will consider its FY2001 Budget Request, a review of recent OIG and GAO financial reports on Amtrak, and a briefing on Amtrak's Mail and Express Business Plan. The meeting will also consider matters raised by individual Council members. Portions of the meeting may be held in closed Executive Session if the Council is considering issues involving Proprietary Information.

DATES: The Council's business meeting is scheduled from 9 a.m. to 11:30 a.m. on Tuesday, August 31, 1999.

ADDRESSES: The meeting will held in the Port of Seattle Commission Chambers, 2711 Alaskan Way, Seattle, WA 98121. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTARY INFORMATION:

The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and Congressional leaders. Each member is to serve a five year term.

Issued in Washington, DC, August 2, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99–20374 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on June 30, 1999. This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590: telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number.

The indexes are published on a quarterly basis (*i.e.*, January, April, July, and October). This publication represents the quarter ending on March 31, 1999.

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register Publication
11/1/89–9/30/90	55 FR 45984; 10/31/90
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91
1/1/91–3/31/91	56 FR 20250; 5/2/91
4/1/91–3/31/91	56 FR 31984; 7/12/91
7/1/91–9/30/91	56 FR 51735; 10/15/91
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92
1/1/92–3/31/92	57 FR 12359; 4/9/92
4/1/92–6/30/92	57 FR 32825; 7/23/92
7/1/92–9/30/92	57 FR 48255; 10/22/92
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93
1/1/93–3/31/93	58 FR 21199; 4/19/93
4/1/93–6/30/93	58 FR 42120; 8/6/93
7/1/93–9/30/93	58 FR 58218; 10/29/93
10/1/93–12/31/93 ..	58 FR 5466; 2/4/94
1/1/94–3/31/94	59 FR 22196; 4/29/94
4/1/94–6/30/94	59 FR 39618; 8/3/94
7/1/94–9/30/94	60 FR 4454; 1/23/95
1/1/95–3/31/95	60 FR 19318; 4/17/95
4/1/95–6/30/95	60 FR 36854; 7/17/95
7/1/95–9/30/95	60 FR 53228; 10/12/95
10/1/95–12/31/95 ..	61 FR 1972; 1/24/96
1/1/96–3/31/96	61 FR 16955; 4/18/96
4/1/96–6/30/96	61 FR 37526; 7/18/96
7/1/96–9/30/96	61 FR 54833; 10/22/96
10/1/96–12/31/96 ..	62 FR 2434; 1/16/97
1/1/97–3/31/97	62 FR 24533; 5/2/97
4/1/97–6/30/97	62 FR 38339; 7/17/97
7/1/97–9/30/97	62 FR 53856; 10/16/97
10/1/97–12/31/97 ..	63 FR 3373; 1/22/98
1/1/98–3/31/98	63 FR 19559; 4/20/98
4/1/98–6/30/98	63 FR 37914; 7/14/98
7/1/98–9/30/98	63 FR 57729; 10/28/98
10/1/98–12/31/98 ..	64 FR 1855; 1/12/99
1/1/99–3/31/99	64 FR 24690; 5/7/99

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice.)

Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet is also set forth at the end of this notice.

Civil Penalty Actions—Orders Issued by the Administrator

Order Number Index

(This index includes all decisions and orders issued by the Administrator from April 1, 1999, to June 30, 1999).

99–3—Clarence L. Justice
6/11/99—CP98WP0055, DMS No. FAA–1998–4751

Civil Penalty Actions—Orders Issued by the Administrator

Subject Matter Index

(Current as of June 30, 1999.)

Administrative Law Judges—Power and Authority:
- Continuance of hearing ..... 91–11 Continental Airlines; 92–29 Haggland.
- Credibility findings ..... 90–21 Carroll; 92–3 Park; 93–17 Metcalf; 94–3 Valley Air; 94–4 Northwest Aircraft Rental; 95–25 Conquest; 95–26 Hereth; 97–20 Werle; 97–30 Emery Worldwide Airlines; 97–32 Florida Propeller; 98–18 General Aviation.
- Default Judgment ..... 91–11 Continental Airlines; 92–47 Cornwall; 94–8 Nunez; 94–22 Harkins; 94–28 Toyota; 95–10 Diamond; 97–28 Continental Airlines; 97–33 Rawlings; 98–13 Air St. Thomas.
- Discovery ..... 89–6 American Airlines; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter; 93–10 Costello.
- Expert Testimony ..... 94–21 Sweeney.
- Granting extensions of time ..... 90–27 Gabbert.
- Hearing location ..... 92–50 Cullop.
- Hearing request ..... 93–12 Langton; 94–6 Strohl; 94–27 Larsen: 94–37 Houston; 95–19 Rayner.
- Initial Decision ..... 92–1 Costello; 92–32 Barnhill.
  - Lateness of ..... 97–31 Sanford Air.
  - Should include requirement to file appeal brief in decision 98–5 Squire.
- Jurisdicton:
  - Generally ..... 90–20 Degenhardt; 90–33 Cato; 92–1 Costello; 92–32 Barnhill.
  - After issuance of order assessing civil penalty ..... 94–37 Houston; 95–19 Rayner; 97–33 Rawlings.
  - When complaint is withdrawn ..... 94–39 Kirola.
- Motion for Decision ..... 92–73 Wyatt; 92–75 Beck; 92–76 Safety Equipment; 93–11 Merkley; 96–24 Horizon; 98–20 Koenig.
- No authority to extend due date for late Answer without showing of good cause. (See also Answer). 95–28 Atlantic World Airways; 97–18 Robinson; 98–4 Larry's Flying Service.
- Notice of Hearing ..... 92–31 Eaddy.
- Regulate proceedings ..... 97–20 Werle.
- Sanction ..... 90–37 Northwest Airlines; 91–54 Alaska Airlines; 94–22 Harkins; 94–28 Toyota.
- Service of law judges by parties ..... 97–18 Robinson.
- Vacate initial decision ..... 90–20 Degenhardt; 92–32 Barnhill; 95–6 Sutton.

Aerial Photography ..... 95–25 Conquest Helicopters.
Agency Attorney ..... 93–13 Medel.

Air Carrier:	
Agent/independent contractor of	92–70 USAir.
Careless or Reckless	92–48 & 92–70 USAir; 93–18 Westair Commuter.
Duty of care Non-delegable	92–70 USAir; 96–16 Westair Commuter; 96–24 Horizon; 97–8 Pacific Av. d/b/a/ Inter-Island Helicopters.
Employee	93–18 Westair Commuter; 97–8 Pacific Av. d/b/a Inter–Island Helicopter.
Ground Security Coordinator, Failure to provide	96–16 WestAir Commuter.
Intoxicated Passenger:	
Allowing to board	98–11 TWA.
Serving alcohol to	98–11 TWA.
Liability for acts/omissions of employees in the scope of employment.	98–11 TWA.
Aircraft Maintenance (See also Airworthiness, Maintenance Manual):	
Generally	90–11 Thunderbird Accessories; 91–8 Watts Agricultural Aviation; 93–36 & 94–3 Valley Air; 94–38 Bohan; 95–11 Horizon; 96–3 America West Airlines; 97–8 Pacific Av. d/b/a/ Inter-Island Helicopters; 97–9 Alphin; 97–10 Alphin; 97–11 Hampton; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 98–18 General Aviation.
Acceptable methods, techniques, and practices	96–3 America West Airlines.
After certificate revocation	92–73 Wyatt.
Airworthiness Directive compliance with	96–18 Kilrain; 97–9 Alphin.
Inspection	96–18 Kilrain; 97–10 Alphin.
Major/minor repairs	96–3 American West Airlines.
Minimum Equipment List (MEL)	94–38 Bohan; 95–11 Horizon; 97–11 Hampton; 97–21 Delta; 97–30 Emery Worldwide Airlines.
Aircraft Records:	
Aircraft Operation	91–8 Watts Agricultural Aviation.
Flight and Duty Time	96–4 South Aero.
Maintenance Records	91–8 Watts Agricultural Aviation; 94–2 Woodhouse; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 98–18 General Aviation.
"Yellow tags"	91–8 Watts Agricultural Aviation.
Aircraft-Weight and Balance (See Weight and Balance):	
Airmen:	
Pilots	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp; 93–17 Metcalf.
Altitude deviation	92–49 Richardson & Shimp.
Careless or Reckless	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp; 92–47 Cornwell; 93–17 Metcalf; 93–29 Sweeney; 96–17 Fenner.
Flight time limitations	93–11 Merkley.
Follow ATC Instruction	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp.
Low Flight	92–47 Cornwell; 93–17 Metcalf.
Owner's responsibility	96–17 Fenner.
See and Avoid	93–29 Sweeney.
Air Operations Area (AOA):	
Air Carrier Responsibilities	90–19 Continental Airlines; 91–33 Delta Air Lines; 94–1 Delta Air Lines.
Airport Operator Responsibilities	90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 98–7 LAX.
Badge Display	91–4 [Airport Operator]; 91–33 Delta Air Lines; 99–1 American Airlines.
Definition of	90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator].
Exclusive Areas	90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator]; 98–7 LAX.
Airport Security Program (ASP):	
Compliance with	91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 94–1 Delta Air Lines; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan; 98–7 LAX; Airport Operator.
Responsibilities	90–12 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan.
Air Traffic Control (ATC):	
Error as mitigating factor	91–12 & 91–31 Terry & Menne.
Error as exonerating factor	91–12 & 91–31 Terry & Menne; 92–40 Wendt.
Ground Control	91–12 Terry & Menne; 93–18 Westair Commuter.
Local Control	91–12 Terry & Menne.
Tapes & Transcripts	91–12 Terry & Menne; 92–49 Richardson & Shimp.

Airworthiness ..... 91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 92–48 & 92–70 USAir; 94–2 Woodhouse; 95–11 Horizon; 96–3 America West Airlines; 96–18 Kilrain; 94–25 USAir; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 97–10 Alphin; 97–11 Hampton; 97–21 Delta; 97–30 Emery Worldwide Airlines; 97–32 Florida Propeller; 98–16 General Aviation.

Amicus Curiae Briefs ..... 90–25 Gabbert.

Answer:

ALJ may not extend due date for late Answer unless good cause shown. ..... 95–28 Atlantic World Airways; 97–18 Robinson; 97–33Rawlings; 98–4 Larry's Flying Service.

Reply to each numbered paragraph in the complaint required .... 98–21 Blankson.

Timeliness of answer ..... 90–3 Metz; 90–15 Playter; 92–32 Barnhill; 92–47 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 94–5 Grant; 94–29 Sutton; 94–30 Columna; 94–43 Perez; 95–10 Diamond; 95–28 Atlantic World Airways; 97–18 Robinson; 97–19 Missirlian; 97–33 Rawlings; 97–38 Air St. Thomas; 98–4 Larry's Flying Service; 98–13 Air St. Thomas.

What constitutes ..... 92–32 Barnhill; 92–75 Beck; 97–19 Missirlian.

Appeals (See also Filing; Timeliness; Mailing Rule):

Briefs, Generally ..... 89–4 Metz; 91–45 Park; 92–17 Giuffrida; 92–19 Cornwall; 92–39 Beck; 93–24 Steel City Aviation; 93–28 Strohl; 94–23 Perez; 95–13 Kilrain.

Additional Appeal Brief ..... 92–3 Park; 93–5 Wendt; 93–6 Westair Commuter; 93–28 Strohl; 94–4 Northwest Aircraft; 94–18 Luxemburg; 94–29 Sutton; 97–22 Sanford Air; 97–34 Continental Airlines; 97–38 Air St. Thomas; 98–18 General Aviation.

Appeal dismissed as premature ..... 95–19 Rayner.

Appeal dismissed as moot after complaint withdrawn ..... 92–9 Griffin.

Appellate arguments ..... 92–70 USAir.

Court of Appeals, appeal to (See Federal Courts) Good Cause for Late-Filed Brief or Notice of Appeal. 90–3 Metz; 90–27 Gabbert; 90–39 Hart; 91–10 Graham; 91–24 Esau; 91–48 Wendt; 91–50 & 92–1 Costello; 92–3 Park; 92–17 Giuffrida; 92–39 Beck; 92–41 Moore & Sabre Associates; 92–52 Beck; 92–57 Detroit Metro Wayne Co. Airport; 92–69 McCabe; 93–23 Allen; 93–27 Simmons; 93–31 Allen; 95–2 Meronek; 95–9 Woodhouse; 95–25 Conquest, 97–28 Continental; 97–38 Air St. Thomas; 98–1 V. Taylor; 98–13 Air St. Thomas.

Motion to Vacate construed as a brief ..... 91–11 Continental Airlines.

Perfecting an Appeal, generally ..... 92–17 Giuffrida; 91–19 Cornwall; 92–39 Beck; 94–23 Perez; 95–13 Kilrain; 96–5 Alphin Aircraft; 98–20 Koenig.

Extension of Time for (good cause for) ..... 89–8 Thunderbird Accessories; 91–26 Britt Airways; 91–32 Bargen; 91–50 Costello; 93–2 & 93–3 Wendt; 93–24 Steel City Aviation; 93–32 Nunez; 98–5 Squire; 98–15 Squire; 99–3 Justice.

Failure to ..... 89–1 Gressani; 89–7 Zenkner; 90–11 Thunderbird Accessories; 90–35 P. Adams; 90–39 Hart; 91–7 Pardue; 91–10 Graham; 91–20 Bargen; 91–43, 91–44, 91–46 & 91–47 Delta Air Lines; 92–11 Alilin; 92–15 Dillman; 92–18 Bargen; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines; 92–45 O'Brien; 92–56 Montauk Caribbean Airways; 92–67 USAir; 92–68 Weintraub; 92–78 TWA; 93–7 Dunn; 93–8 Nunez; 93–20 Smith; 93–23 & 93–31 Allen; 93–34 Castle Aviation; 93–35 Steel City Aviation; 94–12 Bartusiak; 94–24 Page; 94–26 French Aircraft; 94–34 American International Airways; 94–35 American International Airways; 94–36 American International Airways; 95–4 Hanson; 95–22 7 96–5 Alphin Aircraft; 96–2 Skydiving Center; 96–13 Winslow; 97–3 [Airport Operator], 97–6 WRA, Inc.' 97–15 Houston & Johnson County; 97–35 Gordon Air Services; 97–36 Avcon; 97–37 Roush; 98–10 Rawlings; 99–2 Oxygen Systems.

Notice of appeal construed as appeal brief ..... 92–39 Beck; 94–15 Columna; 95–9 Woodhouse; 95–23 Atlantic World Airways; 96–20 Missirlian; 97–2 Sanford Air; 98–5 Squire; 98–17 Blue Ridge Airlines; 98–23 Instead Balloon Services; 99–3 Justice.

What Constitutes ..... 90–4 Metz; 90–27 Gabbert; 91–45 Park; 92–7 West; 92–17 Giuffrida; 92–39 Beck; 93–7 Dunn; 94–15 Columna; 94–23 Perez; 94–30 Columna; 95–9 Woodhouse; 95–23 Atlantic World Airways; 96–20 Missirlian; 97–2 Sanford Air.

Service of brief:

Failure to serve other party ..... 92–17 Giuffrida; 92–19 Cornwall.

Timeliness of Notice of Appeal ..... 90–3 Metz; 90–39 Hart; 91–50 Costello; 92–7 West; 92–609 McCabe; 93–27 Simmons; 95–2 Meronek; 95–9 Woodhouse; 95–15 Alphin Aviation; 96–14 Midtown Neon Sign Corp.; 97–7 & 97–17 Stallings; 97–28 Continental; 97–38 Air St. Thomas; 98–1 V. Taylor; 98–13 Air St. Thomas; 98–16 Blue Ridge Airlines; 98–17 Blue Ridge Airlines; 98–21 Blankson.

Withdrawal of	89–2 Lincoln-Walker; 89–3 Sittko; 90–4 Nordrom; 90–5 Sussman; 90–6 Dabaghian; 90–7 Steele; 90–8 Jenkins; 90–9 Van Zandt; 90–13 O'Dell; 90–14 Miller; 90–28 Puleo; 90–29 Sealander; 90–39 Steidinger; 90–34 D. Adams; 90–40 & 90–41 Westair Commuter Airlines; 91–1 Nestor; 91–5 Jones; 91–6 Lowery; 91–13 Kreamer; 91–14 Swanton; 91–15 Knipe; 91–16 Lopez; 91–19 Bayer; 91–21 Britt Airways; 91–22 Omega Silicone Co.; 91–23 Continental Airlines; 91–25 Sanders; 91–27 Delta Air Lines; 91–28 Continental Airlines; 91–29 Smith; 91–34 GASPRO; 91–35 M. Graham; 91–36 Howard; 91–37 Vereen; 91–39 America West; 91–42 Pony Express; 91–49 Shields; 91–56 Mayhan; 91–57 Britt Airways; 91–59 Griffin; 91–60 Brinton; 92–2 Koller; 92–4 Delta Air Lines; 92–6 Rothgeb; 92–12 Bertetto; 92–20 Delta Air Lines; 92–21 Cronberg; 92–22, 92–23, 92–24, 92–25, 92–26 & 92–28 Delta Air Lines; 92–33 Port Authority of NY & NJ; 92–42 Jayson; 92–43 Delta Air Lines; 92–44 Owens; 92–53 Humble; 92–54 & 92–55 Northwest Airlines; 92–60 Costello; 92–61 Romerdahl; 92–62 USAir; 92–63 Schaefer; 92–64 & 92–65 Delta Air Lines; 92–66 Sabre Associates & Moore; 92–79 Delta Air Lines; 93–1 Powell & Co.; 93–4 Harrah; 93–14 Fenske; 93–15 Brown; 93–21 Delta Air Lines; 93–22 Yannotone; 93–26 Delta Air Lines; 93–33 HPH Aviation; 94–9 B & G Instruments; 94–10 Boyle; 94–11 Pan American Airways; 94–13 Boyle; 94–14 B & G Instruments; 94–16 Ford; 94–33 Trans World Airlines; 94–41 Dewey Towner; 94–42 Taylor; 95–1 Diamond Aviation; 94–3 Delta Air Lines; 95–5 Araya; 95–6 Sutton; 95–7 Empire Airlines; 95–20 USAir; 95–21 Faisca; 94–24 Delta Air Lines; 96–7 Delta Air Lines; 96–8 Empire Airlines; 96–10 USAir, 96–11 USAir, 96–12 USAir; 96–21 Houseal; 97–4 [Airport Operator]; 97–5 WestAir; 97–25 Martin & Jaworski; 97–26 Delta Air Lines; 97–27 Lock Haven; 97–39 Delta Air Lines; 98–9 Contnental Express.
Assault (See also Battery, and Passenger Misconduct)	96–6 Ignatov; 97–12 Mayer.
"Attempt"	89–5 Schultz.
Attorney Conduct Obstreperous or Disruptive	94–39 Kirola.
Attorney Fees (See EAJA)	
Aviation Safety Reporting System	90–39 Hart; 91–12 Terry & Menne; 92–49 Richardson & Shimp.
Baggage Matching	98–6 Continental.
Balloon (Hot Air)	94–2 Woodhouse.
Bankruptcy	91–2 Continental Airlines.
Battery (See also Assault and Passenger Misconduct)	96–6 Ignatov; 97–12 Mayer.
Certificates and Authorizations: Surrender when revoked	92–73 Wyatt.
Civil Air Security National Airport Inspection Program (CASNAIP)	91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].
Civil Penalty Amount (See Sanction):	
Closing Argument (See Final Oral Argument):	
Collateral Estoppel	91–8 Watts Agricultural Aviation.
Complaint:	
Complainant Bound By	90–10 Webb; 91–53 Koller.
No Timely Answer to (See Answer):	
Partial Dismissal/Full Sanction	94–19 Pony Express; 94–40 Polynesian Airways.
Staleness (See Stale Complaint Rule):	
Statute of Limitations (See Statute of Limitations)	
Timeliness of complaint	91–51 Hagwood; 93–13 Medel; 94–7 Hereth; 94–5 Grant.
Withdrawal of	94–39 Kirola; 95–6 Sutton.
Compliance & Enforcement Program:	
(FAA Order No. 2150.3A)	89–5 Schulz; 89–6 American Airlines; 91–38 Esau; 92–5 Delta Air Lines.
Compliance/Enforcement Bulletin 92–3	96–19 [Air Carrier].
Sanction Guidance Table	89–5 Schultz; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines; 91–3 Lewis; 92–5 Delta Air Lines; 98–18 General Aviation.
Concealment of Weapons (See Weapons Violations):	
Consolidation of Cases	90–12, 90–18 & 90–19 Continental Airlines.
Constitutionality of Regulations (See also Double Jeopardy)	90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines; 96–1 [Airport Operator]; 96–25 USAir; 97–16 Mauna Kea; 97–34 Continental Airlines; 98–6 Continental Airlines; 98–11 TWA; 99–1 American.
Continuance of Hearing	90–25 Gabbert; 92–29 Haggland.
Corractive Act (See Sanction):	
Counsel:	
Leave to withdraw	97–24 Gordon.
No right to assigned counsel (See Due Process)	
Credibility of Witnesses:	
Generally	95–25 Conquest Helicopters; 95–26 Hereth; 97–32 Florida Propeller.
Bias	97–9 Alphin.

Defer to ALJ determination of	90–21 Carroll; 92–3 Park; 93–17 Metcalf; 95–26 Hereth; 97–20 Werle; 97–30 Emery Worlwide Airlines; 97–32 Florida Propeller; 98–11 TWA; 98–18 General Aviation.
Experts	(See also Witness) 90–27 Gabbert; 93–17 Metcalf; 96–3 America West Airlines.
Impeachment	94–4 Northwest Aircraft Rental.
Reliability of Identification by eyewitnesses	97–20 Werle.
De facto answer	92–32 Barnhill.
Delay in initiating action	90–21 Carroll.
Deliberative Process Privilege	89–6 American Airlines; 90–12, 90–18 & 90–19 Continental Airlines.
Deterrence	89–5 Schultz; 92–10 Flight Unlimited; 95–16 Mulhall; 95–17 Larry's Flying Service; 97–11 Hampton.
Discovery:	
Deliberative Process Privilege	89–6 American Airlines; 90–12, 90–18 & 90–19 Continental Airlines.
Depositions, generally	91–54 Alaska Airlines.
Notice of deposition	91–54 Alaska Airlines.
Failure to Produce	90–18 & 90–19 Continental Airlines; 91–17 KDS Aviation; 93–10 Costello.
Sanction for	91–17 KDS Aviation; 91–54 Alaska Airlines.
Regarding Unrelated Case	92–46 Sutton-Sautter
Double Jeopardy	95–8 Charter Airlines; 96–26 Midtown.
Due Process:	
Generally	89–6 American Airlines; 90–12 Continental Airlines; 90–37 Northwest Airlines; 96–1 [Airport Operator]; 97–8 Pacific Av. d/b/a Inter-Island Helicopters.
Before finding a violation	90–27 Gabbert.
Multiple violations	96–26 Midtown; 97–9 Alphin.
No right to assigned counsel	97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin.
Violation of	89–6 American Airlines; 90–12 Continental Airlines; 90–37 Northwest Airlines; 96–1 [Airport Operator]; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 98–19 Martin & Jaworski.
EAJA:	
Adversary Adjudication	90–17 Wilson; 91–17 & 91–52 KDS Aviation; 94–17 TCI; 95–12 Toyota.
Amount of award	95–27 Valley Air.
Appeal from ALJ decision	95–9 Woodhouse.
Expert witness fees	95–27 Valley Air.
Final disposition	96–22 Woodhouse.
Further proceedings	91–52 JKDS Aviation.
Jurisdiction over appeal	92–74 Wendt; 96–22 Woodhouse.
Late-filed application	96–22 Woodhouse.
Other expenses	93–29 Sweeney.
Position of agency	95–27 Valley Air.
Prevailing party	91–52 KDS Aviation.
Special circumstances	95–18 Pacific Sky.
Substantial justification	91–52 & 92–71 KDS Aviation; 93–9 Wendt; 95–18 Pacific Sky; 95–27 Valley Air; 96–15 Valley Air; 98–19 Martin & Jaworski.
Supplementation of application	95–27 Valley Air.
Evidence (See Proof & Evidence)	
Ex Parte Communications	93–10 Costello; 95–16 Mulhall; 95–19 Rayner.
Expert Witnesses (See Witness)	
Extension of Time:	
By Agreement of Parties	89–6 American Airlines; 92–41 Moore & Sabre Associates.
Dismissal by Decisionmaker	89–7 Zenkner; 90–39 Hart.
Good Cause for	89–8 Thunderbird Accessories.
Objection to	89–8 Thunderbird Accessories; 93–3 Wendt.
Who may grant	90–27 Gabbert.
Federal Courts	92–7 West; 97–1 Midtown Neon Sign; 98–8 Carr.
Federal Rules of Civil Procedure	91–17 KDS Aviation.
Federal Rules of Evidence (See also Proof & Evidence):	
Admissions	96–25 USAir.
Settlement Offers	95–16 Mulhall; 96–25 USAir.
Subsequent Remedial Measures	96–24 Horizon; 96–25 USAir.
Final Oral Argument	92–3 Park.
Firearms (See Weapons)	
Ferry Flights	95–8 Charter Airlines.
Filing (See also Appeals; Timeliness):	
Burden to prove date of filing	97–11 Hampton Air; 98–1 V. Taylor.
Discrepancy between certificate of service and postmark	98–16 Blue Ridge Airlines.
Service on designated representative	98–19 Martin & Jaworski.
Flight & Duty Time:	
Circumstances beyond crew's control:	
Generally	95–8 Charter Airlines.
Foreseeability	95–8 Charter Airlines.

Late freight	95–8 Charter Airlines.
Weather	95–8 Charter Airlines.
Competency check flights	96–4 South Aero.
Limitation of Duty Time	95–8 Charter Airlines; 96–4 South Aero.
Limitation of Flight Time	95–8 Charter Airlines.
"Other commercial flying"	95–8 Charter Airlines.
Flights	94–20 Conquest Helicopters.
Freedom of Information Act	93–10 Costello.
Fuel Exhaustion	95–26 Hereth.
Guns (See Weapons)	
Ground Security Coordinator (See also Air Carrier; Standard Security Program):	
Failure to provide	96–16 WestAir Commuter.
Hazardous Materials:	
Transportation of, generally	90–37 Northwest Airlines; 92–76 Safety Equipment; 92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota; 95–16 Mulhall; 96–26 Midtown.
Civil Penalty, generally	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
Corrective Action	92–77 TCI; 94–28 Toyota.
Culpability	92–77 TCI; 94–28 Toyota; 94–31 Smalling.
Financial hardship	95–16 Mulhall.
Installment plan	95–16 Mulhall.
First-time violation	92–77 TCI; 94–28 Toyota; 94–31 Smalling.
Gravity of violation	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown; 98–2 Carr.
Minimum penalty	95–16 Mulhall; 98–2 Carr.
Number of violations	95–16 Mulhall; 96–26 Midtown Neon Sign; 98–2 Carr.
Redundant violations	95–16 Mulhall; 96–26 Midtown Neon Sign; 98–2 Carr.
Criminal Penalty	92–77 TCI; 94–31 Smalling.
EAJA, applicability of	94–17 TCI; 95–12 Toyota.
Individual violations	95–16 Mulhall.
Judicial review	97–1 Midtown Neon Sign; 98–8 Carr.
Knowingly	92–77 TCI; 94–19 Pony Express; 94–31 Smalling.
Specific hazard class transported:	
Combustible Paint	95–16 Mulhall.
Corrosive:	
Wet Battery	94–28 Toyota Motor Sales.
Other	92–77 TCI.
Explosive Fireworks	94–31 Smalling; 98–2 Carr.
Flammable:	
Paint	96–26 Midtown Neon Sign.
Turpentine	95–16 Mulhall.
Radioactive	94–19 Pony Express.
Hearing:	
Failure of party to attend	98–23 Instead Balloon Services.
Informal Conference	94–4 Northwest Aircraft Rental.
Initial Decision:	
What constitutes	92–32 Barnhill.
Interference with crewmembers (See also Passenger Misconduct; Assault).	92–3 Park; 96–6 Ignatov; 97–12 Mayer; 98–11 TWA; 98–12 Stout.
Interlocutory Appeal	89–6 American Airlines; 91–54 Alaska Airlines; 93–37 Airspect; 94–32 Detroit Metropolitan; 98–25 Gotbetter.
Internal FAA Policy &/or Procedures	89–6 American Airlines; 90–12 Continental Airlines; 92–73 Wyatt.
Jurisdiction:	
After initial decision	90–20 Degenhardt; 90–33 Cato; 92–32 Barnhill; 93–28 Strohl.
After Order Assessing Civil Penalty	94–37 Houston; 95–19 Rayner.
After withdrawal of complaint	94–39 Kirola.
$50,000 Limit	90–12 Continental Airlines.
EAJA cases	92–74 Wendt; 96–22 Woodhouse.
HazMat cases	92–76 Safety Equipment.
NTSB	90–11 Thunderbird Accessories.
Knowledge of concealed weapon (See also Weapons Violation)	89–5 Schultz; 90–20 Degenhardt.
Laches (See Delay in initiating action)	
Mailing Rule, generally	89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart; 98–20 Koeing.
Overnight express delivery	89–6 American Airlines.
Maintenance (See Aircraft Maintenance)	
Maintenance Instruction	93–36 Valley Air.
Maintenance Manual	90–11 Thunderbird Accessories, 96–25 USAir.
Air carrier maintenance manual	96–3 America West Airlines.
Approved/accepted repairs	96–3 America West Airlines.
Manufacturer's maintenance manual	96–3 America West Airlines; 97–31 Sanford Air; 97–32 Florida Propeller.
Minimum Equipment List (MEL) (See Aircraft Maintenance)	
Mootness, appeal dismissed as moot	92–9 Griffin; 94–17 TCI.

National Aviation Safety Inspection Program (NASIP) ..... 90–16 Rocky Mountain.
National Transportation Safety Board:
  Administrator not bound by NTSB case law ..... 91–12 Terry & Menne; 92–49 Richardson & Shimp; 93–18 Westair Commuter.
  Lack of Jurisdiction ..... 90–11 Thunderbird Accessories; 90–17 Wilson; 92–74 Wendt.
Notice of Hearing Receipt ..... 92–31 Eaddy.
Notice of Proposed Civil Penalty:
  Initiates Action ..... 91–9 Continental Airlines.
  Signature of agency attorney ..... 93–12 Langton.
  Withdrawal of ..... 90–17 Wilson.
Operate, generally ..... 91–12 & 91–31 Terry & Menne; 93–18 Westair Commuter; 96–17 Fenner.
  Responsibility of aircraft owner/operator for actions of pilot ..... 96–17 Fenner.
Oral Argument before Administrator on appeal:
  Decision to hold ..... 92–16 Wendt.
  Instructions for ..... 92–27 Wendt.
Order Assessing Civil Penalty:
  Appeal from ..... 92–1 Costello; 95–19 Rayner.
  Timeliness of request for hearing ..... 95–19 Rayner.
  Withdrawal of ..... 89–4 Metz; 90–16 Rocky Mountain; 90–22 USAir; 95–19 Rayner; 97–7 Stalling.
Parachuting ..... 98–3 Fedele.
Parts Manufacturer Approval (PMA)
  Failure to obtain ..... 93–19 Pacific Sky Supply.
Passenger Misconduct ..... 92–3 Park.
  Assault/Battery ..... 96–6 Ignatov; 97–12 Mayer; 98–11 TWA.
  Interference with a crewmember ..... 96–6 Ignatov; 97–12 Mayer; 98–11 TWA; 98–12 Stout.
  Smoking ..... 92–37 Giuffrida.
  Stowing carry-on items ..... 97–12 Mayer.
Penalty (See Sanction; Hazardous Materials)
Person ..... 93–18 Westair Commuter.
Prima Facie Case (See also Proof & Evidence) ..... 95–26 Hereth; 96–3 America West Airlines.
Proof & Evidence (See also Federal Rules of Evidence):
  Affirmative Defense ..... 92–13 Delta Air Lines; 92–72 Giuffrida; 98–6 Continental Airlines.
  Burden of Proof ..... 90–26 & 90–43 Waddell; 91–3 Lewis; 91–30 Trujillo; 92–13 Delta Air Lines; 92–72 Giuffrida; 93–29 Sweeney; 97–32 Florida Propeller.
  Circumstantial Evidence ..... 90–12, 90–19 & 91–9 Continental Airlines; 93–29 Sweeney; 96–3 America West Airlines; 97–10 Alphin; 97–11 Hampton; 97–32 Florida Propeller; 98–6 Continental Airlines.
  Credibility (See Administrative Law Judges; Credibility of Witnesses)
  Criminal standard rejected ..... 91–12 Terry & Menne.
  Closing Arguments (See also Final Oral Argument) ..... 94–20 Conquest Helicopters.
  Extra-record material ..... 95–26 Hereth; 96–24 Horizon.
  Hearsay ..... 92–72 Giuffrida; 97–30 Emery Worldwide Airlines; 98–11 TWA.
  Offer of proof ..... 97–32 Florida Propeller.
  Preponderance of evidence ..... 90–11 Thunderbird Accessories; 90–12 Continental Airlines; 91–12 & 91–31 Terry & Menne; 92–72 Giuffrida; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 97–32 Florida Propeller; 98–3 Fedele; 98–6 Continental Airlines; 98–11 TWA.
  Presumption that message on ATC tape is received as transmitted. 91–12 Terry & Menne; 92–49 Richardson & Shimp.
  Presumption that a gun is deadly or dangerous ..... 90–26 Waddell; 91–30 Trujillo.
  Presumption that owner gave pilot permission ..... 96–17 Fenner.
  Prima facie case ..... 95–26 Hereth, 96–3 America West; 98–6 Continental Airlines.
  Settlement offer ..... 95–16 Mulhall; 96–25 USAir.
  Subsequent remedial measures ..... 96–24 Horizon; 96–25 UAAir.
  Substantial evidence ..... 92–72 Giuffrida.
Pro Se Parties:
  Special Considerations ..... 90–11 Thunderbird Accessories; 90–3 Metz; 95–25 Conquest.
Prosecutorial Discretion ..... 89–6 American Airlines; 90–23 Broyles; 90–38 Continental Airlines; 91–41 [Airport Operator]; 92–46 Sutton-Sautter; 92–73 Wyatt; 95–17 Larry's Flying Service.
  Administrator does not review Complainant's decision not to bring action-against anyone but respondent. 98–2 Carr.
Reconsideration:
  Denied by ALJ ..... 89–4 & 90–3 Metz.
  Granted by ALJ ..... 92–32 Barnhill.
  Late request for ..... 97–14 Pacific Aviation; 98–14 Larry's Flying Service.
  Petition based on new material ..... 96–23 Kilrain.
  Repetitious petitions ..... 96–9 [Airport Operator].
  Stay of order pending ..... 90–31 Carroll; 90–32 Continental Airlines.
Redundancy, enhancing safety ..... 97–11 Hampton.
Remand ..... 89–6 American Airlines; 90–16 Rocky Mountain; 90–24 Bayer; 91–51 Hagwood; 91–54 Alaska Airlines; 92–1 Costello; 92–76 Safety Equipment; 94–37 Houston.

Repair Station	90–11 Thunderbird Accessories; 92–10 Flight Unlimited; 94–2 Woodhouse; 97–9 Alphin; 97–10 Alphin; 97–31 Sanford Air; 97–32 Florida Propeller.
Request for Hearing	94–37 Houston; 95–19 Rayner.
Constructive withdrawal of	97–7 Stalling; 98–23 Instead Balloon Services.
Rules of Practice (14 CFR Part 13, Subpart G):	
Applicability of	90–12, 90–18 & 90–19 Continental Airlines; 91–17 KDS Aviation.
Challenges to	90–12, 90–18 & 90–19 Continental Airlines; 90–21 Carroll; 90–37 Northwest Airlines.
Effect of Changes in	90–21 Carroll; 90–22 USAir; 90–38 Continental Airlines.
Initiation of Action	91–9 Continental Airlines.
Runway incursions	92–40 Wendt; 93–18 Westair Commuter.
Sanction:	
Ability to Pay	89–5 Schultz 90–10 Webb; 91–3 Lewis; 91–38 Esau; 92–10 Flight Unlimited; 92–32 Barnhill; 92–37 & 92–72 Giuffrida; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 93–10 Costello; 94–4 Northwest Aircraft Rental; 94–20 Conquest Helicopters; 95–16 Mulhall; 95–17 Larry's Flying Service; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–11 Hampton; 97–16 Mauna Kea; 98–4 Larry's Flying Service; 98–11 TWA.
Agency policy:	
ALJ bound by	90–37 Northwest Airlines; 92–46 Sutton-Sautter; 96–19 [Air Carrier].
Changes after complaint	97–7 & 97–17 Stallings.
Statements of (*e.g.*, FAA Order 2150.3A, Sanction Guidance Table, memoranda pertaining to).	90–19 Continental Airlines; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines; 92–46 Sutton-Sautter; 96–4 South Aero; 96–19 [Air Carrier]; 96–25 USAir.
Compliance Disposition	97–23 Detroit Metropolitan.
Consistency with Precedent	96–6 Ignatov; 96–26 Midtown; 97–30 Emery Worldwide Airlines; 98–12 Stout; 98–18 General Aviation.
But when precedent is based on superceded sanction policy	96–19 [Air Carrier].
Corrective Action	91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 92–5 Delta Air Lines; 93–18 Westair Commuter; 94–28 Toyota; 96–4 South Aero; 96–19 [Air Carrier]; 97–16 Mauna Kea; 97–23 Detroit Metropolitan; 98–6 Continental Airlines; 98–22 Northwest Airlines.
Discovery (See Discovery) Factors to consider	89–5 Schultz; 90–23 Broyles; 90–37 Northwest Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–1 Koblick; 94–28 Toyota; 95–11 Horizon; 96–19 [Air Carrier]; 96–26 Midtown; 97–16 Mauna Kea; 98–2 Carr.
First-Time Offenders	89–5 Schultz; 92–5 Delta Air Lines; 92–51 Koblick.
HazMat (See Hazardous Materials)	
Inexperience	92–10 Flight Unlimited.
Installment Payments	95–16 Mulhall; 95–17 Larry's Flying Service.
Maintenance	95–11 Horizon; 96–3 America West Airlines; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 97–10 Alphin; 97–1 Hampton; 97–30 Emery Worldwide Airlines.
Maximum	90–10 Webb; 91–53 Koller; 96–19 [Air Carrier].
Minimum (HazMat)	95–16 Mulall; 96–26 Midtown; 98–2 Carr.
Modified	89–5 Schultz; 90–11 Thunderbird Accessories; 91–38 Esau; 92–10 Flight Unlimited; 92–13 Delta Air Lines; 92–32 Barnhill.
Partial Dismissal of Complaint/Full Sanction (See also Complaint).	94–19 Pony Express; 94–40 Polynesian Airways.
Sanctions in specific cases:	
Unairworthy aircraft	97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 98–18 General Aviation.
Passenger/baggage matching	98–6 Continental Airlines.
Passenger Misconduct	97–12 Mayer; 98–12 Stout.
Person evading screening (See also Screening)	97–20 Werle.
Pilot Deviation	92–8 Watkins.
Test object detection	90–18 and 90–19 Continental Airlines; 96–19 [Air Carrier].
Unauthorized access	90–19 Continental Airlines; 90–37 Northwest Airlines; 94–1 Delta Air Lines; 98–7 LAX.
Weapons violations	90–23 Broyles; 90–33 Cato; 91–3 Lewis; 91–38 Esau; 92–32 Barnhill; 92–46 Sutton-Sautter; 92–51 Koblick; 94–5 Grant; 97–7 and 97–17 Stallings.
Screening of Persons:	
Air carrier failure to detect weapon Sanction	94–44 American Airlines.
Air carrier failure to match bag with passenger	98–6 Continental Airlines.
Entering Sterile Areas	90–24 Bayer; 92–58 Hoedl; 97–20 Werle; 98–20 Koenig.
Sanction for individual evading screening (See also Sanction)	97–20 Werle; 98–20 Koenig.
Security (see Screening of Persons, Standard Security Program, Test Object Detection, Unauthorized Access, Weapons Violations):	
Giving false information about carrying a weapon of explosive on board an aircraft.	98–24 Stevens.
Sealing of Record	97–13 Westair Commuter; 97–28 Continental Airlines.

Separation of Functions ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines; 93–13 Medel.

Service (See also Mailing Rule; Receipt):
- Of NPCP ..... 90–22 USAir; 97–20 Werle.
- Of FNPCP ..... 93–13 Medel.
- Receipt of document sent by mail ..... 92–31 Eaddy.
- Return of certified mail ..... 97–7 and 97–17 Stallings.
- Valid Service ..... 92–18 Bargen; 98–19 Martin & Jaworski.

Settlement ..... 91–50 and 92–1 Costello; 95–16 Mulhall.
Skydiving ..... 98–3 Fedele.
Smoking ..... 92–37 Giuffrida; 94–18 Luxemburg.
Stale Complaint Rule:
- If NPCP not sent ..... 97–20 Werle.

Standard Security Program (SSP):
- Compliance with ..... 90–12–18 and 90–19 Continental Airlines; 91–33 Delta Air Lines; 91–55 Continental Airlines; 92–13 – 94–1 Delta Air Lines; 96–19 [Air Carrier]; 98–22 Northwest Airlines; 99–1 American.
- Checkpoint Security Coordinator ..... 98–22 Northwest Airlines.
- Ground Security Coordinator ..... 96–16 Westair Commuter.

Statute of Limitations ..... 97–20 Werle.
Stay of Orders ..... 90–31 Carroll; 90–32 Continental Airlines.
- Pending judicial review ..... 95–14 Charter Airlines.

Strict Liability ..... 89–5 Schultz; 90–27 Gabbert; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator]; 97–23 Detroit Metropolitan; 98–7 LAX.

Test Object Detection ..... 90–12, 90–18, 90–19, 91–9 & 91–55 Continental Airlines; 92–13 Delta Air Lines; 96–19 [Air Carrier].
- Proof of violation ..... 90–18, 90–19 & 91–9 Continental Airlines; 92–13 Delta Air Lines.
- Sanction ..... 90–18 & 90–19 Continental Airlines; 96–19 [Air Carrier].

Timeliness (See also Complaint; Filing; Mailing rule; and Appeals):
- Burden to prove date of filing ..... 97–11 Hampton Air; 98–1 V. Taylor.
- Of response to NPCP ..... 90–22 USAir.
- Of complaint ..... 91–51 Hagwood; 93–13 Medel; 94–7 Hereth.
- Of initial decision ..... 97–31 Sanford Air.
- Of NPCP ..... 92–73 Wyatt.
- Of reply brief ..... 97–11 Hampton.
- Of request for hearing ..... 93–12 Langton; 95–19 Rayner.
- Of EAJA application (See EAJA–Final disposition, EAJA–Jurisdiction)

Unapproved parts (See also Parts Manufacturer Approval) ..... 93–19 Pacific Sky Supply.
Unauthorized Access:
- To aircraft ..... 90–12 & 90–19 Continental Airlines; 94–1 Delta Air Lines.
- To Air Operations Area (AOA) ..... 90–37 Northwest Airlines; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator]; 94–1 Delta Air Lines.

Visual Cues Indicating runway Adequacy of ..... 92–40 Wendt.
Weapons Violations, generally ..... 89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–23 Broyles; 90–33 Cato; 90–26 & 90–43 Waddell; 91–3 Lewis; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant; 94–44 American Airlines.
- Concealed weapon ..... 89–5 Schultz; 92–46 Sutton-Sautter; 92–51 Koblick.
- "Deadly or Dangerous" ..... 90–26 & 90–43 Waddell; 91–30 Trujillo; 91–38 Esau.
- First-time Offenders ..... 89–5 Schultz.
- Intent to commit violation ..... 89–5 Schultz; 90–20 Degenhardt; 90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 91–53 Koller.
- Knowledge Of Weapon concealment (See also Knowledge) ..... 89–5 Schultz; 90–20 Degenhardt.
- Sanction (See Sanction)

Weight and Balance ..... 94–40 Polynesian Airways.
Witnesses (See also Credibility):
- Absence of, Failure to subpoena ..... 92–3 Park; 98–2 Carr.
- Expert testimony, Evaluation of ..... 93–17 Metcalf; 94–3 Valley Air; 94–21 Sweeney; 96–3 America West Airlines; 96–15 Valley Air; 97–9 Alphin; 97–32 Florida Propeller.
- Expert witness fees (See EAJA)

Regulations (Title 14 CFR, unless otherwise noted)

1.1 (maintenance) ..... 94–38 Bohan; 97–11 Hampton.
1.1 (major repair) ..... 96–3 America West Airlines.
1.1 (minor repair) ..... 96–3 America West Airlines.
1.1 (operate) ..... 91–12 & 91–31 Terry & Menne; 93–18 Westair Commuter; 96–17 Fenner.
1.1 (person) ..... 93–18 Westair Commuter.
1.1 (propeller) ..... 96–15 Valley Air.

13.16	90–16 Rocky Mountain; 90–22 US Air; 90–37 Northwest Airlines; 90–38 & 91–9 Continental Airlines; 91–18 [Airport Operator]; 91–51 Hagwood; 92–1 Costelllo; 92–46 Sutton-Sautter; 93–13 Medel; 93–28 Strohl; 94–27 Larsen; 94–37 Houston; 94–31 Smalling; 95–19 Rayner; 96–26 Midtown Neon Sign; 97–1 Midtown Neon Sign; 97–9 Alphin; 98–18 General Aviation.
13.201	90–12 Continental Airlines.
13.202	90–6 American Airlines; 92–76 Safety Equipment.
13.203	90–12 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines.
13.204	
13.205	90–20 Degenhardt; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–32 Barnhill; 94–32 Detroit Metropolitan; 94–39 Kirola; 95–16 Mulhall; 97–20 Werle.
13.206	
13.207	94–39 Kirola.
13.208	90–21 Carroll; 91–51 Hagwood; 92–73 Wyatt; 92–76 Safety Equipment; 93–13 Medel; 93–28 Strohl; 94–7 Hereth; 97–20 Werle; 98–4 Larry's.
13.209	90–3 Metz; 90–15 Playter; 91–18 [Airport Operator]; 92–32 Barnhill; 92–47 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 94–8 Nunez; 94–5 Grant; 94–22 Harkins; 94–29 Sutton; 94–30 Columna; 95–10 Diamond; 95–28 Atlantic World Airways; 97–7 Stalling; 97–18 Robinson; 97–33 Rawlings; 98–21 Blankson.
13.210	92–19 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 93–7 Dunn; 93–28 Strohl; 94–5 Grant; 94–30 Columna; 95–28 Atlantic World Airways; 96–17 Fenner; 97–11 Hampton; 97–18 Robinson; 97–38 Air St. Thomas; 98–16 Blue ridge Airlines.
13.211	89–6 American Airlines; 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart 91–24 Esau; 92–1 Costello; 92–9 Griffin; 92–18 Bargen; 92–19 Cornwall; 92–57 Detroit Metro. Wayne County Airport; 92–74 Wendt; 92–76 Safety Equipment; 93–2 Wendt; 94–5 Grant; 94–18 Luxemburg; 94–29 Sutton; 95–12 Toyota; 95–28 Valley Air; 97–7 Stalling; 97–11 Hampton; 98–4 Larry's Flying Service; 98–19 Martin & Jaworski; 98–20 Koenig; 99–2 Oxygen Systems.
13.212	90–11 Thunderbird Accessories; 91–2 Continental Airlines; 99–2 Oxygen Systems.
13.213	
13.214	91–3 Lewis.
13.215	93–28 Strohl; 94–39 Kirola.
13.216	
13.217	91–17 KDS Aviation.
13.218	89–6 American Airlines; 90–11 Thunderbird Accessories; 90–39 Hart; 92–9 Griffin; 92–73 Wyatt; 93–19 Pacific Sky Supply; 94–6 Strohl; 94–27 Larsen; 94–37 Houston; 95–18 Rayner; 96–16 WestAir; 96–24 Horizon; 98–20 Koenig.
13.219	89–6 American Airlines; 91–2 Continental; 91–54 Alaska Airlines; 93–37 Airspect; 94–32 Detroit Metro. Wayne County Airport; 98–25 Gotbetter.
13.220	89–6 American Airlines; 90–20 Carroll; 91–8 Watts Agricultural Aviation; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter.
13.221	92–29 Haggland; 92–31 Eaddy; 92–52 Cullop.
13.222	92–72 Giuffrida; 96–15 Valley Air.
13.223	91–12 & 91–31 Terry & Menne; 92–72 Giuffrida; 95–26 Hereth; 96–15 Valley Air; 97–11 Hampton; 97–31 Sanford Air; 97–32 Florida Propeller; 98–3 Fedele; 98–6 Continental Airlines.
13.224	90–26 Waddell; 91–4 [Airport Operator]; 92–72 Giuffrida; 94–18 Luxemburg; 94–28 Toyota; 95–25 Conquest; 96–17 Fenner; 97–32 Florida Propeller; 98–6 Continental Airlines.
13.225	97–32 Florida Propeller.
13.226	90–21 Carroll; 95–26 Hereth.
13.227	90–21 Carroll, 95–26 Hereth.
13.228	92–3 Park.
13.229	
13.230	92–19 Cornwall; 95–26 Hereth; 96–24 Horizon.
13.231	92–3 Park.
13.232	89–5 Shultz; 90–20 Degenhardt; 92–1 Costello; 92–18 Bargen; 92–32 Barnhill; 93–28 Strohl; 94–28 Toyota; 95–12 Toyota; 95–16 Mulhall; 96–6 Ignatov; 98–18 General Aviation.

13.233	89–1 Gressani; 89–4 Metz; 89–5 Schultz; 89–7 Zenkner; 89–8 Thunderbird Accessories; 90–3 Metz; 90–11 Thunderbird Assessories; 90–19 Continental Airlines; 90–20 Degenhardt; 90–25 & 90–27 Gabbert; 90–35 P. Adams; 90–19 Continental Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–7 Pardue; 91–8 Watts Agricultural Aviation; 91–10 Graham; 91–11 Continental Airlines; 91–12 Bargen; 91–24 Esau; 91–26 Britt Airways; 91–31 Terry & Menne; 91–32 Bargen; 91–43 & 91–44 Delta; 91–45 Park; 91–46 Delta; 91–47 Delta; 91–48 Wendt; 91–52 KDS Aviation; 91–53 Koller; 92–1 Costello; 92–3 Park; 92–7 West; 92–11 Alilin; 92–15 Dillman; 92–16 Wendt; 92–18 Bargen; 92–19 Cornwall; 92–27 Wendt; 92–32 Barnhill; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines; 92–39 Beck; 92–56 Montauk Caribbean Airways; 92–57 Detroit Metro. Wayne Co. Airport; 92–67 USAir; 92–69 McCabe; 92–72 Guiffrida; 92–4 Wendt; 92–78 TWA; 93–5 Wendt; 93–6 Westair Commuter; 93–7 Dunn; 93–8 Nunez; 93–19 Pacific Sky Supply; 93–23 Allen; 93–27 Simmons; 93–28 Strohl; 93–31 Allen; 93–32 Nunez; 94–9 B & G Instruments; 94–10 Boyle; 94–12 Bartusiak; 94–15 Columna; 94–18 Luxemburg; 94–23 Perez; 94–24 Page; 94–26 French Aircraft; 94–28 Toyota; 95–2 Meronek; 95–9 Woodhouse; 95–13 Kilrain; 95–23 Atlantic World Airways; 95–25 Conquest; 95–26 Hereth; 96–1 [Airport Operator; 96–2 Skydiving Center; 97–1 Midtown Neon Sign; 97–2 Sanford Air; 97–7 Stalling; 97–22 Sanford Air; 97–24 Gordon Air; 97–31 Sanford Air; 97–33 Rawlings; 97–38 Air St. Thomas; 98–4 Larry's Flying Serivce; 98–3 Fedele; Continental Airlines 98–6; LAX 98–7; 98–10 Rawlings; 98–15 Squire; 98–18 General Aviation; 98–19 Martin & Jaworski; 98–20 Koenig; 99–2 Oxygen Systems.
13.234	90–19 Continental Airlines; 90–31 Carroll, 90–32 & 90–38 Continental Airlines; 91–4 [Airport Operator]; 95–12 Toyota; 96–9 [Airport Operator]; 96–23 Kilrain.
13.235	90–11 Thunderbird Accessories; 90–12 Continental Airlines; 90–15 Playter; 90–17 Wilson; 92–7 West.
Part 14	92–74 & 93–2 Wendt; 95–18 Pacific Sky Supply.
14.01	91–17 & 92–71 KDS Aviation.
14.04	91–17, 91–52 & 92–71 KDS Aviation; 93–10 Costello; 95–27 Valley Air.
14.05	90–17 Wilson.
14.12	95–27 Valley Air.
14.20	91–52 KDS Aviation; 96–22 Woodhouse.
14.22	93–29 Sweeney.
14.23	98–19 Martin & Jaworski.
14.26	91–52 KDS Aviation; 95–27 Valley Air.
14.28	95–9 Woodhouse.
21.181	96–25 USAir.
21.303	93–19 Pacific Sky Supply; 95–18 Pacific Sky Supply.
25.787	97–30 Emery Worldwide Airlines.
25.855	92–37 Giuffrida; 97–30 Emery Worldwide Airlines.
39.3	92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental.
43.3	92–73 Wyatt; 97–31 Sanford Air; 98–18 General Aviation.
43.5	96–18 Kilrain; 97–31 Sanford Air.
43.9	91–8 Watts Agricultural Aviation; 97–31 Stanford Air; 98–4 Larry's Flying Service.
43.13	90–11 Thunderbird Accessories; 94–3 Valley Air; 94–38 Bohan; 96–3 America West Airlines; 96–25 USAir; 97–9 Alphin; 97–10 Alphin 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 97–32 Florida Propeller.
43.15	90–25 & 90–27 Gabbert; 91–8 Watts Agricultural Aviation; 94–2 Woodhouse; 96–18 Kilran.
65.15	92–73 Wyatt.
65.92	92–73 Wyatt.
91.7	97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–16 Mauna Kea; 98–18 General Aviation.
91.8 (91.11 as of 8/18/90)	92–3 Park.
91.9 (91.13 as of 8/18/90)	90–15 Playter; 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–48 USAir; 92–49 Richardson & Shrimp; 92–47 Cornwall; 92–70 USAir; 93–9 Wendt; 93–17 Metcalf; 93–18 Westair Commuter; 93–29 Sweeney; 94–29 Sutton; 95–26 Hereth; 96–17 Fenner.
91.11	96–6 Ignatov; 97–12 Mayer; 98–12 Stout.
91.29 (91.7 as of 8/18/90)	91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental.
91.65 (91.111 as of 8/18/90)	91–29 Sweeney; 94–21 Sweeney.
91.67 (91.113 as of 8/18/90)	91.29 Sweeney.
91.71	97–11 Hampton.

91.75 (91.123 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–49 Richardson & Shimp; 93–9 Wendt.
91.79 (91.119 as of 8/18/90)	90–15 Playter; 92–47 Cornwall; 93–17 Metcalf.
91.87 (91.129 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins.
91.103	95–26 Hereth.
91.111	96–17 Fenner.
91.113	96–17 Fenner.
91.151	95–26 Hereth.
91.173 (91.417 as of 8/18/90)	91–8 Watts Agricultural Aviation.
91.205	98–18 General Aviation.
91.213	97–11 Hampton.
91.403	97–8 Pacific Av. d/b/a Iter-Island Helicopters; 97–31 Sanford Air.
91.405	97–16 Mauna Kea; 98–4 Larry's Flying Service; 98–18 General Aviation.
91.407	98–4 Larry's Flying Service.
91.417	98–18 General Aviation.
91.517	98–12 Stout.
91.703	94–29 Sutton.
105.29	98–3 Fedele; 98–19 Martin & Jaworski.
107.1	90–19 Continental Airlines; 90–20 Degenhardt; 91–4 [Airport Operator]; 91–58 [Airport Operator]; 98–7 LAX.
107.9	98–7 LAX.
107.13	90–12 & 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan; 98–7 LAX.
107.20	90–24 Bayer; 92–58 Hoedl; 97–20 Werle; 98–20 Koenig.
107.21	89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant; 94–31 Smalling; 97–7 Stalling.
107.25	94–30 Columna.
108.5	90–12, 90–18, 90–19, 91–2 & 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 & 94–1 Delta Air Lines; 94–44 American Airlines; 96–16 WestAir; 96–19 [Air Carrier]; 98–22 Northwest Airlines; 99–1 American.
108.7	90–18 & 90–19 Continental Airlines; 99–1 American.
108.9	98–22 Northwest Airlines.
108.10	96–16 WestAir.
108.11	90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 92–46 Sutton-Sautter; 94–44 American Airlines.
108.13	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines.
108.18	98–6 Continental Airlines.
121.133	90–18 Continental Airlines.
121.153	92–48 & 92–70 USAir; 95–11 Horizon; 96–3 America West Airlines; 96–24 Horizon; 96–25 USAir; 97–21 Delta; 97–30 Emery Worldwide Airlines.
121.221	97.30 Emery Worldwide Airlines.
121.317	92–37 Giuffrida; 94–18 Luxemburg.
121.318	92–37 Giuffrida.
121.367	90–12 Continental Airlines; 96–25 USAir.
121.571	92–37 Giuffrida.
121.575	98–11 TWA.
121.577	98–11 TWA.
121.589	97–12 Mayer.
121.628	95–11 Horizon; 97–21 Delta; 97–30 Emery Worldwide Airlines.
135.1	95–8 Charter Airlines; 95–25 Conquest.
135.5	94–3 Valley Air; 94–20 Conquest Helicopters; 95–25 Conquest; 95–27 Valley Air; 96–15 Valley Air.
135.25	92–10 Flight Unlimited; 94–3 Valley Air; 95–27 Valley Air; 96–15 Valley Air.
135.63	94–40 Polynesian Airways; 95–17 Larry's Flying Service; 95–28 Atlantic; 96–4 South Aero.
135.87	90–21 Carroll.
135.95	95–17 Larry's Flying Service.
135.179	97–11 Hampton.
135.185	94–40; Polynesian Airways.
135.263	95–9 Charter Airlines; 96–4 South Aero.
135.267	95–8 Charter Airlines; 95–17 Larry's Flying Service; 96–4 South Aero.
135.293	95–17 Larry's Flying Service; 96–4 South Aero.
135.343	95–17 Larry's Flying Service.
135.411	97–11 Hampton.

135.413	94–3 Valley Air; 96–15 Valley Air; 97–8 Pacific Av. D/b/a Inter-Island Helicopters; 97–16 Mauna Kea.
135.421	93–36 Valley Air; 94–3 Valley Air; 96–15 Valley Air.
135.437	94–3 Valley Air; 96–15 Valley Air.
141.101	98–18 General Aviation.
145.1	97–10 Alphin.
145.3	97–10 Alphin.
145.25	97–10 Alphin.
145.45	97–10 Alphin.
145.47	97–10 Alphin.
145.49	97–10 Alphin.
145.53	97–11 Thunderbird Accessories.
145.57	94–2 Woodhouse; 97–9 Alphin; 97–32 Florida Propeller.
145.61	90–11 Thunderbird Accessories.
191	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines; 98–6 Continental Airlines.
298.1	92–10 Flight Unlimited.
302.8	90–22 USAir.

49 CFR

1.47	92–76 Safety Equipment.
171 et seq.	95–10 Diamond.
171.2	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
171.8	92–77 TCI.
172.101	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown.
172.200	92–77 TCI; 94–28 Toyota; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.202	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.203	94–28 Toyota.
172.204	92–77 TCI; 24–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.300	94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.301	94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.304	92–77 TCI; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.400	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.402	94–28 Toyota.
172.406	92–77 TCI.
173.1	22–77 TIC; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
173.3	94–28 Toyota; 94–31 Smalling; 98–2 Carr.
173.6	94–28 Toyota.
173.22(a)	94–28 Toyota; 94–31 Smalling; 98–2 Carr.
173.24	94–28 Toyota; 95–16 Mulhall.
173.25	94–28 Toyota
173.27	92–77 TCI.
173.62	98–2 Carr.
173.115	92–77 TCI
173.240	92–77 TCI.
173.243	94–28 Toyota.
173.260	94–28 Toyota.
173.266	94–28 Toyota; 94–31 Smalling.
175.25	94–31 Smalling.
191.5	97–13 Westair Commuter.
191.7	97–13 Westair Commuter.
821.30	92–73 Wyatt.
821.33	90–21 Carroll.

Statutes

5 U.S.C:	
504	90–17 Wilson; 91–17 & 92–71 KDS Aviation; 92–74, 93–2 & 93–9, Wendt; 93–29 Sweeney; 94–17 TCI; 95–27 Valley Air; 96–22 Woodhouse; 98–19 Martin & Jaworski.
552	90–12, 90–18 & 90–19 Continental Airlines; 93–10 Costello.
554	90–18 Continental Airlines; 90–21 Carroll; 95–12 Toyota.
556	90–21 Carroll; 91–54 Alaska Airlines.
557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines; 94–28 Toyota.
705	95–14 Charter Airlines.
5332	95–27 Valley Air.
11 U.S.C:	
362	91–2 Continental Airlines.
28 U.S.C:	

2412	93–10 Costello; 96–22 Woodhouse.
2462	0—21 Carroll.
49 U.S.C:	
5123	95–16 Mulhall; 96–26 & 97–1 Midtown Neon Sign; 98–2 Carr.
40102	96–17 Fenner.
44701	96–6 Ignatov; 96–17 Fenner.
44704	96–3 America West Airlines; 96–15 Valley Air.
46110	96–22 Woodhouse; 97–1 Midtown Neon Sign.
46301	97–1 Midtown Neon Sign; 97–16 Mauna Kea; 97–20 Werle.
46302	98–34 Stevens.
46303	97–7 Stalling.
49 U.S.C App:	
1301(31) (operate)	93–18 Westair Commuter.
(33) (person)	93–18 Westair Commuter.
1356	90–18 & 90–19, 91–2 Continental Airlines.
1357	90–18, 90–19 & 91–2 Continental Airlines 91–41 [Airport Operator]; 91–58 [Airport Operator].
1421	92–10 Flight Unlimited; 92–48 USAir, 92–70 USAir; 93–9 Wendt.
1429	92–73 Wyatt.
1471	89–5 Schultz; 90–10 Webb ; 90–20 Degenhardt ; 90–12, 90–18 & 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt ; 92–76 Safety Equipment; 94–20 Conquest Helicopters; 94–40 Polynesian Airways ; 96–6 Ignatov; 97–7 Stalling.
1472	96–6 Ignatov.
1475	90–20 Degenhardt; 90–12 Continental Airlines; 90–18, 90–19 & 91–1 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 94–40 Polynesian Airways.
1486	90–21 Carroll; 96–22 Woodhouse.
1809	92–77 TCI; 94–19 Pony Express, 94–28 Toyota; 94–31 Smalling; 95–21 Toyota.

Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of June 30, 1999)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1999, to June 30, 1999. The FAA will publish the non-cumulative supplements to this compilation on a quarterly basis (e.g., April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Clarence L. Justice

Order No. 99–3 (6/11/99)

[DMS No. FAA–1998–4751]

Motion to Dismiss Denied. Good cause was found to excuse the respondent's late-filing (by 8 days) of a notice of appeal from the law judge's order assessing a $6,600 civil penalty. On February 4, the law judge ordered respondent to respond to a show cause order and to submit an answer to be received by February 16. On February 4, respondent was released from a residential treatment facility and then moved to another state. He did not receive his mail until after the law judge dismissed the case. Notice of appeal also was sufficiently detailed to constitute an appeal brief. Complainant was ordered to file a reply brief.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA)
- LEXIS [Transportation (TRANS) Library, FAA file.]
- Compuserve
- FedWorld

Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC 20591 (tel. No. 202–267–3641.) The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Heritage Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL–401, Washington, DC, 20590, (tel. No. 202–366–9329.) While the originals will be

retained in the FAA Hearing Docket, the DOT Docket will scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Regional Counsel for the Central Region (ACE–7), Central Regional Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Regional Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Regional Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Regional Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (425) 227–2007.

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 20227; (404) 305–5200.

Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Forth Worth, TX 76137–4298; (817) 222–5087.

Office of the Regional Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Regional Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100.

Issued in Washington, DC, on July 30, 1999.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 99–20422 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Final Supplemental Environmental Impact Statement Including Executive Summary and Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of final supplemental environmental impact statement including executive summary and extension of comment period.

SUMMARY: The Federal Aviation Administration(FAA) is issuing this notice to advise the public of the availability of the Final Supplemental Environmental Impact Statement (FSEIS) including the Executive Summary for Indianapolis International Airport. This Executive Summary is required by Council on Environmental Quality (CEQ) regulations, but was inadvertently omitted from the initial FSEIS. The comment period has been extended to September 7, 1999. The FSEIS concerns the environmental impact of implementing the Air Traffic Noise Abatement Measures described within the FSEIS and the federal funding associated with the land use measures.

POINT OF CONTACT: Mr. George M. Bebble, Environmental Specialist, AGL–520.E, FAA Great Lakes Region, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, IL 60018, Telephone (847) 294–7832.

SUPPLEMENTARY INFORMATION: A Final Supplemental Environmental Impact Statement (FSEIS) will be available for public review at the following locations:

(1) Federal Aviation Administration, Air Traffic Division Office, 2300 East Devon Avenue, Des Plaines, IL 60018,

(2) Indianapolis Airport Authority, South High School Road, Indianapolis International Airport, Indianapolis, IN,

(3) Decatur Township Branch Library, 5301 Kentucky Avenue, Indianapolis, IN 46241,

(4) Marion County Public Library, 40 East St. Clair, Indianapolis, IN 46204,

(5) Mooresville Public Library, 220 W. Harrison Street, Mooresville, IN 46158,

(6) Plainfield Public Library, 1120 Stafford Road, Plainfield, IN 46208,

(7) Wayne Township Branch Library, 198 South Girls School Road, Indianapolis, IN 46214.

Written comments may be addressed to Mr. George M. Bebble, Environmental Specialist, AGL–520.E, FAA Great Lakes Region, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, IL 60018.

Issued in Des Plaines, Illinois at the above address on August 4, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–20424 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for Noise Abatement Measures at the Rickenbacker International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of an environmental assessment (EA) and finding of no significant impact (FONSI).

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA Great Lakes Region has approved and signed the EA and FONSI for the permanent implementation of noise abatement measures at the Rickenbacker International Airport. These noise abatement measures decrease the noise of departing aircraft to approximately 100 homes east of the airport while increasing the noise to only one home northeast of the airport. The one impacted home is outside of the 65 DNL noise contour within the 60–65 DNL contour and should not be significantly impacted. However, the airport authority has elected to offer this one homeowner the same mitigation that is offered to homeowners within the 65 DNL contour.

POINT OF CONTACT: Mr. George M. Bebble, Environmental Specialist, AGL–520.E, FAA Great Lakes Region, Air

Traffic Division, 2300 East Devon Avenue, Des Plaines, IL 60018, Telephone (847) 294–7832.

SUPPLEMENTARY INFORMATION: The EA and FONSI are available for inspection at the following locations: .

(1) Federal Aviation Administration, Air Traffic Divisions, 2300 East Devon Avenue, Des Plaines, IL 60018,

(2) Rickenbacker Port Authority, 7400 Alum Creek Drive, Columbia, OH 43217,

(3) Columbus Metro Library, Biography, History, Travel Division, 96 S. Grant Avenue, Columbus, Ohio 43215,

(4) Groveport Municipal Building, 655 Blacklick Street, Groveport, Ohio 43215,

(5) Columbus Metro Library, Southeast Branch, 4575 Winchester Pike, Groveport, Ohio 43215,

(6) Hamilton Township Community Center, 6400 Lockbourne Road, Lockbourne, Ohio 43215,

(7) Harrison Township Fire Department, 3625 State Route 752, Ashville, Ohio 43103,

(8) Madison Township Community Center, 4575 Madison Lane, Grovesport, Ohio 43215,

(9) Madison Township Hall, Pickaway County, Ohio,

(10) Canal Winchester Municipal Building, 36 S. High Street, Canal Winchester, Ohio 43110,

(11) Scioto Township Hall, Front Street, Commercial Point, Ohio 43116,

(12) Pickaway County Engineer's Office, 207 S. Court Street, Circleville, Ohio 43103,

(13) Pickaway County Library, Main Street, Circleville, Ohio 43113.

Issued in Des Plaines, Illinois on August 4, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–20423 Filed 8–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 29, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 8, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0024.
Form Number: IRS Form 843.
Type of Review: Extension.
Title: Claim for Refund and Request for Abatement.

Description: Internal Revenue Code (IRC) sections 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Respondents: Individuals and households, business or other for-profit, not-for-profit institutions, Farms, State, Local or Tribal.

Estimated Number of Respondents/ Recordkeepers: 545,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 min.
Learning about the law or the form—11 min.
Preparing the form—35 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 845,525 hours.

OMB Number: 1545–0119.
Form Number: IRS Form 1099-R.
Type of Review: Extension.
Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

Description: Form 1099-R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.

Respondents: Business or other for-profit, not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 350,000.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: Annually.
Estimated Total Reporting Burden: 16,955,465 hours.

OMB Number: 1545–0235.
Form Number: IRS Form 730.
Type of Review: Revision.
Title: Tax on Wagering.

Description: Form 730 is used to identify taxable wagers and collect the tax monthly. The information is used to determine if persons accepting wagers are correctly reporting the amount of wagers and paying the required tax.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/ Recordkeepers: 4,150.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 30 min.
Learning about the law or the form—53 min.
Preparing and sending the form to the IRS—1 hr., 1 min.

Frequency of Response: Monthly.
Estimated Total Reporting/ Recordkeeping Burden: 378,518 hours.

OMB Number: 1545–0415.
Form Number: IRS Form W–4–P.
Type of Review: Extension.
Title: Withholding Certificate for Pension or Annuity Payments.

Description: Form W–4P is used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or to elect that no tax be withheld, so that the payer can withhold the proper amount.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 12,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—40 min.
Learning about the law or the form—25 min.
Preparing and sending the form to the IRS—59 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 24,720,000 hours.

OMB Number: 1545–0748.
Form Number: IRS Form 2678.
Type of Review: Extension.
Title: Employer Appointment of Agent.

Description: 26 U.S.C. 3504 authorizes an employer to designate a fiduciary, agent, etc., to perform the same acts as required of employers for purposes of employment taxes.

Respondents: Business or other for-profit, not-for-profit institutions, farms, Federal Government.

Estimated Number of Respondent: 95,200.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (as necessary).

Estimated Total Reporting Burden: 47,600 hours.

OMB Number: 1545–0877.

Form Number: IRS Form 1099–A.

Type of Review: Extension.

Title: Acquisition or Abandonment of Secured Property.

Description: Form 1099–A is used by lenders to report foreclosures and abandonments of property that is security for a loan.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 12,916.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 61,817 hours.

OMB Number: 1545–0939.

Form Number: IRS Form 8404.

Type of Review: Extension.

Title: Interest Charge on DISC–Related Deferred Tax Liability.

Description: Shareholders of Interest Charge Domestic International Sales Corporations (IC–DISCs) use Form 8404 to figure and report an interest charge on their DISC-related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly figured and paid the interest charge on a timely basis.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/ Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 4 min.

Learning about the law or the form—2 hr., 17 min.

Preparing and sending the form to the IRS—2 hr., 27 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 17,600 hours.

OMB Number: 1545–1410.

Form Number: IRS Form 8840.

Type of Review: Extension.

Title: Closer Connection Exception Statement for Aliens.

Description: Form 8840 is used by an alien individual, who otherwise meets the substantial presence test, to explain the basis of the individual's claim that he or she is able to satisfy the closer connection exception described in Regs. Section 301.7701(b)-2.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 350,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeeping—13 min.

Learning about the law or the form—10 min.

Preparing the form—1 hr., 27 min.

Copying, assembling, and sending the form to the IRS—35 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 843,500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–20375 Filed 8–6–99; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 64, No. 152
Monday, August 9, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Alternative Methods of Compliance With Requirements for Disclosure of Exchange Disciplinary Information and Access Denial Actions

Correction

In rule document 99–18804 beginning on page 39915, in the issue of Friday, July 23, 1999, make the following correction(s):

1. On page 39916, in the first column, under the heading **I. Introduction**, in the first paragraph, in the last line, "Regulation 9.112(a)" should read "Regulation 9.11(a)".

2. On the same page, in the third column, under the heading **III. Alternative Methods of Compliance**, in the first paragraph, in line 18, "exchange" should read "exchanges".

3. On the same page, in the same column, under the same heading, in the second paragraph, in the first line, "is" should read "in"; and in the eighth line, "notice" should read "notices".

4. On page 39917, in the first column, in footnote 11, in line 14, "regulation" should read "Regulation".

5. On the same page, in the second column, in footnote 13, in the second line, "disciplinary" should read "Disciplinary"; and on the eighth line, "sugar" should read "Sugar".

6. On the same page, in the third column, under the heading *B. Verification and Timeliness of Electronic Notice*, in the first paragraph, in the sixth line, "exchange" should read "exchanges".

[FR Doc. C9–18804 Filed 8–6–99; 8:45 am]
BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Performance of Certain Functions by the National Futures Association With Respect to Regulation 9.11

Correction

In rule document 99–18806 beginning on page 39913, in the issue of Friday, July 23, 1999, make the following correction(s):

1. On page 39914, in the second column, under the heading *A. Processing Regulation 9.11 Filings and Notice of Filing Deficiencies*, in the ninth line, "regulation 9.11" should read "Regulation 9.11".

2. On the same page, at the bottom of the third column, the first footnote designated as footnote 12 should be designated as footnote 11.

3. On the page 39915, in the third column, under the heading **IV. Conclusion and Order**, in the fourth full paragraph, in the eighth line, "relating" should read "retaining".

[FR Doc. C9–18806 Filed 8–6–99; 8:45 am]
BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–51, 301–52, 301–54, 301–70, 301–71 and 301–76

[FTR Interim Rule 8]

RIN 3090–AG92

Federal Travel Regulation; Mandatory Use of the Travel Charge Card

Correction

In rule document 99–18291 beginning on page 38528, in the issue of Friday, July 16, 1999, make the following correction:

On page 38528, in the first column, in the **DATES:** section, in the fourth and fifth lines, "travel performed on or after December 31, 1999" should read "travel performed after December 31, 1999".

[FR Doc. C9–18291 Filed 8–6–99; 8:45 am]
BILLING CODE 1505–01–D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-62a]

Implementation of WTO Recommendations Concerning EC-Measures Concerning Meat and Meat Products (Hormones)

Correction

In notice document 99–19174 beginning on page 40638 in the issue of Tuesday, July 27, 1999, make the following corrections:

1. On page 40638, in the second column, under **SUMMARY**, in the sixth line "three" should read "the".

2. On page 40639, in the first column:

a. In the third line "Director" should read "Directive".

b. In the eighth line "because" should read "became".

c. In second full paragraph, in the sixth line after "contravention" remove "in".

[FR Doc. C9–19174 Filed 8–6–99; 8:45 am]
BILLING CODE 1505–01–D

Reader Aids

Federal Register

Vol. 64, No. 152

Monday, August 9, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998 2
41999–42264 3
42265–42578 4
42579–42822 5
42823–43042 6
43043–43254 9

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

7 CFR

610 41999
11 43043
1728 42005

Proposed Rules:
6 42288
354 43103
931 42858
932 42619
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043

10 CFR

31 42269
50 42823

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049

Proposed Rules:
361 ..... 42861, 42862

14 CFR

27 43016
29 43016
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069
254 41781
382 41781

Proposed Rules:
39 ..... 41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870
65 42810
66 42810
71 ..... 42300, 42301
147 42810

15 CFR

734 42009
738 42009
740 42009
742 42009
902 42826

16 CFR

5 42594

Proposed Rules:
1212 42302

17 CFR

9 43254
10 43071
12 43071
200 42594
240 ..... 42031, 42594
249 42594

Proposed Rules:
4 41843

18 CFR

Proposed Rules:
101 42304
357 42623
385 42307

19 CFR

24 42031

Proposed Rules:
12 41851
113 ..... 41851, 42872
141 41851

20 CFR

Proposed Rules:
404 42310
416 42310

21 CFR

101 42277
172 43072
510 42596
520 42596
522 ..... 42596, 42830
524 42831

558.....42596
1306.....42432
1312.....42432
Proposed Rules:
101.....42315
207.....43114
314.....42625, 42873
607.....43114
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032

26 CFR

1.....41783, 43072
31.....42831
301.....41783
602.....41783, 43072
801.....42834
Proposed Rules:
1.....43117

29 CFR

2570.....42246
2575.....42246
Proposed Rules:
2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

250.....42597
Proposed Rules:
935.....42887

31 CFR

538.....41784
550.....41784
560.....41784
Proposed Rules:
375.....42626

33 CFR

100.....42278, 42598
110.....42279
117.....42033, 42599
160.....41794
Proposed Rules:
100.....41853

34 CFR

611.....42837
Proposed Rules:
668.....42206, 43024
673.....42206
674.....42206
675.....42206
676.....42206
682.....42176, 43024
690.....42206

36 CFR

Proposed Rules:
13.....41854
1191.....42056

37 CFR

Proposed Rules:
201.....42316

40 CFR

9.....42432
52.....42600, 43083
58.....42530
62.....43091
63.....42764
122.....42432
123.....42432
124.....42432
180.....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846
186.....41818
261.....42033
271.....41823, 42602
403.....42552
501.....42432
503.....42552
745.....42849
Proposed Rules:
52.....42629, 42888, 42891, 42892
261.....42317
62.....43123
97.....43124
271.....42630
300.....41875, 42328, 42630, 43129
372.....42222

41 CFR

301.....43254
Proposed Rules:
51-2.....41882
51-5.....41882

42 CFR

413.....42610
1001.....42174

44 CFR

61.....41825
64.....42852
206.....41827
Proposed Rules:
61.....42632
62.....42633

45 CFR

801.....42039

46 CFR

10.....42812
12.....42812
Proposed Rules:
535.....42057

47 CFR

1.....42854
5.....43094
63.....43095
73.....41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095
76.....42617, 42855
90.....43094
Proposed Rules:
Ch. 1.....41883, 42635
1.....41884, 41887
2.....41891
15.....41897
51.....41897
68.....41897
73.....41899, 43132
76.....41887
78.....41899
95.....41891

48 CFR

202.....43096
204.....43098
212.....43098
213.....43098
217.....43096
252.....43098
253.....43098
701.....42040
702.....42040
703.....42040
705.....42040
706.....42040
709.....42040
714.....42040
716.....42040
719.....42040
726.....42040
732.....42040
733.....42040
734.....42040
749.....42040
750.....42040
752.....42040
5416.....41834

49 CFR

Proposed Rules:
571.....42330

50 CFR

17.....41835
600.....42286
635.....42855, 43101
648.....42042, 42045
660.....42286, 42856
679.....41839, 42826
Proposed Rules:
17.....41903, 42058, 42250, 43132
600.....42335, 43137
622.....41905, 42068
648.....42071, 43137, 43138
679.....42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 8, 1999

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Saybrook Point, Connecticut River, CT; safety zone; published 6-28-99¶

RULES GOING INTO EFFECT AUGUST 9, 1999

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Viruses, serums, toxins, etc.:
Veterinary biologics; transfer of functions; published 8-9-99
DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Multiyear contracting; published 8-9-99
Taxpayer identification numbers; published 8-9-99
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Polymer and resin production facilities (Group IV); published 6-8-99
Air quality implementation plans; approval and promulgation; various States:
Ohio; published 6-8-99
Rhode Island; published 8-9-99
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
International common carriers; biennial regulatory review
Correction; published 8-9-99
Radio stations; table of assignments:
Indiana; published 7-6-99
Montana; published 7-6-99
New Mexico; published 7-6-99
North Dakota; published 7-6-99
Texas; published 7-6-99
Television stations; table of assignments:
Arkansas; published 7-6-99
INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Audit functions; delegation to States; published 7-8-99
JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Visa waiver pilot program—
Portugal, Singapore, and Uruguay; published 8-3-99
NUCLEAR REGULATORY COMMISSION
Fee schedules revision; 100% fee recovery (1999 FY); published 6-10-99
Correction; published 7-20-99
STATE DEPARTMENT
Visas; nonimmigrant documentation:
Visa waiver pilot program—
Portugal, et al.; published 8-3-99
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Corporations; treatment of distributions to foreign persons; published 8-9-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant related quarantine, domestic:
Oriental fruit fly; comments due by 8-16-99; published 6-15-99
Plant-related quarantine, domestic:
Mexican fruit fly; comments due by 8-16-99; published 6-15-99
COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; comments due by 8-20-99; published 7-21-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Findings on petitions, etc.—
Barndoor skate; comments due by 8-20-99; published 6-21-99
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 8-16-99; published 7-2-99
Puerto Rico and Virgin Islands coral reef resources; comments due by 8-20-99; published 6-21-99
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permits; comments due by 8-19-99; published 8-4-99
Northeastern United States fisheries—
New England Fishery Management Council; meetings; comments due by 8-16-99; published 7-2-99
West Coast States and Western Pacific fisheries—
West coast salmon; comments due by 8-20-99; published 8-6-99
COMMODITY FUTURES TRADING COMMISSION
Commodity Exchange Act:
Contract market rule review procedures; comments due by 8-16-99; published 7-15-99
DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
Double coverage policy; comments due by 8-16-99; published 6-17-99
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99
DEFENSE DEPARTMENT
Engineers Corps
Water resources development projects; public use; comments due by 8-19-99; published 7-20-99
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Rate schedules filing—
Regional Transmission Organizations; comments due by 8-16-99; published 6-10-99
Oil pipelines:
Annual report; technical conference; comments due by 8-20-99; published 8-5-99
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Off-site waste and recovery operations; comments due by 8-19-99; published 7-20-99
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 8-18-99; published 7-19-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-19-99; published 7-20-99
Louisiana; comments due by 8-18-99; published 7-19-99
Maryland; comments due by 8-19-99; published 7-20-99
Michigan; comments due by 8-20-99; published 7-21-99
Nevada; comments due by 8-16-99; published 6-17-99
Tennessee; comments due by 8-18-99; published 7-19-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Sethoxydim; comments due by 8-16-99; published 6-16-99
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Commercial mobile radio services—
Calling party pays service offering; regulatory obstacles removed; comments due by 8-18-99; published 7-16-99
Radio stations; table of assignments:
California; comments due by 8-16-99; published 7-6-99
Texas; comments due by 8-16-99; published 7-6-99
Wyoming and Utah; comments due by 8-16-99; published 7-6-99
Television broadcasting:

Cable television systems—
12 GHz relay service; eligibility requirements; comments due by 8-16-99; published 8-2-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99
Federal travel:
Income tax reimbursement allowance; comments due by 8-17-99; published 6-18-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Reports and guidance documents; availability, etc.:
Veterinary Medicinal Products, International Cooperation on Harmonisation of Technical Requirements for Registration—
Anthelmintics efficacy; general and specific recommendations; comments due by 8-16-99; published 7-16-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Multifamily housing projects; tenant participation; comments due by 8-16-99; published 6-17-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 8-16-99; published 7-15-99
Maryland; comments due by 8-16-99; published 7-16-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
F and J nonimmigrant aliens; status duration period extension; comments due by 8-16-99; published 6-15-99
Correction; comments due by 8-16-99; published 7-6-99
H petitions filed after numerical cap is reached; treatment; comments due by 8-16-99; published 6-15-99

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Federal Tort Claims Act; comments due by 8-16-99; published 6-15-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Undercapitalized federally-insured credit unions; prompt corrective action system; comments due by 8-16-99; published 5-18-99

INTERIOR DEPARTMENT
National Indian Gaming Commission
Administrative practice and procedure:
Litigation involving agency; testimony, information, and response to subpoena; comments due by 8-16-99; published 7-15-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Supply management program; hearings; comments due by 8-18-99; published 6-21-99

STATE DEPARTMENT
Chemical Weapons Convention and Chemical Weapons Convention Implementation Act:
Sample taking and record keeping and inspections; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Gulf of Alaska, Narrow Cape, Kodiak Island, AK; safety zone; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Standard time zone boundaries:
Kentucky; comments due by 8-20-99; published 6-21-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Checked baggage; security on domestic flights; comments due by 8-17-99; published 6-11-99
Airworthiness directives:
Aerospatiale; comments due by 8-16-99; published 7-16-99
Airbus; comments due by 8-16-99; published 7-15-99
Bell; comments due by 8-16-99; published 6-17-99
Bombardier; comments due by 8-16-99; published 7-16-99
British Aerospace; comments due by 8-16-99; published 7-16-99
Cessna; comments due by 8-16-99; published 7-16-99
Construcciones Aeronauticas, S.A.; comments due by 8-16-99; published 7-16-99
Dornier; comments due by 8-16-99; published 7-16-99
Eurocopter France; comments due by 8-16-99; published 6-17-99
Fairchild; comments due by 8-16-99; published 7-16-99
Fokker; comments due by 8-16-99; published 7-16-99
Gulfstream Aerospace; comments due by 8-16-99; published 7-16-99
Gulfstream American; comments due by 8-16-99; published 7-16-99
International Aero Engines AG; comments due by 8-16-99; published 6-15-99
Lockheed; comments due by 8-16-99; published 7-16-99
McDonnell Douglas; comments due by 8-16-99; published 7-16-99
Mitsubishi; comments due by 8-16-99; published 7-16-99
Saab; comments due by 8-16-99; published 7-16-99
Sabreliner; comments due by 8-16-99; published 7-16-99
Short Brothers; comments due by 8-16-99; published 7-16-99
Airworthiness standards:
Special conditions—
Boeing Model 707-353B airplanes; comments due by 8-20-99; published 7-21-99
Class E airspace; comments due by 8-16-99; published 7-16-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Gross proceeds payments to attorneys; reporting; comments due by 8-19-99; published 5-21-99
Section 467 rental agreements—
Agreements involving payments of $2,000,000; comments due by 8-16-99; published 5-18-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 880/P.L. 106–40
Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Aug. 5, 1999; 113 Stat. 207)

S. 604/P.L. 106–41
Lake Oconee Land Exchange Act (Aug. 5, 1999; 113 Stat. 215)

S. 1258/P.L. 106–42
Patent Fee Integrity and Innovation Protection Act of 1999 (Aug. 5, 1999; 113 Stat. 217)

S. 1259/P.L. 106–43
Trademark Amendments Act of 1999 (Aug. 5, 1999; 113 Stat. 218)

S. 1260/P.L. 106–44
To make technical corrections in title 17, United States

Code, and other laws. (Aug. 5, 1999; 113 Stat. 221)

Last List August 9, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512–1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2250.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-034-00001-1)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869-038-00002-4)	20.00	[1] Jan. 1, 1999
4	(869-034-00003-7)	7.00	[5] Jan. 1, 1999
5 Parts:			
1-699	(869-038-00004-1)	37.00	Jan. 1, 1999
700-1199	(869-038-00005-9)	27.00	Jan. 1, 1999
1200-End, 6 (6 Reserved)	(869-038-00006-7)	44.00	Jan. 1, 1999
7 Parts:			
1-26	(869-038-00007-5)	25.00	Jan. 1, 1999
27-52	(869-038-00008-3)	32.00	Jan. 1, 1999
53-209	(869-038-00009-1)	20.00	Jan. 1, 1999
210-299	(869-038-00010-5)	47.00	Jan. 1, 1999
300-399	(869-038-00011-3)	25.00	Jan. 1, 1999
400-699	(869-038-00012-1)	37.00	Jan. 1, 1999
700-899	(869-038-00013-0)	32.00	Jan. 1, 1999
900-999	(869-038-00014-8)	41.00	Jan. 1, 1999
1000-1199	(869-038-00015-6)	46.00	Jan. 1, 1999
1200-1599	(869-038-00016-4)	34.00	Jan. 1, 1999
1600-1899	(869-038-00017-2)	55.00	Jan. 1, 1999
1900-1939	(869-038-00018-1)	19.00	Jan. 1, 1999
1940-1949	(869-038-00019-9)	34.00	Jan. 1, 1999
1950-1999	(869-038-00020-2)	41.00	Jan. 1, 1999
2000-End	(869-038-00021-1)	27.00	Jan. 1, 1999
8	(869-038-00022-9)	36.00	Jan. 1, 1999
9 Parts:			
1-199	(869-038-00023-7)	42.00	Jan. 1, 1999
200-End	(869-038-00024-5)	37.00	Jan. 1, 1999
10 Parts:			
1-50	(869-038-00025-3)	42.00	Jan. 1, 1999
51-199	(869-038-00026-1)	34.00	Jan. 1, 1999
200-499	(869-038-00027-0)	33.00	Jan. 1, 1999
500-End	(869-038-00028-8)	43.00	Jan. 1, 1999
11	(869-038-0002-6)	20.00	Jan. 1, 1999
12 Parts:			
1-199	(869-038-00030-0)	17.00	Jan. 1, 1999
200-219	(869-038-00031-8)	20.00	Jan. 1, 1999
220-299	(869-038-00032-6)	40.00	Jan. 1, 1999
300-499	(869-038-00033-4)	25.00	Jan. 1, 1999
500-599	(869-038-00034-2)	24.00	Jan. 1, 1999
600-End	(869-038-00035-1)	45.00	Jan. 1, 1999
13	(869-038-00036-9)	25.00	Jan. 1, 1999
14 Parts:			
1-59	(869-038-00037-7)	50.00	Jan. 1, 1999
60-139	(869-038-00038-5)	42.00	Jan. 1, 1999
140-199	(869-038-00039-3)	17.00	Jan. 1, 1999
200-1199	(869-038-00040-7)	28.00	Jan. 1, 1999
1200-End	(869-038-00041-5)	24.00	Jan. 1, 1999
15 Parts:			
0-299	(869-038-00042-3)	25.00	Jan. 1, 1999
300-799	(869-038-00043-1)	36.00	Jan. 1, 1999
800-End	(869-038-00044-0)	24.00	Jan. 1, 1999
16 Parts:			
0-999	(869-038-00045-8)	32.00	Jan. 1, 1999
1000-End	(869-038-00046-6)	37.00	Jan. 1, 1999
17 Parts:			
1-199	(869-038-00048-2)	29.00	Apr. 1, 1999
200-239	(869-038-00049-1)	34.00	Apr. 1, 1999
240-End	(869-038-00050-4)	44.00	Apr. 1, 1999
18 Parts:			
1-399	(869-038-00051-2)	48.00	Apr. 1, 1999
400-End	(869-038-00052-1)	14.00	Apr. 1, 1999
19 Parts:			
1-140	(869-038-00053-9)	37.00	Apr. 1, 1999
141-199	(869-038-00054-7)	36.00	Apr. 1, 1999
200-End	(869-038-00055-5)	18.00	Apr. 1, 1999
20 Parts:			
1-399	(869-038-00056-3)	30.00	Apr. 1, 1999
400-499	(869-038-00057-1)	51.00	Apr. 1, 1999
500-End	(869-038-00058-0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1-99	(869-038-00059-8)	24.00	Apr. 1, 1999
100-169	(869-038-00060-1)	28.00	Apr. 1, 1999
170-199	(869-038-00061-0)	29.00	Apr. 1, 1999
200-299	(869-038-00062-8)	11.00	Apr. 1, 1999
300-499	(869-038-00063-6)	50.00	Apr. 1, 1999
500-599	(869-034-00064-9)	28.00	Apr. 1, 1998
600-799	(869-038-00065-2)	9.00	Apr. 1, 1999
800-1299	(869-038-00066-8)	35.00	Apr. 1, 1999
1300-End	(869-038-00067-9)	14.00	Apr. 1, 1999
22 Parts:			
1-299	(869-038-00068-7)	44.00	Apr. 1, 1999
300-End	(869-038-00069-5)	32.00	Apr. 1, 1999
23	(869-038-00070-9)	27.00	Apr. 1, 1999
24 Parts:			
0-199	(869-038-00071-7)	34.00	Apr. 1, 1999
200-499	(869-034-00072-0)	28.00	Apr. 1, 1998
500-699	(869-038-00073-3)	18.00	Apr. 1, 1999
700-1699	(869-038-00074-1)	40.00	Apr. 1, 1999
1700-End	(869-038-00075-0)	18.00	Apr. 1, 1999
25	(869-038-00076-8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1-1.60	(869-038-00077-6)	27.00	Apr. 1, 1999
§§ 1.61-1.169	(869-038-00078-4)	50.00	Apr. 1, 1999
§§ 1.170-1.300	(869-038-00079-2)	34.00	Apr. 1, 1999
§§ 1.301-1.400	(869-038-00080-6)	25.00	Apr. 1, 1999
§§ 1.401-1.440	(869-038-00081-4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501-1.640	(869-038-00083-1)	27.00	[7] Apr. 1, 1999
§§ 1.641-1.850	(869-038-00084-9)	35.00	Apr. 1, 1999
§§ 1.851-1.907	(869-038-00085-7)	40.00	Apr. 1, 1999
§§ 1.908-1.1000	(869-038-00086-5)	38.00	Apr. 1, 1999
§§ 1.1001-1.1400	(869-038-00087-3)	40.00	Apr. 1, 1999
§§ 1.1401-End	(869-038-00088-1)	55.00	Apr. 1, 1999
2-29	(869-038-00089-0)	39.00	Apr. 1, 1999
30-39	(869-038-00090-3)	28.00	Apr. 1, 1999
40-49	(869-038-00091-1)	17.00	Apr. 1, 1999
50-299	(869-038-00092-0)	21.00	Apr. 1, 1999
300-499	(869-038-00093-8)	37.00	Apr. 1, 1999
500-599	(869-038-00094-6)	11.00	Apr. 1, 1999
600-End	(869-038-00095-4)	11.00	Apr. 1, 1999
27 Parts:			
*1-199	(869-038-00096-2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200-End	(869-034-00097-5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0-42	(869-034-00098-3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0-99	(869-034-00100-9)	26.00	July 1, 1998
100-499	(869-034-00101-7)	12.00	July 1, 1998
500-899	(869-034-00102-5)	40.00	July 1, 1998
900-1899	(869-034-00103-3)	20.00	July 1, 1998
1900-1910 (§§ 1900 to 1910.999)	(869-034-00104-1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869-034-00105-0)	27.00	July 1, 1998
1911-1925	(869-034-00106-8)	17.00	July 1, 1998
1926	(869-034-00107-6)	30.00	July 1, 1998
1927-End	(869-034-00108-4)	41.00	July 1, 1998
30 Parts:			
1-199	(869-034-00109-2)	33.00	July 1, 1998
200-699	(869-034-00110-6)	29.00	July 1, 1998
700-End	(869-034-00111-4)	33.00	July 1, 1998
31 Parts:			
0-199	(869-034-00112-2)	20.00	July 1, 1998
200-End	(869-034-00113-1)	46.00	July 1, 1998
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-034-00114-9)	47.00	July 1, 1998
191-399	(869-034-00115-7)	51.00	July 1, 1998
400-629	(869-034-00116-5)	33.00	July 1, 1998
630-699	(869-034-00117-3)	22.00	[4] July 1, 1998
700-799	(869-034-00118-1)	26.00	July 1, 1998
800-End	(869-034-00119-0)	27.00	July 1, 1998
33 Parts:			
1-124	(869-034-00120-3)	29.00	July 1, 1998
125-199	(869-034-00121-1)	38.00	July 1, 1998
200-End	(869-034-00122-0)	30.00	July 1, 1998
34 Parts:			
1-299	(869-034-00123-8)	27.00	July 1, 1998
300-399	(869-034-00124-6)	25.00	July 1, 1998
400-End	(869-034-00125-4)	44.00	July 1, 1998
35	(869-034-00126-2)	14.00	July 1, 1998
36 Parts			
1-199	(869-034-00127-1)	20.00	July 1, 1998
200-299	(869-034-00128-9)	21.00	July 1, 1998
300-End	(869-034-00129-7)	35.00	July 1, 1998
37	(869-034-00130-1)	27.00	July 1, 1998
38 Parts:			
0-17	(869-034-00131-9)	34.00	July 1, 1998
18-End	(869-034-00132-7)	39.00	July 1, 1998
39	(869-034-00133-5)	23.00	July 1, 1998
40 Parts:			
1-49	(869-034-00134-3)	31.00	July 1, 1998
50-51	(869-034-00135-1)	24.00	July 1, 1998
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998
52 (52.1019-End)	(869-034-00137-8)	33.00	July 1, 1998
53-59	(869-034-00138-6)	17.00	July 1, 1998
60	(869-034-00139-4)	53.00	July 1, 1998
61-62	(869-034-00140-8)	18.00	July 1, 1998
63	(869-034-00141-6)	57.00	July 1, 1998
64-71	(869-034-00142-4)	11.00	July 1, 1998
72-80	(869-034-00143-2)	36.00	July 1, 1998
81-85	(869-034-00144-1)	31.00	July 1, 1998
86	(869-034-00144-9)	53.00	July 1, 1998
87-135	(869-034-00146-7)	47.00	July 1, 1998
136-149	(869-034-00147-5)	37.00	July 1, 1998
150-189	(869-034-00148-3)	34.00	July 1, 1998
190-259	(869-034-00149-1)	23.00	July 1, 1998
260-265	(869-034-00150-9)	29.00	July 1, 1998
266-299	(869-034-00151-3)	33.00	July 1, 1998
300-399	(869-034-00152-1)	26.00	July 1, 1998
400-424	(869-034-00153-0)	33.00	July 1, 1998
425-699	(869-034-00154-8)	42.00	July 1, 1998
700-789	(869-034-00155-6)	41.00	July 1, 1998
790-End	(869-034-00156-4)	22.00	July 1, 1998
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-034-00157-2)	13.00	July 1, 1998
101	(869-034-00158-1)	37.00	July 1, 1998
102-200	(869-034-00158-9)	15.00	July 1, 1998
201-End	(869-034-00160-2)	13.00	July 1, 1998
42 Parts:			
1-399	(869-034-00161-1)	34.00	Oct. 1, 1998
400-429	(869-034-00162-9)	41.00	Oct. 1, 1998
430-End	(869-034-00163-7)	51.00	Oct. 1, 1998
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-034-00166-1)	48.00	Oct. 1, 1998
45 Parts:			
1-199	(869-034-00167-0)	30.00	Oct. 1, 1998
200-499	(869-034-00168-8)	18.00	Oct. 1, 1998
500-1199	(869-034-00169-6)	29.00	Oct. 1, 1998
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
1-40	(869-034-00171-8)	26.00	Oct. 1, 1998
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-034-00174-2)	26.00	Oct. 1, 1998
140-155	(869-034-00175-1)	14.00	Oct. 1, 1998
156-165	(869-034-00176-9)	19.00	Oct. 1, 1998
166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
47 Parts:			
0-19	(869-034-00180-7)	36.00	Oct. 1, 1998
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
40-69	(869-034-00182-3)	24.00	Oct. 1, 1998
70-79	(869-034-00183-1)	37.00	Oct. 1, 1998
80-End	(869-034-00184-0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1-51)	(869-034-00185-8)	51.00	Oct. 1, 1998
1 (Parts 52-99)	(869-034-00186-6)	29.00	Oct. 1, 1998
2 (Parts 201-299)	(869-034-00187-4)	34.00	Oct. 1, 1998
3-6	(869-034-00188-2)	29.00	Oct. 1, 1998
7-14	(869-034-00189-1)	32.00	Oct. 1, 1998
15-28	(869-034-00190-4)	33.00	Oct. 1, 1998
29-End	(869-034-00191-2)	24.00	Oct. 1, 1998
49 Parts:			
1-99	(869-034-00192-1)	31.00	Oct. 1, 1998
100-185	(869-034-00193-9)	50.00	Oct. 1, 1998
186-199	(869-034-00194-7)	11.00	Oct. 1, 1998
200-399	(869-034-00195-5)	46.00	Oct. 1, 1998
400-999	(869-034-00196-3)	54.00	Oct. 1, 1998
1000-1199	(869-034-00197-1)	17.00	Oct. 1, 1998
1200-End	(869-034-00198-0)	13.00	Oct. 1, 1998
50 Parts:			
1-199	(869-034-00199-8)	42.00	Oct. 1, 1998
200-599	(869-034-00200-5)	22.00	Oct. 1, 1998
600-End	(869-034-00201-3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-038-00047-4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

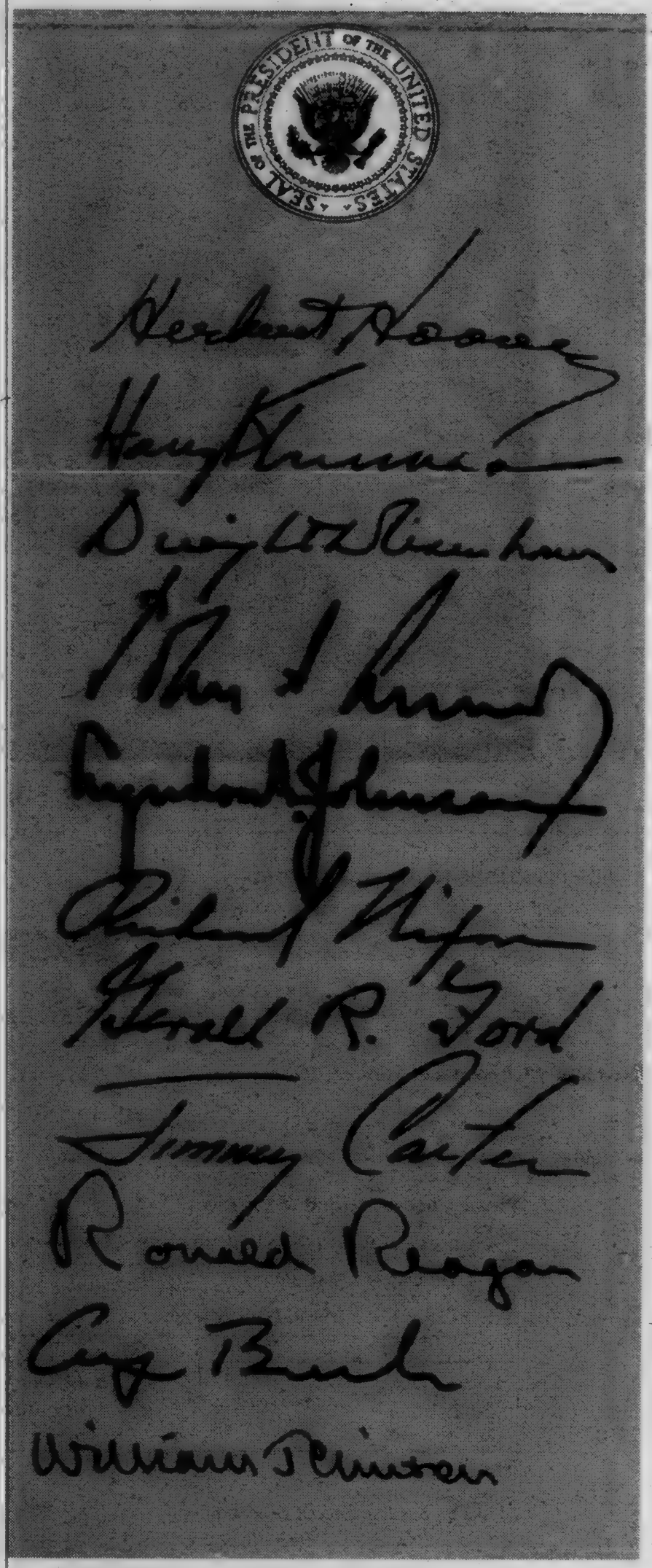

Public Papers of the Presidents of the United States

William J. Clinton

1993
(Book I) $51.00

1993
(Book II) $51.00

1994
(Book I) $56.00

1994
(Book II) $52.00

1995
(Book I) $60.00

1995
(Book II) $65.00

1996
(Book I) $66.00

1996
(Book II) $72.00

1997
(Book I) $69.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

Order Now!

The United States Government Manual 1998/1999

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

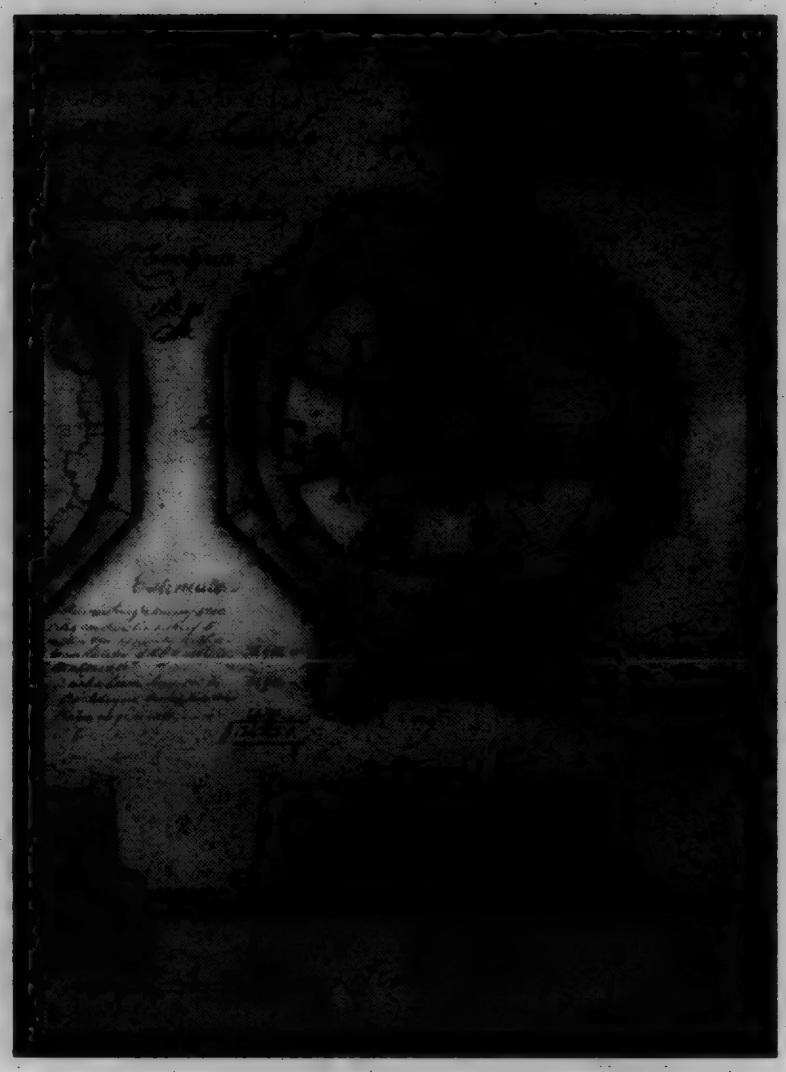

$41 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
★ 7917

☐ **YES**, please send me ——— copies of **The United States Government Manual** 1998/99,
S/N 069–000–00076–2 at $41 ($50 foreign) each.

Total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

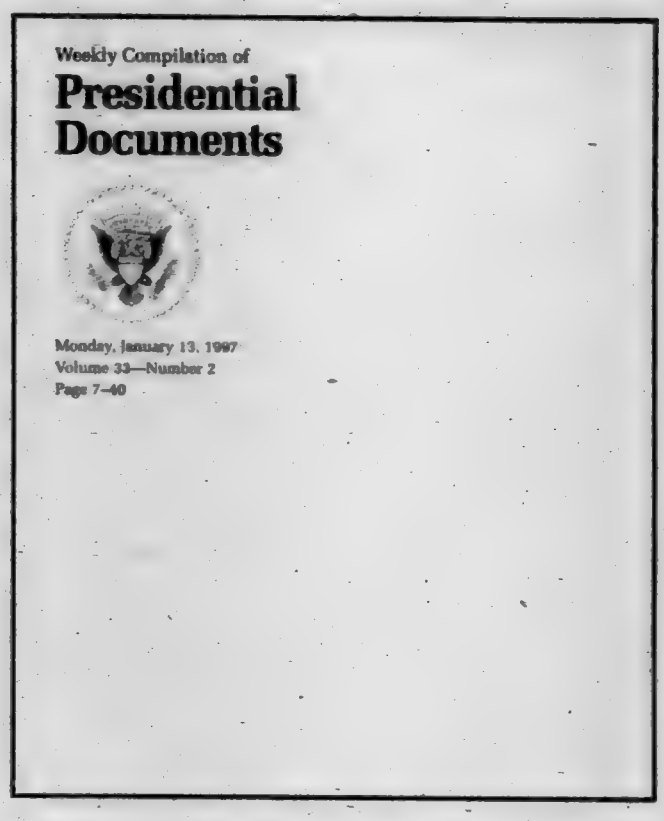

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! MasterCard VISA

Order Processing Code:
* **5420**

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days before the shown date.

```
                                        /
AFR SMITH212J                      DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days before the shown date.

```
                                        /
AFRDO SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR)**; *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature

11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

ICE

VISA

2–2250
2–1800

nge.

nents
☐–☐
☐☐☐
you for
order!

11/3

954

VOL
64
ISS
1
5
2
AG
9
999
UMI

Printed on recycled paper

VOL
64
ISS
1
5
3
AG
10
1999
UMI

8-10-99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United S
Governm
Printing
SUPERINTEN
OF DOCUME
Washington, D

OFFICIAL BU
Penalty for pr

8–10–99
Vol. 64 No. 153

federal register

Tuesday
August 10, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
1
5
3
AG
10
999
UMI

8-10-99
Vol. 64
Pages 4

ANN ARBOR MI 48106

8–10–99
Vol. 64 No. 153
Pages 43255–43598

Federal Register

Tuesday
August 10, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Contents

Federal Register

Vol. 64, No. 153

Tuesday, August 10, 1999

Agricultural Marketing Service
PROPOSED RULES
Almonds grown in—
California, 43298–43301

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service

Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43423

Animal and Plant Health Inspection Service
PROPOSED RULES
Poultry improvement:
National Poultry Improvement Plan and auxiliary provisions—
Plan participants and participating flocks; new program classifications and new or modified sampling and testing procedures, 43301–43314

Children and Families Administration
See Refugee Resettlement Office

Coast Guard
RULES
Ports and waterways safety:
Clinton Harbor, CT; safety zone, 43290–43291
Columbia River, OR and WA; safety zone, 43291–43292
Regattas and marine parades:
Rising Sun Regatta, 43289–43290
NOTICES
Meetings:
Houston/Galveston Navigation Safety Advisory Committee, 43416–43417

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Customs Service
RULES
Technical corrections, 43262–43267

Defense Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43357
Meetings:
Defense Acquisition University Board of Visitors, 43357
Defense Intelligence Agency Science and Technology Advisory Board, 43358
Wage Committee, 43358

Education Department
PROPOSED RULES
Postsecondary education:
Federal Family Education and William D. Ford Federal Direct Loan Programs, 43427–43459
Student assistance general provisions, 43581–43597

Employment and Training Administration
NOTICES
Freedom of Information Act; implementation:
Apprenticeship program sponsor identities release; procedure and policy, 43551–43553

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Depleted uranium hexafluoride; long-term management and use; alternative strategies, 43358–43364
Grants and cooperative agreements; availability, etc.:
Russian Federation; low dose-rate radiation health effects; information request on potential studies, 43364–43366
Vision 21 energy plants; technologies and analytical capabilities development, 43366–43368
Meetings:
Environmental Management Site-Specific Advisory Board—
Hanford Site, WA, 43368
Los Alamos National Laboratory, NM, 43368–43369
Pantex Plant, TX, 43369

Environmental Protection Agency
RULES
Water pollution control:
National Pollutant Discharge Elimination System (NPDES)—
Publicly owned treatment works and other treatment works treating domestic sewage; permit application requirements; correction, 43426
PROPOSED RULES
Hazardous waste:
State underground storage tank program approvals—
North Carolina, 43336–43338
Hazardous waste program authorizations:
South Dakota, 43331–43336
Water programs:
Underground injection control program—
Alabama; Class II program withdrawn; public hearing, 43329–43331
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43380–43382
Submission for OMB review; comment request, 43382
Superfund; response and remedial actions, proposed settlements, etc.:
Carroll & Dubies Site, NY, 43382–43383

Executive Office of the President
See National Drug Control Policy Office
See Presidential Documents

Federal Aviation Administration
RULES
Class E airspace, 43261–43262
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Aircraft operator security, 43322–43323
Airport security, 43321–43322
Airworthiness directives:
Boeing, 43318–43321
McDonnell Douglas, 43316–43318
Raytheon, 43314–43316
Airworthiness standards:
Transport category airplanes—
Braking systems; harmonization with European standards, 43569–43578
NOTICES
Advisory circulars; availability, etc.:
Aircraft products and parts—
Brakes and braking systems certification tests and analysis, 43579–43580
Technical standard orders:
Transport airplane wheels and wheel and brake assemblies, 43579

Federal Communications Commission
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 43383–43384

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Casco Bay Energy Co., LLC, et al., 43377–43380
Hydroelectric applications, 43380
Applications, hearings, determinations, etc.:
Avista Corp., 43369
Caprock Pipeline Co., 43370
CNG Transmission Corp., 43370
Columbia Gas Transmission Corp., 43370–43371
East Tennessee Natural Gas Co., 43371
High Island Offshore System, L.L.C., 43371
Iroquois Gas Transmission System, L.P., 43371–43372
KN Interstate Gas Transmission Co., 43372
Koch Gateway Pipeline Co., 43372–43373
Midwestern Gas Transmission Co., 43373
Mississippi Canyon Gas Pipeline, LLC, 43373
Natural Gas Pipeline Co. of America, 43373
Portland Natural Gas Transmission System, 43374
TCP Gathering Co., 43374
Tennessee Gas Pipeline Co., 43374
Transcontinental Gas Pipe Line Corp., 43374–43375
Transwestern Pipeline Co., 43375
Trunkline Gas Co., 43375
U-T Offshore System, 43375–43376
Viking Gas Transmission Co., 43376
Williston Basin Interstate Pipeline Co., 43376
Wisconsin Electric Power Co., 43376–43377

Federal Highway Administration
NOTICES
Motor carrier safety standards:
Parts and accessories necessary for safe operation—
Minimum fuel tank fill rate and certification labeling requirements; exemption applications, 43417–43419

Federal Labor Relations Authority
NOTICES
Senior Executive Service:
Performance Review Board; membership, 43384

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 43384–43385
Formations, acquisitions, and mergers, 43385
Permissible nonbanking activities, 43385–43386

Food and Drug Administration
NOTICES
Food additive petitions:
O'Brien, Gerard T.; denied, and agency's response to objections, 43387–43388

Food and Nutrition Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43340

General Services Administration
NOTICES
Federal property management:
Utilization and disposal—
Excess biomedical and information technology equipment with potential Y2K defects, 43386–43387

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Refugee Resettlement Office

Health Care Financing Administration
RULES
Medicare and Medicaid:
Nurse aide training programs loss; appeal
Correction, 43295
PROPOSED RULES
Medicare:
Clinical Diagnostic Laboratory Tests Coverage and Administrative Policies Negotiated Rulemaking Committee—
Meetings, 43338–43339

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Resident Opportunities and Self Sufficiency Program, 43529–43549

Interior Department
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Joint Fire Science Program Stakeholder Advisory Group, 43404

Internal Revenue Service
RULES
Income taxes:
Trusts with foreign grantors; application of grantor trust rules, 43267–43280
PROPOSED RULES
Income taxes:
Allocation of purchase price in asset acquisitions, 43461–43503
Trusts with foreign grantors; definition of term "grantor"; cross reference and public hearing, 43323–43324
Procedure and administration:
Private foundation disclosure requirements, 43324–43327

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
Japan, 43341–43342
Brass sheet and strip from—
Germany, 43342–43344
Collated roofing nails from—
Taiwan, 43344–43346
Professional electric cutting tools from—
Japan, 43346–43353

International Trade Commission
NOTICES
Meetings; Sunshine Act, 43406

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Helicopter and motorized vehicle use in gathering wild horses and burros, 43404
Resource management plans, etc.:
Pony Express Resource Area, UT, 43405

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43419–43420

Minerals Management Service
RULES
Royalty management:
Natural gas from Indian leases; valuation, 43505–43528
Oil and gas transportation and processing allowances, and coal washing and transportation allowances; valuation regulations; correction, 43288–43289

Mine Safety and Health Administration
RULES
Coal mine and metal and nonmetal mine safety and health:
Underground mines—
Lighting equipment, coal dust/rock dust analyzers, and methane detectors; regulations improved and removed, 43280–43283
Coal mine safety and health:
Coal mine respirable dust samplers; calibration and maintenance procedures; regulations improved and removed, 43283–43286
Underground mines—
Approved books and records; regulations improved and removed, 43286–43287

National Drug Control Policy Office
NOTICES
High intensity drug trafficking areas designations; list, 43383

National Institute of Standards and Technology
NOTICES
Committees; establishment, renewal, termination, etc.:
Malcolm Baldrige National Quality Award—
Board of Overseers, 43353
Panel of Judges, 43353–43354
Inventions, Government-owned; availability for licensing, 43354–43355
Meetings:
Industry Usability Reporting Project; workshop, 43355
Manufacturing Extension Partnership National Advisory Board, 43355–43356

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Deep-water species, 43296
Northern rockfish, 43296–43297
Pacific ocean perch, 43295–43296
Pollock; Steller sea lion protection measures; correction, 43297
NOTICES
Grants and cooperative agreements; availability, etc.:
National Sea Grant College Program—
Dean John A. Knauss Marine Policy Fellowship; correction, 43356
Meetings:
Gulf of Mexico Fishery Management Council, 43356–43357
Pacific Fishery Management Council, 43357

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 43405–43406

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 43410–43412
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 43406–43408
Detroit Edison Co., 43408–43410

Postal Service
RULES
International Mail Manual:
International priority airmail service; postage rates and service conditions changes, 43292–43295

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees;
Federalism (EO 13132), 43255–43259

Public Health Service
See Food and Drug Administration

Refugee Resettlement Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Refugee resettlement program—
Refugees in local areas of high needs, 43388–43398
Social services funds; State allocations, 43398–43404

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 43420–43421
Meetings:
Mechanical damage and cracking in pipelines; detection; quarterly performance review, 43421–43422
Pipeline safety; waiver petitions:
Chevron Pipe Line Co., 43422–43423

Securities and Exchange Commission
PROPOSED RULES
Investment advisers:
Political contributions, 43555–43568
NOTICES
Applications, hearings, determinations, etc.:
Amway Mutual Fund Trust et al., 43412–43414
Elk Associates Funding Corp. et al., 43414–43415

Small Business Administration
NOTICES
Disaster loan areas:
California, Nevada, and Arizona, 43415–43416
Iowa, 43416
Minnesota, 43416

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Oklahoma, 43327–43329

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration
See Research and Special Programs Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43423–43425

Separate Parts In This Issue

Part II
Department of Education, 43427–43459

Part III
Department of Treasury, Internal Revenue Service, 43461–43503

Part IV
Department of Interior, Minerals Management Service, 43505–43528

Part V
Department of Housing and Urban Development, 43529–43549

Part VI
Department of Labor, Employment and Training Administration, 43551–43553

Part VII
Securities and Exchange Commission, 43555–43568

Part VIII
Department of Transportation, Federal Aviation Administration, 43569–43580

Part IX
Department of Education, 43581–43597

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12872 (Supplemented by EO 13132).....43255
12612 (Revoked by EO 13132).....43255
12866 (Supplemented by EO 13132).....43255
12875 (Supplemented by EO 13132).....43255
12988 (Supplemented by EO 13132).....43255
13083 (Revoked by EO 13132).....43255
13095 (Revoked by EO 13132).....43255
13132.....43255

7 CFR
Proposed Rules:
981.....43298

9 CFR
Proposed Rules:
145.....43301
147.....43301

14 CFR
71 (2 documents).....43261
Proposed Rules:
25.....43570
39 (3 documents).....43314, 43316, 43318
107.....43321
108.....43322

17 CFR
Proposed Rules:
275.....43556

19 CFR
4.....43262
10.....43262
12.....43262
24.....43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
162.....43262
173.....43262
174.....43262
181.....43262

20 CFR
1.....43267
Proposed Rules:
1 (2 documents).....43323, 43462
301.....43324
602.....43462

30 CFR
26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75 (2 documents).....43280, 43286
90.....43283
202.....43506
206 (2 documents).....43288, 43506

Proposed Rules:
936.....43327

33 CFR
100.....43289
165 (2 documents).....43290, 43291

34 CFR
Proposed Rules:
668.....43582
682.....43428
685.....43428

39 CFR
20.....43292

40 CFR
9.....43426
122.....43426
123.....43426
124.....43426
501.....43426
Proposed Rules:
147.....43329
271.....43331
281.....43336

42 CFR
498.....43295
Proposed Rules:
Ch. IV.....43338

50 CFR
679 (4 documents).....43295, 43296, 43297

VOL
64
ISS
1
5
3
AG
10
999
UMI

Title 3

The P

Federal Register
Vol. 64, No. 153
Tuesday, August 10, 1999

Presidential Documents

Title 3—

The President

Executive Order 13132 of August 4, 1999

Federalism

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "Policies that have federalism implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "State and local officials" means elected officials of State and local governments or their representative national organizations.

Sec. 2. *Fundamental Federalism Principles.* In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.

(b) The people of the States created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is inherent in the very structure of the Constitution and is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) The Framers recognized that the States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) The national government should be deferential to the States when taking action that affects the policymaking discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

Sec. 3. *Federalism Policymaking Criteria.* In addition to adhering to the fundamental federalism principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There shall be strict adherence to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action. To the extent practicable, State and local officials shall be consulted before any such action is implemented. Executive Order 12372 of July 14, 1982 ("Intergovernmental Review of Federal Programs") remains in effect for the programs and activities to which it is applicable.

(b) National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

(c) With respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, agencies shall:

(1) encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States;

(2) where possible, defer to the States to establish standards;

(3) in determining whether to establish uniform national standards, consult with appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and

(4) where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.

Sec. 4. *Special Requirements for Preemption.* Agencies, in taking action that preempts State law, shall act in strict accordance with governing law.

(a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) When an agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.

(e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

Sec. 5. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would:

(a) directly regulate the States in ways that would either interfere with functions essential to the States' separate and independent existence or be inconsistent with the fundamental federalism principles in section 2;

(b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant; or

(c) preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met.

Sec. 6. *Consultation.*

(a) Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with State and local officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with State and local officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(3) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

Sec. 7. *Increasing Flexibility for State and Local Waivers.*

(a) Agencies shall review the processes under which State and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 8. *Accountability.*

(a) In transmitting any draft final regulation that has federalism implications to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has federalism implications to the Office of Management and Budget, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order, the Director of the Office of Management and Budget and the Assistant to the President for Intergovernmental Affairs shall confer with State and local officials to ensure that this order is being properly and effectively implemented.

Sec. 9. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 10. *General Provisions.*

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12372 ("Intergovernmental Review of Federal Programs"), Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 12988 ("Civil Justice Reform"), and OMB Circular A–19.

(b) Executive Order 12612 ("Federalism"), Executive Order 12875 ("Enhancing the Intergovernmental Partnership"), Executive Order 13083 ("Federalism"), and Executive Order 13095 ("Suspension of Executive Order 13083") are revoked.

(c) This order shall be effective 90 days after the date of this order.

Sec. 11. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
August 4, 1999.

[FR Doc. 99–20729
Filed 8–9–99; 8:45 am]
Billing code 3195–01–P

VOL
64
ISS
1
5
3
AG
10
999
UMI

Rul

This se
contain
applica
are key
Federal
50 title

The Co
the Sup
new bo
REGIS

DEPA

Federa

14 CF

[Airspa

Amend
Modif

AGENC
Admin

ACTION
effecti

SUMMA
effecti
revise
NE, ar
design
as pub
June 1
Docke

DATES
64 FR
Septe
This
Septe

FOR FU
Kathy
Airspa
Aviati
Street,
teleph

SUPPL

Histor
On
in the
rule; r
revise
NE (F
31116
23). A
discov
for Th
correc
of all
the su
has de
public

Rules and Regulations

Federal Register
Vol. 64, No. 153
Tuesday, August 10, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–23]

Amendment to Class E Airspace; Thedford, NE; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Thedford, NE, and corrects an error in the airspace designation for Thomas County Airport as published in the **Federal Register** June 10, 1999 (63 FR 31116), Airspace Docket No. 99–ACE–23.

DATES: The Direct final rule published at 64 FR 31116 is effective on 0901 UTC, September 9, 1999.

This correction is effective on September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On June 10, 1999, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Thedford, NE (FR document 99–14608, 64 FR 31116, Airspace Docket No. 99–ACE–23). An error was subsequently discovered in the airspace designation for Thomas County Airport. This action corrects that error. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error in the airspace designation and confirms the effective date to the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Thomas County Airport, as published in the **Federal Register** on June 10, 1999 (64 FR 31116), (**Federal Register** Document 99–14608; page 31117, column two) is corrected as follows:

§71.1 [Corrected]

ACE NE E5 Thedford, NE [Corrected]

On page 31117, in the second column, line two, correct the airspace designation by removing "6.3" and adding "6.4"

Issued in Kansas City, MO on July 30, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–20525 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–21]

Modification of Class E Airspace; Kingman, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action modifies the Class E airspace area at Kingman, AZ. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 3 and GPS RWY 21 at Kingman Airport has made this action necessary. Additional controlled airspace extending upward form 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 3 SIAP to Kingman Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations Kingman Airport, Kingman, AZ.

EFFECTIVE DATE: 0901 UTC September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On June 7, 1999, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Kingman, AZ (64 FR 30260). Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 3 SIAP at Kingman Airport. This action will provide adequate controlled airspace for IFR operations at Kingman Airport, Kingman, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CRR part 71 modifies the Class E airspace area at Kingman, AZ. Controlled airspace

extending upward from 700 feet above the surface is required for aircraft executing the GPS RWY 3 and GPS RWS 21 SIAP at Kingman Airport. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 3 SIAP at Kingman Airport, Kingman, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that his rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS.

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120 E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP AZ E5 Kingman, AZ [Revised]

Kingman Airport, AZ
(Lat. 35°15′34″N, long. 113°56′17″W)
Kingman VOR/DME
(Lat. 35°15′38″N, long. 113°56′03″)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Kingman Airport and that airspace within 4.3 miles each side of the Kingman VOR 025° radial, extending from the 4.3-mile radius to 16.5 miles northeast of the Kingman VOR and that airspace 1.7 miles each side of the Kingman VOR 226° radial, extending from the 4.3-mile radius to 9 miles southwest of the Kingman VOR. That airspace extending 1,200 feet above the surface within 4.3 miles southeast and 7.8 miles northwest of the Kingman VOR 025° and 205° radii, extending from 11.3 miles southwest to 33 miles northeast of the Kingman VOR and that airspace bounded by a line beginning at lat. 35°24′50″N, long. 114°01′20″W; to lat. 35°08′40″N, long. 114°10′29″W; to lat. 35°21′15″N, long. 114°13′28″W., thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on July 27, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–20523 Filed 8–9–99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181

[T.D. 99–64]

Technical Corrections to the Customs Regulations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections necessary to ensure that the regulations are as accurate and up-to-date as possible. Some of the corrections involve typographical and printing errors, some involve corrections to correlate with prior regulatory changes, some involve changes to regulatory language to more accurately reflect the underlying statutory language; however, none of the corrections involve changes in substantive legal requirements.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Regulations Branch (202) 927–2391.

SUPPLEMENTARY INFORMATION:

Background

It is Customs policy to periodically review its regulations to ensure that they are as accurate and up-to-date as possible, so that the importing and general public are aware of Customs programs, requirements, and procedures regarding import-related activities. As part of this review policy, Customs has determined that certain changes affecting Parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181 of the Customs Regulations (19 CFR parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181) are necessary to correct typographical and citation-referencing errors, and to make certain conforming changes to the regulations. Many of these changes are being made to conform the language in the Customs Regulations to the language of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, Title VI) ("the Mod Act"). Following is a summary of these changes:

Discussion of Changes

Part 4

Section 4.9(f) provides that the master of a vessel who fails to make entry or presents any entry document which is forged, altered or false is liable for certain civil penalties, as provided in 19 U.S.C. 1436. This document amends § 4.9(f) to reflect the amendment to 19 U.S.C. 1436 by section 611 of the Mod Act that penalties are also applicable for electronically transmitting any forged, altered, or false document, paper, information, data or manifest to Customs.

Section 4.12(a)(5) provides that unless the vessel master provides the required notification of a manifest discrepancy and that the discrepancy was due to clerical error, applicable penalties will be assessed. Further, repeated manifest discrepancies may be deemed negligent and not clerical error. This document amends the definition of "clerical error" to match the definition provided in 19 U.S.C. 1584 as amended by section 619 of the Mod Act, to include electronic submissions. Accordingly, after the word "submission" the words "(electronically or otherwise)" are added.

Section 4.61(b) requires the port director to verify that a vessel is in compliance with certain requirements prior to granting clearance. Section 4.61(b)(3), concerning documentation, makes a reference to § 4.64, which is a "reserved" section. Therefore, this document deletes the reference to § 4.64.

Section 4.82 concerns vessels touching at a foreign port while in

coastwise trade. In § 4.82(a) and (d), footnotes 112, and 113, respectively contain requirements pertaining to manifests of cargo and whether a duty is payable by reason of a vessel taken in at one port of the United States and touching at a foreign port during the voyage. Changes made to 19 U.S.C. 293 and 294, as amended by section 686 of the Mod Act, necessitate the removal of footnotes 112 and 113, respectively. Further, in § 4.82(a), there is a reference to Great Lakes license endorsements which were repealed by Pub. L. 104–324, Title XI, § 1115(a), 110 Stat. 3972 (October 19, 1996). Accordingly, the language referring to Great Lakes license endorsements in § 4.82(a) is deleted.

Part 10

In § 10.41b(b)(1), concerning receiving permission from the port director for release of certain shipping devices in international traffic without entry or duty and without the shipping devices being serially numbered or marked, the number "13" inadvertently appears between the words "serially" and "numbered". The number "13" is, therefore, deleted.

In § 10.41b(b)(2)(iv), concerning the reporting period for the clearance of serially numbered substantial holders or outer containers, the number "14" inadvertently appears between the word "tendered" and an open parenthesis mark. The number "14" is, therefore, deleted.

In § 10.41b(b)(4), concerning the port director's actions on the application for exemption from serial numbering or marking requirements, the number "15" inadvertently appears between the words "the" and "application". The number 15 is, therefore, deleted.

Part 12

In § 12.8(b), concerning liquidated damages assessed for breach of a bond on imported meat, meat-food products, horse meat, and horse meat-food products, the monetary cap of $20,000 for cancellation of liquidated damages by a port director is referenced. However, § 172.21 provides that a Fines, Penalties, and Forfeiture Officer may cancel claims for liquidated damages when the claim is $100,000 or less. Accordingly, for consistency, § 12.8(b) is revised to replace the $20,000 with $100,000.

Part 24

In § 24.21(b)(9), concerning the fees charged for administrative overhead costs, the reference to "§ 111.12(a)(2)" is revised to read "§ 111.12(a)".

In § 24.24(g), concerning the maintenance of records for the harbor maintenance fee, the last sentence references "§§ 162.1a through 162.1i"; however, effective July 16, 1998, the adoption of new Part 163 replaces the reference for those sections. Accordingly, the reference is revised to "part 163".

Part 102

Section 102.20 lists for specific North American Free Trade Agreement purposes specific tariff shift rules and other requirements for determining the country of origin of imported goods other than textiles and apparel products covered by § 102.21. In § 102.20(p), Section XVII: Chapters 86 through 89, the entry under "Tariff shift and/or other requirements" for 8716.10–8716.80 is grammatically unclear and is revised to read "A change to subheading 8716.10 through 8716.80 from any other heading, or from subheading 8716.90 except when that change is pursuant to General Rule of Interpretation 2(a)."

Part 112

In § 112.41, concerning identification cards for a licensed cartman or lighterman and their employees, the title "the Bureau of Customs" is used. Customs is officially a "Service", not a "Bureau". Accordingly, the words "the Bureau of" are deleted.

Part 113

In § 113.38(c)(4), concerning Customs review of a submission by a delinquent surety before determining whether to not accept further bonds from the surety, there is a reference to "(c)(4)". Due to the deletion of a prior paragraph the numbering for this reference should read "(c)(3)". Accordingly, the reference to "(c)(4)" is revised to read "(c)(3)".

Part 118

In § 118.12, concerning a port director's actions on an application for a centralized examination station (CES), the second sentence is amended by deleting the word "imported" to conform to changes made in T.D. 98–29.

Part 122

In § 122.162(b), concerning the failure to notify the port director and explain differences in an air cargo manifest, the definition of "clerical error" is being changed to match the definition provided in 19 U.S.C. 1584 as amended by section 619 of the Mod Act, to include electronic submissions and correspond to the identical definition appearing at § 4.12(a)(5).

Part 133

In §§ 133.26 and 133.46, involving the demand for redelivery of released merchandise and the demand for redelivery of released articles, respectively, the reference to § 141.113(g) should read § 141.113(h). The reference is accordingly revised.

Part 141

Sections 141.64, 141.90(a) and 141.103 are amended in light of the amendment of 19 U.S.C. 1484 by section 637 of the Mod Act which shifted to the importer of record the burden to use reasonable care in providing to Customs the correct classification, appraisement and rate of duty applicable to merchandise in entry documentation, and furnishing at the time of entry sufficient information to enable Customs to determine admissibility, assess proper duties, collect accurate statistics and to determine compliance with any other legal requirement. Accordingly, Customs believes that the regulations should no longer provide that Customs has the burden to review entry and entry summary documentation before acceptance to ensure that all entry and statistical requirements are complied with and that indicated values and rates of duty appear to be correct; § 141.64 currently provides that Customs has that burden. Section 141.64 is being amended to reflect that while it is not Customs burden to review entry and entry summary documentation, Customs may still in its discretion return documentation in which errors are found prior to acceptance. Further, in accordance with 19 U.S.C. 1484, the entered tariff classification, rate of duty, value and estimated duties no longer need to be approved by the port director; § 141.90(a) now provides that the port director has this responsibility. Also, as a result of the above amendment to section 1484, it is not the port director's responsibility to determine the amount of estimated duties "deemed necessary" to be deposited; § 141.103 now states that this is the port director's responsibility. Accordingly, as it is now the responsibility of the importer of record to use "reasonable care" in submitting proper information and documentation with Customs, pursuant to 19 U.S.C. 1484, these responsibilities of Customs regarding acceptance of entry documentation are removed from the regulations. To effect this, § 141.64 is amended by removing the word "shall" in the first sentence and inserting the word "may" in its place; § 141.90 is amended by removing and reserving paragraph (a); and § 141.103 is amended by removing the words "deemed necessary by the port director".

In § 141.68(b), concerning when an entry summary serves as both the entry documentation and entry summary, there is a reference to § 142.13(c). Pursuant to a realignment of the paragraphs of § 142.13 by T.D. 95–77, the correct reference should be "§ 142.13(b)". The reference is accordingly revised.

In § 141.113(b), concerning the recall of textiles and textile products released from Customs custody, the reference to § 113.62(k)(1) should read § 113.62(l)(1). The reference is accordingly revised.

Part 143

In § 143.21(j), concerning merchandise determined to be unique in character or design so as to be eligible for informal entry, the language is clarified by deleting the word "so" before the word "unique" and adding ", such" after the word "design".

Part 144

Section 144.37(h)(2)(vi) concerns a Class 9 warehouse withdrawal for exportation using a sales ticket for goods purchased in a duty-free store. This section is corrected to reflect that the importer's personal exemption is available as to goods purchased in a duty-free store, should such goods later be returned to the United States. This conforms the section with 19 U.S.C. 1555(b)(6)(B) and § 19.35(e)(2).

Part 148

In § 148.51(a)(1), concerning the application for exemption from duty and internal revenue tax by a nonresident arriving in the U.S. who is not entitled to an exemption for gifts, the reference to subheading "9804.00.39", HTSUS is incorrect. This reference is amended to read subheading "9804.00.30", HTSUS.

Part 162

In § 162.65(c), concerning the notice and demand for payment of a penalty for cargo or baggage containing unmanifested narcotic drugs or marihuana, the last word of the first sentence "responsiblie" is misspelled. This document corrects the misspelled word.

Section 162.72(b), concerning the penalties for violation of section 584(a)(1), Tariff Act of 1930 (19 U.S.C. 1584(a)(1)), as amended, states that the penalty for lack of or discrepancy in a manifest is $500. Pursuant to 19 U.S.C. 1584, the penalty amount of $500 has been increased to $1000. This document corrects the regulation to reflect the correct statutory penalty.

In § 162.73, concerning penalties under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), the language is revised to reflect that pursuant to Pub. L. 104–295, the penalty is applicable to taxes and fees as well as duties.

In § 162.74(c), as amended by T.D. 98–49 published in the **Federal Register** (63 FR 29126) on May 28, 1998, concerning the tender of actual loss of duties under a prior disclosure by a person of a violation of law committed by that person involving the filing or attempted filing of a drawback claim, or an entry or introduction, or attempted entry or introduction of merchandise in the United States by fraud, gross negligence, or negligence, the words "his or her" in the second sentence are misleading regarding the fact that Customs calculates the actual loss of duties. This document clarifies the matter.

In § 162.79b, concerning the recovery of the actual loss of duties resulting from a violation of 19 U.S.C. 1592, the language is revised to reflect that there is liability for taxes and fees as well as duties.

Part 173

Section 173.6 provides that where there is probable cause to believe there is fraud in a case, a port director may reliquidate an entry within two years after the date of liquidation or last reliquidation. This section is being removed from the regulations. The authority for § 173.6 was 19 U.S.C. 1521 which was repealed by section 618 of the Mod Act.

Part 174

In § 174.13(a), concerning the contents of a protest, there are nine paragraphs detailing the types of information required. The connective word "and" should be set forth between paragraphs (a)(8) and (a)(9), rather than between paragraphs (a)(7) and (a)(8) as is currently printed. Also, in (a)(9), the word "declaration" is misspelled as "delcaration". This document corrects these errors.

Part 181

In § 181.82(b)(1)(ii), concerning "voluntarily" correcting a declaration in connection with a claim for preferential tariff treatment for a good under NAFTA so as to not be subject to a penalty, the reference to "§ 162.74(g)" is revised to read § 162.74(i)". This reflects the restructuring of § 162.74 set forth in T.D. 98–49.

In § 181.93(b)(5)(i)(B)(4), concerning whether the requester for a NAFTA advance ruling has knowledge that the issue is already subject of a request for an advance ruling, there is a reference to § 181.76(d)(1). However, because a new section (b) was added to § 181.76 by T.D. 95–68, the original § 181.76(d)(1) was redesignated as § 181.76(e)(1). Therefore, the reference to § 181.76(d)(1)" is revised to read "§ 181.76(e)(1)".

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely correct certain typographical, technical and printing errors in the regulations and otherwise conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553(a)(2) and (b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(a)(2) and (d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "significant regulatory action" as defined in E.O. 12866.

Drafting Information. The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Bonds, Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Drug traffic control, Entry, Exports, Fees, Foreign commerce and trade statistics, Freight, Harbors, Imports, Inspection, Merchandise, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 12

Animals, Bonds, Customs duties and inspection, Economic sanctions, Entry of merchandise, Fees assessment, Imports, Meats, Reporting and recordkeeping requirements, Sanctions.

19 CFR Part 24

Accounting, Customs duties and inspection, Fee, Financial and accounting procedures, Harbors, Reporting and recordkeeping requirements, Taxes, User Fees.

19 CFR Part 102

Customs duties and inspection, Customs ports of entry, Imports, Shipments, Sureties.

19 CFR Part 112

Administrative practice and procedure, Customs duties and inspection, Exports, Freight forwarders, Imports, Reporting and recordkeeping requirements.

19 CFR Part 113

Bonds, Customs duties and inspection, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 118

Administrative practice and procedure, Bonds, Customs duties and inspection, Drug traffic control, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 122

Administrative practice and procedure, Bonds, Customs duties and inspection, Freight, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 133

Customs duties and inspection, Fees assessment, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 143

Automated Broker Interface (ABI), Customs duties and inspection, Electronic entry filing, Entry of merchandise, Invoice requirements, Reporting and recordkeeping requirements.

19 CFR Part 144

Customs duties and inspection, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 148

Aliens, Customs duties and inspection, Declarations, Foreign officials, Privileges and immunities, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Drug traffic control, Inspection, Law enforcement, Penalties, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Search warrants, Seizures and forfeitures.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free-Trade Agreement).

Amendment to the Regulations

In accordance with the preamble, Parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181 of the Customs Regulations (19 CFR Parts 4, 10, 12, 24, 102, 112, 113, 118, 122, 133, 141, 143, 144, 148, 162, 173, 174 and 181) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific relevant authority citations for §§ 4.9, 4.12, and 4.82 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.9 also issued under 42 U.S.C. 269; 46 U.S.C. App. 677;

* * * * *

Section 4.12 also issued under 19 U.S.C. 1584;

* * * * *

Section 4.82 also issued under 19 U.S.C. 293, 294, 46 U.S.C. App. 123;

* * * * *

§ 4.9 [Amended]

2. Section 4.9(f) is amended by removing in the first sentence the language "any document required by this section which is forged, altered, or false," and adding in its place the words "or transmits, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest,".

§ 4.12 [Amended]

3. Section 4.12(a)(5) is amended by adding in the second sentence after the word "submission" the words "(electronically or otherwise)".

§ 4.61 [Amended]

4. Section 4.61(b)(3) is amended by removing the parenthetical reference "(§ 4.64)".

§ 4.82 [Amended]

5. Section 4.82(a) is amended to add in the first sentence after the first word "A" the words "United States", and to remove the words ", where appropriate, a Great Lakes license endorsement" and add in their place the words "coastwise endorsement, or both'.

6. Part 4 is amended by removing and reserving footnotes 112 and 113; and removing the superscript footnote referencing designations 112 and 113 from the text.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 and the specific relevant authority citation for § 10.41b continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, HTSUS);

* * * * *

§ 10.41b [Amended]

2. Section 10.41b(b)(1) is amended by removing in the first sentence the number "13" which appears between the words "serially" and "numbered'.

3. Section 10.41b(b)(2)(iv) is amended by removing the number "14" which appears between the word "tendered" and a parenthetical clause.

4. In § 10.41b(b)(4), the third sentence is amended by removing the number "15" which appears between the words "the" and "application".

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

§ 12.8 [Amended]

2. Section 12.8(b) is amended in the first sentence by removing the monetary cap of "$20,000" and adding in its place the monetary cap of "$100,000".

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 and the specific relevant authority for § 24.24 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1450, 1624, 31 U.S.C. 9701.

* * * * *

Section 24.24 also issued under 26 U.S.C. 4461, 4462;

* * * * *

§ 24.21 [Amended]

2. Section 24.21(b)(9) is amended by removing the citation "111.12(a)(2)" and adding in its place the citation "§ 111.12(a)".

§ 24.24 [Amended]

3. "In § 24.24(g), the last sentence is amended by removing the citations §§ 162.1a through 162.1i" and adding in their place the citation "part 163".

PART 102—RULES OF ORIGIN

1. The general authority citation for Part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 3314, 3592.

* * * * *

§ 102.20 [Amended]

2. Section 102.20(p), "Section XVII: Chapters 86 through 89", is amended by revising the entry in the "Tariff shift and/or other requirements" column adjacent to 8716.10–8716.80 in the "HTSUS" column, to read "A change to subheading 8716.10 through 8716.80 from any other heading, or from subheading 8716.90 except when that change is pursuant to General Rule of Interpretation 2(a)."

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The general authority citation for Part 112 continues to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

* * * * *

§ 112.41 [Amended]

2. Section 112.41 is amended by removing in the first sentence the words "the Bureau of".

PART 113—CUSTOMS BONDS

1. The general authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.38 [Amended]

2. Section 113.38(c)(4) is amended by removing in the first sentence the reference to "(c)(4)" and adding in its place "(c)(3)".

PART 118—CENTRALIZED EXAMINATION STATIONS

1. The general authority citation for Part 118 continues to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624; 22 U.S.C. 401; 31 U.S.C. 5317.

* * * * *

§ 118.12 [Amended]

2. Section 118.12 is amended by removing the word "imported" from the last sentence.

PART 122—AIR COMMERCE REGULATIONS

1. The general authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

* * * * *

§ 112.162 [Amended]

2. Section 122.162(b) is amended by removing the words ",made when the manifest is prepared, assembled or submitted" and adding in their place the words "in the preparation, assembly, or submission (electronically or otherwise) of the manifest".

PART 133—TRADEMARKS, TRADE NAMES AND COPYRIGHTS

1. The general authority citation for Part 133 and the specific relevant authority citation for §§ 133.26 and 133.46 continue to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

Sections 133.26 and 133.46 also issued under 19 U.S.C. 1623.

* * * * *

§ 133.26 and 133.46 [Amended]

2. Sections 133.26 and 133.46 are amended by removing the citation § 141.113(g)" and adding in its place the citation "§ 141.113(h)".

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 and the specific relevant authority citations for §§ 141.68, 141.90, and 141.113 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.68 also issued under 19 U.S.C. 1315;

* * * * *

Section 141.90 also issued under 19 U.S.C. 1487;

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

§ 141.64 [Amended]

2. Section 141.64 is amended by removing the word "shall" in the first sentence and adding in its place the word "may".

§ 141.68 [Amended]

3. Section 141.68(b) is amended by removing the citation "§ 142.13(c)" and adding in its place "§ 142.13(b)".

§ 141.90 [Amended]

4. Section 141.90 is amended by removing and reserving paragraph (a).

§ 141.103 [Amended]

5. Section 141.103 is amended by removing the words "deemed necessary by the port director".

§ 141.113 [Amended]

6. Section 141.113(b) is amended by removing the citation "§ 113.62(k)(1)" and adding in its place "§ 113.62(l)(1)".

PART 143—SPECIAL ENTRY PROCEDURES

1. The general authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

* * * * *

§ 143.21 [Amended]

2. Section 143.21(j) is amended by removing the word "so" which appears before the word "unique", and by adding, ", such" after the word "design".

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The general authority citation for Part 144 and the specific authority citation for § 144.37 continue to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

Section 144.37 also issued under 19 U.S.C. 1555, 1562.

§ 144.37 [Amended]

2. In § 144.37(h)(2)(vi), the first sentence is amended by removing the phrase "without personal exemption" and adding in its place the phrase "with personal exemption".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 and the specific relevant

authority citation for § 148.51 continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States).

* * * * *

Sections 148.43, 148.51, 148.63, 148.64, 148.74 also issued under 19 U.S.C. 1321;

* * * * *

§ 148.51 [Amended]

2. Section 148.51(a)(1) is amended by removing the reference "9804.00.39" and adding in its place "9804.00.30".

PART 162—INSPECTION, SEARCH AND SEIZURE

1. The general authority citation for Part 162 and the specific relevant authority citation for §§ 162.65 and 162.72 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.65 also issued under 19 U.S.C. 1584, 21 U.S.C. 960, 961;

Sections 162.65 and 162.72 also issued under 19 U.S.C. 1431(b) and 19 U.S.C. 1644.

§ 162.65 [Amended]

2. Section 162.65(c) is amended by removing the last word of the first sentence, "responsiblie", and adding in its place the word "responsible".

§ 162.72 [Amended]

3. Section 162.72 is amended by removing the amount "$500" in paragraphs (b)(1), (b)(2) and (b)(3)(ii) and by adding "$1,000" in its place.

§ 162.73 [Amended]

4. Section 162.73 is amended by adding after the word "duties" appears in paragraphs (a)(2)(i), (a)(2)(ii), (a)(3)(i), (a)(3)(ii), (b)(1)(i), (b)(1)(ii), and (b)(2), the words ", taxes and fees".

§ 162.74 [Amended]

5. Section 162.74(c) is amended by removing in the second sentence the words "his or her" and adding in their place "Customs".

§ 162.79b [Amended]

6. Section 162.79b is amended by adding after each time the word "duties" appears in the heading and text, the words ", taxes and fees".

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

1. The authority citation for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

§ 173.6 [Removed]

2. Section 173.6 is removed.

PART 174—PROTESTS

1. The general authority citation for Part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515. 1624.

* * * * *

§ 174.13 [Amended]

2. Section 174.13(a)(7) is amended by removing the last word, "and".

3. Section 174.13(a)(8) is amended by removing the period at the end of the sentence and adding in its place "; and".

4. Section 174.13(a)(9) is amended by removing the word "delcaration" and adding in its place the word "declaration".

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The general authority citation for Part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 3314.

* * * * *

§ 181.82 [Amended]

2. Section 181.82(b)(1)(ii) is amended by removing the reference "§ 162.74(g)" and adding in its place "§ 162.74(i)".

§ 181.93 [Amended]

3. Section 181.93(b)(5)(i)(B)(*4*) is amended by removing the reference § 181.76(d)(1)" and adding in its place "§ 181.76(e)(1)".

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 6, 1999.

John P. Simpson.

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–20506 Filed 8–9–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8831]

RIN 1545–AU90

Inbound Grantor Trusts With Foreign Grantors

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations implementing sections 672(f) and 643(h) of the Internal Revenue Code, as amended by the Small Business Job Protection Act of 1996, which relate to the application of the grantor trust rules to certain trusts established by foreign persons. These regulations affect primarily U.S. persons who are beneficiaries of trusts established by foreign persons. This document also contains temporary regulations defining the term *grantor* for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective August 10, 1999.

Applicability Dates: For dates of applicability of § 1.643(h)–1, see § 1.643(h)–1(h). For dates of applicability of § 1.671–2T(e), see § 1.671–2T(e)(7). For dates of applicability of §§ 1.672(f)–1 through 1.672(f)–5, see §§ 1.672(f)–1(c), 1.672(f)–2(e), 1.672(f)–3(e), 1.672(f)–4(h), and 1.672(f)–5(c).

FOR FURTHER INFORMATION CONTACT: M. Grace Fleeman (202) 622–3880 concerning the regulations generally, and James A. Quinn (202) 0622–3060 concerning § 1.671–2T(e) and § 1.672(f)–1 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1997 (62 FR 37819) Treasury and the IRS published a notice of proposed rulemaking (REG–252487–96) under sections 643(h), 671, 672(f), and 7701 of the Internal Revenue Code (Code). Comments responding to the notice were received and a public hearing was held on August 27, 1997. After consideration of the comments, the proposed regulations under sections 643(h) and 672(f) are adopted as final regulations as revised by this Treasury decision. The proposed regulations under section 671 are issued as revised by this Treasury decision as temporary regulations. The revisions are discussed below. The proposed regulations under section 7701 are withdrawn. The temporary regulations under section 671 are also being issued as proposed regulations published elsewhere in this issue of the **Federal Register.**

Explanation of Provisions and Revisions

1. Comments and Changes to § 1.643(h)–1: Distributions by Certain Foreign Trusts Through Intermediaries

Under the proposed regulations, any amount that was derived, directly or indirectly, by a U.S. person from a foreign trust through an intermediary generally was deemed to have been transferred directly by the foreign trust to the U.S. person if any one of three specified conditions was satisfied. In cases where the transfer from the intermediary to the U.S. person did not occur in the same taxable year of the U.S. person as the transfer from the foreign trust to the intermediary, the proposed regulations looked to generally applicable agency principles to determine when the transfer to the U.S. person was deemed to occur.

Commenters said the proposed rules were too broad and could reach virtually any transfer made to a U.S. person by any person who has received a distribution from a foreign trust. They suggested that the basic requirement for treating a transfer to a U.S. person as a transfer directly from a foreign trust should be the existence of an intention to avoid U.S. tax. Alternatively, they said there should at least be a time limitation so that the rule would not apply to a transfer of property received from a foreign trust more than, for example, one year before the transfer to the U.S. person. In addition, they said the proposed rule relying on generally applicable agency principles for determining whether an intermediary is the agent of the foreign trust or of the U.S. person would be difficult to apply because different countries have different laws and the U.S. person should be taxed prior to receipt only if the intermediary is clearly a nominee or agent for the U.S. person.

In response to the comments, the final regulations treat any property (including cash) that is transferred to a U.S. person by an intermediary who has received property from a foreign trust as property transferred directly by the foreign trust to the U.S. person if the intermediary received the property from the foreign trust pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax. A transfer of property will be deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax if all of certain specified factors are present. However, the Commissioner may find that a transfer was made pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax whether or not any of the specified factors is present.

The factors that will cause a transfer to be deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of U.S. tax are the following: (i) the U.S. person is related to a grantor of the foreign trust or has another relationship with a grantor of the foreign trust that establishes a reasonable basis for concluding that the grantor of the foreign trust would make a gratuitous transfer to the U.S. person; (ii) the U.S. person receives from the intermediary, within the period beginning twenty-four months before and ending twenty-four months after the intermediary's receipt of property from the foreign trust, either the property the intermediary received from the foreign trust, proceeds from such property, or property in substitution for such property; and (iii) the U.S. person cannot demonstrate to the satisfaction of the Commissioner that (A) the intermediary has a relationship with the U.S. person that establishes a reasonable basis for concluding that the intermediary would make a gratuitous transfer to the U.S. person, (B) the intermediary acted independently of the grantor and the trustee, (C) the intermediary is not an agent of the U.S. person under generally applicable U.S. agency principles, and (D) the U.S. person timely complied with the reporting requirement of section 6039F, if applicable, if the intermediary is a foreign person. See Notice 97–34 (1997–1 C.B. 422).

The final regulations also have been modified with respect to the application of generally applicable agency principles. Under the final regulations, property is treated as transferred to the U.S. person in the year it is actually transferred to the U.S. person by the intermediary unless the Commissioner determines, or the taxpayer can demonstrate to the satisfaction of the Commissioner, that the intermediary is an agent of the U.S. person under generally applicable agency principles, in which case the property will be treated as transferred to the U.S. person by the trust in the year the property was transferred to the intermediary by the trust. As a corollary, the final regulations provide that the fair market value of the property is determined as of the date of the transfer to the U.S. person, unless the intermediary is treated as an agent of the U.S. person, in which case the fair market value will be determined as of the date of the transfer to the intermediary. Examples illustrate the effect of changes in the fair market value between the date of the transfer to the intermediary and the date of the transfer to the U.S. person.

The final regulations clarify that they apply only to gratuitous transfers. They also clarify that if property is treated as transferred directly by a foreign trust to a U.S. person pursuant to the regulations, the same property will not be taken into account in computing the gross income of the intermediary (if such property would otherwise be required to be so taken into account).

The final regulations under section 643(h) are applicable to transfers made to U.S. persons after August 10, 1999.

2. Comments and Changes to § 1.671–2(e): Definition of Grantor

The proposed regulations provided a definition of grantor for purposes of part I of subchapter J, chapter 1 of the Code. This document replaces the proposed regulations with temporary regulations that are effective August 10, 1999. These temporary regulations are also being issued as proposed regulations published elsewhere in this issue of the **Federal Register**. In accordance with section 7805(e)(2), the temporary regulations will expire before August 12, 2002.

Under the original proposed regulations, a grantor was defined to include any person to the extent such person either (i) creates a trust or (ii) directly or indirectly makes a gratuitous transfer to a trust. Commenters questioned why a nominal creator who has made no transfer to a trust should be treated as a grantor and asked for an explanation of the tax significance of such treatment.

Treating a nominal creator as a grantor ensures that someone will be responsible for reporting the creation of a foreign trust by a U.S. person even if the trust is not immediately funded. See section 6048(a)(3)(A)(i) and (a)(4)(A). At the same time, Treasury and the IRS believe that an accommodation grantor, such as an attorney who creates a trust on behalf of a client, (although a grantor) should not be treated as an owner of the trust. Accordingly, the temporary regulations provide that a person who either creates a trust, or funds a trust with an amount that is directly repaid to such person within a reasonable period of time, but who makes no other transfers to the trust that constitute gratuitous transfers, will not be treated as an owner of any portion of the trust under sections 671 through 677 or 679.

Commenters also questioned a provision in the proposed regulations that treated a distribution from one trust to another trust that is a beneficiary of the first trust as a gratuitous transfer,

with the result that the first trust was a grantor of the second trust. Under the temporary regulations, if a trust makes a gratuitous transfer of property to another trust, the grantor of the transferor trust generally is treated as the grantor of the transferee trust. However, if a person with a general power of appointment over the transferor trust exercises that power in favor of another trust, such person is treated as the grantor of the transferee trust, even if the grantor of the transferor trust is treated as the owner of the transferor trust under subpart E of part I, subchapter J, chapter 1 of the Code. (These rules do not affect the determination of whether or not the gratuitous transfer from the transferor trust is a distribution subject to sections 651 or 661.)

The proposed regulations provided that a person who acquires an interest in a fixed investment trust from a grantor of the trust also will be treated as a grantor of the trust. In response to comments received, the temporary regulations extend the same treatment to persons who acquire an interest in a liquidating trust or an environmental remediation trust.

The temporary regulations include a new section that applies to gratuitous transfers to trusts by partnerships and corporations. If the transfer is entered into for a business purpose of the partnership or corporation, the partnership or corporation, as the case may be, generally is treated as the grantor of the trust. However, if the transfer is not entered into for a business purpose of the partnership or corporation—for example, if it is for the personal purposes of one or more of the partners or shareholders—the transfer is treated as a constructive distribution to such partners or shareholders under federal tax principles, and the partners or shareholders, as the case may be, are treated as the grantors of the trust. See, for example, *Epstein* v. *Commissioner*, 53 T.C. 459 (1969), acq. on another issue, 1970–2 C.B. xix.

Commenters asked for guidance concerning the identification of the grantor when the property contributed to the trust is jointly owned. These temporary regulations do not provide specific guidance on the treatment of joint owners that contribute property to a trust. Treasury and the IRS invite comments with specific examples of areas that may need clarification, such as, for example, the treatment of community property or the joint ownership of property by noncitizen spouses.

3. Comments and Changes to § 1.672(f)–1: Foreign Persons Not Treated as Owners

The proposed regulations prescribed a two-step analysis for implementing the general rule of section 672(f). First, the grantor trust rules other than section 672(f) (the basic grantor trust rules) were applied to determine the worldwide amount and the U.S. amount. Then, the trust was treated as partially or wholly owned by a foreign person based on an annual year-end comparison of the worldwide amount and the U.S. amount. Commenters suggested that the two-step analysis was unnecessarily complex and questioned whether it might produce results that were unintended or inconsistent with the statute.

In response to these concerns, the final regulations provide that the grantor trust rules other than section 672(f) must be applied first to determine whether, under such rules, any portion of the trust would be treated as owned by a person other than a U.S. citizen or resident or domestic corporation. The determination of the portion of the trust that is treated as owned by a grantor or other person is to be made based on the terms of the trust and the application of the grantor trust rules as found in § 1.671–1 *et seq.* If it is determined that any portion of the trust would be treated as owned by a person other than a U.S. citizen or resident or domestic corporation, such person will be treated as the owner of such portion only if such person is a foreign corporation described in § 1.672(f)–2(a) or if such portion of the trust qualifies for one of the exceptions in § 1.672(f)–3.

The final regulations under the general rule are generally applicable to taxable years of a trust beginning after August 10, 1999.

4. Comments and Changes to § 1.672(f)–2: Certain Foreign Corporations

Under the proposed regulations, a controlled foreign corporation (CFC) that created or funded a trust was treated as a domestic corporation for purposes of section 672(f) only to the extent the trust's income was subpart F income that was currently taken into account in computing the gross income of a U.S. citizen, U.S. resident, or domestic corporation. There were similar rules for passive foreign investment companies (PFICs) and foreign personal holding companies (FPHCs). Commenters questioned whether the proposed rules were consistent with the statutory antideferral regime and the legislative history. There also were suggestions that the proposed rules should not apply where a CFC is wholly owned, directly or indirectly, by U.S. shareholders. In addition, there were requests for simplification of the rules pertaining to annual fluctuations in the portion of a trust that is treated as owned by the grantor.

In response to the comments, Treasury and the IRS have developed rules that are narrowly targeted to potentially abusive situations and therefore are not inconsistent with the antideferral regime. Under the final regulations, if the owner of a trust upon application of the grantor trust rules without regard to section 672(f) is a CFC, PFIC, or FPHC, the CFC, PFIC, or FPHC, as the case may be, will be treated as a domestic corporation for purposes of applying the general rule of § 1.672(f)–1. Consequently, a CFC, PFIC, or FPHC generally will be treated as an owner of a trust if it would be so treated under sections 671 through 678 without regard to section 672(f). A CFC, PFIC, or FPHC will be treated as a domestic corporation solely for purposes of applying the general rule of § 1.672(f)–1. Thus, a CFC, PFIC, or FPHC will be treated as a foreign corporation for purposes of § 1.672(f)–4, which is discussed below in part 6 of this explanation.

If a trust to which a CFC, PFIC, or FPHC has made a gratuitous transfer makes a gratuitous transfer to a U.S. person, the CFC, PFIC, or FPHC, as the case may be, will be treated as a foreign corporation for purposes of determining how the transfer will be treated in the hands of the U.S. person, and the rules of § 1.672(f)–4(c) will apply. If a trust that a CFC, PFIC, or FPHC is treated as owning under section 678 makes a gratuitous transfer to a U.S. person, the rules of § 1.672(f)–4(c) will apply as if the CFC, PFIC, or FPHC had made a gratuitous transfer to the trust.

The final regulations for CFCs, PFICs, and FPHCs are generally applicable to taxable years of shareholders of CFCs, PFICs, and FPHCs beginning after August 10, 1999 and taxable years of CFCs, PFICs, and FPHCs ending with or within such taxable years of the shareholders.

5. Comments and Changes to § 1.672(f)–3: Exceptions To General Rule

A. Certain Revocable Trusts

Under the proposed regulations, the general rule of § 1.672(f)–1(a) did not apply to any portion of a trust if the power to revest absolutely in the grantor title to such portion was exercisable solely by the grantor without the approval or consent of any other person

for a period or periods aggregating 183 days or more during the taxable year of the trust. The 183-day rule is targeted at potentially abusive situations in which a power to revest is so limited that it is not likely to be exercised.

In response to comments received, the final regulations clarify that if the first or last taxable year of the trust is less than 183 days, the revocable trust exception will apply if the grantor has a power to revest on each day of the first or last taxable year (including the year of the grantor's death), as the case may be. The final regulations also clarify that, consistent with the principle that statutory exceptions should be construed narrowly, if a trust fails to qualify for the revocable trust exception in a particular year, the exception cannot apply in a later year even if the requirements would otherwise be satisfied in such later year.

Commenters asked whether the revocable trust exception continues to apply if the grantor becomes incapacitated. The final regulations provide that the exception will continue to apply if, but only if, there is a guardian or other person who has unrestricted authority to exercise the necessary power on the grantor's behalf.

Some commenters disagreed with the result in § 1.672(f)–3(a)(4) *Example 3* of the proposed regulations, which concluded that the revocable trust exception does not apply where the grantor of the trust can replace the trustee, who is not a related or subordinate party, at any time for any reason. They said the example was inconsistent with the existing grantor trust rules. See, e.g., § 1.674(d)–2(a). After careful consideration, Treasury and the IRS have concluded that Example 3 is consistent with the purposes of section 672(f) and should be retained.

Commenters raised a number of issues concerning the grandfather rules in § 1.672(f)–3 (a)(2) and (b)(4) of the proposed regulations for certain trusts that were in existence on September 19, 1995. In response to the comments, the final regulations confirm that physical separation of amounts that were gratuitously transferred to the trust after September 19, 1995, are treated as a separate portion of the trust that is accounted for under the rules of § 1.671–3(a)(2).

B. Certain Trusts That Can Distribute Only to the Grantor or the Spouse of the Grantor

Under the proposed regulations, the general rule of § 1.672(f)–1 did not apply if the only amounts distributable from a trust (or portion of a trust) during the lifetime of the grantor were amounts distributable to the grantor or the grantor's spouse. Treasury and the IRS contemplate that the fact that the grantor and his or her spouse might someday divorce or legally separate will be disregarded for purposes of determining whether the exception is applicable.

Under the proposed regulations, amounts distributable in discharge of a legal obligation of the grantor or the grantor's spouse generally were treated as amounts distributable to the grantor or the grantor's spouse. Commenters said these proposed rules were inconsistent with the manner in which distributions in discharge of obligations are treated in regulations promulgated under other provisions of the Code. For example, under sections 677(a) and 662(a)(2), there is no exception for obligations to family members that are not based on full and adequate consideration in money or money's worth. Commenters also said the proposed rules were likely to exclude most trusts from qualification for the exception because, in most jurisdictions, a trust provision that permits distributions to a particular person is construed to permit distributions to be made in satisfaction of that person's obligations, regardless of the source of the obligations.

Treasury and the IRS believe it is neither necessary nor appropriate for the regulations promulgated under the statutory exceptions to section 672(f) to be consistent with the regulations promulgated under other provisions of part I of subchapter J, chapter 1 of the Code. Section 672(f) reflects a policy determination that foreign persons should not be allowed "to affirmatively use the domestic anti-abuse rules concerning grantor trusts" to avoid U.S. tax on trust income distributed to U.S. beneficiaries. Dept. of the Treasury, General Explanations of the Administration's Revenue Proposals, at 12 (1995). Section 672(f) operates to implement that policy determination by providing that the grantor trust rules generally do not apply where their effect would be to treat a foreign person as the owner of any portion of a trust. S. Rep. No. 35, 104th Cong., 1st Sess. 161 (1995). The exceptions in section 672(f)(2) must be interpreted narrowly to preserve the primary operation of the general rule. See, for example, *Commissioner* v. *Clark*, 489 U.S. 726, 739 (1989) ("In construing provisions * * * in which a general statement of policy is qualified by an exception, we usually read the exception narrowly in order to preserve the primary operation of the provision.").

The final regulations continue to provide that a trust will not fail to qualify for the exception solely because amounts are distributable from the trust in discharge of a legal obligation of the grantor (or grantor's spouse). An obligation to a related person is not generally treated as a legal obligation unless it was contracted bona fide and for adequate and full consideration in money or money's worth. However, obligations to support certain individuals will be treated as legal obligations if the individual is either permanently and totally disabled or less than 19 years old. The final regulations expand the list of potentially eligible individuals to include certain individuals who are members of the grantor's (or grantor's spouse's) household and have as their principal place of abode the grantor's (or grantor's spouse's) home, but are not related to the grantor (or grantor's spouse) through one of the relationships listed in section 152(a)(1) through (8). The fact that amounts might become distributable from a trust to support an individual who is not described in the regulations will be disregarded if, at the time the applicability of the exception is being determined, the potential obligation is not reasonably expected to arise under the facts and circumstances.

Some commenters said the limitation in proposed § 1.672(f)-3(b)(2)(ii) for legal obligations to related persons is not needed in the case of reinsurance trusts because, regardless of the sufficiency of the consideration for the reinsurance, the funds in a reinsurance trust can be utilized only to satisfy the legal obligations of the reinsurer (or will be distributed to the reinsurer). In addition, commenters pointed out that there already are other provisions, such as sections 482 and 845, that apply to related-party reinsurance arrangements.

The final regulations reserve on the application of the related-party rule to reinsurance trusts. Treasury and the IRS are looking carefully at this area, and they invite additional comments.

Commenters raised a number of issues concerning the grandfather rules in § 1.672(f)–3(b)(4) of the proposed regulations. These issues are discussed above in connection with the

grandfather rules under § 1.672(f)–3(a)(2) of the proposed regulations.

C. Compensatory Trusts

The proposed regulations listed categories of trusts that constitute compensatory trusts, without regard to whether any portion of a particular trust would ever be treated as owned by the grantor or another person under the grantor trust rules. Treasury and the IRS are concerned that some taxpayers may find such a comprehensive list confusing. Accordingly, the final regulations provide that the trusts to which the compensatory trust exception applies are those to which the application of section 672(f) is likely to be relevant: (i) nonexempt employees' trusts described in section 402(b) and (ii) so-called "rabbi" trusts. Treasury and the IRS believe the issue of whether tax-exempt compensatory trusts can be treated as owned by a foreign person is moot because there are special statutory rules that govern those trusts.

Treasury and the IRS contemplate that a nonexempt employees' trust described in section 402(b) will be treated as owned by a beneficiary of the trust only to the extent provided in regulations section 1.402(b)–1(b)(6). See also proposed regulations § 1.671–1(g) and § 1.671–1(h), which were published in the **Federal Register** (61 FR 50778) on September 27, 1996, for proposed rules describing when an employer will be treated as an owner of any portion of a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan.

The final regulations also provide that the Commissioner may designate additional categories of trusts to which the compensatory trust exception applies.

6. Comments and Changes to § 1.672(f)–4: Recharacterization of Purported Gifts

The proposed regulations provided that a U.S. donee generally must treat a purported gift from a foreign corporation as a distribution from the foreign corporation unless the U.S. donee can establish that a U.S. citizen or resident alien is a shareholder of the transferor and that the U.S. citizen or resident took the amount into account for U.S. tax purposes and subsequently made a gift to the U.S. donee. Similar rules were proposed for purported gifts from partnerships (whether domestic or foreign). There were exceptions for charitable contributions to donees described in section 170(c) and for purported gifts that did not exceed $10,000.

Section 1.672(f)–4(c) of the proposed regulations provided rules for gratuitous transfers to U.S. donees from trusts created by partnerships or foreign corporations. Under the proposed regulations, if the partnership or foreign corporation was treated as the owner of the trust under the grantor trust rules, the transfer was treated as a purported gift from the partnership or foreign corporation. If the partnership or foreign corporation was not treated as the owner of the trust, the transfer was treated as an accumulation distribution from the trust unless the resulting U.S. tax liability was less than the U.S. tax that would be due if the transfer were treated as a purported gift from the partnership or foreign corporation.

Commenters said the proposed regulations were overly broad and exceeded the scope of the regulatory authority granted by Congress. They suggested that a purported gift from a partnership or foreign corporation should be treated as a deemed distribution to the partner or shareholder followed by a deemed transfer to the U.S. donee. Commenters also suggested that purported gifts should not be recharacterized as taxable distributions unless it appeared, based on all the facts and circumstances, that the partnership or foreign corporation was being used principally as a device to avoid U.S. tax.

Treasury and the IRS believe the basic approach taken by the proposed regulations is both necessary and appropriate to prevent the avoidance of the purposes of section 672(f). See Code section 672(f)(4) and (6). A rule that would recharacterize purported gifts only in situations where the partnership or foreign corporation was being used principally as a device to avoid U.S. tax would be unadministrable. It would place a nearly insurmountable burden on the IRS to obtain information, much of it outside the United States, and to establish that the partnership or foreign corporation was being used to avoid U.S. tax. Further, individuals do not normally receive gifts from partnerships and corporations. See, for example, *Commissioner* v. *Duberstein*, 363 U.S. 278 (1960).

The final regulations leave the basic approach essentially unaltered, but expand the number of exceptions to the general rule. They retain the exception for cases where the U.S. donee can establish that a U.S. citizen or resident alien treated (and reported) the purported gift for U.S. tax purposes as a distribution from the partnership or foreign corporation and a subsequent gift to the donee. In response to the commenters' concerns, they provide an additional exception for cases where the U.S. donee can establish that a nonresident alien individual treated and reported the purported gift for purposes of the tax laws of the country in which the nonresident alien is resident as a distribution from the partnership or foreign corporation and a subsequent gift to the donee, provided the U.S. donee timely complied with the filing requirements of section 6039F, if applicable. Finally, they provide another new exception for purported gifts from domestic partnerships that are beneficially owned (within the meaning of § 1.1441–1(c)(6)) exclusively by U.S. citizens or residents or domestic corporations.

In response to other comments, the final regulations clarify that a transfer to a U.S. donee that is a corporation will not be subject to the general rule of § 1.672(f)–4(a) to the extent the donee can establish that the transfer was a contribution to capital. The final regulations also expand the scope of the charitable contribution exception to include a transfer from a transferor that has received a ruling or determination letter from the Internal Revenue Service recognizing its exempt status under section 501(c)(3), provided that the transfer was made pursuant to the transferor's exempt purpose, the ruling or determination letter has not been revoked or modified, and there has been no material change, inconsistent with exemption, in the character, purpose, or method of operation of the organization.

The final regulations revise the rules for gratuitous transfers to U.S. donees from trusts to which partnerships or foreign corporations have made gratuitous transfers. The revisions reflect the fact that, under U.S. domestic law principles, the partners or shareholders might be treated as grantors of the trust. See § 1.671–2T(e)(4).

The final regulations also clarify that if the transferring partnership or foreign corporation receives some consideration from the U.S. donee, but the consideration is less than the fair market value of the property transferred, only the excess will be treated as a purported gift. Further, no portion will be treated as a purported gift if the U.S. donee can establish that the U.S. donee is neither related to a partner or shareholder of the transferor within the meaning of § 1.643(h)–1(e) nor has another relationship with a partner or shareholder of the transferor such that there is a reasonable basis for concluding that the partner or shareholder would make a gratuitous transfer to the U.S. donee.

Commenters said the proposed regulations overturned an early Supreme Court decision, *Bogardus* v.

Commissioner, 302 U.S. 34 (1937), which treated certain payments by an acquiring corporation in a reorganization that were paid at the instigation of former shareholders of the target corporation to employees and former employees of the target corporation as nontaxable gifts rather than as compensation. The result in *Bogardus* might well be different today under section 102(c)(1) (enacted in 1986), which provides that the exclusion from gross income for the value of property acquired by gift does not apply to any amount transferred by or for an employer to, or for the benefit of, an employee. Further, and more importantly, the payor corporation in *Bogardus* was a domestic corporation that did not treat the payments as a deductible expense and there was no avoidance of U.S. tax. Thus, *Bogardus* is distinguishable on its facts from a situation where a foreign corporation transfers property to a U.S. person who treats the transfer as a gift or bequest and there will be avoidance of U.S. tax if the purported gift is not recharacterized.

The final regulations for purported gifts are generally applicable to transfers made after August 10, 1999 by partnerships or foreign corporations, or by trusts to which partnerships or foreign corporations made gratuitous transfers after August 10, 1999.

7. Comments and Changes to § 1.672(f)–5: Special Rules

Section 1.672(f)–5(b) of the proposed regulations provided that, for purposes of § 1.672(f)–1, where the taxable year of a trust was different from the taxable year of a person who was taking an amount into account, the amount was taken into account for the taxable year of the person that included the last day of the taxable year of the trust. This rule was deleted from the final regulations, because it is no longer needed in light of the revisions to § 1.672(f)–1, which are described above in part 3 of this explanation.

Section 1.672(f)–5(c) of the proposed regulations provided that, for purposes of § 1.672(f)–4, a wholly owned business entity must be treated as a corporation, separate from its single owner. Absent this rule, an entity having a single owner could avoid the purported gift rule by electing to be disregarded, with the result that the purported gift would be received from the owner of the entity, rather than from the entity itself. The final regulations clarify that this special rule (renumbered as § 1.672(f)–5(b)) applies solely for purposes of § 1.672(f)–4. Thus, it does not apply for purposes of §§ 1.672(f)–1 through 1.672(f)–3 or § 1.672(f)–5 or for purposes of any other provision of the Code or regulations.

Section 301.7701–2(c)(2)(iii) of the proposed regulations provided that, solely for purposes of applying the rules of section 672(f)(4), a wholly owned business entity will be treated as a corporation, separate from its owner. This provision, which repeated the rule in § 1.672(f)–5(c) (renumbered as § 1.672(f)–5(b)), is not included in the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on the regulation's impact on small business.

Drafting Information. The principal authors of these regulations are M. Grace Fleeman of the Office of Associate Chief Counsel (International) and James A. Quinn of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.643(h)–1 also issued under 26 U.S.C. 643(a)(7).

Section 1.671–2T also issued under 26 U.S.C. 643(a)(7) and 672(f)(6).

Section 1.672(f)–1 also issued under 26 U.S.C. 643(a)(7) and 672(f)(6).

Section 1.672(f)–2 also issued under 26 U.S.C. 643(a)(7) and 672(f)(3) and (6).

Section 1.672(f)–3 also issued under 26 U.S.C. 643(a)(7) and 672(f)(2) and (6).

Section 1.672(f)–4 also issued under 26 U.S.C. 643(a)(7) and 672(f)(4) and (6).

Section 1.672(f)–5 also issued under 26 U.S.C. 643(a)(7) and 672(f)(6). * * *

Par. 2. Section 1.643(h)–1 is added to read as follows:

§ 1.643(h)–1 Distributions by certain foreign trusts through intermediaries.

(a) *In general*—(1) *Principal purpose of tax avoidance.* Except as provided in paragraph (b) of this section, for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code, and section 6048, any property (within the meaning of paragraph (f) of this section) that is transferred to a United States person by another person (an intermediary) who has received property from a foreign trust will be treated as property transferred directly by the foreign trust to the United States person if the intermediary received the property from the foreign trust pursuant to a plan one of the principal purposes of which was the avoidance of United States tax.

(2) *Principal purpose of tax avoidance deemed to exist.* For purposes of paragraph (a)(1) of this section, a transfer will be deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of United States tax if the United States person—

(i) Is related (within the meaning of paragraph (e) of this section) to a grantor of the foreign trust, or has another relationship with a grantor of the foreign trust that establishes a reasonable basis for concluding that the grantor of the foreign trust would make a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)) to the United States person;

(ii) Receives from the intermediary, within the period beginning twenty-four months before and ending twenty-four months after the intermediary's receipt of property from the foreign trust, either the property the intermediary received from the foreign trust, proceeds from such property, or property in substitution for such property; and

(iii) Cannot demonstrate to the satisfaction of the Commissioner that—

(A) The intermediary has a relationship with the United States person that establishes a reasonable basis for concluding that the intermediary would make a gratuitous transfer to the United States person;

(B) The intermediary acted independently of the grantor and the trustee of the foreign trust;

(C) The intermediary is not an agent of the United States person under generally applicable United States agency principles; and

(D) The United States person timely complied with the reporting requirements of section 6039F, if applicable, if the intermediary is a foreign person.

(b) *Exceptions*—(1) *Nongratuitous transfers.* Paragraph (a) of this section does not apply to the extent that either the transfer from the foreign trust to the intermediary or the transfer from the intermediary to the United States person is a transfer that is not a gratuitous transfer within the meaning of § 1.671–2T(e)(2).

(2) *Grantor as intermediary.* Paragraph (a) of this section does not apply if the intermediary is the grantor of the portion of the trust from which the property that is transferred is derived. For the definition of *grantor*, see § 1.671–2T(e).

(c) *Effect of disregarding intermediary*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the intermediary is treated as an agent of the foreign trust, and the property is treated as transferred to the United States person in the year the property is transferred, or made available, by the intermediary to the United States person. The fair market value of the property transferred is determined as of the date of the transfer by the intermediary to the United States person. For purposes of section 665(d)(2), the term *taxes imposed on the trust* includes any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the intermediary with respect to the property transferred.

(2) *Exception.* If the Commissioner determines, or if the taxpayer can demonstrate to the satisfaction of the Commissioner, that the intermediary is an agent of the United States person under generally applicable United States agency principles, the property will be treated as transferred to the United States person in the year the intermediary receives the property from the foreign trust. The fair market value of the property transferred will be determined as of the date of the transfer by the foreign trust to the intermediary. For purposes of section 901(b), any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the intermediary with respect to the property transferred will be treated as having been imposed on the United States person.

(3) *Computation of gross income of intermediary.* If property is treated as transferred directly by the foreign trust to a United States person pursuant to this section, the fair market value of such property is not taken into account in computing the gross income of the intermediary (if otherwise required to be taken into account by the intermediary but for paragraph (a) of this section).

(d) *Transfers not in excess of $10,000.* This section does not apply if, during the taxable year of the United States person, the aggregate fair market value of all property transferred to such person from all foreign trusts either directly or through one or more intermediaries does not exceed $10,000.

(e) *Related parties.* For purposes of this section, a United States person is treated as related to a grantor of a foreign trust if the United States person and the grantor are related for purposes of section 643(i)(2)(B), with the following modifications—

(1) For purposes of applying section 267 (other than section 267(f)) and section 707(b)(1), "at least 10 percent" is used instead of "more than 50 percent" each place it appears; and

(2) The principles of section 267(b)(10), using "at least 10 percent" instead of "more than 50 percent," apply to determine whether two corporations are related.

(f) *Definition of property.* For purposes of this section, the term *property* includes cash.

(g) *Examples.* The following examples illustrate the rules of this section. In each example, FT is an irrevocable foreign trust that is not treated as owned by any other person and the fair market value of the property that is transferred exceeds $10,000. The examples are as follows:

Example 1. Principal purpose of tax avoidance. FT was created in 1980 by A, a nonresident alien, for the benefit of his children and their descendants. FT's trustee, T, determines that 1000X of accumulated income should be distributed to A's granddaughter, B, who is a resident alien. Pursuant to a plan with a principal purpose of avoiding the interest charge that would be imposed by section 668, T causes FT to make a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)) of 1000X to I, a foreign person. I subsequently makes a gratuitous transfer of 1000X to B. Under paragraph (a)(1) of this section, FT is deemed to have made an accumulation distribution of 1000X directly to B.

Example 2. United States person unable to demonstrate that intermediary acted independently. GM and her daughter, M, are both nonresident aliens. M's daughter, D, is a resident alien. GM creates and funds FT for the benefit of her children. On July 1, 2001, FT makes a gratuitous transfer of XYZ stock to M. M immediately sells the XYZ stock and uses the proceeds to purchase ABC stock. On January 1, 2002, M makes a gratuitous transfer of the ABC stock to D. D is unable to demonstrate that M acted independently of GM and the trustee of FT in making the transfer to D. Under paragraph (a)(2) of this section, FT is deemed to have distributed the ABC stock to D. Under paragraph (c)(1) of this section, M is treated as an agent of FT, and the distribution is deemed to have been made on January 1, 2002.

Example 3. United States person demonstrates that specified conditions are satisfied. Assume the same facts as in *Example 2*, except that M receives 1000X cash from FT instead of XYZ stock. M gives 1000X cash to D on January 1, 2002. Also assume that M receives annual income of 5000X from her own investments and that M has given D 1000X at the beginning of each year for the past ten years. Based on this and additional information provided by D, D demonstrates to the satisfaction of the Commissioner that M has a relationship with D that establishes a reasonable basis for concluding that M would make a gratuitous transfer to D, that M acted independently of GM and the trustee of FT, that M is not an agent of D under generally applicable United States agency principles, and that D timely complied with the reporting requirements of section 6039F. FT will not be deemed under paragraph (a)(2) of this section to have made a distribution to D.

Example 4. Transfer to United States person less than 24 months before transfer to intermediary. Several years ago, A, a nonresident alien, created and funded FT for the benefit of his children and their descendants. A has a close friend, C, who also is a nonresident alien. A's granddaughter, B, is a resident alien. On December 31, 2001, C makes a gratuitous transfer of 1000X to B. On January 15, 2002, FT makes a gratuitous transfer of 1000X to C. B is unable to demonstrate that C has a relationship with B that would establish a reasonable basis for concluding that C would make a gratuitous transfer to B or that C acted independently of A and the trustee of FT in making the transfer to B. Under paragraph (a)(2) of this section, FT is deemed to have distributed 1000X directly to B. Under paragraph (c)(1) of this section, C is treated as an agent of FT, and the distribution is deemed to have been made on December 31, 2001.

Example 5. United States person receives property in substitution for property transferred to intermediary. GM and her son, S, are both nonresident aliens. S's daughter, GD, is a resident alien. GM creates and funds FT for the benefit of her children and their descendants. On July 1, 2001, FT makes a gratuitous transfer of ABC stock with a fair market value of approximately 1000X to S. On January 1, 2002, S makes a gratuitous transfer of DEF stock with a fair market value of approximately 1000X to GD. GD is unable to demonstrate that S acted independently of GM and the trustee of FT in transferring the DEF stock to GD. Under paragraph (a)(2) of this section, FT is deemed to have distributed the DEF stock to GD. Under paragraph (c)(1) of this section, S is treated as an agent of FT, and the distribution is deemed to have been made on January 1, 2002.

Example 6. United States person receives indirect loan from foreign trust. Several years ago, A, a nonresident alien, created and funded FT for the benefit of her children and their descendants. A's daughter, B, is a

resident alien. B needs funds temporarily while she is starting up her own business. If FT were to loan money directly to B, section 643(i) would apply. FT deposits 500X with FB, a foreign bank, on June 30, 2001. On July 1, 2001, FB loans 400X to B. Repayment of the loan is guaranteed by FT's 500X deposit. B is unable to demonstrate to the satisfaction of the Commissioner that FB has a relationship with B that establishes a reasonable basis for concluding that FB would make a loan to B or that FB acted independently of A and the trustee of FT in making the loan. Under paragraph (a)(2) of this section, FT is deemed to have loaned 400X directly to B on July 1, 2001. Under paragraph (c)(1) of this section, FB is treated as an agent of FT. For the treatment of loans from foreign trusts, see section 643(i).

Example 7. United States person demonstrates that specified conditions are satisfied. GM, a nonresident alien, created and funded FT for the benefit of her children and their descendants. One of GM's children is M, who is a resident alien. During the year 2001, FT makes a gratuitous transfer of 500X to M. M reports the 500X on Form 3520 as a distribution received from a foreign trust. During the year 2002, M makes a gratuitous transfer of 400X to her son, S, who also is a resident alien. M files a Form 709 treating the gratuitous transfer to S as a gift. Based on this and additional information provided by S, S demonstrates to the satisfaction of the Commissioner that M has a relationship with S that establishes a reasonable basis for concluding that M would make a gratuitous transfer to S, that M acted independently of GM and the trustee of FT, and that M is not an agent of S under generally applicable United States agency principles. FT will not be deemed under paragraph (a)(2) of this section to have made a distribution to S.

Example 8. Intermediary as agent of trust; increase in FMV. A, a nonresident alien, created and funded FT for the benefit of his children and their descendants. On December 1, 2001, FT makes a gratuitous transfer of XYZ stock with a fair market value of 85X to B, a nonresident alien. On November 1, 2002, B sells the XYZ stock to a third party in an arm's length transaction for 100X in cash. On November 1, 2002, B makes a gratuitous transfer of 98X to A's grandson, C, a resident alien. C is unable to demonstrate to the satisfaction of the Commissioner that B acted independently of A and the trustee of FT in making the transfer. Under paragraph (a)(2) of this section, FT is deemed to have made a distribution directly to C. Under paragraph (c)(1) of this section, B is treated as an agent of FT, and FT is deemed to have distributed 98X to C on November 1, 2002.

Example 9. Intermediary as agent of United States person; increase in FMV. Assume the same facts as in *Example 8*, except that the Commissioner determines that B is an agent of C under generally applicable United States agency principles. Under paragraph (c)(2) of this section, FT is deemed to have distributed 85X to C on December 1, 2001. C must take the gain of 15X into account in the year 2002.

Example 10. Intermediary as agent of trust; decrease in FMV. Assume the same facts as in *Example 8*, except that the value of the XYZ stock on November 1, 2002, is only 80X. Instead of selling the XYZ stock to a third party and transferring cash to C, B transfers the XYZ stock to C in a gratuitous transfer. Under paragraph (c)(1) of this section, FT is deemed to have distributed XYZ stock with a value of 80X to C on November 1, 2002.

Example 11. Intermediary as agent of United States person; decrease in FMV. Assume the same facts as in *Example 10*, except that the Commissioner determines that B is an agent of C under generally applicable United States agency principles. Under paragraph (c)(2) of this section, FT is deemed to have distributed XYZ stock with a value of 85X to C on December 1, 2001.

(h) *Effective date.* The rules of this section are applicable to transfers made to United States persons after August 10, 1999.

Par. 3. In § 1.671–2, paragraph (e) is revised to read as follows:

§ 1.671–2 Applicable principles.

* * * * *

(e) [Reserved] For further guidance, see § 1.671–2T(e).

Par. 4. Section 1.671–2T is added to read as follows:

§ 1.671–2T Applicable principles (temporary).

(a) through (d) [Reserved]. For further guidance, see § 1.671–2(a) through (d).

(e)(1) For purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code, a grantor includes any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer (within the meaning of paragraph (e)(2) of this section) of property to a trust. For purposes of this section, the term *property* includes cash. If a person creates or funds a trust on behalf of another person, both persons are treated as grantors of the trust. (See section 6048 for reporting requirements that apply to grantors of foreign trusts.) However, a person who creates a trust but makes no gratuitous transfers to the trust is not treated as an owner of any portion of the trust under sections 671 through 677 or 679. Also, a person who funds a trust with an amount that is directly reimbursed to such person within a reasonable period of time and who makes no other transfers to the trust that constitute gratuitous transfers is not treated as an owner of any portion of the trust under sections 671 through 677 or 679. See also § 1.672(f)–5(a).

(2)(i) A gratuitous transfer is any transfer other than a transfer for fair market value. A transfer of property to a trust may be considered a gratuitous transfer without regard to whether the transfer is treated as a gift for gift tax purposes.

(ii) For purposes of this paragraph (e), a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust. For example, rents, royalties, interest, and compensation paid to a trust are transfers for fair market value only to the extent that the payments reflect an arm's length price for the use of the property of, or for the services rendered by, the trust. For purposes of this determination, an interest in the trust is not property received from the trust. In addition, a person will not be treated as making a transfer for fair market value merely because the transferor recognizes gain on the transaction. See, for example, section 684 regarding the recognition of gain on certain transfers to foreign trusts.

(iii) For purposes of this paragraph (e), a gratuitous transfer does not include a distribution to a trust with respect to an interest held by such trust in either a trust described in paragraph (e)(3) of this section or an entity other than a trust. For example, a distribution to a trust by a corporation with respect to its stock described in section 301 is not a gratuitous transfer.

(3) A grantor includes any person who acquires an interest in a trust from a grantor of the trust if the interest acquired is an interest in certain investment trusts described in § 301.7701–4(c) of this chapter, liquidating trusts described in § 301.7701–4(d) of this chapter, or environmental remediation trusts described in § 301.7701–4(e) of this chapter.

(4) If a gratuitous transfer is made by a partnership or corporation to a trust and is for a business purpose of the partnership or corporation, the partnership or corporation will generally be treated as the grantor of the trust. For example, if a partnership makes a gratuitous transfer to a trust in order to secure a legal obligation of the partnership to a third party unrelated to the partnership, the partnership will be treated as the grantor of the trust. However, if a partnership or a corporation makes a gratuitous transfer to a trust that is not for a business purpose of the partnership or corporation but is, e.g., for the personal purposes of one or more of the partners or shareholders, the gratuitous transfer will be treated as a constructive distribution to such partners or shareholders under federal tax principles and the partners or the shareholders will be treated as the grantors of the trust. For example, if a partnership makes a gratuitous transfer to a trust that is for the benefit of a child of a partner, the gratuitous transfer will

be treated as a distribution to the partner under section 731 and a subsequent gratuitous transfer by the partner to the trust.

(5) If a trust makes a gratuitous transfer of property to another trust, the grantor of the transferor trust generally will be treated as the grantor of the transferee trust. However, if a person with a general power of appointment over the transferor trust exercises that power in favor of another trust, then such person will be treated as the grantor of the transferee trust, even if the grantor of the transferor trust is treated as the owner of the transferor trust under subpart E of part I, subchapter J, chapter 1 of the Internal Revenue Code.

(6) The following examples illustrate the rules of this paragraph (e). Unless otherwise indicated, all trusts are domestic trusts and all other persons are United States persons.

The examples are as follows:

Example 1. A creates and funds a trust, T, for the benefit of her children. B subsequently makes a gratuitous transfer to T. Under paragraph (e)(1) of this section, both A and B are grantors of T.

Example 2. A makes an investment in a fixed investment trust, T, that is classified as a trust under § 301.7701–4(c)(1) of this chapter. A is a grantor of T. B subsequently acquires A's entire interest in T. Under paragraph (e)(3) of this section, B is a grantor of T with respect to such interest.

Example 3. A, an attorney, creates a foreign trust, FT, on behalf of A's client, B, and transfers $100 to FT out of A's funds. A is reimbursed by B for the $100 transferred to FT. The trust instrument states that the trustee has discretion to distribute the income or corpus of FT to B, and B's children. Both A and B are treated as grantors of FT under paragraph (e)(1) of this section. In addition, B is treated as the owner of the entire trust under section 677. Because A is reimbursed for the $100 transferred to FT on behalf of B, A is not treated as transferring any property to FT. Therefore, A is not an owner of any portion of T under sections 671 through 677 regardless of whether A retained any power over or interest in T described in sections 673 through 677. A also is not treated as an owner of any portion of T under section 679. Both A and B are responsible parties for purposes of the reporting requirements in section 6048.

Example 4. A creates and funds a trust, T. A is not treated as an owner of any portion of the trust under subpart E. B holds an unrestricted power, exercisable solely by B, to withdraw certain amounts contributed to the trust before the end of the calendar year and to vest those amounts in B. B is treated as an owner of the portion of T that is subject to the withdrawal power under section 678(a)(1). However, B is not a grantor of T under paragraph (e)(1) of this section because B neither created T nor made a gratuitous transfer to T.

Example 5. A transfers cash to a trust, T, through a broker, in exchange for units in T. The units in T are not property for purposes of determining whether A has received fair market value under paragraph (e)(2)(ii) of this section. Therefore, A has made a gratuitous transfer to T, and, under paragraph (e)(1) of this section, A is a grantor of T.

Example 6. A borrows cash from T, a trust. A has not made any gratuitous transfers to T. Arm's length interest payments by A to T will not be treated as gratuitous transfers under paragraph (e)(2)(ii) of this section. Therefore, under paragraph (e)(1) of this section, A is not a grantor of T with respect to the interest payments.

Example 7. A, B's brother, creates a trust, T, for B's benefit and contributes $50,000 to T. The trustee invests the $50,000 in stock of Company X. C, B's uncle, sells property with a fair market value of $1,000,000 to T in exchange for the stock when it has appreciated to a fair market value of $100,000. Under paragraph (e)(2)(ii) of this section, the $900,000 excess value is a gratuitous transfer by C. Therefore, under paragraph (e)(1) of this section, A is a grantor with respect to the portion of the trust valued at $100,000, and C is a grantor of T with respect to the portion of the trust valued at $900,000. In addition, A or C or both will be treated as the owners of the respective portions of the trust of which each person is a grantor if A or C or both retain powers over or interests in such portions under sections 673 through 677.

Example 8. G creates and funds a trust, T1, for the benefit of G's children and grandchildren. After G's death, under authority granted to the trustees in the trust instrument, the trustees of T1 transfer a portion of the assets of T1 to another trust, T2, and retain a power to revoke T2 and revest the assets of T2 in T1. Under paragraphs (e)(1) and (5) of this section, G is the grantor of T1 and T2. In addition, because the trustees of T1 have retained a power to revest the assets of T2 in T1, T1 is treated as the owner of T2 under section 678(a).

Example 9. G creates and funds a trust, T1, for the benefit of B. G retains a power to revest the assets of T1 in G within the meaning of section 676. Under the trust agreement, B is given a general power of appointment over the assets of T1. B exercises the general power of appointment with respect to one-half of the corpus of T1 in favor of a trust, T2, that is for the benefit of C, B's child. Under paragraph (e)(1) of this section, G is the grantor of T1, and under paragraphs (e)(1) and (5) of this section, B is the grantor of T2.

(7) The rules of this section are applicable to any transfer to a trust, or transfer of an interest in a trust, on or after August 10, 1999. In accordance with section 7805(e)(2), the rules of this section will expire before August 12, 2002.

Par. 5. Sections 1.672(f)–1, 1.672(f)–2, 1.672(f)–3, 1.672(f)–4, and 1.672(f)–5 are added to read as follows:

§ 1.672(f)–1 Foreign persons not treated as owners.

(a) *General rule*—(1) *Application of the general rule.* Section 672(f)(1) provides that subpart E of part I, subchapter J, chapter 1 of the Internal Revenue Code (the grantor trust rules) shall apply only to the extent such application results in an amount (if any) being currently taken into account (directly or through one or more entities) in computing the income of a citizen or resident of the United States or a domestic corporation. Accordingly, the grantor trust rules apply to the extent that any portion of the trust, upon application of the grantor trust rules without regard to section 672(f), is treated as owned by a United States citizen or resident or domestic corporation. The grantor trust rules do not apply to any portion of the trust to the extent that, upon application of the grantor trust rules without regard to section 672(f), that portion is treated as owned by a person other than a United States citizen or resident or domestic corporation, unless the person is described in § 1.672(f)–2(a) (relating to certain foreign corporations treated as domestic corporations), or one of the exceptions set forth in § 1.672(f)–3 is met, (relating to: trusts where the grantor can revest trust assets; trusts where the only amounts distributable are to the grantor or the grantor's spouse; and compensatory trusts). Section 672(f) applies to domestic and foreign trusts. Any portion of the trust that is not treated as owned by a grantor or another person is subject to the rules of subparts A through D (section 641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code.

(2) *Determination of portion based on application of the grantor trust rules.* The determination of the portion of a trust treated as owned by the grantor or other person is to be made based on the terms of the trust and the application of the grantor trust rules and section 671 and the regulations thereunder.

(b) *Example.* The following example illustrates the rules of this section:

Example. (i) A, a nonresident alien, funds an irrevocable domestic trust, DT, for the benefit of his son, B, who is a United States citizen, with stock of Corporation X. A's brother, C, who also is a United States citizen, contributes stock of Corporation Y to the trust for the benefit of B. A has a reversionary interest within the meaning of section 673 in the X stock that would cause A to be treated as the owner of the X stock upon application of the grantor trust rules without regard to section 672(f). C has a reversionary interest within the meaning of section 673 in the Y stock that would cause C to be treated as the owner of the Y stock upon application of the grantor trust rules without regard to section 672(f). The trustee has discretion to accumulate or currently distribute income of DT to B.

(ii) Because A is a nonresident alien, application of the grantor trust rules without regard to section 672(f) would not result in the portion of the trust consisting of the X stock being treated as owned by a United States citizen or resident. None of the exceptions in § 1.672(f)–3 applies because A cannot revest the X stock in A, amounts may be distributed during A's lifetime to B, who is neither a grantor nor a spouse of a grantor, and the trust is not a compensatory trust. Therefore, pursuant to paragraph (a)(1) of this section, A is not treated as an owner under subpart E of part I, subchapter J, chapter 1 of the Internal Revenue Code, of the portion of the trust consisting of the X stock. Any distributions from such portion of the trust are subject to the rules of subparts A through D (641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code.

(iii) Because C is a United States citizen, paragraph (a)(1) of this section does not prevent C from being treated under section 673 as the owner of the portion of the trust consisting of the Y stock.

(c) *Effective date.* The rules of this section are applicable to taxable years of a trust beginning after August 10, 1999.

§ 1.672(f)–2 Certain foreign corporations.

(a) *Application of general rule.* Subject to the provisions of paragraph (b) of this section, if the owner of any portion of a trust upon application of the grantor trust rules without regard to section 672(f) is a controlled foreign corporation (as defined in section 957), a passive foreign investment company (as defined in section 1297), or a foreign personal holding company (as defined in section 552), the corporation will be treated as a domestic corporation for purposes of applying the rules of § 1.672(f)–1.

(b) *Gratuitous transfers to United States persons*—(1) *Transfer from trust to which corporation made a gratuitous transfer.* If a trust (or portion of a trust) to which a controlled foreign corporation, passive foreign investment company, or foreign personal holding company has made a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)), makes a gratuitous transfer to a United States person, the controlled foreign corporation, passive foreign investment company, or foreign personal holding company, as the case may be, is treated as a foreign corporation for purposes of § 1.672(f)–4(c), relating to gratuitous transfers from trusts (or portions of trusts) to which a partnership or foreign corporation has made a gratuitous transfer.

(2) *Transfer from trust over which corporation has a section 678 power.* If a trust (or portion of a trust) that a controlled foreign corporation, passive foreign investment company, or foreign personal holding company is treated as owning under section 678 makes a gratuitous transfer to a United States person, the controlled foreign corporation, passive foreign investment company, or foreign personal holding company, as the case may be, is treated as a foreign corporation that had made a gratuitous transfer to the trust (or portion of a trust) and the rules of § 1.672(f)–4(c) apply.

(c) *Special rules for passive foreign investment companies*—(1) *Application of section 1297.* For purposes of determining whether a foreign corporation is a passive foreign investment company as defined in section 1297, the grantor trust rules apply as if section 672(f) had not come into effect.

(2) *References to renumbered Internal Revenue Code section.* For taxable years of shareholders beginning on or before December 31, 1997, and taxable years of passive foreign investment companies ending with or within such taxable years of the shareholders, all references in this § 1.672(f)–2 to section 1297 are deemed to be references to section 1296.

(d) *Examples.* The following examples illustrate the rules of this section. In each example, FT is an irrevocable foreign trust, and CFC is a controlled foreign corporation. The examples are as follows:

Example 1. Application of general rule. CFC creates and funds FT. CFC is the grantor of FT within the meaning of § 1.671–2T(e). CFC has a reversionary interest in FT within the meaning of section 673 that would cause CFC to be treated as the owner of FT upon application of the grantor trust rules without regard to section 672(f). Under paragraph (a) of this section, CFC is treated as a domestic corporation for purposes of applying the general rule of § 1.672(f)–1. Thus, § 1.672(f)–1 does not prevent CFC from being treated as the owner of FT under section 673.

Example 2. Distribution from trust to which CFC made gratuitous transfer. A, a nonresident alien, owns 40 percent of the stock of CFC. A's brother B, a resident alien, owns the other 60 percent of the stock of CFC. CFC makes a gratuitous transfer to FT. FT makes a gratuitous transfer to A's daughter, C, who is a resident alien. Under paragraph (b)(1) of this section, CFC will be treated as a foreign corporation for purposes of § 1.672(f)–4(c). For further guidance, see § 1.672(f)–4(g) *Example 2* through *Example 4*.

(e) *Effective date.* The rules of this section are generally applicable to taxable years of shareholders of controlled foreign corporations, passive foreign investment companies, and foreign personal holding companies beginning after August 10, 1999, and taxable years of controlled foreign corporations, passive foreign investment companies, and foreign personal holding companies ending with or within such taxable years of the shareholders.

§ 1.672(f)–3 Exceptions to general rule.

(a) *Certain revocable trusts*—(1) *In general.* Subject to the provisions of paragraph (a)(2) of this section, the general rule of § 1.672(f)–1 does not apply to any portion of a trust for a taxable year of the trust if the power to revest absolutely in the grantor title to such portion is exercisable solely by the grantor (or, in the event of the grantor's incapacity, by a guardian or other person who has unrestricted authority to exercise such power on the grantor's behalf) without the approval or consent of any other person. If the grantor can exercise such power only with the approval of a related or subordinate party who is subservient to the grantor, such power is treated as exercisable solely by the grantor. For the definition of *grantor*, see § 1.671–2T(e). For the definition of *related or subordinate party*, see § 1.672(c)–1. For purposes of this paragraph (a), a related or subordinate party is subservient to the grantor unless the presumption in the last sentence of § 1.672(c)–1 is rebutted by a preponderance of the evidence. A trust (or portion of a trust) that fails to qualify for the exception provided by this paragraph (a) for a particular taxable year of the trust will be subject to the general rule of § 1.672(f)–1 for that taxable year and all subsequent taxable years of the trust.

(2) *183-day rule.* For purposes of paragraph (a)(1) of this section, the grantor is treated as having a power to revest for a taxable year of the trust only if the grantor has such power for a total of 183 or more days during the taxable year of the trust. If the first or last taxable year of the trust (including the year of the grantor's death) is less than 183 days, the grantor is treated as having a power to revest for purposes of paragraph (a)(1) of this section if the grantor has such power for each day of the first or last taxable year, as the case may be.

(3) *Grandfather rule for certain revocable trusts in existence on September 19, 1995.* Subject to the rules of paragraph (d) of this section (relating to separate accounting for gratuitous transfers to the trust after September 19, 1995), the general rule of § 1.672(f)–1 does not apply to any portion of a trust that was treated as owned by the grantor under section 676 on September 19, 1995, as long as the trust would continue to be so treated thereafter. However, the preceding sentence does not apply to any portion of the trust attributable to gratuitous transfers to the trust after September 19, 1995.

(4) *Examples.* The following examples illustrate the rules of this paragraph (a):

Example 1. Grantor is owner. FP1, a foreign person, creates and funds a revocable trust, T, for the benefit of FP1's children, who are resident aliens. The trustee is a foreign bank, FB, that is owned and controlled by FP1 and FP2, who is FP1's brother. The power to revoke T and revest absolutely in FP1 title to the trust property is exercisable by FP1, but only with the approval or consent of FB. The trust instrument contains no standard that FB must apply in determining whether to approve or consent to the revocation of T. There are no facts that would suggest that FB is not subservient to FP1. Therefore, the exception in paragraph (a)(1) of this section is applicable.

Example 2. Death of grantor. Assume the same facts as in Example 1, except that FP1 dies. After FP1's death, FP2 has the power to withdraw the assets of T, but only with the approval of FB. There are no facts that would suggest that FB is not subservient to FP2. However, the exception in paragraph (a)(1) of this section is no longer applicable, because FP2 is not a grantor of T within the meaning of § 1.671–2T(e).

Example 3. Trustee is not related or subordinate party. Assume the same facts as in *Example 1*, except that neither FP1 nor any member of FP1's family has any substantial ownership interest or other connection with FB. FP1 can remove and replace FB at any time for any reason. Although FP1 can replace FB with a related or subordinate party if FB refuses to approve or consent to FP1's decision to revest the trust property in himself, FB is not a related or subordinate party. Therefore, the exception in paragraph (a)(1) of this section is not applicable.

Example 4. Unrelated trustee will consent to revocation. FP, a foreign person, creates and funds an irrevocable trust, T. The trustee is a foreign bank, FB, that is not a related or subordinate party within the meaning of § 1.672(c)–1. FB has the discretion to distribute trust income or corpus to beneficiaries of T, including FP. Even if FB would in fact distribute all the trust property to FP if requested to do so by FP, the exception in paragraph (a)(1) of this section is not applicable, because FP does not have the power to revoke T.

(b) *Certain trusts that can distribute only to the grantor or the spouse of the grantor*—(1) *In general.* The general rule of § 1.672(f)–1 does not apply to any trust (or portion of a trust) if at all times during the lifetime of the grantor the only amounts distributable (whether income or corpus) from such trust (or portion thereof) are amounts distributable to the grantor or the spouse of the grantor. For purposes of this paragraph (b), payments of amounts that are not gratuitous transfers (within the meaning of § 1.671–2T(e)(2)) are not amounts distributable. For the definition of *grantor*, see § 1.671–2T(e).

(2) *Amounts distributable in discharge of legal obligations*—(i) *In general.* A trust (or portion of a trust) does not fail to satisfy paragraph (b)(1) of this section solely because amounts are distributable from the trust (or portion thereof) in discharge of a legal obligation of the grantor or the spouse of the grantor. Subject to the provisions of paragraph (b)(2)(ii) of this section, an obligation is considered a legal obligation for purposes of this paragraph (b)(2)(i) if it is enforceable under the local law of the jurisdiction in which the grantor (or the spouse of the grantor) resides.

(ii) *Related parties*—(A) *In general.* Except as provided in paragraph (b)(2)(ii)(B) of this section, an obligation to a person who is a related person for purposes of § 1.643(h)–1(e) (other than an individual who is legally separated from the grantor under a decree of divorce or of separate maintenance) is not a legal obligation for purposes of paragraph (b)(2)(i) of this section unless it was contracted bona fide and for adequate and full consideration in money or money's worth (see § 20.2043–1 of this chapter).

(B) *Exceptions*—(*1*) *Amounts distributable in support of certain individuals.* Paragraph (b)(2)(ii)(A) of this section does not apply with respect to amounts that are distributable from the trust (or portion thereof) to support an individual who—

(*i*) Would be treated as a dependent of the grantor or the spouse of the grantor under section 152(a)(1) through (9), without regard to the requirement that over half of the individual's support be received from the grantor or the spouse of the grantor; and

(*ii*) Is either permanently and totally disabled (within the meaning of section 22(e)(3)), or less than 19 years old.

(*2*) *Certain potential support obligations.* The fact that amounts might become distributable from a trust (or portion of a trust) in discharge of a potential obligation under local law to support an individual other than an individual described in paragraph (b)(2)(ii)(B)(*1*) of this section is disregarded if such potential obligation is not reasonably expected to arise under the facts and circumstances.

(*3*) *Reinsurance trusts.* [Reserved]

(3) *Grandfather rule for certain section 677 trusts in existence on September 19, 1995.* Subject to the rules of paragraph (d) of this section (relating to separate accounting for gratuitous transfers to the trust after September 19, 1995), the general rule of § 1.672(f)–1 does not apply to any portion of a trust that was treated as owned by the grantor under section 677 (other than section 677(a)(3)) on September 19, 1995, as long as the trust would continue to be so treated thereafter. However, the preceding sentence does not apply to any portion of the trust attributable to gratuitous transfers to the trust after September 19, 1995.

(4) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. Amounts distributable only to grantor or grantor's spouse. H and his wife, W, are both nonresident aliens. H is 70 years old, and W is 65. H and W have a 30-year-old child, C, a resident alien. There is no reasonable expectation that H or W will ever have an obligation under local law to support C or any other individual. H creates and funds an irrevocable trust, FT, using only his separate property. H is the grantor of FT within the meaning of § 1.671–2T(e). Under the terms of FT, the only amounts distributable (whether income or corpus) from FT as long as either H or W is alive are amounts distributable to H or W. Upon the death of both H and W, C may receive distributions from FT. During H's lifetime, the exception in paragraph (b)(1) of this section is applicable.

Example 2. Effect of grantor's death. Assume the same facts as in *Example 1*. H predeceases W. Assume that W would be treated as owning FT under section 678 if the grantor trust rules were applied without regard to section 672(f). The exception in paragraph (b)(1) of this section is no longer applicable, because W is not a grantor of FT within the meaning of § 1.671–2T(e).

Example 3. Amounts temporarily distributable to person other than grantor or grantor's spouse. Assume the same facts as in *Example 1*, except that C (age 30) is a law student at the time FT is created and the trust instrument provides that, as long as C is in law school, amounts may be distributed from FT to pay C's expenses. Thereafter, the only amounts distributable from FT as long as either H or W is alive will be amounts distributable to H or W. Even assuming there is an enforceable obligation under local law for H and W to support C while he is in school, distributions from FT in payment of C's expenses cannot qualify as distributions in discharge of a legal obligation under paragraph (b)(2) of this section, because C is neither permanently and totally disabled nor less than 19 years old. The exception in paragraph (b)(1) of this section is not applicable. After C graduates from law school, the exception in paragraph (b)(1) still will not be applicable, because amounts were distributable to C during the lifetime of H.

Example 4. Fixed investment trust. FC, a foreign corporation, invests in a domestic fixed investment trust, DT, that is classified as a trust under § 301.7701–4(c)(1) of this chapter. Under the terms of DT, the only amounts that are distributable from FC's portion of DT are amounts distributable to FC. The exception in paragraph (b)(1) of this section is applicable to FC's portion of DT.

Example 5. Reinsurance trust. A domestic insurance company, DI, reinsures a portion of its business with an unrelated foreign insurance company, FI. To satisfy state regulatory requirements, FI places the premiums in an irrevocable domestic trust, DT. The trust funds are held by a United States bank and may be used only to pay claims arising out of the reinsurance policies, which are legally enforceable under the local

law of the jurisdiction in which FI resides. On the termination of DT, any assets remaining will revert to FI. Because the only amounts that are distributable from DT are distributable either to FI or in discharge of FI's legal obligations within the meaning of paragraph (b)(2)(i) of this section, the exception in paragraph (b)(1) of this section is applicable.

Example 6. Trust that provides security for loan. FC, a foreign corporation, borrows money from B, an unrelated bank, to finance the purchase of an airplane. FC creates a foreign trust, FT, to hold the airplane as security for the loan from B. The only amounts that are distributable from FT while the loan is outstanding are amounts distributable to B in the event that FC defaults on its loan from B. When FC repays the loan, the trust assets will revert to FC. The loan is a legal obligation of FC within the meaning of paragraph (b)(2)(i) of this section, because it is enforceable under the local law of the country in which FC is incorporated. Paragraph (b)(2)(ii) of this section is not applicable, because B is not a related person for purposes of § 1.643(h)–1(e). The exception in paragraph (b)(1) of this section is applicable.

(c) *Compensatory trusts*—(1) *In general.* The general rule of § 1.672(f)–1 does not apply to any portion of—

(i) A nonexempt employees' trust described in section 402(b), including a trust created on behalf of a self-employed individual;

(ii) A trust, including a trust created on behalf of a self-employed individual, that would be a nonexempt employees' trust described in section 402(b) but for the fact that the trust's assets are not set aside from the claims of creditors of the actual or deemed transferor within the meaning of § 1.83–3(e); and

(iii) Any additional category of trust that the Commissioner may designate in revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(2) *Exceptions.* The Commissioner may, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), designate categories of compensatory trusts to which the general rule of paragraph (c)(1) of this section does not apply.

(d) *Separate accounting for gratuitous transfers to grandfathered trusts after September 19, 1995.* If a trust that was treated as owned by the grantor under section 676 or 677 (other than section 677(a)(3)) on September 19, 1995, contains both amounts held in the trust on September 19, 1995, and amounts that were gratuitously transferred to the trust after September 19, 1995, paragraphs (a)(3) and (b)(3) of this section apply only if the amounts that were gratuitously transferred to the trust after September 19, 1995, are treated as a separate portion of the trust that is accounted for under the rules of § 1.671–3(a)(2). If the amounts that were gratuitously transferred to the trust after September 19, 1995 are not so accounted for, the general rule of § 1.672(f)–1 applies to the entire trust. If such amounts are so accounted for, and without regard to whether there is physical separation of the assets, the general rule of § 1.672(f)–1 does not apply to the portion of the trust that is attributable to amounts that were held in the trust on September 19, 1995.

(e) *Effective date.* The rules of this section are generally applicable to taxable years of a trust beginning after August 10, 1999. The initial separate accounting required by paragraph (d) of this section must be prepared by the due date (including extensions) for the tax return of the trust for the first taxable year of the trust beginning after August 10, 1999.

§ 1.672(f)–4 Recharacterization of purported gifts.

(a) *In general*—(1) *Purported gifts from partnerships.* Except as provided in paragraphs (b), (e), and (f) of this section, and without regard to the existence of any trust, if a United States person (United States donee) directly or indirectly receives a purported gift or bequest (as defined in paragraph (d) of this section) from a partnership, the purported gift or bequest must be included in the United States donee's gross income as ordinary income.

(2) *Purported gifts from foreign corporations.* Except as provided in paragraphs (b), (e), and (f) of this section, and without regard to the existence of any trust, if a United States donee directly or indirectly receives a purported gift or bequest (as defined in paragraph (d) of this section) from any foreign corporation, the purported gift or bequest must be included in the United States donee's gross income as if it were a distribution from the foreign corporation. If the foreign corporation is a passive foreign investment company (within the meaning of section 1297), the rules of section 1291 apply. For purposes of section 1012, the United States donee is not treated as having basis in the stock of the foreign corporation. However, for purposes of section 1223, the United States donee is treated as having a holding period in the stock of the foreign corporation on the date of the deemed distribution equal to the weighted average of the holding periods of the actual interest holders (other than any interest holders who treat the portion of the purported gift attributable to their interest in the foreign corporation in the manner described in paragraph (b)(1) of this section). For purposes of section 902, a United States donee that is a domestic corporation is not treated as owning any voting stock of the foreign corporation.

(b) *Exceptions*—(1) *Partner or shareholder treats transfer as distribution and gift.* Paragraph (a) of this section does not apply to the extent the United States donee can demonstrate to the satisfaction of the Commissioner that either—

(i) A United States citizen or resident alien individual who directly or indirectly holds an interest in the partnership or foreign corporation treated and reported the purported gift or bequest for United States tax purposes as a distribution to such individual and a subsequent gift or bequest to the United States donee; or

(ii) A nonresident alien individual who directly or indirectly holds an interest in the partnership or foreign corporation treated and reported the purported gift or bequest for purposes of the tax laws of the nonresident alien individual's country of residence as a distribution to such individual and a subsequent gift or bequest to the United States donee, and the United States donee timely complied with the reporting requirements of section 6039F, if applicable.

(2) *All beneficial owners of domestic partnership are United States citizens or residents or domestic corporations.* Paragraph (a)(1) of this section does not apply to a purported gift or bequest from a domestic partnership if the United States donee can demonstrate to the satisfaction of the Commissioner that all beneficial owners (within the meaning of § 1.1441–1(c)(6)) of the partnership are United States citizens or residents or domestic corporations.

(3) *Contribution to capital of corporate United States donee.* Paragraph (a) of this section does not apply to the extent a United States donee that is a corporation can establish that the purported gift or bequest was treated for United States tax purposes as a contribution to the capital of the United States donee to which section 118 applies.

(4) *Charitable transfers.* Paragraph (a) of this section does not apply if either—

(i) The United States donee is described in section 170(c); or

(ii) The transferor has received a ruling or determination letter, which has been neither revoked nor modified, from the Internal Revenue Service recognizing its exempt status under section 501(c)(3), and the transferor made the transfer pursuant to an exempt

purpose for which the transferor was created or organized. For purposes of the preceding sentence, a ruling or determination letter recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization.

(c) *Certain transfers from trusts to which a partnership or foreign corporation has made a gratuitous transfer—(1) Generally treated as distribution from partnership or foreign corporation.* Except as provided in paragraphs (c)(2) and (3) of this section, if a United States donee receives a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)) from a trust (or portion of a trust) to which a partnership or foreign corporation has made a gratuitous transfer, the United States donee must treat the transfer as a purported gift or bequest from the partnership or foreign corporation that is subject to the rules of paragraph (a) of this section (including the exceptions in paragraphs (b) and (f) of this section). This paragraph (c) applies without regard to who is treated as the grantor of the trust (or portion thereof) under § 1.671–2T(e)(4).

(2) *Alternative rule.* Except as provided in paragraph (c)(3) of this section, if the United States tax computed under the rules of paragraphs (a) and (c)(1) of this section does not exceed the United States tax that would be due if the United States donee treated the transfer as a distribution from the trust (or portion thereof), paragraph (c)(1) of this section does not apply and the United States donee must treat the transfer as a distribution from the trust (or portion thereof) that is subject to the rules of subparts A through D (section 641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. For purposes of paragraph (f) of this section, the transfer is treated as a purported gift or bequest from the partnership or foreign corporation that made the gratuitous transfer to the trust (or portion thereof).

(3) *Exception.* Neither paragraph (c)(1) of this section nor paragraph (c)(2) of this section applies to the extent the United States donee can demonstrate to the satisfaction of the Commissioner that the transfer represents an amount that is, or has been, taken into account for United States tax purposes by a United States citizen or resident or a domestic corporation. A transfer will be deemed to be made first out of amounts that have not been taken into account for United States tax purposes by a United States citizen or resident or a domestic corporation, unless the United States donee can demonstrate to the satisfaction of the Commissioner that another ordering rule is more appropriate.

(d) *Definition of purported gift or bequest—(1) In general.* Subject to the provisions of paragraphs (d)(2) and (3) of this section, *a purported gift or bequest* for purposes of this section is any transfer of property by a partnership or foreign corporation other than a transfer for fair market value (within the meaning of § 1.671–2T(e)(2)(ii)) to a person who is not a partner in the partnership or a shareholder of the foreign corporation (or to a person who is a partner in the partnership or a shareholder of a foreign corporation, if the amount transferred is inconsistent with the partner's interest in the partnership or the shareholder's interest in the corporation, as the case may be). For purposes of this section, the term *property* includes cash.

(2) *Transfers for less than fair market value—(i) Excess treated as purported gift or bequest.* Except as provided in paragraph (d)(2)(ii) of this section, if a transfer described in paragraph (d)(1) of this section is for less than fair market value, the excess of the fair market value of the property transferred over the value of the property received, services rendered, or the right to use property is treated as a purported gift or bequest.

(ii) *Exception for transfers to unrelated parties.* No portion of a transfer described in paragraph (d)(1) of this section will be treated as a purported gift or bequest for purposes of this section if the United States donee can demonstrate to the satisfaction of the Commissioner that the United States donee is not related to a partner or shareholder of the transferor within the meaning of § 1.643(h)–1(e) or does not have another relationship with a partner or shareholder of the transferor that establishes a reasonable basis for concluding that the transferor would make a gratuitous transfer to the United States donee.

(e) *Prohibition against affirmative use of recharacterization by taxpayers.* A taxpayer may not use the rules of this section if a principal purpose for using such rules is the avoidance of any tax imposed by the Internal Revenue Code. Thus, with respect to such taxpayer, the Commissioner may depart from the rules of this section and recharacterize (for all purposes of the Internal Revenue Code) the transfer in accordance with its form or its economic substance.

(f) *Transfers not in excess of $10,000.* This section does not apply if, during the taxable year of the United States donee, the aggregate amount of purported gifts or bequests that is transferred to such United States donee directly or indirectly from all partnerships or foreign corporations that are related (within the meaning of section 643(i)) does not exceed $10,000. The aggregate amount must include gifts or bequests from persons that the United States donee knows or has reason to know are related to the partnership or foreign corporation (within the meaning of section 643(i)).

(g) *Examples.* The following examples illustrate the rules of this section. In each example, the amount that is transferred exceeds $10,000. The examples are as follows:

Example 1. Distribution from foreign corporation. FC is a foreign corporation that is wholly owned by A, a nonresident alien who is resident in Country C. FC makes a gratuitous transfer of property directly to A's daughter, B, who is a resident alien. Under paragraph (a)(2) of this section, B generally must treat the transfer as a dividend from FC to the extent of FC's earnings and profits and as an amount received in excess of basis thereafter. If FC is a passive foreign investment company, B must treat the amount received as a distribution under section 1291. B will be treated as having the same holding period as A. However, under paragraph (b)(1)(ii) of this section, if B can establish to the satisfaction of the Commissioner that, for purposes of the tax laws of Country C, A treated (and reported, if applicable) the transfer as a distribution to himself and a subsequent gift to B, B may treat the transfer as a gift (provided B timely complied with the reporting requirements of section 6039F, if applicable).

Example 2. Distribution of corpus from trust to which foreign corporation made gratuitous transfer. FC is a foreign corporation that is wholly owned by A, a nonresident alien who is resident in Country C. FC makes a gratuitous transfer to a foreign trust, FT, that has no other assets. FT immediately makes a gratuitous transfer in the same amount to A's daughter, B, who is a resident alien. Under paragraph (c)(1) of this section, B must treat the transfer as a transfer from FC that is subject to the rules of paragraph (a)(2) of this section. Under paragraph (a)(2) of this section, B must treat the transfer as a dividend from FC unless she can establish to the satisfaction of the Commissioner that, for purposes of the tax laws of Country C, A treated (and reported, if applicable) the transfer as a distribution to himself and a subsequent gift to B and that B timely complied with the reporting requirements of section 6039F, if applicable. The alternative rule in paragraph (c)(2) of this section would not apply as long as the United States tax computed under the rules of paragraph (a)(2) of this section is equal to or greater than the United States tax that would be due if the transfer were treated as a distribution from FT.

Example 3. Accumulation distribution from trust to which foreign corporation made gratuitous transfer. FC is a foreign corporation that is wholly owned by A, a nonresident alien. FC is not a passive foreign

investment company (as defined in section 1297). FC makes a gratuitous transfer of 100X to a foreign trust, FT, on January 1, 2001. FT has no other assets on January 1, 2001. Several years later, FT makes a gratuitous transfer of 1000X to A's daughter, B, who is a United States resident. Assume that the section 668 interest charge on accumulation distributions will apply if the transfer is treated as a distribution from FT. Under the alternative rule of paragraph (c)(2) of this section, B must treat the transfer as an accumulation distribution from FT, because the resulting United States tax liability is greater than the United States tax that would be due if the transfer were treated as a transfer from FC that is subject to the rules of paragraph (a) of this section.

Example 4. Transfer from trust that is treated as owned by United States citizen. Assume the same facts as in *Example 3*, except that A is a United States citizen. Assume that A treats and reports the transfer to FT as a constructive distribution to himself, followed by a gratuitous transfer to FT, and that A is properly treated as the grantor of FT within the meaning of § 1.671–2T(e). A is treated as the owner of FT under section 679 and, as required by section 671 and the regulations thereunder, A includes all of FT's items of income, deductions, and credit in computing his taxable income and credits. Neither paragraph (c)(1) nor paragraph (c)(2) of this section is applicable, because the exception in paragraph (c)(3) of this section applies.

Example 5. Transfer for less than fair market value. FC is a foreign corporation that is wholly owned by A, a nonresident alien. On January 15, 2001, FC transfers property directly to A's daughter, B, a resident alien, in exchange for 90X. The Commissioner later determines that the fair market value of the property at the time of the transfer was 100X. Under paragraph (d)(2)(i) of this section, 10X will be treated as a purported gift to B on January 15, 2001.

(h) *Effective date.* The rules of this section are generally applicable to any transfer after August 10, 1999, by a partnership or foreign corporation, or by a trust to which a partnership or foreign corporation makes a gratuitous transfer after August 10, 1999.

1.672(f)–5 Special rules.

(a) *Transfers by certain beneficiaries to foreign grantor*—(1) *In general.* If, but for section 672(f)(5), a foreign person would be treated as the owner of any portion of a trust, any United States beneficiary of the trust is treated as the grantor of a portion of the trust to the extent the United States beneficiary directly or indirectly made transfers of property to such foreign person (without regard to whether the United States beneficiary was a United States beneficiary at the time of any transfer) in excess of transfers to the United States beneficiary from the foreign person. The rule of this paragraph (a) does not apply to the extent the United States beneficiary can demonstrate to the satisfaction of the Commissioner that the transfer by the United States beneficiary to the foreign person was wholly unrelated to any transaction involving the trust. For purposes of this paragraph (a), the term property includes cash, and a transfer of property does not include a transfer that is not a gratuitous transfer (within the meaning of § 1.671–2T(e)(2)). In addition, a gift is not taken into account to the extent such gift would not be characterized as a taxable gift under section 2503(b). For a definition of United States beneficiary, see section 679.

(2) *Examples.* The following examples illustrate the rules of this section:

Example 1. A, a nonresident alien, contributes property to FC, a foreign corporation that is wholly owned by A. FC creates a foreign trust, FT, for the benefit of A and A's children. FT is revocable by FC without the approval or consent of any other person. FC funds FT with the property received from A. A and A's family move to the United States. Under paragraph (a)(1) of this section, A is treated as a grantor of FT. (A may also be treated as an owner of FT under section 679(a)(4).)

Example 2. B, a United States citizen, makes a gratuitous transfer of $1 million to B's uncle, C, a nonresident alien. C creates a foreign trust, FT, for the benefit of B and B's children. FT is revocable by C without the approval or consent of any other person. C funds FT with the property received from B. Under paragraph (a)(1) of this section, B is treated as a grantor of FT. (B also would be treated as an owner of FT as a result of section 679.)

(b) *Entity characterization.* Entities generally are characterized under United States tax principles for purposes of §§ 1.672(f)–1 through 1.672(f)–5. See §§ 301.7701–1 through 301.7701–4 of this chapter. However, solely for purposes of § 1.672(f)–4, a transferor that is a wholly owned business entity is treated as a corporation, separate from its single owner.

(c) *Effective date.* The rules in paragraph (a) of this section are applicable to transfers to trusts on or after August 10, 1999. The rules in paragraph (b) of this section are applicable August 10, 1999.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: July 23, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–19928 Filed 8–5–99; 2:09 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 26, 29, 57, and 75

RIN 1219–AA98

Improving and Eliminating Regulations; Lighting Equipment, Coal Dust/Rock Dust Analyzers, and Methane Detectors

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; technical amendments.

SUMMARY: We are removing approval regulations for lighting equipment for illuminating underground workings; portable coal dust/rock dust analyzers; and continuous duty, warning light, portable methane detectors. These regulations are unnecessary because they address equipment that is addressed by other MSHA regulations. Removal of these parts will not reduce protection for miners. This final rule will also make conforming amendments to safety regulations that require the use of this approved equipment in underground coal mines and in gassy underground metal and nonmetal mines.

EFFECTIVE DATE: This regulation is effective October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

In response to the Administration's regulatory reinvention initiative, we conducted a review of our existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that can be removed or revised without reducing protection afforded miners. This final rule is part of our ongoing plan to improve our regulations. The removal of parts 26 and 29, from title 30 of the Code of Federal Regulations (30 CFR), will not reduce protection to miners. These provisions are covered by other MSHA regulations. Conforming amendments to other 30 CFR parts will be made, as appropriate. To increase awareness of this regulatory action, we will mail a copy of this final rule to all mine operators and miners' representatives and post it on MSHA's Website at www.msha.gov.

Even though we are removing 30 CFR parts 26 and 29, lighting equipment for illuminating underground workings and continuous duty, warning light, portable methane detectors approved by MSHA

under these parts can continue to be manufactured and distributed for use in mines as long as this is done in accordance with the drawings and specifications upon which such approvals were based and there are no changes in the approved devices.

On September 3, 1998, we published a proposed rule in the **Federal Register** (63 FR 47120) requesting public comments on our intention to remove 30 CFR parts 26 and 29 and make conforming changes to 30 CFR parts 57 and 75. We allowed 60 days for public comment and received no comments, no requests for an extension of the comment period, and no requests for a public hearing on the proposal.

II. Discussion of Final Rule

A. 30 CFR 26—Lighting Equipment for Illuminating Underground Workings

In 1958, we developed the regulations in 30 CFR 26 to establish specifications for the approval of mine lighting systems that are used independently, *i.e.*, not connected to an approved machine. These specifications contain permissibility requirements to ensure that the electric system and components do not pose an explosion hazard, and design requirements to address the adequacy of the light intensity. MSHA has received only one application for approval of mine lighting systems under 30 CFR 26 since 1978.

Even though we are removing 30 CFR 26, lighting systems approved under this part can continue to be manufactured and distributed for use in mines as long as done in accordance with the drawings and specifications upon which the approval is based and provided there are no changes in the approved systems. We will not permit changes in the approved systems under 30 CFR 26 once it is deleted. Any future changes to lighting systems approved under 30 CFR 26 will require a new application for approval under 30 CFR 18.

Currently, approvals of lighting systems which are used independently, as well as those which are part of MSHA-approved equipment, can be requested under the requirements of 30 CFR 18, Electric Motor Driven Mine Equipment and Accessories. The general requirements in 30 CFR 18, subpart A; certain design and construction requirements in subpart B (e.g., 18.20, 18.23, 18.24, 18.25, 18.30, 18.35, 18.41, 18.48, 18.50, and 18.51); and certain inspections and tests in subpart C (e.g., 18.62, 18.66, 18.67, and 18.68), as well as any other provisions necessary to address the design and performance of the system, are applicable to the approval of independent mine lighting systems. For example, an evaluation for intrinsic safety under 30 CFR 18 includes a "Lamp Bulb Breakage" test which consists of breaking the bulb in the presence of an explosive mixture of methane-in-air. In addition to the permissibility and intrinsic safety requirements in 30 CFR 18, provisions in 30 CFR 75.1719–1 through 75.1719–3 contain voltage limitations, specify the amount of light required in mine workings, and address other safety requirements applicable to mine lighting systems.

For these reasons, we believe that the approval regulations in 30 CFR 26 are unnecessary. Therefore, we are removing part 26. This final rule will not reduce the protection afforded to miners.

B. 30 CFR 29—Portable Coal Dust/Rock Dust Analyzers, and Continuous Duty, Warning Light, Portable Methane Detectors for Use in Coal Mines

We originally developed the regulations in 30 CFR 29 in the early 1970's to provide performance requirements for the approval of portable coal dust/rock dust analyzers for use in measuring the incombustible content of mine dust; and for the approval of continuous duty, warning light, portable methane detectors for use in providing a visual signal of the presence of methane. At that time, we anticipated that there would be a need for the approval of these types of instruments. We have now determined, however, that the approval requirements in 30 CFR 29 for both portable coal dust/rock dust analyzers and continuous duty, warning light, portable methane detectors are unnecessary. Therefore, we are removing part 29.

Although we are removing 30 CFR 29, any devices approved under this part can continue to be manufactured and distributed for use in mines as long as done in accordance with the drawings and specifications upon which the approval is based and provided there are no changes in the approved devices. To clarify this point, MSHA has modified the conforming amendments in parts 57 and 75 to indicate that devices approved under part 29 prior to its removal (30 CFR part 29 contained in the 30 CFR, parts 1–199, edition, revised as of July 1, 1999), may continue to be used. We will not permit changes in these approved devices under 30 CFR 29 once it is deleted. Any future changes to such devices approved under 30 CFR 29 will require a new application for approval under 30 CFR 18 or 22, as discussed below.

Portable coal dust/rock dust analyzers. We have never issued an approval for a portable coal dust/rock dust analyzer under 30 CFR 29. An experimental approval was granted in the late 1980's; however, the project was never completed. We believe that 30 CFR 29 is no longer necessary or viable for approval of a portable coal dust/rock dust analyzer because there has been negligible interest in approval of such an instrument. Furthermore, the performance requirements in 30 CFR 29 for portable coal dust/rock dust analyzers are now outdated. The elimination of 30 CFR 29, therefore, will not reduce protection afforded miners by the existing standards.

Although no such request is anticipated, should portable coal dust/rock dust analyzers be developed in the future, they can be approved under 30 CFR 18, Electric Motor Driven Mine Equipment and Accessories. Approvals are routinely issued under 30 CFR 18 for instruments that are not required by regulation, but are to be used in underground mines, provided that they meet the intrinsic safety requirements in 30 CFR 18.68 and are safe for their intended use as required by 30 CFR 18.20(b). In addition, the general requirements in 30 CFR 18, subpart A, as well as any other provisions necessary to address the design and performance of the instrument, are appropriate for the approval of portable coal dust/rock dust analyzers.

Continuous duty, warning light, portable methane detectors. We have not issued a new approval for a continuous duty, warning light, portable methane detector under 30 CFR 29 since 1981. When 30 CFR 29 was developed, portable methane detectors approved under 30 CFR 22 did not have continuous monitoring, warning, or alarm capability. Since 1981, however, advancements in technology have resulted in instruments that are suitable for approval both as portable methane detectors under 30 CFR 22 and which also have the capability to be used for continuous monitoring and warning or alarm. Portable methane detectors in use in mines now routinely have the capabilities specified in 30 CFR 29, and we have approved them for the past 16 years under 30 CFR 22, Portable Methane Detectors.

If we were to receive a new request under 30 CFR 29 for approval of a methane detector that is portable, operates continuously, and provides a warning to the user, we could conduct an equivalent evaluation of the instrument using the approval requirements in 30 CFR 22. For these reasons, we believe that 30 CFR 29 is

unnecessary and that its removal will not reduce protection afforded miners by the existing standards.

III. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. We have determined that this final rule does not meet the criteria for a significant regulatory action and, therefore, have not prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets our responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, we must use the Small Business Administration (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. Although we traditionally have considered small mines to be those with fewer than 20 employees, we have analyzed the impact of the final rule on mines with 500 or fewer employees for the purposes of the RFA. We have also evaluated the impact of the rule on small manufacturers of lighting equipment for illuminating underground workings and small manufacturers of continuous duty, warning light, portable methane detectors using the appropriate SBA definition of 500 or fewer employees.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers. No small governmental jurisdictions or nonprofit organizations are affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include in the final rule a factual basis for this certification. We also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis. We believe that this analysis provides a reasonable basis for the certification in this case.

We have provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the final rule including the preamble and regulatory flexibility certification statement to all affected mines and miners' representatives and approval holders.

Factual Basis for Certification

MSHA used a qualitative approach in concluding that the final rule will not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers. This final rule removes approval regulations for equipment that can be approved under other existing MSHA regulations. The benefit of removing unnecessary provisions is that MSHA regulations will be more concise, clearer, easier to use, and reflect advances in technology. This final rule will have no economic impact on the mining industry.

V. Paperwork Reduction Act

This final rule contains no information collection requirements subject to the Paperwork Reduction Act of 1995.

VI. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this final rule does not include any Federal mandate and, therefore, results in no increased expenditures by State, local, and tribal governments, or by the private sector.

VII. Executive Order 13045

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, MSHA has evaluated the environmental health and safety risks of the final rule on children. The Agency has determined that the final rule will have no effect on children.

VIII. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

The Agency has reviewed this final rule in accordance with Executive Order 13084, and certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments, because they neither manufacture products covered by parts 26 and 29 nor operate any underground coal or gassy metal/nonmetal mines.

IX. Executive Order 12612 Federalism

Executive Order 12612, regarding federalism, requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. This rule does not limit state policy options, because they neither manufacture products covered by parts 26 and 29 nor operate any underground coal or gassy metal/nonmetal mines, it complies with the principles of federalism and with Executive Order 12612.

X. Executive Order 12630 Government Actions and Interference With Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

XI. Executive Order 12988 Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

List of Subjects

30 CFR Parts 26 and 29

Mine safety and health.

30 CFR Parts 57 and 75

Mine safety and health, Underground mining.

Dated: August 3, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, under the authority of 30 U.S.C. 957 and 961 and for the reasons set out in the preamble, 30 CFR, chapter I, is amended as follows:

PART 26—LIGHTING EQUIPMENT FOR ILLUMINATING UNDERGROUND WORKINGS

1. Part 26 is removed.

PART 29—PORTABLE COAL DUST/ROCK DUST ANALYZERS, AND CONTINUOUS DUTY, WARNING LIGHT, PORTABLE METHANE DETECTORS FOR USE IN COAL MINES

2. Part 29 is removed.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 57.22303 is revised to read as follows:

§ 57.22303 Approved equipment (I–C mines).

Only electrical equipment that is approved by MSHA under the applicable requirements of 30 CFR parts 18 through 28 or approved under 30 CFR part 29 contained in the 30 CFR, parts 1–199, edition, revised as of July 1, 1999, shall be used underground, except for submersible sump pumps.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

5. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

6. Section 75.506 is amended by revising paragraph (d) to read as follows:

§ 75.506 Electric face equipment; requirements for permissibility.

* * * * *

(d) The following equipment will be permissible electric face equipment only if it is approved under the appropriate parts of this chapter, or former Bureau of Mines' approval schedules, and if it is in permissible condition:

(1) Multiple-Shot Blasting Units, part 7 subpart D;

(2) Electric Cap Lamps, part 19;

(3) Electric Mine Lamps Other than Standard Cap Lamps, part 20;

(4) Flame Safety Lamps;

(5) Portable Methane Detectors, part 22;

(6) Telephone and Signaling Devices, part 23;

(7) Single-Shot Blasting Units;

(8) Lighting Equipment for Illuminating Underground Workings;

(9) Methane-Monitoring Systems, part 27; and

(10) Continuous Duty, Warning Light, Portable Methane Detectors, 30 CFR part 29 contained in the 30 CFR, parts 1–199, edition, revised as of July 1, 1999.

[FR Doc. 99–20408 Filed 8–9–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 71, and 90

RIN 1219–AA98

Improving and Eliminating Regulations; Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; technical amendment.

SUMMARY: We (MSHA) have revised and updated our Informational Report No. 1121 (IR 1121) to include currently approved sampling equipment and to permit the use of fast-response calibrators having a volumetric tube. The updated document is Informational Report No. 1240 (IR 1240) entitled, "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers." This final rule updates the existing incorporation-by-reference of IR 1121 in MSHA's coal mine respirable dust standards to reference IR 1240.

EFFECTIVE DATE: This regulation is effective October 12, 1999. The incorporation-by-reference of the publication listed in the rule is approved by the Director of the **Federal Register** as of October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

In response to the Administration's regulatory reinvention initiative, we conducted a review of existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that could be removed or revised without reducing protection afforded miners. This final rule is part of our ongoing plan to improve our regulations. It updates the incorporation-by-reference of IR 1121, with the most recent revision, IR 1240. IR 1240 allows mine operators to use advanced technology without reducing protection to miners.

On September 3, 1998, we published a proposed rule in the **Federal Register** (63 FR 47123) requesting public comment on our intention to update the incorporation-by-reference in title 30 of the Code of Federal Regulations (30 CFR) §§ 70.204, 71.204, and 90.204. We allowed 60 days for public comment and received no comments, no requests for an extension of the comment period, and no requests for a public hearing.

To increase awareness of this regulatory action, MSHA will mail a copy of this final rule to all operators and miners' representatives and will post it and IR 1240 on MSHA's Website at www.msha.gov.

II. Discussion of Final Rule

Existing coal mining regulations §§ 70.204, 71.204, and 90.204 require that approved respirable dust sampling devices be calibrated in accordance with MSHA Informational Report No. 1121 (IR 1121) "Standard Calibration and Maintenance Procedures for Wet Test Meters and Coal Mine Respirable Dust Samplers (Supersedes IR 1073)." These regulations further state that amendments to IR 1121 will be announced in the **Federal Register**. This final rule updates the incorporation-by-reference of IR 1121, with the most recent revision, IR 1240, which is entitled "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers."

IR 1240 addresses improved technology and describes the standard procedures that MSHA currently uses for calibration of approved personal samplers and associated equipment and for maintenance of this equipment. IR 1240 continues to require operators to record calibration parameters and results. MSHA encourages mine operators who store records electronically to provide a mechanism which will allow the continued storage and retrieval of records in the year 2000 and thereafter.

IR 1240 includes the calibration and maintenance procedures for the newest approved sampling unit for collecting respirable coal mine dust. This sampling unit uses constant flow technology and a power source which is different from other approved sampling units. The constant flow technology permits the calibration of this unit without concern for flow fluctuations. In addition, IR 1240 cautions mine operators and other interested parties to maintain such units as approved so as to ensure the accurate collection of respirable coal mine dust samples. IR 1240 also permits the use of fast-response calibrators for calibrating all approved sampling units. It takes only 1 to 2 minutes per unit to calibrate a sampling unit using this newer technology, as opposed to 30 minutes using the traditional calibration systems addressed in IR 1121.

Copies of IR 1240 are available at MSHA, Coal Mine Safety and Health, Room 816, 4015 Wilson Boulevard, Arlington, VA 22203; at each MSHA

Coal Mine Safety and Health district and subdistrict office; and on MSHA's Home Page at www.msha.gov.

III. Paperwork Reduction Act

This final rule, like the existing rule, contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA 95). MSHA submitted the proposed information collection request to OMB for its review and approval under § 3507(o) of PRA 95. OMB reviewed and approved the collection of information under OMB Control Number 1219–0128. This section contains a description of the information collection requirement, the respondent categories, and the annual information collection burden.

Description

Final 30 CFR 70.204, 71.204, and 90,204 require that approved respirable dust sampling devices be calibrated in accordance with IR 1240 "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers." Calibration of sampling units requires data to be recorded as part of the calibration procedure. Most mines that calibrate their own pumps now use instantaneous flow meters for this purpose; and almost all but the largest underground mines send their pumps out to be calibrated, rather than calibrating them themselves.

Respondents

The respondents are mine operators. We estimate that this information collection requirement affects about 900 coal mines and that these mines calibrate about 1,850 pumps per year. Further, MSHA estimates that 897 of these mines calibrate 1814 pumps with a fast response calibrator; that three mines calibrate 36 pumps using the bubble tube method of pump calibration; and that no mines use the wet test meter method of pump calibration.

Information Collection Burden

The recording of calibration data is considered an information collection burden under PRA 95. MSHA estimates that it takes about 30 minutes (0.5 hour) to calibrate a pump using the bubble tube method, including recording calibration-related information and marking the pump flowmeter, and that it takes about 3 minutes (0.05 hour) to calibrate each pump with a fast-response calibrator and mark the pump flowmeter. The average time for pump calibration is 0.059 hour. The mine's technical staff usually does the pump calibration, if it's done at the mine, at a cost of about $42 per hour.

The total estimated annual information collection burden for pump calibration and marking the pump flowmeter is about 109 hours with an associated cost of about $4,580.

We estimate that most mine operators incurred the capital and start-up costs associated with pump calibration prior to October 1, 1995. Fast-response calibrators cost about $900 and have a useful life of about 10 years. The annualization factor for an equipment life of 10 years is 0.142. The annualized cost for calibrators, therefore, is about $128 per calibrator. For the purpose of this analysis, we estimate that about five new mines per year would purchase a fast-response calibrator resulting in a total annualized capital cost of about $640.

We estimate that about 2010 mines send about 2040 pumps per year to an outside contractor for calibration and maintenance. This service includes pump calibration and marking the flowmeter; certification of pump calibration; cleaning and checking pump function; replacing worn or damaged parts; and shipping and handling. MSHA estimates that the average cost for this service is about $100 per pump. Fast-response calibrators also require routine calibration and maintenance each year at a cost of about $100. The cost for calibration and maintenance of 2040 pumps and five calibrators, therefore, is $204,500.

The following chart summarizes MSHA's estimates for compliance with PRA 95.

Provision	Number of respondents	Number of responses	Number of responses per respondent (average)	Hours per response (average)	Total hours
Calibration records	900	1849	2	0.059	109

Annual Cost of calibration for 2040 pumps @ $100 ea.	Annual cost of calibration for 5 fast-response calibrators @ $100 ea.	Annual cost of 5 new mines acquiring fast-response calibrators @ $128 ea. annualized	Total annual cost
$204,000	$500	$640	$205,140

The burden hours and costs associated with pump calibratioin and marking the flowmeter do not represent any license for the mining industry because MSHA regulations currently require operators to perform these activities.

IV. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. We estimate that the cost impact of the final rule is the same as under the existing rule. The primary benefit of the final rule is that it provides mine operators alternatives in maintaining and calibrating dust sampling units. It takes only 1 to 2 minutes per unit to calibrate a sampling unit using this newer technology, as opposed to 30 minutes using the traditional calibration systems addressed in IR 1121. MSHA has determined that this final rule does not meet the criteria for a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. Although MSHA traditionally has considered small mines to be those with fewer than 20

employees, MSHA has analyzed the impact of the final rule on mines with 500 or fewer employees for the purposes of the RFA.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No small governmental jurisdictions or nonprofit organizations are affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include in the final rule a factual basis for this certification. We also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis. We believe that this analysis provides a reasonable basis for the certification in this case.

We have provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, we will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all affected mines and miners' representatives.

Factual Basis for Certification

We used a qualitative approach in concluding that the final rule would not have a significant economic impact on a substantial number of small entities. This final rule updates the regulations to incorporate by reference the latest revision of an MSHA informational report describing the calibration and maintenance procedures for coal mine respirable dust sampling units. The benefit of updating provisions is that MSHA regulations would be clearer and reflect advances in technology. This final rule will have no economic impact on the mining industry. The cost impact on mines employing fewer than 20 miners or those employing 500 or fewer miners will be the same as under the existing rule.

VI. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or by the private sector.

VII. Executive Order 13045

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, MSHA has evaluated the environmental health and safety risks of the final rule on children. The Agency has determined that the final rule would have no effect on children.

VIII. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

The Agency has reviewed this final rule in accordance with Executive Order 13084, and certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments.

IX. Executive Order 12612 Federalism

Executive Order 12612, regarding federalism, requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Since this rule does not limit state policy options, it complies with the principles of federalism and with Executive Order 12612.

X. Executive Order 12630 Government Actions and Interference With Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

XI. Executive Order 12988 Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

XII. National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et. seq.*) requires each Federal agency to consider the environmental effects of final actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. We have reviewed the final standards in accordance with the requirements of NEPA, the regulations of the Council on Environmental Policy (40 CFR 1500), and the NEPA procedures of the Department of Labor (29 CFR 11). As a result of this review, MSHA has determined that this final rule will have no environmental impact.

List of Subjects in 30 CFR Parts 70, 71, and 90

Coal mines, Incorporation by reference, Mine safety and health, Scientific equipment.

Dated: August 3, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, under the authority of 30 U.S.C. 811 and for the reasons set out in the preamble, MSHA is amending chapter I, title 30 of the Code of Federal Regulations, as follows.

PART 70—[AMENDED]

1. The authority citation for part 70 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

2. The authority citation for subpart C continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), and 957.

3. Section 70.204 is amended by revising paragraphs (a) and (e) to read as follows:

§ 70.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers (supersedes IR 1121)" by a person certified in accordance with § 70.203 (Certified person; maintenance and calibration).

* * * * *

(e) MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

PART 71—[AMENDED]

4. The authority citation for part 71 is revised to read as follows:

Authority: 30 U.S.C. 811, 951, and 957.

5. The authority citation for subpart C continues to read as follows:

Authority: 30 U.S.C. 811, 951, 957.

6. Section 71.204 is amended by revising paragraphs (a) and (e) to read as follows:

§ 71.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers (supersedes IR 1121)" by a person certified in accordance with § 71.203 (Certified person; maintenance and calibration).

* * * * *

(e) MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

PART 90—[AMENDED]

7. The authority citation for part 90 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h).

8. The authority citation for subpart C is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

9. Section 90.204 is amended by revising paragraphs (a) and (e) to read as follows:

§ 90.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers "(supersedes IR 1121)" by a person certified in accordance with § 90.203 (Certified person; maintenance and calibration).

* * * * *

(e) MSHA Informational Report IR 1240 (1996)referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

[FR Doc. 99–20409 Filed 8–9–99; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA98

Improving and Eliminating Regulations; Approved Books and Records

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; technical amendment.

SUMMARY: We (MSHA) are revising our regulations to remove certain regulations on Approved Books and Records from the Code of Federal Regulations. Forms required by these regulations are obsolete and some requirements are redundant. In addition, we are revising regulations concerning the records of the testing, examination, and maintenance of circuit breakers to clarify that secure electronic records may be used and that records must be retained for one year.

EFFECTIVE DATE: This regulation is effective October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances: 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

In response to the Administration's regulatory reinvention initiative, MSHA conducted a review of its existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that could be removed or revised without reducing protection afforded miners. On September 3, 1998, MSHA published a proposed rule in the **Federal Register** (63 FR 47122) requesting public comment on its intention to remove part 75, subpart S, Approved Books and Records, and revising 30 CFR 75.800–4 concerning the records of the testing, examination, and maintenance of circuit breakers to clarify that secure electronic records may be used and that the records shall be retained for one year. The Agency allowed 60 days for public comment and received no comments, no requests for an extension of the comment period, and no requests for a public hearing. Consequently, the final rule is unchanged from the proposal. This final rule will streamline 30 CFR part 75 by improving consistency and clarity in MSHA requirements for approved books and records for underground coal mines without reducing protection to miners.

II. Discussion of Final Rule

Existing MSHA standards in 30 CFR 75, subpart S, Approved Books and Records, contain recordkeeping requirements for certain tests and examinations conducted in underground mines. Subpart S specifies approved books for recording test results, as well as the manner in which the books are to be maintained.

Existing 30 CFR 75.1800(b) specifies approved forms on which mine operators are to record results for provisions in 30 CFR 75.1801 through 75.1808. Of these, however, only 30 CFR 75.1806 and 75.1808 remain in 30 CFR 75, subpart S. In addition, all the forms listed are obsolete and are no longer in use.

Existing 30 CFR 75.1800(c) allows mine operators to use record books kept to comply with State requirements, in lieu of the books required in 30 CFR 75, subpart S, if the MSHA district manager determines that those books provide the information specified in any record book required by the MSHA regulation.

The only records specified in 30 CFR 75, subpart S, are those in 30 CFR 75.1806 which require that the results of monthly examinations of high voltage circuit breakers, required by 30 CFR 75.800–3 and 75.800–4, be recorded in a book entitled "Monthly Examinations of Surface High Voltage Circuit Breakers", Form 6–1293. This form is no longer in use and MSHA no longer approves record books.

Existing 30 CFR 75.1808 requires that all approved books and records maintained under the provisions of 30 CFR 75.1801 through 75.1807 be stored in a fireproof repository on the surface of the mine, in a location chosen by the mine operator, and be made available to interested persons. This provision now applies only to 30 CFR 75.1806. To be consistent with other MSHA recordkeeping requirements, and to accommodate the electronic storage of data, we are deleting this requirement.

The rule recognizes the increasing use of electronic storage and retrieval of information and revises 30 CFR 75.800–4 to accommodate this technology.

In addition, we have revised 30 CFR 75.800–4 to clarify that the records must be retained for one year. We consider this additional requirement to be a non-substantive clarification of the existing standard because mine operators already are required to make these records available to an authorized representative of the Secretary, which implies that they be retained.

III. Executive Order 12866 and Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. We have determined that this final rule does not meet the criteria for a significant regulatory action and, therefore, have not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. The analysis contained in this preamble meets our responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No small governmental jurisdiction or nonprofit organizations are affected. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include in the final rule a factual basis for this certification. We also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis.

Factual Basis for Certification

Based on the fact that there is no substantive change in the recordkeeping requirements, we have determined that there would be no impact on small businesses. No small governmental jurisdictions or nonprofit organizations are affected. We believe that this analysis provides a reasonable basis for the certification in this case.

We have provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, we will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all affected mines and miners' representatives.

IV. Paperwork Reduction Act

No new or additional paperwork burdens are included in this amendment. Test records are required in existing 30 CFR 75.800–3 and 75.800–4 and are approved under OMB control number 1219–0067. The Paperwork Reduction Act of 1995 (PRA 95), however, requires that regulations specify a time period for the retention of records. Existing 30 CFR 75.800–3 and 75.800–4 do not specify a retention period for maintaining these required test records. We are requiring, consistent with other MSHA recordkeeping requirements, that these records be kept for at least one year.

V. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this final rule does not include any Federal mandate and, therefore, results in no increased expenditures by State, local, and tribal governments, or by the private sector.

VI. Executive Order 13045

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, we have evaluated the environmental health and safety risks of the final rule on children. We have determined that the final rule would have no effects on children.

VII. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

The Agency has reviewed this final rule in accordance with Executive Order 13084, and certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments.

VIII. Executive Order 12612 Federalism

Executive Order 12612, regarding federalism, requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Since this rule does not limit state policy options, it complies with the principles of federalism and with Executive Order 12612.

IX. Executive Order 12630 Government Actions and Interference With Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

X. Executive Order 12988 Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

List of Subjects in 30 CFR Part 75

Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines.

Dated: August 3, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

For the reasons discussed in the preamble, MSHA proposes to amend part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 75.800–4 is revised to read as follows:

§ 75.800–4 Testing, examination, and maintenance of circuit breakers; record.

(a) *Recordkeeping.* The operator shall make a record of each test, examination, repair, or adjustment of all circuit breakers protecting high-voltage circuits which enter any underground area of the mine.

(b) *Record security.* These records shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(c) *Retention and access.* These records shall be retained at a surface location at the mine for at least one year and shall be made available to authorized representatives of the Secretary, the representative of miners, and other interested persons.

Subpart S—[Removed]

3. Part 75 subpart S—Approved Books and Records, consisting of §§ 75.1800, 75.1806, and 75.1808, is removed and reserved.

[FR Doc. 99–20410 Filed 8–9–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC00

Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances, and Coal Washing and Transportation Allowances

AGENCY: Minerals Management Service, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations concerning oil and gas and coal allowances on Federal and Indian leases which were published in the **Federal Register** on Monday, February 12, 1996, (61 FR 5447).

DATES: Effective on March 1, 1996.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION:

Background

The Minerals Management Service (MMS) is making corrections to a final rule published in the **Federal Register** on February 12, 1996 (61 FR 5447). This final rule, effective March 1, 1996, amended 30 CFR part 206–PRODUCT VALUATION regulations for oil and gas transportation and processing allowances for production from Federal leases. It also amended the regulations for coal washing and transportation allowances for production from Federal leases. The final rule did not change the existing regulations applicable to Indian leases.

Need for Correction

As published, the final regulations in 30 CFR part 206 contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 30 CFR Part 206

Coal, Continental Shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Accordingly, 30 CFR part 206 is corrected by making the following correcting amendments:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart B—Indian Oil

§ 206.51 Definitions [Corrected]

2. In § 206.51, definition of *gross proceeds,* remove the word "terminating" in the third sentence and add, in its place, the word "terminaling."

3. In § 206.51, definition of *tar sands,* remove the word "either," the comma after the word "temperature," and the phrase "or contains quarrying." End the sentence with a period.

§ 206.53 [Corrected]

4. In § 206.53(c), remove the word "proved" in the second sentence and add, in its place, the word "approved."

Subpart D—Federal Gas

§ 206.151 [Corrected]

5. In § 206.151, definition of *gross proceeds,* remove the next-to-last word in the first sentence, "oil," and add, in its place, the words "gas, residue gas, and gas plant products." Also, remove the third sentence.

§ 206.156 [Corrected]

6. In § 206.156(d), remove the word "oil" in the last sentence, and add, in its place, the words "unprocessed gas, residue gas, and gas plant products."

§ 206.158 [Corrected]

7. In § 206.158(e), remove the word "transportation" in the second sentence and add, in its place, the word "processing." Also remove the word "oil" in the second sentence and add, in its place, the words "gas plant products."

8. In § 206.159 paragraph (a)(1)(i), remove the word "transportation" in the last sentence and add, in its place, the word "processing." In paragraph (e)(2), remove the word "transporting" and add, in its place, the word "processing."

9. In the last section in Subpart D, § 206.106, correct the section number to read "206.160."

Subpart E—Indian Gas

§ 206.172 [Corrected]

10. In § 206.172(h), remove both instances of the words "pursuant to" and add, in their place, the word "under."

§ 206.173 [Corrected]

11. In § 206.173(a)(2), remove the word "section" immediately before the words "of this part" and add, in its place, "§ 206.52."

§ 206.174 [Corrected]

12. In § 206.174(d)(2), remove the reference "202.171(c)" in the first sentence, and add, in its place, "202.151(b) and (c)."

§ 206.176 [Corrected]

13. In § 206.176(c)(3), remove the last sentence and add, in its place, the sentence "Under no circumstances will the value for royalty purposes be reduced to zero."

§ 206.177 [Corrected]

14. In § 206.177 paragraph (b)(3)(ii), first sentence, remove the letter "(i)" after the word "paragraph" and add, in its place, the words "(b)(3)(i) of this section." In paragraph (d)(1), first sentence, remove the word "processing," and add, in its place, the word "transportation."

Subpart F—Federal Coal

§ 206.251 [Corrected]

15. In § 206.251, definition of *like-quality coal,* add the word "that" before the word "has."

§ 206.258 [Corrected]

16. In § 206.258(a), remove the second sentence and add, in its place, the sentence "Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero."

§ 206.259 [Corrected]

17. In § 206.259(c)(2)(ii), second sentence, remove the word "processing" and add, in its place, the word "washing."

18. In § 206.261, revise paragraph (b) to read as follows:

§ 206.261 Transportation allowances—general.

* * * * *

(b) Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

* * * * *

19. In § 206.262, remove reserved paragraph (c)(2)(iv), redesignate paragraph (c)(2)(v) as paragraph (c)(2)(iv), add paragraphs (d)(2) and

(d)(3), and revise paragraph (e)(2). The added and revised text reads as follows:

§ 206.262 Determination of transportation allowances.

* * * * *

(d) * * *

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) * * *

(2) The lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payments, in accordance with instructions provided by MMS.

* * * * *

§ 206.263 [Corrected]

20. In § 206.263(b), remove the words "pursuant to" and add, in its place, the word "under." Also, remove the word "in" and add, in its place, the word "is."

§ 206.264 [Corrected]

21. In § 206.264, remove the first word "In" and add, in its place the word "If."

Subpart J—Indian Coal

§ 206.451 [Corrected]

22. In § 206.451, definition of *like-quality coal*, add the word "that" before the word "has."

23. In § 206.457, revise the last sentence of paragraph (a) to read as follows:

§ 206.457 Washing allowances—general.

(a) * * * Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

* * * * *

24. In § 206.460 revise paragraph (b) to read as follows:

§ 206.460 Transportation allowances—general.

* * * * *

(b) Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

* * * * *

§ 206.461 [Corrected]

25. In § 206.461(e)(1), last sentence, add the word "entitled" before the word "to."

§ 206.462 [Corrected]

26. In § 206.462 paragraph (b), remove the word "in" and add, in its place, the word "is." In paragraph (c), remove the section number "206.251" and add, in its place, "206.451."

§ 206.463 [Corrected]

27. In § 206.463, remove the first word "In" and add, in its place, the word "If."

§ 206.464 [Corrected]

28. In § 206.464(a), remove the section number "206.465" in the sentence and add, in its place, "206.456."

Dated: August 3, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–20470 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–99–049]

RIN 2115–AE46

Special Local Regulations; Rising Sun Regatta Ohio River Mile 505.0–507.0, Rising Sun, IN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Rising Sun Inboard Hydroplane Races. This event will be held on September 11 & 12, 1999 from 11 a.m. until 6 p.m. at Rising Sun, Indiana. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 11 a.m. until 6 p.m. on September 11, 1999 and from 11 a.m. to 6 p.m. on September 12, 1999.

ADDRESSES: Unless otherwise indicated, all documents referred to in this regulation are available for review at Marine Safety Office, Louisville, 600 Martin Luther King Jr. Place, Room 360, Louisville, KY 40202–2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY at (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Drafting information. The drafters of this regulation are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a series of high-speed hydroplane boat races. The event is sponsored by Community Heritage Promotions. The course to be followed by the race participants will be marked by precisely placed marker buoys, mid-channel on the Ohio River, between river miles 505.0–507.0. Commercial vessels will be permitted to transit the area every three hours.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary beacause of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T08–049 is added to read as follows:

§ 100.35–T08–049 Ohio River at Rising Sun, Indiana.

(a) *Regulated Area:* Ohio River Mile 505.0–507.0

(b) *Special Local Regulations:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. "Participants" are those persons and vessels identified by the sponsor as taking part in the event. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and sponsor provided vessel assigned to patrol the event. The Coast Guard "Patrol Commander" is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and property and can be reached on VHF–FM Channel 16 by using the call sign "PATCOM".

(c) *Effective Date:* This section will be effective from 11 a.m. to 6 p.m. on September 11, 1999 and from 11 a.m. to 6 p.m. on September 12, 1999.

Dated: July 26, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 99–20514 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–118]

RIN 2115–AA97

Safety Zone: The Clinton Bluefish Festival Fireworks Display, Clinton Harbor Clinton, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Clinton Bluefish Festival Fireworks Display to be held in Clinton Harbor, Clinton, CT., on August 21, 1999. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on August 21 and 22, 1999, from 9 p.m. until 10:05 p.m.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Chief C.D. Stubblefield, Office Supervisor of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Clinton Bluefish Festival Committee is sponsoring a 20 minute fireworks display in Clinton Harbor, Clinton, Connecticut. The fireworks display will occur on August 21, 1999, from 9:30 p.m. until 9:50 p.m. The safety zone covers all waters of Clinton Harbor within a 800 foot radius of the fireworks launching site which will be located in approximate position 41°–05′25″ N, 072°–31′25″ W (NAD) 1983. This zone is required to protect the maritime community from the dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 1286 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Clinton Harbor and entry into this zone will be restricted for only 65 minutes on August 21, 1999. Although this regulation prevents traffic from transiting this section of Clinton Harbor, the effect of this regulation will not be significant for several reasons: The duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this proposal would

have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–118 to read as follows:

§ 165.T01—118 The Clinton Bluefish Festival Fireworks Display, Clinton Harbor, Clinton, CT.

(a) *Location*. The safety zone includes all waters of Clinton Harbor within a 800 foot radius of the launch site located in approximate position 41°–05′.37″N, 071°–31′25″W (NAD 1983).

(b) *Effective date*. This section is effective on August 21, 1999 from 9:00 p.m. until 10:05 p.m., and the rain date is August 22 at the same times.

(c) *Regulations*. (1) The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

D.P. Pekoske,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–20516 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–99–033]

RIN 2115–AA97

Safety Zone Regulation; Columbia River, St. Helens, Oregon, to Port of Benton, Washington

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 300 yard moving safety zone around the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, as this composite vessel transits through U.S. navigable waters from St. Helens, Oregon (Columbia River mile 72.5) to Benton, Washington (Columbia River mile 342) from 5:30 a.m. (PDT) on August 4, 1999 through 11:30 p.m. (PDT) August 10, 1999. This moving safety zone is needed to protect the composite vessel, persons, facilities, and other vessels from the safety hazards inherent to a vessel restricted in maneuverability and transporting Type B claissifed radioactive materials in a river environment. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective form 5:30 a.m. (PDT) on August 4, 1999 through 11:30 p.m. (PDT) August 10, 1999.

ADDRESSES: Documetns as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Group/MSO Portland, Oregon 6767 N. Basin Ave, Portland, Oregon 97217. Normal office hours are between 7:00 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Tom Allan, c/o Captain of the Port, Portland, Oregon 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–9327.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, notice of proposed rulemaking has not been published for this regulation and good

cause exists for making it effective less than 30 days from date of publciaiton in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to protect the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, persons, facilities, and other vessels from the safety hazards inherent to a vessel restricted in maneuverability and transporting Type B classified radioactive materials in a river environment. Due to the complex planning and coordination, the event sponsor, Portland General Electric was unable to provide the Coast Guard with notice of the final details until less than 30 days prior to the date of the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is adopting a temporary moving safety zone regulation for the Trojan Reactor Vessel and Internals Removal Project transport from St. Helens, Oregon to Benton, WA. The zone is needed to protect the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, persons, facilities, and other vessels from the safety hazards inherent to a vessel restricted in maneuverability and transporting Type B classified radioactive materials in a river environment. This moving safety zone will be enforced by representatives of the Captain of the Port Portland, Oregon. The Captain of the Port may be assisted by other federal agencies and local agencies.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedure of the Department of Transportation (DOT) (44 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation would encompass less than 300 yards around the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, as this composite vessel transits through U.S. navigable waters from St. Helens, Oregon to Benton, Washington.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this section and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for temporary safety zones of less than one week in duration. This rule establishes a safety zone with a duration of less than one week.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A temporary 0165.T13–023 is added to read as follows:

§ 165.T13–023 Safety Zone Regulation; Columbia River St. Helens, Oregon, to Port of Benton, Washington.

(a) *Location.* The following area is a moving safety zone: All waters within 300 yards of the composite vessel consisting of the tugs LEWISTON and NOYDENA, and the RVAIR transport barge, as this composite vessel transits through U.S. navigable waters from St. Helens, Oregon (Columbia River mile 72.5) to Benton, Washington (Columbia River mile 342).

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates.* This section is effective from 5:30 a.m. (PDT) on August 4, 1999 through 11:30 p.m. (PDT) August 10, 1999.

Dated: July 28, 1999.

J.D. Spitzer,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 99–20513 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 20

International Priority Airmail Service

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: On November 25, 1998, the Postal Service published in the **Federal Register** (63 FR 65153) a proposed rule to change rates and conditions of service for International Priority Airmail (IPA). The Postal Service adopted the proposed rule by notice in the **Federal Register** (64 FR 10219) on March 3, 1999, with an effective date of April 4, 1999. The Postal Service is now introducing rates for mail to Canada.

DATES: *Effective Date:* 12:01 a.m., August 10, 1999. Comments on the interim rule must be received on or before September 9, 1999.

ADDRESSES: Written comments should be sent to the Manager, Financial Services, Room 370–IBU, International Business Unit, U.S. Postal Service, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Singer, (202) 268–3422.

SUPPLEMENTARY INFORMATION: International Priority Airmail (IPA) is a volume airmail letter service that gives mailers the opportunity to benefit from work-sharing with the Postal Service and to gain improved speed of delivery for presorted mail. On November 25, 1998, by notice in the **Federal Register** (63 FR 65153), the Postal Service sought comment on proposed changes in IPA service. These changes include increasing the minimum sack weight from 10 pounds to 11 pounds; providing country-wide acceptance; instituting volume discounts; providing drop ship rates; and reducing the rates for IPA service.

In response to the request for comment, the Postal Service received one comment. The commenter fully supported the changes proposed by the Postal Service but suggested that the Postal Service include Canada in rate group 2.

IPA service is currently not available to Canada; however, the Postal Service does provide a similar service to Canada—Bulk Letter Service to Canada. The Postal Service was not able to include service to Canada because the costs associated with sending mail to Canada differed from those associated with sending mail to all other countries in rate group 2 and the differences would have resulted in non-compensatory rates. The proposed rule was adopted by notice in the **Federal Register** (64 FR 10219) on March 3, 1999, with an effective date of April 4, 1999.

Due to a change in the cost of sending mail to Canada, the Postal Service is now able to offer IPA service for mail destined for delivery in Canada. However, because the cost for this mail is dissimilar to current rate groups, a separate rate group is established for Canada.

IPA service to Canada will be more flexible than Bulk Letter Service to Canada, which will be eliminated at the end of the current postal fiscal year. This will enable current users of Bulk Letter Service to Canada to transition to IPA at their convenience until September 10, 1999.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), interested parties are invited to submit written data, views, or comments regarding this interim rule to the address above.

The Postal Service is adopting the following interim amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to delete Subchapter 225, Bulk Letter Service (Canada only), effective September 11, 1999, and to immediately incorporate program changes to Subchapter 280, International Priority Airmail Service, as follows:

International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

220 Letters and Letter Packages

* * * * *

225 Bulk Letter Service (Canada Only)

[This subchapter is deleted effective September 11, 1999.]

* * * * *

280 International Priority Airmail Service

281 Description

* * * * *

281.3 Minimum Quantity Requirements

* * * * *

281.32 Presort Mail

The mailer must have a minimum of 11 pounds of presorted LC/AO mail to a single rate group, including Canada, to qualify for the presort rate for that rate group.

Note: Mail that cannot be made up in direct country packages (284.521), in direct country sacks (284.61), or in trays (284.651) does not qualify for the presort rates and is subject to the worldwide nonpresort rates.

* * * * *

282 Postage

282.1 Rates

282.11 General

There are two rate options for International Priority Airmail service: a presort rate option that has five rate groups, and a worldwide nonpresort rate. For both options, there are full service rates for mail deposited at offices other than the drop shipment offices listed in 281.5, and drop ship rates for mail deposited at one of the drop shipment offices. The per-piece rates and per-pound rates are shown in Exhibit 282.11. The per-piece rate of $0.10 or $0.25 applies to each piece regardless of its weight. The per-pound rate applies to the net weight (gross weight minus tare weight of sack) of the mail for the specific rate group. Fractions of a pound are rounded to the next whole pound for postage calculation.

EXHIBIT 282.11

[International priority airmail rates]

Rate group	Piece rate	Pound rate.	
		Full service	Drop ship
Canada	$0.25	$3.40	$2.40
1	0.25	5.00	4.00
2	0.10	5.25	4.25
3	0.10	6.50	5.50
4	0.10	7.50	6.50
Worldwide	0.25	7.00	6.00

* * * * *

282.15 Presort Rates

To qualify for the presort Canada or Group 1, 2, 3, or 4 rates (see Exhibit 282.11), a mailing must consist of a minimum of 11 pounds to a specific rate group. This minimum applies to each rate group and not to the entire mailing (see 281.32). Within a rate group, all mail addressed to an individual country must be sorted into direct country packages of 10 or more pieces (or 1 pound or more of mail) (284.521) and/or sacked in direct country sacks of 11 pounds or more (284.61).

Note: There are separate preparation requirements for mail to Canada. See 284.65.

Mail that cannot be made up into direct country packages or direct country sacks must be sent at the worldwide nonpresort rates.

282.16 Separation by Rate Group

The mailer must specify the rate group on the back of Tag 115, International Priority Airmail, with Canada, 1, 2, 3, 4, or WW (Worldwide), and must physically separate the sacks by rate group at the time of mailing.

* * * * *

284 Preparation Requirements for Individual Items

* * * * *

EXHIBIT 284.522

[Add Canada to exhibit as follows:]

Rate group	Country	3-Letter exchange office code	Exchange Office
Canada	Canada	Exhibit 284.65, Canadian Labeling Information.	

* * * * *

284.6 Sacking Requirements

* * * * *

284.612 Direct Country Sack Tags

Direct country sacks must be labeled with Tag 178. The tag is white and specially coded to route the mail to a specific country and airport of destination. The blocks on the tag for date, weight, and dispatch information must be completed by the Postal Service and may not be completed by the mailer. The mailer must complete the "To" block showing the destination country. Tag 115, International Priority Airmail, must also be affixed to the direct country sacks. Tag 115 is a "Day-Glo" pink tag that identifies the mail to ensure it receives priority handling. The mailer must designate on the back of Tag 115 the applicable rate group, using Canada, 1, 2, 3, 4, or WW (Worldwide).

* * * * *

284.65 Preparation Requirements for Canada

To qualify for the presort rates for Canada, a mailer must have at least 11 pounds of mail for Canada. This includes letter-size, flat-size, and package-size items even though such items are prepared in separate equipment. If the mailing contains less than 11 pounds of mail for Canada, or if the mailer chooses to do so, mail for Canada is included in the worldwide nonpresort rate mail with that for other countries. Worldwide nonpresort mail for Canada is prepared in accordance with 284.63. The preparation requirements of presorted mail to Canada follow.

284.651 Letter-Size Mail and Flat-Size Mail

Letter-size items are prepared in letter trays, either half-size or full-size, depending on volume. Flat-size items are prepared in flat trays. All items must be faced in the same direction, and all trays must be full enough to keep the mail from mixing during transportation. Do not prepare the content of the tray in packages. The mailer must label each tray to show the destination in Canada and the dispatching U.S. international exchange office in the following format:

Line 1: Canadian destination, U.S. exchange office code
Line 2: Contents
Line 3: Mailer, mailer location

Example:

Toronto ON FWD 11430
IPA
ABC Company, New York, NY

In addition, the mailer must complete PS Tag 115, International Priority Airmail. Write "Canada" on the reverse and tape the tag to the tray sleeve. All trays must be banded.

284.652 Packages

Items that cannot be prepared in trays because of their size or shape must be placed loose in blue airmail sacks. Use PS Tag 115, International Priority Airmail, and label to either Toronto or Vancouver, as appropriate. Attached a completed PS Tag 178. See 284.612.

EXHIBIT 284.65

[Canadian labeling information]

Origin ZIP Code	Exchange office	U.S. Exchange office code	Canadian destination
270–282, 286–326, 344, 350–397, 399	ATL	30320	Toronto ON FWD.
130–149	BUF	14240	Toronto ON FWD.
700–708, 710–738, 740–799, 885	DFW	75300	Toronto ON FWD.
430–459, 480–497	DTW	48242	Toronto ON FWD.
967–969	HNL	96820	Vancouver BC FWD.
200–249, 254, 268, 283–285, 400–418, 420–427, 476–477	IAD	20101	Toronto ON FWD.
004–005, 010–098, 100–129, 150–199, 250–267	JFK	11430	Toronto ON FWD.
850, 852–853, 855–857, 859–860, 863–865, 889–891, 896, 900–908, 910–928, 930–936	LAX	90009	Vancouver BC FWD.
006–009, 327–334, 340, 347, 349	MIA	33159	Toronto ON FWD.
460–475, 478–479, 498–516, 520–528, 530–567, 570–578, 600–631, 633–641, 644–658, 660–662, 664–681, 683–693, 739, 800–816, 822–831, 840–847, 870–884, 893, 898.	ORD	60666	Toronto ON FWD.
590–599, 821, 832–838, 970–986, 988–999	SEA	98158	Vancouver BC FWD.

EXHIBIT 284.65—Continued
[Canadian labeling information]

Origin ZIP Code	Exchange office	U.S. Exchange office code	Canadian destination
894–895, 897, 937–966	SFO	94128	Vancouver BC FWD.
335–339, 341–342, 346–347	TPA	33630	Toronto ON FWD.

* * * * *

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 99–20555 Filed 8–5–99; 4:40 pm]
BILLING CODE 7710–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 498

[HCFA–2054–CN]

RIN 0938–AJ59

Medicare and Medicaid Program; Appeal of the Loss of Nurse Aide Training Programs; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of interim final rule with comment period.

SUMMARY: This document corrects a technical error that appeared in the interim final rule with comment period published in the **Federal Register** on July 23, 1999, entitled "Medicare and Medicaid Programs; Appeal of the Loss of Nurse Aide Training Programs."

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey Golland, (202) 619–3377.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 99–18802 of July 23, 1999, (64 FR 39934), there was a technical error. The error relates to an omission of a needed change to our hearing regulations and the accompanying preamble discussion. Specifically, the interim final regulation explicitly made appealable determinations of substandard quality of care that lead to a nursing home's loss of its nurse aide training program. What was inadvertently omitted was a needed revision to § 498.3(b)(12) (Initial determinations by HCFA) which excludes a loss of nurse aide training from the list of initial determinations that are appealable. Because this provision is so flatly inconsistent with the rest of the recently published interim final rule, which made this determination appealable, § 498.3(b)(12) needs to be revised as well to make it consistent with the rest of the nurse aide training appeal rule.

The provision in this correction notice is effective as if it had been included in the document published in the **Federal Register** on July 23, 1999.

Correction of Errors

In FR Doc. 99–18802 of July 23, 1999, make the following corrections:

1. On page 39936, column one, a paragraph is added after the second full paragraph to read as follows:

"We are revising § 498.3(b) (Initial determinations by HCFA) by revising paragraph (12) to remove the reference to the loss of the approval for a nurse aide training program as an exception to an initial determination."

§ 498.3 [Corrected]

2. On page 39937, in column 3, in the regulations text, the amendatory language for item 2 should be revised to read as follows:

"2. In § 498.3, paragraphs (b)(12) and (b)(13) are revised, a new paragraph (b)(15) is added, and paragraph (d)(10)(iii) is revised to read as follows:"

3. On page 39937, in column 3, in § 498.3, paragraph (b)(12) is correctly revised to read as follows:

§ 498.3 Scope and applicability

* * * * *

(b) * * *

(12) With respect to an SNF or NF, a finding of noncompliance that results in the imposition of a remedy specified in § 488.406 of this chapter, except the State monitoring remedy.

* * * * *

(Sections 1866(b) and (h) of the Social Security Act (42 U.S.C. 1395cc(b) and (h)).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 2, 1999.
Kerry Weems,
Deputy Assistant Secretary for Information Resources Management.
[FR Doc. 99–20402 Filed 8–9–99; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080399A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to fully utilize the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1999 TAC of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999)

as 6,760 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 5,760 mt, and set aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific ocean perch in the Central Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on July 11, 1999, (64 FR 37884, July 14, 1999).

NMFS has determined that as of July 24, 1999, 900 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific ocean perch in the Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific ocean perch TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20526 Filed 8–5–99; 4:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080399C]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-water Species Fishery by Vessels using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to fully utilize the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified to the deep-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time, August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7280

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) for the third season, the period July 4, 1999, through September 30, 1999, as 400 metric tons.

The fishery for the deep-water species fishery by vessels using trawl gear in the GOA was closed under § 679.21(d)(7)(i) on July 21, 1999, (64 FR 40293, July 26, 1999).

NMFS has determined that as of July 24, 1999, 180 metric tons remain in the third seasonal apportionment of the Pacific halibut bycatch mortality allowance specified for the GOA trawl deep-water species fishery. Therefore, NMFS is terminating the previous closure and is opening directed fishing for species that comprise the deep-water species fishery that are not otherwise closed to directed fishing in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified to the deep-water species fishery in the GOA. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of maximizing groundfish harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20527 Filed 8–5–99; 4:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 071699A]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to fully utilize the 1999 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time, August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1999 TAC of northern rockfish in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1999

Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 4,150 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 3,650 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The fishery for northern rockfish in the Central Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on July 19, 1999, (64 FR 39090, July 21, 1999).

NMFS has determined that as of July 24, 1999, 700 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the northern rockfish TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20528 Filed 8–5–99; 4:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990115017–9017–01; I.D. 011199A]

RIN 0648–AM08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries off Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the emergency interim rule to implement reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat that was published in the **Federal Register** on January 22, 1999.

DATES: Effective August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7650.

SUPPLEMENTARY INFORMATION: An emergency interim rule was published in the **Federal Register** on January 22, 1999 (64 FR 3437), implementing reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. An extension and revision of the emergency interim rule was subsequently published in the **Federal Register** on July 21, 1999 (64 FR 39087).

Need for Correction

In FR Doc. 99–1378, published on January 22, 1999 (64 FR 3437), incomplete seasonal references concerning protective measures for Steller sea lions were published. This document corrects those references.

§ 679.22 [Corrected]

On page 3443, in the third column, in § 679.22, in paragraph (a)(11)(iv)(C)(*2*), in the first, third, and fourth lines, after "A1 and A2" insert "and C" in both places.

Dated: August 4, 1999.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20533 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 153
Tuesday, August 10, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–3 PR]

Almonds Grown in California; Salable and Reserve Percentages for the 1999–2000 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on establishing salable and reserve percentages for California almonds received by handlers during the 1999–2000 crop year. The almond marketing order (order) regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The percentages would be 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets. The 1999–2000 crop is estimated to be the largest crop on record. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices.

DATES: Comments must be received by September 9, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable and reserve percentages may be established for almonds handled by handlers during the crop year. This rule would establish salable and reserve percentages for almonds received by handlers during the 1999–2000 crop year which runs from August 1, 1999, through July 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on establishing salable and reserve percentages for California almonds received by handlers during the 1999–2000 crop year. The percentages would be 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets. The 1999–2000 crop is estimated to be the largest crop on record. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices. This action was recommended by the Board at a meeting on July 12, 1999, by a vote of seven in favor and three opposed. Volume regulation was last implemented for California almonds during the 1994–95 crop year.

Section 981.47 of the order provides authority for the Secretary, based on recommendations by the Board and analysis of other available information, to establish salable and reserve percentages for almonds received by handlers during a crop year. The crop year runs from August 1 through July 31. To aid the Secretary in fixing the salable and reserve percentages, § 981.49 of the order requires the Board to submit information to the Department on estimates of the marketable production of almonds, combined domestic and export trade demand needs for the year, carryin inventory at the beginning of the year, and the desirable carryout inventory at the end of the crop year. Section 981.66 authorizes the disposition of reserve

almonds to certain outlets such as almond oil, almond butter, and animal feed.

The Board met on May 12, 1999, to review the projected crop estimate and marketing conditions for the 1999–2000 season. The day before the Board's meeting, the California Agricultural Statistics Service (CASS) issued its initial forecast for the 1999 almond crop at 760 million kernelweight pounds. Based on that estimate, the Board recommended salable and reserve percentages of 84.79 percent and 15.21 percent, respectively. The CASS revised its crop estimate upwards to 830 million pounds on July 8, 1999. Based on the updated crop estimate, the Board met on July 12 and revised its recommendation for salable and reserve percentages to 77.64 and 22.36 percent, respectively, again by a seven to three vote. The 830 million pound crop estimate represents a 60 percent increase over 1998–99 production, and is 10 percent larger than the previous record crop of 756 million pounds produced in 1997–98. According to the CASS, although freezing temperatures in early April caused locally variable production losses, average yields are expected to be high due to excellent bloom and good weather during the pollination period. If realized, this will be the largest almond crop on record to date.

A tabulation of the estimates and calculations used by the Board as it considered recommending volume regulation for the 1999–2000 almond crop follows:

MARKETING POLICY ESTIMATES—1999 CROP

[Kernelweight basis]

	Million Pounds	Percent
Estimated production:		
1. 1999 Production	830.0	
2. Loss and Exempt—4.0% (Resulting from the removal of inedible kernels by handlers and losses during manufacturing)	33.2	
3. Marketable Production	796.8	
Estimated Trade Demand:		
4. Domestic	190.0	
5. Export	459.0	
6. Total	649.0	
Inventory Adjustment:		
7. Carryin 8/1/99	100.4	
8. Desirable Carryover 7/31/00 (available for early season shipments during 2000–2001)	70.0	
9. Adjustment (No. 8 minus no. 7)	−30.4	
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9) (quantity of almonds from the marketable production necessary to meet trade demand needs)	618.6	
11. Reserve (No. 3 minus no. 10)	178.2	
12. Salable % (Item 10 divided by item 3 × 100)		77.64
13. Reserve % (100% minus item 12)		22.36

As specified in the marketing order, the Board considered the factors set forth in the preceding table in its deliberations. The available data indicates a supply for the 1999–2000 crop year of 827.2 million kernelweight pounds (marketable production adjusted for carryin and desired carryout), which will exceed estimated trade demand by 178.2 million kernelweight pounds. The estimated trade demand of 649 million kernelweight pounds represents 110 percent of the estimated shipments for the current crop year, and exceeds the record high shipments of 1997–98 by 36 million kernelweight pounds, or 6 percent.

In addition to the factors included in the table, the Board considered additional information such as the weather-related variation in production from year to year, significant increases in recent almond plantings, and increased yields. These are the primary factors contributing to the projected oversupply situation. The Board also considered recent price fluctuations in its deliberations. In 1997, grower prices averaged $1.55 per pound; during the 1998–99 season, prices have reportedly dropped significantly. This has been attributed to larger than anticipated 1998 supplies, speculation within the marketplace, and the anticipated large 1999–2000 crop.

The proposed salable percentage of 77.64 percent would make 618.6 million kernelweight pounds of the marketable production available to handlers for sale to any market. Combining this figure with the carryin inventory from the 1998–99 crop year (100.4 million kernelweight pounds) and deducting the desired carryout inventory at the end of the 1999–2000 crop year (70.0 million kernelweight pounds) would result in a supply of 649 million kernelweight pounds. This supply would allow the industry to meet its trade demand needs of 649 million kernelweight pounds and allow for market growth. The remaining 22.36 percent, or 178.2 million kernelweight pounds, of the marketable production would be withheld by handlers to meet their reserve obligation.

All or part of the reserve almonds could be released to the salable category if it is found that the supply made available by the salable percentage is insufficient to satisfy 1999–2000 trade demand needs or desirable carryover for use during the 2000–2001 crop year. The Board is required to make any recommendations to the Secretary to increase the salable percentage prior to May 15, 2000, pursuant to § 989.48 of the order. Alternatively, all or a portion of the reserve almonds could be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal outlets for almonds.

As previously stated, 3 of the 10 Board members opposed the recommendation for volume regulation at both meetings where the percentages were recommended, with those in opposition commenting that this year's projected "large" crop would ultimately

be considered average in size, and that next year's crop would be even larger due to new plantings, or expressing a preference for seeing the industry concentrating on building demand rather than imposing a reserve. Observers at the Board meetings who were opposed to volume regulation commented that the industry should deal with increasing supplies by building demand through its promotional activities, rather than implementing reserves. Others suggested that it is more appropriate to manage market risks at the individual handler level through marketing tools such as forward contracting, rather than controlling supplies at the industry level.

After much discussion, the majority of Board members supported the establishment of a reserve to help maintain orderly marketing conditions so that the industry can successfully manage the projected large 1999 almond crop. The long term goal of the almond industry is to increase almond consumption and demand, and the supporting Board members believe this can be best achieved in the presence of stable and orderly marketing conditions. These members believe that use of the reserve provisions of the order as a supply management tool, in conjunction with other marketing tools available in the order, can assist in accomplishing the industry's goals.

The "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) issued by the Department in 1982 specify that 110 percent of recent years' sales be made available to primary markets each season for marketing orders using volume regulation. This rule would provide an estimated 719 million kernelweight pounds of California almonds for unrestricted sales (1999 crop salable production plus carryin from the 1998 crop) to meet increasing domestic and world almond consumption demand. This amount exceeds the estimated delivered sales for 1998–99 California almonds by about 22 percent. Thus, the Guidelines' goals are met.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service (NASS), and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

Pursuant to § 981.47 of the order, this rule would establish salable and reserve percentages applicable to California almonds received by handlers during the 1999–2000 crop year. The volume regulation percentages would be 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets such as almond oil, almond butter, and animal feed. Volume regulation is warranted this season because the marketable production estimate of 796.8 million kernelweight pounds combined with the 1998–99 carryin inventory of 100.4 million kernelweight pounds results in an available supply of about 897 million kernelweight pounds. After subtracting the desirable carryout of 70 million kernelweight pounds, the remaining supply of 827 million kernelweight pounds would be 178 million kernelweight pounds higher than the trade demand of 649 million kernelweight pounds. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices, and should ultimately improve grower returns.

Regarding the impact of this rule on affected entities, the salable and reserve percentages would apply uniformly to all handlers in the industry, regardless of size. There were some concerns expressed at the Board's meeting regarding the impact of a reserve on small handlers, specifically, that small handlers who do not have adequate storage facilities may have to rent such facilities to hold their reserve almonds. These are costs they would not otherwise incur. However, the costs of holding almonds in reserve would be borne proportionately throughout the industry. All handlers would be required to store reserve almonds in varying quantities, depending upon the total amount of almonds handled. Those with existing facilities would also incur storage costs, although those costs may be fixed costs spread over a longer period of time. In any event, costs associated with storing reserve product are expected to be more than offset by the benefits of orderly marketing. In addition, the order was amended in 1996 to allow handlers to transfer their reserve obligation to other handlers. Thus, handlers with no storage facilities would now have the option to transfer their reserve withholding obligation to other handlers who could store the reserve almonds.

Furthermore, almond production, like that of many agricultural commodities, can vary significantly from season to season due to a variety of factors. This in turn can contribute to wide fluctuations in prices. For example, California almond production over the past 10 years has varied from a low of 366.7 million kernelweight pounds in 1995 to a high of 756.5 million kernelweight pounds in 1997. Grower prices for the past 10 years, as reported by the NASS, have varied from a low of $.93 per pound in 1990 to $2.48 per pound in 1995.

In addition, returns to growers have reportedly decreased by as much as $1.00 per pound since the beginning of the 1998–99 crop year. It is believed that a larger than anticipated 1998 crop, market speculation, and an estimated record 1999 crop have contributed to the depressed grower prices. Such swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers and consumers. While the benefits of this rulemaking may be difficult to quantify, any stabilizing effects of volume regulation would impact both small and large handlers positively by helping them maintain orderly marketing conditions through supply management.

Regarding alternatives, the Board considered not recommending volume regulation this season. As previously mentioned, three Board members and some observers at the Board's meetings

expressed their view that the industry should continue to focus on increasing the demand for almonds rather than implementing a reserve. It was expressed that market risk can be managed by individual handlers through marketing tools such as forward contracting, rather than managing supply at the industry level. However, the majority of Board members supported the establishment of a reserve to help maintain orderly marketing conditions so that the industry can successfully manage the projected large 1999 almond crop. The Board also deliberated the merits of allocating the reserve to noncompetitive outlets or ultimately releasing part or all of the reserve as salable. The Board decided to delay this decision until next spring when additional information, including an estimate of the 2000–2001 crop, is available. However, handlers may sell reserve almonds to authorized reserve outlets at any time pursuant to an agency agreement as authorized in § 981.67 of the order, and receive credit against their withholding obligation.

This rule may impose some additional reporting, recordkeeping and other compliance requirements on both small and large handlers. Handlers who choose to divert their reserve almonds to authorized outlets would have to file certain reports with the Board. This requirement is the same as that applied during the 1991–92 and 1994–95 crop years when almond reserves were last established. Most of the industry's handlers handled almonds during those years and are thus familiar with the required reports. These reports have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Board's meetings were widely publicized throughout the almond industry and all interested persons were invited to attend and participate in Board deliberations. Like all Board meetings, the May 12 and July 12, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Reserve Committee met on April 1, May 11, and July 12, 1999, and presented its recommendations to the Board at meetings on May 12 and July 12, 1999. All of these meetings were open to the public, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this proposal. Thirty days is deemed appropriate because any salable and reserve percentages established based on this proposal should be implemented as soon as possible. The beginning of the 1999-2000 crop year is August 1. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. In Part 981, § 981.240 is added to read as follows:

§ 981.240 Salable and reserve percentages for almonds during the crop year beginning on August 1, 1999.

The salable and reserve percentages during the crop year beginning on August 1, 1999, shall be 77.64 percent and 22.36 percent, respectively.

Dated: July 29, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–20499 Filed 8–9–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 98–096–1]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by establishing new program classifications and providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 1998 National Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by October 12, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–096–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–096–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as "the Plan") is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program. Also, the regulations in 9 CFR part 82, subpart C, which provide for certain testing, restrictions on movement, and other restrictions on certain chickens, eggs, and other articles due to the presence of *Salmonella enteritidis*, require that no hatching eggs or newly hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified "U.S.S. Enteritidis Monitored" under the Plan or have met equivalent requirements for *S. enteritidis* control, in accordance with 9 CFR 145.23(d), under official supervision.

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan. In this document, we are proposing to amend the regulations to:

1. Establish two new classifications: "U.S. Avian Influenza Clean" for primary and multiplier egg- and meat-type breeding chicken flocks and "U.S. Mycoplasma Meleagridis Clean State, Turkeys."

2. Identify the agar gel immunodiffusion (AGID) test and the enzyme-linked immunosorbent assay (ELISA) as official tests for avian influenza in the Plan.

3. Allow the use of Food and Drug Administration (FDA) approved feed sanitizing agents or salmonella control products in certain chicken and turkey breeding flocks.

4. Eliminate references to *Salmonella typhimurium* throughout the regulations.

5. Add the colony lift assay for group D salmonella and eliminate the referral of all group D salmonella to APHIS' National Veterinary Services Laboratories (NVSL) in the laboratory protocol for isolation and identification of salmonella in breeding turkeys.

6. Make several changes to the duties of the General Conference Committee of the NPIP.

7. Establish technical protocol for culturing chick meconium.

8. Provide for the use of either chick papers or meconium as testing samples in the "U.S. Salmonella Monitored" program of meat-type breeding chickens.

9. Amend the procedure for determining the status of a flock reacting to tests for *Mycoplasma gallisepticum*, *M. synoviae*, and *M. meleagridis*.

10. Provide for the participation of emu, rhea, and cassowary breeding flocks in the provisions of the Plan.

11. Remove exceptions to the requirements for pullorum typhoid clean States that pertain to turkey hatcheries or supply flocks.

12. Add or amend several definitions.

These proposed amendments are consistent with the recommendations approved by the voting delegates to the National Plan Conference that was held from July 15 to 17, 1998.

Participants in the 1998 National Plan Conferences represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating States. The proposed amendments are discussed in greater detail below.

U.S. Avian Influenza Clean

We are proposing to add a new § 145.23(h) to establish a new "U.S. Avian Influenza Clean" classification for egg-type chickens and meat-type chickens. This proposed program is intended to be the basis from which the breeding-hatchery industry could conduct a program for the prevention and control of avian influenza. The program would enable flockowners to determine the presence of avian influenza in breeding chickens through routine serological surveillance of each participating breeding flock. A flock and the hatching eggs and chicks produced from it would qualify for this proposed classification when the Official State Agency determined that they have met the qualifying requirements.

For primary breeding flocks, a minimum of 30 birds would have to have been tested negative for antibodies to avian influenza when the flock is more than 4 months of age to qualify for the classification. After qualifying, a sample of at least 30 birds from the flock would have to be tested negative at intervals of 90 days to retain the classification. As noted above, this routine serological surveillance would allow flockowners to monitor their flocks for the presence of avian influenza. Under the proposed classification criteria, flockowners could test samples of fewer than 30 birds at any one time if all pens were equally represented and a total of 30 birds was tested within each 90-day period. This would provide an alternative for flockowners who may find it easier to spread the necessary testing out over a period of time rather than testing all the birds at the same time.

The qualifying requirements for multiplier breeding flocks would be the same as for primary breeding flocks with one exception: Instead of having to test a sample of 30 birds every 90 days to retain the classification, the testing interval for multiplier breeding flocks would be 30 birds every 180 days. This longer testing interval for multiplier breeding flocks is used throughout the Plan in other disease classifications and is appropriate because there are many more multiplier breeding flocks than primary breeding flocks—the ratio is roughly 5½ to 1. With the much larger number of multiplier breeding flocks, it works out that multiplier breeding flocks would actually be tested nearly three times more often during the course of a year than the primary breeding flocks in a given State. Given that the multiplier breeding flocks are held in comparatively closer proximity and looser biosecurity conditions, relative to the primary breeding flocks, the health status of one multiplier flock is considered a reliable indicator of the health status of the surrounding multiplier flocks. This is especially true with regard to avian influenza, given the fact that the level of avian influenza infection in the flocks in an area where the disease is present would be very high, if not 100 percent. Given these considerations, we believe that this longer interval for testing multiplier breeding flocks would provide an appropriate level of surveillance for avian influeza.

U.S. M. Meleagridis Clean State, Turkeys

We are proposing to add a new § 145.44(e) to establish a new "U.S. M. Meleagridis Clean State" classification for turkeys. This proposed new classification would be given to qualifying States in which all turkey flocks have been shown to be free of *Mycoplasma meleagridis* and in which no *M. meleagridis* has been detected in

turkey flocks for at least the previous 12 months.

For a State to qualify for this proposed new classification, all turkey breeding flocks in production in the State would have to qualify as "U.S. M. Meleagridis Clean" or its equivalent, and all turkey hatcheries within the State would have to handle only products that are classified as "U.S. M. Meleagridis Clean" or its equivalent. Additionally, all shipments of products from turkey breeding flocks other than those classified as "U.S. M. Meleagridis Clean" or its equivalent into the State would be prohibited.

All persons performing poultry disease diagnostic services within the State would be required to report to the Official State Agency within 48 hours the source of all turkey specimens that are identified as being infected with *M. meleagridis;* such reports would have to be followed by an investigation by the Official State Agency to determine the origin of the infection. Any turkey breeding flock found to be infected with *M. meleagridis* would have to be quarantined until marketed under supervision of the Official State Agency.

If a State no longer met any of the above conditions, or if repeated outbreaks of *M. meleagridis* occurred in turkey breeding flocks, or if an infection spread from the premises on which it originated, APHIS would have grounds to revoke its determination that the State was entitled to the classification. Such action would not be taken until APHIS had conducted a thorough investigation and the Official State Agency had been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator.

Tests for Avian Influenza

We are proposing to amend § 145.14, "Blood testing," to designate the agar gel immunodiffusion (AGID) test and the enzyme-linked immunosorbent assay (ELISA) as the official Plan blood tests for avian influenza. These tests would have to be conducted using antigens or test kits approved by the Department and the Official State Agency and would have to be performed in accordance with the recommendations and instructions provided by the test's producer or manufacturer. These proposed requirements would ensure that the tests are routinely conducted in a consistent and accurate manner. We would allow the use of either test because some laboratories find the ELISA a less labor-intensive test to perform, but the AGID is recognized by the Office of International Epizootics as the international standard test for avian influenza. We would require, however, that any ELISA positive tests would have to be check tested using the AGID, since the AGID test is specifically required by many of the countries to which the United States poultry industry exports its products.

The instructions for conducting the AGID and ELISA tests would be set out in a new § 147.9. Paragraph (a) of the proposed new section would provide detailed instructions regarding the use of AGID test as a screening test for avian influenza, including lists of the materials and reagents needed for the test and directions for preparing the avian influenza AGID agar, performing the AGID test, and interpreting test results. Paragraph (b) of the proposed new section would explain that the ELISA may also be used as a screening test for avian influenza and would require the use of federally licensed ELISA kits in accordance with the manufacturer's instructions. The AGID testing protocols, which are set out in § 147.9 in the rule portion of this document, were developed by NVSL and have been reviewed by avian influenza technical experts. Because proposed § 147.9 contains a footnote, we would also renumber the remaining footnotes in part 147 to accommodate its inclusion.

Feed and Salmonella Control Products

The definitions of *baby poultry* in § 145.1, *chicks* in §§ 145.21 and 145.31, and *poults* in § 145.41 all refer to newly hatched birds that have not been fed or watered. The limitation on feeding and watering can be traced back to the standard practices for shipping mail order chicks and poults that were developed when it was impractical to include food or water in the chick or poult boxes. Now, however, gels are available that can easily be placed in chick and poult boxes. The use of these gels has become widespread in the industry and has virtually eliminated primary mortality in baby poultry due to dehydration. Therefore, we are proposing to amend the definitions of *baby poultry, chicks,* and *poults* to remove the words "that have not been fed or watered" in order for the regulations in part 145 to reflect actual poultry industry practice.

We do believe, however, that it is important to ensure that the gels or other nutrients provided to the baby poultry in participating flocks and hatcheries do not expose the chicks or poults to any of the diseases addressed by Plan programs. Accordingly, we are proposing to add a paragraph to each of the subparts in part 145 to inform Plan participants that any nutritive material provided to baby poultry must be free of the avian pathogens that are officially represented in Plan disease classifications, which are listed in § 145.10. This paragraph would be added to § 145.6, "Specific provisions for participating hatcheries," in subpart A and to the "Participation" sections (i.e., §§ 145.21, 145.31, 145.41, 145.51, and 145.61) of the other five subparts.

We are also proposing to amend §§ 145.23(d), 145.33(h), and 145.43(f) to provide for the use of FDA-approved salmonella control products on finished feed as an additional measure for reducing salmonella in breeding flocks. The Plan's provisions currently provide for the use of feed with no animal protein or require feed containing animal protein to meet specified requirements. Allowing salmonella control products that have been approved by the FDA to be used in poultry feed would provide flockowners with an alternative means of reducing the likelihood of salmonella being introduced into their breeding flocks through feed.

Addition of Emus, Rheas, and Cassowaries

We are proposing to amend parts 145 and 147 to provide for the participation of emu, rhea, and cassowary breeding flocks in the provisions of the Plan. The proposed addition to the Plan of provisions for emu, rhea, and cassowary breeding flocks was voted on and approved by the voting delegates at the Plan's 1998 National Plan Conference and follows the addition in 1998 of provisions for the participation of ostrich breeding flocks. Adding provisions to the Plan for emu, rhea, and cassowary breeding flocks would make it possible for the owners of those flocks to voluntarily participate in the Plan's programs for the prevention and control of egg-transmitted, hatchery-disseminated poultry diseases. To integrate emus, rheas, and cassowaries into the provisions of the Plan, we are proposing to amend several sections of the regulations.

First, we would add emus, rheas, and cassowaries to the definition of *poultry* in § 145.1 to ensure that the general provisions of the regulations would apply, where applicable, to emus, rheas, and cassowaries as well as to the types of poultry already covered by the Plan. With the proposed addition of emus, rheas, and cassowaries, the definition of *poultry* would read: "Domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, and cassowaries, waterfowl, and game birds, except doves and pigeons, which are bred for the

primary purpose of producing eggs or meat."

Under § 145.3(c), "Participation," a Plan participant in any State must participate with all of his poultry hatching egg supply flocks and hatchery operations in that State. To demonstrate compliance with that requirement, the Plan participant must submit a report of each of his breeding flocks within the State to the Official State Agency before the birds in a breeding flock reach 24 weeks of age or, in the case of ostriches, before the birds reach 20 months of age. Under the provisions of this proposed rule, those participation requirements would also apply to emu, rhea, and cassowary hatching egg supply flocks and hatchery operations. Because emus, rheas, and cassowaries mature at a rate comparable to that of ostriches, a participant would have to report his or her emu, rhea, or cassowary breeding flocks to the Official State Agency before the birds in the flock reach 20 months of age, as is the case for ostriches, rather than 24 weeks of age as required for other poultry.

We would amend the introductory text of § 145.14 by adding a provision regarding the blood testing of emus, rheas, and cassowaries. That text currently states that poultry must be more than 4 months of age when blood tested for an official classification, except for turkeys, which may be blood tested at 12 weeks of age; game birds, which may be blood tested when more than 4 months of age or upon reaching sexual maturity, whichever comes first; and ostriches, which must be more than 12 months of age.

In providing for the blood testing of emus, rheas, and cassowaries, we are also proposing to amend the exception regarding ostriches. Specifically, we would provide that ostrich, emu, rhea, and cassowary candidates would be blood tested when at least 12 months of age or upon reaching sexual maturity, depending upon the species and at the discretion of the Official State Agency. (As noted in the previous paragraph, ostriches currently must be "more than 12 months of age" when blood tested.) We would provide for blood testing to occur when the birds are at least 12 months of age or upon reaching sexual maturity because these four species will not reach sexual maturity at the same age, although approximately a year after hatching is an appropriate general time frame. The immature birds are kept in a juvenile rearing facility for about a year after hatching, so it would not be necessary to test them for an official classification until such time as they were ready to be integrated into a breeding flock.

The special provisions for emu, rhea, and cassowary breeding flocks would be added to subpart F (§§ 145.61 through 145.63), which currently pertains only to ostriches. To include emus, rheas, and cassowaries in subpart F, we would add the words "emu, rhea, and cassowary" after the word "ostrich" in the following places:

The title of the subpart. As amended, the title would read "Special Provisions for Ostrich, Emu, Rhea, and Cassowary Breeding Flocks."

The introductory text of § 145.62. Emus, rheas, and cassowaries would be subject to the section's requirement that participating flocks, and the eggs and chicks produced from them, must comply with the applicable general provisions of subpart A and the special provisions of subpart F.

Paragraph (a) of § 145.62. Emus, rheas, and cassowaries would lose their identity under Plan terminology—that is, they would not be considered U.S. Pullorum-Typhoid Clean poultry—if they were not maintained under the conditions prescribed in § 145.5(a). Under § 145.5(a), poultry equipment, poultry houses, and the land in their immediate vicinity must be kept in sanitary condition, and the participating flock, its eggs, and all equipment used in connection with the flock must be kept separated from nonparticipating flocks. The sanitation and segregation described in § 145.5(a) are important factors in maintaining the health of flocks, which is why we would require that those conditions be met in order for started poultry to retain its identity under Plan terminology.

Paragraph (b) of § 145.62. The hatching eggs produced by emu, rhea, and cassowary primary breeding flocks would have to be fumigated or otherwise sanitized; that paragraph also refers the reader to § 147.22, which contains procedures for the sanitation of hatching eggs. This proposed requirement for the sanitation of hatching eggs would serve to help prevent the transmission of egg-disseminated diseases that could be spread by unsanitized eggs.

Paragraph (a) of § 145.63. Emu, rhea, and cassowary flocks would be subject to the same qualifying criteria for the U.S. Pullorum-Typhoid Clean classification as are ostrich flocks. Emu, rhea, and cassowary flocks seeking the U.S. Pullorum Typhoid Clean classification would have to demonstrate their freedom from pullorum and typhoid to the Official State Agency through annual blood testing or a bacteriological monitoring program.

The regulations in § 147.45 regarding official delegates to Plan conferences refer to the programs prescribed in subparts B, C, D, and E of part 145. Similarly, the regulations in § 147.46 refer to four committees within the Plan (egg-type chickens, meat-type chickens, turkeys, and waterfowl, exhibition poultry, and game birds) that have been established to consider possible changes to the Plan's provisions. In order to fully integrate ostrich, emu, rhea, and cassowary flocks into the Plan and provide for the full participation of their flockowners, we are proposing to amend § 147.45 so that it refers to subpart F and § 147.46 so that it refers to a committee for ostriches, emus, rheas, and cassowaries.

Mycoplasma Status of Flocks

In § 147.6, "Procedure for determining the status of flocks reacting to tests for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis," paragraph (a)(14) currently provides that a flock will be considered infected with mycoplasma based on the results of an in vivo bio-assay, polymerase chain reaction (PCR) based procedures, or cultural examinations. That paragraph does, however, provide that if only the bio-assay is positive, additional in vivo bio-assays, PCR-based procedures, or cultural examinations may be conducted by the Official State Agency before a final determination on the flock's mycoplasma status is made. In this document, we are proposing to amend that paragraph to provide the same opportunity for additional testing in instances when only the results of the PCR-based procedure are positive. This proposed change would allow Official State Agencies to corroborate the findings of the PCR-based procedures through the use of seroconversion or culture isolation of the mycoplasma organism.

Colony Lift Assay

We are proposing to amend § 147.11(b), which contains bacteriological examination procedures for use with turkey specimens and environmental specimens from turkey flocks, to provide for the use of the colony lift assay as a means for laboratories to pick group D salmonella colonies from selective and non-selective agar culture plates. Group D salmonella colonies are difficult to detect on agar culture plates, so allowing the use of a group D colony lift assay would increase the sensitivity of the culture procedure by eliminating the randomness of selecting colonies, as the

randomness could lead to group D cultures being missed on the agar plate.

We are also proposing to amend the turkey culturing provisions in § 147.11(b) to remove the requirement that all salmonella group D cultures be referred to NVSL for serotyping. Authorized laboratories are capable of conducting the serotyping themselves, so there is no need for the cultures to be referred to NVSL. These proposed changes would make the turkey culturing requirements consistent with the corresponding requirements for egg-type and meat-type chickens.

Chick Meconium Testing Procedure

We are proposing to add a new § 147.18 to provide a testing procedure for chick meconium. This procedure, which is set out in the rule portion of this document, would be added because the "U.S. Salmonella Monitored" classification requires the testing of chick meconium. Because the testing is required by the Plan, it is necessary to provide an official procedure for the collection of samples and laboratory testing. The testing protocol was developed by scientists from the Primary Poultry Breeders Veterinarian Roundtable who have expertise in salmonella isolation and identification.

General Conference Committee

Section 147.43 explains the membership, duties, and functions of the Plan's General Conference Committee (GCC), which is the body that provides advice and assistance to the Department in its administration of the NPIP. At the 1998 National Plan Conference, the voting delegates approved additional duties that the Plan membership wishes the GCC to undertake. Those additional duties are:

- Advise and make recommendations to the Department to the relative importance of maintaining, at all times, adequate Department funding for the NPIP to enable the Senior Coordinator and staff to fully administer the provisions of the Plan.
- Advise and make yearly recommendations to the Department with respect to the NPIP budget well in advance of the start of the budgetary process.
- Serve as a direct liaison between the NPIP and the United States Animal Health Association.
- Advise and make recommendations to the Department regarding NPIP involvement or representation at poultry industry functions and activities as deemed necessary or advisable for the purposes of the NPIP.

We are, therefore, proposing to amend § 147.43 to reflect these additional advisory and liaison duties.

Definitions

In § 145.1, we are proposing to amend the definition of *authorized laboratory* and to add a definition of *independent flock*. The definition of *authorized laboratory* currently reads: "A laboratory designated by an Official State Agency, subject to review by the Service, to perform the blood testing and bacteriological examinations provided for in this part." We are proposing to add to the end of that definition the following: "The Service's review will include, but will not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, periodic duplicate samples, and peer review. A satisfactory review will result in the authorized laboratory being recognized by the Service as a nationally approved laboratory qualified to perform the blood testing and bacteriological examinations provided for in this part." Authorized laboratories have developed into a significant component of the Plan, and the types of tests that are conducted by authorized laboratories on behalf of the NPIP have become more varied in recent years as the Plan has become involved in the certification of essentially all of the live poultry and poultry meat products produced in the United States. The delegates at the Plan's 1998 National Plan Conference voted to add the specific review elements described above to the definition of *authorized laboratory* in order to provide for uniformity and consistency among the Plan's 125 authorized laboratories.

There are three categories of participation in the NPIP: Hatcheries, independent flocks, and dealers. Hatcheries and dealers are already addressed in § 145.1, but there is not currently a definition of the term "independent flock." Therefore, we are proposing to add the following definition of *independent flock* to § 145.1: "A flock that produces hatching eggs and that has no ownership affiliation with a specific hatchery."

We are also proposing to amend § 145.61, which provides definitions for the specific provisions of subpart F. That section does not currently include a definition for the term "chick," which is used several times in that subpart. Therefore, we are also proposing to amend § 145.61 to add a definition of *chick*, which would read "Newly hatched ostriches, emus, rheas, or cassowaries." Adding this definition, which is consistent with the definition provided for the same term in the other four subparts of part 145, would clarify what is intended when the term "chick" is used in subpart F.

Miscellaneous

Prior to 1970, the provisions of the regulations that apply to turkeys were not part of the NPIP, but were instead part of the National Turkey Improvement Plan (NTIP). Because turkeys were not included in the NPIP, the NPIP regulations specifically excluded turkey hatcheries, hatchery supply flocks, and breeding flocks from the criteria used to determine the pullorum-typhoid status of meat-type and egg-type chicken breeding flocks and waterfowl, exhibition poultry, and game bird breeding flocks. When the NTIP was integrated into the NPIP, those exemptions should have been removed from the regulations but were not, which has resulted in a discrepancy between the U.S. Pullorum-Typhoid Clean classification criteria for turkeys and the same criteria for chickens and waterfowl, exhibition poultry, and game birds. A similar discrepancy exists between the U.S. Pullorum-Typhoid Clean classification criteria for egg- and meat-type chicken supply flocks and the requirements for waterfowl, exhibition poultry, and game bird supply flocks. In order to eliminate those discrepancies, we are proposing to amend §§ 145.23, 145.33, and 145.53 to eliminate the incorrect exemptions discussed in this paragraph.

We are also proposing to amend § 145.1 to remove the definition of *S. typhimurium infection or typhimurium* because the disease is not referred to, nor is the term itself used, in part 145. Further, because the Plan does not include any programs for the prevention or control of *Salmonella typhimurium*, the instructions provided in § 147.4, "The tube agglutination test for S. typhimurium," are unnecessary. Therefore, we are proposing to remove § 147.4 from the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The proposed changes contained in this document are based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who took part in the Plan's 1998 National Plan Conference. The proposed changes would amend the Plan and its auxiliary

provisions by establishing new program classifications and providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 1998 National Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

The Plan serves as a "seal of approval" for egg and poultry producers in the sense that tests and procedures recommended by the Plan are considered optimal for the industry. In all cases, the changes proposed in this document have been generated by the industry itself with the goal of reducing disease risk and increasing product marketability. Because participation in the Plan is voluntary, individuals are likely to remain in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program.

Assuming they wished to voluntarily remain in the program, the cost to comply with the proposed protocols, tests, classification schemes, etc. would be borne primarily by the approximately 12 primary breeders in NPIP. However, the net economic effect of the proposed changes on those breeders is expected to be positive over the long term. This is because the breeders' compliance costs should be more than offset by the expected benefits resulting from compliance, i.e., increased U.S. poultry exports. U.S. exports are expected to increase because, by serving to reduce disease risk, the proposed protocols and procedures should make domestic poultry more marketable in foreign markets. That the net economic effect of the proposed changes on the poultry industry is expected to be positive is evidenced by the fact the industry participants of NPIP themselves initiated the proposed changes.

The precise dollar amount of the costs that the breeders would incur to comply with the proposed changes is not available. However, those costs are not expected to be significant, especially since many of the proposed changes are no more than technical corrections to the provisions of the Plan or are intended to bring those provisions into conformity with current developments in the scientific community. In 1997, the dollar value of U.S. exports of meat and edible offal of poultry (fresh, chilled, and frozen) totaled $2.2 billion (World Trade Atlas, September 1998 edition). Even if exports increased by only 1 percent as a result of the proposed changes, the benefit would be $22 million.

In any event, the breeder participants in NPIP always have the option of withdrawing from the Plan, in which case they would not be subject to the proposed changes. As indicated above, industry participation in the NPIP is voluntary.

Economic Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of its rules on small entities, i.e., small businesses, organizations, and governmental jurisdictions. The changes proposed in this document are not expected to have a significant economic effect on a substantial number of small entities, if for no other reason than few, if any, of those entities most affected by the proposed changes—i.e., NPIP-participating breeders and producers—are small in size. The U.S. Small Business Administration's small entity threshold for almost all standard industrial classification categories for poultry and egg producers is annual revenues of $0.5 million or less. We believe that most, if not all, breeders and producers participating in the Plan generate annual revenues in excess $0.5 million.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–096–1. Please send a copy of your comments to: (1) Docket No. 98–096–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The NPIP is a voluntary Federal-State-industry mechanism for controlling certain poultry diseases and for improving poultry breeding flocks and products through disease control techniques. APHIS is responsible for administering the Plan, the primary purpose of which is to protect the health of the U.S. poultry population.

This proposed rule would, among other things, amend the provisions of the Plan to provide for the participation of emu, rhea, and cassowary breeding flocks in the Plan. This would make it possible for the owners of these breeding flocks to voluntarily participate in the NPIP's programs for the prevention and control of egg-transmitted, hatchery-disseminated poultry diseases. Including emu, rhea, and cassowary in the provisions of the Plan would enhance our ability to protect the United States against certain poultry diseases.

Our proposed rule would also establish a new "U.S. M. Meleagridis Clean State" classification for turkeys that would be awarded to qualifying States in which all turkey flocks have been shown to be free of this disease. Achieving this classification would enhance the value of turkey products in national and international trade, and would provide flock owners with added incentive to eliminate this disease from their flocks.

Expanding the Plan to include emu, rhea, and cassowary breeding flocks and establishing a "U.S. M. Meleagridis Clean State" classification for turkeys will necessitate the use of two information collection activities that will (1) alert us to the disease status of turkeys in any given State and (2) alert us when any given owner of emu, rhea, or cassowary flocks opts to enroll these flocks in the Plan. We are asking OMB to approve our use of these information collection activities, which are a necessary element of the Plan's

programs to prevent the spread of contagious poultry diseases within the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2 hours per response.

Respondents: Flock owners, breeders, hatchery operators, and State veterinary medical officers.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 2 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 145.1 would be amended as follows:

a. The definition of *authorized laboratory* would be revised to read as set forth below.

b. The definition of *baby poultry* would be revised to read as set forth below.

c. A new definition of *independent flock* would be added, in alphabetical order, to read as set forth below.

d. The definition of *poultry* would be amended by adding the words "emus, rheas, cassowaries," immediately after the word "ostriches,".

e. The definition of *S. typhimurium infection or typhimurium* would be removed.

§ 145.1 Definitions.

* * * * *

Authorized laboratory. A laboratory designated by an Official State Agency, subject to review by the Service, to perform the blood testing and bacteriological examinations provided for in this part. The Service's review will include, but will not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, periodic duplicate samples, and peer review. A satisfactory review will result in the authorized laboratory being recognized by the Service as a nationally approved laboratory qualified to perform the blood testing and bacteriological examinations provided for in this part.

Baby poultry. Newly hatched poultry (chicks, poults, ducklings, goslings, keets, etc.).

* * * * *

Independent flock. A flock that produces hatching eggs and that has no ownership affiliation with a specific hatchery.

* * * * *

§ 145.3 [Amended]

3. In § 145.3, the introductory text of paragraph (c) would be amended by adding the words "emus, rheas, cassowaries," immediately after the word "ostriches,".

4. In § 145.6, paragraph (e) would be redesignated as paragraph (f) and a new paragraph (e) would be added to read as follows:

§ 145.6 Specific provisions for participating hatcheries.

* * * * *

(e) Any nutritive material provided to baby poultry must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

* * * * *

5. In § 145.10, new paragraphs (r) and (s) would be added to read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(r) *U.S. Avian Influenza Clean.* (See §§ 145.23(h) and 145.33(l).)

BILLING CODE 3410–34–U

Figure 19

(s) *U.S. M. Meleagridis Clean State, Turkeys.* (See § 145.44(e).)

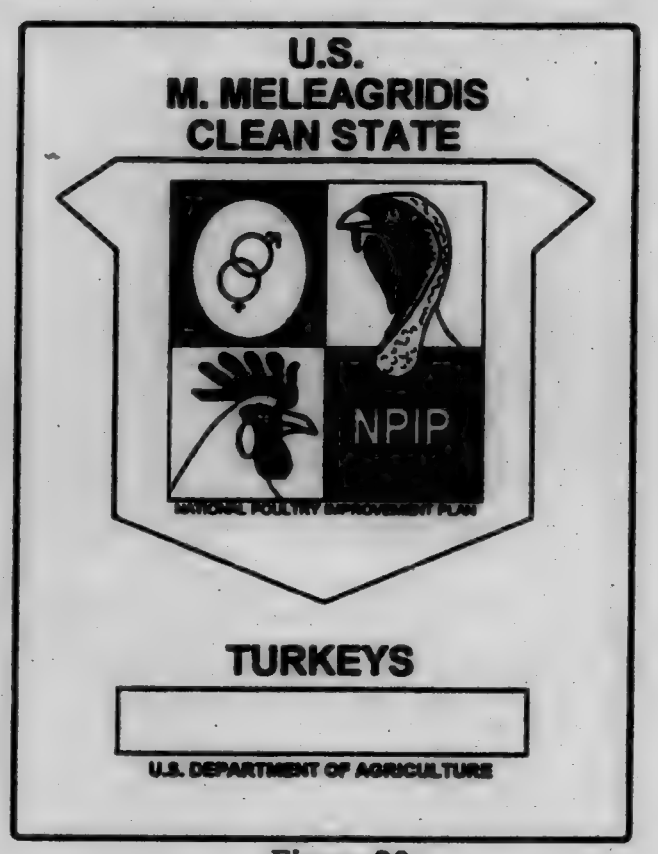

Figure 20

BILLING CODE 3410-34-C

6. Section 145.14 would be amended as follows:

a. In the introductory text at the end of the first sentence, the words "and ostriches blood tested under subpart F must be more than 12 months of age" would be removed and the words "and ostrich, emu, rhea, and cassowary candidates must be blood tested when at least 12 months of age or upon reaching sexual maturity, depending upon the species and at the discretion of the Official State Agency" would be added in their place.

b. A new paragraph (d) would be added to read as follows:

§ 145.14 Blood testing.

* * * * *

(d) *For avian influenza.* The official blood tests for avian influenza are the agar gel immunodiffusion (AGID) test and the enzyme-linked immunosorbent assay (ELISA).

(1) The AGID test must be conducted on all ELISA-positive samples. Positive tests by AGID or ELISA must be further tested by Federal Reference Laboratories. Final judgment may be based upon further sampling or culture results.

(2) The tests must be conducted using antigens or test kits approved by the Department or the Official State Agency and must be performed in accordance with the recommendations of the producer or manufacturer.

* * * * *

7. In § 145.21, the definition of *chicks* would be revised to read as follows:

§ 145.21 Definitions.

* * * * *

Chicks. Newly hatched chickens.

* * * * *

8. In § 145.22, a new paragraph (e) would be added to read as follows:

§ 145.22 Participation.

* * * * *

(e) Any nutritive material provided to chicks must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

9. Section 145.23 would be amended as follows:

a. In paragraph (b)(3)(i), the words ", except turkey hatcheries," would be removed.

b. In paragraph (b)(3)(ii), the words ", except turkey flocks," would be removed.

c. In paragraph (b)(3)(viii), the words ", other than turkey flocks," would be removed.

d. In paragraph (b)(4), the words ", other than turkey, waterfowl, exhibition poultry, and game bird supply flocks," would be removed.

e. Paragraph (d)(1)(ii)(B) would be revised.

f. A new paragraph (h) would be added to read as follows:

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) Mash feed may contain no animal protein other than an APPI animal protein product supplement manufactured in pellet form and crumbled: *Provided*, that mash feed may contain non-pelleted APPI animal protein product supplements if the finished feed is treated with a salmonella control product approved by the Food and Drug Administration.

* * * * *

(h) *U.S. Avian Influenza Clean.* This program is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of avian influenza. It is intended to determine the presence of avian influenza in breeding chickens through routine serological surveillance of each participating breeding flock. A flock and the hatching eggs and chicks produced from it will qualify for this classification when the Official State Agency

determines that they have met one of the following requirements:

(1) It is a primary breeding flock in which minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period.

(2) It is a multiplier breeding flock in which minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 180 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 180-day period.

* * * * *

10. In § 145.31, the definition of *chicks* would be revised to read as follows:

§ 145.31 Definitions.

* * * * *

Chicks. Newly hatched chickens.

* * * * *

11. In § 145.32, a new paragraph (d) would be added to read as follows:

§ 145.32 Participation.

* * * * *

(d) Any nutritive material provided to chicks must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

12. Section 145.33 would be amended as follows:

a. In paragraph (b)(3)(i), the words ", except turkey hatcheries," would be removed.

b. In paragraph (b)(3)(ii), the words ", except turkey flocks," would be removed.

c. In paragraph (b)(3)(viii), the words ", other than turkey flocks," would be removed.

d. In paragraph (b)(4), the words ", other than turkey, waterfowl, exhibition poultry, and game bird supply flocks," would be removed.

e. Paragraph (h)(1)(ii)(B) would be revised.

f. Paragraph (i)(1)(vi) would be amended by removing the words "meconium and" and adding the words "meconium or" in their place.

g. A new paragraph (l) would be added to read as follows:

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(B) Mash feed may contain no animal protein other than an APPI/NMFS animal protein product supplement manufactured in pellet form and crumbled: *Provided*, that mash feed may contain non-pelleted APPI/NMFS animal protein product supplements if the finished feed is treated with a salmonella control product approved by the Food and Drug Administration.

* * * * *

(l) *U.S. Avian Influenza Clean.* This program is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of avian influenza. It is intended to determine the presence of avian influenza in primary breeding chickens through routine serological surveillance of each participating breeding flock. A flock and the hatching eggs and chicks produced from it will qualify for this classification when the Official State Agency determines that they have met one of the following requirements:

(1) It is a primary breeding flock in which a minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period.

(2) It is a multiplier breeding flock in which minimum of 30 birds have been tested negative for antibodies to avian influenza when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 180 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 180-day period.

* * * * *

13. In § 145.41, the definition of *poults* would be revised to read as follows:

§ 145.41 Definitions.

* * * * *

Poults. Newly hatched turkeys.

14. In § 145.42, a new paragraph (d) would be added to read as follows:

§ 145.42 Participation.

* * * * *

(d) Any nutritive material provided to poults must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

15. In § 145.43, paragraphs (f)(3)(ii) and (f)(3)(iii) would be revised to read as follows:

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(f) * * *

(3) * * *

(ii) Initial feed for poults to 2 weeks of age must be manufactured in pellet form. Initial feed may contain no animal protein other than animal protein products produced under the Animal Protein Products Industry (APPI) Salmonella Education/Reduction Program or the Fishmeal Inspection Program of the National Marine Fisheries Service (NMFS). Finished feed must be treated with a Food and Drug Administration (FDA) approved salmonella control product at FDA-approved levels.

(iii) Succeeding feed for turkeys 2 weeks or older must be either:

(A) Pelleted feed that meets the requirements of paragraph (f)(3)(ii) of this section; or

(B) Mash feed that contains no animal protein products; or

(C) Mash feed that contains an APPI/NMFS animal protein products supplement that has been manufactured in pellet form and crumbled. Finished feed must be treated with an FDA-approved salmonella control product at FDA-approved levels.

* * * * *

16. In § 145.44, a new paragraph (e) would be added to read as follows:

§ 145.44 Terminology and classification; States.

* * * * *

(e) *U.S. M. Meleagridis Clean State, Turkeys.* (1) A State will be declared a U.S. M. Meleagridis Clean State, Turkeys, if the Service determines that:

(i) No *Mycoplasma meleagridis* is known to exist nor to have existed in turkey breeding flocks in production within the State during the preceding 12 months;

(ii) All turkey breeding flocks in production are tested and classified as U.S. M. Meleagridis Clean or have met equivalent requirements for *M. meleagridis* control under official supervision;

(iii) All turkey hatcheries within the State only handle products that are classified as U.S. M. Meleagridis Clean

or have met equivalent requirements for *M. meleagridis* control under official supervision;

(iv) All shipments of products from turkey breeding flocks other than those classified as U.S. M. Meleagridis Clean, or equivalent, into the State are prohibited;

(v) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all turkey specimens that have been identified as being infected with *M. meleagridis*;

(vi) All reports of *M. meleagridis* infection in turkeys are promptly followed by an investigation by the Official State Agency to determine the origin of the infection; and

(vii) All turkey breeding flocks found to be infected with *M. meleagridis* are quarantined until marketed under supervision of the Official State Agency.

(2) The Service may revoke the State's classification as a U.S. M. Meleagridis Clean State, Turkeys, if any of the conditions described in paragraph (d)(1) of this section are discontinued. The Service will not revoke the State's classification as a U.S. M. Meleagridis Clean State, Turkeys, until it has conducted an investigation and the Official State Agency has been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator.

* * * * *

17. In § 145.52, a new paragraph (d) would be added to read as follows:

§ 145.52 Participation.

* * * * *

(d) Any nutritive material provided to baby poultry must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

§ 145.53 [Amended]

18. In § 145.53, paragraph (b) would be amended as follows:

a. In paragraph (b)(3)(i), the words ", except turkey hatcheries," would be removed.

b. In paragraph (b)(3)(ii) the words ", except turkey flocks," would be removed.

c. In paragraph (b)(3)(viii), the words ", other than turkey flocks," would be removed.

d. In paragraph (b)(4), the words ", other than turkey flocks," would be removed.

19. The subpart heading for subpart F would be revised to read as follows:

Subpart F—Special Provisions for Ostrich, Emu, Rhea, and Cassowary Breeding Flocks and Products

20. In 145.61, a definition of *chicks* would be added, in alphabetical order, to read as follows:

§ 145.61 Definitions.

* * * * *

Chicks. Newly hatched ostriches, emus, rheas, or cassowaries.

* * * * *

21. In § 145.62, the introductory text would be amended by adding the words "emus, rheas, and cassowaries," immediately after the word "ostriches," and a new paragraph (c) would be added to read as follows:

§ 145.62 Participation.

* * * * *

(c) Any nutritive material provided to chicks must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

§ 145.63 [Amended]

22. In § 145.63, paragraph (a)(2) would be amended by adding the words ", emus, rheas, or cassowaries" immediately after the word "ostriches".

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

23. The authority citation for part 147 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

§ 147.4 [Removed and reserved]

24. Section 147.4 would be removed and reserved.

25. In § 147.6, paragraph (a)(14) would be revised to read as follows:

§ 147.6 Procedure for determining the status of flocks reacting to tests for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis.

* * * * *

(a) * * *

(14) If the in vivo bio-assay, PCR-based procedures, or culture procedures are positive, the flock will be considered infected. However, the following considerations may apply:

(i) In PCR-positive flocks for which there are other negative mycoplasma test results, the flock's mycoplasma status should be confirmed through either seroconversion or culture isolation of the organism, or through both methods, before final determination of the flock's status is made.

(ii) In flocks for which only the bio-assay is positive, additional in vivo bio-assay, PCR-based procedures, or cultural examinations may be conducted by the Official State Agency before final determination of the flock's status is made.

* * * * *

§§ 147.11, 147.12, 147.14, 147.15, 147.16 [Footnotes redesignated]

26. In §§ 147.11, 147.12, 147.14, 147.15, 147.16, footnotes 6 through 22 and their references would be redesignated as footnotes 7 through 23, respectively.

27. A new § 147.9 would be added to read as follows:

§ 147.9 Standard test procedures for avian influenza.

(a) The agar gel immunodiffusion (AGID) test should be considered the basic screening test for antibodies to Type A influenza viruses. The AGID test is used to detect circulating antibodies to Type A influenza group-specific antigens, namely the ribonucleoprotein (RNP) and matrix (M) proteins. Therefore, this test will detect antibodies to all influenza A viruses, regardless of subtype. The AGID test can also be used as a group-specific test to identify isolates as Type A influenza viruses. The method used is similar to that described by Beard.[6] The basis for the AGID test is the concurrent migration of antigen and antibodies toward each other through an agar gel matrix. When the antigen and specific antibodies come in contact, they combine to form a precipitate that is trapped in the gel matrix and produces a visible line. The precipitin line forms where the concentration of antigen and antibodies is optimum. Differences in the relative concentration of the antigen or antibodies will shift the location of the line towards the well with the lowest concentration or result in the absence of a precipitin line. Electrolyte concentration, pH, temperature, and other variables also affect precipitate formation.

(1) *Materials needed.*

(i) Refrigerator (4 °C).

(ii) Freezer (−20 °C).

(iii) Incubator or airtight container for room temperature (~25 °C) incubations.

(iv) Autoclave.

(v) Hot plate/stirrer and magnetic stir bar (optional).

(vi) Vacuum pump.

(vii) Microscope illuminator or other appropriate light source for viewing results.

---

[6] Beard, C.W. Demonstration of type-specific influenza antibody in mammalian and avian sera by immunodifussion Bull. Wld. Hlth. Orig. 42:779–785. 1970.

(viii) Immunodiffusion template cutter, seven-well pattern (a center well surrounded by six evenly spaced wells). Wells are 5.3 mm in diameter and 2.4 mm apart.

(ix) Top loading balance (capable of measuring 0.1 gm differences).

(x) Pipetting device capable of delivering 50 µl portions.

(xi) Common laboratory supplies and glassware—Erlenmeyer flasks, graduated cylinders, pipettes, 100 × 15 mm or 60 × 15 mm petri dishes, flexible vacuum tubing, side-arm flask (500 mL or larger), and a 12-or 14-gauge blunt-ended cannula.

(2) *Reagents needed.*

(i) Phosphate buffered saline (PBS), 0.01M, pH 7.2 (NVSL media #30054 or equivalent).

(ii) Agarose (Type II Medium grade, Sigma Chemical Co. Cat.# A–6877 or equivalent).

(iii) Avian influenza AGID antigen and positive control antiserum approved by the Department and the Official State Agency.

(iv) Strong positive, weak positive, and negative control antisera approved by the Department and the Official State Agency (negative control antisera optional).

(3) *Preparing the avian influenza AGID agar.*

(i) Weigh 9 gm of agarose and 80 gm of NaCl and add to 1 liter of PBS (0.01 M, pH 7.2) in a 2 liter Erlenmeyer flask.

(ii) To mix the agar, either:

(A) Autoclave the mixture for 10 minutes and mix the contents by swirling after removing from the autoclave to ensure a homogeneous mixture of ingredients; or

(B) Dissolve the mixture by bringing to a boil on a hot plate using a magnetic stir bar to mix the contents in the flask while heating. After boiling, allow the agar to cool at room temperature (~25 °C) for 10 to 15 minutes before dispensing into petri plates.

(iii) Agar can be dispensed into small quantities (daily working volumes) and stored in airtight containers at 4 °C for several weeks, and melted and dispensed into plates as needed.

Note: Do not use agar if microbial contamination or precipitate is observed.

(4) *Performing the AGID.* (i) *Detection of serum antibodies.*

(A) Dispense 15 to 17 mL of melted agar into a 100 x 15 mm petri plate or 5 to 6 mL agar into a 60 x 15 mm petri plate using a 25 mL pipette. The agar thickness should be approximately 2.8 mm.

(B) Allow plates to cool in a relatively dust-free environment with the lids off to permit the escape of water vapor. The lids should be left off for at least 15 minutes, but not longer than 30 minutes, as electrolyte concentration of the agar may change due to evaporation and adversely affect formation of precipitin lines.

Note: Plates should be used within 24 hours after they are poured.

(C) Record the sample identification, reagent lot numbers, test date, and identification of personnel performing and reading the test.

(D) Using the template, cut the agar after it has hardened. Up to seven template patterns can be cut in a 100 x 15 mm plate and two patterns can be cut in a 60 x 15 mm plate.

(E) Remove the agar plugs by aspiration with a 12-to 14-gauge cannula connected to a side arm flask with a piece of silicone or rubber tubing that is connected to a vacuum pump with tubing. Adjust the vacuum so that the agar surrounding the wells is not disturbed when removing the plugs.

(F) To prepare the wells, either:

(*1*) Place 50 µl of avian influenza AGID antigen in the center well using a micropipette with an attached pipette tip. Place 50 µl AI AGID positive control antiserum in each of two opposite wells, and add 50 µl per well of test sera in the four remaining wells. This arrangement provides a positive control line on one side of the test serum, thus providing for the development of lines of identity (see figure 1); or

(*2*) Place 50 µl AI AGID positive control antiserum in each of three alternate peripheral wells, and add 50 µl per well of test sera in the three remaining wells. This arrangement provides a positive control line on each side of the test serum, thus providing for the development of lines of identity on both sides of each test serum (see figure 2).

Note: A pattern can be included with positive, weak positive, and negative reference serum in the test sera wells to aid in the interpretation of results (see figure 3).

(G) Cover each plate after filling all wells and allow the plates to incubate for 24 hours at room temperature (~25 °C) in a closed chamber to prevent evaporation. Humidity should be provided by placing a damp paper towel in the incubation chamber. Note: Temperature changes during migration may lead to artifacts.

(ii) *Interpretation of test results.*

(A) Remove the lid and examine reactions from above by placing the plate(s) over a black background, and illuminate the plate with a light source directed at an angle from below. A microscope illuminator works well and allows for varying intensities of light and positions.

(B) The type of reaction will vary with the concentration of antibody in the sample being tested. The positive control serum line is the basis for reading the test. If the line is not distinct, the test is not valid and must be repeated. The following types of reactions are observed (see figure 3):

(*1*) *Negative reaction.* The control lines continue into the test sample well without bending or with a slight bend away from the antigen well and toward the positive control serum well.

(*2*) *Positive reaction.* The control lines join with, and form a continuous line (line of identity) with, the line between the test serum and antigen. The location of the line will depend on the concentration of antibodies in the test serum. Weakly positive samples may not produce a complete line between the antigen and test serum but may only cause the tip or end of the control line to bend inward toward the test well.

(3) *Non-specific lines.* These lines occasionally are observed between the antigen and test serum well. The control lines will pass through the non-specific line and continue on into the test serum well. The non-specific line does not form a continuous line with positive control lines.

BILLING CODE 3410-34-U

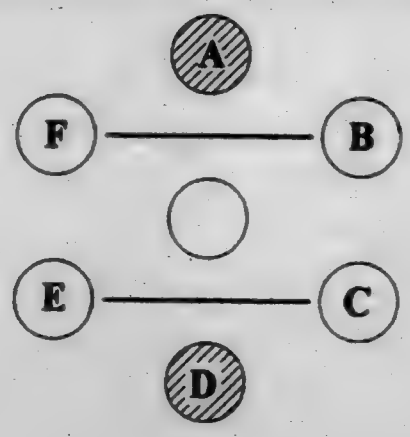

Figure 1. Immunodiffusion test that uses AI AGID antigen in the center well; AI-positive control serum in wells A and D; and AI-negative test serum in wells B, C, E, and F.

VOL 64 ISS 153 AG 10 1999 UMI

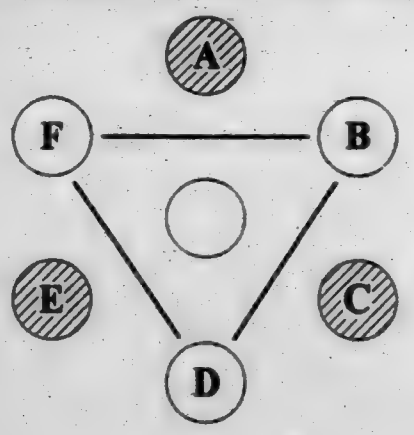

Figure 2. Immunodiffusion test that has AI AGID antigen in the center well; AI-positive control serum in wells A, C, and E; and AI-negative test serum in wells B, D, and F.

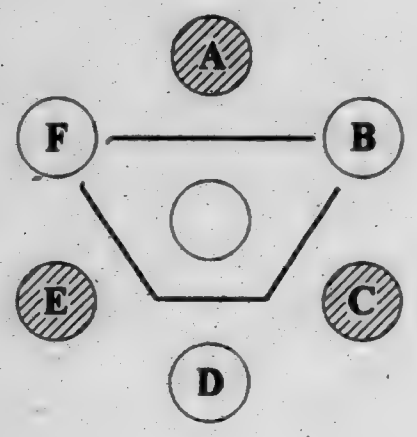

Figure 3. Immunodiffusion test that has AI AGID antigen in the center well; AI-positive control serum in wells A, C, and E; AI-negative test serum in well B; AI-positive test serum in well D; and weak positive test serum in well F.

BILLING CODE 3410-34-C

(b) The enzyme-linked immunosorbent assay (ELISA) may be used as a screening test for avian influenza. Use only federally licensed ELISA kits and follow the manufacturer's instructions. All ELISA-positive serum samples must be confirmed with the AGID test conducted in accordance with paragraph (a) of this section.

§ 147.11 [Amended]

28. Section 147.11 would be amended as follows:

a. In paragraph (b)(2)(iii) the words "A group D colony lift assay may be utilized to signal the presence of the hard-to-detect group D salmonella colonies on agar culture plates." would be added after the final sentence.

b. In paragraph (b)(2)(v), the words "at the National Veterinary Services Laboratory" would be removed.

29. A new § 147.18 would be added to read as follows:

§ 147.18 Chick meconium testing procedure for salmonella.

Procedure:

(a) Record the date, source, and flock destination on the "Meconium Worksheet."

(b) Shake each plastic bag of meconium until a uniform consistency is achieved.

(c) Transfer a 25 gm sample of meconium to a sterile container. Add 225 mL of a preenrichment broth to each sample (this is a 1:10 dilution), mix gently, and incubate at 37 °C for 18–24 hours.

(d) Enrich the sample with selective enrichment broth for 24 hours at 42 °C.

(e) Streak the enriched sample onto brilliant green-Novobiocin (BGN) agar and xylose-lysine-tergitol 4 (XLT4) agar.

(f) Incubate both plates at 35 °C for 24 hours and process suspect salmonella colonies according to § 147.11.

30. In § 147.43, paragraphs (d)(1) through (d)(4) would be redesignated as paragraphs (d)(3) through (d)(6), respectively, and new paragraphs (d)(1), (d)(2), (d)(7), and (d)(8) would be added to read as follows:

§ 147.43 General Conference Committee.

* * * * *

(d) * * *

(1) Advise and make recommendations to the Department on the relative importance of maintaining, at all times, adequate departmental funding for the NPIP to enable the Senior Coordinator and staff to fully administer the provisions of the Plan.

(2) Advise and make yearly recommendations to the Department with respect to the NPIP budget well in advance of the start of the budgetary process.

* * * * *

(7) Serve as a direct liaison between the National Poultry Improvement Plan and the United States Animal Health Association.

(8) Advise and make recommendations to the Department regarding NPIP involvement or representation at poultry industry functions and activities as deemed necessary or advisable for the purposes of the NPIP.

§ 147.45 [Amended]

31. Section 147.45 would be amended by removing the words "and E" and adding the words "E, and F" in their place.

32. In § 145.46, the introductory text of paragraph (a) would be amended by removing the word "four" and adding the word "five" in its place, and a new paragraph (a)(5) would be added to read as follows:

§ 147.46 Committee consideration of proposed changes.

(a) * * *

(5) Ostriches, emus, rheas, and cassowaries.

* * * * *

Done in Washington, DC, this 4th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–20540 Filed 8–9–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–280–AD]

Airworthiness Directives; Raytheon (Beech) Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model 400A airplanes. This proposal would require replacement of the fuel drain tube assembly in the aft fuselage with a new, modified assembly. This proposal is prompted by a report of chafing of the fuel tube assembly against the elevator control cable due to inadequate clearance between the components. The actions specified by the proposed AD are intended to prevent chafing of the fuel drain tube assembly, which could result in fuel leakage from the fuel drain tube assembly and consequent risk of a fire.

DATES: Comments must be received by September 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P. O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Scott West, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4146; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–280–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of chafing on the fuel drain tube assembly in the aft fuselage on a Raytheon (Beech) Model 400A airplane. Further investigation revealed that the elevator control cable contacted the fuel drain tube assembly due to inadequate clearance between the components. This condition, if not corrected, could result in fuel leakage from the fuel drain tube assembly and consequent risk of a fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB.28–3076, dated October, 1997, which describes procedures for replacement of the existing fuel drain tube assembly with a new, modified assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 92 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed action, and that the average labor rate is $60 per work hour. Required parts would cost approximately $21 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $36,072, or $501 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranties are available for parts associated with accomplishing the replacement action required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Beech): Docket 98–NM–280–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–92 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the fuel drain tube assembly, which could result in fuel leakage from the fuel drain tube assembly and consequent risk of fire, accomplish the following:

Replacement

(a) At the next scheduled inspection, but no later than 200 flight hours after the effective date of this AD, replace the existing aft fuselage fuel drain tube assembly, part number (P/N) 128–920151–1, with a new, modified tube assembly, P/N 128–920237–1, in accordance with Raytheon Aircraft Service Bulletin SB.28–3076, dated October, 1997.

Spares

(b) As of the effective date of this AD, no person shall install a fuel drain tube assembly, P/N 128–920151–1, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20502 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–71–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas MD–11 and MD–11F series airplanes. This proposal would require a one-time inspection to determine if metallic transitions are installed on wire harnesses of the tail tank fuel transfer pumps, and to determine if damaged wires are present; and repair, if necessary. This proposal also would require repetitive inspections of the repaired area; and a permanent modification of the wire harnesses if metallic transitions are not installed, which would terminate the repetitive inspections. This proposal is prompted by a report of chafing and damage to a wire harness of a tail tank fuel transfer pump. The actions specified by the proposed AD are intended to prevent wire chafing and damage, which could result in an inoperative fuel transfer pump and/or an increased risk of a fire or explosion from a fuel leak.

DATES: Comments must be received by September 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–71–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Roscoe Van Dyke, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–71–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–71–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of chafing and damage to a wire harness of a tail tank fuel transfer pump on a McDonnell Douglas Model MD–11 series airplane. The cause of such chafing and damage has been attributed to wires chafing against a combination of wire mesh tape and braided shielding, which were installed during production as a substitute for metallic transitions at the wiring harness breakouts. Chafing or damage of a wire harness, if not corrected, could result in an inoperative fuel transfer pump and/or an increased risk of a fire or explosion from a fuel leak.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, which describes procedures for a one-time visual inspection to determine if metallic transitions are installed on the wire harnesses of the tail tank fuel transfer pumps, and to determine if damaged wires are present; repair, if necessary; and repetitive inspections of the repaired area. The FAA also has reviewed and approved McDonnell Douglas Service Bulletin MD11–28–102, Revision 01, dated June 23, 1999, which describes procedures for a permanent modification of the wire harnesses if metallic transitions are not installed. Accomplishment of the permanent modification would eliminate the need for the repetitive inspections in service bulletin MD11–28A101. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed Rule and the Relevant Service Information

Operators should note that, although McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, recommends accomplishing the visual inspection within 15 days (after the release of the service bulletin), the FAA has determined that a compliance time of 30 days would be appropriate. In developing an appropriate compliance time for the

proposed visual inspection of this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, the time necessary to perform the inspection (less than five work hours), and reports from the manufacturer, which indicate that all affected airplanes have been inspected. In light of all of these factors, the FAA finds a 30-day compliance time for initiating the proposed visual inspection to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators should note that the procedures described in condition 2 of McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, permit flight for 15 days before installation of a temporary repair, if metallic transitions are not installed on wire harnesses of the tail tank fuel transfer pumps. This proposed AD would require accomplishment of a temporary repair, prior to further flight. The FAA has determined that, because of the safety implications and consequences associated with chafing and damage of wires, any subject wire harness that is found to not have metallic transitions installed must be repaired prior to further flight.

Operators should also note that, although McDonnell Douglas Service Bulletin MD11–28–102, Revision 01, dated June 23, 1999, recommends accomplishing the permanent modification at the earliest practical maintenance period (after the release of the service bulletin), the FAA has determined that a compliance time of 5 years would be appropriate. In developing an appropriate compliance time for the proposed modification of this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification (less than nine hours). In light of all of these factors, the FAA finds a 5-year compliance time for initiating the proposed modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 14 airplanes of the affected design in the worldwide fleet. The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $300, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–71–AD.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and damage which could result in an inoperative tail tank fuel transfer pump and/or an increased risk of a fire or explosion from a fuel leak, accomplish the following:

Inspection and Corrective Actions

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection of the wire harnesses of the tail tank fuel transfer pumps to determine if metallic transitions are installed, and to determine if damaged wires are present, in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998.

(1) If all metallic transitions are installed, no further action is required by this AD.

(2) If metallic transitions are not installed, accomplish the following:

(i) Prior to further flight, accomplish the temporary repair in accordance with condition 2 of the service bulletin;

(ii) Repeat the visual inspection thereafter at intervals not to exceed 2 years; and

(iii) Within 5 years after the effective date of this AD, permanently modify the wire harnesses in accordance with McDonnell Douglas Service Bulletin MD11–28–102, Revision 01, dated June 23, 1999. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 2: Modification of the wire harnesses accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Service Bulletin MD11–28–102,

dated January 29, 1999, is considered acceptable for compliance with the modification required by paragraph (a)(2)(iii) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20503 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–323–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that currently requires repetitive inspections of the front spar web between the upper and lower seals of the center section of the wings, and repair, if necessary. That AD also provides for an optional terminating modification for the repetitive inspections. This action would require a new terminating modification for the repetitive inspections. For certain airplanes, this action would require new repetitive inspections to detect discrepancies of the front spar web. This proposal is prompted by a report indicating that the optional terminating modification in the existing AD does not address the identified unsafe condition. The actions specified by the proposed AD are intended to prevent fatigue cracks in the front spar web, which could lead to fuel leakage into the air-conditioning distribution bay and/or depressurization of the cabin, and to prevent fuel fumes in the cabin of the airplane.

DATES: Comments must be received by September 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–323–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–323–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–323–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 21, 1989, the FAA issued AD 90–02–16, amendment 39–6452 (55 FR 602, January 8, 1990), applicable to certain Boeing Model 727 series airplanes, to require inspection of the front spar web of the center section of the wings, and repair, if necessary. That action was prompted by reports of cracks in the front spar web. The requirements of that AD are intended to detect and correct such cracking, which could lead to fuel leakage and/or depressurization of the cabin.

Actions Since Issuance of Previous Rule

Since issuance of AD 90–02–16, the FAA has received a report indicating that modification procedures specified in Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; and Revision 2, dated September 16, 1993; do not adequately address airplanes equipped with internal fuel tanks in the center section of the wings. Specifically, the service bulletin does not include procedures for application of the secondary fuel seal on the forward side of the front spar and on the fillet seals on the aft side of the front spar. The service bulletin also describes procedures for the application of sealant Boeing material specification (BMS) 5–95 inside the fuel tank instead of the fuel-proof sealant BMS 5–26, and the installation of non-fluid tight fasteners instead of fluid tight fasteners.

Boeing Service Bulletin 727–57–0177, dated December 22, 1988, was referenced in AD 90–02–16 as the appropriate source of service information for accomplishment of the required modification and close visual and high frequency eddy current (HFEC) inspections. Revisions 1 and 2 of that service bulletin were approved by the FAA as alternative methods of compliance for accomplishment of those actions.

In light of this information, the FAA has determined that the optional modification specified in AD 90–02–16 does not adequately preclude fuel leakage into the air-conditioning distribution bay, which could result in fuel fumes in the cabin of the airplane.

In addition, the FAA finds that the subject service bulletin does not contain procedures for accomplishing an HFEC inspection as an option to the close visual inspection, as required by paragraph A. of AD 90–02–16. The actual procedures used to accomplish that HFEC inspection and the effectiveness of those procedures are unknown to the FAA. The FAA has determined that performing an HFEC inspection in accordance with an unknown procedure does not ensure that cracks will be detected in a timely manner. Therefore, the FAA has determined that all affected airplanes must accomplish repetitive detailed visual inspections to ensure that cracks are detected in a timely manner.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996, which describes procedures for repetitive detailed visual inspections to detect cracks of the front spar web between the upper and lower seals of the center section of the wings, and repair, if necessary. The service bulletin also describes procedures for modification of the front spar web between the upper and lower seals of the center section of the wings, which would eliminate the need for the repetitive inspections. For certain airplanes, the service bulletin describes procedures for repetitive visual inspections of the front spar web to detect fuel leakage and penetrations in the secondary fuel barrier, and to verify the installation of the secondary fuel barrier. Accomplishment of the actions specified in the service bulletin are intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–02–16, amendment 39–6452 (55 FR 602, January 8, 1990), to continue to require repetitive detailed visual inspections of the front spar web between the upper and lower seals of the center section of the wings, and repair, if necessary. The proposed AD also would require modification of the subject front spar web, which would constitute terminating action for the repetitive inspections. For certain airplanes, the proposed AD would require repetitive visual inspections of the front spar web to detect fuel leakage and penetrations in the secondary fuel barrier, and to verify the installation of the secondary fuel barrier. The actions would be required to be accomplished in accordance with the service bulletin described previously; except as discussed below.

The FAA has determined that, for airplanes equipped with integral fuel tanks in the center section of the wings, the repairs and modifications specified in Figure 2 and Figure 3 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; and Revision 2, dated September 16, 1993; do not describe procedures for installation of a fuel proof sealant in these tanks, which could lead to identified unsafe condition of this AD. The procedures specified in the original version, Revision 1, and Revision 2 of the service bulletin are acceptable for airplanes without integral fuel tanks in the center section of the wings. However, the FAA finds that Revision 3 of the subject service bulletin does provide procedures for installation of a fuel proof sealant for integral fuel tanks.

Other Relevant Rulemaking

The FAA has previously issued AD 94–05–04, amendment 39–8842 (59 FR 13442, March 22, 1994), which requires incorporation of certain structural modification on certain Boeing Model 747 series airplanes. Accomplishment of certain actions required by this proposed AD would constitute terminating action for the requirements specified in paragraph (a) of AD 94–05–04 with respect to the modification specified in Boeing Service Bulletin 727–57–0177, dated December 22, 1998. This service bulletin is one of many service bulletins referenced in Boeing Document D6–54860, Revision G, Appendix A.3, dated March 5, 1993. All other service bulletins referenced in that document still apply.

Cost Impact

There are approximately 1,524 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,098 airplanes of U.S. registry would be affected by this proposed AD.

The detailed visual inspection that is currently required by AD 90–02–16, and retained in this AD, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required detailed visual inspection on U.S. operators is estimated to be $197,640, or $180 per airplane, per inspection cycle.

The modification that is proposed in this new AD action would take approximately 360 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,430 per airplane. Based on these figures, the cost impact of the proposed modification required by this AD on U.S. operators is estimated to be $25,286,940, or $23,030 per airplane.

For certain airplanes, the visual inspection that is proposed in this new AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification required by this AD on U.S. operators is estimated to be $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6452 (55 FR 602, January 8, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 97–NM–323–AD. Supersedes AD 90–02–16, Amendment 39–6452.

Applicability: Model 727 series airplanes, as listed in Boeing Service Bulletin 727–57–0177, dated December 22, 1988; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks of the front spar web of the center section of the wings, which could lead to fuel leakage and/or depressurization of the cabin, or to prevent fuel fumes in the cabin of the airplane, accomplish the following:

Repetitive Detailed Visual Inspections

(a) For areas on which the front spar web between the upper and lower seals of the center section of the wings has not been repaired or modified in accordance with Figure 2 or 3 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; or Revision 2, dated September 16, 1993: Prior to the accumulation of 40,000 total flight cycles, or with the next 2,300 flight cycles after February 12, 1990 (effective date of AD 90–02–16, amendment 39–6452), whichever occurs later, unless accomplished with the last 700 flight cycles, perform a detailed visual inspection to detect cracks in the front spar web, in accordance with Figure 1 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; Revision 2, dated September 16, 1993; or Revision 3, dated February 15, 1996. Repeat the detailed visual inspection thereafter at intervals not to exceed 3,000 flight cycles, until accomplishment of the requirements specified in either paragraph (b) or (c) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Accomplishment of the high frequency eddy current (HFEC) inspection required by AD 90–02–16, is considered acceptable for compliance with the initial detailed visual inspection required by paragraph (a) of this AD.

Repair of Cracks

(b) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of the repair action constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD for that repaired area.

(1) For airplanes equipped with integral fuel tanks in the center section of the wings: Repair in accordance with Figure 2 of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996.

(2) For airplanes not equipped with integral fuel tanks in the center section of the wings: Repair in accordance with Figure 2 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988, Revision 1, dated November 21, 1991; Revision 2, dated September 16, 1993; or Revision 3, dated February 15, 1996.

Note 4: Where there are differences between the referenced service bulletins and this AD, the AD prevails.

Modification

(c) Except as provided by paragraph (d) of this AD, prior to the accumulation of 60,000 total flight cycles, or within 48 months after the effective date of this AD, whichever occurs later, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(1) For airplanes equipped with integral fuel tanks in the center section of the wings: Modify the front spar web, between the upper and lower seals, of the center section of the wings, in accordance with Part I of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996.

(2) For airplanes not equipped with integral fuel tanks in the center section of the wings: Modify the front spar web, between the upper and lower seals, of the center section of the wings, in accordance with Boeing Service Bulletin 727–57–0177, dated December 22, 1988, Revision 1, dated November 21, 1991; Revision 2, dated September 16, 1993; or Revision 3, dated February 15, 1996.

Repetitive Visual Inspections and Repair/Modification of the Front Spar Web

(d) For areas on which the front spar web between the upper and lower seals of the center section of the wings has been repaired or modified in accordance with Figure 2 or 3 of Boeing Service Bulletin 727–57–0177, dated December 22, 1988; Revision 1, dated November 21, 1991; or Revision 2, dated September 16, 1993: Accomplish the actions required by either paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes not equipped with integral fuel tanks in the center section of the wings: No further action is required by this AD for those areas repaired or modified.

(2) For airplanes equipped with integral fuel tanks in the center section of the wings: Accomplish the actions required by both paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Within 500 flight cycles after the effective date of this AD, perform a detailed visual inspection of the front spar web to detect fuel leakage and penetrations in the secondary fuel barrier, and to verify the installation of the secondary fuel barrier; in accordance with Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996. Repeat the visual inspection thereafter at intervals not to exceed 1,500 flight cycles, until accomplishment of the actions required by paragraph (d)(2)(ii) of this AD.

(ii) Prior to the accumulation of 14,000 flight cycles, or within 96 months after the effective date of this AD, whichever occurs later, repair/modify the front spar web in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2)(i) of this AD for that repaired/modified area.

Follow-On Corrective Action

(e) During any inspection required by paragraph (d)(2)(i) of this AD, if any fuel leakage or penetration in the secondary fuel barrier is detected, or if any secondary fuel barrier is verified as not being installed, prior to further flight, repair in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0177, Revision 3, dated February 15, 1996. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2)(i) of this AD for that repaired area.

Terminating Action for AD 94–05–04

(f) Accomplishment of the actions required by paragraph (b), (c), (d)(2)(ii), or (e) of this AD constitutes terminating action for the requirements specified in paragraph (a) of AD 94–05–04, amendment 39–8842 (59 FR 13442

dated March 22, 1994), with respect to the modification specified in Boeing Service Bulletin 727–57–0177, dated December 22, 1988. This service bulletin is one of many service bulletins referenced in Boeing Document D6–54860, Revision G, Appendix A.3, dated March 5, 1993. All other service bulletins referenced in that document still apply.

Alternative Method of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g)(2) For airplanes not equipped with integral fuel tanks in the center section of the wings: Alternative methods of compliance, approved previously in accordance with AD 90–02–16, amendment 39–6452, are approved as alternative methods of compliance with this AD. For airplanes equipped with integral fuel tank in the center section of the wings: Alternative methods of compliance, approved previously in accordance with AD 90–02–15, are NOT approved as alternative methods of compliance with this AD.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20504 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. 28979; Notice No. 97–13]

RIN 2120–AD46

Airport Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document announces the reopening of the comment period for a specific issue addressed in the Airport Security notice of proposed rulemaking (NPRM), published in the **Federal Register** on August 1, 1997 (62 FR 41760). That document proposed to amend the existing airport security rules by revising certain applicability provisions, definitions, and terms; reorganizing the rules into subparts containing related requirements; and incorporating some requirements already implemented in airport security programs. The comment period is being reopened to provide another opportunity for the public to submit additional comments on the compliance programs proposed in the NPRM.

DATES: Comments must be received on or before September 24, 1999.

ADDRESSES: Comments on the proposed rule should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915–G, Docket No. 28979, 800 Independence Ave., SW, Washington, DC 20591. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be examined in Room 915–G between 8:30 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Ann M. Zipser, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–8058.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire on proposed § 107.103(a)(2). Substantive comments should be accompanied by cost estimates.

Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket (see **ADDRESSES**). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking final action. Comments received on the section specified above will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 29879." The postcard will be date-stamped and mailed to the commenter. Internet users may reach the FAA's webpage at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su_docs to access recently published rulemaking documents.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Federal Register's electronic bulletin board service (telephone: (202) 512–1661).

Background

The FAA proposed to amend the existing 14 CFR parts 107 and 139 to update the overall regulatory structure for airport security. On August 1, 1997, the NPRM, Airport Security (part 107), was published in the **Federal Register** for public comment. The original comment period closed on December 1, 1997.

On April 21, 1998, the FAA announced the reopening of the comment period and two additional public meetings on the NPRM (63 FR 19691). The second comment period closed on June 26, 1998.

The NPRM proposed, among other things, to require that airport operators have a compliance program to ensure that persons with access to certain areas of the airport comply with the rules governing those areas. Section 107.103(a)(2) was proposed in Notice 97–13 as follows:

Section 107.103 Content

(a) Except as otherwise approved by the Administrator, each airport regularly serving an air carrier, required to conduct screening under § 108.101(a)(1) or § 129.25(b)(1) of this chapter, shall include in the security program a description of the following—

* * * * *

(2) Security compliance program that specifies procedures the airport operator will implement to ensure persons with authorized unescorted access to critical security areas and restricted operations areas comply with § 107.9 and § 107.11(a) and (b) of this part, including revocation of unescorted access authority of persons that fail to comply with security requirements.

The FAA received a number of comments on this proposal, many of them not supportive. Some commenters interpret the proposal to mean that the airport operator would be required to enforce Federal regulations, and impose fines under the Federal statute. This is not what was intended. The FAA

intends that the airport operator would have a specific program to ensure that persons for whom they are responsible carry out the requirements in parts 107 and the relevant security program.

Further, the NPRM did not specify a range of penalties that could be imposed, although the NRPM did address revocation of unescorted access authority. Often, effective programs use progressive disciplinary actions that include such corrective measures as mandated retraining, counseling, and suspension or revocation of unescorted access authority.

Since the comment period closed, the FAA has become aware that there is increased concern regarding employee compliance with requirements governing unescorted access to secured areas. Accordingly, the FAA is reopening the comment period for this section to allow for additional comments on the need for compliance programs and how they might best be structured to promote compliance.

Issued in Washington, DC on August 4, 1999.

Quintee Johnson,

Deputy Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 99–20522 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 28978; Notice No. 97–12]

RIN 2120–AD45

Aircraft Operator Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document announces the reopening of the comment period for a specific issue addressed in the Aircraft Operator Security notice of proposed rulemaking (NPRM), published in the **Federal Register** on August 1, 1997 (62 FR 41730). That document proposed to amend the existing airplane operator security rules, by revising certain applicability provisions, definitions, and terms; reorganizing the rules into subparts containing related requirements; and incorporating some requirements already implemented in air carrier approved security programs. The comment period is being reopened to provide another opportunity for the public to submit additional comments on the compliance program proposed in the NPRM.

DATES: Comments must be received on or before September 24, 1999.

ADDRESSES: Comments on the proposed rule should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915–G, Docket No. 28978 800 Independence Ave., SW, Washington, DC 20591. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be examined in Room 915–G between 8:30 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Ann M. Zipser, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–8058.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire on proposed § 108.103(b)(11) and (c)(6). Substantive comments should be accompanied by cost estimates.

Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket (see **ADDRESSES**). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking final action. Comments received on the section specified above will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28978." The postcard will be date-stamped and mailed to the commenter. Internet users may reach the FAA's webpage at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su_docs to access recently published rulemaking documents.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Federal Register's electronic bulletin board service (telephone: (202) 512–1661).

Background

The FAA proposed to amend the existing 14 CFR part 108 to update the overall regulatory structure for aircraft operator security. On August 1, 1997, the NPRM, Aircraft Operator Security (part 108), was published in the **Federal Register** for public comment. The original comment period closed on December 1, 1997.

On April 21, 1998, the FAA announced the reopening of the comment period and two additional public meetings on the NPRM (63 FR 19691). The second comment period closed on June 26, 1998.

The NPRM proposed, among other things, to require that aircraft operators have a compliance program to ensure that persons with access to certain areas of the airport comply with the rules governing those areas.

Section 108.103(b)(11) and (c)(6) was proposed in Notice 97–12 as follows:

Section 108.103 Form, Content, and Availability.

* * * * *

(b) The security program shall include:

* * * * *

(11) The procedures and curriculum of the training requirements under § 108.227 of this part; and a security compliance program that specifies procedures the air carrier will implement to ensure persons with authorized unescorted access to critical security areas and restricted operations areas comply with § 108.7 and § 108.9 of this part, including revocation of unescorted access authority of persons that fail to comply with security requirements.

(c) Each air carrier having an approved security program shall:

* * * * *

(6) Implement a program to ensure that its employees and employees of contractors comply with the paragraphs (a) and (b) of § 108.103. The program's provisions shall include penalties to be imposed on individuals who fail to comply with paragraphs (a) and (b) of this section that are in accordance with the standards contained in its approved security program.

The FAA received a number of comments on this proposal, many of them not supportive. Some commenters interpret the proposal to mean that the aircraft operator would be required to enforce Federal regulations, and impose fines under the Federal statute. This is not what was intended. The FAA intends that the aircraft operator would have a specific program to ensure that persons for whom they are responsible

carry out the requirements in part 108 and the relevant security program.

Further, the NPRM did not specify a range of penalties that could be imposed, although the notice did address revocation of unescorted access authority. Often, effective programs use progressive disciplinary actions that include such corrective measures as mandated retraining, counseling, and suspension or revocation of unescorted access authority.

Since the comment period closed, the FAA has become aware that there is increased concern regarding employee compliance with requirements governing unescorted access to secured areas. Accordingly, the FAA is reopening the comment period for this section to allow for additional comments on the need for compliance programs and how they might best be structured to promote compliance.

Issued in Washington, DC on August 4, 1999.

Quinten Johnson,

Deputy Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 99–20521 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–252487–96]

RIN 1545–AX25

Inbound Grantor Trusts With Foreign Grantors

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: The IRS is proposing regulations relating to the definition of the term *grantor* for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code. The text of temporary regulations published elsewhere in this issue of the **Federal Register**, also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 12, 1999. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for November 2, 1999, at 10 a.m. must be submitted by October 12, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–252487–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–252487–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James A. Quinn, (202) 622–3060; concerning submissions and the hearing, Guy R. Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 671. The temporary regulations contain rules relating to the definition of *grantor* for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 2, 1999, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by October 12, 1999, and submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by October 12, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.671–2, paragraph (e) is revised to read as follows:

§ 1.671–2 Applicable principles.

* * * * * *

(e) [The text of this proposed paragraph (e) is the same as the text of § 1.671–2T(e) published elsewhere in this issue of the **Federal Register**].

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 99–19929 Filed 8–5–99; 2:09 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–121946–98]

RIN 1545–AW96

Private Foundation Disclosure Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. The proposed regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended fully to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. The proposed regulations provide guidance for private foundations required to make copies of applications for tax exemption and annual information returns available for public inspection and to comply with requests for copies of those documents. Final regulations relating to the public disclosure requirements applicable to tax-exempt organizations other than private foundations were issued on April 9, 1999.

DATES: Written or electronic comments and requests for a public hearing must be received by October 12, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–121946–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–121946–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael B. Blumenfeld, (202) 622–6070 (not a toll-free number); concerning submissions of comments, LaNita Van Dyke (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by October 12, 1999. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§ 301.6104(d)–1, 301.6104(d)–2, and 301.6104(d)–3. This information is required to enable a private foundation to comply with section 6104(d) of the Internal Revenue Code (Code). Under section 6104(d), a private foundation is required to make its application for tax exemption and its annual information returns available for public inspection. In addition, a private foundation is required to comply with requests made in person or in writing from individuals who seek a copy of those documents or, in the alternative, to make its documents widely available. The requirement that a private foundation make its application for tax exemption and annual information returns available for public inspection and comply with requests made in person or in writing from individuals who seek a copy of those documents or, in the alternative, make the documents widely available, will enable the public to obtain information about the private foundation. Under section 6104(d), a private foundation is permitted to file an application for relief from the requirement to provide copies if the private foundation reasonably believes it is the subject of a harassment campaign. The information a private foundation provides when filing an application for a determination that it is subject to a harassment campaign will be used by the IRS to make such determination. The collection of information is required to obtain relief from the requirement to comply with requests for copies if such requests are part of the harassment campaign. The likely respondents and/or recordkeepers are private foundations. The burden for recordkeeping and for reporting is reflected below.

Estimated total annual recordkeeping burden: 32,565 hours.

Estimated average annual burden per recordkeeper: 30 minutes.

Estimated number of recordkeepers: 65,065.

Estimated total annual reporting burden: 31 hours.

Estimated average annual reporting burden per respondent: 27 minutes.

Estimated number of respondents: 68.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document proposes to amend §§ 301.6104(d)–1 through 301.6104(d)–5 of the Procedure and Administration Regulations (26 CFR Part 301) relating to the section 6104(d) public disclosure requirements applicable to tax-exempt organizations (organizations described in section 501(c) or (d) and exempt from

taxation under section 501(a)). The proposed amendments would remove existing § 301.6104(d)–1 (relating to public inspection of private foundation annual information returns). The proposed amendments also would revise §§ 301.6104(d)–2 through 301.6104(d)–5 to apply the provisions to all tax-exempt organizations, including private foundations, and redesignate existing §§ 301.6104(d)–2 through 301.6104(d)–5 as §§ 301.6104(d)–0 through 301.6104(d)–3, respectively. This regulation is not subject to the Unfunded Mandates Reform Act of 1995 because the regulation is an interpretive regulation.

Description of Current Law Disclosure Requirements Applicable to Private Foundations

Section 6104(d), as in effect prior to the effective date of the Tax and Trade Relief Extension Act of 1998 (Division J of H.R. 4328, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) (Public Law 105–277, 112 Stat 2681) (with respect to private foundations), requires a private foundation to make its annual information returns available for public inspection at its principal office during regular business hours for a period of 180 days after the foundation publishes notice of the availability of its return. A private foundation must publish such notice not later than the due date of the return (determined with regard to any extension of time for filing) in a newspaper having general circulation in the county in which the principal office of the foundation is located. Section 6104(e), as in effect prior to the effective date of the Tax and Trade Relief Extension Act of 1998 (with respect to private foundations), requires a private foundation to allow public inspection of the foundation's application for recognition of exemption at the foundation's principal office (and certain regional or district offices). Section 6104(e) also requires a private foundation to provide copies of its exemption application upon request. However, the requirement to provide copies of an exemption application upon request becomes effective only after the Secretary of the Treasury issues regulations applicable to private foundations describing how a private foundation may be relieved of the obligation to provide copies in response to requests by making its exemption application widely available or by obtaining an IRS determination that a particular request is part of a harassment campaign.

Amendments Made by the Tax and Trade Relief Extension Act of 1998

The Tax and Trade Relief Extension Act of 1998, which was enacted on October 21, 1998, amended section 6104(e) of the Code to subject the annual information returns filed by private foundations to the same rules regarding public disclosure that apply to other tax-exempt organizations. In addition, the Tax and Trade Relief Extension Act of 1998 repealed existing section 6104(d), and redesignated section 6104(e), as amended, as new section 6104(d). Section 6104(d), as amended by the Tax and Trade Relief Extension Act of 1998, requires each tax-exempt organization, including one that is a private foundation, to allow public inspection at its principal office (and at certain regional or district offices) and to comply with requests, made either in person or in writing, for copies of the organization's application for recognition of exemption and the organization's three most recent annual information returns. Congress appears to have intended that nonexempt charitable trusts described in section 4947(a)(1) and nonexempt private foundations comply with the expanded public disclosure requirements, just as such entities are subject to the information reporting requirements of section 6033 pursuant to section 6033(d). See Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1998 (JCS–6–98), November 24, 1998, at 242, fn. 102.

The Tax and Trade Relief Extension Act of 1998 amendments apply to requests made after the later of December 31, 1998, or the 60th day after the Secretary of the Treasury issues regulations referred to in section 6104(d)(4) (relating to when documents are made widely available and when a particular request is considered part of a harassment campaign). On April 9, 1999, the IRS published in the **Federal Register** (64 FR 17279) final regulations under section 6104(d) applicable to tax-exempt organizations other than private foundations. Accordingly, section 6104(d), as amended by the Tax and Trade Relief Extension Act of 1998, became effective with respect to tax-exempt organizations other than private foundations on June 8, 1999.

Explanation of Provisions

The proposed amendments extend the recently-published final regulations under section 6104(d) to apply to private foundations. The proposed amendments also modify those regulations in several respects. The proposed amendments state that the term *annual information return* includes any return that is required to be filed under section 6033. For a private foundation, such returns include Form 990–PF and Form 4720. Consistent with the statute, the proposed amendments provide that, unlike other tax-exempt organizations, a *private foundation* is required to disclose to the general public the names and addresses of its contributors. The proposed amendments also clarify that, for purposes of section 6104(d), the terms *tax-exempt organization* and private foundation include nonexempt *private foundations* and nonexempt charitable trusts described in section 4947(a)(1) that are subject to the information reporting requirements of section 6033. Finally, the proposed amendments remove existing § 301.6104(d)–1 and redesignate existing §§ 301.6104–2 through 301.6104(d)–5, as §§ 301.6104(d)–0 through 301.6104(d)–3, respectively.

Until 60 days after these proposed amendments are published as final regulations in the **Federal Register**, private foundations continue to be subject to section 6104(d) and section 6104(e), as in effect prior to the Tax and Trade Relief Extension Act of 1998, and existing § 301.6104(d)–1. Thereafter, private foundations will continue to be subject to the public inspection requirements of section 6104(d), as in effect prior to the Tax and Trade Relief Extension Act of 1998, and existing § 301.6104(d)–1 with respect to any annual information return the due date (determined with regard to any extension of time for filing) for which is prior to the effective date of the final regulations.

Proposed Effective Date

The amendments made by these regulations are proposed to be effective 60 days after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is certified that the collection of information referenced in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to the collection of information requirements in these regulations, the requirements will not

have a significant economic impact on these entities. The average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each private foundation. This estimate is based on the assumption that, on average, a private foundation will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Approximately 0.1 percent of the private foundations affected by these regulations will be subject to the reporting requirements contained in the regulations. It is estimated that annually, approximately 65 private foundations will make its documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 3 private foundations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a private foundation is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated that it will cost a private foundation less than $10 per year to comply with these regulations, which is not a significant economic impact.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting information. The principal author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6104(d)–2 also issued under 26 U.S.C. 6104(d)(3);

Section 301.6104(d)–3 also issued under 26 U.S.C. 6104(d)(3); * * *

§ 301.6104(d)–1 [Removed]

Par. 2. Section 301.6104(d)–1 is removed.

§ 301.6104(d)–2 [Redesignated as § 301.6104(d)–0]

Par. 3. Section 301.6104(d)–2 is redesignated as § 301.6104(d)–0.

Par. 4. Newly designated § 301.6104(d)–0 is revised to read as follows:

§ 301.6104(d)–0 Table of contents.

This section lists the major captions contained in §§ 301.6104(d)–1 through 301.6104(d)–3 as follows:

§ 301.6104(d)–1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.
(a) In general.
(b) Definitions.
(1) Tax-exempt organization.
(2) Private foundation.
(3) Application for tax exemption.
(i) In general.
(ii) No prescribed application form.
(iii) Exceptions.
(iv) Local or subordinate organizations.
(4) Annual information return.
(i) In general.
(ii) Exceptions.
(iii) Returns more than 3 years old.
(iv) Local or subordinate organizations.
(5) Regional or district offices.
(i) In general.
(ii) Site not considered a regional or district office.
(c) Special rules relating to public inspection.
(1) Permissible conditions on public inspection.
(2) Organizations that do not maintain permanent offices.
(d) Special rules relating to copies.
(1) Time and place for providing copies in response to requests made in person.
(i) In general.
(ii) Unusual circumstances.
(iii) Agents for providing copies.
(2) Request for copies in writing.
(i) In general.
(ii) Time and manner of fulfilling written requests.
(A) In general.
(B) Request for a copy of parts of document.
(C) Agents for providing copies.
(3) Fees for copies.
(i) In general.
(ii) Form of payment.
(A) Request made in person.
(B) Request made in writing.
(iii) Avoidance of unexpected fees.
(iv) Responding to inquiries of fees charged.
(e) Documents to be provided by regional and district offices.
(f) Documents to be provided by local and subordinate organizations.
(1) Applications for tax exemption.
(2) Annual information returns.
(3) Failure to comply.
(g) Failure to comply with public inspection or copying requirements.
(h) Effective date.
(1) In general.
(2) Private foundation annual information returns.
§ 301.6104(d)–2 Making applications and returns widely available.
(a) In general.
(b) Widely available.
(1) In general.
(2) Internet posting.
(i) In general.
(ii) Transition rule.
(iii) Reliability and accuracy.
(c) Discretion to prescribe other methods for making documents widely available.
(d) Notice requirement.
(e) Effective date.
§ 301.6104(d)–3 Tax-exempt organization subject to harassment campaign.
(a) In general.
(b) Harassment.
(c) Special rule for multiple requests from a single individual or address.
(d) Harassment determination procedure.
(e) Effect of a harassment determination.
(f) Examples.
(g) Effective date.

§ 301.6104(d)–3 [Redesignated as § 301.6104(d)–1]

Par. 5. Section 301.6104(d)–3 is redesignated as § 301.6104(d)–1.

Par. 6. Newly designated § 301.6104(d)–1 is amended as follows:

1. Revise the section heading.

1a. Paragraph (a) is amended as follows:

a. Remove the language ", other than a private foundation (as defined in paragraph (b)(2) of this section)," from the first sentence.

b. Remove the language ", other than a private foundation," from the second sentence.

c. Remove the language "§§ 301.6104(d)–4 and 301.6104(d)–5" from the fourth sentence and add "§§ 301.6104(d)–2 and 301.6104(d)–3" in its place.

2. In paragraph (b) introductory text, remove the language "§§ 301.6104(d)–4 and 301.6104(d)–5" and add "§§ 301.6104(d)–2 and 301.6104(d)–3" in its place.

3. In paragraph (b)(1), add a sentence at the end of the paragraph.

4. In paragraph (b)(2), add the language "or a nonexempt charitable trust described in section 4947(a)(1) or a nonexempt private foundation subject to the information reporting requirements of section 6033 pursuant to section 6033(d)" at the end of the sentence.

5. In paragraph (b)(3)(iii)(B), remove the word "or" at the end of the paragraph.

6. Redesignate paragraph (b)(3)(iii)(C) as paragraph (b)(3)(iii)(D) and add a new paragraph (b)(3)(iii)(C).

7. In paragraph (b)(4)(i), remove the last two sentences and add three sentences in their place.

8. Paragraph (b)(4)(ii) is amended as follows:

a. Remove the language ", and the return of a private foundation" from the first sentence.

b. Revise the last sentence.

9. Revise paragraph (h).

The revisions and additions read as follows:

§ 301.6104(d)–1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.

* * * * *

(b) * * *

(1) * * * The term tax-exempt organization also includes any nonexempt charitable trust described in section 4947(a)(1) or nonexempt private foundation that is subject to the reporting requirements of section 6033 pursuant to section 6033(d).

* * * * *

(3) * * *

(iii) * * *

(C) In the case of a tax-exempt organization other than a private foundation, the name and address of any contributor to the organization; or

* * * * *

(4) * * * (i) * * * Returns filed pursuant to section 6033 include Form 990, Return of Organization Exempt From Income Tax, Form 990–PF, Return of Private Foundation, or any other version of Form 990 (such as Forms 990–EZ or 990–BL, except Form 990–T) and Form 1065. Each copy of a return must include all information furnished to the Internal Revenue Service on the return, as well as all schedules, attachments and supporting documents. For example, in the case of a Form 990, the copy must include Schedule A of Form 990 (containing supplementary information on section 501(c)(3) organizations), and those parts of the return that show compensation paid to specific persons (currently, Part V of Form 990 and Parts I and II of Schedule A of Form 990).

(ii) * * * In the case of a tax-exempt organization other than a private foundation, the term *annual information return* does not include the name and address of any contributor to the organization.

* * * * *

(h) *Effective date*—(1) *In general.* For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. Except as provided in paragraph (h)(2) of this section, for a private foundation, this section is applicable beginning 60 days after these regulations are published as final regulations in the **Federal Register**.

(2) *Private foundation annual information returns.* This section applies to any private foundation return the due date for which (determined with regard to any extension of time for filing) is after the applicable date for private foundations specified in paragraph (h)(1) of this section.

§ 301.6104(d)–4 [Redesignated as § 301.6104(d)–2]

Par. 7. Section 301.6104(d)–4 is redesignated as § 301.6104(d)–2.

Par. 8. Newly designated § 301.6104(d)–2 is amended as follows:

1. In paragraph (a), remove the language "§ 301.6104(d)–3(a)" from each place it appears and add "§ 301.6104(d)–1(a)" in each place, respectively.

2. Revise paragraph (e).

The revision reads as follows:

§ 301.6104(d)–2 Making applications and returns widely available.

* * * * *

(e) *Effective date.* For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. For a private foundation, this section is applicable beginning 60 days after these regulations are published as final regulations in the **Federal Register**.

§ 301.6104(d)–5 [Redesignated as § 301.6104(d)–3]

Par. 9. Section 301.6104(d)–5 is redesignated as § 301.6104(d)–3.

Par. 10. Newly designated § 301.6104(d)–3 is amended as follows:

1. In paragraph (a), remove the language "§ 301.6104(d)–3(a)" and add "§ 301.6104(d)–1(a)" in its place.

2. Revise paragraph (g).

The revision reads as follows:

§ 301.6104(d)–3 Tax-exempt organization subject to harassment campaign.

* * * * *

(g) *Effective date.* For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. For a private foundation, this section is applicable beginning 60 days after these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–20093 Filed 8–9–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–020–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to a previously proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions concern burden of proof in civil penalty proceedings, petitions for review of proposed individual civil penalty assessment, verification of ownership or control application information, review of ownership or control and violation information, procedures for challenging ownership or control links shown in AVS, and standards for challenging ownership or control links and the status of violation. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4:00 p.m., c.s.t., August 25, 1999.

ADDRESSES: You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

You may review copies of the Oklahoma program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions on the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Discussion of the Proposed Amendment

By letter dated September 28, 1998 (Administrative Record No. OK–982), Oklahoma sent us an amendment to its program under SMCRA. Oklahoma sent the amendment in response to our letter dated January 6, 1994 (Administrative Record No. OK–977), that we sent to Oklahoma under 30 CFR 732.17(c). The amendment also included changes made at Oklahoma's own initiative. Oklahoma proposed to amend the Oklahoma Administrative Code.

We announced receipt of the proposed amendment in the October 20, 1998, **Federal Register** (63 FR 55979) and invited public comment on its adequacy. The public comment period ended November 19, 1998.

During our review of the amendment, we identified concerns relating to 460:2–8–8, Burden of Proof in Civil Penalty Proceedings; 460:2–8–9, Decision by Administrative Hearing Officer; 460:2–8–10, Petitions for Discretionary Review; 460:20–15–11, Verification of Ownership or Control Application Information; 460:20–15–12, Review of Ownership or Control and Violation Information; 460:20–15–13, Procedures for Challenging Ownership or Control Links Shown in AVS; and 460:20–15–14, Standards for Challenging Ownership or Control Links and the Status of Violations. We notified Oklahoma of the concerns by faxes dated December 3, 1998, and July 14, 1999 (Administrative Record Nos. OK–982.03 and OK–982.06, respectively). In letters dated June 23, 1999, and July 20, 1999 (Administrative Record Nos. OK–982.05 and OK–982.07, respectively), Oklahoma responded to our concerns by submitting the following revisions to the amendment:

A. 460:2–8–8, Burden of Proof in Civil Penalty Proceedings

In paragraph (a)(1) of this section, Oklahoma proposes to revise its reference to 45 O.S. 1981, Section 724 *et seq.*, referencing instead 45 O.S. 1981, Sections 775 through 780.

B. 460:2–8–9, Decision by Administrative Hearing Officer

In paragraph (a) of this section, Oklahoma proposes to revise its reference to 460:20–8–8, referencing instead 460:2–8–8.

C. 460:2–8–10, Petitions for Discretionary Review

In paragraph (g) of this section, Oklahoma proposes to revise its reference to 460:2–63–6, referencing instead 460:20–63–6.

D. 460:20–15–11, Verification of Ownership or Control Application Information

In paragraph (b) of this section, Oklahoma proposes to revise its reference to 460:20–23–3(c) through (d), referencing instead 460:20–23–2(3).

E. 460:20–15–12, Review of Ownership or Control and Violation Information

In paragraph (a) of this section, Oklahoma proposes to revise its reference to 460:20–15–11(b), referencing instead 460:20–15–11 in its entirety.

Also, in paragraph (a)(1) of this section, Oklahoma proposes to revise its reference to 460:20–23–3, referencing instead 460:20–23–2.

F. 460:20–15–13, Procedures for Challenging Ownership or Control Links Shown in AVS

Oklahoma proposes to remove the lead-in language at paragraph (a), as well the language at paragraph (a)(1), and re-designated paragraph (a)(2) as paragraph (a).

Oklahoma also proposes to revise the language at paragraph (b) to read as follows:

Challenge Basis. Any applicant or other person who wishes to challenge the status of a state violation, and who is eligible to do so under the provision of paragraphs (a) of this section, shall submit a written explanation of the basis for the challenge, along with any relevant evidentiary materials and supporting documents, to Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, OK 73105, ATTN: Director.

G. 460:20–15–14, Standards for Challenging Ownership or Control Links and the Status of Violations

At paragraph (c)(1)(B), Oklahoma proposes to revise the language to read as follows:

(B) That the facts relied upon by the Department to establish a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Section 460:20–15–2 of this Subchapter, do not or did not exist.

III. Public Comment Procedures

We are reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review

under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 1999.

Charles Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–20505 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–6415–6]

State of Alabama; Underground Injection Control (UIC) Program; Notice of Rescheduled Public Hearing and Extension of Comment Period on Withdrawal of Alabama's Class II UIC Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of rescheduled public hearing and extension of public comment period on withdrawal.

SUMMARY: EPA announces a rescheduled public hearing and extension of the public comment period regarding withdrawal of Alabama's Class II Underground Injection Control (UIC) Program from the State Oil and Gas Board of Alabama on the grounds that it does not regulate as "underground injection," hydraulic fracturing associated with coalbed methane gas production. This program is currently approved by EPA under section 1425 of the Safe Drinking Water Act (SDWA), as amended. This action is being taken in accordance with paragraph 2(a) of the Writ of Mandamus issued on February 18, 1999, by the U. S. Court of Appeals for the Eleventh Circuit and in accordance with Federal regulations for withdrawal of State programs.

DATES: The rescheduled public hearing will be held Thursday, September 9, 1999, at 4:00 p.m. Central Standard Time (CST) to discuss withdrawal of the Alabama Class II UIC Program due to its failure to regulate hydraulic fracturing associated with coalbed methane gas production and EPA's proposed rule seeking such withdrawal. Registration for the hearing will begin at 3 p.m.. Written comments on EPA's proposed rule withdrawing approval of the Alabama Class II UIC Program on the grounds that it does not regulate as "underground injection" hydraulic fracturing associated with coalbed methane gas production must be received by the close of business Thursday, September 16, 1999.

ADDRESSES: The rescheduled public hearing will be held at the University of Alabama in the Sellers Auditorium of the Bryant Conference Center, 240 Bryant Drive, Tuscaloosa, Alabama 35401. Those interested should contact the Bryant Conference Center at (205) 348–8751 for directions. Persons wishing to comment upon or object to any aspects of this proposed withdrawal action of Alabama's Section 1425 approved Class II Program are invited to submit oral or written comments at the September 9th, 1999, public hearing or submit written comments by September 16, 1999, to the Ground Water/Drinking Water Branch, Ground Wafer & UIC Section, United States Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Mr. Larry Cole. Copies of documents regarding this action are available between 8:30 a.m. and 4 p.m. Monday through Friday at the following locations for inspection and copying: Environmental Protection Agency, Region 4, 9th Floor Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, PH: (404) 562–8190; and the State Oil & Gas Board of Alabama, 420 Hackberry Lane, Tuscaloosa, AL 35489–9780, PH: (205) 349–2852.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cole at (404) 562–9474 or at the following address: Environmental Protection Agency, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–8960.

SUPPLEMENTARY INFORMATION:

I. Background Information

This public hearing is a reschedule of the public hearing held on July 28th at 5:30 pm in the Tuscaloosa Public Library, 1801 River Road, Tuscaloosa, Alabama 35401, announced in the **Federal Register**/Vol. 64. No. 98/Friday, May 21, 1999, Pages 27744–27747. The July 28th hearing was canceled prior to its conclusion by the Tuscaloosa Fire Marshal. With this notice we are also

extending the comment period on withdrawal.

By court order, the Regional Administrator for EPA's Region 4 Office informed the State Oil and Gas Board of Alabama of specific areas of alleged noncompliance regarding its approved UIC Program. Specifically, EPA informed the State that, consistent with the Eleventh Circuit's ruling in *LEAF* v. *EPA*, hydraulic fracturing associated with coalbed methane gas production must be regulated as an "underground injection" under Alabama's UIC Program. Withdrawal of the Alabama program would, if completed, divest Alabama of primary enforcement authority under the SDWA to regulate Class II Wells, including hydraulic fracturing associated with coalbed methane gas wells within Alabama.

EPA is proceeding at this time with this notice of reschedule of public hearing and extension of the public comment period in order to comply with paragraph 2(a) of the Writ of Mandamus because hydraulic fracturing associated with coalbed methane gas production is not currently regulated as underground injection (by permit or rule) pursuant to the EPA-approved underground injection control program for Alabama.

At the rescheduled public hearing, all interested persons shall be given the opportunity to make written or oral presentations on EPA's proposed action to withdraw approval of Alabama's section 1425 approved Class II Program on the grounds of its failure to regulate as "underground injection" hydraulic fracturing associated with coalbed methane gas production. In addition, comments may be submitted as provided herein. All written and oral presentations submitted prior to the cancellation of the July 28th public hearing were recorded and will be considered in EPA's final evaluation of the State of Alabama's section 1425 Program.

On August 2, 1982, EPA granted primary enforcement responsibility (primacy) for the Class II Underground Injection Control (UIC) Program under Section 1425 of the Safe Drinking Water Act (SDWA) to the State of Alabama. The SDWA requires EPA to approve an effective in-place state UIC Program to protect Underground Sources of Drinking Water (USDW) from endangerment that could result from the improper injection of fluids associated with, among other things, oil and gas production. On May 3, 1994, the Legal Environmental Assistance Foundation, Inc. (LEAF) submitted a petition to EPA to withdraw Alabama's UIC Program asserting that the State was not regulating activities associated with coalbed methane gas production wells. Following EPA's May 5, 1995 denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF* v. *EPA*, 118 F. 3d 1467 (11th Cir. 1997), the Court held as follows: hydraulic fracturing activities constitute "underground injection" under Part C of the Safe Drinking Water Act, *id.* at 1478; all underground injection is required to be regulated (by permit or rule), *id.* at 1474; and hydraulic fracturing associated with coalbed methane gas production is not currently regulated under Alabama's UIC Program, *id.* at 1471. On February 18, 1999, the Eleventh Circuit issued a Writ of Mandamus directed at EPA to enforce its August 1997 decision. The Writ established a schedule for EPA to follow to determine whether, in light of the Court's holding regarding hydraulic fracturing, EPA should withdraw approval of Alabama's UIC Program.

In response to the LEAF decision and the Writ of Mandamus, EPA must review Alabama's UIC Program in accordance with federal regulations at 40 CFR 145.34(b). The timing of EPA's review and decision-making process must adhere to the time frame contained in the Writ of Mandamus. In order to comply with the Writ of Mandamus and 40 CFR 145.34(b)(2), EPA must hold a public hearing no less than 60 days nor more than 75 days, following the publication of this notice of the hearing in the **Federal Register**. Therefore, in order to comply with this time frame, Region 4 held a public hearing on July 28, 1999, at 5:30 pm in the Tuscaloosa Public Library, Tuscaloosa, Alabama. Due to the cancellation of that hearing prior to its conclusion, Region 4 has rescheduled the public hearing to occur on Thursday, September 9, 1999, at the University of Alabama in the Sellers Auditorium of the Bryant Conference Center, Tuscaloosa, Alabama. All interested persons shall be given the opportunity to make written or oral presentation at the public hearing on whether EPA should withdraw Alabama's Class II UIC Program on the ground that it does not regulate as "underground injection" hydraulic fracturing associated with coalbed methane gas production.

Alabama Class II UIC Section 1425 Program Deficiencies

The State Oil & Gas Board of Alabama is not regulating hydraulic fracturing of coalbed methane gas production wells as "underground injection" (by permit or rule) pursuant to its EPA-approved underground injection control program.

Withdrawal Procedure

Section 1425 of the SDWA and subsequent published EPA guidance does not contain express procedures for the withdrawal of a Section 1425 Program. EPA has promulgated procedures for withdrawing a Section 1422 Program at 40 CFR 145.34(b). In lieu of different express regulatory provisions for the withdrawal of Section 1425 programs and in light of the Court's Writ of Mandamus, EPA is following the procedures at 40 CFR 145.34(b) in proposing to withdraw Alabama's Section 1425 Program.

On March 19, 1999, the Regional Administrator of EPA Region 4 notified the Supervisor of the State Oil and Gas Board of Alabama of EPA's decision to initiate the process to withdraw approval of the Alabama UIC Program. The Regional Administrator's notice to the Supervisor of the State Oil and Gas Board of Alabama constituted the first step in the withdrawal process. According to the procedures established in 40 CFR 145.34(b) and the Writ of Mandamus, the State was given 30 days after the notice to demonstrate that its UIC Program is in compliance with the SDWA and 40 CFR part 145 (i.e., that hydraulic fracturing associated with methane gas production is regulated as "underground injection," by permit or rule, pursuant to the EPA approved Underground Injection Control Program).

The Supervisor of the State Oil and Gas Board responded to the Regional Administrator's letter by a letter dated April 15, 1999. The response indicated that on March 5, 1999, the State Oil & Gas Board of Alabama promulgated rules which regulate hydraulic fracturing of coalbed methane gas wells by rule authorization. These new regulations were added as an Emergency Order and sent to the Alabama Legislative Reference Service under Section 41–22–5 of the Code of Alabama (1975). They became effective on March 11, 1999, for a period of no longer than 120 days. To become part of the EPA approved UIC Program, Alabama should submit a revised UIC Program package containing new regulations to EPA for review and approval. These new regulations must protect current and potential USDWs from endangerment.

The State will not have fully corrected the identified program deficiencies consistent with the requirements of the Writ of Mandamus until a revised Alabama Section 1425 Program has been approved by EPA. Therefore, in accordance with 40 CFR 145.34(b)(2), the Regional Administrator of Region 4 is soliciting comments on the

appropriateness of withdrawing the Class II UIC Program from the State Oil & Gas Board of Alabama on the grounds that it does not, as currently approved by EPA, regulate as "underground injection" hydraulic fracturing associated with methane gas production. This action constitutes the second step in the withdrawal process set out in 40 CFR 145.32(b) and the Writ of Mandamus. Following the public hearing and close of the public comment period, EPA will fully evaluate the record in this matter. If EPA determines that the State is still not in compliance, the Administrator will notify the State.

Within 90 days of receipt of that notification, the State of Alabama must fully implement any required remedial actions regarding regulating hydraulic fracturing or the State's Class II UIC Program will be withdrawn. Class II program approval will, however, not be withdrawn if Alabama can demonstrate that hydraulic fracturing associated with methane gas production is regulated as "underground injection" (by permit or rule) pursuant to the EPA approved underground injection control program. If EPA withdraws approval of the Alabama Class II Program pursuant to the requirement of 40 CFR 145.32(b) and the Writ of Mandamus, it will propose and promulgate a federal program for Class II wells located in Alabama, including hydraulic fracturing associated with methane gas production.

EPA is extending the public comment period regarding withdrawal of the Alabama Class II UIC Program for failure to adequately regulate hydraulic fracturing associated with methane gas production as "underground injection." Public comments received on or before close of business on September 16, 1999, will be considered in EPA's final evaluation of the State of Alabama Section 1425 Program. Comments may be submitted at the rescheduled public hearing to be held on September 9, 1999, at 4 p.m., CST at the University of Alabama, in the Sellers Auditorium of the Bryant Conference Center at 240 Bryant Drive, Tuscaloosa, Alabama 35401.

List of Subjects in 40 CFR Part 147

Environmental protection, Intergovernmental relations, Water supply.

Dated: July 30, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–20314 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6417–2]

South Dakota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: South Dakota has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: Send your comments by September 9, 1999.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. We must receive your comments by September 9, 1999. You can view and copy South Dakota's applications at the following addresses: SDDENR, from 9:00 AM to 5:00 PM, Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501–3181, contact: Carrie Jacobson, phone number (605) 773–3153 and EPA Region VIII, from 8:00 AM to 4:00 PM, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that South Dakota's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant South Dakota Final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Dakota, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in South Dakota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. South Dakota has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the proposed regulations for which South Dakota is requesting authorization are already effective, and are not changed by this proposed approval.

D. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You will not have another opportunity to comment. If you want to

comment on this action, you must do so at this time.

E. What Has South Dakota Previously Been Authorized For?

South Dakota initially received Final authorization on October 19, 1984, effective November 2, 1984 (49 FR 41038) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 17, 1991, effective June 17, 1991 (56 FR 15503); September 8, 1993, effective November 8, 1993 (FR 47216); January 10, 1994, effective March 11, 1994 (59 FR 01275); and July 24, 1996, effective September 23, 1996 (61 FR 38392).

F. What Changes Are We Proposing To Authorize With Today's Action?

On August 1, 1997, September 3, 1997, and March 23, 1999, South Dakota submitted final complete program revision applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a Final decision, subject to receipt of written comments that oppose this action, that South Dakota's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant South Dakota authorization for the following program changes:

Description of federal requirement	Analogous state authority [1]	Effective date
Wood Preserving Listings [55 FR 50450–50490, 12/6/90] (Checklist 82).	74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01.	08/05/97
Wood Preserving Listings; Technical Corrections [56 FR 30192–30198, 7/1/91] (Checklist 92).	74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01.	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Corrections & Technical Amendments I [56 FR 32688, 7/17/91] (Checklist 94).	74:28:22:01; 74:28:26:01; 74:28:27:01; 74:28:28:01	08/05/97
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) [56 FR 41164–41178, 8/19/91] (Checklist 95).	74:28:22:01; 74:28:30:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Technical Amendments II [56 FR 42504–42517, 8/27/91] (Checklist 96).	74:28:22:01; 74:28:27:01; 74:28:28:01	08/05/97
Exports of Hazardous Waste; Technical Correction [56 FR 43704–43705] (Checklist 97).	74:28:23:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Administrative Stay of Applicability & Technical Amendment [56 FR 43874–43877, 9/5/91] (Checklist 98).	74:28:27:01	08/05/97
Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations [56 FR 66365–66369, 12/23/91] (Checklist 99).	74:28:21:02; 74:28:28:01	08/05/97
Liners & Leak Detection Systems for Hazardous Waste Land Disposal Units [57 FR 3462–3497, 1/29/92] (Checklist 100).	74:28:21:02; 74:28:25:01; 74:28:26:01; 74:28:28:01	08/05/97
Administrative Stay for the Requirement that Existing Drip Pads Be Impregnable [57 FR 5859–5861, 2/18/92] (Checklist 101).	74:28:25:01; 74:28:28:01	08/05/97
Second Correction to the Third Third Land Disposal Restrictions [57 FR 8086–8089, 3/6/92] (Checklist 102).	74:28:25:01; 74:28:28:01; 74:28:30:01	08/05/97
Hazardous Debris Case-by-Case Capacity Variance [57 FR 20766–20770, 5/15/92] (Checklist 103).	74:28:30:01	08/05/97
Used Oil Filter Exclusion [57 FR 21524–21534, 5/29/92] (Checklist 104).	74:28:22:01	08/05/97
Recycled Coke By-Product Exclusion [57 FR 27880–27888, 6/22/92] (Checklist 105).	74:28:22:01; 74:28:27:01	08/05/97
Lead-bearing Hazardous Materials Case-by-Case Capacity Variance [57 FR 28628–28632, 6/26/92] (Checklist 106).	74:28:30:01	08/05/97
Used Oil Filter Exclusion: Technical Corrections [57 FR 29220, 7/1/92] (Checklist 107).	74:28:22:01	08/05/97
Land Disposal Restrictions for Newly Listed Wastes & Hazardous Debris [57 FR 37194-37282] (Checklist 109).	74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01.	08/05/97
Coke By-Products Listings [57 FR 37284–37306, 8/18/92] (Checklist 110).	74:28:22:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Technical Amendment III [57 FR 38558–38566, 8/25/92] Checklist 111.	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:27:01; 74:28:28:01.	08/05/97
Recycled Used Oil Management Standards [57 FR 41566–41626, 9/10/92] (Checklist 112).	74:28:22:02; 74:28:22:01; 74:28:27:01	08/05/97
Consolidated Liability Requirements [53 FR 33938–33960, 9/1/88; 56 FR 30200, 7/1/91; 57 FR 42832–42844, 9/16/92] (Checklist 113).	74:28:25:01; 74:28:28:01	08/05/97
Burning of Hazardous Waste in Boilers & Industrial Furnaces; Technical Amendment IV [57 FR 44999–45001, 9/30/92] (Checklist 114).	74:28:27:01	08/05/97
Chlorinated Toluenes Production Waste Listing [57 FR 47376–47386, 10/15/92] (Checklist 115).	74:28:22:01	08/05/97
Hazardous Soil Case-By-Case Capacity Variance [57 FR 47772–47776, 10/20/92] (Checklist 116).	74:28:30:01	08/05/97
Liquids in Landfills II [57 FR 54452–54461, 11/18/92] (Checklist 118).	74:28:21:02; 74:28:25:01; 74:28:28:01	08/05/97

Description of federal requirement	Analogous state authority [1]	Effective date
Wood Preserving: Revisions to Listings & Technical Requirements [57 FR 61492–61505, 12/24/92] (Checklist 120).	74:28:22:01; 74:28:25:01; 74:28:28:01	08/05/97
Corrective Action Management Units & Temporary Units [58 FR 8658–8685, 2/16/93] (Checklist 121).	74:28:21:02; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01.	08/05/97
Recycled Used Oil Management Standards; Technical Amendments & Corrections I [58 FR 26420–26426, 5/3/93] (Checklist 122).	74:28:22:01; 74:28:25:01; 74:28:27:01; 74:28:28:01	08/05/97
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance [58 FR 28506–28511, 5/14/93] (Checklist 123).	74:28:30:01	08/05/97
Land Disposal Restrictions for Ignitable & Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated [58 FR 29860–29887, 5/24/93] (Checklist 124).	74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01	08/05/97
Boilers & Industrial Furnaces; Changes for Consistency with New Air Regulations [58 FR 38816–38884, 7/20/93] (Checklist 125).	74:28:21:02; 74:28:27:01	10/02/95
Testing & Monitoring Activities [58 FR 46040-46051, 8/31/93] (Checklist 126).	74:28:22:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01.	10/02/95
Boilers & Industrial Furnaces; Administrative Stay & Interim Standards for Bevill Residues [58 FR 59598–59603, 11/9/93] (Checklist 127).	74:28:27:01	10/02/95
Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection [59 FR 458–469, 1/4/94] (Checklist 128).	74:28:21:02	10/02/95
Revision of Conditional Exemption for Small Scale Treatability Studies [59 FR 8362–8366, 2/18/94] (Checklist 129).	74:28:22:01	10/02/95
Recycled Used Oil Management Standards; Technical Amendments & Corrections II [59 FR 10550–10560, 3/4/94] (Checklist 130).	74:28:27:01	10/02/95
Recordkeeping Instructions; Technical Amendment [59 FR 13891–13893, 3/24/94] (Checklist 131).	74:28:25:01; 74:28:28:01	10/02/95
Wood Surface Protection; Correction [59 FR 28484, 6/2/94] (Checklist 132).	74:28:21:02	10/02/95
Letter of Credit Revision [59 FR 29958–29960, 6/10/94] (Checklist 133).	74:28:25:01	10/02/95
Correction of Beryllium Powder (P015) Listing [59 FR 31551–31552, 6/20/94] (Checklist 134).	74:28:22:01; 74:28:30:01;	10/02/95
Recovered Oil Exclusion [59 FR 38336–38545, 7/28/94] (Checklist 135).	74:28:22:01; 74:28:27:01	11/05/96
Removal of the Conditional Exemption for Certain Slag Residues [59 FR 43496–43500, 8/24/94] (Checklist 136).	74:28:27:01; 74:28:30:01	11/05/96
Universal Treatment Standards & Treatment Standards for Organic Toxicity Characteristic Wastes & Newly Listed Wastes [59 FR 47982-48110, 9/19/94] (Checklist 137).	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:27:01; 74:28:28:01; 74:28:30:01.	11/05/96
Testing & Monitoring Activities Amendment I [60 FR 3089–3095, 1/13/95] (Checklist 139).	74:28:21:02	11/05/96
Testing & Monitoring Activities Amendment II [60 FR 17001–17004, 4/4/95] (Checklist 141).	74:28:21:02	11/05/96
Universal Waste: General Provisions [60 FR 25492–25551, 5/11/95] (Checklist 142A).	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:26:01; 74:28:27:01; 74:28:28:01; 74:28:30:01; 74:28:33:01.	11/05/96
Universal Waste: Specific Provisions for Batteries [60 FR 25492–25551, 5/11/95] (Checklist 142B).	74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01; 74:28:33:01.	11/05/96
Universal Waste: Specific Provisions for Thermostats [60 FR 25492–25551, 5/11/95] (Checklist 142D).	74:28:21:02; 74:28:22:01; 74:28:25:01; 74:28:26:01; 74:28:28:01; 74:28:30:01; 74:28:33:01.	11/05/96
Universal Waste: Petition Provisions to Add a New Universal Waste [60 FR 25492–25551, 5/11/95] (Checklist 142E).	74:28:21:02; 74:28:33:01	11/05/96
Liquids in Landfills III [60 FR 35703–35706, 7/11/95] (Checklist 145).	74:28:25:01; 74:28:28:01	08/05/97
Amendments to the Definition of Solid Waste; Amendment II [61 FR 13103–13106, 3/26/96] (Checklist 150).	74:28:22:01	08/05/97
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes & Spent Potliners [61 FR 15566–15660, 4/8/96] (Checklist 151).	74:28:30:01	08/05/97

[1] Administrative Rules of South Dakota.

G. Where Are The Revised State Rules Different From The Federal Rules?

EPA cannot delegate the Federal requirements at 40 CFR 268.5, 268.42(b), and 268.44. South Dakota has excluded these requirements and EPA will continue to implement these requirements.

H. Who Handles Permits After This Authorization Takes Effect?

South Dakota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. When the State incorporates

the terms and conditions of the Federal permits into State permits or issues State permits to those facilities, EPA will terminate the Federal permits. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which South Dakota is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. Section 1151) In South Dakota?

EPA has been consulting with the affected Tribes and has had discussions with the State regarding the extent of Indian country in South Dakota. Based on these discussions, we propose the following language. Recognizing that the affected parties may have differing opinions, we invite comment from the Tribes, the State and others.

EPA's decision to authorize the South Dakota hazardous waste program does not include any land that is, or becomes after the date of this authorization, "Indian Country," as defined in 18 U.S.C. 1151, including:

1. Land within formal Indian reservations located within or abutting the State of South Dakota, including the:
   a. Cheyenne River Indian Reservation,
   b. Crow Creek Indian Reservation,
   c. Flandreau Indian Reservation,
   d. Lower Brule Indian Reservation,
   e. Pine Ridge Indian Reservation,
   f. Rosebud Indian Reservation,
   g. Standing Rock Indian Reservation, and
   h. Yankton Indian Reservation.
2. Any land held in trust by the United States for an Indian tribe, and
3. Any other land, whether on or off a reservation, that qualifies as Indian country.

Moreover, in the context of these principles, a more detailed discussion for three reservations follows.

Rosebud Sioux Reservation

In the September 16, 1996, FR Notice, EPA noted that the U.S. Supreme Court in *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584 (1977), determined that three Congressional acts diminished the Rosebud Sioux Reservation and that it no longer includes Gregory, Tripp, Lyman and Mellette Counties. Accordingly, EPA authorizes the South Dakota hazardous waste program for all land in Gregory, Tripp, Lyman and Mellette Counties that was formerly within the 1889 Rosebud Sioux Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This authorization does not include any trust or other land in Gregory, Tripp, Lyman and Mellette Counties that qualifies as Indian country.

Lake Traverse (Sisseton-Wahpeton) Reservation

In the September 16, 1996, FR Notice, EPA noted that the U.S. Supreme Court in *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975), determined that an Act of Congress disestablished the Lake Traverse (Sisseton-Wahpeton) Reservation. Therefore, EPA is authorizing the South Dakota hazardous waste program for all land that was formerly within the 1867 Lake Traverse Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This authorization does not include any trust or other land within the former Lake Traverse Reservation that qualifies as Indian country.

Yankton Sioux Reservation

The U.S. Supreme Court's ruling in *South Dakota* v. *Yankton Sioux Tribe*, 522 U.S. 329 (1998), found that the Yankton Sioux Reservation has been diminished by the unallotted, "ceded" lands, that is, those lands that were not allotted to Tribal members and that were sold by the Yankton Sioux Tribe to the United States pursuant to an Agreement executed in 1892 and ratified by the United States Congress in 1894. Accordingly, EPA is authorizing the South Dakota hazardous waste program for unallotted, ceded lands that were ceded as a result of the Act of 1894, 28 Stat. 286 and do not otherwise qualify as Indian country under 18 U.S.C. 1151. This authorization does not include any trust or other land within the original boundaries of the Yankton Sioux Reservation that qualifies as Indian country under 18 U.S.C. 1151. EPA acknowledges that there may be further interpretation of land status by the final Federal court decision in *Yankton Sioux Tribe* v. *Gaffey*, Nos. 98–3893, 3894, 3986, 3900. If Indian country status changes as a result of *Gaffey*, EPA will act to modify this authorization as appropriate.

J. What Is Codification and Is EPA Codifying South Dakota's Hazardous Waste Program As Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart QQ for this authorization of South Dakota's program until a later date.

K. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the South Dakota program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not

increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. South Dakota

is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 2, 1999.

Jack McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 99–20551 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–6414–6]

North Carolina; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of state of North Carolina for final approval, public hearing and public comment period.

SUMMARY: The State of North Carolina has applied for approval of its underground storage tank program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the North Carolina application and has made the tentative decision that the North Carolina underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. North Carolina's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application, unless insufficient public interest is expressed.

DATES: Written comments on the North Carolina approval application, as well as requests to present oral testimony, must be received by the close of business on September 9, 1999. A public hearing is scheduled for September 13, 1999, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by September 9, 1999. EPA will determine by September 14, 1999, whether there is significant interest to hold the public hearing. The State of North Carolina will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of the North Carolina approval application are available during the hours of 9 am to 5 pm at the following addresses for inspection and copying:

North Carolina Department of Environment and Natural Resources, Underground Storage Tank Section, 2728 Capital Boulevard, Parker-Lincoln Building, Raleigh, North Carolina 27604, Phone: (919) 733–8486;

U.S. EPA Docket Clerk, Office of Underground Storage Tanks, 1235 Jefferson Davis Highway—1st Floor, Arlington, Virginia 22202, Phone: (703) 603–9231; and,

U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 15th Floor, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562–9277.

Written comments should be sent to Mr. John K. Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, telephone (404) 562–9277.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of North Carolina's application for program approval on September 13, 1999, at 7 pm at the North Carolina Department of Environment and Natural Resources Archadale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, North Carolina 27604–1148. Anyone who wishes to learn whether or not the public hearing on the State's application has been canceled should telephone the following contacts after September 14, 1999.

Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562–9277, or

Mr. Burrie Boshoff, Chief, Underground Storage Tank Section, North Carolina Department of Environment and Natural Resources, Post Office Box 29578, Raleigh, North Carolina 27626–0578, Phone: (919) 733–8486.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, phone: (404) 562–9277.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA Section 9004(b), if the Agency finds that the State program is: "no less stringent" than the Federal program for the seven elements set forth at RCRA Section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA Section 9004(a).

B. North Carolina

The State of North Carolina submitted their draft state program approval application to EPA by letter dated December 8, 1992. After reviewing the package and coordinating with the State, EPA submitted final comments to the state for review. North Carolina submitted their complete state program approval application for EPA's tentative approval on January 16, 1998.

North Carolina adopted UST program regulations that became effective on January 1, 1991. Prior to the adoption of the regulations, North Carolina solicited public comment and held a public hearing on the draft UST program regulations. EPA has reviewed the North Carolina application, and has tentatively determined that the State's UST program for petroleum and hazardous substances meets all of the requirements necessary to qualify for final approval.

EPA will hold a public hearing on its tentative decision on September 13, 1999, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until September 9, 1999. Copies of the North Carolina application are available for inspection and copying at the location indicated in the **ADDRESSES** section of this document.

EPA will consider all public comments on its tentative determination received at the hearing, or received in writing during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to North Carolina. EPA expects to make a final decision on whether or not to approve the North Carolina UST program by October 12, 1999, and will give notice of it in the **Federal Register**. The notice will include a *summary* of the reasons for the final determination and a response to all major comments.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the North Carolina program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. North Carolina's participation in an approved UST program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the North Carolina program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing state law which are being approved by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

EPA has determined that this approval will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being approved by EPA. EPA's approval does not impose any additional burdens on these small entities. This is because EPA's approval would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This rule approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and that EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Compliance With Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an

effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its underground storage tank program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from today's action. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. North Carolina is not approved to implement the underground storage tank program in Indian Country. This rule has no effect on the underground storage tank program that EPA implements in the Indian Country within the State. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by an information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 29, 1999.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

[FR Doc. 99–20313 Filed 8–9–99; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

[HCFA–3250–N3]

RIN 0938–AI92

Medicare Program; Negotiated Rulemaking; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests; Announcement of Additional Public Meetings

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: This document announces an additional public meeting of the Negotiated Rulemaking Committee on Coverage and Administrative Policies for Clinical Laboratory Tests. The Committee was mandated by section 4554(b) of the Balanced Budget Act of 1997, and established under the Federal Advisory Committee Act.

DATES: The meetings are scheduled as follows:

1. August 30, 1999, 9 a.m. to 3 p.m.
2. August 31, 1999, 8 a.m. to 1 p.m.

ADDRESSES: The meetings will be held at the Hubert H. Humphrey Building, Room 800, 200 Independence Ave., SW., Washington, DC. 20201.

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan,(410) 786–4635

SUPPLEMENTARY INFORMATION:

We published a notice in the Federal Register on June 3, 1998 (63 FR 30166) announcing the intent to form a negotiated rulemaking committee to provide advice and make recommendations to the Secretary on the content of a proposed rule that will establish national coverage and administrative policies for clinical laboratory tests payable under Part B of the Medicare program. The notice also announced the dates of the Committee meetings that began on July 13, 1998. The Committee held meetings through January 1999.

The Committee wishes to meet again on August 30 and 31, 1999. The opportunity for public comments will be 9:00 a.m. on August 30, 1999. The meetings will be held at the Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201. The purpose of the meeting is to discuss the Committee's comments on the draft proposed rule. The meetings are open to the public without advance registration.

Public attendance at the meetings is limited to space availability.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 3, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–20401 Filed 8–9–99; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 64, No. 153
Tuesday, August 10, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is for reinstatement of a previously approved collection for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

DATES: Comments on this notice must be received by October 12, 1999 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, VA 22302.

Comments are invited on:

(a) Whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR Part 246), Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

OMB Number: 0584–0043.

Expiration Date of Approval: Expired.

Type of Request: Re-instatement of a previously approved collection with changes.

Abstract: The WIC Program provides supplemental foods, nutrition education, and health care referrals to low income, nutritionally at risk pregnant, breastfeeding and postpartum women, infants, and children up to age 5. Currently, WIC operates through State health departments in 50 States, the District of Columbia, Puerto Rico, Guam, America Samoa and the Virgin Islands. Additionally, 33 Indian tribal bands and organizations serve as State agencies.

This information collection is for the reporting and recordkeeping burdens associated with the WIC Program regulations, and is necessary to ensure appropriate and efficient management of the Program. This request is being made to extend the current information collection for an additional three years.

Based on Program regulations:

- State Plans are the principal source of information about how each State agency WIC Program operates.
- Local agency applications and vendor agreements are necessary to delineate responsibility, and ensure the accountability of State agencies, local agencies, and vendors.
- Certification data provide the basis for determining the eligibility of program applicants.
- Local agency nutrition education plans facilitate the provision of quality nutrition education and allows FNS and the State agency to assess the quality and quantity of nutrition education provided to participants.
- The vendor monitoring report enables FNS to evaluate vendor trends and assess State agency efforts to control vendor fraud and abuse.
- Documentation of participant and vendor complaints enables FNS and the State agency to identify problems at the local agency level.

The requirements that the State agency:

- Identify the disposition of food instruments;
- Request approval for specified allowable costs;
- Justify the carry-over and backspending of funds;
- Submit preliminary and final closeout reports;
- Submit financial, participation, and food delivery reports to FNS;
- Develop funding procedures for local agencies;
- Report the status of participant claims; and
- Request waivers for development of alternate cost containment systems;

ensure the accountability of Federal funds and promote efficient program management.

The requirement for State agency corrective action plans ensures the problem areas of program management are rectified. Submission of information to FNS for a biennial report entitled "Study of WIC Participant and Program Characteristics," provides valuable data on the various aspects of program operations. The food delivery requirements assist in controlling vendor fraud and abuse and promoting the integrity of State agency food delivery systems.

The information collected is used by FNS to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the lawful, proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.140 manhours per response.

Respondents: State and local governments, individuals or households, and businesses.

Estimated Number of Respondents: 7,642,797

Estimated Number of Responses per Respondent: 2.45

Estimated Total Annual Burden: 2,607,523 manhours.

Dated: July 21, 1999.

Samuel Chambers, Jr.

Administrator, Food and Nutrition Service.

[FR Doc. 99–20500 Filed 8–9–99; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed-circumstances administrative review of the antidumping order on ball bearings and parts thereof from Japan. Based on this information, we preliminarily determine that Tsubaki-Nakashima Co., Ltd., is the successor-in-interest to Tsubakimoto Precision Products, Co., Ltd. for purposes of determining antidumping liability.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Richard Rimlinger, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20904) the antidumping duty order on ball bearings and parts thereof from Japan. On July 16, 1999, Tsubaki-Nakashima Co., Ltd. (Tsubaki-Nakashima), submitted a letter stating that Tsubaki-Nakashima is the successor-in-interest to Tsubakimoto Precision Products, Co., Ltd. (Tsubakimoto), and that Tsubaki-Nakashima should receive the same antidumping duty treatment as is accorded Tsubakimoto with respect to ball bearings.

Scope of the Review

The products covered by this review are ball bearings and parts thereof. These products include all ball bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the order being reviewed, including recent scope determinations, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998). Although the HTS item numbers are provided for convenience and customs purposes, the written description of the scope of this proceeding remains dispositive.

Initiation and Preliminary Results of Review

In a letter dated July 16, 1999, Tsubaki-Nakashima advised the Department that, effective April 1, 1996, Tsubakimoto merged with Nakashima Manufacturing Co., Ltd. (Nakashima). According to the submission, Tsubakimoto was the surviving company and is currently operating under the name Tsubaki-Nakashima Co., Ltd. Tsubaki-Nakashima stated that the former President of Tsubakimoto is now the President of Tsubaki-Nakashima, that the former Executive Vice President of Tsubakimoto is now one of three Executive Vice Presidents of Tsubaki-Nakashima (two additional Executive Vice Presidents were added following the merger), that the sole Managing Director of Tsubaki-Nakashima was one of two Managing Directors of Tsubakimoto, and, further, that all the current Directors of Tsubaki-Nakashima were Directors of Tsubakimoto. Tsubaki-Nakashima also stated that its production facilities are substantially similar to Tsubakimoto. Specifically, Tsubaki-Nakashima stated that three of its four production facilities were operated previously by Tsubakimoto. Finally, Tsubaki-Nakashima stated that its supplier relationships and customer base are substantially similar to those of Tsubakimoto. Tsubaki-Nakashima submitted exhibits listing the management, production faciliites, major suppliers, and customers of both Tsubaki-Nakashima and Tsubakimoto.

Thus, in accordance with section 751(b) of the Tariff Act, as amended (the Act), the Department is initiating a changed-circumstances review to determine whether Tsubaki-Nakashima is the successor-in-interest to Tsubakimoto for purposes of determining antidumping duty liability with respect to ball bearings. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. See, *e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no single or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994), and *Canadian Brass*. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash-deposit rate of its predecessor.

We preliminarily determine that Tsubaki-Nakashima is the successor-in-interest to Tsubakimoto. Tsubakimoto, the surviving company following its merger with Nakashima, is now operating as Tsubaki-Nakashima. The former President of Tsubakimoto is now the President of Tsubaki-Nakashima. The rest of the company?s senior management structure including the board of directors is substantially similar to that of Tsubakimoto. In addition, the company's production facilities are substantially similar to Tsubakimoto as are supplier relationships and the company's customer base. Thus, we preliminarily determine that Tsubaki-Nakashima

should receive the same antidumping duty treatment with respect to ball bearings as the former Tsubakimoto, *i.e.*, a 7.77 percent antidumping duty cash-deposit rate.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed-circumstances review, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: August 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–20558 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

EFFECTIVE DATE: August 10, 1999.

SUMMARY: On April 6, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Germany. This review covers shipments of subject merchandise to the United States by one manufacturer/exporter, Wieland-Werke AG, during the period March 1, 1997 through February 28, 1998. Due to the respondent's withdrawal from participation in this review, we have based its margin on adverse facts available, applying the highest margin for any company during any segment of this proceeding.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Kris Campbell, AD/CVD Enforcement, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162 or 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations provided in 19 CFR Part 351 (1998).

Background

On April 6, 1999, the Department published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Germany. *See Preliminary Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany*, 64 FR 16697 (April 6, 1999) (preliminary results). As stated in the preliminary results, Weiland-Werke AG (Weiland) withdrew from participation in this review on May 11, 1998, and accordingly received a preliminary rate based on adverse facts available (*i.e.*, the highest rate for any company during any segment of the proceeding). On May 6, 1999, we received a case brief from domestic interested parties,[1] requesting that the Department continue to assign Weiland the adverse rate selected in the preliminary results (16.18 percent). Additionally, since Wieland failed to cooperate by not placing any information on the record, the petitioners argued that the Department should draw the adverse inference that duty absorption occurred on all of Wieland's sales of the subject merchandise during the period of review. We received no comments on the preliminary results from Wieland.

Scope of the Review

This review covers shipments of brass sheet and strip, other than leaded and tinned, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000; this review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7409.21.00 and 7409.29.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* the Statement of Administrative Action to the URAA at 870 (SAA).

On May 11, 1998, Wieland informed the Department that it was withdrawing from participation in the review. By withdrawing its participation, Wieland impeded the instant review. Therefore, in accordance with section 776(a)(2) of the Act and consistent with our preliminary results, we determine that

[1] The case brief was filed by petitioners Hussey Copper, Ltd.; Outokumpu American Brass; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; and United Steelworkers of America (AFL-CIO/CLC). Also named as interested parties were Olin Corporation—Brass Group and United Auto Workers (Local 2367).

the use of total facts available is appropriate for the final results.

As noted above, in selecting facts otherwise available, pursuant to section 776(b) of the Act, the Department may use an adverse inference if the Department finds that an interested party, such as Wieland in this case, failed to cooperate by not acting to the best of its ability to comply with requests for information. Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin from any prior segment of the proceeding. *See, e.g., Viscose Rayon Staple Fiber From Finland*, 63 FR 32820, 32822 (June 16, 1998) (final administrative review). In this case, the highest margin from any prior segment of the proceeding is 16.18 percent *ad valorem*, calculated for a respondent in the less-than-fair-value (LTFV) investigation.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is described in the SAA (at 870) as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."

The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. Thus, to corroborate secondary information, to the extent practicable, the Department will examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See, e.g., Elemental Sulphur from Canada*, 62 FR 971 (January 7, 1997) (preliminary results of administrative review) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 62 FR 2081, 2088 (January 15, 1997) (final results of administrative review). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin for use as adverse facts available because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). In this review, we are not aware of any circumstances that would render the use of the margin selected for Wieland as inappropriate.

Duty Absorption

On May 21, 1998, the petitioners requested that the Department determine whether antidumping duties have been absorbed by an exporter or producer subject to this administrative review, in the event that the subject merchandise was sold during this period of review in the United States through an importer affiliated with Weiland.

Section 751(a)(4) of the Act provides that, if requested, the Department will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an affiliated importer. Section 751(a)(4) of the Act authorizes this inquiry during an administrative review initiated two years or four years after publication of an order. For transition orders as defined in section 751(c)(6)(C) of the Act (*i.e.*, antidumping orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's regulations provides that the Department will make such a determination for any administrative review initiated in 1996 or 1998.

The order in this case is a transition order, which went into effect in 1987. *See Notice of Antidumping Duty Order: Brass Sheet and Strip from the Federal Republic of Germany*, 52 FR 6997 (March 6, 1987). Because this review was initiated in 1998,[2] and the petitioners made a timely request for a duty absorption determination (*i.e.*, within 30 days of the date of publication of the notice of initiation of this review), we find that the regulatory requirements for a duty absorption determination have been met. *See* 19 CFR 351.213(j).

In their May 6, 1999, case brief, the petitioners argued that since Wieland failed to cooperate by not placing any information on the record, the Department should draw the adverse inference that duty absorption occurred on all of Wieland's sales of the subject merchandise during the period of review. As explained above, we have determined that a margin exists for Wieland based on adverse facts available. Lacking other information, we find that duty absorption exists on all of its U.S. sales of the subject merchandise made by Wieland. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590, 35601 (July 1, 1999); *Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12756 (March 16, 1998).

Final Results of Review

We have determined that the following margin exists for Wieland for the period March 1, 1997 through February 28, 1998:

Manufacturer/exporter	Percentage margin
Wieland-Werke AG	16.18

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Wieland will be the rate stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original

[2] *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 63 FR 20378 (April 24, 1998).

LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 7.30 percent, the "all others" rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.304. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 4, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–20557 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–826]

Collated Roofing Nails From Taiwan: Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on collated roofing nails from Taiwan in response to a request by Dinsen Fastening System, Inc., a producer/exporter of subject merchandise. This review covers the period November 20, 1997, through October 31, 1998.

We have preliminarily determined that sales have not been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service not to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins or Katherine Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration, Room 3099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1756, or 482–4929, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the regulations at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1997, the Department published in the **Federal Register** the antidumping duty order on collated roofing nails from Taiwan (62 FR 61729).

On November 12, 1998, we published in the **Federal Register** (63 FR 63287) a notice of opportunity to request an administrative review of the antidumping duty order on collated roofing nails from Taiwan covering the period November 20, 1997, through October 31, 1998.

In accordance with 19 CFR 351.213(b)(1), Dinsen Fastening System, Inc. ("Dinsen") requested that we conduct an administrative review of its sales. We published a notice of initiation of this antidumping duty administrative review on December 23, 1998 (63 FR 71091).

On January 14, 1999, the Department issued an antidumping duty questionnaire to Dinsen. We also issued a supplemental questionnaire on April 12, 1999. On March 8, March 15, and May 3, 1999, we received from Dinsen responses to the original antidumping questionnaire and the supplemental questionnaire. We conducted verification of Dinsen's antidumping duty questionnaire responses from June 1, through June 4, 1999, and issued our report on July 6, 1999, (*see* Memorandum to the File: Sales and Cost of Production Verification) (Verification Report).

On June 2, 1999, Dinsen provided the Department with changes to its response as a result of errors found during the preparation for verification. At the Department's request, on June 30, 1999, the respondent provided revised sales and cost databases reflecting the correction of certain errors found by Dinsen in preparing for verification and also to account for certain errors found at verification.

We made the following additional adjustments to Dinsen's June 30, 1999, reported databases based on verification findings:

1. We deleted threading cost for all control numbers except one, based on the verification results. We also corrected an error in the per-unit threading cost for the one control number based on the verification results.
2. We adjusted the plastic sheet cost to account for a correction in the cost of packing.
3. We corrected the product code and control number for a specific transaction.

Scope of the Review

The product covered by this review is collated roofing nails made of steel, having a length of $^{13}/_{16}$ inch to $1^{13}/_{16}$ inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

Collated roofing nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Fair Value Comparisons

To determine whether sales of the subject merchandise sold by Dinsen and exported to the United States were made at less than normal value ("NV"), we compared export price ("EP") to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual

U.S. transactions to the weighted-average NVs of the foreign like product.

Consistent with our July 29, 1999, preliminary determination that stainless steel collated roofing nails are not within the scope of the antidumping duty order on collated roofing nails from Taiwan (*see* Memorandum for Richard Moreland from Louis Apple regarding "Preliminary Scope Ruling-Antidumping Duty Order on Collated Roofing Nails from Taiwan Requested by the Stanley Bostitch Fastener Division of Stanley Works, Inc." dated July 29, 1999), we have excluded all U.S. sales of such merchandise from our preliminary margin analysis in this review.

Export Price

We based United States price on EP, as defined in section 772(a) of the Act, because the merchandise was sold directly by Dinsen to unaffiliated U.S. purchasers prior to importation or sold to unaffiliated purchasers in Taiwan for exportation to the United States, and constructed export price was not otherwise indicated by the facts of record.

We calculated EP based on packed, FOB Taiwan port or C&I (cost and insurance) U.S. port prices to customers in the United States, or FOB at Taiwan port for trading companies in Taiwan that purchase the subject merchandise from Dinsen and export the subject merchandise to its U.S. customers. We made deductions, where applicable, for inland freight expenses, brokerage and handling expenses (inclusive of marine insurance charges) and harbor maintenance fees, in accordance with section 772(c) of the Act.

Home Market or Third Country Viability

In order to determine whether there was a sufficient volume of sales in the home market or third country to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market or third country sales of the foreign like product are equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market and third country sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(B) and (C) of the Act. Because the respondent's aggregate volume of home market and third country sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that its home and third country markets were not viable. Therefore, we used constructed value ("CV") as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

Normal Value

After testing home market viability, we calculated NV as noted in the "Price-to-CV Comparisons" section of this notice.

Calculation of CV

We calculated CV for the respondent in accordance with section 773(e)(1) of the Act, which indicates that CV shall be based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs.

Because there are no viable comparison markets for the respondent and, hence, no actual company-specific profit and selling expense data available for the respondent, we calculated these items in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong, 2d Sess (1994), at 841. Dinsen reported general and administrative expenses in its questionnaire response.

Specifically, the SAA provides that where, due to the absence of data, the Department cannot determine amounts for profit under alternatives (i) or (ii) of section 773(e)(2)(B) of the Act or a "profit cap" under alternative (iii) of section 773(e)(2)(B) of the Act, the Department may apply alternative (iii) on the basis of the facts available. In this case, we are unable to determine an amount for profit under alternatives (i) or (ii), or a "profit cap" under alternative (iii) because the respondent does not have a viable home market. *See* 19 CFR 351.405(b)(2) (clarifying that under section 773(e)(2)(B) of the Act, "foreign country" means the country in which the merchandise is produced) (62 FR 27296, 27412–13 (May 19, 1997)). The statute directs us to use an amount which reflects profit in connection with sales for consumption in the foreign country of the same general category of products as the subject merchandise. *See* section 773(e)(2) of the Act. Because Dinsen did not have a viable home market, the profit and selling expenses shown on its financial statement do not reflect profit and selling expenses realized in the home market. Therefore, we did not rely on the profit or selling expense data in the respondent's financial statements in calculating CV. Instead, we applied alternative (iii) and determined profit and selling expense on the basis of the facts available consistent with the SAA (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia*, 63 FR 72268, 72273, (December 31, 1998)). As facts available, we calculated Dinsen's profit and selling expenses for CV based on the weighted-average selling expenses and profit contained in the 1998 financial statement of Chun Yu Works & Company, Ltd. ("Chun Yu"), a Taiwan producer of fasteners, lug nuts and steel bars. *See* Calculation Memorandum dated August 2, 1999.

Price-to-CV Comparisons

For price-to-CV comparisons, we did not make a circumstance-of-sale adjustment, pursuant to section 773(a)(6)(C)(iii) of the Act, because the Department was unable to distinguish between home market direct and indirect selling expenses based on the 1998 financial statement of Chun Yu.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Dinsen Fastening System, Inc	11/20/97–10/31/98	0.02 (*de minimis*).

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis* (*i.e*, at or above 0.5 percent) (*see*, 19 CFR 351.106(c)(2)). For assessment purposes, if applicable, we intend to calculate an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity sold.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Dinsen will be that established in the final results of this review, except if the rate is less than 0.5 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the final determination; or (3) if the manufacturer or exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 2.98 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. *See* 19 CFR 351.402(f)(3).

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20559 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke order in part.

SUMMARY: In response to a request by the respondents, Makita Corporation and Makita U.S.A., Inc., the U.S. Department of Commerce is conducting an administrative review of the antidumping duty order on professional electric cutting tools from Japan. The period of review is July 1, 1997, through June 30, 1998.

We have preliminarily found that no sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by Makita Corporation. Furthermore, if these preliminary results are adopted in our final results of this administrative review, we intend to revoke the antidumping duty order with respect to Makita Corporation, based on three consecutive review periods of sales at not less than normal value (*see* 19 CFR 351.222(b)(i)). *See Intent to Revoke* section of this notice.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith, at (202) 482–1766, Barbara Wojcik-Betancourt at (202) 482–0629, or Brian Ledgerwood, at (202) 482–3836, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the U.S. Department of Commerce's ("the Department's") final regulations at 19 CFR Part 351 (1998).

Case History

On July 12, 1993, the Department published in the **Federal Register** an antidumping duty order on professional electric cutting tools from Japan. *See* 58 FR 37461. On July 1, 1998, the Department published a notice providing an opportunity to request an administrative review of this order for the period July 1, 1997, through June 30, 1998 (63 FR 35909). On July 24, 1998, we received a timely request for an administrative review from Makita Corporation ("Makita Japan") and Makita U.S.A. Inc. ("Makita USA"), Makita Japan's affiliated selling agent in the United States. In addition, Makita

Japan and Makita USA (hereafter "Makita" when referenced collectively) requested that the Department revoke the antidumping duty order with respect to Makita. On August 27, 1998, we published the notice of initiation of this review (63 FR 45796).

On August 31, 1998, we issued an antidumping questionnaire to Makita. Because the Department disregarded sales below the cost of production ("COP") in the last completed review (*see Notice of Final Results of Fourth Antidumping Duty Review: Professional Electric Cutting Tools from Japan*, 63 FR 54441 (October 9, 1998)), the Department had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value ("NV") in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether Makita Japan made home market sales during the POR at prices below its COP, and required Makita Japan to respond to the COP section of the questionnaire issued in August 1998.

The Department received the questionnaire responses in October 1998. We issued supplemental questionnaires in January 1999. We received responses to these questionnaires in February 1999. Because Makita requested revocation of the order, the Department verified the company's response pursuant to section 782(i)(2) of the Act.

In December 1998, the Department requested submissions of factual information regarding revocation of the antidumping order in part. Such submissions were received from the petitioner and Makita in February and March, 1999, and were also verified by the Department.

On March 5, 1999, the Department published a notice postponing the preliminary results of this review until August 2, 1999 (64 FR 10621).

Scope of Review

Imports covered by this review are shipments of professional electric cutting tools ("PECTs") from Japan. PECTs may be assembled or unassembled, and corded or cordless.

The term "electric" encompasses electromechanical devices, including tools with electronic variable speed features. The term "assembled" includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term "unassembled" means components which, when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. These are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECTs order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

"Corded" and "cordless" PECTs are included within the scope of this order. "Corded" PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular "corded" tool, then that tool must have at least four of the six characteristics to be considered a "corded" PECT.

"Cordless" PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

This review covers one company, Makita, and the period July 1, 1997 through June 30, 1998.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by Makita. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports placed in the case file.

Duty Absorption

On September 24, 1998, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, Makita Japan sold to the United States through an importer that is affiliated within the meaning of section 771(33) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (*i.e.*, orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, we will make a duty absorption determination in this segment of the proceeding. As we have preliminarily found that there is no dumping margin for Makita with respect to its U.S. sales, we have also preliminarily found that there is no duty absorption. *See Preliminary Results of Antidumping Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany*, 64 FR 16703 (April 6, 1999).

Fair Value Comparisons

We compared the constructed export price ("CEP") to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual transactions to contemporaneous monthly weighted-average prices of sales of the foreign like product (where there were sales that passed the COP test, as discussed in the *Cost of Production Analysis* section below, and were otherwise in the ordinary course of trade).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Makita Japan covered by the description in the *Scope of the Review* section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate, in a month within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: configuration, capacity, number of battery cells, power, speed, housing type and size.

Level of Trade/CEP Offset

In accordance with section 773(a)(7) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative ("SG&A") expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine the stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP Offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In order to determine whether Makita warrants a LOT adjustment or CEP offset, as claimed, we compared the CEP sales to the HM sales in accordance with the principles discussed above. For purposes of our analysis, we examined information regarding the distribution systems in both the United States and Japanese markets, including the selling functions, classes of customers, and selling expenses for the company.

In this review, Makita Japan reported two channels of distribution in the home market: (1) Sales made at the wholesale/distributor price level; and (2) sales made at the dealer/retail price level. Makita Japan based the channels of distribution on the entity (*i.e.*, wholesaler, subwholesaler or retailers) in the distribution chain to which Makita Japan had billed or shipped the merchandise. We preliminarily determine that these sales constitute two LOTs in the home market. As explained below, we found that while Makita Japan performs some of the same selling functions for both distribution channels, the level of activities performed varies.

Makita Japan reported only CEP sales in the U.S. market. For the U.S. market, Makita reported three channels of distribution from Makita USA to unaffiliated customers, as follows: (1) Sales made at the wholesaler price level; (2) sales made at the retailer price level, and (3) sales made directly to the end user. However, the LOT of the CEP sales was based on sales made by Makita Japan to its wholly-owned U.S. subsidiary, Makita USA. Because Makita Japan's sales to the United States were all CEP sales made by an affiliated company, we considered only the parent company's selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Act, and determined that they were the same for all three reported channels of distribution. Therefore, we preliminarily determine that all CEP sales constitute a single LOT in the United States.

To determine whether sales in the comparison market were at a different LOT than CEP sales, we first compared the relevant selling functions performed in the different channels of distribution in the home market. We then examined the relevant selling functions performed at the CEP level and compared those selling functions to the selling functions performed in each home market LOT.

Makita Japan reported thirteen separate selling functions which it performed with respect to sales in the home market and five selling functions performed in the United States at the CEP level (see chart in Addendum 1 to Section A of Makita's October 26, 1998 questionnaire response). The home market selling functions are: (1) Inventory maintenance, (2) market research, (3) after sales service and warranties, (4) technical advice, (5) advertising, (6) R&D/product development, (7) freight/delivery arrangement, (8) procurement and sourcing, (9) competitive pricing (offering discounts, rebates, and other price incentives), (10) pricing negotiations with customers, (11) sales calls and demonstrations, (12) interaction with end users, and (13) processing of daily order updates.

In contrast, Makita Japan only performs the following selling functions in the U.S. market: (1) Inventory maintenance, (2) technical advice, (3) R&D/pfoduct development, (4) procurement and sourcing, and (5)

processing daily order updates. Thus, Makita Japan performs eight selling functions with respect to its home market channels of distribution that it does not perform in the U.S. market. (*See*, Makita Japan / Makita USA Sales and Cost Verification report dated July 9, 1999, at pages 24–33; hereafter "Sales Verification Report.")

In comparing the two home market LOTs claimed by Makita (*i.e.*, wholesaler, subwholesaler or retailers), we noted that, although Makita Japan performs some of the same selling functions in both LOTs, the level of activities performed varies. For example, Makita Japan's interaction with retailers is higher in the following sales functions than for wholesalers and subwholesalers: inventory maintenance, freight/delivery arrangements, and sales calls and demonstrations (see Sales Verification Report at pages 24–33). Therefore, we preliminarily determine that sales to wholesalers/subwholesalers and sales to retailers constitute separate LOTs.

When we compare the CEP LOT to either the home market wholesale LOT or the home market retail LOT, we note that there is only one selling function which is similar in both function and level of activity performed: R&D/ product development (*see* Sales Verification Report at pages 31–33). We noted at verification that of the five selling functions performed in the United States, four of those functions involved substantially less selling activity than in the home market. For example, evidence reviewed at verification indicates that inventory maintenance is an important function in the home market, where products are frequently purchased (by both retailers and wholesalers/subwholesalers) directly from inventory. In contrast, we found at verification that inventory maintenance activities are minimal in the U.S. market, since production is primarily requested through specific purchase orders (*i.e.*, produced to order). Similarly, with respect to technical advice, procurement and sourcing, and processing of daily order updates, we found that Makita Japan performs more significant activities in the home market (for sales to both wholesalers and retailers) than in the U.S. market (*see* Sales Verification Report at pages 24—33). Based on our analysis of the selling functions, which include differences in levels of activity performed, we find that both home market LOTs are at a more advanced stage of distribution than that of the CEP level. Therefore, we agree with Makita Japan's assertion that there is no home market level equivalent to the CEP LOT.

Based on our verification findings and the data on this record, the Department determines for the preliminary results that (1) significant differences exist in the selling functions associated with each of the two home market LOTs, and the CEP LOT, and (2) the CEP LOT is at a less advanced stage of distribution than either home market LOT. Because there is not a common LOT between the two home market and the CEP LOTs, we were unable to quantify a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. Consequently, we have granted Makita's request for a CEP offset adjustment in accordance with section 773 (a)(7)(B) of the Act (the CEP offset provision).

Constructed Export Price

We calculated CEP, in accordance with section 772(b) of the Act, because the sale to the first unaffiliated purchaser took place after importation to the United States. We based CEP on packed and delivered prices to all unaffiliated purchasers in the United States. Where appropriate, we added to the starting price revenues earned from drop-ship fees. Where appropriate, we made deductions from the starting price for discounts and rebates. We also made deductions, where appropriate, for movement expenses in accordance with section 772(c)(2)(A) of the Act. These expenses included foreign and U.S. inland freight, ocean freight, foreign and U.S. brokerage, and handling expenses.

In accordance with section 772(d)(1) of the Act, we deducted from CEP those direct and indirect selling expenses associated with Makita Japan's economic activities occurring in the United States. These expenses included credit expenses, inventory carrying costs, and other indirect selling expenses. Finally, in accordance with section 772(d)(3) of the Act, we deducted from CEP an amount for profit.

Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Makita Japan's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Makita Japan's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable, and, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in Japan.

2. Affiliated-Party Transactions and Arm's-Length Test

It is the Department's practice, in situations where home market sales are made to affiliated parties, to determine whether such sales to affiliated parties are appropriate to use as the basis for calculating NV (*i.e.*, whether such sales are made at arm's-length prices). *See Final Results of Antidumping Duty Administrative Reviews, Partial termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders; Antifriction bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 60 FR 10899, 10900 (February 28, 1995) and 19 CFR 351.403(c). To test whether Makita Japan's sales to affiliated parties were made at arm's-length prices, we compared, on a model-specific basis, prices of sales to its affiliated and unaffiliated customers at the same LOT net of all movement charges, direct selling expenses, discounts, and packing. Where, for the tested models, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 62 FR 5308, 53817 (October 16, 1997); 19 CFR 351.403(c); and *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27355 (May 19, 1997) (preamble to the Department's regulations). In this instance all sales to affiliated parties passed the arm's-length test.

3. Cost-of-Production Analysis

As we stated above in the *Case History* section, because we disregarded sales below the COP in the last completed segment of the proceeding (*i.e.*, the fourth administrative review), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Makita Japan in the home market. We

conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Makita Japan's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses and packing costs in accordance with section 773(b)(3) of the Act. We generally relied on the COP information provided by Makita Japan it its questionnaire responses. However, based on our verification findings, we adjusted the reported COP amounts to correct errors made in calculating cost of manufacturing ("COM"), including factory overhead expenses (*see* Sales Verification Report at page 5).

B. Test of Home Market Prices

We compared the weighted-average COP for Makita Japan, adjusted where appropriate, to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales at prices below the COP, we examined (1) whether within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts and rebates.

C. Results of the COP Test

Pursuant to 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales are not being made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we are comparing prices to POR-average costs, we also determine that such sales are not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregard the below-cost sales.

In this case, we found that, for certain models of PECTs, more than 20 percent of Makita Japan's home market sales within an extended period of time were at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1). For those U.S. sales of PECTs for which there were no comparable home market sales in the ordinary course of trade, we compared CEPs to constructed value ("CV") in accordance with section 773(a)(4) of the Act.

Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the Makita Japan's cost of materials, fabrication, SG&A (including interest expenses), U.S. packing costs, and profit. As noted above, we adjusted Makita Japan's COP by recalculating total COM, including factory overhead expenses (*see* Sales Verification Report at page 5).

In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Makita Japan in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Japan. We used the weighted-average home market selling expenses.

Price-to-Price Comparisons

We based NV on packed, delivered prices to unaffiliated home market customers and prices to affiliated customers that we have determined to be at arm's length. We made adjustments to the starting price for discounts and rebates, where appropriate. We also made deductions, where appropriate, for inland freight (*i.e.*, plant to warehouse and warehouse to customer) pursuant to section 773(a)(6(B) of the Act. In addition, we made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We also deducted the home market direct selling expenses, including credit, in accordance with section 773 (a)(6)(C)(iii) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

For the reasons stated in the *LOT/CEP Offset* section of this notice and pursuant to section 773(a)(7)(B) of the Act, we have allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted from NV the indirect selling expenses included on home market sales which were compared to CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP under section 772(d)(1)(D) of the Act.

No other adjustments to NV were claimed or allowed.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where CV was compared to CEP, we deducted from CV the weighted-average home market direct selling expenses, including credit, in accordance with section 773(a)(6)(C)(iii) of the Act. Also, pursuant to section 773(a)(7)(B) of the Act, we made a CEP offset adjustment as described above in the *Price-to-Price Comparisons* section above.

Intent To Revoke

On July 24, 1998, Makita Japan requested that, pursuant to 19 CFR 351.222(b), the Department revoke the antidumping duty order in the above-referenced proceeding with respect to Makita Japan at the conclusion of this administrative review. Makita Japan submitted along with its revocation request a certification stating that: (1) the company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* 19 CFR 351.222(e)(i)); (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(ii)); and (3) the company agrees to immediate reinstatement of the order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV (*see* 19 CFR 351.222(b)(iii)).

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation,

sold subject merchandise at less than NV. (*See* 19 CFR 351.222(e)(1).) Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that: (1) The company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than NV; and (3) the company has agreed to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. See 19 CFR 351.222(b)(2). *See Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part: Pure Magnesium from Canada* ("Pure Magnesium"), 64 FR 12977, 12982 (March 16, 1999).

We allowed parties to comment on Makita Japan's request for revocation. Petitioner opposes the request for revocation, arguing that it is likely that Makita Japan will resume selling subject merchandise below NV if the order is revoked. Specifically, petitioner argues that Makita Japan has avoided dumping margins in the past by drastically reducing its import volumes, and Makita Japan's pricing practices and loss in market share indicate that Makita Japan is not able to compete effectively in the U.S. market without lowering prices. Additionally, petitioner argues that Makita Japan could easily expand its production capacity in Japan in order to begin selling at below NV in the future. Finally, petitioner purports that market demand in Japan is in decline, thereby increasing Makita's dependance on the U.S. market. As these comments and the relevant analysis require discussion of proprietary information, please *see* the *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (August 2, 1999).

In response, Makita Japan argues that its sales have in fact been in commercial quantities, and that the record clearly indicates that it is not likely that Makita Japan will sell at below NV in the future if the order were revoked. In particular, Makita Japan argues that it has experienced a drastic change in circumstance as a result of the building of its U.S. manufacturing facility, where a majority of Makita Japan's electric cutting tools are now produced. Thus, Makita Japan stresses, most of its production of "subject merchandise" occurs in the United States, and consequently such products are no longer subject to the antidumping duty order. Makita Japan notes that it has made substantial investment in the U.S. facility, and that maintaining the U.S. facility is consistent with the company's objective of producing in close proximity to its customers. Finally, Makita Japan states that, while it has expanding capacity in its U.S. production facility, it has limited remaining production capacity in its facilities in Japan. As such, Makita Japan claims that it is not likely that Makita Japan would ever shift production of its power tools back to Japan.

With regard to the market conditions and pricing levels, Makita Japan argues that it has no need to sell at below NV, because the U.S. electric power tool and electric cutting tool markets are healthy, growing, and stable, and the Japanese electric power tool market is relatively stable. Makita Japan further argues that it is able to charge premium prices because of its reputation for quality. Thus, Makita Japan contends, it can make sales in the U.S. market, even when its prices are higher than its competitors' prices. As these comments and the relevant analysis require discussion of proprietary information, please *see* the *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (August 2, 1999).

Upon review of the three criteria outlined at section 351.222(b) of the Department's regulations, the comments of the parties, and all of the evidence in the record, we have preliminarily determined that the Department's requirements for revocation have been met. Based on the preliminary results in this review and the final results of the two preceding reviews, Makita Japan has preliminarily demonstrated three consecutive years of sales at not less than NV. Furthermore, we find that Makita Japan's aggregate sales to the United States have been made in commercial quantities during all segments of this proceeding. Finally, our review of the record and the comments of the parties indicates that it is not likely that Makita Japan will sell at below NV in the future.

First, although Makita Japan's sales to the United States have decreased substantially since the imposition of the antidumping order, its exports to the United States remain significant. Thus, regardless of any decrease in shipments during the course of this proceeding, Makita Japan is currently selling in commercial quantities. Additionally, Makita has maintained consistent sales levels since 1995. (*See* Sales Verification Report at pages 34–40, and Appendices 2 and 4 of Makita's March 15, 1999, submission). Based on these facts (confirmed at verification) and our review of Makita Japan's sales practices, we find that we can reasonably conclude that the *de minimis* margins calculated for Makita Japan are reflective of the company's normal commercial experience. *Compare Pure Magnesium* 64 FR 12977, 12982 (March 16, 1999) (finding that because sales and volume figures were so small, both in absolute terms and in comparison with the period of investigation ("POI"), the Department could not conclude that the reviews were reflective of what the company's normal commercial experience would be without the discipline of an antidumping duty order); *see* also *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (August 2, 1999), at 10–11.

With respect to whether it is not likely that Makita Japan will in the future sell merchandise at less than NV, we have considered various factors. As we stated in *Brass Sheet and Strip from Germany, Final Results of Antidumping Administrative Review and Determination to Revoke in Part*, 61 FR 49728, 49731 (Sept. 23, 1996), "[i]n prior cases where revocation was under consideration and the likelihood of resumption of dumped sales was at issue, the Department has considered, in addition to the respondent's prices and margins in the preceding periods, such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without LTFV sales." *See also Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part*, 63 FR 6519, 6523 (Feb. 9, 1998).

Based upon the relevant factors in this case, we find that it is not likely that Makita Japan will sell at less than NV if the order is revoked. First, the record indicates that the electric power tool industry, including PECTs, in the United States and around the world is stable and/or growing, as applicable (*see* Sales Verification Report at pages 34–39; the July 13, 1999, Makita Corporation of America ("MCA") verification report at pages 14; Makita's February 9, 1999, submission at pages 33–42; and *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (August 2, 1999), at 14–15). Thus, the price stability characteristic of the electric power tool industry mitigates against the heightened possibility of dumping, as

compared to other industries where market prices are volatile.

Second, with regard to capacity utilization, the record establishes that Makita Japan has very limited remaining capacity in its Japanese facilities, while it has significant (and growing) remaining capacity at MCA. Makita has made significant investments in its U.S. facility, and all evidence in the record indicates that MCA intends to produce PECTs in the United States for the long-term. The majority of the cutting tools sold by Makita USA is now being produced in the United States. Moreover, as confirmed at verification, Makita Japan has never shifted production of any tool from MCA back to Japan. Additionally, Makita Japan is currently producing only specialty tools for export to the U.S. market, and there is no evidence on the record indicating that it would be economically advantageous for Makita to shift existing production in Japan, which is primarily geared toward production for the home market, to production of non-specialty tools for export to the United States.

Third, with respect to specialty tools (imports from Makita Japan), Makita has consistently priced its products higher than its competition in the United States. Thus, the record indicates that Makita has not needed to lower prices of its Japan-produced tools in order to remain competitive or to maintain a consistent level of sales (i.e., quantity). Although Makita has lost U.S. market share in recent years, it has maintained consistent annual sales in significant quantities.

Based upon these factors, and other proprietary information discussed in the *Memorandum Regarding Revocation of the Antidumping Duty Order on Professional Electric Cutting Tools from Japan* (Aug. 2, 1999), at 11–16, we find that it is not likely that Makita will sell at less than NV in the future.

Because all three requirements under the regulation have been satisfied, we preliminarily intend to revoke the antidumping duty order with respect to Makita Japan. If these preliminary findings are affirmed in our final results, we intend to revoke the order with respect to all PECTs produced by Makita Japan and that are also exported by Makita Japan. In accordance with 19 CFR 351.222 (f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct Customs to refund any cash deposit.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period July 1, 1997—June 30, 1998:

Manufacturer/exporter	Margin (percent)
Makita Corporation	0.07 (*de minimis*).

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Request should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Cash Deposit and Assessment Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. If these preliminary results are adopted in our final results, we will instruct the Customs Service liquidate all entries subject to this review without regard to antidumping duties.

If these preliminary results are not adopted in the final results, we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rates calculated in the final results of this review are above *de minimis (i.e.*, at or above 0.5 percent). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the antidumping duty margins calculated for all U.S. sales examined and dividing the amount by the total entered value of the sales examined.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PECTs from Japan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(c) of the Act: (1) No cash deposit will be required for PECTs from Japan that are produced by Makita Corporation and that are also exported by Makita Corporation (unless the margin established for the company in the final results of this review is above *de minimis*); (2) for previously reviewed or investigated companies noted above, the cash deposit rate will continue to be the company specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 54.5 percent, the "All Others" rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 351.213.

Dated: August 2, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20560 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Board of Overseers of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Board of Overseers of the Malcolm Baldrige National Quality Award (Board). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 27, 1999.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–948–4–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: http.// www.quality.nist.gov.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020, telephone 301–975–2361, FAX–301–948–3716; or via e-mail at harry.hertz@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Board of Overseers of the Malcolm Baldrige National Quality Award Information

The board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will make such suggestions for the improvement of the Award process as it deems necessary

2. The Board shall provide a written annual report on the results of Award activities to the Director of NIST, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.

4. The Board will report to the Director of NIST.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of quality management. There will be a balanced representation from U.S. service and manufacturing industries, education and health care. The Board will include members familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. No employee of the Federal Government shall serve as a member of the Board of Overseers.

2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on January 1 and end on December 31 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 et seq.

2. The Board will meet annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to two days in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

1. Nominations are sought from the private sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination acknowledge the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Dated: August 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–20569 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Judges Panel of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel). The terms of some of the members of the Judges Panel will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 27, 1999.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: http://www.quality.nist.gov.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX–301–948–3716; or via e-mail at harry.hertz@nist. gov.

SUPPLEMENTARY INFORMATION:

I. Judges Panel Information

The Judges Panel was established in accordance with 15 U.S.C. 3711a(d)(1), the Federal Advisory Committee Act (5 U.S.C. app. 2), The Malcolm Baldrige National Quality Improvement Act of 1987 (Pub. L. 101–107).

Objectives and Duties

1. The Judges Panel will ensure the integrity of the Malcolm Baldrige National Quality Award selection process by reviewing the results of examiners' scoring of written applications, and then voting on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants.

2. The Judges Panel will ensure that individuals on site visit teams for the Award finalists have no conflict of interest with respect to the finalists. The Panel will also review recommendations from site visits, and recommend Award recipients.

3. The Judges Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act.

4. The Panel will report to the Director of NIST.

Membership

1. The Judges Panel is composed of nine members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service and manufacturing industries, education, and health care and will include members familiar with quality improvement in their area of business. No employee of the Federal Government shall serve as a member of the Judges Panel.

2. The Judges Panel will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Panel member shall be three years. All terms will commence on January 1 and end on December 31 of the appropriate year.

Miscellaneous

1. Members of the Judges Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 et seq.

2. The Judges Panel will meet three times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to three days in duration.

3. Committee meetings are closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, and in accordance with Section 552b(c)(4) of title 5, United States Code. Since the members of the Judges Panel examine records and discuss Award applicant data, the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person may be privileged or confidential.

II. Nomination Information

1. Nominations are sought from all U.S. service and manufacturing industries as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education and health care organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the Judges Panel, and will actively participate in good faith in the tasks of the Judges Panel. Besides participation at meetings, it is desired that members be able to devote the equivalent of seventeen days between meetings to either developing or researching topics of potential interest, reading Baldridge applications, and so forth, in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Judges Panel membership.

Dated: August 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–20570 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 97–047US.

Title: Implementation of Role/Group Permission Association Using Object Access Type.

Abstract: Security administration in a computer system is simplified by defining a new and independent entity called an Object Access Type (OAT). OATs comprise access control specifications associating roles with

permissions, and associating the roles with a set of objects, such as resources or files. Different roles may have differing permissions to objects associated with an OAT, and objects may be assigned to plural OATs. A mechanism is also presented whereby system administrators are provided with the capability to display and manipulate access designations by operating only on the independent OATs.

NIST Docket Number: 98–010US.

Title: Planar Geometry Superconducting Coil Having Internal Damping Resisters.

Abstract: The invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and the University of Colorado. The operation of a planar geometry superconducting coil used in conjunction with a ground plane is improved by intracoil damping. This damping reduces coil resonances. The improvement consists of an intracoil shunt, which damps the resonances of the coil by connecting each turn, or loop, of the multiturn/multiloop coil with resistors. One example of a planar geometry superconducting coil which is effectively damped according to the present invention is the input coil to a superconducting quantum interference device (SQUID). The intracoil shunt may be added to the SQUID at the same time in the SQUID fabrication as the junction shunts.

NIST Docket Number: 98–072US.

Title: Method For The Chemical Precipitation Of Metallic Silver Powder Via A Two Solution Technique.

Abstract: A method for the chemical precipitation of metallic silver powder employs a two solution technique in which a solution of a tin salt and a solution of a silver salt are mixed in the presence of an inorganic or organic acid, alumina, an anionic surfactant, and a colloid to form a precipitation solution at a temperature and pH suitable to effect the chemical precipitation of silver. Almost 80% by weight of the precipitated powder agglomerate is less than 25 microns in diameter, and the individual powder particles which compose the agglomerate range in size from 0.2 to 2.0 microns. In addition to the favorable size distribution, silver particles precipitated in the presence of a gelatin colloid can be used with a minimal amount of sieving so that little work hardening is imparted to the particles. The powder can be annealed at a temperature of up to 750 degrees C for two hours in air with minimal sintering, and the acid-assisted hand consolidated of powder produced according to the present technique is capable of producing silver compacts which are nearly 80% dense. Advantageously, a hand consolidated silver compact which comprises the powder of the present invention equals or exceeds the transverse rupture strength, shear strength, creep, toughness, corrosion resistance, microleakage, and wear properties of conventional silver amalgam.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–20571 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Public Meeting of the Industry Usability Reporting Project (IUSR)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Third Workshop of the Industry Usability Reporting Project will be held as a forum for introducing a newly developed format for reporting usability testing results and for explaining the requirements for participating in an eighteen-month pilot testing of this format. Industry partners are invited to join this effort to standardize the method by which software usability reports are generated. The goal of the on-going effort is to develop a Common Usability Format (CIF), which, if used for exchanging information between software vendors and software consumer organizations, will have positive impacts on the Total Cost of Ownership of software. More information about the IUSR Project can be obtained at: http://www.nist.gov/itl/div894/vvrg/iusr.

Pursuant to 15 U.S.C. 272 et seq., the National Institute of Standards and Technology (NIST) cooperates with industry to accelerate the development of technologies that allow intuitive, efficient access, manipulation and exchange of complex information by facilitating the creation of measurement methods and standards.

DATES: The meeting will be held September 14(8:30 am—5 pm) and September 15 (8:30 am—12:30 pm), 1999.

ADDRESS: The meeting will take place at the Oracle Conference Center, 350 Oracle Parkway, Redwood Shores, CA 94065.

FOR FURTHER INFORMATION CONTACT: Sharon Laskowski, NIST, 100 Bureau Drive, Stop 8940, Gaithersburg, Maryland 20899–8940. Telephone (301) 975–4535 or E-mail sharon.laskowski@nist.gov.

Dated: August 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–20572 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Partially Closed Meeting of the Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's (NIST's) Manufacturing Extension Partnership National Advisory Board (MEPNAB) will meet to hold a meeting on Thursday, September 9, 1999. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was set up, under the direction of the Director of NIST, to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by a state, federal, and local partnership. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to delve into areas of operation determined by the Board. The agenda includes an MEP overview status, leveraging of the ATP results for smaller manufacturers, and ideas for moving towards performance-based operations. The portion of the meeting, which involves personnel and propriety budget information, will be closed to the public. All other portions of the meeting will be open to the public.

DATE AND ADDRESS: The meeting will convene on September 9, 1999, at 8 a.m. and will adjourn at 3:30 p.m. and will be held at the National Institute of Standards and Technology, Building 101, 10th floor conference room, Gaithersburg, Maryland. The closed

portion of the meeting is scheduled from 8–9:30 a.m.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration with the concurrence of the General Counsel formally determined on December 21, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, that these portions of the meeting may be properly closed because they are concerned with matters that are within the purview of 5 U.S.C. 522(c)(4), (6) and (9)(b). A copy of the determination is available for public inspection in the Central Reference and Records Inspection Facility, Room 6219, Main Commerce.

MEP's services to small manufacturers address the needs of the national market as well as the unique needs of each company. Since MEP is committed to providing this type of individualized service through its centers, the program requires the perspective of locally based experts to be incorporated into its national plans. The MEPNAB was established at the direction of the NIST Director to maintain MEP's focus on local and market-based needs. The MEPNAB was approved on October 24, 1996, in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2., to provide advice on MEP programs, plans, and policies; to assess the soundness of MEP plans and strategies; to assess the current performance against MEP program plans, and to function in an advisory capacity. The Board will meet three times a year and reports to the Director of NIST. This will be the third meeting of the MEPNAB in 1999.

FOR FURTHER INFORMATION CONTACT: Linda Acierto, Assistant to the Director for Policy, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–5033.

Dated; August 4, 1999.

Karen H. Brown,

Deputy Director, National Institute of Standards and Technology.

[FR Doc 99–20573 Filed 8–9–99; 8:45 am]

BILLING CODE 3150–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990125029–9205–02]

RIN 0648–ZA55

Dean John A. Knauss Marine Policy Fellowship National Sea Grant College Program Federal Fellows Program

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration. Commerce.

ACTION: Notice, correction.

SUMMARY: The National Oceanic and Atmospheric Administration published a document in the **Federal Register** on March 5, 1999, announcing that applications must be submitted for a Fellowship program which was initiated by the National Sea Grant College Program Office (NSGCPO). The document contained information that has since been revised to increase the Fellowship award and to meet the NSGCPO's legislative requirements with respect to prohibiting indirect costs.

FOR FURTHER INFORMATION CONTACT: Dr. Sharon H. Walker, Acting Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 713–2431 extension 148.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** issue of March 5, 1999, 64 FR 10628, on page 10629, in the second column, correct the "Stipend and Expenses" section to read:

Stipend and Expenses: The local Sea Grant program receives and administers the overall award of $38,000 on behalf of the fellow. Of this award, the university will provide $32,000 to each fellow for salary (stipend) and living expenses (per diem). The additional $6,000 will be used by the university to cover mandatory health insurance for each fellow and other expenses, including travel funds for arrival to and departure from the host office, and moving expenses. Indirect costs are not allowable for either the Fellowships or for any costs associated with the Fellowships, according to 15 CFR 917.11(e), Guidelines for Sea Grant Fellowships. During the year, the host may provide supplemental expenses for work-related travel by the fellow.

Dated: August 5, 1999.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 99–20532 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080399F]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Special Ad Hoc Bycatch Reduction Devise Advisory Panel (SBAP).

DATES: The SBAP meeting is scheduled to begin at 8:30 a.m. on Thursday, August 26, 1999, and adjourn at 3:30 p.m.

ADDRESSES: The meeting will be held at the at the New Orleans Airport Hilton Hotel, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, at the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SBAP will convene to review the bycatch reduction criterion for red snapper that was established for bycatch reduction devices (BRDs) in "Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters with Supplemental Environmental Impact Statement, Regulatory Impact Review, Initial Regulatory Flexibility Analysis, and Social Impact Assessment." The current criterion of 44 percent was the minimum reduction in fishing mortality for age 0 and age 1 red snapper from the average level of fishing mortality during the 1984–89 period. Amendment 9 established a framework procedure for modifying this criterion, if needed, and included a review with recommendations from a SBAP.

Copies of the agendas can be obtained by calling 813–228–2815. Although other issues not on the agenda may come before the SBAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in the agendas listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 19, 1999.

Dated: August 4, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20534 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080299A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Groundfish Strategic Plan Development Committee (Committee) will hold a work session which is open to the public.

DATES: The meeting will begin Thursday, August 26, 1999, at 10 a.m., and may go into the evening until business for the day is completed. The meeting will reconvene at 8 a.m. on Friday, August 27, 1999, and continue throughout the day until business for the day is completed.

ADDRESSES: The meeting will be held at the Pacific Council Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to confer with the consultant to refine the process for development of a strategic plan for the West Coast groundfish fishery.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the conference date.

Dated: August 4, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20535 Filed 8–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB, Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: CHAMPUS Claim Patient's Request for Medical Payment; DD Form 2642; OMB Number 0720–0006.

Type of Request: Extension.

Number of Respondent: 956,000.

Responses Per Respondent: 1.

Annual Responses: 956,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 239,000.

Needs and Uses: This form is used solely by beneficiaries claiming reimbursement for medical expenses under the TRICARE Program [formerly the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS)]. The information collected is used by TRICARE to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received care, and reimbursement for the medical services received.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD (Health Affairs), Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20479 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday September 1, 1999 from 0900 until 1600. The purpose of this meeting is to report back to the BoV on continuing items of interest. The agenda will also include a presentation on the most recent efforts to reorganize the University into a unified structure.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703–845–6756.

Dated: August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20482 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

DATES: 12 August 1999 (9 am to 4 pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discussion several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20480 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows.

DATES: 17 August 1999 (8 am to 4 pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill BLVD, Washington, DC, 20340.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20481 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on September 7, 1999, September 14, 1999, September 21, 1999, and September 28, 1999, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rossyln, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: August 4, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20483 Filed 8–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Record of Decision for Long-Term Management and Use of Depleted Uranium Hexafluoride

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy ("DOE" or "the Department") issued the Final Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride (Final PEIS) on April 23, 1999. DOE has considered the environmental impacts, benefits, costs, and institutional and programmatic needs associated with the management and use of its approximately 700,000 metric tons of depleted uranium hexafluoride (DUF_6). DOE has decided to promptly convert the depleted UF_6 inventory to depleted uranium oxide, depleted uranium metal, or a combination of both. The depleted uranium oxide will be used as much as possible and the remaining depleted uranium oxide will be stored for potential future uses or disposal, as necessary. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. Pursuant to this Record of Decision (ROD), any proposal to proceed with the siting, construction, and operation of a facility or facilities will involve additional review under the National Environmental Policy Act (NEPA). DOE anticipates that approximately 4,700 cylinders containing depleted UF_6 that are located at the East Tennessee Technology Park (formerly known as the K–25 Site), in Oak Ridge, Tennessee, would be shipped to a conversion facility. Uses for the converted product potentially include Government applications and applications that may be developed by the private sector.

ADDRESSES: The Final PEIS and ROD are available on the Office of Environment, Safety and Health NEPA home page at *http://www.eh.doe.gov/nepa* or on the Office of Nuclear Energy, Science and Technology (NE) home page at *http://www.ne.doe.gov*. You may request copies of the Final PEIS and this ROD by calling the toll-free number 1–800–517–3191, by faxing requests to (301) 903–4905, by making requests via the depleted UF_6 home page at *http://web.ead.anl.gov/uranium/finalpeis.cfm*, via electronic mail to scott.harlow@hq.doe.gov., or by mailing them to: Scott E. Harlow, NE, U.S. Department of Energy, 19901 German-

town Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: For information on the alternative strategies for the long-term management and use of depleted UF_6, contact Scott Harlow at the address listed above. For general information on the DOE NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

Depleted UF_6 results from the process of making uranium suitable for use as fuel for nuclear power plants or for military applications. The use of uranium in these applications requires increasing the proportion of the uranium-235 isotope found in natural uranium through an isotopic separation process called uranium enrichment. Gaseous diffusion is the enrichment process currently used in the United States. The depleted UF_6 that is produced as a result of enrichment typically contains 0.2 percent to 0.4 percent uranium-235 and is stored as a solid in large metal cylinders at the gaseous diffusion facilities.

Large-scale uranium enrichment in the United States began as part of atomic bomb development during World War II. Uranium enrichment activities were subsequently continued under the U.S. Atomic Energy Commission and its successor agencies including DOE. The K–25 Plant (now called the East Tennessee Technology Park) at Oak Ridge, Tennessee, was the first of the three gaseous diffusion plants constructed to produce enriched uranium. The U.S. program to enrich uranium was conducted first to support U.S. national security activities and later (by the late 1960s) to provide enriched uranium-235 for fuel for commercial nuclear power plants in the United States and abroad. The K–25 plant ceased operation in 1985, but uranium enrichment continues at both the Paducah Site in Kentucky and the Portsmouth Site in Ohio. These two plants are now operated by USEC Inc. (formerly known as the United States Enrichment Corporation), created by law in 1993 to privatize the uranium enrichment program. Depleted UF_6 is stored as a solid at all three sites in steel cylinders. Each cylinder holds approximately 9 to 12 metric tons of material. The cylinders usually are stacked two layers high in outdoor areas called "yards."

DOE maintains an active cylinder management program to improve storage conditions in the cylinder yards, to monitor cylinder integrity by conducting routine inspections for breaches (leaks), and to perform cylinder maintenance and repairs as needed. The results of these management activities ensure that cylinders are stored with minimum risks to workers, members of the general public, and the environment at the sites. Because storage began in the early 1950s and the cylinders are stored outdoors, many of the cylinders now show evidence of external corrosion. Eight cylinders out of the 46,422 that were filled by DOE or its predecessor agencies have developed leaks. Because the depleted UF_6 is a solid at outdoor ambient temperatures and pressures, it is not readily released from a cylinder following a breach.

DOE has an integrated program plan that has been in place since December 1994 to ensure the safe management of these cylinders. Under this program plan, if alternative uses for the depleted uranium were not found to be feasible by approximately the year 2010, DOE would take steps to convert the depleted UF_6 to triuranium octaoxide (U_3O_8) beginning in the year 2020. U_3O_8 would be more chemically stable than the depleted UF_6 and would be safely stored pending a determination that all or a portion of the depleted uranium was no longer needed. At that point, the U_3O_8 would be disposed of as low-level waste (LLW). This program plan was based on reserving depleted UF_6 for future defense needs and for other potential productive and economically viable purposes including possible reenrichment in an atomic vapor laser isotope separation plant, conversion to depleted uranium metal for fabricating antitank weapons, and use as fuel in advanced liquid metal nuclear reactors. Since the time when that program plan was put into place, several developments have occurred prompting the need for its revision. These developments include the passage and implementation of the Energy Policy Act of 1992 that assigned responsibility for uranium enrichment to the United States Enrichment Corporation. Also, the demand for antitank weapons has diminished, and the advanced liquid metal nuclear reactor program has been canceled. In addition, stakeholders near the current cylinder storage sites have expressed concern about the environmental, safety, health, and regulatory issues associated with the continued storage of the depleted UF_6 inventory. The selection of a new management strategy constituted a major Federal action and required preparation of a PEIS.

The Final Plan for the Conversion of Depleted Uranium Hexafluoride (herein referred to as the "Plan") submitted to Congress in July 1999 was prepared in accordance with Public Law 105–204, which required the Department to prepare and submit a plan to construct conversion facilities at both the Paducah and Portsmouth gaseous diffusion plants. The Plan was also consistent with the preferred alternative of the Final PEIS, to begin conversion of the depleted UF_6 inventory to depleted uranium oxide, depleted uranium metal, or a combination of both. The Department currently expects that conversion to depleted uranium metal would be performed only if uses become available. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. DOE plans to use the resources and expertise of the private sector to convert the depleted UF_6 inventory. The Department has proceeded to implement its procurement strategy to award one or more contracts for the design, construction, operation, and decontamination and decommissioning of conversion facilities and support functions. The draft request for proposals for this procurement, scheduled to be issued in the summer of 1999, will be based on responses received from the Department's request for expressions of interest issued March 4, 1999, input from Congress and stakeholders, the draft Plan, and the Final PEIS.

Work on the PEIS began in 1994 with a request for recommendations for management strategies for depleted UF_6 published in the **Federal Register** designed to solicit ideas from industry and the general public for the management and use of depleted UF_6. The responses were evaluated and those that appeared reasonable provided the basis for the alternatives that were subsequently assessed in the PEIS. The technologies that were suggested were described in The Technology Assessment Report for the Long-Term Management of Depleted Uranium Hexafluoride (UCRL–AR–120372) and The Engineering Analysis Report for the Long-Term Management of Depleted Uranium Hexafluoride (UCRL–AR–124080). The costs associated with the alternatives analyzed in the PEIS are provided in the Cost Analysis Report for the Long-Term Management of Depleted

Uranium Hexafluoride (UCRL–AR–127650). Public scoping meetings for the PEIS were held in Portsmouth, Ohio; Paducah, Kentucky; and Oak Ridge, Tennessee. The Draft PEIS was issued in December 1997. Public hearings on the Draft PEIS were held in Portsmouth, Ohio; Paducah, Kentucky; Oak Ridge, Tennessee; and Washington, D.C. Based on the comments received, a revised version of the document was produced that included a revision of the preferred alternative. The Final PEIS was mailed to interested parties and was made available to the public using the World Wide Web on April 16, 1999.

II. Purpose and Need for the Agency Action

The purpose of the PEIS was to reexamine DOE's long-term management strategy for depleted UF_6 and alternatives to that strategy. DOE needs to take this action to respond to economic, environmental, and legal developments. The PEIS examined the environmental consequences of alternative strategies for long-term storage, use, and disposal of the entire inventory as well as the no-action alternative.

III. Alternatives Analyzed in Detail

DOE evaluated the following alternative strategies for the long-term management and use of depleted UF_6.

No Action. Under this alternative, depleted UF_6 cylinder storage was assumed to continue at the three current storage sites indefinitely. Potential environmental impacts were estimated through the year 2039. The activities assumed to occur at the sites under the no-action alternative include a comprehensive cylinder monitoring and maintenance program with routine cylinder inspections, ultrasonic thickness testing of cylinders, radiological surveys, cylinder painting to prevent corrosion, cylinder yard surveillance and maintenance, construction of four new or improved cylinder yards at Paducah and one at K–25, and relocation of some cylinders at Paducah and K–25 to the new or improved yards. Cylinders were assumed to be painted every ten years, which is consistent with current plans.

Long-Term Storage as Depleted UF_6. This alternative includes long-term storage at a single location and could involve storage of cylinders in newly constructed yards, buildings, or an underground mine. The location of such a long-term storage facility could be at a site other than a current storage site. Continued storage of depleted UF_6 cylinders at the three current storage sites, with existing cylinder management of the entire inventory, would occur through 2008, and the inventory would decrease through 2034 as cylinders are being consolidated at a long-term storage facility. Cylinders would be prepared for shipment at the three current storage sites with transportation of cylinders to a long-term storage facility by truck or rail. The long-term storage facility would include yards, buildings, or an underground mine. Transportation and disposal of any waste created from the activities listed above would occur under this alternative.

Long-Term Storage as Uranium Oxide. Under this alternative, the depleted UF_6 would be converted from depleted UF_6 to depleted uranium oxide prior to placement in long-term storage. Storage in a retrievable form in a facility designed for indefinite, low-maintenance operation would preserve access to the depleted uranium. Storage in the form of an oxide would be advantageous in view of long-term stability and the material preferred for use or disposal at a later date. Conversion of the depleted UF_6 to depleted uranium oxide was assumed to take place in a newly constructed stand-alone plant dedicated to the conversion process. Two forms of uranium oxide, U_3O_8 and uranium dioxide (UO_2), were considered. Both oxide forms have low solubility in water and are relatively stable over a wide range of environmental conditions. Two representative conversion technologies were assessed for conversion to U_3O_8 and three for conversion to UO_2. In addition to producing depleted uranium oxide, conversion would result in the production of considerable quantities of hydrogen fluoride (HF) as a byproduct. HF could be converted to anhydrous hydrogen fluoride (AHF), a commercially valuable chemical. AHF is toxic to humans if exposed at high enough concentrations. HF is typically stored and transported as a liquid, and inventories produced from the conversion process potentially could be sold for use. Alternatively, HF could be neutralized by the addition of lime to form a solid fluoride salt, CaF_2, which is much less toxic than HF. CaF_2 potentially could be sold for commercial use or could be disposed of either in a landfill or LLW disposal facility depending on the uranium concentration and the applicable regulations at the time of disposal. Following conversion, the depleted uranium oxide was assumed to be stored in drums in buildings, below ground vaults, or an underground mine. The storage facilities would be designed to protect the stored material from natural forces/degradation by environmental forces. Once placed in storage, the drums would require only routine monitoring and maintenance activities.

Use as Uranium Oxide. Under this alternative, depleted UF_6 would first be converted to depleted uranium oxide (UO_2 or U_3O_8). For assessment purposes, conversion to depleted UO_2 was assumed. There is a variety of current and potential uses for depleted uranium oxide including use as radiation shielding, use in dense materials applications other than shielding, use in light water reactor fuel cycles, and use in advanced reactor fuel cycles. Radiation shielding was selected as the representative use option for detailed analysis in the PEIS. A conversion facility would be required to convert UF_6 to depleted uranium oxide. The conversion facility would also produce either AHF or CaF_2 as a byproduct. These materials would be used or disposed as discussed above.

Use as Uranium Metal. In this alternative, depleted UF_6 would first be converted to depleted uranium metal. Similar to use as depleted uranium oxide, the depleted uranium metal was assumed to be used as the primary shielding material in casks designed to contain spent nuclear fuel or high-level waste. The depleted uranium metal would be enclosed between the stainless steel shells making up the body of the casks. A conversion facility would be required to convert depleted UF_6 to depleted uranium metal. The conversion facility would also produce either AHF or CaF_2 as a byproduct. These materials would be used or disposed as discussed above. In addition, some metal conversion technologies would also produce large quantities of magnesium fluoride as a byproduct. The magnesium fluoride would be disposed of either in a sanitary landfill or LLW disposal facility depending upon the uranium concentration and applicable disposal regulations at the time. The manufacture of depleted uranium metal casks was assumed to take place at a stand-alone industrial plant dedicated to the cask manufacturing process. The plant would be capable of receiving depleted uranium metal from a conversion facility, manufacturing casks, and storing the casks until shipment by rail to a user such as a nuclear power plant or DOE facility.

Disposal. Under the disposal alternative, depleted UF_6 would be chemically converted to a more stable depleted uranium oxide form and disposed of below ground as LLW.

Compared with long-term storage, disposal is considered to be permanent with no intent to retrieve the material for future use. Prior to disposal, conversion of depleted UF_6 was assumed to take place at a newly constructed stand-alone plant dedicated to the conversion process. This activity would be identical to that described under the long-term storage as oxide alternative. Potential impacts were evaluated for both UO_2 and U_3O_8. The conversion facility would convert depleted UF_6 to depleted uranium oxide and would produce either AHF or CaF_2 as a byproduct. These materials would be used or disposed as discussed above. Several disposal options were considered including disposal in shallow earthen structures, below ground vaults, and an underground mine. In addition, two physical waste forms were considered, ungrouted waste and grouted waste.

Grouted waste refers to the solid material obtained by mixing the depleted uranium oxide with cement and repackaging it in drums. Grouting is intended to increase structural strength and stability of the waste and to reduce the solubility of the waste in water. However, because cement would be added to the depleted uranium oxide, grouting would increase the total volume requiring disposal. Grouting of waste was assumed to occur at the disposal facility.

DOE's Preferred Alternative. DOE's preferred alternative for the long-term management and use of depleted UF_6 is to begin conversion of the depleted UF_6 inventory, as soon as possible, to depleted uranium oxide, depleted uranium metal, or a combination of both. The conversion products, such as fluorine, would be used as much as possible, and the remaining products would be stored for future uses or disposal. The Department currently expects that conversion to depleted uranium metal would be performed only if uses become available. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. DOE's preferred alternative in the Draft PEIS was to begin to convert the depleted UF_6 inventory to uranium oxide or depleted uranium metal only as uses for the material became available. Several reviewers expressed a desire for DOE to start conversion as soon as possible. After consideration of the comments, DOE revised the preferred alternative in the Final PEIS to call for the prompt conversion of the material to depleted uranium oxide, depleted uranium metal, or a combination of both and long-term storage of that portion of the depleted uranium oxide that cannot be put to immediate use. Any proposal to proceed with the location, construction, and operation of a facility or facilities will involve additional review under NEPA and will be subject to availability of funding. DOE expects that in the future, uses would be found for some portion of the converted material. The value of depleted uranium and HF or CaF_2 for use is based on their unique qualities, the size of the inventory, and the history of uses already implemented. DOE plans to continue its support for the development of Government applications for depleted uranium products and to continue the safe management of its depleted uranium inventory as long as such inventory remains in storage prior to total conversion.

IV. Alternatives Dismissed From Detailed Consideration

Storage and Disposal as Depleted Uranium Metal. Conversion of depleted UF_6 to depleted uranium metal for long-term storage and conversion to depleted uranium metal for disposal were not analyzed in depth as reasonable alternatives in the Final PEIS. These alternatives were rejected because of higher conversion cost for some processes used to convert UF_6 to metal, the lower chemical stability of uranium metal as opposed to uranium oxide thus requiring different considerations for handling and storage, and uncertainty over the suitability of depleted uranium metal as a final disposal form. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further.

Storage and Disposal as Depleted Uranium Tetrafluoride (UF_4). Long-term storage as depleted UF_4 and disposal as depleted UF_4 were also not analyzed in depth as reasonable alternatives in the Final PEIS. Although more stable than UF_6, UF_4 has no identified direct use, offers no obvious advantage in required storage space, and is less stable than oxide forms. Further, as a disposal form, UF_4 is soluble in water.

V. Summary of Environmental Impacts

The PEIS analyses indicated that the areas of potential adverse environmental impacts include human health and safety impacts, impacts to ground water, air quality, and waste management under certain conditions. In addition, the Final PEIS identified net positive socioeconomic impacts in terms of employment and income for all alternatives. The most important potential impacts in these areas are summarized in the following paragraphs (detailed discussions are provided in the Final PEIS). For all alternatives, potential impacts in other areas, including ecological resources, resource requirements, land use, cultural resources, and environmental justice, it was determined to be low to negligible or entirely dependent on the actual sites where the alternatives would be implemented that are, as yet, unidentified.

Human Health and Safety. Potential impacts to the health and safety of workers and members of the public are possible during construction activities, during normal facility operations, in the long-term if ground water contamination occurs, from facility accidents, and from transportation. During normal facility operations, under all alternatives, impacts to human health and safety would be limited to involved workers (persons directly involved in the handling of radioactive or hazardous materials). Involved workers could be exposed to low-level radiation emitted by depleted uranium during the normal course of their work activities. The overall radiation exposure of workers was estimated to result in one cancer fatality under the no-action alternative, from one to two cancer fatalities under the long-term storage as UF_6 and the two use alternatives, and up to three cancer fatalities under the disposal and preferred alternatives. For all alternatives, except the disposal as oxide alternative, these exposures were estimated to be within applicable public health standards and regulations.

For the disposal as oxide alternative, if the disposal facility were located in a "wet" environment (typical of the Eastern United States), the estimated dose from the use of groundwater at 1,000 years after the assumed failure of the facility would be about 100 mrem/year, which would exceed the regulatory dose limit of 25 mrem/year specified in 10 CFR Part 61 and DOE Order 5820.2A for the disposal of LLW. In a "dry" environment typical of the Western United States, the analysis indicated that disposal would not exceed regulatory limits for over 1,000 years in the future even if the facility leaked.

Under all alternatives, workers (including involved and noninvolved) could be injured or killed from on-the-job accidents unrelated to radiation or

chemical exposure. Using statistics from similar activities, under the no-action alternative, it was estimated that zero fatalities and about 180 injuries might occur over the period from 1999 through 2039. Under all other alternatives, it was estimated that from one to five fatalities and from 310 to 4,100 injuries might occur over the same period.

Accidents are possible that could release radiation or chemicals to the environment potentially causing adverse health effects among workers and members of the public under all alternatives. Accidents involving cylinders are possible under all alternatives and could have severe consequences (depending on the amount of DUF_6 released) that would be primarily limited to on-site workers even under the worst conditions. During a severe cylinder accident, it was estimated that up to three fatalities from HF exposure would occur among noninvolved workers, with the additional possibility of fatalities among those directly involved in the accident. However, because the probability of such accidents occurring is low, they would not be expected to occur during the operational periods considered in the Final PEIS.

Low probability accidents involving chemicals at a conversion facility were estimated to have potential consequences that are much greater than accidents involving cylinders. Such accidents would be possible under the long-term storage as oxide, use as oxide, use as metal, disposal, and preferred alternatives because they would require conversion of UF_6 to another chemical form with rupture of tanks containing AHF or ammonia estimated to have the largest potential consequences. Such accidents are expected to occur with a frequency of less than once in one million per year of operation. If such a severe event were to occur, it was estimated that up to 30 fatalities among the public and four fatalities among noninvolved workers would be possible. Although the consequences of cylinder and chemical accidents could be severe, these types of accidents are expected to be extremely rare. The maximum calculated risk for these accidents would be zero fatalities and irreversible adverse health effects expected for noninvolved workers and the public combined and one adverse effect (mild and temporary effects such as temporary decrease in kidney function or respiratory irritation) expected for the general public.

Transportation activities could also potentially result in adverse health and safety impacts. Although specific sites for some of the management activities (conversion, for example) have not been identified, the Final PEIS analyzed the potential impacts associated with shipping UF_6 cylinders to alternative locations using representative shipment lengths and routes. The primary impacts from transportation are related to accidents. The total number of traffic fatalities was estimated on the basis of national traffic statistics for shipments by both truck and rail modes for all alternatives. If shipments were predominantly by truck, it was estimated that zero fatalities would be expected for the no-action alternative, approximately two fatalities for the long-term storage as depleted UF_6 alternative, and up to four fatalities for each of the other alternatives. Shipment by rail would result in similar, but slightly smaller, impacts. Severe transportation accidents could also cause a release of radioactive material or chemicals from a shipment that could have adverse health effects. All alternatives, other than no action and long-term storage as UF_6, could involve the transportation of relatively large quantities of chemicals such as ammonia and AHF because conversion would be required. Severe accidents involving these materials could result in releases that caused fatalities with HF posing the largest potential hazard. For example, if a severe accident involving a railcar containing HF occurred in an urban area under unfavorable weather conditions, it was estimated that up to 30,000 people would experience irreversible adverse effects (such as lung damage) and 300 fatalities could occur. However, because of the low probability of such accidents, the maximum calculated risk for these accidents would be zero fatalities. If HF were to be neutralized to CaF_2 at the conversion facility, the risks associated with its transportation would be eliminated.

Ground Water Quality. For operations under all alternatives, uranium concentrations in ground water at the three current storage sites would remain below guidelines throughout the project duration if cylinder maintenance and painting activities are performed as expected. Ground water impacts are possible under the disposal alternative if the disposal facility were located in a "wet" environment. In a dry environmental setting, ground water impacts for the severe situation would be unlikely for at least 1,000 years.

Air Quality. Under all alternatives, impacts to air quality from construction and facility operations would be within existing regulatory standards and guidelines. Under the no-action alternative, however, if cylinder maintenance and painting do not reduce cylinder corrosion rates, it is possible that cylinder breaches could result in HF air concentrations greater than the regulatory standard level at the K–25 storage site around the year 2020; HF concentrations at the Paducah and Portsmouth Sites were estimated to remain within applicable standards or guidelines.

Waste Management. Under all alternatives requiring conversion, there is the potential that significant amounts of fluorine-containing wastes could be generated. If the HF produced from conversion were not used, CaF_2 generated from the neutralization of HF might have to be disposed of as low-level radioactive waste.

Socioeconomics. Positive socioeconomic impacts would occur under all alternatives. The no-action alternative would create about 140 direct jobs and generate about $6.1 million in direct income per operational year. The storage as UF_6 alternative would create about 610 to 1,200 direct jobs and generate about $35 to $65 million in direct income per year. The other alternatives (long-term storage as oxide, use as oxide, use as metal, disposal, and preferred alternatives) would have more beneficial socioeconomic impacts, creating about 970 to 1,600, 1,250 to 1,600, 1,260 to 1,600, 900 to 2,100, and 1,600 to 1,840 direct jobs per year, respectively, and generating about $55 to $85 million, $79 to $93 million, $79 to $93 million, $55 to $120 million, and $89 to $110 million in direct income per year, respectively. Continued cylinder storage under all alternatives would result in negligible impacts on regional growth and housing.

Cumulative Impacts. The continued cylinder storage and cylinder preparation components of the depleted UF_6 management alternatives would result in environmental impacts that would be expected to be relatively minor. The estimated cumulative doses to members of the general public at all three sites would be below levels expected to result in a single cancer fatality over the life of the project, and the annual dose to the off-site maximally exposed individual would be considerably below the Environmental Protection Agency (EPA) maximum standard of 10 mrem/year from the air pathway. The cumulative collective dose to workers at the three sites would result in one to three additional cancer fatalities over the duration of the program. Cumulative demands for water, wastewater treatment, and power would be well within existing capacities at all three sites. Relatively small amounts of additional land would be

needed for depleted UF_6 management at the three current storage sites. The cumulative impacts of conversion, long-term storage, and disposal activities could not be determined because specific sites and technologies have not been designated for these options. Further analyses of cumulative impacts would be performed as required by NEPA regulations for any technology or siting proposals that would involve these facilities.

VI. Environmentally Preferred Alternative

Overall, the potential for adverse environmental impacts tends to be the smallest for the no-action and long-term storage alternatives primarily because they do not require construction and operation of conversion facilities or significant transportation operations. Although the potential impacts tend to be small for all alternatives, differences do exist among the alternatives. The presence of a conversion facility results in the potential for both facility and transportation accidents involving hazardous chemicals that could have severe consequences. However, it must be recognized that the probability of such accidents is low, and accident prevention and mitigative measures are well established for these types of industrial activities. In addition, beneficial socioeconomic impacts tend to be smallest for the no-action and long-term storage as UF_6 alternatives and greatest for those alternatives involving conversion. Finally, the differences in impacts among the alternatives tend to be small when considering the uncertainties related to the actual processes and technologies that will be used and the fact that actual sites have not been identified. In general, because of the relatively small risks that would result under all alternatives and the absence of any clear basis for discerning an environmental preference, DOE concludes that no single alternative analyzed in depth in the Final PEIS is clearly environmentally preferable compared to the other alternatives.

VII. Mitigation

Specific mitigation measures may need to be developed as part of the design of the particular conversion facilities. Such measures would be addressed during the preparation of project-specific NEPA reviews.

VIII. Comments on Final PEIS

The Final PEIS was mailed to stakeholders in mid-April 1999, and the EPA issued a notice of availability in the April 23, 1999, **Federal Register**. In addition, DOE issued a notice of availability in the April 29, 1999, **Federal Register**. The entire document was also made available on the World Wide Web. Comments were received by five reviewers, and at the same time, about two dozen responses to the aforementioned expression of interest were received. The following is a summary of the comments received by reviewers of the Final PEIS:

- *Comments related to the preferred alternative.* One reviewer, BNFL Inc., reiterated their previous comments that DOE should have analyzed in depth, the environmental impacts of conversion of the depleted UF_6 to depleted uranium metal for long-term storage and disposal. DOE addressed these comments in volume 3 of the Final PEIS and earlier in this ROD. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. Should the Department be persuaded that it is reasonable to convert the depleted UF_6 to depleted uranium metal for long-term storage or disposal, these alternatives would be analyzed in detail in future NEPA reviews, as necessary.
- *General comments.* The U.S. Environmental Protection Agency commented that the Department has adequately addressed its concerns on this project and suggested that DOE use a single location for a conversion pilot plant as it conducts its further planning and environmental analysis. The Kentucky Heritage Council recommended that any previously undisturbed areas impacted by the proposed project be surveyed by a professional archaeologist. Should the Department decide to construct a conversion facility in the State of Kentucky, the decision to conduct the requested survey would be addressed at that time. The Kentucky Department for Environmental Conservation, Division of Water, affirmed that the concerns they raised on the Draft PEIS have been addressed in the Final PEIS. The Kentucky Department for Environmental Conservation, Division of Waste Management, reiterated the concerns that were raised in their April 23, 1998, letter regarding the Draft PEIS. These comments were addressed in volume 3 of the Final PEIS. The Kentucky Department for Environmental Conservation, Underground Storage Tank Branch, is currently waiting for closure reports and documentation for several tanks from the Paducah Site. This comment was forwarded to the site for appropriate action. Finally, should the Department decide to construct a conversion facility in the State of Kentucky, the Department would address the issue of using on-site landfills for disposal of waste generated by such a facility at that time.

IX. Other Factors

Public Law 105–204. In accordance with this law, the Secretary of Energy submitted to Congress a plan for the construction of plants at Paducah, Kentucky, and Portsmouth, Ohio, to convert its large inventory of depleted uranium hexafluoride. These proposed activities would be subject to review under NEPA. The preferred alternative is consistent with this legislation.

Cost. As part of the analysis done to develop a long-term management plan, the comparative costs associated with representative technologies for each of the alternatives were calculated. The Cost Analysis Report provided life-cycle cost estimates for each of the alternatives and estimates the primary capital and operating costs for each alternative reflecting all development, construction, operating, and decontamination and decommissioning costs as well as potential offsetting revenues from the sale of recycled materials. The costs are estimated at a preconceptual design level. Depending on the technology and the option selected for disposal, conversion, long-term storage, and cylinder preparation, there was a wide variation in the cost of various alternatives. In general, the no-action alternative was the least costly, while the disposal and use as metal alternatives were the most costly.

Atomic Vapor Laser Isotope Separation (AVLIS). USEC Inc. announced on June 9, 1999, that it would suspend AVLIS technology development activities. The Final PEIS had identified that the AVLIS process could potentially be used to re-enrich depleted UF_6. USEC Inc. has announced that it will move forward with evaluating potentially more economical technology options, such as the Silex laser enrichment process and gas centrifuge technology.

X. Decision

DOE has decided that it will select the preferred alternative from the Final PEIS. This decision includes the following actions:

- DOE will take the necessary steps to promptly convert the depleted UF_6 inventory to depleted uranium oxide, depleted uranium metal, or a combination of both. Conversion to depleted uranium metal would occur

only when uses for the converted material are identified.

- The depleted uranium oxide will be used as much as possible and the remaining depleted uranium oxide will be stored for potential future uses or disposal, as necessary.
- Any proposal to proceed with the location, construction, and operation of a facility or facilities for conversion of the depleted UF_6 to a form other than depleted UF_6 will involve additional NEPA review (i.e., project-specific EIS).
- The proposed facilities to be constructed to support this conversion decision would be built consistent with the plan submitted as required by Public Law 105–204.
- DOE anticipates that approximately 4,700 cylinders containing depleted UF_6 that are located at the East Tennessee Technology Park at Oak Ridge would be shipped to a conversion facility.
- Depleted UF_6 will be available for use until all of it has been converted to another form.

XI. Conclusion

DOE believes conversion of the depleted UF_6 inventory to depleted uranium oxide as soon as possible is the prudent and proper decision. Several factors, including increased chemical stability, socioeconomic benefits associated with the conversion, and public and congressional desire to move forward with conversion, have contributed to this decision. Conversion to depleted uranium metal would be performed only when uses for the converted material are identified. At this time, the Department does not believe that long-term storage as depleted uranium metal and disposal as depleted uranium metal are reasonable alternatives; however, the Department remains open to exploring these options further. DOE will continue to safely maintain the depleted UF_6 cylinders while moving forward to implement the decisions set forth in this ROD.

Issued in Washington, D.C. this second day of August, 1999.

Bill Richardson,

Secretary of Energy.

[FR Doc. 99–20471 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Request for Information on Potential Studies in the Russian Federation of Low Dose-Rate Radiation Health Effects

AGENCY: Office of Environment, Safety and Health, DOE.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE), announces a request for information (RFI) on potential studies in the Russian Federation of low dose-rate radiation health effects. Specifically, DOE is interested in receiving information on new ideas for epidemiologic, dosimetric/biodosimetric, and/or molecular epidemiologic studies that would: (1) Build upon collaborative research already conducted on workers and populations in the Southern Urals; or (2) utilize information on other similar cohorts in the Russian Federation. Information submitted in response to this RFI will be used to define the scope of a Request for Applications (RFA) that may be issued in late calendar year 1999.

DATES: The deadline for receipt of submissions is October 5, 1999.

ADDRESSES: U.S. Department of Energy, Office of International Health Programs, EH–63/270CC, 19901 Germantown Road, Germantown, Maryland 20874–1290

FOR FURTHER INFORMATION CONTACT: Requests for further information on this announcement may be directed to Elizabeth White, Office of International Health Programs (EH–63), U.S. Department of Energy, telephone: (301) 903–7582; facsimile: (301) 903–1413; electronic mail: elizabeth.white@eh.doe.gov. Responses may be submitted, preferably by electronic mail or facsimile, to Ms. White.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Purpose
II. Background
III. Description of Ongoing JCCRER Projects
IV. Submissions to this RFI
V. Disclaimer

I. Purpose

The Office of International Health Programs, Office of Environment, Safety and Health, in partnership with ministries of the Russian Federation, funds epidemiologic studies of cohorts of workers and populations to evaluate the health consequences (cancer and other diseases) of exposure to low dose-rate ionizing radiation. These ongoing studies are coordinated through the Joint Coordinating Committee for Radiation Effects Research (JCCRER). Section II ("Background") provides a description of the JCCRER and Section III ("Description of Ongoing Projects") sets forth a description of the populations currently being studied in the Russian Federation under the auspices of the JCCRER.

The purpose of this Notice is to encourage the submission of information on potential radiation health effects research. The Office of International Health Programs is interested in ideas for new epidemiologic, dosimetric/biodosimetric, and/or molecular epidemiologic studies that would: (1) Build upon low dose-rate radiation health effects research already conducted under the auspices of the JCCRER in the Southern Urals. In particular, DOE is looking for ideas for new projects involving the worker and population cohorts (See Section II) affected by radiation emitted from the Mayak Production Association; or (2) use other similar epidemiologic and dosimetric databases in the Russian Federation to further elucidate the health effects of chronic low dose-rate radiation exposure. In particular, we are interested in learning about other cohorts or potential cohorts of radiation-exposed workers and populations, and the potential scientific studies that could be developed for these cohorts.

DOE, with the help of its standing Scientific Review Group, will review the information submitted in response to this RFI for use in defining the scope of an RFA that may be issued in late calendar year 1999. DOE anticipates that approximately $1,000,000 may be available in fiscal year 2000 to initiate new feasibility projects.

II. Background

The JCCRER is a bilateral Government committee representing agencies from the United States and ministries from the Russian Federation. It was established to implement the Agreement on Cooperation in Research on Radiation Effects for the Purpose of Minimizing the Consequences of Radioactive Contamination on Health and the Environment signed on January 1, 1994, by U.S. Secretary of State Warren Christopher and Russian Foreign Minister Andrey Kozyrev to support and facilitate joint cooperative research.

Radiation research conducted jointly with the Russian Federation provides a unique opportunity to learn more about possible risks to groups of people from lengthy exposure to radiation. This could include people receiving exposure from uranium mining, operations of nuclear facilities, transport and disposal of radioactive materials, the testing and dismantling of nuclear weapons, radiation accidents, and grossly contaminated sites or facilities.

Currently, the JCCRER and DOE are focusing on population and worker studies in the Southern Urals region of

the Russian Federation. In 1948, a nuclear weapons production complex, the Mayak Production Association, was established by the Soviet Union in Southern Urals, about 100 km northwest of the city of Chelyabinsk. Large amounts of radioactive materials were released into the environment between 1948 and 1957. Liquid discharges into the Techa River from the Mayak Production Association occurred from 1949–1956. As a result, thousands of square kilometers have been contaminated and hundreds of thousands of people have received significant radiation exposures. Furthermore, because of limited and inadequate (by today's standards) radiation protection measures and procedures, thousands of MAYAK workers and the population along the Techa River were seriously overexposed to radiation.

The studies of Southern Urals' and other Russian Federation populations may provide an opportunity to answer the question of whether chronic low-level exposures pose a risk different from that previously assumed from studies of atomic bomb survivors in Japan and patients treated with radiation therapy. The atomic bomb survivors were exposed to very short bursts of external radiation, unlike the pattern of exposure normally encountered or expected in the nuclear industry and with other uses of radiation. The Southern Urals' populations experienced chronic exposures over a much longer period. The exposures were also from both external radiation and internally deposited radioactive compounds. Studies on these and similar populations in the Russian Federation, coupled with comparisons with U.S. nuclear worker data, may prove to be a key factor in future development of radiation protection standards and regulations in the United States and worldwide.

The current U.S. JCCRER members are the:

—U.S. Department of Energy (DOE);
—U.S. Nuclear Regulatory Commission (NRC);
—U.S. Department of Health and Human Services (HHS);
—U.S. Department of Defense (DoD);
—U.S. National Aeronautics and Space Administration (NASA); and
—U.S. Environmental Protection Agency (EPA).

The current Russian JCCRER members are the:

—Ministry for Civil Defense Affairs, Emergencies and Elimination of Consequences of Natural Disasters (EMERCOM);
—Ministry of Atomic Energy (MINATOM); and
—Ministry of Health (MINZDRAV).

The Russian institutions currently participating in JCCRER-coordinated radiation health effects research are the:

—Branch Number 1 of Biophysics Institute (FIB–1), Ozersk;
—Mayak Production Association, Ozersk;
—Urals Research Center for Radiation Medicine (URCRM), Chelyabinsk; and
—Institute of Marine Transport Hygiene, St. Petersburg.

III. Description of Ongoing JCCRER Projects

A. Description of Cohorts

Two different epidemiologic research directions currently are supported by the JCCRER: (1) studies of populations who live near the Techa River; and (2) studies of workers at the MAYAK facility.

1. Techa River Population Cohort

The liquid discharges to the Techa River from the Mayak Production Association (due to inadequate storage of radioactive waste) occurred from 1949–56, with 95 percent released in an 18-month period (March 1950 to November 1951), for a total release of about 3 million Ci.

The cohort registry consists of individuals born in 1949 or earlier, who lived for at least one (1) month during 1950 to 1952 in the villages along the Techa River. The cohort includes 28,000 individuals, about 20 percent of which have been estimated to have had average effective doses of exposure of more than 0.5 sievert (Sv). Thirty (30) percent of the cohort members were 0 to 14 years old at the time of exposure.

The external exposure was due from contaminated sediments in the river; the internal exposure (measured by whole body counts and conducted for half of the members of the cohort) was mainly due to intake of river water and milk and included Sr 89, 90, and Cs 137.

Published reports indicate a statistically significant increase in leukemia in the exposed versus control populations. Other cancers, including stomach, esophagus, and lung were also studied, but the results have not been conclusive.

2. Mayak Workers Cohort

The computerized registry of 19,000 Mayak Production Association workers contains: occupational histories; vital status; current place of residence or date and causes of death; annual and cumulative data doses; plutonium body burdens; and internal doses to the main organs (lungs, liver and bone marrow). In this cohort, 14,000 have known vital status; 4,000 are dead; 1,000 died of cancer; and more than 4,000 have known plutonium body burdens. The average value of the equivalent dose to the lung for all workers with measured plutonium (Pu 239) body burden is 7.06 Sv, with external gamma doses of 0.88 gray (Gy) for all workers included in the registry. Radiation doses decreased significantly with time, for example:

Years hired	Average exposure (Gy)
1948–53	1.57
1954–58	0.57
1959–63	0.27
1964–72	0.15

More than 1,800 occupational diseases were diagnosed by 1959, 92 percent of which were noted between 1949 and 1953. Eighty-three (83) percent of these were diagnosed as "chronic radiation sickness" caused by radiation exposures of 1 to 10 Gy. Forty-one (41) cases were diagnosed as "acute radiation syndrome," four of which were fatal. Burns and other local radiation injury were reported for 188 workers. In addition, 110 cases of pnemosclerosis (66 in individuals whose internal lung exposure exceeded 4.0 Gy) were diagnosed.

B. JCCRER Directions

The JCCRER has initiated areas for study called Directions. Direction 1 focuses on the Techa River population and Direction 2 focuses on the MAYAK workers. All projects are jointly conducted by both U.S. and Russian principal investigators and their respective teams of researchers, and are summarized below.

Direction 1: "Medical Aspects of Radiation Exposure Effects on Population"

1. Project 1.1: "Dose Reconstruction for the Population Subjected to Radiation in the Urals"

Objectives: To reconstruct, validate and analyze data on individual radiation doses received by the population so that these can be used in studies assessing the risks of developing cancer in exposed populations. (U.S. support from DOE, with supplements from NASA and EPA.)

2. Project 1.2: "Risk Estimation of the Carcinogenic Effects in the Population Residing in the Region of the Mayak Production Association"

Objectives: To conduct studies to determine the risk of cancer in population groups exposed to

radioactive contaminants in the region, to characterize the quality and validity of the data for conducting such studies, and to preserve the existing data using modern technologies. (U.S. support from DOE on cancer incidence and data preservation projects; from National Cancer Institute (HHS) on cancer mortality project.)

3. Project 1.3: "Retrospective Reconstruction of Radionuclide Contamination of Techa River Caused by Liquid Waste Discharge from Radiochemical Production at the Mayak Production Association: 1949–1956"

Objectives: To supplement the population dose reconstruction study by determining source term of radioactive materials released into the Techa River. (U.S. support from DOE.)

Direction 2: "Medical Consequences of Occupational Exposure to Radiation"

1. Project 2.1: "Metabolism and Dosimetry of Plutonium Industrial Compounds"

Objectives: To conduct a joint analysis of the data collected by the U.S. Transuranium and Uranium Registry (USTUR) and the dosimetry registry at the First Institute of Biophysics/MAYAK on deceased people with occupational exposure to radiation. (U.S. support from DOE.)

2. Project 2.2: "Risk Estimation for Stochastic (Carcinogenic) Effects of Occupational Exposure"

Objectives: To determine risk estimates for cancer as a result of prolonged occupational exposure to radiation, from both external sources and internally-deposited radioactive compounds. (U.S. support from DOE.)

3. Project 2.3: "Non-cancerous Effects of Occupational Exposure to Radiation"

Objectives: To validate and analyze the data on acute and chronic effects of radiation, other than cancer, observed in a large number of workers at the Mayak Production Association. (U.S. support from NRC.)

4. Project 2.4: "Reconstruction of Individual Doses of Exposure to Mayak Production Association Workers"

Objectives: To develop an electronic database of reconstructed doses for external and internal exposures received by the Mayak worker cohort. (U.S. support from DOE.)

DOE Office of International Health Programs-Funded Direction 2 Molecular Epidemiology/Biodosimetry Projects

The Office of International Health Programs awarded five cooperative agreements in August 1998 for 15-month feasibility studies to support ongoing joint U.S.—Russian population-based studies in the Southern Urals on low dose-rate radiation health effects. These new studies are aimed at adding a molecular epidemiology/biodosimetry component to the ongoing epidemiologic and dose reconstruction work of the JCCRER. The feasibility studies have been jointly conducted by the FIB–1 in Ozersk and U.S. institutions, and the following three are being considered for long-term study:

1. "Improved Dosimetry and Risk Assessment for Plutonium-Induced Lung Disease Using a Microdosimetric Approach"

Objectives: To evaluate the potential for determining plutonium distribution in relation to pathology in preserved tissues.

2. "Establishment of a Repository Containing Tissues and Organs of Deceased Workers of the Mayak Production Association Who Were Exposed to Actinide Elements"

Objectives: To begin establishing a human tissue repository for cytogenetic and molecular biological research at the First Institute of Biophysics in Ozersk

3. "Molecular Epidemiology and Lung Cancer in Workers"

Objectives: To examine the potential to use molecular epidemiology approach in establishing in the MAYAK workers' cohort of association of lung cancer, smoking and radiation exposure.

IV. Submissions to this RFI

There are no eligibility requirements for this RFI. Responses should be no longer than 3 pages and should contain 2 sections: (1) A brief description of the cohort(s) and data available for study; and (2) a short summary of potential research topics. As is noted in Section I of this RFI, responses will be used to define the scope of an RFA that may be issued in late calendar year 1999.

Since DOE may use information submitted pursuant to this RFI to define the scope of an RFA, responses should not include business confidential or any other proprietary information.

V. Disclaimer

This RFI should not be construed as: (1) A commitment by the Department to enter into any agreement with any entity submitting response(s); (2) a commitment to issue any RFA concerning the subject of this RFI; or (3) an RFA.

Issued in Washington, DC, on August 4, 1999.

Paul J. Seligman, M.D., M.P.H.

Deputy Assistant Secretary for Health Studies.

[FR Doc. 99–20536 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Development of Technologies and Analytical Capabilities for Vision 21 Energy Plants

AGENCY: Federal Energy Technology Center (FETC), U.S. Department of Energy (DOE).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (Cooperative Agreements) for the program entitled "Development of Technologies and Analytical Capabilities for Vision 21 Energy Plants." Through this solicitation, FETC seeks to support applications in the following areas of interest: development of (A) the enabling and supporting technologies upon which the components and subsystems ("modules") of Vision 21 plants depend, (B) systems integration capability needed to combine two or more modules in Vision 21 plants, and (C) advanced plant design and visualization software leading to demonstration of "virtual" plants. Awards will be made to a limited number of applicants based on an evaluation of the promise of the proposed technology, the quality of prior supporting scientific and engineering studies and of the technical approach to reduce the proposed technology to practice, appropriateness of the project plan, the technical and management capabilities of the applicant organization(s), and availability of DOE funding in the technical areas proposed.

FOR FURTHER INFORMATION CONTACT: Raymond D. Johnson, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh PA 15236–0940, Telephone: (412) 386–6109, FAX: (412) 386–6039, E-mail: johnson@fetc.doe.gov.

DATES: This solicitation (available in both WordPerfect 6.1 and Portable Document Format (PDF)) will be released on DOE's FETC Internet site (http:/www.fetc.doe.gov/business/solicit) on or about September 30, 1999.

Additional information on the Vision 21 Program is available on DOE FETC's World Wide Web Server Internet System (http:/www.fetc.doe.gov/publications/others/vision21/v21.pdf).

SUPPLEMENTARY INFORMATION:

Title of Solicitation: "Development of Technologies and Analytical Capabilities for Vision 21 Energy Plants."

Objectives: Through Program Solicitation No. DE–PS26–99FT40578, the Department of Energy seeks applications for developing the technology basis for Vision 21 energy plants, including developing the enabling and supporting technologies upon which the components and subsystems ("modules") of Vision 21 plants depend, systems integration capability, and advanced computer design and simulation tools. Examples of technology modules are a gasifier, combustor, an engine or turbine system, fuel cell, or a subsystem for separating air into oxygen-and nitrogen-rich streams. Systems integration knowledge is required to design and construct complete plants. Although the DOE's intent is to focus on technology module development rather than on specific plant configurations, arrangements of modules may need to be considered in order to acquire knowledge of systems integration techniques. Computer models for individual technology modules and for complete Vision 21 plants will be required to reduce development costs by minimizing the number of scales at which new technologies will need to be tested, to aid in design and scaleup, and to increase confidence that new designs will meet performance expectations. It is anticipated that spinoff technologies, available as early as 2005, will also result from R&D supported by this solicitation. Spinoff technologies include low-cost oxygen and hydrogen separation technology, gas purification and cleaning technology, better catalysts for producing fuels and chemicals from low-valued raw materials, more efficient and lower cost environmental control technology, improved low-cost manufacturing techniques for high-technology components, advanced combustion and materials technology for enhancing engine and turbine systems, and improved materials for service under aggressive high-temperature conditions.

Eligibility: Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the technical and organizational evaluation factors and the relative importance of each factor.

Areas of Interest: The Department is interested in obtaining applications to develop (A) the enabling and supporting technologies upon which the components and subsystems ("modules") of Vision 21 plants depend, (B) systems integration capability needed to combine two or more modules in Vision 21 plants, and (C) advanced plant design and visualization software leading to demonstration of "virtual" plants.

DOE has, with the help of industry, academic, and government stakeholders, identified "enabling" and "supporting" technologies that are expected to be important in developing high-performance technology modules for Vision 21 plants. Enabling technologies are those upon which the modules or subsystems that form the building blocks of a Vision 21 plant depend. Enabling technologies include:

- Gas separation, e.g., membranes that can be used to separate oxygen from air and hydrogen from syngas
- High-temperature heat exchangers, e.g., alloy exchangers capable of heating high-temperature steam or air for use in advanced, high-efficiency cycles
- Fuel-flexible, thermally efficient gasification to allow the use of low-cost feedstocks, such as municipal waste, petcoke, biomass
- Gas stream purification systems capable of operating at high temperatures for removing sulfur compounds and other constituents that may corrode or erode downstream components, e.g. turbines, or poison downstream catalysts.
- High-performance combustion systems, including ultra-low-NO_X combustion and combustion systems that burn fuels in O_2/CO_2 mixtures and produce exhaust streams containing only CO_2 and water; both suspension-fired and fluidized bed systems are of interest.
- Fuel-flexible combustion turbines and engine systems, especially turbines and engines capable of operating on coal-derived gases or hydrogen; fuel cell/turbine-engine hybrids capable of 70–80% efficiency; advanced combustion turbines, including ceramic turbines and engines; advanced steam turbines.
- Fuel cells, e.g., high-efficiency, low-cost fuel cells; cascaded fuel cell systems capable of operating at multiple temperatures and pressures; fuel cells bottomed by fuel cells; fuel cell/turbine hybrids; new, low-cost, fuel cell concepts capable of approaching $100/kilowatt stack costs and, when incorporated into a system, 70–80% system efficiency.
- Advanced fuels and chemicals development: systems and catalysts for fuels and chemicals production; hydrogen production and storage.

Supporting technologies are cross-cutting technologies also judged to be important for the design of Vision 21 plants. Supporting technologies include:

- Advanced materials for high-temperature applications in aggressive environments, e.g., boiler tubes for high-temperature steam bottoming cycles, and very high-temperature (>2000°F) heat exchangers for use in indirectly fired cycles and other applications, as well as functional materials needed for turbine/engine hot-gas-path components, and gas cleanup or separation.
- Advanced manufacturing and modularization techniques to reduce costs and improve quality. (Modular design is desired where it can reduce costs by maximizing shop fabrication and minimizing field construction, while maintaining or increasing flexibility in plant design.)

Systems Integration prescribes how to combine high-performance technology modules into safe, reliable, economic Vision 21 plants and, as such, is a critical part of the Vision 21 program. Systems integration can be divided into 3 key subelements: systems engineering, dynamic response and control, and industrial ecology. Systems integration topics of interest to DOE include:

- Systems engineering and compatibility issues related to linking Vision 21 modules and components, e.g., gasifiers with combustion turbines, fuel cells, and gas cleanup devices; development of design modifications and interconnections for major subsystems and components.
- Dynamic response and control of Vision 21 modules and integrated plants; studies of the transient response of subsystems and total plants to changes in load and other operating parameters, startup and shutdown, and upset conditions including component failures; modeling of the dynamic response of Vision 21 systems; design of process control software and hardware.
- Application of industrial ecology principles to Vision 21 systems; development and evaluation of designs to recycle or utilize all process effluents that would otherwise be handled as waste streams.

Computational modeling and virtual demonstration software that provides a cost-effective complement to experimental development is also of interest; advanced models to assist in the design process by providing

physically based simulations of Vision 21 components, modules, and plants are sought; an integrated suite of codes (software) called the "virtual demonstration" or "virtual plant" is needed to illustrate equipment configuration and orientation and simulate plant operation.

Awards

DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to the funds available. Approximately $5 million -$10 million of DOE funding is planned for this solicitation in each of the three years FY00, FY01, and FY02. Cost sharing by the applicant is required, and details of the cost sharing requirement are contained in the solicitation.

Solicitation Release Date

A draft of this Program Solicitation is available for comment on FETC's World Wide Web Server Internet System at *http:/www.fetc.doe.gov/business/solicit* until August 20, 1999. The final Program Solicitation is expected to be ready for release on or about September 30, 1999. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

Raymond D. Johnson,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–20472 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 9, 1999: 1:30 a.m.–5:00 p.m.; Friday, September 10, 1999: 8:30 a.m.–4:00 p.m.

ADDRESSES: Radisson Hotel, 17001 Pacific Highway South, Seattle, WA, ph: 206–244–6000.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

—Spent Fuel
  Issues associated with the Cask Loadout System and potential schedule impacts
  Brief overview of Accelerated Approach
—Office of River Protection
  Status on implementation of initiatives
  Status and discussion of Tri-Party Agreement (TPA) negotiations on privatization
—100 Area Burial Grounds
  Informational session discussion
—Hanford Advisory Board FY2000 Workplan
  Identification of issues for FY2000
—Election of EM SSAB Hanford Vice Chairperson
—Discussion of Issues to be Raised at the September Site-Specific Advisory Board
  (SSAB) Chair' Meeting
  SSAB Transportation Working Group
—Committee Updates
  Dollars and Sense
  Environmental Restoration
  Health, Safety and Waste Management
  Public Involvement
  Tank Waste Treatment Ad Hoc

Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on August 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–20473 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Wednesday, August 25, 1999: 6:00 p.m.–9:00 p.m.

ADDRESSES: 1474 Rodeo Road, Santa Fe, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Public Comment, 6:30 p.m.–7:00 p.m.
2. Committee Reports: Environmental Restoration
   Monitoring and Surveillance
   Waste Management
   Community Outreach
   Budget
3. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Dated: Issued at Washington, DC on August 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–20474 Filed 8–9–99; 8:45 am]

BILLING CODE 6405–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant; Notice of Open Meeting

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, August 24, 1999: 1:00 p.m.–5:00 p.m.

ADDRESSES: Amarillo College Business Center, Exhibit Hall 1314 South Polk Street, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 p.m.—Welcome—Agenda Review—Approval of Minutes
1:15 p.m.—Co-Chair Comments
1:30 p.m.—Ex-Officio Reports
1:45 p.m.—Task Force/Subcommittee Minutes
2:30 p.m.—Updates—Occurrence Reports—DOE
3:00 p.m.—Presentation (Epidemiological Report or Sealed Insert Update)
4:00 p.m.—Question and Answer
4:30 p.m.—Closing Remarks
4:45 p.m.—Public Comments
5:00 p.m.—Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 p.m. Monday through Thursday; 7:45 am to 5:00 p.m. on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on August 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–20475 Filed 8–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3656–000]

Avista Corporation; Notice of Filing

July 27, 1999.

Take notice that on July 21, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, and unexecuted Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10, with The Montana Power Marketing & Trading Company and Enron Power Marketing, Inc.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of July 1, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20497 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–452–000]

Caprock Pipeline Co.; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, Caprock Pipeline Co. (Caprock) tendered for filing tariff sheet(s) of its FERC Gas Tariff, First Revised Volume No. 1, with an effective date of September 1, 1999.

Caprock states that it is submitting this filing to incorporate and/or modify tariff provisions to fit the administration and operation of a new computer system for its Buffalo Wallow system. Caprock states that the tariff sheets affected by this filing are listed in Appendix A to the filing.

Caprock states that copies of this filing have been served upon all affected firm customers of Caprock and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing by be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20575 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–457–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, the tariff sheets listed on Attachment A to the filing. CNG requests an effective date of September 1, 1999 for its proposed tariff sheets.

CNG states that the purpose of the filing is to modify CNG's FERC Gas Tariff to reflect the reclassification of certain transmission lines to gathering and to update the tariff for gathering lines which have been sold, abandoned or newly constructed and to correct certain administrative errors.

CNG states that copies of its letter of transmittal and enclosures are being served upon its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20580 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–396–003]

Caprock Pipeline Co.; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, Caprock Pipeline Co. (Caprock) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff Sheets listed below, with an effective date of August 1, 1999:

Substitute Second Revised Sheet No. 6A
Second Substitute Sixth Revised Sheet No. 29A

Caprock states that it is submitting this filing to correct the GISB Standard 2.3.9 (Version 1.3) by placing it in "by reference" tariff sheet.

Caprock states that copies of this filing have been served upon all affected firm customers of Caprock and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20593 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–365–001]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Columbia Gas Transmission corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised

Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of August 1, 1999:

Substitute Eighth Revised Sheet No. 456

Columbia states that this filing is being submitted in compliance with the Commission Letter Order issued on July 23, 1999. On June 30, 1999, Columbia filed tariff sheets in Docket No. RP99–354–000 to conform its Tariff to Version 1.3 of the consensus industry standards, promulgated by the Gas Industry Standards Board (GISB). The Commission directed that pipelines implemented these standards by filing revised tariff sheets not more than 60 days and not less than 30 days prior to the August 1, 1999 implementation date required by Order No. 587–K. By letter order dated July 23, 1999, the Commission accepted the filed tariff sheets with one exception and required Columbia to revise its Tariff to incorporate the change within 15 days of the date of the Letter Order.

In the June 30, 1999 filing, Columbia included GISB standard 2.3.18 in Section 37 of its General Terms and Conditions by reference and also included the standard in Section 8.3 of its General Terms and Conditions . The order directed Columbia to revise its Tariff to incorporate the standard either by reference, or verbatim. The instant filing is in response to the Letter Order, wherein Columbia is removing the standard by reference from sheet No. 456.

Columbia states that copies of its filing and have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provide in Section 154,210 of the Commission's Regulations. protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20591 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–460–000]

East Tennessee Natural Gas Company; Notice of Cashout Report

August 4, 1999.

Take notice that on August 2, 1999, East Tennessee Natural Gas Company (East Tennessee) tendered for filing its fifth annual cashout report for the November 1997 through October 1998 period.

East Tennessee states that the cashout report reflects a cashout loss during this period of $267,167. East Tennessee's cumulative losses from its cashout mechanism total $816,694. East Tennessee will roll forward this loss into its next annual cashout report.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 11, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20583 Filed 8–3–99; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–463–000]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

August 4, 1999.

Take notice that on August 2, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

First Revised Sheet No. 170
First Revised Sheet No. 171
First Revised Sheet No. 172
First Revised Sheet No. 173

Any person desiring to be heard or to protect said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–20586 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP94–72–009, FA92–59–007 and RP97–126–015]

Iroquois Gas Transmission System, L.P.; Notice of Informal Settlement Conference

August 4, 1999.

Take notice that an informal conference will be convened in this proceeding on Wednesday, August 11, 1999, at 10:00 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Any person, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208–

0783 or Lorna J. Hadlock at (202) 208–0737.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20589 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–453–000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, KN Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, First Revised Volume Nos. 1–C and 1–D, the tariff sheets listed on Appendix A to the filing, with an effective date of September 1, 1999.

KNI states that it is submitting this filing to incorporate and/or modify tariff provisions to fit the administration and operation of a new computer system for its Buffalo Wallow system.

KNI states that copies of this filing have been served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20576 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–454–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fourth Revised Sheet No. 1700, to become effective September 1, 1999.

Koch Gateway is proposing a change to Section 10.2(a) of it's General Terms and Conditions that provides customers the flexibility to eliminate transportation imbalances during the month in which the imbalance is created. The proposed change will require shippers to obtain Koch's approval before they can nominate out of balance. Thus, requiring Koch's approval before a customer can nominate out of balance will provide Koch and the customer the opportunity to develop strategies that will result in reduced imbalance.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 383.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20577 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–455–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Volume No. 1, the following tariff sheets, to become effective September 1, 1999:

Third Revised Sheet No. 3700,
Second Revised Sheet No. 3704
First Revised Sheet No. 3705
Original Sheet No. 3706
Original Sheet No. 3707
Original Sheet No. 3708
Original Sheet No. 3709

Koch states that it is proposing to create a new Right of First Refusal (ROFR) process for it's Firm Storage Service (FSS). The proposed tariff changes will create an interactive auction whereby interested shippers will be able to bid on various packages of FSS capacity and thus, will reduce the price risks that are inherent with Koch's current cumbersome FSS ROFR process. This proposed tariff change, however, will not affect the ROFR process utilized by FTS, FTS–SCO, NNS or NNS–SCO customers.

Koch states that the new ROFR process would include:

1. an expanded notification period to inform existing customers of the upcoming expiration of their existing FSS agreements.
2. an automatic grant of the ROFR to existing FSS customers with a contract term of one year or greater.
3. an interactive auction for storage capacity on Kochs web page, and
4. a shortened bid period and a shortened time for customers to exercise their right of first refusal and execute agreements, each of which are designed to reduce the price exposure a customer faces in the market.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20578 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–461–000]

Midwestern Gas Transmission Company; Notice of Cashout Report

August 4, 1999.

Take notice that on August 2, 1999, Midwestern Gas Transmission Company (Midwestern) tendered for filing its fifth annual cashout report for the September 1997 through August 1998 period.

Midwestern states that the cashout report reflects a cashout gain during this period of $83,394. Midwestern's cumulative losses from its cashout mechanism are thereby reduced to $197,274. Midwestern will roll forward this loss into its next annual cashout report.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 11, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20584 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–383–002]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Mississippi Canyon Gas Pipeline, LLC (MCGP), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheet numbers 151 and 152 proposed to become effective August 1, 1999.

MCGP states that the purpose of this filing is to comply with the Letter Order issued July 27, 1999 in Docket Nos. RP99–383–000 and RP99–383–001 whereby MCGP was directed to reflect version 1.3 standards for all standards and definitions. The tariff sheets filed herein reflect version 1.3 for all standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.c. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20592 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–450–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 29, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain revised tariff sheets to be effective September 1, 1999.

Natural states that the purpose of this filing is to establish procedures under which it could reserve certain categories of existing capacity for future expansions. Natural states that an "expansion" may include a facility extension such as a delivery lateral where potential shippers may also require mainline capacity on Natural's existing system. Natural also states that the reservation of such capacity would promote the efficient use of existing capacity, minimize the costs of constructing new facilities and minimize environmental impacts.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective September 1, 1999.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20597 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–459–000]

Portland Natural Gas Transmission System; Notice of Tariff Filing

August 4, 1999.

Take notice that on August 2, 1999, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective August 1, 1999:

First Revised Sheet No. 323
First Revised Sheet No. 380

PNGTS states that the purpose of this filing is to comply with Order No. 587–K Final Rule issued on April 2, 1999 in Docket No. RM96–1–011. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

PNGTS states that copies of the filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20582 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–405–003]

TCP Gathering Co.; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, TCP Gathering Co. (TCP) tendered for filing of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed below, with an effective date of August 1, 1999:

Substitute First Revised Sheet No. 88D
Second Substitute Fourth Revised Sheet No. 103A

TCP is submitting this filing to correct the GISB Standard 2.3.9 (Version 1.3) by placing it in "by reference" tariff sheet.

TCP states that copies of this filing have been served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20594 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–328–000]

Tennessee Gas Pipeline Company; Notice Granting Late Interventions

August 4, 1999.

Motions to intervene in the above-captioned proceeding were due on June 14, 1999. Baltimore Gas and Electric Company and Conoco Inc., filed motions to intervene out of time. No party filed an answer in opposition to the motions.

The petitioners appear to have a legitimate interest under the law that is not adequately represented by other parties. Granting the intervention will not cause a delay or prejudice any other party. It is in the public interest to allow the petitioner to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to Section 375.302 of the Commission's Regulations (18 CFR 375.202), the petitioner is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. §§ 717–717(W). Participation of the late intervenors shall be limited to matters set out in its motion to intervene. The admission of the late intervenors shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20590 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–449–0000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 28, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets to which tariff sheets are enumerated in Appendix A to the filing. The referenced tariff sheets are proposed to be effective August 1, 1999.

Transco states that the purpose of the instant filing is to revise certain of Transco's currently effective tariff sheets to correct various spelling, wording and reference errors.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20596 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–456–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective September 1, 1999:

Tenth Revised Sheet No. 1
122 Revised Sheet No. 5
27 Revised Sheet No. 5A
17 Revised Sheet No. 5A.01
19 Revised Sheet No. 5A.02
19 Revised Sheet No. 5A.03
24 Revised Sheet No. 5B
Original Sheet No. 20A
Original Sheet No. 20B
Original Sheet No. 20C
Original Sheet No. 20D
Original Sheet No. 20E
Eighth Revised Sheet No. 51A
Third Revised Sheet No. 69
First Revised Sheet No. 72B
Eighth Revised Sheet No. 79
Ninth Revised Sheet No. 80A
Thirteenth Revised Sheet No. 81
Second Revised Sheet No. 92B
Third Revised Sheet No. 95
Fifth Revised Sheet No. 95G
Sixth Revised Sheet No. 95H
Fourth Revised Sheet No. 95L
Original Sheet No. 115
Original Sheet No. 115A

Transwestern states that it is submitting these tariff sheets to implement a Limited Firm Transportation Service under new Rate Schedule LFT. Under this Rate Schedule, firm transportation service would be available subject to Transwestern's right to not schedule service in whole or in part on any day (a Limited Day), but not more than a maximum number of Limited Days per month (not to exceed ten) agreed to by Transwestern and Shipper in the LFT Service Agreement. Transwestern is proposing this service to offer greater flexibility to shippers, and to address the needs of shippers that generally require firm service but are able to accommodate periodic interruption of service.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us//online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–20579 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–5–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on July 30, 1999, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised No. 1, the following tariff sheets, to become effective September 1, 1999:

Thirtieth Revised Sheet No. 6
Twenty-Ninth Revised Sheet No. 7
Thirtieth Revised Sheet No. 8
Thirtieth Revised Sheet No. 9
Twelfth Revised Sheet No. 9A
Second Revised Sheet No. 9B
Twenty-Ninth Revised Sheet No. 10
Fifteenth Revised Sheet No. 10A

Trunkline states that this filing is being made in accordance with Section 23 (Miscellaneous Revenue Flowthrough Surcharge Adjustment) of the General Terms and Conditions of trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20587 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–462–000]

U–T Offshore System; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1999.

Take notice that on August 2, 1999 U–T Offshore System (U–TOS), tendered for filing a part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Sub Eleventh Revised Sheet No. 73
Sub Sixth Revised Sheet No. 73A
Sub Fifth Revised Sheet No. 73B
Original Sheet No. 73C
Original Sheet No. 73D

U–TOS asserts that the purpose of this filing is to comply with the Commission's April 2, 1999, letter order in the captioned proceeding regarding

Order No. 587–K, Docket No. RM96–1–011. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–20585 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–458–000]

Viking Gas Transmission Company; Notice of Tariff Filing

August 4, 1999.

Take notice that on July 30, 1999, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to be effective September 1, 1999.

Viking states that the purpose of this filing is to establish a new Rate Schedule FT–D, which will be applicable to the expansion capacity approved by the Commission on april 15, 1999 in "Order Issuing Certificate and Granting Abandonment," Docket No. CP98–761–000, 87 FERC ¶ 61,068. Rate Schedule FT–D is identical in all respects to Viking's existing FT–A rate schedule, except that it applies only to firm shippers using the expansion capacity. Viking is also filing to implement the initial incremental demand rate of $10.65 per Dth/month for service from Emerson to any Zone 1 delivery point and $13.69 per Dth/month for service from Emerson to any Zone 2 delivery point approved by the Commission in the April 15, 1999 certificate order.

As provided in the Commission's order, this initial rate for FT–D service will be subject to a retroactive "true-up" filing after a final accounting for the project has been completed. Viking is also making miscellaneous tariff modifications so that its tariff properly reflects the existence of Viking's new Rate Schedule FT–D.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the seb at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20581 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–410–002]

Williston Basin Intestate Pipeline Company; Notice of Compliance Filing

August 4,1999

Take notice that on August 2, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 1999:

Sub Second Revised Sheet No. 176A

Williston Basin states that the tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Letter Order issued July 22, 1999 regarding Commission Order No. 587–K issued April 2, 1999, in Docket No. RM96–1–011. The tariff sheets reflect the Gas Industry Standards Board (GISB) Version 1.3 standards adopted by the Commission in such Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistamce).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20595 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2665–000]

Wisconsin Electric Power Company; Notice of Filing

August 4, 1999.

Take notice that on July 30, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amended response based on further discussions with Commission staff in the above captioned docket. The response constitutes an amendment to the filing submitted by Wisconsin Electric on June 25th.

Copies of the filing have been served on customers under the market-based rate tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). All such motions and protests should be filed on or before August 13, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20498 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–207–000, et al.]

Casco Bay Energy Company, LLC, et al. Electric Rate and Corporate Regulation Filings

August 3, 1999.

Take notice that the following filings have been made with the Commission:

1. Casco Bay Energy Company, LLC

[Docket No. EG99–207–000]

Take notice that on July 29, 1999, Casco Bay Energy Company, LLC (Casco Bay), tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Casco Bay, a Delaware limited liability company, will own and operate the Maine Independence Station located in Veazie, Maine. Casco Bay will sell power exclusively at wholesale. Duke Energy North America LLC is the sole owner of Casco Bay. DENA is a wholly owned subsidiary of Duke Energy Global Asset Development, Inc., and an indirect subsidiary of Duke Energy, an exempt electric utility holding company.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Statoil Energy Trading, Inc., ConAgra Energy Services, Inc., Texaco Natural Gas Inc., Power Providers, Inc., AEP Power Marketing, Inc., DPL Energy, and NESI Power Marketing, Inc.

[Docket Nos. ER94–964–022 and ER94–964–023, ER95–1751–015, ER95–1787–014, ER96–2303–012, ER96–2495–011, ER96–2601–012, ER97–841–010]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Anker Power Services, Inc., Statoil Energy Services, Inc., NEV Midwest, L.L.C., Starghill Alternative Energy Corporation, LG&E Power Inc., AIE Energy Inc., and ONEOK Power Marketing Company

[Docket Nos, ER97–3788–007, ER97–4381–003, ER97–4654–007, ER97–4680–006, ER98–1278–005, ER98–3164–004, ER98–3897–004]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. SEI Wisconsin, L.L.C., Elwood Marketing LLC, New Energy Partners, L.L.C., SIGCORP Energy Services, LLC, Central Vermont Public Service Corporation, American Electric Power Service Corporation, LG&E Power Inc., Cleveland Electric Illuminating Company, The Toledo Edison Company, and FirstEnergy Operating Companies

[Docket Nos. ER99–669–003, ER99–1465–002, ER99–1812–002, ER99–2181–001, ER99–3802–000, ER99–3805–000, ER99–3806–000, ER99–3807–000, ER99–3808–000, and ER99–3809–000]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. FPH Electric, L.L.C.,

[Docket No. ER99–3142–000]

Take notice that on July 29, 1999, FPH Electric, L.L.C., doing business as Energy Risk Solutions (FPH), amended its petition to the Commission for acceptance of FPH Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

FPH intends to engage in wholesale electric power and energy purchases and sales as a marketer. FPH is not in the business of generating or transmitting electric power. FPH has no members who own or control any electric generation, transmission, franchised retail service territories, generation sites, natural gas fuel supplies, or any other potential barriers to entry.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER99–3278–000]

Take notice that on July 29, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an amendment to its proposed Power Sales Agreement for the provision of electric service to CNG Retail Service Corporation (CNG Retail) under its market-based rate schedule accepted for filing by the Commission in Docket No. ER98–3771–000.

The Power Sales Agreement was originally filed with the Commission on June 16, 1999. The proposed amendment modifies the Power Sales Agreement to more fully incorporate the Commission's requirements regarding sales by a public utility to affiliated entities.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Alliance Energy Services Partnership

[Docket No. ER99–3690–000]

Take notice that on July 22, 1999, Alliance Energy Services Partnership (AESP), pursuant to Section 35.15 of the Commission's Regulations, tendered for filing a notice of cancellation of its Rate Schedule FERC No. 1.

AESP has requested an effective date for the proposed rate schedule

cancellation of July 23, 1999. Accordingly, AESP requests waiver of the 60-day prior notice requirement.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER99–3800–000]

Take notice that on July 29, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Public Service Company of Colorado (Public Service), dated July 12, 1999, and a Non-Firm Transmission Service Agreement with Public Service, dated July 12, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of July 12, 1999, for the Agreements with Public Service, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Public Service, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Unitil Power Corp., Yakin, Inc., Bridgeport Energy, L.L.C., Dayton Power & Light Company, Orange and Rockland Utilities, Inc., Virginia Electric and Power Company, PacifiCorp, Public Service Electric and Gas Company and Florida Power & Light Company,

[Docket Nos. ER99–3810–000, ER99–3811–000, ER99–3812–000, ER99–3813–000, ER99–3814–000, ER99–3815–000, ER99–3816–000, ER99–3817–000 and ER99–3818–000]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Elwood Energy LLC, Potomac Electric Power Company, Montana Power Company, State Line Energy, L.L.C., Southwood 2000, Inc., Wisconsin Public Service Corporation, Genesee Power Station L.P., El Paso Electric Company, Cleco Utility Group Inc. and Western Resources, Inc.

[Docket Nos. ER99–3819–000, ER99–3823–000, ER99–3854–000, ER99–3868–000, ER99–3877–000, ER99–3884–000, ER99–3892–000, ER99–3901–000, ER99–3855–000 and ER99–3856–000]

Take notice that on July 29, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. FirstEnergy Operating Companies

[Docket No. ER99–3820–000]

Take notice that on July 29, 1999, Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (collectively, the FE Operating Companies), tendered for filing a Service Agreement under their FERC Electric Tariff, Original Volume No. 2, for sales of up to 50 MW of capacity and associated energy to the City of Painesville, Ohio.

The FE Operating Companies have asked that the Service Agreement be permitted to become effective on August 1, 1999.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER99–3821–000]

Take notice that on July 29, 1999, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, filed a revision to the capacity entitlements under the Unit Power Sales (UPS) Agreement with the City of Tallahassee, Florida. The revision is proposed to become effective from the beginning of service under the contract (December 8, 1990), and was submitted pursuant to a contractual provision that specifically contemplated such a filing to restore the economic bargain of the parties in the event of regulatory modification to their original agreement. A copy of the filing was sent to Tallahassee.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Casco Bay Energy Company, LLC

[Docket No. ER99–3822–000]

Take notice that on July 29, 1999, Casco Bay Energy Company tendered for filing an Application of Casco Bay Energy Company, LLC for Approval of Market-based Power Sales Tariff, for Waivers of Commission Regulations, and for Authorization to Sell Ancillary Services at Market Rates and to Reassign Transmission Capacity.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER99–3824–000]

Take notice that on July 29, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 10 executed service agreements for transmission service under the PJM Open Access Transmission Tariff. The agreements are as follows: 1 umbrella agreement for network integration transmission service under state required retail access programs with Commodore Gas and Electric, Inc.; 4 umbrella agreements for firm point-to-point transmission service agreements with Commodore Gas and Electric, Inc., Commonwealth Edison Co., Econnergy Energy, Inc., and Reliant Energy Services, Inc.; and 5 umbrella non-firm point-to-point transmission service agreements with Commodore Gas and Electric, Inc., Commonwealth Edison Co., Econnergy Energy, Inc., Reliant Energy Services, Inc., and TransCanada Power Mkt., Ltd.

Copies of this filing were served upon the parties to the service agreements.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3825–000]

Take notice that on July 29, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Enron Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission

Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Central Hudson Gas and Electric Corporation

[Docket No. ER99–3826–000]

Take notice that on July 29, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and NRG Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Central Hudson Gas and Electric Corporation

[Docket No. ER99–3827–000]

Take notice that on July 29, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Engage Energy US, L.P. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Great Bay Power Corporation

[Docket No. ER99–3828–000]

Take notice that on July 29, 1999, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Energy Atlantic, LLC and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective July 23, 1999.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER99–3829–000]

Take notice that on July 29, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's Bid Process Supplier to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of July 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Niagara Mohawk Power Corporation

[Docket No. ER99–3830–000]

Take notice that on July 29, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of July 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER99–3831–000]

Take notice that on July 29, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of July 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20495 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene and Protests

August 4, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2309–006.

c. *Date Filed:* June 10, 1999.

d. *Applicants:* Public Service Electric and Gas Company, Public Service Enterprise Group Incorporated, and PSEG Fossil LLC.

e. *Name of Project:* Yards Creek.

f. *Location:* The project is located in Warren County, New Jersey. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Richard P. Connified., General Solicitor, Public Service Electric and Gas Company, 80 Park Plaza, Newark, New Jersey 07012.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715 or by e-mail at thomas.papsidero@ferc.fed.us.

j. *Deadline for filing comments and or motions:* September 2, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1 888 First Street, N.E., Washington, DC 20426.

Please include the Project Number (2309–006) on any comments or motions filed.

k. *Description of Transfer:* Public Service Electric and Gas Company (PSE&G), a co-licensee under the license for the Yards Creek Project, Public Service Enterprise Group Incorporated (PSEG), the parent corporation of PSE&G and PSEG Fossil LLC, and PSEG Fossil LLC request approval of the partial transfer of the license from PSE&G to PSEG Fossil LLC. The applicants state that this partial transfer of license will not affect the status of the other co-licensee, Jersey Central Power & Light Company.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular applications.

Filing and Service of Responsive documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20588 Filed 8–9–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6416–9]

Agency Information Collection Activities; Measuring Success of EPA Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Measuring Success of EPA Compliance Assistance, EPA ICR number 1921.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 12, 1999.

ADDRESSES: Tracy Back (2224A), U.S. EPA, 401 M St., S.W., Washington D.C. 20460. Interested persons may obtain a copy of the ICR without charge by calling Tracy Back at (202) 564–7076.

FOR FURTHER INFORMATION CONTACT: Tracy Back; (202) 564–7076. Facsimile number: (202) 564–0009.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are businesses and other members of the regulated community, technical assistance providers that receive or access EPA compliance assistance tools, regulating agencies and state/local committees that are recipients of required compliance reports. Technical assistance providers are comprised of such groups as: state pollution prevention programs, state small business assistance programs, small business development centers, manufacturing extension partnership programs, and trade associations. The request for information from these affected entities will be voluntary.

Title: Measuring Success of EPA Compliance Assistance.

Abstract: This will be a voluntary collection of information to gather

customer satisfaction and behavioral change feedback on EPA compliance assistance, as well as data on the resulting impact on compliance.

This effort complies with the mandate of the "Government Performance and Results Act of 1997" (GPRA), the goal of which is to "improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction." EPA provides compliance assistance to help the regulated community understand and comply with federal environmental requirements. Through the development of compliance assistance tools and initiatives, EPA strives to build the capacity for more effective compliance within the regulated community. To accomplish this goal, EPA must target resources to the development of compliance assistance tools and initiatives that meet the needs of the regulated community and are effective in helping the regulated community achieve compliance.

In order to comply with GPRA, the Office of Compliance needs to collect certain information that is currently not collected and which does not exist in our current databases. In accordance with the GPRA, which asks that Federal Agencies determine the outcome of their activities, EPA would like to determine if the compliance assistance it provides is achieving the goal of helping members of the regulated community understand and comply with federal regulatory requirements, as well as improving technical assistance providers' understanding of the industries they serve. In order to target EPA resources to implement the most effective compliance assistance activities, it is necessary to request voluntary feedback from members of the regulated community, compliance assistance providers, and state co-regulators. There are four components to this voluntary collection of information.

First, EPA proposes to include a brief customer satisfaction survey with compliance assistance material developed by the Office of Enforcement and Compliance Assurance to enable recipients of the material to readily provide the Agency with feedback on the material's usefulness. Moreover, survey respondents will be asked what actions they took or intend to take to improve their compliance status and environmental performance, in whole or in part, as a result of the compliance assistance provided by EPA. The survey will likely take the form of a post-card which can be readily returned to the Agency. Compliance assistance material received through the Internet will also include this survey tool that can be completed electronically and E-mailed to the appropriate Agency contact. Secondly, EPA proposes to seek feedback on compliance assistance seminars and workshops delivered to the regulated community. A seminar evaluation form will be developed to voluntarily obtain this feedback from seminar participants. The feedback will focus on the compliance assistance seminar's usefulness and whether it will impact actions which the seminar participants intend to take to improve their compliance. Thirdly, EPA proposes to seek information from state/local regulating agencies and committees regarding the impact of EPA's compliance assistance activities on the state of compliance. The regulating agencies and state/local committees will be asked whether EPA's compliance assistance initiatives resulted in improved compliance. The fourth component involves questions which will be asked of technical assistance providers and state/local agencies to obtain feedback on how well EPA is performing its role as a wholesaler of compliance assistance.

The survey instruments will provide options for responses to facilitate quick completion of the survey. The survey responses will be taken into account in revising compliance assistance materials, seminars, and in developing new tools or initiatives which better address customer needs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA is soliciting comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: It is estimated that approximately 4,780 members of the regulated community and 100 regulating agencies and/or committees may voluntarily complete and return EPA's customer satisfaction survey on an annual basis. EPA estimates that participating members of the regulated community may need to spend three minutes to complete either the complete compliance assistance or seminar/workshop customer satisfaction survey. Therefore, a total of 239 person hours within the regulated community may be expended to provide EPA with data to evaluate the effectiveness of its compliance assistance activities. This burden hour estimate translates to a cost of $1.05 per facility who voluntarily completes the survey and a total cost to industry of $5,019. The facility costs were calculated based on $21.00 per hour, plus 110 percent overhead.

EPA estimates that participating regulating agencies and or committees may need to spend 45 minutes to complete the survey (30 minutes of staff time and 15 minutes of a supervisor's time). Therefore, a total of 4500 person hours within the regulating agencies and/or committees may be expended to provide EPA with data to evaluate the effectiveness of its compliance assistance activities. This burden hour estimate translates to a cost of $16.53 per regulating agency and/or committees that voluntarily completes the survey and a total cost of $1653. for the regulating agencies. The costs to the regulating agencies were calculated based on labor rates of $17.48 per hour, plus $30.34 supervisory time from the United States Department of Commerce, Bureau of Labor Statistics, March 1998, Table 4: Employment Costs of State and Local Government. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 27, 1999.

Elaine Stanley,

Director, Office of Compliance.

[FR Doc. 99–20549 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6417–6]

Agency Information Collection Activities; Notification of Chemical Exports; Submission of ICR No. 0795.10 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that the Information Collection Request (ICR) entitled: "TSCA Section 12(b) Notification of Chemical Exports," (EPA ICR No. 0795.10; OMB Control No. 2070–0030) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which was scheduled to expire on April 30, 1999. However, OMB granted an emergency extension for this ICR until September 30, 1999. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 14, 1999 (64 FR 2486). EPA received a number of comments on this ICR during the comment period, which are addressed in a memorandum accompanying the ICR.

DATES: Additional comments may be submitted on or before September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 0795.10.

ADDRESSES: Send comments, referencing EPA ICR No. 0795.10 and OMB Control No. 2070–0030, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, SW, Washington, DC 20460; and to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 0795.10; OMB Control No. 2070–0030.

Current Expiration Date: Current OMB approval expires on September 30, 1999.

Title: TSCA Section 12(b) Notification of Chemical Exports.

Abstract: Section 12(b)(2) of the Toxic Substances Control Act (TSCA) requires that any person who exports or intends to export to a foreign country a chemical substance or mixture that is regulated under TSCA sections 4, 5, 6 and/or 7 submit to EPA notification of such export or intent to export. Upon receipt of notification, EPA will advise the government of the importing country of the U.S. regulatory action with respect to that substance. EPA uses the information obtained from the submitter via this collection to advise the government of the importing country.

Responses to the collection of information are mandatory (see 40 CFR part 707). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 0.945 hours per response for an estimated 350 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that export or engage in wholesale sales of chemicals.

Estimated No. of Respondents: 350.

Estimated Total Annual Burden on Respondents: 10,400 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is an increase (from 3,800 hours to 10,400 hours) in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB. In response to comments and based on interviews with several firms, the Agency has increased the estimated burden hours allocated to compiling lists of products containing TSCA section 12(b) regulated chemicals, and has also added burden hours for checking shipments that do not ultimately result in TSCA 12(b) notices, an aspect of burden that had not been included in the previous collection. Finally, this increase also reflects EPA's experience over the last three years with the number of notices received and the number of companies submitting notices associated with this information collection.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: August 2, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–20553 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6417–1]

Notice of Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Carroll & Dubies Superfund Site, Town of Deer Park, Orange County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative cost recovery settlement concerning the Carroll & Dubies Superfund Site in the Town of Deer Park, Orange County, New York with the following settling parties: Kolmar Laboratories, Inc. and Wickhen Products, Inc. The settlement requires the settling parties to pay $650,000 to the Hazardous Substances Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a) for all costs incurred by the United States through April 8, 1998. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at Town Hall, Drawer A, Huguenot, New York 12746 and at U.S. Environmental Protection Agency, Region II, 290 Broadway, 18th floor, New York, NY 10007.

DATES: Comments must be submitted on or before September 9, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at U.S. Environmental Protection Agency, Region II, 290 Broadway, 18th floor, New York, NY 10007. A copy of the proposed settlement may be obtained from Sharon Kivowitz, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, 17th floor, New York, NY 10007. Comments should reference the Carroll & Dubies Superfund Site, Town of Deer Park, Orange County, New York and EPA Docket No. CERCLA–02–99–2003 and should be addressed to Sharon Kivowitz, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, 17th floor, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Sharon Kivowitz, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, 17th floor, New York, NY 10007, 212–637–3183.

Dated: July 30, 1999.

Janet Feldstein,

Acting Director, Emergency and Remedial Response Division.

[FR Doc. 99–20552 Filed 8–9–99; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Designation of Eight (8) Counties in North Dakota as Part of the Midwest High Intensity Drug Trafficking Area

AGENCY: Office of National Drug Control Policy, Executive Office of the President.

ACTION: Notice.

SUMMARY: This notice lists the counties of Burleigh, Cass, Grand Forks, Morton, Ramsey, Richland, Walsh, and Ward in North Dakota designated by the Director of The Office of National Drug Control Policy, as additions to the Midwest High Intensity Drug Trafficking Area (HIDTA). The Midwest HIDTA currently consists of 40 counties and municipalities in Kansas, Iowa, Missouri, Nebraska, and South Dakota. HIDTAs are domestic regions identified as having the most critical drug trafficking problems that adversely affect the United States. These new counties are designated pursuant to 21 U.S.C. 1706(b), to promote more effective coordination of drug control efforts. This action will support local, North Dakota, and Federal law enforcement officers in assessing regional drug threats, designing strategies to combat the threats, developing initiatives to implement the strategies, and evaluation of the effectiveness of these coordinated efforts.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding this notice should be directed to Mr. Joseph C. Peters, National HIDTA Director, Office of National Drug Control Policy (ONDCP), Executive Office of the President, Washington, DC 20503; 202–395–6755.

SUPPLEMENTARY INFORMATION: In 1990, the Director of ONDCP designated the first five HIDTAs. These original HIDTAs, areas through which most illegal drugs enter the United States, are the Southwest Border, Houston, Los Angeles, New York/New Jersey, and South Florida. In 1994, the Director designated the Washington/Baltimore HIDTA to address the extensive drug distribution networks serving hardcore drug users and the Puerto Rico/U.S. Virgin Islands HIDTA based upon the significant amount of drugs entering the United States through this region. In 1995, HIDTAs were designated in Atlanta, Chicago, and Philadelphia/Camden to target drug abuse and drug trafficking in those areas. In 1997, the Gulf Coast HIDTA (includes parts of Alabama, Louisiana, and Mississippi), the Lake County HIDTA, the Midwest HIDTA (includes parts of Iowa, Kansas, Missouri, Nebraska, and South Dakota, with the focus on methamphetamine), the Northwest HIDTA (includes seven counties of Washington State), the Rocky Mountain HIDTA (includes parts of Colorado, Utah, and Wyoming), and the San Francisco HIDTA were designated. In 1998, new HIDTAs were designated in Appalachia (includes parts of Kentucky, Tennessee, and West Virginia), Central Florida, Milwaukee, North Texas, and Southeast Michigan.

The HIDTA Program supports over 250 collocated joint task forces in twenty regions of the country, including the entire Southwest Border. The HIDTA Program strengthens local, state, and federal drug trafficking and money laundering task forces, bolsters drug enforcement information networks and, improves integration of law enforcement, drug treatment, and drug abuse prevention programs, where appropriate.

Signed at Washington, DC, this 2nd of August 1999.

Barry R. McCaffrey,

Director.

[FR Doc. 99–20561 Filed 8–9–99; 8:45 am]

BILLING CODE 3115–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2349]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 4, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by August 25, 1999. See Section 1.4(b)(1) of the

Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Definition of the Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules (CS Docket No. 95–178).

Number of Petitions Filed: 2.

Subject: Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (WT Docket No. 96–18). Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PR Docket No. 93–253).

Number of Petitions Filed: 3.

Subject: 1998 Biennial Regulatory Review (CS Docket No. 98–61). "Annual Report of Cable Television Systems," Form 325, filed pursuant to Section 76–403 of the Commission's Rules.

Number of Petitions Filed: 1.

Subject: Amendment of Parts 2 and 15 of the Commission's Rules to Further Insure that Scanning Receivers Do Not Receive Cellular Radio Signals (ET Docket No. 98–76).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20537 Filed 8–9–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Membership of the Federal Labor Relations Authority's Senior Executive Service Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Michele Pilipovich, Human Resources Director, Federal Labor Relations Authority (FLRA), 607 Fourteenth Street, NW; Washington, D.C. 20424–0001; (202) 482–6690, extension 423.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires that each agency establish, in accordance with the regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the Federal Labor Relations Authority's (FLRA) Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

Edward Davidson, Office of the General Counsel, FLRA

Gloria Joseph, National Labor Relations Board

Darrel Netherton, Merit Systems Protection Board

Diedre Flippen, Equal Employment Opportunity Commission

Dated: August 5, 1999

Michele Pilipovich,

Human Resources Director.

[FR Doc. 99–20554 Filed 8–9–99; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 24, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Kenneth H. Rayborn, Cleveland, Tennessee; to retain voting shares of First Citizens Bancorp, Inc., Cleveland, Tennessee, and thereby indirectly retain voting shares of Bank/Citizens Bank, Cleveland, Tennessee; The Home Bank, fsb, Ducktown, Tennessee; The Home Bank of Tennessee, Maryville, Tennessee; and Infinity Mortgage Group, Incorporated, Knoxville, Tennessee.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Rolla Dean Phillips, Quincy, Illinois; to acquire additional voting shares of Mercantile Bancorp, Inc., Quincy, Illinois, and thereby indirectly acquire additional voting shares of State Bank of Augusta, Augusta, Illinois; Security State Bank of Hamilton, Hamilton, Illinois; Mercantile Trust & Savings Bank, Quincy, Illinois; Marine Trust Company of Carthage, Carthage, Illinois; Perry State Bank, Perry, Missouri; Brown County State Bank, Mount Sterling, Illinois; and Golden State Bank, Golden, Illinois.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Donaghey Investment Company, Ltd., Trenton, Texas; to acquire voting shares of Trenton Bankshares, Inc., Tenton, Texas, and thereby indirectly acquire First National Bank of Trenton, Trenton, Texas.

Board of Governors of the Federal Reserve System, August 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20493 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 25, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Clyde Vinson Alexander, Jr., Jackson, Tennessee; to acquire additional voting shares of Hometown Bancorp, Inc., Milan, Tennessee, and thereby indirectly acquire additional voting shares of The Bank of Milan, Milan, Tennessee.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen,

Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Ethel I. Hanson, Mahnomen, Minnesota; to acquire voting shares of Mahnomen Bancshares, Inc., Mahnomen, Minnesota, and thereby indirectly acquire voting shares of First National Bank in Mahnomen, Mahnomen, Minnesota.

2. Kofam Investments, LLP, Sioux Falls, South Dakota, with Howard Kosel as General Partner; to acquire additional voting shares of Empire Bancshares, Incorporated, Sioux Falls, South Dakota, and thereby indirectly acquire additional voting shares of Founders Trust National Bank, Sioux Falls, South Dakota.

Board of Governors of the Federal Reserve System, August 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20600 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Southern Financial Bancorp, Inc., Warrenton, Virginia; to acquire 100 percent of the voting shares of The Horizon Bank of Virginia, Merrifield, Virginia.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Premier Bancshares, Inc., Atlanta, Georgia; to acquire 100 percent of the voting shares of Farmers & Merchants Bank, Summerville, Georgia.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of River Bancorp, Inc., Ramsey, Minnesota, and thereby indirectly acquire Northland Security Bank, Ramsey, Minnesota.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Central of Kansas, Inc., Junction City, Kansas; to acquire 100 percent of the voting shares of FSB, Inc., Superior, Nebraska; and thereby indirectly acquire Farmers State Bank and Trust Company of Superior, Superior, Nebraska, and Farmers State Bank, Mankato, Kansas.

Board of Governors of the Federal Reserve System, August 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20494 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. FLAG Financial Corporation, LaGrange, Georgia; to merge with First Hogansville Bankshares, Inc., Hogansville, Georgia, and thereby indirectly acquire The Citizens Bank, Hogansville, Georgia.

Board of Governors of the Federal Reserve System, August 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20599 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated.

The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First M&F Corporation, Kosciusko, Mississippi; to acquire Community Federal Bancorp, Inc., Tupelo, Mississippi, and its subsidiary, Community Federal Savings Bank, Tupelo, Mississippi, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of Regulation Y. Comments regarding this application must be received no later than September 3, 1999.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire Community Insurance, Fargo, North Dakota, and thereby indirectly acquire B & I Insurance, Inc., Gordon, Nebraska, and thereby engage in general insurance activities in a community with a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, August 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20492 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* through a joint venture, MSC Mortgage,LLC, Sarasota, Florida, in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20601 Filed 8–9–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR H–76]

Utilization and Disposal

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin provides all Federal agencies with information on the disposal of excess biomedical equipment and IT equipment with potential Y2K defects.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Personal Property Management Policy Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone (202) 501–3846; e-mail martha.caswell@gsa.gov.

GSA Bulletin FPMR H–76—Utilization and Disposal

To: Heads of Federal agencies

SUBJECT: Disposal of Year 2000 (Y2K) Noncompliant Biomedical Equipment and Information Technology (IT) Equipment

1. *What is the purpose of this bulletin?* Federal Property Management Regulations (FPMR) part 101–42 provides policy direction with respect to hazardous materials, which includes excess biomedical equipment. It also provides for the reporting of IT equipment as described in FPMR 101–43.304. The purpose of this bulletin is to provide further information for agencies on the disposal of excess biomedical and IT equipment with potential Y2K defects.

2. *When does this bulletin expire?* This bulletin contains information of a continuing nature and will remain in effect until canceled or revised.

3. *What is the background?* The Y2K technology problem relates to the inability of some automated equipment to correctly recognize dates after 1999. This inability may affect the normal operation of information technology equipment and biomedical equipment. In biomedical equipment, the Y2K problem may present a potential risk to public health and safety if not corrected. In response to this potential risk, GSA is providing guidance to executive agencies on the disposal of such equipment when it becomes excess.

4. *What does this bulletin cover?* This bulletin applies to (1) biomedical equipment listed on the Food and Drug Administration (FDA) critical list, and (2) IT equipment. The FDA critical list includes biomedical equipment identified by the FDA as having the greatest potential for presenting a risk to patients if a date problem is not corrected. Federal agencies should consult the FDA's Federal Y2K Biomedical Clearinghouse (Y2K Clearinghouse) located at http://www.fda.gov/cdrh/yr2000/year2000.html for information on equipment on the FDA list.

5. *Disposal of biomedical equipment.*

a. *What is extremely hazardous biomedical equipment?* For disposal purposes, Y2K noncompliant biomedical equipment may be identified as "extremely hazardous" in accordance FPMR 101–42.001. Extremely hazardous in this instance is Y2K noncompliant biomedical equipment that has been determined by the holding agency to endanger public health or safety, or the environment, if it is not rendered harmless before being used by other agencies or released outside the government.

b. *Who determines the status of biomedical equipment?* Biomedical

engineers/technicians within the holding agency must determine if the biomedical equipment is:

(1) Y2K compliant;

(2) Y2K noncompliant; or

(3) Y2K status unknown.

c. *How do we dispose of biomedical equipment if it is Y2K compliant?* If Y2K compliant, excess biomedical equipment must be identified as "Y2K compliant" on the equipment itself and on the reporting document (SF 120) and disposed of through normal disposal procedures described in FPMR 101–43.3, 101–44.2 and 101–45.3. Executive agencies obtaining excess Y2K compliant biomedical equipment must reflect the "Y2K compliant" status on all inventory control documentation pertaining to such equipment.

d. *How do we dispose of biomedical equipment that is not Y2K compliant?* If Y2K status of biomedical equipment is noncompliant, the holding agency must determine whether the equipment can be economically repaired (refer to FDA's critical item list at http://www.fda.gov/cdrh/yr2000/year2000.html) or whether it must be destroyed in accordance with FPMR 101–45.9. Destruction means rendering the equipment completely inoperable for its intended use. For items that can be economically repaired, the recipient should bear the cost for remediation and testing. In no case should excess or surplus Y2K noncompliant biomedical equipment be transferred for use without the assurance that Y2K remediation and testing will be performed. Otherwise, the equipment will be destroyed.

e. *What do we do with biomedical equipment when the Y2K status cannot be determined?* Excess biomedical equipment that is Y2K status unknown may not be transferred. If the Y2K status cannot be economically determined by the holding agency, it should be destroyed in accordance with FPMR 101–45.9 and 101–42.403(e).

6. *IT equipment.*

a. *Do we also report the status of IT equipment?* Yes, all IT equipment must also be identified by the holding agency as Y2K compliant, Y2K noncompliant, or Y2K status unknown. The Y2K status must be visible on the equipment and all reporting documents.

b. *What are the disposal procedures for IT equipment?* IT equipment will be disposed of through normal disposal procedures as described in FPMR 101–43.3, 101–44.2 and 101–45.3.

7. *Who should we contact for further information?* Martha Caswell, Personal Property Management Policy Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone (202) 501–3846; e-mail martha.caswell@gsa.gov.

Dated: August 4, 1999.

Stanley C. Langfeld,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–20562 Filed 8–9–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96F–0493]

Gerard T. O'Brien; Denial, Response to Objections

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; order denying objection.

SUMMARY: The Food and Drug Administration (FDA) is denying an objection to the agency's denial of a petition (FAP 7A4530) proposing that the food additive regulations be amended to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry. The objector did not request a hearing, and thus waives the right to such a hearing.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3078.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 2, 1997 (62 FR 101), FDA announced that a food additive petition (FAP 7A4530) had been filed by Gerard T. O'Brien, 2162 Skyline Dr., Gainesville, GA 30501. The petitioner requested that FDA amend the food additive regulations to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry. In the **Federal Register** of September 26, 1997 (62 FR 50617), FDA published an order denying this petition, in accordance with § 171.100(a) (21 CFR 171.100(a)), because FDA concluded that the petition did not contain sufficient data and information to allow the agency to determine either that the food additive is safe for its proposed use or that the additive will have its intended technical effect.

In its denial, the agency explained that the petitioner had failed to provide data and information to demonstrate that the hydrogen peroxide and sodium bicarbonate mixture would significantly reduce pathogenic bacterial contamination on the surface of fresh poultry, e.g., *Salmonella*, *Escherichia coli*, and psychrophiles, and that the petitioner had failed to provide data and information on whether oxidative effects of hydrogen peroxide would occur on poultry as a result of the proposed use. FDA noted that the agency had requested certain data from the petitioner on several occasions during its review of the petition, including laboratory data to demonstrate that there is reduced bacterial contamination on poultry processed with hydrogen peroxide and sodium bicarbonate, TBA (2-thiobarbituric acid) values (an indicator of oxidation) in skin/fat and meat from processed poultry, and a basis to estimate the amount of hydrogen peroxide that reacts with poultry during the proposed treatment. Because the petitioner failed to provide these data and information, FDA did not have a sufficient basis to determine whether the food additive would achieve its intended technical effect or was safe for the intended use. Accordingly, FDA denied the petition.

Under § 171.110 of the food additive regulations, objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Section 12.22(a) sets forth the conditions that each objection must meet for filing. Section 12.22(a) provides that each objection must: (1) Be submitted on or before the 30th day after the date of publication of the final rule; (2) be separately numbered; (3) specify with particularity the provision of the order objected to; (4) state whether a hearing is requested; and (5) for each objection for which a hearing is requested, include a detailed description of the factual information to be presented in support of the objection. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

In response to the agency's denial of FAP 7A4530, the petitioner, on October 22, 1997, submitted material within the 30-day objection period challenging the denial. The petitioner submitted, as its objection, references to three complaints filed in various legal proceedings in Federal court. Such complaints were filed before the date of the agency's denial of the petition, and therefore, were not written in response to the agency's denial, but were submitted as "objections." A copy of one of the referenced complaints, filed on August 25, 1997, in the U.S. District Court for the Northern District of Georgia, was included in the submission. In addition,

the petitioner submitted a copy of the agency's September 26, 1997, order that had been annotated (apparently by the petitioner) with words and statements that asserted that FDA's findings were wrong. The petitioner provided no explanation for its assertions.

FDA has reviewed the material submitted by the petitioner. The submitted material is not in the form that is required for the filing of objections under § 12.22(a). Although the petitioner submitted material that he characterized as "objections," he failed to identify the specific provisions of the agency's order to which he objected. Further, the petitioner did not request a hearing for any "objection" and therefore, waived the right to a hearing under § 12.22(a)(4). Even if the agency assumed that the petitioner, in his submission, made an implicit request for a hearing, the petitioner did not provide a detailed description and analysis of the factual information to be presented in support of each of his objections, as required under § 12.22(a)(5). Therefore, the material submitted did not meet the conditions for filing objections under § 12.22(a).

Moreover, even if the petitioner's submission is assumed to be an objection that meets the requirements of filing and contains an implicit request for a hearing, the petitioner has not met the requirements for the grant of a request for a hearing under § 12.24(b). Specifically, the petitioner has not identified any genuine and substantial issue of fact for resolution at a hearing (§ 12.24(b)(1)). The petitioner has not provided a factual basis for why the data and information that FDA requested, but that were not provided in the petition, are not necessary in order for the agency to determine whether the proposed use of the food additive is safe, or to determine that the proposed use of the additive will achieve its intended technical effect. The petitioner merely asserted that the agency's determination was wrong, but failed to provide a basis for this assertion. Furthermore, because the petitioner did not provide a detailed description and analysis of the specific factual information intended to be presented in support of any objection, the agency will not use its discretion under § 12.30(b) to order a hearing.

In summary, the petitioner alleges no misapplication of the law by FDA in the agency's order of denial. Moreover, the petitioner has provided the agency with no genuine or substantial issue of fact that could form the basis for FDA to reconsider its decision denying FAP 7A4530. Furthermore, the petitioner's submission provides no basis for granting a hearing because no such request was made, and even if such a request is implied, the petitioner did not include specifically identified reliable evidence that could lead to resolution of any factual issue in dispute. A hearing will not be granted on the basis of mere allegations or denials, or general descriptions of positions and contentions (§ 12.24(b)(2)). Therefore, in accordance with §§ 12.28 and 12.30(b), FDA is denying in its entirety the petitioner's objection to the agency's order denying FAP 7A4530.

Dated: August 3, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20487 Filed 8–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Refugee Resettlement Program: Final Notice of Availability of Formula Allocation Funding for FY 1999 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Final notice of availability of formula allocation funding for FY 1999 targeted assistance grants to States for services to refugees [1] in local areas of high need.

SUMMARY: ORR announces the availability of funds and award procedures for FY 1999 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources. The final notice reflects adjustments in final allocations to States as a result of additional arrival data.

A notice of proposed allocations of targeted assistance funds was published for public comment in the **Federal Register** on March 10, 1999 (64 FR 11927).

DATES: The closing date for submission of applications is September 9, 1999. See Part IV of this announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: Gayle Smith, Acting Director, Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, 370 L'Enfant Promenade, S.W., 6th Floor, Washington, D.C. 20447 Telephone (202) 205–3590, or e-mail: *gsmith@acf.dhhs.gov.*

For Further Information on Application Procedures: States should contact their State Analyst in ORR.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I. General Information
- Background—program purpose and scope, legislative authority.
- Discussion of Comments Received, Funding Availability, Use of Funds, Assurances/Information, Local Program Administration.
- Project and Applicant Eligibility—Qualification and Allocation, Funding Priorities, Eligible Applicants, project and budget periods, multiple applications.

Part II: The Project Description

Part III: The Review Process—intergovernmental review, initial ACF screening, evaluation criteria and application review.

Part IV: The Application—application materials, development and submission.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD), which expires 10/31/2000, and OMB Approval No. 0970–0036, ORR–6, Quarterly Performance Report (QPR), which expires 7/31/2002. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

---

[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for targeted assistance includes (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Part I. General Information/ Background

Purpose and Scope

This notice announces the availability of funds for grants to States for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

Legislative Authority

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(c)); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513).

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA) which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

Discussion of Comments Received

Ten letters of comment were received in response to the notice of proposed availability of FY 1999 funds for targeted assistance. The comments are summarized below and are followed in each case by the Department's response.

Comment: Eight commenters requested that ORR consider the impact that loss of targeted assistance funding will have on large counties with large number of refugee arrivals. These same commenters indicated that several arbitrary decisions by ORR, such as use of concentration rate as an index of impact, the weighting of concentration rate in the calculations, and the failure of ORR to use some assessments of impact such as welfare dependency and median household income in the formula make it possible for large counties to be disqualified. One commenter requested a modification of the proposed targeted assistance allocation methodology based on an increase in arrivals during FY 1998 and heavy utilization of public assistance by refugees in a county.

Resonse: ORR understands that discontinuance of targeted assistance program (TAP) funds in the counties that no longer qualify will have an impact on the services in those counties. Counties losing targeted assistance formula funds may wish to apply for ORR targeted assistance discretionary funds through their States.

Regarding the suggestion that ORR use welfare dependency or median household income as qualifying criteria, ORR must take into account all eligibility factors which are outlined in the statute for which data are available.

In section 412(c)(2) of the Immigration and Nationality Act, the three factors listed for targeted assistance are high population, high refugee concentration, and high use of public assistance. While we do not have welfare dependency data, data are available on refugee population and refugee concentration. Therefore, ORR is required to use both factors in determining county qualification. As stated in the notice of proposed allocations, ORR assigns a double weight to population because we believe that large numbers of refugee/entrant arrivals to a county create a significant impact, regardless of the ratio of refugees to the county general population.

Regarding the suggestion that ORR use median household income as a qualifying criterion for targeted assistance funds, this criterion is not one of the factors outlined in the statute governing the targeted assistance allocation formula.

Comment: Two commenters questioned the number of Havana parolees credited to each county in the proposed notice.

Response: At the time of the proposed notice, ORR had received no data on FY 1998 Havana parolees other than the gross number reported (13,442) for the fiscal year by the Immigration and Naturalization Service (INS). Rather than delay publication of the Proposed Notice, ORR credited each county in the U.S. with a portion of the FY 1998 arrivals according to its share of the five-year population of entrant arrivals. During the comment period, ORR obtained additional records from the Florida Department of Health on parolees arriving in Florida counties. The Final Notice reflects these data. As was done in the FY 1998 Final Notice, each Florida country is credited with the number of arrivals identified by the Florida Department of Health; each non-Florida county is credited with a proportional share of the remaining Havana Parolees according to its share of the five-year entrant population.

Funding Availability

The Office of Refugee Resettlement (ORR) has available $49,477,000 in FY 1999 funds for the targeted assistance program (TAP) as part of the FY 1999 appropriation for the Department of Health and Human Services (Pub. L. 105–277).

The Director of the Office of Refugee Resettlement (ORR) will use the $49,477,000 in targeted assistance funds as follows:

- $44,529,300 will be allocated to States under the five-year population formula, as set forth in this notice.
- $4,947,700 (10% of the total) will be used to award discretionary grants to States under separate grant announcements.

Use of Funds

Targeted assistance funding must be used to assist refugee families to achieve economic independence.

Services funded through the targeted assistance program are required to focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial years of resettlement. States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in

certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In addition to the statutory requirement that TAP funds be used "primarily for the purpose of facilitating refugee employment" (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with 45 CFR 400.313, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with 45 CFR 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

A portion of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State. Allowable services include those listed under 45 CFR 400.316.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must "insure that women have the same opportunities as men to participate in training and instruction." In addition, in accordance with 45 CFR 400.317, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit. States and counties are expected to make every effort to assure availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the targeted assistance program. Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for day care services for children. For an employed refugee, TAP-funded day care should be limited to one year after the refugees becomes employed. States and counties, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.317, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

When planning targeted assistance services, States must take into account the reception and placement (R&P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative. See 45 CFR 400.156(b).

ORR strongly encourages States and counties when contracting for targeted assistance services, including employment services, to give consideration to the special strengths of mutual assistance associations (MAAs), whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served.

Assurances/Information

The State's application for FY 1999 funding shall provide:

1. Assurance that targeted assistance funds will be used in accordance with the requirements in 45 CFR Part 400.

2. Assurance that the targeted assistance funds will be used primarily for the provision of services which are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. Of the FY 1999 targeted assistance formula allocation used for services, States must indicate the percentage that will be used for employment services.

3. Assurance that targeted assistance funds will not be used to offset funding otherwise available to counties or local jurisdictions from the State agency in its administration of other programs, *e.g.*, social services, cash and medical assistance, etc.

4. Assurance that local administrative budgets will not exceed 15% of the local allocation. Targeted assistance grants are cost-based awards. Neither a State nor a county is entitled to a certain amount for administrative costs. Rather, administrative cost requests should be based on projections of actual needs. States and counties are strongly encouraged to limit administrative costs to the extent possible to maximize available funding for services to clients.

5. Assurance that the State will make available to the county or designated local entity not less than 95% of the amount of its formula allocation for purposes of implementing the activities proposed in the plan, except in the case of a State that administers the program locally as described below.

6. Assurance that the State and its contractors or sub-recipients will follow appropriate State procurement and contracting requirements in the acquisition, administration and management of targeted assistance service contracts and sub-grants.

7. Identification of the contracting cycle for targeted assistance service contracts in each county. States with more than one qualified county are encouraged to ensure that all counties participating in TAP in the State use the same contracting cycle dates.

8. A description of the State's plan for conducting fiscal and program monitoring of the targeted assistance program, including frequency of on-site monitoring.

9. Identification of the local administering agency.

States Administering the Program Locally

States that propose to administer the program locally or propose to provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component, including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, and cost per placement. In addition, the program component summary must describe any ancillary services or sub-components such as day care, transportation, or language training.

Qualification and Allocation

Qualifying New Counties

In order to qualify for application for FY 1999 targeted assistance funds, a county (or group of counties with the same Standard Metropolitan Statistical Area, or SMSA) or independent city is required to rank above a selected cut-off point of jurisdictions for which data were reviewed, based on two criteria: (1) The number of refugee/entrant arrivals placed in the county during the most recent 5-year period (FY 1994–1998); and (2) the 5-year refugee/entrant population as a percentage of the county's overall population. County arrival numbers have been adjusted based on updated refugee and entrant arrival data.

Welfare dependency will no longer be used as a qualifying criterion since welfare dependency data for refugee AFDC and now TANF recipients have not been available at the national level since FY 1989.

Each county was ranked on the basis of its 5-year arrival population and its concentration of refugees, with a relative weighting of 2 to 1 respectively, because we believe that large numbers of refugee/entrant arrivals into a county create a significant impact, regardless of the ratio of refugees to the general population.

Each county was then ranked in terms of the sum of a county's rank on refugee/entrant arrivals and its rank on concentration. In order to target a sufficient level of funding to the most impacted counties, a county had to rank within the top 50 counties in order to qualify. It is ORR's intent that the 50 counties listed as qualified for TAP funding in the FY 1999 final TAP notice will remain qualified for TAP funding through FY 2001.

ORR has screened data on all counties that have received awards for targeted assistance since FY 1983 and on all other counties that could potentially qualify for TAP funds based on the criteria in this notice. Analysis of these data indicates that: (1) 40 counties which have previously received targeted assistance continue to qualify; (2) 7 counties which have previously received targeted assistance no longer qualify; and (3) 10 new counties qualify.

Table 1 provides a list of the counties that remain qualified and the new counties that qualify, the number of refugee/entrant arrivals in those counties within the past 5 years, the percent that the 5-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula described above.

Table 2 lists the counties that have previously received targeted assistance funding which no longer qualify, the number of refugee/entrant arrivals in those counties within the past 5 years, the percent that the 5-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula.

Allocation Formula

Of the funds available for FY 1999 for targeted assistance, $44,529,300 is allocated by formula to States for qualified counties based on the initial placements of refugees, Amerasians, entrants, and Kurdish asylees in these counties during the 5-year period from FY 1994 through FY 1998 (October 1, 1993–September 30, 1998).

With regard to Havana parolees, we are crediting 13,442 Havana parolees who arrived in FY 1998 to qualified counties in Florida based on data the State submitted to ORR during the public comment period. We have credited FY 1998 Havana parolee arrivals to the remaining qualified targeted assistance counties based on the counties' proportion of the 5-year entrant arrival population. For FY 1995 and FY 1996, Florida's Havana parolees for each qualified county are based on actual data submitted by the State of Florida, while Havana parolees credited to counties in other States were prorated based on the counties' proportion of the 5-year entrant population in the U.S. The allocations in this notice reflect these additional parolee numbers.

Allocations

Table 3 lists the qualifying counties, the number of refugee and entrant arrivals in those counties during the 5-year period from October 1, 1993–September 30, 1998, the prorated number of Havana parolees credited to each county based on the county's proportion of the 5-year entrant population in the U.S., the sum of the first 3 columns, and the amount of each county's allocation based on its 5-year total population.

Table 4 provides State totals for targeted assistance allocations.

Table 5 indicates the areas that each qualified county represents.

TABLE 1.—TOP 50 COUNTIES ELIGIBLE FOR TARGETED ASSISTANCE

County	State	5-year arrival total	Concentration (in percent)	Sum of ranks
Targeted Assistance Counties Eligible for Continuation				
Dade County	FL	67,889	3.5047	3
Sacramento County	CA	11,795	1.1328	30
New York	NY	55,411	0.7567	30
City of St. Louis	MO	7,672	1.9340	32
Multnomah	OR	12,231	0.8660	36
King/Snohomish	WA	14,507	0.7353	38
DeKalb County	GA	6,584	1.2062	41
Santa Clara County	CA	10,899	0.7278	49
Oneida County	NY	4,125	1.6445	50

TABLE 1.—TOP 50 COUNTIES ELIGIBLE FOR TARGETED ASSISTANCE—Continued

County	State	5-year arrival total	Concentration (in percent)	Sum of ranks
Fulton County	GA	5,681	0.8754	55
Orange County	CA	12,858	0.5334	58
Jefferson County	KY	5,155	0.7753	65
Suffolk County	MA	4,757	0.7165	72
Dallas/Tarrant	TX	12,652	0.4185	77
San Francisco	CA	8,108	0.5056	78
Polk County	IA	3,435	1.0500	79
Hennepin County	MN	5,323	0.5156	86
District of Columbia	DC	3,889	0.6408	86
Cook/Kane	IL	17,362	0.3202	90
Maricopa County	AZ	8,686	0.4093	91
Duval County	FL	3,851	0.5722	94
Monroe County	NY	3,863	0.5411	94
San Diego County	CA	9,332	0.3736	97
Denver County	CO	3,246	0.6942	102
Harris County	TX	9,382	0.3329	103
Bernalillo County	NM	3,226	0.6713	106
Davidson County	TN	3,249	0.6361	107
Philadelphia County	PA	5,794	0.3654	109
Ingham County	MI	2,514	0.8918	113
City of Richmond	VA	2,335	1.1499	115
Lancaster County	NE	2,335	1.0930	116
Hudson County	NJ	2,991	0.5408	125
Ramsey County	MN	2,700	0.5558	129
Fairfax County	VA	3,610	0.3764	129
Los Angeles County	CA	17,313	0.1953	129
Fresno County	CA	3,014	0.4515	136
Cass County	ND	1,669	1.6224	139
Pierce County	WA	2,658	0.4534	147
Cuyahoga County	OH	3,817	0.2703	152
Broward County	FL	3,449	0.2747	156
New Counties That Qualify				
Spokane County	WA	3,009	0.8327	99
Davis/Salt Lake	UT	4,605	0.3911	113
Clark County	NV	3,462	0.4669	118
Hillsborough County	FL	3,084	0.3696	148
Guilford County	NC	2,093	0.6024	153
Minnehaha County	SD	1,430	1.1550	154
Kent County	MI	2,372	0.4738	154
Erie County	PA	1,873	0.6797	155
Hampden County	MA	2,239	0.4907	157
Yolo County	CA	1,433	1.0156	158

TABLE 2.—COUNTIES THAT NO LONGER QUALIFY

County	State	5-year arrival total	Concentration (in percent)	Sum of ranks
Alameda County	CA	3,329	0.2602	165
Oakland County	MI	2,826	0.2608	180
Palm Beach County	FL	2,398	0.2777	190
Baltimore City	MD	2,105	0.2860	198
Broome County	NY	1,098	0.5175	222
San Joaquin County	CA	1,221	0.2540	259
Merced County	CA	690	0.3868	296

TABLE 3.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY

[FY 1999]

	County	State	Refugees[1]	Entrants	Havana parolees[2]	Total arrival FY 94–98	Total FY 1999 final allocation
1	Maricopa County	Arizona	7,394	780	512	8,686	$979,275

TABLE 3.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY—Continued

[FY 1999]

	County	State	Refugees[1]	Entrants	Havana parolees[2]	Total arrival FY 94–98	Total FY 1999 final allocation
2	Fresno County	California	3,011	2	1	3,014	339,804
3	Los Angeles County	California	16,581	434	298	17,313	1,951,899
4	Orange County	California	12,817	23	18	12,858	1,449,634
5	Sacramento County	California	11,788	4	3	11,795	1,329,790
6	San Diego County	California	8,476	517	339	9,332	1,052,107
7	San Francisco	California	8,028	48	32	8,108	914,111
8	Santa Clara County	California	10,815	51	33	10,899	1,228,773
9	Yolo County	California	1,425	5	3	1,433	161,559
10	Denver County	Colorado	3,241	3	2	3,246	365,960
11	District of Columbia	District of Columia	3,866	14	9	3,889	438,453
12	Broward County	Florida	978	1,578	893	3,449	388,847
13	Dade County	Florida	8,426	33,125	26,338	67,889	7,653,928
14	Duval County	Florida	3,788	28	35	3,851	434,169
15	Hillsborough County	Florida	1,525	767	792	3,084	347,696
16	DeKalb County	Georgia	6,562	13	9	6,584	742,292
17	Fulton County	Georgia	5,334	209	138	5,681	640,486
18	Cook/Kane	Illinois	16,699	399	264	17,362	1,957,424
19	Polk County	Iowa	3,433	1	1	3,435	387,268
20	Jefferson County[3]	Kentucky	3,605	934	616	5,155	581,184
21	Hampden County	Massachusetts	2,224	9	6	2,239	252,429
22	Suffolk County	Massachusetts	4,648	63	46	4,757	536,313
23	Ingham County	Michigan	1,785	440	289	2,514	283,433
24	Kent County	Michigan	2,304	41	27	2,372	267,424
25	Hennepin County	Minnesota	5,318	3	2	5,323	600,125
26	Ramsey County	Minnesota	2,683	10	7	2,700	304,403
27	City of St. Louis	Missouri	7,670	1	1	7,672	864,955
28	Lancaster County	Nebraska	2,272	38	25	2,335	263,252
29	Clark County[4]	Nevada	1,363	1,264	835	3,462	390,312
30	Hudson County	New Jersey	1,605	809	577	2,991	337,211
31	Bernalillo County	New Mexico	1,137	1,261	828	3,226	363,705
32	Monroe County	New York	2,723	688	452	3,863	435,522
33	New York	New York	54,272	682	457	55,411	6,247,137
34	Oneida County	New York	4,123	1	1	4,125	465,060
35	Guilford County	North Carolina	2,081	7	5	2,093	235,969
36	Cass County	North Dakota	1,664	3	2	1,669	188,166
37	Cuyahoga County	Ohio	3,805	6	6	3,817	430,336
38	Multnomah	Oregon	11,216	613	402	12,231	1,378,945
39	Erie County	Pennsylvania	1,873	0	0	1,873	211,165
40	Philadelphia County	Pennsylvania	5,708	52	34	5,794	653,226
41	Minnehaha County[5]	South Dakota	1,430	0	0	1,430	161,221
42	Davidson County	Tennessee	3,160	54	35	3,249	366,298
43	Dallas/Tarrant	Texas	11,479	707	466	12,652	1,426,410
44	Harris County	Texas	9,065	189	128	9,382	1,057,744
45	Davis/Salt Lake	Utah	4,603	1	1	4,605	519,176
46	Fairfax County	Virginia	3,595	8	7	3,610	406,998
47	City of Richmond	Virginia	2,153	110	72	2,335	263,252
48	King/Snohomish	Washington	14,423	51	33	14,507	1,635,546
49	Pierce County	Washington	2,641	10	7	2,658	299,668
50	Spokane County	Washington	3,009	0	0	3,009	339,240
Total			313,824	46,056	35,087	394,967	44,529,300

[1] Refugees includes refugees, Kurdish asylees, and Amerasian immigrants from Vietnam.
[2] For all years, Havana parolee arrivals to the qualifying Florida counties (28,058) are based on actual data, while parolees in the non-Florida counties (7,029) are prorated based on the counties' proportion of the five-year (FY 1994–1998) entrant population.
[3] The allocation for Jefferson County, Kentucky will be awarded to the Kentucky Wilson/Fish project.
[4] The allocation for Clark County, Nevada will be awarded to the Nevada Wilson/Fish project.
[5] The allocation for Minnehaha County, South Dakota will be awarded to the South Dakota Wilson/Fish project.

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE

[FY 1999]

State	Total FY 1999 allocation
Arizona	$979,275
California	8,427,677

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE—Continued

[FY 1999]

State	Total FY 1999 allocation
Colorado	365,960

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE—Continued

[FY 1999]

State	Total FY 1999 allocation
District of Columbia	438,453

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE—Continued

[FY 1999]

State	Total FY 1999 allocation
Florida	8,824,640
Georgia	1,382,778
Illinois	1,957,424
Iowa	387,268
Kentucky	581,184
Massachusetts	788,742
Michigan	550,857
Minnesota	904,528
Missouri	864,955

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE—Continued

[FY 1999]

State	Total FY 1999 allocation
Nebraska	263,252
Nevada	390,312
New Jersey	337,211
New Mexico	363,705
New York	7,147,719
North Carolina	235,969
North Dakota	188,166
Ohio	430,336
Oregon	1,378,945

TABLE 4.—TARGETED ASSISTANCE FINAL ALLOCATIONS BY STATE—Continued

[FY 1999]

State	Total FY 1999 allocation
Pennsylvania	864,391
South Dakota	161,221
Tennessee	366,298
Texas	2,484,154
Utah	519,176
Virginia	670,250
Washington	2,274,454
Total	44,529,300

TABLE 5.—TARGETED ASSISTANCE AREAS

State	Targeted assistance area	Definition
Arizona	Maricopa County.	
California	Fresno County.	
	Los Angeles County.	
	Orange County.	
	Sacramento County.	
	San Diego.	
	San Francisco	Marin, San Francisco, and San Mateo Counties.
	San Clara County.	
	Yolo County.	
Colorado	Denver.	
District of Columbia.		
Florida	Broward County.	
	Dade County.	
	Duval County.	
	Hillsborough County.	
Georgia	DeKalb County.	
	Fulton County.	
Illinois	Cook and Kane Counties.	
Iowa	Polk County.	
Kentucky	Jefferson County.	
Massachusetts	Hampden County.	
	Suffolk County:	
Michigan	Ingham County.	
	Kent County.	
Minnesota	Hennepin County.	
	Ramsey County.	
Missouri	City of St. Louis.	
Nebraska	Lancaster County.	
Nevada	Clark County.	
New Jersey	Hudson County.	
New Mexico	Bernalillo County.	
New York	Monroe County.	
	New York	Bronx, Kings, Queens, New York, and Richmond Counties.
	Oneida County.	
North Carolina	Cuilford County.	
North Dakota	Cass County.	
Ohio	Cuyahoga County.	
Oregon	Multnomah	Clackamas, Multnomah, and Washington Counties, Oregon, and Clark County, Washington.
Pennsylvania	Erie.	
	Philadelphia.	
South Dakota	Minnehaha County.	
Tennessee	Davidson County.	
Texas	Dallas/Tarrant.	
	Harris County.	
Utah	Davis/Salt Lake	Davis, Salt Lake, and Utah Counties.
Virginia	Fairfax	Fairfax County and the cities of Falls Church, Fairfax, and Alexandria.
	City of Richmond.	
Washington	King/Snohomish.	
	Pierce Count.	

TABLE 5.—TARGETED ASSISTANCE AREAS—Continued

State	Targeted assistance area	Definition
	Spokane County.	

Eligible Applicants

ORR invites eligible entities to submit grant applications for Targeted Assistance Grants for Services to Refugees in Local Areas of High Need.

Eligible grantees are those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1999 targeted assistance awards.

Under the FY 1999 targeted assistance program, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans. The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in this notice, in accordance with 45 CFR 400.319, the FY 1999 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 1999 targeted assistance funds in a manner different from the formula set forth in this notice, the FY 1999 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

This announcement is inviting applications for project periods up to 3 years. Awards will be for a one-year budget period, although project periods may be for 3 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 3 year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Part II: The Project Description

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, to carry out the proposed project, and it is important that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

General Instructions

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an intergral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participation/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions

or activities identified in the applications. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Part III: The Review Process

A. Intergovernmental Review

This program is not covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities."

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instruction in this announcement and (2) the applicant is eligible for funding.

C. Application Review and Review Criteria

Applications which pass the initial ACF screening will be evaluated and rated based on the completeness of the application as described below.

Criteria 1: Objectives and Need

States and counties are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g)). Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) a determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family. In local jurisdictions that have both targeted assistance and refugee social services programs, one family self-sufficiency plan that incorporates both targeted assistance and refugee social services may be developed for a family.

In instances where a State received targeted assistance funding for impacted counties contained in a standard metropolitan statistical area (SMSA) which includes a county or counties located in a neighboring State, the State receiving those funds must provide a description of the coordination and planning activities undertaken with the State Refugee Coordinator of the neighboring State in which the impacted county or counties are located. These planning and coordination activities should result in a proposed allocation plan for the equitable distribution of targeted assistance funds by county based on the distribution of the eligible population by county within the SMSA. The proposed allocation plan must be included in the State's application to ORR.

Criteria 2: Approach

A description of the State's guidelines for the targeted assistance plans for the required content of county targeted assistance plans or requests for proposals (RFPs), in the case of States that administer the program directly on behalf of an impacted county, and a description of the State's review/approval process for such county plans or RFPs. Acceptable county plans must minimally include the following:

a. Assurance that targeted assistance funds will be used in accordance with the requirements of 45 CFR Part 400.

b. Procedures for carrying out a local planning process for determining targeted assistance priorities and service strategies. All local targeted assistance plans will be developed through a planning process that involves, in addition to the State Refugee Coordinator, representatives of the private sector (for example, private employers, the private industry council, Chamber of Commerce, etc.), leaders of refugee/entrant community-based organizations, voluntary resettlement agencies, refugees from the impacted communities, and other public officials associated with the social services and employee agencies that serve refugees. Counties are encouraged to foster coalition-building among those participating organizations.

c. Identification of the refugee/entrant populations to be served by targeted assistance projects, including approximate numbers of clients to be served, and a description of characteristics and needs of targeted populations. (As per 45 CFR 400.314).

d. Description of specific strategies and services to meet the needs of targeted populations. These should be justified where possible through analysis of strategies and outcomes from projects previously implemented under targeted assistance programs, and any other services available to the refugee populations.

e. The relationship of targeted assistance services to other services available to refugees in the county

including State-allocated ORR social services.

f. Analysis of available employment opportunities in the local community. Examples of acceptable analysis of employment opportunities might include surveys of employers or potential employers of refugee clients and reviews of studies on employment opportunities/forecasts which would be appropriate to the refugee populations. Description of the monitoring and oversight responsibilities to be carried out by the county or qualifying jurisdiction.

Criteria 3: Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form (SF–424A). Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitive detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessary, reasonableness, and allocability for the proposed costs. Tnt Office of Refugee Resettlement is particularly interested in the following:

A line item budget and budget, justification for State administrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project. Sates that administer the program locally in lieu of the country, through a mutual agreement with the qualifying county, may request administrative costs that add up to, but may not exceed, 10% of the country's TAP allocation to the State's administrative budget.

Each applicant should describe the amount of funds to be awarded to the targeted county or counties. If a State with more than one qualifying targeted assistance county chooses to allocate its targeted assistance funds differently from the formula allocation for counties presented in the ORR targeted assistance notice in a fiscal year, its allocations must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. The application must provide a description of, and supporting data for, the State's proposed allocation plan, and the proposed allocation for each county.

In instances where a State receives targeted assistance funding for impacted counties contained in a standard metropolitan statistical area (SMSA) which includes a county or counties located in a neighboring State, the State receiving those funds must provide a description of the coordination and planning activities undertaken with the State Refugee Coordinator.

A line item budget and justification for State Administrative costs limited to a maximum of 5% of the total award to the State. Each budget request must be necessary, reasonable and allocable to the project. States that administer the program locally in lieu of the county may use up to, but not exceed, 10% of the county's TAP allocation for the State's administrative budget.

Criteria 4: Results or Benefits Expected

All applicants must establish targeted assistance proposed performance goals for each of the 6 ORR performance outcome measures for each impacted county's proposed service contracts or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The 6 ORR performance measures are: entered employments, cash assistance terminations due to employment, cash assistance reductions due to employment, 90-day employment retentions, average wage at placement, and entered employments with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the Quarterly Performance Report (OMB Approval No. 0970–0036, expires 7/31/2002).

States that are currently grantees for targeted assistance funds should base projected annual outcome goals for each performance measure on past performance.

States identified as new eligible targeted assistance grantees and States that are currently grantees that have new qualifying counties are also required to set proposed outcome goals for each of the 6 ORR performance outcome measures. New grantees may use baseline data, as available, and current data as reported on the ORR–6 for social services program activity to assist them in the goal-setting process. Proposed targeted assistance goals should reflect improvement over past performance and strive for continuous improvement during the project period from one year to another.

Part IV. The Application

A. Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manager prescribed by ACF. Application materials including forms and instructions are available from the ORR State Analyst assigned to your State.

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late.

2. Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline date to DHHS, ACF, Office of Refugee Resettlement, Attention: Shirley B. Parker, ORR Grants Officer, 370 L'Enfant Promenade, S.W., Sixth Floor, Washington, DC 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EDT, at the Department of Health and human Services, Administration for Children and Families, Office of Refugee Resettlement, ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note: "Attention: Shirley B. Parker, ORR Grants Officer." Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media.

Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications which do not meet the criteria above are considered late applications.

4. Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Reporting Requirements

States are required to submit quarterly reports on the outcomes of the targeted assistance program, using schedule A and Schedule C of the ORR–6 Quarterly Performance Report, OMB Approval No. 0970–0036, which expires 7/31/2002.

Pursuant to 45 CFR 400.210(b), FY 1999 targeted assistance funds must be obligated by the State agency no later than one year after the end of the Federal fiscal year in which the Department awarded the grant. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant. A State's final financial report on targeted assistance expenditures must be received no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. If final reports are not received on time, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of the State's last filed report.

Catalog of Federal Domestic Assistance No. 93–584.

Dated: August 2, 1999.

Lavinia Limón,

Director, Office of Refugee Resettlement.

[FR Doc. 99–20245 Filed 8–9–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refuge Resettlement

Refugee Resettlement Program: Final Notice of Allocations to States of FY 1999 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of allocations to States of FY 1999 funds for refugee [1] social services.

SUMMARY: This notice establishes the allocations to States of FY 1999 funds for social services under the Refugee Resettlement Program (RRP).

This notice includes a $15.5 million set-aside to: (1) Provide outreach and referral to ensure that eligible refugees access the Children's Health Insurance Program (CHIP) and other programs for low income working populations; and (2) provide specialized interpreter training and the hiring of interpreters to enable refugees to have equal access to medical and legal services.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara R. Chesnik, Division of Refugee Self-Sufficiency, (202) 401–4558.

SUPPLEMENTARY INFORMATION: A notice of proposed allocations to States of FY 1999 funds for refugee social services was published in the **Federal Register** on April 27, 1999 (64 *FR* 22626).

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has available $139,990,000 in FY 1999 refugee social service funds as part of the FY 1999 appropriation for the Department of Health and Human Services (Pub.L. 105–277).

The FY 1999 House Appropriations Committee Report (H.R. Rept. No. 105–635) reads as follows with respect to social services funds:

The bill provides $134,990,000 for social services, an increase of $5,000,000 over the comparable fiscal year 1998 appropriation and the budget request. Funds are distributed by formula as well as through the discretionary grant making process for special projects. The Committee agrees that $19,000,000 is available for assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set-aside $16,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Finally, the Committee has set aside $14,000,000 to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. The Committee urges ORR to assist refugees at risk of losing, or who have lost, benefits including SSI, TANF and Medicaid, in obtaining citizenship. In addition, ORR may initiate planning grants to create alternative cash and medical assistance programs for refugees. The Committee has included funding for health screening of new arrivals.

The Committee encourages ORR to award grants for mental health and other health services for victims of torture if such activities are authorized in law.

The Committee encourages ORR to consider supporting education and outreach activities related to female genital mutilation if such activities are authorized in law.

The FY 1999 Senate Appropriations Committee Report (S. Rept. No. 105–300) adds the following:

The Committee provides $19,000,000 to serve communities affected by the Cuban and Haitian entrants and refugees, the same as the amount contained in last year's appropriation. In addition, the Committee recommends $14,000,000 to address the needs of refugees and communities affected by recent changes in Federal assistance programs, and $16,000,000 to assist communities with large concentrations of refugees whose cultural differences make assimilation difficult. These funds are included in the social services line item.

The FY 1999 Conference Report on Appropriations (H.R. Conf. No. 105–825) reads as follows concerning social services:

The conference agreement provides $139,990,000 for social services, an increase of $5,000,000 over the House and $10,000,000 over the Senate. The conference agreement includes $26,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance, and $14,000,000 to address the needs of refugees and communities impacted by the recent changes in Federal assistance programs relating to welfare reform. The agreement includes $19,000,000 for assistance to communities impacted by Cuban and Haitian entrants and refugees whose arrivals in recent years have increased.

The Director of the Office of Refugee Resettlement (ORR) will use the $139,990,000 appropriated for FY 1999 social services as follows:

- $68,841,500 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.

[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

• $12,148,500 will be awarded as social service discretionary grants through competitive grant announcements that will be issued separately from this notice.

• $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds would be awarded through a discretionary grant announcement that will be issued separately from this notice.

• $26,000,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. A grant announcement will be issued separately from this notice.

• $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will be made through announcements issued separately from this notice.

In addition, we have added $15,500,000 in unexpended FY 1997 CMA funds to the FY 1999 formula social services allocation as a set-aside for referral and interpreter services, and $20,000,000 in unexpended FY 1997 CMA funds to the FY 1999 formula social services allocation as part of the standard formula allocation, increasing the total amount available for the formula social services program in FY 1999 to $104,341,500.

Congress provided ORR with broad carry-over authority in the FY 1999 HHS appropriations law to use FY 1997 CMA carry-over funds for assistance and other activities in the refugee program in fiscal years 1998 and 1999. The appropriations law states: "* * * That funds appropriated pursuant to section 414(a) of the Immigration and Nationality Act under Pub.L. 104–208 for fiscal year 1997 shall be available for the costs of assistance provided and other activities conducted in such year and in fiscal years 1998 and 1999."

Refugee Social Service Funds

The population figures for the social services allocation include refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director is allocating $88,841,500, which includes $20,000,000 in unexpended FY 1997 cash and medical assistance (CMA) funds, to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1998 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) a floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

The Director is also allocating an additional $15.5 million from FY 1997 carry-over funds as a set-aside to: (1) provide referral services, including outreach, to ensure that refugees are able to access the Children's Health Insurance Program (CHIP) and other programs for low income populations; and (2) provide for the hiring of interpreters and special interpreter training to enable refugees to have equal access to medical and certain legal services. Depending upon the existing capacity and need in the community, we encourage States to use the funds equally for both activities. Both types of services are not subject to the 5-year limitation and may be provided to refugees regardless of their length of time in the U.S. See 45 CFR 400.152(b).

Eligible refugee families often are not aware of, or do not know how to access, other Federal support programs available to low income working families in the community. We believe that these programs, including CHIP, Food Stamps, Low Income Home Energy Assistance Program (LIHEAP), Medicaid, Head Start, low-income housing, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), child care assistance, adult day care for aged dependents, and other support programs for low-income families, are important for the well-being of working refugees, particularly refugee families, and are necessary to help these refugees maintain employment and move toward full self-sufficiency.

The organizations funded by the set-aside amount are expected to conduct outreach into the community to identify low-income refugees and to help these refugees enroll in and to be familiar with the services available and the participation requirements of these programs. We expect States to fund community-based organizations, to the maximum extent possible, to provide hands-on assistance, which means having the application forms available and helping refugees to fill out the application, accompanying the refugee to the eligibility office, assisting in the communication between the family and the eligibility worker, closely following the application process until the family has been found eligible, and then helping the family effectively use the service or support program in which they have been enrolled. For example, there may be different levels of medical coverage available to a family, depending on the ages of the children and the income level of the family, each with different requirements. It is important for the caseworkers/advocates funded through this initiative to understand the program requirements (such as a co-payment structure) in order to help the family make decisions and fully participate.

The organizations funded under this set-aside should develop effective ways to provide an on-going link between these services, the population they serve, and the targeted low income programs. Methods might include: partnering with schools to identify refugee children who may be eligible for CHIP by virtue of their eligibility for the school lunch program; connecting with local Head Start programs to help identify refugee children who are

eligible for CHIP and other health care programs; arranging to have Medicaid eligibility workers visit the Mutual Assistance Association (MAA) or other participating organization on a scheduled basis; and working with other groups serving low income families, such as hospitals, WIC programs, low-income housing programs, and food assistance programs to make these services widely known to the refugee community being served.

It is also important that States provide as high a standard as possible in interpretation to non-English speaking and to Limited-English-Proficient (LEN) refugees, particularly in regard to medical and legal issues. As mentioned earlier, we are therefore including funding in the set-aside for States to improve the availability and quality of interpreter services for refugees in their communities. The set-aside funds are to be used by States: (1) to fund specialized interpreter training for medical and legal services; and (2) to pay for the hiring and employment of these trained interpreters by MAAs, voluntary agencies, and other community-based organizations serving refugees, to the maximum extent possible, in order to increase the number of skilled interpreters in the community.

Interpretation requires a great deal of skill—interpreters need to be fluent in English and the language spoken by the refugee. They must have the ability to quickly understand the message and terminology, if technical, in one language and to express it as quickly and correctly in another language. In addition to fluency in two languages, interpreters must have the skills to handle confidential client information and to deal with a variety of professionals in the medical, legal, law enforcement, social services, and other fields.

States should use qualified training programs or trainers to provide the interpreter training. Several strategies may be employed, e.g., the direct training of interpreters in a group setting, paying the course tuition and associated expenses for individuals at a community college or university, and the training of trainers in order to establish and maintain an efficient training capacity in the community. To the extent possible, we would expect States to use an established curriculum rather than incurring costs to develop a new one. Funding of interpreter services should be directed to areas of greatest need and to the most linguistically isolated communities.

States must determine a community's capacity to ensure refugee access to medical and other services, and then examine how best to fund and maintain interpreter services for refugees based upon the need and size of the refugee population. For example, an interpreter bank with dedicated interpreters may be a preferred option if the needs of the community can justify full-time interpreters. However, because the provision of interpreter services may not fully occupy funded staff in some locations or in certain languages, States may choose to train bilingual caseworkers at voluntary resettlement agencies, MAAs and refugee service providers. States may also consider cross-training of interpreters so that they may also assist, for example, in enrolling clients in CHIP, Medicaid, or other services for low-income clients, and/or serve as case managers or in other staff positions. Staff with both bilingual interpreter skills and knowledge of the family services network, such as child protective services and the domestic violence system, are also highly desirable.

We also encourage States to set up creative ways to maintain and expand the availability of interpreter services in the community, such as seeking reimbursement for services from the courts, hospitals, and agencies which may be able to pay for interpreter services but have been otherwise hindered in providing these services by the lack of available and appropriately trained individuals. Fees from low-income refugee clients, however, may not be sought.

In light of the unique position that refugee MAAs have in the communities where refugees reside, we are asking that States give special consideration to MAAs in using the set-aside amount, where possible, to provide these services to refugee families. However, qualified community based organizations with refugee experience, voluntary resettlement agencies, or refugee service providers may be funded as well.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the current requirements of 45 CFR Part 400 Subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. However, under 45 CFR 400.152, States may not provide services funded by this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.147, States are required to provide services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) all newly arriving refugees during their first year in the U.S., who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

In the past, a number of States have focused primarily on serving refugee cash assistance (RCA) recipients because of the need to help these refugees become employed and self-sufficient within the 8-month RCA eligibility period. Now, with the passage of welfare reform, refugee recipients of Temporary Assistance for Needy Families (TANF) also face a time limit for cash assistance and need appropriate services as quickly as possible to become employed and self-sufficient. In order for refugees to move quickly off TANF, we believe it is crucial for these refugees to receive refugee-specific services that are designed to address the employment barriers that refugees typically face. We are pleased with the efforts that State Refugee Coordinators have made to date to develop agreements with their State TANF program to utilize the existing refugee service system in a State for refugee TANF participants. We encourage States to continue their efforts in this regard.

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, States are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g)). Each family self-sufficiency plan should address a

family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) a determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family.

Some States are doing remarkably well in achieving refugee self-sufficiencies. For this reason, this may be a good time for these States to re-examine the range of services they currently offer to refugees and expand the range of services beyond employment services to address the broader needs that refugees have in order to successfully integrate into the community.

Reflecting section 412(a)(1)(A)(iv) of the INA, and in keeping with 45 CFR 400.145(c), States must ensure that women have the same opportunities as men to participate in all services funded under this notice, including job placement services. In addition, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services for children. For an employed refugee, day care funded by refugee social service dollars should be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs to the maximum extent possible and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, social service funds must be used primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services, in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with 45 CFR 400.156(e), refugee social services must be provided, to the maximum extent feasible, in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population.

Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job skills training, on-the-job training, or English language training, however, need not be refugee-specific (45 CFR 400.156(d)).

English language training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities (45 CFR 400.156(c)).

When planning State refugee services, States must take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative (45 CFR 400.156(b)).

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of mutual assistance associations (MAAs), voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in Wilson/Fish projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (64 FR 19793, April 22, 1999).

The Use of MAAs

ORR believes that the use of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, we expect States to use MAAs as service providers to the maximum extent possible. We strongly encourage States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served. ORR expects States to continue to assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients.

States may use a portion of their social service grant, either through contracts or through the use of State/county staff, to provide technical

assistance and organizational training to strengthen the capability of MAAs to provide employment services and other social services, particularly in States where MAA capability is weak or undeveloped.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

II. Discussion of Comments Received

We received one letter of comment in response to the notice of proposed FY 1999 allocations to States for refugee social services. This comment is summarized below and followed by the Department's response.

Comment: The commenter expressed concern about the proposal to allocate $15.5 million as a set-aside to provide referral services to ensure that refugees are able to access the Children's Health Insurance Program (CHIP) and other programs for low income populations; and (2) provide for the hiring of interpreters and special interpreter training to enable refugees to have equal access to medical services and certain legal services. The commenter believes that refugees are able to adequately access public assistance and medical assistance programs. Instead, the commenter recommended that the set-aside funds be allocated to States based upon the estimated number of refugees who have been in the country for over seven years who are losing eligibility for Federal Food Stamps. The commenter recommended that States should be given the discretion on how to use the funds in providing food assistance, employment services, or naturalization services in order to mitigate the loss of Federal Food Stamp eligibility. The commenter also recommended that the funds should be used by states to translate notices and information relating to programs and services which refugees need because translation is more cost-effective and efficient than interpreter services. And lastly, the commenter indicated that the President's budget for Federal Fiscal Year (FFY) 2000 includes $40 million to increase and expand the use of TANF funds for the current Medicaid outreach program to include children newly eligible for CHIP and therefore the ORR set-aside would be duplicative of this initiative.

Response: With the continuing increase in diversity among newly arriving refugee groups, and the increased ability of these groups to become employed soon after arrival, we believe that there is a strong need for refugees to receive specially directed assistance to help them access medical and other assistance programs for low-economic populations. We believe this assistance is critical to helping refugees make the transition from the entry and low level jobs which are obtained soon after arrival, when families are struggling to adjust to their new lives, jobs, and communities, to becoming self-sufficient members of the community.

We also believe that it is vital to have appropriate interpreter services available so that the diverse newly arriving populations receive the services necessary for their well-being and integration into their new communities. While both interpreter and translation services are currently allowable social services for States to fund under ORR regulations, it is our understanding that newly arriving refugees would particularly benefit from having additional interpreter services available in the community. In many communities, it is no longer possible for each local resettlement provider to have on staff a bilingual worker for each arriving refugee group. New strategies and means of addressing the diverse population must be found. It is our intent that the set-aside funds will support that need. And finally, while funding to augment access to CHIP may be provided under the FFY 2000 budget, and we would certainly encourage States to do whatever possible to ensure that refugee populations are served if these funds are included in the final appropriations legislation, we do not believe this to be a duplication because refugee program funds would have been available to serve refugees before next year's appropriation is made available to States.

III. Allocation Formulas

Of the funds available for FY 1999 for social services, $88,841,815 is allocated to States in accordance with the formula specified below. In addition, $15.5 million in set-aside funds are allocated in accordance with the formula specified below. A State's allowable allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount is multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1998, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1999 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1998, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, Cuban and Haitian entrants, and Kurdish asylees.

For fiscal year 1999, ORR's formula allocations for the States for social services are based on the numbers of refugees, Amerasians, Kurdish asylees, and entrants who arrived during the preceding three fiscal years: 1996, 1997, and 1998, based on arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1995, and September 30, 1998, who are thought to be living in each State as of October 1, 1998.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 1998. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians and Kurdish asylees are included in the refugee figures.

With regard to Havana parolees, in the absence of reliable data on the State-by-State resettlement of this population, we are crediting each State that received entrant arrivals during the 3-year period from FY 1996 through FY 1998 with a prorated share of the 13,442 parolees reported by the Immigration and Naturalization Service (INS) to have come to the U.S. directly from Havana in FY 1998. In addition, we have credited each State with the same share

of FY 1996 and FY 1997 Havana parolees that they were credited with in the final FY 1997 and FY 1998 social service notices. The allocations in this notice reflect these additional parolee numbers.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1998, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3); total refugee/entrant population, (col. 4); the formula amounts which the population estimates yield (col. 5); the allocation amounts after allowing for the minimum amounts (col. 6); the set-aside amount (col. 7); and the total final allocation (col. 8).

V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations. The following amounts are for allocation for refugee social services in FY 1999:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNT AND ALLOCATION FOR FY 1999.

State	Refugees[1] (1)	Entrants (2)	Havana parolees[2] (3)	Total population (4)	Proposed formula amount (5)	Proposed allocation (6)	Set-aside	Final allocation
Alabama	484	55	75	614	$198,965	$198,965	$34,829	$233,794
Alaska[3]	0	0	0	0				
Arizona	6,105	387	421	6,913	2,240,139	2,240,139	392,139	2,632,278
Arkansas	141	9	9	159	51,524	85,321	9,019	94,340
California	34,833	342	575	35,750	11,584,691	11,584,691	2,027,912	13,612,603
Colorado	3,284	2	6	3,292	1,066,764	1,066,764	186,738	1,253,502
Connecticut	2,362	150	201	2,713	879,140	879,140	153,894	1,033,034
Delaware	58	2	3	63	20,415	75,000	3,574	78,574
Dist. of Columbia	1,498	4	9	1,511	489,635	489,635	85,711	575,346
Florida	12,594	8,201	21,455	42,250	13,690,998	13,690,998	2,396,624	16,087,622
Georgia	8,307	98	155	8,560	2,773,845	2,773,845	485,564	3,259,409
Hawaii	120	1	0	121	39,210	75,000	6,864	81,864
Idaho[4]	1,622	0	0	1,622	525,605	525,605	92,008	617,613
Illinois	11,262	231	304	11,797	3,822,786	3,822,786	669,183	4,491,969
Indiana	1,451	5	7	1,463	474,081	474,081	82,988	557,069
Iowa	5,288	2	3	5,293	1,715,182	1,715,182	300,244	2,015,426
Kansas	1,025	9	11	1,045	338,629	338,629	59,277	397,906
Kentucky[5]	3,375	802	638	4,815	1,560,288	1,560,288	273,130	1,833,418
Louisiana	1,296	79	141	1,516	491,256	491,256	85,996	577,251
Maine	607	0	0	607	196,697	196,697	34,432	231,129
Maryland	3,000	46	95	3,141	1,017,833	1,017,833	178,173	1,196,006
Massachusetts	6,727	85	105	6,917	2,241,435	2,241,435	392,366	2,633,801
Michigan	7,078	347	340	7,765	2,516,227	2,516,227	440,468	2,956,695
Minnesota	8,245	7	15	8,267	2,678,899	2,678,899	468,944	3,147,843
Mississippi	71	10	19	100	32,405	75,000	5,672	80,672
Missouri	6,514	8	13	6,535	2,117,649	2,117,649	370,697	2,488,346
Montana	126	0	0	126	40,830	75,000	7,147	82,147
Nebraska	2,064	36	36	2,136	692,165	692,165	121,164	813,329
Nevada[5]	1,233	609	640	2,482	804,285	804,285	140,791	945,076
New Hampshire	1,095	0	0	1,095	354,832	354,832	62,114	416,946
New Jersey	3,371	365	654	4,390	1,422,568	1,422,568	249,022	1,671,590
New Mexico	346	467	565	1,378	446,537	446,537	78,167	524,704
New York	29,693	756	876	31,325	10,150,782	10,150,782	1,776,905	11,927,687
North Carolina	3,639	29	32	3,700	1,198,975	1,198,975	209,882	1,408,857
North Dakota	1,304	0	2	1,306	423,206	423,206	74,083	497,289
Ohio	4,134	44	44	4,222	1,368,128	1,368,128	239,492	1,607,620
Oklahoma	471	7	10	488	158,135	158,135	27,682	185,817
Oregon	4,616	344	388	5,348	1,733,005	1,733,005	303,364	2,036,369
Pennsylvania	6,893	245	261	7,399	2,397,626	2,397,626	419,707	2,817,333
Rhode Island	331	5	5	341	110,500	110,500	19,343	129,843
South Carolina	226	6	7	239	77,447	100,000	13,557	113,557
South Dakota[4]	750	0	0	750	243,035	243,035	42,544	285,579
Tennessee	3,636	171	179	3,986	1,291,653	1,291,653	226,105	1,517,758
Texas	11,165	778	837	12,780	4,141,325	4,141,325	724,943	4,866,268
Utah	3,163	1	0	3,164	1,025,286	1,025,286	179,477	1,204,763
Vermont	885	0	0	885	286,782	286,782	50,201	336,983
Virginia	4,484	114	163	4,761	1,542,789	1,542,789	270,067	1,812,856
Washington	16,391	45	49	16,485	5,341,920	5,341,920	935,109	6,277,029
West Virginia	8	0	0	8	2,592	75,000	454	75,454
Wisconsin	1,606	9	11	1,626	526,901	526,901	92,235	619,136
Wyoming[3]	0	0	0	0				
Total	228,977	14,913	29,359	273,249	88,545,602	88,841,500	15,500,000	104,341,500

[1] Includes: refugees, Kurdish asylees, and Amerasian immigrants from Vietnam adjusted for secondary migration.
[2] For FY 1998, Florida's Havana Parolees (10,183) were based on actual data, while HP's in other States (3,258) were prorated according to their proportions of the three-year (FY 1996–1998) entrant population. For FY 1997, Florida's HP's (3,957) were based on actual data, while HP's in other States (2,035) were prorated according to their proportions of the three-year population. For FY 1996, Florida's HP's (7,315) were based on actual data, while HP's in other States (2,611) were prorated according to their proportions of the three-year entrant population.
[3] Alaska and Wyoming no longer participate in the Refugee Program.
[4] The allocations for Idaho and South Dakota are expected to be awarded to the State designee.
[5] The allocations for Kentucky and Nevada are expected to be awarded to Wilson/Fish projects.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: August 2, 1999.

Lavinia Limón,

Director, Office of Refugee Resettlement.

[FR Doc. 99–20246 Filed 8–9–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FA–100–2810–00–24–1E]

Reopening of the Call for Non-Federal Nominations to the Joint Fire Science Program Stakeholder Advisory Group

AGENCY: Office of the Secretary, Interior.

ACTION: Reopening of the public call for nominations to the Joint Fire Science Program Stakeholder Advisory Group.

SUMMARY: The Secretary of the Interior and the Secretary of Agriculture are reopening the call for public nominations to the Joint Fire Science Program Stakeholder Advisory Group to allow more time for the public to assemble and submit nomination materials. The initial notice was published in the **Federal Register** on Monday, June 21, 1999 (64 FR 33112).

The purpose of this Stakeholder Advisory Group is to provide advice concerning priorities and approaches for research and implementation of research findings for the management of wildland fuels on lands administered by the Department of the Interior, through the Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service, and the Department of Agriculture, through the Forest Service.

DATES: Nominations should be submitted to the address listed below no later than September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Bob Clark, Joint Fire Science Program Manager, National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho 83705, (208) 387–5349. Internet: bob—clark@blm.gov.

SUPPLEMENTARY INFORMATION: The Stakeholder Advisory Group will consist of 30 members, 15 Federal and 15 nonfederal. This call for nominations will establish the nonfederal membership on the Group. Group membership will be balanced in terms of categories of interest represented.

Any individual or organization may nominate one or more persons to serve on the Joint Fire Science Program Stakeholder Advisory Group. Individuals may also nominate themselves for Group membership. All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to the above address. Letters of support should be from interests or groups that nominees claim to represent. This material will be used to evaluate nominees in terms of their expertise and qualifications for advising the Secretaries on matters pertaining to research into wildland fuels problems and implementation of strategies and solutions for managing the increasing fuel loadings on federally administered wildlands.

Nominations may be made for the following categories of interest:

Wildland fire management
Wildland fuels management
Air quality management
Public lands management
Forest ecology
Rangeland ecology
Hydrology
Conservation
Social science
Computer science and modeling
Tribal government
Public-at-large

The specific category that the nominee will represent should be identified in the letter of nomination.

Agency administrators will nominate Federal representatives, including: four (4) members from the U.S. Forest Service, and one member each from the Bureau of Land Management, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service, the U.S. Geological Survey, the Department of Energy, the Department of Defense, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the Natural Resources Conservation Service.

Each Stakeholder Advisory Group Member will be appointed to serve a 2-year term. Members will serve without salary, but non-federal members will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Group will meet at least once annually. Additional meetings may be called in connection with special needs for advice. The Department's Senior Policy Advisor, Office of Managing Risk and Public Safety, will be the Designated Federal Officer who will call meetings of the Group.

Dated: August 2, 1999.

John Berry,

Assistant Secretary for Policy, Management and Budget.

[FR Doc. 99–20507 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1060–04]

Public Hearing; Helicopters and Motorized Vehicle Use During the Gather of Wild Horses and Capture of Wild Horses From the North Piceance Herd Area and the Piceance/East Douglas Herd Management Area; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public hearing; Capture of wild horses.

SUMMARY: A public hearing regarding the use of helicopters and motorized vehicles has been scheduled in one location in Colorado in 1999. Included is the time and date of this hearing.

SUMMARY: The capture of wild horses from two locations in Colorado in 1999 has been scheduled. Included are dates and locations of the wild horse gather.

DATES AND ADDRESSES: A hearing to discuss helicopter use in the North Piceance Herd Area and the Piceance/East Douglas Herd Management Area, White River Field Office, will be held in Meeker, Colorado at the White River Field Office on September 21, 1999 at 7 P.M.

A wild horse helicopter gather is scheduled to take place in the North Piceance Herd Area and the Piceance/East Douglas Herd Management Area between September 28, 1999 and October 31, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Dobrich; White River Field Office; 73544 Highway 64; Meeker, Colorado; 81641; Telephone (970) 878–3601 extension 5539.

John M. Mehlhoff,

White River Field Office Manager.

[FR Doc. 99–20567 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–09–1220–00]

Notice of Intent, Amendment to the Pony Express Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent; amendment.

SUMMARY: The Bureau of Land Management (BLM), Salt Lake Field Office published in the February 3, 1997 issue of the **Federal Register** a notice of intent to prepare a plan amendment to the Pony Express Resource Management Plan to consider a special recreation management area (SRMA) at Fivemile Pass. This amendment would modify the area boundary and involve an expansion from approximately 31,360 acres to 36,629 approximate acres.

DATES: The comment period for the proposed modification will commence with the date of publication of this notice. Comments must be submitted on or before September 9, 1999.

SUPPLEMENTARY INFORMATION: The Fivemile Pass SRMA was defined as containing at total of 31,360 acres which included 19,020 acres of public lands, approximately 10,740 acres of private land, and 1,600 acres of State lands. The proposed modification would contain a total of 36,629 acres of which would contain 29,611 acres of public lands, approximately 6,171 of private land, and 847 of State Land.

The new boundary will affect all federal lands in:

T5S R3W, Sections 33 and 34;
T6S R3W, Sections 3, 4, 7–11, 13–24, 26–30, 33–35;
T7S R3W, Sections 1, 3–15, 17, 18, 22–27, 34,35;
T8S R3W, Section 3;
T6S R4W, Sections 11–15, 22–26, 35;
T7S R4W, Sections 1, 10–15.

The modification is an effort to incorporate consolidated public lands into an enforceable boundary.

FOR FURTHER INFORMATION CONTACT: Connie Stump, Outdoor Recreation Planner, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah, 84119 telephone 801–977–4363, fax 801–977–4397. Existing planning documents and information are available at the above address. Comments on the proposed plan amendment should be sent to the above address.

Linda S. Colville,
Acting State Director.

[FR Doc. 99–20564 Filed 8–9–99; 8:45 am]
BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 31, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 25, 1999.

Patrick Andrus,
Acting Keeper of the National Register.

Alaska

Anchorage Borough-Census Area

Anchorage Depot, 411 W. First Ave., Anchorage, 99001027

Florida

Charlotte County

El Jobean Post Office and General Store, 4370 Garden Rd., El Jobean, 99001028

Georgia

Clarke County

Buena Vista Heights Historic District, Roughly bounded by Park Ave., Prince Ave., Pound St., and Nantahala Extension, Athens, 99001029

Illinois

Carroll County

Savanna—Sabula Bridge, IA 64, US 52 over Mississippi R., (Highway Bridges of Iowa MPS), Sabula vicinity, 99001033

Hancock County

Fort Madison Bridge, IA 9 over Mississippi R, (Highway Bridges of Iowa MPS), Fort Madison, 99001035

Jo Davies County

Julien Dubuque Bridge, US 20 over Mississippi R., (Highway Bridges of Iowa MPS), Dubuque vicinity, 99001034

Iowa

Buchanan County

Plane, Robert R., and Julia L., House, 301 3rd Ave. SE, Independence, 99001030
State Savings Bank, 103 N. Water St., Quasqueton, 99001031

Dubuque County

Julien Dubuque Bridge, (Highway Bridges of Iowa MPS), US 20 over Mississippi R., Dubuque, 99001034

Jackson County

Savanna—Sabula Bridge, (Highway Bridges of Iowa MPS), IA 64, US 52 over Mississippi R., Sabula, 99001033

Lee County

Fort Madison Bridge, (Highway Bridges of Iowa MPS), IA 9 over Mississippi R., Fort Madison, 99001035

Woodbury County

Knott, Dr. Van Buren, House, 2323 Nebraska St., Sioux City, 99001032

Louisiana

East Baton Rouge Parish

Winans, Fonville, Studio, 409 N. Seventh St., Baton Rouge, 99001052

Orleans Parish

Magnolia Street Housing Project, Roughly bounded by Washington Ave., La Salle St., Louisiana Ave., and Magnolia St., New Orleans, 99001038

St. Landry Parish

Robin House and Barn, (Louisiana's French Creole Architecture MPS), 1616 LA 31, Amaudville vicinity, 99001036

Webster Parish

Bryan House, 2086 Harold Montgomery Rd., Doyline vicinity, 99001037

West Baton Rouge Parish

Sandbar Plantation House, 4234 S. River Rd., Port Allen vicinity, 99001039

Maryland

Wicomico County

Asbury Methodist Episcopal Church, 26679 Collins Wharf Rd., Allen, 99001041

Massachusetts

Berkshire County

Richmond Furnace Historical and Archaeological District, State, Cone Hill, and Furnace Rds., Richmond, 99001044

Franklin County

Conway Center Historic District, 5–38 Academy Hill Rd., 1–59 Elm St., and 8–98 Main St., Conway, 99001043

Missouri

Greene County

Springfield National Cemetery, (Civil War Era National Cemeteries MPS), 1702 E. Seminole St., Springfield, 99001045

North Carolina

Pender County

Burgaw Historic District, Roughly bounded by Cowan St., Fremont St., Dudley St., and Ashe St., Burgaw, 99001047

Wake County

Glen Royall Mill Village Historic District, (Wake County MPS), Roughly bounded by

N. Main St., E. Cedar Ave., CSX RR, and Royall Cotton Mill, Wake Forest, 99001046

North Dakota

Grand Forks County

Metropolitan Opera House, 116 S. Third St., Grand Forks, 99001048

Vermont

Chittenden County

Proctor Maple Research Farm, UVM Rd., Underhill, 99001050

Windsor County

Dewey House, 173 Deweys Mills Rd., Hartford, 99001051

A request for REMOVAL has been made for the following resource:

Arkansas

Sharp County

Maxville School Building, US 167 N of Cave City, (Public Schools in the Ozarks MPS), Cave City vicinity, 92001199

[FR Doc. 99–20488 Filed 8–9–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 13, 1999 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–846–850 (Preliminary)(Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe and Tube from the Czech Republic, Japan, Mexico, Romania, and South Africa)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on August 16, 1999.)
5. Inv. No. 731–TA–851 (Preliminary)(Synthetic Indigo from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on August 16, 1999.)
6. Inv. Nos. 701–TA–384 and 731-TA–806 and 808 (Final)(Certain Hot-Rolled Steel Products from Brazil and Russia)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on August 23, 1999.)
7. Outstanding action jackets:

(1) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).

(2) Document No. GC–99–071: Regarding Inv. No. 337–TA–383 (Certain Hardware Logic Emulation Systems and Components Thereof).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 5, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20721 Filed 8–6–99; 1:30 pm]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23, issued to Carolina Power & Light Company (CP&L, the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit 2 (HBR) located in Darlington County, South Carolina.

The proposed amendment would revise Required Action A.1 of Technical Specification Limiting Condition for Operation 3.7.8 to allow a Completion Time of 72 hours to restore service water (SW) temperature to less than or equal to 95oF prior to entering the required actions for plant shutdown. The amendment request was proposed as a temporary change to be in effect until September 30, 1999.

The licensee requested that this proposed amendment be processed as an exigent request, pursuant to 10 CFR 50.91(a)(6), to permit implementation during this summer. The severe and sustained period of hot weather in the area of HBR, combined with the thermal and hydrological characteristics of the ultimate heat sink (UHS), have resulted in a situation where, on occasion, the existing 8-hour Completion Time is not of sufficient duration to allow UHS temperature to return below 95°F. Additionally, an extended period of this severely hot weather may result in several long temperature excursions above 95°F and could result in unwarranted plant power reductions and shutdowns during a time of record energy demand.

Based on the circumstances described above, the NRC verbally issued a Notice of Enforcement Discretion (NOED) on July 31, 1999. The NOED was documented by letter dated August 3, 1999. The NOED expressed the NRC's intention to exercise discretion not to enforce compliance with the 8-hour Completion Time of TS 3.7.8 until the exigent TS amendment request to revise TS 3.7.8, which the licensee submitted on July 30, 1999, is processed.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change provides a revised allowed time for the plant condition where UHS temperature exceeds the design limit of 95°F. SW system temperature is not assumed to be an initiating condition of any accident analysis evaluated in the safety analysis report (SAR). Therefore, the revised limitation for SW temperature to be in excess of the design limit does not involve an increase in the probability of an accident previously evaluated in the safety analysis report. The SW system supports operability of safety-related systems used to mitigate the consequences of an accident. Plant equipment has been analyzed and determined able to perform its safety-related function through the allowed maximum SW temperature of 99°F. Performance of the containment has not been the subject of a specific re-analysis at the proposed temperatures with current licensing basis methodologies. However, based on engineering judgement, the [effect] on

containment performance from the elevated SW temperature for the proposed period of time would not be significant. The magnitude of any increase in SW temperature in excess of the design limit is expected to be small based on historical data and experience for the UHS. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The temperature of the SW when near or slightly above the design temperature does not introduce new failure mechanisms for systems, structures or components not already considered in the SAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will allow a small increase in SW temperature above the design basis limit for a limited period of time. This will delay the requirement to shutdown the plant for an additional 64 hours beyond the currently 8 hours Completion Time. Design margins are affected which are associated with systems, structures and components which are cooled by the SW system, and system temperature is an input assumption for mitigating the effects of a DBA [design-basis accident]. However, allowing this additional time for SW temperature to exceed the design limit is expected to have a negligible [effect] on containment performance, and no adverse impact on other analyzed plant equipment. Therefore, there is no significant reduction in margin of safety associated with this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final

determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 30, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 4th day of August 1999.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20543 Filed 8–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company, FERMI 2; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43 issued to the Detroit Edison Company (the licensee), for operation of Fermi 2, located in Monroe County, Michigan.

The proposed amendment would represent a full conversion from the current Technical Specifications (CTSs) to a set of improved Technical Specifications (ITSs) based on NUREG–1433, Revision 1, "Standard Technical Specifications, General Electric Plants BWR/4," dated April 1995. NUREG–1433 has been developed through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the NRC staff as part of an industry-wide initiative to standardize and improve CTSs. As part of this submittal, the licensee has applied the criteria contained in the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors" (Final Policy Statement), published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the Fermi 2 CTSs and, using NUREG–1433 as a basis, developed a proposed set of ITSs for Fermi 2. The criteria in the Final Policy Statement subsequently were incorporated in 10 CFR 50.36, "Technical Specifications," in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953). The rule change became effective August 18, 1995.

The licensee has categorized the proposed changes to the CTSs into four general groupings. These groupings are characterized as administrative changes, technical changes—relocations, technical changes—more restrictive, and technical changes—less restrictive.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, and rearranging of requirements and other changes not affecting technical content or substantially revising an operational requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1433 and do not involve technical changes to the CTSs. The proposed changes include (a) providing the appropriate numbers, etc., for NUREG–1433 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1433 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events.

Technical changes—relocations are those changes involving relocation of requirements and surveillances from the CTSs to licensee-controlled documents, for structures, systems, components, or variables that do not meet the criteria for inclusion in the ITSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's Final Policy Statement and 10 CFR 50.36, and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Volume 1 of its April 3, 1998, application titled, "Fermi 2 Improved Technical Specifications Submittal Cover Letter and Split Report." The affected structures, systems, components, or variables are not assumed to be initiators of events analyzed in the Updated Final Safety Analysis Report (UFSAR) and are not assumed to mitigate accident or transient events analyzed in the UFSAR. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the CTSs to administratively controlled documents such as the UFSAR, the Bases, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures, which are also subject to 10 CFR 50.59.

Technical Changes—more restrictive are those changes that involve more stringent requirements for operation of the facility or eliminate existing flexibility. These more stringent

requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. For each requirement in the Fermi 2 CTSs that is more restrictive than the corresponding requirement in NUREG–1433, which the licensee proposes to retain in the ITSs, the licensee has provided an explanation of why it has concluded that the more restrictive requirement is desirable to ensure safe operation of the facility.

Technical changes—less restrictive are changes where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the ITSs may be appropriate. In most cases, relaxations granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the ITSs. Generic relaxations contained in NUREG–1433 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design information will be reviewed to determine if its specific design and licensing bases are consistent with the technical justifications contained in NUREG–1433. This will determine if a foundation exists for the ITSs or if relaxation of the requirements in the CTSs is warranted by the justifications provided by the licensee.

In addition to the changes solely involving the conversion, changes are proposed to the CTSs or as deviations from the improved BWR/4 Technical Specifications (NUREG–1433) as follows:

1. Fermi 2 ITS 3.3.1.1, Surveillance Requirement (SR) 3.3.1.1.6, modifies NUREG–1433 SR 3.3.1.1.6 by allowing the source range monitors to be partially withdrawn from the core while obtaining overlap with the intermediate range monitors. This deviation from NUREG-1433 was based on the current usage of the CTS and on the design of the neutron monitoring system.

2. Fermi 2 ITS 3.3.6.3 modifies NUREG–1433 limiting condition for operation (LCO) 3.3.6.3, Condition B, to provide requirements that are less restrictive than the NUREG based on the Fermi 2 design for the low-low-set arming logic.

3. Fermi 2 ITS 3.4.1 LCO 3.4.1 does not include some CTS actions related to single recirculation loop operation. These actions were not in the NUREG–1433 LCO. But the staff reviewed the changes to determine whether retaining the actions was warranted on a plant-specific basis.

4. Fermi 2 ITS 3.4.6 modifies NUREG–1433 LCO 3.4.6 by removing bracketed Action B.2 and adopting bracketed Actions C and D to allow certain reactor coolant system leakage detection instrumentation to be out of service with completion times beyond those in the CTS based on the capabilities of the remaining instrumentation.

5. Fermi 2 ITS 3.4.10 for reactor coolant system pressure and temperature limits modifies NUREG–1433 LCO 3.4.10 by adding two new SRs that were included in CTS 3.4.1.1 for the recirculation loops because the SRs relate more closely to reactor coolant system temperature limits than to limits for recirculation loop operation.

6. Fermi 2 ITS 3.5.1 modifies the NUREG–1433 LCO 3.5.1 by adding new Conditions B and C and revising NUREG–1433 Conditions B and D to allow certain combinations of emergency core cooling system (ECCS) subsystems to be out of service based, in part, on the CTS and the Fermi 2 loss-of-coolant accident (LOCA) analysis.

7. The Fermi 2 ITS adds SR 3.5.1.14 for response time testing of the ECCS functions. The CTS and NUREG–1433 include this SR in the ECCS instrumentation specification (NUREG–1433 LCO 3.3.5.1). This relocation is based on the fact that the CTS state that the ECCS actuation instrumentation response time need not be measured. Therefore, the SR verifies the overall system response time instead.

8. Fermi ITS 3.6.1.3, Condition D, is expanded to include primary containment isolation valves with leakage exceeding the associated limit(s), providing appropriate actions and completion times. NUREG–1433 LCO 3.6.1.3 would have handled the same situation under Condition A, with the leaking valve considered inoperable. But Condition D is written specifically for the case of a leaking valve. In addition, a new Action D.2 is added that requires the licensee to periodically verify the isolation of penetrations that are isolated due to a leaking valve. This action is analogous to STS Action A.2.

9. The Fermi 2 ITSs relocate the requirements for drywell spray (which is not addressed in NUREG–1433) to licensee-controlled documents, because they do not meet the 10 CFR 50.36(c)(2)(ii) screening criteria.

10. Fermi 2 ITSs 3.10.4 and 3.10.5 modify NUREG–1433 3.10.4 and 3.10.5 to clarify the activities associated with single control rod removal based on the actual steps required to complete the task.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings," in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the

petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment, dated April 3, 1998, as supplemented on September 28, October 19, and December 10, 1998, and January 8, January 26, February 24, March 30, April 8, April 30, May 7, June 2, June 24, June 30, July 7, July 13, and July 26, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 4th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20544 Filed 8–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on August 31, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Tuesday, August 31, 1999—1:00 p.m. until the conclusion of business.*

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 4, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–20541 Filed 8–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor

Safeguards will hold a meeting on September 1–3, 1999, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 18, 1998 (63 FR 64105).

Wednesday, September 1, 1999

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:45 A.M.–10:45 A.M.: Safety Evaluation Report Related to the Oconee Nuclear Power Plant License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Duke Energy Corporation regarding the staff's Safety Evaluation Report associated with the license renewal application for the Oconee Nuclear Power Plant Units 1, 2, and 3, and other license renewal issues.

11:00 A.M.–12:00 Noon: Proposed Resolution of Generic Safety Issue-145, "Actions to Reduce Common Cause Failures" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed resolution of Generic Safety Issue-145.

1:00 P.M.—3:00 P.M.: Proposed Final Source Term Rule and Associated Draft Regulatory Guide and Standard Review Plan Section (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final rule on the application of alternative source term at operating plants and associated draft regulatory guide and Standard Review Plan Section, and related matters.

3:15 P.M.–4:15 P.M.: Proposed Revision to Regulatory Guide 1.78 (DG–1087), "Evaluating the Habitability of a Nuclear Power Plant Control Room During a Postulated Hazardous . Chemical Release" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed revision to Regulatory Guide 1.78.

4:15 P.M.–4:45 P.M.: ACRS Plans for Reviewing the RETRAN–3D Thermal-Hydraulic Transient Analysis Code (Open)—The Committee members will discuss the ACRS plans for reviewing the Electric Power Research Institute RETRAN–3D thermal-hydraulic transient analysis code.

4:45 P.M.–5:45 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

5:45 P.M.–7:15 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a follow-up letter to the NRC Executive Director for Operations' (EDO's) response to the May 19, 1999 ACRS letter on the Modifications Proposed by the Westinghouse Owners Group to the Core Damage Assessment Guidelines and the Post Accident Sampling System Requirements, and a Joint ACRS/ACNW report on the Proposed Framework for Risk-Informed Regulation in the NRC Office of Nuclear Material Safety and Safeguards.

Thursday, September 2, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Application of the Electric Power Research Institute (EPRI) Risk-Informed Methods to Inservice Inspection of Piping (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and EPRI regarding the staff's proposed final Safety Evaluation Report on the application of the EPRI risk-informed methods to inservice inspection of piping at nuclear power plants.

10:15 A.M.–11:45 A.M.: Proposed Guidance for Using Risk Information in the Review of Licensing Actions (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed guidance for using risk information in the review of licensing actions, and related matters.

12:45 P.M.–2:00 P.M.: Proposed Final Revision 3 to Regulatory Guide 1.105, Instrument Setpoints for Safety Systems (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed final revision 3 to Regulatory Guide 1.105.

2:15 P.M.–3:45 P.M.: Office of Nuclear Regulatory Research (RES) Self-Assessment Program (Open)—The Committee will hear presentations by and hold discussions with representatives of RES regarding the status of activities associated with the RES self-assessment program, including the proposed process for prioritizing RES activities.

4:00 P.M.–5:00 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

5:00 P.M.–7:15 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, September 3, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:15 A.M.: Report of the Planning and Procedures Subcommittee (Open)/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

9:15 A.M.–9:30 A.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

9:30 A.M.–9:45 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the EDO to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:00 A.M.–5:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

5:00 P.M.–5:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51968). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked

only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2) and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 3, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–20542 Filed 8–9–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23933; 812–11606]

Amway Mutual Fund Trust et al.; Notice of Application

August 3, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: The requested order would permit applicants, Amway Mutual Fund Trust (the "Trust"), Amway Management Company ("Amway"), and Activa Asset Management LLC ("Activa" and together with Amway, the "Managers"), to enter into and materially amend subadvisory agreements without obtaining shareholder approval.

FILING DATES: The application was filed on February 24, 1999, and was amended on July 13, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 30, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 2905 Lucerne SE, Grand Rapids, MI 45546.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company and operates as a series company. The only series of the Trust presently offered to the public is Amway Mutual Fund ("Fund"). The Trust has recently authorized four additional series ("New Funds") (together with the Fund, the "Funds").[1]

2. Anyway is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). Amway serves as investment adviser to the Fund under an investment management agreement between Amway and the Fund that was approved by the Trust's board of trustees ("Board"), including a majority of trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the shareholders of the Fund (the "Management Agreement"). Activa, an investment adviser which will be registered under the Advisers Act, will serve as investment adviser to the Fund and the New Funds under an investment management agreement between Activa and the Funds that was approved by the Board, including a majority of the Independent Trustees, and will be approved by the initial shareholders of the New Funds before they are offered to the public and by shareholders of the Fund at a meeting scheduled to be held on August 30, 1999 (the "New Management Agreement").[2] The Managers are under

[1] Applicants also request that the relief apply to all registered open-end management investment companies or series thereof that are now, or in the future will be, advised by the Managers or any entity controlling, controlled by, or under common control with the Managers and which operate in substantially the same manner as the Trust ("Future Funds"). Applicants state that all existing investment companies that currently intend to rely on the requested order have been named as applicants, and any Future Funds that subsequently rely on the requested order will comply with the terms and conditions in the application.

[2] The New Management Agreement will not be effective until the effective date of Activa's registration under the Advisers Act. If the New Management Agreement is not approved by shareholders of the Fund, Amway will continue to serve as investment adviser to the Fund.

common control and have the same principal officers and employees.

3. The investment management responsibilities under the Management Agreement and the New Management Agreement (together the "Management Agreement") are essentially the same. Under the Management Agreement, the Managers have overall general supervisory responsibility for the investment management of the Funds and, subject to the supervision of the Board, the power to select subadvisers ("Subadvisers") to provide portfolio management services for all or a portion of a Fund. The Fund currently has, and each of the New Funds is expected to have, a single subadviser.

4. The Managers will select Subadvisers based on a continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a particular investment style. A Subadviser performs services pursuant to a written investment subadvisory agreement between the Subadviser and the Manager ("Subadvisory Agreement"). The Subadvisers are, and will be, registered under the Advisers Act. The Manager pays the Subadvisers out of the fees the Manager receives from the Trust.

5. Applicants request an order to permit the Managers to enter into, and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will be extend to a Subadviser that is an "affiliated person," as defined in section 2(a)(3) of the Act, of the Trust or the Managers, other than be reason of serving as a Subadviser to one or more of the Funds (an "Affiliated Subadviser").

Applicants's Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract approved by majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that investors rely upon the Manager to select one or more Subadvisers for the Fund. Applicants contend that the role of the Subadviser, from the perspective of the investor, is comparable to that of the individual portfolio managers employed by other investment advisory firms. Applicants also contend that requiring shareholder approval of Subadvisory Agreements would impose expenses and unnecessary delays on the Funds, and could prevent the prompt implementation of actions deemed advisable by the Manager and the Board. Applicants note that the Management Agreements will continue to be fully subject to section 15 of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The Managers will provide management and administrative services to the Funds and, subject to the review and approval of the Board will: (i) Set the overall investment strategies of the Funds; (ii) evaluate and recommend Subadvisers; (iii) allocate, and when appropriate, reallocate, the assets of the Funds among Subadvisers in those cases where a Fund has more than one Subadviser; and (iv) monitor and evaluate the investment performance of the Subadvisers, including their compliance with the investment objectives, policies, and restrictions of the Funds.

2. Before any Fund may rely on the order requested in the application, the operation of the Fund in the manner described in this application will be approved by a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 4 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

3. Within 90 days of the hiring of any Subadviser, the Managers will furnish shareholders of the affected Fund with all information about such Subadviser that would be included in a proxy statement, including any change in such disclosure caused by the addition of the new Subadviser. The Managers will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934, as amended ("1934 Act"). The information statement also will meet the requirements of Item 22 of Schedule 14A under the 1934 Act.

4. The Trust and any Future Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the "manager of managers" approach described in the application. The prospectus will prominently disclose that the Managers, subject to Board oversight, have the ultimate responsibility for the investment performance of the Fund due to their responsibility to oversee Subadvisers and recommend their hiring, termination, and replacement.

5. No director, trustee, or officer of the Trust, the Funds, or a Future Fund, or director or officer of the Managers, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a Subadviser except for (a) ownership of interests in the Manager or any entity that controls, is controlled by, or under common control with the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Subadviser or controls, is controlled by, or is under common control with a Subadviser.

6. Neither the Trust nor the Managers will enter into subadvisory Agreements on behalf of a Fund with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

7. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

8. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of meetings of the Board that any such change of Subadvisers is in the best interest of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or Affiliated Subadviser derives an inappropriate advantage.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20490 Filed 8–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23934; 812–11362]

Elk Associates Funding Corporation and Ameritrans Capital Corporation; Notice of Application

August 3, 1999.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants, Elk Associates Funding Corporation ("Elk") and Ameritrans Capital Corporation ("Ameritrans"), request an order approving their respective Non-Employee Directors Stock Option Plans (the "Elk Plan" and the "Ameritrans Plan," collectively, the "Plans") and the grant of certain stock options under the Plans.

FILING DATES: The application was filed on October 19, 1998 and amended on July 29, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 30, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, c/o Perri Beth Irvings, Esquire, Stursberg & Veith, 405 Lexington Avenue, Suite 4949, New York, New York 10174–4902.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0528 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Elk, a New York corporation, is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act [1] and is licensed as a small business investment company ("SBIC") under the Small Business Act of 1958, as amended. Ameritrans is a newly-created Delaware corporation that elected to become a BDC on July 29, 1999.

2. Applicants plan to enter into an Agreement and Plan of Share Exchange (the "Share Exchange Plan"). Under the Share Exchange Plan, Elk would become a wholly-owned subsidiary of Ameritrans, and the holders of all of the outstanding shares of Elk's common stock would receive one share of Ameritrans stock for each share of Elk stock owned (the "Share Exchange").[2] The Share Exchange is expected to take place as soon as practicable after issuance of the order by the Commission relating to the Share Exchange Plan. If the Share Exchange is consummated, Ameritrans will have the identical capital structure, management and board of directors ("Board") that Elk has currently. Elk, as a subsidiary of Ameritrans, would continue to operate as an SBIC and Ameritrans would engage in broader lending and investment operations consistent with its status as a BDC but not subject to SBIC restrictions. Ameritrans will not engage in any substantive business activities prior to the completion of the Share Exchange. Neither applicant has an external investment adviser within the meaning of section 2(a)(20) of the Act.

3. Applicants request an order under section 61(a)(3)(B) of the Act approving the Plans. Each Plan provides for the grant of options to acquire shares of the relevant applicant's common stock to directors who are neither officers, employees nor interested persons (as defined by section 2(a)(19) of the Act) of applicants ("Non-Employee Directors").[3] Elk has a ten-member Board, six of whom are Non-Employee Directors.

4. The Plans are identical, except that the Ameritrans Plan will not become effective unless and until the Share Exchange is completed. When the Share Exchange occurs, the Ameritrans Plan would become the successor Plan to the Elk Plan and options granted under the Elk Plan would be deemed to have been issued under the Ameritrans Plan and would be exercisable for shares of Ameritrans stock. In the event the Share Exchange is not approved, the Elk Plan would remain in effect.

5. On August 21, 1998, the Board adopted the Elk Plan subject to approval by shareholders and the Commission. On September 28, 1998, Elk's shareholders approved the Elk Plan. The Board adopted the Ameritrans Plan on May 21, 1999 and the sole shareholder of Ameritrans approved the Ameritrans Plan on May 21, 1999. The Elk Plan will become effective on the date that it is approved by the Commission ("Approval Date").

6. The Elk Plan provides that on the later of the Approval Date or the first anniversary of the election or appointment of a Non-Employee Director to the Board ("Anniversary Date"), each Non-Employee Director then serving will receive an automatic grant of options to purchase a number of shares of Elk common stock ("Options") determined by dividing $50,000 by the current market value of Elk's common stock on the Approval Date ("Initial Grants"). Following the Initial Grants, each new Non-Employee Director will automatically be granted a number of Options on his or her Anniversary Date to be determined by dividing $50,000 by the current market value of shares of Elk common stock on the date of grant. Based on length of service, four of the six Elk Non-Employee Directors would be granted Options on the Approval Date and the other two Non-Employee Directors upon their Anniversary Date. All Options become exercisable 12 months after the date of the grant if the Non-Employee Director remains on the Board. A total of 75,000 shares of Elk's common stock is issuable to Non-Employee Directors under the Elk Plan.

---

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Share Exchange Plan must be approved by the shareholders of Elk and by the Commission. Applicants have submitted a separate application to the Commission regarding the Share Exchange (File No. 812–11420).

[3] Each Elk Non-Employee Director currently receives a $2,000 annual fee, $750 for each Board meeting attended and reimbursement for meeting-related expenses.

7. Under the terms of the Elk Plan, the exercise price of the Options will be the current market price of Elk's common stock on the later of the Approval Date or the Anniversary Date. The Plans expire ten years after the Approval Date and the Options expire five years from the date of grant. Options may not be assigned or transferred other than by the laws of descent and distribution. In the event of death of a Non-Employee Director during the Director's service, unexercised Options may be exercised for a period of one year following the date of death (by the Director's personal representative) but in no event after the respective expiration dates of such Options. If a Non-Employee Director ceases to be a director for any reason, other than because of death, any unexercised Options may be exercised within one year from the date the Non-Employee Director ceases to be a director, but in no event later than the expiration date of the Option.

8. As of March 31, 1999, Elk had outstanding 11,745,600 shares of common stock. Elk's officers and employees, including employee directors, are eligible to receive options under Elk's other stock option plan (under which Non-Employee Directors are not entitled to participate) ("Other Plan"). A maximum of 200,000 shares, or 11.5% of Elk's outstanding common stock, may be issued under both the Elk Plan and the Other Plan. Of the 125,000 shares issuable under the Other Plan, 75,000 shares, representing 4.3% of Elk's outstanding common stock, are subject to granted options. Elk has no other warrants, options or rights to purchase its outstanding voting securities.

Applicants' Legal Analysis

1. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3)(C) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the oustanding voting securities of the BDC.

3. Applicants represent that the Plans would comply with all of the requirements of section 61(a)(3)(B) of the Act. Applicants state in support of their application that the Board actively oversees Elk's affairs, that Elk relies extensively on the judgment and experience of the Board, and that Non-Employee Directors play an important role on budgetary and operational issues, credit and loan policies, asset valuation and strategic direction, as well as serving on Board committees. Applicants believe that the Plans will provide additional incentives to Non-Employee Directors to remain on the Board and devote their best efforts to ensure the success of applicants. Applicants also believe that the Options will provide significant at-risk incentives to the Non-Employee Directors, thereby further ensuring close identification of their interests with those of the applicants and their shareholders. Applicants assert that by providing incentives such as Options, applicants will be able to maintain continuity in the Board's membership and to attract and retain highly experienced and skilled professionals who are critical to each applicant's success as a BDC.

4. Applicants submit that the terms of the Plans are fair and reasonable and do not involve overreaching of applicants or their shareholders. Applicants state that the Options are not immediately exercisable, will become exercisable 12 months after the date of grant, and then only if the grantee remains a Non-Employee Director. No Options will become exercisable due to the consummation of the Share Exchange. Applicants also state that the total number of shares of common stock issuable under the Elk Plan to Non-Employee directors represents 4.3% of Elk's outstanding common stock. Applicants assert that the Options will have value only to the extent that the market value of Elk's stock (or Ameritrans' stock if the Share Exchange occurs) increases above the exercise price of the Options and that the exercise of the Options under the Plans would not have a substantial dilutive effect on the net asset value of Elk's (or Ameritrans') common stock. Applicants state that the total amount of voting securities that would result from the exercise of all outstanding warrants, options and rights upon approval of the Elk Plan would represent 11.5% of Elk's outstanding voting securities, an amount within the percentage limitations set forth in section 61(a)(3)(C) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20491 Filed 8–9–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3200]

State of California (And Contiguous Counties in Nevada and Arizona)

San Bernardino County and the contiguous counties of Kern, Inyo, Los Angeles, Orange, and Riverside in California, Clark County, Nevada, and La Paz and Mohave Counties in Arizona constitute a disaster area as a result of damages caused by severe storms and flash flooding that occurred on July 11, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on Sept. 27, 1999 and for economic injury until the close of business on May 1, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000

	Percent
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 320006 for California, 320106 for Nevada, and 320206 for Arizona. For economic injury the numbers are 9D4200 for California, 9D4300 for Nevada, and 9D4400 for Arizona.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–20478 Filed 8–9–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3199; Amendment #1]

State of Iowa

In accordance with notices received from the Federal Emergency Management Agency dated July 27 and July 30, 1999, the above-numbered Declaration is hereby amended to include Bremer, Buchanan, Cerro Gordo, Chickasaw, Fayette, Floyd, Howard, Mitchell, and Worth Counties in the State of Iowa as a disaster area due to damages caused by severe storms and flooding beginning on July 2, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Allamakee, Clayton, Hancock, Winnebago, Winneshiek, and Wright Counties in Iowa, and Fillmore, Freeborn, and Mower Counties in Minnesota.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 19, 1999, and for economic injury the deadline is April 24, 2000.

The economic injury number for the State of Minnesota is 9D4800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 2, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–20476 Filed 8–9–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203]

State of Minnesota

As a result of the President's major disaster declaration on July 28, 1999, I find that Cook, Itasca, and St. Louis Counties in the State of Minnesota constitute a disaster area due to damages caused by severe storms, winds, and flooding beginning on July 4, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 25, 1999 and for economic injury until the close of business on April 28, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Aitkin, Beltrami, Carlton, Cass, Koochiching, and Lake Counties in Minnesota, and Douglas County, Wisconsin.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 320306. For economic injury the numbers are 9D4500 for Minnesota and 9D4600 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 2, 1999.

Bernard Kulik,

Associate Administrator For Disaster Assistance.

[FR Doc. 99–20477 Filed 8–9–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–99–051]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its two Subcommittees (Waterways and Navigation) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. All meetings will be open to the public.

DATES: The meeting of HOGANSAC will be held on Thursday, September 9, 1999 from 9 a.m. to approximately 1 p.m. The meeting of the Navigation Subcommittee will be held on Thursday, August 26, 1999 at 9 a.m. and immediately following, the Waterways Subcommittee will meet. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at the meetings.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the Houston Pilots' Office, 8150 South Loop East, Houston, Texas. The subcommittee meetings will be held at the Houston Port Authority, 111 East Loop South, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Wayne Gusman, Executive Director of HOGANSAC, telephone (713) 671–5199, or Commander Paula Carroll, Executive Secretary of the HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC)

The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Pluta), Executive Director (CAPT Gusman) and chairman (Tim Leitzell).

(2) Approval of the May 27, 1999 minutes.

(3) Report from the Waterways Subcommittee.

(4) Report from the Navigation Subcommittee.

(5) Status reports on Baytown Tunnel removal, Army Corps of Engineers' dredging projects and pipeline safety, and comments and discussions from the floor.

(6) New business.

Subcommittee on Waterways

The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Subcommittee on Navigation

The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group.

Procedural

All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make oral presentations during the meetings.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: July 26, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coat Guard District.

[FR Doc. 99–20515 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–99–5867]

Parts and Accessories Necessary for Safe Operation; Exemption Applications; Minimum Fuel Tank Fill Rate and Certification Labeling

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of applications for exemptions and intent to grant exemptions; request for comments.

SUMMARY: The FHWA is announcing its preliminary determination to grant the applications of the Ford Motor Company (Ford) for exemptions from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions would enable motor carriers to operate commercial motor vehicles (CMVs) manufactured by Ford, and equipped with fuel tanks that do not meet the FHWA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute, and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FHWA believes the terms and conditions of the exemptions being considered achieve a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations and requests public comment on Ford's applications. The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: Comments must be received on or before September 9, 1999.

ADDRESSES: Submit written, signed comments to FHWA Docket No. FHWA–99–5867, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that were submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590-0001, in response to previous rulemaking notices concerning the docket referenced at the beginning of this notice by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Pub.L. 105–178, 112 Stat. 107). Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs for a person(s) seeking regulatory relief from those requirements. An exemption may be up to two years in duration, and may be renewed. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the request.

The TEA–21 requires the FHWA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FHWA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations (49 CFR part 381) established the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions.

Ford's Applications for Exemptions

Ford applied for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that

certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

Ford produces "Econoline" incomplete vehicles which are completed by second-stage manufacturers for numerous uses, including use as a CMV as defined in 49 CFR 390.5. The completed vehicles are based on a "light truck" platform with load-or passenger-carrying capabilities that meet or exceed the weight-or passenger-carrying thresholds for the applicability of the FMCSRs. Ford indicated it is not possible to accurately estimate the number of Econoline-based vehicles that will be used as CMVs. Of the 19,000 Econoline-based vehicles produced each model year, 13,000 are produced with gasoline fuel configuration, with a percentage of these used as CMVs.

Application for Exemption From the Fill Rate Requirement

Ford Econoline vehicles are equipped with fuel tanks mounted between the frame rails and use a fill pipe system routed to minimize exposure in the event of a crash. The system is approximately two feet long with several bends, which results in additional internal resistance to fuel flow. When these design characteristics are combined with the vapor generated while filling the tank with gasoline, the maximum filling rate does not exceed 17 gallons per minute. Ford states:

> It is difficult to address [§ 393.67(c)(7)(ii)] as a safety requirement. Ford views this portion of Part 393 to be more a subject of convenience. With virtually all filling stations using the industry standard automatic shut-off nozzles, it is unlikely that fuel will be spilled even while using a high flow rate delivery system. These standard nozzles substantially reduce any potential safety risk introduced by filling an Eonoline vehicle at a rate above its capacity of 17 gallons per minute.
>
> Further, the U.S. Environmental Protection Agency (EPA) has imposed a 10 gallon per minute limit [40 CFR 80.22(j)] on gasoline fuel flow rates at any "retailer or wholesale purchaser-consumer." This EPA requirement was effective in part on January 1, 1996 and in full on January 1, 1998. As mentioned previously, the Econoline fuel fill system can easily accommodate this fill rate.

Ford believes that denial of the exemption application would result in motor carriers having to retrofit replacement fuel tanks, which could result in undermining the fuel system integrity of the vehicles.

Application for Exemption From the Certification Marking Requirement

Ford indicated that fuel tanks used on Econoline vehicles are not marked in accordance with § 393.67(f). Ford states:

> The marking requirements of [§§ 393.67(f)(2) and (f)(3)(ii)] are only identification requirements and do not contribute to the safety of the fuel tank. It acts as a convenient method for [an] inspector to verify that the tank has been self-certified by [its] manufacturer. The subject tanks are already marked with the month and year of manufacture and the Ford production part number satisfying the traceability aspect of the marking requirements. The remaining certification statement will be added but cannot be fitted to all vehicles immediately, hence the need for an exemption. Ford Motor Company believes that there is no negative safety effect of these vehicles not complying with [§§ 393.67(f)(2) and (f)(3)(ii)].

Basis for Preliminary Determination To Grant Exemptions

The FHWA has reviewed its fill pipe design requirements and believes the fill pipe capacity criterion, when applied to gasoline-powered vehicles, is inconsistent with the EPA's regulations concerning gasoline fuel pumps. While the FHWA requirement may be appropriate for diesel fuel-powered commercial motor vehicles, it mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at a rate twice the maximum rate gasoline fuel pumps are designed to dispense fuel.

The EPA requires (40 CFR 80.22) that every retailer and wholesale purchaser-consumer must limit each nozzle from which gasoline or methanol is introduced into motor vehicles to a maximum fuel flow rate not to exceed 10 gallons per minute (37.9 liters per minute). Any dispensing pump that is dedicated exclusively to heavy-duty vehicles is exempt from the requirement.

Since the EPA's regulation includes an exemption for dispensing pumps used exclusively for refueling heavy-duty vehicles, it is possible that some of the gasoline-powered vehicles that would be exempted could be refueled at a location (e.g., at a fleet terminal) where the dispensing equipment exceeds 10 gallons per minute. However, the FHWA does not believe this should present a safety problem because the fill pipe design used by Ford is capable of receiving fuel at a rate of 17 gallons per minute. The 17-gallon-per-minute rate is only 15 percent less than the requirement in § 393.65. The agency believes the 17-gallon-per-minute rate will achieve a level of safety that is equivalent to the level of safety that would be obtained by complying with § 393.67(c)(7)(ii). Gasoline fuel pumps that are dedicated for heavy-duty trucks and buses may dispense fuel at a rate in excess of 10 gallons per minute, but the FHWA does not believe the rate would exceed 17 gallons per minute. The agency requests comments on this issue.

In addition to considering the regulatory inconsistencies between the FHWA and EPA requirements, the FHWA reviewed available information on the origin of the rule concerning fill pipes. The FHWA's 20-gallon per minute rate in § 393.67(c)(7)(ii) is based on the Society of Automotive Engineers' (SAE) recommended practice "Side Mounted Gasoline Tanks" as revised in 1949. The SAE later published fuel tank manufacturing practices in SAE J703, "Fuel Systems," an information report which consisted of the former Interstate Commerce Commission's requirements for fuel systems and tanks (codified at 49 CFR 193.65 in the 1953 edition of the Code of Federal Regulations). The information report retained the 20-gallon-per-minute rate. The SAE currently covers this subject under recommended practice SAE J703 "Fuel Systems—Truck and Truck Tractors." The 1995 version of the recommended practice continues to use the 20-gallon-per-minute criterion for fill pipes.

The FHWA does not have technical documentation explaining the rationale for the SAE's original use of the 20-gallon-per-minute rate in 1949 and believes the adoption of the criterion in Federal regulations may have resulted in its continued use in the current SAE recommended practice which references §§ 393.65 and 393.67. As stated by the SAE, "[t]he intent of this document is not only to clarify the procedures and reflect the best currently known practices, but also to prescribe requirements * * * that meet or exceed all corresponding performance requirements of FMCSR 393.65 and 393.67 that were in effect at the time of issue."

The FHWA believes the current requirement may need to be reconsidered in light of the EPA requirements. While the FHWA reviews this issue, motor carriers should not be penalized for operating vehicles with non-compliant fill pipes that they had no practical means of identifying. The agency has made a preliminary determination that it is appropriate to grant an exemption to § 393.67(c)(7)(ii) for interstate motor carriers operating Ford Econoline vehicles and requests public comment on Ford's application.

With regard to Ford's application for an exemption to the fuel tank marking and certification requirements (§§ 393.67(f)(2) and (f)(3)(ii)), the FHWA agrees with Ford that there is no readily apparent adverse impact on safety associated with the absence of the required markings. Although the FHWA considers marking and certification important for helping enforcement officials and motor carriers quickly distinguish between fuel tanks that are certified as meeting the FHWA's requirements and those that are not, the FHWA does not believe the operators of the Ford Econoline vehicles should be penalized because the fuel tanks are not marked and certified in accordance with § 393.67.

The absence of certification labeling resulted in certain State enforcement officials prohibiting the operation of small buses built on Ford Econoline platforms. The State officials and motor carriers operating those vehicles discussed the issue with Ford and requested assistance in determining whether the fuel tanks met the requirements of § 393.67. Prior to notification from State enforcement officials and motor carriers, Ford was unaware that customers subject to the FMCSRs are required to have fuel tanks that meet the FHWA's requirements, including marking. As a vehicle manufacturer, Ford is fully aware of all applicable Federal Motor Vehicle Safety Standards issued and enforced by the National Highway Traffic Safety Administration, the agency in the U.S. Department of Transportation responsible for regulating motor vehicle and equipment manufacturers. Ford is less familiar with the equipment requirements of the FHWA, the agency responsible for regulating motor carriers.

Ford has met with FHWA staff to discuss the agency's requirements and conducted certain tests to determine whether its fuel tanks satisfy § 393.67. It was determined that the tanks do not meet the fill pipe requirements, and do not have the necessary certification. An exemption to the certification is needed because Ford cannot misrepresent its product by certifying compliance with all applicable provisions in § 393.67 while its fill pipe designs allow only 17 gallons of gasoline fuel per minute to flow into the fuel tank. The agency believes granting exemptions for the affected motor carriers is the most effective way to resolve the problem while ensuring highway safety.

Terms and Conditions for the Exemption

The FHWA would provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating Ford Econoline-based vehicles. The exemption would be valid for two years from the date of approval, unless revoked earlier by the FHWA. Ford, or any of the affected motor carriers, may apply to the FHWA for a renewal. The exemption would preempt inconsistent State or local requirements applicable to interstate commerce.

The motor carriers operating these vehicles would not be required to maintain documentation concerning the exemption because the vehicles and fuel tanks have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain E30, E37, E39, E40, or E47 codes in the fifth, sixth, and seventh positions. The fuel tanks are marked with Ford part numbers F3UA–9002–G*, F3UA–9002–H*, F4UA–9002–V*, F4UA–9002–X*, F5UA–9002–V*, F5UA–9002–X*, F6UA–9002–Y*, F6UA–9002–Z*, F7UA–9002–C*, and F7UA–9002D* where the asterisk (*) represents a "wild card" character (any character of the alphabet). The FHWA believes this information is sufficient and requests public comment.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FHWA is requesting public comment from all interested persons on the exemption applications from Ford. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the FHWA may grant the exemptions at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.48.

Issued on: August 2, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–20517 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–6057]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled "Shipbuilding Orderbook and Shipyard Employment."

DATES: Comments should be submitted on or before October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel Seidman, Office of Ship Construction, Maritime Administration, 400 Seventh Street, SW, Room 8311, Washington, D.C. 20590, telephone number—202–366–1888. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Shipbuilding Orderbook and Shipyard Employment.

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0029.

Form Number: MA–832.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: In accordance with Sections 210 and 211 of the Merchant Marine Act, 1936, as amended, this collection of information will help facilitate MARAD's efforts to monitor the shipbuilding industry's health and current employment, facility utilization, and scheduling practices. Additionally, this data will facilitate the projection of future employment needs and facility availability for future shipbuilding work.

Need and Use of the Information: The collection of information is necessary in order for MARAD to perform and carry out its duties required by section 210 and 211 of the Merchant Marine Act, 1936.

Description of Respondents: U.S. Shipyards which agree to complete the information and return it to the MARAD.

Annual Responses: 800 responses.

Annual Burden: 400 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: August 4, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 99–20484 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority tissues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request.

PM—Party to application with the modification request

Issued in Washington, DC, on August 3, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemption and Approval.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	08/31/1999
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	08/31/1999
11817–N	FIBA Technologies, Inc., Westboro, MA	1, 4	08/31/1999
11862–N	The BOC Group, Murray Hill, NJ	4	08/31/1999
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	08/31/1999
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	08/31/1999
12020–N	Rhone-Poulenc, Inc., Shelton, CT	4	08/31/1999
12029–N	NACO Technologies, Lombard, IL	4	08/31/1999
12032–N	Physical Acoustics Quality Services, Lawrenceville, NJ	4	08/31/1999
12033–N	PPG Industries, Inc., Pittsburgh, PA	4	08/31/1999
12051–N	General American Transportation Corporation, Chicago, IL	4	08/31/1999
12064–N	Occident Chemical Corp., Webster, TX	4	08/31/1999
12071–N	Pennwalt India Limited, Worli, Mumbai, IN	4	08/31/1999
12106–N	Air Liquide America Corporation, Houston, TX	4	08/31/1999
12123–N	Eastman Chemical Co., Kingsport, TN	4	08/31/1999
12125–N	Mayo Foundation, Rochester, MN	4	08/31/1999
12126–N	LaRoche Industries Inc., Atlanta, GA	4	08/31/1999
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	08/31/1999
12144–N	Sea-Land Service, Inc., Charlotte, NC	4	08/31/1999
12146–N	Luxfer Gas Cylinders, Riverside, CA	4	08/31/1999
12148–N	Eastman Kodak Company, Rochester, NY	4	08/31/1999
12156–N	Columbia Falls Aluminum Co., Columbia Falls, MT	4	08/31/1999
12158–N	Hickson Corporation, Conley, GA	4	08/31/1999
12164–N	Rhodia Inc., Shelton, CT	4	08/31/1999
12166–N	Dow Corning Corp., Midland, MI	4	08/31/1999
12171–N	Arichell Technologies, Inc., West Newton, MA	4	08/31/1999
12173–N	ARCO Alaska, Inc., Anchorage, AK	4	08/31/1999
12181–N	Aristech, Pittsburgh, PA	4	08/31/1999
12194–N	Air Products & Chemicals, Inc., Allentown, PA	4	08/31/1999
12203–N	Celanese Ltd., Dallas, TX	4	08/31/1999
12204–N	Express Service & Lockheed Martin, Princeton, NJ	1	08/31/1999
12205–N	Independent Chemical Corp., Glendale, NY	4	08/31/1999
12206–N	General Electric Silicones, Waterford, NY	4	08/31/1999

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
3415–M	U.S. Department of Defense (MTMC), Falls Church, VA	4	8/31/1999
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	8/31/1999
6611–M	Gardner Cryogenics, Lehigh Valley, PA	4	8/31/1999
6765–M	Gardner Cryogenics Lehigh Valley, PA	4	8/31/1999
9266–M	ERMEWA, Inc., Houston, TX	4	8/31/1999
9419–M	FIBA Technologies, Inc., Westboro, MA	4	8/31/1999
10677–M	Suunto USA, Carlsbad, CA	4	8/31/1999
10921–M	The Procter & Gamble Company, Cincinnati, OH	4	8/31/1999
10929–M	Consolidated Rail Corporation, Philadelphia, PA	4	8/31/1999
10977–M	Federal Industries Corporation Plymouth, MN	4	8/31/1999
11173–M	Olin Corporation, Norwalk, CT	4	8/31/1999
11327–M	Phoenix Services Limited Partnership, Pasadena, MD	4	8/31/1999
11613–M	Solutia, Inc., St. Louis, MO	1	9/30/1999
11769–M	HCI USA Distribution Co., Inc., Irvine, CA	4	7/30/1999
11173–M	Olin Corporation, Norwalk, CT	4	8/31/1999
11327–M	Phoenix Services Limited Partnership, Pasadena, MD	4	8/31/1999
11613–M	Solutia, Inc., St. Louis, MO	1	9/30/1999
11769–M	HCI USA Distribution Co., Inc., Irvine, CA	4	7/30/1999
11856–M	Olin Corp/Motorola Corp	1	9/30/1999
12013–M	HCI USA Distribution Companies Incorporated, Irvine, CA	4	7/31/1999

[FR Doc. 99–20512 Filed 8–9–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Quarterly Performance Review Meeting on the Contract "Detection of Mechanical Damage in Pipelines" (Contract DTRS–56–96–C–0010)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of meeting.

SUMMARY: RSPA invites the pipeline industry, in-line inspection ("smart pig") vendors, and the general public to the last quarterly performance review meeting of progress on the contract "Detection of Mechanical Damage in Pipelines." The meeting is open to anyone, and no registration is required. This contract is being performed by Battelle Memorial Institute (Battelle), along with the Southwest Research Institute, and Iowa State University. The contract is a research and development contract to develop electromagnetic in-line inspection technologies to detect and characterize mechanical damage and stress corrosion cracking. The meeting will cover a review of the overall project plan, the status of the contract tasks, progress made during the past quarter, and projected activity for the remainder of the contract.

DATES: The last quarterly performance review meeting will be held on Monday, August 30, 1999 beginning at 1 p.m. and ending around 5 p.m.

ADDRESSES: The quarterly review meeting will be held at The Antlers Adam's Mark Hotel, 4 South Cascade Avenue, Colorado Springs, CO 80903. The hotel's telephone number is (719) 473–5600.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Ulrich, Contracting Officer's Technical Representative, Office of Pipeline Safety, telephone: (202) 366–4556, FAX: (202) 366–4566, e-mail: lloyd.ulrich@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

RSPA is conducting quarterly meetings on the status of its contract "Detection of Mechanical Damage in Pipelines" (Contract DTRS–56–96–C–0010) because in-line inspection research is of immediate interest to the pipeline industry and in-line inspection vendors. The research contract with Battelle is a cooperative effort between the Gas Research Institute (GRI) and DOT, with GRI providing technical guidance. The meetings allow disclosure of the results to interested parties and provide an opportunity for interested parties to ask Battelle questions concerning the research. Attendance at this meeting is open to all and does not require advanced registration nor advanced notification to RSPA.

We specifically want that segment of the pipeline industry involved with in-line inspection to be aware of the status of this contract. To assure that a cross section of industry is well represented at these meetings, we have invited the major domestic in-line inspection company (Tuboscope Vetco Pipeline Services) and the following pipeline industry trade associations: American Petroleum Institute, Interstate Natural Gas Association of America, and the American Gas Association. Each has named an engineering/technical representative and, along with the GRI representative providing technical guidance, form the Industry Review Team (IRT) for the contract.

The original objective was to open each quarterly performance review meeting to the public. The first quarterly meeting was conducted on October 22, 1996, in Washington, DC. However, preparing for a formal briefing each quarter takes a considerable amount of time and resources on Battelle's part that could be better used to conduct the research. Therefore, Battelle requested and RSPA concurred that future public meetings would be conducted semi-annually. Conducting public meetings semi-annually will provide all interested parties with sufficient update of progress in the research. Only the IRT and RSPA staff involved with the contract will be invited to the quarterly performance review meetings held between the public semi-annual meetings.

Another objective is to conduct many of the semi-annual meetings at the same location and either before or after a meeting of GRI's Nondestructive Evaluation Technical Advisory Group to enable participation by pipeline technical personnel involved with nondestructive evaluation. This meeting is being held in Colorado Springs the day before a meeting of the GRI Nondestructive Technical Advisory Group. Each of the semi-annual

meetings have been announced in the **Federal Register** at least two weeks prior to the meeting.

II. The Contract

The Battelle contract is a research and development contract to evaluate and develop in-line inspection technologies for detecting mechanical damage and cracking, such as stress-corrosion cracking (SCC), in natural gas transmission and hazardous liquid pipelines. Third-party mechanical damage is one of the largest causes of pipeline failure, but existing in-line inspection tools cannot always detect or accurately characterize the severity of some types of third-party damage that can threaten pipeline integrity. Although SCC is not very common on pipelines, it usually appears in high-stressed, low-population-density areas and only when a limited set of environmental conditions are met. Several attempts have been made to develop an in-line inspection tool for SCC, but there is no commercially successful tool on the market.

Under the contract, Battelle is evaluating and advancing magnetic flux leakage (MFL) inspection technology for detecting mechanical damage and two electromagnetic technologies for detecting SCC. The focus is on MFL for mechanical damage because experience shows MFL can characterize some types of mechanical damage and can be successfully used for metal-loss corrosion under a wide variety of conditions. The focus for SCC is on electromagnetic technologies that can be used in conjunction with, or as a modification to, MFL tools. The technologies to be evaluated take advantage of the MFL magnetizer either by enhancing signals or using electrical currents that are generated by the passage of an inspection tool through a pipeline.

The contract includes three major tasks. Task 1 evaluated existing MFL signal generation and analysis methods and established a baseline from which today's tools can be evaluated and tomorrow's advances measured. Then, improvements to signal analysis methods were developed and verified through testing under realistic pipeline conditions. Finally, it built an experience base and defect sets to generalize the results from individual tools and analysis methods to the full range of practical applications.

Task 2 evaluated two inspection technologies for detecting stress corrosion cracks. The focus in Task 2 was on electromagnetic techniques that have been developed in recent years and that could be used on or as a modification to existing MFL tools. Three subtasks evaluated velocity-induced remote-field techniques, remote-field eddy-current techniques, and external techniques for sizing stress corrosion cracks.[1]

Task 3 is verifying the results from Tasks 1 and 2 by tests under realistic pipeline conditions. Task 3 is (1) extending the mechanical damage detection, signal decoupling, and sizing algorithms developed in the basic program to include the effects of pressure, (2) verifying the algorithms under pressurized conditions in GRI's 4,700 foot, 24-inch diameter Pipeline Simulation Facility (PSF) flow loop, and (3) developing techniques to measure stress and determine the severity of mechanical damage and cracks.

A drawback of present pig technology is the lack of a reliable pig performance verification procedure that is generally accepted by the pipeline industry and RSPA. The experience gained by the pipeline industry and RSPA with the use of the PSF flow loop in this project will provide a framework to develop procedures for evaluating pig performance. Defect detection reliability is critical if instrumented pigging is to be used as an in-line inspection tool in pipeline industry risk management programs.

The ultimate benefits of the project could be more efficient and cost-effective operations, maintenance programs to monitor and enhance the safety of gas transmission and hazardous liquid pipelines. Pipeline companies will benefit from having access to inspection technologies for detecting critical mechanical damage and stress-corrosion cracks. Inspection tool vendors will benefit by understanding where improvements are beneficial and needed. These benefits will support RSPA's long-range objective of ensuring the safety and reliability of the gas transmission and hazardous liquid pipeline infrastructure.

Issued in Washington, DC.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–20538 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–60–P

[1] The report summarizing the work conducted under tasks 1 and 2 can be found from viewing the RSPA home page, http://ops.dot.gov.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5442; Notice 2]

Chevron Pipe Line Company; Grant of Waiver

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice.

Chevron Pipe Line Company (CPL) petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR 19.612(b)(3), which requires that gas pipeline facilities in the Gulf of Mexico found to be exposed on the seabed or constituting a hazard to navigation be reburied so that the top of the pipe is 36 inches below the seabed.

CPL proposed to install concrete mesh blanket units to protect the pipeline from damage in lieu of the 36 inches of cover required by (192.612(b)(3)). Each concrete mesh blanket unit is a 20-foot by 8-foot by 9-inch section constructed from 160 individually cast 17-inch by 17-inch by 9-inch beveled concrete briquettes inter-connected with ¾-inch polypropylene UV stabilized line.

On May 27, 1999 we published a notice of petition for waver with request for comments in the **Federal Register** (60 FR 27809 May 25, 1995). We received two comments. The first commenter opined that the alternative to cover the line with a 9″ concrete mat did not appear to provide equal protection to the pipeline to that of 36″ of natural cover. The commenter further stated that the mat would produce a hump on the gulf floor which may create further safety risk. The second commenter expressed interest in the proposal to require a rock shield. The commenter believed that a pipe of the diameter would have been concrete coated before installation thus negating the need for any further protection of the pipe from the concrete mesh blanket units.

We have considered the concerns expressed by the commenter and agree that the concrete mat could under some circumstances pose a hazard to navigation by reducing the water depth by 9-inches. However, the potential for adverse consequences of a vessel striking the mat is less than the potential for adverse consequence for a vessel striking and rupturing a high pressure natural gas pipeline. As evidenced by repeated surveys in this area, the gulf floor consists of sugar sands which are highly susceptible to erosion. Although the concrete mats

would reduce the depth of water by 9-inches, the mats provide consistent penetration resistance and are designed to promote the collection of bottom silt and vegetative growth. This silt-in process is achieved by particulates dropping out of the water column as a result of reduced current flow across the mesh blankets and will add stability to the installation while building cover over the pipeline. The concrete blanket will consistently protect the line to an equal or greater degree as will 36-inches of soft, unstable natural cover.

We agree with the second commenter that the rock shield would be unnecessary if the pipeline is concrete coated. CPL confirms that the pipeline was concrete coated. Therefore we will not require a rock shield to be installed.

In consideration of the forgoing we find that the requested waiver of compliance with § 192.612(c)(3) is not inconsistent with pipeline safety. Therefore the request for waiver is granted.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick by telephone at 202–366–5523, by fax at 202–366–4566, by mail at U.S. Department of Transportation, RSPA, DPS–10, 400 Seventh Street, SW, Washington, DC 20590, or via e-mail to le.herrick@rspa.dot.gov regarding the subject matter of this notice.

Authority: 49 U.S.C. 60118(c); 49 CFR 1.53.

Issued in Washington, DC, on August 5, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–20539 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Permit User Limited Display Fireworks Under (18 U.S.C. Chapter 40, Explosives).

DATES: Written comments should be received on or before October 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Michael Bouchard, Chief, Arson and Explosives Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7930.

SUPPLEMENTARY INFORMATION:

Title: Application For Permit User Limited Display Fireworks Under (18 U.S.C. Chapter 40, Explosives).

OMB Number: 1512–0399.

Form Number: ATF F 5400.21.

Abstract: ATF F 5400.21 is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis. The record retention requirement for this information collection is indefinitely.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1800.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 540.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 2, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–20566 Filed 8–9–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to develop census data on veterans enrolled in VA's health care system.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility;

(2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Census of Health of Veterans, Short Form 36 (10–21034, 10–21034a, 10–21034b, 10–21034c, 10–21034d, 10–21034e and 10–21034f).

b. Census of Enrollment Status, VA Form 10–21034g.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract:

a. *Census of Health of Veterans.* The information is to be used for clinical purposes by doctors, health care providers, administrators, and policy makers in the routine care of patients and to characterize individual physician and hospital practices.

b. *Census of Enrollment Status.* The information to develop the characteristics of the new VA enrolled population.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. *Census of Health of Veterans*—750,000 hours.

b. *Census of Enrollment Status*—4,050 hours.

Estimated Average Burden Per Respondent:

a. *Census of Health of Veterans*—15 minutes.

b. *Census of Enrollment Status*—9 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents:

a. *Census of Health of Veterans*—3,000,000.

b. *Census of Enrollment Status*—27,000.

Dated: July 12, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–20529 Filed 8–9–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a parent's eligibility, dependency and income, as applicable, for the death benefit sought.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0005" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation by Parent(s), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to gather the necessary information to determine a parent's eligibility, dependency and income, as applicable, for death benefits. Without the information, VA could not make a determination on the death benefit sought.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,056 hours.

Estimated Average Burden Per Respondent: 1 hour 12 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 20,880.

Dated: July 13, 1999.

By direction of the Secretary:

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–20530 Filed 8–9–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0241]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to establish the reasonable value of used manufactured home units proposed for guaranteed financing.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0241" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Determination of Reasonable Value (Used Manufactured Home) VA Form 26–8728.

OMB Control Number: 2900–0241.

Type of Review: Extension of a currently approved collection.

Abstract: The information is submitted to VA by buyers, owners/sellers, lenders, and manufactured home dealers to obtain appraisals of used manufactured home units proposed for guaranteed financing. Without the information, VA could not establish the reasonable value of such units.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 38 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 225.

Dated: July 12, 1999.

By direction of the Secretary:

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service

[FR Doc. 99–20531 Filed 8–9–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 64, No. 153
Tuesday, August 10, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 501

[FRL-6401-2]

RIN 2040-AB39

National Pollutant Discharge Elimination System Permit

Correction

In rule document 99-18866 beginning on page 42434 in the issue of Wednesday, August 4, 1999, make the following correction(s):

On page 42434, in the second column, in the DATES section, in the first line, after "rule" remove "and" and add "is effective December 2, 1999, and the stay on".

[FR Doc. C9-18866 Filed 8-9-99; 8:45 am]
BILLING CODE 1505-01-D

federal register

Tuesday
August 10, 1999

Part II

Department of Education

34 CFR Parts 682 and 685
Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR parts 682 and 685

RIN 1845–AA00

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. These proposed regulations are needed to implement recently enacted changes to the Higher Education Act of 1965 made by the Higher Education Amendments of 1998. The proposed regulations deal with provisions of the Higher Education Amendments of 1998 that affect FFEL borrowers, schools, lenders, and guaranty agencies and Direct Loan borrowers and schools. These proposed regulations seek to improve the efficiency of Federal student aid programs, and, by so doing, to improve their capacity to enhance opportunities for postsecondary education.

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments concerning these proposed regulations to Ms. Patsy Beavan and Ms. Nicki Meoli, U.S. Department of Education, PO Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: loansnprm@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representatives named in this section.

FOR FURTHER INFORMATION CONTACT: For the FFEL Program, Ms. Patsy Beavan, or for the Direct Loan Program, Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the FIRS at 1–800–877–8339.

General

Background

On October 7, 1998, President Clinton signed into law the Higher Education Amendments of 1998 (Pub. L. 105–244)(1998 Amendments) to amend the Higher Education Act of 1965, as amended (HEA). The 1998 Amendments contained a number of changes to the Title IV programs. This notice of proposed rulemaking (NPRM) addresses many of the changes that affect the FFEL and Direct Loan programs.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four

committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee II (committee), which was made up of the following members:

- American Association of Community Colleges.
- American Association of Cosmetology Schools.
- American Association of State Colleges and Universities.
- American Council on Education.
- Career College Association.
- Coalition of Associations of Schools of the Health Professions.
- Coalition of Higher Education Assistance Organizations.
- Consumer Bankers Association.
- Education Finance Council.
- Education Loan Management Resources.
- Legal Services Counsel (a coalition).
- National Association of College and University Business Officers.
- National Association for Equal Opportunity in Higher Education.
- National Association of Graduate/Professional Students.
- National Association of Independent Colleges and Universities.
- National Association of State Student Grant and Aid Programs.
- National Association of State Universities and Land-Grant Colleges.
- National Association of Student Financial Aid Administrators.
- National Association of Student Loan Administrators.
- National Council of Higher Education Loan Programs.
- National Direct Student Loan Coalition.
- Sallie Mae, Inc.
- Student Loan Servicing Alliance.
- The College Board.
- The College Fund/United Negro College Fund.
- United States Department of Education.
- United States Student Association.
- US Public Interest Research Group.

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Proposed Regulatory Changes

These proposed regulations include, in addition to the changes made to the HEA by the 1998 Amendments, conforming changes and minor technical changes.

The proposed regulations address changes that are specific to the FFEL Program and changes that are common to both the FFEL and Direct Loan programs. The following discussion of the proposed regulations begins with changes that affect only the FFEL Program, followed by changes that affect both the FFEL and Direct Loan programs.

Federal Family Education Loan Program Changes

Section 682.102—Obtaining and Repaying a Loan

The proposed regulations would modify this section to reflect the change made by the 1998 Amendments to section 432(m)(1)(C) of the HEA, to require the use of the Free Application for Federal Student Aid (FAFSA) as the application for FFEL subsidized and unsubsidized Stafford loans beginning in academic year 1999–2000. These proposed regulations also include language to reflect the use of a Master Promissory Note (MPN) that would allow borrowers to receive, in addition to an initial loan, additional loans for the same or subsequent periods.

The proposed regulations also would revise this section to reflect the change made by the 1998 Amendments to allow a borrower with multiple FFEL holders to secure an FFEL Consolidation loan from any eligible FFEL lender.

Section 682.200—Definitions

The proposed regulations would implement changes made by the 1998 Amendments to the definition of an eligible lender in section 435(d)(5) of the HEA. Specifically, the 1998 Amendments created an exception to the long-standing provision that prohibits a lender from providing inducements to schools to secure loan applications. The exception added by the 1998 Amendments provides that, notwithstanding the general prohibition on inducements, a lender may provide a school with assistance "that is comparable to the kinds of assistance that is provided by the Department of Education."

The Department expressed its view that the purpose of the new exception was to allow lenders to provide assistance to schools similar to that provided by the Department to schools in the Direct Loan Program and therefore suggested that the proposed regulations be limited to the assistance provided by the Department for the Direct Loan Program. The committee agreed to proposed regulatory language that permits lenders to provide assistance "comparable to the kinds of assistance provided by the Secretary under, or in furtherance of the Federal Direct Loan Program." This proposed language would reflect congressional intent to broaden the types of assistance that lenders may provide to a school while retaining meaning for the prohibition against lenders providing inducements to schools.

The 1998 Amendments did not change the general prohibition that lenders cannot provide services, at less than market value, to a school in order to secure applications. In general, we believe that most goods and services that a lender provides to a school at less than their fair market value are, by definition, an inducement. If those goods and services are provided by the lender to secure applicants for loans, the inducement would be prohibited. This is especially true with regard to goods and services provided by a lender that are used by the school to meet its Title IV program responsibilities under the law and the regulations. The Secretary believes that it is not necessary for the lender to specifically tie the goods and services to loan applications for certain activities to be considered improper inducements.

Prior to the 1998 Amendments, certain activities by lenders could have constituted a prohibited inducement. In light of the new law, these proposed regulations broaden the types of assistance that lenders may provide to schools. Accordingly, the following are examples of activities that would not jeopardize a lender's status as an eligible lender:

- *Counseling:* A lender may support schools in meeting their responsibilities to provide borrowers with initial counseling, exit counseling, and general debt counseling. In providing this support, lenders may:
  - Assist in the development, production, and distribution of materials used by schools in counseling activities.
  - Develop, and offer to schools, electronic products and services, including web-based processes, that can be used to meet counseling requirements.
  - Participate in counseling sessions offered by a school, provided that the school maintains control of these events and school staff members are present.
  - Participate in initial counseling, provided that the lender's activities reinforce the student's right to choose a lender.
- *Outreach:* A lender may support schools in activities to inform the public or students of the availability of student aid, including student loans. Lender participation might include such

activities as: Providing publicity for outreach events; preparing, producing, and distributing materials; providing light refreshment; and providing staff to assist the school in the presentation. Permissible outreach activities also include those that are undertaken by a lender in conjunction with a guaranty agency.

• *Computer Support:* A lender may provide computer software, technical support, and training— but not computer hardware— that support the technological processes used by the lender in its administration of the FFEL Program.

• *Training:* A lender may provide specialized training to schools in support of their FFEL Program processes. This training may be provided in person, either on or off campus, or through the use of technology. A lender may not provide school staff additional services or goods (other than items of nominal value) in connection with the training, and it may not pay expenses incurred by school staff for the training.

Section 682.201—Eligible Borrowers

The proposed regulations would implement a change made by the 1998 Amendments to section 428C(a)(3)(A) of the HEA that prohibits a borrower from receiving an FFEL Consolidation loan if the borrower is subject to a judgment secured through litigation or to an administrative wage garnishment order on a loan made under the HEA. The committee agreed to apply this restriction only to the loans the borrower wishes to consolidate. Therefore, a borrower against whom an administrative wage garnishment order or a judgment has been issued may receive an FFEL Consolidation loan, but may not include loans subject to litigation or administrative wage garnishment in the FFEL Consolidation loan. The committee also agreed that these loans should be ineligible for consolidation only until the judgment has been vacated or the administrative wage garnishment order has been lifted.

The proposed regulations also would reflect the changes made by the 1998 Amendments to section 428C(a)(3)(B) of the HEA to expand the universe of loans that may be included in an FFEL Consolidation loan. Under the 1998 Amendments, loans received prior to the borrower's receipt of an FFEL Consolidation loan may be added to the FFEL Consolidation loan during the 180-day period following the making of the FFEL Consolidation loan. Loans received by the borrower during the 180-day period following the making of the FFEL Consolidation loan may also be added during that period. Finally, loans received prior to the date of a borrower's first FFEL Consolidation loan may be added to any subsequent FFEL Consolidation loan the borrower obtains. However, the proposed regulations would clarify that a single FFEL Consolidation loan may not be reconsolidated without the borrower having another eligible loan to consolidate.

Prior to enactment of the 1998 Amendments, a borrower's eligibility to receive an FFEL Consolidation loan terminated upon receipt of an FFEL Consolidation loan, except that the borrower could add loans received prior to the date of the FFEL Consolidation loan during the 180-day period after the FFEL Consolidation loan was made. Loans made prior to, but not included in, the FFEL Consolidation loan were permanently ineligible for consolidation. The new statutory provisions that are reflected in these proposed regulations would provide more opportunities for borrowers to add loans to existing FFEL Consolidation loans.

The proposed regulations also would reflect the change made by the 1998 Amendments to section 428C(b)(1)(A)(i) of the HEA that permits a borrower who has multiple FFEL Program holders to apply to any eligible FFEL lender for an FFEL Consolidation loan. Prior to this change, a borrower had to request an FFEL Consolidation loan from the holders of all of his or her existing loans before requesting a loan from a different lender. Under the proposed rules, a borrower with a single holder may apply to another eligible FFEL lender only if the borrower is either unable to receive an FFEL Consolidation loan from the holder or is unable to receive an FFEL Consolidation loan with income-sensitive repayment terms.

Section 682.202—Permissible Charges by Lenders to Borrowers Capitalization of Interest

Interest Rates

The proposed regulations would reflect the changes made by the 1998 Amendments to the interest rate formulas for FFEL Program loans in section 427A of the HEA. The 1998 Amendments made permanent the temporary interest rate formulas that were added to the HEA by the Transportation Equity Act for the 21st Century, Pub. L. 105–178 (TEA), enacted June 9, 1998. TEA created interest rate formulas for new student and parent loans first disbursed on or after July 1, 1998, and before October 1, 1998. The 1998 Amendments applied these same formulas to loans first disbursed on or after October 1, 1998, and before July 1, 2003. Accordingly, the proposed regulations reflect the different formulas for interest rates on FFEL Program loans.

As provided by the HEA and reflected in these proposed regulations, the interest rate on Stafford loans during the repayment period is calculated based on the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period plus 2.3 percent and during the in-school and grace periods as the 91-day Treasury bills plus 1.7 percent, with a cap during these periods of 8.25 percent. The formula for PLUS loan interest rates is the 91-day Treasury bills plus 3.1 percent not to exceed 9 percent. In addition, the proposed regulations reflect the statutory formula for the interest rate on FFEL Consolidation loans for which the application is received by the lender on or after October 1, 1998, as the lesser of the weighted average of the interest rates on the loans consolidated rounded upward to the nearest one-eighth of one percent, or 8.25 percent.

Capitalization of Interest

The proposed regulations also would implement the changes made by the 1998 Amendments to the rules for capitalization of interest on unsubsidized Stafford loans. The 1998 Amendments modified the rules governing the frequency of capitalization during certain periods in which the borrower is not making payments on the principal of an unsubsidized Stafford loan. Under these new rules, a lender would be able to add accrued interest to the principal only when the loan enters repayment, at the expiration of a period of authorized deferment, at the expiration of a period of authorized forbearance, and when the borrower defaults.

The committee engaged in lengthy discussions as to how interest that accrues during a period of forbearance should be treated. There was also lengthy discussion as to whether these changes covered subsidized Stafford loans during periods of forbearance as well as unsubsidized Stafford loans during all periods in which payments of principal are not being made. (The only issue on subsidized Stafford loans was the treatment of periods of forbearance because the Department does not pay interest on the borrower's behalf during these periods.) The committee also engaged in lengthy discussions as to whether, if there were consecutive periods covered by these new

requirements (for example, a deferment period immediately followed by a forbearance period), the capitalization of the accrued interest should take place at the end of each period or the end of the consecutive covered periods.

After much discussion, the committee reached consensus on these draft regulations. Under these proposed rules, for loans first disbursed on or after July 1, 2000 (the effective date of these proposed regulations), periods of forbearance on both subsidized and unsubsidized Stafford loans would be covered by the new capitalization rules. Further, the committee agreed to propose that the capitalization could take place at the expiration of each covered period rather than at the end of a series of consecutive covered periods. For unsubsidized Stafford loans disbursed on or after the date of enactment of the 1998 Amendments (October 7, 1998) and prior to July 1, 2000, the lender must capitalize interest pursuant to section 428H(e)(2) of the HEA.

The committee believed that the proposed regulations would maximize borrower benefits by reducing the costs of capitalization. The Secretary believes that the proposed regulations would maintain the historic regulatory approach of treating periods of deferment and forbearance similarly in the area of capitalization.

Origination Fees

The proposed regulations would also implement changes to the rules governing origination fees made to section 438(c) of the HEA by the 1998 Amendments. The 1998 Amendments require any lender who charges student borrowers an origination fee to charge the same fee to all student borrowers. The law also permits a lender to assess a lower origination fee to a borrower demonstrating "greater financial need," as determined by the borrower's adjusted gross income. The 1998 Amendments, for the first time, establish provisions governing a lender's decision to offer a reduced origination fee on subsidized and unsubsidized Stafford loans. Prior to these amendments, a lender had discretion to waive or lower the fee charged to a particular subsidized Stafford loan borrower. The 1998 Amendments limit the lender's discretion and make a lower fee a term or condition of the loan if the lender chooses to charge a reduced fee to any borrower.

The committee engaged in extensive discussions regarding the appropriate standard for determining "greater financial need" for this purpose. The committee discussed a number of different possible standards including: an expected family contribution (EFC) of "0," an EFC that makes students eligible for a Federal Pell Grant, and eligibility for a subsidized Stafford loan. In addition, since each lender must apply its origination fee policies to all borrowers, there were also extensive discussions as to what constitutes a lender for purposes of this provision. Some negotiators inquired about how trust relationships would be evaluated under this regulation.

Ultimately, the committee reached consensus on both of these issues. On the issue of the standard for "greater financial need," the committee agreed to propose that a lender would be permitted to use two standards to determine whether a borrower demonstrates greater financial need to allow lenders operational and financial flexibility. Under the proposed regulations, a lender could consider a borrower as demonstrating greater financial need if—

- The borrower's EFC used to determine eligibility for the loan is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified; or
- The borrower qualifies for a subsidized Stafford loan.

To allow for situations in which a lender wants to use a comparable alternative, the committee also agreed to propose that a lender, with the approval of the Secretary, would be able to use some other standard to determine whether a borrower demonstrates greater financial need.

The proposed regulations would specify that a lender that charges a borrower a lower origination fee on the borrower's unsubsidized Stafford loan must charge the same lower fee on the borrower's subsidized Stafford loan. This requirement will ensure that borrowers who demonstrate greater financial need will receive the benefit of lower origination fees on both loan types for which they may be eligible.

The proposed regulations also would provide that all lenders under common ownership, including ownership by a common holding company, constitute a single lender for purposes of this section. The proposed regulations further would provide that any beneficial owner of loans that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf is considered the lender. We believe that this definition will ensure that all borrowers who have loans from a particular lender will be treated equitably.

Section 682.206—Due Diligence in Making a Loan

The proposed regulations include changes in this section to conform these rules to proposed changes made in § 682.603 of the regulations related to loan certification of borrower eligibility by the school, and in § 682.401 of the regulations related to the use of the MPN.

Section 682.207—Due Diligence in Disbursing a Loan

Section 682.207 of the proposed regulations would add a new provision to require lenders to disburse loans in a single installment (rather than in multiple installments as generally required) if so directed by a school that meets certain criteria specified in the 1998 Amendments. The criteria, contained in § 682.604 of the proposed regulations, specify that the exemption applies to two groups of schools: (1) Those certifying loans for a single term, with FFEL cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates of less than ten percent for each of the three most recent years for which rates have been calculated and; (2) those certifying loans for students in study abroad programs when the school certifying the loan has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the most recent year for which rates have been calculated. Consistent with the current practice, the committee agreed to propose that lenders would be permitted to rely upon the disbursement schedule provided by the school in making single installment loans.

Section 682.209—Repayment of a Loan

The proposed regulations would implement the addition made by the 1998 Amendments of section 428(b)(9)(A)(iv) of the HEA that requires a lender to offer FFEL borrowers, including FFEL Consolidation loan borrowers, an extended repayment plan with fixed or graduated repayment amounts to be paid over a period not to exceed 25 years. The extended repayment plan is available to a new borrower (one with no outstanding balance on an FFEL Program loan as of October 7, 1998), whose total outstanding FFEL loans exceed $30,000.

The proposed regulations in this section also would reflect the new statutory provision allowing borrowers to change repayment plans annually.

Section 682.300—Payments of Interest Benefits on Stafford and Consolidation Loans

The proposed regulations include a change in this section to conform these rules to a proposed change in § 682.301 of the regulations related to the interest subsidy payment on the portion of an FFEL Consolidation loan that repaid a subsidized FFEL or Direct Loan program loan during a period of authorized deferment.

Section 682.301—Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

The proposed regulations would reflect changes made by the 1998 Amendments to section 428C(b) of the HEA that extended the authority for payment of interest subsidy on the portion of an FFEL Consolidation loan that repaid a subsidized FFEL or Direct Loan program loan during a period of authorized deferment. This provision does not apply to the portion of the loan that does not represent Health Education Assistance Loans (HEAL). This borrower benefit was originally included in the Emergency Student Loan Consolidation Act of 1997 and was extended by the 1998 Amendments.

Section 682.301 also includes provisions necessary to conform to the changes in § 682.603 of the proposed regulations related to loan certification by a school.

Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

The proposed regulations would modify this section to reflect amendments to section 523(a)(8) of Title 11 of the United States Code (the Bankruptcy Code) included in the 1998 Amendments that eliminate the seven-year repayment provision for discharge of FFEL Program loans for bankruptcy petitions filed on or after October 8, 1998. The Bankruptcy Code now permits discharge of an FFEL Program loan after that date only on the grounds of undue hardship. The proposed regulations reflect the change in the criteria for bankruptcy petitions filed on or after October 8, 1998, and revise lender and guaranty agency claim filing procedures related to these loans.

Section 682.402 of the proposed regulations also includes conforming changes necessary for the implementation and use of the MPN. In particular, the proposed regulations would provide that a lack of evidence of a borrower's confirmation for subsequent loans made under an MPN will not lead to a denial of claim payment to the lender unless the loan is found to be unenforceable. However, if a court rules that the loan is not enforceable solely because of the lack of evidence of the confirmation process or processes, the lender and the guaranty agency must repay any insurance and reinsurance payments received on the loan.

Section 682.406—Conditions of Reinsurance Coverage

The proposed regulations would include conforming changes necessary to implement and use the MPN.

Section 682.409—Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

The proposed regulations contain a conforming change relating to the MPN. The proposed regulations would clarify the rules governing assignment of defaulted loans to the Secretary by specifying that mandatory assignment of one loan made under an MPN does not constitute assignment of all loans made under the MPN.

Section 682.414—Records, Reports, and Inspection Requirements for Guaranty Agency Programs

The proposed regulations would make conforming changes to this section which are necessary to implement the MPN. In particular, this section would require lenders to maintain documentation of the confirmation processes the lender and the school used for subsequent loans under an MPN and specify that a lender or guaranty agency may, to accommodate the MPN process, retain a true and exact copy of the promissory note rather than the original note.

Section 682.603—Certification by a Participating School in Connection with a Loan Application

The proposed regulations would reflect changes made by the 1998 Amendments to section 428(a)(2) of the HEA that reduce the types of information a school is required to provide to a lender in certifying a Stafford loan. To reflect the statute, the proposed regulations would require the school to certify only the loan amount for which the borrower is eligible and to provide a disbursement schedule. The proposed regulations would require the school to maintain documentation of the determination of the borrower's need (based on the cost of attendance, estimated financial assistance, and, if applicable, EFC).

The proposed regulations in this section also would specify that schools that qualify for exemption from the multiple disbursement requirement or the requirement for delayed delivery of loan funds for first-time borrowers—due to their low FFEL cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates—must cease certifying loans based on those criteria no later than 30 days after the school is notified that it no longer meets the qualifications. The committee agreed that this 30-day period after notification was necessary to allow the school sufficient time to advise students of this change in the school's status and to make necessary system and procedural changes.

Section 682.610—Administrative and Fiscal Requirements for Participating Schools

The proposed regulations would make conforming changes to this section that are necessary to implement and use the MPN and to reflect the modified loan certification requirements of the school in 682.603 of the proposed regulations.

FFEL and Direct Loan Program Changes

Sections 682.102 and 685.201—Master Promissory Note

The proposed regulations in these sections would make conforming changes necessary to reflect the implementation of the MPN in the FFEL and Direct Loan programs. A more detailed discussion of the MPN is provided in the discussion of changes to §§ 682.401 and 685.402 in this preamble.

Sections 682.200 and 685.102—Definitions of Default, Estimated Financial Assistance, and Master Promissory Note

The proposed regulations would revise the FFEL and Direct Loan program definitions of "Default" and "Estimated financial assistance" to reflect changes made to sections 435(l) and 428(a)(2)(C) of the HEA by the 1998 Amendments. The proposed regulations also would add the term "Master promissory note" to the definition sections in the FFEL and Direct Loan program regulations, as part of the implementation of the MPN as provided in section 432(m)(1)(D) of the HEA.

Default

The 1998 Amendments extended the length of time a borrower is delinquent before a default occurs on an FFEL or Direct Loan program loan from—

- 180 days to 270 days for FFEL and Direct Loan program loans repayable in monthly installments; and
- 240 days to 330 days for FFEL Program loans repayable less frequently than monthly installments.

The proposed regulations would modify the existing definition of default to reflect this statutory change.

Estimated Financial Assistance

Before enactment of the 1998 Amendments, schools were required to include veterans' educational benefits paid under Chapter 30 of Title 38 of the United States Code as "estimated financial assistance" for the purpose of determining a borrower's eligibility for FFEL and Direct Loan program loans. The 1998 Amendments changed this requirement for the purpose of determining eligibility for subsidized FFEL and Direct Loan program loans. Schools no longer are required to include the specified veterans' educational benefits paid in the calculation of estimated financial assistance when determining eligibility for subsidized FFEL and Direct Loan program loans.

The 1998 Amendments also now require schools to include national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (Americorps) as estimated financial assistance for the purpose of determining a borrower's eligibility for unsubsidized FFEL and Direct Loan program loans. However, schools are not required to include these benefits when determining a borrower's eligibility for subsidized FFEL and Direct Loan program loans.

The proposed regulations reflect these statutory changes affecting the treatment of veterans' educational and Americorps benefits in determining estimated financial assistance.

Master Promissory Note

The proposed regulations include a definition of the term "Master promissory note" (MPN). An MPN is a promissory note under which a borrower may receive loans for a single academic year or multiple academic years. The 1998 Amendments direct us to develop and require the use of an MPN for periods of enrollment beginning not later than July 1, 2000. Initially, not all borrowers will be permitted to receive multiple loans under the MPN. To receive multiple loans under an MPN, the borrower must attend a school that is authorized for multi-year use of the MPN. However, some schools that are authorized for multi-year use of the MPN may choose not to exercise this option. Further, a borrower who attends a school exercising the multi-year option may choose to receive and sign an MPN for each loan that he or she receives.

A more detailed discussion of the MPN is covered in §§ 682.401 and 685.402. Other conforming changes appear throughout the regulations.

Sections 682.204 and 685.203—Loan Limits

The proposed regulations would implement changes made by the 1998 Amendments to sections 428(b) and 428H(d) of the HEA that specify the annual loan limits for an academic year. The proposed regulations would reflect these changes and modify the method for calculating the reduced annual loan limits that apply to FFEL and Direct Loan borrowers enrolled in programs of study or remaining balances of programs of study that are less than an academic year in length. The proposed regulations also specify annual loan limits for non-degree preparatory and teaching credential coursework. The 1998 Amendments simplified the proration calculation but did not change the conditions under which proration would be required.

Reduced Loan Limits

The proposed regulations would implement changes in the HEA that altered the method of calculating statutorily mandated reduced annual loan limits for borrowers enrolled in a program of undergraduate education that is less than one academic year. Prior to enactment of the 1998 Amendments, the HEA included specific loan limits that applied to these borrowers. The 1998 Amendments eliminated these specified loan amounts and replaced them with a calculation that reduces the loan amount proportionally based on the relationship of the program length to the length of the academic year. The HEA now provides that the maximum amount that a borrower enrolled in a program of undergraduate education that is less than one academic year may receive is the amount that bears the same ratio to the statutory annual maximum ($2,625 for subsidized and unsubsidized, and $4,000 for additional unsubsidized) as the program of study in which the borrower is enrolled bears to one academic year.

The 1998 Amendments also clarified that annual loan limits are authorized for an academic year as that term is defined in section 481(a)(2) of the HEA, which contains a minimum standard of instructional time and academic coursework. The committee agreed that students enrolled in a program that does not meet one or both of the statutory minimum standards for an academic year not receive a full annual loan amount. After some discussion, the committee agreed that the draft regulations should propose that the calculation of the proportional loan amount for a program of study that is less than a full academic year should use the ratio that is the lesser of the ratio of academic credit or number of weeks to the academic year.

For prorating loan limits for remaining balances of programs that are equal to or greater than an academic year in length, the committee agreed that a proportional loan amount calculated as simply a ratio of the academic credit to the academic year could be used. This is because these programs already meet the two standards (instructional weeks or academic credit) for an academic year.

Preparatory Coursework

The proposed regulations would reflect the change made by the 1998 Amendments to specify the annual loan amount in the FFEL and Direct Loan programs that a borrower may receive if he or she is enrolled in preparatory coursework required for admission into an undergraduate degree or certificate program or for enrollment in a graduate or professional degree or certificate program. The loan limits specified in the statute are the same as the limits previously specified in the Department's guidance for loans made to these borrowers. The proposed regulations provide that the maximum loan amount that such a borrower may receive for coursework necessary for admission into an undergraduate program is $2,625 in subsidized and unsubsidized loans and, for independent students and certain dependent students, an additional $4,000 in unsubsidized loans. In the case of a borrower who has obtained a baccalaureate degree, the proposed regulations provide that the maximum amount a borrower may receive for coursework necessary for admission into a graduate or professional program is $5,500 in subsidized and unsubsidized loans and $10,500 (less any subsidized amount borrowed) in additional unsubsidized loans.

Teaching Credentials

The proposed regulations would reflect the change made by the 1998 Amendments to specify the annual loan amount that a borrower may receive for enrollment in postbaccalaureate coursework necessary for a professional credential or teacher certification by a State for teaching in elementary or secondary schools. The HEA specifies that such a borrower may receive an annual limit of up to $5,500 in subsidized and unsubsidized loans and

$5,000 in additional unsubsidized loans for such coursework. The loan limits specified in the statute are the same limits as those previously specified in the Department's guidance for loans made to these borrowers following enactment of section 484(b)(4) of the HEA in 1992, which made these borrowers eligible for loans.

Sections 682.207, 682.604, 685.301, and 685.303—Disbursement Exemptions

The proposed regulations would implement changes made to section 428G(a)(3), (b)(1), and (e) of the HEA by the 1998 Amendments that authorize exemptions to the requirements for disbursing loan proceeds to FFEL and Direct Loan program borrowers. These exemptions apply to FFEL and Direct Loan program schools that meet specific criteria.

Multiple Disbursement Exemption

Generally, an FFEL or Direct Loan program loan must be disbursed in more than one installment. As a result of the 1998 Amendments, loan proceeds may now be disbursed to the borrower in one installment if—

- The loan period is equal to or shorter than one semester, one trimester, one quarter, or four months; and
- The school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available.

Loan proceeds to cover the cost of attendance in a study abroad program also may be disbursed in one installment if the school has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the single most recent fiscal year for which data are available.

Delayed Delivery/Disbursement Exemption for First-Year, First-Time Borrowers

In general, FFEL and Direct Loan program schools must delay delivery or disbursement of an installment of loan proceeds to first-year, first-time borrowers until 30 days after the first day of the student's program of study. First-year, first-time borrowers are students who are enrolled in their first year of an undergraduate program of study and who have not previously received an FFEL Subsidized Stafford, FFEL Unsubsidized Stafford, Federal Supplemental Loans for Students (SLS), Direct Subsidized, or Direct Unsubsidized loan.

Under the proposed regulations and in accordance with the statute, an FFEL or Direct Loan program school may deliver or disburse loan proceeds to first-year, first-time borrowers without the 30-day delay if the school—

- Has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available or
- Is an eligible postsecondary home school certifying or originating a loan to cover the cost of attendance in a study abroad program; and
- Has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than five percent for the single most recent fiscal year for which data are available.

A school's eligibility for these exemptions is based on the school's published FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate. To be eligible, the school must have a published rate calculated for each of the required number of years. For example, a new school that has only one published FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent and wants to disburse a one-semester loan in a single installment would not qualify for the multiple disbursement exemption.

Annually, the Secretary notifies schools of their published FFEL cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates. Under the proposed regulations, schools that no longer qualify for the exemptions would have to cease certifying or originating loans based on the exemptions beginning 30 days after the school received the Department's notice that it no longer qualifies for the exemptions. A school would be responsible for certifying or originating loans in accordance with the applicable regulations and its default rate, and FFEL lenders and guaranty agencies would be able to rely upon the school certifications.

Sections 682.209 and 685.207—Grace Period for Military Service

The proposed regulations would implement changes made by the 1998 Amendments to section 428(b)(7)(D) of the HEA that authorize the exclusion of certain periods of service in the Armed Forces from the six-month grace period for FFEL and Direct Loan program borrowers. To qualify, a borrower must be—

- A member of a reserve component of the Armed Forces named in section 10101 of Title 10 of the United States Code; and
- Called or ordered to active duty for a period of more than 30 days.

For borrowers who qualify, the following periods would be excluded from the six-month grace period for the borrower's subsidized and unsubsidized student loans:

- Periods during which a borrower serves in the Armed Forces; and
- The period necessary for a borrower to resume enrollment at the next available regular enrollment period when the borrower returns from service.

The committee discussed the incidence of a borrower serving more than one period of active duty. To ensure that borrowers receive the benefit each time they serve, the committee agreed that the proposed regulations should provide that each period that coincides with the borrower's loans being in an in-school or grace status is subject to the three-year limit.

The committee also discussed the fact that the time period in which a borrower needs to re-enroll in the "next available regular enrollment period" after returning from service in the Armed Forces may need to be longer for some borrowers than others, especially if the borrower is pursuing a non-traditional academic program. As a result of these discussions, the committee agreed that the proposed regulations should require that all borrowers must re-enroll within 12 months of their return from active duty service. Borrowers would not be required to re-enroll in the same program in which they were enrolled at the time they were called or ordered to active duty.

The proposed regulations also would provide that borrowers who were in their grace period when called or ordered to active duty receive a full six-month grace period when they return from service in the Armed Forces. The committee believed that this provision would be in the best interest of borrowers—many of whom must secure jobs upon their return.

Sections 682.210 and 685.204—Deferment

The proposed regulations would implement changes made by the 1998 Amendments to requirements for deferments in section 428(b)(1) of the HEA. These changes affect the qualifications for the in-school and unemployment deferments.

In-School Deferment

Prior to enactment of the 1998 Amendments, certain FFEL Program borrowers who were enrolled less than full time had to borrow a loan for the

same period of enrollment for which the borrower was seeking an in-school deferment in order to qualify for the deferment. These "new borrowers" are defined for deferment purposes, as those who did not have an outstanding balance on an FFEL loan made prior to July 1, 1987 and who received an FFEL loan on or prior to June 30, 1993. The 1998 Amendments eliminated the requirement that the borrower take out a loan to qualify for the deferment. The proposed regulations would provide these FFEL borrowers enrolled at least half time at an eligible school may qualify for an in-school deferment.

The 1998 Amendments also changed the HEA to specify three methods by which FFEL lenders and the Secretary will determine a borrower's eligibility for an in-school deferment. The proposed regulations would provide that a borrower may be determined eligible for an in-school deferment when—

- The borrower submits a request for deferment along with documentation verifying the borrower's eligibility for the deferment to the borrower's FFEL lender or the Secretary for a Direct Loan;
- The borrower's FFEL lender or the Secretary for a Direct Loan receives either a newly completed loan application or, as part of the MPN process, information from the borrower's school indicating that the borrower is eligible to receive a new loan; or
- The borrower's FFEL lender, or the Secretary for a Direct Loan, receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.

Before the 1998 Amendments, a borrower could only receive an in-school deferment by submitting a request and the required verification of eligibility to the borrower's FFEL lender or the Secretary for a Direct Loan. The Department's current regulations allow FFEL lenders to determine a borrower's eligibility for an in-school deferment when they received new loan eligibility information from a borrower's school.

The statute requires an FFEL lender, or the Secretary for a Direct Loan, to notify a borrower when granting an in-school deferment based on new loan eligibility or student status information. The committee agreed that to provide borrowers with the opportunity to make an informed choice, the proposed regulations would provide that this notice must inform the borrower of the option to make interest payments on an unsubsidized loan during the deferment period and of the opportunity to cancel the deferment and continue paying on the loan. The proposed regulations also provide that, in the case of a borrower who chooses to cancel the deferment and continue paying on the loan, the borrower may exercise his or her option to avoid capitalization of unpaid interest by making the principal and interest payments that were deferred.

Unemployment Deferment

Prior to the 1998 Amendments, to qualify for additional periods of an unemployment deferment after an initial six months, FFEL and Direct Loan program borrowers were required to submit a written certification that described the borrower's conscientious search for full-time employment. Alternatively, a borrower could provide comparable documentation the borrower had used to meet the requirements of the Unemployment Insurance Service.

The 1998 Amendments modified the HEA to permit borrowers who are eligible for unemployment insurance benefits to submit evidence of their eligibility for the benefits to their FFEL lender, or to the Secretary for a Direct Loan, to qualify for initial and subsequent periods of an unemployment deferment. The proposed regulations reflect this change in the HEA. However, borrowers who are not eligible for unemployment insurance benefits may continue to provide written certifications to their FFEL lender or the Secretary.

As part of the discussions of this statutory change, the committee agreed that borrowers who are eligible for unemployment insurance benefits should not have to receive those benefits to qualify for an unemployment deferment. The proposed regulations reflect this standard of eligibility. The committee believed that the statute's goal was to reduce the burden on the borrower. Therefore, the committee agreed that a borrower should simply submit documentation proving that he or she is eligible to receive the unemployment insurance benefits for the period during which the borrower is requesting an unemployment deferment.

The committee also discussed the minimum documentation that a borrower should be required to provide. Some negotiators suggested that the documentation should include, at a minimum—

- The borrower's personal identifying information (i.e., name, address, and social security number); and
- The effective dates of the borrower's eligibility to receive unemployment insurance benefits.

However, following these discussions, the committee did not include these requirements in the proposed regulations. The Secretary invites comment as to whether these items should be included in the final regulations.

Sections 682.211 and 685.205—Forbearance

The proposed regulations would implement changes to sections 428(c)(3) and 428H(e) of the HEA made by the 1998 Amendments. These changes remove the requirement that forbearance requests be in writing and add a new basis for granting a forbearance.

Under new sections 428(c)(3)(D) and 428H(e)(7) of the HEA, an FFEL lender, and the Secretary for a Direct Loan, may grant a forbearance to a borrower for a period not to exceed 60 days after the borrower requests a deferment, a forbearance, a change in repayment plan, or a consolidation loan. The purpose of this forbearance period is to allow time for FFEL lenders and the Secretary to collect and process documentation supporting these requests. Lenders and the Secretary may not capitalize interest that accrues during this forbearance period.

Sections 682.401 and 685.402—Multi-Year Use of the Master Promissory Note

The proposed regulations would modify §§ 682.401 and 685.402 to reflect the adoption of an MPN in the FFEL and Direct Loan Programs. Even before enactment of the 1998 Amendments, the Department, in consultation with the financial aid community, developed an MPN and a process for multi-year use of the MPN for FFEL and Direct Stafford loans. The Department's adoption of an MPN was confirmed by changes made to section 432(m)(1)(D) of the HEA by the 1998 Amendments. The proposed regulations would further this process by stating the requirements that a school must meet to be authorized for multi-year use of the MPN.

Under the proposed regulations, a school would have to be authorized by the Secretary to use a single MPN as the basis for multiple loans obtained by a particular borrower. A borrower attending a school that is not authorized by the Secretary for multi-year use of the MPN would have to complete a new MPN for each subsequent loan.

Under the proposed regulations, to be eligible for multi-year use of the MPN, a school would have to be a four-year or graduate/professional school, or meet criteria or be otherwise designated at the sole discretion of the Secretary. The school also would have to meet the following requirements:

- Not be subject to an emergency action or a proposed or final limitation,

suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the HEA; and

• Meet other performance criteria determined by the Secretary.

The proposed regulations provide that the Secretary may designate additional institutions to use the multi-year feature of the MPN, in his sole discretion. It is our current intention to allow schools (other than four-year and graduate/professional schools) to request approval for use of the multi-year feature of the MPN at any time after the publication of the final regulations. Any such requests will be considered at the Secretary's sole discretion. At some point after final regulations are published, it is also our intention to establish and announce criteria and a process that will be used by the Department for consideration of requests for approval of the use of the multi-year feature of the MPN by schools other than four-year and graduate/professional schools.

We believe the proposed regulations would give the Secretary adequate flexibility to implement multi-year use of the MPN.

The adoption of the MPN for multi-year use will require significant changes to the systems and procedures currently in place for lenders, schools, servicers, and the Department. It will also require increased efforts by all parties to ensure that borrowers understand their obligations and rights under the new note. In light of these changes, the Secretary believes it is appropriate to phase in the multi-year use of the MPN. Accordingly, at this time, the Secretary will authorize multi-year use of the MPN only for four-year or graduate/professional schools that are not subject to an emergency action or a proposed or final limitation, suspension, or termination action. However, it is the Secretary's ultimate goal to allow multi-year use of the MPN by all schools that meet the eligibility requirements.

Consistent with the statutory requirements, the proposed regulations would require schools that are authorized for multi-year use of the MPN to develop and document a confirmation process or processes along with the FFEL lender, or the Secretary for Direct Loans, to ensure that the borrower wants subsequent loans.

The negotiators agreed that a confirmation process is required now and that schools and lenders may follow the guidance in the Department's Dear Colleague Letters—GEN–98–25, November 1998 and GEN–99–08, February 1999—in developing and documenting that confirmation process. As technology develops and different methods of confirmation are tested, the Secretary will continue to issue guidance regarding confirmation methods. Any guidelines will be issued in accordance with applicable requirements of the Administrative Procedures Act. Ultimately, after evaluating various confirmation processes, the Secretary plans to develop regulations governing the confirmation process.

It is the Secretary's goal to maintain and enhance a borrower's control over the lending process. To that end, the Secretary intends to work with students, schools, lenders, guaranty agencies, and other interested parties to develop improved technologies and processes that will enable borrowers to further control the lending process. These efforts will include the development of borrower-control mechanisms such as the—

• Use of electronic signatures to confirm acceptance of loans;

• Use of PIN numbers to access and confirm loan records and amounts; and

• Adoption of on-line or other initial counseling that includes acknowledgment of the loan.

Sections 682.402, 685.212, and 685.215—Unpaid Refund Discharge

The proposed regulations would implement changes made to section 437(c)(1) of the HEA by the 1998 Amendments. These changes provide for the discharge of the amount of a borrower's FFEL or Direct Loan program loan that should have been refunded by the borrower's school. This discharge is available for loans disbursed on or after January 1, 1986. Under the proposed regulations, the loan discharge would be available to any borrower whose school failed to refund loan proceeds to an FFEL lender or the Secretary on behalf of a borrower who was entitled to a refund. While technically the return of Title IV loan proceeds that have been applied to the account of a borrower who never attended a school does not meet the definition of a Title IV refund, the committee agreed to be fair to borrowers in this situation, and propose to make these borrowers eligible for the unpaid refund discharge.

The rules proposed by the committee for unpaid refund discharges are generally consistent with the rules governing application for closed school and false certification discharges. The committee believed that adopting consistent rules would help assure consistent administration and fair treatment for borrowers. The proposed regulations therefore would require FFEL and Direct Loan program borrowers to submit a complete application for an unpaid refund discharge. However, the committee agreed that an application should not be required in all cases. The proposed regulations would allow the Secretary or the guaranty agency, with the approval of the Secretary, to discharge a loan based on information in his/its possession that shows that the borrower is eligible for a discharge. Under the proposed regulations, collection efforts on the loan would cease from the time the borrower submits the application until such time as a determination is made as to the borrower's eligibility for the discharge.

Under the proposed regulations, the borrower would have to agree to provide, upon request, any additional documentation reasonably available to the borrower but not submitted with the application, to demonstrate that the borrower meets the qualifications for the discharge. Examples of documentation reasonably available to the borrower include copies of the tuition bill, the enrollment contract, the school's catalog or other documents stating the school's refund policy, and any correspondence from the school specifying the borrower's withdrawal date or the amount of the refund owed.

Unpaid refund discharge requests will involve both schools that have closed and schools that are open. However, the issues presented by those situations differ. Accordingly, the proposed regulations provide different procedures for closed and open school situations.

Closed School Situations

Under the proposed regulations, if the school has closed, the guaranty agency or the Secretary would discharge the amount of the loan equal to the unpaid refund and any associated accrued interest and other charges based on a complete application from the borrower or, under limited circumstances, information otherwise available to the guaranty agency or to the Secretary.

Open School Situations

Under the proposed regulations, if the school is open, the guaranty agency or the Secretary would discharge the amount of the loan equal to the unpaid refund and any associated accrued interest and other charges if—

• The borrower no longer attends the school that owes the refund;

• The borrower has been unable to resolve the unpaid refund with the school; and

• The guaranty agency or the Secretary has been unable to resolve the unpaid refund with the school within 120 days from the date the borrower

submits a complete application for the unpaid refund discharge.

Under the proposed regulations, the guaranty agency or the Secretary would notify the school of the receipt of an unpaid refund discharge application. Within 60 days of the date of this notice, the school would have to submit documentation demonstrating that the school either made the refund, or is not required to make the refund.

In both closed and open school situations, the proposed regulations would provide that the guaranty agency or the Secretary would determine the amount eligible for discharge based on information showing the refund amount that was not made or by applying the appropriate refund formula to data that the borrower provides or that is otherwise available to the guaranty agency or to the Secretary. If this information is not available, the guaranty agency or the Secretary would use one of two formulas to determine the amount eligible for discharge. Two formulas must be considered because of changes made to the HEA by the 1998 Amendments that modify the calculation of Title IV refunds. The effective date for the new refund calculation is October 7, 2000 and that date will be used to determine which of the following formulas applies.

For Students Who Fail To Attend, Withdraw, or Are Terminated Before October 7, 2000

To determine unpaid refund discharges for borrowers in this group, the guaranty agency or the Secretary would calculate and discharge the lesser of the institutional charges unearned by the school or the loan amount. The amount of institutional charges unearned equals—

$$\frac{\text{Time Remaining in Loan Period After Student's Last Day of Attendance}}{\text{Actual Length of Loan Period}} \times \text{Institutional Charges for Loan Period}$$

For Students Who Fail To Attend, Withdraw, or Are Terminated On or After October 7, 2000

To determine unpaid refund discharges for borrowers in this group, a guaranty agency or the Secretary would calculate and discharge the loan amount unearned by the school. The loan amount unearned equals—

$$\frac{\text{Time Remaining in Loan Period After Student's Last Day of Attendance}}{\text{Actual Length of Loan Period}} \times \text{Title IV Grants/Loans Student Received (if known) or Loan Amount}$$

The refund resulting from the above calculation may never exceed the loan amount, including accrued interest and other charges.

Sections 682.604 and 685.304—Counseling Borrowers

The proposed regulations would reflect changes made to section 485(b)(2)(C) of the HEA by the 1998 Amendments clarifying that schools may use electronic means to provide exit counseling to FFEL and Direct Stafford loan borrowers. The statutory change addresses only exit counseling because initial counseling is not required by the HEA. However, because electronic counseling gives flexibility to both borrowers and schools, the committee agreed that the proposed regulations should also permit schools to use electronic means to provide initial counseling to borrowers. This change also would conform to the guidance issued by the Department before enactment of the 1998 Amendments, which permitted schools to use electronic means to provide initial and exit counseling to FFEL and Direct Loan program borrowers. The proposed regulations also would update the counseling elements to require schools to include information about two new statutory initiatives—the MPN and the availability of the Department's Student Loan Ombudsman's office.

Use of Electronic Means To Provide Counseling

The proposed regulations make changes based on the statutory authorization for schools to use electronic means to provide counseling to borrowers. Under the proposed regulations, FFEL and Direct Loan program schools would be authorized to provide initial and exit counseling to borrowers—

- In person;
- By audiovisual presentation; or
- By interactive electronic means.

In any case, schools would continue to be required to ensure that an individual with knowledge of Title IV programs is reasonably available shortly after the counseling to answer borrowers' questions. The proposed regulations would also continue to allow schools to provide written counseling materials to borrowers who are enrolled in a correspondence program or a study abroad program approved for credit at a postsecondary home school. In the case of a borrower who withdraws from school without the school's prior knowledge or who fails to complete the exit counseling as required, the proposed regulations would now require a school to provide exit counseling through interactive electronic means or by mailing written counseling materials to the borrower within 30 days after the school learns that the borrower has withdrawn from school or failed to complete the exit counseling as required.

The committee members pointed out that there are different electronic means by which schools may provide initial and exit counseling to FFEL and Direct Loan borrowers. Moreover, new and improved electronic means are continually becoming available. At the same time, the committee agreed that it was important to ensure that the quality of the counseling that schools provide to borrowers is enhanced rather than diminished by advancing technology. For these reasons, the proposed regulations would not prescribe specific electronic means by which schools may provide initial and exit counseling. Rather, the proposed regulations would specify that the electronic means the school uses must be interactive, which at a minimum, requires schools to take reasonable steps to ensure that each borrower receives the counseling

materials and participates in and completes the counseling. For example, simply ensuring that the student received and "opened" an electronic message that contained loan counseling information would not be sufficient.

The proposed regulations would continue to require schools to maintain documentation substantiating their compliance with the initial and exit counseling requirements for each borrower. However, in recognition of the unique features of electronic counseling, the proposed regulations would eliminate the requirement that a school maintain the documentation in a borrower's file. For schools that send initial and exit counseling materials by e-mail or other electronic means, the school's documentation would have to include proof that the borrower received the materials. This does not mean that the school must receive a personal response from the borrower, rather the school can accept an electronic "receipt", or other comparable response, that is a feature of most electronic mail systems. Proof of receipt would not be required if schools send the materials via U.S. mail.

New Counseling Elements

The proposed regulations also would require that, as part of initial and exit counseling, schools include information about two new initiatives authorized by the 1998 Amendments. The committee believed that these statutory initiatives are important for borrowers to be informed of during the appropriate counseling session. Under the proposed regulations, schools would have to—

- Explain the use of an MPN during the initial counseling; and
- Review information on the availability of the Department's Student Loan Ombudsman's office during the exit counseling.

The committee also agreed that borrowers should be informed of the availability of the Department's Student Loan Ombudsman's office by FFEL lenders and guaranty agencies at specific points in the life of the loan. The agreed-upon points at which information on the Ombudsman's services would be provided are included and discussed in the NPRM of Committee I.

Section 685.300—Choice of Loan Programs

The 1998 Amendments modified section 498(b) of the HEA to require that the application for schools to participate in the Title IV programs provide schools the option to participate in one or more of the loan programs under the FFEL and Direct Loan programs. As a result of this change, a school may choose to participate in either the subsidized or the unsubsidized Stafford loan programs, or both. A school also has the option to choose whether or not to participate in the PLUS loan program. The proposed Direct Loan Program regulations contain a conforming change in 685.300 to reflect this statutory change. The prior FFEL Program regulations that provided for agreements between an eligible school and the Secretary for participation in the FFEL Program were removed and reserved in regulations published on July 1, 1995. Therefore, a comparable conforming change is not proposed for those regulations. Notwithstanding that fact, FFEL schools also have the option to decide in which FFEL loan programs they wish to participate.

The committee considered whether a student attending a school that chose not to participate in the PLUS loan program would be automatically eligible to borrow additional unsubsidized FFEL or Direct Loan program funds as the law provides for dependent students whose parents are unable to borrow under the PLUS loan program. After much discussion, the committee agreed that the proposed regulations should not permit a dependent student attending such a school to be eligible to receive additional unsubsidized FFEL or Direct Loan program funds based on the school's decision not to participate in the PLUS loan program. Some negotiators agreed with the Department's belief that this went beyond the scope of the intent of the law.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by the negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

Summary of Potential Costs and Benefits

The following is an analysis of the costs and benefits of the most significant provisions of the proposed regulations, all of which reflect statutory changes included in the 1998 Amendments. There are additional proposed changes including conforming and minor technical changes intended to further improve the administration of the FFEL and Direct Loan programs, which are discussed elsewhere in this preamble under the heading *Proposed Regulatory Changes*. The Department does not consider there to be significant costs associated with those provisions.

Interest Rates

The 1998 Amendments changed the basis for calculating borrower interest rates on new Stafford and unsubsidized Stafford loans from a security of comparable maturity plus 1 percent for both in-school and repayment periods, to the 91-day T-bill interest rate plus 1.7 percent for in-school, grace, and deferment periods, and the 91-day T-bill interest rate plus 2.3 percent for repayment periods. These changes are incorporated in proposed 682.202. At the time the 1998 Amendments passed, the 91-day T-bill interest rate plus 2.3 percent was roughly equal to the 10–20 year bond interest rate plus 1 percent; as a result this change had no financial impact for loans in repayment. The lower in-school costs of unsubsidized Stafford loans result in significant student benefits. The cost to loan holders is estimated to be $56 million for loans originated in FY 2000.

The interest rate on FFEL Consolidation loans with applications received by the lender on or after October 1, 1998, was changed to the lesser of the weighted average of interest rates on the loans consolidated, rounded to the nearest higher 1/8th of 1 percent, or 8.25 percent. The cost to loan holders for the lower borrower interest rate is estimated to total $52 million for FFEL Consolidation loans originated in FY 2000.

Capitalization

Section 682.202 also reflects the changes made to the HEA that govern the frequency with which FFEL loan holders may capitalize accrued interest. In addition, they clarify that these frequency of capitalization rules apply

to subsidized loans as well as to unsubsidized loans. In accordance with the 1998 Amendments, a loan holder may only add accrued interest to the principal when a borrower enters repayment, at the expiration of a period of authorized deferment, at the expiration of a period of authorized forbearance, and when the borrower defaults. This provision would benefit borrowers and would result in an estimated cost to loan holders of $45 million for loans originated in FY 2000. Of this amount, $354,000 is the cost of including subsidized loans.

FFEL Extended Repayment Plan

Section 682.209 incorporates the new FFEL extended repayment plan for new borrowers with outstanding FFEL Program loans exceeding $30,000 which would allow those borrowers to repay their loans, including FFEL Consolidation loans, over a period not to exceed 25 years with fixed or graduated repayment amounts. Assuming the same proportion of FFEL borrowers take advantage of these provisions as in the Direct Loan Program, lender's interest receipts may increase by as much as $55 million over the 30-year life of a loan. This increased revenue should more than offset any additional administrative costs lenders may incur. Further, it is likely that many or most small lenders will sell loans in the extended repayment plan to larger loan holders in the secondary markets.

Bankruptcy Discharge

Section 682.402 reflects changes made to the Bankruptcy Code by the 1998 Amendments that eliminates the seven-year repayment provision for discharge of FFEL Program loans for bankruptcy petitions filed on or after October 8, 1998. This change limits the FFEL Program loans that may be discharged in bankruptcy to those that qualify on grounds of undue hardship. The discharge of fewer loans would save the Federal Government an estimated $66 million for loans originated in FY 2000.

Overall, these regulations would result in savings to borrowers and the Federal Government, and would have a cost to loan holders in the FFEL Program as shown in the table below. These costs are a direct result of changes made to the HEA by the 1998 Amendments and have been implemented prior to the development of these proposed regulations.

FY 2000 COSTS

[In millions of dollars]

Provision	Federal government	All Borrowers	FFEL loan holders
Interest Rate Reduction	.....	−108	108
Capitalization Upon Repayment	.....	−45	45
Limit Bankruptcy Discharge	−66	66	
Total	−66	−87	153

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 682.202 Permissible charges by lenders to borrowers.)*
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the persons listed in the ADDRESSES section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these regulations are institutions of higher education and loan holders that participate in the Title IV, HEA programs, and individual FFEL and Direct Loan borrowers. Institutions would experience positive impacts from these proposed regulations. Individuals are not considered small entities for this purpose. Nearly all of the roughly 4,800 participating FFEL loan holders would be defined as small entities under U.S. Small Business Administration (SBA) guidelines. (Student loans are originated by lenders and are often sold in packages to larger secondary market participants.) Small lenders originate only 16 percent of new loans. The economic impact for loans originated in FY 2000 would be $24 million or approximately $5,000 per average lender.

The Secretary invites comments on this determination, and welcomes proposals on any significant alternatives that would satisfy the same legal and policy objectives of these proposals while minimizing the economic impact on small entities.

Paperwork Reduction Act of 1995

Sections 682.102, 682.200, 682.402, 682.604, 682.610, 685.215, and 685.304 contain information collection requirements and require OMB approval. Sections 682.210(h), 682.301(b), 682.401(b)(5), 685.204(b) and 685.205 are affected by the NPRM and require continued approval by OMB. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program.

Section 682.102—Obtaining and Repaying a Loan

We are proposing to require the use of the Free Application for Federal Student

Aid (FAFSA), beginning in academic year 1999–2000, as the application for subsidized and unsubsidized Stafford loans, as required by the 1998 Amendments. Borrowers would no longer be required to complete a separate loan application. This provision would reduce the burden hours required for a lender's processing of the loan application. The Department currently has the burden hours for this provision accounted for under 682.401(b)(4) and approved under OMB control numbers 1840–0742 and 1840–0717. We will submit a change request to reflect the reduction in burden hours to OMB.

Section 682.200—Definitions

We are proposing to change the definition of "Default" by increasing the number of days a borrower may be delinquent before an FFEL Program Loan becomes defaulted from 180 days to 270 days for loans repayable in monthly installments, and from 240 days to 330 days for loans repayable less frequently than monthly installments. We anticipate no change in burden hours as a result of this change.

Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

We are proposing changes that would provide for the discharge of all or a portion of a borrower's FFEL Program loan if a school failed to refund loan proceeds to the lender on behalf of a borrower who withdrew or was terminated from the school within a timeframe that entitled the borrower to a Title IV refund. This proposed statutory change would be retroactive to loans disbursed on or after January 1, 1986. The proposed unpaid refund discharge would involve both schools that have closed and schools that are open. Annual reporting burden hours for this collection of information for processing unpaid refund discharge payments is estimated to average one hour per response for 500 borrowers, equaling a total of 500 new burden hours. This figure is based on unpaid refund discharge payments for an estimated 400 borrowers in closed school situations and an estimated 100 borrowers in open school situations.

Section 682.604—Processing the Borrower's Loan Proceeds and Counseling Borrowers

We are proposing to change the regulations to clarify that schools are not restricted to providing in-person exit counseling to borrowers, but may use interactive electronic means to conduct entrance and exit counseling for borrowers. Our recalculation of burden hours also reflects the streamlining of an in-person counseling since the inception of the process in 1989. Annual public reporting burden for the collection of information for initial counseling is estimated to average 0.25 hour per response for 5,899 FFEL Program schools times eight sessions per school for a total of 11,798 burden hours. This equals a decrease of 4,514 burden hours. Annual public reporting burden for the collection of information for exit counseling is estimated to average 0.25 hour per response for 836,124 students for a total of 209,031 burden hours. This equals an increase of 77,814 burden hours over the current inventory. The large increase results from the large increase of respondents since the last calculation of these numbers.

Section 682.610—Administrative and Fiscal Requirements for Participating Schools

This provision would require a school to maintain documentation of any confirmation process or processes the school may have used for borrowers who use the multi-year feature of the Master Promissory Note. This provision has information collection requirements that affect schools. Annual reporting burden for this collection of information is estimated to average 20 minutes to prepare a document describing the school's confirmation process or processes for MPN multi-year borrowers. There are 5,899 FFELP schools. This equals a total of 1,947 new burden hours.

Section 685.215—Unpaid Refund Discharge

This proposed provision would allow a borrower to have all or a portion of the borrower's loan discharged if a school failed to make a refund. The provision has information collection requirements that would affect borrowers and schools. In the majority of cases, borrowers would be required to complete a form to apply for an unpaid refund discharge. This form will be developed following publication of the final regulations and, when cleared, will account for the burden to borrowers. In cases in which a borrower applies for an unpaid refund discharge based on the actions of a school that is open, schools would need to respond to an inquiry by the Department as to the unpaid refund allegation. The Department estimates that 100 Direct Loan borrowers will submit unpaid refund discharge applications and that 25% of those applications would require schools that are open to spend one hour to respond to the allegations for an estimated total of 25 new burden hours.

Section 685.304—Counseling Borrowers

This proposed provision would revise existing regulations to allow schools to provide initial and exit counseling to borrowers by one of three methods: in person, by audiovisual presentation, or by interactive electronic means. Schools would continue to be affected by the information collection requirements in the existing regulations—they would have to collect and maintain documentation substantiating their compliance with the initial and exit counseling requirements for each borrower. However, with the authorization for providing initial and exit counseling through electronic means, the time required for schools to collect and maintain the information would be reduced. For initial counseling, the Department estimates that 1,230 Direct Loan schools will conduct an average of eight counseling sessions and spend .25 hour per session collecting and maintaining the required documentation for a total of 2,460 burden hours. For exit counseling, the Department estimates that Direct Loan schools will spend .25 hour collecting and maintaining the required documentation for each of 836,124 borrowers who must complete exit counseling for a total of 209,301 burden hours. The combined burden hours for the information collection requirements associated with initial and exit counseling equal 211,491. While this is an increase of 182,097 burden hours to the 29,394 burden hours reported in the Department's most recent inventory, the increase is due to the growth of the Direct Loan Program.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representatives named in the **ADDRESSES** section of this preamble.

We consider your comments in these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm
http://www.ed.gov/legislation/HEA/rulemaking/

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers 84.032 Federal Family Education Loan Program, and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 22, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising parts 682 and 685 as follows:

PART—682 FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.100 paragraph (a)(4) is amended by removing "other loans, including,"; and by adding "Loans for Disadvantaged Students (LDS)", after "(HPSL)".

3. Section 682.102, paragraph (a), is revised; paragraph (b) is removed and reserved; and paragraph (d) is revised to read as follows:

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan, a student requests a loan by completing the Free Application for Federal Student Aid (FAFSA), or contacting the school, lender or guarantor. The school determines and certifies the student's eligibility for the loan. Prior to loan disbursement, the lender obtains a loan guarantee from a guaranty agency or the Secretary and the student completes a promissory note, unless the student has previously completed a Master Promissory Note (MPN) that the lender may use for the new loan.

(b) [Reserved]

* * * * *

(d) *Consolidation loan application.* To obtain a Consolidation loan, a borrower completes an application and submits it to the lender holding the borrower's FFEL Program loan. If the borrower has multiple holders of FFEL Program loans, or if the borrower's single loan holder declines to make a Consolidation loan, or declines to make one with income-sensitive repayment, the borrower may submit the application to any lender participating in the Consolidation Loan Program. In the case of a married couple seeking a Consolidation loan, only the holders for one of the applicants must be contacted for consolidation. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

* * * * *

4. Section 682.200(b) is amended as follows:

A. By amending the definitions of *Default* by revising paragraphs (1) and (2), *Estimated financial assistance* by revising paragraphs (1)(i) (2)(i)(B) and (C), (2)(ii), and by adding (2)(iii).

B. By revising the definition of *Holder*.

C. In the definition of "Lender," by revising paragraph (5)(i) and by renumbering the second paragraph (5) as paragraph (6).

D. By adding a new definition "Master promissory note (MPN)" in alphabetical order.

E. In the definition of "Repayment period," in paragraph (1), by adding "or 25 years under an extended repayment schedule,", after "10 years"; in paragraph (2), by adding "or 25 years under an extended repayment schedule,", after "10 years".

§ 682.200 Definitions.

* * * * *

Default.

* * * * *

(1) 270 days for a loan repayable in monthly installments; or

(2) 330 days for a loan repayable in less frequent installments.

* * * * *

Estimated financial assistance.

(1) * * *

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 and veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

* * * * *

(2) * * *

(i) * * *

(A) * * *

(B) PLUS loan amounts; or

(C) Private and state-sponsored loan programs; and

(ii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined; and

(iii) For the purpose of determining eligibility for a subsidized Stafford loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Holder. An eligible lender owning an FFEL Program loan including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

* * * * *

Lender.

* * * * *

(5) * * *

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any school or other party to secure applicants for FFEL loans, except that a lender is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program.

* * * * *

Master promissory note (MPN). A promissory note under which the borrower may receive loans for a single period of enrollment or multiple periods of enrollment.

* * * * *

5. Section 682.201 is amended as follows:

A. By revising paragraph (a)(2).

B. By revising paragraph (c)(1); in paragraph (c)(2)(iii) by removing "(c)(1)(vi)", and by adding in its place, "(c)(1)(iv)"; and by removing paragraphs (c)(3) and (c)(4).

C. By adding a new paragraph (d).

D. By adding a new paragraph (e).

§ 682.201 Eligible borrowers.

(a) * * *

(2) In the case of any student who seeks an unsubsidized Stafford loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must—

(i) Receive a determination of need for a subsidized Stafford loan; and

(ii) If the determination of need is in excess of $200, have made a request to a lender for a subsidized Stafford loan;

* * * * *

(c) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) Is, on the loans being consolidated—

(A) In a grace period preceding repayment;

(B) In repayment status;

(C) In a default status on a title IV loan and has either made satisfactory repayment arrangements as defined in 682.200(b)(2) or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in 682.209(a)(6)(viii);

(D) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(E) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted;

(ii) Certifies that no other application for a Consolidation loan is pending;

(iii) Agrees to notify the holder of any changes in address; and

(iv)(A) Certifies that the lender holds the outstanding loan of the borrower that is being consolidated; or

(B) Applies to any eligible consolidation lender if the borrower—

(*1*) Has multiple holders of FFEL loans; or

(*2*) Has been unable to receive from the holder of the borrower's outstanding loans, a Consolidation loan or a Consolidation loan with income-sensitive repayment.

* * * * *

(d) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except that—

(1) A borrower who receives an eligible loan after the date a Consolidation loan is made may receive a subsequent Consolidation loan; and

(2) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made.

(e) A Consolidation loan borrower may consolidate an existing Consolidation loan only if the borrower has other outstanding eligible loans that will be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, and 1091)

6. Section 682.202 is amended as follows:

A. In paragraph (a)(1)(i) by removing "If" and by adding, in its place, "For loans made prior to July 1, 1994, if,".

B. In paragraph (a)(1)(ii)(B) by adding "and prior to July 1, 1994," after "October 1, 1992".

C. In paragraph (a)(1)(iii)(A) by removing "evidencing the loan".

D. In paragraph (a)(1)(iv) by adding "but before December 29, 1993," after "October 1, 1992".

E. By adding new paragraphs (a)(1)(v) through (a)(1)(viii).

F. In paragraph (a)(2)(iii), introductory text, by adding "and prior to July 1, 1994," after "October 1, 1992".

G. By adding new paragraphs (a)(2)(iv) and (a)(2)(v).

H. In paragraph (a)(3)(iii), introductory text, by removing "1992," and by adding, in its place, "1992 and for loans made prior to July 1, 1994 for a period of enrollment that began prior to July 1, 1994".

I. In paragraph (a)(4) by adding "(i)" at the beginning of the sentence before "A Consolidation", by adding "made before July 1, 1994" after "loan", by designating paragraph "(i)" as "(*A*)", by designating paragraph "(ii)" as "(*B*)", by adding new paragraphs (a)(4)(ii) through (a)(4)(v).

J. In paragraph (b)(1), by removing "paragraph (b)(2) of"; and by revising paragraph (b)(2).

K. In paragraph (b)(3) by removing ", except that capitalization", and by adding in its place, ". Capitalization".

L. By removing paragraph (b)(5).

M. By redesignating paragraph (b)(4) as paragraph (b)(5); and adding a new paragraph (b)(4).

N. By revising the newly redesignated paragraph (b)(5).

O. By revising paragraphs (c)(1) and (c)(2).

P. By redesignating paragraphs (c)(3) through (c)(5) as paragraphs (c)(5) through (c)(7); and by adding new paragraphs (c)(3) and (c)(4).

§ 682.202 Permissible charges by lenders to borrowers.

(a) * * *

(1) * * *

(v) For a Stafford loan for which the first disbursement is made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that includes or begins on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10; or

(B) 8.25 percent.

(vii) For a Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 for a period of enrollment that includes or begins on or after July 1, 1995, the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 2.5 percent during the in-school, grace and deferment period and 3.10 percent during repayment; or

(B) 8.25 percent.

(viii) For a Stafford loan for which the first disbursement is made on or after

July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period plus 1.7 percent during the in-school, grace and deferment periods and 2.3 percent during repayment; or

(B) 8.25 percent.

* * * * *

(2) * * *

(iv) For a loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1998, the interest rate is a variable rate applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

(v) For a loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

* * * * *

(4) * * *

(ii) A Consolidation loan made on or after July 1, 1994, for which the loan application was received by the lender before November 13, 1997, bears interest at the rate that is equal to the weighted average of interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(iii) For a Consolidation loan for which the loan application was received by the lender on or after November 13, 1997 and before October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1 of each year plus 3.10 percent; or

(B) 8.25 percent.

(iv) For a Consolidation loan for which the application was received by the lender on or after October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a fixed rate that is the lesser of—

(A) The weighted average of interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

(B) 8.25 percent.

(v) For a Consolidation loan for which the application was received by the lender on or after November 13, 1997, the annual interest rate applicable to the portion of each consolidation loan that repaid HEAL loans is a variable rate adjusted annually on July 1 and must be equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending June 30, plus 3 percent. There is no maximum rate on this portion of the loan.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(4) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

* * * * *

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest—

(A) When the loan enters repayment;

(B) At the expiration of a period of authorized deferment;

(C) At the expiration of a period of authorized forbearance; and

(D) When the borrower defaults.

(5) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Fees for FFEL Program loans.* A lender—

(1) May charge a borrower an origination fee on a Stafford loan not to exceed 3 percent of the principal amount of the loan. Except as provided in paragraph (c)(2) of this section, a lender must charge all borrowers the same origination fee.

(2)(i) May charge a lower origination fee than the amount specified in paragraph (c)(1) of this section to a borrower whose expected family contribution (EFC), used to determine eligibility for the loan, is equal to or less than the minimum qualifying EFC for a Federal Pell Grant at the time the loan is certified or to borrowers who qualify for a subsidized Stafford loan.

(ii) If a lender charges a lower origination fee pursuant to this subparagraph, the lender must charge all similarly situated borrowers the same origination fee.

(iii) A lender may use a comparable standard with the approval of the Secretary.

(3) If a lender charges a lower origination fee on unsubsidized loans under paragraphs (c)(1) or (c)(2) of this section, the lender must charge the same fee on subsidized loans.

(4) For purposes of paragraphs (c)(1) and (c)(2) of this section, all lenders under common ownership, including ownership by a common holding company, constitute a single lender. Any beneficial owner of loans, that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf, is considered the lender for this purpose.

* * * * *

7. Section 682.204 is amended as follows:

A. By revising paragraphs (a), (b), (c), (d), and (e).

B. In paragraph (f)(2)(i) by adding "the following", after "exceed".

C. In paragraph (f)(2)(ii) by adding "the following" after "exceed".

D. In paragraph (f)(2)(ii)(B) by removing "and", and by adding, in its place, "or".

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct

Stafford/Ford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks in program}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $3,500 for a program whose length is at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $5,500 for a program whose length is at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Federal Direct Stafford/Ford Loan Program, may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or certificate, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed $5,500.

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Stafford Loan Program loans in combination with loans received by the student under the Federal Direct Stafford/Ford Loan Program, but excluding the amount of capitalized interest may not exceed the following:

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Unsubsidized Stafford Loan Program.* (1) In the case of an

undergraduate student, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program.

(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students, the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Federal Direct Unsubsidized Stafford/Ford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraphs (a) and (c) of this section, an independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (b) and (c) of this section for any academic year of study—

(1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, may not exceed the following:

(i) $4,000 for a program of study of at least a full academic year.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $4,000 as the lesser of—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education may not exceed the following:

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of a student who has successfully completed the second year of a program of undergraduate education, but has not completed the remainder of the program, may not exceed the following:

(i) $5,000 for a program of study of at least a full academic year.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (d)(3) of this section.

(5) In the case of a graduate or professional student, may not exceed $10,000.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

(i) $4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,000 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

(e) *Combined Federal Stafford, SLS and Federal Unsubsidized Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of Stafford Loans, Federal Direct Stafford/Ford Loans, Unsubsidized Stafford Loans, Federal Direct Unsubsidized Stafford/

Ford Loans and SLS Loans, but excluding the amount of capitalized interest may not exceed the following:

(1) $46,000 for an undergraduate student.

(2) $138,500 for a graduate or professional student.

* * * * *

8. Section 682.206 is amended as follows:

A. By revising paragraph (a)(1);

B. By removing "on the application form or data electronically transmitted to the lender" in paragraph (c)(1);

C. By revising paragraph (c)(2);

D. By removing paragraph (c)(3); and

E. By revising paragraph (d)(1).

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include determining the borrower's loan amount, approving the borrower for a loan, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note (except with respect to multiple loans made under an MPN).

* * * * *

(c) * * *

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, in no case may the loan amount exceed the lesser of the amount the borrower requests, the amount certified by the school under § 682.603 or the loan limits under § 682.204.

* * * * *

(d)(1) The lender must ensure that each loan is supported by an executed legally-enforceable promissory note as proof of the borrower's indebtedness.

* * * * *

9. Section 682.207 is amended as follows:

A. By revising the introductory text of paragraph (c);

B. By removing paragraph (c)(5);

C. By redesignating paragraph (d) as paragraph (f);

D. By redesignating paragraph (c)(4) as paragraph (d);

E. By adding a new paragraph (e); and

F. By revising the newly redesignated paragraph (f).

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) Except as provided in paragraph (e) of this section, a lender must disburse any Stafford or PLUS loan in accordance with the disbursement schedule provided by the school as follows:

* * * * *

(e) A lender must disburse the loan in one installment if the school submits a schedule for disbursement of loan proceeds in one installment as authorized by § 682.604(c)(10).

(f)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis only if—

(i) The school certified the borrower's loan eligibility and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible;

(ii) The student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in § 682.604(c)(5); and

(iii) In the case of a second or subsequent disbursement, the student graduated or successfully completed the period of enrollment for which the loan was intended.

(2) The lender must give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (f)(1) of this section at the time the lender sends the loan proceeds to the school.

10. Section 682.209 is amended as follows:

A. By revising paragraph (a)(4).

B. By redesignating paragraphs (a)(6), (a)(7), and (a)(8) as paragraphs (a)(7), (a)(8), and (a)(9), respectively.

C. By adding a new paragraph (a)(6).

D. By revising the newly redesignated paragraph (a)(7)(iii).

E. In the newly redesignated paragraph (a)(7)(v)(A) by removing "income-sensitive or a graduated repayment", and adding, in its place, "income-sensitive, a graduated, or if applicable, an extended repayment".

F. By redesignating paragraph (a)(7)(ix) as paragraph (a)(7)(xi).

G. By adding new paragraphs (a)(7)(ix) and (x).

H. By revising paragraph (c)(1)(i).

I. By removing paragraph (h)(3); by redesignating paragraphs (h)(4), (h)(5), and (h)(6), as paragraphs (h)(3), (h)(4), and (h)(5), respectively; by revising the newly redesignated paragraph (h)(3); and by removing redesignated paragraph (h)(4)(ii) and redesignating paragraph (h)(4)(iii) as paragraph (h)(4)(ii).

§ 682.209 Repayment of a loan.

(a) * * *

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of—

(i) The day after the borrower completes the program;

(ii) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(iii) 60 days following the last day for completing the program as established by the school.

* * * * *

(6) For purposes of establishing the beginning of the repayment period for Stafford and SLS loans, the grace periods referenced in paragraphs (a)(2)(iii) and (a)(3)(i) exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Stafford or SLS borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a full grace period upon completion of the excluded period.

(7) * * *

(iii) Not more than six months prior to the date that the borrower's first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, or if applicable, an extended repayment schedule.

* * * * *

(ix) Under an extended repayment schedule, the borrower may repay the loan on a fixed annual repayment amount or a graduated repayment amount for a period that may not exceed 25 years. For purposes of this section, a "new borrower" is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of October 7, 1998, or on the date he or she obtains an FFEL Program loan after October 7, 1998.

(x) A borrower may request a change in the repayment schedule on a loan. The lender must permit the borrower to change the repayment schedule no less frequently than annually.

* * * * *

(c) *Minimum annual payment.* (1)(i) Subject to paragraph (c)(1)(ii) of this section and except as otherwise provided by a graduated, income-sensitive, or extended repayment plan selected by the borrower, during each year of the repayment period, a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

* * * * *

(h) * * *

(3) For the purpose of paragraph (h)(2) of this section, the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and

(ii) With the exception of the defaulted title IV loans on which the borrower has made satisfactory repayment arrangements with the holder of the loan, does not include the unpaid balance on defaulted loans.

* * * * *

11. Section 682.210 is amended as follows:

A. By revising paragraphs (a)(3), (a)(4), and (a)(6)(iv); in paragraph (a)(7) by removing "180- or 240-day" and adding, in its place, "270- or 330-day".

B. By revising paragraph (b)(4).

C. By revising the heading in paragraph (c); by revising paragraph (c)(1), by redesignating paragraphs (c)(2) through (c)(4) as paragraphs (c)(3) through (c)(5), respectively; and by adding a new paragraph (c)(2).

D. In redesignated paragraph (c)(3) by adding "or other form certified by the school" after "application".

E. In redesignated paragraph (c)(4) by removing "SLS or PLUS" and adding, in its place, "SLS, PLUS or Consolidation loan" after "Stafford".

F. In redesignated paragraph (c)(5), by adding "or PLUS (unless based on the dependent's status)" after "Stafford".

G. By revising paragraph (h).

§ 682.210 Deferment.

(a) * * *

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary for a Stafford loan and for all or a portion of a qualifying Consolidation loan that meets the requirements under 682.301 when the loan is made.

(4) As a condition for receiving a deferment, except for purposes of paragraphs (c)(1)(ii) and (iii) of this section, the borrower must request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

* * * * *

(6) * * *

(iv) In the case of a student deferment, the student's anticipated graduation date as certified by an authorized official of the school and as updated by notice or SSCR update to the lender from the school or guaranty agency; or

* * * * *

(b) * * *

(4) For a "new borrower," as defined in paragraph (b)(7) of this section, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

* * * * *

(c) *In-School deferment.* (1) Except as provided in paragraph (c)(5) of this section, the lender processes a deferment for full-time study or half-time study at a school, when—

(i) The borrower submits a request and supporting documentation for a deferment;

(ii) The lender receives information from the borrower's school about the borrower's eligibility in connection with a new loan; or

(iii) The lender receives student status information indicating that the borrower's enrollment status supports eligibility for a deferment.

(2) The lender must notify the borrower that a deferment has been granted based on paragraphs (c)(1)(ii) or (iii) of this section and of the borrower's option to pay interest that accrues on an unsubsidized Federal Stafford loan or to cancel the deferment and continue paying on the loan.

* * * * *

(h) *Unemployment deferment.* (1) A borrower qualifies for an unemployment deferment by providing evidence of eligibility for unemployment benefits to the lender.

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification—

(i) Describing the borrower's conscientious search for full-time employment during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer's address and phone number; and

(C) The name or title of the person contacted;

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, specifying the agency's name and address and date of registration.

(3) For purposes of obtaining an unemployment deferment under paragraph (h)(2) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(iv) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(v) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(2)(i) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, provided it shows the same number of contacts and contains the same information the borrower would be required to provide under this section.

* * * * *

12. Section 682.211 is amended as follows:

A. By revising paragraph (a)(4);

B. In paragraph (b) by removing "in writing";

C. By adding a new paragraph (f)(9);

D. In paragraphs (h)(1) and (h)(2), by removing the word "written"; and

E. By removing paragraph (h)(2)(ii)(B) and designating paragraph (h)(2)(ii)(C) as paragraph (h)(2)(ii)(B) to read as follows:

§ 682.211 Forbearance.

(a) * * *

(4) Except as provided in paragraph (f)(10) of this section, if payments of interest are forborne, they may be capitalized as provided in 682.202(b).

* * * * *

(f) * * *

(9) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

13. Section 682.300 is amended by revising paragraph (a) to read as follows:

§ 682.300 Payments of interest benefits on Stafford and Consolidation loans.

(a) *General.* The Secretary pays a lender, on behalf of a borrower, a

portion of the interest on a subsidized Stafford loan and on all or a portion of a qualifying Consolidation loan that meets the requirements under 682.301. This payment is known as interest benefits.

* * * * *

14. Section 682.301 is amended as follows:

A. By revising paragraph (a)(3);

B. By removing paragraph (a)(4); and

C. By revising paragraphs (b) and (c).

§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) * * *

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender—

(i) On or after January 1, 1993 but prior to August 10, 1993;

(ii) On or after August 10, 1993, but prior to November 13, 1997 only if the loan consolidates subsidized Stafford loans; and

(iii) On or after November 13, 1997 for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a statement to the lender pursuant to 682.603. The student must qualify for interest benefits if the eligible institution has determined and documented the student's amount of need for a loan based on the student's estimated cost of attendance, estimated financial assistance, and expected family contribution as determined under part F of the Act.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a PLUS, unsubsidized Stafford loan, State sponsored loan, or private program loan obtained for a period of enrollment to replace the expected family contribution for that period of enrollment.

(Authority: 20 U.S.C. 1078, 1082, 1087–1)

15. Section 682.401 is amended as follows:

A. By revising paragraphs (b)(5)(i) and (ii);

B. By redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively; and

C. By adding a new paragraph (d)(4).

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(5) *Borrower responsibilities.* (i) The borrower must indicate his or her preferred lender on the promissory note or application, if he or she has such a preference.

(ii) The borrower must give the lender, as part of the promissory note or application process for a Stafford or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) In the case of a PLUS loan request, information concerning the outstanding FFEL loans of the borrower and of the student, including any Consolidation loan used to repay a Stafford, SLS, or PLUS loan;

(C) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(D) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

* * * * *

(d) * * *

(4)(i) The Secretary authorizes the use of the multi-year feature of the Master Promissory Note (MPN)—

(A) For students and parents for attendance at four-year or graduate/professional schools; and

(B) For students and parents for attendance at other institutions meeting criteria or otherwise designated at the sole discretion of the Secretary.

(ii) The Secretary may prohibit use of the multi-year feature of the MPN at specific schools described under paragraph (i) of this section. The criteria to be used by the Secretary to prohibit use of the multi-year feature include the school being subject to an emergency action or a limitation, suspension, or termination action, or not meeting other performance criteria determined by the Secretary.

(iii) A borrower attending a school for which the multi-year feature of the MPN has not been authorized must complete a new promissory note for each period of enrollment.

(iv) Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

(v) A lender's ability to make additional loans under an MPN will automatically expire upon the earliest of—

(A) The date the lender receives written notification from the student asking that the MPN no longer be used as the basis for additional loans;

(B) Twelve months after the original MPN was signed if no disbursements are issued by the lender under that MPN; or

(C) Ten years from the date the student signed the MPN or the date the lender receives the MPN. However, if a portion of a loan is made on or before 10 years from the signature date, remaining disbursements of that loan may be made.

(vi) The lender and school must develop and document a confirmation process in accordance with guidelines established by the Secretary.

* * * * *

16. Section 682.402 is amended as follows:

A. By revising the section heading; by revising paragraph (a)(1); in paragraph (a)(3), by adding "and as provided in paragraph (h)(1)(iv) of this section," after "section".

B. In paragraph (f)(1) by removing "(f) through (m)", and adding, in its place, "(h) through (k)"; by revising paragraph (f)(3); in paragraph (f)(5)(i)(B) by adding "before October 8, 1998" after "Code".

C. By revising paragraphs (g)(1)(i) and (ii).

D. In paragraph (h)(1)(i), by removing "paragraph (g)", and adding, in its place, "paragraph (h)"; by adding a new paragraph (h)(1)(iv);

E. By revising paragraph (i)(1); and by removing paragraph (i)(3) in its entirety.

F. In paragraph (j)(1)(ii), by removing "(B)"; and by revising paragraph (j)(1)(iii).

G. By revising paragraph (k)(1)(i)(A).

H. By redesignating paragraphs (l) and (m) as paragraphs (r) and (s); and by adding new paragraphs (l) through (q).

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

* * * * *

(f) * * *

(3) *Determination of filing.* The lender must determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other proof of filing provided by the debtor's attorney or the bankruptcy court.

* * * * *

(g) * * *
(1) * * *
(i) The original promissory note or a copy of the promissory note certified by the lender as true and accurate.
(ii) The loan application, if a separate loan application was provided to the lender.
* * * * *
(h) * * *
(1) * * *
(iv) In reviewing a claim under this section, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of the confirmation process or processes, insurance benefits must be repaid.
* * * * *
(i) *Guaranty agency participation in bankruptcy proceedings*—(1) *Undue hardship claims.* (i) In response to a petition filed with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8) on the grounds of undue hardship, the guaranty agency must, on the basis of reasonably available information if the petition for relief in bankruptcy was filed prior to October 8, 1998, determine whether the first payment on the loan was due more than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of that petition and, if so, process the claim; and
(ii) In all other cases, determine whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.
(iii) If the agency determines that repayment would not constitute an undue hardship, the agency must then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.
(iv) The agency must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. Unless discharge would be more effectively opposed by not taking the following actions, the agency must—
(A) Oppose the borrower's petition for a determination of dischargeability; and
(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.
(v) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.
* * * * *
(j) * * * (1) * * *
(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8) on grounds of undue hardship.
* * * * *
(k) * * *
(1) * * *
(i) * * *
(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8) with respect to a proceeding initiated under chapter 7 or chapter 11; or
* * * * *
(l) *Unpaid refund discharge.*
(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary reimburses the guarantor of a loan and discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL Program loan (disbursed on or after January 1, 1986) equal to the refund that should have been made by the school under applicable Federal law and regulations, including this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund are also discharged.
(2) *Unpaid refunds in open school situations.* In the case of a school that is open, the guarantor discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL loan (disbursed on or after January 1, 1986) equal to the amount of the refund that should have been made by the school under applicable Federal law and regulations, including this section, if—
(i) The borrower has ceased to attend the school that owes the refund; and
(ii) The guarantor receives documentation regarding the refund and the borrower and guarantor have been unable to resolve the unpaid refund within 120 days from the date the borrower submits a complete application in accordance with paragraph (l)(4) of this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the amount of the unpaid refund amount are also discharged.
(3) *Relief to borrower (and any endorser) following discharge.* (i) If a borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest, late charges, collection costs, origination fees, and insurance premiums) owed by the borrower at the time of discharge.
(ii) The holder of the loan reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the holder of the loan previously reported the status of the loan.
(4) *Borrower qualification for discharge.* To receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the holder or guaranty agency except as provided in paragraph (l)(5)(iv) of this section. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—
(i) State that the borrower (or the student on whose behalf a parent borrowed)—
(A) Received the proceeds of a loan to attend a school;
(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and
(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as a holder of a performance bond or a tuition recovery program.
(ii) State whether the borrower has any other application for discharge pending for this loan; and
(iii) State that the borrower—
(A) Agrees to provide upon request by the Secretary or the Secretary's designee other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for an unpaid refund discharge under this section; and
(B) Agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e) of this section and to transfer any right to recovery against a third party to the Secretary in

accordance with paragraph (d) of this section.

(5) *Unpaid refund discharge procedures.* (i) Except for the requirements of paragraph (l)(5)(iv) of this section related to an open school, if the holder or guaranty agency learns that a school did not pay a refund of loan proceeds owed under applicable law and regulations, the holder or the guaranty agency sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan.

(ii) If the borrower returns the application, specified in paragraph (l)(4) of this section, the holder or the guaranty agency must review the application to determine whether the application appears to be complete. In the case of a loan held by a lender, once the lender determines that the application appears complete, it must provide the application and all pertinent information to the guaranty agency including, if available, the borrower's last date of attendance. If the borrower returns the application within 60 days, the lender must extend the period during which efforts to collect on the affected loan are suspended to the date the lender receives either a denial of the request or the unpaid refund amount from the guaranty agency. At the conclusion of the period during which the collection activity was suspended, the lender may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iii) If the borrower fails to return the application within 60 days, the holder of the loan resumes collection efforts and grants forbearance of principal and interest for the period during which the collection activity was suspended. The holder may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iv) The guaranty agency may, with the approval of the Secretary, discharge a portion of a loan under this section without an application if the guaranty agency determines, based on information in the guaranty agency's possession, that the borrower qualifies for a discharge.

(v) If the holder of the loan or the guaranty agency determines that the information contained in its files conflicts with the information provided by the borrower, the guaranty agency must use the most reliable information available to it to determine eligibility for and the appropriate payment of the refund amount.

(vi) If the holder of the loan is the guaranty agency and the agency determines that the borrower qualifies for a discharge of an unpaid refund, the guaranty agency must suspend any efforts to collect on the affected loan and, within 30 days of its determination, discharge the appropriate amount and inform the borrower of its determination. Absent documentation of the exact amount of refund due the borrower, the guaranty agency must calculate the amount of the unpaid refund using the unpaid refund calculation defined in paragraph (o) of this section.

(vii) If the guaranty agency determines that a borrower does not qualify for an unpaid refund discharge, (or, if the holder is the lender and is informed by the guarantor that the borrower does not qualify for a discharge)—

(A) The agency must notify the borrower in writing of the reason for the determination and of the borrower's right to request a review of the agency's determination within 30 days of the borrower's submission of additional documentation supporting the borrower's eligibility that was not considered in the initial determination. During the review period, collection activities must be suspended; and

(B) The holder must resume collection if the determination remains unchanged and grant forbearance of principal and interest for the period during which collection activity was suspended. The holder may capitalize any interest accrued and not paid during the review period in accordance with § 682.202(b).

(viii) If the guaranty agency determines that a current or former borrower at an open school may be eligible for a discharge under this section, the guaranty agency must notify the lender and the school of the unpaid refund allegation. The notice to the school must include all pertinent facts available to the guaranty agency regarding the alleged unpaid refund. The school must, no later than 60 days after receiving the notice, provide the guaranty agency with documentation demonstrating, to the satisfaction of the guarantor, that the alleged unpaid refund was either paid or not required to be paid.

(ix) In the case of a school that does not make a refund or provide sufficient documentation demonstrating the refund was either paid or was not required, within 60 days of its receipt of the allegation notice from the guaranty agency, relief is provided to the borrower (and any endorser) if the guaranty agency determines the relief is appropriate. The agency must forward documentation of the school's failure to pay the unpaid refund to the Secretary.

(m) *Unpaid refund discharge procedures for a loan held by a lender.* In the case of an unpaid refund discharge request, the lender must provide the guaranty agency with documentation related to the borrower's qualification for discharge as specified in paragraph (l)(4) of this section.

(n) *Payment of an unpaid refund discharge request by a guaranty agency*— (1) *General.* The guaranty agency must review an unpaid refund discharge request promptly and must pay the lender the amount of loss as defined in paragraphs (l)(1) and (l)(2) of this section, related to the unpaid refund not later than 45 days after a properly filed request is made.

(2) *Determination of the unpaid refund discharge amount to the lender.* The amount of loss payable to a lender on an unpaid refund includes that portion of an FFEL Program loan equal to the amount of the refund required under applicable Federal law and regulations, including this section, and including any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund.

(o)(1) *Determination of amount eligible for discharge.* The guaranty agency determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the guaranty agency. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (o)(1) of this section is not available, the guaranty agency uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000, the guaranty agency discharges the lesser of the institutional charges unearned or the loan amount. The guaranty agency determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October

7, 2000, the guaranty agency discharges the loan amount unearned. The guaranty agency determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or if unknown, the loan amount.

(p) *Requests for reimbursement from the Secretary on loans held by guaranty agencies.* The Secretary reimburses the guaranty agency for its losses on unpaid refund request payments to lenders or borrowers in an amount that is equal to the amount specified in paragraph (n)(2) of this section.

(q) *Payments received after the guaranty agency's payment of an unpaid refund request.* (1) The holder must promptly return to the sender any payment on a fully discharged loan, received after the guaranty agency pays an unpaid refund request unless the sender is required to pay (as in the case of a tuition recovery fund) in which case, the payment amount must be forwarded to the Secretary. At the same time that the holder returns the payment, it must notify the borrower that there is no obligation to repay a loan fully discharged.

(2) If the holder has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (q)(1) of this section, and the borrower (or representative) continues to send payments to the holder, the holder must remit all of those payments to the Secretary.

(3) If the loan has not been fully discharged, payments must be applied to the remaining debt.

* * * * *

17. Section 682.406 is amended by adding a new paragraph (c) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

* * * * *

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

18. Section 682.409 is amended as follows:

A. By revising paragraph (c)(2);

B. In paragraph (c)(4)(i) by adding "original or a true and exact copy of the" after "The";

C. In paragraph (c)(4)(iv) by adding ", if a separate application was provided to the lender", after "application";

D. In paragraph (c)(5), and by removing "certified" after "submit" and by removing "if no originals exist" after "originals".

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

* * * * *

(c) * * *

(2) The guaranty agency must execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section. If more than one loan is made under an MPN, the assignment of the note only applies to the loan or loans being assigned to the Secretary.

* * * * *

19. Section 682.414 is amended, as follows:

A. In paragraph (a)(4)(ii)(A) by adding "if a separate application was provided to the lender" after "application";

B. In paragraph (a)(4)(ii)(B) by removing ", including the repayment instrument" after "note";

C. In paragraph (a)(4)(ii)(J) by removing "and" at the end of sentence;

D. By redesignating paragraph (a)(4)(ii)(K) as paragraph (a)(4)(ii)(L);

E. By adding a new paragraph (a)(4)(ii)(K);

F. In paragraph (a)(5)(i) by removing "(K)", and adding, in its place, "(L)";

G. By revising paragraph (a)(5)(ii); and

H. By removing paragraph (a)(5)(iii).

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(4) * * *

(i) * * *

(K) Documentation of any confirmation process or processes; and

* * * * *

(5) * * *

(ii) A lender or guaranty agency holding a promissory note must retain the original or a true and exact copy of the promissory note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency must return either the original or a true and exact copy of the note to the borrower or notify the borrower that the loan is paid in full, and retain a copy for the prescribed period.

* * * * *

20. Section 682.603 is amended as follows:

A. By revising paragraph (b);

B. By adding a new paragraph (c);

C. By redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively; and

D. By adding a new paragraph (g).

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201 and § 682.204;

(2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with § 682.301; and

(3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in § 682.604(c).

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower's request or the loan limits determined under § 682.204.

* * * * *

(g) A school must cease to certify a loan based on the exceptions in § 682.604(c)(5)(i) and (c)(5)(ii) and § 682.604(c)(10)(i) and (ii) that allow for the disbursement of loans in one installment and exempt the school from delayed release of loan proceeds no later than 30 days after the date the school is notified that the Secretary has determined that the school does not meet the qualifications outlined in those paragraphs.

* * * * *

21. Section 682.604 is amended as follows:

A. By revising paragraph (c)(5);

B. By revising the introductory text of paragraph (c)(6);

C. By adding a new paragraph (c)(10); and

D. By revising paragraphs (f) and (g).

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(5) A school may not release the first installment of a Stafford loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a

Stafford, SLS, Direct Subsidized, or Direct Unsubsidized loan until 30 days after the first day of the student's program of study unless—

(i) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(ii) The school is an eligible postsecondary home school certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

(6) Unless the provision of § 682.207(d) applies—

* * * * *

(10) Notwithstanding the requirements of paragraphs (c)(6)-(9) of this section, a school is not required to deliver loan proceeds in more than one installment if—

(i)(A) The student's loan period is not more than one semester, one trimester, one quarter, or 4 months; and

(B) The school in which the student is enrolled has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(ii) The school is an eligible postsecondary home school certifying a loan to cover the student's cost of attendance in a study abroad program and has an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(iii) The school is not in a State.

* * * * *

(f) *Initial counseling.* (1) A school must conduct initial counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the borrower has received a prior Stafford, SLS, or Direct loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. As an alternative, in the case of a student enrolled in a correspondence program or a student enrolled in a study-abroad program that the postsecondary home school approves for credit, the school may provide the counseling through written materials, prior to releasing those loan proceeds.

(2) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(iii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iv) In the case of a borrower of a Stafford loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

(5) A school must maintain documentation substantiating the school's compliance with this section for each borrower.

(g) *Exit counseling.* (1) A school must conduct exit counseling with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must conduct this counseling shortly before the borrower ceases at least half-time study at the school. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the postsecondary home school approves for credit, the school may provide written counseling materials by mail within 30 days after the borrower completes the program. If a borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing written counseling materials to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Stafford or SLS loans for attendance at that school or in the borrower's program of study;

(ii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing of SLS loans);

(iii) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review with the borrower the conditions under which the borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vi) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the borrower's expected permanent address, the address of the borrower's next of kin, and the name and address of the borrower's expected employer, that will then be provided within 60 days to the guaranty agency or agencies listed in the borrower's records; and

(vii) Review with the borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) A school that conducts exit counseling by electronic interactive means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

(5) The school must maintain documentation substantiating the school's compliance with this section for each borrower.

* * * * *

22. Section 682.610 is amended by revising paragraph (b) to read as follows:

§ 682.610 Administrative and fiscal requirements for participating schools.

* * * * *

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school must maintain—

(1) A copy of the loan certification or data electronically submitted to the lender, that includes the amount of the loan and the period of enrollment for which the loan was intended;

(2) The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount;

(3) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(4) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower;

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under 682.604(c)(3) to deliver the initial and subsequent disbursements of each FFEL program loan; and

(6) Documentation of any confirmation process or processes the school may have used.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

23. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

24. Section 685.102 is amended in paragraph (b)

A. By revising the definitions of "Default" and "Estimated financial assistance."

B. By adding after "Loan fee" a new definition "Master promissory note (MPN)."

§ 685.102 Definitions.

* * * * *

(b) * * *

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for 270 days.

Estimated financial assistance: (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, financial need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of a Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loan;

(viii) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Direct PLUS Loan amounts;

(B) Direct Unsubsidized Loan amounts; and

(C) Non-Federal loan amounts;

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined; and

(iii) For the purpose of determining eligibility for a Direct Subsidized Loan, veterans' educational benefits paid under chapter 30 of title 38 of the United States Code and national service education awards or post-service benefits under title I of the National and Community Service Act of 1990.

* * * * *

Master promissory note (MPN): A promissory note under which the borrower may receive loans for a single academic year or multiple academic years. Loans for multiple academic years may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement except that a remaining portion of a loan may be disbursed after this date.

* * * * *

25. Section 685.201 is revised to read as follows:

§ 685.201 Obtaining a loan.

(a) *Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan.* (1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled must perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions:

(i) A school participating under school origination option 2 must create a loan origination record, ensure that the loan is supported by a completed Master Promissory Note (MPN), draw down funds, and disburse the funds to the student.

(ii) A school participating under school origination option 1 must create a loan origination record, ensure that the loan is supported by a completed MPN, and transmit the record and MPN (if required) to the Servicer. The Servicer initiates the drawdown of funds. The school disburses the funds to the student.

(iii) If the student is attending a school participating under standard origination, the school must create a loan origination record and transmit the record to the alternative originator, which either confirms that a completed MPN supports the loan or prepares an MPN and sends it to the student. The Servicer receives the completed MPN from the student (if required) and initiates the drawdown of funds. The school disburses the funds to the student.

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent must complete the application and promissory note and submit it to the school at which the student is enrolled. The school must complete its portion of the application and promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school must perform the following functions: A school participating under school origination

option 2 must draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

(c) *Application for a Direct Consolidation Loan.*

(1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Servicer. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Servicer. The Servicer answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application and promissory note to the Servicer, the Secretary makes the Direct Consolidation Loan under the procedures specified in § 685.216.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

26. Section 685.203 is amended by revising paragraphs (a) and (c)(2); and by revising the introductory text of paragraphs (d) and (e) to read as follows:

§ 685.203 Loan limits.

(a) *Direct Subsidized Loans.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $3,500 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $3,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $5,500 for a program of study of at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $5,500.

* * * * *

(c) * * *

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Stafford/Ford Loan Program and the Federal Unsubsidized Stafford Loan Program for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first year of a program of undergraduate education—

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $4,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

or

$$\frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year.}}$$

(ii) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education—

(A) $4,000 for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iii) In the case of a student who has successfully completed the second year of a program of undergraduate education but has not completed the remainder of the program of study—

(A) $5,000 for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(iv) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (c)(2)(iii) of this section.

(v) In the case of a graduate or professional student, $10,000.

(vi) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate—

(A) $4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(B) $5,000 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(vii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000.

(d) *Federal Direct Stafford/Ford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

* * * * *

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans but excluding the amount of capitalized interest may not exceed the following:

* * * * *

27. Section 685.204 is amended by adding a new paragraph (b)(1)(iii) to read as follows:

§ 685.204 Deferment.

* * * * *

(b) * * *

(1) * * *

(iii)(A) For the purpose of paragraph (b)(1)(i) of this section, the Secretary processes a deferment when—

(*1*) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(*2*) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan; or

(*3*) The Secretary receives student status information from the borrower's school indicating that the borrower is enrolled on at least a half-time basis.

(B)(*1*) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(*2*) or (*3*) of this section, the borrower has the option to continue paying on the loan.

(*2*) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

* * * * *

28. Section 685.205 is amended as follows:

A. By revising the introductory text of paragraph (a); by removing the "period" at the end of paragraph (a)(2) and adding, in its place, "; "; by revising paragraph (a)(4); and by removing paragraph (a)(5) and redesignating paragraph (a)(6) as paragraph (a)(5).

B. By revising paragraph (b)(6); by removing "or" at the end of paragraph (b)(7); by removing the "period" at the end of paragraph (b)(8) and adding, in its place, "; or"; and by adding a new paragraph (b)(9).

§ 685.205 Forbearance.

(a) *General.* "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(9) of this section, if payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—

* * * * *

(4) The borrower is serving in a national service position for which the borrower is receiving a national service education award under title I of the National and Community Service Act of 1990; or

* * * * *

(b) * * *

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under 685.213;

(ii) Under 685.214;

(iii) Under 685.215; or

(iv) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized.

* * * * *

29. Section 685.207 is amended as follows:

A. By redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii);

B. By adding a new paragraph (b)(2)(ii);

C. By revising the redesignated paragraph (b)(2)(iii).

D. By redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii); and by adding a new paragraph (c)(2)(ii).

§ 685.207 Obligation to repay.

* * * * *

(b) * * *

(2) * * *

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the 6-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (b)(2)(ii)(A) of this section is entitled to a full 6-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Subsidized Loan.

* * * * *

(c) * * *

(2) * * *

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the 6-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (c)(2)(ii)(A) of this section is entitled to a full 6-month grace period upon completion of the excluded period.

* * * * *

30. Section 685.212 is amended by revising paragraphs (d), (e), (f), and (g) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(d) *Closed schools.* If a borrower meets the requirements in 685.213, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the requirements in 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(f) *Unpaid refunds.* If a borrower meets the requirements in 685.215, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the amount of the loan equal to the unpaid refund and any accrued interest and other charges associated with the unpaid refund. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the unpaid refund owed on any loan disbursed on or after January 1, 1986 that was included in the consolidation loan.

(g) *Payments received after eligibility for discharge.* (1) *For the discharge*

conditions in paragraphs (a)–(e) of this section. Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, those payments received after the date that the eligibility requirements for discharge were met but prior to the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

(2) *For the discharge condition in paragraph (f) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender payments received in excess of the amount owed on the loan after applying the unpaid refund.

(Authority: 20 U.S.C. 1087a *et seq.*)

31. Section 685.215 is redesignated it as 685.216, a new 685.215 is added to read as follows:

§ 685.215 Unpaid refund discharge.

(a)(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.*

(i) In the case of a school that is open, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section, if—

(A) The borrower has ceased to attend the school that owes the refund;

(B) The borrower has been unable to resolve the unpaid refund with the school; and

(C) The Secretary is unable to resolve the unpaid refund with the school within 120 days from the date the borrower submits a complete application in accordance with paragraph (c)(1) of this section regarding the unpaid refund. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the Secretary documentation demonstrating that the refund was made by the school or that the refund was not required to be made by the school.

(b) *Relief to borrower following discharge.* (1) If the borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest and other charges) owed by the borrower at the time of discharge.

(2) The Secretary reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* (1) Except as provided in paragraph (c)(2) of this section, to receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the Secretary. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan to attend a school;

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as the holder of a performance bond or a tuition recovery program;

(ii) State whether the borrower (or student) has any other application for discharge pending for this loan; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions as described in 685.213(d) and to transfer any right to recovery against a third party to the Secretary as described in 685.213(e).

(2) The Secretary may discharge a portion of a loan under this section without an application if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(d) *Determination of amount eligible for discharge.*

(1) The Secretary determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the Secretary. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (d)(1) of this section is not available, the Secretary uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000, the Secretary discharges the lesser of the institutional charges unearned or the loan amount. The Secretary determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000, the Secretary discharges the loan amount unearned. The Secretary determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or, if unknown, the loan amount.

(e) *Discharge procedures.* (1) Except as provided in paragraph (c)(2) of this section, if the Secretary learns that a school did not make a refund of loan proceeds owed under applicable law and regulations, the Secretary sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If a borrower who is sent a discharge application fails to submit the application within 60 days of the Secretary's sending the discharge application, the Secretary resumes

collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If a borrower qualifies for a discharge, the Secretary notifies the borrower in writing. The Secretary resumes collection and grants forbearance of principal and interest on the portion of the loan not discharged for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(4) If a borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of the reasons for the determination. The Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(Authority: 20 U.S.C. 1087a *et seq.*)

32. The newly redesignated 685.216 is amended by revising paragraphs (g), (l)(1), (l)(2), and (l)(3) to read as follows:

§ 685.216 Consolidation.

* * * * *

(g) *Interest rate.* The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established in 685.202(a)(3)(i). The interest rate on a Direct PLUS Consolidation Loan is the rate established in 685.202(a)(3)(ii).

* * * * *

(l) * * *

(1) *Deferment.* To obtain a deferment on a joint Direct Consolidation Loan under 685.204, both borrowers must meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Direct Consolidation Loan under 685.205, both borrowers must meet the requirements of that section.

(3) *Discharge.* (i) To obtain a discharge of a joint Direct Consolidation Loan under 685.212, each borrower must meet the requirements for one of the types of discharge described in that section.

(ii) If a borrower meets the requirements for discharge under 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan and the borrower's spouse does not meet the requirements for any type of discharge described in 685.212, the Secretary discharges a portion of the consolidation loan equal to the amount of the loan that would have been eligible for discharge under the provisions of 685.212(d), (e), or (f) as applicable.

33. Section 685.300 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) * * *

(1) * * *

(ii) Enter into a written program participation agreement with the Secretary that identifies the loan program or programs in which the school chooses to participate.

* * * * *

34. Section 685.301 is amended by revising paragraphs (b)(2), (b)(3), introductory text, (b)(8), and (c)(2) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(b) * * *

(2) Unless paragraph (b)(5) or (6) of this section applies, an institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (b)(4), (5), (6), or (8) of this section applies—

* * * * *

(8)(i) A school is not required to make more than one disbursement if—

(A)(*1*) The loan period is not more than one semester, one trimester, one quarter, or 4 months; and

(*2*) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible postsecondary home school originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(8)(i)(A) and (B) of this section, which allow the disbursement of loans in one installment, do not apply to any loans originated by the school beginning 30 days after the date the school is notified that the Secretary has determined that the school does not meet the qualifications outlined in those paragraphs.

* * * * *

(c) * * *

(2) A school that originates a loan must ensure that the loan is supported by a completed promissory note as proof of the borrower's indebtedness.

* * * * *

35. Section 685.303 is amended by revising paragraph (b)(4) to read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(4)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Direct Subsidized, or Direct Unsubsidized Loan, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study unless—

(A) The school has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available;

(B) The school is an eligible postsecondary home school originating a loan to cover the cost of attendance in a study abroad program and has a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

(ii) Paragraphs (b)(4)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school is notified that the Secretary has determined that the school does not meet the qualifications outlined in those paragraphs.

* * * * *

36. Section 685.304 is amended as follows:

A. By revising paragraphs (a)(1), (a)(2), and (a)(3) introductory text; by redesignating paragraphs (a)(3)(i)–(iv) as paragraphs (a)(3)(ii)–(v), respectively; by adding a new paragraph (a)(3)(i); by revising the newly redesignated paragraph (a)(3)(v); and by adding new paragraphs (a)(6) and (a)(7).

B. By redesignating paragraphs (b)(1)(ii), (b)(2), introductory text, (b)(2)(i) through (vi), (b)(2)(vii), (b)(3), and (b)(4), introductory text, (b)(4)(i) through (vi), (b)(4)(viii), (b)(5), and (b)(7), respectively; by revising paragraph (b)(1) and newly redesignated paragraphs (b)(3), (b)(4), introductory text, (b)(4)(v), (b)(4)(vi), (b)(4)(viii), and (b)(7); and by adding new paragraphs (b)(2), (b)(4)(vii), and (b)(6).

§ 685.304 Counseling borrowers.

(a) *Initial counseling.* (1) Except as provided in paragraph (a)(5) of this section, a school must conduct initial counseling prior to making the first disbursement of the proceeds of a Direct Subsidized or Direct Unsubsidized Loan to a borrower unless the borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, Federal Unsubsidized Stafford, or Federal SLS Loan.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the postsecondary home school, the school may provide the borrower with written counseling materials prior to disbursing the loan proceeds.

(3) In conducting the initial counseling, the school must—

(i) Explain the use of a Master Promissory Note;

* * * * *

(v) Inform the student as to the average anticipated monthly repayment for those students based on the average indebtedness provided under paragraph (a)(3)(iv) of this section.

* * * * *

(6) A school that conducts initial counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes initial counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each borrower.

(b) * * *

(1) A school must conduct exit counseling with each Direct Subsidized or Direct Unsubsidized Loan borrower shortly before the borrower ceases at least half-time study at the school.

(2) The counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the postsecondary home school, the school may provide the borrower with written counseling materials within 30 days after the borrower completes the program.

(3) If a borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, the school must provide exit counseling either through interactive electronic means or by mailing written counseling materials to the borrower at the borrower's last known address within 30 days after the school learns that the borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) In conducting the exit counseling, the school must—

* * * * *

(v) Meet the requirements described in paragraphs (a)(3)(ii) and (iii) of this section;

(vi) Review with the borrower the conditions under which the borrower may defer repayment or obtain a full or partial cancellation of a loan;

(vii) Review with the borrower information on the availability of the Department's Student Loan Ombudsman's office; and

(Viii) Require the borrower to provide corrections to the school's records concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the borrower's expected permanent address, the address of the borrower's next of kin, and the name and address of the borrower's expected employer (if known). The school must provide this information to the Secretary within 60 days.

* * * * *

(6) A school that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes exit counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each borrower.

37. Section 685.402 is amended by adding a new paragraph (f) to read as follows:

§ 685.402 Criteria for schools to originate loans.

* * * * *

(f) *Determination of eligibility for multi-year use of the Master Promissory Note.* (1) A school must be authorized by the Secretary to use a single Master Promissory Note (MPN) as the basis for all loans borrowed by a student or parent borrower for attendance at that school. A school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from a student or parent borrower for each academic year.

(2) To be eligible for multi-year use of the MPN, a school must—

(i) Be a four-year or graduate/professional school, or other institution meeting criteria or otherwise designated at the sole discretion of the Secretary; and

(ii)(A) Not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act; and

(B) Meet other performance criteria determined by the Secretary.

(3) A school that is authorized by the Secretary for multi-year use of the MPN must develop and document a confirmation process in accordance with guidelines established by the Secretary.

(Authority: 20 U.S.C. 1087a *et seq.*)

[FR Doc. 99–19947 Filed 8–4–99; 3:04 pm]

BILLING CODE 4000–01–U

VOL
64
ISS
1
5
3
AG
10
999
UMI

federal register

Tuesday
August 10, 1999

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602
Purchase Price Allocations in Deemed Actual Asset Acquisitions; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG–107069–97]

RIN 1545–AZ58

Purchase Price Allocations in Deemed Actual Asset Acquisitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the allocation of purchase price in deemed and actual asset acquisitions. The proposed regulations determine the amount realized and the amount of basis allocated to each asset transferred in a deemed or actual asset acquisition and affect transactions reported on either Form 8023 or Form 8594.

DATES: Written comments must be received by September 20, 1999. Requests to speak and outlines of topics to be discussed at the hearing scheduled for 10 a.m., October 12, 1999, must be received by September 20, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG 107069 97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG 107069 97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Starke, (202) 622–7790 or Stephen R. Wegener, (202) 622–7530; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by October 12, 1999.

Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the collections will have a practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§ 1.338–2(d), 1.338–2(e)(4), 1.338–5(d)(3), 1.338–10(a)(4), 1.338(h)(10)–1(d)(2), and 1.1060–1(e)(ii)(A) and (B). The collections of information are necessary to make an election to treat a sale of stock as a sale of assets, to calculate and collect the appropriate amount of tax in a deemed or actual asset acquisition, and to determine the bases of assets acquired in a deemed or actual asset acquisition.

These collections of information are required to obtain a benefit. The likely respondents and/or recordkeepers are small businesses or organizations, businesses, or other for-profit institutions, and farms.

The regulation provides that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023. The regulation also provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for the collection of information in § 1.338–2(e)(4) is as follows:

Estimated total annual reporting/recordkeeping burden: 25 hours.

Estimated average annual burden per respondent/recordkeeper: 0.56 hours.

Estimated number of respondents/recordkeepers: 45.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

A. Evolution of Code and Regulations

Section 338 was added to the Internal Revenue Code of 1954 (Code) by section 224(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (96 Stat. 324), and amended by section 306(a)(8) of the Technical Corrections Act of 1982, Public Law 97–448 (96 Stat. 2365), and further amended by section 712(k) of the Tax Reform Act of 1984, Public Law 98–369 (98 Stat. 951). Section 338 replaces any nonstatutory treatment of a stock purchase as an asset purchase by allowing certain acquiring corporations to elect to treat qualifying stock purchases as asset acquisitions.

General rules for making elections under section 338 were first issued in temporary regulations §§ 5f.338–1, 5f.338–2, and 5f.338–3 published as TD 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722) (1984–1 C.B. 93). Those rules were amended and redesignated as §§ 1.338–1T, 1.338–2T, and 1.338–3T by temporary regulations published as TD 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086) (1984–2 C.B. 81).

Treasury Decision 8021, published in the **Federal Register** on April 25, 1985 (50 FR 16402) (1985–1 C.B. 96), amended §§ 1.338–1T and 1.338–2T and added § 1.338–4T. These regulations provided guidance in a question and answer format, most notably in the areas of asset and stock consistency requirements.

Temporary regulations published as TD 8068 in the **Federal Register** on January 8, 1986 (51 FR 741) (1986–1 C.B. 165) amended §§ 1.338–1T and

1.338–4T. The temporary regulations published on January 8, 1986 also added § 1.338(h)(10)–1T to implement section 338(h)(10), under which a selling consolidated group can elect to treat certain stock sales as asset sales.

Sections 1.338–1T and 1.338–4T were again amended by temporary regulations published as TD 8072 in the **Federal Register** on January 29, 1986 (51 FR 3583) (1986–1 C.B. 111) (Due to typesetting errors, the Federal Register republished TD 8072 in its entirety on March 28, 1986 (51 FR 10617)). The temporary regulations published on January 29, 1986 also amended § 1.338(h)(10)–1T and added §§ 1.338(b)–1T, 1.338(b)–22T, and 1.338(b)–3T. These regulations required the selling price and basis allocated to each asset to be determined by using a four class residual method.

On February 12, 1986, temporary regulations published as TD 8074 in the **Federal Register** (51 FR 5163) (1986–1 C.B. 126) amended §§ 1.338–1T, 1.338–4T, and 1.338(h)(10)–1T and added § 1.338–5T. These regulations provided guidance on international aspects of section 338.

Sections 1.338–1T, 1.338–2T, 1.338–4T, 1.338–5T, and 1.338(h)(10)–1T were amended by temporary regulations published as TD 8088 in the **Federal Register** on May 16, 1986 (51 FR 17929) (1986–1 C.B. 103). Sections 1.338–1T, 1.338–3T, 1.338–4T, 1.338–5T, and 1.338(h)(10)–1T were amended by temporary regulations published as TD 8092 in the **Federal Register** on July 1, 1986 (51 FR 23741) (1986–2 C.B. 49). The temporary regulations published on July 1, 1986 also added § 1.338(b)–4T. These regulations made miscellaneous conforming changes and transitional rules relating to making and filing section 338 elections.

Section 1060 was added by section 641 of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2282). Section 1060 requires both the buyer and the seller of a trade or business to allocate their consideration paid or received to the assets under the same residual method prescribed by the section 338 regulations. Also as part of the 1986 act, miscellaneous changes were made to section 338 by section 631, 1275, 1804(e), and 1899A (100 Stat. 2269, 2598, 2800, 2958). The changes to section 338 were made to conform section 338 with the repeal of the *General Utilities* doctrine and to define a qualified stock purchase by reference to section 1504.

General guidance under section 1060 was provided by § 1.1060–1T, added by temporary regulations published as TD 8215 on July 18, 1986 (53 FR 27035) (1988–2 C.B. 304). These regulations included direction on the scope of section 1060 and reiterated the four class residual method found in the section 338 regulations.

Section 1060 was amended by section 1006(h) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3410). This amendment requires the residual method to be used in the case of a distribution of partnership property or a transfer of an interest in a partnership, but only in determining the value of goodwill or going concern value for purposes of applying section 755. Miscellaneous changes were again made to section 338 by sections 1006(e)(20), 1012(bb)(5)(A), and 1018(d)(9) of the 1988 act (102 Stat. 3403, 3535, 3581).

Sections 338 and 1060 were amended by section 11323 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (104 Stat. 1388–464). The amendments add certain reporting requirements under sections 338 and 1060. In addition, a provision was added to section 1060 under which parties are bound by written agreements as to allocations or fair market values. The legislative history indicates that the parties are so bound unless the parties can refute the agreement under the standards set forth in *Commissioner* v. *Danielson,* 378 F.2d 771 (3d Cir.), cert. denied, 389 U.S. 858 (1967) (by presenting proof which in an action between the parties would be admissible to alter that construction or to show its unenforceability because of mistake, undue influence, fraud, duress, etc.). See, H.R. Ways and Means Comm., 101st Cong., 2d Sess. (Print No. 101–37, Oct. 15, 1990), at 79 .

Temporary regulations published as TD 8339 in the **Federal Register** on March 15, 1991 (56 FR 11093) (1991–1 C.B. 52) added § 1.338–6T. The March 15, 1991, temporary regulations provided relief from situations in which a corporation making an election under section 338 could be subjected to multiple taxation on the same gain as a result of the 1986 repeal of the *General Utilities* doctrine.

On January 12, 1992, a notice of proposed rulemaking (CO–111–90) under section 338 was published in the **Federal Register** (57 FR 1409) (1992–1 C.B. 1000). The notice of proposed rulemaking contained proposed regulations to replace the question and answer asset and stock consistency rules of § 1.338–4T and the rules relating to the international aspects of section 338 found in § 1.338–5T. In addition, the proposed rules restated the remainder of the temporary regulations under section 338, except that only minor conforming changes were made to §§ 1.338(b)–2T and 1.338(b)–3T.

Section 1060 was again amended by section 13261(e) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (107 Stat. 539). This amendment made changes to section 1060 to conform the rules for actual asset acquisitions to the amortization of intangibles under section 197. In addition, the legislative history to section 197 suggested that the residual method should be altered to accommodate section 197 intangibles (See H.R. Rep. 111, 103d Cong., 1st Sess. 760 (May 23, 1993) (1993–3 C.B. 336).

Sections 1.338–1T, 1.338–2T, 1.338–3T, 1.338–4T, 1.338–5T, 1.338(b)–1T, and 1.338(h)(10)–1T were revised and replaced by §§ 1.338–1, 1.338–2, 1.338–3, 1.338–4, 1.338–5, 1.338(b)–1, and 1.338(h)(10)–1, respectively, by final regulations published as TD 8515 in the **Federal Register** on January 20, 1994 (59 FR 2958) (1994–1 C.B. 89). The final regulations published on January 20, 1994 (TD 8515) also removed § 1.338–6T and added § 1.338(i)–1. Also, a new § 1.338–4T was added by temporary regulations published as TD 8516 on January 20, 1994 in the **Federal Register** (59 FR 2956) (1994–1 C.B. 119). The temporary regulations provided consistency rules applicable to certain cases involving controlled foreign corporations.

Treasury Decision 8626 amended § 1.338–2 by final regulations published in the **Federal Register** on October 27, 1995 (60 FR 54942) (1995–2 C.B. 34), providing rules governing the treatment of an intragroup merger following a qualified stock purchase of target stock when a section 338 election is not made for the target.

Section 1.338–4 was amended and § 1.338–4T was removed by final regulations published as TD 8710 in the **Federal Register** on January 23, 1997 (62 FR 3458) (1997–1 C.B. 82).

Sections 1.338(b)–2T, 1.338(b)–3T, and 1.1060–1T were amended by temporary regulations published as TD 8711 in the **Federal Register** on January 16, 1997 (62 FR 2267) (1997–1 C.B. 85). The January 16, 1997, changes to the regulations adapted the residual method to section 197 by adding a fifth class to the residual method prescribed for deemed and actual asset acquisitions.

B. Current Regulations

Section 338 allows certain purchasers of stock to treat the purchases instead as purchases of assets. A purchasing corporation can elect to treat a stock acquisition as an asset acquisition if it acquires 80 percent of the total voting

power and 80 percent of the total value of the stock of a target corporation (not taking into account certain preferred stock) by purchase within a 12-month period. If a purchasing corporation makes a section 338 election, the target is treated as if it (as old target) sold all of its assets at the close of the acquisition date at fair market value in a single transaction and (as new target) purchased all of the assets as of the beginning of day after the acquisition date.

If a purchasing corporation acquires the stock of a target corporation in a qualified stock purchase and makes a section 338(g) election (i.e., makes a general section 338 election, not a section 338(h)(10) election), old target's gain or loss from the deemed asset sale is included in old target's final return unless old target is a member of a consolidated group or is an S corporation. In the consolidated and S corporation cases, old target files a special final return including only the items from the deemed asset sale. § 1.338 1(e). In the consolidated case, that return is consolidated with neither the selling corporation's nor the purchasing corporation's consolidated group. In the S corporation case, old target must file the special final return as a C corporation. The section 338(g) election (as opposed to a section 338(h)(10) election) generally does not change the tax treatment of the selling shareholders—that is, they are still taxed on their stock sale, notwithstanding the purchasing corporation's section 338(g) election.

In certain cases, the selling shareholders may join with the purchasing corporation in making a section 338(h)(10) election. Until 1994, a section 338(h)(10) election could be made only for target corporations that were members of a consolidated group. The 1994 revisions to the section 338 regulations (effective retroactively to 1992 at taxpayers' election) expanded the eligibility for section 338(h)(10) elections to target corporations that are members of an affiliated group and S corporations. The section 338(h)(10) election changes the tax treatment of old target and the selling shareholders. Old target is deemed to sell all its assets in a single transaction while a member of the selling consolidated group (or while a non-consolidated affiliate, or while an S corporation owned by the selling shareholders) and is deemed immediately thereafter to distribute the proceeds in complete liquidation to the members of the selling consolidated group who sold the target stock (or to the selling affiliate or to all the S corporation shareholders). Thus, under section 338(h)(10), the selling shareholders are not treated as selling stock but instead realize gain or loss, if any, on the stock in the deemed liquidation. § 1.338(h)(10)–1(d)(2). Usually, a selling consolidated group or selling affiliate will recognize no stock gain or loss on the deemed liquidation under section 332. S corporation shareholders will include their share of items of income, gain, loss, or deduction on the deemed asset sale passed through to them under section 1366, increase or decrease their basis accordingly under section 1367, and then recognize any remaining gain or loss in their stock under section 331 (the overall effect of which is to recognize net gain or loss equal to the amount of built-in gain or loss in their S corporation stock immediately before the qualified stock purchase).

In the case of a section 338(g) election, old target's total amount realized for the assets it is deemed to sell (aggregate deemed sale price or ADSP) is the sum of (a) the purchasing corporation's grossed-up basis in recently purchased target stock; (b) the liabilities of new target; and (c) other relevant items. This is the amount to be allocated among the assets sold for purposes of determining gain or loss on the assets. § 1.338–3(d)(1) and (2). The liabilities referred to in (b) are those liabilities assumed by new target, but the amount thereof taken into account in ADSP is determined as if old target had sold its assets to an unrelated person for consideration that included the liabilities. The liabilities include any tax liability resulting from the deemed asset sale. §§ 1.338–3(d)(3) and 1.338(b)–1(f). In the case of a section 338(h)(10) election, ADSP is modified. While not stated explicitly, modified ADSP (MADSP) appears to exclude any tax liabilities resulting from the deemed asset sale. § 1.338(h)(10)–1(f).

New target's adjusted grossed-up basis in the assets it is deemed to purchase (AGUB) is the sum of (a) the purchasing corporation's grossed-up basis in recently purchased target stock; (b) the purchasing corporation's basis in nonrecently purchased target stock; (c) the liabilities of new target; and (d) other relevant items. This is the amount to be allocated among the assets sold for purposes of determining the purchaser's basis in the assets. § 1.338(b)–1(c)(1).

Section 1060(a) requires a purchaser and a seller to allocate basis for any applicable asset acquisition in the same manner as amounts are allocated to such assets under section 338(b)(5). Section 1060(c) defines an applicable asset acquisition as any transfer of assets that constitute a trade or business where the transferee's basis is determined wholly by reference to the consideration paid for the assets.

Section 338(b)(5) authorizes the Secretary to issue regulations prescribing how the deemed purchase price is to be allocated among the assets. Final and temporary regulations under sections 338(b) and 1060, as amended, implement this authority. The regulations generally require that the basis of the acquired (or deemed acquired) assets will be determined using a five class residual method. Class I consists of cash and cash equivalents; Class II consists of certificates of deposit, U.S. Government securities, readily marketable stock or securities, and foreign currency; Class III includes all assets not included in Class I, Class II, Class IV, or Class V; Class IV consists of section 197 intangible assets except those in the nature of goodwill and going concern value; and Class V consists of section 197 intangible assets in the nature of goodwill and going concern value. The total allocable basis is first decreased by the amount of Class I assets. Any remaining amount is allocated proportionally to Class II assets to the extent of their fair market value. Any remaining amount is then allocated first to Class III assets and then to Class IV assets in the same manner as to Class II assets. Finally, any remaining amount is allocated to the Class V assets. See §§ 1.338(b)–2T and 1.1060–1T.

Reasons for Change

A. In General

The regulations under section 338 have developed, in large part, through a series of small changes and additions according to the priorities of taxpayers' and the government's needs and in response to statutory amendments to section 338 or other relevant Code sections. Most of the regulations under section 338 (§§ 1.338–1, 1.338–2, 1.338–3, 1.338–4, 1.338–5, 1.338(b)–1, 1.338(h)(10)–1, and 1.338(i)–1) were made final as part of a single package as recently as 1994, but, with the exception of the consistency rules, most of those regulations were largely restatements of the existing temporary regulations that had been developed to that point. The remaining temporary regulations under section 338 and the temporary regulations under section 1060 have been substantively changed only once since 1986 and 1988, respectively, to accommodate the addition of section 197 to the Code. As a result of the ad hoc manner in which the regulations under sections 338 and 1060 have been amended, the current regulations are

difficult to follow. Thus the IRS and Treasury determined that a review of the regulations was appropriate.

In addition, the current regulations have proven problematic in three major respects: first, in their statement of tax accounting rules and their relationship to tax accounting rules for asset purchases outside of section 338, second, in the effects of the allocation rules, and, third, in their lack of a statement of a complete model for the deemed asset sale (and, in the case of section 338(h)(10) elections, the deemed liquidation) from which one can determine the tax consequences not specifically set forth in the regulations.

B. Tax Accounting Rules Under Current Regulations

The current regulations include certain rules for accounting for items in connection with the deemed asset sale. These tax accounting rules apply for determining the original amounts of and subsequent adjustments to ADSP and AGUB. For example, the regulations provide rules governing the treatment of contingent liabilities deemed assumed by new target. In some respects the tax accounting rules in the current regulations differ considerably from the tax accounting rules applicable to actual asset sales.

Link Between Old Target's and New Target's Tax Accounting

Under the current regulations, ADSP is defined as the sum of (a) the grossed-up basis of the purchasing corporation's recently purchased target stock, (b) the liabilities of new target, and (c) other relevant items. Thus, the calculation of ADSP is linked to the tax accounting treatment of new target or the purchaser of new target in item (a) above. Such link does not exist, however, in the case of an actual asset sale between two parties. In actual asset sales the timing and amount of the seller's amount realized and the timing and amount of the buyer's basis may differ. For example, with respect to the link under (a), the current fair market value of promised future contingent payments that constitute debt is taken into account in amount realized under § 1.1001–1(g) unless, in rare and extraordinary circumstances, the fair market value is not reasonably ascertainable. Yet, under § 1.1012–1(g), the current fair market value of such future contingent payments is not taken into account currently in the purchaser's basis.

This link between old target's deemed sales price and the purchasing corporation's basis in target stock existed in the original version of section 338, adopted in 1982. In 1984, Congress removed that link from the statute, providing instead that old target should be deemed to sell its assets at fair market value. The regulations originally allowed old target to choose between using the three-part formula (items (a) through (c)) above to calculate ADSP and treating the assets as being sold at their fair market value. In 1994, new regulations eliminated the election, thereafter requiring use of the three-part formula. Under the current regulations, any contingent payments for target stock do not become part of AGUB and ADSP until they become fixed and determinable. However, no rule prevents the seller from using all its basis to offset the amount realized in the year of the deemed sale. As a result of the link between old target's deemed sales price and the purchasing corporation's purchase price, old target receives open transaction treatment on terms broader than those available in an actual asset sale. Compare § 15A.453–1(d)(2)(iii) ("Only in those rare and extraordinary cases involving sales for a contingent payment obligation in which the fair market value of the obligation * * * cannot reasonably be ascertained will the taxpayer be entitled to assert that the transaction is 'open.'")

Liabilities Assumed

The current regulations specify new target's tax accounting treatment for the assumption of liabilities. New target takes a liability into account in AGUB only if it is a bona fide liability of target as of that date that would be properly taken into account in basis under principles of tax law if new target had acquired old target's assets from an unrelated person and, as part of the transaction, had assumed, or taken property subject to, the liabilities, and the amount thereof is determined on the same basis. § 1.338(b)–1(f)(1) and (2).

Under § 1.338(b)–3T(a)(1), AGUB is subsequently redetermined only if an adjustment would be required, under general principles of tax law, in connection with an actual asset purchase by new target from an unrelated person. One of the subsequent events enumerated as an example is the change in a contingent liability of target to one which is fixed and determinable. Section 1.338(b)–3T(c)(1) provides that a contingent amount (including contingent liabilities of old target deemed assumed) is taken into account at the time at which such amount becomes fixed and determinable. The statement of the latter rule suggests to some that it overrides the rules based on general principles of tax law stated in §§ 1.338(b)–1(f)(2) and 1.338(b)–3T(a)(1). However, interpreting the fixed and determinable rule in this manner would be inconsistent with the economic performance rules of section 461(h), that, in some circumstances, would operate to defer new target's taking an assumed liability into account until some time after the liability becomes fixed and determinable. See §§ 1.461–4(a) and 1.446–1(c)(1)(ii)(B).

Installment Method

The current regulations provide no rules for old target to report its deemed sale gain under the installment method. Because the parties could have structured an actual asset sale to qualify for the installment method, commentators have argued that making the installment method available when a section 338(h)(10) election is made would be consistent with the full asset sale model implied by those rules. Making the installment method available when only a section 338(g) election is made would not be appropriate because the target shareholders are still treated as selling stock and because target would get a step-up in basis of assets before it had borne the tax burden for such step-up.

C. Allocation Rules Under Current Regulations

Fast Pay Assets

The current regulations employ a residual method of allocation. Under the residual method, the amount of basis to be allocated to goodwill and going concern value is based entirely on the amount of basis remaining to be allocated after all other assets have been allocated basis to the extent of their fair market values. Because assets other than goodwill and going concern value tend to be more easily valued, the residual allocation method is intended to result in less controversy over the value of goodwill and going concern value. The legislative history of section 1060, adopted in the Tax Reform Act of 1986, Public Law 99–514, (100 Stat. 2282), noted with approval the use of the residual method under the section 338(b) regulations and required that the same method be used in regulations to be prescribed under section 1060. See S. Rep. No. 313, 99th Cong., 2d Sess., May 29, 1986, at 254. Accordingly, the current regulations place each acquired asset into one of five asset classes. The total allocable basis is allocated among the classes starting with the first class and proceeding to the final, residual class. No asset in any class except for the residual class can be allocated more than its fair market value. If the aggregate basis allocable to a particular

class is less than the aggregate fair market value of the assets within the class, each asset is allocated an amount in proportion to its fair market value and nothing is allocated to any junior class.

The residual allocation method presents unique problems when the cost of the assets, and hence the basis to be allocated thereto, is less than the aggregate fair market value of the individual assets. This situation may arise as a result of the use of contingent consideration for target stock or the deemed assumption of liabilities that are not yet taken into account. If this is the case, the basis of the assets is said to be impaired. Under the residual method, the impairment is borne equally by the assets in the first class in which the cumulative fair market value exceeds the remaining aggregate basis available for allocation. As no basis is allocated to assets in junior classes, they are also impaired. If such an asset is sold, the taxpayer will realize a gain on its disposition even if its value has not increased since the acquisition date. Taxpayers may reverse the gain recognized in later years if the purchasing corporation pays or incurs additional amounts for target stock or additional target liabilities deemed assumed are taken into account. For this reason, the gain recognized is often referred to as phantom income.

The problem is most acute with assets that turn over quickly, such as accounts receivable and inventory (fast pay assets). Comments received on the temporary regulations suggested that fast pay assets should be placed in a more senior class to make it more likely that basis is allocated equal to the assets' fair market values in order to alleviate concerns over phantom income.

Top-Down Allocation

Under the current regulations, stock in a subsidiary is generally a Class III asset. In allocating basis among tiered corporations, an allocation to the stock of a subsidiary becomes the starting point for allocation to the assets inside the subsidiary if a section 338 election is also made for the subsidiary. See, e.g., § 1.338–2(b)(4) of the current regulations. One might refer to this as top-down allocation. Under a top-down allocation, the basis of assets of a particular class can be more impaired at one corporate level than at another. For example, Class III assets in the parent target corporation might be allocated some basis while Class II assets in its subsidiary are allocated no basis because Class I assets in the subsidiary have absorbed all the basis allocated to the stock in the subsidiary, a Class III asset. The differences in impairment arising from the differences in the location of assets and liabilities is inconsistent with the residual method (e.g., liabilities secured by an asset support basis of all assets in a single corporation) and can lead to the misallocation of basis.

D. Statement of Complete Model

For purposes of effectuating the statutory purpose of permitting taxpayers to elect to treat a stock acquisition as an asset acquisition, section 338 and the current regulations deem certain transactions to occur. The current regulations' express statement of these deemed transactions provides the appropriate Federal income tax consequences for most targets for which a section 338 election is made. However, as with the tax accounting rules, some taxpayers interpret the express statements in the current regulations as resulting in tax consequences different from those had they actually engaged in the transactions deemed under the regulations to have occurred or as resulting in the tax consequences specifically stated and not any of the collateral consequences.

Explanation of Provisions

A. Overview of Changes

The proposed regulations are intended to clarify the treatment of, and provide consistent rules (where possible) for, both deemed and actual asset acquisitions under sections 338 and 1060. In addition, the proposed regulations propose changes to the current regulations to take into account changes to the tax law made since the different portions of the current regulations were published. The changes made by the proposed regulations have four major components: organization of the regulations; clarification and modification of the accounting rules applicable to deemed and actual asset acquisitions; modifications to the residual method mandated for allocating consideration and basis; and miscellaneous revisions to the current regulations. These changes are discussed in the order in which they arise in the proposed regulations. The IRS and Treasury did not address any provisions of the regulations relating to the consistency rules or the international aspects of section 338.

B. Organization of Regulations

The proposed regulations change the organization of the regulations in order to make the rules for all asset acquisitions more administrable and provide consistent treatment, when appropriate, for deemed and actual asset acquisitions. In order to make the regulations more administrable, the proposed regulations redesignate certain of the final regulations and reorganize and restate the remaining final and temporary regulations in a manner that is more consistent with the approach the IRS and Treasury has taken to drafting regulations in other areas. The proposed regulations also attempt to provide similar treatment, when appropriate, for deemed and actual asset acquisitions by stating the relevant concepts once in the regulations under section 338 and cross-referencing those rules in § 1.1060–1 of the proposed regulations.

New § 1.338–1 includes a scope statement. Section 1.338–1 also addresses the question of to what extent the deemed asset sale and other elements of the section 338 regime are considered as actually having occurred for purposes of application of other Code sections, such as those relating to retirement plan sponsors. Terminology and definitions and provisions regarding the mechanics of the section 338 election of current § 1.338–1 have been moved to new § 1.338–2. The return filing rules of current § 1.338–1 have been moved to their own section, § 1.338–10. All of the current § 1.338–2 rules for qualification for making the section 338 election and rules relating to the effect on continuity of proprietary interest have been moved to new § 1.338–3.

The rules defining ADSP, as well as various rules relating to taxation of old target, currently in § 1.338–3, are in § 1.338–4 of the proposed regulations. The rules defining AGUB, currently in § 1.338(b)–1, are in § 1.338–5. Current § 1.338(b)–3T sets forth the timing of increases or decreases in ADSP and AGUB; these timing rules have been moved to new § 1.338–4 (ADSP) and new § 1.338–5 (AGUB).

Current §§ 1.338–4 and 1.338–5, dealing with consistency and with international aspects of section 338, respectively, have been renumbered § 1.338–8 and 1.338–9, respectively. The substance of these rules has not been addressed in connection with these proposed regulations.

Section 1.338–6 of the proposed regulations addresses allocation of ADSP and AGUB among assets, currently covered by § 1.338(b)–2T. The rules pertaining to subsequent adjustments to ADSP and AGUB, currently in § 1.338(b)–3T, are in § 1.338–7 of the proposed regulations.

Section 1.338(h)(10)–1 has not been renumbered.

C. Section 1.338–1 General Principles; Status of Old Target and New Target

Regulations' Scope Statement

The scope statement describes the general model of the deemed asset sale and other aspects of the regulations used as the basis for the rules in the proposed regulations. This statement of the model should assist the reader generally in the correct interpretation and application of the regulations. This section also provides that old target and new target (as well as any other affected parties, for example, when a section 338(h)(10) election is made) are to determine the tax consequences as if they had actually engaged in the transactions deemed under the section 338 regulations to have occurred. Thus, the proposed regulations clarify that old target's deemed asset sale may result in tax consequences for old target and new target (such as income and deduction) in addition to old target's gain or loss realized on its deemed sale of assets. For example, if target is an insurance company for which a section 338 election is made, the deemed asset sale would be characterized and taxed as an assumption-reinsurance transaction under applicable Federal income tax law. See § 1.817–4(d).

The proposed regulations make minor amendments to the list of sections in subtitle A for purposes of which old target and new target are considered the same corporation, notwithstanding the deemed asset sale between the two. Such changes generally are with respect to retirement plan and similar provisions.

Anti-Abuse Rule

The proposed regulations incorporate an anti-abuse rule giving the Commissioner, for purposes of calculating ADSP and AGUB and allocating ADSP and AGUB among assets, the authority under certain circumstances (a) to treat as not being part of target's assets those added to the pool of target's assets before the deemed asset sale and (b) to treat as being part of target's assets those removed from the pool of target's assets before the deemed asset sale. The Commissioner's authority to treat assets added to the pool as not being part of the pool exists when the property is transferred to old target in connection with the transactions resulting in the application of the residual method if such property is, within 24 months after the deemed asset sale, (a) not owned by new target but owned, directly or indirectly, by a member of the affiliated group of which new target is a member, or (b) owned by new target but held or used to more than an insignificant extent in connection with an activity conducted, directly or indirectly, by another member of the affiliated group of which new target is a member in combination with other property acquired, directly or indirectly, from the transferor of the property to old target. The Commissioner's authority to treat assets removed from the pool as being part of the pool exists where the property is removed in connection with the transactions resulting in the application of the residual method if the removed property, within 24 months after the deemed asset sale, (a) is owned by new target, or (b) is owned, directly or indirectly, by a member of the affiliated group of which new target is a member and continues after the election to be held or used to more than an insignificant extent in connection with one or more of the activities of new target.

D. Section 1.338–2 Nomenclature and Definitions; Mechanics of the Section 338 Election

Definitions

Four definitions of terms already used in the current regulations have been added to the proposed regulations under section 338. These terms are *acquisition date asset, deemed asset sale, deemed sale gain, and deemed sale return.* The scope of some of these terms has been expanded from their usage in the current regulations. For example, *deemed asset sale* refers to the transaction deemed under the section 338 regulations to occur between old target and new target and *deemed sale gain*, refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset sale. Deemed sale gain can also refer to the Federal income tax consequences of the transfer of a particular individual asset in the deemed asset sale. The expanded definition of deemed sale gain in conjunction with the rules in § 1.338–7(c) of the proposed regulations (§ 1.338(b)–3T(h) of the current regulations) provides a mechanism for target (or, in the case of a section 338(h)(10) election, the member of the selling consolidated group, the selling affiliate, or the S corporation shareholders to which such income, loss, or other amount is attributable) to report items that are properly taken into account after the acquisition date. One such item would be the deduction for an assumed liability of old target that it could not deduct under its method of accounting on or before the acquisition date.

The definition of *purchasing corporation* has been clarified to include new target (new T) with respect to its deemed purchase of stock in its own subsidiary.

The definition of *selling group* in § 1.338–2 of the proposed regulations and related provisions in § 1.338(h)(10)–1 of the proposed regulations provide that a section 338(h)(10) election may be made for target notwithstanding that it was at some time during the year in which the acquisition date occurs the common parent of its affiliated or consolidated group, so long as it is not the common parent on the acquisition date.

E. Section 1.338–3 Qualification for the Section 338 Election

More Than a Nominal Amount Paid for Purchase of Stock

The IRS and Treasury have received many informal comments in which guidance was requested on whether a section 338 election may be made for a target that is insolvent. In order to have a purchase of a share of stock in target, the proposed regulations generally require that more than a nominal amount of consideration be paid for the stock. With respect to target affiliates, one cannot adequately determine whether more than a nominal amount of consideration is paid for the stock because the amount paid is not determined in an arm's length transaction but instead under the allocation rules of the regulations. Consequently, the proposed regulations provide that stock in a target affiliate acquired by new target in the deemed asset sale of target's own assets is considered purchased if, under general principles of tax law, new target is considered to own stock of the target affiliate meeting the requirements of section 1504(a)(2), notwithstanding that no purchase price may be allocated to target's stock in the target affiliate. For a discussion of the tax consequences when a qualified stock purchase is made of an insolvent corporation and a section 338(h)(10) election is made, see the discussion of section 338(h)(10) elections later in this preamble.

Time for Testing Relationship

A section 338 election may be made only with respect to a transaction that qualifies as a purchase within the meaning of section 338(h)(3). Under section 338(h)(3)(iii), the parties to the transaction must be unrelated in order for a transaction to qualify as a purchase. The statute is unclear,

however, as to when the relationship between the parties is tested. The proposed regulation provides that the relationship is tested immediately after the transaction. This rule gives effect to the statutory objective of preventing a transferor from obtaining the benefits of a section 338 election while retaining a significant interest, directly or indirectly, in the property transferred. This rule also furthers the statutory objective of affording similar tax treatment to section 338 deemed asset sales and actual asset sales. For example, under this rule, if an actual sale of assets would qualify as a reorganization under section 368(a)(1)(D) (with a carryover of basis and other attributes), taxpayers are not able to reach a different result by structuring the transaction as a stock sale and electing under section 338.

F. Sections 1.338 4 and 1.338 5 Aggregate Deemed Sale Price; Various Aspects of Taxation of the Deemed Asset Sale; Adjusted Grossed-up Basis

Breaking the Link Between ADSP and AGUB

Under the current regulations, the first element in the definition of ADSP is the grossed-up basis of the purchasing corporation's recently purchased target stock. The combination of the link between the definitions of ADSP and AGUB with the rule in the current regulations that contingent payments are taken into account in AGUB as they become fixed and determinable effectively affords old target open-transaction treatment, which treatment generally is inconsistent with §§ 15A.453–1(d)(2)(iii) and 1.1001 1(g)(2). The proposed regulations remove the link in the current regulations between calculation of the first element of ADSP and the purchaser's basis in recently purchased target stock.

The new first element in the calculation of ADSP is the grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock. Amount realized is determined as if old target itself were the selling shareholder. Also, notwithstanding that the sellers of the target shares may use the installment method of section 453 to report their gain on the stock, old target may not use the installment method in the calculation of the first element of ADSP.

Time and Amount Combined

The proposed regulations provide that general principles of tax law apply in determining the timing and amount of the elements of ADSP, and that ADSP is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, to the individual constituent elements of the definition of ADSP. The proposed regulations also provide a parallel rule for AGUB. Substantively, the two statements are designed to eliminate special accounting rules included in the current section 338 regulations-such as the current regulations' fixed and determinable rule for the timing of taking into account contingent amounts-and to bring taxation of old target's deemed asset sale closer to the taxation of an actual asset sale. In contrast to the current regulations, the proposed regulations state in one location all the rules for determining ADSP and AGUB.

Both the breaking of the link between the calculation of ADSP and the purchaser's basis in recently purchased stock and the removal of the fixed and determinable rule for contingent liabilities may often result in increased disparities between ADSP and AGUB.

Liabilities

The current regulations appear to presume that any tax liability of old target incurred on its deemed asset sale is a liability assumed by new target if a section 338(h)(10) election is not made but is not a liability assumed by new target if a section 338(h)(10) election is made. These presumptions apparently required that the definition of ADSP be modified in current § 1.338(h)(10)–1. The proposed regulations make clear that, whether or not a section 338(h)(10) election is made, old target's tax liability is deemed not assumed by new target only if the parties have agreed that (or the tax or non-tax rules operate such that) the seller, and not target, will bear the economic cost of that tax liability. This is because the legal burden for the tax would otherwise remain with target. Thus, the proposed regulations remove the term *MADSP* from § 1.338(h)(10)–1, and extend the use of the term *ADSP* to that regulation.

Under the proposed regulations, the amount of liabilities of old target taken into account to calculate ADSP is determined as if old target had sold its assets to an unrelated person for consideration that included the unrelated person's assumption of, or taking subject to, the liabilities. Similarly, they provide that, in order to be taken into account in AGUB, a liability must be a liability of target that is properly taken into account in basis under general principles of tax law that would apply if new target had acquired its assets from an unrelated person for consideration that included the assumption of, or taking subject to, the liability. Regarding the timing of taking such liabilities into account, the proposed regulations provide that general principles of tax law apply in determining the timing and amount of the elements of ADSP and AGUB. Thus, for example, under general principles of tax law, a particular liability might not be taken into account in basis when a purchaser buys an asset subject to such liability, but might be taken into account at some later date; such timing controls the timing of including the liability in AGUB. Accordingly, the current rule in the regulations that liabilities are taken into account in calculating AGUB, and apparently ADSP, only when such liabilities become fixed and determinable is removed in the proposed regulations.

Costs

The treatment of selling costs for old target and acquisition costs for new target is modified. For old target, it is made clear that when grossing-up the selling shareholders' amount realized where not all the target stock is recently purchased by the purchaser, the amount of selling costs by which that grossed-up amount realized is reduced is not itself grossed-up. For new target, the definition of AGUB is changed such that when the purchaser's basis in recently purchased stock is grossed-up, acquisition costs are no longer also grossed-up.

Grossing-up the selling shareholders' selling costs or the purchasing corporation's acquisition costs would result in costs not actually incurred reducing old target's amount realized for the assets or increasing new target's cost basis in the assets. The IRS and Treasury do not believe that these results are appropriate because there is no evidence that the purchasing corporation's costs to acquire an amount of target stock sufficient for there to be a qualified stock purchase would increase proportionately if it acquired all of the target stock and the deemed asset sale mechanism allows taxpayers to avoid many of the costs that would be incurred in an actual asset sale. Accordingly, the IRS and Treasury have exercised the authority under section 338(b)(2) to prevent the grossing-up of selling costs and acquisitions costs.

Other Relevant Items

The element *other relevant items* is removed from the definitions of both ADSP and AGUB as it no longer serves any function. In the current regulations, this element reduces ADSP for the purchasing corporation's acquisition

costs that would otherwise be taken into account because the purchaser's basis in recently purchased stock was an element in calculation of both ADSP and AGUB. This element becomes unnecessary with the removal of the link between ADSP and AGUB.

G. Section 1.338–6 Allocation of ADSP and AGUB Among Target Assets

Allocation of ADSP and AGUB Generally

Apart from a change in the number of classes, the proposed regulations generally do not represent a substantive change in the system of allocation of ADSP and AGUB. The proposed regulation states the allocation rules that apply equally to ADSP and AGUB and then states the modifications to those common allocation rules for AGUB.

Transaction Costs

Generally, the definition of fair market value is the price at which a willing seller will transfer an asset to a willing buyer. Therefore, the fair market value of a particular asset to a seller is not different from the fair market value of the same asset to a buyer, even though the economic value of the asset to each would reflect the selling costs or acquisition costs. A seller may reduce its amount realized on an asset and a buyer may increase its cost basis in an asset for the transaction costs specifically allocable to the asset in an actual asset sale. Because the underlying transaction in section 338 is actually a stock sale, the costs incurred are not specifically allocable to any individual asset deemed transferred, but rather to the stock. Therefore, in applying the residual method to a deemed asset sale, transaction costs are accounted for only by decreasing the total amount realized by the seller or increasing the total cost basis of the buyer. In contrast, see the discussion of the treatment of transaction costs in an actual asset acquisition below.

IRS Challenges to Asset Fair Market Value

Drawing from the existing rules under section 1060, the proposed regulations provide that the IRS may challenge a taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties.

Number and Content of Classes

The seven classes under the proposed regulations are as follows: Class I, cash and cash equivalents; Class II, actively traded personal property as defined in section 1092(d), certificates of deposit, and foreign currency; Class III, accounts receivable, mortgages, and credit card receivables which arise in the ordinary course of business; Class IV, stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; Class V, all assets not in Class I, II, III, VI, or VII; Class VI, all section 197 intangibles except goodwill or going concern value; and Class VII, goodwill and going concern value.

AGUB Less Than the Amount of Class I Assets

The proposed regulations clarify that, if the total AGUB (or consideration in an applicable asset acquisition under section 1060) to be allocated is less than the amount of Class I assets (i.e., cash and cash equivalents), then new target (or the purchaser in an applicable asset acquisition under section 1060) immediately recognizes ordinary income to that extent.

Marketable Securities

The current regulations include marketable stock and securities, as defined in § 1.351–1(c)(3), in Class II. Marketable stock and securities are included in Class II because a value can be easily assigned at any given time by looking at the value at which those instruments were trading on a securities exchange. Since the time Class II was first defined, financial markets have evolved and a greater variety of financial instruments can be readily valued in the same manner. The proposed regulations instead defines Class II with respect to actively traded personal property as defined under section 1092(d) because the regulations under that section have a more comprehensive definition of public financial markets.

Fast Pay Assets

The IRS and Treasury are aware that many taxpayers engage in transactions solely to avoid the impairment problems with fast-pay assets. In addition, the IRS spends time evaluating whether such transactions are subject to challenge under the section 338 regulations or general principles of tax law. In order to address these concerns, the proposed regulations create two new classes of assets between current Classes II and III, one for accounts receivable, mortgages, and credit card receivables which arise in the ordinary course of business and another for stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

Residual Class

In the current regulations, Class V, the residual class, is comprised of section 197 intangibles in the nature of goodwill and going concern value. Class IV is comprised of all section 197 intangibles except those in the nature of goodwill and going concern value. Because many section 197 intangibles would have been characterized by the IRS as assets in the nature of goodwill and going concern value prior to the enactment of section 197, the current regulations provide somewhat ambiguous guidance as to the line between current Class IV and current Class V. Accordingly, the proposed regulations remove the phrase "in the nature of." Furthermore, in rare circumstances, goodwill or going concern value is not a section 197 intangible. The residual class should include all goodwill and going concern value to ensure that the residual method serves the purpose of reducing valuation controversies. Therefore, the proposed regulations define the residual class as goodwill and going concern value without any reference to whether those assets would qualify as section 197 assets.

In TD 8711, *supra*, the IRS amended the current regulations to adapt the residual method to section 197 by creating a new Class IV for section 197 intangibles other than goodwill or going concern value and providing that goodwill and going concern value would remain in a true residual class. The proposed regulations retain this distinction in renumbered Class VI and Class VII. Allocating goodwill and going concern value to Class VII avoids the need for determining the value of goodwill and going concern value through a non-residual method.

Allocation of AGUB When Gain Recognition Election Available but Not Made

When the purchaser of the target stock holds nonrecently purchased target stock and no section 338(h)(10) election is made, the purchaser has the option of making or not making the gain recognition election. (If a section 338(h)(10) election is made, the making of the gain recognition election is automatic rather than elective.) The proposed regulations retain these rules. The current regulations have a special allocation rule when the failure to make

the gain recognition election leaves AGUB less than ADSP (that is, when the purchaser's nonrecently purchased stock was bought at a lower price than the recently purchased stock). Under the special allocation rule, AGUB, after reduction by the amount of Class I assets, is allocated among all other assets, regardless of their class, in proportion to their fair market values. (For this purpose, the fair market value of assets in the residual class (current Class V) is deemed to be the excess, if any, of the hypothetical purchase price over the sum of the Class I assets and the fair market values of the Class II, III, and IV assets. The hypothetical purchase price is the AGUB that would result if a gain recognition election were made.)

If, looking at the hypothetical purchase price, full fair market value was paid on the acquisition date for assets in each class above the residual class, the current regulation's special allocation rule spreads the impairment that arises because no gain recognition election was made equally among all assets in classes below Class I. However, if, looking at the hypothetical purchase price, full fair market value was not paid on the acquisition date for assets in each class above the residual class, this rule spreads the impairment that arises because no gain recognition election was made as well as the impairment that arises from the bargain purchase equally among all assets in classes below Class I. In the latter case, the prioritization of classes under the residual method becomes irrelevant by the failure to make a gain recognition election. Prior to the enactment of section 197, the effect of the current regulations generally would have been to shift basis from depreciable or amortizable assets to nondepreciable, nonamortizable assets.

The proposed regulations modify the special allocation rule to minimize this effect. Generally, under the modified special allocation rule, the portion of AGUB (after reduction by the amount of Class I assets) to be allocated to each Class II, III, IV, V, VI, and VII asset is determined by multiplying (a) the amount that would be allocated to such asset under the general rules for allocation of AGUB were AGUB increased to equal the hypothetical purchase price by (b) a fraction, the numerator of which is actual AGUB (after reduction by the amount of Class I assets) and the denominator of which is the hypothetical purchase price (after reduction by the amount of Class I assets). The reason for the modification is to spread only the impairment that arises because no gain recognition election was made equally among all assets in classes below Class I.

The IRS and Treasury request comments as to whether any special allocation rule has continuing merit.

H. Section 1.338–7 Allocation of Redetermined ADSP and AGUB Among Target Assets

In General

Section 1.338(b)–3T of the current regulations addresses subsequent adjustments to ADSP and AGUB. In the proposed regulations, these rules, contained in § 1.338–7, have been streamlined and some of their content has been moved to the sections defining ADSP and AGUB, §§ 1.338–4 and 1.338–5 respectively. The proposed regulations eliminate the use of the term *adjustment event* used in certain provisions of the current regulations. Instead, the proposed regulations provide simply that when general principles of tax law require a change in the amount of any of the various elements of ADSP or AGUB (discussed earlier), the new ADSP or AGUB amount is reapplied to produce new allocations to the assets. This generally is not intended as a substantive change to the current rules for subsequent adjustments provided in § 1.338(b)–3T.

Item-Specific Adjustments

The current regulations at § 1.338(b)–3T contain special rules for changes to AGUB (and thus, indirectly, to ADSP) that relate to the income produced by intangible assets. The special rules apply for purposes of allocating an increase or decrease in AGUB or ADSP to the extent (a) the contingency that results in the increase or decrease directly relates to income produced by a particular intangible asset (contingent income asset) and (b) the increase or decrease is related to such contingent income asset and not to other target assets. The special rules consist of two provisions that vary from the normal rules of § 1.338(b)–3T. Under the first provision, the fair market value of the contingent income asset at the beginning of the day after the acquisition date is redetermined at the time of the increase or decrease in AGUB or ADSP (but only those circumstances that resulted in the increase or decrease to AGUB or ADSP are taken into account in the redetermination). Under the second, the increase or decrease in AGUB or ADSP is allocated first to the contingent income asset, not to all assets generally under the normal allocation rules. Any portion that cannot be so allocated because of the fair market value limitation (as redetermined) is allocated under the normal allocation rules.

The intent of this rule was to accommodate the uncertainties in the valuation of contingent income assets. The rule produces an allocation that would have resulted if the parties had known on the acquisition date the fair market value of the contingent income asset (as determined, with hindsight, on the date of the adjustment event) and paid on the acquisition date the increased or decreased consideration. The IRS and Treasury weighed the usefulness of this rule with its complexity and decided that the proposed regulations should not include any item-specific adjustment rule. Commentators, if they believe that the item-specific adjustment rule continues to serve a useful function that justifies its retention, should identify in their comments in what circumstances the rule has proven useful or could prove useful. Commentators should also identify what provisions would be necessary for an effective item-specific adjustment rule.

I. Section 1.338(h)(10)–1 Deemed Asset Sale and Liquidation

Model

The proposed regulations explain the effects of the section 338(h)(10) election on the parties involved. The proposed regulations discuss the effects of the section 338(h)(10) election on the purchasing corporation, the effects on new target, the effects on old target, and the effects on old target's shareholders (including non-selling shareholders).

As with the rest of the proposed regulations, proposed § 1.338(h)(10)–1 describes the model on which taxation of the section 338(h)(10) election is based. Under the proposed regulations, old target is treated as transferring all of its assets by sale to an unrelated person. Old target recognizes the deemed sale gain while a member of the selling consolidated group, or owned by the selling affiliate, or owned by the S corporation shareholders (both those who actually sell their shares and any who do not). Old target is then treated as transferring all of its assets to members of the selling consolidated group, the selling affiliate, or S corporation shareholders and ceasing to exist. If target is an S corporation, the deemed asset sale and deemed liquidation are considered as occurring while it is still an S corporation. The proposed regulations treat all parties concerned as if the fictions the section 338(h)(10) regulations deem to occur actually did occur, or as closely thereto as possible. The structure of this model

should help taxpayers answer any questions not explicitly addressed by the proposed regulations. Also, old target generally is barred by the proposed regulations from obtaining any tax benefit from the section 338(h)(10) election that it would not obtain if it actually sold its assets and liquidated.

The treatment of S corporation targets which own one or more qualified subchapter S subsidiaries (as defined in section 1361(b)(3)) is also addressed, as is the treatment of tiered targets (i.e., the order of their deemed asset sales and deemed liquidations).

Deemed Liquidation

The current regulations provide that, when a section 338(h)(10) election is made, old target is deemed to sell all of its assets and distribute the proceeds in complete liquidation. The term *complete liquidation* is generally considered to be a term of art in tax law. The proposed regulations instead provide that old target transferred all of its assets to members of the selling consolidated group, the selling affiliate, or S corporation shareholders and ceased to exist, making it clear that the transaction following the deemed asset sale does not automatically qualify as a distribution in complete liquidation under either section 331 or 332. This is meant to clarify any inference one might draw from previous regulations that section 332 treatment is automatic under section 338(h)(10) in the case of an affiliated or consolidated group. For example, if S owns all of the stock of T, T is insolvent because of its indebtedness to S, P acquires T from S in a qualified stock purchase, and, as a condition of the sale, S cancels the debt owed it by T, and P and S make a section 338(h)(10) election for target, T's deemed liquidation would not qualify under section 332 because S would not be considered to receive anything in return for its stock in T. Rev. Rul. 68–602 (1968–2 C.B. 135).

Special S Corporation Issues

The current regulations provide that, notwithstanding the purchase of 80 percent of the shares of an S corporation by a purchasing C corporation, the S corporation continues to be considered an S corporation for purposes of determining the tax effects of the section 338(h)(10) election to old target and its S corporation shareholders. For example, old target reports to its shareholders under section 1366 the tax effects of its deemed asset sale, and the shareholders adjust their stock basis pursuant to section 1367. The proposed regulations clarify that when the target itself is an S corporation immediately before the acquisition date, any direct and indirect subsidiaries of target with respect to which qualified subchapter S subsidiary elections are in effect are considered to remain qualified subchapter S subsidiaries for purposes of target's and its S corporation shareholders' reporting the effects of target's deemed sale of assets and deemed liquidation. No similar rule applies when a qualified subchapter S subsidiary, as opposed to the S corporation that is its owner, is the target corporation. The IRS and Treasury request comments as to whether it would be beneficial to make section 338(h)(10) elections available for acquisitions of qualified subchapter S subsidiaries and as to how the section 338(h)(10) regulations should be modified to accommodate the unique taxation of these entities.

The proposed regulations clarify the effects of the section 338(h)(10) election on both selling and non-selling S corporation shareholders. For example, the proposed regulations clarify that all S corporation shareholders, selling or not, must consent to the making of the section 338(h)(10) election, particularly because the non-selling shareholders have to include their proportionate share of the deemed sale gain under section 1366. Form 8023 will be corrected to reflect this requirement.

Availability of the Section 453 Installment Method

When some or all of the target stock is purchased for an installment obligation and a section 338(h)(10) election is made, the proposed regulations make the section 453 installment method available to old target in its deemed asset sale, as long as the deemed asset sale would otherwise qualify for installment sale reporting. Solely for purposes of the application of section 453 and related provisions to the deemed asset sale and subsequent deemed corporate liquidation under section 338(h)(10), old target generally is considered to receive from new target in the deemed asset sale consideration consisting of the installment obligation given to old target shareholders in exchange for recently purchased stock, the assumption of, or taking subject to, old target liabilities, and cash. Thus, regardless of its actual character, any consideration conveyed by the purchaser to the selling shareholders other than installment obligations is considered to have been in cash, including for instance the purchaser's assumption of, or taking subject to, liabilities of the selling shareholders. In addition, the amount of any grossing-up under § 1.338–4(d) of the proposed regulations is deemed to be in the form of cash. For purposes of section 453, new target is considered to be the obligor on the installment obligation the purchasing corporation actually issued. The provisions of sections 453(h), 453B(d), and 453B(h) may then apply to old target and its shareholders with respect to the deemed liquidation of old target following the deemed asset sale. In the deemed liquidation, a selling shareholder who actually received an installment obligation in the stock sale is deemed to receive that installment obligation as part of the liquidating distribution; the other shareholders are deemed to receive none of the installment obligation.

The proposed regulations provide that old target generally is barred from obtaining any tax benefit from the section 338(h)(10) election that it would not obtain if it actually sold its assets and liquidated. This bar extends to the application of section 453. In other words, the results of application of section 453 to old target should be as close as possible to those that would occur if old target actually sold its assets for an installment obligation of the purchaser. Thus, for example, the installment method of section 453 applies unless old target affirmatively elects out of the installment method.

As another example, § 15A.453–1(b)(2)(iv) provides that any obligation created subsequent to the taxpayer's acquisition of the property and incurred or assumed by the taxpayer or placed as an encumbrance on the property in contemplation of disposition of the property is not qualifying indebtedness if the arrangement results in accelerating recovery of the taxpayer's basis in the installment sale. Old target would be subject to this test with respect to its debts new target is deemed to assume or take subject to.

Further, the rule of section 453A requiring payment of interest will apply in the same manner as it would apply if target actually sold all its assets in return for consideration that included an installment obligation from the purchaser and then distributed in complete liquidation all the consideration received.

Tiered Targets

The proposed regulations provide that, in the case of parent-subsidiary chains of corporations making section 338(h)(10) elections, the deemed asset sale at the parent level is considered to precede that at the subsidiary level. The proposed regulations then provide, however, that the deemed liquidation of

the subsidiary is considered to precede the deemed liquidation of the parent.

Additional Information Required

The proposed regulations provide that the Commissioner may exercise the authority granted in section 338(h)(10)(C)(iii) to require the provision of any information deemed necessary to carry out the provisions of section 338(h)(10) by requiring submission of information on any tax reporting form. The IRS and Treasury are considering requiring that the information about the amount and allocation of AGUB and ADSP currently submitted on the election form (Form 8023) instead be submitted by the purchaser and seller(s) separately on their income tax returns, and is interested in comments on this approach.

J. Section 1.1060–1

Definition of Trade or Business

Section 1060 applies to the direct or indirect transfer of a trade or business. Under the current regulations, a group of assets constitutes a trade or business if the use of such assets would constitute an active trade or business for purposes of section 355. Further, even if a group of assets would not qualify as an active trade or business for purposes of section 355, a group of assets will constitute a trade or business for purposes of section 1060 if goodwill or going concern value could attach under any circumstances. The current regulations set out factors that will be considered in determining whether goodwill or going concern could attach.

Although the current regulations set out factors, there are still ambiguities regarding when goodwill or going concern value could attach. For example, § 1.1060–1T(b)(2) has been misinterpreted to mean that a trade or business exists only when basis is allocated to goodwill or going concern value under the residual method. Under the misinterpretation, a taxpayer would be required to filter every bulk asset purchase through the residual allocation method in order to determine whether the transaction is subject to section 1060. The proposed regulations clarify that a trade or business is present if goodwill or going concern value could attach to the group of assets, regardless of whether any value will eventually be allocated to the residual class (Class VII).

In addition, the proposed regulations provide that the presence of assets in the nature of section 197 assets is a factor to be considered in determining whether goodwill or going concern value could attach. This clarification recognizes that many section 197 assets would have been considered part of goodwill or going concern value at the time Congress enacted section 1060. However, the proposed regulations make it clear that the transfer of an isolated section 197 asset will not be subject to section 1060.

The proposed regulations clarify that an applicable asset acquisition can occur even if the trade or business is transferred from seller to purchaser in a series of related transactions and that the residual method must be applied once to all of the assets transferred in a series of related transactions. The proposed regulations also incorporate the principles of the anti-abuse rule from § 1.338–1(c) of the proposed regulations to determine which assets must be included for purposes of applying the residual method.

Asymmetrical Transfers of Assets

Section 1060 applies to the direct or indirect acquisition of a trade or business when the purchaser's basis in the assets (other than assets to which section 1031 applies) is determined wholly by reference to the consideration paid by the purchaser. This rule clarifies that a purchaser of assets in an applicable asset acquisition is subject to the allocation rules set out in §§ 1.338–6 and 1.338–7 even if the transferor in the transaction is treated as transferring something different from the assets the transferee is treated as receiving. For example, Rev. Rul. 99–6 (1999–6 I.R.B. 6) concerns the purchase, by one person, of all of the interests in a limited liability company which is classified as a partnership under § 301.7701–3. The revenue ruling sets forth two situations and holds that each seller is treated as having transferred its interests in the partnership, while each purchaser is treated as having purchased the assets of the limited liability company. The proposed regulations make it clear that each purchaser described in Rev. Rul. 99–6 must use the residual method prescribed under §§ 1.338–6 and 1.338–7 to allocate the consideration paid for the purchased assets (provided that the asset transfer otherwise qualifies as an applicable asset acquisition).

Multiple Trades or Businesses Transferred in a Single Transaction

The current regulations are silent on the proper application of the residual method to situations when a seller transfers a group of assets that could be categorized as constituting more than one trade or business. The proposed regulations clarify that, as long as any part of the assets are a trade or business, all of the assets are to be treated as a single trade or business for purposes of applying the residual method. Therefore, the residual method should be applied once to all of the assets transferred, rather than to blocks of the assets separately. This rule is intended to reduce valuation conflicts regarding how much consideration should be allocated to each separate group of assets. By treating all of the assets as a single trade or business, all assets in Classes I through VI can receive full fair market value allocation before the goodwill of any trade or business is allocated basis. In addition, this rule brings actual asset acquisitions into conformity with deemed asset acquisitions by allocating consideration paid across all assets acquired, without looking to the trade or business with which they are associated.

Miscellaneous Changes

The proposed regulations incorporate two miscellaneous changes addressing issues that have arisen under the current regulations. First, the proposed regulations include any covenants entered into between the seller and the purchaser in connection with an applicable asset acquisition as an asset transferred as part of a trade or business even though, to the seller, the covenant is a contract for services. As a result, sellers must include any covenants in the asset pool for purposes of applying the residual method, thus allowing for greater symmetry to be achieved between the purchaser and seller.

Second, the like-kind exchange rule in the current regulation has been expanded. Under this expanded rule, if an applicable asset acquisition includes property that is transferred subject to any provision of the Code or regulations that has the tax effect of section 1031, the tax treatment determined under such provision is given effect. The residual method is then applied to the remaining assets and consideration exchanged.

In addition, the proposed regulations no longer separately state the residual allocation method. Instead, proposed § 1.1060–1 incorporates the residual method by cross reference to proposed regulations §§ 1.338–6 and 1.338–7. Proposed regulation § 1.1060–1 only sets out rules in which the treatment of an actual asset acquisition differs from the treatment of a deemed asset acquisition. By cross-referencing the section 338 regulations rather than separately stating the residual method, the proposed regulations ensure that deemed and actual asset acquisitions will be treated similarly to the extent possible.

Transaction Costs

Under the current regulations, consideration is allocated to each asset to the extent of that asset's fair market value as long as there is sufficient consideration to provide full allocation of basis to each asset in the class. The fair market value limitation and the residual allocation method of the current regulations do not permit costs associated with specific assets to be allocated to those assets. For example, if a purchaser incurred costs to acquire an asset and section 1060 did not apply to the acquisition, the basis of that asset would be increased to reflect those costs. However, the fair market value limitation under the current regulations would limit a purchaser's basis in the asset to its fair market value. The proposed regulations allow the buyer and seller to adjust their allocation of consideration to particular assets for costs incurred which are specifically identified with those assets. Thus, the total amount the seller allocates to an asset for which it incurs specifically identifiable costs would be less than its fair market value and, for the buyer, greater than its fair market value. The parties are not allowed to apportion costs associated generally with the overall transaction to specific assets. A similar rule is not necessary, and therefore not included, under section 338, because the underlying transaction is a stock sale. Any costs associated with a deemed asset sale are of the type generally associated with the overall sale of stock and, therefore, the parties would not be allowed to apportion those costs to specific assets under the rule.

Written Allocation Agreements

After the current regulations were adopted, Congress amended section 1060 to provide that a written agreement allocating purchase price is binding on both parties. See section 1060(a). The legislative history indicates that parties must report consistent with their agreed-upon allocations, unless the parties are able to refute the agreement under the standards set forth in *Commissioner* v. *Danielson*, 378 F.2d 771 (3d Cir.), cert. denied, 389 U.S. 858 (1967). The proposed regulations incorporate the *Danielson* standard by reference.

Specific Requests for Comments and Matters Under Study

A. Examples in the Section 338 and Section 1060 Regulations

The proposed regulations, for the most part, retain the examples of the current regulations. The retained examples are updated to reflect the changes in the location, terminology, and substance of the regulations which they illustrate. Some examples have been dropped as it was thought that they were unnecessary. Comments are requested as to whether any of the retained examples (or new examples) are superfluous and whether other examples are necessary to illustrate the regulations.

B. Discharge of Indebtedness Income in the Case of Tiered Targets Under Section 338 and the Current Regulations

Taxpayers may inadvertently experience adverse tax consequences when there is intercompany indebtedness owing between tiered targets acquired in the same qualified stock purchase. Such consequences might include the realization of discharge of indebtedness income and changes to the issue price of the indebtedness. The latter could affect the total amount of AGUB to be allocated.

For example, assume that T owns 100 percent of the stock of T1, T and T1 do not file a consolidated return, and T is indebted to T1. Assume also that P acquires all the stock of T in a qualified stock purchase and makes section 338 elections for both T and T1. Under § 1.338–2(b)(4), first old T is considered to sell its assets to new T, and new T is deemed to assume the debt of old T, to old T1. Next, old T1 is deemed to sell its assets to new T1. New T1 thus may be considered to acquire debt owed by new T (to old T1) at a time when new T1 is related to new T.

Under section 108(e)(4), this may trigger discharge of indebtedness income for new T if new T1's adjusted basis in the acquired debt is less than the amount of the debt (see § 1.108–2(f)(1)). That might occur when the T stock is purchased partly for contingent consideration not originally taken into account in AGUB. A variety of similar issues may arise under § 1.1502 13(g).

The IRS and Treasury solicit comments on whether the application of section 108(e)(4) and § 1.1502–13(g) is appropriate in these circumstances and how one might best address these consequences.

C. Ideas for Revision of Application of the Residual Method of Allocation Under Section 338 in the Case of Tiered Targets

In General

The IRS and Treasury are studying ways of addressing the allocation of ADSP and AGUB in the case of tiered targets making section 338 elections. Set forth below is the framework for one potential method that would equalize the amount of impairment for assets in a given class without regard to which target corporation owns the assets. This method uses a lookthrough approach. The method is incomplete, raises difficult issues, and is more complicated than the current rules. For these reasons, the proposed regulations do not adopt the method. However, the IRS and Treasury request comments as to the value and feasibility of the method; how best to resolve its issues; and what alternative approaches might be better. For instance, would it be better to have a complicated special method such as that described below that operates in every case of tiered targets or, as the proposed regulations do, retain the approach of the current regulations with the addition of an anti-abuse rule, the goal of which is to restrict movement of assets in advance of the qualified stock purchase undertaken to benefit from the shortcomings of the current top-down rules?

Essentially, the lookthrough approach referred to above would revise the treatment of Classes I through V (referring to the class numbering system of the proposed regulations). In allocating to these senior classes, the tiered targets would be aggregated for purposes of calculating the overall purchase price and allocating that amount among the individual assets. This rule would apply to a target (referred to as the parent target) and to those of its lower tier subsidiaries for which a section 338 election is also made (referred to as subsidiary targets). Stock in subsidiaries for which section 338 elections are not or cannot be made would continue to be treated for all purposes as a Class V asset (or Class II if publicly traded)—in other words, such entities would not participate in the aggregation.

The method would thereafter switch back to the normal top-down system for allocation to assets in Classes VI and VII, because the process of dividing up the amount allocated to the aggregate goodwill of all the targets under the residual method would be antithetical to the notion that goodwill is best valued by looking at what value is left over rather than being separately valued, and because both Class VI and VII assets generally get the same 15 year amortization period pursuant to section 197–hence determining which of those two classes or assets within the classes receives a given dollar of basis is relatively insignificant.

An issue in applying the method is how to treat liabilities owed by one group member to another. The IRS and Treasury request comments as to whether such liabilities should be

treated for all allocation purposes as not debt but as stock in the debtor-member held by the creditor-member, and whether to do so even if the creditor-member is a subsidiary of the debtor-member.

One possible method of implementing the method is set forth in greater detail, below. Possible method of implementation of the lookthrough approach

The first step under the method would be to calculate the total amount to be allocated (ADSP and AGUB). Under the method, this would be the sum of (a) the amount realized or basis, as appropriate, of the parent target stock (grossed-up as appropriate to reflect stock not recently purchased, etc.) and (b) liabilities.

In the second step, all Class I through Class V assets in the parent target and subsidiary targets (other than stock of subsidiary targets) would be combined into aggregate Classes I, II, III, IV, and V. Then, the total basis would be allocated (as basis is under the current system, except that the allocation would be across such joint classes, not merely within individual members) first to Class I assets, then, if there is any remainder, to Class II assets, then, if there is any remainder, to Class III assets, then, if there is any remainder, to Class IV assets, and then, if there is any remainder, to Class V assets. The allocations thus made to individual Class I through V assets would be the final, binding allocations to them.

In the third step, if there were no amount of the total basis remaining to be allocated to Class VI and VII assets, one would proceed to determine the basis in subsidiary target stock. If the aggregate amount assigned to all the subsidiary's Class I through V assets pursuant to the second step above exceeded the amount of the subsidiary's liabilities, then the amount of the excess would become its parent's basis in that subsidiary's stock.

If the aggregate amount were, however, less than the liabilities, then the stock basis would be zero. A subissue is whether in such case other action should also be taken: whether, in the case of a consolidated group, an excess loss account should be created equal to the amount of the shortfall; and whether, if the tiered entities do not join in filing a consolidated return but other nonconsolidated investment adjustment rules apply, future positive basis increases should be denied to the extent of the excess loss account that would have been created under the method had they been filing consolidated. The rule could apply, for example, to increases in basis of controlled foreign corporations for undistributed earnings taxed currently under subpart F.

Under the method, if there were an amount of the total ADSP or AGUB remaining to be allocated to Class VI and VII assets, then one would proceed to allocate basis to Class VI and VII assets. At this point, the aggregating of members' assets into joint classes would be abandoned and the method would revert to a top-down system similar to that of current rules. The process is top-down in that any basis not already allocated to the parent target's Class I through V assets (other than subsidiary target stock) would be allocated among its Class VI and VII assets and subsidiary target stock, then the subsidiary target would in turn make its own allocation of its own basis among its own Class VI and VII assets and any stock it might own in other subsidiary targets.

Certain adjustments, as yet undetermined, would have to be made to this method for minority interests outstanding in subsidiaries.

Possible Disadvantages of the Method

The method has drawbacks:

(1) *Complexity.* The method is more complicated than the existing rules. When, for example, there is a subsequent change in the amount of a liability of a subsidiary target that changes the amount of AGUB or ADSP, under the method one would recalculate the allocations to all the assets of the parent target and all subsidiary targets, not just the assets of the indebted subsidiary target and its own subsidiary targets.

Also, questions arise regarding subsequent changes in AGUB and ADSP, with respect to subsidiary targets already disposed of. What if, for instance, at the time of a subsequent adjustment to AGUB or ADSP, the group had already disposed of the stock of a particular subsidiary target should one change the allocation to that former subsidiary's assets? Separately, in determining whether AGUB or ADSP has changed, should one take into account changes in the amount of liabilities of former subsidiary targets? How would the group be made aware of such changes?

(2) *Lack of inside-outside basis conformity.* The current system, although it tolerates large disparities in the allocations to identical assets based on location, assures conformity between stock basis and net asset basis. The look-through approach does so only in a consolidated setting (employing excess loss accounts to do so).

(3) *The method would not eliminate all allocation disparities.* The method would not completely eliminate disparate allocations based on location within the acquired group, because it applies only to tiered targets. Similar disparities can exist in acquisitions of sister corporations or in mixed stock and asset purchases. The method does not include a mechanism for equalizing basis impairment in such cases. Thus, the method would not fully solve the disparity problem. (Note, however, that the new anti-abuse rule included in the proposed regulations may operate in some cases.)

Proposed Effective Date

The regulations are proposed to be effective on the date that final regulations are published in the **Federal Register** and apply to qualified stock purchases or applicable asset acquisitions occurring on or after the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. An initial regulatory flexibility analysis has been prepared pursuant to 5 U.S.C. section 604 for the collections of information in this Treasury Decision. The analysis is set forth below under the heading "Initial Regulatory Flexibility Analysis." Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

This regulatory action is intended to simplify and clarify the current rules relating to both deemed and actual asset acquisitions. The current rules were developed over a long period of time and have been repeatedly amended. The IRS and Treasury believe these proposed regulations will significantly improve the clarity of the rules relating to both deemed and actual asset acquisitions.

The major objective of the proposed regulations is to modify the rules for allocating purchase price in both deemed and actual asset acquisitions. In addition, the proposed regulations replace the general rules for electing to treat a stock sale as an asset sale.

These collections of information may affect small businesses if the stock of a corporation which is a small entity is acquired in a qualified stock purchase or if a trade or business which is also a small business is transferred in a

taxable transaction. Form 8023 (on which an election to treat a stock sale as an asset sale is filed) has been submitted to and approved by the Office of Management and Budget. With respect to Form 8023, the IRS estimated that 201 forms would be filed each year and that each taxpayer would require 12.98 hours to comply. Form 8594 (on which a sale or acquisition of assets constituting a trade or business is reported) has also been submitted to and approved by the Office of Management and Budget. With respect to Form 8594, the IRS estimated that 20,000 forms would be filed each year and that each taxpayer would require 12.25 hours to comply. These estimates have been made available for public comment and no public comments have been received. These proposed regulations do not impose new requirements on small businesses and, in fact, should lessen any difficulties associated with the existing reporting requirements by clarifying the rules associated with deemed and actual asset acquisitions.

The collections of information require taxpayers to file an election in order to treat a stock sale as an asset sale. In addition, taxpayers must file a statement regarding the amount of consideration allocated to each class of assets under the residual method. The professional skills that would be necessary to make the election or allocate the consideration would be the same as those required to prepare a return for the small business.

Consideration was given to limiting the reporting requirements under section 1060 to trades or businesses meeting a threshold level of business activity. However, any threshold derived without further information would be arbitrary. Instead, the proposed regulations authorize the Commissioner to exclude certain transactions from the reporting requirements.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 12, 1999, beginning at 10 a.m. in the NYU Classroom, Room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The IRS recognizes that persons outside the Washington, DC, area may also wish to testify at the public hearing through teleconferencing. Requests to include teleconferencing sites must be received by September 20, 1999. If the IRS receives sufficient indications of interest to warrant teleconferencing to a particular city, and if the IRS has teleconferencing facilities available in that city on the date the public hearing is to be scheduled, the IRS will try to accommodate the requests. The IRS will publish the locations of any teleconferencing sites in an announcement in the **Federal Register**.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must request to speak, and submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by September 20, 1999. A period of ten minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal authors of these proposed regulations are Richard Starke and Stephen R. Wegener, Office of the Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for 1.338(b)–1, 1.338(b)–3T, and 1.1060 1T and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.338–6 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–7 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–8 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–9 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–10 also issued under 26 U.S.C. 337(d), 338, and 1502.* * *

Section 1.1060–1 also issued under 26 U.S.C. 1060.* * *

Par. 2. Sections 1.338–0 through 1.338–3 are revised to read as follows:

§ 1.338–0 Outline of topics.

This section lists the captions contained in the regulations under section 338 as follows:

§ 1.338–1 General principles; status of old target and new target.

(a) In general.
(1) Deemed transaction.
(2) Application of other rules of law.
(3) Overview.
(b) Treatment of target under other provisions of the Internal Revenue Code.
(1) General rule for subtitle A.
(2) Exceptions for subtitle A.
(3) General rule for other provisions of the Internal Revenue Code.
(c) Anti-abuse rule.
(1) In general.
(2) Examples.

§ 1.338–2 Nomenclature and definitions; mechanics of the section 338 election.

(a) Scope.
(b) Nomenclature.
(c) Definitions.
(1) Acquisition date.
(2) Acquisition date assets.
(3) Affiliated group.
(4) Common parent.
(5) Consistency period.
(6) Deemed asset sale.
(7) Deemed sale gain.
(8) Deemed sale return.
(9) Domestic corporation.
(10) Old target's final return.
(11) Purchasing corporation.
(12) Qualified stock purchase.
(13) Related persons.
(14) Section 338 election.
(15) Section 338(h)(10) election.
(16) Selling group.
(17) Target; old target; new target.
(18) Target affiliate.
(19) 12-month acquisition period.
(d) Time and manner of making election.
(e) Special rules for foreign corporations or DISCs.
(1) Elections by certain foreign purchasing corporations.
(i) General rule.

(ii) Qualifying foreign purchasing corporation.
(iii) Qualifying foreign target.
(iv) Triggering event.
(v) Subject to United States tax.
(2) Acquisition period.
(3) Statement of section 338 may be filed by United States shareholders in certain cases.
(4) Notice requirement for U.S. persons holding stock in foreign market.
(i) General rule.
(ii) Limitation.
(iii) Form of notice.
(iv) Timing of notice.
(v) Consequence of failure to comply.
(vi) Good faith effort to comply.
§ 1.338–3 Qualification for the section 338 election.
(a) Scope.
(b) Rules relating to qualified stock purchases.
(1) Purchasing corporation requirement.
(2) Purchase.
(i) Definition.
(ii) Purchase of target.
(iii) Purchase of target affiliate.
(3) Acquisitions of stock from related corporations.
(i) In general.
(ii) Time for testing relationship.
(iii) Cases where section 338(h)(3)(C) applies—acquisitions treated as purchases.
(iv) Examples.
(4) Acquisition date for tiered targets.
(i) Stock sold in deemed asset sale.
(ii) Examples.
(5) Effect of redemptions.
(i) General rule.
(ii) Redemptions from persons unrelated to the purchasing corporation.
(iii) Redemptions from the purchasing corporation or related persons during 12-month acquisition period.
(A) General rule.
(B) Exception for certain redemptions from related corporations.
(iv) Examples.
(c) Effect of post-acquisition events on eligibility for section 338 election.
(1) Post-acquisition elimination of target.
(2) Post-acquisition elimination of the purchasing corporation.
(3) Consequences of post-acquisition elimination of target.
(i) Scope.
(ii) Continuity of interest.
(iii) Control requirement.
(iv) Example.
§ 1.338–4 Aggregate deemed sale price; various aspects of taxation of the deemed asset sale.
(a) Scope.
(b) Determination of ADSP.
(1) General rule.
(2) Time and amount of ADSP.
(i) Original determination.
(ii) Redetermination of ADSP.
(iii) Example.
(c) Grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock.
(1) Determination of amount.
(2) Example.
(d) Liabilities of old target.
(1) In general.
(2) Time and amount of liabilities.
(3) Interaction with deemed sale gain.
(e) Calculation of deemed sale gain.
(f) Other rules apply in determining ADSP.
(g) Examples.
(h) Deemed sale of target affiliate stock.
(1) Scope.
(2) In general.
(3) Deemed sale of foreign target affiliate by a domestic target.
(4) Deemed sale producing effectively connected income.
(5) Deemed sale of insurance company target affiliate electing under section 953(d).
(6) Deemed sale of DISC target affiliate.
(7) Anti-stuffing rule.
(8) Examples.
§ 1.338–5 Adjusted grossed-up basis.
(a) Scope.
(b) Determination of AGUB.
(1) General rule.
(2) Time and amount of AGUB.
(i) Original determination.
(ii) Redetermination of AGUB.
(iii) Examples.
(c) Grossed-up basis of recently purchased stock.
(d) Basis of nonrecently purchased stock; gain recognition election.
(1) No gain recognition election.
(2) Procedure for making gain recognition election.
(3) Effect of gain recognition election.
(i) In general.
(ii) Basis amount.
(iii) Losses not recognized.
(iv) Stock subject to election.
(e) Liabilities of new target.
(1) In general.
(2) Time and amount of liabilities.
(3) Interaction with deemed sale gain.
(f) Adjustments by the Internal Revenue Service.
(g) Examples.
§ 1.338–6 Allocation of ADSP and AGUB among target assets.
(a) Scope.
(1) In general.
(2) Fair market value.
(i) In general.
(ii) Transaction costs.
(iii) Internal Revenue Service authority.
(b) General rule for allocating ADSP and AGUB.
(1) Reduction in the amount of consideration for Class I assets.
(2) Other assets.
(i) In general.
(ii) Class II assets.
(iii) Class III assets.
(iv) Class IV assets.
(v) Class V assets.
(vi) Class VI assets.
(vii) Class VII assets.
(3) Other items designated by the Internal Revenue Service.
(c) Certain limitations and other rules for allocation to an asset.
(1) Allocation not to exceed fair market value.
(2) Allocation subject to other rules.
(3) Special rule for allocating AGUB when purchasing corporation has nonrecently purchased stock.
(i) Scope.
(ii) Determination of hypothetical purchase price.
(iii) Allocation of AGUB.
(4) Liabilities taken into account in determining amount realized on subsequent disposition.
(d) Examples.
§ 1.338–7 Allocation of redetermined ADSP and AGUB among target assets.
(a) Scope.
(b) Allocation of redetermined ADSP and AGUB.
(c) Special rules for ADSP.
(1) Increases or decreases in deemed sale gain taxable notwithstanding old target ceases to exist.
(2) Procedure for transactions in which section 338(h)(10) is not elected.
(i) Deemed sale gain included in new target's return.
(ii) Carryovers and carrybacks.
(A) Loss carryovers to new target taxable years.
(B) Loss carrybacks to taxable years of old target.
(C) Credit carryovers and carrybacks.
(3) Procedure for transactions in which section 338(h)(10) is elected.
(d) Special rules for AGUB.
(1) Effect of disposition or depreciation of acquisition date assets.
(2) Section 38 property.
(e) Examples.
§ 1.338–8 Asset and stock consistency.
(a) Introduction.
(1) Overview.
(2) General application.
(3) Extension of the general rules.
(4) Application where certain dividends are paid.
(5) Application to foreign target affiliates.
(6) Stock consistency.
(b) Consistency for direct acquisitions.
(1) General rule.
(2) Section 338(h)(10) elections.
(c) Gain from disposition reflected in basis of target stock.
(1) General rule.
(2) Gain not reflected if section 338 election made for target.
(3) Gain reflected by reason of distributions.
(4) Controlled foreign corporations.
(5) Gain recognized outside the consolidated group.
(d) Basis of acquired assets.
(1) Carryover basis rule.
(2) Exceptions to carryover basis rule for certain assets.
(3) Exception to carryover basis rule for de minimis assets.
(4) Mitigation rule.
(i) General rule.
(ii) Time for transfer.
(e) Examples.
(1) In general.
(2) Direct acquisitions.
(f) Extension of consistency to indirect acquisitions.
(1) Introduction.
(2) General rule.
(3) Basis of acquired assets.
(4) Examples.
(g) Extension of consistency if dividends qualifying for 100 percent dividends received deduction are paid.

(1) General rule for direct acquisitions from target.
(2) Other direct acquisitions having same effect.
(3) Indirect acquisitions.
(4) Examples.
(h) Consistency for target affiliates that are controlled foreign corporations.
(1) In general.
(2) Income or gain resulting from asset dispositions.
(i) General rule.
(ii) Basis of controlled foreign corporation stock.
(iii) Operating rule.
(iv) Increase in asset or stock basis.
(3) Stock issued by target affiliate that is a controlled foreign corporation.
(4) Certain distributions.
(i) General rule.
(ii) Basis of controlled foreign corporation stock.
(iii) Increase in asset or stock basis.
(5) Examples.
(i) [Reserved]
(j) Anti-avoidance rules.
(1) Extension of consistency rules.
(2) Qualified stock purchase and 12-month acquisition period.
(3) Acquisitions by conduits.
(i) Asset ownership.
(A) General rule.
(B) Application of carryover basis rule.
(ii) Stock acquisitions.
(A) Purchase by conduit.
(B) Purchase of conduit by corporation.
(C) Purchase of conduit by conduit.
(4) Conduit.
(5) Existence of arrangement.
(6) Predecessor and successor.
(i) Persons.
(ii) Assets.
(7) Examples.
§ 1.338–9 International Aspects of Section 338.
(a) Scope.
(b) Application of section 338 to foreign targets.
(1) In general.
(2) Ownership of FT stock on the acquisition date.
(3) Carryover FT stock.
(i) Definition.
(ii) Carryover of earnings and profits.
(iii) Cap on carryover of earnings and profits.
(iv) Post-acquisition date distribution of old FT earnings and profits.
(v) Old FT earnings and profits unaffected by post-acquisition date deficits.
(vi) Character of FT stock as carryover FT stock eliminated upon disposition.
(4) Passive foreign investment company stock.
(c) Dividend treatment under section 1248(e).
(d) Allocation of foreign taxes.
(e) Operation of section 338(h)(16).
[Reserved]
(f) Examples.
§ 1.338–10 Filing of Returns.
(a) Returns including tax liability from deemed asset sale.
(1) In general.
(2) Old target's final taxable year otherwise included in consolidated return of selling group.
(i) General rule.
(ii) Separate taxable year.
(iii) Carryover and carryback of tax attributes.
(iv) Old target is a component member of purchasing corporation's controlled group.
(3) Old target is an S corporation.
(4) Combined deemed sale return.
(i) General rule.
(ii) Gain and loss offsets.
(iii) Procedure for filing a combined return.
(iv) Consequences of filing a combined return.
(5) Deemed sale excluded from purchasing corporation's consolidated return.
(6) Due date for old target's final return.
(i) General rule.
(ii) Application of § 1.1502 76(c).
(A) In general.
(B) Deemed extension.
(C) Erroneous filing of deemed sale return.
(D) Erroneous filing of return for regular tax year.
(E) Last date for payment of tax.
(7) Examples.
(b) Waiver.
(1) Certain additions to tax.
(2) Notification.
(3) Elections or other actions required to be specified on a timely filed return.
(i) In general.
(ii) New target in purchasing corporation's consolidated return.
(4) Examples.
§ 1.338(h)(10)–1 Deemed Asset Sale and Liquidation.
(a) Scope.
(b) Definitions.
(1) Consolidated target.
(2) Selling consolidated group.
(3) Selling affiliate; affiliated target.
(4) S corporation target.
(5) S corporation shareholders.
(6) Liquidation.
(c) Section 338(h)(10) election.
(1) In general.
(2) Simultaneous joint election requirement.
(3) Irrevocability.
(4) Effect of invalid election.
(d) Certain consequences of section 338(h)(10) election.
(1) P.
(2) New T.
(3) Old T—deemed sale.
(i) In general.
(ii) Tiered targets.
(4) Old T and selling consolidated group, selling affiliate, or S corporation shareholders—deemed liquidation; tax characterization.
(i) In general.
(ii) Tiered targets.
(5) Selling consolidated group, selling affiliate, or S corporation shareholders.
(i) In general.
(ii) Basis and holding period of T stock not acquired.
(iii) T stock sale.
(6) Nonselling minority shareholders other than nonselling S corporation shareholders.
(i) In general.
(ii) T stock sale.
(iii) T stock not acquired.
(7) Consolidated return of selling consolidated group.
(8) Availability of the section 453 installment method.
(i) In deemed asset sale.
(ii) In deemed liquidation.
(9) Treatment consistent with an actual asset sale.
(e) Examples.
(f) Inapplicability of provisions.
(g) Required information.
§ 1.338(i)–1 Effective dates.

§ 1.338–1 General principles; status of old target and new target.

(a) *In general*—(1) *Deemed transaction.* Elections are available under section 338 when a purchasing corporation acquires the stock of another corporation (the target) in a qualified stock purchase. One type of election, under section 338(g), is available to the purchasing corporation. Another type of election, under section 338(h)(10), is, in more limited circumstances, available jointly to the purchasing corporation and the sellers of the stock. (Rules concerning eligibility for these elections are contained in §§ 1.338–2, 1.338–3, and 1.338(h)(10)–1.) Although target is a single corporation under corporate law, if a section 338 election is made, then two separate corporations, old target and new target, generally are considered to exist for purposes of subtitle A of the Internal Revenue Code. Old target is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the assumption of, or taking subject to, liabilities, and new target is treated as acquiring all of its assets from an unrelated person in exchange for consideration that includes the assumption of or taking subject to liabilities. (Such transaction is, without regard to its characterization for Federal income tax purposes, referred to as the deemed asset sale and the income tax consequences thereof as the deemed sale gain.) If a section 338(h)(10) election is made, old target is also deemed to liquidate following the deemed asset sale.

(2) *Application of other rules of law.* Other rules of law apply to determine the tax consequences to the parties as if they had actually engaged in the transactions deemed to occur under section 338 and the regulations hereunder except to the extent otherwise provided in the regulations hereunder. See also § 1.338–6(c)(2). Other rules of law may characterize the transaction as something other than or in addition to a sale and purchase of assets; however, it must be a taxable transaction. For example, if target is an insurance company for which a section 338 election is made, the deemed asset

sale would be characterized and taxed as an assumption-reinsurance transaction under applicable Federal income tax law. See § 1.817–4(d).

(3) *Overview.* Definitions and special nomenclature and rules for making the section 338 election are provided in § 1.338–2. Qualification for the section 338 election is addressed in § 1.338–3. The amount for which old target is treated as selling all of its assets (the aggregate deemed sale price, or ADSP) is addressed in § 1.338–4. The amount for which new target is deemed to have purchased all its assets (the adjusted grossed-up basis, or AGUB) is addressed in § 1.338–5. Section 1.338–6 addresses allocation both of ADSP among the assets old target is deemed to have sold and of AGUB among the assets new target is deemed to have purchased. Section 1.338–7 addresses allocation of ADSP or AGUB when those amounts change after the close of new target's first taxable year. Asset and stock consistency are addressed in § 1.338–8. International aspects of section 338 are covered in § 1.338–9. Rules for the filing of returns are provided in § 1.338–10. Eligibility for and treatment of section 338(h)(10) elections is addressed in § 1.338(h)(10)–1.

(b) *Treatment of target under other provisions of the Internal Revenue Code*—(1) *General rule for subtitle A.* Except as provided in this section, new target is treated as a new corporation that is unrelated to old target for purposes of subtitle A of the Internal Revenue Code. Thus—

(i) New target is not considered related to old target for purposes of section 168 and may make new elections under section 168 without taking into account the elections made by old target; and

(ii) New target may adopt, without obtaining prior approval from the Commissioner, any taxable year that meets the requirements of section 441 and any method of accounting that meets the requirements of section 446. Notwithstanding § 1.441–1T(b)(2), a new target may adopt a taxable year on or before the last day for making the election under section 338 by filing its first return for the desired taxable year on or before that date.

(2) *Exceptions for subtitle A.* New target and old target are treated as the same corporation for purposes of—

(i) The rules applicable to employee benefit plans (including those plans described in sections 79, 104, 105, 106, 125, 127, 129, 132, 137, and 220), qualified pension, profit-sharing, stock bonus and annuity plans (sections 401(a) and 403(a)), simplified employee pensions (section 408(k)), tax qualified stock option plans (sections 422 and 423), welfare benefit funds (sections 419, 419A, 512(a)(3), and 4976), voluntary employee benefit associations (section 501(c)(9) and the regulations thereunder);

(ii) Sections 1311 through 1314 (relating to the mitigation of the effect of limitations) if a section 338(h)(10) election is not made for target;

(iii) Section 108(e)(5) (relating to the reduction of purchase money debt);

(iv) Section 45A (relating to the Indian Employment Credit), section 51 (relating to the Work Opportunity Credit), section 51A (relating to the Welfare to Work Credit), and section 1396 (relating to the Empowerment Zone Act);

(v) Sections 401(h) and 420 (relating to medical benefits for retirees);

(vi) Section 414 (relating to definitions and special rules); and

(vii) Any other provision designated in the Internal Revenue Bulletin by the Internal Revenue Service. See § 601.601(d)(2)(ii) of this chapter (relating to the Internal Revenue Bulletin). See § 1.1001–3(e)(4)(F) providing that an election under section 338 does not result in the substitution of a new obligor on target's debt.

(3) *General rule for other provisions of the Internal Revenue Code.* Except as provided in the regulations under section 338 or in the Internal Revenue Bulletin by the Internal Revenue Service (see § 601.601(d)(2)(ii) of this chapter), new target is treated as a continuation of old target for purposes other than subtitle A of the Internal Revenue Code. For example—

(i) New target is liable for old target's Federal income tax liabilities, including the tax liability for the deemed sale gain and those tax liabilities of the other members of any consolidated group that included old target that are attributable to taxable years in which those corporations and old target joined in the same consolidated return (see § 1.1502–6(a));

(ii) Wages earned by the employees of old target are considered wages earned by such employees from new target for purposes of sections 3101 and 3111 (Federal Insurance Contributions Act) and section 3301 (Federal Unemployment Tax Act); and

(iii) Old target and new target must use the same employer identification number.

(c) *Anti-abuse rule*—(1) *In general.* For purposes of applying the residual method of §§ 1.338–0 through 1.338–10, 1.338(h)(10)–1, and 1.338(i)–1, the Commissioner is authorized to treat any property (including cash) transferred by old target in connection with the transactions resulting in the application of the residual method as, nonetheless, property of target at the close of the acquisition date if the property so transferred, within 24 months after the deemed asset sale, is owned by new target, or is owned, directly or indirectly, by a member of the affiliated group of which new target is a member and continues after the election to be held or used to more than an insignificant extent in connection with one or more of the activities of new target. The Commissioner is authorized to treat any property (including cash) transferred to old target in connection with the transactions resulting in the application of the residual method as, nonetheless, not being property of target at the close of the acquisition date if the property so transferred by the transferor is, within 24 months after the deemed asset sale, not owned by new target but owned, directly or indirectly, by a member of the affiliated group of which new target is a member or owned by new target but held or used to more than an insignificant extent in connection with an activity conducted, directly or indirectly, by another member of the affiliated group of which new target is a member in combination with other property acquired, directly or indirectly, from the transferor of the property (or a member of the same affiliated group) to old target. For purposes of this paragraph (c)(1), an interest in an entity is considered held or used in connection with an activity if property of the entity is so held or used. The authority under this paragraph (c)(1) includes the making of any necessary correlative adjustments.

(2) *Examples.* The following examples illustrate this paragraph (c):

Example 1. Prior to a qualified stock purchase under section 338, target transfers one of its assets to a related party. The purchasing corporation then purchases the target stock and also purchases the transferred asset from the related party. After its purchase of target, the purchasing corporation and target are members of the same affiliated group. A section 338 election is made. Under an arrangement with the purchaser, target continues to use the separately transferred asset to more than an insignificant extent in connection with its own activities. Applying the anti-abuse rule of this paragraph (c), the Commissioner may consider target to own the transferred asset for purposes of applying section 338 and its allocation rules.

Example 2. Target (T) owns all the stock of T1. T1 leases intellectual property to T, which T uses in connection with its own activities. P, a purchasing corporation, wishes to buy the T–T1 chain of corporations. P, in connection with its planned purchase of the T stock, contracts to consummate a purchase of all the stock of T1

on March 1 and of all the stock of T on March 2. Section 338 elections are thereafter made for both T and T1. Immediately after the purchases, P, T and T1 are members of the same affiliated group. T continues to lease the intellectual property from T1 and to use the property to more than an insignificant extent in connection with its own activities. Thus, an asset of T, the T1 stock, was removed from T's own assets prior to the qualified stock purchase of the T stock, T1's own assets are used after the deemed asset sale in connection with T's own activities, and the T1 stock is after the deemed asset sale owned by P, a member of the same affiliated group of which T is a member. Applying the anti-abuse rule of this paragraph (c), the Commissioner may, for purposes of application of section 338 both to T and to T1, consider P to have bought only the stock of T, with T at the time of the qualified stock purchases of both T and T1 (the qualified stock purchase of T1 being triggered by the deemed sale under section 338 of T's assets) owning T1. The Commissioner would accordingly apply section 338 first at the T level and then at the T1 level.

§ 1.338–2 Nomenclature and definitions; mechanics of the section 338 election.

(a) *Scope.* This section prescribes rules relating to elections under section 338.

(b) *Nomenclature.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) T is a domestic target corporation that has only one class of stock outstanding. Old T refers to T for periods ending on or before the close of T's acquisition date; new T refers to T for subsequent periods.

(2) P is the purchasing corporation.

(3) The P group is an affiliated group of which P is a member.

(4) P1, P2, etc., are domestic corporations that are members of the P group.

(5) T1, T2, etc., are domestic corporations that are target affiliates of T. These corporations (T1, T2, etc.) have only one class of stock outstanding and may also be targets.

(6) S is a domestic corporation (unrelated to P and B) that owns T prior to the purchase of T by P. (S is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by a domestic corporation.)

(7) A, a U.S. citizen or resident, is an individual (unrelated to P and B) who owns T prior to the purchase of T by P. (A is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by an individual who is a U.S. citizen or resident. Ownership of T by A and ownership of T by S are mutually exclusive circumstances.)

(8) B, a U.S. citizen or resident, is an individual (unrelated to T, S, and A) who owns the stock of P.

(9) F, used as a prefix with the other terms in this paragraph (b), connotes foreign, rather than domestic, status. For example, FT is a foreign corporation (as defined in section 7701(a)(5)) and FA is an individual other than a U.S. citizen or resident.

(10) CFC, used as a prefix with the other terms in this paragraph (b) referring to a corporation, connotes a controlled foreign corporation (as defined in section 957, taking into account section 953(c)). A corporation identified with the prefix F may be a controlled foreign corporation. The prefix CFC is used when the corporation's status as a controlled foreign corporation is significant.

(c) *Definitions.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) *Acquisition date.* The term *acquisition date* has the same meaning as in section 338(h)(2).

(2) *Acquisition date assets.* *Acquisition date assets* are the assets of the target held at the beginning of the day after the acquisition date (other than assets that were not assets of old target).

(3) *Affiliated group.* The term *affiliated group* has the same meaning as in section 338(h)(5). Corporations are affiliated on any day they are members of the same affiliated group.

(4) *Common parent.* The term *common parent* has the same meaning as in section 1504.

(5) *Consistency period.* The *consistency period* is the period described in section 338(h)(4)(A) unless extended pursuant to § 1.338–8(j)(1).

(6) *Deemed asset sale.* The *deemed asset sale* is the transaction described in § 1.338–1(a)(1) that is deemed to occur for purposes of subtitle A of the Internal Revenue Code if a section 338 election is made.

(7) *Deemed sale gain. Deemed sale gain* refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset sale. *Deemed sale* gain also refers to the Federal income tax consequences of the transfer of a particular asset in the deemed asset sale.

(8) *Deemed sale return.* The *deemed sale return* is the return on which target's deemed sale gain is reported that does not include any other items of target. Target files a deemed sale return when a section 338 election (but not a section 338(h)(10) election) is filed for target and target is a member of a selling group (defined in paragraph (c)(16) of this section) that files a consolidated return for the period that includes the acquisition date or is an S corporation. See § 1.338–10.

(9) *Domestic corporation.* A *domestic corporation* is a corporation—

(i) That is domestic within the meaning of section 7701(a)(4) or that is treated as domestic for purposes of subtitle A of the Internal Revenue Code (e.g., to which an election under section 953(d) or 1504(d) applies); and

(ii) That is not a DISC, a corporation described in section 1248(e), or a corporation to which an election under section 936 applies.

(10) *Old target's final return. Old target's final return* is the income tax return of old target for the taxable year ending at the close of the acquisition date that includes the deemed sale gain. If the disaffiliation rule of § 1.338–10(a)(2)(i) applies or if target is an S corporation, target's deemed sale return is considered old target's final return.

(11) *Purchasing corporation.* The term *purchasing corporation* has the same meaning as in section 338(d)(1). The purchasing corporation may also be referred to as purchaser. Unless otherwise provided, any reference to the purchasing corporation is a reference to all members of the affiliated group of which the purchasing corporation is a member. See sections 338(h)(5) and (8). Also, unless otherwise provided, any reference to the purchasing corporation is, with respect to a deemed purchase of stock under section 338(a)(2), a reference to new target with respect to its own deemed purchase of stock in another target.

(12) *Qualified stock purchase.* The term *qualified stock purchase* has the same meaning as in section 338(d)(3).

(13) *Related persons.* Two persons are related if stock in a corporation owned by one of the persons would be attributed under section 318(a) (other than section 318(a)(4)) to the other.

(14) *Section 338 election.* A *section 338 election* is an election to apply section 338(a) to target. A section 338 election is made by filing a statement of section 338 election pursuant to § 1.338–2(d). The form on which this statement is filed is referred to in the regulations under section 338 as the Form 8023 Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

(15) *Section 338(h)(10) election.* A *section 338(h)(10) election* is an election to apply section 338(h)(10) to target. A section 338(h)(10) election is made by making a joint election for target under § 1.338(h)(10)–1.

(16) *Selling group.* The *selling group* is the affiliated group (as defined in section 1504) eligible to file a

consolidated return that includes target for the taxable period in which the acquisition date occurs. However, a selling group is not an affiliated group of which target is the common parent on the acquisition date.

(17) *Target; old target; new target.* *Target* is the target corporation as defined in section 338(d)(2). *Old target* refers to target for periods ending on or before the close of target's acquisition date. *New target* refers to target for subsequent periods.

(18) *Target affiliate.* The term *target affiliate* has the same meaning as in section 338(h)(6) (applied without section 338(h)(6)(B)(i)). Thus, a corporation described in section 338(h)(6)(B)(i) is considered a target affiliate for all purposes of section 338. If a target affiliate is acquired in a qualified stock purchase, it is also a target.

(19) *12-Month acquisition period.* The *12-month acquisition period* is the period described in section 338(h)(1), unless extended pursuant to § 1.338–8(j)(2).

(d) *Time and manner of making election.* The purchasing corporation makes a section 338 election for target by filing a statement of section 338 election on Form 8023 in accordance with the instructions to the form. The section 338 election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs. A section 338 election is irrevocable. See § 1.338(h)(10)–1(c)(2) for section 338(h)(10) elections.

(e) *Special rules for foreign corporations or DISCs*—(1) *Elections by certain foreign purchasing corporations*—(i) *General rule.* A qualifying foreign purchasing corporation is not required to file a statement of section 338 election for a qualifying foreign target before the earlier of 3 years after the acquisition date and the 180th day after the close of the purchasing corporation's taxable year within which a triggering event occurs.

(ii) *Qualifying foreign purchasing corporation.* A purchasing corporation is a qualifying foreign purchasing corporation only if, during the acquisition period of a qualifying foreign target, all the corporations in the purchasing corporation's affiliated group are foreign corporations that are not subject to United States tax.

(iii) *Qualifying foreign target.* A target is a *qualifying foreign target* only if target and its target affiliates are foreign corporations that, during target's acquisition period, are not subject to United States tax (and will not become subject to United States tax during such period because of a section 338 election). A target affiliate is taken into account for purposes of the preceding sentence only if, during target's 12-month acquisition period, it is or becomes a member of the affiliated group that includes the purchasing corporation.

(iv) *Triggering event.* A *triggering event* occurs in the taxable year of the qualifying foreign purchasing corporation in which either that corporation or any corporation in its affiliated group becomes subject to United States tax.

(v) *Subject to United States tax.* For purposes of this paragraph (e)(1), a foreign corporation is considered subject to United States tax—

(A) For the taxable year for which that corporation is required under § 1.6012 2(g)–(other than § 1.6012–2(g)(2)(i)(B)(*2*)) to file a United States income tax return; or

(B) For the period during which that corporation is a controlled foreign corporation, a passive foreign investment company for which an election under section 1295 is in effect, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2).

(2) *Acquisition period.* For purposes of this paragraph (e), the term acquisition period means the period beginning on the first day of the 12-month acquisition period and ending on the acquisition date.

(3) *Statement of section 338 election may be filed by United States shareholders in certain cases.* The United States shareholders (as defined in section 951(b)) of a foreign purchasing corporation that is a controlled foreign corporation (as defined in section 957 (taking into account section 953(c))) may file a statement of section 338 election on behalf of the purchasing corporation if the purchasing corporation is not required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(B)(*2*)) to file a United States income tax return for its taxable year that includes the acquisition date. Form 8023 must be filed as described in the form and its instructions and also must be attached to the Form 5471 (information return with respect to a foreign corporation) filed with respect to the purchasing corporation by each United States shareholder for the purchasing corporation's taxable year that includes the acquisition date (or, if paragraph (e)(1)(i) of this section applies to the election, for the purchasing corporation's taxable year within which it becomes a controlled foreign corporation). The provisions of § 1.964–1(c) (including § 1.964–1(c)(7)) do not apply to an election made by the United States shareholders.

(4) *Notice requirement for U.S. persons holding stock in foreign market*—(i) *General rule.* If a target subject to a section 338 election was a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to—

(A) Each U.S. person (other than a member of the affiliated group of which the purchasing corporation is a member (the purchasing group member)) that, on the acquisition date of the foreign target, holds stock in the foreign target; and

(B) Each U.S. person (other than a purchasing group member) that sells stock in the foreign target to a purchasing group member during the foreign target's 12-month acquisition period.

(ii) *Limitation.* The notice requirement of this paragraph (e)(4) applies only where the section 338 election for the foreign target affects income, gain, loss, deduction, or credit of the U.S. person described in paragraph (e)(4)(i) of this section under section 551, 951, 1248, or 1293.

(iii) *Form of notice.* The notice to U.S. persons must be identified prominently as a notice of section 338 election and must—

(A) Contain the name, address, and employer identification number (if any) of, and the country (and, if relevant, the lesser political subdivision) under the laws of which is organized, the purchasing corporation and the relevant target (i.e., target the stock of which the particular U.S. person held or sold under the circumstances described in paragraph (e)(4)(i) of this section);

(B) Identify those corporations as the purchasing corporation and the foreign target, respectively; and

(C) Contain the following declaration (or a substantially similar declaration): THIS DOCUMENT SERVES AS NOTICE

OF AN ELECTION UNDER SECTION 338 FOR THE ABOVE CITED FOREIGN TARGET THE STOCK OF WHICH YOU EITHER HELD OR SOLD UNDER THE CIRCUMSTANCES DESCRIBED IN TREASURY REGULATIONS SECTION 1.338–2(e)(4). FOR POSSIBLE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES UNDER SECTION 551, 951, 1248, OR 1293 OF THE INTERNAL REVENUE CODE OF 1986 THAT MAY APPLY TO YOU, SEE TREASURY REGULATIONS SECTION 1.338–9(b). YOU MAY BE REQUIRED TO ATTACH THE INFORMATION ATTACHED TO THIS NOTICE TO CERTAIN RETURNS.

(iv) *Timing of notice.* The notice required by this paragraph (e)(4) must be delivered to the U.S. person on or before the later of the 120th day after the acquisition date of the particular target or the day on which Form 8023 is filed. The notice is considered delivered on the date it is mailed to the proper address (or an address similar enough to complete delivery), unless the date it is mailed cannot be reasonably determined. The date of mailing will be determined under the rules of section 7502. For example, the date of mailing is the date of U.S. postmark or the applicable date recorded or marked by a designated delivery service.

(v) *Consequence of failure to comply.* A statement of section 338 election is not valid if timely notice is not given to one or more U.S. persons described in this paragraph (e)(4). If the form of notice fails to comply with all requirements of this paragraph (e)(4), the section 338 election is valid, but the waiver rule of § 1.338–10(b)(1) does not apply.

(vi) *Good faith effort to comply.* The purchasing corporation will be considered to have complied with this paragraph (e)(4), even though it failed to provide notice or provide timely notice to each person described in this paragraph (e)(4), if the Commissioner determines that the purchasing corporation made a good faith effort to identify and provide timely notice to those U.S. persons.

§ 1.338–3 Qualification for the section 338 election.

(a) *Scope.* This section provides rules on whether certain acquisitions of stock are qualified stock purchases and on other miscellaneous issues under section 338.

(b) *Rules relating to qualified stock purchases*—(1) *Purchasing corporation requirement.* An individual cannot make a qualified stock purchase of target. Section 338(d)(3) requires, as a condition of a qualified stock purchase, that a corporation purchase the stock of target. If an individual forms a corporation (new P) to acquire target stock, new P can make a qualified stock purchase of target if new P is considered for tax purposes to purchase the target stock. Facts that may indicate that new P does not purchase the target stock include new P merging downstream into target, liquidating, or otherwise disposing of the target stock following the purported qualified stock purchase.

(2) *Purchase*—(i) *Definition.* The term *purchase* has the same meaning as in section 338(h)(3).

(ii) *Purchase of target.* A purchase of a share of target stock occurs so long as more than a nominal amount is paid for such share.

(iii) *Purchase of target affiliate.* Stock in a target affiliate acquired by new target in the deemed asset sale of target's assets is considered purchased if, under general principles of tax law, new target is considered to own stock of the target affiliate meeting the requirements of section 1504(a)(2), notwithstanding that no amount may be allocated to target's stock in the target affiliate.

(3) *Acquisitions of stock from related corporations*—(i) *In general.* Stock acquired by a purchasing corporation from a related corporation (R) is generally not considered acquired by purchase. See section 338(h)(3)(A)(iii).

(ii) *Time for testing relationship.* For purposes of section 338(h)(3)(A)(iii), a purchasing corporation is treated as related to another person if the relationship specified in section 338(h)(3)(A)(iii) exists—

(A) In the case of a single transaction, immediately after the purchase of Target stock;

(B) In the case of a series of acquisitions otherwise constituting a qualified stock purchase within the meaning of section 338(d)(3), immediately after the last acquisition in such series; and

(C) In the case of a series of transactions effected pursuant to an integrated plan to dispose of Target stock, immediately after the last transaction in such series.

(iii) *Cases where section 338(h)(3)(C) applies—acquisitions treated as purchases.* If section 338(h)(3)(C) applies and the purchasing corporation is treated as acquiring stock by purchase from R, solely for purposes of determining when the stock is considered acquired, target stock acquired from R is considered to have been acquired by the purchasing corporation on the day on which the purchasing corporation is first considered to own that stock under section 318(a) (other than section 318(a)(4)).

(iv) *Examples.* The following examples illustrate this paragraph (b)(3):

Example 1. (i) S is the parent of a group of corporations that are engaged in various businesses. Prior to January 1, Year 1, S decided to discontinue its involvement in one line of business. To accomplish this, S forms a new corporation, Newco, with a nominal amount of cash. Shortly thereafter, on January 1, Year 1, S transfers all the stock of the subsidiary conducting the unwanted business (Target) to Newco in exchange for 100 shares of Newco common stock. Prior to January 1, Year 1, S and Underwriter (U) had entered into a binding agreement pursuant to which U would purchase 60 shares of Newco common stock from S and then sell those shares in an Initial Public Offering (IPO). On January 6, Year 1, the IPO closes.

(ii) Newco's acquisition of Target stock is one of a series of transactions undertaken pursuant to one integrated plan. The series of transactions ends with the closing of the IPO and the transfer of all the shares of stock in accordance with the agreements. Immediately after the last transaction effected pursuant to the plan, S owns 40 percent of Newco, which does not give rise to a relationship described in section 338(h)(3)(A)(iii). See paragraph (b)(3)(ii)(C) of this section. Accordingly, S and Newco are not related for purposes of section 338(h)(3)(A)(iii).

(iii) Further, because Newco's basis in the Target stock is not determined by reference to S's basis in the Target stock and because the transaction is not an exchange to which section 351, 354, 355, or 356 applies, Newco's acquisition of the Target stock is a purchase within the meaning of section 338(h)(3).

Example 2. (i) On January 1 of Year 1, P purchases 75 percent in value of the R stock. On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, R acquires an additional 16 shares of T stock. On December 1 of Year 1, P purchases 70 shares of T stock from an unrelated person and 12 of the 20 shares of T stock held by R.

(ii) Of the 12 shares of T stock purchased by P from R on December 1 of Year 1, 3 of those shares are deemed to have been acquired by P on January 1 of Year 1, the date on which 3 of the 4 shares of T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., 4×.75). The remaining 9 shares of T stock purchased by P from R on December 1 of Year 1, are deemed to have been acquired by P on June 1 of Year 1, the date on which an additional 12 of the 20 shares of T stock owned by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., (20×.75) -3). Because stock acquisitions by P sufficient for a qualified stock purchase of T occur within a 12-month period (i.e., 3 shares constructively on January 1 of Year 1, 9 shares constructively on June 1 of Year 1, and 70 shares actually on December 1 of Year 1), a qualified stock purchase is made on December 1 of Year 1.

Example 3. (i) On February 1 of Year 1, P acquires 25 percent in value of the R stock

from B (the sole shareholder of P). That R stock is not acquired by purchase. See section 338(h)(3)(A)(iii). On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, P purchases an additional 25 percent in value of the R stock, and on January 1 of Year 2, P purchases another 25 percent in value of the R stock. On June 1 of Year 2, R acquires an additional 16 shares of the T stock. On December 1 of Year 2, P purchases 68 shares of the T stock from an unrelated person and 12 of the 20 shares of the T stock held by R.

(ii) Of the 12 shares of the T stock purchased by P from R on December 1 of Year 2, 2 of those shares are deemed to have been acquired by P on June 1 of Year 1, the date on which 2 of the 4 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., 4×.5). For purposes of this attribution, the R stock need not be acquired by P by purchase. See section 338(h)(1). (By contrast, the acquisition of the T stock by P from R does not qualify as a purchase unless P has acquired at least 50 percent in value of the R stock by purchase. Section 338(h)(3)(C)(i).) Of the remaining 10 shares of the T stock purchased by P from R on December 1 of Year 2, 1 of those shares is deemed to have been acquired by P on January 1 of Year 2, the date on which an additional 1 share of the 4 shares of the T stock held by R on that date was first considered owned by P under section 318(a)(2)(C) (i.e., (4×.75)—2). The remaining 9 shares of the T stock purchased by P from R on December 1 of Year 2, are deemed to have been acquired by P on June 1 of Year 2, the date on which an additional 12 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., (20×.75)—3). Because a qualified stock purchase of T by P is made on December 1 of Year 2, only if all 12 shares of the T stock purchased by P from R on that date are considered acquired during a 12-month period ending on that date (so that, in conjunction with the 68 shares of the T stock P purchased on that date from the unrelated person, 80 of T's 100 shares are acquired by P during a 12-month period) and because 2 of those 12 shares are considered to have been acquired by P more than 12 months before December 1 of Year 2 (i.e., on June 1 of Year 1), a qualified stock purchase is not made. (Under § 1.338–8(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 4. Assume the same facts as in *Example 3*, except that on February 1 of Year 1, P acquires 25 percent in value of the R stock by purchase. The result is the same as in *Example 3*.

(4) *Acquisition date for tiered targets*—(i) *Stock sold in deemed asset sale.* If an election under section 338 is made for target, old target is deemed to sell target's assets and new target is deemed to acquire those assets. Under section 338(h)(3)(B), new target's deemed purchase of stock of another corporation is a purchase for purposes of section 338(d)(3) on the acquisition date of target. If new target's deemed purchase causes a qualified stock purchase of the other corporation and if a section 338 election is made for the other corporation, the acquisition date for the other corporation is the same as the acquisition date of target. However, the deemed sale and purchase of the other corporation's assets is considered to take place after the deemed sale and purchase of target's assets.

(ii) *Examples.* The following examples illustrate this paragraph (b)(4):

Example 1. A owns all of the T stock. T owns 50 of the 100 shares of X stock. The other 50 shares of X stock are owned by corporation Y, which is unrelated to A, T, or P. On January 1 of Year 1, P makes a qualified stock purchase of T from A and makes a section 338 election for T. On December 1 of Year 1, P purchases the 50 shares of X stock held by Y. A qualified stock purchase of X is made on December 1 of Year 1, because the deemed purchase of 50 shares of X stock by new T because of the section 338 election for T and the actual purchase of 50 shares of X stock by P are treated as purchases made by one corporation. Section 338(h)(8). For purposes of determining whether those purchases occur within a 12-month acquisition period as required by section 338(d)(3), T is deemed to purchase its X stock on T's acquisition date, i.e., January 1 of Year 1.

Example 2. On January 1 of Year 1, P makes a qualified stock purchase of T and makes a section 338 election for T. On that day, T sells all of the stock of T1 to A. Although T held all of the T1 stock on T's acquisition date, T is not considered to have purchased the T1 stock because of the section 338 election for T. In order for T to be treated as purchasing the T1 stock, T must hold the T1 stock when T's deemed asset sale occurs. The deemed asset sale is considered the last transaction of old T at the close of T's acquisition date. Accordingly, the T1 stock actually disposed of by T on the acquisition date is not included in the deemed asset sale. Thus, T does not make a qualified stock purchase of T1.

(5) *Effect of redemptions*—(i) *General rule.* Except as provided in this paragraph (b)(5), a qualified stock purchase is made on the first day on which the percentage ownership requirements of section 338(d)(3) are satisfied by reference to target stock that is both—

(A) Held on that day by the purchasing corporation; and

(B) Purchased by the purchasing corporation during the 12-month period ending on that day.

(ii) *Redemptions from persons unrelated to the purchasing corporation.* Target stock redemptions from persons unrelated to the purchasing corporation that occur during the 12-month acquisition period are taken into account as reductions in target's outstanding stock for purposes of determining whether target stock purchased by the purchasing corporation in the 12-month acquisition period satisfies the percentage ownership requirements of section 338(d)(3).

(iii) *Redemptions from the purchasing corporation or related persons during 12-month acquisition period*—(A) *General rule.* For purposes of the percentage ownership requirements of section 338(d)(3), a redemption of target stock during the 12-month acquisition period from the purchasing corporation or from any person related to the purchasing corporation is not taken into account as a reduction in target's outstanding stock.

(B) *Exception for certain redemptions from related corporations.* A redemption of target stock during the 12-month acquisition period from a corporation related to the purchasing corporation is taken into account as a reduction in target's outstanding stock to the extent that the redeemed stock would have been considered purchased by the purchasing corporation (because of section 338(h)(3)(C)) during the 12-month acquisition period if the redeemed stock had been acquired by the purchasing corporation from the related corporation on the day of the redemption. See paragraph (b)(3) of this section.

(iv) *Examples.* The following examples illustrate this paragraph (b)(5):

Example 1. QSP on stock purchase date; redemption from unrelated person during 12-month period. A owns all 100 shares of T stock. On January 1 of Year 1, P purchases 40 shares of the T stock from A. On July 1 of Year 1, T redeems 25 shares from A. On December 1 of Year 1, P purchases 20 shares of the T stock from A. P makes a qualified stock purchase of T on December 1 of Year 1, because the 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 2. QSP on stock redemption date; redemption from unrelated person during 12-month period. The facts are the same as in *Example 1*, except that P purchases 60 shares of T stock on January 1 of Year 1 and none on December 1 of Year 1. P makes a qualified stock purchase of T on July 1 of Year 1, because that is the first day on which the T stock purchased by P within the preceding 12-month period satisfies the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 3. Redemption from purchasing corporation not taken into account. On December 15 of Year 1, T redeems 30 percent of its stock from P. The redeemed stock was

held by P for several years and constituted P's total interest in T. On December 1 of Year 2, P purchases the remaining T stock from A. P does not make a qualified stock purchase of T on December 1 of Year 2. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of P's T stock on December 15 of Year 1 is not taken into account as a reduction in T's outstanding stock.

Example 4. Redemption from related person taken into account. On January 1 of Year 1, P purchases 60 of the 100 shares of X stock. On that date, X owns 40 of the 100 shares of T stock. On April 1 of Year 1, T redeems X's T stock and P purchases the remaining 60 shares of T stock from an unrelated person. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of the T stock from X (a person related to P) is taken into account as a reduction in T's outstanding stock. If P had purchased the 40 redeemed shares from X on April 1 of Year 1, all 40 of the shares would have been considered purchased (because of section 338(h)(3)(C)(i)) during the 12-month period ending on April 1 of Year 1 (24 of the 40 shares would have been considered purchased by P on January 1 of Year 1 and the remaining 16 shares would have been considered purchased by P on April 1 of Year 1). See paragraph (b)(3) of this section. Accordingly, P makes a qualified stock purchase of T on April 1 of Year 1, because the 60 shares of T stock purchased by P on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/60 shares), determined by taking into account the redemption of 40 shares.

(c) *Effect of post-acquisition events on eligibility for section 338 election*—(1) *Post-acquisition elimination of target.* (i) The purchasing corporation may make an election under section 338 for target even though target is liquidated on or after the acquisition date. If target liquidates on the acquisition date, the liquidation is considered to occur on the following day and immediately after new target's deemed purchase of assets. The purchasing corporation may also make an election under section 338 for target even though target is merged into another corporation, or otherwise disposed of by the purchasing corporation provided that, under the facts and circumstances, the purchasing corporation is considered for tax purposes as the purchaser of the target stock.

(ii) The following examples illustrate this paragraph (c)(1):

Example 1. On January 1 of Year 1, P purchases 100 percent of the outstanding common stock of T. On June 1 of Year 1, P sells the T stock to an unrelated person. Assuming that P is considered for tax purposes as the purchaser of the T stock, P remains eligible, after June 1 of Year 1, to make a section 338 election for T that results in a deemed asset sale of T's assets on January 1 of Year 1.

Example 2. On January 1 of Year 1, P makes a qualified stock purchase of T. On that date, T owns the stock of T1. On March 1 of Year 1, T sells the T1 stock to an unrelated person. On April 1 of Year 1, P makes a section 338 election for T. Notwithstanding that the T1 stock was sold on March 1 of Year 1, the section 338 election for T on April 1 of Year 1 results in a qualified stock purchase by T of T1 on January 1 of Year 1. See paragraph (b)(4)(i) of this section.

(2) *Post-acquisition elimination of the purchasing corporation.* An election under section 338 may be made for target after the acquisition of assets of the purchasing corporation by another corporation in a transaction described in section 381(a), provided that the purchasing corporation is considered for tax purposes as the purchaser of the target stock. The acquiring corporation in the section 381(a) transaction may make an election under section 338 for target.

(3) *Consequences of post-acquisition elimination of target*—(i) *Scope.* The rules of this paragraph (c)(3) apply to the transfer of target assets to the purchasing corporation (or another member of the same affiliated group as the purchasing corporation) (the transferee) following a qualified stock purchase of target stock, if the purchasing corporation does not make a section 338 election for target. Notwithstanding the rules of this paragraph (c)(3), section 354(a) (and so much of section 356 as relates to section 354) cannot apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer of target assets is pursuant to a reorganization as determined without regard to this paragraph (c)(3).

(ii) *Continuity of interest.* By virtue of section 338, in determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied on the transfer of assets from target to the transferee, the purchasing corporation's target stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization.

(iii) *Control requirement.* By virtue of section 338, the acquisition of target stock in the qualified stock purchase will not prevent the purchasing corporation from qualifying as a shareholder of the target transferor for the purpose of determining whether, immediately after the transfer of target assets, a shareholder of the transferor is in control of the corporation to which the assets are transferred within the meaning of section 368(a)(1)(D).

(iv) *Example.* The following example illustrates this paragraph (c)(3):

Example. (i) *Facts.* P, T, and X are domestic corporations. T and X each operate a trade or business. A and K, individuals unrelated to P, own 85 and 15 percent, respectively, of the stock of T. P owns all of the stock of X. The total adjusted basis of T's property exceeds the sum of T's liabilities plus the amount of liabilities to which T's property is subject. P purchases all of A's T stock for cash in a qualified stock purchase. P does not make an election under section 338(g) with respect to its acquisition of T stock. Shortly after the acquisition date, and as part of the same plan, T merges under applicable state law into X in a transaction that, but for the question of continuity of interest, satisfies all the requirements of section 368(a)(1)(A). In the merger, all of T's assets are transferred to X. P and K receive X stock in exchange for their T stock. P intends to retain the stock of X indefinitely.

(ii) *Status of transfer as a reorganization.* By virtue of section 338, for the purpose of determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied, P's T stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of T's business enterprise prior to the transfer that can be continued in a reorganization through P's continuing ownership of X. Thus, the continuity of interest requirement is satisfied and the merger of T into X is a reorganization within the meaning of section 368(a)(1)(A). Moreover, by virtue of section 338, the requirement of section 368(a)(1)(D) that a target shareholder control the transferee immediately after the transfer is satisfied because P controls X immediately after the transfer. In addition, all of T's assets are transferred to X in the merger and P and K receive the X stock exchanged therefor in pursuance of the plan of reorganization. Thus, the merger of T into X is also a reorganization within the meaning of section 368(a)(1)(D).

(iii) *Treatment of T and X.* Under section 361(a), T recognizes no gain or loss in the merger. Under section 362(b), X's basis in the assets received in the merger is the same as the basis of the assets in T's hands. X succeeds to and takes into account the items of T as provided in section 381.

(iv) *Treatment of P.* By virtue of section 338, the transfer of T assets to X is a reorganization. Pursuant to that reorganization, P exchanges its T stock solely for stock of X, a party to the reorganization. Because P is the purchasing corporation, section 354 applies to P's exchange of T stock for X stock in the merger of T into X. Thus, P recognizes no gain or loss on the exchange. Under section 358, P's basis in the X stock received in the exchange is the same as the basis of P's T stock exchanged therefor.

(v) *Treatment of K.* Because K is not the purchasing corporation (or an affiliate thereof), section 354 cannot apply to K's exchange of T stock for X stock in the merger of T into X unless the transfer of T's assets is pursuant to a reorganization as determined

without regard to § 1.338–3(c)(3). Under general principles of tax law applicable to reorganizations, the continuity of interest requirement is not satisfied because P's stock purchase and the merger of T into X are pursuant to an integrated transaction in which A, the owner of 85 percent of the stock of T, received solely cash in exchange for A's T stock. See, e.g., *Yoc Heating* v. *Commissioner*, 61 T.C. 168 (1973); *Kass* v. *Commissioner*, 60 T.C. 218 (1973), aff'd, 491 F.2d 749 (3d Cir. 1974). Thus, the requisite continuity of interest under § 1.368–1(b) is lacking and section 354 does not apply to K's exchange of T stock for X stock. K recognizes gain or loss, if any, pursuant to section 1001(c) with respect to its T stock.

§§ 1.338–4 and 1.338–5 [Redesignated as §§ 1.338–8 and 1.338–9]

Par. 3. Sections 1.338–4 and 1.338–5 are redesignated as §§ 1.338–8 and 1.338–9, respectively.

Par. 4. New §§ 1.338–4 and 1.338–5 are added to read as follows:

§ 1.338–4 Aggregate deemed sale price; various aspects of taxation of the deemed asset sale.

(a) *Scope.* This section provides rules under section 338(a)(1) to determine the aggregate deemed sale price (ADSP) for target. ADSP is the amount for which old target is deemed to have sold all of its assets in the deemed asset sale. ADSP is allocated among target's assets in accordance with § 1.338–6 to determine the amount for which each asset is deemed to have been sold. When an increase or decrease with respect to an element of ADSP is required, under general principles of tax law, after the close of new target's first taxable year, redetermined ADSP is allocated among target's assets in accordance with § 1.338–7. This section also provides rules regarding the recognition of gain or loss on the deemed sale of target affiliate stock. Notwithstanding section 338(h)(6)(B)(ii), stock held by a target affiliate in a foreign corporation or in a corporation that is a DISC or that is described in section 1248(e) is not excluded from the operation of section 338.

(b) *Determination of ADSP*—(1) *General rule.* ADSP is the sum of—

(i) The grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock (as defined in section 338(b)(6)(A)); and

(ii) The liabilities of old target.

(2) *Time and amount of ADSP*—(i) *Original determination.* ADSP is initially determined at the beginning of the day after the acquisition date of target. General principles of tax law apply in determining the timing and amount of the elements of ADSP.

(ii) *Redetermination of ADSP.* ADSP is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, for the elements of ADSP. For example, ADSP is redetermined because of an increase or decrease in the amount realized for recently purchased stock or because liabilities not originally taken into account in determining ADSP are subsequently taken into account. An increase or decrease to one element of ADSP may cause an increase or decrease to the other element of ADSP. For example, if an increase in the amount realized for recently purchased stock of target is taken into account after the acquisition date, any increase in the tax liability of target for the deemed sale gain is also taken into account when ADSP is redetermined. Increases or decreases with respect to the elements of ADSP that are taken into account before the close of new target's first taxable year are taken into account for purposes of determining ADSP and the deemed sale gain as if they had been taken into account at the beginning of the day after the acquisition date. Increases or decreases with respect to the elements of ADSP that are taken into account after the close of new target's first taxable year result in the reallocation of ADSP among target's assets under § 1.338–7.

(iii) *Example.* The following example illustrates this paragraph (b)(2):

Example. In Year 1, T, a manufacturer, purchases a customized delivery truck from X with purchase money indebtedness having a stated principal amount of $100,000. P acquires all of the stock of T in Year 3 for $700,000 and makes a section 338 election for T. Assume T has no liabilities other than its purchase money indebtedness to X. In Year 4, when T is neither insolvent nor in a title 11 case, T and X agree to reduce the amount of the purchase money indebtedness to $80,000. Assume further that the reduction would be a purchase price reduction under section 108(e)(5). T and X's agreement to reduce the amount of the purchase money indebtedness would not, under general principles of tax law that would apply if the deemed asset sale had actually occurred, change the amount of liabilities of old target taken into account in determining its amount realized. Accordingly, ADSP is not redetermined at the time of the reduction. See § 1.338–5(b)(2)(iii) *Example* 1 for the effect on AGUB.

(c) *Grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock*—(1) *Determination of amount.* The grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock is an amount equal to—

(i) The amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock determined as if old target were the selling shareholder and the installment method were not available and determined without regard to the selling costs taken into account in paragraph (c)(1)(iii) of this section;

(ii) Divided by the percentage of target stock (by value, determined on the acquisition date) attributable to that recently purchased target stock;

(iii) Less the selling costs incurred by the selling shareholders in connection with the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock that reduce their amount realized on the sale of the stock (e.g., brokerage commissions and any similar costs to sell the stock).

(2) *Example.* The following example illustrates this paragraph (c):

Example. T has two classes of stock outstanding, voting common stock and preferred stock not taken into account for purposes of section 1504(a)(2). On March 1 of Year 1, P purchases 40 percent of the outstanding T stock from S1 for $500, 20 percent of the outstanding T stock from S2 for $225, and 20 percent of the outstanding T stock from S3 for $275. On that date, the fair market value of all the T voting common stock is $1,250 and the preferred stock $750. S1, S2, and S3 respectively incur $40, $35, and $25 of selling costs. S1 continues to own the remaining 20 percent of the outstanding T stock. The grossed-up amount realized on the sale to P of P's recently purchased T stock is calculated as follows: The total amount realized (without regard to selling costs) is $1,000 (500 + 225 + 275). The percentage of T stock by value on the acquisition date attributable to the recently purchased T stock is 50% (1,000/(1,250 + 750)). The selling costs are $100 (40 + 35 + 25). The grossed-up amount realized is $1,900 (1,000/.5 − 100).

(d) *Liabilities of old target*—(1) *In general.* The liabilities of old target are the liabilities of target (and the liabilities to which target's assets are subject) as of the beginning of the day after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject). In order to be taken into account in ADSP, a liability must be a liability of target that is properly taken into account in amount realized under general principles of tax law that would apply if old target had sold its assets to an unrelated person for consideration that included that person's assumption of, or taking subject to, the liability. Thus, ADSP takes into account both tax credit recapture liability arising because of the

deemed asset sale and the tax liability for the deemed sale gain unless the tax liability is borne by some person other than the target. For example, ADSP would not take into account the tax liability for the deemed sale gain when a section 338(h)(10) election is made for a target S corporation because the S corporation shareholders bear that liability. However, if a target S corporation is subject to a tax under section 1374 or 1375, the liability for tax imposed by those sections is a liability of target taken into account in ADSP (unless the S corporation shareholders expressly assume that liability).

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining ADSP and the amount of the liabilities taken into account is determined as if old target had sold its assets to an unrelated person for consideration that included the unrelated person's assumption of or taking subject to the liabilities. For example, if no amount of a target liability is properly taken into account in amount realized as of the beginning of the day after the acquisition date, the liability is not initially taken into account in determining ADSP (although it may be taken into account at some later date). As a further example, an increase of decrease in a liability that does not affect the amount of old target's basis, deductions, or noncapital nondeductible items arising from the incurrence of the liability is not taken into account in redetermining ADSP.

(3) *Interaction with deemed sale gain.* Though deemed sale gain increases or decreases ADSP by creating or reducing a tax liability, the amount of the tax liability itself is a function of the size of the deemed sale gain. Thus, the determination of ADSP may require trial and error computations.

(e) *Calculation of deemed sale gain.* Deemed sale gain on each asset is computed by reference to the ADSP allocated to that asset.

(f) *Other rules apply in determining ADSP.* ADSP may not be applied in such a way as to contravene other applicable rules. For example, a capital loss cannot be applied to reduce ordinary income in calculating the tax liability on the deemed sale for purposes of determining ADSP.

(g) *Examples.* The following examples illustrate this section. For purposes of the examples in this paragraph (g), unless otherwise stated, T is a calendar year taxpayer that files separate returns and that has no loss, tax credit, or other carryovers to Year 1. Depreciation for Year 1 is not taken into account. T has no liabilities other than the Federal income tax liability resulting from the deemed asset sale, and the T shareholders have no selling costs. Assume that T's tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34 percent and that any capital loss is offset by capital gain. On July 1 of Year 1, P purchases all of the stock of T and makes a section 338 election for T. The examples are as follows:

Example 1. One class. (i) On July 1 of Year 1, T's only asset is an item of section 1245 property with an adjusted basis to T of $50,400, a recomputed basis of $80,000, and a fair market value of $100,000. P purchases all of the T stock for $75,000, which also equals the amount realized for the stock determined as if old target were the selling shareholder.

(ii) ADSP is determined as follows (In the following formula, G is the grossed-up amount realized on the sale to P of P's recently purchased T stock, L is T's liabilities other than T's tax liability for the deemed sale gain, T_R is the applicable tax rate, and B is the adjusted basis of the asset deemed sold):

$$ADSP = G + L + T_R \times (ADSP - B)$$
$$ADSP = (\$75,000/1) + \$0 + .34 \times (ADSP - \$50,400)$$
$$ADSP = \$75,000 + .34ADSP - \$17,136$$
$$.66ADSP = \$57,864$$
$$ADSP = \$87,672.72$$

(iii) Because ADSP for T ($87,672.72) does not exceed the fair market value of T's asset ($100,000), a Class V asset, T's entire ADSP is allocated to that asset. Thus, T has deemed sale gain of $37,272.72 (consisting of $29,600 of ordinary income and $7,672.72 of capital gain).

(iv) The facts are the same as in paragraph (i) of this *Example 1*, except that on July 1 of Year 1, P purchases only 80 of the 100 shares of T stock for $60,000. The grossed-up amount realized on the sale to P of P's recently purchased T stock (G) is $75,000 ($60,000/.8). Consequently, ADSP and deemed sale gain are the same as in paragraphs (ii) and (iii) of this *Example 1*.

(v) The facts are the same as in paragraph (i) of this *Example 1*, except that T also has goodwill (a Class VII asset) with an appraised value of $10,000. The results are the same as in paragraphs (ii) and (iii) of this *Example 1*. Because ADSP does not exceed the fair market value of the Class V asset, no amount is allocated to the Class VII assets (goodwill and going concern value).

Example 2. More than one class. (i) P purchases all of the T stock for $140,000, which also equals the amount realized for the stock determined as if old target were the selling shareholder. On July 1 of Year 1, T has liabilities (not including the tax liability for the deemed sale gain) of $50,000, cash (a Class I asset) of $10,000, actively traded securities (a Class II asset) with a basis of $4,000 and a fair market value of $10,000, goodwill (a Class VII asset) with a basis of $3,000, and the following Class V assets:

Asset	Basis	FMV	Ratio of asset FMV to total Class V FMV
Land	$5,000	$35,000	.14
Building	10,000	50,000	.20
Equipment A (Recomputed basis $80,000)	5,000	90,000	.36
Equipment B (Recomputed basis $20,000)	10,000	75,000	.30
Total	30,000	250,000	1.00

(ii) ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities. The amount allocated to an asset (other than a Class VII asset) cannot exceed its fair market value (however, the fair market value of any property subject to nonrecourse indebtedness is treated as being not less than the amount of such indebtedness; see § 1.338–6(a)(2)). See § 1.338–6(c)(1) (relating to fair market value limitation).

(iii) The portion of ADSP allocable to the Class V assets is preliminarily determined as follows (in the formula, the amount allocated to the Class I assets is referred to as I and the amount allocated to the Class II assets as II):

$$ADSP_V = (G - (I + II)) + L + T_R \times [(II - B_{II}) + (ADSP_V - B_V)]$$
$$ADS_{PV} = (\$140,000 - (\$10,000 + \$10,000)) + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (ADSP_V - (\$5,000 + \$10,000 + \$5,000 + \$10,000))]$$
$$ADSP_V = \$161,840 + .34\ ADSP_V$$
$$16.66\ ADSP_V = \$161,840$$
$$ADSP_V = \$245,212.12$$

(iv) Because, under the preliminary calculations of ADSP, the amount to be allocated to the Class I, II, III, IV, V, and VI

assets does not exceed their aggregate fair market value, no ADSP amount is allocated to goodwill. Accordingly, the deemed sale of the goodwill results in a capital loss of $3,000. The portion of ADSP allocable to the Class V assets is finally determined by taking into account this loss as follows:

$ADSP_V = (G - (I + II)) + L + T_R \times [(II - B_{II}) + (ADSP_V - B_V) + (ADSP_{VII} - B_{VII})]$
$ADSP_V = (\$140,000 - (\$10,000 + \$10,000)) + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (ADSP_V - \$30,000) + (\$0 - \$3,000)]$
$ADSP_V = \$160,820 + .34\ ADSP_V$
$.66\ ADSP_V = \$160,820$
$ADSP_V = \$243,666.67$

(v) The allocation of $ADSP_V$ among the Class V assets is in proportion to their fair market values, as follows:

Asset	ADSP	Gain
Land	$34,113.33	$29,113.33 (capital gain)
Building	48,733.34	38,733.34 (capital gain)
Equipment A	87,720.00	82,720.00 (75,000 ordinary income, 7,720 capital gain)
Equipment B	73,100.00	63,100.00 (10,000 ordinary income, 53,100 capital gain)
Totals	243,666.67	213,666.67

Example 3. More than one class. (i) The facts are the same as in *Example 2*, except that P purchases the T stock for $150,000, rather than $140,000. The amount realized for the stock determined as if old target were the selling shareholder is also $150,000.

(ii) As in *Example 2*, ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities.

(iii) The portion of ADSP allocable to the Class V assets as preliminarily determined under the formula set forth in paragraph (iii) of *Example 2* is $260,363.64. The amount allocated to the Class V assets cannot exceed their aggregate fair market value ($250,000). Thus, preliminarily, the ADSP amount allocated to Class V assets is $250,000.

(iv) Based on the preliminary allocation, the ADSP is determined as follows (in the formula, the amount allocated to the Class I assets is referred to as I, the amount allocated to the Class II assets as II, and the amount allocated to the Class V assets as V):

$ADSP = G + L + T^R [(II\ B^{II}) + (V\ B^V) + (ADSP\ (I + II + V + B^{VII}))]$
$ADSP = \$150,000 + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (\$250,000 - \$30,000) + (ADSP\ (\$10,000 + \$10,000 + \$250,000 + \$3,000))]$
$ADSP = \$200,000 + .34ADSP\ \$15,980$
$.66ADSP = \$184,020$
$ADSP = \$278,818.18$

(v) Because ADSP as determined exceeds the aggregate fair market value of the Class I, II, III, IV, V, and VI assets, the $250,000 amount preliminarily allocated to the Class V assets is appropriate. Thus, the amount of ADSP allocated to Class V assets equals their aggregate fair market value ($250,000), and the allocated ADSP amount for each Class V asset is its fair market value. Further, because there are no Class VI assets, the allocable ADSP amount for the Class VII asset (goodwill) is $8,818.18 (the excess of ADSP over the aggregate ADSP amounts for the Class I, II, III, IV, V and VI assets).

Example 4. Amount allocated to T1 stock. (i) The facts are the same as in Example 2, except that T owns all of the T1 stock (instead of the building), and T1's only asset is the building. The T1 stock and the building each have a fair market value of $50,000, and the building has a basis of $10,000. A section 338 election is made for T1 (as well as T), and T1 has no liabilities other than the tax liability for the deemed sale gain. T is the common parent of a consolidated group filing a final consolidated return described in § 1.338 10(a)(1).

(ii) ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities.

(iii) Because T does not recognize any gain on the deemed sale of the T1 stock under paragraph (h)(2) of this section, appropriate adjustments must be made to reflect accurately the fair market value of the T and T1 assets in determining the allocation of ADSP among T's Class V assets (including the T1 stock). In preliminarily calculating ADSPV in this case, the T1 stock can be disregarded and, because T owns all of the T1 stock, the T1 asset can be treated as a T asset. Under this assumption, ADSPV is $243,666.67. See paragraph (iv) of *Example 2*.

(iv) Because the portion of the preliminary ADSP allocable to Class V assets ($243,666.67) does not exceed their fair market value ($250,000), no amount is allocated to Class VII assets for T. Further, this amount ($243,666.67) is allocated among T's Class V assets in proportion to their fair market values. See paragraph (v) of *Example 2*. Tentatively, $48,733.34 of this amount is allocated to the T1 stock.

(v) The amount tentatively allocated to the T1 stock, however, reflects the tax incurred on the deemed sale of the T1 asset equal to $13,169.34 ($.34 \times (\$48,733.34 - \$10,000)$). Thus, the ADSP allocable to the Class V assets of T, and the ADSP allocable to the T1 stock, as preliminarily calculated, each must be reduced by $13,169.34. Consequently, these amounts, respectively, are $230,497.33 and $35,564.00. In determining ADSP for T1, the grossed-up amount realized on the deemed sale to new T of new T's recently purchased T1 stock is $35,564.00.

(vi) The facts are the same as in paragraph (i) of this Example 4, except that the T1 building has a $12,500 basis and a $62,500 value, all of the outstanding T1 stock has a $62,500 value, and T owns 80 percent of the T1 stock. In preliminarily calculating $ADSP_V$, the T1 stock can be disregarded but, because T owns only 80 percent of the T1 stock, only 80 percent of T1 asset basis and value should be taken into account in calculating T's ADSP. By taking into account 80 percent of these amounts, the remaining calculations and results are the same as in paragraphs (ii), (iii), (iv), and (v) of this *Example 4*, except that the grossed-up amount realized on the sale of the recently purchased T1 stock is $44,455.00 ($35,564.00/0.8).

(h) *Deemed sale of target affiliate stock*—(1) *Scope.* This paragraph (h) prescribes rules relating to the treatment of gain or loss realized on the deemed sale of stock of a target affiliate when a section 338 election (but not a section 338(h)(10) election) is made for the target affiliate. For purposes of this paragraph (h), the definition of domestic corporation in § 1.338–2(c)(9) is applied without the exclusion therein for DISCs, corporations described in section 1248(e), and corporations to which an election under section 936 applies.

(2) *In general.* Except as otherwise provided in this paragraph (h), if a section 338 election is made for target, target recognizes no gain or loss on the deemed sale of stock of a target affiliate having the same acquisition date and for which a section 338 election is made if—

(i) Target directly owns stock in the target affiliate satisfying the requirements of section 1504(a)(2);

(ii) Target and the target affiliate are members of a consolidated group filing a final consolidated return described in § 1.338–10(a)(1); or

(iii) Target and the target affiliate file a combined return under § 1.338–10(a)(4).

(3) *Deemed sale of foreign target affiliate by a domestic target.* A domestic target recognizes gain or loss on the deemed sale of stock of a foreign target affiliate. For the proper treatment of such gain or loss, see, e.g., sections 1246, 1248, 1291 *et seq.*, and 338(h)(16) and § 1.338–9.

(4) *Deemed sale producing effectively connected income.* A foreign target recognizes gain or loss on the deemed sale of stock of a foreign target affiliate to the extent that such gain or loss is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(5) *Deemed sale of insurance company target affiliate electing under section 953(d).* A domestic target recognizes gain (but not loss) on the deemed sale of stock of a target affiliate that has in effect an election under section 953(d) in an amount equal to the lesser of the gain realized or the earnings and profits described in section 953(d)(4)(B).

(6) *Deemed sale of DISC target affiliate.* A foreign or domestic target recognizes gain (but not loss) on the deemed sale of stock of a target affiliate that is a DISC or a former DISC (as defined in section 992(a)) in an amount equal to the lesser of the gain realized or the amount of accumulated DISC income determined with respect to such stock under section 995(c). Such gain is included in gross income as a dividend as provided in sections 995(c)(2) and 996(g).

(7) *Anti-stuffing rule.* If an asset the adjusted basis of which exceeds its fair market value is contributed or transferred to a target affiliate as transferred basis property (within the meaning of section 7701(a)(43)) and a purpose of such transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of such target affiliate's stock, the gain or loss recognized by target on the deemed sale of stock of the target affiliate is determined as if such asset had not been contributed or transferred.

(8) *Examples.* The following examples illustrate this paragraph (h):

Example 1. (i) P makes a qualified stock purchase of T and makes a section 338 election for T. T's sole asset, all of the T1 stock, has a basis of $50 and a fair market value of $150. T's deemed purchase of the T1 stock results in a qualified stock purchase of T1 and a section 338 election is made for T1. T1's assets have a basis of $50 and a fair market value of $150.

(ii) T realizes $100 of gain on the deemed sale of the T1 stock, but the gain is not recognized because T directly owns stock in T1 satisfying the requirements of section 1504(a)(2) and a section 338 election is made for T1.

(iii) T1 recognizes gain of $100 on the deemed sale of its assets.

Example 2. The facts are the same as in Example 1, except that P does not make a section 338 election for T1. Because a section 338 election is not made for T1, the $100 gain realized by T on the deemed sale of the T1 stock is recognized.

Example 3. (i) P makes a qualified stock purchase of T and makes a section 338 election for T. T owns all of the stock of T1 and T2. T's deemed purchase of the T1 and T2 stock results in a qualified stock purchase of T1 and T2 and section 338 elections are made for T1 and T2. T1 and T2 each own 50 percent of the vote and value of T3 stock. The deemed purchases by T1 and T2 of the T3 stock result in a qualified stock purchase of T3 and a section 338 election is made for T3. T is the common parent of a consolidated group and all of the deemed asset sales are reported on the T group's final consolidated return. See § 1.338–10(a)(1).

(ii) Because T, T1, T2 and T3 are members of a consolidated group filing a final consolidated return, no gain or loss is recognized by T, T1 or T2 on their respective deemed sales of target affiliate stock.

Example 4. (i) T's sole asset, all of the FT1 stock, has a basis of $25 and a fair market value of $150. FT1's sole asset, all of the FT2 stock, has a basis of $75 and a fair market value of $150. FT1 and FT2 each have $50 of accumulated earnings and profits for purposes of section 1248(c) and (d). FT2's assets have a basis of $125 and a fair market value of $150, and their sale would not generate subpart F income under section 951. The sale of the FT2 stock or assets would not generate income effectively connected with the conduct of a trade or business within the United States. FT1 does not have an election in effect under section 953(d) and neither FT1 nor FT2 is a passive foreign investment company.

(ii) P makes a qualified stock purchase of T and makes a section 338 election for T. T's deemed purchase of the FT1 stock results in a qualified stock purchase of FT1 and a section 338 election is made for FT1. Similarly, FT1's deemed purchase of the FT2 stock results in a qualified stock purchase of FT2 and a section 338 election is made for FT2.

(iii) T recognizes $125 of gain on the deemed sale of the FT1 stock under paragraph (h)(3) of this section. FT1 does not recognize $75 of gain on the deemed sale of the FT2 stock under paragraph (h)(2) of this section. FT2 recognizes $25 of gain on the deemed sale of its assets. The $125 gain T recognizes on the deemed sale of the FT1 stock is included in T's income as a dividend under section 1248, because FT1 and FT2 have sufficient earnings and profits for full recharacterization ($50 of accumulated earnings and profits in FT1, $50 of accumulated earnings and profits in FT2, and $25 of deemed sale earnings and profits in FT2). § 1.338–9(b). For purposes of sections 901 through 908, the source and foreign tax credit limitation basket of $25 of the recharacterized gain on the deemed sale of the FT1 stock is determined under section 338(h)(16).

§ 1.338 5 Adjusted grossed-up basis.

(a) *Scope.* This section provides rules under section 338(b) to determine the adjusted grossed-up basis (AGUB) for target. AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under section 338(a)(2). AGUB is allocated among target's assets in accordance with § 1.338–6 to determine the price at which the assets are deemed to have been purchased. When an increase or decrease with respect to an element of AGUB is required, under general principles of tax law, after the close of new target's first taxable year, redetermined AGUB is allocated among target's assets in accordance with § 1.338–7.

(b) *Determination of AGUB*—(1) *General rule.* AGUB is the sum of—

(i) The grossed-up basis in the purchasing corporation's recently purchased target stock;

(ii) The purchasing corporation's basis in nonrecently purchased target stock; and

(iii) The liabilities of new target.

(2) *Time and amount of AGUB*—(i) *Original determination.* AGUB is initially determined at the beginning of the day after the acquisition date of target. General principles of tax law apply in determining the timing and amount of the elements of AGUB.

(ii) *Redetermination of AGUB.* AGUB is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, with respect to an element of AGUB. For example, AGUB is redetermined because of an increase or decrease in the amount paid or incurred for recently purchased stock or nonrecently purchased stock or because liabilities not originally taken into account in determining AGUB are subsequently taken into account. An increase or decrease to an element of ADSP may cause an increase or decrease to an element of AGUB. For example, if

an increase in the amount realized for recently purchased stock of target is taken into account after the acquisition date, any increase in tax liability of target for the deemed sale gain is also taken into account when AGUB is redetermined. An increase or decrease to one element of AGUB may also cause an increase or decrease to another element of AGUB. For example, if there is an increase in the amount paid or incurred for recently purchased stock after the acquisition date, any increase in the basis of nonrecently purchased stock because a gain recognition election was made is also taken into account when AGUB is redetermined. Increases or decreases with respect to the elements of AGUB that are taken into account before the close of new target's first taxable year are taken into account for purposes of determining AGUB and the basis of target's assets as if they had been taken into account at the beginning of the day after the acquisition date. Increases or decreases with respect to the elements of AGUB that are taken into account after the close of new target's first taxable year result in the reallocation of AGUB among target's assets under § 1.338–7.

(iii) *Examples.* The following examples illustrate this paragraph (b)(2):

Example 1. In Year 1, T, a manufacturer, purchases a customized delivery truck from X with purchase money indebtedness having a stated principal amount of $100,000. P acquires all of the stock of T in Year 3 for $700,000 and makes a section 338 election for T. Assume T has no liabilities other than its purchase money indebtedness to X. In Year 4, when T is neither insolvent nor in a title 11 case, T and X agree to reduce the amount of the purchase money indebtedness to $80,000. Assume that the reduction would be a purchase price reduction under section 108(e)(5). T and X's agreement to reduce the amount of the purchase money indebtedness would, under general principles of tax law that would apply if the deemed asset sale had actually occurred, change the amount of liabilities of old target taken into account in determining its basis. Accordingly, AGUB is redetermined at the time of the reduction. See paragraph (e)(2) of this section. Thus the purchase price reduction affects the basis of the truck only indirectly, through the mechanism of §§ 1.338–6 and 1.338–7. See § 1.338–4(b)(2)(iii) *Example* for the effect on ADSP.

Example 2. T, an accrual basis taxpayer, is a chemical manufacturer. In Year 1, T is obligated to remediate environmental contamination at the site of one of its plants. Assume that all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy but economic performance has not occurred with respect to the liability within the meaning of section 461(h). P acquires all of the stock of T in Year 1 and makes a section 338 election for T. Assume that, if a corporation unrelated to T had actually purchased T's assets and assumed T's obligation to remediate the contamination, the corporation would not satisfy the economic performance requirements until Year 5. Under section 461(h), the assumed liability would not be treated as incurred and taken into account in basis until that time. The incurrence of the liability in Year 5 under the economic performance rules is an increase in the amount of liabilities properly taken into account in basis and results in the redetermination of AGUB. (Respecting ADSP, compare § 1.461–4(d)(5), which provides that economic performance occurs for old T as the amount of the liability is properly taken into account in amount realized on the deemed asset sale. Thus ADSP is not redetermined when new T satisfies the economic performance requirements.)

(c) *Grossed-up basis of recently purchased stock.* The purchasing corporation's grossed-up basis of recently purchased target stock (as defined in section 338(b)(6)(A)) is an amount equal to—

(1) The purchasing corporation's basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section;

(2) Multiplied by a fraction, the numerator of which is 100 percent minus the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock, and the denominator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's recently purchased target stock;

(3) Plus the acquisition costs the purchasing corporation incurred in connection with its purchase of the recently purchased stock that are capitalized in the basis of such stock (e.g., brokerage commissions and any similar costs incurred by the purchasing corporation to acquire the stock).

(d) *Basis of nonrecently purchased stock; gain recognition election*—(1) *No gain recognition election.* In the absence of a gain recognition election under section 338(b)(3) and this section, the purchasing corporation retains its basis in the nonrecently purchased stock.

(2) *Procedure for making gain recognition election.* A gain recognition election may be made for nonrecently purchased stock of target (or a target affiliate) only if a section 338 election is made for target (or the target affiliate). The gain recognition election is made by attaching a gain recognition statement to a timely filed Form 8023 for target. The gain recognition statement must contain the information specified in the form and its instructions. The gain recognition election is irrevocable. If a section 338(h)(10) election is made for target, see § 1.338(h)(10)–1(d)(1) (providing that the purchasing corporation is automatically deemed to have made a gain recognition election for its nonrecently purchased T stock).

(3) *Effect of gain recognition election*—(i) *In general.* If the purchasing corporation makes a gain recognition election, then for all purposes of the Internal Revenue Code—

(A) The purchasing corporation is treated as if it sold on the acquisition date the nonrecently purchased target stock for the basis amount determined under paragraph (d)(3)(ii) of this section; and

(B) The purchasing corporation's basis on the acquisition date in nonrecently purchased target stock immediately following the deemed sale in paragraph (d)(3)(i)(A) of this section is the basis amount.

(ii) *Basis amount.* The basis amount is equal to the amount in paragraph (c)(1) of this section (the purchasing corporation's basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section) multiplied by a fraction the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. Thus, if target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock.

(iii) *Losses not recognized.* Only gains (unreduced by losses) on the nonrecently purchased target stock are recognized.

(iv) *Stock subject to election.* The gain recognition election applies to

(A) All nonrecently purchased target stock; and

(B) Any nonrecently purchased stock in a target affiliate having the same acquisition date as target if such target affiliate stock is held by the purchasing corporation on such date.

(e) *Liabilities of new target*—(1) *In general.* The liabilities of new target are the liabilities of target (and the liabilities to which target's assets are subject) as of the beginning of the day

after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject). In order to be taken into account in AGUB, a liability must be a liability of target that is properly taken into account in basis under general principles of tax law that would apply if new target had acquired its assets from an unrelated person for consideration that included the assumption of, or taking subject to, the liability. See § 1.338–4(d)(1) for examples of when tax liabilities are considered liabilities assumed by new target.

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining AGUB and the amount of the liabilities taken into account is determined as if new target had acquired its assets from an unrelated person for consideration that included the assumption of, or taking subject to, the liabilities. For example, an increase or decrease in a liability that does not affect the amount of new target's basis arising from the assumption of, or taking subject to, the liability is not taken into account in redetermining AGUB.

(3) *Interaction with deemed sale gain.* See § 1.338–4(d)(3).

(f) *Adjustments by the Internal Revenue Service.* In connection with the examination of a return, the District Director may increase (or decrease) AGUB under the authority of section 338(b)(2) and allocate such amounts to target's assets under the authority of section 338(b)(5) so that AGUB and the basis of target's assets properly reflect the cost to the purchasing corporation of its interest in target's assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by the purchasing corporation after the acquisition date from minority shareholders.

(g) *Examples.* The following examples illustrate this section. For purposes of the examples in this paragraph (g), T has no liabilities other than the tax liability for the deemed sale gain, T shareholders incur no costs in selling the T stock, and P incurs no costs in acquiring the T stock. The examples are as follows:

Example 1. (i) Before July 1 of Year 1, P purchases 10 of the 100 shares of T stock for $5,000. On July 1 of Year 2, P purchases 80 shares of T stock for $60,000 and makes a section 338 election for T. As of July 1 of Year 2, T's only asset is raw land with an adjusted basis to T of $50,400 and a fair market value of $100,000. T has no loss or tax credit carryovers to Year 2. T's marginal tax rate for any ordinary income or net capital gain resulting from the deemed asset sale is 34 percent. The 10 shares purchased before July 1 of Year 1 constitute nonrecently purchased T stock with respect to P's qualified stock purchase of T stock on July 1 of Year 2.

(ii) The ADSP formula as applied to these facts is the same as in § 1.338–4(g) *Example 1.* Accordingly, the ADSP for T is $87,672.72. The existence of nonrecently purchased T stock is irrelevant for purposes of the ADSP formula, because that formula treats P's nonrecently purchased T stock in the same manner as T stock not held by P.

(iii) The total tax liability resulting from T's deemed asset sale, as calculated under the ADSP formula, is $12,672.72.

(iv) If P does not make a gain recognition election, the AGUB of new T's assets is $85,172.72, determined as follows (In the following formula, GRP is the grossed-up basis in P's recently purchased T stock, BNP is P's basis in nonrecently purchased T stock, L is T's liabilities, and X is P's acquisition costs for the recently purchased T stock):

AGUB = GRP + BNP + L + X
AGUB = $60,000 × [(1 − .1)/.8] + $5,000 + $12,672.72 + 0
AGUB = $85,172.72

(v) If P makes a gain recognition election, the AGUB of new T's assets is $87,672.72, determined as follows:

AGUB = $60,000 × [(1 − .1)/.8] + $60,000 × [(1 − .1)/.8] × [.1/(1 − .1)] + $12,672.72
AGUB = $87,672.72

(vi) The calculation of AGUB if P makes a gain recognition election may be simplified as follows:

AGUB = $60,000/.8 + $12,672.72
AGUB = $87,672.72

(vii) As a result of the gain recognition election, P's basis in its nonrecently purchased T stock is increased from $5,000 to $7,500 (i.e., $60,000 × [(1 − .1)/.8] × [.1/(1 − .1)]). Thus, P recognizes a gain in Year 2 with respect to its nonrecently purchased T stock of $2,500 (i.e., $7,500 − $5,000).

Example 2. On January 1 of Year 1, P purchases one-third of the T stock. On March 1 of Year 1, T distributes a dividend to all of its shareholders. On April 15 of Year 1, P purchases the remaining T stock and makes a section 338 election for T. In appropriate circumstances, the District Director may decrease the AGUB of T to take into account the payment of the dividend and properly reflect the fair market value of T's assets deemed purchased.

Example 3. (i) T's sole asset is a building worth $100,000. At this time, T has 100 shares of stock outstanding. On August 1 of Year 1, P purchases 10 of the 100 shares of T stock for $8,000. On June 1 of Year 2, P purchases 50 shares of T stock for $50,000. On June 15 of Year 2, P contributes a tract of land to the capital of T and receives 10 additional shares of T stock as a result of the contribution. Both the basis and fair market value of the land at that time are $10,800. On June 30 of Year 2, P purchases the remaining 40 shares of T stock for $40,000 and makes a section 338 election for T. The AGUB of T is $108,800.

(ii) To prevent the shifting of basis from the contributed property to other assets of T, the District Director may allocate $10,800 of the AGUB to the land, leaving $98,000 to be allocated to the building. See paragraph (f) of this section. Otherwise, applying the allocation rules of § 1.338–6 would, on these facts, result in an allocation to the recently contributed land of an amount less than its value of $10,800, with the difference being allocated to the building already held by T.

Par. 5. Sections 1.338–6 and 1.338–7 are added to read as follows:

§ 1.338–6 Allocation of ADSP and AGUB among target assets.

(a) *Scope*—(1) *In general.* This section prescribes rules for allocating ADSP and AGUB among the acquisition date assets of a target for which a section 338 election is made.

(2) *Fair market value*—(i) *In general.* Generally, the fair market value of an asset is its gross fair market value (i.e., fair market value determined without regard to mortgages, liens, pledges, or other liabilities). However, for purposes of determining the amount of old target's deemed sale gain, the fair market value of any property subject to a nonrecourse indebtedness will be treated as being not less than the amount of such indebtedness. (For purposes of the preceding sentence, a liability that was incurred because of the acquisition of the property is disregarded to the extent that such liability was not taken into account in determining old target's basis in such property.)

(ii) *Transaction costs.* Transaction costs are not taken into account in allocating ADSP or AGUB to assets in the deemed sale (except indirectly through their effect on the total ADSP or AGUB to be allocated).

(iii) *Internal Revenue Service authority.* In connection with the examination of a return, the Internal Revenue Service may challenge the taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties. For example, in certain cases the Internal Revenue Service may make an independent showing of the value of goodwill and going concern value as a means of calling into question the validity of the taxpayer's valuation of other assets.

(b) *General rule for allocating ADSP and AGUB*—(1) *Reduction in the amount of consideration for Class I assets.* Both ADSP and AGUB, in the respective allocation of each, are first reduced by the amount of Class I acquisition date assets. Class I assets are cash and general deposit accounts

(including savings and checking accounts) other than certificates of deposit held in banks, savings and loan associations, and other depository institutions. If the amount of Class I assets exceeds AGUB, new target will immediately realize ordinary income in an amount equal to such excess. The amount of ADSP or AGUB remaining after the reduction is to be allocated to the remaining acquisition date assets.

(2) *Other assets*—(i) *In general.* Subject to the limitations and other rules of paragraph (c) of this section, ADSP and AGUB (as reduced by the amount of Class I assets) are allocated among Class II acquisition date assets of target in proportion to the fair market values of such Class II assets at such time, then among Class III assets so held in such proportion, then among Class IV assets so held in such proportion, then among Class V assets so held in such proportion, then among Class VI assets so held in such proportion, and finally to Class VII assets.

(ii) *Class II assets.* Class II assets are actively traded personal property within the meaning of section 1092(d)(1) and § 1.1092(d)–1 (determined without regard to section 1092(d)(3)). In addition, Class II assets include certificates of deposit and foreign currency even if they are not actively traded personal property. Examples of Class II assets include U.S. government securities and publicly traded stock.

(iii) *Class III assets.* Class III assets are accounts receivable, mortgages, and credit card receivables from customers which arise in the ordinary course of business.

(iv) *Class IV assets.* Class IV assets are stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(v) *Class V assets.* Class V assets are all assets other than Class I, II, III, IV, VI, and VII assets.

(vi) *Class VI assets.* Class VI assets are all section 197 intangibles, as defined in section 197, except goodwill and going concern value.

(vii) *Class VII assets.* Class VII assets are goodwill and going concern value (whether or not the goodwill or going concern value qualifies as a section 197 intangible).

(3) *Other items designated by the Internal Revenue Service.* Similar items may be added to any class described in this paragraph (b) by designation in the Internal Revenue Bulletin by the Internal Revenue Service.

(c) *Certain limitations and other rules for allocation to an asset*—(1) *Allocation not to exceed fair market value.* The amount of ADSP or AGUB allocated to an asset (other than Class VII assets) cannot exceed the fair market value of that asset at the beginning of the day after the acquisition date.

(2) *Allocation subject to other rules.* The amount of ADSP or AGUB allocated to an asset is subject to other provisions of the Internal Revenue Code or general principles of tax law in the same manner as if such asset were transferred to or acquired from an unrelated person in a sale or exchange. For example, if the deemed asset sale is a transaction described in section 1056(a) (relating to basis limitation for player contracts transferred in connection with the sale of a franchise), the amount of AGUB allocated to a contract for the services of an athlete cannot exceed the limitation imposed by that section. As another example, the amount of AGUB allocated to an amortizable section 197 intangible resulting from an assumption-reinsurance transaction is determined under section 197(f)(5).

(3) *Special rule for allocating AGUB when purchasing corporation has nonrecently purchased stock*—(i) *Scope.* This paragraph (c)(3) applies if at the beginning of the day after the acquisition date—

(A) The purchasing corporation holds nonrecently purchased stock for which a gain recognition election under section 338(b)(3) and § 1.338–5(d) is not made; and

(B) The hypothetical purchase price determined under paragraph (c)(3)(ii) of this section exceeds the AGUB determined under § 1.338–5(b).

(ii) *Determination of hypothetical purchase price.* Hypothetical purchase price is the AGUB that would result if a gain recognition election were made.

(iii) *Allocation of AGUB.* Subject to the limitations in paragraphs (c)(1) and (2) of this section, the portion of AGUB (after reduction by the amount of Class I assets) to be allocated to each Class II, III, IV, V, VI, and VII asset of target held at the beginning of the day after the acquisition date is determined by multiplying—

(A) The amount that would be allocated to such asset under the general rules of this section were AGUB equal to the hypothetical purchase price; by

(B) A fraction, the numerator of which is actual AGUB (after reduction by the amount of Class I assets) and the denominator of which is the hypothetical purchase price (after reduction by the amount of Class I assets).

(4) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property deemed purchased by new target, the entire amount of any liability taken into account in AGUB is considered to be an amount taken into account in determining new target's basis in property that secures the liability for purposes of applying § 1.1001–2(a). Thus, if a liability is taken into account in AGUB, § 1.1001–2(a)(3) does not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4) as a result of new target's sale or disposition of the property which secures such liability.

(d) *Examples.* The following examples illustrate §§ 1.338–4, 1.338–5, and this section:

Example 1. (i) T owns 90 percent of the outstanding T1 stock. P purchases 100 percent of the outstanding T stock for $2,000. There are no acquisition costs. P makes a section 338 election for T and, as a result, T1 is considered acquired in a qualified stock purchase. A section 338 election is made for T1. The grossed-up basis of the T stock is $2,000 (i.e., $2,000 × 1/1).

(ii) The liabilities of T as of the beginning of the day after the acquisition date (including the tax liability for the deemed sale gain) that would, under general principles of tax law, be properly taken into account before the close of new T's first taxable year, are as follows:

Liabilities (nonrecourse mortgage plus unsecured liabilities)	$700
Taxes Payable	300
Total	1,000

(iii) The AGUB of T is determined as follows:

Grossed-up basis	$2,000
Total liabilities	1,000
AGUB	3,000

(iv) Assume that ADSP is also $3,000.

(v) Assume that, at the beginning of the day after the acquisition date, T's cash and the fair market values of T's Class II, III, IV, and V assets are as follows:

Asset Class	Asset	Fair market value
I	Cash	*$200
II	Portfolio of actively traded securities.	300
III	Accounts receivable	600
IV	Inventory	300
V	Building	800
V	Land	200
V	Investment in T1	450
	Total	2,850

*Amount.

(vi) Under paragraph (b)(1) of this section, the amount of ADSP and AGUB allocable to T's Class II, III, IV, and V assets is reduced by the amount of cash to $2,600, i.e., $3,000 − $200. $300 of ADSP and of AGUB is then allocated to actively traded securities. $600 of ADSP and of AGUB is then allocated to accounts receivable. $300 of ADSP and of AGUB is then allocated to the inventory. Since the remaining amount of ADSP and of AGUB is $1,600 (i.e., $3,000 − ($200 + $300 + $600 + $300)), an amount which exceeds the sum of the fair market values of T's Class V assets, the amount of ADSP and of AGUB allocated to each Class V asset is its fair market value:

Building	800
Land	200
Investment in T1	450
Total	$1,450

(vii) T has no Class VI assets. The amount of ADSP and of AGUB allocated to T's Class VII assets (goodwill and going concern value) is $150, i.e., $1,600 − $1,450.

(viii) The grossed-up basis of the T1 stock is $500, i.e., $450 × 1/.9.

(ix) The liabilities of T as of the beginning of the day after the acquisition date (including the tax liability for the deemed sale gain) that would, under general principles of tax law, be properly taken into account before the close of new T's first taxable year, are as follows:

General Liabilities	$100
Taxes Payable	20
Total	120

(x) The AGUB of T1 is determined as follows:

Grossed-up basis of T1 Stock	$500
Liabilities	120
AGUB	620

(xi) Assume that ADSP is also $620.

(xii) Assume that at the beginning of the day after the acquisition date, T1's cash and the fair market values of its Class IV and VI assets are as follows:

Asset Class	Asset	Fair Market Value
I	Cash	*$50
IV	Inventory	200
VI	Patent	350
	Total	600

*Amount.

(xiii) The amount of ADSP and of AGUB allocable to T1's Class IV and VI assets is first reduced by the $50 of cash.

(xiv) Because the remaining amount of ADSP and of AGUB ($570) is an amount which exceeds the fair market value of T1's only Class IV asset, the inventory, the amount allocated to the inventory is its fair market value ($200). After that, the remaining amount of ADSP and of AGUB ($370) exceeds the fair market value of T1's only Class VI asset, the patent. Thus, the amount of ADSP and of AGUB allocated to the patent is its fair market value ($350).

(xv) The amount of ADSP and of AGUB allocated to T1's Class VII assets (goodwill and going concern value) is $20, i.e., $570–$550.

Example 2. (i) Assume that the facts are the same as in *Example 1* except that P has, for five years, owned 20 percent of T's stock, which has a basis in P's hands at the beginning of the day after the acquisition date of $100, and P purchases the remaining 80 percent of T's stock for $1,600. P does not make a gain recognition election under section 338(b)(3).

(ii) Under § 1.338–5(c), the grossed-up basis of recently purchased T stock is $1,600, i.e., $1,600 × (1 − .2)/.8.

(iii) The AGUB of T is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5(c) ($1,600 × (1 − .2)/.8)	$1,600
Basis of nonrecently purchased stock	100
Liabilities	1,000
AGUB	2,700

(iv) Since P holds nonrecently purchased stock, the hypothetical purchase price of the T stock must be computed and is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5(c) ($1,600 × (1 − .2)/.8)	$1,600
Basis of nonrecently purchased stock as if the gain recognition election under § 1.338–5(d)(2) had been made ($1,600 × .2/(1 − .2))	400
Liabilities	1,000
Total	3,000

(v) Since the hypothetical purchase price ($3,000) exceeds the AGUB ($2,700) and no gain recognition election is made under section 338(b)(3), AGUB is allocated under paragraph (c)(3) of this section.

(vi) First, an AGUB amount equal to the hypothetical purchase price ($3,000) is allocated among the assets under the general rules of this section. The allocation is set forth in the column below entitled *Original Allocation*. Next, the allocation to each asset in Class II through Class VII is multiplied by a fraction having a numerator equal to the actual AGUB reduced by the amount of Class I assets ($2,700 − $200 = $2,500) and a denominator equal to the hypothetical purchase price reduced by the amount of Class I assets ($3,000 − $200 = $2,800), or 2,500/2,800. This produces the *Final Allocation:*

Class	Asset	Original allocation	Final allocation
I	Cash	$200	$200
II	Portfolio of actively traded securities	300	*268
III	Accounts receivable	600	536
IV	Inventory	300	268
V	Building	800	714
V	Land	200	178
V	Investment in T1	450	402
VII	Goodwill and going concern value	150	134
	Total	$3,000	$2,700

*All numbers rounded for convenience.

§ 1.338–7 Allocation of redetermined ADSP and AGUB among target assets.

(a) *Scope.* ADSP and AGUB are redetermined at such time and in such amount as an increase or decrease would be required under general principles of tax law for the elements of ADSP or AGUB. This section provides rules for allocating redetermined ADSP or AGUB when increases or decreases with respect to the elements of ADSP or AGUB are required after the close of new target's first taxable year. For determining and allocating ADSP or AGUB when increases or decreases are required with respect to the elements of ADSP or AGUB before the close of new target's first taxable year, see §§ 1.338–4, 1.338–5, and 1.338–6.

(b) *Allocation of redetermined ADSP and AGUB.* When ADSP or AGUB is redetermined, a new allocation of ADSP or AGUB is made by allocating the redetermined ADSP or AGUB amount under the rules of § 1.338–6. If the allocation of the redetermined ADSP or AGUB amount under § 1.338–6 to a given asset is different from the original allocation to it, the difference is added

to or subtracted from the original allocation to the asset, as appropriate. Amounts allocable to an acquisition date asset (or with respect to a disposed-of acquisition date asset) are subject to all the asset allocation rules (for example, the fair market value limitation in § 1.338–6(c)(1)) as if the redetermined ADSP or AGUB were the ADSP or AGUB on the acquisition date.

(c) *Special rules for ADSP*—(1) *Increases or decreases in deemed sale gain taxable notwithstanding old target ceases to exist.* To the extent general principles of tax law would require a seller in an actual asset sale to account for events relating to the sale that occur after the sale date, target must make such an accounting. Target is not precluded from realizing additional deemed sale gain because the target is treated as a new corporation after the acquisition date.

(2) *Procedure for transactions in which section 338(h)(10) is not elected*—(i) *Deemed sale gain included in new target's return.* If an election under section 338(h)(10) is not made, any additional deemed sale gain of old target resulting from an increase or decrease in the ADSP is included in new target's income tax return for new target's taxable year in which the increase or decrease is taken into account. For example, if after the acquisition date there is an increase in the allocable ADSP of section 1245 property for which the recomputed basis (but not the adjusted basis) exceeds the portion of the ADSP allocable to that particular asset on the acquisition date, the additional gain is treated as ordinary income to the extent it does not exceed such excess amount. See paragraph (c)(2)(ii) of this section for the special treatment of old target's carryovers and carrybacks. Although included in new target's income tax return, the deemed sale gain is separately accounted for as an item of old target and may not be offset by income, gain, deduction, loss, credit, or other amount of new target. The amount of tax on income of old target resulting from an increase or decrease in the ADSP is determined as if such deemed sale gain had been recognized in old target's taxable year ending at the close of the acquisition date.

(ii) *Carryovers and carrybacks*—(A) *Loss carryovers to new target taxable years.* A net operating loss or net capital loss of old target may be carried forward to a taxable year of new target, under the principles of section 172 or 1212, as applicable, but is allowed as a deduction only to the extent of any recognized income of old target for such taxable year, as described in paragraph (c)(2)(i) of this section. For this purpose, however, taxable years of new target are not taken into account in applying the limitations in section 172(b)(1) or 1212(a)(1)(B) (or other similar limitations). In applying sections 172(b) and 1212(a)(1), only income, gain, loss, deduction, credit, and other amounts of old target are taken into account. Thus, if old target has an unexpired net operating loss at the close of its taxable year in which the deemed asset sale occurred that could be carried forward to a subsequent taxable year, such loss may be carried forward until it is absorbed by old target's income.

(B) *Loss carrybacks to taxable years of old target.* An ordinary loss or capital loss accounted for as a separate item of old target under paragraph (c)(2)(i) of this section may be carried back to a taxable year of old target under the principles of section 172 or 1212, as applicable. For this purpose, taxable years of new target are not taken into account in applying the limitations in section 172(b) or 1212(a) (or other similar limitations).

(C) *Credit carryovers and carrybacks.* The principles described in paragraphs (c)(2)(ii)(A) and (B) of this section apply to carryovers and carrybacks of amounts for purposes of determining the amount of a credit allowable under part IV, subchapter A, chapter 1 of the Internal Revenue Code. Thus, for example, credit carryovers of old target may offset only income tax attributable to items described in paragraph (c)(2)(i) of this section.

(3) *Procedure for transactions in which section 338(h)(10) is elected.* If an election under section 338(h)(10) is made, any additional deemed sale gain resulting from an increase or decrease in the ADSP is accounted for in determining the taxable income (or other amount) of the member of the selling consolidated group, the selling affiliate, or the S corporation shareholders to which such income, loss, or other amount is attributable for the taxable year in which such increase or decrease is taken into account.

(d) *Special rules for AGUB*—(1) *Effect of disposition or depreciation of acquisition date assets.* If an acquisition date asset has been disposed of, depreciated, amortized, or depleted by new target before an amount is added to the original allocation to the asset, the increased amount otherwise allocable to such asset is taken into account under general principles of tax law that apply when part of the cost of an asset not previously taken into account in basis is paid or incurred after the asset has been disposed of, depreciated, amortized, or depleted. A similar rule applies when an amount is subtracted from the original allocation to the asset. For purposes of the preceding sentence, an asset is considered to have been disposed of to the extent that its allocable portion of the decrease in AGUB would reduce its basis below zero.

(2) *Section 38 property.* Section 1.47–2(c) applies to a reduction in basis of section 38 property under this section.

(e) *Examples.* The following examples illustrate this section. Any amount described in the following examples is exclusive of interest. For rules characterizing deferred contingent payments as principal or interest, see §§ 1.483–4, 1.1274–2(g), and 1.1275–4(c). The examples are as follows:

Example 1. (i)(A) T's assets other than goodwill and going concern value, and their fair market values at the beginning of the day after the acquisition date, are as follows:

Asset class	Asset	Fair market value
V	Building	$100
V	Stock of X (not a target)	200
	Total	$300

(B) T has no liabilities other than a contingent liability that would not be taken into account under general principles of tax law in an asset sale between unrelated parties when the buyer assumed the liability or took property subject to it.

(ii)(A) On September 1, 2000, P purchases all of the outstanding stock of T for $270 and makes a section 338 election for T. The grossed-up basis of the T stock and T's AGUB are both $270. The AGUB is ratably allocated among T's Class V assets in proportion to their fair market values as follows:

Asset	Basis
Building ($270 × 100/300)	$90
Stock ($270 × 200/300)	180
Total	$270

(B) No amount is allocated to the Class VII assets. New T is a calendar year taxpayer. Assume that the X stock is a capital asset in the hands of new T.

(iii) On January 1, 2001, new T sells the X stock and uses the proceeds to purchase inventory.

(iv) Pursuant to events on June 30, 2002, the contingent liability of old T is at that time properly taken into account under general principles of tax law. The amount of the liability is $60.

(v) T's AGUB increases by $60 from $270 to $330. This $60 increase in AGUB is first allocated among T's acquisition date assets in accordance with the provisions of § 1.338–6. Because the redetermined AGUB for T ($330) exceeds the sum of the fair market values at the beginning of the day after the acquisition date of the Class V acquisition date assets

($300), AGUB allocated to those assets is limited to those fair market values under § 1.338–6(c)(1). As there are no Class VI assets, the remaining AGUB of $30 is allocated to goodwill and going concern value (Class VII assets). The amount of increase in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Building	$90	$100	$10
X Stock	180	200	20
Goodwill and going concern value	0	30	30
Total	$270	$330	$60

(vi) Since the X stock was disposed of before the contingent liability was properly taken into account for tax purposes, no amount of the increase in AGUB attributable to such stock may be allocated to any T asset. Rather, such amount ($20) is allowed as a capital loss to T for the taxable year 2002 under the principles of *Arrowsmith* v. *Commissioner*, 344 U.S. 6 (1952). In addition, the $10 increase in AGUB allocated to the building and the $30 increase in AGUB allocated to the goodwill and going concern value are treated as basis redeterminations in 2002. See paragraph (d)(1) of this section.

Example 2. (i) On January 1, 2002, P purchases all of the outstanding stock of T and makes a section 338 election for T. Assume that ADSP and AGUB of T are both $500 and are allocated among T's acquisition date assets as follows:

Asset class	Asset	Basis
V	Machinery	$150
V	Land	250
VII	Goodwill and going concern value.	100
Total		$500

(ii) On September 30, 2004, P filed a claim against the selling shareholders of T in a court of appropriate jurisdiction alleging fraud in the sale of the T stock.

(iii) On January 1, 2007, the former shareholders refund $140 of the purchase price to P in a settlement of the lawsuit. Assume that, under general principles of tax law, both the seller and the buyer properly take into account such refund when paid. Assume also that the refund has no effect on the tax liability for the deemed sale gain. This refund results in a decrease of T's ADSP and AGUB of $140, from $500 to $360.

(iv) The redetermined ADSP and AGUB of $360 is allocated among T's acquisition date assets. Because ADSP and AGUB do not exceed the fair market value of the Class V assets, the ADSP and AGUB amounts are allocated to the Class V assets in proportion to their fair market values at the beginning of the day after the acquisition date. Thus, $135 ($150 ($360/($150 + $250))) is allocated to the machinery and $225 ($250 ($360/($150 + $250))) is allocated to the land. Accordingly, the basis of the machinery is reduced by $15 ($150 original allocation $135 redetermined allocation) and the basis of the land is reduced by $25 ($250 original allocation − $225 redetermined allocation). No amount is allocated to the Class VII assets. Accordingly, the basis of the goodwill and going concern value is reduced by $100 ($100 original allocation − $0 redetermined allocation).

(v) Assume that, as a result of deductions under section 168, the adjusted basis of the machinery immediately before the decrease in AGUB is zero. The machinery is treated as if it were disposed of before the decrease is taken into account. In 2007, T recognizes income of $15, the character of which is determined under the principles of *Arrowsmith* v. *Commissioner*, 344 U.S. 6 (1952), and the tax benefit rule. No adjustment to the basis of T's assets is made for any tax paid on this amount. Assume also that, as a result of amortization deductions, the adjusted basis of the goodwill and going concern value immediately before the decrease in AGUB is $40. A similar adjustment to income is made in 2007 with respect to the $60 of previously amortized goodwill and going concern value.

(vi) In summary, the basis of T's acquisition date assets, as of January 1, 2007, is as follows:

Asset	Basis
Machinery	$0
Land	225
Goodwill and going concern value	0

Example 3. (i) Assume that the facts are the same as § 1.338–6(d) *Example 2* except that the recently purchased stock is acquired for $1,600 plus additional payments that are contingent upon T's future earnings. Assume that, under general principles of tax law, such later payments are properly taken into account when paid. Thus, T's AGUB, determined as of the beginning of the day after the acquisition date (after reduction by T's cash of $200), is $2,500 and is allocated among T's acquisition date assets under § 1.338–6(c)(3)(iii) as follows:

Class	Asset	Final allocation
I	Cash	$200
II	Portfolio of actively traded securities.	*268
III	Accounts receivable	536
IV	Inventory	268
V	Building	714
V	Land	178
V	Investment in T1	402
VII	Goodwill and going concern value.	134
	Total	$2,700

*All numbers rounded for convenience.

(ii) After the close of new target's first taxable year, P pays an additional $200 for its recently purchased T stock. Assume that the additional consideration paid would not increase T's tax liability for the deemed sale gain.

(iii) T's AGUB increases by $200, from $2,700 to $2,900. This $200 increase in AGUB is accounted for in accordance with the provisions of § 1.338–6(c)(3)(iii).

(iv) The hypothetical purchase price of the T stock is redetermined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5(c) ($1,800 × (1 − .2)/.8)	$1,800
Basis of nonrecently purchased stock as if the gain recognition election under § 1.338–5(d)(2) had been made ($1,800 × .2/(1 − .2))	450
Liabilities	1,000
Total	$3,250

(v) Since the redetermined hypothetical purchase price ($3,250) exceeds the redetermined AGUB ($2,900) and no gain recognition election was made under section 338(b)(3), the rules of § 1.338–6(c)(3)(iii) are reapplied using the redetermined hypothetical purchase price and the redetermined AGUB.

(vi) First, an AGUB amount equal to the redetermined hypothetical purchase price ($3,250) is allocated among the assets under the general rules of § 1.338 6. The allocation is set forth in the column below entitled *Hypothetical Allocation*. Next, the allocation to each asset in Class II through Class VII is multiplied by a fraction with a numerator equal to the actual redetermined AGUB reduced by the amount of Class I assets ($2,900–$200 = $2,700) and a denominator equal to the redetermined hypothetical purchase price reduced by the amount of Class I assets ($3,250–$200 = $3,050), or 2,700/3,050. This produces the *Final Allocation*:

Class	Asset	Hypothetical allocation	Final allocation
I	Cash	$200	$200
II	Portfolio of actively traded securities	300	*266
III	Accounts receivable	600	531
IV	Inventory	300	266
V	Building	800	708
V	Land	200	177
V	Investment in T1	450	398
VII	Goodwill and going concern value	400	354
	Total	$3,250	$2900

*All numbers rounded for convenience.

(vii) As illustrated by this example, reapplying § 1.338–6(c)(3) results in a basis increase for some assets and a basis decrease for other assets. The amount of redetermined AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original (c)(3) allocation	Redetermined (c)(3) allocation	Increase (decrease)
Portfolio of actively traded securities	$268	$266	$(2)
Accounts receivable	536	531	(5)
Inventory	268	266	(2)
Building	714	708	(6)
Land	178	177	(1)
Investment in T1	402	398	(4)
Goodwill and going concern value	134	354	220
Total	$2,500	$2,700	$200

Example 4. (i) On January 1, 2001, P purchases all of the outstanding T stock and makes a section 338 election for T. P pays $700 of cash and promises also to pay a maximum $300 of contingent consideration at various times in the future. Assume that, under general principles of tax law, such later payments are properly taken into account by P when paid. Assume also, however, that the current fair market value of the contingent payments is reasonably ascertainable. The fair market value of T's assets (other than goodwill and going concern value) as of the beginning of the following day is as follows:

Asset class	Assets	Fair market value
V	Equipment	$200
V	Non-actively traded securities.	100
V	Building	500
	Total	$800

(ii) T has no liabilities. The AGUB is $700. In calculating ADSP, assume that, under § 1.1001–1, the current amount realized attributable to the contingent consideration is $200. ADSP is therefore $900 ($700 cash plus $200).

(iii) (A) The AGUB of $700 is ratably allocated among T's Class V acquisition date assets in proportion to their fair market values as follows:

Asset	Basis
Equipment ($700 × 200/800)	$175.00
Non-actively traded securities ($700 × 100/800)	87.50
Building ($700 × 500/800)	437.50
Total	$700.00

(B) No amount is allocated to goodwill or going concern value.

(iv) (A) The ADSP of $900 is ratably allocated among T's Class V acquisition date assets in proportion to their fair market values as follows:

Asset	Basis
Equipment	$200
Non-actively traded securities	100
Building	500
Total	$800

(B) The remaining ADSP, $100, is allocated to goodwill and going concern value (Class VII).

(v) P and T file a consolidated return for 2001 and each following year with P as the common parent of the affiliated group.

(vi) In 2004, a contingent amount of $120 is paid by P. Assume that, under general principles of tax law, the payment is properly taken into account by P at the time made. In 2004, there is an increase in T's AGUB of $120. The amount of the increase allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Equipment	$175.00	$200.00	$25.00
Land	87.50	100.00	12.50
Building	437.50	500.00	62.50
Goodwill and going concern value	0.00	20.00	20.00
Total	$700.00	$820.00	$120.00

Par. 6. Section 1.338 10 is added to read as follows:

§ 1.338–10 Filing of returns.

(a) *Returns including tax liability from deemed asset sale*—(1) *In general.* Except as provided in paragraphs (a)(2) and (3) of this section, any deemed sale gain is reported on the final return of old target filed for old target's taxable year that ends at the close of the acquisition date. If old target is the common parent of an affiliated group, the final return may be a consolidated return (any such consolidated return must also include any deemed sale gain of any members of the consolidated group that are acquired by the purchasing corporation on the same acquisition date as old target).

(2) *Old target's final taxable year otherwise included in consolidated return of selling group*—(i) *General rule.* If the selling group files a consolidated return for the period that includes the acquisition date, old target is disaffiliated from that group immediately before the deemed asset sale and must file a deemed sale return separate from the group that includes only the deemed sale gain and the carryover items specified in paragraph (a)(2)(iii) of this section. The deemed asset sale occurs at the close of the acquisition date and is the last transaction of old target. Any transactions of old target occurring on the acquisition date other than the deemed asset sale are included in the selling group's consolidated return. A deemed sale return includes a combined deemed sale return as defined in paragraph (a)(4) of this section.

(ii) *Separate taxable year.* The deemed asset sale included in the deemed sale return under this paragraph (a)(2) occurs in a separate taxable year, except that old target's taxable year of the sale and the consolidated year of the selling group that includes the acquisition date are treated as the same year for purposes of determining the number of years in a carryover or carryback period.

(iii) *Carryover and carryback of tax attributes.* Target's attributes may be carried over to, and carried back from, the deemed sale return under the rules applicable to a corporation that ceases to be a member of a consolidated group.

(iv) *Old target is a component member of purchasing corporation's controlled group.* For purposes of its deemed sale return, target is a component member of the controlled group of corporations including the purchasing corporation unless target is treated as an excluded member under section 1563(b)(2).

(3) *Old target is an S corporation.* If target is an S corporation for the period that ends on the day before the acquisition date, old target must file a deemed sale return as a C corporation. For this purpose, the principles of paragraph (a)(2) of this section apply. This paragraph (a)(3) does not apply if an election under section 338(h)(10) is made for the S corporation.

(4) *Combined deemed sale return*—(i) *General rule.* Under section 338(h)(15), a combined deemed sale return (combined return) may be filed for all targets from a single selling consolidated group (as defined in § 1.338(h)(10)–1(b)(3)) that are acquired by the purchasing corporation on the same acquisition date and that otherwise would be required to file separate deemed sale returns. The combined return must include all such targets. For example, T and T1 may be included in a combined return if—

(A) T and T1 are directly owned subsidiaries of S;

(B) S is the common parent of a consolidated group; and

(C) P makes qualified stock purchases of T and T1 on the same acquisition date.

(ii) *Gain and loss offsets.* Gains and losses recognized on the deemed asset sales by targets included in a combined return are treated as the gains and losses of a single target. In addition, loss carryovers of a target that were not subject to the separate return limitation year restrictions (SRLY restrictions) of the consolidated return regulations while that target was a member of the selling consolidated group may be applied without limitation to the gains of other targets included in the combined return. If, however, a target has loss carryovers that were subject to the SRLY restrictions while that target was a member of the selling consolidated group, the use of those losses in the combined return continues to be subject to those restrictions, applied in the same manner as if the combined return were a consolidated return. A similar rule applies, when appropriate, to other tax attributes.

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed asset sales of all targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in § 1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include an attachment prominently identified as an ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15). The attachment must—

(A) Contain the name, address, and employer identification number of each target required to be included in the combined return;

(B) Contain the following declaration (or a substantially similar declaration): EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN;

(C) For each target, be signed by a person who states under penalties of perjury that he or she is authorized to act on behalf of such target.

(iv) *Consequences of filing a combined return.* Each target included in a combined return is severally liable for any tax associated with the combined return. See § 1.338–1(b)(3).

(5) *Deemed sale excluded from purchasing corporation's consolidated return.* Old target may not be considered a member of any affiliated group that includes the purchasing corporation with respect to its deemed asset sale.

(6) *Due date for old target's final return*—(i) *General rule.* Old target's final return is generally due on the 15th day of the third calendar month following the month in which the acquisition date occurs. See section 6072 (time for filing income tax returns).

(ii) *Application of § 1.1502–76(c)*—(A) *In general.* Section 1.1502–76(c) applies to old target's final return if old target was a member of a selling group that did not file consolidated returns for the taxable year of the common parent that precedes the year that includes old target's acquisition date. If the selling group has not filed a consolidated return that includes old target's taxable period that ends on the acquisition date, target may, on or before the final return due date (including extensions), either—

(*1*) File a deemed sale return on the assumption that the selling group will file the consolidated return; or

(*2*) File a return for so much of old target's taxable period as ends at the close of the acquisition date on the assumption that the consolidated return will not be filed.

(B) *Deemed extension.* For purposes of applying § 1.1502–76(c)(2), an extension of time to file old target's final return is considered to be in effect until

the last date for making the election under section 338.

(C) *Erroneous filing of deemed sale return.* If, under this paragraph (a)(6)(ii), target files a deemed sale return but the selling group does not file a consolidated return, target must file a substituted return for old target not later than the due date (including extensions) for the return of the common parent with which old target would have been included in the consolidated return. The substituted return is for so much of old target's taxable year as ends at the close of the acquisition date. Under § 1.1502–76(c)(2), the deemed sale return is not considered a return for purposes of section 6011 (relating to the general requirement of filing a return) if a substituted return must be filed.

(D) *Erroneous filing of return for regular tax year.* If, under this paragraph (a)(6)(ii), target files a return for so much of old target's regular taxable year as ends at the close of the acquisition date but the selling group files a consolidated return, target must file an amended return for old target not later than the due date (including extensions) for the selling group's consolidated return. (The amended return is a deemed sale return.)

(E) *Last date for payment of tax.* If either a substituted or amended final return of old target is filed under this paragraph (a)(6)(ii), the last date prescribed for payment of tax is the final return due date (as defined in paragraph (a)(6)(i) of this section).

(7) *Examples.* The following examples illustrate this paragraph (a):

Example 1. (i) S is the common parent of a consolidated group that includes T. The S group files calendar year consolidated returns. At the close of June 30 of Year 1, P makes a qualified stock purchase of T from S. P makes a section 338 election for T, and T's deemed asset sale occurs as of the close of T's acquisition date (June 30).

(ii) T is considered disaffiliated for purposes of reporting the deemed sale gain. Accordingly, T is included in the S group's consolidated return through T's acquisition date except that the tax liability for the deemed sale gain is reported in a separate deemed sale return of T. Provided that T is not treated as an excluded member under section 1563(b)(2), T is a component member of P's controlled group for the taxable year of the deemed asset sale, and the taxable income bracket amounts available in calculating tax on the deemed sale return must be limited accordingly.

(iii) If P purchased the stock of T at 10 a.m. on June 30 of Year 1, the results would be the same. See paragraph (a)(2)(i) of this section.

Example 2. The facts are the same as in *Example 1*, except that the S group does not file consolidated returns. T must file a separate return for its taxable year ending on June 30 of Year 1, which return includes the deemed asset sale.

(b) *Waiver*—(1) *Certain additions to tax.* An addition to tax or additional amount (addition) under subchapter A of chapter 68 of the Internal Revenue Code arising on or before the last day for making the election under section 338 because of circumstances that would not exist but for an election under section 338, is waived if—

(i) Under the particular statute the addition is excusable upon a showing of reasonable cause; and

(ii) Corrective action is taken on or before the last day.

(2) *Notification.* The Internal Revenue Service should be notified at the time of correction (e.g., by attaching a statement to a return that constitutes corrective action) that the waiver rule of this paragraph (b) is being asserted.

(3) *Elections or other actions required to be specified on a timely filed return*—(i) *In general.* If paragraph (b)(1) of this section applies or would apply if there were an underpayment, any election or other action that must be specified on a timely filed return for the taxable period covered by the late filed return described in paragraph (b)(1) of this section is considered timely if specified on a late-filed return filed on or before the last day for making the election under section 338.

(ii) *New target in purchasing corporation's consolidated return.* If new target is includible for its first taxable year in a consolidated return filed by the affiliated group of which the purchasing corporation is a member on or before the last day for making the election under section 338, any election or other action that must be specified in a timely filed return for new target's first taxable year (but which is not specified in the consolidated return) is considered timely if specified in an amended return filed on or before such last day, at the place where the consolidated return was filed.

(4) *Examples.* The following examples illustrate this paragraph (b):

Example 1. T is an unaffiliated corporation with a tax year ending March 31. At the close of September 20 of Year 1, P makes a qualified stock purchase of T. P does not join in filing a consolidated return. P makes a section 338 election for T on or before June 15 of Year 2, which causes T's taxable year to end as of the close of September 20 of Year 1. An income tax return for T's taxable period ending on September 20 of Year 1 was due on December 15 of Year 1. Additions to tax for failure to file a return and to pay tax shown on a return will not be imposed if T's return is filed and the tax paid on or before June 15 of Year 2. (This waiver applies even if the acquisition date coincides with the last day of T's former taxable year, i.e., March 31 of Year 2.) Interest on any underpayment of tax for old T's short taxable year ending September 20 of Year 1 runs from December 15 of Year 1. A statement indicating that the waiver rule of this paragraph is being asserted should be attached to T's return.

Example 2. Assume the same facts as in *Example 1*. Assume further that new T adopts the calendar year by filing, on or before June 15 of Year 2, its first return (for the period beginning on September 21 of Year 1 and ending on December 31 of Year 1) indicating that a calendar year is chosen. See § 1.338–1(b)(1).Any additions to tax or amounts described in this paragraph (b) that arise because of the late filing of a return for the period ending on December 31 of Year 1 are waived, because they are based on circumstances that would not exist but for the section 338 election. Notwithstanding this waiver, however, the return is still considered due March 15 of Year 2, and interest on any underpayment runs from that date.

Example 3. Assume the same facts as in *Example 2*, except that T's former taxable year ends on October 31. Although prior to the election old T had a return due on January 15 of Year 2 for its year ending October 31 of Year 1, that return need not be filed because a timely election under section 338 was made. Instead, old T must file a final return for the period ending on September 20 of Year 1, which is due on December 15 of Year 1.

§§ 1.338(b)–1, 1.338(b)–2T, and 1.338(b)–3T [Removed]

Par. 7. Sections 1.338(b)–1, 1.338(b)–2T, and 1.338(b)–3T, are removed.

Par. 8. Section 1.338(h)(10)–1 is revised to read as follows.

§ 1.338(h)(10)–1 Deemed asset sale and liquidation.

(a) *Scope.* This section prescribes rules for qualification for a section 338(h)(10) election and for making a section 338(h)(10) election. This section also prescribes the consequences of such election. The rules of this section are in addition to the rules of §§ 1.338–0 through 1.338–10 and 1.338(i)–1 and, in appropriate cases, apply instead of the rules of §§ 1.338–0 through 1.338–10 and 1.338(i)–1.

(b) *Definitions*—(1) *Consolidated target.* A *consolidated target* is a target that is a member of a consolidated group within the meaning of § 1.1502–1(h) on the acquisition date and is not the common parent of the group on that date.

(2) *Selling consolidated group.* A *selling consolidated group* is the consolidated group of which the consolidated target is a member on the acquisition date.

(3) *Selling affiliate; affiliated target.* A *selling affiliate* is a domestic corporation that owns on the acquisition date an amount of stock in a domestic target, which amount of stock is

described in section 1504(a)(2), and does not join in filing a consolidated return with the target. In such case, the target is an *affiliated target*.

(4) *S corporation target.* An *S corporation target* is a target that is an S corporation immediately before the acquisition date.

(5) *S corporation shareholders.* S *corporation shareholders* are the S corporation target's shareholders. Unless otherwise indicated, a reference to S corporation shareholders refers both to S corporation shareholders who do and those who do not sell their target stock.

(6) *Liquidation.* Any reference in this section to a *liquidation* is treated as a reference to the transfer described in paragraph (d)(4) of this section notwithstanding its ultimate characterization for Federal income tax purposes.

(c) *Section 338(h)(10) election*—(1) *In general.* A section 338(h)(10) election may be made for T if P acquires stock meeting the requirements of section 1504(a)(2) from a selling consolidated group, a selling affiliate, or the S corporation shareholders in a qualified stock purchase.

(2) *Simultaneous joint election requirement.* A section 338(h)(10) election is made jointly by P and the selling consolidated group (or the selling affiliate or the S corporation shareholders) on Form 8023 in accordance with the instructions to the form. S corporation shareholders who do not sell their stock must also consent to the election. The section 338(h)(10) election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(3) *Irrevocability.* A section 338(h)(10) election is irrevocable. If a section 338(h)(10) election is made for T, a section 338 election is deemed made for T.

(4) *Effect of invalid election.* If a section 338(h)(10) election for T is not valid, the section 338 election for T is also not valid.

(d) *Certain consequences of section 338(h)(10) election.* For purposes of subtitle A of the Internal Revenue Code (except as provided in § 1.338–1(b)(2)), the consequences to the parties of making a section 338(h)(10) election for T are as follows:

(1) *P.* P is automatically deemed to have made a gain recognition election for its nonrecently purchased T stock, if any. The effect of a gain recognition election includes a taxable deemed sale by P on the acquisition date of any nonrecently purchased target stock. See § 1.338–5(d).

(2) *New T.* The AGUB for new T's assets is determined under § 1.338–5 and is allocated among the acquisition date assets under §§ 1.338–6 and 1.338–7. Notwithstanding paragraph (d)(4) of this section (deemed liquidation of old T), new T remains liable for the tax liabilities of old T (including the tax liability for the deemed sale gain). For example, new T remains liable for the tax liabilities of the members of any consolidated group that are attributable to taxable years in which those corporations and old T joined in the same consolidated return. See § 1.1502–6(a).

(3) *Old T—deemed sale*—(i) *In general.* Old T is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the assumption of or taking subject to liabilities in a single transaction at the close of the acquisition date (but before the deemed liquidation). See § 1.338–1(a) regarding the tax characterization of the deemed asset sale. ADSP for old T is determined under § 1.338–4 and allocated among the acquisition date assets under §§ 1.338–6 and 1.338–7. Old T realizes the deemed sale gain from the deemed asset sale before the close of the acquisition date while old T is a member of the selling consolidated group (or owned by the selling affiliate or owned by the S corporation shareholders). If T is an affiliated target, or an S corporation target, the principles of §§ 1.338–2(c)(10) and 1.338–10(a)(1), (5), and (6)(i) apply to the return on which the deemed sale gain is reported. When T is an S corporation target, T's S election continues in effect through the close of the acquisition date (including the time of the deemed asset sale and the deemed liquidation) notwithstanding section 1362(d)(2)(B). Also, when T is an S corporation target, any direct and indirect subsidiaries of T which T has elected to treat as qualified subchapter S subsidiaries under section 1361(b)(3) remain qualified subchapter S subsidiaries through the close of the acquisition date. No similar rule applies when a qualified subchapter S subsidiary, as opposed to the S corporation that is its owner, is the target the stock of which is actually purchased.

(ii) *Tiered targets.* In the case of parent-subsidiary chains of corporations making elections under section 338(h)(10), the deemed asset sale of a parent corporation is considered to precede that of its subsidiary. See § 1.338–3(4)(i).

(4) *Old T and selling consolidated group, selling affiliate, or S corporation shareholders—deemed liquidation; tax characterization—(i) In general.* Old T is treated as if, before the close of the acquisition date, after the deemed asset sale in paragraph (d)(3) of this section, and while old T is a member of the selling consolidated group (or owned by the selling affiliate or owned by the S corporation shareholders), it transferred all of its assets to members of the selling consolidated group, the selling affiliate, or S corporation shareholders and ceased to exist. The transfer from old T is characterized for Federal income tax purposes in the same manner as if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur. For example, the transfer may be treated as a distribution in pursuance of a plan of reorganization, a distribution in complete cancellation or redemption of all its stock, one of a series of distributions in complete cancellation or redemption of all its stock in accordance with a plan of liquidation, or part of a circular flow of cash. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 336 or 337 applies.

(ii) *Tiered targets.* In the case of parent-subsidiary chains of corporations making elections under section 338(h)(10), the deemed liquidation of a subsidiary corporation is considered to precede the deemed liquidation of its parent.

(5) *Selling consolidated group, selling affiliate, or S corporation shareholders—(i) In general.* If T is an S corporation target, S corporation shareholders (whether or not they sell their stock) take their pro rata share of the deemed sale gain into account under section 1366 and increase or decrease their basis in T stock under section 1367. Members of the selling consolidated group, the selling affiliate, or S corporation shareholders are treated as if, after the deemed asset sale in paragraph (d)(3) of this section and before the close of the acquisition date, they received the assets transferred by old T in the transaction described in paragraph (d)(4)(i) of this section. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 331 or 332 applies.

(ii) *Basis and holding period of T stock not acquired.* A member of the selling consolidated group (or the selling affiliate or an S corporation shareholder) retaining T stock is treated as acquiring the stock so retained on the day after the acquisition date for its fair market value. The holding period for the retained stock starts on the day after the acquisition date. For purposes of this

paragraph, the fair market value of all of the T stock equals the grossed-up amount realized on the sale to P of P's recently purchased target stock. See § 1.338–4(c).

(iii) *T stock sale.* Members of the selling consolidated group (or the selling affiliate or S corporation shareholders) recognize no gain or loss on the sale or exchange of T stock included in the qualified stock purchase (although they may recognize gain or loss on the T stock in the deemed liquidation).

(6) *Nonselling minority shareholders other than nonselling S corporation shareholders—(i) In general.* This paragraph (d)(6) describes the treatment of shareholders of old T other than the following: members of the selling consolidated group, the selling affiliate, S corporation shareholders (whether or not they sell their stock), and P. For a description of the treatment of S corporation shareholders, see paragraph (d)(5) of this section. A shareholder to which this paragraph (d)(6) applies is called a minority shareholder.

(ii) *T stock sale.* A minority shareholder recognizes gain or loss on the shareholder's sale or exchange of T stock included in the qualified stock purchase.

(iii) *T stock not acquired.* A minority shareholder does not recognize gain or loss under this section with respect to shares of T stock retained by the shareholder. The shareholder's basis and holding period for that T stock is not affected by the section 338(h)(10) election.

(7) *Consolidated return of selling consolidated group.* If P acquires T in a qualified stock purchase from a selling consolidated group

(i) The selling consolidated group must file a consolidated return for the taxable period that includes the acquisition date;

(ii) A consolidated return for the selling consolidated group for that period may not be withdrawn on or after the day that a section 338(h)(10) election is made for T; and

(iii) Permission to discontinue filing consolidated returns cannot be granted for, and cannot apply to, that period or any of the immediately preceding taxable periods during which consolidated returns continuously have been filed.

(8) *Availability of the section 453 installment method.* Solely for purposes of applying sections 453, 453A, and 453B, and the regulations thereunder (the installment method) to determine the consequences to old T in the deemed asset sale and to old T (and its shareholders, if relevant) in the deemed liquidation, the rules in paragraphs (d)(1) through (7) of this section are modified as follows:

(i) *In deemed asset sale.* Old T is treated as receiving in the deemed asset sale new T installment obligations, the terms of which are identical (except as to the obligor) to P installment obligations issued in exchange for recently purchased stock of T. Old T is treated as receiving in cash all other consideration in the deemed asset sale other than the assumption of, or taking subject to, old T liabilities. For example, old T is treated as receiving in cash any amounts attributable to the grossing-up of amount realized under § 1.338–4(c). The amount realized for recently purchased stock taken into account in determining ADSP is adjusted (and, thus, ADSP is redetermined) to reflect the amounts paid under an installment obligation for the stock when the total payments under the installment obligation are greater or less than the amount realized.

(ii) *In deemed liquidation.* Old T is treated as distributing in the deemed liquidation the new T installment obligations that it is treated as receiving in the deemed asset sale. The members of the selling consolidated group, the selling affiliate, or the S corporation shareholders are treated as receiving in the deemed liquidation the new T installment obligations that correspond to the P installment obligations they actually received individually in exchange for their recently purchased stock. The new T installment obligations may be recharacterized under other rules. See for example § 1.453–11(a)(2) which, in certain circumstances, treats the new T installment obligations deemed distributed by old T as if they were issued by new T in exchange for the members' of the selling consolidated group, the selling affiliate's, or the S corporation shareholders' stock in old T. The members of the selling consolidated group, the selling affiliate, or the S corporation shareholders are treated as receiving all other consideration in the deemed liquidation in cash.

(9) *Treatment consistent with an actual asset sale.* Old T may not assert any provision in section 338(h)(10) or this section to obtain a tax result that would not be obtained if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur.

(e) *Examples.* The following examples illustrate this section:

Example 1. (i) S1 owns all of the T stock and T owns all of the stock of T1 and T2. S1 is the common parent of a consolidated group that includes T, T1, and T2. P makes a qualified stock purchase of all of the T stock from S1. S1 joins with P in making a section 338(h)(10) election for T and for the deemed purchase of T1. A section 338 election is not made for T2.

(ii) S1 does not recognize gain or loss on the sale of the T stock and T does not recognize gain or loss on the sale of the T1 stock because section 338(h)(10) elections are made for T and T1. Thus, for example, gain or loss realized on the sale of the T or T1 stock is not taken into account in earnings and profits. However, because a section 338 election is not made for T2, T must recognize any gain or loss realized on the deemed sale of the T2 stock. See § 1.338–4(h).

(iii) The results would be the same if S1, T, T1, and T2 are not members of any consolidated group, because S1 and T are selling affiliates.

Example 2. (i) S and T are solvent corporations. S owns all of the outstanding stock of T. S and P agree to undertake the following transaction: T will distribute half its assets to S, and S will assume half of T's liabilities. Then, P will purchase the stock of T from S. S and P will jointly make a section 338(h)(10) election with respect to the sale of T. The corporations then complete the transaction as agreed.

(ii) Under section 338(a), the assets present in T at the close of the acquisition date are deemed sold by old T to new T. Under paragraph (d)(4) of this section, the transactions described in paragraph (d) of this section are treated in the same manner as if they had actually occurred. Because S and P had agreed that, after T's actual distribution to S of part of its assets, S would sell T to P pursuant to an election under section 338(h)(10), and because paragraph (d)(4) of this section deems T subsequently to have transferred all its assets to its shareholder, T is deemed to have adopted a plan of complete liquidation under section 332. T's actual transfer of assets to S is treated as a distribution pursuant to that plan of complete liquidation.

Example 3. (i) S1 owns all of the outstanding stock of both T and S2. All three are corporations. S1 and P agree to undertake the following transaction. T will transfer substantially all of its assets and liabilities to S2, with S2 issuing no stock in exchange therefor, and retaining its other assets and liabilities. Then, P will purchase the stock of T from S1. S1 and P will jointly make a section 338(h)(10) election with respect to the sale of T. The corporations then complete the transaction as agreed.

(ii) Under section 338(a), the assets present in T at the close of the acquisition date are deemed sold by old T to new T. Under paragraph (d)(4) of this section, the transactions described in this section are treated in the same manner as if they had actually occurred. Because old T transferred substantially all of its assets to S2, and is deemed to have distributed all its remaining assets and gone out of existence, the transfer of assets to S2, taking into account the related transfers, deemed and actual, qualifies as a

reorganization under section 368(a)(1)(D). Section 361(c)(1) and not section 332 applies to T's deemed liquidation.

Example 4. (i) T owns two assets: an actively traded security (Class II) with a fair market value of $100 and an adjusted basis of $100, and inventory (Class IV) with a fair market value of $100 and an adjusted basis of $100. T has no liabilities. S is negotiating to sell all the stock in T to P for $100 cash and contingent consideration. Assume that under generally applicable tax accounting rules, P's adjusted basis in the T stock immediately after the purchase would be $100, because the contingent consideration is not taken into account. Thus, under the rules of § 1.338–5, AGUB would be $100. Under the allocation rules of § 1.338–6, the entire $100 would be allocated to the Class II asset, the actively traded security, and no amount would be allocated to the inventory. P, however, plans immediately to cause T to sell the inventory, but not the actively traded security, so it requests that, prior to the stock sale, S cause T to create a new subsidiary, Newco, and contribute the actively traded security to the capital of Newco. Because the stock in Newco, which would not be actively traded, is a Class V asset, under the rules of § 1.338–6 $100 of AGUB would be allocated to the inventory and no amount of AGUB would be allocated to the Newco stock. Newco's own AGUB, $0 under the rules of § 1.338–5, would be allocated to the actively traded security. When P subsequently causes T to sell the inventory, T would realize no gain or loss instead of realizing gain of $100.

(ii) Assume that, if the T stock had not itself been sold but T had instead sold both its inventory and the Newco stock to P, T would for tax purposes be deemed instead to have sold both its inventory and actively traded security directly to P, with P deemed then to have created Newco and contributed the actively traded security to the capital of Newco. Section 338, if elected, generally recharacterizes a stock sale as a deemed sale of assets. The tax results of the deemed sale of assets should, where possible, be like those of an actual asset sale. Hence, the deemed sale of assets under section 338(h)(10) should be treated as one of the inventory and actively traded security themselves, not of the inventory and Newco stock. That is the substance of the transaction. The anti-abuse rule of § 1.338–1(c) does not apply, because the substance of the deemed sale of assets is a sale of the inventory and the actively traded security themselves, not of the inventory and the Newco stock. Otherwise, the anti-abuse rule might apply.

Example 5. (i) T, a member of a selling consolidated group, has only one class of stock, all of which is owned by S1. On March 1 of Year 2, S1 sells its T stock to P for $80,000, and joins with P in making a section 338(h)(10) election for T. There are no selling costs or acquisition costs. On March 1 of Year 2, T owns land with a $50,000 basis and $75,000 fair market value and equipment with a $30,000 adjusted basis, $70,000 recomputed basis, and $60,000 fair market value. T also has a $40,000 liability. S1 pays old T's allocable share of the selling group's consolidated tax liability for Year 2 including the tax liability for the deemed sale gain (a total of $13,600).

(ii) ADSP of $120,000 ($80,000 + $40,000 + 0) is allocated to each asset as follows:

Assets	Basis	FMV	Fraction	Allocable ADSP
Land	$50,000	$75,000	5/9	$66,667
Equipment	30,000	60,000	4/9	53,333
Total	$80,000	$135,000	1	$120,000

(iii) Under paragraph (d)(3) of this section, old T has gain on the deemed sale of $40,000 (consisting of $16,667 of capital gain and $23,333 of ordinary income).

(iv) Under paragraph (d)(5)(iii) of this section, S1 recognizes no gain or loss upon its sale of the old T stock to P. S1 also recognizes no gain or loss upon the deemed liquidation of T. See paragraph (d)(4) of this section and section 332.

(v) P's basis in new T stock is P's cost for the stock, $80,000. See section 1012.

(vi) Under § 1.338–5, the AGUB for new T is $120,000, i.e., P's cost for the old T stock ($80,000) plus T's liability ($40,000). This AGUB is allocated as basis among the new T assets under §§ 1.338–6 and 1.338–7.

Example 6. (i) The facts are the same as in *Example 5*, except that S1 sells 80 percent of the old T stock to P for $64,000, rather than 100 percent of the old T stock for $80,000.

(ii) The consequences to P, T, and S1 are the same as in *Example 5*, except that:

(A) P's basis for its 80-percent interest in the new T stock is P's $64,000 cost for the stock. See section 1012.

(B) Under § 1.338–5, the AGUB for new T is $120,000 (i.e., $64,000/.8 + $40,000 + $0).

(C) Under paragraph (d)(4) of this section, S1 recognizes no gain or loss with respect to the retained stock in T. See section 332.

(D) Under paragraph (d)(5)(ii) of this section, the basis of the T stock retained by S1 is $16,000 (i.e., $120,000 − $40,000 (the ADSP amount for the old T assets over the sum of new T's liabilities immediately after the acquisition date) × .20 (the proportion of T stock retained by S1)).

Example 7. (i) The facts are the same as in *Example 6*, except that K, a shareholder unrelated to T or P, owns the 20 percent of the T stock that is not acquired by P in the qualified stock purchase. K's basis in its T stock is $5,000.

(ii) The consequences to P, T, and S1 are the same as in *Example 6*.

(iii) Under paragraph (d)(6)(iii) of this section, K recognizes no gain or loss, and K's basis in its T stock remains at $5,000.

Example 8. (i) The facts are the same as in *Example 5*, except that the equipment is held by T1, a wholly-owned subsidiary of T, and a section 338(h)(10) election is also made for T1. The T1 stock has a fair market value of $60,000. T1 has no assets other than the equipment and no liabilities. S1 pays old T's and old T1's allocable shares of the selling group's consolidated tax liability for Year 2 including the tax liability for T and T1's deemed sale gain.

(ii) ADSP for T is $120,000, allocated $66,667 to the land and $53,333 to the stock. Old T's deemed sale gain is $16,667 (the capital gain on its deemed sale of the land). Under paragraph (d)(5)(iii) of this section, old T does not recognize gain or loss on its deemed sale of the T1 stock. See section 332.

(iii) ADSP for T1 is $53,333 (i.e., $53,333 + $0 + $0). On the deemed sale of the equipment, T1 recognizes ordinary income of $23,333.

(iv) Under paragraph (d)(5)(iii) of this section, S1 does not recognize gain or loss upon its sale of the old T stock to P.

Example 9. (i) The facts are the same as in *Example 8*, except that P already owns 20 percent of the T stock, which is nonrecently purchased stock with a basis of $6,000, and that P purchases the remaining 80 percent of the T stock from S1 for $64,000.

(ii) The results are the same as in *Example 8*, except that under paragraph (d)(1) of this section and § 1.338–5(d), P is deemed to have made a gain recognition election for its nonrecently purchased T stock. As a result, P recognizes gain of $10,000 and its basis in the nonrecently purchased T stock is increased from $6,000 to $16,000. P's basis in all the T stock is $80,000 (i.e., $64,000 + $16,000). The computations are as follows:

(A) P's grossed-up basis for the recently purchased T stock is $64,000 (i.e., $64,000 (the basis of the recently purchased T stock) × (1 .2)/(.8) (the fraction in section 338(b)(4))).

(B) P's basis amount for the nonrecently purchased T stock is $16,000 (i.e., $64,000 (the grossed-up basis in the recently purchased T stock) × (.2)/(1.0 − .2) (the fraction in section 338(b)(3)(B))).

(C) The gain recognized on the nonrecently purchased stock is $10,000 (i.e., $16,000 − $6,000).

Example 10. (i) T is an S corporation whose sole class of stock is owned 40 percent each by A and B and 20 percent by C. A and B each has an adjusted basis of $10,000 in the stock. C has an adjusted basis of $5,000 in the stock. A, B, and C hold no installment obligations to which section 453A applies. On March 1 of Year 1, A sells its stock to P for $40,000 in cash and B sells its stock to P for a $25,000 note issued by P and real estate having a fair market value of $15,000. The $25,000 note, due in full in Year 7, is not publicly traded and bears adequate stated interest. A and B have no selling expenses.

T's sole asset is real estate, which has a value of $110,000 and an adjusted basis of $35,000. Also, T's real estate is encumbered by long-outstanding purchase-money indebtedness of $10,000. The real estate does not have built-in gain subject to section 1374. A, B, and C join with P in making a section 338(h)(10) election for T.

(ii) Solely for purposes of application of sections 453, 453A, and 453B, old T is considered in its deemed asset sale to receive back from new T the $25,000 note (considered issued by new T) and $75,000 of cash (total consideration of $80,000 paid for all the stock sold, which is then divided by .80 in the grossing-up, with the resulting figure of $100,000 then reduced by the amount of the installment note). Absent an election under section 453(d), gain is reported by old T under the installment method.

(iii) In applying the installment method to old T's deemed asset sale, the contract price for old T's assets deemed sold is $100,000, the $110,000 selling price reduced by the indebtedness of $10,000 to which the assets are subject. (The $110,000 selling price is itself the sum of the $80,000 grossed-up in paragraph (ii) above to $100,000 and the $10,000 liability.) Gross profit is $75,000 ($110,000 selling price − old T's basis of $35,000). Old T's gross profit ratio is 0.75 (gross profit of $75,000 ÷ $100,000 contract price). Thus, $56,250 (0.75 × the $75,000 cash old T is deemed to receive in Year 1) is Year 1 gain attributable to the sale, and $18,750 ($75,000 − $56,250) is recovery of basis.

(iv) In its liquidation, old T is deemed to distribute the $25,000 note to B, since B actually sold the stock partly for that consideration. To the extent of the remaining liquidating distribution to B, it is deemed to receive, along with A and C, the balance of old T's liquidating assets in the form of cash. Under section 453(h), B, unless it makes an election under section 453(d), is not required to treat the receipt of the note as a payment for the T stock; P's payment of the $25,000 note in Year 7 to B is a payment for the T stock. Because section 453(h) applies to B, old T's deemed liquidating distribution of the note is, under section 453B(h), not treated as a taxable disposition by old T.

(v) Under section 1366, A reports 40 percent, or $22,500, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases A's $10,000 adjusted basis in the T stock to $32,500. Next, in old T's deemed liquidation, A is considered to receive $40,000 for its old T shares, causing it to recognize an additional $7,500 gain in Year 1.

(vi) Under section 1366, B reports 40 percent, or $22,500, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases B's $10,000 adjusted basis in its T stock to $32,500. Next, in old T's deemed liquidation, B is considered to receive the $25,000 note and $15,000 of other consideration. Applying section 453, including section 453(h), to the deemed liquidation, B's selling price and contract price are both $40,000. Gross profit is $7,500 ($40,000 selling price − B's basis of $32,500). B's gross profit ratio is 0.1875 (gross profit of $7,500 ÷ $40,000 contract price). Thus, $2,812.50 (0.1875 $15,000) is Year 1 gain attributable to the deemed liquidation. In Year 7, when the $25,000 note is paid, B has $4,687.50 (0.1875 × $25,000) of additional gain.

(vii) Under section 1366, C reports 20 percent, or $11,250, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases C's $5,000 adjusted basis in its T stock to $16,250. Next, in old T's deemed liquidation, C is considered to receive $20,000 for its old T shares, causing it to recognize an additional $3,750 gain in Year 1. Finally, under paragraph (d)(5)(ii) of this section, C is considered to acquire its stock in T on the day after the acquisition date for $20,000 (fair market value=grossed-up amount realized of $100,000 × 20%). C's holding period in the stock deemed received in new T begins at that time.

(f) *Inapplicability of provisions.* The provisions of section 6043, § 1.331–1(d), and § 1.332–6 (relating to information returns and recordkeeping requirements for corporate liquidations) do not apply to the deemed liquidation of old T under paragraph (d)(4) of this section.

(g) *Required information.* The Commissioner may exercise the authority granted in section 338(h)(10)(C)(iii) to require provision of any information deemed necessary to carry out the provisions of section 338(h)(10) by requiring submission of information on any tax reporting form.

Par. 9. Section 1.338(i)–1 is revised to read as follows:

§ 1.338(i)–1 Effective dates.

The provisions of §§ 1.338–0 through 1.338–10 and 1.338(h)(10)–1 apply to any qualified stock purchase occurring after the date that final regulations are published in the **Federal Register**. For rules applicable to qualified stock purchases before the date that final regulations are published in the **Federal Register**, see §§ 1.338–0 through 1.338–5, 1.338(b)–1, 1.338(b)–2T, 1.338(b)–3T, 1.338(h)(10)–1, and 1.338(i)–1 as contained in 26 CFR part 1 revised April 1, 1999.

Par. 10. Section 1.1060–1 is added to read as follows:

§ 1.1060–1 Special allocation rules for certain asset acquisitions.

(a) *Scope*—(1) *In general.* This section prescribes rules relating to the requirements of section 1060, which, in the case of an applicable asset acquisition, requires the transferor (the seller) and the transferee (the purchaser) each to allocate the consideration paid or received in the transaction among the assets transferred in the same manner as amounts are allocated under section 338(b)(5) (relating to the allocation of adjusted grossed-up basis among the assets of the target corporation when a section 338 election is made). In the case of an applicable asset acquisition described in paragraph (b)(1) of this section, sellers and purchasers must allocate the consideration under the residual method as described in §§ 1.338–6 and 1.338–7 in order to determine, respectively, the amount realized from, and the basis in, each of the transferred assets. For rules relating to distributions of partnership property or transfers of partnership interests which are subject to section 1060(d), see § 1.755–2T.

(2) *Effective date.* The provisions of this section apply to any asset acquisition occurring after the date that final regulations are published in the **Federal Register**.

(3) *Outline of topics.* In order to facilitate the use of this section, this paragraph (a)(3) lists the major paragraphs in this section as follows:

(a) Scope.
(1) In general.
(2) Effective date.
(3) Outline of topics.
(b) Applicable asset acquisition.
(1) In general.
(2) Assets constituting a trade or business.
(i) In general.
(ii) Goodwill or going concern value.
(iii) Factors indicating goodwill or going concern value.
(3) Examples.
(4) Asymmetrical transfers of assets.
(5) Related transactions.
(6) More than a single trade or business.
(7) Covenant entered into by the seller.
(8) Partial non-recognition exchanges.
(c) Allocation of consideration among assets under the residual method.
(1) Consideration.
(2) Allocation of consideration among assets.
(3) Certain costs.
(4) Effect of agreement between parties.
(d) Examples.
(e) Reporting requirements.
(1) Applicable asset acquisitions.
(i) In general.
(ii) Time and manner of reporting.
(A) In general.
(B) Additional reporting requirement.
(2) Transfers of interests in partnerships.

(b) *Applicable asset acquisition*—(1) *In general.* An applicable asset acquisition is any transfer, whether direct or indirect, of a group of assets if the assets transferred constitute a trade or business in the hands of either the seller or the purchaser and, except as provided in paragraph (b)(8) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration.

(2) *Assets constituting a trade or business*—(i) *In general.* For purposes of this section, a group of assets constitutes a trade or business if—

(A) The use of such assets would constitute an active trade or business under section 355; or

(B) Its character is such that goodwill or going concern value could under any circumstances attach to such group.

(ii) *Goodwill or going concern value.* Goodwill is the value of a trade or business attributable to the expectancy of continued customer patronage. This expectancy may be due to the name or reputation of a trade or business or any other factor. Going concern value is the additional value that attaches to property because of its existence as an integral part of an ongoing business activity. Going concern value includes the value attributable to the ability of a trade or business (or a part of a trade or business) to continue functioning or generating income without interruption notwithstanding a change in ownership. It also includes the value that is attributable to the immediate use or availability of an acquired trade or business, such as, for example, the use of the revenues or net earnings that otherwise would not be received during any period if the acquired trade or business were not available or operational.

(iii) *Factors indicating goodwill or going concern value.* In making the determination in paragraph (b)(2) of this section, all the facts and circumstances surrounding the transaction are taken into account. Whether sufficient consideration is available to allocate to goodwill or going concern value after the residual method is applied is not relevant in determining whether goodwill or going concern value could attach to a group of assets. Factors to be considered include—

(A) The presence of any intangible assets (whether or not those assets are section 197 intangibles), provided, however, that the transfer of such an asset in the absence of other assets will not be a trade or business for purposes of section 1060;

(B) The existence of an excess of the total consideration over the aggregate book value of the tangible and intangible assets purchased (other than goodwill and going concern value) as shown in the financial accounting books and records of the purchaser; and

(C) Related transactions, including lease agreements, licenses, or other similar agreements between the purchaser and seller (or managers, directors, owners, or employees of the seller) in connection with the transfer.

(3) *Examples.* The following examples illustrate paragraphs (b)(1) and (2) of this section:

Example 1. S is a high grade machine shop that manufactures microwave connectors in limited quantities. It is a successful company with a reputation within the industry and among its customers for manufacturing unique, high quality products. Its tangible assets consist primarily of ordinary machinery for working metal and plating. It has no secret formulas or patented drawings of value. P is a company that designs, manufactures, and markets electronic components. It wants to establish an immediate presence in the microwave industry, an area in which it previously has not been engaged. P is acquiring assets of a number of smaller companies and hopes that these assets will collectively allow it to offer a broad product mix. P acquires the assets of S in order to augment its product mix and to promote its presence in the microwave industry. P will not use the assets acquired from S to manufacture microwave connectors. The assets transferred are assets that constitute a trade or business in the hands of the seller. Thus, P's purchase of S's assets is an applicable asset acquisition. The fact that P will not use the assets acquired from S to continue the business of S does not affect this conclusion.

Example 2. S, a sole proprietor who operates a car wash, both leases the building housing the car wash and sells all of the car wash equipment to P. S's use of the building and the car wash equipment constitute a trade or business. P begins operating a car wash in the building it leases from S. Because the assets transferred together with the asset leased are assets which constitute a trade or business, P's purchase of S's assets is an applicable asset acquisition.

Example 3. S, a corporation, owns a retail store business in State X and conducts activities in connection with that business enterprise that meet the active trade or business requirement of section 355. P is a minority shareholder of S. S distributes to P all the assets of S used in S's retail business in State X in complete redemption of P's stock in S held by P. The distribution of S's assets in redemption of P's stock is treated as a sale or exchange under sections 302(a) and 302(b)(3), and P's basis in the assets distributed to it is determined wholly by reference to the consideration paid, the S stock. Thus, S's distribution of assets constituting a trade or business to P is an applicable asset acquisition.

Example 4. S is a manufacturing company with an internal financial bookkeeping department. P is in the business of providing a financial bookkeeping service on a contract basis. As part of an agreement for P to begin providing financial bookkeeping services to S, P agrees to buy all of the assets associated with S's internal bookkeeping operations and provide employment to any of S's bookkeeping department employees who choose to accept a position with P. In addition to selling P the assets associated with its bookkeeping operation, S will enter into a long term contract with P for bookkeeping services. Because assets transferred from S to P, along with the related contract for bookkeeping services, are a trade or business in the hands of P, the sale of the bookkeeping assets from S to P is an applicable asset acquisition.

(4) *Asymmetrical transfers of assets.* If, under general principles of tax law, a seller is not treated as transferring the same assets as the purchaser is treated as acquiring, the assets acquired by the purchaser constitute a trade or business, and, except as provided in paragraph (b)(8) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration, then the purchaser is subject to section 1060.

(5) *Related transactions.* Whether the assets transferred constitute a trade or business is determined by aggregating all transfers from the seller to the purchaser in a series of related transactions. Except as provided in paragraph (b)(8) of this section, all assets transferred from the seller to the purchaser in a series of related transactions are included in the group of assets among which the consideration paid or received in such series is allocated under the residual method. The principles of § 1.338–1(c) are also applied in determining which assets are included in the group of assets among which the consideration paid or received is allocated under the residual method.

(6) *More than a single trade or business.* If the assets transferred from a seller to a purchaser include more than one trade or business, then, in applying this section, all of the assets transferred (whether or not transferred in one transaction or a series of related transactions and whether or not part of a trade or business) are treated as a single trade or business.

(7) *Covenant entered into by the seller.* If, in connection with an applicable asset acquisition, the seller enters into a covenant (e.g., a covenant not to compete) with the purchaser, that covenant is treated as an asset transferred as part of a trade or business.

(8) *Partial non-recognition exchanges.* A transfer may constitute an applicable asset acquisition notwithstanding the fact that no gain or loss is recognized with respect to a portion of the group of assets transferred. All of the assets transferred, including the non-recognition assets, are taken into account in determining whether the group of assets constitutes a trade or business. The allocation of consideration under paragraph (c) of this section is done without taking into account either the non-recognition assets or the amount of money or other property that is treated as transferred in exchange for the non-recognition assets (together, the non-recognition exchange property). The basis in and gain or loss recognized with respect to the non-recognition exchange property are

determined under such rules as would otherwise apply to an exchange of such property. The amount of the money and other property treated as exchanged for non-recognition assets is the amount by which the fair market value of the non-recognition assets transferred by one party exceeds the fair market value of the non-recognition assets transferred by the other (to the extent of the money and the fair market value of property transferred in the exchange). The money and other property that are treated as transferred in exchange for the non-recognition assets (and which are not included among the assets to which section 1060 applies) are considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, then from Class IV assets, then from Class V assets, then from Class VI assets, and then from Class VII assets. For this purpose, liabilities assumed (or to which a non-recognition exchange property is subject) are treated as Class I assets. See *Example 1* in paragraph (d) of this section for an example of the application of section 1060 to a single transaction which is, in part, a non-recognition exchange.

(c) *Allocation of consideration among assets under the residual method*—(1) *Consideration.* The seller's consideration is the amount, in the aggregate, realized from selling the assets in the applicable asset acquisition under section 1001(b). The purchaser's consideration is the amount, in the aggregate, of its cost of purchasing the assets in the applicable asset acquisition that is properly taken into account in basis.

(2) *Allocation of consideration among assets.* For purposes of determining the seller's amount realized for each of the assets sold in an applicable asset acquisition, the seller allocates consideration to all the assets sold by using the residual method under §§ 1.338–6 and 1.338–7, substituting consideration for ADSP. For purposes of determining the purchaser's basis in each of the assets purchased in an applicable asset acquisition, the purchaser allocates consideration to all the assets purchased by using the residual method under §§ 1.338–6 and 1.338–7, substituting consideration for AGUB. In allocating consideration, the rules set forth in paragraphs (c)(3) and (4) of this section apply in addition to the rules in §§ 1.338–6 and 1.338–7.

(3) *Certain costs.* The seller and purchaser each adjusts the amount allocated to an individual asset to take into account the specific identifiable costs incurred in transferring that asset in connection with the applicable asset acquisition (e.g., real estate transfer costs or security interest perfection costs). Costs so allocated increase, or decrease, as appropriate, the total consideration that is allocated under the residual method. No adjustment is made to the amount allocated to an individual asset for general costs associated with the applicable asset acquisition as a whole or with groups of assets included therein (e.g., non-specific appraisal fees or accounting fees). These latter amounts are taken into account only indirectly through their effect on the total consideration to be allocated.

(4) *Effect of agreement between parties.* If, in connection with an applicable asset acquisition, the seller and purchaser agree in writing as to the allocation of any amount of consideration to, or as to the fair market value of, any of the assets, such agreement is binding on them to the extent provided in this paragraph (c)(4). Nothing in this paragraph (c)(4) restricts the Commissioner's authority to challenge the allocations or values arrived at in an allocation agreement. This paragraph (c)(4) does not apply if the parties are able to refute the allocation or valuation under the standards set forth in *Commissioner* v. *Danielson*, 378 F.2d 771 (3d Cir.), *cert. denied*, 389 U.S. 858 (1967) (a party wishing to challenge the tax consequences of an agreement as construed by the Commissioner must offer proof that, in an action between the parties to the agreement, would be admissible to alter that construction or show its unenforceability because of mistake, undue influence, fraud, duress, etc.).

(d) *Examples.* The following examples illustrate this section:

Example 1. (i) On January 1, 2001, A transfers assets X, Y, and Z to B in exchange for assets D, E, and F plus $1,000 cash.

(ii) Assume the exchange of assets constitutes an exchange of like-kind property to which section 1031 applies. Assume also that goodwill or going concern value could under any circumstances attach to each of the DEF and XYZ groups of assets and, therefore, each group constitutes a trade or business under section 1060.

(iii) Assume the fair market values of the assets and the amount of money transferred are as follows:

By A		By B	
Asset	Fair market value	Asset	Fair market value
X	$400	D	$40
Y	400	E	30
Z	200	F	30
		Cash (amount)	1,000
Total	$1,000	Total	$1,100

(iv) Under paragraph (b)(8) of this section, for purposes of allocating consideration under paragraph (c) of this section, the like-kind assets exchanged and any money or other property that are treated as transferred in exchange for the like-kind property are excluded from the application of section 1060.

(v) Since assets X, Y, and Z are like-kind property, they are excluded from the application of the section 1060 allocation rules.

(vi) Since assets D, E, and F are like-kind property, they are excluded from the application of the section 1060 allocation rules. In addition, $900 of the $1,000 cash B gave to A for A's like-kind assets is treated as transferred in exchange for the like-kind property in order to equalize the fair market values of the like-kind assets. Therefore, $900 of the cash is excluded from the application of the section 1060 allocation rules.

(vii) $100 of the cash is allocated under section 1060 and paragraph (c) of this section.

(viii) A, as transferor of assets X, Y, and Z, received $100 that must be allocated under section 1060 and paragraph (c) of this section. Since A transferred no Class I, II, III, IV, V, or VI assets to which section 1060 applies, in determining its amount realized for the part of the exchange to which section 1031 does not apply, the $100 is allocated to Class VII assets (goodwill and going concern value).

(ix) A, as transferee of assets D, E, and F, gave consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 and paragraph (c) of this section are not applied to determine the bases of the assets A received.

(x) B, as transferor of assets D, E, and F, received consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 do not apply in determining B's gain or loss.

(xi) B, as transferee of assets X, Y, and Z, gave A $100 that must be allocated under section 1060 and paragraph (c) of this section. Since B received from A no Class I, II, III, IV, V, or VI assets to which section 1060 applies, the $100 consideration is allocated by B to Class VII assets (goodwill and going concern value).

Example 2. (i) On January 1, 2001, S, a sole proprietor, sells to P, a corporation, a group of assets that constitutes a trade or business under paragraph (b)(2) of this section. S, who plans to retire immediately, also executes in P's favor a covenant not to compete. P pays S $3,000 in cash and assumes $1,000 in liabilities. Thus, the total consideration is $4,000.

(ii) On the purchase date, P and S also execute a separate agreement that states that the fair market values of the Class II, Class III, Class V, and Class VI assets S sold to P are as follows:

Asset class	Asset	Fair market value
II	Actively traded securities	$500
	Total Class II	500
III	Accounts receivable	200
	Total Class III	200
V	Furniture and fixtures	800
	Building	800
	Land	200
	Equipment	400
	Total Class V	2,200
VI	Covenant not to compete	900
	Total Class VI	900

(iii) P and S each allocate the consideration in the transaction among the assets transferred under paragraph (c) of this section in accordance with the agreed upon fair market values of the assets, so that $500 is allocated to Class II assets, $200 is allocated to the Class III asset, $2,200 is allocated to Class V assets, $900 is allocated to Class VI assets, and $200 ($4,000 total consideration less $3,800 allocated to assets in Classes II, III, V, and VI) is allocated to the Class VII assets (goodwill and going concern value).

(iv) In connection with the examination of P's return, the District Director, in determining the fair market values of the assets transferred, may disregard the parties' agreement. Assume that the District Director correctly determines that the fair market value of the covenant not to compete was $500. Since the allocation of consideration among Class II, III, V, and VI assets results in allocation up to the fair market value limitation, the $600 of unallocated consideration resulting from the District Director's redetermination of the value of the covenant not to compete is allocated to Class VII assets (goodwill and going concern value).

(e) *Reporting requirements*—(1) *Applicable asset acquisitions*—(i) *In general.* Unless otherwise excluded from this requirement by the Commissioner, the seller and the purchaser in an applicable asset acquisition each must report information concerning the amount of consideration in the transaction and its allocation among the assets transferred. They also must report information concerning subsequent adjustments to consideration.

(ii) *Time and manner of reporting*—(A) *In general.* The seller and the purchaser each must file asset acquisition statements on Form 8594 with their income tax returns or returns of income for the taxable year that includes the first date assets are sold pursuant to an applicable asset acquisition. This reporting requirement applies to all asset acquisitions described in this section. For reporting requirements relating to asset acquisitions occurring before the date final regulations are published in the **Federal Register**, as described in paragraph (a)(2) of this section, see the temporary regulations under section 1060 in effect prior to the date final regulations are published in the **Federal Register** (§ 1.1060–1T as contained in 26 CFR part 1 revised April 1, 1999).

(B) *Additional reporting requirement.* When an increase or decrease in consideration is taken into account after the close of first taxable year that includes the first date assets are sold in an applicable asset acquisition, the seller and the purchaser each must file a supplemental asset acquisition statement on Form 8594 with the income tax return or return of income for the taxable year in which the increase (or decrease) is properly taken into account.

(2) *Transfers of interests in partnerships.* For reporting requirements relating to the transfer of the partnership interest, see § 1.755–2T(c).

§ 1.1060–1T [Removed]

Par. 11. Section 1.1060–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 13. In § 602.101, paragraph (b) is amended by removing the entries for 1.338(b)–1 and 1.1060–1T from the table.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 99–19930 Filed 8–4–99; 9:14 am]

BILLING CODE 4830–01–U

UMI

VOL
64

ISS
1
5
3

AG
10

999

Federal Register

Tuesday
August 10, 1999

Part IV

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206
Amendments to Gas Valuation Regulations for Indian Leases; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

RIN 1010–AB57

Amendments to Gas Valuation Regulations for Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing the valuation for royalty purposes of natural gas produced from Indian leases. These changes add alternative valuation methods to the existing regulations to ensure that Indian lessors receive maximum revenues from their mineral resources as required by the unique terms of Indian leases and MMS's trust responsibility to the Indian lessor. Further, these changes will improve the accuracy of royalty payments at the time the royalties are due.

DATES: The effective date of this final rule is January 1, 2000.

ADDRESSES: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, PO Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff; phone (303) 231–3432; fax (303) 231–3385; e-mail david.guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Donald T. Sant and Richard Adamski of the Royalty Management Program, MMS, and Peter Schaumberg of the Office of the Solicitor, Department of the Interior.

I. Background

MMS's purposes in revising the current regulations regarding the valuation of gas production from Indian leases are:

(1) To ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary of the Interior's (Secretary) trust responsibility and lease terms; and

(2) To improve the regulatory framework so that information is available which would permit lessees to comply with the regulatory requirements at the time that royalties are due.

II. Comments on Proposed Rule

On September 23, 1996, MMS published a notice of proposed rulemaking (61 FR 49894) to amend the valuation regulations for gas production from Indian leases. The framework for the proposed rule was the product of an Indian Gas Valuation Negotiated Rulemaking Committee (the Committee). The proposed rulemaking provided for a 60-day comment period, which ended November 22, 1996, and was extended to December 3, 1996 (61 FR 59849, November 25, 1996). During the public comment period, MMS received 13 written comments: seven responses from industry, four from industry trade groups or associations, one from an Indian tribe, and one from an Indian agency. A public hearing was held in Oklahoma City, Oklahoma, on October 23, 1996. MMS reopened the public comment period until April 4, 1997 (62 FR 10247, March 6, 1997) to receive comments on the issue of proceeds received from contract settlements. Two comments were received: one from industry and one from an industry trade association.

MMS has considered carefully all of the public comments received during this rulemaking. MMS hereby adopts final regulations governing the valuation of gas produced from Indian leases. These regulations will apply prospectively to gas produced on or after the effective date specified in the DATES section of this preamble.

This final rule reflects certain changes to the proposed rule. However, none of these changes are significant in that they affect the basic structure or approach of the new gas valuation rules.

General Comments

All commenters endorsed the concept of revising the existing regulations to provide simplicity and certainty, decrease administrative costs, and decrease litigation. Industry generally supports the use of independent published index prices for valuing gas produced from Indian leases. Industry also supports the concept of an alternative "percentage increase" to satisfy the dual accounting requirement contained in most Indian leases to the extent the lessee chooses to use this alternative methodology voluntarily. Industry objects to the following parts of the proposed rule:

- The safety net concept for nondedicated sales.
- The separate dual accounting requirement on natural gas liquids.
- The gross proceeds requirement if gas production was subject to a previous contract that was part of a gas contract settlement.

The Rocky Mountain Oil and Gas Association (RMOGA) states in its comments that "it believes the inclusion of a safety net provision is a profound violation of the original consensus on gross proceeds and major portion lease requirements." RMOGA also states that "Indeed, the concept of a safety net was not raised until many months after the vote on the formula had been taken." The Independent Petroleum Association of Mountain States (IPAMS) also objects to "the belated introduction of the "safety net" requirement which, as discussed in more detail below, undermines the compromise that was reached on the major portion index value and dual accounting formulae." The Council of Petroleum Accountants Societies (COPAS) states "The COPAS representative on the Committee voted in favor of the original index-based formula at the Committee's May 1995 meeting based on the belief that the use of that formula would satisfy both the gross proceeds and major portion clauses contained in most Indian leases, with the exception of gas sold under certain high-priced dedicated contracts. The record will show that this was clearly the focus of the Committee's discussions leading up to the vote, and that the prospect of a "safety net" for nondedicated contracts was not raised until several months later, and came as a surprise to the industry members."

Response. A review of the record generally contradicts these comments. The first formal proposals for valuation of gas production using index formulas were made at the April 12–13, 1995, meeting of the Committee. The proposal of the Federal Government members was patterned after the Federal Gas Valuation Negotiated Rulemaking Committee proposal (Final Report, March 1995) and included an analysis of gross proceeds for sales before the index point to ensure the validity of index-based values. The proposal offered by the Indian representatives included the concept of a safety net. The proposal to be taken back to the committee members' constituents, dated April 13, 1995, 2:45 p.m. version, stated that "a safety net must be developed to protect the Indian lessor in certain circumstances."

The meeting notes for the June 14–15, 1995, meeting at which the index formula was adopted included, under the "safety net" heading: "big discussion as to what to compare to the formula value. Is it the amount accruing

to the lessee (because we do not want to use the term gross proceeds)?" A subgroup was formed at the July 12–13, 1995, meeting to bring safety net options to the next meeting. A second subgroup was formed at the August 8–10, 1995, meeting to further analyze the options for the safety net. The options these subgroups developed all had some concept of obtaining additional royalty for high-value sales beyond the index-pricing point or of gathering data to validate the index. The safety net was voted on and approved at the next meeting on October 17–19, 1995.

Certainly, the group may have adopted a different proposal had different dynamics occurred within the group or a different sequence of events occurred. But the proposed safety net was a product of the decisions the Committee made.

MMS and the one Indian commenter believe that the safety net is an essential part of the proposed rule, and MMS will retain the safety net in the final rule. The Indian comment aptly summarizes the issue: "The once-a-year calculation of a safety net price is a small concession by Indian lessees to accomplish certainty and to foster general confidence in the validity of the published index prices. The calculation of the safety net price does not require a detailed "tracing" of molecules produced from all Indian leases to all distant sales points." In addition, the regulation permits only 1 year for MMS to verify a lessee's safety net calculation. There should not be a continuation of audit disputes and litigation over the safety net or problems in administering it.

MMS agrees that the gross proceeds requirement in the proposed rule dealing with the issue of gas contract settlements changed the Committee's agreement that the index formula was to replace both the gross proceeds requirement and the major portion requirement. The comment period was specifically reopened to address this issue. Only two comments were received. In addition, courts in two different circuits have issued decisions in gas contract settlements cases during and after the comment period, as explained more fully below, that affect the handling of the gas contract settlements issue in this rule. This final rule includes the concept that some contract settlement proceeds are royalty bearing, as explained below, but does not require a monthly gross proceeds comparison to the index formula. Those contract settlement proceeds that are royalty-bearing will be part of gross proceeds when value is determined by gross proceeds. Examples include production under a dedicated contract and gas produced in nonindex areas where the initial value is determined by gross proceeds. For index areas, MMS will require the gross proceeds for gas sold under nondedicated contracts to be calculated only if the contract settlement proceeds per MMBtu, when added to 80 percent of the safety net price, exceed the index formula value for the month, including any increase for dual accounting. This computation would be made after the safety net prices were reported to MMS by the lessee.

After publication of the final rule, MMS plans to hold training sessions with industry to illustrate the various procedures for computing value under this rule.

Specific Comments and Other Principal Changes to the Proposed Rule

Comment on § 202.550(a)(1)—now § 202.550(b). MMS received five comments on this issue. The commenters did not object to the tribe rather than MMS deciding when the lessor would take gas as royalty in kind as long as the Indian lessor was subject to the same rules of notification with which MMS must comply.

Response. The tribe will abide by the terms of notification in the lease. No change is made in the final rule.

Comment on § 202.550(a)(2)—now § 202.550(d). MMS specifically requested comment on whether the Department should continue to approve requests for royalty rate reductions on allotted leases when a lessee demonstrates economic hardship. Twelve commenters believe that MMS should continue to provide this approval because of the difficulty in identifying and locating allottee lessors. Two commenters believe that the lease language and the language in 25 U.S.C. 396 do not expressly allow the Secretary to approve a reduction without full consent of every lessor.

Response. MMS agrees that under current law the Secretary may not approve royalty rate reductions without full consent. No change is made in the final rule.

Comment on § 202.550(b)—now § 202.551. Four commenters supported the concept that you should pay royalties on your entitled share of gas production from Indian leases not in approved Federal unit or communitization agreements rather than on your actual takes.

Response. MMS disagrees and we changed the final rule to require royalties on your actual takes for leases not in an approved Federal agreement (AFA). This is consistent with the requirement for Federal leases under the Royalty Simplification and Fairness Act of 1996 (Pub. L. 104–185, as corrected by Pub. L. 104–200). If another person takes some of your entitled share but does not pay for the royalties owed, you are liable for those royalties.

Comment on § 202.550(d)—now § 202.555. Five commenters stated that transportation field fuel and reinjected unprocessed gas, gas plant products, and residue should also be listed as gas not subject to royalty.

Response. Any production that is reinjected and is not produced from the lease, is not subject to royalty until it is again produced and removed from the lease. Transportation field fuel is subject to the requirements of the regulation. We do not believe the suggested change is necessary.

Structure changes to part 202. In an effort to make the final rule easier to read, we restructured § 202.550 to create more sections with headings. Also, we made some changes to clarify the regulatory provisions in this part. None of these changes were intended to change the principal intent of the rule.

One change was made to proposed § 202.550(b), now § 202.551. This section explains the volumes for which you must pay royalties for leases not committed to an approved Federal unit or communitization agreement. Under this section you are liable for royalties on your entitled share of production. Thus, if you hold 40 percent of the operating rights, you are liable for 40 percent of the royalties. However, under this section you must report and pay royalties based on your takes. So if you take 30 percent of the gas production, you must report and pay on that volume. The same applies if you take 50 percent. To address concerns about liability for volumes not taken, we added a new provision to this section so that all interest owners for the lease may ask MMS for permission to report and pay on entitlements. If MMS grants the request, it will provide valuation instructions consistent with the provisions in part 202 for over-taken and under-taken volumes. See the new §§ 202.552, 202.553, and 202.554 (proposed § 202.550(c)) which explain how to value over-taken and under-taken volumes for leases in approved Federal unit or communitization agreements. MMS will apply a similar approach for stand-alone leases.

Comment on § 206.170(c). Eleven commenters believe that the lessee and tribal lessor should be allowed to negotiate alternate valuation methods

on their own without MMS approval. The commenters agree that MMS should be part of the negotiation process between lessees and allottees.

Response. MMS is confident that tribes can negotiate independently with lessees. Consistent with the Secretary's trust responsibility, MMS will review and approve agreements for alternate valuation methodologies that are negotiated by the tribe and do not breach the trust responsibility of the Secretary. MMS will take a more active role in negotiations between lessees and allottee lessors. MMS does not believe it is necessary to change the language in the final rule.

Comment on § 206.171. Ten commenters recommend that the definition of "marketing affiliate" be reinstated in the final rule. Two commenters noted that in the definition of "posted price" it is unnecessary and misleading to refer to marketable condition. They state that gas, in a publicly available price bulletin, is by definition in marketable condition.

Response. We know of no company that meets the requirements of the regulatory definition of "marketing affiliate" at 30 CFR 206.171. MMS did not include the definition in the final rule. MMS agrees that the definition of "posted price" is unnecessary and has removed the definition in the final rule. MMS has also removed references to "posted price" under the benchmarks at § 206.174(c)(2) and the transportation factor under § 206.178(a)(5).

Comment on § 206.172. One commenter listed the following concerns:

- How would a publication become approved?

Response. Publications will be approved if they meet MMS's criteria, which are listed under § 206.172(d)(4).

- What kind of market condition changes will be considered to require a Technical Conference for disqualifying an index zone?

Response. MMS will closely monitor the market sales prices realized in the short and long-term markets. If it appears that index-based values no longer represent reasonable values obtained in the entire market, then MMS will convene a Technical Conference.

- How often will MMS publish the list of acceptable publications in the **Federal Register**?

Response. We plan to update the list of acceptable publications whenever we need to add a new publication or we need to drop a current publication.

- How will independent payors who do not receive the **Federal Register** be notified?

Response. MMS will make sure that all payors are notified through periodic "Dear Payor Letters" and publication of those letters on the Internet.

- Which tables within the publications will be used and can they vary from month to month?

Response. When MMS publishes the list of acceptable publications, we will be very specific as to the proper tables and pipelines within the publications you should use in computing the index-based formula price.

- How will MMS determine that the published price does not reflect value accurately?

Response. MMS will closely monitor published prices and compare them to prices published in other publications and to prices received in the entire gas market. MMS will investigate price changes.

- Does this mean each payor will have to subscribe to all MMS-approved publications?

Response. No, MMS will calculate the index-based formula price for each index zone on a monthly basis and provide this information to all interested payors.

- Why is a safety net price required if rates have been accepted by MMS previously?

Response. The safety net price is intended to capture the significantly higher values for sales occurring beyond the index point.

Comment on § 206.172(b)(1)(ii). Two commenters recommended that this paragraph be modified to refer to gas that is not processed before it flows into a mainline and should not be limited to pipelines with an index point.

Response. The Committee spent time discussing the best way to describe when and where gas is or is not processed. The Committee believed the term "mainline" was not used consistently throughout the industry. MMS will change § 206.176 of this title to state that dual accounting is not required if gas is not processed before it flows into a mainline pipeline for nonindex areas. MMS believes that for index areas the language of the proposed rule is the proper terminology. We did not define "mainline" but intend to have the same characteristics as a pipeline in an index zone with an index.

Comment on § 206.172(b)(2)(ii)—now 206.172(b)(2). Twelve commenters objected to the inclusion of the contract settlement provision in the proposed rule because in addition to the index-based value calculation, it would require a gross proceeds calculation. The same commenters stated that the Committee did not agree to include gas contract settlement language and recommended that this paragraph be deleted. One commenter supported the inclusion of gas contract settlement language because of the position that royalty is due, at a minimum, on all the components of a lessee's gross proceeds.

Response. The Committee was unable to reach consensus on the issue of contract settlements. The Committee spent considerable time discussing whether contract settlement amounts should be included in the safety net calculation. The Committee agreed to language in the proposed rule which would exclude contract settlement amounts from the safety net value and agreed to address the issue in 30 CFR 206.172 of the proposed rule.

MMS acknowledges that the issue of royalty on contract settlement proceeds is currently in litigation. Under judicial decisions issued as of the time of this rule, some contract settlement payments are or may be royalty-bearing while others are not. The final rule includes contract settlement amounts as part of royalty value only when value is determined by gross proceeds and only when the contract settlement payment is of the type that is royalty-bearing as a part of gross proceeds. Value is determined by gross proceeds when valuing production sold under dedicated contracts or the initial value in nonindex areas. For nondedicated contracts, gross proceeds will only need to be calculated when the safety net price plus the royalty-bearing contract settlement proceeds increment exceeds the index formula value including the dual accounting increase. We will modify the current policy whenever necessary to conform with the outcome of ongoing litigation.

This rule does not change which contract settlement payments are royalty-bearing or to what extent a particular payment is royalty-bearing. If and to the extent that a particular contract settlement payment would be royalty-bearing as part of the lessee's gross proceeds before this rule, it is royalty-bearing under this rule when value is determined by gross proceeds. If a contract settlement payment is not royalty-bearing before this rule, it likewise has no royalty consequence under this rule.

In *Mobil Exploration and Producing U.S. Inc.* (MMS–94–0151–OCS, May 4, 1998), the Department determined that contract settlement payments to buy out of the terms of a gas contract and

terminate the sales relationship entirely are not royalty-bearing. It also determined that payments to compromise Mobil's purchaser's liability for accrued but unpaid take-or-pay liabilities were not royalty-bearing.

In *United States* v. *Century Offshore Management Corp.*, 111 F.3d 443 (6th Cir., 1997), the Sixth Circuit Court of Appeals concluded that MMS could collect royalties on what MMS had identified as a "buydown" payment.

Comment on § 206.172(c)(1) and (2). Two commenters suggested that these paragraphs should make it clear that both transportation and processing allowances are used in dual accounting. These same commenters stated that the reference in paragraph (c)(2)(iii) to subpart B of this part should be more specific.

Response. We have included "and/or transportation allowances" in § 206.172(c)(2)(ii). The reference to the entire subpart B of this part is necessary so that drip condensate may be valued correctly under various sale scenarios.

Comment on § 206.172(d) (1) through (6). One commenter stated that the index-based valuation formula accomplished the Committee's goals of availability, timeliness, and satisfying the Indian lease language. One commenter believed that the 10 percent reduction to the index-based value may be considerably lower than actual transportation prices. This commenter suggests the reduction should be between 15 and 20 percent. Five commenters recommended that MMS should clarify in § 206.172(d)(6) that individual index prices will be excluded if MMS determines the index price does not accurately reflect the value of production in that index zone "on a prospective basis only."

Response. The 10 percent reduction to the index-based value was a compromise reached by the Committee to reflect average transportation costs. MMS believes that this percentage combined with the administrative savings realized by not having to file forms and track actual costs should adequately compensate the lessee in most cases. MMS believes that § 206.172(d)(6) makes clear our intent to exclude an individual index price only after notification by publication in the **Federal Register**. We do not believe the suggested change adds to or clarifies the sentence.

Comment on § 206.172(e). One commenter stated that the safety net comparison of values is absolutely essential for the protection of the Indian lessor and for the validation of the published index price ranges. Twelve commenters strenuously object to inclusion of a "safety net" for the following reasons:

(1) The index-based formula will yield a value that is far in excess of market value. This formula price should satisfy the gross proceeds and major portion clauses of an Indian lease without any need for a "safety net" on nondedicated sales.

(2) The safety net provision, to tie value to markets downstream of an index point, implies a duty to market even further from the field or area.

(3) The concept of a safety net was not raised until many months after the vote on the formula had been taken.

(4) The certainty, simplicity, and any administrative benefits gained from the use of the index-based valuation formula are negated with the safety net.

(5) The safety net provision would require tracing gas, and would inevitably lead to a continuation of the current cycle of endless audit disputes and litigation with regard to gas valuation on Indian leases.

Response. The comment that the idea of a safety net was not raised until many months after the vote on the index-based formula was taken is inaccurate. As discussed above, a review of the Committee's meeting minutes for April 1995 indicates that the concept of some type of safety net was part of the original valuation proposal from the Indian representatives and part of the original draft of the index-based formula. The safety net was conceived as a comparison of the index-based value to some other value that would represent the actual proceeds accruing to the lessee. In June 1995, the Committee voted on and adopted the index-based formula. The safety net provision, although part of the proposal, had not yet been discussed in detail by the Committee. A subgroup composed of industry, Indian, and Federal representatives was formed in July 1995 to explore the safety net issue. The Committee continued to periodically discuss the safety net issue over the next year and voted in October 1995 to include a safety net in the proposed rule and finally adopted the language that is contained in the proposed rule in May 1996.

The safety net, by comparing index prices to prices that reflect sales made beyond an index point, ensures that the index-based value represents the value of all market transactions. The safety net is calculated using prices received for gas sold downstream of the index point. The lessee includes only sales under those contracts that establish a delivery point beyond the first index-pricing point to which the gas flows. It includes only the lessee's or its affiliate's sales prices, and it does not require detailed calculations for the costs of transportation. The safety net price captures the significantly higher values for sales occurring beyond the index point. Although the safety net requires tracing the gas beyond the index-pricing point, confidentiality should not be an issue because only the lessee's and its affiliate's sales prices are used in the volume weighted average calculation. MMS has added "or your affiliate's" at § 206.172(e)(3) to make it clear it is either the lessee's or its affiliate's arm's-length sales contract that is used in the safety net.

MMS has only 1 year from the date the lessee's safety net prices on Form MMS–4411, Safety Net Report, are due to order the lessee to amend its safety net price calculation. If MMS does not order any adjustment, then the safety net price is final. This provides certainty to the lessee and alleviates extended audit disputes. MMS has determined that the safety net is necessary to ensure that Indian lessors receive royalties on the proper value of production as discussed above.

MMS has added at § 206.172(e)(4)(i) that 80 percent of the safety net value minus 125 percent of the index formula value is the safety net differential.

MMS has revised § 206.172(e)(4)(ii) to clarify that additional royalty is due if the safety net differential under § 206.172(e)(4)(i) is a positive number. The proposed rule did not include a multiplication by any lease royalty rates. In the final rule, paragraph (e)(5)(i) identifies the Indian leases which had production that was sold beyond the index-pricing point and multiplies the production by the safety net differential and by the royalty rate in the lease. Paragraph (e)(5)(ii) describes how you allocate production to Indian leases when production has been commingled with non-Indian production and then sold beyond the first index pricing point.

Comment on § 206.173. Nine commenters supported the use of the alternative methodology for dual accounting, if its use is optional. Two commenters stated that § 206.173(a)(2)(iii) of this title is grammatically incorrect and should be revised to read: "When you elect to use the alternative methodology for a designated area, you must also use the alternative methodology for any new wells commenced and any new leases acquired in the designated area during the term of the election."

Response. We agree with the comment and made the suggested wording change to § 206.173(a)(2)(iii) in the final rule.

Also, § 206.173(b)(4) is modified to read "if any of your gas from the lease is processed during a month" instead of "if you process any gas from the lease" to make it clear that dual accounting is required for all lease production if any of your production is processed, not just for the gas production you process from your Indian lease.

The last sentence of § 206.174(a)(1) was changed to make it clear that a separate major portion calculation other than the index value is not required for leases in an index zone with dedicated contracts.

Comment on § 206.174(a)(4)(ii)—now 206.174(a)(4)(iii). Five commenters suggested that MMS include in the final rule a process by which industry may contest MMS's major portion calculation. These same commenters recommended insertion of the phrase "less applicable allowances" after the phrase "Form MMS–2014" in the first sentence to clarify that allowances will be deducted before the major portion price is calculated.

Response. A lessee or Indian lessor may appeal the major portion value under 30 CFR part 290. MMS will calculate the major portion value using values from Form MMS–2014, Report of Sales and Royalty Remittance, which have been reduced by applicable transportation allowances. MMS does not agree that the suggested wording change is clarifying or necessary.

Comment on § 206.174(g)(2). One commenter suggested that the final rule require that the minimum value for gas plant products be based on the highest price, or at the very least, the average of the highest prices found in commercial price bulletins. Twelve commenters believe that the "minimum value" for gas plant products would effectively establish a dual accounting requirement for liquids values within the dual accounting calculation, and a major portion requirement on liquids within the major portion calculation, neither of which is required or even suggested by the lease terms. These same twelve commenters believed that the index-based formula would satisfy the gross proceeds and major portion requirements for the entire gas stream. One commenter stated that prices published in one of the publications MMS suggested are not available until 90 days after production. This would make timely reporting of gas plant product values impossible. Twelve commenters responded to MMS's request for comments on several specific issues as follows:

- Is a minimum value needed when a lessee chooses the actual dual accounting methodology?

Comment. No. It was demonstrated during the review of the percentage dual accounting alternative that liquid valuation was not a significant factor in the calculation.

- Are there other better methods to use?

Comment. No. No method is preferable to any other because the concept of a minimum value for gas plant products is objectionable.

- Are Conway and Mont Belvieu the proper locations to look for prices for gas plant products?

Comment. Eleven commenters stated that the proper location to look for gas plant products values is the point at which the products are sold. This would be consistent with the lease language which refers to the field or area. One commenter stated that if MMS is looking for some form of gas plant liquid postings, then it should look to the locations of those postings.

- Are the 7.0 and 8.0 cents per gallon the right deductions for transportation and fractionation?

Comment. Eleven commenters found this question irrelevant because the entire concept is objectionable. One commenter stated that the deductions appear reasonable for Conway and Mount Belvieu price postings.

- Would a percentage of the price or actual rates paid be a better deduction?

Comment. Eleven commenters found this question irrelevant because the entire concept is objectionable. One commenter stated that a percentage might provide more certainty but that may be difficult to develop because of price fluctuations.

Response. The Indian lease terms require that "value" be calculated based on the highest price paid or offered for the major portion of oil, gas, and all other hydrocarbon substances produced and sold from the field. To ensure that Indian lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms, MMS is adopting a minimum value for gas plant products in the final rule. We have researched the problem with the availability of published price data and determined that the necessary pricing data are available within a week after the end of the month. We appreciate the comments received in response to the specific issues and because no viable alternatives were suggested we will not make any changes in the final rule.

Non-Binding Guidance Under § 206.174(f)

The rule provides that lessees can request and MMS can provide non-binding valuation guidance. MMS cannot issue binding guidance regarding valuation. If a lessee seeks binding guidance, it must ask the Assistant Secretary.

Comment on § 206.174(l)(1). Seven commenters stated that audit closure should not just be limited to leases in Montana and North Dakota. The same commenters also recommend deleting the requirement to report adjustments that would result in additional royalty.

Response. MMS has determined that lessees must make adjustments sooner, and MMS must complete audits sooner for leases in Montana and North Dakota. The rule would be limited to Indian leases in these two States because at this time there are no acceptable published indexes applicable to that area. The Committee discussed what would happen if an area such as the San Juan Basin were disqualified as an index area, and agreed that time limitations would not be appropriate in that case. Naming Montana and North Dakota was the most straightforward way to write the rule. Otherwise, we would need to discuss what happens if an area such as the San Juan Basin becomes disqualified as an index area. We did not make any changes in the final rule.

Comment on § 206.174(l)(1)(ii). Two commenters suggested that to conform to parallel language in paragraph (l)(1)(i), the closing language of the last sentence should be amended to read, "after the last day of the 12th month *following* the last day to report adjustments."

Response. We agree and made the change in the final rule.

Comment on § 206.174(l)(2)(i). Two commenters suggested amending the opening phrase of this paragraph to read, "If you have a pending dispute with your purchaser *that affects valuation.* * * *" These commenters feel that MMS might otherwise unnecessarily try to avoid audit closure.

Response. MMS agrees and we made the change in the final rule.

Comment on § 206.174(l)(2)(i). Two commenters suggested amending the opening phrase of this paragraph to read, "If you have a pending *dispute that affects valuation* with the person transporting. * * *"

Response. MMS agrees and we made the change in the final rule. We also consolidated paragraphs (i) and (ii) in

the final rule and adjusted the numbering accordingly.

Comment on § 206.174(l)(2)(ii). Two commenters suggested that this provision should be modified to read, "If there is a written agreement between you and MMS or its delegee *to extend the time limit,* the time period is extended * * *."

Response. We made the proposed change in the final rule.

Comment on § 206.176(a)(1)(i) and (ii). Five commenters recommended replacing the word "*including* * * * applicable allowances" with the word "less" to avoid the implication that allowances are not deductible.

Response. We agree and made the suggested word change where appropriate in the final rule.

Comment on § 206.176(c). Eight commenters stated that the Committee agreed that the gas must be traced to the mainline. Whether the pipeline has an index is irrelevant and in any case does not take into account valuation in nonindex areas. This reference should also be corrected in § 206.172(b)(1)(ii) and wherever discussed in the preamble.

Response. We generally agree with the commenters and note that although the Committee spent considerable time trying to determine the correct wording, no decision was ever reached. We changed the wording of the first sentence in § 206.176(c) of the final rule by adding the phrase "* * * or into a *mainline pipeline* not in an index zone." We did not change the wording in § 206.172(b)(1)(ii) for the reasons discussed above. We did not define mainline but intend it to have the same characteristics as a pipeline in an index zone with an index. We have also added wording clarifying that accounting for comparison is not required if the gas produced from the lease is not processed.

Comment on § 206.176(e). Two commenters believe there is no need to compute the weighted average Btu when the alternative method is not being used. This paragraph need only state that you do not have to perform dual accounting for a facility measurement point with a Btu content of less than 1,000 Btu/cf. Likewise, the cross-reference to § 206.173 is not necessary.

Response. We believe that the cross-reference adds clarity, and we did not make the change in the final rule.

Comment on § 206.178(a)(1)(i). One commenter stated that transportation contracts, invoices, or non-arm's-length transportation cost documentation should be made available only upon audit and review. One commenter supported the routine submittal of transportation contracts because the information contained in those contracts will permit the timely verification of the deduction and satisfies the Committee's goal related to closure.

Response. MMS agrees with the need to routinely submit transportation contracts, and we did not make any changes in the final rule.

Comment on § 206.178(f). Two commenters stated that the first sentence of this paragraph should specify that "you are required to report and pay additional royalties *on the difference,* plus interest * * *."

Response. We do not believe that the additional wording is necessary and did not make any changes in the final rule.

Comment on § 206.178(g). Seven commenters recommended that the exception for Federal Energy Regulatory Commission (FERC) or State-approved tariffs contained in the regulations published in 1988 be reinstated in the final rule.

Response. We will allow the lessee to deduct only those costs associated with specifically identifiable actual or theoretical losses that are part of the lessee's arm's-length transportation contract. We did not make any change in the final rule.

Comment on § 206.179. One commenter agreed that MMS should not allow extraordinary cost deductions. Two commenters believe that the provisions in the 1988 regulations covering extraordinary processing allowances should be reinstated in the rule.

Response. MMS believes at this time that it is a better exercise of the Secretary's trust responsibility to not allow extraordinary cost allowances for Indian leases.

Comment on § 206.179(f). Two commenters believe that this paragraph is out of place. It should be moved to § 220.550(d) and should include unprocessed gas as well as residue gas and gas plant products.

Response. We assume that the commenters made a typographic error and the correct cite should be § 202.550(d). We do not believe that moving the paragraph will add to or clarify the rule. No change was made in the final rule.

FERC Order 636 Changes. On December 16, 1997, MMS issued a final regulation amending the existing transportation allowance regulation for both Federal and Indian leases (62 FR 65753). These changes result from FERC Order 636.

Many of the transportation allowance provisions changed in that rulemaking were the same as those proposed in this rulemaking. Therefore, this final rule incorporates changes to the transportation allowance rules in §§ 206.177 and 206.178 resulting from the recent final rule.

Paperwork Reduction Act

MMS requested comments on two new forms, Form MMS–4410, Certification for Not Performing Accounting for Comparison (Dual Accounting), and Form MMS–4411, Safety Net Report, as they relate to the Paperwork Reduction Act.

Comment on the Paperwork Reduction Act. Eleven commenters believe that Form MMS–4410 is unnecessary because the same result can be more efficiently accomplished through the use of a specific transaction code on Form MMS–2014. These same commenters stated that because they are totally opposed to the entire "safety net" concept, Form MMS–4411 is not needed. The eleven commenters also believe that MMS's estimate of additional costs to the entire industry of only $935,000 per year is absurdly low.

Response. Form MMS–4410 will ensure that the lessee is not in violation of lease terms specifying dual accounting by verifying whether or not dual accounting is required. The form will benefit industry because, by submitting the form, the lessee will not have to perform dual accounting. Further, the form is only a one time certification, which will require less burden than using a reporting code on Form MMS–2014 that would have to be used for every report month. Form MMS–4411 is critical in using the index pricing method to satisfy the gross proceeds and major portion requirements of Indian leases. The form is necessary to ensure that index pricing represents market value and that the tribes do not suffer significant revenue losses. The commenters' statement that the $935,000 estimate is too low was not supported with any verifying data of what the estimate should be. MMS performed an analysis to determine this estimate, as explained in the September 23, 1996, proposed rule, and maintains that this estimate is reasonable.

III. Principal Changes between the Proposed Rule and the Final Rule

Addition of § 206.172(f) and (g). The final rule adds additional paragraphs (f) and (g) to § 206.172. Paragraph (f) permits an Indian tribe to request that some or all of its leases be excluded from valuation under § 206.172. If MMS, after consultation with the Bureau of Indian Affairs (BIA), approves the

request, value is determined under § 206.174 beginning with production on the first day of the second month following the date MMS publishes notice in the **Federal Register**. If the tribe requests to exclude only some of its leases, the request will only be approved if the leases may be segregated into one or more groups based on fields within the reservation.

This change is included in the final rule because a revenue analysis indicated the Jicarilla Apache Tribe would receive less revenue under the index methodology than under a gross proceeds methodology. Specifically, royalties reported to MMS on MMS's Form MMS–2014 for 1995 and 1996 exceeded the calculated values using the index formula in § 206.172. The proposed rule provided for MMS to disqualify an index zone, but not to disqualify a reservation within an index zone.

A tribe may also ask MMS to terminate this exclusion. If MMS, after consultation with the BIA, terminates the exclusion, value would be determined under § 206.172. Termination of an exclusion cannot take effect earlier than 1 year after the first day of the production month that the exclusion was effective.

Paragraph (g) for Indian allotted leases contains provisions similar to paragraph (f) and provides that MMS, with BIA consultation, may exclude any allotted leases from valuation under § 206.172.

Addition of § 206.174(a)(4)(iv). A new paragraph (iv) in § 206.174(a)(4) permits using data other than values reported on Form MMS–2014 in calculating the major portion value. The alternative data would be data for production in the designated area reported to a State tax authority or price data from leases MMS has reviewed in the designated area. This change was needed because the revenue analysis indicated that some Indian leases in Oklahoma would receive less revenue under the index methodology than under a gross proceeds methodology and we therefore expect that several tribes in Oklahoma will request their leases to be excluded from index valuation. Indian gas production is only about 2 percent of production in Oklahoma. Since this amount of gas is too small to be representative of all gas production values in a designated area, we needed an additional data source beyond information on a Form MMS–2014. The revenue analysis for the Jicarilla Apache reservation showed similar results and under § 206.172(f), and MMS expects the Jicarilla Apache will request its leases to be excluded from index valuation.

IV. Procedural Matters

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this final rule, call 1–888–734–3247.

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Approximately 700 entities pay royalties to MMS on production from Indian lands, 400 of which are small businesses because they employ 500 or less employees. This rule will not have a significant administrative impact on these small entities because it decreases rather than increases the reporting burden. The reduced reporting results from using the alternative method for dual accounting and the relief from complying with major portion requirements under index pricing. For example, the average Indian royalty payor will expend approximately $8,500 less annually for administrative costs to comply with this amended rule than under existing regulations. We estimate that the 200 smallest companies (0–4 employees) would have an average administrative savings of $700 per year.

The rule would also have a royalty impact on small businesses due to the index pricing formula for index-based areas and the major portion provision for non-index areas. We estimate that 35 percent of the total gas royalties paid on Indian tribal lands derive from the 400 small businesses that pay Indian gas royalties.

In our cost benefit analysis of the rule's impact, we estimated that the index pricing formula would increase Indian revenues by about $ 2.4 million annually. Therefore, small businesses would incur an annual increase of about $2,100 per company ($2,400,000 x .35 ÷ 400). This represents about a 5 percent increase in royalties, so a very small company (e.g., 0–4 employees) that pays, for example, only $500 per year in royalties would pay approximately an additional $25.

In non-index areas, we estimate that the major portion provisions of the new rule would increase Indian revenues by $57,000 annually. Small businesses on average would account for about $50 each ($57,000 × .35 ÷ 400). However, given the significant administrative savings of the rule described above, we believe any increase in royalties paid by small companies will be more than offset by savings in reporting burdens.

Likewise, this rule will not adversely impact small tribal governments. This rule will increase annual royalty revenues to tribal governments by approximately $2.5 million.

Unfunded Mandates Reform Act of 1995

This Department has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, State governments, or the private sector.

Executive Order 12630

The Department certifies that this rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights."

Executive Order 12988

The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action requiring Office of Management and Budget review. MMS estimates that this rule will result in an overall $7.4 million administrative cost savings to industry.

Paperwork Reduction Act

This final rule contains information collection requirements. These requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB Control Numbers 1010–0075.

As discussed below, this final rule impacts an existing collection of information on Forms MMS–4109 and MMS–4295, which has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork

and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior, Washington, DC 20503. Send copies of your comments to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, PO Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is: Building 85, Denver Federal Center, Denver, Colorado 80225; e-Mail address is: RMP.comments@mms.gov.

As a predecessor to this rulemaking, on September 23, 1996, MMS published in the **Federal Register** a Notice of Proposed Rulemaking (NPR) (61 FR 49894) to amend its regulations governing the valuation for royalty purposes of natural gas produced from Indian leases. The NPR introduced two new forms—Form MMS–4410, Certification for Not Performing Accounting for Comparison (Dual Accounting) (OMB Control Number 1010–0104), and Form MMS–4411, Safety Net Report (OMB Control Number 1010–0103). These forms were approved by OMB on November 5, 1996. Forms MMS–4295 and 4109 were also mentioned in this NPR. No comments were received from the public on these allowance forms.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received to determine if a further rulemaking is necessary.

The burden hours associated with the existing information collection titled Gas Processing Allowance Summary Report (Form MMS–4109) and Gas Transportation Allowance Report (Form MMS–4295), OMB Control Number 1010–0075, will be reduced by this final rulemaking. Instead of submitting estimated processing or transportation cost information on the forms and then following up with actual cost information at the end of the reporting cycle, the rule will require only responses with actual cost information. In addition, Indian lessees that have arm's-length transportation and processing contracts will submit copies of the actual contracts to MMS.

MMS estimates that 65 Indian lessees will submit approximately 3,000 allowance data lines annually. Lessees may be involved in more than one type of allowance proposal and may submit both a processing allowance line and a transportation allowance line. Based on past experience, MMS estimates that lessees can complete an allowance data line in about ¼ hour.

The estimate of the total annual burden hours to respondents for this information collection is 750 hours (3,000 allowance data lines × ¼ hour). The Gas Transportation Allowance Report, Form MMS–4295, accounts for approximately 2,400 responses annually (80 percent of the forms received), and the Gas Processing Allowance Summary Report, Form MMS–4109, accounts for approximately 600 responses annually (20 percent of the forms received). Therefore, the annual estimate of the burden hours by form is 600 hours for Form MMS–4295 and 150 hours for Form MMS–4109.

The MMS estimates that this information collection will result in a decrease to industry of about 2,755 burden hours annually. The MMS attributes this decrease primarily to the decrease in the number of responses to only actual cost information as discussed above. A further decrease will result from certain lessees electing the alternative method for valuing processed gas, which requires no processing allowance to be taken and no accompanying allowance report to be submitted.

In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. For instance your comments may address the following areas. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969

We determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: March 23, 1999.

Sylvia V. Baca,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 202 and 206 are amended as follows:

PART 202—ROYALTIES

1. The authority citation for part 202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

§ 202.51 [Amended]

2. Paragraph (b) of § 202.51 is revised to read as follows:

* * * * *

(b) The definitions in subparts B, C, D, and E, of part 206 of this title are applicable to subparts B, C, D, and J of this part.

3. The heading for Subpart D—Federal and Indian Gas is revised to read as follows:

Subpart D—Federal Gas

§ 202.150 [Amended]

4. In § 202.150 the words "or Indian" are removed from. (b)(1), (e)(1) and (e)(2).

§ 202.150 [Amended]

5. In § 202.150 the words "and Indian" and "or Indian" are removed from paragraph (f).

§ 202.151 [Amended]

6. In § 202.151, the words "and Indian" are removed from paragraph (a)(2).

7. A new subpart J is added to read as follows:

Subpart J—Gas Production from Indian Leases

Sec.

202.550 How do I determine the royalty due on gas production?
202.551 How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)?
202.552 How do I determine how much royalty I must pay if my lease is in an approved Federal unit or communitization agreement (AFA)?
202.553 How do I value my production if I take more than my entitled share?
202.554 How do I value my production that I do not take if I take less than my entitled share?
202.555 What portion of the gas that I produce is subject to royalty?
202.556 How do I determine the value of avoidably lost, wasted, or drained gas?
202.557 Must I pay royalty on insurance compensation for unavoidably lost gas?
202.558 What standards do I use to report and pay royalties on gas?

Subpart J— Gas Production From Indian Leases

§ 202.550 How do I determine the royalty due on gas production?

If you produce gas from an Indian lease subject to this subpart, you must determine and pay royalties on gas production as specified in this section.

(a) *Royalty rate.* You must calculate your royalty using the royalty rate in the lease.

(b) *Payment in value or in kind.* You must pay royalty in value unless:

(1) The Tribal lessor requires payment in kind; or

(2) You have a lease on allotted lands and MMS requires payment in kind.

(c) *Royalty calculation.* You must use the following calculations to determine royalty due on the production from or attributable to your lease.

(1) When paid in value, the royalty due is the unit value of production for royalty purposes, determined under 30 CFR part 206, multiplied by the volume of production multiplied by the royalty rate in the lease.

(2) When paid in kind, the royalty due is the volume of production multiplied by the royalty rate.

(d) *Reduced royalty rate.* The Indian lessor and the Secretary may approve a request for a royalty rate reduction. In your request you must demonstrate economic hardship.

(e) *Reporting and paying.* You must report and pay royalties as provided in part 218 of this title.

§ 202.551 How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)?

(a) You are liable for royalty on your entitled share of gas production from your Indian lease, except as provided in §§ 202.555, 202.556, and 202.557.

(b) You and all other persons paying royalties on the lease must report and pay royalties based on your takes. If another person takes some of your entitled share but does not pay the royalties owed, you are liable for those royalties.

(c) You and all other persons paying royalties on the lease may ask MMS for permission to report and pay royalties based on your entitlements. In that event, MMS will provide valuation instructions consistent with this part and part 206 of this title.

§ 202.552 How do I determine how much royalty I must pay if my lease is in an approved Federal unit or communitization agreement (AFA)?

You must pay royalties each month on production allocated to your lease under the terms of an AFA. To determine the volume and the value of your production, you must follow these three steps:

(a) You must determine the volume of your entitled share of production allocated to your lease under the terms of an AFA. This may include production from more than one AFA.

(b) You must value the production you take using 30 CFR part 206. If you take more than your entitled share of production, see § 202.553 for information on how to value this production. If you take less than your entitled share of production, see § 202.554 for information on how to value production you are entitled to but do not take.

§ 202.553 How do I value my production if I take more than my entitled share?

If you take more than your entitled share of production from a lease in an AFA for any month, you must determine the weighted-average value of all of the production that you take using the procedures in 30 CFR part 206, and use that value for your entitled share of production.

§ 202.554 How do I value my production that I do not take if I take less than my entitled share?

If you take none or only part of your entitled production from a lease in an AFA for any month, use this section to value the production that you are entitled to but do not take.

(a) If you take a significant volume of production from your lease during the month, you must determine the weighted average value of the production that you take using 30 CFR part 206, and use that value for the production that you do not take.

(b) If you do not take a significant volume of production from your lease during the month, you must use paragraph (c) or (d) of this section, whichever applies.

(c) In a month where you do not take production or take an insignificant volume, and if you would have used § 206.172(b) to value the production if you had taken it, you must determine the value of production not taken for that month under § 206.172(b) as if you had taken it.

(d) If you take none of your entitled share of production from a lease in an AFA, and if that production cannot be valued under § 206.172(b), then you must determine the value of the production that you do not take using the first of the following methods that applies:

(1) The weighted average of the value of your production (under 30 CFR part 206) in that month from other leases in the same AFA.

(2) The weighted average of the value of your production (under 30 CFR part 206) in that month from other leases in the same field or area.

(3) The weighted average of the value of your production (under 30 CFR part 206) during the previous month for production from leases in the same AFA.

(4) The weighted average of the value of your production (under 30 CFR part 206) during the previous month for production from other leases in the same field or area.

(5) The latest major portion value that you received from MMS calculated under 30 CFR 206.174 for the same MMS-designated area.

(e) You may take less than your entitled share of AFA production for any month, but pay royalties on the full volume of your entitled share under this section. If you do, you will owe no additional royalty for that lease for that month when you later take more than your entitled share to balance your account. The provisions of this paragraph (e) also apply when the other AFA participants pay you money to balance your account.

§ 202.555 What portion of the gas that I produce is subject to royalty?

(a) All gas produced from or allocated to your Indian lease is subject to royalty except the following:

(1) Gas that is unavoidably lost.

(2) Gas that is used on, or for the benefit of, the lease.

(3) Gas that is used off-lease for the benefit of the lease when the Bureau of Land Management (BLM) approves such off-lease use.

(4) Gas used as plant fuel as provided in 30 CFR 206.179(e).

(b) You may use royalty-free only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility when you use gas for one of the following purposes:

(1) On, or for the benefit of, the lease at a production facility handling production from more than one lease with BLM's approval.

(2) At a production facility handling unitized or communitized production.

(c) If the terms of your lease are inconsistent with this subpart, your lease terms will govern to the extent of that inconsistency.

§ 202.556 How do I determine the value of avoidably lost, wasted, or drained gas?

If BLM determines that a volume of gas was avoidably lost or wasted, or a volume of gas was drained from your Indian lease for which compensatory royalty is due, then you must determine the value of that volume of gas under 30 CFR part 206.

§ 202.557 Must I pay royalty on insurance compensation for unavoidably lost gas?

If you receive insurance compensation for unavoidably lost gas, you must pay royalties on the amount of that compensation. This paragraph does not apply to compensation through self-insurance.

§ 202.558 What standards do I use to report and pay royalties on gas?

(a) You must report gas volumes as follows:

(1) Report gas volumes and Btu heating values, if applicable, under the same degree of water saturation. Report gas volumes and Btu heating value at a standard pressure base of 14.73 psia and a standard temperature of 60 degrees Fahrenheit. Report gas volumes in units of 1,000 cubic feet (Mcf).

(2) You must use the frequency and method of Btu measurement stated in your contract to determine Btu heating values for reporting purposes. However, you must measure the Btu value at least semi-annually by recognized standard industry testing methods even if your contract provides for less frequent measurement.

(b) You must report residue gas and gas plant product volumes as follows:

(1) Report carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any gas marketed as a separate product by using the same standards specified in paragraph (a) of this section.

(2) Report natural gas liquid (NGL) volumes in standard U.S. gallons (231 cubic inches) at 60 degrees F.

(3) Report sulfur (S) volumes in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

8. The authority citation for 30 CFR part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

9. Subpart E of part 206 is revised to read as follows:

Subpart E—Indian Gas

Sec.

206.170 What does this subpart contain?
206.171 What definitions apply to this subpart?
206.172 How do I value gas produced from leases in an index zone?
206.173 How do I calculate the alternative methodology for dual accounting?
206.174 How do I value gas production when an index-based method cannot be used?
206.175 How do I determine quantities and qualities of production for computing royalties?
206.176 How do I perform accounting for comparison?

Transportation Allowances

206.177 What general requirements regarding transportation allowances apply to me?
206.178 How do I determine a transportation allowance?

Processing Allowances

206.179 What general requirements regarding processing allowances apply to me?
206.180 How do I determine an actual processing allowance?
206.181 How do I establish processing costs for dual accounting purposes when I do not process the gas?

Subpart E—Indian Gas

§ 206.170 What does this subpart contain?

This subpart contains royalty valuation provisions applicable to Indian lessees.

(a) This subpart applies to all gas production from Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation). The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms. This subpart does not apply to Federal leases.

(b) If the specific provisions of any Federal statute, treaty, negotiated agreement, settlement agreement resulting from any administrative or judicial proceeding, or Indian oil and gas lease are inconsistent with any regulation in this subpart, then the Federal statute, treaty, negotiated agreement, settlement agreement, or lease will govern to the extent of that inconsistency.

(c) You may calculate the value of production for royalty purposes under methods other than those the regulations in this title require, but only if you, the tribal lessor, and MMS jointly agree to the valuation methodology. For leases on Indian allotted lands, you and MMS must agree to the valuation methodology.

(d) All royalty payments you make to MMS are subject to monitoring, review, audit, and adjustment.

(e) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.171 What definitions apply to this subpart?

The following definitions apply to this subpart and to subpart J of part 202 of this title:

Accounting for comparison means the same as dual accounting.

Active spot market means a market where one or more MMS-acceptable publications publish bidweek prices (or if bidweek prices are not available, first of the month prices) for at least one index-pricing point in the index zone.

Allowance means a deduction in determining value for royalty purposes. Processing allowance means an allowance for the reasonable, actual costs of processing gas determined under this subpart. Transportation allowance means an allowance for the reasonable, actual cost of transportation determined under this subpart.

Approved Federal Agreement (AFA) means a unit or communitization agreement approved under departmental regulations.

Area means a geographic region at least as large as the defined limits of an oil or gas field, in which oil or gas lease products have similar quality, economic, or legal characteristics. An area may be all lands within the boundaries of an Indian reservation.

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between

independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. The following percentages (based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership) determine if persons are affiliated:

(1) Ownership in excess of 50 percent constitutes control.

(2) Ownership of 10 through 50 percent creates a presumption of control.

(3) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. MMS may require the lessee to certify the percentage of ownership or control of the entity. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other persons who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Compression means raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Dedicated means a contractual commitment to deliver gas production (or a specified portion of production) from a lease or well when that production is specified in a sales contract *and* that production must be sold pursuant to that contract to the extent that production occurs from that lease or well.

Drip condensate means any condensate recovered downstream of the facility measurement point without resorting to processing. Drip condensate includes condensate recovered as a result of its becoming a liquid during the transportation of the gas removed from the lease or recovered at the inlet of a gas processing plant by mechanical means, often referred to as scrubber condensate.

Dual Accounting (or *accounting for comparison*) refers to the requirement to pay royalty based on a value which is the higher of the value of gas prior to processing less any applicable allowances as compared to the combined value of drip condensate, residue gas, and gas plant products after processing, less applicable allowances.

Entitlement (or *entitled share*) means the gas production from a lease, or allocable to lease acreage under the terms of an AFA, multiplied by the operating rights owner's percentage of interest ownership in the lease or the acreage.

Facility measurement point (or *point of royalty settlement*) means the point where the BLM-approved measurement device is located for determining the volume of gas removed from the lease. The facility measurement point may be on the lease or off-lease with BLM approval.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

Gas means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas. However, it does not include residue gas.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area; or a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM operations personnel.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, and gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, or field gathering to the extent that the lessee is obligated to perform them at no cost to the Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest is exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Index means the calculated composite price ($/MMBtu) of spot-market sales published by a publication that meets MMS-established criteria for acceptability at the index-pricing point.

Index-pricing point (IPP) means any point on a pipeline for which there is an index.

Index zone means a field or an area with an active spot market and published indices applicable to that field or area that are acceptable to MMS under § 206.172(d)(2).

Indian allottee means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Indian tribe means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

For purposes of this subpart, this definition excludes Federal leases.

Lease products means any leased minerals attributable to, originating from, or allocated to a lease.

Lessee means any person to whom the United States, a tribe, and/or individual Indian landowner issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease (including operating rights owners) as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality lease products means lease products which have similar chemical, physical, and legal characteristics.

Marketable condition means a condition in which lease products are sufficiently free from impurities and otherwise so conditioned that a purchaser will accept them under a sales contract typical for the field or area.

MMS means the Minerals Management Service, Department of the Interior. MMS includes, where appropriate, tribal auditors acting under agreements under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* or other applicable agreements.

Minimum royalty means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

Natural gas liquids (NGL's) means those gas plant products consisting of ethane, propane, butane, or heavier liquid hydrocarbons.

Net-back method (or *work-back method*) means a method for calculating market value of gas at the lease under which costs of transportation, processing, and manufacturing are deducted from the proceeds received for, or the value of, the gas, residue gas, or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale under an arm's-length contract or comparison to other sales of such products.

Net output means the quantity of residue gas and each gas plant product that a processing plant produces.

Net profit share means the specified share of the net profit from production of oil and gas as provided in the agreement.

Operating rights owner (or *working interest owner*) means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title (see BLM regulations at 43 CFR 3100.0–5(d)).

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Point of royalty measurement means the same as facility measurement point.

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, desulphurization (or "sweetening"), and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the "MMS Royalty Management Program Oil and Gas Payor Handbook."

Spot sales agreement means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration. It also does not normally require a cancellation notice to terminate, and does not contain an obligation, or imply an intent, to continue in subsequent periods.

Takes means when the operating rights owner sells or removes production from, or allocated to, the lease, or when such sale or removal occurs for the benefit of an operating rights owner.

Work-back method means the same as net-back method.

§ 206.172 How do I value gas produced from leases in an index zone?

(a) *What leases this section applies to.* This section explains how lessees must value, for royalty purposes, gas produced from Indian leases located in an index zone. For other leases, value must be determined under § 206.174.

(1) You must use the valuation provision of this section if your lease is in an index zone and meets one of the following two requirements:

(i) Has a major portion provision;

(ii) Does not have a major portion provision, but provides for the Secretary to determine the value of production.

(2) This section does not apply to carbon dioxide, nitrogen, or other non-hydrocarbon components of the gas stream. However, if they are recovered and sold separately from the gas stream, you must determine the value of these products under § 206.174.

(b) *Valuing residue gas and gas before processing.* (1) Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (b) explains how you must value the following four types of gas:

(i) Gas production before processing;

(ii) Gas production that you certify on Form MMS–4410, Certification for Not Performing Accounting for Comparison (Dual Accounting), is not processed before it flows into a pipeline with an index but which may be processed later;

(iii) Residue gas after processing; and

(iv) Gas that is never processed.

(2) The value of gas production that is not sold under an arm's-length dedicated contract is the index-based value determined under paragraph (d) of this section unless the gas was subject to a previous contract which was part of a gas contract settlement. If the previous contract was subject to a gas contract settlement and if the royalty-bearing contract settlement proceeds per MMBtu added to the 80 percent of the safety net prices calculated at § 206.172(e)(4)(i) exceeds the index-based value that applies to the gas under this section (including any adjustments required under § 206.176), then the value of the gas is the higher of the value determined under this section (including any adjustments required under § 206.176) or § 206.174.

(3) The value of gas production that is sold under an arm's-length dedicated contract is the higher of the index-based value under paragraph (d) of this section or the value of that production determined under § 206.174(b).

(c) *Valuing gas that is processed before it flows into a pipeline with an index.* Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (c) explains how you must value gas that is processed before it flows into a pipeline with an index. You must value this gas production based on the higher of the following two values:

(1) The value of the gas before processing determined under paragraph (b) of this section.

(2) The value of the gas after processing, which is either the alternative dual accounting value under § 206.173 or the sum of the following three values:

(i) The value of the residue gas determined under paragraph (b)(2) or (3) of this section, as applicable;

(ii) The value of the gas plant products determined under § 206.174, less any applicable processing and/or transportation allowances determined under this subpart; and

(iii) The value of any drip condensate associated with the processed gas determined under subpart B of this part.

(d) *Determining the index-based value for gas production.* (1) To determine the index-based value per MMBtu for production from a lease in an index zone, you must use the following procedures:

(i) For each MMS-approved publication, calculate the average of the highest reported prices for all index-pricing points in the index zone, except for any prices excluded under paragraph (d)(6) of this section;

(ii) Sum the averages calculated in paragraph (d)(1)(i) of this section and divide by the number of publications; and

(iii) Reduce the number calculated under paragraph (d)(1)(ii) of this section by 10 percent, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu. The result is the index-based value per MMBtu for production from all leases in that index zone.

(2) MMS will publish in the **Federal Register** the index zones that are eligible for the index-based valuation method under this paragraph. MMS will monitor the market activity in the index zones and, if necessary, hold a technical conference to add or modify a particular index zone. Any change to the index zones will be published in the **Federal Register**. MMS will consider the following five factors and conditions in determining eligible index zones:

(i) Areas for which MMS-approved publications establish index prices that accurately reflect the value of production in the field or area where the production occurs;

(ii) Common markets served;

(iii) Common pipeline systems;

(iv) Simplification; and

(v) Easy identification in MMS's systems, such as counties or Indian reservations.

(3) If market conditions change so that an index-based method for determining value is no longer appropriate for an index zone, MMS will hold a technical conference to consider disqualification of an index zone. MMS will publish notice in the **Federal Register** if an index zone is disqualified. If an index zone is disqualified, then production from leases in that index zone cannot be valued under this paragraph.

(4) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including, but not limited to the following five criteria:

(i) Publications buyers and sellers frequently use;

(ii) Publications frequently referenced in purchase or sales contracts;

(iii) Publications that use adequate survey techniques, including the gathering of information from a substantial number of sales;

(iv) Publications that publish the range of reported prices they use to calculate their index; and

(v) Publications independent from DOI, lessors, and lessees.

(5) Any publication may petition MMS to be added to the list of acceptable publications.

(6) MMS may exclude an individual index price for an index zone in an MMS-approved publication if MMS determines that the index price does not accurately reflect the value of production in that index zone. MMS will publish a list of excluded indices in the **Federal Register**.

(7) MMS will reference which tables in the publications you must use for determining the associated index prices.

(8) The index-based values determined under this paragraph are not subject to deductions for transportation or processing allowances determined under §§ 206.177, 206.178, 206.179, and 206.180.

(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (1) Notwithstanding any other provision of this section, the value for royalty purposes of gas production from an Indian lease that is sold beyond the first index pricing point through which it flows cannot be less than the value determined under this paragraph (e).

(2) By June 30 following any calendar year, you must calculate for each month of that calendar year your safety net price per MMBtu using the procedures in paragraph (e)(3) of this section. You must calculate a safety net price for each month and for each index zone where you have an Indian lease for which you report and pay royalties.

(3) Your safety net price (S) for an index zone is the volume-weighted average contract price per delivered MMBtu under your or your affiliate's arm's-length contracts for the disposition of residue gas or unprocessed gas produced from your Indian leases in that index zone as computed under this paragraph (e)(3).

(i) Include in your calculation only sales under those contracts that establish a delivery point beyond the first index pricing point through which the gas flows, and that include any gas produced from or allocable to one or more of your Indian leases in that index zone, even if the contract also includes gas produced from Federal, State, or fee properties. Include in your volume-weighted average calculation those volumes that are allocable to your Indian leases in that index zone.

(ii) Do not reduce the contract price for any transportation costs incurred to deliver the gas to the purchaser.

(iii) For purposes of this paragraph (e), the contract price will not include the following amounts:

(A) Any amounts you receive in compromise or settlement of a predecessor contract for that gas;

(B) Deductions for you or any other person to put gas production into marketable condition or to market the gas; and

(C) Any amounts related to marketable securities associated with the sales contract.

(4) Next, you must determine for each month the safety net differential (SND). You must perform this calculation separately for each index zone.

(i) For each index zone, the safety net differential is equal to: SND = [(0.80 × S) − (1.25 × I)] where (I) is the index-based value determined under 30 CFR 206.172(d).

(ii) If the safety net differential is positive you owe additional royalties.

(5)(i) To calculate the additional royalties you owe, make the following calculation for each of your Indian leases in that index zone that produced gas that was sold beyond the first index-pricing point through which the gas flowed and that was used in the calculation in paragraph (e)(3) of this section:

Lease royalties owed = SND × V × R, where R = the lease royalty rate and V = the volume allocable to the lease which produced gas that was sold beyond the first index pricing point.

(ii) If gas produced from any of your Indian leases is commingled or pooled with gas produced from non-Indian properties, and if any of the combined gas is sold at a delivery point beyond the first index pricing point through which the gas flows, then the volume allocable to each Indian lease for which gas was sold beyond the first index

pricing point in the calculation under paragraph (e)(5)(i) of this section is the volume produced from the lease multiplied by the proportion that the total volume of gas sold beyond the first index pricing point bears to the total volume of gas commingled or pooled from all properties.

(iii) Add the numbers calculated for each lease under paragraph (e)(5)(i) of this section. The total is the additional royalty you owe.

(6) You have the following responsibilities to comply with the minimum value for royalty purposes:

(i) You must report the safety net price for each index zone to MMS on Form MMS–4411, Safety Net Report, no later than June 30 following each calendar year;

(ii) You must pay and report on Form MMS–2014 additional royalties due no later than June 30 following each calendar year; and

(iii) MMS may order you to amend your safety net price within one year from the date your Form MMS–4411 is due or is filed, whichever is later. If MMS does not order any amendments within that one-year period, your safety net price calculation is final.

(f) *Excluding some or all tribal leases from valuation under this section.* (1) An Indian tribe may ask MMS to exclude some or all of its leases from valuation under this section. MMS will consult with BIA regarding the request.

(i) If MMS approves the request for your lease, you must value your production under § 206.174 beginning with production on the first day of the second month following the date MMS publishes notice of its decision in the **Federal Register**.

(ii) If an Indian tribe requests exclusion from an index zone for less than all of its leases, MMS will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation.

(2) An Indian tribe may ask MMS to terminate exclusion of its leases from valuation under this section. MMS will consult with BIA regarding the request.

(i) If MMS approves the request, you must value your production under § 206.172 beginning with production on the first day of the second month following the date MMS publishes notice of its decision in the **Federal Register**.

(ii) Termination of an exclusion under paragraph (f)(2)(i) of this section cannot take effect earlier than 1 year after the first day of the production month that the exclusion was effective.

(3) The Indian tribe's request to MMS under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution.

(g) *Excluding Indian allotted leases from valuation under this section.* (1)(i) MMS may exclude any Indian allotted leases from valuation under this section. MMS will consult with BIA regarding the exclusion.

(ii) If MMS excludes your lease, you must value your production under § 206.174 beginning with production on the first day of the second month following the date MMS publishes notice of its decision in the **Federal Register**.

(iii) If MMS excludes any Indian allotted leases under this paragraph (g)(1), it will exclude all Indian allotted leases in the same field.

(2)(i) MMS may terminate the exclusion of any Indian allotted leases from valuation under this section. MMS will consult with BIA regarding the termination.

(ii) If MMS terminates the exclusion, you must value your production under § 206.172 beginning with production on the first day of the second month following the date MMS publishes notice of its decision in the **Federal Register**.

§ 206.173 How do I calculate the alternative methodology for dual accounting?

(a) *Electing a dual accounting method.* (1) If you are required to perform the accounting for comparison (dual accounting) under § 206.176, you have two choices. You may elect to perform the dual accounting calculation according to either § 206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).

(2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each MMS-designated area. Your election for a designated area must apply to all of your Indian leases in that area.

(i) MMS will publish in the **Federal Register** a list of the lease prefixes that will be associated with each designated area for purposes of this section. The MMS-designated areas are as follows:

(A) Alabama-Coushatta;
(B) Blackfeet Reservation;
(C) Crow Reservation;
(D) Fort Belknap Reservation;
(E) Fort Berthold Reservation;
(F) Fort Peck Reservation;
(G) Jicarilla Apache Reservation;
(H) MMS-designated groups of counties in the State of Oklahoma;
(I) Navajo Reservation;
(J) Northern Cheyenne Reservation;
(K) Rocky Boys Reservation;
(L) Southern Ute Reservation;
(M) Turtle Mountain Reservation;
(N) Ute Mountain Ute Reservation;
(O) Uintah and Ouray Reservation;
(P) Wind River Reservation; and
(Q) Any other area that MMS designates. MMS will publish a new area designation in the **Federal Register**.

(ii) You may elect to begin using the alternative methodology for dual accounting at the beginning of any month. The first election to use the alternative methodology will be effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative methodology must remain in effect for 2 calendar years. You may return to the actual dual accounting method only at the beginning of the next election period or with the written approval of MMS and the tribal lessor for tribal leases, and MMS for Indian allottee leases in the designated area.

(iii) When you elect to use the alternative methodology for a designated area, you must also use the alternative methodology for any new wells commenced and any new leases acquired in the designated area during the term of the election.

(b) *Calculating value using the alternative methodology for dual accounting.* (1) The alternative methodology adjusts the value of gas before processing determined under either § 206.172 or § 206.174 to provide the value of the gas after processing. You must use the value of the gas after processing for royalty payment purposes. The amount of the increase depends on your relationship with the owner(s) of the plant where the gas is processed. If you have no direct or indirect ownership interest in the processing plant, then the increase is lower, as provided in the table in paragraph (b)(2)(ii) of this section. If you have a direct or indirect ownership interest in the plant where the gas is processed, the increase is higher, as provided in paragraph (b)(2)(ii) of this section.

(2) To calculate the value of the gas after processing using the alternative methodology for dual accounting, you must apply the increase to the value before processing, determined in either § 206.172 or § 206.174, as follows:

(i) Value of gas after processing = (value determined under either § 206.172 or § 206.174, as applicable) × (1 + increment for dual accounting); and

(ii) In this equation, the increment for dual accounting is the number you take from the applicable Btu range, determined under paragraph (b)(3) of this section, in the following table:

BTU range	Increment if Lessee has no ownership interest in plant	Increment if lessee has an ownership interest in plant
1001 to 1050	.0275	.0375
1051 to 1100	.0400	.0625
1101 to 1150	.0425	.0750
1151 to 1200	.0700	.1225
1201 to 1250	.0975	.1700
1251 to 1300	.1175	.2050
1301 to 1350	.1400	.2400
1351 to 1400	.1450	.2500
1401 to 1450	.1500	.2600
1451 to 1500	.1550	.2700
1501 to 1550	.1600	.2800
1551 to 1600	.1650	.2900
1601 to 1650	.1850	.3225
1651 to 1700	.1950	.3425
1701+	.2000	.3550

(3) The applicable Btu for purposes of this section is the volume weighted-average Btu for the lease computed from measurements at the facility measurement point(s) for gas production from the lease.

(4) If any of your gas from the lease is processed during a month, use the following two paragraphs to determine which amounts are subject to dual accounting and which dual accounting method you must use.

(i) Weighted-average Btu content determined under paragraph (b)(3) of this section is greater than 1,000 Btu's per cubic foot (Btu/cf). All gas production from the lease is subject to dual accounting and you must use the alternative method for all that gas production if you elected to use the alternative method under this section.

(ii) Weighted-average Btu content determined under paragraph (b)(3) of this section is less than or equal to 1,000 Btu/cf. Only the volumes of lease production measured at facility measurement points whose quality exceeds 1,000 Btu/cf are subject to dual accounting, and you may use the alternative methodology for these volumes. For gas measured at facility measurement points for these leases where the quality is equal to or less than 1,000 Btu/cf, you are not required to do dual accounting.

§ 206.174 How do I value gas production when an index-based method cannot be used?

(a) *Situations in which an index-based method cannot be used.* (1) Gas production must be valued under this section in the following situations.

(i) Your lease is not in an index zone (or MMS has excluded your lease from an index zone).

(ii) If your lease is in an index zone and you sell your gas under an arm's-length dedicated contract, then the value of your gas is the higher of the value received under the dedicated contract determined under § 206.174(b) or the value under § 206.172.

(iii) Also use this section to value any other gas production that cannot be valued under § 206.172, as well as gas plant products, and to value components of the gas stream that have no Btu value (for example, carbon dioxide, nitrogen, etc.).

(2) The value for royalty purposes of gas production subject to this subpart is the value of gas determined under this section less applicable allowances determined under this subpart.

(3) You must determine the value of gas production that is processed and is subject to accounting for comparison using the procedure in § 206.176.

(4) This paragraph applies if your lease has a major portion provision. It also applies if your lease does not have a major portion provision but the lease provides for the Secretary to determine value.

(i) The value of production you must initially report and pay is the value determined in accordance with the other paragraphs of this section.

(ii) MMS will determine the major portion value and notify you in the **Federal Register** of that value. The value of production for royalty purposes for your lease is the higher of either the value determined under this section which you initially used to report and pay royalties, or the major portion value calculated under this paragraph (a)(4). If the major portion value is higher, you must submit an amended Form MMS–2014 to MMS by the due date specified in the written notice from MMS of the major portion value. Late-payment interest under 30 CFR 218.54 on any underpayment will not begin to accrue until the date the amended Form MMS–2014 is due to MMS.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, MMS will calculate the major portion value for each designated area (which are the same designated areas as under § 206.173) using values reported for unprocessed gas and residue gas on Form MMS–2014 for gas produced from leases on that Indian reservation or other designated area. MMS will array the reported prices from highest to lowest price. The major portion value is that price at which 25 percent (by volume) of the gas (starting from the highest) is sold. MMS cannot unilaterally change the major portion value after you are notified in writing of what that value is for your leases.

(iv) MMS may calculate the major portion value using different data than the data described in paragraph (a)(4)(iii) of this section or data to augment the data described in paragraph (a)(4)(iii) of this section. This may include price data reported to the State tax authority or price data from leases MMS has reviewed in the designated area. MMS may use this alternate or the augmented data source beginning with production on the first day of the month following the date MMS publishes notice in the **Federal Register** that it is calculating the major portion using a method in this paragraph (a)(4)(iv) of this section.

(b) *Arm's-length contracts.* (1) The value of gas, residue gas, or any gas plant product you sell under an arm's-length contract is the gross proceeds accruing to you or your affiliate, except as provided in paragraphs (b)(1)(ii)–(iv) of this section.

(i) You have the burden of demonstrating that your contract is arm's-length.

(ii) In conducting reviews and audits for gas valued based upon gross proceeds under this paragraph, MMS will examine whether or not your contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you or your affiliate for the gas, residue gas, or gas plant product. If the contract does not reflect the total consideration, then MMS may require that the gas, residue gas, or gas plant product sold under that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to you or your affiliate, including the additional consideration.

(iii) If MMS determines for gas valued under this paragraph that the gross proceeds accruing to you or your affiliate under an arm's-length contract do not reflect the value of the gas, residue gas, or gas plant products because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then MMS will require that the gas, residue gas, or gas plant product be valued under paragraphs (c)(2) or (3) of this section. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your value.

(iv) This paragraph applies to situations where a pipeline purchases

gas from a lessee according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price specified in the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessees must value all over-delivered volumes under paragraph (c)(2) or (3) of this section.

(2) MMS may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product.

(c) *Non-arm's-length contracts.* If your gas, residue gas, or any gas plant product is not sold under an arm's-length contract, then you must value the production using the first applicable method of the following three methods:

(1) The gross proceeds accruing to you under your non-arm's-length contract sale (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). For residue gas or gas plant products, the comparable arm's-length contracts must be for gas from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors will be considered: price, time of execution, duration, market or markets served, terms, quality of gas, residue gas, or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the gas, residue gas, or gas plant products.

(2) A value determined by consideration of other information relevant in valuing like-quality gas, residue gas, or gas plant products, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, or for residue gas or gas plant products from the same gas plant or other nearby processing plants. Other factors to consider include prices received in spot sales of gas, residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of such gas, residue gas, or gas plant products.

(3) A net-back method or any other reasonable method to determine value.

(d) *Supporting data.* If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to the determination of royalty value.

(1) Such data will be subject to review and audit, and MMS will direct you to use a different value if we determine upon review or audit that the value you reported is inconsistent with the requirements of these regulations.

(2) You must make all such data available upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons. This includes your arm's-length sales and volume data for like-quality gas, residue gas, and gas plant products that are sold, purchased, or otherwise obtained from the same processing plant or from nearby processing plants, or from the same or nearby field or area.

(e) *Improper values.* If MMS determines that you have not properly determined value, you must pay the difference, if any, between royalty payments made based upon the value you used and the royalty payments that are due based upon the value MMS established. You also must pay interest computed on that difference under 30 CFR 218.54. If you are entitled to a credit, MMS will provide instructions on how to take that credit.

(f) *Value guidance.* You may ask MMS for guidance in determining value. You may propose a valuation method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. MMS will promptly review your proposal and provide you with a non-binding determination of the guidance you request.

(g) *Minimum value of production.* (1) For gas, residue gas, and gas plant products valued under this section, under no circumstances may the value of production for royalty purposes be less than the gross proceeds accruing to the lessee (including its affiliates) for gas, residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined under this subpart.

(2) For gas plant products valued under this section and not valued under § 206.173, the alternative methodology for dual accounting, the minimum value of production for each gas plant product is as follows:

(i) Leases in certain States and areas have specific minimum values.

(A) For production from leases in Colorado in the San Juan Basin, New Mexico, and Texas, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Mont Belvieu, Texas, minus 8.0 cents per gallon.

(B) For production in Arizona, in Colorado outside the San Juan Basin, Minnesota, Montana, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Conway, Kansas, minus 7.0 cents per gallon;

(ii) You may use any commercial price bulletin, but you must use the same bulletin for all of the calendar year. If the commercial price bulletin you are using stops publication, you may use a different commercial price bulletin for the remaining part of the calendar year; and (iii) If you use a commercial price bulletin that is published monthly, the monthly average minimum price is the bulletin's minimum price. If you use a commercial price bulletin that is published weekly, the monthly average minimum price is the arithmetic average of the bulletin's weekly minimum prices. If you use a commercial price bulletin that is published daily, the monthly average minimum price is the arithmetic average of the bulletin's minimum prices for each Wednesday in the month.

(h) *Marketable condition/Marketing.* You are required to place gas, residue gas, and gas plant products in marketable condition and market the gas for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor. When your gross proceeds establish the value under this section, that value must be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services to place the gas, residue gas, or gas plant products in marketable condition or to market the gas, the cost of which ordinarily is your responsibility.

(i) *Highest obtainable price or benefit.* For gas, residue gas, and gas plant products valued under this section, value must be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if you fail to take proper or timely action to receive prices or benefits to which you are entitled, you must pay royalty at a value based upon

that obtainable price or benefit. Contract revisions or amendments must be in writing and signed by all parties to an arm's-length contract. If you make timely application for a price increase or benefit allowed under your contract but the purchaser refuses, and you take reasonable measures, which are documented, to force purchaser compliance, you will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph is not intended to permit you to avoid your royalty payment obligation in situations where your purchaser fails to pay, in whole or in part, or timely, for a quantity of gas, residue gas, or gas plant product.

(j) *Non-binding MMS reviews.* Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in an MMS redetermination of value under this section will be considered final or binding against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) *Confidential information.* Certain information submitted to MMS to support valuation proposals, including transportation allowances and processing allowances, may be exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this subpart must be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

(l) *Time limits on adjustments and audits for certain Indian leases.* (1) If you determine the value of production under this section from leases in Montana and North Dakota, you have time limits to make adjustments to your reported royalty value. If you know of an adjustment that would result in additional royalty owed, you are required to report that adjustment and pay the additional royalty by the time limit established in this paragraph. MMS also has time limits to complete royalty audits for these leases only. There are exceptions to these time limits in paragraph (l)(2) of this section.

(i) If your royalty valuation does not include a non-arm's-length allowance under this subpart, you have until the last day of the 13th month following the production month to report any adjustments on Form MMS–2014. MMS must complete royalty audits timely and may not issue demands or orders or initiate other action to collect royalty underpayment for this production from the lessee after the last day of the 12th month following the last day to make adjustments.

(ii) If your royalty valuation includes a non-arm's-length allowance under this subpart, you have until the last day of the 9th month following the month you submit to MMS your actual transportation allowance report, or your actual processing allowance report, to report any adjustments on Form MMS–2014. MMS must complete royalty audits timely and may not issue demands or orders or initiate any other action to collect royalty underpayments for this production from the lessee after the last day of the 12th month following the last day to report adjustments.

(2) Exceptions to the time limits in paragraph (l)(1) of this section are as follows:

(i) If you have a pending dispute with your purchaser or with the person transporting or processing your gas production that affects valuation, the time periods to make adjustments in paragraphs (l)(1)(i) and (ii) of this section will be extended for 6 months after your dispute is finally resolved. The time period to complete audits and issue demands or orders is correspondingly extended;

(ii) If there is a written agreement between you and MMS or its delegee (if applicable) to extend the time limit, the time period is extended for the period stated in the agreement;

(iii) If there is a pending regulatory proceeding by any agency with jurisdiction over sales prices for gas that could affect the value of the gas, the time period to make adjustments in paragraphs (l)(1)(i) and (ii) of this section will be extended for 90 days after final resolution of the pending regulatory proceeding, including any period for judicial review. The time period to complete audits and issue demands or orders is correspondingly extended;

(iv) If the lessee fails or refuses to provide records or information in its possession or control necessary to complete the audit, the time period to issue demands or orders will be extended for any time periods that MMS cannot obtain the records or information; and

(v) The time period in paragraphs (l)(1)(i) and (ii) of this section will not apply in situations involving fraud or intentional misrepresentation or concealment of a material fact for the purpose of evading a payment obligation.

(3) For purposes of this paragraph (l), *demand* or *order* means an order to pay a specific amount or an amount that the lessee may easily calculate. It also includes an order to perform a restructured accounting based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months. The order to perform a restructured accounting must specify the reasons and the factual bases for the order.

(4) If an audit discloses overpayments for any lease, the lessee may credit those overpayments against any underpayments due on that same lease.

§ 206.175 How do I determine quantities and qualities of production for computing royalties?

(a) For unprocessed gas, you must pay royalties on the quantity and quality at the facility measurement point BLM either allowed or approved.

(b) For residue gas and gas plant products, you must pay royalties on your share of the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(c) If you have no ownership interest in the processing plant and you do not operate the plant, you may use the contract volume allocation to determine your share of plant products.

(d) If you have an ownership interest in the plant or if you operate it, use the following procedure to determine the quantity of the residue gas and gas plant products attributable to you for royalty payment purposes:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which you must pay royalty is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease must be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of non-uniform content, the volumes of residue gas and gas plant products allocable to each lease are

based on theoretical volumes of residue gas and gas plant products measured in the lease gas stream. You must calculate the portion of net plant output of residue gas and gas plant products attributable to each lease as follows:

(i) First, compute the theoretical volumes of residue gas and of gas plant products attributable to the lease by multiplying the lease volume of the gas stream by the tested residue gas content (mole percentage) or gas plant product (GPM) content of the gas stream;

(ii) Second, calculate the theoretical volumes of residue gas and of gas plant products delivered from all leases by summing the theoretical volumes of residue gas and of gas plant products delivered from each lease; and

(iii) Third, calculate the theoretical quantities of net plant output of residue gas and of gas plant products attributable to each lease by multiplying the net plant output of residue gas, or gas plant products, by the ratio in which the theoretical volumes of residue gas, or gas plant products, is the numerator and the theoretical volume of residue gas, or gas plant products, delivered from all leases is the denominator.

(4) You may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If MMS approves a different method, it will be applicable to all gas production from your Indian leases that is processed in the same plant.

(e) You may not take any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas incurred prior to the facility measurement point will not be subject to royalty if BLM determines that the loss was unavoidable.

§ 206.176 How do I perform accounting for comparison?

(a) This section applies if the gas produced from your Indian lease is processed and that Indian lease requires accounting for comparison (also referred to as actual dual accounting). Except as provided in paragraphs (b) and (c) of this section, the actual dual accounting value, for royalty purposes, is the greater of the following two values:

(1) The combined value of the following products:

(i) The residue gas and gas plant products resulting from processing the gas determined under either § 206.172 or § 206.174, less any applicable allowances; and

(ii) Any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement without resorting to processing determined under § 206.52, less applicable allowances.

(2) The value of the gas prior to processing determined under either § 206.172 or § 206.174, including any applicable allowances.

(b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 206.173 instead of the provisions in paragraph (a) of this section.

(c) Accounting for comparison is not required for gas if no gas from the lease is processed until after the gas flows into a pipeline with an index located in an index zone or into a mainline pipeline not in an index zone. If you do not perform dual accounting, you must certify to MMS that gas flows into such a pipeline before it is processed.

(d) Except as provided in paragraph (e) of this section, if you value any gas production from a lease for a month using the dual accounting provisions of this section or the alternative dual accounting methodology of § 206.173, then the value of that gas is the minimum value for any other gas production from that lease for that month flowing through the same facility measurement point.

(e) If the weighted-average Btu quality for your lease is less than 1,000 Btu's per cubic foot, see § 206.173(b)(4)(ii) to determine if you must perform a dual accounting calculation.

Transportation Allowances

§ 206.177 What general requirements regarding transportation allowances apply to me?

(a) When you value gas under § 206.174 at a point off the lease, unit, or communitized area (for example, sales point or point of value determination), you may deduct from value a transportation allowance to reflect the value, for royalty purposes, at the lease, unit, or communitized area. The allowance is based on the reasonable actual costs you incurred to transport unprocessed gas, residue gas, or gas plant products from a lease to a point off the lease, unit, or communitized area. This would include, if appropriate, transportation from the lease to a gas processing plant off the lease, unit, or communitized area and from the plant to a point away from the plant. You may not deduct any allowance for gathering costs.

(b) You must allocate transportation costs among all products you produce and transport as provided in § 206.178.

(c)(1) Except as provided in paragraphs (c)(2) and (3) of this section, your transportation allowance deduction for each selling arrangement may not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant product. For purposes of this section, natural gas liquids are considered one product.

(2) If you ask MMS, MMS may approve a transportation allowance deduction in excess of the limitations in paragraph (c)(1) of this section. To receive this approval, you must demonstrate that the transportation costs incurred in excess of the limitations in paragraph (c)(1) of this section were reasonable, actual, and necessary. Under no circumstances may an allowance reduce the value for royalty purposes under any selling arrangement to zero.

(3) Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination.

(d) If MMS conducts a review or audit and determines that you have improperly determined a transportation allowance authorized by this subpart, then you will be required to pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54. Alternatively, you may be entitled to a credit, but you will not receive any interest on your overpayment.

§ 206.178 How do I determine a transportation allowance?

(a) *Determining a transportation allowance under an arm's-length contract.* (1) This paragraph explains how to determine your allowance if you have an arm's-length transportation contract.

(i) If you have an arm's-length contract for transportation of your production, the transportation allowance is the reasonable, actual costs you incur for transporting the unprocessed gas, residue gas and/or gas plant products under that contract. Paragraphs (a)(1)(ii) and (iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. Your allowances also are subject to paragraph (e) of this section. You are required to submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your report which claims the allowance on the Form MMS–2014.

(ii) When either MMS or a tribe conducts reviews and audits, they will

examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from you to the transporter of the transportation. If the contract reflects more than the total consideration, then MMS may require that the transportation allowance be determined under paragraph (b) of this section.

(iii) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then MMS will require that the transportation allowance be determined under paragraph (b) of this section. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your transportation costs.

(2) This paragraph explains how to allocate the costs to each product if your arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract.

(i) If your arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs must be allocated in a consistent and equitable manner to each of the products transported. To make this allocation, use the same proportion as the ratio that the volume of each product (excluding waste products which have no value) bears to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without MMS approval, or without lessor approval on tribal leases.

(ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported. MMS will approve the method if we determine that it meets one of the two following requirements:

(A) The methodology in paragraph (a)(2)(i) of this section cannot be applied; and

(B) Your proposal is more reasonable than the methodology in paragraph (a)(2)(i) of this section.

(3) This paragraph explains how to allocate costs to each product if your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract.

(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to MMS. You may use the transportation allowance determined in accordance with your proposed allocation procedure until MMS decides whether to accept your cost allocation.

(ii) You are required to submit all relevant data to support your allocation proposal. MMS will then determine the gas transportation allowance based upon your proposal and any additional information MMS deems necessary.

(4) If your payments for transportation under an arm's-length contract are not based on a dollar per unit price, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price includes a reduction for a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. You may use the transportation factor to determine your gross proceeds for the sale of the product. However, the transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(b) *Determining a transportation allowance under a non-arm's-length or no contract.* (1) This paragraph explains how to determine your allowance if you have a non-arm's-length transportation contract or no contract.

(i) When you have a non-arm's-length transportation contract or no contract, including those situations where you perform transportation services for yourself, the transportation allowance is based upon your reasonable, allowable, actual costs for transportation as provided in this paragraph.

(ii) All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies. However, MMS may approve a longer time period. MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may require you to modify your actual transportation allowance deduction.

(2) This paragraph explains what actual transportation costs are allowable under a non-arm's-length contract or no contract situation. The transportation allowance for non-arm's-length or no-contract situations is based upon your actual costs for transportation during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A) of this section), or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, fuel, utilities, materials, ad valorem property taxes, rent, supplies, and any other directly allocable and attributable operating expense that you can document.

(ii) Allowable maintenance expenses include maintenance of the transportation system, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without MMS approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the transportation system services, or a unit of production method. Once you make an election, you may not change methods without MMS approval. A change in ownership of a

transportation system will not alter the depreciation schedule that the original transporter/lessee established for purposes of the allowance calculation. With or without a change in ownership, a transportation system may be depreciated only once. Equipment may not be depreciated below a reasonable salvage value. To compute a return on undepreciated capital investment, you will multiply the undepreciated capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you will multiply the initial capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and is effective during the reporting period. The rate must be redetermined at the beginning of each subsequent transportation allowance reporting period that is determined under paragraph (b)(4) of this section.

(3) This paragraph explains how to allocate transportation costs to each product and transportation system.

(i) The deduction for transportation costs must be determined based on your cost of transporting each product through each individual transportation system. If you transport more than one product in a gaseous phase, the allocation of costs to each of the products transported must be made in a consistent and equitable manner. The allocation should be in the same proportion that the volume of each product (excluding waste products that have no value) bears to the volume of all products in the gaseous phase (excluding waste products that have no value). Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without MMS approval.

(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported. MMS will approve the method upon determining that it meets one of the two following requirements:

(A) The methodology in paragraph (b)(3)(i) of this section cannot be applied; and

(B) Your proposal is more reasonable than the method in paragraph (b)(3)(i) of this section.

(4) Your transportation allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.

(5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS. You may use the transportation allowance determined in accordance with your proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. You are required to submit all relevant data to support your proposal. MMS will then determine the transportation allowance based upon your proposal and any additional information MMS deems necessary.

(c) *Using the alternative transportation calculation when you have a non-arm's-length or no contract.* (1) As an alternative to computing your transportation allowance under paragraph (b) of this section, you may use as the transportation allowance 10 percent of your gross proceeds but not to exceed 30 cents per MMBtu.

(2) Your election to use the alternative transportation allowance calculation in paragraph (c)(1) of this section must be made at the beginning of a month and must remain in effect for an entire calendar year. Your first election will remain in effect until the end of the succeeding calendar year, except for elections effective January 1 that will be effective only for that calendar year.

(d) *Reporting your transportation allowance.* (1) If MMS requests, you must submit all data used to determine your transportation allowance. The data must be provided within a reasonable period of time that MMS will determine.

(2) You must report transportation allowances as a separate line item on Form MMS–2014. MMS may approve a different reporting procedure on allottee leases, and with lessor approval on tribal leases.

(e) *Adjusting incorrect allowances.* If for any month the transportation allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to report and pay additional royalties due, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due. If the transportation allowance you are entitled to is greater than the amount you took on Form MMS–2014 for any royalties during the reporting period, you are entitled to a credit. No interest will be paid on the overpayment.

(f) *Determining allowable costs for transportation allowances.* Lessees may include, but are not limited to, the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Firm demand charges paid to pipelines.* You must limit the allowable costs for the firm demand charges to the applicable rate per MMBtu multiplied by the actual volumes transported. You may not include any losses incurred for previously purchased but unused firm capacity. You also may not include any gains associated with releasing firm capacity. If you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period.

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to implement the restructuring requirements of FERC orders in 18 CFR part 284.

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service.

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines.

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable provided such fees are mandatory in FERC-approved tariffs.

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses.

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* This paragraph does not apply to non-

arm's-length transportation arrangements.

(8) *Temporary storage services.* This includes short duration storage services offered by market centers or hubs (commonly referred to as "parking" or "banking"), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or less.

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* MMS allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under § 206.174(h).

(g) *Determining nonallowable costs for transportation allowances.* Lessees may not include the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off the lease, for more than 30 days.

(2) *Aggregater/marketer fees.* This includes fees you pay to another person (including your affiliates) to market your gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production.

(3) *Penalties you incur as shipper.* These penalties include, but are not limited to the following:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price the pipeline pays you for over-delivered volumes outside the tolerances and the price you receive for over-delivered volumes within tolerances.

(ii) *Scheduling penalties.* This includes penalties you incur for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iii) *Imbalance penalties.* This includes penalties you incur (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iv) *Operational penalties.* This includes fees you incur for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline.

(4) *Intra-hub transfer fees.* These are fees you pay to hub operators for administrative services (e.g., title transfer tracking) necessary to account for the sale of gas within a hub.

(5) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

(h) *Other transportation cost determinations.* You must follow the provisions of this section to determine transportation costs when establishing value using either a net-back valuation procedure or any other procedure that allows deduction of actual transportation costs.

Processing Allowances

§ 206.179 What general requirements regarding processing allowances apply to me?

(a) When you value any gas plant product under § 206.174, you may deduct from value the reasonable actual costs of processing.

(b) You must allocate processing costs among the gas plant products. You must determine a separate processing allowance for each gas plant product and processing plant relationship. Natural gas liquids are considered as one product.

(c) The processing allowance deduction based on an individual product may not exceed 66 2/3 percent of the value of each gas plant product determined under § 206.174. Before you calculate the 66 2/3 percent limit, you must first reduce the value for any transportation allowances related to post-processing transportation authorized under § 206.177.

(d) Processing cost deductions will not be allowed for placing lease products in marketable condition. These costs include among others, dehydration, separation, compression upstream of the facility measurement point, or storage, even if those functions are performed off the lease or at a processing plant. Costs for the removal of acid gases, commonly referred to as sweetening, are not allowed unless the acid gases removed are further processed into a gas plant product. In such event, you will be eligible for a processing allowance determined under this subpart. However, MMS will not grant any processing allowance for processing lease production that is not royalty bearing.

(e) You will be allowed a reasonable amount of residue gas royalty free for operation of the processing plant, but no allowance will be made for expenses incidental to marketing, except as provided in 30 CFR part 206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of your residue gas necessary for the operation of the processing plant will be allowed royalty free.

(f) You do not owe royalty on residue gas, or any gas plant product resulting from processing gas, that is reinjected into a reservoir within the same lease, unit, or approved Federal agreement, until such time as those products are finally produced from the reservoir for sale or other disposition. This paragraph applies only when the reinjection is included in a BLM-approved plan of development or operations.

(g) If MMS determines that you have determined an improper processing allowance authorized by this subpart, then you will be required to pay any additional royalties plus late payment interest determined under 30 CFR 218.54. Alternatively, you may be entitled to a credit, but you will not receive any interest on your overpayment.

§ 206.180 How do I determine an actual processing allowance?

(a) *Determining a processing allowance if you have an arms's-length processing contract.* (1) This paragraph explains how you determine an allowance under an arm's-length processing contract.

(i) The processing allowance is the reasonable actual costs you incur to process the gas under that contract. Paragraphs (a)(1)(ii) and (iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. You are required to submit to MMS a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your first report that deducts the allowance on the Form MMS–2014.

(ii) When MMS conducts reviews and audits, we will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from you to the processor for the processing. If the contract reflects more than the total consideration, then MMS may require that the processing allowance be determined under paragraph (b) of this section.

(iii) If MMS determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then MMS will require that the

processing allowance be determined under paragraph (b) of this section. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your processing costs.

(2) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product must be determined in accordance with the contract. You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS. You may use your proposed allocation procedure until MMS issues its determination. You are required to submit all relevant data to support your proposal. MMS will then determine the processing allowance based upon your proposal and any additional information MMS deems necessary. You may not take a processing allowance for the costs of processing lease production that is not royalty-bearing.

(4) If your payments for processing under an arm's-length contract are not based on a dollar per unit price, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (1) This paragraph applies if you have a non-arm's-length processing contract or no contract, including those situations where you perform processing for yourself.

(i) If you have a non-arm's-length contract or no contract, the processing allowance is based upon your reasonable actual costs of processing as provided in paragraph (b)(2) of this section.

(ii) All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies. MMS may approve a longer time period. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may require you to modify your processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations is based upon your actual costs for processing during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A) of this section), or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the processing plant.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, fuel, utilities, materials, ad valorem property taxes, rent, supplies, and any other directly allocable and attributable operating expense that the lessee can document.

(ii) Allowable maintenance expenses include maintenance of the processing plant, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. After you elect to use either method for a processing plant, you may not later elect to change to the other alternative without MMS approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the processing plant services, or a unit-of-production method. Once you make an election, you may not change methods without MMS approval. A change in ownership of a processing plant will not alter the depreciation schedule that the original processor/lessee established for purposes of the allowance calculation. However, for processing plants you or your affiliate purchase that do not have a previously claimed MMS depreciation schedule, you may treat the processing plant as a newly installed facility for depreciation purposes. A processing plant may be depreciated only once, regardless of whether there is a change in ownership. Equipment may not be depreciated below a reasonable salvage value. To compute a return on undepreciated capital investment, you must multiply the undepreciable capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you must multiply the initial capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to plants first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.

(4) The processing allowance for each gas plant product must be determined based on your reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant product upon generally accepted accounting principles. You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(c) *Reporting your processing allowance.* (1) If MMS requests, you must submit all data used to determine your processing allowance. The data must be provided within a reasonable period of time, as MMS determines.

(2) You must report gas processing allowances as a separate line item on the Form MMS–2014. MMS may approve a different reporting procedure for allottee leases, and with lessor approval on tribal leases.

(d) *Adjusting incorrect processing allowances.* If for any month the gas processing allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to pay additional royalties, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted a processing allowance until the date you pay the royalties due. If the

processing allowance you are entitled is greater than the amount you took on Form MMS–2014, you are entitled to a credit. However, no interest will be paid on the overpayment.

(e) *Other processing cost determinations.* You must follow the provisions of this section to determine processing costs when establishing value using either a net-back valuation procedure or any other procedure that requires deduction of actual processing costs.

§ 206.181 How do I establish processing costs for dual accounting purposes when I do not process the gas?

Where accounting for comparison (dual accounting) is required for gas production from a lease but neither you nor someone acting on your behalf processes the gas, and you have elected to perform actual dual accounting under § 206.176, you must use the first applicable of the following methods to establish processing costs for dual accounting purposes:

(a) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that some gas has previously been processed under these agreements.

(b) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that the agreements are in effect for plants to which the lease is physically connected and under which gas from other leases in the field or area is being or has been processed.

(c) A proposed comparable processing fee submitted to either the tribe and MMS (for tribal leases) or MMS (for allotted leases) with your supporting documentation submitted to MMS. If MMS does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the MMS Director under 30 CFR part 290.

(d) Processing costs based on the regulations in §§ 206.179 and 206.180.

[FR Doc. 99–20376 Filed 8–9–99; 8:45 am]
BILLING CODE 4310–MR–P

federal register

Tuesday
August 10, 1999

Part V

Department of Housing and Urban Development

Notice of Funding Availability: Resident Opportunities and Self Sufficiency (ROSS) Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4520–N–01]

Notice of Funding Availability: Resident Opportunities and Self Sufficiency (Ross) Program (Formerly Economic Development and Supportive Services, Tenant Opportunities Program and Public Housing Service Coordinators)

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY:

Purpose of Program

The purpose of ROSS is to link services to public and Indian housing residents by providing grants for supportive services, resident empowerment activities and activities to assist residents in becoming economically self-sufficient.

Available Funds

Approximately $66.6 million is being made available for the ROSS Program under this NOFA.

Eligible Applicants

Grants may be made to Public Housing Agencies (PHAs) on behalf of public housing residents, or directly to resident management corporations, resident councils, or resident organizations (including nonprofit entities supported by residents). Intermediary Resident Organizations (IROs) and those non-profits that operate associations and networks that administer programs benefiting public and assisted resident organizations are also eligible recipients for ROSS funding categories where specifically noted in this NOFA. Indian Tribes (Tribes) and Tribally designated housing entities (TDHEs) are eligible for grants under the Technical Assistance/Training Support for Resident Organizations and Resident Service Delivery Models (RSDM) funding categories.

Application Deadline

Completed applications (one original and two copies) must be submitted by the time described in section I. of this NOFA, below, on: October 12, 1999 for Resident Management and Business Development; October 12, 1999 for Capacity Building and/or Conflict Resolution; November 8, 1999 for Resident Service Delivery Models; and September 9, 1999 for Service Coordinators.

Match

All grants require a match of at least 25% of the grant amount. This match does not have to be a cash match. It can be in-kind and/or cash contributions.

Additional Information

If you are interested in applying for funding under any of these programs, please review carefully the following information.

I. Application Due Date, Application Kits, Further Information and Technical Assistance

Application Due Date

Except for the Resident Service Delivery Models funding category, eligible applications will be funded on a first-come, first-served basis, and applicants are urged to make their submissions as soon as possible before the due dates listed above.

(1) *Mailed Applications (Other than Overnight or Express Mail Delivery)*

Your application will be considered timely filed if postmarked before midnight, local time, on the application due date and received on or within ten (10) days of the application due date.

(2) *Applications Sent by Overnight/Express Mail Delivery*

Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

(3) *Hand Carried Applications*

Applications must be delivered by 6:00 pm local time on the due date. Hand carried applications will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 pm.

Address for Submitting Applications

By the application due date an original and one copy of the application must be received at the Grants Management Center (GMC); one copy must be received at the local Field Office with delegated public or assisted housing responsibilities attention: Director, Office of Public Housing, or, in the case of Indian Tribes/TDHEs, an original and one copy to ONAP, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202. Applications, other than those from Tribes/TDHEs, should be sent to the GMC at the following address: Grants Management Center, Attention: Director, 501 School Street, SW, Suite 800, Washington, DC 20024. A list of HUD Field Offices is included in the application kit for this NOFA.

For Application Kits

For an application kit and any supplemental information please call the PIH Information and Resource Center at 1–800–955–2232. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209. The application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to ROSS and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance

For answers to your questions, you have several options. For ROSS and any of its funding categories, you may call the local HUD field office with delegated responsibilities over the pertinent housing agency/authority. Answers may also be obtained by calling the Public and Indian Housing Information and Resource Center at 1–800–955–2232. Information on this NOFA may also be obtained through the HUD web site on the Internet at http://www.HUD.gov.

II. Amount Allocated

(A) Total Amount

Approximately $66.6 million in funding is being made available under this NOFA. This amount is comprised of approximately $40 million from the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), (FY 1999 Appropriations Act), and approximately $26.6 million of carryover funds from the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, 111 Stat. 1344, approved October 27, 1997), (FY 1998 Appropriations Act).

(B) Allocation

To the extent that there are a sufficient number of qualified applications, not less than 25% percent of funds available for ROSS shall be provided directly to resident councils, resident organizations, and resident management corporations. This requirement will be implemented by the awards made to resident organizations for the Technical Assistance/Training

Support for Resident Organizations and the Resident Service Delivery Models funding categories.

III. General Program Description; Funding Categories

(A) General Program Description

The Quality Housing and Work Responsibility Act of 1998 (the Public Housing Reform Act) (title V of the FY 1999 Appropriations Act) institutes various public housing reforms aimed at creating mixed income communities. Reforms contained in the Public Housing Reform Act will: reduce the costs of public and assisted housing by streamlining regulations; facilitate the formation of local partnerships; leverage State, local, and private resources; and uphold and protect residents' right to organize and empower themselves to improve their own communities. Specific provisions grant Public Housing Agencies (PHAs) increased flexibility to develop local situations to address housing needs, but they are required to use that flexibility to better serve their residents by creating healthier, more economically integrated communities. Several initiatives are intended to enhance the quality of life for public housing residents while promoting self-sufficiency and personal responsibility in communities.

Section 538 of the Public Housing Reform Act adds a new section 34 to the United States Housing Act of 1937 which provides a mandate to link services and public housing residents for economic self-sufficiency. The Resident Opportunities and Self Sufficiency (ROSS) Program responds to this initiative by redefining, restructuring and consolidating certain aspects of previous programs while incorporating objectives contained in the Public Housing Reform Act.

The newly enacted legislative authority formally recognizes a vital connection between providing housing delivery and other services that are necessary for improvements in the quality of life for public housing residents. Through ROSS the Department will programmatically address essential links of services to public housing residents. The purpose of ROSS is to provide linkages to public housing residents by providing supportive services, resident empowerment activities and assisting residents in becoming economically self-sufficient. This program purpose is consistent with the Department's goal to most effectively focus resources on "welfare to work" and on independent living for the elderly and persons with disabilities. HUD believes that it is imperative that housing authorities and residents work together to meet the challenge of welfare reform.

Under the ROSS Program, priority will be given to funding those models that are successful models and may have proven themselves on a limited basis in practical situations. The ROSS Program seeks to provide assistance to implement practical solutions within the grant term, thereby delivering results in the form of improved economic self-sufficiency for public housing residents. This philosophy should be reflected in the proposed grant activities for all funding categories within the ROSS program.

As indicated in section II., above, of this NOFA, the funding sources for this first ROSS Program NOFA are the FY 1997 Appropriations Act, the FY 1998 Appropriations Act and the FY 1999 Appropriations Act, specifically, from funds made available under these Acts for Economic Development and Supportive Services (EDSS), the Tenant Opportunities Program (TOP), and Public Housing Service Coordinators. HUD has determined that these programs are sufficiently similar to the new ROSS Program under section 34 of the 1937 Act to permit the funds appropriated for them to be made available under ROSS. However, the specific statutory provisions under the FY 1997, 1998 and 1999 Appropriations Acts that apply to the use of these funds must still be observed, even though they do not appear in section 34. For example, Indian Tribes and TDHEs are eligible for funding under the FY 1998 and 1999 Appropriations Acts, and they are eligible under this NOFA although section 34 does not mention them. Similarly, the provisions in this NOFA that Section 8 recipients may be among those participating or receiving benefits are taken from the Appropriations Acts; section 34 only permits public housing residents, not Section 8 recipients, to participate and receive benefits. HUD anticipates that funding in subsequent appropriations acts will be specifically targeted for section 34, and the "blending" of requirements to address statutory provisions, as in this NOFA, will not be necessary.

(B) Funding Categories

The following are funding categories under ROSS:

(1) Technical Assistance/Training Support for Resident Organizations

(a) *Resident Management and Business Development.* Resident Management and Business Development grants will be made directly to resident organizations and to Tribes/TDHEs that partner with Tribal resident organizations (ROs) and Tribal resident management corporations (RMCs) to: increase resident involvement and participation in their housing developments; develop resident management opportunities; provide resident-led business or cooperative development opportunities; and obtain necessary supportive services for self-sufficiency. (See section IV.(A) of this NOFA for a specific requirements for this funding category.)

(b) *Resident Capacity Building and/or Conflict Resolution.* The Resident Capacity Building funding category provides grants to Intermediary Resident Organizations (IROs) on behalf of public housing residents, which include Public Housing Site-Based Resident Councils; Resident Management Corporations; and Tribes/TDHEs on behalf of tribal housing residents, Tribal ROs and Tribal RMCs; and those non-profits which operate associations and networks that administer programs that benefit public and Tribal housing resident organizations, for assistance to site-based resident associations who do not yet have the capacity to administer a welfare-to-work program or conduct management activities. The funds will be used to help establish new resident organizations or enhance the capacity of existing organizations to enable them to participate in housing agency decision-making, manage all or a portion of their developments, and/or apply for and administer grants. (See section IV.(B) of this NOFA for specific requirements for this funding category). The Conflict Resolution (CR) funding category provides assistance to Intermediary Resident Organizations (IROs), Tribes/TDHEs that partner with Tribal resident organizations and Tribal resident management corporations, and those non-profits which operate associations and networks that administer programs that benefit public and Tribal housing resident organizations, to partner with professional mediators to resolve conflicts involving public housing residents, tribal housing residents, and/or site-based resident associations. (See section IV.(B) of this NOFA for a specific requirements for this funding category.)

(2) Resident Service Delivery Models

The Resident Service Delivery Models (RSDM) funding category provides grants to Public Housing Agencies (PHAs), Indian Tribes and Tribally designated housing entities (TDHEs) on behalf of public and Tribal housing residents, or directly to resident management corporations, resident

councils, or resident organizations, including nonprofit entities supported by residents. There are two types of grants: (1) Family—program related and supportive services to establish and implement comprehensive programs that achieve resident self-sufficiency for families, or (2) Elderly and Disabled—independent living for the elderly and persons with disabilities. (See section V. of this NOFA for a specific requirements for this funding category.)

(3) Service Coordinator Renewals

The Service Coordinator grant category provides resources to PHAs to address the needs of public housing residents who are elderly and disabled persons. Service coordinators help residents obtain supportive services that are needed to enable independent living. Only renewals of prior Public Housing Elderly and Disabled Service Coordinator grants will be funded under this NOFA; no applications for new Service Coordinator grants will be accepted. (See section VI. of this NOFA for a specific requirements for this funding category.)

(C) Number of Applications Permitted

Each applicant may submit no more than one application under this NOFA. The only exception is that applicants for Service Coordinator Renewal grants under section VI. of this NOFA may also apply in one additional funding category. To avoid a duplication of funding, in any funding category listed here (Resident Management and Business Development; Capacity Building, Conflict Resolution; Resident Service Delivery Models—Family, Resident Service Delivery Models—Elderly/Disabled), there may be no more than one application per PHA development. (i.e., a PHA and one of its RAs may not both successfully submit an application for a Resident Service Delivery Models'Family grant to serve the same development.)

IV. Technical Assistance/Training Support for Resident Organizations

(A) Resident Management and Business Development

(1) Program Description

These grants are available to establish and strengthen organizational capacity for site-based resident associations that do not have the capacity to administer a welfare-to-work program or conduct management activities.

(2) Amount Allocated

(a) A total of $6 million, of which $500,000 is for Tribes/TDHEs that partner with Tribal ROs and Tribal RMCs, is being made available for awards to qualified applicants for Resident Management and Business Development (RMBD) grants.

(b) *Maximum Grant Award* for this funding category shall be $100,000 per applicant.

(3) Eligible Applicants

Site-Based Resident Associations (RAs), City-Wide Resident Organizations (CWROs), and Tribes/TDHEs that partner with Tribal ROs and Tribal RMCs. If an RA is a beneficiary or recipient of proposed grant activities by a CWRO, then that RA cannot also apply under this category. Previous TOP grantees must demonstrate that they have spent at least 75 percent of any prior grant by the publication date of this NOFA. Applications from a Tribe or TDHE must include a Memorandum of Understanding (MOU) (see section IV.(A)(8)(b), below, of this NOFA) with the Tribal RO or RMC.

(4) Eligible Participants

For applications that are not from a Tribe or TDHE, at least 75 percent of the persons participating and receiving benefits from RMBD activities must be residents of conventional public housing; any other persons (up to 25 percent per grantee) participating or receiving benefits from these programs must be recipients of Section 8 assistance. In addition, all applicants must provide evidence that at least 51 percent of those served by the activities are households affected by welfare reform.

(5) Eligible Activities

Under this funding category funds may be used for the activities described below.

(a) Training related to resident-owned business or cooperative development and technical assistance for job training and placement in RMC developments;

(b) Technical assistance and training in resident managed business development through: feasibility and market studies; development of business plans; outreach activities; and innovative financing methods including revolving loan funds and the development of credit unions; and legal advice in establishing a resident-managed business entity or cooperative.

(c) Establishing and funding revolving loan funds;

(d) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a development;

(e) Training residents with respect to fair housing requirements; and

(f) Gaining assistance in negotiating management contracts and designing a long-range planning system.

(g) Providing social support needs (such as self sufficiency and youth initiatives) including:

(i) Feasibility studies to determine training and social services needs;

(ii) Training in management-related trade skills, computer skills, and similar skills;

(iii) Management-related employment training and counseling including job search assistance, job development assistance, job placement assistance, and follow up assistance;

(iv) Supportive services including: child care services; educational services, remedial education, literacy training, ESL instruction, assistance in attaining a GED; vocational training including computer training; health care outreach and referral services; meal services for the elderly or persons with disabilities; personal assistance to maintain hygiene/appearance for the elderly or persons with disabilities; housekeeping assistance for the elderly or persons with disabilities; transportation services; congregate services for the elderly or persons with disabilities; and case management;

(v) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(vi) Training programs on health, nutrition, safety and substance abuse;

(vii) Workshops for youth services including: child abuse and neglect prevention, tutorial services, youth leadership skills, youth mentoring, peer pressure reversal, life skills, and goal planning. The workshops could be held in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire, and Big Brother/Big Sisters;

(viii) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing agency staff, resident management corporations and resident councils on youth initiatives and program activities;

(ix) Physical improvements to facilities at public housing developments in order to provide space for self-sufficiency activities for residents, i.e. to provide cosmetic improvements and repairs to space to conduct community activities; or to expand existing community space for proposed ROSS activities. Physical

improvements may not exceed 50% of the total grant amount and must be directly related to providing space for self-sufficiency activities for residents. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments;

(*1*) Renovation, conversion, and repair costs may be essential parts of physical improvements. In addition, architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections may also be part of the cost components to implement physical improvements.

(*2*) The renovation, conversion, or combination of vacant dwelling units in a PHA development to create common areas to accommodate the provision of supportive services is an eligible activity for physical improvement.

(*3*) The renovation of existing common areas in a PHA development to accommodate the provision of supportive services.

(*4*) The renovation or repair of facilities located near the premises of one or more PHA developments to accommodate the provision of supportive services.

(*5*) Each applicant must submit a description of the renovation or conversion to be conducted along with a budget and timetable for those activities.

(*6*) Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than 2 years following the completion of renovation, conversion, or repair activities funded under this NOFA.

(*7*) If renovation, conversion, or repair is done off-site, the PHA must provide documentation that it has control of the proposed property for not less than 2 years and preferably for 4 years or more. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation.

(6) *Ineligible Resident Management and Business Development Activities and Costs*

Ineligible activities and costs include the following:

(a) Entertainment, including associated costs such as food and beverages, except normal per diem for meals related to travel performed in connection with implementing the Work Plan. (See Travel Notice for more specific guidance.)

(b) Purchase or rental of land.

(c) Activities not directly related to the welfare-to-work initiatives (e.g., lead-based paint testing and abatement and operating capital for economic development activities).

(d) Purchase of any vehicle (car, van, bus, etc.).

(e) Payment of salaries for routine project operations, such as security and maintenance, or for applicant staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the Resident Management and Business Development grant activities or coordinate on-site social services.

(f) Payment of fees for lobbying services.

(g) Any expenditures that are fraudulent, wasteful or otherwise incurred contrary to HUD or OMB directives.

(h) Any cost otherwise eligible under this program section of this NOFA for which funds are being provided from any other source.

(i) Entertainment equipment such as televisions, radios, stereos, and VCRs. An exception to this item may be granted by the HUD Field Office or AONAP or if funding is being utilized specifically for the purposes of establishing a business directly related to radio, television or film or some other form of technical communication, and equipment is being utilized for training of residents or RAs. All such exceptions must be authorized in writing by the HUD Field Office or AONAP before purchases may be made.

(j) Any activity or cost determined by HUD on a case-by-case good cause basis to be ineligible.

(7) *Application Submission Requirements*

In addition to addressing the application submission requirements listed in section IX., below, of this NOFA, Resident Management and Business Development grant applications must include a description of how they will carry out and fund the following activities and costs:

(a) *Training.* on HUD regulations and policies governing the operation of low-income public housing including contracting/procurement regulations; financial management; capacity building to develop the necessary skills to assume management responsibilities at the project and property management; and training in accessing other funding sources.

(b) *Hiring trainers or other experts.* Resident grantees must ensure that all training is provided by a qualified public housing or management specialist (Consultant/Trainer), HUD Headquarters, AONAP or Field staff or the local PHA. To ensure the successful implementation of the grant Work Plan activities, the applicants are required to determine the need to contract for outside consulting/training services. The applicant and the PHA must jointly select and approve the consultant/trainer. Each applicant should make maximum use of its PHA, non profit, or other Federal, State, Tribal or local government resources for technical assistance and training needs. The amount allowed for hiring an individual consultant for this purpose shall not exceed 30% of the total grant award or $30,000, whichever is less. The amount available for all consultants and contracts shall not exceed 50% of the grant or $50,000 whichever is less. HUD Field Offices and AONAPs will monitor this process to ensure compliance with program and OMB requirements, and particularly the requirement for competitive bidding.

(c) *Stipends.* Trainees and program participants of an RA, CWRO, or Tribe/TDHE may only receive stipends for participating in or receiving training under RM to cover the reasonable costs related to participation in training and other activities in the program, subject to the availability of funds. The stipends should be used for additional costs incurred during the training programs, such as child care and transportation costs. The cost of stipends may not exceed $200 per month per trainee without written HUD Field Office or AONAP authorization.

(d) Reimbursement of reasonable expenses incurred by Officers and Board members in the performance of their fiduciary duties and/or training related to the performance of their official duties.

(e) Travel directly related to the successful completion of the required Work Plan. All grantees must adhere to the travel policy established by HUD Notice 96–18. The policy sets travel costs at a maximum amount of $5,000 per RA without special HUD approval.

(f) Child care expenses for individual staff, board members, or residents in cases where those who need child care are involved in training-related activities associated with grant activities.

(g) Costs incurred by a RA in applying for 501(c) tax exempt status with Internal Revenue Service.

(h) *Administrative costs.* These costs are necessary for the implementation of grant activities. Administrative costs are not to exceed 20% of the grant. Appropriate administrative costs include, but are not limited to, the following reasonable costs or activities:

(i) *Space and equipment.* Maintenance, utility costs, postage, building lease/rental costs, purchase or lease of telephone, computer, printing, copying, and sundry non-dwelling equipment (such as office supplies, software, and furniture). A grantee must justify the need for this equipment or space based on services being delivered in relationship to implementing its approved grant activities.

(ii) *Grant contract and financial management.* If a grantee is unable to obtain the services of a Contract Administrator or accountant without charge, the cost for a Contract Administrator and or accountant is eligible. The grantee is required to maintain documentation on file showing what efforts it made to obtain the services of a Contract Administrator cost-free.

(iii) *Technical assistance* regarding any other service and/or resource, including case management, that are proposed by applicants and approved by HUD.

(iv) Rental or lease of a car, van, or bus by resident grantees to attend training;

(8) *Threshold Requirements*

(a) *Focus on Residents Affected by Welfare Reform.* The application must contain written evidence provided by the PHA to the applicant, or by Tribe or TDHE that at least 51 percent of the public or Tribal housing residents (including Section 8 tenants as applicable) to be included in the proposed program are affected by the welfare reform legislation, including TANF recipients and, if affected, legal immigrants and SSI recipients. Elderly or disabled residents not otherwise affected by welfare reform may be included towards meeting the 51 percent requirement if, under the grant, they will provide services such as child care or mentoring to persons affected by welfare reform.

(b) *Partnership between the Resident Association and the PHA or the Tribal RO or RMC and the Tribe/TDHE.*

(1) The application must contain a signed Memorandum of Understanding (MOU) between the RA and the PHA or the Tribe/TDHE and the Tribal RO or RMC which describes the specific roles, responsibilities and activities to be undertaken between the two entities.

(2) The MOU, at a minimum, must identify the principal parties (i.e. the name of the PHA and RA or the Tribe/TDHE and the Tribal RO or RMC), the terms of the agreement (expectations or terms for each party), and indicate that the agreement pertains to the support of the grant application. This document is the basis for foundation of the relationship between the RA and PHA or the Tribe/TDHE and the Tribal RO or RMC. It must be precise and outline the specific duties and objectives to be accomplished under the grant. All MOUs must be finalized, dated and signed by duly authorized officials of both the RA and PHA or the Tribe/TDHE and the Tribal RO or RMC upon submission of the application. A sample MOU will be provided in the application kit.

(c) *Accessible Community Facility.* The applicant must provide evidence (e.g. through an executed use agreement and/or in the MOU with the PHA) that a majority of the proposed activities will be administered at community facilities within easy access (i.e., walking or by direct (no transfers required), convenient, inexpensive and reliable transport) of the property or properties represented by the applicant. The community facility must also meet the structural accessibility requirements of section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

(d) *Match Requirement.*

(1) The applicant must supplement grant funds with an in-kind and/or cash match of not less than 25% of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS, EDSS, TOP or SC funds); funds from any State or local government sources; and funds from private contributions.

(2) The application must demonstrate that the cash or in-kind resources and services, which the applicant will use as match amounts (including resources from the applicant's Comprehensive Grant, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. "Firmly committed" means there must be a written agreement to provide the resources and services, signed by an official legally able to make commitments on behalf of the organization. The written agreement may be contingent upon an applicant receiving a grant award.

(3) The following are guidelines for valuing certain types of in-kind contributions:

(i) The value of volunteer time and services shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the activity is located.

(ii) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one-year old taken from the community where the item or activity is located, as appropriate.

(e) *Contract Administrator.* For applicants other than Tribes/TDHEs, unless HUD or an Independent Public Accountant has determined that the applicant's financial management system and procurement procedures fully comply with 24 CFR part 84, the application must contain evidence that the applicant will use the services of a Contract Administrator in administering the grant. Troubled PHAs are not eligible to be Contract Administrators. In cases where the Contract Administrator is the PHA, the contract administration responsibilities can be incorporated into the MOU discussed above.

(f) *Applicant Non-Profit Status.* Applications that are RAs/RCs/RMCs/CWROs must include evidence that the applicant is registered with the State as a nonprofit corporation at the time of application submission. CWROs only must have 501(c) status with the United States Internal Revenue Service at the time of application submission.

(g) *Certification of Elections.* Resident Organization applicants must submit certification of the RA board election, signed by the local PHA and/or an independent third-party monitor and notarized.

(h) *Compliance with Current Programs.* The applicant must provide a valid certification on the format provided in the application kit that it is not the subject of unresolved HUD Office of Inspector General findings and that it and the contract administrator are not in default at the time of application submission with respect to any previous HUD-funded grant programs the applicant or contract administrator has received.

(i) *List of RAs Receiving Support.* CWRO applications must list in their application the name of the RAs that will receive services and must submit letters of support from each RA identified in the application.

(9) *Application Selection Process*

Applicants for Resident Management and Business Development grants are required to address application submission requirements, but are not

required to address selection factors. Eligibility will be determined by applications that meet the threshold requirements of sections IV.(A)(8) and VII. of this NOFA. HUD will accept for funding the first five eligible applications from each of the ten federal regions and from ONAP National Program Office in Denver (ONAP) on a first-come, first-serve basis for 60 days after this NOFA is published. Any funds remaining after making awards to the first five eligible applications from each region and ONAP will be awarded to the next eligible application from each region or ONAP, then the next, and so forth until funds are exhausted. If sufficient funds are not available in any round to fund an eligible application from each region, the eligible applications will then be funded in the order in which they were received regardless of region. If sufficient funds are not available in any round to fund an eligible application from ONAP, or if funds remain available after funding every eligible ONAP application, the remaining funds are transferable to other funding categories in this NOFA in the following order: first, to qualifying applications from Tribes/TDHEs for Resident Service Delivery Model grants under section V. of this NOFA; second to qualifying applications from Tribes/TDHEs for Resident Capacity Building and/or Conflict Resolution grants under section IV.(B) of this NOFA; third, to qualifying applications for Resident Management and Business Development grants under this section IV.(A) from applicants that are not Tribes/TDHEs. In addition, if all funds are not awarded in this funding category to eligible regional applications received within 60 days after this NOFA is published, funds are transferable to other non-Tribe/TDHE funding categories in this NOFA in the following order: first, service coordinators under section VI. of this NOFA; second, Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA; third, Resident Service Delivery Models under section V. of this NOFA. Where physical development activities are proposed, HUD will perform an environmental review, to the extent required by 24 CFR part 50, prior to award. The results of the environmental review may require that proposed activities be modified or proposed sites rejected.

(10) *Grant Term*

The grant term for Resident Management and Business Development grants is thirty-six months from the execution date of the grant agreement.

(B) Capacity Building and/or Conflict Resolution

(1) *Program description*

These grants are available for two types of awards:

(a) *Conflict Resolution Grants* (CR) are available to secure the services of professional mediators to resolve conflicts involving public or Tribal housing residents and/or Site-Based Resident Associations or Tribal ROs or RMCs. For Conflict Resolution Grants, a skilled mediator or partner, under the auspices of an applicant, will bridge impasses between residents and/or factions within specific developments, among active participants of a Site-Based Resident Association (RA) or Tribal ROs or RMCs, or between an RA or Tribal RO or RMC and its partners, especially local Housing Agencies. The scope of conflict resolution activities may include support for multicultural cooperation and communication. The applicant must apply in partnership with a recognized professional mediation organization. All mediators must have entered into at least one referral agreement with judicial, law enforcement or social services agencies to mediate for public housing residents served by the agency. After awarding the grants, HUD would refer cases requiring mediation to the grantee. Also conflicting parties, on their own initiative, could make requests for mediation services directly to the grantee. While mediating for residents and their partners, the professional mediators would also train grantee staff in mediation principles and skills for mediation in the future.

(b) *Capacity Building Grants* (CB) are available to provide technical assistance and training activities to establish and strengthen organizational capacity for site-based resident associations or Tribal ROs or RMCs that do not have the capacity to administer welfare-to-work and other programs, work with PHAs, Tribes or TDHEs, or conduct management activities. Capacity Building Grants will be targeted to help establish new site-based resident organizations or enhance the capacity of existing organizations to assist residents, participate in Housing Agency decision making, manage all or a portion of their housing development, and develop skills and expertise needed to administer grants.

(2) *Amount Allocated for Capacity Building and/or Conflict Resolution*

(a) $5 million is available for CB/CR awards, of which $400,000 is for applications from Indian Tribes or TDHEs.

(b) The maximum grant award will be $15,000 per RA represented, up to the following maximums: $105,000 for City-Wide Resident Organizations (CWROs), Indian Tribes, or TDHEs and $240,000 per applicant for all other applicants in these funding categories. An applicant that is not a CWRO, an Indian Tribe, or a TDHE is required to serve a minimum of 10 RAs.

(3) *Eligible applicants*

(a) Intermediary Resident Organizations (IROs) on behalf of public housing residents, which include Public Housing Site-Based Resident Councils; Resident Management Corporations; and Tribes/TDHEs on behalf of tribal housing residents, Tribal ROs and Tribal RMCs may apply for Capacity Building and/or Conflict Resolution grants. IROs include National Resident Organizations, Statewide Resident Organizations, Regional Resident Organizations, City-Wide Resident Organizations, and Jurisdiction-Wide Resident Organizations.

(b) Non-profits that operate as associations and/or networks that administer programs that benefit public and Tribal housing resident organizations are also eligible for this funding category.

(c) An applicant that is not a CWRO must serve a minimum of 10 RAs.

(d) Previous TOP grantees must demonstrate that they have spent at least 75 percent of any prior grant by the publication date of this NOFA.

(4) *Eligible Activities*

(a) *Conflict resolution.* Conflict resolution grant activities may include, but are not limited to:

(i) Efforts to address conflicts related to gang violence;

(ii) Establishing violence-free zones to enhance the quality of living environment for public housing residents;

(iii) Training programs on mediation and communication skills;

(iv) Training programs on dispute resolution and reconciliation, including training addressing racial, ethnic and other forms of diversity;

(v) Workshops for youth services including: child abuse and neglect prevention, tutorial services, youth leadership skills, youth mentoring, peer pressure reversal, life skills, goal planning, health, and nutrition. The workshops may be held in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc.

(vi) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of youth, improving youth initiatives that are currently active, and training youth, housing agency staff, resident management corporations and resident councils on youth initiatives and program activities.

(b) *Capacity Building.* Eligible activities for CB grants may include, but are not limited to:

(i) Training Board members in community organizing, Board development, and leadership training;

(ii) Determining the feasibility of and training existing resident groups for resident management or for a specific resident management project;

(iii) Assisting in the creation of an RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter;

(iv) Developing the management capabilities of existing resident organizations;

(v) Determining the feasibility of homeownership by residents, including assessing the feasibility of other housing (including HUD-owned or held single or multi-family) affordable for purchase by residents.

(5) *Ineligible Activities*

Ineligible activities are the same as those listed in section IV.(A)(6) of this NOFA, above. In addition, physical development activities are not eligible for funding under CB or CR grants.

(6) *Application Submission Requirements*

In addition to addressing the application submission requirements listed in section IX., below, of this NOFA, applicants for the CB and CR grants must provide a narrative description of proposed activities that addresses the following information: a description of the geographic boundaries of the RAs or Tribal ROs or RMCs included in the application; a description of the public or Tribal housing community; a detailed description of the issues or problems involved with each RA or Tribal RO or RMC to be served by the grant; and the resources that are currently being devoted to the problem or issue under consideration.

(7) *Threshold Requirements*

(a) *Written Agreement with Mediator.* Conflict Resolution applicants only must have a written agreement with a professional mediator or mediation organization (mediator/partner) outlining the roles and responsibilities of each party, as well as any compensation to the mediator/partner (which must be reasonable and based on the work to be performed) defined. The written agreement must specify, consistent with the work plan, that the mediator/partner will train grantee staff and/or volunteers such that the grantee will be capable of providing mediation assistance independently by the end of the grant term;

(b) *Mediation Experience/Referral Agreement.* Conflict Resolution applicants only must provide evidence that their mediator/partner that are PHAs have at least three years of experience in providing mediation services and at least two years of experience in mediation training; and include one referral agreement with a judicial, law enforcement or social service agency such as the court system or Welfare Department for mediation referral of public housing residents.

(c) *Applicant Non-Profit Status.* Both CB and CR applications that are not Tribes/TDHEs must provide evidence that the applicant is registered with the State as a nonprofit corporation and has 501(c) status with the United States Internal Revenue Service at the time of application submission.

(d) *Compliance with Current Programs.* Both CB and CR applicants must provide certification on the format provided in the application kit that the applicant and the mediation partner are not in default at the time of application submission with respect to any previous HUD funded grant programs the applicant received and that there are no unresolved Office of Inspector General findings against the applicant or mediation partner.

(e) *Match Requirement.*

(i) Both CB and CR applicants must supplement grant funds with an in-kind and/or cash match of not less that 25% of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS, EDSS, TOP, or SC funds); funds from any State or local government sources; and funds from private contributions.

(ii) Both CB and CR applications must demonstrate that the cash or in-kind resources and services, which the applicant will use as match amounts (including resources from the applicant's Comprehensive Grant, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. "Firmly committed" means there must be a written agreement to provide the resources and services, signed by an official legally able to make commitments on behalf of the organization. The written agreement may be contingent upon an applicant receiving a grant award.

(iii) The following are guidelines for valuing certain types of in-kind contributions:

(*1*) The value of volunteer time and services shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the activity is located.

(*2*) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one-year old taken from the community where the item or activity is located, as appropriate.

(f) *List of RAs Receiving Support.* In both CB and CR applications eligible applicants must list in their application the name of the RAs or Tribal ROs or RMCs that will receive training, technical assistance and/or coordinated supportive services and must submit letters of support from each entity identified in the application.

(8) *Application Selection Process*

Applicants for Conflict Resolution or Capacity Building grants are required to address application submission requirements but are not required to address selection factors. Applicants are required to include letters of support from the PHA or Tribe on behalf of RAs or Tribal ROs and RMCs to be served (see section IV.(B)(7)(f), above, of this NOFA). Eligibility will be determined by applications that meet the threshold requirements of sections IV.(B)(7) and VII. of this NOFA. HUD will accept for funding the first two eligible applications from each of the ten federal regions and from ONAP National Program Office in Denver (ONAP) on a first-come, first-serve basis for 60 days after this NOFA is published. Any funds remaining after making awards to the first two eligible applications from each region or ONAP will be awarded to the next eligible application from each region or ONAP, then the next, and so forth until funds are exhausted. If sufficient funds are not available in any round to fund an eligible application from each region, the eligible

applications will then be funded in the order in which they were received regardless of region. If sufficient funds are not available in any round to fund an eligible application from ONAP, or if funds remain available after funding every eligible ONAP application, the remaining funds are transferable to other funding categories in this NOFA in the following order: first, to qualifying applications from Tribes/TDHEs for Resident Service Delivery Model grants under section V. of this NOFA; second to qualifying applications from Tribes/TDHEs for Resident Management and Business Development grants under section IV.(A) of this NOFA; third, to qualifying applications for Resident Capacity Building and/or Conflict Resolution grants under this section IV.(B) from applicants that are not Tribes/TDHEs. In addition, if all funds are not awarded in this funding category to eligible regional applications received within 60 days after this NOFA is published, funds are transferable to other non-Tribe/TDHE funding categories in this NOFA in the following order: first, service coordinators under section VI. of this NOFA; second, Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA; third, Resident Service Delivery Models under section V. of this NOFA.

(9) *Grant Term*

The grant term for both Capacity Building and Conflict Resolution grants is thirty-six months from the execution date of the grant agreement.

V. Resident Service Delivery Models (RSDM)

(A) Program Description

(1) *Resident Service Delivery Models—Families*

These grants provide services to assist eligible residents to become economically self-sufficient, particularly families with children where the head of household would benefit from the receipt of supportive services and is working, seeking work, or is preparing for work by participating in job-training or educational programs. Grants provide support for program activities essential to facilitate economic uplift and provide access to the skills and resources needed for employment, job development and business development.

(2) *Resident Service Delivery Models—Elderly/Disabled*

This grant category provides supportive services for elderly residents and persons with disabilities.

(B) Amount Allocated

(1) *Amount Allocated for Resident Service Delivery Models*

For RSDM, $40.6 million is available for eligible applicants. Of this amount $2 million is available for Tribes/TDHEs.

(2) *Maximum Grant Award*

(a) For PHAs and Tribes/TDHEs, the maximum grant application award will be based on the number of occupied units for family or the elderly and persons with disabilities, as applicable. For the RSDM category, PHAs must use the number of occupied units to determine the maximum grant amount in accordance with the categories listed below for family:

(i) For PHAs and Tribes/TDHEs with 1 to 780 occupied family units, the maximum grant award is $75,000.

(ii) For PHAs and Tribes/TDHEs with 781 to 7,300 occupied family units, the maximum grant award is $250,000.

(iii) For PHAs and Tribes/TDHEs with 7,301 or more occupied family units, the maximum grant award is $500,000.

(b) For Elderly and Disabled RSDM grants, PHAs and Tribes/TDHEs may apply for the below listed maximums:

(i) For 1 to 217 units occupied by elderly residents or persons with disabilities, the maximum grant award is $27,125.

(ii) For 218 to 1,155 units occupied by elderly residents or persons with disabilities, the maximum grant award is $100,000.

(iii) For 1,156 or more units occupied by elderly residents or persons with disabilities, the maximum grant award is $150,000.

(c) The maximum grant award for RAs is $75,000.

(d) Non profit entities supported by residents or RAs are limited to $75,000 for each RA. Non profit entities supported by residents may be awarded no more than three awards for different RAs.

(e) Tribes/TDHEs should use the number of units counted as Formula Current Assisted Stock for Fiscal Year 1998 as defined in 24 CFR 1000.316. Tribes who have not previously received funds from the Department under the 1937 Act should count housing units under management that are owned and operated by the Tribe and are identified in their housing inventory as of September 30, 1997.

(3) If all funds are not awarded in one funding category, funds are transferable to the other funding categories in this NOFA.

(C) Eligible Applicants

(1) *Family*

This funding category provides grants to PHAs, Indian Tribes and TDHEs on behalf of public and Tribal housing residents, or directly to resident management corporations, resident councils, or resident organizations, including nonprofit entities supported by residents, to enable them to establish and implement comprehensive programs that assist residents in becoming self-sufficient and/or enable independent living and aging in place.

(2) *Elderly and Disabled*

PHAs, Indian Tribes and TDHEs are eligible applicants in providing supportive services for the elderly and disabled.

(3) *Previous Grantees*

Previous EDSS, TOP, or Service Coordinator grantees must demonstrate that they have spent at least 75 percent of any prior grant by the publication date of this NOFA.

(4) *Joint Applications*

Two or more applicants may join together to submit a joint application for proposed grant activities. Joint applications must designate a lead applicant. All parties in a joint application (lead or non-lead) are considered to be applying for ROSS and are therefore subject to the limit of one ROSS application per applicant, with the exception of those Service Coordinator applicants that may also apply in one additional ROSS category. Funding for joint applications may not exceed the stated maximum for this funding category.

(D) Eligible Participants

At least 75 percent of the persons participating and receiving benefits from these activities must be residents of conventional public housing or Tribal housing. For applications that are not from a Tribe or TDHE, any other persons (up to 25 percent per grantee) participating or receiving benefits from these programs must be recipients of Section 8 assistance.

(E) Eligible Activities

Funds may be used for the activities described below, according to whether the application is for the family category, or elderly and disabled category.

(1) *Family*

(a) *Program Coordinator.* Applicants are encouraged to include a Program Coordinator for proposed RSDM

activities for the entire term of the grant. A Program Coordinator is a person who is responsible for coordinating various proposed activities to ensure that their accomplishment will assist in achieving overall grant goals and objectives.

(b) *Physical improvements* to provide space for self-sufficiency activities for residents, i.e. to provide cosmetic and repairs for space to conduct community activities; or to expand existing community space for proposed ROSS activities. Physical improvements may not exceed 50% of the total grant amount and must be directly related to providing space for self-sufficiency activities for residents. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments.

(i) Renovation, conversion, and repair costs may be essential parts of physical improvements. In addition, architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections may also be part of the cost components to implement physical improvements.

(ii) The renovation, conversion, or combination of vacant dwelling units in a housing development to create common areas to accommodate the provision of supportive services is an eligible activity for physical improvement.

(iii) The renovation of existing common areas in a housing development to accommodate the provision of supportive services.

(iv) The renovation or repair of facilities located near the premises of one or more housing developments to accommodate the provision of supportive services.

(v) Each applicant should submit a description of the renovation or conversion to be conducted along with a budget and timetable for those activities.

(vi) Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than 2 years following the completion of renovation, conversion, or repair activities funded under this NOFA.

(vii) If renovation, conversion, or repair is done off-site, the applicant must provide documentation that it has control of the proposed property for not less than 2 years and preferably for 4 years or more. Control can be evidenced through a lease agreement, ownership documentation or other appropriate documentation.

(c) *Entrepreneurship training* (literacy training, computer skills training, business development planning).

(d) *Entrepreneurship development* (entrepreneurship training curriculum, entrepreneurship courses).

(e) *Micro/Loan fund.* Developing a strategy for establishing a revolving micro/loan fund and/or capitalizing a loan fund, including licensing, bonding, and insurance needed to operate a business.

(f) *Developing credit unions.* Developing a strategy to establish and/or create onsite credit union(s) to provide financial and economic development initiatives to PHA residents. (RSDM grant funds cannot be used to capitalize a credit union.) The credit union could support the normal financial management needs of the community (i.e., check cashing, savings, consumer loans, micro-businesses money management, home buyer counseling educational loans, and other revolving loans).

(g) *Employment training and counseling* (e.g., job training (such as apprenticeship programs), preparation and counseling, job search assistance, job development and placement, and continued follow-up assistance).

(h) *Employer linkage and job placement.*

(i) *Family only—supportive services activities.* The provision of services to assist eligible residents to become economically self-sufficient, particularly families with children where the head of household would benefit from the receipt of supportive services and is working, seeking work, or is preparing for work by participating in job-training or educational programs. Eligible supportive services may include, but are not limited to:

(i) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities.

(ii) Computer-based educational opportunities, skills training, and entrepreneurial activities.

(iii) Homeownership training and counseling, development of feasibility studies and preparation of homeownership plans/proposals.

(iv) Education including but not limited to: remedial education; computer skills training; career counseling; literacy training; assistance in the attainment of certificates of high school equivalency; two-year college tuition assistance; trade school assistance; youth leadership skills and related activities (activities may include peer leadership roles training for youth counselors, peer pressure reversal, life skills, goal planning). Academic support shall not be limited to TANF recipients.

(v) Youth mentoring of a type that mobilizes a potential pool of role models to serve as mentors to public or Tribal housing youth. Mentor activities may include after-school tutoring, help with problem resolution issues, illegal drugs avoidance, job counseling, or mental health counseling.

(vi) Transportation costs, as necessary to enable any participating family member to receive available services to commute to his or her training or supportive services activities or place of employment.

(vii) Personal well-being (e.g., family/parental development counseling, parenting skills training for adult and teenage parents, self-development counseling, support groups/counseling for victims of domestic violence, and/or families with a mentally ill member, etc.).

(viii) Supportive health care services (e.g., outreach and referral services to substance and alcohol abuse treatment and counseling, mental health services, wellness programs).

(ix) Contracting for case management services contracts or employment of case managers, either of which must ensure confidentiality about resident's disabilities.

(x) Administrative costs not to exceed 20% of the grant amount.

(xi) *Stipends.* No more than $200 per participant per month of the grant award may be used for stipends for active trainees and program participants to cover the reasonable costs related to participation in training and other activities.

(2) *Elderly and Disabled—Supportive Services Activities*

May include, but are not limited to:

(a) Meal service adequate to meet nutritional need;

(b) Assistance with daily activities;

(c) Housekeeping aid;

(d) Transportation services;

(e) Wellness programs, preventive health education, referral to community resources;

(f) Personal emergency response; and

(g) Congregate services—includes supportive services that are provided in a congregate setting at a conventional public or Tribal housing development.

(F) Ineligible Activities

Activities for which costs are ineligible for funding under the RSDM funding category include:

(1) Payment of wages and/or salaries to participants receiving supportive services and/or training programs, except that grant funds under family

RSDM may be used to hire a resident(s) as a Program Coordinator or to provide training program activities.

(2) Purchase or rental of land.

(3) New construction, materials, and costs.

(4) Purchase of vehicles.

(G) Threshold Requirements

(1) *Elderly Housing Development Certification*

(For Elderly RSDM Applicants Only) A Certification that at least 25% of the residents of the development(s) proposed for grant activities are elderly and/or non elderly people with disabilities at the time of application.

(2) *Focus on Residents Affected by Welfare Reform (For Family RSDM Only)*

The RSDM application must demonstrate evidence from the PHA, Tribe or TDHE that at least 51% or more of the public or Tribal housing residents (including Section 8 tenants as applicable) to be included in the proposed program are affected by the welfare reform legislation, including Temporary Assistance for Needy Families (TANF) recipients, legal immigrants, and disabled SSI recipients.

(3) *Accessible Community Facility*

The application must provide evidence (e.g. through an executed use agreement if the facility is to be provided by an entity other than the PHA, Tribe or TDHE that a majority of the proposed activities will be administered at community facilities within easy transportation access (i.e., walking or by direct (no transfers required), convenient, inexpensive and reliable transport), of the property represented by the PHA, Tribe or TDHE. The community facilities must also meet the structural accessibility requirements of Section 504 of the rehabilitation Act and the Americans With Disabilities Act.

(4) Match Requirement

(a) The applicant must supplement grant funds with an in-kind and/or cash match of not less than 25% of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS, TOP, EDSS, or SC funds); funds from any State or local government sources; and funds from private contributions.

(b) The application must demonstrate that the cash or in-kind resources and services, which the applicant will use as match amounts (including resources from the applicant's Comprehensive Grant, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. "Firmly committed" means there must be a written agreement to provide the resources and services signed by an official legally able to make commitments on behalf of the organization. The written agreement may be contingent upon an applicant receiving a grant award.

(c) The following are guidelines for valuing certain types of in-kind contributions:

(i) The value of volunteer time and services Shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the RSDM activity is located.

(ii) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one-year old taken from the community where the item or RSDM activity is located, as appropriate.

(5) *Compliance With Current Programs*

The applicant must provide certification in the format provided in the application kit that it is not in default at the time of application submission with respect to grants for the following programs: the Family Investment Center Program; the Youth Development Initiative under the Family Investment Center Program; the Youth Apprenticeship Program; the Apprenticeship Demonstration in the Construction Trades Program; the Urban Youth Corps Program; the HOPE 1 Program; the Public Housing Service Coordinator Program; the Public Housing Drug Elimination Program; the Youth Sports Program; the Tenant Opportunities Program; and the Economic Development and Supportive Services Program.

(6) *Contract Administrator*

For applicants other than Tribes/TDHEs, unless HUD or an Independent Public Accountant has determined that the applicant's financial management system and procurement procedures fully comply with 24 CFR part 84, the application must contain evidence that the applicant will use the services of a Contract Administrator in administering the grant. Applicants that are troubled PHAs are required to provide evidence that a Contract Administrator has been retained for the term of the grant.

(a) A Contract Administrator, if retained, must oversee the financial activities and assist with the entire implementation of the grant. A signed executed agreement must be included in the application. This agreement may be contingent upon the applicant receiving a grant award.

(b) The Contract Administrator may be: Local Housing Agencies (except for troubled PHAs); community-based organizations such as Community Development Corporations (CDC), churches; non-profits; State/Regional associations and organizations. Troubled PHAs are not eligible to be Contract Administrators.

(c) If a grantee is unable to obtain the services of a Contract Administrator or accountant without charge, the cost for a Contract Administrator and or accountant is eligible. The grantee is required to maintain documentation on file showing what efforts it made to obtain the services of a Contract Administrator cost-free.

(7) Applicant Non-Profit Status

Both RA and non-profit applicants only must submit evidence that the applicant is registered with the State as a nonprofit corporation at the time of application submission. Non-profits only must have 501(c) status with the United States Internal Revenue Service at the time of application submission.

(8) Certification of Elections

Resident Organization applicants only must submit certification of the RA board election as required by HUD, signed by the local PHA and/or an independent third-party monitor and notarized.

(H) Application Selection Process

All applications are due no later than 90 days from the publication date of this NOFA. Three types of reviews will be conducted: a screening to determine if the application submission is complete and on time; a threshold review to determine applicant eligibility; and a technical review to rate the applications based on the rating factors in section V.(I), below, of this NOFA. A minimum score of 55 is required to be considered for funding. If the applicant is not a PHA, where physical development activities are proposed, HUD will perform an environmental review, to the extent required by 24 CFR part 50, prior to award. The results of the environmental review may require that proposed activities be modified or proposed sites rejected.

HUD will conduct the selection process as follows:

(1) *For Applicants Other Than Tribes/TDHEs*

HUD will first select the highest ranked application from each of the ten federal regions for funding. After this "round," HUD will select the second highest ranked application in each of the ten federal regions for funding (the second round). HUD will continue this process with the third, fourth, and so on, highest ranked applications in each federal region until the last complete round is selected for funding. If available funds exist to fund some but not all eligible applications in the next round, HUD will make awards to those remaining applications in rank order regardless of region and will fully fund as many as possible with remaining funds. In addition, if all funds are not awarded in this funding category, funds are transferable to other funding categories in this NOFA in the following order: first, service coordinators under section VI. of this NOFA; second, Resident Management and Business Development under section IV.(A) of this NOFA; third, Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA. The selection process is designed to achieve both geographic diversity and a more equitable distribution of grant awards throughout the country.

(2) *For Tribes/TDHEs*

After rating and ranking, HUD will fund Tribes/TDHEs in rank order until all funds allocated for Tribes/TDHEs have been awarded to the extent that there are eligible applications. Any remaining funds will be transferable to other funding categories in this NOFA in the following order: first, to qualifying applications from Tribes/TDHEs for Resident Management and Business Development grants under section IV.(A) of this NOFA; second to qualifying applications from Tribes/TDHEs for Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA; third, to qualifying applications for Resident Service Delivery Model grants under this section V. from applicants that are not Tribes/TDHEs.

(I) Factors for Award Used to Evaluate and Rate RSDM Applications

The factors for rating and ranking applicants and maximum points for each factor are provided below. The maximum number of points available for this program is 100. In addition, this NOFA also provides for the award of two bonus points for eligible activities/projects that are proposed to be located in federally designated Empowerment Zones (EZs), Enterprise Communities (ECs), or Urban Enhanced Enterprise Communities (EECs). The application kit contains a certification which must be completed for the applicant to be considered for EZ/EC bonus points and a listing of federally designated EZs, ECs, or Enhanced EECs.

An RSDM application must receive a total of 55 points out of 100 to be eligible for funding.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) *Proposed Program Staffing* (7 Points)

(a) *Experience.* (4 Points): The knowledge and experience of the proposed project director and staff, including the day-to-day program manager, sub-recipients and partners in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant to undertake eligible program activities.

(b) *Sufficiency.* (3 Points): The applicant, its sub-recipients, and partners have sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. To demonstrate sufficiency, the applicant must submit the proposed number of staff years to be allocated to the project by employees and experts, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to the project, and the roles to be performed by each identified employee and expert.

(2) *Program Administration and Fiscal Management* (7 Points)

(a) *Program Administration.* (4 Points): The soundness of the proposed management of the proposed RSDM program. In order to receive a high score, an applicant must provide a comprehensive description of the project management structure. The narrative must provide a description of how any co-applicants, sub-grantees, and other partner agencies relate to the program administrator as well as the lines of authority and accountability among all components of the proposed program.

(b) *Fiscal Management.* (3 Points): The soundness of the applicant's proposed fiscal management. In order to receive a high score an applicant must provide a comprehensive description of the fiscal management structure, including, but not limited to, budgeting, fiscal controls, and accounting. The application must identify the staff responsible for fiscal management, and the processes and timetable for implementation during the proposed grant period.

(3) *Applicant/Administrator Track Record* (6 Points): In order to receive a high score, the applicant must demonstrate its (or the proposed Administrator's) program compliance and successful implementation of any resident self-sufficiency, security or independence oriented grants (including those listed below) awarded to the applicant or overseen by the Administrator. Applicants or Administrators with no prior experience in operating programs that foster resident self-sufficiency, security or independence will receive a score of 0 on this factor. The applicant's past experience may include, but is not limited to, administering the following grants: the Family Investment Center Program; the Youth Development Initiative under the Family Investment Center Program; the Youth Apprenticeship Program; the Apprenticeship Demonstration in the Construction Trades Program; the Urban Youth Corps Program; the HOPE I Program; the Public Housing Service Coordinator Program; the Public Housing Drug Elimination Program; Tenant Opportunities Program; Economic Development and Supportive Services; and the Youth Sports Program.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area. Applicants will be evaluated on the extent to which they document a critical level of need in the development or the proposed activities in the area where activities will be carried out. In responding to this factor, applicants will be evaluated on:

(1) *A Needs Assessment Document* (18 Points): HUD will award up to 18 points based on the quality and comprehensiveness of the needs assessment document.

(a) In order to obtain maximum points for Family RSDM applications, this

document must contain statistical data which provides:

(i) A thorough socioeconomic profile of the eligible residents to be served by the grant, in relationship to PHA-wide and national public and assisted housing data on residents who are on TANF, SSI benefits, or other fixed income arrangements; in job training, entrepreneurship, or community service programs; and employed.

(ii) Specific information on training, contracting, and employment through the PHA or Tribe.

(iii) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use;

(iv) A description of the goals, objectives, and program strategies that will result in successful transition of residents from welfare-to-work.

(b) In order to obtain maximum points for Elderly and Persons with Disabilities RSDM applications, the needs assessment document should contain statistical data that provide:

(i) The numbers of residents needing assistance for activities of daily living.

(ii) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use.

(iii) A description of the goals, objectives, and program strategies that will result in increased independence for proposed program participants.

(2) *Level of Priority in Consolidated Plan.* (2 Points): Documentation of the level of priority the locality's, or in the case of small cities, the State's, Consolidated Plan has placed on addressing the needs. Applicants may also address needs in terms of fulfilling the requirements of court actions or other legal decisions or which expand upon the Analysis of Impediments to Fair Housing Choice (AI) to further fair housing. Applicants that address needs that are in the community's Consolidated Plan, AI, or a court decision, or identify and substantiate needs in addition to those in the AI, will receive a greater number of points than applicants who do not relate their proposed program to the approved Consolidated Plan or AI or court action. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. In rating this factor HUD will consider: the viability and comprehensiveness of strategies to address the needs of residents; budget appropriateness/efficient use of grant; the speed at which the applicant can realistically accomplish the goals of the proposed RSDM program; the soundness of the applicant's plan to evaluate the success of its proposed RSDM program at completion and during program implementation; and resident and other partnerships; and policy priorities.

(1) *Viability and comprehensiveness of the strategies to address the needs of residents* (21 Points): The score under this subfactor will be based on the viability and comprehensiveness of strategies to address the needs of residents. HUD will award up to 19 points based on the following:

(a) *Services* (18 Points for Family RSDM applicants and 21 Points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded in the Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant) The score under this subfactor will be based on the following:

(i) For Family RSDM applications, the extent to which an applicant's plan provides services that specifically address the successful transition from welfare to work of non-elderly families. To receive a high score, the applicant's plan should include case management/counseling, job training/development/placement (and/or business training/development/startup), child care, and transportation services. Also, in order to receive maximum points, the goals and objectives of the proposed plan must represent significant achievements related to welfare-to-work and other self-sufficiency/independence goals. Specifically for those residents affected by welfare reform, the number of residents employed or resident businesses started are preferable to the number of residents receiving training.

(ii) For Elderly and Persons with Disabilities RSDM applications, services in the applicant's plan should include case management, health care, congregate services and transportation. To obtain maximum points, the application must describe the goals, objectives, and program strategies that will result in increased independence for proposed program participants; the services must be located in a community facility; and services must be available on a 12 hour basis or as needed by the eligible residents.

(b) *Resident Contracting and Employment* (3 Points): The score in this factor will be based on the extent to which residents will achieve self-sufficiency through the applicant's contracts with resident-owned businesses and through resident employment. A high score will be awarded where there is documentation (a letter or resolution from the applicant's governing body) describing the applicant's commitment to hire or contract with at least 15% of residents and a narrative describing the number of resident jobs or contracts involved, as well as the training processes related to the comprehensive plan of your application. Elderly and Persons with Disabilities RSDM applications will not be scored on the criterion in this subcategory.

(2) *Budget Appropriateness/Efficient Use of Grant* (5 Points): The score in this factor will be based on the following:

(a) *Detailed Budget Break-Out.* The extent to which the application includes a detailed budget break-out for each budget category in the SF–424A.

(b) *Reasonable Administrative Costs.* The extent to which the application includes administrative costs at or below the 20% administrative cost ceiling.

(c) *Budget Efficiency.* The extent to which the application requests funds commensurate with the level of effort necessary to accomplish the goals and objectives, and the extent to which the requested funding is reasonable in relationship to the anticipated results.

(3) *Reasonableness of the Timetable* (2 Points for Family RSDM applicants and 4 Points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded in Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant):

The score in this factor will be based on the speed of response at which the applicant can accomplish the goals of the proposed RSDM program. To receive a high score, the applicant must demonstrate that it will make substantial program implementation progress within the first six months after grant execution, including putting staff in place, finalizing partnership arrangements, completing the development of requests for proposals, and achieving other milestones that are

prerequisites for implementation of the program. In addition, the applicant must demonstrate that the proposed timetable for all components of the proposed program is reasonable considering the size of the grant and its activities and that it can accomplish its objectives within the 24-month time limit.

(4) *Program Assessment.* (3 Points for Family RSDM and Elderly and Persons with Disabilities RSDM): The score in this factor will be based on the soundness of the applicant's plan to evaluate the success of its proposed RSDM program both at the completion of the program and during program implementation. At a minimum, the applicant must track the goals and objectives of the proposed work plan program, which must include, if applicable, a plan for monitoring the applicant's Contract Administrator. HUD will rate more favorably applicants who can track specific measurable achievements for the use of program funds, such as number of residents employed, salary scales of jobs obtained, persons removed from welfare roles 12 months or longer, number of elderly or persons with disabilities residents receiving supportive services, and number of persons receiving certificates for successful completion of training in careers such as computer technology.

(5) *Resident and Other Partnerships* (9 Points for Family RSDM applicants and 7 Points for Elderly and Persons with Disabilities RSDM applicants)

(a) *Resident Involvement in RSDM Activities* (3 Points for Family RSDM applicants and 4 Points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded in Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant): The score in this factor will be based on the extent of resident involvement in developing the proposed RSDM program as well as the extent of proposed resident involvement in implementing the proposed RSDM program. In order to receive a high score on this factor, the applicant must describe the involvement of residents in the planning phase for this program, and a commitment to provide continued involvement in grant implementation. For applicants to receive the maximum number of points, a Memorandum of Understanding or other written agreement with the PHA, Tribe or TDHE and the Resident Association involved, as appropriate, must be included.

(b) *Other Partnerships* (3 Points): The score in this factor will be based on the successful integration of partners into implementation of the proposed RSDM program. In order to receive a high score, an applicant must provide a signed Memorandum of Understanding (MOU) or other equivalent signed documentation that delineates the roles and responsibilities of each of the parties in the program and the benefits they will receive. In assessing this subfactor, HUD will examine a number of aspects of the proposed partnership, including:

(i) The division of responsibilities/management structure of the proposed partnership relative to the expertise and resources of the partners;

(ii) The extent to which the partnership as a whole addresses a broader level of unmet resident needs; and

(iii) The extent to which the addition of the partners provides the ability to meet needs that the applicant could not meet without the partner(s).

(c) *Overall Relationship/Coordination* (3 Points for Family RSDM only): For Family RSDM applicants, the score in this factor will be based on the extent of coordination between the applicant's proposed RSDM program and any existing or proposed programs within the applicant's jurisdiction. In order to receive a high score, the application must contain an MOU that describes collaboration between the applicant and residents on all of the specific components related to the work plan of the proposed RSDM program. To receive points, at a minimum, there must be a narrative description of this collaboration. Elderly and Persons with Disabilities RSDM applications will not be scored on this criterion.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (note: financing is a community resource) that can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. The budget, the work plan, and commitments for additional resources and services, other than the grant, must show that these resources are firmly committed, will support the proposed grant activities and will, in combined amount (including in-kind contributions of personnel, space and/or equipment, and monetary contributions) equal at least 25% of the RSDM grant amount proposed in this application. "Firmly committed" means there must be an written agreement with the provider of resources, signed by an official legally able to make commitments on behalf of the organization. The signed, written agreement may be contingent upon an applicant receiving a grant award. Other resources and services may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (not including RSDM funds); funds from any State or local government sources; and funds from private contributions. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. To be firmly committed there must be a written agreement with the provider of resources signed by an official legally able to make commitments on behalf of the organization. This agreement may be contingent upon an applicant receiving a grant award. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant's program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor HUD will consider the extent to which the application addresses:

(1) *Coordination with the Consolidated Plan* (2 Points for Family RSDM applicants and 6 points for Elderly and Persons with Disabilities RSDM applicants. More points are awarded for Elderly and Persons with Disabilities RSDM applications in order to balance other sections of the rating criteria where points are not applicable to an Elderly and Persons with Disabilities RSDM applicant.) Demonstrates the applicant has reviewed the community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice, and has proposed activities that address the priorities,

needs, goals or objectives in those documents; or substantially furthers fair housing choice in the community.

(2) *For Family RSDM Applications, Coordination with the State or Tribal Welfare Plan* (4 Points): Provides evidence that the proposed RSDM program has been coordinated with and supports the PHA's, Tribe's/TDHE's efforts to increase resident self-sufficiency and is coordinated and consistent with the State, Tribal or local Welfare Plan.

(3) *Coordination with Other Activities* (4 Points): Demonstrates that the applicant, in carrying out program activities, will develop linkages with: other HUD-funded program activities proposed or on-going in the community; or other State, Tribal, Federal or locally funded activities proposed or on-going in the community which, taken as a whole, support and sustain a comprehensive system to address the needs.

(I) Grant Term

The grant term for Resident Service Delivery Models grants is thirty-six months from the execution date of the grant agreement.

VI. Service Coordinators for Elderly and Persons With Disabilities

(A) *Program Description*

The Service Coordinator program for the elderly and persons with disabilities provides funding for the employment and support of service coordinators in public housing developments designated for the elderly and persons with disabilities. These elderly and disabled service coordinators help residents obtain supportive services that are needed to enable independent living and aging in place.

(B) Amounts Allocated

A total of $15 million is available for awards to qualified applicants for service coordinators to serve the elderly and persons with disabilities. These funds may only be used as follows:

(1) Renewal of existing Service Coordinator (SC) grants from prior years. This limitation is imposed in order to further the achievement of the Congressional intent conferred with the passage of the FY 1998 EDSS appropriation to renew all service coordinator and congregate services grants expiring in fiscal year 1998. No applications for new Service Coordinator grants will be accepted under this funding category.

(2) For the Elderly and Persons with Disabilities SC category, award amounts cannot be higher than the applicant's highest funding and staffing level for any one-year period that was approved for their last funded Service Coordinator Grant. An increase of up to 2 percent over this amount will be allowed if supported by a narrative justification.

(C) Eligible Applicants

(1) This funding category provides grants to PHAs with developments designated for the elderly and persons with disabilities.

(2) A PHA may not apply for elderly and disabled service coordinator funding if it has an expiring elderly Service Coordinator or EDSS grants that has spent less than 75% of the prior grant by the publication date of this NOFA.

(3) *Joint Applications.* Two or more PHAs may join together to share a service coordinator and so submit joint applications. Joint applications must designate a lead applicant. Funding for a joint application may not exceed the stated maximum for this funding category.

(D) Eligible Developments

To be eligible, a development must have elderly residents and/or non-elderly resident with disabilities who together total at least 25 percent of the building's residents.

(E) Eligible Activities

Under this funding category, funds may be used for the following activities:

(1) *Service coordinator*

Grant funds from this category may be used to pay for the salary, fringe benefits, and related administrative costs for employing a service coordinator. A service coordinator is a social service staff person hired or contracted by the PHA. The coordinator is responsible for assuring that elderly residents, especially those who are frail or at risk, and those non-elderly residents with disabilities are linked to the supportive services they need to continue living independently in that development. The service coordinator, however, may not require any elderly person or person with disabilities to accept the supportive services. For the purposes of this program, a service coordinator is any person who is responsible for one or more of the following functions:

(a) Working with community service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(b) Establishing a system to monitor and evaluate the delivery, impact, effectiveness and outcomes of supportive services under this program;

(c) Coordinating this program with other independent living or self-sufficiency, education and employment programs;

(d) Performing other duties and functions to assist residents to remain independent, and to prevent unnecessary institutionalization; and

(e) Mobilizing other national and local public/private resources and partnerships.

(2) Administrative Costs

May include, but are not limited to, purchase of furniture, office equipment and supplies, training, quality assurance, travel, and utilities. Administrative costs must not exceed 20% of the total grant costs.

(F) Ineligible Costs

(1) Applicants may not use these monies to replace current funding from other sources for a Service Coordinator or for some other staff person who performs service coordinator functions.

(2) The cost of application preparation is not eligible.

(G) Application Submission Requirements

(1) Each application must be submitted in one original and two copies. Applications may not be sent by facsimile (FAX).

(2) *Required Certifications, Assurances and other Forms.* All applications for funding under this funding category must contain the following documents and information:

(a) Transmittal letter and request using the designated format;

(b) Grant Certifications;

(c) Evidence of comparable salaries in local area;

(d) Applicant checklist;

(e) For PHAs with expiring elderly or disabled Service Coordinator or Elderly or Disabled EDSS grants, evidence of grant expenditures that total at least 75% of grant funds by the publication date of this NOFA.

(f) Lead Agency letter format (if appropriate);

(g) Certification of Non-Duplication of Funding Request;

(h) Each applicant must submit signed copies of the following forms, assurances, and certifications:

(i) Standard Form (SF) 424, Standard Form for Application for Federal Assistance;

(j) Standard Form (SF) 424–B, Assurances for Non-Construction Programs.

(k) Drug-Free Workplace Certification (HUD–50070);

(l) Certification and Disclosure Form Regarding Lobbying Activities (SF–LLL); and

(m) Applicant/Recipient Disclosure Update Report (HUD–2880).

(H) Threshold Requirements

(1) Elderly and/or Disabled Housing Development Certification

A Certification that at least 25% of the residents of the development(s) proposed for grant activities are elderly and/or non-elderly people with disabilities at the time of application.

(2) Accessible Community Facility

The application must provide evidence (e.g. through an executed use agreement if the facility is to be provided by an entity other than the PHA that a majority of the proposed activities will be administered at community facilities within easy transportation access (i.e., walking or by direct (no transfers required), convenient, inexpensive and reliable transport), of the property represented by the PHA. The community facilities must also meet the structural accessibility requirements of Section 504 of the Rehabilitation Act and the Americans With Disabilities Act.

(3) Match Requirement

(a) The applicant must supplement grant funds with an in-kind and/or cash match of not less than 25% of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS, EDSS, TOP, SC funds); funds from any State or local government sources; and funds from private contributions.

(b) The application must demonstrate that the cash or in-kind resources and services, which the applicant will use as match amounts (including resources from the applicant's Comprehensive Grant, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. "Firmly committed" means there must be a written agreement to provide the resources and services signed by an official legally able to make commitments on behalf of the organization. The written agreement may be contingent upon an applicant receiving a grant award.

(c) The following are guidelines for valuing certain types of in-kind contributions:

(i) The value of volunteer time and services shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the activity is located.

(ii) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one year old taken from the community where the item or activity is located, as appropriate.

(4) Compliance With Current Programs

The applicant must provide certification in the format provided in the application kit that it is not in default at the time of application submission with respect to grants for the following programs: the Family Investment Center Program; the Youth Development Initiative under the Family Investment Center Program; the Youth Apprenticeship Program; the Apprenticeship Demonstration in the Construction Trades Program; the Urban Youth Corps Program; the HOPE 1 Program; the Public Housing Service Coordinator Program; the Public Housing Drug Elimination Program; the Youth Sports Program; the Tenant Opportunities Program; and the Economic Development and Supportive Services Program.

(I) Application Selection Process

Applicants for Elderly or Persons with Disabilities Service Coordinator grants are required to address application submission requirements, but are not required to address selection factors. To be eligible for funding, an application must meet the threshold requirements of sections VI.(H) and VII. of this NOFA, and submit all information required under this NOFA. HUD will accept eligible applications for funding on a first-come, first-serve basis for up to 30 days from the publication date of this NOFA or until funds are exhausted. If all funds are not awarded in this funding category to eligible applications, funds are transferable first to the Technical Assistance/Training Support for Resident Organizations category, and then to other funding categories in this NOFA in the following order: first, Resident Management and Business Development under section IV.(A) of this NOFA; second, Resident Capacity Building and/or Conflict Resolution under section IV.(B) of this NOFA; third, Resident Service Delivery Models under section V. of this NOFA.

(J) Grant Term

The grant term for Elderly or Persons with Disabilities Service Coordinator grants is twelve months from the execution date of the grant agreement.

VII. General Threshold Requirements

(A) Compliance With Fair Housing and Civil Rights Laws

All applicants and their subrecipients must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a).

If you, the applicant—

(1) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(2) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(3) Have received a letter of noncompliance findings under Title VI, Section 504, or Section 109,—

HUD will not rank and rate your application under this NOFA if the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline stated in the individual program NOFA. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(B) Additional Nondiscrimination Requirements

The applicant and any subrecipients, must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(C) Affirmatively Furthering Fair Housing

The applicant must include in the application or work plan the specific steps that the applicant will take to:

(1) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

Further, the applicant has a duty to carry out the specific activities provided in your responses to the NOFA rating factors that address affirmatively furthering fair housing.

(D) Economic Opportunities for Low and Very Low-Income Persons (Section 3)

The ROSS Program requires recipients of assistance to comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons in Connection with assisted Projects) and the HUD regulations at 24 CFR part 135, including the reporting requirements subpart E. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment and other economic opportunities will be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low and very low income persons.

(E) Relocation

Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity is covered by Federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing government-wide regulation at 49 CFR part 24.

The relocation requirements of the URA and the government-wide regulations cover any person who moves permanently from real property or moves personal property from real property directly because of rehabilitation or demolition for an activity undertaken with HUD assistance.

(F) Forms, Certifications and Assurances

The applicant is required to submit signed copies of the standard forms, certifications, and assurances listed in this NOFA. As part of HUD's continuing efforts to improve the NOFA process, several of the required standard forms have been simplified this year. The standard forms, certifications, and assurances are as follows:

(1) Standard Form for Application for Federal Assistance (SF–424);

(2) Standard Form for Budget Information—Non-Construction Programs (SF–424A) or Standard Form for Budget Information—Construction Programs (SF–424C), as applicable;

(3) Standard Form for Assurances—Non-Construction Programs (SF–424B) or Standard Form for Assurances—Construction Programs (SF–424D), as applicable;

(4) Drug-Free Workplace Certification (HUD–50070);

(5) Certification and Disclosure Form Regarding Lobbying (SF–LLL).

(6) Applicant/Recipient Disclosure Update Report (HUD–2880);

(7) Certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients applying for funds under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) also must certify to compliance with section 109 of the Housing and Community Development Act.

(8) Certification required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required.)

(G) OMB Circulars

For the ROSS Program, the policies, guidance, and requirements of OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments), OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations), 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State and Local governments) may apply to the award, acceptance and use of assistance and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 1999 HUD Appropriations Act, other Federal statutes. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number).

(H) Conflicts of Interest

If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under this NOFA, you are subject to 18 U.S.C. 208, the Federal criminal conflict of interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for this NOFA, you may not serve on a selection panel and you may not serve as a technical advisor to HUD for this NOFA. All individuals involved in rating and ranking this NOFA, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. Individuals involved in the rating and ranking of applications must disclose to HUD's General Counsel or HUD's Ethic Law Division the following information if applicable: the selection or non-selection of any applicant under this NOFA will affect the individual's financial interests, as provided in 18 U.S.C. 208; or the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The individual must disclose this information prior to participating in any matter regarding this NOFA. If you have questions regarding these provisions or if you have questions concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at 202–708–3815 and ask to speak to one of HUD's attorneys in this division.

VIII. Program Requirements

Grantees must meet the following program requirements:

(A) Compliance With Civil Rights Requirements

In addition to compliance with the civil rights requirements at 24 CFR 5.105, each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*; the Equal Pay Act, 29 U.S.C. 206(d); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, and Titles I and V of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* Tribes/TDHEs must comply with the Indian Civil Rights Act (Title II of the Civil Rights Act of 1968, 24 U.S.C. 1001–1303); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(B) Adhere to the Grant Agreement

After an application has been approved, HUD and the applicant shall enter into a grant agreement (Form 1044 and attachments) incorporating the

entire application except as modified by HUD and setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism (which except under extraordinary conditions will operate under HUD's Line of Credit Control System (LOCCS) and special conditions, including requiring adherence to the appropriate OMB circulars and other government wide requirements and specifying sanctions for violation of the agreement. The grant agreement will include additional information regarding Insurance/Indemnification, Freedom of Information Act, grant staff personnel, exclusion period, earning and benefits, reports, close-outs, and treatment of income.

(C)

Within twelve months of HUD grant approval, successful applicants who are site-based RAs must have applied for 501(c) status from the United States Internal Revenue Service.

(D) Risk Management

Grantees and subgrantees are required to implement, administer and monitor programs so as to minimize the risk of fraud, waste, abuse, and liability for losses from adversarial legal action.

(E) ROSS Evaluation and Assessment

All applicants selected for award must be willing to participate in the evaluation and assessment that HUD intends to conduct for the ROSS Program. At grant award HUD will provide additional information on the evaluation and assessment for applicants who receive awards.

(F) Applicant Internet Access

Prior to the initial draw down, all grantees shall have secured online access to the Internet as a means to communicate with HUD on grant matters.

(G) Definitions

City-Wide Resident Organization consists of members from Resident Councils, Resident Management Corporations, and Resident Organizations who reside in housing developments that are owned and operated by the same PHA within a city.

Community Facility means a non-dwelling structure that provides space for multiple supportive services for the benefit of public housing residents (as well as others eligible for the services provided) that may include but are not limited to:

(1) Child care;
(2) After-school activities for youth;
(3) Job training;
(4) Campus of Learner activities; and
(7) English as a Second Language (ESL) classes.

Contract Administrator means an overall administrator and/or a financial management agent that oversees the financial aspects of a grant and assists in the entire implementation of the grant. Examples of qualified organizations that can serve as a Contract Administrator are:

(1) Local housing agencies; and
(2) Community based organizations such as Community Development Corporations (CDCs), community churches, and State/Regional Associations/Organizations.

Development has the same meaning as the term "Project" below.

Firmly Committed means there must be a written agreement to provide the resources. This written agreement may be contingent upon an applicant receiving an award.

Elderly person means a person who is at least 62 years of age.

Jurisdiction-Wide Resident Organization means an incorporated nonprofit organization or association that meets the following requirements:

(1) Most of its activities are conducted within the jurisdiction of a single housing agency;
(2) There are no incorporated Resident Councils or Resident Management Corporations within the jurisdiction of the single housing agency;
(3) It has experience in providing start-up and capacity-building training to residents and resident organizations; and
(4) Public housing residents representing unincorporated Resident Councils within the jurisdiction of the single housing agency must comprise the majority of the board of directors.

Intermediary Resident Organizations means Jurisdiction-Wide Resident Organizations, City-Wide Resident Organizations, State-Wide Resident Organizations, Regional Resident Organizations, and National Resident Organizations.

National Resident Organization (NRO) means an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

(1) It is national (i.e., conducts activities or provides services in at least two HUD Areas or two States);
(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and
(3) Public housing residents representing different geographical locations in the country must comprise the majority of the board of directors.

Person with disabilities means an adult person who:

(1) Has a condition defined as a disability in section 223 of the Social Security Act;
(2) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act; or
(3) Is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which:
(a) Is expected to be of long-continued and indefinite duration;
(b) Substantially impedes his or her ability to live independently; and
(c) Is of such a nature that such ability could be improved by more suitable housing conditions.

The term "person with disabilities" does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. In addition, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing, solely on the basis of any drug or alcohol dependence.

The definition provided above for persons with disabilities is the proper definition for determining program qualifications. However, the definition of a person with disabilities contained in Section 504 of the rehabilitation Act of 1973 and its implementing regulations must be used for purposes of reasonable accommodations.

Program Coordinator is a person who is responsible for coordinating various proposed RSDM activities to ensure that their accomplishment will assist in achieving overall grant goals and objectives.

Project is the same as "low-income housing project" as defined in section 3(b)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act).

Resident Association (RA) means any or all of the forms of resident organizations as they are defined elsewhere in this Definitions section and includes Resident Councils (RC), Resident Management Corporations (RMC), Regional Resident Organizations (RRO), Statewide Resident Organizations (SRO), Jurisdiction-Wide Resident Organizations, and National Resident Organizations (NRO).

Resident Council (RC) means (as provided in 24 CFR 964.115) an incorporated or unincorporated nonprofit organization or association that shall consist of persons residing in public housing and must meet each of the following requirements in order to

receive official recognition from the PHA/HUD, and be eligible to receive funds for RC activities and stipends for officers for their related costs for volunteer work in public housing. (Although 24 CFR part 964 defines an RC as an incorporated or unincorporated nonprofit organization, HUD requires RC applicants for ROSS grants to be registered with the State at the time of application submission):

(1) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the public housing residents. The elections must be held on a regular basis, but at least once every 3 years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the percentage of voting membership ("threshold") which must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(2) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five elected board members. The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appear on a lease for the unit in the public housing that the resident council represents.

(3) It may represent residents residing in:

(a) Scattered site buildings in areas of contiguous row houses;

(b) One or more contiguous buildings;

(c) A development; or

(d) A combination of the buildings or developments described above.

Regional Resident Organization (RRO) means an incorporated nonprofit organization or association for public housing that meets each of the following requirements:

(1) It is regional (i.e., not limited by HUD Areas);

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the region must comprise the majority of the board of directors.

Resident Management Corporation (RMC) (See 24 CFR 964.7, 964.120) means an entity that consists of residents residing in public housing and must have each of the following characteristics in order to receive official recognition by the PHA and HUD:

(1) It shall be a nonprofit organization that is validly incorporated under the laws of the State in which it is located;

(2) It may be established by more than one RC, so long as each such council:

(a) Approves the establishment of the corporation; and

(b) Has representation on the Board of Directors of the corporation.

(3) It shall have an elected Board of Directors, and elections must be held at least once every 3 years;

(4) Its by-laws shall require the Board of Directors to include resident representatives of each RC involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired;

(5) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appear on the lease of a unit in public housing represented by the RMC;

(6) Where an RC already exists for the development, or a portion of the development, the RMC shall be approved by the RC board and a majority of the residents. If there is no RC, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(7) It may serve as both the RMC and the RC, so long as the corporation meets the requirements of this part for an RC.

Secretary means the Secretary of Housing and Urban Development.

Site-Based Resident Associations means Resident Councils and Resident Management Corporations.

Statewide Resident Organization (SRO) means a Site-Based incorporated nonprofit organization or association for public housing that meets the following requirements:

(1) It is Statewide;

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public housing residents representing different geographical locations in the State must comprise the majority of the board of directors.

Tribal housing means housing assisted under the Indian Housing Block Grant Program at 24 CFR part 1000.

(H) Environmental Requirements

It is anticipated that most activities under this NOFA will be categorically excluded under 24 CFR 50.19(b)(3), (b)(9), (b)(12), or (b)(14). An applicant proposing physical development activities is prohibited from rehabilitating, converting, leasing, repairing or constructing property, or committing or expending HUD or non-HUD funds for these types of program activities, until one of the following has occurred:

(1) If the grantee is not a PHA, HUD has completed an environmental review to the extent required by 24 CFR part 50, prior to grant awards.

(2) If the grantee is a PHA, HUD has approved the grantee's Request for Release of Funds (HUD Form 7015.15) following a Responsible Entity's completion of an environmental review under 24 CFR part 58, where required, or if HUD has determined in accordance with § 58.11 to perform the environmental review itself under part 50, HUD has completed the environmental review.

IX. Application Submission Requirements

The applicant must submit the following, which are further described in the application kit.

(A) Needs Assessment Report which includes statistical or survey information on the needs of the recipient population; please use the appropriate format provided in the application kit.

(B) A three-year work plan for implementing grant activities which includes reasonably achievable, quantifiable goals, budget, timetable and strategies, including any innovative approaches. In addition to a narrative, please use the formats provided in the application kits to chart the following:

(1) Activity plan summary;

(2) Activity breakout;

(3) Budget breakout;

(4) Summary budget;

(5) Program resources; and

(6) Program staffing;

(C) Information on the applicant and/or administrator track record with comparable initiatives. Please provide the chart and/or certification format provided in the application kit;

(D) Certifications and assurances referenced in this program. Applicants who are IROs or non profits operating association and/or networks operating programs that benefit public housing resident organizations must also submit a list of site-based resident associations they intend to be assisted.

(E) Memorandum of Understanding/Agreement; commitment letters; and other required documentation of partnerships.

X. Correction to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies.

Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. Examples of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested.

Applicants must submit clarifications or corrections of technical deficiencies in accordance with information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

XI. Findings and Certifications

(A) *Paperwork Reduction Act Statement*

The information collection requirements contained in this notice were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0211. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. This finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(C) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits applicants to help eligible families make the transition from welfare to work, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the NOFA is not subject to review under the Order.

(D) Prohibition Against Lobbying Activities

You, the applicant, are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form-LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

(E) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements*

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and Public Access Requirements*

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) Disclosures

HUD will make available to the public for 5 years all applicant disclosure reports (Form HUD–2880) submitted in connection with this NOFA. Update reports (also Form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding*

HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(F) *Section 103 HUD Reform Act*

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive

advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(G) *Catalog of Federal Domestic Assistance Numbers*

The Catalog of Federal Domestic Assistance number for this program is 14.870.

XIII. Authority.

The Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriation Act of 1999 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), and the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, 111 Stat. 1344, approved October 27, 1997).

Dated: July 27, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–20429 Filed 8–4–99; 2:21 pm]

BILLING CODE 4210–33–P

VOL
64
ISS
1
5
3
AG
10
999
UMI

federal register

Tuesday
August 10, 1999

Part VI

Department of Labor

Employment and Training Administration

Bureau of Apprenticeship and Training; Policy for Releasing Identities of Program Sponsors; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Bureau of Apprenticeship and Training; Policy for Releasing Identities of Program Sponsors

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Adoption of Procedure.

SUMMARY: The Bureau hereby adopts a policy for releasing identities of apprenticeship program sponsors registered and recognized by BAT. On December 5, 1997, the Bureau of Apprenticeship and Training (BAT) noticed in the **Federal Register** a proposed policy and procedure for releasing identities of program sponsors registered by the Bureau, (62 FR 64452). The Bureau invited interested persons to submit written comments before February 3, 1998 concerning the proposal. A few responses were received as discussed herein.

EFFECTIVE DATE: This procedure is effective on August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Marion M. Winters, FOIA Coordinator for BAT, Telephone: (202) 219–5921 (Ext. 107) (this is not a toll free number). FAX: (202) 219–5011.

SUPPLEMENTARY INFORMATION:

Background

The BAT administers and promotes the nation's apprenticeship and training programs. Individuals join an apprenticeship program to learn the skills the program has to offer as well as to obtain employment. Apprenticeship is a relationship between the program sponsor and the apprentice during which the employee, or apprentice, learns a trade. The training lasts a specified length of time. An apprenticeship covers all aspects of the trade and includes both on-the-job training and related instruction.

Apprenticeship programs are sponsored and operated on a voluntary basis by employers, employee associations, or partnerships between employers and labor unions. The sponsor of an apprenticeship program plans, administers and pays for the program. When an apprentice is accepted into a program, the apprentice and the sponsor sign an apprenticeship agreement. The apprentice agrees to perform the work faithfully and complete the related study, and the sponsor agrees to make every effort to keep the apprentice employed and to comply with the standards established for the program. An apprenticeship program must meet certain requirements set down by BAT.

BAT regulations require that apprenticeship programs be registered with BAT or a federally approved State Apprenticeship Council. Registered programs must meet federally-approved standards related to job duties, related instruction, wages, and safety and health conditions. Apprentices who successfully complete registered programs receive certificates of completion from the U.S. Department of Labor or a federally-approved State Apprenticeship Agency.

In the past, when BAT received FOIA requests for information concerning registered apprenticeship programs, it would notify the appropriate sponsor and seek their views regarding the effect that disclosure of the relevant data would have on its competitive business position. This procedure was followed because of BAT's understanding or perhaps misinterpretation, of Executive Order 12600 (29 CFR part 70 *et seq*: 29 CFR 70.26).

Executive Order 12600, issued May 30, 1989, requires Federal Agencies to notify a submitter of commercial information if its potential release could be considered sensitive or harmful to its business interests. In an effort to comply with Executive Order 12600, BAT sought views of each sponsor on whether the disclosure of the existence of a registered apprenticeship program could be harmful to its proprietary interest.

BAT does not believe the relevant information is proprietary to the sponsors. This information belongs to the government as well as to the sponsors and apprentices. It has been BAT's experience that when it has contacted sponsors and sought their comments on any commercial harm they would experience that when it has contacted sponsors and sought their comments on any commercial harm they would experience by the publication of the fact that a registered program exists, the vast majority offered no objections. There is little basis, if any, for supporting a claim of negative proprietary impact on sponsors by identifying their participation as an apprenticeship program sponsor. It is BAT's understanding that in an overwhelming number (if not in all) State Apprenticeship Council (SAC) States the fact of the existence of apprenticeship programs is released to the public.

Discussion of Comments

The BAT received six letters commenting on the proposed procedure that was published in the **Federal Register** Notice of December 5, 1997.

The comment from the Plasterers & Cement Masons Job Corps Training Program of Washington, DC, was very supportive of the proposal in that it could serve as a stimulus for attracting potential apprentices to enter the Building and Construction Trades.

The Independent Electrical Contractors, Inc. (IEC) of Alexandria, Virginia, endorsed the proposed policy. They thought the general availability of this information would stimulate the establishment of more apprenticeship programs and also encourage students to investigate apprenticeships as a reliable alternative to college or vocational training options.

However, the Independent Electrical Contractors cautioned against releasing detailed personal information regarding these programs, such as the identities of apprentices enrolled therein. They considered such information as being proprietary. Identification as well as characteristics of apprentices and/or trainees are protected as personal information subject to the Privacy Act.

BAT Response

BAT does not contemplate releasing personal information on any apprentice or trainee; nor is this a matter sheltered as proprietary.

The National Association of State and Territorial Apprenticeship Directors (NASTAD) supports releasing the name and address of sponsoring organizations, but not the name and phone number of contact persons. BAT acknowledges that the latter information is subject to frequent change, and is not maintained in many of the SAC States.

BAT Response

In any event, under the BAT FOIA policy, the identity of a sponsor and a mailing address will be provided.

The Vermont Department of Employment and Training in Montpelier, Vermont, had no problem with releasing the names and addresses of registered apprenticeship program sponsors to anyone on request. They believe that such information would benefit the apprenticeship training program by providing job and career counselors with a list of participating registered apprenticeship program sponsors for client referral.

The Wyoming Electrical Joint Apprenticeship and Training Committee of Casper, Wyoming (WJATC) commented that information on such programs would be vital for persons interested in apprenticeship. The WJATC pointed out that many apprenticeships are available but that

not all programs are registered. Further, the WJATC stated that making information on sponsors more readily available would enable the public to find the best apprenticeship programs and what they have to offer.

The Associated Builders and Contractors, Inc. (ABC) commented that it does not oppose the release of identifying information on apprenticeship program sponsors. The ABC provides for the registration of all apprenticeship programs with their 81 geographically distinct chapters.

ABC did oppose any release of information that would enable individual employers within an ABC chapter to be identified.

BAT's Response

As discussed above, the BAT FOIA policy provides for the release of information regarding sponsors, not information about individual employers.

Adoption of Procedure

Accordingly, BAT hereby adopts a FOIA policy for releasing identities of apprenticeship program sponsors registered and recognized by the BAT.

In response to requests for program sponsor identification, the official name of the organization along with street address, city, and State will be disclosed.

All newly registered apprenticeship program sponsors will be provided with a copy of this **Federal Register** Notice.

Signed at Washington, DC, this 3rd day of August, 1999.

Anthony Swoope,

Director, Bureau of Apprenticeship and Training Employment and Training Administration.

[FR Doc. 99–20407 Filed 8–9–99; 8:45 am]

BILLING CODE 4510–30–P

VOL
64
ISS
1
5
3
AG
10
1999
UMI

federal register

Tuesday
August 10, 1999

Part VII

Securities and Exchange Commission

17 CFR Part 275
Political Contributions by Certain Investment Advisers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–1812; File No. S7–19–99]

RIN 3235–AH72

Political Contributions by Certain Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment a new rule under the Investment Advisers Act of 1940 that would prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or any of its partners, executive officers or solicitors make a contribution to certain elected officials or candidates. The Commission also is proposing rule amendments that would require a registered adviser that has government clients to maintain certain records of the political contributions made by the adviser or any of its partners, executive officers or solicitors. The new rule and rule amendments would address "pay to play" practices in the investment adviser industry.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–19–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W. Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Attorney, <GoldsteinK@sec.gov>, or Jeffrey O. Himstreet, Attorney, <HimstreetJ@sec.gov>, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed rule 206(4)-5 (17 CFR 275.206(4)-5) and proposed amendments to rule 204–2 (17 CFR 275.204–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) ("Advisers Act" or "Act").

Table of Contents

Executive Summary
I. Background
II. Discussion
A. Rule 206(4)-5
1. "Pay to Play" Restrictions
2. Solicitation Restrictions
3. Direct and Indirect Contributions or Solicitations
4. Private Investment Companies
5. Exemptions
B. Recordkeeping
C. Transition Period
D. General Request for Comment
III. Cost/Benefit Analysis
A. Benefits
B. Costs
C. Requests for Comment
IV. Paperwork Reduction Act
V. Summary of Initial Regulatory Flexibility Analysis
VI. Statutory Authority
Text of Proposed Rule and Rule Amendments

Executive Summary

Public pension plan assets are held, administered and managed by elected officials for the benefit of citizens, retirees, and other beneficiaries. Elected officials who allow political contributions to play a role in the management of these assets violate the public trust by rewarding those who make political contributions. Moreover, they undermine the fairness of the process by which public contracts are awarded. Similarly, investment advisers that seek to influence the award of advisory contracts by public entities, by making or soliciting political contributions to those officials who are in a position to influence the awards, compromise their fiduciary obligations to the plans. These practices—known as "pay to play"—distort the process by which investment advisers are selected and can harm plans, which may, consequently, receive inferior advisory services and/or pay higher fees. As a result, the millions of retirees and other beneficiaries who rely on these plans can be harmed.

We believe that advisers' participation in pay to play is inconsistent with the high standards of ethical conduct required of them under the Investment Advisers Act. We are therefore proposing a new rule designed to eliminate an adviser's ability to participate. Proposed rule 206(4)–5 would prohibit an adviser from providing advisory services for compensation to a government client for two years after the adviser, or any of its partners, executive officers or solicitors, make a contribution to state treasurers or comptrollers or other elected officials who can influence the selection of the adviser. The prohibition also would apply to contributions to candidates for these positions, but would not result from contributions of $250 or less to elected officials or candidates for whom the person making the contribution can vote.

Proposed rule 206(4)–5 also would prohibit an adviser from providing or seeking to provide advisory services for compensation to a government client while the adviser, or any of its partners, executive officers or solicitors, solicit contributions for an elected official or candidate. Finally, we are proposing rule amendments that would require an adviser registered with us that has government clients to make and keep certain records regarding the political contributions and solicitation activities of the adviser, its partners, executive officers and solicitors.

I. Background

Persons seeking to do business with the governments of some states and municipalities are increasingly being expected to make political contributions to elected officials or candidates.[1] In some cases, businesses that submit bids for public contracts make political contributions to elected officials, hoping to influence the selection process. In other cases, political contributions are solicited from businesses, or it is simply understood that only contributors will be considered for selection. Contributions do not typically guarantee an award of business to the contributor, but the failure to contribute will guarantee that another is selected. Hence the term "pay to play."

Pay to play practices can be viewed as imposing a hidden tax on persons seeking to do business with governments. They increase the cost of government services, which is likely to reflect the cost of the political contribution, and may diminish the quality of services, as officials may award contracts to less qualified advisory firms. Pay to play practices are unfair to businesses, particularly smaller businesses, that cannot afford the required contributions. Pay to play practices call into question the integrity

[1] *See generally* Alexander Heard, The Costs of Democracy 142–145 (1960); Peter M. Manikas, *Campaign Finance, Public Contracts and Equal Protection*, 59 Chi.-Kent L. Rev. 817 (1983). Pay to play practices have been found relating to a variety of government contracts outside of the financial markets. *See, e.g.*, O'Hare Truck Service, Inc. v. City of Northlake, 518 U.S. 712 (1996) (independent towing service contractor).

of public officials and the fairness of the government contracting process.

Pay to play practices have been a significant problem in the municipal securities market.[2] Securities firms seeking to underwrite municipal securities offerings have made political contributions and other payments to officials who are in a position to influence the award of underwriting contracts. After studying pay to play practices, the Commission staff concluded that they harm the municipal securities markets by increasing underwriting costs, undermining the integrity of municipal securities underwritings and damaging investor confidence.[3] We came to the same conclusion in 1994 when we approved Municipal Securities Rulemaking Board ("MSRB") rule G–37 to end broker-dealer participation in pay to play practices.[4]

Rule G–37 prohibits broker-dealers from engaging in municipal securities business with a government issuer for two years after making a political contribution to an elected official of the issuer who can influence the selection of the broker-dealer.[5] The prohibition applies to contributions made by the firm or any of its "municipal finance professionals," including certain executive officers.[6] A municipal finance professional, however, may make a contribution to a candidate of up to $250 per election without triggering the prohibition if he or she can vote for the candidate.[7] Rule G–37 also prohibits a broker-dealer from providing or seeking to provide underwriting services to a government, if the broker-dealer or any of its municipal finance professionals solicits or coordinates contributions for a candidate or elected official of the government.[8] The MSRB requires broker-dealers to file quarterly reports disclosing the political contributions made by the firm, its executive officers and municipal finance professionals,[9] and to keep accurate records of those contributions.[10]

Since the adoption of rule G–37, the Commission has become concerned about other pay to play practices that are not addressed by that rule; practices which involve public pension plans and other funds. We have received reports that the selection of investment advisers, which we regulate under the Advisers Act, may be influenced by political contributions,[11] and as a result, the quality of management services provided to funds may be affected.[12] We have become particularly concerned about the possibility that the adoption of rule G–37 has resulted in a shift of pay to play practices to this area as political contributions by broker-dealers are curtailed.[13] We therefore have examined the role of investment advisers in the management of public pension funds and other assets, the role of pay to play in their selection, and the implications of pay to play practices on the fiduciary obligations of investment advisers under the federal securities laws.

Investment advisers provide a wide variety of advisory services to state and local governments.[14] Advisers manage public monies that fund pension plans and a number of other important public programs, including transportation, children's programs, arts programs, environmental reclamation, and financial aid for education. In addition, advisers provide risk management,[15] asset allocation,[16] financial planning[17]

---

[2] *See Murky Depths (Municipal Finance)*, Economist, Nov. 4, 1995, at 83 ("America's municipal bond market is more rife with corruption than even its fiercest critics have claimed"); Terence P. Pare, *The Big Sleaze in Muni Bonds*, Fortune, Aug. 7, 1995, at 113; Leah Nathans Spiro et al., *The Trouble with Munis*, Bus. Wk., Sept. 6, 1993, at 44. *See also* Lazard Freres & Co., Securities Exchange Act Release No. 39388 (Dec. 3, 1997) (enforcement action brought against municipal securities dealer for undisclosed contributions made by a former partner and officer through a consultant to obtain municipal securities underwriting business); *SEC* v. *Rudi*, Litigation Release No. 14421 (Feb. 23, 1995) (complaint alleged that financial advisor received "kickbacks," the amount of which were to be reduced by campaign contributions).

[3] *See* Division of Market Regulation, U.S. Securities and Exchange Commission, Staff Report on the Municipal Securities Markets 9–11 (1993).

[4] *See* In the Matter of Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business and Notice of Filing and Order Approving on an Accelerated Basis Amendment No. 1 Relating to the Effective Date and Contribution Date of the Proposed Rule, Securities Exchange Act Release No. 33868, at sections V.A.1 and 2 (Apr. 7, 1994) (59 FR 17621 (Apr. 13, 1994)) ("Rule G–37 Adopting Release") (rule G–37 was adopted "to establish industry-wide restrictions and requirements aimed at preventing fraudulent and manipulative practices"). In approving rule G–37, we also concluded that pay to play practices may harm the municipal markets by fostering a selection process that excludes those firms that do not make contributions, cause less qualified underwriters to be retained, and undermine equitable practices in the municipal securities industry. *Id.* at section V. In 1996, we approved MSRB rule G–38 to prevent persons from circumventing rule G–37 through the use of consultants. *See* Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Consultants, Securities Exchange Act Release No. 36727 (Jan. 17, 1996) (61 FR 1955 (Jan. 24, 1996)).

[5] MSRB rule G–37(b). The prohibition also applies to successful and unsuccessful candidates for an office that can influence the selection of the broker-dealer. MSRB rule G–37(g)(vi). Shortly after rule G–37 became effective, a municipal securities dealer challenged it as an infringement on the constitutional rights of municipal securities professionals. A federal appeals court upheld the constitutionality of rule G–37, finding that the rule served a compelling government interest in preventing fraudulent and manipulative acts. *Blount* v. *SEC*, 61 F.3d 938 (D.C. Cir. 1995), *cert. denied*, 517 U.S. 1119 (1996).

[6] MSRB rule G–37(b). A "municipal finance professional" generally is an associated person of a broker-dealer firm who is "primarily engaged" in municipal securities activities, solicits municipal securities business on behalf of a broker-dealer, or a person who supervises associated persons primarily engaged in municipal securities activities "up through and including" the chief executive officer of the firm (or person performing similar functions). MSRB rule G–37(g)(iv).

[7] MSRB rule G–37(b).

[8] MSRB rule G–37(c).

[9] MSRB rule G–37(e). Firms are required to make quarterly filings with the MSRB on Forms G–37 and G–38. *Id.* These filings are made available to the public through its website, at <http://www.msrb.org> (visited July 22, 1999).

[10] MSRB rule G–8(a)(xvi); Rule G–37 Adopting Release, *supra* note 4, at section III.B.2.

[11] Letter from Thomas Flanigan (former executive director of the California State Teachers' Retirement System) to Arthur Levitt, Chairman, SEC (June 7, 1997), available in File No. S7–19–99 ("(pay to play) potentially places the credibility of many investment operations, either through direct or indirect pressure, in jeopardy"). There also have been numerous press reports of investment advisers engaging in pay to play practices, some of which report an adverse impact on plans. *See infra* note 38.

[12] Anonymous Letter dated Feb. 5, 1999 to Arthur Levitt, Chairman, SEC, available in File No. S7–19–99 (marketer for institutional money manager is "amazed at how many managers are awarded contracts by public funds due to the money they have donated when there were other more qualified managers available"). *See, e.g.*, Wyatt, Lindsay, *Paring the Politics from a Public Plan*, Pens. Mgmt., Nov. 1995, at 12 (Connecticut treasurer quoted as saying that pay to play "adversely influenced our treasury"); David A. Vise, *D.C. Pension Plan Mishandled; Too Many Advisers, Poor Financial Results*, Wash. Post, Aug. 15, 1993, at A1.

[13] *See* Eric Bailey, *Firms with State Pacts Are Fertile Donors to Fong*, L.A. Times, May 25, 1998, at A1 ($400,000 decline in contributions from underwriting firms attributed to rule G–37); Bill Krueger, *Money Managers Giving to Boyles*, News & Observer, May 2, 1996, at A1 (noting that rule G–37 "dried up" a contribution source for a state treasurer, "so now he is getting campaign contributions from a group (investment advisers) that is not subject to (rule G–37)"); Gerri Willis, *Filling Carl's War Chest: Comptroller Getting Thousands From State's Money Managers*, Crain's N.Y. Bus., Sept. 16, 1996, at 1 (securities executive observing that "(b)ecause of the SEC's crackdown on the pay to play nature of the muni bond business, the game has shifted to asset management and brokerage").

[14] *See* Werner Paul Zorn, *Public Employee Retirement Systems and Benefits*, *in* Local Government Finance, Concepts and Practices 376 (John E. Peterson and Dennis R. Strachota, eds., 1st ed. 1991) (discussing the services investment advisers provide for public funds).

[15] *See* Robert A. Fippinger, The Securities Law of Public Finance 669 (1997).

[16] *See, e.g.*, Public Employee Retirement Systems, *supra* note 14. *See also* Barry B. Burr, *The New $100 Billion Club, Pens. & Inv., May 4, 1998, at 1.*

[17] *See* Cal. Ed. Code § 22303.5 (1999) (requiring teachers' retirement system to offer retirement planning services to beneficiaries); CalSTRS Financial Education Program <http://www.calstrs.ca.gov/benefit/defined/mbrinfo/

Continued

and cash management services;[18] structure bond offerings;[19] help state and local governments find and evaluate other advisers that manage public funds ("pension consultants");[20] and provide other types of services.[21]

Most of the public funds managed by investment advisers fund state and municipal pension plans. These pension plans have over $2.3 trillion of assets and represent one-third of all U.S. pension assets.[22] They are among the largest and most active institutional investors in the United States.[23] The management of these funds significantly affects publicly held companies,[24] mutual funds[25] and the securities markets themselves.[26] But most significantly, their management affects the taxpayers,[27] and the millions of state and municipal retirees who rely on the funds for their pensions and other benefits.[28]

Elected officials of state and local governments are involved, directly or indirectly, in the selection of advisers to manage most public pension fund assets. In some jurisdictions, one or more elected officials have sole authority to select advisers.[29] In others, elected officials serve as members[30] or appoint some or all members[31] of a governing board that makes selections.[32] The selection process typically begins with the issuance of a request for proposals ("RFP"). The staff of the governing board of the fund receives the proposals and evaluates the applicants, often with the assistance of a pension consultant. Specific criteria such as past performance, experience, management approach, services and fees are established and used to narrow the list of applicants. Finalists are then interviewed, and the board selects one or more advisers.[33] The board may reject recommendations made by its staff and consultants and, in some instances, boards have selected advisers that were not among the "finalists."[34]

The absence of a fully objective bidding process makes it possible for considerations other than merit to intrude into the selection process.[35] The

---

mctbl.html> (visited July 22, 1999). Other funds are also considering whether to offer financial planning services to their beneficiaries. *See, e.g.*, Steve Hemmerick, *CalPERS Officials Consider 'Comprehensive' Financial Planning for Participants*, Pens. & Inv., Feb. 8, 1998, at 3.

[18] *See* Government Finance Officers Association, an Introduction to External Money Management for Public Cash Managers 5 (1991).

[19] Not all persons who structure bond offerings for state and local governments are investment advisers subject to regulation under the Advisers Act. *See* The Knight Group (pub. avail. Nov. 13, 1991); East Texas Investment Company (pub. avail. Nov. 14, 1975). *But see* In re O'Brien Partners, Inc., Investment Advisers Act Release No. 1772 (Oct. 27, 1998) (financial advisor was subject to the Advisers Act for rendering advice to municipal securities issuers "concerning their investment of bond proceeds in securities, including (non-government securities), and was compensated for that advice"). Recently, a group of these firms agreed to a self-imposed ban on making political contributions to obtain business. *See Financial Advisers Support SEC's 'Pay-to-Play'* Rules, WALL. ST. J., Mar. 2, 1999, at A8.

[20] In addition to assisting the fund in selecting investment advisers, pension consultants may also provide advice to state and local governments in designing investment objectives, determining available funding media, or recommending specific securities or investments for the fund. Pension consultants are generally investment advisers subject to the Advisers Act. *See* Applicability of Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release. No. 1092 (Oct. 8, 1987) (52 FR 38400, 38401 (Oct. 16, 1987)).

[21] For example, public funds may retain advisers to perform custodial services. *See, e.g.*, Public Employee Retirement Systems, *supra* note 14, at 376–77.

[22] Board of Governors of the Federal Reserve System, *Flow of Funds Accounts of the United States, Flows and Outstandings, First Quarter 1999* (June 11, 1999) (at tables L.119 and L.120). Since 1994, total financial assets of public pension funds have grown by almost 45%. *Id.* at table L.120.

[23] According to a recent survey, seven of the ten largest pension funds were sponsored by state and municipal governments (one was the Federal Retirement Thrift Fund). *Top 200 Pension Funds/Sponsors*, Pens. & Inv., Jan. 25, 1999, at 30.

[24] *See Corporate Governance: Funds Flex Their Muscles*, Pen. & Inv., at 109 (Oct. 19, 1998) ("Public funds discover they have the clout to influence corporate boards they believe are not acting in the shareholders' best interests.").

[25] *See* Louis Trager, *Run on State Money Market Funds; Orange County Fallout: $1 Billion in Withdrawals*, San Francisco Examiner, Dec. 19, 1994, at B1 (reporting that, shortly after Orange County filed for bankruptcy, investors withdrew $1.03 billion (nearly 7% of the funds' assets) from money market funds that held securities issued by the county). *See also* Richard Marcis et al., *Mutual Fund Shareholder Response to Market Disruptions*, Investment Company Institute Perspective, at 10 (July 1995) (noting that the Orange County bankruptcy caused outflows in both tax-exempt bond funds and money market funds). Public funds are exempt from regulation as mutual funds under the Investment Company Act of 1940. Sections 2(b) and 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(b) and 3(c)(11)).

[26] Federal Reserve reports indicate that, of the $2.3 trillion in non-federal government plans, $1.5 trillion are invested in corporate equities. Flow of Funds Accounts, *supra* note 22 (at table L.120).

[27] *See* Paul Zorn, 1997 Survey of State and Local Government Employee Retirement Systems 61 (1997) ("(t)he investment of plan assets is an issue of immense consequence to plan participants, taxpayers, and to the economy as a whole" as a low rate of return will require additional funding from the sponsoring government, which "can place an additional strain on the sponsoring government and may require tax increases").

[28] The most current census data reports that public pension funds have 13.6 million beneficiaries. 1992 Census of Governments, U.S. Bureau of Census, VOL. 4, No. 6, *Employee-Retirement Systems of State and Local Governments*, at ii, 19 (1995) (available at <http://www.census.gov/prod/2/gov/gc92–4/gc924–6.pdf> (visited July 22, 1999)).

[29] *See* "What Are the Comptroller's Responsibilities?" available at <http://www.osc.state.ny.us/divisions/press_office/response.htm> (visited July 22, 1999) (noting that the placement of state and local government retirement systems assets is under the sole custodianship of the New York State Comptroller). *See also* S.C. Code Ann. §§ 9–1–20, 1–11–10 (Law. Co-op. 1998) (five-member board consisting of five elected officials).

[30] *See, e.g.*, Cal. Gov't Code § 20090 (Deering 1999) (state controller, state treasurer); Md. Code Ann., State Pers. & Pens. § 21–104 (Supp. 1998) (state comptroller, treasurer, secretary of budget, superintendent of schools, and secretary of the state police); Miss. Code Ann. § 25–11–15(2) (1998) (state treasurer); N.C. Gen. Stat. § 135–6 (1999) (state treasurer and state superintendent of public instruction); R.I. Gen. Laws § 36–8–4 (Supp. 1998) (state treasurer); Utah Code Ann. § 49–1–202 (Supp. 1998) (state treasurer); W. VA. Code § 5–10D–1 (Supp. 1998) (governor, state treasurer, state auditor, secretary of the department of administration); Wyo. Stat. § 9–3–404 (Supp. 1998) (state treasurer).

[31] *See, e.g.*, Ariz. Rev. Stat. Ann. § 38–713 (1999) (governor appoints all nine members); CAL. Gov't Code20090 (Deering 1999) (governor appoints three of thirteen members); Hawaii Rev. Stat.§ 88–24 (Supp. 1998) (governor appoints three of eight members); IDAHO CODE § 59–1304 (Supp. 1998) (governor appoints all five members); Kan. Stat. Ann. § 74–4905 (Supp. 1997) (governor appoints four of nine members; speaker of the house and president of the senate each appoint one member); Me. Rev. Stat. Ann. tit. 5, § 17102 (Supp. 1997) (governor appoints four of eight members); Nev. Rev. Stat. § 286.120 (1997) (governor appoints all seven members); N.H. Rev. Stat. Ann. § 100–A:14(i) (1998) (governor and council appoint two of thirteen members); VA. Code Ann. § 51.1–124.20 (Michie 1998) (governor appoints five of nine members); W. Va. Code § 5–10D–1 (1998) (governor appoints ten of fourteen members); Wyo. Stat. § 9–3–404 (Supp. 1998) (governor appoints ten of eleven members (the state treasurer is the other member)).

[32] In some cases, state retirement systems have sought to insulate the selection process from the effects of political contributions by delegating the selection of investment advisers to the professional staff of the fund. *See, e.g.*, Missouri State Employees Retirement System, *External Manager Hiring and Termination Policy* (Nov. 13, 1998). *See* discussion *infra* at section II.A.1.

[33] *See* Stephen A. Berkowitz & Louis D. Finney, the Selection and Management of Investment Managers for Public Pension Plans 40–45 (1990) (discussing the RFP, selection criteria, performance measurement, interview process, and elements of a final contract); Public Cash Managers, *supra* note 18, at 12–13 (discussing elements of the RFP and selection process); M. Corrine Larson, an Introduction to Investment Advisers for State and Local Governments 6 (1998) (discussing the process for drafting the RFP, evaluating RFP responses, interviewing candidates, and selecting advisers); Girard Miller et al., Investing Public Funds5 (1998) (discussing selection criteria, and the use of consultants and an investment committee to aid in the selection process).

[34] *See, e.g.*, Josh Kosman, *Manager Access to Trustees Examined, Investment Mgmt. Wkly.*, Aug. 25, 1997, *available in* 1997 WL 15447410; Too Many Advisers, Poor Financial Results, *supra* note 12.

[35] In approving rule G–37, the MSRB observed, and we agreed, that in a competitive and objective bidding process, there is "less possibility of collusion and political patronage," as bidders are able to publicly compete on price and their willingness to accept market risk. Rule G–37 Adopting Release, *supra* note 4, at section II.A. The prohibition contained in rule G–37 thus applies only to contracts that were awarded on a basis other

management of public pension funds is highly lucrative, and there is keen competition among advisers vying for selection.[36] The record suggests strongly that political contributions can play a significant role in the selection of investment advisers.[37] Allegations of pay to play have been reported in at least seventeen states.[38]

Pay to play practices are rarely explicit: participants do not typically let it be publicly known that contributions are made or accepted for the purpose of influencing the selection of an adviser. As one court noted, "actors in this field are presumably shrewd enough to structure their relations rather indirectly." [39] Some elected officials who are responsible for public pension plans have actively solicited contributions from advisers that either provide or seek to provide advisory services to the state or local government.[40] Several have received large amounts of money from advisers and contractors to the pension funds.[41] Some have participated in the selection of investment advisers shortly before, or shortly after, receiving contributions from the adviser.[42]

Recently, the nation's largest public pension fund, the California Public Employees Retirement System ("CalPERS"), sought to end the participation of its trustees in pay to play practices. The CalPERS actions and subsequent litigation [43] provide unusual insights into how pay to play can work in the selection of investment advisers for public funds. According to court documents submitted by CalPERS, elected officials serving as CalPERS trustees solicited campaign contributions from investment advisers and other fund contractors.[44] Each raised a considerable amount of money from advisers that are providing, or are seeking to provide, advisory services to CalPERS.[45] Failure to contribute reduced the interest of the elected official in the adviser's role in managing the fund; [46] contributing a sufficient amount could lead to the official championing the selection of the adviser,[47] which could even result in the fund selecting the adviser over the recommendation of its professional staff and consultants.[48] In order to avoid the perception of a conflict, the elected officials voluntarily would abstain from a vote concerning an adviser that made contributions,[49] but the officials could participate in the discussions that preceded the vote.[50] CalPERS decided to bar contractors and prospective contractors from making political contributions as an effort to end pay to play, which it described as "an insidious form of corruption" that "infects the entire decision-making process." [51]

Two states and some funds have come to similar conclusions regarding pay to play. Vermont and Connecticut both have recently enacted statutes prohibiting any person doing business with state funds from making contributions to the treasurer of either

---

than a "competitive bid" (*i.e.*, negotiated offerings). MSRB rule G–37(g)(vii). Contracts awarded on the basis of a competitive bid remain subject to the federal securities laws. *See* In re Stephens, Inc., Securities Act Release No. 7612 (Nov. 23, 1998) (enforcement action brought against consultant who authorized undisclosed payments to two public officials and an outside pension consultant to obtain municipal finance business that was subject to competitive bidding).

[36] A recent investment adviser search by CalPERS, for example, yielded 269 proposals submitted by 189 managers. *See* Steve Hemmerick, *58 Managers Make CalPERS' First Cut*, PENS. & INV., Aug. 18, 1997, at 6.

[37] In most cases, these political contributions are lawful. Thus, we do not suggest that the elected officials, by accepting these contributions, are acting unlawfully. Also, the Commission has not investigated and therefore cannot confirm the validity of the allegations described in the articles cited or referenced in the footnotes that follow. The *Blount* court held that allegations of pay to play were sufficient to support the rulemaking and that "no smoking gun is needed where, as here, the conflict of interest is apparent, the likelihood of stealth great, and the legislative purpose prophylactic." 61 F.3d at 945.

[38] The articles and other materials describing allegations of pay to play practices are available in File No. S7–19–99. *See, e.g.*, Janet Aschkenasy, *Pay-to-Play—Scrutiny of Unethical Practices at Public Funds Is Intensifying, But Will Self-Policing Efforts Succeed?*, PLAN SPONSOR, Feb. 1998, at 58–60; Charles Gasparino & Jonathan Axelrod, *Political Money May Sway Business of Public Pensions*, Wall St. J., Mar. 24, 1997, at C1; Matt O'Connor, *Santos Done in by Tape; 'Time to Belly Up' Remark Called Key to Guilty Verdict*, CHI. TRIB., May 4, 1999, at N1.

[39] *Blount*, 61 F.3d at 945.

[40] *See, e.g.*, Scrutiny of Unethical Practices Intensifying, *supra* note 38. Public fund officials also have provided us with first-hand reports of the solicitation activities of elected officials. *See* Letter from Maxie L. Patterson, Executive Director, Houston Firefighters' Relief and Retirement Fund, to Robert Plaze, Associate Director, SEC (Feb. 10, 1999), available in File No. S7–19–99.

[41] *See* Houston Firefighters' Fund Letter, *supra* note 40; Office of Vermont State Treasurer James H. Douglas, *If You Play, You Pay: New Campaign Finance Legislation Prohibits Contracts for Wall Street Firms Contributing to State Treasurer Races, a Provision Pushed by Douglas*, available at <http://www.state.vt.us/treasurer/press/pr970616.htm> (visited July 22, 1999); Scrutiny of Unethical Practices Intensifying, *supra* note 38.

[42] For example, a solicitor for an institutional adviser recently informed us that the solicitor received two invitations from the same elected official in the same week—one to make a presentation to the fund's selection committee, the other to attend a $1,000 fundraising dinner. Anonymous Letter, *supra* note 12. Representatives of the selection committee later requested that the solicitor inform them if a contribution was made "so they could let the officials know it came from" the parties making the presentation. Anonymous Letter, *supra* note 12.

[43] An elected official who is a CalPERS fiduciary sued to overturn the CalPERS ban on pay to play practices. A California court invalidated the CalPERS resolutions on procedural grounds. Kathleen Connell for Controller v. CalPERS, No. 98CS01749 (Cal. Sup. Ct. Sept. 18, 1998). *See also* Charles Gasparino, *California Controller's Committee Sues Calpers Over Campaign-Donation Rule*, WALL. ST. J., July 9, 1998, at B7. CalPERS subsequently proposed similar pay to play prohibitions by regulation. California Public Employees' Retirement System, Proposed Regulatory Action, Notice File No. 98–1016–10 (Oct. 30, 1998).

[44] *See* Memorandum of Points and Authorities in Opposition to Petition for Writ of Mandate, Kathleen Connell for Controller v. CalPERS, No. 98CS01749, at 20 (Cal. Sup. Ct. Sept. 4, 1998) (stating that "there was actual evidence of *massive* contributions solicited by (the state controller) from CalPERS contractors and other prospective contractors") (emphasis in original); *Oversight of Investment Procedures of the Public Employees' Retirement System and State Teachers' Retirement System, Before the Senate Committee on Public Employment and Retirement*, Calif. Leg. 20–21 (Aug. 25, 1997) (testimony of James E. Burton, Chief Executive Officer, CalPERS).

[45] The state controller, for example, raised over $180,000 from 1995 to 1998 from CalPERS contractors. CalPERS Brief, *supra* note 44 (declaration of Thomas W. Hiltachk). The state treasurer, who also is a CalPERS trustee, raised $150,000 from advisers and other CalPERS contractors in a recent U.S. Senate campaign. *See* Firms with State Pacts, *supra* note 13; Paul Jacobs, *Firms Lobby, Woo State Pension Officials, Win Pacts*, L.A. TIMES, Feb. 4, 1998, at A3.

[46] In connection with the litigation, CalPERS submitted a declaration in which an adviser stated that, after refusing to make a political contribution, the elected official's representative contacted the adviser less frequently about investment matters, and displayed a "higher degree of skepticism" about the adviser's recommendations. CalPERS Brief, *supra* note 44 (declaration of Leslie Brun, Hamilton Lane Advisors, Inc.). *See also* Paul Jacobs, *Donations to Pension Officials Scrutinized; Politics: Connell, Fong Say They Are not Influenced by Contributions from Firms Doing Business with State Systems*, L.A. Times, Aug. 21, 1997, at A1; Dan Smith, *Connell Accused of Shunning Non-Donor*, Sacramento Bee, Aug. 14, 1998, at A3.

[47] *See* Paul Jacobs, *Firms Lobby, Woo State Pension Officials, Win Pacts*, L.A. TIMES, Feb. 2, 1998, at A1. Elected officials may not only champion the selection of contributors, but also may advocate their retention. *See California Pension Fund Weathers Investment Controversy*, Nat'l Mortgage News, June 24, 1996, at 10.

[48] *See* Steve Hemmerick, *California Funds to Review Voting*, PENS. & INV., Sept. 15, 1997, at 36; Paul Jacobs, *Investment Raises Questions About State Pension Fund Finance*, L.A. TIMES, Sept. 16, 1997, at A1; *cf.* Manager Access to Trustees Examined, *supra* note 34.

[49] *See* Scrutiny of Unethical Practices Intensifying, *supra* note 38.

[50] *See* CalPERS Brief, *supra* note 44, at n. 16 (noting that one trustee who abstained from voting to award contracts to contributors "has never" sought recusal from "participating in the discussions affecting the contributor"); Donations to Pension Officials, *supra* note 46.

[51] CalPERS Brief, *supra* note 44, at 8. CalPERS stated that pay to play negatively affects the decision-making process because "it appears that decisions are made, not only by considering who gave a contribution, but also by considering who did *not* give a contribution." CalPERS Brief, *supra* note 44, at 8 (emphasis in original).

state.[52] The Connecticut Treasurer noted that, before the legislation was enacted, "investment managers (were) being chosen more for their political connections and campaign contributions than for their performance."[53] Some funds have adopted codes of ethics prohibiting trustees from accepting contributions.[54] Some have delegated the selection of investment advisers to professional staff members, aiming to insulate the selection process from considerations of campaign contributions.[55] Not all efforts to address pay to play have been effective,[56] and most jurisdictions and pension plans have not acted effectively to stop pay to play practices.[57]

[52] *See* CONN. GEN. STAT. § 9–333o (1997); VT. STAT. ANN. tit. 32, § 109 (1997). Efforts to eliminate pay to play are not limited to the securities industry. Bar associations also are considering similar prohibitions to address pay to play practices in the legal profession. *See* American Bar Ass'n, Report and Recommendations of the Task Force on Lawyers' Political Contributions, Part I (July 1998); Special Committee on Government Ethics, Association of the Bar of the City of New York, Campaign Contributions by Lawyers Seeking Government Finance Work (Feb. 1997).

[53] *See* Christopher Burnham, *Reviving a Pension Plan*, AM. City & County, July 1998.

[54] *See, e.g.*, Oregon Investment Council, *Standard of Ethics*, at 1–2 (July 1998); State of New Hampshire, *An Order Enacting a Code of Ethics for Public Officials and Employees of the Executive Branch in the Performance of Their Official Duties*, Executive Order No. 98–1, at 2 (May 19, 1998); Fulton County Employees Retirement System Board, *Ethics Policy*, at 4–5 (Feb. 11, 1998). Other funds require disclosure of political contributions. *See, e.g.*, Cal. Gov. Code § 20152.5 (1999); Texas Permanent School Fund Operating Rules, Chapter 4, Conduct and Public Relations (Mar. 6, 1998).

[55] *See, e.g.*, Missouri Investment Adviser Selection Policy, *supra* note 32.

[56] Some public pension plans, for example, prohibit firms that contract with the plan from making contributions to plan trustees, but the prohibition does not apply to executives of the firm. Similarly, several statutory prohibitions apply only to contributions made to particular officeholders, but not to other elected officials who are plan trustees, appoint plan trustees, or otherwise can influence the selection of an investment adviser. Some codes of ethics can be difficult to enforce when plans are faced with evidence of pay to play. Also, some advisers have found a way to circumvent state and plan limitations and disclosure requirements by making political contributions indirectly, through the use of third parties such as consultants. *See infra* notes 92 to 93, and accompanying text (discussing the use of "gatekeepers").

[57] It is possible that many jurisdictions have found it difficult to address pay to play practices due to what the *Blount* court calls a "collective action problem (that tends) to make the misallocation of resources persist." *Blount*, 61 F.3d at 945–46. Elected officials that accept contributions from state contractors may believe they have an advantage over their opponents that forswear the contributions, and firms that do not "pay" may fear they will lose government business to those that do. *See id. See generally* Mancur Olson, The Logic of Collective Action; Public Goods and the Theory of Groups 44 (17th ed. 1998) (group members that seek to maximize their individual personal welfare will not act to advance common objectives absent coercion or other incentive). *See also* Donations to Public Officials, *supra* note 46 (fund contractor quoted as saying, "(i)f you don't contribute, you're subject to the concern that others might make contributions").

II. Discussion

The Commission regulates investment advisers under the Investment Advisers Act of 1940. Section 206(1) of the Advisers Act prohibits an investment adviser from "employ(ing) any device, scheme, or artifice to defraud any client or prospective client."[58] Section 206(2) prohibits advisers from engaging in any act, practice or course of business which operates as a fraud on a client or prospective client.[59] The Supreme Court has construed section 206 as establishing a federal fiduciary standard governing the conduct of advisers.[60]

An adviser that participates in pay to play practices undermines the merit-based selection process established by the public pension plan.[61] When an adviser makes political contributions to elected officials for the purpose of influencing the award of an advisory contract, the adviser contributes to the risk that the officials may "award the contracts on the basis of benefit to their campaign chests rather than to the governmental entity."[62] If pay to play is a factor in the selection process, the public pension plan can be harmed in several ways: The most qualified adviser may not be selected, leading to inferior management, diminished returns or even losses.[63] The pension plan may pay higher fees because advisers must recoup the costs of contributions, or because contract negotiations may not occur on an arm's-length basis.[64] Moreover, the absence of arm's-length negotiations may enable advisers to obtain greater ancillary benefits, such as "soft dollars," from the advisory relationship, which may be directed for the benefit of the adviser, at the expense of the pension plan, thereby using a fund asset for its own purposes.

[58] 15 U.S.C. 80b–6(1).

[59] 15 U.S.C. 80b–6(2).

[60] Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 17 (1979) (citations omitted); SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191–192 (1963).

[61] *See supra* notes 29 to 34 and accompanying text.

[62] *Blount*, 61 F.3d at 944–45.

[63] Paring the Politics, *supra* note 12, at 11 (Connecticut treasurer quoted as saying that pay to play "adversely influenced our treasury"); Too Many Advisers, Poor Financial Results, *supra* note 12 (municipal fund awarded contract to an adviser that "had the worst performance numbers of all the candidates interviewed").

[64] *See State Street Effort Fails in Its Lawsuit On Pennsylvania Pact*, Wall. St. J., May 28, 1998, at B17. Firm executives contributed "perhaps several thousand dollars" to the outgoing treasurer's campaign. *Id.*

Because pay to play has the potential to harm advisory clients, we believe that it is inconsistent with the high standards of ethical conduct required of fiduciaries under the Advisers Act. We have authority under section 206(4) of the Act to adopt rules "reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive or manipulative."[65] Congress gave us this authority to prohibit "specific evils" that the broad anti-fraud provisions may be incapable of covering.[66] The provision thus permits the Commission to adopt prophylactic rules designed to prevent fraudulent conduct even if not all of the conduct prohibited is fraudulent.[67]

We are proposing new rule 206(4)–5 to prevent advisers from participating in pay to play practices and protect clients from the consequences of pay to play. The rule, and related rule amendments that we are also proposing today, are described below.

A. Rule 206(4)–5

Under proposed rule 206(4)–5, it would be a fraudulent, deceptive, or

[65] 15 U.S.C. 80b–6(4).

[66] S. Rep. No. 1760, 86th Cong., 2d Sess. 4, 8 (1960). The Commission has used this authority to adopt four rules addressing abusive advertising practices, custodial arrangements, the use of solicitors and required disclosures regarding the adviser's financial condition and disciplinary history. 17 CFR 275.206(4)–1; 275.206(4)–2; 275.206(4)–3; and 275.206(4)–4.

[67] The Supreme Court, in U.S. v. O'Hagan, 521 U.S. 642 (1997), interpreted nearly identical language in Section 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78n(e)) as providing the Commission with authority to adopt rules that are "definitional and prophylactic" and that may prohibit acts that "are not themselves fraudulent * * * if the prohibitions are reasonably designed to prevent acts and practices that are fraudulent." 521 U.S. 667, 673. The language of both section 206(4) and section 14(e) was taken from section 15(c)(2) of the Exchange Act (15 U.S.C. 78o(c)(2)). *See SEC Legislation, Hearing on S. 1160, S. 1161 and S. 1162, Before the Senate Committee on Banking and Currency, Subcommittee on Securities*, 86th Cong., 2d Sess. 137 (1959) (testimony of Philip A. Loomis, Director, Division of Trading and Exchanges, SEC) ("(The language of Section 206(4)) is almost the identical wording of Section 15(c)(2) of the Securities Exchange Act in regard to brokers and dealers.") and S. Rep. No. 1760, 86th Cong., 2d Sess. 8 (June 28, 1960) ("(The language of section 206(4)) is almost the identical wording of Section 15(c)(2) of the Securities Exchange Act of 1934 in regard to brokers and dealers."). *See also* H.R. Rep. No. 1655, 91st Cong., 2d Sess. at 4 (Dec. 7, 10, 1970) (the amendment to section 14(e) "is identical to that contained in existing section 15(c)(2) of the Exchange Act"). Congress, in amending section 15(c)(2) to expand the Commission's authority to prohibit fraud by municipal securities dealers, described the Commission's rulemaking authority under section 15(c)(2)(D) as including "the promulgation of prophylactic rules." S. Rep. No. 75, 94th Cong., 1st Sess. 228 (Apr. 14, 1975).

manipulative act for an investment adviser to provide advisory services for compensation to a government entity within two years after the adviser, any of its partners, executive officers or solicitors made a contribution to an elected official who could influence the selection of the adviser. The rule would also make it unlawful for an adviser to solicit contributions for an official of a government client while providing or seeking to provide the government client advisory services. Proposed rule 206(4)–5 would not be a ban on political contributions, but rather a ban, or "time-out," on conducting advisory business with a government client for two years after a contribution is made.

Investment advisers subject to the proposed rule would include all investment advisers that are not prohibited from registering with the Commission.[68] As a result, the rule would apply to Commission-registered advisers and those exempt from registration under section 203 of the Advisers Act, such as those advisers that had fewer than fifteen clients during the last twelve months.[69]

The rule generally would not apply to smaller advisers that are registered with state securities authorities.[70] We believe that the great majority of advisers to public funds are registered with the Commission. We, therefore, are not proposing to cover state-registered advisers under the proposed rule. We request comment on our assumption, and on whether we should extend the scope of the proposed rule to include state-registered advisers.

The Commission modeled proposed rule 206(4)–5 after MSRB rule G–37, which we believe has successfully addressed pay to play in the municipal bond market. This approach should minimize the compliance burdens on firms that would be subject to both rules by allowing them to adopt common compliance procedures. We have modified the proposed rule, however, to reflect the different statutory framework under which the rule would be adopted and the differences between municipal underwriting and asset management. The differences between proposed rule 206(4)–5 and rule G–37 are highlighted below. Comment is requested on whether we should use rule G–37 as a model for proposed rule 206(4)–5. Are there additional differences in the selection of municipal underwriters and investment advisers that should be reflected in the rule?

The Commission considered proposing a different approach to address pay to play, which would require an adviser to disclose information concerning its political contributions. Disclosure, however, may not be effective to protect public pension plan clients. Disclosure to a pension plan's trustees would be ineffective because, in some cases, the trustees would have received the contributions. Disclosure to plan beneficiaries also would be ineffective because they are generally unable to act on the information by moving their pension assets to a different plan or reversing adviser hiring decisions.[71] Moreover, disclosure requirements have not worked in the past at stopping pay to play practices and can be circumvented.[72] We request comment on this approach.

1. "Pay to Play" Restrictions

Proposed rule 206(4)–5 would prohibit investment advisers from providing advice for compensation to a "government entity"[73] within two years after a contribution to an official of the government entity has been made by (i) the adviser, (ii) any of its partners, executive officers or solicitors, or (iii) any political action committee ("PAC") controlled by the adviser or by any of the adviser's partners, executive officers or solicitors.[74] Each element of the proposed rule and one exception from the prohibition are discussed below.

Investment advisers making contributions covered by the proposed rule would not be prohibited from providing advisory services to a government client, but only from *receiving compensation* from the client for providing advisory services. This approach is intended to avoid requiring an adviser to abandon a government client after the adviser or any of its partners, executive officers or solicitors make a political contribution covered by the rule. An adviser subject to the prohibition would likely be obligated to provide (uncompensated) advisory services until the government client finds a successor.[75] Alternatively, the rule could establish a time period after the expiration of which the adviser could no longer provide advisory services. We request comment on which approach would cause the least disruption to the government client.

The prohibitions in the rule would be triggered by a contribution to an *official of a government entity*. Government entities under the proposed rule include all state and local governments, their agencies and instrumentalities, and all government pension plans and other collective government funds.[76] An official would include an incumbent, candidate or successful candidate for elective office of a government entity if the office (or an appointee of the office) is directly or indirectly responsible for, or can influence the outcome of, the selection of an investment adviser.[77] Generally, executive or legislative officers who hold a position with influence over the selection of an investment adviser are government officials under the proposed rule.[78] These definitions are substantively the same as those in MSRB rule G–37.[79]

---

[68] Proposed rule 206(4)–5(a).

[69] Section 203(b) of the Advisers Act (15 U.S.C. 80b–3(b)). The Commission is including unregistered advisers within the scope of the rule principally to make the rule applicable to advisers to private investment companies. *See* discussion *infra* section II.A.4.

[70] Amendments to the Advisers Act in 1996 placed regulatory responsibility for these advisers in the hands of state regulators. *See* section 203A of the Advisers Act (15 U.S.C. 80b–3a) enacted as part of Title III of the National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[71] For these reasons, the Commission is not proposing a reporting requirement for advisers required to keep records of their political contributions under the proposed amendments to the recordkeeping rules. *See* discussion of recordkeeping amendments *infra* at Section II.B. MSRB rule G–37, however, does establish a reporting and disclosure system for broker-dealers subject to that rule. MSRB rule G–37(e)(ii).

[72] *See* discussion of "gatekeepers" *supra* section II.A.2.

[73] "Government entity" is defined by the proposed rule as any State or political subdivision of a State, including any agency, authority, or instrumentality, plan or pool of assets controlled by the State or political subdivision or any agency, authority or instrumentality thereof; and officers, agents, or employees of the State or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity. Proposed rule 206(4)–5(e)(3). In this Release, we use the term government entity interchangeably with "government client" and "public pension plan."

[74] Proposed rule 206(4)–5(a)(1).

[75] An investment adviser that violates the rule may be required, under its fiduciary duties, to continue providing advisory services to the public fund, for a reasonable period of time, until the fund obtains a new adviser. *See* Temporary Exemption for Certain Investment Advisers, Investment Advisers Act Release No. 1736 (July 22, 1998) (63 FR 40231, 40232 (July 28, 1998)) (describing an investment adviser's fiduciary duties to an investment company in the case of an unforeseeable assignment of the advisory contract).

[76] Proposed rule 206(4)–5(e)(3).

[77] Proposed rule 206(4)–5(e)(4).

[78] The scope of authority of the particular office of an official, not the individual, would determine whether the official may have influence over the awarding of an investment advisory contract. In some cases, authority to select and terminate an investment adviser is completely delegated to the staff of a public fund, in which case a government official may not be able to influence the selection. *See supra* note 32. Under the proposed rule, contributions to the official would not trigger the prohibitions of the rule.

[79] MSRB rule G–37(g)(ii) and (g)(vi).

The proposed rule covers *contributions* made by an investment adviser, its partners, executive officers and solicitors; and any PAC controlled by the adviser or any of its partners, executive officers or solicitors. The proposed rule uses the same definition of contribution as MSRB rule G–37.[80] A contribution would generally be anything of value made to an official to influence a federal, state or local election, including any payments for debts incurred in an election, and transition or inaugural expenses incurred by a successful candidate for state or local office.[81]

Contributions made to influence the selection process are typically made not by the firm, but by officers and employees of the firm who have a direct economic stake in the business relationship with the government client. This is why the MSRB also applied the prohibitions of rule G–37 to contributions made by "municipal finance professionals" employed by a broker-dealer. There is no group, however, within the typical investment advisory firm that corresponds to municipal finance professionals. In our examination of pay to play practices involving investment advisers, we found that political contributions intended to influence the selection of the advisory firm were typically made by executives of the adviser or persons who solicit government clients on behalf of the adviser. Therefore, we are proposing to limit application of the rule to contributions made by the adviser or its partners, executive officers or solicitors.

Under the proposed rule, the term *executive officer* includes the adviser's president, vice-presidents in charge of a business unit or division of the adviser, and other officers or persons who perform a policy-making function for the adviser.[82] A *solicitor* is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.[83] Employees who play a role in obtaining government clients are thus covered by the proposed rule as are third-party solicitors an investment adviser engages to obtain clients. Contributions by other employees of the adviser or other persons (such as spouses, control persons and affiliates) would not otherwise trigger the rule's prohibitions unless the adviser or any of its partners, executives or solicitors used the person to indirectly make a contribution. This could occur, for example, if a firm paid a non-executive employee a bonus with the expectation or understanding that the employee would make a political contribution that, if made by the firm, would trigger the rule's prohibition.[84]

The Commission has drafted the proposed rule so that its prohibitions are triggered by political contributions by persons we have found are typically involved in pay to play practices and who, in the context of an advisory firm, are likely to have an economic incentive to make contributions to influence the advisory firm's selection. We are mindful of the burdens the proposed rule would place on advisory firms and on the ability of persons associated with an adviser to participate in civic affairs. We thus have narrowly tailored the rule to achieve our goal of ending adviser participation in pay to play practices. We request comment on the scope of the rule in its application to persons associated with an adviser. Are there less restrictive alternatives that would accomplish our goals?

Proposed rule 206(4)–5 contains a *de minimis* provision that would permit a partner, executive officer or solicitor to make contributions of $250 or less to an elected official or candidate without triggering the rule's prohibitions if the person making the contribution is entitled to vote for the official or candidate.[85] The Commission assumes that contributions of less than $250 are typically made without the intent or ability to influence the selection process for investment advisers and thus do not involve the conflicts of interest the rule is intended to prevent. Comment is requested on the scope of the exception. The $250 amount is the same as the *de minimis* amount excepted from MSRB rule G–37.[86] Should the amount be increased or decreased? Should we provide a *de minimis* exemption for contributions of a lesser amount, *e.g.* $100, to officials for whom an individual is not entitled to vote?

Under the proposed rule, a contribution made by a partner, executive officer or solicitor of an adviser would also be attributed to any other adviser that employs or engages the person who made the contribution within two years after the date the contribution was made.[87] As a result, an investment adviser would be required to "look-back" in time to determine whether it would be subject to any business restrictions under the proposed rule when employing or engaging a partner, executive officer or solicitor. This provision, which is similar to one in MSRB rule G–37,[88] would prevent advisers from circumventing the rule by channeling contributions through departing employees, or by influencing the selection process by hiring persons who have made political contributions. Comment is requested on the look-back requirement. Would a shorter period be sufficient to prevent circumvention of the rule?

2. Solicitation Restrictions

Another way an adviser can attempt to influence the selection process is by soliciting contributions for an elected official. Therefore, like MSRB rule G–37,[89] the proposed rule would prohibit an adviser from providing or seeking to provide advisory services for compensation while the adviser, or any of its partners, executive officers or solicitors, solicit any person or PAC to make, or coordinate, any contribution to an official of a government entity to which the adviser is providing or seeking to provide investment advisory

[80] MSRB rule G–37(g). Like rule G–37, the proposed rule would encompass, for federal offices, only those contributions to an official of a government entity who is seeking election to a federal office. Proposed rule 206(4)–5(e)(3).

[81] Proposed rule 206(4)–5(e)(1). Contributions to political parties would not trigger the proposed rule's prohibitions, unless the contribution is earmarked or known to be provided to an official. Contributions to state and local political parties are, however, subject to the proposed rule's recordkeeping requirements. *See infra* section II.B.

[82] Proposed rule 206(4)–5(e)(2). The definition of "executive officer" is the same as that used in Advisers Act rule 205–3. 17 CFR 275.205–3.

[83] Proposed rule 206(4)–5(e)(6). The definition of "solicitor" is the same as that used in Advisers Act rule 206(4)–3. 17 CFR 275.206(4)–3.

[84] *See* discussion of indirect contributions *infra* section II.A.3.

[85] Proposed rule 206(4)–5(b). Under the proposed rule, a partner, executive officer or solicitor of an investment adviser could, without triggering the prohibitions of the rule, contribute up to $250 in both the primary election campaign and the general election campaign (up to $500) of each official for whom the person making the contribution would be entitled to vote. For purposes of this rule, a person would be "entitled to vote" for an official if the person's principal residence is in the locality in which the official seeks election.

[86] MSRB rule G–37(b).

[87] Proposed rule 206(4)–5(a)(1)(ii). Persons who are employees as well as "independent contractors" would be covered by the proposed rule. In no case would the prohibition imposed by the proposed rule be longer than two years from the date the executive officer makes a covered contribution. If, for example, an executive officer becomes employed by an investment adviser one year and six months after making a contribution, the new employer would be subject to the proposed rule's prohibition for the remaining six months of the two-year period. The executive officer's employer at the time of the contribution would be subject to the proposed rule's prohibition for the entire two-year period regardless of whether the executive officer remains employed by the adviser. However, if an executive officer is not an employee of an adviser, the adviser would not be responsible for any recordkeeping requirements with respect to that executive officer. *See supra* section II.B.

[88] MSRB rule G–37(g)(iv).

[89] MSRB rule G–37(c).

services.[90] This provision would also prohibit advisers from seeking to influence the selection process by, for example, "bundling" [91] contributions from its employees or by making contributions through a third party, such as a "gatekeeper."

In a gatekeeper arrangement, political contributions are arranged by an intermediary, typically a pension consultant, which distributes or directs contributions to elected officials or candidates. The gatekeeper ensures that advisers not making a requisite amount of contributions are not included among the final candidates for advisory contracts. In addition, the gatekeeper may arrange "swaps" of contributions between elected officials in order to shield the contributions from public disclosure or to circumvent plan restrictions on contributions to trustees.[92] Under the proposed rule, the gatekeeper in these arrangements would be soliciting political contributions and, if the gatekeeper is an investment adviser, would violate the proposed rule.[93]

3. Direct and Indirect Contributions or Solicitations

The proposed rule would also prohibit acts "done indirectly, which, if done directly would be considered a fraudulent, deceptive or manipulative act under the rule." [94] Thus, an adviser could not circumvent the rule by directing or funding contributions through third parties, including, for example, consultants, attorneys, family members or persons controlling the adviser who have an economic interest in the adviser being awarded an advisory contract. This provision would also cover contributions made, directed or funded, with the expectation that, as a result of the contribution, another contribution would be made by a third party for the benefit of the adviser. Contributions made through gatekeepers (described above) thus would be considered made "indirectly" for purposes of the proposed rule.

4. Private Investment Companies

In some cases, advisers to "private investment companies," [95] such as hedge funds and venture capital pools, have reportedly made contributions to elected officials who have influenced the decision of a government entity to invest in the adviser's company.[96] The proposed rule would treat an investment by a government entity in a private investment company the same as if the government entity entered into an advisory contract directly with the adviser.[97] As a result, a contribution by an adviser, any of its partners, executive officers or solicitors to an official of a government entity who can influence the decision to invest in the private fund, would trigger the prohibitions of the proposed rule. If the government entity was an investor in the fund at the time of the contribution, the adviser would be required to cause the private investment company to redeem the investment of the government entity, or, alternatively, return to the government entity amounts it received as compensation for managing the assets of the private investment company attributable to the government entity's investment. The Commission requests comment on whether additional types of government investments should be covered by the proposed rule. In particular, should the rule apply to off-shore funds, which do not fall within the definition of private investment company, and therefore are not subject to the proposed rule? [98]

5. Exemptions

Under the proposed rule the Commission could, upon application, exempt advisers from the rule's prohibitions that are triggered by inadvertent contributions or when imposition of the prohibitions is inconsistent with the rule's intended purpose. In determining whether to grant an exemption, we would consider whether (i) the exemption is in the public interest and consistent with the purposes of the rule, (ii) the adviser, before the contribution is made, had developed procedures to ensure compliance with the rule and had no actual knowledge of the contributions, and (iii) the adviser, after the contribution was made, took appropriate preventative and remedial measures, including all available steps to obtain a return of the contribution.[99]

These factors are similar to those considered by the NASD and the appropriate bank regulators in determining whether to grant an exemption under MSRB rule G–37(i). Under the proposed rule, however, exemptive authority will be exercised by the Commission.[100] In applying the criteria, we expect to take into account, among other things, the varying facts and circumstances presented by each application. We would apply these exemptive provisions with sufficient flexibility to avoid consequences disproportionate to the violation while accomplishing the remedial purpose of the rule.[101] We request comment on the proposed exemptive criteria. Are there additional criteria the Commission should consider when determining whether to grant an exemption.

---

[90] Proposed rule 206(4)–5(a)(2)(i). An investment adviser would be seeking to provide advisory services to a government entity when it responds to an RFP, communicates with a government entity regarding that entity's formal selection process for investment advisers, or engages in some other solicitation of investment advisory business with the government entity. A violation of paragraph (a)(2)(i) of the proposed rule would not trigger a two-year ban on the provision of investment advisory services for compensation, but would be a violation of the rule.

[91] An employee or person acting on an adviser's behalf "bundles" contributions by coordinating small contributions from several employees of the adviser to create one large contribution.

[92] For example, Adviser A advises Plan X, while Adviser B advises Plan Y. The "gatekeeper" may direct a political contribution from Adviser A to the elected official, who is a trustee to Plan Y, and from Adviser B to the elected official, who is a trustee to Plan X, agreeing to place both advisers on each plan's approved list. Persons reviewing records of the political contributions would have no way of determining that the contributions were swapped and that they created conflicts of interest on the part of the advisers as well as the elected officials.

[93] Regardless of whether the gatekeeper is an investment adviser, a person participating in such a scheme would, if the rule is adopted, likely be aiding and abetting an adviser's violation of the rule. *See* section 209(d) of the Act (15 U.S.C. 80b–9(d)) (authorizing Commission enforcement action for aiding and abetting a violation of the Advisers Act or any Advisers Act rule).

[94] Proposed rule 206(4)–5(a)(2)(ii). *See also* section 208(d) of the Advisers Act (15 U.S.C. 80b–8(d)).

[95] The proposed rule defines a private investment company as an investment company exempt from Commission registration under section 3(c)(1) or (3)(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) and 3(c)(7)). Proposed rule 206(4)–5(e)(5).

[96] The articles describing allegations that advisers to private investment companies engage in pay to play practices are available in File No. S7–19–99.

[97] Proposed rule 206(4)–5(c). The proposed rule would thus "look through" the private investment company and treat its security holders as clients of the adviser. *Cf.* rule 205–3(b) (17 CFR 275.205–3(b)) (equity owners of private investment companies treated as clients for purposes of performance fee exemptive rule).

[98] Off-shore funds are generally not required to register with the Commission under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)).

[99] Proposed rule 206(4)–5(d).

[100] The MSRB has provided four "Questions and Answers" regarding application of MSRB rule G–37–(i). Question 4, *Additional Rule G–37 Q&As*, June 15, 1995, MSRB Rule Book at 196 (1999), *Questions and Answers Regarding Rule G–37(i)*, June 29, 1998, MSRB Rule Book at 199 (1999). Denials of an exemption pursuant to MSRB Rule G–37(i) are not subject to appeal to the Commission. *See* In re Morgan Stanley & Co., Securities Exchange Act Release No. 39459 (Dec. 17, 1997).

[101] Under the proposed rule, an adviser applying for an exemption, could place advisory fees earned between the date of the contribution triggering the prohibition and the date on which we determine whether to grant an exemption in an escrow account. The escrow account would be payable to the adviser if the Commission grants the exemption. If the Commission does not grant the exemption, the fees contained in the account must be returned to the public fund.

B. Recordkeeping

We are also proposing amendments to rule 204–2 to require an investment adviser that is registered with us and has government clients to make and keep certain records of contributions made by the adviser, its partners, executive officers and solicitors.[102] These records would be confidential,[103] and only reviewed by our staff in the course of an adviser examination. We believe they would be necessary to allow us to enforce compliance with rule 206(4)–5, if adopted.

The proposed amendments would require an adviser to make and keep a list of its partners, executive officers and solicitors, the states in which the adviser has, or is seeking, government clients, the identity of those clients, and the contributions made by the firm and its partners, executive officers and solicitors to government officials and candidates.[104] These requirements would be similar to the MSRB recordkeeping rule for broker-dealers.[105]

These new recordkeeping requirements should not be burdensome. As discussed above, a single contribution could, under the rule, lead to a two-year suspension of advisory activities for a government client. We would expect, therefore, that advisers would adopt sufficient internal procedures to prevent the rule's prohibitions from being triggered. The records that we propose registered advisers make and keep would be those an adviser undertaking a serious compliance effort would ordinarily make, and thus we assume the amendments would involve no substantial additional burdens. Comment is requested on our assumptions and on whether our assessment of the burdens is correct. We request that commenters opposing the new recordkeeping requirements suggest alternative means we could use to enforce the new rule.

C. Transition Period

The prohibition and recordkeeping requirements under the proposed rule would arise from contributions made on or after the effective date of the rule, if adopted. As a result, firms would need to begin monitoring contributions made by their partners, executive officers and solicitors on that date. The Commission requests comment on whether firms would require additional time to develop procedures to comply with the proposed rule and, if so, how long of a transitional period following the rule's adoption would be necessary?

D. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and rule amendment that are the subject of this release, or to suggest additional changes or submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

III. Cost/Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules, and understand that compliance with proposed rule 206(4)–5 and the proposed amendments to rule 204–2 may impose costs on some advisers. The proposed rule and rule amendments would apply only to investment advisers that provide advisory services to government clients and which make political contributions. In addition, the proposed rule and rule amendments would only affect the political contributions made by the adviser, and its partners, executive officers and solicitors. The majority of advisers and advisory employees thus would be unaffected by the proposed rule and rule amendments.

A. Benefits

Proposed rule 206(4)–5 would likely yield several important benefits to investment advisers and state and local governments, both direct and indirect. The proposed rule would reduce or eliminate the costs of political contributions incurred by investment advisers through pay to play practices. While not readily quantifiable, the record above indicates that advisers, and their partners, executive officers and solicitors, have made substantial contributions to elected officials from whom the advisers are seeking business.[106] We believe these contributions would decrease substantially if the proposed rule were adopted. This could result in lower advisory fees being paid by the state or local government for advisory services, as advisers would not have to recoup the cost of contributions through fees the advisers charge the government client.

The proposed rule should also yield several indirect benefits, including benefits to state and local governments and taxpayers. If state and local governments select an adviser on the basis of campaign contributions, the most qualified adviser may not be selected. As discussed above, awarding advisory contracts to advisers that make political contributions may lead to inferior management, and diminished or negative returns.[107] Similarly, an adviser that is selected on bases other than merit may obtain soft dollars and other ancillary benefits at the expense of the government client. Finally, the proposed rule would level the playing field for advisers to state and local governments. Campaign contributions create artificial barriers to competition for firms that cannot or will not make political contributions. Eradicating pay to play arrangements enables advisory firms, particularly smaller advisory firms, to compete on the basis of merit, rather than their ability to make contributions.

B. Costs

The proposed rule and rule amendments would impose some costs on advisers that provide advisory services to government clients. The proposed rule would require an adviser with government clients, and an adviser which solicits business from government clients, to incur costs to monitor contributions made by the adviser, and its partners, executive officers and solicitors, and to establish procedures to comply with the proposed rule and rule amendments. The initial and ongoing compliance costs imposed by the proposed rule would vary significantly among firms, depending on a number of factors. These include the number of partners, executive officers and solicitors of the adviser, the degree to which compliance procedures are automated, and whether the adviser is affiliated with a broker-dealer firm that is subject to rule G–37. A smaller adviser, for example, would likely have a small number of partners, executive officers and solicitors, and thus expend less resources to comply with the proposed rule and rule amendments than a larger adviser.

As a comparison, Commission staff has been advised that the burden imposed by rule G–37 on smaller broker-dealer firms is negligible. Although a large adviser is likely to spend more resources to comply with

---

[102] 17 CFR 275.204–2.

[103] Section 210(b) of the Advisers Act (15 U.S.C. 80b–10(b)) prohibits the Commission staff from disclosing to anyone outside the Commission any information obtained as a result of an examination or investigation without Commission approval.

[104] Proposed rule 204–2(l).

[105] MSRB rule G–8(a)(xvi). Like rule G–37, the proposed rule requires an investment adviser to keep, in addition to records of political contributions, records of any other "payments" made to officials. A payment is defined as any gift, subscription, loan, advance, or deposit of money or anything of value.

[106] *See supra* note 38.

[107] *See supra* note 63 and accompanying text.

the rule than a smaller adviser, an adviser with a broker-dealer affiliate that is required to comply with MSRB rule G–37 could likely use some or all of the compliance procedures established by the affiliate. As a result, many advisers with broker-dealer affiliates may spend few resources to comply with the proposed rule and rule amendments.

Based on compliance with other recordkeeping rules, Commission staff anticipates that most advisory firms would develop compliance procedures to monitor the political contributions made by the adviser and its partners, executive officers and solicitors. We estimate that the costs imposed by the proposed rule would be higher initially, as firms establish and implement procedures to comply with the rule and rule amendments. If we adopt the proposed rule and rule amendments, firms with government clients would likely develop and implement compliance procedures within 60 to 90 days after adoption. It is anticipated that compliance expenses would then decline to a relatively constant amount in future years.

The Commission has limited data on the costs that the proposed rule and rule amendments would impose on investment advisers with government clients. We estimate that as many as 1,500 investment advisers registered with the Commission may be affected by the proposed rule and rule amendments.[108] Based on registration information filed with the Commission, we estimate that approximately 450 advisers have fewer than five partners, executive officers, or solicitors that would be subject to the proposed rule ("smaller firms"); approximately 825 advisers have between five and 15 partners, executive officers or solicitors ("medium firms"); and approximately 225 advisers have more than 15 partners, executive officers, or solicitors that would be subject to the prohibitions of the proposed rule ("larger firms").

Advisers that are exempt from registration with the Commission would be subject to the proposed rule (but not the rule amendments). The Commission has limited data regarding the number of investment advisers that are exempt from registration under section 203(b) of the Advisers Act. Reports indicate that the number of exempt advisers may exceed 3,000.[109] While not readily quantifiable, the estimated number of exempt advisers likely includes advisers to off-shore funds that would not be subject to the proposed rule. The Commission also has limited information regarding the number of partners, executive officers and solicitors of exempt advisers. For purposes of this analysis, it is anticipated that the number of persons of each exempt advisory firm that would be subject to the proposed rule are comparable to the ranges for registered investment advisers, described above.

Although the time needed to comply with the proposed rule would vary significantly from adviser to adviser, the Commission estimates that firms with government clients would spend between 2.5 hours and 250 hours to establish adequate procedures to comply with the proposed rule. These estimates are derived in part from conversations with industry professionals regarding broker-dealer compliance with rule G–37. Commission staff estimates that ongoing compliance with the proposed rule would require between 10 and 1,000 hours, annually. Initial compliance procedures would likely be designed and administered by compliance professionals and clerical staff. We estimate that the hourly wage rate for compliance professionals is $114, including benefits, and for clerical staff, $15 per hour, including benefits. To establish and implement adequate compliance procedures, the Commission staff estimates that the proposed rule would impose initial compliance costs of approximately $285[110] per smaller firm, approximately $13,387.50[111] per medium firm, and approximately $22,312.50[112] per larger firm. It is estimated that the proposed rule would impose annual, ongoing compliance expenses of approximately $892.50[113] per smaller firm, $53,550[114] per medium firm, and $89,250[115] per larger firm.

The prohibitions of the proposed rule may also impose other, less quantifiable costs on advisers and political officials. An adviser that becomes subject to the prohibitions of the proposed rule would no longer be eligible to receive advisory fees from its government client. The adviser, however, would likely be obligated under its fiduciary duties to continue providing advisory services to the government client for a period of time without compensation. An adviser that provides uncompensated advisory services to a government client may incur opportunity costs if the adviser is unable to pursue other government clients. Advisers to government clients, as well as the partners, executive officers and solicitors of the adviser, also may be less likely to make political contributions to political officials, possibly imposing costs on the officials if they are unable to secure alternate funding.

We anticipate that the proposed rule amendments would impose few, if any, additional costs. As discussed above, advisers generally would establish internal compliance procedures to comply with the proposed rule. Advisers would create and maintain various records, as required by their own compliance procedures. The proposed rule amendments are intended to cover those records an adviser typically would maintain in complying with the proposed rule. Advisers that are exempt from Commission registration under section 203(b) of the Advisers Act would be subject to the proposed rule, but not the proposed recordkeeping amendments. We have requested comment on the scope of the proposed rule and rule amendments.

C. Requests for Comment

The Commission requests comment on the effects of the proposed rule and rule amendments on individual investment advisers and on the advisory profession as a whole. We request data to quantify the costs and value of the benefits associated with the proposed rule. Specifically, comment is requested on the costs of establishing compliance procedures to comply with the proposed rule, both on an initial and ongoing basis. Comment also is requested on the costs of using compliance procedures of an affiliated broker-dealer that the broker-dealer established as a result of rule G–37. In addition, we request data

[108] This number was used for purposes of the Paperwork Reduction Act analysis, *infra* section IV.

[109] Hal Lux, *Hedge Fund? Who Me?*, Institutional Investor, Aug. 1998, at 33; Bethany McLean, *Everybody's Going Hedge Funds*, Fortune, June 8, 1998, at 180.

[110] The per firm cost estimate is based on our estimate that development of initial compliance procedures for smaller firms would take 2.5 hours of professional time (at $114 per hour).

[111] The per firm cost estimate is based on our estimate that development of initial compliance procedures for medium firms would take 112.50 hours of professional time (at $114 per hour) and 37.5 hours of clerical time (at $15 per hour).

[112] The per firm cost estimate is based on our estimate that development of initial compliance procedures for larger firms would take 187.50 hours of professional time (at $114 per hour) and 62.5 hours of clerical time (at $15 per hour).

[113] The per firm cost estimate is based on our estimate that ongoing compliance procedures for smaller firms would take 7.5 hours of professional time (at $114 per hour) and 2.5 hours of clerical time (at $15 per hour), per year.

[114] The per firm cost estimate is based on our estimate that ongoing compliance procedures for medium firms would take 450 hours of professional time (at $114 per hour) and 150 hours of clerical time (at $15 per hour), per year.

[115] The per firm cost estimate is based on our estimate that ongoing compliance procedures for larger firms would take 750 hours of professional time (at $114 per hour) and 250 hours of clerical time (at $15 per hour), per year.

regarding our assumptions about advisers exempt from registration under section 203(b) of the Act, such as the number of advisers that would be subject to the proposed rule, and the number of partners, executive officers and solicitors of these exempt advisers. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with this proposal.

IV. Paperwork Reduction Act

The proposed rule amendments contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995,[116] and the Commission has submitted the amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Rule 204–2" under the Advisers Act. Rule 204–2 contains a currently approved collection of information number under OMB control number 3235–0278. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB number is displayed.

Section 204 of the Advisers Act provides that investment advisers required to register with the Commission must make and keep certain records for prescribed periods, and make and disseminate certain reports. Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is mandatory. The Commission staff uses this collection of information in its examination and oversight program, and the information generally is kept confidential.[117] The current collection of information for rule 204–2 is based on average of 235.47 burden hours each year, per Commission-registered adviser, for a total of 1,483,461 burden hours. The current total burden is based on 6,300 potential respondents.

The proposed amendments to rule 204–2 would require registered investment advisers that provide advisory services to government clients to maintain certain records of contributions made by the adviser or any of its partners, executive officers, or solicitors. These records would be required to be maintained in the manner, and for the period of time, as other books and records under rule 204–2(a). This collection of information would be found at 17 CFR 275.204–2.

[116] 44 U.S.C. 3501.

[117] *See* section 210(b) of the Advisers Act (15 U.S.C. 80b–10(b)).

Advisers that are exempt from Commission registration under section 203(b) of the Advisers Act would not be subject to the recordkeeping requirements.

Commission records indicate that there currently are approximately 8,200 potential respondents to the collection of information imposed by rule 204–2. As a result of the increase in the number of advisers registered with the Commission, the total burden is being increased by 447,393 hours (1,900 new advisers × 235.47 hours). We estimate that there may be as many as 1,500 advisers that provide advisory services to government clients and would thus be affected by the proposed rule amendments. Under the proposed amendments, each respondent would be required to retain the records on an ongoing basis. The proposed amendments to rule 204–2 are estimated to increase the burden by approximately two hours, to 237.47, per Commission-registered adviser with government clients. The weighted average burden per Commission-registered adviser is 235.83. The annual aggregate burden for all respondents to the recordkeeping requirements under rule 204–2 thus would be 1,933,854 hours.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609 with reference to File No. S7–19–99. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–19–99, and be submitted to the Securities and Exchange Commission, Office of Filings and Information Services. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed rule 206(4)–5 and proposed amendments to rule 204–2, both under the Advisers Act. The following summarizes the IRFA.

As set forth in greater detail in the IRFA, the proposed rule would prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or any of its partners, executive officers or solicitors made a contribution to certain elected officials or candidates. The prohibition would not result from contributions of up to $250 (per election) made by a partner, executive officer or solicitor of the adviser to an elected official or candidate for whom the person making the contribution can vote. The rule amendments would require a registered adviser that has government clients and makes political contributions to maintain certain records of their political contributions. The IRFA states that the new rule and rule amendments are designed to prevent advisers from engaging in pay to play practices, and to protect advisory clients (and their beneficiaries) from the consequences of pay to play.

The IRFA contains the statutory authority for the proposed rule and rule amendments. The IRFA also discusses the effect of the proposed rule and rule amendments on small entities. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if (i) it manages assets of less than $25 million reported on its most recent Schedule I to Form ADV (17 CFR 279.1), (ii) it does not have total assets of $5 million or more on the last day of the most recent fiscal year, and (iii) it is not in a control relationship with another investment adviser that is not a small entity.[118]

The Commission estimates that of the investment advisers subject to the proposed rule and rule amendments, approximately 1,000 are small entities. The Commission has no information regarding the number of small-entity advisers that provide advisory services

[118] Rule 0–7 (17 CFR 275.0–7).

to government clients. Advisers to state and local governments, however, are unlikely to be small entities. The proposed rule and rule amendments, therefore, would likely affect few or no small entities.

The IRFA states that the proposed rule and rule amendments would impose no new reporting requirements. The proposed rule and rule amendments, however, would create certain new compliance and recordkeeping requirements. The proposed rule imposes a new compliance requirement by prohibiting an adviser from providing advisory services for compensation to government clients for two years after the adviser or any of its partners, executive officers or solicitors makes a contribution to certain elected officials or candidates. The proposed rule amendments would impose new recordkeeping requirements by requiring an adviser to state and local governments that makes political contributions to maintain certain records of its contributions and its advisory clients. An investment adviser that either does not make political contributions or does not provide advisory services to a state or local government would be unaffected by the proposed rule and rule amendments. Moreover, as discussed above, few or no small entities are likely to be affected by the proposed rule and rule amendments. There are no rules that duplicate, overlap, or conflict with, the proposed rule and rule amendments.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed rule amendments that might minimize the effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule and rule amendments for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the proposed rule and rule amendments, or any part thereof, for small entities.

As discussed in more detail in the IRFA, we believe it would be both unfeasible and unnecessary to exempt small entities from the proposed rule and rule amendments. After taking into account the resources available to small entities and the potential burden that could be placed on small-entity investment advisers, the Commission is proposing to require small entities to be subject to the proposed rule and rule amendments. As discussed in more detail in the IRFA, we have taken steps to minimize the effects on small-entity investment advisers. We have determined that it does not appear feasible to establish different reporting or compliance requirements or to further clarify, consolidate, or simplify the reporting or compliance requirements.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rule and rule amendments. A copy of the IRFA may be obtained by contacting Jeffrey O. Himstreet, Attorney, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549–0506.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rule and rule amendment on the economy on an annual basis. Commenters should provide empirical data to support their views.

VI. Statutory Authority

The Commission is proposing new rule 206(4)–5 of the Act pursuant to the authority set forth in sections 206(4) and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(4), 80b–11(a)).

The Commission is proposing amendments to rule 204–2 of the Act pursuant to the authority set forth in sections 204 and 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4 and 80b–6(4)).

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.206(4)–5 is added to read as follows:

§ 275.206(4)–5 Political contributions by certain investment advisers.

(a) *Prohibitions.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), it shall be unlawful:

(1) For any investment adviser not prohibited from registering with the Commission under section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by:

(i) The investment adviser;

(ii) Any partner, executive officer or solicitor of the investment adviser (including a person who becomes a partner, executive officer or solicitor within two-years after the contribution is made); or

(iii) Any political action committee controlled by the investment adviser or by any partner, executive officer or solicitor of the investment adviser; and

(2) For any investment adviser not prohibited from registering with the Commission under section 203A(a) of the Act (15 U.S.C. 80b–3a(a)), or any of its partners, executive officers or solicitors:

(i) To solicit any person or political action committee to make, or coordinate, any contribution to an official of a government entity to which the investment adviser is providing or seeking to provide investment advisory services; or

(ii) To do anything indirectly which, if done directly, would result in a violation of this section.

(b) *Exception.* Paragraph (a)(1) of this section does not apply to contributions made by a partner, executive officer or solicitor to officials for whom the partner, executive officer or solicitor was entitled to vote at the time of the contributions and which in the aggregate do not exceed $250 to any one official, per election.

(c) *Special rule for private investment companies.* For purposes of this section, an investment adviser to a private investment company in which a government entity invests provides investment advisory services to the government entity.

(d) *Exemptions.* The Commission, upon application, may conditionally or unconditionally exempt an investment adviser from the prohibition under paragraph (a)(1) of this section. In determining whether to grant an exemption, the Commission will consider, among other factors, whether:

(1) The exemption is consistent with the purposes of this section;

(2) The investment adviser, before the contribution(s) resulting in the prohibition was made:

(i) Developed and instituted procedures reasonably designed to ensure compliance with this section;

(ii) Had no actual knowledge of the contribution(s); and

(3) The investment adviser:

(i) Has taken all available steps to obtain a return of the contribution(s); and

(ii) Has taken other remedial or preventive measures as may be appropriate under the circumstances.

(e) *Definitions.* For purposes of this section:

(1) *Contribution* means any gift, subscription, loan, advance, or deposit of money or anything of value made for:

(i) The purpose of influencing any election for federal, state or local office;

(ii) Payment of debt incurred in connection with any such election; or

(iii) Transition or inaugural expenses of the successful candidate for State or local office.

(2) *Executive officer* means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser.

(3) *Government entity* means any State or political subdivision of a State, including

(i) Any agency, authority, or instrumentality of the State or political subdivision;

(ii) Plan or pools of assets controlled by the State or political subdivision or any agency, authority or instrumentality thereof; and

(iii) Officers, agents, or employees of the State or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity.

(4) *Official* means any person (including any election committee for the person) who was, at the time of the contribution, an incumbent, candidate or successful candidate:

(i) For an elective office of a government entity, if the office is directly or indirectly responsible for, or can influence the outcome of, the use of an investment adviser by a government entity; or

(ii) For any elective office of a government entity, if the office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the use of an investment adviser.

(5) A *Private investment company* is a company that would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) but for the exceptions to that definition in sections 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1)).

(6) A *Solicitor* is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

(f) *Effective date.* The prohibition on providing investment advisory services as described in this section arises only from contributions made on or after (the effective date of this section).

3. Section 275.204–2 is amended by revising paragraphs (e)(1) and (h)(1) and adding paragraph (l) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(e)(1) The following books and records must be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser:

(i) Books and records required to be made under the provisions of paragraphs (a) to (c)(1) (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this section); and

(ii) Books and records required to be made under the provisions of paragraph (1) of this section.

* * * * *

(h)(1) Any book or other record made, kept, maintained and preserved in compliance with §§ 240.17a–3 and 240.17a–4 of this chapter under the Securities Exchange Act of 1934, or with rules adopted by the Municipal Securities Rulemaking Board, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

* * * * *

(l)(1) Every investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) that provides investment advisory services to a government entity, must make and keep the following records:

(i) The names, titles and business and residence addresses of all partners, executive officers or solicitors of the investment adviser;

(ii) The States in which the investment adviser or any of its partners, executive officers, or solicitors is providing or seeking to provide investment advisory services to a government entity;

(iii) All government entities to which the investment adviser has provided investment advisory services in the past five years, but not prior to (insert effective date of rule); and

(iv) All direct or indirect contributions or payments made by the investment adviser or any of its partners, executive officers, or solicitors or a political action committee controlled by the investment adviser or any of its partners, executive officers, or solicitors to an official, a political party of a State or political subdivision thereof, or a political action committee.

(2) Records of the contributions and payments must be listed in chronological order and indicate:

(i) The name and title of each contributor;

(ii) The name and title (including any city/county/state or other political subdivision) of each recipient of a contribution or payment; and

(iii) The amount and date of each contribution or payment.

(3) For purposes of this section:

(i) The terms *contribution, government entity, official, executive officer* and *solicitor* have the same meanings as set forth in § 275.206(4)–5.

(ii) The term *payment* means any gift, subscription, loan, advance, or deposit of money or anything of value.

Dated: August 4, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20489 Filed 8–9–99; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Tuesday
August 10, 1999

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Revision of Braking Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes; Proposed Rule
Proposed Technical Standard Order (TSO)–C135, Transport Airplane Wheels and Wheel and Brake Assemblies; Proposed Rule
Proposed Advisory Circular (AC) 25.735–1X, Brakes and Braking Systems Certification Tests and Analysis; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–1999–6063; Notice No. 99–16]

RIN 2120–AG80

Revision of Braking Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to revise the airworthiness standards for transport category airplanes to harmonize braking systems design and test requirements with standards proposed for the European Joint Aviation Requirements (JAR). These proposals were developed in cooperation with the Joint Aviation Authorities (JAA) of Europe and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee (ARAC), and are intended to benefit the public interest by standardizing certain requirements, concepts, and procedures contained in the airworthiness standards without reducing, but potentially enhancing, the current level of safety.

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to U.S. Department of Transportation Dockets, Docket No. FAA–1999–6063, 400 Seventh Street SW., Room Plaza 401, Washington DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m weekdays, except Federal holidays. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments in the information docket may be examined between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mahinder K. Wahi, FAA, Propulsion/Mechanical Systems/Cabin Safety Branch, ANM–112, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2142; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters must identify the regulatory docket or notice number and submit comments in duplicate to the Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the docket. The Docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered to the extent practicable. The proposals in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–1999–6063." The postcard will be date stamped and mailed to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–9680. Communications must identify the notice number of docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The airworthiness standards for transport category airplanes are contained in 14 CFR part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the relevant standards of part 25. These standards apply to airplanes manufactured within the U.S. for use by U.S.-registered operators and to airplanes manufactured in other countries and imported under a bilateral airworthiness agreement.

In Europe, the Joint Aviation Requirements (JAR) were developed by the Joint Aviation Authorities (JAA) to provide a common set of airworthiness standards for use within the Europe aviation community. The airworthiness standards for European type certification of transport category airplanes, JAR–25, are based on part 25 of Title 14. Airplanes certificated to the JAR–25 standards, including airplanes manufactured in the U.S. for export to Europe, receive type certificates that are accepted by the aircraft certification authorities of 23 European countries.

Although part 25 and JAR–25 are very similar, they are not identical. Differences between the FAR and the JAR can result in substantial additional costs when airplanes are type certificated to both standards. These additional costs, however, frequently do not bring about an increase in safety. For example, part 25 and JAR–25 may use different means to accomplish the same safety intent. In this case, the manufacturer is usually burdened with meeting both requirements, although the level of safety is not increased correspondingly. Recognizing that a common set of standards would not only economically benefit the aviation industry, but would also maintain the necessary high level of safety, the FAA and JAA consider harmonization to be a high priority.

In 1988, the FAA, in cooperation with the JAA and other organizations representing the American and European aerospace industries, began a process to harmonize the airworthiness requirements of the United States and

the airworthiness requirements of Europe, especially in the areas of Flight Test and Structures.

The Aviation Rulemaking Advisory Committee

The Aviation Rulemaking Advisory Committee (ARAC) was formally established by the FAA on January 22, 1991 (56 FR 2190) to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. This advice was sought to develop better rules in less overall time using fewer FAA resources than are currently needed. The committee provides the opportunity for the FAA to obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop proposals to recommend to the FAA for resolving specific issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, all interested parties are invited to participate as working group members. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before that proposal can be presented to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package will be fully disclosed in the public docket.

Starting in 1992, the FAA harmonization effort for various systems related airworthiness requirements was undertaken by the ARAC. A working group of industry and government braking systems specialists of Europe, the United States, and Canada was chartered by notice in the **Federal Register** (59 FR 30080, June 10, 1994). The working group was tasked to develop a harmonized standard, such as a Technical Standard Order (TSO), for approval of wheels and brakes to be installed on transport category airplanes and to develop a draft notice of proposed rulemaking (NPRM), with supporting economic and other required analyses, and/or any other related guidance material or collateral documents, such as advisory circulars, concerning new or revised requirements and the associated test conditions for wheels, brakes and braking systems, installed in transport category airplanes (§ 25.731 and 25.735). The JAA is to develop a similar proposal to amend JAR–25, as necessary, to achieve harmonization.

The rulemaking proposal contained in this notice is based on a recommendation developed by the Braking Systems Harmonization Working Group, and presented to the FAA by the ARAC as a recommendation.

General Discussion of the Proposals

The FAA proposes to amend 14 CFR 25.731 and 25.735 to harmonize these sections with JAR–25. The JAA intends to publish a Notice of Proposed Amendment (NPA), also developed by the Braking Systems Harmonization Working Group, to revise JAR–25 as necessary to ensure harmonization in those areas for which the proposed amendments differ from the current JAR–25, Change 14. When published, the NPA will be placed in the docket for this rulemaking.

Generally, the FAA proposes to: (1) add appropriate existing JAR requirements to achieve harmonization; (2) move some of the existing regulatory text, considered to be of an advisory nature, to an advisory circular; (3) add regulations addressing automatic brake systems, brake wear indicators, pressure release devices, and system compatibility; and (4) consolidate and/or separate requirement subparagraphs for clarity.

A new proposed Advisory Circular (AC) 25.735–1X, Brakes and Braking Systems Certification Tests and Analysis, has been developed by the ARAC Harmonization Working Group to ensure consistent application of these proposed revised standards. Public comments concerning AC 25.735–1X are invited by separate notice published elsewhere in this issue of the **Federal Register**. The JAA intends to publish an Advisory Material Joint (AMJ), also developed by the Harmonization Working Group, to accompany its NPA. The proposed AC and the proposed AMJ contain harmonized advisory information.

A new proposed TSO–C135 has also been developed by the Harmonization Working Group as a harmonized standard for approval of transport airplane wheels and wheel and brake assemblies to replace applicable parts of the existing TSO–C26c, Aircraft Wheels and Wheel-Brakes Assemblies, dated May 18, 1984. Pubic comments concerning TSO–C135 are invited by separate notice published elsewhere in this issue of the **Federal Register**. The JAA intends to adopt TSO–C135 as Joint Technical Standard Order (JTSO)–C135 and publish it to accompany their NPA.

Section by Section Discussion of the Proposals

Proposal 1. The FAA proposes to revise the current heading of § 25.735, "Brakes," to read "§ 25.735 Brakes and braking systems."

Discussion: This section covers not only the brakes and their performance requirements and safety considerations, but also provides requirements for the systems and equipment associated with the brakes. As examples, the proposed additional paragraph (b)(2) refers to the brake hydraulic system and the hydraulic fluid supplying the brakes, and the proposed paragraph (e) refers to the antiskid system. The proposed change is of an editorial nature only, and consequently would have no impact on the current level of safety.

Proposal 2. The FAA proposes to add a heading to and revise the text of § 25.735(a) to read, "(a) *Approval.* Each assembly consisting of a wheel(s) and brake(s) must be approved."

Discussion: The current § 25.735(a), which states that each brake must be approved, is considered incomplete. Although a wheel not associated with a brake (non-braked) may be approved on its own per the applicable TSO, a brake approval is always considered in combination with its associated wheel(s) (i.e., for a combined wheel(s) and brake(s) assembly). The proposed change is of an editorial nature only and therefore would have no impact on the current level of safety. Applicable advisory information would be included in proposed AC 25.735–1X.

Proposal 3. The FAA proposes to add the heading "Brake system capability" to § 25.735(b), to separate and revise the current text of the first sentence of § 25.735(b) into §§ 25.735(b) and (b)(1), and to delete the current text of the entire second sentence to read:

"(b) *Brake system capability.* The brake system, associated systems and components must be designed and constructed so that: (1) if any electrical, pneumatic, hydraulic or mechanical connecting or transmitting element fails, or if any single source of hydraulic or other brake operating energy supply is lost, it is possible to bring the airplane to rest with a braked roll stopping distance of not more than two times that

obtained in determining the landing distance as prescribed in § 25.125."

Discussion: The current text of the first sentence of § 25.735(b) reads, "The brake systems and associated systems must be designed and constructed so that if any electrical, pneumatic, hydraulic, or mechanical connecting or transmitting element (excluding the operating pedal or handle) fails, or if any single source of hydraulic or other brake operating energy supply is lost, it is possible to bring the airplane to rest under conditions specified in § 25.125 with a mean deceleration during the landing roll of at least 50 percent of that obtained in determining the landing distance as prescribed in that section."

Under this proposal, the term "components" would be added to the terms "brake system and associated systems" in the first sentence to make it more comprehensive. The parenthetical phrase "(excluding the operating pedal or handle)" would be deleted because no justification could be found for such an exclusion. The words "braked roll stopping distance" would be inserted in place of "landing roll" to clarify that the requirement refers only to the distance covered while the brakes are applied. The change in concept from at least 50 percent mean deceleration to not more than two times the landing distance is intended to eliminate any possible confusion between "mean" and "average" deceleration, and to state the requirement more clearly in terms of its real intent. The other changes in text are editorial and are made for clarity.

The current second sentence reads "subcomponents within the brake assembly, such as brake drum, shoes, and actuators (or their equivalents), shall be considered as connecting or transmitting elements, unless it is shown that leakage of hydraulic fluid resulting from failure of the sealing elements in these subcomponents within the brake assembly would not reduce the braking effectiveness below that specified in this paragraph." The current second sentence would be removed and, due to its advisory content, included as guidance material in proposed AC 25.735–1X.

The proposed changes are clarifications of current regulations and the associated terminology and therefore would have no impact on the current level of safety. Applicable advisory information would be included in proposed AC 25.735–1X.

Proposal 4. The FAA proposes to add a new § 25.735(b)(2) that would contain the intent and content of the ACJ 25.735(b) of JAR–25 regarding protection against fire resulting from hydraulic fluid leakage, spillage, or spraying on hot brakes. The proposal would state that, "(2) Fluid lost from a brake hydraulic system, following a failure in, or in the vicinity of, the brakes, is insufficient to cause or support a hazardous fire on the ground or in flight."

Discussion: Although the proposed requirement was previously included in ACJ 25.735(b) as acceptable means of compliance and interpretative material, it is now thought more appropriate that these practices should be considered as requirements as they have generally been treated as such in the past by both airplane manufacturers and regulatory authorities. The current level of safety would not be affected by this proposed change as it would adopt an existing industry practice. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 5. The FAA proposes to add the heading "Brake controls" to § 25.735(c), and to separate and revise the current text of § 25.735(c) into §§ 25.735(c) and (c)(1) to read: "(c) *Brake Controls.* The brake controls must be designed and constructed so that: (1) Excessive control force is not required for their operation."

Discussion: The current text reads, "Brake controls may not require excessive control force in their operation." The proposed changes are clarifications of current regulations and the associated terminology and therefore the current level of safety would not be impacted. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 6. The FAA proposes to add a new § 25.735(c)(2) to read: "(2) If an automatic braking system is installed, means are provided to (i) arm and disarm the system, and (ii) allow the pilot(s) to override the system by use of manual braking."

Discussion: The intent and content of the proposed changes have generally been adopted in the design of current automatic braking systems and are currently included in FAA Order 8110.8, "Engineering Flight Test Guide for Transport Category Airplanes," as interpretative and acceptable means of compliance. Consequently, both the airplane manufacturers and the regulatory authorities have generally considered them as standard practices; therefore, they would not impact the current level of safety. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 7. The FAA proposes to amend § 25.735(d) by adding the heading, "Parking brake," and by modifying the current text from, "The airplane must have a parking control that, when set by the pilot, will without further attention, prevent the airplane from rolling on a paved, level runway with takeoff power on the critical engine." to "(d) *Parking brake.* The airplane must have a parking brake control that, when selected on, will, without further attention, prevent the airplane from rolling on a dry and level paved runway when the most adverse combination of maximum thrust on one engine and up to maximum ground idle thrust on any, or all, other engine(s) is applied. The control must be suitably located or be adequately protected to prevent inadvertent operation. There must be indication in the cockpit when the parking brake is not fully released."

Discussion: Introduction of the word "brake" before "control" clarifies that the paragraph refers to the means provided to the flightcrew for the application of the wheel brakes in the airplane parking mode. By revising the text, as proposed, the requirements would be enhanced to cover not only the case of a single engine takeoff thrust check with all other engines stopped, but would also cover an equally if not more probable case where any or all other engines are operating and producing up to a maximum ground idle thrust. The proposal also clarifies the extent of the takeoff thrust to be considered for the "critical" engine as the maximum that can be achieved, and by implication also requires the relevant thrust cases for remaining engine(s) according to the environmental circumstances that are dictated for the achievement of the maximum takeoff thrust on the critical engine. The word "dry" is added solely for clarification of the current understanding of this requirement.

The requirement for suitable location or protection against inadvertent operation of the parking brake control is derived from the current ACJ 25.735(d) of JAR–25 and is introduced because it is believed that such considerations should be regarded as requirements, and have generally been treated as such in the past by both airplane manufacturers and regulatory authorities. The additional requirement for cockpit indication when the parking brake is "not fully released" is to caution the pilot against a takeoff with the parking brake set. The proposed changes potentially enhance the current level of safety by clarifying intent and addressing come critical cases. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 8. The FAA proposes to add the heading "Antiskid system" to § 25.735(e), to delete the current text

"no single probable malfunction will result in a hazardous loss of braking ability or directional control of the airplane" as being superfluous, and in order to facilitate the introduction of the new proposed § 25.735(e)(1) and (e)(2) under proposals 9 and 10 respectively, revise the remaining current text to read:

"(e) *Antiskid system.* If an antiskid system is installed:"

Discussion: The current § 25.735(e9 reads: "If antiskid devices are installed, the devices and associated systems must be designed so that no single probable malfunction will result in hazardous loss of braking ability or directional control of the airplane." The reference to antiskid devices and associated systems would be changed to "antiskid system," this being more appropriate to the paragraph's intent. The term "probable" was incompatible with the terminology of § 25.1309 because a "probable" malfunction cannot be associated with either major or hazardous effects and, if used in the "§ 25.1309" sense, could lead to a requirement that could be seen as less severe than § 25.1309 for that specific failure condition, with no obvious technical/state of the art reasons. It appears that the terminology (probable and hazardous) used was probably not "§ 25.1309 related" when the requirement was first introduced. Rather than trying to define the words, it is considered that the requirement is adequately covered by § 25.1309 and the current § 25.735(e) is superfluous. The proposed changes are of a clarifying and an editorial nature only and therefore would have no impact on the current level of safety. Appropriate advisory material would be included in proposed AC 25.735–1X.

Proposal 9. The FAA proposes to add a new § 25.735(e)(1) to read.

"(1) It must operate satisfactory over the range of expected runway conditions, without external adjustment."

Discussion: The intent and content of the proposed changes are currently included in FAA Order 8110.8, "Engineering Flight Test Guide for Transport Category Airplanes," as interpretative material and acceptable means of compliance and are deemed appropriate to be adopted as requirements. Both the airplane manufacturers and the regulatory authorities have, in the past, considered them as standard practices; therefore, they would not impact the current level of safety. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 10. The FAA proposes to add a new § 25.735(e)(2) to read: "(2) It must, at all times, have priority over the automatic braking system, if installed."

Discussion: The intent and content of the proposed change is currently included in FAA Order 8110.8, "Engineering Flight Test Guide for Transport Category Airplanes," as interpretative material and acceptable means of compliance and is deemed appropriate to be adopted as a requirement. Both the airplane manufacturers and the regulatory authorities have, in the past, considered it as a standard practice; therefore, it would not impact the current level of safety. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 11. The FAA proposes to amend § 25.735(f) by adding the heading "Kinetic energy capacity," by consolidating the requirements of current paragraphs (f) and (h), by adding similar requirements for a high energy landing condition, by removing paragraphs (f)(1) and (2), and paragraphs (h)(1) and (2), and by revising the text to read:

"(f) *Kinetic energy capacity.* The design landing stop, the maximum kinetic energy accelerate-stop, and the most severe landing stop brake kinetic energy absorption requirements of each wheel and brake assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel and brake assemblies are capable of absorbing not less than these levels of kinetic energy. Energy absorption rates defined by the airplane manufacturer must be achieved. These rates must be equivalent to mean decelerations not less than 10 fps^2 [feet per second] for the design landing stop and 6 fps^2 for the maximum kinetic energy accelerate stop. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe. Design landing stop is an operational landing stop at maximum landing weight. Maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. Most severe landing stop is a stop at the most critical combination of airplane landing weight and speed.

Discussion: The current paragraphs (f) and (h) state that the brake kinetic energy capacity ratings may not be less than the determined energy absorption requirements. The proposed paragraph (f) would require the calculation of the necessary energy absorption capacity, and require dynamometer test substantiation of the capability of the wheel and brake assemblies to absorb the energy at not less than specified rates. Usually, brakes are sized to exceed the calculated energy absorption requirements (i.e., their capacity exceeds the requirements, hence the heading "Kinetic energy capacity"). The term "rating" would be deleted because it is more relevant to the TSO than to the regulation. The proposed change would encompass the requirements of current paragraph (h) without the need for complete duplication of text.

The term "rejected takeoff" used under current paragraph (h) would be replaced with "accelerate-stop" for compatibility with § 25.109 terminology; and the term "most severe landing stop" would be added to address cases such as emergency return to land after takeoff, where the brake energy for a flaps up landing may exceed that corresponding to the accelerate-stop energy. For the accelerate-stop and the most severe landing stop, it is intended that the initial brake temperature resulting from previous brake use must be accounted for as specified in paragraphs 3.3.3.3 and 3.3.4.3 in the proposed TSO–C135. It should be noted that the consideration for the initial temperature (in terms of residual energy) reflects an existing British Civil Aviation authority (CAA) Specification 17 requirement. Changing the term "main wheel-brake assemblies" to "wheel and brake assemblies," ensures the paragraph," ensures the paragraph's applicability to any wheels fitted with brakes (i.e., includes the possibility of nose wheel brakes, etc.) and further ensures the understanding that the absorption requirements apply to the wheel and brake assembly. The substantiation statement requires that the wheel and brake assemblies be capable of absorbing the calculated levels of kinetic energy at the fully worn limit and that the energy absorption capability substantiation testing be conducted on the dynamometer.

The current §§ 25.735(f)(1) and (h)(1) would be incorporated in proposed AC 25.735–1X, because their content is not strictly part of the requirement, but provides advice on the primary features that should be conservatively included in a rational analysis.

The current §§ 25.735(f)(2) and (h)(2) are not strictly the requirement, but advice on the method of energy calculation to be used. Consequently, these would be incorporated in proposed AC 25.735–1X.

Because the required energy capacity of *each* wheel and brake assembly must be determined, the need to refer to

"designed unequal braking distributions" is no longer necessary and would be deleted.

The current level of safety would be retained and possibly enhanced by addressing the most severe landing stop condition. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 12. The FAA proposes to remove the current § 25.735(g) requirement.

Discussion: The current § 25.735(g) requirement states that when setting up the dynamometer test inertia, an increase in the initial brake application speed is not a permissible method of accounting for a reduced (i.e., lower than ideal) dynamometer mass. This method is not permissible because, for a target test deceleration, a reduction in the energy absorption rate would result, and could produce a performance different from that which would be achieved with the correct brake application speed. Such a situation is recognized and is similarly stated in the proposed new TSO–C135, which would provide an acceptable means for wheel and brake assembly approval under § 25.735(a), thus making current § 25.735(g) unnecessary. The proposed change consolidates existing requirements and deletes redundant wording, and therefore would not impact the current level of safety.

Proposal 13. The FAA proposes to add a new § 24.735(g), "Brake condition after high kinetic energy dynamometer stop(s)," to read:

"(g) *Brake condition after high kinetic energy dynamometer stop(s).* Following the high kinetic energy stop demonstration(s) required by paragraph (f) of this section, with the parking brake promptly and fully applied for at least three (3) minutes, it must be demonstrated that for at least five (5) minutes from application of the parking brake, no condition occurs (or has occurred during the stop), including fire associated with the tire or wheel and brake assembly, that could prejudice the safe and complete evacuation of the airplane."

Discussion: Paragraph (g) would require that the parking brake be applied for a minimum of three minutes, which is considered to be the minimum period of time required to cover the brake's ability to maintain the airplane in a stationary condition to allow a safe evacuation.

The requirement also gives consideration to the fact that the flightcrew may not be aware of the condition of the brake assemblies at the commencement of the flight, nor of the condition of the brake and wheel assemblies following the braking maneuver. Furthermore, the reason for the severe braking could encompass both airplane system and engine failures or fires. It would therefore appear sensible that it should be demonstrated that neither during the stop, nor for a reasonable period of time after its completion, no condition(s) shall occur as a result of these maneuvers that could further prejudice the safe and complete evacuation of the airplane. On the basis that an evacuation may be determined as prudent or necessary, and that such an evacuation must be capable of completion, irrespective of the timely response of the emergency services, for minutes would appear to be a reasonable period of time for the associated brake systems and equipment to remain free from conditions that might prejudice or jeopardize the evacuation. It is proposed that this period should commence at the time of initial application of the parking brake, this being a time during which the possible need for evacuation and airport emergency services occurs following an accelerate-stop. The proposed changes provide for the additional demonstration of a safe condition following high energy absorption by the wheels and brakes, which was not previously required. Although previously approved brakes may have been able to comply with the requirement, approval could not have been refused had this not been the case. It is therefore believed that the proposed changes would provide a potential enhancement of the current level of safety. Applicable advisory material would be included in proposed AC 25.735–1X.

Proposal 14. The FAA proposes to add a modified version of the current JAR 25.735(i) as new 14 CFR 25.735(h), "Stored energy systems," to read:

"(h) *Stored energy systems.* An indication to the flightcrew of usable stored energy must be provided if a stored energy system is used to show compliance with paragraph (b)(1) of this section. The available stored energy must be sufficient for:

(1) At least six (6) full applications of the brakes when an antiskid system is not operating; and,

(2) Bringing the airplane to a complete stop when an antiskid system is operating, under all runway surface conditions for which the airplane is certificated."

Discussion: A full brake application is defined as an application from brakes fully released to brakes fully applied, and back to fully released. For those airplanes that may provide a number of independent braking systems, which are not "reliant" on a stored energy system for the demonstration of compliance with paragraph (b)(1) of this section, but which perhaps incorporate a stored energy device, this requirement is not applicable. It would be unreasonable that the requirement for a minimum energy capacity and the provision of means to indicate the level of stored energy to the flightcrew should be maintained, particularly if its failure would have a minimal consequence on airplane or passenger safety.

In the event that an hydraulic accumulator is used for energy storage and the gas pressurization depletes, a pressure indication alone as currently required in JAR 25.735(i) would be inadequate because it would not provide indication of such faults to the flightcrew. In fact, the current typical flight deck presentation could give a false sense of security to the crew because it would almost inevitably indicate a satisfactory pressure, regardless of the real situation. Consequently, the proposed rule would require a measure of the stored energy, rather than pressure, to be presented to the flightcrew.

The minimum level of stored energy required for the emergency/standby braking means would be presented as a requirement rather than as advisory material. In the majority of cases, this material has been used as a virtual requirement in the past by airplane manufacturers and regulatory authorities. The proposed change would potentially enhance the current level of safety because the FAA is proposing to adopt a common but not universal industry practice and an improvement over the existing JAR rule. Applicable advisory material would be included in the proposed new AC 25.735–1X.

Proposal 15. The FAA proposes to add a new § 25.735(i), "Brake wear indicators," to read:

"(i) *Brake wear indicators.* Means must be provided for each brake assembly to indicate when the heat sink is worn to the permissible limit. The means must be reliable and readily visible."

Discussion: In order to ensure, as far as is practicable, that the brake heat sink is not worn beyond its allowable wear limits throughout its operational life, it is considered necessary to provide some device that can readily identify the fully worn limit of the heat sink. The proposal reflects a requirement included in a series of airworthiness directives issued between 1989 and 1994 to require establishment of brake wear limits and to provide means to indicate the same. The British Civil Aviation Authority (CAA) Specification No. 17

also specifies the provision of such an indicator, and the majority of wheel and brake assembly designs include such a device. The proposed rule would have no impact on the current level of safety, because the FAA is proposing to adopt an existing industry practice. Appropriate advisory information would be included in proposed AC 25.735–1X.

Proposal 16. The FAA proposes to add a new § 25.735(j), "Overtemperature burst prevention," a new § 25.731(d), "Overpressure burst prevention," and a new § 25.731(e), "Braked wheels," to read as follows:

"§ 25.735(j) *Overtemperature burst prevention.* Means must be provided in each braked wheel to prevent wheel failure and tire burst that may result from elevated brake temperatures. Additionally, all wheels must meet the requirements of § 25.731(d)."

"§ 25.731(d) *Overpressure burst prevention.* Means must be provided in each wheel to prevent wheel failure and tire burst that may result from excessive pressurization of the wheel and tire assembly."

"§ 25.731(e) *Braked wheels.* Each braked wheel must meet the applicable requirements of § 25.735."

Discussion—§ 25.735(j): There is an existing requirement (§ 25.729(f)) related to the protection of equipment in wheel wells against the effects of bursting tires and a similar requirement is stated in TSO–C26c, Wheels and Wheel-Brake Assemblies. JAR 25.729(f) requires protection of equipment on the landing gear and in wheel wells against tire burst and elevated brake temperatures, and a similar requirement is stated in the "Minimum Operational Performance Specification for Wheels and Brakes on JAR Part 25 Civil Aeroplanes" (Document ED–69). However, there is no direct requirement in either part 25 or JAR–25 that means must be provided to prevent wheel failure and tire burst that could result from elevated brake temperatures. As a result, it has become an industry practice to incorporate pressure release device(s) that function as a result of elevated wheel temperatures to deflate the tires. Nevertheless, it is believed to be both reasonable and prudent that such a requirement should be clearly stated in the paragraph related to airplane brakes and braking systems. The proposed requirement for temperature activated devices would not impact the current level of safety. Applicable advisory information would be included in proposed AC 25.735–1X.

Discussion—§ 25.731(d): Wheel failure and tire burst due to over-inflation presents a hazard to ground personnel and the airplane. Certain airplane manufacturers require wheel pressure release devices that reduce this hazard. This is considered a safety issue requiring the incorporation of these devices. Incorporation of pressure release devices in tire inflation equipment is not considered adequate due to a history of misuse resulting in serious injuries or fatalities. Installation in the wheel reduces the potential for tampering or misuse and insures proper levels of protection. The proposed change would retain and potentially enhance the current level of safety. Applicable advisory information would be included in proposed AC 25.735–1X.

Discussion—25.731(e): This section contains regulations applicable to all airplane wheels. If the wheel is braked, additional regulations apply, which are contained in § 25.735. Section 25.731(e) is added to provide a cross-reference to those additional requirements. The proposed change would retain and potentially enhance the current level of safety.

Proposal 17. The FAA proposes to add a new § 25.735(k), "Compatibility," to read:

"(k) *Compatibility.* Compatibility of the wheel and brake assemblies with the airplane and its systems must be substantiated."

Discussion: Reliable and consistent brake system performance can be adversely affected by incompatibilities within the system and with the landing gear and the airplane. As part of the overall substantiation of safe and anomaly free operation, it is necessary to show that no unsafe conditions arise from incompatibilities between the brakes and brake system with other airplane systems and structures. Areas such as antiskid tuning, landing gear dynamics, tire type and size, brake combinations, brake characteristics, brake and landing gear vibrations, etc., need to be explored and corrected if necessary. Therefore, this requirement is introduced to address these issues which are normally covered by airplane manufacturers during development of the airplane and must be addressed by modifiers of the equipment. Incorporation of this requirement would potentially enhance the current level of safety. Appropriate advisory information would be included in proposed AC 25.735–1X.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule is not "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by OMB. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This proposed rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

Although numerous revisions would be made to § 25.735, only one would impose additional quantified costs for both part 25 large and small airplane manufacturers (see below—proposal 11). One ARAC member, a manufacturer of part 25 small airplanes, claimed that proposals 7, 14, and 16 would also impose incremental costs, but provided no specific estimates (these proposals are also discussed below). Essentially all of the changes codify current industry practice or conform 14 CFR 25.735 to corresponding sections of the JAR. Adoption of the proposed changes would increase harmonization and commonality between American and European airworthiness standards, thus enhancing safety. Harmonization would eliminate unnecessary duplication of

airworthiness requirements, thus reducing manufacturers' certification costs (6 substantive proposals out of 17 total in the subject NPRM would essentially mirror the proposed European standards; the 11 others would not differ significantly). The FAA believes the enhanced safety benefits and harmonization cost savings would exceed the relatively low incremental costs of the proposed rule (see Summary of Costs and Benefits section below).

Proposal 7. Changes regarding parking brake control and cockpit indication of the brake essentially reflect current industry practice for the majority of part 25 manufacturers; consequently, there are no expected incremental costs. As noted above, one manufacture of part 25 small airplanes, however, indicated that its current designs do not meet this requirement and that costs for cockpit indication in future designs would, in fact, be incremental. The manufacturer, however, did not provide such costs to the FAA. The FAA invites that manufacture (and/or other interested parties) to provide detailed cost estimates during the public comment period.

Proposal 11. One ARAC member, a manufacturer of part 25 large airplanes, notes that the average impact of the 10 percent residual rejected takeoff energy requirement would be a 2 to 3 percent increase in the brake's energy absorption requirements. Notwithstanding, this increase is smaller than the tolerances on its ability to define brake requirements and the brake manufacturer's conformance to the specifications. Also, higher residual energies would enable the manufacturer to raise its recommended brake temperatures for dispatch, so any potential higher brake costs would be offset by more efficient aircraft operation (shorter turnaround times, less time at gate waiting for brakes to cool).

The term "most severe landing stop" (MSL) would be added to address cases such as immediate return to land after takeoff where the brake energy for a flaps up landing may exceed that corresponding to the accelerate-stop energy. The MSL requirement, while a new FAA requirement, has been in effect in Europe (per British CAA); consequently, many large part 25 airplane manufacturers currently meet this standard. Notwithstanding, large part 25 airframe and brake manufacturers note that in almost all cases either the MSL stop energy would not exceed the maximum kinetic energy accelerate-stop energy, or the MSL stop condition is extremely improbable. One part 25 large airplane manufacturer, however, noted that demonstrating adherence to this requirement for its typical airplane model would add the equivalent of two additional high-energy dynamometers tests in which the test brake would be destroyed; estimated incremental one-time costs for this equal approximately $60,000 per type certification. Another manufacturer, however, estimates only one test in the $20,000–$40,000 range. Manufacturers of small part 25 airplanes would experience some incremental one-time testing costs totaling approximately $20,000 per type certification.

The aforementioned nonrecurring costs for either the part 25 large or small airplane type certification would easily be offset by the harmonization cost savings cited earlier. Any potential safety benefits from avoiding even one minor accident would add to such benefits. The FAA therefore finds proposal 11 to be cost beneficial.

Proposal 14. As the stored energy requirement reflects current industry practice for most part 25 manufacturers, there would be no expected incremental costs associated with it. However, the same manufacturer (of part 25 small airplanes) that reported potential costs for proposal 7, also indicated that its current designs do not include usable stored energy indication, and compliance with this requirement in future designs would impose incremental costs. Detailed cost estimates, however, were not provided. The FAA requests that the manufacturers (or others) provide detailed costs estimates during the public comment period.

Proposal 16. In the last several years, many wheel manufacturers have included pressure release devices in most new production wheels in order to avoid potential liability. Codification of existing industry practice would ensure that the enhanced level of safety is retained. There are no expected incremental costs associated with this proposal since it does reflect current industry practice. However, the same manufacturer (of part 25 small airplanes) that, in contrast to other manufacturers, reported potential costs for proposals 7 and 14 indicated that the requirement for wheel pressure release devices would also impose incremental costs in future designs. Again, the FAA invites that manufacturer (or others) to provide detailed cost estimates during the public comment period.

Summary of Costs and Benefits

As delineated above, and barring more detailed information for proposals 7, 14, and 16, the FAA concludes that only proposal 11 would result in incremental costs attributable to the subject NPRM. Demonstrating adherence to the MSL requirement would increase nonrecurring testing costs from $20,000–$60,000 for a part 25 large airplane type certification; the amount for a part 25 small airplane type certification is estimated to be $20,000. According to one manufacturer, cost savings from harmonization, in terms of avoiding added costs of coordination and documentation (with the JAA and involving, for example, additional travel overseas, reports, etc.) would be equal to or greater than the maximum incremental cost of $60,000. The FAA believes that potential safety benefits resulting form specification of minimum accepted standards would supplement these cost-savings. Although there were numerous (approx. 170) accidents involving brake failures during landings in the period 1982–1995, none were determined to have been directly preventable by the subject provisions. Different designs in future type certifications, however, could present other problems (unexpected) and raise future accident rates. This proposed rule is expected to reduce the chances of future accidents by codifying in 14 CFR part 25 (and therefore making mandatory) what was prevailing, but not necessarily universal, industry practice.

For the reasons specified, the FAA finds the proposed rule to be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes as "a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact

on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule would affect manufacturers of part 25 transport category airplanes produced under future new airplane type certifications. For manufacturers, a small entity is one with 1,500 or fewer employees. No part 25 airplane manufacturer has 1,500 or fewer employees. Notwithstanding, the relatively low annualized incremental certification costs are not considered significant within the meaning of the RFA. Consequently, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of manufacturers identified as small entities.

International Trade Impact Statement

The provisions of this proposed rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

This proposed rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European Joint Aviation Requirements. The result would be a positive step toward removing impediments to international trade.

Federalism Implications

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) or State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any 1 year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall develop a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any 1 year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Amend § 25.731 to add new paragraphs (d) and (e) to read as follows:

§ 25.731 Wheels.

* * * * *

(d) *Overpressure burst prevention.* Means must be provided in each wheel to prevent wheel failure and tire burst that may result from excessive pressurization of the wheel and tire assembly.

(e) *Braked Wheels.* Each braked wheel must meet the applicable requirements of § 24.735.

3. Revise § 25.735 to read as follows:

§ 25.735 Brakes and braking systems.

(a) *Approval.* Each assembly consisting of a wheel(s) and brake(s) must be approved.

(b) *Brake system capability.* The brake system, associated systems and components must be designed and constructed so that:

(1) If any electrical, pneumatic, hydraulic, or mechanical connecting or transmitting element fails, or if any single source of hydraulic or other brake operating energy supply is lost, it is possible to bring the airplane to rest with a braked roll stopping distance of not more than two times that obtained in determining the landing distance as prescribed in § 25.125.

(2) Fluid lost from a brake hydraulic system following a failure in, or in the vicinity of, the brakes is insufficient to cause or support a hazardous fire on the ground or in flight.

(c) *Brake controls.* The brake controls must be designed and constructed so that:

(1) Excessive control force is not required for their operation.

(2) If an automatic braking system is installed, means are provided to:

(i) Arm and disarm the system, and

(ii) Allow the pilot(s) to override the system by use of manual braking.

(d) *Parking brake.* The airplane must have a parking brake control that, when selected on, will, without further attention, prevent the airplane from rolling on a dry and level paved runway when the most adverse combination of maximum thrust on one engine and up to maximum ground idle thrust on any, or all, other engine(s) is applied. The control must be suitably located or be adequately protected to prevent inadvertent operation. There must be indication in the cockpit when the parking brake is not fully released.

(e) *Antiskid system.* If an antiskid system is installed:

(1) It must operate satisfactory over the range of expected runway conditions, without external adjustment.

(2) It must, at all times, have priority over the automatic braking system, if installed.

(f) *Kinetic energy capacity.* The design landing stop, the maximum kinetic energy accelerate-stop, and the most severe landing stop brake kinetic energy absorption requirements of each wheel and brake assembly must be determined. It must be substantiated by dynamometer testing that, at the declared fully worn limit(s) of the brake heat sink, the wheel and brake assemblies are capable of absorbing not less than these levels of kinetic energy. Energy absorption rates defined by the airplane manufacturer must be achieved. These rates must be equivalent to mean decelerations not less than 10 fps^2 for the design landing stop and 6 fps^2 for the maximum kinetic energy accelerate stop. The most severe landing stop need not be considered for extremely improbable failure conditions or if the maximum kinetic energy accelerate-stop energy is more severe. Design landing stop is an operational landing stop at maximum landing weight. Maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. Most severe landing stop is a stop at the most critical combination of airplane landing weight and speed.

(g) *Brake condition after high kinetic energy dynamometer stop(s).* Following the high kinetic energy stop demonstration(s) required by paragraph (f) of this section, with the parking brake promptly and fully applied for at least three (3) minutes, it must be demonstrated that for at least five (5) minutes from application of the parking brake, no condition occurs (or has occurred during the stop), including fire associated with the tire or wheel and brake assembly, that could prejudice the safe and complete evacuation of the airplane.

(h) *Stored energy systems.* An indication to the flightcrew of the usable stored energy must be provided if a stored energy system is used to show compliance with paragraph (b)(1) of this section. The available stored energy must be sufficient for:

(1) At least six (6) full applications of the brakes when a antiskid system is not operating; and

(2) Bringing the airplane to a complete stop when an antiskid system is operating, under all runway surface conditions for which the airplane is certificated.

(i) *Brake wear indicators.* Means must be provided for each brake assembly to indicate when the heat sink is worn to the permissible limit. The means must be reliable and readily visible.

(j) *Overtemperature burst prevention.* Means must be provided in each braked wheel to prevent wheel failure and tire burst that may result from elevated brake temperatures. Additionally, all wheels must meet the requirements of § 25.731(d).

(k) *Compatibility.* Compatibility of the wheel and brake assemblies with the airplane and its systems must be substantiated.

Issued in Washington, DC, on August 3, 1999.

Ronald T. Wojnar,

Deputy Director, Aircraft Certification Service.

[FR Doc. 99–20518 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)—C135, Transport Airplane Wheels and Wheel and Brake Assemblies

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed technical standard order and request for comments.

SUMMARY: This notice announces the availability of and request comments on a proposed technical standard order (TSO) pertaining to transport airplane wheels and wheel and brake assemblies. The proposed TSO prescribes the minimum performance standards that transport category airplane wheels and wheel and brake assemblies must meet to be identified with the applicable TSO marking. this notice provides interested persons an opportunity to comment on the proposed TSO concurrently with a notice of proposed rulemaking and a proposed advisory circular on the same subject, published elsewhere in this issue of the **Federal Register.**

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Send all comments on the proposed technical standard order to the Federal Aviation Administration, Attention: Mahinder Wahi, Propulsion/ Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mahinder Wahi, at the above address, telephone (425) 227–2142; facsimile (425) 227–1320; e-mail mahinder.wahi@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO by submitting such written data, views, or arguments as hey desire to the above specified address. Comments must identify the title and number of the TSO (TSO–C135) and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Director, Aircraft Certification Service, before issuing the final TSO.

Background

As stated above, this proposed TSO prescribes he minimum performance standards that transport category airplane wheels and wheel and brake assemblies must meet to be identified with the applicable TSO marking. Information provided in an appendix to the TSO include the minimum performance specifications, general design specifications, minimum performance under standard test conditions, and data requirements.

The material contained in the proposed TSO was developed by the Braking Systems Harmonization Working Group of the Aviation Rulemaking Advisory committee to ensure consistent application of the standards proposed under separate notice, "Revision of Braking Systems Airworthiness Standards to Harmonize with European Airworthiness Standards to Harmonize with European Airworthiness Standards for Transport Category airplanes,' and a corresponding proposed Advisory Circular (AC–25.735–IX, "Brakes and Braking Systems Certification Tests and Analysis" published elsewhere in this issue of the **Federal Register.** the corresponding advisory material and TSO developed by the JAA are AMJ 25.735 and JTSO–C135.

How To Obtain Copies

A copy of proposed TSO–C135 may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, D.C. on August 3, 1999.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–20520 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 25.735–1X, Brakes and Braking Systems Certification Tests and Analysis

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular which provides guidance as to acceptable means of demonstrating compliance with a separate notice of proposed rulemaking on the subject of brakes and braking systems published elsewhere in this issue of the **Federal Register.** This notice provides interested person an opportunity to comment on the proposed AC concurrently with the proposed rulemaking, as well as a proposed Technical Standard Order on the same subject also published elsewhere in this issue of the **Federal Register.**

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Send all comments on the proposed advisory circular to the Federal Aviation Administration, Attention, Mahinder Wahi, Propulsion/ Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mahinder Wahi at the above address, telephone (425)) 227–2142; facsimile (425) 227–1320; or e-mail mahinder.wahi@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested person are invited to comment on the proposed AC by submitting such written data, views, or arguments as they desire to the above specified address. Comments must identify the title of the AC and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Transport Airplane Directorate before issuing the final AC.

Discussion

Although 14 CFR part 25 and the Joint Aviation Requirements, JAR–25, are very similar, they are not identical. Differences between the FAR and the JAR can result in substantial additional costs when airplanes are type certificated to both standards. Starting in 1992, the harmonization effort for various systems-related airworthiness requirements was undertaken by the Aviation Rulemaking Advisory Committee (ARAC). A working group (the Braking Systems Harmonization Working Group)) of industry and government braking systems specialists from Europe, the United States, and Canada was chartered by notice in the **Federal Register** (59 FR 30080, June 10, 1994). The working group was tasked to develop harmonized standards and any

collateral documents, such as advisory circulars, concerning new or revised requirements for braking systems, and the associated test conditions for braking systems, installed in transport category airplanes (§§ 25.731 and 25.735). The Joint Aviation Authorities (JAA)) have developed a similar proposal to amend JAR 25.731 and JAR 25.735, as necessary, to achieve harmonization.

The advisory material contained in the proposed AC was developed by the Braking Systems Harmonization Working Group to ensure consistent application of the standards proposed under separate notice, "Revision of Braking Systems Airworthiness Standards to Harmonize with European Airwothiness Standards for Transport Category Airplanes," and a corresponding proposed Technical Standards Order (TSO–C135), "Transport Airplane Wheels and Wheel and Brake Assemblies," published elsewhere in this issue of the **Federal Register**. The corresponding advisory material and TSO developed by the JAA are AMJ 25.735 and JTSO–C135.

Issuance of AC 25.735–1X is contingent on final adoption of the proposed amendment to part 25.

How To Obtain Copies

A copy of proposed AC 25.735–1X may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, D.C. on August 3, 1999.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–20519 Filed 8–9–99; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
August 10, 1999

Part IX

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845–AA03

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would govern the disclosure of institutional and financial assistance information provided to students under the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended (Title IV). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The proposed regulations implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments).

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Paula Husselmann, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: ifainprm@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann or Lloyd Horwich. Telephone (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations at Regional Office Building 3, 7th and D Streets, SW, Room 3045, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you can call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General

These proposed regulations would revise the current Student Assistance General Provisions, 34 CFR part 668, concerning the disclosure of institutional and financial assistance information to students under the financial assistance programs authorized under Title IV. The revisions implement the Higher Education Amendments of 1998, Public Law 105–244, enacted October 7, 1998.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, D.C., Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over

the course of several months, beginning in January.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of Committee IV. Committee IV was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Jesuit Colleges and Universities
Career College Association
Council for Higher Education Accreditation
Council of Recognized National Accrediting Agencies
Council for Regional Accrediting Commissions
Education Finance Council
Legal Services Counsel (a coalition)
National Association of College and University Business Officers
National Association of Equal Opportunity in Higher Education
National Association of Independent Colleges and Universities
National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition)
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Direct Student Loan Coalition
National Women's Law Center
State Higher Education Executive Officers Association
The College Board
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
US Public Interest Research Group

The following organizations were members of the committee for the purpose of developing proposed regulations relating to the reporting of campus crime only:

American Psychological Association
International Association of Campus Law Enforcement Administrators
International Association of Chiefs of Police
Security on Campus, Inc. (C. & H. Clery)
Society of Professional Journalists

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Subpart D—Student Consumer Information Services

The proposed regulations would (1) retitle Subpart D as Institutional and Financial Assistance Information for Students, to conform the title to that of section 485 of the HEA, and (2) renumber the sections.

The proposed regulations would remove current § 668.42 and incorporate it into proposed § 668.41. Therefore, the proposed regulations would renumber current §§ 668.43–668.49 as §§ 668.42–668.48. The headings in this section for proposed §§ 668.43–668.48 reflect the proposed renumbering. There is no discussion of proposed § 668.42 (current § 668.43), because there is no proposed change other than the renumbering.

Section 668.41 Reporting and Disclosure of Information

Prior to the 1998 Amendments, section 485(a) of the HEA required an institution to provide specified information about the institution and its administration of the Title IV, HEA programs to all current students, and upon request to prospective students. The 1998 Amendments provided that, instead of providing the information to current students, an institution must provide current students a list of the information to which they are entitled. The 1998 Amendments did not affect an institution's responsibility concerning prospective students.

The proposed regulations would amend § 668.41 to comply with the changes made to the HEA by the 1998 Amendments, to make the information disclosure process more understandable and less burdensome to institutions, and to make the information more accessible to students, parents, employees, and other interested parties. These proposed regulations would move definitions from the various sections under Subpart D and consolidate them into § 668.41. In addition, these proposed regulations repeat many existing provisions for which no changes are proposed, but which are included to provide context for the proposed changes. These changes are discussed in the following paragraphs.

As stated previously, the 1998 Amendments require an institution to provide each enrolled student with a list of the various information that the institution must provide, upon request, to the student. Proposed § 668.41(c) implements this requirement. Proposed § 668.41(c) would require an institution to include with the list a brief description of the required disclosures. The description should be sufficient to allow the student to understand the nature of the disclosure and make an informed decision whether to request the full disclosure. The following is an example of such a description:

A copy of [name of institution]'s annual security report. This report includes statistics for the previous three years concerning reported crimes that occurred on campus; in certain off-campus buildings or property owned or controlled by [name of institution]; and on public property within, or immediately adjacent to and accessible from, the campus. The report also includes institutional policies concerning campus security, such as policies concerning alcohol and drug use, crime prevention, the reporting of crimes, sexual assault, and other matters. You can obtain a copy of this report by contacting [name of office] or by accessing the following website [address of website].

The proposed regulations would group together an institution's reporting and disclosure obligations, what must be disclosed, and to whom the disclosure must be made. These proposed regulations also would allow an institution to use the Internet or, for current students and current employees, an Intranet website, to make most of the required disclosures under Subpart D. The committee thought that use of the Internet or an Intranet would benefit institutions by reducing their publication costs and benefit individuals interested in the information by making the information more accessible.

However, an institution could not rely on the Internet or an Intranet to disclose to a prospective student-athlete and his or her parents the graduation or completion rate information and, if applicable, transfer-out rate information, required under § 668.48. The HEA requires an institution to provide this information to a student and the student's parents at the time the institution offers the student athletically related student aid.

The Secretary believes that because Congress singled out this group of prospective students and identified a student-specific time when the institution must make the disclosure, it would be inappropriate to allow the institution to use the Internet, a broad distribution medium, to disclose the information. Disclosure of this information as a posting on the Internet would not ensure that the student and his or her parents receive the information at the time the HEA requires. An institution may provide the information in paper form or through electronic mail.

An institution that chooses to use an Internet website, or an Intranet website, to make a required disclosure would be required to provide a notice, to each

person to whom the institution must disclose information, that the required information is available on the website. The proposed regulations would require that this notice (1) identify the information required to be disclosed, (2) provide the exact electronic website address for accessing the information, and (3) state that the person is entitled to a paper copy of the information, upon request.

The proposed regulations also state that a notice must be provided directly to each person to whom notice must be given. For example, the notice could be a paper document that is handed or mailed to each person, or it could be electronically mailed. It would not be sufficient for an institution simply to post the notice (as opposed to the actual disclosures, which in most cases may be posted on a website) on its Internet website or to make the notice available at electronic information kiosks. The notice requirements would also apply to the list of information that the 1998 Amendments require an institution to provide to all enrolled students.

Where an institution must make a disclosure upon request, it may not require that the request be in writing. The Secretary believes that requiring an otherwise properly directed request to be made in writing runs counter to the purpose of ensuring easy access to the information that must be disclosed.

Section 668.42 Preparation and Dissemination of Materials

The proposed regulations would remove current § 668.42 and incorporate it into proposed § 668.41, as discussed.

Section 668.43 Institutional Information

The statute requires and, therefore these proposed regulations require, that an institution disclose the requirements for a student's officially withdrawing from the institution. This proposed regulatory provision also makes other minor wording changes.

Section 668.45 Information on Completion or Graduation Rates

The proposed regulations would amend provisions relating to an institution's disclosure of its completion or graduation rate and, if applicable, transfer-out rate to comply with changes made to the HEA by the 1998 Amendments and by Public Law 105–18, the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia.

An institution will continue to be able to comply with all requirements concerning disclosure of its completion or graduation rate, and if applicable, transfer-out rate, by completing the National Center for Education Statistics' Graduation Rate Survey (GRS).

Cohort Changes

These proposed regulations incorporate changes made by Section 60001 of Public Law 105–18 which changed the beginning of the required cohort period used to calculate an institution's completion/graduation rate and, if applicable, transfer-out rate. This change requires an institution to establish a cohort beginning September 1 of each year, instead of July 1 of each year. The new cohort for calculating these rates is for students who enter an institution on or after September 1, 1998. The Secretary informed institutions of these changes in a June 1998 Dear Colleague Letter (GEN–98–11). An institution that established cohorts beginning on September 1 for students who entered the institution between September 1, 1996 and August 31, 1998 for purposes of the GRS survey may continue to report rates based on those cohorts.

Transfer-Out Rate

The proposed regulations implement the new statutory provisions pertaining to students who transfer from one institution to another. Under current regulations, an institution must disclose a transfer-out rate for students who subsequently enroll in any program of an eligible institution for which the program of the prior institution provided substantial preparation. This requirement has applied equally to institutions such as community colleges that prepare students in significant numbers for transfer to other institutions, as well as to traditional four-year institutions that have only a small, incidental number of transfers.

Under proposed § 668.45(a)(2), a transfer-out rate would be required only of institutions that determine that their mission includes providing substantial preparation for their students to transfer-out, such as community colleges. The proposed regulations would allow an institution to determine for itself if it provides substantial preparation for its students for transfer to a program at another eligible institution. Substantial preparation does not include preparation for a student to enroll in a graduate or professional program after the student completes an undergraduate program. The Secretary anticipates that the required transfer-out rate will not apply to most four-year institutions, although any institution may disclose a transfer-out rate pursuant to proposed § 668.45(f)(3).

Disclosure Date

Under current regulations, an institution is required to disclose its completion/graduation and transfer-out rates no later than January 1 following 150% of the normal time for completion/graduation from its programs. For example, an institution that offers four-year programs only, must disclose its rates for a cohort of students no later than the January 1 following six years from the date that the cohort began the program. The 1998 Amendments changed the disclosure date from January 1 to July 1 for any rate that an institution discloses on or after October 1, 1998, regardless of when the institution established the cohort.

Establishing the Cohort

Under current regulations, an institution that does not operate on a term basis must include in the cohort any first-time, full-time, certificate or degree-seeking student who attended at least one day of class. In an effort to achieve greater consistency between term and non-term institutions, for programs less than or equal to one academic year in length, the proposed regulations would include in the cohort only students who attend at least fifteen days of class. For programs that are longer than one academic year, the proposed regulations would include in the cohort only students who attend at least thirty days of class. The Secretary requests comments on whether these proposed timeframes are appropriate, in light of their potential impact on the completion or graduation and transfer-out rates.

Optional Disclosures

Current regulations provide that an institution may disclose a separate completion/graduation rate for students who transfer into the institution. Pursuant to the 1998 Amendments, the proposed regulations would give institutions the option of disclosing two additional rates. The first optional rate is a completion/graduation and transfer-out rate of students who have left school for the following reasons: to serve in the Armed Forces, to serve on official church missions, to serve with a foreign aid service of the Federal Government (e.g., the Peace Corps), because they are totally and permanently disabled, or because they are deceased. The second optional rate is a transfer-out rate even when the institution's mission does not include providing substantial preparation for its students to enroll in a program at another eligible institution.

Section 668.46 Institutional Security Policies and Crime Statistics

The proposed regulations would amend requirements relating to an institution's disclosure of its annual security report to current and prospective students and employees to comply with changes made by the 1998 Amendments and to improve the administration of the campus security regulations. The Secretary also proposes to reorganize this section so that the various requirements are more clearly presented.

Definitions—§ 668.46(a)

Business day. The proposed regulations would define a business day to mean Monday through Friday, excluding any day when the institution is closed. The 1998 Amendments require an institution that has a campus police or campus security department to establish a crime log and to enter or update information in the crime log within two business days after the campus police or campus security department receives the information.

Campus, noncampus building or property, and public property. The 1998 Amendments revised the definition of a campus and added definitions of noncampus building or property and public property for an institution to follow in complying with the campus security requirements. The proposed regulations would reflect those changes. Previously, the HEA defined campus to mean property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution for its educational purposes, as well as any property owned or controlled by a student organization recognized by the institution, or any property owned by a third-party but controlled by the institution.

a. *Campus.* The first part of the proposed definition of "campus" remains the same: property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution for its educational purposes. However, the new definition specifically includes residence halls. The second part of the proposed definition is property that is within or reasonably contiguous to the area described in the first part of the definition, that is owned by the institution and controlled by another person, that is frequently used by students, and that supports institutional purposes such as a food or other retail vendor.

b. *Noncampus building or property.* The first part of the definition of "noncampus building or property" is not significantly different from what is in the current regulatory definition of campus: any building or property owned or controlled by a student organization recognized by the institution. The proposed regulations would define recognition to mean official recognition because it may be difficult for an institution to know about organizations that it does not officially recognize. The second part of the definition is a building or property owned or controlled by the institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution. Under this provision, an institution would pay particular attention to whether students frequently use the site to determine if a location qualifies as a noncampus building or property site for campus security purposes. If students do not frequently use a site, the proposed regulations would exclude that site from noncampus buildings or property. For example, if students do not frequently go to a cooperative extension site of a land-grant institution, the institution would not consider that site a noncampus building or property.

c. *Public property.* The 1998 Amendments require the reporting of crime statistics on public property as part of an institution's annual security report. The proposed regulations would define public property to be all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus or immediately adjacent to and accessible from the campus. This definition reflects statutory changes and the committee's agreement that public property be limited to property accessible from the campus. The definition would not require an institution to include in its annual security report statistics of crimes committed on, for example, highways that are adjacent to the campus, but which are separated from the campus by a fence or other man-made barrier.

Campus security authority. These proposed regulations would modify the definition of a "campus security authority" in the current regulations. Under current regulations, this definition serves to identify which campus officials are responsible for making timely warning reports. The proposed definition would also apply to the statistical reporting requirements.

The proposed definition would include (1) a campus police department or a campus security department of an institution (previously a campus law enforcement unit), (2) an individual who has responsibility for campus security, but who is not part of a campus police department or a campus security department (for example, a person who only monitors the entrance to institutional property), (3) any individual specified by the institution to receive reports of offenses, and (4) any official of the institution who has significant responsibility for student and campus activities, such as student housing, student discipline, and campus judicial proceedings.

Current regulations exclude persons with significant counseling responsibilities from the definition of a "campus security authority." The proposed regulations would exclude only pastoral counselors and professional counselors. The committee agreed to propose this change to ensure that crime victims and others have full access to the services of pastoral and professional counselors, but also to avoid situations where an expansive definition of counselor might be used to evade statistical reporting. These regulations propose to define a "pastoral counselor" as an employee of an institution who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. The proposed regulations would define a "professional counselor" as an employee of an institution whose official responsibilities include providing psychological counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. The Secretary requests comments on these proposed exclusions from the definition of a campus security authority.

The proposed regulations would include as a campus security authority, for purposes of reporting crime statistics in the institution's annual security report, an individual who has responsibility for campus security but who does not constitute a campus police department (for example, an access monitor who checks student identification at a building entrance). However, since this individual is separately defined from a campus police department, this individual would not be responsible for maintaining a crime log under proposed § 668.46(f).

Referred for campus disciplinary action. The 1998 Amendments require an institution to disclose in its crime statistics the number of persons referred for campus disciplinary action for

liquor-law, drug-law, and weapons possession violations. The proposed regulations would define the term "referred for campus disciplinary action" to mean the referral of any student to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

Annual Security Report—§ 668.46(b)

The current regulations list various categories of information and required disclosures that an institution must include in the annual security report required by § 668.46. In conjunction with the proposal described below to exclude professional and pastoral counselors from the statistical reporting requirements, these proposed regulations would change the annual security report to improve and encourage voluntary reporting by students. The proposed regulations would include in the list of required disclosures:

- A description of the institution's procedures for preparing the annual disclosure of crime statistics. Currently, an institution must include a description of its procedures for making timely warning reports. The proposed regulations would require that an institution also include a description of its procedures for preparing the annual disclosure of crime statistics, in recognition of the need for students and employees to know when and how the crime statistics are gathered and disseminated by an institution.
- A statement that discloses whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis, and, if the institution has such a policy, a description of the policy and relevant procedures. The regulations propose this statement in an effort to encourage the voluntary reporting of crime statistics by a victim or witness.
- A statement that discloses whether the institution has a policy encouraging pastoral or professional counselors employed by the institution, if and when the counselor deems it appropriate, to inform the person being counseled of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. The committee agreed to propose this statement in an effort to encourage the reporting of crime statistics. Many negotiators felt strongly that the decision whether and when to provide this information to the person being counseled must remain entirely within the counselor's professional discretion. The Secretary agrees, and these proposed regulations would not interfere with that discretion.
- A statement of the institution's policy concerning the monitoring and recording (through local police agencies) of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by an institution.

Change in Statutory Reference

To conform to the 1998 Amendments, the proposed regulations would change the reference in § 668.46(b)(10) from Section 1213 to Section 120(a)–(d) of the HEA.

Report of Statistics—§ 668.46(c)

New Crime Disclosures

The 1998 Amendments changed the list of crimes that an institution must disclose in its annual security report. Current regulations require that the statistical report include a murder category; the 1998 Amendments added an additional category of manslaughter. Under the standard definitions used by the Uniform Crime Reporting System (UCR) of the Federal Bureau of Investigation (FBI), manslaughter is broken into two categories: nonnegligent manslaughter, and negligent manslaughter. Under UCR, the former is reported together with murder under a single category; negligent manslaughter is separately reported. Murder and nonnegligent manslaughter is the willful (nonnegligent) killing of one human being by another. Manslaughter by negligence is the killing of another person through gross negligence.

The proposed regulations would incorporate manslaughter into the regulations by adding nonnegligent manslaughter to the current murder category and adding a new negligent manslaughter category. Collectively the two categories would be referred to as "criminal homicide" consistent with the FBI's definitions.

The 1998 Amendments also added the category of arson to the crime disclosure list. Arson is defined in the UCR as any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

The proposed regulations would amend Appendix E to Part 668 of the Student Assistance General Provisions to include the definitions of criminal homicide and arson, as provided in the UCR.

Current regulations require an institution to disclose the number of arrests for the most recent calendar year for liquor-law, drug-law, and weapons possession violations. The 1998 Amendments changed the period for which these violations must be disclosed from the most recent calendar year to the most recent three calendar years to be consistent with the three calendar-year requirement for other crimes. The 1998 Amendments also require that institutions disclose not only the number of arrests for liquor-law, drug-law, and weapons possessions violations, but also the number of persons who were referred for campus disciplinary action for these activities. If a student was both arrested and referred for campus disciplinary action for the same violation, the proposed regulations would require that the institution report the statistic only under arrests.

Hate Crime Disclosure

Current regulations require an institution to disclose the number of hate crimes only among the statistics it reports for murder, forcible rape, and aggravated assault. A hate crime is one in which the victim is selected intentionally because of his or her actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability. The 1998 Amendments expanded the hate crime disclosure requirements. The 1998 Amendments require an institution to disclose, by category of prejudice, the number of hate crimes among:

(1) all the crimes that it is required to report (excluding arrests for and persons referred for campus disciplinary action for liquor-law, drug-law, or weapons-law violations); and

(2) any other crimes involving bodily injury reported to a local police agency or a campus security authority.

The proposed regulations would implement that change, and would require that an institution use the UCR standard of evidence of prejudice to assist in determining if a hate crime occurred. Under this standard, an incident must manifest evidence that the perpetrator selected the victim on the basis of prejudice in order to be considered a hate crime.

Disclosure of Location of Crime

The 1998 Amendments require an institution to provide a geographic breakdown for the required crime statistics according to the following categories: (1) On campus, (2) noncampus building or property, (3) public property, and (4) dormitories or other residential facilities for students on campus. The proposed regulations would incorporate these categories and clarify that the dormitory and residential facility category is a subset of the campus category.

How a Crime Is Recorded

Currently, the Secretary requires an institution to report a crime statistic for the calendar year in which the crime occurred. The proposed regulations do not address this matter specifically. In response to discussions during negotiated rulemaking, the Secretary requests comments as to whether the final regulations should require an institution to report a crime statistic for the calendar year in which the crime was reported to the institution, rather than for the calendar year in which it occurred.

Protecting Identity

The proposed regulations include the provision of the 1998 Amendments that specifically prohibits an institution from identifying the victim or the alleged perpetrator of the crime in the institution's disclosure of its crime statistics.

Time Period for Statistics and Transition to New Requirements

The HEA requires an institution to disclose the previous three calendar years' crime statistics for the required statistical disclosures. For example, an institution must include in its annual security report for 1999, crime statistics for calendar years 1996, 1997, and 1998. As discussed under the sections titled "New crime disclosures," "Hate crime disclosure," and "Disclosure of location of crime," the 1998 Amendments changed the required statistical disclosures and the geographic areas for which the statistics must be reported; the changes were effective October 1, 1998.

Because the HEA requires the statistical disclosures to be reported on a calendar-year basis, the Secretary interprets the HEA to require that the changes concerning the collection and disclosure of crime statistics take effect at the beginning of the calendar year immediately following passage of the 1998 Amendments. Therefore, an institution must begin collecting statistics using the new categories, effective for calendar year 1999. An institution's 2000 report—which will include statistics for calendar years 1997, 1998, and 1999—must include statistics for calendar year 1999 using the new categories. An institution may continue to report statistics for calendar years 1997 and 1998 using the previously applicable categories, except that an institution may use the new categories for 1997 and 1998 if it wants to do so.

Access to Counseling

The proposed regulations would make clear that an institution is not required to report statistics relating to crimes that are reported to a pastoral counselor or a professional counselor who is functioning within the scope of his or her license or certification. These regulations are proposed in response to the counseling community's strongly held belief, expressed during the negotiated rulemaking sessions, that required reporting from counselors has had a chilling effect on victims and others' seeking counseling, particularly where counselors felt compelled under their professional ethical codes to notify individuals of the reporting requirement.

The proposed rule agreed to by the committee is intended to ensure that crime victims and others are not deterred from seeking appropriate psychological or pastoral care. The committee was of the opinion that the proposed changes to the regulation would encourage other confidential reporting options so that statistical data can be obtained without infringing on the individual's expectation of confidentiality.

Compilation of Crimes

Under existing regulations, an institution must use the definitions of crimes provided by the UCR System and the Hate Crime Collection Guidelines published by the FBI. For the application of these definitions and classification of crime, an institution may use either the UCR Reporting Handbook or the UCR Reporting Handbook: National Incident-Based Reporting System (NIBRS) EDITION, except in determining how to report a single incident involving multiple criminal offenses. If an institution reports a crime involving multiple offenses, the institution must use the UCR Reporting Handbook, including the FBI's Hierarchy Rule.

Use of a Map

The proposed regulations would add a provision to encourage an institution to use a map to aid in the disclosure of its crime statistics. The purpose of a map is to clearly depict and disclose the areas for which the institution will be reporting crime statistics; that is, its campus, noncampus buildings or property, and public property. If an institution chooses to use a map to depict these areas, the institution may limit its reporting of crime statistics to crimes committed in those areas, as long as the map accurately depicts these areas as defined by regulation. If an institution has separate campuses and chooses to use a map to depict the appropriate geographic areas, the proposed regulations would require that the institution use separate maps for separate campuses.

Obtaining Statistics From Local and State Police Agencies

The Secretary proposes to clarify that an institution may rely on statistical information supplied by local and State police agencies, as long as the institution makes a reasonable, good faith effort to obtain these statistics. The Secretary encourages an institution to document its efforts to obtain these data, including its success or lack of success in obtaining the data.

Disclosure Date for Annual Security Report

The committee agreed to change the date by which an institution must disclose its annual security report from September 1 to October 1 of each year because many institutions do not begin fall enrollment until after September 1.

Timely Warning—§ 668.46(e)

The 1998 Amendments did not change the requirement that an institution make a timely warning report to the campus community when a crime that the institution considers to be a threat to students and employees is reported to a campus security authority or a local police agency. Proposed § 668.46(a) would broaden the definition of a campus security authority, by excluding only pastoral counselors and professional counselors as defined in the regulation, as opposed to the current exclusion of any individual with significant counseling responsibilities. Therefore, the timely warning requirement still would not apply for crimes reported to pastoral and professional counselors. However, the timely warning requirement would apply for crimes reported to any campus security authority, including those who have significant counseling responsibilities but are not a pastoral or professional counselor.

Crime Log Requirements—§ 668.46(f)

The 1998 Amendments introduced a requirement that an institution with a campus police or campus security department of any kind maintain a daily, written crime log of any crime reported to that department that occurred on campus, in or on a noncampus building or property, or on public property. It is the Secretary's view that this provision includes an institution that contracts out its security

services. The institution must make this log available for public inspection.

Entries into the crime log must include the nature, date, time, and general location of each crime, and the disposition of the complaint, if known. The log must be written and easily understood. The proposed regulations would require that each crime be entered into the log based on the date the crime was reported, rather than the date the crime occurred. The 1998 Amendments require an institution to make an entry or addition to an entry in the log within two business days of the report of the crime, or the report of additional information, to the campus police or campus security department, unless disclosing the information is prohibited by law or would jeopardize the confidentiality of the victim. The 1998 Amendments also permit an institution to withhold crime log information if release of the information would jeopardize an ongoing criminal investigation or jeopardize the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence. However, once the adverse effect of disclosing the crime log information is no longer likely to occur, the institution must disclose the information. The Secretary wishes to emphasize that an institution may withhold only the specific information that would have an adverse effect described previously; an institution may not automatically withhold all of the log information relating to such a crime. The proposed regulations would permit an institution to archive crime log information after 60 days, as long as the institution makes archived material available for public inspection within two business days of a request. The committee recognizes that some institutions are already required by State law to maintain a crime log; the proposal does not require maintenance of a separate Federal log. An institution may use a State log to comply with the requirements of these regulations, as long as that log includes all of the information and procedures required under this proposal.

Report to the Secretary

The 1998 Amendments require each institution to submit annually the statistical section of its security report to the Secretary. The Secretary will make a form available to institutions for the reporting of this information and will notify institutions when and how to submit their crime statistics. There is no requirement that an institution submit statistical information in the institution's crime log to the Secretary.

Recordkeeping Requirements

Section 668.24 of the Student Assistance General Provisions provides the recordkeeping requirements for an institution to administer the student financial assistance programs under Title IV of the HEA. Generally, an institution must retain records for three years.

An institution is required to maintain campus security records to document the information it must include in its annual security report, which must include information covering the previous three calendar years. An institution must keep campus security records for three years following the last year the information is included in its annual security report.

For example, an institution must include campus security information for the 1997 calendar year in its 1998, 1999, and 2000 annual security reports. Under proposed § 668.41(e), the report must be distributed annually by October 1. Therefore, an institution would be required to maintain its 1997 campus security records until October 1, 2003.

Section 668.47 Report on Athletic Program Participation Rates and Financial Support Data

The 1998 Amendments amended section 485(g) of the HEA (the Equity in Athletics Disclosure Act, or EADA) to require institutions to disclose additional data about revenues and expenses attributable to their intercollegiate athletic activities and to require institutions to submit their annual EADA report to the Secretary.

The proposed regulations would implement the changes made by the 1998 Amendments and reflect the committee's agreement to provide greater specificity in the definitions and in the disclosure requirements.

The primary change to the EADA made by the 1998 Amendments was the relocation of disclosure requirements concerning revenues and expenses attributable to an institution's intercollegiate athletic activities from section 487(a) (Program Participation Agreements), to section 485(g). In addition, the audit requirement under section 487(a), which applied only to institutions that awarded athletically related student aid, was repealed by the 1998 Amendments.

Previously, the EADA required an institution to disclose its operating expenses for each varsity team, its combined revenues from all men's sports, and its combined revenues from all women's sports. The amended statute requires the following additional breakdowns of revenues and expenses: (1) total revenues and expenses attributable to an institution's intercollegiate athletic activities; and (2) revenues and expenses attributable to football, men's basketball, women's basketball, all men's sports combined except football and basketball, and all women's sports combined except basketball.

The committee agreed to propose additional clarifications to § 668.47. The proposed regulations would include in the definitions of revenues and expenses examples of revenues and expenses that would be included in an institution's EADA report. The examples would not expand the statutory definitions of revenues and expenses. The basis for determining whether a revenue or expense should be included in an institution's EADA report is simply whether the item was attributable to the institution's intercollegiate athletic activities. The examples are meant merely to provide guidance on revenues and expenses that frequently will be attributable to intercollegiate athletic activities. Clarifying language also has been added to the definitions of operating expenses and recruiting expenses.

Several negotiators noted that some individuals have used EADA to gauge whether an institution is in compliance with Title IX of the Education Amendments of 1972 and that, in some cases a misunderstanding of how the EADA dealt with the counting of athletes who participated on more than one varsity team caused an institution to appear to be out of compliance with the athletic financial aid provisions of Title IX. Under Title IX, for purposes of counting participation opportunities provided to male and female athletes, an athlete is counted as a participant for each sport he or she plays. However, for purposes of calculating the equitable distribution of athletic financial aid under Title IX, a scholarship athlete who plays on more than one team is counted as a participant only once because he or she receives only one scholarship.

Therefore, these proposed regulations would add a requirement that in addition to listing the number of participants for each varsity team, an institution provide an unduplicated head count of individuals who participated on at least one varsity team. The committee believes additional reporting requirements should correct the confusion concerning the number of individuals participating on varsity teams.

The Secretary notes that the EADA and Title IX were enacted for different, but complementary, purposes. The

EADA is designed to make students, prospective students, and others aware of an institution's participation rates, staffing, and financial support for its men's and women's intercollegiate athletic programs. Title IX prohibits discrimination based on gender in education programs. Title IX does not require identical programs for men and women. Therefore, differences between men's and women's athletic programs reflected in an institution's EADA report do not necessarily reflect that the institution is or is not in compliance with Title IX (the Secretary has published Title IX definitions and requirements at 34 CFR part 106 and 44 FR 71413 (Dec. 11, 1979)).

The committee agreed to propose a modification of the requirement that institutions report whether their head and assistant coaches are full-time or part-time. The current regulations require an institution to report whether a coach is assigned to a team full-time or part-time. The proposed change would require an institution to indicate whether a coach is assigned to a team full-time or part-time, and if, part-time, whether the coach is a full-time or part-time employee of the institution. This change would better enable prospective student athletes and others to understand a coach's status.

For example, the committee noted that most coaches at National Collegiate Athletic Association Division III institutions are part-time. However, many of those coaches are full-time employees of their institutions, and therefore are effectively as accessible to their student-athletes as are full-time coaches at other institutions. The Secretary believes that providing for institutions to provide this information would benefit both institutions and students.

The Secretary does not consider cheerleading a sport for purposes of the EADA. To be considered a sport under the EADA, an activity's primary purpose must be to engage in intercollegiate competition.

Section 668.48 Report on Completion or Graduation Rates for Student-Athletes

Proposed § 668.48 simply reflects the previous discussion of transfer-out rates in § 668.45, by indicating that a transfer-out rate need only be disclosed by an institution to which the required transfer-out rate is applicable (that is, an institution that determines that its mission includes providing substantial preparation for students to enroll in a program at another eligible institution).

Section 668.48(a)(1)(ii), (iv) and (vi) requires an institution to disclose a completion or graduation rate and, if applicable, a transfer-out rate for students in specified cohorts who received athletically related student aid. The Secretary wishes to clarify that an institution that offers a predominant number of programs based on semesters, trimesters, or quarters only must include in the rates required by § 668.48(a)(1)(ii), (iv) and (vi) students who received athletically-related student aid by October 15 or the end of the institution's drop-add period for the relevant academic year.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.41 *Reporting and disclosure of information.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these proposed regulations are institutions of higher education that participate in the Title IV, HEA programs. These institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. These proposed regulations would minimize administrative and regulatory burden on institutions by permitting an institution to use Internet or Intranet websites to comply with the statutory requirement to make campus security information available to current or prospective employees and students.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Proposed §§ 668.41, 668.43, 668.45, 668.46, 668.47, and 668.48 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Institutional and Financial Assistance Information

These regulations affect the following types of entities eligible to participate in the Title IV, HEA programs: Public educational institutions, private non-profit educational institutions, and private for-profit educational institutions.

The information to be collected is institutional and financial assistance information concerning each institution. Each institution annually must make the information available to enrolled and prospective students, and must submit certain information to the Secretary.

Educational institutions that participate in Title IV, HEA programs must collect this information to satisfy the requirements for participation set forth in section 485 of the HEA. Each institution annually must submit to the Secretary the data required by §§ 668.45 through 668.48. The Secretary will use these data to prepare reports concerning graduation rates, campus crime, and gender equity in athletics and will make the data publicly available.

Annual public reporting and recordkeeping burden is estimated to average 3 hours for each response for 8500 respondents, and an additional .5 hour for 1800 respondents, for Sec. 668.41; .5 hour for each response for 8500 respondents for Sec. 668.43; 20 hours for each response for 8500 respondents for Sec. 668.45; 29 hours for each response for 8500 respondents for Sec. 668.46; 5.5 hours for each response for 1800 respondents for Sec. 668.47; and 20 hours for each response for 8500 respondents for Sec. 668.48. These hours include the time needed for searching existing data sources, and gathering, maintaining, and disclosing the data.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES section of this preamble.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the collection of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR Part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedreg.htm
http://www.ed.gov/legislation/HEA/rulemaking/

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: August 2, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094, 1099c and 1141, unless otherwise noted.

2. The title of subpart D is revised to read as follows:

Subpart D—Institutional and Financial Assistance Information for Students

3. Section 668.41 is revised to read as follows:

§ 668.41 Reporting and disclosure of information.

(a) *Definitions.* The following definitions apply to this subpart:

Athletically related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student-athlete simply happens to be the recipient, is not athletically related student aid.

Certificate or degree-seeking student means a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

First-time freshman student means an entering freshman who has never attended any institution of higher education. It includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

Notice means information provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing

through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet website or an Intranet website does not constitute a notice.

Prospective student means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Undergraduate students, for purposes of §§ 668.45 and 668.48 only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate.

(b) *Disclosure through Internet or Intranet websites.* Subject to paragraphs (c)(2)(i) and (ii), (e)(2) and (3), or (g)(1)(ii) of this section, as appropriate, an institution may satisfy any disclosure requirement under paragraph (d), (e), or (g) of this section for—

(1) Enrolled students or current employees by posting the disclosure on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the disclosure is required; and

(2) Prospective students or prospective employees by posting the disclosure on an Internet website.

(c) *Notice to enrolled students.* (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to § 99.7. The notice must list and briefly describe the disclosures and inform the student how to obtain the disclosures.

(2) An institution that makes a disclosure to enrolled students required under paragraph (d), (e), or (g) of this section by posting the disclosure on an Internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

(i) The exact electronic address at which that disclosure is posted; and

(ii) A statement that the institution will provide a paper copy of that disclosure on request.

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student, on request, through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42);

(2) The institution (pursuant to § 668.43);

(3) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation; and

(4) The terms and conditions under which students receiving Federal Family Education Loan or William D. Ford Federal Direct Loan assistance may obtain deferral of the repayment of the principal and interest of the loan for—

(i) Service under the Peace Corps Act (22 U.S.C. 2501);

(ii) Service under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951); or

(iii) Comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service.

(e) *Annual security report.* (1) *Enrolled students and current employees—annual security report.* By October 1 of each year, an institution must distribute, to all enrolled students and current employees, its annual security report described in § 668.46(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet website or an Intranet website, subject to paragraphs (e)(2) and (3) of this section.

(2) *Enrolled students—annual security report.* If an institution chooses to distribute its annual security report to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) *Current employees—annual security report.* If an institution chooses to distribute its annual security report to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report.* The institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report, upon request, to a prospective student or prospective employee. If the institution chooses to provide its annual security report to prospective students and prospective employees by posting the disclosure on an Internet website, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(f) *Prospective student-athletes and their parents, high school coach and guidance counselor—report on completion or graduation rates for student-athletes.*

(1)(i) Except under the circumstances described in paragraph (f)(1)(ii) of this section, an institution that is attended by students receiving athletically related student aid, when it offers a prospective student-athlete athletically related student aid, must provide to the prospective student-athlete, and his or her parents, high school coach, and guidance counselor, the report produced pursuant to § 668.48(a).

(ii) An institution's responsibility under paragraph (f)(1)(i) of this section with reference to a prospective student athlete's high school coach and guidance counselor is satisfied if—

(A) The institution is a member of a national collegiate athletic association;

(B) The association compiles data on behalf of its member institutions, which data the Secretary determines are substantially comparable to those required by § 668.48(a); and

(C) The association distributes the compilation to all secondary schools in the United States.

(2) By July 1 of each year, an institution must submit to the Secretary the report produced pursuant to § 668.48.

(g) *Enrolled students, prospective students, and the public—report on athletic program participation rates and financial support data.*

(1)(i) An institution of higher education subject to § 668.47 must, not later than October 15 of each year, make available on request to enrolled students, prospective students, and the public, the report produced pursuant to § 668.47(c). The institution must make the report easily accessible to students, prospective students, and the public and must provide the report promptly to anyone who requests it.

(ii) The institution must provide notice to all enrolled students, pursuant to paragraph (c)(1) of this section, and prospective students of their right to request the report described in paragraph (g)(1) of this section. If the institution chooses to make the report

available by posting the disclosure on an Internet website or an Intranet website, it must provide in the notice the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report on request. For prospective students, the institution may not use an Intranet website for this purpose.

(2) An institution must submit the report described in paragraph (g)(1)(i) of this section to the Secretary within 15 days of making it available to students, prospective students, and the public.

(Authority: 20 U.S.C. 1092)

§ 668.42 [Amended]

4. Section 668.42 is removed, and §§ 668.43 through 668.49 are redesignated as §§ 668.42 through 668.48, respectively.

5. Newly redesignated § 668.43 is revised to read as follows:

§ 668.43 Institutional information.

(a) Institutional information that the institution must make readily available upon request to enrolled and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) The requirements for officially withdrawing from the institution;

(4) A summary of the requirements under § 668.22 for the return of title IV grant or loan assistance;

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(6) The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(7) A description of any special facilities and services available to disabled students;

(8) The titles of persons designated under § 668.44 and information regarding how and where those persons may be contacted; and

(9) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs.

(b) The institution must make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(Authority: 20 U.S.C. 1092)

6. Newly redesignated § 668.45 is revised to read as follows:

§ 668.45 Information on completion or graduation rates.

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, full-time undergraduate students who enter the institution on or after September 1, 1998, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, full-time undergraduate students who enter the institution on or after September 1, 1998, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of programs based on semesters, trimesters, or quarters must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution during the fall term.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the group of certificate -or degree-seeking, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(iii) For purposes of the completion or graduation rate and, if applicable, transfer-out rate calculations required in paragraph (a) of this section, an institution must count as entering students only first-time freshman students, as defined in § 668.41(a).

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time freshman student who is enrolled as of October 15, or the end of the institution's drop-add period.

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time freshman student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) Beginning with the group of students who enter the institution between September 1, 1998 and August 31, 1999, and for groups of students who enter during succeeding September 1 through August 31 time periods, an institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the point in time that 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated within 150% of the normal time for completion or graduation from their program; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, within 150% of normal time for completion from that program.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who, within 150% of the normal time for completion or graduation from the program in which they were enrolled, have not completed or graduated and subsequently enroll in any program of an eligible institution for which its program provides substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may exclude students who—

(1) Have left school to serve in the Armed Forces;

(2) Have left school to serve on official church missions;

(3) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(4) Are totally and permanently disabled; or

(5) Are deceased.

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate and transfer-out rate for students described in paragraph (d) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Authority: 20 U.S.C. 1092)

7. Newly redesignated § 668.46 is revised to read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) *Additional definitions that apply to this section.*

Business Day: Monday through Friday, excluding any day when the institution is closed.

Campus: (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

Campus security authority: (1) A campus police department or a campus security department of an institution.

(2) An individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (1) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

(3) An individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

(4) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. A pastoral counselor or professional counselor, when acting as such, is not considered a campus security authority.

Noncampus building or property: (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

(2) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

Pastoral counselor: An employee of an institution who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Professional counselor: An employee of an institution whose official responsibilities include providing psychological counseling to members of the institution's community and who is functioning within the scope of his or her license or certification.

Prospective employee: An individual who has contacted an institution for the purpose of requesting information concerning employment with the institution.

Public property: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

Referred for campus disciplinary action: The referral of any student to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

(b) *Annual Security Report.* An institution must prepare an annual security report that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c).

(2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—

(i) Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section;

(ii) Policies for preparing the annual disclosure of crime statistics; and

(iii) A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and if so, a description of those policies and procedures.

(3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of current policies concerning campus law enforcement that—

(i) Addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals;

(ii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies; and

(iii) Describe procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for

inclusion in the annual disclosure of crime statistics.

(5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.

(10) A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

(11) A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include—

(i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;

(iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;

(v) Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

(c) *Crime statistics.* (1) *Crimes that must be reported.* An institution must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of the following offenses reported to local police agencies or to a campus security authority:

(i) Criminal Homicide:

(A) Murder and Nonnegligent Manslaughter.

(B) Negligent Manslaughter.

(ii) Sex Offenses:

(A) Forcible Sex Offenses.

(B) Nonforcible Sex Offenses.

(iii) Robbery.

(iv) Aggravated assault.

(v) Burglary.

(vi) Motor vehicle theft.

(vii) Arson.

(viii)(A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.

(B) Persons not included in paragraph (c)(1)(viii)(A) of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

(2) *Reported Crimes if a Hate Crime:* An institution must report, by category of prejudice, any crime it reports pursuant to paragraphs (c)(1)(i) through (vii) of this section, and any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

(3) *Crimes by location.* The institution must provide a geographic breakdown of the statistics reported under paragraphs (c)(1) and (2) of this section according to the following categories:

(i) On campus.

(ii) Of the crimes in paragraph (c)(3)(i) of this section, the number of crimes that took place in dormitories or other residential facilities for students on campus.

(iii) In or on a noncampus building or property.

(iv) On public property.

(4) *Identification of the victim.* The statistics required under paragraphs (c)(1) and (2) of this section may not include the identification of the victim or the person accused of committing the crime.

(5) *Pastoral and professional counselor.* An institution is not required to report statistics under paragraphs (c)(1) and (2) of this section for crimes reported to a pastoral or professional counselor.

(6) *UCR definitions.* An institution must compile the crime statistics required under paragraphs (c)(1) and (2) of this section using the definitions of crimes provided in Appendix E to this Part, and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS EDITION, except that in determining how to report crimes committed in a multiple-offense situation an institution must use the UCR Reporting Handbook. Copies of the UCR publications referenced in this paragraph are available from: FBI, Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306; (304–625–2823).

(7) *Use of a map.* In complying with the statistical reporting requirements under paragraphs (c)(1) and (2) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas, and may limit its reporting of crime statistics to crimes committed in those areas, if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(8) *Statistics from police agencies.* In complying with the statistical reporting

requirements under paragraphs (c)(1) through (3) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

(d) *Separate campus.* An institution must comply with the requirements of this section for each separate campus.

(e) *Timely warning.* (1) An institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

(i) Described in paragraph (c)(1) of this section;

(ii) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(1) of this section or local police agencies; and

(iii) Considered by the institution to represent a threat to students and employees.

(2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

(f) *Crime log.* (1) An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

(3)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would—

(A) Jeopardize an ongoing criminal investigation or the safety of an individual;

(B) Cause a suspect to flee or evade detection; or

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

(5) The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(g) *Report to the Secretary.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by paragraph (c) of this section to the Secretary. (Authority: 20 U.S.C. 1092)

8. Newly redesignated § 668.47 is revised to read as follows:

§ 668.47 Report on athletic program participation rates and financial support data.

(a) *Applicability.* This section applies to a co-educational institution of higher education that—

(1) Participates in any title IV, HEA program; and

(2) Has an intercollegiate athletic program.

(b) *Definitions.* The following definitions apply for purposes of this section only.

(1) *Expenses.*

(i) *Expenses* means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.

(ii) *Operating expenses* means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as "game-day expenses"), for—

(A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and

(B) Officials.

(iii) *Recruiting expenses* means all expenses an institution incurs attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.

(2) *Institutional salary* means all wages and bonuses an institution pays a coach as compensation attributable to coaching.

(3)(i) *Participants* means students who, as of the day of a varsity team's first scheduled contest—

(A) Are listed by the institution on the varsity team's roster;

(B) Receive athletically related student aid; or

(C) Practice with the varsity team and receive coaching from one or more varsity coaches.

(ii) Any student who satisfies one or more of the criteria in paragraphs (b)(3)(i)(A) through (C) of this section is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (i.e., a redshirt), or for academic, medical, or other reasons.

(4) *Reporting year* means a consecutive twelve-month period of time designated by the institution for the purposes of this section.

(5) *Revenues* means revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.

(6) *Undergraduate students* means students who are consistently designated as such by the institution.

(7) *Varsity team* means a team that—

(i) Is designated or defined by its institution or an athletic association as a varsity team; or

(ii) Primarily competes against other teams that are designated or defined by their institutions or athletic associations as varsity teams.

(c) *Report.* An institution described in paragraph (a) of this section must annually, for the preceding reporting year, prepare a report that contains the following information:

(1) The number of male and the number of female full-time undergraduate students that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants as of the day of its first scheduled contest of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated.

(ii) Total operating expenses attributable to the team, except that an institution may report combined operating expenses for closely related teams, such as track and field or swimming and diving, but such combinations must be reported separately for men's and women's teams.

(iii) In addition to the data required by paragraph (c)(2)(ii) of this section, an institution may report operating expenses attributable to the team on a per-participant basis.

(iv)(A) Whether the head coach was male or female, was assigned to the team on a full-time or part-time basis, and if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the institution.

(B) The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(v)(A) The number of assistant coaches who were male and the number of assistant coaches who were female, and within each category, the number who were assigned to the team on a full-time or part-time basis, and of those assigned on a part-time basis, the number who were full-time and part-time employees of the institution.

(B) The institution must consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for purposes of this report.

(3) The unduplicated head count of the individuals who were listed under paragraph (c)(2)(i) of this section as a participant on at least one varsity team, by gender.

(4)(i) Revenues derived by the institution according to the following categories (Revenues not attributable to a particular sport or sports must be included only in the total revenues attributable to intercollegiate athletic activities, and if appropriate, revenues attributable to men's sports combined or women's sports combined. Those revenues include, but are not limited to, alumni contributions to the athletic department not targeted to a particular sport or sports, investment interest income, and student activity fees):

(A) Total revenues attributable to its intercollegiate athletic activities.

(B) Revenues attributable to all men's sports combined.

(C) Revenues attributable to all women's sports combined.

(D) Revenues attributable to football.

(E) Revenues attributable to men's basketball.

(F) Revenues attributable to women's basketball.

(G) Revenues attributable to all men's sports except football and basketball, combined.

(H) Revenues attributable to all women's sports except basketball, combined.

(ii) In addition to the data required by paragraph (c)(4)(i) of this section, an institution may report revenues attributable to the remainder of the teams, by team.

(5) Expenses incurred by the institution, according to the following categories (Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses attributable to intercollegiate athletic activities):

(i) Total expenses attributable to intercollegiate athletic activities.

(ii) Expenses attributable to football.

(iii) Expenses attributable to men's basketball.

(iv) Expenses attributable to women's basketball.

(v) Expenses attributable to all men's sports except football and basketball, combined.

(vi) Expenses attributable to all women's sports except basketball, combined.

(6) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, aggregately for men's teams, and aggregately for women's teams.

(7) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(8) The total amount of recruiting expenses incurred, aggregately for all men's teams, and aggregately for all women's teams.

(9)(i) The average annual institutional salary of the non-volunteer head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer head coaches of all women's teams, across all offered sports, on a per person and a per full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If a head coach has responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(10)(i) The average annual institutional salary of the non-volunteer assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer assistant coaches of women's teams, across all offered sports, on a per person and a full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If an assistant coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(Authority: 20 U.S.C. 1092)

9. Newly redesignated § 668.48 is amended as follows:

A. In paragraph (a)(1), by removing "By July 1, 1997, and by every July 1 every year thereafter, each" and adding, in its place, "Annually, by July 1, an"; by removing "shall" and adding in its place "must"; and by removing "an annual" and adding, in its place "a".

B. In paragraph (a)(1)(iii), by adding ", if applicable," before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)";

C. In paragraph (a)(1)(iv), by adding ", if applicable," before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)";

D. In paragraph (a)(1)(v), by adding ", if applicable," before "transfer-out" both times it appears; by removing "§ 668.46(a)(2), (3), and (4)" and adding, in its place, "§ 668.45(a)(1)"; and by removing "shall" and adding, in its place, "must";

E. In paragraph (a)(1)(vi), by adding ", if applicable," before "transfer-out" both times it appears; by adding after "recent," "completing or graduating"; by removing "§ 668.46(a)(2), (3), and (4)" and adding in its place

"§ 668.45(a)(1)"; and by removing "shall" and adding in its place "must"; and

F. In paragraph (b), by removing "§ 668.46" and adding in its place "§ 668.45"; by removing "(a)(1)(iii), (a)(1)(iv), and (a)(1)(v)" and adding in their place "(a)(1)(iii) through (vi)"; and by adding ", if applicable," before "transfer-out."

10. Appendix E is amended by removing the definition of "Murder," and by adding the following definitions before the definition of "robbery:"

Appendix E to Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

* * * * *

Crime Definitions From the Uniform Crime Reporting Handbook

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

* * * * *

[FR Doc. 99–20603 Filed 8–9–99; 8:45 am]

BILLING CODE 4000–01–U

VOL
64
ISS
1
5
3
AG
10
999
UMI

Rea

CUSTO
Federal
General
aids
Laws
Presider
Executiv
The Unit
Other Se
Electron
Privacy
Public L
TTY for

ELECTR
World W
Full text
publicat
Federal
Inspecti
E-mail
PENS (P
service
subscrib
with the
Use lists
PENS. W
Referen
Federal
The Fed
regulatio

FEDER
41765–4
41999–4
42265–4
42579–4
42823–4
43043–4
43255–4

Reader Aids

Federal Register

Vol. 64, No. 153

Tuesday, August 10, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998 2
41999–42264 3
42265–42578 4
42579–42822 5
42823–43042 6
43043–43254 9
43255–43598 10

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Supplemented by EO 13132) 43255
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255

7 CFR

11 43043
610 41999
1728 42005

Proposed Rules:
6 42288
354 43103
931 42858
932 42619
981 43298
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043

Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049

Proposed Rules:
361 ..... 42861, 42862

14 CFR

27 43016
29 43016
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261
254 41781
382 41781

Proposed Rules:
25 43570
39 ..... 41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318
65 42810
66 42810
71 ..... 42300, 42301
107 43321
108 43322
147 42810

15 CFR

734 42009
738 42009
740 42009
742 42009
902 42826

16 CFR

5 42594

Proposed Rules:
1212 42302

17 CFR

9 43254
10 43071
12 43071
200 42594
240 ..... 42031, 42594
249 42594

Proposed Rules:
4 41843
275 43556

18 CFR

Proposed Rules:
101.....42304
357.....42623
385.....42307

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
162.....43262
173.....43262
174.....43262
181.....43262

Proposed Rules:
12.....41851
113.....41851, 42872
141.....41851

20 CFR

Proposed Rules:
404.....42310
416.....42310

21 CFR

101.....42277
172.....43072
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596
1308.....42432
1312.....42432

Proposed Rules:
101.....42315
207.....43114
314.....42625, 42873
607.....43114
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032

26 CFR

1.....41783, 43072, 43267
31.....42831
301.....41783
602.....41783, 43072
801.....42834

Proposed Rules:
1.....43117, 43323, 43462
301.....43324
602.....43462

29 CFR

2570.....42246
2575.....42246

Proposed Rules:
2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75.....43280, 43286
90.....43283
202.....43506
206.....43288, 43506
250.....42597

Proposed Rules:
935.....42887
936.....43327

31 CFR

538.....41784
550.....41784
560.....41784

Proposed Rules
375.....42626

33 CFR

100.....42278, 42598, 43289
110.....42279
117.....42033, 42599
160.....41794
165.....43290, 43291

Proposed Rules:
100.....41853

34 CFR

611.....42837

Proposed Rules:
668.....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682.....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:
13.....41854
1191.....42056

37 CFR

Proposed Rules:
201.....42316

39 CFR

20.....43292

40 CFR

9.....42432, 43426
52.....42600, 43083
58.....42530
62.....43091
63.....42764
122.....42432, 43426
123.....42432, 43426
124.....42432, 43426
180.....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846
186.....41818
261.....42033
271.....41823, 42602
403.....42552
501.....42432, 43426
503.....42552
745.....42849

Proposed Rules:
52.....42629, 42888, 42891, 42892
147.....43329
261.....42317
62.....43123
97.....43124
271.....42630, 43331
281.....43336
300.....41875, 42328, 42630, 43129
372.....42222

41 CFR

301.....43254

Proposed Rules:
51-2.....41882
51-5.....41882

42 CFR

413.....42610
498.....43295
1001.....42174

Proposed Rules:
Ch. IV.....43338

44 CFR

61.....41825
64.....42852
206.....41827

Proposed Rules:
61.....42632
62.....42633

45 CFR

801.....42039

46 CFR

10.....42812
12.....42812

Proposed Rules:
535.....42057

47 CFR

1.....42854
5.....43094
63.....43095
73.....41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095
76.....42617, 42855
90.....43094

Proposed Rules:
Ch. 1.....41883, 42635
1.....41884, 41887
2.....41891
15.....41897
51.....41897
68.....41897
73.....41899, 43132
76.....41887
78.....41899
95.....41891

48 CFR

202.....43096
204.....43098
212.....43096
213.....43098
217.....43096
252.....43096
253.....43096
701.....42040
702.....42040
703.....42040
705.....42040
706.....42040
709.....42040
714.....42040
716.....42040
719.....42040
726.....42040
732.....42040
733.....42040
734.....42040
749.....42040
750.....42040
752.....42040
5416.....41834

49 CFR

Proposed Rules:
571.....42330

50 CFR

17.....41835
600.....42286
635.....42855, 43101
648.....42042, 42045
660.....42286, 42856
679.....41839, 42826, 43295, 43296, 43297

Proposed Rules:
17.....41903, 42058, 42250, 43132
600.....42335, 43137
622.....41905, 42068
648.....42071, 43137, 43138
679.....42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 10, 1999

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock; Steller sea lion protection measures; correction; published 8-10-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
District of Columbia; published 6-11-99

POSTAL SERVICE
International Mail Manual:
International priority airmail service; postage rates and service conditions changes; published 8-10-99

TREASURY DEPARTMENT
Customs Service
Technical corrections; published 8-10-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Trusts with foreign grantors; application of grantor trust rules; published 8-10-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant related quarantine, domestic:
Oriental fruit fly; comments due by 8-16-99; published 6-15-99
Plant-related quarantine, domestic:
Mexican fruit fly; comments due by 8-16-99; published 6-15-99

COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; comments due by 8-20-99; published 7-21-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Findings on petitions, etc.—
Barndoor skate; comments due by 8-20-99; published 6-21-99
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 8-16-99; published 7-2-99
Puerto Rico and Virgin Islands coral reef resources; comments due by 8-20-99; published 6-21-99
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permits; comments due by 8-19-99; published 8-4-99
Northeastern United States fisheries—
New England Fishery Management Council; meetings; comments due by 8-16-99; published 7-2-99
West Coast States and Western Pacific fisheries—
West coast salmon; comments due by 8-20-99; published 8-6-99

COMMODITY FUTURES TRADING COMMISSION
Commodity Exchange Act:
Contract market rule review procedures; comments due by 8-16-99; published 7-15-99

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
Double coverage policy; comments due by 8-16-99; published 6-17-99
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99

DEFENSE DEPARTMENT
Engineers Corps
Water resources development projects; public use; comments due by 8-19-99; published 7-20-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Rate schedules filing—
Regional Transmission Organizations; comments due by 8-16-99; published 6-10-99
Oil pipelines:
Annual report; technical conference; comments due by 8-20-99; published 8-5-99

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Off-site waste and recovery operations; comments due by 8-19-99; published 7-20-99
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 8-18-99; published 7-19-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-19-99; published 7-20-99
Louisiana; comments due by 8-18-99; published 7-19-99
Maryland; comments due by 8-19-99; published 7-20-99
Michigan; comments due by 8-20-99; published 7-21-99
Nevada; comments due by 8-16-99; published 6-17-99
Tennessee; comments due by 8-18-99; published 7-19-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Sethoxydim; comments due by 8-16-99; published 6-16-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Commercial mobile radio services—
Calling party pays service offering; regulatory obstacles removed; comments due by 8-18-99; published 7-16-99
Radio stations; table of assignments:
California; comments due by 8-16-99; published 7-6-99
Texas; comments due by 8-16-99; published 7-6-99
Wyoming and Utah; comments due by 8-16-99; published 7-6-99
Television broadcasting:
Cable television systems—
12 GHz relay service; eligibility requirements; comments due by 8-16-99; published 8-2-99

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99
Federal travel:
Income tax reimbursement allowance; comments due by 8-17-99; published 6-18-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Reports and guidance documents; availability, etc.:
Veterinary Medicinal Products, International Cooperation on Harmonisation of Technical Requirements for Registration—
Anthelmintics efficacy; general and specific recommendations; comments due by 8-16-99; published 7-16-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Multifamily housing projects; tenant participation; comments due by 8-16-99; published 6-17-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 8-16-99; published 7-15-99
Maryland; comments due by 8-16-99; published 7-16-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
F and J nonimmigrant aliens; status duration period extension; comments due by 8-16-99; published 6-15-99
Correction; comments due by 8-16-99; published 7-6-99

H petitions filed after numerical cap is reached; treatment; comments due by 8-16-99; published 6-15-99

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Federal Tort Claims Act; comments due by 8-16-99; published 6-15-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Undercapitalized federally-insured credit unions; prompt corrective action system; comments due by 8-16-99; published 5-18-99

INTERIOR DEPARTMENT
National Indian Gaming Commission
Administrative practice and procedure:
Litigation involving agency; testimony, information, and response to subpoena; comments due by 8-16-99; published 7-15-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Supply management program; hearings; comments due by 8-18-99; published 6-21-99

STATE DEPARTMENT
Chemical Weapons Convention and Chemical Weapons Convention Implementation Act:
Sample taking and record keeping and inspections; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Gulf of Alaska, Narrow Cape, Kodiak Island, AK; safety zone; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Standard time zone boundaries:
Kentucky; comments due by 8-20-99; published 6-21-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Checked baggage; security on domestic flights; comments due by 8-17-99; published 6-11-99
Airworthiness directives:
Aerospatiale; comments due by 8-16-99; published 7-16-99
Airbus; comments due by 8-16-99; published 7-15-99
Bell; comments due by 8-16-99; published 6-17-99
Bombardier; comments due by 8-16-99; published 7-16-99
British Aerospace; comments due by 8-16-99; published 7-16-99
Cessna; comments due by 8-16-99; published 7-16-99
Construcciones Aeronauticas, S.A.; comments due by 8-16-99; published 7-16-99
Dornier; comments due by 8-16-99; published 7-16-99
Eurocopter France; comments due by 8-16-99; published 6-17-99
Fairchild; comments due by 8-16-99; published 7-16-99
Fokker; comments due by 8-16-99; published 7-16-99
Gulfstream Aerospace; comments due by 8-16-99; published 7-16-99
Gulfstream American; comments due by 8-16-99; published 7-16-99
International Aero Engines AG; comments due by 8-16-99; published 6-15-99
Lockheed; comments due by 8-16-99; published 7-16-99
McDonnell Douglas; comments due by 8-16-99; published 7-16-99
Mitsubishi; comments due by 8-16-99; published 7-16-99
Saab; comments due by 8-16-99; published 7-16-99
Sabreliner; comments due by 8-16-99; published 7-16-99
Short Brothers; comments due by 8-16-99; published 7-16-99
Airworthiness standards:
Special conditions—
Boeing Model 707-353B airplanes; comments due by 8-20-99; published 7-21-99
Class E airspace; comments due by 8-16-99; published 7-16-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Gross proceeds payments to attorneys; reporting; comments due by 8-19-99; published 5-21-99
Section 467 rental agreements—
Agreements involving payments of $2,000,000; comments due by 8-16-99; published 5-18-99

Public Laws

106th Congress, 1st Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 1st Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 1st Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ - ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/98

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

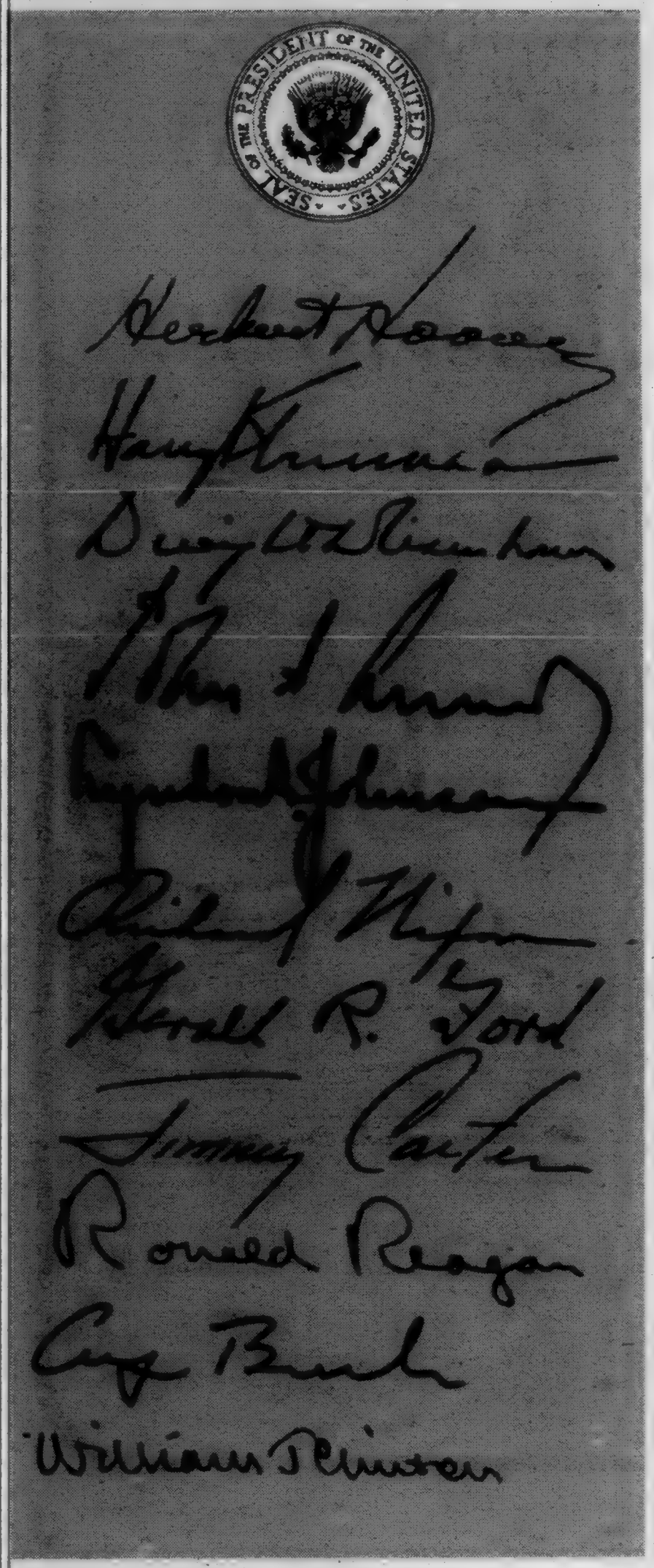

Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

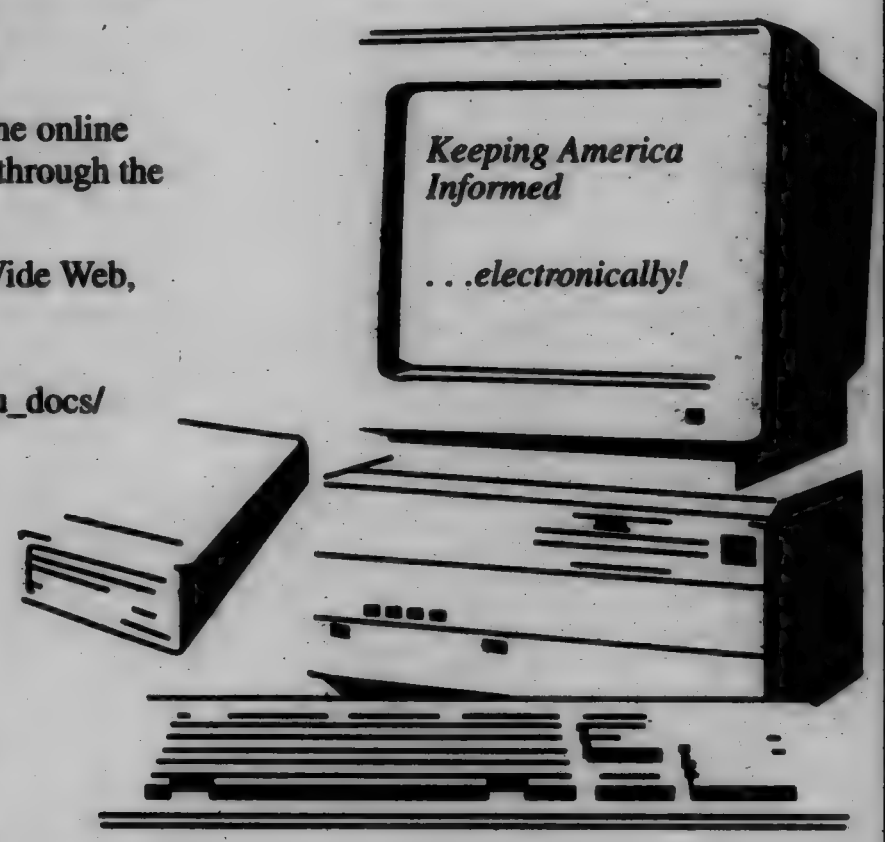

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

VOL
64
ISS
1
53
AG
10
1999
UMI

Printed on recycled paper

VOL
64
ISS
1
5
4
AG
11
1999
UMI

8-11-99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United
Govern
Printing
SUPERINTE
OF DOCUM
Washington
OFFICIAL B
Penalty for p

8–11–99
Vol. 64 No. 154

federal register

Wednesday
August 11, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

UMI

VOL
64
ISS
154
AG
11
999
UMI

8-11-99
Vol. 64
Pages

8-11-99
Vol. 64 No. 154
Pages 43599–43886

federal register

Wednesday
August 11, 1999

PO BOX 1346
ANN ARBOR MI 48106

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Contents

Federal Register
Vol. 64, No. 154
Wednesday, August 11, 1999

Agriculture Department
See Farm Service Agency
See Forest Service
See Rural Housing Service

Air Force Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Linden Innovative Research LLC, 43678

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Customs Service
RULES
Merchandise; examination, sampling, and testing:
Detention procedures for merchandise undergoing extended examination, 43608–43613
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43814–43815

Defense Department
See Air Force Department
See Navy Department
PROPOSED RULES
Banks, credit unions, and other financial institutions on DoD installations; procedures, 43858–43877
Financial institutions on DoD installations, 43855–43858

Delaware River Basin Commission
NOTICES
Meetings and hearings, 43678–43679

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Projects with Industry Program, 43680

Employment and Training Administration
NOTICES
Adjustment assistance:
Boise Cascade Corp., 43726
Broughton Operating Corp., 43726
Carhartt, Inc., 43726–43727
Chapman Services, 43727
Don-Nan Machine & Manufacturing, 43727
General Electric Co., 43727
Jahmpasa USA, Inc., 43727
Lady Carol Dresses, 43727–43728
PGS Ocean Bottom Seismic et al., 43728
Siemens ICN, 43728–43729
Thunderbird Mining, 43729
VECO Pacific et al., 43729–43730
Adjustment assistance and NAFTA transitional adjustment assistance:
Hevi-Duty Electric et al., 43722–43726
NAFTA transitional adjustment assistance:
Camco Inc., 43730
International Business Corp. (IBM), 43730
Phelps Dodge Magnet Wire et al., 43730–43731
Robertshaw Controls Co., 43731–43732
Siebe Appliance Controls, 43732

Employment Standards Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43732–43733

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Comgas, S. DE R.L. DE C.V., et al., 43681

Environmental Protection Agency
PROPOSED RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 43641–43643
NOTICES
Air pollution control; new motor vehicles and engines:
State implementation plans; transportation conformity; adequacy status—
Metropolitan Washington, DC area, 43698–43699
Confidential business information and data transfer, 43699–43701
Drinking water:
Safe Drinking Water Act—
Contaminant occurrence database release, 43701
Meetings:
Local Government Advisory Committee, 43701
Pesticide registration, cancellation, etc.:
AVA Chemical Ventures, L.L.C., et al., 43701–43702
Registration maintenance fees non-payment; pesticides cancelled, 43819–43832
Superfund; response and remedial actions, proposed settlements, etc.:
Friedrichsohn's Cooperage, Inc. Site, NY, 43703

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Farm Service Agency
NOTICES
Meetings:
Beginning Farmers and Ranchers Advisory Committee, 43647

Federal Aviation Administration
RULES
Class E airspace, 43599
PROPOSED RULES
Airworthiness directives:
Robinson Helicopter Co., 43638–43641

NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43809–43810
Exemption petitions; summary and disposition, 43810
Meetings:
RTCA, Inc., 43811

Federal Communications Commission
RULES
Common carrier services:
International settlements policy and associated filing requirements; biennial regulatory review, 43618
PROPOSED RULES
Frequency allocations and radio treaty matters:
50.2-50.4 and 51.4-71.0 GHz realignment, 43643–43646

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Iowa, 43703–43704
Nevada, 43704
North Dakota, 43704

Federal Energy Regulatory Commission
RULES
Practice and procedure:
Complaint procedures, 43600–43608
NOTICES
Electric rate and corporate regulation filings:
California Power Exchange Corp. et al., 43688–43692
Pepco Services, Inc., et al., 43692–43695
Environmental statements; notice of intent:
Williams Gas Pipelines Central, Inc., 43695–43697
Hydroelectric applications, 43697–43698
Applications, hearings, determinations, etc.:
Alpine Power Co., 43681
Caprock Pipeline Co., 43681–43682
Cinergy Services, Inc., 43682
Garden Banks Gas Pipeline, L.L.C., 43682
Kern River Gas Transmission Co., 43682–43683
KN Wattenburg Transmission LLC, 43683
Mission Pipeline Co., 43683
Nautilus Pipeline Co., L.L.C., 43683–43684
Niagara Mohawk Power Corp. et al., 43684
Northern Natural Gas Co., 43684
Reliant Energy Gas Transmission Co., 43685
Southern California Gas Co., 43685
Stepenske, Loraine, et al., 43685
Steuben Gas Storage Co., 43685–43686
Texas Eastern Transmission Corp., 43686
Transok, LLC, 43686–43687
Trunkline Gas Co., 43687
Tuscarora Gas Transmission Co., 43687
Williams Gas Pipelines Central, Inc., 43687–43688
Williston Basin Interstate Pipeline Co., 43688

Federal Maritime Commission
NOTICES
Agreements filed, etc., 43704–43705
Freight forwarder licenses:
Moving & Packing International, Inc., 43706
Applications, hearings, determinations, etc.:
Adnyl Express Cargo Inc. et al., 43705–43706

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 43759

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 43706–43707

Federal Trade Commission
RULES
Practice and procedure:
Prior approval proceedings, 43599

Fish and Wildlife Service
PROPOSED RULES
Hunting and fishing:
Refuge-specific regulations, 43833–43854

Food and Drug Administration
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 43707

Forest Service
NOTICES
Environmental statements; notice of intent:
Kootenai National Forest, MT; withdrawn, 43647
Meetings:
California Coast Provincial Advisory Committee, 43647–43648

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
NOTICES
Meetings:
National Bioethics Advisory Commission, 43707

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43707–43708

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43708

Housing and Urban Development Department
RULES
Section 8 housing, 43613
PROPOSED RULES
Meetings:
Operating Fund Allocation Negotiated Rulemaking Committee, 43641

Immigration and Naturalization Service
NOTICES
Temporary protected status program designations:
Bosnia-Herzegovina, 43720–43722

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 43708–43712

Interior Department
See Fish and Wildlife Service

See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Income taxes:
Consolidated return regulations—
Consolidated groups; overall foreign losses and separate limitation losses, 43613–43618

International Trade Administration
NOTICES
Antidumping:
Frozen concentrated orange juice from—
Brazil, 43650–43659
Heavy forged hand tools, finished or unfinished, with or without handles, from—
China, 43659–43672
Antidumping and countervailing duties:
Administrative review requests, 43649–43650
Countervailing duties:
Cold-rolled flat-rolled carbon-quality steel products from—
Brazil, 43672–43673
Hot-rolled lead and bismuth carbon steel products from—
United Kingdom, 43673–43677
Meetings:
Environmental Technologies Trade Advisory Committee, 43677

International Trade Commission
NOTICES
Import investigations:
Paintbrushes from—
China and Indonesia, 43715–43716

Justice Department
See Immigration and Naturalization Service
See Prisons Bureau
NOTICES
Meetings:
Heavy duty diesel engine consent decrees, 43716–43717
Pollution control; consent judgments:
Capitol Park Associates, 43717
Conklin Co., Inc., et al., 43717
Cornerstone Real Estate Management L.L.C., 43717–43718
Crawford Edgewood Management, Inc., 43718
Double H Housing, Inc., 43718–43719
FMC Corp. et al., 43719
Skitec Corp., 43719
Texmark Chemicals, Inc., 43719–43720

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Labor Statistics Bureau
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43722

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43733–43734

Land Management Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43712
Opening of public lands:
New Mexico, 43712

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 43785–43786
Grants and agreements with higher education institutions, hospitals and other non-profit organizations; uniform administrative requirements (Circular A-110), 43786–43791

Merit Systems Protection Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43758–43759

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Space Science Advisory Committee, 43759

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43759–43760
Grants and cooperative agreements; availability, etc.:
Folk and traditional arts; private support increase; feasibility study, 43760

National Highway Traffic Safety Administration
NOTICES
Meetings:
Research and development programs, 43811–43812
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 43812–43813

National Institutes of Health
NOTICES
Meetings:
Recombinant DNA Advisory Committee, 43883–43884
Recombinant DNA molecules research:
Actions under guidelines
Proposed, 43884–43892

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Thornyhead rockfish, 43634–43635
NOTICES
Meetings:
International Commission for Conservation of Atlantic Tuna, U.S. Section Advisory Committee; Summer workshop, 43677
Permits:
Marine mammals, 43677–43678

National Park Service
NOTICES
Meetings:
Kaloko-Honokohau National Historical Park Advisory Commission, 43712
Manzanar National Historic Site Advisory Commission, 43712–43713
San Franciso Maritime National Historical Park Advisory Commission, 43713
Native American human remains and associated funerary objects:
South Dakota State Archaeological Research Center, SD; inventory, 43713–43714
University of Pennsylvania Museum, PA; inventory, 43714

National Science Foundation
NOTICES
Meetings:
Design, Manufacture, and Industrial Innovation Special Emphasis Panel, 43760
Geosciences Special Emphasis Panel, 43760
Polar Programs Special Emphasis Panel, 43761
President's Committee on National Medal of Science, 43761

Navy Department
NOTICES
Organization, functions, and authority delegations:
Navy-Marine Corps Relief Society, Board of Directors, 43678
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Environmental Directions, Inc., 43678

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43761–43762
Committees; establishment, renewal, termination, etc.:
Licensing Support Network Advisory Review Panel, 43762
Environmental statements; availability, etc.:
Texas Utilities Electric Co., 43762–43763
Meetings:
Pilot Program Evaluation Panel, 43763–43764
Meetings; Sunshine Act, 43764
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 43764–43785
Petitions; Director's decisions:
Seabrook Nuclear Generating Station, 43785
Reports and guidance documents; availability, etc.:
Decommissioning activities; licensee requests to delay initiation; standard review plan, 43785

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43734–43738

Office of Management and Budget
See Management and Budget Office

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Massachusetts Mutual Life Insurance Co. et al., 43738–43757
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 43757–43758

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Internet, Working Group on unlawful conduct on; establishment (EO 13133), 43893–43896

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Incarceration fee cost, 43879–43881
NOTICES
Inmate control, custody, care, etc.:
Incarceration cost for Federal inmates; annual determination of average cost, 43882

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Privacy Act:
Systems of records, 43714–43715

Rural Housing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43648

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 43792
Boston Stock Exchange, Inc., 43793
Chicago Board Options Exchange, Inc., 43793–43795
Depository Trust Co., 43795–43797
National Association of Securities Dealers, Inc., 43797–43802
New York Stock Exchange, Inc., 43802–43805
Pacific Exchange, Inc., 43805–43807

Small Business Administration
PROPOSED RULES
Business loans:
Microloan program; changes, 43636–43638
NOTICES
Commercial loans sale, 43807–43809
Disaster loan areas:
Arizona, 43809

State Department
RULES
Acquisition regulations:
Miscellaneous amendments, 43618–43634

Surface Transportation Board
NOTICES
Railroad services abandonment:
Burlington Northern & Santa Fe Railway Co., 43813–43814

Thrift Supervision Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43815

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Customs Service
See Internal Revenue Service
See Thrift Supervision Office

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43815–43816
Submission for OMB review; comment request, 43816–43818

Separate Parts In This Issue

Part II
Environmental Protection Agency, 43819–43832

Part III
Department of Interior, Fish and Wildlife Service, 43833–43854

Part IV
Department of Defense, 43855–43877

Part V
Department of Justice, Bureau of Prisons, 43879–43882

Part VI
Department of Health and Human Service, National Institutes of Health, 43883–43892

Part VII
The President, 43893–43896

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
13133.....43895

13 CFR
Proposed Rules:
120.....43636

14 CFR
71.....43599
Proposed Rules:
39.....43638

16 CFR
2.....43599

18 CFR
343.....43600
385.....43600

19 CFR
151.....43608
174.....43608
178.....43608

24 CFR
982.....43613
Proposed Rules:
990.....43641

26 CFR
1.....43613
602.....43613

28 CFR
505.....43880

32 CFR
Proposed Rules:
230.....43856
231.....43858
231a.....43856

40 CFR
Proposed Rules:
300.....43641

47 CFR
0.....43618
43.....43618
63.....43618
64.....43618
Proposed Rules:
2.....43643

48 CFR
601.....43618
602.....43618
603.....43618
604.....43618
605.....43618
606.....43618
608.....43618
609.....43618
610.....43618
611.....43618
613.....43618
614.....43618
615.....43618
616.....43618
617.....43618
619.....43618
622.....43618
623.....43618
625.....43618
626.....43618
628.....43618
629.....43618
630.....43618
631.....43618
632.....43618
633.....43618
634.....43618
636.....43618
637.....43618
639.....43618
641.....43618
642.....43618
643.....43618
644.....43618
645.....43618
646.....43618
647.....43618
649.....43618
652.....43618
653.....43618

50 CFR
679.....43634
Proposed Rules:
32.....43834
36.....43834

Rules and Regulations

Federal Register
Vol. 64, No. 154
Wednesday, August 11, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–15]

Amendment to Class E Airspace; Rock Rapids, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Rock Rapids, IA.

DATES: The direct final rule published at 64 FR 19263 was effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 20, 1999 (64 FR 19263). Due to an administrative error the Direct final rule; confirmation of effective date was not published in the **Federal Register** prior to the effective date of July 15, 1999. This document confirms the effective date amending the Class E airspace at Rock Rapids, IA. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comments, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule became effective on that date.

Issued in Kansas City, MO, on July 27, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–20713 Filed 8–10–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 2

Procedures in Prior Approval Proceedings

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is amending its procedures governing applications for approval of proposed divestitures, acquisitions, or similar transactions that are subject to Commission review under outstanding orders. The amendment repeals the unnecessary and burdensome requirement for disclosure on the public record of communications concerning an application from persons outside the Commission to Commissioners and their advisors.

EFFECTIVE DATE: August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Attorney, Office of the General Counsel, 202–326–2451.

SUPPLEMENTARY INFORMATION: Commission Rule 2.41(f)(3), 16 CFR 2.41(f)(3), requires that Commissioners and their advisors expeditiously disclose written communications, and memoranda setting forth the full contents and circumstances of oral communications, that they receive from outside parties concerning a prior approval application. The Commission is repealing this legally unnecessary and, in practice, burdensome provision. Consistent with existing practice, however, the Commission will provide applicants with an explanation of any adverse information that the Commission may consider, and provide applicants with an opportunity to respond. Applicants will thus continue to have an opportunity to respond to significant information transmitted by outside parties directly to Commissioners' offices (which former Rule 2.41(f)(3) covered), as well as information transmitted by outside parties to staff and through staff to those offices (which the former rule did not cover).

Procedural matters. The proposed amendments is exempt from the notice and comment requirements of the Administrative Procedure Act as a rule "of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). It does not entail information collection and thus is not subject to the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 *et seq.* And it will not have a significant economic impact on a substantial number of small businesses, and is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in CFR Part 2

Administrative practice and procedure, reporting and record-keeping requirements.

Accordingly, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, the Code of Federal Regulations as follows:

PART 2—NON-ADJUDICATIVE PROCEDURES

1. The authority for part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. In § 2.41, paragraph (f)(3) is removed.

3. In § 2.41, paragraphs (f)(4) and (5) are redesignated as paragraphs (f)(3) and (4), respectively.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–20698 Filed 8–10–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 343 and 385

[Docket No. RM98–13–001; Order No. 602–A]

Complaint Procedures

Issued: July 28, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing and clarification.

SUMMARY: On March 31, 1999, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 602) revising its regulations governing complaints filed with the Commission under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and the Outer Continental Shelf Lands Act. A number of requests for rehearing and clarification of the final rule were filed. The general framework established by the complaint rule remains the same. The order does, however, grant rehearing and clarification in instances where the suggested changes will improve the new procedures and contribute to ensuring that the process allows the resolution of complaints in the most suitable manner. The order, among other things, clarified the types of relief that may be granted with respect to complaints, modified certain procedures concerning the treatment of privileged information in complaints and answers, modified the requirement concerning simultaneous service of complaints, and reduced the scope of documentation required in an answer. With respect to changes made to the procedural rules applicable to oil pipeline proceedings, the order clarifies that the Commission will be flexible in its application of the complaint procedures to oil pipelines. The order also states that the Commission did not make any changes to the substantive regulations or policies governing oil pipeline complaints.

DATES: The regulations are effective September 10, 1999.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Order on Rehearing and Clarification

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

This order addresses a number of requests for rehearing and clarification of the Commission's final rule revising its complaint procedures. The general framework established by the complaint rule remains the same. The order does, however, grant rehearing and clarification in instances where the suggested changes will improve the new procedures and contribute to ensuring that the process allows the resolution of complaints in the most suitable manner.

I. Background

On March 31, 1999, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 602) revising its regulations governing complaints filed with the Commission under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and the Outer Continental Shelf Lands Act.[1] Order No. 602 was designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner.

In order to organize the complaint procedures so that all complaints are handled in a timely and fair manner, the Commission revised Rule 206 of its Rules of Practice and Procedure.[2] Among other things, the Commission required that complaints meet certain informational requirements, required answers to be filed in a shorter, 20-day time frame, and provided various paths for resolution of complaints, including Fast Track processing for complaints that are highly time sensitive. The Commission intended these changes to ensure that the Commission and all parties to a dispute would have as much information as early in the complaint process as possible to evaluate their respective positions. The changes were also intended to ensure that the process used to resolve a complaint would be suited for the facts and circumstances surrounding the complaint, the harm alleged, the potential impact on competition, and the amount of expedition needed.

The Commission added a new Rule 218 providing for simplified procedures for complaints where the amount in controversy is less than $100,000 and the impact on other entities is *de minimis*. The Commission adopted these new procedures to provide a process by which small controversies can be resolved more simply and expeditiously than more complicated matters.

The Commission also took a number of steps to support its policy of promoting consensual resolution of disputes among parties in the first instance. The Commission pointed out that the recently created Dispute Resolution Service will work with all those interested in Commission activities to increase awareness and use of alternative dispute resolution (ADR) in all areas the Commission regulates. The Commission emphasized that this new service will also help identify cases appropriate for ADR processes and

[1] Complaint Procedures, Order No. 602, III FERC Stats. & Regs. ¶ 31,071 (1999), 64 FR 17087 (April 8, 1999).

[2] 18 CFR 385.206 (1998).

conduct ADR processes, including convening sessions. To further publicize and establish its Enforcement Hotline as a viable alternative to the filing of a formal complaint, the Commission codified its current Enforcement Hotline procedures.[3]

The Commission also revised its alternative dispute resolution regulations (Rules 604, 605 and 606)[4] to conform to the changes made by the Administrative Dispute Resolution Act of 1996[5] and foster an environment that promotes consensual resolution of disputes by eliminating provisions in its regulations which were seen as having a chilling effect on the use of ADR.

The Commission also revised certain sections of Part 343, Procedural Rules Applicable to Oil Pipeline Proceedings,[6] to conform to the changes in the Commission's complaint procedures in Part 385 of the regulations.

Requests for rehearing and/or clarification of Order No. 602 were filed by ARCO Products Company, and Ultramar Diamond Shamrock Corporation (ARCO); Association of Oil Pipe Lines (AOPL); Chevron Pipe Line Company (Chevron Pipe Line); Chevron Products Company (Chevron Products); Enron Interstate Pipelines (Enron); Express Pipeline Partnership (Express); Indicated Shippers; Interstate Natural Gas Association of America (INGAA); Southern Company Services, Inc. (Southern Company); and the Williams Companies, Inc. (Williams). Their requests for rehearing and/or clarification will be addressed below. The topic headings in the discussion section are those used in Order No. 602.

II. Discussion

The Commission continues to encourage and support consensual resolution of complaints and reaffirms its commitment to resolving disputes in as timely and as fair a manner as possible. The Commission has reviewed the requests for rehearing and concludes that in many instances the suggestions for change will improve the new procedures and contribute to ensuring that the process allows the resolution of complaints in the most suitable manner.

A. Informational Requirements for Complaints

The final rule revised Rule 206 of the Commission's Rules of Practice and Procedure to require that a complaint satisfy certain informational requirements.

Indicated Shippers states that Rule 206(b) requires the complainant to state whether informal procedures were used to resolve the complaint prior to filing. If such procedures were not used, the preamble to the final rule indicates that the complainant must explain why. However, the regulatory text does not expressly require such an explanation. Indicated Shippers submit that the regulatory text should be modified to reflect the requirement that an explanation be provided, as discussed in the preamble.

The Commission grants Indicated Shippers' request. In the final rule, the Commission strongly encouraged parties to attempt informal resolution of their disputes prior to the filing of a formal complaint. The Commission therefore adopted the proposal in the NOPR that parties be required to explain whether alternative dispute resolution was tried, and, if not, why. The regulatory text inadvertently omitted this requirement. Therefore, on rehearing § 385.206(b)(9)(i) is revised to require a complaint to state "whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures were used, or why these procedures were not used."

In the final rule, the Commission adopted procedures to allow complainants and respondents to request privileged treatment of information contained in a complaint or answer, and for interested persons to obtain the privileged version of the complaint or answer. These procedures are contained in § 385.206(e) for complaints and § 385.213(c)(5) for answers.

On rehearing, the Indicated Shippers assert that the procedure in the final rule creates the potential that complainants would be required to provide confidential materials to non-parties. Indicated Shippers submit that the ten-day period contemplated for requesting and receiving confidential materials will conclude twenty days before answers and interventions are due. Indicated Shippers contend that a complainant would be required to produce confidential material for an entity that had not intervened at that point, and might not intervene at all. Indicated Shippers propose that the Commission amend the rule to provide that a complainant need not disclose confidential material to a non-party. Indicated Shippers argue that the complainant should be required to serve the material by the later of (1) five days after receipt of the request or (2) the date of the requesting party's motion to intervene. Indicated Shippers states that because respondents are automatically parties, the complainant would be required to provide the confidential materials to the respondent within five days of the respondent's request as provided in the final rule. In addition, Indicated Shippers state that an interested person seeking to examine the material before the intervention deadline could always intervene in advance of the deadline.

Indicated Shippers argue that the wording of Rule 206(e)(3) appears to foreclose any requests for confidential materials once the initial five-day period following the filing of the complaint has expired. Indicated Shippers propose that the Commission not adopt a deadline for requests for confidential materials. Indicated Shippers contend that truly interested person have an obvious motivation to obtain the confidential material as soon as possible, in order to participate meaningfully, and do not need the compulsion of a deadline. However, the Commission should not eliminate the five-day deadline for complainants to furnish the confidential material to parties once a request for such information is made. Indicated Shippers submit that the Commission should similarly modify the corresponding provisions of Rule 213.

The Commission grants Indicated Shippers request for rehearing. The Commission's intention in establishing procedures for privileged information was to allow a complainant to have adequate protection for information it believed was commercially sensitive while allowing the respondent and interested parties an opportunity to receive the privileged information in a meaningful time for filing answers and comments. The Commission did not intend for information to be available to non-parties. The Commission also agrees with Indicated Shippers argument that a deadline for requesting privileged information is not necessary because a party has an obvious motivation to receive the information quickly in order to meaningfully participate in the proceeding. The Commission will therefore make the modifications suggested by Indicated Shippers.

Section 385.206(e)(3), concerning procedures for privileged treatment of information in complaints, will now read:

> The respondent and any interested person who filed a motion to intervene in the complaint proceeding may make a written request to the complainant for a copy of the complete complaint. The request must include an executed copy of the protective

---

[3] 18 CFR Part 1b (1998).
[4] 18 CFR 385.604–606 (1998).
[5] Pub. L. 104–320, 110 Stat. 3870 (October 19, 1996).
[6] 18 CFR Part 343 (1998).

agreement and, for interested persons other than the respondent, a copy of the motion to intervene. Any person may file an objection to the proposed form of protective agreement.

Section 385.213(c)(5)(iii), concerning procedures for privileged treatment of information in answers, will now read:

The complainant and any interested person who has filed a motion to intervene may make a written request to the respondent for a copy of the complete answer. The request must include an executed copy of the protective agreement and, for interested persons other than the complainant, a copy of the motion to intervene. Any person may file an objection to the proposed form of protective agreement.

In the final rule, the Commission stated that the procedures for requesting privileged treatment have the advantage of enabling the parties to resolve disclosure disputes through consensual agreement among themselves without the need for Commission involvement in every instance involving privileged information. The Commission stated that it could still step in if parties were unable to agree on protective conditions or expressed a need for the added assurance against disclosure that would be offered by a Commission-issued protective order. The Commission stated that, if necessary, it could develop a model protective agreement akin to the model protective order developed recently by the Office of Administrative Law Judges.

While not seeking rehearing, AOPL and Chevron Pipe Line urge the Commission to seek comments on any such model protective agreement before adopting it. Their concerns stem from the fact that what may be an acceptable protective agreement for the natural gas and electric industries may not be acceptable for an oil pipeline subject to Section 15(13) of the Interstate Commerce Act. Section 15(13) of the Interstate Commerce Act makes it a crime for an oil pipeline to divulge information regarding its shippers. In Chevron Pipe Line's view, the only manner in which it can provide Section 15(13) information to another party in a proceeding (absent the shipper's consent) is if the protective agreement limits the availability of that information to outside counsel and expert witnesses. Chevron Pipe Line submits that the model protective agreement adopted by the Chief Judge, referenced by the Commission in Order No. 602, does not include that limitation.

The Commission understands the concerns of the oil pipeline industry and does not intend to adopt any model protective agreements or orders without input from the affected industries. If, in the future, the Commission determines that obtaining consensual agreement concerning privileged information is proving problematic, the Commission will then decide how to proceed in crafting model protective agreements or orders.

Southern Company asserts that while deadlines are imposed for filing answers, complainants are under no obligation to initiate the grievance process within any particular timeframe after the occurrence of the event giving rise to the dispute. This disparate treatment would allow complainants to spend unlimited time preparing a detailed complaint, complete with supporting expert witness testimony and exhibits. The respondent would then only have twenty days to investigate the facts, perform any needed research and prepare an answer. Such an approach is unfair and raises serious due process questions. Southern Company requests that the Commission revise the complaint procedures to limit availability of expedited adjudication to instances when the complainant shows that it initiated the grievance resolution process promptly following the occurrence of the event that underlies the dispute. In this regard, it would be reasonable for complainants to initiate the process within the same time frames applicable for respondents to submit an answer. Southern Company asserts that if a complainant is unable to initiate the process within those deadlines, it would be unreasonable to require respondents to answer within those timeframes. Southern Company contends that such an approach should not bar complaints that do not meet the deadlines, but the abbreviated timeframes for answers and Commission action set forth in the final rule should not apply to those complaints.

The Commission denies Southern Company's request for rehearing. Southern Company's request is essentially that a complainant be required to file a complaint within 20 days after the occurrence of the event underlying the complaint. In the Commission's view, this sort of "statute of limitations" requirement is inappropriate. The Commission and the parties would become bogged down unnecessarily in details concerning what is the event or occurrence which gave rise to the complaint, and from what event the deadline should run. Complainants have an incentive to file their complaints as quickly as possible so that they may obtain prompt relief, where appropriate. Further, given the more detailed filing requirements set forth in the complaint rule, it would be burdensome to require a complainant to file a complaint within 20 days after the event giving rise to the complaint. Nevertheless, the Commission clarifies that if a respondent wants additional time to file an answer it may request it. The Commission would consider a long time elapsed between the event giving rise to the complaint and the filing of the complaint as a factor justifying an extension of time. The Commission will be flexible in considering requests for extension and will favor granting them in circumstances where an extension will foster development of a complete record early in the complaint process.

B. Informal Resolution

Throughout the final rule the Commission reiterated its interest in strongly encouraging parties to attempt informal resolution of their dispute. In that regard the Commission had requested information on what professional assistance the Commission might provide to facilitate informal dispute resolution. In response a number of parties requested publication of complaints on the Commission's web site, a complaint status report on the Commission's web site, or a procedural hotline concerning a party's options for complaints. The Commission stated that although it could put certain basic information about a party's options in filing a complaint on the FERC Homepage, the idea of a complaint status report, as well as other electronic access issues relating to complaints, would be considered as part of the Commission's broader review of its information technology capabilities as well as the proceeding in Docket No. PL98–1–000 concerning public access to information and electronic filing.

Indicated Shippers assert the final rule creates the potential that interested persons not actually served with a complaint will not become aware of the complaint in time to intervene and present their legal positions and factual support in a timely manner. The late-filed and or incomplete interventions and answers which could result from inadequate notice may bog down the complaint proceedings with piecemeal record development and due process issues.

Given that the Commission accepts certain types of filings electronically, Indicated Shippers believe that the Commission should be able to post the full text of complaints on its web site. At a minimum, the Commission should post on its homepage a centralized list of pending complaints, comparable to the rate filings list on the Commission's gas page, which provides access to files. The listing should include (1) the names of the complainant and respondent, (2)

the docket number assigned, (3) the date the complaint was filed, and (4) whether the complaint included confidential information submitted under Part 388, for which execution of a confidentiality agreement would be required to obtain access. With this information, potentially affected parties reviewing the Commission's homepage could then access the notice via the Commission Issuances Posting System (CIPS) and the complaint itself via the Records and Information Management System (RMS).

In the alternative, the Commission could require the regulated entity to which the complaint relates to post the complaint, or notice of the complaint including filing date and docket number of the regulated entity's electronic bulletin board or web page.

The Commission agrees that Indicated Shippers' suggestion to include basic information on the Commission's Homepage is reasonable and may prove beneficial in notifying potential parties if issues in a complaint affect them. The Commission's goal continues to be to provide the public with as much information as possible with respect to complaints and the complaint process. Therefore, the Commission will be adding to its Homepage a list of all complaints pending with the Commission. The list will include the information suggested by the Indicated Shippers.

C. Simultaneous Service

In the final rule, the Commission adopted § 385.206(c) to read as follows:

> Any person filing a complaint must serve a copy of the complaint on the respondent, affected regulatory agencies, and others the complainant reasonably knows may be expected to be affected by the complaint. Service must be simultaneous with filing at the Commission for respondents and affected entities in the same metropolitan area as the complainant. Simultaneous or overnight service is acceptable for respondents and affected entities outside the complainant's metropolitan area. Simultaneous service can be accomplished through electronic mail, fax, express delivery, or messenger.

On rehearing, AOPL and Chevron Pipe Line assert that service simultaneous with filing should be by hand, fax or electronic mail unless demonstrably impossible. AOPL states that while hand service is certainly dependent on the geographic proximity of the complaint and respondent, fax and electronic mail are not. AOPL submits that there is no reason why a respondent should not, at a minimum, get a copy of the complaint the day it is filed unless complainant can prove there was no fax or electronic mail service available because of circumstances outside the complainant's control. A copy of the full filing should then follow by overnight mail. Chevron Pipe Line asserts that there is no practical distinction that simultaneous service is required only if the respondent is in the same metropolitan area as the complainant—that distinction does not take account of the real-life considerations involved in filing complaints with the Commission. If the entity filing the complaint is located outside the Washington, D.C. area, it will generally file the complaint with the Commission by next day delivery or by mail. In that case, there is no reason that the complainant cannot serve the respondent on the same day as the complaint is filed, regardless of where the respondent is located. Chevron Pipe Line asserts that the Commission should remedy this unnecessary distinction and require simultaneous service of all complaints on the respondent, while allowing next day service on any other required entity.

The Commission grants the requests for rehearing. The Commission concludes that the reference to a "metropolitan area" in the regulations could lead to unreasonable results. For example, as Chevron Pipe Line points out, under the regulation as written, a Washington, D.C. law firm filing a complaint on behalf of a Houston client would have to make simultaneous service on a Houston respondent, while service on a Philadelphia or Washington, D.C. respondent could be the next day. Therefore, § 385.206(c) will be revised to require simultaneous service on the respondent regardless of the respondent's location. The complainant should take all reasonable steps to serve the respondent simultaneous with filing at the Commission. Simultaneous or overnight service will be acceptable for all other affected entities.[7]

INGAA seeks clarification that, as part of the service requirement, parties must serve the complaint on the corporate official appointed to receive such service by the regulated entity. Thus, all Commission-regulated entities should be required to appoint an official to receive service of complaints, which official is to be designated on the company's electronic bulletin board or web site. INGAA states that absent this requirement, a complaint served on a corporation without identifying a specific individual recipient could be misrouted or its significance overlooked. INGAA submits that by the time the responsible officials become aware that a complaint has been filed, a large portion of time for answering may have been lost, adversely affecting the completeness and timeliness of the answer. INGAA asserts that a uniform requirement that every regulated entity appoint a corporate official responsible for receiving service of complaints, and a corollary requirement that complainants serve that official directly, will ensure that responses to those complaints are filed expeditiously, thus furthering the goals of the final rule.

The Commission finds INGAA's suggestion to be reasonable given the shorter amount of time respondents have to answer a complaint under the revised regulations. The requirement that a corporate official be designated to receive service of complaints should ensure expeditious receipt and handling of complaints by regulated entities. The Commission concludes that designating a corporate official to receive service would also be of benefit in other types of proceedings. The Commission therefore is issuing a notice of proposed rulemaking concurrently with this order proposing to add a new section (i) to § 385.2010 (Rule 2010) to require that all entities regulated by the Commission designate corporate officials or other persons to receive service of certain types of pleadings where a person to receive service has not otherwise been designated under the Commission's regulations.

D. Time Period for Answers, Comments and Interventions

Section 385.206(f) adopted in the final rule requires that answers, interventions and comments to a complaint must be filed within 20 days after the complaint is filed or, in cases where the complainant requests privileged treatment for information in its complaint, 30 days after the complaint is filed.

On rehearing, AOPL asserts that the time to answer should run from issuance of the notice of the complaint. AOPL argues that there is a real potential that interested parties who may be indirectly affected by a complaint may not be among those that would normally receive a copy of the complaint. Thus, not being served under the Commission's rules, they may not learn of the complaint until much of the already limited answer period has passed. AOPL submits that much would be gained from a due process standpoint, and little would be lost in terms of time, if the response, comments

[7] The Commission is also revising section 385.206(c) to require that simultaneous service by electronic mail must be in accordance with section 385.2010(f)(3) as promulgated in Order No. 604, Electronic Service of Documents, 87 FERC ¶ 61,205 (1999).

and intervention period began to run from the issuance of the notice.

The Commission recognizes that there may be interested persons who may not receive service of the complaint even using the broad category of "others the complainant reasonably knows may be expected to be affected by the complaint," as required for service in Rule 206(c). Nevertheless, in the Commission's view, the time for filing answers should be determined from the date of filing of the complaint, rather than the notice. The Commission has found that in most instances interested parties are capable of responding to filings in a thoroughly capable manner even when doing so under time requirements shorter than those for answers to complaints.[8] In addition, AOPL's concerns should be alleviated by the fact that the Commission will be posting basic information on a complaint on the Commission's web site when it is received. This will permit interested persons to have the same amount of time to file answers, interventions, or comments as parties served under the regulations. The Commission also will remain flexible in considering the circumstances supporting any requests for extension of time to answer.

AOPL and Express assert that to the extent that the parties wish to pursue dispute resolution prior to the answer due date, the Commission should toll the answer period. If the complainant and the respondent agree to stay the answer in order to pursue settlement negotiations or some form of dispute resolution, the Commission should support such action. AOPL and Express contend that the Commission's rules should be modified to permit stay of the answer if settlement is being actively pursued.

The Commission will entertain requests to extend the time for answers pending the outcome of settlement negotiations or alternative dispute resolution. This is in keeping with one of the principles of the complaint rule of encouraging consensual resolution where possible. A further change to the regulations to recognize this, however, is unnecessary. The parties can simply file a motion pursuant to § 385.2008 requesting an extension of time within which to file an answer.

Chevron Pipe Line contends that the Commission should restore 30 days as the generally applicable period for filing an answer. Chevron Pipe Line asserts that a 20 calendar day response period, especially with next day service, does not permit sufficient time in which to research the facts and issues raised by a complex complaint and prepare a written response. Chevron Pipe Line argues that it is unnecessary to shorten the standard period to 20 calendar days, especially since the Commission is establishing procedures in which answers to extremely time sensitive complaints may be required in a shorter period under fast track processing. If the Commission believes that fast track processing is not, by itself, sufficient to handle time-sensitive matters, it should amend its rules to allow a complainant to seek a shortening of the answering period when it files its complaint, upon the proper showing. Chevron Pipe Line submits that under such a procedure, the answer would be filed more quickly, but the complainant would be accorded standard, not fast track, processing. Chevron Pipe Line asserts that by allowing only 20 calendar days and by beginning the period with the filing of the complaint rather than its service, the Commission is actually allotting less time for answers to complaints filed with it than is allotted for complaints filed in federal court. Chevron Pipe Line states that Rule 12 of the Federal Rules of Civil Procedure provide that answers must be filed within 20 days of service of the summons and complaint.

The Commission denies Chevron Pipe Line's request for rehearing. The Commission considers twenty days to be appropriate because it provides a respondent with a sufficient amount of time to answer a complaint while furthering the goal of speeding up the complaint resolution process. In addition, as more fully discussed below, the Commission is modifying the requirement that respondents provide "all documents supporting the answer" to "documents supporting the answer." This will lessen the burden on respondents when they are preparing their answers. Finally, as also discussed below, and as touched on earlier, where good cause is shown, the Commission will give respondents more time to file an answer.

Williams urges the Commission to clarify that Rule 2008 of the Commission's Rules of Practice and Procedure is applicable to the complaint procedures and that the Commission will grant extensions of time to respond to complaint for good cause shown. Williams is concerned that in certain instances it may be impossible to meet the accelerated deadlines set forth in the complaint procedures.

The Commission clarifies that parties may file requests for extensions of time with respect to filing pleadings in a complaint case and the Commission may grant such requests pursuant to Rule 2008. As stated earlier, the Commission will consider extending the time for answering when an extension will further the goal of ensuring as complete a record as possible early in the complaint process.

The Commission will also be making a conforming change to Rule 213(d). That section currently states that answers to pleadings are due 30 days after the filing of the pleading or, if a notice is published in the **Federal Register**, 30 days after the publication of the notice. The Commission will modify the regulation so it will not be applicable to answers to complaints. This conforming change should have been made in the Final Rule but was overlooked.

D. Revisions to Oil Pipeline Regulations

The final rule revised certain sections of Part 343. Procedural Rules Applicable to Oil Pipeline Proceedings, to conform with the changes to the Commission's complaint procedures.

AOPL, Chevron Products, and Express assert that the Commission should exclude oil pipelines from the new rules and leave the distinctly different and entirely separate oil pipeline complaint procedures in place. Petitioners assert that the Commission's own discussion of the need for the new procedures only cited transitions in the natural gas and electric industries as the motivation for the new rules. They argue that nowhere in that discussion does the Commission recognize any transition or other development occurring in the oil pipeline arena militating for change. Further, petitioners assert that the very nature of the issues traditionally addressed in the oil pipeline arena are far more complex and factually based than the more generic, policy oriented disputes currently arising in the natural gas and electric sectors.

The Commission's purpose in revising the oil pipeline regulations was to ensure the consistency of the complaint procedures for all industries regulated by the Commission, while preserving the rate complaint standards adopted as an integral part of the package of ratemaking changes enacted in response to the Energy Policy Act of 1992. In the Commission's view, this purpose is still valid. Nevertheless, the Commission recognizes that the oil pipeline industry is not undergoing the same changes as the electric and gas industries. The Commission also acknowledges that complaint cases against oil pipelines in many instances may not require or lend themselves to the type of faster decision

[8] See, for example, 18 CFR 154.210, which requires that protests to tariff filings under section 4 of the Natural Gas Act must be filed not later than 12 days after the date of the tariff filing.

contemplated by the complaint rule. Accordingly, where the nature of a complaint against an oil pipeline may not fit neatly into the complaint resolution paths adopted in the Final Rule, the Commission will be flexible and devise a suitable procedure that will ensure resolution of the dispute in a manner that best serves all. Such an approach, which applies to other complaints as well, is best applied on a case-by-case basis, rather than through changes to the complaint regulations.

ARCO asserts that the standard of "substantially in excess" of cost based rates[9] is illegal and inconsistent with the decision of the Court of Appeals for the District of Columbia circuit in *Farmers' Union Central Exchange, Inc. et al.* v. *FERC*, 734 F.2d 1486, 1510 (D.C. Cir.), *cert. denied*, 469 U.S. 1034 (1984). ARCO asserts that the final rule fails to state all requirements for qualifying for or complaining against "market-based" rates, and is thus inconsistent with *Farmers Union II*. ARCO contends that the final rule conflicts with the actual practice of the Commission with respect to requirements for a complaint against cost-based or market-based rates. One or the other must conform. ARCO submits that the final rule, if it encompasses the process now in effect, discriminates against shippers seeking redress of grievances against oil pipelines and results in the effective refusal of the agency to do its statutory duty of ensuring that all rates are just and reasonable. ARCO contends that the Commission's new complaint process for shippers seeking rate redress from oil pipelines will require six different and sequential order, all subject to judicial review.

In the Final Rule the Commission made only two procedural changes to the oil pipeline regulations with respect to complaints. First, depending on whether the complaint involved rate or non-rate matters, certain information requirements in Rule 206 would have to be followed. Second, the Commission required that answers to complaints must be filed within 20 days after the complaint is filed. The Commission did not make any changes to the substantive regulations or policies governing oil pipeline complaints. ARCO's assertion in its request for rehearing that standards used to examine different types of rates are inconsistent with various court cases is inapposite because the complaint rule did not make any changes to oil pipeline ratemaking standards.[10] Accordingly, ARCO's request for rehearing is denied.

E. Content of Answers

Section 385.213(c)(4) adopted in the final rule requires that answers include "all documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts, affidavits, and testimony."

On rehearing, AOPL, Chevron Pipe Line and Express assert that the requirements for answers are too complex and burdensome. AOPL asserts that the final rule applies parallel requirements for supporting affidavits, testimony and documentation for complaint and answer alike. AOPL submits that for practical and procedural reasons, this parallelism is both unreasonable and unnecessary. AOPL argues that respondents should be required to demonstrate in their answers the nature of the factual conflict posed by the complaint. They should not be required to file a responsive case in chief accompanied by "all documents" that would support their position. AOPL contends that the Commission should seek a middle ground between the new requirements and the prior rule. Chevron Pipe Line asserts that requiring the provision of all documents may be construed as moving discovery to the answering stage of a proceeding. Chevron Pipe Line argues that the reference to "testimony" is unnecessary, since factual support can be provided through affidavits, and is procedurally confusing, since testimony usually means a party's case developed after necessary discovery. Chevron Pipe Line suggests that the Commission remove the word "all" from before documents and by deleting the reference to "testimony" in Rule 213(c)(4). Chevron Pipe Line states that the rule would then call for a provision of documents supporting the facts in the answer. Chevron Pipe Line submits that respondents will be properly motivated to include supporting documents, especially since they will be aware that certain matters can be decided on the basis of the complaint and answer alone. Chevron Pipe Line also contends that the Commission's regulation should provide that when time to file an answer is shortened for fast track processing, the respondent is required to provide only readily accessible documents.

The Commission concludes that it would be reasonable to require respondents to provide "documents that support the facts in the answer" as opposed to "all documents that support the facts in the answer." The reference to "all documents" could be considered a burdensome requirement given that respondents have 20 days to file an answer. The Commission's intent was not to move discovery to an earlier stage of the proceeding but rather to ensure that an answer was properly supported by documentation. In the Commission's view, a respondent will be motivated to provide all relevant documents that support its case, even if "all documents" are not required. Since a complaint case may be decided on the pleadings alone, a respondent runs the risk of an adverse decision if it decides to withhold documents beneficial to its position. The requirements for an answer need not parallel and be as stringent as those for a complaint because it is the complainant who bears the burden of proof. Accordingly, the Commission will grant rehearing and strike the word "all" before the word documents in § 385.213(c)(4).

The Commission clarifies that the reference to testimony in § 385.213(c)(4) does not require a respondent to prepare new testimony for a particular complaint proceeding. In order to avoid any confusion, the Commission will delete the reference to "testimony" in § 385.213(c)(4).[11] The references to "contract, affidavits, and testimony" in both § 385.206(b)(8) and § 385.213(c)(4) were intended to be examples of the types of documentation that complainants and respondents could provide. If it wishes, a party may prepare and submit testimony for a complaint proceeding. It is more likely, however, that a party would provide preexisting testimony which could shed light on an issue raised in the proceeding. Such testimony, for example, could be prior testimony in

[9] The standard is set forth in § 343.2(c) of the Commission's regulations and refers to the standard for challenging rates established under the indexing regulations of § 342.3 and the standard for challenging settlement rates established under § 342.4(c). The standard was established in Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs. (Regulation Preambles 199–1996) § 30,985 (1993). 58 FR 58753 (November 4, 1993), *order on reh'g*, Order No. 561–A, FERC Stats. & Regs. (Regulation Preambles 1991–1996) § 31,000 (1994), 59 FR 40243 (August 8, 1994).

[10] Section 13(1) of the Interstate Commerce Act provides that anyone can file a complaint against "anything done or omitted to be done by any common carrier * * *" Thus, any complaint against an oil pipeline's market-based rates would fall under this provision and the burden would fall to the complainant to establish that those rates are no longer just and reasonable. The Commission has not established an evidentiary standard for adjudicating such complaints in this or any other proceeding. As for challenges to rates deemed just and reasonable under Section 1803(a) of the Energy Policy Act, the Act itself at Section 1803(b) establishes a "substantial change" standard that a complainant must meet.

[11] The Commission is also making the same change in § 385.206(b)(8).

another case describing certain aspects of a pipeline's operations.

Given the short time frame for an answer when a complaint is assigned to the Fast Track process, the Commission will look at the practicalities of a respondent being able to answer a complaint with extensive detail and documentation on a case-by-case basis. This assurance should alleviate Chevron Pipe Line's concerns.

Indicated Shippers assert that the final rule requires the respondent to serve its answer, without any confidential material and accompanied by a form of protective agreement, to each entity that has been served pursuant to Rule 206. It is possible, however, that an interested person that was not served by the complainant would have intervened in the complaint docket before the respondent files the answer. Indicated Shippers submit that such entities, as parties, should receive service of the response, including a form of protective agreement if the response contains confidential material. Indicated Shippers assert that Rule 213 should reflect this requirement.

Indicated Shippers' request is reasonable, and, accordingly, the Commission grants rehearing. To allow for the possibility of a person intervening early who would like to be served the answer, § 385.213(c)(5)(ii) will be modified to read "A respondent must provide a copy of its answer without the privileged information and its proposed form of protective agreement to each entity that either has been served pursuant to § 385.206(c) or whose name is on the official service list for the proceeding compiled by the Secretary."

F. Complaint Resolution Paths

Section 385.206(g) adopted in the final rule describes a number of procedural options that the Commission may use to resolve issues raised in complaints. These complaint resolution paths are (1) alternative dispute resolution, (2) decision on the pleadings by the Commission, and (3) hearing before an ALJ. Where a highly credible claim for relief is presented, and a persuasive showing is made that standard complaint resolution processing may not provide timely relief as quickly as circumstances may demand, the Commission will put the complaint on a Fast Track, to provide for expedited action by the Commission or an ALJ in a matter of weeks. The Fast Track process is described in § 385.206(h) of the regulations adopted by the final rule. Preliminary relief pending a resolution of the complaint by either the Commission or an ALJ may also be requested. A ruling on preliminary relief by an ALJ would be appealable to the Commission. Such an appeal is provided for in § 385.206(g)(2) adopted in the final rule.

Indicated Shippers supports the fast track concept in general. However, it states that without prompt notice, the procedure will create considerable uncertainty for the respondent and interested persons. Indicated Shippers contend that the Commission could alleviate uncertainty for the respondent and others by providing prompt notice adopting a Fast Track procedure and establishing an answer/intervention deadline or declining to adopt a Fast Track procedure. Ideally, such notice should be provided by the close of the business on the first business day following the filing of the complaint. Indicated Shippers submit that, in that way, the respondent and intervenors will have certainty quickly as to (1) whether the Commission will shorten the answer and intervention deadline, and (2) what the new deadline will be. Moreover, the Commission should not establish an answer/intervention deadline that is shorter than ten days, in keeping with the comments on the NOPR.

When it receives a complaint requesting Fast Track treatment the Commission will endeavor to issue, no later than the next business day following the filing of the complaint, a notice describing the complaint, stating whether the Fast Track process is to be used and, if so, the deadline for answers, interventions and comments, as well as any other information concerning the procedures to be used.

Enron, INGAA and Williams assert that the Commission has exceeded its NGA authority in specifying that interim relief is available for Natural Gas Act Section 5 complaint proceedings. Enron asserts that Section 5(a) of the NGA requires that the Commission must make a finding that a rate, practice or contract is unjust, unreasonable, unduly discriminatory, or preferential prior to fixing a new rate, practice or contract. Thus, Enron asserts, the NGA explicitly states that which must be proven in order for the Commission to impose a change. Enron argues that an order, even an interim order, mandating changes in a pipeline's rates or service must be based on a finding of substantial evidence. Enron submits that the Commission cannot now substitute a different standard. Enron contends that the standard in *Virginia Petroleum Jobber Ass'n* v. *FPC*, 259 F.2d 921 (D.C. Cir. 1958), cited in the final rule, does not satisfy the legal requirement of NGA Section 5(a). Enron states that a court may grant preliminary relief based merely upon the determination that the complainant is likely to succeed on the merits. Enron asserts that it is not sufficient under NGA section 5(a) that the Commission find merely that the action is likely to be found unjust, unreasonable, unduly discriminatory or preferential. Enron also contends that the absence of explicit statutory language authorizing preliminary relief is evidence that Congress did not intend to extend authority to the Commission.

INGAA asserts that the Commission itself has recognized that it has no authority under section 5 to grant interim relief.[12] INGAA asserts that the Commission's self grant of authority to order preliminary relief in this proceeding in a section 5 complaint case flies in the face of the explicit language of the statute that requires a hearing, with a final merits decision that the company's actions are unjust and unreasonable, prior to the imposition of any remedy. INGAA also cites *American Smelting and Refining Co.* v. *FPC*, 494 F. 2d 925, 933 (D.C. Cir. 1974) where the court held that:

> [t]he "core section" underlying the orders now before us is section 5(a) which empowers the Commission, on its own motion, after hearing, to correct discriminatory practices by natural gas companies. Like any order issued pursuant to section 5(a), an interim order can only issue after full hearing and must include a statement or reasons based upon findings of fact which are supported by substantial evidence in the record. No emergency can excuse these procedural requirements.

Thus, INGAA asserts, the court in *American Smelting* recognized that the Commission may not issue an interim order as provided in the final complaint rule.

The Commission will clarify what types of relief the Commission may provide under the complaint rule. At the outset, the Commission wishes to make it clear that it will act only where it has authority under the various statutes administered by the Commission. The final rule was designed to provide potential complainants with as many procedural options as possible to seek redress of their complaints given the short-term and dynamic nature of energy markets. The Commission acknowledges that use of certain terminology in the final rule

[12] *Citing*, Southern Natural Gas Co., 66 FERC ¶ 61,302 at 61,867 (1994) (stating that in *Western Resources, Inc.* v. *FERC*, 9 F.3d 1566, 1578 (D.C. Cir. 1993) the court found unlawful the Commission's attempt to replace the pipeline's pre-existing backhaul rate on an interim basis because it failed to meet the section 5 requirements).

may have led to confusion and concern on the part of many parties. By describing how the Commission envisions the complaint process working, the Commission hopes to eliminate such concern and confusion.

The Commission will eliminate all references to preliminary relief, other than stays or extensions of time, in the complaint regulations. Thus, sections 385.206(b)(7) and 385.206(h) will be modified and section 385.206(g)(2) will be deleted. In addition, the standards in section (b)(7)(i) through (iv), which are based on *Virginia Petroleum Jobber Ass'n* v. *FPC*, 259 F.2d 921 (D.C. Cir. 1958), will also be deleted. In the Commission's view, these changes should eliminate certain parties' concern that the Commission was attempting to establish procedures for granting injunctive-type relief.

There may be cases, however, in which the Commission can issue what could be categorized as an "interim" or "preliminary" order in a complaint proceeding pursuant to existing authorities. For example, a complainant may assert that a respondent's conduct is so egregious or the evidence is so substantial supporting its case that the Commission needs to take some immediate action. In filing its complaint, a complainant could indicate that its evidence is so substantial as to establish a prima facie case of a violation of the relevant statutory standard or regulatory requirement. In these instances, the Commission could pursue several options. If the Commission were to find the complainant's case compelling based upon substantial evidence, the Commission *sua sponte* could issue a show cause or declaratory order based on the facts known at that time prior to the answer being filed. The respondent would then be directed to address the requirements of the order rather than file an answer. If the Commission did not find that immediate action was appropriate, the Commission would wait for the respondent to file an answer and then decide the appropriate course of action. This type of relief may be appropriate in certain limited circumstances and is within the Commission's authority to grant. Further, a respondent's due process rights are protected because it has the opportunity to respond to the show cause or declaratory order.

The Commission could also take such other "interim" or "preliminary" actions, as it can now, such as issuing an order granting a stay or an order granting an extension of time, stop work order, or other orders contemplated by certificate or hydroelectric licensing conditions. In addition, a complainant may request forms of relief which it believes is within the Commission's authority to grant. The Commission will decide whether the relief may be granted on a case-by-case basis. Accordingly, the requests for rehearing are granted consistent with the discussion above.

Indicated Shippers assert that Rule 206(g)(1)(i) as codified states that the Commission may assign a case to be resolved through alternative dispute resolution or "assign the case to a settlement judge in accordance with section 385.603." However, Rule 603 states that the Commission, instead of assigning cases directly to settlement judges, directs that the Chief Administrative Law Judge appoint a settlement judge. Indicated Shippers request that Rule 206(g)(1)(i) be revised to conform to Rule 603.

The Commission grants Indicated Shippers' request for rehearing since it accurately reflects the Commission's regulations. Therefore, § 385.206(g)(1)(i) will be modified to read "The Commission may assign a case to be resolved through alternative dispute resolution procedures in accordance with §§ 385.604–606, in cases where the affected parties consent, or the Commission may order the appointment of a settlement judge in accordance with section 385.603."

G. Simplified Procedures for Small Controversies

The final rule codified in new Rule 218 procedures for complaints involving small controversies that will allow them to be resolved more simply and expeditiously than more complicated matters. The procedure will be available if the amount in controversy is less than $100,000 and the impact on other entities is de minimis. Among other things, answers, interventions and comments are due within 10 days after the filing of the complaint.

Chevron Pipe Line asserts that the 10 day answer period is too short a time period (a maximum of seven business days if the complaint is filed on a Friday, including the day of receipt of the complaint) and there is no justification for adopting a shorter time than the normal period for answers. In Order No. 602, the Commission recognized that fast track processing will place a strain on its resources. In the same manner, preparing answers to complaints places a strain on the respondent's resources. Chevron Pipe Line asserts that business personnel necessary for the preparation of answers to complaints have other responsibilities, which cannot be completely ignored in favor of preparing the answer. Chevron Pipe Line contends that the Commission should not intensify that unavoidable strain with a 10 day answering period. Rather, it should allow the normal period for answers to small controversy complaints, and, amend its rules to allow a complainant to seek a shorter period upon the proper showing.

The Commission denies Chevron Pipe Line's rehearing. In the Commission's view, the 10 day answer period is sufficient given the more limited nature of the complaints filed under the simplified procedure. Moreover, a respondent is not required to file relevant documents with its answer, thus reducing its burden. Nevertheless, if a respondent believes that the answer period is too short, it may request an extension of time within which to file an answer pursuant to Rule 2008.

Williams asserts that the complaint procedures erroneously provide simplified procedures for controversies less than $100,000, regardless of the likelihood that such controversies could have significant policy impacts. Williams contends that the simplified procedure ignores the ultimate impact on both the respondent and the industry, especially when policy issues are involved. Williams argues that the value placed on a claim by a complainant in one instance might not accurately reflect the ultimate impact of the complaint proceeding. For example, a controversy that is worth $50,000 to the complainant may be worth millions of dollars to the respondent after a precedent is set and others avail themselves of that precedent. Further, Williams asserts that issues that involve matters of policy, even if the amount in controversy is small, must be given full and adequate consideration. Williams submits that the complaint procedures should be revised to eliminate the discriminatory, special treatment for small controversies and provide everyone with the same treatment and procedures.

The Commission denies the request for rehearing. The simplified procedures for complaints are designed to resolve disputes between the complainant and the regulated entity involving less complex matters, for example, a billing dispute. It was not contemplated that small controversy complaints would have any major policy implications. The procedures are designed to allow a complainant with limited resources to seek relief before the Commission without incurring the time and expense associated with a more formal complaint. The effects of a small controversy complaints were intended

to be limited to the complainant and respondent, hence the *de minimis* impact requirement. Nevertheless, if in a respondent's view, the use of the simplified procedures is not appropriate, it should provide support for such assertion in its answer. In the event the Commission finds that a small controversy case has policy implications affecting an industry, or resolution of the complaint would require the respondent to take action affecting other customers that would have a cumulative effect over $100,000, it can remove the case from the simplified procedures and use the more formal procedures under Rule 206. Such decisions will be made on a case-by-case basis.

III. Effective Date

The amendments to the Commission's regulations adopted in this order on rehearing will become effective September 10, 1999.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission denies rehearing in part, grants rehearing in part, and clarifies Order No. 602 as described above, and amends Part 385, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. In § 385.206, paragraphs (b)(7), (b)(8), (b)(9)(i), (c), (e)(3), and (h)(1) are revised, paragraph (g)(2) is removed, paragraphs (g)(1) introductory text, (g)(1)(i), (g)(1)(ii) and (g)(1)(iii) are redesignated as paragraphs (g) introductory text, (g)(1), (g)(2) and (g)(3), respectively, and newly redesignated paragraph (g)(1) is revised to read as follows:

§ 385.206 Complaints (Rule 206).

* * * * *

(b) * * *

(7) State the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief;

(8) Include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits;

(9) * * *

(i) Whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures were used, or why these procedures were not used;

* * * * *

(c) *Service.* Any person filing a complaint must serve a copy of the complaint on the respondent, affected regulatory agencies, and others the complainant reasonably knows may be expected to be affected by the complaint. Service must be simultaneous with filing at the Commission for respondents. Simultaneous or overnight service is permissible for other affected entities. Simultaneous service can be accomplished by electronic mail in accordance with § 385.2010(f)(3), facsimile, express delivery, or messenger.

* * * * *

(e) * * *

(3) The respondent and any interested person who has filed a motion to intervene in the complaint proceeding may make a written request to the complainant for a copy of the complete complaint. The request must include an executed copy of the protective agreement and, for persons other than the respondent, a copy of the motion to intervene. Any person may file an objection to the proposed form of protective agreement.

* * * * *

(g) * * *

(1) The Commission may assign a case to be resolved through alternative dispute resolution procedures in accordance with §§ 385.604–385.606, in cases where the affected parties consent, or the Commission may order the appointment of a settlement judge in accordance with § 385.603;

* * * * *

(h) *Fast Track Processing.* (1) The Commission may resolve complaints using Fast Track procedures if the complaint requires expeditious resolution. Fast Track procedures may include expedited action on the pleadings by the Commission, expedited hearing before an ALJ, or expedited action on requests for stay, extension of time, or other relief by the Commission or an ALJ.

* * * * *

3. In § 385.213, paragraphs (c)(4), (c)(5)(ii), (c)(5)(iii) and (d)(2) introductory text are revised to read as follows:

§ 385.213 Answer (Rule 213).

* * * * *

(c) * * *

(4) An answer to a complaint must include documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts and affidavits. An answer is also required to describe the formal or consensual process it proposes for resolving the complaint.

(5) * * *

(ii) A respondent must provide a copy of its answer without the privileged information and its proposed form of protective agreement to each entity that has either been served pursuant to § 385.206 (c) or whose name is on the official service list for the proceeding compiled by the Secretary.

(iii) The complainant and any interested person who has filed a motion to intervene may make a written request to the respondent for a copy of the complete answer. The request must include an executed copy of the protective agreement and, for persons other than the complainant, a copy of the motion to intervene. Any person may file an objection to the proposed form of protective agreement.

* * * * *

(d) * * *

(2) Any answer to a pleading or amendment to a pleading, other than a complaint or an answer to a motion under paragraph (d)(1) of this section, must be made:

* * * * *

[FR Doc. 99–19885 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 151, 174, 178

[T.D. 99–65]

RIN 1515–AB75

Detention of Merchandise

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for procedures regarding the detention of merchandise that is undergoing extended Customs examination. The changes promulgated accurately reflect amendments to the underlying statutory

authority, enacted as part of the Customs modernization portion of the North American Free Trade Agreement Implementation Act. The regulations provide importers with an accelerated method to receive administrative or judicial review of any decision to exclude merchandise from the United States. Certain other conforming amendments are also made.

EFFECTIVE DATE: September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–927–2344.

SUPPLEMENTARY INFORMATION:

Background

In a notice of proposed rulemaking (NPRM) published in the **Federal Register** (61 FR 28522) on June 5, 1996, Customs proposed to amend the provisions of part 151 of the Customs Regulations (19 CFR part 151), relating to the examination, sampling and testing of merchandise, to provide for procedures to be followed with regard to the detention of merchandise. Section 613 of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, Title VI of which is popularly known as the Customs Modernization Act (Mod Act), amended the provisions of section 499 of the Tariff Act of 1930, as amended (19 U.S.C. 1499), to provide for the detention of merchandise in any case where Customs is unable, upon initial examination, to make a determination as to whether that imported merchandise may be released into commerce or seized or denied entry because of some sort of defect regarding its admissibility into the United States. This legislation brought the law into conformity with existing Customs practice with regard to the examination and detention of merchandise.

Prior to this amendment, Customs, while having extensive examination and broad detention authority, had no specific statutory or regulatory procedures for detaining merchandise whose admissibility had not yet been determined. The Mod Act codified Customs current detention practices and provided importers with an accelerated method to receive administrative or judicial review of any decision to exclude or a deemed exclusion.

Under the provisions of section 613, Customs has five working days after merchandise is presented for examination to determine whether such merchandise should be detained or can be released. The NPRM provided that merchandise shall be considered to be presented for Customs examination when it is in a condition to be viewed and examined by a Customs officer. Mere presentation to the examining officer of a cargo van, container, or instrument of international traffic in which the merchandise to be examined is contained was not to be considered to be presentation of the merchandise for Customs examination purposes so as to start the five-day period in which the decision to detain or release must be made. Further, consistent with the provisions of § 151.7 of the Customs Regulations (19 CFR 151.7), relating to the examination of merchandise at a place other than the public stores, the importer shall bear any expense involved in preparing or transporting the merchandise for Customs examination.

The NPRM required Customs to issue a written notice of detention to the importer or other party having an interest in the merchandise. The notice of detention must advise the importer or other interested party of the initiation of the detention, the specific reason for, and the anticipated length of, the detention, the nature of the tests or inquiries to be conducted and the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention. After 30 days, or such longer period authorized by law, if Customs has not made a determination to release or seize, the goods are deemed to be excluded for purposes of 19 U.S.C. 1514. Under the proposed rule, the 30-day limitation could be extended when the importer or interested party requests in writing an extension of the detention period, in order to comply with Customs requirements. Barring that, the importer or interested party may file a protest as to the exclusion. If, within 30 days after filing of the protest, Customs fails to act, the importer or interested party may seek judicial review in the Court of International Trade. The proposed regulations also permitted Customs to allow exportation of the goods in lieu of seizure with all costs of exportation being borne by the importer.

The statute compels Customs to make timely decisions, provide timely notices, disclose available testing results and descriptions of procedures and methodologies that are not proprietary to Customs or the holder of any copyright or patent, and process any exclusion protests within a prescribed statutory time period. If a notice to exclude is not issued within such time period and a court action is commenced, the burden of proof is on Customs, by a preponderance of the evidence, to show good cause as to why an admissibility decision had not been made prior to the time the importer commenced suit. If Customs makes the decision to exclude, an importer wishing to challenge the decision shall bear the burden of proof. These procedures are applicable to those cases where Customs has the responsibility and authority to determine the admissibility of the merchandise. They do not apply to those situations where the decision of admissibility is vested with another Federal agency.

One party responded to the NPRM, making various comments. A description of each comment made, followed by Customs response to the comment, is set forth below.

Discussion of Comments

Comment

The commenter suggests that the statute did not contemplate that all detentions arising from laws administered by other government agencies would be exempt from the new detention and seizure provisions. The commenter notes that the legislative history to the Mod Act simply recognized that Customs often detains merchandise on behalf of other agencies, but specifically stated that the law would not preclude application of this new procedure to those situations if agreed to by the other agency. As such, the commenter avers that Congress clearly provided authority for all imports to be governed by the same time restraints and notice procedures.

Customs Response

The legislative history to which the commenter refers expressly states that nothing in the statute is intended to change the procedures or relationship between Customs and other Federal agencies. This would not preclude application of this new procedure and remedy in those cases where Customs has the responsibility and authority to determine the admissibility of the merchandise, and such procedure and remedy are agreed to by the other agency. However, it does not authorize application of the new procedure to detentions made by Customs on behalf of another agency that retains the authority to make its own admissibility determinations.

A full reading of the legislative history makes it clear that Congress had no intention of unilaterally applying Customs detention procedures in instances where longstanding procedures of other agencies are in place. Nor would the new detention provisions apply in any situation where the determination as to admissibility of merchandise rests with the other agency. For example, the newly

legislated procedures would not be applicable to determinations of admissibility of imported merchandise as required by the Food, Drug and Cosmetic Act (see 21 U.S.C. 381). The Food and Drug Administration (FDA), and not Customs, is responsible for determinations of admissibility of importations that fall under that Act. A full complement of regulations providing for a well-established detention and hearing program for such merchandise is already in place. Customs detention procedures promulgated in this final rule are clearly inapplicable in such a setting.

Comment

The commenter asks for clarification as to whether copyright and trademark requirements are governed by the proposed regulations.

Customs Response

The regulations governing the detention of possibly piratical (copyright violations) merchandise are specifically enumerated in part 133, subpart E, Customs Regulations (19 CFR part 133, subpart E), and find their statutory origins in 17 U.S.C. 603. The regulations governing the detention of confusingly similar trademark-violative merchandise are specifically enumerated in part 133, subpart C, Customs Regulations (19 CFR part 133, subpart C) and find their statutory origins in 15 U.S.C. 1124. Section 151.16 is changed to confirm the inapplicability of its detention notice requirements to those situations involving suspected piratical or confusingly similar merchandise. It should be noted that regulatory changes have recently been issued in a separate document (T.D. 98–21, 63 FR 11825, dated March 11, 1998), which clarify detention procedures with regard to suspected copyright and trademark violations.

Comment

The commenter states that the proposed rule does not assure that the importer is aware of the date that triggers the five-working day period for decision-making by the Customs Service. It is averred that the regulation should require that Customs provide notice to the importer or broker of the date of availability of the merchandise for examination so that the importer is aware of its rights and can exercise those rights without making *ad hoc* inquiries to the Customs Service. Additionally, the commenter suggests that the notice of detention should indicate the date on which the merchandise was presented for examination.

Customs Response

Customs agrees that the date the merchandise was presented for examination should appear on the notice of detention and § 151.16(c)(1) has been amended to provide for this. It is also Customs view that it would be an unnecessary burden to send an additional notification to the importer of the date that presentation actually occurred. When intensive examination of a shipment is to be undertaken, the importer or agent of the importer (generally the Customs broker) is apprised of the fact and is instructed to arrange to present the merchandise for examination. Once the importer or his agent has arranged for the examination, it would be wasteful of resources to require the Government to send an additional notice that the merchandise for which examination has been arranged was actually presented for examination on a date certain.

Comment

The commenter proposes that Customs should be required to issue a notice of detention when it fails to act to release the goods within the initial 5-working day period, but does not make a formal decision to detain the merchandise.

Customs Response

Section 151.16(b) states that merchandise that is not released within the 5-working day period shall be considered to be detained merchandise. As such, Customs is required to send a notice of detention on this merchandise. Section 151.16(c) is amended to make this clear.

Comment

The commenter suggests, in reference to proposed § 151.16(i), that Customs retain authority to approve any protest and release or seize the merchandise up to and after a summons is filed in the Court of International Trade. The commenter states that it would be counterproductive to require an importer to go to court for a favorable decision where Customs intends to act favorably but merely misses the 30-day deadline. The commenter notes that the legislative history to the statute recognizes the continuing authority of Customs to release the merchandise where a protest is "deemed" denied.

Customs Response

Customs agrees that if an action concerning a deemed denial of a protest with respect to a detention has not been commenced in the Court of International Trade, Customs has the authority to act favorably on the protest and release the merchandise; however, if an action is commenced, Customs is of the view that the matter is within the jurisdiction of the Court and release could only be ordered by the Court. Also, Customs is of the view that it has the authority officially to deny the protest in accordance with § 174.30 of the Customs Regulations.

Consequently, § 151.16 is changed by adding a new paragraph (h) to reflect Customs authority to grant protests that have been deemed denied and to release detained goods or to deny protests in accordance with § 174.30 of the Customs Regulations at any time prior to initiation of a court action pursuant to 28 U.S.C. 1581.

Comment

The commenter indicates that no sensitive import information should be released to a third party based upon "suspicion" or without first providing a reasonable opportunity for the importer to resolve the questions concerning the detention directly with Customs. The commenter states that if Customs adopts the subject proposed rule in concert with a second separate proposed rule (58 FR 44476, dated August 23, 1993) which involves the release of sensitive information to trademark owners where merchandise is detained under suspicion that it bears an infringing trademark or copyright, then the possibility will be created that information will be provided to third persons because merchandise was "deemed" detained or seized. The commenter indicates that the subject proposed rule must be modified to assure that the release of information only occurs where there is an affirmative decision by Customs that there is a violation and the importer has not directly resolved the issue with Customs.

Customs Response

In Customs view, the rule as proposed and as adopted here does not provide for the release of confidential or proprietary business information to any parties. Further, the commenter does not suggest how the rule is suspect with regard to the release of this sensitive information.

Merchandise will be detained when a question as to admissibility arises and further examination or testing is required. Indeed, the final rule is careful to exempt specifically from release any information on testing procedures or methodologies that are proprietary to holders of copyrights or patents

(§ 151.16(d)). Customs believes that this final rule does not serve to assist in the illegal dissemination of trade sensitive information in violation of any law or regulation.

It is noted that the other proposed rule referred to by the commenter, which was published in the **Federal Register** (58 FR 44476) on August 23, 1993, and did address certain disclosure matters, has recently been adopted as a final rule (T.D. 98–21, *supra*).

Conclusion

In view of the foregoing, and following careful consideration of the issues raised by the commenter and further review of the matter, Customs has concluded that the proposed amendments with the modifications discussed above should be adopted.

Additional Changes

In addition, Customs has determined to change § 151.16(c) to make clear that issuance of a notice of detention is not a final determination so as to permit the filing of a protest pursuant to 19 U.S.C. 1514(a)(4). Proposed § 151.16(e), redesignated as § 151.16(j) for editorial clarity, is revised regarding seizure and forfeiture to allow Customs to deny entry or allow exportation of detained merchandise where authorized by law, with the importer responsible for paying all expenses of exportation. Proposed paragraphs (f) and (g) of § 151.16, redesignated as paragraphs (e) and (f) in this document, respectively, are changed to remove any references that would have allowed the importer or interested party to extend the time Customs has to issue a final determination with respect to detained merchandise. Customs has determined that the importer may, without the necessity of asking for an extension of time, bring the merchandise into compliance thereby lifting the detention or file a protest based upon Customs failure to issue a final determination. In this latter regard, the term "decision" in proposed § 151.16(f), redesignated as § 151.16(e) is changed to "determination", for purposes of editorial consistency with redesignated § 151.16(f). Section 151.16(e) is further revised to provide that a final determination thereunder may be the subject of a protest.

In order to bring consistency to the regulations with regard to the disallowance of any extension of time which Customs has to issue a final determination to exclude merchandise, § 174.21(b), Customs Regulations (19 CFR 174.21(b)) is amended by removing the provision which allowed for delay in issuance of a decision on a protest relating to the deemed exclusion of merchandise (at the protestant's request) insofar as that provision of the regulations is inconsistent with the provisions of 19 U.S.C. 1499(c)(5)(B).

In order to clarify the time period in which a protestant has to commence a civil action in the Court of International Trade in response to a deemed denial of a protest; Customs has amended § 174.31 by adding a new paragraph (c) to indicate that a civil action must be filed within 180 days after the date that a protest is deemed denied under proposed § 151.16(h), which is redesignated as § 151.16(g). Customs has also added the phrase "for purposes of 28 U.S.C. 1581" to §§ 151.16(g) and 174.21(b) to further clarify this change.

Regulatory Flexibility Act and Executive Order 12866

This final rule document accurately reflects recent amendments to statutory law, enacted as part of the Mod Act. These amendments essentially constitute a codification of existing and longstanding Customs practice with regard to the examination and detention of imported merchandise. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this rule does not have a significant economic impact on a substantial number of small entities. Thus, the rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604. Nor does the rule result in a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0210. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is contained in § 151.16(d). This information is necessary and will be used to determine the admissibility of imported merchandise and to otherwise comply with the requirements of the Mod Act and protect the revenue. The likely respondents and/or recordkeepers are businesses or other for-profit institutions.

The estimated average annual burden associated with this collection is 2 hours per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

List of Subjects

19 CFR Part 151

Customs duties and inspection, Examination, Sampling and testing, Imports, Laboratories, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, parts 151, 174, and 178, Customs Regulations (19 CFR parts 151, 174, and 178), are amended as set forth below.

PART 151—EXAMINATION, SAMPLING AND TESTING OF MERCHANDISE

1. The general authority citation for part 151, and the specific authority for subpart A, continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 20 and 21, Harmonized Tariff Schedule of the United States), 1624. Subpart A also issued under 19 U.S.C. 1499. * * *

2. Part 151 is amended by adding a new § 151.16 to read as follows:

§ 151.16 Detention of merchandise.

(a) *Exemptions from applicability.* The provisions of this section are not applicable to detentions effected by Customs on behalf of other agencies of the U.S. Government in whom the determination of admissibility is vested and to detentions arising from possibly piratical copies (see part 133, subpart E, of this chapter) or import of goods bearing marks which are confusingly similar to recorded trademarks or restricted gray market merchandise (see part 133, subpart C, of this chapter.)

(b) *Decision to detain or release.* Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented

for Customs examination, Customs shall decide whether to release or detain merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise. For purposes of this section, merchandise shall be considered to be presented for Customs examination when it is in a condition to be viewed and examined by a Customs officer. Mere presentation to the examining officer of a cargo van, container or instrument of international traffic in which the merchandise to be examined is contained will not be considered to be presentation of merchandise for Customs examination for purposes of this section. Except when merchandise is examined at the public stores, the importer shall pay all costs relating to the preparation and transportation of merchandise for examination.

(c) *Notice of detention.* If a decision to detain merchandise is made, or the merchandise is not released within the 5-day period, Customs shall issue a notice to the importer or other party having an interest in such merchandise no later than 5 days (excluding weekends and holidays) after such decision or failure to release (see paragraph (b) of this section). Issuance of a notice of detention is not to be construed as a final determination as to admissibility of the merchandise. The notice shall be prepared by the Customs officer detaining the merchandise and shall advise the importer or other interested party of the:

(1) Initiation of the detention, including the date the merchandise was presented for examination;

(2) Specific reason for the detention;

(3) Anticipated length of the detention;

(4) Nature of the tests or inquiries to be conducted; and

(5) Nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

(d) *Providing testing results.* Upon written request by the importer or other party having an interest in detained merchandise, Customs shall provide copies of the results of any testing conducted on the merchandise together with a description of the testing procedures and methodologies used (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by Customs for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(e) *Final determinations.* A final determination with respect to admissibility of detained merchandise will be made within 30 days from the date the merchandise is presented for Customs examination. Such a determination may be the subject of a protest.

(f) *Effect of failure to make a determination.* The failure by Customs to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for Customs examination, or such longer period if specifically authorized by law, shall be treated as a decision by Customs to exclude the merchandise for purposes of section 514(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)(4)). Such a deemed exclusion may be the subject of a protest.

(g) *Failure to decide protest.* If a protest which is filed as a result of a final determination or a deemed exclusion of detained merchandise is not allowed or denied in whole or in part before the 30th day after the day on which the protest was filed, it shall be treated as having been denied on such 30th day for purposes of 28 U.S.C. 1581.

(h) *Decision before commencement of court action.* Customs may at any time after a deemed denial of a protest as provided in paragraph (g) of this section, but before commencement of a court action as provided in paragraph (i) of this section, grant a protest and permit release of detained merchandise, or deny a protest in accordance with § 174.30 of this chapter.

(i) *Commencement of court action; burden of proof and decisions of the court.* Once a court action respecting a detention is commenced, unless Customs establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

(j) *Seizure and forfeiture; denial of entry or exportation.* If otherwise provided by law, detained merchandise may be seized and forfeited. In lieu of seizure and forfeiture, where authorized by law, Customs may deny entry and permit the merchandise to be exported, with the importer responsible for paying all expenses of exportation.

PART 174—PROTESTS

1. The general authority citation for part 174 continues to read as follows, and a specific sectional authority citation for § 174.21 is added to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

Section 174.21 also issued under 19 U.S.C. 1499.

2. Section 174.21 is amended by revising paragraph (b) to read as follows:

§ 174.21 Time for review of protests.

* * * * *

(b) *Protests relating to exclusion of merchandise.* If the protest relates to an administrative action involving exclusion of merchandise from entry or delivery under any provision of the Customs laws, the port director shall review and act on a protest filed in accordance with section 514(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1514(a)(4)), within 30 days from the date the protest was filed. Any protest filed pursuant to this paragraph shall clearly so state on its face. Any protest filed pursuant to this paragraph which is not allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day for purposes of 28 U.S.C. 1581.

3. Section 174.31 is amended by removing the word "or" following the comma at the end of paragraph (a); by removing the period at the end of paragraph (b), and adding a comma in its place, followed by the word "or"; and by adding a new paragraph (c) thereafter to read as follows:

§ 174.31 Judicial review of denial of protest.

* * * * *

(c) The date that a protest is deemed denied in accordance with § 174.21(b), or § 151.16(g) of this chapter.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
*	*	*
151.16(d)) ..	Detention of merchandise.	1515–0210

19 CFR Section	Description	OMB control No.
* * * * *		

Commissioner of Customs,
Raymond W. Kelly.
Approved: July 8, 1999.
Deputy Assistant Secretary of the Treasury
John P. Simpson
[FR Doc. 99–20606 Filed 8–10–99; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4428–N–02]

RIN 2577–AB91

Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs: Change in Effective Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule; change in effective date.

SUMMARY: This document advises the public that the interim rule published on May 14, 1999, which provides for the complete merger of HUD's Section 8 tenant-based Certificate and Voucher programs into a new Housing Choice Voucher Program, will take effect on October 1, 1999.

DATES: The effective date of the rule published at 64 FR 26632 (May 14, 1999) is delayed until October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On May 14, 1999 (64 FR 26632), HUD published an interim rule to implement most of the Section 8 tenant-based program provisions contained in the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub. L. 105–276, approved October 21, 1998; 112 Stat. 2461) (the "1998 Act"). Section 502 of the 1998 Act states that a purpose of the legislation is "consolidating the voucher and certificate programs for rental assistance under Section 8 of the United States Housing Act of 1937 (the "USH Act" (42 U.S.C. 1437f)) into a single market-driven program that will assist in making tenant-based rental assistance under such section more successful at helping low-income families obtain affordable housing and will increase housing choice for low-income families." Accordingly, the May 14, 1999 interim rule provides for the complete merger of the Section 8 tenant-based certificate and voucher programs (section 545 of the 1998 Act, amending 42 U.S.C. 1437f(o)) into the new Housing Choice Voucher Program.

The May 14, 1999 interim rule provides for the rule to take effect on August 12, 1999. HUD has decided to delay the effective date until October 1, 1999, to allow public housing agencies (PHAs) more time to prepare for implementation of the Housing Choice Voucher Program and to allow PHAs to revise their computer software to accommodate the new subsidy formula.

The purpose of this document is to give notice that the effective date of the May 14, 1999 interim rule has been changed to October 1, 1999. Any reference in the regulatory text to an effective date or merger date earlier than October 1, 1999 will be amended at the final rule stage.

Accordingly, HUD's interim rule published on May 14, 1999 at 64 FR 26632 (Docket No. FR–4428–I–01, FR Doc. 99–12082) will take effect on October 1, 1999.

Dated: August 6, 1999.
Deborah Vincent,
General Deputy Assistant Secretary for Public and Indian Housing.
[FR Doc. 99–20837 Filed 8–9–99; 11:04 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8833]

RIN 1545–AW08

Consolidated Returns—Consolidated Overall Foreign Losses and Separate Limitation Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final consolidated return regulations relating to the treatment of overall foreign losses and separate limitation losses in the computation of the foreign tax credit limitation. The regulations replace existing guidance with respect to overall foreign losses and provide guidance with respect to separate limitation losses. These regulations affect consolidated groups that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.

DATES: *Effective Date:* These regulations are effective August 11, 1999.

Applicability Dates: For dates of applicability of these regulations, see §§ 1.1502–9A(a)(1) and (b)(1) and 1.1502–9(e).

FOR FURTHER INFORMATION CONTACT: Trina Dang of the Office of Associate Chief Counsel (International), (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under the control number 1545–1634. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The estimated annual burden per respondent is 1.5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained so long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 29, 1998, the IRS and Treasury published in the **Federal Register** (REG–106902–98, 63 FR 71589) a notice of proposed rulemaking modifying the rules relating to the

treatment of overall foreign loss (OFL) accounts, and providing new rules relating to the treatment of separate limitation loss (SLL) accounts. The regulations proposed to replace the notional account method for allocating a group's consolidated OFL (COFL) account to a departing member of a group with an asset-based method for allocating both OFLs and SLLs. The regulations also proposed to modify the section 904(f)(3) and (5)(F) disposition rules in the case of intercompany transactions, and to provide computational rules and nomenclature for SLLs as well as OFLs.

A public hearing was held on February 17, 1999, and two written comments were received. One commentator recommended the retention of the notional account method because the asset-based method can result in the allocation of a portion of the COFL account to a departing member that did not contribute to the COFL account, a result that the commentator views as arbitrary. To alleviate the tension between the interest allocation and COFL rules, the commentator suggested amending the interest allocation rules instead of the COFL rules.

Treasury and the IRS recognize that, under the asset-based method, a portion of a COFL account can under certain circumstances be allocated to a member that did not directly contribute to the COFL account (because, for example, it was not a member of the group at the time the OFL arose). However, as noted in the preamble to regulations issued in January 1998 that eliminated the limitation on OFL recapture and foreign tax credit utilization with respect to separate return limitation years, any single member's economic "contribution" to a COFL account is difficult to measure since the expense allocation rules require interest and certain other expenses to be allocated to a member's income in separate limitation categories on the basis of the group's assets.

An asset-based method is not arbitrary because it associates a COFL account with assets that will produce income subject to recapture, thereby ensuring the recapture of the COFL account. As explained in the preamble to the proposed regulations, Treasury and the IRS believe that the asset-based method for allocating a COFL account harmonizes the COFL rules with the interest allocation provisions. Those provisions, as required by statute, are designed to prevent corporations from borrowing in ways that inappropriately minimize the amount of interest expense allocated against foreign-source income (thereby inflating the amount of foreign-source income that can be sheltered from U.S. tax by foreign tax credits).

The commentator also criticized the asset-based method for allocating COFL accounts as creating uncertainty and administrative burdens in determining the proper amount of a selling group's COFL account to be apportioned to a departing member at the time a member is acquired. Treasury and the IRS recognize that the asset-based method may result in greater uncertainty under certain circumstances. It is anticipated that a taxpayer acquiring a member of a consolidated group may address any uncertainties as to the proper allocation of a COFL account by entering into a tax indemnity or similar agreement. It is also noted that, even under the notional account method, a COFL account apportioned to a departing member cannot be determined with certainty at the time of the acquisition because the apportionment is made at the end of the taxable year during which the member departs the group. Treasury and the IRS recognize that the new rules may result in an increased burden for certain taxpayers, but have concluded that the possibility of an increased burden is not sufficient to warrant the retention of the notional account method in light of severe distortions created by the interaction of the notional account method and the interest expense allocation provisions.

Another commentator requested a transition rule under which the notional account method would continue to apply to a group's existing COFL account that would not be a part of the group's account had the asset-based allocation method been in effect in prior years. The commentator argued that a transition rule is necessary because taxpayers can be adversely affected by the transition from the old rules to the new rules.

The final regulations do not adopt this transition rule because of administrative and equity concerns. The rule would be difficult to administer because a taxpayer would be required to ascertain asset values of all members that departed the group (on the date that the member departed) going back a number of years in order to apply the asset-based allocation method. Additionally, keeping track of the grandfathered account on a prospective basis and distinguishing it from non-grandfathered accounts could add significant complexity.

Furthermore, it is not clear whether the commentator's suggested transition rule generally produces equitable results. Under the suggested transition rule, no portion of the group's COFL account that would not be a part of the group's account had the new rules applied in earlier years would be allocated to a departing member that has foreign assets but that does not have a notional account. Treasury and the IRS are not convinced that it would be more equitable for the group to bear the burden of the COFL account under these circumstances.

A question has been raised regarding whether the asset-based method for allocating COFL accounts to a departing member also applies to an affiliated group that does not file a consolidated return. Because the interest expense allocation rules apply to affiliated groups, these rules can result under certain circumstances in the creation of OFL accounts in members with no foreign assets. Section 904(i) is an anti-abuse rule intended to prevent an affiliated group from circumventing the consolidated return rules to avoid the foreign tax credit limitation provisions. Under § 1.904(i)–1, each member of an affiliated group determines its taxable income for each separate limitation income category under section 904(d) and then combines those amounts to determine one amount of income for the group in each income category. The consolidated return regulations that apply the principles of sections 904(f) and 907(c)(4) will then be applied to the combined amounts in each separate category as if all affiliates were members of a single consolidated group. By reason of the section 904(i) regulations, the asset-based method for allocating the appropriate portion of a group's COFL account to a departing member applies to an affiliated group of corporations that does not file returns on a consolidated basis.

A question has also been raised as to whether the tax book value of assets is affected for purposes of COFL apportionment if a member's departure from a group causes the group to take into account in computing consolidated taxable income gain or loss on assets transferred in intercompany transactions. To prevent apportionment of a disproportionate amount of the COFL account to a departing member, § 1.1502–9(c)(2)(ii) of the final regulations clarifies that the computation of the tax book value of assets for purposes of such apportionment shall be determined without regard to previously deferred gain or loss that is taken into account as a result of the member's departure from the group (because, for example, of the acceleration rule under § 1.1502–13(d)).

After full consideration of all questions and comments, the proposed

regulations published in the **Federal Register** on December 29, 1998 (REG–106902–98, 63 FR 71589) are adopted by this Treasury decision without substantive amendment.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory impact analysis is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect corporations filing consolidated federal income tax returns that have overall foreign losses or separate limitation losses. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have overall foreign losses or separate limitation losses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of this regulation is Trina Dang of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.1502–9T and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–9 also issued under 26 U.S.C. 1502. * * *

Section 1.1502–9A also issued under 26 U.S.C. 1502. * * *

Par. 2. In § 1.1502–3T, paragraph (c)(4), the first sentence is amended by removing the language "1.1502–9T(b)(1)(v)" and adding "1.1502–9A(b)(1)(v)" in its place, and revising the last sentence to read as follows:

§ 1.1502–3T Consolidated investment credit (temporary).

* * * * *

(c) * * *

(4) * * * However, a consolidated group making the election provided in § 1.1502–9A(b)(1)(vi) (electing not to apply § 1.1502–9A(b)(1)(v) to years beginning before January 1, 1998) may nevertheless choose to apply all such paragraphs other than § 1.1502–9A(b)(1)(v) for all relevant years.

* * * * *

Par. 3. Immediately following § 1.1504–4 an undesignated center heading is added to read as follows:

Regulations Applicable for Tax Years for Which a Return Is Due on or Before August 11, 1999.

Par. 4. Section 1.1502–9 is redesignated as § 1.1502–9A and transferred under the new undesignated center heading set out in Par. 3. above.

Par. 5. Newly designated § 1.1502–9A is amended by:

1. Revising the section heading.
2. Redesignating the paragraph heading and text of paragraph (a) as the paragraph heading and text of paragraph (a)(2).
3. Adding a new paragraph heading for paragraph (a), and new paragraphs (a)(1), (b)(1)(v) and (b)(1)(vi).

The revisions and additions read as follows:

§ 1.1502–9A Application of overall foreign loss recapture rules to corporations filing consolidated returns due on or before August 11, 1999.

(a) *Scope*—(1) *Effective date.* This section applies only to consolidated return years for which the due date of the income tax return (without extensions) is on or before August 11, 1999.

(2) *In general.* * * *

(b) * * *

(1) * * *

(v) *Special effective date for SRLY limitation.* Except as provided in paragraph (b)(1)(vi) of this section, paragraphs (b)(1)(iii) and (iv) of this section apply only to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, the rules of paragraph (b)(1)(ii) of this section shall apply to overall foreign losses from separate return years that are separate return limitation years. For purposes of applying paragraph (b)(1)(ii) of this section in such years, the group treats a member with a balance in an overall foreign loss account from a separate return limitation year on the first day of the first consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998, as a corporation joining the group on such first day. An overall foreign loss that is part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998, shall be added to the appropriate consolidated overall foreign loss account in the year that it is absorbed. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, similar principles apply to overall foreign losses when there has been a consolidated return change of ownership (regardless of when the change of ownership occurred). See also § 1.1502–3T(c)(4) for an optional effective date rule (generally making this paragraph (b)(1)(v) applicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(vi) *Election to defer application of special effective date.* A consolidated group may elect not to apply paragraph (b)(1)(v) of this section to consolidated return years beginning before January 1, 1998. To make this election, a consolidated group must write "Election Pursuant to Notice 98–40" across the top of page 1 of an original or amended tax return for each consolidated return year subject to the election. For the first consolidated return year to which the overall foreign loss provisions of paragraph (b)(1)(v) of this section apply (i.e., the first year beginning on or after January 1, 1998), such consolidated group must write "Notice 98–40 Election in Effect in Prior Years" across the top of page 1 of the consolidated tax return for that year. For purposes of applying paragraph (b)(1)(ii) of this section with respect to such year, any member with a balance in an overall foreign loss account from a separate return limitation year on the first day of

such year shall be treated as joining the group on such first day.

* * * * *

Par. 6. New § 1.1502–9 is added to read as follows:

§ 1.1502–9 Consolidated overall foreign losses and separate limitation losses.

(a) *In general.* This section provides rules for applying section 904(f) (including its definitions and nomenclature) to a group and its members. Generally, section 904(f) concerns rules relating to overall foreign losses (OFLs) and separate limitation losses (SLLs) and the consequences of such losses. As provided in section 904(f)(5), losses are computed separately in each category of income described in section 904(d)(1) (basket). Paragraph (b) of this section defines terms and provides computational and accounting rules, including rules regarding recapture. Paragraph (c) of this section provides rules that apply to OFLs and SLLs when a member becomes or ceases to be a member of a group. Paragraph (d) of this section provides a predecessor and successor rule. Paragraph (e) of this section provides effective dates.

(b) *Consolidated application of section 904(f).* A group applies section 904(f) for a consolidated return year in accordance with that section, subject to the following rules:

(1) *Computation of CSLI or CSLL and consolidated U.S. source income or loss.* The group computes its consolidated separate limitation income (CSLI) or consolidated separate limitation loss (CSLL) for each basket under the principles of § 1.1502–11 by aggregating each member's foreign-source taxable income or loss in such basket computed under the principles of § 1.1502–12, and taking into account the foreign portion of the consolidated items described in § 1.1502–11(a)(2) through (8) for such basket. The group computes its consolidated U.S.-source taxable income or loss under similar principles.

(2) *Netting CSLLs, CSLIs, and consolidated U.S. source taxable income or loss.* The group applies section 904(f)(5) to determine the extent to which a CSLL for a basket reduces CSLI for another basket or consolidated U.S.-source taxable income.

(3) *CSLL and COFL accounts.* To the extent provided in section 904(f), the amount by which a CSLL for a basket (the loss basket) reduces CSLI for another basket (the income basket) shall result in the creation of (or addition to) a CSLL account for the loss basket with respect to the income basket. Likewise, the amount by which a CSLL for a loss basket reduces consolidated U.S.-source income will create (or add to) a consolidated overall foreign loss account (a COFL account).

(4) *Recapture of COFL and CSLL accounts.* In the case of a COFL account for a loss basket, section 904(f)(1) and (3) recharacterizes some or all of the foreign-source income in the loss basket as U.S.-source income. In the case of a CSLL account for a loss basket with respect to an income basket, section 904(f)(5)(C) and (F) recharacterizes some or all of the foreign-source income in the loss basket as foreign-source income in the income basket. The COFL account or CSLL account is reduced to the extent amounts are recharacterized with respect to such account.

(5) *Intercompany transactions*—(i) *Nonapplication of section 904(f) disposition rules.* Neither section 904(f)(3) (in the case of a COFL account) nor (5)(F) (in the case of a CSLL account) applies at the time of a disposition that is an intercompany transaction to which § 1.1502–13 applies. Instead, section 904(f)(3) and (5)(F) applies only at such time and only to the extent that the group is required under § 1.1502–13 (without regard to section 904(f)(3) and (5)(F)) to take into account any intercompany items resulting from the disposition, based on the COFL or CSLL account existing at the end of the consolidated return year during which the group takes the intercompany items into account.

(ii) *Example.* Paragraph (b)(5)(i) of this section is illustrated by the following examples. The identity of the parties and the basic assumptions set forth in § 1.1502–13(c)(7)(i) apply to the examples. Except as otherwise stated, assume further that the consolidated group recognizes no foreign-source income other than as a result of the transactions described. The examples are as follows:

Example 1. (i) On June 10, Year 1, S transfers nondepreciable property with a basis of $100 and a fair market value of $250 to B in a transaction to which section 351 applies. The property was predominantly used without the United States in a trade or business, within the meaning of section 904(f)(3). B continues to use the property without the United States. The group has a COFL account in the relevant loss basket of $120 as of December 31, Year 1.

(ii) Because the contribution from S to B is an intercompany transaction, section 904(f)(3) does not apply to result in any gain recognition in Year 1. See paragraph (b)(5)(i) of this section.

(iii) On January 10, Year 4, B ceases to be a member of the group. Because S did not recognize gain in Year 1 under section 351, no gain is taken into account in Year 4 under § 1.1502–13(d). Thus, no portion of the group's COFL account is recaptured in Year 4. For rules requiring apportionment of a portion of the COFL account to B, see paragraph (c)(2) of this section.

Example 2. (i) The facts are the same as in paragraph (i) of *Example 1*. On January 10, Year 4, B sells the property to X for $300. As of December 31, Year 4, the group's COFL account is $40. (The COFL account was reduced between Year 1 and Year 4 due to unrelated foreign-source income taken into account by the group.)

(ii) B takes into account gain of $200 in Year 4. The $40 COFL account in Year 4 recharacterizes $40 of the gain as U.S. source. See section 904(f)(3).

Example 3. (i) On June 10, Year 1, S sells nondepreciable property with a basis of $100 and a fair market value of $250 to B for $250 cash. The property was predominantly used without the United States in a trade or business, within the meaning of section 904(f)(3). The group has a COFL account in the relevant loss basket of $120 as of December 31, Year 1. B predominately uses the property in a trade or business without the United States.

(ii) Because the sale is an intercompany transaction, section 904(f)(3) does not require the group to take into account any gain in Year 1. Thus, under paragraph (b)(5)(i) of this section, the COFL account is not reduced in Year 1.

(iii) On January 10, Year 4, B sells the property to X for $300. As of December 31, Year 4, the group's COFL account is $60. (The COFL account was reduced between Year 1 and Year 4 due to unrelated foreign-source income taken into account by the group.)

(iv) In Year 4, S's $150 intercompany gain and B's $50 corresponding gain are taken into account to produce the same effect on consolidated taxable income as if S and B were divisions of a single corporation. See § 1.1502–13(c). All of B's $50 corresponding gain is recharacterized under section 904(f)(3). If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $100 basis in the property and would have $200 of gain ($60 of which would be recharacterized under section 904(f)(3)), instead of a $50 gain. Consequently, S's $150 intercompany gain and B's $50 corresponding gain are taken into account, and $10 of S's gain is recharacterized under section 904(f)(3) as U.S. source to reflect the $10 difference between B's $50 recharacterized gain and the $60 recomputed gain that would have been recharacterized.

(c) *Becoming or ceasing to be a member of a group—(1) Adding separate accounts on becoming a member.* At the time that a corporation becomes a member of a group (a new member), the group adds to the balance of its COFL or CSLL account the balance of the new member's corresponding OFL account or SLL account. A new member's OFL account corresponds to a COFL account if the account is for the same loss basket. A new member's SLL account corresponds to a CSLL account if the account is for the same loss basket

and with respect to the same income basket. If the group does not have a COFL or CSLL account corresponding to the new member's account, it creates a COFL or CSLL account with a balance equal to the balance of the member's account.

(2) *Apportionment of consolidated account to departing member*—(i) *In general.* A group apportions to a member that ceases to be a member (a departing member) a portion of each COFL and CSLL account as of the end of the year during which the member ceases to be a member and after the group makes the additions or reductions to such account required under paragraphs (b)(3), (b)(4) and (c)(1) of this section (other than an addition under paragraph (c)(1) of this section attributable to a member becoming a member after the departing member ceases to be a member). The group computes such portion under paragraph (c)(2)(ii) of this section, as limited by paragraph (c)(2)(iii) of this section. The departing member carries such portion to its first separate return year after it ceases to be a member. Also, the group reduces each account by such portion and carries such reduced amount to its first consolidated return year beginning after the year in which the member ceases to be a member. If two or more members cease to be members in the same year, the group computes the portion allocable to each such member (and reduces its accounts by such portion) in the order that the members cease to be members.

(ii) *Departing member's portion of group's account.* A departing member's portion of a group's COFL or CSLL account for a loss basket is computed based upon the member's share of the group's assets that generate income subject to recapture at the time that the member ceases to be a member. Under the characterization principles of §§ 1.861–9T(g)(3) and 1.861–12T, the group identifies the assets of the departing member and the remaining members that generate foreign-source income (foreign assets) in each basket. The assets are characterized based upon the income that the assets are reasonably expected to generate after the member ceases to be a member. The member's portion of a group's COFL or CSLL account for a loss basket is the group's COFL or CSLL account, respectively, multiplied by a fraction, the numerator of which is the value of the member's foreign assets for the loss basket and the denominator of which is the value of the foreign assets of the group (including the departing member) for the loss basket. The value of the foreign assets is determined under the asset valuation rules of § 1.861–9T(g)(1) and (2) using either tax book value or fair market value under the method chosen by the group for purposes of interest apportionment as provided in § 1.861–9T(g)(1)(ii). For purposes of this paragraph (c)(2)(ii), § 1.861–9T(g)(2)(iv) (assets in intercompany transactions) shall apply, but § 1.861–9T(g)(2)(iii) (adjustments for directly allocated interest) shall not apply. If the group uses the tax book value method, the member's portions of COFL and CSLL accounts are limited by paragraph (c)(2)(iii) of this section. In addition, for purposes of this paragraph (c)(2)(ii), the tax book value of assets transferred in intercompany transactions shall be determined without regard to previously deferred gain or loss that is taken into account by the group as a result of the transaction in which the member ceases to be a member. The assets should be valued at the time the member ceases to be a member, but values on other dates may be used unless this creates substantial distortions. For example, if a member ceases to be a member in the middle of the group's consolidated return year, an average of the values of assets at the beginning and end of the year (as provided in § 1.861–9T(g)(2)) may be used or, if a member ceases to be a member in the early part of the group's consolidated return year, values at the beginning of the year may be used, unless this creates substantial distortions.

(iii) *Limitation on member's portion for groups using tax book value method.* If a group uses the tax book value method of valuing assets for purposes of paragraph (c)(2)(ii) of this section and the aggregate of a member's portions of COFL and CSLL accounts for a loss basket (with respect to one or more income baskets) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's foreign assets in the loss basket, the member's portion of the COFL or CSLL accounts for the loss basket shall be reduced (proportionately, in the case of multiple accounts) by such excess. This rule does not apply if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the foreign assets in the loss basket.

(iv) *Determination of values of foreign assets binding on departing member.* The group's determination of the value of the member's and the group's foreign assets for a loss basket is binding on the member, unless the Commissioner concludes that the determination is not appropriate. The common parent of the group must attach a statement to the return for the taxable year that the departing member ceases to be a member of the group that sets forth the name and taxpayer identification number of the departing member, the amount of each COFL or CSLL for each loss basket that is apportioned to the departing member under this paragraph (c)(2), the method used to determine the value of the member's and the group's foreign assets in each such loss basket, and the value of the member's and the group's foreign assets in each such loss basket. The common parent must also furnish a copy of the statement to the departing member.

(v) *Anti-abuse rule.* If a corporation becomes a member and ceases to be a member, and a principal purpose of the corporation becoming and ceasing to be a member is to transfer the corporation's OFL account or SLL account to the group or to transfer the group's COFL or CSLL account to the corporation, appropriate adjustments will be made to eliminate the benefit of such a transfer of accounts. Similarly, if any member acquires assets or disposes of assets (including a transfer of assets between members of the group and the departing member) with a principal purpose of affecting the apportionment of accounts under paragraph (c)(2)(i) of this section, appropriate adjustments will be made to eliminate the benefit of such acquisition or disposition.

(vi) *Examples.* The following examples illustrate this paragraph (c):

Example 1. (i) On November 6, Year 1, S, a member of the P group, a consolidated group with a calendar consolidated return year, ceases to be a member of the group. On December 31, Year 1, the P group has a $40 COFL account for the general limitation basket, a $20 CSLL account for the general limitation basket (i.e., the loss basket) with respect to the passive basket (i.e., the income basket), and a $10 CSLL account for the shipping income basket (i.e., the loss basket) with respect to the passive basket (i.e., the income basket). No member of the group has foreign-source income or loss in Year 1. The group apportions its interest expense according to the tax book value method.

(ii) On November 6, Year 1, the group identifies S's assets and its own assets (including S's assets) expected to produce foreign general limitation income. Use of end-of-the-year values will not create substantial distortions in determining the relative values of S's and the group's relevant assets on November 6, Year 1. The group determines that S's relevant assets have a tax book value of $2,000 and a fair market value of $2,200. Also, the group's relevant assets (including S's assets) have a tax book value of $8,000. On November 6, Year 1, S has no assets expected to produce foreign shipping income.

(iii) Under paragraph (c)(2)(ii) of this section, S takes a $10 COFL account for the general limitation basket ($40 × $2000/$8000)

and a $5 CSLL account for the general limitation basket with respect to the passive basket ($20 × $2000/$8000). S does not take any portion of the shipping income basket CSLL account. The limitation described in paragraph (c)(2)(iii) of this section does not apply because the aggregate of the COFL and CSLL accounts for the general limitation basket that are apportioned to S ($15) is less than 150 percent of the actual fair market value of S's general limitation foreign assets ($2,200 × 150%).

Example 2. (i) Assume the same facts as in *Example 1*, except that the fair market value of S's general limitation foreign assets is $4 as of November 6, Year 1.

(ii) Under paragraph (c)(2)(iii) of this section, S's COFL and CSLL accounts for the general limitation basket must be reduced by $9, which is the excess of $15 (the aggregate amount of the accounts apportioned under paragraph (c)(2)(ii) of this section) over $6 (150 percent of the $4 actual fair market value of S's general limitation foreign assets). S thus takes a $4 COFL account for the general limitation basket ($10 − ($9 × $10/$15)) and a $2 CSLL account for the general limitation basket with respect to the passive basket ($5 − ($9 × $5/$15)).

(d) *Predecessor and successor.* A reference to a member includes, as the context may require, a reference to a predecessor or successor of the member. See § 1.1502–1(f).

(e) *Effective dates.* This section applies to consolidated return years for which the due date of the income tax return (without extensions) is after August 11, 1999. However, paragraph (b)(5) of this section (intercompany transactions) is not applicable for intercompany transactions that occur before January 28, 1999. A group applies the principles of § 1.1502–9A(e) to a disposition which is an intercompany transaction to which § 1.1502–13 applies and that occurs before January 28, 1999. Also, paragraph (c)(2) of this section (apportionment of consolidated account to departing member) is not applicable for members ceasing to be members of a group before January 28, 1999. A group applies the principles of § 1.1502–9A (rather than paragraph (c)(2) of this section) to determine the amount of a consolidated account that is apportioned to a member that ceases to be a member of the group before January 28, 1999 (and reduces its consolidated account by such apportioned amount) before applying paragraph (c)(2) of this section to members that cease to be members on or after January 28, 1999.

§ 1.1502–9T [Removed]

Par. 7. Section 1.1502–9T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par 9. In § 602.101, paragraph (b) is amended in the table by removing the current entry for 1.1502–9 and adding new entries for 1.1502–9 and 1.1502–9A to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–9	1545–1634
* * * * *	
1.1502–9A	1545–0121
* * * * *	

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved: July 16, 1999.

Donald C. Lubick,
Assistant Secretary of the Treasury.

[FR Doc. 99–20242 Filed 8–10–99; 8:45 am]
BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 43, 63, and 64

[IB Docket Nos. 98–148, 96–22, CC Docket No. 90–337 (Phase II), FCC 99–73]

Biennial Review of the Reform of the International Settlements Policy and Associated Filing Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission amended its rules regarding the International Settlements Policy. The rules contained information collection requirements. These rules became effective on July 29, 1999.

EFFECTIVE DATE: The amendments to 47 CFR 0.457, 43.51, 63.14, 63.16, 63.22, 63.23, 64.1001, and 64.1002 published at 64 FR 34734 (June 29, 1999) became effective on July 29, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Choi or Jackie Ruff, Attorney-Advisors, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: On April 15, 1999, the Commission adopted an order removing and modifying rules that govern the manner in which U.S. international telecommunications carriers provide service in correspondence with foreign carriers that operate in competitive markets, a summary of which was published in the **Federal Register**. See 64 FR 34734, June 29, 1999. All of the rules contained information collection requirements. We stated that the "rules contain information collections that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these rules." The information collections were approved by OMB on July 29, 1999. See OMB Nos. 3060–0454 and 3060–0901. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

List of Subjects in 47 CFR Parts 0, 43, 63 and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99–20694 Filed 8–10–99; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF STATE

48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 611, 613, 614, 615, 616, 617, 619, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 641, 642, 643, 644, 645, 646, 647, 649, 652 and 653

[Public Notice #3025]

RIN 1400–AA71

Office of the Procurement Executive; Department of State Acquisition Regulation (DOSAR)

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule published for comment on November 30, 1998 (63 FR 65728) amending the Department of State Acquisition Regulation (DOSAR). The final rule also contains several miscellaneous amendments and corrections not published on November 30, 1998, as outlined below.

EFFECTIVE DATE: August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street NW, Suite 603, State Annex Number 6, Washington, DC 20522–0602; telephone (703) 516–1691; e-mail address: ginesgg@state.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 30, 1998 (63 FR 65728), the Department of State proposed amendments to the DOSAR to reflect numerous miscellaneous changes, additions, and deletions dealing with internal or administrative matters. The proposed rule also eliminated certification requirements that were not specifically imposed by statute, and added one new certification required by statute and one new certification not required by statute but justified in accordance with section 29 of Public Law 104–106 (the Federal Acquisition Reform Act of 1996). Finally, the proposed rule eliminated internal coverage from the codified section of the DOSAR.

No comments were received during the public comment period, which ended on January 29, 1999. This rule makes final the amendments, as revised, proposed on November 30, 1998.

II. Amendments Not Contained in Proposed Rule

The final rule also contains several amendments and corrections to the proposed rule. These amendments are the result of several changes which have taken place during the comment period. They are as follows:

- DOSAR section 604.502 is revised to conform to FAR numbering changes made in FAC 97–9.
- DOSAR section 609.406–3(a)(1) is revised to reflect coordination through the Office of the Procurement Executive of Office of the Inspector General investigation reports that involve possible criminal or fraudulent activities by contractors.
- DOSAR sections 614.201–6, 614.201–6–70, 615.209, and 615.209–70 are being removed. These sections contained the prescription for the provision at 652.214–71, Authorization to Perform. The Department has determined that this provision should be a contract clause, since it contains requirements that the successful offeror must adhere to following contract award, i.e., having the appropriate licenses, permits, etc. Since it is a contract clause, the prescription is moved to 642.271(b). The clause is renamed as "Authorization and Performance", revised slightly, and renumbered as 652.242–73.
- DOSAR section 617.105–1(d) is being revised to better reflect current Administration policy as set forth in OMB Circulars A–11 and A–34. This section contained language regarding three options to finance cancellation costs of multiyear contracts. However, the current policy as stated in OMB Circulars A–11 and A–34 is to allow only the first option (cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract). The policy is to fully fund usable segments and to obligate cancellation costs as part of the original contract, as currently stated in FAR 17.104(c). Therefore, DOSAR 617.105–1(d) is revised to state that every multiyear contract must comply with FAR 17.104(c) unless an exception is approved through the budget process in coordination with the cognizant comptroller.
- DOSAR 617.502 is removed, and a new section 617.503 is added, as the determination and findings requirements for Economy Act interagency agreements are now located in FAR 17.503.
- DOSAR 633.214–70(c)(4), (c)(5), and (c)(6)(iii) are revised to delete references to the Army Corps of Engineers IWR pamphlets and the Administrative Conference of the U.S. publication on mediation. These documents are no longer available in hard copy. Reference to an Internet site for obtaining information on alternative disputes resolution is provided instead.
- DOSAR 633.270–1, 633.270–2, and 633.270–3 are revised to reflect the transfer of certain appellate and review functions from the Armed Services Board of Contract Appeals to the General Services Board of Contract Appeals. Related reference changes are made to 633.214–70(c) and (c)(2).
- DOSAR 637.104–70 is revised to add a new paragraph (i) describing the authority for the Bureau of Diplomatic Security to issue personal services contracts in accordance with section 206 of Pub. L. 99–399, as amended by the Emergency Supplemental Appropriations Act of 1998.
- DOSAR 642 is revised to correct the headings of Part 642 and Subpart 642.2. A new paragraph (b) is added to 642.271, as discussed above.

These amendments and corrections do not affect the public, and therefore good cause exists to publish the amendments for effect without first soliciting public comment because prior public comment is unnecessary. The amendments are for the purpose of implementing internal changes and making minor corrections.

III. Regulatory Flexibility Act

The Department of State certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis has, therefore, not been performed.

IV. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 requires agencies to prepare several analytical statements before proposing any rule that may result in annual expenditures of $100 million of State, local, and Indian tribal governments or the private sector. Since this final rule will not result in expenditures of this magnitude, the Department certifies that such statements are not necessary.

V. Executive Order 12866

This final rule has been reviewed under Executive Order 12866 by the Office of Management and Budget.

VI. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved under the Paperwork Reduction Act of 1980 by OMB, and were assigned control number 1405–0050.

List of Subjects in 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 611, 613, 614, 615, 616, 617, 619, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 641, 642, 643, 644, 645, 646, 647, 649, 652 and 653

Government procurement.

Accordingly, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 614, 616, 617, 619, 620, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 642, 643, 645, 646, 647, 649, 652, 653 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION

2. Section 601.105 is redesignated as section 601.106. New sections 601.105 and 601.105–3, are added to read as follows:

601.105 Issuance.

601.105–3 Copies.

The DOSAR is available on CD–ROM disks through the Department's INFOEXPRESS program, or through the Internet from A/OPE's Acquisition Website. The Internet address is: http://www.statebuy.gov/home.htm

3. Newly designated section 601.106 is revised to read as follows:

601.106 OMB Approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget before collecting information from ten (10) or more members of the public. Individuals are not required to respond to information collection unless the OMB number and burden estimate information is provided. Accordingly, the information and recordkeeping requirements contained in this regulation have been approved by OMB under OMB Control Number 1405–0050. The burden estimate is 225,302 hours.

601.301 [Amended]

4. Section 601.301 is amended by redesignating paragraph (a)(1) as paragraph (a) and by removing paragraph (a)(2) in its entirety.

601.302 [Amended]

5. Section 601.302 is amended in the first sentence of paragraph (a) by removing the words "and leases of real and personal property".

601.303 [Amended]

6. Section 601.303 is amended by correcting the citation at the end of paragraph (c) to read "FAR 1.105–2(c)".

601.471 [Removed]

7. Section 601.471 is removed.

8. The heading of Subpart 601.6 is revised to read as follows:

Subpart 601.6—Career Development, Contracting Authority, and Responsibilities

601.602–3 and 601.602–3–70 [Removed]

9. Section 601.602–3, and section 601.602–3–70, are removed.

10. Section 601.603–3 is amended by adding a title to paragraph (a); by revising the second sentence of paragraph (a); by revising paragraph (b) in its entirety; and, by adding a new paragraph (d), to read as follows:

601.603–3 Appointment.

(a) *General.* * * * The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603–3, with the one exception as noted in paragraph (b) of this section.

* * *

(b) *Temporary warrants.* The Chief of Mission is delegated the authority by the Procurement Executive to issue temporary contracting officer warrants for periods up to 90 calendar days in order to cover emergency, post-specific operational requirements (e.g., staffing gaps, medical evacuations, extended leave, etc.). These temporary appointments shall be executed on the Standard Form 1402, and a copy shall be furnished to A/OPE. The warrant shall contain both a dollar limitation of no more than $100,000 and a specific time period (not to exceed 90 days) during which the warrant is effective.

* * * * *

(d) Personal services agreements. Individuals who may sign personal services agreements (PSAs) are limited to the following:

(1) An individual, or class of individuals, granted authority by the Director, PER/OE; or

(2) Individuals with contracting officer certificates of appointment.

601.603–70 Amended

11. Section 601.603–70 is amended—

(a) By adding a period after the words "and services" and removing the words "; to sell personal property; and to lease real property." in the first sentence of paragraph (a)(1) introductory text;

(b) By adding a period after the words "Deputy Assistant Secretary of State for Foreign Buildings" and removing the words "and to the Director for Acquisitions as the HCA." in paragraph (a)(2);

(c) By removing the heading "Office of Acquisition" and inserting "Office of Logistics Management; Office of Acquisition Management (A/LM/AQM)" in its place; and by removing the words "and Deputy Director as the HCA" and inserting "or designee as the HCA" in their place in paragraph (a)(3);

(d) By removing the word "and" before the word "construction" and removing the word "of" after "construction" and by adding the words "and supplies for" after the word "construction" in paragraph (a)(7);

(e) By adding the word "supplies," after the word "subsystems," in paragraph (a)(8);

(f) By revising paragraph (a)(9) to read as indicated below;

(g) By removing the words "Office of Acquisition" and inserting the acronym "A/LM/AQM" in their place in the second sentence of paragraph (b) introductory text;

(h) By removing the words "schedule contracts" and inserting the words "existing contracts up to the maximum ordering threshold or limitation" in their place in paragraphs (b)(1) through (b)(6); and

(i) By adding a new paragraph (b)(7), to read as follows:

601.603–70 Delegations of authority.

(a) * * *

(9) *Regional Procurement Support Offices.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) as the HCA at the following locations:

(i) RPSO Germany in conjunction with Embassy Bonn and Consulate General Frankfurt;

(ii) RPSO Tokyo in conjunction with Embassy Tokyo;

(iii) RPSO Singapore in conjunction with Embassy Singapore; and,

(iv) RPSO Florida in conjunction with the Florida Regional Center.

(b) * * *

(7) *Office of Small and Disadvantaged Business Utilization.* The authority to enter into and administer 8(a) purchase orders and contracts as a third party pursuant to the Memorandum of Understanding signed with the Small Business Administration.

601.670 [Removed]

12. Section 601.670 is removed.

PART 602—DEFINITIONS OF WORDS AND TERMS

13. Section 602.101–70 is amended by removing the definition of "local procurement"; and by adding, in alphabetical order, a definition of "major system" to read as follows:

602.101–70 DOSAR definitions.

* * * * *

Major system has the same definition as described in FAR 2.101; however, the Department of State's dollar threshold as defined in paragraph (b) is $30 million. The Under Secretary for Management is the head of the agency for the purposes of paragraph (c).

* * * * *

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

14. Subpart 603.1 is revised to read as follows:

Subpart 603.1—Safeguards

Sec.

603.104 Procurement integrity.

603.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

603.104–10 Violations or possible violations.

Subpart 603.1—Safeguards

603.104 Procurement integrity.

603.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The following classes of persons may be authorized to receive contractor bid or proposal information or source selection information by the contracting officer or head of the contracting activity, who is the agency head's designee, when such access is necessary to the conduct of an acquisition:

(1) Individuals involved in the selection process, such as the Contracting Officer's Representative, technical evaluators, advisors, consultants, and the Source Selection Official;

(2) Clerical personnel directly involved in the acquisition;

(3) Supervisors in the contracting officer's chain of command;

(4) Contracting personnel involved in reviewing or approving the solicitation, contract, or contract modification;

(5) Individuals from offices who may be required to perform pre-award audits, such as DCAA; and,

(6) Personnel in the following offices: Office of Small and Disadvantaged Business Utilization (A/SDBU), Office of the Legal Adviser, Office of Legislative Affairs, Office of the Inspector General, Office of the Procurement Executive, the Small Business Administration, and the Office of Federal Contract Compliance Programs (Department of Labor).

(c) All information which is considered proprietary or source selection information shall be marked to prevent its unauthorized disclosure before award. This may be performed by marking each page of proprietary or source selection material with the statement "Source Selection Information—See FAR 3.104" or "Proprietary Information—See FAR 3.104", as applicable. Alternatively, this requirement may be met by attaching Forms DS–1926, Proprietary Information (Cover Page), and DS–1927, Source Selection Information (Cover Page), to any proprietary and source selection information. Individuals responsible for preparing derivative documents which reference, cite, or paraphrase proprietary or source selection information, are responsible for marking such documents as indicated in this paragraph. The required marking or cover page shall be included when technical proposals are submitted for evaluation and when an audit is requested. After award, the procedures governing the Freedom of Information Act and related laws/regulations shall be followed regarding release of proprietary or source selection information.

603.104–10 Violations or possible violations.

(a)(1) The contracting officer shall report any violation or possible violation to the head of the contracting activity after he or she has reviewed the documentation and has concluded that there is no impact on the acquisition.

(d)(2)(ii)(B) The Procurement Executive is the agency head's designee for the purposes of FAR 3.104–10(d)(2)(ii)(B).

603.203 [Removed]

15. Section 603.203 is removed.

Subpart 603.3—[Removed]

16. Subpart 603.3, consisting of section 603.303, is removed.

17. Section 603.405 is added to read as follows:

603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient to determine whether an actual violation has occurred. The contracting officer may also obtain the advice of the Office of the Legal Adviser as to the legality and general propriety of any information disclosed.

603.408 and 603.408–1 [Removed]

18. Section 603.408, and section 603.408–1, are removed.

603.670 [Removed]

19. Section 603.670 is removed.

20. Subpart 603.9 is added to read as follows:

Subpart 603.9—Whistleblower Protections for Contractor Employees

Sec.
603.905 Procedures for investigating complaints.
603.906 Remedies.

Subpart 603.9—Whistleblower Protections for Contractor Employees

603.905 Procedures for investigating complaints.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.905.

603.906 Remedies.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.906.

PART 604—ADMINISTRATIVE MATTERS

Subpart 604.2—[Removed]

21. Subpart 604.2, consisting of section 604.202, is removed.

Subpart 604.4—[Removed]

22. Subpart 604.4, consisting of sections 604.404 and 604.404–70, is removed.

23. Subpart 604.5 is added to read as follows:

Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 4.502.

Subpart 604.70—[Removed]

24. Subpart 604.70, consisting of sections 604.7001 and 604.7002, is removed.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

605.202–70 [Amended]

25. Section 605.202–70 is amended by removing the date "June 15, 1998" and inserting the date "May 19, 2001" in its place in the last sentence of paragraph (a).

605.207 [Removed]

26. Section 605.207 is removed.

605.303 [Amended]

27. Section 605.303 is amended by inserting a comma and by adding the words "upon request," after the word "Affairs" in the first sentence of paragraph (a).

PART 606—COMPETITION REQUIREMENTS

Subpart 606.1—[Removed]

28. Subpart 606.1, consisting of sections 606.101 and 606.101–70, is removed.

606.302–6 [Amended]

29. Section 606.302–6 is amended by removing "E.O. 12356" and "Executive Order 12356" and inserting "Executive Order 12958" in its place wherever it appears in paragraphs (c)(1) introductory text and (c)(1)(vi).

606.304 [Amended]

30. Section 606.304 is amended in paragraph (a)(2) by removing the

amounts "$100,000" and "$1,000,000" and inserting "$500,000" and "$10,000,000" in their place, respectively.

31. Section 606.501 is amended by revising the first sentence of paragraph (b) to read as follows:

606.501 Requirement.

* * * * *

(b) A contracting activity competition advocate has been designated for A/LM/AQM. * * *

32. Section 606.570 is revised to read as follows:

606.570 Solicitation provision.

The contracting officer shall insert the provision at 652.206–70, Competition Advocate/Ombudsman, in all solicitations exceeding the simplified acquisition threshold.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

33. Part 608, consisting of subpart 608.3 and section 608.302, is removed.

PART 609—CONTRACTOR QUALIFICATIONS

34. Section 609.206, and section 609.206–1, are added to read as follows:

609.206 Acquisitions subject to qualification requirements.

609.206–1 General.

(b) The authority prescribed in FAR 9.206–1(b) is delegated, without power of redelegation, to the head of the contracting activity.

35. Section 609.404 is amended by revising the section heading to read as follows:

§609.404 List of parties excluded from federal procurement and nonprocurement programs.

36. Section 609.405 is amended by revising paragraphs (d)(4)(i) and (d)(4)(ii) to read as follows:

§ 609.405 Effect of listing.

* * * * *

(d) * * *

(4)(i) For procurement actions (both domestic and overseas) that do not exceed the simplified acquisition threshold, contracting officers need not consult the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" prior to award. The list should be consulted whenever the contracting officer has reason to believe that a proposed contractor may appear on the list.

(ii) Contracting officers at domestic contracting activities shall review the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", either in hard copy or electronic form, prior to awarding a procurement action exceeding the simplified acquisition threshold.

37. Section 609.406–3 is amended in paragraph (a)(1) by adding the following two sentences to the end of the paragraph; and, in paragraph (b)(7) by removing the number "10" and inserting the number "30" in its place:

§609.406–3 Procedures.

(a)(1) * * * The Office of the Inspector General shall provide to the Procurement Executive a copy of its investigation report. The contracting officer shall provide to the Procurement Executive a copy of his or her intended actions in response to the Office of the Inspector General report.

* * * * *

38. Subpart 609.5 is amended by revising the heading to read as follows:

Subpart 609.5—Organizational and Consultant Conflicts of Interests

PART 610—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

39. Part 610, consisting of sections 610.002 and 610.002–70, is removed.

40. Part 611 is added to subchapter B to read as follows:

PART 611—DESCRIBING AGENCY NEEDS

Sec.
611.002 Policy.
611.002–70 Metric system implementation.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

Subpart 611.5—Liquidated Damages

611.502 Policy.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

611.002 Policy.

611.002–70 Metric system implementation.

(a) *Policy.* The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), requires Federal agencies to establish implementing guidelines pursuant to metric policy to adopt the metric system as the preferred system of weights and measurements for United States trade and commerce. This section establishes the Department of State's metric conversion guidelines.

(b) *Applicability.* This section applies to all DOS acquisitions, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(c) *Definitions.*

Dual system means the use of both traditional and metric systems. For example, an item is designated, produced and described in inch-pound values with soft metric values also shown for information or comparison.

Hard metric means the use of only standard metric (SI) measurements in specifications, standards, supplies and services.

Hybrid system means the use of both traditional and hard metric values in specifications, standards, supplies and services.

Measurement sensitive means any item having an application or meaning depending substantially on some measured quantity. For example, measurement sensitive items include product or performance criteria and standards binding on others, such as emission levels, size and weight limitations, etc.

Metric system means the International System of Units (Le System International d'Unites (SI)) of the International Bureau of Weights and Measures.

Metrication means any act that increases metric system use, including metric training and initiation or conversion of measurement sensitive processes and systems to the metric system.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents. The physical dimensions, however, are not changed.

Traditional system of weights and measurements means the predominant weight and measurement system currently used in the United States, also referred to as the "inch-pound system." The traditional system includes such commonly used units as inch, foot, yard, mile, pint, quart, gallon, bushel, ounce (fluid and avoirdupois), pound, degree Fahrenheit, ampere, candela, and second.

(d) *Procedures.* (1) DOS contracting activities shall implement the metric system in a manner consistent with 15 U.S.C. 205a, *et seq.*

(2) All DOS contracting activities shall use the metric system in acquisition consistent with security, operations, economic, technical, logistical, training and safety requirements.

(3) The Department shall encourage industry to adopt the metric system by acquiring commercially available metric products and services that meet the Department's needs whenever practical.

Toward this end, solicitations for DOS acquisitions shall:

(i) State all measurement sensitive requirements in metric terms whenever possible. Alternatives to hard metric are soft, dual and hybrid metric terms. The Metric Handbook for Federal Officials regarding the selection of proper metric units and symbols is available from the National Technical Information Service; and

(ii) For contracts expected to exceed $500,000 contracting officers shall return to the requirements office all specifications and statements of work that are not expressed in some form of metric terms unless the requirements office has prepared a justification, for the approval of the contracting officer, for the use of non-metric specifications or statements of work. The justification shall be in a format as prescribed by the head of the contracting activity. Option year prices shall be considered when computing the $500,000 threshold.

(4) Waivers are not required when ordering from Federal Supply Schedules.

(5) Valid justifications for non-metric specifications or statements of work include, but are not limited to:

(i) Existing specifications or standards are in inch-pound units, unless conversion of the existing specifications or standards is necessary or advantageous to the Government. Unnecessary retrofit of existing systems with new metric components should be avoided if the total cost of the retrofit, including redesign costs, exceeds $50,000;

(ii) Metric is not the accepted industry system with respect to a business-related activity; however, soft, hybrid, or dual systems may be used during the transition to hard metric;

(iii) The use of metric is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(6) The contracting officer shall review and, if acceptable, approve the waiver prior to the release of the solicitation. The waiver shall be placed in the contract file. If the waiver is not approved, the contracting officer shall return it to the requirements office with an explanation for the disapproval.

(7) The in-house operating metric costs shall be identified. Identification includes, but is not limited to, the cost of metric aids, tools, equipment, training and increased cost to develop metric specifications. All contracting activities and requirements offices shall maintain a record of any costs and/or savings brought about by metric conversion.

(8) Bulk (loose, unpacked) materials shall be specified and purchased in metric or dual units.

(9) Measuring devices, shop and laboratory equipment shall be purchased in metric or dual units.

(10) Shipping allowances, bills of lading and other shipping documents shall be expressed in metric or dual units.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

(a) The head of the contracting activity is the agency head for the purpose of FAR 11.103(a).

Subpart 611.5—Liquidated Damages

611.502 Policy.

(d) The head of the contracting activity is the agency head for the purpose of FAR 11.502(d).

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

41. Part 613 is revised to read as follows:

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).
613.303–5 Purchases under BPAs.
613.305 Imprest funds and third party drafts.
613.305–3 Conditions for use.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).

613.303–5 Purchases under BPAs.

(c) In accordance with FAR 13.303–5(c), BPAs shall be awarded to small businesses to the maximum extent practicable.

613.305 Imprest funds and third party drafts.

613.305–3 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.305–3(a).

PART 614—SEALED BIDDING

42. Subpart 614.2 is revised to read as follows:

Subpart 614.2—Solicitation of Bids

614.201 Preparation of invitation for Bids (IFB).

614.201–70 Use of English language.

Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

43. Section 614.404–1 is amended by adding a new paragraph (f) to read as follows:

614.404–1 Cancellation of invitations after opening.

* * * * *

(f) The head of the contracting activity is the agency head for the purpose of FAR 14.404–1(f). This authority is not redelegable.

614.406, 614.406–3, and 614.406–4 [Redesignated as 614.407, 614.407–3, and 614.407–4]

44. Sections 614.406, 614.406–3 and 614.406–4, are re-designated as "614.407", "614.407–3", and "614.407–4", respectively.

614.407–3 [Amended]

45. Newly designated section 614.407–3 is amended by correcting "FAR 14.406" to read "FAR 14.407" where it appears in the first sentence; and, by correcting "FAR 14.406–3(f)" to read "FAR 14.407–3(f)" where it appears in the second sentence.

614.407–4 [Amended]

46. Newly designated section 614.407–4 is amended by correcting "FAR 14.406–4" to read "FAR 14.407–4" where it appears in the first sentence; and, by correcting "FAR 14.406–4(d)" to read "FAR 14.407–4(d)" where it appears in the second sentence.

47. Part 615 is revised to read as follows:

PART 615—CONTRACTING BY NEGOTIATION

Sec.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.
615.205 Issuing solicitations.
615.205–70 Use of English language.

Subpart 615.3—Source Selection

615.303 Responsibilities.

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.

(e) The Procurement Executive is the agency head's designee for the purposes of FAR 15.204(e).

615.205 Issuing solicitations.

(a) Contracting officers shall release copies of solicitation mailing lists in accordance with FAR 14.205–5(a). However, the list of those firms which actually submit proposals is not releasable. Requests for information other than solicitation mailing lists shall be handled under the Freedom of Information Act.

615.205–70 Use of English language.

The requirements of DOSAR 614.201–70 also apply when contracting by negotiation.

Subpart 615.3—Source Selection

615.303 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR 15.303(a).

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

(a)(4) The contact points for unsolicited proposals are the heads of the contracting activities.

PART 616—TYPES OF CONTRACTS

Subpart 616.1—[Removed]

48. Subpart 616.1, consisting of sections 616.102 and 616.102–70, is removed.

Subpart 616.3—[Removed]

49. Subpart 616.3, consisting of sections 616.301–3 and 616.306, is removed.

50. Section 616.505 is re-designated as section 616.506, and the section heading is revised to read as follows:

616.506 Solicitation provisions and contract clauses.

616.505–70 [Redesignated as 616.506–70]

51. Section 616.505–70 is re-designated as section 616.506–70.

52. A new section 616.505 is added to read as follows:

616.505 Ordering.

(b)(4) The Departmental Competition Advocate is designated the task and delivery order contract ombudsman.

Subpart 616.6—[Removed]

53. Subpart 616.6, consisting of sections 616.603 and 616.603–2, is removed.

PART 617—SPECIAL CONTRACTING METHODS

54. Subpart 617.1 is revised to read as follows:

Sec.

Subpart 617.1—Multiyear Contracting

617.104 General.
617.105 Policy.
617.105–1 Uses.
617.108 Congressional notification.

Subpart 617.1—Multiyear Contracting

617.104 General.

(b) The Procurement Executive is the agency head for the purpose of FAR 17.104(b).

617.105 Policy.

617.105–1 Uses.

(d) Every multiyear contract shall comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant financial management office/comptroller.

617.108 Congressional notification.

(a) The Procurement Executive is the agency head for the purposes of FAR 17.108(a).

617.502 [Removed]

55. Section 617.502 is removed.

56. Section 617.503 is added to read as follows:

617.503 Determination and findings requirements.

The authority to make the determination prescribed in FAR 17.503 is delegated to the head of the contracting activity.

617.504–70 [Amended]

57. Section 617.504–70 is amended in paragraph (a) by adding the words "or their equivalents" after the words "Department deputy assistant secretaries."

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS PROGRAMS

58. Part 619 is amended by revising the heading to read as set forth above.

59. Section 619.201 is amended in paragraph (d)(5) by removing the word "limitation" and adding the words "threshold, including commercial items using the simplified procedures of FAR subpart 13.5," in its place; and, by revising paragraph (d)(18) to read as follows:

619.201 General policy.

* * * * *

(d) * * *

(18) Participating in interagency programs relating to small and small disadvantaged business matters as authorized by the A/SDBU Operations Director.

619.501 [Amended]

60. Section 619.501 is amended by deleting the phrase "/Labor Surplus Area" from the title of the Form DS–1910.

61. Section 619.505 is amended by revising the section heading to read as follows:

619.505 Rejecting Small Business Administration recommendations.

62. Subpart 619.7 is amended by revising the subpart heading to read as follows:

Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

63. Section 619.705–3 is revised to read as follows:

619.705–3 Preparing the solicitation.

To further promote the use of small, disadvantaged, and women-owned firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

64. Subpart 619.8 is revised to read as follows:

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

Sec.
619.800 General.
619.801 Definitions.
619.803 Selecting acquisitions for the 8(a) program.
619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).
619.803–71 Simplified procedures for 8(a) acquisitions under MOUs.
619.804 Evaluation, offering, and acceptance.
619.804–2 Agency offering.
619.804–3 SBA acceptance.
619.804–3–70 SBA acceptance under MOUs for acquisitions exceeding $100,000.
619.805 Competitive 8(a).
619.805–2 Procedures.
619.806 Pricing the 8(a) contract.
619.808 Contract negotiation.
619.808–1 Sole source.
619.810 SBA appeals.

619.811 Preparing the contracts.
619.811–1 Sole source.
619.811–2 Competitive.
619.811–3 Contract clauses.
619.812 Contract administration.

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

619.800 General.

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to the Senior Procurement Executives of various Federal contracting activities. The Department of State has signed an MOU with SBA, effective May 6, 1998. Under the MOU, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on contracts currently awarded under the MOU.

619.801 Definitions.

National buy requirements includes all 8(a) contracts performed outside the United States and processed by the Small Business Administration.

619.803 Selecting acquisitions for the 8(a) program.

619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).

A/SDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, A/SDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.803–71 Simplified procedures for 8(a) acquisitions under MOUs.

Contracting activities may use the simplified acquisition procedures of FAR part 13 and DOSAR part 613 to issue purchase orders or contracts, not exceeding $100,000, to 8(a) participants. The $100,000 limitation for use of FAR part 13 simplified acquisition procedures applies to the acquisition of both commercial and non-commercial items. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from, the SBA are required.

(b) The contracting activity shall use the SBA's PRO-Net database on the Internet (http://www.sba.gov) to establish that the selected 8(a) firm is a current program participant.

(c) Once an 8(a) contractor has been identified, the agency contracting officer shall establish the price with the selected 8(a) contractor.

(d) The contracting officer shall issue the purchase order or contract directly to the 8(a) firm in accordance with the provisions of FAR part 13 and DOSAR part 613. The contracting officer shall insert FAR clause 52.219–14, Limitations on Subcontracting, and DOSAR clause 652.219–71, Section 8(a) Direct Award, in all purchase orders and contracts awarded under this subsection. The contracting officer's title shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose, shall sign the purchase order or contract as a third party.

(e) The contracting officer shall forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued.

619.804 Evaluation, offering, and acceptance.

619.804–2 Agency offering.

(a) When applicable, this notification shall identify that the offering is in accordance with the MOU identified in 619.800.

619.804–3 SBA acceptance.

619.804–3–70 SBA acceptance under MOUs for acquisitions exceeding $100,000.

(a) The SBA's decision whether to accept the requirement shall be transmitted to the contracting agency in writing within five working days of receipt of the offer.

(b) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(c) SBA's acceptance letter should be faxed or e-mailed to the offering contracting agency.

(d) If the offering contracting agency has not received an acceptance or rejection of the offering from SBA within five days of SBA's receipt of the offering letter, the contracting agency may assume that the requirement has been accepted and proceed with the acquisition.

(e) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

619.805 Competitive 8(a).

619.805–2 Procedures.

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see FAR part 13). The award process is significantly streamlined where an MOU is in place.

(c)(3) For requirements exceeding $100,000 processed under the MOU cited in 619.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer shall submit information on the next low offeror or next apparent successful offeror, as applicable, to the cognizant SBA field office.

619.806 Pricing the 8(a) contract.

(a) When required by FAR subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under the MOU cited in 619.800.

619.808 Contract negotiation.

619.808–1 Sole source.

(a) If the acquisition is conducted under an MOU cited in 619.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 619.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in the negotiations.

619.810 SBA appeals.

(d) The Procurement Executive is the agency head for the purposes of FAR 19.812(d).

619.811 Preparing the contracts.

619.811–1 Sole source.

(d) If the award is to be made under an MOU cited in 619.800, the contract to be awarded by the contracting activity to the 8(a) firm shall be

prepared in accordance with the contracting activity's normal procedures, given contract type and dollar amount, that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5), as appropriate, and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall insert FAR 52.219–14, Limitations on Subcontracting, and DOSAR 652.219–71, Section 8(a) Direct Awards.

(3) For acquisitions exceeding $100,000, the contracting activity shall include SBA's requirement number on the award document.

(4) A single award document shall be used between the agency and the 8(a) contractor, i.e., an SBA signature will not be required. The title of the agency contracting officer shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose shall sign the contract as a third party. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "Awarded to" or "Contractor name" block on the appropriate form.

619.811–2 Competitive.

(a) If the award is made under the delegation of 8(a) contracting authority, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole source contracts. See 619.811–1.

(b) If the acquisition is conducted under the MOU cited in 619.800, the process for obtaining signatures shall be as specified in 619.811–1(d)(4).

619.811–3 Contract clauses.

(d)(3) The contracting officer shall insert the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation), in competitive solicitations and contracts exceeding $100,000 when the acquisition is processed under the MOU cited in 619.800.

(f) The contracting officer shall insert the clause at FAR 52.219–14, Limitations on Subcontracting, and DOSAR 652.219–71, Section 8(a) Direct Awards, in all solicitations and contracts that are processed under the MOU cited at 619.800. The clauses at FAR 52.219–11, Special 8(a) Contract Conditions; 52.219–12, Special 8(a) Subcontract Conditions; and, 52.219–17, Section 8(a) Award, shall not be used.

619.812 Contract administration.

(d) The head of the contracting activity is the agency head for the purposes of FAR 19.812(d). Awards under the MOU cited in 619.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at DOSAR 652.219–71, Section 8(a) Direct Awards, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

622.401 [Removed]

65. Section 622.401 is removed.

622.406–3 [Removed]

66. Section 622.406–3 is removed.

67. Section 622.803 is added to read as follows:

622.803 Responsibilities.

(c) The Procurement Executive is the agency head for the purpose of FAR 22.803(c).

68. The heading of subpart 622.13 is revised to read as follows:

Subpart 622.13—Disabled Veterans and Veterans of the Vietnam Era

69. The heading of subpart 622.14 is revised to read as follows:

Subpart 622.14—Employment of Workers With Disabilities

PART 623—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

70. Subpart 623.4 is revised to read as follows:

Subpart 623.4—Use of Recovered Materials

Sec.
623.400 Scope of subpart.
623.404 Procedures.

Subpart 623.4—Use of Recovered Materials

623.400 Scope of subpart.

The affirmative procurement program is applicable to all domestic acquisitions of items currently designated by an EPA guideline or by future guidelines promulgated by EPA. The requirements of this section are not applicable to acquisitions made and/or performed outside the United States or its possessions.

623.404 Procedures.

(b)(2) The requirements office initiating an acquisition is responsible for determining whether recovered materials should be included in the specifications. Requirements offices may purchase EPA designated items containing other than recovered materials only if one of the exemptions listed in FAR 23.404(b)(3) applies. If the requirements office determines to acquire EPA designated items that do not contain recovered materials, a written justification must be submitted to the head of the contracting activity.

(i) Contracts for the purchase of, or requiring the supply of, any EPA designated item shall require that the item conform to the EPA guidelines, unless an exception has been approved by the head of the contracting activity in accordance with FAR 23.404(b)(3) and DOSAR 623.404(b)(3).

(ii) Contracting officers shall promote the fact that the Department is seeking to buy items containing recovered materials at pre-bid and pre-proposal conferences, when appropriate. Other means of promotion may include a specific notice on a solicitation's cover letter, calling attention to the requirement for recovered materials.

(iii) Contracting officers shall include FAR clause 52.223–9 to ensure that contractors estimate, certify, and verify the amount of recovered material used in the performance of the contract.

(iv) The effectiveness of the program shall be reviewed annually by A/OPE. An assessment will be made to determine if greater use of recovered materials is possible for the existing requirements or if recovered materials are causing undue delay, lack of competition, unreasonable prices, or an unacceptable level of performance.

(3) The head of the contracting activity is the agency head for the purpose of FAR 23.404(b)(3).

PART 625—FOREIGN ACQUISITION

Subpart 625.9 [Removed]

71. Subpart 625.9, consisting of sections 625.901 and 625.903, is removed.

72. Subpart 625.70 is added to read as follows:

Subpart 625.70—Arab League Boycott and Related Provisions

Sec.
625.7001 Policy.
625.7002 Solicitation provision and contract clause.

Subpart 625.70—Arab League Boycott and Related Provisions

625.7001 Policy.

(a) Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Public Law 103–236) prohibits the Department of State from entering into any contract that expends funds appropriated to the Department of State:

(1) With a foreign person that complies with the Arab League Boycott of Israel; or,

(2) With any foreign or United States person that discriminates in the award of subcontracts on the basis of religion.

(b) This authority has continuing effect. Section 565 requires specific language to be included in all Invitations for Bids and Requests for Proposals with respect to a contract subject to Section 565's prohibitions.

(c) Section 565 may be waived on a country-by-country basis if such a waiver is in the national interest and necessary to carry on diplomatic functions and is approved by the Secretary of State or his/her designee.

625.7002 Solicitation provision and contract clause.

Contracting officers shall include the following provision and clause in all solicitations and contracts exceeding the simplified acquisition threshold, unless a waiver has been granted in accordance with DOSAR 625.7001(c):

(a) 652.225–70, Arab League Boycott of Israel; and.

(b) 652.225–71, Section 8(a) of the Export Administration Act, as amended.

73. Part 626 is added to subchapter D to read as follows:

PART 626—OTHER SOCIOECONOMIC PROGRAMS

Subpart 626.2—Minority Business Enterprise

626.200–70 Solicitation provision.

The contracting officer shall insert the provision at 652.226–70, Certification of Status as a Minority Business Enterprise, in all solicitations issued by domestic contracting activities. If the solicitation is being issued using electronic commerce, the contracting officer shall use the provision with its Alternate I.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 628—BONDS AND INSURANCE

74. Section 628.305 is amended by revising the second and third sentences of paragraph (b) introductory text and adding a fourth sentence to read as follows; and by removing paragraphs (b)(1), (b)(2), and (b)(3):

628.305 Overseas workers' compensation and war-hazard insurance.

* * * * *

(b) * * * In countries where local nationals and/or third country nationals will be employed to perform the contract, such countries have been waived by the Secretary of Labor. Whenever such insurance is required under the contract, the contracting officer shall insert the clause at 652.228–71, Worker's Compensation Insurance (Defense Base Act)—Services. If the contract is for construction, the contracting officer shall insert the clause with its Alternate I.

* * * * *

75. Section 628.306 is revised to read as follows:

628.306 Insurance under fixed-price contracts.

The contracting officer shall insert the provision at 652.228–74, Defense Base Act Insurance Rates—Limitation—Fixed-Price, in solicitations for fixed-price or construction contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

76. Section 628.307 is revised to read as follows:

628.307 Insurance under cost-reimbursement contracts.

The contracting officer shall insert the provision at 652.228–76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials, in solicitations for cost-reimbursement, labor-hour, or time-and-materials type contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

628.307–70 [Removed]

77. Section 628.307–70 is removed.

PART 629—TAXES

78. Sections 629.402, 629.402–1 and 629.402–1–70 are added to read as follows:

629.402 Foreign contracts.

629.402–1 Foreign fixed-price contracts.

629.402–1–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229–71, Personal Property Disposition at Posts Abroad, in all solicitations and contracts performed overseas.

PART 630—COST ACCOUNTING STANDARDS

79. Part 630 is removed.

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

80. Subpart 631.2 is added to read as follows:

Subpart 631.2—Contracts with Commercial Organizations

631.205 Selected costs.

631.205–6 Compensation for personal services.

(g)(3) The head of the contracting activity is the agency head's designee for the purpose of FAR 31.205–6(g)(3).

PART 632—CONTRACT FINANCING

81. Sections 632.006, 632.006–1, 632.006–2, and 632.006–4 are added to read as follows:

632.006 Reduction or suspension of contract payments upon finding of fraud.

632.006–1 General.

The Procurement Executive is the agency head for the purpose of FAR 32.006–1.

632.006–2 Definitions.

Remedy coordination official means the Assistant Inspector General for Investigations.

632.006–4 Procedures.

The Procurement Executive is the agency head for the purposes of FAR 32.006–4.

82. Subpart 632.1 is added to read as follows:

Subpart 632.1—Non-Commercial Item Purchase Financing

632.114 Unusual contract financing.

The Procurement Executive is the agency head for the purpose of FAR 32.114.

83. Subpart 632.2 is added to read as follows:

Subpart 632.2—Commercial Item Purchase Financing

632.201 Statutory authority.

The head of the contracting activity is the agency head for the purpose of FAR 32.201.

84. Section 632.404 is added to read as follows:

632.404 Exclusions.

(a) Total advance payments may be authorized for the items listed in FAR 32.404(a), notwithstanding their designation as a commercial item and

acquisition under FAR part 12 procedures.

85. Subpart 632.7 is revised to read as follows:

Subpart 632.7—Contract Funding

Sec.
632.702 Policy.
632.702–70 DOS policy.
632.703 Contract funding requirements.
632.703–3 Contracts crossing fiscal years.
632.705 Contract clauses.
632.705–70 DOSAR contract clause.

Subpart 632.7—Contract Funding

632.702 Policy.

632.702–70 DOS policy.

The Department's policy is to provide full funding for all contracts, to the maximum extent practicable. FAR 32.704 and 32.705–2 provide for incremental funding of cost-reimbursement contracts. Fixed-price, labor-hour, and time-and-materials contracts for severable services may also be incrementally funded if full funding is not available at the time of contract award and the contracting officer executes a determination and findings, approved by the requirements office, justifying the need for incremental funding due to the unavailability of funds.

632.703 Contract funding requirements.

632.703–3 Contracts crossing fiscal years.

(b) The head of the contracting activity is the agency head for the purpose of FAR 32.703–3(b).

632.705 Contract clauses.

632.705–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.232–72, Limitation of Funds, in incrementally funded fixed-price, labor-hour, and time-and-materials solicitations and contracts for severable services.

86. Section 632.803 is amended by adding the following sentence to the end of paragraph (b):

632.803 Policies.

(b) * * * The Directors, Regional Procurement Support Offices may approve the assignment of claims for contracts under their administration after obtaining legal consultation.

PART 633—PROTESTS, DISPUTES AND APPEALS

633.102 [Amended]

87. Section 633.102 is amended by removing the words "or the General Services Administration Board of Contract Appeals (GSBCA)".

88. Section 633.103 is revised to read as follows:

633.103 Protests to the agency.

(d)(4) The independent review as described in FAR 33.103(d)(4) shall be performed by the Departmental Competition Advocate.

89. Section 633.104 is revised to read as follows:

633.104 Protests to GAO.

(a) General procedures. The Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) coordinates the response of the Department of State to protests filed at the GAO. Contracting activities shall consult L/BA for guidance before taking any actions in response to a protest to GAO.

633.105 [Removed]

90. Section 633.105 is removed.

633.211 [Removed]

91. Section 633.211 is removed.

92. Section 633.214–70 is amended in paragraph (c) introductory text and paragraph (c)(2) by removing the acronym "ASBCA" and inserting the acronym "GSBCA" in its place in the second sentence and first sentence, respectively; and, in paragraphs (c)(4), (c)(5), and (c)(6)(iii) by deleting the last sentence of each paragraph, and by inserting the following sentence in each paragraph in its place:

633.214–70 Alternative dispute resolution.

* * * * *

(c) * * *

(4) * * * Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: *http://www.adrr.com*

(5) * * * Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: *http://www.adrr.com*

(6) * * *

(iii) * * * Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: *http://www.adrr.com*

* * * * *

633.270–1 [Amended]

93. Section 633.270–1 is amended by removing the words "Armed Services Board of Contract Appeals" and inserting the words "General Services Board of Contract Appeals" in their place.

633.270–2 [Amended]

94. Section 633.270–2 is amended by removing the words "Armed Services Board of Contract Appeals (ASBCA)" and inserting the words "General Services Board of Contract Appeals (GSBCA)" in their place in the first sentence; and, by removing the acronym "ASBCA" and inserting the acronym "GSBCA" in its place in the second sentence.

633.270–3 [Amended]

95. Section 633.270–3 is amended by removing the acronym "ASBCA" and inserting the acronym "GSBCA" in its place at the end of the first sentence.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

634.001, 634.001–70, and 634.002 [Removed]

96. Sections 634.001, 634.001–70, and 634.002 are removed.

634.003 [Amended]

97. Section 634.003 is amended in paragraph (a) by removing the second sentence.

634.005–6 [Amended]

98. Section 634.005–6 is amended by removing the period at the end of the sentence and adding the following words to the end of the sentence "with power of redelegation to the Under Secretary for Management."

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

99. Section 636.101–70 is amended by adding the following sentence:

636.101–70 Exception.

* * * The Deputy Assistant Secretary for Foreign Buildings Operations is authorized to waive the provisions of the FAR.

100. Subpart 636.5 is added to read as follows:

Subpart 636.5—Contract Clauses

636.513 Accident prevention.

(a) In accordance with a class deviation approved by the Procurement Executive, contracting officers at overseas contracting activities shall insert DOSAR 652.236–70, Accident Prevention, in lieu of FAR clause 52.236–13 when awarding construction contracts.

101. Section 636.602–1 is added to read as follows:

636.602–1 Selection criteria.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 36.602–1(b).

PART 637—SERVICE CONTRACTING

102. Section 637.104–70 is amended by revising the heading; by removing the word "and" at the end of paragraph (g); by removing the period and adding a semicolon and the word "and" to the end of paragraph (h); and by adding a new paragraph (i) to read as follows:

637.104–70 Personal services contracts.

* * * * *

(i) For the Bureau of Diplomatic Security, section 206 of Public Law 99–399, as amended by the Emergency Supplemental Appropriations Act of 1998.

637.106 [Removed]

103. Section 637.106 is removed.

104. Section 637.110 is amended by adding the following sentence to the end of paragraph (c):

637.110 Solicitation provisions and contract clauses.

* * * * *

(c) * * * Overseas contracting activities may add local holidays to the list included in paragraph (a) of the clause.

105. Subpart 637.2 is added to read as follows:

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

The head of the contracting activity is the agency head for the purposes of FAR 37.204.

PART 639—ACQUISITION OF INFORMATION RESOURCES

106. Part 639, consisting of section 639.001–70, is removed.

107. Part 641 is added to subchapter F to read as follows:

PART 641—ACQUISITION OF UTILITY SERVICES

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 641.2—Acquiring Utility Services 641.201 Policy.

(d) The Procurement Executive is the agency head for the purposes of FAR 41.201(d)(2)(i) and FAR 41.201(d)(3).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION AND AUDIT SERVICES

108. Part 642 is amended by revising the heading to read as set forth above.

109. The heading of subpart 642.2 is revised to read as follows:

Subpart 642.2—Contract Administration Services

110. Section 642.271 is revised to read as follows:

642.271 DOSAR contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 652.242–70, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

(b) The contracting officer shall insert a clause substantially the same as the clause at 652.242–73, Authorization and Performance, in all solicitations and contracts to be awarded and/or performed overseas. For overseas local guard contracts, the contracting officer shall use the clause with its Alternate I.

111. Subpart 642.7 is added to read as follows:

Subpart 642.7—Indirect Cost Rates

642.703 General.

642.703–2 Certificate of indirect costs.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 42.703–2(b).

PART 643—CONTRACT MODIFICATIONS

643.102–7 [Amended]

112. Section 643.102–70 is amended by removing paragraph (b) and by removing the paragraph designation in paragraph (a).

113. Sections 643.104 and 643.104–70 are added to read as follows:

643.104 Notification of contract changes.

643.104–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.243–70, Notices, in all solicitations and contracts exceeding the micro-purchase threshold which are awarded and/or performed overseas.

114. Part 644 is added to subchapter G to read as follows:

PART 644—SUBCONTRACTING POLICIES AND PROCEDURES

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 644.3—Contractor's Purchasing System Reviews

644.302 Requirements.

(a) The Procurement Executive is the head of the agency for the purpose of FAR 44.302(a).

PART 645—GOVERNMENT PROPERTY

115. Subpart 645.4 is added to read as follows:

Subpart 645.4—Contractor Use and Rental of Government Property

645.403 Rental—Use and Charges clause.

(a) The head of the contracting activity is the agency head's designee for the purpose of FAR 45.403(a).

PART 646—QUALITY ASSURANCE

116. Part 646 is removed.

PART 647—TRANSPORTATION

117. Subpart 647.2 is added to read as follows:

Subpart 647.2—Contracts for Transportation or for Transportation-Related Services

647.207 Solicitation provisions, contract clauses, and special requirements.

647.207–7 Liability and insurance.

(e) The Procurement Executive has approved a class deviation for paragraph (c) of FAR clause 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods. The contracting officer shall indicate that the contractor shall indemnify the owner of the goods at a rate of $5.00 per pound (or metric equivalent in local currency) based on the total net weight. The rate conforms with liability calculations found in International Through Government Bills of Lading (ITGBL).

PART 649—TERMINATION OF CONTRACTS

649.111 [Removed]

118. Section 649.111 is removed.

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

652.203–70 [Removed]

119. Section 652.203–70 is removed.

652.203–71 [Removed]

120. Section 652.203–71 is removed.

652.204–70 [Removed]

121. Section 652.204–70 is removed.

652.204–71 [Removed]

122. Section 652.204–71 is removed.

123. Section 652.206–70 is revised to read as follows:

652.206–70 Competition Advocate/ Ombudsman.

As prescribed in 606.570, insert the following provision:

Competition Advocate/Ombudsman (Aug 1999)

(a) The Department of State's Competition Advocate is responsible for assisting industry in removing restrictive requirements from Department of State solicitations and removing barriers to full and open competition and use of commercial items. If such a solicitation is considered competitively restrictive or does not appear properly conducive to competition and commercial practices, potential offerors are encouraged to first contact the contracting officer for the respective solicitation. If concerns remain unresolved, contact the Department of State Competition Advocate on (703) 516–1680, by fax at (703) 875–6155, or write to: Department of State, Competition Advocate, Office of the Procurement Executive (A/OPE), Suite 603, SA–6, Washington, DC 20522–0602.

(b) The Department of State's Acquisition Ombudsman has been appointed to hear concerns from potential offerors and contractors during the preaward and postaward phases of this acquisition. The role of the ombudsman is not to diminish the authority of the contracting officer, the Technical Evaluation Panel or Source Evaluation Board, or the selection official. The purpose of the ombudsman is to facilitate the communication of concerns, issues, disagreements, and recommendations of interested parties to the appropriate Government personnel, and work to resolve them. When requested and appropriate, the ombudsman will maintain strict confidentiality as to the source of the concern. The ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Interested parties are invited to contact the contracting activity ombudsman, [insert name], at [insert telephone and fax numbers]. For an American Embassy or overseas post, refer to the numbers below for the Department Acquisition Ombudsman. Concerns, issues, disagreements, and recommendations which cannot be resolved at a contracting activity level may be referred to the Department of State Acquisition Ombudsman at (703) 516–1680, by fax at (703) 875–6155, or write to: Department of State, Acquisition Ombudsman, Office of the Procurement Executive (A/OPE), Suite 603, SA–6, Washington, DC 20522–0602.

(End of provision)

652.214–70 [Removed]

124. Section 652.214–70 is removed.

652.214–71 [Removed]

125. Section 652.214–71 is removed.

126. Section 652.216–70 is amended by revising the introductory text to read as follows:

652.216–70 Ordering—Indefinite-delivery contract.

As prescribed in 616.506–70, insert the following clause:

* * * * *

127. Section 652.216–71 is revised to read as follows:

652.216–71 Price adjustment.

As prescribed in 616.203–4, insert a clause substantially the same as follows:

Price Adjustment (Aug 1999)

(a) The contract price may be increased or decreased in actual costs of direct service labor which result directly from laws enacted and effective during the term of this contract by the [insert name of country] Government. Direct service labor costs include only the costs of wages and direct benefits (such as social security, health insurance, unemployment compensation insurance) paid to or incurred for the direct benefit of personnel performing services under one of the categories listed in Section [identify section number] of this contract. Price adjustments will include only changes in direct service labor costs incurred in order to comply with the requirements of the law. No adjustment will be made under this clause with respect to labor costs of personnel not performing direct service labor under the categories of Section [identify section], nor for overhead, profit, general and administrative (G&A) costs, taxes or any other costs whatsoever.

(b) For the contracting officer to consider any request for adjustment, the contractor shall demonstrate in writing:

(1) That the change in the law occurred during the term of this contract and subsequent to the award date of this contract; and,

(2) That the change in the law could not have been reasonably anticipated prior to contract award; and,

(3) How the change in the law directly affects the contractor's costs under this contract.

(c) The contractor shall present data that clearly supports any request for adjustment. This data shall be submitted no later than 30 calendar days after the changes in the law have been made public. This data shall include, but not be limited to, the following:

(1) The calculation of the amount of adjustment requested; and,

(2) Documentation which identifies and provides the appropriate portions of the text of the particular law from which the request is derived.

(d) In order to establish the change between the requested adjusted rate and the original rate, the contractor shall support the appropriate data and composition of the original rate and the requested adjusted rate. This shall include details regarding specific hourly rates paid to individual employees. For contracts paid in U.S. dollars, the contractor's request for price adjustment shall present data reflecting:

(1) The exchange rate in effect on the date of the contractor's proposal that was accepted for the basic contract; and

(2) The current exchange rate and its effect on payment of workers in local currency. The allowable adjustment shall be limited to the extent to which increases in direct service labor costs due to host country law changes are not offset by exchange rate gains.

(e) Only direct cost changes mandated by enacted laws shall be considered for adjustment under this contract. Changes for purposes of maintaining parity of pay between employees at the minimum mandated levels and employees already paid at levels above the newly mandated minimums shall not be considered. Therefore, if the contractor elects to increase payments to employees who are already being paid at or above the mandated amounts, such increased costs shall be borne solely by the contractor and shall not be justification for an increase in the hourly and monthly rates under this contract.

(f) Any request for adjustment shall be presented by signature of an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(g) No adjustment shall be made to the contract price that relates to any indirect, overhead, or fixed costs, profit or fee. Only the changes in direct service labor wages (and any benefits based directly on wages) shall be considered by the U.S. Government as basis for contract price changes.

(h) No request by the contractor for an adjustment under this clause shall be allowed if asserted after final payment has been made under this contract.

(i) This clause shall only apply to laws enacted by the [insert name of country] Government meeting the criterion set forth above in paragraph (b). No adjustments shall be made due to currency fluctuations in exchange rates.

(End of clause)

128. Section 652.219–71 is added to read as follows:

652.219–71 Section 8(a) direct awards.

As prescribed in 619.811–3(f), insert the following clause:

Section 8(a) Direct Awards (Aug 1999)

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of State (DOS). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [To be completed by the contracting officer at the time of award]

(b) The DOS contracting officer is responsible for administering the purchase order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the DOS contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The DOS contracting officer shall also coordinate with SBA prior to processing any novation agreement. The DOS contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) to notify the DOS contracting officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the

owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and,

(2) to adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of clause)

652.223–70 [Removed]

129. Section 652.223–70 is removed.

652.223–71 [Removed]

130. Section 652.223–71 is removed.

652.223–72 [Removed]

131. Section 652.223–72 is removed.

652.223–73 [Removed]

132. Section 652.223–73 is removed.

652.223–74 [Removed]

133. Section 652.223–74 is removed.

652.223–75 [Removed]

134. Section 652.223–75 is removed.

652.223–76 [Removed]

135. Section 652.223–76 is removed.

652.223–77 [Removed]

136. Section 652.223–77 is removed.

652.223–78 [Removed]

137. Section 652.223–78 is removed.

138. Section 652.225–70 is added to read as follows:

652.225–70 Arab League Boycott of Israel.

As prescribed in 625.7002(a), insert the following provision:

Arab League Boycott of Israel (Aug 1999)

(a) Definitions. As used in this provision:

Foreign person means any person other than a United States person as defined below.

United States person means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as provided under the Export Administration Act of 1979, as amended.

(b) Certification. By submitting this offer, the offeror certifies that it is not:

(1) Taking or knowingly agreeing to take any action, with respect to the boycott of Israel by Arab League countries, which Section 8(a) of the Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)) prohibits a United States person from taking; or,

(2) Discriminating in the award of subcontracts on the basis of religion.

(End of provision)

139. Section 652.225–71 is added to read as follows:

652.225–71 Section 8(a) of the Export Administration Act of 1979, as amended.

As prescribed in 625.7002(b), insert the following clause:

Section 8(a) of the Export Administration Act of 1979, as Amended (Aug 1999)

(a) Section 8(a) of the U.S. Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)), prohibits compliance by U.S. persons with any boycott fostered by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation. The Boycott of Israel by Arab League countries is such a boycott, and therefore, the following actions, if taken with intent to comply with, further, or support the Arab League Boycott of Israel, are prohibited activities under the Export Administration Act:

(1) Refusing, or requiring any U.S. person to refuse to do business with or in Israel, with any Israeli business concern, or with any national or resident of Israel, or with any other person, pursuant to an agreement of, or a request from or on behalf of a boycotting country;

(2) Refusing, or requiring any U.S. person to refuse to employ or otherwise discriminating against any person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person;

(3) Furnishing information with respect to the race, religion, or national origin of any U.S. person or of any owner, officer, director, or employee of such U.S. person;

(4) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the State of Israel, with any business concern organized under the laws of the State of Israel, with any Israeli national or resident, or with any person which is known or believed to be restricted from having any business relationship with or in Israel;

(5) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the State of Israel; and,

(6) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement against doing business with the State of Israel.

(b) Under Section 8(a), the following types of activities are not forbidden "compliance with the boycott," and are therefore exempted from Section 8(a)'s prohibitions listed in paragraphs (a)(1)–(6) above:

(1) Complying or agreeing to comply with requirements:

(i) Prohibiting the import of goods or services from Israel or goods produced or services provided by any business concern organized under the laws of Israel or by nationals or residents of Israel; or,

(ii) Prohibiting the shipment of goods to Israel on a carrier of Israel, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(2) Complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipments as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(3) Complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurance, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(4) Complying or agreeing to comply with the export requirements of the boycotting country relating to shipments or transshipments of exports to Israel, to any business concern of or organized under the laws of Israel, or to any national or resident of Israel;

(5) Compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and,

(6) Compliance by a U.S. person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his or her activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his or her own use, including the performance of contractual services within that country, as may be defined by such regulations.

(End of clause)

140. Section 652.226–70 is added to read as follows:

652.226–70 Certification of status as a minority business enterprise.

As prescribed in 626.200–70, insert the following provision:

Certification of Status as a Minority Business Enterprise (Aug 1999)

The Bidder/Offeror/Supplier certifies that it [ ] is [ ] is not [check one] a minority business enterprise which is defined as a business which is at least 51 percent owned

by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are:

[Check the applicable block]

[ ] Black Americans
[ ] Hispanic Americans
[ ] Native Americans
[ ] Asian-Pacific Americans
[ ] Other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

Alternate I (Aug 1999).

Certification of Status as a Minority Business Enterprise (Alternate I) (Aug 1999)

(a) If you are a minority-owned business, please indicate in the comments section of your quote/response the applicable minority designation from those listed below. If no comments are received, it shall be assumed that you are not a minority-owned business. This request for information is to assist the Department collect statistics on awards to minority-owned businesses and will not influence the award decision.

(b) A minority business enterprise is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are: Black Americans; Hispanic Americans; Native Americans; Asian-Pacific Americans; and, other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

141. Section 652.228–70 is amended by revising the introductory text to read as follows:

652.228–70 Indemnification.

As prescribed in 628.7001(b), insert the following clause:

* * * * *

142. Section 652.228–71 is revised to read as follows:

652.228–71 Worker's compensation insurance (Defense Base Act)—Services

As prescribed in 628.305(b), insert the following clause:

Worker's Compensation Insurance (Defense Base Act)—Services (Aug 1999)

(a) This clause supplements FAR 52.228–3.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award. The current rate under the Department of State contract is [contracting officer insert rate] of compensation for services.

(c) Since the Department of State has obtained a waiver of DBA coverage for contractor employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the Department shall modify this contract accordingly.

(f) The contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(End of clause)

Alternate I (Aug 1999). If the contract is for construction, as prescribed in 628.305 (b), substitute the last sentence of paragraph (b) to read as follows: "The current rate under the Department of State contract is [contracting officer insert rate] of compensation for construction."

652.228–72 [Removed and reserved]

143. Section 652.228–72 is removed and reserved.

652.228–73 [Removed and reserved]

144. Section 652.228–73 is removed and reserved.

145. Section 652.228–74 is revised to read as follows:

652.228–74 Defense Base Act insurance rates—Limitation—Fixed-price.

As prescribed in 628.306, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Fixed-Price (Aug 1999)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Services @ [contracting officer insert current rate] of compensation; or

Construction @ [contracting officer insert current rate] of compensation.

(b) Bidders/Offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided for the base year and each year thereafter, if applicable. The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees: _____

(2) Defense Base Act Insurance Costs: _____

(3) Total Cost: _____

(c) Bidders/offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

652.228–75 [Removed and reserved]

146. Section 652.228–75 is removed and reserved.

147. Section 652.228–76 is revised to read as follows:

652.228–76 Defense Base Act insurance rates—Limitation—Cost-reimbursement, labor-hour, and time-and-materials.

As prescribed in 628.307, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials (Aug 1999)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for DBA insurance:

Services @ [contracting officer insert current rate] of compensation (direct salary plus differential, but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); or

Construction @ [contracting officer insert current rate] of compensation.

(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Should an offeror compute or include higher DBA insurance rates, the rates shall be disallowed.

(d) Offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

652.228–77 [Removed]

148. Section 652.228–77 is removed.

149. Section 652.229–70 is amended by revising the introductory text to read as follows:

652.229–70 Excise tax exemption statement for contractors within the United States.

As prescribed in 629.401–70, insert the following clause:

* * * * *

150. Section 652.229–71 is added to read as follows:

652.229–71 Personal property disposition at posts abroad.

As prescribed in 629.402–1–70, insert the following clause:

Personal Property Disposition at Posts Abroad (Aug 1999)

Regulations at 22 CFR Part 136 require that U.S. Government employees and their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes. Should the contractor experience importation or tax privileges in a foreign country because of its contractual relationship to the United States Government, the contractor shall observe the requirements of 22 CFR Part 136 and all policies, rules, and procedures issued by the chief of mission in that foreign country.

(End of clause)

151. Section 652.232–70 is amended by revising the clause heading and by revising the first sentence of paragraph (c) of the clause to read as follows:

652.232–70 Payment schedule and invoice submission—(Fixed-price)

* * * * *

Payment Schedule and Invoice Submission (Fixed-Price) (Aug 1999)

* * * * *

(c) Invoice Submission. Invoices shall be submitted in an original and [contracting officer insert appropriate number of copies] to the office identified in Block 10 of the SF–26, Block 23 of the SF–33, or Block 18b of the SF–1449. * * *

* * * * *

152. Section 652.232–71 is amended by revising the clause heading and by revising the last sentence of paragraph (a) of the clause to read as follows:

652.232–71 Voucher submission (Cost-reimbursement).

* * * * *

Voucher Submission (Cost-Reimbursement) (Aug 1999)

(a) * * * All vouchers shall be submitted to the office identified in Block 10 of the SF–26, Block 23 of the SF–33, or Block 18b of the SF–1449.

* * * * *

153. Section 652.232–72 is added to read as follows:

652.232–72 Limitation of funds.

As prescribed in 632.705–70, insert the following clause:

Limitation of Funds (Aug 1999)

(a) Of the total price in Section B (or the "Prices" section), only the amount stated on the contract award document or subsequent modifications is now available for payment and obligated under this contract. It is anticipated that from time to time, additional funds will be obligated under the contract until the total price of the contract is obligated.

(b) The Government is not obligated to pay or reimburse the contractor more than the amount obligated pursuant to this clause. The contractor agrees to perform the contract up to the point at which the total amount paid and payable by the Government (including amounts payable for subcontracts and settlement costs if this contract is terminated for convenience) approximates but does not exceed the total amount obligated.

(c)(1) It is contemplated that funds now obligated under this contract will cover the work to be performed until [contracting officer insert date].

(2) If the contractor considers the funds obligated under this contract to be insufficient to cover the work to be performed until that date, or another date agreed to by the parties, the contractor shall notify the contracting officer in writing and indicate the date on which it expects expended funds to approximate 75 percent of the total amount obligated. The notice shall state the estimated amount of additional funds required to continue performance through the date specified in paragraph (c)(1) of this clause or another date agreed to by the parties.

(3) If, after notification is provided pursuant to paragraph (c)(2) of this clause, additional funds are not obligated, or an earlier date than the date in paragraph (c)(1) of this clause is not agreed to, the contractor shall not be obligated to continue performance under this contract (including actions under the termination clause of this contract) beyond the funds obligated for contract performance.

(d) When additional funds are obligated from time to time for continued performance of this contract, the contract shall be modified to increase the funds obligated and to indicate the period of performance for which funds are applicable. The contractor may notify the contracting officer as provided in paragraph (c)(2) of this clause regarding any additional funds obligated.

(e) If the contractor incurs additional costs or is delayed in the performance of work under this contract, solely by reason of the Government's failure to obligate additional funds in amounts sufficient for the timely performance of this contract, an equitable adjustment may be made to the price, or time of delivery, or both.

(f) This clause shall become inoperative upon obligation of funds sufficient to cover the full price stated in the contract, except for rights and obligations then existing under this clause.

(g) Nothing in this clause shall affect the Government's right to terminate the contract for convenience or default.

(End of clause)

154. Section 652.236–70 is added to read as follows:

652.236–70 Accident prevention.

As prescribed in 636.513, insert the following clause:

Accident Prevention (Aug 1999)

(a) General. The contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and, control costs in the performance of this contract. For these purposes, the contractor shall:

(1) Provide appropriate safety barricades, signs and signal lights;

(2) Comply with the standards issued by any local government authority having jurisdiction over occupational health and safety issues; and,

(3) Ensure that any additional measures the contracting officer determines to be reasonably necessary for this purpose are taken.

(4) [The contracting officer shall specify additional requirements regarding safety if the work involves scaffolding or other work at heights above 2 meters, trenches or other excavation greater than 1 meter, earth moving equipment, electrical hazards, work in confined spaces (limited exits, potential for oxygen less than 19.5%, toxic or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.), or hazardous materials (especially those used indoors, e.g., paints, solvents, etc.).]

(b) Records. The contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to or theft of property, materials, supplies, or equipment. The contractor shall report this data in the manner prescribed by the contracting officer.

(c) Subcontracts. The contractor shall be responsible for its subcontractors' compliance with this clause.

(d) Written program. Before commencing work, the contractor shall:

(1) Submit a written plan for implementing this clause; and,

(2) Meet with the contracting officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(e) Notification. The contracting officer shall notify the contractor of any non-compliance with these requirements and the corrective actions required. This notice, when delivered to the contractor or the contractor's representative on site, shall be deemed sufficient notice of the non-compliance and corrective action required. After receiving the notice, the contractor shall immediately take corrective action. If the contractor fails or refuses to promptly take corrective action, the contracting officer

may issue an order suspending all or part of the work until satisfactory corrective action has been taken. The contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any suspension of work order issued under this clause.

(End of clause)

652.237–71 [Amended]

155. Section 652.237–71 is amended by revising the clause date to "(Aug 1999)"; and, in paragraph (c) of the clause by removing the words "Building Pass Application Unit, Room 309, State Annex Number 1, Columbia Plaza., 2401 E Street, NW, Washington, DC" and inserting the words "Building Pass Application Unit, Room B266, Department of State, 2201 C Street, NW, Washington, DC" in their place.

652.237–72 [Amended]

156. Section 652.237–72 is amended by revising the clause date to "(Aug 1999)"; and, in paragraph (a) of the clause by removing the words "Presidents' Day" from the list of designated holidays and inserting the words "Washington's Birthday" in their place.

652.242–70 [Amended]

157. Section 652.242–70 is amended by revising the clause date to "(Aug 1999)"; and by deleting the parenthetical "[insert name of COR]" in paragraph (b) of the clause and inserting the words "[insert job title of COR]" in their place.

158. Section 652.242–71 is amended by revising the introductory text to read as follows:

652.242–71 Notice of shipments.

As prescribed in 642.1406–2–70(a), insert the following clause:

* * * * *

159. Section 652.242–72 is amended by revising the introductory text to read as follows:

652.242–72 Shipping instructions.

As prescribed in 642.1406–2–70(b), insert the following clause:

* * * * *

160. Section 652.242–73 is added to read as follows:

652.242–73 Authorization and performance.

As prescribed in 642.271(b), insert a clause substantially the same as follows:

Authorization and Performance (Aug 1999)

(a) The contractor warrants the following:

(1) That is has obtained authorization to operate and do business in the country or countries in which this contract will be performed;

(2) That is has obtained all necessary licenses and permits required to perform this contract; and,

(3) That it shall comply fully with all laws, decrees, labor standards, and regulations of said country or countries during the performance of this contract.

(b) If the party actually performing the work will be a subcontractor or joint venture partner, then such subcontractor or joint venture partner agrees to the requirements of paragraph (a) of this clause.

(End of clause)

Alternate I (Aug 1999). If the contract is for overseas local guard services, as prescribed in 642.271(b), substitute the following paragraphs (a)(1) and (a)(2) for paragraphs (a)(1) and (a)(2) of the basic clause:

"(a)(1) That it has obtained authorization to operate and do business in the country or countries in which this contract will be performed, or will obtain such authorization before performance of this contract begins;

"(a)(2) That it has obtained all necessary licenses and permits required to perform this contract, or will obtain such licenses and permits before performance of this contract begins;"

161. Section 652.243–70 is added to read as follows:

652.243–70 Notices.

As prescribed in 643.104–70, insert the following clause:

Notices (Aug 1999)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the contracting officer.

(End of clause)

652.246–70 [Removed]

162. Section 652.246–70 is removed.

PART 653—FORMS

653.213–70 [Removed]

163. Section 653.213–70 is removed.

164. Section 653.219 is amended by revising the section heading to read as follows:

653.219 Small business programs.

165. Section 653.219–70 is revised to read as follows:

653.219–70 DOS form DS–1910, Small Business Agency Review—Actions Above the Simplified Acquisition Threshold.

As prescribed in 619.501(c), DS–1910 is prescribed for use in documenting set-aside decisions.

Dated: August 3, 1999.

Lloyd W. Pratsch,

Procurement Executive.

[FR Doc. 99–20556 Filed 8–10–99; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080599D]

Fisheries of the Exclusive Economic Zone Off Alaska; Thornyhead Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of thornyhead rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of thornyhead rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 1999 total allowable catch (TAC) of thornyhead rockfish in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 6, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1999 TAC of thornyhead rockfish in the Western Regulatory Area of the GOA was established as 260 metric tons by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for thornyhead rockfish in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of thornyhead rockfish in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 TAC for thornyhead rockfish in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the 1999 TAC for thornyhead rockfish in the Western Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 6, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20732 Filed 8–6–99; 3:28 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 154
Wednesday, August 11, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to implement changes in the microloan program required by the Small Business Reauthorization Act of 1997, enacted on December 2, 1997. The proposed rule would terminate the designation of the microloan program as a "demonstration," add a welfare-to-work microloan initiative, allow a nonprofit child care business to qualify for the microloan program, and authorize a microloan intermediary to use up to 25 percent of grant funds for technical assistance to prospective microloan borrowers. The proposed rule would also establish procedures for SBA to suspend or revoke the status of an intermediary lender or non-lending technical assistance provider from the microloan program for its failure to meet certain minimum performance standards.

DATES: Submit comments on or before September 10, 1999.

ADDRESSES: Comments should be mailed to Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jody Raskind, 202–205–6497.

SUPPLEMENTARY INFORMATION: Section 201 of Pub. L. 105–135, enacted on December 2, 1997, (1997 legislation) amends SBA's microloan program in section 7(m) of the Small Business Act (15 USC 636(m)) (Act). Section 202 of the 1997 legislation adds a welfare-to-work microloan initiative. These proposed rules would implement the statutory changes.

The 1997 legislation terminated the designation of the microloan program as a "demonstration." This proposed rule deletes that designation wherever it was in SBA's rules, including the heading for subpart G of this part.

SBA proposes to amend § 120.706 of its regulations (13 CFR 120.706) to increase the aggregate amount which a microloan intermediary may borrow from SBA from the previous statutory limit of $2.5 million to the new statutory limit of $3.5 million.

Generally, microloan borrowers must engage in for profit activities. However, SBA proposes to amend § 120.707(a) of its regulations to implement the 1997 legislation authorizing microloan assistance to a borrower to establish a nonprofit child care business.

The 1997 legislation increases, from 15 percent to 25 percent, the amount of grant funds a microloan intermediary may use for technical assistance to prospective microloan borrowers. This proposed rule would amend § 120.712 to reflect the increased percentage. SBA will also implement a new provision in the 1997 legislation by amending § 120.712 to allow an intermediary to use up to 25 percent of the grant funds it receives from SBA to contract to enable third parties to provide technical assistance to microloan borrowers.

Under section 7(m) of the Act, SBA may give grants to a maximum of 25 non-lending technical assistance providers. Under prior rules, SBA could provide the 25 grants for a maximum of 5 annual terms. The proposed rule would amend § 120.714 of SBA's regulations to reflect the changes in the 1997 legislation that authorize SBA to provide the annual grants without any maximum term limits.

Section 7(m)(12) of the Act authorizes SBA, on a pilot basis, to guarantee loans made to microloan intermediaries. Currently, § 120.715 of SBA's regulations incorrectly places a limit on the number of loans to intermediaries which SBA may guarantee. SBA proposes to amend § 120.715 of its regulations to clarify that there is no statutorily prescribed limit on the number of loans which SBA is authorized to guarantee to microloan intermediaries.

SBA proposes to add § 120.716 to its regulations to implement the 1997 legislation's welfare-to-work initiative. The initiative will give supplemental technical assistance grants to existing program participants for low-income individuals who get assistance under a State program funded under part A of title IV of the Social Security Act, or under any comparable State funded means tested program ("State Program"). The supplemental grants would be used to help new small businesses eliminate their dependence on State Programs. SBA would obtain funds to provide these supplemental grants from other departments and agencies of the federal government. To get such funds, SBA would enter into memoranda of understanding with the departments and agencies specifying the terms and conditions of the supplemental grants and providing for monitoring of expenditures by each grantee and each recipient.

Under the welfare-to-work initiative, SBA would select from its participating intermediaries and non-lending technical assistance providers up to 20 grantees in fiscal year 1998, 25 grantees in fiscal year 1999, and 30 grantees in fiscal year 2000. Each selected intermediary and non-lending technical assistance provider would be eligible to receive a supplemental grant from SBA of up to $200,000 a year, which SBA has the sole authority to determine.

A grantee who gets a supplemental grant under this initiative would not have to match the grant. A grantee could use the supplemental grant to pay or reimburse a portion of child care and transportation costs of the recipients of State Programs if the recipients certify that they are not being paid for such costs under state block grants under the Child Care Development Block Grant Act of 1990 or under part A, title IV of the Social Security Act. A grantee also could use the supplemental grants for marketing, management, and technical assistance to recipients of State Programs. SBA may use up to 5 percent of the grant amounts it provides under the welfare-to-work microloan initiative in any fiscal year for technical assistance to the grantees to ensure that they have the knowledge, skills, and understanding of making microloans and operating a welfare-to-work microloan program.

SBA also proposes to add a new §120.717 to authorize the SBA Associate Administrator for Financial Assistance (AA/FA) to terminate or otherwise act regarding an intermediary lender or non-lending technical assistance provider that fails to meet certain minimum performance standards. This authority is similar to that held by the

AA/FA regarding the termination or suspension of lenders or pool assemblers in the agency's 7(a) business loan program. It is important for SBA to be able to terminate the services of, or impose other sanctions on, a microloan entity which operates to bring discredit on the program. SBA must be able to discipline an intermediary or non-lending technical assistance provider whose failure to operate properly may adversely affect microloan borrowers or imperil the safety and soundness of the microloan program.

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule is not a significant rule within the meaning of Executive Order 12866 and does not have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch 35, SBA certifies that this proposed rule requires the microloan intermediaries and technical assistance providers to formally count, and account for, welfare clients and expenditures for those clients.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications requiring a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

(Catalog of Federal Domestic Assistance Programs, Nos. 59.012 and 59.013)

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Revise the heading for subpart G of part 120, title 13, Code of Federal Regulations to read as follows:

Subpart G—Microloan Program

3. In 120.700, revise the first sentence to read as follows:

§ 120.700 What is the Microloan Program?

The Microloan Program assists women, low income individuals, minority entrepreneurs, and other small businesses which need small amounts of financial assistance. * * *

4. In 120.706, revise the section heading and last sentence to read as follows:

§ 120.706 What are the terms and conditions of an SBA loan to an Intermediary?

(a) * * * In later years, the Intermediary's obligation to SBA may not exceed an aggregate of $3.5 million, subject to statutory limitations on the total amount of funds available per state.

* * * * *

5. In § 120.707(a), remove the first sentence and add two new sentences in its place to read as follows:

§ 120.707 What conditions apply to loans by Intermediaries to Microloan borrowers?

(a) *General.* An intermediary may make Microloans to any small business eligible to receive financial assistance under this part. A borrower may also use Microloan proceeds to establish a nonprofit child care business. * * *

* * * * *

6. In § 120.712, revise paragraphs (b)(1) and (e) to read as follows:

§ 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

* * * * *

(b) * * *

(1) Up to 25 percent of the grant funds may be used to provide information and technical assistance to prospective Microloan borrowers; and

* * * * *

(e) *Third party contracts for technical assistance.* An Intermediary may use no more than 25 percent of the grant funds it receives from SBA for contracts with third parties for the latter to provide technical assistance to Microloan borrowers.

7. In § 120.714, revise the section heading, add an introductory text, and revise paragraph (b) to read as follows:

§ 120.714 How are grants made to non-lending technical assistance providers?

SBA selects non-lending technical assistance providers (NTAP) to receive grant funds for technical assistance to Microloan borrowers.

* * * * *

(b) *Number and amount of grants.* In each year of the Microloan Program, SBA may make no more than 25 grants to NTAPs. A grant may not exceed $125,000.

* * * * *

8. In § 120.715, revise paragraph (a) to read as follows:

§ 120.715 Does SBA guarantee any loans an Intermediary obtains from another source?

(a) SBA may guarantee not less than 90 percent of loans made by for-profit or nonprofit entities (or an alliance of such entities) to no more than 10 Intermediaries in urban areas and 10 Intermediaries in Rural Areas (as defined in section 120.10).

* * * * *

9. Add § 120.716 to read as follows:

§ 120.716 Welfare-to-work initiative.

(a) *Purpose.* The purpose of the welfare-to-work initiative is to supplement the technical assistance grants provided under the microloan program for the purpose of helping low-income individuals who receive assistance under a State program funded under Part A of title IV of the Social Security Act (42 U.S.C. 601), or under any comparable State funded means tested program of assistance (State Program). These supplemental grants are to be used to help the individuals to establish small businesses and eliminate their dependence on such State Programs.

(b) *Supplemental grant.* SBA may accept funds transferred to it from other agencies or departments of the Federal government to make the supplemental grants under the welfare-to-work initiative. SBA will make such grants to microloan Intermediaries and NTAPs (as defined in § 120.714) in order to provide technical assistance and related services to individuals receiving State Program aid at the time they initially apply for a microloan.

(c) *Number of Intermediaries and NTAPs.* SBA may give supplemental grants to no more than 20 participating microloan Intermediaries and NTAPs in fiscal year 1998, no more than 25 grantees in fiscal year 1999, and no more than 30 grantees in fiscal year 2000.

(d) *Amount of supplemental grant.* Each of the selected Intermediaries and NTAPs may receive a supplemental grant from SBA of no more than $200,000 a year.

(e) *Supplemental grant needs no matching.* A supplemental grant made by SBA under this initiative does not have to be matched by the grantee Intermediary or NTAP.

(f) *Use of supplemental grant.* A grantee may use the supplemental grant:

(1) To pay or reimburse a portion of child care and transportation costs of recipients of State Programs, if the recipients certify that they are not being paid for such costs under State block grants under the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858) or under part A, title IV of the Social Security Act (42 U.S.C. 601); and

(2) For marketing, management, and technical assistance to the recipients of State Programs.

(g) *Memorandum of understanding.* Before SBA accepts a transfer of funds from an agency or department of the Federal government, under this initiative, it must enter into a memorandum of understanding with the agency or department which will specify the terms and conditions of the supplemental grants, including monitoring of expenditures.

(h) *Additional condition for welfare-to-work supplemental grant.* SBA may use up to 5 percent of the grant amounts it provides under the welfare-to-work microloan initiative in any fiscal year for technical assistance to the grantees to ensure that the grantees have the knowledge, skills, and understanding of making microloans and operating a welfare-to-work microloan program.

10. Add § 120.717 to read as follows:

§ 120.717 Suspension or revocation of an Intermediary or NTAP.

(a) The AA/FA may suspend or revoke the participation status of an Intermediary or NTAP from the Microloan Program, or may impose other sanctions in the best interests of the program, if it fails to comply with the laws, regulations, and policies governing the program or if it fails to meet any one of the following minimum performance standards.

(1) For Intermediaries only—An Intermediary must:

(i) Close and fund a minimum of four microloans per year; and

(ii) Satisfactorily provide in-house technical assistance to microloan clients and prospective microloan clients.

(2) For NTAPs only—An NTAP must show that, for every thirty clients for which it provided technical assistance, one client received a loan from the private sector.

(3) For Intermediaries and NTAPs—An Intermediary and an NTAP must:

(i) Cover the service territory assigned by SBA, including honoring the SBA determined boundaries of neighboring Intermediaries and NTAPs;

(ii) Fulfill reporting requirements;

(iii) Manage program funds and matching funds in a satisfactory and financially sound manner;

(iv) Communicate and file reports via the internet within six months after beginning participation in the program;

(v) Maintain a currency rate of 85 percent or more (that is loans that are no more than 30 days late in scheduled payments);

(vi) Maintain a default rate of 15 percent or less of the cumulative dollars loaned under the program; and

(vii) Attend Microloan Program training conferences offered by SBA, or such substitute training as may be approved by SBA on a case-by-case basis.

(b) The AA/FA, on a case by case basis, may impose pre-suspension or revocation sanctions which may include, but are not limited to, the following:

(1) Accelerated reporting requirements;

(2) Accelerated loan repayment requirements for outstanding program debt to SBA; and

(3) Imposition of a temporary lending and/or training moratorium.

(c) Revocation from the Microloan Program will include:

(1) Removal from the program;

(2) Liquidation of MRF and LLRF accounts, by SBA, and application of liquidated funds to any outstanding balance owed to SBA;

(3) Payment of outstanding debt to SBA by the Intermediary;

(4) Forfeiture or repayment of any unused grant funds by the Intermediary or NTAP; and

(5) Debarment of the organization from receipt of Federal funds until loan and grant repayment requirements are met.

(d) An Intermediary or NTAP may appeal a suspension or revocation under procedures found in part 134 of this chapter. The action of the AA/FA remains in effect pending resolution of the appeal.

Dated: July 30, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–20324 Filed 8–10–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–08–AD]

Airworthiness Directives; Robinson Helicopter Company (Robinson) Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Robinson Model R44 helicopters. The AD would require inspecting the wire harness for contact with the fuel line assembly, removing and replacing the fuel line assembly if chafing has occurred, and installing spiral wrap tubing on the fuel line assembly. This proposal is prompted by four incidents of contact between the wire harness and the fuel line assembly. The actions specified by the proposed AD are intended to prevent contact between the wire harness and the fuel line, which could result in chafing of the wire harness and a potential fire hazard.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–08–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5265; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–08–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–08–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion: This document proposes the adoption of a new AD applicable to Robinson Model R44 helicopters. The AD would require inspecting for chafing and installing spiral wrap tubing on the fuel line at the wire harness contact point. This proposal is prompted by four incidents of contact between the wire harness and the fuel line assembly above the fuel shutoff valve. In three of the incidents, the wire harness contacted the fuel line just above the fuel valve. In the fourth incident, the wire harness contacted the apex of the fuel line nut. The actions specified by the proposed AD are intended to prevent contact between the wire harness and the fuel line assembly, which could result in chafing of the wire harness and a potential fire hazard.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R44 helicopters of the same type design, the proposed AD would require inspecting the wire harness, part number (P/N) C059, for contact with the fuel line assembly, P/N C726–2; removing and replacing the fuel line assembly if chafing has occurred; and installing spiral wrap tubing, P/N B161–8, on the fuel line.

Cost Impact

The FAA estimates that 200 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.3 work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $0.22 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,644.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Robinson Helicopter Company: Docket No. 99–SW–08–AD.

Applicability: Model R44 helicopters, serial numbers 0002 through 0462, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service or 90 calendar days after the effective date of this AD, whichever occurs first, unless accomplished previously.

To prevent contact between the wire harness and the fuel line assembly, which could result in chafing of the wire harness and a potential fire hazard, accomplish the following:

(a) Remove the cover, part number (P/N) C474–1, from between the rear seatbacks.

(b) Inspect the wire harness, P/N C059, and the fuel line assembly, P/N C726–2, above the fuel shutoff valve for contact. If the wire harness contacts the fuel line assembly, inspect for chafing.

(c) If chafing has occurred between the wire harness and the fuel line assembly, replace the fuel line with an airworthy fuel line assembly. Torque the fuel line nuts to 110–130 in-lbs. Verify that clearance exists between the fuel line assembly and the wire harness.

(d) Install a 3-inch section of spiral wrap tubing, P/N B161–8, on the fuel line assembly as shown in Figure 1. Push the spiral wrap tubing down until it is against the fuel line fitting.

Note 2: Robinson Helicopter Company Service Bulletin SB–31, dated October 28, 1998, pertains to the subject of this AD.

BILLING CODE 4910–13–P

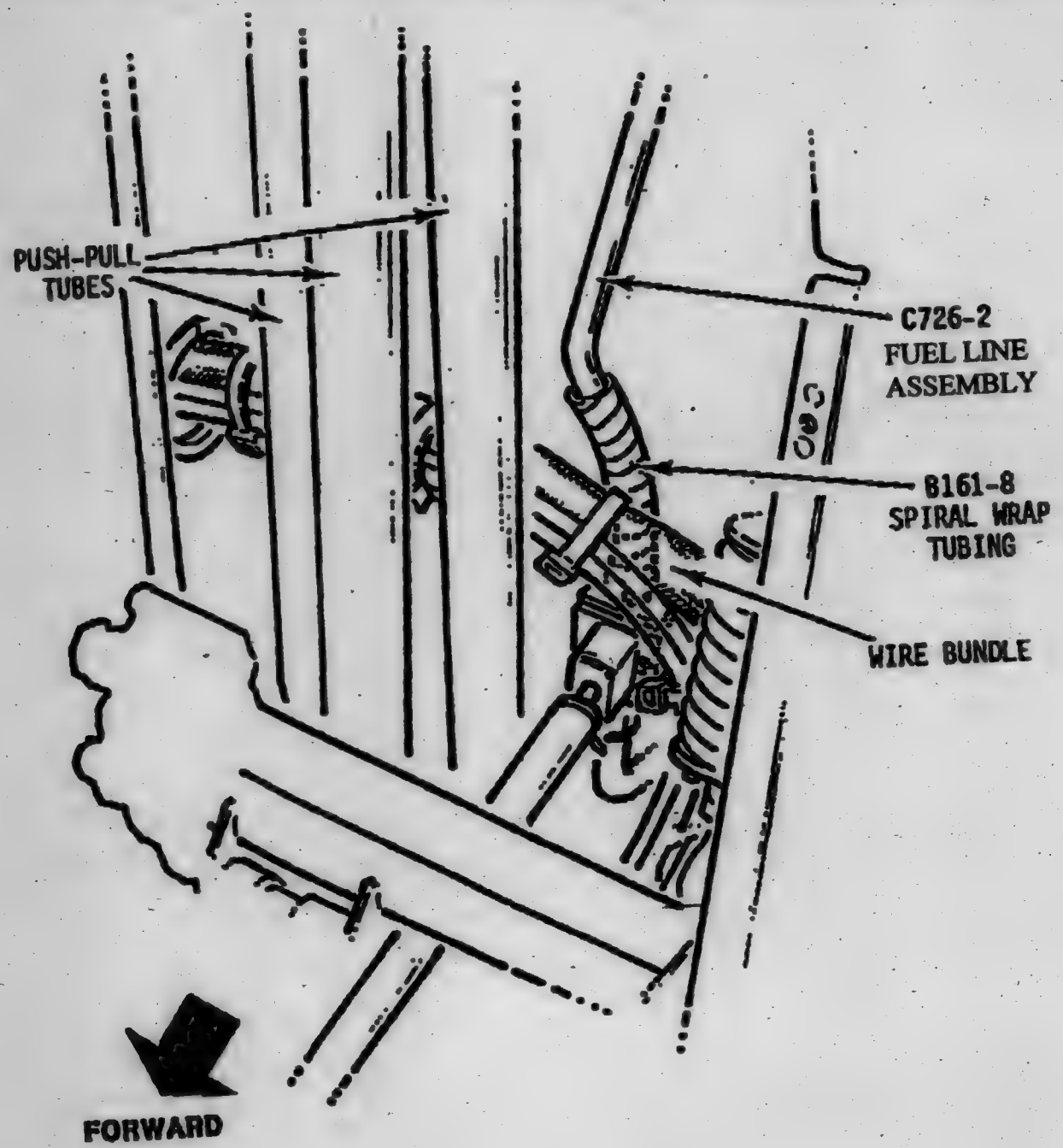
PUSH-PULL TUBES
C726-2 FUEL LINE ASSEMBLY
B161-8 SPIRAL WRAP TUBING
WIRE BUNDLE
FORWARD

FIGURE 1

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on August 4, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–20755 Filed 8–10–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–05]

Negotiated Rulemaking Committee on Operating Fund Allocation; Cancellation August Meeting and Announcement of September Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: This document announces the cancellation of the meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation, which had been scheduled to take place on August 11 and August 12, 1999. This document also announces the dates, time, and location of the September committee meeting. These ongoing meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs).

DATES: The committee meeting scheduled to take place on August 11 and August 12, 1999 has been cancelled.

The September committee meeting will be held on September 14 and September 15, 1999.

The first day of the September committee meeting will begin at approximately 9:30 am and end at approximately 5:00 pm. The second day of the September committee meeting will begin at approximately 9:00 am and end at approximately 4:00 pm.

ADDRESSES: The September committee meeting will take place at the Hilton Washington Dulles Hotel, 13869 Park Center Road, Herndon, VA 20171.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 ext. 4035 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary of HUD has established the Negotiated Rulemaking Committee on Operating Fund Allocation to negotiate and develop a proposal that would change the current method of determining the payment of operating subsidies to PHAs.

This document announces the cancellation of the meeting of the committee, which had been scheduled to take place on August 11 and August 12, 1999. The cancellation will allow HUD to more fully develop a subsidy allocation proposal for committee consideration.

This document also announces the dates, time, and location of the September committee meeting, which will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the committee meeting includes: (1) Workgroup sessions to discuss various issues related to the implementation of an operating fund formula; (2) full committee discussions of the work-products developed by the workgroups; (3) development of draft regulatory language; and (4) the scheduling of future meetings, if necessary.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: August 6, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–20836 Filed 8–9–99; 11:04 am]

BILLING CODE 4210–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6416–6]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Vestal Water Supply Well 4–2 Superfund Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Vestal Water Supply Well 4–2 (Vestal 4–2) Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further action is appropriate at the Vestal 4–2 Site under CERCLA. Moreover, EPA and the State have determined that the activities conducted at the Vestal 4–2 Site are protective of public health and the environment.

DATES: Comments concerning the deletion of the Vestal 4–2 Site from the NPL may be submitted on or before September 10, 1999.

ADDRESSES: Comments may be mailed to: Lorenzo Thantu, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, NY 10007.

Comprehensive information on this Site is available through the EPA Region II public docket, which is located at EPA's Region II Office in New York City, and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. For further information or to request an appointment to review the public

docket, please contact Mr. Thantu at (212) 637–4240.

Background information from the EPA Region II public docket related to the Vestal 4–2 Site is also available for viewing at the information repositories noted below:

Vestal Town Hall, 605 Vestal Parkway West, Vestal, NY 13850; and Vestal Public Library, 320 Vestal Parkway East, Vestal, NY 13850.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, NY 10007, (212) 637–4240.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the Vestal Water Supply Well 4–2 Site (Site), located in Vestal, Broome County, New York, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such sites warrant such action.

The Vestal 4–2 Site is located on the west side of Prentice Road in the Town of Vestal, Broome County, New York. The Town of Vestal is about five miles southwest of Binghamton. Well 4–2 is about 1,000 feet south of the Susquehanna River and is one of four water supply wells in Water District Number 4 of the Town of Vestal.

EPA will accept comments concerning the Vestal 4–2 Site for thirty days after publication of this document in the **Federal Register**.

II. NPL Deletion Criteria

Section 300.425(e)(1) (i)–(iii) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State of New York, considers whether any of the following criteria has been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further cleanup by responsible parties is appropriate; or,

(iii) The remedial investigation has shown that the release poses no significant threat to human health or the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The following procedures were used for the intended deletion of the Site:

(1) Two Reports, issued in 1980 and 1981, determined that the source of Vestal 4–2 contamination was the Monarch Chemical, Inc. facility.

(2) In 1993, the Town of Vestal had a former dry well and surrounding soils removed from the Monarch facility.

(3) In 1997, groundwater sampling confirmed the cleanup of the aquifer.

(4) The New York State Department of Environmental Conservation (NYSDEC) concurred with the deletion in a letter dated September 29, 1998.

(5) EPA Region II has recommended deletion and has prepared the relevant documents. EPA has also made all relevant documents available in the Regional office and local Vestal 4–2 Site information repositories.

(6) Concurrent with this national Notice of Intent to Delete, a notice has been published in a local newspaper and has been distributed to appropriate Federal, State and local officials and other interested parties announcing a thirty-day public comment period on the deletion.

Comments received during the comment period will be evaluated before any final decision is made. If necessary, EPA Region II will prepare a Responsiveness Summary which will address any significant comments received during the public comment period. A deletion occurs when the EPA Regional Administrator places a final Notice of Deletion in the **Federal Register**.

IV. Basis for Intended Site Deletion

In February 1980, Vestal Water Supply Well 4–2 was found to be contaminated with trichloroethene, 1,1,1-trichloroethane and tetrachloroethene. The Vestal 4–2 Site was listed on the NPL on September 1, 1983.

An October 1980 report entitled, "Hydrogeologic Investigation of Organic Contamination at Monarch Chemicals, Inc.," and an April 7, 1981 draft report entitled, "Hydrologic Study of a Portion of the Susquehanna River Valley in the Town of Vestal, Broome County, New York with Emphasis on Chemical Contamination of the Aquifer," together delineated the nature and extent of the suspected contamination at the Vestal 4–2 Site and documented that the Monarch facility was the source of contamination of Well 4–2.

The Monarch Chemicals is located approximately 200 feet south and hydraulically upgradient of Well 4–2. Monarch Chemicals began operations around 1970, repackaging chemicals including 1,1,1-trichloroethane, trichloroethene and other chlorinated solvents as part of a bulk chemical handling operation.

In April 1983, the "Town of Vestal Water District No. 4, Groundwater Exploration" report was released. The report found that the contamination in the vicinity of Well 4–2 was a localized condition. The report also indicated that although Monarch Chemicals vacated its premises in the Fall of 1982, the continued presence of contaminants in Well 4–2 indicated that the Monarch facility remained contaminated. The report recommended that Well 4–2 should continue to pump to waste unless another remedial action were taken to remove the contamination. These conclusions mapped out the remedial alternatives which were later incorporated in the New York State Enforcement Action, also known as the Settlement Agreements.

In 1985, the New York State Department of Law, Attorney General's Office along with the Town of Vestal and the Vestal Water Districts No. 3, 4 and 6 signed two Settlement Agreements with the responsible parties at the Site.

In September 1988, as a result of the Settlement Agreements, an air stripper and additional carbon filtration were installed at Well 4–2. The air stripping system reduced contaminant levels in groundwater to below detection limits.

On December 14, 1993, approximately 26 cubic yards (42 tons) of material were excavated including the former dry well and surrounding soils from the Monarch Chemicals facility.

In order to determine if groundwater contaminants had attenuated and if it were appropriate to begin the NPL delisting process for the Site, EPA sampled the groundwater in the vicinity of the Vestal 4–2 Site on May 8, 1997, June 11, 1997 and September 10, 1997. The results of the sampling showed that groundwater contamination in the vicinity of the former Monarch

Chemicals dry well had decreased, such that it was at or approaching drinking water standards.

EPA's 1997 sampling data are consistent with the Town's monthly monitoring results for samples collected prior to the air stripper. Therefore, the primary pathways associated with the Vestal 4–2 Site that threatened public health have been addressed. EPA summarized the actions taken at this Site in a Superfund Site Close Out Report dated September 30, 1998.

EPA and NYSDEC have determined that all appropriate responses under CERCLA at the Site have been completed, and that no further activities are necessary. Consequently, EPA is proposing deletion of this Site from the National Priorities List. Documents supporting this action are available in the docket.

Dated: July 27, 1999.

Herb Barrack,

Acting Regional Administrator, Region 2.

[FR Doc. 99–20464 Filed 8–10–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket 99–261; FCC 99–183]

50.2–71 GHz Realignment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the United States Table of Frequency Allocations with respect to the 50.2–50.4 GHz and 51.4–71.0 GHz bands. The allocations proposed in this instant proceeding would provide additional spectrum to the inter-satellite service ("ISS") and to the fixed and mobile services while continuing to provide an acceptable environment for passive spaceborne sensor measurements of atmospheric temperature.

DATES: Comments must be filed on or before September 7, 1999, and reply comments must be filed on or before September 22, 1999.

ADDRESSES: Address all comments concerning this proposed rule to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, TTY (202) 418–2989, e-mail: tmooring@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket 99–261, FCC 99–183, adopted July 16, 1999, and released July 23, 1999. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room TW–A306), 445 12th Street S.W., Washington, DC. The complete text of this document also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Notice of Proposed Rulemaking

1. We propose:

- To provide a net gain of 900 megahertz of spectrum allocated on a primary basis for non-Government ISS by allocating the 65–71 GHz band to that service and by deleting non-Government ISS allocations from the 56.9–57.0 GHz and 59–64 GHz bands;
- To allocate the 64–65 GHz band to the Government ISS on a primary basis;
- To require that the existing Government and non-Government ISS allocations in the 54.25–56.90 GHz and 57.0–58.2 GHz bands and the existing Government ISS allocation in the 59.0–59.3 GHz band be used exclusively for geostationary satellite-to-geostationary satellite communications, subject to a power flux-density ("p.f.d.") limit designed to protect passive sensor operations;
- To provide a net gain of 2.27 gigahertz of spectrum allocated on a primary basis for Government and non-Government fixed and mobile services by allocating the 51.4–52.6 GHz, 58.2–59.0 GHz, and 64–65 GHz bands to these services, by deleting the unused fixed and mobile service allocations from the 50.2–50.4 GHz and 54.25–55.78 GHz bands, and by upgrading the allocation status of these services in the 65–66 GHz band from secondary to primary;
- To specify that the 57–59 GHz and 64–66 GHz bands will be available for use by Government and non-Government unlicensed devices; and
- To allocate the 59.0–59.3 GHz band to the Government and non-Government earth exploration-satellite (passive) and space research (passive) services and to delete unneeded passive sensor allocations from the 51.4–52.6 GHz and 64–65 GHz bands.

2. The proposals are part of the Commission's continuing effort to facilitate the commercialization of "millimeter wave" spectrum, and are consistent with the international allocation changes that the United States sought and obtained for this frequency range at the 1997 World Radiocommunication Conference ("WRC–97"). Adoption of these proposals would allocate the spectrum that Government and non-Government satellite users require to interconnect their satellites within their respective networks. More specifically, the ISS proposals are expected to provide a wide range of fixed-satellite service ("FSS") and mobile-satellite service systems, including both geostationary orbit ("GSO") and non-geostationary orbit ("NGSO") systems, with the additional spectrum needed to complete their end-to-end communications service. For example, using the ISS allocations proposed, Ka-band FSS licensees could inter-link their broadband multimedia satellites, thereby permitting the provision of innovative high-speed Internet-like services on a regional and global basis. Our proposals also provide the spectrum that new licensed fixed and mobile services and unlicensed devices are anticipated to require. For example, Personal Communication Service ("PCS") and cellular licensees could use unlicensed spectrum in the 57–59 GHz frequency range to connect nearby base stations to one another, which would be especially useful in high-density urban areas. We tentatively find that these additional allocations can be made while, at the same time, ongoing passive sensor operations—used to obtain weather and climate data in all weather conditions—are fully protected. We also tentatively find that these proposals would further our efforts towards achieving the overarching goal of section 706 of the Telecommunications Act of 1996, to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing measures that promote competition in the local telecommunications market."

Inter-Satellite Service

3. We propose, in accordance with international allocation decisions taken at WRC–97, to allocate the 64–71 GHz band to the ISS domestically. We tentatively find that the feasibility of ISS and existing services sharing the 64–71 GHz band has been clearly shown by various studies. At the request of NTIA, we further propose to delete the non-Government ISS allocation from the 56.9–57.0 GHz and 59–64 GHz bands and to allocate the 64–65 GHz segment for exclusive Government ISS use and the 65–71 GHz segment for exclusive non-Government ISS use. This domestic allocation split addresses two concerns.

First, there is a well-established and pressing demand for commercial inter-satellite link spectrum, which we believe necessitates a substantial ISS allocation that can be used by all commercial satellite systems. Furthermore, although commercial systems have requested spectrum below 65 GHz, NTIA asserts that Federal Government ISS operations in the 59–64 GHz band are not compatible with proposed commercial ISS uses of this band. Second, an allocation at 64–65 GHz for Government only use would compensate Federal users for the loss of flexibility in the 59–64 GHz ISS band that will occur as a result of the WRC–97 decision to limit the use of the 59.0–59.3 GHz band to geostationary satellite-to-geostationary satellite communications. The net result of these proposals is that commercial satellite operators would have exclusive use of 6 gigahertz of primary ISS spectrum at 65–71 GHz and Federal agencies would have exclusive use of 6.1 gigahertz of primary ISS spectrum at 56.9–57.0 GHz and 59–65 GHz. We observe that the shared and commercial exclusive ISS spectrum could be used, for example, by Ka-band licensees for satellite-to-satellite communications, making their systems more efficient and enabling them to provide some of the advanced telecommunications capabilities that section 706 of the Communications Act envisions.

4. We also propose to adopt international footnote S5.556A domestically. This footnote limits use of the 54.25–56.90 GHz, 57.0–58.2 GHz, and 59.0–59.3 GHz ISS bands to GSO satellite transmissions that comply with a maximum p.f.d. limit at altitudes of 1000 kilometers (approximately 621.4 miles) or less above the Earth's surface of −147 dBW per square meter per 100 megahertz for all angles of arrival. This proposal reflects the results of studies that have shown these technical restrictions to be necessary to prevent ISS transmissions in these bands from causing harmful interference to passive sensor reception in the 54.25–58.20 GHz band. We tentatively find that, although adoption of footnote S5.556A explicitly precludes NGSO networks from accessing this 4.15 gigahertz of ISS spectrum, the 6 gigahertz we are proposing to allocate at 65–71 GHz for exclusive commercial use is sufficient to accommodate all pending requests by NGSO licensees for ISS spectrum. We request comment on this tentative conclusion.

5. With regard to the 56.9–57.0 GHz band, we observe that WRC–97 limited ISS use of this spectrum through footnote S5.558A, which permits only GSO inter-satellite links and transmissions from NGSO satellites in high-Earth orbit to those in low-Earth orbit. However, Federal agencies, which currently operate in the band, have determined that these restrictions must be loosened slightly by also permitting transmissions between satellites in geostationary orbit and those in high-Earth orbit and between satellites in geostationary orbit and those in low-Earth orbit. Since we have previously proposed that the use of the ISS allocation in the 56.9–57.0 GHz band be limited exclusively to Federal agencies, this expanded use would be authorized under a new Government footnote. We request comment on all of the above proposals.

Fixed and Mobile Services/Unlicensed Devices

6. We propose to allocate the 51.4–52.6 GHz and 58.2–59.0 GHz bands to Government and non-Government fixed and mobile services on a primary basis. We also propose to make the 64–66 GHz band available to the Government and non-Government fixed and mobile (except aeronautical mobile) services on a primary basis by allocating the 64–65 GHz segment for these purposes and by upgrading the status of the secondary fixed and mobile services in the 65–66 GHz segment. In order to protect ongoing passive sensor reception in the 50.2–50.4 GHz and 54.25–55.78 GHz bands from future disruption, we propose to delete the unused Government and non-Government fixed and mobile service allocations from these bands. We also propose to delete the requirement that aeronautical mobile station transmissions not cause harmful interference to ISS operations in the 54.25–55.78 band and to add this requirement in the 66–71 GHz band. Finally, we observe that any future land mobile services in the 66–71 GHz band will be required to protect the new non-Government ISS service—as well as the existing space radiocommunication services—from harmful interference.

7. These fixed and mobile service proposals have been enabled by: (1) NTIA's finding that the 51.4–52.6 GHz and 64–65 GHz bands are no longer required for Government passive sensor operations, and (2) ITU–R studies that have shown that passive sensors can share with fixed and mobile services at frequencies above 55.78 GHz due to the high atmospheric attenuation that exists. These studies found that, at lower frequencies, undesirable constraints would be required on the fixed and mobile services and the meteorological community would still receive interference that could effect weather forecasts and give false results to measurements of warming of the Earth. Thus, our related proposal to delete the fixed and mobile service allocations from the 50.2–50.4 GHz and 54.25–55.78 GHz bands will provide exclusive spectrum for the measurement of atmospheric temperature using passive spaceborne sensors in bands where sharing with other services is not feasible. In sum, these proposals, if adopted, would result in a net gain of 2.27 gigahertz of primary spectrum for fixed and mobile services, while eliminating the need for constraints on the parameters of fixed and mobile systems since these services would not share allocations with the passive services below 55.78 GHz. We request comment on all of the above proposals.

8. We also observe that WRC–97 adopted new footnote S5.547, which makes the 51.4–52.6 GHz, 55.78–59.00 GHz and 64–66 GHz bands "available for high-density applications in the fixed service" ("HDFS"). We request comment on whether footnote S5.547 should be adopted domestically, what the ramifications of such an action would be, and whether, in order to assure spectrum availability for HDFS, the bands should not be allocated to the mobile service.

9. *Unlicensed Devices.* In 1996, we made the 59–64 GHz band available for unlicensed devices under part 15 of Commission's Rules. We observe that the 55.78–59 GHz and 64–66 GHz bands are adjacent to this unlicensed band, that both of these bands would, if our proposals are adopted, be allocated to the fixed and mobile services on a primary basis, and that, furthermore, both of these bands could be made available for use by HDFS.

10. We also observe that the European Radiocommunications Committee has adopted a Recommendation entitled "Radio Frequency Channel Arrangement for Fixed Services Operating in the Band 57.0–59.0 GHz Which Do Not Require Frequency Planning," but that this Recommendation has not yet been implemented. This Recommendation states, *inter alia*, "that the high frequency reuse achievable in the oxygen absorption band reduces the requirement for frequency planning techniques and offers the possibility of deregulated telecommunications environment within CEPT [the European Conference of Postal and Telecommunications Administrations] for various low power, low cost and short range radio-relays." In addition, it is our understanding that there are ongoing discussions in Europe concerning unlicensed broadband HDFS

use of the 57–59 GHz band. We anticipate a similar need in the United States. Specifically, we believe that PCS, cellular, and other mobile service licensees will require unlicensed spectrum in the 57–59 GHz frequency range to connect nearby base stations to one another, especially in high-density urban areas, i.e., "hot spots."

11. We tentatively find that the 57–59 GHz and 64–66 GHz bands are well suited for use by unlicensed devices, and accordingly, we propose to make these bands available for use by unlicensed devices under part 15 of Commission's Rules. We base this proposal on the propagation characteristics of the bands, and on the technical material previously presented by the Millimeter Wave Communications Working Group in the Above 40 GHz proceeding. We tentatively find that licensing is not necessary because of the limited potential for interference due to oxygen absorption and the narrow beamwidth of point-to-point antennas likely to be operating in this range. We also tentatively find that low-power unlicensed use of 57–59 GHz and 64–66 GHz bands is an ideal use of this Government/non-Government shared spectrum because this proposed use further reduces the chance of harmful interference to in-band sensors. We request comment on these proposals. We also request comment on whether the 55.78–57.00 GHz segment should be made available for use by unlicensed devices or whether this segment should be made available for licensed fixed and mobile services.

12. We are not proposing technical rules for unlicensed use of the 57–59 GHz and 64–66 GHz bands in this proceeding, except that operation in the 57–59 GHz band would not be permitted on aircraft or satellites. Instead, we intend to initiate a separate rulemaking to address appropriate technical rules. Nonetheless, we invite comment looking toward this further rulemaking on the technical rules needed for the spectrally efficient operation of unlicensed devices in these band. For example, should we simply employ the existing technical rules and etiquette from the 59–64 GHz band throughout an extended 57–66 GHz unlicensed band, or should we develop different technical rules for the 57–59 GHz and 64–66 GHz bands? If we adopt different technical rules, should either of the bands be channelized, and should the use of listen-before-transmit etiquette be required on all or some of these channels? We request comment on all of the above proposals.

Passive Sensors

13. Satellite-borne passive microwave sensors are used to obtain atmospheric temperature profiles that are of utmost importance to weather forecasting and to climate studies, and these sensor measurements can only be obtained in the vicinity of unique molecular oxygen resonance frequencies located between 50 GHz and 70 GHz. WRC–97 allocated the 59.0–59.3 GHz band to the earth exploration-satellite (passive) and space research (passive) services on a primary basis and deleted unneeded earth exploration-satellite (passive) and space research (passive) service allocations from the 51.4–52.6 GHz and 64–65 GHz bands. WRC–97 also modified the text of footnote 907 (re-numbered as footnote S5.340) in order to delete the prohibition on emissions from the 51.40–54.25 GHz, 58.2–59.0 GHz, and 64–65 GHz bands and to add the prohibition on emissions to the 50.2–50.4 GHz and 52.60–54.25 GHz bands. In order to implement domestically the WRC–97 revision of footnote S5.340, NTIA requests that the text of footnote US246 be modified to reflect these international rule changes. Similarly, NTIA requests that the text of footnote US263 be modified to specify that passive sensor operations in the 56.26–58.20 GHz band (rather than the 50.2–50.4 GHz and 54.25–58.20 GHz bands) will not receive protection from fixed and mobile services operating in accordance with the Table of Frequency Allocations. We agree that these WRC–97 amendments and the consequential changes to United States footnotes adequately provide for passive sensor operations and therefore propose to implement these changes domestically. We request comment on all of the above proposals.

Other Matters

14. Internationally, radio astronomy observations may be carried out under national arrangements in the 51.40–54.25 GHz, 58.2–59.0 GHz, and 64–65 GHz bands per footnote 906 (revised and re-numbered as footnote S5.556). In the United States, these bands are allocated to the Government and non-Government radio astronomy ("RA") service on a primary basis. Recently, the coordinator for Task 2 of ITU–R Joint Rapporteurs Group 7D–9D stated that:

> there is no known usage of [the 51.4–52.6 GHz, 55.78–59.00 GHz, and 64–66 GHz bands] by the RA community (potentially due to atmospheric absorption) and no studies on potential sharing have been done to date. Even if radio astronomical use were to develop, there should not be any problems with radio astronomy stations sharing [these] band[s] with HDFS since RA use of these bands must already be coordinated with the fixed service within individual Administrations. Therefore, sharing between HDFS and RA is a domestic issue.

NTIA requests that the radio astronomy service allocation be deleted from the 51.40–54.25 GHz and 64–65 GHz bands and that international footnote S5.556 be added to these bands. NTIA did not propose any change to the radio astronomy service allocation at 58.2–59.0 GHz. We tentatively find that radio astronomy use of the 51.40–54.25 GHz and 64–65 GHz bands is a domestic issue that is best authorized under a national arrangement. Accordingly, we propose to delete radio astronomy service allocation from the 51.40–54.25 GHz and 64–65 GHz bands and to add international footnote S5.556 to these bands. We solicit comment on these proposals and on the specifics of such national arrangements. For example, should RA observatories that may need protection in the future be listed in a US footnote?

15. Finally, we propose to correct a typographical error in the Allocation Table by adding a reference to footnote S5.559 in the 59–64 GHz band. This reference has inadvertently been dropped from the Table.

16. *Initial Regulatory Flexibility Analysis.* Section 603 of the Regulatory Flexibility Act, as amended,[1] requires that the Commission prepare an Initial Regulatory Flexibility Analysis in notice and comment rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a significant number of small entities."[2] In this *Notice of Proposed Rule Making*, we propose, *inter alia*, to reallocate spectrum that will result in net gain of 2.27 gigahertz of primary spectrum for fixed and mobile services; and to also designate 4 gigahertz of spectrum at 57–59 GHz and 64–66 GHz for unlicensed devices. We believe that this net increase in fixed and mobile spectrum and the designation of new unlicensed bands will provide new opportunities for small entities, without any known harmful effects. Accordingly, we hereby certify that the proposed reallocations will not, if promulgated, have significant economic impact on a significant number of small entities. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance

[1] *See* 47 U.S.C. 603.
[2] *Id.* at § 605(b).

with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

17. *Ex Parte Rules—Permit-But-Disclose Proceedings.* This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during any Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202(a), 1.1203, and 1.1206.

List of Subjects in 47 CFR Part 2

Comunications equipment, radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20692 Filed 8–10–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 154
Wednesday, August 11, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Public Meetings of Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meetings.

SUMMARY: The Farm Service Agency (FSA) is issuing this notice to advise the public that meetings of the Advisory Committee on Beginning Farmers and Ranchers (Committee) will be held to discuss ways to increase opportunities for these producers.

DATES: The public meetings will be held August 31–September 2, 1999. The first meeting on August 31, 1999, will start at 1:00 p.m. and end at 5:00 p.m.; on September 1, 1999, the meeting will begin at 8:30 a.m. and end at 5:00 p.m.; the September 2, 1999, meeting will begin at 8:30 a.m. and end at 12:00 noon. All meetings will be held at the Westin Hotel, 2350 M Street, N.W., Washington. D.C. All times noted are Eastern Daylight Time (EDT).

Attendance is open to all interested persons but limited to space available. Anyone wishing to make an oral statement should submit their request in writing (letter, fax, or e-mail) to Mark Falcone at the address listed below. Statements should be received no later than 12:00 noon EDT on Thursday, August 26, 1999. Requests should include the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. The floor will be open to oral presentations beginning at 1:00 p.m. on September 1, 1999. Comments will be limited to 5 minutes, and presenters will be approved on a first-come, first-served basis.

ADDRESSES: Statements or comments should be sent to Mark Falcone, Designated Federal Official for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5438–S, STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-mail mfalcone@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on: (1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers required by Section 309 (i) of the Consolidated Farm and Rural Development Act (this program consists of Federal and State beginning farmer programs that provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

Departmental Regulation 1042–119 dated November 25, 1998, formally established the Committee and designated the Farm Service Agency (FSA) to provide support. The Committee is comprised of 18 members appointed by the Secretary. Members represent the following groups: (1) FSA; (2) State beginning farmer programs; (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer programs; (5) the Cooperative State Research, Education, and Extension Service; (6) educationalinstitutions with demonstrated experience in training beginning farmers or ranchers; (7) other entities providing lending or technical assistance for qualified beginning farmers or ranchers; and (8) farmers and ranchers. The Committee will meet at least once a year and all meetings will be open to the public. The duration of the Committee is indefinite.

If special accommodations are required, please contact Mr. Falcone at the address specified above, by COB August 26, 1999.

Signed in Washington, DC on August 5, 1999.

James C. Kearney,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–20782 Filed 8–10–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Pipe Creek Timber Sale and Associated Activities; Kootenia National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of notice of intent to prepare an environmental impact statement.

SUMMARY: On December 28, 1998, a Notice of Intent to prepare an environmental impact statement for the Upper Pipe Creek Timber Sale and Associated Activities appeared in the **Federal Register** (FR, December 28, 1998, Volume 63, Number 248, Pages 71442–71444). The Upper Pipe Creek Timber Sale will be incorporated into the Pipe Creek Timber Sale; therefore, the Notice of Intent to prepare an environmental impact statement for the Upper Pipe Creek Timber Sale and Associated Activities is being withdrawn.

FOR FURTHER INFORMATION CONTACT: Kirsten Kaiser, Project Coordinator, Libby Ranger District. Phone: (406) 293–7773.

Dated: August 2, 1999.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 99–20715 Filed 8–10–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on August 25 and 26, 1999, at the City Hall in Fort Bragg, California. The meeting will be held from 9:00 a.m.

to 2:00 p.m. on August 25. A field trip to the Jackson State Forest will be held from 2:00 p.m. to 5:00 p.m. on August 25. The business meeting will continue on August 26 from 9:00 a.m. to 3:00 p.m. The City Hall is located at 363 No. Main Street in Fort Bragg. Agenda items to be covered include: (1) Panel presentation on anadromous fish stocks at risk in the California Coast Province; (2) Regional Ecosystem Office (REO)/ IAC Update (to include IAC/PAC Summit, new developments in Late Successional Reserves; and Survey and Manage requirements update); (3) Status of FERC/Potter Valley Project; (4) Presentation on a US Fish and Wildlife Service study on northern spotted owl demographics; (5) Presentation on cumulative watershed effects in the California Coast Province; (6) PAC direction to the Public/Private/Tribal Partnership Opportunities Subcommittee; (7) Report from the Work on the Ground Subcommittee; (8) Agency/PAC updates; and (9) Open public comment. All California Coast Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–3316.

Dated: August 4, 1999.

Thomas Kennedy,

Acting Forest Supervisor.

[FR Doc. 99–20723 Filed 8–10–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of Housing Application Packaging Grants.

DATES: Comments on this notice must be received by October 12, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, South Building, Washington, DC 20250, Telephone 202–720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Title: Housing Application Packaging Grants.

OMB Number: 0575–0157.

Expiration Date of Approval: September 30, 1999.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) under section 509 of the Housing Act of 1949, 42 U.S.C. 1479, provides grants to public and private nonprofit organizations and state and local governments to package housing applications for loans under sections 502, 504, 514, 515, and 524 grants under section 533 of the Housing Act of 1949 in colonias and designated undeserved counties. RHS reimburses eligible organizations for part or all of the costs of conducting, administering and coordinating an effective housing application packaging program in colonias and designated underserved counties. Eligible organizations assist very low and low-income families that are without adequate housing to buy, build, or repair housing for their own use. Also, the organizations package applications for loans to buy, build or repair rental units for lower income families.

RHS will be collecting information from grantees to assure the organizations participating in this program are eligible entities and have participated in RHS training in application packaging. The respondents are nonprofit organizations, States, State agencies, and units of general local government. The information required for approval of housing application packaging grants is used by RHS personnel to verify program eligibility requirements. The information is collected at the RHS field office responsible for the processing of the application being submitted. The information is also used to ensure the program is administered in a manner consistent with legislative and administrative requirements. If not collected, RHS would be unable to determine if a grantee would qualify for grant assistance.

The grantees facilitate the application process by helping applicants submit complete applications to RHS. This saves RHS time by prescreening applicants, making preliminary determinations of eligibility, ensuring that the application is complete, and helping the applicant understand the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.12 hours per response.

Respondents: Private and public nonprofit organizations and State and local governments.

Estimate Number of Respondents: 200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 900 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Branch, at (202) 692–0041.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimates of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 3, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–20781 Filed 8–10–99; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of August 1999, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina:	
Oil Country Tubular Goods, A–357–810	8/1/98–7/31/99
Seamless Pipe, A–357–809	8/1/98–7/31/99
Australia: Corrosion-Resistant Carbon Steel Flat Products, A–602–803	8/1/98–7/31/99
Belgium:	
Cut-to-Length Carbon Steel Plate, A–423–805	8/1/98–7/31/99
Phosphoric Acid, A–423–602	8/1/98–7/31/99
Brazil:	
Cut-to-Length Carbon Steel Plate, A–351–817	8/1/98–7/31/99
Seamless Pipe, A–351–826	8/1/98–7/31/99
Canada:	
Corrosion-Resistant Carbon Steel Flat Products, A–122–822	8/1/98–7/31/99
Cut-to-Length Carbon Steel Plate, A–122–823	8/1/98–7/31/99
Magnesium, A–122–814	8/1/98–7/31/99
Finland: Cut-to-Length Carbon Steel Plate, A–405–802	8/1/98–7/31/99
France:	
Corrosion-Resistant Carbon Steel Flat Products, A–427–808	8/1/98–7/31/99
Industrial Nitrocellulose, A–427–009	8/1/98–7/31/99
Germany:	
Cold-Rolled Carbon Steel Flat Products, A–428–814	8/1/98–7/31/99
Corrosion-Resistant Carbon Steel Flat Products, A–428–815	8/1/98–7/31/99
Cut-to-Length Carbon Steel Plate, A–428–816	8/1/98–7/31/99
Seamless Pipe, A–428–820	8/1/98–7/31/99
Israel: Phosphoric Acid, A–508–604	8/1/98–7/31/99
Italy:	
Grain Oriented Electrical Steel, A–475–811	8/1/98–7/31/99
Oil Country Tubular Goods, A–475–816	8/1/98–7/31/99
PTFE Resin, A–475–703	8/1/98–7/31/99
Seamless Pipe, A–475–814	8/1/98–7/31/99
Japan:	
Acrylic Sheet, A–588–055	8/1/98–7/31/99
Brass Sheet & Strip, A–588–704	8/1/98–7/31/99
Corrosion-Resistant Carbon Steel Flat Products, A–588–824	8/1/98–7/31/99
Oil Country Tubular Goods, A–588–835	8/1/98–7/31/99
PTFE Resin, A–588–707	8/1/98–7/31/99
Kazakhstan: Titanium Sponge, A–834–803	8/1/98–7/31/99
Mexico:	
Cement, A–201–802	8/1/98–7/31/99
Cut-to-Length Carbon Steel Plate, A–201–809	8/1/98–7/31/99
Oil Country Tubular Goods, A–201–817	8/1/98–7/31/99
Poland: Cut-to-Length Carbon Steel Plate, A–455–802	8/1/98–7/31/99
Republic of Korea:	
Cold-Rolled Carbon Steel Flat Products, A–580–815	8/1/98–7/31/99
Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/98–7/31/99
Oil Country Tubular Goods, A–580–825	8/1/98–7/31/99
Romania: Cut-to-Length Carbon Steel Plate, A–485–803	8/1/98–7/31/99
Russia: Titanium Sponge, A–821–803	8/1/98–7/31/99
Spain: Cut-to-Length Carbon Steel Plate, A–469–803	8/1/98–7/31/99
Sweden: Cut-to-Length Carbon Steel Plate, A–401–805	8/1/98–7/31/99
Thailand: Malleable Pipe Fittings, A–549–601	8/1/98–7/31/99
The Netherlands:	
Brass Sheet & Strip, A–421–701	8/1/98–7/31/99
Cold-Rolled Carbon Steel Flat Products, A–421–804	8/1/98–7/31/99
The People's Republic of China:	
Petroleum Wax Candles, A–570–504	8/1/98–7/31/99
Sulfanilic Acid, A–570–815	8/1/98–7/31/99

	Period
The Ukraine:	
Titanium Sponge, A–823–803	8/1/98–7/31/99
Uranium, A–823–802	8/1/98–7/31/99
The United Kingdom: Cut-to-Length Carbon Steel Plate, A–412–814	8/1/98–7/31/99
Turkey: Aspirin, A–489–602	8/1/98–7/31/99
Suspension Agreements	
Japan: Color Negative Photographic Paper, A–588–832	8/1/98–7/31/99
The Netherlands: Color Negative Photographic Paper, A–421–806	8/1/98–7/31/99
The People's Republic of China: Honey, A–570–838	8/1/98–7/31/99
Countervailing Duty Proceedings	
Belgium: Cut-to-Length Carbon Steel Plate, C–423–806	1/1/98–12/31/98
Brazil: Cut-to-Length Carbon Steel Plate, C–351–818	1/1/98–12/31/98
Canada:	
Live Swine, C–122–404	4/1/98–3/31/99
Pure Magnesium, C–122–815	1/1/98–12/31/98
Alloy Magnesium, C–122–815	1/1/98–12/31/98
France: Corrosion-Resistant Carbon Steel, C–427–810	1/1/98–12/31/98
Germany:	
Cold-Rolled Carbon Steel Flat products, C–428–817	1/1/98–12/31/98
Corrosion-Resistant Carbon Steel, C–428–817	1/1/98–12/31/98
Cut-to-Length Carbon Steel Plate, C–428–817	1/1/98–12/31/98
Israel: Industrial Phosphoric Acid, C–508–605	1/1/98–12/31/98
Italy:	
Seamless Pipe, C–475–815	1/1/98–12/31/98
Oil Country Tubular Goods, C–475–817	1/1/98–12/31/98
Mexico: Cut-to-Length Carbon Steel Plate, C–201–810	1/1/98–12/31/98
Republic of Korea:	
Cold-Rolled Carbon Steel Flat Products, C–580–818	1/1/98–12/31/98
Corrosion-Resistant Carbon Steel Plate, C–580–818	1/1/98–12/31/98
Spain: Cut-to-Length Carbon Steel Plate, C–469–804	1/1/98–12/31/98
Sweden: Cut-to-Length Carbon Steel Plate, C–401–804	1/1/98–12/31/98
United Kingdom: Cut-to-Length Carbon Steel Plate, C–412–815	1/1/98–12/31/98

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27494 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, US Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of August 1999. If the Department does not receive, by the last day of August 1999, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 4, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–20735 Filed 8–10–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 5, 1999, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of

the antidumping duty order on frozen concentrated orange juice from Brazil. This review covers the U.S. sales and/or entries of four manufacturers/exporters. We are rescinding this review with respect to two additional companies. This is the eleventh period of review, covering May 1, 1997, through April 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. We have considered the comments we received in our analysis and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Sergio Gonzalez or Shawn Thompson, Office of AD/CVD Enforcement, DAS Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1779 or (202) 482–1776, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On February 5, 1999, the Department published in the **Federal Register** its preliminary results of the 1997–1998 administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (64 FR 5767). The Department has now completed this administrative review, in accordance with section 751(a) of the Act.

Scope of the Review

The merchandise covered by this review is FCOJ from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and for customs purposes. The Department's written description remains dispositive.

Partial Rescission of Review

As noted in the preliminary results, in July 1998, two companies to whom the Department issued the questionnaire, CTM Citrus S.A. (CTM) and Sucorrico S.A. (Sucorrico), informed the Department that they had no shipments of subject merchandise to the United States during the period of review (POR) (*i.e.*, May 1, 1997, through April 30, 1998). We have confirmed this with information received from the Customs Service. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to CTM and Sucorrico (*see, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998); and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (Oct. 14, 1997)).

Facts Available

A. Use of Facts Available

In accordance with section 776(a)(2)(A) of the Act, we have based the dumping margin for Branco Peres Citrus S.A. (Branco Peres), Cambuhy Citrus Comercial e Exportadora Ltd. (Cambuhy), Citrovita Agro Industrial S.A. (Citrovita), and Frutax Industria e Comercio Ltda. (Frutax) on facts available. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, both Cambuhy and Frutax failed to respond to the Department's questionnaire, issued in June 1998, while Branco Peres and Citrovita failed to respond to the cost of production (COP) questionnaire. Moreover, Citrovita also failed to respond to a supplemental questionnaire regarding sales information.

Because all four respondents have failed to respond to certain questionnaires and have refused to participate fully in this administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from The People's Republic of China*, 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel From Italy: Final Results of Antidumping Duty Administrative Review*, 62 FR 2655 (Jan. 17, 1997) (affirming *Certain Grain-Oriented Electrical Steel From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551 (July 4, 1996)).

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. 103–316, Vol. 1, 870 (1994). The failure of each of the four respondents to participate in the review or to respond completely to the Department's questionnaires demonstrates that each has failed to act to the best of its ability in complying with the Department's request for information in this review and, therefore, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737 (Mar. 4, 1997) (*Rebar from Turkey*); and *Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review*, 64 FR 12967 (Mar. 16, 1999).

In situations involving non-cooperating respondents of this type, it is the Department's normal practice to select as adverse facts available the highest margin from the current or any prior segment of the same proceeding. (*See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part*, 64 FR 2173, 2175 (Jan. 13, 1999); and *Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review*, 63 FR 42823 (Aug. 11, 1998).) In this case, however, use of this margin, 2.52 percent, would not be appropriate because it is apparent that the respondents would benefit from their lack of cooperation, given that 2.52 percent is much lower than the margins actually calculated based on information submitted by respondents in this segment of the proceeding (*see* below). Therefore, we do not believe this rate is high enough to encourage participation in future segments of this proceeding. *See, e.g., Steel Wire Rope from the Republic of Korea; Final*

Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 63 FR 17986, 17987 (April 13, 1998).

Consequently, in accordance with section 776(b)(4) of the Act, we have used the data on the record of this proceeding as adverse facts available. Specifically, we used the data supplied by the petitioners in the cost allegation, as well as the sales data provided by the two respondents that submitted partial questionnaire responses (*i.e.*, Branco Peres and Citrovita), to calculate sales-specific dumping margins. We then selected as the facts available rates for Branco Peres and Citrovita the highest company-specific and transaction-specific margins calculated in this manner. The highest company-specific rates are 39.18 and 63.55 percent, respectively. In addition, we assigned the higher of these rates to the two remaining respondents who did not submit questionnaire responses (*i.e.*, Cambuhy and Frutax). For the procedures used to determine the rates, *see* the "Calculation of the Facts Available Rate" section, below.

We find that the methodology described above is appropriate given the particular facts of this case. Specifically, we note that, unlike in many cases, the publicly available cost data submitted by the petitioners in the cost allegation was complete. The petitioners provided cost data for 100 percent of the products sold by Branco Peres and Citrovita. Moreover, this data was contemporaneous with the POR and specific to Brazil. Finally, this methodology results in a facts available rate that is sufficiently high to effectuate the purpose of the facts available rule—which is to encourage the participation of these companies in future segments of this proceeding. (*See Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States*, 865 F. Supp. 857, 858 (CIT 1994), where the Court affirmed that the best information available provisions encourage compliance with the Department's requests for information, in view of the Department's lack of subpoena power.)

B. Calculation of the Facts Available Rates

As mentioned above, we calculated margins based on the information on the record using the following methodology:

We used the data in the cost allegation to perform the cost test for Branco Peres and Citrovita. The COP information in the cost allegation was obtained from two sources: (1) A U.S. Department of Agriculture Attache Report, dated June 1998, which showed the price and quantity of oranges needed to produce one metric ton of FCOJ in Brazil; and (2) a study by a University of Florida professor published in *Citrus & Vegetable Magazine* in December 1997, which showed FCOJ processing and general and administrative costs in Brazil.

We compared the COP figures derived from the cost allegation to home market/third country prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. We compared product-specific COPs to product-specific foreign market prices, less any applicable movement charges.

In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that product were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that more than 20 percent of Branco Peres' and Citrovita's foreign market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and, where available, used the remaining above-cost sales as the basis for determining normal value (NV), in accordance with section 773(b)(1) of the Act. For those U.S. sales of FCOJ for which there were no comparable foreign market sales in the ordinary course of trade, we compared export price (EP) and constructed export price (CEP) to constructed value (CV), in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV using the COP data referenced above. In accordance with section 773(e)(2)(A) of the Act, we based profit for Branco Peres on the amounts incurred and realized by this company in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Regarding Citrovita, because: (1) This company made no sales at prices above the COP; and (2) there was no publicly available profit rate on the record of this proceeding, we used a profit rate which was derived from the public financial statements of the sole respondent who participated in the most recent prior administrative review. For further discussion, see *Comment 2* in the "Analysis of Comments Received" section of this notice.

In accordance with the results of the cost test, we disregarded all foreign market sales made at prices below the COP.

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Company-specific calculations are discussed below.

1. Branco Peres

We calculated EP using the data submitted by Branco Peres in its September 18, 1998, supplemental questionnaire response. We based EP on the gross unit price to the first unaffiliated purchaser in the United States. We made deductions from gross unit price, where appropriate, for foreign inland freight, foreign inland insurance, warehousing costs, and port charges, in accordance with section 772(c)(2)(A) of the Act.

We also calculated NV using the data submitted on September 18, 1998. Based on the results of the cost test described above, we found that Branco Peres made certain third country sales during the POR at prices above the COP. Consequently, where a contemporaneous comparison existed, we based NV on these above-cost sales. Where no contemporaneous comparison existed, we based NV on CV.

Where NV was based on third country sales, we based NV on the gross unit price to unaffiliated customers. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, warehousing costs, and port charges, in accordance with section 773(a)(6)(B) of the Act. Pursuant to

section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments, where appropriate, for differences in commissions and credit expenses.

Where NV was based on CV, we made circumstance-of-sale adjustments, where appropriate, for commissions and credit expenses, in accordance with sections 773(a)(6)(C)(iii) and (a)(8) of the Act. Because it was unclear whether the processing costs included in CV contained commission expenses, as facts available we assumed that these costs were exclusive of commissions.

2. Citrovita

We calculated CEP using the data submitted by Citrovita on August 17, 1998. We calculated CEP based on the gross unit price to the first unaffiliated customer in the United States. We made deductions from gross unit price, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling expenses, U.S. customs duties, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act. We made additional deductions, where appropriate, for commissions, credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Because Citrovita did not respond to the supplemental sales questionnaire, we adjusted its U.S. sales data to account for certain discrepancies in its response. Specifically, where the data shown on Citrovita's calculation worksheets differed from the data contained in the U.S. sales listing, we used the highest figure reported as facts available. *See* the memorandum to the file from Sergio Gonzalez entitled "Calculations Performed for Citrovita for the Preliminary Results," dated February 1, 1999.

We made no adjustment to the price for CEP profit, pursuant to section 772(d)(3) of the Act, because Citrovita operated at a loss with respect to its sales of FCOJ during the POR. *See Comment 3.*

Based on the results of the cost test described above, we found that Citrovita made no home market sales during the POR at prices above the COP. Consequently, we based NV on CV.

For CEP-to-CV comparisons, we made circumstance-of-sale adjustments, where appropriate, for commissions and credit expenses (offset by interest revenue received by Citrovita), in accordance with sections 773(a)(6)(C)(iii) and (a)(8) of the Act. We computed the CV profit rate using the public financial statements of the sole respondent who participated in the most recent prior administrative review. (*See Comment 2.*) Furthermore, we recalculated home market credit expenses on the basis of home market price net of Brazilian taxes, in accordance with our practice. *See, e.g., Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 59407 (Nov. 22, 1996).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from two respondents, (*i.e.*, Branco Peres and Citrovita). We received rebuttal comments from the petitioners, (*i.e.*, Florida Citrus Mutual, Caulkins Indian Citrus Co., Citrus Belle, Citrus World, Inc., Orange-Co of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp).

Comment 1: Use of Adverse Facts Available

Both Branco Peres and Citrovita contend that the Department's decision to use adverse facts available to calculate the margins in this review is not supported by evidence on the record, is contrary to law, and is in violation of application of the Agreement on Application of Article VI of GATT 1994, Annex II (use of best information available) (GATT 1994).

Specifically, these companies argue that, in order to apply adverse facts available, the Department must first make a finding that the companies did not act to the best of their ability. *See Borden, Inc., et al.*, versus *United States*, F. Supp. 2d 1221, 1246–47 (CIT 1998). Both companies argue that the Department cannot make such a finding in this review, because each respondent submitted complete, or almost complete, sales data, and the failure to provide cost data was caused by factors beyond their control. Branco Peres asserts that it did not possess the cost information required by the Department (due to circumstances of a business proprietary nature which cannot be discussed here), while Citrovita maintains that it did not possess personnel resources sufficient to complete the review (due to an economic crisis in Brazil).

According to Branco Peres, Congress intended the Department to take these types of circumstances into account when evaluating a respondent's data. In support of this assertion, Branco Peres cites the SAA, which states that the Department "may take into account the circumstances of the party including (but not limited to) the party's size, its accounting systems, and computer capabilities, as well as the prior success of the same firm, or other similar firms, in providing requested information in antidumping and countervailing duty proceedings." Branco Peres asserts that, not only does it have a history of being a cooperative respondent in prior segments of this proceeding, but it also would have supplied all of the data requested in this segment had it been able to do so. According to Branco Peres, the circumstances surrounding its inability to supply cost data are precisely the type of circumstances envisioned by Congress.

Branco Peres asserts that the courts have made clear that the Department may not use adverse facts available to penalize companies for failing to provide information that does not exist. Branco Peres maintains that the courts have similarly held that the Department may not characterize a party's failure to provide such information as a "refusal" to provide information. *See Olympic Adhesives, Inc.* versus *United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990) (*Olympic Adhesives*).

According to Branco Peres and Citrovita, given the fact that the Department erred with respect to finding that each did not act to the best of its ability, the Department's use of adverse facts available is contrary to law and to GATT 1994.[1] Branco Peres and Citrovita cite to section 782(e) of the Act (19 U.S.C. 1677m(e)), which states that the administering authority shall not decline to use information that is submitted by an interested party if that information is verifiable, submitted on time, is not so incomplete that it cannot be used, has been provided to the best of the party's ability, and can be used without difficulty. Branco Peres and Citrovita also assert that their information meets each of the above three criteria: it was submitted on time, it can be used without difficulty (since the Department did, in fact, use it to some extent for purposes of the preliminary results); and it has been provided to the best of the respondents' abilities. Moreover, while they acknowledge that the Department would be justified in using facts available to determine COP for both companies (and selling expenses for Citrovita), they argue that there is no basis for applying total facts available.

According to Citrovita, the Department has discretion in deciding whether to make adverse inferences. As support for this position, Citrovita cites the preamble to the Department's

[1] The language in Annex II of the Agreement on Implementation of Article VI of GATT (1994) to a large extent mirrors that in 19 USC 1677m(e).

regulations (*see Final rule*, 62 FR 37296, 27340 (May 19, 1997)), which states that "if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department, in reaching its determination, 'may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.'"

Citrovita argues that the Department has consistently distinguished between respondents who do not cooperate at all and those who attempt to respond to the Department's information requests but cannot do so completely. As support for this assertion, Citrovita cites the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30329 (June 14, 1996) (*Pasta from Italy: LTFV Investigation*); *Roller Chain, Other Than Bicycle from Japan: Final Results and Partial Recission of Antidumping Duty Administrative Review*, 63 FR 63671, 63674 (Nov. 16, 1998) (*Roller Chain from Japan*); and *Certain Cut-to-Length Carbon Steel Plate from Sweden: Final Results of Administrative Review*, 62 FR 46947, 46948 (Sept. 5, 1997). Citrovita notes that in the former two cases the Department assigned less adverse facts available rates based upon a finding of partial cooperation, while in the latter case the Department assigned a higher rate to a respondent who failed to cooperate at all. Consistent with these findings, Citrovita contends that the Department should assign it and Branco Peres facts available margins which are lower than the one assigned to Cambuhy and Frutax, given that they fully participated in this review by submitting responses to the Department's sales questionnaire, while Cambuhy and Frutax did not respond to any requests for information.

Moreover, both respondents argue that, not only was the decision to use adverse facts available unsupported by law or Department practice, but also the method used to select the facts available margin was completely arbitrary. According to the respondents, the Department should reconsider its decision because the courts have held that the power to use facts available against recalcitrant parties cannot be used arbitrarily. *See AK Steel Corp., et al.*, v. *United States*, 34 F. Supp. 2d 756, 771 (CIT 1998).

Specifically, the respondents note that the Department deviated from its normal practice of applying the highest margin ever found in the current or any prior segment of the same proceeding, based on a finding that the respondents would benefit from such a policy. Branco Peres argues that in order to make this finding, however, the Department treated the respondents' data inconsistently, in that it deemed it reliable for certain purposes but not others. For example, Branco Peres asserts that, while the Department used the data to: (1) Determine the extent of the respondents' below-cost sales; (2) determine the fact that the calculated margin would be higher than the highest margin calculated in any prior segment (*i.e.*, 2.52 percent); and (3) calculate transaction-specific margins, it did not deem it reliable enough to calculate the weighted-average dumping margin. According to Branco Peres, the Department failed to explain why the respondents' information was sufficiently reliable to justify departure from normal procedures, but not sufficiently reliable to calculate weighted-average margins.

Furthermore, Branco Peres argues that the Department failed to explain why Citrovita's price information is a more reliable indicator of Branco Peres' margin than Branco Peres' own data, especially given that Branco Peres submitted a response to the Department's supplemental questionnaire, while Citrovita did not. Indeed, Branco Peres argues that the Department in three separate instances disregarded manifestly better information that was on the record in favor of inferior information. Specifically, Branco Peres asserts that the Department: (1) Used Citrovita's, rather than Branco Peres', prices to establish the dumping margins for Branco Peres; (2) calculated the adverse facts available margin using CEP methodology (because Citrovita made CEP sales), although Branco Peres had no CEP sales; and (3) calculated profit using Branco Peres' pre-POR profits when the information on the record showed that neither Branco Peres nor Citrovita was operating at a profit during the POR. Branco Peres asserts that the use of Citrovita's information is impermissible in this instance, because courts have held that the Department may not disregard acceptable information in favor of what is demonstrably inferior information. *See Rautaruukki Oy* v. *United States*, Consol. Ct. No 97–05–00864, Slip Op. 98–112, 1998 CIT LEXIS 109 (Aug. 4, 1998) (*Rautaruukki*).

Branco Peres argues that, for purposes of the final results, the Department should determine its margin by comparing net U.S. prices to the cost information submitted by the petitioners (*i.e.*, costs without profit). According to Branco Peres, the margin resulting from this comparison is sufficiently punitive, because it is more than twice the highest rate calculated in any prior review. Alternatively, the respondents assert that the Department should apply the weight-averaged rates calculated, but not used, for each respondent for purposes of the preliminary results. These rates are 18.33 percent for Branco Peres and 22.09 for Citrovita.[2] The respondents argue that these rates would not in any way reward them for not supplying information, because they were calculated using the cost data submitted by the petitioners. According to the respondents, because this cost information is overstated, the extent of the dumping margins is overstated as well.

According to the petitioners, the Department was justified in using adverse facts available for purposes of the preliminary results because neither respondent acted to the best of its ability in this proceeding. Regarding Branco Peres, the petitioners state that this company should have known that a cost investigation was likely to be initiated because: (1) The information used in the cost allegation was public information based on Brazilian industry data, which showed that the Brazilian FCOJ industry was experiencing losses during the POR; and (2) Branco Peres had been involved in cost investigations in previous segments of this proceeding and, therefore, was familiar with the procedures. The petitioners assert that Branco Peres intentionally planned not to respond to a COP questionnaire in hopes of obtaining a minimal facts available rate. Moreover, the petitioners assert that Branco Peres' reliance on *Olympic Adhesives* is misplaced, because in *Olympic Adhesives*, the court found that the Department incorrectly applied total facts available to a respondent who did not provide information which had never been directly requested; here, on the other hand, Branco Peres failed to respond to the Department's specific request for cost information.

The petitioners argue that Citrovita's claim that it failed to submit a complete response because of the current economic crisis in Brazil is similarly without merit. According to the petitioners, if the Department were to allow a respondent to refuse to answer questionnaires on the basis on national economic problems, the entire process of administrative reviews would be compromised.

Moreover, the petitioners note that the Act contains a provision designed to aid

[2] The respondents argue that these rates should be adjusted to incorporate the calculation changes identified below.

companies who encounter difficulties in responding to the questionnaire. Specifically, section 782(c) of the Act affords interested parties in a review the opportunity to notify the Department when they are unable to submit the information requested, and requires them to provide suggested alternatives for submitting the information. The petitioners note that Citrovita not only failed to inform the Department of any difficulties in responding to the questionnaires prior to withdrawing from the review, but it also suggested no alternatives for completing the responses. Furthermore, the petitioners assert that Citrovita did not explain why it had sufficient staff to complete the initial sales questionnaire response, but not the supplemental and COP questionnaires.

The petitioners state that the Department acted completely within its discretion in selecting the rate to use as adverse facts available for Branco Peres and Citrovita. Regarding Branco Peres' argument that the Department should have used its own information in order to calculate a margin, the petitioners note that the SAA at page 869 does not require the Department to prove that the facts available margin is based on the best alternative information. Rather, the petitioners state that this section of the SAA merely requires that the information or inferences used as facts available be reasonable under the circumstances. Further, the petitioners note that both the GATT and the URAA direct the Department to consider the extent to which a party may benefit from its own lack of cooperation. The petitioners argue that in this case the respondents' failure to respond to the Department's cost questionnaire could be due in part to the respondents' expectations that they would receive a lower rate by not cooperating. According to the petitioners, the information selected for facts available should take this possibility into account.

Regarding Branco Peres' assertion that its information is reliable since the Department used it in part, the petitioners assert that the Department never made a determination that this information was fully accurate. Rather, the petitioners maintain that the Department simply used this information to determine if there were reasonable grounds to initiate a cost investigation. According to the petitioners, the level of the reliance on accuracy and detail of information for margin calculation purposes is much greater than for the purpose of determining the extent of sales below the COP. Finally, the petitioners assert that the use of information for one purpose does not necessarily make it reliable for a completely different purpose. Consequently, the petitioners argue that, even if Branco Peres' sales information were somehow more reliable than Citrovita's, the Department was still well within its discretion in this case to choose which facts available rate to apply and to make an adverse inference in doing so.

DOC Position

We disagree with the respondents, in part. We find that our determination to rely on adverse facts available is reasonable, supported by evidence on this record, and otherwise in accordance with law (as discussed below). Nonetheless, we have reconsidered the methodology used to select the adverse facts available margin for Branco Peres. For purposes of the final results, we assigned this company the highest transaction-specific margin generated using its own data.

According to section 776(a) of the Act, the Department shall use the facts otherwise available in reaching a determination if:

(1) Necessary information is not available on the record, or

(2) An interested party or any other person—

(A) Withholds information that has been requested by the administering authority or the Commission under this title,

(B) Fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,

(C) Significantly impedes a proceeding under this title, or

(D) provides such information but the information cannot be verified as provided in section 782(i).

In this proceeding, both Branco Peres and Citrovita submitted an apparently complete response to the initial sales questionnaire. However, neither responded to the Department's request for COP and CV information. Moreover, Citrovita also did not respond to the supplemental sales questionnaire. While we may have been able to "fill in the gaps" in Citrovita's sales data without a supplemental response, we were unable to do so with respect to the COP/CV data. This information is vital to our dumping analysis, because: (1) It provides the basis for determining whether comparison market sales can be used to calculate normal value; and (2) in certain instances (*e.g.*, when there are no comparison market sales made at prices above the COP), it is used as the basis of NV itself. In cases involving a sales-below-cost investigation, as in this case, lack of COP/CV information renders a company's response so incomplete as to be unuseable. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (Mar. 31, 1999) (*Plate from Canada*); *Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 82 (Jan. 4, 1999); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 43661, 43664 (Aug. 14, 1998) (*Pineapple from Thailand*); *Rebar from Turkey*, 62 FR at 9737–3738; and *Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*, 62 FR 18396, 18401 (Apr. 15, 1997).

Accordingly, because both companies failed to submit information which was not only specifically requested by the Department but was also fundamental to the dumping analysis, we find that they withheld information necessary to reach a determination and/or significantly impeded the proceeding. Consequently, we have assigned these companies margins based on total facts available, as required by sections 776(a)(2)(A) and (C) of the Act.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. We have determined that the respondents did not act to the best of their ability in this proceeding, as required by section 776(b) of the Act, because we find that the failure to provide the information requested was not beyond either respondent's control.

Regarding Branco Peres, we note that this company possessed the information necessary to complete the review at the time that the review was initiated. At initiation, the information was within Branco Peres' control. Although Branco Peres subsequently maintained control of the sales data only, there is no evidence to indicate that it was outside Branco Peres' ability to maintain control over the data necessary to respond to the cost questionnaire. As with its sales data, the company could have made an adequate provision to retain this cost data. Not only was Branco Peres aware that the possibility of a cost investigation existed (in light of its participation in cost investigations in previous segments of this proceeding),

but it should have been aware that such an investigation was likely, given that the information used in the cost allegation was public information based on Brazilian industry data.

Furthermore, although Branco Peres' factual circumstances changed during the course of the review, this does not relieve Branco Peres of the obligation to attempt to comply, to the best of its ability, with the request for information. In this case, Branco Peres provided no evidence that it attempted to obtain the cost information necessary to complete the review. Finally, we note that section 782(c) of the Act affords interested parties in a review the opportunity to notify the Department when they are unable to submit the information requested, and requires them to provide suggested alternatives for submitting the information. Although Branco Peres notified the Department of its purported inability to submit the information, it provided no suggestions for submitting alternative information. *See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68429 (December 11, 1998); and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615, 6616 (Feb. 10, 1999) (*Pasta from Italy*). Consequently, we find that Branco Peres did not act to the best of its ability in this proceeding.

For the foregoing reasons, we find that Branco Peres' reliance on *Olympic Adhesives* is misplaced. In *Olympic Adhesives*, the respondent failed to provide information which had never been directly requested by the Department and had never existed. Here, there is no dispute that the information exists. Moreover, the information was directly requested by the Department; Branco Peres simply did not provide it; nor did it attempt to provide reasonable alternative information.

Regarding Citrovita, we note that this company possessed the sales and cost information requested by the Department, but it opted to withdraw from the review rather than to submit this information. In its withdrawal letter, Citrovita stated:

> [t]he Department's recent decision to initiate a sales below cost investigation will make it extremely difficult, if not impossible, for Citrovita to complete the required responses within the time frame allotted. The current economic crisis in Brazil has forced us to maintain the bare minimum of staff and we simply do not have the personnel resources to dedicate to completing the review.

It is clear from this statement that Citrovita made a conscious decision not to allocate any more resources to participating in this review. Although Citrovita cites the deadlines for submitting its responses, it did not request an extension of these deadlines. Indeed, had Citrovita requested such an extension, the company could have reasonably expected that the Department would grant it, given that Citrovita had requested and received extensions for filing both its initial and supplemental sales responses in this review.

Moreover, we find Citrovita's concerns related to staffing unpersuasive. We note that Citrovita was able to submit its initial questionnaire response without raising similar staffing concerns. Acceptance of Citrovita's argument in this proceeding would be tantamount to giving companies the option not to dedicate their resources to response preparation, which would have the practical effect of waiving the requirement that companies submit cost responses at all. The Department has a long-standing practice of denying these types of administrative burden arguments. *See, e.g., Pasta from Italy, Plate from Canada, Roller Chain from Japan*, and *Pineapple from Thailand*.

Nonetheless, Congress recognized that on occasion respondents may experience legitimate difficulties in collecting information. The SAA indicates that the Department has the discretion to modify its request for information if promptly asked to do so by an interested party, to avoid imposing an unreasonable burden on the party. Specifically, the SAA states that the Department:

> Will take due account of difficulties experienced by parties, particularly small companies, in supplying information, and will provide such assistance as [the Department considers] practicable * * * Section 782(c)(1) is intended to alleviate some of the difficulties encountered by small firms and firms in developing countries, particularly with regard to the submission of data in computerized form. *It is not intended to exempt small firms from the requirements of the antidumping and countervailing duty laws.*

SAA at 864 and 865 (emphasis added). As noted in the SAA, section 782(c) of the Act directs the Department to mitigate the burden imposed on respondents under certain circumstances (*e.g.*, when a company is unable to submit data in the appropriate computer format). It is clear from the SAA, however, that Congress did not intend the Department to exempt firms from submitting questionnaire responses because the preparation of these responses would place an unreasonable administrative burden on respondents.

Although section 782(c)(1) of the Act allows the Department to consider the ability of the respondent to submit information, Citrovita did not attempt to invoke this provision. Specifically, Citrovita did not request that the Department modify its reporting requirements to alleviate its administrative burden, nor did it provide any alternative solutions. It merely withdrew from the proceeding. Thus, we find that Citrovita was not unable to respond to our information requests; it was simply unwilling to do so. Consequently, we also find that Citrovita did not act to the best of its ability in this review.

Accordingly, we have made an adverse inference in selecting the margins for both respondents for purposes of the final results. Section 776(b) of the Act provides that the Department may use the following sources of information in making adverse inferences:

(1) The petition,

(2) A final determination in the investigation under this title,

(3) Any previous review under section 751 or determination under section 753, or

(4) Any other information placed on the record.

In this case, in accordance with section 776(b)(4) of the Act, we have continued to use the data on the record of this proceeding as adverse facts available. Specifically, we used the data supplied by the petitioners in the cost allegation, as well as the sales data provided by Branco Peres and Citrovita, to calculate sales-specific dumping margins. We then selected as the facts available rate for each company the highest transaction-specific margin generated using its own data.

We disagree with the respondents that the methodology used to select the facts available margins is arbitrary. In choosing these margins, we looked to the SAA for guidance. Specifically, the SAA states:

> Where a party has not cooperated, Commerce and the Commission may employ adverse inferences about missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, *one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation.*

SAA at 870 (emphasis added).

As noted in the "Facts Available" section of this notice, the data on the record indicates that the respondents were dumping during the POR at rates higher than the highest rate ever

determined in any other segment of this proceeding. For this reason, we find that assigning them the highest rate ever determined would allow the respondents to benefit from their lack of cooperation.

Similarly, we find that using the data in the cost allegations to calculate company-specific weighted-average dumping margins potentially would allow the respondents to benefit. Contrary to the respondents' assertions, there is no evidence on the record that the costs in these allegations were overstated. Rather, we find that it is equally likely that these costs are understated with respect to Branco Peres and Citrovita, because they are based on average data from the Brazilian FCOJ industry, which is comprised of both high-and low-cost producers. Thus, we find that the use of this information is not adverse to the respondents.

According to the SAA, at 869, there is no requirement that the information used as facts available be the best alternative information. Rather, the SAA merely requires that the facts available be reasonable to use under the circumstances. As we discussed above, the highest company-specific margin is a reasonable use of facts available.[3]

We disagree with Branco Peres that the Department may not disregard its sales information because the Department has not only deemed this information reliable, but this information meets the requirements of section 782(e) of the Act. We find that Branco Peres' arguments are without merit, because, in situations involving the application of total facts available, it is the Department's practice to evaluate whether a respondent's data *in toto* should be disregarded under section 782(e) of the Act. Given the fact that Branco Peres did not submit a complete questionnaire response, the five requirements of section 782(e) of the Act were not met. Therefore, the Department is not required to use this information. *See, e.g., Pineapple from Thailand* and *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (Oct. 16, 1997).

Moreover, although we have ultimately reached the same conclusion, we also disagree with Branco Peres' rationale as to why the Department should not base its margin on Citrovita's data in this review. We note that in certain cases it may be appropriate to base the facts available rate for one respondent on another company's margin. However, in such instances the Department does not attempt to assign rates of companies who are similarly situated to the non-cooperating respondent, nor do we take into account whether these companies primarily made EP or CEP sales. *See, e.g., Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12763 (Mar. 16, 1998). Furthermore, we find that Branco Peres' citation to *Rautaruukki* equally does not apply here, because the court in that case merely held that the Department may not continue to use as facts available any rates which were subsequently invalidated on remand. Rather, the court mandated that the Department must use the updated rates when choosing margins in proceedings involving facts available.

Nonetheless, we agree that we should base Branco Peres' margin on its own data. This data has probative value and is sufficiently adverse.

Finally, we disagree with Citrovita's argument that the Department should assign it a rate which is less adverse than the margins assigned to those companies who did not respond at all. While we acknowledge that the Department has, in other proceedings, assigned less adverse rates in instances where a respondent has made a sufficient effort to cooperate (*see, e.g., Pasta from Italy: LTFV Investigation*), we do not consider it appropriate to do so here. Citrovita essentially terminated its participation in the review, failing to respond at all to the COP/CV section of the questionnaire. Moreover, in order to assign different rates to the "less cooperative" respondents in this case, the Department would be required to either: (1) Assign lower margins than we consider suitable to Branco Peres and Citrovita; or (2) select a more adverse rate for Cambuhy and Frutax. Neither of these options is appropriate.

Although there are more adverse rates available to the Department, use of these rates would require us to resort to the data in the petition. Given the facts that: (1) The data on the record is more probative of current conditions than is the data contained in the petition; (2) unlike in many cases, this data can actually be used to calculate dumping margins;[4] and (3) we have determined that the rates calculated using the facts available are sufficiently high to encourage participation in future segments of the proceeding, we find that there is no need to resort to the petition in this segment.

Comment 2: CV Profit Calculation for Citrovita

For purposes of the preliminary results, the Department based the CV profit rate on information contained in the 1995 public financial statements of Branco Peres, because these were the most recent financial statements available to the Department showing a profit on the sale of FCOJ. Citrovita argues this methodology is not in accordance with the statute because the Department ignored Citrovita's own income statement in favor of another producer's pre-POR data.

In support of its position, Citrovita cites section 773(e)(2)(B) of the Act, which provides the following three alternatives for calculating CV profit when there are no home market sales in the ordinary course of trade:

(i) The actual amounts incurred and realized by the specific exporter or producer being examined * * * in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise;

(ii) The weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the * * * review (other than the exporter or producer described in clause (i)) * * * in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country; or

(iii) the amounts * * * based on any other reasonable method, except that the amount of profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.

According to Citrovita, the Department correctly did not invoke subsection (i) above, because it found that Citrovita made all of its home market sales at prices below the COP. However, Citrovita maintains that the Department erred in using Branco Peres' financial statements because Branco

[3] We disagree with Branco Peres that we should calculate this dumping margin without incorporating an element for CV profit. Because our calculations show that Branco Peres made comparison market sales in the ordinary course of trade during the POR, we have used the profit derived from these sales in the computation of CV for Branco Peres. For further discussion, see *Comment 2* below.

[4] Although the respondents failed to respond to the cost questionnaire, complete cost information exists on this record. Specifically, the cost allegation contains costs for 100 percent of the products sold by Branco Peres and Citrovita.

Peres did not have home market sales of FCOJ, as required by both subsections (ii) and (iii). Moreover, Citrovita notes that these financial statements reflected worldwide sales which were made two years prior to the instant period of review.

Citrovita asserts that, because the requirements of subsections (ii) and (iii) cannot be met due to the absence of appropriate data on the record, the Department should calculate the CV profit rate based on the combined income statement of Citrovita and Votorantrade, Citrovita's affiliated exporter. Alternatively, Citrovita argues that, should the Department disregard these statements because they reflect a combined loss, the Department should use only Votorantrade's income statement because this statement shows a profit. According to Citrovita, the Department would be justified in using Citrovita's own experience to calculate the CV profit rate because the SAA, at 841, states that "in situations where the producer and exporter are separate companies, the Administration intends that Commerce may continue to calculate constructed value based on the total profit and total SG&A expenses realized and incurred by both companies."

The petitioners disagree, asserting that the Department acted within its discretion in selecting the CV profit rate. According to the petitioners, section 776(b) of the Act authorizes the Department to use information derived from previous administrative reviews when drawing adverse inferences. Furthermore, the petitioners assert that there was no reason for the Department to rely on secondary information from one of Citrovita's affiliated parties when it had an actual profit figure from another respondent engaged directly in FCOJ production.

DOC Position

We disagree with Citrovita and as part of our adverse facts available determination we have continued to base CV profit on the 1995 financial statements of Branco Peres. Based on the results of our analysis, we found that Citrovita made no home market sales in the ordinary course of trade during the POR. According to section 773(e)(2)(B) of the Act, the Department has three alternatives for calculating CV profit in these circumstances. Specifically, section 773(e)(2)(B) directs the Department to use: (1) The respondent's own profits earned on home market sales, made in the ordinary course of trade, of the same general category of merchandise; (2) another respondent's profits earned on home market sales, made in the ordinary course of trade, of the foreign like product; or (3) profits based on any other reasonable method, as long as they do not exceed the amount normally realized on home market sales by other exporters or producers of the same general category of merchandise. However, the Department is not required to follow any of these approaches, given that we have made a determination to base the respondents' margins on adverse facts available.

Moreover, contrary to Citrovita's assertion, the Department has interpreted section 773(e)(2) of the Act as requiring a positive amount for profit in the calculation of CV. Although the URAA and the subsequent revisions to U.S. law eliminated the use of a minimum profit, it did not eliminate the presumption of a profit element altogether. For a discussion of the reasoning behind our interpretation in this area, see *Silicomanganese from Brazil, Final Results of Antidumping Administrative Review*, 62 FR 37877–37878 (July 15, 1997). Consequently, contrary to Citrovita's assertions, the Department cannot use the combined income statements of Citrovita and Votorantrade to determine Citrovita's profit, because these statements show a loss.

We also disagree with Citrovita that we can base profit on the income statement of Votorantrade alone. As Citrovita correctly noted, the SAA states:

> In situations where the producer and exporter are separate companies, the Administration intends that Commerce may continue to calculate total profit and total SG&A expenses realized and incurred by both companies.

SAA at 841. Thus, the SAA directs the Department to use combined data in cases where the producer and exporter are separate. In any event, however, we find that it would be inappropriate to use Votorantrade's data, because this company appears to function as a middle man between Citrovita and its U.S. affiliate. Thus, the profit shown on this income statement is merely an intra-corporate profit, because it is derived in large part from transactions between affiliated parties.

Because we are precluded from determining profit under the methodology advocated by Citrovita, we have continued to base the amount of profit on the facts available under the methodology used for purposes of the preliminary results. Specifically, we have continued to use the most recent financial statements available to the Department showing a profit on the sale of FCOJ. We find that this method is reasonable, because these financial statements are for the sale of the foreign like product in question. Moreover, we find that these financial statements continue to have probative value, because the profit percentage computed from them is comparable to the profit percentage computed using the proprietary data submitted by Branco Peres in this administrative review. *See* the memorandum to the file from Sergio Gonzalez regarding this topic, dated August 4, 1999. Finally, we find that this method does not conflict with the intent of the Act, because: (1) This alternative does not require that profit be determined on home market sales; and (2) there is no information available to use in determining the profit "cap." *See* the SAA at 841.

Comment 3: CEP Profit Calculation for Citrovita

For purposes of the preliminary results, the Department also based the CEP profit rate for Citrovita on the 1995 financial statements of Branco Peres. According to Citrovita, this methodology is contrary to law, as well as a direct contradiction of Department policy as set forth in the SAA. Specifically, Citrovita notes that the SAA states, at 155, that "if there is no profit to be allocated (because the affiliated entity is operating at a loss in the United States and foreign markets) Commerce will make no adjustment under section 772(d)(3)" of the Act. In addition, Citrovita cites to section 772(f) of the Act, which requires the Department to use total actual profit in calculating the CEP profit deduction.

Citrovita asserts that its own financial statements show that the company operated at a loss during 1997. Therefore, Citrovita argues that the Department should make no adjustment to U.S. price for CEP profit for purposes of the final results.

DOC Position

Section 772(f)(1) of the Act states that the Department will calculate CEP profit by multiplying the total actual profit by the applicable percentage of U.S. expenses to total expenses. According to section 772(f)(2)(D) of the Act, "total actual profit" is defined as the total profit earned by the foreign producer, exporter, and affiliated parties with respect to the sale of the same merchandise for which total expenses are determined.

Because the data on the record shows that Citrovita operated at an aggregate loss in its home and U.S. markets during the POR, we have made no adjustment for CEP profit for purposes of the final

results, in accordance with section 772(f)(1) of the Act.

Comment 4: CEP Offset

Citrovita argues that the Department improperly denied it a CEP offset for purposes of the preliminary results. Citrovita maintains that it is entitled to a CEP offset in accordance with 19 CFR 351.412(f) because: (1) It does not sell in the home market at a level of trade that is comparable to the CEP level of trade; and (2) it cannot quantify a level of trade adjustment. According to Citrovita, this offset should equal total home market indirect selling expenses, capped by the amount of indirect selling expenses incurred on U.S. sales.

DOC Position

We disagree. Section 351.412(f) states that the Department will grant a CEP offset only under the following conditions: (1) NV is compared to CEP; (2) NV is determined at a more advanced level of trade than the level trade of the CEP; and (3) despite the fact that a person has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in level of trade affects price comparability. In this case, we find that neither of the second two criteria has been met. Specifically, we note that there is no information on the record to establish that NV is at a more advanced level of trade than the CEP. Moreover, we have found that Citrovita has not cooperated to the best of its ability in this administrative review. (*See Comment 1.*) Consequently, we find that Citrovita is not entitled to a CEP offset for purposes of the final results.

Final Results of Review

As a result of our review, we find that the following margins exist for the period May 1, 1997, through April 30, 1998:

Manufacturer/exporter	Margin percent
Branco Peres Citrus, S.A	39.18
Cambuhy Citrus Comercial e Exportadora Ltda	63.55
Citrovita Agro Industrial S.A	63.55
Frutax Industria e Comercio Ltda	63.55

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The duty assessment rates for importers of subject merchandise will be those rates listed above. These rates will be assessed uniformly on all entries of FCOJ made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of frozen concentrated orange juice from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 1.96 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.210(c).

Dated: August 4, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–20738 Filed 8–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs), from the People's Republic of China (PRC) in the **Federal Register** on February 5, 1999 (64 FR 5770). These reviews cover the time period, February 1, 1997 through January 31, 1998. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have made changes to the margins and the margin calculations presented in the preliminary results of the reviews. The final weighted-average dumping margins are listed below in the section entitled Final Results of Review. We will instruct the U.S. Customs Service (Customs) to assess antidumping duties accordingly.

EFFECTIVE DATE: August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or James Terpstra, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3601 or 482–3965, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act

(URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1998).

Background

The Department published the preliminary results of the administrative reviews of the antidumping duty orders on HFHTs from the PRC in the **Federal Register** on February 5, 1999 (*HFHTs Prelims*). *See* 64 FR 5770. We received case and rebuttal briefs from O. Ames Co., and its division, Woodings-Verona (Petitioner), on March 11 and March 16, respectively. We also received joint case and rebuttal briefs from Fujian Machinery & Export Corp. (FMEC), Shandong Huarong General Group Corp. (SHGC), Liaoning Machinery Import & Export Corp. (LMC), Tianjin Machinery Import & Export Corp. (TMC), and Shandong Machinery Import & Export Corp. (SMC) (collectively Respondents) on March 11 and March 16, respectively. On March 25 we determined that Respondents' case brief contained new factual information because it referenced data that had not been submitted prior to the deadlines outlined in 19 CFR 351.301(b)(2). *See* March 25, 1999, Commerce Department letter to Respondents regarding case briefs. On April 8, 1999, Respondents submitted a revised case brief, redacting the new factual information. Also, on April 30, 1999, we determined that Petitioner's brief also contained new factual information. *See* April 30, 1999, Commerce Department letter to Petitioner regarding case briefs. Subsequently, the Department removed the untimely filed data from the record. We held a hearing on April 27, 1999. On May 12, 1999 Petitioner asked us to reconsider our decision to reject the new factual information contained in its case brief. However, we did not change our finding that this untimely filed new information had to be returned. On June 10 and July 13, the Department published notice that pursuant to section 733 (c)(1)(A) of the Act, these HFHTs reviews were extraordinarily complicated and required postponement of the final review results until no later than August 4, 1999. *See* 64 FR 31178 and 64 FR 37742, respectively.

In the preliminary review results of HFHTs, we decided to preliminarily rescind the reviews for certain companies reporting no shipments of certain classes or kinds of HFHTs pending confirmation of these claims from Customs. On April 16, 1999, Customs confirmed that LMC had no shipments of hammers/sledges, picks/mattocks, and axes/adzes during the period of review (POR). Similarly, Customs confirmed that SHGC had no shipments during the POR of picks/mattocks and hammers/sledges. As a result, the Department is rescinding the reviews of LMC with respect to hammers/sledges, picks/mattocks, and axes/adzes and the reviews of SHGC with respect to picks/mattocks and hammers/sledges. *See* the *Facts Available* section below regarding the final disposition of the remaining recission requests filed by SHGC, TMC, FMEC, and SMC.

The Department has now completed these reviews in accordance with section 751 of the Act.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools, and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars, and tampers; and steel wood-splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to the required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing, painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Facts Available (FA)

In accordance with section 776(a) of the Act, we have determined that the use of FA is appropriate for several producers. For FMEC and SMC and their supplying factories A and B, we found that these companies provided information which could not be verified, as described in section 776(a)(2)(D) of the Act. *See* comments 2 through 6 below. For SHGC with respect to axes/adzes, and for TMC with respect to axes/adzes and bars/wedges, we found that these companies, in claiming no shipments when there were transactions, withheld information requested by the Department, as described in section 776(a)(2)(A) of the Act. Similarly, for FMEC and SMC, we found that both companies withheld information with respect to bars/wedges, by claiming no shipments when there were transactions by these entities involving this class or kind of hand tools.

Adverse Inferences

In accordance with section 776(b) of the Act, we find that the companies listed above claiming no shipments when they had transactions involving certain classes or kinds of HFHTs failed to cooperate by not acting to the best of their abilities. Contrary to what was reported by these Respondents, on April 16, 1999, Customs notified the Department of U.S. sales by these companies of the above noted classes or kinds of HFHTs. We notified Respondents of this and gave them an opportunity to comment. On May 10, 1999, Respondents provided various explanations as to why such sales were not reported. However, we found Respondents' explanations to be without merit. We found that the Customs data showed that all unreported sales were of subject merchandise sold by these companies during the POR. As a consequence, Respondents were obligated to report these sales. As much of the underlying data is confidential, a more detailed discussion of this analysis is contained in the *Memorandum Regarding Unreported Sales*, dated August 3, 1999. Because Respondents failed completely to report these sales, no U.S. price and normal value (NV) data exist on the records of these proceedings that would permit sales comparisons and margin calculations. As a result there is no basis for a margin estimate other than FA. Moreover, the fact that Respondents failed completely to report the sales of subject merchandise indicates that they did not act to the best of their abilities and that adverse inferences are warranted.

For purposes of 776(b) of the Act, an adverse inference may include reliance on secondary information such as information derived from the petition, the final determination in the investigation, and previous administrative review results, or reliance on any other information

placed on the record. In this case, as adverse FA (AFA) with respect to axes/adzes for SHGC and with respect to axes/adzes and bars/wedges for TMC, we selected the highest rate from all segments of the respective proceedings. Specifically, we have used the rates of 18.72 percent for axes/adzes and 47.88 percent for bars/wedges. *See* Comment 6 for a further discussion of these rates. As SMC and FMEC have not satisfied the Department that they are entitled to separate rates, shipments of bars/wedges from these two companies will be subject to the PRC rate for bars/wedges, which is an AFA rate based on the highest margin from any segment of this proceeding. *See* Comments 6 and 7 below. With respect to TMC, LMC, and SHGC, we are issuing separate rates because TMC, LMC, and SHGC have satisfied the Department that they are entitled to separate rates for the proceedings in question.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action, H.R. Doc. 103–316, Vol.1, at 870 (1994) (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as surrogate values, there are no independent sources for calculated dumping margins. The only source for calculated margins is an administrative determination. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567, 49568 (September 26, 1995) (the Department disregarded the highest margin as best information available because that margin was based on an extraordinarily high business expense resulting from uncharacteristic investment activities, which resulted in the high margin). In the instant review, because there is no evidence to suggest that these margins are not relevant, the Department finds no need to disregard such information as appropriate FA.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Petitioner and case and rebuttal briefs from Respondents.

Comment 1: Factual Errors

Respondents contend that the preliminary results notice contains several significant factual errors, which in turn call into question the overall accuracy of the verification results issued by the Department. Respondents first claim that, in the verification reports, the dates listed for the verifications of FMEC and SMC are incorrect. Respondents further assert that the Department incorrectly implies in the preliminary results notice that the verified factories produce and supply subject merchandise to either SMC or FMEC, when in fact the factories supply both SMC and FMEC with subject merchandise. Respondents argue that the Department incorrectly stated in the preliminary results notice that it found unreported factors of production for both factories, where in actuality, the Department found during verification that only one factory failed to report certain factors of production. Respondents contend that these discrepancies illustrate fundamental flaws in the Department's characterization of the verification results, the conclusions of which provided the basis for the Department's preliminary review results.

Department's Position

We disagree with Respondents that the verification reports were materially in error. Respondents are correct that the dates in the verification reports were inadvertently transposed. In addition, Respondents are correct that the report erroneously indicated that each factory only supplied one trading company. Moreover, we agree with Respondents that the Department found unreported factors of production at only one factory. However, these minor errors in no way undermine the findings in the report, or call into question the underlying accuracy and objectivity of the reports. Indeed, none of these minor errors relates in any way to the significant problems encountered at verification and described in the reports, including the companies' failure to substantiate certain factor data, provide relevant investment records, or to reconcile the total quantity and value of reported sales to the firms' books and records. *See* Comments 2, 3, 4, and 5 below.

Comment 2: Whether FMEC Failed Verification

FMEC claims that its failures during verification were justifiable for five general reasons: first, FMEC argues it had insufficient time to prepare for verification because of a Chinese holiday that fell a few days prior to the beginning of the verification; second, FMEC claims that the two-day time period allotted for verification was insufficient; third, FMEC argues that the Department was merely attempting to "verify the negative," which is contrary to Department practice; fourth, FMEC argues that failure to provide certain data was immaterial to the dumping analysis; and finally, FMEC argues that its accounting system is not flexible and thus not easily translatable for antidumping verification purposes. As such, FMEC claims that it acted to the best of its ability by providing extensive information, and that the Department should rely on the data that were provided during verification as sufficient data for margin calculation purposes.

In particular, FMEC argues that contrary to the Department's statement in the January 29, 1999, *Determination of Adverse Facts Available Based on Verification Failure in the Administrative Review of Heavy Forged Hand Tools from the People's Republic of China Regarding Adverse Facts Available Memorandum (AFA Memorandum)* that it had "ample time, specifically ten days * * * to analyze the outline and thus prepare for verification," FMEC in fact had only four business days to prepare for verification because of a Chinese holiday that immediately preceded verification. FMEC argues that the Department was aware of the holiday and that FMEC would be closed from October 1 through October 4 for the holiday.

According to FMEC, the Department's standard 2-day allocation for verification of a Chinese company is flexible, and thus, because the verification followed a national holiday, the Department should have extended the allotted time for verification. FMEC argues that, while the Department's standard practice may be to provide two days for a verification, it has not always followed this standard. FMEC notes that

in the verification conducted for the 1992–1993 HFHT review, and in several other cases, the Department provided more than two days for verification. FMEC claims that in *Disposable Pocket Lighters from the People's Republic of China*, 60 FR 5899, 5900 (Jan. 31, 1995), the Department indicated a need for flexibility in dealing with the time allowed for verification and the timing of verification where Chinese holidays conflict with scheduled verifications.

FMEC further argues that the problems regarding timing were compounded by the extensive number of general questions asked by the verifiers in their attempt to "verify the negative," or in essence to review the entire operations of the trading company to determine that no unreported sales of subject merchandise were made by FMEC through any aspect of its operations. FMEC asserts that the verifiers' attempt to "verify the negative" was contrary to the intent of verification and case law defining the scope of verification. FMEC cites *Belmont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990), arguing that verification should "normally * * * entail selective examination rather than testing of an entire universe," of possibilities. FMEC also cites *Monsanto Co.* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988), arguing that verification is "a spot check and is not intended to be an exhaustive examination of the Respondents' business."

FMEC's fourth argument is that its failure to provide certain data during verification was immaterial. FMEC agrees that it was unable to provide four different types of data, but maintains that such data were not necessary for verification. The data requested that FMEC could not produce include in part: (1) A complete list of sales; (2) financial records for long-and short-term investments; (3) quantity and value worksheets; and (4) voucher books and records. With respect to the first two types of data, a complete list of sales and financial records for long-and short-term investments, FMEC notes that the records were either locked away or not kept at FMEC's offices. FMEC argues that it does not have an integrated computer system and therefore offered instead the FMEC catalogue in order to provide sales information. FMEC argues that the verifiers agreed to move on, accepting copies of the catalogues. Additionally, FMEC argues that, although financial records were locked away, company officials provided a list of FMEC investments.

FMEC argues that it could not prepare the "quantity and value" worksheets, because it does not have a flexible accounting system that allows sales tracing to financial records. FMEC also claims that the documents relevant to this request were kept in a locked cabinet, and that the accountant with the key had already left for the day, since the request did not come until approximately 5:30 p.m.

As to the requested voucher books and records, FMEC notes that "[t]he verifiers actually visited the accounting department office where the records were kept during the business day, but did not ask for the records at that time." FMEC contends, however, that "most of the verifiers" concerns can be satisfactorily answered by other information on the record. FMEC also claims that although it was unable to reconcile total U.S. sales to its financial statements, and specifically could not provide any accounting voucher books for the four requested months, January–April, it did not realize such information would be necessary. *See Memorandum To the File on Verification of the Questionnaire Response of Fujian Machinery & Equipment Import and Export Corporation in the Administrative Review of Heavy Forged Hand Tools from the People's Republic of China* (January 6, 1999). Additionally, regarding the absence of available financial records requested for certain entities, FMEC asserts that there is no evidence that any of these entities shipped subject merchandise during the POR. Regardless, Respondents contend, any financial records FMEC had would not have included sales records. Further in response to the Department's assertion in the *AFA Memorandum* that FMEC's failure to show "there was no affiliation with its U.S. customer undermines the bona fides of the reported prices," FMEC claims that there simply is no affiliation between FMEC and its U.S. customers.

Finally, FMEC argues that, "but for the timing," the necessary documents would have been provided. FMEC claims that the Department verifiers did not advise the company officials that they could submit any information following the verification. FMEC asserts that, the Department should have informed FMEC that it could have more time to supply these records, in accordance with 19 CFR 351.301(b)(2), and that counsel should have been told by Department officials that FMEC had not supplied all requested information. FMEC maintains that it provided extensive records to the verifiers, and that given the circumstances, the Department should use the sales information submitted by FMEC or reopen the verification for the narrow purpose of collecting the information.

Petitioner claims the Department was correct in determining that FMEC failed verification as a result of FMEC's inability to provide key accounting records, including records concerning sales in the first three months of the POR and all relevant records detailing the company's investments. Taken together, Petitioner notes that this resulted in the verifier's inability to confirm the accuracy of the reported U.S. sales.

Petitioner disagrees with Respondents' claim that the verification failure was due to insufficient time, noting that the amount of time spent verifying FMEC's submissions was consistent with past Department practice. Further, Petitioner contends that because this is the seventh administrative review of the antidumping orders on HFHTs, FMEC should be familiar with the Department's review and verification process.

Finally, Petitioner also disagreed with Respondents' assertion that the problems encountered at verification were immaterial. Petitioner claims that the Department's inability to ascertain whether U.S. sales were properly reported is not only material, but detrimental to establishing the integrity of the entire database submitted by the Respondent.

Department's Position

We disagree with FMEC's claim that it did not fail verification and that its failures to provide appropriate documentation during verification were justifiable. As stated in our AFA Memorandum, we encountered a number of serious problems at verification. Among the most serious was FMEC's failure to provide sales data for four months of the POR. As a result, we could not confirm that all U.S. sales were properly reported, which is one of the most important goals of verification. FMEC also did not respond to our requests for quantity and value worksheets, a sales listing, and financial records relating to long-and short-term investments. As discussed below, these requests were crucial to our confirmation of the submitted data.

With respect to FMEC's claim that it had inadequate time to prepare for verification, we disagree. FMEC claims that it only had four business days to prepare for the verification, because there was a national holiday preceding the verification which caused FMEC to be closed for several days just before the verification. However, FMEC agreed in advance to the selected verification

dates, and did not express concern about the proximity of the national holiday at that time. In order to secure approval to travel to the PRC on official government business, it is necessary to secure a letter of invitation from the company being visited in advance of submitting a visa application. In this case, the letter of invitation was provided by Respondents nearly a month before verification. This required that Department verifiers, the Respondents, and their counsel discuss verification scheduling well in advance of the actual dates of verification. Moreover, the verification outline was sent to Respondents 10 days in advance, as is customary, and was similar to the verification outlines used in verifying these companies in the past. Thus, FMEC did, in fact, have ample time to prepare for verification.

We also disagree with FMEC's contention that two days was not a reasonable period of time to allow for verification. The Department typically allows two days for verifying trading companies and two days for verifying factories in PRC cases (*see Memorandum to the File on Verification in Beijing, PRC, of the Questionnaire Response of China Processed Food Import & Expott Company in the Antidumping Duty Investigation of Certain Preserved Mushrooms from the People's Republic of China* (October 16, 1998)). The amount of verification time can be adjusted within limits to accommodate the circumstances of a case. In this instance, no adjustment was appropriate. Data that the Department requested in advance of its visit were not accessible to the verification team when it was requested. FMEC maintained a list of the data requests made by the Department throughout the verification and understood clearly what information requests were pending. All outstanding information requests were repeatedly followed up throughout the two days of the Department's stay. The verification team stayed late both days of verification to allow sufficient time for company officials to provide requested information. At no time during the verification did the company officials request additional time to provide the information. Because the delays were the result of FMEC's failures, it was not necessary or appropriate to extend the time allotted for verification.

We also disagree with Respondent's assertion that the Department improperly attempted to "verify the negative." The verifiers simply followed standard verification procedures which call for the confirmation that all sales have been reported completely and accurately. This procedure is known as the "completeness test," which was described in the verification outline provided to FMEC prior to the start of verification. The completeness test is routinely conducted as part of virtually all sales verifications and requires that all sales records be available for examination by the verifiers. This procedure is a critical aspect of verification and is specifically designed to test whether all sales in the United States (and home market, where appropriate) were properly reported. Since dumping is a measure of price discrimination, and prices are reflected in sales documentation, a complete record of sales is indispensable for an accurate measure of dumping. Thus, FMEC's claim that the Department acted contrary to Department practice by attempting to verify the negative is without merit.

Furthermore, because of the volume of information that has to be evaluated at verification, the Department is necessarily limited in the number and scope of documents examined. Therefore, many verification procedures, including the completeness test, call for the testing of a subset of the total amount of information in the questionnaire response using the company's accounting records. For example, it is common to select only certain months to test for unreported sales. In the instant case, we requested but were completely unable to test four full months of the POR. Therefore, there was no way to determine whether all sales were properly reported.

We also disagree with FMEC's contention that its failure to provide certain data was immaterial. During verification, FMEC failed to produce, among other things: (1) A complete list of sales; (2) financial records for long- and short-term investments; (3) quantity and value worksheets; and (4) financial records, including voucher books and records, for four full months of the POR.

As we mentioned above, a complete listing of sales, along with quantity and value worksheets, and financial records for long- and short-term investments, are necessary to successfully perform the "completeness test" and confirm that all sales have been properly reported. The integrity of the Respondent's entire response is based upon the confirmation that all sales have been reported properly. The quantity and value worksheets also serve another important purpose in that they provide a baseline for the accounting ledgers and worksheets that are used to verify many other topics. For this reason, the questionnaire issued to FMEC required it to submit a quantity and value reconciliation on the record prior to the start of verification. FMEC failed to provide such data before or during verification. Additionally, without financial records for four full months of the POR, the Department can neither confirm total sales, nor confirm the completeness of the responses as a whole.

FMEC contends that much of the documentation was locked away or unavailable, and that "but for the time," such information would have been presented. This response is insufficient. FMEC received the verification outline well in advance, and has participated in verifications for several years. Although FMEC claims that its failures to produce information were immaterial, it has provided no justification for the absence of key personnel or for assuming that it would not need to provide four full months of financial data from the POR. A respondent must be prepared to verify any section of its response during the scheduled verification.

We also disagree with FMEC's claim that, because it does not have a flexible accounting system, it consequently should be relieved from presenting certain information at verification. The verification outline used in this case, which was similar to the standard verification outlines used in all non-market economy (NME) cases, requested information that is necessary for determining the accuracy and completeness of the submissions. Regardless of the nature of a particular company's record-keeping system, the information provided in submissions to the Department must be verifiable and the Department must be satisfied that the questionnaire responses are complete and accurate. While some companies have elaborate computerized records and reliable, audited financial statements, many producers and exporters have rudimentary record-keeping systems or lack audited financial statements, and the Department adjusts its verification procedures accordingly. In this case the verifiers made deliberate efforts to work within the constraints of FMEC's limited accounting system and were still unable to confirm the completeness and accuracy of FMEC's responses. The fact that the verifiers took into account the nature of the company's accounting records in attempting to perform standard verification procedures is clearly reflected in the Department's verification reports. For example, the verifiers altered the extent of the reconciliation they were asking FMEC to perform. However, despite limiting their requests to departmental levels within FMEC and confining the reconciliation

to a smaller time period, FMEC failed to provide sufficient data from its books and records to confirm the accuracy of its response.

FMEC further argues that the information actually verified should be sufficient to address the Department's concerns. However, as explained above, the information that FMEC failed to provide is a crucial part of the Department's "completeness test," which allows the Department to verify that the Respondent has accurately reported all sales of subject merchandise. FMEC simply did not provide the Department with documentation at verification that confirmed all reported sales. Thus, the examples cited by FMEC of instances in which alternative information was provided during verification pertaining to selected shipments and certain suppliers were not sufficient to confirm the reliability of FMEC's response.

Finally, FMEC argues that, "but for the timing," the necessary documents would have been provided, and that the Department verifiers did not advise the company officials that they could submit any information following the verification. FMEC argues that the Department should have informed FMEC that it could have more time to supply these records, in accordance with 19 CFR 351.301(b)(2), and that counsel should have been told that FMEC had not supplied all requested information. However, Respondents maintained a list of data requests by the Department and understood what had been supplied and what was still pending. If FMEC wished to submit additional requested data, it could have inquired immediately as to that possibility.

Comment 3: Whether SMC Failed Verification

SMC contends that it did not fail verification and that it responded completely to virtually every question posed by the verifiers. SMC claims that the *AFA Memorandum* is distorted and erroneous in reporting the events at the SMC verification, and does not tie with the SMC verification report.

SMC also claims that the verifiers had complete access to all SMC Department records and that the verifiers were confused about access to the complete records of the No. 2 Hardware & Tools Department and the Agricultural Tools Department. SMC argues that although the verification report states that records from the No. 2 Hardware & Tools Department were not available, in fact the verifiers reviewed various records from that Department. SMC claims that, contrary to the verification report, the verifiers looked at the books containing sales of picks by the Agriculture Tools Department and saw that there were no pick sales other than those reported. SMC notes, in fact, that every sale checked by the verifiers was found to be non-subject merchandise. SMC states that because of the many concurrent verification requests being addressed and the general confusion of the verification, it was impossible in the time allowed to complete the tracing for both the No. 2 Hardware & Tools Department and the Agriculture Tools Department.

SMC argues that the primary problem during verification involved the Department's verification request that SMC "provide a breakdown of the value of the No. 2 Hardware & Tools Department's 1997 sales by U.S. and non-U.S. sales of each subject merchandise product; and of all sales of each individual other product; and to reconcile these figures to their department's and the company's financial statement." SMC contends that the verification report is incorrect in its statements that, "company officials did not have available at verification any invoices except for the invoices of the reported U.S. sales of the subject merchandise. When we asked about the invoices and other sales documentation, company officials told us that the individual salesmen kept all sales documentation, and by that time, the documentation was no longer available because these salesmen had already left the office for the day." SMC claims, in fact, that the complete sales records of the No. 2 Hardware & Tools Department and the Agricultural Tools Department were in the verification room during the entire verification. Additionally, SMC contends that the Agricultural Tools Department manager was present throughout the verification and could locate any files in the boxes in the room. SMC has provided a photograph of a box in the verification room as evidence that the documents were present and available for review. SMC claims that in only one instance was a sales person unavailable during the verification, an instance when the verifiers expressly asked for an unannounced check of some other SMC department.

SMC claims that at the end of the second day, the only incomplete verification project was a request for information concerning SMC's affiliated U.S. entity, Pacific Tools. SMC argues that its failure to provide Pacific Tools' data is immaterial, and reiterates that there has never been any question of affiliation between SMC and its U.S. customers.

SMC argues that its individual department records were successfully reconciled. SMC states that, in regard to the verification exercise which attempted to reconcile department statements and SMC's 1997 financial statement, although small differences existed in SMC's department statements and its financial statement, these differences have no relationship to company sales, and in fact, the sales data in both statements are the same. SMC also states that its accounting system is maintained in accordance with Chinese generally accepted accounting principles (GAAP), although the verifiers independently concluded that they were not.

Finally, SMC argues that other issues identified as contributing to the verification failure are in fact minor; specifically, (1) the failure to report one U.S. sale; (2) the non-completion of the Agricultural Department reconciliation; (3) the incorrect reporting of the port of entry for one shipment; (4) the failure of SMC to substantiate that ocean freight payments were paid in foreign currency; and (5) the failure of SMC to acknowledge and report several companies, formerly departments of SMC, that would potentially be considered affiliated with SMC.

Petitioner claims the Department's determination that SMC failed verification is appropriate because SMC did not provide any quantity or value reconciliation for its Agriculture Tools Department's sales, failed to reconcile its financial records to the financial statement submitted to the Department, and was unable to provide ownership and financial information regarding the company's U.S. affiliate, SMC Pacific Tools, Inc. Petitioner claims that when combined, these problems prevented the Department from ascertaining the reliability of SMC's reported sales, made it impossible to tie SMC's sales from its Hand Tool Department to its company-wide financial record, and undermined the Department's ability to verify whether the U.S. sales were *bona fide* transactions.

Petitioner disagrees with the Respondents that the problems encountered at verification were either minor or immaterial. Petitioner claims that the Respondents' comments contradict the verifiers' record and that SMC is merely attempting to submit untimely and unverifiable data on the record after verification.

Department's Position

We disagree with SMC's claim that its verification failures were minor. The verification report and the *AFA Memorandum* from the preliminary

determination clearly establish that the company failed to adequately demonstrate that it had reported all sales. Specifically, SMC was unable to confirm the total sales for its Agriculture Department. In addition SMC was unable to satisfy the Department that SMC's affiliated U.S. importer was not affiliated with other firms, including customers. As a consequence, the Department was not able to perform the "completeness test." *See* Comment 2 of this notice for a more detailed discussion of the importance of the completeness test.

Moreover, SMC's assertions that the verifiers did examine the books of the Agricultural Department are flatly contradicted by the Department's verification report. According to the verification report, SMC acknowledged that SMC officials did not have available at verification any invoices except invoices of the reported U.S. sales of subject merchandise. When verifiers asked about other invoices and sales documentation to test the completeness of the reported U.S. sales, company officials told the verifiers that the individual salesman who kept all sales documentation had left for the day. *See Memorandum to the File on Verification of the Questionnaire Response of Shandong Machinery Import and Export Corporation in the Administrative Review of Heavy Forged Hand Tools from the People's Republic of China* (January 6, 1999). Consequently, while SMC salesmen may have been present throughout the verification process, the specific sales personnel that had access to requested documentation were not available when necessary. As explained in Comment 2 of this notice, a respondent must be prepared to verify any section of its response during the scheduled verification.

SMC further claims that a complete tracing of sales was difficult, since its system was not computerized and such an activity must be manually done. However, as explained in Comment 2 of this notice, a respondent in an antidumping proceeding is not relieved of its responsibility to substantiate its submissions simply because it has a rudimentary bookkeeping system. Moreover, the verification team did not demand records that did not exist; rather they attempted to work with the existing record-keeping system of the company. For example, when the verifiers requested sales reconciliations, SMC informed them that complying with the request would be difficult due to its bookkeeping system. Therefore, the verifiers then requested less complicated versions of the reconciliations by limiting their requests, for example, to certain products or months. Nevertheless, SMC failed to provide even the data that were ordinarily maintained in its books and records. Thus, SMC failed to provide key documentation during verification that was necessary to test the completeness of SMC's response, and because the lack of documentation calls into question the reliability of SMC's responses as a whole, we find that SMC failed verification.

Comment 4: Whether Factory a Failed Verification

Respondents assert that Factory A did not fail verification. Respondents argue that the factory measures its costs through the use of "caps" ("estimated" costs) in the ordinary course of business. Respondents note that while Factory A keeps "actual" costs for steel inputs, for all other inputs, the costs are measured only through the use of established "caps." Because the vast majority of input cost in the production of hand tools is steel, Respondents maintain that inputs other than steel are inconsequential, and hence, easily adapted to the use of "caps." Respondents claim that the Department had determined that "caps" were reasonable using factory records in previous reviews.

Respondents suggest that the verifiers confused some of the deficiencies noted in the preliminary results notice by claiming that, contrary to the notice, there were no unreported factors of production from Factory A. Respondents next argue that while the reported cost figures for Factory A were in some cases inaccurate, the factory reported the same estimated input figures as the Department verified in 1994 and the differences were consistent. Respondents assert that the under-reported inputs are more than compensated by the over-reported inputs, and that it should be expected that there would be variances from the "caps." Respondents stress that each of the reported "caps," which are essentially estimates, was reasonable, even though not traceable to the company's financial statement.

Respondents believe that the main problem at the Factory A verification was the failure of the factory to tie factor inputs to financial statements. Respondents argue that the submissions never indicated that the factories had records which specifically tied "caps" to their financial statements, and that with the exception of steel inputs for Factory A, all factor inputs were based solely on "caps." Respondents argue that it was abundantly clear that the factory did not have records which could trace factor inputs on a per product basis, and that nothing in the verification outline requires companies to prepare materials that do not exist. Respondents insist that the Department's verification outline did not require the factory to tie "caps" to financial statements.

Respondents note that Factory A separately calculated the amount of steel it used to produce the subject merchandise, but argue that just because it could now report actual steel physical weights did not mean it could tie its steel consumption per item of subject merchandise to its financial statements.

Petitioner claims that the Department was justified in rejecting the factor data of Factory A because Factory A could not reconcile its reported factors of production or "caps" with the factory's actual accounting records. More specifically, Factory A could not verify the actual consumption of coal, electricity, or steel.

Department's Position

We disagree with Respondents' argument that the Department has "accepted caps" in the past and should do so again. This is a misleading characterization of what happened in previous reviews. The questionnaire in this and previous reviews requires Respondents to report for each factor of production (FOP) the quantity used to manufacture one unit of subject merchandise during the POR, *e.g.*, the actual kilograms (kgs.) of steel used to produce one hand tool. In this and previous reviews, Respondents reported "caps" instead of the actual per-unit utilization of inputs, because they claimed their bookkeeping systems were limited. However, it is not entirely accurate to say that the Department accepted "caps" in previous reviews. Rather, in the previous review segment, as a result of verification, we confirmed that the reported FOP data, *i.e.*, the "caps," were reasonable approximations of actual consumption. As such we used this data to calculate NV.

However, verification objectives, testing, and results vary with the review segment, company, and facts. In the verification in this review, we once again tested the reasonableness of certain reported FOP data by weighing the input materials as they entered the production process. We found that the factor utilization rates the company reported in its questionnaire response appeared to be reasonable estimates of the weight of certain material inputs. Although we weighed the input materials as in the previous review and found them not widely variant from reported factors, we also asked the

company to demonstrate that the reported factor utilization figures or "caps" were accurate and reflected the company's actual production experience by tracing these "caps" to the company's accounting records in some way. This is a basic goal of verification and the company failed.

Respondents' argument, in essence, is that the only way the Department needs to test their reported factors is to weigh several pieces at verification and ignore any systematic link between the reported factors and the company's books and records. This is not acceptable. While it is useful to test the production factors that a company reports in various ways, the reliability of the factor utilization rates ultimately depends on the ability of the respondent to trace the calculation of this rate to the company's actual production experience as it has been recorded in the company's accounting records, a demonstration that in this review segment the company could not make.

This approach is consistent with the position the Department took regarding the use of "caps" in *Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China; Final Review Results of Antidumping Duty Administrative Review*, 64 FR 27506 (May 20, 1999) (*Natural Bristle Paintbrushes*) for the review period covering 97–98. While the Department had considered "caps" reasonable in past segments of this proceeding, the Department found that there were discrepancies in the 97–98 review between the reported "cap" amounts and the figures presented at verification. Because the Department could not deduce how the information in the questionnaire was derived, the Department did not consider the information verified.

Regarding Respondents' assertion that the errors noted at verification were minor, we disagree. The verification reports clearly set forth the significant problems encountered at verification. Company officials at Factory A could not support or document actual consumption of coal and electricity. In addition, we were unable to tie steel purchases to steel consumption as reported in the questionnaire response. Furthermore, as discussed above, company officials could not establish links between reported "caps" and company accounting records for specific products. *See AFA Memorandum.* Despite the rudimentary record keeping of the company, it was the responsibility of Factory A to demonstrate how its questionnaire response is derived from the production data captured in its books and records. Factory A failed to do so in this case.

In concluding that Factory A failed verification, we examined the entire record supporting the factual data in the questionnaire response and considered the critical impact that any questionable items may have had on our NV calculations. We ultimately determined that the inaccuracies and unverified claims, *in toto*, were such that the reported data were not a reliable basis for calculating a dumping margin. We also note that, regardless of whether Factory A passed verification, the Department would be applying FA, nonetheless, because of the critical deficiencies in the sales verifications of FMEC and SMC.

Comment 5: Whether Factory B Failed Verification

Respondents argue that Factory B did not fail verification. First, Respondents claim that the verifiers confused some of the deficiencies noted in the preliminary results notice. Respondents claim that, while the verifiers identified three unreported inputs in the notice, these should be considered part of factory overhead rather than separate factor inputs. Respondents argue that these inputs are not significant, and that, even if the record is incomplete, it is not so incomplete as to warrant the use of total FA.

Respondents also contend that the reported figures did not contain many errors, and that the "caps" verified in 1994 are the same figures as the current "caps" for the same types of subject merchandise. Respondents argue that reported factors relating to the most important inputs, steel and steel scrap, were confirmed during verification, and that the verifiers unnecessarily conducted an extensive review of three insignificant unreported factors. Respondents further argue that Factory B provided its complete records, and that the submissions never indicated that the factory had records which specifically tied the reported "caps" to the factory's financial statements. Respondents argue that the Department has accepted "caps" in the past, recognizing that variances between reported "caps" and the actual figures existed. Respondents stress that in previous HFHT reviews, it was established that the "caps" were estimated, that the estimates were reasonably close to the actual factor inputs used, and thus, the Department accepted the reported "caps'.

Petitioner claims that the Department was justified in rejecting the cost data of Factory B because Factory B could not reconcile its reported factors of production or "caps" with the factory's actual accounting records, could not confirm the actual consumption of coal or electricity used in the production process, and could not confirm the levels of the additional factors of production not included in Factory B's data.

Department's Position

We disagree that Factory B did not fail verification. As detailed in the *AFA Memorandum*, there are several reasons for concluding that the information reported for Factory B was unreliable. First, the company did not adequately document its FOP data, including the most important factor, which is steel. Second, we discovered at verification additional factors of production that Factory B had not reported to the Department. Finally, Factory B provided insufficient data to support the consumption figures that it had reported for coal and electricity. Although Factory B attempts to defend these deficiencies by arguing the limitations of its bookkeeping system, it is the factory's responsibility to demonstrate how its questionnaire response is derived from its actual production experience as reflected in the factory's financial records. Factory B failed to do this.

We also disagree with Respondents' assertion that the Department had accepted "caps" in the past and that the reported "caps" were adequately verified in this review segment. As explained in Comment 4 of this notice, we performed limited testing of the "caps" in the last review segment. In this review, we asked the factory to trace these "caps" to its records. Thus, for the Department to consider the reported production factors reliable, the factory should have demonstrated how they were derived from the company's accounting records. However, as we mention above, Factory B failed in this exercise as it was unable to show any systematic link between the reported factors and the factory's books and records. The verification report, in discussing the grade, type, and specifications of steel used by Factory B, identifies the important ways in which the reported production factors were found to be inaccurate. As these findings are proprietary, please *see Memorandum to the File on Verification of the Questionnaire Response of Factory B in the Administrative Review of Heavy Forged Hand Tools from the People's Republic of China* (January 6, 1999) and the *AFA Memorandum* for a more detailed discussion of this and other deficiencies.

We also disagree with Respondents' arguments that the factors the Department states were not reported were insignificant, that these factors should appropriately be subsumed within the factory overhead factor, and that the Department allotted too much time to these factors at verification. There was no way to confirm these claims at verification as Factory B was not able to substantiate a number of its production factors. Furthermore, because the information concerning the additional FOPs was new, the Department had no choice but to devote some time to these data at verification, to ascertain, if possible, the extent of the new information uncovered.

In concluding that Respondents failed verification we examined the entire record supporting the factual data in the questionnaire response and considered the critical impact that any questionable items may have had on our NV calculations. We ultimately determined that the inaccuracies and unverified claims, *in toto*, were such that the reported data did not provide a reliable basis for calculating a dumping margin. Furthermore, regardless of these findings, the Department would apply FA to transactions involving Factory B because of the critical deficiencies in the sales verifications of FMEC and SMC.

Comment 6: Whether the Application of AFA Is Warranted

Respondents claim that, given the level of cooperation and the substantial evidence on the record that they acted to the best of their abilities during verification, application of AFA is unwarranted. Respondents argue that the Department applies a five-part test, as detailed in the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, 56616 (October 22, 1998) (*Mushrooms from Chile*), when determining whether information should be accepted in the face of verification failures. The five factors considered are whether: (1) Submissions of information were made timely; (2) Respondents substantially cooperated with the Department's information requests; (3) some successful verification of the questionnaire response was made; (4) for unverifiable information, there was alternative information available to allow "appropriate adjustments to the submitted data;" and (5) the Department was able to make adjustments for the identified deficiencies and could use the submitted information without undue difficulties. Respondents note that when applying these factors in *Mushrooms from Chile*, the Department chose not to apply AFA, despite certain deficiencies, because the Respondent had "demonstrated that it acted to the best of its ability in the investigation and [did] not otherwise significantly [impede the] investigation."

According to Respondents, the verifications at Factory A, Factory B, SMC, and FMEC were largely successful. Despite discrepancies in verifying certain sales and cost information, these four companies assert that they provided alternative information sufficient to verify the data in their questionnaire responses and that they have cooperated to the best of their abilities. Respondents maintain that the conduct of SMC and FMEC is neither wholly unresponsive, blatantly uncooperative, nor resulted in any significant impediments to the verification or review. SMC claims that its conduct demonstrates an effort to comply with the Department's information requests and precludes any application of AFA. Similarly, Respondents stress that the inability of FMEC to provide certain documents to the Department does not evidence any level of non-cooperation or willful withholding of information, but rather resulted from unfortunate timing. Respondents further claim that Factories A and B were prepared for verification and did cooperate to the best of their ability. Outlining the data the factories did supply, Respondents argue that their conduct does not warrant application of AFA.

Respondents insist that the Department cannot expect companies to prepare and maintain records solely for purposes of the antidumping statute. Respondents claim that, while the Department in its AFA memo repeatedly points to a failure of Respondents to provide financial statements to tie in to their production records, this expectation is unreasonable unless such a financial statement is kept in the ordinary course of business. In this case, Respondents argue, the companies do not prepare internal financial statements, and the verification should have been limited instead to an examination of "whether the allocation methods are used in the normal accounting records and whether they have been historically used by the company." *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR at 77 (January 4, 1999). Applying that standard, the records provided to the Department at the verifications are the normal accounting records and methods used historically by Respondents. Further, the Respondents argue that by providing these records, use of AFA cannot be supported or sustained.

Finally, Respondents contend that the PRC-wide rate assigned to FMEC and SMC is based on tainted steel surrogate data from the second review, and that, even if the Department resorts to AFA, it has to have some basis for the rates selected. Respondents claim that the preliminary PRC-wide rates, which were applied to FMEC and SMC, are invalid as a matter of law. Respondents assert that these rates, taken from the 1992–1993 review, were changed due to the remand in *Olympia Indus., Inc.* v. *United States*, Consol. Ct. No. 95–10–01339, (Slip Op. 98–49 (April 17, 1998) (*Olympia*), which the Court affirmed on February 17, 1998. Thus, Respondents argue, the Department has no legal authority to assert AFA rates or PRC-wide rates based on rates which the Department has itself acknowledged contain "aberrational" data.

Petitioner asserts that the Department correctly assigned AFA to SMC and FMEC for their lack of cooperation during verification. Petitioner points out that both SMC and FMEC failed to provide financial information at verification to confirm sales and ownership data. SMC failed to verify its Agriculture Tool Department's sales, failed to reconcile its 1997 financial record, and failed to confirm its ownership stake in SMC Pacific Tool. Similarly, FMEC failed to provide numerous financial statements containing important sales data, and failed to provide accounting records regarding its affiliation with a U.S. party. Petitioner claims that these deficiencies prevented the Department from using the Respondents' data to calculate margins, and from evaluating whether the Respondents should be given separate margins or should be considered a single PRC entity.

Department's Position

We disagree with Respondents that adverse inferences are not warranted in this case. With respect to the PRC, FMEC, SMC, and their supplying factories A and B, we found that these parties did not cooperate to the best of their abilities. On April 23, 1998, the Department sent a questionnaire to the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") in order to collect information relevant to the calculation of the PRC-wide rate. MOFTEC did not respond. SMC and FMEC likewise did not justify separate rates or provide a consolidated response representing all non-independent exporters of HFHTs. In addition, as discussed above in comments 2 through

5, the accuracy of SMC's and FMEC's individual responses could not be substantiated at verification. These verification failures were the direct result of these companies' failure to supply a wide variety of requested information.

We also disagree with Respondents' claims that the same facts that caused the Department not to apply AFA in *Mushrooms from Chile* exist in these reviews. In *Mushrooms from Chile*, the Department applied the criteria established in section 782(e) of the Act, which directs the Department to consider information, even if the information did not meet all the Department's requirements, if: (1) The information is submitted within the established deadlines; (2) the interested party acted to the best of its ability in providing the requested information; (3) the information can be verified; (4) the information is not so incomplete that it cannot serve as a reliable basis for reaching a determination; and (5) the information can be used without undue difficulties. After reviewing the record of the investigation in *Mushrooms from Chile*, the Department decided that it was not appropriate to reject the respondent's data in its entirety, but to apply partial facts available. Contrary to the facts involved in the Chilean mushroom investigation, the inaccuracies and unverified information in SMC's and FMEC's responses in the HFHTs' proceedings, when taken in total, are so substantial that they prevent the Department from using any part of SMC's or FMEC's responses to determine whether dumping margins exist. Consequently, the Department finds that, pursuant to sections 776(a)(2)(D) and 776(b), the use of an adverse inference is appropriate in determining dumping margins, as these entities have not acted to the best of their abilities to comply with our requests for information.

As explained in the following comment entitled "Separate Rates," the PRC entity, which did not respond to our information requests, includes both SMC and FMEC, as these firms were not able to justify being assigned separate rates for any class or kind of HFHT. Pursuant to section 776(b) of the Act, we are relying on AFA to determine the margin for the PRC-wide entity. This is consistent with the Department's practice in cases where a firm fails verification or the Department receives no response to its questionnaires. *See Natural Bristle Paintbrushes.*

For each of these HFHTs' proceedings, we have used as AFA for the PRC-wide rate the highest rate from any segment of the respective proceedings. Specifically, the highest rates are: 18.72 percent for axes/adzes; 47.88 percent for bars/wedges; 27.71 percent for hammers/sledges; and 98.77 percent for picks/mattocks.

As to the Respondents' claim that the PRC-wide rates that we selected for the preliminary results are not appropriate due to changes in the rates as a result of litigation on the 1992–1993 review, we agree. The Department reviewed the PRC-wide rates on remand in *Olympia* and stated that it had eliminated Japanese exports to India for the purposes of valuing the steel input factor in the final results of the 1992/1993 HFHT reviews, thereby lowering the margins in these cases. We have taken the *Olympia* decision into account when we reviewed the highest rates from any segment of these respective proceedings.

Comment 7: Separate Rates

Respondents argue that the Department had no basis in law or fact to deny separate rates for FMEC and SMC. Respondents argue that no part of the verification addressed the separate rates issue, and that the first mention of this issue was in the preliminary results notice. Respondents argue that for *de jure* control, the verifiers looked at FMEC's business license, that the verifiers noted no restrictive stipulations, and that the record shows no government control. For de *facto* control, Respondents argue, the reports show that FMEC and SMC set their own prices, kept the proceeds, negotiated their contracts, and selected their own management.

Respondents further raise the question, if the Department's policy that "separate rates questionnaire responses must be evaluated each time a respondent makes a separate rates claim," why did the Department's verification outline fail to include any separate rates' questions? Respondents argue that the Department's citation to *Manganese Metal from the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998), is misplaced, because it does not involve a change in the Department's granting a separate rate following a verification. Additionally, Respondents argue that the Department's basis for denying separate rates rested on Respondents' failure to provide information that was irrelevant to this issue. Accordingly, Respondents claim that the Department abused its discretion in denying separate rates for FMEC and SMC.

Respondents stress that the Department determined that FMEC and SMC qualified for separate rates in the previous five administrative reviews. Citing *Certain Iron Construction Castings from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 57 FR 24245 (June 8, 1992), Respondents claim that it is the Department's practice to maintain separate rates unless there is an indication that a Chinese company's status has changed.

Petitioner supports the Department's decision to assign the PRC-wide rate to both SMC and FMEC, as AFA. Petitioner claims that Respondents failed to provide the Department with verified information regarding their eligibility for separate rates. Petitioner disagrees with Respondents that the record shows that FMEC and SMC set their own prices, kept the proceeds, negotiated their contracts, and selected their own management. Petitioner claims that the problems at verification resulted in the Department's inability to verify U.S. sales and to verify affiliations which could have a direct impact on the Department's separate rate determination. Petitioner notes that, while the Department has, in other cases, calculated separate rates for Respondents that failed verification, the present case is factually different from those circumstances. Citing *Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China; Preliminary Results and Partial Recission of Antidumping Duty Administrative Review*, 64 FR 2192 (Jan. 13, 1999) (*Natural Bristle Paintbrushes Prelim*), Petitioner claims that Respondents in that case warranted a separate rate based on the fact that the verification failure resulted from the Department's inability to verify the information provided by the supplier, and not from any discrepancies in the information provided by the exporter; and that verification of the company revealed that it warranted a separate rate. Thus, Petitioner argues that the *Natural Bristle Paintbrushes Prelim* is distinguishable from this case.

Petitioner also claims that assigning the PRC-wide margins to SMC and FMEC as AFA is appropriate regardless of the separate rate analysis, because the PRC-wide rates are the highest margins calculated in any prior segment of these cases. Petitioner claims that SMC and FMEC warrant the highest rate calculated because they failed to cooperate to the best of their abilities in verifying their cost and sales data. In similar situations, Petitioner claims that the Department has assigned AFA citing *Natural Bristle Paintbrushes Prelim and Elemental Sulphur from Canada; Final Results of Antidumping Administrative*

Reviews, 62 FR 37958 (July 15, 1997). Further, Petitioner suggests that by assigning the PRC-wide rate to SMC and FMEC, the Department will ensure that these companies will not benefit from their lack of cooperation.

Department's Position

We disagree with Respondents' assertion that the record supports a finding of separate rates for FMEC and SMC. As stated in the preliminary results of these reviews, the failure to satisfy requests for information that would confirm various elements of these firms' questionnaire responses directly compromised the information that formed the basis of these entities' separate rates' claims. More specifically, we determined that, due to the nature of the verification failures of SMC and FMEC and the inadequacy of their cooperation, it was not possible to confirm information regarding these entities' affiliations, ownership arrangements, and corporate structure. *See Heavy Forged Hand Tools From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 5770 (February 5, 1999). Thus, even though we did not directly examine all aspects of these firms' separate rates' claims at verification, the separate rates' claims were called into question because the data unsuccessfully addressed at verification were key to our separate rates' analysis.

Comment 8: Surrogate Value for Steel

For HFHTs that are not made from scrap, Petitioner argues that the Department erred in selecting its steel surrogate values. In the previous administrative reviews of this case, the Department valued steel inputs for these tools based upon HTS category 7214.50, the classification for forged bars and rods. However, in this review, based on the descriptions of the production process in the record, the Department decided to use HTS category 7207.20.09, the classification for semi-finished steel, to value the steel input. Petitioner claims that HTS category 7207.20.09 is not appropriate because it covers billets and blooms that must be further hot-rolled to ensure that they meet the tolerances necessary to be forged into hand tools. While Petitioner acknowledges that the petition did refer to the raw material for HFHTs as a "billet," Petitioner maintains that the Respondents do not hot roll semi-finished steel billets in their production process. Instead, according to the Respondents' questionnaire responses, the hand tool manufacturers purchase finished round bars, cut them to proper length, and then forge them into tools. Petitioner contends that because "bars" are used in the Respondents' production process, it is not appropriate to use an "unfinished" product to value the steel input into HFHTs. Petitioner argues that the use of HTS category 7207.20.09 is inconsistent with the statutory mandate, because it is unrelated to the factors of production that are utilized in producing subject merchandise. The proper category to value the steel input is HTS category 7214.50 because it includes finished bars.

Respondents support the Department's use of the HTS category 7207.20.09 to value the steel input, claiming that it constitutes the best available information regarding the materials being used by the HFHT manufacturers to produce subject merchandise. While the Respondents agree that the Department used the correct HTS category to value steel inputs, the Respondents contend that the Department should recalculate the surrogate value within the HTS subheading used. More specifically, Respondents argue that the April–September 1997 Indian Imports from Germany and Qatar under HTS category 7207.20.09 are aberrational in price and therefore should be disregarded to avoid distorting the per unit value for steel. Respondents cite the Department's final remand results in *Olympia*, arguing that the Department's decision in that review to disregard certain Japanese imports as aberrational suggests that the Department should disregard the imports from Germany and Qatar in this review, because they are similarly aberrational.

Finally, Respondents claim the Department double-counted the values for steel in the month of April 1997.

Department's Position

We disagree with Petitioners. In our preliminary review results we stated that we had changed the HTS category that we used to value steel from 7214.50 used in previous reviews to 7207.20.09 because the former covered "finished rods and bars" and the latter covered "unfinished" steel. This was based on our analysis of the petition, the ITC report, the questionnaire responses in this review segment, the HTS, and conversations with product experts. This analysis suggested that the input material used by the PRC producers was unfinished and that the input material underwent a number of operations which could be characterized as "finishing" operations, including forging.

However, in reviewing this analysis in light of the comments raised by the parties we realized that our use of the term "unfinished" was somewhat imprecise in the discussion regarding the choice of appropriate surrogate values. One of the primary differences between HTS categories 7214.50 and 7207.20.09 is that the former covers "bars and rods" and the latter covers "ingots and other primary forms" (including billets). Thus, in considering which of these categories most closely reflects the input materials used by respondents, the most important determinant is whether the steel input for the HFHTs in question is closest to a billet or a bar, not whether the input is "finished" or "unfinished."

In reviewing the record evidence we noted that both Respondents and Petitioners used a variety of terms to describe the input materials. The petition originally filed in this proceeding describes the input material as "fine grain special bar quality carbon steel" in one place, and as a "billet" in another. *See* Petition for the Imposition of Antidumping Duties on Heavy Forged Hand Tools, With or Without Handles, from the People's Republic of China, at pages 14 and 35, respectively (April 4, 1990). Similarly, Respondents refer to the input materials as "ordinary merchant grade 1045 steel bar" and "billets." *See* TMC's and Shandong Huarong's Response to the Department's April 23, 1998 Questionnaire—Section C and D (June 24 and 26, 1998). In order to address this issue we asked Respondents a series of questions designed to clarify the type of input used. *See* June 18 letter to Respondents regarding Steel Value. Their responses indicated that they used billets. *See* Shandong Huarong and TMC Response to Department's June 18, 1999 Supplemental Questionnaire (June 23, 1999). Accordingly, for these final review results, we continue to hold that HTS category 7207.20.09 is a better HTS category to value the steel input used in the HFHTs in question because it covers billets, not bars.

We also disagree with Petitioner's assertion that this category is inappropriate because it covers both semi-finished billets and blooms. Almost all of the HTS categories we use cover a range of products, some of which include products other than the specific input in question. Nevertheless, the category selected is still the factor value on the record of this review that most closely resembles the production input actually used by the PRC producers.

We disagree with Respondents' claim that the Department incorrectly double-counted the values for steel in the month of April 1997. However, we

identified an error in the calculation of unit values derived from the April-September time period which we have corrected in these final review results. In addition, we agree with Respondents' final claim that the average unit values for steel imports from Germany and Qatar under this HTS category are so substantially higher when compared with the great majority of other imports under this category that they are aberrational. As such we have excluded these imports from our analysis.

Comment 9: Surrogate Value for Steel Scrap

Petitioner argues that for HFHTs made from scrap railroad wheels and rails, the record evidence does not support using HTS category 7204.41 to value Respondents' steel input. Petitioner claims that railroad wheels used as scrap are not classified under HTS category 7204.41. Furthermore, Petitioner contends that the used railroad wheels and rails that are resold in the scrap market command almost twice the price of scrap that is resold in the form of mill waste, turnings, and shavings. According to Petitioner, railroad scrap is a premium quality scrap as opposed to the scrap by-products that are covered under HTS category 7204.41, an item number which generally encompasses the cheapest grades of scrap available. As evidence Petitioner cites to experience in the U.S. scrap market where used railroad wheels command almost twice the price of certain other scrap forms. Petitioner therefore maintains that the scrap steel should be valued as bars under HTS category 7214.50. However, if the Department continues to use HTS category 7204.41, Petitioner argues that the Department should take into account the scrap market data discussed above and double the unit value we derive from the import statistics. Petitioner further notes that the Department has never verified TMC's use of railroad wheels in the production process for certain HFHTs.

Respondents argue that the Department used the correct HTS category to value the scrap steel input and oppose Petitioner's suggestion that the average import unit value be doubled to reflect the value of the scrap railroad wheels. Respondents contend that the statute requires the Department to use surrogate values when they are available, not U.S. experience. In addition, respondents oppose HTS category 7214.50, the input classification that Petitioner advocates, because it does not include used railroad wheels and rails. Respondents argue in addition that Petitioner made no timely request that the Department conduct a verification of TMC.

Department's Position

Based on the arguments raised by the parties, subsequent to the preliminary review results, we identified a new value for scrap which may more closely resemble the production input actually used by respondents. This value, HTS category 7204.49, encompasses heavier scrap steel than the category previously used. This category is significantly closer to the scrap railroad wheels and rails that the Respondents use than the mill waste, turnings, and shavings that are classified under HTS category 7204.41. *See Memorandum to the File regarding Selection of Scrap Steel*, dated June 7, 1999.

Comment 10: NME Shipments

The Respondents claim that the Department made a clerical error when we included imports from the Democratic People's Republic of Korea (the DPRK) but not imports from the Republic of Korea (the ROK) in the Indian import statistics used to value certain FOPs for HFHTs.

Department's Position

We agree with the Respondents that an error occurred when we inadvertently included import data for shipments from the DPRK, but omitted the import data for shipments from the ROK in establishing factor values. It is the Department's practice to exclude from the import data used to value FOP import information pertaining to NMEs. Consequently, the Department has included the import data from the ROK and omitted the import data from the DPRK in these final review results.

Comment 11: Ocean Freight Rate for SHGC

Respondents claim that the Department should have used market value ocean freight rates for all SHGC shipments since it represents the best information available. Instead, the Department used surrogate value ocean freight rates for all shipments except one. The one exception concerned a shipment by SHGC that was transported by a market economy vendor and paid for by SHGC using a market economy currency. It is the market economy rates used for this shipment that Respondents argue the Department should use to value all ocean freight for SHGC.

Petitioner did not comment on this issue.

Department's Position

We disagree with the Respondents. Record evidence indicates that, with one exception, SHGC used NME carriers for its shipments. Since, with this one exception, SHGC did not use a market economy vendor or pay market economy prices for its shipments, we appropriately used surrogate values for all but this one shipment. This is consistent with our longstanding practice of using actual prices only when the NME producer (1) sources an input from a market economy country; and (2) pays for the input in a market economy currency. *See, e.g., Final Determination of Sales at Less than Fair Value: Chrome Plated Lug Nuts From the People's Republic of China*, 56 FR 46153 (September 10, 1991); *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China*, 56 FR 55271, 55274–75 (October 25, 1991); *Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 59 FR 58818, 58822–23 (November 15, 1994); *Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China*, 60 FR 22359, 22366 (May 5, 1995); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 65527, 65553 (December 13, 1996).

We also disagree with Respondents' claim that the one market economy currency transaction is the "best available information" for valuing the remaining NME transactions because that value reflects the "actual" value of ocean freight. This contention is without merit. Respondents have not suggested why, nor provided any information to support the argument that, this one market economy transaction is a better surrogate value than the value we used from a comparable economy, as is our normal practice.

Comment 12: The Surrogate Value for Coal

The Respondents argue that the Department should abandon the data source it used to price coal and value this input using the more contemporaneous Indian import statistics for coal imported during the POR. Respondents note that the Department relied on Indian import statistics for valuing coal expenditures in the 96–97 *Preliminary Results of Antidumping Duty Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China*, 63 FR 60299 (November 9, 1998) (*Helical Spring Lock Washers*). Thus,

Respondents claim that the Department should do the same here.

Petitioner did not comment on this issue.

Department's Position

We disagree with Respondents. Respondents cite to an earlier review result in another proceeding as support for their claim that the Department should use Indian import statistics to value coal. However, the Department's decision on factor valuation is based on the best information available in each review segment. In this case, we used information from the International Atomic Energy Agency's Publication, *Energy Prices and Taxes*, Second Quarter 1998, to value coal because the publication provided values for coal on a more specific basis. In particular, this publication provided values for coal used in industrial applications. The Indian import statistics for coal that Respondents recommend do not distinguish between coal used for household and industrial applications. Because the use of coal in HFHT production is an industrial application, we believe the value for coal used in industrial applications is more specific and more reflective of this factor's value.

Comment 13: The Surrogate Value for Cartons

Respondents argue that the Department should use the most recent Indian import statistics to value cartons even though the statistical reporting unit for more recent imports under this HTS category is no longer kilograms, the unit Respondents used for this production factor. Respondents argue that these data are more contemporaneous.

Petitioner did not comment on this issue.

Department's Position

We disagree. Respondents reported their carton data on a per kilogram basis. In order to accurately value this production factor, we use data that are reported on a per kilogram basis. As a result, for these final results, the Department used Indian import statistics for cartons from an earlier time period, February 1995, when the statistical reporting unit for the HTS category in question was still kilograms. As we discussed in the *HFHTs Prelims*, we adjusted these data using the wholesale price indices for India reported in the IMF's publication, *International Financial Statistics*, to account for price differences between the period of the FOP data and the POR.

Comment 14: Truck Freight

The Respondents claim that the Department double-counted the truck freight expense, by including both mileage and factory overhead in its factor valuation. Respondents suggest that, where a company uses its own trucks, the Department should simply assume these expenses are included as part of a company's factory overhead. In the alternative, Respondents argue that the Department should use the *Times of India* truck rate for all domestic truck transportation, rather than using this rate only in those instances when transportation was provided by company-operated trucks. While Respondents acknowledge that the *Times of India* truck rate covers company-operated trucks, not non-company operated trucks, they nonetheless cite *Helical Spring Lock Washers*, noting that in that case, the Department used the *Times of India* rate for all domestic truck transportation.

Department's Position

We disagree with Respondents. First, Respondents have provided no evidence to demonstrate that truck expenses are already included in factory overhead. Second, the Department treats the cost of operating the company's own vehicles as a separate, distinguishable expense from the costs related to use of non-company operated trucks. We used the *Times of India* rate to value the cost of a company-operated truck because this is the most appropriate surrogate value. For non-company operated trucks, *i.e.*, the purchase of freight delivery services in the PRC, we used information contained in an August 1993 embassy cable, which we have placed on the record of these reviews, describing the cost of truck transportation for an Indian company located in Bombay used in the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China* (58 FR 48833). We also disagree that Helical *Spring Lock Washers* supports using company-operated truck rates for valuing all truck transportation. In that review segment the Department used only company-operated truck rates to value truck transportation because the company used only company-operated trucks during the POR.

Comment 15: Selling, General, and Administrative Expenses (SG&A), Factory Overhead, and Profit

Respondents claim that the surrogate values used for calculating SG&A, factory overhead, and profit were from large industries and therefore not appropriate for the small companies engaged in producing the subject material. Citing *Helical Spring Lock Washers*, Respondents argue that despite the Department's practice of using the most contemporaneous data available, Commerce should use the data for smaller companies from other reviews in this case because these data are more representative of the business conditions in China and the industry producing HFHTs.

Petitioner argues that the Department should maintain the use of the current surrogate values for SG&A, factory overhead, and profit, since they are more contemporaneous.

Department's Position

We agree with the Respondents. For these final review results we valued the factors for factory overhead, SG&A, and profit using the surrogate data employed for these factors in *Helical Spring Lock Washers*. More specifically, these data were derived from the *Reserve Bank of India Bulletin*, a publication that we have placed on the record of this review and reflects the experience of companies from smaller industries. The PRC producers subject to this review are small producers. Thus, the surrogate data used in *Helical Spring Lock Washers* is more appropriate for valuing SG&A, factory overhead, and profit, because it is more reflective of the business experience of small industries, and therefore, the HFHTs' sector.

Final Results of the Reviews

As a result of our reviews, we have determined that the following margins exist for the period February 1, 1997 through January 31, 1998:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Huarong General Group Corporation		
Bars/Wedges	2/1/97–1/31/98	1.27
Axes/Adzes	2/1/97–1/31/98	18.72
Liaoning Machinery Import & Export Corporation		
Bars/Wedges	2/1/97–1/31/98	0.00

Manufacturer/exporter	Time period	Margin (percent)
Tianjin Machinery Import & Export Corporation		
Hammers/Sledges	2/1/97–1/31/98	0.14
Picks/Mattocks	2/1/97–1/31/98	0.00
Bars/Wedges	2/1/97–1/31/98	47.88
Axes/Adzes	2/1/97–1/31/98	18.72
PRC-wide rates		
Axes/Adzes	2/1/97–1/31/98	18.72
Bars/Wedges	2/1/97–1/31/98	47.88
Hammers/Sledges	2/1/97–1/31/98	27.71
Picks/Mattocks	2/1/97–1/31/98	98.77

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), where we analyzed and used a company's response in issuing these final review results, we have calculated an importer-specific duty assessment rate by dividing the total amount of dumping margins calculated for sales to each importer by the total number of units of those same sales sold to that importer. The unit dollar amount will be assessed uniformly against each unit of merchandise of that specific importer's entries during the POR. As discussed above, SMC and FMEC did not justify receiving separate rates. They are covered by the PRC-wide rates for the different classes or kinds of HFHTs. Where a rate is based on FA, this rate will be uniformly applied to all imports of that merchandise. In accordance with 19 CFR 351.106(c)(2), we also will instruct Customs to liquidate without regard to antidumping duties any entries for which the importer-specific antidumping duty assessment rate is *de minimis, i.e.*, less than 0.5 percent. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following cash deposit requirements will be effective upon publication of this notice of final results of reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates (SHGC, LMC, and TMC) will be the rates stated above for those firms and for the classes or kinds of HFHTs listed above; (2) for any previously reviewed PRC and non-PRC exporter with a separate rate, (including those companies and products where we terminated the review), the cash deposit rate will be the company-and product-specific rate established for the most recent period; (3) for all other PRC exporters, including SMC and FMEC, which failed to justify receiving separate rates in this segment of the proceeding, the cash deposit rates will be the product-specific PRC-wide rates as stated above; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the product-specific rates applicable to the PRC supplier of that exporter. These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double the amount of antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: August 4, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–20739 Filed 8–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Postponement of Time Limit for Countervailing Duty Investigation: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of time limit for preliminary determination of countervailing duty investigation.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determination in the countervailing duty investigation of certain cold-rolled flat-rolled carbon-quality steel products from Brazil because we deem this investigation to be extraordinarily complicated, and determine that additional time is necessary to make the preliminary determination.

EFFECTIVE DATE: August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein at (202) 482–0984 or Javier Barrientos at (202) 482–2849, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Postponement

On June 21, 1999, the Department of Commerce (the Department) initiated a countervailing duty investigation of certain cold-rolled flat-rolled carbon-quality steel products from Brazil. *See Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Flat-*

Rolled-Carbon-Quality Steel Products from Brazil, Indonesia, Thailand and Venezuela, 64 FR 34201 (June 25, 1999). The preliminary determination currently must be issued by August 25, 1999. Respondents have indicated that they will be cooperating in the investigation. In November 1998, the Department issued new countervailing duty regulations (*see, Countervailing Duties; Final Rule* 63 FR 65341 (November 25, 1998), which have new provisions that are applicable in this case, particularly with respect to equityworthiness, creditworthiness and discount rates. Accordingly, as detailed in the August 4, 1999 Memorandum to Robert S. LaRussa, Assistant Secretary for Import Administration (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), we deem this investigation to be extraordinarily complicated by reason of the novelty of the issues presented, and determine that additional time is necessary to make the preliminary determination. Therefore, pursuant to section 703(c)(1) of the Tariff Act of 1930, as amended ("the Act"), we are postponing the preliminary determination in this investigation to no later than September 27, 1999. This notice is published pursuant to section 703(c)(2) of the Act.

Dated: August 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–20734 Filed 8–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 7, 1999, the Department of Commerce ("the Department") published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products ("lead bar") from the United Kingdom for the period January 1, 1997 through December 31, 1997. The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Stephanie Moore, Group II, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 C.F.R. 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers British Steel plc./British Steel Engineering Steels Limited (formerly United Engineering Steels Limited). This review also covers the period January 1, 1997 through December 31, 1997 and nine programs.

Since the publication of the preliminary results on April 7, 1999 (64 FR 16920), the following events have occurred. We invited interested parties to comment on the preliminary results. On May 7, 1999 case briefs were submitted by British Steel Engineering Steels Limited ("BSES"), which exported to the United States during the review period ("respondent"), and Inland Steel Bar Co. ("petitioner"). On May 12, 1999 rebuttal briefs were submitted by BSES and Inland Steel Bar Co.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 C.F.R. Part 351, (1998) unless otherwise indicated.

Scope of the Review

Imports covered by this review are hot-rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* ("HTSUS") Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellarium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7213.91.30.00, 45.00. 60.00; 7213.99.00; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; 7214.91.00; 7214.99.00 and 7228.30.80.00, 80.50. Although the HTSUS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this proceeding is dispositive.

Subsidies Value Information

Change in Ownership

(I) Background

On March 21, 1995, British Steel plc ("BS plc") acquired all of Guest, Keen & Nettlefolds' ("GKN") shares in United Engineering Steels ("UES"), the company which produced and exported the subject merchandise to the United States during the original investigation. Thus, UES became a wholly-owned subsidiary of BS plc and was renamed British Steel Engineering Steels ("BSES").

Prior to this change in ownership, UES was a joint venture company formed in 1986 by British Steel Corporation ("BSC"), a government-owned company, and GKN. In return for shares in UES, BSC contributed a major portion of its Special Steels Business, the productive unit which produced the subject merchandise. GKN contributed its Brymbo Steel Works and its forging business to the joint venture. BSC was privatized in 1988 and now bears the name BS plc.

In the investigation of this case, the Department found that BSC had received a number of nonrecurring subsidies prior to the 1986 transfer of its Special Steels Business to UES. *See Final Affirmative Countervailing Duty*

Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom, 58 FR 6237, 6243 (January 27, 1993) ("*Lead Bar*"). Further, the Department determined that the sale to UES did not alter these previously bestowed subsidies, and thus the portion of BSC's pre-1986 subsidies attributable to its Special Steels Business transferred to UES. *Lead Bar*, 58 FR at 6240.

In the 1993 certain steel products investigations, the Department modified the allocation methodology developed for *Lead Bar*. Specifically, the Department stated that it would no longer assume that all subsidies allocated to a productive unit follow it when it is sold. Rather, when a productive unit is spun-off or acquired, a portion of the sales price of the productive unit represents the reallocation of prior subsidies. *See* the General Issues Appendix ("*GIA*"), appended to the *Final Countervailing Duty Determination; Certain Steel Products From Austria*, 58 FR 37217, 37269 (July 9, 1993) ("*Certain Steel*"). In a subsequent Remand Determination, the Department aligned *Lead Bar* with the methodology set forth in the "Privatization" and "Restructuring" sections of the *GIA*. *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Remand Determination* (October 12, 1993) ("*Remand*").

On March 21, 1995, BS plc acquired 100 percent of UES. In determining how this change in ownership affects our attribution of subsidies to the subject merchandise, we relied on section 771(5)(F) of the Act, which states that a change in ownership does not require a determination that past subsidies received by an enterprise are no longer countervailable, even if the transaction is accomplished at arm's length. The Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) ("SAA"), explains that the aim of this provision is to prevent the extreme interpretation that the arm's length sale of a firm automatically, and in all cases, extinguishes any prior subsidies conferred. While the SAA indicates that the Department retains the discretion to determine whether and to what extent a change in ownership eliminates past subsidies, it also indicates that this discretion must be exercised carefully by considering the facts of each case. SAA at 928.

In accordance with the Act and the SAA, we examined the facts of BS plc's acquisition of GKN's 50 percent ownership stake in UES, and we determined that the change in ownership does not render previously bestowed subsidies attributable to UES no longer countervailable. However, we also determined that a portion of the purchase price paid for UES is attributable to its prior subsidies. Therefore, we reduced the amount of the subsidies that "traveled" with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 62 FR 53306 (October 14, 1997) ("*Lead Bar 95 Final Results*") and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 16555 (April 7, 1997) ("*Lead Bar 95 Preliminary Results*"). To calculate the amount of UES's subsidies that passed through to BS plc as a result of the acquisition, we applied the methodology described in the "Restructuring" section of the *GIA*. *See GIA*, 58 FR at 37268–37269. This determination is in accordance with our changes in ownership finding in *Final Affirmative Countervailing Duty Determination; Pasta From Italy*, 61 FR 30288, 30289-30290 (June 14, 1996), and our finding in the 1994 administrative review of this case, in which we determined that "[t]he URAA is not inconsistent with and does not overturn the Department's *General Issues Appendix* methodology or its findings in the *Lead Bar Remand Determination.*" *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377, 58379 (November 14, 1996).

With the acquisition of UES, we also determined that BS plc's remaining subsidies are attributable to the subject merchandise, now produced by BS plc's wholly-owned subsidiary, BSES. Where the Department finds that a company has received untied countervailable subsidies, to determine the countervailing duty rate, the Department attributes those subsidies to that company's total sales of domestically produced merchandise, including the sales of 100-percent-owned domestic subsidiaries. If the subject merchandise is produced by a subsidiary company, and the only subsidies in question are the untied subsidies received by the parent company, the countervailing duty rate calculation for the subject merchandise is the same as described above. Similarly, if such a company purchases another company, as was the case with BS plc's purchase of UES, then the current benefit from the parent company's allocable untied subsidies is attributed to total sales, including the sales of the newly acquired company. *See, e.g., GIA*, 58 FR at 3762 ("the Department often treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy"). Accordingly, in the *Lead Bar 95 Final Results*, we determined that it is appropriate to collapse BSES with BS plc for purposes of calculating the countervailing duty for the subject merchandise. BSES, as a wholly-owned subsidiary of BS plc, continues to benefit from the remaining benefit stream of BS plc's untied subsidies.

In collapsing UES with BS plc, we also determined that UES's untied subsidies "rejoined" BS plc's pool of subsidies with the company's 1995 acquisition. All of these subsidies were untied subsidies originally bestowed upon BSC (BS plc). After the formation of UES in 1986, the subsidies that "traveled" with the Special Steels Business were also untied, and were found to benefit UES as a whole. *See Lead Bar 95 Final Results; Lead Bar 95 Preliminary Results.*

(II) Calculation of Benefit

To calculate the countervailing duty rate for the subject merchandise in 1997, we first determined BS plc's benefits in 1997, taking into account all spin-offs of productive units (including the Special Steel Business) and BSC's full privatization in 1988. *See Final Affirmative Countervailing Duty Determination; Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993) ("*UK Certain Steel*"). We then calculated the amount of UES's subsidies that "rejoined" BS plc after the 1995 acquisition, taking into account the reallocation of subsidies to GKN. *See Lead Bar 95 Final Results; Lead Bar 95 Preliminary Results.* As indicated above, in determining both these amounts, we followed the methodology outlined in the *GIA*. After adding BS plc's and UES's benefits for each program, we then divided that amount by BS plc's total sales of merchandise produced in the United Kingdom in 1997.

Allocation Methodology

In *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) ("*British Steel*"), the U.S. Court of International Trade ("the Court") ruled against the allocation period methodology for non-recurring subsidies that the Department has employed for the past decade, a

methodology that was articulated in the *General Issues Appendix* (58 FR at 37226). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life ("AUL") of non-renewable physical assets. For British Steel, we determined this allocation period to be 18 years. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

The Department's acquiescence to the CIT's decision in the *Certain Steel* cases resulted in different allocation periods between the *UK Certain Steel* and *Lead Bar* proceedings (18 years vs. 15 years). Moreover, UES became a wholly-owned subsidiary of BS plc in 1995. In the 1995 review of *Lead Bar*, in order to maintain a consistent allocation period across the *UK Certain Steel* and *Lead Bar* proceedings, as well as in the different segments of *Lead Bar*, we altered the allocation methodology previously used to determine the allocation period for non-recurring subsidies previously bestowed on BSC and attributed to UES. In the 1995 review, we applied the company-specific 18-year allocation period to all non-recurring subsidies. *See Lead Bar 95 Final Results*. Based on our decision in the 1995 administrative review of this order, we determine that it is appropriate in this review to continue to allocate all of BSC's non-recurring subsidies over BS plc's company-specific average useful life of renewable physical assets (*i.e.*, 18 years).

Analysis of Programs

Based upon the responses to our questionnaire and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Equity Infusions

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record shows that no new information has been placed on it which shows that this program does not continue to confer countervailable subsidies. This and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program, which is 4.07 percent *ad valorem*, remains unchanged from the preliminary results.

2. Regional Development Grant Program

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record shows that no new information has been placed on it which shows that this program does not continue to confer countervailable subsidies. This and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program, which is 0.14 percent *ad valorem*, remains unchanged from the preliminary results.

3. National Loan Funds Loan Cancellation

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record shows that no new information has been placed on it which shows that this program does not continue to confer countervailable subsidies. This and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program, which is 0.43 percent *ad valorem*, remains unchanged from the preliminary results.

II. Programs Found To Be Not Used

In the preliminary results we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. New Community Instrument Loans
B. NLF Loans
C. Regional Selective Loans
D. ECSC Article 56(b)(2) Redeployment Aid
E. Inner Urban Areas Act of 1978
F. LINK Initiative

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

III. Other Programs Examined

BRITE/EuRAM and Standards Measurement and Testing Program

BS plc received assistance under these two European Union programs to fund research and development. The European Union claimed that assistance provided under both of these programs is non-countervailable in accordance with Article 8.2(a) of the WTO Agreement on Subsidies and Countervailing Measures and section 771(5B)(B) of the Act (which provide that certain research and development subsidies are not countervailable). We determine that it is not necessary to address whether BRITE/EuRAM and the Standards Measurement and Testing Program qualify for non-countervailable treatment because combined, the assistance provided under both of these programs would result in a rate of less than 0.005 percent *ad valorem*, and thus would have no impact on the overall countervailing duty rate calculated for this POR. For the same reason we have not conducted a specificity analysis of these programs. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990, 54995–54996 (October 22, 1997).

Analysis of Comments

Comment 1: Application of the Repayment Methodology

According to the petitioner, the Department's subsidy repayment methodology is inconsistent with the countervailing duty statute, basic economic principles, and evidence produced in this proceeding. The petitioner contends that the Department's subsidy credit methodology is invalid, that there is no evidence of repayment, and that BS plc's acquisition of GKN's shares does not differ from sales of shares traded daily on the stock market. Because BSES is in the same position as BSC's special steels business in 1985, all of UES's subsidies should travel back to BS plc, subsequent to GKN's sale of UES shares to BS plc. Furthermore, the petitioner asserts that the *GIA* and *Certain Pasta from Italy* are distinguishable from the current case.

In rebuttal, the respondent points out that the petitioner's arguments with respect to the attribution of a portion of UES's subsidies to GKN have been examined by the Department in the 1995 and 1996 administrative reviews and rejected by the Department. The respondent argues that petitioner's contention that the Department's repayment methodology should not be applied to the1986 privatization of the assets of British Steel Corporation's Special Steel Division and BS plc's 1995 acquisition of GKN is not correct. The respondent asserts that these two transactions were authentic and substantive undertakings enacted for separate and important commercial reasons. The respondent further argues that these transactions were not carried

out for purposes of evading U.S. countervailing duties. Therefore, the respondent asserts that the Department has no basis to disregard the validity or substance of these transactions and there is no basis to not apply the repayment methodology.

Department's Position

Our position with respect to the petitioner's comments was outlined in detail in the 1995 review of this case. *See Lead Bar 95 Final Results*, 62 FR at 53309–10. The petitioner has not presented any new arguments or facts that would lead the Department to depart from its original conclusion with respect to this issue. Further, the Department's position was strengthened with the CAFC's holding in *British Steel*, affirming the Department's discretion to apply the repayment methodology. For these reasons, we continue to apply the repayment methodology in these final results.

Comment 2: The "Change in Ownership" Issue

BSES argues that the Department should revisit its determinations on the change-in-ownership issues in this case because the effect of the URAA amendments on change in ownership transactions is currently under consideration by the United States Court of Appeals for the Federal Circuit ("CAFC") in *Delverde, SRL* v. *United States*, 24 F.Supp.2d 314 (CIT 1998), appeal docketed, No. 99–1186 (Federal Circuit Jan. 13, 1999). The respondent states that pursuant to consent motions, the CIT has stayed the appeals of the Department's final results in both the 1995 and 1996 administrative reviews of this case pending the CAFC's decision in *Delverde*. According to the respondent, by raising this issue again in this review, BSES preserves the possibility that the final decision in *Delverde* may be applied to entries covered by this administrative review.

The respondent claims that the Department countervailed BS plc's 1997 production without any analysis of its 1988 privatization. The respondent also contends that to comply with the Change in Ownership provision of the URAA, the Department is required to conduct an analysis of the privatization transaction in order to determine whether subsidies pass through. Moreover, the respondent argues that 19 U.S.C. section 1677(5)(B) requires the Department to conduct an analysis to determine whether the privatized company has received a financial benefit from the past subsidies received by BSC. The respondent argues that current production of BS plc subject to countervailing duties is no longer subsidized because, as of the 1988 privatization, the company bears its full cost of capital to its shareholders on all funds and assets in the company. Moreover, the respondent contends that BSES received no financial benefit from the past subsidies to BSC. Therefore, the respondent argues that BSES cannot be subjected to countervailing duties based on past subsidies.

In rebuttal, petitioner points out that BSES raises no new arguments in its case brief and the Department has already addressed and ruled against these arguments in *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom ("Lead Bar 1994 Final Results")*, 61 FR 58377 (November 14, 1996). According to petitioner, the Department decided that its subsidy allocation methodology was in agreement with the URAA and used its discretion in determining the impact the change in ownership had on the countervailability of BS plc's past subsidies. The petitioner asserts that the Department has rejected BSES's claim that countervailable subsidies must be current benefits and the CAFC has also rejected similar arguments made by British Steel in *Inland Steel Bar Co.* v. *United States*, 155 F.3d 1370 (Federal Circuit 1998).

The petitioner further argues that BSES has mischaracterized the Department's analysis in the preliminary results of this review and in the investigation and previous administrative reviews of this case in claiming that the Department has refused "to consider the effect of a privatization" and has used an "irrebuttable presumption." The petitioner contends that the Department has examined the specific facts of this case and considered arguments raised by the parties in its determination of the allocation of subsidies. The petitioner cites to Comment 5 of the *Lead Bar 1994 Final Results* and asserts that the Department considered interested parties arguments regarding the "subsequent events rule" and explained that the Department did not rely on such a rule in its findings in that review. *See* 61 FR at 58381.

Department's Position

Our position with respect to the respondent's comments on these "change in ownership" issues was outlined in detail in the 1994 review of this case. *See Lead Bar 1994 Final Results*, 61 FR at 58378–58380. The respondent has not presented any new arguments or facts that would lead the Department to depart from its original conclusion with respect to this issue. For these reasons, our preliminary determination with respect to the changes in ownership remains unchanged in these final results.

Final Results of Review

In accordance with 19 C.F.R. 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As discussed in the "Change in Ownership" section of the notice, above, we are treating British Steel plc and British Steel Engineering Steels as one company for purposes of this proceeding. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy for British Steel plc/British Steel Engineering Steels (BS plc/BSES) to be 4.64 percent *ad valorem*.

We will instruct the Customs Service ("Customs") to assess countervailing duties on entries of subject merchandise from BS plc/BSES during the POR at 4.64 percent *ad valorem*. The Department will also instruct Customs to collect a cash deposit of estimated countervailing duties of 4.64 percent of the f.o.b. invoice price on all shipments of the subject merchandise from BS plc/BSES entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 C.F.R. 351.213(b). Pursuant to 19 C.F.R. 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company cannot change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-

reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See, Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 60 FR 54841 (October 26, 1995). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. § 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: August 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–20736 Filed 8–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, US Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting from 9:30 a.m. to 3 p.m. on August 26, 1999. The ETTAC was created on May 31, 1994, to advise the U.S. government on policies and programs to expand U.S. exports of environmental products and services.

Date and Place

August 26, 1999. The meeting will take place in Room 6800 of the Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The plenary meeting will include an update of the WTO ATL process, a guest speaker on the topic of European environmental support at the WTO and review the objectives and agendas of its subcommittee working groups: Market Access, Trade Impediments, Government Resources, Finance, Water, and Energy.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jane Siegel, Department of Commerce, Office of Environmental Technologies Exports. Phone: 202–482–5225.

Dated: August 3, 1999.

E. Sage Chandler,

Office of Environmental Technologies Exports.

[FR Doc. 99–20649 Filed 8–10–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080599A]

ICCAT Advisory Committee; Summer Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces an August 1999 workshop on ICCAT minimum sizes. More information on the August workshop can be found in the **DATES** and **SUPPLEMENTARY INFORMATION** sections of this notice.

DATES: The Advisory Committee minimum size workshop will be held from 1:00 p.m. to 6:00 p.m. on August 24, 1999, and from 8:30 a.m. to 12:00 p.m. on August 25, 1999.

ADDRESSES: The Advisory Committee workshop will be held at the Holiday Inn Silver Spring, located at 8777 Georgia Avenue, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran or Kimberly Blankenbeker at 301–713-2276.

SUPPLEMENTARY INFORMATION: The August workshop of the Advisory Committee will examine the efficacy of minimum sizes as conservation and management measures for ICCAT species. It will provide a forum to critically review the application of minimum sizes to ICCAT species, including a discussion of possible alternative management measures and other issues as deemed appropriate. The first day of the meeting is expected to be composed of presentations by invited speakers. Committee discussions will take place on the second day. There will be no opportunity for public comment at this workshop.

The public is reminded that NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the meeting, an appropriate representative will explain the ground rules. Attendees are expected to respect these rules, and if they do not, they will be asked to leave the meeting.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patrick E. Moran at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: August 5, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20731 Filed 8–6–99; 3:28 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072899A]

Marine Mammals; File No. 466B

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Scott Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, MA 02110–33099, has been issued an amendment to scientific research Permit No. 1014.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On June 21, 1999, notice was published in the **Federal Register** (63 FR 33056) that an amendment of Permit No. 1014, issued August 29, 1996 (61 FR 51688), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The amendment authorizes the Holder to conduct acoustic activities on right whales.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 3, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–20730 Filed 8–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Linden Innovative Research LLC (hereafter Linden) a private, limited liability company doing business in Fairfax County, VA, an exclusive license in any right, title, and interest the Air Force has in United States Patent No. 5,719,794 issued February 17, 1998 and filed in the name of Air Force employee Edward E. Altshuler and non-Air Force inventor Derek S. Linden for "Process for the Design of Antennas Using Genetic Algorithms."

An exclusive license to patent described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Patent Attorney, SAF/GCQ, 1740 Air Force Pentagon, Washington, D.C. 20330–1740, (703) 588–5091.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–20623 Filed 8–10–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Secretarial Authorization for a Member of the Department of the Navy To Serve on the Board of Directors, Navy-Marine Corps Relief Society

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: In accordance with 10 U.S.C. 1033, the Secretary of the Navy has authorized Rear Admiral M. E. Finley, SC, USN, a member of the Department of the Navy, to serve without compensation on the board of directors of the Navy-Marine Corps Relief Society.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mike Edwards, JAGC, USN, Office of the Judge Advocate General, Administrative Law Division, (703) 604–8228.

(Authority: 10 U.S.C. 1033(c))

Dated: August 3, 1999.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–20751 Filed 8–10–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant an Exclusive Patent License; Environmental Directions, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives of its intent to grant to Environmental Directions, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government-owned inventions described in U.S. Patent No. 5,449,553 entitled "Nontoxic Antifouling Systems" issued September 12, 1995 and U.S. Patent No. 5,593,732 entitled "Nontoxic Antifouling Systems" issued January 14, 1997; in the field of manufacture and application of fouling release coating to boat and ship hulls and power plant cooling tunnels.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, no later than October 12, 1999.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: August 3, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–20752 Filed 8–10–99; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference and public hearing on Wednesday, August 18, 1999. The hearing will be part of the Commission's regular business meeting. Both the conference and business meeting are open to the public and will be held in the Goddard Conference Room of the Commission's offices at 25

State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. and will include discussions of coordinated drought responses and a proposed Commission-Corps of Engineers' drought storage agreement; the *Flowing Toward the Future* report and Governors' Summit; establishment of a watershed council; and the strategy for resolving interstate flow management issues in the Delaware River Basin.

In addition to the subjects summarized below which are scheduled for public hearing at the 1:00 p.m. business meeting, the Commission will also address the following: Minutes of the June 23, 1999 business meeting; announcements; report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; and public dialogue.

The subjects of the hearing will be as follows:

Possible Drought Emergency Action.

The Commission may consider whether current and developing conditions of water supply and demand require drought related actions. The purpose of this hearing is to permit the public to comment on these matters and to make any suggestions or recommendations concerning possible Commission actions. The Commission will consider a resolution to ratify and approve the temporary modification of the Trenton flow objective and may also consider possible amendment of Commission Resolution No. 88–22 (Revised) or such other drought related actions as the Commission finds to be necessary.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact.

1. *Friskies Petcare Division D–84–2 RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 25.92 million gallons (mg)/30 days of water to the applicant's pet food manufacturing facility from Well Nos. 2, 4, 5 and 6. Commission approval on April 26, 1989 was extended to 10 years. The applicant requests that the total withdrawal from all wells remain limited to 25.92 mg/30 days. The project is located in South Whitehall Township, Lehigh County, Pennsylvania.

2. *City of Newark D–90–110 CP (G) (Amendment No. 1).* An amendment to revise Docket No. D–90–110 (G) CP to ratify emergency actions taken by the Executive Director due to drought conditions and to require the preparation and submission of an Integrated Water Resources Supply Plan by the City of Newark in cooperation with other New Castle County Public suppliers and the Delaware Department of Natural Resources and Environmental Control. The project is located in Newark, Delaware.

3. *United Water Delaware D–96–50 CP (Amendment No. 1).* An amendment to revise Docket No. D–96–50 CP to ratify emergency actions taken by the Executive Director due to drought conditions and to require the preparation and submission of an Integrated Water Resources Supply Plan by United Water Delaware in cooperation with other New Castle County public suppliers and the Delaware Department of Natural Resources and Environmental Control. The project is located in New Castle County, Delaware.

4. *Artesian Water Company, Inc. D–97–48 CP.* An application for approval of a ground water withdrawal project to supply up to 150 mg/30 days of water to the applicant's Southern Distribution System from 14 new and existing wells in nine wellfields, and to limit the withdrawal from all Southern Distribution System wells to 150 mg/30 days. The project is located south of the Chesapeake & Delaware Canal, New Castle County, Delaware.

5. *Buckingham Township D–98–49 CP.* A project to expand the applicant's existing Furlong sewage treatment lagoon system from 68,000 gallons per day (gpd) to 116,825 gpd. Lagoon treatment capacity will be increased along with associated spray field modifications and expansions to accommodate an increase of spray irrigation discharge. A pump station and force main will convey treated effluent to a storage pond at the Look-A-Way Golf Course for irrigation use and to allow for an alternate stream discharge from the pond to Mill Creek. All facilities are located in Buckingham Township, Bucks County, Pennsylvania. The project will continue to serve residential development in Buckingham Township.

6. *Bucks County Water & Sewer Authority D–99–13 CP.* An application to rerate the Harvey Avenue sewage treatment plant (STP) from 0.9 million gallons per day (mgd) to 1.2 mgd. Located at the end of Harvey Avenue in Doylestown Borough, Bucks County, Pennsylvania, the STP will continue to serve Doylestown Township and Doylestown Borough. Following high quality secondary treatment, effluent will continue to discharge to Cooks Run, a tributary of Neshaminy Creek.

7. *Borough of Kennett Square D–99–17 CP.* An application to modify the applicant's existing 1.1 mgd STP by replacing the existing trickling filter system with an oxidation ditch system designed to treat the same flow. The proposed modification project will also include an ultraviolet light disinfection system and post aeration. The STP is located in Kennett Square Township off Chindler Mill Road approximately 1,500 feet west of the southwest border of the Borough of Kennett Square and will continue to discharge to West Branch Red Clay Creek approximately 3.3 river miles above its confluence with Red Clay Creek.

8. *Saville Rustin Water Company D–99–31 CP.* An application for approval of an increase in ground water withdrawal from 3.18 mg/30 days of water to 7.5 mg/30 days by providing an additional supply of up to 4.32 mg/30 days of water to the applicant's distribution system from new Well No. 5, and to limit the withdrawal from all wells to 7.5 mg/30 days. The project is located in Lehman Township, Pike County, Pennsylvania.

9. *TPT Partners, L.P. D–99–41.* An application for approval of a ground water withdrawal project to supply up to 3.8 mg/30 days of water for irrigation of the applicant's Bellewood Golf Course from new Well Nos. 1 and 2, and to limit the withdrawal from all wells to 3.8 mg/30 days. The project is located in North Coventry Township, Chester County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who would like to attend the hearing should contact the Secretary at (609) 883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the DRBC may accommodate your needs.

Dated: August 3, 1999.

Anne M. Zamonski,

Acting Secretary.

[FR Doc. 99–20627 Filed 8–10–99; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.234P]

Projects With Industry; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The Projects With Industry (PWI) program creates and expands job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process. PWI projects identify competitive job and career opportunities and the skills needed to perform those jobs, create practical settings for job readiness and training programs, and provide job placements and career advancement services.

Eligible Applicants: Employers, nonprofit agencies or organizations, designated State units, labor unions, community rehabilitation program providers, trade associations, Indian tribes or tribal organizations, and other agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities.

Only applicants that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program may apply.

SUPPLEMENTARY INFORMATION: Applications for funding under this notice will be used to support grants in FY 2000. The Secretary may consider supporting approved applications submitted in FY 2000 for grant support in FY 2001.

Deadline for Transmittal of Applications: January 10, 2000.

Deadline for Intergovernmental Review: March 10, 2000.

Applications Available: October 8, 1999.

The Administration has requested $22,071,000 for this program for FY 2000. However, the actual level of funding is contingent upon final congressional action.

Available Funds: $2,071,694.

Estimated Range of Awards: $158,000-$238,000.

Estimated Average Size of Awards: $198,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 379.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses the selection criteria in 34 CFR 379.30. The selection criteria to be used for this competition will be provided in the application package.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1

Projects that demonstrate effective collaboration with the "One-Stop" delivery system established under title I of the Workforce Investment Act of 1998 to assist individuals with disabilities to secure job skills training and employment opportunities in the competitive labor market. Proposed PWI service delivery models should promote the delivery of services to individuals with disabilities through local "One-Stop" centers. Applicants who wish to address this invitational priority may get further information about the "One-Stop" delivery system by calling the Department of Labor at (202) 219–8395, Ext. 182.

Invitational Priority 2

Projects that demonstrate effective collaboration with the "Welfare-to-Work Program" administered by the U. S. Department of Labor to serve and secure competitive placement opportunities for persons with disabilities who are participants in this program. Applications should demonstrate a project's capacity to address issues unique to individuals with disabilities transitioning from welfare to work. Applicants who wish to address this invitational priority may get further information at the Department of Labor web site at:

http://wtw.doleta.gov/documents/census/

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its web site (http://www.ed.gov/pubs/edpubs/html) or its E-mail address (edpubs@inet.ed.gov).

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–9817. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at 1–877–576–7734. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Martha Muskie or Mary Jane Kane, U.S. Department of Education, 400 Maryland Avenue, SW., room 3320 Switzer Building, Washington, DC 20202. Telephone (202) 205–3293 for Martha Muskie. Telephone (202) 205–8206 for Mary Jane Kane. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 777b.

Dated: August 6, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–20756 Filed 8–10–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Orders Granting, Transferring and Vacating Authorizations To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, transferring and vacating natural gas import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 5, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1499	07–01–99	COMGAS, S. DE R.L. DE C.V. 99–49–NG.	1 Tcf	1 Tcf	Import and export from and to Mexico over a two-year term beginning on date of first delivery.
165–A	07–01–99	Medpath Energy Corp. (Successor to Fiscus Inc.) 99–50–NG and ERA Docket No. 86–64–NG.			Transfer of blanket authority to affiliate.
1500	07–02–99	Mieco Inc. 99–47–NG	13 Bcf	13 Bcf	Import and export from and to Canada over a two-year term beginning on the date of first delivery.
1501	07–09–99	Crestar Energy Marketing Corp. 99–51–NG.	50 Bcf		Import and export from and to Canada up to a combined total beginning on July 12, 1999, and extending through July 11, 2001.
1438–B	07–12–99	IDACORP, Energy Solutions L.P. (Successor to Idaho Power Company) 98–91–NG.			Transfer of blanket authority to subsidiary.
1502	07–12–99	Texas-Ohio Energy, Inc. 99–52–NG	100 Bcf		Import from Canada beginning on July 11, 1999, and extending through July 12, 2001.
1503	07–26–99	Wisvest Corporation, Androscoggin Energy, Inc. and Polsky Energy Corporation of Maine, Inc. 99–53–NG.	2,500 Bcf		Import and export from and to Canada up to combined total beginning on August 1, 1999, and extending through July 31, 2001.
498–B	07–29–99	Encogen Four Partners, L.P. 90–11–NG.			Vacate long-term authority.

DOE/FE; Authority

[FR Doc. 99–20659 Filed 8–10–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11689–000]

Alpine Power Company; Notice Granting Late Intervention

August 5, 1999.

On March 14, 1999, the Commission issued a notice of the application for preliminary permit filed by Alpine Power Company for the Stuyvesant Falls Hydroelectric Project, to be located on Kinderhook Creek, in Columbia County, New York. The notice established July 13, 1999, as the deadline for filing motions to intervene.

On July 16, 1999, the New York State Department of Environmental Conservation filed a late motion to intervene. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice any other party to it. Therefore, pursuant to Rule 214,[1] the late motion to intervene is granted, subject to the Commission's regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20769 Filed 8–10–99; 8:45 am]
BILLING CODE 6717–01–M

[1] 18 CFR 385.214.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–398–004]

Caprock Pipeline Company; Notice of Tariff Filing

August 4, 1999.

Take notice that on August 2, 1999, Caprock Pipeline Company (Caprock), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff Sheet, with an effective date of August 1, 1999:

Third Sub Sixth Revised Sheet No. 29A

Caprock states that the filing is being made to comply with the Commission's letter order issued July 28, 1999 in Docket No. RP99–398–002 in order to add Standard 1.3.18 on Tariff Sheet No. 29A.

Caprock respectfully requests that the Commission grant any waiver of its regulations that the Commission my deem necessary for acceptance of this filing.

Caprock states that copies of this filing have been served upon all affected firm customers of Caprock and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20766 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000]

Regional Transmission Organizations; Order Granting Extension of Time

Issued August 5, 1999.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

On July 28, 1999, Cinergy Services, Inc. (Cinergy), on behalf of its operating companies, Cincinnati Gas & Electric Company and PSI Energy, Inc., filed a motion for an extension of time within which to submit initial comments in response to the Commission's Notice of Proposed Rulemaking to facilitate the formation of Regional Transmission Organizations, issued May 13, 1999, in this proceeding. Cinergy requests a one-week extension, from August 16, 1999 to August 23, 1999, to file initial comments in this proceeding in light of the unavailability of key management personnel due to recent severe heat throughout the Midwest and its effect on power supply and transmission system operations.

Upon consideration, we are persuaded that Cinergy has provided sufficient justification to grant an extension from August 16, 1999 to August 23, 1999 for the filing of initial comments by Cinergy and other interested persons. While we grant the motion, we nevertheless encourage all interested persons to file their initial comments as early as possible.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20639 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–23–000]

Garden Banks Gas Pipeline, L.L.C.; Notice of Filing

August 5, 1999.

Take notice that Garden Banks Gas Pipeline, L.L.C. filed standards of conduct on July 28, 1999, under Order Nos. 497 *et seq.*[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 or 385.214 (1998)). All such motions to intervene or protest should be filed on or before August 20, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20762 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Reg. 1986–1990 ¶ 30,260 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denies*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–347–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

August 5, 1999.

Take notice that on August 2, 1999, Kern River Gas Transmission Company (Kern River), tendered for filing to be a part of its FERC Gas Tariff, First Revised Volume 1, Substitute Sixth Revised Sheet No. 72, to be effective August 1, 1999.

On June 22, 1999, Kern River tendered for filing and acceptance tariff sheets to implement the revised and new business standards promulgated by the Gas Industry Standards Board (GISB) and adopted by the Commission in Order No. 587–K. In its July 20 letter order, the Commission accepted the tariff sheets, subject to Kern River filing a revised Sheet No. 72, including the footnote and footnote reference that are a part of GISB Standard No. 1.3.14. The purpose of this filing is to revise Sheet No. 72.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20775 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–407–003]

KN Wattenberg Transmission LLC; Notice of Tariff Filing

August 5, 1999.

Take notice that on July 30, 1999, KN Wattenberg Transmission LLC (KNW), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Substitute First Revised Sheet No. 44A
Second Substitute third Revised Sheet No. 67

KNW states that it is submitting the filing to correct the GISB Standard 2.3.9 (Version 1.3) by placing it in "by reference" tariff sheet.

KNW states that copies of its filing has been served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20779 Filed 8–10–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–595–000]

Mission Pipeline Company; Notice of Petition for Declaratory Order

August 5, 1999.

Take notice that on July 30, 1999, Mission Pipeline Company (Mission), 3700 Buffalo Speedway, Suite 1100, Houston, Texas 77098, filed in Docket No. CP99–595–000 a petition pursuant to Section 1(b) of the Natural Gas Act (NGA) for a declaratory order exempting facilities being acquired by purchase from Mission Pipeline Company (Mission), located in Hidalgo County, Texas, from Commission regulation under the NGA, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Mission states that it has an agreement with Texas Eastern to purchase the facilities, consisting of Line 16–A (18.45 miles of 8-inch line) and Sublateral Line 16–A–1 (0.37 mile of 4-inch line), both located in Hidalgo County, Texas. Mission states that following acquisition of the facilities, Mission, an intrastate pipeline, will use them to receive gas within Texas by purchasing gas from wells attached to the facilities or by entering into intrastate transportation agreements. Therefore, Mission requests a determination that its facilities, services and rates be exempt from Commission jurisdiction. Mission asserts that its operations are subject to regulation by the Texas Railroad Commission. Mission explains that the facilities will remain connected to Texas Eastern's McAllen-Vidor Line, also in Hidalgo County and that no customers will lose service as a result of the request.

Texas Eastern proposes to sell the facilities to Mission because the attached reserves are being depleted and the facilities are underutilized. It is stated that between June 1998 and May 1999, 23.95 percent of the capacity of the facilities has been utilized. It is asserted that acquisition of the facilities by Mission would provide Mission with access to additional gas supplies for the intrastate market. It is further asserted that Mission anticipates tying-in additional production which would lead to increased utilization of the facilities. It is stated that Texas Eastern is concurrently filing a request for abandonment authorization for the facilities by sale to Mission.

Any questions regarding the application may be directed to Cynthia Corcoran, Attorney at Law, 4801 Woodway Drive, Suite 300 East, Houston, Texas 77056 (713) 964–2776.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 26, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropraite action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20760 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–388–001]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1999.

Take notice that on July 29, 1999, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub Fourth Revised Sheet No. 216 and Sub Original Sheet No. 217, proposed to be effective August 1, 1999.

Nautilus states that the purpose of this filing is to comply with the Commission's Letter Order issued July 26, 1999 in Docket No. RP99–388–000 whereby Nautilus was directed to reflect version 1.3 standards for all standards and definitions. The tariff sheets filed herein reflect version 1.3 for all standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20778 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2474–004]

Niagara Mohawk Power Corporation, Erie Boulevard Hydropower, L.P.; Notice Requiring Service of Motion for Late Intervention

August 5, 1999.

On October 6, 1997, the Atlantic Salmon Fish Creek Club (Club) filed a late motion to intervene in the above-captioned proceeding.[1] However, the Club's motion did not include a certificate of service, as required by Rule 2010 of the Commission's Rules of Practice and Procedure.[2] As a result, it appears that parties to the proceeding may not have been served and may not have had an opportunity to file answers to the Club's late motion.

The Club will not be required to refile its motion to intervene. However, before the Commission considers whether to grant late intervention, the Club must serve a copy of its motion on each person whose name appears on the official service list for this proceeding, and file a certificate of service with the Commission. The 15-day period for filing answers to the Club's motion will begin as of the date that the Club files its certificate of service.[3]

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20768 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

---

[1] On July 26, 1999, the Commission issued an order approving transfer of the project license from Niagara Mohawk Power Corporation to Erie Boulevard Hydropower, L.P., and substitution of Erie as the applicant in the pending relicensing proceeding for the project. The transfer has not yet been completed. 88 FERC ¶ 62,082.

[2] 18 CFR 385.2010 (1999).

[3] *See* Rule 213, 18 CFR 385.213 (1999).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–007]

Northern Natural Gas Company; Notice of Compliance Filing

August 5, 1999.

Take notice that on July 30, 1999, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective November 1, 1998:

2nd Substitute Fourth Revised Sheet No. 291
2nd Substitute Third Revised Sheet No. 292
Original Sheet No. 292A

Northern states that the above-listed tariff sheets are filed in compliance with the Commission's Order On Compliance Filings issued July 16, 1999 in Docket Nos. RP98–203, *et al.*, to clarify that the Small Customer's tolerances include the Small Customer positive daily delivery variance charge (DDVC) levels within the tolerance during critical periods.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20773 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–31–003]

Northern Natural Gas Company; Notice of Compliance Filing

August 5, 1999.

Take notice that on July 30, 1999, Northern Natural Gas Company (Northern tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective November 1, 1998 and August 1, 1999:

Second Substitute Fourth Revised Sheet No. 260
Substitute Fifth Revised Sheet No. 260

Northern states that the above-listed tariff sheets are filed in compliance with the Commission's Order issued July 16, 1999 in Docket Nos. RP99–31, *et al.*, to comply with the Commission's Order No. 587–H and the Commission's October 30, 1998 Letter Order in Docket No. RP99–31–000 addressing intra-day nominations and bumping tariff provisions.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20774 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR96–200–043]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1999.

Take notice that on July 39, 1999, Reliant Energy Gas Transmission Company (REGT), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective August 1, 1999:

First Revised Sheet No. 8B

REGT states that the purpose of this filing is to reflect an extension of and a change to an existing negotiated rate contract.

Any person desiring to protest this filing should file a protest with the Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20772 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–197–005]

Southern California Gas Company; Notice of Report of Refunds

August 5, 1999.

Take notice that on June 30, 1999, Southern California Gas Company (SoCalGas) tendered for filing its second report of refunds in Docket No. RP93–197–004.

SoCalGas states that the Second Report of Refunds reflects the additional refunds to interstate shippers (who were also end-use customers of SoCalGas) of all amounts collected through the Wheeler Ridge interconnection charge for the July 13, 1993 through December 31, 1993 period plus interest calculated pursuant to the Commission's regulations. SoCalGas states that the second refunds amount of $1,626,832.35 inclusive of interest and that such refunds were distributed by June 29, 1999.

SoCalGas states that it filed on November 24, 1998, a report showing that refunds of $1,899,994.85, including interest, were made only to those shippers who were not also end-use customers of SoCalGas during the time period in which the refund obligation arose. SoCalGas states that this second report of rate refunds shows that SoCalGas has refunded a total of $31,516,827.20, including interest, to all interstate shippers of all amounts collected through the Wheeler Ridge interconnection during the time period in which the refund obligation arose.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 12, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20770 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–596–000]

Loraine Stepenske v. Colorado Interstate Gas Company; Notice of Complaint

August 5, 1999.

Take notice that on August 3, 1999, Loraine Stepenske, P.O. Box 64, Kim, Colorado 81049, filed with the Federal Energy Regulatory Commission a complaint against Colorado Interstate Gas Company (CIG) regarding certain alleged damage done to a water well on her property in Walsenburg County, Colorado during the construction of a gas line during November and December of 1998, and an alleged loose gate installed on her property.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 23, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before August 23, 1999. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20761 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–385–001]

Steuben Gas Storage Company; Notice of Compliance Filing

August 5, 1999.

Take notice that on July 30, 1999, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheet listed below, to be effective August 1, 1999:

Substitute Third Revised Sheet No. 132B

Steuben states the attached tariff sheet is being filed in compliance with the Commission's Order issued on July 23, 1999, at Docket No. RP99–385–000.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20777 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–594–000]

Texas Eastern Transmission Corporation; Notice of Application

August 5, 1999.

Take notice that on July 30, 1999, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP99–594–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Mission Pipeline Company (Mission) pipeline facilities and appurtenances located in Hidalgo County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Texas Eastern proposes to abandon by sale to Mission the Tabasco Facilities consisting of Line 16–A (18.45 miles of 8-inch line) and sublateral 16–A–1 (0.37 mile of 4-inch line). Texas Eastern states that the facilities were installed to gain access to supplies of natural gas from production fields in Hidalgo County and are connected to Texas Eastern's McAllen-Vidor Line, also in Hidalgo County.

Texas Eastern proposes to sell the facilities to Mission because the attached reserves are being depleted and the facilities are underutilized. It is stated that between June 1998 and May 1999, 23.95 percent of the capacity of the facilities has been utilized. It is asserted that acquisition of the facilities by Mission would provide Mission with access to additional gas supplies for the intrastate market. It is further asserted that Mission anticipates tying-in additional production which would lead to increased utilization of the facilities.

It is stated that Texas Eastern and Mission have agreed on a sale price of $80,000, which is the net book value of the facilities as of October 31, 1999, plus incidental expenses not to exceed $15,000.

Texas Eastern states that Mission is willing to provide service to all producers and other parties currently utilizing the facilities, and no customers would lose service as a result of the abandonment. Texas Eastern explains that Mission is concurrently filing a request for a declaratory order to exempt the facilities from Commission regulation.

Any questions regarding the application may be directed to Steven E. Tillman, Director of Regulatory Affairs, at P.O. Box 1642, Houston, Texas 77251–1642, (713) 627–5113.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 26, 1999, file with Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene its timely filed, or if the Commission on is own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, rules otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20785 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–2–003]

Transok, LLC; Notice of Petition for Rate Approval

August 5, 1999.

Take notice that on July 23, 1999, Transok, LLC (Transok), submitted for filing a revised fuel tracker mechanism for its Traditional System. The revised method is intended to reduce year to year swings in the fuel percentage. Additionally, Transok states that the filing reflects a corrected classification of several of its compressors as transmission versus gathering. Transok proposes to reduce the current fuel percentage from 1.61% to 1.11%. Transok seeks an effective date of September 1, 1999.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed with the Secretary of the Commission on or before August 12, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20763 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR96–7–003]

Transok, LLC; Notice of Petition for Rate Approval

August 5, 1999.

Take notice that on July 23, 1999, Transok, LLC (Transok) submitted for filing a revised fuel tracker mechanism for its Anadarko System. The revised mechanism is intended to reduce year to year variations in the fuel percentage, and institutes a separate charge for low pressure compression services, capped at 2% at each stage of compression. Transok proposes to reduce the current fuel percentage from 2.09% to 0.73%. Transok seeks an effective date of September 1, 1999.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed with the Secretary of the Commission on or before August 12, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20764 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–129–005 (Phase I Remand)]

Trunkline Gas Company; Notice of Informal Settlement Conference

August 5, 1999.

Take notice that an informal settlement conference will be convened in these proceedings on August 11, 1999 at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 285.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a part must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Lorna J. Hadlock (202) 208–0737.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20771 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–354–001]

Tuscarora Gas Transmission Company; Notice of Tariff Filing

August 5, 1999.

Take notice that on July 29, 1999, Tuscarora Gas Transmission Company (Tuscarora), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective August 1, 1999:

Sub Third Revised Sheet No. 33
Original Sheet No. 33A

Tuscarora asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on July 22, 1999, in Docket No. RP99–354–000. Specifically, Tuscarora has revised Sheet No. 33 and added Sheet No. 33A to include the footnote and footnote reference for GISB Standard No. 1.3.14. Tuscarora states that copies of this filing were mailed to customers of Tuscarora and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20776 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–451–000]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

August 4, 1999.

Take notice that on July 29, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing its interruptible excess refund report for the month of October 1993.

Williams states that Article 12 of the General Terms and Conditions of its FERC Gas Tariff specifies that Williams will file an interruptible excess refund report within 30 days of a final Commission order accepting new rates. Based on the Commission's March 5, 1999, order in Docket No. RP93–109, Williams' revenue crediting mechanism set forth in Article 12 applies to the month of October 1993. Article 12 also provides that Williams will mail any refunds, including interest pursuant to Section 154.501 of the Commission's regulations, within 10 days following a final Commission order accepting the report. Williams proposes to refund approximately $1.2 million, including interest calculated through July 31, 1999.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customer sand interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 11, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://ww.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20767 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–410–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 5, 1999.

Take notice that on July 30, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 1999:

Sub. third Revised Sheet No. 175
Third Revised Sheet No. 175A
Sub. Fourth Revised Sheet No. 176
Sub. Second Revised Sheet No. 176A

Williston Basin states that the tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Letter Order issued July 22, 1999 regarding Commission Order No. 587–K issued April 2, 1999, in Docket No. RM96–1–011. The tariff sheets reflect the Gas Industry Standards Board (GISB) Version 1.3 standards adopted by the Commission in such Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20780 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC96–19–000, et al.]

California Power Exchange Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 4, 1999.

Take notice that the following filings have been made with the Commission:

1. California Power Exchange Corporation

[Docket Nos. EC96–19–000 and ER96–1663–000]

Take notice that on July 30, 1999, the California Power Exchange Corporation (CalPX), tendered for filing its annual report on the state of competition in the California markets in accordance with the Commission's October 30, 1997 order in this proceeding.

Comment date: August 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company (Minnesota) on behalf of itself and its Public Utility Subsidiaries and New Century Energies, Inc. on behalf of its Public Utility Subsidiaries

[Docket No. EC99–101–000]

Take notice that on July 30, 1999, Northern States Power Company (Minnesota) (NSP–M) on behalf of itself and its public utility subsidiaries and New Century Energies, Inc. (NCE) on behalf of its public utility subsidiaries (referred to collectively as the Applicants), tendered for filing pursuant to section 203 of the Federal Power Act (the FPA), 16 U.S.C. § 824b, Part 33 of the Commission's Regulations, 18 CFR 33, and 18 CFR 2.26, a Joint Application for an order approving the proposed merger and reorganization of NSP–M and NCE.

Applicants request all authorizations necessary to undertake a merger and reorganization pursuant to which NCE will merge with and into NSP–M, which will be renamed Xcel Energy Inc. (Xcel Energy), transfer all of the jurisdictional assets presently owned directly by NSP–M to a new subsidiary, provisionally named "New NSP Utility," and with respect to the concomitant transfer of control resulting from the Merger Transaction over the Applicants and all their respective FERC-jurisdictional facilities, including FERC-jurisdictional contracts. Subject to Commission approval, at the time of the merger NSP–M and NCE will enter into a Joint Operating Agreement and a Joint Open Access Transmission Tariff, which agreements have been filed in separate dockets.

The Applicants state that (subject to certain requests for waiver) they have submitted the information required by part 33 of the Commission's Regulations, and by the Commission's Merger Policy Statement (Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement), Order No. 592, 61 FR 68,595 (1996).(codified at 18 CFR 2.26), in support of the Application. The Applicants also represent that copies of the Application and related testimony and exhibits have been served on each of the wholesale requirements and firm transmission customers of NSP–M and NCE, and on the Arizona Corporation Commission, Colorado Public Utilities Commission, Kansas Corporation Commission, Michigan Public Service Commission, Minnesota Public Utilities Commission, New Mexico Public Regulation Commission, North Dakota Public Service Commission, Oklahoma Corporation Commission, South Dakota Public Utilities Commission, Public Utility Commission of Texas, Public Service Commission of Wisconsin, and Wyoming Public Service Commission.

Comment date: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Westbrook Power LLC

[Docket No. EG99–208–000]

Take notice that on July 30, 1999, Westbrook Power LLC, tendered for filing with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Westbrook Power is a Maine limited liability company that will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities to be located in Maine. The eligible facilities will consist of an approximately 540 MW gas and/or oil fired electric generation project and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Reliant Energy Osceola, LLC

[Docket No. EG99–209–000]

Take notice that on July 30, 1999, Reliant Energy Osceola, LLC (Reliant

Osceola), tendered for filing an application for a determination of exempt wholesale generator status, pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended (PUHCA), 15 U.S.C. § 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 365.

Reliant Osceola, an indirect wholly-owned subsidiary of Reliant Energy Power Generation, Inc., is a Delaware limited liability company that intends to construct, own and operate an electric generating facility in Osceola County, Florida. Reliant Osceola states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning and/or operating an eligible facility and selling electric energy at wholesale.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration to those that concern the adequacy or accuracy of the application.

5. South Carolina Electric & Gas Company

[Docket Nos. ER96–1085–004 and OA96–49–004]

Take notice that on July 30, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing a refund report pursuant to the Commission's April 5, 1999 Order in Docket Nos. ER96–1085–000 and OA96–1086–000. This filing represents the compliance report showing information pertaining to refunds made as required in the order.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Co., California; Independent System Operator Corp., El Segundo Power, LLC; Pacific Gas & Electric Co., Duke Energy Moss Landing, LLC, Duke Energy Oakland, LLC; San Diego Gas & Electric Co; Southern California Edison Co., Pacific Gas & Electric Co., San Diego Gas & Electric Co., Duke Energy Moss Landing, LLC, Duke and Energy Oakland, LLC

[Docket Nos. ER98–441–006, ER98–2550–003, ER98–495–006, ER98–1614–004, ER98–2145–004, ER98–2668–007, ER98–2669–006, ER98–4296–004, ER98–4300–004, ER98–496–005, ER98–2160–003, ER98–441–001, ER98–495–001, ER98–496–001, ER98–4300–001, ER98–2668–001, ER98–2669–001, ER98–4296–001, ER99–1127–005, and ER99–1128–005]

Take notice that, on July 30, 1999, Duke Energy Moss Landing, LLC and Duke Energy Oakland, LLC, tendered for filing a refund report in compliance with the Offer of Settlement filed in the above-captioned dockets on April 2, 1999 and approved by the Federal Energy Regulatory Commission (Commission) by letter order on May 28, 1999.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Yankee Atomic Power Company

[Docket No. ER98–570–001]

Take notice that on July 30, 1999, Maine Yankee Atomic Power Company (Maine Yankee), tendered for filing a compliance filing pursuant to the Commission's letter order issued June 1, 1999, in the above captioned docket. The compliance filing contains a compliance report detailing the refund amounts and calculations including a summary of the refund amounts in total for the refund period, revenue data to reflect prior, present and settlement rates in total and by individual customer, and the monthly interest computation. As required by the FERC order of June 1, 1999, the company has furnished copies of such report to the affected wholesale customers and to each state commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2270–000]

Errata Notice (August 4, 1999)

Notice of Filing (July 22, 1999)

Take notice that the Notice of Filing issued on July 22, 1999, in Docket No. ER99–3612–000, should have been issued in Docket No. ER99–2270–000.

9. Commonwealth Edison Company

[Docket No. ER99–3859–000]

Take notice that on July 30, 1999, Commonwealth Edison Company (ComEd), tendered for filing a Non-Firm Service Agreement establishing the City of Rochelle (Rochelle), as a customer under the terms of ComEd's OATT.

ComEd requests an effective date of July 20, 1999, for the service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Rochelle.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. El Dorado Energy, LLC

[Docket No. ER99–3865–000]

Take notice that on July 30, 1999, El Dorado Energy, LLC (El Dorado), tendered for filing pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and part 35 of the Commission's Regulations, 18 CFR 35, its amended FERC Electric Rate Schedule No. 1 authorizing El Dorado to make sales of ancillary services at market-based rates to the California Independent System Operator Corporation (CAISO) and to entities that are self-supplying ancillary services to the CAISO, and outside the CAISO's control area consistent with the Commission's Order in Avista Corp., 87 FERC ¶ 61,223 (1999).

El Dorado owns a 492-megawatt combined cycle generating plant in Boulder City, Nevada that is expected to commence operations in the fall of 1999. El Dorado is an exempt wholesale generator and is authorized to sell electric energy and capacity at wholesale at market-based rates.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Energy Lovett, L.L.C.

[Docket No. ER99–3869–000]

Take notice that on July 30, 1999, Southern Energy Lovett, L.L.C. (SE Lovett), tendered for filing a Master Index Purchase and Sale Agreement between Southern Company Energy Marketing L.P. and Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., and Southern Energy NY-Gen, L.L.C.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Energy NY-Gen, L.L.C.

[Docket No. ER99–3870–000]

Take notice that on July 30, 1999, Southern Energy NY-Gen, L.L.C. (SE NY-Gen), tendered for filing a Master Index Purchase and Sale Agreement between Southern Company Energy Marketing L.P. and Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., and Southern Energy NY-Gen, L.L.C., under its Market Rate Tariff accepted by the Commission in Docket No. ER99–2045–000.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Energy Bowline, L.L.C.

[Docket No. ER99–3871–000]

Take notice that on July 30, 1999, Southern Energy Bowline, L.L.C. (SE Bowline), tendered for filing a Master Index Purchase and Sale Agreement between Southern Company Energy Marketing L.P. and Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., and Southern Energy NY-Gen, L.L.C., under its Market Rate Tariff accepted by the Commission in Docket No. ER99–2044–000.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER99–3872–000]

Take notice that on July 30, 1999, the New England Power Pool (NEPOOL) Participants Committee tendered for filing revisions to Market Rules 11 and Appendix I of Market Rule 20, and a new Appendix D to Market Rule 11.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docket No. ER99–3873–000]

Take notice that on July 30, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for FPL Energy Power Marketing, Inc. and for Old Mill Power Company, and a Firm Point-to-Point Transmission Service Agreement for Constellation Power Source, Inc. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after July 1, 1999.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company; Metropolitan Edison Company; and Pennsylvania Electric Company

[Docket No. ER99–3874–000]

Take notice that on July 30, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and El Paso Power Services Company (El Paso Power), dated July 29, 1999. This Service Agreement specifies that El Paso Power has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and El Paso Power to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 29, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Carolina Power & Light Company

[Docket No. ER99–3875–000]

Take notice that on July 30, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with LG&E Energy Marketing, Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Montana Power Company

[Docket No. ER99–3876–000]

Take notice that on July 30, 1999, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with Western Area Power Administration under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Western Area Power Administration.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System and Operator Corporation

[Docket No. ER99–3879–000]

Take notice that on July 30, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 20) to the ISO Tariff. Amendment No. 20 would make certain technical changes to the ISO Tariff to correctly state the manner in which charges for one Ancillary Service will be determined following the implementation of the Rational Buyer protocol approved by the Commission in its May 26, 1999, order in Docket Nos. ER98–2843–005, *et al.*

The ISO asks for waiver of Section 35.3 of the Commission's Regulations to permit Amendment No. 20, to become effective upon implementation of the Rational Buyer protocol.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER99–3880–000]

Take notice that on July 30, 1999, Florida Power Corporation (FPC), tendered for filing an executed service agreement between El Paso Power Services Company (El Paso) and FPC for service under FPC's Cost-Based

Wholesale Power Sales Tariff (CR–1), FERC Electric Tariff, Original Volume No. 9. The executed service agreement replaces the unexecuted service agreement with El Paso that FPC filed with the Commission in this Docket on July 7, 1999.

FPC renews the request made in its July 7, 1999 filing for a June 8, 1999 effective date for the service agreement.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Atlantic City Electric Company

[Docket No. ER99–3881–000]

Take notice that on July 30, 1999, Atlantic City Electric Company (Atlantic) and the City of Vineland, New Jersey (Vineland) jointly filed an amended and restated Interconnection Agreement between Atlantic and Vineland (Interconnection Agreement). The Interconnection Agreement is necessary to conform to the most recent PJM Interconnection, LLC (PJM) Operating Agreement, the PJM Reliability Assurance Agreement and the PJM Open Access Transmission Tariff as well as accommodate the ongoing business arrangements with Vineland.

Atlantic and Vineland requested waiver of the notice of filing requirements so that the Interconnection Agreement become effective on August 1, 1999.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Public Service Corporation

[Docket No. ER99–3882–000]

Take notice that on July 30, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Avista Energy, Inc., providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company; and Commonwealth Edison Company of Indiana

[Docket No. ER99–3886–000]

Take notice that on July 30, 1999, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing amendments to ComEd's Open Access Transmission Tariff (OATT) to accommodate the retail access program mandated by the State of Illinois under the Electric Service Customer Choice and Rate Relief Law of 1997.

ComEd requests an effective date of October 1, 1999 for the above-described amendments.

Copies of the filing were served upon ComEd's jurisdictional customers, interested state commissions, and on the parties to the Illinois Commerce Commission (ICC) Docket Nos. 98–0894 and 99–0117 proceedings now pending before the ICC.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. MidAmerican Energy Company

[Docket No. ER99–3887–000]

Take notice that on July 30, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, 28th Floor, Des Moines, Iowa 50303 tendered for filing proposed rate schedule changes to its Open Access Transmission Tariff (OATT).

MidAmerican states that the proposed changes (1) Reduce the loss factors in Sections 15.7 and 28.5; (2) unbundle the Schedule 1 charge for transmission customers taking service under the OATT; (3) reduce Schedule 7 rates for Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service by approximately 22%; (4) modify Schedule 7 to state the method used to determine exceeded point-to-point transmission service reservations for Transmission Customers that serve unbundled retail customers in Illinois who do not have sufficient metering capability to determine an hourly demand, and to reflect adoption of the jurisdictional delineation recommended by the Illinois Commerce Commission (Illinois Commission) and the Iowa Utilities Board (IUB); (5) revise the ceiling rates in Schedule 8 for Non-Firm Point-To-Point Transmission Service; (6) modify Schedule 8 to state discounts on the OASIS, to state the method used to determine exceeded point-to-point transmission service reservations for Transmission Customers that serve unbundled retail customers in Illinois who do not have sufficient metering capability to determine hourly demand, and to reflect adoption of the jurisdiction delineation; (7) reduce the Annual Transmission Revenue Requirement stated in Attachment H for Network Integration Transmission Service by approximately 28%; (8) modify the formula in Attachment H for determining the Transmission Customer's Load Ratio Share credit, to reflect the adoption of the jurisdictional delineation and the unbundling of Schedule 1 charges; and (9) modify Attachment H to state the method used to determine a Transmission Customer's hourly usage coincident with MidAmerican's monthly system peak for load ratio share calculation purposes for Transmission Customers that serve unbundled retail customers in Illinois who do not have sufficient metering capability to determine hourly demand.

MidAmerican proposes that the rate schedule changes become effective on October 1, 1999.

A copy of the proposed rate schedule changes have been mailed to all Transmission Customers having service agreements under the OATT and to the IUB, the Illinois Commission and the South Dakota Public Service Commission.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. PP&L, Inc.

[Docket No. ER99–3888–000]

Take notice that on July 30, 1999, PP&L, Inc. (PP&L), tendered for filing with the Federal Energy Regulatory Commission a tariff sheet for inclusion in the PJM Open Access Transmission Tariff (PJM Tariff). The tariff sheet supplements Attachment H–8 of the PJM Tariff and sets forth rates for transmission service to wholesale customers utilizing PP&L's facilities at primary voltage levels of 12 kV through 23 kV.

PP&L requests an effective date of February 1, 1999 for the tariff sheet.

PP&L states that a copy of this filing has been provided to the Pennsylvania Public Utility Commission, the PJM Office of Interconnection and the wholesale customers to which the rate in the tariff sheet may apply.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Northbrook New York, LLC

[Docket No. ER99–3911–000]

Take notice that on July 30, 1999, Northbrook New York, LLC, a Delaware limited liability company (Northbrook), petitioned the Commission for acceptance of Northbrook New York, LLC Rate Schedule No. FERC No. 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Northbrook intends to engage in wholesale electric power and energy transactions as a marketer. Northbrook is exclusively engaged in the acquisition, ownership and operation of an approximately 33 MW (net) hydroelectric facility in Glen Park, New York. Northbrook is owned 50% by Omega Energy, LLC., and 50% by NEO Corporation. NEO Corporation is an

indirect subsidiary of Northern States Power Company, a Minnesota electric utility company.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin); Public Service Company of Colorado; Cheyenne Light, Fuel and Power Company; Southwestern Public Service Company; New Century Services, Inc.; Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin); NRG Power Marketing, Inc.; Cabrillo Power I LLC; El Segundo Power, LLC; Long Beach Generation LLC; Somerset Power LLC; Cadillac Renewable Energy LLC; CogenAmerica Parlin Inc.; Arthur Kill Power LLC; Huntley Power LLC; Astoria Power LLC; Dunkirk Power LLC; E Prime, Inc.; Denver City Energy Associates, L.P.; and Front Range Energy Associates, L.L.C.

[Docket No. ER99–3914–000]

Take notice that on July 30, 1999, Northern States Power Company (Minnesota) (NSP–M), on behalf of itself and certain of its subsidiaries, and New Century Services, Inc. (NCS), on behalf of certain of its affiliates (NSP–M and NCS collectively the Applicants), filed a Joint Operating Agreement and Statement of Policy and Code of Conduct, which are to take effect upon the consummation of the proposed merger of NSP–M, itself a public utility company and the holding company parent of Northern States Power Company (Wisconsin), and New Century Energies, Inc., the registered holding company parent of Public Service Company of Colorado, Southwestern Public Service Company, and Cheyenne Light, Fuel and Power Company.

Applicants state that the filing is made in conjunction with three related filings consisting of (1) A merger application under section 203 of the Federal Power Act, (2) a joint Open Access Transmission Tariff under section 205 of the Federal Power Act, and (3) revised Standards of Conduct pursuant to 18 CFR Part 37.

Copies of the filing have been served on the affected state regulatory commissions and on each entity that is a party to any of the above-captioned Dockets.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Pool

[Docket Nos. OA97–237–000; ER97–1079–000; ER97–3574–000; OA97–608–000; ER97–4221–000 and ER98–499–000]

Take notice that on July 30, 1999, New England Power Pool (NEPOOL) Participants Committee tendered for filing information relating to rate surcharges determined in accordance with formula rates of the NEPOOL Open Access Transmission Tariff. These materials describe the transmission charges that are in effect for the twelve month period commencing June 1, 1999.

The NEPOOL Participants Committee state that copies of these materials were sent to all persons identified in the Commission's official service lists for the captioned dockets, the New England state governors and regulatory commissions, and the NEPOOL Participants.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. El Paso Electric Company

[Docket No. ES99–54–000]

Take notice that on July 30, 1999, El Paso Electric Company (EPE), tendered for filing an application for authorization to issue up to 2,000,000 shares of its common stock pursuant to its 1999 Long-Term Incentive Plan. EPE states that its 1999 Long-Term Incentive Plan establishes a means of providing ownership of EPE's common stock to selected eligible participants in order to improve its ability to attract and retain the services of highly qualified individuals and to strengthen the commonality of interest between such individuals. EPE also requests an exemption from the competitive bidding and negotiated placement requirements of 18 CFR 34.2.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ES99–53–000]

Take notice that on July 30, 1999, UtiliCorp United Inc. (Applicant), filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue (1) Up to and including 4,500,000 shares of common stock, par value $1.00 per share, pursuant to the UtiliCorp United Inc. Amended and Restated 1986 Stock Incentive Plan, (2) up to and including 15,000,000 shares of common stock, (3) forward contracts or other financial instruments for up to and including 12,000,000 shares of common stock, and (4) up to and including $250 million of Trust Preferred Securities from time to time in one or more public offerings. Applicant also requests an exemption from the Commission's competitive bidding and negotiated placement requirements as it relates to the shares of common stock to be issued pursuant to the UtiliCorp United Inc. Amended and Restated 1986 Stock Incentive Plan.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20758 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3096–004, et al.]

Pepco Services, Inc., et al., Electric Rate and Corporate Regulation Filings

August 2, 1999.

Take notice that the following filings have been made with the Commission:

1. Pepco Services, Inc.

[Docket No. ER98–3096–004]

Take notice that on July 28, 1999, Pepco Services, Inc., tendered for filing a summary of activity for the quarter ending June 30, 1999 in compliance with the Commission's July 16, 1998 order issued in the above-referenced docket. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

2. California Independent System Operator Corporation

[Docket Nos. ER98–1028–001, ER98–1029–001, ER98–1030–001, ER98–1032–001, ER98–2499–001, and ER98–3708–001]

Take notice that on July 28, 1999, the California Independent System Operator Corporation (California ISO), tendered for filing a Compliance Report as required by the Letter Order issued by the Commission on May 28, 1998.

Copies of the filing have been served upon each person designated on the official service list.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2270–000]

Take notice that on July 28, 1999, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing revised executed network integration transmission service and network operating agreements to replace previously submitted unexecuted documents for Monongahela Power Company's wholesale customers: the City of Philippi, Harrison Rural Electrification Association and the City of New Martinsville.

The effective date for each agreement corresponds to the dates authorized by the Commission in Docket No. ER99–1141–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Energy, Inc.

[Docket No. ER99–3414–000]

Take notice that on June 29, 1999, Consolidated Edison Energy, Inc. (CEEI), tendered for filing an amendment to Consolidated Edison Energy FERC Electric Rate Schedule No. 1, Market Based Rate Tariff to include the sale of ancillary services at market-based rates.

CEEI states that a copy of this filing has been served by mail upon The New York State Public Service Commission and those customers taking service under Consolidated Edison Energy FERC Electric Rate Schedule No. 1, Market Based Rate Tariff.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER99–3545–000]

Take notice that on July 28, 1999, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company (APC), tendered for filing Exhibit A and Page 14 of the Interconnection Agreement between Mobile Energy Services Company, L.L.C., and APC filed with the Commission on July 12, 1999.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. South Glens Falls, LLC

[Docket No. ER99–3762–000]

Take notice that on July 26, 1999, South Glens Falls, LLC filed its quarterly report for the quarter ending June 30, 1999.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER99–3763–000]

Take notice that on July 28, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing an Interconnection and Operating Agreement between Entergy Arkansas and Pine Bluff Energy LLC (Pine Bluff).

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consumers Energy Company Docket

[Docket No. ER99–3764–000]

Take notice that on July 28, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Network Integration Transmission Service with Michigan Cooperative Coordinated Pool (Pool) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of July 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Pool members.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Energy Company

[Docket No. ER99–3765–000]

Take notice that on July 28, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Firm Point-to-Point Transmission Service with PECO Energy Company (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of July 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3766–000]

Take notice that on July 28, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 26, adding Southern Indiana Gas and Electric Company as a new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 27, 1999, to Southern Indiana Gas And Electric Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER99–3767–000]

Take notice that on July 28, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreement to provide Non-Firm Point-To-Point Transmission Service to DukeSolutions, Inc. under the NU

System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to DukeSolutions, Inc.

NUSCO requests that the Service Agreement become effective August 9, 1999.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3768–000]

Take notice that on July 28, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 28 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 27, 1999, to Yadkin Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3769–000]

Take notice that on July 28, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 27, adding Wabash Valley Power Association, Inc., as a new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 27, 1999, to Wabash Valley Power Association, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3770–000]

Take notice that on July 28, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to NRG Power Marketing (NRG).

Con Edison states that a copy of this filing has been served by mail upon NRG.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3771–000]

Take notice that on July 28, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source, Inc., (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3772–000]

Take notice that on July 28, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group, Inc., (MS).

Con Edison states that a copy of this filing has been served by mail upon MS.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3773–000]

Take notice that on July 28, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group, Inc., (MS).

Con Edison states that a copy of this filing has been served by mail upon MS.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3774–000]

Take notice that on July 28, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Marketing Center (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3775–000]

Take notice that on July 28, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Marketing Center (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Northeast Utilities Service Company

[Docket No. ER99–3776–000]

Take notice that on July 28, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreement to provide Firm Point-To-Point Transmission Service to DukeSolutions, Inc., under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO requests that the Service Agreement become effective August 9, 1999.

NUSCO states that a copy of this filing has been mailed to DukeSolutions, Inc.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Northeast Utilities Service Company

[Docket No. ER99–3777–000]

Take notice that on July 28, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service

Agreement with Reliant Energy Services, Inc. (Reliant), under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO requests that the Service Agreement become effective July 19, 1999.

NUSCO states that a copy of this filing has been mailed to TransAlta.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. PECO Energy Company

[Docket No. ER99–3778–000]

Take notice that on July 28, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Transaction Letter dated July 27, 1999 with Horizon Energy Company d/b/a Exelon Energy (EXELON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of August 1, 1999, for the Transaction Letter.

PECO states that copies of this filing have been supplied to EXELON and to the Pennsylvania Public Utility Commission.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. PP&L EnergyPlus Co., LLC

[Docket No. ER99–3779–000]

Take notice that on July 28, 1999, PP&L EnergyPlus Co., LLC (EnergyPlus), tendered for filing with the Commission an application to amend its Market-Based Rate Tariff, FERC Electric Tariff Original Volume No. 1, to allow EnergyPlus to sell specified ancillary services at market-based rates.

EnergyPlus requested waiver of Commission regulations to permit the tariff amendment to become effective on July 29, 1999.

EnergyPlus stated that it served a copy of the foregoing on the Pennsylvania Public Utility Commission and on those parties who take service under EnergyPlus' Market-Based Rate Tariff.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. California Power Exchange Corporation

[Docket No. ER99–3781–000]

Take notice that on July 28, 1999, the California Power Exchange Corporation (CalPX), tendered for filing revised tariff sheets to make two minor changes in its Power Exchange Settlement and Billing Protocol (PSABP). CalPX proposes to eliminate references to "ancillary services" from Section 1.6.1 of the PSABP and proposes an effective date of September 26, 1999 for that proposed change. CalPX proposes to change Section 1.6.4 of the PSABP to finalize payments or receipts to or from the California ISO 56 business days, as opposed to 65 calendar days, after the last day of the Trading Period.

CalPX requests waiver of the notice requirement to permit the second proposed change to become effective concurrently with the effective date of the Payments Calendar changes of the ISO's Amendment No. 17.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. California Power Exchange Corporation

[Docket Nos. ER99–3782–000 and ER99–3783–000]

Take notice that on July 28, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–3787–000]

Take notice that on July 28, 1999, Central and South West Services, Inc., as agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing a quarterly report under the CSW Operating Companies' market-based sales tariff. The report is for the period April 1, 1999 through June 30, 1999.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Soyland Power Cooperative, Inc.

[Docket No. ES99–52–000]

Take notice that on July 28, 1999, Soyland Power Cooperative Inc. (Soyland), submitted an application under Section 204 of the Federal Power Act for authorization to issue and pledge an amount not to exceed $25,000,000 of debt securities. The Applicant also requested exemption from the competitive bidding and negotiated offer requirements. Soyland requests expedited treatment for its application.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20638 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–576–000]

Williams Gas Pipelines Central, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Empire District Electric Company State Line Plant Project and Request for Comments on Environmental Issues

August 5, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Empire District Electric Company State Line Plant (Empire) Project involving construction and operation of facilities by Williams Gas Pipelines Central, Inc. (Williams) in Kay, Osage, and Washington Counties, Oklahoma; Labette and Cherokee Counties, Kansas; and Jasper County, Missouri.[1] These facilities would require the replacement of various minor facilities along about 84.3 miles of its Blackwell-Cotton

[1] Williams' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Valley pipeline (Blackwell-Cotton Uprate); the installation of about 36.8 miles of pipeline loop (Southern Trunk Loop); and the construction of measurement facilities at the Empire Electric Power Plant (Empire Facilities). This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Williams wants to expand the capacity of its facilities in Oklahoma, Kansas, and Missouri to transport an additional 55,000 decatherms per day of natural gas to Empire District Electric Company's (Empire) State Line Plant. (This would result in a total of 83,800 decatherms per day of natural gas to the State Line Plant.) Williams seeks authority to:

- Reclaim three mainline valves and two mainline drips, replace fine mainline valves and one mainline drip, replace 11 road crossings, and install a 16-inch-diameter pig launcher and appurtenant piping along the existing 16-inch-diameter, 85-mile-long Blackwell-Cotton Valley pipeline in Kay, Osage, and Washington Counties, Oklahoma;
- Upgrade 14 domestic meters, which would include upgrading/replacing regulators and valves as needed, along with Blackwell-Cotton Valley pipeline in Kay, Osage, and Washington Counties, Oklahoma;
- Increase the maximum allowable pressure along the Blackwell-Cotton Valley pipeline from 500 psig to 690 psig in Kay, Osage, and Washington Counties, Oklahoma;
- Extend the existing 20-inch-diameter Southern Trunk Loop an additional 36.8 miles in Labette and Cherokee Counties, Kansas;
- Relocate the existing 20-inch-diameter pig receiver to the end of the 36.8-mile Southern Trunk Loop and install two mainline valves in Cherokee County, Kansas;
- Install a dual 6-inch regulator setting, a dual 8-inch turbine meter setting, an 8-inch flow control setting, and about 450 feet of 16-inch-diameter pipeline at a new location within the existing Empire property area in Jasper County, Missouri; and
- Install a 4-inch flow control setting at Empire's existing site in Jasper County, Missouri.

The general location of the project facilities as well as a detailed version of the Southern Trunk Loop are shown in appendix 2.

Land Requirements for Construction

Construction of the proposed Blackwell-Cotton Uprate, Southern Trunk Loop, and Empire Facilities would require a total construction area of about 3.5, 401.5, and 1.2 acres of land respectively. The Blackwell-Cotton Uprate and the Southern Trunk Loop have no aboveground facilities associated with them. Construction of the Blackwell-Cotton Uprate would temporarily effect 3.5 acres. No new right-of-way would be created. Construction of the Southern Trunk Loop would disturb about 401.5 acres. Of this, only about 111.5 acres would convert to permanent right-of-way. Following construction, about 0.9 acre of the Empire Facilities would be maintained as new aboveground facility sites. The remaining 0.35 acre of the Empire Facilities land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Williams. This preliminary list of issues may be changed based on your comments and our analysis.

- Five streams would be crossed (using either horizontal directional drill or horizontal boring methods) by the Southern Trunk Loop; and
- One federally listed species may be present in the Neosho River. Among the five streams to be crossed, the Neosho River is designated as critical habitat for the federally threatened Neosho madtom.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Lable one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;

• Reference Docket No. CP99–576–000; and

• Mail your comments so that they will be received in Washington, DC on or before September 7, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding know as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenros have the fight to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene acecording to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" links, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20759 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meetings, Site Visit, and Soliciting Scoping Comments

August 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No:* 2055–010.

c. *Date filed:* November 24, 1998.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* C.J. Strike.

f. *Location:* On the Snake River in Owyhee County, Idaho, between the towns of Grandview and Bruneau. This project utilizes about 3,000 acres of federal lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Lewis Wardle, Hydro Relicensing Department, Idaho Power Company, P.O. Box 70, Boise, ID 83707, (208) 388–2964.

i. *FERC Contact:* John Blair, *john.blair@ferc.fed.us.* (202) 219–2845.

j. *Deadline for filing scoping comments:* October 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service lists for the projects. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:*

The project consists of the following existing facilities: (1) A 3,220-foot-long earthfill dam with a maximum height of 115 feet, which includes a 340-foot-wide and 78-foot-high reinforced concrete spillway consisting of eight 34-foot-wide bays; (2) a 55-foot-wide, 158-foot-long, and 65-foot-high reinforced concrete intake structure located at the left abutment of the same, consisting of three intakes; (3) three riveted steel penstocks connecting the intakes to the generating units; (4) a 198-foot-long, 64-foot-wide, and 68-foot-high reinforced concrete powerhouse, located at the left abutment of the dam, containing 3 vertical fixed-blade turbines with a total nameplate capacity of 82.8 megawatts; (5) a reservoir extending about 32 miles upstream on the Snake River and about 12 miles upstream on the Bruneau River, with a surface area of about 7,500 acres at normal water surface elevation of 2,455 feet above mean sea level; and (6) two 138-kilovolt (kV) transmission lines extending from the project 65 miles northwesterly to the Caldwell terminal substation and about 25 miles northeasterly to the 138-kV lines near Mountain Home.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20246, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. *Scoping Process:* The Commission has determined that issuance of a new license for the C.J. Strike Project would constitute a major federal action significantly affecting the quality of the human environment; therefore, the Commission intends to prepare an environmental impact statement (EIS) on the project, in accordance with the National Environmental Policy Act.

Scoping Meetings

The Commission will hold two scoping meetings, one in the morning and one in the evening, to help us

identify the scope of issues to be addressed in the EIS.

The morning scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Morning Meeting: September 15, 1999, 9:00 a.m., Boise Centre, 850 West Front Street, Boise, Idaho, (208) 336–8900.

Evening Meeting: September 15, 1999, 7:00 p.m., Boise Centre, 850 West Front Street, Boise, Idaho, (208) 336–8900.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EIS to parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

Idaho Power Company and the Commission staff will conduct a project site visit on September 14, 1999. We will meet at 7:30 a.m. in the Visitor Parking lot of Idaho Power Company's headquarters, 1221 W. Idaho Street, Boise, Idaho. If you would like to attend, please call Lewis Wardle, Idaho Power Company, at (208) 388–2964, no later than September 7, 1999.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceedings for these projects.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20765 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

August 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* 2077–016.

c. *Date filed:* July 29, 1999.

d. *Applicant:* USGen New England, Inc.

e *Name of Project:* Fifteen Mile Falls Hydroelectric Project.

f. *Location:* Project is located on the Connecticut River,. in Grafton Co., New Hampshire, and Caledonia Co., Vermont. Project would not utilize any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Cleve Kapala, USGen New England, Inc., 46 Centerra Parkway, Lebanon, NH 03766.

i. *FERC Contact:* Any questions on this notice should be addressed William Guey-Lee, E-mail address william.gueylee@ferc.fed.us, or telephone (202) 219–2808.

j. *Status of Environmental Review:* This application is not ready for environmental analysis at this time.

k. *Description of Project:* The project consists of the following: The Moore Development, located 283.5 miles from the mouth of the Connecticut River, consists of: An 11-mile-long, 3,490 surface-acre reservoir with 114,176 acre-feet storage capacity at 809.0 feet mean sea level (msl); an earth and concrete gravity dam with a length of 2,920 feet and a max. height of 178 feet; a 373-foot-long concrete spillway with 15-foot-wide by 20-foot-high sluice gate, four 50-foot bays of 17-foot-high stanchions, and three bays of 36 foot-wide by 30-foot-high Taintor gates; four steel penstocks each 296 feet-long; and a powerhouse with four Francis type turbines at a combined rating of 225,600 hp at a design head of 150 feet, for a plant capability of 191,960 kilowatts (kW). The Comerford Development, located 275.2 miles from the mouth of the Connecticut River, consists of: an 8-mile-long, 1,093 surface-acre reservoir with 29,356 acre-feet storage capacity at 650.0 feet msl; an earth and concrete gravity dam with a length of 2,253 feet and a max. height of 170 feet; an 850-foot-long concrete spillway with six 7-foot-wide by 9-foot-high sluice gates, four bays of 8-foot high flashboards and seven 10-foot-high stanchion bays; four steel penstocks each 150 feet-long; and a powerhouse with four Francis type turbines at combined rating of 216,800 hp at a design head of 180 feet, for a plant capability of 163,960 kW. The McIndoes Development, located 268.2 miles from the mouth of the Connecticut River, consists of: a 5-mile-long, 543 surface-acre reservoir with 4,581 acre-feet storage capacity at 454.0 feet msl; a concrete gravity dam with a length of 730 feet and a max. height of 25 feet; a 520-foot-long concrete spillway with a 12-foot wide by 13-foot high skimmer gate, three 24-foot-wide by 25-foot-high Taintor gates, a 300-foot long spillway flashboard section with 6 foot flashboards, and two 50-foot-wide by 18-foot-high stanchion bays; four steel penstocks each 150 feet-long; and a powerhouse with four Kaplan type turbines at combined rating of 3,800 hp at a design head of 29 feet, for a plant capability of 13,000 kW.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20784 Filed 8–10–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6418–1]

Adequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes: Metropolitan Washington, DC Area—Phase I Rate of Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: In this document, EPA is announcing that the motor vehicle emissions budgets (hereafter referred to as "budgets") contained in the submitted Rate of Progress (ROP) Plan for the Metropolitan Washington DC ozone nonattainment area (comprised of the District of Columbia and portions of the State of Maryland and Commonwealth of Virginia) are adequate for transportation conformity purposes. As a result of our finding, the budgets from the submitted ROP plan may be used for future conformity determinations in the Metropolitan Washington DC ozone nonattainment area.

DATES: These budgets are effective August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA. 19103 at (215) 814–2183 or by e-mail at: wentworth.paul@.epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us", or "our" are used we mean EPA. The word "budgets" refers to the mobile source emission budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X). The word SIP in this document refers to the State Implementation Plan revision submitted to satisfy the rate-of-progress requirements for 1999, commonly referred to as the Post 96 ROP plan.

On May 20, 1999, we received the Post 96 ROP Plan for the Metropolitan Washington DC ozone nonattainment area. The May 20, 1999 submittal is a revision to the previous ROP plan submitted in 1997. There are two mobile source emission budgets found in this plan for the year 1999. The emissions budget for VOCs is 128.5 tons/day and the emissions budget for NO_X is 196.4 tons/day. These two revised, adequate post-1996 budgets replace the adequate budgets in the previous rate-of-progress plan.

On March 2, 1999, the US District Court ruled that budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. In accordance with that ruling, on June 2, 1999, we posted a notice on our web site at: http://www.epa.gov/oms/traq stating that we were taking comments on the adequacy of motor vehicle emissions budget found in the May 20, 1999 submitted revised plan. The comment period closed on July 15, 1999, and we received no comments.

Today's notice is simply an announcement of a finding that we have already made. On July 28, 1999, EPA Region III sent letters to the Virginia Department of Environmental Quality, the Maryland Department of the Environment, and the Washington DC Environmental Regulation Administration stating that the motor vehicle emissions budgets found in Post 96 ROP plan submitted on May 20, 1999 for the Metropolitan Washington DC ozone nonattainment are adequate. The essential information in this notice will also be posted on EPA's conformity website: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button, then look for "Adequacy Review of Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and EPA's review to determine if the SIP is approvable. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance memorandum dated May 14, 1999 and titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision". We have followed this guidance in making this adequacy determination for the budgets contained in the revised Post 96 ROP plan submitted on May 20, 1999 for the Metropolitan Washington DC ozone nonattainment area. You may obtain a copy of this guidance from EPA's conformity web site: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button) or by calling the contact name listed in "For Further Information Contact" section of this document.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–20705 Filed 8–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100148; FRL–6095–1]

Computer Based Systems, Incorporated; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Based Systems, Incorporated (CBSI) has been awarded a contract to perform work for the EPA Office of Pesticide Programs and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to CBSI consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable CBSI to fulfill the obligations of the contract.

DATES: CBSI will be given access to this information no sooner than August 16, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Schmitt Acting Director, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 703, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5484.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W–98–045, CBSI will provide technical support to EPA's Office of Pesticide Programs by abstracting and indexing incident reports received from pesticide chemical manufacturers and the public. Incident reports submitted by chemical manufacturers may include FIFRA CBI claims. This contract involves no subcontractors.

The Office Pesticide Programs has determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

I. IMPORTANT INFORMATION

A. Does this apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How can I get additional information or copies of support documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPP–100148], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

II. INTRODUCTION

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with CBSI, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, CBSI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs.

All information supplied to CBSI by EPA for use in connection with this contract will be returned to EPA when CBSI has completed its work.

List of Subjects

Environmental Protection, Transfer of data.

Dated: July 28, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–20702 Filed 8-10-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100147; FRL–6094–9]

Eastern Research Group, Incorporated; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Eastern Research Group, Incorporated (ERG) has been awarded a contract to perform work for the EPA Office of Pollution Prevention and Toxics, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to ERG consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable ERG to fulfill the obligations of the contract.

DATES: ERG will be given access to this information no sooner than August 16, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Schmitt, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 703, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5484; e-mail: schmitt.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W6–022 WA4–20, ERG will extract pesticide fate data required for the Endocrine Disruptor Priority Setting Database (Version 2) from a variety of sources located in the Office of Pesticide Programs. These sources include Reregistration Eligibility Decision reports available on the Internet, Environmental Fate and Effects Division files, antimicrobial pesticide files, Registration Division electronic files, and data for inert ingredients often used in pesticide products. ERG will enter extracted information into the Endocrine Disruptor Priority Setting Database (Version 2), and perform quality control/quality assurance on the information entered into the data base. This contract involves one subcontractor that will not have access to the FIFRA CBI subject to this notice.

The Office of Pollution Prevention and Toxics and the Office of Pesticide Programs have determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

I. IMPORTANT INFORMATION

A. Does this apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How can I get additional information or copies of support documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPP–100147], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not

include any information claimed as CBI, is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

II. INTRODUCTION

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with ERG prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, ERG is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officers for this contract in the EPA Office of Pollution Prevention and Toxics.

All information supplied to ERG by EPA for use in connection with this contract will be returned to EPA when ERG has completed its work.

List of Subjects

Environmental Protection, Transfer of data.

Dated: July 29, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–20703 Filed 8-10-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6418–2]

EPA Releases National Drinking Water Contaminant Occurrence Database (NCOD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In response to the Safe Drinking Water Act (SDWA) Amendments of 1996, the Office of Ground Water and Drinking Water (OGWDW) of U.S. Environmental Protection Agency (U.S. EPA) is announcing the July 30, 1999 release of the National Drinking Water Contaminant Occurrence Database (NCOD). The NCOD is a national level database that contains information on contaminants that occur or are likely to occur in public drinking supply systems. The database may be accessed on the internet at *www.epa.gov/ncod/*. There is a feedback form for questions and comments, or NCOD users may contact the Safe Drinking Water hot line at 1–800–426–4791 or E-mail to hotline-sdwa@epa.gov.

FOR FURTHER INFORMATION CONTACT: For other information on the NCOD, please contact Charles Job, at the U.S. Environmental Protection Agency, Phone: 202–260–7084, Fax: 202–260–3762, or use the feedback for on the web pages.

Dated: August 5, 1999.

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–20708 Filed 8–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6417–8]

Meeting of the Local Government Advisory Committee and the Small Community Advisory Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee and the Small Community Advisory Subcommittee will meet on September 8–10, 1999, in Alexandria, VA. This will be a joint meeting between the Local Government Advisory Committee and its Small Community Advisory Subcommittee. The two panels will focus on exploring the role of local governments in the environmental protection efforts for water, air and land. In addition, the two advisory groups will consider recommendations concerning EPA's implementation of the Small Business Regulatory Enforcement Fairness Act amendments to the Regulatory Flexibility Act.

The Local Government Advisory Committee will hear comments from the public between 12 noon and 12:15 pm on Friday, September 10, 1999 and the Small Community Advisory Subcommittee will hear public comments between 3:30pm and 3:45 pm on Wednesday, September 8, 1999. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the numbers listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The Small Community Advisory Subcommittee meeting will begin at 8:00 a.m. on Wednesday, September 8th and conclude at 4:30 p.m. on the 9th. The Local Government Advisory Committee meeting will begin at 8:30 a.m. on Thursday, September 9th and conclude at 4:00 p.m. on the 10th.

ADDRESSES: The meetings will be held in Alexandria, Virginia at the Ramada Plaza Hotel—Old Town located at 901 Fairfax Street.

Requests for Minutes and other information can be obtained by writing to 401 M Street, SW (1306), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for the Local Government Advisory Committee (LGAC) is Denise Zabinski Ney (202) 260–0419 or the DFO for the Small Community Advisory Subcommittee (SCAS) Steve Wilson (202) 260–2294.

Dated: August 5, 1999.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

Dated: August 5, 1999.

Steve Wilson,

Designated Federal Officer, Small Community Advisory Subcommittee.

[FR Doc. 99–20707 Filed 8–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30481; FRL–6095–2]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by September 10, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30481] and the file symbols to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Denise Greenway	Rm. 9th Floor, CM #2, 703–308–8263, e-mail: greenway.denise@epa.gov	1921 Jefferson Davis Hwy, Arlington, VA
Anne Ball	Rm. 910W44, CM #2, 703–308–8717, e-mail: ball.anne@epa.gov	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 70950–E. Applicant: AVA Chemical Ventures, L.L.C., 80 Rochester Ave., Suite 214, Portsmouth, NH 03801. Product Name: Sucrose Octanoate [32.1%]. Biological Insecticide. Active ingredients: Sucrose octanoate (C_8 fatty acid mono-,di- and triesters of sucrose octanoate and sucrose dioctanoate (α-D-glucopyranoside, β-D-fructofuranosyl, monooctanoate and dioctanoate) at 32.1%. Proposed classification/Use: None. For use in greenhouses, nurseries, and on field crops. (D. Greenway)

2. File Symbol: 70950–R. Applicant: AVA Chemical Ventures, L.L.C. Product Name: Avachem Sucrose Octanoate Manufacturing Use Product [63%]. Biological Insecticide. Active ingredient: Sucrose octanoate (C_8 fatty acid mono-, di- and triesters of sucrose octanoate and sucrose dioctanoate) (α-D-glucopyranoside, β-D-fructofuranosyl, monooctanoate and dioctanoate) at 63%. Proposed classification/Use: None. For manufacturing use to formulate into biological insecticide end-use products. (D. Greenway)

3. File Symbol: 70299–G. Applicant: BioSafe Systems, 80 Commerce St., Glastonbury, CT 06033. Product Name: TerraCare Granular. Algaecide/Fungicide. Active ingredient: Sodium percarbonate at 40%. Proposed classification/Use: None. For use as a treatment for the prevention and control of horticultural diseases in commercial greenhouses, garden centers, landscapes, nurseries, and interiorscapes. (A. Ball)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30481] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30481]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: July 30, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–20704 Filed 8–10–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6416–4]

Proposed Settlement Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Friedrichsohn's Cooperage, Inc. Superfund Site, Waterford, Saratoga County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA"), Region II, announces a proposed administrative *de minimis* settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Friedrichsohn's Cooperage, Inc. Superfund Site ("Site"), located at 153–155 Saratoga Avenue in the Town of Waterford, Saratoga County, New York. This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and give the public the opportunity to comment.

The proposed settlement, between EPA and Jones Chemicals, Inc. and C.O. Jelliff Corporation ("Respondents"), has been memorialized in an Administrative Order on Consent (Index Number II–CERCLA–99–2014) ("Order").

The Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate the Order is inappropriate, improper, or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to the Order. Under the settlement, Respondents will be obligated to make payment of $19,985.29 to the Hazardous Substance Superfund in reimbursement of EPA response costs relating to the Site. This payment is based on documentation indicating each company contributed minimal volumes of hazardous substances to the Site. In exchange, the settling companies will receive a covenant not to sue from EPA relating to liability for the Site under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

DATES: Comments must be provided by September 10, 1999.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007–1866, and should refer to: "Friedrichsohn's Cooperage, Inc. Superfund Site, U.S. EPA Index No. II–CERCLA–99–2014". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leilani Davis, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3249.

Dated: July 16, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–20709 Filed 8–10–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1282–DR]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1282–DR), dated July 22, 1999, and related determinations.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1999:

Bremer, Cerro Gordo, Chickasaw, Floyd, and Worth Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–20716 Filed 8–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1282–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1282–DR), dated July 22, 1999, and related determinations.

EFFECTIVE DATE: July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 22, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding beginning on July 2, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Curtis D. Musgrave of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

Black Hawk, Butler, Jones, and Woodbury Counties for Individual Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–20717 Filed 8–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1281–DR]

Nevada; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nevada (FEMA–1281–DR), dated July 20, 1999, and related determinations.

EFFECTIVE DATE: July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 20, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Nevada, resulting from severe storms and flash flooding on July 8–16, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act").

I, therefore, declare that such a major disaster exists in the State of Nevada.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael W. Lowder of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nevada to have been affected adversely by this declared major disaster:

Clark County for Individual Assistance and Public Assistance.

All counties within the State of Nevada are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–20718 Filed 8–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1279–DR]

North Dakota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA–1279–DR), dated June 8, 1999, and related determinations.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 19, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–20719 Filed 8–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date of this notice appears in the **Federal Register**.

Agreement No.: 202–011259–019.
Title: United States/Southern Africa Conference Agreement.
Parties:
A.P. Moller–Maersk Line
Lykes Lines Limited, LLC
Mediterranean Shipping Company S.A.
Safbank Line, Ltd.
Wallenius Wilhelmsen Lines AS (associate member)
Synopsis: The proposed modification changes the name of the agreement to the U.S./Southern Africa Conference, provides for southbound service by associate members, provides authority to treat related but not wholly owned affiliates as a single member, and makes other administrative changes.

Agreement No.: 203–011453–001.
Title: Southern Africa/Oceania Agreement.
Parties:
Safbank Line Ltd.
A.P. Moller–Maersk Line ("Maersk Line")
Mediterranean Shipping Co. S.A.
Synopsis: The proposed amendment would restate the Agreement and add Maersk Line as a party to the portion of the Agreement pertaining to Southern Africa and the Indian Ocean. The parties have requested a shortened review period.

Agreement No.: 232–011666.
Title: West Coast North America/Pacific Islands Vessel Sharing Agreement.
Parties:
Hamburg-Sudamerkanische Dampfschiffahrts-Gesellschaft
Eggert & Amsinck trading as South Seas Steamship Line
Polynesia Line Ltd.
Synopsis: The proposed Agreement permits the parties to charter space from one another in the trade between the Pacific Coast of the United States (including Hawaii) and points in the United States served via such ports and ports and points in the Society Islands, Tonga, Samoa, Kiribati, Vanuatu, Tuvalu, Cook Islands, Fiji, New Caledonia, Solomon Islands and Papua New Guinea.

Agreement No.: 217–011667.
Title: Lykes/Nordana Space Charter Agreement.
Parties:
Nordana Line ("Nordana")
Lykes Lines Limited, LLC ("Lykes").
Synopsis: The proposed Agreement would permit Lykes to charter space to Nordana on its vessels operating in the trade between United States Gulf Coast ports (including ports in Puerto Rico) and ports in the Dominican Republic, Mexico, Costa Rica, Panama, Venezuela, and the Caribbean Coast of Colombia. The parties would also be permitted to engage in related cooperative activities in the trade. The parties have requested a shortened review period.

Agreement No.: 224–201082.
Title: Port of Detroit Operators Association Marine Terminal Agreement.
Parties:
Nicholson Terminal and Dock Company
Detroit Marine Terminals, Inc.
Synopsis: The proposed agreement replaces FMC Agreement No. 009345 and re-states that agreement, incorporating all its existing amendments.

Agreement No.: 224–201083.
Title: San Francisco-South Seas Pier 80 Marine Terminal Agreement.
Parties: San Francisco Port Commission
South Seas Steamship Line.
Synopsis: The proposed agreement provides for the non-exclusive use of certain facilities at San Francisco's Pier 80. The agreement runs through August 31, 2004.

Agreement No.: 224–201084.
Title: San Francisco-Columbus Line Pier 80 Marine Terminal Agreement.
Parties: San Francisco Port Commission
Columbus Line USA, Inc.
Synopsis: The proposed agreement provides for the non-exclusive use of certain facilities at San Francisco's Pier 80. The agreement runs through August 31, 2004.

Dated: August 6, 1999.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–20697 Filed 8–10–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Adnyl Construction and Development Corporation, dba Adnyl Express Cargo Inc. 3653 San Gabriel River Parkway, Pico Rivera, CA 90660, Officers: Wilfredo J. Navarro, Jr., Vice President (Qualifying Individual), Hector G. Nuguit, President

Airgate Int'l (SFO) Corp, 484 Grandview Drive, South San Francisco, CA 94080, Officers: Alex Chan, Vice President, (Qualifying Individual), Joanna Chan, President

Ampac Shipping Inc., 5441 Cogswell Road, Suite F, Arcadia, CA 91006, Officers: Pauline Mark, Vice President, (Qualifying Individual), Adam Wang, Chief Executive Officer

Asiana Express (New York) Corp., 167–10 South Conduit Avenue, Suite 105, Jamaica, NY 11434, Officers: Sophia Lee, Vice President, (Qualifying Individual), Lee Soo Kim, President

Caribbean American Shipping Corp., 1801 SW 1st Avenue, Suite A, Ft. Lauderdale, FL 33315, Officers: Antonio Marcelli, President, (Qualifying Individual), Maurice Laroche, Jr., Vice President

Consolidated Freight & Shipping, Inc., 10025 NW 116th Way, Suite 14, Medley, FL 33178, Officers: Eraldo Sanguinetti, Director, Qualifying Individual), Paul Levy, Director

Doral Freight, Inc., 9300 NW 58th Street, Suite 213, Miami, FL 33178, Officers: Richard Hanks, Manager, (Qualifying Individual), Marcos A. Rodriguez, President

First Express (Los Angeles), Inc., 5353 West Imperial Highway, Suite 600, Los Angeles, CA 90045, Officer: Suk Jin Hong, President, (Qualifying Individual)

Fondocean Express (HK) Ltd., 59 Tai Yip Street, 1/f, Sunshine Cargo Center, Kowloon Bay, Hong Kong, Officers: Francis So, Executive Director, (Qualifying Individual), Ernie So, Vice President

Global Shipping, Inc., 2697 International Parkway, Parkway One, Suite 201, Virginia Beach, VA 23452, Officers: R. Timothy Jones, Vice President, (Qualifying Individual), J. Michael Gatchell, President

Kesco Shipping Inc., 11222 S. La Cienega Blvd., Suite 475, Inglewood, CA 90304, Officers: Kevin Che-Hwa Chang, President, (Qualifying Individual), Edmond Fon, Chief Executive Officer

Laser International Freight Transport, Corp., 3218 NW North River Drive, Miami, FL 33142, Officers: Santi Gabino, Director, (Qualifying

Individual), Mercedies Gabino, President
Lighthouse Shipping, Ltd., 1555 N. Michael Drive, Wood Dale, IL 60191, Officer: Anne V. Reilly, President, (Qualifying Individual)
MTS Transportation, Inc., 8054 E. Garvey Avenue, #101, Rosemead, CA 91770, Officers: Ben Chou, Manager, (Qualifying Individual), Shiao-Chuan Cheng, President
Oriental Air Transport Service Inc., 5777 W. Century Blvd., Suite 838 Los Angeles, CA 90045, Officers: Carol Wai-Fong Chan, Secretary, (Qualifying Individual), Scott Chen, President
Pro-Well Sea U.S.A. Inc., 5777 West Century Blvd., Suite 1195, Los Angeles, CA 90045, Officers: Benson Mao, Vice President (Qualifying Individual), Harris Mao, General Manager
Quality Freight International Services, Inc., 11383 NW 65 Street, Miami, FL 33172, Officer: Rosa Cecilia Maguina, President, (Qualifying Individual)
World Transport Services, 325 Corey Way, Suite 115, South San Francisco, CA 94080, Cynthia Wright, Sole Proprietor
World Transportation Services, Inc., d/b/a Global Express Line, 2723 Yale Street, Houston, TX 77008, Officers: Pam Garifalos Holdrup, Secretary, (Qualifying Individual) Jim Shaw, President

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Scotia Ocean Services Ltd., 2810 Silver Falls, Kingwood, TX 77339, Thomas M. McGovern, Sole Proprietor
ODE International Company, 13535 S. Figueroa Street, Los Angeles, CA 90061, Sook Ok Sue Demonte, Sole Proprietor
Albatrans, Inc., 149–10 183rd Street, Jamaica, NY 11413, Officers: Franco Ginepro, President, Giovanni Chiarelli, Vice President, (Qualifying Individual)
Universal Express International, 613 Hindry Avenue, Inglewood, CA 90301, Officer: Mike Mudallal, President, (Qualifying Individual)
L.G. Diamond International Shipping, Inc., 12619 Crenshaw Boulevard, Hawthorne, CA 90250, Officer: Lester Gatewood, President, (Qualifying Individual)
Logictrans Corporation, 3562 Market Street, St. Louis, MO 63103, Officers: William L. Hehr, President, (Qualifying Individual), Jeanne M. Clerc, Vice President
Z-Way Travel & Cargo Services, Inc., 8105 N. Austin Avenue, Morton Grove, IL 60053, Benjamin Suansing, President, Zenaida D. Suansing, Secretary, (Qualifying Individual)
Star Container Lines, Inc., 12919 S. Figueroa, Los Angeles, CA 90061, Officers: Jalal Boloorchi, President, Alex Ferasat, Vice President, (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Trans-Group International Corporation, 155–06 South Conduit Avenue, #203, Jamaica, NY 11434, Officer: Yuxiong Zhang, President, (Qualifying Individual)
Trans-Am Air & Sea Freight (SFO) Inc., 1290 Bayshore Hwy., Suite 269, Burlingame, CA 94010, Officers: Sam Y.S. Lam, President, Raymond H.C. Fong, Vice President, (Qualifying Individual)
AFC Worldwide Express, Inc., 975 Cobb Place Boulevard, Suite 101, Kennesaw, GA 30144, Officers: Glenn S. Henderson, President, A.J. Scaturro, Vice President, (Qualifying Individual)
Nautica Cargo Services Inc., 7911 NW 72 Avenue, (Unit 110–A), Miami, FL 33166, Officers: Vivian Gonzalez, President, (Qualifying Individual), Christian A. Hernandez, President, (Qualifying Individual)
J-Lec Corp, 5405 NW 102nd Avenue, Suite 223, Sunrise, FL 33351, Officers: Eduardo G. Sardinha, President, (Qualifying Individual), Carlos DeCarlo, Vice President
Philippine Unimovers Express, 1325 West Willow Street, Long Beach, CA 90810, Emanuel Nacario, Sole Proprietor

Dated: August 3, 1999.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 99–20695 Filed 8–10–99; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app; 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/address	Date reissued
2896	Moving and Packing (M.A.P.) International, Inc., 2303 Nance Street, Houston, TX 77020.	April 7, 1999.

T.A. Zook,
Deputy Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–20696 Filed 8–10–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, August 16, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 6, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–20838 Filed 8–9–99; 10:17 am]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) the international project and (2) the comprehensive system of human subjects protections. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on September 16, 1999 from 11:30 am to 12 noon.

Dates/times	Location
September 16, 1999, 8:30 a.m.–5 p.m.	Holiday Inn National Airport, The Grand Ballroom, 1489 Jefferson Davis Highway, Arlington, Virginia.
September 17, 1999, 8:30 a.m.–12 Noon.	Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: August 5, 1999.
Eric M. Meslin,
Executive Director, National Bioethics Advisory Commission.
[FR Doc. 99–20629 Filed 8–10–99; 8:45 am]
BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0040]

Agency Information Collection Activities; Announcement of OMB Approval; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 17, 1999 (64 FR 26657), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0409. The approval expires on July 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets"

Dated: August 4, 1999
William K. Hubbard,
Senior Associate Commissioner for Policy, Planning and Legislation.
[FR Doc. 99–20604 Filed 8–10–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–276]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Prepaid Health Plan Cost Report;

Form No.: HCFA–276 (OMB# 0938–0165);

Use: These forms are needed to establish the reasonable cost providing covered services to the enrolled Medicare population of Health Maintenance Organizations and Competitive Medical Plans (HMO/CMP) in accordance with Section 1876 of the

Social Security Act and Health Care Prepayment Plans (HCPP) in accordance with Section 1833 of the Social Security Act;

Frequency: Quarterly, Annually;

Affected Public: Business or other for-profit;

Number of Respondents: 62;

Total Annual Responses: 327;

Total Annual Hours: 11,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 3, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–20660 Filed 8–10–99; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: July 1999

AGENCY: Office of Inspector General, HHS

ACTION: Notice of program exclusions.

During the month of July 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ACOSTA, JORGE LUIS EGLIN AFB, FL	08/19/1999
ADAMS, HANNAH N MIAMI BEACH, FL	08/19/1999
ALONSO, EMMA MIAMI, FL	08/19/1999
BRUMFIELD, RAMONA K ST JULIEN ORANGE, TX	08/19/1999
CABRERA, RICHARD HIALEAH, FL	08/19/1999
CAJETE, SALVADOR MIAMI, FL	08/19/1999
CANTINE, SANDRA A CLIFTON PARK, NY	08/19/1999
CLOUD, DAVID WAYNE BEAUMONT, TX	08/19/1999
DE LA ROSA, AIDA VEGA MARIANNA, FL	08/19/1999
DELGADO, JOEL MIAMI, FL	08/19/1999
DIEGUEZ, JUAN MIGUEL HOLLYWOOD, FL	08/19/1999
DIEGUEZ, ARMANDO MIAMI, FL	08/19/1999

Dated: August 2, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–20624 Filed 8–10–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Project To Assess Ethnicity/Race and Services to Bi/Multilingual Populations in Community Health Centers—NEW

The Office of Minority and Women's Health (OMWH) in the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA), recognizes that full understanding of the ethnicity of clients and providers and the provision of language appropriate services are vital to guaranteeing full and effective health care. OMWH proposes to conduct a voluntary survey, the purpose of which will be two-fold: (1) To obtain detailed data on the ethnic/racial composition of health center users and providers, and (2) to collect information about the composition and provision of bimultilingual services. This information will be collected from a sample of approximately 128 health centers.

These data will provide HRSA with information which will be used to make resource and staffing decisions related to reducing barriers to health care often faced by ethnic/racial minorities an by non- or limited-English-speaking populations.

The burden estimate for this project is follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response (minutes)	Total hour burden
Survey	128	1	128	20	42

Subject, city, state	Effective date
DUMONT, KAREN B WINSLOW, ME	08/19/1999
FERRIS, MILES SARASOTA, FL	08/19/1999
FIELDS, FELISHA D ST LOUIS, MO	08/19/1999
FUERTES, SYLVANNA MAYTE HIALEAH, FL	08/19/1999
GASEL, ALAN MIAMI, FL	08/19/1999
GOLDMAN, NORMAN NISKAYUNA, NY	08/19/1999
GONZALEZ, JORGE LUIS HIALEAH, FL	08/19/1999
GONZALEZ, ALBERTO MIAMI, FL	08/19/1999
HARPER, JANELLA COLUMBUS, OH	08/19/1999
HARRELL-HOUSE, DELORES FAYETTEVILLE, GA	08/19/1999
HERNANDEZ, GABRIELA M MIAMI, FL	08/19/1999
HOUSE, ROBERT FAYETTEVILLE, GA	08/19/1999
HUSSAIN, RUQAIYA PLANO, TX	08/19/1999
JALIL, ADDAE FORT SMITH, AR	08/19/1999
JOHNSON, FELENCIA FARMINGTON, NM	08/19/1999
LAWRENCE, JULES JESUP, GA	08/19/1999
LILES, SANDRA RENEE BATESVILLE, AR	08/19/1999
MARTIN, KAREN SCOTIA, NY	08/19/1999
MATAUTIA, BEPE R SEATTLE, WA	08/19/1999
MENDIETA, CESAR AUGUSTO MIAMI, FL	08/19/1999
MURILLO, LUIS MIAMI, FL	08/19/1999
PAMIDIMUKKALA, VIJAY KUMAR EDISON, NJ	08/19/1999
PANG, SHING YIP ARLINGTON, TX	08/19/1999
PITTMAN, LINDA BALD PHILADELPHIA, PA	08/19/1999
PLOUCH, NAKISHA ANN HENSLEY, AR	08/19/1999
PRICE, SHIRLEY BRYAN, TX	08/19/1999
RICHARDSON, CHERYL E WESTMINSTER, MD	08/19/1999
RUST, PAMELA EILEEN BOONEVILLE, AR	08/19/1999
SANCHEZ, ORLANDO MARIANNA, FL	08/19/1999
SCHAPIRA, HENRI J WEST HAVEN, CT	08/19/1999
SHAFFER, ARREN KAY VALE, OR	08/19/1999
SMITH, TOMAS GREENE DENVER, CO	08/19/1999
STRONG, DIANE ATLANTA, GA	08/19/1999
SULTAN, ISAAC AARON NEW ROCHELLE, NY	08/19/1999
THOMAS, ELBERT EDWARD III	08/19/1999
SEAGOVILLE, TX	
TURNER, CAROL PEKIN, IL	08/19/1999
URQUIJO, JOHN (JUAN) MANUEL MIAMI, FL	08/19/1999
URQUIJO, GUSTAVO ADOLFO SR PENSACOLA, FL	08/19/1999
VALERO, RALPH HIALEAH, FL	08/19/1999
VOYE, ROBERTA WEST PARIS, ME	08/19/1999
WILBANKS, DONNIE JO HOUSE SPRINGS, MO	08/19/1999
ZOLTKOWSKI, MARIANNE GANSEVOORT, NY	08/19/1999

FELONY CONVICTION FOR HEALTH CARE FRAUD

KERR, MICHAEL T MORGANTOWN, WV	08/19/1999

FELONY CONTROL SUBSTANCES CONVICTION

ADDISON, JANET GRAMPIAN, PA	08/19/1999
GUPTA, ANIL MT VERNON, IL	08/19/1999
HORNOR, AVIS ANN MANSFIELD, AR	08/19/1999
NOVAK, FREDDIE PATRICK PORTLAND, OR	08/19/1999
SEITZINGER, STEVEN L ASHLAND, PA	08/19/1999
WEST, NADENE M GREENSBURG, PA	08/19/1999

PATIENT ABUSE/NEGLECT CONVICTIONS

ALMEIDA, ALLAN MIDDLETOWN, RI	08/19/1999
ANDERSON, LEANNA MCCOLL, SC	08/19/1999
ARAGON, MARIO PROVO, UT	08/19/1999
BACHMAN, KIMBERLY K COLUMBUS, OH	08/19/1999
BETHEA, HOWARD MICHAEL MAUMELLE, AR	08/19/1999
BISHOP, ADAM WESLEY HELENA, OK	08/19/1999
BROWN, LOIS REESE LAPLACE, LA	08/19/1999
COCKRELL, BRUCE SALISBURY, MO	08/19/1999
DALKA, PATRICK RHINELANDER, WI	08/19/1999
ELLIS, HELEN SPARTANBURG, SC	08/19/1999
FLADGER, MARY ANN FORK, SC	08/19/1999
FLETCHER, HARVEY G DELHI, LA	08/19/1999
HARRIS, ROSIE PITTSBORO, MS	08/19/1999
HILLIE, VAN MERIDIAN, MS	08/19/1999
HUNT, LATRENA HERSEY MERIDIAN, MS	08/19/1999
HUSEAS, SUZANNE	08/19/1999
GREENBRIER, AR	
HUTCHINS, GLORIA KOSCIUSKO, MS	08/19/1999
JACKSON, ALECIA RENEE PORT ARTHUR, TX	08/19/1999
JACKSON, TRACY M DAYTON, OH	08/19/1999
KNIGHT, LONNIE RICHARD PAULS VALLEY, OK	08/19/1999
LASTER, JOYCE MORTON, MS	08/19/1999
LEE, MICHAEL ANTHONY WASHINGTON, DC	08/19/1999
LESURE, TASHA NEW ALBANY, MS	08/19/1999
LEWIS, CLINTON A III ELGIN, SC	08/19/1999
MOORE, ODESSA GRENADA, MS	08/19/1999
POWELL, FRANCIS MARIE TAFT, OK	08/19/1999
RAMIREZ, FERNANDO SALT LAKE CITY, UT	08/19/1999
THOMAS, PATRICIA FAYE JESSUP, MD	08/19/1999
UHLENBERG, CAROLYN L MOUNTAIN HOME, AR	08/19/1999

CONVICTION FOR HEALTH CARE FRAUD

MEDINA, ARGENTINA MIAMI, FL	08/19/1999
MEDINA, MARIA MIAMI, FL	08/19/1999
MEJIA, AGRIPINA MIAMI, FL	08/19/1999
MEJIA, ADOLFO MIAMI, FL	08/19/1999
OCHOA, GERARDO MIAMI, FL	08/19/1999

LICENSE REVOCATION/SUSPENSION/ SURRENDERED

AGRO, LINDA MILFORD, CT	08/19/1999
ALDAN, VICENTE SABLAN SAIPAN, CA	08/19/1999
ALLEN, TINA MARIE SAN FRANCISCO, CA	08/19/1999
AMBURGEY, KAREN SUE SPANISH FORT, AL	08/19/1999
AMMONS, MICHAEL LEE ENTERPRISE, AL	08/19/1999
BABALOLA, ADEBOWALE A PROVIDENCE, RI	08/19/1999
BALLARD, BEVERLY KAY TUSCUMBIA, AL	08/19/1999
BALZORA, JACQUELINE VE-DETTE ELMHURST, NY	08/19/1999
BAPTISTE, QUETLIE F JEAN BROOKLYN, NY	08/19/1999
BARKER, LESIA NELL RED BAY, AL	08/19/1999
BARLOW, CHARLENE MARIA MACON, GA	08/19/1999
BATES, ALCIE MARIE TRUSSVILLE, AL	08/19/1999
BATZ, ELIZABETH ANA SUNNYVALE, CA	08/19/1999
BEHLKE, KATHLEEN FLAHERTY	08/19/1999

Subject, city, state	Effective date
HONESDALE, PA	
BHUTA, JAGDEEP V	08/19/1999
JACKSONVILLE, FL	
BITONTI, JENNIFER BRIGHTWELL	08/19/1999
BELLE VERNON, PA	
BLAIR, JOY L DUNCAN	08/19/1999
BIRMINGHAM, AL	
BLUBAUGH, VICTORIA G	08/19/1999
BELMONT, NH	
BOWERS, CANDICE DIANE	08/19/1999
FLORENCE, AL	
BREZEL, BRUCE S	08/19/1999
SHELTON, WA	
BRODIE, WADE MARTIN	08/19/1999
ATLANTA, GA	
BROOKS, ALICEMAE	08/19/1999
PROVIDENCE, RI	
BROWN, MARY FRANCES MANGAN	08/19/1999
SAVANNAH, GA	
BROWN, TANYA EDWINA	08/19/1999
NEWTON, AL	
BURGESS, CLAUDE	08/19/1999
SACRAMENTO, CA	
BUTTS, KENNETH C	08/19/1999
WARRENTON, VA	
CADET, MARIE HERNANTE	08/19/1999
JAMAICA, NY	
CAHN, ELLSWORTH G	08/19/1999
ALBANY, NY	
CALABRESE, PAULINE	08/19/1999
W PITTSTON, PA	
CASSANI, JILLIAN B	08/19/1999
ARLINGTON, VT	
CAUSEY, DENNIS MICHAEL	08/19/1999
SAN FRANCISCO, CA	
CAVANAGH, JAMES G	08/19/1999
HAWTHORNE, NV	
CAVARRETTA, KATHRYN	08/19/1999
S DAYTONA, FL	
CAWLEY, JENNIFER M	08/19/1999
GREENFIELD, NH	
CENAC, PAUL EDWARD	08/19/1999
BELLINGHAM, WA	
CHARLES, GUYLENE	08/19/1999
BROOKLYN, NY	
CHARRON, KATHIE NADEAU	08/19/1999
JERICHO, VT	
CLEMENT, MICHAEL DARREN	08/19/1999
BRENTWOOD, CA	
COLE, MARY E WETTACH	08/19/1999
ST AUGUSTINE, FL	
CONINE, AGNES ANN	08/19/1999
RUSSELLVILLE, AL	
CONLEY-BENJAMIN, GAYLE LOUISE	08/19/1999
ELMIRA, NY	
CRAWFORD, CAROL A	08/19/1999
PITTSBURGH, PA	
CRISWELL-POITIER, FRANCES L	08/19/1999
OAKLAND, CA	
CROUDY, TROY R	08/19/1999
LYNCHBURG, VA	
DAVID, NICOLE	08/19/1999
ROSEDALE, NY	
DAVIS, MARY BETH	08/19/1999
GRAFTON, WV	
DEAL, MICHELLE S	08/19/1999
NORFOLK, VA	
DIUGUID, DENISE LEIGH	08/19/1999
BIRMINGHAM, AL	
DOBYNS, DONALD RAOUL	08/19/1999
MARINA, CA	
DOMINIGUE, MARLENE	08/19/1999
BROOKLYN, NY	
DOYLE, MICHAEL	08/19/1999
WATERBURY, CT	
DRUMMOND, KIMBERLY ANN	08/19/1999
JASPER, AL	
DWIGHT, DAVID J	08/19/1999
NORTHAMPTON, MA	
EASTERLING, JESSICA C SANDERS	08/19/1999
BRYAN, GA	
EBBITT, DIANE M	08/19/1999
WEST MIFFLIN, PA	
EDWARDS, MINITA EILEEN CARROLL	08/19/1999
ANNISTON, AL	
ELETU, MICHELLE BURNS	08/19/1999
PROVIDENCE, RI	
ELLIOTT, WANDA J ROBINSON	08/19/1999
BIRMINGHAM, AL	
EMMANUEL, CARLINE	08/19/1999
BRENTWOOD, NY	
END, LINDSAY JEAN	08/19/1999
SAN FRANCISCO, CA	
ERICKSON, CLAYTON D	08/19/1999
SEATTLE, WA	
EVANS, ELIZABETH ANN	08/19/1999
LODI, CA	
FLEURANTIN, MICHELINE	08/19/1999
BROOKLYN, NY	
FOOT, DIANE U	08/19/1999
SPRINGFIELD, IL	
FOXHALL, PAMELA LOUISE AUTREY	08/19/1999
FRISCO CITY, AL	
FUQUA, FRANCES LEE	08/19/1999
LANCASTER, CA	
GANTHIER, GHISLAINE	08/19/1999
BROOKLYN, NY	
GARCIA, RAMON G	08/19/1999
TAMPA, FL	
GARCIA, PHILIP ALAN	08/19/1999
MODESTO, CA	
GOLBACH, DEBORAH J WILLIAMS	08/19/1999
CUMMING, GA	
GONSALVES, NATALIA	08/19/1999
SAN FRANCISCO, CA	
GRENIER, MARCELLE	08/19/1999
BURLINGTON, CT	
GWATHNEY, BRENDA CAROL	08/19/1999
HUNTSVILLE, AL	
HAAS, JOSEPHINE MARY	08/19/1999
SACRAMENTO, CA	
HAGGERTY, LOIS G	08/19/1999
MANCHESTER, NH	
HARBUT, BRENDA JOYCE	08/19/1999
LANETT, AL	
HARDING, ESSIE RUTH O'NEAL	08/19/1999
BIRMINGHAM, AL	
HARRIS, CHARLOTTE S	08/19/1999
JACKSONVILLE, FL	
HARRISON, ELIZABETH MEREDITH	08/19/1999
LANDRUM, SC	
HART, GORDON KEITH	08/19/1999
PETALUMA, CA	
HEATON, KAREN E	08/19/1999
ATLANTA, IL	
HENDRICKS, LISA M	08/19/1999
PETERBOROUGH, NH	
HENOWITZ, MAURICE M	08/19/1999
HAMDEN, CT	
HUBERT, YVETTE L	08/19/1999
BRADLEY, JL	
HUGHES, KATHLEEN	08/19/1999
RENO, NV	
HUSAIN, ZAFARUL	08/19/1999
CORONA, CA	
JACQUES, JACQUELINE	08/19/1999
BROOKLYN, NY	
JEAN-BAPTISTE, MARIE JOSE	08/19/1999
BROOKLYN, NY	
JEAN-FELIX, LEA	08/19/1999
BROOKLYN, NY	
JEAN-PAUL, MONIQUE	08/19/1999
BROOKLYN, NY	
JENKINS, HIRAM JAMES	08/19/1999
SUISUN CITY, CA	
JERJEES, NUJIM ALDEEN A	08/19/1999
BERWYN, IL	
JOHNSON, KAREN M	08/19/1999
PROVIDENCE, RI	
JONES, TOBIN JACK	08/19/1999
BOYDTON, VA	
JONES, SONJA	08/19/1999
CHICAGO, IL	
JUCKEL, JANICE L	08/19/1999
ANCHORAGE, AK	
KOSIN, MARGARET	08/19/1999
HOFFMAN ESTATES, IL	
KULESZA, SHAWN J	08/19/1999
CHICAGO, IL	
KULICK, DANIEL H	08/19/1999
FT MYERS, FL	
KUZMAN, JOHN H	08/19/1999
EDGEWOOD, KY	
LANE, MAUREEN A	08/19/1999
BLOOMINGTON, IL	
LAROCHE, MARIE FREDINE	08/19/1999
BROOKLYN, NY	
LATHE, BARBARA J	08/19/1999
NEWPORT, VT	
LEE, GERMAINE DOLEY	08/19/1999
FARMVILLE, VA	
LENAHAN, GERALD SCOTT	08/19/1999
PEEKSKILL, NY	
LERMA, MARY	08/19/1999
FRANKLIN PARK, IL	
LESPIER, MARY KATHLEEN	08/19/1999
STOCKTON, CA	
LIGHT, HOWARD WAYNE	08/19/1999
SANTA ROSA, CA	
LOBBATO, VINCENT J JR	08/19/1999
NEW YORK, NY	
LOVE, MARGARET A	08/19/1999
JOLIET, IL	
LUKOVSKY, MICHAEL PETROVICH	08/19/1999
BROOKLYN, NY	
MABON, MICHELLE	08/19/1999
COUNTRY CLUB HILLS, IL	
MAIGNAN, CONSTANT	08/19/1999
CAMBRIA HGTS, NY	
MALLIET, KRISTINE MARIE	08/19/1999
BOURBONNAIS, IL	
MARES, LESLIE DELIA MARTIN	08/19/1999
LAWRENCEVILLE, GA	

Subject, city, state	Effective date
MATER, MARGARET LOUISE VACAVILLE, CA	08/19/1999
MATHIS, MICHAEL ROY MAGNOLIA, MS	08/19/1999
MAYS, SHEILA DENISE HANDY LAWRENCEVILLE, GA	08/19/1999
MCALLESTER, ESLIE E WILLIAMS AUGUSTA, GA	08/19/1999
MCAVOY, DAVID M OLDSMAR, FL	08/19/1999
MCCRACKEN, ROBERT HEBRON, CT	08/19/1999
MCFARLAND, JAMES ALAN AUBURN, CA	08/19/1999
MELGAREJO, PABLO E ORLANDO, FL	08/19/1999
MERVEILLE, MARIE CARMEN BROOKLYN, NY	08/19/1999
MILLER, GEORGE W MIAMI, FL	08/19/1999
MILORD, IRLANDE BROOKLYN, NY	08/19/1999
MONTINA, MIMOSE BROOKLYN, NY	08/19/1999
MOORE, GWENDOLYN CHICAGO, IL	08/19/1999
NEWMAN, LA VON NAPA, CA	08/19/1999
OBAS, SUZE M BROOKLYN, NY	08/19/1999
ODUM, CYNTHIA DENISE SAN ANTONIO, TX	08/19/1999
ONDASH, BERNARD S DAYTONA BEACH, FL	08/19/1999
ONUFRY, SUZANNE W OSSIPEE, NH	08/19/1999
OTTERNESS, SABRA JANEEN CRYSTAL SPRINGS, FL	08/19/1999
PEOPLES, LALENA SAN DIEGO, CA	08/19/1999
PHILLIPS, JOHN ALDRICK III CONYERS, GA	08/19/1999
PIERRE, LUDE BROOKLYN, NY	08/19/1999
PING, VICKIE BELL NEWARK, CA	08/19/1999
POE, RITA K CLAY CITY, IL	08/19/1999
PYLES, CARLENE B W FRANKFORT, IL	08/19/1999
RAMSEY, SHERI MARIE SALINAS, CA	08/19/1999
RASCON, KATHERINE E CHICAGO, IL	08/19/1999
ROSENTHAL, JUDITH Z COOPERSBURG, PA	08/19/1999
ROSS, ANNETTA BRADFORD, IL	08/19/1999
SAINT-JEAN, MARIE GEHANE JAMAICA, NY	08/19/1999
SANCHEZ, CARMENZA J KEENE, NH	08/19/1999
SANTELLI, MARIE JOSE FLUSHING, NY	08/19/1999
SHAPIRO, JEFFREY S N ANDOVER, MA	08/19/1999
SHEEHAN, JOHN P COCOA BEACH, FL	08/19/1999
SHUBIN, SHAROLYN JOYCE DESMOND	08/19/1999
FRESNO, CA	
SMITH, MAUREEN BRIDGETT DICKINSON, TX	08/19/1999
SMOOT, CASSANDRA L HARVEY, IL	08/19/1999
STANZIONE, KATHLEEN M WARREN, RI	08/19/1999
STEWART, JAMES A LOS ANGELES, CA	08/19/1999
STEWART, CHERYL ANN MODESTO, CA	08/19/1999
SWAILS, KELLEY RENEE LOWELL, FL	08/19/1999
SWEATT, DEBRA DIANE LOS ALAMITOS, CA	08/19/1999
TALBOT, KIMBERLEE BELLEVILLE, IL	08/19/1999
TAYLOR, LINDA LOUISE SAN FRANCISCO, CA	08/19/1999
THOMAS, BRENDA LEE W BRATTLEBORO, VT	08/19/1999
THOMPSON, RHONDA Y JOLIET, IL	08/19/1999
TURNER, MERLINE ELIZABETH S OZONE PARK, NY	08/19/1999
TURNER, JUDITH ANN HAMBURG, NY	08/19/1999
UHLIG, DONNA D WILTON, CA	08/19/1999
VORREYER, RICHARD DANIEL FORT VALLEY, GA	08/19/1999
WADLINGTON, STEPHEN DAVID TUSCALOOSA, AL	08/19/1999
WAGERS, AARON K EL CAJON, CA	08/19/1999
WEASE, PATRICIA JACKSONVILLE, IL	08/19/1999
WEATHERILL, LAURENCE JOSEPH YUBA CITY, CA	08/19/1999
WHITMAN, GAIL DANBURY, CT	08/19/1999
WOLFE, PEGGY J GUIN, AL	08/19/1999
WRIGHT, JOAN WINIFRED NEW YORK, NY	08/19/1999
YASSA, NOREEN BRONX, NY	08/19/1999
YOUENS, ROBYN CLARE SAN JOSE, CA	08/19/1999

FEDERAL/STATE EXCLUSION/ SUSPENSION

BARRETT, MARILYN VEAZIE, ME	08/19/1999

OWNED/CONTROLLED BY CONVICTED/ EXCLUDED

AMERICAN DIAGNOSTIC EXPRESS EGLIN AFB, FL	08/19/1999
ATLANTA X-RAY, INC CONYERS, GA	08/19/1999
BALANCED LIVING COUNSELING CLIFTON PARK, NY	08/19/1999
CHIROPRACTIC HEALTH & WELLNESS MILWAUKEE, WI	08/19/1999
CMC MEDICAL CARE, INC MIAMI, FL	08/19/1999
D & L MEDICAL SERVICES, INC MIAMI, FL	08/19/1999
G & M INTERNATIONAL, INC BROOKLYN, NY	08/19/1999
GLJ MEDICAL, INC MIAMI, FL	08/19/1999
J & L SERVICES, INC HIALEAH, FL	08/19/1999
MOBILE IMAGING SERVICES DENTON, TX	08/19/1999
PHYSICIAN'S SERVICE GROUP, INC MIAMI, FL	08/19/1999
PROFESSIONAL MEDICAL BILLERS DENTON, TX	08/19/1999
PROGRESSIVE CARE MED & SURGICAL MARIANNA, FL	08/19/1999
SHAWN JONAS CHIROPRACTIC KENT, WA	08/19/1999
TENDER LOVING CARE HOME HEALTH BATON ROUGE, LA	08/19/1999
WALLACE CHIROPRACTIC CENTER ARTESIA, NM	08/19/1999

DEFAULT ON HEAL LOAN

CHA, CHRIS S GARDEN GROVE, CA	08/19/1999
MCALEES, RAYMOND M N PALM BEACH, FL	08/19/1999
MCCARTHY, MARK G BLAINE, MN	08/19/1999
MCMORRIS, BRUCE LONG BEACH, CA	08/19/1999
MOLINA, ROLANDO J MIAMI, FL	08/19/1999
MOORE, CHARZETTA DETROIT, MI	08/19/1999
NETT, MICHAEL L KINGSFORD, MI	08/19/1999
NEWBERRY-WALKER, PATRICIA J NASHVILLE, TN.	08/19/1999
NEWSOME, RAYMOND E DE SOTO, TX	08/19/1999
REED, DAVID E NEW ORLEANS, LA	08/19/1999
SAHM, ROGER A SNOHOMISH, WA	08/19/1999
SAINT-PHARD, GUERCY MASSAPEQUA, NY	08/19/1999
SANTAYANA, SUSAN A MIAMI, FL	08/19/1999
TRINITY CHIROPRACTIC CENTER E ELLIJAY, GA	08/19/1999
VU, GIANG H ANAHEIM, CA	08/19/1999
WEISMAN, ANNETTE F MOUNT SHASTA, CA	08/19/1999
WOODWARD, DAVID R WILLIAMSBURG, VA	08/19/1999

Dated: August 2, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99–20750 Filed 8–10–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO 310 1310 03–2410; OMB Approval Number 1004–0145]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On June 11, 1999, the Bureau of Land Management (BLM) published a notice in the **Federal Register** (64 FR 29334) requesting comments on the collection. The comment period ended August 2, 1999. No comments were received. Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Office at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0160), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630) 1849 C St., NW, Room 401 LS Bldg., Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Oil and Gas Exploration and Leasing.

OMB Approval Number: 1004–0145.

Abstract: Respondents supply information that will be used to determine the eligibility of an applicant to hold, explore for, and produce oil and gas on Federal lands. The information supplied allows the Bureau of Land Management to determine whether an applicant is qualified to conduct exploration and leasing activities and to hold a lease to obtain a benefit under the terms of the Mineral Leasing Act of 1920.

Form Number: N/A.

Frequency: On occasion.

Description of Respondents: Individuals, small businesses, and oil and gas exploration and drilling companies.

Estimated Completion Time: 1 hour.

Annual Responses: 1,400.

Annual Burden Hours: 1,400.

Bureau Clearance Officer: Carole J. Smith (202) 452–0367.

Dated: August 3, 1999.

Carole J. Smith,

Bureau Clearance Officer.

[FR Doc. 99–20626 Filed 8–10–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 930–1430–01; NMNM 92938]

Order Providing for the Opening of Public Land in Catron County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open 22.50 acres which were segregated for an exchange under the Federal Land Policy and Management of 1976 (43 U.S.C. 1716), as amended to the operation of the public land laws and the general mining laws. The exchange was consummated and this land was not conveyed out of Federal ownership and needs to be opened to entry. The land is described as follows:

New Mexico Principal Meridian

T. 10 N., R. 13 W.,
Sec. 24, W½1SE¼NE¼ and SW¼SE¼SE¼NE¼.
Containing 22.50 acres.

EFFECTIVE DATE: September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM, New Mexico State Office, P. O. Box 27115, Santa Fe, NM 87502–0115, (505) 438–7597.

At 10 a.m. on September 10, 1999 the land will be open to appropriation under the public land laws and mining laws, subject to valid existing rights and any other segregation of record.

Dated: August 2, 1999.

Richard A. Whitley,

Acting State Director.

[FR Doc. 99–20740 Filed 8–10–99; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili o Kaloko Honokohau, Kaloko Honokohau National Historical Park Advisory Commission will be held at 10 a.m. to 12 noon, September 4, 1999, at the King Kamehameha's Kona Beach Hotel, Hawaiian Resource Center, Kailua-Kona, Hawaii.

Superintendent's and Committee Reports will be presented.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after October 15, 1999. For copies of the minutes, contact the Kaloko-Honokohau National Historical Park Superintendent at (808) 329–6881.

Dated: July 30, 1999.

Bryan Harry,

Superintendent, Pacific Islands Support Office.

[FR Doc. 99–20641 Filed 8–10–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 2 p.m. on Friday, August 27, 1999, at the Japanese American National Museum, 369 East First Street, Los Angeles, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site. The meeting will be held

in the second floor Education Center, in Historic Building, First and Alameda Street.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:
Rose Ochi, Chairperson
William Michael, Vice Chairperson
Keith Bright
Martha Davis
Sue Kunitomi Embrey
Gann Matsuda
Vernon Miller
Mas Okui
Glenn Singley
Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after October 1, 1999. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: July 30, 1999.

Ross R. Hopkins,

Superintendent, Manzanar National Historic Site.

[FR Doc. 99–20640 Filed 8–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Advisory Commission for the San Francisco Maritime National Historical Park; Public Meeting

Agenda for the August 25, 1999 Public Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park, Public Meeting, Presidio Golden Gate Club, 10:00 a.m.–12:30 p.m.

10:00 a.m.
Welcome—Neil Chaitin, Chairman
Opening Remarks—Neil Chaitin, Chairman
10:15 a.m.
Update—General Management Plan, Phase II Implementation, William Thomas, Superintendent
10:30 a.m.
Update—Haslett Warehouse, Stephen Crabtree, Concession Program, Management
10:45 a.m.
Status—SAFR Space needs for: Building E, Tom Mulhern, Museum Services Manager
11:00 a.m.
Status—Ship Preservation Update, Wayne Boykin, Ships Manager & Staff
11:15 a.m.
Status—Volunteer Program, Sue Schmidt, Volunteer Coordinator
11:30 a.m.
Update—National Maritime Museum Association Projects, Kathy Lohan, Chief Executive Officer
11:45 a.m.
Update—Associates of the National Maritime Museum Library, Peter Evans, President, Library Associates
12:00 p.m.
Public Comments and Questions
12:15 p.m.
Agenda items/Date for next meeting

William G. Thomas,

Superintendent.

[FR Doc. 99–20642 Filed 8–10–99 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the the possession of the South Dakota State Archaeological Research Center, Rapid City, SD.

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center (SARC) professional staff in consultation with representatives of the Rosebud Sioux Tribe of the Rosebud Indian Reservation and the Lower Brule Sioux Tribe of the Lower Brule Reservation.

Around 1870, human remains representing one individual were recovered in eastern Montana by B.C. Coleman of Spearfish, SD. In 1995, these human remains were discovered in the collections of the Adams Memorial Museum, Deadwood, SD and were transferred that same year to the South Dakota State Archaeological Research Center. No known individual was identified. No associated funerary objects are present.

Based on cranial morphology and dentition, this individual has been identified as Native American. Extensive copper staining on the cranium indicates a post–1700 AD date for this burial. Based on crainometric measurements, oral tradition, and historical evidence, the cultural affiliation of this individual from eastern Montana is most likely with the Brule division of the Lakota tribe. The Brule currently reside and are represented by the Rosebud Sioux Tribe of the Rosebud Indian Reservation and the Lower Brule Sioux Tribe of the Lower Brule Reservation.

Based on the above mentioned information, officials of the South Dakota State Archaeological Research Center have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the South Dakota State Archaeological Research Center have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Rosebud Sioux Tribe of the Rosebud Indian Reservation and the Lower Brule Sioux Tribe of the Lower Brule Reservation.

This notice has been sent to officials of the Rosebud Sioux Tribe of the Rosebud Indian Reservation and the Lower Brule Sioux Tribe of the Lower Brule Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Renee Boen,

Curator, State Archaeological Center, South Dakota Historical Society, P.O. Box 1257, Rapid City, SD 57709–1257; telephone: (605) 394-1936, before September 10, 1999. Repatriation of the human remains to the Rosebud Sioux Tribe of the Rosebud Indian Reservation and the Lower Brule Sioux Tribe of the Lower Brule Reservation may begin after that date if no additional claimants come forward.

Dated: August 3, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–20643 Filed 8–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the University of Pennsylvania Museum, University of Pennsylvania, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of University of Pennsylvania Museum, University of Pennsylvania, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma.

At an unknown date, human remains representing one individual were removed from Ft. Klamath, OR by person(s) unknown. Prior to 1915, these human remains were received by the University of Pennsylvania Museum. In 1915, the control of these remains was transferred from the University of Pennsylvania Museum to the Wistar Institute. In 1961, control of the remains was transferred back to the University of Pennsylvania Museum. No known individual was identified. No associated funerary objects are present.

Based on accession information from the Wistar Institute, this individual has been identified as Native American of Modoc affiliation. No further information exists for this individual.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Lastly, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104–6324; telephone: (215) 898–4051, fax: (215) 898–0657, before September 10, 1999. Repatriation of the human remains to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: August 3, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 99–20644 Filed 8–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974; Revisions to Existing System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior is issuing public notice of its intent to amend the existing system of records managed by the Bureau of Reclamation (Reclamation) entitled "Equipment, Supply, and Service Contracts, LBR–45."

The notice is published in its entirety below.

DATES: Persons wishing to comment on the proposed revisions must do so by September 10, 1999.

Effective date: The proposed revised system of records will become effective without further notice on September 20, 1999, unless comments received result in a contrary determination. Reclamation will publish a new notice if changes are made based on review of comments received.

ADDRESSES: Interested individuals may comment on this publication by writing to the Reclamation Privacy Act Officer, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007 or comments may be sent by facsimile transmission to fax No. 1–800–822–7651. Comments will be available for inspection at the Bureau of Reclamation, Denver Federal Center, Sixth Avenue and Kipling Street, Building 67, Room 112, Denver, Colorado, from 7:30 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding "Equipment, Supply, and Service Contracts, WBR–45" contact Mr. Ronald Simonich, Procurement Analyst, Acquisition Operations Group at (303) 445–2447. For general information regarding Reclamation's Privacy Act program, call Mr. Casey Snyder at (303) 445–2048.

SUPPLEMENTARY INFORMATION: Recent Privacy Act Compilations list this system of records as Reclamation-45. When originally published in the **Federal Register** this system of records was identified as LBR–45. The content of the system of records is the same; the prefix on the system was changed to reflect organizational changes.

This system of records notice was previously published in the **Federal Register** on April 11, 1977 (42 FR 19109). This publication:

1. Revises the system location;

2. Adds routine uses and users to include the Internal Revenue Service, other Federal agencies, and debt collection agencies;

3. Updates information about storage of the system to include computerized system information;

4. Updates information concerning the retention and disposal of records in the system;

5. Updates the system manager and address; and

6. Adds a purpose statement which was not required when the original system of records notice was published.

All other changes proposed are editorial in nature.

Murlin Coffey,

Manager, Property and Office Services.

INTERIOR/WBR–45

SYSTEM NAME:

Equipment, Supply, and Service Contracts.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have entered into contracts with the agency for equipment, supplies, and services. (The records contained in this system which pertain to individuals contain principally proprietary information concerning sole proprietorships. Some of the records in the system which pertain to individuals may reflect personal information, however. Only the records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Contracts for the procurement of equipment, supplies, materials, and services; including reports of compliance or noncompliance to labor and other laws governing contract administration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Reclamation Act of June 17, 1902, as amended, 43 U.S.C. 371, *et seq.*, 40 U.S.C. 486(c), 31 U.S.C. 66a, 31 U.S.C. 7701(c); and 31 U.S.C. 3325(d).

PURPOSE(S):

The primary uses of the records are for administration of the contract. The information is also used by the contractor to report income tax. The Government uses these records to collect and report on business travel expenses, self-employment tax, depreciation, and any delinquent amounts arising out of the contractor's relationship with the Government. The records are also used to report certain contract information to the Federal Procurement Data System (FPDS) and payment information to the Internal Revenue Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains;

(2) To the Internal Revenue Service to report payments;

(3) To the Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(i) The Department or any component of the Department;

(ii) Any Departmental employee acting in his or her official capacity;

(iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(i) Relevant and necessary to the proceedings; and

(ii) Compatible with the purpose for which we compiled the information.

(4) To the appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule regulation, order or license.

(5) To a congressional office in response to an inquiry to that office by the individual to whom the records pertains.

(6) To a collection agency for the purpose of debt collection.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders and on the Federal Financial System automated acquisition and reporting systems.

RETRIEVABILITY:

Indexed by name of individual or by purchase order number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules, as included in the Federal Acquisition Regulation (FAR 9.805).

SYSTEM MANAGER(S) AND ADDRESS:

Acquisition and Assistance Management Services, Bureau of Reclamation, Denver Federal Center, PO Box 25007, Denver, Colorado 80225–0007.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

[FR Doc. 99–20652 Filed 8–10–99; 8:45 am]

BILLING CODE 4310–04–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–857–858 (Preliminary)]

Certain Paintbrushes From China and Indonesia

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731-TA–857–858 (Preliminary) under section 733(a) of the Tariff Act of 1930 [1] (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an

[1] 19 U.S.C. 1673b(a).

industry in the United States is materially retarded, by reason of imports from China of synthetic filament paintbrushes, provided for in subheading 9603.40.4060 of the Harmonized Tariff Schedule of the United States (HTS), and imports from Indonesia of natural bristle and synthetic filament paintbrushes, provided for in subheadings 9603.40.4040 and 9603.40.4060 of the HTS that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act,[2] the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by September 16, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by September 23, 1999.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E,[3] and part 207, subparts A and B.[4]

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or ffischer@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on August 2, 1999, by the Paintbrush Trade Action Coalition (PATAC) whose member firms include EZ Paintr Corp., St. Francis, WI; Bestt Liebco, Philadelphia, PA; The Wooster Brush Co., Wooster, OH; Purdy Corp., Portland, OR; and Tru*Serv Manufacturing, Cary, IL.

[2] 19 U.S.C. 1673a(c)(1)(B).

[3] 19 CFR part 201.

[4] 19 CFR part 207.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties[5] who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 10:30 a.m. on August 23, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179 or ffischer@ustic.gov) not later than August 18, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

[5] As defined in 19 U.S.C. 1677(9).

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 26, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: August 4, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20720 Filed 8–10–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Public Meeting Concerning Heavy Duty Diesel Engine Consent Decrees

The Department of Justice and the Environmental Protection Agency announce a public meeting to be held on September 10, 1999 at 11:00 a.m. at 810 7th Street, NW., Main Conference Room (3102), Washington, DC. The subject of the meeting will be implementation of the provisions of seven consent decrees signed by the United States and diesel engine manufactures and entered by the United States District Court for the District of Columbia on July 1, 1999. In supporting entry by the court of the decrees, the United States committed to meet with states, industry groups, environmental groups, and concerned citizens to discuss consent decree implementation issues. This will be the first of a series of public meetings to be held quarterly

during the first year of implementation of the consent decrees and at least annually thereafter. Future meetings will be announced in the **Federal Register** and/or on EPA's Diesel Engine Settlement web page at: www.epa.gov/oeca/ore/aed/diesel.

This first meeting will likely focus on the United States' review of the Company Proposed project plans and in-use testing plans and implementation of the Low NO_X rebuild program. Interested parties may contact the Environmental Protection Agency prior to the meeting at the address listed below with questions or suggestions for other topics of discussion. During the week prior to the meeting, questions and suggestions for topics of discussion which have been received will also be posted on the EPA web site.

FOR FURTHER INFORMATION, PLEASE CONTACT: Anne Wick, EPA Diesel Engine Consent Decree Coordinator, U.S. Environmental Protection Agency (Mail Code 2242A), EPA Headquarters, Washington, DC 20460, e-mail: WICK.ANNE@EPA.GOV.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20745 Filed 8–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on July 15, 1999 a proposed consent decree in *United States* v. *Capitol Park Associates* (No. 1:99CV01901) was lodged with the United States District Court for the District of Columbia.

The consent decree settles claims concerning residential apartment buildings in the District of Columbia that were brought on behalf of the Department of Housing and Urban Development under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. § 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in its complaint that defendants failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

This consent decree settles claims against Capitol Park for violations of the Lead Hazard Reduction Act. Capitol Park owns three buildings in the District of Columbia, containing 936 apartment units. Under the consent decree, Capitol Park will provide the notices and disclosures required by the Lead Hazard Reduction Act, will perform abatement measures to make apartment units lead-safe, will pay $10,000 in administrative penalties, and will perform a Child Health Improvement Project which consists of $15,000 of funding to support the Upper Cardoza Center, a low-income health clinic in Washington, provide health care, intervention and education for non-English speaking Families with one or more lead-poisoned children.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Capitol Park Associates* D.J. Ref. 90–5–1–1–06558/3.

The consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza S.W, Room 3206, Washington, D.C. 20410, (202) 755–1785. The consent decree may be obtained in person or by mail from the Department of Justice Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0852, or on the Department of Justice website at: "http://www.usdoj.gov/enrd/consent.html". In requesting copies from the Consent Decree Library, please enclose a check for the copy production of the decree (25 cents per page) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20742 Filed 8–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 U.S.C. 50.7, and in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States v. Conklin Company, Inc., et al.* Civil Action No. *97–1372*, was Lodged on July, *30*, 1999, with the United States District Court for the Eastern District of Louisiana.

The Consent Decree settles an action brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607. The Consent Decree provides that Conklin will pay the United States $262,500 dollars for response costs incurred in conducting a removal action at the Malter International Site located in the City of Gretna, Jefferson Parish, Louisiana.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Conklin Company, Inc., et al.* DOJ Ref. #90–11–2–1247.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Louisiana, Hale Boggs Federal Building, 501 Magazine Street, Second Floor, New Orleans, Louisiana 70130; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of *$6.00* (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20747 Filed 8–10–99 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on July 15, 1999 a proposed consent decree in *United States* v. *Cornerstone Real Estate Management L.L.C.* ("Cornerstone") (No. 1:99CV01906) was lodged with the United States District Court for the District of Columbia.

The consent decree settles claims concerning residential apartment buildings in the District of Columbia that were brought on behalf of the Department of Housing and Urban Development under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. §§ 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in its complaint that defendants failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

This consent decree settles claims against two defendants—1425 Park Avenue, L.L.C. and Cornerstone (collectively "Cornerstone")—for violations of the Lead Hazard Reduction Act. Cornerstone owns and manages four buildings containing 52 apartment units in the District of Columbia. Under the consent decree, Cornerstone will provide the notices and disclosures required by the Lead Hazard Reduction Act, will perform abatement measures to make apartment units lead-safe, will pay $2,000 in administrative penalties, and will perform a Child Health Improvement Project which consists of the purchase of three leadcare portable blood test analysis kits, valued at a total of $6,750, which will be donated to three low-income health clinics in the District of Columbia.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Cornerstone Real Estate Management L.L.C.* D.J. Ref. 90–5–1–1–06558/1.

The consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza S.W., Room 3206, Washington, D.C. 20410, (202) 755–1785. The consent decree may be obtained in person or by mail from the Department of Justice Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0852, or on the Department of Justice website at: "http://www.usdoj.gov/enrd/consent.html". In requesting copies from the Consent Decree Library, please enclose a check for the copy production of the decree (25 cents per page) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20743 Filed 8–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on July 15, 1999 a proposed consent decree in *United States* v. *Crawford Edgewood Management, Inc.* (No. 1:99CV01904) was lodged with the United States District Court for the District of Columbia.

The consent decree settles claims concerning residential apartment buildings in the District of Columbia that were brought on behalf of the Department of Housing and Urban Development under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in its complaint that defendants failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

This consent decree settles claims against Crawford Edgewood for violations of the Lead Hazard Reduction Act. Crawford Edgewood manages 12 buildings in the District of Columbia, containing 1588 apartment units. Under the consent decree, Crawford Edgewood will provide the notices and disclosures required by the Lead Hazard Reduction Act, will perform abatement measures to make apartment units lead-safe, will pay $25,000 in administrative penalties, and will perform $100,000 worth of Child Health Improvement Projects.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Crawford Edgewood Management, Inc.* D.J. Ref. 90–5–1–1–06558/4.

The consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza S.W., Room 3206, Washington, D.C. 20410, (202) 755–1785. The consent decree may be obtained in person or by mail from the Department of Justice Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0852, or on the Department of Justice website at: "http://www.usdoj.gov/enrd/consent.html". In requesting copies from the Consent Decree Library, please enclose a check for the copy production of the decree (25 cents per page) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20744 Filed 8–10–99 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on July 15, 1999 a proposed consent decree in *United States* v. *Double H Housing, Inc.* (No. 1:99CV01907) was lodged with the United States District Court for the District of Columbia.

The consent decree settles claims concerning residential apartment buildings in the District of Columbia that were brought on behalf of the Department of Housing and Urban Development under the Residential Lead-Based Hazard Reduction Act 42 U.S.C. §§ 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in its complaint that defendants failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

This consent decree settles claims against eleven defendants (collectively "Double H") for violations of the Lead Hazard Reduction Act. Double H owns and manages 12 buildings in the District of Columbia and two buildings in Maryland containing 1,370 apartment units. Under the consent decree, Double H will provide the notices and disclosures provided by the Lead Hazard Reduction Act, will perform abatement measures to make apartment units lead-safe, will pay $50,000 in administrative penalties, and will perform $50,000 worth of Child Health Improvement Projects.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the

Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Double H Housing, Inc.* D.J. Ref. 90–5–1–06558/6.

The consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW., Room 3206, Washington, DC 20410, (202) 755–1785. The consent decree may be obtained in person or by mail from the Department of Justice Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington,DC 20005, (202) 624–0852, or on the Department of Justice website at: "http://www.usdoj.gov/enrd/consent.html". In requesting copies from the Consent Decree Library, please enclose a check for the copy production of the decree (25 cents per page) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20741 Filed 8–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 21, 1999, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint with the United States District Court for the District of Idaho alleging that defendants FMC Corporation ("FMC") and the J.R. Simplot Company ("Simplot") are liable under Sections 106 and 107 the Comprehensive Environmental, Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 & 9607, for the implementation of EPA's selected remedy for the Eastern Michaud Flats Superfund Site near Pocatello, Idaho ("the Site"), and for the reimbursement of all costs incurred by the United States on behalf of EPA in response to the release of hazardous substances at the Site. The action is styled *United States v. FMC Corporation*, Civil Action No. 99–296–E–BLW (D. Idaho). On the same day, the United States lodged with the United States District Court for the District of Idaho Consent Decrees with FMC and Simplot resolving the United States' claims in this action.

The Consent Decree requires FMC and Simplot to implement EPA's selected remedy for the Site, and to reimburse the United States for $614,456.11, which represents the full amount of unreimbursed costs incurred by the United States on behalf of EPA in response to releases of hazardous substances from the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *FMC*, DOJ Ref. #90–7–1–689/1.

The proposed Consent Decrees may be examined at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101 (206) 553–1504, and may be obtained from the Office of the United States Attorney for the District of Idaho, P.O. Box 32, Boise, Idaho 83707 (208) 334–1211. Copies of either or both of the proposed Consent Decrees may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting copies please refer to *United States* v. *FMC*, No. C99–296–E–BLW (D. Idaho), and enclose a check payable to the Consent Decree Library in the amount of $20.75 for the Consent Decree with FMC (83 pages at 25 per page reproduction costs, not including attachments) and $18.50 for the Consent Decree with Simplot (74 pages at 25 cents per page reproduction costs not including attachments).

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 99–20748 Filed 8–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act of 1976 (RCRA) as Amended, 42 U.S.C. 6928

Under 28 CFR 50.7, notice is hereby given that on July 26, 1999, a proposed Consent Decree in *United States* v. *Skitec Corporation*, Civil Action No. C99–2071, was lodged with the United States District Court for the Northern District of Iowa.

In this action, the United States sought injunctive relief and penalties for violations by Skitec Corporation (Skitec) of the requirements of sections 3008 of RCRA, 42 U.S.C. 6928(a) and (g), and the regulations promulgated thereunder, in particular 40 CFR parts 264, 265, and 270, at its facility in Waverly, Iowa. This facility is a plant that conducts metal tubing fabrication activities and is located at 824 Industrial Road, Waverly, Iowa. The Consent Decree resolved the RCRA violations alleged in the Complaint filed simultaneously with the lodging of the Consent Decree, which stem primarily from Skitec's violations of hazardous waste treatment, storage and disposal requirements.

The injunctive relief required under the proposed Consent Decree requires Skitec to properly dispose of all contaminated soil at its aforementioned facility. Skitec also will pay a civil penalty to the United States of $9,500,00, plus interest accrued, as well as certify that the corrective measures, outlined in Attachment A to the Consent Decree, have been completed.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Skitec Corporation*, D.J. Ref. 90–7–1–915.

The Consent Decree may be examined at the Office of the United States Attorney, 401 1st Street SE., Cedar Rapids, Iowa, 52401, at U.S. EPA Region VII, U.S. 726 Minnesota Avenue, Kansas City, Kansas 66101, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $12.50 (25 cents per page reproduction cost), with attachments a check in the amount of $20.75, payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20749 Filed 8–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 U.S.C. 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Texmark Chemicals, Inc.*, Civil Action No. *H–99–2437*, was lodged on July *29*, 1999, with the United

States District Court for the Southern District of Texas.

The Consent Decree settles an action brought under Sections 309(b) and (d) of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b) and (d). The consent Decree provides for Texmark's payment of a civil penalty to the United States in the amount of $129,816, requires injunctive relief to bring Texmark into compliance with the Clean Water Act, and requires Texmark to implement and complete two Supplemental Environmental Projects ("SEPs") costing in the aggregate $95,790 at its Galena Park, Harris County, Texas facility.

The Vacuum Pumps SEP involves the replacement of its two steam jets in the DCPD Distillation Process with two vacuum pumps thereby eliminating process wastewater in its process system. Because process wastewater will no longer be generated in the production of DCPD, the proposed SEP will reduce the average flow through outfall 001 by between 50% and 78%; process wastewater flow would concurrently be reduced by between 55% and 87%.

The Rail Car Overfill Prevention SEP will augment Texmark's existing rail car loading process to prevent the inadvertent overfilling of rail cars at the facility. The SEP will employ a micro-motion meter system which consists of a senor, transmitter, totalizer and probe. The sensor will measure mass, volume, density and temperature. The SEP will prevent spills occurring as the result of rail car filling thus benefitting the environment.

The Department of Justice will receive, for a period of thirty (30) days from the ate of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Texmark Chemicals, Inc.*, DOJ Ref. #90–5–1–1–4527.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas, 910 Travis Suite 1500, Houston, Texas 77208; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of *$6.75* (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20746 Filed 8–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2006–99; AG Order No. 2240–99]

RIN 1115–AE26

Extension of Designation of Bosnia-Herzegovina Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends the Attorney General's designation of Bosnia-Herzegovina under the Temporary Protected Status (TPS) program until August 10, 2000. Eligible nationals of Bosnia-Herzegovina (or aliens having no nationality who last habitually resided in Bosnia-Herzegovina) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered for the initial period of TPS, which ended on August 10, 1993,or who registered after that date under the late initial registration provision. Persons who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Bosnia-Herzegovina is effective August 11, 1999, and will remain in effect until August 10, 2000. The 30-day re-registration period begins August 11, 1999 and will remain in effect until September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have To Extend the Designation of Bosnia-Herzegovina Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act, as amended (the Act), states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). Under section 244(b)(3)(C), the Attorney General may extend the initial TPS period based on a determination that the foreign state continues to meet the conditions for designation. 8 U.S.C. 1254a(b)(3)(C). Through such an extension, TPS continues to be available only to persons who have been continuously physically present and have continuously resided in the United States from the effective date of the initial designation, in this case since August 10, 1992.

Why Is the Attorney General Extending the TPS Designation for Bosnia-Herzegovina

On August 10, 1992, the Attorney General designated Bosnia-Herzegovina for TPS for a period of 12 months. 57 FR 35604. Since that date, the Department of State and the Department of Justice have annually reviewed conditions within Bosnia-Herzegovina and the Attorney General, based on these reviews, has extended TPS for that country each year. Based on this year's review, the Attorney General finds that extraordinary and temporary conditions that prevent nationals of Bosnia-Herzegovina from returning to their country in safety persist, and that, due to such conditions, extension of the designation of Bosnia-Herzegovina under the TPS program is warranted. 8 U.S.C. 1254a(b)(1)(C).

If I Currently Have TPS, How Do I Register for an Extension?

Persons previously granted TPS under the Bosnia-Herzegovina program may apply for an extension by filing a Form I–821, without the fee, during the re-registration period that begins August 11, 1999 and ends September 10, 1999. Additionally, you must file a Form I–765. See the chart below to determine whether or not you must submit the one-hundred dollars ($100) filing fee with the Form I–765.

If	Then
You are applying for employment authorization through August 10, 2000	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.

If	Then
You already have employment authorization or do not require employment authorization	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver	You must complete and file Form I–765, with a fee waiver request and affidavit (and any other information), in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½" x 1½") and supporting evidence, as provided in

8 CFR 244.9 (evidence of identity and nationality, and proof or residence).

Is Late Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Bosnia-Herzegovina under 8 CFR 244.2(f)(2). The requirements for late initial registration specify that an applicant for late initial registration must—

(1) Be a national of Bosnia-Herzegovina (or an alien having no nationality who last habitually resided in Bosnia-Herzegovina);

(2) Have been continuously physically present in the United States since August 10, 1992;

(3) Have continuously resided in the United States since August 10, 1992; and

(4) Be admissible as an immigrant, except as otherwise provided in section 244(c)(2)(A), and not ineligible under section 244(c)(2)(B) of the Act. 8 CFR 244.2(f)(2).

Additionally, the applicant must be able to demonstrate that, during the initial registration period from August 10, 1992, through August 10, 1993, he or she—

(1) Was in valid immigrant or nonimmigrant status, or had been granted voluntary departure status of any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. Id.

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the qualifying condition. Id.

Where Should I File for an Extension of TPS?

Persons seeking to extend their TPS must submit an application and accompanying materials to the Immigration and Naturalization local office that has jurisdiction over the applicant's place of residence.

When Can I File for an Extension of TPS?

The 30-day re-registration period begins August 11, 1999 and will remain in effect until September 10, 1999.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not preclude or affect an application for asylum or any other immigration benefit. Any national of Bosnia-Herzegovina (or alien having no nationality who last habitually resided in Bosnia-Herzegovina) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also lead to denial of TPS. For example, a person who has been convicted of an aggravated felony is not eligible for asylum or TPS.

Does This Extension Allow Nationals of Bosnia-Herzegovina (or Aliens Having No Nationality Who Last Habitually Resided in Bosnia-Herzegovina) Who Entered the United States After August 10, 1992, To File for TPS?

No. This is a notice of an extension of the TPS designation for Bosnia-Herzegovina. It is not a notice of redesignation for Bosnia-Herzegovina under the TPS program. An extension of TPS does not change the required dates of continuous physical presence and residence in the United States, and does not expand the TPS program to include nationals of Bosnia-Herzegovina (or aliens having no nationality who last habitually resided in Bosnia-Herzegovina) who arrived in the United States after the date of the initial designation, in this case since August 10, 1992.

Notice of Extension of the Designation of Bosnia-Herzegovina Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(3)(A) and (C) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Bosnia-Herzegovina was initially designated for TPS continue to exist. 8 U.S.C. 1254a(b)(3)(A), (C). As a result, I determine that the conditions for the initial designation of TPS for Bosnia-Herzegovina continue to be met. Accordingly, I order as follows:

(1) The designation of Bosnia-Herzegovina under section 244(b)(1)(C) of the Act is extended for an additional 12-month period from August 11, 1999, until August 10, 2000. 8 U.S.C. 1254a(b)(1)(C).

(2) I estimate that there are approximately 400 nationals of Bosnia-Herzegovina (or aliens having no nationality who last habitually resided in Bosnia-Herzegovina) who have been granted TPS and are eligible for re-registration.

(3) In order to maintain current registration for TPS, a national of Bosnia-Herzegovina (or alien having no nationality who last habitually resided in Bosnia-Herzegovina) who received a grant of TPS during the initial period of designation from August 10, 1992, until August 10, 1993, must re-register for TPS.

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 10, 2000, the designation of Bosnia-Herzegovina under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination and the reasons underlying it will be published in the **Federal Register**.

(5) Information concerning the TPS program for nationals of Bosnia-Herzegovina (or aliens having no nationality who last habitually resided in Bosnia-Herzegovina) will be available at local Service offices upon publication of this notice.

Dated: August 6, 1999.
Janet Reno,
Attorney General.
[FR Doc. 99–20852 Filed 8–9–99; 11:59 am]
BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 4, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((292) 209–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before September 10, 1999.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.
Title: Strategic Partnerships for Worker Safety and Health.
OMB Number: 1218–0NEW.
Frequency: On occasion.
Affected Public: Business or other non-profit; Federal Government.
Number of Respondents: 500.
Estimated Time Per Respondent: 29.72 hours per year.
Total Burden Hours: 14,860.
Total Annualized capital/startup costs: $0.
Total annual costs (operating/maintaining systems or purchasing services): $0.
Description: OSHA requires Strategic Partnerships for Worker Safety and Health information to assess the impact of partnerships. An OSHA Strategic Partnership aims to have a measurable, positive impact on workplace safety and health that goes beyond what historically has been achievable through traditional enforcement methods and through a focus on individual work sites.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 99–20662 Filed 8–10–99; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July , 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or protection of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–36,283, A, B, C; Hevi-Duty Electric, Mt. Vernon, IL, Pell City, AL, Cortland, NY, and Berwick, PA
TA–W–36,189; Gary Williams Energy Corp., Roosevelt, UT
TA–W–36,332; S & S Chemical and Oil, Inc., Williston, ND
TA–W–36,223; Dydrolex, Inc., Longview, TX
TA–W–35,959; Bonney Forge Cop., Allentown, PA
TA–W–36,232; Total Safety, Inc., Watford City, ND
TA–W–36,320; CAC, Inc., Edmund, OK
TA–W–36,214; Union Drilling, Inc., Roosevelt, UT
TA–W–36,211; Aquila Gas Pipeline Corp., San Antonio, TX
TA–W–36,133; MCM Enterprises, Inc. (A/k/A Midstates Wire), Crawfordsville, IN
TA–W–35,682; Newport Steel Corp., Newport, KY
TA–W–35,846; U.S. Axle, Inc., Pottstown, PA
TA–W–36,380; Smurfit-Stone Container Corp., Laporte, IN
TA–W–36,069; Thyssen Mining Construction, Inc. & Betty B. Coal Co., Inc., Coeburn, VA
TA–W–35,887; Hydroform USA, Inc., Carson, CA
TA–W–35,566; H & H Strandflex, Oriskany, NY
TA–W–36,408; Geo-Log, Inc., Granbury, TX
TA–W–35,857; Johnstown Corp., Johnstown, PA
TA–W–36,077; Graybec Lime, Inc., Central Quarry, Pleasant GAP, Formerly Bellefonte Lime Co., Bellefont, PA
TA–W–36,374; Rockwell Automation, Reliance Electric Custom Motors, Kings Mountain, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–36,404; CXY Energy, Dallas, TX
TA–W–36,347; Great River Insurance Co., Accounting Dept. Meridian, MS
TA–W–36,353; Gdynia-America Line, Inc., Elizabeth, NJ
TA–W–36,405; First Reserve Oil and Gas Co., Midland, TX
TA–W–36,335; Kellogg Brown & Root, Odessa, TX
TA–W–36,474; Weyerhauser Co., Export Service, Coos Bay Chip Operations, North Bend, OR
TA–W–36,352; Triton Energy, Dallas, TX
TA–W–36,450; AMP, Inc., Metrology Group, Harrisburg, PA

TA–W–36,419; Inter-American Oil Works, Inc., Odessa, TX
TA–W–36,157 &A; Paramount Pictures, Hollywood, CA and Walt Disney Pictures & Television, Burbank, CA
TA–W–36,470; Cable Repair of Hobbs, Inc., d/b/a Cable Service Co. Hobbs, NM
TA–W–35,958; Jencraft Corp., McAllen, TX
TA–W–36,505; American Industrial Components, Inc., Breckenridge, TX
TA–W–36,497; Power Exploration, Inc., Tyler, TX
TA–W–36,519; Kramer Steel, Inc., Farmington Hills, MI
TA–W–36,503; Petron Industries, Inc., Alice, TX
TA–W–35,893 & A; Natchiq, Inc., Anchorage, AK and Houston, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–35,893I; Omega service Industries, Operating Throughout the State of Louisiana and Gulf Coast Offshore
TA–W–35,714; Allegheny Ludlum Steel Corp., Allegheny Rodney Strip Div., Wallingford, CT
TA–W–36,267; Batesville Casket Co., Campbellsville, KY
TA–W–35,731; National Material Co., Arnold, PA
TA–W–36,276; Allergan Lenior, Lenoir, NC
TA–W–36,234; Northrop Grumman Corp., Commercial Aircraft Div., Job Families 7000, 7060, 7441 and 2180, Dallas, TX
TA–W–36,264; Batts, Inc., Zeeland, MI
TA–W–36,341; Nortel Carrier Solutions (Formerly Known as The Nortel Switching), Research Triangle Park, NC
TA–W–36,226; & A; Seagull Energy Corp. Headquartered in Houston, TX and Seagull Pipeline & Marketing Co., Liberty, TX
TA–W–36,226B; Seagull Energy E&P, Inc., Pampa, TX and C; Waskom, TX, D; Carthage, TX, E; Freeport, TX, F: Ratcliff, AR, G; Dubach, LA, H; Haughton, LA, I; Morgan City LA, J: Weatherford, OK
TA–W–36,226K; Seagull Freestone District, Oakwood, TX
TA–W–36,226L; Seagull Field Service, Kilgore, TX
TA–W–36,226M; Enstar Transmission & Distribution Center, Anchorage, AK
TA–W–36,140; Wellco Enterprises, Inc., Waynesville, NC
TA–W–36,351; National Wood Products, Glasgow, KY;
TA–W–35,812; Silicon Graphics, Inc., Chippewa Falls, WI and Eagan, MN
TA–W–36,075; Universal Welding, Inc., Export, PA
TA–W–36,393; Fruit of The Loom, Distribution Center, Campbellsville, KY
TA–W–36,279; Hazleton Knitwear, Hazleton, PA
TA–W–36,187; & A; Fluor Daniel, Inc., Sugar Land, TX and Tulsa, OK
TA–W–36,327; Fisher Rosemount, Inc., Burnsville, MN
TA–W–36,409; Barrett Resources Corp., Tulsa, OK
TA–W–36,434; Damascus Steel Casting Co., New Brighton, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–35,893E & F; Houston Contracting Co. Operating Throughout The State of AK and Houston, TX

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–36,219; Matador Petroleum Corp., Dallas, TX
TA–W–35,893B and C; Alaska Petroleum Contractors, Anchorage, AK and Houston, TX
TA–W–36,893D; APC Wood LLC, Operating Througout the State of AK
TA–W–36,893G; Houston/NANA, J.N. Operating Throughout the State of AK
TA–W–36,393H; ASRC Parsons Engineering, LLC, Operating Throughout The State of AK

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number of proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–35,944; Wabash Technologies, Huntington, IN
TA–W–36,262A; Allsop, Inc., Laramie, WY

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–36,458; R.L. Bolin, Wichita, Falls, TX
TA–W–36,495; Enron Oil and Gas Co., Tyler, TX

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–36,382; Philips Electronics North America Corp., Philips Components Div., Dept 140, Saugerties, NY: May 19, 1998
TA–W–36,086, A,B,C,D; Maxus Energy Corp., Dallas, TX. Midgard Energy Co., Amarillo, TX, Dumas, TX, Canadian, TX and Perryton, TX: March 31, 1998.
TA–W–36,312; Master Lick Co., Milwaukee, WI; May 4, 1998.
TA–W–36,377; Modern Machine Works, Inc., Dudahy, WI: May 24, 1998.
TA–W–36,323; Royce Hosiery Mills, Inc., Conover, NC: May 14, 1998.
TA–W–35,251; Gary Drilling Co., Inc., Bakersfield, CA: April 19, 1998.
TA–W–35,292 & A; Santa Fe Energy Resources, Inc., d/b/a Santa Fe Snyder Corp., Houston and Midland, TX: May 10, 1998.
TA–W–36,296; Yale E, Key, A Div. of Key Energy Service, Inc., Odessa, TX: April 28, 1998.
TA–W–36,440; Pilkington Libbey-Owens-Ford a/k/a Libby Owen Ford, Sherman, TX: June 8, 1998.
TA–W–36,443; Penn Transfer LTD, West Hazleton, PA: June 11, 1998.
TA–W–36,062; Stonecutter Textiles, Inc., Spindale, NC: March 29, 1998.
TA–W–36,281; Rick Bar Processing, Inc., Bethlehem, PA: May 12, 1998
TA–W–36,106; Funtime Sportswear, Inc., Lansford, PA: April 12, 1998.
TA–W–36,429; Dyersburg Corp., Alamac Knit Fabrics, Hamilton, NC; June 2, 1998.
TA–W–36,413; Jantzen, Inc., Portland, Or: June 2, 1998.
TA–W–36,430; Gemini Fashions Partnership, Union City, NJ: May 26, 1998.
TA–W–36,435; May Tag & Label Corp. Div. of Acco Brands, Including Leased Workers of Agency Solutions Staffing Services, Hillside, NJ: May 13, 1998.
TA–W–36,316; Kellwood Co., Sportswear Div., Coffeeville, MS: May 1. 1998.
TA–W–36,334; Federal Mogul Friction Products & World Wide Aftermarket Distribution, Manila, AR: May 14, 1998.

TA–W–36,355 & A; Cresthill Industries, Inc., Yonkers, NY and New York, New York: May 20, 1998.

TA–W–35,249; Coastal Oil and Gas Corp., Amarillo, TX: April 10, 1998.

TA–W–36,124; Coastal Oil and Gas Corp., Altamont, UT: April 1, 1998.

TA–W–36,204; Madiera Twin Fashions, Inc., New Bedford, MA: April 20, 1998.

TA–W–36,182; Jackes-Evans Manufacturing Co., St. Louis, MO: April 22, 1998.

TA–W–36,295; Chevron USA Production Co (CPDN), A Div. of Chevron USA, Inc., Midland, TX and A; AK, B; CA, C; CO, D; LA, E; MS. F; NM, G; OK, H; TX, I; UT: April 27, 1998.

TA–W–36,289; Marathon Oil Co., Houston, TX, A; WY and B; MI: May 7, 1998.

TA–W–36,192; Nextrom, Inc., Perth Amboy, NJ: April 23, 1998.

TA–W–36,113; Twin Ridge Corp., Acton, ME: April 15, 1998.

TA–W–36,136; Lamesa Apparel, Lamesa, TX: April 19, 1998.

TA–W–36,293; Leamco-Ruthco, Inc., Div. Of Weatherford ALS, Perryton, TX: April 22, 1998.

TA–W–36,294; Lankford Oil and Gas, Graham, TX: May 6, 1998.

TA–W–36,109 & A; Johansen Brothers Shoe Co., Inc., Corning, AR and Harrisburg, AR: April 7, 1998.

TA–W–36,337 & A; House of Ronnie, New York, NY and Jasper Textiles, Jasper, FL: May 19, 1998.

TA–W–36,400; Elementis Pigments, Inc., East St. Louis, IL: May 21, 1998.

TA–W–36,395 A; Circle De Lumber Beaver Marsh Yard, Beaver Marsh, OR and Klamath Falls, OR: June 1, 1998.

TA–W–35,898; American Alloys, Inc., New Haven, WV: March 3, 1998.

TA–W–36,078; International Paper Co., Mobile, AL: March 30, 1998.

TA–W–36,315; Vesuvius USA Steel Div., Zelienople, PA: May 13, 1998.

TA–W–36,331; Victoreen, Inc., Component Dept., Solon, OH: May 7, 1998.

TA–W–36,132; J.H. Boone's Inc., Gainesville, FL: April 16, 1998.

TA–W–36,012; Rhone-Poulenc AG Co., Ambler, PA: March 25, 1998.

TA–W–36,083; Schneider Drilling Corp., Tyler, TX: March 25, 1998.

TA–W–36,145; K & B Manufacturing, Inc., Lake Havasu City, AZ: April 22, 1998.

TA–W–36,310; Holiday Products, Inc., El Paso, TX: May 8, 1999.

TA–W–36,397; Techneglas, Inc., Finishing Operation, Pittston, PA: May 18, 1998.

TA–W–36,031; Joe's Casing & Drilling, Inc., Williston, ND: March 22, 1998.

TA–W–36,225; A. B. Glen Enterprises, Inc., Reform Manufacturing Div., Reform, Al and Detroit Slack Div., Finishing and Pressing Dept,. Detroit, Al and McCoy Manufacturing, Sulligent, Al: May 3, 1998.

TA–W–36,034; Gig Dog Driling, Midland, TX: April 6, 1998.

TA–W–36,246; Algroup Wheaton Molded Glass Operations, Millville, NJ: April 27, 1998.

TA–W–36,143; Glasgow & Sons, Inc., Perth Amboy, NJ: April 15, 1998.

TA–W–36,398; Majestic Lace Corp., Union City, NJ: May 27, 1998.

TA–W–36,358; Near Corp., New England Audo Resources, Lewiston, ME: May 26, 1998.

TA–W–36,252; Fina Oil & Chemical Co., Midland and Houston, TX: April 23, 1998.

TA–W–36,278; Mannor Corp., Bay Minette, AL: May 10, 1998.

TA–W–36,262; Allsop, Inc., Bellingham, WA: May 7, 1998.

TA–W–36,453; Offshore Diamond Drilling, Inc., Houston, TX: June 6, 1998.

TA–W–36,463; ITT Cannon, New Britain, CT: June 1, 1998.

TA–W–36,236; Yopp & Co., Inc., Florence, SC: April 22, 1998.

TA–W–36,253; Charles Komar & Sons, McAlester, OK: May 14, 1998.

TA–W–36,459; Medders Oil Co., Inc., Wichita Falls, TX: June 3, 1998.

TA–W–36,103; Lincoln Automotive Co. Including Leased Workers of Staffmark & Manpower, Jonesboro, AR: April 6, 1998.

TA–W–36,411; Apache Corp., Houston, TX: May 17, 1998.

TA–W–36,340; Beartrack Mine, Meridian Gold, Salmon, ID: May 20, 1998.

TA–W–36,354; Rama Group of Companies, Inc., Charm Graphics, Cheektowaga, NY: May 20, 1998.

TA–W–36,308; Amercord, Inc., Lumber City, GA: May 13, 1998.

TA–W–36,920; Soniform, El Cajon, CA: March 8, 1998.

TA–W–36,073; Mann Manufacturing Co., Inc., Walnut Grove, MS; April 8, 1998.

TA–W–36,161; Lab-Volt Systems, Inc., Wall, NJ: April 9, 1998.

TA–W–36,386; A.A. Fogley Co., Inc., Paris, AR: May 22, 1998.

TA–W–36,147; ITT Industries, Fluid Handling Systems, New Lexington, OH: April 19, 1998.

TA–W–36,365; Ashland Specialty Chemical Co., Plaquemine, LA: May 26, 1998.

TA–W–36,209 and A; Acorn Products Co., Inc. Hampden, ME and Lewiston, ME: May 3, 1998.

TA–W–36,886 & A, B, and C; Justin Boot Co., Sarcoxie, MO, Cashville, MO, Carthage, MO and Fort Forth TX: March 3, 1998.

TA–W–36,166; Weatherford International, Weatherford Completion & Oilfield Services Div., Kilgore, TX: April 9, 1998.

TA–W–36,241; Holston Defense Corp., Kingsport, TN: April 23, 1998.

TA–W–36,344; Crysteco, Inc., Welmington, OH: July 20, 1998.

TA–W–36,299; ABB Power T & D Co., Inc., Bloomington, IN: May 11, 1998.

TA–W–36,948; F. Schumacher & Co., Richburg, SC: May 10, 1998.

TA–W–36,005; The Cannondale Corp., Bedford, PA: March 20, 1998.

All workers engaged in work related to manufacturing bicycles separated on or after March 20, 1998.

All workers engaged in work manufacturing bicycle clothing and accessories are denied.

TA–W–36,917; Compaq Computer Corp., Network Productions Div., Irving, TX: March 8, 1998.

TA–W–36,515; Strasburg Manufacturing, Strasburg, VA: June 15, 1998.

TA–W–36,175; The Frog, Switch and Manufacturing Co., Carlisle, PA: April 15, 1998.

TA–W–36,311; Sew Crafters, LLC, Royston, GA: May 7, 1998

TA–W–36,325; Fasco Motors Group, Russellville, AR: May 7, 1998.

TA–W–36,020; Precision Circuits, Inc., Eatontown, NJ: March 19, 1998.

TA–W–36,230 & A; Johansen Brothers Shoe Co., Inc., Harrisburg, AR and Corning, AR: April 30, 1998.

TA–W–36,466; Delta Tanning Corp., North Bergen, NJ and Johnsontown, NY: June 8, 1998.

TA–W–36,066; Reach, Inc., Woodmill Div., Klamath Falls, OR: March 31, 1998.

TA–W–36,487; Praegitzer Indusries, Huntsville, AL Division, Madison, AL: June 18, 1998.

TA–W–36,326; C & J. Manufacturing, Inc., Blytheville, AR: May 12, 1998.

TA–W–36,387; Sylvia Hats, Inc. St. Louis, MO: May 27, 1998.

TA–W–36,138; ABB Vetco Gray, Inc., Houston, TX: April 20, 1998

TA–W–36,462; Lee County Textiles, Inc., Giddings, TX: May 28, 1998

TA–W–36,513; London International Group, Inc., Dothan Plant and Centre Plant, Dothan, AL: June 18, 1998.

All workers engaged in work manufacturing latex gloves separated on or after June 18, 1998;

and

All workers engaged in testing and packaging condoms are denied.

TA–W–36,188; Preferred Foundation, Freeport, NY: April 28, 1998

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03201; Lockheed Martin Corp., Tactical Aircraft Systems, Fort Worth, TX

NAFTA–TAA–03294; EFTC Corp., Rocky Mountain Operations (RMO), Greeley, CO

NAFTA–TAA–03249; Lee County Textiles, Inc., Giddings, TX

NAFTA–TAA–03233; Rockwell Automation, Reliance Electric—Custom Motors, Kings Mountain, NC

NAFTA–TAA–03186; Smurfit-Stone Container Corp., Laporte, IN

NAFTA–TAA–03281; Willamette Industries, Inc., Engineered Wood Products Div., Woodburn, OR

NAFTA–TAA–03077; The Cannondale Corp., Bedford, PA

NAFTA–TAA–03226; MCM Enterprises, Inc., (A.K.A. Midstates Wire), Crawfordsville, IN

NAFTA–TAA–03189; Allergan Lenoir, Lenoir, NC

NAFTA–TAA–03229; Sylvia Hat, Inc., St. Louis, MO

NAFTA–TAA–03177; C & J Manufacturing, Inc., Blytheville, AR

NAFTA–TAA–03152 & A; Johansen Brothers Shore Co., Inc., Corning, AR and Harrisburg, AR

NAFTA–TAA–03066; Precision Circuits, Inc., Eatontown, NJ

NAFTA–TAA–03141; Fina Oil and Chemical Co., Midland, TX

NAFTA–TAA–03235; Apache Corp., Houston, TX

NAFTA–TAA–03215; Ingersoll-Dresser Pump Co., Phillipsburg, NJ

NAFTA–TAA–03165; SMS Textile Mills, Allentown, PA

NAFTA–TAA–03241; Ansell-Edmont Protective Products, Tarboro, NC

NAFTA–TAA–03231; Horn Textiles, Inc., Titusville, PA

NAFTA–TAA–03100; Pennsylvania Steel Technologies, Inc., A Subsidiary of Bethlehem Steel Corp., Steelton, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03194; Tubby's Auto Service, Inc., Auto Salvage Div., Houston, TX

NAFTA–TAA–03207; Bombardier Motor Corp., of America, Recreational Products Div., Wausau, WI

NAFTA–TAA–03287; Bauer Nike Hockey USA, Inc., Greenland, NH

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03156; Chippenhook Corp., Stamping Department, McAllen, TX: May 5, 1998

NAFTA–TAA–03138; Apollo Tanning, Ltd., Camden, ME: April 30, 1998

NAFTA–TAA–03239; Collins & Aikman, Plastic Div., Homer, MI: April 20, 1998

NAFTA–TAA–03300; AZT Sewing, Commerce, CA: July 9, 1998

NAFTA–TAA–03302; The Bachman Co., Phoenixville Plant, Phoenixville, PA: July 8, 1998.

NAFTA–TAA–03150 & A; Acorn Products Co., Inc., Hampden, ME and Lewiston, ME: May 3, 1998.

NAFTA–TAA–03298 & A; Walls Industries, Inc., Merkel Walls Industries, Inc., Merkel, TX and Big Spring Walls Industries, Inc., Big Spring, TX: July 6, 1998

NAFTA–TAA–03171; Rosemount Analytical, Inc., Anaheim, CA: May 5, 1998.

NAFTA–TAA–03275; Cutler-Hammer, Sensors Business Unit, Everett, WA: June 28, 1998.

NAFTA–TAA–03286; Abitibi—Consolidated, West Tacoma Div., Steilacoom, WA: June 25, 1998

NAFTA–TAA–03243; Batts, Inc., Zeeland, MI: May 20, 1998.

NAFTA–TAA–03114; Lab-Volt Systems, Inc., Wall, NJ: April 9, 1998.

NAFTA–TAA–03273; Stuffed Shirt, Inc., New York, NY: June 24, 1998

NAFTA–TAA–03181; Fasco Motors Group, Russellville, AR: May 11, 1998.

NAFTA–TAA–03224; Lincoln Automotive Co., Including Leased Workers of Staffmark & Manpower, Jonesboro, AR: May 17, 1998.

NAFTA–TAA–03079; Reach, Inc., Woodmill Div., Klamath Falls, OR: March 31, 1998.

NAFTA–TAA–03247; Proctor and Gamble Paper Products Co., Greenville Plant, Greenville, NC

NAFTA–TAA–03214; Algroup Wheaton, Molded Glass Operations, Millville, NJ: April 27, 1998.

NAFTA–TAA–03213; Associated Spring, Arden, NC: April 27, 1998.

NAFTA–TAA–03217 & A; Circle De Lumber, Beaver Marsh Yard, Beaver Marsh, OR and Klamath Falls, OR: June 2, 1998.

NAFTA–TAA–03159; Holiday Products, Inc., El Paso, TX: May 8, 1999

NAFTA–TAA–03262; Techneglas, Inc., Finishing Operation, Pittston, PA: May 18, 1998.

NAFTA–TAA–03227; Victoreen, Inc., Component Dept., Solon, OH: May 24, 1998

NAFTA–TAA–03258; Vesuvius USA, Steel Div., Zelienople, PA: June 11, 1998.

NAFTA–TAA–03126; Jackes-Evans Manufacturing Co., St. Louis, MO: April 26, 1998.

I hereby certify that the aforementioned determinations were issued during the months of July, 1999. Copies of these determinations are

available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 2, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20682 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Boise Cascade Corporation, Paper Engineering Department, Boise, ID; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Boise Cascade Corporation, Paper Engineering Department, Boise, Idaho. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,933; Boise Cascade Corporation, Paper Engineering Dept., Boise, Idaho (July 26, 1999)

Signed at Washington, DC this 2nd day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20676 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,042]

Broughton Operating Corp., Houston, Texas; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 10, 1999, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 15, 1999, and published in the **Federal Register** on May 21, 1999 (64 FR 27810).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The April 15, 1999, denial of TAA for workers of Broughton Operating Corp., Houston, Texas, was based on the finding that the workers provided a service and did not produce an article as required by Section 222(3) of the Trade Act of 1974, as amended.

The petitioner asserts that the subject firm is involved in the exploration and production of oil and gas, and explains that the petitioners provided personnel services including the review of oil and gas leases, paid rentals and performance of title work involved with those leases, and thus should be considered engaged in employment related to the production of oil and gas.

The investigation shows that the petitioning worker group was employed by Administaff which was contracted with the subject firm to provide certain personnel functions, which included lease analysts. The Department stands corrected that the workers in fact, performed administrative and lease analyst functions for Broughton Operating Corp. in Houston, Texas.

The petitioning workers (Administaff employees) were providing a service in the offices of Broughton Operating Corp. in Houston, Texas.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20678 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,904]

Carhartt, Inc., McKenzie, Tennessee; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 6, 1999, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 12, 1999, and published in the **Federal Register** on May 11, 1999 (64 FR 25371).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings for the April 12 denial of TAA for workers of Carhartt, Inc. producing insulated bib overalls in McKenzie, Tennessee showed that criterion (3) of the group eligibility requirements of Section 222 of the Trade Act was not met. There were no company or customer imports of bib overalls.

The petitioner asserts that when the subject firm plant closes some of the production will be transferred to the Carhartt plant in Camden, Tennessee. In turn, some of the Camden production is being shifted to Mexico. The petition investigation, however, revealed that the company does not import products like or directly competitive with that which was produced in McKinzie, Tennessee. Furthermore, the workers at Carhartt, Inc. in Camden, Tennessee have not petitioned for TAA eligibility.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 15th day of July 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20666 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,816]

Chapman Services, Odessa, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Chapman Services, Odessa, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,816; Chapman Services, Odessa Texas (July 26, 1999)

Signed at Washington, DC this 2nd day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20675 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,221]

Don-Nan Machine and Manufacturing Midland, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999 in response to a worker petition which was filed on April 23, 1999 on behalf of workers at Don-Nan Machine and Manufacturing, Midland, Texas.

The investigation revealed that an investigation was initiated on February 1, 1999 in response to a previous petition (TA–W–35,572), filed on behalf of workers at Don-Nan Pump & Supply Company, Inc. Midland, Texas. The workers produced oilfield rod pump parts and related oilfield parts. The investigation also revealed that criterion (3) had not been met and was denied on February 24, 1999. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of July, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–20670 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,417]

General Electric Company, Motors and Transformers Divisions, Fort Wayne, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 21, 1999, in response to a worker petition which was filed on behalf of workers at the General Electric Company, Motors and Transformers Division, Fort Wayne, Indiana.

All workers of the subject firm are covered under an existing certification under TA–W–33, 7783. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20679 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,195]

Jahmpasa USA, Incorporated, Vass, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999 in response to a worker petition which was filed on behalf of workers and former workers at Jahmpasa USA, Incorporated, located in Vass, North Carolina (TA–W–36,195).

The Department of Labor has determined that the petitioning group of workers are covered by an existing certification, as amended (TA–W–34,840A). Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 23rd day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20680 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 213, TA–W–35, 213A]

Lady Carol Dresses, a Subsidiary of Duryea Industries; Duryea, PA, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 5, 1999, applicable to workers of Lady Carol Dresses, a subsidiary of Duryea Industries, located in Duryea, Pennsylvania. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25372).

At the request of the UNITE union, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at the New York, New York location of Lady Carol Dresses when the company closed in October 1988. The New York, New York location was the sales office, administration and showroom for Lady Carol's production facility in Duryea, Pennsylvania. The workers were engaged in the production of ladies' dresses.

The intent of the Department's certification is to include all workers of Lady Carol Dresses who were adversely affected by increased imports of ladies' dresses. Accordingly, the Department is amending the certification to cover the workers of Lady Carol Dresses, New York, New York.

The amended notice applicable to TA–W–35, 213 is hereby issued as follows:

All workers of Lady Carol Dresses, a subsidiary of Duryea Industries, Duryea, Pennsylvania (TA–W–35, 213) and New York, New York (TA–W–35, 213A) who became totally or partially separated from employment on or after October 23, 1997 through February 5, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20665 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 07/12/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,527	PGS Ocean Bottom Seismic (Comp).	Houston, TX	06/15/1999	Marine Seismic Exploration.
36,528	ASM America, Inc (Comp)	Phoenix, AZ	06/30/1999	Capital Equipment for Semiconductors.
36,529	Steward Cable Repair, Inc. (Wrks).	Midland, TX	05/22/1999	Produce and Repair Seismic Cables.
36,530	Newcom, Inc (Wrks)	W. Lake Village, CA	06/25/1999	Computer Modems.
36,531	BHP Copper North America (Comp).	Tucson, AZ	07/03/1999	Copper Mining.
36,532	McClatchy Bros., Inc (Wrks)	Midland, TX	06/29/1999	Truck Hauling—Oilfield.
36,533	Eastham Forge, Inc (Wrks)	Beaumont, TX	06/15/1999	Forgings for Oilwell Parts.
36,534	Thomaston Mills, Inc (Comp)	Thomaston, GA	06/29/1999	Industrial Denim Fabrics.
36,535	Cooper Tools (Comp)	Madison, ME	06/29/1999	Wooden Lathes.
36,536	Martin County Residential (Comp).	Williamston, NC	06/18/1999	Collars and Welts for Knit Shirts.
36,537	Ocean Beauty Seafood (ISFU)	Chinook, WA	06/26/1999	Seafood.
36,538	Texas Oil Co. (The) (Wkrs)	Houston, TX	05/13/1999	Oil and Gas.

[FR Doc. 99–20672 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,967]

Siemens ICN a/k/a Siemens Information Communications Networks, Inc., Cherry Hill, NJ; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 7, 1999, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 20, 1999, and published in the **Federal Register** on May 21, 1999 (64 FR 27810).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings for the April 20 denial of TAA for workers of Siemens ICN producing communication and voice messaging servers and business telephones in Cherry Hill, New Jersey showed that criterion (3) of the group eligibility requirements of Section 222 of the Trade Act was not met. The work performed in Cherry Hill was transferred to another domestic facility. Sales at the subject plant increased prior to the shift in production.

The petitioners assert that the business phones manufactured in Austin, Texas were to be transferred to Cherry Hill. Siemens ICN, however, opted to import the product from Germany. The Department's investigation revealed that the business phones manufactured and imported from Germany are not like or directly competitive with those which were produced in Cherry Hill, New Jersey.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of

Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 19th day of July 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20667 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,202 & TA–W–36,202A]

Thunderbird Mining Eveleth and Forbes, Minnesota; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Thunderbird Mining, Eveleth and Forbes, Minnesota. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,202 & TA–W–36,202A; Thunderbird Mining Eveleth and Forbes, Minnesota (July 26, 1999)

Signed at Washington, DC this 2nd day of August, 1999.

Grant D. Beale,

Program Manager, Office of trade Adjustment Assistance.

[FR Doc. 99–20674 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigation Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistanace.

APPENDIX

[Petitions instituted on 07/19/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,539	VECO Pacific (Co.)	Bellingham, WA	07/06/1999	Engineers, Designers, and Drafters.
36,540	Dalzell Corporation (Wkrs)	New Martinsville, WV	01/27/1999	Handmade Glassware.
36,541	Phelps Dodge Magnet Wire (UAW).	Hopkinsville, KY	07/01/1999	Magnet Wire.
36,542	Willamette Industries (Wkrs)	Woodburn, OR	06/29/1999	Wood I Beams.
36,543	Bon Worth, Inc (Co.)	Victoria, VA	06/28/1999	Ladies' Apparel.
36,544	Guidon, Inc (IAMAW)	Muskegon, MI	07/07/1999	Loose Needle Rollers.
36,545	Bombardier Motor Corp. (Wkrs)	Wausau, WI	06/28/1999	Technical Assistance & Distribution.
36,546	Shape Global Technology (Co.)	Dadeville, AL	06/23/1999	3–D Jewel Boxes.
36,547	Spalding Sports Worldwide (Wkrs).	Johnstown, NY	06/29/1999	Golf Clubs, Sets and Singles.
36,548	Caterpillar Work Tools (Wkrs)	Dallas, OR	06/24/1999	I.T. Coupler, Pallet Forks.
36,549	F and M Manufacturing (Co.)	Westminster, MD	06/25/1999	Cast Iron Compression Cylinders.
36,550	Brintons Carpets (USA) (Wkrs)	Paramus, NJ	06/27/1999	Carpets.
36,551	Winer Industries, Inc (UNITE)	Paterson, NJ	07/02/1999	Ladies' Garment Samples.
36,552	Dixon Ticonderoga Co. (Co.)	Deer Lake, PA	06/30/1999	Writing Instruments and Artist Kits.
36,553	JPN Service Co (Co.)	Denver City, TX	07/01/1999	Construct Oilfield Facilities.
36,554	Hamilton Standard (Co.)	Colorado Spring, CO	07/02/1999	Electronic Aircraft Assemblies.
36,555	Beloit Corporation (Wkrs)	Portland, OR	06/29/1999	Pulp-Making Equipment.
36,556	Hydralift, Inc. (Co.)	Houston, TX	06/30/1999	Oil Drilling Equipment.
36,557	McCoy Cove Mine (Co.)	Battle Mountain, NV	06/30/1999	Gold and Silver Mine.
36,558	McDermott Engineering (Wkrs)	Houston, TX	06/27/1999	Design & Engineer Offshore Platforms.
36,559	Allison Manufacturing Co (Wkrs)	McAllen, TX	07/01/1999	Children's Clothing.
36,560	Viskase Corporation (Wkrs)	Chicago, IL	06/12/1999	Meat Casings.
36,561	Oxford International (Wkrs)	Chicago, IL	06/29/1999	Automotive Loudspeakers.
36,562	Baker Oil Tools, West Tx (Co.)	Odessa, TX	05/26/1999	Oilfield Services.
36,563	Walls Industries (Co.)	Merkel, TX	07/06/1999	Insulated Coveralls.
36,564	Vision Ease Corp. (Wkrs)	St. Cloud, MN	07/07/1999	Vision Lenses.
36,565	Husky Injuection Molding (Co.)	Pittsfield, MA	06/28/1999	Plastic Injection Molding Machines.
36,566	EFTC (Wkrs)	Greeley, CO	06/29/1999	Circuit Board Assemblies.
36,567	Rust Tractor Co. (Co.)	Silver City, NM	07/07/1999	Sell and Service Caterpillar Equipment.
36,568	Boeing Corporation (UAW)	Long Beach, CA	07/09/1999	Commercial Aircraft.

APPENDIX—Continued

[Petitions instituted on 07/19/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,569	West Texas Drilling (Co.)	Midland, TX	06/30/1999	Drilling Fluids and Chemicals.
36,570	Bachman Company (The) (BCT)	Phoenixville, PA	07/08/1999	Potato Chips.
36,571	Mallard JC, Inc. (Co.)	McPherson, KS	06/02/1999	Oil and Gas Well Drilling.
36,572	Rhone Poulenc Ag Co. (Co.)	Mt. Pleasant, TN	06/25/1999	Bromoxynil Octanoate.
36,573	Gerber Childrenswear (Co.)	Lumberton, NC	07/07/1999	Children's Underwear.
36,574	Ametek March Electric (IAMAW)	Cambridge, OH	07/12/1999	Electric Motors.
36,575	Landmark Graphics (Co.)	Houston, TX	07/08/1999	Oil and Gas.
36,576	Texas Pipe Coupling (Wkrs)	Hughes Springs, TX	07/07/1999	Oilfield Drilling Parts.
36,577	Statoil Exploration (US) (Wkrs)	Houston, Tx	07/07/1999	Deepwater Exploration.
36,578	Carpentas Oilfield Const. (Wkrs)	Denver City, TX	06/25/1999	Oilfield Construction.
36,579	Continental Natural Gas (Wkrs)	Tulsa, OK	06/29/1999	Natural Gas Liquids.
36,580	Scientific Drilling (Wkrs)	Oklahoma City, OK	06/24/1999	Oil and Gas Drilling.

[FR Doc. 99–20664 Filed 8–10–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3301]

Camco Inc., REDA Division, Midland, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 13, 1999, in response to a worker petition which was filed by a company official on behalf of workers at Camco Inc., REDA Division, Midland, Texas.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20681 Filed 8–10–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03297]

International Business Corporation (IBM) Storage Systems Division (SSD) San Jose, California; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 24, 1999 in response to a petition filed on behalf of workers at the Storage Systems Division (SSD) of International Business Corporation (IBM), located in San Jose, California (NAFTA–03297).

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (NAFTA–03283). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 26th day of July 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20673 Filed 8–10–99; 8:45 am]
BILLING CODE 4510–70–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement—Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of OTAA not later than August 23, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than August 23, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC and this 2nd day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Phelps Dodge Magnet Wire (UAW)	Hopkinsville, KY	07/08/1999	NAFTA–3,292	Copper and Aluminum magnet wire.
Continental Natural Gas (Wkrs)	Tulsa, OK	07/09/1999	NAFTA–3,293	Natural gas.
EFTC Corporation (Wkrs)	Greeley, CO	07/08/1999	NAFTA–3,294	Medical, industrial & avionic products.
Dixon Ticonderoga (Co.)	Deer Lake, PA	07/07/1999	NAFTA–3,295	Writing instruments.
Guidant Intermedics (Co.)	Angleton, TX	07/06/1999	NAFTA–3,296	Lead.
International Business Machines (Wkrs)	San Jose, CA	06/24/1999	NAFTA–3,297	Hard disk drives & tape products.
Walls Industries (Co.)	Merkel, TX	07/08/1999	NAFTA–3,298	Insulated clothing.
Walls Industries (Co.)	Big Spring, TX	07/08/1999	NAFTA–3,298	Insulated clothing.
Texas Jeans (Wkrs)	El Paso, TX	07/12/1999	NAFTA–3,299	Jean products.
AZT Sewing (Wkrs)	Commerce, CA	07/09/1999	NAFTA–3,300	Denim jeans.
Camco (Co.)	Midland, TX	07/13/1999	NAFTA–3,301	Electrical pumps.
Bachman Company (The) (BCTGM)	Phoenixville, PA	07/14/1999	NAFTA–3,302	Potato chips.
Motorola (Wkrs)	Boynton Beach, FL	06/02/1999	NAFTA–3,303	Pagers.
Gerber Childrenswear	Greenville, SC	07/08/1999	NAFTA–3,304	Children's underwear.
Stuart Entertainment (Co.)	McAllen, TX	07/14/1999	NAFTA–3,305	Bingo cards and bingo ink markers.
Pacific Softwoods—WTD Industries (Wkrs).	Philomath, OR	07/19/1999	NAFTA–3,306	Wood products.
Chief Supply—American Resources (Wkrs).	Eugene, OR	07/19/1999	NAFTA–3,307	Sewn products.
HG Bass (Co.)	S. Porland, ME	07/19/1999	NAFTA–3,308	Footwear.
Newcom (Wkrs)	Westlake Village, CA.	07/01/1999	NAFTA–3,309	CD Rom's, modems.
Shaer Shoe (Wkrs)	Farmington, ME	07/19/1999	NAFTA–3,310	Women's shoes.
N.G.K. Locke Insulator (UE)	Baltimore, MD	06/18/1999	NAFTA–3,311	Porcelain high voltage insulators.
Western Gas Resources (Wkrs)	Midland, TX	07/20/1999	NAFTA–3,312	Natural gas.
Bunger Steel (Wkrs)	Phoenix, AZ	07/19/1999	NAFTA–3,313	Machinery.
Southwestern Cutting (Wkrs)	El Paso, TX	07/13/1999	NAFTA–3,314	Garment, jeans.
Justin Boot (Co.)	Fort Worth, TX	07/21/1999	NAFTA–3,315	Western boots.
Contact Apparel (Co.)	El Paso, TX	07/19/1999	NAFTA–3,316	Clothing.
Weathervane Window (Wkrs)	Brighton, MI	07/22/1999	NAFTA–3,317	Glass.
Pabst Engineering (Wkrs)	Onalaska, WI	07/22/1999	NAFTA–3,318	Models and tooling.
Justin Boot (Wkrs)	Carthage, MO	07/26/1999	NAFTA–3,319	Boots
Paramount Headwear	Bourbon, MO	07/26/1999	NAFTA–3,320	Headwear, caps, hats.
American National Can (IBT)	Longview, TX	07/26/1999	NAFTA–3,321	Aluminum cans.
Jet Composites (GMP)	Bluffton, TN	07/26/1999	NAFTA–3,322	Hoodliners, dash insulators, heat shields.
Supreme Tooling (Co.)	Fremont, IN	07/23/1999	NAFTA–3,323	Blow molds and fixturing.
Modine Tooling (Co.) Holdings (Wkrs)	Merced, CA	07/26/1999	NAFTA–3,324	Heat transfer equipment.
Levi Strauss (Co.)	El Paso, TX	07/27/1999	NAFTA–3,325	Jeans and dockers.
Alcatel Data Networks (Wkrs)	Mt. Laurel, NJ	07/21/1999	NAFTA–3,326	Printed circuit boards.
AMI—DDC (IBEW)	Cedar Knolls, NJ	07/21/1999	NAFTA–3,327	Rivets.
Walker McDonald (Wkrs)	Greenville, TX	07/27/1999	NAFTA–3,328	Drill bits
Total Petroleum (Wkrs)	Alma, MI	06/24/1999	NAFTA–3,329	Crude oil, refined crude oil.
AMP—A TYCO International (Co).	Lowell, NC	07/28/1999	NAFTA–3,330	Electric connectors.
Invensys Appliance Controls (USWA)	New Stanton, PA	07/28/1999	NAFTA–3,331	Controls for cooking and Refrigeration.
Lincoln Industrial (IAMAW)	St. Louis, MO	07/26/1999	NAFTA–3,332	Screw machine.
Biotech Immuno Systems (Wkrs)	Allentown, PA	07/28/1999	NAFTA–3,333	Hematology instruments.
Phelps Dodge Refinery (Co.)	El Paso, TX	07/28/1999	NAFTA–3,334	Copper cathode.

[FR Doc. 99–20677 Filed 8–10–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03202]

Robertshaw Controls Co. Including Leased Workers of Volt Services Group Fort Collins, Colorado; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 14, 1999, applicable to all workers of Robertshaw Controls Co., located in Fort Collins, Colorado. The notice was published in the **Federal Register** on June 30, 1999 (64 FR 35186).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers of Robertshaw Controls Co. were leased from Volt Services Group to produce ignition controls at the Fort Collins, Colorado facility.

Based on these findings, the Department is amending the certification to include workers of Volt

Services Group, Fort Collins, Colorado leased to Robertshaw Controls Co., Fort Collins, Colorado.

The intent of the Department's certification is to include all workers of Robertshaw Controls Co. adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–03202 is hereby issued as follows:

All workers of Robertshaw Controls Co., Fort Collins, Colorado and leased workers of Volt Services Group, Fort Collins, Colorado engaged in employment related to the production of ignition controls for Robertshaw Controls Co., Fort Collins, Colorado who became totally or partially separated from employment on or after May 18, 1998 through June 14, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 2nd day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20671 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—02990]

Siebe Appliance Controls (Currently Known as Invensys Appliance Controls) Cooking and Refrigeration Division Including Roger Walter Thomas Winterset, Iowa; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Worker Adjustment Assistance

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on April 15, 1999, applicable to workers of Siebe Appliance Controls, Cooking and Refrigeration Division, Winterset, IA. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25373).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the manufacture of electronic range controls. New information shows that in April, 1999 Siebe Appliance Controls became known as Invensys Appliance Controls. Findings also show that Roger Walter Thomas, an independent contractor, will be separated from employment when the Winterset, Iowa location of Siebe Appliance Controls, currently known as Invensys Appliance Controls closes in August, 1999. Mr. Thomas provides computer programming services to support the production of electronic range controls at the Winterset, Iowa facility.

The intent of the Department's certification is to include all workers of Siebe Appliance Controls adversely affected by imports of Mexico.

Accordingly, the Department is amending the certification determination to properly reflect these matters.

The amended notice applicable to NAFTA–2990 is hereby issued as follows:

All workers of Siebe Appliance Controls, (currently known as Invensys Appliance Controls), Cooking and Refrigeration Division, Winterset, Iowa, including Roger Walter Thomas who provides computer programming services to support the production of electronic range controls for Siebe Appliance Controls, (currently known as Invensys Appliance Controls), Cooking and Refrigeration Division, Winterset, Iowa who became totally or partially separated from employment on or after March 4, 1998 through April 15, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–20663 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension of two information collections: the OWCP–1, Agreement and Undertaking (Office of Workers' Compensation Programs); and the WH–201 MIS, Application for Authority for an Institution of Higher Education to Employ its Full-Time Students at Subminimum Wages Under Regulations 29 CFR Part 519 (Wage and Hour). A copy of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 15, 1999.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

Agreement and Undertaking

I. Background

The OWCP–1, Agreement and Undertaking, is a joint use form (Longshore and Black Lung Programs) completed by employers to provide the Secretary of Labor with authorization to sell securities or to bring suit under indemnity bonds deposited by the self-insured employers in the event there is a default in the payment of benefits.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor is seeking an extension of authority to collect this information in order to carry out its responsibility to insure that the correct amount of negotiable securities are deposited or an indemnity bond is purchased and that, in case of default, OWCP can exercise their authority to utilize the securities or bond to meet the company's financial responsibility for coal mine or longshore benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Agreement and Undertaking.

OMB Number: 1215–0034.

Agency Number: OWCP–1.

Affected Public: Businesses or other for-profit.

Total Respondents: 300.

Frequency: On occasion.

Total Responses: 300.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 75.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Application for Authority for an Institution of Higher Education to Employ Its Full-Time Students at Subminimum Wages Under Regulations 29 CFR Part 519

I. Background

Section 14(b)(3) of the Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to provide certificates authorizing the employment of full-time students at subminimum wages in institutions of higher education to the extent necessary in order to prevent curtailment of opportunities for employment. This section also sets limits on such employment and protects the full-time employment opportunities of other workers. The WH–201–MIS is used by employers seeking such authorization.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to make a determination whether to grant or deny subminimum wage authority to the applicant.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Authority for an Institution of Higher Education to Employ Its Full-Time Students at Subminimum Wages Under Regulations 29 CFR Part 519.

OMB Number: 1215–0080.

Agency Number: WH–201–MIS.

Affected Public: Businesses or other for-profit; Individuals or households.

Total Respondents: 15.

Frequency: Annually.

Total Responses: 15.

Average Time per Response: 15 to 30 minutes.

Estimated Total Burden Hours: 5.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 5, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. 99–20668 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before October 12, 1999. The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Karin G. Kurz, BLS Clearance Officer. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Proposed Collection

Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the "Displaced Workers, Job Tenure, and Occupational Mobility Supplement to the Current Population Survey (CPS)." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual

listed in the Addresses section of this notice.

II. Background

The February 2000 Displaced Workers, Job Tenure, and Occupational Mobility Supplement to the Current Population Survey (CPS) is sponsored by the Department of Labor, Employment and Training Administration (ETA). This supplement previously was conducted in conjunction with the February 1998 CPS and has been conducted biennially since 1984. Additional data on occupational mobility will be collected in the February 2000 supplement.

The information will be used to determine the size and nature of the population affected by job displacements and, hence, the needs and scope of programs serving adult displaced workers. The information collected also will be used to assess employment stability by determining the length of time workers have been with their current employer and estimating the incidence of occupational change over the course of a year. In addition, data on job tenure for all workers are needed to calculate the incidence of displacement among various worker groups so that comparisons can be made over time and among different affected groups. Combining the questions on displacement, job tenure, and occupational mobility will enable analysts to obtain a more complete picture of employment stability.

III. Current Actions

The questions concerning displacement among workers will help define the size of the readjustment problem faced by individual workers and the economy including: (a) Workers who have lost their jobs or have received notice that they soon will lose their jobs due to a permanent plant closing; (b) laid-off workers who are unlikely to return to their previous industry or occupation; and (c) the long-term unemployed with little prospect of reemployment. Policy planning has to take into account the industries with the most severe displacement problem and the retraining needs of affected workers.

This supplement also will provide data regarding:

1. The economic impact of job displacements. For those workers who have been reemployed, data will be collected to compare current earnings with those from the lost job.

2. Information on the receipt of unemployment compensation, the loss of health insurance coverage, and the time spent without a job. In combination, these supplemental data will provide the information needed to assess the economic hardship experienced by displaced workers.

3. The types of jobs that displaced workers have been able to find. This will assist in developing training programs that will provide other displaced workers with the skills necessary to adjust to the changing economic environment.

4. The extent to which displaced workers received advance notice of job cutbacks or the closing of their plant or business. The President, Congress, and private organizations have shown significant interest in this area.

5. The length of time workers (including those who have not been displaced) have been with their current employer. Tenure data are used to calculate displacement rates for long-tenured workers so that comparisons can be made over time and among different worker groups. Information on job tenure also is important because of the effect seniority has on wage levels, the receipt of employee benefits such as vacations and pensions, and other facets of the employment relationship.

6. The incidence and nature of occupational changes in the year prior to the survey. Such information is useful in assessing the training and educational needs of the workforce.

Type of Review: Reinstatement with change of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Displaced Worker, Job Tenure, and Occupational Mobility Supplement to the Current Population Survey (CPS).

OMB Number: 1220–0104.

Affected public: Households.

Total Respondents: 48,000.

Frequency: One-time.

Total Responses: 48,000.

Average Time Per Response: 9 minutes.

Estimated Total Burden Hours: 7,200 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of August, 1999.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 99–20621 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–13]

Portable Fire Extinguishers (Hydrostatic Test Certification Record); Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed extension of the information collection requirement contained in the provision in the standard on Portable Fire Extinguishers (Hydrostatic Test Certification Record) (29 CFR 1910.157(f)(16)).

Request for Comment

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before October 12, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–13, Occupational Safety and Health Administration, US Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, US Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR)

supporting the need for the information collection requirement (hydrostatic test certification record) contained in the Portable Fire Extinguishers standard (29 CFR 1910.157(f)(16)) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kennedy at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirement (hydrostatic test certification record) in the Portable Fire Extinguishers standards (29 CFR 1910.157(f)(16)) ensures that employers properly inform employees about the condition of fire extinguishers they may be using in the workplace. Failure of the employer to collect and distribute the information collection under this requirement will affect significantly OSHA's effort to control and reduce injuries and fatalities in the workplace.

II. Proposed Actions

OSHA proposes to retain its earlier estimate of 318,750 burden hours for the standard on Portable Fire Extinguishers (Hydrostatic Test Certification Record) (29 CFR 1910.157(f)(16)).

OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information collection requirement contained in the above standard.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Portable Fire Extinguishers (Hydrostatic Test Certification Record) (29 CFR 1910.157(16)).

OMB Number: 1218–0218.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 1,275,000.

Frequency: Varies (on occasion; annually).

Average Time per Response: 15 minutes (0.25 hour).

Estimated Total Burden Hours: 318,750.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–20618 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–16]

Crawler, Locomotive, and Truck Cranes (Inspection Certification Records) (29 CFR 1910.180(d), (g)(1) and (g)(2)(ii); Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed decrease and extension of the information collection requirements (inspection certification records) contained in the standard on Crawler, Locomotive, and Truck Cranes (29 CFR 1910.180).

REQUEST FOR COMMENT:

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before October 12, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket, No. ICR–99–16, Occupational Safety and Health Administration, US Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in 29 CFR 1910.180 (inspection certification records) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www/osh.gov/comp-links.html, and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired forma.. reporting burden (time and costs) is minimal, collection instruments are clearly understood, and

OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) The major purpose of the information collection requirements in 29 CFR 1910.180 is to provide information for properly maintaining crawler, locomotive and truck cranes and, therefore, to ensure safe operating conditions for employees. Specifically, employers must establish certification records to demonstrate that crane inspections comply with the requirements specified in the standard. Failure of the employer to collect and distribute the information collected under the requirements contained in the standard will affect significantly OSHA's effort to control and reduce injuries and fatalities in the workplace.

II. Proposed Actions

OSHA proposes to decrease its earlier estimate of 174,015 burden hours for the information collection requirements in 29 CFR 1910.180(d), (g)(1), and (g)(2)(ii) to 174,000 burden hours.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above provisions.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Crawler, Locomotive, and Truck Cranes (Inspection Certifications) (29 CFR 1910.180(d), (g)(1), and (g)(2(ii)).

OMB Number: 128–0221.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 1,900.

Frequency: Monthly.

Average Time per Response: Varies from 15 minutes (0.25 hour) to 30 minutes (0.50 hour).

Estimated Total Burden Hours: 174,000.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–20619 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–15]

Shipyard Certification Records (29 CFR 1915.113(b)(1) and 1915.172(d)); Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed increase in estimated burden hours and extension of the shipyards certification record requirements contained in 29 CFR 1916.113(b) and 1915.172(d).

REQUEST FOR COMMENT:

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before October 12, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–15, Occupational Safety and Health Administration, US Department of Labor, Room N–2625, 200 Constitution Avenue NW, Washington, DC 10210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Program, Occupational Safety and Health Administration, US Department of Labor, Room N–3605, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in 29 CFR 1915.113(b) and 1915.172(d) (shipyard certification records) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www/osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1994 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses,and accidents. (29 U.S.C. 657.) In this regard, the information collection requirements contained in 29 CFR 1915.113(b)(1) and 29 CFR 1915.172(d) (shipyard certification records) ensures that employers properly inform employees about the condition of shackles and hooks, and portable air receivers and other unfired pressure vessels, in shipyards. Failure of the employer to collect and distribute the information collected under this requirement will affect significantly OSHA's effort to control and reduce injuries and fatalities in shipyards.

II. Proposed Actions

OSHA proposes to increase its earlier estimate of 1,846 burden hours for the information collection requirements in 29 CFR 1915.113(b) and 1915.172(d) (shipyard certification records) to 4,461 burden hours.

OSHA will summarize the comments submitted in response to this notice,

and will include this summary in the request to OMB to extend the approval of the information collection requirement contained in the above provisions.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Shipyard Certification Records (29 CFR 1915.113(b)(1) and 1915.172(d)).

OMB Number: 1218–0220.

Affected Public: Business or other-for-profit; Federal government, state, local or tribal government.

Number of Respondents: 900.

Frequency: Varies (on occasion, quarterly, annually).

Average Time per Response: Varies for 3 minutes (0.05 hours) to 20 minutes (0.33 hour).

Estimated Total Burden Hours: 4,461.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 911.

Signed at Washington, DC, this 4th day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–20620 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–12]

Hazard Communication Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the standard on Hazard Communication (29 CFR 1910.1200; 1915; 1917; 1918; 1926; 1928).

Request for Comment

The Agency is particularly interested in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before October 12, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–12, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the Hazard Communication Standard is available for inspection and copying in the Docket Office, or mailed on request by telephoning Todd R. Owen or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR on Hazard Communication, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirements in the Hazard Communication Standard ensures that employers and employees know about work hazards and how to protect themselves; this should help to reduce the incidence of chemical source illness and injury.

II. Proposed Actions

OSHA proposes to extend the Office of Management and Budget (OMB) approval for the collections of information, paperwork, contained in the Hazard Communication Standard 29 CFR 1910.1200; 1915; 1917; 1918; 1926; 1928.

The Hazard Communication Standard's collection of information requirements are designed to ensure that the hazards of all chemicals produced or imported are evaluated and that information concerning their hazards is transmitted to employees and downstream employers. The standard requires chemical manufacturers and importers to evaluate chemicals they produce or import to determine if they are hazardous; for those chemicals determined to be hazardous, material safety data sheets and warning labels must be developed. Employers are required to establish a hazard communication program, to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets and training programs. Implementation of these collection of information requirements will ensure all employees have the "right-to-know" the hazards and identities of the chemicals they work with and will reduce the incidence of chemically-related occupational illness and injuries.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request of OMB to extend the approval of the information collection requirements contained in the Hazard Communication Standard.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Hazard Communication Standard.

OMB Number: 1218–0072.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 5,041,918.

Frequency: On Occasion.

Average Time per response: Time for response ranges from approximately 10 minutes for establishments to obtain and maintain material safety data sheets to 8 hours for manufacturers or importers to conduct a hazard determination.

Estimated Total Burden Hours: 7,301,762.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–20669 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10244, et al.]

Proposed Exemptions; Massachusetts Mutual Life Insurance Company (MM)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, US Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, US Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Massachusetts Mutual Life Insurance Company (MM) Located in Springfield, Massachusetts

[Application No. D–10244]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: the sale and/or exchange by MM of a partial or complete interest in certain properties (the Properties) from its general investment account assets to one or more separate investment accounts, for which MM shall receive as consideration cash and/or a corresponding interest in such separate account or separate accounts (the Separate Account Transaction), provided the conditions set forth in section II are satisfied.

Section II. Conditions

(A) The sale and exchange of the Properties is a one-time transaction with respect to each separate account of MM which will be established for the Properties; i.e., all Properties transferred in that transaction will be conveyed at the same time, and no further properties will be transferred from MM to such separate account;

(B) In no event shall MM provide any financing with respect to any sale or exchange transaction which is the subject of the exemption proposed herein;

(C) Before the subject transaction is consummated, (i) An independent appraisal firm will have valued each Property to be transferred by MM to one or more separate accounts; (ii) the value of each Property so appraised will be confirmed by the appraiser as of a date not more than two weeks prior to the issuance of interests to third party investors in the separate accounts, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value; (iii) an independent fiduciary for each employee benefit plan subject to the Act (collectively, the Plans) will, prior to agreeing to invest in the separate account, be provided with all information regarding the Properties to

be sold to the separate account, including third party appraisals and a private placement memorandum or other offering document, which will describe the legal structure and include risk disclosures, a summary of principal terms and a schedule of fees; and (iv) such independent fiduciary will have reviewed all pertinent terms of the sale and exchange of the properties to the separate accounts and will have concluded that the transaction is in the best interest of the Plan; and

(D) Only Plans with total assets having an aggregate fair market value of at least $50 million are permitted to engage in the Covered Transactions, provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR section 2510.3–101 (the Plan Asset Regulation), which entity engages in a Covered Transaction, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such group trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which engages in a Covered Transaction, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to Plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of engaging in the Covered Transactions.)

Summary of Facts and Representations

1. MM is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts and subject to supervision and regulation by the Insurance Commissioner of Massachusetts. On February 29, 1996, Connecticut Mutual Life Insurance Company (CM), a mutual life insurance company organized under the laws of the State of Connecticut, was merged with and into MM.

2. MM conducts business in all 50 states, as well as in the District of Columbia and Puerto Rico. Presently, MM has more than 2 million policyholders. MM, either directly or through its affiliates, offers a complete portfolio of life and health insurance, asset accumulation products, and health and pension employee benefits to its employees (including former employees of CM) and investment management services. As of December 31, 1998, MM had $67 billion in assets, and the assets under its management as of that date approximate $176 billion.

3. MM performs a wide variety of services for Plans. As part of these activities, MM enters into arrangements with other employers for the administration of their Plans and the investment of their Plan assets. In addition, MM sponsors retirement plans for its own employees, including the MassMutual Employee Pension Plan (the MM Plan), a defined benefit plan adopted in 1948. MM also sponsors the retirement plan for the benefit of CM employees prior to the merger and to which MM succeeded as a result of the merger.

4. MM has been involved in real estate mortgage investing for more than 50 years and in equity real estate investing for more than 30 years. As of December 31, 1998, MM estimates that it had commercial mortgage loan assets of approximately $4.7 billion, residential mortgage loan pool investments of $1.4 billion and commercial real estate equity investments of approximately $1.9 billion.

5. In 1994, MM created a wholly-owned subsidiary, Cornerstone Real Estate Advisors, Inc. (Cornerstone), to offer investment management services for MM's real estate equity portfolio, as well as to third parties. Cornerstone is registered as an investment adviser under the Investment Adviser's Act of 1940, as amended.

6. The exemption proposed herein involves a transaction relating to the sale for cash and/or exchange for units of one or more separate accounts maintained by MM of certain real estate, i.e. the Properties, from the general account of MM to those separate accounts. The transaction, the Separate Account Transaction, relates to certain Properties which MM proposes to transfer to one or more separate investment accounts of MM and in exchange for which MM shall receive cash and an interest in such separate investment account or accounts. For the Separate Account Transaction, no financing will be provided by MM's general account. Moreover, no commissions or similar payment will be paid in connection with the sale or exchange of the Properties.

7. *The Separate Account Transaction*—The transfer of the Properties will be structured in one of two ways: (1) The separate account(s) will acquire the entire interest of MM's general account in the Properties, and, in return, MM's general account will receive cash and/or units in the separate account(s); or (2) the separate account(s) will purchase a partial interest in the Properties for cash from the general account, and the general account will retain the remaining interest in the Properties. In each instance, the consideration received by MM will equal the fair market value of the interest of the Properties transferred. The transaction will occur simultaneously with or prior to the investment in the separate account(s) by third party investors.

8. The fair market value of each of the Properties will be determined by an independent appraiser as of the date of the sale or exchange. The independent appraiser will be a recognized real estate expert in the type and geographic area of the Properties.

9. Units or interests in such separate accounts will also be marketed to tax-exempt entities, including Plans. The minimum investment in such separate accounts has not been determined, but in no event will be less than $1 million. The determination of any Plan or other entity to make an investment in such separate accounts will be in the sole discretion of that Plan or entity and neither MM nor any affiliate of MM shall serve in any fiduciary capacity to any such Plan or entity in determining

whether an investment in such separate account shall be made. Prior to agreeing to invest in the separate account, an independent fiduciary for each Plan will have before it all the information regarding the properties to be sold to the separate account, including third party appraisals and a private placement memorandum or other offering document which will describe the legal structure and include risk disclosures, a summary of principal terms and a schedule of fees. The applicant represents that independent fiduciaries for the Plans will have all information necessary to make their decisions prior to their agreement to invest in the separate account. The applicant further represents that Plans investing in the separate accounts will be large, sophisticated Plans that will equal or exceed $50 million in assets (or be part of a group trust of that size which also meets other tests).

10. In any particular Covered Transaction, the real estate Properties in the portfolio to be sold to the separate account will be determined and disclosed to an independent fiduciary for each Plan before the transaction occurs. Appraisals of the Properties to be included in the portfolio, performed by appraisers independent of MM, will be available to each such fiduciary. The value of each Property so appraised will be confirmed by the appraiser as of a date not more than two weeks prior to the issuance of interests to third party investors in the separate accounts, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value. Each Covered Transaction will be a one-time transaction (i.e., all Properties transferred in that transaction will be conveyed at the same time, and no other Properties will be transferred by MM to that separate account) with respect to a portfolio of Properties and a particular "start-up" separate account of MM which will invest in such Properties. Any purchase, sale, or exchange of property between MM's general account and any MM separate account will independently meet the conditions of the exemption ptoposed herein.

11. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act for the following reasons: (a) The sale and exchange of the Properties is contemplated as a one-time transaction with respect to each separate account of MM which will be established for the Property group (*i.e.*, all Properties transferred in that transaction will be conveyed at the same time, and no other Properties will be transferred by MM to that separate account); (b) in no event shall MM provide any financing with respect to any sale or exchange transaction which is the subject of the exemption proposed herein; (c) before the subject transactions are consummated, (i) An independent appraisal firm will have valued each Property to be transferred by MM to one or more separate accounts; (ii) the value of each Property so appraised will be confirmed by the appraiser as of a date not more than two weeks prior to the issuance of interests to third party investors in the separate accounts, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value; (iii) an independent fiduciary for each Plan will, prior to agreeing to invest in the separate account, be provided with all information regarding the Properties to be sold to the separate account, including third party appraisals and a private placement memorandum or other offering document, which will describe the legal structure and include risk disclosures, a summary of principal terms and a schedule of fees; and (iv) such independent fiduciary will have reviewed all pertinent terms of the sale and exchange of the properties to the separate accounts and will have concluded that the transaction is in the best interest of the Plan; and (d) Plans investing in the separate accounts will be large, sophisticated Plans that will equal or exceed $50 million in assets (or be part of a group trust of that size which also meets other tests).

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Modern Woodmen of America Employees' Savings Plan (the Plan) Located in Rock Island, Illinois

[Application No. D–10518]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale, on March 23, 1998, by the Plan of certain commercial mortgages and bonds (the Securities) to Modern Woodmen of America (the Employer), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) The sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) for each Security, the Plan received an amount equal to the highest, as of the date of the sale, of (a) the par value, (b) the book value, or (c) the fair market value of the Security, as determined by a qualified, independent appraiser; and (4) the Plan received the accrued but unpaid interest that was due on each Security at the time of the transaction.

Effective date: The proposed exemption, if granted, will be effective as of March 23, 1998.

Summary of Facts and Representations

1. The Plan was a defined contribution plan sponsored by the Employer, a fraternal life insurance society. As of June 30, 1997, the Plan had approximately 1,141 participants and beneficiaries. As of that same date, the Plan had total assets of approximately $37,541,533.40. Until April 1, 1998, the trustee of the Plan was the Savings Plan Investment Committee (the Committee), comprised of five employees of the Employer having responsibility for investment of the Plan's assets. Effective April 1, 1998, the Plan was merged into a new 401(k) Plan providing for individually directed accounts that is being administered by Vanguard Funds.

2. Among the assets of the Plan were the Securities, which consisted of 21 privately placed commercial mortgages and bonds. Each of the Securities was purchased by the Plan at various times between 1989 and 1996 from various unrelated brokers. The amount paid by the Plan for the Securities in each case was either the par value or the book value. The Committee believed that the Plan's acquisition of these Securities was consistent with the Plan's investment objectives at the time. Since the Securities were not publicly traded, there was no ready market for the Securities.[1] As a result of the need to liquidate the Securities quickly, in order to implement the merger of the Plan into a new 401(k) Plan on April 1, 1998, the Employer filed an exemption application with the Department seeking to purchase the Securities from the Plan. On March 23, 1998, the

[1] The Department expresses no opinion herein as to whether the acquisition and holding of the Securities by the Plan violated any of the provisions of Part 4 of Title I in the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan and its participants and beneficiaries when making investment decisions on behalf of the plan.

Employer purchased the Securities from the Plan for a total of $5,685,534.46.

3. The applicant represents that the terms of the sale were at least as favorable to the Plan as terms the Plan could have obtained in an arm's length transaction with an unrelated party. For each Security, the Employer paid the Plan an amount equal to the highest, as of March 23, 1998, of (a) the par value,[2] (b) the book value,[3] or (c) the fair market value of the Security, as determined by a qualified, independent appraiser.

With respect to the fair market value of the Security, the highest quotation obtained from three reputable independent mortgage banking firms was used. The appraisals of the mortgages were conducted by (i) Cauble & Company, located in Charlotte, North Carolina, (ii) Rob Wolf & Associates, located in San Francisco, California, and (iii) Venture Mortgage, located in Edina, Minnesota. The appraisals of the bonds were conducted by (i) Piper Jaffray, located in Minneapolis, Minnesota, and (ii) John G. Kinnard & Co., located in Minneapolis, Minnesota. Each of the entities which appraised the value of the Securities was a dealer who would have bought or sold such Securities in the ordinary course of its business. The appraised value amounts assume that there is a willing third party buyer to purchase the security, although there is no active market for the Securities.

The sale of the Securities by the Plan to the Employer was a one-time transaction for cash. The Plan paid no commissions nor other expenses relating to the sale of the Securities, which represented a significant savings to the Plan in transaction costs.

4. The assets purchased by the Employer from the Plan, which included 10 mortgages and 11 bonds, are individually listed below.

Description	Net rate (percent)	Maturity	Par	Book value	FMV	Accured interest	Purchase price
Mortgages							
Butler Family Partnership, Walgreen's (Lessee), Missouri City, TX	7.375	01/10/16	$607,021.21	$576,670.15 95.00	$623,410.78 102.70	$1,616.62	$625,027.40
Ervin & Susanne Bard, K-Mart (Lessee), Huntington, IN	8.75	07/01/12	486,562.87	486,562.87 100.00	531,472.62 109.23	2,601.76	534,074.38
The Byrd Companies, Inc., First Alabama Bank (Lessee), Vestavia Hills, AL	9.375	03/01/11	362,572.72	362,572.72 100.00	412,498.98 113.77	1,227.46	413,726.44
JRL Amerivest, Ameritech Michigan (Lessee), Auburn, MI	7.75	03/10/01	461,784.70	461,784.70 100.00	481,410.55 104.25	1,292.36	482,702.91
Stockbridge Property Co., (Jonathan P. Rosen), Good Year Tire & Rubber (Lessee), Stockbridge, GA	9.75	02/10/07	279,470.04	279,470.04 100.00	308,702.61 110.46	983.97	309,686.58
Bogel Investments, Inc., The City of Irving, TX, Irving, TX	7.75	07/10/06	770,194.00	770,194.00 100.00	802,696.19 104.22	2,155.47	804,851.66
Argonne Forest Partnership, (Al Payne & Joel O'Connor), ALCO Standard (Lessee), Spokane, WA	8.00	01/01/05	478,512.11	478,512.11 100.00	494,207.31 103.28	2,339.39	496,546.70
Dr. Fred Wurlitzer, (Rezan, L.P.), May Dept. Stores (Lessee), Plano, TX	8.625	01/10/03	250,547.01	250,547.01 100.00	260,368.45 103.92	780.35	261,149.80
Morro Palmes Shopping Ctr., Winn-Dixie (Lessee), Abbeville, SC	8.125	04/10/01	385,577.12	385,577.12 100.00	397,915.59 103.20	1,131.29	399,046.88
Audrey Weedn, Toys "R" Us (Lessee), Houston, TX	9.00	05/01/99	110,143.11	108,469.57 98.50	112,103.66 101.78	605.79	112,709.45
Total			4,192,384.89	4,160,360.29	4,424,786.74	14,734.46	4,439,521.20

[2] The par value of each Security was the face value of the Security at the time of the transaction. For example, a bond selling at par is worth the same dollar amount for which it was issued or at which it will be redeemed at maturity, typically $1,000 per bond.

[3] The book value of each Security was the value at which it was carried on the Plan's balance sheet. For example, a bond is typically considered to have a book value equal to its outstanding principal balance plus accrued but unpaid interest.

Description	Net rate (percent)	Maturity	Par	Book value	FMV	Accured interest	Purchase price
Corporate Issues							
Railroads:							
Baltimore & Ohio	8.75	10/15/99	$100,826.94	$101,661.28 100.90	103,473.65 102.625	$3,872.03	107,345.68
Chesapeake & Ohio	8.75	10/15/99	50,597.13	51,002.52 100.90	51,925.30 102.625	1,943.07	53,868.37
Chicago & Northwestern Transportation	6.65	06/15/99	25,862.20	25,862.20 100.00	25,862.20 100.00	468.16	26,330.38
Denver & Rio Grande	6.65	06/15/99	19,216.34	19,216.34 100.00	19,216.34 100.00	347.87	19,564.21
Kansas City Southern	6.65	06/15/98	2,358.07	2,358.07 100.00	2,358.07 100.00	42.69	2,400.76
Railbox	9.357	01/10/99	56,255.48	54,526.84 96.90	57,380.59 102.00	190.08	57,570.67
Seaboard Systems	8.75	11/15/99	50,800.74	51,371.18 101.20	52,578.77 103.50	1,580.47	54,159.24
Industrials, Utilities & Governments:							
Shelby Funding Corp.	8.00	10/01/05	259,877.99	259,877.99 100.00	263,334.37 101.33	9,933.11	273,267.48
Third Sixth Mont	8.00	07/01/05	275,786.99	231,661.07 100.00	275,786.99 100.00	5,025.45	280.812.44
Maine Public Service	7.12	05/01/98	178,000.00	177,303.53 100.00	178,000.00 100.00	5,002.54	183,002.54
Fairchild Farms (FmHA)	8.75	04/15/07	181,218.51	181,218.51 100.00	181,218.51 99.40	6,472.98	187,691.49
Total	.....	.....	1,200,800.39	1,200,185.45	1,211,134.79	34,878.47	1,246,013.26
Grand Totals (Mortgages & Bonds)	.....	.....	5,393,185.28	5,360,545.74	5,635,921.53	49,612.93	5,685,534.46

As indicated by the chart above, the Plan received a price for each Security equalling the Security's current fair market value. However, with respect to four of the 11 bonds sold by the Plan, the fair market value was determined to be equal to both the bond's par value and book value. In addition, with respect to two of the bonds, the fair market value was equal to the bond's par value. All of the other bonds and all 10 of the mortgages had a fair market value which exceeded either their par value or their book value at the time of the transaction.

The Plan also received the accrued but unpaid interest that was due on the Security at the time of the transaction.

The applicant represents that the sale was in the best interests of the Plan and of its participants and beneficiaries because it enabled the Plan to divest itself of illiquid assets at the best possible price. In addition, the sale permitted Plan participants to timely direct the investment of the full value of their individual accounts, as of the effective date of the reconstituted Plan (i.e., April 1, 1998).

5. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) The sale of the Securities by the Plan to the Employer was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale of the Securities; (3) for each Security, the Plan received an amount equal to the highest, as of March 23, 1998, of (a) par value, (b) book value, or (c) the fair market value of the Security, as determined by a qualified, independent appraiser; (4) the Plan received the accrued but unpaid interest that was due on each Security at the time of the transaction; and (5) the Plan divested itself of illiquid assets, thus permitting Plan participants to timely direct the investment of the full value of their individual accounts in the new 401(k) Plan.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery or by first-class mail within five days of the date of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 35 days of the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Fleet Bank (RI), National Association (Fleet) Located in Providence, Rhode Island

[Exemption Application No. D–10643]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. Effective as of the date this proposed exemption is published in the **Federal Register**, the restrictions of

sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates.[4]

B. Effective as of the date this proposed exemption is published in the **Federal Register**, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of the relevant series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates of a series does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition;

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity;[5] and

(v) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. For purposes of paragraphs B.(1)(iv) and B.(1)(v) only, an entity shall not be considered to service receivables contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in Section I. B.(1)(i) and (iii) through (v) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective as of the date this proposed exemption is published in the **Federal Register**, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including reassigning receivables to the sponsor, removing from the trust receivables in accounts previously designated to the trust, changing the underlying terms of accounts designated to the trust, adding new receivables to the trust, designating new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided that:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement;

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust;[6]

(3) The addition of new receivables or designation of new accounts, or the removal of receivables in previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum for such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating of the certificates; and

(4) The series of which the certificates are a part will be subject to an "Economic Pay Out Event" (as defined in Section III.BB.), which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any revolving period, scheduled amortization period or scheduled accumulation period

---

[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, all references to "prospectus" include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

applicable to the certificates to end, and principal collections to be applied to monthly payments of principal to, or the accumulation of principal for the benefit of, the certificateholders of such series until the earlier of payment in full of the outstanding principal amount of the certificates of such series or the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of the trust, from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.U. below.

D. Effective as of the date this proposed exemption is published in the **Federal Register**, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I will be available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) In one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies; provided that, notwithstanding such ratings, this exemption shall apply to a particular class of certificates only if such class (an Exempt Class) is at the time of such acquisition part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust, to the extent allocable to the class of certificates purchased by a plan, represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, to the extent allocable to the class of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA). The trustee, as the legal owner of, or holder of a perfected security interest in, the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including plans;

(8) Prior to the issuance by the trust of any new series, confirmation is received from the Rating Agencies that such issuance will not result in the reduction or withdrawal of the then current rating of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of the receivables in the trust, the pooling and servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than two (2) percent of the principal balance of the receivables contained in the trust;

(10) Each receivable added to a trust is an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of the cardholder agreements must be made applicable to the comparable segment of accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be designated to the trust, unless the Rating Agencies otherwise consent in writing, to the following: (i) With respect to any consecutive three-month period commencing in January, April, July and October of each calendar year, 15 percent of the number of existing accounts designated to the trust as of the first day of the calendar year during which such monthly period commenced, and (ii) with respect to any calendar year, 20 percent of the number of existing accounts designated to the trust as of the first day of such calendar year;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel confirming the validity and perfection of each transfer of receivables in newly originated accounts to the trust for each interim addition;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive confirmation from a Rating Agency that no Ratings Effect will result from (i) a Required Addition (as defined in Section III.MM.) in excess of the limits in paragraph B.(11) above, or (ii) any Restricted Additions (as defined in Section III.NN.);

(14) If a particular class of certificates held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall include as an early payout event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of certificates will not be withdrawn or reduced;

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer, as agent for the trustee, shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "Excess Finance Charge Collections" (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the sponsor;

(15) Any class of certificates, to which one or more swap agreements entered into by the trust applies, may be acquired or held in reliance upon this exemption only by Qualified Plan Investors.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that:

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

(2) In the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

Section III—Definitions

For purposes of this proposed exemption:

A. "Certificate" means a certificate:

(1) That (i) represents a beneficial ownership interest in the assets of a trust and entitles the holder to payments denominated as principal, interest and/or other payments made as described in the applicable prospectus or private placement memorandum and in accordance with the pooling and servicing agreement in connection with the assets of such trust, to the extent allocable to the series of certificates purchased by a plan, either currently or after a revolving period during which principal payments on assets of the trust are reinvested in new assets, or (ii) is denominated as a debt instrument that represents a regular interest in a financial asset securitization investment trust (FASIT), within the meaning of section 860L(a) of the Code, and is issued by and is an obligation of the trust.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust; and

(2) With respect to which (a) Fleet or any of its affiliates is the sponsor, and (b) Fleet, any of its affiliates, or an "underwriter" (as defined in Section III.C.) is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either:

(a) Receivables (as defined in Section III.V.); or

(b) Participations in a pool of receivables (as defined in Section III.V.) where such beneficial ownership interests are not subordinated to any other interest in the same pool of receivables;[7]

(2) Property which has secured any of the assets described in paragraph B.(1) above;[8]

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph B.(1)(a) above;

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements,[9] yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates

---

[7] The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other participation interests in the same pool of receivables.

[8] Fleet states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the exemption should permit foreclosed property to be an eligible trust asset.

[9] In a series involving an accumulation period (as defined in Section III.Z.), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means an entity which has received from the Department an individual prohibited transaction exemption which provides relief for the operation of asset pool investment trusts that issue asset-backed pass-through securities to plans that is similar in format and substance to this exemption (each, an Underwriter Exemption); [10] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. "Sponsor" means Fleet, or an affiliate of Fleet that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. "Master Servicer" means Fleet or an affiliate that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. "Subservicer" means Fleet or an affiliate of Fleet, or an entity unaffiliated with Fleet which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means Fleet or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. "Trustee" means an entity which is independent of Fleet and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty of, a trust. Notwithstanding the foregoing, a swap counterparty is not an insurer, and a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Each swap counterparty;

(7) Any obligor with respect to receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or

(8) Any affiliate of a person described in paragraphs L.(1) through (7) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided that:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, "pooling and servicing agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

T. "Series" means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement, and any supplement thereto and restrictions therein.

U. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing with respect to the receivables;

(2) The servicer may not charge the fee absent the act or failure to act referred to in paragraph U.(1) above;

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

(4) The amount paid to investors in the trust is not reduced by the amount of any such fee waived by the servicer.

V. "Receivables" means secured or unsecured obligations of credit card holders which have arisen or arise in Accounts designated to a trust. Such obligations represent amounts charged

[10] For a listing of Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97–34 (62 FR 39021, July 21, 1997).

by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and certain other fees (such as bad check fees, cash advance fees, and other fees specified in the cardholder agreements) designated by card issuers (other than a qualified administrative fee as defined in Section III.U.).

W. "Accounts" are revolving credit card accounts serviced by Fleet or an affiliate, which were originated or purchased by Fleet or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

X. "Revolving Period" means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables arising in the accounts.

Y. "Amortization Period" means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

Z. "Accumulation Period" means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

AA. "Pay Out Event" means any of the events specified in the pooling and servicing agreement or supplement thereto that results (in some instances without further affirmative action by any party) in the early commencement of either an amortization period or an accumulation period, including (1) The failure of the sponsor or the servicer, whichever is subject to the relevant obligation under the pooling and servicing agreement, (i) To make any payment or deposit required under the pooling and servicing agreement within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement, which failure has a material adverse effect on holders of investor certificates of the relevant series and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement that continues to be incorrect in any material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) the failure to pay in full amounts owing to investors on the expected maturity date; and (6) the Economic Pay Out Event.

BB. An "Economic Pay Out Event" occurs automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) Amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

CC. "CCA" or "Cash Collateral Account" means that certain account established in the name of the trustee that serves as credit enhancement with respect to the investor certificates and holds cash and/or permitted investments (as defined below in Section III.KK.) which conform to applicable provisions of the pooling and servicing agreement.

DD. "Group" means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the applicable prospectus or private placement memorandum.

EE. "Ratings Effect" means the reduction or withdrawal by a Rating Agency of its then current rating of the certificates held by any plan pursuant to this exemption.

FF. "Principal Receivables Discount" means, with respect to any account designated by the sponsor, the portion of the related principal receivables that represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

GG. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any senior class of certificates held by any plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of the swap and rating of the swap counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

HH. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. Dollars;

(2) Pursuant to which the trust pays or receives, on or immediately prior to the respective payment or distribution date for the senior class of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in paragraph HH.(2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is the earlier of the date on which the trust terminates or the related class of certificates is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in paragraphs HH.(1) through (4) above without the consent of the trustee.

II. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the

date of issuance of the certificates by the trust, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the senior class of certificates with which the swap is associated has a final maturity date of more than one year from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

JJ. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),[11] as defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984);

(2) An "in-house asset manager" (INHAM),[12] as defined under Part IV(a) of PTE 96–23 (61 FR 15975, 15982, April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such certificates.

[11] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[12] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

KK. "Permitted Investments" means investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the relevant Rating Agency(ies).

LL. "Excess Finance Charge Collections" means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

MM. "Required Additions" means accounts which are required to be added to the trust when either the seller amount is less than the minimum required seller amount or the principal amount is less than the required principal amount.

NN. "Restricted Additions" means accounts which may be added to the trust at the discretion of the sponsor only upon confirmation from a Rating Agency that no Ratings Effect will result from the addition.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for transactions described herein and occurring on or after the date this proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. The applicant is Fleet Bank (RI), National Association (Fleet), a national banking association located in Providence, Rhode Island. Fleet conducts nationwide consumer lending programs principally comprised of credit card related activities. Fleet is a wholly-owned indirect subsidiary of Fleet Financial Group, Inc. On February 20, 1998, through a series of transactions, Advanta National Bank (Advanta) transferred substantially all of its consumer credit card business to affiliates of Fleet Financial Group, Inc., including Fleet. As a result, the rights and obligations of Advanta, as Seller and Servicer, under the relevant Pooling and Servicing Agreements (each, a PSA), were assigned, transferred to and assumed by Fleet.

2. The transactions for which an exemption is requested are investments by employee benefit plans in certain certificates (Certificates) representing the right to receive principal and interest payments from the assets of various Trusts which hold credit card receivables. Each Trust will issue, from time to time, a particular series of Certificates (i.e., a Series) which will be secured by the Trust's assets. A Series may include one or more classes of Certificates, some of which may be subordinate to others. However, only senior certificates issued by such Trusts, which meet the restrictive criteria designed to ensure investor safety discussed herein would be eligible for the exemptive relief to be provided under this proposed exemption.

The Trusts

3. Each Trust is created under a PSA between Fleet, as Seller and Servicer, and an independent and unaffiliated Trustee. Upon creation of a Trust, the Seller transfers to the Trust a pool of interest-bearing credit card receivables which are selected under strict criteria approved by one or more of certain nationally recognized rating agencies,[13] from the portfolio of revolving credit card accounts owned by Fleet. The PSA establishes the general parameters for the Trust, such as the requirements for eligible receivables to be transferred to the Trust, the manner of transferring and administering and servicing the receivables, Seller representations and covenants as to receivable eligibility, Servicer and Trustee duties and eligibility, and other matters.

The applicant represents that any Trust that issues a class of Certificates to be covered by the proposed exemption would include the following investor safeguards:

(a) Restricted selection of receivables;

(b) Periodic reporting and monitoring of accounts;

(c) Minimum receivable requirements;

(d) Restrictions regarding addition and removal of accounts;

(e) Servicer eligibility requirements;

[13] As noted in Section I.C.(3) above, these rating agencies are: (i) Standard & Poors Ratings Services, a division of McGraw-Hill Companies Inc.; (ii) Moody's Investors Service, Inc.; (iii) Duff & Phelps Credit Rating Co.; and (iv) Fitch IBCA, Inc., or their successors (collectively, the Rating Agencies).

(f) Servicer reports, duties and public accounting firm review;
(g) Trustee eligibility and duties;
(h) Restrictions on investments;
(i) Protection from the consequences of unplanned events; and
(j) Limited discretion.

These investor safeguards are discussed in the following paragraphs.

4. *Restricted Selection of Receivables.* In order for a receivable to be eligible for transfer to the Trust, either on the initial closing date or on any subsequent date, it must have arisen under an eligible account. An eligible account is one that is in existence and owned by and maintained with Fleet (as of the initial selection date or, with respect to additional accounts, as of the relevant addition cut-off date), and is payable in U.S. dollars. In addition, an eligible account must have a United States address for its obligor, must not have been classified as fraudulent, stolen or lost, and (except as provided below) must not contain a defaulted receivable. However, eligible accounts may include accounts, the receivables of which have been written off, or which have been identified as fraudulent, stolen or lost, provided that the balance of all receivables included in such accounts is reflected on the books and records of the Seller (and is treated for purposes of the PSA) as "zero," and charging privileges with respect to all such accounts have been canceled in accordance with the relevant credit card guidelines (i.e, investors do not pay for such accounts but receive the benefit of any payments made on such accounts). The eligible receivable must have been created in compliance with applicable law. All consents, licenses and other approvals necessary for the creation of the receivable and the execution of the credit card agreement must have been obtained and be in full force and effect, and Fleet must have good title to the receivable, free and clear of liens. Finally, an eligible receivable must constitute the legal valid and binding payment obligation of the obligor, and constitute an "account" or "general intangible" under Article 9 of the Uniform Commercial Code (the "UCC"), as in effect in the State of Rhode Island, so as to grant the Trust a first priority security interest in the event of bankruptcy. Once the pool of eligible accounts has been identified, accounts are selected at random for the transfer of their receivables to the Trust so as to provide a combination of receivables that is representative of the entire pool of eligible receivables.

Fleet represents and warrants that the receivables transferred to the Trust, and the accounts related to those receivables, meet the above-described standards for eligible receivables and accounts, and that no selection procedures adverse to the Certificateholders have been employed in selecting accounts. These restrictions on account selection are in place to prevent the concentration of high risk accounts. Each relevant Rating Agency requires that all of these safeguards be in place before a superior rating is given.

5. *Periodic Reporting and Monitoring of Accounts.* In connection with the transfer of the receivables to the Trust, Fleet must record and file a UCC financing statement (including any continuation statements, when applicable) in order to perfect the assignment of the receivables, and must deliver a file-stamped copy of such financing or continuation statement to the Trustee. Fleet must also indicate in its computer system file of credit card accounts the receivables transferred to the Trust by identifying the accounts with a unique designation, as described in the PSA. Fleet must deliver a complete list of all accounts in the Trust to the Trustee on or prior to the initial closing date and thereafter on a periodic basis as required by the PSA.

The Trustee is able to continually monitor the Trust's assets by reviewing the monthly reports regarding pool performance which are prepared for the Trustee and investors by Fleet, as Servicer. In addition, Fleet provides the Trustee with a complete list of accounts prior to each addition or removal, as required by the PSA. Each relevant Rating Agency requires significant monitoring procedures for the servicing of receivables to ensure investor safety as a condition to a superior rating.

6. *Minimum Receivable Requirements.* The aggregate principal amount of the receivables held by the Trust must be at least equal to the sum of the principal amount of the Certificates (prior to the commencement of any related amortization or accumulation) for all Series then outstanding (other than a Series which is backed in full by accumulated cash or permitted investments (see Paragraph 11 below) less any accumulated excess funding amount held in the Trust for Certificateholders. If, on the last business day of any month, the aggregate amount of principal receivables is less than the required minimum, Fleet must designate additional accounts or may convey participations in other credit card receivable pools sponsored by Fleet to be transferred to the Trust so that the aggregate principal receivables will meet the minimum requirement.

Interests in the assets of each Trust are allocated among the Certificateholders of each Series and the Seller (i.e., Fleet) and the principal portion of the Seller's interest is referred to as the "Seller Amount." The interest in the Trust assets allocated to the Seller is referred to as the "Seller Interest" less any accumulated excess funding amount held in the Trust for Certificateholders. To protect against fraud, chargebacks or other dilution of receivables in the Trust, the PSA and the Rating Agencies will require Fleet, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the Trust (referred to as the "Required Seller Percentage"). If, on the last business day of any month, the Seller Amount is less than the Required Seller Percentage, Fleet must designate additional accounts or participations in other credit card receivable pools to be transferred by Fleet to the Trust in order to satisfy the minimum requirement. When account payments exceed account purchases, the total pool of receivables in the relevant Trust contracts. As a result, the Seller Interest declines, thus providing a buffer to prevent a decline in the principal balance of the Certificates prior to the scheduled payment of principal. Thus, when the account balances that secure the Certificates decline, the Seller Interest decreases, not the principal balance of the Certificates. When the account balances again increase, the Seller Interest is increased. The Seller Interest will also decline as a result of dilution of the receivable portfolio resulting from noncash reductions such as merchandise returns or servicer errors.

The minimum receivable requirement and Required Seller Percentage requirement imposed on Fleet by the PSA (as described above) cause the Trustee, Servicer or Seller to have limited discretion regarding the minimum size of the Trust. Each relevant Rating Agency gains comfort from these minimum receivable levels that the Trust will be maintained so as not to adversely affect the ability of the Trust assets to support the promised interest and/or principal payments to Certificateholders.

7. *Restrictions Regarding Addition and Removal of Accounts.* In addition to the limitations discussed above regarding the initial selection of accounts and minimum receivable requirements, the following restrictions apply to the addition of accounts subsequent to the initial transfer of receivables to the Trust. Any transfer of receivables from additional accounts

must be preceded by written notice to the Trustee, each relevant Rating Agency and the Servicer specifying the approximate aggregate amount of receivables to be transferred. In connection with the transfer, Fleet will warrant that the additional accounts are eligible accounts and that each receivable is an eligible receivable, and that no selection procedures believed by Fleet to be materially adverse to the interest of the Certificateholders were utilized in selecting the accounts. Fleet must deliver an opinion of counsel with respect to the added receivables to the Trustee, with a copy to each relevant Rating Agency, that such addition is enforceable and that the Trust has either a valid transfer of, or a grant of security interest in, the additional accounts. The PSA requires that the Servicer and the Trustee receive confirmation from a Rating Agency that no Ratings Effect (i.e., a downgrade or withdrawal of the then current rating of any outstanding Series of Certificates) will result from a proposed transfer of accounts to the Trust.

Fleet may remove receivables and accounts, subject to the minimum receivable requirements discussed above. Fleet must give the Trustee and the Servicer and the relevant Rating Agencies written notice stating the approximate aggregate principal balance of the removal, and certifying that such removal must not result in a Pay Out Event. Fleet must warrant that no selection procedures believed by it to be materially adverse to the Certificateholders were utilized in selecting the removed receivables. Each relevant Rating Agency must have confirmed that such proposed removal will not result in a Ratings Effect. Fleet states further that the amount of any receivables that are removed must be less than 5 percent of the aggregate amount of principal receivables or, if any Series is paid in full, the amount of receivables removed must approximate the initial investor interest of such Series.

Each Rating Agency has determined that the number of additional accounts from which receivables may be added is generally limited to: (i) with respect to any consecutive three-month period commencing in January, April, July and October of each calendar year, 15 percent of the number of existing accounts designated to the Trust as of the first day of the calendar year in which such monthly period commenced, and (ii) with respect to any calendar year, 20 percent of the number of accounts designated to the Trust as of the first day of such calendar year. Fleet may be able to exceed the maximum addition amount if approval is received from each relevant Rating Agency.

By informing the relevant Rating Agencies of all details regarding additions and removals, the Trust is effectively reexamined each time these events occur in order to assure that the changes to the Trust assets will not adversely affect the rating of any outstanding Series. Each relevant Rating Agency scrutinizes the receivables in the additional accounts, or the relative strength of the pool of receivables designated to the Trust both before and after the addition or removal, as the case may be, in making any such re-examinations.

8. *Servicer Eligibility Requirements.* The Servicer of the receivables must be either the Seller (Fleet), an affiliate of Fleet, or an entity unaffiliated with Fleet acting as a "Subservicer" which is qualified to service a portfolio of consumer revolving credit card accounts and meets certain requirements. Under such requirements, the entity acting as either a Servicer or Subservicer must be legally qualified and have the capacity to service the accounts, must be qualified to use the software used to service the accounts, must have demonstrated the ability to professionally and competently service a portfolio of similar accounts in accordance with customary standards of skill and care, and must have a certain net worth (e.g. at least $50,000,000). These requirements are in line with the Rating Agencies' standards for servicers.

Regardless of whether the Servicer is Fleet, an affiliate of Fleet, or a third party meeting the eligibility requirements discussed above, the Servicer's duties are largely ministerial and are provided in detail in the PSA. The Servicer administers the receivables, collects payments due thereunder, makes withdrawals from the various accounts created under the PSA which are forwarded to the Trustee on the dates and in the manner provided under the PSA, commences enforcement proceedings with respect to delinquent receivables and makes filings and other necessary reports with the SEC and any state securities authorities as necessary to comply with the law. The Servicer must maintain fidelity bond coverage insuring against losses through its own wrongdoing, and is entitled to receive a reasonable servicing fee which is specifically enumerated in each PSA supplement.

9. *Servicer Daily Reports, Duties and Public Accounting Firm Review.* On each business day the Servicer, upon prior written notice by the Trustee, must prepare and make available to the Trustee a record of the collections processed on the second preceding business day and the aggregate amount of receivables as of the close of business on such day. The Servicer must prepare monthly for the Trustee, the paying agent, any credit enhancement provider, and each relevant Rating Agency, a certificate setting forth the aggregate collections processed during the preceding month with respect to each Series outstanding, the aggregate amount of the investor percentages of collections of finance charge receivables and principal receivables processed during the preceding month with respect to each Series outstanding, the balances in the finance charge account, the principal account or any Series account during the preceding month, and other detailed information.

The Servicer will provide annually a certificate from an officer indicating that the Servicer's activities over a 12-month period were reviewed and the officer believed such obligations were fully performed under the PSA. Every year, a nationally recognized firm of independent certified public accountants will review the internal accounting controls and their relation to the servicing of the receivables as well as the mathematical accuracy of the Servicer's monthly reports, and the results will be provided to the Trustee, any credit enhancement provider, and each relevant Rating Agency. These additional reviews of the Servicer are designed to prevent Servicer fraud and limit Servicer discretion. These safeguards protect investors and are a positive factor in a Rating Agency's evaluation.

10. *Trustee Eligibility and Duties.* The Trustee must be a corporation, bank, or other financial institution organized, doing business and regulated under the laws of the United States, any State or the District of Columbia and have a long-term unsecured debt rating as specified in the PSA. The Trustee must be independent of Fleet and its affiliates and meet the same requirements that would be necessary for an eligible Servicer (as discussed under "Servicer Eligibility Requirements" above in paragraph 8). Any successor Trustee must also meet these requirements and be approved by each relevant Rating Agency.

The Trustee is responsible for receiving collections from receivables as provided in the PSA, investing any moneys as directed in the PSA, and directing payments to Certificateholders according to the plan of allocation and payment detailed in the PSA. In performing these functions, the Trustee has little, if any, discretion. The Trustee is also responsible for examining any

resolutions, statements, certificates, opinions, reports or other instruments in order to determine whether they substantially conform to the requirements of the PSA. The Trustee has no power to vary the corpus of the Trust and must perform the duties of other parties should they fail to perform under the PSA. Like the Servicer restrictions, the restrictions on the Trustee limit discretion, enhance investor protection, and are a positive influence on a Rating Agency's evaluation.

11. *Restrictions on Investments.* The collections of principal receivables and finance charge receivables held in the Trust may be invested by the Trustee only in "permitted investments" during the interim periods between collection and payment to the Certificateholders. Such permitted investments are detailed in the PSA and represent what each relevant Rating Agency considers to be secure investments that sufficiently protect investors. Under the proposed exemption, permitted investments would be investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency. In addition, all permitted investments must be described in the PSA and permitted by the relevant Rating Agencies.

12. *Protection From the Consequences of Unplanned Events.* If Fleet should desire to merge or consolidate with, or assume the obligations of, another entity, certain provisions of the PSA ensure that the Trust assets remain secure. The new entity involved in the merger or consolidation must be a national banking association, a state banking corporation, a savings and loan association, or another entity not subject to bankruptcy laws or a bankruptcy remote corporation and must be organized and regulated under the laws of the United States, any State or the District of Columbia. The new entity must expressly assume the performance of every covenant and obligation of Fleet, and Fleet must provide the Trustee with an opinion of counsel that such assumption is legal, valid and binding. Finally, each relevant Rating Agency must be notified in advance of the change. Similarly, a merger, consolidation or assumption of the obligations of the Servicer also requires the same protections of a full assumption of liabilities, an opinion of counsel and Rating Agency notification.

The Certificateholders of each Series receive protection from certain unplanned events (called "Pay Out Events"). If a "Pay Out Event" occurs with respect to a Series, either (i) a rapid amortization period will commence during which the Certificates of such Series will be paid down periodically, as provided in the PSA Supplement, with the principal collections allocable to such Series or with principal collections allocable to other Series which are shared within the same Group (as discussed in Paragraph 15 below), or (ii) a rapid accumulation period will commence during which the Series' principal collections will be accumulated until a designated payment date. Pay Out Events include "Trust Pay Out Events," which apply to all Series, and "Series Pay Out Events," which apply to particular Series. "Trust Pay Out Events" include: (i) Certain events of insolvency, conservatorship or receivership relating to Fleet; (ii) the Trust becomes an "investment company" within the meaning of the Investment Company Act of 1940, as amended; and (iii) Fleet becomes unable for any reason to transfer receivables to the Trust as required by the PSA.

"Series Pay Out Events" generally include:

(a) Failure of Fleet to make required payments or observe its other covenants to the extent there is a material adverse effect on the Certificateholders of that Series;

(b) Breach by Fleet of its representations and warranties to the extent there is a material adverse effect on the Certificateholders of that Series;

(c) A default by the Servicer that would have a material adverse effect on the Certificateholders of that Series;

(d) Failure of Fleet to convey additional accounts as required to meet the required seller percentage and principal balance requirements; and

(e) The net portfolio yield for any three consecutive monthly periods is less than the base rate for such period (an "Economic Pay Out Event").

With respect to item (e) above, Fleet states that an "Economic Pay Out Event" will occur automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

Fleet states that an "Economic Pay Out Event" should not occur because the amount of receivables included within the Trust has been designed to create "excess spread" between the yield on the receivables and the certificate rates. "Excess spread" is the amount by which the yield on the receivables held by the Trust exceeds, at any point in time, the amounts necessary to pay certificate interest, principal (if such payments are due to certificateholders), servicing fees and expenses, and to satisfy cardholder defaults or charge-offs. The Rating Agencies examine the expected amount of "excess spread" very closely before providing a high credit rating for the certificates.

A "Pay Out Event" accelerates the scheduled payments or accumulation of principal on the Certificates as specified within each PSA Supplement, and eliminates shared allocations from such Series, thus increasing the probability of full payment to senior Certificateholders, including plan investors. During a rapid amortization period, which is triggered by a "Pay Out Event", all collections are distributed periodically (instead of being distributed on the originally scheduled principal payment dates), as provided in the PSA Supplement, until the senior Certificateholders are paid in full. During a rapid accumulation period, also triggered by a "Pay Out Event", all principal collections allocated to the senior Certificates are accumulated and invested by the Trustee until the senior Certificateholders' interest is backed in full by cash and/or permitted investments which will be distributed on the originally scheduled payment date. Payments or accumulations are then directed to the next level of Certificates below the senior Certificates, until all Certificates have been paid or accumulated, or the Trust terminates. Because this accelerated pay out or accumulation schedule is triggered as a result of poor

performance, senior Certificateholders are protected from a loss which might result from long-term yield reduction, and are, to a level of certainty necessary to support a rating of "AA" (or better), likely to receive their entire investment return. The timing or amount of the payments or accumulations is specifically defined in each PSA Supplement, further protecting investors from mismanagement. This automatic pay out trigger is important to each relevant Rating Agency as well, because it strictly limits the potential losses to investors.

Investors are also protected from the negative consequences of an event of Seller insolvency. If one or more of a number of indications of insolvency are present, a "Pay Out Event" occurs and a rapid amortization or a rapid accumulation period is triggered. As discussed above, this event accelerates payments or accumulation of collections to maximize the probability that senior Certificateholders will be paid promptly and in full. In addition, the Trustee also liquidates the receivables (unless otherwise instructed by Certificateholders representing undivided interests aggregating more than 50 percent of each outstanding Series) in order to further accelerate the pay out or accumulation process. The proceeds of the liquidation are distributed or accumulated in the tiered manner discussed above in the low-yield scenario.

13. *Limited Discretion.* Inherent in all of the restrictions surrounding creation and management of the Trust, discussed above, is the limited ability of any party to the transaction to make discretionary decisions that would have a major impact on the Trust assets. The PSA addresses every possible important decision and provides the exact course of action required. Each detail is designed to ensure maximum investor security, and minimum Trustee and Servicer discretion.

The Series

14. Once a Trust is established, a Series of Certificates may be issued pursuant to a PSA Supplement. One Trust typically supports multiple Series of Certificates over time. Each Series issued under a Trust is secured, along with other outstanding Series, by the assets of the issuing Trust. The PSA Supplement builds on the PSA by specifying the parameters for the Series, such as the number and type of Certificates, subordination and payment structuring, and other credit enhancement features.

The life of a Series consists of a revolving period and an amortization or accumulation period. During both periods, daily collections are allocated to the Trust accounts in the manner specified in the PSA Supplement. Interest payments are made periodically to the Certificateholders as provided in the PSA Supplement, and principal is paid in a lump sum on the date designated in the PSA Supplement (in the case of an accumulation period), or periodically pursuant to a schedule in the PSA Supplement (in the case of an amortization period), for each class of Certificates. The allocation of collections and the priority of payments differs slightly during the revolving period and the amortization or accumulation period.

15. During a Series' revolving period, periodic interest payments are made to Certificateholders. Principal payments, however, are not made until the amortization period or at the end of the accumulation period. Principal collections during the revolving period typically are shared among the Series that are members of the same Group. If one Series has principal receipts greater than needed to pay principal for that period, the excess may be used to pay principal for another Series in the Group which may have a need for such principal collections. In such instances, the minimum principal receivable balances required by the Rating Agencies for all Series must be maintained. The process of sharing within the Group spreads payment risk over a broader base of collections and effectively allows concentration of principal collections supporting a particular Series, resulting in increased reliability of the payment streams.

Principal collections received during the amortization or accumulation period are also potentially shared, but are first applied to the principal funding for the Series to which they relate. The amortization or accumulation period ends on the earliest of: (i) When the investor interests are paid in full; (ii) the Series termination date provided in the PSA Supplement; or (iii) the commencement of a rapid amortization or rapid accumulation period. Finance charges and fees collected during the revolving period and the accumulation or amortization period are applied to the related Series, and are not generally shared within the Group.

16. Every Trust will have a variety of credit enhancement features, as described in the PSA and specified in the applicable PSA Supplement. In addition to the Group sharing of collections discussed above, other forms of credit enhancement may include subordination and letters of credit or other third party arrangements. The type and value of credit enhancement for a particular Series is designed to complement the underlying Trust receivables so that, as a whole, the Trust assets satisfy the relevant Rating Agencies' requirements for the superior rating desired. In this regard, Fleet represents that the particular class of certificates for each series to which this proposed exemption would apply (an Exempt Class) will have credit support provided to the Exempt Class through either a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss.

Each Series with an Exempt Class covered by the proposed exemption will include one or more of the following credit enhancing investor safeguards (as discussed further below): (i) subordination; (ii) third party credit enhancement; and (iii) predetermined allocation of collections and payments to certificateholders allows no variation.

17. *Subordination.* Typically, a Series will have some form of subordination incorporated within the payment schedule detailed in the PSA Supplement. Such a Series will consist of at least one class of senior Certificates (typically designated as "Class A Certificates") which will be allocated collections in a more favorable manner than, and/or prior to, another class (or other classes) of Certificates (i.e., the next lower level, typically designated as "Class B Certificates") and often will include an uncertificated class subordinate to the Class B Certificates (typically designated as the "Collateral Interest" or "Class C Interest"). The subordination process generally will involve both the receipt of collections and the effect of losses. Thus, such collections will be applied to the senior (or Class A) Certificates first and then the second tier (or Class B) Certificates, and will be applied last to the lowest level class of Certificates (or the Collateral Interest). Conversely, the losses will first reduce the lowest class of Certificates (or the Collateral Interest), only affecting the senior (or Class A) Certificates after all other classes have been reduced to zero. The result of this tiered structure is that the senior (or Class A) Certificates are protected from nonpayment by the lower classes. If the certainty of payment provided by the subordination or other credit support mechanism is insufficient to allow each relevant Rating Agency to bestow one of its two highest ratings on the senior Certificates, the senior Certificates

would not be eligible for the relief provided under the proposed exemption.

18. *Third Party Credit Enhancement.* A Series may include a form of credit enhancement provided by an outside party, such as a letter of credit, a cash collateral account, insurance or a guaranty or other extension of credit. This arrangement will be documented by a separate contract outlining the terms of the enhancement. A holder of the Collateral Interest (described in paragraph 17) or other subordinate interest holder may be a loan provider or an investor in the Class C Interest, and the PSA Supplement typically requires that a minimum Collateral Interest (or subordinate interest) be a feature of each Series. As with all the forms of credit enhancement, the terms and the amount of the Collateral Interest will be dependent upon an evaluation of the other Trust assets and the additional support needed to satisfy each relevant Rating Agency that the Certificates are sufficiently protected from default.

19. *Predetermined Allocation of Collections and Payments to Certificateholders Allows No Variation.* The PSA Supplement provides instructions to the Servicer regarding each day's collections and the allocation of those collections to the various accounts created by the PSA. These instructions indicate how to make the payments and allocations during the revolving period, the controlled amortization or controlled accumulation period and the rapid amortization or rapid accumulation period, if any. The instructions also cover the treatment of other moneys from loans or other credit enhancement features, and carefully describe how to accommodate any excess collections, or how to compensate for any shortfalls. In following these detailed instructions, the Servicer does not make any discretionary decisions. The tasks are predetermined and largely ministerial. These explicit instructions, in concert with the Servicer reporting and review requirements, are designed to permit each relevant Rating Agency to conclude that mismanagement risks are minimal.

The Certificates

20. Each Series may include a class or various classes of Certificates, some of which may be subordinate to others. Certificateholders will be entitled to receive periodic payments of interest based upon a fixed or variable interest rate which is set forth in the PSA Supplement and applied to the Certificateholder's unpaid principal balance. Certificateholders will also be entitled to receive a lump sum principal payment on the scheduled payment date, or a series of periodic payments beginning on the scheduled payment commencement date, as specified in the PSA Supplement, to the extent of the Certificateholder's investor interest.

As noted earlier, only Certificates that are not subordinate to any other class or classes of Certificates (the "Senior Certificates") would be eligible for exemptive relief under the proposed exemption. However, subordinate certificates that are part of a Series which includes Senior Certificates eligible for the proposed exemption could be purchased by insurance company general accounts if the conditions of Prohibited Transaction Exemption 95–60, 60 FR 35925 (July 12, 1995) (PTE 95–60), are satisfied.

21. Fleet represents that a plan would invest in the Certificates for the same reasons any investor would invest in a highly secure, "AA" (or better) rated investment with attractive yields. The Senior Certificates represent an investment alternative which offers all the benefits of a highly rated fixed-income security, such as fixed payment streams, investment diversity and market rates of return. Permitting plans to invest in Senior Certificates in reliance on the proposed exemption would provide plans with additional and safe investment opportunities.

22. With respect to the credit ratings of the Certificates, Fleet states that the rating reflects a Rating Agency's opinion as to the relative amount of protection that investors have against loss of principal and interest during the life of the security. A high rating comports with a low risk of loss. In order to achieve this rating, each relevant Rating Agency requires the credit card securitizations effected through the Trust to include a variety of safeguards—such as subordination or other forms of credit enhancement, limitations on the Seller's discretion, and Rating Agency approval of certain actions taken with respect to the Trust or a Series of Certificates. Each relevant Rating Agency typically requires legal opinions regarding the credit card securitization's structure and performs stress tests on the portfolio of selected receivables in order to evaluate the securitization's anticipated performance within a range of significant market fluctuations. In addition, each relevant Rating Agency performs a comprehensive review of all documents related to the credit card securitization before the formal rating is given. Each relevant Rating Agency must provide confirmations that additions of receivables from accounts to a Trust, or withdrawals of existing accounts from a trust, will not result in a Ratings Effect on the Certificates.

After its rating is assigned, the Rating Agency monitors the performance of the credit card receivables included in a Trust in order to assess whether the performance remains consistent with the rating. Although variations in portfolio performance are expected during a Certificate's duration and are factored into a Rating Agency's analysis, extreme and unexpected performance results may result in a revision of the rating. Fleet makes its Trust performance information available to each relevant Rating Agency in a variety of ways, in order to ensure that such Agency receives all the information it deems necessary to make its evaluation. For example, Fleet provides information on portfolio performance broken down by account balance, credit limit, account age, delinquency period and geographic distribution.

Fleet states that the receipt of one of the two highest generic ratings from a Rating Agency represents the result of an exhaustive analysis of the many risk factors involved with a Series of Certificates, and provides a comfort level to investors that the potential reduction in yield as a result of credit losses is minimal.[14]

23. Fleet represents that the statistics on Certificates backed by credit card trusts indicate that they are sound investments. In this regard, Fleet states that public credit card securitization transactions have been in existence since 1987 and issuers have successfully sold over $230 billion in Certificates backed by credit card receivables since then with a zero investor loss rate. Fleet states further that plans have invested during this time in such Certificates,

[14] In this regard, the Department was advised by representatives from two of the Rating Agencies (RA Reps) of certain issues concerning the ratings of certificates issued by trusts holding credit card receivables. The RA Reps discussed, among other things, the fact that different banks use different underwriting standards and may offer cardholders different terms on their accounts. Some banks may be willing to accept cardholders with more risky credit histories while other banks may not or may offer better terms to cardholders with superior payment histories. The result may be that some banks have a higher quality portfolio of receivables than other banks. The RA Reps stated that if a bank securitizes a portfolio of receivables which holds a number of riskier accounts, the Rating Agencies will require more credit enhancement measures because different assumptions will have to be made about the performance of the portfolio—e.g. higher charge-off rates will be assumed and greater "excess spread" will be necessary to avoid losses—in order to achieve an "AAA" rating. Thus, for example, Bank A's certificates may receive an "AAA" rating along with Fleet's certificates even though Bank A may experience more charge-offs on the credit card accounts and may have different payment rates on the receivables associated with those accounts.

despite the prohibited transaction provisions of the Act, in reliance upon the Department's regulation defining "plan assets" and, specifically, the "100-Holder Exception" for "publicly-offered" securities (see 29 CFR 2510.3–101).[15]

Fleet maintains that the proposed exemption offers a number of safeguards in the form of concentration restrictions that are designed to provide additional protections for plan investors which are not included in the typical 100-holder exception transactions. For example, for purposes of the relief from the prohibitions of section 406(b) of the Act [16] provided under Section I.B. herein (relating to certain obligors of the Trust who may have discretionary authority for a plan investing in certificates of the Trust), the proposed exemption limits such plan's investment in any class of Certificates of any Series to not more than 25 percent of the principal amount of the Certificates of that class outstanding at the time of acquisition. In addition, immediately after the acquisition of the certificates, not more than 25 percent of the assets of such a plan may be invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. Further, the proposed exemption requires that at least 50 percent of the outstanding principal amount of each class of Certificates in which plans have invested, and at least 50 percent of the outstanding aggregate interest of the Trust, in connection with the initial issuance of the Certificates, must be acquired by persons independent of the Sponsor, the Servicer and other related parties. These restrictions are designed to protect plan investors from the risks inherent in excessive ownership concentration and related party transactions.

24. Fleet represents that the requested exemption is similar to the Underwriter Exemptions.[17] The Underwriter Exemptions are a series of exemptions granted by the Department to various underwriters or trust sponsors for transactions relating to the acquisition by plans of certificates representing interests in trusts holding various types of assets (e.g. single and multi-family residential or commercial mortgages, motor vehicle leases and related vehicles, equipment leases or other secured obligations), as provided in Section III.B. of the Underwriter Exemptions.

The Trusts described under the proposed exemption for Certificates backed by credit card receivables differ from trusts holding secured obligations in that the Trusts do not contain a fixed pool of assets and the receivables are not secured by real or tangible personal property. However, Fleet states that this difference in structure does not represent a difference in the quality or safety of investments by plans and other investors in the Certificates. Under the proposed exemption, Fleet represents that the other forms of credit enhancement provide at least the same level of security for investors in Trusts holding credit card receivables as exists for investors in trusts holding tangible or real property as collateral for the payment obligations to Certificateholders. In addition, Trusts holding credit card receivables do not involve the expense and administrative complexities of foreclosure procedures relating to tangible and real property.

25. Certificateholders are entitled to receive periodic payments of interest based upon an interest rate, which may be variable or fixed. This interest rate is specified or defined in the PSA Supplement for the particular Series and is applied to the outstanding principal balance of the Certificates. This outstanding balance (net of any charge-offs) is known as the investor interest for the senior class of Certificates. Certificateholders are also entitled to receive principal payments on the scheduled payment dates, or sooner or later under certain limited circumstances, pursuant to the PSA Supplement to the extent of the Certificateholders' investor interest. The payments are funded from collections on the related receivables and allocated to the investor interests as provided in the PSA Supplement.

Fleet states that a Series or class of Certificates may have the benefit of an interest rate swap agreement entered into between the Trustee for a Trust and a bank or other financial institution acting as a swap counterparty. Pursuant to the swap agreement, the swap counterparty would pay a certain rate of interest to the Trust in return for a payment of a rate of interest by the Trust, from collections allocable to the relevant Series or class of Certificates, to the swap counterparty. Fleet represents that the credit rating provided to a particular Series or class of Certificates by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of the swap agreements will not effect the credit rating of the Series or class of Certificates to which the swap relates (i.e. a "Non-Ratings Dependent Swap").

Fleet states that whether or not the credit rating of a particular Series or class of Certificates is dependent upon the terms and conditions of one or more interest rate swap agreements entered into by the Trust (i.e. a "Ratings Dependent Swap" or a "Non-Ratings Dependent Swap"), each particular swap transaction will be an "Eligible Swap" as defined in Section III.HH. above.

In this regard, an Eligible Swap will be a swap transaction:

(a) Which is denominated in U.S. Dollars;

(b) Pursuant to which the Trust pays or receives, on or immediately prior to the respective payment or distribution date for the applicable senior class of Certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(c) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(d) Which is not leveraged (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in item (b) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(e) Which has a final termination date that is the earlier of the date on which

---

[15] The Department's regulation defining "plan assets" provides that, if a plan invests in a publicly-offered security, the plan's assets will not include, solely by reason of such investment, any of the underlying assets of the entity issuing the security (i.e. the "look-through rule" will not apply and the operations of the entity will not be subject to scrutiny under the prohibited transaction provisions of the Act). The regulation defines a "publicly-offered" security as one that is freely transferable, widely-held, and registered under the federal securities laws. A class of securities is "widely held" if it is owned by 100 or more investors who are independent of the issuer and of one another at the conclusion of the offering (see 29 CFR 2510.3–101(b)(3)).

[16] Section 406(b) of the Act, in pertinent part, prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account, or from acting on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan and its participants and beneficiaries.

[17] As indicated in Footnote 7 above, PTE 97–34 (which granted an amendment to the Underwriter Exemptions) contains the most comprehensive listing of these exemptions.

the Trust terminates or the related class of Certificates is fully repaid; and

(f) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in items (a) through (e) above without the consent of the Trustee.

In addition, any Eligible Swap entered into by the Trust will be with an "Eligible Swap Counterparty", which will be a bank or other financial institution with a rating at the date of issuance of the Certificates by the Trust which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Certificates (see Section III.II above). However, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency.

With respect to a Ratings Dependent Swap, an Eligible Swap Counterparty will be subject to certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of such swap counterparty below a level specified by the Rating Agency, which would be no lower than the level that would make such counterparty "eligible" under this proposed exemption (see Section III.II. above). If these arrangements are not established within a specified period, as described in the PSA, there will be an early payout event causing certificateholders to receive an earlier than expected payout of principal on their certificates for the series to which the swap relates. However, with respect to a Non-Ratings Dependent Swap, the PSA will not specify that there be an early payout event for the series to which the swap relates if the credit rating of the swap counterparty falls below the level required for it to be considered an Eligible Swap Counterparty (as described in Section III.II. above). In such instances, in order to protect the interests of the Trust as a swap counterparty, the servicer (as agent for the trustee of the trust) will be required to either:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement will terminate);

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms.

Under any termination of a swap, the Trust will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "excess finance charge collections" or other amounts that would otherwise be payable to the servicer or the seller (i.e. Fleet). In this regard, "excess finance charge collections" will be, as of any day funds are distributed from the Trust, the amounts by which the finance charge collections allocated to certificates of a series exceed the amounts necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Certificates must confirm, as of the date of issuance of the Certificates by the Trust, that entering into the swap transactions with the Eligible Swap Counterparty will not effect the rating of the Certificates, even if such counterparty is no longer an "eligible" counterparty and the swap is terminated.[18]

Any class of senior Certificates to which one or more swap agreements entered into by the trust applies, will be acquired or held only by Qualified Plan Investors (as defined in Section III.JJ. above). Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of senior Certificates to be purchased and the effect such swap would have upon the credit rating of the senior Certificates to which the swap relates.

[18] RA Reps have indicated to the Department that certain series of certificates issued by a trust holding credit card receivables will have certificate ratings that are not dependent on the existence of a swap transaction entered into by the trust. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the certificates. RA Reps state that in such instances there will be more credit enhancements (e.g. "excess spread", letters of credit, cash collateral accounts) for the series to protect the certificateholders than there would be in a comparable series where the trust enters into a so-called Ratings Dependent Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the trust to pay certain fixed interest rates on a series of certificates. However, the receipt of such fixed rates by the trust from the counterparty is not a necessity for the trust to be able to make its fixed rate payments to the certificateholders.

For purposes of the proposed exemption, such a qualified independent fiduciary will be either:

(i) A "qualified professional asset manager" (i.e. QPAM), as defined under Part V(a) of PTE 84–14;[19]

(ii) An "in-house asset manager" (i.e. INHAM), as defined under Part IV(a) of PTE 96–23;[20] or

(iii) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Certificates.

Disclosures Available to Investing Plans

26. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information pertinent to a plan's decision to invest in the Certificates, such as:

(a) Information concerning the Certificates, including payment terms, certain tax consequences of owning and selling Certificates, the legal investment status and rating of the Certificates, and any special considerations with respect to the Certificates;

(b) Information about the underlying receivables, including the types of receivables, statistical information relating to the receivables, their payment terms, and the legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the servicer and servicing compensation;

(d) Information about the Sponsor of the Trust;

(e) A full description of the material terms of the Pooling and Servicing Agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such Certificates.

Certificateholders will be provided with information concerning the amount of principal and interest to be paid on Certificates in connection with each distribution to Certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the Trust.

In the case of a Trust that offers and sells Certificates in a registered public offering, the Trustee, the Servicer or the Sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934, as amended (the '34 Act). Although some Trusts that offer Certificates in a public offering will file quarterly reports on

[19] See Footnote 11 above.

[20] See Footnote 12 above.

Form 10–Q and Annual Reports on Form 10–K, many Trusts (i) obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K; or (ii) are not subject to such requirements for one or more Series of Certificates issued by the Trust. If such an exemption is obtained, these Trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Trust and the Certificates. While the SEC's interpretation of the periodic reporting requirement is subject to change, periodic reports concerning a Trust will be filed to the extent required under the '34 Act.

Fleet states that at or about the time distributions are made to Certificateholders, reports will be delivered to the Trustee as to the status of the Trust and its assets, including underlying Receivables. Such reports will typically contain information regarding the Trust's assets, payments received or collected by the Servicer, the amount of delinquencies and defaults, the amount of any payments made pursuant to any credit support or credit enhancement feature, and the amount of compensation payable to the Servicer. Such reports will also be delivered or made available to the Rating Agency that currently rates the Certificates. Such reports will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, Certificateholders will receive a statement summarizing information regarding the Trust and its assets and the applicable Series, including underlying receivables.

28. In summary, Fleet represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because, among other things:

(a) The acquisition of senior Certificates by a plan will be on terms (including Certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(b) The rights and interests evidenced by the senior Certificates will not be subordinated to the rights and interests evidenced by other investor Certificates of the Trust;

(c) Any senior Certificates acquired by a plan will have received a rating at the time of such acquisition that is in one of the two highest generic rating categories from any one of the Rating Agencies or, for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies;

(d) The Trustee of the Trust will not be an affiliate of any other member of the Restricted Group;

(e) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of Certificates will represent not more than reasonable compensation for underwriting or placing the Certificates; the consideration received by the Sponsor as a consequence of the assignment of receivables (or interests therein) to the Trust will represent not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the Servicer, which are allocable to the Series or class of certificates purchased by a plan, will represent not more than reasonable compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(f) Any plan investing in such Certificates will be an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the SEC under the Securities Act of 1933, as amended;

(g) The terms of each Series or class of Certificates, and the conditions under which Fleet may designate additional accounts to, or remove previously-designated accounts from, the Trust will be described in the prospectus or private placement memorandum provided to investing plans;

(h) The Trustee of the Trust will be a substantial financial institution or trust company experienced in trust activities and would be familiar with its duties, responsibilities and liabilities as a fiduciary under the Act;

(i) The PSA will include "Economic Pay Out Events" triggered by a decline in the performance of the receivables in the Trust;

(j) To protect against fraud, chargebacks or other dilution of the receivables in the Trust, the PSA and the Rating Agencies will require Fleet, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the Trust;

(k) Each receivable added to a Trust will be an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the PSA;

(l) The PSA will require that any change in the terms of any cardholder agreements also will be made applicable to the comparable segment of accounts owned or serviced by Fleet which are part of the same program or have the same or substantially similar characteristics;

(m) The addition of new receivables or designation of new accounts, and the removal of previously-designated accounts, will meet the terms and conditions for such additions, designations, or removals as described in the prospectus or private placement memorandum for such Certificates, which terms and conditions will have been approved by each relevant Rating Agency, and will not result in the Certificates receiving a lower credit rating from the relevant Rating Agency than the then current rating of the Certificates;

(n) Any swap transaction relating to senior Certificates that are covered by the proposed exemption must satisfy the several investor-protective conditions applicable to Eligible Swaps and must be entered into by the Trust with an Eligible Swap Counterparty; and

(o) Any class of Certificates to which one or more swap agreements entered into by the Trust applies may be acquired or held by plans in reliance upon this proposed exemption only if such plans are represented by "Qualified Plan Investors."

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and

protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 2nd day of August, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–20190 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Benefit Implications Due to the Growth of a Contingent Workforce Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what the benefit implications are due to the growth of a contingent workforce will hold an open public meeting on Wednesday, September 8, 1999, in Room N3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to receive testimony from additional witnesses on the most recently available contingent, flexible and non-traditional employment relationships as well as an analysis on the policy implications that flow from the data.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1.

Signed at Washington, DC, this 4th day of August, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–20614 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Exploring the Possibility of Using Surplus Pension Assets To Secure Retiree Health Benefits Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, September 8, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to explore the possibility of using surplus pension assets to secure retiree health benefits.

The session will take place in Room N–3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m., is for working group members to discuss the first draft of the committee's report, due to be completed by mid-November, to begin formulating recommendations for the report and to hear additional actuarial testimony on levels deemed to be adequate regarding pension plan assets.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 1, 1999, to Sharon Morrissey, Executive Secretary ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1.

Signed at Washington, DC, this 4th day of August 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–20615 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Issues Surrounding the Trend in the Defined Benefit Plan Market With a Focus on Employer-Sponsored Hybrid Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Thursday, September 9, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study issues

surrounding trends in the defined benefit market with a focus on employer-sponsored hybrid plans.

The purpose of the open meeting, which will run from 9 a.m. to approximately 1 p.m. in Room N–3427 A–B, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210, is for working group members to continue taking testimony on additional perspectives as well as additional factual input on account balance plans.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, US Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 1, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1.

Signed at Washington, DC, this 4th day of August 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–20616 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

107th Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 107th public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, September 9, 1999.

The purpose of the open meeting, which will run from 2 p.m. to approximately 3:30 p.m. in Room N–3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue NW., Washington, DC 20210, is for members to receive progress reports from the three working groups established for 1999 and a status report on the activities of the Pension and Welfare Benefits Administration, which staffs the Advisory Council for the Secretary of Labor.

Working Group topics and the chairs of those working groups are:

- Benefit Implications of a Contingent Workforce, Michael Fanning;
- Exploring the Possibility of Using Pension Surplus to Fund Retiree Health Benefits, Michael J. Gulotta, and
- The Trend in the Defined Benefit Plan Market with a Focus on Hybrid Plans, including Cash Balance Plans, Judith F. Mazo.

Members of the public are encouraged to file a written statement pertaining to any of these topics by submitting 20 copies on or before September 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the full Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 1, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1.

Signed at Washington, DC, this 4th day of August 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–20617 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–29–M

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is requesting a three year reinstatement of its expired Generic Clearance Request for Voluntary Customer Surveys Under Executive Order 12862 "Setting Customer Service Standards" from the Office of Management and Budget (OMB) under section 3506 of the Paperwork Reduction Act of 1995, OMB Control Number: 3124–0012.

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 10 minutes to 30 minutes per response, with an average of 15 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	5,000	1	3,750	.25	937.5

In addition, the MSPB invites comments on (1) Whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility;

(2) the accuracy of MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: Comments concerning the paperwork burden should be addressed to Mr. Bruce Mayor, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419 or by calling (202) 653–8900.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–20722 Filed 8–10–99; 8:45 am]

BILLING CODE 7400–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

August 6, 1999.

TIME AND DATE: 10:00 a.m., Wednesday, August 18, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: This Commission meeting is a continuation of the Commission meeting held on August 6, 1999, to discuss in closed session the pending application for a prosecutor in *Disciplinary Matter,* Docket No. D–99–1.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–20916 Filed 8–9–99; 3:36 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–104]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems (Origins); Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Origins Subcommittee.

DATES: Wednesday, September 1, 1999, 8:30 a.m. to 5 p.m.; Thursday, September 2, 1999, 8:30 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, Conference Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Harley Thronson, Code SR, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0369.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Astronomical Search for Origins and Planetary Systems "roadmap" and Office of Space Science Strategic Plan
—Meeting with the Associate Administrator
—Restructuring of the Research and Analysis Program
—Status of the Theme and the Astronomical Search for Origins and Planetary Systems Missions
—Wide-Field Camera 3
—The Astrobiology Laboratory/Institute

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 30, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–20605 Filed 8–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

July 29, 1999.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1955 [P.L. 104–13, 44 U.S.C. Chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts, Civil Rights Office, Angelia C. Richardson, Director (202) 682–5454. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 682–5695 between 10:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 [(202) 395–7316], within 30 days from the date of this publication in the **Federal Register.** The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of its Civil Rights Checklist. This entry is issued by the Endowment and contains the following information: (1) the title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. § 3504 (h).

Agency: National Endowment for the Arts.

Title: Civil Rights Checklist.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, state and local arts agencies.

Estimated Number of Respondents: 1,062.

Estimated Time Per Respondents: 1.

Total Burden Hours: 1,062.

Total Annualized Capital/Startup Cost: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Service): 0.

Description: The National Endowment for the Arts is mandated by law to ensure that its grantees are in compliance with its nondiscrimination regulations—Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Age Discrimination Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and the Department of Justice's Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs—through compliance reviews. The Compliance Review checklists are returned and analyzed by the Endowment to ensure that our recipients' programs, activities and facilities are in compliance with the laws/regulations that govern receipt of federal funds and that the rights of all people are protected without regard to race, color, sex, age, national origin, religion and disability.

ADDRESSES: Angelia C. Richardson, Director, Civil Rights Office, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 812, Washington, D.C. 20506–001, telephone (202) 682–5454 (this is not a toll free number), fax (202) 682–5553.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 99–20637 Filed 8–10–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Feasibility Study for Increased Private Support for the Folk and Traditional Arts

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to conduct a national feasibility study of the potential for increasing private funding for the folk and traditional arts. It is expected that the study will include: a quantitative and descriptive analysis of non-federal and non-state funding for the folk and traditional arts in the United States, including the perspectives of representatives of a variety of funders and folk arts organizers/producers; the identification and analysis of obstacles and opportunities for increased financial support inherent both in the folk and traditional arts field and in the non-federal, non-state arenas; and the feasibility of new structures to assist in increasing financial support for the folk and traditional arts. Available funding is $100,000. There is an expectation that, during the course of the work, additional funds for the study may be raised. Those interested in receiving the solicitation package should reference Program Solicitation PS 99–05 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 99–05 is scheduled for release approximately August 30, 1999 with proposals due on September 30, 1999.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 99–20628 Filed 8–10–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (#1194).

Date & Time: September 8, 9, 10, 13, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, and 30, 1999 8:30 a.m.–3:00 p.m. each day.

Place: Rooms 340, 360, 370 and 380, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Joseph Hennessey, Program Manager, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacture, and Industrial Innovation, National Science Foundation, 4210 Wilson Boulevard, VA 22230, Telephone (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–20691 Filed 8–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (#1756).

Date and Time: September 17, 1999, 8:30 a.m.–5:00 p.m.

Place: Room 770, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Thomas Spence, Senior Associate for Science Program and Coordination, Room 705, National Science Foundation, Arlington, VA 22230, (703) 306–1502.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Methods and Models of Integrated Assessment Panel (MMIA) as part of the selection process of awards.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b (c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 5, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–20688 Filed 8–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (#1209).

Date and Time: September 22–23, 1999, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 730, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Polly A. Penhale, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Southern U.S. Global Ocean Ecosystems Dynamics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: August 5, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–20689 Filed 8–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Program (#1209).

Date and Time: September 20–21, 1999, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 730, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Polly A. Penhale, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Biology and Medicine proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 5, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–20690 Filed 8–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science (#1182)

Date and Time: Monday, November 15, 1999, 9:00 a.m.–3:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Program Manager, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–306–1096.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Agenda: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients;

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: August 5, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–20687 Filed 8–10–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: Voluntary Reporting of Performance Indicators.

3. The form number if applicable: Not applicable.

4. How often the collection is required: One-time collection and quarterly thereafter.

5. Who is required or asked to report: Power reactor licensees.

6. An estimate of the number of responses: 264.

7. The estimated number of annual respondents: 66 reactor sites.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 13,860 hours (210 hours per site), and a one-time start-up effort of 13,200 hours.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: As part of a joint industry-NRC initiative, the NRC plans to receive information submitted voluntarily by power reactor licensees regarding selected performance attributes known as performance indicators (PIs). PIs provide objective measures of the performance of licensees' systems or programs. The NRC is revising its reactor oversight process to use PI information, along with the results of selected audits and inspections, as the basis for NRC conclusions regarding plant performance and necessary regulatory response. PIs will be transmitted electronically to reduce burden on licensees and the NRC as part of the NRC's revised oversight process which

is scheduled for implementation beginning in April 2000.

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC World Wide Web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC Home Page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 10, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin,

Office of Information and Regulatory Affairs (3150–), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 5th day of August 1999.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20658 Filed 8–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of amendment of the Charter of the Licensing Support Network Advisory Review Panel (LSNARP).

SUMMARY: The Licensing Support System Advisory Review Panel was established by the U.S. Nuclear Regulatory Commission as a Federal Advisory Committee in 1989. Its purpose was to provide advice to (1) the Department of Energy (DOE) on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and (2) the Nuclear Regulatory Commission on the operation and maintenance of the system. This electronic information management system was known as the Licensing Support System (LSS). In 1998 the Commission approved amendments to 10 CFR Part 2 to provide for a Network based electronic information management system and the Licensing Support System Advisory Review Panel was renamed as the Licensing Support Network Advisory Review Panel and the Charter was amended to reflect other changes made in the rule.

The Commission recently decided to place the LSN Administrator under the supervision of the Chief Administrative Judge (CAJ) of the Atomic Safety and Licensing Board Panel and to have the LSNARP report to the CAJ. To accommodate the change minor modifications to the Charter have been made.

The Nuclear Regulatory Commission has determined that amendment of the charter is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–504–1963.

Dated: August 5, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–20655 Filed 8–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; Comanche Peak Steam Electric Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of license amendments to Facility Operating License (FOL) Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company (TU Electric or the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed license amendments would allow the licensee to increase the licensed thermal power level of CPSES, Unit 2, from 3411 to 3445 megawatts thermal (MWt), which represents a 1 percent increase in allowable thermal power. This facility was authorized for power production at 3411 MWt with issuance of the FOL on April 6, 1993.

The proposed action is in accordance with the licensee's application for license amendment dated December 21, 1998, as supplemented by letters dated April 23 and May 14, 1999. Section V, of Attachment 2, to the licensee's May 14, 1999, supplement, contains the licensee's detailed environmental evaluation of the proposed licensing action.

The Need for the Proposed Action

The proposed action will allow an increase in power generation at CPSES, Unit 2, to provide additional electrical power for distribution to the grid. Power uprate has been widely recognized by the industry as a safe and cost-effective method to increase generating capacity.

Environmental Impacts of the Proposed Action

The Commission has previously evaluated the environmental impact of operation of CPSES, Units 1 and 2, as described in the "Final Environmental Statement Related to the Operation of Comanche Peak Steam Electric Station, Units 1 and 2," NUREG–0775, September 1981. With regard to consequences of postulated accidents, the licensee has reanalyzed the design-basis accident doses for the exclusion area boundary, low population zone, and the control room dose to the operators and determined that there will be a small increase in these doses; however, the analysis presented in NUREG–0775 postulates these doses resulting from releases at 104.5 percent of the currently licensed power level. Thus, the increase in postulated doses due to design-basis accidents is bounded by the previous evaluation presented in NUREG–0775. No increase in the probability of these accidents is expected to occur.

With regard to normal releases, calculations have been performed that show the potential impact on the radiological effluents from the proposed 1 percent increase in power level of CPSES Unit 2. For the 1 percent uprating calculations, the offsite doses from normal effluent releases remain significantly below the bounding limits of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix I. Normal annual average gaseous release remains limited to a small fraction of 10 CFR Part 20 limits for identified mixtures. Solid and liquid waste processing systems are expected

to operate within their design requirements. More frequent operation of these systems may lead to a slight increase in solid and liquid production.

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. With regard to thermal discharges to the Squaw Creek Reservoir, a small increase in the circulating water discharge temperature is expect due to the proposed 1 percent power uprate. The increase is expected to be approximately .01 degree Fahrenheit, and therefore, insignificant. Existing administrative controls ensure the conduct of adequate monitoring such that appropriate actions can be taken to preclude exceeding National Pollution Discharge Elimination System (NPDES) permitted limits. No additional monitoring requirements or other changes relative to the NPDES permit are required as a result of the power uprate.

Therefore, as described in the preceding discussions, the 1 percent uprate of Unit 2 does not have a significant environmental impact on the Squaw Creek Reservoir.

No other nonradiological impacts are associated with the proposed action.

Based upon the above, the Commission concludes that the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the CPSES.

Agencies and Persons Consulted

In accordance with its stated policy, on July 19, 1999, the staff consulted with the Texas State official, Mr. Authur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application for license amendment December 21, 1998, as supplemented by letters dated April 23 and May 14, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas.

Dated at Rockville, Maryland, this 4th day of August, 1999.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20685 Filed 8–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Pilot Program Evaluation Panel; Meeting Notice

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L., 94–463, Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC) announced the establishment of the Pilot Program Evaluation Panel (PPEP). The PPEP will function as a management-level Oversight group to monitor and evaluate the success of the Commission's Reactor Oversight Process Improvements program. A Charter governing the PPEP functions as a Federal Advisory Committee was filed with Congress on June 30, 1999, after consultation with the Committee Management Secretariat, General Services Administration. The PPEP will hold its second meeting on August 17, 1999, in the Two White Flint North Auditorium, Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, Maryland.

The PPEP meeting participants are listed below along with their affiliation:

Frank P. Gillespie—Nuclear Regulatory Commission
Mohan C. Thadani—Nuclear Regulatory Commission
James T. Wiggins—Nuclear Regulatory Commission
Heidi Hahn—LANL
Bruce Mallet—Nuclear Regulatory Commission
Geoffrey Grant—Nuclear Regulatory Commission
Kenneth E. Brockman—Nuclear Regulatory Commission
James Lieberman—Nuclear Regulatory Commission
Steve Floyd—Nuclear Energy Institute
David Garchow—Public Service Electric and Gas
Masoud Bajestani—Tennessee Valley Authority
George Barnes—Commonwealth Edison Company
James Chase—Omaha Public Power District
Gary Wright—Illinois Department of Nuclear Safety
David Lochbaum—Union of Concerned Scientists

A tentative agenda of the meeting is outlined as follows:

9:00–9:30 a.m. Introduction and opening remarks
- Noticing requirements
- Public participation

9:30–11:00 a.m. Discuss conduct of panel and rules of operation
- Location of meetings
- Approach to report generation

11:00 a.m.–12:00 n. Staff presentation on initial results of pilot plant inspections
- Final criteria and measurement approach for criteria

12:00 n.–1:00 p.m. Lunch

1:00–2:00 p.m. NEI Presentation—topic to be determined

2:00–3:00 p.m. Panel discussion on need for any additional data or analyses

3:00 p.m. Discussion and public presentations
- Future invited speakers
- Open discussion

4:00 p.m. Meeting Adjourned

Meetings of the PPEP are open to the members of the public. Oral or written

views may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make oral statements should notify Mr. Frank P. Gillespie (Telephone 301/415–1004, e-mail FPG@nrc.gov) or Mr. Mohan C. Thadani (Telephone 301/415–1476, e-mail MCT@nrc.gov) five days prior to the meeting date, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; and the Panel Chairman's ruling regarding requests to present oral statements and time allotted, may be obtained by contacting Mr. Frank P. Gillespie or Mr. Mohan C. Thadani between 8:00 a.m. and 4:30 p.m. EDT.

PPEP meeting transcripts and meeting reports will be available from the Commission's Public Document Room. Transcripts will be placed on the agency's web page when a web site for PPEP is established.

Dated: August 5, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–20656 Filed 8–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 9, 16, 23, and 30, 1999.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 9

Thursday, August 12

11:30 a.m. Affirmation Session (Public Meeting) (If needed).

Week of August 16—Tentative

There are no meetings scheduled for the Week of August 16.

Week of August—Tentative

Tuesday, August 24

2:00 p.m. Briefing by Executive Branch (Closed—ex. 1)

3:30 p.m. Briefing on Threat Assessment (Closed—ex. 1)

Wednesday, August 25

9:55 a.m. Affirmation Session (Public Meeting) (If needed)

Week of August 30—Tentative

Wednesday, September 1

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

2:00 Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

* The schedule for Commission meeting is subject to change on short notice. To verify the status of meetings call (recording)—(301)–415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: August 6, 1999.

William M. Hill, Jr.,

SECY, Tracking Officer, Office of the Secretary.

[FR Doc. 99–20906 Filed 8–9–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 17, 1999, through July 30, 1999. The last biweekly notice was published on July 28, 1999 (64 FR 40903).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 10, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: July 9, 1999.

Description of amendment request: The proposed amendment would revise Harris Nuclear Plant (HNP) Technical Specification (TS) 3/4.2.2, "Heat Flux Hot Channel Factor—$F_Q(Z)$," TS 3/4.2.3, "RCS Flow Rate And Nuclear Enthalpy Rise Hot Channel Factor," TS 3/4.2.5, "DNB Parameters," an associated note in TS Table 2.2–1, and associated Bases. Specifically, the proposed amendment would: (1) Remove the allowance for reduced power operation for reduced Reactor Coolant System (RCS) flow rate conditions; (2) separate the requirements for F delta H and RCS flow rate in the format prescribed by NUREG–1431, Revision 1, "Standard Technical Specifications, Westinghouse Plants," dated April 1995; and, (3) implement the guidance of NUREG–1431, Revision 1, and NRC Generic Letter (GL) 88–16, dated October 4, 1988 for TS 3/4.2.2, TS 3/4.2.3, TS 3/4.2.5 and associated Bases by removing cycle specific parameters and placing that

information into the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS.

As described in HNP TS Bases, the limits on heat flux hot channel factor, RCS flow rate, and enthalpy rise hot channel factor ensure that: (1) the design limits on peak local power density and minimum DNBR [departure from nucleate boiling ratio] are not exceeded and (2) in the event of a LOCA the peak fuel clad temperature will not exceed the 2200 degree Fahrenheit ECCS [emergency core cooling system] acceptance limit.

Removing the allowance for reduced power operation for reduced RCS flow conditions is more restrictive than that currently allowed by TS. Power Distribution Limiting Conditions for Operation for heat flux hot channel factor and enthalpy rise hot channel factor are not affected by this change. Therefore, the consequences of an accident will not increase because of this change. Power Distribution limits place administrative restrictions on reactor core parameters and as such do not initiate nor mitigate accidents.

Power Distribution limits at HNP are developed using NRC approved methodologies. Changing power distribution limits to be consistent with NUREG–1431, Revision 1 will not increase the probability or consequences of an accident that has been previously evaluated.

Relocating cycle specific information from TS to the COLR will not impact the ability of structures, systems, or components to mitigate accidents. Future changes to relocated requirements in the COLR will be submitted to the NRC for review in accordance with HNP TS Section 6.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS. The changes are consistent with NUREG–1431, Revision 1 and the Commission's Final Policy Statement on Technical Specification improvements. The proposed amendment will not create any new accident scenarios, because the change does not introduce any new single failures, adverse equipment or material interactions, or release paths.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The LCO limit for RCS flow rate at 100.0% reactor power has not changed. The previous capability to operate with reduced RCS flow rate has been eliminated. This aspect of the proposed change is more restrictive than current plant TS in that continued reactor operation greater than 5% is not allowed if RCS flow rate is less than the LCO limit at 100% power.

Changes to TS 3/4.2.2, TS 3/4.2.3, TS 3/4.2.5 and associated Bases are in accordance with NUREG–1431, Revision 1. The completion times for TS Actions are acceptable because the plant is not allowed to remain in an unacceptable condition for an extended period of time. Sufficient time to reduce reactor power in an orderly manner or perform other required actions is also provided. The surveillance intervals established by NUREG–1431, Revision 1 have been determined to be adequate for monitoring the change in power distribution.

Relocating cycle specific information from HNP TS to the COLR is in accordance with NRC GL 88–16. HNP does not intend to alter the methodologies for any parameter limit calculation as a result of this change. The proposed change is in accordance with the plant safety analysis. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: July 9, 1999.

Description of amendment request: The proposed amendment would relocate Harris Nuclear Plant (HNP) Technical Specification (TS) 3/4.3.3.3, "Seismic Instrumentation," TS 3/4.3.3.4, "Meteorological Instrumentation," TS 3/4.3.3.9, "Metal Impact Monitoring System," and TS 3/4.3.3.11, "Explosive Gas Monitoring Instrumentation," to plant procedure PLP–114, "Relocated Technical Specifications and Design Basis Requirements." The proposed change is in accordance with guidance provided by NRC Generic Letter 95–10, "Relocation of Selected Technical Specification Requirements Related to Instrumentation." Changes to relocated requirements would be performed in accordance with 10 CFR 50.59. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Seismic Instrumentation, Meteorological Instrumentation, Metal Impact Monitoring System, and Explosive Gas Monitoring Instrumentation are not accident initiating components as described in the Final Safety Analysis Report. Seismic Instrumentation, Meteorological Instrumentation, Metal Impact Monitoring System, and Explosive Gas Monitoring Instrumentation are not accident mitigating components. There are no modifications being made to plant systems as a result of this change. Additionally, there are no changes being made to the way in which systems are being operated as a result of this change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Seismic Instrumentation, Meteorological Instrumentation, Metal Impact Monitoring System, and Explosive Gas Monitoring Instrumentation are not accident initiating components as described in the Final Safety Analysis Report (FSAR). The proposed change relocates the TS requirements for Seismic Instrumentation, Meteorological Instrumentation, Metal Impact Monitoring System, and Explosive Gas Monitoring Instrumentation to plant procedure PLP–114. Plant systems and components are not modified as a result of this change. Future changes in these systems will be controlled in accordance with 10 CFR 50.59.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed change to Seismic Instrumentation, Meteorological Instrumentation, Metal Impact Monitoring System, and Explosive Gas Monitoring Instrumentation does not affect any of the

parameters that relate to the margin of safety as described in the Bases of the TS or the FSAR. Accordingly, NRC Acceptance Limits are not affected by this change. The proposed change relocates the TS requirements for Seismic Instrumentation, Meteorological Instrumentation, Metal Impact Monitoring System, and Explosive Gas Monitoring Instrumentation to plant procedure PLP–114. Plant systems and components are not modified as a result of this change. Future changes in these systems will be controlled in accordance with 10 CFR 50.59. Generic Letter 95–10 states that the staff has concluded that these provisions are not related to dominant contributors to plant risk.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of amendment request: June 30, 1999

Description of amendment request: The proposed amendment would clarify that the source of DC electrical power required for a unit in Mode 5 or 6 or during the movement of irradiated fuel assemblies may be cross-tied to the opposite unit. An administrative change would also delete reference to AT&T batteries since all AT&T batteries have been replaced with Charter Power Systems, Inc. (C&D) batteries. The amendment would also remove the Allowed Outage Time (AOT) extension approved for Braidwood Station by Amendment No. 99. The activity addressed by Amendment No. 99 is complete and the extension no longer applies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will allow one DC bus on a shutdown unit to be supplied via the DC bus cross-tie to the opposite unit. The other DC bus on the shutdown unit will at all times be required to be fully operable, supplied by the associated battery and charger, and the associated cross-ties open. The DC electrical system is not considered an initiator of any accident previously evaluated, and therefore the probability of a previously analyzed accident is unchanged.

The consequences of a previously analyzed event are dependent on the initial conditions assumed for the analysis, the availability and successful functioning of the equipment assumed to operated in response to the analyzed event, and the setpoints at which these actions are initiated. Sufficient equipment remains available to mitigate the consequences of previously analyzed events. The Updated Final Safety Analysis Report (UFSAR) section 8.3.2.1.1 clearly allows operation with the DC cross-tie closed on one DC bus between a unit that is operating and a unit that is shutdown, or between two shutdown units, in the manner proposed by this amendment. The TS in effect prior to the implementation of the Improved TS also allowed operation in the manner proposed by this amendment. If DC buses are cross-tied due to an inoperable DC source on a shutdown unit, both the previous TS and the change proposed by this amendment limit the time in this condition to seven days, and if the inoperable source is a battery, the current on the cross-tie is limited to 200 amps. These actions protect both the operating unit, and the shutdown unit. If a shutdown unit's DC bus is cross-tied to an operating unit's DC bus due to an inoperable charger on the operating unit, both the previous TS and the change proposed by this amendment limit the time in this condition to 24 hours. The limitations imposed by both the previous TS and the change proposed by this amendment ensure that operation in this configuration is within the design bases of the plant. Thus the consequences of accidents previously analyzed are unchanged between the previous TS and the change proposed by this amendment. In the worst case scenario, assuming a single failure, one DC bus on the shutdown unit will always be operable, and the ability to mitigate the consequences of any accident previously analyzed is preserved.

The change to delete all references in the Braidwood TS to AT&T batteries and the AOT extension granted under TS Amendment Number 99 is administrative only, and has no impact on the probability or consequences of accidents previously evaluated.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical change to the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated. There are no setpoints affected by this change at which protective or mitigative actions are initiated. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures which ensure the plant remains within analyzed limits in being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to delete all references in the Braidwood TS to AT&T batteries and the AOT extension granted under TS Amendment Number 99 is administrative only, and cannot create the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. The proposed change, which will allow one DC bus on a shutdown unit to be supplied via the DC bus cross-tie to the opposite unit, is acceptable because of the limitations imposed on operation in this configuration, and because the other DC bus on the shutdown unit will at all times be required to be fully operable, supplied by the associated battery and charger, and the associated cross-ties open. The TS in effect prior to the implementation of the Improved TS allowed operation in the manner proposed by this amendment. In the worst case scenario, assuming a single failure, one DC bus on the shutdown unit will always be operable. Thus, there is no detrimental impact on any equipment design parameter, and the plant will still be required to operate within prescribed limits. Therefore, the change does not reduce the margin of safety.

The change to delete all references in the Braidwood TS to AT&T batteries and the AOT extension granted under TS Amendment Number 99 is administrative only, and does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: May 3, 1999.

Description of amendment request: The proposed amendments would relocate Technical Specifications (TS) Section 3/4.6.I to the Updated Final Safety Analysis Report (UFSAR). TS Section 3/4.6.I contains reactor coolant chemistry limiting conditions for operation (LCO) and surveillance requirements (SR) for conductivity, chloride concentration, and pH.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes simplify the TS, meet regulatory requirements for relocated TS's, and implement the recommendations of the NRC Final Policy Statement on TS improvements. The Chemistry requirements will be relocated to the Updated Final Safety Analysis Report (UFSAR) and to applicable station procedures. Future changes to these requirements will be controlled by 10 CFR 50.59. The proposed changes are administrative in nature and do not involve any modification to any plant equipment or affect plant operation. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any previously evaluated accident.

Consequently, this proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature, do not involve any physical alterations to any plant equipment, and cause no change in the method by which any safety related system performs its function. Therefore, this proposed TS amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed amendment represents the relocation of current requirements, which are based on generic guidance or previously approved provisions for other stations. The proposed changes are administrative in nature and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The proposed changes have been evaluated and found to be acceptable for use at Dresden Nuclear Power Station. Since the proposed changes are administrative in nature, and are based on NRC accepted provisions which have been adopted at other nuclear facilities, and maintain the necessary levels of system reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket No. 50–373, LaSalle County Station, Unit 1, LaSalle County, Illinois

Date of amendment request: July 7, 1999.

Description of amendment request: The proposed amendments would (1) revise Technical Specification Section 2.1, Safety Limits, to reflect a change to the LaSalle, Unit 1, Minimum Critical Power Ratio Safety Limit; and (2) revise Technical Specification Section 6.6.A.6 to add an NRC-approved Siemens Power Corporation methodology to the list of topical reports used to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC-approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. These changes do not affect the operability of plant systems, nor do they compromise any fuel performance limits.

Changing the MCPR Safety Limit for LaSalle Unit 1 will not increase the probability or the consequences of an accident previously evaluated. This change implements the MCPR Safety Limit resulting from the SPC ANFB critical power correlation methodology using the approved ATRIUM–9B additive constant uncertainty. For each cycle, cycle specific MCPR Safety Limit calculations will be performed, consistent with SPC's approved methodology, to confirm the appropriateness of the MCPR Safety Limit. Additionally, operational MCPR limits will be applied that will ensure the MCPR Safety Limit is not violated during all modes of operation and anticipated operational occurrences. The MCPR Safety Limit ensures that less than 0.1% of the rods in the core are expected to experience boiling transition. Therefore the probability or consequences of an accident will not increase.

Adding EMF–85–74, Revision 0, Supplement 1 (P)(A) and Supplement 2 (P)(A) to Section 6 does not increase the probability or consequences of an accident previously evaluated. The NRC-approved burnup extension for RODEX2A applications has been demonstrated to meet all applicable design criteria. Therefore adding this methodology to Technical Specification Section 6 does not increase the probability or consequences of an accident previously evaluated .

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications to the plant configuration, including changes in allowable modes of operation. This Technical Specification submittal does not involve any modifications to the plant configuration or allowable modes of operation. No new precursors of an accident are created and no new or different kinds of accidents are created. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the MCPR Safety Limit does not create the possibility of a new accident from any accident previously evaluated. This

change does not alter or add any new equipment or change modes of operation. The MCPR Safety Limit is established to ensure that 99.9% of the rods avoid boiling transition.

The MCPR Safety Limit is changing for LaSalle Unit 1 to support Cycle 9 operation. This change does not introduce any physical changes to the plant, alter the processes used to operate the plant, or change allowable modes of operation. Therefore, no new accidents are created that are different from any accident previously evaluated.

The addition of RODEX2A (EMF–85–74, Revision 0, Supplement 1 (P)(A) and Supplement 2 (P)(A)) does not create the possibility of a new accident from an accident previously evaluated. This change does not alter or add any new equipment or change modes of operation. This change does not introduce any physical changes to the plant, alter the processes used to operate the plant, or change allowable modes of operation. Therefore, no new accidents are created that are different from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in the margin of safety?

Changing the MCPR Safety Limit for LaSalle Unit 1 will not involve any reduction in margin of safety. The MCPR Safety Limit provides a margin of safety by ensuring that less than 0.1% of the rods are calculated to be in boiling transition. The proposed Technical Specification amendment request reflects the MCPR Safety Limit results from evaluations by SPC using NRC-approved methodology.

The revised MCPR Safety Limit will ensure the same level of fuel protection. Additionally, operational limits will be established based on the proposed MCPR Safety Limit to ensure that the MCPR Safety Limit is not violated during all modes of operation including anticipated operation[al] occurrences. This will ensure that the fuel design safety criterion of more than 99.9% of the fuel rods avoiding transition boiling during normal operation as well as during an anticipated operational occurrence is met.

The addition of EMF–85–74, Revision 0, Supplement 1 (P)(A) and Supplement 2 (P)(A) to Section 6 does not decrease the margin of safety. The burnup limit extension for RODEX2A applications has been reviewed and approved by the NRC. The data supporting the burnup extension demonstrates that all applicable design criteria are met. Therefore, since the burnup extension is acceptable and within the design criteria, using the approved burnup extension will not affect the margin of safety.

Therefore, these changes do not involve a significant reduction in the margin of safety.

Therefore, based upon the above evaluation, ComEd has concluded that these changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: November 9, 1998, as supplemented on July 7, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification Table 3.3.3–2, "Emergency Core Cooling System Actuation Instrumentation Setpoints," to modify the degraded voltage second level undervoltage relay setpoint and allowable value. These proposed amendments were originally noticed on January 13, 1999 (64 FR 2245), and are being renoticed to include the revised setpoints that were included in the July 7, 1999, supplement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The setpoint change does not change the logic or function of the degraded voltage protection circuits as described in the UFSAR [Updated Final Safety Analysis Report] Section 8.2.3. They also do not reduce the reliability of these circuits. The increase in the degraded voltage protection circuit setpoint is conservative compared to the existing setpoint. There is no change as a result of this amendment to the underlying accident and transient analyses that support operations of LaSalle County Station. Inadvertent or spurious operation of the degraded voltage protection function will initiate loading of the safe shutdown loads on the diesel generators and is not assumed to initiate an accident. The proposed degraded voltage setpoints are low enough to prevent spurious actuations given the expected offsite grid voltages. After implementation of this amendment, no operator actions are required for equipment operations in response to degraded voltage conditions.

This change does not affect the initiators or precursors of any accident previously evaluated. This change will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction and/or catastrophic system failure.

The consequences of accidents previously evaluated are not increased. The proposed change does not affect the required level of availability of systems required to mitigate the accidents considered in the analyses. The proposed changes will ensure that the Class 1E equipment will be capable of starting and operating during a design basis accident with degraded offsite grid voltage. The increase in the level of confidence is the result of more rigorous methodology used to determine limiting Class 1E bus voltages at the minimum expected offsite AC voltage. These calculations demonstrate that the degraded voltage relays will not actuate following a block start of the electrical loads that are automatically actuated by or as a consequence of the LOCA [loss-of-coolant accident] signal if the switchyard voltage remains above 352 kV.

If the grid voltage drops below 352 kV, then the analytical limit of 3814 volts for proper operation of class 1E loads connected to each 4.16 kV Class 1E bus is assured by transfer to the respective onsite power sources (Emergency Diesel Generators (EDGs)) by the degraded voltage logic.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Setpoint methodology established the bases to ensure that, with known errors, the relays will detect degraded voltage conditions and transfer safety loads to the EDGs at a voltage level adequate to ensure proper safety equipment performance and to prevent equipment damage.

The trip setpoint of greater than or equal to 3863 volts and less than or equal to 3877 volts and the allowable value of greater than or equal to 3814 volts and less than or equal to 3900 volts, include adequate tolerance to calibrate the relay trip units while ensuring that the Class 1E bus voltage will remain above the analytical limits.

These setpoint changes will ensure that adequate voltages will be available for the continuous operation of safety-related equipment required to function during a LOCA. These proposed changes will also ensure that adequate voltages will be available for starting any Class 1E equipment.

The proposed degraded voltage setpoint change does not change the design of the degraded voltage protection system or its function to protect against degraded offsite power. Actuation of the degraded voltage protection system will initiate a sequence of events that will start the EDG for the associated Class 1E bus, strip loads from the Class 1E bus, open all feed breakers to the Class 1E bus, close the Emergency feed breaker (thus energizing the Class 1E bus

from the respective EDG), and initiate starting of the Safe Shutdown equipment supplied by the Class 1E bus.

Since the scope of this change does not affect the operation of auxiliary power system or any actions necessary to mitigate the consequences of accidents or achieve safe shutdown, the change does not involve a new or different accident scenario.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

The proposed amendment will allow the degraded voltage setpoint to be conservatively established based on new engineering calculations which consider the lowest expected offsite grid voltage and operation of required Class 1E equipment under design basis accident loading conditions.

The proposed degraded voltage setpoints will ensure that adequate Class 1E bus voltage will be available to support starting and operation of required Class 1E loads. The proposed setpoint includes instrument error to ensure that the lowest possible voltage will not be lower than the degraded voltage analytical limits. Additionally, the proposed setpoints are low enough to prevent spurious actuations due to expected fluctuations in the grid voltage. The new setpoints are also set with margin to the minimum Class 1E bus voltage, which is based on a minimum grid voltage of 352 kV, which is less than the expected grid voltage of 354 kV. The proposed changes will provide an increase in the level of protection that currently exists and will ensure the margin of safety is adequately maintained.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1, Monroe County, Michigan

Date of amendment request: April 20, 1999 (Reference NRC–99–0035).

Description of amendment request: The proposed amendment will revise the Technical Specifications by deleting Specification D.3.c. Specification D.3.c requires the licensee to perform weekly observations of the nitrogen cover gas pressure within the sodium storage tanks located in the Sodium Building Complex. Removing this surveillance requirement would allow the licensee to remove the nitrogen cover gas system from service for these sodium storage tanks. This action is necessary for the licensee to begin work on removing the remaining residual sodium from these tanks. The licensee also requested an editorial change to delete the words "STORAGE TANK" from the title of Specification D.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration using the standards in 10 CFR 50.92(c). The licensee's analysis is presented below:

(1) *The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

Removing the primary cover gas supply from the storage tanks will not significantly increase the probability of an accident occurring as long as the probability of an uncontrolled water reaction with residual sodium is not significantly increased. This is ensured by sealing the storage tanks after the nitrogen cover gas system is removed except when controlled activities such as sampling are performed. The consequences of an accident would not be affected by removing the nitrogen cover gas supply from service as the previously analyzed primary sodium accident already involves release of all the radioactive material in the primary sodium. Removing the cover gas will not increase the amount of radioactive material available to be released.

(2) *The proposed change does not create the possibility of a new or different accident from any previously evaluated.*

A sodium accident has been previously evaluated. No other type of accident could be caused by removing the primary sodium tanks cover gas or opening the tanks since no other system or mode of operation of any other system will be affected.

(3) *The proposed change does not involve a significant reduction in a margin of safety.*

Currently, only a small amount of residual sodium remains in the primary sodium storage tanks. Some of this residual sodium may have been converted to sodium carbonate. This conversion of sodium to sodium carbonate would have left even less sodium remaining in these tanks. The cover gas is a good precaution, especially for tanks sitting unattended for many years. It prevents moisture from intruding into the tanks and reacting with the sodium residues. It also prevents oxygen from entering these tanks and reacting with any hydrogen formed from reactions of water and sodium. Discontinuing the use of cover gas slightly reduces the margin of safety, but not significantly.

Removing the cover gas does not, in itself, introduce water into the tank in an uncontrolled manner. Even if slight amounts of moisture from humidity in the air enter these tanks over the next year or two, until the sodium is removed while the tanks are either opened or sealed, the volume of each tank (15,000 gallons) is large enough that the tank should be able to dissipate any small reactions that could occur. The design pressure for the primary sodium storage tanks is from vacuum to 50 pounds per square inch based on the vendor's drawing.

Even if sufficient water entered the tank, generated hydrogen, and sufficient oxygen entered the tank to cause a reaction that released the contents of the tank, there would be no significant release of radioactivity from the tank. The release of all residual primary sodium would result in concentration levels well below the values in 10 CFR 20, Appendix B, Table II for releases to unrestricted areas. Since there is less sodium in the primary sodium storage tanks than in the secondary sodium storage tanks, potential hazard consequences of releasing the contents of a primary sodium tank are bounded by the hypothetical secondary sodium scenario evaluated in the Fermi 1 Safety Analysis Report. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esquire, Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Branch Chief: Larry W. Camper.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 22, 1998, supplemented by October 22, 1998, January 28, May 6 and June 24, 1999.

Description of amendment request: By the referenced submittals the licensee requested the Catawba Technical Specifications be changed to permit the licensee's planned use of fuel supplied by Westinghouse, which has different design characteristics from the fuel currently in use. The staff has previously published two Notices of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration of Issuance of Amendments. The first notice, dated November 18, 1998 (63 FR 64108), covers the submittals dated July

22 and October 22, 1998. The second notice, dated May 19, 1999 (64 FR 27317), covers the submittal dated May 6, 1999. The June 24, 1999, submittal actually requested an amendment separate from that described above, but nevertheless conveyed a revised proposed Figure 2.1.1–1, "Reactor Core Safety Limits—Four Loops in Operation", superseding what was originally proposed in the licensee's previous submittals. Hence, this Notice only covers the revised proposed Figure 2.1.1–1. The Notices referenced above are unaffected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the June 24, 1999, submittal. The staff has reviewed the licensee's analysis and has performed its own analysis as follows:

First Standard

No. The proposed changes to Figure 2.1.1–1 will not affect the safety function and will not involve any change to the design or operation of any plant system or component. The revised Figure 2.1.1–1 restricts reactor coolant flow to within previously analyzed temperature and pressure conditions. Therefore, no accident probabilities or consequences will be impacted.

Second Standard

No. The proposed changes will not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

Third Standard

No. Margin of safety is associated with confidence in the design and operation of the plant; specifically, the ability of the fission product barriers to perform their design functions during and following an accident. The proposed changes to Figure 2.1.1–1 do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for the proposed change to Figure 2.1.1–1. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 24, 1999.

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) as follows: (1) Revise Figure 2.1.1–1, "Reactor Core Safety Limits—Four Loops in Operation," which defines the current limits of reactor coolant system (RCS) flow under different combinations of pressure and temperature; (2) revise the Actions associated with Limiting Condition of Operation (LCO) 3.4.1 and Table 3.4.1–1 to reflect the updated assumptions for reactor coolant flow, temperature and pressure; and (3) delete Figure 3.4.1–1, "RCS Total Flow Rate Versus Rated Thermal Power—Four Loops in Operation," since these requirements are being relocated to LOC 3.4.1 and Table 3.4.1–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the June 24, 1999, submittal, which is presented below:

First Standard

No component modification, system realignment, or change in operating procedure will occur which could affect the probability of any accident or transient. The increase in RCS total flow rate limit will not change the probability of actuation of any Engineered Safety Feature or other device. In order to provide more margin in the core design limits and allow more flexibility for future cycle-specific core design, the analyses that establish these limits were reanalyzed at the proposed TS minimum RCS total flow rate limit. The impact of the power/flow tradeoff is determined for each reanalyzed event either by qualitative evaluation or by explicit reanalysis.

An increase in the Technical Specification minimum RCS total flow rate limit and the revised power/flow tradeoff will not adversely affect the steady-state or transient analyses documented in Chapters 3, 4, 6, and 15 of the McGuire and Catawba Nuclear Station UFSARs [Updated Final Safety Analysis Reports]. The reduced RCS low flow reactor trip setpoint and allowable value will not increase the consequences of the partial loss of forced reactor coolant flow and reactor coolant pump shaft seizure accidents. In these transient reanalyses, the minimum DNBR and peak primary system pressure acceptance criteria are not adversely affected. Therefore, the proposed changes will not involve an increase in the probability or consequences of an accident previously evaluated.

Second Standard

No component modification, system realignment, or change in operating procedure will occur which could create the possibility of a new or different kind of accident. As described in Attachment 3, the proposed increase in Technical Specification minimum RCS total flow rate limit and revised power/flow tradeoff will not adversely affect the steady-state or transient analyses documented in Chapters 3, 4, 6, and 15 of the McGuire and Catawba Nuclear Station UFSARs. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

These amendments will not involve a significant reduction in a margin of safety. As described in Attachment 3, the increase in minimum RCS total flow rate limit and revised power/flow tradeoff will not adversely affect the steady-state or transient analyses documented in Chapters 3, 4, 6, and 15 of the McGuire and Catawba Nuclear Station UFSARs. DNBR, fuel clad intergrity, reactor vessel integrity and containment integrity will not be adversely affected by the proposed changes. Therefore, the proposed changes will not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, et al., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 22, 1998, supplemented by October 22, 1998, January 28, May 6 and June 24, 1999.

Description of amendment request: By the referenced submittals the licensee requested the McGuire Technical Specifications be changed to permit the licensee's planned use of fuel supplied by Westinghouse, which has different design characteristics from the fuel currently in use. The staff has previously published two Notices of

Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration of Issuance of Amendments. The first notice, dated December 16, 1998 (63 FR 69338), covers the submittals dated July 22 and October 22, 1998. The second notice, dated May 19, 1999 (64 FR 35202), covers the submittal dated May 6, 1999. The June 24, 1999, submittal actually requested an amendment separate from that described above, but nevertheless conveyed a revised proposed Figure 2.1.1–1, "Reactor Core Safety Limits—Four Loops in Operation," superseding what was originally proposed in the licensee's previous submittals. Hence this Notice only covers the revised proposed Figure 2.1.1–1. The Notices referenced above are unaffected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the June 24, 1999, submittal. The staff has reviewed the licensee's analysis, and has performed its own analysis as follows:

First Standard

No. The proposed changes to Figure 2.1.1–1 will not affect the safety function and will not involve any change to the design or operation of any plant system or component. The revised Figure 2.1.1–1 restricts reactor coolant flow to within previously analyzed temperature and pressure conditions. Therefore, no accident probabilities or consequences will be impacted.

Second Standard

No. The proposed changes would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

Third Standard

No. Margin of safety is associated with confidence in the design and operation of the plant; specifically, the ability of the fission product barriers to perform their design functions during and following an accident. The proposed changes to Figure 2.1.1–1 do not involve any change to plant design, operation or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for the proposed change to Figure 2.1.1–1. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 24, 1999.

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) as follows: (1) Revise Figure 2.1.1–1, "Reactor Core Safety Limits—Four Loops in Operation," which defines the current limits of reactor coolant system (RCS) flow under different combinations of pressure and temperature; (2) revise Table 3.3.1–1 to provide values for the trip setpoint and allowable value for RCS Flow-Low; (3) revise Table 3.3.1–1 to make a typographical correction for T, the nominal T-average at Rated Thermal Power; (4) revise the Actions associated with Limiting Condition of Operation (LCO) 3.4.1 and Table 3.4.1–1 to reflect the updated assumptions for reactor coolant flow, temperature and pressure; and (5) delete Figure 3.4.1–1, "RCS Total Flow Rate Versus Rated Thermal Power—Four Loops in Operation," since these requirements are being relocated to LCO 3.4.1 and Table 3.4.1–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

No component modification, system realignment, or change in operating procedure will occur which could affect the probability of any accident or transient. The increase in RCS total flow rate limit will not change the probability of actuation of any Engineered Safety Feature or other device. In order to provide more margin in the core design limits and allow more flexibility for future cycle-specific core design, the analyses that establish these limits were reanalyzed at the proposed TS minimum RCS total flow rate limit. The impact of the power/flow tradeoff is determined for each reanalyzed event either by qualitative evaluation or by explicit reanalysis.

An increase in the Technical Specification minimum RCS total flow rate limit and the revised power/flow tradeoff will not adversely affect the steady-state or transient analyses documented in Chapters 3, 4, 6, and 15 of the McGuire and Catawba Nuclear Station UFSARs [Updated Final Safety Analysis Reports]. The reduced RCS low flow reactor trip setpoint and allowable value will not increase the consequences of the partial loss of forced reactor coolant flow and reactor coolant pump shaft seizure accidents. In these transient reanalyses, the minimum DNBR and peak primary system pressure acceptance criteria are not adversely affected. Therefore, the proposed changes will not involve an increase in the probability or consequences of an accident previously evaluated.

Second Standard

No component modification, system realignment, or change in operating procedure will occur which could create the possibility of a new or different kind of accident. As described in Attachment 3, the proposed increase in Technical Specification minimum RCS total flow rate limit and revised power/flow tradeoff will not adversely affect the steady-state or transient analyses documented in Chapters 3, 4, 6, and 15 of the McGuire and Catawba Nuclear Station UFSARs. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

These amendments will not involve a significant reduction in a margin of safety. As described in Attachment 3, the increase in minimum RCS total flow rate limit and revised power/flow tradeoff will not adversely affect the steady-state or transient analyses documented in Chapters 3, 4, 6, and 15 of the McGuire and Catawba Nuclear Station UFSARs. DNBR, fuel clad integrity, reactor vessel integrity and containment integrity will not be adversely affected by the proposed changes. Therefore, the proposed changes will not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Operations, Inc. (EOI), Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: July 14, 1999.

Description of amendment request: The proposed amendments delete requirements from the Technical Specifications to maintain a Post Accident Sampling System (PASS). Licensees were required to implement PASS upgrades as a result of NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, Revision 3, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Access Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades were an outcome of the NRC's lessons learned from the accident that occurred at Three Mile Island, Unit 2. EOI has stated that the information obtained using PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—[The Proposed Change] Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the Three Mile Island Unit 2 (TMI–2) accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that the actual benefits afforded by a PASS provide little benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides no benefit to the plant staff in coping with an accident. The use of the PASS may be counter productive to plant operations since its operation will divert resources away from accident management, the sample results may be ambiguous and may be misinterpreted, and the use of PASS may restrict personnel movements in certain areas of the plant while resulting in additional fission product release points outside the containment.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Additionally, preliminary discussions with the State of Arkansas have indicated that the elimination of the PASS will not adversely impact actions taken by the State during an emergency event. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 [accident] guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan PARs [protective action recommendations].

Therefore, the elimination of PASS requirements of the ANO–1 and ANO–2 [Arkansas Nuclear One, Unit 1 and Unit 2] Technical Specifications (TS) and subsequent requested relief from the requirements of NUREG–0737 and Regulatory Guide 1.97, Revision 3, does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—[The Proposed Change] Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The relief from PASS related NUREG–0737 and Regulatory Guide 1.97 requirements in addition to the proposed TS changes will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—[The Proposed Change] Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety at ANO–1 and ANO–2. Non-PASS methodologies are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events nor rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations, Inc. has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Indiana Michigan Power Company, Docket Nos. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan.

Date of amendment requests: December 3, 1998.

Description of amendment requests: The proposed amendments would revise Technical Specification (TS) 3/4.7.7, "Sealed Source Contamination," and the associated bases to address testing requirements for fission detectors. The proposed changes would provide consistency between the unit 1 and Unit 2 TS requirements and with NUREG–0452, "Standard Technical Specifications.".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes clarify testing requirements for fission detectors. When the fission detectors are tested for surface contamination, they do not interfere with plant equipment and they do not affect plant operation. The detectors are not assumed to initiate an accident; therefore, the probability of an accident previously evaluated is not changed.

Conducting tests prior to using a new fission detector provides assurance that intake limits will not be exceeded. There is no change to the nuclear material contained in the detector. The fission detectors are not used to mitigate the consequences of postulated accidents. Therefore, the consequences of an accident remain the same as previously evaluated.

Therefore, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

Does the change create the possibility of a new or different type of accident from any accident previously evaluated?

The proposed changes do not affect the design or operation of systems, structures, or components in the plant. There are no changes to parameters governing plant operation, and no new or different types of equipment will be installed. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

Does the change involve a significant reduction in a margin of safety?

The proposed changes do not introduce new equipment, equipment modifications, or new or different modes of plant operation. These changes do not affect the operational characteristics of any equipment or systems.

Therefore, it is concluded that these changes do not involve a significant reduction in the margin of safety.

Conclusion

In summary, based upon the above evaluation, the Licensee has concluded that these changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 29, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification Surveillance Requirement 3.9.1.1 and the associated Bases 3.9.1 to delete the requirement for the refuel platform fuel grapple fully retracted position interlock.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change removes a redundant interlock and will not impact the functionality of associated interlocks. The removal of the "refuel platform fuel grapple fully retracted position" refueling interlock will not affect the ability of the remaining refueling interlocks to produce a rod block during fuel moves. The administrative controls in place do not allow control rod withdrawals while fuel is being moved or fuel movement while rods are withdrawn. The fuel grapple full up interlock is a redundant and diverse interlock and its removal has no impact on plant safety. The interlock's intent, to provide a backup to the load sensor, is not required since the setpoint is currently low enough to provide adequate protection therefore not significantly increasing the probability of an accident previously evaluated.

The refueling interlocks are not used to prevent or to mitigate the fuel handling accident as discussed in the PBAPS [Peach Bottom Atomic Power Station], Units 2 and 3, UFSAR [Updated Final Safety Analysis Report], Section 14.6.4 ("Refueling Accident"). The "refuel platform fuel grapple fully retracted position" interlock and the "refuel platform fuel grapple, fuel loaded" interlock both provide rod blocks during fuel movement over the core. Additionally, the refueling interlocks are not assumed as an initial condition in the control rod drop accident as discussed in the PBAPS, UFSAR, Section 14.6.2 ("Control Rod Drop Accident"). The control rod drop accident is only analyzed when the reactor is critical and not during refueling operations.

The refueling interlocks associated with the refueling platform provide rod blocks to ensure that control rods can not be withdrawn when fuel is being moved over the core (PBAPS, Units 2 and 3, UFSAR Section 14.5.3.3, "Control Rod Removal Error During Refueling"). They are also used to prevent refueling bridge motion towards the core if a control rod is withdrawn during fuel movements (PBAPS, Units 2 and 3, UFSAR Section 14.5.3.4, "Fuel Assembly Insertion Error During Refueling"). These interlocks prevent the possibility of an inadvertent criticality during refueling. However, removal of the "refuel platform fuel grapple fully retracted position" interlock, which is a redundant and diverse interlock, will not prevent the remaining interlocks from performing their intended safety functions. The refueling interlocks are active with the mode switch in refuel, and are only designed to reinforce administrative procedures for moving fuel. Therefore, the proposed TS changes will not involve a significant increase in the probability of an accident previously evaluated.

The fuel or core loading characteristics are not altered by the removal of this interlock. The dose resulting from a potential control rod withdrawal or fuel bundle error event is not increased as a result of eliminating this redundant and diverse interlock. Therefore, the removal of the "refuel platform fuel grapple fully retracted position" interlock will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The refueling interlocks are not accident initiators. Nor will any new failure mode be introduced by the removal of the "refuel platform fuel grapple fully retracted position" interlock. The interlocks are used to reinforce administrative controls which prevent fuel movement over the core with control rods withdrawn and preclude withdrawal of control rods when the fuel is being moved over the core. The interlock for ensuring the fuel grapple is fully up, is a redundant and diverse interlock since a load sensor determines if the main hoist is loaded with a fuel bundle. This redundant and diverse interlock prevents the withdrawal of a control rod while moving fuel during refueling. The setpoint is low enough to ensure a rod block will be received if the main hoist is being used to move fuel over the core and to prevent movement of the refueling bridge. The remaining refueling interlocks, in combination with the refueling procedures, will still prevent an inadvertent criticality during refueling operations. Fuel handling procedures require that interlocks be verified by observing the rod withdraw permissive light in the control room, and by monitoring the rod block interlock light on the refuel bridge. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

This change will not involve a significant reduction in a margin of safety. The "refuel platform fuel grapple fully retracted position" interlock is redundant and diverse to the "refuel platform fuel grapple, fuel

loaded" interlock on the main hoist. The other two hoists on the bridge have the fuel loaded interlock but do not have the backup full up position interlock. The margin of safety of the refueling interlocks will not be significantly reduced by this change since redundant interlocks are not required (this a nonsafety-related function) and the original justification for using it, a high load weight setpoint, is no longer applicable. The system consists of a single channel, and no current design basis for using redundant and diverse interlocks to provide the rod block. Additionally, the Reactor Manual Control System will not be affected by this change. The system's ability to provide a rod block is not affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: April 5, 1999

Description of amendment request: The proposed changes would revise Appendix A (Section 6.1) and Appendix B (Section 7.1) of the James A. FitzPatrick Technical Specifications. The proposed changes would remove the position title of General Manager from these sections and would state that if the Site Executive Officer (SEO) is unavailable, he will delegate his responsibilities to another staff member, in writing. In addition the position title of Resident Manager, used in Apendix B, Section 7.1, would be replaced by Site Executive Officer.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the proposed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: The proposed changes to Appendix A (Section 6.1) and Appendix B (Section 7.1) are administrative in nature in that they do not change the intent of the Technical Specifications. If the SEO is unavailable, he will still delegate his responsibilities to a qualified personnel member, such as the Plant Manager or one of the General Managers. These changes can not cause an accident or contribute to the probability or consequences of one.

The replacement of the position title of Resident Manager with Site Executive Officer in Appendix B, Section 7.1, was already approved by the NRC in Amendment 228.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed changes to Appendix A (Section 6.1) and Appendix B (Section 7.1) are administrative in nature as they do not affect the function of plant equipment or the way the equipment operates. The changes do not change the intent of the current TS, in that if the SEO is unavailable, he will delegate his responsibilities to another personnel member such as the Plant Manager or one of the General Managers. Appendix A (Section 6.1) and Appendix B (Section 7.1) are being revised to eliminate the need for future TS changes to these sections resulting solely from the creation of new or revised management positions (such as the Plant Manager), title changes to the position of General Manager, or a change to the number of General Managers. These types of organizational changes will be evaluated using the criteria of 10 CFR 50.59.

The replacement of the position title of Resident Manager with Site Executive Officer in Appendix B, Section 7.1, was already approved by the NRC in Amendment 228.

Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed changes to Appendix A (Section 6.1) and Appendix B (Section 7.1) are administrative changes associated with the delegation of the SEO's responsibilities when he is unavailable. These changes do not change the intent of the current TS, in that in the SEO's absence, he will still delegate his responsibilities to other personnel members such as the Plant Manager or General Managers.

The replacement of the position title of Resident Manager with Site Executive Officer in Appendix B, Section 7.1, was already approved by the NRC in Amendment 228.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 22, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications by changes to the Pressure and Temperature (P–T) limits. As part of this proposed change the licensee is proposing to add separate bottom head curves A_{BH} and B_{BH} for in-service hydrostatic and leak tests and non-nuclear heatup and cooldown, respectively. In addition, a non-beltline curve (i.e., A_{NB}) for in-service hydrostatic and leak tests is being proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes to the P–T curves are being proposed to preclude brittle fracture of RPV [Reactor Pressure Vessel] materials for up to 32 EFPY [effective full-power years]. In addition to the P–T curve for up to 32 EFPY, a P–T curve has been prepared for exposures up to 24 EFPY to shorten outage time for startups conducted prior to reaching this exposure. Safety margins specified in 10 CFR 50, Appendix G and Appendix G to Section XI of the ASME [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] will continue to be met for each of these curves. Therefore, there is not a significant increase in the probability of an accident previously evaluated.

The RPV, as part of the reactor coolant system, provides a barrier to the release of reactor coolant. Operation in accordance

with the proposed amendment will preclude brittle fracture of the RPV consistent with current requirements, and consequently, does not significantly increase the consequences of an accident previously evaluated.

Based on the above, operation of the FitzPatrick plant in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alterations to plant configurations or introduce any new accident precursors which could initiate a new or different kind of accident. The proposed change does not affect the intended function of the RPV nor does it affect the operation of the RPV in a way which would create a new or different kind of accident. The changes to the P–T curves are being proposed to preclude brittle fracture of RPV materials for up to 32 EFPY. Safety margins specified in 10 CFR 50, Appendix G and Appendix G to Section XI of the ASME Code will continue to be met. Therefore, operation of the FitzPatrick plant in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The existing FitzPatrick P–T curves were developed using safety margins for brittle fracture found in 10 CFR 50 Appendix G. The proposed FitzPatrick P–T curves, which are valid for up to 32 EFPY of operation, were also developed using safety margins for brittle fracture found in 10 CFR 50 Appendix G. Based on this, operation of the FitzPatrick plant in accordance with the proposed amendment will continue to preclude brittle fracture of the RPV materials during in-service hydrostatic and leak tests, non-nuclear heatup and cooldown, and core critical operation without a significant reduction in a margin of safety. Therefore, operation of the FitzPatrick plant in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E., Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 2, 1999.

Description of amendment request: The proposed amendments would relocate the requirements from Technical Specification 3/4.3.4, "Instrumentation, Turbine Overspeed Protection," and the associated bases to licensee-controlled documents in accordance with Generic Letter 95–10, "Relocation of Selected Technical Specifications Requirements Related to Instrumentation."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested amendments will not involve an increase in the probability or consequences of an accident previously evaluated. Relocation of the affected Technical Specification sections and their Bases to the Salem UFSAR [Updated Final Safety Analysis Report] will have no affect on the probability that any accident will occur. Additionally, the consequences of an accident will not be affected because the Turbine Overspeed Protection system will continue to be utilized in the same manner as before. No impact on the plant response to accidents will be created.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms will be created as a result of the relocation of the Turbine Overspeed Protection system Technical Specification requirements and their Bases to the Salem UFSAR. Plant operation will not be affect by the proposed amendments and no new failure modes will be created.

3. Will not involve a significant reduction in a margin of safety.

The proposed amendments will not involve a reduction in the margin of safety. Relocation of the affected Technical Specification requirements to the Salem UFSAR is consistent with NUREG 1431, Standard Technical Specifications—Westinghouse Plants which do not include Technical Specification requirements for the Turbine Overspeed Protection system. The proposed amendments are consistent with the NRC philosophy of encouraging utilities to propose amendments that are consistent with NUREG 1431.

Based on the above, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 16, 1999.

Description of amendment request: Proposed Technical Specifications (TS) change to increase the action requirement time to be in Mode 3 if the temperature of the ultimate heat sink (UHS) exceeds the TS limit of 75 °F. The increased time will only apply if the UHS temperature is between 75 and 77 °F. The Bases for the associated TS will also be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will allow plant operation to continue for an additional 12 hours with the temperature of the Ultimate Heat Sink (UHS) up to 2 °F above the Technical Specification limit of 75 °F. This increase in UHS temperature will not affect the normal operation of the plant to the extent which would make any accident more likely to occur. In addition, there exists adequate margin in the safety systems and heat exchangers to assure the safety functions are met at the higher temperature. An evaluation has confirmed that safe shutdown will be achieved and maintained for a loss of coolant accident (LOCA) with a loss of normal power (LNP) and a single active failure with a UHS water temperature as high as 77 °F.

The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will allow plant operation to continue for an additional 12 hours with the temperature of the UHS up to 2 °F above the Technical Specification limit of 75 °F. This will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following these accidents is unaffected by the changes. In addition, the UHS is not an accident initiator. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed changes will allow plant operation to continue for an additional 12 hours with the temperature of the UHS up to 2 °F above the Technical Specification limit of 75 °F. Evaluations have been performed which demonstrate that the safety systems have adequate margin to ensure their safety functions can be met with a UHS temperature of 77 °F. In addition, safe shutdown capability has been demonstrated for a UHS water temperature as high as 77 °F.

The proposed changes will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: July 12, 1999.

Description of amendment request: **The proposed change will revise Technical Specifications (TSs) TS 2.1.1.2, "Reactor Core [Safety Limits] SLs," and Section 5.6.5, "Core Operating Limits Report." These Sections will be revised to: (1) Incorporate revised Safety Limit Minimum Critical Power Ratios (SLMCPRs) due to the use of a cycle-specific analysis performed by General Electric Nuclear Energy (GENE) for Peach Bottom Atomic Power Station, Unit 3, (PBAPS, Unit 3) Cycle 13, (2) delete previously added footnotes which are no longer necessary, and (3) update a reference contained in TS 5.6.5.b.2 which documents an analytical method used to determine the core operating limits.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle specific SLMCPRs for incorporation into the TS, and its use to determine cycle specific thermal limits, has been performed using the methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–13, and U.S. Supplement, NEDE–24011–P–A–13–US, August 1996, and Amendment 25. Amendment 25 was approved by the NRC in a March 11, 1999 safety evaluation report. This change in SLMCPRs cannot increase the probability or severity of an accident.

The basis of the SLMCPR calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and fuel damage in the event of a postulated accident. The fuel licensing acceptance criteria for the SLMCPR calculation apply to PBAPS, Unit 3, Cycle 13 in the same manner as they have applied previously. The probability of fuel damage is not increased. Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

In addition to the change to the SLMCPR, the footnotes to TS 2.1.1.2 and TS 5.6.5.b.1 are being deleted. The footnote associated with TS 2.1.1.2 was originally included to ensure that the SLMCPR value was only applicable for the identified cycle. The footnote was added to TS 5.6.5.b.1 because Amendment 25 and the R-factor calculation methodology were not yet NRC approved. Amendment 25 and the R-factor methodology have subsequently been approved. Therefore, these footnotes are no longer necessary. The footnotes were for information only, and have no impact on the design or operation of the plant. The deletion of the footnotes associated with TS 2.1.1.2 and TS 5.6.5.b.1 is an administrative change that does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Revision 1 ARTS/MELLLA [Maximum Extended Load Line Limit and ARTS Improvement Program Analysis for Peach Bottom Atomic Power Station Unit 2 and 3,] analysis contained in TS 5.6.5.b.2 is being updated to a Revision 2 analysis, to reflect changes that were previously approved by the NRC as documented in the safety evaluation report dated August 10, 1994 (Amendment No. 192 for PBAPS, Unit 2). This is an administrative change which will ensure that the references contained in the PBAPS Technical Specifications are accurate and consistent with other licensing documents. No technical changes are occurring which have not been previously approved by the NRC. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a TS numerical value, designed to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core during the limiting postulated accident. The new SLMCPRs are calculated using NRC approved methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–13 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–13–US, August 1996, and Amendment 25. The SLMCPR is not an accident initiator, and its revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Additionally, this proposed change will delete footnotes contained in TS 2.1.1.2 and TS 5.6.5.b.1 as the result of the NRC approval of analysis associated with Amendment 25 and the R-factor methodology. The proposed change also updates the ARTS/MELLLA analysis contained in TS 5.6.5.b.2. This revision contains information which was previously approved by the NRC. Therefore, the deletion of the footnotes associated with TS 2.1.1.2 and TS 5.6.5.b.1, and the updating of the reference contained in TS 5.6.5.b.2 are administrative changes that do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

There is no significant reduction in the margin of safety previously approved by the NRC as a result of: (1) the proposed changes

to the SLMCPRs, (2) the proposed change that will delete the footnotes to TS 2.1.1.2 and TS 5.6.5.b.1, and (3) updating the reference to the ARTS/MELLLA analysis contained in TS 5.6.5.b.2. The new SLMCPRs are calculated using methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–13 (GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–13–US, August 1996, and Amendment 25. The fuel licensing acceptance criteria for the calculation of the SLMCPR apply to PBAPS, Unit 3 Cycle 13 in the same manner as they have applied previously. The SLMCPRs ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated when all uncertainties are considered, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes will not involve a significant reduction in the margin of safety previously approved by the NRC.

Additionally, the proposed changes that delete the footnotes to TS 2.1.1.2 and TS 5.6.5.b.1, and update the revision to the ARTS/MELLLA analysis contained in TS 5.6.5.b.2, are administrative changes that will not significantly reduce the margin of safety previously approved by the NRC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: June 28, 1999.

Description of amendment request: The proposed amendment would revise the Improved Technical Specifications (ITS) associated with the Reactor Coolant System (RCS) Leakage Detection Instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes add further requirements for redundancy and a requirement to perform either an RCS water inventory balance or analyses of containment atmosphere grab samples once within 12 hours and every 12 hours thereafter when the particulate containment atmosphere radioactivity monitor is unavailable while in Modes 1, 2, 3, and 4. This does not increase the probability of an accident previously evaluated since the compensatory actions are either a calculation utilizing installed indication or the measurement of a sample drawn downstream from the containment atmosphere sample isolation valves and are of themselves not an accident initiator. The proposed compensatory actions are based on the NUREG–1431 guidance and the proposed frequencies are more conservative, which gives a higher assurance that the RCS leakage rate can be adequately monitored.

Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes add further requirements for redundancy and the proposed change for compensatory actions when the particulate containment atmosphere radioactivity monitor is inoperable does not of itself involve a physical alteration of the plant (ie. no new or different type of equipment will be added to perform the required actions) or changes in the methods governing normal plant operation. The changes only involve implementing currently approved alternate methods to determine the RCS leak rate on an increased frequency. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes only add conservatism in the number of required RCS leakage detection instrumentation and add more conservative compensatory actions that are to be taken when the containment atmosphere particulate radioactivity monitor is inoperable. The compensatory actions are based on the guidance of NUREG–1431. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the preceding information, it has been determined that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meets the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005.

NRC Section Chief: S. Singh Bajwa.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: September 10, 1998 (PCN–496), as supplemented July 19, 1999.

Description of amendment requests: **The proposed amendments would modify the Technical Specifications for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 to delete the requirements for equipment used to control hydrogen in the containment structure.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The containment hydrogen control system is currently classified as an engineered safety feature that serves as the combustible gas control system in the containment. The hydrogen control system is composed of a hydrogen recombiner subsystem and a hydrogen purge subsystem. Hydrogen control subsystem components are not considered to be accident initiators.

Therefore, this change does not increase the probability of an accident previously evaluated.

The hydrogen control system is provided to ensure that the hydrogen concentration is maintained below the flammability limit of 4% so that containment integrity is not challenged following a design basis Loss Of Coolant Accident (LOCA). Existing analysis show[s] that the hydrogen concentration will not reach the flammability limit of 4% for at least 13.5 days after a design basis LOCA. The time available will be extended to over 30 days using more realistic hydrogen generation rates. The containment peak pressure will remain below the San Onofre Nuclear Generating Station Units 2 and 3 (SONGS 2 & 3) containment design pressure of 60 psig [pounds per square inch gauge] during this time. Beyond 30 days, hydrogen concentration may reach the flammability limit. However, containment failure due to hydrogen combustion is unlikely based on the results of the SONGS 2 & 3 IPE [indvidual plant examination] study. The detailed

SONGS 2 & 3-specific containment integrity analysis indicates that containment rupture pressure is approximately 139 psig with 95% confidence. Therefore, this change does not increase the consequences of accidents previously evaluated.

Removal of the existing requirements for hydrogen control will eliminate the Emergency Operating Instruction (EOI) steps for hydrogen control and hence simplify the EOIs. This would have a positive impact on public health risk by reducing the probability of operator error during potential accidents and hence reduce the core damage frequency. As proposed in this change request, these changes will allow the operators to address all hydrogen control issues as part of the proposed Accident Management Guidelines which cover operator actions at long time frames following accidents.

Removal of the existing requirements for hydrogen control will eliminate the EOI steps to initiate the containment hydrogen purge. This will result in a lower probability of a failed open containment purge valve. Consequently, the offsite doses would be reduced due to the reduction of the probability of a failed-open containment purge valve. The changes described in this request result in a "risk positive" change.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

This proposed change does not change the design or configuration of the plant beyond the hydrogen control system. Hydrogen generation following a design basis LOCA has been evaluated in accordance with regulatory requirements. Deletion of the hydrogen control system from the Technical Specifications does not alter the hydrogen generation processes post-LOCA. The consideration of hydrogen generation will no longer be included in the design basis of SONGS 2 & 3. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The changes described in this change request result in a "risk positive" change. Removal of the existing requirement for a hydrogen control system will, by eliminating the EOI steps for hydrogen control, result in lower operator error probabilities. Elimination of the EOI steps to initiate the containment hydrogen purge will result in a lower probability of a failed-open containment purge valve, resulting in lower large early release probabilities.

Therefore, this change involves an increase in safety, not a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: April 13, 1999.

Description of amendment request: Southern Nuclear Operating Company (SNC) proposes to revise the Vogtle Electric Generating Plant (VEGP) Unit 1 and Unit 2 Technical Specifications (TS) Limiting Condition for Operation (LCO) Applicability LCO 3.0.4 and Surveillance Requirement (SR) Applicability SR 3.0.4. The proposed changes would update the versions of LCO 3.0.4 and SR 3.0.4 that appear in the existing VEGP TS to be consistent with the versions of LCO 3.0.4 and SR 3.0.4 as they appear in Revision 1 to NUREG–1431. The proposed change would add the words "or that are part of a shutdown of the unit," to LCO 3.0.4 to allow reactor shutdowns that are not necessarily required by other TS Required Actions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change has impact on what equipment is required to be OPERABLE or demonstrated OPERABLE via surveillance prior to unit shutdowns or entry into MODES 5 and 6. This change could increase the probability or consequences of an accident previously evaluated if applied without consideration to all applicable transitions. However, as part of the change, an evaluation is attached in the form of a matrix that identifies those specifications to which LCO 3.0.4 and SR 3.0.4 must continue to apply. Therefore, only those specifications that do not impact safety for these plant conditions are afforded this relaxation. As such, there is no increase in the probability or consequences of an accident previously evaluated as this assessment has been performed and documented with the submittal.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change administratively changes when equipment is required to be OPERABLE or demonstrated OPERABLE via surveillance prior to unit shutdown or entry into MODES 5 and 6. However, as no changes in equipment function or operation are included, there is no increase in the probability of a new or different kind of accident from those previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

No. The proposed change has impact on what equipment is required to be OPERABLE or demonstrated OPERABLE via surveillance prior to unit shutdown or entry into MODES 5 and 6. This change could impact the margin of safety of some accidents if applied without consideration to all applicable transitions. However, as part of the change, an evaluation is attached in the form of a matrix, that identifies those specifications to which LCO 3.0.4 and SR 3.0.4 must continue to apply. Therefore, only those specifications that do not impact safety for these plant conditions, which includes any impact on margin of safety are afforded this relaxation. As such, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: April 28, 1999.

Description of amendment request: The amendments revise Vogtle's licensing basis to allow the licensee to establish containment hydrogen monitoring within 90 minutes of initiation of a safety injection following a loss-of-coolant accident, compared to the current 30 minutes requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Containment hydrogen concentration is not an input parameter to the FSAR Chapter 15 accident analyses for a loss of reactor or secondary coolant accidents; nor is it used as an initial assumption for the containment response analysis. Control room operators use the containment hydrogen monitors to establish hydrogen control measures should it become necessary. However, the actions required to establish containment hydrogen monitoring are a distraction for the operators from more important tasks during the early phases of an accident. Hydrogen production occurs over a long period and a significant accumulation is not expected for several hours into the event. This function is more appropriately included as a part of the long-term core damage assessment process. The one-hour extension will have a positive impact on the ability of the operators to concentrate on their more immediate actions while having no negative impact on the long-term assessment efforts. Therefore, the proposed license amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

Operation of the containment hydrogen monitors is not an initiator of any design basis accident. Control room operators use the containment hydrogen monitors following a LOCA to establish hydrogen control measures should it become necessary. Accurate indication of containment hydrogen concentration is needed prior to initiating recombiner operation or containment venting and for long-term core damage assessment. The proposed license amendment would not eliminate the requirement to establish hydrogen monitoring, but would permit it to be delayed until those actions required to diagnose the event and verify proper operation of essential safety equipment have been completed. The one-hour extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not create a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The need to establish hydrogen control measures will not be present within the first 90 minutes following a LOCA since there will not be significant hydrogen accumulation. By extending the time allowed to establish containment hydrogen monitoring, the operators can remain focused on the actions necessary to assess and mitigate the accident before redirecting their attention to long-term recovery actions. The one-hour extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not involve a significant reduction in a margin of safety, but will instead result in an overall enhancement to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: May 18, 1999.

Description of amendment request: The proposed change would revise Surveillance Requirements (SRs) 3.8.1.3 and 3.8.1.13 to reduce the loading requirements for the diesel generators (DGs). Presently, SR 3.8.1.3 requires that the DGs be loaded and operated for greater than or equal to 60 minutes between 6800 kW and 7000 kW at least once every 31 days. The proposed change would revise the lower end of the load band in SR 3.8.1.3 to 6500 kW from 6800 kW. Revised SR 3.8.1.3 would require that the DGs be loaded and operated for greater than or equal to 60 minutes at a load greater than or equal to 6500 kW and less than or equal to 7000 kW at least once every 31 days.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change affects only the DG loading requirements (kW and kVAR) specified in SRs 3.8.1.3 and 3.8.1.13. These loading requirements have no impact on or relationship to the probability of any of the initiating events assumed.for the accidents previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability of any accident previously evaluated. Furthermore, since the proposed loading requirements bound the maximum expected loading for the DGs, SRs 3.8.1.3 and 3.8.1.13 will continue to demonstrate that the DGs are capable of performing their safety function. Since the proposed change does not adversely affect the capability of the DGs to perform their safety function, the outcomes of the accidents previously evaluated (i.e., radiological consequences) will not be affected. Therefore, the proposed change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed change affects only the DG loading requirements (kW and kVAR) specified in SRs 3.8.1.3 and 3.8.1.13. The proposed change will not introduce any new equipment or create new failure modes for existing equipment. Other than the reduced loading requirements for the DGs, the proposed change will not affect or otherwise alter plant operation. The DGs will remain capable of performing their safety function. No other safety related or important to safety equipment will be affected by the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change reduces the loading requirements of SRs 3.8.1.3 and 3.8.1.13. With one exception, the new loading requirements are consistent with the latest regulatory guidance found in Regulatory Guide (RG) 1.9, Revision 3, "Selection, Design, and Qualification of Diesel-Generator Units Used as Standby (Onsite) Electric Power Systems at Nuclear Power Plants," July 1993. The one exception to RG 1.9, the loading requirements for the 2-hour portion of the endurance and margin test (SR 3.8.1.13), will require testing at loads in excess of 105 percent of the maximum expected load as opposed to 105 percent of the continuous duty rating. Testing for at least 2 hours at 105 percent of the maximum expected load will continue to demonstrate adequate margin, and it will reduce wear and tear on the DGs due to testing. Reduction in wear and tear should inherently increase the reliability of the DGs. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 24, 1999 (TS 99–05)

Brief description of amendments: The proposed amendments would change the Sequoyah Units 1 and 2 Technical Specification (TS) requirements by clarifying and changing the surveillance requirements for the ice weight in the ice condenser baskets. This request is a lead-plant change for all Westinghouse-designed ice condenser plants and will be incorporated into the Improved Standard Technical Specifications (ISTSs), if approved.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority, the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS amendments discussed below cannot increase the probability of occurrence of any analyzed accident because they are not the result or cause of any physical modification to the ice condenser structures, and for the current design of the ice condenser, there is no correlation between any credible failure and the initiation of any previously analyzed accident.

Regarding the consequences of analyzed accidents, the proposed amendment provides for consistency with the ISTSs by: (1) requiring the actions if one or more ice condenser ice baskets are determined to weigh below the minimum specified value to be made a part of the TS surveillance requirement (SR) instead of being located in the bases, and (2) relocating the ice basket selection methodology into the bases. This ensures consistent interpretation of the requirements of the TS in accordance with the ISTSs. The clarification of the response required if one or more ice baskets in a given bay are determined to be underweight ensures sufficient ice is maintained in each bay to prevent early meltout in a local zone following a design basis accident (DBA) and that the required overall ice weight is maintained in the ice condenser. The relocation of the ice basket selection methodology to the bases does not result in any change to the intent or implementation of this portion of the TSs since plant procedures ensure the requirements of the bases of the TSs are correctly implemented. Additionally, the clarification that the weight requirement is applicable to the beginning of the cycle does not change the present intent of the TS, but ensures there is no confusion, since the weight at the end of the operating cycle may be less than that specified in the SR due to sublimation. This does not result in a change to the intent or implementation of the TS since a sublimation allowance was provided in the original SR weight requirement. These clarifications do not result in any [effect] on plant equipment or operation and the actions taken during the implementation of the revised TS will be the same as prior to the revision. Therefore, the clarification of these requirements will not increase the consequences of any accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The inclusion of the action required for an underweight ice basket in the TS SR, instead of in the bases of the TS, provides for the consistent interpretation of the requirement. The clarification of the response required if one or more ice baskets in a given bay are determined to be underweight ensures sufficient ice is maintained in each bay to prevent early meltout in a local zone following a DBA and that the required overall ice weight is maintained in the ice condenser. The relocation of the ice basket selection methodology to the bases does not result in any change to the intent or implementation of this portion of the TSs since plant procedures ensure the requirements of the bases of the TSs are correctly implemented. Additionally, the clarification that the weight requirement is applicable to the beginning of the cycle does not change the present intent of the TS, but ensures there is no confusion, since the weight at the end of the operating cycle may be less than that specified in the SR due to sublimation. This does not result in a change to the intent or implementation of the TS since a sublimation allowance was provided in the original SR weight requirement. The operation, design and maintenance of the ice condenser and its associated equipment will not change as a result of these clarifications. Therefore, the implementation of these clarifications will not create the possibility of accidents or equipment malfunctions of a new or different kind from any previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment allows for the consistent interpretation of the required actions if an ice basket is determined to weigh less than the required minimum. The inclusion of these actions in the TS SR instead of in the TS bases assures the correct actions will be taken as intended by the TSs. The clarification of the response required if one or more ice baskets in a given bay are determined to be underweight ensures sufficient ice is maintained in each bay to prevent early meltout in a local zone following a DBA and that the required overall ice weight is maintained in the ice condenser. The relocation of the ice basket selection methodology to the bases does not result in any change to the intent or implementation of this portion of the TSs since plant procedures ensure the requirements of the bases of the TSs are correctly implemented. Additionally, the clarification that the weight requirement is applicable to the beginning of the cycle does not change the present intent of the TS, but ensures there is no confusion, since the weight at the end of the operating cycle may be less than that specified in the SR due to sublimation. This does not result in a change to the intent or implementation of the TS since a sublimation allowance was provided in the original SR weight requirement. The proposed clarifications do not result in or have any [effect] on the operation, design, or maintenance of any plant equipment. Thus the design limits for the continued safe function of the containment structure following a DBA are not exceeded due to this change; therefore, the proposed amendment does not involve a reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 25, 1999 (TS 99–004).

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear Plant Unit 1 Technical Specifications (TS) and associated TS Bases for Limiting Condition for Operation (LCO) 3.7.1, Main Steam Safety Valves, to provide a new requirement to reduce the Power Range Neutron Flux-High reactor trip setpoints when two or more main steam safety valves (MSSVs) per steam generator are inoperable. This proposal is based on a generic change developed by the Westinghouse Owners Group (WOG), TSTF–235, Revision 1, which has been approved by the NRC staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS LCO 3.7.1 requires a reduction of the Power Range Neutron Flux-High reactor trip setpoints to a corresponding power level depending on the number of inoperable MSSVs. The change is based on and consistent with an industry sponsored change (TSTF–235, Revision 1) which has been reviewed and accepted by the NRC staff.

Although plant procedures currently require resetting the high flux trip, it is not a TS requirement. The proposed amendment will provide a more appropriate barrier to prevent the plant from being operated under a non-conservative technical specification action statement in a region where multiple inoperable MSSVs coincident with a reactivity insertion event such as an inadvertent rod cluster control assembly (RCCA) bank withdrawal could result in overpressurization of the secondary system.

No change is made in the probability of initiating accident, i.e., RCCA bank withdrawal, and by requiring the reactor trip setpoint reduction, a potential mismatch between core power and turbine load without sufficient steam relief capacity is eliminated. Therefore, the change requested by this amendment actually decreases the consequences of an accident previously evaluated (without credit for procedure actions to reduce the trip setpoints).

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Without crediting existing plant procedures, the addition of the proposed TS change prevents the plant from being operated in a region where an overpressurization of the main steam system is postulated to potentially occur. The proposed change assures that the existing FSAR [Final Safety Analysis Evaluation Report] accident analysis remains bounding for events that challenge the relieving capacity of the MSSVs. Since the addition of the TS action adds a more appropriate administrative barrier to prevent operation in an undesired region and because the change is bounded by the current accident analysis described in the FSAR, a new or different kind of accident has not been created as a result of this license amendment.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed TS change eliminates a non-conservative TS action to prevent the plant from being operated in a region where an overpressurization of the main steam system is postulated to potentially occur. Since the addition of the TS action adds a more effective administrative barrier to prevent operation in an undesired region and because the change is bounded by the existing FSAR accident analysis, the margin of safety has actually increased for the proposed change. For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 8, 1999.

Description of amendment request: The amendment request proposes to increase the allowable values for the engineered safety features actuation system (ESFAS) loss-of-power 4 kV undervoltage trips in the current Technical Specifications (TSs) Table 3.3–4 (functional units 8.a and 8.b) and in Surveillance Requirement (SR) 3.3.5.3 of the improved TSs. The word "nominal" is also being added to describe the trip setpoint in SR 3.3.5.3 and in the Bases of the improved TSs. The improved TSs were issued in Amendment 123 dated March 31, 1999, but have not yet been implemented.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The reactor protection system performance will remain within the bounds of the previously performed accident analysis. The protection systems will continue to function in a manner consistent with the plant design basis. The proposed changes will not affect any of the analysis assumptions for any of the accidents previously evaluated. The proposed changes will not affect the probability of any event initiators nor will the proposed changes affect the ability of any safety related equipment to perform its intended function. There is no change to the technical specification trip setpoints; therefore, there is no degradation in the performance of nor an increase in the number of challenges imposed on safety related equipment assumed to function during an accident situation and be no change to normal plant operating parameters or accident mitigation capabilities. The allowable values and the trip setpoints in the protection system proposed to be changed are not initiators of accidents previously evaluated.

Based on the above evaluation, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no changes in the method by which any safety related plant system performs its safety function. The normal manner of plant operation remains unchanged because the methodology to determine the allowable value and the trip setpoints remains unchanged. The increase in allowable value for the trip setpoints still provides margin between the nominal trip setpoint and allowable value while taking into account worst case 4.16 kV Class 1E system (NB) bus voltages that could be possible during steady state loss-of-coolant accident (LOCA) conditions. The change in allowable value for the undervoltage protection functions does not impact the systems capability to:

a. Trip the 4.16 kV preferred normal and alternate bus feeder breakers to remove the deficient power source to protect the Class 1E equipment from damage;

b. Shed all loads from the bus except the Class 1E 480 Vac load centers and centrifugal charging pumps to prepare the buses for re-energization by the load shedder and emergency load sequencer (LSELS); and

c. Generate a emergency diesel generator (EDG) start signal.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. The allowable values and the trip setpoints in the protection system proposed to be changed are not initiators of accidents. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The undervoltage protection functions are to:

a. Trip the 4.16 kV preferred normal and alternate bus feeder breakers to remove the deficient power source to protect the Class 1E equipment from damage;

b. Shed all loads from the bus except the Class 1E 480 Vac load centers and centrifugal charging pumps to prepare the buses for re-energization by the load shedder and emergency load sequencer (LSELS); and

c. Generate a EDG start signal.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change in the safety analysis limit. There will be no effect on the manner in which safety limits or engineered safety features actuation system settings are determined nor will there be any affect on those plant systems necessary to assure the accomplishment of the above protection functions. Therefore, there will not be a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity for a Hearing

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 30, 1999.

Brief description of amendment: The proposed amendment would revise Technical Specification (TS) 3/4.7.5 of the current TSs by adding a temporary action statement that would allow the plant to operate for up to 12 hours with an inlet temperature up to but less than 95°F.

Date of individual notice in **Federal Register**: July 15, 1999 (64 FR 38221).

Expiration date of individual notice: August 16, 1999.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 26, 1999

Brief description of amendment: This amendment changes the Table Notations for Technical Specification (TS) Table 3.3–4, "Engineered Safety Features Actuation System Instrumentation Trip Setpoints." Specifically, the time constants used in the lead-lag controller for Steam Line Pressure—Low (Table item 1.e) and in the rate-lag controller for Negative Steam Line Pressure Rate—High (Table item 4.e) have been revised.

Date of issuance: July 28, 1999.

Effective date: July 28, 1999.

Amendment No.: 89.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14280).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: October 2, 1998, as supplemented November 20, 1998, December 21, 1998, and May 13, 1999.

Brief description of amendments: The amendments revised the Updated Final Safety Analysis Report related to an unreviewed safety question regarding the use of a small amount of containment overpressure to ensure sufficient net positive suction head for the reactor building spray and low pressure injection pumps during the post loss of coolant accident recirculation phase.

Date of Issuance: July 19, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—305; Unit 2—305; Unit 3—305.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: June 16, 1999 (64 FR 32288).

The November 20, 1998, December 21, 1998, and May 13, 1999, letters provided clarifying information that did not change the scope of the October 2, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501

West South Broad Street, Walhalla, South Carolina.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: May 28, 1998.

Brief description of amendment: Changes the Crystal River Unit 3 (CR–3) licensing bases to incorporate Generic Letter 87–11, "Relaxation in Arbitrary Intermediate Pipe Rupture Requirements," and NUREG/CR–2913, "Two-Phase Jet Loads," as part of the licensing basis for CR–3.

Date of issuance: July 27, 1999.

Effective date: As of the date of issuance, to be incorporated into the Final Safety Analysis Report at the time of its next update.

Amendment No.: 181.

Facility Operating License No. DPR–72: Amendment approves changes to the Final Safety Analysis Report.

Date of initial notice in **Federal Register**: July 15, 1998 (63 FR 38200).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 1, 1999, as supplemented by letters dated March 10, 1999, June 8, 1999, and June 23, 1999.

Brief description of amendment: The amendment changes the Cooper Nuclear Station Technical Specifications to revise the calibration frequency of the reactor recirculation flow transmitters from once every 184 days to once every 18 months.

Date of issuance: July 26, 1999.

Effective date: July 26, 1999, to be implemented within 30 days.

Amendment No.: 179.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 7, 1999 (64 FR 17027) The March 10, June 8, and June 23, 1999, letters provided additional clarifying information and updated TS pages. This information was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 28, 1998, as supplemented by letter dated March 12, 1999.

Brief description of amendment: The amendment authorizes the revision to the licensing basis as described in the Updated Safety Analysis Report (USAR) to incorporate the modification for overriding the containment isolation actuation signal to the reactor coolant system letdown flow containment isolation valves.

Date of issuance: July 22, 1999.

Effective date: July 22, 1999, and shall be implemented in the next periodic update to the USAR in accordance with 10 CFR 50.71(e).

Amendment No.: 191.

Facility Operating License No. DPR–40. The amendment revised the Updated Safety Analysis Report.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64119) The March 12, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 29, 1999.

Brief description of amendment: The amendment revises Technical Specifications 2.10.2(1) and 2.10.2(3) and deletes Figure 2–11 to relocate three cycle specific parameters to the Core Operating Limits Report.

Date of issuance: July 27, 1999.

Effective date: July 27, 1999.

Amendment No.: 192.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9193) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: W, Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: January 25, 1999.

Brief description of amendments: Revise technical specifications surveillance requirement frequencies for the emergency diesel generator maintenance inspection outages, the 24-hour endurance run and the hot restart test from 18 to 24 months.

Date of issuance: July 29, 1999.

Effective date: Both units, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 136 and 101.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9196).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 2, 1999, as supplemented on April 26, 1999.

Brief description of amendments: The amendments revise Technical Specification (TS) 5.6, "Fuel Storage, Criticality," to change the maximum unirradiated fuel assembly enrichment value for new fuel storage from 4.5 to 5.0 weight percent Uranium-235 and to allow the use of equivalent criticality control to that provided by the current TS requirement of 2.35 milligrams of Boron-10 per linear inch loading in the Integral Fuel Burnable Absorber pins.

Date of issuance: July 21, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 223 and 204.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 10, 1999 (64 FR 11965).

The April 26, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland, this 4th day of August 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20545 Filed 8–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Seabrook Nuclear Power Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a Director's Decision concerning a petition dated March 31, 1999, filed by Mr. David A. Lochbaum against unspecified individuals working at the Seabrook Nuclear Power Station (Seabrook Station) pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The petition requests that the individuals responsible for discrimination against a contract electrician at the Seabrook Nuclear Generating Station as identified in NRC Office of Investigations (OI) Report No. 1–98–005 be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of at least five (5) years; that the individuals responsible for creating a false record to cover up the concern raised by the contract electrician as identified in the cited OI report also be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of a least five (5) years; and that the Petitioner be permitted to attend the upcoming pre-decisional enforcement conference on this matter.

The Director, Office of Enforcement, has determined that the petition should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (i.e., DD–99–10). While the NRC staff concluded that the foreman had engaged in wrongdoing, the Director, Office of Enforcement denied Mr. Lochbaum's request to ban the foreman from participating in licensed activities for a period of at least five years because the requested enforcement action is not appropriate based on the circumstances of the case. The Director's Decision and the Notices of Violation issued to the foreman, Williams Power Corporation, and NAESCO for the foreman's wrongdoing are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC, and on the NRC's web page at *http://www.nrc.gov/NRC/PUBLIC/2206/index.html* and *http://www.nrc.gov/OE/rpr/oehome4.htm* respectively.

A copy of the Director's Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, the Director's Decision will become the final action of the Commission twenty-five days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 3rd day of August 1999.

For the Nuclear Regulatory Commission.

R. W. Borchardt,

Director, Office of Enforcement.

[FR Doc. 99–20686 Filed 8–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Standard Review Plan: Licensee Requests To Delay Initiation of Decommissioning Activities

NRC's "Timeliness in Decommissioning of Materials Facility" rule (hereafter the Timeliness Rule), became effective on August 15, 1994. The Timeliness Rule established the criteria necessary to avoid future problems resulting from delayed decommissioning of contaminated inactive facilities, separate buildings, and outdoor areas.

In May 1996, the Nuclear Energy Institute (NEI) filed a petition for rulemaking to amend the Timeliness Rule to allow licensees to delay decommissioning and operate in a "standby" mode. NRC denied NEI's petition for rulemaking because the Timeliness Rule contains provisions which allow licensees to request delays or postponement of decommissioning, provided they can demonstrate that the delay is not detrimental to the public health and safety and is otherwise in the public interest. However, along with denying the petition, the Commission requested that NRC prepare guidance to identify the acceptance criteria necessary to demonstrate that postponement of decommissioning activities will not be detrimental to the public interest.

In response to the Commission request, NRC has developed the draft Standard Review Plan (SRP) titled, "Licensee Requests to Delay Initiation of Decommissioning Activities." NRC has posted the draft SRP on the internet (www.nrc.gov/NMSS/DWM/DECOM/decomm.htm) to provide interested parties an opportunity to review and comment on NRC's acceptance criteria necessary to demonstrate that postponement of decommissioning activities will not be detrimental to the public health and safety and is otherwise in the public interest. NRC will consider all comments received in finalizing the SRP for implementation.

The draft SRP is available for inspection at the NRC's Public Document Room, 2120 L Street NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 2nd day of August 1999.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–20684 Filed 8–10–99; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budget authority, now totaling $173 million.

The deferral affects programs of the Department of State.

William J. Clinton

THE WHITE HOUSE,
August 2, 1999.

Supplemental Report

Report Pursuant to Section 1013 of P.L. 93–344

This report updates Deferral No. 99–1A, which was transmitted to Congress on February 1, 1999.

This revision increases by $72,276,278 the previous deferral of $100,581,381 in the United States Emergency Refugee and Migration Assistance Fund, Department of State, resulting in a total deferral of $172,857,659. This increase results from the deferral of new budget authority provided for FY 1999 in the FY 1999 Emergency Supplemental Appropriations Act (P.L. 106–31).

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93–344

Agency: DEPARTMENT OF STATE
Bureau: Other.
Account: United States emergency refugee and migration assistance fund [1] (11X0400)

New budget authority: *$195,000,000
Other budgetary resources: *75,412,337
Total budgetary resources: *270,412,337
Amount deferred for entire year: *172,857,659

Justification: This deferral withholds funds available for emergency refugee and migration assistance for which no determination has been made by the President to provide assistance as required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94–141) and section 414(b)(1) of the Refugee Act of 1980 (Public Law 96–212) amended section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for emergency refugee and migration assistance to the Secretary of State, but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

Estimated programmatic effect: None.

[FR Doc. 99–20700 Filed 8–10–99; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Request for Comments on Clarifying Changes to Proposed Revision on Public Access to Research Data.

SUMMARY: This notice offers interested parties an opportunity to comment on clarifying changes to a proposed revision to OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." Public Law 105–277 directs OMB to amend Section __.36 of the Circular "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act" (FOIA). Pursuant to the direction of Public Law 105–277, OMB published a Notice of Proposed Revision on February 4, 1999.

OMB received over 9,000 comments on the proposed revision. Many of these comments raised serious concerns about the impact Public Law 105–277 and the proposed revision would have on the conduct of scientific research. In part, these concerns arose from questions as to how expansively or narrowly the proposed revision would be interpreted and applied. In raising these questions, commenters on both sides of the debate sought clarification of four concepts found in the proposed revision: "data," "published," "used by the Federal Government in developing policy or rules," and cost reimbursement.

In response to these comments, and in order to advance implementation of the requirements of Public Law 105–277, OMB has developed proposed clarifying definitions for the first three of these concepts and is providing additional background discussion regarding the fourth. In framing these definitions, OMB has used its discretion to balance the need for public access to research data with protections of the research process. Specifically, OMB seeks to further the interest of the public in obtaining the information needed to validate Federally-funded research findings, ensure that research can continue to be conducted in accordance with the traditional scientific process, and implement a public-access process that will be workable in practice. OMB will consider all comments received in response to this notice, and the comments received in response to the prior notice, in its development of the final revision to the Circular. OMB intends to publish the final revision on or before September 30, 1999. It is not necessary to re-submit comments already provided to OMB.

DATES: Comments must be received by September 10, 1999.

ADDRESSES: Comments on this proposed revision should be addressed to: F. James Charney, Policy Analyst, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503. Comments may be submitted via E-mail (grants@omb.eop.gov), but must be made in the text of the message and not as an attachment. Since OMB will consider all comments that it receives, it is not necessary to send multiple copies of a comment letter to different officials in the Executive Branch. The full text of Circular A–110, the text of this notice, and the text of the February 4, 1999, Notice of Proposed Revision, may be obtained by accessing OMB's home page (http://www.whitehouse.gov/OMB), under the heading "Grants Management." Copies of Public Law 105–277 can be obtained by accessing the Library of Congress's home page (http://thomas.loc.gov).

FOR FURTHER INFORMATION CONTACT: F. James Charney, Policy Analyst, Office of Management and Budget, at (202) 395–3993. Press inquiries must be directed to OMB's Communications Office, at (202) 395–7254.

SUPPLEMENTARY INFORMATION:

I. Approach to Implementation

Congress included a two-sentence provision in Public Law 105–277 that directs OMB to amend Circular A–110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." The provision also provides for a reasonable fee to cover the costs incurred in responding to the request. The Circular applies to grants and other financial assistance provided to institutions of higher education, hospitals, and non-profit institutions, from all Federal agencies. Therefore, the proposed revision will affect the full range of research activities funded by the Federal Government.

In response to the provision contained in Public Law 105–277, OMB published a Notice of Proposed Revision to the Circular on February 4, 1999 (64 FR 5684). OMB received over 9,000 comments on the proposed revision. Many of these comments (including many of those from the scientific community) raised serious concerns about the effect the provision contained in Public Law 105–277 and the proposed revision would have on scientific research. They sought protection for the privacy of research

---

[1] This account was the subject of a similar deferral in FY 1998 (D98–7).

* Revised from previous report.

subjects and the proprietary interests of scientists and their research partners. They also emphasized that scientists must be able to pursue their research efforts to their conclusion, without the premature release of their research data.

Science and technology are the principal agents of change and progress, with over half of the Nation's economic productivity in the last 50 years attributable to technological innovation and the science that supports it. Although the private sector makes many investments in technology development, the Federal Government has an important role to play—particularly when risks are too great or the return to companies too speculative. Its support of cutting-edge science contributes to new knowledge and greater understanding, ranging from the edge of the universe to the smallest imaginable particles.

In implementing the provision contained in Public Law 105–277, OMB seeks to (1) Further the interest of the public in obtaining the information needed to validate Federally-funded research findings, (2) ensure that research can continue to be conducted in accordance with the traditional scientific process, and (3) implement a public-access process that will be workable in practice.

To this end, OMB earlier proposed to require public access to "data relating to published research findings produced under an award that were used by the Federal Government in developing policy or rules." It intended these clarifications to ensure public access to data supporting the Federally-funded research findings upon which agencies rely, without upsetting the traditional scientific process by requiring researchers to release their data prematurely.

As in many other fields of endeavor, scientists need a private setting where they are free to deliberate over, develop, and pursue alternative approaches. When a scientist completes research, he or she publishes the results for the scrutiny of other scientists and the community at large. In light of this traditional scientific process, OMB does not construe the statute as requiring scientists to make research data publicly available while the research is still ongoing, because that would force scientists to "operate in fishbowl" and to release information prematurely. *Cf. Wolfe* v. *Department of Health and Human Services*, 839 F.2d 768, 773 (D.C. Cir. 1988) (en banc) (Congress in enacting the FOIA did not force government officials to "operate in a fishbowl"); *Montrose Chemical Corp. of Calif.* v. *Train*, 491 F.2d 63, 66 (D.C. Cir. 1974) (same). OMB also understands the need of researchers to assure confidentiality to those who voluntarily agree to participate in Federally-funded research. Accordingly, OMB's proposed revision would allow agencies to withhold personal privacy and confidential business information pursuant to the FOIA "exemptions" in 5 U.S.C. 552(b). For example, under FOIA exemption 6, 5 U.S.C. 552(b)(6), an agency is not required to release "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." As the Supreme Court explained in U.S. Dep't of Justice v. Reporters Committee of the Freedom of the Press, 489 U.S. 749 (1989), certain types of privacy information can be protected as a categorical matter, without regard to individual circumstances. *Id* at 776–780. Moreover, in accord with exemption 6's express protection for their medical records, courts have found that individuals have a strong privacy interest in medical records. *See McDonnell* v. *United States*, 4 F.3d 1227, 1251–1254 (3rd Cir. 1993); *Plain Dealer Pub. Co.* v. *U.S. Dep't of Labor*, 471 F. Supp. 1023, 1027–29 (D.D.C. 1979). In addition, courts have held that, although the redaction of names or other individual identifiers may be sufficient in some cases to protect privacy, an entire record may be withheld if necessary to ensure privacy (e.g., in a case where, notwithstanding the redaction of names or other personal identifiers, an individual's identity could still be inferred from other information). *See Alirez* v. *NLRB*, 676 F.2d 423, 428 (10th Cir. 1982); *Whitehouse* v. *U.S. Dep't of Labor*, 997 F. Supp. 172, 175 (D. Mass. 1998).

Notwithstanding these clarifications in the earlier proposal, commenters from the scientific community expressed serious concerns about the impact Public Law 105–277 would have on their research activities. In part, these concerns arose from questions as to how expansively or narrowly the statute and the proposed revision would be interpreted and applied. In raising these questions, commenters on both sides of the debate sought clarification of four concepts found in the proposed revision: "data," "published," "used by the Federal Government in developing policy or rules," and cost reimbursement.

In order to advance implementation of the requirements of Public Law 105–277, and to provide the greater clarification that the commenters requested, OMB seeks public comment on proposed clarifying definitions for the first three concepts, and its additional background discussion regarding the fourth.

II. Background

A. Data Access Provision Contained in Public Law 105–277

Public Law 105–277 includes a provision that directs OMB to amend Section __.36 of the Circular "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." Public Law 105–277 further provides that "if the agency obtaining the data does so solely at the request of a private party, the agency may authorize a reasonable user fee equaling the incremental cost of obtaining the data."

According to congressional floor statements made in support of the provision, its aim is to "provide the public with access to federally funded research data" that are "used by the Federal Government in developing policy and rules." 144 Cong. Rec. S12134 (October 9, 1998) (Statement of Sen. Lott); *see id.* (Statement of Sen. Shelby) (the provision "represents a first step in ensuring that the public has access to all studies used by the Federal Government to develop Federal policy"). The congressional proponents further explained that the provision requires OMB "to amend OMB Circular A–110 to require Federal awarding agencies to ensure that all research results, including underlying research data, funded by the Federal Government are made available to the public through the procedures established under the Freedom of Information Act." *Id.* (Statement of Sen. Lott). The proponents stated that "the amended Circular shall apply to all Federally funded research, regardless of the level of funding or whether the award recipient is also using non-Federal funds." *Id.* (Statement of Sen. Campbell). They also noted that "[t]he Conferees recognize that this language covers research data not currently covered by the Freedom of Information Act. The provision applies to all Federally funded research data regardless of whether the awarding agency has the data at the time the request is made" under the FOIA. *Id.* Under the Supreme Court's decision in *Forsham* v. *Harris*, 445 U.S. 169, 179–80 (1980), data that are in the files of a recipient of a Federal award, but not in the files of a Federal agency, would not otherwise be available under FOIA.

B. OMB's Proposed Revision to Circular A–110

In response to the congressional direction in Public Law 105–277, OMB published a Notice of Proposed Revision to the Circular on February 4, 1999 (64 FR 5684) to amend Section ____.36(c) of the Circular to read as follows:

(c) The Federal Government has the right to (1) Obtain, reproduce, publish or otherwise use the data first produced under an award, and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes. In addition, in response to a Freedom of Information Act (FOIA) request for data relating to published research findings produced under an award that were used by the Federal Government in developing policy or rules, the Federal awarding agency shall, within a reasonable time, obtain the requested data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

In the preamble to the notice, OMB provided an explanation of the proposed revision. As the notice outlined, the proposed revision implements Public Law 105–277 by providing that, after publication of research findings used by the Federal Government in developing policy or rules, the research results and underlying data would be available to the public in accordance with the FOIA. The proposed revision requires Federal awarding agencies, in response to a FOIA request, to obtain the requested data from the recipient of the Federal award. Since the agency must take steps to obtain the data, the agency is afforded a reasonable time to do so. Once the agency has obtained the data, the agency will then process the FOIA request in accordance with the standard FOIA procedural and substantive rules. The agency will therefore have to determine whether any of the FOIA exemptions, which permit an agency to withhold requested records, would apply to some or all of the data. If the Federal awarding agency obtained the data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA.

C. Public Comments Called for Clarification

OMB received approximately 8,350 comments during the 60-day public comment period. Additionally, OMB received approximately 800 comments after the close of the comment period. OMB will consider the comments received in response to the prior notice, and the comments received in response to this notice, in developing the final revision to the Circular.

Of the comments received, 55 percent were submitted by individual members of the public, without any organizational identification. Individual researchers working at institutions of higher education accounted for 36 percent of the comments. The remainder of the comments came from other non-profit research organizations (three percent), professional associations (two percent), commercial research organizations (one percent), and official comments from institutions of higher education (one percent). OMB also received comments from Members of Congress, Federal agencies, employees of State governments, and law firms.

Of those comments received, 55 percent supported implementation of Public Law 105–277 in the form of the proposed revision while 37 percent opposed the language of Public Law 105–277 and the proposed revision. The remaining eight percent of those commenting had serious concerns about the proposed revision, suggesting that it be modified in some substantial way.

Commenters offered strongly differing views on the provision contained in Public Law 105–277. Commenters who supported the statutory provision stated that the public has a right to obtain research data that have been funded with tax dollars, particularly when the research findings were used by the Federal Government in developing policy or rules. These commenters also expressed the view that making this data available for public review and validation would improve the scientific process. Commenters who opposed the provision contained in Public Law 105–277 stated that they support the concepts of full disclosure and open access to information. In their comments, they explained that the traditional scientific process operates by requiring researchers to subject their findings to the scrutiny of the scientific community and the general public, so that those findings may be validated, corrected, or rejected. They expressed concern that the approach required by Public Law 105–277 would significantly impair scientific research. In their view, individuals and businesses would be reluctant to agree to participate in research, since the participants' personal privacy and proprietary information could not be assured of confidential treatment.

III. Proposed Clarification of Concepts

Many commenters asked OMB to clarify four concepts found in the proposed revision: "data," "published," "used by the Federal Government in developing policy or rules," and cost reimbursement. OMB agrees that clarification is needed for these concepts and believes development of the final revision, pursuant to the direction of Public Law 105–277, will be advanced by requesting additional public comment.

A. "Data"

A large number of comments addressed the fact that the term "data" is not defined in either the provision contained in Public Law 105–277 or in the proposed revision to the Circular.

Commenters from the scientific community expressed concern that "data" might be interpreted expansively to include such things as lab specimens (e.g., cell cultures, tissue or plant samples), a researcher's lab notebooks, working papers, phone logs and electronic mail, or a researcher's financial records. These commenters stated that requiring researchers to turn over such materials would be extremely burdensome and would harm the scientific process. Commenters from the scientific community raised the additional concern that requiring public access to research "data" would result in the public disclosure of highly private information about individuals (e.g., information about the medical condition or treatment of research subjects) and the proprietary business information (e.g., intellectual property) of their research partners. In this regard, these commenters were not reassured by the fact that the Federal awarding agency would be able to withhold information that falls within the existing FOIA exemptions that permit agencies to withhold personal and confidential business information. See 5 U.S.C. 552(b). Notwithstanding the applicability of these FOIA exemptions, the commenters from the scientific community asserted that they would no longer be able to promise confidentiality to persons who agree to participate in research studies.

Commenters supporting the provision contained in Public Law 105–277 agreed that the term "data" needs to be defined. One argued for a broad interpretation of "data," but agreed that "[f]inancial records and other personal

data of individual researchers should be excluded from the definition of data in the revised Circular." A comment letter from Senators Shelby, Lott, and Campbell, who support the provision contained in Public Law 105–277, stated that "data" should be defined "based on how the term is commonly used in the scientific community and the ultimate goal of this provision. At a minimum, data should include all information necessary to replicate and verify the original results and assure that the results are consistent with the data collected and evaluated under the award."

Taking into account the concerns that commenters expressed, and in order to advance implementation of the requirements of Public Law 105–277, OMB has developed and seeks comment on a proposed definition of "research data". In framing this definition, OMB has sought to ensure that members of the public can obtain the information needed to validate Federally-funded research findings, while ensuring the privacy of research subjects and proprietary interests of scientists and their research partners. OMB proposes to define "research data" in a way that does not require recipients to transmit information which, in their judgment, includes "trade secrets, commercial information," or "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The Federal awarding agency would retain its right to ask the recipient for additional information, if it believed the recipient's application of these principles was improper.

Accordingly, OMB proposes to define "research data" as "the recorded factual material commonly accepted in the scientific community as necessary to validate researching findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues." This excludes physical objects such as laboratory samples. Moreover, under the proposed definition, "research data" would exclude "(A) trade secrets, commercial information, materials necessary to be held confidential by a researcher until publication of their results in a peer-reviewed journal, or information which may be copyrighted or patented; and (B) personnel and medical files and similar files the disclosure or which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular research subject in a research study."

B. "Published"

Commenters generally supported OMB's clarification that public access pertains to "published" research findings. For example, a comment letter from Senators Shelby, Lott, and Campbell, who support the provision contained in Public Law 105–277, stated that "the OMB reference to published findings is not inconsistent with the underlying statute" and that "this limitation to data related to published research findings will ensure that the provision does not disrupt the research process by forcing the premature release of data before the study is completed."

Notwithstanding the general support for a publication requirement, a significant number of commenters raised questions regarding when research findings have been "published." While there was a general consensus that research findings are "published" when they appear in a peer-reviewed scientific or technical journal, commenters asked whether research findings could be considered to be "published" at an earlier time. Examples of earlier definitions of "published" include: (1) When data are distributed as part of the journal's peer-review process; (2) when a researcher makes a presentation at a scientific meeting open to the public; or (3) when data have been otherwise made available to the public (e.g., through a press release or a presentation to the media). In particular, commenters from the scientific community expressed the concern that defining "published" expansively could lead to premature release of data as well as misunderstandings and false claims about what research proves. These commenters also noted that requiring researchers to make their data publicly available prematurely could also prevent future publication in some peer-reviewed journals, and may limit a researcher's patent rights. Additionally, commenters argued that the willingness of private sector organizations to enter into partnerships would be reduced unless their proprietary data can be protected. Other researchers feared harassment from groups that do not support certain scientific methods or those that do not support certain areas of research.

Commenters who support the provision contained in Public Law 105–277 were generally sympathetic to these concerns. However, many expressed the concern that, if "published" meant only publication in a peer-reviewed journal, Federal agencies would be able to rely on research findings that have been released to the agency (while not having yet been published in a peer-review journal), but interested members of the public would not be able to obtain the data that are necessary to validate these findings. As one commenter stated, under that scenario "award recipients would be able to avoid disclosure of data otherwise available to the public merely by failing to submit the data to a formal peer review publication." This concern was also raised in the comment letter from Senators Shelby, Lott, and Campbell, which stated that "[if] federally-funded pre-published data or findings are used to support a federal policy or rule, then the final revision should ensure that such data would also be made publicly available under FOIA. If the data are sufficiently sound to support a federal policy or rule, then they should be able to bear public scrutiny and disclosure * * *. This point is critical to ensuring that our federal rules and policies are based on good science and research findings."

Taking into account the concerns that commenters expressed, and in order to advance implementation of the requirements of Public Law 105–277, OMB has developed and seeks comment on a proposed definition of "published." In framing this definition, OMB has sought to ensure that members of the public can obtain the information needed to validate Federally-funded research findings, while at the same time ensuring that researchers will continue to be able to engage in the traditional scientific process without fear that they could be forced to release their research prematurely. OMB has also framed this definition based on the understanding that Federal agencies generally rely on research findings that have been peer-reviewed, because until they have been peer-reviewed, research findings may be inherently unreliable. OMB solicits comments on these issues.

Accordingly, OMB proposes to define "published" research findings as "either when (A) research findings are published in a peer-reviewed scientific or technical journal, or (B) a Federal agency publicly and officially cites to the research findings in support of" an agency action.

C. "Used by the Federal Government in Developing Policy or Rules"

Many commenters requested clarification on what is meant by "used by the Federal Government in developing policy or rules." Commenters who oppose the provision contained in Public Law 105–277 argued for an interpretation under which "policy or rules" would refer to

agency regulations, and "used" would refer to the agency's public and official citation of the research findings in support of the agency action. Commenters who support the provision contained in Public Law 105–277 argued for a more expansive interpretation, under which "policy or rules" would include such things as agency guidance, surveys, risk assessments and reports, and "used" would refer to when the agency first relies internally on the findings—or perhaps even earlier. Referring to situations where "studies are funded, performed, and published with a clear anticipation that the data in the study will be useful in connection with future government rulemaking or policy development," one commenter argued that, in some regulatory situations, such data "clearly should be available for public scrutiny before the formal regulatory proceedings begin." This commenter, though, went on to state that "OMB should also define a meaningful carve-out for activities that do not influence the development of regulations or policy." In explaining this "carve-out" approach, the commenter stated that, in contrast to situations where a published study is cited by an agency, "[w]here materials are merely submitted by the public and not cited by the government decision makers, however, the issue is less clear. In such cases it is often difficult or impossible to determine what studies the government has "used" in shaping policy." Based on this commenter's view that "all data adverse to the position of a party impacted by regulatory action should be susceptible of honest scrutiny," the commenter addressed the problem of how to identify when research findings are "used"—when they have not been cited—by concluding that "if materials are submitted in the course of rulemaking or other government policy formulation, those data should be made available to the public."

OMB believes that the provision contained in Public Law 105–277 should be implemented in a manner that respects the general framework of the traditional scientific process, and is workable in practice. In this regard, the operating principles that OMB adopts in its revisions to section ____.36 of the Circular should be relatively easy to administer (by the public, Federal agencies, and recipients), should rely on existing processes whenever possible, and should not result in uncertainties and disagreements when they are applied to the facts in individual cases. Based on our review of the comments, OMB believes that the provision contained in Public Law 105–277 can be implemented in the context of the agencies' promulgation of regulations, but that considerable implementation problems would arise if the scope of the provision contained in Public Law 105–277 extended to such agency actions as guidance, surveys, assessments, and reports.

When an agency promulgates a regulation, it does so through the well-established rulemaking process. Through notices in the **Federal Register** (typically proposed and final rulemaking notices), an agency explains regulations and seeks and reacts to public comments. As was pointed out by commenters who support the provision contained in Public Law 105–277, agencies generally cite the sources that support their regulations, often including findings from Federally-funded research in their rulemaking notices published in the **Federal Register**. In so doing, the agency relies on the research findings—in an official and public manner—to explain and justify the agency's regulatory actions to the public, to Congress, and to the courts. Many commenters argued that members of the public should be able to obtain the data that underlies these research findings. This allows the public to seek to validate the findings, evaluate the regulation, submit comments to the agency on the proposed regulations, or seek judicial review of the final regulations.

Among the commenters who addressed this issue, there was a general consensus that the case for the public obtaining the underlying research data is strongest when an agency cites Federally-funded research findings to support the agency's issuance of a regulation. In promulgating a regulation, the agency acts with the force and effect of law. In citing to the research findings to support the agency's regulatory decision, the agency is relying—publicly and officially—on those findings. Indeed, that reliance is given legal significance by the courts during any review of the regulation.

The comments also indicated that an agency's citation to research findings in support of a regulation allows the process to be administered most readily and easily. In such cases, the public access provision should clearly be applicable. Any uncertainty can be resolved by an inspection of the agency's rulemaking records.

When one moves outside the regulatory context and into other areas of agency action, the comments provided less of a justification for the application of the provision contained in Public Law 105–277. It also becomes less clear how members of the public and the agencies would be able to determine when public access would be required in individual cases.

Commenters who support the provision contained in Public Law 105–277 argued that the public should have access to data used in agency guidance, surveys, assessments, and reports, when the data comes from research funded by the Federal taxpayers. Arguably, the need for public access to data would be less for agency actions that do not have the force and effect of law or are not subject to judicial review.

OMB is concerned that a broader proposal would be problematic. It is not clear how the provision contained in Public Law 105–277 would operate in practice outside the regulatory context. When agencies undertake less formal agency action they often do not prepare and issue accompanying explanatory preambles that outline the basis and underlying factual support for the action. In the absence of a formal record that explains the agency's action, it would be far more difficult for the public and the agencies to determine, in individual cases, whether particular research findings were "used" by the agency in "developing" the agency action. For example, from the comments that we received on the proposed revision, an agency might be viewed as having "used" research findings if those findings: (1) Were relied upon in an internal agency memorandum sent to a decision maker; (2) were discussed in an agency staff level communication, such as an email message; or (3) were simply available for the agency staff to read, regardless of whether there was any evidence that the staff relied upon the findings in carrying out their work. In sharp contrast with identifying agency reliance in the regulatory context, none of these tests could be applied readily and easily by members of the public and the agency for determining, in individual cases, whether research data would be publicly available under the provision contained in Public Law 105–277. Instead of being able to rely on the public record, these tests would entail a fact-intensive inquiry into the agency's internal deliberations. This inquiry would be burdensome and time-consuming, and would intrude into the agency's deliberative process.

In sum, based on the comments that OMB has received, it does not appear that the provision contained in Public Law 105–277 can be readily and easily implemented outside of the regulatory context. Given the considerable implementation difficulties, and the lesser public interest in obtaining the

underlying research data when the agency is not taking action that has the force and effect of law, OMB does not believe that the public interest would be served by extending the provision contained in Public Law 105–277 beyond the regulatory context.

Accordingly, in order to advance implementation of the requirements of Public Law 105–277, OMB seeks comment on a proposal to replace "used by the Federal Government in developing policy or rules" with "used by the Federal Government in developing a regulation." "Regulation" refers to the well-established and long-standing definition of a regulation for which notice and comment is required under the Administrative Procedures Act (5 U.S.C. 553). In framing this proposal, OMB has sought to ensure that members of the public can obtain the information needed to validate those Federally-funded research findings on which Federal agencies rely when they take actions that have the force and effect of law, while at the same time ensuring that the provision contained in Public Law 105–277 can be administered in a manner that is workable for members of the public, Federal agencies and their recipients.

In addition, based on its experience with reviewing agency regulations, OMB believes the public interest in having access to research data is likely to be greatest in the case of those regulations that have the most substantial impact on society. One existing method for identifying these regulations is whether a regulation meets a $100 million impact threshold. This approach is similar to those required by the Unfunded Mandates Reform Act (Public Law 104–4, 2 U.S.C. 1532, 1535) and the Congressional Review Act (Public Law 104–121, 8 U.S.C. 801(a)(3), 804(2)). Therefore, OMB requests comments on whether limiting the scope of the proposed revision to regulations that meet the $100 million threshold would be appropriate. In particular, commenters should identify current and past regulatory actions that do not meet the $100 million threshold, but where they believe the public would have benefitted from having access to the underlying research data sufficiently to justify burdens on, or risks to, the traditional scientific process.

D. Cost Reimbursement

Many commenters sought clarification about the "reasonable fee" agencies may charge, pursuant to the provision contained in Public Law 105–277. OMB believes the "reasonable fee," which is intended to cover the cost of obtaining the requested data, is separate from the FOIA fee an agency could assess under 5 U.S.C. 552(a)(4)(A). In light of the congressional intent that Federal agencies and researchers be reimbursed by the requester for the costs that they incur in responding to the request, OMB has concluded that agencies may retain this new fee, in order to reimburse themselves, recipients, and applicable subrecipients, for the costs they incur.

OMB seeks comments on (1) Estimates of potential incremental costs to be incurred by Federal agencies, their recipients, and applicable subrecipients in carrying out the proposed revision, and (2) the mechanisms available to recipients to charge to their awards the costs that they would incur (e.g., "direct" versus "indirect" charge, or by contract).

After receiving comments, OMB will consider revising OMB Circular A–21, "Cost Principles for Educational Institutions," as necessary to ensure recipient institutions are reimbursed for the incremental costs of complying with the provision contained in Public Law 105–277.

OMB encourages interested parties to provide comments on these four concepts at this time so that any concerns may be addressed in OMB's development of the final revision to the Circular, pursuant to the direction of Public Law 105–277. OMB intends to publish the final revision on or before September 30, 1999.

Issued in Washington, D.C., August 5, 1999.

Norwood J. Jackson,

Acting Controller.

Pursuant to the direction of Public Law 105–277, OMB proposes to amend Section ____.36 of OMB Circular A–110 by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding new paragraph (d) to read as follows:

____.36 Intangible property.

* * * * *

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing a regulation, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions are to be used for purposes of paragraph (d) of this section:

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate researching findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until publication of their results in a peer-reviewed journal, or information which may be copyrighted or patented; and

(B) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites to the research findings in support of a regulation.

(iii) *Used by the Federal Government in developing a regulation* is defined as when an agency publicly and officially cites to the research findings in support of a regulation (for which notice and comment is required under 5 U.S.C. 553).

* * * * *

[FR Doc. 99–20683 Filed 8–10–99; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41696; File No. SR–Amex–99–18]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Amending Amex Rule 901C

August 3, 1999.

I. Introduction

On May 17, 1999, the American Stock Exchange LLL ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 901C. On June 8, 1999, Amex filed Amendment No. 1.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 24, 1999.[4] No comments were received on the proposed proposal. This order approves the proposal.

II. Description of the Proposal

By adding Commentary .03 to Amex Rule 901C to establish criteria for the splitting of stock indexes, the proposed rule change will permit the Exchange to split broad and narrow-based indexes without submitting a proposed rule change to the Commission. Specifically, the proposal will require the Exchange, prior to instituting an index split, to issue an information circular to the Exchange's membership with details concerning the index split and the adjusting of position and exercise limits until the expiration of the further non-LEAP option contract. In effecting the index split, the Exchange will increase the applicable index divisor; proportionally increase the number of contracts outstanding; and increase the index option's applicable position and exercise limits. Position and exercise limits that are increased to accommodate any outstanding index option positions will revert, following the expiration of the furthest non-LEAP option contract, to their then applicable limit.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[5] Specifically, the Commission finds that the proposal is consistent with the section 6(b)(5)[6] requirements in that the proposed reduction in the value of an index and the associated temporary increase in the position and exercise limits should remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.[7]

By reducing the value of an index, the Commission believes that a broader range of investors will be provided with a means to hedge their exposure to the market risk associated with the stocks underlying an index. Similarly, the Commission believes that reducing the value of an index may attract additional investors, thus creating a more active and liquid trading market for the index options. The Commission notes that, before splitting an index, the Exchange will provide reasonable advance notice of the proposed index split to its membership.[8]

The Commission also believes that Amex's proposed adjustments to its position and exercise limits applicable to an index are appropriate and consistent with the Act. In particular, the Commission believes that the temporary increase of the position and exercise limits is reasonable in light of the fact that the size of the options contracts on an index will be proportionally reduced and that, as a result, the number of outstanding options contracts an investor holds will be increased. The temporary increase of the position and exercise limits, therefore, will ensure that investors will not potentially be in violation of the lower existing position and exercise limits while permitting market participants to maintain, after the split of an index, their current level of investment in the option contracts.

The Commission further believes that increasing an index's divisor will not have an adverse market impact on the trading in these options. After the split, an index will continue to be composed of the same stocks with the same weightings and will be calculated in the same manner, except for the proposed change in the divisor.

Finally, in its release adopting new Rule 19b–4(e),[9] the Commission noted that if the trading rules, procedures and listing standards for the product class included criteria regarding splitting an index, such changes would be permitted without being considered a material change to the derivative securities product and without requiring the filing of a proposed rule change pursuant to Section 19(b) of the Act.[10] The proposed rule change will permit the Exchange to adjust the value of a stock index covered by Commentary .02 to Rule 901C from time to time in response to prevailing market conditions without the need to submit a rule filing to the Commission on each occasion.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Amex–99–18) and Amendment No. 1 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20632 Filed 8–10–99; 8:45 am]

BILLING CODE 8010–01–M

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, dated June 4, 1999. In Amendment No. 1, Amex amended the text of the proposed rule.

[4] Securities Exchange Act Release No. 41536 (June 17, 1999), 64 FR 33941.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this rule and amendment, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] From experience, the Commission finds that reasonable notice may include the Exchange providing notice to its membership at least two weeks prior to the implementation of the proposed change to the value of an index and the resulting adjustments to the outstanding options; issuing a second notice to its members just prior to implementing the index reduction setting forth the new divisor and other relevant information; and issuing a circular to its members at least one month prior to the expiration of the furthest non-LEAP options on the index that reminds its member firms that the respective position and exercise limits will revert to their original levels. Although not exclusive, the Commission believes that these proposed time frames should allow for adequate notice to the holders of all open positions in options on an index proposed to be split.

[9] 17 CFR 240.19b–4(e).

[10] See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) ("New Products Release").

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41700; File No. SR–BSE–99–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Minor Rule Violation Plan

August 3, 1999.

I. Introduction

On March 26, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Summary Fine Schedule of the Minor Rule Violation Plan through the addition of violations of Rule 11Ac1–4 under the Act ("Display Rule").[3] Notice of the proposed rule change appeared in the **Federal Register** on May 20, 1999.[4] The Commission received no comment letters about the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend its Minor Rule Violation Plan ("Plan") to include violations of the Display Rule which are inadvertent or unintentional. The amendment will allow the assessment of fines, rather than a full disciplinary procedure in such situations.

The proposal provides that failure to display a customer limit order immediately (no later than 30 seconds) after receipt will result in a written warning for the initial offense. A second offense will result in a $50 fine. Subsequent offenses will be fined at $100. The proposal allows for calculation of subsequent violations on the basis of a rolling 12 month period. Where violations of the Display Rule are found to be intentional, however, the Exchange is not precluded under the proposal from initiating formal Disciplinary Proceedings under Chapter XXX or imposing sanctions of more or less than the recommended fines (not to exceed $2,500 in any event).

III. Discussion

The Commission has reviewed carefully the Exchange's proposal, and finds, for the reasons set forth below, that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5), 6(b)(6), 11A(a)(1)(C)(iii) and (iv) of the Act and Rule 11Ac1–4 under the Act.[6] Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(b)(6) of the Act provides that the rules of an exchange provide that its members and associated persons be appropriately disciplined for violations of the Act and the rules of the exchange.

In Section 11A of the Act, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market. The proposed rule change should help to ensure the timely availability of information with respect to quotations.

The Display Rule, which the Commission adopted under Section 11A of the Act, requires specialists to display immediately, *i.e.*, as soon as practicable (which under normal market conditions means no later than 30 seconds from the time of receipt)[7] the price and full size of customer limit orders that would improve the bid or offer in a security or add to the size of the best bid or offer. The Commission believes that displaying customer limit orders benefits investors by providing enhanced execution opportunities and improved transparency.[8] The Commission finds that the proposal reinforces the obligations of an exchange specialist to display immediately certain customer limit orders in accordance with Sections 6 and 11A of the Act and the Display Rule.

Although the Commission believes that certain violations of the Display Rule are amenable to efficient and equitable enforcement and therefore are appropriate for inclusion in the Exchange's Plan, because a violation of the Display Rule amounts to a violation of federal securities law, the Commission expects that the Exchange will err on the side of caution in disposing of such violations under the Plan. The Commission expects the Exchange will continue to resolve intentional violations of the Display Rule through formal disciplinary proceedings.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change, as amended, is consistent with the provisions of the Act, and in particular with Sections 6(b)(5), 6(b)(6), 11A(a)(1)(C)(iii) and (iv) of the Act, and rule 11Ac1–4 under the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the act,[9] that the proposed rule change (SR–BSE–99–04), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20634 Filed 8–10–99; 8:45 am]

BILLING CODE 8010–01–M

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.11Ac1–4.

[4] Securities Exchange Act Release No. 41396 (May 13, 1999) 64 FR 27609.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5), 15 U.S.C. 78f(b)(6), 15 U.S.C. 78k–1(a)(1)(C)(iii) and (iv), and 17 CFR 240.11Ac1–4.

[7] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Adopting Release"). A specialist is not displaying customer limit orders immediately if the specialist regularly executes customer limit orders at, for example, the 27th second after receipt. The requirement that a limit order be displayed "immediately" means that the limit order must be displayed as soon as practicable, but no later than 30 seconds after receipt under normal market conditions. This 30 seconds is an outer limit under normal market conditions and is not to be interpreted as a 30-second safe harbor.

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41702; File No. SR–CBOE–98–53]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and 2 to the Proposed Rule Change To Amend the Firm Quote Requirement

August 4, 1999.

On December 15, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the

Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change to amend the Exchange's firm quote requirement. The proposed rule change was published for comment in the **Federal Register** on January 28, 1999.[2] The CBOE submitted Amendments No. 1[3] and 2[4] to the proposed rule change on April 15, 1999, and July 28, 1999, respectively. The Commission received no comments on the proposal. This order approves the approval, as amended.

I. Description of the Proposal

The Exchange proposes to amend CBOE Rule 8.51(a)(2), CBOE's firm quote provision, to require that trading crowds be firm for a number of contracts on less than the RAES contract limit applicable to that class of options.[5] CBOE also proposes to make conforming changes to Interpretation and Policies .01 and .06. The proposal would permit the appropriate Floor Procedure Committee ("FPC") to establish the firm quote requirement for each particular class of options traded on RAES provided that the requirement is no less than the RAES contract limit and no more than 50 contracts. For classes or series that are not traded on RAES, the appropriate FPC may establish a firm quote requirement between 10 and 50 contracts.[6]

The firm quote requirement will apply at all times,[7] except during an opening or closing trading rotation. Unless there is a contrary ruling by two Floor Officials, the requirement obligates a trading crowd to sell (buy) the established number of contracts at the offer (bid) which is displayed when a buy (sell) customer order reaches the trading station where the particular option class is located for trading. Currently, paragraph (a)(2) of Rule 8.51 requires trading crowds to buy (sell) at least ten (10) contracts under these circumstances.

Because RAES is essentially a form of electronic firm quote, the Exchange believes that in most cases, the firm quote requirement should be no less than the RAES contract limit for a particular options class. In fact, in deciding to raise the firm quote requirement, the Exchange noted that the appropriate FPC responsible for setting the contract limit for RAES in particular option classes recently increased the RAES maximum contract size, such that in most cases the RAES contract limit is now higher than the firm quote requirement.[8] Exchange Rule 8.51 will continue to provide that the appropriate Market Performance Committee may determine the classes and series that will be subject to the requirements of the Rule.

The CBOE also is amending Interpretation and Policy .06 to Rule 8.51 to clarity that the firm quote requirements for spreads and straddles applies only in equity options.[9] The CBOE notes that policy was clearly stated in File No. SR–CBOE–94–54 and in the Commission's order approving that filing.[10] However, the rule language itself does not reflect this limitation. Thus, the CBOE is making this change to clarify in the rule text what was originally intended by that rule filing.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change meets the requirements of section 6(b)(5) of the Act[11] which states that, among other things, the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that the proposal should provide greater depth to the option market and benefit public customers by ensuring that they receive fills of their orders for a greater number of contracts. Moreover, the Commission believes that allowing the FPC to set the firm quote requirement on a class by basis within a given range (*i.e.*, no less than the RAES limit and no more than 50 contracts) will give the Exchange the flexibility to respond to competitive pressures from other markets for multiply listed options while not imposing an undue burden on firms that trade those option classes.

Moreover, as CBOE notes, Rule 8.51 is unclear in its application to spreads and straddles, although the Commission order approving the proposal clearly indicates that the provision only applies to equity options as opposed to index and equity options. As a result, the Commission believes it is appropriate to clarify that the firm quote requirement for spreads and straddles applies only to equity options.

Pursuant to section 19(b)(2) of the Act,[12] the Commission finds good cause to approve Amendments No. 1 and 2 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register** because the Amendments do not present any new regulatory issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1 and 2, including whether those amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–

---

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Exchange Act Release No. 40857 (Jan. 20, 1998), 64 FR 4485.

[3] *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 13, 1999 ("Amendment No. 1"). Amendment No. 1 explains why the Exchange believes the proposed rule change will not have anti-competitive effects on small market-makers.

[4] *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Richard Strasser, Assistant Director, Division, Commission, dated July 27, 1999 ("Amendment No. 2"). Amendment No. 2 sets forth the circumstances under which Floor Officials may grant an exemption to or suspend the firm quote requirement. These include the declaration of a fast market, a system malfunction, an influx or orders, or other unusual circumstances that cause displayed quotations to be inaccurate or not current. Amendment No. 2 also makes certain technical changes to the proposed rule change.

[5] The appropriate Floor Procedure Committee determines the size of orders eligible for entry into RAES. The maximum RAES order size is generally 20 contracts. All classes of securities traded on the Exchange, except Long Term Equity Anticipation Securities ("LEAPS"), are traded on RAES. The firm quote requirement will not apply to orders received from other exchanges or broker/dealers. Phone call between Stephanie C. Mullins, Attorney, CBOE, and Sonia Patton, Attorney, Division, Commission, on June 7, 1999.

[6] The new form quote requirement will remain in effect for that options class indefinitely or until the FPC changes it. The FPC meets once every two weeks. The discretion given to the FPC by the proposed rule change to establish a different firm quote requirement between the RAES contract limit and 50 contracts for a particular class of options is intended to enable the FPC to respond to general trading trends in a given options class. Phone call between Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, Sonia Patton, Attorney, Division, Commission and Constance Kiggins, Special Counsel, Division, Commission, on January 6, 1999.

[7] Under Exchange Rule 8.51(a)(3), however, any two Floor Officials may suspend the firm quote requirement for a class or a series within a class, if it is in the interest of a fair and orderly market.

[8] *See* Regulatory Circulars RG98–102, RG98–117, RG 98–119.

[9] The term "spreads and straddles" refers to two-part equity option orders in which the component series are on opposite sided of the market and in a one-to-one-ratio.

[10] Securities Exchange Act Release No. 35785 (May 31, 1995), 60 FR 30125 (June 7, 1995).

[11] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(2).

0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–53 and should be submitted by September 1, 1999.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–98–53), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20631 Filed 8–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41657; File No. SR–DTC–99–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Arrangements To Integrate The Depository Trust Company and the National Securities Clearing Corporation

July 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 6, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–99–17) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change filed by DTC involves proposed arrangements to integrate DTC and National Securities Clearing Corporation ("NSCC"). The proposal provides for the following:

- DTC and NSCC will form a New York corporation ("Holding Company") for the purpose of owning directly all of the outstanding stock of NSCC and owning indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.
- After receipt of all necessary regulatory approvals, the Holding Company will conduct exchange offers in which current DC stockholders will have the opportunity to exchange their DTC shares for newly-issued Holding Company common stock on a one-for-one basis and the two current stockholders of NSCC will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares ("Exchange Offers").
- The Holding Company will elect as the Directors of DTC and NSCC the persons elected by the stockholders of the Holding Company.
- As subsidiaries of the Holding Company, DTC and NSCC will continue to operate as they do currently, and each will offer its own services to its own members pursuant to separate legal arrangements and separate risk management procedures.
- The Holding Company itself will not engage in clearing agency activities. Certain support functions, including Human Resources, Finance, Audit, General Administration, Corporate Communications, and Legal will be centralized in the Holding Company, and the Holding Company will provide those services to each of the two subsidiary clearing agencies pursuant to service contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At their meetings in February 1999, the Boards of Directors of DTC and NSCC voted to proceed with a plan for the integration of the two clearing agencies. A principal goal of the plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at DTC and NSCC for the clearance and settlement of both institutional and broker transactions. This strategy is intended to accommodate shortened settlement cycles and increased volumes, to improve risk management, and to lower transaction processing costs.

An initial step in the plan was the identification from among the incumbent directors of both Boards of a single group of individual to serve as the Board of Directors for each of the two companies. Since simply adding the membership of DTC's Board of NSCC's Board would have resulted in certain user and marketplace organizations having more than one representative, each of these organizations was asked to select only one representative. Through this process and with the inclusion of DTC and NSCC management Directors, a group of twenty-seven persons was identified. That group has been elected as NSCC Board of Directors by NSCC's stockholders. Since federal banking law applicable to DTC limits the maximum size of DTC's Board to twenty-five members, two of the persons to NSCC's Board will participate in DTC Board meetings as non-voting advisors. The remaining twenty-five persons have been elected as DTC's Board of Directors by DTC stockholders.[3] The next steps in the integration plan, conducting the Exchange Offers and implementing certain stock ownership and corporate governance arrangements for the Holding Company, are the subjects of the proposed rule change.

The Holding Company will issue two classes of stock in connection with the Exchange Offers: common stock to be owned initially by current DTC stockholders and preferred stock to be owned in equal amounts by the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"), the current stockholders of NSCC. As explained in more detail below, DTC believes that DTC and NSCC will satisfy the fair representation requirement of Section

[3] *See* Securities Exchange Act Release No. 41529 (June 15, 1999), 64 FR 33333 (File No. SR–DTC–99–08) (order approving proposed rule change).

17A(b)(3)(C) of the Act[4] in the Holding Company structure by (1) giving participants and members of DTC and NSCC the right to purchase shares or Holding Company common stock on a basis that reflects their use of the services and facilities of DTC and NSCC (based on a system analogous to the system now employed by DTC for reallocating entitlements to purchase shares of DTC stock) and (2) selecting individuals to be directors of the Holding Company (who will also be directors of DTC and NSCC) on a basis that will insure that all major constituencies in the securities industry will have a voice in the business and affairs of DTC and NSCC (based on a process analogous to the process now employed by the two clearing agencies for selecting their directors).

In connection with the exchange offer for shares of DTC stock, the current DTC Stockholders Agreement will be amended to provide that if a specified supermajority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) Any DTC stockholders that fail to tender their shares of DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participants or members of DTC and NSCC.[5]

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents")[6] contain provisions designed to preserve the rights that the stockholders of DTC and NSCC currently have and in particular to satisfy the fair representation requirement of Section 17A of the Act. In this regard, the Basic Documents provide for the following.

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Director of the Holding Company, and that person will also serve on the Boards of DTC and NSCC. All other Directors will be elected annually by the owners of Holding Company common stock.
- As discussed above, the rights to purchase Holding Company common stock will be reallocated to the users of both clearing agencies based upon the users' usage. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.
- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

With respect to the nomination process, each year the Holding Company's Board of Directors will appoint a nominating committee that may include both members and nonmembers of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Since the Basic Documents provide for cumulative voting, one or more owners of Holding Company common stock could arrange to elect a person not on the slate nominated for election by the Board.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it is designed to coordinate further the activities of DTC and NSCC in order to help assure the continued prompt and accurate clearance and settlement of securities transactions in the face of changing business and regulatory requirements for the securities industry.

(B) Self-Regulatory Organization's Statement of burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. DTC and NSCC are utilities created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members complete with one another.

(C)Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from DTC participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rules Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submission should refer to File No. SR–DTC–99–17 and should be submitted by September 1, 1999.

---

[4] 15 U.S.C. 78q–1(b)(3)(C).

[5] DTC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

[6] DTC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through DTC.

For the Commission by Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20701 Filed 8–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41704; File No. SR–NASD–99–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Margin for Exempted Borrowers, Good Faith Accounts, Joint Back Office Arrangements and Options Transactions

August 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation amended its proposal on June 1, 1999, July 7, 1999, and July 15, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rule 2520, "Margin Requirements," to revise the margin requirements for exempted borrowers, good faith accounts, joint back office arrangements and options transactions. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed):

2520. Margin Requirements

(a) Definitions

For purposes of this paragraph, the following terms shall have the meanings specified below:

* * * * *

(3) The term "customer" means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. it will also include any person for whom securities are held or carried and to or for whom a member extends, arranges or maintains any credit. The term will not include *the following: (A)* a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member or its customers *[.], or (B) and "exempted borrower" as defined by Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T"), except for the proprietary account of a broker-dealer carried by a member pursuant to paragraph (e)(6) of this Rule.*

(b) Initial Margin

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) the amount specified in Regulation T[of the Boad of Governors of the Federal Reserve System]; or

* * * * *

Withdrawals of cash or securities may be made from any account which has as debit balance, "short" position or commitments, provided it is in compliance with Regulation T [of the Board of Governors of the Federal Reserve System] and after such withdrawal the equity in the account is at least the greater of $2,000 or an amount sufficient to meet the maintenance margin requirements of this paragraph.

(c) Maintenance Margin

The margin which must be maintained in [margin] *all*[4] accounts of customers, *except for cash accounts subject to other provisions of this rule,* shall be as follows:

* * * * *

[(5) In the case of securities listed on the Emerging Company Marketplace of the America Stock Exchange (AMEX), 100 percent of the market value in cash, of each security held "long" in the account, unless the AMEX determines that the security satisfies the criteria enumerated in Sections 220.17(a) and (b) of Regulation T of the Board of Governors of the Federal Reserve System for inclusion and continued inclusion on the List of OTC Margin Stocks, except for the requirement relating to the number of dealers in Sections 220.17(a)(1) and (b)(1)].

* * * * *

(e) Exceptions to Rule

The foregoing requirements of this [paragraph] *Rule*[5] are subject to the following exceptions:

* * * * *

(2) Exempted Securities, Marginable Corporate Debt Securities and Baskets

* * * * *

(C) Non-Convertible Corporate Debt Securities

On any positions in non-convertible corporate debt securities, which are listed or traded on a registered national securities exchange or quality as an "OTC margin bond," as defined in Section 220.2(t) of Regulation T [of the Board of Governors of the Federal Reserve System], the margin to be maintained shall be 20 percent of the current market value or 7 percent of the principal amount, whichever amount is greater, except on mortgage related securities as defined in Section 3(a)(41) of the Act the margin to be maintained for an exempt account shall be 5 percent of the current market value. For purposes of this subparagraph, and exempt account shall be defined as a member, non-member broker/dealer, "designated account" or any person having net tangible assets of at least sixteen million dollars.

* * * * *

(3) Joint Accounts in Which the Carrying Member or a Partner or Stockholder Therein Has an Interest

In the case of a joint account carried by a member in which such member, or

---

[7] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 1, 1999 ("Amendment No. 1"); Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated July 7, 1999 ("Amendment No. 2"); and Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division, Commission, dated July 15, 1999 ("Amendment No. 3"). Amendment No. 1 conforms several provisions of NASD Rule 2520 to New York Stock Exchange ("NYSE") Rule 431. Among other things, Amendment No. 1 indicates that, for purposes of the joint back office provisions of NASD Rule 2520, the NASD will interpret the terms "carrying and clearing member" and "carrying member" in the same manner as NYSE. Amendment No. 1 also provides additional information regarding the proposed changes to the provisions of NASD Rule 2520 governing control and restricted securities. Amendment Nos. 2 and 3 make technical changes to the text of NASD Rule 2520.

[4] *See* Amendment No. 1, *supra* note 3.

[5] *See* Amendment No. 2, *supra* note 3.

any partner, or stockholder (other than a holder of freely transferable stock) of such member participates with others, each participant other than the carrying members shall maintain an equity with respect to such interest pursuant to the margin provisions of this paragraph as if such interest were in a separate account.

Pursuant to the Rule 9600 Series, the Association may grant an exemption from the provisions of paragraph (e)(3), if the account is[:]

[(A)] confined exclusively to transactions and positions in exempted securities[;].

[(B) maintained as a Market Functions Account conforming to the conditions of Section 220.12(e) (Odd-lot dealers) of Regulation T of the Board of Governors of the Federal Reserve System; or]

[(C) maintained as a Market Functions Account conforming to the conditions of Section 220.12(c) (Underwritings and Distributions) of Regulation T of the Board of Governors of the Federal Reserve System and each other participant margins his share of such account on such basis as the Association may prescribe.][6]

* * * * *

(5) Specialists' and Market Makers' Accounts

(A) A member many carry the account of an "approved specialist or market maker," which account is limited to specialist or market making transactions, upon a margin basis which is satisfactory to both parties. The amount of any deficiency between the equity in the account and the [margin required by the other provisions of this paragraph and the] *haircut requirements pursuant to SEC Rule 15c3–1* shall be charged against the member's net capital when computing net capital under SEC Rule 15c3–1.

For the purpose of this subparagraph, the term "approved specialist or market maker" means either:

(i) a specialist or market maker, who is deemed a specialist for all purposes under the Act and who is registered pursuant to the rules of a national securities exchange; or

(ii) an OTC market maker or third market maker, who meets the requirements of Section 220.*7.(g)(5)*[12(d) of Regulation T [of the Board of Governors of the Federal Reserve System].

(B) In the case of joint account carried by a member in accordance with subparagraph (i) above in which the member participates, the equity maintained in the account by the other participants may be in any amount which is mutually satisfactory. The amount of any deficiency between the equity maintained in the account by the other participants and their proportionate share of the [margin required by the other provisions of this paragraph] *the haircut requirements pursuant to SEC Rule 15c3–1* shall be charged against the member's net capital when computing net capital under SEC Rule 15c3–1.

(6) Broker/Dealer Accounts

(*A*) A member may carry the proprietary account to another broker/dealer, which is registered with the Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T [of the Board Governors of the Federal Reserve System] are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the [margin required by the other provisions of this paragraph] *haircut requirements pursuant to SEC Rule 15c3–1* shall be charged against the member's net capital when computing net capital under SEC Rule 15c3–1.

(B) Joint Back Office Arrangements An arrangement may be established between two or more registered broker-dealers pursuant to Regulation T Section 220.7, to form a joint back office ("JBO") arrangement for carrying and clearing or carrying accounts or participating broker-dealers. Members must provide written notification to the Association prior to establishing a JBO arrangement.

(i) A carrying and clearing, or carrying member must:

a. maintain a minimum tentative net capital of $25 million as computed pursuant to SEC Rule 15c3–1, except that a member whose primary business consists of the clearance of options market-maker accounts may carry JBO accounts provided that it maintains a minimum net capital of $7 million as computed pursuant to SEC Rule 15c3–1. In addition, the member must include in its ratio of gross options market maker haircuts required by the provisions of SEC Rule 15c3–1 gross deductions for JBO participant accounts. Clearance of option market maker accounts shall be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the above ratio are options market maker deductions. In the event that a carrying and clearing, or a carrying member's tentative net capital, or net capital, respectively, has fallen below the above requirements, the firm shall: (a) promptly notify the Association in writing of such deficiency, (b) take appropriate action to resolve such deficiency within three consecutive business days, or not permit any new transactions to be entered into pursuant to the JBO arrangement;

b. maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker/dealers which shall be made available to the Association on request; and

c. deduct from net capital haircut requirements pursuant to SEC Rule 15c3–1 amounts in excess of the equity maintained in the accounts of participating broker/dealers.

(ii) A participating broker/dealer must:

a. be a registered broker/dealer subject to the SEC's net capital requirements;

b. maintain an ownership interest in the carrying/clearing member organization pursuant to Regulation T of the Federal Reserve Board, section 220.11; and

c. maintain a minimum liquidating equity of $1 million in the JBO arrangement exclusive of the ownership interest established in (ii)(b) above. When the minimum liquidating equity decreases below the $1 million requirement, the participant must deposit an amount sufficient to eliminate this deficiency within 5 business days or be subject to margin requirements pursuant to the other provisions of this Rule.[7]

(7) Nonpurpose Credit

In a nonsecurities credit account, a member may extend and maintain nonpurpose credit to or for any customer without collateral or on any collateral whatever, provided,

(A) the account is recorded separately and confined to the transactions and relations specifically authorized by Regulation T [of the Board of Governors of the Federal Reserve System];

* * * * *

The term "nonpurpose credit" means an extension of credit other than "purpose credit" as defined in Section 220.2[(u)] of Regulation T [of the Board of Governors of the Federal Reserve System].

---

[6] *See* Amendment No. 1, *supra* note 3.

[7] NASD Regulation agreed to revise NASD Rule 2520(e)(6)(B) to: (1) Replace a period at the end of NASD Rule 2520(e)(6)(B)(i)(a) with a semi-colon; and (2) revise NASD Rule 2520(e)(6)(B)(ii)(c) to refer to the preceding paragraph as (ii)(b) rather than (2). Telephone conservation between Elliott R. Curzon, Assistant General Counsel, NASD Regulation, and Yvonne Fraticelli, Special Counsel, Division, Commission, on July 19, 1999.

(B) Shelf-Registered, Control and Restricted Securities

* * * * *

(B) Control and Restricted Securities—The equity in accounts of customers for control securities and other restricted securities of issuers who continue to maintain a consistent history of filing annual and periodic reports in timely fashion pursuant to the formal continuous disclosure system under the Act, which are subject to Rule 144 or 145(d) under the Securities Act of 1933, shall be 40 percent of the current market value of such securities "long" in the account, provided the member:

(i) in computing net capital, deducts any margin deficiencies in customers' accounts based upon a margin requirement as specified in subparagraph (c)(ii) below for such securities and values only that amount of such securities which are then salable under Rule 144 or 145(d) under the Securities Act of 1933 in conformity with all of the applicable terms and conditions thereof, for purposes of determining such deficiencies; and

* * * * *

(C) Additional Requirements on Shelf-Registered Securities and Control and Restrict Securities—A member extending credit on shelf-registered, control and other restricted securities in margin accounts of customers shall be subject to the following additional requirements:

(i) The Association may at any time require reports from members showing relevant information as to the amount of credit extended on shelf-registered, control and restricted securities and the amount, if any, deducted from net capital due to such security positions.

(ii) Concentration Reduction. A concentration exists whenever the aggregate position in control and restricted securities of any one issue, *excluding excess securities (as defined below),*[8] exceeds:

a. 10 percent of the outstanding shares or

b. 100 percent of the average weekly volume during the preceding three-month period. Where a concentration exists, for purposes of computing subparagraph (B)(i) above, the margin requirement on such securities shall be, based on the greater of (ii) a or b, above, as specified below:

Percent of outstanding shares	or, Percent of average weekly volume	Margin requirement
Up to 10 percent	Up to 100 percent	25 percent.
Over 10 percent and under 15 percent	Over 100 percent and under 200 percent	30 percent.
15 percent and under 20 percent	Over 200 percent and under 300 percent	45 percent.
20 percent and under 25 percent	300 percent and under 400 percent	60 percent.
25 percent and under 30 percent	400 percent and under 500 percent	75 percent.
30 percent and above	500 percent and above	100 percent.

For purposes of this sub-paragraph (e)(8)(C)(ii), "excess securities" shall mean the amount of securities, if any, by which the aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on such control and restricted securities if the applicable margin requirement were 50%.

(D) Restricted Securities—Securities either:

(i) [held by non-affiliates of the issuer which are] then salable [by non-affiliate] pursuant to the terms and conditions of Rule 144(k) under the Securities Act of 1993, or

(ii) [which have been acquired by non-affiliates of the issuer in connection with Rule 145(a) transaction under the Securities Act of 1933 which are] then salable [by such non-affiliate] pursuant to the terms and conditions of Rule 145 (d)(2) or (d)(3) under such Act,

shall not be subject to the provisions of this subparagraph [H] *(e)(8)*, provided that the issuer continues to maintain a consistent history of filing annual and periodic reports in timely fashion pursuant to the formal continuous disclosure system under the Act.[9]

[8] *See* Amendment No. 1, *supra* note 3.

(f) Other Provisions

* * * * *

(2) Puts, Calls and Other Options

* * * * *

(H)

* * * * *

(iv)

* * * * *

In the case of a put on an option contract (including a put on a broad index stock group), the letter of guarantee must certify that the guarantor holds for the account of the customer as security for the letter, cash or cash equivalents which have an aggregate market value, computed as at the close of business on the day the put is written, of not less than 100 percent of the aggregate exercise price of the put and that the guarantor will promptly pay the member the exercise settlement amount (in the case of a put on a broad index stock group) or the aggregate exercise price (in the case of any other put on an option contract) in the event the account is assigned an exercise notice. Cash equivalents shall mean those instruments referred to in Section 220.2 of Regulation T [of the Board of Governors of the Federal Reserve System.]

[9] *See* Amendment No. 1, *supra* note 3.

* * * * *

(L) Exclusive designation—A customer may designate at the time an option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the member; or the customer may have a standing agreement with the member as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Any security held in the account which serves in lieu of the required margin for a short put or short call shall be unavailable to support any other option transaction in the account.

(M) Cash account transactions—A member may make option transactions in a customer's cash account, providing:

(i) The transaction is permissible under Regulation T, Section 220.8; or

(ii) The transaction is a debit put spread in listed broad-based index options with European-style exercise comprised of a long put(s) coupled with a short put(s) overlying the same broad-based index with an equivalent underlying aggregate index value and the short put(s) and long put(s) expire simultaneous[7], and the strike price of

the long put(s) exceed the strike price of the short put(s).

* * * * *

(3) "When Issued" and "When Distributed" Securities

(A) Margin Accounts

* * * * *

When an account has a "short" position in a "when issued" security and there are held in the account securities upon which the "when issued" security may be issued, such "short" position shall be marked to the market and the balance in the account shall for the purpose of this [paragraph (c)] *Rule* [10] be adjusted for any unrealized loss in such "short" position.

(B) Cash Accounts

* * * * *

The provisions of this subparagraph [(B)]*(f)(3)* shall not apply to any position resulting from contracts on a "when issued" basis in a security:

* * * * *

(6) Time Within Which Margin or "Mark to Market" Must Be Obtained

The amount of margin or "mark to market" required by any provision of [this paragraph (c)] *this Rule* shall be obtained as promptly as possible and in any event within fifteen business days from the date such deficiency occurred, unless the Association has specifically granted the member additional time.

(7) Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited

When a "margin call," as defined in Section 220.2[(1)] of Regulation T [of the Board of Governors of the Federal Reserve System], is required in a customer's account, no member shall permit a customer to make a practice of either deferring the deposit of cash or securities beyond the time when such transactions would ordinarily be settled or cleared, or meeting the margin required by the liquidation of the same or other commitments in the account.

* * * * *

(8) Special Initial and Maintenance Margin Requirements

* * * * *

(B) Day-Trading

The term "day-trading" means the purchasing and selling of the same security on the same day. A "day-trader" is any customer whose trading shows a pattern of day-trading. Whenever day-trading occurs in a customer's margin account the margin to be maintained shall be the margin on the "long" or "short" transaction, whichever occurred first, as required pursuant to the other provisions of this Rule. When day-trading occurs in the account of a "day-trader" the margin to be maintained shall be the margin on the "long" or "short" transaction, whichever occurred first, as required by Regulation T [of the Board of Governors of the Federal Reserve System] or as required pursuant to the other provisions of this Rule, whichever amount is greater.

* * * * *

(9) Free-Riding in Cash Accounts Prohibited

No member shall permit a customer (other than a broker/dealer or a "designated account") to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No member shall permit a customer to make a practice of selling securities with them in a cash account which are to be received against payment from another broker/dealer where such securities were purchased and are not yet paid for. A member transferring an account which is subject to a Regulation T 90-day freeze to another member firm shall inform the receiving member of such 90-day freeze. The provisions of Section 220.8(c) of Regulation T [of the Board of Governors of the Federal Reserve System] dictate the prohibitions and exceptions against customers' free-riding. Members may apply to the Association in writing for waiver of a 90-day freeze not exempted by Regulation T.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Association included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation is proposing to adopt amendments to the provisions of NASD Rule 2520 relating to exempted borrowers, good faith accounts, joint back office ("JBO") arrangements and options transactions to conform NASD Rule 2520 to recent changes to NYSE Rule 431 and recently adopted changes to Regulation T promulgated by the Board of Governors of the Federal Reserve System ("Federal Reserve Board"). NASD Regulation is also proposing other minor changes to eliminate obsolete provisions and correct errors in the text of NASD Rule 2520.

Margin Requirements for Exempted Borrowers and Good Faith Accounts. Under the recent changes to Regulation T, the Federal Reserve Board has created a new category of account called the "good faith account" to replace the "non-purpose," "arbitrage," and "government securities" accounts. In the good faith account, a customer can purchase certain securities (exempted and non-equity securities, and money market and exempted securities mutual funds) on "good faith" margin (the amount of margin specified by the creditor in the exercise of sound credit judgment) or the margin specified by the regulatory authority, whichever is greater. Regulation T no longer specifies initial margin, payment and liquidation time frames for transactions in these securities in a good faith account. NASD Regulation believes that these changes to Regulation T represent a continuing philosophical shift away from government mandated credit regulation and toward greater reliance on industry self-regulation and risk assessment.

NASD Regulation believes that transactions in good faith accounts raise the same safety and soundness questions as transactions in cash and margin accounts. Accordingly, the proposed amendments require all accounts (except for cash accounts) to maintain margin as required by NASD Rule 2520. Cash accounts will continue to be subject only to certain specific requirements, not to the overall requirements of the rule.

In addition, NASD Regulation states that the Federal Reserve Board exempted a class of borrowers called "exempted borrowers" (broker-dealers that do substantial public business) from the requirements of Regulation T. The proposed amendments to NASD Rule 2520 will recognize the exemption

[10] See Amendment No. 3, *supra* note 3.

adopted by the Federal Reserve Board by codifying the exemption in the definition of "customer" in paragraph 2520(a)(3). However, the proposed amendments will require that the proprietary accounts of an introducing member that are carried or cleared by another member remain subject to the equity requirements of 2520(e)(6), which prohibit a member from carrying a proprietary account in a deficit equity condition and require the difference between the account equity and the margin required by NASD Rule 2520 to be deducted from the member's net capital.[11]

Amendments to Provide for Joint Back Office Arrangements.[12] NASD Regulation is also proposing amendments to provide for JBO arrangements established pursuant to Section 220.7 of Regulation T. A JBO arrangement is one in which the creditor is a carrying and clearing broker-dealer or a carrying broker-dealer[13] owned jointly or individually by other creditors. The amendments would require members, prior to establishing a JBO arrangement, to notify the Association. In addition, a carrying and clearing broker-dealer or a carrying broker-dealer in a JBO arrangement must maintain minimum net capital of $25 million. If a carrying and clearing broker-dealer or a clearing broker-dealer only clears options market-maker accounts, it must maintain minimum net capital of $7 million.

A carrying and clearing broker-dealer or a carrying broker-dealer in a JBO arrangement must include in its ratio of gross options market maker haircuts for net capital purposes the gross deductions of JBO participant accounts. In the event that a carrying and clearing broker-dealer or a carrying broker-dealer's tentative net capital or net capital falls below the requirements, the broker-dealer must notify the Association of the deficiency and resolve the deficiency within three business days. If the deficiency is not resolved, the broker-dealer may not permit any new transactions under the JBO arrangement. In addition, a carrying and clearing broker-dealer or a carrying broker-dealer in a JBO arrangement must maintain a written risk analysis methodology for assessing credit extensions and deduct the excess equity of participating broker-dealers from its net capital haircuts.

A participating broker-dealer must be registered as a broker-dealer, maintain an ownership interest in the carrying and clearing broker-dealer or the carrying broker-dealer, and have a liquidating equity of $1 million in the JBO arrangement, exclusive of its ownership interest in the carrying and clearing broker-dealer or the carrying broker-dealer.

Control and Restricted Securities. Currently, the "Concentration Reduction" provision in NASD Rule 2520(e)(8)(C)(ii) is designed to impose increasing margin requirements for customer positions in control and restricted securities based upon the percent of outstanding shares or the percent of average weekly volume that the position represents. The effect of the provision, however, is to impose a margin requirement on the entire position, rather than on part of the position that actually collateralizes the loan extended to the customer. Thus, the customer is penalized for maintaining a position that exceeds the collateral necessary to cover his margin loan. To eliminate this unintended penalty, the proposed rule change adds language excluding "excess securities" from the concentration reduction calculation. The proposal defines "excess securities" as the amount of securities by which the aggregate position in control and restricted securities of any one issue would be required to support the aggregate credit extended on such control and restricted securities if the applicable margin requirement was 50% percent. Thus, under the proposed rule change, the concentration reduction calculation will be performed on an aggregate position that is only as large as the collateral necessary to support a margin loan of 50% percent.

In addition, the proposed rule change expands the exception in paragraph (e)(8) to include all restricted securities that can be sold pursuant to SEC Rules 144(k), 145(d)(2), or 145(d)(3). Currently, only those restricted securities that can be sold by non-affiliates of the issuer pursuant to SEC Rules 144(k), 145(d)(2), or 145(d)(3) are excepted from paragraph (e)(8). Thus, in the event of a customer default, members will be permitted to sell certain restricted securities pursuant to SEC Rule 144(k) without being subject to the requirements of NASD Rule 2520. Accordingly, those customer-owned, restricted securities that can be sold under SEC Rule 144(k) would be subject to the same maintenance margin requirements that presently apply to ordinary stock (25%).

Amendments to Margin Rules governing Options Transactions. NASD Regulation is proposing to amend paragraph (f)(2) to add subparagraphs (L) and (M), which are identical to current provisions in NYSE Rule 431, to permit customers to designate securities positions to margin options trades, and to permit options transactions in customer cash accounts to the extent the transaction is permissible under Regulation T, or that has certain other specific characteristics.

Amendments to Conform to Changes to Regulation T. NASD Regulation is also proposing to amend NASD Rule 2520 to conform references to Regulation T to the amendment to

---

[11] According to NASD Regulation, under the National Securities Markets Improvement Act of 1996 ("NSMIA"), the Federal Reserve Board no longer has the authority to regulate credit for the market making transactions of a registered market maker (transactional exemption); however, broker-dealers that are not market makers and that do not qualify as exempted borrowers because they do not meet the Regulation T definition are treated like ordinary customers for purposes of Regulation T initial margin. Currently, NASD Rule 2520 permits good faith maintenance margin for broker-dealer's market making and proprietary accounts. *See* Rule 2520(e)(5) and (e)(6). This good faith maintenance margin standard will not be changed under the proposed amendments.

[12] The Chicago Board Options Exchange, the Chicago Stock Exchange, the NYSE, the Philadelphia Stock Exchange, and the Pacific Exchange have filed similar proposed rule changes with the Commission relating to JBOs. Notices of the exchanges' JBO proposals have been published for comment. *See* Securities Exchange Act Release Nos. 39416 (December 10, 1997), 62 FR 66154 (December 17, 1997) (File No. SR–CBOE–97–58); 40384 (August 31, 1998), 63 FR 48286 (September 9, 1998) (File No. SR–CHX–98–12); 39497 (December 29, 1997), 63 FR 899 (January 7, 1998) (File No. SR–NYSE–97–28); 39680 (February 18, 1998), 63 FR 9822 (February 25, 1998) (File No. SR–PCX–97–49); and 39419 (December 10, 1997), 62 FR 66169 (December 17, 1997) (File No. SR–PHLX–97–56).

[13] Like the NASD's current proposal, the NYSE's JBO proposal permits "carrying and clearing" broker-dealers and "carrying" broker-dealers to establish JBOs. The NYSE sought and obtained interpretative guidance from the Federal Reserve Board of Governors indicating that a broker-dealer that would carry the accounts of JBO participants on its books but would not itself clear the JBO participants' accounts would be a "clearing and servicing broker" for purposes of Section 220.7(c) of Regulation T and, accordingly, would be permitted to establish a JBO. *See* Letter from Scott Holz, Counsel, Federal Reserve Board of Governors, to Raymond J. Hennessy, Vice President, Member Firm Regulation, NYSE, dated April 16, 1999 ("April 16 Letter"). NASD Regulation understands that the NYSE uses the terms "clearing member" and "carrying member" to refer to two distinct forms of activity engaged in by certain firms. In addition, NASD Regulation agrees with the interpretation set forth in the April 16 Letter and intends for the terms "carrying and clearing member" and "clearing member" to have the same meaning in NASD Rule 2520 as they have in NYSE Rule 431. NASD Regulation states that it intends for NASD Rule 2520 to be substantially identical to NYSE Rule 431 to minimize confusion regarding margin requirements for NASD members who are also NYSE members. Accordingly, NASD Regulation intends that, unless otherwise specifically noted or where the language of NASD Rule 2520 differs substantively from NYSE Rule 431, the two rules are to be read and interpreted in the same manner. *See* Amendment No. 1, *supra* note 3.

Regulation T recently adopted by the Federal Reserve Board.

Miscellaneous Amendments. NASD Regulation is proposing to eliminate paragraph (c)(5) prescribing maintenance margin for American Stock Exchange Emerging Company Marketplace securities because the Emerging Company Marketplace no longer exists. NASD Regulation is also proposing to eliminate paragraphs (e)(3)(B) and (C) because Section 220.12 of Regulation T was deleted under the recent amendments to Regulation T.[14]

2. Statutory Basis

The Association believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the rules of an Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying a the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–05 and should be submitted by September 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20636 Filed 8–10–99; 8:45 am]

BILLING CODE 8010–01–M

[14] Telephone conversation between Elliott R. Curzon, Assistant General Counsel, NASD Regulation, and Anitra Cassesa, Division, Commission, on July 8, 1999.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41703; File No. SR–NYSE–99–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amended Rules 13 and 72

August 4, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rules 13 and 72 to define XPress orders and describe how such orders are to be executed. Below is the text of the proposed rule change. Proposed new language is in *italics.*

* * * * *

Rule 13 Definitions of Orders

XPress order

An order to buy or sell a security for no less than such number of shares as the Exchange shall from time to time determine and no more than the displayed size of an XPress quote, as defined below, which order is to be executed in whole or in part at the price of the XPress quote, if available, or at a better price if obtainable. The portion not so executed shall be treated as cancelled.

An XPress quote is a quote so indicated by the Exchange. In order to be indicated as an XPress quote, a published bid or offer must be at the same price, for no less than the number of shares and the minimum period of time that the Exchange shall from time to time determine. If the XPress bid or offer price changes or the published bid or offer size is less than such number of shares, the bid or offer shall no longer be indicated as an XPress quote. (See also Rule 72.50.)

The Exchange shall make known to its membership to minimum size for XPress orders and the minimum size and time requirements for XPress quotes.

Rule 72 Priority and Precedence of Bids and Offers

* * * * *

(f) *Except as provided in .50 below,* a sale shall remove all bids from the Floor except that if the number of shares of stock or principal amount of bonds offered exceeds the number of shares or principal amount specified in the bid having priority or precedence, a sale of the unfilled balance to other bidders shall be governed by the provisions of these Rules as though no sales had been made to the bidders having priority or precedence.

* * * * *

.50 XPress Orders.—An execution of an XPress order, in whole or in part, shall not remove bids or offers from the Floor. Once an XPress order has been represented in the Crowd, no part of the XPress bid or offer against which the XPress order is to be executed shall be withdrawn, except to provide price improvement to all or part of the XPress order. When an XPress order has been executed in part at an improved price, the remainder of such order shall be executed at the XPress bid or offer up to the number of shares then available, regardless of whether such number is less than the minimum size for an XPress quote. All XPress orders shall be executed in strict time priority with respect to each other. A member who is providing a better price to an XPress order must trade with all other market interest having priority at that price before trading with the XPress order.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation in its auction market, the Exchange proposes to create a new type of order, known as an "XPress Order." The Exchange believes this order type responds to the needs of market participants for "clean" executions when entering large-size orders in response to bids and offers which have been displayed for a minimum time period. NYSE Rule 13 would be amended to define XPress order and XPress quote. NYSE Rule 72 would be amended to provide the requirements for executing XPress orders.

An XPress order is an order of a specified minimum size which is to be executed against a displayed XPress quote, or at an improved price, if obtainable. In order to be indicated as an XPress quote, a published bid or offer must be for no less than the specified minimum share size at the same price for no less than 30 seconds. The Exchange proposes to initially set the minimum size for XPress orders and XPress quotes at 25,000 shares. Within six months after implementation, as experience is gained with XPress orders, the NYSE proposes to reduce the minimum size to 15,000 shares, unless experience indicates that it would not be appropriate to do so. The 30 second minimum requirement for XPress quotes would also be reviewed by the NYSE at such time, with consideration given to possibly decreasing this minimum.

It is possible for one or both sides of a quote to be indicated as XPress. If the XPress bid or offer *price changes* or the published bid or offer *size becomes less than* the specified minimum size, the bid or offer will no longer be indicated as an XPress quote. For example, if there is an XPress offer of 40,000 shares at 50 and the offer changes to 40,000 shares at 49 15/16, the offer is no longer XPress, as it has not been the same price for 30 seconds.

XPress orders will be delivered to the specialist's post via the Exchange's automated order routing system. Multiple XPress orders in the same stock will be executed in strict time priority with respect to each other and with respect to other orders. The size of the XPress order may not exceed the size of the XPress bid or offer against which it is to be executed at the time of order entry. An XPress order is guaranteed an execution at the XPress quote price up to the full size of the displayed XPress quote, if available.

If an XPress order is received at the specialist's post and the quote is no longer XPress, the XPress order will be cancelled. For example, assume there is an XPress offer of 30,000 shares when an XPress order to buy 25,000 shares is entered and a broker in the Crowd buys 25,000 shares (*i.e.*, takes 25,000 shares of the offer) before the XPress order is received at the post. The XPress order will be cancelled as the 5,000 share offer is less than the minimum size required and therefore is no longer an XPress offer. however, if the quote had been reduced in size from time of order entry, but was still an XPress quote (*i.e.*, still greater than minimum size), the full size of the XPress order would be represented and be given an opportunity for price improvement. Any portion of the XPress order not executed, at either the XPress or an improved price, would be cancelled.

All or part of an XPress order may be executed at an improved price, if available. An execution of an XPress order, in whole or in part, does not remove bids or offers from the Floor. This means that an XPress order that has been executed in part at an improved price retains its priority [3] (*i.e.*, is first in line for execution) and does not have to compete (*i.e.*, be on parity) with newly entered bids or offers at the XPress quote. For example, if 30,000 shares are offered at 50 2/16 (XPress), an XPress order could come in to buy 30,000 at 50 2/16 and be partially executed at an improved price (*e.g.*, 15,000 at 50 1/16). The remainder of the XPress order would retain priority to be executed at 50 2/16 (the XPress offer price) and would not have to compete on parity with other subsequent bidders at 50 2/16. (Without this proposed provision, Rule 72(f), which provides that a trade clears the Floor, would apply; in which case, once 15,000 traded 50 1/16, all bids and offers would be removed from the Floor and a new auction would begin. If that were the case, the XPress bid to buy the remaining 15,000 shares at 50 2/16 would no longer have priority and would be on a parity with any other bids made at that price, thereby defining the purpose of the XPress order type.)

Once the specialist has represented an XPress order in the Crowd, no part of the XPress bid or offer against which the XPress order is to be executed may be withdrawn, except to provide price improvement to all or part of the XPress order. The remainder of such order would be executed at the XPress bid or offer up to the number of shares then available, regardless of whether such number is less than the minimum size for an XPress quote.

For example, assume there is an XPress offer of 30,000 shares at 50 which consists of 20,000 shares offered by Broker A and 10,000 shares offered by Broker B. If an XPress order to buy 25,000 shares arrives at the post, the specialist will ask if anyone is willing to offer price improvement to a 25,000 share XPress order to buy at 50. Broker B could withdraw 10,000 shares offered at 50 and offer to sell 10,000 shares at 49 15/16. The XPress order would then buy 10,000 shares at the improved price of 49 15/16. Broker A could not then withdraw 20,000 shares offered at 50 because the XPress order has already been represented. The XPress order is entitled to 15,000 at 50 to complete the order, even though the quote is now below the minimum size.

All or part of the balance of an XPress bid or offer could be withdrawn after an XPress order has been executed and before any subsequent XPress orders are represented.

A member who is providing a better price to an XPress order must trade with all other market interest having priority at that price before trading with the XPress order. For example, assume the market is quoted 49 15/16 bid for 5,000 shares and 60,000 shares offered at 50 which is an XPress offer. If an XPress order to buy 30,000 shares at 50 comes in and a broker in the Crowd offers to improve the price by selling 30,000 shares at 49 15/16, the broker must first trade with the 5,000 share bid at 49 15/16 which has priority. The XPress order would then buy 25,000 shares at 49 15/16 and would complete the order by buying 5,000 shares at 50.

The effective date of the proposed rule change will be based on the implementation of enhancements to NYSE systems as well as the state of readiness of the member firm community. The preliminary target is to

[3] Exchange Rules 71 and 72 provide that the first bid made at the highest price has priority. Similarly, the first offer at the lowest price has priority.

complete NYSE systems enhancements to support XPress orders by the third quarter of 2000.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE believes the proposed rule change would perfect the mechanism of a free and open market by permitting orders that meet the rule's requirements to interact with exposed XPress bids and offers to the fullest extent possible, thus providing more options for market participants. The Exchange believes that the proposed rule change is designed to protect investors and the public interest by requiring that bids and offers be of a minimum size and be displayed for a minimum period of time before becoming XPress, and thus should give brokers and non-XPress orders the opportunity to interact with the quote before coming XPress eligible. In addition, brokers may interact with an XPress order by providing price improvement. The Exchange believes that the proposed rule change should protect bids and offers on the book or in the Crowd that have priority at an improved transaction price and all orders are executed in time and price priority.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer File No. SR–NYSE–99–24 and should be submitted by September 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20630 Filed 8–10–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41701; File No. SR–NYSE–99–20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Examination Specifications and Content Outline for the Front Line Specialist Clerk Qualification Examination (Series 21)

August 3, 1999.

I. Introduction

On May 14, 1999, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to examination specifications and content outline for the Front Line Specialist Clerk Qualification Examination (Series 21). The proposed rule change was published for comment in the **Federal Register** on June 18, 1999.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Exchange Rule 35 requires that employees of members and member organizations be registered with and approved by the Exchange prior to admittance to the Trading Floor. Currently, the registration process for Floor employees functioning as Front Line Specialist Clerks ("FLS Clerks") primarily consists of submission of a completed Form U–4 ("Uniform Application for Securities Industry Registration or Transfer") and fingerprints. Under a proposed interpretation of Rule 35, which has been approved separately by the Commission (SR–NYSE–99–19), these FLS Clerks also will have to be qualified by taking and passing an appropriate qualification examination and by meeting appropriate training requirements.

The Front Line Specialist Clerk Qualification Examination ("Series 21") and Content Outline, which the Exchange is asking the Commission to approve in this filing, were developed by the Exchange, in conjunction with a committee of Floor representatives (members, Specialists, and FLS Clerks)

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41515 (June 10, 1999), 64 FR 32911.

to qualify FLS Clerks pursuant to the new interpretation of Rule 35. The Series 21 examination will help ensure that FLS Clerks have the basic knowledge, skills, and abilities necessary to perform their duties, which include assisting Floor Specialists.

The Series 21 examination is a 90-minute test consisting of 65 questions. The examination covers such topics as preparing for the market opening, operating the display book, preparing for the market close, and generating trade reports. The requirement to take and pass the Series 21 examination to qualify as an FLS Clerk will apply to both current and prospective FLS Clerks. All candidates must pass the Series 21 examination before functioning as an unsupervised FLS Clerk, *i.e.*, functioning without the specialized supervision required during the training period.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules regulation thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act,[5] which provides that the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience, and competence as are prescribed by the rules of the Exchange. The Commission finds that the subject matter included in the Series 21 Examination and the content outline by the Exchange is consistent with Section 6(c)(3)(B) because it provides the Exchange with an appropriate means for measuring an FLS Clerk's ability and qualifications. The Series 21 Examination and content outline covers such topics as preparing for the market opening, operating the display book, preparing for the market close, and generating trade reports. Requiring all current and future FLS to pass the Series 21 Examination will help ensure that they are adequately trained and qualified to perform their duties competently.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–99–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20635 Filed 8–10–99; 8:45 am]

BILLING CODE 8010–01–M

[4] In approving the proposed rule change, the Commission also has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(c)(3)(B).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41699; File No. SR–PCX–99–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Market Maker Surcharges

August 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] notice is hereby given that on June 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. On June 25, 1999, and July 16, 1999, the PCX filed with the Commission Amendment Nos. 1 and 2, respectively, to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its rules to adopt a one-year pilot program under which the Exchange will impose a fee on Market Makers for contracts traded by Market Makers in particular option issues. The fee will be used to reduce order book execution charges on the PCX. Below is the text of the proposed rule change. Proposed new language is in *italic*.

* * * * *

RULE 16.1

RATES AND CHARGES

Market Maker Surcharge for Customer Rate Reduction

Rule 16.1(a) Definitions

(1) Resident Market Maker. A Resident Market Maker in a particular issue of options is a Market Maker who transacted at least 80% of his or her market maker contracts in option issues traded in the trading crowd where the particular option issue is traded in the prior calendar month.

(2) Standard OBO Rate. The Standard OBO Rate is any rate for Order Book Official ("OBO") floor brokerage established by the Exchange for the particular equity option issue traded on the Exchange Floor, other than pursuant to this Rule.

(3) Standard Market Maker Fees. Standard Market Maker Fees are the total market maker fees established by the Exchange for the particular option issue other than any fees implemented pursuant to this Rule.

(4) Market Maker Surcharge. The Market Maker Surcharge is the amount of the fee, not to exceed 25 cents per contract, that the Exchange may impose on Market Makers for a particular issue of option pursuant to this Rule that is in addition to the Standard Market Maker Fees for the option issue.

(b) Generally.

(1) The Options Floor Trading Committee ("OFTC") may impose a Market Maker Surcharge for transactions in a particular issue of options, which Surcharge will be imposed on a per contract basis for every contract traded by every Market Maker, whether in-person or by order, in that option issue during the period for which the Market Maker Surcharge is in effect.

(2) In imposing the fee, the OFTC will consider the vote of the Resident Market Makers for a particular option issue, as described in paragraph (d) of this Rule. In addition, the OFTC will consider the views of any Market Maker in favor of or opposed to the recommended Surcharge or in favor of some other Surcharge amount. The OFTC will provide notice of its meeting schedule for the consideration of the Market Maker Surcharge and the deadline for the submission of other materials for its consideration. The OFTC will determine the manner in which it will review the submitted materials and whether it will allow personal appearances before the OFTC. A decision of the OFTC may be appealed to the Exchange's Board of Appeals Committee pursuant to Rule 11; however, the Surcharge will be

[1] 15 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the Exchange removed a provision that permitted the Options Floor Trading Committee ("OFTC") to delegate responsibility and corrected a typographical error. *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation ("Division"), Commission, dated June 24, 1999 ("Amendment No. 1"). In Amendment No. 2, the Exchange corrected a typographical error. *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division, Commission dated July 15, 1999 ("Amendment No. 2").

effective until the matter has completed the Exchange's review process. The OFTC through authority delegated by the Board of Governors will submit a rule filing pursuant to Section 19(b)(3) of the Exchange Act before the implementation of any new Surcharge or any change in the Surcharge or change in the OBO rate made pursuant to this Rule.

(3) The Market Maker Surcharge will be used to reimburse the Exchange to the extent the OFTC reduces the OBO brokerage rate applicable to the particular option issue below the standard OBO Rate pursuant to paragraph (g) of this Rule. Any amount remaining after the Exchange has been reimbursed will be refunded to each Market Maker who paid the Surcharge in that issue (on a pro rata basis). The Market Maker Surcharge generally will be assessed after the end of the month in which transactions on which the Market Maker Surcharge was based occurred.

(c) Time Period. The Market maker Surcharge generally will be instituted for a minimum period of one month.

(d) Vote to Recommend a Market Maker Surcharge Amount.

(1) Any Resident Market Maker may recommend a Market Maker Surcharge amount by the Friday prior to the vote or by any other time and date required by the OFTC. The vote of the Resident Market Makers to recommend the Surcharge will take place at the trading post where the applicable option issue is traded on the Tuesday of expiration week for equity options, or on any other day selected by the OFTC. The OFTC must provide 24 hour notice of the time and date of the vote to the trading crowd if the vote is to be held at a different time or on a different day. The OFTC will determine how the vote will be conducted. Any Resident Market Maker personally present at the trading post when the vote is conducted may vote on the amount of the Surcharge to be recommended. The Order Book Official at the particular trading post will conduct the vote.

(2) Each Resident Market Maker's vote will be weighted equally.

(3) Any Surcharge amount that receives a majority of the votes cast will be the Surcharge recommended to the OFTC. If any Surcharge amount does not receive a majority on the first ballot, the OBO may conduct subsequent ballots with the proposed Surcharges received the most votes or may solicit Resident Market Makers for other proposed Surcharge amounts.

(e) Option Issues. The OFTC may specify those option issues on which a Surcharge may be assessed pursuant to paragraph (b) of this rule. In no event may the OFTC permit a Surcharge to be assessed on an issue that is not also listed for trading on at least one other options exchange. In addition, the Surcharge may not be assessed for an option issue that has been allocated to a Lead Market Maker.

(f) Book Brokerage Rates. The OFTC may reduce the Exchange's OBO Rate for a particular option issue below the Standard OBO Rate upon a recommendation of the Resident Market Makers pursuant to the terms of the vote in paragraph (d). In determining to reduce the OBO brokerage rate, the OFTC will consider not only the vote of the Resident Market makers, but also the views of any other Floor Broker or Market Maker who submits views to the OFTC pursuant to the published schedule for such submissions. Notice of the hearing, governance of the hearing, and all appeal rights will be the same as those set forth in paragraph (b)(ii) of this Rule. If the OFTC determines to reduce the OBO brokerage rate below the Standard OBO Rate, the Exchange will make the appropriate filing as required by the Exchange Act. To the extent the OFTC reduces the OBO brokerage rate below the Standard OBO Rate, any Market Maker Surcharge will be sued to reimburse the Exchange for the difference pursuant to paragraph (b)(iii). If the Exchange determines on its own initiative, otherwise than pursuant to this Rule, to lower the Standard OBO Rate for a particular equity option issue, the Market Maker Surcharge will not be used to reimburse the Exchange for such reduction.

(g) Pilot Program. This Rule will be in effect as a pilot program until one year from [date of SEC approval of this Rule.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis or, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set for in Sections A, B, and C below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. Many options traded on the PCX are traded in crowds where the quotes are established by competing Market Makers.[3] In the PCX's competing market maker crowds, the agency function is performed by OBOs, who are PCX employees, and Floor Brokers. An OBO maintains the limit order book in reach option issue. Only non-broker/dealer customer orders may be placed with an OBO.[4] Orders that cannot be placed with an OBO must be manually represented in the trading crowd. Other exchanges, such as the American Stock Exchange and Philadelphia Stock Exchange, have a specialist system whereby specialists can serve both the agency and principal functions. At the Chicago Board Options Exchange ("CBOE"), certain issues are traded by Designated Primary Market Makers ("DPMs"), who can also serve both functions.[5]

As a result of the differences between competing market maker crowds and specialist and DPM systems, the OBO's rates at the PCX compete with rates charged by specialists and DPMs at other exchanges with respect to orders that can be placed with an OBO. The Exchange notes that specialists and DPMs can reduce their book execution rates to attract order flow and can offset such reductions through revenue they earn from the principal part of their business. Because the PCX's non-LMMs (who cannot represent agency orders) lack the flexibility over pricing enjoyed by specialists and DPMs at other exchanges, the PCX developed the current proposal to allow the PCX and its member firms to better compete with other exchanges in order book rates.

General Description of the Proposal. The Exchange is proposing a new PCX Rule 16.1 that would allow the

[3] Other options on the PCX are traded in a Lead Market Maker ("LMM") system. The LMM functions in approved option issues as a market and, for those LMMs participating in the LMM Book Program, in the place of the Order Book Official ("OBO"). *See* PCX Rule 6.82; Securities Exchange Act Release No. 40548 (October 14, 1998) 63 FR 56283 (October 21, 1998). This proposal will apply to option issues traded by market maker trading crowds, but will not apply to issues traded by LMMs.

[4] *See* PCX Rule 6.52(a).

[5] The proposal is similar to a recent CBOE rule change. *See* Securities Exchange Act Release No. 41121 (February 26, 1999) 64 FR 11523 (March 9, 1999). At the CBOE, like the PCX, some, but not all option issues are traded by market maker trading crowds (and are not traded under the DPM or LMM system).

Exchange to impose a fee on Market Makers ("Surcharge") for contracts traded by Market Makers in a particular option issue. This fee, not to exceed $0.25 per contract,[6] will be collected by the Exchange and will be used to reimburse the Exchange to the extent the OBO brokerage rate is reduced if such reduction is based upon a recommendation of the Resident Market Makers.[7] Any remaining amount of the Surcharge collected sill then be refunded to each Market Maker who paid the Surcharge (on a pro rata basis). The proposed Surcharge would allow the PCX to compete with other exchanges based on the respective fee each exchange charges a firm to execute an order on the limit order book.

How the Surcharge Will be Determined. Under proposed PCX Rule 16.1, the OFTC,[8] under authority delegated to it by the PCX's Board of Governors, will determine the issues option for which the Surcharge would be assessed as well as what that Surcharge, if any, will be.[9] Any Resident Market Maker can recommend a Surcharge amount. All Residents Market Makers then vote on the recommended amounts of the Surcharge, with each person having an equal vote. Any amount that receives a majority of the votes is the Surcharge amount that is recommended to the OFTC, which then decides the actual Surcharge. In reaching its decision, the OFTC must consider the vote of the Resident Market Makers and the views of any Market Maker in favor of or opposed to the recommended Surcharge.[10] The OFTC is not bound, however, to follow the Resident Market Makers' recommendation. The OFTC is free to impose a different Surcharge than the one recommended or to impose no Surcharge at all. Any Market Maker may appeal the decision of the OFTC to the Exchange's Appeals committee pursuant to PCX Rule 11.7. The Surcharge will remain in effect until the appeal has been decided.

Once the OFTC determines to implement a Surcharge and change the OBO fee, it will file a rule proposal with the Commission pursuant to Section 19(b)(3)(A) under the Act. After determining to impose or amend a Surcharge, the OFTC will notify the PCX Board of Governors at the meeting following the determination. Any Surcharge to be paid by the Market Makers would be in effect for at least one month to avoid disrupting normal Exchange billings and accounting procedures.

2. Statutory Basis

The PCX believes the proposed rule change is consistent with Section 6(b)[11] of the Act, in general, and furthers the objectives of Section 6(b)(5)[12] in particular, because it is designed to facilitate transactions in securities, perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All submissions should refer to File No. SR–PCX–99–15 and should be submitted by September 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20633 Filed 8–10–99; 8:45 am]

BILLING CODE 8010–01–M

[6] Bids and offers in options series trading below $3 are expressed in sixteenths of a dollar, *i.e.*, $0.0625. Because standard option contracts have a multiplier of 100 (*i.e.*, they represent interest in 100 shares of the underlying security), the value of the minimum spread between any option contract listed on the Exchange would be $6.25 ($0.0625 times 100). Options priced over $3 have a minimum spread of one eighth of a dollar ($12.50 value for the minimum spread). Thus, the 25-cent cap on the Surcharge will ensure that it remains far below the minimum quote increment for options trade on the PCX.

[7] The proposed defines a "Resident Market Maker" as someone who transacted at least 80% of his or her market maker contracts in option issues traded in the trading crowd in the prior calendar month. If the Exchange decides on its own initiative to reduce the OBO rate for a particular option issue, then the Surcharge would not be used to reimburse the Exchange.

[8] Generally, the OFTC consists of 14 members who trade on the Options Floor. OFTC members that would be impacted by the Surcharge would be required to recuse themselves from that vote.

[9] The proposal is limited, however, to option issues that are multiply traded, and does not include LMM option issues. As of May 28, 1999, approximately 800 standard equity options are traded on the PCX, and of those, approximately 100 would be eligible for participation in this pilot program.

[10] The OFTC must give notice of its meeting schedule for the consideration of the Surcharge and the deadline for the submission of other matierals for its consideration.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Sale of Commercial Loans

AGENCY: Small Business Administration.

ACTION: Notice of Sale of Commercial Loans-Loan Sale #1.

SUMMARY: This notice announces the Small Business Administration's ("SBA") intention to sell approximately 4,000 secured and unsecured commercial loans (the "Loans") in a sealed bid auction. The total unpaid principal balance of the Loans to be sold in Loan Sale #1 is approximately $350 million (US). Some of the Loans were previously guaranteed by SBA under various sections of the Small Business

Act, as amended, 15 U.S.C. 631 *et seq.*, or the Small Business Investment Act, as amended, 15 U.S.C. 695 *et seq.* All SBA guarantees have been paid and no SBA guaranty is available to the successful bidders. In addition, the remainder of the Loans were directly originated and funded by SBA. The collateral for those Loans that are secured includes commercial and residential real estate and other business and personal property located nationwide. This notice also summarizes the bidding process for the Loans.

DATES: The Bidder Information Package will be available to qualified bidders beginning July 2, 1999. The Bid Date is currently scheduled for August 17, 1999, and closings are currently scheduled to occur between September 7, 1999, and September 21, 1999.

ADDRESSES: Bidder Information Packages will be available from SBA's Financial Advisor, KPMG, LLP ("KPMG") 2001 M Street, N.W., Washington, D.C. 20036, 888–660–8060. KPMG will forward Bidder Information Packages to qualified bidders via overnight courier. Bidder Information Packages will be made available only to parties that have submitted a completed Confidentiality Agreement and Bidder Qualification Statement and demonstrated that they are qualified bidders. Interested parties can obtain a Confidentiality Agreement and Bidder Qualification Statement from the SBA Asset Sales website: *www.sba.gov/assets* or by calling 888–660–8060. This is a toll free number. Imaged files for the Loans included in the sale are available for review by qualified bidders that have paid the due diligence fee and visit the due diligence facility located at 409 Third Street, S.W., Suite C–970, Washington, D.C. 20416. To schedule a visit to the due diligence facility qualified bidders should contact Wayne Thornton, METEC Asset Management, L.C. at 202–401–3059. This is not a toll free number. The due diligence facility will be open between the hours of 8 am and 8 pm, Monday through Friday and 9 am to 5 pm on Saturday. The due diligence facility opened on July 6, 1999 and is currently scheduled to close on or about August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Richard C. Blewett, Director Asset Sales, Small Business Administration, 409 Third Street, S.W., Washington, DC 20416; 202–205–4202. This is not a toll free number. Hearing or speech-impaired individuals may access this number via TDD/TTY by calling the Federal Information Relay Service at 1–800–877–8339. This is a toll-free number.

SUPPLEMENTARY INFORMATION: SBA intends to sell approximately 4,000 commercial loans. The Loans include loans that are performing, subperforming and non-performing. The Loans will be divided into loan pools on the basis of performance status, collateral status, collateral type and geographic location of the collateral. A list of the Loans, loan pools and pool descriptions is contained in the Bidder Information Package. SBA will offer interested persons an opportunity to bid competitively on loan pools, subject to conditions set forth in the Bidder Information Package. SBA shall use its sole discretion to evaluate and determine winning bids. No Loans will be sold individually.

SBA has fully honored its guaranty payment obligation for each Loan in the sale. The Loans are not currently guaranteed and will be sold without SBA guarantees. The majority of the Loans are currently serviced by SBA. One group of Loans are currently serviced by a single servicer/approved lender.

The Bidding Process

To ensure a uniform and fair competitive bidding process, the terms of sale are not subject to negotiation.

SBA will describe in detail the procedure for bidding on the Loans in the Bidder Information Package, which will include bid forms, a non-negotiable loan sale agreement prepared by SBA ("Loan Sale Agreement"), specific bid instructions, as well as pertinent information on the Loans such as total outstanding unpaid principal balances, interest rates, maturity terms, payment history and collateral information including its geographic location and type. The Bidder Information Package also includes computer diskettes containing data on the Loans.

The Bidder Information Package will be available approximately 6 weeks prior to the Bid Date. The Bidder Information Package will contain procedures for obtaining supplemental information about the Loans. Any interested party may request a copy of the Bidder Information Package by sending a written request together with a duly executed Confidentiality Agreement and a Bidder Qualification Statement to the address specified in the **ADDRESSES** section of this notice.

Prior to the Bid Date, a Bidder Information Package Supplement will be mailed to all qualified bidders. It will contain the final list of loans included in Sale #1.

Each bidder must include with its bid a deposit equal to 10% of the amount of its highest bid. If a successful bidder fails to abide by the terms of the Loan Sale Agreement, including paying SBA any remaining sums due pursuant to the Loan Sale Agreement and closing within the time period specified in the Loan Sale Agreement, SBA shall retain any deposit as liquidated damages.

Due Diligence Facility

A bidder due diligence period will take place beginning on or about July 6, 1999. During the bidder due diligence period, qualified bidders may, for a non-refundable fee of $500 US, review all asset file documents which have been imaged onto a database by visiting the due diligence facility located at 409 Third Street, S.W., Washington, D.C. 20416 and/or via modem. Bidders that have paid the due diligence fee of $500 US may also request CD ROM discs that contain substantial due diligence materials such as payment histories for each Loan and Brokers' Price Opinions, where available.

Specific instructions for ordering information in electronic format or making an appointment to visit the due diligence facility are included in the Bidder Information Package.

SBA Reservation of Rights

SBA reserves the right to remove loans from the sale and to add loans at any time prior to the Bid Date, for any reason and without prejudice to its right to include any loans in a later sale. SBA also reserves the right to terminate this sale at any time prior to the Bid Date.

SBA reserves the right to use its sole discretion to evaluate and determine winning bids. SBA also reserves the right in its sole discretion and for any reason whatsoever to reject any and all bids.

SBA reserves the right to conduct a "best and final" round wherein bidders will be given the opportunity to increase their bids. A best and final round shall not be construed as a rejection of any bid or preclude SBA from accepting any bid made by a bidder.

Number of Bids

Bidders may submit a maximum of 30 bids of any type. A bidder may divide its bids among any combination of a portfolio bid, multiple pool bids and/or individual pool bids, however, a bidder can submit only individual pool bids for certain loan pools identified in the Bidder Information Package.

Ineligible Bidders

The following individuals and entities (either alone or in combination with

others) are ineligible to bid on any one or combination of the loans included in the sale:

(1) Any employee of SBA, any member of any such employee's household and any entity controlled by an SBA employee or by a member of such employee's household;

(2) Any individual or entity that is debarred or suspended from doing business with SBA or any other agency of the United States Government;

(3) Any contractor, subcontractor, consultant, and/or advisor (including any agent, employee, partner, director, principal, or affiliate of any of the foregoing) who will perform or has performed services for, or on-behalf of, SBA either in connection with this sale or the development of SBA's loan sale program;

(4) Any individual that was an employee, partner, director, agent, or principal of any entity, or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of, SBA either in connection with this sale or the development of SBA's loan sale program;

(5) Any individual or entity that has used or will use the services, directly or indirectly, of any person or entity ineligible under any of paragraphs (1) through (4) above to assist in the preparation of any bid in connection with this sale.

Loan Sale Procedure

SBA has selected a competitive sealed bid auction as the method to sell the Loans. Historically, this method of sale optimizes the return on the sale of loans and, affords the greatest opportunity for all interested parties to bid. This method also provides the quickest and most efficient vehicle for the SBA to dispose of the Loans.

Post Sale Servicing Requirement

The Loans will be sold servicing released. Purchasers of the Loans, and their successors and assigns, will be required to service the Loans in accordance with the applicable provisions of the Loan Sale Agreement. In addition, the Loan Sale Agreement establishes certain requirements that a servicer must satisfy to service the Loans.

Scope of Notice

This notice applies to Loan Sale Number #1, and does not establish agency procedures and policies for other loan sales. If there are any conflicts between this Notice and the Bidder Information Package, the contents of the Bidder Information Package shall prevail.

Dated: August 4, 1999.

Jane Palsgrove Butler,

Associate Administrator for Financial Assistance.

[FR Doc. 99–20654 Filed 8–10–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9D47]

State of Arizona

Pima County and the contiguous counties of Cochise, Graham, Maricopa, Pinal, Santa Cruz, and Yuma in the State of Arizona constitute an economic injury disaster loan area as a result of severe storms on July 13–15, 1999, that caused landslides and resulting road closures. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 2, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for this disaster is 9D4700.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 2, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–20622 Filed 8–10–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 350 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 12, 1999, [FR 64, page 12399].

DATES: Comments must be submitted on or before September 10, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilot Schools.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0009.

Forms(s): FAA Form 8420–8.

Affected Public: Applicants who wish to be issued pilot school certificates and associated ratings.

Abstract: The information on FAA Form 8420–8, Application for Pilot School Certificates, is required from applicants who wish to be issued pilot school certificates and associated ratings. Pilot schools train private, commercial, flight instructor, and airline transport pilots, along with training for associated ratings in various types of aircraft. The information is also necessary to assure continuing compliance with 14 CFR Part 141, renewal of certificates every 24 months, and for any amendments to pilot school certificates.

Estimated Annual Burden Hours: 28,878 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 5, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APR–100.

[FR Doc. 99–20711 Filed 8–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–24]

Petitions for Waiver; Summary of Petitions Received

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of petitions for waivers received.

SUMMARY: This notice contains the summary of petitions requesting waivers from the final compliance date required of 14 CFR part 91, § 91.853. Requesting a waiver is allowed through § 91.873. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 26, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28680, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following internet address: nprmcmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Agela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issues in Washington, DC, on August 5, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations

Petitions for Exemption

Docket No.: 29447
Petitioner: ABX Air, Inc.
Sections of the FAR Affected: 14 CFR 91.873
Description of Relief Sought: To allow ABX to operate two Stage 2 DC–8–61 after 12/31/99, pending replacement on a one-for-one basis with B–767 aircraft scheduled for the end of 2000.

Docket No.: 29440
Petitioner: Kitty Hawk International, Inc.
Sections of the FAR Affected: 14 CFR 91.973
Description of Relief Sought: To allow non-revenue Stage 2 operations under certain conditions such as hushkitting, scraping, and exporting. Currently, similar requests are handled by special flight authorizations under SFAR–64, which expires 12/31/99.

Docket No.: 29440
Petitioner: Kitty Hawk Aircargo, Inc.
Sections of the FAR Affected: 14 CFR 91.973
Description of Relief Sought: To allow non-revenue Stage 2 operations under certain conditions such as hushkitting, scraping, and exporting. Currently, similar requests are handled by special flight authorizations under SFAR–64, which expires 12/31/99.

Docket No.: 29440
Petitioner: ABX Air, Inc.
Sections of the FAR Affected: 14 CFR 91.873
Description of Relief Sought: To allow non-revenue Stage 2 operations under certain conditions such as hushkitting, scraping, and exporting. Currently, similar requests are handled by special flight authorizations under SFAR–64, which expires 12/31/99.

Docket No.: 29440
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 91.873
Description of Relief Sought: To allow non-revenue Stage 2 operations under certain conditions such as hushkitting, scraping, and exporting. Currently, similar requests are handled by special flight authorizations under SFAR–64, which expires 12/31/99.

Docket No.: 29440
Petitioner: U.S. Airways, Inc.
Sections of the FAR Affected: 14 CFR 91.873
Description of Relief Sought: To allow non-revenue Stage 2 operations under certain conditions such as hushkitting, scraping, and exporting. Currently, similar requests are handled by special flight authorizations under SFAR–64, which expires 12/31/99.

Docket No.: 29440
Petitioner: Southwest Airlines
Sections of the FAR Affected: 14 CFR 91.873
Description of Relief Sought: To allow non-revenue Stage 2 operations under certain conditions such as hushkitting, scraping, and exporting. Currently, similar requests are handled by special flight authorizations under SFAR–64, which expires 12/31/99.

Docket No.: 29440
Petitioner: Express One International, Inc.
Sections of the FAR Affected: 14 CFR 91.873
Description of Relief Sought: To allow non-revenue Stage 2 operations under certain conditions such as hushkitting, scraping, and exporting. Currently, similar requests are handled by special flight authorizations under SFAR–64, which expires 12/31/99.

Docket No.: 29440
Petitioner: Florida West International Airways, Inc.
Sections of the FAR Affected: 14 CFR 91.873
Description of Relief Sought: To allow non-revenue Stage 2 operations under certain conditions such as hushkitting, scraping, and exporting. Currently, similar requests are handled by special flight authorizations under SFAR–64, which expires 12/31/99.

Docket No.: 29440
Petitioner: Trans World Airways, Inc.
Sections of the FAR Affected: 14 CFR 91.873
Description of Relief Sought: To allow non-revenue Stage 2 operations under certain conditions such as hushkitting, scraping, and exporting. Currently, similar requests are handled by special flight authorizations under SFAR–64, which expires 12/31/99.

[FR Doc. 99–20714 Filed 8–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–165 meeting to be held September 1, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036. (This plenary meeting will follow a meeting of SC–165 Working Group (WG)–3, Minimum Aviation System Performance Standards, on August 30–31.)

The agenda will include: (1) Welcome and Introductions; (2) Review Summary of the Previous Meeting; (3) Chairman's Remarks; (4) Review comments from the ballot of draft document DO–210D, Minimum Operational Performance Standards for Geosynchronous Orbit Aeronautical Mobile Satellite Services (AMSS) Avionics. Incorporate accepted ballot comments into the final draft document to forward to the Program Management Committee. (5) Overview of Related Activities: a. AEEC 741 and 761 Characteristics; b. EUROCAE Working Group 55; c. AMS(R)S Spectrum Issues; d. AMCP WG–A on AMSS; e. Industry, Users, Government; (6) Review of SC–165 Working Group Activities: a. WG–1, AMSS Avionics Equipment Minimum Operational Performance Standards; b. WG–3, AMSS System/Service Performance Criteria; (7) Other Business; (8) Date and Place of Next Meeting; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 5, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–20712 Filed 8–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

Dates and Times

The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on September 16, 1999, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 5:00 p.m. on August 31, 1999. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by September 3, 1999, to the address given below. If sufficient time is available, questions received after the September 3 date will be answered at the meeting during the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by September 3 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia. Suggestions for specific research and development topics as described below and questions for the September 16, 1999, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., SW, Washington, DC 20590. The fax number is (202) 366–5930.

SUPPLEMENTARY INFORMATION: In recent years, since April 1993, NHTSA has provided detailed information about its research and development programs in presentations at a series of public meetings. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This is the twenty-fourth meeting in that series, and it will be held on September 16, 1999, at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia.

Based on the suggestions received in previous meetings, NHTSA intends to limit its presentation at the September 16, 1999, meeting to a single research topic. NHTSA requests suggestions from interested parties on the specific agenda topic to be presented at this meeting. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by 5:00 p.m. on August 31, 1999. Before the meeting, NHTSA will publish a notice with an agenda listing the research and development topic to be discussed. The agenda can also be obtained by calling or faxing the request to the telephone numbers listed in this notice, through the E-mail address listed in this notice, or from NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA asks that the suggestions be limited to three, in priority order, so that the presentation at the September 16, 1999, meeting can be most useful to the audience. Specific research and development topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other research and development topics of specific interest to their organizations. Additionally, if any interested parties would like to make a presentation regarding technical issues concerning any of NHTSA's research programs, information concerning the proposed topic and speaker should be submitted in writing by 5:00 p.m. on August 31, 1999.

Specific R&D topics are: Fiscal Year 1999 R&D Research Efforts, International Harmonized Research Activities (IHRA), On-line tracking system for NHTSA's research projects, and Crash Injury Research and Engineering Network (CIREN).

Specific Crashworthiness R&D topics are:

Status of advanced air bag research and up-to-date results,
Demonstration of CD ROM for child restraint/vehicle compatibility,
Preparation of new dummies for assessment of advanced air bag technology,
Improved frontal crash protection (program status, problem identification, offset testing),
Upgrade side crash protection,
Child restraint/air bag interaction (CRABI) dummy testing,

Head and neck injury research,

Lower extremity injury research, and

Thorax injury research.

Specific Crash Avoidance R&D topics are:

National Advanced Driving Simulator (NADS),

Intelligent vehicle initiative (the rear-end collision avoidance system operational test),

Drowsy driver monitoring,

Driver workload assessment, and Lane change/merge collision avoidance system guidelines.

Specific National Center for Statistics and Analysis (NCSA) topics are:

NCSA Overview,

Fatality Analysis Reporting System (FARS), and

Special crash investigation studies of air bag cases.

Separately, questions regarding research projects that have been submitted in writing not later than 5:00 p.m. on September 3, 1999, will be answered. The summary minutes of the meeting, copies of materials handed out at the meeting, and answers to the questions submitted for response at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The summary minutes, handouts, and answers to the questions will also be available on NHTSA's Web site at Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons by telephone on (202) 366–4862, by telefax on (202) 366–5930, or by E-mail at rgibbons@nhtsa.dot.gov by 5:00 p.m. September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930. E-mail: rgibbons@nhtsa.dot.gov.

Issued: August 6, 1999.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 99–20710 Filed 8–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6062]

Notice of Receipt of Petition for Decision That Nonconforming 1996 Toyota RAV4 Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996 Toyota RAV4 multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1996 Toyota RAV4 MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 10, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether a 1996 Toyota RAV4 MPV that was manufactured for European and other foreign markets is eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1996 Toyota RAV4 MPV that was manufactured for importation into and sale in the United States and certified by its manufacturer, Toyota Motor Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1996 Toyota RAV4 MPV to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1996 Toyota RAV4 MPV, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1996 Toyota RAV4 MPV is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger*

Cars, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) inscription of the word "Brake" on the brake failure indicator lamp lens; (b) replacement of the speedometer/odometer with a unit calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model rear sidemarker assemblies; (c) installation of a high mounted stop lamp.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement in the passenger side rearview mirror.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning lamp and buzzer; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicle is equipped with Type 2 seat belts at the front and rear outboard seating positions.

301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that U.S.-model components must be added to the non-U.S. certified 1996 Toyota RAV4 MPV so that it complies with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–20733 Filed 8–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 384X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Minnehaha County, SD

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 2.98-mile line of its railroad between milepost 147.15 and milepost 150.13 near Sioux Falls, in Minnehaha County, SD. The line traverses United States Postal Service Zip Code 57105.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 10, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 23, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 31, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Sarah Whitley Bailiff, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, 3107 Lou Menk Drive, Fort Worth, TX 76131–2830.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 16, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority

---

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by August 11, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: August 4, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–20565 Filed 8–10–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request U.S. Customs Declaration (Customs Form 6059B)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 12, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper perfromance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: U.S. Customs Declaration.

OMB Number: 1515–0041.

Form Number: Customs Form 6059B.

Abstract: The U.S. Customs Declaration, Customs Form 6059B, facilitates the clearance of persons and their goods arriving in the territory on the U.S. by requiring basic information necessary to determine Customs exception status and if any duties of taxes are due. The form is also used for the enforcement of Customs and other agencies laws and regulations.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, travelers.

Estimated Number of Respondents: 42,000,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 2,100,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 5, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–20609 Filed 8–10–99; 8:45 am]

BILLING CODE 4820–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 12, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use.

OMB Number: 1515–0032.

Form Number: Customs Form 5125.

Abstract: The Customs Form 5125 is used for the withdrawal and lading of

bonded merchandise (especially alcoholic beverages) for use on board fishing vessels and foreign or domestic vessels involved in international trade. The form also certifies the use: total consumption or partial consumption with secure storage for use on next voyage.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 42.

Estimated Total Annualized Cost on the Public: $504.00.

Dated: August 5, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–20610 Filed 8–10–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 4, 1999.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

DATES: Submit written comments on or before September 10, 1999.

OMB Number: 1550–0087.

Form Number: Not Applicable.

Type of Review: regular.

Title: Measurement Survey—Examination Standards.

Description: This information collection is a key element in the OTS' activities under the National Performance Review. The OTS must obtain feedback from the thrift institutions it regulates to properly evaluate the effectiveness of our examination process and agency communications. This information collection is needed to: (a) Provide this feedback on the content and conduct of OTS examinations; (b) encourage and facilitate thrift input; and (c) promote OTS/thrift communications.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Recordkeepers: 1302.

Estimated Burden Hours Per Recordkeepers: 0.25 hours.

Frequency of Response: Once for each examination.

Estimated Total Recordkeeping Burden: 325 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 Street, NW, Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 99–20647 Filed 8–10–99; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 4, 1999.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

DATES: Submit written comments on or before September 10, 1999.

OMB Number: 1550–0066.

Form Number: OTS Form 1499, also known as Form DV.

Type of Review: Extension.

Title: Voluntary Dissolution.

Description: 12 CFR Section 546.4 sets forth the requirement for the submission of a statement of reasons and a plan of dissolution. The submission of this documentation provides the basis for the OTS to determine whether the dissolution will be in the best interests of all concerned, including insured depositors and all other parties affected by such action.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours Per Recordkeeper: 239 hours.

Frequency of Response: Once per submission.

Estimated Total Recordkeeping Burden: 239 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 Street, NW, Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 99–20648 Filed 8–10–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0028]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Information and Technology (IT), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed Reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed from veteran service organizations requesting to be placed on the mailing lists for specific VA publications.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to Barbara Epps (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0028" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Barbara Eppe at (202) 273–8013 or FAX (202) 273–5981.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, IT invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of IT's functions, including whether the information will have practical utility; (2) the accuracy of IT's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application of Service Representative for Placement on Mailing List, VA Form 3215.

OMB Control Number: 2900–0028.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA operates an outreach services program to ensure veterans and beneficiaries have information about benefits and services to which they may be entitled. To support the program, VA distributes copies of publications to veterans service organizations representatives. The information collected on VA Form 3215 is used to process a request from a service organization to be placed on the mailing list for specific VA publications.

Affected Public: Individuals or households.

Estimated Annual Burden: 25 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 150.

Dated: July 2, 1999.

By Direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–20724 Filed 8–10–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0108]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine eligibility for income-based benefits programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0108" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Income from Property or Business, VA Form 21–4185.

OMB Control Number: 2900–0108.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to derive net income from property or business. The information is used to determine whether the beneficiary is eligible for VA benefits and, if eligibility exists, to determine the proper rate of benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 29,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 59,000.

Dated: July 9, 1999.

By Direction of the Secretary.

Sandra McIntyre,

Management and Program, Analyst, Information Management Service.

[FR Doc. 99–20725 Filed 8–10–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0024]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 10, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans

Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0024."

SUPPLEMENTARY INFORMATION:

Title: Insurance Deduction Authorization, VA Form 29–888.

OMB Control Number: 2900–0024.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to authorize VA to make deductions from benefit payments to pay premiums, loans and/or liens on his/her insurance contract. The information requested is used by VA to process the insured's request.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 1999 at page 13471.

Affected Public: Individuals or Households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 3,732.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0024" in any correspondence.

Dated: July 12, 1999.

By Direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–20726 Filed 8–10–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 10, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0047."

SUPPLEMENTARY INFORMATION:

Title: Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used primarily by purchasers assuming a veteran's home loan in release of liability cases authorized by 38 U.S.C. 3714 and by veteran-purchasers seeking substitution of entitlement by 38 U.S.C. 3702(b)(2).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1999 at page 4745.

Affected Public: Individuals or Households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 40,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0047" in any correspondence.

Dated: July 9, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–20727 Filed 8–10–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 10, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0116."

SUPPLEMENTARY INFORMATION:

Title: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193.

OMB Control Number: 2900–0116.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used by penal institutions to furnish information to VA regional offices about incarcerated VA beneficiaries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 23, 1998 at page 71194.

Affected Public: Individuals or Households, Federal Government, State, Local or Tribal Government.

Estimated Annual Burden: 416 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 1,664.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0116" in any correspondence.

Dated: July 9, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–20728 Filed 8–10–99; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday
August 11, 1999

Part II

Environmental Protection Agency

Cancellation of Pesticides for Non-Payment of 1999 Registration Maintenance Fees; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64042; FRL 6093–8]

Cancellation of Pesticides for Non-Payment of 1999 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October, 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for about 1,003 registrations. Section 4(i)(5)(D) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all 1,003 of these registrations have been issued within the past few days.

FOR FURTHER INFORMATION CONTACT: For further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (H7504C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 226, Crystal Mall No. 2, 1921 Jefferson Davis Highway South, Arlington, VA 22202, (703) 305–6426; e-mail: jamula.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this apply to me

You may be potentially affected by this notice if you are an EPA registrant with any approved product registration(s). Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the FOR FURTHER INFORMATION CONTACT section.

B. How can I get additional information or copies of support documents

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the Federal Register-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPP–64042], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

II. Introduction

Section 4(i)(5) of FIFRA as amended in October, 1988, and again in December, 1991, requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The 1990, Farm Bill amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 99 minor agricultural use registrations at the request of the registrants.

In late November, 1998, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-February to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Late payments of the fees were accepted until May 15, when the actual process of cancellation was begun.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 16,343 section 3 registrations, or about 95% of the registrations on file in November. Fees have been paid for about 2,484 section 24(c) registrations, or about 86% of the total on file in November. Cancellations for non-payment of the maintenance fee affect about 672 section 3 registrations and about 331 section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until the due date for the next annual registration maintenance fee, January 15, 2000. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-Payment

Table 1, lists all of the section 24(c) registrations, and Table 2, lists all of the section 3 registrations which were canceled for non-payment of the 1998 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. It is Agency policy to rescind cancellation of any particular registration only if the cancellation resulted from Agency error.

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE

SLN No.	Product Name
AL–95–0003	Dual Herbicide
AL–95–0004	Dual 8E Herbicide
AL–98–0005	Aquathol Super K Granular Aquatic Herbicide
AL–98–0006	Abound Fungicide
AR–88–0006	Triumph 4E Insecticide
AR–95–0003	Command 4EC Herbicide
AR–95–0009	Starfire Herbicide
AR–97–0006	Dimilin 25W for Cotton/Soybean
AR–98–0004	Abound Fungicide
AZ–83–0004	Dimethogon 267 EC

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
AZ–83–0005	Dual 8E Herbicide
AZ–88–0002	De-Fend E-267 Dimethoate Systemic Insecticide
AZ–88–0003	Dimethoate 267 EC
AZ–94–0001	Prefar 4-E Herbicide
AZ–95–0007	Telone II
AZ–97–0001	Treflan H.F.P.
CA–77–0053	Kelthane MF
CA–77–0136	Niagara Furadan 5 Granules Insecticide
CA–79–0139	Guthion 35% Wettable Powder Crop Insecticide
CA–79–0149	Guthion 35% Wettable Powder (PVA)
CA–81–0089	Dupont Lorox Weed Killer WP
CA–82–0034	Red-Top Golden-Dew (fungicide and Insecticide)
CA–82–0042	Dupont Lorox DF Weed Killer
CA–82–0095	Funginex Emulsifiable Concentrate
CA–85–0059	Niagara Furadan 4 Flowable
CA–88–0020	Monitor 4
CA–88–0025	Carzol SP
CA–88–0029	Kelthane 35 Agricultural Miticide
CA–90–0003	Gnatrol - AS
CA–90–0021	Guthion 2S
CA–91–0002	Clean Crop Prometryne 80W Herbicide
CA–92–0012	Captan 50 Wettable Fungicide
CA–92–0020	Vectobac-12AS
CA–92–0021	Rally 40W Agricultural Fungicide In Water Soluble Pouch
CA–93–0010	Pounce 3.2 EC Insecticide
CA–93–0017	Prokil Diazinon 4 EC
CA–96–0014	DI - Syston 8
CA–97–0020	Dimilin 25W for Cotton/soybean
CA–98–0005	Logic Fire Ant Bait

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
CO–88–0013	Drexel Carbaryl 4L
CO–95–0001	Comite II
CO–98–0005	Dual Herbicide
CO–98–0006	Dual II Herbicide
CO–98–0007	Dual 8E Herbicide
DE–94–0003	Dual Herbicide
DE–94–0004	Dual 8E Herbicide
DE–98–0003	Abound Fungicide
FL–88–0001	Malathion ULY
FL–88–0021	Triumph 4E Insecticide
FL–88–0023	Sodium Hypochlorite Solution
FL–88–0029	Enquik
FL–89–0030	Illoxan 3EC Herbicide
FL–90–0004	Enquik
FL–93–0001	Dual 8E Herbicide
FL–93–0011	Methyl Bromide 99.5%
FL–95–0006	Gibgro 4LS
FL–96–0012	Enquik
FL–97–0013	Abound Fungicide
GA–90–0006	Illoxan 3EC Herbicide
GA–95–0003	Dual Herbicide
GA–95–0004	Dual 8E Herbicide
GA–96–0006	Ridomil Copper 70W
GA–97–0001	Authority 75 Df Herbicide
GA–98–0004	Abound Fungicide
HI–90–0005	Goal 1.6e Herbicide
HI–92–0009	Drexel Sulfur 90W
HI–92–0010	Drexel Sulfur 90W
HI–93–0001	Banvel Herbicide
HI–93–0007	Thiolux Dry Flowable Micronised Sulfur
HI–93–0008	Thiolux Dry Flowable Micronised Sulfur
HI–94–0005	Roundup Herbicide
IA–88–0004	Triumph 4e Insecticide
ID-80-0021	Guthion 50% Wettable Powder Crop Insecticide
ID-80-0047	Ded-Weed Sulv-Amine

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
ID–86–0016	Dimethoate 2.67 EC
ID–88–0008	Kumulus S
ID–91–0018	Zinc Phosphide Concentrate for Muskrat and Nutria
ID–95–0005	Furadan CR–10
ID–96–0011	Diva Fungicide
ID–98–0006	Clarity Herbicide
ID–98–0009	Jms Stylet-Oil
IL–88–0006	De-Fend E–267 Dimethoate Systemic Insecticide
IL–93–0001	Furadan 4F
IL–97–0003	Topsin M WSB
IN–89–0005	Carzol SP
KS–97–0002	Dual II Herbicide
KY–94–0003	Dual Herbicide
KY–94–0004	Dual 8E Herbicide
KY–95–0003	Dual Herbicide
KY–95–0004	Dual 8E Herbicide
KY–96–0001	Ziram 76DF Fungicide
KY–96–0004	Command 4EC Herbicide
KY–97–0001	Authority 75 Df Herbicide
LA–88–0005	Dual 8E Herbicide
LA–88–0013	Triumph 4E Insecticide
LA–93–0004	Dithane F-45 Ag., Fungicide
LA–93–0005	Dithane DF Ag., Fungicide
LA–93–0006	Command 4 EC
LA–93–0007	Illoxan Herbicide
LA–93–0008	Dupont Karmex Df Herbicide
LA–95–0006	Dual 8E Herbicide
LA–95–0015	Starfire Herbicide
LA–96–0008	Florida Mosquito Larvicide
LA–96–0009	Gramoxone Extra Herbicide
MA-83-0005	Geigy Diazinon 14g (14.3% Granular) Insecticide
MA–95–0003	Dual Herbicide
MA–95–0004	Dual 8E Herbicide
ME–91–0004	Gowan Azinphos-M 2 EC

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
ME–91–0008	Kelthane 35 Agricultural Miticide
ME–92–0004	Diazinon 500–AG
ME–92–0005	Diazinon 500–AG
ME–95–0002	Devrinol 50–DF Selective Herbicide
MI–91–0007	Imidan 50–WP Agricultural Insecticide
MI–91–0008	Tri-Lux II Antifouling
MI–95–0005	Dual 8E Herbicide
MI–95–0006	Dual Herbicide
MN–91–0001	Furadan CR 10
MN–93–0003	Stampede 80 EDF
MN–96–0004	Diva Fungicide
MN–98–0002	Aquathol Super K Granular Aquatic Herbicide
MN–98–0004	Clarity Herbicide
MO–80–0023	Ded-Weed Sulv-Amine
MO–89–0003	Triumph 4E Insecticide
MO–95–0007	Resource Herbicide
MO–96–0002	Diva Fungicide
MO–96–0004	Stellar Herbicide
MO–96–0005	Stellar Herbicide
MO–96–0006	Stellar Herbicide
MO–96–0007	Stellar Herbicide
MO–96–0008	Stellar Herbicide
MO–96–0010	Resource Herbicide
MO–96–0012	Starfire Herbicide
MO–96–0013	Gramoxone Extra Herbicide
MS–88–0004	Guthion 35% Wettable Powder Crop Insecticide
MS–88–0007	Triumph 4E Insecticide
MS–91–0006	Dursban TC
MS–93–0006	Statesman Herbicide
MS–95–0006	Dual 8E Herbicide
MS–95–0014	Gramoxone Super Herbicide
MS–97–0009	Dimilin 25W for Cotton/soybean
MT-80-0006	Ded-Weed Sulv-Amine

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
MT–94–0004	Dimethogon 267 EC
MT–98–0003	Clarity Herbicide
MT–98–0004	Clarity Herbicide
NC–88–0007	Triumph 4E Insecticide
NC–88–0008	Carzol SP
NC–89–0002	Triumph 4e Insecticide
NC–91–0002	Dursban Turf Insecticide
NC–91–0013	Kleen-Tac 85
NC–92–0004	Dual Herbicide
NC–92–0005	Dual 8E Herbicide
NC–96–0001	Dual Herbicide
NC–96–0002	Dual 8E Herbicide
NC–96–0004	Gibgro 4LS
NC–97–0001	Authority 75 Df Herbicide
NC–98–0002	Aquathol Super K Granular Aquatic Herbicide
NC–98–0003	Abound Fungicide
ND-80-0010	Ded-Weed Sulv-Amine
ND–86–0001	Furadan CR–10
ND–93–0001	Stampede 80 EDF Herbicide
ND–96–0004	Dithane F–45 Flowable Agricultural Fungicide
ND–98–0004	Clarity Herbicide
ND–98–0005	Clarity Herbicide
NE–93–0003	Bicep Herbicide
NE–97–0002	Dual II Herbicide
NJ–93–0002	Furadan 4F
NJ–93–0003	Command 4EC
NJ–93–0007	Command 4EC
NJ–94–0002	Guthion 50% Wettable Powder Crop Insecticide
NJ–95–0004	Dual Herbicide
NJ–95–0005	Dual 8E Herbicide
NJ–95–0006	Dual Herbicide
NJ–95–0007	Dual 8E Herbicide
NJ–97–0004	Dual Herbicide
NJ–97–0005	Dual 8E Herbicide
NJ–98–0002	Sodium Hypochlorite Solution
NJ–98–0003	Abound Fungicide

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
NM–80–0001	Du Pont Sinbar Terbacil Weed Killer
NM–82–0001	Ded-Weed Sulv-Amine
NM–85–0004	Dual 8E Herbicide
NM–86–0004	Dual 8E Herbicide
NV–80–0014	Red-Top Superior Spray Oil
NV–83–0007	Ded-Weed Sulv Herbicide
NV–88–0001	Dimethogon 267 EC
NV–90–0005	Wilbur-Ellis Dimethoate 267
NV–92–0005	10% Strychnine Alkaloid Paste
NV–97–0003	Dual 8E Herbicide
NY–90–0001	Dual 8E Herbicide
NY–93–0005	Express Herbicide
NY–97–0003	Dual 8E Herbicide
NY–97–0007	Pyramite
OH–81–0017	Guthion 50% Wettable Powder Crop Insecticide
OH–81–0018	Guthion 2S
OH–88–0005	Drexel Diazinon Insecticide
OH–97–0003	Dual Herbicide
OH–97–0004	Dual 8E Herbicide
OK–82–0008	Ded-Weed Sulv-Amine
OK–86–0003	Dual 8E Herbicide
OK–92–0009	Du Pont Sinbar Herbicide
OR–79–0026	Ded-Weed Sulv-Amine
OR–80–0036	Guthion 50% Wettable Powder Crop Insecticide
OR–85–0003	Orco Patrol
OR–85–0042	Dimethogon 267 EC
OR–85–0043	Dimethogon 267 EC
OR–85–0044	Dimethogon 267 EC
OR–85–0045	Dimethogon 267 EC
OR–85–0046	Dimethogon 267 EC
OR–89–0011	Dupont Karmex DF Herbicide
OR–91–0007	Dual 8E Herbicide

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
OR–92–0003	Du Pont Sinbar Herbicide
OR–92–0015	Dupont Karmex DF Herbicide
OR–93–0007	Supracide 2E Insecticide-Miticide
OR–93–0020	Dupont Karmex DF Herbicide
OR–93–0022	Dual 8E Herbicide
OR–94–0009	Dupont Karmex Df Herbicide
OR–94–0018	Dupont Lorox Df Herbicide
OR–95–0008	Gowan Cryolite Bait
OR–95–0019	Triumph 4E Insecticide
OR–95–0024	Dual Herbicide
OR–95–0025	Dual 8E Herbicide
OR–96–0009	Thiolux Dry Flowable Micronised Sulfur
OR–96–0019	Enquik
OR–96–0033	Diva Fungicide
OR–96–0035	Select Herbicide
OR–96–0038	Dual 8E Herbicide
OR–96–0039	Dual Herbicide
OR–96–0041	Transline
OR–97–0027	Bird Shield Bird Repellent Concentrate
OR–98–0003	Hydrothol 191
OR–98–0017	Clarity Herbicide
PA–90–0003	Du Pont Sinbar Terbacil Weed Killer
PA–94–0003	Furadan 4F
PA–95–0001	Dual 8E Herbicide
PA–95–0002	Dual Herbicide
PA–97–0001	Stauffer Captan 10 Dust
PA–98–0003	Abound Fungicide
PR–98–0002	Carbamate WDG Fungicide
SC–88–0005	Triumph 4E Insecticide
SC–91–0007	Kleen-Tac 85
SC–92–0004	Imidan 50-WP Agricultural Insecticide
SC–97–0003	Authority 75 DF Herbicide
SC–98–0001	Abound Fungicide

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
SD–93–0001	Stampede 80 EDF Herbicide
SD–93–0002	Banvel Herbicide
SD–96–0001	Banvel Herbicide
SD–98–0003	Clarity Herbicide
SD–98–0004	Clarity Herbicide
TN–93–0002	Orthene 75 S Soluble Powder
TN–93–0010	Triumph 4E Insecticide
TN–94–0007	Starfire Herbicide
TN–97–0001	Authority 75 DF Herbicide
TN–97–0002	Abound Fungicide
TN–97–0003	Dimilin 25W for Cotton/soybean
TX–78–0030	Weedar Mcpa Concentrate
TX–82–0011	Ded-Weed Sulv-Amine
TX–83–0011	Dual 8E Herbicide
TX–92–0021	Du Pont Lorox Df Herbicide
TX–95–0004	Dual 8E Herbicide
TX–95–0005	Busan 85
TX–96–0007	Treflan E.C.
TX–98–0002	Dual 8E Herbicide
TX–98–0003	Dual Herbicide
UT–83–0010	Ded-Weed Sulv Herbicide
UT–88–0001	Dimethogon 267 EC
UT–90–0004	Dimethogon 267 EC
UT–94–0002	Bmp 144 Primary Powder
UT–98–0001	Clarity Herbicide
VA–89–0005	Kelthane 35 Agricultural Miticide
VA–90–0004	Du Pont Sinbar Terbacil Weed Killer
VA–91–0009	Kleen-Tac 85
VA–92–0002	Furadan 4F
VA–92–0004	Dual 8E Herbicide
VA–92–0005	Dual Herbicide
VA–94–0007	Dual Herbicide
VA–94–0008	Dual 8E Herbicide
VA–94–0009	Dual 8E Herbicide
VA–94–0010	Dual Herbicide
VA–96–0002	Dual Herbicide
VA–96–0003	Dual 8E Herbicide

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
VA–97–0001	Dual Herbicide
VA–97–0002	Dual 8E Herbicide
VA–98–0005	Abound Fungicide
VA–98–0007	Aquathol Super K Granular Aquatic Herbicide
VT–78–0004	Guthion 50% Wettable Powder Crop Insecticide
WA–79–0065	DED-Weed Sulv-Amine
WA–81–0002	DED-Weed Sulv-Amine
WA–87–0032	Dimethoate 267 EC
WA–87–0033	Dimethoate 25% Wettable Powder Systemic Insecticide
WA–88–0005	Dupont Karmex Df Herbicide
WA–89–0009	Enquik
WA–90–0017	Du Pont Lorox DF Herbicide
WA–90–0026	Vinco Formaldehyde Solution
WA–91–0003	Hopkins Zinc Phosphide Mouse Bait for Control of Mice
WA–91–0018	Hopkins Zinc Phosphide Mouse Bait for Control of Mice
WA–91–0027	Vinco Formaldehyde Solution
WA–92–0004	Dimethoate 267 EC
WA–92–0022	Orco Patrol Ground Squirrel Bait
WA–92–0023	Du Pont Karmex DF Herbicide
WA–92–0038	Busan 1020
WA–92–0039	Metam Soil Fumigant
WA–93–0007	Du Pont Sinbar Herbicide
WA–94–0008	Dupont Manzate 200 DF Fungicide
WA–94–0016	Dupont Karmex DF Herbicide
WA–94–0019	Supracide 2E Insecticide-Miticide

TABLE 1—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

SLN No.	Product Name
WA–94–0023	Dupont Manzate 200 DF Fungicide
WA–95–0008	Dual Herbicide
WA–95–0011	Imidan 70–Wp Agricultural Insecticide
WA–95–0012	Imidan 70–WSB
WA–95–0013	Imidan 70–WP Agricultural Insecticide
WA–95–0014	Imidan 70–WSB
WA–95–0017	Furadan CR–10
WA–95–0018	Gowan Cryolite Bait
WA–95–0023	Mycoshield Brand of Agricultural Terramycin
WA–95–0024	Dual 8E Herbicide
WA–95–0044	Parapel II Paraffinized Pellets
WA–96–0009	Clean Crop Nemasol 42%
WA–96–0002	Captan 50–WP
WA–96–0022	Jms Stylet-Oil
WA–96–0024	Clarity Herbicide
WI–94–0001	Dual 8E Herbicide
WI–94–0005	Dupont Lorox Df Herbicide
WI–95–0004	Diazinon G–14
WI–96–0005	Dual 8E Herbicide
WI–96–0006	Dual Herbicide
WI–97–0002	Diazinon G–14
WI–98–0002	Dual 8E Herbicide
WI–98–0004	Aquathol Super K Granular Aquatic Herbicide
WY–92–0002	Zp Rodent Bait Ag
WY–92–0006	Banvel Herbicide
WY–98–0003	Clarity Herbicide
WY–98–0007	Clarity Herbicide

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE

Reg. No.	Product Name
000003–00006	Formula BF–201 (Roach and Ant Killer)

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
000003–00007	Formula BF–301 (Flea and Tick Killer)
000019–00003	Hexzene No. 2
000070–00055	Kill-KO Bean Beetle Dust 1% Rotenone
000070–00133	Kill KO Thro Pac Rat Killer
000070–00170	Kill KO Rat Killer
000070–00259	Rigo Streptomycin Sulfate
000070–00292	Rigo 3–In–1 Vegetable Dust
000100–00635	Triumph Technical
000100–00843	Triumph 4E Insecticide
000100–00777	Dividend 0.15 Fs Fungicide
000100–00778	Dividend 0.31 Fs Fungicide
000100–00891	Mertect DF Fungicide
000106–00077	Pro Quat 256B
000150–20004	Bac - Off
000192–00206	Dexol Preemergent Weed and Grass Preventer 2
000239–02574	Orthenex Insect & Disease Control Formula II
000239–02575	Isotox Insect Killer Formula III
000275–00036	Dipel 4l Worm Killer
000275–00048	Dipel 6l
000275–00051	Dipel 8l
000275–00059	Dipel 6af Worm Killer
000275–00067	Dipel 8af Worm Killer
000275–00079	Ditera Technical Powder
000275–00080	Ditera Wettable Powder
000275–00087	Dipel 2X WDG Biological Insecticide
000275–00113	Biobit-Wettable Powder
000275–00114	Biobit Flowable Concentrate
000275–00121	Biobit Technical Powder
000275–00123	Bactimos Wettable Powder

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
000334–00104	Spoox Residual Roach Liquid
000334–00246	Swinger the Reserve Power Detergent with Germ-Disinfecting Action
000334–00290	Hy-Kil Fly & Roach Spray
000334–00381	PS 75 Insect Killer for House & Garden
000334–00449	Hysan FIK–20 Insect Killer
000334–00545	Bendiocide
000334–00565	Dragnet Residual Insecticide
000402–00095	Hill #74 Roach & Insect Spray
000407–00287	Imperial Sevin 50w Garden Spray
000407–00338	Imperial Garden Weed Preventer
000407–00370	Imperial 50% Methoxychlor Wettable Powder
000407–00383	Imperial Sevin Suspension
000407–00401	Imperial Lime Sulphur Spray
000407–00416	Imperial 5% Dacthal
000421–00371	400 Insecticide
000475–00250	Germicidal Sani-Flush Thick Liquid Toilet Bowl Cleaner
000475–00330	Germicidal Sani-Flush Chlorinating Thick Liquid Toilet Bowl Cleaner
000491–00265	Bug Blitz
000498–00120	Spraypak Wasp & Hornet Spray 0.15%
000498–00123	Spraypak Professional Strength Ant & Roach Killer
000498–00143	Spraypak Automatic Room Fogger, Formula 3
000498–00145	Spraypak Indoor Insect Fogger, Formula 2
000527–00092	Mill-O-Cide 100

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
000527–00119	Bytech Bysan
000550–00177	Chlorine Liquified Gas
000572–00107	Rockland 5% Sevin Brand Carbaryl Insecticide Dust
000572–00237	Rockland Super Dacthal 686
000655–00688	Prentox Cube Flea & Tick Dip
000655–00790	Prentox Larva-Lur
000655–00791	Prentox Ban Bug Bait
000662–00076	12.5% Sodium Hypochlorite Solution
000675–00045	Quatsyl 256
000675–00047	Premeasured Quatsyl 256
000706–00099	Claire Jet Stream Wasp and Hornet Killer
000706–00102	House & Garden Insect Spray
000707–00167	Kathon CS–30 Oil Field Microbiocide
000707–00168	Kathon CS–35
000707–00169	Kathon CS–25 Oil field Micro Biocide
000707–00171	Kathon Mwx
000769–00309	Fish-Tox–5 (5% Rotenone)
000769–00653	Kills Rats with Para Blox Weather Proof Paraffinized Rat Bait Flavor
000769–00655	Smcp Para-Blox Weather Proof Rat Bait Fish and Grain Flavor
000769–00656	Smcp Zinc Phosphide
000769–00657	Smcp Diphacin (r) 110
000769–00659	Smcp Singe-Kil
000769–00660	Smcp Para Blox Kills Rats Weath Prf Paraffin Rat Bait Flavor Meat
000769–00669	Commerical Size Para-Blox (Cereal & Molasses)

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
000769–00670	Kill Rats with Para-Blox
000769–00671	Commercial Para Blox Meat & Blood Flavored
000769–00706	Pelletized Slug and Snail Bait
000769–00707	Crumblized Slug and Snail Bait
000769–00741	Zinc Phosphide (Rumetan) 90%
000769–00743	AFC Zinc Phosphide 80 (Rumetan)
000769–00756	Zinc Phosphide Rodenticide for Controlling Orchard Mice
000769–00758	Afc Diphacinnone 0.1%
000769–00787	DI-Mix 110
000769–00832	Miller V–75 A Dust
000769–00836	Miller Dacthal 5G
000769–00837	Miller Turf Food 12–6–6 Plus 3
000769–00842	Pratt DX Insect Spray
000769–00854	Tomato & Vegetable Dust or Spray
000769–00855	Pratt 1% Rotenone Dust or Spray
000769–00889	Agrisect Rotenone Dust 1%
000769–00904	Science 1% Rotenone
000769–00911	Science Garden Weeder
000802–00360	Lilly/Miller Diazinon Insect Dust
000802–00442	Miller's Sevin 5% Dust Insecticide
000802–00513	Lilly/Miller Lawn & Turf Weed Bomb
000802–00526	Millers Multi-Purpose House Plant Insect Spray
000802–00540	Lily/Miller Tomato & Vegetable Garden Spray
000802–00547	Ultragreen Weed & Feed
000802–00559	Lilly/Miller Feed & Weed

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
000802–00563	Lilly/Miller Granular Noxall Vegetation Control
000802–00568	Lilly/Miller Ready-To-Use Spurge and Oxalis Killer
000802–00571	Lily/Miller Casoron Granules 1.5%
000802–00572	Lilly/Miller Ready-To-Use Knock-Out II
000802–00575	Lilly/Miller Hose'n Go Lawn Bug Spray
000802–00576	Lilly/Miller Ultragreen Crabgrass Control & Lawn Food
000802–00577	Lilly/Miller Fence and Grass Edger
000802–00578	Lilly/Miller Crabgrass Killer
000802–00582	Lilly/Miller Knock-Out II Weed & Grass Killer
000802–00585	Lilly Miller Sevin Brand Carbaryl Insecticide Spray
000802–00587	Lilly/Miller Noxall Vegetation Killer Concentrate
000802–00598	Lilly/Miller Diazinon Insect Spray
000861–00024	Wonder Pine Aroma Disinfectant
000875–00130	Citru Quat–3 Disinfectant, Cleaner, Fungicide, Deodorant
000876–00330	Velsicol Technical Heptachlor
000909–00103	Cooke Sevin Brand Liquid Carbaryl Insecticide
000909–00105	Cooke Fungicide
000961–00242	Lebanon Dandelion Killer
000961–00290	Lebanon Improved Bug Out
000961–00291	Improved Two-Way Winter Green
000961–00298	Greenview Two-Way Green Power

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
000961–00336	Lebanon Betasan 4–E Emusifiable Liquid
000961–00337	Lebanon Country Club 19–4–9 with Betasan
000961–00338	Lebanon Betasan 7% Granular
000961–00339	Lebanon Weed Control with Fertilizer 32–3–3
000961–00344	Lebanon Country Club Fertilizer with Oftanol Insect Control
000961–00355	Lebanon Turf Food with Sevin Insect Control
000961–00357	Lebanon Lawn Food with Insect Control contains 1.0% Dursban
000961–00363	Lebanon Fertilizer with Barricade Preemergence Weed Control (0.65%)
000961–00366	Lebanon Fertilizer with Turcam Insect Control
000961–00372	Crabgrass Preventer with 0.20 Barricade Preemergence Herbicide
000961–00373	Fertilizer Plus 0.50% Oftanol Par Ex
000961–00374	Fertilizer Plus 0.67% Oftanol Par Ex
000961–00375	Fertilizer Plus 0.96% Oftanol Par Ex
000961–00378	Par Ex Fertilizer Plus 0.96 I% Ronstar
000961–00381	Par Ex Fertilizer Plus 2.0% Ronstar
000961–00387	Par Ex Slow Release Fertilizer with 0.434% Barricade
001021–00535	Personal Repellent Formula 5731
001021–00608	Pyrocide Intermediate 5951
001021–01007	Pyrocide Intermediate 6893
001021–01090	Pyrocide Intermediate 7004
001021–01121	Pyrocide Intermediate 7007
001021–01175	D-Trans Intermediate 1914
001021–01196	D-Trans Intermediate 1940
001021–01267	Pyrocide Intermediate 7168
001021–01397	Multicide (r) Intermediate 2155
001021–01421	Synergized Industrial Aerosol From MGK/ esbiol/intermediate 1972
001021–01423	Multicide Intermediate 2209
001021–01466	Esbiol Intermediate 2207
001021–01486	Evercide Intermediate 2302
001021–01568	Evercide Emulsifiable Concentrate 2462
001021–01577	Evercide Total Release Fogger 2522
001021–01579	Evercide Total Release Fogger 2524
001021–01581	Evercide Concentrate 2529
001021–01585	Multicide Total Release Aerosol 2554
001021–01590	Evercide Concentrate 2518
001021–01591	Evercide Intermediate 2497
001021–01592	Evercide Total Release Aerosol 2525
001021–01593	Evercide Concentrate 2517
001021–01604	Evercide Intermediate 2546
001022–00006	Ambrocide
001022–00550	Chapco SA–1
001043–00036	Amerse
001057–00067	Dolge Food Plant Fogging Aqueous Pyrethrum Insecticide
001072–00010	Surge Mitrocin Plus
001072–00018	Bab-O-Dyne
001124–00063	Sani-Turge Disinfectant Cleaner
001203–00005	Delta Foremost 4820 Del-Kill Insecticide
001203–00035	Foremost 4812 - Es Ambush Residual Insecticide
001239–00015	D/S/D
001270–00172	Zep 10–X Insecticide
001270–00199	Zep Stop
001270–00251	Zep Mini Fog
001304–00064	Mcness Free-Choice Vitamin & Mineral Mix
001317–00065	Sani-Du Chlorine Sanitizer
001386–00445	Unico Sevin Spray Powder
001409–00022	Marine Woodlife Ready To Use
001409–00029	Us Plywood Boxlife-C Penetrating Fungi Water Repel Wood Ready To Use
001409–00065	Woodlife P Wood Preservative
001452–00019	Hilo Dip for Cats
001452–00037	Hilo Gold Shampoo
001452–00049	Hilo Lawn Spray
001452–00050	Hilo Carpet Powder
001452–00051	Hilo Flea & Tick Spray II
001452–00052	Hilo Flea and Tick Shampoo Plus
001553–00101	Momar No Mow II
001553–00109	Imperial XX
001553–00111	Imperial V Thermal Fogger
001553–00124	Aquatrol C–2610
001553–00126	Aquatrol C–2540
001553–00131	Contract
001553–00132	R.i.p. Ima Bug Residual Insecticide
001553–00133	Imperial XXX
001609–00014	Moorwood Semi-Transparent Stain & Wood Preservative

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
001609–00015	Moorwood Penetrating Clear Wood Finish & Preservative
001685–00034	Heavy Duty Terg-O-Cide Formula No. 132
001685–00069	Formula 296 State Roach & Ant Killer
001685–00071	State Formula 298 Ras Residual Roach & Ant Spray
001685–00104	State Formula 429 Was Wasp Killer
001685–00113	State Formula 425 Microcide
001791–00046	North Coast Pyrethol
001812–00349	Cotton Pro 80df
002011–00006	Vigortone Bovotone Fc "007" Mg
002021–00025	168–Wp
002269–00175	Gold Kist 5–5–25 with Ronstar
002269–00176	Gold Kist 14–14–14 with Ronstar
002269–00177	St., Augustine Weed and Feed
002270–00706	Excelcide Cold Fog #1
002270–00707	Excelcide Cold Fog
002296–00093	Ionox Disinfectant Cleaner
002382–00145	Knockout Spray Concentrate #1
002382–00146	Permethrin-IGR #7 Flea and Tick Spray for Dogs
002393–00517	Diphacinone 110 S Concentrate Rodenticide
002437–00015	Elko Sani-Scrub
002596–00114	Hartz Blockade for Cats
002596–C0115	Hartz Blockade for Dogs
002630–00012	Crest-O-Pine
002675–00013	N.p.s. Sanitizing Agent II
002686–00011	One Step Totil
002724–00279	Zoecon RF–156 Collar for Dogs

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
002724–00354	Zoecon RF–271 RTU Pump Spray
002724–00479	Fluvalinate 25% Bulk An Insecticide for Manufacturing Use Only
002724–00482	Fluvalinate 22.3%f Bulk
002781–00010	Happy Jack X-Pel Flying Insect Repellent
002792–00049	Deccozil- EC 79
002792–00064	Deco Salt No. 35
003008–00009	Osmose Clear Water Repellent & Wood Preservative
003008–00062	Osmose Pcp 40% Concentrate
003125–00123	Guthion 2s
003125–00128	Di-Syston 2% Granular Systemic Insecticide for Repackaging Only
003125–00193	Guthion 50% Wettable Powder Crop Insecticide
003125–00330	Oftanol 5% Granular Insecticide
003125–00331	Oftanol 1.5% Granular
003125–00338	Guthion 3 Flowable Insecticide
003125–00350	Lawn Food and Insecticide
003125–00378	Guthion 35% Wettable Powder Insecticide
003125–00379	Guthion Solupak 35% Wettable Powder In Water Soluble Packets
003125–00425	Guthion Technical
003125–00426	Guthion 2l
003125–00427	Guthion 3 Flowable Insecticide
003125–00435	Oftanol 5% Granular Turf and Ornamental Insecticide
003342–00004	Tiger Brand 1.0% Rotenone Dust

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
003342–00014	Tiger Brand 4% Malathion Dust
003342–00051	Tiger Brand 5% Sevin Dust
003342–00053	Tiger Brand Two Way Vegetable Dust
003342–00056	Tiger Brand Sevin Vegetable Dust
003342–00069	Tiger Brand - 10% Sevin Dust
003342–00100	Garden Special
003635–00264	Duklor
003696–00136	Dow Disinfectant Bathroom Cleaner
003838–00034	Quat 42 Germicidal Cleaner
004077–00040	ORB Industrial Aerosol Insecticide
004077–00079	ORB No. 116 Total Release Clean Out Fogger
004091–00006	Seal Treat II
004238–00026	Diasof
004238–00027	Calusa Mildew Preventive
004238–00028	Diasof Powder
004462–00047	Beaver Udder-Cide with Lanolin Iodine Sanitizer & Udder Wash
004925–00004	Special King Vapor-Generating Mosquito Mat
004959–00044	Sure sect– 50 Liquid Spray 0.50%
004959–00045	C-San 28 Wash Sanitizer
005481–00189	Alco Slug'm
005481–00195	Metaldehyde Methiocarb Granules 2–1
005481–00332	Metaldehyde Methiocarb Granules 2–1 for Home Owner Use
005481–00333	Slug' M for Homeowners Use
005549–00050	Brozone Preplant Soil Fumigant
005602–00164	V-Twenty-Three
005602–00171	Lethalaire A–50

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
005602–00173	Lethalaire A–41
005602–00179	Procide All Purpose Insecticide
005602–00180	V Clear-Out
005602–00185	V Clean-Out II
005684–00050	Tech 10
005815–00035	Triple X Garden Weed Preventer
005887–00001	1% Rotenone Garden Dust
005887–00148	Black Leaf Tomato & Vegetable Insect Killer
005887–00149	Rose & Flower Insect Killer
005887–00178	Kill-Ko Rat and Mouse Bait Packs
005887–00180	Kill-Ko Rat and Mouse Pellets
005887–00181	Kill-Ko Mouse Bait Station
005887–00182	Kill-Ko Rat and Mouse Weatherproof Bait Blocks
005891–00012	Now Sanitizer
005967–00151	Coxysul Wettable Powder Fungicide
006325–00011	Yellow Jacket Manufacturing Sulfur
006325–00015	Yellow Jacket Flowable Sulfur
006390–00011	Vikol #af–25
006409–00001	Original Professional Do It Yourself Exterminator's Kit Formual 305
006484–00004	Bacti-Con
006830–20005	Calcium Hypochlorite, Technical
007115–00012	Chex-Flame Preservative Coating for Canvas
007122–00032	Guardian Rat Bait
007152–00043	Sea/gran Sanitizer–21
007173–00197	Ridall-Zinc Tracking Powder for Control of House Mice
007180–00005	Chlor-Rite
007294–00007	Shaklee Highly Concentrated Insecticide Insect Control
007299–20003	Brenco 550 Hi-Chlor
007405–00003	Chemi-Cap Insect Spray
007405–00044	Chemi-Cap Wasp-Hornet Spray
007579–00002	Rid-A-Bird Perch 1100 Solution
007779–00007	Slimex 14 Slimicide
007925–00010	Bleach
007969–00143	San 1297h 70wg Herbicide
008120–00060	Super Tropical 280-S–2771
008123–00056	Amine Selective Weed Control
008155–00016	Husky *H/W/T Germicidal Cleaner
008220–00043	Flea & Tick Spray for Cats & Dogs
008220–00045	Shield Flea and Tick Control for Cats
008220–00064	X-O-Trol Dt Flea & Tick Fogger
008220–00065	X-O-Trol 7 Flea & Tick Fogger
008591–00042	Microcide Ca–39
008591–00044	Microcide L–60
008637–00001	Mitco Cc–3t Algicide
009161–20004	Fast-N Easy Bleach
009198–00001	Fatal
009198–00024	Tee Time Fertilizer 20–4–10 with Dacthal
009807–00004	Double-D
009820–00001	D.G.D.
009852–00021	R/O Formula 101 Diazinon (with Synergized Pyrethrins)
009852–00054	Rite Off Surface Disinfectant and Deodorant
009852–00057	Rite-Off Germicidal Foam Cleaner
009852–00065	Rite-Off Residual Spray with Dursban
009852–00073	Platinum Multi-Purpose Insect Killer
009852–00075	Platiunum Wasp & Hornet Killer
009852–00077	Platinum Indoor Fogger
010031–00004	Petersens Pocket Gopher Killer IV
010107–00001	Pesti Sack Horn Fly Dust
010107–00004	All in 1 Turf 16=4=6
010107–00005	Methoxychlor E2
010107–00015	Diazinon 6000 Granular Turf & Garden Insect Control
010107–00019	Diazinon Ag 500
010107–00020	Diazinon 14G Granular Insecticide
010107–00027	Weed Pro 4 Lb. Low Vol
010107–00031	Weedpro 4 Lb. Amine
010107–00037	2% Malathion Grain Insecticide Dust
010107–00040	Weed Pro 6 Lb. Low Vol
010107–00044	Sevin 2I
010107–00049	Lawn King 20–7–5 Lawn Fertilizer with Diazinon
010107–00055	Combelt Super Turf 25 Insect and Grub Control Granules
010107–00059	Majestic Green Benefin 10 Sprayable
010107–00061	Majestic Green Turf King with Balan 17–5–5
010107–00070	Potato Seed Treater with Bark
010107–00082	Combelt Dacthal 5-G
010107–00093	Seed Shield Potato Seed Treater No. 7.5
010107–00096	Seed Shield Potato Seed Treater No. 15

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
010107–00096	Seed Shield Potato Seed Treater with Captan-Streptomycin
010107–00102	Seed Shield Potato Seed Treater
010107–00106	Two Plus Two Bromacil and Diuron
010107–00107	Four Plus Four Bromacil and Diuron
010107–00108	Top Moth 25
010107–00128	Protox Seed Protectant Drill Box Treatment
010107–00144	Majestic Green Bordeaux Mixture
010107–00145	Majestic Green Banvel + 2, 4-D
010107–00154	Combelt's Magnum B.T.
010163–00096	Gowan Dicofol 1.6 EC
010163–00119	Prokil Azinphos-M
010182–00020	Talon Rodenticide Mini-Pellets
010182–00021	Talon Rodenticide Bait Pack (mini-Pellets)
010182–00024	Talon Rodenticide Bait Pack (pellets)
010182–00025	Talon-G Rodenticide Mini-Pellets In Mouse Box
010182–00026	Talon Rodenticide Pellets
010182–00038	Talon-G Rodenticide Pellets
010182–00039	Talon-G Rodenticide Bait Pack (pellets)
010182–00040	Talon-G Rodenticide Bait Pack (mini-Pellets)
010182–00041	Talon-G Rodenticide Mini-Pellets
010182–00048	Weatherblok Bait
010182–00060	Havoc Rodenticide Bait Pack (mini-Pellets)

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
010182–00061	Havoc Rodenticide Bait Pack (pellets)
010182–00075	Havoc Rodenticide Mini-Pellets
010182–00076	Havoc Rodenticide Pellets
010182–00093	Havoc Rodenticide Bait Pack (pellets)
010182–00152	Eptam 6–E
010182–00169	Vernam 10G
010182–00221	Vernam 7–E
010182–00257	Vernam-Technical Selective Herbicide
010182–00390	Flexstar Herbicide
010292–00004	Mint Odor Disinfectant Cleaner
010292–00022	906 Fogging Insecticide
010332–00005	Algaecide Bm
010350–00011	Duratrol Household Flea Spray
010350–00014	Duratrol Flea and Tick Dip for Dogs No. 1487
010350–00017	Duratrol Flea & Tick Dip for Dogs
010350–00019	Sectrol Flea Foam
010350–00029	Duratol Plus Household Flea Spray
010350–00030	Duratrol Plus Flea & Tick Dip for Dogs
010350–00031	Duratrol Plus Flea Spray for Dogs
010466–00031	Ultrafresh DM–50 CC
010663–00008	Thermal Firing Squad Fogging Concentrate
010663–00037	Zap Insecticide
010707–00013	Magnacide 4551
010707–00024	Magnacide 656
010806–00063	Contact Indoor Fogger V
010806–00086	Contact Insect Repellent
010806–00091	Contact Hornet and Wasp Killer IV
010806–00095	Contact Indoor Fogger VII

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
010900–00073	857 Wasp and Hornet Killer II
010902–00004	Home Pest Control
010951–00006	Britz Diazinon 50W
011314–00003	Straight Arrow Stable Care II Fly Repellent Spray
011350–00025	7284 Hi-Build Antifouling Red Brown
011350–00032	5287 RD Sigmaplane Ecol Antifouling 1154 Redbrown
011411–00016	W–30–12
011556–00100	Para-Premise Residual Premise Insecticide
011694–00082	Double Action Liguid Insecticide
011694–00089	Baysect Residual Spray Insecticide
012255–00001	Acme Algaecide
012714–00003	Golden Sun Feeds Hi Phos "12" Larvi-Ban
013283–00004	Rainbow Fire Ant Control
019713–00255	Drexel Vernam 7–E
019713–00259	Drexel Vernam 10g
020375–00001	Nutmeg No–54
028059–00003	Microbio-San
028059–00004	Hydro-Cide
028293–00088	Unicorn Coumaphos Screwworm Spray
028293–00091	Unicorn Coumaphos Livestock Duster
028293–00122	Unicorn Coumaphos Fly and Louse Dust
028293–00198	Unicorn Rotenone Fire Ant Killer
029728–00001	Foodtown Fresh Scent Bleach
032273–00008	#90 Deck & Fencepost Preservative
032802–00017	Dacthal 5–G Plus
032802–00027	Dacthal 5–G Weed Preventer

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
033009–00003	Glidco Pine Oil–140
033270–00008	Us Sentry Trifluralin
033354–00017	Fresh Mark Fresh Wax 36 CF-R2
033560–00049	Oxy Chloracil
033631–00003	Casco Sanitizer
034702–00008	Aqueous Wasp & Hornet Spray 12685
034704–00302	Malaspray 50 EC
034704–00457	Cythion 5 EC
034704–00544	Cythion 5–E Insecticide
034704–00618	Clean Crop Vapona 40–E Insecticide
034704–00641	Mcpp 4 K
034704–00683	Bt–50 Biological Insecticide
034704–00752	Hopkins BT Spray
034704–00755	BT 320 Dust
034810–00032	WEX-Cide 200
035138–00067	Aero Roach Spray
035138–00077	Aero Pyrethrum Concentrate
035512–00024	Turf Pride 15–0–15 with 1% Ronstar
035512–00026	Turf Pride 12–0–12 with 75% Ronstar
035512–00031	Turf Pride with 0.5% Ronstar
035512–00035	Turf Pride with .67% Ronstar
035512–00040	Southern Garden Lawn Weed Killer "S"
035576–00035	Fiesta Insecticide Spray No. 2
035896–00022	Cupric Oxide 808 Technical
035896–00023	Cupric Oxide 761 Technical
036330–00002	San-It
037023–00001	Kenic Flea-Rid Spray for Puppies & Kittens
037023–00004	Kenic Flea Rid Spray for Cats
037023–00010	Kenic Flea-Rid Clear Dip
037023–00011	Kenic Flea Rid Tri-Ex Flea and Tick Shampoo
037733–00008	Reddick Bro-Mean Sol
039444–00010	Micropur Mt 20
039444–00011	Micropur Mt 5
039529–00001	WEI–625 Liquid Algaecide
040510–00002	Paranitrophenol, Technical
041014–00009	Mariate 400 Flowable Concentrate
041014–00011	Mariate 300 Methoxychlor Flowable
041835–00003	Durakyl Shampoo
041835–00004	Durakyl Pet Spray
041835–00006	Durakyl Pet Dip
041835–00008	Durakyl II Flea & Tick Control Pet Spray
041835–00009	Durakyl II Flea and Tick Control Pet Shampoo
041878–00002	M–100 Mosquito Repellent Solution
042373–00005	Waterbed Conditioner
042389–00020	Fire Ant Killer 2
042408–00001	Gipco Cide 922
042519–00013	Dorsan Insecticide
043602–00003	Blast 'em Residual Roach & Ant Insecticide
043757–00001	Eastern Minerals' Fly Control Mineral with Rabon Oral Larvicide
043921–00001	14 Day Flea & Tick Spray
043921–00003	Carpet Treatment #1
044666–00001	Marshall Minerals' Fly Control Mineral with Rabon Oral Larvicide
044716–00009	Fearing Permethrin Insecticide Spray
044716–00010	Fearing Insecticide Concentrate 10% EC
044716–00012	Show & Trail
045087–00029	Zema Super Flea & Tick Spray for Cats & Dogs
045087–00031	Zema Indoor Premise Spray
045087–00052	Zema Equitec Repellent Spray
045087–00055	Zema Fast Acting Carpet Powder
046372–20006	CT–244 Biocide
047550–00002	Elite Flea & Tick Spray Mist
047898–00001	Polyace S–1000
048099–00001	Bear Skunker
048242–00006	RAM Poly - Algaecide
048242–00009	RAM Mustard Out
049403–00012	Nipecide Cmx
049403–00022	Ottasept
049668–00001	Superfine Dusting Sulphur
049668–00003	Redball Technical Sulphur
049721–00001	Liquefied Chlorine Gas Under Pressure
050416–20001	Proclean Pro-San Sanitizer/bleach
050534–00011	2 Plus 2 (mcpp + 2,4-D Amine)
050534–00131	2, 4-D Acid Technical Flake
050534–00151	Triban-D
050534–00153	2,4-D + Dicamba Turf Care Herbicide
050534–00194	DS–33
050534–00203	Reach
050654–00002	Insekten Killer
050654–00004	Insectkiller Cockroach Carpet
050654–00005	Bio-Hautschutz Repellent
050697–00001	Blue Lustre Flea Killer for Carpets
051890–00001	Algaecide Al–101
052142–00004	Dog Repellent
052200–00007	Greensward Premium Fertilizer Plus Dursban
052779–00001	Magna Q–43
052779–00002	Magna Q–25
052779–00005	Magna CAS–5
052779–00007	Magna DIN–15

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
052779–00014	Magna CP–1
052779–00015	Magna Phen–100
052779–00017	Magna Phen–100/256
052951–00002	Foura-Lemon
052951–00003	FY-Sol-Mint
053114–20206	Bugaway
053265–00001	LX Flowable Sulfur
054045–00002	VIP Mosquito Mat
054287–00006	Insect Guard
054287–00012	Deet Plus Composite Spray
054471–00005	Cunap Coat
055146–00065	Champ Formula II Dry Flowable Water Soluble Packaging
055236–00006	White Copper Antifouling Paint
055460–00009	Carlson Company 6% Malathion Grain Protector
055467–00003	Tenkoz Trifluralin 4 Hfp
055500–00001	Z-Stop
055501–00001	The Recipe
055638–00013	Condor G Bio-insecticide
056336–00009	Consep SPR1 Tomato Pinworm Sprayable Bead Pheromone
056336–00010	Consep SPR2 Oriental Fruit Moth Pheromone Sprayable
056387–00006	Pyrinyl II Lice Control Spray
056392–00005	Hospital Foam Cleaner Disinfectant
056629–00002	Amber Guard 425
056658–00001	Loveland Flea Busters Flea and Tick Shampoo
056667–20202	US Pro-Kill
056938–00001	Bacto
057125–00001	Purex Bleach
057159–20003	San 2000
058225–00003	WES 615
059144–00003	5% Sevin Brand Carbaryl Insecticide Dust

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
059144–00005	10% Sevin Brand Carbaryl Insecticide Dust
059144–00006	Green Charm Liquid Sevin Insect Spray
059144–00007	Green Charm Home Pest Insect Control
059144–00026	Ant, Flea, Tick & Grub Granules with Sevin 1% Brand Carbaryl Insect
059144–00027	Ant, Flea, Tick & Grub Control
059301–00002	Liquified Chlorine Gas Under Pressure
059639–00088	Orthene Turf, Tree & Ornamental Sprayable Wsp
060038–00002	Roach Food
060061–00052	Pettit Marine Paint Unepoxy Antifouling Super slick 1290 Blue
060061–00053	Pettit Marine Paint Unepoxy Antifouling Super slick 1690 Red
061282–00008	Gold Crest Promar Tracking Powder Rodenticide
061451–00001	TCIPN
061451–00002	Chlorothalonil Technical
062207–00004	Fox-Chlor Concentrate
062562–00002	Quvatek
062562–00003	Quvasys
062719–00091	Exetor
062719–00177	Dowelanco Basal
063720–00002	Diacide Dialyzer Disinfecting Solution
064240–00028	Combat Ant Killer Granular Bait 0.65%
064248–00007	Maxforce Ant Killer Granular Bait 0.65%
064296–00003	Bio-Path Cockroach Control Chamber
064350–00001	W–30–14

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
064721–00001	Supernatural Brand D-E Insecticide
064721–00002	Supernatural Brand Plant Protection Insecticide
064854–00002	Kefa Biowash-Q
065260–20001	Sodium Hypochlorite 12.5%
065263–00001	Dr. Biosedge
065264–00001	Body Armor
065382–00005	X–1 Manufacturing-Use Only
065462–00001	Organic Plus Diatomaceous Earth Crawling Insect Killer
065462–00004	Organic Plus Pyrethrin/diatomaceous Earth Insecticide
065462–00005	Organic Plus Pco Pyrethrin/diatomaceous Earth / Piperonyl Butoxide Insect
065462–00006	Organic Plus Crop Insecticide
065462–00007	Organic Plus Diatomaceous Earth/pyrethrin Insecticide
065608–00001	Guard-U
065626–00001	Mycotrol GH-OF for Rangeland and Improved Pastures
065626–00003	Mycotrol GH-OF for Repackaging Use Only
065626–00004	Mycotrol GH-ES for Rangeland and Improved Pastures
065626–00005	Mycotrol GH-ES for Crops
065626–00006	Mycotrol GH-ES for Repackaging Only
066232–00001	Swim Kleer
066306–00002	Sunsect Insect Repellant with Aloe - Spf 4
066306–00003	Sunset Insect Repellent Sunscreen W/aloe Spf 8

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
066306–00008	Sunsect Safari Gel - Spf 23 (formula 6321/5)
066480–00001	Eco-Fresh
066480–00002	Eco-Fresh No Fleas
066480–00004	Eco-Fresh Brand De Insect and Slug Killer
066524–00001	Expedite Broadleaf Herbicide 3-Way Amine
066551–00001	Buzz Away
066551–00002	Buzz Away
066551–00003	Buzz Away Insect Repellent
066674–00002	Terminator Plus
066676–00002	Famam No-Gnaw
066760–00001	Liquified Chlorine Gas Under Pressure
066963–00002	Espree Pet Spray
066963–00006	Espree Insecticide for Horses
066986–00004	Safecide Brand M-Pede Insecticide
067200–00003	Chase A-Way Insect Repelling Wristband Bug-Me-Not X Formulation
067278–00001	Bio Bug Insect Repellent
067544–00001	Liquified Chlorine Gas Under Pressure
067572–00060	Staffel's Dipel Garden Caterpillar Dust
067624–00001	Liquified Chlorine Gas Under Pressure
067748–00001	Phytohealth J08 Post-Harvest Fungicide
067748–00002	Phytohealth M14 Post-Harvest Fungicide
067801–00001	Thidiazuron 50WP Cotton Defoliant
067801–00002	Paraquat Concentrate
067801–00003	Butifos 6 Emulsifiable Defoliant
067801–00004	Pendimethalin

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
067813–00001	Dow Liquid Disinfectant Formulation 2A
067813–00002	Dow Liquid Disinfectant Formulation 3A
067813–00003	Dow Disinfectant Formulation 4A
067985–00001	Liquefied Chlorine Gas Under Pressure
068158–00001	Wst Iodinated Resin Cartridge
068171–00001	Exterminator Plus
068182–00011	ESC–10 Biofungicide Technical
068182–00013	ESC–11 Biofungicide Technical
068197–00001	Ecoplug Implant, containing Rodeo Herbicide
068316–00001	Barnacle Ban Antifouling Paint
068316–00002	Hotbottom White Paint
068329–00010	Alpha 412
068329–00019	Alpha 415
068357–00001	Skeeto-Ban Insect Repellent
068401–00002	Total Control
068451–00002	Deltamethrin 3% Collar
068476–00002	Flea-Away
069152–00001	Repello's Products Repelling Wristband
069152–00002	Repello Products Disposable Insect Repelling Tablecloth
069152–00006	Repello Products Insect Repelling Towellette
069152–00015	Repello Products Insect Repelling Candle
069152–00017	Repello Products No Bites Ssf Insect Repelling Towellete
069240–00001	No More Fleas
069298–00002	Lipopel Insect Repellent Spray 2610
069328–00001	Sta-Clear Jumbo Tablets
069328–00002	Sta-Clear "shock"

TABLE 2—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF THE 1999 MAINTENANCE FEE—Continued

Reg. No.	Product Name
069407–00003	ADL Flea and Tick Shampoo
069407–00004	ADL Flea and Tick Dip
069408–00001	Omniban
069494–00001	Getem Roach Killer
070060–00002	M–97–002 Kaolin
070395–00002	Gone Insect Repelling Tablecloth
070422–00001	Horse Guard Equine Fly Spray
070480–00001	Protopac Total Control Brand
070480–00002	Protopac Total Control 3 Brand
070597–00001	Bio Slime Retardant
070844–00001	Unocal Neutral "90" Spray Oil
071096–00001	OR-Cal Stabilized Malathion 400
071096–00003	OR-Cal Ziram 400
071096–00005	OR-Cal Colloidal Lindane
071125–00001	White Magic Flea Carpet Treatment
071156–00001	BT–1100
071176–00001	Cyfly Technical
071176–00002	Cyfly 1% Premix
071240–00003	Zerepel 2
071566–00001	Top Crop Flowable

IV. Public Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business hours in the OPP Public Docket, Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

Dated: July 29, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–20469 Filed 8–10–99; 8:45 am]

BILLING CODE 6560–50–F

federal register

Wednesday
August 11, 1999

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 32 and 36
1999–2000 Refuge—Specific Hunting and Sport Fishing; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 36

RIN 1018–AF52

1999–2000 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to add additional national wildlife refuges (refuges) to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities; and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 1999–2000 season. These regulations would provide additional recreational opportunity consistent with the primary purposes of the National Wildlife Refuge System.

DATES: Submit comments on or before September 10, 1999.

ADDRESSES: Submit written comments to Chief, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240. See SUPPLEMENTARY INFORMATION for information on electronic submission.

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358–2397; Fax (703) 358-2248.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Act of 1966 closes national wildlife refuges to hunting and sport fishing until we open them by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purposes of the refuge. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound fish and wildlife management and administration, and otherwise must be in the public interest. This ensures that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System (System) for the benefit of present and future generations of Americans.

We review refuge hunting and fishing programs annually to determine whether to add additional refuges or whether individual refuge regulations governing existing programs need modification, deletion or additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications ensuring continued compatibility of hunting and fishing programs and that these programs will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.

50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. We regulate hunting and fishing on refuges to:

- ensure compatibility;
- properly manage the fish and wildlife resource;
- protect other refuge values; and
- ensure refuge user safety.

On many refuges, our general policy of adopting regulations identical to State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under the section entitled "Statutory Authority." We issue refuge-specific hunting and fishing regulations when we open wildlife refuges to either migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or those species subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. 50 CFR part 32 contains previously issued refuge-specific regulations for hunting and fishing. We are promulgating many of the amendments to these sections to standardize and clarify the existing language of these regulations.

Plain Language Mandate

The vast majority of the proposed revisions in this proposed rule to the individual refuge units are to comply with a Presidential mandate to use plain language in regulations and do not modify the substance of the previous restrictions. These types of changes include using "you" to refer to the reader and "we" to refer to the Service and using the word "allow" instead of "permit" when we do not require the use of a permit for an activity. Only a handful of proposed refuge-specific regulations contain the substantive changes discussed below.

Use of Only Approved Nontoxic Shot

Waterfowl and migratory birds can get lead poisoning by ingesting lead shot or sinkers when they feed. You can get scientific information on this by requesting the publication, "Toxicity of Lead Shot to Wildlife," from us by calling 1–800–582–3421 or by accessing the bibliographic databases information directly on the Internet at: http://www.fws.gov/fwrefser.html.

In the November 21, 1986, **Federal Register** (51 FR 42107) we began the conversion to nontoxic shot nationwide for waterfowl hunting on refuges, which we implemented in the 1991–1992 hunting season. In the December 4, 1995, **Federal Register** (60 FR 62035), we issued final regulations adopting requirements to use nontoxic shot to hunt wildlife species other than waterfowl and coots on certain refuges beginning with the 1996–97 hunting season. Prior to that time we requested voluntary compliance. For Alaska we delayed implementation until the 1997–98 season to allow coordination with the State and outlying villages. We also provided delays for Waterfowl Production Areas (WPAs), principally in North Dakota, South Dakota, Minnesota, Montana, Wisconsin, and Iowa until the 1998–99 season, with voluntary compliance requested in the meantime. We took these actions to allow adequate time for additional coordination and educational outreach with the affected States, hunting organizations, and the general public on the effects of toxic lead shot to waterfowl and other migratory birds. We requested voluntary hunter use of nontoxic shotshells until we adopted final rules. In the September 3, 1998, **Federal Register** (63 FR 46910) we identified the refuges subject to the rule.

50 CFR part 32 prohibits the use or possession of toxic shotgun pellets by upland game hunters on WPAs and certain other areas (refuges or areas within refuges) of the System to the extent needed to protect against significant exposure to migratory birds. We delineated these areas on maps, leaflets and/or signs (available at each refuge headquarters or posted at each refuge) or as stated in refuge-specific regulations. Where we allow turkey and deer hunting, you may use slugs and shot containing lead to hunt these species unless prohibited by refuge-specific regulations.

We specifically identify the shot allowed in areas of the System by reference to the shot identified in 50 CFR 20.21(j). We sometimes grant new shot types conditional approvals until we complete all necessary studies. These conditional approvals change yearly, and we add new shot types to our approved list as they meet our criteria. To avoid any confusion, we propose to amend *§ 32.2 What are the general provisions regarding hunting on*

areas of the National Wildlife Refuge System? to state that you may use only "approved" nontoxic shot identified in 50 CFR 20.21(j) while hunting with shotguns or muzzleloaders on WPAs, or on certain other areas of the National Wildlife Refuge System. We also propose to amend affected refuges listed in *Subpart B.—Refuge-Specific Regulations for Hunting and Fishing* to reflect that hunters may possess and use only approved nontoxic shot while in the field.

Establishment of Lead-Free Fishing Areas

On April 13, 1999, we published a notice of intent in the **Federal Register** (64 FR 17992) to establish "Lead-Free Fishing Areas" and the prohibition of the use of certain fishing sinkers and jigs made with lead on specific units of the System. We received 12 written and 2 verbal comments on the notice: 6 support our proposal; 4 request coordination in implementing our proposal; 3 would like to review the evidence; and 1 disagreed with our scientific findings. On this basis, we feel we should proceed with this proposed action and will consider and address the substance of the comments prior to adopting any final rule.

We now propose prohibiting the use of these sinkers and jigs made of lead or lead alloys in areas where mortality of common loons has occurred or where concerns exist because habitat use by loons and significant fishing activities overlap. Each refuge selected that meets these criteria will have a two-year phase-in period. This action will not close to sport fishing any of the refuge units, but only prohibit the use of lead fishing sinkers there.

Researchers have well documented that lead is toxic to both humans and wildlife. In areas where recreational angling and loon populations co-occur, lead poisoning from swallowing lead sinkers and jigs accounts for 10–50% of recorded loon mortality (Pokras). This information was referenced in the April 13, 1999, notice.

We propose the establishment of a "Lead-Free Fishing Area" in these refuges and WPAs:

- From the outlet of Skilak Lake downstream to the refuge boundary and the Dave Spenser Unit of the Kenai Refuge Wilderness Area, Kenai National Wildlife Refuge, Alaska
- J.N. "Ding" Darling National Wildlife Refuge, Florida
- Moosehorn National Wildlife Refuge, Maine
- Carlton Pond Waterfowl Production Area (part of Sunkhaze National Wildlife Refuge), Maine
- Seney National Wildlife Refuge, Michigan
- One Waterfowl Production Area in the Fergus Falls Wetland Management District: Nicholson WPA, Minnesota
- Rice Lake National Wildlife Refuge, Minnesota
- Tamarac National Wildlife Refuge, Minnesota
- Pablo National Wildlife Refuge, Montana
- Red Rock Lakes National Wildlife Refuge, Montana
- Necedah National Wildlife Refuge, Wisconsin
- 5 Waterfowl Production Areas in the St. Croix Wetland Management District: Oakridge and Amschler WPAs (both in St. Croix County), Rose Lee WPA, Flatey WPA, and Bass Lake WPA (in Polk County), Wisconsin
- National Elk Refuge, Wyoming

For the areas in Kenai National Wildlife Refuge listed in Alaska above, we will follow the procedures for establishing permanent restrictions in National Wildlife Refuges in Alaska outlined in *§ 36.42 Public participation and closure procedures* in implementing the two-year phase in. Listed above, we have identified other refuges in the lower 48 States that will have "Lead-Free Fishing Areas."

We propose to phase-in "Lead-Free Fishing Areas." During the first year of the phase-in, we will educate anglers about the benefits of nontoxic tackle for wildlife. After the two-year phase-in, we will require anglers to fish with lead-free sinkers and jigs in all designated "Lead-Free Fishing Areas."

Request for Comments

If you wish to comment, you may do so by any one of several methods. You may mail comments to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240. You may comment via the Internet to: Refuge_Specific_Comments@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: "Attn: 1018-AF52" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–2029. You may also fax comments to: Chief, Division of Refuges, (703) 358–2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We considered providing a 60-day rather than a 30-day comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and fishing regulations would hinder the effective planning and administration of our hunting and fishing programs. That delay would jeopardize establishment of hunting and fishing programs this year, or shorten their duration. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time provide for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges. Finally, there already has been a public comment period on our notice of intent on the proposed establishment of "Lead-Free Fishing Areas."

When finalized, we will incorporate this regulation into Title 50 Code of Federal Regulations (50 CFR) parts 32 and 36. Part 32 contains general provisions and refuge-specific regulations for hunting and fishing on national wildlife refuges. Part 36 contains provisions specific to Alaska national wildlife refuges.

Clarity of this Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the

format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k–460k–4), govern the administration and public use of national wildlife refuges.

The National Wildlife Refuge System Improvement Act (NWRSIA) of 1997 is the latest amendment to the NWRSAA. It amends and builds upon the NWRSAA in a manner that provides an improved "Organic Act" for the Refuge System similar to those which exist for other public lands. It serves to ensure that we effectively manage the System as a national system of lands, waters and interests for the protection and conservation of our nation's wildlife resources. The NWRSAA states first and foremost that we focus the mission of the System on conservation of fish, wildlife, and plant resources and their habitat. This Act requires the Secretary, before initiating or permitting a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is a compatible use and not inconsistent with public safety.

The RRA authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which we established the areas. This Act requires that any recreational use of refuge lands be compatible with the primary purposes for which we established the refuge and not inconsistent with other previously-authorized operations.

The NWRSAA and RRA also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop hunting and sport fishing plans for each existing refuge prior to opening it to hunting or fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purposes for which we established the refuge. We've ensured initial compliance with the NWRSAA and the RRA for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at the time of acquisition. This ensures that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. We ensure continued compliance by the development of long-term hunting and sport fishing plans and by annual review of hunting and sport fishing programs and regulations.

In preparation for new openings, we include the following documents in the refuges' "openings package" for Regional review and approval from the Washington Office: an interim hunting and fishing management plan; a Section 7 determination pursuant to the Endangered Species Act that these openings will have no effect, or are not likely to have an adverse effect, on listed species or critical habitats; a letter of concurrence from the affected State; interim compatibility determination; and refuge-specific regulations to administer the hunting and/or fishing programs. Upon review of these documents, we have determined that the opening of these national wildlife refuges to hunting and fishing is compatible with the principles of sound fish and wildlife management and administration and otherwise will be in the public interest.

We propose the following wildlife-dependent recreational activities for the first time:

Hunting of migratory game birds on:

- Bayou Teche National Wildlife Refuge, Louisiana.
- Currituck National Wildlife Refuge, North Carolina.
- Julia Butler Hansen Refuge for the Columbian White-Tailed Deer, Oregon.
- Plum Tree Island National Wildlife Refuge, Virginia.

Upland game hunting on:

- Bayou Teche National Wildlife Refuge, Louisiana.

Big game hunting on:

- Bond Swamp National Wildlife Refuge, Georgia.
- Bayou Teche National Wildlife Refuge, Louisiana.

Sport fishing on:

- Bond Swamp National Wildlife Refuge, Georgia.
- J. Clark Salyer National Wildlife Refuge, North Dakota.
- Tewaukon National Wildlife Refuge, North Dakota.
- Stewart Lake National Wildlife Refuge, North Dakota.
- Upper Souris National Wildlife Refuge, North Dakota.
- Julia Butler Hansen Refuge for the Columbian White-Tailed Deer, Oregon.
- Willapa National Wildlife Refuge, Oregon.
- ACE Basin National Wildlife Refuge, South Carolina.

In accordance with NWRSAA and the RRA, we have determined that these openings are compatible and consistent with the primary purposes for which we established the refuge.

Need for This Regulation

We propose to add additional refuges to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities. We propose to amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing for the 1999–2000 season. On many refuges, our policy of adopting regulations identical to State regulations is adequate in meeting National Wildlife Refuge System objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under the section entitled "Statutory Authority" in the rule. We issue refuge-specific regulations when opening a national wildlife refuge or modifying the various uses of a refuge, and for all hunting or sport fishing. These regulations list the prohibited uses, limited uses, and those activities that are available without restriction. They also list those wildlife species that you may hunt or fish for along with the respective seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. We propose to promulgate many of the amendments here to provide greater restriction and clarify the existing regulation language, which should result in less violations of refuge regulations.

Why Alternative Approaches Are not Feasible

Refuge officers process violation notices through the Federal District Court's Violation Notice procedures. U.S. Magistrates have required us to print refuge regulations in the Code of Federal Regulations before they will accept refuge violations into their courts. State courts do not prosecute Federal recreation regulations, and voluntary compliance with regulations has not been successful.

Regulatory Planning and Review

This document is not a significant rule subject to Office of Management and Budget review under Executive

Order 12866. See explanation under Regulatory Flexibility Act.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment or other units of government. A cost-benefit and economic analysis is not required. This proposed rule is administrative, legal, technical, and procedural in nature and makes minor modification to existing refuge public use programs. The rule will allow hunting on five refuges where we had prohibited hunting and allow fishing on eight refuges where we had prohibited that activity. We estimate that these changes will result in 11,900 additional visitor-hunting-days and 165,300 visitor-fishing-days. The appropriate measure for the net benefits of these changes is the additional net economic value experienced by the participants. The 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation measured net economic values by activity and region. Applying these estimates to the number of additional activity-days permitted by this rule yields an estimate of the national benefits from increased hunting of $160,000 and from increased fishing of $2.6 million. These estimates are well below the threshold for a significant rule.

The rule will also establish "Lead-Free Fishing Areas" at 13 units. When fully implemented, we will not allow anglers in these areas to use lead sinkers and other lead equipment. According to the FY1997 Refuge Management Information System, fewer than 40,000 fishing days occurred in the refuges proposed for this status. Although lead-free sinkers are less dense than lead ones, the difference in fishing with them is insignificant, and we anticipate no change in net economic values from the prohibition.

The addition of the term "approved" to the nontoxic shot regulations is for clarification purposes, and we do not expect it to affect hunters' behavior. It has no economic effects.

b. This rule will not create inconsistencies with other agencies' actions. We coordinate recreational use on national wildlife refuges with State governments as well as other Federal agencies having adjoining or over-lapping jurisdiction before proposing regulations. The proposed regulation is consistent with, and not less restrictive than, other agencies' rules.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The provisions of this rule only apply to persons involved in wildlife-dependent public use including regulated hunting and sport fishing on national wildlife refuges, which is a privilege and not a right. User fees will not change as a result of this rule.

d. This rule will not raise novel legal or policy issues. This proposed rule continues the practice of requiring public use of refuges to be compatible with the primary purpose of the refuge.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities such as businesses, organizations and governmental jurisdictions in the area as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis is not attached, and a Small Entity Compliance Guide is not required.

This rulemaking will not have a significant economic impact on a substantial number of small entities. Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats. They facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including fishing, hunting, wildlife observation and photography, and environmental education and interpretation as priority public uses on national wildlife refuges and to better appreciate the value of, and need for, fish and wildlife conservation.

For most units within the National Wildlife Refuge System, this rule is administrative, legal, technical, and procedural in nature and provides for minor changes to the methods of hunting and fishing permitted but does not stop the overall use permitted. For most units, this rule will not change the number of visitors using refuges or their spending and, therefore, will have no impact on the local economies in their vicinity.

We propose to open five units to hunting for the first time and eight to fishing. Data from the 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation provides estimates of spending per day for each activity in each of our regions. Multiplying spending per activity day by the number of activity days expected at each unit yields an estimate of the total spending related to the regulation. As much of this spending would have occurred at other sites in the local region absent the regulation, this estimate does not represent *increased* economic activity but economic activity *related to* the new recreational opportunities. We estimate the additional hunting opportunities will result in 11,900 visitor-hunting-days on the newly opened units. This hunting will entail $302,000 in trip-related expenditures by hunters. We estimate the additional fishing opportunities will result in 165,300 visitor-fishing-days and $9.3 million in spending. Upper Souris National Wildlife Refuge and J. Clark Salyer National Wildlife Refuge account for 90,000 of the increased fishing days so we expect $5.4 million of the related spending in the Minot, North Dakota area. As small businesses are a significant portion of the sporting goods industry, much of this economic activity will flow to small entities. However, the rule will not have a significant economic effect on a substantial number of small entities as defined in the Act.

The "Lead-Free Fishing Areas" aspect of the rule will affect fewer than 40,000 angler days at 13 units. Lead-free weights are somewhat more expensive than lead weights. The average U.S. angler spends about $11 per year on sinkers, swivels, and related line gear (not including lines, bait, and lures). This is less than three percent of the angler's annual equipment spending. If each fishing day represented a different angler, i.e., no repeat visits to the refuges, and all of the anglers spent twice as much on sinkers as in an average year, the increased spending would amount to approximately $435,000 spread over eight states. Planned trade-in programs at the affected refuges will ameliorate even this small effect. This part of the rule will not have a significant economic effect.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act as discussed in the Regulatory Planning and Review section above. This rule:

a. Does not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally-owned and managed

refuges, it does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and limit what they can do while they are on a refuge.

Federalism (Executive Order 12612)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations, and result in better understanding of the regulations by refuge visitors. They will be enforced through the use of U.S. District Court Violation Notice procedures. A refuge regulation violator can plead guilty and forfeit a set amount of fine established at the time of the violation by the refuge officer. The violator can complete this through the mail without a court appearance. A violator can also plead not guilty on the notice, and the Magistrates Court will set an appearance date and time and notify both the violator and officer to appear in Magistrates Court for a hearing and/or trial, in accordance with U.S. District Court Rules of Procedure.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than that already approved by the Office of Management and Budget under the Paperwork Reduction Act. See 50 CFR 25.23 for information concerning that approval.

Section 7 Consultation

In preparation for new openings, we include Section 7 consultation documents in the refuge's "openings package" for Regional review and approval from the Washington Office. We reviewed the changes in hunting and fishing herein with regard to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and find the actions are not likely to adversely affect the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species within the System since the rule is primarily administrative, legal, technical or procedural in nature and/or makes minor modifications to existing public use programs. We comply with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) when developing comprehensive conservation plans, refuge public use management plans, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations required by the Endangered Species Act on a case-by-case basis before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 318 DM 2.2(g) and 6.3(D). This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation covers this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge Comprehensive Conservation Plans and/or step-down management plans, pursuant to our refuge planning guidance in 602 FW 1–3. We prepare these plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

We have also prepared several related environmental analyses, such as lead shot vs. nontoxic shot as it relates to waterfowl and other wildlife with the latest being an Environmental Assessment (EA) in May, 1998.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs, and maps of their respective areas. You may also obtain information from the regional offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director— Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director—Refuges and Wildlife U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5300.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E.

Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

References

Pokras, MA., and R. Chafel. 1992. Lead toxicosis from ingested fishing sinkers in adult common loons (Gavia immer) in New England. Journal of Zoo and Wildlife Medicine. 23:92–97.

Primary Author

Leslie A. Marler, Management Analyst, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

List of Subjects

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

50 CFR Part 36

Alaska, Recreation and recreational areas, Reporting and recordkeeping requirements, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 32—[AMENDED]

1. The authority citation for part 32 is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

2. We propose to amend § 32.2 by revising the section heading and by revising paragraph (k) to read as follows:

§ 32.2 What are the general provisions regarding hunting on areas of the National Wildlife Refuge System?

* * * * *

(k) You may only use or possess approved nontoxic shot, which we identify in 50 CFR 20.21(j), while hunting with shotguns or muzzleloaders on Waterfowl Production Areas, or on certain other areas of the National Wildlife Refuge System as delineated on maps, leaflets and/or signs, available at each refuge headquarters or posted at each refuge, or as stated in refuge specific regulations. Where we allow turkey and deer hunting, you may use slugs and shot containing lead to hunt these species unless prohibited by refuge-specific regulations.

3. We propose to amend § 32.7 by revising the section heading and by removing the listing of "Cossatot National Wildlife Refuge" and by alphabetically adding the listing "Pond Creek National Wildlife Refuge" in the State of Arkansas; by alphabetically adding the listing "Bond Swamp National Wildlife Refuge" in the State of Georgia; by alphabetically adding the listing of "Bayou Teche National Wildlife Refuge" in the State of Louisiana; by alphabetically adding the listing of "Currituck National Wildlife Refuge" in the State of North Carolina; by alphabetically adding the listing of "Stewart Lake National Wildlife Refuge" in the State of North Dakota; by removing the listing of "Baskett Slough National Wildlife Refuge" and by alphabetically adding the listing "Julia Butler Hansen Refuge for the Columbian White-Tailed Deer" in the State of Oregon; by alphabetically adding the listing "Plum Tree Island National Wildlife Refuge" in the State of Virginia; and by alphabetically adding the listing "St. Croix Wetland Management District" in the State of Wisconsin. The revision reads as follows:

§ 32.7 What refuge units are open to hunting and/or fishing?

* * * * *

4. We propose to amend § 32.20 Alabama by revising Wheeler National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Wheeler National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, racoon, and opossum on designated areas of the refuge subject to the following condition: We require permits.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We do not allow bank fishing around the shoreline of the refuge headquarters.
2. All other refuge waters are open to fishing year-round unless otherwise posted.
3. We prohibit entry and use of airboats and hovercraft on all waters within the refuge boundaries.
4. We prohibit entry and use of inboard waterthrust boats, such as but not limited to personal watercraft, watercycles, and waterbikes on all waters of the refuge except that portion of the Tennessee River and Flint Creek from its mouth to mile-marker three.
5. Boats may not be left on the refuge overnight.

5. We propose to amend § 32.22 Arizona by revising Bill Williams River National Wildlife Refuge and Cibola National Wildlife Refuge; by revising paragraphs A.3. and B.4. of Havasu National Wildlife Refuge; and by revising paragraphs A.3. and B.2. of Imperial National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Bill Williams River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning and white-winged doves on designated areas of the refuge subject to the following condition: We allow only shotguns.

B. Upland Game Hunting. We allow hunting of quail and cottontail rabbit on designated areas of the refuge subject to the following conditions:

1. You will possess and use only approved nontoxic shot while in the field.
2. We allow only shotguns.
3. We allow hunting of cottontail rabbits from September 1 to the close of the State quail season.

C. Big Game Hunting. We allow hunting of desert big-horn sheep on designated areas of the refuge.

D. Sport Fishing. We allow sport fishing in designated areas.

* * * * *

Cibola National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, common snipe, mourning and white-winged dove on designated areas of the refuge subject to the following conditions:

1. We allow only shotguns.
2. You will possess and use only approved nontoxic shot while in the field.
3. You must pay a hunt fee in portions of the refuge. Consult refuge hunting leaflet for locations.
4. We do not allow pit or permanent blinds.
5. Hunting in Farm Unit 2 closes at 12:00 p.m. each day, and special regulations are in effect. Consult refuge hunting leaflet for regulations and location.
6. We close Farm Unit 2 to all hunting except waterfowl hunting during the Arizona waterfowl season.
7. You must remove all temporary blinds, boats, and decoys from the refuge following each day's hunt.
8. We do not allow hunting within 50 yards (45 m) of any public road.
9. The Hart Mine Marsh area is open to hunting from 10:00 a.m. to 3:00 p.m. daily during goose season.
10. The area known as Pretty Water is open to waterfowl hunting from ½ hour before sunrise to 3:00 p.m. MST during the Arizona and California waterfowl hunting seasons.

B. Upland Game Hunting. We allow hunting of quail and cottontail rabbit on designated areas of the refuge subject to the following conditions:

1. We allow only shotguns and bows and arrows.
2. You will possess and use only approved nontoxic shot while in the field.
3. You may hunt cottontail rabbit from September 1 through the last day of the respective State's quail season.
4. During the Arizona waterfowl season, you may not hunt quail and rabbit in Farm Unit 2.
5. You may not hunt within 50 yards (45 m) of any public road.

C. Big Game Hunting. We allow hunting of mule deer on designated areas of the refuge subject to the following conditions:

1. During the Arizona waterfowl season, you may not hunt mule deer in Farm Unit 2.

2. You may not hunt within 50 yards (45 m) of any public road.

D. Sport Fishing. We allow sport fishing and frogging subject to the following condition:

1. Cibola Lake is open to fishing and frogging from March 15 through Labor Day.

Havasu National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field..

* * * * *

B. Upland Game Hunting. * *

* * * * *

4. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Imperial National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. * * *

* * * * *

2. We require approved nontoxic shot for hunting quail and cottontail rabbit.

* * * * *

§ 32.23 [Amended]

6. We propose to amend § 32.23 Arkansas by revising the name "Cossatot National Wildlife Refuge" to read "Pond Creek National Wildlife Refuge" and by placing it in alphabetical order.

7. We propose to amend § 32.24 California by revising paragraph A.2. of Clear Lake National Wildlife Refuge; by revising the introductory text of paragraphs A. and B., by revising paragraph A.1., by adding paragraph A.4., by redesignating paragraphs B.2. and B.3. as B.3. and B.4. and designating the undesignated paragraph following paragraph B.1. as B.2., by revising paragraphs B.2., and B.3., and adding paragraph B.5. of Colusa National Wildlife Refuge; by revising Delevan National Wildlife Refuge; by revising paragraph D. of Humboldt Bay National Wildlife Refuge; by revising paragraph B.2. of Kern National Wildlife Refuge; by revising Lower Klamath National Wildlife Refuge; by revising paragraph A. of Merced National Wildlife Refuge; by revising paragraph A.4. and paragraph B. of Modoc National Wildlife Refuge; by revising paragraphs A. and B. of Sacramento National Wildlife Refuge; by revising paragraph A., by revising the introductory text of paragraph B. and paragraph B.1., by revising paragraph D. of San Luis National Wildlife Refuge; by revising paragraphs A. and B. of Sutter National Wildlife Refuge; and by revising paragraphs A. and B. of Tule Lake National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Clear Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuges subject to the following conditions:

1. You will possess and use only approved nontoxic shot while in the field.

* * * * *

4. No person will build or maintain fires, except in portable gas stoves.

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

* * * * *

2. We do not allow bicycles and other conveyances.

3. You will possess and use only approved nontoxic shot while in the field.

* * * * *

5. No person will build or maintain fires, except in portable gas stoves.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions:

1. You must unload firearms while transporting them between parking areas and spaced blind areas.

2. We do not allow snipe hunting in the spaced blind areas.

3. We restrict hunters assigned to the spaced blind area to within 100 feet (30 m) of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the area.

4. Access to the hunt area is by foot traffic only. We do not allow bicycles and other conveyances.

5. You may not possess more than 25 shells while in the field.

6. You will possess and use only approved nontoxic shot while in the field.

7. No person will build or maintain fires, except in portable gas stoves.

B. Upland Game Hunting. We allow hunting of pheasant only in the free roam areas on the refuge subject to the following conditions:

1. We do not allow pheasant hunting in the spaced blind area except during a special one-day only pheasant hunt on the first Monday after the opening of the State pheasant hunting season.

2. You will possess and use only approved nontoxic shot while in the field.

3. Access to the hunt area is by foot traffic only. We do not allow bicycles and other conveyances.

4. You may not possess more than 25 shells while in the field.

5. No person will build or maintain fires, except in portable gas stoves.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. We allow fishing during daylight hours only from February 15 through October 1.

* * * * *

Humboldt Bay National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from the designated shoreline train along Hookton Slough during daylight hours only.

2. We allow fishermen to only use pole and line or rod and reel from the Hookton Slough Shoreline trail fishing area.

3. We do not allow either motorized boats or motors on the refuge dock on Humboldt Bay. We close the dock on Humboldt Bay to launching of all boats from November 1 through January 15.

* * * * *

Kern National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens and snipe on designated areas of the refuge subject to the following conditions:

1. In the controlled waterfowl hunting area, we require entry permits for the first 2 days of the waterfowl season for all hunters 16 years of age or older. An adult with a permit must accompany hunters under the age of 16 hunting in the controlled area. We require advance reservations for the first 2 days of the hunt.

2. Shooting hours end at 1:00 p.m. daily on the California portion of the refuge except that the refuge manager may designate up to six one-day special youth or disabled hunter hunts per season and up to three days per week of general waterfowl hunting starting December 1 after 1:00 p.m.

3. You may carry only unloaded firearms on hunter access routes open to motor vehicles or when taking them through posted retrieving zones when traveling to and from the hunting areas.

4. You may not set decoys in retrieving zones.

5. We do not allow air-thrust and inboard waterthrust boats.

6. Snipe hunters will possess and use, while in the field, only approved nontoxic shot.

7. You may only use non-motorized boats and boats with electric motors on units 4b and 4c from the start of the hunting season through November 30. You may use motorized boats on units 4b and 4c from December 1 through the end of hunting season.

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. You will possess and use only approved nontoxic shot while in the field.

2. You may carry only unloaded firearms on hunter access routes open to motor vehicles or when taking them through posted retrieving zones when traveling to and from the hunting areas.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Merced National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and moorhens on designated areas of the refuge subject to the following conditions and as we may otherwise post in the refuge regulations:

1. You must unload firearms while transporting them between parking areas and blind sites.

2. You may not possess or use more than 25 approved nontoxic shotgun shells when leaving their assigned parking lot.

3. We restrict hunters assigned to the spaced blind unit to their assigned blind except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

* * * * *

Modoc National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * * * * * * * *

4. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. We limit hunting to junior hunters possessing a valid Junior Hunting License and refuge permit.

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions:

1. You must unload firearms while transporting them between parking areas and spaced blind areas.

2. We do not allow snipe hunting in the spaced blind area.

3. We restrict hunters assigned to the spaced blind unit to within 100 feet (30 m) of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

4. You will possess and use only approved nontoxic shot while in the field.

5. You may not possess more than 25 shells while in the field.

6. Access to the hunt area is by foot traffic only. We do not allow bicycles and other conveyances.

7. No person will build or maintain fires, except in portable gas stoves.

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. We do not allow pheasant hunting in the spaced blind area except during a special one-day only pheasant hunt on the first Monday after the opening of the State pheasant hunting season.

2. You will possess and use only approved nontoxic shot while in the field.

3. Access to the hunt area is by foot traffic only. We do not allow bicycles and other conveyances.

4. You may not possess more than 25 shells while in the field.

5. No person will build or maintain fires, except in portable gas stoves.

* * * * *

San Luis National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions and as we may otherwise post in the refuge regulations:

1. In the free-roam hunting areas, you may use only portable blinds, temporary blinds constructed of natural materials, and on the San Luis Unit, existing concrete barrel blinds. We prohibit the cutting of woody vegetation.

2. You must remove all portable blinds, decoys, and other personal equipment from the refuge following each day's hunt.

3. You may snipe hunt only within the free-roam portion of the San Luis unit's waterfowl hunting areas. Snipe hunters may only possess and use approved nontoxic shot.

4. You may possess not more than 25 approved nontoxic shotgun shells after leaving their assigned parking lot or boat launch.

5. Vehicles may stop only at designated, assigned parking areas. We prohibit dropping of passengers or equipment or stopping between designated parking areas. You must return your permits to the check stations immediately upon completion of your hunt, and prior to using any tour routes or leaving the refuge vicinity.

6. You may not transport loaded firearms while walking or bicycling between parking areas in spaced blind units, or while traveling in a boat under power.

7. We restrict hunters in the spaced blind area, to their assigned blind except when they are placing decoys, traveling to and from the parking area; retrieving downed birds, or when shooting to retrieve cripples.

8. Access to the Frietas Unit free-roam hunting area is by boat only with a maximum of 5 mph. Prohibited boats include air-thrust and/or inboard water-thrust types.

9. We prohibit the use of motorized boats in the free roam units with the exception of the Frietas Unit.

B. Upland Game Hunting. We allow hunting of pheasants on designated areas of the refuge subject to the following conditions or as we otherwise may post in refuge regulations available at visitor information centers and refuge headquarters:

1. You will possess and use only approved nontoxic shot while in the field.

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions and as we may otherwise post in the refuge regulations:

1. We allow fishing from sunrise to sunset only, except on that portion of the San Joaquin River's south (left descending) bank within the West Bear Creek Unit designated as open for fishing 24 hours per day, or as otherwise posted in refuge regulations.

2. We allow the use of 1 pole and line or 1 rod and reel per person. Fishermen must attend at all times any pole and line or rod and reel they are using for fishing.

3. We prohibit the use of any boat, float tube, or other floating aid/device.

* * * * *

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens and snipe on designated areas of the refuge subject to the following conditions:

1. You will possess and use only approved nontoxic shot while in the field.

2. You may not possess more than 25 shells while in the field.

3. Access to the hunt area is by foot traffic only. We do not allow bicycles and other conveyances.

4. No person will build or maintain fires, except in portable gas stoves.

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. You will possess and use only approved nontoxic shot while in the field.

2. Access is by foot traffic only. We do not allow bicycles and other conveyances.

3. You may not possess more than 25 shells while in the field.

4. No person will build or maintain fires, except in portable gas stoves.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions:

1. We require entry permits in the controlled waterfowl hunting area for the first 2 days of the waterfowl season for all hunters 16 years of age or older. An adult with a permit must accompany hunters under the age of 16 hunting in the controlled area. We require advance reservation for the first 2 days of the hunt.

2. Shooting hours end at 1:00 p.m. daily on the California portion of the refuge except

that the refuge manager may designate up to six one-day special youth or disabled hunter hunts per season and up to three days per week of general waterfowl hunting starting December 1 after 1:00 p.m.

3. We do not allow possession of any loaded firearms more than 200 feet (60 m) from the established blind states. You select blind sites by lottery at the beginning of each hunt day. You may shoot only from within their assigned blind sites.

4. You may carry only unloaded firearms on hunter access routes open to motor vehicles or when taking them through posted retrieving zones when traveling to and from the hunting areas.

5. We do not allow you to set decoys in retrieving zones.

6. We do not allow air-thrust and inboard waterthrust boats.

7. Snipe hunters will possess and use, while in the field, only approved nontoxic shot.

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. You will possess and use only approved nontoxic shot while in the field.

2. You may carry only unloaded firearms on hunter access routes open to motor vehicles or when taking them through posted retrieving zones when traveling to and from the hunting areas.

* * * * *

8. We propose to amend § 32.25 Colorado by revising paragraph B. of Arapaho National Wildlife Refuge to read as follows:

§ 32.25 Colorado.

* * * * *

Arapaho National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow upland game hunting on designated areas of the refuge pursuant to State law and subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

* * * * *

9. We propose to amend § 32.27 Delaware by revising paragraph B. of Bombay Hook National Wildlife Refuge; and by revising paragraph B.4. of Prime Hook National Wildlife Refuge to read as follows:

§ 32.27 Delaware.

* * * * *

Bombay Hook National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. We allow hunting only on the South Upland Hunting Area.

2. We allow hunting from ½ hour before sunrise to ½ hour after sunset.

3. We do not allow hunting from March 1 through August 31.

4. Shotgun hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Prime Hook National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Shotgun hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

10. We propose to amend § 32.28 Florida by revising Chassahowitzka National Wildlife Refuge; by adding paragraph D.8. of J. N. "Ding" Darling National Wildlife Refuge; by revising paragraphs C. and D. of Lake Woodruff National Wildlife Refuge; by revising paragraphs A., B., C., and D.9. and adding paragraph D.10. of St. Marks National Wildlife Refuge; and by revising paragraphs B., C., and D. of St. Vincent National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

Chassahowitzka National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks and coots on designated areas of the refuge subject to the following condition: We require permits.

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit and armadillo on designated areas of the refuge subject to the following condition: We require permits.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow sport fishing on the refuge year round. Creel limits/seasons are in accordance with State regulations.

* * * * *

J. N. "Ding" Darling National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

8. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on all fresh water open to fishing.

Lake Woodruff National Wildlife Refuge

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. Sport fishing will be in accordance with State regulations and is subject to the following conditions:

1. We allow fishing only from sunrise to sunset.

2. We do not allow use of airboats in the refuge.

3. We do not allow commercial fishing or the taking of frogs or turtles.

4. We do not allow the use of snatch hooks in the refuge impoundments.

* * * * *

St. Marks National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks and coots in designated areas of the refuge subject to the following condition: We require permits.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, and racoon on designated areas of the refuge subject to the following condition: We require permits.

C. Big Game Hunting. We allow hunting of white-tailed deer, turkeys, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. * * *

* * * * *

9. We prohibit crabbing in refuge pools and impoundments along Lighthouse Road.

10. We do not allow launching of airboats or inboard waterthrust boats (personal watercraft) from refuge saltwater boat ramps at Wakulla Beach or the Lighthouse Road area.

St. Vincent National Wildlife Refuge

* * * * *

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer, sambar deer, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing only from sunrise to sunset.

2. We allow only non-motorized boats and boats with electric motors.

3. We do not allow the use of live minnows as bait.

4. We allow fishing in Lakes 1, 2, and Oyster Pond from April 1 through September 30.

5. We allow fishing in Lakes 3, 4, and 5 from May 15 through September 30.

* * * * *

11. We propose to amend § 32.29 Georgia by alphabetically adding Bond Swamp National Wildlife Refuge; by revising paragraphs C. and D. of Okefenokee National Wildlife Refuge; by revising paragraphs B. and C., revising the introductory text of paragraph D. and revising paragraph D.3. of Savannah National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

* * * * *

Bond Swamp National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from March 15 to October 15 except on the Ocmulgee River which is open to fishing year-around.
2. We allow fishing only from sunrise to sunset.
3. We allow fishing only with pole and line or rod and reel.
4. We prohibit the taking of sturgeon, frogs, turtles, and mollusks.
5. We allow only non-motorized boats or boats with electric motors on refuge waters except the Ocmulgee River.
6. Fishermen may not leave boats or other personal equipment on the refuge overnight.
7. The minimum size limit for largemouth bass is 14" (35 cm)

* * * * *

Okefenokee National Wildlife Refuge

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: we require permits except for Cowhouse Island. We open Cowhouse Island to white-tailed deer and feral hog hunting per Dixon Memorial State Forest Regulations.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We do not allow the use of boats with motors larger than 10 horsepower.
2. We do not allow the use of live minnows as bait.
3. We only allow the use of pole and line or rod and reel.
4. The daily creel limit is 5 largemouth bass, 5 channel catfish, and 25 of any one, or combination, of bream or sunfish. We do not allow the possession of more than the daily creel limit.
5. We do not allow the taking of largemouth bass smaller than 14 inches (35 cm).

* * * * *

Savannah National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of squirrels and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

C. Big Game Hunting. We allow hunting of white-tailed deer, turkey, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

* * * * *

3. We allow fishing from sunrise to sunset.

* * * * *

12. We propose to amend § 32.30 Hawaii by revising by revising paragraph C.1. of Hakalau Forest National Wildlife Refuge to read as follows:

§ 32.30 Hawaii.

* * * * *

Hakalau Forest National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. You must have reservations or permits to access the refuge.

* * * * *

13. We propose to amend § 32.31 Idaho by revising paragraph A.2. of Bear Lake National Wildlife Refuge; by revising paragraphs A. and B. of Camas National Wildlife Refuge; by revising paragraphs A.3. and B.4. of Deer Flat National Wildlife Refuge; and by revising paragraph B.2. of Minidoka National Wildlife Refuge to read as follows:

§ 32.31 Idaho.

* * * * *

Bear Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Camas National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and snipe on designated areas of the refuge subject to the following condition: Snipe hunters will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. We allow hunting of pheasant and grouse on designated areas of the refuge subject to the following condition: Pheasant hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Deer Flat National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Pheasant, quail and partridge hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Minidoka National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Pheasant hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

14. We propose to amend § 32.32 Illinois by revising paragraphs A.3., A.4., B.3., C.2., C.3., C.4., D.1., and D.7. and removing paragraph D.8. of Crab Orchard National Wildlife Refuge; by revising paragraph B. and the introductory text of paragraph C. of Cypress Creek National Wildlife Refuge; by revising paragraph B.1. of Mark Twain National Wildlife Refuge; by revising A., revising the introductory text of paragraph B., revising paragraphs B.3., and B.4. adding paragraph B.5., revising the introductory text of paragraph C., revising paragraphs C.3., C.4., and C.5. and revising paragraph D. of Upper Mississippi National Wildlife and Fish Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Crab Orchard National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Goose hunters outside the controlled goose hunting area on Crab Orchard Lake must hunt from a blind that is on shore or anchored a minimum of 200 yards (180m) away from any shoreline. Waterfowl hunters may also hunt on the east shoreline in Grassy Bay.

4. You may possess and use only approved nontoxic shot while hunting migratory game bird species.

B. Upland Game Hunting. * * *

* * * * *

3. You may possess and use only approved nontoxic shot while hunting all permitted species except wild turkey. You may possess and use lead shot for hunting wild turkey.

C. Big Game Hunting. * * *

* * * * *

2. We require hunters using the closed area to check in at the refuge visitor contact station prior to hunting and to comply with the special rules provided to them.

3. You may not hunt deer with a firearm in the controlled goose hunting areas. You may hunt deer in the controlled goose hunting areas with archery equipment in accordance with State seasons and regulations.

4. You must remove hunting stands at the end of each day's hunt.

* * * * *

D. Sport Fishing. * * *

1. Crab Orchard Lake—west of Wolf Creek Road—Anglers may fish from boats all year. Anglers must remove trot-lines/jugs from sunrise until sunset from Memorial Day through Labor Day; east of Wolf Creek Road, anglers may fish from boats March 15 through September 30. Anglers may fish all year at the Wolf Creek and Route 148 causeway areas. Anglers must check and remove fish from all jugs and trot lines daily. It is illegal to use stakes to anchor any trot-lines; anglers must tag them with their name and address. Anglers may use all noncommercial fishing methods except they may not use any underwater breathing apparatus. Anglers may not use jugs or trot-lines with any floatation device that has previously contained any petroleum-based materials or toxic substances. Anglers must attach a buoyed device that is visible on the water's surface to all trot-lines.

* * * * *

7. We restrict motorboats to slow speeds leaving no wakes in Cambria Neck, and within 150 feet (45m) of any shoreline, swimming area, marina entrance, boat ramp, or causeway tunnel on Crab Orchard, Little Grassy, or Devils Kitchen Lakes.

Cypress Creek National Wildlife Refuge

* * * * *

B. Upland Game Hunting. You may hunt bob-white quail, rabbit, squirrel, raccoon, opossum, coyote, red fox, grey fox, and turkey (spring) on designated areas of the refuge in accordance with posted regulations and subject to the following conditions:

1. If we provide hunter check-in/check-out post, you must present daily harvests.

2. We do not allow hunting after sunset.

3. You may only use or possess approved nontoxic shot while hunting for any permitted birds except wild turkey. You may use lead shot while hunting wild turkey.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with posted regulations and subject to the following conditions:

* * * * *

Mark Twain National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. You must possess and use only approved nontoxic shot while hunting all permitted birds, except wild turkeys. You may possess and use lead shot for hunting wild turkey.

* * * * *

Upper Mississippi National Wildlife and Fish Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

1. You may not hunt migratory birds on refuge-closed areas posted "Area Closed," on the Goose Island "No Hunting" zone in Pool 8, on the Upper Halfway Creek March "No Hunting" zone in Pool 7, or on the Frog Pond area "No Hunting" zone in Pool 13.

2. We require permits for Potters Marsh in Pool 13 except during the early teal season.

You may only use and possess approved nontoxic shot when hunting for any permitted migratory bird.

4. On Pools 4 through 11 you must remove all decoys from the refuge at the end of each day's hunt.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

* * * * *

3. You may not hunt at any time on the Goose Island "No Hunting" zone in Pool 8, on the Upper Halfway Creek Marsh "No Hunting" zone in Pool 7, or on the Frog Pond "No Hunting" zone in Pool 13.

4. Shotgun hunters may only use or possess approved nontoxic shot when hunting for any permitted birds or other small game, except wild turkey. We still allow possession of lead shot for wild turkey hunting.

5. You may use lights and dogs to hunt raccoons, and other specifically authorized small mammals, in accordance with State regulations. We allow such use of lights on the refuge at the point of kill only. We prohibit all other uses of lights for hunting on the refuge.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

* * * * *

3. You may not hunt at any time on the Goose Island "No Hunting" zone in Pool 8, on the Upper Halfway Creek "No Hunting" zone in Pool 7, or on the Frog Pond "No Hunting" zone in Pool 13.

4. We do not allow construction or use of permanent blinds, platforms, or ladders.

5. You must remove all stands from the refuge at the end of each day's hunt.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We do not allow fishing on the Spring Lake Closed Area, Carroll County, Illinois from October 1 through the last day of the Illinois waterfowl season.

2. We allow only hand-powered boats or boats with electric motors on Mertes' Slough in Buffalo County, Wisconsin.

15. We propose to amend § 32.34 Iowa by revising paragraph B. of Union Slough National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

Union Slough National Wildlife Refuge

* * * * *

B. Upland Game Hunting. You may hunt upland game in designated areas of the refuge subject to the following condition: You may only use or possess approved nontoxic shot while hunting upland game, except wild turkey. You may possess and use lead shot for wild turkey hunting.

* * * * *

16. We propose to amend § 32.35 Kansas by revising paragraph B.2. of Flint Hills National Wildlife Refuge; by revising paragraph A. of Kirwin National Wildlife Refuge; and by revising paragraph A. of Quivira National Wildlife Refuge to read as follows:

§ 32.35 Kansas.

* * * * *

Flint Hills National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

2. You will possess and use only approved nontoxic shot or rimfire firearms while in the field.

* * * * *

Kirwin National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, mourning doves and snipe on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters will possess and use, while in the field, only approved nontoxic shot.

* * * * *

Quivira National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, rails (Virginia and Sora only), mourning doves, and common snipe on designated areas of the refuge subject to the following condition: We require approved nontoxic shot when hunting any game on the refuge. We prohibit the possession of lead shot in the field.

* * * * *

17. We propose to amend § 32.36 Kentucky by revising paragraph B.4. of Ohio River Islands National Wildlife Refuge to read as follows:

§ 32.36 Kentucky.

* * * * *

Ohio River Islands National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. You will possess and use, while in the field, only approved nontoxic shot.

* * * * *

18. We propose to amend § 32.37 Louisiana by alphabetically adding Bayou Teche National Wildlife Refuge; by revising paragraphs B. and C., the introductory text of paragraph D., and revising paragraphs D.1. and D.2. of Catahoula National Wildlife Refuge; by revising D'Arbonne National Wildlife Refuge; by revising paragraph D.2. and removing paragraphs D.3. and D.4. of Grand Cote National Wildlife Refuge; by revising Lake Ophelia National Wildlife Refuge; by revising the introductory text of paragraph A., by revising paragraph A.1., and by revising paragraph D. of Sabine National Wildlife Refuge; and by revising Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Bayou Teche National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory birds on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for hunting must bide by all terms and conditions in the refuge hunting brochure.

D. Sport Fishing. [Reserved]

* * * * *

Catahoula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of raccoon, squirrel, rabbit, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from one hour before sunrise until one-half hour after sunset. We allow only pole and line or rod and reel fishing. We prohibit snagging.

2. We allow boat launching on all refuge waters as designated in the refuge brochure. We allow only non-motorized boats or boats with motors of 10 horsepower or less. Boats may not be left on the refuge overnight.

* * * * *

D'Arbonne National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, coots, and woodcock on designated areas of the refuge subject to the following condition: We require permits.

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon and opossum on designated areas of the refuge subject to the following condition: We require permits.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

2. We only allow cotton limb lines.

* * * * *

Grand Cote National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Any person entering, using, or occupying the refuge for fishing or crawfishing must abide by all terms and conditions in the refuge fishing brochure.

* * * * *

Lake Ophelia National Wildlife Refuge

A. Hunting of Migratory Game Birds. You may hunt duck, coots, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, and raccoon on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

D. Sport Fishing. We allow fishing in designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for fishing must abide by all terms and conditions in the refuge fishing brochure.

* * * * *

Sabine National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. We require refuge hunting permits.

* * * * *

D. Sport Fishing. We allow fishing, crabbing, and shrimp cast netting on designated areas of the refuge subject to the following conditions: Any person entering, using or occupying the refuge must abide by all terms and conditions set forth in the refuge fishing brochure.

* * * * *

Upper Ouachita National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, coots, and woodcock on designated areas of the refuge subject to the following condition: We require permits.

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon, opossum, beaver, and coyotes on designated areas of the refuge subject to the following condition: We require permits.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

2. We only allow cotton limb lines.

19. We propose to amend § 32.38 Maine by adding paragraph D.3. of Moosehorn National Wildlife Refuge; by revising paragraph B.3. and by adding paragraph C.5. of Rachel Carson National Wildlife Refuge; and by revising paragraph B. and adding paragraph D.1. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

§ 32.38 Maine.

* * * * *

Moosehorn National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" on the entire refuge.

Rachel Carson National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field.

C. Big Game Hunting. * * *

* * * * *

5. We allow only archery and shotgun hunting with appropriate buckshot or slug loads.

* * * * *

Sunkhaze Meadows National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following condition: Shotgun hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

D. Sport Fishing. * * *

1. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" for the Carlton Pond Waterfowl Production Area.

20. We propose to amend § 32.39 Maryland by revising paragraph D. of Eastern Neck National Wildlife Refuge; and by revising paragraph B.6. of Patuxent Research Refuge to read as follows:

§ 32.39 Maryland.

* * * * *

Eastern Neck National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing and crabbing in designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We allow fishing and crabbing from Eastern Neck Island bridge.

2. We allow fishing and crabbing from April 1–September 30 during daylight hours only at the Ingleside Recreation Area.

3. We allow fishing from the Boxes Point and Duck Inn Trails during daylight hours only.

Patuxent Research Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

6. Shotgun hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

21. We propose to amend § 32.40 Massachusetts by revising paragraph

B.3. of Oxbow National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Oxbow National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field.

* * * * *

22. We propose to amend § 32.41 Michigan by adding paragraph D.3. of Seney National Wildlife Refuge to read as follows:

§ 32.41 Michigan.

* * * * *

Seney National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" on the entire refuge. Current State regulations for lead-free fishing areas remain in effect.

* * * * *

23. We propose to amend § 32.42 Minnesota by revising paragraph B.1. of Big Stone National Wildlife Refuge; by adding paragraph D.1. of Fergus Falls Wetland Management District; by revising paragraph B.2. of Minnesota Valley National Wildlife Refuge; by revising paragraphs A.1. and B.1. and adding paragraph D.4. of Rice Lake National Wildlife Refuge; by revising paragraphs A.5. and B.1. of Sherburne National Wildlife Refuge; and by revising paragraph B.3., revising the introductory text of paragraph D., and adding paragraph D.5. of Tamarac National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Big Stone National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. You may use or possess only approved nontoxic shot while hunting for partridge or ring-necked pheasant.

* * * * *

Fergus Falls Wetland Management District

* * * * *

D. Sport Fishing. * * *

1. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" for Nicholson Waterfowl Production Area.

Minnesota Valley National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. In the field, you may only use or possess approved nontoxic shot.

* * * * *

Rice Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Shotgun hunters may only use or possess approved nontoxic shot while hunting migratory game birds.

B. Upland Game Hunting. * * *

1. Shotgun hunters may only use or possess approved nontoxic shot while hunting upland game species.

* * * * *

D. Sport Fishing. * * *

* * * * *

4. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" on Mandy Lake and Twin Lakes.

* * * * *

Sherburne National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. Shotgun hunters may use or possess only approved nontoxic shot while hunting for migratory game birds.

B. Upland Game Hunting. * * *

1. Shotgun hunters may use or possess only approved nontoxic shot while hunting for all upland game species.

* * * * *

Tamarac National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Shotgun hunters may only use and possess approved nontoxic shot while hunting for all upland game species.

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

* * * * *

5. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" covering the entire refuge, including bank fishing on the Ottertail River. We will coordinate implementation with the White Earth Tribe.

* * * * *

24. We propose to amend § 32.43 Mississippi by revising Dahomey National Wildlife Refuge, St. Catherine Creek National Wildlife Refuge and Tallahatchie National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Dahomey National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning doves, migratory waterfowl, coots, snipe, and woodcock on designated areas of the refuge subject to the following condition: We require permits.

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, beaver, raccoon, coyotes, and opossum on designated areas of the refuge subject to the following condition: We require permits.

C. Big Game Hunting. We allow hunting of deer, turkey, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to the following condition: We require permits.

* * * * *

St. Catherine Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, and coots on designated areas of the refuge subject to the following condition: We require permits.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, beaver, nutria, muskrat, feral hogs, raccoon, coyotes, and opossum on designated areas of the refuge subject to the following conditions: We require permits.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to the following conditions: We require permits.

Tallahatchie National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning doves, migratory waterfowl, coots, snipe, and woodcock on designated areas of the refuge subject to the following condition: We require permits.

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, beaver, raccoon, coyotes, and opossum on designated areas of the refuge subject to the following condition: We require permits.

C. Big Game Hunting. We allow hunting of deer, turkey, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to the following condition: We require permits.

* * * * *

25. We propose to amend § 32.44 Missouri by revising paragraph A.2. of Swan Lake National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

* * * * *

Swan Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

26. We propose to amend § 32.45 Montana by revising paragraph B. of Black Coulee National Wildlife Refuge; by revising paragraph B.3. of Bowdoin National Wildlife Refuge; by revising paragraph B.1. of Hailstone National Wildlife Refuge; by revising paragraph B. of Lake Mason National Wildlife Refuge; by revising paragraph D. of Pablo National Wildlife Refuge; by revising paragraphs A. and D. of Red Rock Lakes National Wildlife Refuge; by

revising paragraph A. of Swan River National Wildlife Refuge; and by revising paragraph B. of War Horse National Wildlife Refuge to read as follows:

§ 32.45 Montana.

* * * * *

Black Coulee National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

* * * * *

Bowdoin National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Hailstone National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Lake Mason National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

* * * * *

Pablo National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge pursuant to State and Tribal law.

1. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" covering the entire refuge. We will coordinate implementation with the Tribe.

Red Rock Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from the third week of June through the end of the general State season.

2. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" covering the entire refuge. Current State regulations for lead-free fishing areas remains in effect.

Swan River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

War Horse National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of upland game birds on designated areas of the refuge subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

* * * * *

27. We propose to amend § 32.47 Nevada by revising paragraphs A. and D. of Ruby Lake National Wildlife Refuge; by revising paragraphs A.1., B., C., and D. of Sheldon National Wildlife Refuge to read as follows:

§ 32.47 Nevada.

* * * * *

Ruby Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge in accordance with State law and subject to the following conditions:

1. We do not allow off-road vehicles on the refuge.

2. We do not allow permanent and pit blinds. You must remove all blind materials and decoys at the end of each hunting day.

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to State law and the following conditions:

1. We allow fishing from one hour before sunrise until two hours after sunset.

2. We only allow fishing on the dikes in the areas north of the Brown Dike and the east of the Collection Ditch with the exception that you may fish by wading and from personal flotation devices (float tubes) on Unit 21.

3. We prohibit fishing from the bank on the South Marsh except at Brown Dike, the Main Boat Landing, and Narciss Boat Landing.

4. Fishermen may use only artificial lures in the Collection Ditch and spring ponds adjoining the ditch.

5. We do not allow boats on the refuge from January 1 through June 14.

6. During the boating season, we only allow boats on the South Marsh. Beginning June 15 through July 31, we allow only motorless boats or boats with battery-powered electric motors. Beginning August 1 through December 31, we allow only motorless boats and boats propelled with motors with a total of 10 hp or less.

7. Launch boats only from designated landings.

8. Do not store boats of any kind on the refuge from January 1 through May 31.

9. We do not allow off-road vehicles on the refuge.

Sheldon National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Waterfowl and coot hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. We allow hunting of quail, grouse, and partridge on designated areas of the refuge.

C. Big Game Hunting. We allow hunting of deer, antelope, and bighorn sheep on designated areas of the refuge.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. Anglers may only bank fish, fish by wading, use boats with electric motors, float tubes and similar floatation devices in Big Springs Reservoir, Duferrena Ponds, and Catnip Reservoir. Anglers may not fish from other types of motorized boats.

2. We allow only individuals 12 years of age or under, or 65 years of age or older, or disabled individuals to fish in McGee Pond.

* * * * *

28. We propose to revise § 32.48 New Hampshire to read as follows:

§ 32.48 New Hampshire.

Great Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

1. Waterfowl hunting will not require a permit. We will allow hunting only from the immediate shoreline of the Bay.

2. We allow only portable blinds. You must remove all decoys, blinds, and boats after each day's hunt.

3. Waterfowl hunters will access shorelines by boat only.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following conditions:

1. We require refuge permits for the deer hunt.

2. We require big game hunters to wear in a conspicuous manner on the head, chest and back, a minimum of 400 square inches (3 m^2) of solid-colored blaze orange clothing or material.

3. We allow only shotguns and bows.

D. Sport Fishing. [Reserved]

29. We propose to amend § 32.49 New Jersey by revising paragraph A.4. of Cape May National Wildlife Refuge; by revising paragraph A.7. of Edwin B. Forsythe National Wildlife Refuge; by revising the introductory text of paragraph C. and by removing paragraph C.2. of Great Swamp National Wildlife Refuge; by revising paragraph A.5. of Supawna Meadows National Wildlife Refuge; and by revising paragraph A.3. of Wallkill River National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Cape May National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Edwin B. Forsythe National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

7. Shotgun hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Great Swamp National Wildlife Refuge

* * * * *

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following conditions:

* * * * *

Supawna Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Wallkill River National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Shotgun hunters may use or possess only approved nontoxic shot while hunting migratory game birds.

* * * * *

30. We propose to amend § 32.50 New Mexico by revising paragraphs A.2. and B.1. of Bitter Lake National Wildlife Refuge; by revising paragraphs A. and B.2. of Bosque Del Apache National Wildlife Refuge; and by revising paragraph A.2. of Las Vegas National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

* * * * *

Bitter Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.only approved nontoxic shot.

* * * * *

B. Upland Game Hunting. * * *

1. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Bosque Del Apache National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning and white-winged doves on designated areas of the refuge subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Las Vegas National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

31. We propose to amend § 32.51 New York by revising paragraphs A.4. and B.4. of Iroquois National Wildlife Refuge to read as follows:

§ 32.51 New York.

* * * * *

Iroquois National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Waterfowl hunters may not use or possess more than 20 shells per day.

* * * * *

B. Hunting of Upland Game. * * *

* * * * *

4. Shotgun hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

32. We propose to amend § 32.52 North Carolina by revising paragraph A.1. of Cedar Island National Wildlife Refuge; by alphabetically adding Currituck National Wildlife Refuge; by revising paragraph A., adding paragraph C.2. and revising paragraph D. of Mattamuskeet National Wildlife Refuge; by revising paragraphs A., B., and C., of Pocosin Lakes National Wildlife Refuge; by revising paragraph A.2. of Roanoke River National Wildlife Refuge; and by revising paragraph A.1. of Swanquarter National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Cedar Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Currituck National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of swans, geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Hunting must be from assigned blind location.

3. We allow hunting on Wednesdays and Saturdays during the North Carolina waterfowl season.

4. We allow hunting from ½ hour before sunrise to 1:00 p.m.

5. We allow access 1½ hours before legal shooting time and all parties must be off the refuge by 3:00 p.m.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

* * * * *

Mattamuskeet National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of swans, geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. We allow taking of Canada geese only during the special September season for resident Canada geese.

3. Any person entering, using, or occupying the refuge for hunting must abide by all the terms and conditions in the refuge hunting brochure.

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Any person entering, using, or occupying the refuge for hunting must abide by all the terms and conditions in the refuge hunting brochure.

D. Sport Fishing. We allow fishing and crabbing on designated areas of the refuge subject to the following conditions:

1. We allow fishing and crabbing from March 1 through November 1 from ½ hour before sunrise to ½ hour after sunset or as posted.

2. We allow bank fishing and crabbing year-round along Highway 94 Causeway and in the immediate vicinity of the Lake Landing water control structure, the Rose Bay water control structure, and the Outfall Canal water control structure. Other areas open to this activity are the Central Canal and East and West Main Canal as signed. We allow bank fishing and crabbing from ½ hour before sunrise to ½ hour after sunset except that the Highway 94 Causeway is open to fishing and crabbing 24 hours per day.

3. Fishermen may not dip herring (alewife).

4. Fishermen must attend all fish lines and crabbing equipment. We restrict crabbing equipment to 5 handlines and/or hand-activated traps per person. The catch/possession limit is 12 blue crabs per day per person.

5. We do not permit airboats, sailboats, wind surfers, and personal watercraft.

6. We prohibit bank fishing along the entrance road from Highway 94 to the Refuge Headquarters.

* * * * *

Pocosin Lakes National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, snow geese, swans, doves, woodcock, rails and snipe on designated areas of the refuge subject to the following conditions:

1. We allow access 1½ hours before and after legal shooting time.

2. You must unload and encase firearms while transporting them by vehicle or boat under power.

3. We allow only portable blinds and temporary blinds constructed of natural materials. We require removal of portable blinds following each day's hunt.

4. We allow hunting during the State season.

B. Upland Game Hunting. We allow hunting of quail, squirrel, raccoon, opossum, rabbit, and fox on designated areas of the refuge subject to the following conditions:

1. We require permits for any night hunting.

2. We allow access 1½ hours before and after legal shooting time.

3. You must unload and encase firearms while transporting them by a vehicle or boat under power.

4. We allow hunting during State season except we will close opossum and raccoon hunting during the State bear season including five days before and after that season.

5. You must wear 500 square inches (3.7 m^2) of fluorescent orange material above the waist, visible from all directions.

6. We prohibit possession of buckshot or slugs while hunting with dogs.

7. You will use only shotguns and/or 22 caliber rim-fire rifles for upland game hunts.

8. You will possess and use only approved nontoxic shot while in the field on designated areas of the refuge.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. You must wear 500 square inches (3.7 m^2) of fluorescent orange material above the waist visible from all directions during the muzzle loading and gun seasons.

2. We allow only shotguns, muzzle-loaders, and bow and arrow for big game hunts.

3. You must unload and encase firearms while transporting them by a vehicle or boat under power.

4. We allow access 1½ hours before and after legal shooting time.

5. We allow hunting during the State season.

6. We do not allow dogs.

7. You must remove all stands from the refuge following each day's hunt. We prohibit the construction or use of permanent stands, blinds, platforms, or ladders.

8. We allow archery hunting on the Pungo Unit during the regular State archery season and from November 1 through 30. State bag limits apply.

9. We allow shotgun and muzzle-loaders on the Pungo Unit subject to the following conditions: We require permits and allow access one hour before and after legal shooting time.

* * * * *

Roanoke River National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Swanquarter National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. You will possess and use only approved nontoxic shot while in the field.

* * * * *

33. We propose to amend § 32.53 North Dakota by revising paragraph B.2. of Arrowwood National Wildlife Refuge; by revising paragraphs B., C., and D. of Audubon National Wildlife Refuge; by revising paragraph B.1., by redesignating paragraphs B.2. and B.3. as paragraphs B.3. and B.4. and by adding a new paragraph B.2. of Des Lacs National Wildlife Refuge; by revising J. Clark Salyer National Wildlife Refuge; by revising paragraphs A.2. and B. of Lake Alice National Wildlife Refuge; by revising paragraph D. of Lake Ilo National Wildlife Refuge; by revising paragraph C. of Lake Nettie National Wildlife Refuge; by revising paragraph B.1. of Lake Zahl National Wildlife Refuge; by revising paragraph B.1. of Long Lake National Wildlife Refuge; by revising paragraph B.3. of Lostwood National Wildlife Refuge; by alphabetically adding Stewart Lake National Wildlife Refuge; by revising paragraphs B., C., and D. of Tewaukon National Wildlife Refuge; and by revising paragraphs B., C., and D. of Upper Souris National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Arrowwood National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Audubon National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of ring-necked pheasant, gray partridge and sharp-tailed grouse on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

C. Big Game Hunting. We allow hunting of white-tailed and mule deer on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

D. Sport Fishing. We allow ice fishing on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

* * * * *

Des Lacs National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. You will possess and use only approved nontoxic shot while in the field.

2. You may use falconry for upland game hunting.

* * * * *

J. Clark Salyer National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge.

B. Upland Game Hunting. We allow hunting of pheasant, partridge, grouse, turkey and fox on designated areas of the refuge subject to the following conditions:

1. Fox hunting opens annually on the day following the close of the regular firearm deer season and closes on March 31.

2. We close fox hunting from ½ hour after sunset until ½ hour before sunrise.

3. You will possess and use only approved nontoxic shot while in the field.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge as per State law with certain restrictions as posted.

Lake Alice National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Waterfowl and coot hunters will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. We allow hunting of upland game and fox on designated areas of the refuge subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

* * * * *

Lake Ilo National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

Lake Nettie National Wildlife Refuge

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed and mule deer on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

* * * * *

Lake Zahl National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. You may possess and use only approved nontoxic shot while in the field.

* * * * *

Long Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. You may only possess and use only approved nontoxic shot while in the field.

* * * * *

Lostwood National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

3. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Stewart Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. We allow fishing on the designated area subject to all State regulations.

Tewaukon National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of ring-necked pheasants on designated areas of the refuge as per State law with certain restrictions as posted.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge as per State law with certain restrictions as posted.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge as per State law with certain restrictions as posted.

Upper Souris National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of upland game birds with approved nontoxic shot on designated areas of the refuge as per State law with certain restrictions as posted.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge as per State law with certain restrictions as posted.

D. Sport Fishing. We allow fishing on designated areas of the refuge as per State law with certain restrictions as posted.

34. We propose to amend § 32.54 Ohio by revising Ottawa National Wildlife Refuge to read as follows:

§ 32.54 Ohio.

* * * * *

Ottawa National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese and ducks on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. You will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. You must check in and out of the refuge each day that they hunt.

3. You may not shoot from refuge roads.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing during daylight hours only and during designated dates.

2. We do not allow boats or flotation devices.

35. We propose to amend § 32.55 Oklahoma by revising paragraph B.3. of Deep Fork National Wildlife Refuge; by revising paragraph B.4. of Little River National Wildlife Refuge; by revising paragraphs A.1. and B.1. of Salt Plains National Wildlife Refuge; by revising paragraphs A.2. and B.2. of Sequoyah National Wildlife Refuge; by revising paragraph A.3. of Tishomingo National Wildlife Refuge; and by revising paragraphs A., B.1., D.1. and D.3. of Washita National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Deep Fork National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. You may use only shotguns with #4 or smaller, approved nontoxic shot.

* * * * *

Little River National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Salt Plains National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. You will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. * * *

1. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Sequoyah National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Tishomingo National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Washita National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese and sandhill cranes on designated areas of the refuge subject to the following conditions: We require permits and payment of a fee.

B. Upland Game Hunting. * * *

1. We only allow shotguns.

* * * * *

D. Sport Fishing. * * *

1. Anglers may fish from March 15 through October 14 in the Washita River and Foss Reservoir. Anglers may bank fish year round in the Washita River and Foss Reservoir from open areas.

* * * * *

3. We do not allow boats and other flotation devices on refuge waters from October 15 through March 14.

* * * * *

36. We propose to amend § 32.56 Oregon by revising paragraph A. of Bandon Marsh National Wildlife Refuge; by removing Baskett Slough National Wildlife Refuge; by revising paragraphs A.6. and B.3. of Cold Springs National Wildlife Refuge; by revising paragraphs A.2. and B.2. of Deer Flat National Wildlife Refuge; by alphabetically adding Julia Butler Hansen Refuge for the Columbian White-Tailed Deer; by revising paragraph A.2. of Klamath Forest National Wildlife Refuge; by revising paragraphs A. and D. of Lewis and Clark National Wildlife Refuge; by revising paragraphs A.4. and B.2. of Lower Klamath National Wildlife Refuge; by revising paragraphs A.2. and B.3. of Malheur National Wildlife Refuge; by revising paragraphs A.7. and B.3. of McKay Creek National Wildlife Refuge; by revising Umatilla National Wildlife Refuge; and by revising paragraph A.2. of Upper Klamath National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Bandon Marsh National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, snipe, doves and pigeons on designated areas of the refuge subject to the following condition: Snipe hunters must possess and use only approved nontoxic shot while in the field.

* * * * *

Cold Springs National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Deer Flat National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Pheasant, quail, and partridge hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and common snipe on the Wallace Island Unit subject to the following condition:

1. You will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. We allow sport fishing along the shoreline of the Wallace Island Unit in accordance with State regulations.

Klamath Forest National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Lewis and Clark National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and common snipe on designated areas of the refuge subject to the following conditions:

1. You will possess and use only approved nontoxic shot while in the field.

2. We do not allow hunting on all exposed lands on Miller Sands Island and its partially enclosed lagoon, as posted. We do not allow hunting inside the diked portion of Karlson Island, as posted.

* * * * *

D. Sport Fishing. We allow sport fishing along the shoreline of the refuge islands in accordance with State regulations.

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Malheur National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field when hunting on designated areas east of Highway 205.

* * * * *

McKay Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

7. Snipe hunters will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and common snipe on designated areas of the refuge subject to the following conditions:

1. The refuge is open from 4:00 a.m. to 1½ hours after sunset except for the Hunter Check Station parking lot at the McCormack Unit which is open each morning 2 hours prior to State shooting hours for waterfowl. We do not allow decoys, boats and other personal property on the refuge following each day's hunt.

2. In the McCormack Unit, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day.

3. We require waterfowl hunting parties in the Boardman Unit to space themselves a minimum of 200 yards (180m) apart.

4. You may not possess more than 25 shells while in the field.

5. We require permits for hunting on the McCormack Unit.

6. Snipe hunters will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. We allow hunting of pheasant, chukar, Hungarian partridge, and quail on designated areas of the refuge subject to the following conditions:

1. We do not allow hunting of upland game birds until noon of each hunt day.

2. In the McCormack Unit, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Years Day.

3. You will possess and use only approved nontoxic shot while in the field.

4. You may not possess more than 25 shells while in the field.

5. We require permits for hunting on the McCormack Unit.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following conditions:

1. Hunting is by permit only.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. The refuge is open from 5 a.m. to 1½ hours after sunset.

2. We allow fishing on refuge impoundments and ponds from February 1 through September 30. We open other refuge waters (Columbia River and its backwaters) in accordance with State regulations.

3. We allow only non-motorized boats and boats with electric motors on refuge impoundments and ponds.

4. We only allow fishing with hook and line.

Upper Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

37. We propose to amend § 32.57 Pennsylvania by revising paragraph B.4. of Ohio River Islands National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Ohio River Islands National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. You will possess and use only approved nontoxic shot while in the field.

* * * * *

38. We propose to amend § 32.60 South Carolina by revising paragraphs C. and D. of ACE Basin National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

* * * * *

ACE Basin National Wildlife Refuge

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require permits.

D. Sport Fishing. Anglers may fish on the refuge in accordance with State law and as specifically designated in refuge publications.

* * * * *

39. We propose to amend § 32.61 South Dakota by revising paragraph B. of Pocasse National Wildlife Refuge to read as follows:

§ 32.61 South Dakota.

* * * * *

Pocasse National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

* * * * *

40. We propose to amend § 32.62 Tennessee by revising paragraphs B., C., and D. of Cross Creeks National Wildlife Refuge; by revising paragraph A.4. of Hatchie National Wildlife Refuge; and by revising Tennessee National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

* * * * *

Cross Creeks National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of squirrels on designated areas of the refuge subject to the following conditions: We require permits.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions: We require permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing on refuge pools and reservoirs from March 15 through October 31 from sunrise to sunset.

2. We do not allow bow and arrows, trotlines, limblines, jugs, and slat baskets in refuge pools and reservoirs.

3. We do not allow taking of frogs.

4. The length limit for largemouth bass taken from Elk and South Cross Creeks reservoirs is less than 12 inches (30 cm) and more than 15 inches (37.5 cm). Anglers must immediately release unharmed largemouth bass from 12 inches (30 cm) to 15 inches (37.5 cm). We prohibit possession of largemouth bass between 12 inches (30 cm) and 15 inches (37.5 cm).

Hatchie National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Tennessee National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. We allow hunting of squirrels and raccoon on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. You must unload and encase or dismantle firearms transported in motor vehicles.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. You must unload and encase or dismantle firearms transported in motor vehicles.

D. Sport Fishing. We allow fishing on designated portions of the refuge subject to the following conditions:

1. We close impounded waters to fishing from November 1 through March 14.

2. We close Swamp Creek, Britton Ford and Bennett's Creek embayments to fishing and boating from November 1 through March 14.

3. Anglers must launch boats from designated access points only. We restrict boats to "slow speed/minimum wake" on all refuge impoundments open to fishing.

4. Anglers may not leave boats on the refuge overnight.

41. We propose to amend § 32.63 Texas by revising paragraph B.3. of Buffalo Lake National Wildlife Refuge; and by revising Hagerman National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

Buffalo Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Hagerman National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning doves in the month of September on designated areas of the refuge, subject to the following conditions:

1. We require you to check in and out of the hunt area.

2. We allow only shotguns.

3. You may possess no shot larger than No. 4 on the hunting area.

B. Upland Game Hunting. We allow hunting of quail in the month of February and squirrel and rabbit in the months of February and September on designated areas of the refuge subject to the following conditions:

1. We require you to check in and out of the hunt area.

2. We allow only shotguns.

3. You may possess no shot larger than No. 4 on the hunting area.

4. You must plug shotguns to hold no more than three shells during the September dove season.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following conditions:

1. You may archery hunt as listed in the refuge hunt information sheet. You must obtain a refuge permit and pay a hunt fee.

2. We allow firearms hunting utilizing shotguns, 20 gauge or larger, loaded with rifled slug during a special youth hunt as listed in the refuge hunt information sheet. We require permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. Lake Texoma and connected streams are open to fishing year round.

2. We allow fishing in ponds and stock tanks from April 1 through September 30.

3. Fishermen may string trotlines between anchored floats only. We do not allow lines attached to rubber bands, sticks, poles, trees or other fixed objects in refuge ponds or impoundments.

4. We do not allow fishing from bridges or roadways.

5. We do not allow boats and other flotation devices on the waters of Lake Texoma from October 1 through March 31, nor at any time on refuge ponds and impoundments.

* * * * *

42. We propose to amend § 32.64 Utah by revising paragraphs A.2. and B.1. of Bear River Migratory Bird Refuge; and paragraph B. of Ouray National Wildlife Refuge to read as follows:

§ 32.64 Utah.

* * * * *

Bear River Migratory Bird Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. * * *

1. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Ouray National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

* * * * *

43. We propose to amend § 32.65 Vermont by revising paragraph B.4. of Missisquoi National Wildlife Refuge to read as follows:

§ 32.65 Vermont.

* * * * *

Missisquoi National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Shotgun hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

44. We propose to amend § 32.66 Virginia by revising Chincoteague National Wildlife Refuge; and by alphabetically adding Plum Tree Island National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

Chincoteague National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of waterfowl and rails on designated areas of the refuge subject to the following conditions:

1. You must possess written permission to hunt in the non-guided public hunting areas.

2. On Wildcat Marsh we reserve compartments 1–4 for guided hunting only with refuge-designated commercial guides.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed and sika deer in designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. We allow fishing, crabbing, and clamming on designated areas of the refuge subject to the following conditions:

1. We allow sport fishing, crabbing, and clamming in salt water areas and in that portion of Swan Cove adjacent to Beach Road. We close all other refuge ponds, impoundments and channels to these activities.

2. Fishermen must attend traps and crab pots.

3. Fishermen must obtain a permit to remain on the refuge after normal closing hours.

* * * * *

Plum Tree Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of waterfowl on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Waterfowl hunters will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

* * * * *

45. We propose to amend § 32.67 Washington by revising Columbia National Wildlife Refuge, Julia Butler Hansen Refuge for the Columbian White-Tailed Deer, and Willapa National Wildlife Refuge; by revising paragraph A. of Conboy Lake National

Wildlife Refuge; by removing paragraphs A.6. and B.6., by revising the introductory text of paragraph B., and by revising paragraphs A.3. and B.3. of McNary National Wildlife Refuge; by revising paragraphs A.5. and B.2. of Toppenish National Wildlife Refuge; and by revising paragraphs A.6. and B.4. of Umatilla National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and common snipe on designated areas of the refuge subject to the following conditions:

1. In Marsh Unit 1, we allow hunting only on Wednesdays, Saturdays, and Sundays.

2. Snipe hunters will possess and use only approved nontoxic shot while in the field.

3. In Marsh Unit 1, concurrent with the State's designated Youth Day prior to the opening of the waterfowl hunt, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

B. Upland Game Hunting. We allow hunting of pheasant, quail, and partridge on designated areas of the refuge subject to the following conditions:

1. We allow hunting of upland game birds only during State seasons that run concurrently with the State waterfowl season.

2. We allow only shotguns and bows and arrows.

3. Upland game bird hunters will possess and use only approved nontoxic shot while in the field.

4. In Marsh Unit 1, concurrent with the State's designated Youth Day prior to the opening of the waterfowl hunt, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following condition: We allow only shotgun and archery hunting.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow non-motorized boats and boats with electric motors on Upper and Lower Hampton, Hutchinson, Royal and Shiner Lakes.

2. We allow motorized boats and non-motorized boats on all other refuge waters open to fishing.

3. We prohibit the taking of bullfrogs.

Conboy Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of doves, geese, ducks, coots, and common snipe on designated areas of the refuge subject to the following condition: snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and common snipe on the Hunting Island Unit subject to the following condition:

1. You will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. We allow bank fishing from the Mainland Unit shoreline adjoining the Elochoman and Columbia Rivers as well as Steamboat and Brooks Sloughs, in accordance with State fishing regulations. We also allow bank fishing in the pond adjacent to the diking district pumping station by Brooks Slough. We close all other inferior water of the Mainland Unit to fishing.

* * * * *

McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. We allow hunting of pheasant, quail, chukar, and Hungarian partridge on designated areas of the refuge subject to the following conditions:

* * * * *

3. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. Snipe hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. You will possess and use only approved nontoxic shot while in the field.

* * * * *

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Snipe hunters will possess and use only approved nontoxic shot while in the field.

B. Upland Game Hunting. * * *

* * * * *

4. Upland game bird hunters will possess and use only approved nontoxic shot while in the field.

* * * * *

Willapa National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of Riekkola and Lewis Units, in accordance with State hunting regulations and subject to the following conditions:

1. At Riekkola Unit, prior to entering the hunt area, we require you to obtain a permit, pay a recreation user fee, and obtain a blind assignment.

2. At Riekkola Unit you may take ducks and coots only coincidental to hunting geese. We do not allow exclusive hunting of ducks in Riekkola Unit.

3. We allow hunting in the Riekkola Unit only from established blinds on Wednesdays and Saturdays.

4. At the Riekkola Unit you will possess and use no more than 24 shells per day while in the field.

5. You will possess and use only approved nontoxic shotgun shells.

B. Upland Game Hunting. We allow hunting of blue and ruffed grouse on Long Island, subject to the following conditions:

1. We require you to obtain and carry a refuge permit and report game taken, as specified with the permit.

2. We allow only archery hunting.

3. We do not allow firearms on Long Island at any time.

4. We do not allow dogs on Long Island.

C. Big Game Hunting. We allow hunting for deer, elk, and bear on Long Island, subject to the following conditions:

1. We require you to obtain and carry a refuge permit and report game taken, as specified with the permit.

2. We allow only archery hunting.

3. We do not allow firearms on Long Island at any time.

4. We do not allow dogs on Long Island.

D. Sport Fishing. We allow fishing along the shoreline of the refuge in accordance with State regulations.

46. We propose to amend § 32.68 West Virginia by revising paragraph B.2. of Canaan Valley National Wildlife Refuge and paragraph B.4. of Ohio River Islands National Wildlife Refuge to read as follows:

§ 32.68 West Virginia.

* * * * *

Canaan Valley National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Shotgun hunters may use or possess only approved nontoxic shot while hunting on the refuge.

* * * * *

Ohio River Islands National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. You will possess and use only approved nontoxic shot while in the field.

* * * * *

47. We propose to amend § 32.69 Wisconsin by revising paragraph C. of Fox River National Wildlife Refuge; by revising Horicon National Wildlife Refuge and Necedah National Wildlife Refuge; and by alphabetically adding St. Croix Wetland Management District to read as follows:

§ 32.69 Wisconsin.

* * * * *

Fox River National Wildlife Refuge

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We require permits.
2. We do not allow the construction or use of blinds, platforms, or ladders.
3. We allow hunting only during the State firearms season and during a designated time period of the archery season.

* * * * *

Horicon National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks and coots on designated areas of the refuge subject to the following conditions:
1. We require permits.
2. We allow only participants in the Young Wildfowlers and Special Programs to hunt.

B. Upland Game Hunting. We allow hunting of ring-necked pheasant, gray partridge, squirrel, and cottontail rabbit on designated areas of the refuge from the opening of the respective State seasons through the State deer firearms season, and subject to the following conditions:
1. Shotgun hunters may use or possess only approved nontoxic shot while hunting upland game species.
2. Hunting in the youth/novice pheasant hunt area (Area F) is for youth who are 12 through 15 years of age, and by permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:
1. We allow hunting only during the early archery and State firearms season.
2. We do not allow the construction and use of permanent blinds, platforms or ladders.
3. You must remove all stands from the refuge following each day's hunt.
4. Hunting in the area surrounding the office/visitor center (Area E) is by permit only.
5. Hunting in the auto tour/hiking trail complex (Area D) is open only during the State firearms deer season.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:
1. We allow fishing from April 15 through September 15.
2. We allow only bank fishing.

* * * * *

Necedah National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds only on designated areas of the refuge.

B. Upland Game Hunting. We allow hunting of wild turkey, ruffed grouse, gray squirrel, fox squirrel, cottontail rabbit, snowshoe hare, and racoon only on designated areas of the refuge subject to the following conditions:
1. You may only possess unloaded guns in the retrieval zone of Refuge Area 7 during the State waterfowl hunting season, except while hunting deer during the gun deer season.
2. During the spring turkey hunting season only, persons possessing a valid State spring turkey permit may enter and hunt wild turkeys in all open refuge areas.
3. Refuge Area 3 is open to hunting after the State deer gun season through the end of the respective State seasons or until February 28, whichever occurs first.
4. You may use dogs only when hunting small game and waterfowl.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:
1. We prohibit the possession of a loaded rifle or shotgun with 50 feet (15m) of the centerline of all paved or graveled roads and designated trails, or discharging these weapons from, across, down, or alongside these roads and trails within the refuge.
2. We do not allow the construction of permanent blinds, platforms or ladders.
3. You may use portable elevated devices but must lower them to ground level at the close of shooting hours each day. You must remove all blinds, stands, platforms and ladders from the refuge at the end of the hunting season.
4. Refuge Areas 1, 2, 4, 5, 6, and 7 are open to deer hunting.
5. Refuge Area 3 is open to deer hunting during the State gun, muzzleloader, and late archery seasons. Unarmed deer hunters may enter Area 3 to scout beginning the Saturday prior to the gun deer season.
6. We do not allow target or practice shooting.
7. We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

D. Sport Fishing. We allow fishing in designated waters of the refuge at designated times subject to the following conditions:
1. We allow use of non-motorized boats in Sprague-Goose Pools only when these pools are open to fishing. We allow motorized boats in Suk Cerney Pool.
2. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" on the entire refuge.

St. Croix Wetland Management District

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds throughout the district except that you may not hunt on designated portions of the St. Croix Prairie Waterfowl Production Area in St. Croix County or on the Oakridge Waterfowl Production Area in St. Croix County.

B. Upland Game Hunting. We allow hunting of upland game throughout the district except that you may not hunt on designated portions of the St. Croix Prairie Waterfowl Production Area in St. Croix County or on the Oakridge Waterfowl Production Area in St. Croix County.

C. Big Game Hunting. We allow hunting of big game throughout the district except that you may not hunt on designated portions of the St. Croix Prairie Waterfowl Production Area in St. Croix County.

D. Sport Fishing. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" covering the following five Waterfowl Production Areas: Oakridge WPA and Amschler WAP (both in St. Croix County), Rose Lee WPA, Flatey WPA, and Bass Lake WPA (in Polk County).

* * * * *

48. We propose to amend § 32.70 Wyoming by adding paragraph D.1. of National Elk Refuge; by revising paragraph B. of Pathfinder National Wildlife Refuge and by revising paragraph B. of Seedskadee National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

National Elk Refuge

* * * * *

D. Sport Fishing. * * *

1. Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" covering the entire refuge. Current State regulations for lead-free fishing areas remain in effect.

Pathfinder National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of sage grouse and cottontail rabbit on designated areas of the refuge subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

* * * * *

Seedskadee National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of sage grouse and cottontail rabbit on designated areas of the refuge subject to the following condition: You will possess and use only approved nontoxic shot while in the field.

* * * * *

PART 36—[AMENDED]

49. The authority citation for part 36 is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460(k) *et seq.*, 668dd–668ee, 742(a) *et seq.*, 3101 *et seq.*; and 44 U.S.C. 3501 *et seq.*

50. We propose to revise § 36.39(i)(6) to read as follows:

§ 36.39 Public use.

* * * * *

(i) * * *

(6) What are the restrictions concerning fishing on Kenai National Wildlife Refuge?

(i) We prohibit fishing June 1 to August 15 on the south bank of the Kenai River from the Kenai-Russian River Ferry dock to a point 100 feet (30 m) downstream.

(ii) Effective with the 2001–2002 season, we will require anglers to use lead-free sinkers and jigs on "Lead-Free Fishing Areas" on the section of the Kenai River from the outlet of Skilak Lake downstream to the refuge boundary and the Dave Spenser Unit of the Kenai Refuge Wilderness Area.

* * * * *

Dated: July 29, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–20192 Filed 8–10–99; 8:45 am]
BILLING CODE 4310–55–P

Federal Register

Wednesday
August 11, 1999

Part IV

Department of Defense

Office of the Secretary

32 CFR Parts 230, 231, and 231a
Financial Institutions on DoD Installations; Proposed Rule
Procedures Governing Banks, Credit Unions and Other Financial Institutions on DoD Installations; Proposed Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 230 and 231a

[0790–AG73]

Financial Institutions on DoD Installations

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes to remove 32 CFR part 231a, "Procedures governing Banking Offices on DoD Installations" and to revise part 230 on "Financial Institutions on DoD Installations." This rule is being promulgated to provide administrative guidelines for the operation of banks and credit unions on domestic and overseas installations of the Department of Defense and address areas such as the solicitation for such services, the types of services and the logistics support provided.

DATES: Comments must be received by October 12, 1999.

ADDRESSES: Forward comments to OUSD(C), 1745 Jefferson Davis Highway, Suite 201, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: T. Summers, 703–602–0299.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Planning and Review

It has been determined that 32 CFR part 230 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is being promulgated to provide administrative guidelines for the operation of banks and credit unions on domestic and overseas installations of the Department of Defense and address areas such as the solicitation for such services, the types of services and the logistics support provided.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 230 and 231a

Armed forces, Banks, banking, Credit unions, Federal buildings and facilities.

Accordingly, 32 CFR part 230 is proposed to be revised to read as follows:

PART 230—FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS

Sec.

230.1 Purpose.
230.2 Applicability.
230.3 Definitions.
230.4 Policy.
230.5 Responsibilities.

Authority: 10 U.S.C. 136

§ 230.1 Purpose.

This part:

(a) Updates policies and responsibilities for financial institutions that serve Department of Defense (DoD) personnel on DoD installations worldwide. Associated procedures are contained in DoD 7000.14–R[1].

(b) Ensures that arrangements for the provision of services by financial institutions are consistent among the DoD Components, and that financial institutions operating on DoD installations provide, and are provided, support consistent with the policies stated in this part.

§ 230.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to as the "DoD Components."

[1] Copies may be obtained at *http://web7.whs.osd.mil/corres.htm*

§ 230.3 Definitions.

Terms used in this part are set forth in 32 CFR part 231.

§ 230.4 Policy.

(a) The following pertains to financial institutions on domestic DoD installations:

(1) Except where they already may exist as of July 1, 1999, no more than one banking institution and one credit union shall be permitted to operate on a DoD installation.

(2) Upon the request of an installation commander and with the approval of the Secretary of the Military Department concerned (or designee), duly chartered financial institutions may be authorized to provide financial services on DoD installations to enhance the morale and welfare of DoD personnel and facilitate the administration of public and quasi-public monies. Arrangement for the provision of such services shall be in accordance with this part and related issuances.

(3) Financial institutions or branches thereof, shall be established on DoD installations only after approval by the Secretary of the Military Department concerned (or designee) and the appropriate regulatory agency.

(i) Only banking institutions insured by the Federal Deposit Insurance Corporation (FDIC) and credit unions insured by the National Credit Union Share Insurance Fund (NCUSIF) shall operate on DoD installations. These financial institutions may be either state or federally chartered. Foreign banking institutions operating on overseas DoD installations and chartered to provide financial services in that country are excepted from this requirement.

(ii) Military banking facilities (MBFs) shall be established on DoD installations only when a demonstrated and justified need cannot be met through other means. Normally, MBFs shall be authorized only at overseas locations. They may be considered for use at domestic DoD installations only when DoD Components have been unable to obtain, through normal means, financial services from a state or federally chartered financial institution authorized to operate in that state. In times of mobilization, it may become necessary to designate additional MBFs as an emergency measure. The Director, Defense Finance and Accounting Service (DFAS) may recommend the designation of banking facilities to the Department of the Treasury under provisions of 12 U.S.C. 265.

(iii) Retail banking operations shall not be performed by any DoD Component. Solicitations for such services shall be issued, or proposals

accepted, only in accordance with the policies identified in this part. DoD Components shall rely on commercially available sources in accordance with DoD Directive 4100.15[2].

(iv) Retail fees and services for products (to include related minimum balance requirements for noninterest checking, Negotiable Order of Withdrawal (NOW) and savings accounts) offered by financial institutions operating on domestic installations and domestic credit unions operating on DoD installations overseas shall not exceed 110 percent of the industry-wide averages for banks in the "Annual Report to Congress on Retail Fees and Services of Depository Institutions," published by the Board of Governors of the Federal Reserve System.

(4) Installation commanders shall not seek the provision of financial services from any entity other than the on-base banking office or credit union. The Director, DFAS, with the concurrence of the Under Secretary of Defense Comptroller), (USD(C)), may approve exceptions to this policy. Such requests for exception shall be proposed through the Secretary of the Military Department concerned (or designee).

(5) Financial institutions authorized to locate on DoD installations shall be provided logistic support as set forth in Volume 5 of the DoD Financial Management Regulation (DoD 7000.14–R).

(6) Military disbursing offices, nonappropriated fund instrumentalities including MWR activities, the Military Exchange Services and other DoD Component activities requiring financial services shall use on-base financial institutions to the maximum extent feasible and consistent with sound management practice.

(7) The Department encourages the delivery of retail financial services on DoD installations via nationally networked automated teller machines (ATMs). ATMs are considered electronic banking services and, as such, shall be provided only by duly chartered financial institutions.

(i) Notwithstanding the provisions contained in paragraph (a) (3) (iv) of this section, on-base ATM service offered by financial institutions operating on domestic installations and domestic credit unions operating on DoD installations overseas shall be provided without surcharge.

(ii) Proposals by the installation commander to install ATMs from other than on-base financial institutions shall comply with the provisions of paragraph (a) (4) of this section, and will be considered only when ATM service is unavailable or existing service is inadequate and the on-base financial institution(s) either declines to provide the service, fails to improve existing service so that it is adequate or does not formally respond to the request within 30 days of the date of the request.

(8) Expansion of financial services (to include in-store banking) provided by on base financial institutions must be approved by the installation commander. Such requests for expansion of services should be coordinated with the installation bank/credit union liaison officer prior to the commander's consideration. Approved expansion of services will be documented as an amendment to the existing operating agreement between the installation commander and the on-base financial institution. The amendment to the operating agreement and any required lease (to include a change to an existing lease) shall be in place prior to the initiation of new financial services or offices.

(9) The installation commander shall ensure, to the maximum extent feasible, that all financial institutions operating on his or her installation are given the opportunity to participate in pilot programs to demonstrate new financial-related technology (e.g., smart cards) or establish new business lines (e.g., in-store banking) where a determination has been made by the installation commander that the offering of such services is warranted.

(10) Requests for termination of financial services must be approved by the installation commander, substantiated by sufficient evidence and forwarded to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) shall coordinate such requests with the Under Secretary of Defense (Comptroller), through the Director, DFAS, before notification to the appropriate regulatory agency.

(b) The following pertains to financial institutions on overseas DoD installations:

(1) The extension of services by MBFs and credit unions overseas shall be consistent with the policies stated in this part and with the pertinent status of forces agreement, other intergovernmental agreement, or host-country law.

(2) The policies governing the operation of financial institutions on domestic DoD installations identified in paragraph (a) of this section shall apply to financial institutions operating overseas.

(3) Financial services at overseas DoD installations may be provided by:

(i) Domestic on-base credit unions operating overseas under a geographic franchise and, where applicable, as authorized by the pertinent status of forces agreement, other intergovernmental agreement, or host-country law.

(ii) MBFs operated under and authorized by the pertinent status of forces agreement, other intergovernmental agreement, or host-country law.

(iii) Domestic and foreign banks located on overseas DoD installations that are:

(A) Chartered to provide financial services in that country, and

(B) A party to a formal operating agreement with the installation commander to provide such services, and

(C) Identified, where applicable, in the status of forces agreements, other intergovernmental agreements, or host-country law.

(4) Financial institutions authorized to locate on DoD installations shall be provided logistical support as set forth in the Volume 5 of the DoD Financial Management Regulation (DoD 7000.14–R).

(5) In countries served by MBFs operated under contract, nonappropriated fund instrumentalities and on-base credit unions that desire and are authorized to provide accommodation exchange services shall acquire foreign currency from the MBF at the MBF accommodation rate; and shall sell such foreign currency at a rate of exchange that is no more favorable to the customer than that available from the MBF.

(6) Additional guidance pertaining to financial services overseas is set forth in Volume 5 of DoD 7000.14–R.

§ 230.5 Responsibilities.

(a) The Under Secretary of Defense (Comptroller) (USD(C)) shall develop and monitor policies governing establishment, operation, and termination of financial institutions on DoD installations and take final action on requests for exceptions to this part.

(b) The Under Secretary of Defense (Acquisition and Technology) (USD(A&T)) shall develop and monitor policies and procedures governing logistical support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(c) The Under Secretary of Defense (Personnel and Readiness) (USD(P&R)) shall advise the USD(C) on all aspects of on-base financial institution services

[2] See footnote 1 to § 230.1(a).

that affect the morale and welfare of DoD personnel.

(d) DoD Component responsibilities pertaining to this part are set forth in Volume 5 of the DoD Financial Management Regulation (DoD 7000.14–R).

PART 231a—[Removed]

By the authority of 10 U.S.C. 301, 32 CFR part 231a is proposed to be removed.

Dated: August 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20508 Filed 8–10–99; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 231

RIN 0790–AG74

Procedures Governing Banks, Credit Unions and Other Financial Institutions on DoD Installations

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule reflects the transition of operational responsibilities for banks and credit unions from the Office of the Under Secretary of Defense (Comptroller) to the Defense Finance and Accounting Service; to address changes in financial-related technology and the vehicles through which financial services are delivered (i.e., in-store banking, electronic banking (ATMs)); and incorporates the procedural guidance contained in other DoD documents.

DATES: Comments must be received by October 12, 1999.

ADDRESSES: Forward comments to: OUSD(C), 1745 Jefferson Davis Highway, Suite 201, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: T. Summers, 703–602–0299.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Planning and Review

It has been determined that 32 CFR part 231 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is being promulgated to provide administrative guidelines for the operation of banks and credit unions on domestic and overseas installations of the Department of Defense and address areas such as the solicitation for such services, the types of services and the logistics support provided.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 231

Armed forces, Banks, banking, Credit unions, Federal buildings and facilities.

Accordingly, 32 CFR part 231 is proposed to be revised to read as follows:

PART 231—PROCEDURES GOVERNING BANKS, CREDIT UNIONS AND OTHER FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS

Subpart A—Guidelines

231.1 Overview.
231.2 Policy.
231.3 Responsibilities.
231.4 General policy provisions.
231.5 Procedures-domestic banks.
231.6 Procedures-overseas banks.
231.7 Procedures-domestic credit unions.
231.8 Procedures-overseas credit unions.
231.9 Definitions.

Subpart B–DoD Directive 1000.11

231.10 Financial institutions on DoD installations.

Subpart C—Guidelines for Application of the Privacy Act to Financial Institution Operations

231.11 Guidelines
Appendix A to Part 231—Sample Operating Agreement
Appendix B to Part 231—In-Store Banking
Appendix C to Part 231—Sample Certificate of Compliance for Credit Unions
Appendix D to Part 231—Foreign Geographic Field of Membership (Franchise) Assignment Listing

Authority: 10 U.S.C. 136.

Subpart A—Guidelines

§ 231.1 Overview.

(a) *Purpose.* This part implements DoD Directive 1000.1,[1] "Financial Institutions on DoD Installations," and prescribes guidance and procedures governing the establishment, support, operation, and termination of banks and credit unions operating on DoD installations worldwide, to include military banking facilities (MBFs). In addition, this part provides guidance intended to ensure that arrangements for the provision of services by financial institutions are consistent among DoD Components, and that financial institutions operating on DoD installations provide, and are provided support consistent with the guidance and procedures stated in this part.

(b) *Applicability.* This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff (JCS), the Combatant Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, the DoD Field Activities, and all nonappropriated fund instrumentalities including the Military Exchange Services and morale, welfare and recreation (MWR) activities.

§ 231.2 Policy.

The policy pertaining to financial institutions operating on DoD installations is contained in DoD Directive 1000.11, "Financial Institutions on DoD Installations" (32 CFR part 230) and in § 231.4.

§ 231.3 Responsibilities.

(a) The Under Secretary of Defense (Comptroller) (USD(C)) shall develop and monitor policies governing establishment, operation, and termination of financial institutions on DoD installations and take final action on requests for exceptions to DoD Directive 1000.11.

(b) The Under Secretary of Defense (Acquisition and Technology) (USD(A&T)) shall develop and monitor policies and procedures governing logistical support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

---

[1] Copies may be obtained at http://web7.whs.osd.mil/corres.htm.

(c) The Under Secretary of Defense (Personnel and Readiness) (USD(P&R)) shall advise the USD(C) on all aspects of on-base financial institution services that affect the morale and welfare of DoD personnel.

(d) The Director, Defense Finance and Accounting Service (DFAS) shall:

(1) Develop procedures governing banks and credit unions on DoD installations for promulgation in this part.

(2) For domestic DoD installations, coordinate with the Secretaries of the Military Departments (or designees) on requests from subordinate installation commanders to establish or terminate banking offices or on-base credit unions. For overseas DoD installations, coordinate with the Secretary of the Military Department concerned (or designee) on requests from subordinate installation commanders to establish or discontinue the provision of financial services from the on-base financial institution under contract with the Department of Defense or to establish or terminate banking offices or credit unions located on DoD installations.

(3) In coordination with affected DoD Components, authorize the specific types of banking services that will be provided by overseas military banking facilities (MBFs) and specify the charges or fees, or the basis for these, to be levied on users of these services.

(4) Coordinate with the Fiscal Assistant Secretary of the Treasury on the designation of domestic and overseas MBFs as depositaries and financial agents of the U.S. Government.

(5) Designate a technical representative to provide policy direction for the procuring and administrative contracting officer(s) responsible under the Federal Acquisition Regulation (FAR) for acquiring banking services required at overseas DoD installations.

(6) Serve as principal liaison with banking institutions having offices on overseas DoD installations. In this capacity, monitor MBF managerial and operational policies, procedures, and operating results and take action as appropriate.

(7) As necessary, assist in the formation of government-to-government agreements for the provision of banking services on overseas DoD installations, in accordance with DoD Directive 5530.3.[2]

(8) Provide procedural guidance to DoD Components, as required.

(9) Maintain liaison with financial institution trade associations, leagues, and councils in order to interpret DoD policies toward respective memberships and aid in resolving mutual concerns affecting the provision of financial services.

(10) Coordinate with the USD(P&R), through the USD(C), on all aspects of morale and welfare and with the USD(A&T), through the USD(C), on all aspects of logistic support for on-base financial institutions.

(11) Monitor industry trends, conduct studies and surveys, and facilitate appropriate dialogues on banking and credit union arrangements and cost-benefit relationships, coordinate as necessary with DoD Components, financial institutions, and trade associations as appropriate.

(12) Maintain liaison, as appropriate, with financial institution regulatory agencies at federal and state levels.

(13) Ensure that recommendations of the Combatant Commands are considered before processing requests for overseas banking and credit union service or related actions.

(e) Secretaries of the Military Departments (or designees) shall:

(1) For domestic DoD installations, take action on requests from subordinate installation commanders to establish or terminate financial institution operations. For overseas DoD installations, take action in accordance with guidance contained herein on requests from subordinate installation commanders to establish or discontinue the provision of financial services from the DoD contracted bank, or to establish or terminate other financial institutions located on DoD installations.

(2) Provide for liaison to those financial institutions that operate banking offices on respective domestic DoD installations.

(3) Oversee the use of banking offices and credit unions on respective DoD installations within the guidance contained herein and in DoD Directive 1000.11.

(4) Evaluate the services provided by respective on-base banking offices and credit unions to ensure that they fulfill the requirements upon which the establishment and retention of those services were justified.

(5) Monitor practices and procedures of respective banking offices and credit unions to ensure that the welfare and interests of DoD personnel as consumers are protected.

(6) Assist on-base banking offices and credit unions to develop and expand necessary services for DoD personnel consistent with this part.

(7) Encourage the conversion of existing domestic MBFs on respective installations to independent or branch bank status where feasible.

(8) Provide logistical support to overseas MBFs under terms and conditions identified in this part as well as with the applicable terms of DoD contracts with financial institutions responsible for the operations of overseas MBFs.

(9). Refer matters requiring policy decisions or proposed changes to this part or DoD Directive 100011 to the USD(C) through the Director, DFAS.

(10) Supervise and encourage the use of financial institutions on DoD installations to:

(i) Facilitate convenient, effective management of the appropriated, nonappropriated, and private funds of on-base activities.

(ii) Assist DoD personnel in managing their personal finances through participation in programs such as direct deposit and regular savings plans. The use of on-base financial institutions shall be on a voluntary basis and should not be urged in preference to, or to the exclusion of, other financial institutions.

(11) Encourage and assist duly chartered financial institutions on domestic DoD installations to provide complete financial services to include financial counseling at no charge.

(12) Establish liaison, as appropriate, with federal and state regulatory agencies and financial institution trade associations, leagues, and councils.

(13) Provide debt processing assistance to on-base financial institutions in accordance with the Privacy Act guidelines in subpart B of this part.

(14) Recognize the right of DoD personnel to organize and join duly chartered credit unions.

(15) Permit DoD personnel to serve on credit union boards and committees on a voluntary basis, without compensation, when neither a conflict of duty nor a conflict of interest is involved, as stated in DoD Directive 5500.7.[3]

(16) Allow personnel to attend credit union conferences and meetings in accordance with DoD Directive 1327.5[4], Subchapter 630 of the "DoD Civilian Personnel Manual," DoD 1400.25–M[5], and Comptroller General Decision B–212457.

(f) The Commanders of the Combatant Commands (or designees) shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish financial institutions in countries not presently served. Such requests will include a statement that

[2] See footnote 1 to § 231.1(a).

[3] See Footnote 1 to § 231.1(a).

[4] See Footnote 1 to § 231.1(a).

[5] See Footnote 1 to § 231.1(a).

the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Eliminate any or all financial institutions on DoD installations within a foreign country. Such requests will include a statement that the U.S. Chief of Diplomatic Mission has been informed and appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate military banking operations within the command area. Personnel assigned to security assistance positions will not perform this function without the prior approval of the Director, Defense Security Cooperation Agency (DSCA).

(g) The Commanders of Major Commands and subordinate installation commanders shall:

(1) Monitor the banking and credit union program within their commands.

(2) Coordinate requests to establish or construct bank and credit union offices or terminate logistical support to banks and credit unions within their commands. Personnel assigned to overseas security assistance positions will not monitor, coordinate, or assist in military banking operations without the prior approval of the DSCA.

(3) Assign, as appropriate, responsibility for paragraphs (g)(1) and (g)(2) of this section, to Comptroller or resource management personnel.

(4) Cooperate with financial institution associations, leagues, and councils.

(5) Recognize the right of all DoD personnel to organize and join credit unions and promote the credit union movement in DoD worldwide.

(6) Permit DoD personnel to serve on credit union boards and committees on a voluntary basis, without compensation, when neither conflict of duty nor conflict of interest is involved, as stated in DoD Directive 5500.7.

(7) Allow personnel to attend credit union conferences and meetings in accordance with DoD Directive 1327.5, Subchapter 630 of the DoD Civilian Personnel Manual (DoD 1400.25–M), and Comptroller General Decision B–212457.

(8) Seek the provision of financial services only from existing on-base financial institutions, proposing alternatives only where on-base financial institutions fail to respond favorably to legitimate requirements.

(9) Coordinate appropriate actions with the cognizant Combatant Command.

§ 231.4 General policy provisions.

(a) *Security.* The installation commander (or designee) and the on base financial institutions shall work with the installation security police to establish an understanding as to each entity's responsibilities. A written agreement shall be established outlining the security procedures that the financial institution will follow and the role that the security police will play with regard to alarms, movement of cash, and procedures to be followed should a robbery occur. The on-base financial institutions are encouraged to establish an ongoing relationship with the security police on all matters of asset protection.

(1) Cash and other assets in on-base banking offices and credit unions are the property of the financial institutions. Maintenance of alarms, escorting of cash or use of armored cars, and the guarding of cash is the sole responsibility of the on-base financial institution.

(2) Military guards, civilian guards (for use within the installation), military police or other protective service will be provided without charge in the following cases:

(i) For needed periods for paydays to guard shipments of money that primarily are for disbursing officer use.

(ii) At times of unusual risk to the financial institution, such as cash needed to stock remote automated teller machines.

(iii) To avoid undue insurance costs.

(b) *Central locator services.* Military locator services shall be provided per the guidelines in subpart B to this part.

(1) When appropriate, installations will process financial institution requests for central locator service to obtain military addresses of active duty personnel. This service will be used to locate persons for settling accounts, and recovering funds on checks that did not clear or loans that are delinquent or in default (see DoD Directive 1344.9[6]). If delinquent loans or dishonored checks are not recouped within 48 hours, financial institutions operating on DoD installations may bring this information to the attention of the local commander, bank liaison officer, or other designee for assistance in effecting restitution of the amount due, if not otherwise prohibited by law.

(2) The Department will assist financial institutions to locate DoD personnel whose whereabouts cannot be locally determined. The request should be on the financial institution's letterhead, include the Service member's name and social security number (SSN), and cite the cognizant Military Department regulation that authorizes the use of locator services. If a financial institution needs immediate service, the institution should contact the bank or credit union liaison officer.

(i) For addresses of Department of the Army active, retired, separated and civilian personnel, financial institutions may telephone (703) 325–3732 or write to: Department of the Army WW Locator, U.S. Army Enlisted Record and Evaluation Center, 8899 E. 56th Street, Indianapolis, IN 46249–5301.

(ii) For addresses of Department of the Navy active, retired, separated and civilian personnel, financial institutions may telephone (901) 874–3388 or write to: Department of the Navy, Navy Personnel Command, PERS–312F, 5720 Integrity Drive, Millington, TN 38055.

(iii) For addresses of Department of the Air Force active, retired, separated and civilian personnel, financial institutions may telephone (210) 565–2660 or write to: Department of the Air Force Personnel Command, MSIMDL Suite 50, 550 C Street West, Randolph AFB, TX 78150.

(iv) For addresses of United States Marine Corps active, retired, separated and civilian personnel, financial institutions may telephone (703) 784–3942 or write to:

Active:

U.S. Marine Corps–CMC, HQ MC MMS B 10, 2008 Elliot Road, Room 201, Quantico, VA 22134–5030

Retired-Separated:

Q U.S. MMRS–6, 280 Russell Road, Quantico, VA 22134–5105

Civilian:

Commanding General, 15303 Andrew Road, Kansas City, MO, 64147–1207

(c) *Advertising.* (1) On-base financial institutions may use the unofficial section of that installation's daily bulletin, provided space is available, to inform DoD personnel of financial services and announce seminars, consumer information programs, and other matters of broad general interest. Announcements of free financial counseling services are encouraged. Such media may not be used for competitive or comparative advertising of, for example, specific interest rates on savings or loans.

(2) On-base financial institutions may use installation bulletin boards, newsletters or web pages to post general information that complements the installation's financial counseling programs and promotes financial responsibility and thrift. Message center services may distribute a reasonable number of announcements to units for use on bulletin boards so long as this

[6] See footnote 1 to § 231.1(a).

does not impose an unreasonable workload.

(3) On-base financial institutions may include a one page insert into the newcomer's package. This insert would benefit the installation's newcomers by letting them know what financial services are available on the installation.

(4) DoD Directive 5120.20[7] prevents use of the Armed Forces Radio and Television Service to promote a specific financial institution.

(5) Off-base financial institutions will not be permitted to distribute competitive literature or forms on the installation. However, they may use commercial advertising, mailings or telecommunications to reach their customers.

(6) Advertising in government-funded (official) installation papers is not permitted with the exception of insert advertising in the *Stars and Stripes* overseas. Installation newspapers funded by local advertisers are not official publications and, thus, may include paid bank advertising.

(7) Installation activities, including Military Exchange and concessionaire outlets, shall not permit the distribution of literature from off-base financial institutions if there is an on-base financial institution. This does not prevent Military Exchange Services from distributing literature on affinity credit cards centrally acquired through competitive solicitation.

(d) On-base financial institutions are encouraged to install ATMs at those installation(s) on which they are located.

(1) Financial institutions that propose to install an ATM on DoD installations shall bear the cost of ATM installation, maintenance, and operation.

(2) ATM approval authority is as shown.

(i) The installation commander has approval authority when an on-base financial institution wishes to place an ATM on the installation. This approval should be reflected as an amendment to the operating agreement.

(ii) Where there is no on-base financial institution, follow the solicitation procedures to obtain financial services set forth in §§ 231.5(b) and 231.7(b).

(3) The availability of ATM service will not preclude the later establishment of a banking office should conditions change on an installation.

(4) Proposals by the installation commander to install ATMs from other than on-base financial institutions on domestic installations shall be considered only when ATM service is unavailable or existing service is inadequate and the on-base financial institution(s) either declines to provide the service, fails to improve existing service so that it is adequate, or does not formally respond to the request for such service within 30 days of the date of the request. Additional ATM service from other than on-base financial institutions is considered an exception to policy and, therefore, must be submitted by the installation commander for approval to the USD(C) through the Secretary of the Military Department concerned (or designee) and the DFAS. The procedures to establish an on-base financial institution set forth in §§ 231.5(b) and 231.7(b) shall be followed when soliciting for the additional services. Proposals offering shared-access ATMs shall receive preference.

(5) ATM service from foreign banking institutions may be authorized on overseas installations with or without MBFs operated under contract where the installation or community commander determines that a bonafide need exists to support local national hires. In such instances, ATM connectivity shall be limited to host country networks and the ATMs shall dispense only local currency (no U.S. dollars). The operating agreement covering ATM service shall be negotiated by the installation or community commander and coordinated with the Secretary of the Military Department concerned (or designee) and the appropriate Combatant Command (or designee) prior to its execution. A copy of the operating agreement will be forwarded through DoD Component channels to the DFAS.

(6) *Domestic and International Treasury General Accounts.* In cases where authorization will be required for the banking office or on-base credit union to act as a Treasury General Account (TGA) domestic depositary (on overseas installations—International Treasury General Account (ITGA) overseas depository), the financial institution must satisfy the risk management standard established by the Department of the Treasury. Local operating funds may be used if the on-base financial institution requests reimbursement for costs incurred. On-base financial institutions shall accept deposits for credit to the TGA (or ITGA) when so authorized.

(7) *Staffing.* (i) On-base financial institutions are expected to be staffed adequately commensurate with industry standards for similar numbers of accountholders and financial services rendered. Staffing at overseas MBFs operated under contract shall be maintained within negotiated ceilings.

(ii) All staffing will comply fully with the spirit and intent of the DoD equal employment opportunity policies and programs in accordance with DoD Directive 1440.1.[8]

(iii) DoD personnel may not serve as directors of domestic or foreign banking institutions operating banking offices on those DoD installations where they are currently assigned. However, a member of a Reserve Component who has been serving as a director of a domestic or foreign banking institution operating a banking office on a DoD installation need not resign his or her directorship when called to active duty.

(iv) DoD personnel may not be detailed to duty with an on-base financial institution located on a DoD installation. However, off-duty personnel may be employed by an on-base financial institution subject to installation commander approval. Such employment must not interfere with the performance of the individual's official duties and responsibilities.

(e) *Departure clearance.* The installation commander establishes the clearance policy for all DoD personnel leaving the installation. The on-base financial institutions shall be included as places requiring clearance. The purpose of a clearance is to report change of address, reaffirm allotments or outstanding debts, and receive financial counseling, if desired or appropriate. Clearance may not be denied in order to collect debts or resolve disputes with financial institution management.

(f) *Financial education.* (1) Officials of on-base financial institutions shall be invited to take part in seminars to educate personnel on personal financial management and services of financial institutions. Financial institutions will be encouraged to provide financial education and counseling services as an integral part of their financial program. Officials of on-base financial institutions shall submit advance-briefing texts for approval by the installation commander to ensure that the program is not used to promote services of a specific financial institution.

(2) DoD personnel who tender uncollectable checks, overdraw their accounts or fail to meet their financial obligations in a proper and timely manner damage their credit reputation and adversely affect the public image of all government personnel. For uniformed personnel, military financial counselors and legal advisors shall

[7] See footnote 1 to § 231.1(a).

[8] See footnote 1 to § 231.1(a).

recommend workable repayment plans that avoid further endangering credit rating and counsel affected personnel to protect their credit standing and career. Counselors shall ensure that such personnel are aware of the stigma associated with bankruptcy and shall recommend its use only when no other alternative will alleviate the situation.

(g) *Operating agreements.* Before operations of an on base banking office or credit union begin, a written operating agreement (Appendix A to this part) shall be negotiated directly between the installation commander and officials of the designated financial institution. The operating agreement shall define the basic relationship between the on-base financial institution and the installation commander and identify mutual support activities such as hours of operation, service fees and security provided. The agreement shall not prescribe internal operations of the financial institution. One copy of the agreement shall be sent through command channels to the Secretary of the Military Department concerned (or designee). A copy of the agreement shall be maintained by the installation commander and the banking office or on-base credit union. At a minimum, the agreement shall include the following provisions:

(1) Identification of services to be rendered and the conditions for service. Full financial services shall be provided where feasible. Agreements, however, may not restrict either entity's right to renegotiate services and fees.

(2) Agreement that retail fees and services for products (to include related minimum balance requirements for noninterest checking, NOW and savings accounts) offered by financial institutions operating on domestic installations and domestic credit unions operating on DoD installations overseas shall not exceed 110 percent of the industry-wide averages for banks as identified in the "Annual Report to Congress on Retail Fees and Services of Depository Institutions," published by the Board of Governors of the Federal Reserve System. This report is submitted to the Congress pursuant to section 1002 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by section 108 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and is accessible through the Internet at http://www.bog.frb.fed.us/boarddocs/RptCongress.

(3) Agreement that, notwithstanding the provisions contained in paragraph (g)(2) of this section, on-base ATM service offered by financial institutions operating on domestic installations and domestic credit unions operating on DoD installations overseas shall be provided without surcharge.

(4) Agreement by both parties that they will comply with this part.

(5) Agreement by the on base financial institution that it will furnish copies of its monthly financial reports and other local publications to the installation commander (or designee).

(6) Agreement that the on-base financial institution will indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim, or demand to which the U.S. Government may be subjected as a result of death, loss, destruction, or damage in conjunction with the use and occupancy of the premises caused in whole or in part by agents or employees of the on-base financial institution.

(7) Agreement that neither the Department of Defense nor its representatives shall be responsible or liable for the financial operation of the on-base financial institution or for any loss (including criminal losses), expense, or claim for damages arising from operations.

(8) Agreement by the on-base financial institution (or any successor) that it will provide no less than 180 days advance written notice before ceasing operations.

(9) Specification of the security services to be provided for guarding cash shipments for paydays, at times of unusual risk to the financial institution, and to avoid excessive insurance costs charged to that institution.

(10) Statement that the physical security for cash and negotiable items will be in a manner consistent with the requirements of the on-base financial institution's insurer. A copy of those requirements will be provided to the installation commander on request.

(11) Statement that the financial institution, whenever possible, will accommodate local command requests for lectures and printed materials for consumer credit education programs. Officials invited to participate in such programs shall not use the occasion to promote the exclusive services of a particular financial institution.

(12) Agreement of the installation commander to provide support as identified in this part.

(13) Statement that on-base financial institution operations shall be terminated in accordance with the provisions outlined in this part.

(h) *Installation financial services.* (1) Financial services provided on DoD installations will be as uniform as possible for all personnel.

(2) As separately negotiated, or based on a fee schedule, custodians of nonappropriated funds shall compensate on-base financial institutions for services received. Compensation may be made with compensating balances or paying fees based on the services provided or a combination of these payment mechanisms. Fees shall not exceed the charge customary for the financial institution less an offsetting credit on balances maintained. Banking offices shall classify nonappropriated fund accounts as commercial accounts.

(3) At a minimum, banking offices shall provide the same services to individuals and nonappropriated fund instrumentalities as are available locally.

(4) On-base financial institutions may conduct operations during normal duty hours provided they do not disrupt the performance of official duties. Operating hours shall be set, in consultation with the bank/credit union liaison officer, to meet the needs of all concerned. ATMs may be used to expand financial services and operating hours.

(5) DoD personnel may use their allotment of pay privileges to establish sound credit and savings practices through on-base financial institutions.

(i) On-base financial institution shall credit customer accounts not later than the value date of the allotment check or electronic funds transfer.

(ii) The initiation of an allotment is voluntary (see Volume 7A, section 4202, of DoD 7000.14–R). Thus, generally, a Service member cannot be required to initiate an allotment for the repayment of a loan. Allotments voluntarily established by a Service member for the purpose of repaying a loan or otherwise providing funds to an on-base financial institution shall continue in effect at the option of the allotter.

(6) In accordance with sound lending practice, policies on loans to individuals are expected to be as liberal as feasible while remaining consistent with the overall interests of the on-base financial institution. On-base financial institutions shall conform to the Standards of Fairness principles before executing loan or credit agreements. (See DoD Directive 1344.9).

(7) On-base financial institutions shall make financial education and counseling services available without charge to individuals seeking financial counseling. Such services shall include helping customers to budget and solve financial problems. Personnel in junior enlisted grades, or newly married couples who apply for loans, shall be given special attention and counseling.

(8) On-base financial institutions must strive to provide the best service to all customers. On-base financial institutions that evidence a policy of discrimination in their services are in violation of this part. In resolving complaints of discrimination, use the procedures specified in § 231.5(g)(7).

(9) All correspondence regarding on-base financial institutions, and questions concerning their operation that cannot be resolved locally shall be referred through command channels to the Secretary of the Military Department concerned (or designee) for consideration.

§ 231.5 Procedures—domestic banks.

(a) *Establishment.* (1) The following information shall be included in the installation commander's request to the Secretary of the Military Department concerned (or designee) for establishment of banking offices:

(i) The approximate number of DoD personnel at the installation, and other persons who may be authorized to use the banking office.

(ii) The distance between the installation and the financial institutions in the vicinity, and the names and addresses of those institutions.

(iii) Available transportation between the installation and the financial institutions listed in paragraph (a)(1)(ii) of this section.

(iv) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(v) The approximate loss of duty time due to DoD personnel leaving the installation for banking services.

(vi) Sources from which the disbursing officer obtains operating and payroll cash, the frequency of these acquisitions, and the amount obtained monthly.

(vii) The name and location of the depositary used to make official deposits for credit to the Treasury General Account (TGA).

(viii) The estimated savings to the disbursing officer if a banking office is established on the installation.

(ix) A list of organizational and nonappropriated fund accounts, the name and location of the financial institutions where deposited, and the average daily activity and balance of each account.

(x) A written description and photographs of the space proposed for banking office use.

(xi) A statement listing the requirements of the proposed banking office for safes and a vault; alarm systems; and surveillance equipment, when necessary.

(xii) Reasons for use of space controlled by the General Services Administration (GSA). All the GSA-assigned space, whether leased space or federal office building space, is reimbursable to the GSA at a standard level user charge. As such, space occupied by a banking office to serve military needs will be assigned and charged by the GSA.

(xiii) Any other information pertinent to the establishment of a banking office.

(2) The Secretary of the Military Departments (or designee) shall:

(i) Review each request for the establishment of banking offices.

(ii) Conduct a solicitation for the services when warranted.

(iii) Approve proposals for banking offices.

(iv) Notify the selected financial institution either directly or through the installation commander. The selected banking institution will, in turn, obtain operating authority from their regulating agencies.

(v) Forward proposals to establish TGAs to the DFAS for subsequent forwarding to the Fiscal Assistant Secretary of the Treasury in accordance with this part.

(b) *Solicitations.* The Secretary of the Military Department concerned (or designee), or the installation commander with advice from the cognizant Secretary of the Military Department (or designee), shall conduct solicitations to include pre-proposal conferences for on-base banking. Subject to the criteria for selection outlined in paragraph (d) of this section, the preferred sources of on-base financial services at domestic installations are federally-insured state or federally-chartered banking institutions operating in the local area. No commitment may be made to any banking institution regarding its proposal until a designation is made by the appropriate regulatory agency.

(1) Solicitations for banking services shall be accomplished in the following order:

(i) Solicitation letters will be sent to local banking institutions and a solicitation announcement will be published in the local newspaper(s) and forwarded to financial institution associations.

(ii) If the Secretary of the Military Department concerned (or designee) or, where delegated, the installation commander, determines that the geographic scope of the solicitation needs to be expanded, a prospectus will be forwarded to financial institutions in a larger geographic area, as well as financial institution associations and regulatory authorities in the state where the installation is located.

(iii) If the Secretary of the Military Department concerned (or designee) or, where delegated, the installation commander, determines that the geographic scope of the solicitation needs to be expanded further, the prospectus will be published in the Commerce Business Daily and financial institution trade journals.

(2) For solicitations conducted at the installation level, the installation commander shall review proposals to establish banking offices, select the banking institution making the best offer and forward a recommendation to the Secretary of the Military Department concerned (or designee) for final approval.

(3) Banking institutions will not be coerced when banking arrangements are under consideration or after banking offices are established. If otherwise proper, this prohibition does not preclude:

(i) Discussions with banking institutions prior to submitting a proposal for a new banking office.

(ii) Helping banking offices extend their operations in support of an installation requirement.

(iii) Discussions with banking institutions to improve services or to create savings for the bank or DoD personnel.

(iv) Seeking proposals for banking service as directed by the Secretary of the Military Department concerned (or designee).

(v) Negotiations preparatory to signing a banking agreement.

(4) When soliciting for banking services, proposals shall be evaluated on specific factors identified in the solicitation. These factors, at a minimum, will be predicated on the services to be provided as outlined in paragraph 3 of Appendix A to this part, service fees and charges, and the extent of logistical support required. Prior to issuance of the solicitation, the preparing office will identify (for internal use during the subsequent evaluation period) the weights to be applied to the factors reflected in the solicitation. Proposals will be evaluated and ultimate selection made based upon the factors and weights developed for the solicitation.

(5) The Secretary of the Military Department concerned (or designee), or the installation commander with advice from the cognizant Secretary of the Military Department (or designee), shall make the selection of the banking institution based on the provisions outlined in this section.

(c) *Terminations.* (1) Requests for termination of financial services shall be approved by the installation commander, substantiated by sufficient evidence and forwarded to the Secretary of the Military Department concerned (or designee). The installation commander only under one of the following conditions shall initiate the termination of banking office operations:

(i) The mission of the installation has changed, or is scheduled to be changed, thereby eliminating or substantially reducing the requirement for financial services.

(ii) Active military operations prevent continuation of on-base financial services.

(iii) Performance of the banking office in providing services is not satisfactory according to standards ordinarily associated with the financial services industry or is inconsistent with the operating agreements or the procedures prescribed in this section.

(iv) Merger, acquisition, change of control or other action results in violation of the terms and conditions of the existing operating agreement.

(2) The installation commander shall forward requests for terminations to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) shall coordinate such requests with the USD(C), through the Director, DFAS, before notification to the appropriate regulatory agency. Subsequent to this coordination process:

(i) The Secretary of the Military Department (or designee) shall inform the regulatory agency of the action.

(ii) The installation commander shall revoke the authority of the financial institution to operate. The lease will be terminated.

(3) Any banking office that intends to terminate its operations should notify the installation commander at least 180 days before the closing date. This notification should precede any public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the banking office to continue operations until the installation has made other arrangements. Immediately upon notification of a closing, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of banking services is justified, action to establish another banking office shall be taken in accordance with the guidance prescribed in this section.

(d) *Leases or permits for existing government structures.* (1) *Lease terms.*

(i) The charge for lease of an existing structure shall be determined by appraisal of fair market rental value.

(ii) The term shall be for 5 years subject to renewal by mutual agreement and with the understanding that the cognizant Assistant Secretary of the Military Department (Installations and Logistics) has the authority to terminate the lease per the cancellation provisions addressed in paragraphs (e)(3)(i) and (e)(3)(iii) of this section. Terms in excess of 5 years must be approved by the Secretary of the Military Department (or designee) following a determination that the longer term will aid the national defense or be in the public interest. If space occupied is assigned by GSA, charges to financial institutions for space and services shall be at the standard level user rate of GSA.

(iii) When banking institutions use their own funds to improve existing government space, leases, for a period not to exceed 5 years, may be negotiated for a period commensurate with the appraised value of the leasehold improvements divided by the annual lease fee. Terms in excess of 5 years must be approved by the Secretary of the Military Department (or designee) following a determination that the longer term will aid the national defense or be in the public interest.

(iv) Banking institutions shall perform all maintenance, repair, improvements, alterations, and construction on the banking premises.

(v) Banking institutions shall pay for all utilities and custodial, janitorial, and other services furnished by the government at rates set forth in the lease or by written agreement between the installation and the banking institution.

(vi) The banking office shall be housed in a building accessible to most DoD personnel on the installation and in a location permitting reasonable security.

(2) Leases executed before [effective date of the final rule] may not be altered solely as a result of the provisions of this part unless a lessee specifically requests a renegotiation under these provisions. Leases may not be negotiated or renegotiated, nor may any rights be waived or surrendered without compensation to the government. Compensation to the government may consist of added property value, added banking services, or both.

(e) *Land leases.* (1) A lease for construction of a building to house a bank shall be at the appraised fair market rental value. Charges shall apply for the term of the lease not to exceed 5 years. Terms in excess of 5 years shall be approved by the Secretary of the Military Department (or designee) following a determination that the longer term will aid the national defense or be in the public interest.

(2) Banking institutions that participate in the construction of a shopping mall complex will be given a lease at fair market rental value for a term not to exceed 5 years. Terms in excess of 5 years shall be approved by the Secretary of the Military Department (or designee) following a determination that the longer term will aid the national defense or be in the public interest. The lease shall cover only land where the banking office physically is located.

(3) Leases shall include the following provisions:

(i) The government has the right to terminate the lease due to national emergency; installation inactivation, closing, or other disposal action; or default by the lessee.

(ii) The lessee shall provide written notice 180 days prior to voluntarily terminating the lease.

(iii) Upon a lease termination, the government has the option to cause the title of all structures and other improvements to be conveyed to the United States without reimbursement, or require the lessee to remove the improvements and restore the land to its original condition.

(4) If determined to be in the government's interest, an existing lease of land may be extended prior to expiration of its term. Passage of title to facilities shall be deferred until all extensions have expired. Such extensions shall be for periods not to exceed 5 years with lease payments set at the appraised fair market rental of the land only as determined on the date of each such extension. Banking institution lessees shall continue to maintain the premises and pay for utilities and services furnished.

(5) When under the terms of a lease, title to improvements passes to the government, arrangements normally will be made as follows:

(i) When the square footage involved exceeds that authorized in DoD 4270.1–M,[9] the banking institution shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that excess space.

(ii) The charge for continued occupancy of improved space by a banking office shall be at fair market rental value only for the associated land. The lessee shall continue to maintain the premises and pay the cost of utilities and services furnished.

(6) Without exception, those leases executed before [effective date of the

[9] See footnote 1 to § 231.1(a).

final rule] shall not be altered solely as a result of the provisions of this part unless a lessee specifically requests a renegotiation under these provisions. Lease contracts may not be negotiated or renegotiated, nor may any rights thereunder be waived or surrendered, without compensation to the government.

(f) *Construction.* Banking institutions may construct buildings subject to the following provisions:

(1) The building shall be solely for the use of the banking institution and may not provide for other commercial enterprises or government instrumentalities.

(2) Construction projects must meet the criteria in DoD 4270.1–M.

(3) Construction projects approval authority.

(i) Projects costing $25,000 or more shall be approved by the Major Command (or Claimant) with an information copy sent to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) will have 30 days to provide comments to the Major Command (or Claimant) before final approval can be granted. Major Commands (or Claimants) may accept telephonic concurrence from the Secretary of the Military Department (or designee).

(ii) Projects costing less than $25,000, to include interior alterations and room or office additions to existing banking offices, shall be approved by installation commanders. Copies of approvals, including the identification of project cost, shall be furnished to the Secretary of the Military Department concerned (or designee).

(4) In accordance with applicable Military Department regulations, the Congress must be notified of all construction projects using other than appropriated funds and costing over $500,000.

(5) Proposals for construction of structures on installations at banking institution expense shall be reviewed and reported in accordance with cognizant Military Department regulations. The following information shall be listed to support each proposal:

(i) Number of DoD personnel at the installation plus others who may use the banking office.

(ii) Square footage of the proposed building.

(iii) Land area to be leased to the banking institution.

(iv) Term of the lease.

(v) Estimated cost of construction.

(vi) Estimated fair market value of the land to be leased.

(vii) A statement that the banking institution will be responsible for utility connections and other utility and maintenance costs.

(viii) A statement that the building will be used only for financial services.

(ix) A statement that management understands its potential loss of the building in the event of installation closure or other delimiting condition.

(x) Justification for a waiver of space criteria if the building exceeds that specified in DoD 4270.1–M.

(6) Banking institutions shall pay for interior alterations and maintenance as well as utilities, custodial, and other furnished services.

(7) Banking institutions shall pay all construction costs.

(g) *Bank liaison officer (BLO).* Each installation commander having a banking office shall appoint a BLO. The BLO's photograph, name and duty telephone number shall be displayed prominently at each banking office on the installation. As appropriate, the BLO's responsibility shall be assigned to comptroller or resource management personnel. Employees, officials or directors of a financial institution may not serve as BLOs. The duties of a BLO are to:

(1) Ensure that the banking institution operating the banking office has the latest version of this part.

(2) Ensure that traveler's checks and money orders are not being sold by other on-base organizations when banking offices are open for business. However, postal units and credit unions are exempt from this restriction.

(3) Attend financial workshops, conferences, and seminars as appropriate. Such gatherings offer excellent opportunities for personnel of financial institutions and the Department to improve the military banking program. Free discussion among the attendees gives an excellent forum for planning, developing, and reviewing programs that improve Military banking and financial services.

(4) Assist, when requested by the banking office manager or the installation commander, in locating and collecting from individuals tendering uncollectable checks, overdrawing accounts, or defaulting on loans (within the guidelines of subpart B of this part) if not otherwise prohibited by law.

(5) Maintain regular contact with the banking office manager to confer and discuss quantitative and qualitative improvements in the services provided. In executing this authority, the BLO shall not become involved in the internal operations of the banking institution.

(6) Review the schedule of fees annually, and ensure that the operating agreement is updated at least every 5 years. Renegotiate services and fees as necessary.

(7) Assist in resolving customer complaints about banking services.

(8) Assist in resolving complaints of discrimination with financial services by the banking institution. If a complaint cannot be resolved, a written request for investigation shall be forwarded to the appropriate regulatory agency. Any such request must document the problem and command efforts taken toward its resolution. Information copies of all related correspondence shall be sent through channels to the Secretary of the Military Department concerned (or designee) for transmittal to DFAS.

(9) Assist the installation commander to report to the appropriate regulatory agency any evidence suggesting malpractice by banking office personnel.

(h) *In-store banking.* Under the direction and approval of the installation commander, an on-base financial institution may provide in-store banking within the premises of the commissary, the Military Exchange Service or other on-base retail facility.

(1) Provision of the requested services and the associated stipulations arising from the provision of the requested services shall be documented as an amendment to the existing operating agreement between the installation commander and the on-base financial institution that will provide in-store services.

(2) The amendment to the operating agreement shall be drafted through close coordination between the requesting DoD Component representative, the on-base financial institution representative, and the installation commander. All three parties shall sign the amendment: the installation commander, the DoD Component that hosts the in-store banking operations, and the on-base financial institution.

(3) The installation commander shall extend the opportunity to provide the requested in-store banking services to all financial institutions located on the installation. The selection process is outlined in Appendix B of this part.

(4) Space shall be granted through a lease to the banking institution that will provide in-store service.

(i) *Domestic military banking facilities (MBFs)* (1) *Domestic MBF establishment.* Requests to establish MBFs should be made only when a need for services cannot be met by other means. During mobilization, however, MBFs may be designated as an emergency measure.

(ii) Installation commanders shall send requests for an MBF with justification for its establishment through the Secretary of the Military Department concerned (or designee) to the Director, DFAS, for coordination with the Department of the Treasury. The Department of the Treasury may approve the designation of an MBF under provisions of 12 U.S.C. 265.

(iii) MBF operations may begin only after approval for MBF status is granted by the Department of the Treasury.

(5) *MBF conversion.* (i) Where MBFs exist, installation commanders shall encourage their conversion to independent or branch banks.

(ii) Proposals from the on-base banking institution to convert an existing MBF to an independent or branch bank shall be sent through command channels to the Secretary of the Military Department concerned (or designee) for approval. The Secretary of the Military Department (or designee), shall forward the request to the Director, DFAS, for coordination with the Department of the Treasury.

(iii) Unsolicited proposals from banking institutions to establish independent or branch banks where an MBF exists shall be forwarded through command channels to the Secretary of the Military Department concerned (or designee). Each proposal shall be evaluated on its own merits.

(A) The installation commander shall inform the banking institution operating the MBF that an unsolicited proposal for a banking office has been received and shall offer that incumbent institution the opportunity to submit its own proposal.

(B) Preference to operate an independent or branch bank shall be given to the banking institution that has operated the MBF provided that prior banking service has been satisfactory and that the institution's proposal is adequate.

(6) *MBF termination.* The Director, DFAS, shall coordinate the termination of a financial institution's authority to operate an MBF with the Department of the Treasury.

§ 231.6 Procedures—overseas banks.

(a) *General provisions of banking services overseas.* The Department acquires banking services overseas for use by authorized persons and organizations by:

(1) MBFs operated under contract and authorized by the pertinent status of forces agreement, other intergovernmental agreements, or host-country law.

(2) Domestic and foreign banking institutions located on overseas DoD installations. Each such institution shall be:

(i) Chartered to provide financial services in that country,

(ii) A party to a formal operating agreement with the installation commander to provide such services, and

(iii) Identified, where applicable, in the status of forces agreements, other intergovernmental agreements, or host-country law.

(b) *Establishment.* (1) *Overseas MBFs operated under contract.* Installation or community commanders requiring banking services will send a request through command channels to the Secretary of the Military Department concerned (or designee) for concurrence and subsequent transmittal to the Director, DFAS, for approval.

(i) Requests to establish MBFs will include, but are not limited to, the following information:

(A) The approximate number of DoD personnel at the installation and in the community and any other persons who may be authorized to use the MBF.

(B) The distance between the installation and the nearest MBF and credit union office, the names; addresses, and telephone numbers of the operators of those institutions; and the installations and communities where they are located.

(C) The availability of official and public transportation between the installation or community and the nearest MBF and credit union office.

(D) The approximate loss of duty time due to DoD personnel leaving the installation or community to obtain banking services.

(E) Sources from which the disbursing officer obtains operating and payroll cash, the frequency of these acquisitions, and the amount obtained monthly.

(F) The name and location of the depository used to make official deposits for credit to the TGA.

(G) The estimated savings to the disbursing officer if the MBF is established on the installation.

(H) A list of organizational and nonappropriated fund accounts, the name and location of the financial institutions where deposited, and the average daily activity and balance of each account.

(I) A written description and photographs or drawings of the space proposed for MBF use. The extent and approximate cost of required alterations, including the construction of counters and teller cages.

(J) A statement that recognizes the logistical support, including equipment, to be provided by the local command as detailed in paragraph (c) of this section. The statement will include the costs of such equipment and the manner in which it will be acquired.

(K) In countries where no MBFs currently are operated under contract, a statement from the appropriate Combatant Command that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation in accordance with § 231.3(f)(1)(i).

(L) Any other pertinent information to justify MBF establishment.

(ii) As a general rule, MBFs may be established only when the installation or community population meets the following criteria:

(A) *Full-time MBF.* Except in unusual circumstances, a total of at least 1,000 permanent military personnel and DoD civilian employees is necessary to qualify for a full-time MBF.

(B) *Part-time MBF.* Except in unusual circumstances, a total of at least 250 permanent military personnel and DoD civilian employees is necessary to qualify for a part time MBF.

(iii) If the population at a certain remote area is not sufficient to qualify under the criteria for full-or part-time MBFs, the installation or community commander will explore all other alternatives for acquiring limited banking services before requesting establishment of an MBF as an exception to these provisions. Alternatives to limited banking services include installation of ATMs and check cashing and accommodation exchange service by disbursing officers and their agents.

(iv) Establishment of an overseas MBF is predicated on and requires:

(A) Designation of the MBF contractor as a depositary and financial agent of the U.S. Government by the Department of the Treasury.

(B) The availability of banking contractors interested in bidding for the operation of the facility and the viability of such proposals.

(C) The availability of appropriated funds to underwrite such banking services.

(D) Establishment of a U.S. Dollar Currency Custody Account to support banking operations.

(2) *Other overseas banking offices.* Where a need for financial services has been identified; either the banking and currency control laws of certain host countries do not permit MBFs to operate on DoD installations or MBFs, where permitted, have not been established; and there is a desire to establish banking services the following applies:

(i) Installation or community commanders will send requests for banking services or unsolicited proposals from foreign banking institutions to their Major Commands (or Claimants) with supporting data as required in § 231.5 (a).

(ii) Major Commands (or Claimants) will forward installation or community commander requests to the Secretary of the Military Department concerned (or designee) for approval. The Secretary of the Military Department concerned (or designee) will coordinate with DFAS to seek the designation of the parent foreign banking institution designated as a depositary and financial agent of the U.S. Government by the Department of the Treasury.

(iii) Banking offices in this category will become operational only after the foreign parent banking institution has been designated a depositary and financial agent of the U.S. Government. The institution also must indicate a willingness and ability to provide collateral backing for any official and nonappropriated fund U.S. dollar deposits. Any collateral pledged must be in a form acceptable to DFAS and the Department of the Treasury.

(c) *Logistical support.* (1) *Overseas MBFs operated under contract.* (i) Installation or community commanders will provide logistical support to MBFs. Such support normally includes:

(A) Adequate office space, including steel bars; grillwork; security doors; a vault, safes, or both; security alarm systems and camera surveillance equipment (where deemed necessary) that meet documented requirements of the contractor's insurance carrier; construction of counters, teller cages, and customer and work areas; necessary modifications and alterations to existing buildings; and construction of new MBF premises, if necessary.

(*1*) The size and arrangement of space should permit efficient operations. Space assigned may not exceed that prescribed in DoD 4270.1–M.

(*2*) All maintenance, repair, rehabilitation, alterations, or construction for banking offices shall comply with guidelines established by the installation commander.

(B) Office space in a building that is accessible to the most users and permits the maximum security.

(C) Office space for MBF area and district administrations and storage space for retention of records, files, and storage of supplies.

(D) DoD housing on a rental basis to key MBF personnel who are unable to find suitable, reasonably priced housing in the vicinity of the DoD installation, subject to the assignment procedures and other requirements of DoD 4165.63–M [10]

(E) Air-conditioning, which is considered a normal utility for banking offices located at installations that qualify for air-conditioning under applicable regulations. Banking space is classified as administrative space at Military installations.

(F) Utilities (i.e., electricity, gas, water and sewage), heating, intrastation telephone service, and custodial and janitorial services to include garbage disposal and outdoor maintenance (such as grass cutting and snow removal).

(G) Defense Switching Network (DSN) voice and data communication to include Internet access.

(H) Military guards, civilian guards (for use within the installation), military police, or other protective services to accompany shipments of money. This level of protective service also shall be provided at other times as required to include alarm system failures and to avoid undue risks or insurance costs on the part of the MBF.

(I) U.S. Military Postal Service access under DoD Directive 4525.6 [11]. Use of free intra-theater delivery system (IDS) is authorized for all routine mail sent and received between Army Post Offices (APOs) and Fleet Post Offices (FPOs) within a theater.

(J) Office equipment and furniture on memorandum receipt if available from local stock. If office equipment or furniture is unavailable, statements of nonavailability will be issued.

(K) Vehicle registration and fuel sales from government-owned facilities for bank-operated vehicles if not in conflict with host government agreements. Vehicle registration will be subject to normal fees.

(L) The local commander for official may issue issuance of invitational travel orders that authorize travel at no expense to the U.S. Government on site visits by U.S. based banking institution officials.

(ii) Suggestions for changes to the contract under which logistical support is granted may be forwarded through command channels to the Director, DFAS, for consideration.

(2) *Other overseas banking offices.* (i) Logistical support provided to such offices will be negotiated with the parent foreign banking institution and incorporated into the written operating agreement.

(ii) Logistical support will not exceed that provided to contract MBFs as specified paragraph (c)(1) of this section.

[10] See footnote 1 to § 231.1(a).

[11] See footnote 1 to § 231.1(a).

(d) *Operations.* (1) *General conditions of MBF operation.* (i) Before initiating MBF operations, a written agreement shall be directly negotiated and signed by the installation or community commander and management of the banking contractor or other financial institution concerned. One copy of the agreement with U.S. banking contractors and two copies of the agreement with institutions other than U.S. banking contractors will be forwarded through command channels to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) shall forward one copy of the agreement with institutions other than U.S. banking contractors through command channels to the Director, DFAS. A copy of the agreement also shall be maintained at all times by the installation or community commander and the banking institution manager.

(ii) For MBFs operated by U.S. banking contractors, the agreement shall state operating details not set forth in the contract. Though the contract limits the number of operating hours per week, local commanders and MBF managers should set days and hours of operation to best meet local needs. Operating times may include Saturdays and evening hours when necessary to complement other retail services for DoD personnel, provided the contractor can implement that service at no additional cost to the government. When added cost is involved, the commander will send a request including reasons for expanded or modified times of operation, through command channels, to the Secretary of the Military Department concerned (or designee) for action. If approved, the request, with recommendations, will be forwarded to the Director, DFAS.

(2) *Overseas MBFs operated under contract.* (i) *General.* Overseas MBFs shall operate under terms and conditions established at the time of annual contract negotiations and confirmed in respective contracts or contracting officer determinations.

(ii) *Authorized customers.* DoD banking contracts specify the personnel authorized to receive service. Additionally, overseas major commanders may approve banking services for other individuals that qualify for individual logistic support under the regulations of the DoD Component concerned, provided that the use of banking services is not prevented by status of forces agreements, other intergovernmental agreements, or host-country law.

(iii) *Services rendered.* DoD banking contracts specify the services to be

rendered and related charges. Suggestions for expansion or modification of authorized services, fees or charges may be forwarded through DoD Component channels to DFAS. Proposals for any new service must be coordinated with the appropriate Combatant Command and U.S. Chief of Diplomatic Mission or U.S. Embassy to make certain that the proposal does not conflict with the status of forces agreements, other intergovernmental agreements, or host-country law.

(iv) *Regulation to be provided.* The DFAS shall advise each U.S. banking contractor operating an overseas MBF of this part and furnish a copy to the contractor.

(v) *Conditions of operation.* (A) Part-time and payday service MBFs will provide limited services that mirror, to the extent feasible, those provided by full-time MBFs. Since part-time MBFs operate out of nearby MBFs, installation or community commanders shall provide and fund transportation and guards for their operation.

(B) Any deficiency of banking services under DoD banking contracts shall be reported to the manager of the MBF within 7 calendar days of noting the deficiency. If the problem has not been corrected within 30 calendar days after being noted, the commander shall report the problem through DoD Component channels to DFAS.

(C) The MBF contractor and military disbursing officers shall establish cash management practices that minimize the cash required to conduct business.

(D) Commanders shall assist MBF contractors to develop and update contingency plans for banking services in the event of hostilities or other emergencies.

(E) MBF provision of foreign currency shall be in accordance with Volume 5, Chapter 13 of DoD 7000.14–R.

(3) *Other overseas banking offices.* (i) *Authorized customers.* The list of authorized customers shall be negotiated between the installation commander and the bank and shall be reflected in the bank operating agreement. Those customers identified as authorized in the operating agreement shall be in accordance with applicable status of forces agreements, other intergovernmental agreements, or host-country law.

(ii) *Services rendered.* Services and charges shall parallel, whenever practical, the services and charges of MBFs operated under contract. Specific services shall be negotiated and included in the agreement with the foreign banking institution. A copy of the agreement shall be sent through DoD Component channels to the DFAS.

(iii) *Operating agreements.* Before agreements are executed, they will be coordinated with and approved by the appropriate Combatant Command (or designee).

(iv) *Conditions of operation.* A banking institution shall provide equipment (except that furnished by the installation or community), supplies, and trained bank personnel.

(4) *Relocation of MBF.* (i) When an MBF is moved from one location to another at the same installation or community, the commander shall notify the cognizant Military Department, through command channels. The Military Department shall forward the information to the DFAS.

(ii) For all other relocations, prior approval from the DFAS must be obtained through DoD Component channels.

(5) *Comments.* Installation or community commanders shall send their banking comments through DoD Component channels to the DFAS for any of the following:

(i) Major changes in installation population that would affect use of the MBF.

(ii) Opinion that the space assigned is not adequate for the efficient operation of the MBF. Include a statement concerning corrective action.

(iii) Suggestions that might improve the MBF operation, increase efficiency, or decrease costs.

(iv) Pending developments that may have a material impact on the MBF operation.

(6) *Bank liaison officer.* The duties of the BLO are outlined in § 231.5 (g).

(e) *Termination.* Requests to eliminate any or all MBFs in a foreign country must include documentation that the U.S. Chief of Diplomatic Mission has been informed and arrangements for local termination announcements and procedures have been made with the U.S. Embassy.

(1) *Overseas MBFs operated under contract.* In cases where an installation or community no longer can justify overseas MBF operations, the commander shall notify the Secretary of the Military Department concerned (or designee) through command channels.

(i) The report shall state whether a part-time MBF should be established and specify the days each week that the MBF would be needed.

(ii) The Secretary of the Military Department (or designee) shall send this report with recommendations to the DFAS.

(2) *Other overseas banking offices.* Termination actions, when required, shall be taken in accordance with the applicable clauses in the operating agreement. Notice of intent to terminate, including the closing date, shall be sent through DoD Component channels to DFAS, which shall notify the Department of the Treasury so that the foreign banking institution's authority as a depositary and as a financial agent of the U.S. Government at that location may be revoked.

§ 231.7 Procedures–domestic credit unions.

(a) *General policy.* Given their role in promoting morale and welfare, on base credit unions shall be recognized and assisted by DoD Components at all levels. These credit unions shall provide services to DoD personnel of all ranks and grades within their respective fields of membership.

(b) *Establishment.* A demonstrated need for credit union services may be addressed by establishing a new full-service credit union or by opening a branch office or facility of an existing credit union under the common bond principle.

(1) DoD personnel seeking to establish a new full-service credit union shall submit a proposal to the installation commander for review. In addition to the information identified in § 231.5(a)(1), the proposal shall include a request for the establishment of a field of membership that includes all personnel at the installation. Upon installation commander concurrence, the proposal shall be forwarded through DoD Component channels to the Secretary of the Military Department (or designee).

(2) The Secretary of the Military Department concerned (or designee) shall:

(i) Obtain a list of credit unions that are eligible to serve the installation's military members and civilian employees from the National Credit Union Administration (NCUA) Regional Office that has geographic jurisdiction and the appropriate state regulatory agency.

(ii) Prepare and send formal solicitation letters to eligible credit unions informing them of an opportunity to establish a branch office at the installation.

(iii) In coordination with the installation commander, establish the criteria for selection of a specific credit union in accordance with § 231.5(b)(4). Proposals shall be evaluated, and a selection made, based upon the factors and weights developed for the solicitation.

(3) Upon approval by the Secretary of the Military Department (or designee), the NCUA or appropriate state regulatory agency shall be notified and

asked to establish or amend the selected credit union's charter to include the new location. For Federal credit unions, no specific NCUA approval is required to open a branch.

(4) No commitment may be made to a credit union regarding its proposal until the appropriate regulatory agency has announced a selection.

(c) *Terminations.* (1) *Voluntary credit union terminations.* (i) When a credit union plans to end operations on a DoD installation, it shall be required to notify the installation commander 180 days before the closing date. Such notification shall be required to precede public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the credit union to continue operations until the installation has made other arrangements.

(ii) The installation commander shall inform the Secretary of the Military Department concerned (or designee) immediately upon receiving notification of a closing. The report shall include a recommendation about continued credit union service on the installation. Paragraph (b) of this section applies if continued service is needed.

(2) *Termination for cause.* If, after discussion with credit union officials, an installation commander determines that the operating policies of a credit union are inconsistent with this part, a recommendation for termination of logistical support and space arrangements may be made through the Secretary of the Military Department concerned (or designee). A credit union shall be removed from the installation only with approval of the Secretary of the Military Department (or designee) after coordination with DFAS and the appropriate regulatory agency.

(3) *Termination in the interest of national defense.* At the option of the government, leases may be terminated in the event of national emergency or as a result of installation deactivation, closing, or other disposal action.

(d) *Use of space, logistical support, and military real property for domestic credit unions.* (1) *Criteria for use of space on Government-owned real property.* (i) Criteria governing the assignment of space and construction of new space for credit unions are in DoD 4270.1–M.

(ii) A credit union may be furnished space on a DoD installation at one or more locations for periods not to exceed 5 years. Terms in excess of 5 years must be approved by the Secretary of the Military Department concerned (or designee) following a determination that the longer term will aid the national defense or be in the public interest. The cumulative total of space furnished shall be subject to the limitations of DoD 4270.1–M.

(A) The furnishing of office space (including ATM placement) to on-base credit unions is governed by the Federal Credit Union Act (12 U.S.C. 1751). The provision of no-cost office space is limited to credit unions having a membership at least 95 percent of which is composed of individuals who are, or who were at the time of admission into the credit union, military personnel or federal employees, or members of their families. This percentage criterion applies only to members who use the on-base office, not to the total credit union membership. A written statement, prepared on the credit union's letterhead and signed by either the president of its board of directors or its general manager to the effect that the credit union meets the 95 percent criterion, shall be required to justify and document the allotment of free government space. A certification also shall be required whenever there is a merger, takeover, or significant change in a field of membership. This certification shall be required to serve as justification and documentation for the continued allocation of free government space including space renovated with credit union funds. The statement shall be updated on renewal of lease. (See Appendix A to this part for a sample format of the statement.)

(B) Credit unions that fail to meet the 95 percent criterion shall be charged fair market rental for space provided. Except where more than one credit union exists on an installation prior to July 1, 1999, credit unions giving less than full service or not serving all assigned DoD personnel are not authorized free space.

(C) When a credit union that meets the 95 percent criterion uses its own funds to expand, modify, or renovate government-owned space, it may be provided a no-cost permit or license for a period not to exceed 5 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. Terms in excess of 5 years must be approved by the Secretary of the Military Department concerned (or designee) following a determination that the longer term will aid the national defense or be in the public interest. The permit or license shall be effective until the agreed date of expiration or until the credit union ceases to satisfy the 95 percent criterion. In this latter case, the no-cost permit shall be cancelled in favor of a lease immediately negotiated at fair market value under the provisions of paragraph (d) of this section. If the credit union desires, this lease at fair market value may extend through the period identified in the original license not to exceed 5 years. When the term proposed exceeds 5 years, the Secretary of the Military Department concerned (or designee) must approve the longer term following a determination that the longer term will aid the national defense or be in the public interest.

(D) Similarly, a credit union not meeting the 95 percent criterion that uses its own funds to expand, modify, or renovate government-owned space, may be provided a lease at fair market value for a period not to exceed 5 years. Duration of this lease shall be commensurate with the extent of the improvements as determined by the DoD Component concerned.

(2) *Logistical support.* When available, custodial and janitorial services, heating and air conditioning, utilities (i.e., electricity, gas, water, and sewage), fixtures, and maintenance shall be furnished at no cost to credit unions occupying free space in government buildings. However, credit unions shall be required to pay for all communication services to include telephone lines, long distance data services and Internet connections. Credit unions also shall pay for space alterations. Should a credit union fail to meet the 95 percent membership criterion, any logistical support furnished shall be on a reimbursable basis.

(e) Credit unions offering ATM service shall do so in accordance with § 231.4(d) except that the installation commander may provide ATMs to on-base credit unions under certain circumstances such as when it is advantageous to the government to have one or more ATMs but the acquisition cost to the credit union is prohibitive. In all such cases, installation costs and all logistics support must be borne by the credit union.

(f) *Staffing.* (1) On-base credit unions shall provide full service. To do so, credit union offices shall be staffed by:

(i) A loan officer authorized to act for the credit committee.

(ii) An individual authorized to sign checks.

(iii) A qualified financial counselor available to serve members during operating hours.

(2) Exceptions to paragraph (f)(1)(i) of this section may be approved by the installation commander with advice from the Secretary of the Military Department concerned (or designee) in the case of newly organized credit unions.

(3) When an on-base credit union can support only minimum staffing, one of the positions required in paragraph (f)(1)(i) or (f)(1)(ii) of this section also may be subsumed under the counselor duties.

(4) Credit union remote service locations at the same installation may be staffed with one person alone, provided that a direct courier or an electronic or automated message service links each remote location to the credit union's main office.

(5) All credit union staffing shall comply fully with the spirit and intent of the DoD equal employment opportunity policies and programs, in accordance with DoD Directive 1440.1.

(g) *Credit union liaison officer (CULO).* When a credit union office is located on an installation, the commander shall appoint a CULO. As appropriate, the CULO responsibility should be assigned to comptroller or resource management personnel. The CULO's photograph, name and duty telephone number shall be displayed conspicuously at each credit union office on the installation. Anyone who serves as a credit union board member or in any other official credit union capacity may not serve as a CULO. The duties of a CULO are the same as the duties listed for a BLO (see § 231.5(g)).

(h) *In-store banking.* In-store banking services may be provided in accordance with § 231.5(h) except that:

(1) Credit unions interested in submitting proposals to provide requested in-store banking services shall provide a statement from the National Credit Union Administration (NCUA) certifying the credit union's authority to offer the requested financial services to the commissary, the Military Exchange Services, or other on-base facilities.

(2) Space granted to a credit union selected to provide in-store banking services should be issued through a no cost license in accordance with the Federal Credit Union Act (12 U.S.C. 1751).

§ 231.8 Procedures—overseas credit unions.

(a) *General policy.* (1) Credit union services to authorized persons and organizations may be provided by domestic on-base credit unions operating under a geographic field of membership (franchise). The Foreign Geographic Field of Membership (Franchise) Assignment listing is included at Appendix D to this part.

(2) The extension of credit union service overseas is encouraged consistent with the principles prescribed for domestic credit unions and with applicable status of forces agreements or other intergovernmental agreements, or host-country law. Where permitted by the applicable status of forces agreement or other intergovernmental agreements, or host-country law, the ultimate decision to provide services overseas rests with the credit union itself.

(3) Where permitted by the status of forces agreements or other intergovernmental agreements, or host-country law, only Federal credit unions or federally insured state chartered credit unions may operate on overseas DoD installations.

(b) *Establishment.* (1) Commanders shall notify the Secretary of the Military Department concerned (or designee), through command channels, when overseas credit union services are needed. Such requests shall include:

(i) Full information about available space and logistical support.

(ii) The name and location of the nearest credit union facility or branch.

(iii) The distance between the installation and the nearest credit union facility or branch.

(iv) The availability of any official or public transportation.

(v) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(vi) In countries not presently served, a statement concurred in by the Combatant Command that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy. The statement shall include that the host country will permit the operations, with any conditions imposed by the host country identified.

(2) Subsequent to approval of the request from the installation or community commander to establish an overseas credit union facility, the Secretary of the Military Department concerned (or designee) shall solicit proposals for the provision of full credit union services as follows:

(i) Where there is a DoD designated geographic field of membership (franchise) with a specific field of membership, the Secretary of the Military Department (or designee) shall direct the installation or community commander to contact the servicing defense credit union and request that a branch or facility be established. The basic decision concerning such extensions of service rests with the servicing credit union.

(ii) Where there is no DoD designated geographic field of membership (franchise), the Secretary of the Military Department (or designee) shall:

(A) Coordinate requests, through the DFAS, to obtain a geographic field of membership (franchise). A geographic field of membership (franchise) is the authorization granted to a credit union by the Office of the Under Secretary of Defense (Comptroller) to provide financial services in a specific geographic region located outside the United States and its territories.

(B) Solicit proposals from credit unions currently operating on DoD installations.

(C) Review proposals of interested credit unions.

(D) Coordinate with field commands, as needed.

(E) Recommend selection to National Credit Union Administration (NCUA) or appropriate state regulatory agency with a copy to the DFAS and the OUSD(C), requesting that the appropriate field of membership adjustment be made. Such a recommendation shall identify the primary installations on which the credit union would operate and, if applicable, the contiguous geographic boundaries for future facilities and branches.

(3) Where there is an existing field of membership, the Secretary of the Military Department concerned (or designee) shall take the following actions:

(i) If a credit union on an installation terminates operation, afford any other credit union having a geographic field of membership (franchise) within that country an opportunity to assume the franchise being vacated. If all such institutions decline, the geographic field of membership (franchise) shall be offered to the federally insured defense credit union community. If, as a result of a credit union decision to decline service to an installation or a termination action, another credit union is assigned the former geographic field of membership (franchise) or portion thereof, the NCUA or the applicable state regulatory agency shall be notified and requested to make appropriate field of membership adjustments.

(ii) When other credit union(s) having a geographic field of membership (franchise) within a country decline the opportunity, or there is no other credit union having a franchise within that country, the provisions of paragraph (b)(2)(ii) of this section apply.

(4) No commitment may be made to a credit union regarding its proposal until the appropriate regulatory agency has announced a selection.

(c) *Logistical support.* Installation or community commanders will provide logistical credit union support. Such support normally shall include:

(1) Adequate office space, including steel bars; grillwork; security doors; a vault, safes or both; security alarm systems and camera surveillance equipment (where deemed necessary) that meet documented requirements of the contractor's insurance carrier; construction of counters, teller cages, and customer and work areas; necessary modifications and alterations to existing buildings; and construction of a new premises, if necessary. The size and arrangement of space should permit efficient operations. The credit union shall pay for all improvements to the space given. Space assigned may not exceed that prescribed in DoD 4270.1–M.

(2) DoD housing on a rental basis to key credit union personnel unable to find suitable, reasonably priced housing in the vicinity of the DoD installation, if available.

(3) Utilities (i.e., electricity, gas, water and sewage), heating, intrastation telephone service, and custodial and janitorial services to include garbage disposal and outdoor maintenance (such as grass cutting and snow removal).

(4) Defense Switched Network (DSN) voice and data communication to include internet access.

(5) U.S. Military Postal Service support under DoD Directive 4525.6 (reference (q)). Use of free intra-theater delivery system (IDS) is authorized for all routine mail sent and received between Army Post Offices (APOs) and Fleet Post Offices (FPOs) within a theater.

(d) *Travel.* Travel by credit union officials must be at no expense to the U.S. Government. Overseas commanders may issue invitational travel orders for official on-base visits by credit union officials at no cost to the U.S. Government.

(e) *Operations.* (1) An overseas credit union shall confine its field of membership to individuals or organizations eligible by law or regulation to receive services and benefits from the installation. Services shall not be provided to those personnel precluded such services by applicable status of forces agreements, other intergovernmental agreements, or host-country law.

(2) The Department assigns overseas credit unions a prescribed geographic field of membership (franchise). However, any credit union may continue to serve its members stationed overseas by mail or telecommunications.

(3) A credit union proposing any new service not authorized by the operating agreement must coordinate the establishment of the new service through the cognizant Component command to the Combatant Command. The new service can be offered only after the appropriate command's approval and coordination with the U.S. Chief of Diplomatic Mission or U.S. Embassy to ensure that the service does not conflict with the status of forces agreements, other intergovernmental agreements, or host-country law.

(4) Credit unions that operate full service branches shall have U.S. currency and coin available for member transactions. In areas served by currency custody accounts, transactional U. S. currency and coins shall be made available from the servicing MBF with no direct or analysis charge to the credit union, provided settlement is made via the local MBF account or equivalent arrangements are made with the MBF.

(5) In countries served by MBFs operated under contract, credit unions shall purchase foreign currency only from the servicing MBF.

(i) The bulk rate purchase price shall apply to currency used by the credit union to make payments to vendors or to make payroll payments.

(ii) Credit unions that desire and are authorized to provide accommodation exchange services to its members shall acquire foreign currency from the servicing MBF at the MBF accommodation rate and sell it at a rate of exchange no more favorable than that available to customers of the MBF.

(6) The NCUA may review operations of overseas credit union offices either when it examines the main credit union or at other times of its choosing. For federally insured, state chartered credit unions, the applicable state regulatory agency also may examine credit unions operations.

§ 231.9 Definitions.

Automated teller machine (ATM). An electronic machine that dispenses cash, and may perform such other functions as funds transfers among a customer's various accounts and acceptance of deposits. Equipment generally is activated by a plastic card in combination with a personal identification number (PIN). Typically, when the cardholder's account is with a financial institution other than that operating the ATM, its use results in the assessment of a fee from the ATM network (Armed Forces Financial Network (AFFN), Cirrus, PLUS) handling the transaction. Shared access, which is predicated on a formal agreement between financial institutions, refers to ATMs that may be used by cardholders of more than one financial institution without being assessed a network fee.

Banking institution. An entity chartered by a state or the federal government to provide financial services.

Banking office. A branch bank, or independent bank operated by a banking institution on a domestic DoD installation or by a foreign banking institution on an overseas DoD installation.

Branch bank. A separate unit chartered to operate at an on-base location geographically remote from its parent banking institution.

Credit union. A cooperative nonprofit association, incorporated under the Federal Credit Union Act, 12 U.S.C. 1751 *et seq.*, or similar state statute, for the purposes of encouraging thrift among its members and creating a source of credit at a fair and reasonable rate of interest.

Credit union facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide cash transaction services but must disburse loans and shares by check or draft and provide competent financial counseling during normal working hours.

Defense credit union. A state or federally insured credit union with a field of membership composed primarily of DoD personnel.

Discrimination. Any differential treatment in provision of services, including loan services, by a financial institution to DoD personnel and their dependents on the basis of race, color, religion, national origin, sex, marital status, age, rank, or grade. However, if uniformly applied, the amount of credit extended may be directly based on an applicant's total income.

DoD Component. For the purposes of this part, DoD Components include the Office of the Secretary of Defense, the Military Departments, the Joint Chiefs of Staff, the Joint Staff and the supporting Joint Agencies, the Combatant Commands, the Inspector General of the Department of Defense, the Uniformed Services University of the Health Sciences, the Defense Agencies, the DoD Field Activities, and all nonappropriated fund instrumentalities including the Military Exchange Services, and Morale, Welfare and Recreation activities.

DoD Personnel. All military personnel; DoD civil service employees; other civilian employees, including special government employees of all offices, Agencies, and Departments performing functions on a DoD installation (including nonappropriated

fund instrumentalities); and their dependents. On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD installation. For the purposes of this part, a military installation located within a state of the United States, the District of Columbia, Guam or the Commonwealth of Puerto Rico.

Fair Market Rental. A reasonable charge for on-base land, buildings, or building space. Rental is determined by a government appraisal based on comparable properties in the local civilian economy. However, the appraiser will consider that on-base property may not always be comparable to similar property in the local commercial geographic area. Examples of circumstances that may affect fair market rental include limitations of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, and the government's right to terminate the lease or take title to improvements constructed at the financial institution's expense.

Field of membership. A group of people entitled to credit union membership because of a common bond of occupation, association, employment, or residence within a well-defined neighborhood, community or rural district. A field of membership is defined in the credit union's charter by the appropriate regulatory agency.

Financial institution. This term encompasses any banking institution, credit union, and subordinate office or facility, each as separately defined in this section.

Financial services. Those services commonly associated with financial institutions in the United States, such as electronic banking (e.g., ATMs and personal computing banking), in-store banking, checking, share and savings accounts, funds transfers, sales of official checks, money orders, and travelers checks, loan services, safe deposit boxes, trust services, sale and redemption of U.S. Savings Bonds, and acceptance of utility payments and any other services provided by financial institutions.

Foreign banking institution. A bank located outside the United States chartered by the country in which it is domiciled.

Full service credit union. A credit union that provides full-time counter transaction services, to include cash operations, and is staffed during normal working hours by a loan officer, a person authorized to sign checks, and a qualified financial counselor. In overseas areas, "full service" includes cash operations where not prevented by:

(a) Status of forces agreements, other intergovernmental agreements, or host-country law.

(b) Physical security requirements that cannot be resolved by the credit union or local command.

Geographic field of membership (franchise). Authorization granted to a credit union by the Office of the Under Secretary of Defense (Comptroller) to provide financial services in a specific geographic region located outside the United States and its territories.

Independent bank. A bank specifically chartered to operate on a DoD installation or DoD installations whose directors and officers usually come from the local business and professional community. Such operations are thus differentiated from county-wide or state-wide branch systems consisting of a head office and one or more geographically separate branch offices.

In-store banking. An expansion of financial services provided by an on-base financial institution within the premises of the commissary, exchange, and/or other on base retail facility.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties or the intentional violation of an applicable law or regulation or both that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials know that the applicable action or inaction violated a law or regulation.

Military banking facility (MBF). A banking office located on a DoD installation and operated by a financial institution that the Department of the Treasury has specifically authorized, under its designation as a "Depository and Financial Agent of the U.S. Government," to provide certain banking services at the installation.

National bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

On-base. Refers to physical presence on a domestic or overseas DoD installation.

Operating agreement. A mutual agreement between the installation commander and the on-base financial institution to document their relationships.

Overseas DoD installation. A military installation (or community) located outside the states of the United States, the District of Columbia, Guam or the Commonwealth of Puerto Rico.

Part-time MBF. A MBF that operates fewer than 5 days a week exclusive of additional payday service. When only payday service is provided, the MBF may be termed a "payday service facility."

Regulatory agency. Includes the Office of the Comptroller of the Currency, Department of the Treasury; the Federal Deposit Insurance Corporation; the Board of Governors of the Federal Reserve System; the respective Federal Reserve District Banks; the National Credit Union Administration; the various state agencies and commissions that oversee financial institutions; and, for military banking facilities (MBFs), the Fiscal Assistant Secretary of the Treasury (or designee).

State bank. An institution organized and chartered under the laws of one of the states of the United States to operate a banking business within that state.

Surcharge. A fee typically assessed on nonaccountholders to access an ATM. In accordance with Federal Reserve Board Regulation E, such a fee must be disclosed at the ATM either through a sign or screen disclosure. For the purposes of this chapter, surcharges are limited to ATMs.

Subpart B—DoD Directive 1000.11

§ 231.10 Financial institutions on DoD installations.

(a) Purpose. This subpart:

(1) Updates policies and responsibilities for financial institutions that serve Department of Defense (DoD) personnel on DoD installations worldwide. Associated procedures are contained in DoD 7000.14–R.

(2) Ensures that arrangements for the provision of services by financial institutions are consistent among the DoD Components, and that financial institutions operating on DoD installations provide, and are provided, support consistent with the policies stated in this subpart.

(b) *Applicability.* This subpart applies to the Office of the Secretary of Defense, the Military Departments, the Joint Chiefs of Staff, the Joint Staff and the supporting Joint Agencies, the Combatant Commands, the Inspector General of the Department of Defense, the Uniformed Services University of the Health Sciences, the Defense Agencies, the DoD Field Activities, and all nonappropriated fund instrumentalities including the Military Exchange Services and morale, welfare and recreation (MWR) activities.

(c) *Definitions.* Terms used in this subpart are set forth in Volume 5 of DoD 7000.14–R.

(d) *Policy.* (1) The following pertains to financial institutions on domestic DoD installations:

(i) Except where they already may exist as of July 1, 1999, no more than one banking institution and one credit union shall be permitted to operate on a DoD installation.

(ii) Upon the request of an installation commander and with the approval of the Secretary of the Military Department concerned (or designee), duly chartered financial institutions may be authorized to provide financial services on DoD installations to enhance the morale and welfare of DoD personnel and facilitate the administration of public and quasi-public monies. Arrangement for the provision of such services shall be in accordance with this subpart and related issuances.

(iii) Financial institutions, or branches thereof, shall be established on DoD installations only after approval by the Secretary of the Military Department concerned (or designee) and the appropriate regulatory agency.

(A) Only banking institutions insured by the Federal Deposit Insurance Corporation (FDIC) and credit unions insured by the National Credit Union Share Insurance Fund (NCUSIF) shall operate on DoD installations. These financial institutions may be either state or federally chartered. Foreign banking institutions operating on overseas DoD installations and chartered to provide financial services in that country are excepted from this requirement.

(B) Military banking facilities (MBFs) shall be established on DoD installations only when a demonstrated and justified need cannot be met through other means. Normally, MBFs shall be authorized only at overseas locations. They may be considered for use at domestic DoD installations only when DoD Components have been unable to obtain, through normal means, financial services from a state or federally chartered financial institution authorized to operate in that state. In times of mobilization, it may become necessary to designate additional MBFs as an emergency measure. The Director, Defense Finance and Accounting Service (DFAS) may recommend the designation of banking facilities to the Department of the Treasury under provisions of 12 U.S.C. 265.

(C) Retail banking operations shall not be performed by any DoD Component. Solicitations for such services shall be issued, or proposals accepted, only in accordance with the policies identified in this subpart. DoD Components shall rely on commercially available sources in accordance with DoD Directive 4100.15.[12]

[12] See footnote 1 to § 231.1(a).

(D) Retail fees and services for products (to include related minimum balance requirements for noninterest checking, Negotiable Order of Withdrawal (NOW) and savings accounts) offered by financial institutions operating on domestic installations and domestic credit unions operating on DoD installations overseas shall not exceed 110 percent of the industry-wide averages for banks in the "Annual Report to Congress on Retail Fees and Services of Depository Institutions," published by the Board of Governors of the Federal Reserve System.

(iv) Installation commanders shall not seek the provision of financial services from any entity other than the on-base banking office or credit union. The Director, DFAS, with the concurrence of the Under Secretary of Defense Comptroller (USD(C)), may approve exceptions to this policy. Such requests for exception shall be proposed through the Secretary of the Military Department concerned (or designee).

(v) Financial institutions authorized to locate on DoD installations shall be provided logistic support as set forth in Volume 5 of DoD 7000.14–R.

(vi) Military disbursing offices, nonappropriated fund instrumentalities including MWR activities, the Military Exchange Services and other DoD Component activities requiring financial services shall use on-base financial institutions to the maximum extent feasible and consistent with sound management practice.

(vii) The Department encourages the delivery of retail financial services on DoD installations via nationally networked automated teller machines (ATMs). ATMs are considered electronic banking services and, as such, shall be provided only by duly chartered financial institutions.

(A) Notwithstanding the provisions contained in paragraph (d)(1)(iii)(D) of this section, on-base ATM service offered by financial institutions operating on domestic installations and domestic credit unions operating on DoD installations overseas shall be provided without surcharge.

(B) Proposals by the installation commander to install ATMs from other than on-base financial institutions shall comply with the provisions of paragraph (d)(1)(iv) of this section and will be considered only when ATM service is unavailable or existing service is inadequate and the on-base financial institution(s) either declines to provide the service, fails to improve the existing service so that it is adequate or does not formally respond to the request within 30 days of the date of the request.

(viii) Expansion of financial services (to include in-store banking) provided by on-base financial institutions must be approved by the installation commander. Such requests for expansion of services should be coordinated with the installation bank/credit union liaison officer prior to the commander's consideration. Approved expansion of services will be documented as an amendment to the existing operating agreement between the installation commander and the on-base financial institution. The amendment to the operating agreement and any required lease (to include a change to an existing lease) shall be in place prior to the initiation of new financial services or offices.

(ix) The installation commander shall ensure, to the maximum extent feasible, that all financial institutions operating on his or her installation are given the opportunity to participate in pilot programs to demonstrate new financial-related technology (e.g., smart cards) or establish new business lines (e.g., in-store banking) where a determination has been made by the installation commander that the offering of such services is warranted.

(x) Requests for termination of financial services must be approved by the installation commander, substantiated by sufficient evidence and forwarded to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) shall coordinate such requests with the Under Secretary of Defense (Comptroller), through the Director, DFAS, before notification to the appropriate regulatory agency.

(2) The following pertains to financial institutions on overseas DoD installations:

(i) The extension of services by MBFs and credit unions overseas shall be consistent with the policies stated in this subpart and with the pertinent status of forces agreement, other intergovernmental agreement, or host-country law.

(ii) The policies governing the operation of financial institutions on domestic DoD installations identified in paragraph (d)(1) of this section shall apply to financial institutions operating overseas.

(iii) Financial services at overseas DoD installations may be provided by:

(A) Domestic on-base credit unions operating overseas under a geographic franchise and, where applicable, as authorized by the pertinent status of forces agreement, other intergovernmental agreement, or host-country law.

(B) MBFs operated under and authorized by the pertinent status of forces agreement, other intergovernmental agreement, or host-country law.

(C) Domestic and foreign banks located on overseas DoD installations that are:

(*1*) Chartered to provide financial services in that country, and

(*2*) A party to a formal operating agreement with the installation commander to provide such services, and

(*3*) Identified, where applicable, in the status of forces agreements, other intergovernmental agreements, or host-country law.

(iv) Financial institutions authorized to locate on DoD installations shall be provided logistical support as set forth in the Volume 5 of DoD 7000.14–R.

(v) In countries served by MBFs operated under contract, nonappropriated fund instrumentalities and on-base credit unions that desire and are authorized to provide accommodation exchange services shall acquire foreign currency from the MBF at the MBF accommodation rate; and shall sell such foreign currency at a rate of exchange that is no more favorable to the customer than that available from the MBF.

(vi) Additional guidance pertaining to financial services overseas is set forth in Volume 5 of DoD 7000.14–R.

(e) *Responsibilities.* (1) The Under Secretary of Defense (Comptroller) (USD(C)) shall develop and monitor policies governing establishment, operation, and termination of financial institutions on DoD installations and take final action on requests for exceptions to this subpart.

(2) The Under Secretary of Defense (Acquisition and Technology) (USD(A&T)) shall develop and monitor policies and procedures governing logistical support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(3) The Under Secretary of Defense (Personnel and Readiness) (USD(P&R)) shall advise the USD(C) on all aspects of on-base financial institution services that affect the morale and welfare of DoD personnel.

(4) DoD Component responsibilities pertaining to this Directive are set forth in Volume 5 of DoD 7000.14–R.

Subpart C—Guidelines for Application of the Privacy Act to Financial Institution Operations

§ 231.11 Guidelines.

(a) The following guidelines govern the application of DoD Directive 5400.11 to those financial institutions that operate under this subpart:

(1) Financial institutions and their branches and facilities operating on DoD military installations do not fall within the purview of 5 U.S.C. 552 *et seq.*

(i) These financial institutions do not fit the definition of "agency" to which the Privacy Act applies, that is, any executive department, Military Department, government corporation, government-controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or an independent regulatory agency (5 U.S.C. 552(e) and 552a(a)(1)).

(ii) These financial institutions are not "government contractors" within the meaning of 5 U.S.C. 552a(o), as they do not operate a system of records on behalf of an agency to accomplish an agency function. According to the Office of Management and Budget Privacy Act Guidelines, the provision relating to government contractors applies only to systems of records actually taking the place of a Federal system which, but for the contract, would have been performed by an agency and covered by the Privacy Act. Clearly, the subject institutions do not meet these criteria.

(iii) Since the Act does not apply to them, these financial institutions are not required to comply with 5 U.S.C. 552a(e)(3) in obtaining and making use of personal information in their relationships with personnel authorized to use such institutions. Thus, these institutions are not required to inform individuals from whom information is requested of the authority for its solicitation, the principal purpose for which it is intended to be used, the routine uses that may be made of it, or the effects of not providing the information. There also is no requirement to post information of this nature within on-base banking and credit union offices.

(2) The financial institutions concerned hold the same position and relationship to their account holders, members, and to the government as they did before enactment of OMB Circular A–130. Within their usual business relationships, they still are responsible for safeguarding the information provided by their account holders or members and for obtaining only such information as is reasonable and necessary to conduct business. This includes credit information and proper identification, which may include social security number, as a precondition for the cashing of checks.

(3)(i) Financial institutions may incorporate the following conditions of disclosure of personal identification in all contracts, including loan agreements, account signature cards, certificates of deposit agreements, and any other agreements signed by their account holders or members:

> I hereby authorize the Department of Defense and its various Components to verify my social security number or other identifier and disclose my home address to authorized (name of financial institution) officials so that they may contact me in connection with my business with (name of financial institution). All information furnished will be used solely in connection with my financial relationship with (name of financial institution).

(ii) When the financial institution presents such signed authorizations, the receiving military command or installation shall provide the appropriate information.

(4) Even though an agreement described in paragraph (a)(3) of this section has not been obtained, the Department of Defense may provide these financial institutions with salary information and, when pertinent, the length or type of civilian or military appointment, consistent with DoD Directives 5400.11 and 5400.7. Some examples of personal information pertaining to DoD personnel that normally can be released without creating an unwarranted invasion of personal privacy are name, rank, date of rank, salary, present and past duty assignments, future assignments that have been finalized, office phone number, source of commission, and promotion sequence number.

(5) When DoD personnel with financial obligations are reassigned and fail to inform the financial institution of their whereabouts, they should be located by contacting the individual's last known commander or supervisor at the official position or duty station within that particular DoD Component. That commander or supervisor either shall furnish the individual's new official duty location address to the financial institution, or shall forward, through official channels, any correspondence received pertaining thereto to the individual's new commander or supervisor for appropriate assistance and response. Correspondence addressed to the individual concerned at his or her last official place of business or duty station shall be forwarded as provided by postal regulations to the new location. However, once an individual's affiliation with the Department of Defense is terminated through separation or retirement, the Department's ability to render locator assistance (i.e., disclose a home address) is severely curtailed unless the public

interest dictates disclosure of the last known home address. The Department may, at its discretion, forward correspondence to the individual's last known home address. The Department may not act as an intermediary for private matters concerning former DoD personnel who are no longer affiliated with the Department.

(b) Questions concerning this guidance should be forwarded through channels to the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), The Pentagon, Washington, DC 20301–1100.

Appendix A to Part 231—Sample Operating Agreement

Operating Agreement Between Military Installations and Banks/Credit Unions

Note: The following operating agreement template identifies general arrangement and content. Content of the actual operating agreement may vary according to the circumstances of each installation.

Operating Agreement Between (Name of Installation), (State or Country Installation Located) and (Name of Bank/Credit Union).

This Agreement is made and entered into this day by and between the installation commander of (Name of Installation) in his or her official capacity as installation commander, hereinafter referred to as the "Commander" and the (Name of Bank/Credit Union), having its principal office at (Location of Home Office) hereinafter referred to as the "Bank/Credit Union," together hereinafter referred to as "the parties." Whereas the Commander and the Bank/Credit Union enter into this Operating Agreement upon the mutual consideration of the promises, covenants, and agreements hereinafter contained:

1. The parties understand and agree that this Agreement shall in no way modify, change, or alter the terms and conditions of Lease Number (number of lease) covering the use of real property described therein, and this Agreement shall continue, subject to the termination provisions herein-after set forth, during the terms of said lease and any extensions thereof. In the case of a bank operating a military banking facility (MBF) overseas, this agreement will not change the conditions of the contract between the bank and the Department of Defense.

2. The Bank/Credit Union agrees to operate a (State Bank, National Bank, Independent Bank, Branch Bank, Military Banking Facility or Credit Union) on-base in accordance with the policies and procedures set forth in Volume 5, Chapter 34 of the *DoD Financial Management Regulation* or, for the Overseas Military Banking Program (OMBF), the policies and procedures set forth in Volume 5, Chapter 34 of the *DoD Financial Management Regulation* and the applicable DoD contract. The hours of operations shall be between (Hour Office Opens) and (Hour Office Closes), and on the following days (Week Days Office Open), except on government holidays when the Bank/Credit Union may be closed. The Program Office for the OMBP shall notify the commander of any changes to the DoD contract.

3. The Bank/Credit Union shall provide the following services:

a. *Services for Individuals*

(1) Demand (checking) account services.

(2) Cashing personal checks and government checks for accountholders.

(3) Maintaining savings accounts and (any other interest-bearing accounts).

(4) Selling official checks, money orders, and traveler's checks.

(5) Selling and redeeming United States savings bonds.

(6) Providing direct deposit service.

(7) Electronic banking (Automated Teller Machines).

b. *Services for Disbursing Officers*

(1) Furnishing cash (if the financial institution's terms for doing so is consistent with sound management practices).

(2) Accepting deposits for credit to the Treasury General Account (where the financial institution has entered into an agreement with the Department of the Treasury).

c. *Services for Nonappropriated Fund Instrumentalities and Private Organizations*

(1) Demand (checking) account services, including wire transfers.

(2) Savings accounts and nonnegotiable certificates of deposit or other interest-bearing accounts offered by the bank.

(3) Currency and coin for change.

4. Service charges shall be as follows:

a. *Service for Individuals.*

(1) No fees shall be charged to individuals for the services listed in subpara graph 3.a.(2), 3.a.(5) and 3.a.(7), above, except that checks drawn on other financial institutions may be treated in accordance with the financial institution's established policy. Any charge to cash a government check shall not exceed that typically charged by financial institutions in the vicinity of the installation.

(2) Checking and savings accounts. Fees for individual checking and savings accounts shall be the customary service charges of the bank/credit union or those negotiated for base personnel per the attached schedule.

(3) Sale of official checks, money orders, traveler's checks and other types of financial paper. Charges for these services shall be the customary charges of the financial institution operating the on-base banking/credit union office.

b. *Service for Disbursing Officers.* No charge shall be made for the services listed in subparagraph 3.b.(2), above. Compensation to the financial institution shall be per its separate agreement with the Department of the Treasury. Charges, if any, for the services stated in subparagraph 3.b.(1) shall be as locally negotiated with the financial institution.

c. *Nonappropriated Fund Instrumentalities and Private Organizations.* State the charges or refer to a schedule of charges for funds and organizations that do not participate in a central banking program. For those activities participating in a central banking program, determine the compensation to the financial institution by account analysis.

5. It is agreed that the Bank/Credit Union shall:

a. Notify the Commander of any proposed changes to the attached schedule of fees and services at least 30 days prior to implementation.

b. Follow the requirements in Volume 5, Chapter 34 of the *DoD Financial Management Regulation* and any changes thereto.

c. Comply with Department of the Treasury requirements for establishment and operation of a Treasury General Account where the bank/credit union agrees to act as a depository for government funds.

d. Absolve the (Military Service) and its representatives of responsibility or liability for the financial operation of the bank/credit union; and for any loss (including losses due to criminal activity), expenses, or claims for damages arising from bank/credit union operations.

e. Indemnify, and hold harmless the United States from (and against) any loss, expense, claim, or demand, including attorney fees, court costs, and costs of litigation, to which the government may be subjected as a result of death, loss, destruction, or damage in connection with the use and occupancy of (Military Service) premises occasioned in whole or in part by officers, agents or employees of the institution operating a bank/credit union office.

f. Favorably respond, whenever feasible, to reasonable local command requests for lectures and printed materials to support consumer credit education programs, financial management program and newcomer's briefings.

g. Prominently post in the lobby of the bank/credit union the name, duty telephone number and photograph of the Bank/Credit Union Liaison Officer.

h. Allow, with reasonable notification, authorized auditors or installation comptroller representatives to verify financial operational data provided by the institution at the request of the installation commander.

i. Accept the government travel card in all on-base ATMs operated by the bank/credit union.

j. Abide by the installation fire protection program, including immediate correction of fire hazards noted by the installation fire inspector during periodic fire prevention inspections.

6. The Commander shall provide the following space and support:

a. Space requirements for bank/credit union operations will be administered in accordance with the existing lease. (Show Number of Lease).

b. Utilities (i.e., electricity, gas, water and sewage), heating, intrastation telephone service, and custodial and janitorial services to include garbage disposal and outdoor maintenance (such as grass cutting and snow removal) on a reimbursable basis.

c. Assistance in locating military personnel and civilian employees who tender uncollectable checks, overdraw their accounts, default on loans, or otherwise owe money to (or are owed money by) the Bank/Credit Union.

d. Making recovery of funds in such cases as allowed by regulation.

7. Termination of this Agreement shall be consistent with the termination provision of

the real property lease and Volume 5, Chapter 34, of the *DoD Financial Management Regulation*. The Secretary of the (Military Department) shall have the right to terminate this Agreement at any time. Any termination of the right of the Bank/Credit Union to operate on the installation shall render this Agreement terminated without any applicable action by the Commander.

8. Any provision of this Agreement that is contrary to or violates any laws, rules, or regulations of the United States, its agencies, or the state of (State Bank/Credit Union Located) that apply on federal installations shall be void and have no force or effect; however, both parties to this Agreement agree to notify the other party promptly of any known or suspected continuing violation of such laws, rules, or regulations.

9. So long as this Agreement remains in effect, it shall be reviewed jointly by the Commander and the Bank/Credit Union at least once every 5 years to ensure compatibility with current DoD issuances and to determine if any changes are required to the Agreement.

In witness whereof, the Commander, and the Bank/Credit Union, by their duly authorized office, have hereunto set their hands this day of (Day, Month, Year).

_____

Bank/Credit Union Official

_____

Installation Commander

Appendix B to Part 231—In-Store Banking

A. *Selection Process*. The purpose of this guidance is to assure an impartial and thorough process to select the best on-base financial institution to provide in-store banking services when such services are desired and approved by the installation commander.

1. Consistent with DoD Component delegation, the final decision to solicit for an in-store banking office rests with the installation commander.

2. The DoD Component seeking in-store banking (e.g., Defense Commissary Agency, Military Exchange Services and MWR activities) shall draft the solicitation letter.

3. The solicitation letter shall be reviewed by the installation legal counsel prior to its release.

4. Close coordination among all cognizant DoD elements is essential throughout the selection process.

5. The Bank/Credit Union Liaison Officer(s) shall be the focal point(s) of the selection process.

6. During the selection process, all communication between requesting DoD Component and the financial institutions shall be channeled through the Bank/Credit Union Liaison Officer(s).

B. Specific Procedures:

1. The need for in-store banking service may be identified from either:

a. An unsolicited proposal from an on-base financial institution,

b. A DoD Component's request, or

c. An installation commander's request.

2. The cognizant installation commander is responsible for assessing the environment and authorizing the Bank/Credit Union Liaison Officer(s) to pursue the acquisition of in-store banking services. If no authorization is given, no further action is required.

3. The cognizant installation commander shall determine whether a solicitation is required. (A solicitation shall be required whenever there is two or more financial institutions on a DoD installation). If no solicitation is required, then the Bank/Credit Union Liaison Officer shall work directly with the on base financial institution to obtain the requested services. Where there is neither a banking office nor an on-base credit union, the solicitation process outlined in paragraph 340502, as supplemented by the provisions outlined in paragraph A, above, apply.

4. The requesting DoD Component shall prepare a solicitation letter and present the letter, through the Bank/Credit Union Liaison Officer, to the installation commander for signature. The solicitation letter shall identify the financial services being requested and classify these services as either mandatory or optional. In addition, the solicitation letter shall highlight any services that will be weighed as more important than others during the evaluation of the proposals. Any space consideration and terms of the proposed agreement also shall be identified in the letter.

5. In order to maintain the integrity of the solicitation process, all communications among the requesting agency, the installation commander, and the interested financial institutions shall be directed through the Bank/Credit Union Liaison Officer(s). The Bank/Credit Union Liaison Officer(s) shall forward the solicitation letter to both on-base financial institutions. All proposals shall be referred to the requesting DoD Component for evaluation and subsequent selection. Credit union proposals must contain certification from the NCUA or appropriate state regulatory agency that the provision of the requested services complies fully with regulatory guidelines and statute. The requesting DoD Component shall submit a written recommendation, and supporting rationale, to the installation commander for final approval. The installation commander shall approve or disapprove the requesting DoD Component's recommendation and notify the requesting agency of that decision.

6. The Bank/Credit Union Liaison Officer(s) shall notify in writing the selected financial institution and request that institution to coordinate with the proper activity to begin any construction, modifications or renovations necessary to open the in-store banking office. The cognizant facility management personnel shall begin the process of obtaining the necessary outgrant instruments. Concurrently, the requesting DoD Component representative and the financial institution representative shall draft the appropriate amendment to the operating agreement. The amendment shall contain provisions regarding: (a) the roles and responsibilities of all parties involved, (b) the financial services to be provided, and (c) the logistical support arrangements to include custodial services and security provisions. The amendment shall be coordinated with the Bank/Credit Union Liaison Officer(s) prior to forwarding that document to the installation commander for signature. The amendment shall be signed by the installation commander and the appropriate representatives from the financial institution and the requesting DoD Component.

Appendix C to Part 231—Sample Certificate of Compliance for Credit Unions

Certificate of Compliance

I, (name), general manager of the (credit union), located at (place), certify that this credit union complies with the requirements of the Federal Credit Union Act, section 124 (12 U.S.C. 1770), for the allotment of space in Federal buildings without charge for rent or services. At least 95 percent of the (credit union and branch) current membership is composed of persons who are now, or were when they joined this credit union, military personnel or Federal employees, or members of their families.

Date _____

Name _____

(President of the board of directors or general manager)

(Note: The Certificate of Compliance is posted on credit union letterhead)

Appendix D to Part 231—Foreign Geographic Field of Membership (Franchise) Assignment Listing

Credit Union services to authorized persons and organizations on DoD installations overseas are provided by domestic defense credit unions operating under a geographic field of membership (franchise). The DoD geographic fields of membership (franchises) are as follows:

Bahrain

Navy Federal Credit Union

Belgium

Andrews Federal Credit Union

Canada

Navy Federal Credit Union

Cuba

Navy Federal Credit Union

Diego Garcia

Navy Federal Credit Union

Federal Republic of Germany

Andrews Federal Credit Union:
- State of Hessen
- State of Nordrhein Westfalen
- Hamlen Pymont—Sub District of Hannover County/District State of Niedersachsen
- Mainz—Sub District of County/District Rheinhessen State of Rheinlandpfalz
- Bad Kreuznach—Sub District of Koblenz County/District State of Rheinlandpfalz
- County/District of Unterfranken—State of Bayern

Finance Center Federal Credit Union:
- State of Bayern excluding County/District of Unterfranken

Pentagon Federal Credit Union:
- State of Hamburg
- State of Schleswig Holstein

State of Bremen
State of Niedersachsen excluding Hamlen Pymont Sub District Hannover County/ District
Service Federal Credit Union:
State of Berlin
State of Baden-Wurttemburg
State of Saarland
State of Rheinlandpfalz excluding:
Bad Krueznach—Sub District of Koblenz
Mainz—Sub District of Rheinhessen

Greece/Crete

Army and Air Force Mather Federal Credit Union
Navy and Marine Corps—Navy Federal Credit Union

Hong Kong

Navy Federal Credit Union

Iceland

Navy Federal Credit Union

Italy

Army and Air Force—Global Credit Union
Navy and Marine Corps Navy—Federal Credit Union

Japan

Army and Air Force—United Services of America Federal Credit Union
Navy and Marine Corps—Navy Federal Credit Union

Korea

United Services of America Federal Credit Union

The Netherlands

Andrews Federal Credit Union

Okinawa (Prefecture of Japan)

Army and Air Force—Pentagon Federal Credit Union
Navy and Marine Corps—Navy Federal Credit Union

The Philippines

Army and Air Force—Alaska USA Federal Credit Union
Navy/Marine Corps—Navy Federal Credit Union

Portugal

Pentagon Federal Credit Union

Spain

Army and Air Force—Pentagon Federal Credit Union
Navy and Marine Corps—Navy Federal Credit Union

Turkey

Pentagon Federal Credit Union

United Kingdom

Army and Air Force—Keesler Federal Credit Union
Navy/Marine Corps—Navy Federal Credit Union

World-Wide

Tower Federal Credit Union (representative offices only)
Security Service Federal Credit Union (representative offices only)

Note: Questions concerning this guidance should be forwarded through channels to the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), The Pentagon, Washington, DC 20301–1100.

Dated: August 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20509 Filed 8–10–99; 8:45 am]
BILLING CODE 5001–10–P

UMI

VOL

64

ISS

1
5
4

AG

11

999

UMI

Federal Register

Wednesday
August 11, 1999

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 505

Cost of Incarceration Fee; Final Rule; Annual Determination of Average Cost of Incarceration; Notice

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 505

[BOP–1079–F]

RIN 1120–AA75

Cost of Incarceration Fee

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is revising its regulations on the cost of incarceration fee in order to remove obsolete references and to eliminate redundant provisions.

EFFECTIVE DATE: August 11, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its regulations on the cost of incarceration fee (28 CFR part 505). A final rule on this subject was published in the **Federal Register** on December 15, 1994 (59 FR 64781).

The regulations are being revised in order to remove redundant provisions and to make organizational or editorial changes. The Director of the Bureau has been delegated the authority given to the Attorney General to assess and collect a fee from eligible inmates to cover the cost of incarceration. Procedures pertaining to the cost of incarceration fee which have been issued under authority retained by the Attorney General are contained in 28 CFR 0.96c.

Section 505.1 has been revised to make clear the connection with the provisions issued by the Attorney General in § 0.96c. Consequently, redundant references to the procedures in § 0.96c have been removed from this and other sections of the Bureau's regulations. The title of the Bureau's regulation and other provisions have been revised to conform to the phrasing used in § 0.96c (namely, "cost of incarceration" rather than "costs of incarceration"). Further specific changes are discussed below.

Revised § 505.1 notes the statutory constraints on imposing the cost of incarceration fee in instances where the court imposes or waives a fine pursuant to the Sentencing Guidelines 5E1.2(i). Section 505.2 has been revised to remove obsolete reference to the 1995 cost of incarceration fee and redundant provisions already contained in § 0.96c. The provisions in §§ 505.3 and 505.4 have been redesignated for organizational reasons. Section 505.3 now contains the provisions pertinent to exemption from fee assessment which were previously contained in former § 505.4. A reference in this section to the United States Sentencing Guidelines has been updated in conformance to a revision of the sentencing guidelines. Section 505.4 restates the provisions on calculation of assessment previously contained in former § 505.3. Revised § 505.4 clarifies that only one assessment for each separate period of incarceration is made for the inmate and includes provisions for prorating the assessment which had been contained in former § 505.5. Section 505.6 pertaining to fee waiver has been redesignated as new § 505.5 and has been revised to make consistent use of the word "inmate". Section 505.7 pertaining to procedures for payment has been redesignated as new § 505.6 and has been revised to clarify application of the inmate financial responsibility program.

Former § 505.8 pertaining to procedures for appeal has been removed. The procedures in that section are contained in the Bureau's Administrative Remedy Program (28 CFR part 542) and need not be restated separately. Finally, former § 505.9 pertaining to procedures for final disposition has been redesignated as new § 505.7.

Because these changes are either organizational or editorial in nature and have no adverse impact upon inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 505

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p) and 0.96c, part 505 in subchapter A of 28 CFR, chapter V is revised as set forth below.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 505—COST OF INCARCERATION FEE

Sec.

505.1 Purpose and scope.
505.2 Annual determination of average cost of incarceration.
505.3 Inmates exempted from fee assessment.
505.4 Calculation of assessment by unit staff.
505.5 Waiver of fee by Warden.
505.6 Procedures for payment.
505.7 Procedures for final disposition.

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 31 U.S.C. 3717; Pub. L. 102–395, 106 Stat. 1842 (18 U.S.C. 4001 note); 28 CFR 0.95–0.99.

§ 505.1 Purpose and scope.

This part establishes procedures for the assessment and collection of a fee to cover the cost of incarceration. The Director of the Bureau of Prisons has been delegated the authority of the Attorney General (see 28 CFR 0.96c) to assess and collect a fee imposed by the Bureau in the event the court neither imposes nor waives a fine pursuant to the Sentencing Guidelines 5E1.2(d). For purposes of this part, revocation of parole or supervised release is to be treated as a separate period of incarceration for which a fee may be imposed.

§ 505.2 Annual determination of average cost of incarceration.

Pursuant to 28 CFR 0.96c, the Bureau of Prisons staff is responsible for calculating the annual average cost of incarceration. This calculation is reviewed annually and the revised figure is published as a notice in the **Federal Register**.

§ 505.3 Inmates exempted from fee assessment.

Inmates who began service of sentence before January 1, 1995, or who have had a fine either imposed or expressly waived by the United States District Court, pursuant to Section 5E1.2 (e) of the United States Sentencing Guidelines, or any successor provisions, are exempt from fee assessment otherwise required by this part.

§ 505.4 Calculation of assessment by unit staff.

Bureau of Prisons Unit Team staff are responsible for computing the amount of the fee to be paid by each inmate who has not been exempted from fee assessment. The inmate will only be assessed an amount once for the cost of incarceration for each separate period of incarceration.

(a) Unit Team staff are to rely exclusively on the information contained in the Presentence Investigation Report and findings and orders of the sentencing court in order to determine the extent of an inmate's assets, liabilities and dependents.

(b) The fee is assessed in accordance with the following formula: If an inmate's assets are equal to or less than the poverty level, as established by the United States Department of Health and Human Services and published annually in the **Federal Register**, no fee is to be imposed. If an inmate's assets are above the poverty level, Unit Team staff are to impose a fee equal to the inmate's assets above the poverty level up to the average cost to the Bureau of Prisons of confining an inmate for one year.

(c) If the amount of time that the inmate is in custody is less than 334 days (including pretrial custody time), the maximum fee to be imposed is to be computed by prorating the fee on a monthly basis.

§ 505.5 Waiver of fee by Warden.

The Warden may reduce or waive the fee if the inmate establishes that:

(a) He or she is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fee, or

(b) Imposition of a fee would unduly burden the inmate's dependents.

§ 505.6 Procedures for payment.

Fees imposed pursuant to this part are due and payable after notice of the Unit Team actions. When the inmate participates in the inmate financial responsibility program (see 28 CFR part 545, subpart B), fees are to be included under the category "other federal government obligations" and are to be paid before other financial obligations included in that same category. Fees may be subject to interest charges.

§ 505.7 Procedures for final disposition.

Before the inmate completes his or her sentence, Unit Team staff must review the status of the inmate's fee. Any unpaid amount will be referred for collection in accordance with Federal Claims Collection Standards (4 CFR Chapter II).

[FR Doc. 99–20650 Filed 8–10–99; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The fee to cover the average cost of incarceration for Federal inmates is $21,926.

EFFECTIVE DATE: August 11, 1999.

ADDRESSES: Office of General Counsel, HOLC 754, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: Provisions in 28 CFR part 505 allow for the assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. This fee is calculated by dividing the number representing the obligation encountered in Bureau facilities (excluding activation costs) by the number of inmate-days incurred for preceding fiscal year, and then by multiplying the quotient by 365.

The initial publication of the fee based upon fiscal year 1994 data was $21,352. Subsequent determinations of the fee were: $23,542 (based upon fiscal year 1995 data), $23,542 (based upon fiscal year 1996 data), $21,838 (based upon fiscal year 1997 data).

Pursuant to § 505.2(b), the Director of the Bureau of Prisons has reviewed the amount of the fee and has determined that, based upon fiscal year 1998 data, the fee to cover the average cost of incarceration for Federal inmates is $21,926.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

[FR Doc. 99–20651 Filed 8–10–99; 8:45 am]

BILLING CODE 4410–05–P

Federal Register

Wednesday
August 11, 1999

Part VI

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee and Office of Recombinant DNA Activities; Notice of Meeting and Proposed Actions Under the NIH Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on September 2–3, 1999. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on September 2, 1999, at approximately 9:00 a.m., and will recess at approximately 5:00 p.m. The meeting will reconvene on September 3, 1999, at approximately 8:30 a.m. and will adjourn at approximately 5:00 p.m. The meeting will be held to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions will follow this notice of meeting. The meeting will be open to the public. Attendance by the public will be limited to space available.

Debra W. Knorr, Deputy Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting. The Office of Recombinant DNA Activities (ORDA) web site is located at *http://www.nih.gov/od/orda* for further information about the office.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: July 27, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–20645 Filed 8–10–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Recombinant DNA Activities; Recombinant DNA Research: Proposed Actions Under the NIH Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the *NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).*

SUMMARY: This notice sets forth proposed actions to the *NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)* (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782, 62 FR 53335, 62 FR 56196, 62 FR 59032, 63 FR 8052, 63 FR 26018, 64 FR 25361). These proposed actions will be considered by the Recombinant DNA Advisory Committee (RAC) during its September 2–3, 1999, meeting. Public comments and any recommendations made by the RAC on these proposed actions will be considered by the NIH Director. Decisions regarding these proposed actions will be issued in accordance with the *NIH Guidelines*, as deemed appropriate by the NIH Director.

DATES: Interested parties are invited to submit comments concerning the proposed actions. Comments received by August 25, 1999, will be reproduced and distributed to the RAC for consideration at its September 2–3, 1999, meeting. After consideration of this proposal and comments by the RAC, the NIH Director will issue decisions in accordance with the *NIH Guidelines.*

PUBLIC COMMENTS: Interested parties are invited to comment on these proposed actions. Written comments should be submitted to: Debra Knorr, RAC Executive Secretary, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, or by FAX to (301)–496–9839. Written comments received by August 25, 1999, will be reproduced and distributed to the committee members for their consideration during the September 2–3, 1999, RAC meeting. All comments received in response to this notice will be considered by the RAC and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

CONTACT INFORMATION: For further information regarding these proposed actions please contact: The Office of Recombinant DNA Activities (ORDA), National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone: 301–496–9838, Facsimile: 301–496–9839. Additional information is also available at ORDA's web site: *http://www.nih.gov/od/orda.*

SUPPLEMENTARY INFORMATION: The NIH has continually refined its oversight of human gene transfer research as the field has developed. In December 1996, the RAC review process was modified to consist of a rapid initial analysis of each human gene transfer experiment to determine which protocols present significant novel scientific, safety, ethical, legal and/or social issues and therefore warrant further RAC review and public discussion. In October 1997, the *NIH Guidelines* were amended to eliminate the requirement for approval by the RAC of individual protocols. The objectives of both of these actions were to streamline the review process and ensure that the roles and responsibilities of the NIH complement, rather than duplicate, those of other Federal agencies while preserving public confidence in the field.

At present, human gene transfer protocols must be approved by the local Institutional Biosafety Committee (IBC) and the local Institutional Review Board (IRB) prior to submission to the NIH Office of Recombinant DNA Activities (ORDA) for RAC review. Within 15 days of receipt of the complete submission to ORDA, investigators are informed of the RAC's decision as to whether a given protocol is novel and therefore warrants further review and public discussion. To provide adequate time for additional analysis of the protocol and public notice of the upcoming RAC review and discussion, a protocol must be received by ORDA at least eight weeks prior to

a RAC meeting. Over the past two years, approximately 10% of protocols were determined by the RAC to warrant further analysis and public discussion because they presented novel safety and/or ethical issues. Examples of novel characteristics included new disease indications, vulnerable patient populations, and new classes of viral vectors.

In an effort to optimize further and streamline this process, the NIH is proposing to modify further the requirements for protocol submission for RAC review. Specifically, clinical trial proposals may be submitted for RAC review before having been approved by the local IBC and IRB; however, clinical trial investigations may not be initiated until the RAC review process has been completed, IBC and IRB approvals have been obtained, and applicable regulatory authorization(s) have been obtained.

The above changes will allow investigators to receive RAC input at an earlier stage of protocol development and allow multiple levels of protocol review to occur simultaneously. This proposed action is intended to reduce the delays in initiating clinical trials that may result from the multiple, sequential reviews currently conducted by the local institutional review bodies and federal government agencies. The NIH is interested in exploring strategies to expedite further the process of public discussion by the RAC of novel protocols.

Other changes to the *NIH Guidelines* are presented in these Proposed Actions in order to clarify the process and requirements for protocol submission, review, and reporting. These Proposed Actions will preserve RAC's critical role in the review and public discussion of novel human gene transfer experiments in advance of clinical application.

I. Proposed Actions

I–A. Proposed Amendments to Section I, *Scope of the NIH Guidelines*; Section III, *Experiments Covered by the NIH Guidelines*; Section IV, *Roles and Responsibilities*; Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*; of the *NIH Guidelines* Regarding Human Gene Transfer Experiments.

Section I–A–1–a, *Scope of the NIH Guidelines*, currently reads:

"Experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) cannot be initiated without simultaneous submission to both NIH/ORDA and FDA of such information on the proposed experiment as is prescribed by those agencies. Submission of human gene transfer protocols to NIH shall be in the format described in Appendix M–I, *Submission Requirements—Human Gene Transfer Experiments*, of the *NIH Guidelines*. Submission to NIH shall be for registration purposes and will ensure continued public access to relevant human gene transfer information conducted in compliance with the *NIH Guidelines*. Investigational New Drug (IND) applications shall be submitted to FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, *IND Content and Format*.

"If a determination is made that an experiment will undergo full RAC discussion, NIH/ORDA will immediately notify the Principal Investigator. RAC members may forward requests for additional information relevant to a specific protocol through NIH/ORDA to the Principal Investigator. In making a determination whether an experiment is novel and deserving of full RAC discussion, reviewers will examine the scientific rational, scientific content (relative to other proposals reviewed by RAC), whether the preliminary *in vitro* and *in vivo* safety data were obtained in appropriate models and are sufficient, and whether questions related to relevant social and ethical issues have been resolved. RAC's recommendation(s) on a specific human gene transfer experiment will be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and other DHHS components, as appropriate."

Section I–A–1–a is proposed to be amended to read:

"Experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) cannot be initiated without submission to NIH/ORDA and completion of the RAC review process. The RAC review process shall include an initial determination as to whether the submission has novel characteristics warranting full RAC review and public discussion. During the initial determination, RAC members shall notify NIH/ORDA of their recommendations regarding the necessity for full RAC review and public discussion. At any time during the review process, individual RAC members may contact NIH/ORDA to request additional information deemed important to the decision-making process. NIH/ORDA will immediately notify the Principal Investigator(s) of RAC requests for additional information. The initial RAC review shall be completed and NIH/ORDA will notify the Principal Investigator of the results of this review within 15 working days of receipt of a complete submission. RAC review at a public meeting of an individual human gene transfer experiment can be: (1) initiated by the NIH Director, or (2) recommended to NIH/ORDA by: (a) three or more RAC members, or (b) other Federal agencies. An individual human gene transfer experiment that is recommended for full RAC review should have novel characteristics deserving of public discussion. Following that review and discussion, RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and/or other DHHS components, as appropriate. Submission of human gene transfer protocols to NIH shall be in the format described in Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, of the *NIH Guidelines*." Investigational New Drug (IND) applications shall be submitted to FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, *IND Content and Format*.

Section III, *Experiments Covered by the NIH Guidelines*, preamble, first paragraph, currently reads:

"This section describes six categories of experiments involving recombinant DNA: (i) those that require Institutional Biosafety Committee (IBC) approval, RAC review, and NIH Director approval before initiation (see Section III–A), (ii) those that require NIH/ORDA and Institutional Biosafety Committee approval before initiation (see Section III–B), (iii) those that require Institutional Biosafety Committee and Institutional Review Board approvals and NIH/ORDA registration before initiation (see Section III–C), (iv) those that require Institutional Biosafety Committee approval before initiation (see Section III–D), (v) those that require Institutional Biosafety Committee notification simultaneous with initiation (see Section III–E), and (vi) those that are exempt from the *NIH Guidelines* (see Section III–F)."

Section III, *Experiments Covered by the NIH Guidelines*, preamble, first paragraph, is proposed to be amended to read:

"This section describes six categories of experiments involving recombinant DNA: (i) those that require Institutional Biosafety Committee (IBC) approval,

RAC review, and NIH Director approval before initiation (see Section III–A), (ii) those that require NIH/ORDA and Institutional Biosafety Committee approval before initiation (see Section III–B), (iii) those that require Institutional Biosafety Committee and Institutional Review Board approvals and completion of the RAC review process before initiation (see Section III–C), (iv) those that require Institutional Biosafety Committee approval before initiation (see Section III–D), (v) those that require Institutional Biosafety Committee notification simultaneous with initiation (see Section III–E), and (vi) those that are exempt from the *NIH Guidelines* (see Section III–F)."

Section III–C, *Experiments that Require Institutional Biosafety Committee and Institutional Review Board Approvals and NIH/ORDA Registration Before Initiation*, currently reads:

"Section III–C, *Experiments that Require Institutional Biosafety Committee and Institutional Review Board Approvals and NIH/ORDA Registration Before Initiation.*

"Section III–C–1, *Experiments Involving the Deliberate Transfer of Recombinant DNA or DNA or RNA Derived from Recombinant DNA into One or More Human Subjects.*

"Research proposals involving the deliberate transfer of recombinant DNA, or DNA or RNA derived from recombinant DNA, into human subjects (human gene transfer) will be considered through a review process involving both NIH/ORDA and RAC. Investigators shall submit relevant information on the proposed human gene transfer experiments to NIH/ORDA. Submission of human gene transfer protocols to NIH will be in the format described in Appendix M–I, *Submission Requirements—Human Gene Transfer Experiments.* Submission to NIH/ORDA shall be for registration purposes and will ensure continued public access to relevant human gene transfer information in compliance with the *NIH Guidelines.* Investigational New Drug (IND) applications should be submitted to FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format.

"Institutional Biosafety Committee approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is *ex vivo* transduction of recombinant DNA material into target cells for human application).

"RAC prefers that submission to NIH/ORDA in accordance with Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public. Following receipt by NIH/ORDA, relevant information shall be entered into the NIH human gene transfer database for registration purposes. Summary information pertaining to the human gene transfer protocol will be forwarded to RAC members. NIH/ORDA summary information shall include comparisons to previously registered protocols. Specific items of similarity to previous experiments include (but are not limited to): (i) Gene delivery vehicle, (ii) functional gene, (iii) marker gene, (iv) packaging cell (if applicable), (v) disease application, (vi) route of administration, and (vii) patient selection criteria.

"RAC members shall notify NIH/ORDA within 15 working days if the protocol has been determined to represent novel characteristics requiring further public discussion.

"Full RAC review of an individual human gene transfer experiment can be initiated by the NIH Director or recommended to the NIH Director by: (i) Three or more RAC members, or (ii) other Federal agencies. An individual human gene transfer experiment that is recommended for full RAC review should represent novel characteristics deserving of public discussion. RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and other DHHS components, as appropriate.

"**Note:** For specific directives concerning the use of retroviral vectors for gene delivery, consult Appendix B–V–1, Murine Retroviral Vectors."

Section III–C–1 is proposed to be amended to read:

"Section III–C, *Experiments that Require Institutional Biosafety Committee and Institutional Review Board Approvals and RAC Review Before Initiation.*

"Section III–C–1. *Experiments Involving the Deliberate Transfer of Recombinant DNA or DNA or RNA Derived from Recombinant DNA into One or More Human Subjects.*

"Investigators shall not initiate any human gene transfer experiments until the RAC review process has been completed as described in the *NIH Guidelines* (see Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*); Institutional Biosafety Committee approvals have been obtained from each institution at which recombinant DNA material will be administered to human subjects (rather than from each site involved in manufacturing gene transfer products); Institutional Review Board approval(s) have been obtained; and applicable regulatory authorization(s) have been obtained.

"Submission to NIH/ORDA shall be in accordance with Appendix M–I, *Submission, Review, and Reporting Requirements—Human Gene Transfer Experiments,* and should contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public. Following receipt by NIH/ORDA, relevant information shall be entered into the NIH human gene transfer database. Summary information pertaining to the human gene transfer protocol will be forwarded to RAC members. NIH/ORDA summary information shall include comparisons to previously registered protocols. Specific items of similarity to previous experiments include (but are not limited to): (i) Gene delivery vehicle, (ii) functional gene, (iii) marker gene, (iv) packaging cell (if applicable), (v) disease application, (vi) route of administration, and (vii) patient selection criteria.

"The RAC review process shall include an initial determination as to whether the submission has novel characteristics warranting full RAC review and public discussion. During the initial determination, RAC members shall notify NIH/ORDA of their recommendations regarding the necessity for full RAC review and public discussion. At any time during the review process, individual RAC members may contact NIH/ORDA to request additional information deemed important to the decision-making process. NIH/ORDA will immediately notify the Principal Investigator(s) of RAC requests for additional information. The initial RAC review shall be completed and NIH/ORDA will notify the Principal Investigator of the results of this review within 15 working days of receipt of a complete submission. RAC review at a public meeting of an individual human gene transfer experiment can be: (1) Initiated by the NIH Director, or (2) recommended to NIH/ORDA by: (a) Three or more RAC members, or (b) other Federal agencies. An individual human gene transfer experiment that is recommended for full RAC review should have novel characteristics

deserving of public discussion. Following that review and discussion, RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and/or other DHHS components, as appropriate.

"Investigational New Drug (IND) applications should be submitted to FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format.

"**Note:** For specific directives concerning the use of retroviral vectors for gene delivery, consult Appendix B–V–1, Murine Retroviral Vectors."

"Section IV–B–1–f, under *Roles and Responsibilities*, of the Institution currently reads in part:

"* * * and (ii) all aspects of Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*, have been appropriately addressed by the Principal Investigator *prior to submission to NIH/ORDA*. Institutional Biosafety Committee approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is ex vivo transduction of recombinant DNA material into target cells for human application)."

"Section IV–B–1–f is proposed to be amended to read in part:

"* * * and (ii) all aspects of Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*, have been appropriately addressed by the Principal Investigator prior to the initiation of any human gene transfer experiments. Institutional Biosafety Committee approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (rather than from each site involved in manufacturing gene transfer products)."

"Section IV–B–2–a–(1) under Roles and Responsibilities, Institutional Biosafety Committee (IBC), Membership and Procedures, currently reads in part:

"* * * and (ii) all aspects of Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*, have been appropriately addressed by the Principal Investigator prior to submission to NIH/ORDA. Institutional Biosafety Committee approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is ex vivo transduction of recombinant DNA material into target cells for human application)."

"Section IV–B–2–a–(1) is proposed to be amended to read:

"* * * and (ii) all aspects of Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*, have been appropriately addressed by the Principal Investigator prior to the initiation of any human gene transfer experiments. Institutional Biosafety Committee approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (rather than from each site involved in manufacturing gene transfer products)."

"Section IV–B–6 under Roles and Responsibilities, Institutional Biosafety Committee (IBC), Human Gene Therapy Expertise, currently reads in part:

"* * * and (ii) all aspects of Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*, have been appropriately addressed by the Principal Investigator prior to submission to NIH/ORDA."

"Section IV–B–6 is proposed to be amended to read:

"* * * and (ii) all aspects of Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*, have been appropriately addressed by the Principal Investigator prior to the initiation of human gene transfer experiments."

"Section IV–B–7–b–(6) under Roles and Responsibilities, Principal Investigator, currently reads:

"Ensure that all aspects of Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*, have been appropriately addressed prior to submission of human gene therapy experiments to NIH/ORDA."

"Section IV–B–7–b–(6) is proposed to be amended to read:

"Ensure that all aspects of Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*, have been appropriately addressed by the Principal Investigator(s) (PI) on institutional letterhead acknowledging that the documentation being submitted to NIH/ORDA complies with the requirements set forth in Appendix M, Points to Consider; that an exact duplicate of this submission has been sent to the Institutional Biosafety Committee; and that the proposed study will not be initiated until: (1) The RAC review process has been completed, (2) final approval(s) have been obtained from the IBC(s) at each clinical trial site(s), (3) final approval(s) have been obtained from the IRB(s), and (4) applicable regulatory authorization(s) have been obtained."

"Appendix M, *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider)*, preamble, paragraphs 4 through 7 are proposed to be deleted from the preamble and incorporated with modification into a reorganized Appendix M–I, *Submission, Review, and Reporting Requirements—Human Gene Transfer Experiments*.

"Research proposals involving the deliberate transfer of recombinant DNA, or DNA or RNA derived from recombinant DNA, into human subjects (human gene transfer) will be considered through a review process involving both NIH/ORDA and the RAC. Investigators shall submit their relevant information on the proposed human gene transfer experiments to NIH/ORDA. Submission of human gene transfer protocols to NIH will be in the format described in Appendix M–I, Submission Requirements—Human Gene Transfer Experiments. Submission to NIH shall be for registration purposes and will ensure continued public access to relevant human gene transfer information conducted in compliance with the *NIH Guidelines*. Investigational New Drug (IND) applications should be submitted to FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format.

"Institutional Biosafety Committee approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution

involved in the production of vectors for human application and each institution at which there is *ex vivo* transduction of recombinant DNA material into target cells for human application).

"Factors that may contribute to public discussion of a human gene transfer experiment by RAC include: (i) New vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Among the experiments that may be considered exempt from RAC discussion are those determined not to represent possible risk to human health or the environment. Full RAC review of an individual human gene transfer experiment can be initiated by the NIH Director or recommended to the NIH Director by: (i) Three or more RAC members, or (ii) other Federal agencies. An individual human gene transfer experiment that is recommended for full RAC review should represent novel characteristics deserving of public discussion. If the Director, NIH, determines that an experiment will undergo full RAC discussion, NIH/ORDA will immediately notify the Principal Investigator. RAC members may forward individual requests for additional information relevant to a specific protocol through NIH/ORDA to the Principal Investigator. In making a determination whether an experiment is novel, and thus deserving of full RAC discussion, reviewers will examine the scientific rationale, scientific context (relative to other proposals reviewed by RAC), whether the preliminary *in vitro* and *in vivo* safety data were obtained in appropriate models and are sufficient, and whether questions related to relevant social and ethical issues have been resolved. RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and other DHHS components, as appropriate. Relevant documentation will be included in the material for the RAC meeting at which the experiment is scheduled to be discussed. RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed (see Section IV–D–5, *Protection of Proprietary Data*). RAC prefers that information provided in response to Appendix M contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public.

"**Note:** Any application submitted to NIH/ORDA shall not be designated as 'confidential' in its entirety. In the event that a sponsor determines that specific responses to one or more of the items described in Appendix M should be considered as proprietary or trade secret, each item should be clearly identified as such. The cover letter (attached to the submitted material) shall: (1) Clearly indicate that select portions of the application contain information considered as proprietary or trade secret, (2) a brief explanation as to the reason that each of these items is determined proprietary or trade secret."

Appendix M, *Points to Consider*, Preamble, paragraphs 8 and 9, currently reads:

"Public discussion of human gene transfer experiments (and access to relevant information) shall serve to inform the public about the technical aspects of the proposals, meaning and significance of the research, and significant safety, social, and ethical implications of the research. RAC discussion is intended to ensure the safe and ethical conduct of gene therapy experiments and facilitate public understanding of this novel area of biomedical research."

"In its evaluation of human gene transfer proposals, RAC will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of clinical investigation, namely, to protect the health and well being of human subjects being treated while at the same time gathering generalizable knowledge. Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (i) Vertical transmission of genetic changes from an individual to his/her offspring, or (ii) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, Appendices M–I through M–V request information that will enable RAC and NIH/ORDA to assess the possibility that the proposed experiment(s) will inadvertently affect reproductive cells or lead to infection of other people (e.g., medical personnel or relatives)."

Appendix M, *Points to Consider*, Preamble, paragraphs 8 and 9, are proposed to be amended to read:

"Research proposals involving the deliberate transfer of recombinant DNA, or DNA or RNA derived from recombinant DNA, into human subjects (human gene transfer) will be considered through a review process involving NIH/ORDA and the RAC (described below in Appendix M–I). In its evaluation of human gene transfer proposals, RAC will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of clinical investigation, namely, to protect the health and well being of human subjects being treated while at the same time gathering generalizable knowledge. Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (i) Vertical transmission of genetic changes from an individual to his/her offspring, or (ii) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, Appendices M–I through M–V request information that will enable RAC and NIH to assess the possibility that the proposed experiment(s) will inadvertently affect reproductive cells or lead to infection of other people (e.g., medical personnel or relatives).

"In its evaluation of human gene transfer proposals, RAC will also consider whether a proposed human gene transfer experiment presents novel characteristics warranting further review by the full RAC and public discussion (as discussed in Appendix M–I below). Public discussion of human gene transfer experiments (and access to relevant information) shall serve to inform the public about the technical aspects of the proposals, meaning and significance of the research, and significant safety, social, and ethical implications of the research. The process of RAC review and public discussion is intended to foster the safe and ethical conduct of human gene transfer experiments and facilitate public understanding of this novel area of biomedical research."

Appendix M–I, currently entitled *Submission Requirements—Human Gene Transfer Experiments*, currently reads:

"Appendix M–I, Submission Requirements—Human Gene Transfer Experiments.

"Investigators must submit the following material (see exemption in Appendix M–VIII–A, *Footnotes of Appendix M*) to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. Investigators may submit this material electronically and can obtain specific instructions from the ORDA home page (http://www.nih.gov/od/orda) regarding electronic submission requirements. For all submissions, whether printed or electronic, ORDA will confirm receipt within three working days after receiving the submission. Investigators

should contact ORDA if they do not receive this confirmation.

"Proposals in printed form and/or in an electronic version shall be submitted to NIH/ORDA in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) Responses to Appendix M–II through M–V, *Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues* (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (4) clinical protocol as approved by the local Institutional Biosafety Committee and Institutional Review Board; (5) Informed Consent document as approved by the Institutional Review Board (see Appendix M–III, *Informed Consent*); (6) appendices (including tables, figures, and manuscripts); (7) curricula vitae—no more than two pages for each key professional person in biographical sketch format; and (8) all submissions must include Institutional Biosafety Committee (IBC) and Institutional Review Board (IRB) approvals and their deliberations pertaining to your protocol. IBC approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is *ex vivo* transduction of recombinant DNA material into target cells for human application). Because these written IBC and IRB approvals require appropriate signatures, investigators cannot submit them electronically. Investigators should submit these signed approvals either by mail or by facsimile transmission.

"Investigational New Drug (IND) applications shall be submitted to the FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, *IND Content and Format*. Submissions to the FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448.

"**Note:** NIH/ORDA will accept submission material at any time. However, if a protocol is submitted less than eight weeks before a scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members."

Appendix M–VI, *RAC Review—Human Gene Transfer Experiments*, currently reads (and is proposed to be incorporated in Appendix M–I):

"Appendix M–VI, *RAC Review—Human Gene Transfer Experiments*.

"In order to maintain public access to information regarding human gene transfer protocols, NIH/ORDA will maintain the documentation described in Appendices M–I through M–V (including protocols that are not reviewed by RAC). RAC prefers that information provided in response to Appendix M, *Points to Consider*, contain no proprietary data or trade secrets, enabling all aspects of the discussion to be open to the public.

"Appendix M–VI–A, *RAC Members' Written Comments*.

"Following receipt by NIH/ORDA, summary information on each human gene transfer protocol will be forwarded to RAC members. Each RAC member shall notify NIH/ORDA within 15 working days regarding the necessity for full RAC discussion. Full RAC review of an individual human gene transfer experiment can be initiated by the NIH Director or recommended to the NIH Director by: (i) Three or more RAC members, or (ii) other Federal agencies. An individual human gene transfer experiment that is recommended for full RAC review should represent novel characteristics deserving of public discussion. If the Director, NIH, determines that an experiment will undergo full RAC discussion, NIH/ORDA will immediately notify the Principal Investigator. RAC members may forward individual requests for additional information relevant to a specific protocol through NIH/ORDA to the Principal Investigator. In making a determination whether an experiment is novel, and thus deserving of full RAC discussion, reviewers shall examine the scientific rationale, scientific context (relative to other proposals reviewed by RAC), whether the preliminary *in vitro* and *in vivo* safety data were obtained in appropriate models and are sufficient, and whether questions related to relevant social and ethical issues have been resolved. RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and other DHHS components, as appropriate."

Appendix M–VII, Reporting Requirements—Human Gene Transfer Protocols currently reads (and is proposed to be incorporated in Appendix M–I):

"Appendix M–VII, Reporting Requirements—Human Gene Transfer Protocols.

"Appendix M–VII–A, *Investigational New Drug Application Reporting*.

"Upon receipt of notification of permission to proceed with an Investigational New Drug application for a human gene transfer protocol, the Principal Investigator(s) shall submit a written report that includes the following information: (1) How the investigator(s) responded to RAC's recommendations on the protocol (if applicable), and (2) any modifications to the protocol as required by FDA.

"Appendix M–VII–B, *Annual Data Reporting and Gene Therapy Database*.

"Investigators shall comply with annual data reporting requirements. Annual Data Report forms will be forwarded by NIH/ORDA to investigators. Data submitted in these reports will be evaluated by RAC and NIH/ORDA, and reviewed at a future RAC meeting. Information obtained through annual data reporting will be included in a human gene transfer database that will be administered by NIH/ORDA. The purpose of this human gene transfer database is to: (1) Maintain an institutional memory, (2) provide administrative details of protocol registration, (3) provide annual status reports of protocols, (4) facilitate risk assessment of individual applications of human gene transfer, and (5) enhance public awareness of relevant scientific, safety, social, and ethical issues.

"Appendix M–VII–C, *Adverse Event Reporting*.

"Investigators who have received approval from FDA to initiate a human gene transfer protocol must report any serious adverse event immediately to the local Institutional Review Board, Institutional Biosafety Committee, Office for Protection from Research Risks (if applicable), NIH/ORDA, and FDA, followed by the submission of a written report filed with each group. Reports submitted to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, (301) 496–9838."

Appendix M–VIII, *Footnotes of Appendix M*, is proposed to be renumbered to Appendix M–VII.

Appendix M–I is proposed to be amended to read:

"Appendix M–I. Submission, Review, and Reporting Requirements—Human Gene Transfer Experiments.

"Appendix M–I–A. Submission Requirements.

"Investigators must submit the following material (see exemption in Appendix M–VI–A, *Footnotes of Appendix M*) to the Office of

Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. Investigators may submit this material electronically. ORDA will confirm receipt within three working days after receiving the submission. Investigators should contact ORDA if they do not receive this confirmation. Additional information regarding RAC activities is located on the ORDA home page (*http://www.nih.gov/od/orda*).

"Proposals in printed form and/or in an electronic version shall be submitted to NIH/ORDA in the following order: (1) Cover letter on institutional letterhead that has been signed by the Principal Investigator(s) at the proposed clinical trial site(s). The cover letter must acknowledge that the documentation submitted to NIH/ORDA complies with the requirements set forth in Appendix M–I of the *NIH Guidelines* and that an exact duplicate of this documentation has been submitted to the IBC at the proposed clinical trial site(s). The cover letter must acknowledge that the proposed study will not be initiated until: (a) The RAC review process has been completed; (b) final approval(s) have been obtained from the IBC(s) at each clinical trial site(s); (c) final approval(s) have been obtained from the IRB(s); and (d) all applicable regulatory authorization(s) have been obtained. (2) Scientific abstract. (3) Non-technical abstract. (4) The proposed clinical protocol, including tables, figures, and relevant manuscripts. (5) Responses to Appendix M–II through M–V, *Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues*. Responses to Appendices M–II through M–V may be provided either as an appendix to the clinical protocol or within the clinical protocol. If responses to Appendices M–II through M–V are included within the clinical protocol, each response must be accompanied by its corresponding reference to Appendix M–II through M–V. (6) Proposed Informed Consent document (see Appendix M–III, *Informed Consent*). (7) Curricula vitae of the principal investigator(s) at the proposed clinical trial site(s) (no more than two pages for each key professional person in biographical sketch format).

"**Note:** NIH/ORDA will accept submission material at any time. However, if a protocol is submitted less than eight weeks before a scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members as well as public notice and comment.

"Investigational New Drug (IND) applications shall be submitted to the FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, *IND Content and Format*. Submissions to the FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448.

"Appendix M–I–B. RAC Review Requirements.

"Appendix M–I–B–1. Initial RAC Review

"Human gene transfer experiments submitted to NIH/ORDA must meet the requirements set forth in Appendix M–I, *Submission, Review, and Reporting Requirements—Human Gene Transfer Experiments*, and should not contain proprietary data or trade secrets, enabling all aspects of the review to be open to the public. Investigators shall not initiate the proposed study prior to completion of the RAC review process.

"The RAC review process shall include an initial determination as to whether the submission has novel characteristics warranting full RAC review and public discussion. During the initial determination, RAC members shall notify NIH/ORDA of their recommendations regarding the necessity for full RAC review and public discussion. At any time during the review process, individual RAC members may contact NIH/ORDA to request additional information deemed important to the decision-making process. NIH/ORDA will immediately notify the Principal Investigator(s) of RAC requests for additional information. The initial RAC review shall be completed and NIH/ORDA will notify the Principal Investigator of the results of this review within 15 working days of receipt of a complete submission. RAC review at a public meeting of an individual human gene transfer experiment can be: (1) Initiated by the NIH Director, or (2) recommended to NIH/ORDA by: (a) Three or more RAC members, or (b) other Federal agencies. An individual human gene transfer experiment that is recommended for full RAC review should have novel characteristics deserving of public discussion. Following that review and discussion, RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and/or other DHHS components, as appropriate.

"An individual human gene transfer experiment that is recommended for full RAC review should represent novel characteristics deserving of public discussion. In making a determination whether an experiment is novel, reviewers shall examine the scientific rationale, scientific context (relative to other proposals reviewed by RAC). Factors that may warrant public discussion of a human gene transfer experiment by the RAC include: (i) new vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion.

"Appendix M–I–B–2. Full RAC Review and Public Discussion

"RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed. Relevant documentation will be included in the material for the RAC meeting at which the experiment is scheduled to be discussed. Following RAC review and public discussion, RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and/or other DHHS components, as appropriate.

"**Note:** To enable all aspects of the review process to be open to the public, information provided in response to Appendix M should not contain proprietary data or trade secrets and any application submitted to NIH/ORDA shall not be designated as 'confidential' in its entirety. In the event that an investigator determines that specific responses to one or more of the items described in Appendix M should be considered as proprietary or trade secret, each item should be clearly identified as such. The cover letter (attached to the submitted material) shall: (1) Clearly indicate the information that is considered as proprietary or trade secret, (2) an explanation as to the reason that each of these items is determined proprietary or trade secret.

"Appendix M–I–C. Reporting Requirements.

"Appendix M–I–C–1. Initiation of the Clinical Investigation.

"The Principal Investigator(s) shall submit the following to NIH/ORDA within 15 working days of initiation of a human gene transfer experiment: (1) A copy of the Informed Consent document approved by the IRB, (2) a copy of the protocol approved by the IBC and IRB, and (3) a copy of the final IBC

approval(s) at the clinical trial site(s); (4) a copy of the final IRB approval(s); (5) a brief written report that includes the following information: (a) how the investigator(s) responded to RAC's recommendations on the protocol (if applicable), and (b) any modifications to the protocol as required by FDA.

"Appendix M–I–C–2. Annual Reporting.

"Investigators shall comply with annual data reporting requirements. Annual data report forms will be forwarded by NIH/ORDA to investigators. Information submitted in these annual reports will be evaluated by NIH/ORDA and the RAC, and possibly considered at a future RAC meeting. Information obtained through the annual data reporting process will be included in the NIH/ORDA clinical trials database to: (1) Provide clinical trial information; (2) provide administrative details of protocol registration; (3) provide annual status reports of protocols; (4) facilitate risk assessment of individual applications of human gene transfer; and (5) enhance public awareness of relevant scientific, safety, social, and ethical issues.

"Appendix M–I–C–3. Serious Adverse Event Reporting.

"Investigators who have received authorization from FDA to initiate a human gene transfer protocol must report any serious adverse event immediately to the local Institutional Review Board, Institutional Biosafety Committee, Office for Protection from Research Risks (if applicable), NIH/ORDA, and FDA, followed by the submission of a written report filed with each group. Reports submitted to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, (301) 496–9838."

Appendix M–III–B currently reads in part:

"Investigators submitting human gene transfer proposals must include the Informed Consent document as approved by the local Institutional Review Board. A separate * * *"

Appendix M–III–B is proposed to read:

"Investigators submitting human gene transfer proposals must include a copy of the proposed Informed Consent document. A separate * * *"

II. Proposed Amendments to Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider), of the NIH Guidelines, Regarding Prenatal Gene Transfer Research

II–A. Background Information.

On July 31, 1998, Dr. W. French Anderson, University of Southern California, Los Angeles, California, and Dr. Esmail Zanjani, Veterans Hospital, Reno, Nevada, submitted the following two "pre-protocols" for *in utero* gene transfer entitled: (1) *In Utero* Gene Transfer for the Treatment of ADA-Deficient SCID and (2) *In Utero* Gene Transfer for the Treatment of a-Thalassemia. These two "pre-protocols" provided the catalyst for the RAC recommendation to the NIH Director made at its September 1998 meeting that a Gene Therapy Policy Conference (GTPC) should be held on the topic of prenatal gene transfer. On January 7–8, 1999, NIH convened the GTPC entitled: Prenatal Gene Transfer: Scientific, Medical, and Ethical Issues. This meeting provided a public forum for the presentation and discussion of relevant scientific data and policy issues by members of the scientific, biomedical, ethical, and legal communities and the public. The anticipated outcome of the GTPC is two-fold: (1) Development of a policy paper that will highlight the conclusions of the working groups and conference participants, and (2) a comprehensive list of issues that should be further deliberated by the RAC at subsequent meetings. To achieve this goal, RAC members and ad hoc experts were assigned to one or more of the following working groups based on their individual areas of expertise: Working Group I—Preclinical Research Issues; Working Group II—Clinical Research Issues; and Working Group III—Ethical, Legal, and Societal Issues.

At the March 11–12, 1999, RAC meeting, the RAC discussed three working group reports and issued a consensus statement that reads:

The RAC continues to explore the issues raised by the potential of *in utero* gene transfer research. However, at present, the members unanimously agree that it is premature to undertake any human *in utero* gene transfer experiment.

Rationale: Significant additional preclinical and clinical studies addressing vector transduction efficacy, biodistribution, and toxicity are required before a human *in utero* gene transfer protocol should proceed. In addition, a more thorough understanding of the ontogeny of human organ systems, such as the immune and nervous systems, is needed to better define the potential efficacy and risks of human *in utero* gene transfer. Prerequisites for considering any specific human *in utero* gene transfer procedure include an understanding of the pathophysiology of the candidate disease and a demonstrable advantage to the *in utero* approach. Once the above criteria are met, the committee would be willing to consider well rationalized *in utero* gene transfer protocols."

Appendix M, *Points to Consider*, Preamble, to include a new paragraph after paragraph 3, is proposed to read:

The RAC continues to explore the issues raised by the potential of *in utero* gene transfer research. However, at present, the RAC concludes that it is premature to undertake any human *in utero* gene transfer experiment. Significant additional preclinical and clinical studies addressing vector transduction efficacy, biodistribution, and toxicity are required before a human *in utero* gene transfer protocol should proceed. In addition, a more thorough understanding of the ontogeny of human organ systems, such as the immune and nervous systems, is needed to better define the potential efficacy and risks of human *in utero* gene transfer. Prerequisites for considering any specific human *in utero* gene transfer procedure include an understanding of the pathophysiology of the candidate disease and a demonstrable advantage to the *in utero* approach. Once the above criteria are met, the RAC would be willing to consider well rationalized *in utero* gene transfer protocols."

III. Discussion of Three Novel Human Gene Transfer Protocols

During the September 2–3, 1999, RAC meeting, three novel human gene transfer protocols will be discussed: (1) Limb girdle muscular dystrophy using adeno-associated viral vector delivery of sarcoglycan genes, (2) hemophilia A using systemic retroviral vector delivery of a gene encoding factor VIII, and (3) gyrate atrophy using retroviral vector delivery of a gene encoding ornithine aminotransferase.

IV. Discussion on Expediting RAC Public Review Process of Human Gene Transfer Experiments

The NIH is interested in exploring strategies to expedite further the process of public discussion by the RAC of novel protocols.

OMB's "Mandatory Information Requirements for Federal Assistance

Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 5, 1999.

Lana R. Skirboll,

Associate Director for Science Policy, National Institutes of Health.

[FR Doc. 99–20646 Filed 8–10–99; 8:45 am]

BILLING CODE 4140–01–P

Federal Register

Wednesday
August 11, 1999

Part VII

The President

Executive Order 13133—Working Group on Unlawful Conduct on the Internet

VOL
64
ISS
1
5
4
AG
11
999
UMI

Federal
Vol. 64
Wednes

Title

The

Federal Register
Vol. 64, No. 154
Wednesday, August 11, 1999

Presidential Documents

Title 3—

The President

Executive Order 13133 of August 5, 1999

Working Group on Unlawful Conduct on the Internet

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to address unlawful conduct that involves the use of the Internet, it is hereby ordered as follows:

Section 1. *Establishment and Purpose.* (a) There is hereby established a working group to address unlawful conduct that involves the use of the Internet ("Working Group"). The purpose of the Working Group shall be to prepare a report and recommendations concerning:

(1) The extent to which existing Federal laws provide a sufficient basis for effective investigation and prosecution of unlawful conduct that involves the use of the Internet, such as the illegal sale of guns, explosives, controlled substances, and prescription drugs, as well as fraud and child pornography.
(2) The extent to which new technology tools, capabilities, or legal authorities may be required for effective investigation and prosecution of unlawful conduct that involves the use of the Internet; and
(3) The potential for new or existing tools and capabilities to educate and empower parents, teachers, and others to prevent or to minimize the risks from unlawful conduct that involves the use of the Internet.

(b) The Working Group shall undertake this review in the context of current Administration Internet policy, which includes support for industry self-regulation where possible, technology-neutral laws and regulations, and an appreciation of the Internet as an important medium both domestically and internationally for commerce and free speech.

Sec. 2. *Schedule.* The Working Group shall complete its work to the greatest extent possible and present its report and recommendations to the President and Vice President within 120 days of the date of this order. Prior to such presentation, the report and recommendations shall be circulated through the Office of Management and Budget for review and comment by all appropriate Federal agencies.

Sec. 3. *Membership.*

(a) The Working Group shall be composed of the following members:

(1) The Attorney General (who shall serve as Chair of the Working Group).
(2) The Director of the Office of Management and Budget.
(3) The Secretary of the Treasury.
(4) The Secretary of Commerce.
(5) The Secretary of Education.
(6) The Director of the Federal Bureau of Investigation.
(7) The Director of the Bureau of Alcohol, Tobacco and Firearms.
(8) The Administrator of the Drug Enforcement Administration.
(9) The Chair of the Federal Trade Commission.
(10) The Commissioner of the Food and Drug Administration; and
(11) Other Federal officials deemed appropriate by the Chair of the Working Group.

(b) The co-chairs of the Interagency Working Group on Electronic Commerce shall serve as liaison to and attend meetings of the Working Group. Members of the Working Group may serve on the Working Group through designees.

William J. Clinton

THE WHITE HOUSE,
August 5, 1999.

[FR Doc. 99–20924
Filed 8–10–99; 8:45 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 64, No. 154

Wednesday, August 11, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998	2
41999–42264	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43598	10
43599–43896	11

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43896

7 CFR

11 43043
610 41999
1728 42005

Proposed Rules:
6 42288
354 43103
931 42858
932 42619
981 43298
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043

Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049

Proposed Rules:
361 ..... 42861, 42862

13 CFR

Proposed Rules:
120 43636

14 CFR

4 43599
27 43016
29 43016
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599
254 41781
382 41781

Proposed Rules:
25 43570
39 ..... 41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638
65 42810
66 42810
71 ..... 42300, 42301
107 43321
108 43322
147 42810

15 CFR

734 42009
738 42009
740 42009
742 42009
902 42826

16 CFR

2 43599
5 42594

Proposed Rules:
1212 42302

17 CFR

9 43254
10 43071

12.....43071
200.....42594
240.....42031, 42594
249.....42594
Proposed Rules:
4.....41843
275.....43556

18 CFR

Proposed Rules:
101.....42304
343.....43600
357.....42623
385.....42307, 43600

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
151.....43608
162.....43262
173.....43262
174.....43262, 43608
178.....43608
181.....43262
Proposed Rules:
12.....41851
113.....41851, 42872
141.....41851

20 CFR

Proposed Rules:
404.....42310
416.....42310

21 CFR

101.....42277
172.....43072
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596
1308.....42432
1312.....42432
Proposed Rules:
101.....42315
207.....43114
314.....42625, 42873
607.....43114
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032

24 CFR

982.....43613
Proposed Rules:
990.....43641

26 CFR

1 .....41783, 43072, 43267, 43613
31.....42831
301.....41783
602 .....41783, 43072, 43613
801.....42834
Proposed Rules:
1 .....43117, 43323, 43462
301.....43324
602.....43462

28 CFR

505.....43880

29 CFR

2570.....42246
2575.....42246
Proposed Rules:
2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75.....43280, 43286
90.....43283
202.....43506
206.....43288, 43506
250.....42597
Proposed Rules:
935.....42887
936.....43327

31 CFR

538.....41784
550.....41784
560.....41784
Proposed Rules
375.....42626

32 CFR

Proposed Rules:
230.....43856
231.....43858
231a.....43856

33 CFR

100 .....42278, 42598, 43289
110.....42279
117.....42033, 42599
160.....41794
165.....43290, 43291
Proposed Rules:
100.....41853

34 CFR

611.....42837
Proposed Rules:
668 .....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682 .....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:
13.....41854
1191.....42056

37 CFR

Proposed Rules:
201.....42316

39 CFR

20.....43292

40 CFR

9.....42432, 43426
52.....42600, 43083
58.....42530
62.....43091
63.....42764
122.....42432, 43426
123.....42432, 43426
124.....42432, 43426
180 .....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846
186.....41818
261.....42033
271.....41823, 42602
403.....42552
501.....42432, 43426
503.....42552
745.....42849
Proposed Rules:
52 .....42629, 42888, 42891, 42892
147.....43329
261.....42317
62.....43123
97.....43124
271.....42630, 43331
281.....43336
300 .....41875, 42328, 42630, 43129, 43641
372.....42222

41 CFR

301.....43254
Proposed Rules:
51-2.....41882
51-5.....41882

42 CFR

413.....42610
498.....43295
1001.....42174
Proposed Rules:
Ch. IV.....43338

44 CFR

61.....41825
64.....42852
206.....41827
Proposed Rules:
61.....42632
62.....42633

45 CFR

801.....42039

46 CFR

10.....42812
12.....42812
Proposed Rules:
535.....42057

47 CFR

0.....43618
1.....42854
5.....43094
43.....43618
63.....43095, 43618
64.....43618
73 .....41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095
76.....42617, 42855
90.....43094
Proposed Rules:
Ch. 1.....41883, 42635
1.....41884, 41887
2.....41891, 43643
15.....41897
51.....41897
68.....41897
73.....41899, 43132
76.....41887
78.....41899
95.....41891

48 CFR

202.....43096
204.....43098
212.....43098
213.....43098
217.....43096
252.....43098
253.....43098
601.....43618
602.....43618
603.....43618
604.....43618
605.....43618
606.....43618
608.....43618
609.....43618
610.....43618
611.....43618
613.....43618
614.....43618
615.....43618
616.....43618
617.....43618
619.....43618
622.....43618
623.....43618
625.....43618
626.....43618
628.....43618
629.....43618
630.....43618
631.....43618
632.....43618
633.....43618
634.....43618
636.....43618
637.....43618
639.....43618
641.....43618
642.....43618
643.....43618
644.....43618
645.....43618
646.....43618
647.....43618
649.....43618
652.....43618
653.....43618
701.....42040
702.....42040
703.....42040
705.....42040
706.....42040
709.....42040
714.....42040
716.....42040
719.....42040

726.....42040
732.....42040
733.....42040
734.....42040
749.....42040
750.....42040
752.....42040
5416.....41834

49 CFR

Proposed Rules:
571.....42330

50 CFR

17.....41835
600.....42286
635.....42855, 43101
648.....42042, 42045
660.....42286, 42856
679.....41839, 42826, 43295, 43296, 43297, 43634

Proposed Rules:
17.....41903, 42058, 42250, 43132
32.....43834
36.....43834
600.....42335, 43137
622.....41905, 42068
648.....42071, 43137, 43138
679.....42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 11, 1999

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps education awards; published 7-12-99

ENERGY DEPARTMENT

Contractor employee protection program; criteria and procedures; published 7-12-99

FEDERAL TRADE COMMISSION

Practice and procedure:

Prior approval proceedings; published 8-11-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Cactus ferruginous pygmy owl; critical habitat designation; published 7-12-99

Huachuca water umbel; published 7-12-99

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Incarceration fee cost; published 8-11-99

STATE DEPARTMENT

Acquisition regulations:

Miscellaneous amendments; published 8-11-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 7-27-99

Dassault; published 7-7-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Consolidated return regulations—

Consolidated groups; overall foreign losses and separate limitation losses; published 8-11-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant related quarantine, domestic:

Oriental fruit fly; comments due by 8-16-99; published 6-15-99

Plant-related quarantine, domestic:

Mexican fruit fly; comments due by 8-16-99; published 6-15-99

COMMERCE DEPARTMENT

Export Administration Bureau

Chemical Weapons Convention regulations; comments due by 8-20-99; published 7-21-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Findings on petitions, etc.—

Barndoor skate; comments due by 8-20-99; published 6-21-99

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico reef fish; comments due by 8-16-99; published 7-2-99

Puerto Rico and Virgin Islands coral reef resources; comments due by 8-20-99; published 6-21-99

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permits; comments due by 8-19-99; published 8-4-99

Northeastern United States fisheries—

New England Fishery Management Council; meetings; comments due by 8-16-99; published 7-2-99

West Coast States and Western Pacific fisheries—

West coast salmon; comments due by 8-20-99; published 8-6-99

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Contract market rule review procedures; comments due by 8-16-99; published 7-15-99

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

Double coverage policy; comments due by 8-16-99; published 6-17-99

Federal Acquisition Regulation (FAR):

Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99

DEFENSE DEPARTMENT

Engineers Corps

Water resources development projects; public use; comments due by 8-19-99; published 7-20-99

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):

Rate schedules filing—

Regional Transmission Organizations; comments due by 8-16-99; published 6-10-99

Oil pipelines:

Annual report; technical conference; comments due by 8-20-99; published 8-5-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Off-site waste and recovery operations; comments due by 8-19-99; published 7-20-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New York; comments due by 8-18-99; published 7-19-99

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 8-19-99; published 7-20-99

Louisiana; comments due by 8-18-99; published 7-19-99

Maryland; comments due by 8-19-99; published 7-20-99

Michigan; comments due by 8-20-99; published 7-21-99

Nevada; comments due by 8-16-99; published 6-17-99

Tennessee; comments due by 8-18-99; published 7-19-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Sethoxydim; comments due by 8-16-99; published 6-16-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Commercial mobile radio services—

Calling party pays service offering; regulatory obstacles removed; comments due by 8-18-99; published 7-16-99

Radio stations; table of assignments:

California; comments due by 8-16-99; published 7-6-99

Texas; comments due by 8-16-99; published 7-6-99

Wyoming and Utah; comments due by 8-16-99; published 7-6-99

Television broadcasting:

Cable television systems—

12 GHz relay service; eligibility requirements; comments due by 8-16-99; published 8-2-99

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99

Federal travel:

Income tax reimbursement allowance; comments due by 8-17-99; published 6-18-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:

Veterinary Medicinal Products, International Cooperation on Harmonisation of Technical Requirements for Registration—

Anthelmintics efficacy; general and specific recommendations; comments due by 8-16-99; published 7-16-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Multifamily housing projects; tenant participation; comments due by 8-16-99; published 6-17-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 8-16-99; published 7-15-99
Maryland; comments due by 8-16-99; published 7-16-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
F and J nonimmigrant aliens; status duration period extension; comments due by 8-16-99; published 6-15-99
Correction; comments due by 8-16-99; published 7-6-99
H petitions filed after numerical cap is reached; treatment; comments due by 8-16-99; published 6-15-99

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Federal Tort Claims Act; comments due by 8-16-99; published 6-15-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Undercapitalized federally-insured credit unions; prompt corrective action system; comments due by 8-16-99; published 5-18-99

INTERIOR DEPARTMENT
National Indian Gaming Commission
Administrative practice and procedure:
Litigation involving agency; testimony, information, and response to subpoena; comments due by 8-16-99; published 7-15-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Supply management program; hearings; comments due by 8-18-99; published 6-21-99

STATE DEPARTMENT
Chemical Weapons Convention and Chemical Weapons Convention Implementation Act:
Sample taking and record keeping and inspections; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Gulf of Alaska, Narrow Cape, Kodiak Island, AK; safety zone; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Standard time zone boundaries:
Kentucky; comments due by 8-20-99; published 6-21-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Checked baggage; security on domestic flights; comments due by 8-17-99; published 6-11-99
Airworthiness directives:
Aerospatiale; comments due by 8-16-99; published 7-16-99
Airbus; comments due by 8-16-99; published 7-15-99
Bell; comments due by 8-16-99; published 6-17-99
Bombardier; comments due by 8-16-99; published 7-16-99
British Aerospace; comments due by 8-16-99; published 7-16-99
Cessna; comments due by 8-16-99; published 7-16-99
Construcciones Aeronauticas, S.A.; comments due by 8-16-99; published 7-16-99
Dornier; comments due by 8-16-99; published 7-16-99
Eurocopter France; comments due by 8-16-99; published 6-17-99
Fairchild; comments due by 8-16-99; published 7-16-99
Fokker; comments due by 8-16-99; published 7-16-99
Gulfstream Aerospace; comments due by 8-16-99; published 7-16-99
Gulfstream American; comments due by 8-16-99; published 7-16-99
International Aero Engines AG; comments due by 8-16-99; published 6-15-99
Lockheed; comments due by 8-16-99; published 7-16-99
McDonnell Douglas; comments due by 8-16-99; published 7-16-99
Mitsubishi; comments due by 8-16-99; published 7-16-99
Saab; comments due by 8-16-99; published 7-16-99
Sabreliner; comments due by 8-16-99; published 7-16-99
Short Brothers; comments due by 8-16-99; published 7-16-99
Airworthiness standards:
Special conditions—
Boeing Model 707-353B airplanes; comments due by 8-20-99; published 7-21-99
Class E airspace; comments due by 8-16-99; published 7-16-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Gross proceeds payments to attorneys; reporting; comments due by 8-19-99; published 5-21-99
Section 467 rental agreements—
Agreements involving payments of $2,000,000; comments due by 8-16-99; published 5-18-99

VOL
64
ISS
1
5
4
AG
11
999
UMI

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

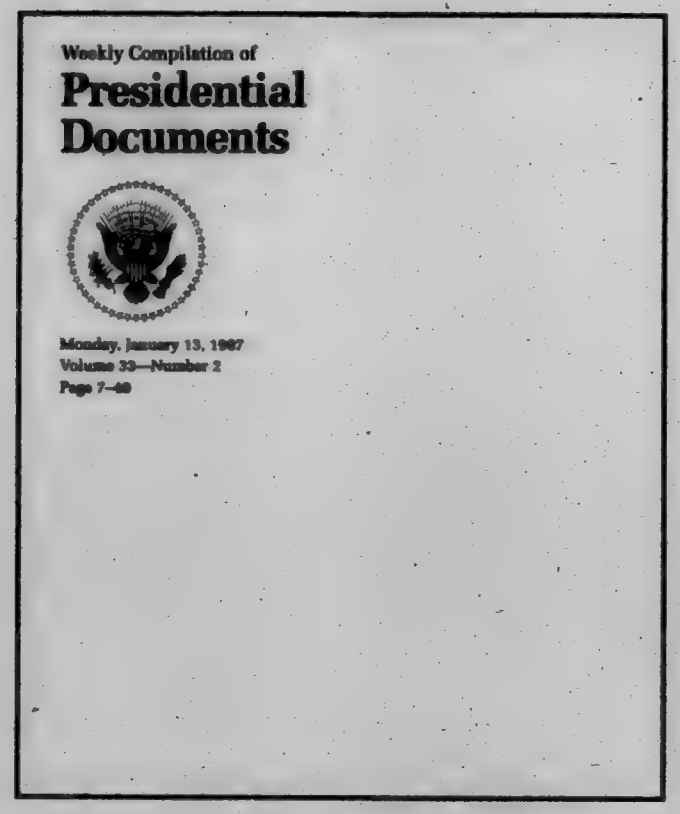

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy!

Order Processing Code:
* 5420

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

are

of the
al

VISA

12–2250
12–1800

so I can

hange.

ments
☐–☐

☐☐☐

you for
r order!

11/3

7954

VOL
64
ISS
1
5
4
AG
11
1999
UMI

Printed on recycled paper

VOL
64
ISS
1
5
5
AG
12
999
UMI

8-12-99
Vol. 64

United
Goverr
Printin
SUPERINT
OF DOCU
Washingto
OFFICIAL
Penalty for

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

8-12-99
Vol. 64 No. 155

federal register

Thursday
August 12, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
1
5
5
AG
12
999
UMI

8-12-9
Vol. 64
Pages

8-12-99
Vol. 64 No. 155
Pages 43897-44100

federal register

Thursday
August 12, 1999

ANN ARBOR MI 48106

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Contents

Federal Register

Vol. 64, No. 155

Thursday, August 12, 1999

Agricultural Marketing Service
RULES
Raisins produced from grapes grown in—
California, 43897–43902
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43975–43976

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Florida Fruit Fly Cooperative Control Program, 43976–43977

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Cargill Inc. and Continental Grain Co., 44046–44057

Architectural and Transportation Barriers Compliance Board
NOTICES
Committees; establishment, renewal, termination, etc.:
Public Rights-of-Way Access Advisory Committee, 43980–43981

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Tennessee, 43981

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Board of Trade—
Corn, 43987–43988
New York Mercantile Exchange—
California-Oregon-Border and Palo Verde electricity, 43989
FTSE Eurotop 300 stock index, 43988–43989

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Consolidated Electrical Disributors, Inc., 43990–43992

Defense Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Information technology; interagency acquisition by executive agent, 44099–44100
NOTICES
Arms sales notification; transmittal letter, etc., 43993–44001
Meetings:
President's Information Technology Advisory Committee, 44002

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44002
Submission for OMB review; comment request, 44002–44003

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollution control; motor vehicles and engines:
Federal test procedure for emissions from motor vehicles; reporting and recordkeeping requirements, 43936–43937
PROPOSED RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 43970–43972
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44005–44008
Air pollution control; motor vehicles and engines:
State implementation plans; adequacy status for transportation conformity purposes, 44008–44009
Clean Air Act:
State operating permits programs—
Louisiana, 44009
Committees; establishment, renewal, termination, etc.:
National Environmental Education Advisory Council, 44009–44010
Toxic and hazardous substances control:
New chemicals; receipt and status information, 44010–44015
Water pollution control:
Clean Water Act—
Class I administrative penalty assessments, 44015–44016

Executive Office of the President
See Management and Budget Office

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Boutros, Fadi, 43981–43982

Federal Aviation Administration
RULES
Airworthiness directives:
Bell, 43905–43907
Class D and Class E airspace, 43907–43908

PROPOSED RULES
Airworthiness directives:
Boeing, 43950–43953
Bombardier, 43948–43950, 43957–43961
British Aerospace, 43955–43957
Construcciones Aeronauticas, S.A., 43953–43955
Dassault, 43961–43963
McDonnell Douglas, 43963–43969
Airworthiness standards:
Special conditions—
Bombardier Model DHC-8-400 airplane, 43943–43946
Dassault Aviation Falcon Model 20-C5/-D5/-E5/-F5 airplanes, 43946–43948

Federal Communications Commission
RULES
Common carrier services:
Interlocking directorates; CFR part removed; biennial regulatory review, 43937–43941

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 44016

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Northern States Power Co. et al., 44003–44005

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Lawrence County, OH, 44078–44079

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Pilot mortgage purchase program—
Cincinnati, Indianapolis, and Seattle, 44016

Federal Maritime Commission
NOTICES
Complaints filed:
Global Transporte Oceanico S.A., 44016–44017

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 44017
Nonbanking activities, 44017–44018
Permissible nonbanking activities, 44018

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 44040–44041

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Sulfadimethoxine/ormetoprim, 43909–43910
Food additives:
Sucralose, 43908–43909
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44018–44019
Submission for OMB review; comment request, 44019–44023
Submission for OMB review; comment request; correction, 44019
Meetings:
Oxygen therapeutics as red cell substitutes; criteria for safety and efficacy evaluation; public workshop, 44023
Reports and guidance documents; availability, etc.:
Medical devices inspection; compliance program guidance manual, 44024
Summary judgment and permanent injunction; final amended order, 44025–44030

Food Safety and Inspection Service
RULES
Freedom of Information Act; implementation, 43902–43904

Foreign Assets Control Office
RULES
Angola (UNITA) sanctions, 43924–43936

Forest Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 43977–43979

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Information technology; interagency acquisition by executive agent, 44099–44100

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44030
Submission for OMB review; comment request, 44030–44032

Health Resources and Services Administration
NOTICES
Meetings:
Childhood Vaccines Advisory Commission, 44032
Graduate Medical Education Council, 44032–44033

Housing and Urban Development Department
RULES
Fair housing:
Affirmative fair housing marketing; compliance procedures; nomenclature changes, 44093–44097
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44038–44039
Public and Indian housing:
Housing assistance payments (Section 8)—
Contract administrators for project-based payments, 44039–44040
Regulatory waiver requests; quarterly listing, 44081–44091

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Income tax return preparer; identifying number, 43910–43911
PROPOSED RULES
Income taxes:
Income tax return preparer; identifying number; cross reference, 43969–43970

International Trade Administration
NOTICES
Antidumping:
Circular welded non-alloy steel pipe from—Mexico, 43982–43983
Corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate from--Canada, 43984

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Muskegon County, MI, et al., 44045–44046
Strategic Materials, Inc., 44046

Land Management Bureau
NOTICES
Closure of public lands:
Oregon, 44041–44042
Environmental statements; availability, etc.:
South Pipeline Project, NV, 44042
Meetings:
Resource Advisory Councils—Sierra Front/Northwest Great Basin, 44042
Withdrawal and reservation of lands:
Colorado, 44043

Management and Budget Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44062–44069

Minerals Management Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44043–44045

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Information technology; interagency acquisition by executive agent, 44099–44100

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 44033
National Center for Research Resources, 44033–44034
National Eye Institute, 44034
National Institute of Diabetes and Digestive and Kidney Diseases, 44035–44036
Strategic plan, 44034–44035
National Institute of General Medical Sciences, 44036–44037
National Institute of Mental Health, 44036
National Institute of Nursing Research, 44037
National Institute on Aging, 44035, 44037
Scientific Review Center, 44038

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of the Exclusive Economic Zone:
Pacific ocean perch, 43942
Rockfish, 43941–43942
Caribbean, Gulf and South Atlantic fisheries—Gulf of Mexico shrimp; correction, 43941
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 43984
Environmental statements; notice of intent:
Pago Pago Harbor, American Samoa; vessels grounded on reefs during Hurricane Val; emergency assessment and restoration planning, 43984–43985
Meetings:
Crab Interim Action Committee, 43985
Permits:
Exempted fishing, 43986–43987

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Kennecott Uranium Co., 44057–44059
Kerr-McGee Corp., 44059–44061
Meetings:
Nuclear Waste Advisory Committee, 44061
Strategic plan:
Nuclear reactor safety chapter; workshop, 44061–44062
Applications, hearings, determinations, etc.:
GPU Nuclear, Inc., 44057

Office of Management and Budget
See Management and Budget Office

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 44069

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Enforcement procedures, 43972–43974

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 44069–44072
Pacific Exchange, Inc., 44072–44073
Philadelphia Stock Exchange, Inc., 44073–44074

Small Business Administration
NOTICES
Disaster loan areas:
Minnesota, 44074
North Dakota, 44074

State Department
NOTICES
Environmental statements; availability, etc.:
McAllen, Hidalgo, and Mission, TX; Anzalduas International Crossing project, 44075–44078

Presidential permits:
McAllen, Hidalgo, and Mission, TX; Anzalduas International Crossing project, 44078

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Indiana, 43911–43913
Texas, 43913–43924

Surface Transportation Board
NOTICES
Railroad services abandonment:
Union Pacific Railroad Co., 44079–44080

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 44081–44091

Part III
Department of Housing and Urban Development, 44093–44097

Part IV
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 44099–44100

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
989.....43897

9 CFR
390.....43902

14 CFR
39.....43905
71.....43907
Proposed Rules:
25 (2 documents).....43943, 43946
39 (9 documents).....43948, 43950, 43953, 43955, 43957, 43959 43961, 43963, 43966

21 CFR
172.....43908
558.....43909

24 CFR
108.....44094

26 CFR
1.....43910
Proposed Rules:
1.....43969

30 CFR
914.....43911
943.....43913

31 CFR
590.....43924

40 CFR
9.....43936
86.....43936
Proposed Rules:
300.....43970

47 CFR
62.....43937

48 CFR
Proposed Rules:
17.....44100

49 CFR
Proposed Rules:
190.....43972

50 CFR
622.....43941
679 (2 documents).....43941, 43942

UMI

VOL
64

ISS
1
55

AG
12

999

Rul

This sec
contains
applicab
are keye
Federal
50 titles

The Cod
the Supe
new boo
REGIST

DEPAR

Agricul

7 CFR

[Docket

Raisins
in Calif
Demand
Regulat

AGENCY
USDA.

ACTION:

SUMMAR
estimate
comput
for 1999
Seedless
Federal
raisins (
handlin
grapes g
adminis
Admini
This rul
implem
1999–20
are shor
maintain
export m
domesti

EFFECTIV
effective

FOR FURT
Maureen
Californ
and Veg
2202 Mo
Fresno, C
(559) 48
George K
Marketin
Branch,
AMS, US
96456, W
telephon
720–569

Rules and Regulations

Federal Register
Vol. 64, No. 155
Thursday, August 12, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV99–989–4 FR]

Raisins Produced From Grapes Grown in California; Use of Estimated Trade Demand to Compute Volume Regulation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule authorizes using an estimated trade demand figure to compute volume regulation percentages for 1999–2000 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This rule provides parameters for implementing volume regulation for 1999–2000 crop NS raisins if supplies are short for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market.

EFFECTIVE DATE: This final rule becomes effective August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule authorizes using an estimated trade demand figure to compute volume regulation percentages for 1999–2000 crop NS raisins covered under the order. This rule provides parameters for implementing volume regulation for 1999–2000 crop NS raisins if supplies are short for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market. This action was recommended by the Committee at a meeting on April 13, 1999.

Volume Regulation Authority

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation for each crop year, which runs from August 1 through July 31. The Committee must meet by August 15 to review data regarding raisin supplies. At that time, the Committee computes a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is equal to 90 percent of the prior year's domestic and export shipments, adjusted by subtracting carryin inventory from the prior year, and adding a desirable carryout inventory for the end of the current year.

By October 5, the Committee must announce preliminary crop estimates

and determine whether volume regulation is warranted for the varietal types for which it computed trade demands. Preliminary volume regulation percentages are then computed to release 85 percent of the computed trade demand if a field price has been established, or 65 percent of the trade demand if no field price has been established. Field price is the price that handlers pay for raisins from producers. By February 15, the Committee must recommend final free and reserve percentages which release the full trade demand.

The order also requires that, when volume regulation is in effect, two offers of reserve raisins must be made available to handlers for free use. These offers are known as the "10 plus 10" offers. Each offer consists of a quantity of reserve raisins equal to 10 percent of the prior year's shipments. The order also specifies that "10 plus 10" raisins must be sold to handlers at the current field price plus a 3 percent surcharge and Committee costs.

Development of Export Markets

With the exception of 10 crop years, volume regulation has been utilized for NS raisins since the order's inception in 1949. The procedures for determining volume regulation percentages have been modified over the years to address the industry's needs. In the past, volume regulation has been utilized primarily to help the industry manage an oversupply of raisins. Through the use of various marketing programs operated through reserve pools and other industry promotional activities, the industry has also developed its export markets which now account for almost 40 percent of the industry's shipments.

Between 1980–85, exports of California NS raisins averaged about 26 percent (53,700 packed tons, or raisins which have been processed) of the industry's total NS raisin shipments (207,600 packed tons, excluding government purchases) per year. Between 1993–97, NS raisin exports increased to average about 37 percent (112,000 packed tons) of the industry's total NS raisin shipments (300,000 packed tons, excluding government purchases) per year.

Export Replacement Offer

One market development program operated through reserve pools, the Export Replacement Offer (ERO), has helped California raisins to be price competitive in export markets. Prices in export markets are generally lower than the domestic market. The ERO began in the early 1980's as a "raisin-back" program whereby handlers who exported California raisins could purchase, at a reduced price, reserve raisins for free use. This effectively blended down the cost of the raisins which were exported. The NS raisin ERO was changed to a "cash-back" program in 1996 whereby handlers could receive cash from the reserve pool for export shipments.

Over the past 5 years, an average of 43,000 natural condition tons (unprocessed raisins) of reserve raisins have been utilized per year to fund the ERO. Financing for the cash-back ERO program has been generated primarily from the Committee's "10 plus 10" sales of reserve raisins to handlers for free use. Under the 1996 and 1997 cash-back ERO programs, an average of $57 million of reserve pool funds were utilized to support the export of about 113,000 packed tons of NS raisins.

Current Industry Situation—Potential of Two, Consecutive Short Crops

The Committee is concerned with maintaining the ERO program through potentially two, consecutive short crop years. The 1998–99 California raisin crop was much smaller than average due to the combined effect of adverse crop conditions created by the weather phenomenon known as El Nino, scattered rain during the fall harvest, and a shortage of labor once the grapes were ready for harvest. The 1998–99 NS raisin crop totaled about 235,000 natural condition tons, about 35 percent lower than the 10-year average of 360,183 natural condition tons. Volume regulation was not implemented for 1998–99 NS raisins, the major varietal type of California raisin, for the first time in 16 years. However, about 60,000 natural condition tons of 1997–98 reserve raisins were available to maintain the industry's ERO program.

The Committee is concerned that the 1999–2000 California raisin crop may also be short due to an April 1999 frost and anticipated high demand for raisin-variety grapes from wineries this fall. If no 1999–2000 reserve is established, the industry will not be able to continue the ERO program. Without a program to support its export sales, the Committee is concerned that the industry could lose a significant portion, perhaps 50 percent, of those markets. Further, handlers who could not sell their raisins in export may sell their raisins domestically. Annual domestic shipments of NS raisins for the past 5 years have averaged about 188,000 packed tons. The Committee is concerned that additional raisins sold into the domestic market could create instability.

Thus, the Committee formed a working group to review this issue and consider options to continue to support its export sales while maintaining stability in the domestic market. After several meetings, the working group presented its recommendation to a subcommittee, and then in turn to the Committee. At a meeting on April 13, 1999, the Committee recommended adding a new paragraph to § 989.154 of the order's administrative rules and regulations that provides parameters for implementing volume regulation for 1999–2000 crop NS raisins if supplies are short. Section 989.154 is divided into two paragraphs, (a) and (b). Paragraph (a) pertains to an existing regulation regarding desirable carryout levels, and paragraph (b) pertains to estimated trade demand.

Implementing Volume Regulation if Supplies are Short to Maintain the ERO

Section 989.54(e) contains a list of factors that the Committee must consider when computing volume regulation percentages. Factor (4) states that the Committee must consider, if different than the computed trade demand, the estimated trade demand for raisins in free tonnage outlets. The Committee recommended using an estimated trade demand figure for 1999–2000 crop NS raisins, or a figure different than the computed trade demand, to compute volume regulation percentages to create a reserve if supplies are short. This will allow the Committee to continue its ERO program thereby maintaining a portion of its export sales and stabilizing the domestic market.

Specifically, the Committee recommended that an estimated trade demand be utilized to compute preliminary, interim, and final free and reserve percentages for 1999–2000 crop NS raisins if the crop estimate is equal to, less than, or no more than 10 percent greater than the trade demand as computed according to the formula specified in § 989.54(a) of the order. If an estimated trade demand figure is utilized, the final reserve percentage will be no more than 10 percent. Finally, volume regulation will not be implemented if the 1999–2000 crop estimate is below 235,000 natural condition tons.

To illustrate how this will work, the Committee will compute a trade demand for NS raisins by August 15 (as an example, 260,000 natural condition tons). At that time, the Committee will also announce its intention to use an estimated trade demand of 235,000 natural condition tons to compute

volume regulation percentages for the 1999–2000 crop.

Crop Estimate Below 235,000 Tons—No Regulation

The Committee will meet by October 5 to announce a NS crop estimate and determine whether volume regulation is warranted. If the 1999–2000 crop estimate is under 235,000 natural condition tons, volume regulation will not be recommended. With a crop of 235,000 natural condition tons, and about 82,000 natural condition tons of NS raisins carried forward from the 1998–99 crop year, a supply of about 317,000 natural condition tons of raisins would be available for the 1999–2000 crop year. As previously mentioned, annual NS raisin shipments average about 300,000 packed tons (about 320,000 natural condition tons), excluding government purchases.

With an available supply of only 317,000 natural condition tons of NS raisins, the Committee believes that the industry's first priority would be to satisfy the needs of the domestic market, which absorbs annually an average of about 188,000 packed tons (200,000 natural condition tons). Assuming that 200,000 natural condition tons were shipped domestically, the Committee estimates that, with no ERO program to help California raisins be price competitive in export markets, the industry would export about half of its usual tonnage, or about 60,000 natural condition tons. The remaining 57,000 natural condition tons would likely be held in inventory for the following 2000–2001 crop year. Annual carryout inventory for NS raisins for the past 5 years has averaged about 100,000 natural condition tons.

Crop Estimate Between 235,000 Tons and 10 Percent Above the Computed Trade Demand—Volume Regulation

If the October 1999–2000 crop estimate for NS raisins falls between 235,000 natural condition tons and 10 percent above the computed trade demand, the Committee will use an estimated trade demand figure to compute preliminary free and reserve percentages for the 1999–2000 crop. Thus, using the 260,000 natural condition ton computed trade demand figure, an estimated trade demand will be used to compute volume regulation percentages if the crop estimate falls between 235,000 and 286,000 natural condition tons.

The order specifies that preliminary percentages compute to release 85 percent of the computed trade demand as free tonnage once a field price is established. Producers are paid the field price for their free tonnage. Normally, when preliminary percentages are computed, producers receive an initial payment from handlers for 85 percent of the computed trade demand (or 65 percent of the trade demand if no field price has been established). Using the 260,000 natural condition ton computed trade demand figure, this would equate to 238,000 natural condition tons. However, if the lower, 235,000 natural condition ton estimated trade demand figure were utilized to compute preliminary percentages, producers would receive an initial payment from handlers for only 199,750 natural condition tons, or 71 percent of the computed trade demand.

The Committee is concerned with the preliminary percentage computation using an estimated trade demand and its impact on producer returns. The Committee wants to ensure that producers receive the field price for as much of their crop as possible early in the season while still establishing a small pool of reserve raisins to maintain the ERO. Thus, the Committee recommended that, if an estimated trade demand figure is utilized, preliminary percentages be computed to release 85 percent of the crop estimate. However, the order specifies that preliminary percentages be computed to release 85 percent of the trade demand, not the crop estimate, once a field price is established.

To achieve the same objective but remain within the order's parameters, the Committee could compute interim percentages to equal 85 percent free and 15 percent reserve. Pursuant to § 989.54(c), interim percentages may be computed prior to February 15 to release less than the trade demand. As an example, with a crop estimate of 265,000 natural condition tons and an estimated trade demand of 238,500 natural condition tons, a free percentage of 85 percent of the crop estimate would release 225,250 natural condition tons of raisins, or 94 percent of the estimated trade demand. This action will mollify the impact of implementing volume regulation when supplies are short on producers by allowing them to be paid for as much of their free tonnage raisins as possible early in the season.

Finally, the Committee will meet by February 15 to compute final free and reserve percentages. The Committee recommended that if an estimated trade demand figure is used to compute percentages, the final reserve percentage be computed to equal no more than 10 percent. Producers would ultimately be paid the field price for 90 percent of their crop, or their free tonnage.

The remaining 10 percent of the crop would be held in reserve and offered for sale to handlers in the "10 plus 10" offers. As previously described, the "10 plus 10" offers are two offers of reserve raisins that are made available to handlers for free use. The order specifies that each offer consists of a quantity of reserve raisins equal to 10 percent of the prior year's shipments. This requirement would not be met if volume regulation were implemented when raisin supplies were short. However, all of the raisins held in reserve would be made available to handlers for free use. Handlers would pay the Committee for the "10 plus 10" raisins and that money would be utilized to fund a 1999–2000 ERO program. Any unused 1999–2000 reserve pool funds could be loaned forward to initiate a 2000–2001 ERO program. However, the Committee recommended that such funds be paid back to the 1999–2000 reserve pool and ultimately be returned to 1999–2000 equity holders.

Crop Estimate More Than 10 Percent Above the Computed Trade Demand

Finally, the Committee recommended that, if the 1999–2000 crop estimate is more than 10 percent greater than the computed trade demand (or above 286,000 natural condition tons in the earlier example), the computed trade demand (as an example, 260,000 natural condition tons) be utilized to compute volume regulation percentages. Under this scenario, enough raisins (over 28,000 natural condition tons) would be available in reserve to continue the ERO program.

It is anticipated that allowing the use of an estimated trade demand figure to compute volume regulation percentages for 1999–2000 crop NS raisins if supplies are short will assist the industry in maintaining a portion of its export markets and stabilize the domestic market. If the crop estimate is below 235,000 natural condition tons, no volume regulation will be implemented. If this occurs, it is anticipated that domestic market needs would be met, while export markets would likely not be satisfied.

However, if the crop falls between 235,000 natural condition tons and slightly higher than the computed trade demand, establishing a small reserve pool will allow the industry to not only satisfy the needs of the domestic market, but also maintain a portion of its export sales, which now account for almost 40 percent of the industry's annual shipments. By maintaining an ERO program, even at a reduced level, exporters could continue to be price

competitive and sell their raisins abroad. The domestic market would remain stable because it would not have to absorb any additional raisins that handlers could not afford to sell in export markets.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This rule adds a new paragraph to § 989.154 of the order's administrative rules and regulations that provides parameters for using an estimated trade demand figure specified in § 989.54(e)(4) of the order to compute volume regulation percentages for 1999–2000 crop NS raisins. This rule provides guidelines for the use of volume regulation if 1999–2000 NS raisin supplies are short for the purposes of maintaining a portion of the industry's export markets and stabilizing the domestic market.

Regarding the impact of the action on producers and handlers, if an estimated trade demand figure is used to compute volume regulation percentages, the final reserve percentage would compute to no more than 10 percent. Producers would thus be paid the field price for at least 90 percent of their crop, but would lose being paid the field price for about 10 percent of their crop that would go into a reserve pool. The field price for NS raisins for the past 5 years has averaged $1,216 per ton. Handlers in turn would purchase 90 percent of their raisins directly from producers at the field price, but would have to buy remaining raisins out of the reserve pool at a higher price (field price plus 3 percent and Committee costs). The "10 plus 10" price of NS reserve raisins has averaged about $100 higher than the field price for the past 5 years, or $1,316 per ton. Proceeds from the "10 plus 10" sales would be used to support export sales.

While there may be some initial costs for both producers and handlers, the long term benefits of this action far outweigh the costs. The Committee believes that with no reserve pool and hence no ERO program, export sales would decline dramatically, perhaps up to 50 percent. Handlers would likely sell into the domestic market raisins that they were unable to sell into lower priced export markets. Additional NS raisins sold into the domestic market, which typically absorbs about 188,000 packed tons, could create instability. The industry would likely lose a substantial portion of its export markets, which now account for about 37 percent (112,000 packed tons) of the industry's annual shipments (300,000 packed tons, excluding government purchases). Committee members have also commented that, once export markets were lost, it would be difficult and costly for the industry to recover those sales.

Maintaining the industry's export markets will, in turn, help the industry maximize its 1999–2000 total shipments and prevent handlers from carrying forward large quantities of inventory into the 2000–2001 crop year. If the industry is unable to maximize its 1999–2000 shipments, carryin inventory could be high which would result in a lower computed trade demand figure for the 2000–2001 crop year. If the industry returns to its pattern of relatively large crops in 2000–2001, a low trade demand and large crop estimate would compute to a low free tonnage percentage. Since producers are paid significantly more for their free tonnage than for reserve tonnage, this would mean reduced returns to producers. Projected reduced 2000–2001 returns to raisin producers, coupled with the risks of rain and labor shortages during harvest, may influence producers to "go green," or sell their raisin-variety grapes to the fresh-grape, wine, or juice concentrate markets. Additional supplies to those outlets could potentially reduce "green" returns as well.

A similar scenario occurred in the California raisin industry in the early 1980's where the industry experienced two consecutive, short crop years. The 1981–82 and 1982–83 crops were short followed by relatively large crops for the remainder of the 1980's. The producer field price for NS raisins was $1,275 per ton for 1981–82 crop raisins, and $1,300 per ton for 1982–83 crop raisins. No volume regulation was implemented in 1982–83. However, a large inventory of high-priced raisins was carried forward into the 1983–84 crop year. When coupled with the largest crop on record at the time, volume regulation was implemented for the 1983–84 crop with the free tonnage percentage at a historically low 37.5 percent. By 1984, the producer field price for free tonnage raisins fell to $700 per ton, causing producers to experience large financial losses. Thus, the industry wants to help avoid a repeat of what happened in the 1980's by utilizing the Federal order to maintain export sales and provide stability in the domestic market.

Several alternatives to this action were considered by the industry. As previously mentioned, the Committee formed a working group to address its concerns. The working group considered utilizing money remaining in the 1997–98 reserve pool to fund some portion of an ERO. About $22 million would be available. However, because there was no 1998–99 reserve, the 1997–98 pool will ultimately fund at least 16 months of an ERO program. Ideally, the Committee would like to see each reserve pool support one year of an ERO program. Unfortunately, because of variances in crop size, the spread in price between the domestic and export markets, and other factors, this goal is not always met. In any event, the Committee agreed that any remaining 1997–98 reserve pool funds could be loaned forward to initiate a 1999–2000 ERO program, but those funds would have to be paid back and ultimately returned to the 1997–98 equity holders.

A second alternative considered by the working group was to fund the ERO through an increased assessment rate. The current assessment rate is $8.50 per ton for raisins acquired by handlers. The Committee estimated that the rate would need to be increased to at least $60 per ton for acquired raisins. The Department had concerns with such an increase as well as whether the ERO could be funded through the order's assessment authority.

A third alternative considered by the working group was to change the order's desirable carryout formula. Desirable carryout is part of the order's trade demand formula and is the amount of

tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available for shipment. Desirable carryout is specified in the order's regulations and is equal to 2½ months of the prior year's shipments. Changing the desirable carryout changes the trade demand computation. The working group considered developing a sliding scale which would match crop estimates with levels of carryout inventory. However, after much discussion, the working group ultimately recommended to the Committee using an estimated trade demand to compute volume regulation percentages next year if NS raisin supplies are short.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. If volume regulation were implemented this year using an estimated trade demand figure, the requirements on handlers would be identical to those requirements imposed in past seasons when volume regulation was implemented. As previously stated, volume regulation has been utilized in all but 10 seasons for NS raisins since the inception of the order in 1949. Thus, handlers are familiar with the requirements.

Furthermore, this action imposes no additional reporting or recordkeeping burden on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's working group meetings held on February 24, March 10, March 18, April 6, 1999, and the subcommittee and Committee meetings on April 13, 1999, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. The Committee held a follow-up meeting on June 10, 1999, to further educate the industry on its recommendation. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

Further, two major industry organizations, Sun-Maid Growers of California (Sun-Maid) and the Raisin Bargaining Association (RBA), have held meetings to provide additional information to their members on the Committee's recommendation. Sun-Maid and the RBA represent about 70 percent of the California raisin industry.

A proposed rule concerning this action was published in the **Federal Register** on June 28, 1999 (64 FR 34571). A 20-day comment period, which ended on July 19, 1999, was provided to allow interested persons to respond to this proposal. Copies of the rule were mailed to all Committee members and alternates, handlers, and producers. The rule was also made available through the Internet by the Office of the Federal Register. Three comments were received.

All three commenters expressed concern with the impact of implementing volume regulation in short crop years on producers. One commenter stated that he supports maintaining the industry's export markets, but only if it is profitable for producers. The commenters also stated that the ERO program benefits handlers with producers assuming the burden of financing the program.

The evidence before the Committee indicates that the domestic market can currently only absorb a limited quantity of California raisins annually, or about 188,000 packed tons (200,000 natural condition tons). If the crop significantly exceeded this level and if no ERO program were established, handlers who could not sell their raisins in export might sell their raisins domestically. Additional NS raisins sold into the domestic market would create instability and reduce producer returns.

In addition, while the domestic market generates the highest return for producers (about $1,216 per ton), the export market generates the second highest level of return (about $800 per ton). Other outlets for raisins such as government purchase, diversion, and distilleries or animal feed provide much lower returns. Thus, since the domestic market can only absorb a limited amount of raisins, it is prudent to help ensure that as much of the remainder of the crop as possible be sold to the next profitable outlet—export.

Two of the commenters expressed concern with the relationship between the world supply of raisins and the proposal's concern with a potential loss of export markets. Early season forecasts predict relatively smaller crops in some other raisin-producing countries. The commenters contend that, if the world supply of raisins this year is short, along with a short California crop, the California raisin industry would not lose its export markets because other raisin-producing countries would not be able to supply those markets.

Even in light of a relatively short world supply of raisins, however, an ERO program would be necessary to continue to help California raisins attract buyers in export markets. Raisins are not a necessary product for consumers, and export markets would disappear if prices sharply advanced to free tonnage levels. It would be very difficult and costly for the industry to regain export markets once they were lost.

One of the commenters expressed concern with the composition of the Committee, and another commenter expressed concern with the composition of the working group which deliberated the issue. Specifically, one commenter contends that the Committee is suppose to be made up of an equal number of producers and handlers, and that many handlers who are also producers hold producer positions on the Committee. The commenter contends that this results in Committee discussions which usually favor the interests of handlers rather than producers.

Consistent with the terms of the order, the Committee is composed of 47 members—35 producers, 10 handlers, 1 representing the RBA, and 1 public member. Nothing under the current order prohibits a producer member from having a handler interest, or a handler member from having a producer interest. In addition, the Committee can change its composition through formal rulemaking (public hearing and producer referendum) if desired.

As stated above, one commenter expressed concern with the make-up of the working group which held preliminary meetings to discuss this issue. The commenter contends that the working group was composed of five Committee members—one public member and four members affiliated with a handler. However, the working group was composed of 13 Committee members representing a cross-section of producers and handlers. Further, all of the working group meetings were open to any interested person who would have liked to attend.

The Department believes that the group to which the commenter is referring is the group of Committee members who responded to industry questions on this issue at the meeting on June 10, 1999. That group consisted of only a few members of the original

working group who visited the Department's headquarters' office in April 1999 to discuss the Committee's proposal.

Finally, regardless of the recommendation of the Committee or its working group, it is the Department of Agriculture that makes the decision to adopt this rule after a thorough consideration of all the evidence and views of the entire industry.

Accordingly, no changes have been made to the rule as proposed, based on the comments received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee, the comments received in response to the proposed rule, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This action needs to be in effect by August 12, 1999, which is the date of the Committee's meeting where the 1999–2000 trade demand will be announced; (2) producers and handlers are aware of this action which was recommended at a public meeting; and (3) a 20-day comment period was provided in the proposed rule, and the comments received in response to that rule were addressed herein.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. The undesignated center heading preceding § 989.154 is revised to read "Marketing Policy."

3. Section 989.154 is revised to read as follows:

§ 989.154 Marketing policy computations.

(a) *Desirable carryout levels.* The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to total shipments of free tonnage of the prior crop year during August, September, and one-half of October, for each varietal type, converted to a natural condition basis: *Provided,* That, should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August, September, and one-half of October during one of the three crop years preceding the prior crop year.

(b) *Estimated trade demand.* Pursuant to § 989.54(e)(4), estimated trade demand is a figure different than the trade demand computed according to the formula in § 989.54(a). The Committee shall use an estimated trade demand to compute preliminary and interim free and reserve percentages, or determine such final percentages for recommendation to the Secretary for 1999–2000 crop Natural (sun-dried) Seedless (NS) raisins if the crop estimate is equal to, less than, or no more than 10 percent greater than the computed trade demand: Provided, That the final reserve percentage computed using such estimated trade demand shall be no more than 10 percent, and no reserve shall be established if the final 1999–2000 NS raisin crop estimate is less than 235,000 natural condition tons.

§ 989.157 [Amended]

4. A new undesignated center heading is added preceding § 989.157 to read "Quality Control."

Dated: August 9, 1999.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–20877 Filed 8–9–99; 1:55 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 390

[Docket No. 99–034F]

Electronic Freedom of Information Act

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the administrative procedures of the Food Safety and Inspection Service (FSIS) by implementing the provisions of the Department of Agriculture's (USDA) final rule entitled USDA Freedom of Information Act. Issued on May 4, 1999, the departmental rule authorizes substantive administrative changes to be made by agencies to conform to the requirements of the Electronic Freedom of Information Act (EFOIA) Amendments of 1996 and instructs agencies to promulgate regulations implementing certain of its requirements. Therefore, FSIS is amending its regulations to comply with the departmental regulations. The regulations establish a fourth category of "reading room records" in electronic format and require the Agency to make all records it has created on or after November 1, 1996 available electronically on a World Wide Web site by November 1, 1997. The electronic availability obligation applies not only to records in the new fourth reading room category but also to more traditional reading room records created by the Agency, such as staff manuals and other materials regularly requested by the public.

DATES: This final rule is effective August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Hicks, Director, Executive Management and Coordination Staff, FSIS, at (202) 690–3881 or by FAX at (202) 205–0158.

SUPPLEMENTARY INFORMATION:

Background

The Freedom of Information Act (FOIA) evolved from the 1958 Administrative Procedure Act disclosure requirement. FOIA was enacted in 1966. In 1967, it was codified as section 552 of Title 5 of the United States Code (U.S.C.). FOIA establishes a presumptive right for any member of the public to obtain identifiable, existing records of Federal departments and agencies without indicating a reason or need for seeking the information. Any member of the public may use the FOIA to gain access to Government information. However, agencies also may deny access to records, or portions of records, which fall under enumerated exemptions, such as information that is classified for national defense or business information involving trade secrets.

As is the case with all Federal agencies, FSIS is subject to the provisions of FOIA, which require agencies to make certain documents available for public inspection and duplication and to process requests from the public for documents. FOIA requests received by FSIS are often for documents produced daily by inspection personnel stationed in more than 6,000 meat, poultry, and egg processing plants throughout the country and in U.S. territories.

FSIS receives approximately 1,000 FOIA requests each year. About 40 percent of the requests processed by the

Agency involve documents of 200 pages or more. However, document length can range from a single page to 5,000 pages. Because Federal agencies are required to maintain copies of any information that is released to the public, FSIS now maintains voluminous paper files associated with its FOIA function.

In 1996, Congress enacted the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231; 110 Stat. 3048). These amendments acknowledge the widespread use of computers and other means of electronic telecommunications by Federal agencies and address the subject of electronic records for the first time in the history of the statute.

USDA issued its implementing regulation on May 4, 1999 (63 FR 24467). Specifically, the final rule requires FSIS and other departmental agencies to make available on-line, for public inspection and reproduction, copies of any records that, because of the nature of their subject matter, are likely to elicit additional requests. The regulation requires that agencies provide information in the form requested (for example, paper or computer diskette) if the information is readily reproducible in that form. The regulation also extends the time for responding to a FOIA request from 10 to 20 working days (excepting Saturdays, Sundays, and Federal holidays), modifies the requirements for reporting FOIA activities to Congress, and specifies cases in which agencies may extend the time in which it will respond to a FOIA request. The regulation also includes provisions regarding the availability of documents in electronic form, the treatment of electronic records, the establishment of electronic reading rooms, and the tracking and expedited processing of requested materials.

Other important features:

- Agencies may process requests according to the level of effort rather than on a strict first-in, first-out basis.
- When denying a request, an agency must try to estimate the volume of any denied material and provide that estimate to the requester, unless doing so would harm an interest protected by an exemption.
- Agencies redacting electronically transmitted materials must provide a record of the location and extent of any deletions made.
- Certain categories of requesters would receive priority treatment of their requests if failure to obtain information would pose an imminent threat to life or physical safety or if there is an urgency in informing the public about Federal activity.
- If the extra 10 working days is still insufficient time to respond to an unusually burdensome request, an agency must inform the requester that the request cannot be processed within the statutory time limits. The agency will provide the requester an opportunity to limit the scope of the request or arrange a negotiated deadline for processing the request. If the requester refuses and then seeks judicial review, that refusal will be considered as a factor in determining whether "exceptional circumstances" exist.
- "Exceptional circumstances" will not include a delay that results from a predictable agency workload of FOIA requests unless the agency demonstrates reasonable progress in reducing its backlog.

This final rule does not affect substantively any member of the public, but constitutes a modification in administrative procedures that requires FSIS to update its public information system by adding an electronic component. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that public participation in this rulemaking procedure is impracticable and unnecessary, and good cause is found for making this final rule effective less than 30 days after publication in the **Federal Register**.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. Executive Order 12866 and Regulatory Flexibility Act.

FSIS has determined that this final rule is not a significant regulatory action for the following reasons. The rule does not have an annual effect on the economy of $100 million or more and does not adversely affect the economy or any segment of the economy. Therefore, FSIS has determined that this final rule is not a significant rule under Executive Order 12866, and it has not undergone review by the Office of Management and Budget (OMB).

Executive Order 12898

Pursuant to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," FSIS has considered the potential impact of this final rule on environmental and health conditions on low-income and minority communities and determined that there will be no impact. This rule represents a modification in administrative procedures.

Paperwork Reduction Act

The paperwork requirements for this final rule have been approved by OMB under control number 0583–0092.

This rulemaking is part of the Reinventing Government effort. The intent of this action is to reduce the number of future requests for identical information and to lessen the paperwork burden and duplication costs by encouraging the Agency to use newer technology to increase public access to Government information.

List of Subjects in 9 CFR Part 390

Freedom of information.

For the reasons discussed in the preamble to this rule, FSIS is amending 9 CFR part 390 of the Federal meat and poultry products inspection regulations as follows:

PART 390—FREEDOM OF INFORMATION

1. The authority citation for part 390 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 7 CFR 1.3, 2.7.

2. Section 390.1 is revised to read as follows:

§ 390.1 Scope and purpose.

This part is issued pursuant to the Freedom of Information Act (FOIA) as amended (5 U.S.C. 552), and in accordance with the directives of the Department of Agriculture regulations in part 1, subpart A, of Title 7. The availability of records, including electronic records created on or after November 1, 1996, of the Food Safety and Inspection Service (FSIS), and the procedures by which the public may request such information, will be governed by the FOIA and by the Department regulations as implemented and supplemented by the regulations in this part.

3. Section 390.2 is revised to read as follows:

§ 390.2 Published materials.

FSIS rules and regulations relating to its regulatory responsibilities and administrative procedures are published and made available to the public in the **Federal Register** and codified in chapter III, title 9, of the Code of Federal Regulations. FSIS also issues numerous publications relating to Agency programs, which implement the laws listed in the Delegation of Authority, 7 CFR 2.15(a). Most of these publications

are available free from the USDA Publications Division, Office of Governmental and Public Affairs, or at established rates from the Superintendent of Documents, U.S. Government Printing Office, Washington, 20402–9328.

4. Section 390.3 is revised to read as follows:

§ 390.3 Indexes, reference guide, and handbook.

(a) Pursuant to the regulations in 7 CFR 1.4(c), FSIS will maintain and make available for public inspection and copying an index providing identifying information regarding the materials required to be published or made available under the Freedom of Information Act (5 U.S.C. 552(a)(2)). The Agency will make the index available by computer telecommunications by December 31, 1999. Quarterly publication of the index is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of quarterly publication. The Agency will provide copies of any index, upon request, at a cost not to exceed direct cost of duplication.

(b) FSIS is responsible for preparing reference material or a guide for requesting records or information from the Agency. This guide also will include an index of all major information systems and a description of major information and record locator systems.

(c) FSIS will prepare a handbook for obtaining information from the Agency. The handbook will be available on paper and through electronic means, and will discuss how the public can use it to access Agency FOIA annual reports. Similarly, the annual reports will refer to the handbook and how to obtain it.

5. Section 390.4 is revised to read as follows:

§ 390.4 Facilities for inspection and copying.

Facilities for public inspection and copying of the material described in §§ 390.2 and 390.3 of this part will be provided by FSIS pursuant to 7 CFR 1.5(a) in a reading area, on business days between the hours of 8:30 a.m. and 4:30 p.m., upon request to the Freedom of Information Coordinator or designee at the following address:

Freedom of Information Act Coordinator (FOIA), Food Safety and Inspection Service, Department of Agriculture, Washington, DC 20250–3700

6. Section 390.5 is revised to read as follows:

§ 390.5 Request for records.

(a) The FOIA Coordinator of FSIS is authorized to receive requests and to exercise authority under 7 CFR 1.3(a) to—

(1) Make determinations to grant or deny such requests,

(2) Extend the 20-day deadline,

(3) Make discretionary releases of exempt records, except where disclosure is specifically prohibited by Executive Order, statute, and applicable regulations,

(4) Consider expedited processing when appropriate,

(5) Make determinations regarding the charging of fees pursuant to the established schedule, and

(6) Determine the applicability of 7 CFR 1.5 to requests for records.

(b) Requests for FSIS records or information will be made in writing in accordance with 7 CFR 1.5 and submitted to the FSIS Freedom of Information Act Coordinator at the following address:

Freedom of Information Act Coordinator (FOIA Request), Food Safety and Inspection Service, Department of Agriculture, Washington, DC 20250–3700

The submitter will identify each record with reasonable specificity as prescribed in 7 CFR 1.3. All requests to inspect or obtain copies of any record or to obtain a fee waiver must be submitted in writing.

(c) In exercising authority under 7 CFR 1.3(a)(3) to grant and deny requests, the Coordinator or designee will comply with subsection (b) of the Freedom of Information Act (5 U.S.C. 552(b)), as amended, which requires that any reasonably segregated portion of a document will be provided to a person requesting the document after deletion of any portions within the scope of the request for which an exemption is being claimed under the Act. Therefore, unless the disclosable and nondisclosable portions are so inextricably linked that it is not reasonably possible to separate them, the document will be released with the nondisclosable portions deleted. The Coordinator or designee may exercise discretion as limited by 7 CFR l.15 to release the entire document or make only a minimum number of deletions. If portions of a document in electronic format have been redacted, the Agency must indicate, on the released portion of the document, the amount of information that has been deleted from a record, unless that indication would harm an interest protected by an applicable exemption.

7. Section 390.6 is revised to read as follows:

§ 390.6 Fee schedule.

Department regulations provide for a schedule of reasonable standard charges for document search and duplication. See 7 CFR 1.17. Fees to be charged are in 7 CFR part 1, subpart A, appendix A.

8. Section 390.7 is revised to read as follows:

§ 390.7 Appeals.

(a) If the request for information or for a waiver of search or duplication is denied, in whole or in part, the FOIA Coordinator or designee will explain in the letter of response the grounds for any denial of access and offer the requester an opportunity to file an administrative appeal, pursuant to 7 CFR 1.3(a)(4). The appeal should be filed in writing within 45 days of the date of denial (departmental regulations, 7 CFR 1.14) and addressed as follows:

Administrator, Food Safety and Inspection Service (FOIA Appeals), Department of Agriculture, Washington, DC 20250–3700

(b) The FSIS Administrator is authorized under 7 CFR 1.3(a)(4) to extend the 20-day deadline, make discretionary releases, and make determinations regarding the charging of fees.

9. Section 390.8 is revised to read as follows:

§ 390.8 Agency response to requests.

(a) The response to Freedom of Information requests and appeals by officials named in §§ 390.5 and 390.7 of this part shall be governed by and made in accordance with 7 CFR 1.7 and the regulations in this part.

(b) If requests for records and information are received by field offices, the field office will immediately notify the FOIA Coordinator or designee by telephone and transmit the request to the FOIA office. In rare instances, the FOIA Coordinator or designee will authorize a release of the requested records to the field office receiving the request. The request will be considered as having been received on the date of arrival in the office of the Coordinator or designee. Any person whose request for records has been granted may inspect and copy the records (or copies) at the office listed in § 390.4 of this part in accordance with the provisions of that section and with § 390.6. Copies also may be obtained by mail.

Done in Washington, DC, on August 4, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–20821 Filed 8–11–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–73–AD; Amendment 39–11252; AD 99–17–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, and 205A–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 204B, 205A, and 205A–1 helicopters, that currently requires modifying and inspecting the vertical fin spar (fin spar) for cracks. This amendment requires modification and visual and dye-penetrant inspections of the fin spar for cracks, and if a crack is discovered, replacing the fin spar. A tapping test for disbonding and replacing certain fin spars within 12 calendar months is also required. This amendment is prompted by an accident involving a Model 205A–1 helicopter and four other accidents involving helicopters of similar type design. The actions specified by this AD are intended to prevent failure of the fin spar, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective September 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry Edmiston, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5158, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–18–11, Amendment 39–10520 (63 FR 26429), applicable to BHTI Model 204B, 205A, and 205A–1 helicopters, was published in the **Federal Register** on May 26, 1999 (64 FR 28420). That action proposed to require initial and repetitive inspections of the fin spar for cracks. Also proposed was a requirement to replace the fin spar within 12 calendar months. Replacing the fin spar with a FAA-approved fin spar configuration that satisfies the structural fatigue requirement of repeated high torque events would constitute a terminating action for the requirements of the AD. That action was prompted by an accident involving a Model 205A–1 helicopter and four other accidents involving helicopters of similar type design.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 150 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the initial inspection and 0.5 work hour to accomplish each repetitive inspection. Replacing the fin spar will take approximately 150 work hours. The average labor rate is $60 per work hour. The manufacturer has stated that parts will be provided at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $76,500 for the initial inspection and one repetitive inspection, and $1,350,000 to replace the fin spars on the entire fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10520 (63 FR 26429, May 13, 1998), and by adding a new airworthiness directive (AD), Amendment 39–11252, to read as follows:

AD 99–17–03 Bell Helicopter Textron, Inc.: Amendment 39–11252. Docket No. 98–SW–73–AD. Supersedes AD 97–18–11, Amendment 39–10520, Docket No. 97–SW–32–AD.

Applicability: Model 204B helicopters with vertical fin spar (fin spar), part number (P/N) 205–030–899–001, –089, P/N 205–030–846–001, –003, –047, –049, or P/N 204–030–825–063, –065, installed, and Model 205A and 205A–1 helicopters, with fin spar, P/N 205–030–899–101, P/N 205–030–846–087, –089, or P/N 205–032–851–003, –007, –009, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fin spar, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 204B helicopters:

(1) Within 8 hours time-in-service (TIS), modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 5 of Bell Helicopter Textron (BHTI) Alert Service Bulletin (ASB) 204B–98–50, dated October 22, 1998.

(i) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspection, apply MIL–PRF–81352 TYI clear lacquer or equivalent to the inside of the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent, over the clear lacquer. To facilitate subsequent inspections, do not replace the two lower rivets. See Figure 2 of BHTI ASB 204B–98–50, dated October 22, 1998.

Note 2: BHTI–MED–SRM–1, pages 3–36 through 3–38, pertain to the installation of Hi-Loks.

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. An existing edge distance less than 1.5 times the diameter of the drill or reamed hole must have FAA approval of the reworked area before proceeding.

(iv) Fasten the forward left-hand fin skin to the spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of BHTI ASB 204B–98–50, dated October 22, 1998.

(v) Refinish the reworked area.

(2) After initial modification and inspection of the fin, thereafter inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3 of BHTI ASB 204B–98–50, dated October 22, 1998.

(ii) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspection, accomplish Part I (A2), paragraphs 5 and 6 of BHTI ASB 204B–98–50, dated October 22, 1998.

(3) Within 25 hours TIS, modify and inspect the vertical fin as follows:

(i) Accomplish Part I (C1), paragraph 1 of BHTI ASB 204B–98–50, dated October 22, 1998.

(ii) Remove sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the "skin cutline", approximately fin station 64.31 (see Figure 2 of BHTI ASB 204B–98–50, dated October 22, 1998).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. An existing edge distance less than 1.5 times the diameter of the drill or reamed hole must have FAA approval of the reworked area before proceeding.

(iv) Accomplish Part I (C1), paragraphs 3, 4, and 6 of BHTI ASB 204B–98–50, dated October 22, 1998.

(v) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part I (C1), paragraphs 10 through 14 of BHTI ASB 204B–98–50, dated October 22, 1998.

(4) After the initial modification and dye-penetrant inspection of the fin spar, thereafter at intervals not to exceed 300 hours TIS, inspect the fin spar as follows:

(i) Accomplish Part I (C2), paragraphs 1, 2, 3, 4, 5, and 7 of BHTI ASB 204B–98–50, dated October 22, 1998.

(ii) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) Accomplish Part I (C2), paragraphs 11 through 14 of BHTI ASB 204B–98–50, dated October 22, 1998.

(5) Within 25 hours TIS, and thereafter at intervals not to exceed 300 hours TIS, inspect the fin spar as follows:

(i) Accomplish Part I (B), paragraphs 1 through 13 of BHTI ASB 204B–98–50, dated October 22, 1998.

(ii) Repair any disbonding discovered during the inspection before further flight.

(6) Within 12 calendar months, remove fin spar P/N 205–030–899–001, or –089, or P/N 205–030–846–001, –003, –047, or –049, or P/N 204–030–825–063, or –065. Replace it with an airworthy fin spar configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high torque events and is approved by the Manager, Rotorcraft Standards Staff.

(7) Installation of a replacement fin spar approved by the Manger, Rotorcraft Standards Staff, constitutes a terminating action for the requirements of this AD.

(b) For Model 205A and 205A–1 helicopters:

(1) Within 8 hours TIS, modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 5 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(i) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspection, apply MIL–PRF–81352 TYI clear lacquer or equivalent to the inside of the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent, over the clear lacquer. To facilitate subsequent inspections do not replace the two lower rivets. See figure 2 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. An existing edge distance less than 1.5 times the diameter of the drill or reamed hole must have FAA approval of the reworked area before proceeding.

(iv) Fasten the forward left-hand fin skin and the retainer, P/N 205–032–851–045, to the fin spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998. Reinstall clip and radius block (if existing) removed in paragraph 2 of Part 1 (A1) of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(v) Refinish the reworked area.

(2) After initial modification and inspection of the vertical fin, thereafter, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(ii) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspection, accomplish Part I (A2), paragraphs 5 and 6, of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(3) Within 25 hours TIS, modify and inspect the vertical fin as follows:

(i) Accomplish Part I (C1), paragraph 1 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(ii) Remove the clip, P/N 212–030–099–091, and radius block, P/N 212–030–099–095, if present. Remove the retainer, P/N 205–032–851–045, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the "skin cutline", at approximately Fin Station 66.31 (see Figure 2 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. An existing edge distance less than 1.5 times the diameter of the drill or reamed hole must have FAA approval of the reworked area before proceeding.

(iv) Accomplish Part I (C1), paragraphs 3, 4, and 6 in BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(v) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part I (C1) paragraphs 10 through 14 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(4) After the initial modification and dye-penetrant inspection of the fin spar, thereafter, at intervals not to exceed 300 hours TIS, inspect the fin spar as follows:

(i) Accomplish Part I (C2), paragraphs 1, 2, 3, 4, 5, and 7 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(ii) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding

discovered during the inspection before further flight.

(iii) Accomplish Part I (C2), paragraphs 11 through 14 of ASB 205–98–71, Revision A, dated September 21, 1998.

(5) Within 25 hours TIS, and thereafter at intervals not to exceed 300 hours TIS inspect the fin spar as follows:

(i) Accomplish Part I (B), paragraphs 1 through 13 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(ii) Repair any disbonding discovered during the inspection before further flight.

(6) Within 12 calendar months, remove fin spar, P/N 205–030–899–001, or –089, or P/N 205–030–846–087, or –089, or P/N 205–032–851–003, –007, or –009. Replace it with an airworthy fin spar configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high torque events and is approved by the Manager, Rotorcraft Standards Staff, or replace it with fin spar assembly, P/N 205–530–514–103, as specified in BHTI ASB 205–98–73, dated September 25, 1998.

(7) Installing fin spar, P/N 205–530–514–103, or a fin spar that has been approved by the Manager, Rotorcraft Standards Staff, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Rotorcraft Directorate, Rotorcraft Certification Office. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections and modifications shall be done in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin 204B–98–50, dated October 22, 1998; 205–98–71, Revision A, dated September 21, 1998; or 205–98–73, dated September 25, 1998, as applicable. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 16, 1999.

Issued in Fort Worth, Texas, on August 4, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–20754 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–A–AWP–11]

Airport Name Change and Revision of Legal Description of Class D, Class E2, and Class E4 Airspace Areas; Barbers Point, NAS, HI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of Barbers Point NAS, HI, and it's associated airspace areas to Kalaeola Airport and revises the legal descriptions of the related Class D, Class E2, and Class E4 airspace areas by changing the geographical reference point from the Barbers Point Tactical Air Navigation (TACAN) to a new point of origin. The U.S. Navy has decommissioned the Barbers Point TACAN. The current airspace areas associated with Barbers Point NAS are described in FAA Order 7400.9F, Airspace Designations and Reporting Points, using the Barbers Point TACAN. The airport name change and decommissioning of the TACAN have made this action necessary.

EFFECTIVE DATE: 0901 UTC, September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

Under federal mandates of the Base Realignment and Closure (BRAC) Act, the United States Navy vacated Barbers Point NAS on July 1, 1999. Effective at 2200 Coordinated Universal Time on July 2, 1999, ownership of the airport was transferred to the State of Hawaii and the name changed to Kalaeloa Airport. In conjunction with the Navy's departure, the existing military TACAN and Instrument Approach Procedures to Barbers Point NAS were decommissioned. The current airspace areas associated with Barbers Point NAS are described in FAA Order 7400.9F, Airspace Designations and Reporting Points, using the Barbers Point TACAN. The intent of this action is to change the name of Barbers Point NAS and it's associated airspace areas to Kalaeloa Airport and revise the legal description of the related Class D, Class E2, and Class E4 airspace areas by changing the geographical reference point from the Barbers Point Tactical Air Navigation (TACAN) to a new point of origin without changing the dimensions of operating requirements of the existing airspace. The transfer of ownership of the airport does not coincide with a scheduled publication date for the appropriate aeronautical charts. The next Hawaiian Islands Visual Flight Rules (VFR) Sectional Aeronautical Chart will be published on November 4, 1999 and will reflect these changes.

Class D, Class E2, and Class E4 airspace areas are published respectively in Paragraphs 5000, 6002, and 6004 of FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 20, 1998, and effective September 16, 1998, through September 15, 1999, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document would be published subsequently in this Order.

The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations changes the name of Barbers Point NAS and it's associated airspace areas to Kalaeloa Airport and revises the legal description of the related Class D, Class E2, and Class E4 airspace areas by changing the geographical reference point from the Barbers Point Tactical Air Navigation (TACAN) to a new point of origin without changing the dimensions or operating requirements of the existing airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine mater that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP HI D Barbers Point NAS, HI [Removed]

* * * * *

AWP HI D Kalaeloa Airport, Kapeloi, HI—[New]

Kalaeloa Airport, HI
(Lat 21°18′21″ N, long. 158°04′20″ W)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.3 mile radius of Kalaeloa Airport, excluding the airspace within the Honolulu, HI, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AWP HI E2 Barbers Point NAS, HI [Removed]

* * * * *

AWP HI E2 Kalaeloa Airport, Kapeloi, HI [New]

Kalaeloa Airport, HI
(Lat 21°18′21″ N, long. 158°04′20″ W)

That airspace extending upward from the surface within a 4.3 mile radius of Kalaeloa Airport, excluding the airspace within the Honolulu, HI, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AWP HI E4 Barbers Point NAS, HI [Removed]

* * * * *

AWP HI E4 Kalaeloa Airport, Kapeloi, HI [New]

Kalaeloa Airport, HI
(Lat. 21°18′21″ N, long. 158°04′20″ W)
Point of Origin
(Lat. 21°18′21″ N, long. 158°03′54″ W)

That airspace extending upward from the surface within 3 miles each side of the 242° bearing from the Point of Origin, extending from the 4.3 mile radius of Kalaeloa Airport to 8.5 miles west of the Point of Origin and within 1.8 miles each side of the 289° bearing from the Point of Origin, extending from the 4.3 miles radius of the airport to 6.6 miles west of the Point of Origin, excluding the airspace within the Honolulu, HI, Class B airspace area.

Issued in Los Angeles, California, on July 27, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–20524 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 99F–0001]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucralose

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sucralose as a general purpose sweetener for food. This action is in response to a petition filed by McNeil Specialty Products Co.

DATES: This regulation is effective August 12, 1999; written objections and requests for a hearing by September 13, 1999.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3106.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** on January 11, 1999 (64 FR 1634), FDA announced that a food additive petition (FAP 8A4624) had been filed by McNeil Specialty Products, Co., 501 George St., New Brunswick, NJ 08903–2400. The petition proposed that the food additive regulations be amended at § 172.831 (21 CFR 172.831) to expand the permitted uses of sucralose to allow for use as a general purpose sweetener in food. FDA previously approved sucralose for use in 15 food categories under § 172.831 (64 FR 16417, April 3, 1998).

II. Identity

Sucralose is a disaccharide that is made from sucrose in a five-step process that selectively substitutes three atoms of chlorine for three hydroxyl groups in the sugar molecule. It is a free-flowing, white crystalline solid, product at an approximate purity of 98 percent, that is soluble in water and stable both in crystalline form and in most aqueous solutions. The sweetness intensity for sucralose in 320 to 1,000 times that of sucrose, depending on the food application.

Hydrolysis of sucralose may occur under conditions of prolonged storage at elevated temperatures in highly acidic aqueous food products. The hydrolysis products are the monosaccharides, 4-chloro-4-deoxy-galactose (4-CG) and 1,6-dichloro-1,6-dideoxyfructose (1,6-DCF).

III. Evaluation of Safety

In support of safety for the proposed expanded uses of sucralose, the petitioner referenced the toxicological safety data base submitted in food additive petition (FAP) 9A3987 that established the safety of the currently approved uses. Also referenced were the identity, manufacturing process, and specifications for the sweetener. In the new petition (FAP 8A4624), the petitioner submitted data concerning: (1) Use and typical use levels; (2) self-limiting levels; (3) proof of technical effect; (4) exposure; (5) stability; and (6) analysis in foods for both sucralose and its potential hydrolysis products.

In order to determine whether sucralose can be safety used as a general

purpose sweetener, the agency reevaluated the currently established acceptable daily intake (ADI) for sucralose, 5 milligrams per kilogram body weight per day (mg/kg bw/d) (Ref. 1) and determined that this ADI is still appropriate (Ref. 2). FDA also estimated new daily intakes (EDI) for the 90th percentile consumer of sucralose to include the expanded uses. The new EDI was derived from projections based on the amount of sucralose that may be used in the currently regulated food categories, the proposed food categories, and on data regarding the consumption levels of these particular foods. Based upon the data in the petition and other information, the agency established a no effect level (NOEL) for the hydrolysis products of sucralose at 30 mg/kg bw/d (Ref. 2).

To aid in the establishment of new exposure estimates for sucralose and its hydrolysis products, the petitioner submitted a Market Research Corporation of America (MRCA) report that addresses foods in which sucralose may be used and an updated report on the potential exposure for the hydrolysis products. From this information, the agency has determined that based on the expanded uses, the cumulative exposure to sucralose could increase to 2.4 mg/kg bw/d and the cumulative exposure to its hydrolysis products to 0.007 mg/kg bw/d (Ref. 3). The agency concludes: Exposure to sucralose will remain below the previously established ADI of 5.0 mg/kg bw/d for sucralose, and exposure to the hydrolysis products will remain far below the no effect level of 30 mg/kg bw/d (Refs. 2 and 3).

IV. Conclusions

From the review of all the information available on sucralose and its hydrolysis products, the agency concludes that sucralose may be safely used as a sweetener in food generally (Refs. 2 and 3).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 13, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Addendum memorandum from Whiteside, Scientific Support Branch, FDA, to Anderson, Novel Ingredients Branch, FDA, November 13, 1997.

2. Memorandum from Whiteside, Division of Health Effects Evaluation, FDA, to Anderson, Regulatory Policy Branch, February 25, 1999.

3. Memorandum from DiNovi, Division Product Manufacture and Use, FDA, to Anderson, Division of Product Policy, FDA, October 22, 1998.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.831 is amended by removing the introductory paragraph and by revising paragraph (c) to read as follows:

§ 172.831 Sucralose.

* * * * *

(c)The additive may be used as a sweetener in foods generally, in accordance with current good manufacturing practice in an amount not to exceed that reasonably required to accomplish the intended effect.

* * * * *

Dated: August 5, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20888 Filed 8–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Sulfadimethoxine, Ormetoprim

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Roche Vitamins, Inc. The supplemental NADA provides for a change in the name of a duck pathogen. Infections of the pathogen are controlled by use of

sulfadimethoxine/ormetoprim Type C medicated feed.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

SUPPLEMENTARY INFORMATION: Roche Vitamins, Inc., 45 Waterview Blvd., Parsippany, NJ 07054–1298, filed a supplement to NADA 40–209 that provides for use of Rofenaid® 40 (113.5 grams per pound (g/lb) sulfadimethoxine with 68 g/lb ormetoprim) to make Type C medicated duck feeds containing 454 g per ton (/t) sulfadimethoxine with 272.4 g/t ormetoprim. The Type C medicated feeds are used as an aid in the control of bacterial infections in ducks. The supplement provides for a change of nomenclature of one pathogen from *Pasteurella anatipestifer* to *Riemerella anatipestifer* based on the results of studies obtained from DNA-rRNA hybridization analyses and determinations of DNA ratios and from analyses of protein and fatty acids. According to the published report (Ref. 1), the causative agent of the disease known as "septicemia anserum exsudativa" constitutes a separate taxon within the *Flavobacterium-Cytophaga* rRNA homology cluster and is named *R. anatipestifer*. This organism is distributed world wide and causes septicemia in ducks, geese, and turkeys. The supplemental NADA was approved as of June 15, 1999, and the regulations are amended in 21 CFR 558.575 (d)(4)(ii)(a) to reflect the change in nomenclature.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a copy of the information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. *International Journal of Systematic Bacteriology*, p. 768–776, October, 1993.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.575 [Amended]

2. Section 558.575 is amended in paragraph (d)(4)(ii)(*a*) by removing the first "*P.*" and adding in its place "*Riemerella*".

Dated: August 2, 1999

Clair M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine

[FR Doc. 99–20844 Filed 8–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TS 8835]

RIN 1545–AX27

Furnishing Identifying Number of Income Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations that allow income tax return preparers to elect an alternative to their social security number (SSN) for purposes of identifying themselves on returns they prepare. The regulations are needed to implement changes made to the applicable law by the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations affect individual preparers who elect to identify themselves using a number other than their SSN. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective August 12, 1999.

Applicability Date: For dates of applicability of these regulation, see §§ 1.6109–2(d) and 1.609–2T(d).

FOR FURTHER INFORMATION CONTACT: Andrew J. Keyso, (202) 622–4910 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 6109(a)(4) of the Internal Revenue Code provides that any return or claim for refund prepared by an income tax return preparer must bear the identifying number of the preparer as required by regulations prescribed by the Secretary. Prior to its amendment by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206, 112 Stat. 685 (RRA '98)), section 6109(a) provided that the identifying number of an individual preparer was that preparer's social security number (SSN).

Section 3710 of RRA '98 amended section 6109(a) by removing the requirement that an individual preparer's identifying number be the preparer's SSN. Instead, the Secretary may prescribe alternatives to the SSN for purposes of identifying individual preparers.

Explanation of Provisions

On December 21, 1998, the IRS published Notice 98–63, 1998–51 IRB 15, to inform preparers of the IRS's intention to develop a system of alternative identifying numbers. This document contains amendments to the Income Tax Regulations (26 CFR part 1) to allow individual preparers to either use their SSN or elect an alternative identifying number for purposes of identifying themselves on returns they prepare. The IRS will develop a form on which preparers may apply for an alternative identifying number.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the

Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. For the applicability of the Regulatory flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble of the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Andrew J. Keyso, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1,6109–2 is amended by:

1. Revising the first sentence of paragraph (a) introductory text;
2. Adding paragraph (d).

The revision and addition read as follows:

§ 1.6109–2 Furnishing identifying number of income tax return preparer.

(a) *Furnishing identifying number.* For returns or claims for refund filed prior to January 1, 2000, each return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code prepared by one or more income tax return preparers must bear the identifying number of the preparer required by § 1.6695–1(b) to sign the return or claim for refund. * * *

* * * * *

(d) *Effective date.* Paragraph (a) of this section and this paragraph (d) apply to returns or claims for refund filed prior to January 1, 2000. For returns or claims for refund filed after December 31, 1999, see § 1.6109–2T(a).

Par. 3. Section 1.6109–2T is added to read as follows:

§ 1.6109–2T Furnishing identifying number of income tax return preparer (temporary).

(a) *Furnishing identifying number.* (1) Each return of tax, or claim for refund of tax, under subtitle A of the Internal Revenue Code prepared by one or more income tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) to sign the return or claim for refund. In addition, if there is a partnership or employment arrangement between two or more preparers, the identifying number of the partnership or employer must also appear on the return or claim for refund. For the definition of the term income tax return preparer (or preparer) see section 7701(a)(36) and § 301.7701–15 of this chapter.

(2) The identifying number of a preparer who is an individual (not described in paragraph (a)(3) of this section) is that individual's social security account number, or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(3) The identifying number of a preparer (whether an individual, corporation, or partnership) who employs or engages one or more persons to prepare the return or claim for refund (other than for the preparer) is that preparer's employer identification number.

(b) and (c) [Reserved]. For further guidance, see § 1.6109–2(b) and (c).

(d) *Effective date.* Paragraph (a) of this section and this paragraph (d) apply to returns or claims for refund filed after December 31, 1999. For returns or claims for refund filed prior to January 1, 2000, see § 1.6109–2(a).

Approved: August 3, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–20485 Filed 8–11–99; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–129–FOR; State Program Amendment No. 98–2]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Indiana Department of Natural Resources (IDNR) proposed revisions to the Indiana program rules pertaining to permitting, collateral bonds, performance bond release, and citizen's request for state inspection. The revisions mainly relate to the public participation and administrative requirements of these rules. Indiana intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Proposed Amendment

By letter dated May 7, 1999 (Administrative Record No. IND–1647), the IDNR sent us an amendment to the Indiana program under SMCRA. The IDNR sent the amendment at its own initiative. The IDNR proposed to amend the Indiana Administrative Code (IAC) at 310 IAC 12–3, 12–4, and 12–6 regarding permit applications, collateral bonds, performance bond release, and citizen's request for state inspection.

We announced receipt of the amendment in the May 20, 1999, **Federal Register** (64 FR 27484). In the same document, we opened the public comment period and provided an opportunity for a public hearing or

meeting on the adequacy of the amendment. The public comment period closed on June 21, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

1. Revisions to Indiana's Rules That Are Minor

The IDNR proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the previously-approved State rules listed in the table below:

Topic	State rule	Federal regulation
Permit Approval or Denial Actions	310 IAC 12–3–114(b)	30 CFR 773.15(a).
Permit Approval or Denial Actions	310 IAC 12–3–114(f)	30 CFR 773.19(b)(2).
Collateral Bonds	310 IAC 12–4–12(b)(4), (b)(6)(A)(ii)	30 CFR 800.21(b).
Performance Bond Release	310 IAC 12–4–16(a), (c)	30 CFR 800.40(a), (c).
Citizen's Request for State Inspections	310 IAC 12–6–2(a), (b), (c)	30 CFR 842.12(a), (c).

Because the proposed changes to the State rules listed above are minor, we find that they will not make the Indiana rules less effective than the counterpart Federal regulations.

2. Revisions to Indiana's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations.

The State rules listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State rule	Federal regulation
Permit Applications; Informal Conferences	310 IAC 12–3–109(a)	30 CFR 773.13(c)(1).
Permit Applications; Informal Conferences	310 IAC 12–3–109(b)	30 CFR 773.13(c)(2).
Permit Applications; Informal Conferences	310 IAC 12–3–109(c)	30 CFR 773.13(c)(3).
Permit Applications; Informal Conferences	310 IAC 12–3–109(d)	30 CFR 773.13(c)(4).
Permit Terms	310 IAC 12–3–115(b)	30 CFR 773.19(e).
Collateral Bonds	310 IAC 12–4–12(c)	30 CFR 800.21(f).
Performance Bond Release	310 IAC 12–4–16(d)	30 CFR 800.40(d).
Citizen's Request for State Inspections	310 IAC 12–6–2(e)	30 CFR 842.12(b).

Because the above State rules have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

3. 310 IAC 12–3–114(e) Notification of Permit Approval or Denial Actions

The IDNR revised 310 IAC 12–3–114(e)(1) to require the director of IDNR to give a copy of the permit application decision to the local OSM office. This is consistent with the Federal regulation at 30 CFR 773.19(b)(3) that requires a State regulatory authority to issue written notification of the permit application decision to the local OSM office. With this revision, the Indiana rules at 310 IAC 12–3–114(c) through (f) are no less effective than the Federal regulation at 30 CFR 773.19(b).

IV. Summary and Disposition of Comments

Public Comments

OSM requested public comments on the proposed amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1648). By letter dated June 8, 1999, the Mine Safety and Health Administration (MSHA) commented that the proposed rules do not conflict with MSHA regulations (Administrative Record No. IND–1655).

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). However, none of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1648). By letter dated May 21, 1999, the EPA commented that it had reviewed the proposed program amendment and had no comments to offer (Administrative Record No. IND–1651).

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 13, 1999, we requested comments on Indiana's amendment (Administrative Record No. IND–1648), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Indiana on May 7, 1999. We approve the rules that Indiana proposed with the provision that they be promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * * *
May 7, 1999	August 12, 1999	310 IAC 12–3–109(a) through (d); 12–3–114(b), (e), and (f); 12–3–115(b); 12–4–12(b)(4), (b)(6)(A)(ii), and (c); 12–4–16(a), (c), and (d); 12–6–2(a), (b), (c), and (e).

[FR Doc. 99–20839 Filed 8–11–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–041–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns revegetation success and normal husbandry practice guidelines. Texas is adding these guidelines to ensure consistency with the corresponding Federal regulations; to ensure that adequate data collection methods are used for determining revegetation success for purposes of releasing reclamation performance bonds; and to ensure that the husbandry practices used by the permittee during the period of responsibility for revegetation success and bond liability are normal husbandry practices within the region for unmined lands.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45

FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated May 13, 1999 (Administrative Record No. TX–649), Texas sent us an amendment to its program under SMCRA. Texas sent the amendment in response to our letters dated May 20, 1985, and February 21, 1990 (Administrative Record Nos. TX–358 and TX–476), that we sent to Texas under 30 CFR 732.17(c). The amendment includes a guideline document entitled "Procedures and Standards for Determining Revegetation Success on Surface-Mined Land in Texas" that permittees are to use for sampling and analysis of vegetation data. It also includes a guideline document entitled "Normal Husbandry Practices for Surface-Mined Lands in Texas" that permittees are to use for identifying agricultural and management practices that will not extend the period of responsibility for revegetation success and bond liability (extended responsibility period).

We announced receipt of the amendment in the June 1, 1999, **Federal Register** (64 FR 29249). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on July 1, 1999. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified a concern with Texas' revegetation success guideline document relating to productivity of non-prime farmland soils. We were concerned that Texas' guidelines at Section V.B.2 were not clear on the requirement that in areas receiving 26 inches or less of precipitation, the production standards for cropland must be met in at least the last 2 consecutive years of the responsibility period. We notified Texas of this concern by telefax dated June 24, 1999 (Administrative Record No. TX–649.07). By letter dated June 30, 1999 (Administrative Record No. TX–649.09), Texas sent us revisions to Section V.B.2 and Appendix B that clarify its requirements for non-prime farmland cropland receiving 26 inches or less of precipitation.

Because the revisions merely clarified certain provisions of Texas' amendment, we did not reopen the public comment period.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

A. Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas

Texas submitted a guideline document that describes the procedures and standards for determining revegetation success on reclaimed surface mined lands in Texas. The Texas Coal Mining Regulations at 16 Texas Administrative Code (TAC) 12.395(a)(1) requires the Railroad Commission of Texas (Commission) to select standards for success and statistically valid sampling techniques for measuring success. The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring success and include them in its approved regulatory program. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking must be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) require that standards for success be applied in accordance with the approved postmining land use and specified minimum conditions for each type of land use. Texas developed its revegetation success guideline document to satisfy these requirements.

In some cases, the guidelines reference the performance standards for revegetation success contained in the Texas program at 16 TAC 12.390 through 12.395; but they do not replace or change any existing State regulations. As discussed in the findings below, we find that the revegetation success standards and statistically valid sampling techniques contained in Texas' revegetation success guideline document meet the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal requirements for revegetation success at 30 CFR 816.116 and 817.116.

1. *Section I. Introduction.* The introductory section provides the scope, purpose, and applicability of the revegetation success guideline document. Permittees must demonstrate revegetation success using the revegetation standards and statistically valid sampling techniques for measuring success contained in the guidance document. Use of the methods contained in this document will provide assurance that adequate data collection methods have been used for determining revegetation success for purposes of releasing reclamation performance bond funds. Permittees may propose alternative procedures for sampling and analysis of vegetation data. However, the Commission must approve the use of alternative methods, and the alternative methods must be included in the approved regulatory program.

We find that Section I is not inconsistent with the requirements of the Federal regulations at 30 CFR 816.116 and 817.116, and we are approving it.

2. *Section II. Regulatory Requirements.* This section references the regulatory requirements for meeting revegetation success under the Texas Surface Coal Mining and Reclamation Act at sections 134.041, .092(a)(19) and (20), and .104. It also references the implementing performance standards for revegetation success in the Texas Coal Mining Regulations at 16 TAC 12.390 through 12.395 and 12.399. Texas discusses the applicable sections of 16 TAC 12.390 and 12.395 that define the standards by which revegetation success will be measured; the general requirements that must be met for the vegetative cover; the requirements for the methodologies used for evaluating when the standards have been met; and the minimum standards for each postmining land use. Texas also discusses the definitions at 16 TAC 12.3 that are applicable to the guidance document, including "disturbed area"; "land use"; "cropland"; "pastureland"; "grazingland"; "forestry"; "residential"; "industrial/commercial"; "recreation"; "fish and wildlife habitat"; "undeveloped land"; and "reference area."

We previously approved the regulations referenced and described in Section II, and we agree that they are applicable to the proposed revegetation success guideline document. Therefore, we find that including these regulations in this section of the document is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1).

3. *Section III. Vegetation Evaluation Procedures.* This section identifies specific concepts and requirements to be followed in developing revegetation evaluation plans.

Section III.A includes the general requirements for vegetation evaluation. Ground cover and productivity for herbaceous biomass measurements must be obtained during the growing season of the primary vegetation species comprising the land use. Herbaceous productivity is estimated from only the current season's growth. Woody-plant stocking can be measured at any time. Ground cover corresponds to the area of ground covered by the combined areal parts of standing permit-approved vegetation (dead or alive) and the litter that is produced naturally on site. The litter component cannot exceed 15 percent of the total ground cover. The species must be on either the planting list that contains approved species which support the land use or the list of approved desirable invader species. Both lists must be included in the approved permit. Rock fragments are considered ground surface cover during soil surveys, but only the vegetal component can be considered in ground cover measurements. Texas includes an example of hypothetical data from a vegetation survey and the resulting calculations from 100 observation points.

Section III.B covers the data collection characteristics of vegetation evaluation. The methods used for doing vegetation surveys must comply with statistical conventions. All methods used to assess revegetation success must contain the following criteria: (1) all sample points must be chosen independently and have an equal chance of being chosen; (2) the number of sample points should be independent of the size of the areas to be evaluated; and (3) sample units should include the same land use, similar vegetation growth forms, comparable management, and similar chemical and physical soil characteristics. The number of observation points needed to produce statistically-acceptable results depends on the vegetation parameter that is measured.

Section III.C identifies the requirements for reporting vegetation survey data. When submitting revegetation data, permittees are to include a map or aerial photograph that identifies the location of the vegetation survey transects. This subsection specifies what information must be reported for measurements of ground cover; productivity measurements for forages obtained from plot harvesting; productivity measurements for forages obtained by weighing a portion of the bales harvested; productivity measurements for cropland that involve plot harvesting; productivity measurements involving whole-field harvest; and stem count measurements for woody-plants. All measurements, except productivity measurements for cropland plot harvesting and whole-field harvest, must include a one-sided 90 percent confidence interval (with a 0.10 alpha error) if the cover, biomass, yield, or stem estimates are below the lowest acceptable value (90% of the technical standard) or where the reclaimed area is compared to a reference area. Productivity measurements for cropland that involve plot harvesting must include a one-sided 90 percent confidence interval (with a 0.10 alpha error) for the standardized crop yield. All productivity measurements must include documentation from a calibrated scale. The permittee must document the scale manufacturer, model number, calibration date, date and time of productivity data collections, and individual performing the weighing.

We find that Section III meets the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) that statistically valid sampling techniques for measuring success be selected by the regulatory authority and included in an approved regulatory program. We also find that this section is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) that require sampling techniques for measuring success to use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

4. *Section IV. Revegetation Success Evaluation and Measurement Methods.* This section provides the approved methods for implementing the various evaluation methods for ground cover, productivity, and woody-plant stocking, including the proper selection of observation points. Measurement methods are presented for all vegetation parameters. Measurement results must be compared to either approved reference areas or technical success standards.

Section IV.A provides information and examples for two methods of selecting observation points for collecting vegetation data. The first method, random point sampling, involves the selection of random points within the area to be evaluated and plotting the points on a map or aerial photograph. The second method, baseline sampling with multiple random starts, involves the random placement of a baseline within the target evaluation area, along with five randomly-placed transverse transects along the baseline. Either observation location method is appropriate for all revegetation performance parameters. Ground cover measurements should ideally involve 100 observation points, with a minimum of 75 points. Herbaceous productivity and wood plant stocking estimates require at least 15 measurements. The maximum sample number for ground cover and productivity/stem count distributions is 150 and 30, respectively. Permittees must use the statistical equations for binomially-distributed revegetation data in Appendix A to estimate a statistical adequate sample size for ground cover. They must use the statistical equations for normally-distributed revegetation data in Appendix A to estimate a statistically adequate sample size for productivity and woody-plant stocking.

Section IV.B provides guidance on adjusting for field conditions when conducting vegetation surveys. Non-vegetated structures such as permanent roads and ponds, riprap areas, and rock and brush piles created for wildlife are not to be included as part of the revegetation analyses. Habitat features in grazingland and pastureland must be included in ground cover and productivity measurements. Slopes under 25 percent should not influence on-the-ground measurement intervals. Individual areas to be surveyed must be under the same land use and management and must contain the same vegetation type.

Section IV.C provides guidelines for ground cover measurements. Ground cover measurements are required for all land uses, except for cropland after row crops have been planted. The point intercept method is the recommended method for determining ground cover. This section discusses the use of the point intercept method with a crosswire sighting device.

Section IV.D contains guidance for measurement of productivity. The method of measurement of productivity is dependent on the land use and the established vegetation. Productivity can be evaluated by hand-harvesting or with mechanized agricultural implements. Productivity measurements must be obtained during the growing season of the primary vegetation species. Either plot harvesting or whole-field harvesting are to be used for evaluation of herbaceous species and food or fiber crops. Herbaceous species should be harvested at the times appropriate to the plant species. Sampling should be timed to coincide with seed ripeness or the mature stage of the target vegetative

species. The moisture content of harvested herbaceous biomass and other vegetative/grain components must be standardized to eliminate weight variations due to moisture content. Moisture content must be determined using a properly calibrated, standard agricultural grain moisture tester. A determination that a statistically adequate sample size was obtained is performed on standardized or corrected dry weights. This section contains the formula for correcting the measured grain/bean weights to appropriate moisture contents. For whole-field harvesting, the total production from a hayed or harvested area is obtained by weighing the entire yields of the agricultural commodity. The permittee must notify the Commission 15 to 30 days before the harvest. The Commission may require that an inspector be on site during the harvest activity. Forage crops must be harvested following sound agronomic practices, including field-drying cut forage and not bailing until the forage moisture content is 25 percent or less. Moisture content for grains/beans must be adjusted to the accepted values for each agricultural commodity. The foreign material content of the grain/beans must be determined by a licensed grain dealer and the weight shrunk to marketable condition weight with a foreign material allowance of one percent. There is no allowances for harvest and handling losses. The harvesting of plots instead of the whole area is an acceptable alternative, as long as the yields of the plots are representative of the overall production. Appropriate sampling procedures for plots are included in this section. Sampling procedures include information to collect; plot size; harvest procedures; sample number; determination of moisture content; and a double-sampling method. This section also describes the grazing method to estimate productivity. The conversion of animal units (AU) to a weight of vegetation biomass for a given area can be used to estimate productivity in grazingland and pasture land uses instead of whole-field or plot harvesting. The animal numbers must be maintained in a manner that allows grazing of the current year's forage production without damaging future forage growth and quality. Included in this section is a table showing the minimum plant residue levels and stubble heights to sustain production and a table that contains a guide to animal-unit equivalents. Stocking rates must be verified by a signed affidavit from the party managing the grazing of a given area and must identify the time period covered and the class of livestock involved.

Section IV.E provides guidelines for woody plant stocking. Randomly-selected measurement locations are required for conducting woody plant stocking evaluations. Observation points should not be located within 20 feet of the edge of the stocked area. Observation points for woody plant counts can also be used for measuring ground cover. Woody plants counted for success determination must be alive and healthy and in place for two growing seasons. Miniplots, usually circular in shape, are used to determine stocking rates. The number of plots needed to characterize the evaluation area will depend on the variability of the vegetation. Approximately 30 plots should be randomly-placed, regardless of the size of the area to be evaluated. The number of samples required is calculated following procedures listed in Appendix A. The permittee must continue the sampling procedure until the actual number of measurements produces a statistically adequate sample size.

Section IV.F contains guidance on selecting and management of reference areas. The permittee must work closely with the Commission staff to select and develop a suitable reference area. Reference areas are unmined land units that are maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by agricultural production methods approved by the Commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area. This section contains criteria for comparing revegetated mined areas and reference areas. Although it is not essential that the reference area be immediately adjacent to the mined, revegetated area, the two areas should be close enough to each other to prevent differences in rainfall distribution patterns.

We find that the requirements of Section IV meet the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) that statistically valid sampling techniques for measuring success be selected by the regulatory authority and included in an approved regulatory program. We also find that this section is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) that require sampling techniques for measuring success to use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

5. *Section V. Revegetation Success Standards.* This section lists the revegetation success standards for each land use type and provides information on determining productivity of the reclaimed areas. Nine general types of land use are included: grazingland; pastureland; cropland; forestry; fish and wildlife habitat; undeveloped land; industrial/commercial; residential; and recreation. We find that Texas' revegetation success guidelines for each land use type in combination with its previously approved regulations at 16 TAC 12.395 meet the Federal requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1) that success standards be selected by the regulatory authority and included in its approved regulatory program. We also find that Texas' success standards for each land use type are no less effective than the Federal regulations at 30 CFR 816.116(b) and 817.116(b) that require standards for success be applied in accordance with the approved postmining land use.

a. Section V.A provides guidelines relating to ground cover and productivity standards for grazingland and pastureland. The ground cover values and productivity of mined, revegetated areas are compared either to the ground cover or productivity of an approved reference area or to approved technical standards. The revegetation success standard when reference areas are used is that the ground cover and the productivity of the revegetated grazingland or pastureland must be 90 percent of the reference area with a 90 percent statistical confidence.

The approved technical standards for ground cover on grazingland and pastureland are dependent upon the moisture regime (5- or 10-year extended responsibility period area) and the dominant plant species. For areas with an average annual precipitation greater than 26 inches, the ground cover standard is 95 percent for sod-forming grasses and 90 percent for bunch grass mixtures. For areas with an average annual precipitation less than or equal to 26 inches, the ground cover standard is 90 percent for sod-forming grasses and 80 percent for bunch grass mixtures. Seventy-five percent of the ground cover must be permit-approved species which support the land use. The remaining 25 percent can be permit-approved, desirable invader species.

Whole-field harvesting is appropriate for grazingland or pastureland harvested for hay. The harvest of plots is appropriate for all grazingland and pastureland. When reference areas are used, the permittee must compare the productivity of the reference area to the reclamation area. The lowest acceptable

value for the productivity of the reference area is 90 percent of the reference area productivity value. The actual yield for the reclaimed area must be used when comparing the data. Site-specific technical standards for grazingland and pastureland production are currently developed by the USDA-NRCS and are included in the permit application for each mine. These standards are site-specific with respect to rainfall, species/cultivar produced, soil mapping unit, and fertilization. The permittee must compare the productivity of the reclaimed area, with a 90 percent confidence interval, to the appropriate technical standard.

The Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) require that ground cover and production of living plants on the revegetated grazingland or pastureland areas be at least equal to that of a reference area or such other success standards approved by the regulatory authority. We find that Texas' success standards for grazingland and pastureland are no less effective than these Federal requirements.

b. Section V.B contains guidance on the ground cover and productivity standards for cropland with non-prime farmland soils and cropland with prime farmland soils. Adequate ground cover to control erosion is required until crop production begins for both soil types.

(1) The productivity of mined, revegetated areas where non-prime farmland soils were involved is compared either to the productivity of an approved reference area or to approved technical standards. For non-prime farmland soils, the permittee must determine the lowest acceptable value for the productivity of the reference area by calculating 90 percent of the yield obtained form the reference area. The permittee must then compare the actual yield for the reclaimed area productivity to the lowest acceptable value for the reference area. For non-prime farmland soils, technical success standards must be determined by the USDA–NRCS at the request of the mine operator or landowner. The technical standards will be permit-specific and will be developed by using data on the expected individual crop productivity for the particular county and soil mapping unit, as published in the USDA–NRCS Field Office Technical Guides. For bond release in areas receiving more than 26 inches of precipitation (5-year responsibility period), the total field harvest of the crop for any two years, except the first year, will be compared to the approved productivity standard specifically developed for the particular crop and a particular growing season. In areas receiving 26 inches of precipitation or less (10-year responsibility period), the production standards must be met in at least the last 2 consecutive years of the responsibility period. The permittee must compare the productivity of the reclaimed area to 90 percent of the appropriate technical standards.

We find that Texas' success standards for non-prime farmland cropland are no less effective than the Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2) that require crop production on the revegetated area to be at least equal to that of a reference area or such other success standards approved by the regulatory authority. We also find that Texas' success standards for non-prime farmland cropland for areas of more than 26 inches of annual average precipitation are no less effective than the Federal regulations at 30 CFR 816.116(c)(2)(i) and 817.116(c)(2)(i) that require cropland to equal or exceed the approved success standard during the growing season of any two years of the responsibility period, except the first year. Lastly, we find that Texas' success standards for non-prime farmland cropland in areas receiving 26 inches of precipitation or less are no less effective than the Federal regulations at 30 CFR 816.116(c)(3)(i) and 817.116(c)(3)(i) that require cropland to equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(2) Prime farmland productivity will be restored in accordance with provisions specified in 16 TAC 12.625 (Prime Farmland: Revegetation and Restoration of Soil Productivity). Productivity of restored prime farmlands will be returned to equivalent levels of crop yields as non-mined land of the same soil type in the surrounding area under equivalent levels of crop yields as non-mined land of the same soil type in the surrounding area under equivalent management practices. Measurement of crop productivity will be initiated within 10 years after completion of soil replacement. The measurement period for determining average annual crop production shall be a minimum of three crop years prior to bond release. For areas receiving more than 26 inches of precipitation, crop production may be measured in any of the extended responsibility period years except the first. For areas receiving 26 inches of precipitation or less, the crop production standards must be met in at least the last two consecutive years of the extended responsibility period. The reference crops on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Only two of the three required crop years may involve forage crops. Where row crops are the dominant crop grown on prime farmland in the area, the row crop requiring the greatest rooting depth must be chosen as one of the reference crops. Permittees must select reference crops through consultation with the USDA–NRCS. Reference areas are not applicable where restored prime farmland soils are involved. Productivity of crops grown on reclaimed prime farmland soils will be measured by using the crop yield of a reference crop produced on all or a portion of the reclaimed area. Crop yields will be determined through whole-field or plot harvesting. The reference crop yields for a given crop season will be compared to average yields for specific prime farmland soil series. These average yields are obtained from the USDA–NRCS National Soil Information System database, which contains information linking soil series and slope phase, land capability, and crop yields. Restoration of soil productivity will be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for non-mined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

By letter dated April 13, 1999, the USDA–NRCS State Conservationist in Texas concurred with the guidelines contained in Section V.B.4 concerning evaluation of productivity for restored prime farmland soils (Administrative Record No. TX–649).

Based on the USDA–NRCS concurrence and our own technical evaluation, we find the Texas' guidelines for restoration of prime farmland cropland are consistent with and no less effective than the Federal regulation requirements at 30 CFR 823.15 pertaining to revegetation and restoration of prime farmland soil productivity. We also find that Texas' success standards for prime farmland cropland for areas of more than 26 inches of annual average precipitation are no less effective than the Federal requirements at 30 CFR 816.116(c)(2)(i) and 817.116(c)(2)(i) that require cropland to equal or exceed the approved success standard during the growing season of any of the years of the responsibility period, except the first year. We find further that Texas' success standards for prime farmland cropland for areas of 26 inches or less of annual average precipitation are consistent with the Federal regulations at 30 CFR

816.116(c)(3)(i) and 817.116(c)(3)(i) that require cropland to equal or exceed the approved success standard during the growing seam of at least the last two consecutive years of the responsibility period.

c. Section V.C provides guidelines on the ground cover standards and woody-plant stocking rates for the forestry land use category. The forestry land use category is land used or managed for the long-term production of wood, wood fiber, or wood-derived products. Ground cover of mined, revegetated forestry areas are compared either to the ground cover of an approved reference area or to approved technical standards.

The ground cover of the reclaimed forest must be within 90 percent of the ground cover of the reference area, with a 90 percent statistical confidence. Only permit-approved permanent species and additional species found in the reference area will count toward the ground cover. The permittee must measure and record the ground cover value for the reference area and the reclaimed area. The permittee must then compare the reclaimed area ground cover estimate to 90 percent of the reference area cover value. If technical standards are used, they must be equal to or greater than 78 percent ground cover. The permittee must compare the reclaimed area ground cover estimate to 90 percent of the ground cover standard. Ground cover measurements must be evaluated in conjunction with information on the species composition. Seventy-five percent of the ground cover must be comprised of permit-approved species which support the land use and the remaining 25 percent can be comprised of desirable invader species. Lists of both types of species must be included in the approved reclamation plan.

The success of woody-plant stocking is determined by comparing the reclaimed forest area to a technical standard. The stocking rate success standards for woody plant species will be permit-specific and site-specific. Success standards for stocking rates will be developed by the applicant through consultation with the Texas Forest Service in accordance with guidelines included in attachment 3 of Texas' revegetation success guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Forest Service. The permittee must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stocking measurements must be evaluated in conjunction with information on the species composition of the stands.

We find that Texas' guidelines for forestry are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Federal regulations require that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agency responsible for the administration of forestry. Consultation and approval may occur on either a programwide or a permit-specific basis. As noted above, Texas is requiring consultation and approval on a permit-specific basis.

d. Section V.D contains guidance on ground cover standards and woody-plant rates for fish and wildlife habitat. Fish and wildlife habitat is land that is dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

The ground cover values of mined, revegetated areas are compared to an approved technical standard. The ground cover of the reclaimed fish and wildlife habitat must be within 90 percent of a 78 percent ground cover success standard with a 90 percent statistical confidence. Ground cover measurements must be evaluated in conjunction with information on the species composition of the stands. Seventy-five percent of the ground cover must include permit-approved species which support the land use. Twenty-five percent can be comprised of desirable invader species as established and approved in the permit.

The success of woody-plant stocking is measured by comparing the reclaimed habitat to a technical standard. The stocking rates for woody plant species will be permit-specific and site-specific. Stocking rates must be developed by the applicant through consultation with the Texas Parks and Wildlife Department in accordance with guidelines included in attachment 2 of Texas' revegetation success guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. Permittees must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stocking measurements must be evaluated in conjunction with information on the species composition of the stands.

We find that Texas' guidelines for fish and wildlife habitat are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Federal regulations require that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agency responsible for the administration of wildlife programs. Consultation and approval may occur on either a programwide or a permit-specific basis. As noted above, Texas is requiring consultation and approval on a permit-specific basis.

e. Section V.E provides guidelines on ground cover standards and woody-plant stocking rates for undeveloped land. Undeveloped land (no current use or land management) is land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

The ground cover values of mined, revegetated areas are compared to approved technical standards. The choice of technical standards to employ depends on the dominant vegetation growth form found in the undeveloped land: grasses or woody species. If grasses are predominant and the areas have an average annual precipitation greater than 26 inches, the ground cover standard is 95 percent for sod-forming grasses and 90 percent for bunch grass mixtures. If grasses are predominant and the areas have an average annual precipitation less than or equal to 26 inches, the ground cover standard is 90 percent for sod-forming grasses and 80 percent for bunch grass mixtures. If woody species are predominant, the technical standard for ground cover is 78 percent. The permittee must compare the ground cover estimate to 90 percent of the appropriate ground cover standard. Ground cover measurements must be evaluated in conjunction with information on the species composition of the stands.

Woody-plant stocking is measured by comparing the reclaimed area to a technical standard. The stocking rates for woody plant species are permit-specific and site-specific. The permittee must develop stocking rates through consultation with the Texas Parks and Wildlife Department in accordance with guidelines included in attachment 2 of Texas' guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. The permittee must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stem count measurements

must be evaluated in conjunction with information on the species composition of the stands.

The Federal regulations at 30 CFR 816.116(b) and 817.116(b) do not contain specific reclamation success standards for undeveloped land. However, we find that Texas' guidelines for undeveloped land are not inconsistent with the requirements of the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products.

f. Section V.F contains guidelines relating to ground cover standards and woody-plant stocking rates for industrial/commercial land uses. These land uses involve either (1) extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products or (2) retail or trade of goods or services.

Ground cover must be adequate to control erosion. Woody-plant stocking, if it is implemented, is measured by comparing the reclaimed area to a technical standard. The stocking rates for woody plant species will be permit-specific and site-specific. Stocking rates must be developed by the applicant through consultation with the Texas Parks and Wildlife Department in accordance with guidelines included in attachment 2 of Texas' revegetation success guidelines. Woody-Plant stocking success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. Permittees must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stem count measurements must be evaluated in conjunction with information on the species composition of the stands.

We find that Texas' ground cover guidelines are no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(4) and 817.116(b)(4) for areas to be developed for industrial, commercial, or residential use. The Federal regulations do not contain a woody-plant stocking standard for these land uses. However, we find that Texas' woody-plant stocking guidelines are consistent with the minimum stocking and planting arrangement requirements of the Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products.

g. Section V.G provides guidance on ground cover standards and woody-plant stocking rates for a residential land use. This land use includes single- and multiple-family housing, mobile home parks, and other residential lodgings. Ground cover must be adequate to control erosion. Woody-plant stocking, if used, is measured by comparing the reclaimed area to a technical standard. The stocking rates for woody plant species will be permit-specific and site-specific. Stocking rates will be developed by the applicant through consultation with the Texas Parks and Wildlife Department, in accordance with guidelines included in attachment 2 of Texas' revegetation success guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. The permittee must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. Woody-plant stem count measurements must be evaluated in conjunction with information on the species composition of the stands.

We find that Texas' ground cover guidelines for residential land use are no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(4) and 817.116(b)(4) for areas to be developed for industrial, commercial, or residential use. The Federal regulations do not contain a woody-plant stocking standard for this land use. However, we find that Texas' woody-plant stocking guidelines are consistent with the minimum stocking and planting arrangement requirements of the Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products.

h. Section V.H contains guidelines on ground cover standards and woody-plant stocking rates for recreation land uses. This land use involves public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas. It may also include less intensive uses such as hiking, canoeing, and other undeveloped recreational uses. Ground cover must be sufficient to control erosion. Woody-plant stocking is measured by comparing the reclaimed area to a technical standard. The stocking rates for woody plant species will be permit-specific and site-specific. Stocking rates will be developed by the applicant through consultation with the Texas Parks and Wildlife Department in accordance with guidelines included in attachment 2 of Texas' revegetation success guideline document. Success standards will be subject to review and comment during the permit review and will be approved by the Texas Parks and Wildlife Department. The permittee must compare the mean stem count of the reclaimed area to 90 percent of the appropriate stem count standard. The permittee must evaluate woody-plant stem count measurements in conjunction with information on the species composition of the stands.

We find that Texas' guidelines for recreation land use are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Federal regulations require that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agency responsible for the administration of wildlife programs. Consultation and approval may occur on either a programwide or a permit-specific basis. As noted above, Texas is requiring consultation and approval on a permit-specific basis.

6. *Section VI. Literature Cited.* This section provides a listing of the literature used in developing the guideline document. We find that this section is not inconsistent with the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

7. *Appendices and Attachments.* Texas included the following appendices and attachments in its revegetation success guideline document.

a. Appendix A contains the statistical information, including equations and tables, to be used in the determination of revegetation success for ground cover, productivity, and woody-plant stocking. We conducted a technical review of the statistical operations contained in appendix A, and we found that they meet the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) that statistically valid sampling techniques for measuring success be selected by the regulatory authority and included in an approved regulatory program.

b. Appendix B provides a table summarizing the revegetation success standards for all land uses. The table in Appendix B includes the revegetation parameters, performance standards, and conditions for bond release relating to each land use. We find that the addition of this summary is not inconsistent with the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

c. Appendix C contains examples of revegetation success determinations for ground cover and productivity involving herbaceous biomass and woody plant stem counts. The addition

of examples will aid the permittees in making revegetation success determinations when using the statistical sampling techniques in Texas' revegetation success guideline document. Therefore, we find that appendix C is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1).

d. Attachment 1 is a document entitled "The Development of the Forage Production Standards for Post Mine Soils" by the United States Department of Agriculture—Natural Resources Conservation Service. It contains an example of the methodology used by the USDA–NRCS to develop site-specific productivity standards for mining companies in Texas to use in demonstrating grazingland and pastureland productivity success on reclaimed areas. We find that the addition of attachment 1 is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 30 CFR 817.116(a)(1).

e. Attachment 2 is a document entitled "Texas Parks and Wildlife Department Recommendations for the Development of Success Standards for Woody-Plant Stocking Rates." Permit applicants must develop woody-plant stocking rates for various land uses through consultation with the Texas Parks and Wildlife Department in accordance with the guidelines included in this attachment. We find that the addition of attachment 2 is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 30 CFR 817.116(a)(1).

f. Attachment 3 is a document entitled "Texas Forest Service Recommendations for Reforestation of Pine and Hardwoods in Texas." Permit applicants must develop woody-plant stocking rates for forestry land uses through consultation with the Texas Forest Service in accordance with the guidelines included in this attachment. We find that the addition of attachment 3 is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(a)(1) and 30 CFR 817.116(a)(1).

B. Normal Husbandry Practices for Surface-Mined Lands in Texas

Texas submitted a guideline document that describes the husbandry practices that may be used by the permittee during the period of responsibility for revegetation success and bond liability without restarting the extended responsibility period. The Texas Coal Mining Regulations at 16 TAC 12.395(c)(4) allow the Commission to approve selective husbandry practices provided it obtains prior approval from OSM that the practices are normal husbandry practices. The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow each regulatory authority to approve selective husbandry practices as normal husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval for the practices from OSM in accordance with 30 CFR 732.17. These normal husbandry practices may be implemented without extending the period of responsibility for revegetation success and bond liability if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control. It also includes any pruning, reseeding, and transplanting needed because of these practices. Texas developed a normal husbandry practices guideline document to implement these requirements.

As discussed in the findings below, we find that the normal husbandry practices contained in the guideline document satisfy the requirements of 30 CFR 816.116(c)(4) and 817.116(c)(4).

1. *Section I. Introduction.* The introductory section provides the scope, purpose, and applicability of the normal husbandry practices guideline document. The guideline document includes the normal husbandry practices that permittees must use for disease and pest control, application of fertilizers, application and incorporation of other soil amendments, and any other necessary soil vegetation management activities on surface-mined lands in Texas during the extended responsibility period. Husbandry practices not included in this document may be considered augmentative in nature and, if performed on land that is currently in the extended responsibility period, may restart that period. The decision whether a particular activity can be classified as a normal husbandry practice will depend both on the regulatory requirements of the Texas Coal Mining Regulations and the postmining land use.

We find that this introductory section is not inconsistent with the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4), and we are approving it.

2. *Section II. Regulatory Requirements.*

a. This section references the regulatory requirements for meeting revegetation success under the Texas Surface Coal Mining and Reclamation Act at sections 134.041, .092(a)(19) and (20), and .104. It also references the implementing performance standards for revegetation success in the Texas Coal Mining Regulations at 16 TAC 12.390 through 12.395, and 12.399. Texas discusses the applicability of section of 16 TAC 12.395(c)(4), which recognizes that the Commission may determine that certain management practices will not extend the responsibility period for revegetation success and bond liability.

We previously approved the regulations referenced and described in this section, and we agree that they are applicable to the proposed normal husbandry practices guideline document. Therefore, we find that the reference to and discussion of these regulations in this section of the document is not inconsistent with the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

b. Texas noted that the Commission intends that the terms "husbandry" and "augment" both have their ordinary meanings as follows:

> Husbandry—the control or judicious use of resources: conservation; the cultivation or production of plants and animals: agriculture; the scientific control and management of a branch of farming and especially of domestic animals.
>
> Augment—to make (something well or adequately developed) greater, more numerous, larger, or intense.

We find that Texas' definitions for the terms "husbandry" and "augment" are not inconsistent with the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

3. *Section III. Conventions for Normal Husbandry Practices.* Texas lists the following three conventions regarding normal husbandry practices for surface-mined lands in Texas:

(1.) Normal husbandry practices are region-specific and include activities performed by landowners managing lands not disturbed by mining activities. For example, limestone application and incorporation is not practiced anywhere in the South Texas Plains vegetational area; therefore, liming would not be a normal husbandry practice for mines situated in this region. Practices required to address problems that arise from mining-related activities are not considered normal husbandry practices.

(2.) Normal husbandry practices are those activities that can expected to continue as part of the postmining land use.

(3.) Discontinuance of the husbandry practices will not reduce the probability of revegetation success. For example, the discontinuance of maintenance fertilization

on grazingland would not result in loss of vegetative cover (it might lead to an alteration of the species composition, however).

We find that Texas' conventions for normal husbandry practices at Section III are consistent with the requirements of the Federal regulations at 30 CFR 816.116(c)(4) and 817.117(c)(4).

4. *Section IV. Normal Husbandry Practices, as Influenced by Land Uses.* In Section IV, Texas proposes normal husbandry practices for six vegetative community postmining land uses defined in the Texas program: grazingland; pastureland; cropland; forestry; fish and wildlife habitat; and undeveloped land. The normal husbandry practices listed for grazingland, pastureland, cropland, forestry, and fish and wildlife habitat are divided into three general categories: (1) general management of soil and vegetation; (2) addition of plant nutrients and other soil amendments; and (3) pest management. Documents defining the normal husbandry practices for each category are referenced. Texas submitted copies of these documents to support its proposed practices for disease and pest control; application of fertilizers; application and incorporation of other soil amendments; and other necessary soil vegetation management activities on surface-mined lands. Because the definition of undeveloped land excludes any type of management inputs during the extended responsibility period, Texas is only allowing limited erosion repair for this land use.

We determined that the documents submitted by Texas and referenced in Section IV represent normal husbandry practices in Texas, and we find that Section IV is no less effective than the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

5. *Section V. Repair of Damaged Reclaimed Areas and Removal of Structures.* In Section V, Texas provides guidelines for erosion repair, other damage repair, reseeding areas, overseeding, and restocking of woody species. Texas also included a provision for regrading and revegetation of areas where temporary structures have been removed. By letter dated May 4, 1999, the USDA–NRCS State Conservationist in Texas concurred with Texas' proposed guidelines for repair of damaged areas and removal of structures in Section V.

a. Because reclaimed sites may experience some type of damage to established vegetation at some point during the period of extended responsibility, Texas may consider repair of erosion or other types of damage as a normal husbandry practice, provided that the damage is not caused by a lack of planning, design, or implementation of the mining and reclamation plan. Examples of such damage includes small slips, channel erosion, and unauthorized access. The total acreage of repaired areas cannot exceed three contiguous acres or ten percent of the total land of the extended responsibility area. In cases of erosion, repairs may be considered nonaugmentative if rill and gully damage was caused by precipitation exceeding a 10-year/24-hour event or damage occurred before the first two years of a 5-year extended responsibility period or four years of a 10-year extended responsibility period. After the first two or four years, whichever is applicable, total acreage for erosion repair cannot exceed one contiguous acre or two percent of the total land of that extended responsibility area. Texas will require that areas undergoing damage repair be fully revegetated with permanent, permit-approved species for at least one year before final bond release and meet all vegetation cover and productivity success standards. Documents defining the normal husbandry practices relating to general management, addition of plant nutrients and other soil amendments, and pest management for erosion repair areas are referenced in this section. Texas submitted copies of these documents and the USDA–NRCS concurrence letter, discussed above, to support its proposed normal husbandry practice guidelines for repair of erosion or other types of damage.

We determined that the documents submitted by Texas and referenced in Section V represent normal husbandry practices in Texas for repair of erosion or other types of damage. We believe that by limiting the size of areas that may be repaired without restarting the extended responsibility period and by demonstrating that such practices are supported as normal husbandry practices, Texas has ensured that the probability of revegetation success will not be reduced. Therefore, we find that Texas' proposed guidelines for repair of erosion or other types of damage are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

b. Texas will determine whether or not regrading and revegetation of areas where temporary structures such as sediment ponds, roads, and small diversions have been removed are nonaugmentative on a case-by-case basis. Areas that may pose significant potential for reclamation problems will require a separate extended responsibility period. Texas will require that areas undergoing removal of structures be fully revegetated with permanent, permit-approved species for at least one year before final bond release and meet all vegetation cover and productivity success standards.

Texas' provision that areas will be fully revegetated for at least one year before final bond release and meet all vegetation cover and productivity success standards will ensure that the vegetation of these areas will be subject to Texas' counterparts to the Federal regulations at 30 CFR 816.116 and 817.116 relating to the attainment of revegetation success. It will also discourage the removal of ponds, roads, or diversions toward the end of the liability period for the surrounding area because these areas would not qualify for final bond release until vegetative cover is fully established and meets Texas' revegetation standards. Texas' reference to temporary roads in its policy is interpreted by OSM to mean those roads necessary for maintenance of sediment ponds, diversions, and reclamation areas. Ancillary roads used for maintenance do not include haul roads or other primary roads which should have been removed upon completion of mining. It is also noted that in its letter dated May 4, 1999, the USDA–NRCS State Conservationist concurred with Texas' guideline for removal of structures.

Although Texas' guideline is primarily concerned with defining normal husbandry practices, the term "nonaugmentative" is used with reference to the removal and reclamation of structures used in support of reclamation. Texas specifically states in its guideline that the removal and reseeding of the structures is not a normal husbandry practice. We agree that reclamation of these areas, while being nonaugmentative, is not a normal husbandry practice.

As outlined in the May 29, 1996, **Federal Register** (61 FR 26792), OSM has adopted the policy published for comment in the September 15, 1993, **Federal Register** (58 FR 48333). Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence "after the last year of augmented seeding, fertilizing, irrigation, or other work" needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the

permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the planted area. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until two years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44038–44039, September 26, 1983).

The purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA because the lands involved are relatively small in size and either widely dispersed or narrowly linear in distribution and the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

In addition, the areas affected likely would be no larger than those which could be reseeded (without restarting the revegetation period) in the course of performing normal husbandry practices, as that term is defined in 30 CFR 816.116(c)(4) and explained in the preamble to that rule (53 FR 34636, 34641; September 7, 1988; 52 FR 28012, 28016; July 27, 1987). Areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, this interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards. From a practical standpoint, it is usually difficult to identify precisely where such areas are located in the field once revegetation is established in accordance with the approved reclamation plan.

Based on the above discussion, we find that Texas' guideline for regrading and revegetation of areas where temporary structures have been removed is consistent with and no less effective than the Federal regulations at 30 CFR 816.46(b)(5) and (6), 817.46(b)(5) and (6), 816.150(f)(6), 817.150(f)(6), and sections 515(b)(19) and (20) of SMCRA, as clarified by OSM in the September 15, 1993, **Federal Register** (58 FR 48333).

c. Overseeding of winter cover crops and/or summer annuals, into existing vegetation, is considered a normal husbandry practice. Texas will require reseeding activities to be included in the mining company's reclamation plan. Texas referenced documents defining the normal husbandry practices relating to general management, addition of plant nutrients and other soil amendments, and pest management for reseeded areas. Texas submitted copies of these documents to support reseeding areas. We determined that the documents submitted by Texas and referenced in Section V represent normal husbandry practices in Texas for overseeding of winter cover crops and/or summer annuals, into existing vegetation. Therefore, we find that Texas' proposed guidelines for overseeding are consistent with and no less effective than the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

d. Restocking of woody species is allowed, as long as the time and quantity of restocking is in compliance with Texas' regulations at 16 TAC 12.395(b)(3)(B). These regulations require that trees and shrubs counted in determining the success of stocking be in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine the success of stocking must have been in place for 60 percent of the applicable minimum period of responsibility. Texas' requirements for tree and shrub stocking are consistent with the Federal requirements at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii). We agree that restocking of woody species is allowed under both the State and Federal regulations, as long as the time and quantity of restocking is in compliance with the regulations. Therefore we are approving this guideline.

6. *Section VI. Non-Normal and Unacceptable Husbandry Practices or Augmentation.* In Section VI, Texas lists those activities that are considered unacceptable husbandry practices. The activities include: reseeding of areas devoid of vegetation due to acid mine soils; irrigation; supplemental watering of herbaceous vegetation and supplemental watering of large woody stock later than two years after planting; all application and incorporation of alkaline amendments, except for non-excessive application; and excessive application of plant nutrients. If any of the listed practices are performed, the extended responsibility period for the affected areas will restart. Texas does not consider practices required to address problems that arise from mining-related activities as normal husbandry practices. Texas will use information from field inspection reports and mine-soil chemical analysis data to evaluate unacceptable husbandry practices or augmentation. We agree that the activities listed in this section are not normal husbandry practices and that they should not be allowed without extending the period of responsibility for revegetation success and bond liability. Therefore, we find that Section VI is not inconsistent with the Federal regulations for normal husbandry practices at 30 CFR 816.116(c)(4) and 817.116(c)(4).

7. *Section VII. Literature Cited.* This section provides a listing of the literature used in developing the guideline document. We find that this section is not inconsistent with the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(r).

IV. Summary and Disposition of Comments

Public Comments

On June 1, 1999, we asked for public comments on the amendment (64 FR 19249). By letter dated June 9, 1999, the Texas Utilities Company System (TXU) Business Services provided comments on behalf of TXU Mining Company (TX–649.05). The TXU Business Services commented that TXU supports the proposed amendment, and the proposed procedures and standards provide adequate guidelines for determining revegetation success for the release of reclamation performance bonds. The TXU Business Services also stated that the amendment provides a clear description of the normal husbandry practices that may be used by permittees during the period of extended responsibility for revegetation success and bond liability. As shown in the findings above, we agree with the comments provided by the TXU Business Services.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–649.03). By letter dated June 3, 1999 (Administrative Record No. TX–469.04), the USDA–NRCS State Conservationist in Temple, Texas, asked us to note that the amendment contained two letters from his office concurring on specific sections of the documents. He stated

that the USDA–NRCS was an active participant in the development of the documents, and he noted that the USDA–NRCS has worked with both the Texas Railroad Commission and individual mining companies in the State on reconstruction and reclamation of surface mined land. As indicated by the USDA–NRCS, the amendment contains letters dated April 13, 1999, and May 4, 1999, in which the USDA–NRCS concurs with Section V.B.4 of Texas' revegetation success guideline document and Section V of Texas' normal husbandry practices guideline document, respectively. As discussed in Finding A.5.b.(2), the USDA–NRCS concurred with Texas' guidelines for evaluation of productivity for restored prime farmland soils, and as discussed in Findings B.5. and B.5.b, the USDA–NRCS concurred with Texas' guidelines for repair of damaged reclaimed areas and removal of structures.

By letter dated June 18, 1999, the U.S. Army Corps of Engineers (Corps) commented on Texas' amendment (Administrative Record No. TX–649.08). The Corps recommended that the proposed amendment specify all measures in the International System of Units (SI), in lieu of the inch-pound (IP) system. The Federal regulations at 30 CFR 816.116 and 817.116 do not require States to use the International System of Units in their guidelines for determining revegetation success or normal husbandry practices. Also, the standards and specifications for revegetation developed by the USDA–NRCS, the Texas Agricultural Extension Services, major universities, and other recognized sources use the inch-pound system. However, we will give a copy of the comments to Texas for its consideration when developing future amendments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the provisions in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX–649.01). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 21, 1999, we requested comments on Texas' amendment (Administrative Record No. TX–649.02), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Texas on May 13, 1999, and as revised on June 30, 1999.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 943, which codify decisions concerning the Texas program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Texas to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
May 13, 1999	August 12, 1999	Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas; Normal Husbandry Practices for Surface-Mined Lands in Texas.

[FR Doc. 99–20840 Filed 8–11–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 590

UNITA (Angola) Sanctions Regulations: Implementation of Executive Orders 13069 and 13098

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the UNITA (Angola) Sanctions Regulations to implement Executive Order 13069 of December 12, 1997, and Executive Order 13098 of August 18, 1998, prohibiting certain transactions with respect to the National Union for the Total Independence of Angola ("UNITA") and to make other technical and conforming changes.

EFFECTIVE DATE: AUGUST 12, 1999.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief, Policy Planning and Program Management, tel.: 202/622–2500, or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Research Mall" of the FedWorld bulletin board. By modem, dial 703/321–8020, and select self–expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

On September 26, 1993, in view of United Nations Security Council Resolution No. 864 of September 15, 1993, President Clinton issued E.O. 12865, 58 FR 51005, 3 CFR, 1993 Comp., p.636, declaring a national emergency with respect to UNITA's actions in Angola and placing sanctions on UNITA. Executive Order 12865 prohibits the sale or supply by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of arms, arms–related materiel of all types, petroleum, and petroleum products, regardless of their origin, to the territory of Angola, other than through designated points of entry, or to UNITA. Executive Order 12865 also prohibits any activity by U.S. persons or in the United States that promotes or is calculated to promote such prohibited sale or supply. On December 10, 1993, the Office of Foreign Assets Control of the Department of the Treasury ("OFAC") implemented Executive Order 12865 by promulgating the UNITA (Angola) Sanctions Regulations, 31 CFR Part 590 (the "Regulations").

On December 12, 1997, President Clinton issued Executive Order 13069, 62 FR 65989, 3 CFR, 1997 Comp., p.232, placing additional sanctions on UNITA, taking into account the provisions of United Nations Security Council Resolutions 1127 of August 28, 1997, and 1130 of September 29, 1997. Effective 12:01 a.m. EST on December 15, 1997, Executive Order 13069 closes all UNITA offices in the United States and prohibits various aircraft–related transactions. Specifically, section 2(a) of Executive Order 13069 prohibits the sale, supply, or making available in any form by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of aircraft or aircraft components, regardless of their origin, to the territory of Angola, other than through designated points of entry, or to UNITA. Section 2(b) prohibits the insurance, engineering, or servicing of UNITA aircraft by United States persons or from the United States. Section 2(c) prohibits the granting of takeoff, landing, or overflight permission to any aircraft on flights or continuations of flights to or from the territory of Angola other than to or from designated places in Angola. Section 2(d) prohibits the provision of engineering and maintenance servicing, the certification of airworthiness, the payment of new insurance claims against existing insurance contracts, and the provision, renewal, or making available of direct insurance by a United States person or from the United States with respect to any aircraft registered in Angola, except designated aircraft, and with respect to any aircraft that have entered the territory of Angola other than through designated points of entry.

On August 18, 1998, President Clinton issued Executive Order 13098, 63 FR 44771, 3 CFR, 1998 Comp., p.206, placing further sanctions on UNITA, taking into account the provisions of United Nations Security Council Resolutions 1173 of June 12, 1998, and 1176 of June 24, 1998. These additional sanctions went into effect at 12:01 a.m. EDT on August 19, 1998. Section 1 of Executive Order 13098 blocks all property and interests in property of UNITA, designated senior UNITA officials, and designated adult members of their immediate families if the property or property interests are in the United States, hereafter come within the United States, or are or hereafter come within the possession or control of United States persons. Section 2 prohibits the importation into the United States of all diamonds exported from Angola that are not controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation (the "GURN"). Section 2 also prohibits the

sale or supply by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of equipment used in mining and of motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft, regardless of their origin, to the territory of Angola other than through designated points of entry. Finally, section 2 prohibits the sale or supply by U.S. persons, or from the United States or using U.S.–registered vessels or aircraft, of mining services or ground or waterborne transportation services, regardless of their origin, to persons in designated areas of Angola to which the GURN's State administration has not been extended.

Accordingly, to implement Executive Orders 13069 and 13098, and to make technical and conforming changes, OFAC is amending the Regulations. Since the amendments are extensive, part 590 is being reissued in its entirety.

New prohibitions are added to the Regulations to reflect the new sanctions imposed in Executive Orders 13069 and 13098, and certain existing prohibitions are renumbered. The text of existing § 590.202 has been replaced by new language implementing section 1 of Executive Order 13069, requiring the closure of all UNITA offices located in the United States. The text of existing § 590.203 has been moved to new § 590.211 and replaced by new language implementing the aircraft–related prohibitions contained in section 2 of Executive Order 13069 that are within the Treasury Department's jurisdiction. Thus, § 590.203 now prohibits the sale, supply, or making available in any form by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of aircraft or aircraft components, regardless of origin, to the territory of Angola, other than through a point of entry designated in new appendix B to part 590, or to UNITA. Section 590.203 also prohibits the insuring, engineering, or servicing by United States persons or from the United States of any aircraft owned or controlled by UNITA. Finally, § 590.203 prohibits the provision or making available of engineering and maintenance servicing, the payment of new claims against insurance contracts in existence as of December 15, 1997, and the provision, renewal, or making available of direct insurance by United States persons or from the United States after December 14, 1997, with respect to aircraft registered in Angola, other than aircraft designated in new appendix C to part 590, or with respect to any aircraft that have entered the territory of Angola other than through a point of entry designated in new appendix B to part 590. (Provisions in section 2 of Executive Order 13069 relating to the granting of takeoff, landing, and overflight permission to certain aircraft and the certification of airworthiness for certain aircraft are not addressed by this final rule, but instead are implemented by the Department of Transportation.)

Section 590.204 of the Regulations, implementing section 2(b) of Executive Order 13098, prohibits the sale or supply by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of equipment used in mining, regardless of origin, to the territory of Angola other than through a point of entry designated in new appendix B to part 590. Section 590.205 of the Regulations, implementing section 2(c) of Executive Order 13098, imposes the same prohibition with respect to motorized vehicles, watercraft, and spare parts for motorized vehicles or watercraft. Section 590.206 of the Regulations, implementing section 2(d) of Executive Order 13098, prohibits the sale or supply by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of mining services or ground or waterborne transportation services, regardless of origin, to persons in areas of Angola to which the GURN's State administration has not been extended, as designated in new appendix D to part 590.

Section 590.207 of the Regulations, implementing section 1 of Executive Order 13098, blocks all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of UNITA and those senior UNITA officials or adult members of their immediate families designated by the Secretary of the Treasury or the Secretary's delegate. As defined in § 590.314 of the Regulations, UNITA includes all persons owned or controlled by or acting for or on behalf of UNITA. Section 590.209 and 590.210 of the Regulations detail the effect of transfers of blocked property in violation of the Regulations and the required holding of blocked property in interest–bearing accounts.

Section 590.208 of the Regulations, implementing section 2(a) of Executive Order 13098, prohibits the direct or indirect importation into the United States of all diamonds exported from Angola after August 18, 1998, unless those diamonds are controlled through the Certificate of Origin regime of the GURN.

Various new definitions are added to the Regulations, several existing definitions are revised, and all of the definitions are placed in alphabetical order and renumbered accordingly. Due to the substantial increase in regulated commodities that are not normally controlled for export as dual–use items, OFAC has decided to discontinue use of the Commerce Control List as the primary reference for defining the broad categories of commodities now regulated by the Regulations and to reference instead the relevant chapters, headings, and subheadings of Harmonized Tariff Schedule of the United States ("HTS"). Thus, the term "aircraft or aircraft components" is defined in § 590.301 of the Regulations by reference to the relevant chapter of the HTS. Similarly, the terms "diamonds," "equipment used in mining," and "motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft" are defined in §§ 590.305, 590.308, and 590.313 respectively by reference to the relevant HTS subheadings. For consistency, the existing definitions for "arms and related materiel" and "petroleum and petroleum products," now located at §§ 590.302 and 590.316 respectively, have been modified by replacing the references to the Commerce Control List with references to the relevant chapters of the HTS. (However, in appendix A to part 590, which lists various arms and related materiel, references to Commerce Control List categories have been retained and updated as an additional guide for exporters.) The terms "controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation" and "mining services or ground or waterborne transportation services" are defined in §§ 590.304 and 590.312 respectively, and numerous definitions are added to clarify the scope of the blocking ordered in § 590.207 of the Regulations. To implement the definition of "UNITA" in Executive Orders 13069 and 13098, the definition of the term "National Union for the Total Independence of Angola," or "UNITA," located at § 590.314, is expanded to include "the Center for Democracy in Angola (CEDA)," the successor to the Free Angola Information Services, Inc. Finally, the definition of "effective date" in § 590.306 is amended to include the effective dates of all new prohibitions contained in the Regulations.

Subpart D of the Regulations is amended to include interpretive sections relating to blocked property and interests in property and the new import and export restrictions. The existing interpretive sections concerning

transshipments through the United States and transshipments through third countries are revised to include the commodities and services covered by the new prohibitions.

Subpart E of the Regulations is amended to include several general licenses and to indicate that OFAC will consider granting specific licenses for transactions for medical and humanitarian purposes otherwise prohibited under §§ 590.203 through 590.208 of the Regulations. Subpart F of the Regulations is amended to reflect the relocation of sections relating to OFAC records and reports to subpart C of 31 CFR part 501. Technical and conforming changes are made to subpart G of the Regulations, relating to penalties. Subpart H of the Regulations is amended to reflect the relocation of sections containing license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a) to subpart D of 31 CFR part 501. Subpart I of the Regulations is amended to include a Paperwork Reduction Act notice.

Five new appendices are added to the Regulations. Appendix B to part 590 contains the list of points of entry in the territory of Angola designated for the purposes of the exceptions to certain prohibitions in §§ 590.201, 590.203, 590.204, and 590.205. The list of these points of entry currently contained in § 590.201(b) is removed and transferred to new appendix B to part 590. This amendment will allow both the existing and new sections to refer to the same list of designated points of entry without unneeded repetition. Appendix C to part 590 contains the list of designated aircraft to which certain prohibitions contained in § 590.203 do not apply. Appendix D to part 590 lists those areas to which the GURN's State administration has not been extended for purposes of the prohibition in § 590.206. Appendices E and F to part 590 are non-exhaustive lists of the items considered to be equipment used in mining, motorized vehicles, watercraft, and spare parts for motorized vehicles and watercraft, which are subject to the prohibitions in §§ 590.204 and 590.205.

Other technical amendments are also made.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

As authorized in the APA, the Regulations are being issued without prior notice and public comment. The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget ("OMB") under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 590

Administrative practice and procedure, Aircraft, Aircraft services, Angola, Arms and munitions, Blocking of assets, Diamonds, Exports, Foreign trade, Imports, Insurance, Mining equipment, Mining services, Motorized vehicles, National Union for the Total Independence of Angola, Penalties, Petroleum, Reporting and recordkeeping requirements, Shipping, Transportation services, UNITA, Vessels.

For the reasons set forth in the preamble, 31 CFR part 590 is revised to read as follows:

PART 590—ANGOLA (UNITA) SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

590.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

590.201 Prohibited sale or supply of arms, arms materiel, petroleum, or petroleum products.
590.202 Required closure of UNITA offices in the United States.
590.203 Prohibited aircraft-related transactions.
590.204 Prohibited sale or supply of equipment used in mining.
590.205 Prohibited sale or supply of motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft.
590.206 Prohibited sale or supply of mining services or ground or waterborne transportation services.
590.207 Prohibited transactions involving blocked property.
590.208 Prohibited importation of diamonds.
590.209 Effect of transfers violating the provisions of this part.
590.210 Holding of funds in interest-bearing accounts; investment and reinvestment.
590.211 Evasions; attempts; conspiracies.

Subpart C—General Definitions

590.301 Aircraft or aircraft components.
590.302 Arms and related materiel.
590.303 Blocked account; blocked property.
590.304 Controlled through the Certificate of Origin Regime of the Angolan Government of Unity and National Reconciliation.
590.305 Diamonds.
590.306 Effective date.
590.307 Entity.
590.308 Equipment used in mining.
590.309 General license.
590.310 Interest.
590.311 License.
590.312 Mining services or ground or waterborne transportation services.
590.313 Motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft.
590.314 National Union for the Total Independence of Angola; UNITA.
590.315 Person.
590.316 Petroleum and petroleum products.
590.317 Property; property interest.
590.318 Specific license.
590.319 Transfer.
590.320 United States.
590.321 United States person; U.S. person.
590.322 U.S. financial institution.

Subpart D—Interpretations

590.401 Reference to amended sections.
590.402 Effect of amendment.
590.403 Termination and acquisition of an interest in blocked property.
590.404 Setoffs prohibited.
590.405 Transactions incidental to a licensed transaction.
590.406 Offshore transactions.
590.407 Transshipments through the United States prohibited.
590.408 Exports to third countries; transshipments.
590.409 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.
590.410 Provision of services.
590.411 Importation of diamonds mined outside of Angola.
590.412 Importation into and release from a bonded warehouse or foreign trade zone.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

590.501 General and specific licensing procedures.
590.502 Effect of license.
590.503 Exclusion from licenses.
590.504 Exemptions for medical and humanitarian purposes.
590.505 Payments and transfers to blocked accounts in U.S. financial institutions.
590.506 Entries in certain accounts for normal service charges authorized.
590.507 Provision of certain legal services authorized.
590.508 Investment and reinvestment of certain funds.

Subpart F—Reports

590.601 Records and reports.

Subpart G—Penalties

590.701 Penalties.
590.702 Prepenalty notice.
590.703 Response to prepenalty notice; informal settlement.
590.704 Penalty imposition or withdrawal.
590.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

590.801 Procedures.
590.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

590.901 Paperwork Reduction Act notice.

Appendix A to Part 590—Arms and Related Materiel

Appendix B to Part 590—Designated Points of Entry in the Territory of Angola

Appendix C to Part 590—Designated Aircraft of Angolan Registry [Reserved]

Appendix D to Part 590—Designated Areas of Angola to Which State Administration Has Not Been Extended

Appendix E to Part 590—Equipment Used in Mining (Harmonized Tariff Schedule Subheadings)

Appendix F to Part 590—Motorized Vehicles, Watercraft, or Spare Parts for Motorized Vehicles or Watercraft (Harmonized Tariff Schedule Subheadings)

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12865, 58 FR 51005, 3 CFR, 1993 Comp., p.636; E.O. 13069, 62 FR 65989, 3 CFR, 1997 Comp., p.232; E.O. 13098, 63 FR 44771, 3 CFR, 1998 Comp., p.206

Subpart A—Relation of This Part to Other Laws andRegulations

§ 590.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the provisions of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 590.201 Prohibited sale or supply of arms, arms materiel, petroleum, or petroleum products.

Except as otherwise authorized, the sale or supply by United States persons, or from the United States or using U.S.–registered vessels or aircraft, or any activity by United States persons or in the United States that promotes or is calculated to promote the sale or supply, of arms and related materiel of all types (as defined in § 590.302) or petroleum and petroleum products (as defined in § 590.316), regardless of origin, is prohibited if such sale or supply is to:

(a) UNITA; or

(b) The territory of Angola other than through a point of entry designated in appendix B to this part.

Note to § 590.201: The exportation of arms–related items to Angola may require separate authorization from the Bureau of Export Administration, U.S. Department of Commerce, under the Export Administration Regulations, 15 CFR subchapter C.

§ 590.202 Required closure of UNITA offices in the United States.

Except as otherwise authorized, all UNITA offices operating in the United States shall immediately and completely close.

§ 590.203 Prohibited aircraft–related transactions.

Except as otherwise authorized, the following are prohibited:

(a) The sale, supply, or making available in any form by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of any aircraft or aircraft components (as defined in § 590.301), regardless of origin, to:

(1) UNITA; or

(2) The territory of Angola other than through a point of entry designated in appendix B to this part;

Note to paragraph (a): The exportation of aircraft–related items to Angola may require separate authorization from the Bureau of Export Administration, U.S. Department of Commerce, under the Export Administration Regulations, 15 CFR subchapter C.

(b) The insurance, engineering, or servicing by United States persons or from the United States of any aircraft owned or controlled by UNITA;

(c) The provision or making available of engineering and maintenance servicing, the payment of new claims against existing insurance contracts, or the provision, renewal, or making available of direct insurance by United States persons or from the United States with respect to any aircraft that:

(1) Is registered in Angola other than aircraft designated in appendix C to this part; or

(2) Has entered the territory of Angola other than through a point of entry designated in appendix B to this part.

Note to § 590.203: Additional prohibitions exist on (1) the granting of takeoff, landing, and overflight permission for aircraft that are en route to or from a point in the territory of Angola other than a point of entry designated in appendix B to this part, and (2) the certification of airworthiness with respect to any aircraft registered in Angola, other than aircraft designated in appendix C to this part, or with respect to any aircraft that has entered Angola other than through a point of entry designated in appendix B to this part. These prohibitions are not included in this part because they fall within the jurisdiction of the U.S. Department of Transportation and the Federal Aviation Administration. Persons involved in these transactions are directed to review the rules of the Department of Transportation and the Federal Aviation Administration or to contact those agencies for assistance.

§ 590.204 Prohibited sale or supply of equipment used in mining.

Except as otherwise authorized, the sale or supply by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of equipment used in mining (as defined in § 590.308), regardless of origin, to the territory of Angola other than through a point of entry designated in appendix B to this part is prohibited.

Note to § 515.204: The export to Angola of equipment used in mining is also subject to the Export Administration Regulations, 15 CFR subchapter C, and may require separate authorization from the Bureau of Export Administration, U.S. Department of Commerce.

§ 590.205 Prohibited sale or supply of motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft.

Except as otherwise authorized, the sale or supply by United States persons, or from the United States or using U.S.–registered vessels or aircraft, of motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft (as defined in § 590.313), regardless of origin, to the territory of Angola other than through a point of entry designated in appendix B to this part is prohibited.

Note to § 515.204: The export to Angola of motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft is also subject to the Export Administration Regulations, 15 CFR subchapter C, and may require separate authorization from the Bureau of Export Administration, U.S. Department of Commerce.

§ 590.206 Prohibited sale or supply of mining services or ground or waterborne transportation services.

Except as otherwise authorized, the sale or supply by United States persons, or from the United States or using U.S.-registered vessels or aircraft, of mining services or ground or waterborne transportation services (as defined in § 590.312), regardless of origin, to persons in areas of Angola to which State administration has not been extended, as designated in appendix D to this part, is prohibited.

§ 590.207 Prohibited transactions involving blocked property.

(a) Except as otherwise authorized, no property or interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, of UNITA or of those senior officials of UNITA or adult members of their immediate families who are designated by the Secretary of the Treasury or the Secretary's delegate may be transferred, paid, exported, withdrawn, or otherwise dealt in.

Note to paragraph (a) of § 590.207: Please refer to the appendices at the end of this chapter V for listings of senior officials of UNITA and adult members of their immediate families designated pursuant to this section. Section 501.807 of this chapter V sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or who wish to assert that the circumstances resulting in designation no longer apply.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property is blocked pursuant to this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (either prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or appears to have assigned, transferred, or otherwise disposed of the security.

(c) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

§ 590.208 Prohibited importation of diamonds.

Except as otherwise authorized, the direct or indirect importation into the United States on or after 12:01 a.m. EDT on August, 19, 1998, of all diamonds (as defined in § 590.305) exported from Angola that are not controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation (as defined in § 590.304) is prohibited.

§ 590.209 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 590.207(a) is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interest.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 590.207(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, the United Nations Participation Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Property transfers that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license issued pursuant to this part and was not so licensed, or if a license did purport to cover the transfer, that such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, direction, or license issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 590.209: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date of § 590.207 there existed an interest of a person whose property is blocked pursuant to § 590.207(a).

§ 590.210 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 590.207(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally–insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or sub–account, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 590.207(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest–bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 590.207(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 590.207(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to persons whose property is blocked pursuant to § 590.207(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 590.211 Evasions; attempts; conspiracies.

Any transaction by any United States person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

Subpart C—General Definitions

§ 590.301 Aircraft or aircraft components.

The term *aircraft or aircraft components* means all aircraft, spacecraft, and parts thereof described in chapter 88 of the Harmonized Tariff Schedule of the United States and any other items that the supplier knows or has reason to know are intended to be used as a part or spare part of an aircraft or spacecraft.

§ 590.302 Arms and related materiel.

The term *arms and related materiel* means all items listed in appendix A to this part; all items described in chapter 93 of the Harmonized Tariff Schedule of the United States; any other items designed as or for use with a weapon; all items controlled under the International Traffic in Arms Regulations, 22 CFR parts 120 through 130; and any other items controlled for export as arms or related materiel by any office or agency of the United States.

§ 590.303 Blocked account; blocked property.

The terms *blocked account* and *blocked property* mean any account or property subject to the prohibition in § 590.207, held in the name of a person whose property is blocked pursuant to § 590.207(a) or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license from the Office of Foreign Assets Control authorizing such action.

§ 590.304 Controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation.

The term *controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation* means accompanied by any documentation that demonstrates to the satisfaction of the United States Customs Service (or analogous officials of a United States territory or possession with its own customs administration) that the diamonds were legally exported from Angola with the approval of the Angolan Government of Unity and National Reconciliation.

§ 590.305 Diamonds.

The term *diamonds* means all diamonds described in heading 7102 of the Harmonized Tariff Schedule of the United States; all diamond dust described in subheading 7105.10 of the Harmonized Tariff Schedule of the United States; all diamond jewelry described in subheadings 7116.20.05–.15 of the Harmonized Tariff Schedule of the United States; and any items described elsewhere in the Harmonized Tariff Schedule of the United States containing diamonds or diamond dust.

§ 590.306 Effective date.

The term *effective date* refers to each of the effective dates of the applicable prohibitions and directives of this part as follows:

(a) With respect to § 590.201 and any prohibitions under § 590.211 related to § 590.201, 4:35 p.m. EDT on September 26, 1993.

(b) With respect to §§ 590.202 and 590.203 and any prohibitions under § 590.211 related to §§ 590.202 or 590.203, 12:01 a.m. EST on December 15, 1997.

(c) With respect to §§ 590.204, 590.205, 590.206, 590.207, 590.208, 590.209, and 590.210 and any prohibitions under § 590.211 related to §§ 590.204, 590.205, 590.206, 590.207, 590.208, 590.209, or 590.210, 12:01 a.m. EDT on August, 19, 1998, or in the case of senior officials of UNITA or adult members of their immediate families who are designated after that date, the earlier of the date on which a person receives actual or constructive notice of such designation.

§ 590.307 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

§ 590.308 Equipment used in mining.

The term *equipment used in mining* means all items described in any of the Harmonized Tariff Schedule subheadings listed in appendix E to this part and any other equipment that the supplier knows or has reason to know is intended for use in the activities of prospecting or mining.

§ 590.309 General license.

The term *general license* means any license the terms of which are set forth in this part.

§ 590.310 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., *an interest in property*) means an interest of any nature whatsoever, direct or indirect.

§ 590.311 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 590.312 Mining services or ground or waterborne transportation services.

The term *mining services or ground or waterborne transportation services* means any services that are part of prospecting, mining, or carrying persons or cargo by land or water.

§ 590.313 Motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft.

The term *motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft* means all items described in any of the Harmonized Tariff Schedule subheadings listed in Appendix F to this part and any other items that the supplier knows or has reason to know are intended for use as motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft.

§ 590.314 National Union for the Total Independence of Angola; UNITA.

The term *National Union for the Total Independence of Angola*, or *UNITA*, includes:

(a) Any entity, political subdivision, agency, or instrumentality of UNITA, including without limitation:

(1) The União Nacional para a Independencia Total de Angola (UNITA), known in English as the "National Union for the Total Independence of Angola";

(2) The Forcas Armadas para a Liberação de Angola (FALA), known in English as the "Armed Forces for the Liberation of Angola";

(3) The Free Angola Information Service, Inc.; and

(4) The Center for Democracy in Angola (CEDA);

(b) Any person or entity substantially owned or controlled by any of the foregoing;

(c) Any person to the extent that such person is or has been, or to the extent that there is reasonable cause to believe that such person is or has been, since the effective date, acting or purporting to act directly or indirectly for or on behalf of any of the foregoing; and

(d) Any other person determined by the Director of the Office of Foreign Assets Control to be included within paragraphs (a) through (c) of this section.

§ 590.315 Person.

The term *person* means an individual or entity.

§ 590.316 Petroleum and petroleum products.

The term *petroleum and petroleum products* means all items described in chapter 27 of the Harmonized Tariff Schedule of the United States and any synthetic or part–synthetic replacement therefore.

§ 590.317 Property; property interest.

The terms *property* and *property interest* include but are not limited to money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, whether present, future, or contingent.

§ 590.318 Specific license.

The term *specific license* means any license not set forth in this part but issued pursuant to this part.

§ 590.319 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation upon the foregoing, the term *transfer* includes the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order; the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 590.320 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 590.321 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

§ 590.322 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, as principal or agent. This terms includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions which are located in the United States, but not such institutions' headquarters, branches, offices, or agencies.

Subpart D—Interpretations

§ 590.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order,

instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 590.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 590.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed pursuant to this part results in the transfer of property (including any property interest) away from a person whose property is blocked pursuant to § 590.207(a), the transferred property will no longer be considered property in which that person has or has had an interest. Provided no other person whose property is blocked pursuant to § 590.207(a) has any interest in the transferred property following the transfer, the transferred property will no longer be considered property blocked pursuant to § 590.207(a).

(b) Unless otherwise specifically provided in a license issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property is blocked pursuant to § 590.207(a), such property shall be deemed to be property in which that person has an interest, and such property is therefore blocked pursuant to § 590.207(a).

§ 590.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 590.207(a) if effected after the effective date.

§ 590.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect to the licensed transaction is also authorized by the license. Except as specifically authorized by the terms of a license, prohibited transactions by persons whose property is blocked pursuant to § 590.207(a) and debits to accounts blocked pursuant to § 590.207(a) are not considered incidental to a licensed transaction and therefore remain prohibited.

§ 590.406 Offshore transactions.

(a) The prohibitions contained in § 590.207 apply to transactions by any U.S. person in a location outside the United States with respect to property in which the U.S. person knows, or has reason to know, that a person whose property is blocked pursuant to § 590.207(a) has or has had an interest since the effective date of § 590.207.

(b) Transactions by a U.S. person prohibited by § 590.207 include but are not limited to:

(1) Importation into or exportation from locations outside the United States of goods, technology, or services in which the U.S. person knows, or has reason to know, that a person whose property is blocked pursuant to § 590.207(a) has or has had an interest since the effective date of § 590.207.

(2) Purchasing, selling, financing, swapping, insuring, transporting, lifting, storing, incorporating, transforming, brokering, or otherwise dealing in, within locations outside the United States, goods, technology, or services in which the U.S. person knows, or has reason to know, that a person whose property is blocked pursuant to § 590.207(a) has or has had an interest since the effective date of § 590.207.

(c) *Examples.* (1) A U.S. person may not, within the United States or abroad, purchase, sell, finance, insure, transport, act as a broker for the sale or transport of, or otherwise deal in the personal possessions of any person whose property is blocked pursuant to § 590.207(a).

(2) A U.S. person may not, within the United States or abroad, enter into any contract for any goods or services with UNITA or with any other person whose property is blocked pursuant to § 590.207(a).

§ 590.407 Transshipments through the United States prohibited.

(a) The prohibitions in §§ 590.201, 590.203, 590.204, 590.205, and 590.206 apply to the importation into the United States, for transshipment or transit, of goods or services intended or destined to be sold, supplied, or provided in violation of §§ 590.201, 590.203, 590.204, 590.205, or 590.206.

(b) The prohibition in § 590.208 applies to the importation into the United States, for transshipment or transit, of diamonds intended or destined for third countries if the diamonds were exported from Angola on or after 12:01 a.m. EDT on August 19, 1998 and are not controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation. In the case of diamonds transported by vessel, the prohibition in § 590.208 applies to the unlading in the United States and the intent to unlade in the United States of diamonds intended or destined for third countries if the diamonds were exported from Angola on or after 12:01 a.m. EDT on August 19, 1998 and are not controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation.

(c) Goods imported into or transshipped through the United States are blocked pursuant to § 590.207(a) if those goods constitute property in which a person whose property is blocked pursuant to § 590.207(a) has or has had an interest since the effective date of § 590.207.

§ 590.408 Exports to third countries; transshipments.

(a) The prohibitions in §§ 590.201 and 590.203 include the exportation of arms and related materiel, petroleum and petroleum products, and aircraft or aircraft components to third countries if the exporter knows or has reason to know that the goods are intended for reexportation or transshipment to the territory of Angola, other than through a point of entry designated in appendix B to this part, or to UNITA, including passage through or storage in intermediate destinations.

(b) The prohibitions in §§ 590.204 and 590.205 include the exportation of equipment used in mining, motorized vehicles, watercraft, or spare parts for motorized vehicles or watercraft to third countries if the exporter knows or has reason to know that the goods are intended for reexportation or transshipment to the territory of Angola other than through a point of entry designated in appendix B to this part, including passage through or storage in intermediate destinations.

(c) The prohibitions in § 590.206 include the exportation of mining services or ground or waterborne transportation services to third countries if the exporter knows or has reason to know that the services are intended for persons in areas of Angola to which State administration has not been extended, as designated in appendix D to this part.

§ 590.409 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.

No debits may be made to a blocked account to pay obligations to U.S.

persons or other persons, including payment for goods or services exported prior to the effective date of the blocking, except as authorized pursuant to this part.

§ 590.410 Provision of services.

(a) The prohibitions contained in § 590.207 apply to services performed by U.S. persons, wherever located:

(1) On behalf of or for the benefit of a person whose property is blocked pursuant to § 590.207(a); or

(2) With respect to property interests of a person whose property is blocked pursuant to § 590.207(a).

(b) *Example.* U.S. persons may not, without specific authorization from the Office of Foreign Assets Control, represent an individual or entity with respect to contract negotiations, contract performance, commercial arbitration, or other business dealings with persons whose property is blocked pursuant to § 590.207(a). See § 590.507 on licensing policy with regard to the provision of certain legal services.

§ 590.411 Importation of diamonds mined outside of Angola.

The importation prohibition in § 590.208 applies to diamonds exported from Angola whether or not those diamonds were mined in Angola.

§ 590.412 Importation into and release from a bonded warehouse or foreign trade zone.

The prohibition in § 590.208 applies to importation into and release from a bonded warehouse or a foreign trade zone of the United States. However, § 590.208 does not prohibit the release from a bonded warehouse or a foreign trade zone of diamonds exported from Angola and imported into that bonded warehouse or foreign trade zone prior to the effective date of § 590.208.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 590.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart D of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 590.502 Effect of license.

(a) No license contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control pursuant to this part, authorizes or validates any transaction effected prior to the issuance of the license, unless the prior transaction is specifically authorized in such license.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited by this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part authorizes any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited by this part has the effect of removing from the transaction a prohibition or prohibitions contained in this part, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest that would not otherwise exist under ordinary principles of law in or with respect to any property.

§ 590.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 590.504 Exemptions for medical and humanitarian purposes.

Specific licenses may be issued in appropriate cases for transactions otherwise prohibited by §§ 590.203, 590.204, 590.205, 590.206, 590.207, or 590.208, including aircraft–related transactions and ground and waterborne transportation transactions, for medical and humanitarian purposes.

§ 590.505 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property is blocked pursuant to § 590.207(a) has any interest and that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

Note to § 590.505: Please refer to part 501, subpart C of this chapter for mandatory reporting requirements regarding financial transfers. See also § 590.210 concerning the obligation to hold blocked funds in interest–bearing accounts.

§ 590.506 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charges* includes but is not limited to charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; minimum balance charges; notary and protest fees; and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 590.507 Provision of certain legal services authorized.

(a) The provision to or on behalf of a person whose property is blocked pursuant to § 590.207(a) of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipt of payment for such services must be specifically licensed.

(b) Specific licenses may be issued on a case–by–case basis authorizing receipt from unblocked sources of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to a person whose property is blocked pursuant to § 590.207(a):

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions that would violate any prohibition contained in this chapter;

(2) Representation of a person whose property is blocked pursuant to § 590.207(a) when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative

proceedings in defense of property interests subject to U.S. jurisdiction of a person whose property is blocked pursuant to § 590.207(a);

(4) Representation of a person whose property is blocked pursuant to § 590.207(a) before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such person; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) The provision of any other legal services to a person whose property is blocked pursuant to § 590.207(a), not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property of a person whose property is blocked pursuant to § 590.207(a) or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property of a person whose property is blocked pursuant to § 590.207(a) is prohibited unless specifically licensed in accordance with § 590.209(e).

§ 590.508 Investment and reinvestment of certain funds.

U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 590.207(a), subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but in no case may funds be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments are not credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to any person whose property is blocked pursuant to § 590.207(a).Subpart F—Reports

§ 590.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 590.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the "Act") (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty not to exceed $11,000 per violation may be imposed on any person who violates or attempts to violate any license, order, or regulation issued under the Act;

(2) Whoever willfully violates or willfully attempts to violate any license, order, or regulation issued under the Act, upon conviction, shall be fined not more than $50,000, and if a natural person, may also be imprisoned for not more than 10 years; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000, or if a natural person, may also be imprisoned for not more than 10 years; and any officer, director, or agent of any corporation who knowingly participates in such a violation or evasion shall be punished by a similar fine, imprisonment, or both; and any property, funds, securities, papers, other articles or documents, vessels together with their tackle, apparel, furniture, equipment, vehicle, or aircraft concerned in such violation shall be forfeited to the United States. The penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

(d) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(e) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 590.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall issue to the person concerned a notice of intent to impose a monetary penalty. This prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within 30 days of the date of mailing of the notice as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

§ 537.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent shall have 30 days from the date of mailing of the prepenalty notice to make a written response to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of response.* The written response need not be in any particular form, but must contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the

allegations in the prepenalty notice and set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(c) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice issued pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 537.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to a prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any response to a prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition of the monetary penalty to the respondent.

(1) The penalty notice shall inform the respondent that payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice.

(2) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

§ 537.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay a penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of a penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 590.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart D of this chapter.

§ 590.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Orders 12865 (3 CFR, 1993 Comp., p. 636), 13069 (3 CFR, 1997 Comp., p. 232), and 13098 (63 FR 44771, Aug. 20, 1998), and any further Executive orders relating to the national emergency declared with respect to UNITA in Executive Order 12865 may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 590.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Appendix A to Part 590—Arms and Related Materiel

Note to Appendix A: Commerce Control List Export Control Commodity Numbers are provided in parenthesis at the end of each item as a convenience.

(a) Spindle assemblies, consisting of spindles and bearings as a minimal assembly, except those assemblies with axial and radial axis motion measured along the spindle axis in one revolution of the spindle equal to or greater (coarser) than the following:
(1) 0.0008 mm TIR (peak-to-peak) for lathes and turning machines; or
(2) D x 2 x 10(-5) mm TIR (peak-to-peak) where D is the spindle diameter in millimeters for milling machines, boring mills, jig grinders, and machining centers (ECCNs 2B001 and 2B290);
(b) Equipment for the production of military explosives and solid propellants, as follows:
(1) Complete installations; and
(2) Specialized components (for example, dehydration presses; extrusion presses for the extrusion of small arms, cannon and rocket propellants; cutting machines for the sizing of extruded propellants; sweetie barrels (tumblers) 6 feet and over in diameter and having over 500 pounds product capacity; and continuous mixers for solid propellants) (ECCN 1B018);
(c) Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, specially designed for the examination, manufacture, testing, and checking of the arms, appliances, machines, and implements of war (ECCN 2B018), ammunition hand-loading equipment for both cartridges and shotgun shells, and equipment specially designed for manufacturing shotgun shells (ECCN 0B986);
(d) Construction equipment built to military specifications, specially signed for airborne transport (ECCN 0A018);
(e) Vehicles specially designed for military purposes, as follows:
(1) Specially designed military vehicles, excluding vehicles listed in the United States Munitions List, 22 CFR Part 121 (ECCN 9A018);
(2) Pneumatic tire casings (excluding tractor and farm implement types), of a kind specially constructed to be bulletproof or to run when deflated (ECCN 9A018);
(3) Engines for the propulsion of the vehicles enumerated above, specially designed or essentially modified for military use (ECCN 9A018); and
(4) Specially designed components and parts to the foregoing (ECCN 9A018);
(f) Pressure refuellers, pressure refueling equipment, and equipment specially designed to facilitate operations in confined areas and ground equipment, not elsewhere specified, developed specially for aircraft and helicopters, and specially designed parts and accessories, n.e.s. (ECCN 9A018);

(g) Specifically designed components and parts for ammunition, except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (ECCN 0A018);
(h) Nonmilitary shotguns, barrel length 18 inches or over; and nonmilitary arms, discharge type (for example, stun-guns, shock batons, etc.), except arms designed solely for signal, flare, or saluting use; and parts, n.e.s. (ECCNs 0A984 and 0A985);
(i) Shotgun shells, and parts (ECCN 0A986);
(j) Military parachutes (ECCN 9A018);
(k) Submarine and torpedo nets (ECCN 8A518);
(l) Bayonets and muzzle-loading (black powder) firearms (ECCN 0A018).

Appendix B to Part 590—Designated Points of Entry in the Territory of Angola

(a) Airports:
(1) Luanda
(2) Katumbela, Benguela Province
(b) Ports:
(1) Luanda
(2) Lobito, Benguela Province
(3) Namibe, Namibe Province
(c) Entry Points:
(1) Malongo, Cabinda Province
(2) [Reserved].

Appendix C to Part 590—Designated Aircraft of Angolan Registry

[Reserved]

Appendix D to Part 590—Designated Areas of Angola to Which State Administration Has Not Been Extended

(a) Bie Province:
(1) Municipalities:
(A) Andulo
(B) Cuemba
(C) Nharea
(2) Communities:
(A) Cassumbe
(B) Chivualo
(C) Umpulo
(D) Ringoma
(E) Luando
(F) Sachinemuna
(G) Gamba
(H) Dando
(I) Calussinga
(J) Munhango
(K) Lubia
(L) Caleie
(M) Balo Horizonte
(b) Cunene Province:
(1) Municipalities:
[Reserved]
(2) Communities:
(A) Cubati–Cachueca
(B) [Reserved]
(c) Huambo Province:
(1) Municipalities:
(A) Bailundo
(B) Mungo
(2) Communities:
(A) Bimbe
(B) Hungue–Calulo
(C) Lungue
(D) Luvemba
(E) Cambuengo
(F) Mundundo
(G) Cacoma
(d) K. Kubango Province:
(1) Municipalities:
[Reserved]
(2) Communities:
(A) Longa
(B) Lulana
(C) Luengue
(e) Malange Province:
(1) Municipalities:
(A) Luquembo
(B) Quirima
(C) Cambudi Catembo
(D) Massango
(2) Communities:
(A) Dumba–Kabango
(B) Quitapa
(C) Tala–Mungongo
(D) Bembo
(E) Caribo
(F) Culamagia
(G) Bange–Angola
(H) Milando
(I) Capunga
(J) Cunga–Palanga
(K) Dombo
(L) Quibango
(M) Rimba
(N) Bangala
(O) Moma
(P) Sautar
(Q) Cuale
(R) Caxinga
(S) Cateco–Cangola
(T) Qulhuhu
(U) Quinguengue
(f) Moxico Province:
(1) Municipalities:
(A) Cangamba
(B) Luau
(C) Luacano
(D) Cazombo
(2) Communities:
(A) Lovua
(B) Mussuma
(C) Sessa
(D) Cachipoque
(E) Cangombe
(F) Cassamba
(G) Muie
(H) Caianda
(I) Ninda
(J) Chiume
(K) Lutembo
(L) Giambe
(M) Tempue
(N) Luvuei
(O) Candundo
(P) Macondo
(Q) Sandando
(R) Muangai
(S) Lago–Dilolo
(g) Uige Province:
(1) Municipalities:
(A) Bembe
(B) [Reserved]
(2) Communities:
(A) Massau
(B) Macola
(C) Cuile–Camboso
(D) Alto–Zaza
(E) Cuango
(F) Icoca
(G) Lucunga
(H) Mabaia
(I) Beu
(J) Cuilo Futa
(K) Sacandica
(h) Benguela Province:
(1) Municipalities:
[Reserved]
(2) Communities:
(A) Chicuma
(B) Casseque
(i) Lunda–Norte Province:
(1) Municipalities:
(A) Cuilo
(B) [Reserved]
(2) Communities:
(A) Lovua
(B) Bote "Cassange–Calucala"
(C) Capala
(D) Caluango
(j) Kuanza–Norte Province:
(1) Municipalities:
(A) Banga
(B) [Reserved]
(2) Communities:
(A) Samba–Lucala
(B) Caculo–Cabaca
(C) Carlamba
(D) Aldeia–Nova
(k) Lunda–Sul Province:
(1) Municipalities:
(A) Mucondo
(B) [Reserved]
(2) Communities:
(A) Xassengue
(B) Alto–Chicapa
(C) Chiluage
(D) Cazage
(E) Luma–Cassai
(F) Muriege
(G) Cassai–Sul
(l) Bengo Province:
(1) Municipalities:
[Reserved]
(2) Communities:
(A) Quiaje
(B) [Reserved]

Appendix E to Part 590—Equipment Used in Mining (Harmonized Tariff Schedule Subheadings)

8429.11.00, 8429.19.00, 8429.20.00, 8429.30.00, 8429.40.00, 8429.51.10, 8429.51.50, 8429.52.10, 8429.52.50, 8429.59.10, 8429.59.50

8430.10.00, 8430.31.00, 8430.39.00, 8430.41.00, 8430.49.80, 8430.61.00, 8430.62.00, 8430.69.00

8431.41.00, 8431.42.00, 8431.43.80, 8431.49.90

Appendix F to Part 590—Motorized Vehicles, Watercraft, or Spare Parts for Motorized Vehicles or Watercraft (Harmonized Tariff Schedule Subheadings)

8407.10.00, 8407.21.00, 8427.29.00, 8407.31.00, 8407.32.10, 8407.32.20, 8407.32.90, 8407.33.10, 8407.33.30, 8407.33.60, 8407.33.90, 8407.34.05,

8407.34.14, 8407.34.18, 8407.34.25, 8407.34.35, 8407.34.44, 8407.34.48, 8407.34.55, 8407.90.10, 8407.90.90

8408.10.00, 8408.20.10, 8408.20.20, 8408.20.90, 8408.90.10, 8408.90.90

8409.10.00, 8409.91.10, 8409.90.30, 8409.91.50, 8409.91.92, 8409.91.99, 8409.99.10, 8409.99.91, 8409.99.92, 8409.99.99

8483.10.10, 8483.10.30, 8483.10.50

8601.10.00, 84601.20.00

8602.10.00, 8602.90.00

8603.10.00, 8603.90.00

8604.00.00

8605.00.00

8606.10.00, 8606.20.00, 8606.30.00, 8606.91.00, 8606.92.00, 8606.99.00

8607.11.00, 8607.12.00, 8607.19.03, 8607.19.06, 8607.19.12, 8607.19.15, 8607.19.30, 8607.19.90, 8607.21.10, 8607.21.50, 8607.29.10, 8607.29.50, 8607.30.10, 8607.30.50, 8607.91.00, 8607.99.10, 8607.99.50

8701.10.00, 8701.20.00, 8701.30.10, 8701.30.50, 8701.90.10, 8701.90.50

8702.10.30, 8702.10.60, 8702.90.30, 8702.90.60

8703.10.50, 8703.21.00, 8703.22.00, 8703.23.00, 8703.24.00, 8703.31.00, 8703.32.00, 8703.33.00, 8703.90.00

8704.10.10, 8704.10.50, 8704.21.00, 8704.22.10, 8704.22.50, 8704.23.00, 8704.31.00, 8704.32.00, 8704.90.00

8705.10.00, 8705.20.00, 8705.30.00, 8705.40.00, 8705.90.00

8706.00.03, 8706.00.05, 8706.00.15, 8706.00.25, 8706.00.30, 8706.00.50

8707.10.00, 8707.90.10, 8707.90.50

8708.10.30, 8708.10.60, 8708.21.00, 8708.29.10, 8708.29.15, 8708.29.20, 8708.29.50, 8708.31.10, 8708.31.50, 8708.39.10, 8708.39.50, 8708.40.10, 8708.40.20, 8708.40.30, 8708.40.50, 8708.50.10, 8708.50.30, 8708.50.50, 8708.50.80, 8708.60.10, 8708.60.30, 8708.60.50, 8708.60.80, 8708.70.05, 8708.70.15, 8708.70.25, 8708.70.35, 8708.70.45, 8708.70.60, 8708.80.15, 8708.80.25, 8708.80.30, 8708.80.45, 8708.91.10, 8708.91.50, 8708.92.10, 8708.92.50, 8708.93.15, 8708.93.30, 8708.93.60, 8708.93.75, 8708.94.10, 8708.94.50, 8708.99.03, 8708.99.06, 8708.99.09, 8708.99.12, 8708.99.15, 8708.99.18, 8708.99.21, 8708.99.24, 8708.99.27, 8708.99.31, 8708.99.34, 8708.99.37, 8708.99.40, 8708.99.43, 8708.99.46, 8708.99.49, 8708.99.52, 8708.99.55, 8708.99.58, 8708.99.61, 8708.99.64, 8708.99.67, 8708.99.70, 8708.99.73, 8708.99.80

8709.11.00, 8709.19.00

8710.00.00

8711.10.00, 8711.20.00, 8711.30.00, 8711.40.30, 8711.40.60, 8711.50.00, 8711.90.00

8714.11.00, 8714.19.00

8716.10.00, 8716.20.00, 8716.31.00, 8716.39.00, 8716.40.00, 8716.80.10, 8716.80.50, 8716.90.10, 8716.90.30, 8716.90.50

8901.10.00, 8901.20.00, 8901.30.00, 8901.90.00

8902.00.00

8903.10.00, 8903.91.00, 8903.92.00, 8903.99.20, 8903.99.90

8904.00.00

8905.10.00, 8905.90.50

8906.00.10, 8906.00.90

Dated: July 20, 1999.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 28, 1999.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 99–20831 Filed 8–9–99; 1:08 pm]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 86

[FRL–6409–2]

OMB Approvals Under the Paperwork Reduction Act Relating to the Federal Test Procedure for Emissions From Motor Vehicles; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for Final Regulations for Revisions to the Federal Test Procedure for Emissions From Motor Vehicles. This document also announces the effective dates of certain sections in the Code of Federal Regulations which contained information collection requirements and which were originally published in the **Federal Register** on October 22, 1996.

EFFECTIVE DATES: The amendment to 40 CFR 9.1 is effective August 12, 1999. 40 CFR 86.000–7, 86.000–8, 86.000–9, 86.000–21, 86.000–23, 86.000–24, 86.000–25, 86.000–26, 86.000–28, 86.001–9, 86.001–21, 86.001–23, 86.001–24, 86.001–25, 86.001–26, 86.001–28, 86.004–9, 86.004–28, 86.108–00, 86.129–00, 86.159–00, 86.160–00, 86.161–00, 86.162–00 and 86.162–03 became effective on August 27, 1997 when the Office of Management and Budget (OMB) approved their information collection requirements.

FOR FURTHER INFORMATION CONTACT: Richard W. Nash, Vehicle Programs and Compliance Division, U. S. Environmental Protection Agency, 2565 Plymouth Rd, Ann Arbor MI 48105; (734) 214–4412; nash.dick@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the Final Regulations for Revisions to the Federal Test Procedure for Emissions From Motor Vehicles, which appeared in the **Federal Register** on October 22, 1996, 61 FR 54852; OMB approved the information collection requirements on August 27,1997 (ICR 0783.36, OMB 2060–0104). The affected regulations are codified at 40 CFR part 86. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320. By this action, EPA is also announcing that these sections, which contain information collection requirements, became effective when approved by OMB on August 27, 1997.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58

FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 12, 1999 for the amendment to 40 CFR 9.1. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 22, 1999.

Joseph Retzer,

Director, Regulatory Information Division, Office of Policy.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding new entries in numerical order under the following centerheading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * * * *	
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
86.000–7	2060–0104
86.000–8	2060–0104
86.000–9	2060–0104
86.000–21	2060–0104
86.000–23	2060–0104
86.000–24	2060–0104
86.000–25	2060–0104
86.000–26	2060–0104
86.000–28	2060–0104
86.001–9	2060–0104
86.001–21	2060–0104
86.001–23	2060–0104
86.001–24	2060–0104
86.001–25	2060–0104
86.001–26	2060–0104
86.001–28	2060–0104
86.004–9	2060–0104
86.004–28	2060–0104
* * * * * * *	
86.108–00	2060–0104
* * * * * * *	
86.129–00	2060–0104
* * * * * * *	
86.159–00	2060–0104
86.160–00	2060–0104
86.161–00	2060–0104
86.162–00	2060–0104
86.162–03	2060–0104
86.163–00	2060–0104

* * * * * *

[FR Doc. 99–19267 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 62

[CC Docket No. 98–195; FCC 99–163]

1998 Biennial Regulatory Review—Repeal of Part 62 of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document seeks as part of its 1998 biennial review of regulations whether its rules governing interlocking directorates should be repealed. After reviewing the comments, the Commission released a Report and Order (Order) repealing part 62 of the rules governing interlocking directorates, because it concluded that part 62 is no longer necessary in the public interest. The Commission concludes that it should forbear from applying those provisions in section 212 of the Act that prohibit any person from holding the position of officer or director of more than one carrier subject to the Act without obtaining prior Commission authorization.

DATES: Effective September 13, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Myers Kashatus, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket 98–195 [FCC 99–163], adopted on July 7, 1999, and released on July 16, 1999. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International

Transcription Services, 445 12th Street, S.W., Room CY–B400, Washington, D.C. 20554.

1. The Commission initiated this proceeding by a Notice of Proposed Rulemaking (*Notice*) released on November 17, 1998. In the *Notice*, the Commission designated this proceeding as part of its 1998 biennial review of regulations pursuant to section 11 of the Act. Section 11 requires the Commission to conduct a biennial review, in every even-numbered year beginning in 1998, of "all regulations * * * that apply to the operations or activities of any provider of telecommunications service" and to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."[1] Section 11 further requires the Commission to repeal or to modify any regulation it determines is no longer necessary in the public interest.

2. In the *Notice*, the Commission tentatively concluded that part 62 of its rules governing interlocking directorates is no longer necessary to the public interest and therefore should be repealed. Specifically, the Commission proposed to eliminate the requirements that: (1) application be made to hold interlocking positions with more than one carrier subject to the Act where one carrier sought to be interlocked is either a dominant carrier, or a carrier not yet determined to be non-dominant; (2) applications for findings of common ownership be filed if dominant carriers are involved; (3) interlocking positions of more than one carrier subject to the Act involving non-dominant carriers, connecting carriers, cellular licensees operating in different geographic markets, and parents of carriers, among others, be reported to the Commission within 30 days after such interlock occurs; and (4) any change in status as reported under part 62 of the rules be reported to the Commission within 30 days of such change.

3. Additionally, in the *Notice*, the Commission tentatively concluded that it should forbear from enforcing those provisions of section 212 of the Act that address interlocking directorates. Section 10 of the Act requires the Commission to forbear from applying any provision of the Act, or any regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission makes certain specified findings with respect to such provisions or regulations. In the *Notice*, the Commission tentatively concluded that section 212 of the Act: (1) is not necessary to ensure that carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory; and (2) is not necessary for the protection of consumers. The Commission also tentatively concluded that forbearance from applying interlocking directorate requirements is consistent with the public interest.

4. The Commission received eleven comments and one reply comment in this proceeding. All but one commenter support the Commission's tentative conclusions that the Commission should repeal part 62 of its rules and forbear from enforcing the interlocking directorate provisions of section 212 of the Act.

5. In the Report and Order, the Commission concludes that it should repeal part 62 of its rules, which implements section 212 of the Act. Specifically, the Commission concludes that it should delete its rules that require: (1) dominant carriers and those carriers not yet found to be non-dominant to seek Commission approval prior to accepting an interlocking directorate position; (2) non-dominant carriers, connecting carriers, parent companies, and other carriers as may be required under our rules, to file post interlocking directorate reports; (3) carriers desiring authorization to hold interlocking directorates based on a finding of common ownership to make specific filings with the Commission; and (4) carriers that undergo a change in status with respect to interlocking directorate status to file a change of status report. The Commission found that interlocking directorates rarely threaten to constrain competition. More precisely, the Commission finds it difficult to envision a proposed interlock that the Commission would conclude to be anticompetitive, *ab initio*, such that the Commission would deny approval for such interlock. To the extent that potentially anticompetitive interlocks may occur, the Commission further finds that other Title II provisions and antitrust laws adequately protect against the particular concerns its Part 62 rules seek to address. Therefore, the Commission found that its rules are no longer necessary in the public interest and should be repealed.

The Commission also concludes that, pursuant to section 10 of the Act, the Commission should forbear from enforcing the interlocking directorate provisions of section 212 of the Act. In the *Notice*, the Commission tentatively concluded that the Commission should forbear from enforcing the provisions of section 212 of the Act requiring any person seeking to hold the position of officer or director with more than one carrier subject to the Act to seek prior Commission approval. The Commission tentatively concluded that these provisions of section 212 of the Act: (1) Are not necessary to ensure that a carrier's charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory; and (2) are not necessary for the protection of consumers. The Commission also tentatively concluded that forbearance from enforcing these requirements is consistent with the public interest. The Commission recognized in the *Notice* that section 212 of the Act applies to carriers in telecommunications markets that may not yet be fully competitive, and therefore, sought comment on whether the analysis undertaken to consider forbearance from enforcing section 212 of the Act should vary from market to market. No commenter opposes the Commission's tentative conclusion that the Commission should forbear from section 212 of the Act as applied to all carriers in all telecommunications markets. For all the reasons detailed previously in support of eliminating its part 62 rules, the Commission concludes that each of the statutory criteria for forbearance is satisfied, and therefore, that it should forbear from enforcing these provisions of section 212 of the Act in all markets.

V. Final Regulatory Flexibility Act Analysis

8. As required by the Regulatory Flexibility Act (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice*. The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

9. *Need for, and Objectives of, this Action:* The Commission initiated its examination of its part 62 rules as part of its 1998 biennial review of regulations as required by section 11 of the Communications Act of 1934, as amended. The Commission also issued the *Notice* to review its regulatory regime for interlocking directorates, and to determine whether in light of section 10 of the Act, the Commission should forbear from applying such requirements. The purpose of the Report and Order is to delete part 62 of the Commission's rules, which the Commission finds are no longer

[1] 47 U.S.C. 161(a).

necessary in the public interest. The Commission also has determined that it should forbear from addressing those provisions in section 212 of the Act that address interlocking directorates.

10. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA:* In the IRFA, the Commission sought comment on whether repealing part 62 of its rules and forbearing from section 212 would benefit small entities. The Commission received no comments in response to the IRFA. Several commenters, including one small entity, however, indicated that the proposals in the *Notice* would benefit small entities by reducing unnecessary regulatory burdens.

11. *Description, potential impact, and number of small entities affected:* In this order, the Commission has decided to repeal part 62 of its rules, which includes eliminating the post-interlock filing requirement for non-dominant carriers, many of whom may be small entities. The Commission also has decided to forbear from enforcing those provisions of section 212 of the Act addressing interlocking directorates. Forbearance from enforcing these rules will benefit small entities by reducing the regulatory burden to which small businesses would otherwise be subject.

12. To estimate the number of small entities that would benefit from this positive economic impact, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

13. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,459 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

14. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."

15. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." Additionally, we note that the number of small entities affected by this rule change as set forth in this Order is less than the total number of telephone companies as stated herein, because as discussed, the Commission already has decided to forbear from applying section 212 of the Act with regard to CMRS providers. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order.

16. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions in this Order.

17. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,371 small

entity LECs or small incumbent LECs that may be affected by the decisions in this Order.

18. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 143 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the decisions in this Order.

19. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 109 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the decisions in this Order.

20. *Pay Telephone Operators.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies except radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 441 companies reported that they were engaged in the provision of pay telephone services. We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small pay telephone operators.

21. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 27 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the decisions in this Order.

22. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 339 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the decisions adopted in this Order.

23. *Private Paging.* At present, there are approximately 24,000 Private Paging licenses. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. We estimate that the majority of private paging providers would qualify as small entities under the SBA definition. We note that private paging does not include common carrier paging, for which the Commission has adopted auction rules and has proposed to SBA a special small business size standard definition.

24. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions adopted in this Order.

25. *Recording, record keeping, and other compliance requirements:* No additional paperwork will be required by the decisions adopted in this proceeding. This proceeding eliminates filing requirements set forth in part 62 of the Commission's rules.

26. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* The impact of this proceeding should be beneficial to small businesses, because eliminating the Commission's part 62 rules will reduce the reporting or recordkeeping

requirements on all communications common carriers.

27. *Report to Congress:* The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.

VI. Conclusion and Ordering Clauses

28. Accordingly, *It is ordered* that pursuant to sections 1, 4, 10, 11, and 212, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 160, 161, and 212, the policies, rules, and requirements set forth herein ARE ADOPTED.

29. *It is further ordered* That pursuant to section 11 of the Communications Act of 1934, as amended, 47 U.S.C. 161, that part 62 of the Commission's rules, 47 CFR part 62, is no longer in the public interest, and therefore is REMOVED, effective 30 days after publication of the text thereof in the **Federal Register**.

30. *It is further ordered* That pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. 160, the Commission WILL FORBEAR from those provisions of section 212 addressing interlocking directorates, 47 U.S.C. 212, effective 30 days after publication of the text thereof in the **Federal Register**.

31. *It is further ordered* That the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR part 62

Antitrust, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph and telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

PART 62—[REMOVED]

Accordingly, under the authority 47 U.S.C. 154, amend 47 CFR chapter I by removing part 62.

[FR Doc. 99–20886 Filed 8–11–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990330083–9166–02; I.D. 031999B]

RIN 0648–AK32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Final Rule; Correction

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: NMFS issues a correction to the final rule, published in the **Federal Register** on July 13, 1999, which established procedures for the testing and certification of bycatch reduction devices for use in shrimp trawls in the exclusive economic zone in the Gulf of Mexico. This action corrects a prohibition by adding a cross reference applicable to the South Atlantic shrimp fishery that was inadvertently omitted, corrects an amendatory instruction, corrects an erroneous cross reference in the **DATES** section, and corrects an erroneous acronym in § 622.41(h)(3).

DATES: Effective August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 727–570–5325.

SUPPLEMENTARY INFORMATION: On July 13, 1999, NMFS published a final rule, at 64 FR 37690, that established procedures for the testing and certification of bycatch reduction devices for use in shrimp trawls in the exclusive economic zone in the Gulf of Mexico. This rule corrects § 622.7(aa) to incorporate the applicable cross reference regarding the South Atlantic shrimp fishery. Also, this rule corrects cross references in the **DATES** section. In addition, this rule corrects an acronym in § 622.41(3)(i)(B) and (3)(ii).

Corrections

In final rule FR Doc. 99–17488 published on July 13, 1999 (64 FR 37690), make the following corrections:

1. On page 37690, in the 3rd column, under **DATES**, in the 11th and 12th lines, "§ 622.41(h)(4)(i) and (h)(4)(ii)," is corrected to read "§ 622.41(h)(3)(i) and (h)(3)(ii),".

§ 622.7 [Corrected]

2. On page 37693, in the 3rd column, amendatory instruction 2 is corrected to read as follows: "2. In § 622.7, paragraph (aa) is revised to read as follows:".

3. On the same page, in the same column, under § 622.7(aa), in the last line, "§ 622.41(h)(3)" is corrected to read "§ 622.41(g)(3)(i) or (h)(3)".

§ 622.41 [Corrected]

4. On page 37694, in the 1st column, under § 622.41(h)(3)(i)(B), in the 2nd and 6th lines "RA" is corected to read "RD" in both places.

5. On the same page, in the 2nd column, under § 622.41(h)(3)(ii), in the 6th, 9th, and 31st lines "RA" is corrected to read "RD" in three places.

Dated: August 6, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20901 Filed 8–11–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 060999B]

Fisheries of the Exclusive Economic Zone Off Alaska; Other Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of other rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of other rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of other rockfish in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 9, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council

under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of other rockfish in the Western Regulatory Area of the GOA was established as 20 metric tons by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the 1999 TAC of other rockfish in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of other rockfish in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC for other rockfish in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 1999 TAC for other rockfish in the Western Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20904 Filed 8–9–99; 4:56 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080999A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 9, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1998 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 6,760 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii). The directed fishery for Pacific ocean perch in the Central Regulatory Area was closed under § 679.20(d)(iii) on July 11, 1999, (64 FR 37884, July 14, 1999) and reopened on August 6, 1999 (notification filed by the Office of the Federal Register on August 5, 1999).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for Pacific ocean perch will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,760 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20921 Filed 8–9–99; 4:56 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 155
Thursday, August 12, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 25

[Docket No. NM162; Notice No. 25–99–08–SC]

Special Conditions: Bombardier Model DHC–8–400 Airplane; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Bombardier Model DHC–8–400 series airplanes. This new airplane will have a novel or unusual design feature associated with an Automatic Takeoff Thrust Control System (ATTCS). The applicable airworthiness regulations do not contain appropriate safety standards for approach climb performance using an ATTCS. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–14), Docket No. NM162, 1601 Lind Avenue SW., Renton, Washington, 98055; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked "Docket No. NM162." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Transport Airplane Directorate, Aircraft Certification Office, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, Washington, telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM162." The postcard will be date stamped and returned to the commenter.

Background

On January 31, 1995, Bombardier Regional Aircraft, 123 Garratt Blvd., Downsview, Ontario, France, M3K 1Y5, applied for an amended type certificate to include the new Bombardier Model DHC–8–400 airplane. The Bombardier Model DHC–8–400, which is a derivative of the Bombardier (formerly de Havilland, Inc.) Model DHC 8–300 series airplanes currently under Type Certificate No. A13NM is a medium-sized airplane powered by two Pratt & Whitney Canada PW150A turbopropeller engines mounted on the wings. Each engine is equipped with a Dowty Aerospace Model R408 propeller and is capable of delivering 5071 horsepower at takeoff. The airplane is configured for five flight crewmembers and 78 passengers.

The Bombardier Model DHC–8–400 incorporates an unusual design feature, the Automatic Takeoff Thrust Control System (ATTCS), referred to by Bombardier as uptrim, to show compliance with the approach climb requirements of § 25.121(d). Appendix I to part 25 limits the application of performance credit for ATTCS to takeoff only. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Bombardier must show that the Model DHC–8–400 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A13NM or the applicable regulations in effect on the date of application for the change to the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A13NM are as follows: part 25, effective February 1, 1965, including Amendments 25–1 through 25–86, and § 25.109 as amended by Amendment 92. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Model DHC–8–400 includes part 34, effective September 10, 1990, including Amendment 34–3 effective February 3, 1999, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, including Amendments 36–1 through 36–21 and any subsequent amendments which will be applicable on the date the type certificate is issued. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Bombardier Model DHC–8–400 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model DHC–8–400 must

comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model DHC–8–400 will incorporate the following novel or unusual design feature: the Automatic Takeoff Thrust Control System (ATTCS), referred to by Bombardier as uptrim, to show compliance with the approach climb requirements of § 25.121(d). The Bombardier Model DHC–8–400 is a medium-sized airplane powered by two Pratt & Whitney Canada PW150A turbopropeller engines equipped with Full Authority Digital Engine Controls (FADEC) that, in part, protect against exceeding engine limits. The Model DHC–8–400 is also equipped with Dowty Aerospace Model R408 propellers as part of the propulsion package. The propellers incorporate a Propeller Electronic Control (PEC) that functions with the FADEC to control the engine/propeller system.

The Model DHC–8–400 incorporates a non-moving throttle system that functions by placing the throttle levers in detents for the takeoff and climb phases of flight, allowing the FADEC to schedule power settings based on flight phase. With the uptrim and associated systems functioning normally as designed, all applicable requirements of part 25 of the Federal Aviation Regulations (FAR) and paragraph 25 of the Joint Aviation Requirements (JAR), will be met without requiring any action by the crew to increase power.

Automatic takeoff power control on the Model DHC–8–400 involves uptrimming the remaining engine to Maximum Takeoff Power (MTOP) and autofeathering the propeller on the failed engine. These actions will be controlled by the PEC. At takeoff when AUTOFEATHER (A/F) is selected and the power levers are set to Normal Takeoff Power (NTOP), an "A/F ARM" message on the engine display will confirm to the pilot that the system is armed and autofeather and uptrim will occur without any further action by the crew if an engine fails. During go-around the uptrim will be automatically armed as soon as the control (power) levers are set to the takeoff (go-around) configuration.

Engine power is set to NTOP, which is 90 percent of MTOP, to initiate the takeoff roll. The value of NTOP for the current ambient conditions will be calculated and set by the FADEC. Following an engine failure during takeoff or go-around, the ATTCS will change the power reference on the operating engine to achieve the MTOP rating if the engine power was originally set to NTOP. If the reduced power takeoff option is being used the ATTCS will increase the power of the operating engine from 90 percent to 100 percent of the corresponding set power.

The engine operating limits (turbine temperature and RPM) for NTOP are set and displayed to the pilot when that rating is selected. These limits are set such that the engine red line limits are not exceeded when an uptrim is applied. When MTOP rating is selected or triggered, the engine limits are reset automatically to reflect the engine red line limits.

When both Power Lever Angles (PLA) are high and both the Condition Lever Angles (CLA) are at maximum position (MAX), the system is armed. If the torque on one engine drops below 25 percent, the PEC on the failed engine sends an uptrim signal to the remaining engine. Other conditions that will trigger the uptrim are the reduction of prop speed (Np) below 80 percent or the automatic feathering of the prop. The power levers will continue to function normally should the ATTCS fail. The MTOP can also be selected by pressing the "MTOP" switch on the engine control panel. The full MTOP is available if the pilot elects to push the PLA past the takeoff power detent into the over travel range.

To deactivate the uptrim, the PLA's should be moved out of the rating detent to a position less than 60 degrees (PLA not high) or the CLA of the active engine should be moved out of the MAX/1020 takeoff detent.

The part 25 standards for ATTCS, contained in § 25.904 and Appendix I, specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, including go-around, was considered at the time the standards were issued, but flightcrew workload issues precluded further consideration. As stated in the preamble to Amendment 25–62: "In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb (§ 25.121(d)) than for the landing climb (§ 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase" (52 FR 43153, November 9, 1987).

The ATTCS incorporated on the Model DHC–8–400 allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent. Since the ATTCS is permanently armed, it will function automatically following an engine failure, and advance the remaining engine to the ATTCS thrust level. Therefore, this design adequately addresses the pilot workload concerns identified in the preamble to Amendment 25–62. Accordingly, these proposed special conditions would require a showing of compliance with those provisions of § 25.904 and Appendix I that are applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case, during which time it must be extremely improbable to violate a flight path based on the § 25.121(d) gradient requirement, is of primary importance. The § 25.121(d) gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Applicability

As discussed above, these proposed special conditions would be applicable to the Bombardier Model DHC–8–400. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Bombardier Model DHC–8–400 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Bombardier Regional Aircraft Model DHC–8–400 airplane.

1. *General.* An Automatic Takeoff Thrust Control System (ATTCS) is defined as the entire automatic system, including all devices, both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers, or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and furnish cockpit information on system operation.

2. *ATTCS.* The engine power control system that automatically resets the power or thrust on the operating engine following engine failure during the approach for landing) must comply with the following requirements:

a. *Performance and System Reliability Requirements.* The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

b. *Thrust Setting.* The initial takeoff thrust set on each engine at the beginning of the takeoff roll or go-around may not be less than:

(1) Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust or power approved for the airplane under existing ambient conditions);

(2) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(3) That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust or power to the maximum approved takeoff thrust or power.

c. *Powerplant Controls.* In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety. The ATTCS must be designed to:

(1) Apply thrust or power on the operating engine(s), following any one engine failure during takeoff or go-around, to achieve the maximum approved takeoff thrust or power without exceeding engine operating limits; and

(2) Provide a means to verify to the flightcrew before takeoff and before beginning an approach for landing that the ATTCS is in a condition to operate.

3. *Critical Time Interval.* The definition of the Critical Time Interval in Appendix I, Section I25.2(b) shall be expanded to include the following:

a. When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

(1) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach climb gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative approach climb gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

b. The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual.

c. The critical time interval is illustrated in the following figure:

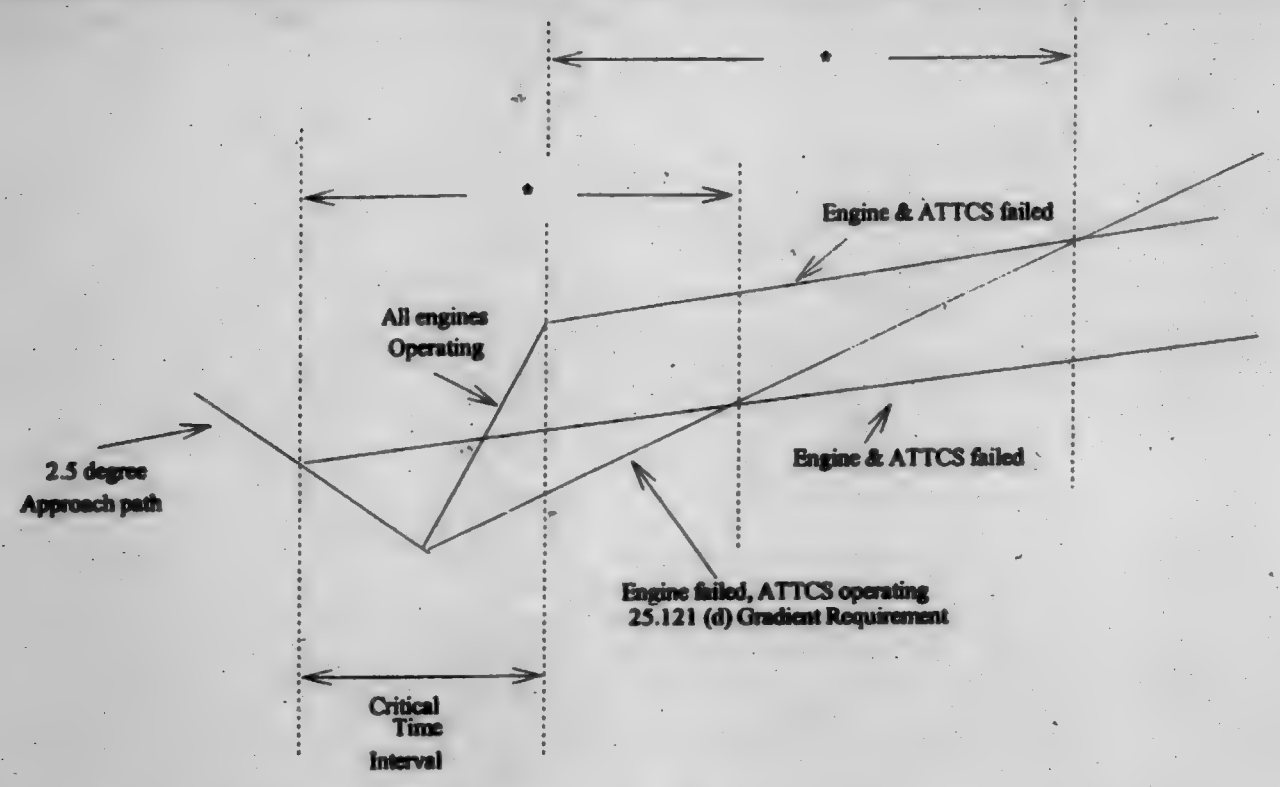

* The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

Issued in Renton, Washington, on August 4, 1999.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service, ANM–100.

[FR Doc. 99–20857 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 25

[Docket No. NM160, Notice No. 25–99–07–SC]

Special Conditions: Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes as modified by Garrett Aviation Services. The Model 20–C5/–D5/–E5/–F5 airplanes are equipped with a high-technology digital avionics system that performs critical functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions that this system performs are maintained when the airplane is exposed to HIRF.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM160, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM160. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Transport Airplane Directorate, Aircraft Certification Service, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM160." The postcard will be date stamped and returned to the commenter.

Background

On November 8, 1998, Garrett Aviation Services applied for a supplemental type certificate (STC) to modify Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes listed on Type Certificate A7EU.

The Model 20–C5/–D5/–E5/–F5 series of low wing airplanes are pressurized

airplanes with twin, Garrett TRE731–5AR turbofans that are configured for 8–10 passengers and a crew of 2. The airplane has a maximum takeoff weight of 29,000 pounds, a maximum landing weight of 27,734 pounds, and a range of 1600 nautical miles. The overall length of the Falcon Model 20–C5/–D5/–E5/–F5 airplanes is 56 feet 3 inches, and the wing span is 53 feet, 6 inches.

The modification incorporates the installation of flat panel displays for display of critical flight parameters (altitude, airspeed, and attitude) to the crew. These displays can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Garrett Aviation Services must show that the Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A7EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A7EU are as follows:

The certification basis for the modified Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes include CAR 4b effective December 1953, through Amendment 4b–12 and SR422B, as amended by type certificate data sheet.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 20–C5/–D5/–E5/–F5 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes will incorporate the following new design feature: a new electronic flat panel display system, which was not available at the time of certification of these airplanes, that performs critical functions. This system may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes, which require that new electrical and electronic systems, such as the flat panel displays for display of critical flight parameters (altitude, airspeed, and attitude) to the crew, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Field Strength (volts per meter)	Frequency	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee. In general, these standards are less critical than the threat level that was previously used as the basis for some earlier special conditions.

Applicability

As discussed above, these special conditions are applicable to Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes modified by Garrett Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes modified by Garrett Aviation Services. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Dassault Aviation Falcon Model 20–C5/–D5/–E5/–F5 airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 29, 1999.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–20859 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–321–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, that currently requires a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. This action would require the accomplishment of these same actions on additional airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight.

DATES: Comments must be received by September 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–321–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Senior Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–321–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–321–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 14, 1998, the FAA issued AD 98–20–14, amendment 39–10781 (63 FR 50501, September 22, 1998), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, to require a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to

rivet heads. The requirements of that AD are intended to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, issued Canadian airworthiness directive CF–98–08R1, dated September 16, 1998. Airworthiness directive CF–98–08R1 revises the applicability of Canadian airworthiness directive CF–98–08, dated March 26, 1998, to include Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes having serial numbers 3 through 540, excluding serial number 462. Canadian airworthiness directive CF–98–08 was applicable to Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes having serial numbers 3 through 519, excluding serial number 462.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–20–14 to continue to require a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. This proposal would expand the applicability of the existing AD to include additional airplanes. The actions would be required to be accomplished in accordance with Bombardier Service Bulletin S.B. 8–53–66, dated March 27, 1998.

Differences Between Existing AD, Service Bulletin, and Proposed Rule

Operators should note that Bombardier Service Bulletin S.B. 8–53–66, dated March 27, 1998, describes, and the existing AD requires, a visual inspection to detect chafing of electrical wires in the cable trough below the cabin floor. This proposed AD refers to that inspection as a general visual inspection. **Note 2** of this AD also includes a definition of this type of inspection.

Cost Impact

There are approximately 231 Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions specified in this proposed rule are currently required by AD 98–20–14, which is applicable to 210 Model DHC–8–102, –103, –106, –201, and –202 series airplanes. For these airplanes, it takes approximately 70 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the current requirements of that AD on U.S. operators of these airplanes is estimated to be $882,000, or $4,200 per airplane. The proposed AD would add no new costs for these airplanes.

The actions specified in this proposed rule are currently required by AD 98–20–14, which is applicable to 15 Model DHC–8–301, –311, and –315 series airplanes. For these airplanes, it takes approximately 100 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the current requirements of that AD on U.S. operators of these airplanes is estimated to be $90,000, or $6,000 per airplane.

The actions specified in this proposed AD would be applicable to 6 additional Model DHC–8–301, –311, and –315 series airplanes of U.S. registry and would take approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the new costs proposed by this AD on U.S. operators is estimated to be $36,000, or approximately $6,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10781 (63 FR 50501, September 22, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 98–NM–321–AD. Supersedes AD 98–NM–172–AD, Amendment 39–10781.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 3 through 540

inclusive, excluding serial number 462; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight, accomplish the following:

One-Time Inspection, Corrective Action, and Modification

(a) Perform a one-time general visual inspection to detect chafing of electrical wires in the cable trough below the cabin floor; install additional tie-mounts and tie-wraps; and apply sealant to rivet heads (reference Bombardier Modification 8/2705); in accordance with Bombardier Service Bulletin S.B. 8–53–66, dated March 27, 1998, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. If any chafing is detected during the inspection required by this paragraph, prior to further flight, repair in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or external area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) For airplanes having serial numbers 3 through 519 inclusive, excluding serial number 462: Inspect within 36 months after October 27, 1998 (the effective date of AD 98–20–14, amendment 39–10781).

(2) For airplanes having serial numbers 520 through 540 inclusive: Inspect within 36 months after the effective date of this AD, or at the next "C" check, whichever occurs first.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–98–08R1, dated September 16, 1998.

Issued in Renton, Washington, on August 6, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20882 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–84–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes, that currently requires repetitive visual inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. That AD also provides an optional terminating action for certain repetitive inspections. This action would add requirements for repetitive high frequency eddy current (HFEC) inspections, and corrective actions, if necessary. This action also would mandate accomplishment of the previously optional terminating action. The actions specified by the proposed AD are intended to prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane.

DATES: Comments must be received by September 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–84–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 30, 1998, the FAA issued AD 98–25–06, amendment 39–10931 (63 FR 67769, December 9, 1998), applicable to certain Boeing Model 737–200, –200C, –300, and –400 airplanes, to require repetitive inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. That action also provides an optional terminating action for the repetitive inspection requirement of that AD. That action was prompted by reports indicating that fatigue cracks have been detected in the corners of the door frame and the cross beams of the aft cargo door on several in-service airplanes, and by another report indicating that rapid depressurization occurred during flight on one of those airplanes. The requirements of that AD are intended to prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–25–06, the FAA has received a report indicating that during a high frequency eddy current inspection a one-inch crack was detected in the forward corner frame of the aft cargo door. Further investigation revealed a crack in the aft corner frame and cracks in the lower cross beam. No cracking was detected during a detailed visual inspection of these areas that was accomplished approximately 925 flight cycles prior to an incident of rapid depressurization of the airplane. In light of this information, the FAA has determined that the detailed visual inspections of the door frame and the cross beams of the aft cargo door required by the existing AD are not providing the degree of safety assurance necessary for the affected airplanes.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–25–06 to continue to require repetitive visual inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. This proposed AD would add requirements for repetitive high frequency eddy current (HFEC) inspections of the corners of the aft cargo door frame, and corrective actions, if necessary. This proposal also would mandate accomplishment of the previously optional terminating action.

The HFEC inspections would be required to be accomplished in accordance with the procedures specified in Boeing 737 Nondestructive Test Manual, Part 6, Chapter 51–00–00 (Figure 4 or Figure 23). Modification of the door frame would be required to be accomplished in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996. Repairs of the outer chord of the upper and lower cross beams would be required to be accomplished in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative.

Other Relevant Rulemaking

The FAA previously has issued AD 90–06–02, amendment 39–6489 (55 FR 8372, March 7, 1990), applicable to certain Boeing Model 737 series airplanes. AD 90–06–02 requires accomplishment of certain structural modifications, which constitutes terminating action for the repetitive inspection requirements of this proposed AD.

Differences Between Service Bulletin and This Proposed AD

• As stated in AD 98–25–06, operators should note that, unlike the procedures described in the service bulletin, this proposed AD would not permit further flight with stop-drilled cracks in the frame of the aft cargo door. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject aft cargo door frame that is found to be cracked must be permanently repaired and modified prior to further flight.

• As stated in AD 98–25–06, operators should note that the effectivity listing of the service bulletin includes Boeing Model 737–200 and –200C series airplanes having line numbers 6 through 873 inclusive. The applicability of this proposed AD includes not only those airplanes listed in the effectivity listing of the service bulletin, but also Boeing Model 737–200, –200C, –300, and –400 series airplanes; having line numbers 874 through 1642 inclusive; that have certain replacement doors installed and that have not been modified in accordance with Boeing Service Bulletin 737–52–1079.

• Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

• Operators should note that, although the service bulletin describes accomplishment of a visual inspection of the corners of the door frame and the cross beams of the aft cargo door, for the reasons discussed previously, the FAA has determined that accomplishment of a visual inspection only is inadequate to detect cracking in certain areas. Therefore, this proposed AD would add repetitive high frequency eddy current inspections to detect cracking of the four corners of the aft cargo door frame.

• Operators should note that this AD proposes to mandate, within 4 years after the effective date of this AD, the modification of the door frame of the aft cargo door described in Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, as terminating action for the repetitive inspections of the door frame. The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification is in consonance with these conditions.

Cost Impact

There are approximately 1,636 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 707 airplanes of U.S. registry would be affected by this proposed AD.

The detailed visual inspections that currently are required by AD 98–25–06, and retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $84,840, or $120 per airplane, per inspection cycle.

The new high frequency eddy current inspections that are proposed in this AD action would take approximately 4 work

hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspections proposed by this AD on U.S. operators is estimated to be $169,680, or $240 per airplane, per inspection cycle.

The modification that is proposed in this AD action would take approximately 144 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,530 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $9,311,190, or $13,170 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10931 (63 FR 67769, December 9, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–84–AD. Supersedes AD 98–25–06, Amendment 39–10931.

Applicability: The following airplane models, certificated in any category:

- Model 737–200 and –200C series airplanes, line numbers 6 through 873 inclusive;
- Model 737–200, –200C, –300, and –400 series airplanes; line numbers 874 through 1642 inclusive; equipped with an aft cargo door having Boeing part number (P/N) 65–47952–1 or P/N 65–47952–524; excluding:

1. Those airplanes on which that door has been modified in accordance with Boeing Service Bulletin 737–52–1079; or

2. Those airplanes on which the door assembly having P/N 65–47952–524 includes four straps (P/N's 65–47952–139, 65–47952–140, 65–47952–141, and 65–47952–142) and a thicker lower cross beam web (P/N 65–47952–157).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

Restatement of the Requirements of AD 98–25–06:

Inspections and Corrective Actions

(a) Within 90 days or 700 flight cycles after December 24, 1998 (the effective date of AD 98–25–06, amendment 39–10931), whichever occurs later, perform an internal detailed visual inspection to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996.

(1) If no cracking is detected, accomplish the requirements of either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the internal visual inspection thereafter at intervals not to exceed 4,500 flight cycles. Or

(ii) Prior to further flight, modify the corners of the door frame and the cross beams of the aft cargo door in accordance with the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD.

(2) If any cracking is detected in the upper or lower cross beams, prior to further flight, modify the cracked beam in accordance with paragraph III.C. of Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the repaired beam.

(3) If any cracking is detected in the forward or aft upper door frame, prior to further flight, repair the frame and modify the corners of the door frame of the aft cargo door, in accordance with paragraph III.E. of Part I of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the upper door frame.

Note 2: Cracks of the forward or aft upper door frame, regardless of length, must be repaired prior to further flight in accordance with paragraph III.E. of Part I of the Accomplishment Instructions of the service bulletin.

(4) If any cracking is detected in the forward or aft lower door frame, prior to further flight, replace the damaged frame with a new frame, and modify the corners of the door frame of the aft cargo door, in accordance with paragraph III.F. of Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the lower door frame.

(b) Where Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, specifies that certain repairs are to be accomplished in accordance with instructions received from Boeing, this AD requires that, prior to further flight, such repairs be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

New Requirements of This AD:

Inspections and Corrective Actions

(c) If any cracking of the outer chord of the upper or lower cross beams of the aft cargo door is detected as a result of any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

(d) Within 4,500 flight cycles or one year after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection (HFEC) to detect cracking of the four corners of the door frame of the aft cargo door, in accordance with the procedures specified in Boeing 737 Nondestructive Test Manual, Part 6, Chapter 51–00–00 (Figure 4 or Figure 23) .

(1) If no cracking of the corners of the door frame of the aft cargo door is detected, repeat the HFEC inspections thereafter at intervals not to exceed 4,500 flight cycles until accomplishment of the modification specified in paragraph (e) of this AD.

(2) If any cracking of the corners of the door frame of the aft cargo door is detected, prior to further flight, replace the damaged frame with a new frame, and modify the four corners of the door frame, in accordance with Parts II and III of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that door frame.

Terminating Action

(e) Within 4 years after the effective date of this AD: Modify the four corners of the door frame and the cross beams of the aft cargo door, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: Accomplishment of the modification required by paragraph (a) of AD 90–06–02, amendment 39–6489, is considered acceptable for compliance with paragraph (e) of this AD.

Note 4: Modification of the corners of the door frame and the cross beams of the aft cargo door accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–52–1079, dated December 16, 1983; Revision 1, dated December 15, 1988; Revision 2, dated July 20, 1989; Revision 3, dated May 17, 1990; or Revision 4, dated February 21, 1991; is considered acceptable for compliance with paragraph (e) of this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(f)(2) Alternative methods of compliance, approved previously in accordance with AD 98–25–06, amendment 39–10931, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 6, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20881 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–117–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all CASA Model CN–235 series airplanes, that currently requires repetitive eddy current inspections to detect fatigue cracks in the nose landing gear (NLG) turning tube, and replacement of cracked tubes. This proposal would add a requirement for the replacement of the existing NLG turning tube constructed of aluminum alloy with a new NLG turning tube made of steel; such replacement would terminate the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking and failure of the NLG turning tube, which could result in reduced structural integrity of the NLG.

DATES: Comments must be received by September 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–117–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–117–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–117–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 15, 1997, the FAA issued AD 97–02–17, amendment 39–9902 (62 FR 3994, January 28, 1997), applicable to all CASA Model CN–235 series airplanes, to require repetitive eddy

current inspections to detect fatigue cracks in the nose landing gear (NLG) turning tube, and replacement of cracked tubes. That action was prompted by a report of the failure of a NLG turning tube during landing roll; the failure was attributed to fatigue cracking in the turning tube. The requirements of that AD are intended to ensure that fatigue cracking in the NLG turning tube is detected and corrected before it could cause the failure of the tube and, consequently, degrade the structural integrity of the NLG.

Action Since Issuance of Previous Rule

In the preamble to AD 97–02–17, the FAA indicated that the actions required by that AD were considered "interim action" until final action is identified, at which time the FAA may consider further rulemaking. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows that determination.

Explanation of Relevant Service Information

CASA has issued Service Bulletin 35–CSB–32–001, dated February 16, 1999, which describes procedures for replacement of the existing NLG turning tube constructed of aluminum alloy with a new NLG turning tube made of steel. The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, classified this service bulletin as mandatory and issued Spanish airworthiness directive 01/95, Rev. 2, dated February 15, 1999, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 97–02–17, amendment 39–9902, to continue to require repetitive eddy current inspections to detect fatigue cracks in the nose landing gear (NLG) turning tube, and replacement of cracked tubes. The proposed AD would add a requirement to replace the existing NLG turning tube constructed of aluminum alloy with a new NLG turning tube made of steel, which would terminate the repetitive inspections.

Differences Between Proposed Rule and Related Service Information

Operators should note that, although the parallel Spanish airworthiness directive does not mandate the accomplishment of required actions for CASA Model CN–235 series airplane, serial number C–011, the applicability of this proposed AD would include that airplane. Although that airplane was not certificated for civilian operation by the DGAC, the FAA has certificated it as such. The FAA has determined that the unsafe condition addressed in this AD may also exist or develop on that airplane.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 97–02–17, and retained in this AD, take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $480 per airplane.

The new actions that are proposed in this AD action would take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $20,722 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $43,364, or $21,682 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9902 (62 FR 3994, January 28, 1997), and by adding a new airworthiness directive to read as follows:

Construcciones Aeronauticas, S.A. (CASA): Docket 99–NM–117–AD. Supersedes AD 97–02–17, amendment 39–9902.

Applicability: All Model CN–235 series airplanes; including Model CN–235 series airplane, serial number C–011; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the

effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and failure of the nose landing gear (NLG) turning tube, which could result in reduced structural integrity of the NLG, accomplish the following:

Restatement of Requirements of AD 97–02–17, Amendment 39–9902

(a) At the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD, conduct a high frequency eddy current (HFEC) inspection to detect fatigue cracking in the NLG turning tube, in accordance with the procedures specified in Annex 1 and Annex 2 of CASA Maintenance Instructions COM 235–092, Revision 02, dated May 5, 1995.

(1) For Model CN–235 airplanes [Basic model; Maximum Takeoff Weight (MTOW) = 31,746 lbs. (14,400 kgs.)]: Conduct the inspection prior to or upon the accumulation of 6,000 landings on the NLG turning tube, or within 50 landings after March 4, 1997 (the effective date of AD 97–02–17, amendment 39–9902), whichever occurs later.

(2) For Model CN–235–100 series airplanes [MTOW = 33,290 lbs. (15,100 kgs.)] and Model CN–235–200 series airplanes [MTOW = 34,833 lbs. (15,800 kgs)]: Conduct the inspection prior to or upon the accumulation of 4,800 landings on the NLG turning tube, or within 50 landings after March 4, 1997, whichever occurs later.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, repeat the inspection thereafter at intervals not to exceed 200 landings until the requirements of paragraph (d) are accomplished.

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, accomplish the actions required by paragraph (c)(1) or (c)(2) of this AD. After the effective date of this AD, only the actions specified by paragraph (c)(2) of this AD shall be accomplished.

(1) Replace the NLG turning tube with a new unit in accordance with CASA Maintenance Instructions COM 235–092, Revision 02, dated May 5, 1995. After replacement, repeat the HFEC inspection prior to or upon the accumulation of 6,000 landings on the new NLG turning tube installed on Model CN–325 airplanes (basic model); or prior to or upon the accumulation of 4,800 landings on the new NLG turning tube installed on Model CN–325–100 and –200 series airplanes. Thereafter, repeat the inspection at intervals not to exceed 200 landings.

(2) Remove the NLG turning tube, P/N GA 63433, from the NLG yoke assembly and install a new turning tube, P/N GA 65924, and identify the modified NLG with a P/N SB–A0002–0101 data plate with the service bulletin number inscribed, in accordance with CASA Service Bulletin 35–CSB–32–001, dated February 16, 1999.

New Requirements of This AD

(d) Remove the NLG turning tube, P/N GA 63433, from the NLG yoke assembly and install a new turning tube, P/N GA 65924, and identify the modified NLG with a P/N SB–A0002–0101 data plate with the service bulletin number inscribed, in accordance with CASA Service Bulletin 35–CSB–32–001, dated February 16, 1999. Except as provided by paragraph (c)(2) of this AD, accomplish the actions at the later of the times specified in paragraphs (d)(1) and (d)(2) of this AD. Accomplishment of these actions constitutes terminating action for the requirements of this AD.

(1) Prior to the accumulation of 4,800 total flight cycles; or

(2) Within 1 year or 200 landings after the effective date of this AD, whichever occurs first.

(e) As of the effective date of this AD, no person shall install a NLG turning tube, P/N GA 63433, on any airplane.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 01/95, Rev. 2, dated February 15, 1999.

Issued in Renton, Washington, on August 6, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20893 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–70–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and BAe Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 and BAe Avro 146–RJ series airplanes. This proposal would require repetitive inspections to detect signs of chafing to the fuel feed pipe, and repair or replacement of the fuel feed pipe with a serviceable part, if necessary; and ensuring that responder units, electrical connector backshells, and associated wiring are undamaged and are positioned correctly to provide maximum clearance with the fuel pipe. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent damage to the fuel feed pipe, which could result in fuel leaks and an increased potential for fire on the airplane.

DATES: Comments must be received by September 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington

98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–70–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146 and BAe Avro 146–RJ series airplanes. The CAA advises that it has received service reports of damage to the fuel feed pipe that supplies secondary fuel flow from the fuel flow divider to the right side fuel manifold. The CAA attributes the damage to movement of the firewall responder unit within its restraining clamps, leading to contact between the backshell clamps of the responder connector and the adjacent fuel pipe. This condition, if not corrected, could result in damage to the fuel feed pipe, which could result in fuel leaks and an increased potential for fire on the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin SB.26–44, dated February 25, 1999, which describes procedures for repetitive detailed inspections to detect signs of chafing of the fuel feed pipe, and repair or replacement of the fuel feed pipe with a serviceable part, if necessary; and procedures for ensuring that responder units, electrical backshell connectors, and associated wiring are undamaged and are positioned correctly to provide maximum clearance with the fuel pipe. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 009–02–99 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

British Aerospace has also issued Service Bulletin SB.26–44–01638A, dated February 25, 1999, which describes procedures for modifying the airplane to improve the responder unit clamping arrangement to prevent chafing against the fuel pipe. This modification would eliminate the need for the repetitive inspections.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the CAA, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect signs of chafing of the fuel feed pipes before it represents a hazard to the airplane.

Cost Impact

The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1200, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 99–NM–70–AD.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, except those on which Modification HCMO1638A (British Aerospace Service Bulletin SB.26–44–01638A, dated February 25, 1999) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the fuel feed pipe, which could result in fuel leaks and an increased potential for fire on the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a detailed visual inspection of the fuel feed pipe for signs of chafing, and ensure that responder units are undamaged and positioned correctly in relation to clamps and that electrical connector backshells and associated wiring are undamaged and are oriented to provide maximum clearance with the fuel pipe; in accordance with British Aerospace Service Bulletin SB.26–44, dated February 25, 1999.

(1) If no chafing is detected, repeat the inspection thereafter at intervals not to exceed 3,000 flight hours, until accomplishment of paragraph (b) of this AD.

(2) If any sign of chafing is detected, prior to further flight, accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable, in accordance with British Aerospace Service Bulletin SB.26–44, dated February 25, 1999. Repeat the inspection thereafter at intervals not to exceed 3,000 flight hours, until accomplishment of paragraph (b) of this AD.

(i) If the damage does not exceed one-half the thickness of the fuel feed pipe wall, prior to further flight, repair the pipe.

(ii) If the damage exceeds one-half the thickness of the fuel feed pipe wall, prior to further flight, replace the pipe with a serviceable part.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Modification of the clamping arrangement for the firewall responder units in accordance with British Aerospace Service Bulletin SB.26–44–01638A, dated February 25, 1999, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in British airworthiness directive 009–02–99.

Issued in Renton, Washington, on August 6, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20894 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–385–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. This proposal would require a one-time inspection to detect damage of the input connectors and wiring of the main and auxiliary power unit (APU) battery chargers, and corrective action, if necessary. It would also require installation of secure connectors for the battery charger input connections. In addition, this proposal would require, for certain airplanes, either the installation of a resistor in the battery charger wiring, or the installation of new batteries with internal resistors. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent increased risk of a short circuit and consequent electrical smoke or fire in the aft fuselage.

DATES: Comments must be received by September 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–385–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft

Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Louis Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–385–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–385–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. TCA advises that several incidents of damage to the battery connectors of the main battery and the auxiliary power unit (APU) have been reported. An investigation has revealed that short circuit protection does not exist within the main battery and the APU battery for the mid-voltage sensing wire going from the 10th cell of each battery to its respective battery charger. This condition, if not corrected, could result in increased risk of a short circuit and consequent electrical smoke or fire in the aft fuselage.

Explanation of Relevant Service Information

Bombardier has issued Canadair Alert Service Bulletin A601R–24–085, Revision "C," dated November 5, 1998, which describes procedures for a one-time detailed visual inspection to detect damage of the input connectors and wiring of the main battery and auxiliary power unit (APU) battery charger, and corrective action, if necessary. It also describes procedures for the installation of secure connectors for the battery charger input connections, and either the installation of a resistor in the battery charger wiring or installation of new batteries with internal resistors. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–98–40, dated November 10, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 6 work hours per airplane to accomplish the proposed actions (no breakdown of work hours for each action is provided in the service bulletin), at an average labor rate of $60 per work hour. Required parts would be provided at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $41,400, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 98–NM–385–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7067 inclusive and 7069 through 7250 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent increased risk of a short circuit and consequent electrical smoke or fire in the aft fuselage, accomplish the following:

Inspection and Corrective Action

(a) For all airplanes: Within 450 flight hours after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Part A of the Accomplishment Instructions of Canadair Alert Service Bulletin A601R–24–085, Revision 'C,' dated November 5, 1998.

(1) Perform a detailed visual inspection to detect damage of the input connector of the main battery charger and the wire harness between the electrical connectors for the main battery and the main battery charger. If any damage is detected, prior to further flight, repair it, or replace the wiring or connector with new or serviceable parts.

(2) Perform a detailed visual inspection to detect damage of the input connector of the auxiliary power unit (APU) battery charger and the wire harness between the electrical connectors for the APU battery and the APU battery charger. If any damage is detected, prior to further flight, repair it, or replace the wiring or connector with new or serviceable parts.

(3) Secure both the spin coupling ring of the input connector of the main battery charger and the spin coupling ring of the input connector of the APU battery charger by installing heat shrink tubing and ty-rap.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Modification or Replacement

(b) For airplane serial numbers 7003 through 7067 inclusive and 7069 through 7249 inclusive: Within 450 flight hours after the effective date of this AD, accomplish the actions in either paragraph (b)(1) or (b)(2) in accordance with Part B of the Accomplishment Instructions of Canadair Alert Service Bulletin A601R–24–085, Revision 'C,' dated November 5, 1998.

(1) Install an external 5.1-Kohm resistor in the mid-voltage sensing wire for the main battery and an external 5.1-Kohm resistor in the mid-voltage sensing wire for the APU battery. Or

(2) Install main battery P/N 601R59041–3 and APU battery P/N 600–59151–11, which contain an internal resistor for the mid-voltage sensing wire.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–98–40, dated November 10, 1998.

Issued in Renton, Washington, on August 6, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20895 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–324–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–311 and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–311 and –315 series airplanes, that currently requires replacement of the nitrogen cylinder assemblies that inflate the airplane's ditching dams with improved nitrogen cylinder assemblies. This action would expand the applicability of the existing AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the ditching dams to inflate fully during an emergency water landing, which could result in water entering the airplane.

DATES: Comments must be received by September 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–324–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream,

New York 11581; telephone (516) 256–7520; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–324–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–324–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 22, 1998, the FAA issued AD 98–11–25, amendment 39–10550 (63 FR 30121, June 3, 1998), applicable to certain Bombardier Model DHC–8–311 and –315 series airplanes, to require replacement of the nitrogen cylinder assemblies that inflate the airplane's ditching dams with improved nitrogen cylinder assemblies. That action was prompted by information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent failure of the ditching dams to inflate fully during an emergency water landing, which could result in water entering the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Transport Canada Civil Aviation (TCA), which is the airworthiness authority for Canada, has advised the FAA that medium and high gross weight configured airplanes on which Bombardier Change Request CR803SO00001–1 or CR803SO00002–1 has been incorporated may also be subject to the identified unsafe condition.

Explanation of Relevant Service Information

The manufacturer has issued de Havilland Service Bulletin S.B. 8–25–122, dated October 10, 1997, which describes procedures for replacing the existing nitrogen cylinder assemblies on ditching dams with new nitrogen cylinder assemblies that incorporate an improved valve assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–97–21R1, dated July 22, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–11–25 to continue to require replacement of the nitrogen cylinder assemblies that inflate the airplane's ditching dams with improved nitrogen cylinder assemblies. This action would expand the applicability of the existing AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 2 airplanes of U.S. registry that would be affected by this proposed AD.

The replacement that is currently required by AD 98–11–25 and retained in the proposed AD would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer of the nitrogen cylinder assembly at no cost to the operator. Based on these figures, the cost impact of the replacement currently required on U.S. operators is estimated to be $480, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12,612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10550 (63 FR 30121, June 3, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 98–NM–324–AD. Supersedes AD 98–11–25, Amendment 39–10550.

Applicability: Model DHC–8–311 and -315 series airplanes in the medium and high gross weight configuration, on which Bombardier Change Request CR803SO00001, CR803SO00001–1, CR803SO00002, CR803SO00002–1, CR803CH00046, CR803CH00079, CR803CH00105, CR825CH00847, or CR803CH00051 has been incorporated; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ditching dams to inflate fully during an emergency water landing, which could result in water entering the airplane, accomplish the following:

Restatement of the Requirements of AD 98–11–25, Amendment 39–10550

(a) For airplanes in the medium and high gross weight configuration, on which Bombardier Change Request CR803SO00001, CR803SO00002, CR803CH00046, CR803CH00079, CR803CH00105, CR825CH00847, or CR803CH00051 has been incorporated: Within 6 months after July 8, 1998 (the effective date of AD 98–11–25), replace the existing nitrogen cylinder assembly on the ditching dams with a new nitrogen cylinder assembly that incorporates an improved valve assembly (reference de Havilland Modification 8/3154), in accordance with de Havilland Service Bulletin S.B. 8–25–122, dated October 10, 1997.

(b) For airplanes in the medium and high gross weight configuration, on which Bombardier Change Request CR803SO00001, CR803SO00002, CR803CH00046, CR803CH00079, CR803CH00105, CR825CH00847, or CR803CH00051 has been incorporated: As of July 8, 1998, no person shall install on any airplane any nitrogen cylinder assembly having part number (P/N) 410870(BSC) or 410870–1.

New Requirements of This AD

Replacement

(c) For airplanes other than those identified in paragraph (a) of this AD: Within 6 months after the effective date of this AD, replace the existing nitrogen cylinder assembly on the ditching dams with a new nitrogen cylinder assembly having P/N 410870–3 or -5, that incorporates an improved valve assembly (reference de Havilland Modification 8/3154), in accordance with de Havilland Service Bulletin S.B. 8–25–122, dated October 10, 1997.

Spares

(d) For airplanes other than those identified in paragraph (a) of this AD: As of the effective date of this AD, no person shall install on any airplane any nitrogen cylinder assembly having P/N 410870(BSC) or 410870–1.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–21R1, dated July 22, 1998.

Issued in Renton, Washington, on August 6, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20891 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–377–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes. This proposal would require a detailed inspection for interference between the safety-lock hooks and upper cowls, and corrective action, if necessary. This proposal also would require modification of the attachment supports of the inner locking hooks; and a detailed inspection of the safety-lock hooks on the lower engine cowl for proper operation and for clearance between the outer edges of the upper and lower cowls; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent unintended disengagement of the engine cowl hooks during ground maintenance, which could result in in-flight loss of an engine cowl from the airplane and possible damage to the airplane and persons or property on the ground.

DATES: Comments must be received by September 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–377–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–377–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–377–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 2000 series airplanes. The DGAC advises that, during flight, an engine cowl separated from an airplane. A definitive cause for the separation could not be determined because critical pieces of the cowling were not recovered. The separation is thought to have been caused by disengagement of a forward attachment hook during ground maintenance. This theory is supported by another report received from an operator that noted that after closing the cowling during ground maintenance the forward hook was not properly engaged. The existing design of the attachment hook may not adequately prevent such disengagement. This condition, if not corrected, could result in in-flight loss of an engine cowl from the airplane and possible damage to the airplane and persons or property on the ground.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F2000–133, Revision 1, dated October 7, 1998, which describes procedures for a detailed inspection for interference between the safety-lock hooks and upper cowls, and trimming the upper cowl slots, if necessary. The service bulletin also describes procedures for modification of the attachment supports of the inner locking hooks; and a detailed inspection of the safety-lock hooks on the lower engine cowl for proper operation and for clearance between the outer edges of the upper and lower cowls, and corrective actions, if necessary. The modification involves trimming the attachment support of each lock and applying a corrosion protective coating. The corrective actions involve replacing the safety hammer return springs, front and rear outer attachment hooks, and safety hammers; and trimming the outer edges of the lower cowl, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 98–391–006(B), dated October 7, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspections and modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,371, or $189 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 98–NM–377–AD.

Applicability: Model Falcon 2000 series airplanes, serial numbers 2 through 72 inclusive, except those airplanes on which modification M1486 (reference Dassault Service Bulletin F2000–133, dated July 29, 1998, or Revision 1, dated October 7, 1998) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent unintended disengagement of the engine cowl hooks during ground maintenance, which could result in in-flight loss of the engine cowl from the airplane and possible damage to the airplane and persons or property on the ground, accomplish the following:

Corrective Actions

(a) Within 6 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with Dassault Service Bulletin F2000–133, Revision 1, dated October 7, 1998.

(1) Perform a detailed inspection for interference between the safety-lock hooks and upper cowls. If the clearance is outside the limits specified in the service bulletin, prior to further flight, trim the edges of the upper cowl slots.

(2) Modify the attachment supports of the inner locking hooks.

(3) Perform a detailed inspection of the safety-lock hooks on the lower engine cowl for proper operation and for clearance between the outer edges of the upper and lower cowls. If any discrepancy is detected, prior to further flight, perform the applicable corrective action specified in the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct-source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–391–006(B), dated October 7, 1998.

Issued in Renton, Washington, on August 6, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20892 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–30 and –30F Series Airplanes, and Model MD–11 and –11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–30 and –30F series airplanes, and Model MD–11 and –11F series airplanes. This proposal would require that a determination be made of whether, and at what locations, metallized polyethyleneteraphthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets. This proposal is prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. The actions specified by the proposed AD are intended to ensure that insulation blankets constructed of MPET are removed from the fuselage. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

DATES: Comments must be received by September 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Robert Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5334; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–162–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of a number of in-flight and ground fires on McDonnell Douglas Model DC–9–80 and MD–11 series airplanes manufactured with insulation blankets covered with metallized polyethyleneteraphthalate (MPET) (also known as metallized Mylar). Investigation has revealed that MPET covered insulation blankets may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. The results of extensive flammability testing, conducted by the manufacturer and the FAA, revealed that this type of insulation material will propagate a fire.

There are other materials on insulation blankets that exhibit similar flammability characteristics if ignited. However, these materials are much more difficult to ignite than MPET.

Insulation blankets constructed of MPET installed throughout the fuselage, if not corrected, could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

The subject insulation blankets on certain McDonnell Douglas Model DC–10–30 and –30F series airplanes, and Model MD–11F series airplanes are identical to those on the affected Model DC–9–80 and MD–11 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition. The FAA is issuing a separate rulemaking action [notice of proposed rulemaking (NPRM), Rules Docket No. 99–NM–161–AD] to address McDonnell Douglas Model DC–9–80 and MD–90–30 series airplanes, and Model MD–88 airplanes.

Other Relevant Investigations and Rulemaking

The FAA is continuing to investigate various wiring problems on McDonnell Douglas Model DC–9–80, MD–90–30, DC–10, and MD–11 series airplanes, and Model MD–88 airplanes. The FAA may consider additional rulemaking actions to address any identified unsafe condition. The FAA will take into account the impact of those actions on U.S. operators to minimize the duplication of aircraft downtime associated with accomplishing the actions of this proposed AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC10–25–368, dated October 31, 1997 (for Model DC–10–30 and –30F series airplanes), and McDonnell Douglas Service Bulletin MD11–25–200, Revision 01, dated March 20, 1998 (for Model MD–11 and –11F series airplanes). The service bulletins describe procedures for replacement of MPET covered insulation blankets with new blankets fabricated with metallized Tedlar or equivalent blanket material. Accomplishment of the replacement procedures specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed AD and Service Bulletins

The referenced service bulletins describe procedures for replacement of MPET covered insulation blankets with certain metallized Tedlar or equivalent blanket material, which meet the current FAA flammability standards (i.e., Bunsen burner test). However, this proposed AD requires replacement with insulation blankets that are constructed of materials tested in accordance with Standard Test Method American Society for Testing and Materials (ASTM) E648 and approved by the FAA. The FAA finds that the current flammability standards are not able to distinguish between different types of insulation covering material in their flame spread properties from small ignition sources. ASTM E648 provides a test that will differentiate flame spread properties of different metallized Tedlars. Only one of the two insulation blanket film materials specified in the service bulletins, has successfully passed the testing of the ASTM flammability standard and has been found to be an acceptable replacement material for the MPET covered insulation blankets. Other film material, such as certain polyimide and fluoropolymer composites, also has been successfully tested to ASTM E648 and could be found to be acceptable for compliance with the requirements of this proposed AD if presented to the FAA for approval. These materials are not listed in the service bulletins described previously.

Operators should note that this proposed AD would require replacement of MPET insulation blankets within 4 years after the effective date of this AD. The service bulletins recommend that this action should be accomplished "at the earliest practical maintenance period." Maintenance periods vary between operators and may involve maintenance on an entire airplane or only portions of an airplane. As a result, in developing an appropriate compliance time for this and other proposed AD's, the FAA must adopt a time period that will apply to all operators and airplanes. In establishing a compliance time for this proposed AD, the FAA balanced the urgency associated with addressing the subject unsafe condition against the need to ensure that operators are provided sufficient time to perform a safe replacement of the insulation. Because of the close proximity of the insulation to wiring and other fixtures of various critical airplane systems, it is imperative that operators be given the necessary time to ensure safe

replacement. Therefore, the FAA has determined that a 4-year compliance time is appropriate in that it allows the proposed replacement to be accomplished within an interval of time that encompasses normal scheduled maintenance for the majority of affected operators, thereby, allowing safe replacement. In order to meet the deadline, the FAA expects early planning and anticipates that operators will have to take advantage of every heavy maintenance opportunity.

Operators also should note that the effectivity listing of the referenced service bulletins differs from the applicability of the proposed AD. The applicability of the proposed AD affects airplanes manufactured with MPET insulation blankets. The effectivity listing of the service bulletins not only includes airplanes manufactured with MPET insulation blankets, but airplanes equipped with other materials that are much more difficult to ignite than MPET (as discussed previously). The FAA has determined that only airplanes manufactured with MPET insulation blankets are subject to the identified unsafe condition. Therefore, paragraph (a) of the proposed AD would require that a determination be made of whether, and at what locations, MPET insulation blankets are installed, and the proposal would require corrective action only with respect to those blankets. The proposal would require that this determination be made in a manner approved by the manager of the LAACO. Blankets that are stamped with "DMS 2072, Type 2, Class 1, Grade A" or "DMS 1996, Type 1" are constructed of MPET. On some blankets, because of their age or wear, it may not be possible to identify these stamps. Boeing is currently developing instructions for how to determine whether such blankets are constructed of MPET. These instructions, if approved, may be referenced as additional service information in any final rule resulting from this rulemaking. In addition, if additional airplane models manufactured with MPET insulation blankets are identified, the FAA may consider additional rulemaking actions to address the identified unsafe condition.

Regulatory Evaluation

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA conducted a Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis to determine the regulatory impacts of this and one other proposed AD to operators of all 699 U.S.-registered McDonnell Douglas airplanes that have thermal/acoustical insulation blankets covered with a film of MPET. This analysis is included in Rules Docket No.'s 99–NM–162–AD and 99–NM–161–AD. The FAA has determined that 61 Model MD–11 and –11F series airplanes and four Model DC–10–30 and –30F series airplanes operated by 5 entities would be affected by this proposed AD. Three entities operate Model MD–11 and –11F series airplanes and two entities operate both Model MD–11 and –11F series airplanes and Model DC–10–30 and –30F series airplanes.

The Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis, completed by the FAA and included in the Rules Docket, estimates that the affected airplanes could be retrofitted with thermal/acoustic insulation blankets covered with film that exhibit no flame propagation when tested in accordance with the requirements of ASTM E648 or FAA-approved equivalent. Testing conducted by the FAA indicates that there are films that are currently in use that meet the test standard required by this proposed AD. These include certain polyvinylfluoride films that weigh no more than the materials they would replace. The FAA has identified three categories of costs associated with the retrofit: (1) Material costs of the blankets; (2) labor costs to remove existing blankets, install new blankets, and reinstall wiring, panels, floors, and other items; and (3) net lost revenues, or out of service costs. Over the four-year compliance period, material costs would total $3.5 million, labor costs would be $43.5 million, and net lost revenues would be $9.9 million. Total costs would be $56.8 million, or $48.1 million discounted to present value at seven percent.

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. Only one entity affected by the proposed AD is considered small. This entity has revenues in excess of $100 million. One entity is not considered a substantial number of small entities by Small Business Administration criteria. Pursuant to the RFA, 5 U.S.C. 605(b), the FAA certifies that this proposed AD would not have a significant economic impact on a substantial number of small entities.

The provisions of this proposed AD would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or

uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–162–AD.

Applicability: Model DC–10–30 and –30F series airplanes, and Model MD–11 and –11F series airplanes; manufacturer's fuselage numbers 440 through 632 inclusive; certificated in any category.

Note: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that insulation blankets constructed of metallized polyethyleneteraphthalate (MPET) are removed from the fuselage, accomplish the following:

Inspection

(a) Within 4 years after the effective date of this AD, determine whether, and at what locations, insulation blankets constructed of MPET are installed. This determination shall be made in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Insulation blankets that are stamped with "DMS 2072, Type 2, Class 1, Grade A" or "DMS 1996, Type 1" are constructed of MPET.

Corrective Actions

(b) For insulation blankets that are determined not to be constructed of MPET, no further action is required by this AD.

(c) For insulation blankets that are determined to be constructed of MPET, within 4 years after the effective date of this AD, replace the MPET insulation blankets with new insulation blankets. The replacement procedures shall be done in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC10–25–368, dated October 31, 1997 (for Model DC–10–30 and –30F series airplanes); or McDonnell Douglas Service Bulletin MD11–25–200, Revision 01, dated March 20, 1998 (for Model MD–11 and –11F series airplanes); as applicable. The replacement insulation blankets must be constructed of materials tested in accordance with Standard Test Method American Society for Testing and Materials (ASTM) E648 and approved by the Manager, Los Angeles ACO.

Note 3: Although this paragraph allows up to 4 years for the required replacement, the FAA anticipates that operators will comply at the earliest practicable maintenance opportunity.

Note 4: Only one of the two metallized Tedlar covers specified in the service bulletins has been shown to have successfully passed the testing of the ASTM flammability standard and is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install an MPET insulation blanket on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 9, 1999.

D. L. Riggin, Acting Manager,
Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 99–20939 Filed 8–11–99; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–161–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 and MD–90–30 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 and MD–90–30 series airplanes, and Model MD–88 airplanes. This proposal would require that a determination be made of whether, and at what locations, metallized polyethyleneteraphthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets. This proposal is prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. The actions specified by the proposed AD are intended to ensure that insulation blankets constructed of MPET are removed from the fuselage. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

DATES: Comments must be received by September 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00

p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Robert Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5334; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–161–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of a number of in-flight and ground fires on McDonnell Douglas Model DC–9–80 and MD–11 series airplanes manufactured with insulation blankets covered with metallized polyethyleneteraphthalate (MPET) (also known as metallized Mylar). Investigation has revealed that MPET covered insulation blankets may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. The results of extensive flammability testing, conducted by the manufacturer and the FAA, revealed that this type of insulation material will propagate a fire.

There are other materials on insulation blankets that exhibit similar flammability characteristics if ignited. However, these materials are much more difficult to ignite than MPET.

Insulation blankets constructed of MPET installed throughout the fuselage, if not corrected, could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

The subject insulation blankets on certain McDonnell Douglas Model MD–90–30 and DC–10 series airplanes, and Model MD–88 airplanes are identical to those on the affected Model DC–9–80 and MD–11 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition. The FAA is issuing a separate rulemaking action [notice of proposed rulemaking (NPRM), Rules Docket No. 99–NM–162–AD] to address McDonnell Douglas Model DC–10 and MD–11 series airplanes.

Other Relevant Investigations and Rulemaking

The FAA is continuing to investigate various wiring problems on McDonnell Douglas Model DC–9–80, MD–90–30, DC–10, and MD–11 series airplanes, and Model MD–88 airplanes. The FAA may consider additional rulemaking actions to address any identified unsafe condition. The FAA will take into account the impact of those actions on U.S. operators to minimize the duplication of aircraft downtime associated with accomplishing the actions of this proposed AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD–90–25–015, Revision 01, dated November 5, 1997 (for Model MD–90–30 series airplanes), and McDonnell Douglas Service Bulletin MD80–25–355, Revision 01, dated November 5, 1997 (for Model DC–9–80 series airplanes and Model MD–88 airplanes). The service bulletins describe procedures for replacement of MPET covered insulation blankets with new blankets fabricated with metallized Tedlar or equivalent blanket material. Accomplishment of the replacement procedures specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed AD and Service Bulletins

The referenced service bulletins describe procedures for replacement of MPET covered insulation blankets with certain metallized Tedlar or equivalent blanket material, which meet the current FAA flammability standards (i.e., Bunsen burner test). However, this proposed AD requires replacement with insulation blankets that are constructed of materials tested in accordance with Standard Test Method American Society for Testing and Materials (ASTM) E648 and approved by the FAA. The FAA finds that the current flammability standards are not able to distinguish between different types of insulation covering material in their flame spread properties from small ignition sources. ASTM E648 provides a test that will differentiate flame spread properties of different metallized Tedlars. Only one of the two insulation blanket film materials specified in the service bulletins has successfully passed the testing of the ASTM flammability standard and has been found to be an acceptable replacement material for the MPET covered insulation blankets. Other film material, such as certain polyimide and fluoropolymer composites, also have been successfully tested to ASTM E648 and could be found to be acceptable for compliance with the requirements of this proposed AD if presented to the FAA for approval. These materials are not listed in the service bulletins described previously.

Operators should note that this proposed AD would require replacement of MPET insulation blankets within 4 years after the effective date of this AD. The service bulletins recommend that this action should be accomplished "at the earliest practical maintenance period." Maintenance periods vary between operators and may involve maintenance on an entire airplane or only portions of an airplane. As a result, in developing an appropriate compliance time for this and other proposed AD's, the FAA must adopt a time period that will apply to all operators and airplanes. In establishing a compliance time for this proposed AD, the FAA balanced the urgency associated with addressing the subject unsafe condition against the need to ensure that operators are provided sufficient time to perform a safe replacement of the insulation. Because of the close proximity of the insulation to wiring and other fixtures of various critical airplane systems, it is imperative that operators be given the necessary time to ensure safe replacement. Therefore, the FAA has determined that a 4-year compliance time is appropriate in that it allows the proposed replacement to be accomplished within an interval of time that encompasses normal scheduled maintenance for the majority of affected operators, thereby, allowing safe replacement. In order to meet the deadline, the FAA expects early planning and anticipates that operators will have to take advantage of every heavy maintenance opportunity.

Operators also should note that the effectivity listing of the referenced service bulletins differs from the applicability of the proposed AD. The applicability of the proposed AD affects airplanes manufactured with MPET insulation blankets. The effectivity listing of the service bulletins not only includes airplanes manufactured with MPET insulation blankets, but airplanes equipped with other materials that are much more difficult to ignite than MPET (as discussed previously). The FAA has determined that only airplanes manufactured with MPET insulation blankets are subject to the identified unsafe condition. Therefore, paragraph (a) of the proposed AD would require that a determination be made of whether, and at what locations, MPET insulation blankets are installed, and the proposal would require corrective action only with respect to those blankets. The proposal would require that this determination be made in a manner approved by the manager of the LAACO. Blankets that are stamped with "DMS 2072, Type 2, Class 1, Grade A" or "DMS 1996, Type 1" are constructed of MPET. On some blankets, because of their age or wear, it may not be possible to identify these stamps. Boeing is currently developing instructions for how to determine whether such blankets are constructed of MPET. These instructions, if approved, may be referenced as additional service information in any final rule resulting from this rulemaking. In addition, if additional airplane models manufactured with MPET insulation blankets are identified, the FAA may consider additional rulemaking actions to address the identified unsafe condition.

Regulatory Evaluation Summary

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA conducted a Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis to determine the regulatory impacts of this and one other proposed AD to operators of all 699 U.S.-registered McDonnell Douglas airplanes that have thermal/acoustical insulation blankets covered with a film of MPET. This analysis is included in the Rules Docket No.'s 99–NM–161–AD and 99–NM–162–AD. The FAA has determined that 612 Model DC–9–80 series airplanes and 22 Model MD–90–30 series airplanes operated by 16 entities would be affected by this proposed AD. Thirteen of these entities operate N-registered Model DC–9–80 series airplanes, three entities operate Model MD–90–30 series airplanes, and two entities operate both Model DC–9–80 series airplanes and Model MD–90–30 series airplanes.

The Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis, completed by the FAA and included in this Rules Docket, estimates that the affected airplanes could be retrofitted with thermal/acoustic insulation blankets covered with film that exhibit no flame propagation when tested in accordance with the requirements of ASTM E648 or FAA-approved equivalent. Testing conducted by the FAA indicates that there are films that are currently in use that meet the test standard required by this proposed AD. These include certain polyvinylfluoride films that weigh no more than the materials they would replace. The FAA has identified three categories of costs associated with the retrofit: (1) Material costs of the blankets; (2) labor costs to remove existing blankets, install new blankets, and reinstall wiring, panels, floors, and other items; and (3) net lost revenues, or out of service costs. Over the four-year compliance period, material costs would be $17.2 million, labor costs would be $214.1 million, and net lost revenues would be $13.3 million. Total costs would be $244.6 million, or $207.0 million discounted to present value at seven percent.

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Three of the operators affected by the proposed AD are considered small, that is, they employ fewer than 1,500 people. One of these operators is a private corporation and the FAA is unable to ascertain any financial information about it. The other two entities have revenues in excess of $100 million. Two entities are not considered a substantial number of small entities by Small Business Administration criteria. Pursuant to the RFA, 5 U.S.C. 605(b), the FAA certifies that this proposed AD would not have a significant economic impact on a substantial number of small entities.

The provisions of this proposed AD would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–161–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) series airplanes; Model MD–90–30 series airplanes; and MD–88 airplanes; manufacturer's fuselage numbers 1011 through 2241 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that insulation blankets constructed of metallized polyethyleneteraphthalate (MPET) are removed from the fuselage, accomplish the following:

Inspection

(a) Within 4 years after the effective date of this AD, determine whether, and at what locations, insulation blankets constructed of MPET are installed. This determination shall be made in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Insulation blankets that are stamped with "DMS 2072, Type 2, Class 1, Grade A" or "DMS 1996, Type 1" are constructed of MPET.

Corrective Actions

(b) For insulation blankets that are determined not to be constructed of MPET, no further action is required by this AD.

(c) For insulation blankets that are determined to be constructed of MPET, within 4 years after the effective date of this AD, replace the MPET insulation blankets with new insulation blankets. The replacement procedures shall be done in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD–90–25–015, Revision 01, dated November 5, 1997 (for Model MD–90–30 series airplanes); or McDonnell Douglas Service Bulletin MD80–25–355, Revision 01, dated November 5, 1997 (for Model DC–9–80 series airplanes and Model MD–88 airplanes); as applicable. The replacement insulation blankets must be constructed of materials tested in accordance with Standard Test Method American Society for Testing and Materials (ASTM) E648 and approved by the Manager, Los Angeles ACO.

Note 3: Although this paragraph allows up to 4 years for the required replacement, the FAA anticipates that operators will comply at the earliest practicable maintenance opportunity.

Note 4: Only one of the two metallized Tedlar covers specified in the service bulletins has been shown to have successfully passed the testing of the ASTM flammability standard and is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install an MPET insulation blanket on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 9, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20940 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105237–99]

RIN 1545–AX19

Furnishing Identifying Number of Income Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: The IRS is proposing regulations that allow income tax return preparers to elect an alternative to their social security number (SSN) for

purposes of identifying themselves on returns they prepare. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** also serves as the text of these proposed regulations. The regulations affect individual preparers who elect to identify themselves using a number other than their SSN.

DATES: Written or electronically generated comments and requests for a public hearing must be received by November 9, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105237–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105237–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Andrew J. Keyso, (202) 622–4910; concerning submissions, Michael Slaughter, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 6109. The temporary regulations provide that an income tax return preparer who is an individual may furnish either a social security number or an alternative identifying number to satisfy the requirements of section 6109(a)(4). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Andrew J. Keyso, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6109–2 is amended by revising paragraphs (a) and (d) to read as follows:

§ 1.6109–2 Furnishing identifying number of income tax return preparer.

(a) [The text of proposed paragraph (a) is the same as the text of § 1.6109–2T(a) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) [The text of proposed paragraph (d) is the same as the text of § 1.6109–2T(d) published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–20486 Filed 8–11–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6417–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Anchor Chemicals Superfund Site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (EPA), Region 2, announces its intent to delete the Anchor Chemicals Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil & Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the New York State Department of Environmental Conservation (NYSDEC) have determined that all appropriate response actions have been completed and no further action by the responsible parties is appropriate under CERCLA. In addition, EPA and NYSDEC have determined that response activities conducted to date at the Site have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Site from the NPL may be submitted on or before September 13, 1999.

ADDRESSES: Comments should be submitted to: Thomas Taccone, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on the Site is contained at: U.S. Environmental Protection Agency, Region 2, Superfund Records Center 290 Broadway, Room 1828, New York, New York 10007–1866,

(212) 637–4308, Hours: Mon.–Fri. 9:00am—5:00 pm.

Information on the Site is also available for viewing at the Site Administrative Record Repository located at: Hicksville Library, Community Room, 169 Jerusalem Avenue, Hicksville, L.I. 11801, Tel. (516) 931–1417, Hours: Mon.√Thurs. 9:00 am–9:00 pm or Fri.–Sat. 9:00 am–5:00 pm.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Taccone at the address above or by telephone at (212) 637–4281 or by electronic mail at "Taccone.Tom@epamail.epa.gov."

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region 2 announces its intent to delete the Anchor Chemicals Superfund Site (the Site) from the National Priorities List (NPL) and requests public comment on this deletion. The NPL is appendix B to the National Oil & Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of CERCLA, as amended, 42 U.S.C. 9601 *et seq*. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the site warrant such action.

EPA will accept comments concerning the deletion of the Site from the NPL for 30 days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the NPL deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e)(1)(i)–(iii), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the NYSDEC, will consider whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) A remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for information purposes and to assist Agency management.

EPA Region 2 will accept and evaluate public comments before making a final decision to delete the Site. The following procedures were used for the intended deletion of the Site:

1. EPA Region 2 issued a Record of Decision for the Site in September 1995, which stated that no remedial action was necessary, since the Site did not pose an unacceptable threat to human health and the environment.

2. EPA has recommended deletion.

3. The NYSDEC concurred with the deletion decision in a letter dated July 7, 1999.

4. Concurrent with this Notice of Intent to Delete, a notice has been published in a local newspaper and has been distributed to appropriate federal, state and local officials, and other interested parties.

5. EPA has made available the relevant documents to this decision at the addresses listed above.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region 2 will prepare a Responsiveness Summary, if necessary, which will address any significant comments received during the public comment period.

If, after consideration of the comments it receives, EPA decides to proceed with the deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect this deletion in the next final update. Public notices and copies of the Responsiveness Summary, if any, will be made available to local residents by EPA Region 2.

IV. Basis for Intended Site Deletion

The following summary provides a brief description and history of the Anchor Chemicals Superfund Site and the Agency's rationale for recommending deletion of the Site, in the Town of Oyster Bay, Nassau County, New York, from the NPL.

The Site is approximately 1.5 acres in size and includes one 28,850 square foot, two-story building. Most of the Site is paved with asphalt. The KoBar Company purchased the Site on September 30, 1964, and in the same year constructed the building for the Anchor Chemical Corporation. Before the building was constructed, the Site property was used for agricultural purposes.

From 1964 to 1978, Anchor Chemical manufactured, blended and stored chemicals for the graphic arts industry. Seventeen underground storage tanks (USTs), which ranged in size from 500 to 4,000 gallons, were used by the company at the Site to store chemicals and solvents, such as acetone, 1,1,1-trichloroethane (1,1,1-TCA), methylene chloride, 2-butoxyethanol and isopropyl alcohol. The chemicals were also stored in seven aboveground tanks which were removed from the Site in 1985. The tanks ranged in size from 550 to 1,500 gallons.

In addition, there are nine dry wells and one drain on-Site. The dry wells and drain were installed to collect rainwater runoff and drainage from the building. Liquid which collects in the dry wells infiltrates into the soil. None of the dry wells are connected to a sewer.

In 1977, the Nassau County Health Department (NCHD) discovered 1,1,1-TCA, trichloroethene (TCE) and tetrachloroethene (PCE) in liquid samples near the dry wells. In subsequent testing of 14 of the 17 USTs, six tanks failed air-over-product tank tightness tests, indicating that the tanks had the potential to leak. Five tanks were decommissioned in 1983; the remaining twelve were decommissioned in 1991. In 1982, the NCDH requested Anchor/Lith Kem-Ko, the operators, to investigate the possibility of groundwater and soil contamination at the Site.

Three groundwater monitoring wells were installed in September 1982. Groundwater samples taken from the wells contained elevated levels of 1,1,1-TCA, PCE, dichloroethane,

chlorodibromo-methane, methylene chloride and TCE. Soil samples, taken during the well installations, revealed the presence of methylene chloride and 1,1,1-TCA. On June 10, 1986, the Site was placed on the National Priorities List.

On June 2, 1989, EPA issued an Administrative Order on Consent to the K.B. Company, the owner of the property and successor to Kobar, to undertake a remedial investigation/feasibility study (RI/FS) to determine the nature and extent of contamination at the Site and to evaluate options for cleanup. Field work was completed in February 1995 and an RI report was submitted to EPA in March 1995. The report revealed a significant decrease in the concentration of the contaminants in the groundwater and soil from those levels observed in the early 1980s. In addition, the risk assessment determined that the Site did not pose an unacceptable risk to human health and the environment. EPA published these findings in a Record of Decision (ROD) on September 29, 1995.

The ROD stated that the risks posed by the Site contamination are within the acceptable risk range, but noted that four dry wells on Site were found to be contaminated with chromium, lead, 1,1,1-TCA and other volatile compounds. Groundwater samples from several monitoring wells on Site also showed concentrations of chromium and 1,1,1-TCA above Maximum Contaminant Levels. On September 29 and 30, 1995, a removal action was performed at the Site. The action consisted of the removal and off-Site disposal of contaminated soils and sediments from the dry wells to prevent further groundwater contamination. The excavated materials were disposed of in accordance with Resource Conservation and Recovery Act (RCRA) requirements. The completion of the removal action was documented in a Removal Action Report, dated May 1996, by the responsible parties. The ROD stated that no additional action was necessary at the Site upon completion of the removal action. EPA formally acknowledged completion of the action in a Preliminary Closeout Report for the Site on September 30, 1996. Results from two rounds of groundwater samples, which were collected in April 1996 and July 1997, confirmed the effectiveness of the removal action and that the Site does not pose an unacceptable risk to human health and the environment. A Final Close Out Report was not prepared by EPA, since completion of all response actions for the Site has been documented in the ROD and in the Preliminary Closeout Report.

The responsible parties have completed all necessary response actions at the Site. EPA, in consultation with NYSDEC, has determined that the Anchor Chemicals Superfund Site does not pose a significant threat to human health or the environment. No further Site remediation is necessary.

Because all of the necessary response actions have been competed at the Site, and since the Site does not pose an unacceptable risk to human health and the environment, EPA has also determined that the five-year review requirement of section 121(c) of CERCLA, as amended, is not applicable.

Dated: July 27, 1999.

Herb Barrack,

Acting Regional Administrator, Region 2.

[FR Doc. 99–20550 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 190

[Docket No. RSPA–98–4284; Notice 1]

RIN 2137–AD22

Pipeline Safety Enforcement Procedures

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to revise our pipeline safety enforcement procedures concerning alleged violations for which persons agree to proposed compliance orders or pay proposed civil penalties without contesting the allegations. At present, if a person responds to a notice of probable violation (NOPV) by paying a civil penalty proposed for an alleged violation, we consider the allegation uncontested and find that the person committed the violation. The violation then counts as a prior offense in determining the amount of any future civil penalty assessment against that person. We are proposing to adopt identical procedures for NOPV responses that agree to proposed compliance orders without contesting the alleged violations. Further, we are proposing to stop preparing final orders for alleged violations for which persons agree to proposed compliance orders or pay proposed civil penalties without contesting the allegations. The proposed rule changes would unify and streamline the handling of uncontested alleged violations in enforcement cases.

DATES: Persons interested in submitting written comments on this notice must do so by October 12, 1999. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Or you may submit written comments to the docket electronically. To do so, log on to the following Internet Web address: http://dms.dot.gov. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Linda Daugherty at (202) 366–4577 or linda.daugherty@rspa.dot.gov. Comments may be read on the internet at http://dms.dot.gov. General information about RSPA's pipeline safety program can be obtained at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Response Options

Under the pipeline safety enforcement procedures in 49 CFR Part 190, in responding to an NOPV (§ 190.207), a person may decide not to contest an alleged violation. To do so, the person, or "respondent," either pays a proposed civil penalty (§ 190.209(a)(1)) or agrees to a proposed compliance order (§ 190.209(b)(1)), or both when applicable.

If a proposed civil penalty is paid, we then "close the case with prejudice to the respondent," as § 190.209(a)(1) provides. Such closure means that we consider the alleged violation to have been committed by the respondent, and that we will treat the violation as a "prior offense" under § 190.225(c) in determining the amount of any future assessment against the respondent (see 53 FR 1634; Jan. 21, 1988).

In contrast, the procedures do not provide for a similar closure when a person agrees to a proposed compliance order without contesting the alleged violation. This inconsistency may be confusing when an NOPV proposes both a civil penalty and a compliance order for the same alleged violation.

Therefore, we are proposing to revise § 190.209 to treat uncontested responses involving civil penalty payments and compliance order agreements alike. The separate lists of response options now stated in § 190.209(a) and § 190.209(b) would be combined in proposed § 190.209(a). Proposed § 190.209(a)(1) would clarify that by paying a proposed civil penalty or agreeing to a proposed compliance order, the respondent elects not to contest the underlying alleged violation. The phrase "close the case with prejudice to the respondent" would be replaced by a fuller explanation, under proposed § 190.209(b), of the consequences of paying a proposed civil penalty or agreeing to a proposed compliance order without contesting the underlying alleged violation.

A separate option under present § 190.209(b) to request execution of a consent order would be removed as unnecessary. Under § 192.219, a respondent may request execution of a consent order at any time before issuance of a compliance order. And a consent order may be requested in connection with any response that contests an alleged violation.

The present paragraph (c) in § 190.209 is published incorrectly as the third item in a list instead of as an independent paragraph. This paragraph also references a previously deleted paragraph (c). So we are proposing to revise the paragraph structure of § 190.209 for clarity and to omit the obsolete reference in paragraph (c).

Final Order

Under § 190.213, we now prepare a final order in every enforcement case. Each order addresses each alleged violation in the case. Based on the evidence presented, the order states our findings on whether a violation has been committed as alleged, and if a sanction is to be imposed, states the amount of the civil penalty or terms of the compliance order.

For alleged violations a respondent decides not to contest by paying a proposed civil penalty or agreeing to a proposed compliance order, or both, we believe preparation of a separate document called a final order is a redundant administrative step.

Proposed § 190.209(b)(3) would eliminate the unnecessary paperwork of preparing a final order for alleged violations a respondent decides not to contest by paying a proposed civil penalty or agreeing to a proposed compliance order, or both. A conforming change to § 190.213(a) also would be made. Despite the lack of a separate document called "Final Order," if an operator did not comply with the terms of an agreed to compliance order, RSPA could enforce the agreement by assessing civil penalties or by obtaining a court injunction.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this rulemaking document. DOT does not consider this proposed rulemaking significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979). Because the proposed rulemaking should enhance governmental efficiency without cost to the regulated industry, a further regulatory evaluation is not warranted.

B. Regulatory Flexibility Act

The proposed rule changes would not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. Based on the facts available about the anticipated impact of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13084

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rules would not significantly or uniquely affect the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Paperwork Reduction Act

This proposed rulemaking contains no information collection that is subject to review by OMB under the Paperwork Reduction Act of 1995.

E. Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

F. Executive Order 12612

This action would not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that the final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

G. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 Problem.

This notice of proposed rulemaking does not propose business process changes or require modifications to computer systems. Because this notice apparently does not affect the ability of organizations to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the rule changes proposed in this notice.

List of Subjects in 49 CFR Part 190

Enforcement procedures, Penalty, Pipeline safety.

In consideration of the foregoing, we propose to amend 49 CFR part 190 as follows:

1. The authority citation for Part 190 continues to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 60101 *et seq.*; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.53.

2. Section 190.209 would be revised to read as follows:

§ 190.209 Response options.

(a) Within 30 days of receipt of a notice of probable violation, the respondent shall respond to the allegations of violation and proposed

sanctions in the following way to the Regional Director who issued the notice:

(1) Elect not to contest an allegation by paying the proposed civil penalty or agreeing to the proposed compliance order applicable to the allegation;

(2) Submit written explanations, information, or other materials that answer the allegations or seek mitigation of the proposed civil penalty or proposed compliance order; or

(3) Request a hearing under § 190.211.

(b) If a respondent responds to an alleged violation under paragraph (a)(1) of this section—

(1) The allegation automatically becomes an agency determination that the respondent has committed the violation as alleged, allowing OPS to consider the violation as a prior offense in assessing civil penalties in the future;

(2) The proposed civil penalty applicable to the violation is assessed, or the terms of the proposed compliance order applicable to the violation are imposed, without further action; and

(3) The finding of violation, assessment of civil penalty, or compliance terms imposed under § 190.209(b)(1) and (2), as evidenced by the notice of probable violation and the respondent's response, constitute a final order under 49 U.S.C. 60101 *et seq.*

(c) Failure of the respondent to respond in accordance with paragraph (a) of this section constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, OPS, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under § 190.213.

3. Section 190.213(a) is revised to read as follows:

§ 190.213 Final order.

(a) Except with respect to violations resolved under § 190.209(b), after a hearing under § 190.211 or, if no hearing has been requested, after expiration of the 30 day response period prescribed in § 190.209, the case file of an enforcement proceeding commenced under § 190.207 is forwarded to the Associate Administrator, OPS, for issuance of a final order.

* * * * *

Issued in Washington, DC on August 6, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–20816 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 64, No. 155
Thursday, August 12, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number LS–99–11]

Notice of Request for New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) request for comments on a new information collection related to the delivery of Meat Grading and Certification (MGC) Branch services. This voluntary survey would give MGC Branch's external customers, who are primarily in the livestock and meat industry, an opportunity to provide feedback on the quality of service they are receiving thereby assisting the MGC Branch to continuously improve its services and service delivery.

DATES: Comments on this notice must be received on or before October 12, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Marlene M. Betts, Assistant to the Chief, Meat Grading and Certification Branch, Livestock and Seed Program, AMS, USDA, STOP 0248, Room 2628–S, 1400 Independence Avenue, SW., Washington, DC 20250–0248, Telephone (202) 720–1640, or Fax (202) 690–4119.

SUPPLEMENTARY INFORMATION:

The Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1621–1627) (Act) directs the Secretary of the Department of Agriculture (USDA) to facilitate the marketing of agricultural products by developing and applying grade standards. Under the Act, AMS offers grading, quality assurance, and certification services for a user-fee, to facilitate the efficient marketing of meat and meat products in the global marketplace. The MGC Branch provides voluntary quality grading and certification services based on U.S. grade standards and approved specifications to producers, slaughterers, wholesalers, retailers, consumers, brokers, and other financially interested parties involved in the marketing of livestock and meat products.

There are approximately 380 current users of the AMS's, MGC Branch voluntary quality grading and certification services. These customers are located nationwide and represent a diverse mixture of small, medium, and large producers; slaughterers; wholesalers; retailers; brokers; and other financially interested parties. These companies request product grading and certification services from an MGC Branch Area Office. (There are four MGC Branch Area Offices nationwide.)

The mission of the MGC Branch is to provide timely, high-quality, unbiased service that facilitates the orderly marketing and distribution of agricultural commodities, and fosters goodwill in the global marketplace. To accomplish this mission, the MGC Branch needs feedback from customers to evaluate the services that are provided.

Title: Customer Service Survey (Meat Grading and Certification Services).

OMB Number: New collection, a number will be assigned after approval.

Expiration Date of Approval: New collection.

Type of Request: New information collection.

Abstract: The collection of information using a voluntary customer service survey will provide all MGC Branch customers an opportunity to comment on the type and level of services they expect and evaluate the actual services that they receive. This information will assist the MGC Branch in continuously improving its services to meet or exceed customer expectations.

The MGC Branch does not have a formal means of determining its external customer's expectations or the quality of service that is delivered. To collect this information, the MGC Branch proposes to annually distribute a voluntary customer service survey. The information collected from the survey will be used to evaluate service delivery and assist in planning and managing the program.

The customer service survey consists of one document comprised of 20 inquiry components where customers assess the quality of service that is provided by the MGC Branch. Some examples of survey components customers are asked to assess and respond to include the following: "MGC Branch employees provide service at the date and time requested," "MGC Branch employees provide helpful technical advice," and "Graders working in your facility receive adequate supervision." These survey components will be assessed using a rating scale ranging from "strongly agrees" to "strongly disagrees" or "not applicable." There is also space available on the survey for the customer to provide additional comments they deem appropriate.

Due to the voluntary nature of grading and certification services, MGC Branch customers will use the services only if they receive the quality of service that meets or exceeds their expectations. By obtaining information from customers through a voluntary customer service survey, the MGC Branch could continue to improve its services to meet or exceed customer expectations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .084 hours per response.

Respondents: Livestock and meat industry or other for-profit businesses.

Estimated Number of Respondents: 428.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 36 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology. Comments may be sent to Marlene M. Betts, Assistant to the Chief, Meat Grading and Certification Branch, Livestock and Seed Program, AMS, USDA, STOP 0248, Room 2628–S, 1400 Independence Avenue, SW., Washington, DC 20250–0248. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 4, 1999.

Robert L. Leverette,

Acting Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–20876 Filed 8–11–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–020–2]

Fruit Fly Cooperative Control Program; Draft Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental impact statement for the Fruit Fly Cooperative Control Program. This document analyzes potential environmental effects of cooperative efforts to control exotic fruit fly pests in the United States. We are requesting public comments on the draft environmental impact statement, and notifying the public of the comment period and public meetings for the draft environmental impact statement.

DATES: We invite you to comment on the draft environmental impact statement. We will consider all comments that we receive by October 12, 1999. The public meetings will be held in (1) Washington, DC, on August 16, 1999; (2) Tampa, FL, on August 18, 1999; (3) Miami, FL, on August 20, 1999; (4) Brownsville, TX, on August 23, 1999; and (5) Los Angeles, CA, on August 25, 1999.

ADDRESSES: Please send your comment and three copies to: Mr. Harold T. Smith, Environmental Protection Officer, Environmental Analysis and Documentation, PPD, APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737–1228.

Please state that your comment refers to Docket No. 98–020–2.

You may read any comments that we receive on the draft environmental impact statement in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Copies of the draft environmental impact statement are available for review between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays at the following locations:

APHIS Reading Room, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC;
USDA, APHIS Library, 4700 River Road, Riverdale, MD;
USDA, APHIS, PPQ, 9580 Micron Avenue, Suite I, Sacramento, CA 95827;
USDA, APHIS, PPQ, 3505 Boca Chica Boulevard, Suite 360, Brownsville, TX 78521–4065;
USDA, APHIS, PPQ, 3505 25th Avenue, Building 1 North, Gulfport, MS 39501; and
USDA, APHIS, PPQ, Blason II, 1st Floor, 505 South Lenola Road, Moorestown, NJ 08057.

Interested persons may obtain a copy of the draft environmental impact statement by writing to any of the last four addresses listed above (those beginning with USDA, APHIS, PPQ) or to the address listed below under **FOR FURTHER INFORMATION CONTACT.**

The public meeting will be held at the following locations and times:

(1) South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC, on August 16, 1999, from 1 p.m. to 4 p.m.;
(2) Ramada Airport Inn and Conference Center, 5303 West Kennedy Boulevard, Tampa, FL, on August 18, 1999, from 1 p.m. to 4 p.m., and 6 p.m. to 9 p.m.;
(3) Doubletree Grand Hotel, 1717 North Bayshore, Miami, FL, on August 20, 1999, from 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m.;
(4) Holiday Inn Fort Brown, 1900 East Elizabeth Street, Brownsville, TX, on August 23, 1999, from 6 p.m. to 9 p.m.; and
(5) Embassy Suites Los Angeles/Downey, 8425 Firestone Boulevard, Downey, CA, on August 25, 1999, from 1 p.m. to 4 p.m., and 6 p.m. to 9 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Harold T. Smith, Environmental Protection Officer, Environmental Analysis and Documentation, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1228; (301) 734–8565.

SUPPLEMENTARY INFORMATION:

Background

Many fruit fly species are serious pests of agriculture throughout the World and represent a threat to the agriculture and ecology of the United States. The Animal and Plant Health Inspection Service (APHIS), in cooperation with other Federal and State organizations, is proposing a national program, a broad strategy, to respond to that threat. The national program includes what formerly were separate cooperative programs to control various fruit fly pest species.

APHIS, with the assistance of its cooperators, has developed a draft environmental impact statement (EIS) that analyzes a range of program alternatives and their associated components, including exclusion, detection and prevention, and control. The EIS focuses principally on the potential environmental effects of the control measures, but maintains a secondary focus on the identification of strategies for the reduction of risk in fruit fly programs.

We published a notice of intent to prepare an EIS in the **Federal Register** on March 20, 1998 (63 FR 13614–13615, Docket No. 98–020–1). The notice of intent requested comments from the public concerning issues that should be addressed in the EIS. Comments from the public during the formal scoping period were considered by APHIS for the development of the draft.

Major Issues

The comments received from the public helped us to determine the principal focus and issues of the draft EIS. The document analyzes the following broad alternatives: (1) No action, (2) a nonchemical program, and (3) an integrated program. The draft focuses principally on the potential environmental effects of control components (especially chemicals) but also focuses on the identification of strategies to reduce risk in fruit fly programs.

The draft EIS is now available for review and comment. We are seeking input from the public, including private citizens, organizations, industry, and other government agencies.

Preparation of the Final Environmental Impact Statement.

APHIS will consider all comments received by the close of the comment period in the development of the final EIS for the Fruit Fly Cooperative Control Program. A notice announcing the availability of the final document will be published in a subsequent **Federal Register** notice.

This notice is issued in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 3rd day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–20820 Filed 8–11–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to reinstate, without change, a previously approved information collection. This information collection will provide the Forest Service with the information to complete an Agreement to Initiate and an Exchange Agreement when cooperating in land exchanges with non-Federal parties. Forest Service personnel collect the information from non-Federal land exchange parties.

DATES: Comments must be received in writing on or before October 12, 1999.

ADDRESSES: All comments should be addressed to Jack L. Craven, Director, Lands Staff, Mail Stop 1124, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

Comments also may be submitted via facsimile to (202) 205–1604 or by email to: lands/wo@fs.fed.us.

The public may inspect comments received in the Office of the Director, Lands Staff, 201 14th Street, SW, Washington, DC. Visitors are encouraged to call ahead to (202) 205–1248 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: James M. Williams, Lands Specialist, at (202) 205–1248 or Kathleen L. Dolge, Realty Specialist, at (202) 205–1248.

SUPPLEMENTARY INFORMATION:

Background

Land exchanges are discretionary, voluntary, real estate transactions between the Secretary of Agriculture, acting by and through the Forest Service, and non-Federal land exchange parties. Land exchanges can be initiated by a non-Federal party, an agent of a landowner, a broker, a third party, or a non-Federal public agency.

Each land exchange requires preparation of an Agreement to Initiate as required by § 254.4 of title 36 of the Code of Federal Regulations (CFR), which specifies the preliminary, non-binding intentions of the non-Federal land exchange party and of the Forest Service in pursuing a land exchange.

As the land exchange proposal develops, the Forest Service and the non-Federal land exchange party may enter into a binding Exchange Agreement pursuant to 36 CFR, § 254.14. The Exchange Agreement is a legally binding document delineating the conditions that must be met to complete the land exchange.

Data from this information collection can be unique to each land exchange and are not available from other sources.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: Agreement to Initiate.

OMB Number: 0596–0105.

Expiration Date of Approval: May 31, 1998.

Type of Request: Reinstatement, without change, of a previously approved information collection.

Abstract: The data collected are used by the agency to facilitate a mutually beneficial land exchange between the Forest Service and a non-Federal partner.

The Agreement to Initiate is a non-binding document. Respondents answer questions in the Agreement to Initiate that include the description of properties being considered in the land exchange; an implementation schedule of action items, such as the relocation of any tenants occupying the land; and the identification of the party responsible for each action item, as well as target dates for completion of each action item.

Respondents are non-Federal land exchange parties. Forest Service personnel collect the information by phone, in face-to-face meetings with land exchange parties, or by requesting in a letter to the exchange party that the requested information be submitted by mail.

Data gathered in the information collection are not available from other sources.

Estimate of Burden: 1 hour.

Type of Respondents: Non-Federal land exchange parties.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: Exchange Agreement.

OMB Number: 0596–0105.

Expiration Date of Approval: May 31, 1998.

Type of Request: Reinstatement, without change, of a previously approved information collection.

Abstract: The data collected are used by the agency to facilitate a mutually beneficial land exchange between the Forest Service and a non-Federal land exchange partner.

The Exchange Agreement is a legally binding document. Respondents will be asked questions, such as the identification of the non-Federal land exchange parties; the description of the lands and interests to be exchanged, such as roads; the identification of all reserved and outstanding interests, such as roads, minerals, and easements; and all other terms and conditions necessary to complete an exchange.

Respondents are non-Federal land exchange parties. Forest Service personnel collect the information by phone, in face-to-face meetings with land exchange parties, or by requesting in a letter to the land exchange party that the requested information be submitted by mail.

Data gathered in this information collection are not available from other sources.

Estimate of Burden: 1 hour.

Type of Respondents: Non-Federal land exchange partners.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed

collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: August 4, 1999.

Arthur Bryant,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 99–20842 Filed 8–11–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Improve Management of the Tongass National Forest and Service to Local, Regional, and National Customers

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to establish a new information collection. The new collection will provide information that will help Forest Service personnel identify and meet the needs of people who use, visit, or benefit in other ways from the Tongass National Forest in southeast Alaska. Respondents will be chosen from three different groups of customers: southeast Alaska residents; southeast Alaska visitors; and the general public.

DATES: Comments must be received in writing on or before October 12, 1999.

ADDRESSES: All comments should be addressed to: Robert F. Schroeder, Forestry Sciences Lab, Forest Service, USDA, 2770 Sherwood Lane, Suite 2A, Juneau, AK 99801.

Comments also may be submitted via facsimile to (907) 586–7848 or by email to rschroeder/r10@fs.fed.us.

The public may inspect comments received at the Office of the Forestry Sciences Lab, Forest Service, USDA, 2770 Sherwood Lane, Suite 2A, Juneau, Alaska. Visitors are asked to call (907) 586–8811, extension 240, to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Robert F. Schroeder, Forestry Sciences Lab, at (907) 586–8811, extension 240.

SUPPLEMENTARY INFORMATION:

Background

The Tongass National Forest encompasses nearly 85 percent of the land in southeast Alaska, and activities conducted on the Forest form the basis for the regional economy. Commercial fishing, timber production, mineral extraction, and the quickly growing tourism industry depend on the renewable and non-renewable natural resources of this National Forest. The Forest Service completed a revision of the Tongass Land Management Plan in 1997 and published a revised Record of Decision in the **Federal Register** on May 11, 1999 (64 FR 25274). The Tongass Land Management Plan and Record of Decision will serve as a blueprint for how the Forest Service will manage the Tongass National Forest over the next 10 to 15 years.

While revising the Tongass Land Management Plan in 1997, the Forest Service identified critical information needs. Some of these information needs were associated with the human component of Tongass National Forest ecosystems, that is the people and social systems that benefit from these ecosystems.

The collected data, while addressing the human component, will provide the Forest Service with a better understanding of how forest management practices influence community well-being and social change within the southeast Alaska geographic area and will help the agency meet the needs of three groups of diverse customers: residents of southeast Alaska who are affected by forest management actions on a day-to-day basis, people from outside the southeast Alaska geographic area who visit the Tongass National Forest, and people who may never visit the Tongass National Forest yet believe they benefit because it exists.

The agency will gain a better understanding of the demands the public makes on the Tongass National Forest programs and services, how well information about agency programs and services are communicated to the public, and how well the agency meets the needs and expectations of the three identified groups of people.

Forest Service personnel from the Pacific Northwest Research Station Forestry Sciences Lab in Juneau, Alaska, will work in cooperation with University of Alaska research staff to design, administer, and evaluate these surveys. Interviewers will conduct most surveys by telephone. Mail-back questionnaires and face-to-face interviews will be used to reach people who do not have telephones.

People from each of the three identified groups will be asked to respond to questions that include their perceptions of how the Tongass National Forest is managed by the agency, their preferences for how this National Forest should be managed, their perceptions of Tongass National Forest ecosystems, their past and planned visits to the Tongass National Forest, their use of the forest's resources, their vision of the forest of the future, their household and community economic dependence on the forest, and their attitudes and values concerning timber management.

The information collection is comprised of three closely related surveys: The Tongass Southeast Alaska Resident Survey, The Tongass Visitor Survey, and The Tongass National Public Survey. A description of each survey form follows.

Description of Information Collection

The following describes the new information collection:

Title: The Tongass Southeast Alaska Resident Survey.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: This is a new information collection requirement and has not received approval from the Office of Management and Budget.

Abstract: The Forest Service conducted a survey in 1979 to assess the interaction of the southeast Alaska residents with the Tongass National Forest. This survey also included the perceptions these residents had of the Tongass as a natural resource. The 1979 survey provided the most recent comprehensive information on southeast Alaska residents' subsistence and recreational use of the Tongass, their attitudes and values concerning the Tongass National Forest, their interest in the development of a regional timber economy, and their perceptions of Forest Service land management practices. This important benchmark

survey is now 20 years old and may not be an accurate reflection of the views, perceptions, and activities of current southeast Alaska residents.

This new information collection will provide current data and identify issues that have become important to the southeast Alaska residents in the intervening years. Respondents also will be asked questions that relate to issues that were not important at the time of the 1979 survey. These issues include large scale timber harvesting on national forest and private lands, a large increase in tourist use of the forest, expansion of tourist use into back-country areas, economic restructuring of the area that is moving away from timber, mining, and commercial fishing toward tourism and service industries, and an increasing resident and visitor population competing for limited fish and wildlife resources.

Forest Service personnel and University of Alaska research staff will conduct a random sample survey of southeast Alaska residents, primarily through telephone interviews.

Data gathered in this information collection are not available from other sources.

Estimated Burden per Respondent: 30 minutes.

Type of Respondents: Individuals from southeast Alaska.

Estimated Number of Respondents: 1600.

Estimated Number of Responses per Respondents: 1.

Estimated Total Burden on Respondents: 800 hours.

Description of Information Collection

The following describes the new information collection:

Title: The Tongass Visitor Survey.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: This is a new information collection requirement and has not received approval from the Office of Management and Budget.

Abstract: In 1979, the Forest Service conducted a survey of cruise ship passengers visiting southeast Alaska as a companion study to the 1979 Alaska Public Survey. In the intervening years, tourism has increased in southeast Alaska, with approximately 1 million visitors expected in 1999.

The Forest Service is the primary land manager in the southeast Alaska area. The tourist industry has become a dominant economic and social force within this area, and the tourist experience has become a more important concern of the agency's management of the Tongass National Forest.

Visitors are drawn to the scenic attractions on the Tongass National Forest that include the tidewater and other glaciers; the wilderness, wildlife, and whales; the Native cultures and colorful history; and excellent sport fishing opportunities. Cruise ship visitors comprise a large majority of the total visitor population to southeast Alaska. However, independent travelers are becoming a larger segment of the tourist population.

This information collection will help Forest Service personnel evaluate a visitor's interaction with the Tongass National Forest, the perceptions visitors have regarding the Forest Service's land management practices of these natural resources, the role the Tongass National Forest plays in attracting visitors to southeast Alaska, and how the agency's land management practices add to or detract from visitors' experiences.

This information collection will be accomplished through interviews with tourists visiting southeast Alaska. Forest Service personnel in cooperation with university research staff will collect information through telephone interviews, mail-back questionnaires, and face-to-face interviews. Forest Service personnel will compare the data from this collection to the study conducted in 1979.

Data gathered in this information collection are not available from other sources.

Estimated Burden per Respondent: 30 minutes.

Type of Respondents: Individuals from the main market segments of southeast Alaska pleasure visitor populations.

Estimated Number of Respondents: 1,500.

Estimated Number of Responses per Respondents: 1.

Estimated Total Burden on Respondents: 750 hours.

Description of Information Collection

The following describes the new information collection:

Title: Tongass National Public Survey.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: This is a new information collection requirement and has not received approval from the Office of Management and Budget.

Abstract: The Tongass National Public Survey will provide a method of collecting information to learn if people in the United States outside Alaska are aware of the existence of the Tongass National Forest and, of those who are aware, how they perceive the benefits of this Forest. Respondents will be non-Alaskan residents of the United States.

Forest Service personnel will work cooperatively with university staff and professional contractors to ask respondents questions that include their knowledge about the Tongass National Forest, their past or planned visits to the forest, the benefits they believe they obtain or receive from this National Forest, and their perceptions of the agency's management of this Forest. Researchers will conduct a telephone survey of people who live in the United States outside of Alaska.

Data gathered in this information collection are not available from other sources.

Estimated Burden per Respondent: 30 minutes.

Type of Respondents: Individuals from the national public.

Estimated Number of Respondents: 1,200.

Estimated Number of Responses per Respondents: 1.

Estimated Total Burden on Respondents: 600 hours.

Comments Are Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval. Those who submit comments should be aware that all comments, including names and addresses when provided, are placed in the record and are available for public inspection.

Dated August 4, 1999.

Robert Lewis, Jr.,

Deputy Chief for Research and Development.

[FR Doc. 99–20843 Filed 8–11–99; 8:45 am]

BILLING CODE 3410–11–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way; Access Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of intent to establish advisory committee.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) announces its intent to establish a Public Rights-of-Way Access Advisory Committee (Committee) to make recommendations for accessibility guidelines for public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Access Board requests applications for representatives to serve on the Committee.

DATES: Applications should be received by September 27, 1999.

ADDRESSES: Applications should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Fax number (202) 272–5447. Applications may also be sent via electronic mail to the Access Board at the following address: windley@access-board.gov.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 25 (Voice); (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication N–03 (Public Rights-of-Way Access Advisory Committee notice). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication N–03. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (http://www.access-board.gov/notices/prowac.htm).

Background

The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 *et seq.*) to ensure that facilities and vehicles covered by the law are readily accessible to and usable by individuals with disabilities.[1] The Department of Justice is responsible for issuing final regulations, consistent with the guidelines issued by the Access Board, to implement titles II and III (except for transportation vehicles and facilities). The Department of Transportation is responsible for issuing regulations to implement the transportation provisions of titles II and III of the ADA. Those regulations must also be consistent with the Access Board's guidelines.

The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. 4151 *et seq.*) requires that facilities designed, built, altered or leased with certain Federal funds be accessible to persons with disabilities. Similar to its responsibility under the ADA, the Access Board is responsible for developing accessibility guidelines for facilities covered by the ABA. The Board's guidelines serve as the basis for enforceable standards issued by four standard-setting agencies; the standard-setting agencies are the Department of Defense (DOD), the General Services Administration (GSA), the Department of Housing and Urban Development (HUD), and the U.S. Postal Service (USPS).[2]

Rulemaking History

On July 26, 1991, the Access Board published the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for new construction and alterations in places of public accommodation and commercial facilities. 36 CFR part 1191. ADAAG contains scoping provisions and technical specifications generally applicable to buildings and facilities (sections 1 through 4) and additional requirements specifically applicable to certain types of buildings and facilities covered by title III of the ADA: restaurants and cafeterias (section 5); medical care facilities (section 6); mercantile and business facilities (section 7); libraries (section 8); and transient lodging (section 9). On September 6, 1991, the Access Board amended ADAAG to include additional requirements specifically applicable to transportation facilities (section 10).

On December 21, 1992, the Access Board published a notice of proposed rulemaking (NPRM) in the **Federal Register** which proposed to add four special application sections to ADAAG specifically applicable to certain types of State and local government buildings and facilities covered by title II of the ADA. Those special application sections included:

11. Judicial, Legislative, and Regulatory Facilities.
12. Detention and Correctional Facilities.
13. Accessible Residential Housing.
14. Public Rights-of-Way.

The NPRM also proposed requirements and asked questions regarding the addition of miscellaneous provisions specifically applicable to State and local government facilities. 57 FR 60612 (December 21, 1992).

On June 20, 1994, the Board published an interim rule in the **Federal Register** which added sections 11 through 14 and miscellaneous provisions to ADAAG. 59 FR 31676 (June 20, 1994) as corrected at 59 FR 32751 (June 24, 1994). The interim rule sought comment on sections 11 through 14 and the miscellaneous provisions.

On January 13, 1998, the Board published final rules for State and local governments but decided to reserve section 14, due in large measure to the concerns of the transportation community expressed in comments to the Board on the proposed and interim final rules. 63 FR 2000. Many of those commenters, including public works agencies, transportation departments, and traffic consultants, were concerned that the section 14 provisions would be applied to existing developed rights-of-way.

The response to both the NPRM and the interim rule clearly indicated the need for substantial education and outreach regarding the application of

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; the General Services Administration; and the United States Postal Service.

[2] The Uniform Federal Accessibility Standards (UFAS) were developed by the four standard-setting agencies to implement the Architectural Barriers Act of 1968. Most Federal agencies also reference UFAS as the accessibility standard for buildings and facilities constructed or altered by recipients of Federal financial assistance for purposes of section 504 of the Rehabilitation Act of 1973, as amended.

guidelines in this area. Rather than finalizing the guidelines for public rights-of-way, the Board embarked upon an ambitious outreach plan to the highway industry. This outreach included producing a series of videotapes, an accessibility checklist, a synthesis on accessible pedestrian signals, and a design guide on accessible public rights-of-way. In addition, the Board has been actively involved with transportation industry organizations and has worked closely with the Federal Highway Administration on access issues.

The Access Board has reviewed its education and outreach program and the impact of State and local government regulatory efforts in this area, and believes that the development of requirements for accessibility in the public right-of-way is appropriate at this time. At its May 1999 meeting, the Access Board voted to reinitiate rulemaking on accessible pedestrian facilities by convening a Federal advisory committee to develop recommendations for guidelines for public rights-of-way covered by the Americans with Disabilities Act and the Architectural Barriers Act.

Public Rights-of-Way Access Advisory Committee

The Access Board intends to establish a Public Rights-of-Way Access Advisory Committee (Committee) to assist the Board in the process of developing its accessibility guidelines. The Committee will make recommendations to the Access Board on the content and format of the guidelines, including scoping and technical provisions to address access to sidewalks, street crossings, and related pedestrian facilities. The Committee will be expected to present a report with its recommendations to the Access Board within one year of the Committee's first meeting. The Access Board requests applications for representatives of the following interests for membership on the Committee:

- Federal agencies;
- Design professional organizations;
- Transportation and traffic engineering institutes, departments, and organizations;
- State and local government public works and transportation agencies;
- Pedestrian and bicycle organizations;
- Standard setting organizations;
- Organizations representing the access needs of individuals with disabilities; and
- Other persons affected by the accessibility guidelines.

The number of Committee members will be limited to effectively accomplish the Committee's work and will be balanced in terms of interests represented. Organizations with similar interests are encouraged to submit a single application to represent their interest. Although the Committee will be limited in size, there will be opportunities for the public to present written information to the Committee, to participate through subcommittees, and to comment at Committee meetings.

Applications should be sent to the Access Board at the address listed at the beginning of this notice. The application should include the representative's name (and an alternate), title, address and telephone number; a statement of the interests represented; and a description of the representative's qualifications, including engineering, technical and design expertise and knowledge of making public rights-of-way accessible to individuals with disabilities.

Committee members will not be compensated for their service. The Access Board may, at its own discretion, pay travel expenses for a limited number of persons who would otherwise be unable to participate on the Committee. Committee members will serve as representatives of their organizations, not as individuals. They will not be considered special government employees and will not be required to file confidential financial disclosure reports.

After the applications have been reviewed, the Access Board will publish a notice in the **Federal Register** announcing the appointment of Committee members and the first meeting of the Committee. The first meeting of the Committee is tentatively scheduled for November 8–9, 1999 in Washington, DC. The Committee will operate in accordance with the Federal Advisory Committee Act, 5 U.S.C. app 2. Each meeting will be open to the public. A notice of each meeting will be published in the **Federal Register** at least 15 days in advance of the meeting. Records will be kept of each meeting and made available for public inspection.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–20883 Filed 8–11–99; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 1, 1999, at the Tennessee General Assembly Legislative Plaza, Room 30, 6th Avenue and Charlotte Avenue, Nashville, Tennessee 37243. The purpose of the meeting is to discuss the status of the Commission, the Committee's Title VI report, and the problems/progress of civil rights activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 9, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–20884 Filed 8–11–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; FADI BOUTROS, Also Known as Fadi E. Sitto, Fadi Jirjis, and Fred Boutros; Order Denying Permission To Apply for or Use Export Licenses

On April 29, 1999, Fadi Boutros, also known as Fadi E. Sitto, Fadi Jirjis, and Fred Boutros (Boutros), was convicted in the United States District Court for the District of Connecticut on one court of violating Section 38 of the Arms Export Control Act (currently codified at 22 U.S.C.A. § 2778 (1990 & Supp. 1999)) (AECA) and one count of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)) (IEEPA). Specifically, Boutros was convicted of willfully attempting to export defense articles on the U.S. Munitions List from the United States to Iraq via Jordan, namely, ITT Aviator Night Vision GEN II AN/AVS 6 systems, without first having obtained the required export license from the United States Department of State, and of willfully dealing and attempting to deal in defense articles on the U.S. Munitions List intended for exportation to Iraq via

Jordan, specifically, ITT Aviator Night Vision GEN III AN/AVS 6 systems, and engaging and attempting to engage in activity intended to promote such dealing, without first having obtained the authorization of the United States Department of Treasury, in violation of the embargo against Iraq contained in the Office of Foreign Assets Control's Iraqi Sanctions Regulations.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA or IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to §§ 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA or IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Boutros's conviction for violating the AECA and IEEPA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Boutros permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on April 29, 2009. I have also decided to revoke all licenses issued pursuant to the Act in which Boutros had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*

I. Until April 29, 2009, Fadi Boutros, also known as Fadi E. Sitto, Fadi Jirjis, and Fred Boutros, currently incarcerated at: Federal Correction Institute, P.O. Box 9999, Milan, Michigan 48160, and with an address at: 1491 Fueta Heights Lane, El Cajon, California 92019, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Boutros by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until April 29, 2009.

VI. A copy of this Order shall be delivered to Boutros. This Order shall be published in the **Federal Register**.

Dated: August 3, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–20911 Filed 8–11–99; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Export Administration Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe From Mexico; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of Circular Welded Non-alloy Steel Pipe from Mexico. This review covers the

period November 1, 1997 through October 31, 1998.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: John Drury or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0195 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for completion of the preliminary results until November 30, 1999, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act") by the Uruguay Round Agreements Act of 1994 (19 U.S.C. 1675 (a)(3)(A)). See memorandum to Robert S. LaRussa from Joseph A. Spetrini regarding the extension of case deadline, dated July 30, 1999.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: July 30, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–20737 Filed 8–11–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Termination of Anticircumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Anticircumvention Inquiry.

SUMMARY: On January 10, 1997, in response to a request from petitioners in this case,[1] the Department of Commerce (the Department) initiated an inquiry to determine whether certain imports of (i) pipe certified to the American Petroleum Institute (API) 5L line pipe specifications (API 5L or line pipe) and (ii) pipe certified to both the API 5L line pipe specifications and the less-stringent American Society for Testing and Materials (ASTM) A53 standard pipe specifications (dual-certified pipe[2]) are circumventing the antidumping duty order on certain welded non-alloy carbon steel pipe from Mexico (57 FR 49453, November 2, 1992). The anticircumvention inquiry covered two manufacturers/exporters of the merchandise subject to this inquiry, Hylsa, S.A. de C.V. (Hylsa) and Tuberia Nacionál, S.A. de C.V. (TUNA), and the period January 1, 1996 through December 31, 1996.

In response to rulings by the Court of International Trade (the Court) and the Court of Appeals for the Federal Circuit (Federal Circuit) we are terminating the anticircumvention inquiry.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1997, the Department initiated an anticircumvention inquiry in response to allegations that, following publication of the antidumping duty order, exporters of standard pipe from Mexico began circumventing the order by having pipe intended for use as standard pipe certified as line pipe or certified as both line and standard pipe. Following initiation Hylsa and TUNA brought suit before the Court (*Hylsa, S.A. de. C.V. and Tuberia Nacionál, S.A. de C.V.* v. *United States*, Court No. 97–01–00132) (Hylsa I) challenging the legality of the Department's anticircumvention inquiry, given the Department's March 1996 negative scope determination covering the very merchandise subject to the instant inquiry. After granting a temporary restraining order (TRO) enjoining the department from proceeding with its investigation, the Court subsequently vacated this TRO and dismissed the case. *Hysla* v. *United States*, 960 F. Supp. 320 (CIT 1997).[3]

On December 19, 1997, the Department released its "Notice of Affirmative preliminary Determination of Circumvention." Hylsa again sought a permanent injunction from the Court barring the completion of the investigation, the publication of the preliminary determination and any notification of the United States Customs Service. On February 3, 1998, the Court issued the requested permanent injunction in light of its earlier decision in a related case, *Wheatland Pipe Company* v. *United States*, 973 F. Supp. 149 (CIT 1997). *See Hylsa, S.A. de C.V.* versus United States, slip Op. 98–10 (CIT 1998) (Hylsa II).

The Department appealed the Court's decision in *Hylsa II* to the Court of Appeals for the Federal Circuit (Federal Circuit). However, on November 23, 1998, the Federal Circuit affirmed the Court's July 18, 1997 decision in the earlier *Wheatland* litigation on virtually identical issues. *Wheatland Pipe Company* versus *United States*, 161 F.3d 1365 (Fed. Cir. 1998).

In light of the Federal Circuit's decision in *Wheatland*, on January 19, 1999, all parties moved the Federal Circuit to dismiss the appeal of *Hylsa II*. Accordingly, as the Department has been permanently enjoined from conducting this anticircumvention inquiry, we are hereby terminating this inquiry.

This notice serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of information disclosed under APO in accordance with 19 CFR 353.34(d) (1994). Timely, written notification of the return or destruction of APO materials is hereby requested.

This notice is published in accordance with section 781(c) of the Tariff Act (19 U.S.C. 1677j(c)) and 19 CFR 53.29.

Dated: August 5, 1999.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–20898 Filed 8–11–99; 8:45 am]

BILLING CODE 3510–DS–P

---

[1] Petitioners are: Allied Tube & Conduit Corp., Sawhill Tubular Division of Tex-Tube Co., Century Tube Corp., Laclede Steel Co., LTV Tubular Products Co.; Sharon Tube Co., Western Tube & Conduit Co., Wheatland Tube Co., and CSI Tubular Products, Inc.

[2] This merchandise, sometimes referred to as "dual-stenciled," may also include "multiple-stenciled" pipe.

[3] The Federal Circuit affirmed the Court's dismissal of Hylsa's and TUNA's action in *Hylsa I* on February 12, 1998. *See Hylsa, S.A. de C.V. and Tuberia Nacionál* v. *United States*, Appeal No. 97–1270 (Fed. Cir. 1998)

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822 and A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits For Preliminary Results of Antidumping Administrative Review.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Elfi Blum-Page, Mark Hoadley, or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0197, (202) 482–0666 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351 (1999).

Background

On August 19, 1993, the Department published in the **Federal Register** (58 FR 44162) the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. Based on timely requests by petitioners and respondents in both proceedings, the Department published its initiation of these antidumping duty administrative reviews covering the period of August 1, 1997 through July 31, 1998 (63 FR 51893) on September 29, 1998.

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Preliminary Results of Antidumping Administrative Reviews: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada, dated August 6, 1999, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results 10 days to August 16, 1999. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: August 6, 1999.

Richard O. Weible,

Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 99–20897 Filed 8–11–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080699A]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Beluga Whale Harvest Report.

Agency Form Number: None.

OMB Approval Number: 0648–0382.

Type of Request: Extension of a currently approved collection.

Burden: 5 hours.

Number of Respondents: 10

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The National Marine Fisheries Service requires Alaskan Natives who harvest beluga whales in Cook Inlet to report certain information and to submit the labeled jawbones on the whales taken. The information will be used to evaluate the health and stability of this stock and to construct a management regime that will provide for a sustainable subsistence harvest by Alaskan Natives.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: August 6, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20903 Filed 8–11–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent To Conduct Emergency Assessment and Restoration Planning

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce; United States Department of the Interior; and Government of American Samoa.

ACTION: Notice of intent to conduct emergency assessment and restoration planning.

SUMMARY: In December 1991, nine vessels grounded on the reefs in Pago Pago Harbor, American Samoa, during Hurricane "Val." The U.S. Coast Guard (USCG) responded, removing an estimated 10,500 gallons of diesel, lube and hydraulic oil. Due in part to recent discharges of oil from the vessels, the USCG has determined that an imminent pollution threat exists and intends to eliminate the risk of pollutant discharge by removing all fuel oil and other hazardous materials from the vessels. The natural resource trustees ("Trustees") intend to take emergency restoration action to minimize continuing injuries and prevent additional response related injuries.

DATES: Comments must be submitted in writing on or before September 13, 1999.

ADDRESSES: Jim Hoff, NOAA, National Ocean Service, Office of Response and Restoration, Silver Spring, MD 20910–3281.

SUPPLEMENTARY INFORMATION: United States Coast Guard Samoa Longliners Clean Up—In December 1991, nine foreign-owned fishing vessels grounded on the reefs in Pago Pago Harbor, American Samoa, during Hurricane "Val." Approximately 1,500 gallons of oil was discharged into the surrounding waters. The USCG responded, removing an estimated 10,500 gallons of diesel,

lube and hydraulic oil from three of the vessels before suspending operations due to adverse weather conditions.

Due in part to recent discharges of oil from the vessels, the USCG has determined that an imminent pollution threat exists and intends to eliminate the risk of pollutant discharge by removing all fuel oil and other hazardous materials (including ammonia, asbestos and zinc) from the vessels. To accomplish this, the USCG proposes to dismantle the vessels to allow access to the double bottom tanks and remove all of the hazardous materials, oil and oily debris, and other toxic substances. After removal of the pollutants, the remainder of the vessels may be left for possible future removal by another, as yet unidentified, party. The USCG response approach is detailed in the June 28, 1999, Incident Action Plan.

Pursuant to section 1006 of the Oil Pollution Act and 15 CFR 990.26, the natural resource trustees intend to take emergency restoration action to minimize continuing injuries and prevent additional response related injuries. The Trustees for this incident are the U.S. Department of Commerce through the National Oceanic and Atmospheric Administration (NOAA); the U.S. Department of the Interior; and the Government of American Samoa. The Trustees are designated pursuant to the National Contingency Plan, 40 CFR Sections 300.600 and 300.605.

During the week of June 28, 1999, the Trustees visited the vessel sites to collect baseline data to assist in the evaluation of potential injuries caused by the USCG response, which is expected to begin on or about August 1, 1999. Based on these data and other information, the Trustees have determined that the response will likely cause natural resource and resource service injuries.

Injuries that may result from the response will be documented in an Emergency Assessment and Restoration Plan being developed by the Trustees. The objective of this plan will be to determine appropriate restoration alternatives for injuries caused by the USCG response. The justification for and extent and nature of emergency restoration required will be described more fully in the Emergency Assessment and Restoration Plan.

FOR FURTHER INFORMATION CONTACT: For further information contact: Jim Hoff, at (301) 713–3038, ext. 188; or Lelei Peau, (684) 633–5155, or Sheila Wiegman, at (684) 633–2304.

Dated: August 4, 1999.

John Oliver,

Director, Management and Budget Office, National Ocean Service.

[FR Doc. 99–20847 Filed 8–11–99; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080999F]

Fisheries of the Exclusive Economic Zone Off Alaska; Crab Interim Action Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meeting.

SUMMARY: NMFS announces a Crab Interim Action Committee (CIAC) meeting to review an appeal of recent Alaska Board of Fisheries (Board) preseason management decisions to revise State regulations governing the Bering Sea/Aleutian Islands King and Tanner crab fisheries.

DATES: The meeting will be held Wednesday, August 11, 1999, from 10:00 am to 5:00 p.m., Alaska local time.

ADDRESSES: The meeting will be held at the NMFS Regional Office in the Federal Building, 709 West 9th Street, Room 445, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7445 (phone), (907) 586–7465 (fax), or gretchen.harrington@noaa.gov (e-mail).

SUPPLEMENTARY INFORMATION: An appeal has been submitted to the Secretary of Commerce requesting Secretarial review of three management decisions made by the Board at its meeting in March 1999. The Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) requires the CIAC to review the appeal prior to action by the Secretary. The CIAC has no authority to grant or reject the appeal, but will comment on the appeal for the benefit of the Secretary. The CIAC will review the Board's actions to determine whether the management measures adopted by the Board are consistent with the FMP (including compliance with framework criteria), the Magnuson-Stevens Fishery Conservation and Management Act, and other Federal law.

The FMP delegates management of the king and Tanner crab fisheries in Federal waters to the State of Alaska, with Federal oversight. The appeal requested Secretarial review of the Board's decision to (1) move the Bristol Bay red king crab fishing season from November 1 to October 15, (2) implement a 30-day exclusion period when no pot or trawl gear can be fished in Area T before the red king crab fishery in that area, and (3) implement a 30-day exclusion period when no pot or trawl gear can be fished in Area J prior to the *C. bairdi* Tanner crab fishery in that area and include trawl gear in the existing 14-day exclusion period for *C. opilio* Tanner crab.

Subsequent to the March 1999 meeting, the Board decided to abate the implementation through regulation of the trawl gear exclusion periods until consultation with the North Pacific Fishery Management Council (Council) and further deliberation. The Board consulted with the Council during a joint meeting on July 27, 1999. The Board will decide at an August 6, 1999, teleconference meeting whether to proceed to implement the trawl gear exclusion periods or continue to abate this action pending further deliberation and consultation with the Council. If the Board continues to abate implementation of the exclusion periods, the CIAC only will review the Board's action to change Bristol Bay red king crab season. Further abeyance by the Board on the trawl gear exclusion periods would alleviate the urgency for the August 11, 1999, CIAC meeting and the meeting may be rescheduled for a later date.

NMFS invites the public to attend the CIAC meeting to listen to staff presentations, however, no public testimony will be heard. Interested public should contact NMFS prior to August 11, 1999, to confirm the meeting date (See **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gretchen Harrington (see **FOR FURTHER INFORMATION CONTACT**) prior to the workshop date.

Dated: August 9, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20929 Filed 8–9–99; 4:56 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073099B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an exempted fishing permit.

SUMMARY: NMFS announces the issuance of exempted fishing permit (EFP) 99–03 to Groundfish Forum, Inc. The EFP authorizes Groundfish Forum to conduct an experiment in the Bering Sea and Aleutian Islands management area (BSAI) that would test the accuracy of at-sea observer basket sampling practices, the design and use of automated species composition sampling, and the effect of fish stratification in trawls on size composition sampling. This EFP is necessary to provide information not otherwise available through research or commercial fishing operations. The intended effect of this action is to promote the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act.

ADDRESSES: Copies of the EFP and the Environmental Assessment analyzing the potential impacts of fishing activities to be conducted under the EFP are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) authorizes the issuance of EFPs for fishing for groundfish in a manner that would otherwise be prohibited under existing regulations. The procedures for issuing EFPs are set out at 50 CFR 679.6 and 600.745(b).

NMFS received the application for EFP 99–03 from Groundfish Forum, Inc. on March 23, 1999. Groundfish Forum is an industry group representing small and medium size factory trawlers that mainly process head and gut product forms. The Alaska Fisheries Science Center (AFSC), NMFS, determined the application to be sufficiently complete to warrant further consideration by NMFS and the North Pacific Fishery Management Council (Council). The Council's April 1999 meeting agenda, which was published in the **Federal Register** on April 6, 1999 (64 FR 16707), provided public notice of the Council's intent to review and consider the EFP and receive testimony from interested members of the public on the proposed experimental fishing activity. The Council endorsed the Groundfish Forum's EFP application at its April 1999 meeting.

The application requested authorization for Groundfish Forum to test the accuracy of at-sea observer basket sampling practices, the design and use of automated species composition sampling, and the effect of fish stratification in trawls on size composition sampling. The supporting experimental design described in the application was developed in coordination with the North Pacific Groundfish Observer Program, AFSC, NMFS. NMFS is supportive of experimentation to assess the accuracy of catch composition and accounting given the agency's responsibility to monitor and manage total mortality of fishery resources as a result of the fishing activities authorized under the FMP. Successful completion of the experiment could provide data for improvements in observer sampling of catch and facilitate more accurate accounting of total catch mortality associated with the commercial North Pacific groundfish fisheries.

NMFS currently relies on NMFS-certified observers to determine species composition of sampled hauls using standard species composition sampling methods. In mixed species fisheries, observers onboard trawl vessels typically rely on basket samples of fish collected randomly as fish are transfered from the trawl codend into a holding bin (trawl catcher vessels) or as fish are transfered from live tanks into the processing line (catcher/processor vessels). Concern exists that these species composition sampling techniques may not accurately reflect the catch composition of an individual haul. This EFP will provide information not otherwise available through research or commercial fishing operations because it is not economically feasible for vessels to participate in an experiment of this extent and rigor during the fast-paced commercial fisheries.

The experimental fishery will be conducted by one vessel in the BSAI flathead sole and Greenland turbot fisheries. Fishing under the EFP would take place in Bycatch Zone 2 of the Bering Sea in areas normally fished for flathead sole and Greenland turbot. The operator of the participating vessel will determine exact fishing locations. Fishing operations will start on or about September 3, 1999, and will last 3 to 4 weeks. This time line is set to accommodate the schedule of NMFS personnel associated with the experiment. The effective period for the EFP may be revised to a later time period in 1999 pending prior agreement between the permit holder and the Administrator, Alaska Region, NMFS (Regional Administrator).

The experiment authorized under the EFP is comprised of three parts. Part I will test the accuracy of basket sampling for species composition and part II will test alternative automated species composition methods. These two parts of the experiment will consist of 30 tows each for a total of 60 tows. The desired catch composition of each tow in parts I and II is 50 percent or more flatfish, with flathead sole being the predominant flatfish species. In the event that the actual catch composition is markedly and consistently different from these desired percentages, Groundfish Forum and NMFS personnel will evaluate the actual catch composition's effect on the experiment and encourage the participating vessel to find remedies to maintain the quality of the experiment. Failure to achieve an acceptable catch composition may result in discontinuation of the experiment.

The flathead sole fishery was chosen for the first two parts of the experiment because it is a mixed fishery in which flatfish and roundfish are commonly caught together in tows; typical tows are fairly long (2–3 hours); and typical haul size is fairly large (around 15 metric tons (mt) on average), but not so large as to necessarily overwhelm the accounting necessary for the experiment. Mixed catches, tow duration, and size of hauls are important factors in determining the potential for catch to be stratified when sampled. Stratification of catch can adversely affect the quality of observer data collected under current sampling procedures. Additional reasons for selecting the flathead sole fishery are that it is currently the most economically viable flatfish fishery for the average sized head-and-gut trawl catcher/processor vessel and the fishery can be conducted during late summer when weather conditions are amenable for the experiment.

Part III of the experiment will assess the effect of fish stratification in a haul on sampling for species size composition. This portion of the experiment will take place immediately following the successful completion of

parts I and II and will rely on a small number of tows targeting Greenland turbot. This fishery was chosen for part III because it presents a reasonable opportunity for harvesting target species of different sizes. The revenue received from the limited harvest of Greenland turbot also will support the participating vessel's involvement in the experiment.

All of the incidental catch amounts of pollock and Pacific cod harvested in the flatfish fishing activities authorized under the EFP must be retained to minimize discard amounts, contrary to existing regulations that require retention of these two species only up to a specified maximum retainable catch allowance (§ 679.27). For all other non-flatfish species, standard maximum retainable catch allowances established in regulations at 50 CFR 679.20 will apply based on retained flatfish as the basis species.

The catch of groundfish under this EFP must not exceed a total of 925 mt during parts I and II of the experiment and 342 mt during part III. If these authorized amounts are found to be insufficient to fully conduct the experiment, the applicant must confer with the Regional Administrator and obtain a modification to the EFP according to regulations at § 679.6 prior to any catch of groundfish in excess of these amounts.

The total catch of Greenland turbot authorized under all parts of the EFP is limited to the smallest of the following amounts: (1) An amount equal to 35 percent of the amount of pollock, Pacific cod, and flatfish other than Arrowtooth flounder caught and retained by the permitted vessel during parts I and II of the experiment; (2) the amount of Greenland turbot caught when a total of 342 mt of groundfish have been caught during part III of the experiment; or (3) a total of 175 mt of Greenland turbot caught at any time during the experiment (parts I, II, or III).

If Pacific halibut bycatch during part III of the EFP exceeds 10.2 mt, fishing activities under the EFP must cease and the experiment will be terminated by the Regional Administrator. Although an upper limit of halibut bycatch equal to 10.2 mt is established for part III, the halibut bycatch limit likely will not prevent the harvest of the entire allowable amount of turbot based on 1997–98 observer data collected on halibut bycatch rates in the Greenland turbot fishery. Limits on the catch of prohibited species during parts I and II of the experiment are not established given the objective of the experimental design approved by NMFS for this portion of the experiment.

Existing regulations governing retention and release of prohibited species, as defined at § 679.21(b), will apply to the vessel participating in the experiment except that no deck-sorting of groundfish or prohibited species will be allowed during parts I and II of the experiment. Deck-sorting of halibut will be required during Part III of the experiment to reduce halibut bycatch mortality.

Groundfish and prohibited species catch associated with this experiment will not be deducted from total allowable catch (TAC) or prohibited species bycatch allowances specified for the 1999 groundfish fisheries.

The participating vessel is required to carry three NMFS-certified observers. Other on-board EFP personnel will include a NMFS scientist and one Groundfish Forum project coordinator. The vessel operator also will need to provide crew members or other qualified personnel to assist observers and to carry out the sorting and weighing of fish prior to discard. NMFS staff have recommended that the experiment be conducted on a trawl catcher/processor vessel used primarily to produce headed and gutted product because the problem of catch stratification is most often associated with the fisheries and vessel configurations of that sector.

Vessel owners interested in participating in this EFP experiment must apply through a "request for proposals" (RFP) process administered by Groundfish Forum. The participating vessel will be chosen on the basis of how well the vessel's owners and crew are able to identify creative, workable solutions to the logistical challenges described in the experimental design developed jointly by NMFS and Groundfish Forum. The selection of a participating vessel will be made through a NMFS-directed review of applications. In the event that more than one vessel equally satisfies the requirements in the RFP, the participating vessel will be selected by lottery.

The Regional Administrator has approved the EFP application and has issued EFP 99–03 to Groundfish Forum subject to the permit terms and conditions summarized above. Failure of the permit holder to comply with the terms and conditions of the EFP may be grounds for revocation, suspension, or modification of the EFP under 15 CFR part 904 with respect to any or all persons and vessels conducting activities under the EFP. Failure to comply with applicable laws also may result in sanctions imposed under those laws.

Classification

The Regional Administrator determined that fishing activities conducted under this action would not affect endangered and threatened species or modify critical habitat in any manner not considered in prior consultations on the groundfish fisheries.

This notice is exempt from review under E.O. 12866. It also is exempt from the Regulatory Flexibility Act (RFA) because prior notice and opportunity for public comment are not required for this notice. Therefore, the analytical requirements of the RFA are inapplicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 6, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20902 Filed 8-11-99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to Chicago Board of Trade Corn Futures Contract Regarding the Delivery Listing Cycle

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has proposed amendments to the corn futures contract that would list November and January as additional delivery months. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on September 9, 1999—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 27, 1999.

ADDRESSES: Interested persons should submit their views and comments to

Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the delivery months for the CBT corn futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: The existing terms of the CBT corn futures contract provide for the following delivery months: March, May, July, September and December. The Exchange is proposing to list November and January as additional delivery months. The CBT intends to apply the proposed amendments beginning with the November 2000 and January 2001 contract months following its receipt of notice of Commission approval. In support of the proposed amendments, the CBT stated that:

> The proposed amendments to add November and January trading months will result in a trading month cycle that better reflects the harvest and key marketing periods for corn. Therefore, November and January contracts will increase the harvest and winter marketing hedging effectiveness, respectively. Furthermore, the preservation of the December contract allows a temporary transition period.
>
> * * * The Exchange will monitor the activity in the November, December, and January contracts to determine which contracts the market prefer. Based on that information and the performance of the new Illinois River delivery system, the Exchange will consider whether further changes in the Corn futures trading months are needed. The December contract is listed through 2001.
>
> * * * The addition of the November Corn contract reflects historical U.S. harvest data showing 89 percent of the harvest completed by November 15th * * * In addition, the January Corn contract represents the mid-month in the busiest three month period of corn shipments on the Illinois River * * *

The Commission requests comment on the proposed amendments.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet on the CFTC website at www.cftc.gov under "What's New & Pending".

Other materials submitted by the CBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 9, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–20855 Filed 8–11–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Applications of the Commodity Exchange, Inc. Division of the New York Mercantile Exchange for Designation as a Contract Market in FTSE Eurotop 300 Stock Index Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contracts.

SUMMARY: The Commodity Exchange, Inc. Division of the New York Mercantile Exchange (COMEX or Exchange) has applied for designation as a contract market in FTSE Eurotop 300 stock index futures and options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 27, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the COMEX FTSE Eurotop 300 stock index futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: *tleahy@cftc.gov*.

SUPPLEMENTARY INFORMATION: The Exchange requested an abbreviated public comment period of 15 days citing the similarities between the proposed contract and the Exchange's existing FTSE Eurotop 100 futures and option contracts. In approving the existing Eurotop 100 contracts, the Commission determined that those contracts satisfied the requirements of the Accord. In view of the contract's similarities, the fact that the same entity (FTSE) owns and maintains the Eurotop 100 and the Eurotop 300 indexes, and because all the stocks comprising the Eurotop 100 are included in the Eurotop 300, the Division believes that the abbreviated 15-day comment period requested by the Exchange is appropriate.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the COMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's

headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the COMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 9, 1999.

John Mielke,

Acting Director.

[FR Doc. 99–20854 Filed 8–11–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to New York Mercantile Exchange California-Oregon-Border and Palo Verde Electricity Futures Contracts Regarding the Contract Size, Hourly Rate of Delivery, Price Limits and Related Provisions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has proposed amendments to the California-Oregon-Border and Palo Verde electricity futures contracts that would halve both the hourly rate of delivery, to one megawatt per hour from two megawatts per hour, and the contract size, to 432 megawatt hours (MWhs) from 864 MWhs. In addition, the Exchange proposes conforming amendments to halve the specified monthly delivery-unit amounts (based on the number of on-peak delivery days in the month) to reflect the reduced contract size. In addition, for both contracts, the Exchange proposes certain modifications to the price limit provisions, including setting a uniform price limit of $10 per MWh expandable to $20 and $30 per MWh following a trading halt(s). The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 27, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to contract size and price limits of the NYMEX California-Oregon-Border and Palo Verde electricity futures contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov.

SUPPLEMENTARY INFORMATION: The Exchange justified the proposals by stating that:

> These rule changes [to the contract size] are being proposed in order to provide more consistency between the futures and cash markets. Currently the standard cash market transaction requires a delivery rate of 25 MW. Since the delivery rate of many cash market contracts is not divisible by two 2 MW—the delivery rate of the futures contract—it is difficult to use the futures contracts for hedging. A delivery rate of 1 MW would allow traders to more precisely hedge with 25 futures contracts per standard cash market transaction.
>
> These changes [to the price limit provisions] help to ensure that futures market prices are able to reflect cash market pricing by not subjecting them to artificial price constraints at times when the market is reacting to fundamental changes in the supply/demand balance. Rule language identical to the language proposed in this submission has already been approved by the Commission for the Exchange's Cinergy, Entergy and PJM contracts.

The NYMEX stated in its submission that it plans to make the amendment effective 60 days following notice of Commission approval for application to existing and newly listed months. Exchange staff indicated that the planned implementation date is November 1, 1999. According to the Exchange, "implementation for contracts with open interest would be executed between trading sessions and all open positions will be split so that any open positions would be converted to two open positions. For example, if a trader held a short position of 20 contracts at the end of the trading session before the effective date of the rules, the trader would hold a short position of 40 contracts at the beginning of the next session. The total value of the position would be unchanged since each old position based on 864 MWhs would be converted to two positions based on 432 MWhs which is an equivalent MWh total."

The Division requests comment on the proposed amendments. In addition, the Division requests comment on the Exchange proposal to apply the amendments to certain existing contract months, as noted above.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet on the CFTC website at www.cftc.gov under "What's New & Pending".

Other materials submitted by the NYMEX in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 9, 1999.

John Mielke,

Acting Director.

[FR Doc. 99–20856 Filed 8–11–99; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–C0007]

Consolidated Electrical Distributors, Inc., a Domestic Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1115.20(b)(4). Published below is a provisionally-accepted Settlement Agreement with Consolidated Electrical Distributors, Inc., containing a civil penalty of $1,500,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on it contents by filing a written request with the Office of the Secretary by August 27, 1999.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 99–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 5, 1999.

Sadye E. Dunn,

Secretary.

UNITED STATES OF AMERICA

Consumer Product Safety Commission

In the Matter of Consolidated Electrical Distributors, Inc.; Respondent

CPSC DOCKET NO. 99–C0007

Consent Agreement

This Consent Agreement is made by and between the staff of the Consumer Product Safety Commission, and Consolidated Electrical Distributors, Inc., a domestic corporation, to settle the staff's allegations that Consolidated Electrical Distributors, Inc., distributed in commerce certain allegedly defective in-wall electric heaters manufactured by Cadet Manufacturing Company ("Cadet"), a domestic corporation, with its principal place of business located at 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660.

Parties

1. The "staff" is the staff of the Consumer Product Safety Commission ("CPSC" or "the Commission"), an independent regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2053, as amended.

2. Respondent Consolidated Electrical Distributors, Inc. ("CED") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 31356 Via Colinas, Westlake Village, California 91362. CED is a distributor of electrical materials and products.

Subject Matter

3. Since approximately 1978, Cadet has allegedly manufactured, sold and/or distributed in commerce in-wall electric heaters for use in homes and residences under the brand names "Cadet" and "Encore." These include all models and variants within each model of the series FW (including models FW–051, FW–101, FW–122, FW–202, and FW–751), manufactured between 1978 and 1987; series FX (including models FX–051, FX–052, FX–071, FX–072, FX–101, FX–102, FX–122, FX–151, FX–152, FX–202, FX–242), manufactured between 1985 and 1994; series LX (including models LX–242, LX–302, LX–402, and LX–482), manufactured between 1985 and 1994; series TK (including models TK–051, TK–071, TK–072, TK–101, TK–102, TK–151, and TK–152), manufactured between 1984 and 1998; series ZA (including models ZA–051, ZA–052, ZA–071, ZA–072, ZA–101, ZA–102, ZA–122, ZA–151, ZA–152, ZA–202, and ZA–242), manufactured between 1985 and 1994; series Z (including models ZA–072, ZA–101, ZA–102, ZA–151, ZA–152, ZA–202, and ZA–208), manufactured between 1993 and 1999; and all series and models of the same or functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX (including models RX–072, RX–101, RX–102, RX–151, RX–152, RX–202, and RX–242), manufactured between 1985 and 1994; series RLX (including models RLX–302, RLX–402, and RLX–482) manufactured between 1985 and 1994; series RK (including models RK–101 and RK–102), manufactured between 1984 and 1998; series RA (including models RA–101, RA–102, RA–151, RA–152, RA–202), manufactured between 1985 and 1994; and series ZC (including models ZC–072, ZC–101, ZC–102, ZC–151, ZC–152, ZC–202, and ZC–208), manufactured between 1993 and 1999. For each of these heaters, the variants signified by the suffix T (with thermostat), W (white color), and TW (with thermostat and white color) found after the model number are included. All the heaters and variants referred to in this paragraph shall hereinafter be collectively referred to as "the Heaters." The Heaters were sold and/or distributed to consumers principally in the States of California, Idaho, Montana, Oregon, and Washington. Since approximately 1978, CED has allegedly sold and/or distributed certain of the Heaters in commerce.

4. On January 14, 1999, the staff filed an Administrative Complaint ("Complaint") against Cadet, seeking a determination that certain of the Heaters present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), and public notice and a recall of certain of the Heaters pursuant to Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). The Complaint alleged that certain of the Heaters are defective and present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), because their design and/or manufacture causes them to overheat, fail, and catch fire; and/or allows lint, dirt, or debris to build up within the heaters and catch fire. The Complaint also alleged that the design of certain of the Heaters can cause the Heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the Heaters creating a risk of electric shock. The staff has agreed with Cadet to the terms of a corrective action plan for notification to consumers and for the replacement of the Heaters ("the Corrective Action Plan" or "the Plan"). The Corrective Action Plan is incorporated in a Consent Agreement and Order between Cadet and the staff, which was executed by Cadet on June 17, 1999 and executed by the staff on June 18, 1999, and will be submitted to the Commission for final approval.

Agreement of the Parties

5. It is the express purpose of the parties entering this Consent Agreement to protect the public safety by assisting Cadet's recall and replacement of the Heaters.

6. Fulfillment of the terms of this Consent Agreement and the attached Order (hereinafter "Order" or "the Order"), which is hereby incorporated by reference, shall resolve all potential obligations of CED (and each of CED's predecessors, successors, assigns, parents, subsidiaries, affiliated entities, agents, representatives, attorneys, employees, officers, directors, stockholders, and principals) (collectively "the CED Releasees") under Section 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), to give public notice of the alleged hazard presented by the Heaters, and to repair, replace, or refund the purchase price of the Heaters. Fulfillment of the terms of this Consent Agreement and Order shall also resolve all potential obligations and liabilities of the CED Releasees for all other claims and causes of action which could have been alleged by the CPSC against the CED Releasees relating to the Heaters, based upon information known to the CPSC, or otherwise in the CPSC's possession, at the time the CPSC staff signs this Consent Agreement. Nothing in this Paragraph 6 is intended to limit the CPSC's rights under Paragraph 21 of this Consent Agreement.

7. The staff believes that this Consent Agreement and Order is an equitable resolution of consumer claims against CED for replacement heaters, and the staff has concluded that the Corrective Action Plan, and CED's participation in that Plan, will provide an effective, fair, reasonable and adequate remedy for consumers throughout the United States who own or are otherwise exposed to the heaters by notifying

consumers of the alleged hazard and providing replacement heaters to them, and that this Agreement is, therefore, in the best interests of consumers.

8. This Consent Agreement and Order shall not be deemed or construed as an admission by CED or as evidence: (a) Of any violation of law or regulation by CED; (b) of other wrongdoing by CED; (c) that the Heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against CED or with respect to the Heaters. Except as specifically set forth in Paragraphs 9, 10, and 11, below, CED does not admit the factual allegations and other statements, or any conclusions of law, as alleged or otherwise stated in the Complaint or this Consent Agreement and Order which relate to the Heaters.

9. The Heaters are "consumer products" within the meaning of Section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

10. CED is a "distributor" of "consumer product[s]," which are "distributed in commerce," as those terms are defined in Sections 3(a)(1), (5), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11).

11. The CPSC has jurisdiction over CED and the Heaters under Sections 3(a)(1), (5), and (11) and Section 15 of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11) and § 2064.

12. For purposes of this settlement only, CED agrees not to contest the staff's allegation, which CED denies, that the Heaters contain a "defect which creates a substantial product hazard," as those terms are defined in Section 15(a) of the CPSA, 15 U.S.C. 2064(a).

13. Upon final acceptance by the CPSC of this Consent Agreement and Order, CED knowingly, voluntarily, and completely waives and relinquishes any past, present, and/or future right or rights in this matter captioned *In the Matter of Consolidated Electrical Distributors, Inc.*, CPSC Docket No. 99–C0007: (a) To an administrative or judicial hearing and to all further procedural steps—including findings of fact and conclusions of law—to determine whether the Heaters contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (b) to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement and Order as issued and entered; (c) to seek judicial review of this or any past orders, findings, and/or determinations of the CPSC in this matter, except as set forth in Paragraphs 22 and 25 of this Consent Agreement; and (d) to file any claim or to seek any remedy under the Equal Access to Justice Act.

14. The Order is issued under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), and a violation of this Consent Agreement and Order is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5), and may subject CED to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070.

15. The parties agree to fulfill all requirements of this Consent Agreement and Order.

16. For all purposes, the Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police and regulatory power. CED acknowledges and agrees that this Consent Agreement and Order are pursuant to the CPSC's police and regulatory power to remedy the alleged risk created by the Heaters, and that, once CED signs the Consent Agreement and Order, the Consent Agreement and Order will not be subject to an automatic stay in any bankruptcy proceeding involving CED.

17. CED acknowledges that any interested person may bring any action pursuant to Section 24 of the CPSA, 15 U.S.C. 2073, in the United States District Court in which CED is found or transacts business, to enforce the Order and to obtain appropriate injunctive relief.

18. This Consent Agreement and Order shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and any operating bankruptcy trustees or receivers. If, prior to the termination of this Consent Agreement and Order, CED merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, CED shall provide reasonable prior notice to the surviving corporation or to the purchaser, assignee, or transferee of substantially all of CED's assets, of this Consent Agreement and Order, and of its binding effect upon said surviving corporation, purchaser, assignee, or transferee. The existence of this Consent Agreement and Order and its binding effect shall be noted in any agreement between CED and such surviving corporation, purchaser, assignee, or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or the purchaser, assignee, or transferee shall execute a document agreeing to be bound by the provisions of this Consent Agreement and Order and shall submit to the jurisdiction of the CPSC for purposes of enforcement of this Consent Agreement and Order. In the event of any merger, sale, assignment, or transfer of substantially all of CED's assets, CED shall provide written notice to the staff at least sixty (60) days prior to any such merger, asset sale, assignment, or transfer.

19. The CPSC, the staff, and/or CED may disclose terms of this Consent Agreement and Order to the public.

20. The staff is entering into this Consent Agreement and Order upon reliance on CED's representation that CED and Cadet have executed a settlement agreement dated June 22, 1999 ("the CED/Cadet Settlement Agreement") that provides, *inter alia*: (a) For the payment by CED to Cadet, subject to the terms of the CED/Cadet Settlement Agreement, of Six Hundred and Fifty-One Thousand Dollars ($651,000) in satisfaction of CED's pre- and post-bankruptcy petition accounts receivable debts claimed by Cadet; and (b) for CED to purchase Two Million Dollars ($2,000,000) worth of products from Cadet, at market prices, over the next two years following the effective date of this Consent Agreement and Order, subject to the terms and conditions of the CED/Cadet Settlement Agreement.

21. The CPSC, at its sole discretion and upon reasonable notice to the staff and CED, may void, suspend, or rescind all, or any part, of this Consent Agreement and Order if, in CED's letter to the staff dated March 10, 1999, CED materially and knowingly misrepresented the dollar amount of the products it purchased from Cadet from 1989 through 1998, or if CED and Cadet have not executed the CED/Cadet Settlement Agreement referred to in Paragraph 20 of this Consent Agreement. In no event shall a default by Cadet under the CED/Cadet Settlement Agreement or any termination resulting from a default by Cadet affect the CPSC's and CED's rights and obligations under this Consent Agreement and Order. Notwithstanding the provisions of Paragraph 32 of this Consent Agreement, the CPSC may exercise its rights under this Paragraph 21 within, and not later than, three (3) years after the date on which the CPSC finally accepts this Consent Agreement and enters the Order.

22. If any provision of this consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Consent Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this consent Agreement and Order a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal, or unenforceable. the rest of the Consent Agreement and Order shall remain in full effect, unless the CPSC determines, after providing CED with notice and a reasonable opportunity to comment, that severing the provision materially impacts the Corrective Action Plan or remediation program set forth in this Consent Agreement and Order. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

23. This Consent Agreement and Order have been negotiated by the parties. CED is not relying on the advice of the staff, nor anyone associated with the staff, as to legal, tax, or other consequences of any kind arising out of this Consent Agreement and Order, and CED specifically assumes the risk of all legal, tax, and other consequences.

24. CED acknowledges that this Consent Agreement and Order have been negotiated between unrelated, sophisticated, and knowledgeable parties acting in their own self-interest and represented by counsel, and the provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or entity or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement and Order.

25. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the alleged hazard that the Heaters pose and to resolve potential claims by the CPSC against CED with respect to the

Heaters. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the dispute to non-binding arbitration by a panel of three arbitrators, according to the rules of the American Arbitration Association then in effect. The CPSC and CED shall each have the right to select one arbitrator, and shall jointly select the third arbitrator. If the CPSC and CED are unable to agree on the selection of the third arbitrator, that arbitrator shall be selected by the American Arbitration Association. Either party may institute an action, following the non-binding decision rendered by the arbitration panel, in the United States District Court for the District Court for the District of Columbia. Notwithstanding the foregoing, neither the arbitrators nor the CPSC shall have authority to resolve dispute arising under the CED/Cadet Settlement Agreement, including but not limited to those provisions referred to in Paragraph 20, above, nor may any rights or obligations arising out of the CED/Cadet Settlement Agreement be enforced through this Consent Agreement and Order.

26. The existence of a dispute between the staff and CED over any provision of this Consent Agreement and Order shall not excuse, toll, or suspend any obligation or deadline imposed upon CED or the staff under this Consent Agreement and Order, other than the specific provisions in dispute.

27. This Consent Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the parties and approved by the CPSC.

28. This Consent Agreement and Order contain the entire agreement, understanding, representation, and interpretation of the parties herein, and nothing else may be used to vary or contradict its terms.

29. CED and the staff consent to the entry of the Order attached hereto.

30. Upon provisional acceptance of this Consent Agreement and Order by the CPSC, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1115.20(b)(4). If the CPSC does not receive any written request not to accept this Consent Agreement and Order within fifteen (15) calendar days, this Consent Agreement and Order shall be deemed finally accepted on the twentieth (20th) calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1115.20(b)(5).

31. Upon final acceptance by the CPSC of this Consent Agreement and Order, the CPSC shall issue the incorporated Order. This Consent agreement and Order shall become effective upon service of the signed Order upon CED.

32. CED's obligations under this Consent Agreement and Order shall terminate when CED makes the final payment required under Paragraphs 4 and 5 of the Order.

33. CED makes the monetary payments described in Paragraphs 4 and 5 of the Order solely as restitution to fund the Corrective Action Plan and thereby to settle claims arising out of its alleged distribution of the Heaters. CED makes the monetary payment described in paragraph 20 of this Consent Agreement solely to satisfy Cadet's claims against CED for pre- and post-bankruptcy petition accounts receivable debts claimed by Cadet. No payment made pursuant to or referred to in this Consent Agreement and Order is a fine or other penalty paid with respect to any violation of any law or regulation. Payment hereunder does not constitute, nor shall it be construed or treated as, payment in lieu of a fine or other penalty, punitive recovery, or forfeiture.

34. Each party shall cooperate fully to implement its obligation under the terms and conditions of this Consent Agreement and Order.

35. The parties have executed two (2) identical copies of this Consent Agreement and the two copies shall be treated as one and the same executed Consent Agreement.

Dated: July 19, 1999.

Howard N. Tarnoff, Trial Attorney, Magaret H. Plank, Trial Attorney

Eric L. Stone, Director, Legal Division, Alan H. Schoem, Assistant Executive, Director, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, Telephone: (301) 504–0626

Dated July 19, 1999.

Blake A. Biles, Esq., Jamellah L. Braddock, Esq., Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004–1206, Telephone: (202) 942–5836

Counsel for Respondent, Consolidated Electrical Distributors, Inc.

H. Dean Bursch, President & Chief Executive Officer, Consolidated Electrical Distributors, Inc.

Order

Upon Consideration of the Consent Agreement entered into between Respondent Consolidated Electrical Distributors, Inc. ("CED") and the staff of the Consumer Product Safety Commission ("the staff") (collectively "the parties"); and

The Consumer Product Safety Commission ("CPSC" or "the Commission") having jurisdiction over the subject matter and CED;

It is hereby ordered that:

1. The Consent Agreement between CED and the staff is incorporated herein by reference and accepted, and CED shall comply with all obligations of the Consent Agreement and this Order.

2. Based on the Consent Agreement, the CPSC finds that the Consent Agreement and this Order are necessary to protect the public from the alleged hazard presented by Cadet's series FW, FX, LX, TK, ZA, and Z in-wall electric heaters, and the functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX, RLX, RK, RA, and ZC. These heaters shall hereinafter be collectively referred to as "the Heaters."

3. CED shall immediately cease and desist offering for sale and/or distributing in commerce any of the Heaters, whether by itself or through its subsidiaries, affiliates, CED-owned distribution centers, or any other persons or entities over whom CED has control.

4. CED shall pay into a staff-designated, interest-bearing escrow account ("the escrow account"), the sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000), according to the following schedule:

a. TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000) upon the CPSC's final acceptance of this Order.

b. FIVE HUNDRED THOUSAND DOLLARS ($500,000) on or before the later of August 1, 1999, or upon the CPSC's final acceptance of this Order.

c. FIVE HUNDRED THOUSAND DOLLARS ($500,000) on or before the later of October 1, 1999, or upon the CPSC's final acceptance of this Order.

d. TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000) on or before the later of December 1, 1999, or upon the CPSC's final acceptance of this Order.

5. CED shall pay into the escrow account a contingent contribution of an additional FIVE DOLLARS ($5.00) for every heater in excess of two hundred and fifty thousand (250,000) heaters ordered by consumers under the Consent Agreement and Order between Cadet and the staff executed by Cadet on June 17,1999 and by the staff on June 18, 1999 (the "Cadet Consent Agreement and Order"); provided, CED's contingent contribution shall be capped at FIVE HUNDRED THOUSAND DOLLARS ($500,000), and in no event shall CED be required to make more than one contingent contribution payment. CED shall pay its contingent contribution within fifteen (15) days of CED's receipt of written notice from the staff either: (a) That consumers have ordered at least 350,000 total replacement heaters under the Cadet Consent Agreement and Order; or (b) specifying the number of replacement heaters in excess of 250,000 ordered by consumers within twenty-four (24) months after the Effective Date of the Cadet Consent Agreement and Order.

6. The monetary payments referred to in Paragraphs 4 and 5, above, may be distributed by the CPSC to offset expenses directly related to Cadet's CPSC-approved Corrective Action Plan.

7. In addition to any penalty it may incur pursuant to Paragraph 14 of the Consent Agreement, if CED fails to make timely contributions to the escrow account, as required by Paragraphs 4 and 5 of this Order, CED shall be liable for additional contributions to the escrow account. Such additional contributions shall include the following:

a. Interest at the percentage rate established by the Department of the Treasury pursuant to 31 U.S.C. 3717, for any period after the due date; and

b. A five percent (5%) per month penalty charge if the deposit is not made within thirty (30) days after the due date.

Provisionally accepted and Provisional Order issued on the 5th day of August, 1999.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–20803 Filed 8–11–99; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–30]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–30, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 6, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

30 July 1999

In reply refer to:
I-99/009850

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-30, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $400 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	**$ 222 million**
Other	**$ 178 million**
TOTAL	**$ 400 million**

(iii) Description of Articles or Services Offered: Two E-2T Hawkeye 2000E aircraft, two AN/APS-145 radar, two T56-A-427 engines, two OE-335/A antenna groups, two Mission Computer Upgrade/Advanced Control Indicator Set, two Passive Detection System, upgrade of software laboratory, spare and repair parts, support equipment, supply support, publications, personnel training and training equipment, U.S. Government and contractor engineering and technical services, and other related elements of logistics support.

(iv) Military Department: Navy (SDE)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 30 July 1999

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - E-2T Hawkeye 2000E Aircraft

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested a possible sale of two E-2T Hawkeye 2000E aircraft, two AN/APS-145 radar, two T56-A-427 engines, two OE-335/A antenna groups, two Mission Computer Upgrade/Advanced Control Indicator Set, two Passive Detection System, upgrade of software laboratory, spare and repair parts, support equipment, supply support, publications, personnel training and training equipment, U.S. Government and contractor engineering and technical services, and other related elements of logistics support. The estimated cost is $400 million.

This proposed sale is consistent with United States law and policy, as expressed in Public Law 96-8.

The recipient needs these aircraft to augment its present operational inventory and its self-defense capability. The recipient's Air Force already has four E-2T aircraft in its inventory.

The proposed sale of this equipment and support will not affect the basic military balance in the region. Others in the region have the E-2C in their inventories.

The prime contractor will be Northrop Grumman Corporation, Bethpage, New York. There are no offset agreements proposed connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government representatives in Taiwan. However; there will be two contractor representatives for two years for technical support following the delivery of the aircraft.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Classified Annex Item No. vi

(vi) Sensitivity of Technology:

1. The E-2T aircraft contains sensitive state-of-the-art technology. Some of the hardware publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Secret. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through depot level) of the E-2T aircraft and its installed systems and related software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–20786 Filed 8–11–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–31]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–31, with attached transmittal, and policy justification.

Dated: August 6, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

30 July 1999

In reply refer to:
I-99/009851

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-31, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $150 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 0 million**
Other	**$ 150 million**
TOTAL	**$ 150 million**

(iii) **Description of Articles or Services Offered: This sale will provide funds for the establishment of a Cooperative Logistics Supply Support Arrangement (CLSSA) for spare parts in support of F-5E/F, C-130H, Indigenous Defense Fighter, F-16A/B with Block 15 Mid-Life Upgrade and for U.S. systems and sub-systems of the aircraft.**

(iv) **Military Department: Air Force (KDG)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None**

(vii) **Date Report Delivered to Congress: 30 July 1999**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - Cooperative Logistics Supply Support Arrangement

The Taipei Economic and Cultural Representative Office in the United States (TECRO) has requested the establishment of a Cooperative Logistics Supply Support Arrangement (CLSSA) for spare parts in support of F-5E/F, C-130H, Indigenous Defense Fighter, F-16A/B with Block 15 Mid-Life Upgrade and for U.S. systems and sub-systems of the aircraft. The estimated cost is $150 million.

This proposed sale is consistent with United States law and policy, as expressed in Public Law 96-8.

These spare parts are required to assure that aircraft and aircraft systems previously procured from the United States are maintained in a mission capable status. The recipient will have no difficulty utilizing these additional spare parts.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items will be from the many contractors providing similar items to the U.S. armed forces. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Taiwan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 99–20787 Filed 8–11–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Information Technology Advisory Committee (Formerly the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet)

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the President's Information Technology Advisory Committee. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: September 2, 1999.

ADDRESSES: NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Proposed Schedule and Agenda: The President's Information Technology Advisory Committee (PITAC) will meet in open session from approximately 8:30 a.m. to 12:30 p.m. and 1:30 p.m. to 4:30 p.m. on September 2, 1999. This meeting will include: (1) Discussions on PITAC's review of Information Technology for the Twenty-First Century: A Bold Investment in America's Future (IT^2), proposed in the President's FY 2000 budget, including reports from PITAC IT^2 review panels on: software (software development, human computer interface and information management); scalable information infrastructure; socio-economic issues; and high-end computing. (2) Discussion of PITAC's agenda in the coming year. Time will also be allocated during the meeting for public comments by individuals and organizations.

FOR FURTHER INFORMATION CONTACT: The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: http://www.ccic.gov; it can also be reached at (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: August 6, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–20788 Filed 8–11–99; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 12, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 6, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Title: Applications for Assistance (Sections 8002 and 8003) Impact Aid Program.

Frequency: Annually.

Affected Public: Individuals or households; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 602,237.

Burden Hours: 631,534.

Abstract: A local educational agency must submit an application to the Department to receive Impact Aid payments under Sections 8002 or 8003 of the Elementary and Secondary Education Act (ESEA), and a State requesting certification under Section 8009 of the ESEA must submit data for the Secretary to determine whether the State has a qualified equalization plan and may take Impact Aid payments into consideration in allocating State aid.

Written comments and requests for copies of this information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–20814 Filed 8–11–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 13, 1999.

ADDRESSES: Written comments should be addressed to the Office of

Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 6, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Local Education Agency Component of Study of School Violence and Prevention.
Frequency: Two one time reportings.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 204.
Burden Hours: 250.
Abstract: The purpose of this study is to increase understanding of how local education agencies plan, implement, and evaluate their alcohol, tobacco, and other drug (ATOD) and violence prevention efforts, especially efforts funded under the Safe and Drug-Free Schools and Communities Act. This study also will assess the implementation of the Principles of Effectiveness, and document obstacles or barriers to implementation of the principles.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or electronically at her internet address Jackie Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–20815 Filed 8–11–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3915–000, et al.]

Northern States Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 5, 1999.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), Public Service Company of Colorado and Cheyenne Light, Fuel and Power Company and Southwestern Public Service Company

[Docket No. ER99–3915–000]

Take notice that on July 30, 1999, Northern States Power Company (Minnesota) (NSP–M) on behalf of the intended successor-in-interest to its utility business, provisionally referred to as New NSP Utility, Northern States Power Company (Wisconsin), Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (jointly, the Applicants) tendered for filing revised Standards of Conduct pursuant to 18 CFR Part 37.

Applicants state that the filing is made in conjunction with three related filings consisting of (1) a merger application under Section 203 of the Federal Power Act, (2) a Joint Operating Agreement and a Statement of Policy and Code of Conduct under Section 205 of the Federal Power Act, and (3) joint Open Access Transmission Tariff under Section 205 of the Federal Power Act.

The Applicants request that the revised Standards of Conduct become effective immediately.

Copies of the filing have been served on the affected state regulatory commissions and on each entity that is a party to the above-captioned dockets.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Cheyenne Light, Fuel and Power Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), Public Service Company of Colorado and Southwestern Public Service Company

[Docket No. ER99–3916–000]

Take notice that on July 30, 1999, Cheyenne Light, Fuel and Power Company, Northern States Power Company (Minnesota) (NSP–M) on behalf of the intended successor-in-interest to its utility business, provisionally referred to as New NSP Utility, Northern States Power Company (Wisconsin), Public Service Company of Colorado, and Southwestern Public Service Company (jointly, the Applicants), tendered for filing a Joint Open Access Transmission Tariff which is to take effect upon consummation of the proposed merger of NSP–M and New Century Energies, Inc.

Applicants state that the filing is made in conjunction with three related filings consisting of (1) a merger application under Section 203 of the Federal Power Act, (2) a Joint Operating Agreement and a Statement of Policy and Code of Conduct under Section 205 of the Federal Power Act, and (3) revised Standards of Conduct under 18 CFR Part 37.

Copies of the filing have been served on the affected state regulatory commissions and on the Applicants' existing open access transmission tariff customers.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Energy New England, L.L.C., Southern Energy Canal, L.L.C. and Southern Energy Kendall, L.L.C.

[Docket No. ER99–3917–000]

Take notice that on July 30, 1999, Southern Energy New England, L.L.C., Southern Energy Canal, L.L.C., and Southern Energy Kendall, L.L.C. (the Southern Parties), tendered for filing an application requesting approval of

certain proposed amendments to their Market Rate Tariffs. The proposed amendments would authorize the Southern Parties to engage in wholesale sales of ancillary services to eligible customers at market rates.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Cleco Energy LLC

[Docket No. ER99–3918–000]

Take notice that on July 29, 1999, Cleco Energy LLC, (formerly named CLECO ENERGY, L.L.C.), tendered for filing its Notice of Succession in which it adopted, ratified, and made its own in every respect all applicable rate schedules, and supplements thereto, heretofore filed with the Commission by CLECO ENERGY, L.L.C.

Effective November 20, 1998, CLECO ENERGY, L.L.C., changed its name to Cleco Energy LLC.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Nevada Power Company

[Docket No. ER99–3919–000]

Take notice that on July 29, 1999, Nevada Power Company (NPC), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under NPC's (Transmission Provider) Open Access Transmission Tariff with Aquila Energy Marketing Corporation (Aquila).

A copy of this filing has been served on Aquila and the Nevada Public Service Commission.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Nevada Power Company

[Docket No. ER99–3920–000]

Take notice that on July 29, 1999, Nevada Power Company (NPC), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under NPC's Open Access Transmission Tariff with British Columbia Power Exchange Corporation (Powerex).

A copy of this filing has been served on Powerex and the Nevada Public Service Commission.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Consumers Energy Company

[Docket No. ER99–3922–000]

Take notice that on July 30, 1999, Consumers Energy Company (Consumers), tendered for filing revised standards of conduct procedures in order to reflect: (1) A recent change in organizational structure and (2) the re-configuration of certain transmission system operations facilities.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER99–3832–000]

Take notice that on July 30, 1999, the New England Power Pool Participants Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Merchant Energy Group of the Americas, Inc., (Merchant Energy Group). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Merchant Energy Group's signature page would permit NEPOOL to expand its membership to include Merchant Energy Group. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Merchant Energy Group a member in NEPOOL.

The Participants Committee requests an effective date of August 1, 1999, for commencement of participation in NEPOOL by Merchant Energy Group.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER99–3833–000]

Take notice that on July 30, 1999, the New England Power Pool (NEPOOL) Participants Committee tendered for filing a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to TransCanada Power Marketing Ltd., in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

A retroactive effective date of July 1, 1999 for commencement of transmission service has been requested.

Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Pool

[Docket No. ER99–3834–000]

Take notice that on July 30, 1999, the New England Power Pool Participants Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Richard Silkman (Mr. Silkman). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Mr. Silkman's signature page would permit NEPOOL to expand its membership to include Mr. Silkman. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Mr. Silkman a member in NEPOOL.

The Participants Committee requests an effective date of August 1, 1999, for commencement of participation in NEPOOL by Mr. Silkman.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER99–3835–000]

Take notice that on July 30, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a long term firm transmission service agreement between itself and Madison Gas & Electric Company (MG&E). The Transmission Service Agreement allows MG&E to receive firm transmission service for 11 MW of wind power, under Wisconsin Energy Corporation Operating Companies FERC Electric Tariff, Volume No. 1.

Also submitted were umbrella firm and non-firm transmission service agreements establishing Consumers Energy Company (Consumers) as a customer under the Tariff.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. FirstEnergy System

[Docket No. ER99–3836–000]

Take notice that on July 30, 1999, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for FirstEnergy Wholesale Energy Transactions, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is July 22, 1999

for the above mentioned Service Agreement in this filing.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. The Montana Power Company

[Docket No. ER99–3837–000]

Take notice that on July 30, 1999, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Firm Point-To-Point Transmission Service Agreement with Arizona Public Service under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff), replacing a previously filed unexecuted service agreement.

A copy of the filing was served upon Arizona Public Service.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. FirstEnergy System

[Docket No. ER99–3845–000]

Take notice that on July 30, 1999, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for FirstEnergy Wholesale Energy Transactions, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is July 22, 1999.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Mountain West Independent System Administrator

[Docket No. ER99–3719–000]

Take notice that on July 23, 1999, Sierra Power Company (Sierra), and Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power Act, a number of filings intended to put into effect the Mountain West Independent System Administrator (Mountain West). These filings include the Mountain West Tariff, the Transmission Owner's Tariff, and *pro forma* versions of several related agreements. Sierra and Nevada Power are making the filing on behalf of Mountain West, which only recently has been formed and has no employees. Included with the filing is a letter from Mountain West's Board of Directors and Advisory committee indicating their support of the filing and their intent to adopt the filing in the future.

The Applicants request that the commission make the filing effective as of March 1, 1999, the date of retail access in the State of Nevada.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Southwestern Electric Power Company

[Docket No. ER99–3784–000]

Take notice that on July 28, 1999, Southwestern Electric Power Company (SWEPCO) filed an Interconnection Agreement between SWEPCO and Lone Star Steel Sales Company (Lone Star).

SWEPCO requests an effective date for the Interconnection Agreement of July 29, 1999. Accordingly, SWEPCO requests waiver of the Commission's notice requirements.

SWEPCO states that a copy of the filing was served on Lone Star and the PUCT.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Energy Canal, L.L.C.

[Docket No. ER99–3838–000]

Take notice that on July 30, 1999, Southern Energy Canal, L.L.C. (Southern Canal), tendered for filing the following agreements as long-term service agreements under its Market Rate Tariff accepted by the Commission in the Docket No. ER98–4115–000:

1. Amended and Restated Power Sales Contract by and between Southern Energy Canal, L.L.C. and Cambridge Electric Light Company and Commonwealth Electric Company, dated December 18, 1998, as reinstated by Reinstatement Agreement dated July 6, 1999;

2. Amended and Restated Power Sales Contract by and between Southern Energy Canal, L.L.C. and Montaup Electric Company, dated December 18, 1998, as reinstated by Reinstatement Agreement dated July 6, 1999;

3. Amended and Restated Power Sales Contract by and between Southern Energy Canal, L.L.C. and Boston Edison Company, dated December 18, 1998, as reinstated by Reinstatement Agreement dated July 6, 1999; and

4. Amended and Restated Power Sales Contract by and between Southern Energy Canal, L.L.C. and New England Power Company, dated June 30, 1999.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20813 Filed 8–11–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6418–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards of Performance for Primary and Secondary Emissions From Basic Oxygen Process Furnace at Steel Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS, Subparts N and Na—Primary and Secondary Emissions from Basic Oxygen Process Furnaces at Steelmaking Facilities; OMB Control No. 2060–0029; expiration date is September 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before September 13, 1999.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No.1069.06.

SUPPLEMENTARY INFORMATION:

Title: (OMB Control No. 2060–0029; EPA ICR No.1069.06) expiring

September 30, 1999. This is an extension of a currently approved collection.

Abstract: Sources are required to meet monitoring, recordkeeping and reporting requirements under NSPS, Subparts N and Na. Specifically, the standards require that a source conduct the following activities:

• Keep records of: startups, shutdowns, malfunctions, periods where the continuous monitoring system is inoperative (60.7(b)); time and duration of each steel production cycle (60.143(a)); time and duration of the rates or levels of any diversion of exhaust gases from the main stack servicing the BOPF (60.143(a)); the various rates or levels of exhaust ventilation at each phase of the cycle through each duct of the secondary emission capture system (60.143a(a)); time and duration of the visible emission data sets (60.145a(d)); particulate matter concentration (i.e., opacity levels) exiting the control device and discharged into the atmosphere (60.142(a–b)); pressure loss through the venturi constriction of the scrubber continuously (60.143(a)(1)); and water supply pressure to the venturi scrubber control equipment continuously (60.143(a)(2)). Industry is required to maintain records at the facility for a minimum of two years.

• Provide notification of: construction/reconstruction (60.7(a)(1)); anticipated startup (60.7(a)(2)); actual startup (60.7(a)(3)); initial and any other performance tests (60.8(d)); demonstration of continuous monitoring system (60.7(a)(5)); and physical or operational change (60.7(a)(4) and 60.145(a)).

• Report on: initial performance test results (60.8 (a)); and monitoring results (e.g., opacity) that average more than 10 % below the average level maintained during the most recent performance test on a semiannual basis (60.7(c), 60.143(c) and 60.143a(d)).

An owner or operator could elect to reduce operating expenses by not installing, maintaining, or otherwise operating the control technology required by the standards. In the absence of the information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, or the inability to ensure compliance with the standards.

The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. The enforcement personnel may elect to conduct an inspection to ensure that the equipment is properly installed and operated, as was indicated in the performance test report. They may also conduct periodic inspections to obtain additional data on source operation and maintenance and to make compliance determinations.

All reports are sent to the delegated State or Local Agency. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published in the **Federal Register** (63 FR 47280) on September 4, 1998; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18.0 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Iron and Steel Plants.

Estimated Number of Respondents: 11.33.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 1,795 hours.

Estimated Total Annualized Cost Burden: $34,400.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1069.06 and OMB Control No. 2060–0029 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov); and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 6, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–20863 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6418–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Registration of Fuels and Fuel Additives—Health-Effects Research Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers (40 CFR part 79—subpart F) (OMB Control Number 2060–0297, expiration date: October 31, 1999). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1696.03.

SUPPLEMENTARY INFORMATION:

Title: Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers (40 CFR part 79—subpart F), (OMB Control Number 2060–0297, EPA ICR Number 1696.03) expiring October 31, 1999. This is a request for an extension of a currently approved collection.

Abstract: In accordance with the Clean Air Act regulations at 40 CFR part 79, manufacturers (including importers) of gasoline, diesel fuel, and additives for gasoline or diesel fuel, are required to have their products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The health-effects research is the subject of this ICR. The other information collection requirements at 40 CFR part 79 are covered by a separate ICR (EPA ICR Number 309.09, OMB Control Number 2060–1050). The health-effects research is divided into three tiers of requirements for specific categories of fuels and additives. Tier 1 requires an emissions characterization and a health-effects literature search for those emissions. Tier 1 data were submitted in 1997 and 1998 and will be applicable for most new products seeking registration. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects, unless comparable data are already available. Alternative Tier 2 testing can be required in lieu of the standard Tier 2 if EPA concludes that such testing would be more appropriate. EPA reached that conclusion with respect to baseline gasoline, oxygenated gasoline additives, and Ethyl Corporation's manganese gasoline additive MMT. Certain small businesses are exempt from some or all of the Tier 1 and Tier 2 requirements. Tier 3 provides for follow-up research, if necessary. However, no Tier 3 requirements have been established. Thus, it is not covered in this document. This information will be used to determine if there are any products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. In accordance with the Clean Air Act, the results of this research shall not be considered confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on April 7, 1999 (64 FR 16960); one comment was received. It was a brief statement from the Ethyl Corporation referencing the continuing dialogue over the appropriate testing for MMT.

Burden Statement: It is likely that only limited additional Tier 1 research will be done. New fuels and additives subject to Tier 1 will almost exclusively be those that can group with existing Tier 1 data, and come from manufacturers that have already paid for the Tier 1 data. Thus, over the next three years only one Tier 1 submission is anticipated. Standard Tier 2 activity will also be very limited. The EPA has concluded that existing data cover Tier 2 for baseline diesel. Alternative Tier 2 testing will be conducted over the next five years and covers baseline gasoline, the six major nonbaseline gasoline oxygenates, and the atypical gasoline additive MMT. Thus, only up to four standard Tier 2 submissions are anticipated over the next three years. The annual public reporting and recordkeeping burden for this collection is estimated to average 20,695 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of gasoline, diesel fuel, and fuel additives.

Estimated Number of Respondents: 6.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 67,467 hours.

Estimated Total Annualized Capital, O & M Cost Burden: $6.5 million.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the following addresses. Please refer to EPA ICR Number 1696.03 and OMB Control Number 2060–0297 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 6, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–20864 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6419–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Activities Associated With EPA's Energy Star Buildings Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Collection Activities Associated with EPA's Energy Star Buildings Program, OMB# 2060–0347, expires September 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before Sepember 13, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1772.02.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Activities Associated with EPA's Energy Star Buildings Program, OMB# 2060–0347, ICR# 1772.02, expires September 30, 1999. This is a request for an

extension of a currently approved collection.

Abstract: The Energy Star Buildings and Green Lights programs are voluntary programs aimed at preventing pollution. These programs focus on reducing utility-generated emissions by reducing the demand for energy. EPA first created the Green Lights program to encourage corporations, state and local governments, colleges and universities, and other organizations to adopt energy efficient lighting as a profitable means of preventing pollution and improving lighting quality. With the success of the Green Lights program, EPA developed the Energy Star Buildings program to encourage business of all sizes, state and local governments, Federal Agencies, academic and other non-profit organizations to make more comprehensive energy efficiency improvements in their buildings. In designing the Energy Star Buildings program, EPA made the energy efficient lighting upgrades of the Green Lights program the first stage of the Energy Star Buildings' five-stage upgrade program. Both of these programs need to collect initial information to establish participation in them, monitor progress in completing energy efficiency upgrades, and measuring reductions in energy usage. EPA will use information requested from participants to further evaluate the overall results of the program and make adjustments, if necessary. Participation in the Energy Star Buildings and Green Lights programs is voluntary and may be terminated by Partners, Allies, Endorsers or EPA at any time. EPA does not expect that organizations will deem any information collected under the program to be confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 4/19/99 (FR Vol 64., No. 74); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information will vary depending on the type of participant, and the specific collection activity. For example: the total estimated respondent burden for completing a Memorandum of Understanding (MOU) is 5.1 hour per respondent. The burden for collection requirements associated with applying for the Energy Star label is estimated to be 3.8 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Participants in EPA' Energy Star Buildings (Green Lights, Energy Small Business) voluntary program.

Estimated Number of Respondents: 4,318.

Frequency of Response: One-time, annually, and/or periodically, dependent upon type of respondent.

Estimated Total Annual Hour Burden: 217,714 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $14,716.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1772.02 and OMB Control No. 2060–0347 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 6, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–20867 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Region VII Tracking No. 061–1061; FRL–6418–8]

Inadequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy status.

SUMMARY: In this document, Region VII is augmenting the national list of submitted State Implementation Plans (SIP) with motor vehicle emissions budgets that have been reviewed for adequacy for transportation conformity purposes as identified in 64 FR 31217–31219 (June 10, 1999). This document describes a finding of inadequacy for the emissions budget for St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess, U.S. EPA, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; (913) 551–7213 or hess.christopher@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do.

Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

On March 2, 1999, the D.C. Circuit Court of Appeals ruled that submitted SIPs cannot be used for conformity determinations unless EPA has affirmatively found the conformity budget adequate. Where EPA finds a budget inadequate, it cannot be used for further conformity determinations.

The new process for determining the adequacy of submitted SIP budgets is contained in a May 14, 1999, memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." EPA will be revising the conformity rule to codify this guidance. You can obtain this guidance at *http://www.epa.gov/oms/transp.htm.*

Status of Submitted Budgets

In Region VII, the only submitted budgets for transportation conformity purposes pertain to the St. Louis metropolitan area and that area's 15% plan and attainment demonstration for the pollutant ozone.

In a letter dated May 27, 1999, from EPA to the Missouri Department of Natural Resources, Region VII determined that the area's budgets are inadequate and we are publishing that finding in this document. As stated in the May 14, 1999, guidance, EPA's adequacy review is not to be used to prejudge EPA's ultimate approval or disapproval of the submitted SIPs. Approvability of the SIPs will be addressed in a future rulemaking.

Because the area has performed certain other emissions analyses, its transportation programs may continue despite this finding of inadequacy regarding submitted budgets. Furthermore, the state is anticipated to submit new budgets by November 15, 1999.

Dated: July 30, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–20866 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6419–3]

Clean Air Act Operating Permit Program; Petition for Objection to Proposed State Operating Permit for Monroe Electrical Generating Plant Entergy Louisiana, Inc.; Monroe, Ouachita Parish, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to State operating permit.

SUMMARY: This document announces that the EPA Administrator has partially granted and partially denied a petition to object to a proposed State operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) to the Monroe Electrical Generating Plant, Entergy Louisiana, Inc., Monroe, Ouachita Parish, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), petitioner may seek judicial review of those portions of the petition which EPA denied in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: http:www.epa.gov/ttn/ oarpg/ramain.html.

FOR FURTHER INFORMATION CONTACT: Jole Luehrs, Chief, Air Permitting Section, Multimedia Planning and Permitting Division, EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7250, or electronic mail at luehrs.jole@epa.gov.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Ms. Merrijane Yerger, Managing Director of the Citizens for Clean Air and Water (Petitioner), submitted a petition to the Administrator on February 9, 1999, seeking EPA's objection to the proposed title V operating permit to be issued to the Monroe Electrical Generating Plant (Monroe plant) owned and operated by Entergy Louisiana, Inc. (Entergy) and located in the city of Monroe, Ouachita Parish, Louisiana. The petition objects to issuance of the proposed permit on five grounds: (1) LDEQ failed to subject the Monroe plant to prevention of significant deterioration (PSD) review, (2) the maximum capacity of the Monroe plant may have been increased by some unknown method at some time between 1976 and the time of the title V application without being subject to PSD review and New Source Performance Standards, (3) the proposed permit fails to incorporate enforceable one-hour maximum emission rate limitations for sulfur dioxide and other criteria pollutants, (4) the proposed permit includes apparent annual emissions increases that suggest PSD review should be conducted for the sulfur dioxide emissions, and (5) sufficient information has not been provided in Entergy's permit application to ensure compliance with the Resource Conservation and Recovery Act disposal requirements.

In addition, the Petitioner requested the following: (1) that EPA issue an information request letter to Entergy and the City of Monroe under section 114 of the Act, requiring them to disclose all matters raised by this petition; and (2) that EPA conduct an on-site inspection of the Monroe plant to determine whether PSD and NSPS have been triggered.

On June 11, 1999, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the proposed title V operating permit fails to assure compliance with applicable PSD requirements as set forth in the Louisiana State Implementation Plan. The order also explains the reasons for denying Petitioner's remaining claims.

Dated: July 30, 1999.

W. B. Hathaway,

Acting Regional Administrator, Region 6.

[FR Doc. 99–20868 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6419–6]

Request for Applications for the National Environmental Education Advisory Council

Due Date: September 24, 1999.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 9(a) and (b) of the National Environmental Education Act of 1990 (PL–101–619) mandates a National Environmental Education Advisory Council. The Advisory Council provides advice, consults with, and makes recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters relating to the activities, functions, and policies of EPA under the Act. EPA is requesting nominations of candidates for membership on the Council. The Act requires that the Council be comprised of eleven (11) members appointed by the Administrator of EPA, after consultation with the Secretary of U.S. Department of Education. Members represent a balance of perspectives, professional qualifications, and experience. The Act

specifies that members must represent the following:

- Primary and secondary education (one of whom shall be a classroom teacher)—two members.
- Colleges and universities—two members.
- Not-for-profit organizations involved in environmental education—two members.
- State departments of education and natural resources—two members.
- Business and industry—two members.
- Senior Americans—one member.

Members are chosen to represent the various geographic regions of the country, and the Council shall have minority representation. The professional backgrounds of Council members include scientific, policy, and other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period, which runs from November to November of each calender year. Members are expected to participate in up to two (2) meetings per year and monthly or more conference calls per year. Members of the Council shall receive compensation and allowances, including travel expenses, at a rate fixed by the Administrator.

There are currently five (5) vacancies on the Advisory Council that must be filled.

- Business and Industry—one vacancy (Nov. 1999–Nov. 2002).
- College and University—one vacancy (Nov. 1999–Nov. 2002).
- State Department of Education—one vacancy (Nov. 1999–Nov. 2002).
- Non-Profit Organization—one vacancy (Nov. 1999–Nov. 2002).
- Primary/Secondary Education (must be an in-service classroom teacher)—one vacancy (Nov. 1999–Nov. 2002).

EPA particularly seeks candidates with demonstrated experience and/or knowledge in any of the following environmental education issue areas:

- Integrating environmental education into state and local education reform and improvement;
- State, local and tribal level capacity building;
- Cross-sector partnerships; leveraging resources for environmental education;
- Design and implementation of environmental education research
- Professional development for teachers and other education professionals; and
- Targeting under-represented audiences, including low-income and multi-cultural audiences, senior citizens, and other adults.

Additional Considerations:

The Council is looking for individuals who demonstrate the following:

- Ability to make the time commitment.
- Strong leadership skills.
- Strong analytical and writing skills.
- Ability to stand apart and evaluate programs in an unbiased fashion.
- Team players.
- Conviction to follow through and to meet deadlines.
- Ability to review items on short notice.

DATES: Applications to fill the existing vacancies on the Council must be submitted no later than September 24, 1999. The application must include the following:

- Name/address/phone/e-mail of applicant.
- 1–2 page resume (Please do not exceed 2 pages.)
- Two (2) letters of support for the applicant.
- One (1) page statement of "How the candidate is qualified." This must not exceed one (1) page.
- One (1) page statement by the applicant on his/her personal perspective on environmental education. This must not exceed one (1) page.

ADDRESSES: Submit nominations to Ginger Keho, Advisory Council Coordinator, Office of Environmental Education, Office of Communications, Education and Media Relations (1704), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ginger Keho at the above address, or call (202) 260–4129. E-mail address: keho.ginger@epamail.epa.gov

SUPPLEMENTARY INFORMATION: The Council provides the Administrator with advice and recommendations on EPA implementation of the National Environmental Education Act. In general, the Act is designed to increase public understanding of environmental issues and problems, and to improve the training of environmental education professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with other Federal agencies, state and local education and natural resource agencies, not-for-profit organizations, universities, and the private sector to encourage and support environmental education and training programs. The Council is also responsible for preparing a national biennial report to Congress that will describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify the skill, education, and training needs for environmental professionals.

Dated: July 30, 1999.

David L. Cohen,

Acting Associate Administrator, Office of Communications, Education and Media Relations.

[FR Doc. 99–20870 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51326; FRL–6077–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 1, 1999, to March 19, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

These notices were inadvertently excluded when the Agency announced its receipt of PMNs and TME's for March 1999.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to.

Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

A. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/homepage/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51926. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

C. *By phone.* If you need additional information about this action, you may also contact the person identified in the "FOR FURTHER INFORMATION CONTACT " section.

III. Why is EPA Taking This Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME, and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 1, 1999, to March 19, 1999, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 99 Premanufacture Notices Received From: 03/01/99 to 03/19/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0523	03/01/99	05/30/99	CBI	(G) Surfactants	(G) Substituted polyoxyethylene
P–99–0524	03/01/99	05/30/99	CBI	(S) Polyurethane foam surfactant	(G) Polydimethylsiloxane, hydroxyalkylether-terminated
P–99–0525	03/02/99	05/31/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–0526	03/02/99	05/31/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–0527	03/02/99	05/31/99	CBI	(G) Component of coating with open use	(G) Blocked isocyanate
P–99–0528	03/01/99	05/30/99	Unichema North America	(S) Lubricant base fluid for metal working fluids	(G) Complex Ester*
P–99–0529	03/02/99	05/31/99	CBI	(G) Anaerobic sealant/ threadlocker ingredient, for use on threaded fasteners and flange sealing applications	(G) Polyurethane methacrylate
P–99–0530	03/02/99	05/31/99	CBI	(G) Anaerobic sealant/ threadlocker ingredient, for use on threaded fasteners and flange sealing applications	(G) Polyurethane acrylate
P–99–0532	03/01/99	05/30/99	CBI	(S) Polymer used in coating solution	(G) Partially silylated isocyanate oligomer
P–99–0533	03/01/99	05/30/99	CBI	(S) Polymer used in coating solution	(G) Silylated polyetherisocyanate oligomer
P–99–0536	03/02/99	05/31/99	CBI	(S) Anaerobic bolt threadlocker and/or flange sealant	(G) Polyurethane acrylate
P–99–0537	03/02/99	05/31/99	CBI	(S) Anaerobic bolt threadlocker and/or flange sealant	(G) Epoxy acrylate oligomer
P–99–0538	03/03/99	06/01/99	First Chemical Corporation	(S) Photoinitiator for polymer system	(S) Methanone, bis[4-(ethylmethylamino)phenyl]-*

I. 99 Premanufacture Notices Received From: 03/01/99 to 03/19/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0539	03/02/99	05/31/99	Dystar L. P.	(S) Dyestuff for coloration of polyester fiber	(G) Propanenitrile, 3-[[4-[(substituted)azo]phenyl](substituted)amino]-*
P–99–0540	03/03/99	06/01/99	The Dow Chemical Company	(G) Prepolymer for isocyanate polyurethane	(G) Experimental mdi prepolymer
P–99–0541	03/03/99	06/01/99	The Dow Chemical Company	(G) Polymer for thin films	(G) Water dispersable polyurethane polymer
P–99–0542	03/05/99	06/03/99	Dow Corning Corporation	(S) Water repellent for masonary	(S) Silicic acid, diethoxyoctylsilyl trimethylsilyl ester*
P–99–0543	03/03/99	06/01/99	The Dow Chemical Company	(G) Chemical intermediate	(G) Alkali salt of polyalkylene glycol
P–99–0544	03/03/99	06/01/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Fatty acids, tall-oil, compounds with 2-(2-aminoethoxy)ethanol*
P–99–0545	03/03/99	06/01/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Octadecanoic acid, compound with 2-(2-aminoethoxy) ethanol (1:1)*
P–99–0546	03/03/99	06/01/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Isooctadecanoic acid, compound with 2-(2-aminoethoxy) ethanol (1:1)*
P–99–0547	03/03/99	06/01/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Fatty acids, soya, compounds with 2-(2-aminoethoxy) ethanol*
P–99–0548	03/03/99	06/01/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Fatty acids, castor-oil, compounds with 2-(2-aminoethoxy) ethanol*
P–99–0549	03/09/99	06/07/99	CBI	(G) Adhesive for flexible substrates	(G) Polyester urethane polymer
P–99–0550	03/08/99	06/06/99	CBI	(G) Softener/debonding agent	(G) Acid salts of ester of amine ethoxylates
P–99–0551	03/08/99	06/06/99	CBI	(G) Softener/debonding agent	(G) Acid salts of ester of amine ethoxylates
P–99–0552	03/08/99	06/06/99	H. B. Fuller Company	(S) Adhesive/sealant for window construction	(G) Polyester isocyanate polymer
P–99–0553	03/08/99	06/06/99	H. B. Fuller Company	(S) Adhesive/sealant for window construction	(G) Polyester isocyanate polymer
P–99–0554	03/08/99	06/06/99	CBI	(G) Softener/debonding agent	(G) Mono, diester amines, ethoxylate
P–99–0555	03/08/99	06/06/99	Imation Enterprises Corp.	(G) Compound in color dispersion	(G) Acrylate copolymer
P–99–0556	03/08/99	06/06/99	CBI	(G) Extractant modifier	(G) Mixed diesters
P–99–0557	03/09/99	06/07/99	First Chemical Corporation	(G) Destructive use intermediate for the production of a polymer additive	(S) Benzenamine, 4,4'-methylenebis[n-ethyl-n-*methyl*-*
P–99–0558	03/10/99	06/08/99	CBI	(G) A component of photoresist	(G) Phenolic resin
P–99–0559	03/10/99	06/08/99	CBI	(G) Softener/ debonding agent	(G) Ester quaternary ammonium compound
P–99–0560	03/08/99	06/06/99	CBI	(G) Open, non-dispersive use	(G) Maleinized oil
P–99–0561	03/09/99	06/07/99	CBI	(G) Hydroxyl-terminated polyester; intermediate for polyurethane polymer	(G) Hydroxyl terminated polyester
P–99–0562	03/08/99	06/06/99	CBI	(S) Acid donor for polyamide dyeing	(G) Diethylene glycol disubstituted organic acid
P–99–0563	03/08/99	06/06/99	CBI	(S) Acid donor for polyamide dyeing	(G) Diethylene glycol disubstituted organic acid
P–99–0564	03/10/99	06/08/99	CBI	(G) Additive for conductive paste	(G) Alkyl substituted succinic acid salt
P–99–0565	03/10/99	06/08/99	Purac America	(S) Solvent; cleaner; degreaser	(S) Propanoic acid, 2-hydroxy-, methyl ester, (2*s*)-*
P–99–0566	03/10/99	06/08/99	Purac America	(S) Solvent; cleaner; degreaser	(S) Propanoic acid, 2-hydroxy- ethyl ester, (2*s*)-*
P–99–0567	03/10/99	06/08/99	Purac America	(S) Solvent; cleaner; degreaser	(S) Propanoic acid, 2-hydroxy- butyl ester, (2*s*)-*
P–99–0568	03/03/99	06/01/99	Huntsman Petrochemical Corporation	(G) Paper processing chemical	(G) Fatty amide amphoteric
P–99–0569	03/03/99	06/01/99	Huntsman Petrochemical Corporation	(G) Paper processing chemical	(G) Fatty imidazolium amphoteric
P–99–0570	03/03/99	06/01/99	Huntsman Petrochemical Corporation	(G) Paper processing chemical	(G) Fatty amide amphoteric

I. 99 Premanufacture Notices Received From: 03/01/99 to 03/19/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0571	03/03/99	06/01/99	Huntsman Petrochemical Corporation	(G) Paper processing chemical	(G) Fatty imidazolium amphoteric
P–99–0572	03/09/99	06/07/99	CBI	(S) Leather dyeing	(G) Polysubstituted bis phenylazonapthalene disulfonic acid
P–99–0573	03/12/99	06/10/99	CBI	(G) Additive, open, non-dispersive use	(G) Carboxylic acid alkyl ester modified polyalkylene amine
P–99–0574	03/12/99	06/10/99	CBI	(G) Additive, open, non-dispersive use	(G) N-alkyl modified polyisocyanate, reaction products with diamine
P–99–0575	03/12/99	06/10/99	Arizona Chemical	(G) Open, non-dispersive use	(G) Maleic modified rosin ester
P–99–0576	03/12/99	06/10/99	CBI	(S) Laminating adhesive	(G) Polyester polyurethane
P–99–0577	03/12/99	06/10/99	CBI	(S) Moisture curing adhesive or coating for metal panel and laminating wood	(G) Isocyanate terminated urethane polymer
P–99–0578	03/15/99	06/13/99	CBI	(G) Open non dispersive (injection molding plastic)	(G) Aliphatic thermoplastic polyurethane resin
P–99–0579	03/15/99	06/13/99	CBI	(G) Lubricants for plastics	(G) Fatty acid esters
P–99–0580	03/17/99	06/15/99	KOSA	(S) Reactant in manufacture of rigid polyurethane foam	(G) Aromatic polyester polyol
P–99–0581	03/16/99	06/14/99	CBI	(S) Acid dye for the coloring of leather	(G) Chromate, bis[[[[(substituted)azo] phenyl]sulfonyl]amino]-hydroxy-[(substituted)azo]-naphthalenesulfonato]-, pentasodium*
P–99–0582	03/15/99	06/13/99	CBI	(G) Fiber spinning	(G) Thermoplastic polyester polyurethane polymer
P–99–0583	03/15/99	06/13/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Fatty acids, coco, compds. with 2-(2-aminoethoxy) ethanol*
P–99–0584	03/15/99	06/13/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Dodecanoic acid, compd. with 2-(2-aminoethoxy)ethanol (1:1)*
P–99–0585	03/15/99	06/13/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Neodecanoic acid, compd. with 2-(2-aminoethoxy)ethanol (1:1)*
P–99–0586	03/15/99	03/15/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Decanoic acid, compd. with 2-(2-aminoethoxy)ethanol (1:1)*
P–99–0587	03/15/99	03/15/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Nonaanoic acid, compd. with 2-(2-aminoethoxy)ethanol (1:1)*
P–99–0588	03/15/99	03/15/99	Huntsman Petrochemical Corporation	(S) Metal working fluid - corrosion inhibition and ph control	(S) Boric acid (h3bo3), compd. with 2-(2-aminoethoxy)ethanol (1:1)*
P–99–0589	03/15/99	06/13/99	CBI	(G) Component in manufacturing processes; catalyst manufacture	(G) Phosphorus chloride derivative
P–99–0590	03/18/99	06/16/99	CBI	(G) Dyestuff for inkjet printer ink	(G) Naphthalene sulfonic acid derivative
P–99–0591	03/16/99	06/14/99	CBI	(G) Isolated polymer intermediate	(G) Polyanhydride
P–99–0592	03/15/99	06/13/99	CBI	(S) Light absorbing dye for imaging media such as photographic films	(G) Substituted napthalene sulfonic acid
P–99–0593	03/15/99	06/13/99	CBI	(S) Paraffin & asphaltene dissolving agent in tertiary oil recovery; gas compressor wash oil; carrier solvent for polyurethane foam synthesis	(G) Polyethylbenzene bottoms, middle fraction, reaction products, distillation heavies
P–99–0594	03/15/99	06/13/99	CBI	(S) Paraffin & asphaltene dissolving agent in tertiary oil recovery; gas compressor wash oil; carrier solvent for polyurethane foam synthesis	(G) Polyethylbenzene bottoms, middle fraction, reaction products, distillation heavies
P–99–0595	03/17/99	06/15/99	Loctite Corporation	(S) Site limited intermediate used in the manufacture of ts990104	(S) 3-cyclohexene-1-carboxylic acid, 1-methyl-1-(4-methyl-3-cyclohenen-1-yl) ethyl ester*
P–99–0596	03/17/99	06/15/99	Loctite Corporation	(S) Site limited intermediate used in the manufacture of ts990104	(S) 3-cyclohexene-1-carbonyl chloride*
P–99–0597	03/17/99	06/15/99	Loctite corporation	(S) Site limited intermediate used in the manufacture of ts990104	(S) 3-cyclohexene-1-carboxylic acid*

I. 99 Premanufacture Notices Received From: 03/01/99 to 03/19/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0598	03/17/99	06/15/99	Loctite corporation	(S) A component of novel adhesives/ sealant formulations	(S) 7-oxabicyclo [4.1.0]heptane-3-carboxylic acid, 1-methyl-1-(6-methyl-7-oxabicyclo [4.1.0]hept-3-yl) ethyl ester*
P–99–0599	03/16/99	06/14/99	CBI	(G) Fragrance	(S) Benzoic acid, 2-hydroxy-4-methyl, ethyl ester*
P–99–0600	03/18/99	06/16/99	CBI	(S) Coating for plastics sheet	(S) Carbonic acid, diphenyl ester, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, 1,4-butanediol, 1,2-ethanediamine, 1,6-hexanediol and 1,1′-methylenebis[4-isocyanatocyclohexane], morpholine-blocked*
P–99–0601	03/18/99	06/16/99	CBI	(G) Laminating adhesive	(G) A polymer of an aromatic diisocyanate, aliphatic diols, a diepoxide and an aliphatic amine
P–99–0602	03/18/99	06/16/99	Cook Composites & Polymers Co.	(S) Crosslinking polymer resin for coatings	(G) Acrylic polymer resin
P–99–0603	03/18/99	06/16/99	Cook Composites & Polymers Co.	(S) Crosslinking polymer resin for coatings	(G) Acrylic polymer resin
P–99–0604	03/18/99	06/16/99	Cook Composites & Polymers Co.	(S) Oil free alkyd for printing inks	(G) Oil-free alkyd
P–99–0605	03/18/99	06/16/99	Cook Composites & Polymers Co.	(S) Pigment grinding vehicle	(G) Unsaturated polyester resin
P–99–0606	03/18/99	06/16/99	CBI	(S) Surfactant for extinguishing fires	(G) Perfluoroalkylethyl amphoteric
P–99–0607	03/18/99	06/16/99	CBI	(S) Anionic surfactant for foaming agent	(G) Anionic surfactant
P–99–0608	03/18/99	06/16/99	CBI	(S) Intermediate for surfactant manufac.	(G) Perfluoroalkylethyl amine
P–99–0609	03/18/99	06/16/99	CBI	(S) Intermediate for surfactant manufac.	(G) Perfluoroalkylethyl ester
P–99–0610	03/18/99	06/16/99	CBI	(G) Photoresist component	(G) Polyhydroxystyrene compound
P–99–0611	03/18/99	06/16/99	Engelhard Corporation	(S) Pigment for industrial coatings	(G) Azo red pigment
P–99–0612	03/19/99	06/17/99	CIBA Specialty Chemicals Corp. - Colors Div.	(G) Textile dye	(G) 2-anthracenesulfonic acid, 4-[[4-(acetylamino)phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-, compd. with alkanol amine-alkylene oxide polymer
P–99–0613	03/18/99	06/16/99	CBI	(S) Coatings for plastic sheet	(S) Carbonic acid, diphenyl ester, polymer with 1,6-diisocyanatohexane, 1,6-hexanediol and 1,1′ -methylenebis[4-isocyanatocyclohexane]*
P–99–0614	03/17/99	06/15/99	CBI	(G) Polyurthane intermediate	(G) Polyester modified isocyanate polymer
P–99–0617	03/19/99	06/17/99	CBI	(S) Uv light stabilizer for plastics	(G) Substituted cyano acrylate
P–99–0623	03/18/99	06/16/99	CBI	(G) Additive for manufacture of articles	(G) Modified vinyl polymer
P–99–0624	03/18/99	06/16/99	CBI	(G) Additive for manufacture of articles	(G) Modified vinyl polymer
P–99–0625	03/18/99	06/16/99	CBI	(G) Additive for manufacture of articles	(G) Modified vinyl polymer
P–99–0626	03/18/99	06/16/99	CBI	(G) Additive for manufacture of articles	(G) Modified vinyl polymer
P–99–0627	03/18/99	06/16/99	CBI	(G) Additive for manufacture of articles	(G) Modified vinyl polymer
P–99–0628	03/18/99	06/16/99	CBI	(G) Additive for manufacture of articles	(G) Modified vinyl polymer
P–99–0629	03/18/99	06/16/99	CBI	(G) Additive for manufacture of articles	(G) Modified vinyl polymer
P–99–0630	03/18/99	06/16/99	CBI	(G) Intermediate for chemical manufacture	(G) Modified biopolymer
P–99–0631	03/18/99	06/16/99	CBI	(G) Intermediate for chemical manufacture	(G) Modified biopolymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 38 Notices of Commencement Received From: 03/01/99 to 03/19/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–91–1224	03/11/99	01/05/98	(G) Modified maleated rosin, calcium, magnesium and zinc salts.
P–92–1053	03/16/99	02/26/99	(G) Polyethanolamine diester with fatty acids dialkyl sulfate salts
P–93–0209	03/01/99	02/18/99	(G) Substituted phenol ester
P–94–0583	03/01/99	02/24/99	(G) Modified methyl methacrylate/ethyl acrylate polymer
P–94–1238	03/18/99	03/05/99	(S) Propanenitrile, 3-[amino, *n*-(tallowalkyl)] dipropylenetri-*
P–94–2072	03/01/99	05/09/98	(G) Ethoxysilane
P–96–0713	03/03/99	02/17/99	(G) Hydrogenated petroleum resin
P–97–0104	03/10/99	02/18/99	(G) Polyisocyante adduct based on toluenediisocyanate
P–97–0711	03/11/99	03/02/99	(G) Crosslinking stoving urethane resin
P–97–0813	03/09/99	02/24/99	(G) Diphenol tars
P–97–0919	03/18/99	06/01/98	(G) Polyisobutylene succinimide molybdenum inhibitor
P–98–0551	03/10/99	02/02/99	(G) Substance (1) polyether succinate
P–98–0567	03/15/99	03/04/99	(G) Styrene acrylic polymer
P–98–0619	03/16/99	03/09/99	(G) Acrylic polymer
P–98–0840	03/08/99	03/03/99	(G) Polyester resin
P–98–0865	03/16/99	03/04/99	(G) Acrylic resin
P–98–0883	03/08/99	02/05/99	(G) Quarternary ammonium functional acrylic polymer
P–98–0925	03/08/99	02/25/99	(G) Modified hydrocarbon resin
P–98–1121	03/10/99	02/23/99	(G) Methacrylic and acrylic ester copolymer
P–98–1122	03/10/99	02/23/99	(G) Alkyl methacrylate, morpholinylethyl methacrylate copolymer
P–98–1123	03/10/99	02/23/99	(G) Methacrylic and acrylic esters copolymer
P–98–1125	03/01/99	02/23/99	(G) Adduct of polyamide and polyamine
P–98–1137	03/08/99	02/16/99	(S) Hexanoic acid, 6-[[(4-methylphenyl)sulfonyl]amino]-*
P–98–1157	03/01/99	01/29/99	(G) Acetal blocked phs
P–98–1167	03/15/99	02/11/99	(G) Epoxidized styrene-butadien copolymer
P–98–1174	03/08/99	02/24/99	(G) Amine fatty acid salt
P–99–0008	03/03/99	02/10/99	(G) Cationic epoxy resin
P–99–0017	03/18/99	03/06/99	(G) Alkenes, maleic anhydride polymer
P–99–0047	03/01/99	02/24/99	(G) B-alanine, *n*-(substituted)phenyl)azo-3-alkyl(phenyl)-*n*-ethyl-, alkoxy ester
P–99–0048	03/15/99	03/03/99	(G) Naphthalenedisulfonic acid, substituted triazine, substituted naphthalenyl azo-, mixed salts
P–99–0085	03/10/99	02/23/99	(G) Bisphenol a-type polyester resin
P–99–0090	03/09/99	02/07/99	(G) Aluminum organometallic compound
P–99–0097	03/01/99	02/02/99	(G) Heavy aromatic solvent
P–99–0098	03/01/99	02/02/99	(G) Heavy aromatic solvent
P–99–0105	03/01/99	02/19/99	(G) Soduim salt of substituted copper phthalocyanine derivative
P–99–0136	03/02/99	02/18/99	(G) Saturated copolyester resin
P–99–0161	03/02/99	02/24/99	(G) Blocked polyisocyanate
P–99–0177	03/18/99	02/26/99	(G) Acrylate functional polyester
Y–94–0060	03/01/99	01/23/99	(G) Alkyd resin

Environmental protection, Premanufacture notices.

Dated: August 4, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–20872 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6418–7]

Proposed Administrative Penalty Assessments and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Assessment of Clean Water Act Class I Administrative Penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a "Class I" administrative penalty proceeding. Class I proceedings under section 309(g) are conducted in accordance with proposed consolidated rules of practice governing the administrative assessment of civil

penalties, published at 63 FR 9464 (Feb. 25, 1998).

EPA is providing notice of the following proposed Class I penalty proceeding initiated by the Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105:

In the Matter of Arizona Dairy Co., Docket No. CWA–09–99–0002, filed July 14, 1999; proposed penalty, $18,000; for unauthorized discharge from Arizona Dairy Co., 19135 E. Elliot Rd., Higley, AZ 85236, on March 31 and April 14, 1998, to Warner Road Alignment Wash and the Eastern Maricopa Floodway.

Procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty proceeding are set forth in the proposed consolidated rules.

DATES: The deadline for submitting public comment on a proposed Class I penalty is on or before September 13, 1999. The Regional Administrator of EPA, Region 9 may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in the proposed consolidated rules.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the proposed consolidated rules, review the complaint, proposed consent order, or other documents filed in the proceeding, comment upon the proposed penalty, or participate in any hearing that may be held, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in the proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in the proceeding prior to thirty days after issuance of this document.

Dated: July 30, 1999.

John Ong,

Director, Water Division, Region 9.

[FR Doc. 99–20865 Filed 8–11–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, August 17, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, August 19, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–19: Andrea Ellis.

Notice of Availability—Petition for Rulemaking Filed by James Bopp, Jr., on Behalf of the Iowa Right to Life Committee, Inc.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–20967 Filed 8–10–99; 11:42 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

[99–N–10]

Pilot Mortgage Program Proposed by the Federal Home Loan Banks of Cincinnati, Indianapolis, and Seattle

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Finance Board has under consideration a proposal submitted jointly by the FHLBanks of Cincinnati, Indianapolis and Seattle to initiate a pilot program to purchase mortgage loans from member financial institutions under a credit risk sharing arrangement. Under the proposed Mortgage Purchase Program, or MPP, the FHLBanks could purchase fixed-rate, single family mortgages from member financial institutions subject to the establishment of a risk-sharing account designed to transfer a substantial portion of the credit risk to the member financial institution. In addition to the risk-sharing account, the member would further credit enhance the mortgage loans by providing supplemental mortgage insurance. The MPP is designed to provide member financial institutions with another alternative to selling mortgages in the secondary market, and the FHLBanks with a means to increase mission-related activities.

FOR FURTHER INFORMATION CONTACT: Scott Smith, Deputy Director, Office of Policy, Research and Analysis, (202) 408–2991, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

Background

Pursuant to the procedures set forth in Federal Housing Finance Board (Finance Board) Resolution 97–70 (November 12, 1997), the Finance Board is publishing notice of receipt of an application from the Federal Home Loan Banks (FHLBanks) of Cincinnati, Indianapolis, and Seattle to initiate a pilot program. As specified in the procedures, the Finance Board will not act on the application during the 30-day notice period and will consider any comments received during the notice period before taking action.

Dated: August 6, 1999.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–20797 Filed 8–11–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 99–14]

Global Transporte Oceanico S.A. v. Coler Ocean Independent Lines Co.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Global Transporte Oceanico S.A. ("Complainant") against Coler Ocean Independent Lines Co. ("Respondent") was served August 3, 1999. Complainant alleges that Respondent violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(a)(1) by failing to remit full payment of ocean freight and other charges, issuing a bank draft for payment which was returned for insufficient funds, and subsequently agreeing to a schedule of payments but failing to make the scheduled payments.

This proceeding has been assigned to the office of Administrative Law Judges and Complainant has requested that this proceeding be conducted under shortened procedure. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer

only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 3, 2000, and the final decision of the Commission shall be issued by December 1, 2000.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–20789 Filed 8–11–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Provident Bancorp, Amesbury, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of The Provident Bank, Amesbury, Massachusetts.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Popular, Inc., Popular International Bank Inc., both of Hato Rey, Puerto Rico., and Popular North America, Inc., Mount Laurel, Pennsylvania; to acquire 100 percent of the voting shares of Aurora National Bank, Aurora, Illinois.

Board of Governors of the Federal Reserve System, August 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20819 Filed 8-11-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Nonbanking Activities or to Acquire Companies that are Engaged in Nonbanking Activities

Bank of Nova Scotia, Toronto, Canada (Notificant) has applied for Board approval pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.24 of the Board's Regulation Y (12 C.F.R. 225.24), to engage as principal in forward contracts, swap transactions, and similar derivative contracts based on the equity and debt securities of a single issuer through its wholly-owned subsidiary, Scotiabanc Inc., Atlanta, Georgia. This activity will be conducted worldwide.

The Board has previously authorized bank holding companies under section 4(c)(8) of the BHC Act to underwrite and deal, to a limited extent, in all types of debt and equity securities, except interests in open-end investment companies ("bank-ineligible securities") (*see Canadian Imperial Bank of Commerce, et al.*, 76 Fed. Res. Bull. 158 (1990); *J.P. Morgan & Co. Incorporated.*, 75 Fed. Res. Bull. 192 (1989)). The Board has determined that such activities are consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377) provided that the company engaged in underwriting and dealing in bank-ineligible securities does not derive more than 25 percent of its revenues from such activities. Section 4(c)(8) of the BHC Act also provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 *Federal Register* 794, 806 (1984).

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Notificant "can reasonably be expected to produce benefits to the public, such as grater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Notificant believes that the proposal would produce public benefits that outweigh any potential adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 7, 1999. Any request for a hearing on this application must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, August 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20818 Filed 8-11-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *First Busey Corporation*, Urbana, Illinois; to acquire Eagle BancGroup, Inc., Bloomington, Illinois, and thereby indirectly acquire First Federal Savings and Loan of Bloomington, Bloomington, Illinois, and FFS Investment Services, Bloomington, Illinois, and thereby engage in operating a savings association, pursuant to § 225.25(b)(4)(ii) of Regulation Y; providing securities brokerage services with respect to all types of securities, both alone and in combination with investment advisory services, including securities clearing and/or securities execution services on an exchange and incidental activities such as securities credit activities and custodial services, pursuant to § 225.25(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20817 Filed 8-11-99; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2553]

Agency Information Collection Activities: Proposed Collection; Comment Request; Citizen Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations relative to a participant's right to petition for issuance amendment or repeal of a rule.

DATES: Submit written comments on the collection of information by October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Citizen Petition—21 CFR 10.30 (OMB Control Number 0910–0183—Extension)

The Administrative Procedures Act (5 U.S.C. 553(e)) provides that every agency shall accord any interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) provides that any person may submit to the agency a citizen petition requesting the Commissioner of Food and Drugs to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

The information is used by the agency to determine the need or desirability of the requested action and also to determine if the submitted information is sufficient to support the action. FDA determines if the submitted information is sufficient to support the action. FDA determines whether or not to grant the petition based on the information submitted.

The affected respondents are individuals or households, State or local governments, nonprofit institutions and

businesses or other for-profit institutions or groups.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.30	120	1	120	12	1,440

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 6, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–20794 Filed 8–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0926]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Under the Federal Import Milk Act; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 26, 1999 (64 FR 40379). The document announced an opportunity for public comment on a collection of information that had been submitted to the Office of Management and Budget for review and clearance.

DATES: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–18927, appearing on page 40379 in the **Federal Register** of Monday, July 26, 1999, the following correction is made:

1. On page 40379, in the third column, in the first full paragraph, beginning in the fourth line, "No comments were received." is corrected to read "One comment was received that was supportive of the Federal Import Milk Act and encouraged FDA to continue this information collection request."

Dated: August 5, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–20793 Filed 8–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1010]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by September 13, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Investigational New Drug (IND) Regulations—21 CFR Part 312 (OMB Control Number 0910–0014)— Renewal

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in FDA's regulation "Investigational New Drug Application" part 312 (21 CFR part 312). This regulation implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts. The IND regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the

scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted prior to authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to assure subject safety, to assure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

There are two forms that are required under part 312: Form FDA–1571—"Investigational New Drug Application."A person who intends to conduct a clinical investigation submits this form to FDA. It includes: (1) A cover sheet containing background information on the sponsor and investigator, (2) a table of contents, (3) an introductory statement and general investigational plan, (4) an investigator's brochure describing the drug substance, (5) a protocol for each planned study, (6) chemistry, manufacturing, and control information for each investigation, (7) pharmacology and toxicology information for each investigation, and (8) previous human experience with the investigational drug.

Form FDA–1572— "Investigator Statement." Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312:

TABLE 1.—REPORTING REQUIREMENTS

21 CFR Section	Explanations
312.7(d)	Applications for permission to sell an investigational new drugs.
312.10(a)	Applications for waiver of requirements under part 312. Only emergency requests are estimated under this section; other requests are included under §§ 312.23 and 312.31.
312.20(c)	Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24). Estimates for this requirement are included under § 312.23.
312.23	IND's (content and format).
312.23(a)(1)	Cover sheet FDA–1571.
312.23(a)(2)	Table of contents.
312.23(a)(3)	Investigational plan for each planned study.
312.23(a)(5)	Investigator's brochure.
312.23(a)(6)	Protocols—Phase 1, 2, and 3.
312.23(a)(7)	Chemistry, manufacturing, and control information.
312.23(a)(7)(iv)(*a*), (*b*), and (*c*)	A description of the drug substance, a list of all components, and any placebo used.
312.23(a)(7)(iv)(*d*)	Labeling—copies of labels and labeling to be provided each investigator.
312.23(a)(7)(iv)(*e*)	Environmental impact analysis regarding drug manufacturing and use.
312.23(a)(8)	Pharmacological and toxicology information.
312.23(a)(9)	Previous human experience with the investigational drug.
312.23(a)(10)	Additional information.
312.23(a)(11)	Relevant information.
312.23(f)	Identification of exception from informed consent.
312.30	Protocol amendments.
312.30(a)	New protocol.
312.30(b)	Change in protocol.
312.30(c)	New investigator.
312.30(d)	Content and format.
312.30(e)	Frequency.
312.31	Information amendments.
312.31(b)	Content and format.
	Chemistry, toxicology, or technical information.
312.32	Safety reports.
312.32(c)(1)	Written reports to FDA and to investigators.
312.32(c)(2)	Telephone reports to FDA for fatal or life-threatening experience.
312.32(c)(3)	Format or frequency.
312.32(d)	Followup submissions.
312.33	Annual reports.
312.33(a)	Individual study information.
312.33(b)	Summary information.
312.33(b)(1)	Adverse experiences.
312.33(b)(2)	Safety report summary.
312.33(b)(3)	List of fatalities and causes of death.
312.33(b)(4)	List of discontinuing subjects.

TABLE 1.—REPORTING REQUIREMENTS—Continued

21 CFR Section	Explanations
312.33(b)(5)	Drug action.
312.33(b)(6)	Preclinical studies and findings.
312.33(b)(7)	Significant changes.
312.33(c)	Next year general investigational plan.
312.33(d)	Brochure revision.
312.33(e)	Phase I protocol modifications.
312.33(f)	Foreign marketing developments.
312.35	Treatment use of investigational new drugs.
312.35(a)	Treatment protocol submitted by IND sponsor.
312.35(b)	Treatment IND submitted by licensed practitioner.
312.36	Requests for emergency use of an investigational new drugs.
312.38(b) and (c)	Notification of withdrawal of an IND.
312.44(c) and (d)	Opportunity for sponsor response to FDA when IND is terminated.
312.45(a) and (b)	Sponsor request for or response to inactive status determination of an IND.
312.47(b)	"End-of-Phase 2" meetings and "Pre-NDA" meetings.
312.53(c)	Investigator information. Investigator report (Form FDA–1572) and narrative; Investigator's background information; Phase 1 outline of planned investigation; and Phase 2 outline of study protocol; financial disclosure information.
312.54(a) and (b)	Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24.
312.55(b)	Sponsor reports to investigators on new observations, especially adverse reactions and safe use. Only "new observations" are estimated under this section; investigator brochures are included under § 312.23.
312.56(b), (c), and (d)	Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA.
312.58(a)	Sponsor's submission of records to FDA on request.
312.64	Investigator reports to the sponsor.
312.64(a)	Progress reports.
312.64(b)	Safety reports.
312.64(c)	Final reports.
312.64(d)	Financial disclosure reports.
312.66	Investigator reports to Institutional Review Board. Estimates for this requirement are included under § 312.53.
312.70	Investigator disqualification; opportunity to respond to FDA. Estimates for this requirement are not included in the estimates for part 312.
312.83	Sponsor submission of treatment protocol. Estimates for this requirement are included under §§ 312.34 and 312.35.
312.85	Sponsors conducting phase 4 studies. Estimates for these postmarketing studies are not included in the estimates for part 312.
312.110(b)	Request to export an investigational drug.
312.120(b) and (c)(2)	Sponsor's submission to FDA for use of foreign clinical study to support an IND.
312.120(c)(3)	Sponsor's report to FDA on findings of independent review committee on foreign clinical study.
312.130(d)	Request for disclosable information for investigations involving an exception from informed consent under § 50.24.

TABLE 2.—RECORDKEEPING REQUIREMENTS

21 CFR Section	Explanations
312.52(a)	Transfer of obligations to a contract research organization.
312.57(a) and (b)	Sponsor recordkeeping.
312.59	Sponsor recordkeeping of disposition of unused supply of drugs. Estimates for this requirement are included under § 312.57.
312.62(a)	Investigator recordkeeping of disposition of drugs.
312.62(b)	Investigator recordkeeping of case histories of individuals.
312.160(a)	Records maintenance—shipment of drugs for investigational use in laboratory research animals or in vitro tests.
312.160(c)	Shipper records of alternative disposition of unused drugs.

In the **Federal Register** of May 6, 1999 (64 FR 24402), the agency requested comments on the proposed collections of information. No comments were received.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS[1]

21 CFR Section	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.7(d)	7	1	7	24	168
312.10(a)	0	0	0	0	0
312.23(a) and (f)	1,601	1.25	1,996	1,600	3,193,600
312.30(a) through (e)	918	14.85	13,629	284	3,870,636
312.31(b)	760	8.87	6,738	100	673,800
312.32(c) and (d)	459	14.33	6,576	32	210,432
312.33(a) through (f)	1,841	2.35	4,318	350	1,511,300
312.35(a) and (b)	1	1	1	300	300
312.36	643	1.2	720	16	11,520
312.38(b)	621	1.24	773	28	21,644
312.38(c)	621	1.24	773	160	123,680
312.44(c) and (d)	710	1.10	780	16	12,480
312.45(a) and (b)	294	1.32	389	12	4,668
312.47(b)	252	1	252	160	40,320
312.53(c)	4,500	1	4,500	80	360,000
312.54(a) and (b)	4	1	4	48	192
312.55(b)	4,500	1	4,500	48	216,000
312.56(b), (c), and (d)	5	1	5	80	400
312.58(a)	337	1	337	8	2,696
312.64(a) through (d)	8,200	1	8,200	24	196,800
312.110(b)	150	2	303	75	22,725
312.120(b) and (c)(2)	100	2	200	168	33,600
312(c)(3)	100	2	200	40	8,000
312.130(d)	4	1	4	8	32
Total Reporting Burden					10,514,993

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.52(a)	360	1	360	2	720
312.57(a) and (b)	4,000	2.05	8,200	100	400,000
312.62(a)	8,200	1	8,200	40	328,000
312.62(b)	8,200	12.2	100,000	40	328,000
312.160(a)	3,400	7.35	25,000	30 min	1,700
312.160(c)	3,400	2.35	8,000	30 min	1,700
Total Recordkeeping Burden					1,060,120
Human Drugs Total Burden Hours					11,575,113

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Respondents	No. of Responses Per Response	Total Annual Responses	Hours per Response	Total Hours
312.7(d)	9	1.3	12	24	288
312.10(a)	1	1	1	40	40
312.23(a) and (f) and 312.120(b), (c)(2), and (c)(3)	278	1.8	492	1,600	787,200
312.30(a) and (e)	975	6.5	6,411	284	1,820,724
312.31(b)	975	9.2	9,005	100	900,500
312.32(c) and (d) and 312.56(c)	602	6.7	4,034	32	129,088
312.33(a) and (f) and 312.56(c)	1,253	1.6	1,969	350	696,150
312.35(a) and (b)	1	1	1	300	300
312.36	22	5.5	122	16	1,952
312.38(b)	128	1.7	212	28	5,936
312.38(c)	128	1.7	212	160	33,920
312.44(c) and (d)	55	1.9	107	16	1,712
312.45(a) and (b)	74	1.4	105	12	1,260
312.47(b)	150	1.8	274	160	43,840
312.53(c)	672	6.6	4,421	80	353,680
312.54(a) and (b)	4	1	4	48	192
312.55(b)	374	6.1	2,288	48	109,824
312.56(b) and (d)	12	1.6	20	80	1,600
312.58(a)	10	1	10	8	80
312.64(a) and (d)	5,014	1	5,014	24	120,336

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS[1]—Continued

21 CFR Section	No. of Respondents	No. of Responses Per Response	Total Annual Responses	Hours per Response	Total Hours
312.110(b)	10	1.3	13	75	975
312.130(d)	1	1	1	0.5	0.5
Total Reporting Burden					5,009,597.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.52(a)	27	2.5	67	5	135
312.57(a) and (b)	1,253	2	2,506	100	125,300
312.62(a)	5,014	1	5,014	40	200,560
312.62(b)	8,200	12.2	100,000	40	328,000
312.160(a)	3,400	7.35	25,000	30 min	1,700
312.160(c)	320	1	320	0.5	160
Total Biologics Recordkeeping Hours					655,855
Total Biologics Burden Hours					5,665,452.5
Total Human Drugs Burden Hours					11,575,113
Total Combined Burdens					17,240,565.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 6, 1999

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–20846 Filed 8–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Criteria for Safety and Efficacy Evaluation of Oxygen Therapeutics as Red Cell Substitutes; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Criteria for Safety and Efficacy Evaluation of Oxygen Therapeutics as Red Cell Substitutes." This public workshop is intended to examine the current status of the safety of red cell substitutes at both the basic and preclinical science levels and review the clinical experiences gained by manufacturers in the course of the development of these products. The public workshop also is intended to address problems of efficacy evaluation and risk/benefit assessments in trauma and surgery.

Date and Time: The public workshop will be held on September 27, 1999, 8 a.m. to 5 p.m., and on September 28, 1999, 8 a.m. to 12:30 p.m.

Location: The public workshop will be held at the National Institutes of Health, Natcher Conference Center, Bldg. 45, Balconies A, B, and C, 45 Center Dr., Bethesda, MD.

Contact: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX 301–827–2843.

Registration and Requests for Oral Presentations: Early registration by Friday, September 10, 1999, is recommended. Mail or fax registration information (including name, title, firm name, address, telephone, and fax number) to Joseph Wilczek (address above). On-site registration, which will begin at 7 a.m., will be done on a space available basis on the day of the workshop. There is no registration fee for the workshop. Space is limited, therefore, interested parties are encouraged to register early. If you need special accommodations due to disability, please contact Joseph Wilczek at least 7 days in advance. Requests for oral presentations should be sent by September 13, 1999, to Abdulilah Alayash, Center for Biologics Evaluation and Research, Division of Hematology, Bldg. 29, rm. 112, 8800 Rockville Pike, Bethesda, MD 20892, 301–827–3813, FAX 301–435–4034, or e-mail "Alayash@cber.fda.gov".

Agenda: The public workshop is intended to discuss a variety of issues concerning the safety and efficacy of red blood cell substitutes. The goals of the public workshop are to: (1) Review current understanding of toxicity issues, (2) define clinical endpoints for clinical trials in hemorrhagic shock and elective surgery, (3) consider whether physiological endpoint(s) could be used as surrogates in lieu of mortality and/or morbidity, and (4) discuss the therapeutic "risk vs. benefit" in using hemoglobin and fluorochemical-based products in trauma and surgery.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A– , Rockville, MD 20857, approximately 15 working days after the public workshop at cost of 10 cents per page. The public workshop transcript will also be available on the Center for Biologics Evaluation and Research website at "http://www.fda.gov/cber/minutes/workshop-min.htm".

Dated: August 6, 1999

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–20845 Filed 8–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0448]

"Draft Compliance Program Guidance Manual: Inspection of Medical Devices;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance document entitled "Draft Compliance Program Guidance Manual: Inspection of Medical Devices." This revised draft compliance program provides guidance to FDA staff for the enforcement of four medical device postmarket regulations: The quality system (QS) regulation, which includes coverage of sterilization process validation and the use of the guidance on quality systems inspections technique (QSIT); medical device reporting (MDR); medical device corrections and removals; and medical device tracking requirements. This revised draft guidance is intended to represent the agency's current thinking on the inspection of medical device manufacturers, and it is neither final nor in effect at this time.

DATES: Written comments concerning this revised draft guidance must be submitted by November 10, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the revised draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Draft Compliance Program Guidance Manual: Inspection of Medical Devices" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning the revised draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Allen T. Wynn, Center for Devices and Radiological Health (HFZ–306), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4695.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance entitled "Draft Compliance Program Guidance Manual: Inspection of Medical Devices" (CP 7382.845). A notice of availability of the draft guidance was published in the **Federal Register** of July 30, 1998 (63 FR 40720). The draft guidance provides guidance to the FDA field and center staff on the inspection and enforcement activities related to the QS/good manufacturing practices (GMP's) regulation (21 CFR part 820), the MDR regulation (21 CFR part 803), the medical device corrections and removals regulation (21 CFR part 806), and the medical device tracking requirements (21 CFR part 821).

The revised draft document contains the following three major differences from the previous draft guidance. First, the QSIT should be used to conduct QS/GMP inspections, including inspections for sterilization processes, to evaluate a firm's manufacturing and QS. Second, part V of the draft guidance document has been revised so that an official action is indicated based on evidence of QS or subsystem(s) deviations that constitute major nonconformities. Third, three inspection programs have been added to cover the requirements of the MDR, medical device corrections and removals, and the medical device tracking regulations.

Inspection of MDR, medical device corrections and removals, and medical device tracking requirements should be conducted during initial or comprehensive inspections. If a subsequent routine or followup inspection of a firm's corrective and preventive action subsystem suggests a potential QS problem, then these three related regulatory requirements should be assessed.

The agency has adopted GGP's, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This revised draft guidance document is issued as a level 1 guidance consistent with GGP's.

This guidance document represents the agency's current thinking on inspection of medical device manufacturers. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

II. Electronic Access

In order to receive the "Draft Compliance Program Guidance Manual: Inspection of Medical Devices" (CP7382.845) via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number (1702), followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the revised draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the "Draft Compliance Program Guidance Manual: Inspection of Medical Devices" (CP7382.845), device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at " http://www.fda.gov/cdrh".

III. Comments

Interested persons may, on or before November 10, 1999, submit to Dockets Management Branch (address above) written comments regarding this revised draft guidance. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the revised draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 28, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–20885 Filed 8–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0222]

Order Granting Summary Judgment and Permanent Injunction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing in its entirety an order entitled "Final Amended Order Granting Summary Judgment and Permanent Injunction."

On July 28, 1999, United States District Judge Royce C. Lamberth entered an order and directed that it be published in the **Federal Register**. The agency is publishing this document to comply with that order.

FOR FURTHER INFORMATION CONTACT:

Regarding biological products and devices regulated by the Center for Biologics Evaluation and Research: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3028;

Regarding human drug products: Laurie B. Burke, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828;

Regarding medical devices: Byron L. Tart, Center for Devices and Radiological Health (HFZ–302), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4639.

Dated: August 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–???? Filed ??–??–99; 8:45 am]

BILLING CODE 4160–01–F

The order reads as follows:

BILLING CODE 1160–01–F–

FILED
JUL 28 1999
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WASHINGTON LEGAL FOUNDATION,)

Plaintiff,

v.) Civil Action 94-1306 (RCL)

JANE E. HENNEY, in her official capacity as Commissioner, Food and Drug Administration,

and

DONNA SHALALA, in her official capacity as Secretary, Department of Health and Human Services,

Defendants.

FINAL AMENDED ORDER GRANTING SUMMARY JUDGMENT AND PERMANENT INJUNCTION

This action is before the Court on the Cross-Motions for Summary Judgment filed by Plaintiff Washington Legal Foundation ("WLF") and defendants Jane E. Henney and Donna Shalala.

Having reviewed the memorandum and other materials submitted, having heard oral argument and otherwise being fully advised;

THE COURT FINDS that there are no genuine issues of material fact and that WLF is entitled to judgment as a matter of law; accordingly,

THE COURT GRANTS WLF's Motion for Summary Judgment;

THE COURT DENIES Defendants' Cross-Motion for Summary Judgment;

THE COURT FINDS AND DECLARES that the policies, rules and regulations of the United States Food and Drug Administration ("FDA") set forth in the Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data, 61 Fed. Reg. 52800 (Oct. 8, 1996) (the "Reprint Guidance"), Guidance for Industry Funded Dissemination of Reference Texts, 61 Fed. Reg. 52800 (Oct. 8, 1996) (the "Textbook Guidance"), and Final Guidance on Industry Supported Scientific and Educational Activities, 62 Fed. Reg. 64074 (Dec. 3, 1997) (the "Final CME Guidance"), are contrary to rights secured by the United States Constitution and therefore must be set aside pursuant to 5 U.S.C. § 706(2)(B) except insofar as they are consistent with the injunctive provisions below.

THE COURT FURTHER FINDS AND DECLARES that the policies, rules and regulations of the United States Food and Drug Administration ("FDA") set forth in the Food and Drug Administration Modernization Act, 21 U.S.C. §§ 360aaa through 360aaa-6, and in the FDA's Final Rule on the Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices, 21 C.F.R. Part 99, are contrary to rights secured by the United States Constitution and therefore must be set aside pursuant to 5 U.S.C. § 706(2)(B) except insofar as they are consistent with the injunctive provisions below.

THE COURT HEREBY ENJOINS Defendants, their successors, and all persons acting in concert with them or otherwise purporting to act on behalf of the United States (collectively "Defendants") from application or enforcement of any regulation, guidance, policy, order or other official action , as follows:

1. Defendants SHALL NOT in any way prohibit, restrict, sanction or otherwise seek to limit any pharmaceutical or medical device manufacturer or any other person:

a) from disseminating or redistributing to physicians or other medical professionals any article concerning prescription drugs or medical devices previous published in a bona fide peer-reviewed professional journal, regardless of whether such article includes a significant or exclusive focus on unapproved uses for drugs or medical devices that are approved by FDA for other uses and regardless of whether such article reports the original study on which FDA approval of the drug or device in question was based;

b) from disseminating or redistributing to physicians or other medical professionals any reference textbook (including any medical textbook or compendium) or any portion thereof published by a bona fide independent publisher and otherwise generally available for sale in bookstores or other distribution channels where similar books are normally available, regardless of whether such reference textbook or portion thereof includes a significant or exclusive focus on unapproved uses for drugs or medical devices that are approved by FDA for other uses;

c) from suggesting content or speakers to an independent program provider in connection with a continuing medical education seminar program or other symposium regardless of whether unapproved uses for drugs or medical devices that are approved by FDA for other uses are to be discussed.

2. For purposes of this injunction, a "bona fide peer-reviewed journal" is a journal that uses experts to objectively review and select, reject, or provide comments about proposed articles. Such experts should have demonstrated expertise in the subject of the article under review, and be independent from the journal.

3. For purposes of this injunction, a "bona fide independent publisher" is a

publisher that has no common ownership or other corporate affiliation with a pharmaceutical or medical device manufacturer and whose principal business if the publication and distribution of books through normal distribution channels.

4. For purposes of this injunction, an "independent program provider" is an entity that has no common ownership or other corporate affiliation with a pharmaceutical or medical device manufacturer, that engages in the business of creating and producing continuing medical education seminars, programs or other symposia and that is accredited by a national accrediting organization pertinent to the topic of the seminars, programs or symposia.

5. Nothing herein shall be construed to limit Defendants' application or enforcement of any rules, regulations, guidances, statutes or other provisions of law that sanction the dissemination or redistribution of any material that is false or misleading. In addition, Defendants may require any pharmaceutical or medical device manufacturer that sponsors or provides financial support for the dissemination or redistribution of articles or reference textbooks or for seminars that include references to unapproved uses for drugs or medical devices that are approved by FDA for other uses to disclose (i) its interest in such drugs or devices, and (ii) the fact that the use discussed has not been approved by FDA.

6. Defendants shall cause this injunction to be published in the Federal Register within 15 days of the date hereof.

IT IS SO ORDERED on this 28th day of July, 1999.

Royce C. Lamberth

THE HONORABLE ROYCE C. LAMBERTH
United States District Judge

[FR Doc. 99-20993 Filed 8-11-99; 8:45 am]
BILLING CODE 4160-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1537]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare/Medicaid Hospital Survey Report Form and Supporting Regulations in 42 CFR 482.2 through 482.57; *Form No.:* HCFA–1537 (OMB# 0938–0382); *Use:* Section 1861(e) of the Social Security Act (the Act) provides that hospitals participating in Medicare under the Act must meet specific requirements. These requirements are presented as Condition of Participation. State agencies must determine compliance with these conditions through the use of this report form.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 1,123; *Total Annual Responses:* 1,123; *Total Annual Hours:* 3,650.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 5, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–20914 Filed 8–11–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0283]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

ACTION: Comment request.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Market Survey of Fraud, Waste and Abuse Detection Software; *Form No.:* HCFA–R–0283 (OMB# 0938–new); *Use:* This information collection tool is essential to providing the Health Care Financing Administration (HCFA) a vehicle to ascertain cutting edge fraud, waste, and abuse detection products. HCFA and its contractors presently use a number of these tools, as do other segments of government, the health care industry, and industry generally. New products taking advantage of new technologies are in continuous development. This completely voluntary survey will ensure that HCFA is vigilant in identifying new advances to help fight the scourge of Medicare fraud and abuse.; *Frequency:* Annually; *Affected Public:* Business or other for profit, and Not for profit institutions; *Number of Respondents:* 400; *Total Annual Responses:* 450; *Total Annual Hours:* 1,350.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 29, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–20915 Filed 8–11–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0282, HCFA–0301, and HCFA–0319]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the

Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request

Extension of a currently approved collection; *Title of Information Collection:* Blood Bank Inspection Checklist and Report and Supporting Regulations in 42 CFR 493.1269–493.1285; *Form No.:* HCFA–0282 (OMB# 0938–0170); *Use:* The Clinical Laboratory Improvement Amendments (CLIA) of 1988 requires the Department of Health and Human Services (HHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by HHS. The law provides for inspections on an announced or unannounced basis during regular hours of operation. All records and information having a bearing on whether the laboratory is being operated in accordance with the law can be requested by the surveyor. The HCFA–0282 is the Blood Bank Inspection Checklist and Report which is outlined in the CLIA of 1988.; *Frequency:* Biennially; *Affected Public:* Not-for-profit institutions, Business or other for-profit, Federal Government, and State, Local, and Tribal Government; *Number of Respondents:* 1,250; *Total Annual Responses:* 1,250; *Total Annual Hours:* 625.

2. Type of Information Collection Request

Extension of a currently approved collection; *Title of Information Collection:* Certification of Medicaid Eligibility Quality Control (MEQC) Payment Error Rates and Supporting Regulations in 42 CFR 431.800 through 431.865; *Form No.:* HCFA–0301 (OMB# 0938–0246); *Use:* MEQC is operated by the State title XIX agency to monitor and improve the administration of its Medicaid system. The MEQC system is based on State reviews of Medicaid beneficiaries from the eligibility files. The reviews are used to assess beneficiary liability, if any, and to determine the amounts paid to provide Medicaid services for these cases.; *Frequency:* Semi-annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 102; Total Annual Hours: 22,515.

3. Type of Information Collection Request

Extension of a currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control (MEQC) Sample Section Lists and Supporting Regulations in 42 CFR 431.800–431.865; *Form No.:* HCFA–0319 (OMB# 0938–0147); *Use:* At the beginning of each month, State agencies are required to submit sample selection lists which identify all of the cases selected for review in the States' samples. These reviews are conducted to determine whether the sampled cases meet applicable State Title XIX eligibility requirements. The sample selection lists contain identifying information on Medicaid beneficiaries such as: State agency review number; beneficiary's name and address; the name of the county where beneficiary resides; and the Medicaid case number. The reviews are also used to assess beneficiary liability, if any, and to determine the amounts paid to provide Medicaid services for these cases.; *Frequency:* Monthly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 55; *Total Annual Responses:* 660; *Total Annual Hours:* 5,280.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 29, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–20809 Filed 8–11–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0029/0030 and HCFA–R–0107]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HSS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Certification as Rural Health Clinic and Rural Health Clinic Survey Repot From and Supporting Regulations in 42 CFR 491.1–491.11; *Form No.:* HCFA–0029/0030 (OMB# 0938–0074); *Use:* The Form HCFA–0029 is utilized as an application to be completed by suppliers of RHC services requesting participation in the Medicare/Medicaid programs. This form initiates the process of obtaining a decision as to whether the conditions for certification are met as a supplier of RHC services. It also promotes data reduction or introduction to and retrieval from the Online Survey and Certification and Reporting System (OSCAR) by the HCFA Regional Offices (RO). The Form HCFA–0030 is an

instrument used by the State survey agency to record data collected in order to determine RHC compliance with individual conditions of participation and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction (keypunching) and retrieval into OSCAR at the HCFA ROs. The form includes basic information on compliance (i.e., met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 470; *Total Annual Responses:* 470; *Total Annual Hours:* 822.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Determining Third Party Liability (TPL) State Plan Preprint and Supporting Regulations in 42 CFR 433.138; *Form No.:* HCFA–R–0107 (OMB# 0938–0502); *Use:* In the past, many third party resources were not diligently pursued by State governments. In an effort to improve program efficiencies and reduce Medicaid expenditures HCFA implemented TPL procedures. The collection of TPL information results in significant program savings to the extent that liable third parties can be identified and payments can be made for services that would otherwise be paid for by the Medicaid program.; *Frequency:* On occasion; *Affected Public:* Individuals or Households, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 1,900,000; *Total Annual Responses:* 1,900,000; *Total Annual Hours:* 329,965.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 29, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–20811 Filed 8–11–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1999.

Name: Advisory Commission on Childhood Vaccines (ACCV)

Date and Time: September 8, 1999; 9:00 a.m.–5:00 p.m.; September 9, 1999; 9:00 a.m.–12:30 noon.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, September 8, from 9:00 a.m. to 5:00 p.m. and on Thursday, September 9, from 9 a.m. to 12:30 p.m. Agenda items will include, but not be limited to: A discussion of intussusception and its potential relationship to the rotavirus vaccine, a presentation on thimerosal, updates from the Department of Justice and the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on September 8, 1999 and before adjournment on September 9, 1999. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Shelia Tibbs, Committee Management Assistant, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on September 8–9, 1999. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Tibbs, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Agenda items are subject to change as priorities dictate.

Dated: August 5, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination, OMPS.

[FR Doc. 99–20791 Filed 8–11–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1999:

Name: Council on Graduate Medical Education.

Date and Time: September 8, 1999, 8:30 a.m.–5:30 p.m.; September 9, 1999, 8:30 a.m.–12:00 p.m.

Place: The Latham Hotel, 3000 M Street, N.W., Georgetown-Presidential Ballroom, Washington, D.C. 20007, (202) 726–5000.

This meeting is open to the public.

Agenda: The agenda will include: Welcome and opening comments from the Administrator, Health Resources and Services Administration, the Associate Administrator for Health Professions and the Acting Executive Secretary of COGME; a panel on What Changes are Expected in Medicare GME; and a panel on Where Do We Go from Here in GME. There will be presentations on BHPR Physician workforce Modeling Activities and California Physician Workforce Activities. The Council will hear the reports of its work groups on Ambulatory Programs and Financing, and Physician Workforce. There will be a presentation on the National Advisory Council on Nurse Education and Practice—Strategic Plan and Activities, and comments from the Senate Committee on Health, Education, Labor, and Pensions.

Anyone requiring information regarding the subject should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: August 6, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination, OMPS.

[FR Doc. 99–20792 Filed 8–11–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applicants and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Primary Care Resident Rotation in Cancer Prevention.

Date: August 16, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, EPN, Room 635, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Michael B. Small, PhD., Scientific Review Administrator, National Cancer Institute, Division of Extramural Activities, 6130 Executive Blvd., Room 643, Bethesda, MD 20892, 301/496–7929.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 6, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20830 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–10–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. Detailed Drug Evaluation & Development of Treatment Strategies for Chemotherapeutic agents.

Date: August 25, 1999.

Time: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 6130 Executive Blvd., Room 635, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: C.M. Kerwin, PhD., Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–630, Rockville, MD 20892–7405, 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394; Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397; Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 5, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20835 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Research Resources Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council Executive Subcommittee.

Date: September 9, 1999.

Open: 8 a.m. to 8:45 a.m.

Agenda: To discuss policy issues.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 3B31, Building 31, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Name of Committee: National Advisory Research Resources Council.

Date: September 9, 1999.

Open: 9 a.m. to 2 p.m.

Agenda: Report of Center Director and other issues related to Council business.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 6, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20828 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and person information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: August 23, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892.

Contact Person: Andrew P. Mariani, PhD., Chief, Scientific Review Branch, 6120 Executive Blvd, Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 6, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20823 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: August 25, 1999.

Time: 2:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Andrew P. Mariani, Phd., Chief, Scientific Review Branch, 6120 Executive Blvd., Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 6, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20832 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases

The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK)—in close collaboration with the members of its National Advisory Council, Board of Scientific Counselors, and other external scientific and lay experts—is embarking on the development of a Strategic Plan that will be reflective of the Institute's unique mission, science and culture. As part of the NIH response to recommendations of the Institute of Medicine (IOM) study on NIH priority-setting and public input, the NIDDK is required to send a draft copy of its Strategic Plan to the NIH Director by December 31, 1999. the NIDDK needs and welcomes public input into this process.

The NIDDK wants to develop a process that considers the views of groups and individuals who are concerned about the Institute's research programs aimed at expanding knowledge about and reducing the burden of the diseases within the NIDDK mission. The development of the NIDDK Strategic Plan will be a continuous, iterative process, during which draft documents will be shared with the scientific and lay community to solicit comments and input at steps along the way. The NIDDK's new Strategic Plan will build upon many existing planning processes that are already in place within the Institute, as well as upon the plans of constituent organizations.

The NIDDK expects to develop its Strategic Plan using *cross-cutting scientific themes* that unite and underpin the disease-oriented programs of the Institute. These cross-cutting themes include genetics, cell biology, mechanisms of disease injury, prevention and treatment of disease, and research infrastructure. Expert Working Groups will provide advice to the Institute on these themes. In the NIDDK Strategic Planning document, disease-oriented research will be used, *by way of example,* to highlight these unifying scientific themes. While the Plan *will not contain budget estimates,* it should include *scientific implementation strategies* for capitalizing on cross-cutting research opportunities and needs. This conceptual framework for developing the NIDDK Strategic Plan was presented to and generally endorsed by the statutory NIDDK National Advisory Council on June 1, 1999.

As one means of gaining public input, the Institute will hold an "Open Meeting for Public Comment on the NIDDK Strategic Planning Process" on Monday, October 18, 1999, from 9 a.m. to 4 p.m., with a one-hour break for attendees to purchase lunch. This meeting will be held in Conference Room 10 in Building 31, "C" Wing, at the National Institutes of Health in Bethesda, Maryland. The purpose of this meeting is to enable individuals representing voluntary health and professional organizations, as well as private citizens, to provide oral comment on the process and on an

expanded outline of a working draft document. Members of the NIDDK National Advisory Council and Senior Staff will be in attendance. Prior to the public comment, brief presentations will be made by NIDDK Senior Staff on the different sections of the working draft document.

In an effort to achieve representation across the many diseases within the mission of the NIDDK, oral presentations at the October 18 meeting will be strictly limited to three minutes in length. In order to have a written public record of all comments, transcription services will be available for those who cannot provide a typed copy of their comments. If you do not wish to or are unable to make an oral presentation, the NIDDK encourages the submission of written statements of unspecified length.

Requests for time to give oral presentations should be made in writing by *September 15, 1999* to: Ms. Mary Beth Kester, Program Analyst, Office of Scientific Program and Policy Analysis, NIDDK, NIH, 31 Center Drive MSC 2560, Building 31, Room 9A07, Bethesda, MD 20892–2560. Please include in your request any special accommodations that you may require. Written statements may be submitted to the above address until *October 25, 1999*. The NIDDK will assemble a compendium of all comments received and this compendium will be available for public access at the NIDDK Office of Scientific Program and Policy Analysis.

Please visit the NIDDK World Wide Web site (http:///www.niddk.nih.gov), where electronic comments can be made about some of the features, goals and objectives that the Institute would like to incorporate in its Strategic Plan, and the preliminary conceptual framework for developing the document. We are asking that electronic comments be submitted by *October 8, 1999*, so that they can be considered in the development of the Strategic Plan. If you do not have access to a computer, the NIDDK will provide you with a copy of the material that is on the World Wide Web site. You may request this material from: Ms. Mary Beth Kester at the address noted previously.

The NIDDK looks forward to working with the research community and the public to develop its Strategic Plan.

Dated: August 2, 1999.

Ms. Carol Feld,

Associate Director for Scientific, Program and Policy Analysis, NIDDK, NIH.

[FR Doc. 99–20822 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Global Burden of Disease 2000 in Aging Population.

Date: August 31–September 1, 1999.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Paul Lenz, PhD., Office of Extramural Affairs, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 6, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–20825 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: Septemer 9–10, 1999.

Open: September 9, 1999, 8:30 AM to 12:00 PM.

Agenda: Grant applications.

Place: Holiday Inn-Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: September 10, 1999, 9:45 AM to 10:15 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: September 10, 1999, 10:15 AM to 12:00 PM.

Agenda: Grant applications.

Place: Holiday Inn-Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Walter S. Stolz, Ph.D., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrine and Metabolic Diseases Subcommittee.

Date: September 9–10, 1999.

Open: September 9, 1999, 1:30 PM to 2:30 PM.

Agenda: Grant applications.

Place: Holiday Inn-Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: September 9, 1999, 2:30 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: September 10, 1999, 8:00 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Walter S. Stolz, PhD., Director for Extramural Activities, National

Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Digestive Diseases and Nutrition Subcommittee.

Date: September 9–10, 1999.

Open: September 9, 1999, 1:30 PM to 2:30 PM.

Agenda: Grant applications.

Place: Holiday Inn—Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: September 9, 1999, 2:30 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: September 10, 1999, 8:00 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Walter S. Stolz, Phd., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: September 9–10, 1999.

Open: September 9, 1999, 1:30 PM to 2:30 PM.

Agenda: Grant applications.

Place: Holiday Inn—Chevy Chase, Palladian West Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: September 9, 1999, 2:30 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian West Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: September 10, 1999, 8:00 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian West Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Walter S. Stolz, Phd., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology, and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 6, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–20826 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 26, 1999.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jack D. Maser, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9606, Bethesda, MD 20892–9606, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientists Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institute of Health, HHS)

Dated: August 6, 1999.

Anna Snouffer,

Acting Director, OFACP, NIH.

[FR Doc. 99–20827 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 23–24, 1999.

Closed: September 23, 1999, 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: September 23, 1999, 11 a.m. to 5 p.m.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of Council.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: September 24, 1999, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: W. Sue Shafer, PhD, Deputy Director, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, MD 20892, (301) 594–4499.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry

Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 6, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–20829 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 14, 1999.

Open: 9:00 AM to 1:00 PM.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 2:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Mary Leveck, PhD, Associate Director for Scientific Programs, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5693.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 5, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20833 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Genetics.

Date: August 17, 1999.

Time: 8:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Standford Terrace Inn, 531 Stanford Avenue, Palo Alto, CA 94306.

Contact Person: Carole H. Latker, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–3663.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 5, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–20834 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of Imaging and Biological Markers for Diagnosis and Progression of Alzheimer's Disease

Notice is hereby given of the Meeting Imaging and Biological Markers for Diagnosis and Progression of Alzheimer's Disease, September 27 and 28, 1999, to be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. This meeting will be open to the public from 8:00 a.m. to 5:00 p.m. both days.

The meeting will focus on the potential usefulness of various neuroimaging modalities (e.g. MRI, MRS, fMRI, PET, SPECT) and biological markers (e.g. beta—amyloid, tau, inflammatory, oxidative) in the initial diagnosis of Alzheimer's disease and in assessing disease progression and response to treatments. This particular workshop will not address genetic markers.

Ms. Paula Nesmith, MultiConsultant Associates, Inc., 8484 Georgia Avenue, Suite 320, Silver Spring, MD 20910, Phone: 301–650–7430, Fax: 301–587–4138, will provide a list of speakers and their topics, and the Registration (no fee) Form, upon request.

A block of rooms has been reserved at the Bethesda Marriott at a Group Rate of $145 per person per night for the first 100 industry attendees to make reservations. Twelve percent (12%) State and Local taxes will be added to this rate. Please contact Ms. Paula Nesmith, MultiConsultant Associates, Inc., 8484 Georgia Avenue, Suite 320, Silver Spring, MD 20910, Phone: 301–650–7430, Fax: 301–587–4138, who will provide a list of speakers and their topics, the Registration (no fee) Form, and the Hotel Application Form upon request. Reservations must be received on or before Wednesday, August 25, 1999, to secure the group Rate. All room and hotel expenses are that of the attendee. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Rosztoczy at 301–496–9350, in advance of the meeting.

Dated: August 4, 1999.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 99–20937 Filed 8–10–99; 10:36 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–ET1–05.

Date: August 9, 1999.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892 (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 1999.

Time: 10:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848; Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 18, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, The Chevy Chase Pavilion, 4300 Military Road NW, Wisconsin at Western Avenue, Washington, DC 20015.

Contact Person: Michael J. Kozak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 VISB (03).

Date: August 18, 1999.

Time: 2:00 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Leonard Jakubczack, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 18, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 19, 1999.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ronald Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 6, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–20824 Filed 8–11–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4446–N–04]

Notice of Proposed Information Collection: Comment Request; Welfare to Work: A Comprehensive Guide of Welfare to Work Resources and Services

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date October 12, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sheila E. Jones, Reports Liaison Officer, Department of Housing & Urban Development, 451 Seventh Street, SW, Room 7230, Washington, DC 20410–7000.

FOR FURTHER INFORMATION CONTACT: Maxine Wallace, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2186 ext. 4385. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Wallace.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the

burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Welfare to Work: A Comprehensive Guide of Welfare to Work Resources and Services.

OMB Control Number, if applicable: 2506–0168.

Description of the need for the information and proposed use: Information collection is required to provide employers in eight (8) cities (New York, Baltimore, Kansas City, St. Louis, Dallas, Seattle, Denver and San Antonio) with helpful information on securing and training welfare recipients as workers.

Agency form numbers, if applicable: n/a.

Members of affected public: Service Providers including Not-for-Profits and State, Local and Tribal Governments will be the primary affected members of the public. Businesses and other for-profit agencies will be affected members as well.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 1,200. The proposed frequency of the response to the collection of information is one-time. It is believed that it will take approximately one (1) hour to complete the questionnaire with 1,200 respondents for a total of 1,200 hours.

Status of the proposed information collection:

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

August 3, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 99–20800 Filed 8–11–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4511–N–02]

Request for Proposals; Contract Administrators for Project-Based Section 8 Housing Assistance Payments (HAP) Contracts; Amendments

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of request for proposals; amendment.

SUMMARY: On May 3, 1999, HUD issued a Request for Proposals (RFP) pertaining to Contract Administrators for Project-Based Section 8 Housing Assistance Payments (HAP) Contract. The RFP was published in the **Federal Register** on May 19, 1999, to ensure a wider dissemination. Through the RFP, HUD is seeking sources interested in providing contract administration services for project-based Housing Assistance Payment Contracts under Section 8. The RFP solicitation is not a formal procurement within the meaning of the Federal Acquisition Regulations (FAR) but follows many of those principles.

HUD amended the RFP on August 2, 1999. This notice publishes the amendments already issued, again, for the purpose of wider dissemination.

Offerors must submit technical and cost proposals prior to the RFP deadline. Proposals in response to the RFP are due to the HUD Denver Multifamily Hub at 5:00 pm MDT Wednesday, August 25, 1999. The amendments provide the exact submission location. The amendments to the RFP follow:

Dated August 9, 1999.

William C. Apgar,

Assistant Secretary for Housing, Federal Housing Commissioner.

1. Introduction

a. The second paragraph of the Introduction section is amended to replace the number "9" in the last sentence with the number "8," and to add a new sentence to the end of second paragraph.

Paragraph 2 Amended

When HUD renews the expired project-based HAP Contracts that PHAs currently administer, HUD generally expects to transfer contract administration of the renewed HAP Contracts to the Contract Administrator (CA) it selects through this RFP for the service area where the property is located. This RFP does not apply to contract administration of Section 8 projects assisted under the Section 8 moderate rehabilitation program (including the Section 8 moderate rehabilitation single room occupancy program) or the Section 8 project-based certificate program, or to contract administration of Section 8 projects to be assisted under the Section 8 project-based voucher program. In addition, the following projects will not be transferred to contract administrators: HUD-owned projects; projects in foreclosure pipelines; projects classified as MIP (mortgagee-in-possession); projects referred to the Enforcement Center; projects where the owner has advised that they intend to "opt-out."

b. The fourth paragraph is amended to add the words "and the District of Columbia" at the end of the second sentence, and in the last sentence to remove all language following the word "other" and to insert in its place the phrase "public or private, profit or non-profit entities."

Paragraph 4 Amended

Proposals in response to this RFP may cover an area no smaller than an individual State (or U.S. Territory). Proposals may cover one or more HUD Multifamily Hubs or one or more States (or U.S. Territory), and the District of Columbia. Geographic Service Area Jurisdiction (Attachment II) describes the jurisdictions of the Multifamily Hubs. HUD encourages proposals through joint ventures and other public or private, profit or non-profit entities.

3. Statement of Work

Additional references are added to the "references" sections of each of Section 3.3, Rental Adjustments, and Section 3.4, Opt-Out and Contract Termination as follows:

3.3 Rental Adjustments

References Amended

References:
HUD Handbook 4350.1
Notice: H–98–34
Notice: H–98–3
Notice: H–98–27
Notice: H–99–08
Notice: H–99–13
Notice: H–99–15
Internal Housing Memoranda dated 2/9/99 and 5/7/99

3.4 Opt-Out and Contract Termination

References Amended

References:
Notice: H–98–34
Notice: H–99–08
Notice: H–99–13
Internal Housing Memoranda dated 2/9/99 and 5/7/99

3.7 Section 8 Budgets, Requisitions, Revisions and Year-end Statements

The last sentence in the first paragraph is revised to state that year-end settlements are to be submitted within 45 days of the end of the CA's fiscal year.

Paragraph 1 Amended

To receive monthly ACC payments, Section 8 budgets and requisitions (and revisions as required) must be submitted for each HAP contract at least 90 days before the beginning of the fiscal year. Also to receive monthly ACC payments, Year-end settlement statements must be prepared and submitted within 45 days of the end of the CA's fiscal year.

3.8 Contract Administrator's Audit

a. The fourth "bullet" paragraph under the subheading "Requirements" is amended to replace "FMC" with "HUD".

Subparagraph 4 Under "Requirements" Amended

Requirements:

* * * * *

• Provide HUD with annual financial audit of the CA's activities the earlier of 30 days after receipt of the auditors report or 9 months after the CA's fiscal year end (FYE) (in accordance with OMB Circular A–133). This audit must be performed by an independent public accountant (IPA).

3.10 Renewals of Expiring Section 8 Contracts

Additional references are added to the "reference" section of section 3.10 as follows:

Reference Amended

Reference:

Notice: H–98–34
Notice: H–99–08
Notice: H–99–13
Internal Housing Memoranda dated 2/9/99 and 5/7/99

3.12 Physical Inspection

Additional references are added to the "reference" section of Section 3.12 as follows:

Reference Amended

Reference:

HUD Handbook 4350.1
Federal Register, September 1, 1998 Housing Assistance Payments (HAP) Contract

5.1 Service Area Designation

The first paragraph of this section is amended by adding at the end of the second sentence and the end of the third sentence the words "and the District of Columbia".

Paragraph 1 Amended

Proposals in response to this solicitation must clearly designate the intended service area. Offerors must bid to provide contract administration services for areas no smaller than an individual State (or U.S. Territory) and the District of Columbia. HUD will accept proposals covering the entire nation, multiple Multifamily Hubs, individual Multifamily Hubs, or any combination of states, but no smaller than an individual State (or U.S. Territory) and the District of Columbia. All multi-state proposals must provide a separate cost proposal for each state within the proposed service area (see Attachment II.B). HUD will evaluate proposals for areas larger than an individual State on a state by state basis.

5.2 Proposal Organization

a. The first numbered subparagraph, following the first paragraph, is amended by replacing "20" with the number "30".

Subparagraph #1 Amended

1. Understanding and Technical Approach—30 pages.

b. A new paragraph is added to this section to read as follows:

New Paragraph Added

The proposal shall include an additional page placed before the appendix. This page does not count toward the page limitation. This page shall state whether or not any member of the Offeror Bidding Team has or is currently serving as a Contract Administrator. If the answer is yes, identify the team member or members.

5.3 Proposal Due Date

The first paragraph is amended to provide for a new deadline date and location for submission. The second and third paragraphs of this section are not changed.

Paragraph 1 Amended

Offerors must submit proposals no later than 5:00 PM MDT, Wednesday, August 25, 1999. Offerors must submit proposals to: U.S. Department of Housing and Urban Development, Attention: Denver Multifamily Hub, 633 17th Street, 11th Floor, Denver, CO 80202–3607.

7.1 Understanding and Technical Approach—50 Points

The second paragraph of this section is revised to change the number "60" to "120."

Paragraph 2 Amended

The proposal must provide a proposed plan for the transfer of responsibility for contract administration from HUD to the CA that includes, but need not be limited to, how the offeror will be prepared to begin operations within 120 calendar days after award of the ACC.

7.1.1 Data Systems

The first paragraph is amended by adding a new sentence at the end.

Paragraph 1 Amended

Offerors must demonstrate their ability to comply with all processing and reporting requirements applicable to CA functions contained in this RFP, including requirements for contract administrators outlined in Section 108 of 24 CFR, Part 208—Electronic Transmission of Required Data for Certification and Recertification and Subsidy Billing Procedures for Multifamily Subsidized Projects (a/k/a the Automation Rule). CAs are expected to have Internet Service Provider access for communication with HUD. (At this time, HUD plans for most data entry and data transfer with CAs to occur over the Internet). CAs must ensure that all systems are virus free.

[FR Doc. 99–20933 Filed 8–11–99; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Prt—835640

Applicant: Cat Dancers Ranch, Alachua, FL

The applicant requests a permit to re-export and re-import leopard (*Panthera pardus*), and progeny of the animals currently held by the applicant, and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

PRT–015807

Applicant: D. Barry Lederach, Telford, PA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–015933

Applicant: Clark S. Ullom, Marietta, GA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species

PRT–815482, 835802, 012984

Applicant: Randy Miller, Big Bear City, CA

The applicant requests a permit to re-export and re-import tigers (*Panthera tigris*), African leopard (*Panther pardus*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.), and the regulations governing marine mammals (50 CFR 18).

PRT–015398

Applicant: Ron Watson, Hamilton, OH

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Canada for personal use.

PRT–014012

Applicant: Joe T. Lock, Laneville, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Canada for personal use.

Applicant: David Rain, Cedarville, NJ

PRT–015154

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the M'Clintock Channel polar bear population, Canada for personal use.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 9, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–20853 Filed 8–11–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–30–24–1A; HAG 99–0279]

Emergency Closure of Public Lands: Josephine County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Josephine County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Josephine County, Oregon, are hereby temporarily closed to all public use, including vehicle operation and sightseeing from August 3, 1999 until this notice is rescinded. The closure is made under the authority of 43 CFR 9268.3(d)(1)(l) and 8364.1(a).

The public lands affected by this emergency closure are specifically identified as follows:

Section 27, Section 29, Section 31, Section 33, Section 34, Section 35; T. 37 S., R. 7 W., Willamette Meridian. Section 2, Section 3, Section 5, Section 7 and Section 11, and Section 15; T. 38 S., R. 7 W., Willamette Meridian.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; and the holders of Bureau of Land Management (BLM) permits and/or contracts. Access by additional parties may be allowed, but must be approved by the Authorized Officer or their representative.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed 12 months, as well as the penalties provided under Oregon State law.

The public land is temporarily closed to unauthorized public use under this order and will be posted with signs at points of public access.

The purpose of this emergency temporary closure is to protect persons from potential harm and protect valuable public property from unauthorized abuse.

This closure is effective from August 3, 1999 until this notice is rescinded.

FOR FURTHER INFORMATION CONTACT: Ron Wenker, District Manager, Medford District Office, at (541) 770–2200.

Dated: August 3, 1999.

Ron Wenker,

District Manager.

[FR Doc. 99–20810 Filed 8–11–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–30–24–1A; HAG 99–0280]

Emergency Closure of Public Lands: Jackson and Josephine Counties, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Jackson and Josephine Counties, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Jackson and Josephine Counties, Oregon, are hereby temporarily closed to all public use, including vehicle operation and sightseeing from August 5, 1999 until this notice is rescinded. The closure is made under the authority of 43 CFR 9268.3(d)(1)(1) and 8364.1(a).

The public lands affected by this emergency closure are specifically identified as follows:

Sections 20, 29, 30, 31: T. 38 S., R. 4 W., Willamette Meridian, Jackson County
Sections 6, 7: T. 39 S., R. 4 W., Willamette Meridian, Jackson County
Sections 1, 12, 13: T. 39 S., R. 5 W., Willamette Meridian, Josephine County

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state,

local and federal law enforcement and fire protection personnel; and the holders of Bureau of Land Management (BLM) permits and/or contracts. Access by additional parties may be allowed, but must be approved by the Authorized Officer or their representative.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed 12 months, as well as the penalties provided under Oregon State law.

The public land is temporarily closed to unauthorized public use under this order and will be posted with signs at points of public access.

The purpose of this emergency temporary closure is to protect persons from potential harm and protect valuable public property from unauthorized abuse.

This closure is effective from August 5, 1999 until this notice is rescinded.

FOR FURTHER INFORMATION CONTACT: Ron Wenker, District Manager, Medford District Office at (541) 770–2200.

Dated: August 5, 1999.

Aaron Horton,

Acting District Manager.

[FR Doc. 99–20913 Filed 8–11–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–3809]

Notice of Availability; Environmental Impact Statement; South Pipeline Project; Proposed Expansion of Existing Gold Mining/Processing Operations; Lander County, Nevada

AGENCY: Bureau of Land Management, Interior.

COOPERATING AGENCIES: Nevada Division of Wildlife, U.S. Army Corps of Engineers.

ACTION: Notice of availability of the Draft Environmental Impact Statement for the South Pipeline Project, Lander County, Nevada.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and 40 Code of Federal Regulations 1500–1508 Council on Environmental Quality Regulations, notice is hereby given of the availability for comment of the Draft Environmental Impact Statement, prepared by the Battle Mountain BLM, which analyzes the environmental effects of the South Pipeline Project, the No Action Alternative, and the Pipeline Backfill Alternative.

DATES: Written comments must be postmarked or otherwise delivered by 4:30 p.m. on October 5, 1999. Comments may also be presented at public meetings to be held:

August 30, 1999 (7–9 pm) BLM office, Battle Mountain, NV

August 31, 1999 (7–9 pm) Crescent Valley, NV Community Center

A limited number of copies of the Draft EIS may be obtained at the Battle Mountain BLM Field Office.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published in the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirely.

FOR FURTHER INFORMATION CONTACT: Gary Foulkes, Battle Mountain BLM at (775) 635–4060.

SUPPLEMENTARY INFORMATION: Cortez Gold Mines, Inc. (CGM) proposes to extend gold mining operations at the Pipeline Mine within the Gold Acres Mining District in Lander County, approximately 30 miles southeast of Battle Mountain, Nevada. The South Pipeline Project (Proposed Action) would include an expansion of the existing open pit and waste rock disposal sites, and the development of heap leach and ancillary facilities. The Proposed Action would require surface disturbance of 4,450 acres, all of which is public land administered by the Bureau of Land Management. Mining operations are expected to occur seven-days-a-week, 24-hours-a-day, for an additional 10 years (total life of 18 years).

Gerald M. Smith,

Field Manager, Battle Mountain Field Office.

[FR Doc. 99–20812 Filed 8–11–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–99–1020–24–1 A]

Sierra Front/Northwest Great Basin Resource Advisory Council-Subgroup Meeting, Notice of Meeting Location and Time, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Subgroup meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council Subgroup meeting will be held as indicated below. The topic for discussion will be the draft Black Rock Management Plan.

All meetings are open to the public. The public may present written comments to the council. Time will be allocated for public comments. The public comment period for the council meeting is listed below. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Robert Stewart at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6000.

DATE & TIME: The council will meet on Friday, August 27, 1999 from 8:00 a.m. to 12:00 noon, at the Bureau of Land Management Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, NV, in the main conference room. If due to unforeseeable problems this site is not available, the meeting will be rescheduled. Public comment will be received during the course of the meeting, as determined by the subgroup leader.

FOR FURTHER INFORMATION CONTACT: Terry Reed, Field Office Manager, Winnemucca Field Office, telephone (775) 623–1500.

Dated: August 6, 1999

Terry A. Reed,

Field Office Manager.

[FR Doc. 99–20919 Filed 8–11–99; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4214–010; COC–61627]

Notice of Meeting on Proposed Withdrawal; Mt. Emmons Iron Bog/Fen; Colorado

August 3, 1999.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming meeting on the Forest Service withdrawal application for the Mt. Emmons Iron Bog/Fen for protection of natural resource and scientific research values near Crested Butte, Colorado. This meeting will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: Meeting will be held on September 15, 1999, at 7:00 p.m. All comments or requests to be heard should be received by close of business on September 3, 1999, at the Colorado State Office.

ADDRESSES: The meeting will be held at the Gunnison County Commissioners' Office, 200 East Virginia (Second Floor), Gunnison, Colorado 81230.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 239–3706.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal for the Mt. Emmons Bog/Fen which was published in the **Federal Register** on November 16, 1998, (63 FR 63745), is hereby modified to schedule a public meeting as provided by 43 U.S.C. 1714, and 43 CFR 2310.

This meeting will be open to all interested persons; those who desire to be heard in person and those who desire to submit written comments on this subject. All comments and requests to be heard should be submitted to the Colorado State Director, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, by September 3, 1999.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 99–20917 Filed 8–11–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0057).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Submit written comments by October 12, 1999.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart C, Pollution Prevention and Control (1010–0057).

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS. This must be done in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. The OCS Lands Act Amendments of 1978 also gave the Secretary the responsibility to minimize or eliminate conflicts among the exploration, development, and production of oil and natural gas and the recovery of other resources such as fish and shellfish. The OCS Lands Act at 43 U.S.C. 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." The OCS Lands Act at 43 U.S.C. 1334(a)(8) also requires the Secretary to administer the provisions of this subchapter relating to the leasing of the OCS, and prescribe such rules and regulations as may be necessary "for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State." The OCS Lands Act Amendments at 43 U.S.C. 1843(b) direct the Secretary to "establish regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use."

Regulations at 30 CFR 250, subpart C, "Pollution, Prevention and Control" implement these statutory requirements. We use the information collected and records maintained under subpart C to ensure:

- There is no threat of serious, irreparable, or immediate damage to the marine environment and to identify potential hazards to commercial fishing caused by OCS oil and gas exploration, development, and production activities;
- The location of items lost overboard is recorded to aid in recovery by the operator during site clearance activities on the lease;
- Operations are conducted according to all applicable regulations, permit conditions and requirements, and conducted in a safe and workmanlike manner;
- OCS oil and gas operations minimize air pollution of the OCS and adjacent onshore areas and comply with the emission levels specified in the MMS Development and Production Plan approval conditions;
- A data baseline is established for the meteorological, oceanographic, and sea-ice conditions in frontier areas of the OCS to determine that offshore facilities and operational practices can withstand the expected environmental forces in an area;

• Emissions from OCS activities are not significantly affecting the air quality of any State adjacent to the OCS facilities/operations;

• Discharge or disposal of drill cuttings, sand, and other well solids, including those containing naturally occurring radioactive materials, are properly handled for the protection of OCS workers and the environment; and

• Facilities are inspected daily for the prevention of pollution and problems observed have been corrected.

We will protect proprietary information submitted according to the Freedom of Information Act; 30 CFR 250.118, "Data and information to be made available to the public'; and 30 CFR Part 252, "OCS Oil and Gas Information Program." No items of a sensitive nature are collected. Responses are mandatory.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion or monthly.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved annual hour burden for this collection is 149,510 hours, which averages 1,150 hours per respondent.

This burden includes a data collection effort for respondents to monitor emissions air quality and submit monthly reports for a 1-year study of selected in sites in the Breton National Wildlife Refuge/Wilderness Area (BWA) under §§ 250.303(k) and 250.304(g). OMB previously approved the information collection burden for this, however, the project has been on hold. We have now scheduled the effort to begin on January 1, 2000, as announced in the Gulf of Mexico OCS Region's Notice to Lessees and Operators (NTL) No. 99–G14.

In addition, we will be requesting an increase in the annual burden for a 1-year data collection effort to monitor ozone and regional haze air quality of facilities in the Gulf of Mexico west of 87° 30′ West longitude also beginning January 1, 2000. As announced in NTL No. 99–G15, monitoring will be monthly, with an annual report due the following March in 2001. We estimate 285 additional annual burden hours per respondent for this data collection effort.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: OMB previously approved the burden on lessees and operators of each lease within 100 kilometers of the BWA to collect and report meteorological data under §§ 250.303(l) and 250.304(h), although this collection effort has also been on hold. NTL No. 99-G03 announced the start of this project on January 1, 2000. The Offshore Operators Committee (OOC) has agreed to undertake this project. The OOC estimates this one-time data collection effort will cost approximately $750,000.00, which will be expensed to the affected OCS lessees.

Comments: We will summarize written responses to this notice and address them in our submission for OMB approval. All comments will become a matter of public record. As a result of your comments and our consultations with a representative sample of respondents, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements and maintain records in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping "cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: August 6, 1999.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 99–20798 Filed 8–11–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0059).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Submit written comments by October 12, 1999.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart H, Oil and Gas Production Safety Systems (1010–0059).

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS. This must be done in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. The OCS Lands Act at 43 U.S.C. 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

Regulations at 30 CFR 250, subpart H, "Oil and Gas Production Safety Systems" implement these statutory requirements. We use the information collected under subpart H to evaluate equipment and/or procedures that lessees propose to use during production operations. Information is also used to verify the no-flow condition of wells to continue the waiver of requirements to install valves capable of preventing backflow. The MMS inspectors review the records maintained to verify compliance with testing and minimum safety requirements.

In addition, in the Pacific OCS Region, MMS reviews copies of the Emergency Action Plans that lessees and operators submit to their local air quality agencies to ensure that abatement procedures do not jeopardize safe platform operations.

We will protect proprietary information submitted according to the Freedom of Information Act; 30 CFR 250.118, "Data and information to be made available to the public"; and 30 CFR Part 252, "OCS Oil and Gas Information Program." No items of a sensitive nature are collected. Responses are mandatory.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved annual hour burden for this collection is 2,900 hours, which averages 22.5 hours per respondent.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: None identified.

Comments: We will summarize written responses to this notice and address them in our submission for OMB approval. All comments will become a matter of public record. As a result of your comments and our consultations with a representative sample of respondents, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements and maintain records in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: August 4, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–20799 Filed 8–11–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the policy of the Department of Justice, 28 U.S.C. 50.7, notice is hereby given that a proposed consent decree in *United States et al.*, v. *County of Muskegon, Michigan, et al.*, Civ. No. 1–97–CV–486, was lodged with the United States District Court for the Western District of Michigan, on July 30, 1999. The action was brought by the United States against the County of Muskegon, Michigan ("Muskegon") under Section 309(b) and (d) of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b) and (d), for injunctive relief and assessment of civil penalties. The Complaint alleged violations by Muskegon of Section 301 of the Act, 33 U.S.C. 1311, and the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") Permits issued pursuant to Section 402 of the Act, 33 U.S.C. 1342, and for violations of two administrative orders issued to Muskegon by the U.S. Environmental Protection Agency pursuant to Section 309(a) of the Act, 33 U.S.C. 1319(a), in connection with two Publicly Owned Treatment Works owned and operated by Muskegon.

Under the proposed consent decree, Muskegon will pay $160,000 in civil penalties for past violations. In addition, Muskegon will implement certain remedial actions to effect compliance with its NPDES permit requirements including: (1) measures to comply with the effluent discharge limits for fecal coliform and total suspended solids from its Metro POTW; and (2) measures

to implement its Michigan-approved industrial pretreatment program.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States et al.*, v. *County of Muskegon, Michigan, et al.* D.J. Ref. 90–5–1–1–4382.

The proposed consent decree may be examined at : (1) the Office of the United States Attorney for the Western District of Michigan, The Law Building, 330 Ionia Avenue, NW, 5th Floor, Grand Rapids, Michigan 49503, (616–456–2404); (2) The United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Robert Thompson (312–353–6700)); and, (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. When requesting a copy, please refer to *United States et al.*, v. *County of Muskegon, Michigan, et al.* D.J. Ref. 90–5–1–1–4382, and enclose a check in the amount of $8.25 for the consent decree only (33 pages at 25 cents per page reproduction costs), or $24.50 for the consent decree and all appendices (98 pages), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20807 Filed 8–11–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Stipulation Pursuant to The Clean Air Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Stipulation, Settlement Agreement, and Order in *United States* v. *Strategic Materials, Inc.*, Civ. No. 99–C–0853, was lodged with the United States District Court for the Eastern District of Wisconsin, on July 28th, 1999. That action was brought against defendant pursuant to Sections 110 and 113 of the Clean Air Act ("the Act"), 42 U.S.C. 7410, 7413, for violations at its glass recycling facility, located in Milwaukee, Wisconsin. Specifically, the complaint alleges that SMI has violated the Act and the requirements or prohibitions of the State Implementation Plan for the State of Wisconsin, promulgated pursuant to Section 110 of the Act, 42 U.S.C. 7410. The violations relate to particulate emissions, volatile organic compounds, operating without a permit, and violation of the opacity and record keeping requirements of the permit. The settlement stipulation provides for payment of $276,176, and also requires defendant to erect and maintain fencing to provide a barrier for windblown material associated with defendant's glass recycling operations.

The Department of justice will receive comments relating to the proposed settlement stipulation for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Strategic Materials, Inc.*, D.J. Ref. 90–5–2–1–2205.

The proposed settlement stipulation may be examined at the office of the United States Attorney for the Eastern District of Wisconsin, 517 East Wisconsin Ave., Milwaukee, Wisconsin 53202; at the Region V office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW, 3rd floor, Washington, DC 20005, 202–624–0892. A copy of the proposed settlement stipulation may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $3.0 for the stipulation (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Strategic Materials, Inc.*, D.J. Ref. 90–5–2–1–2205.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20808 Filed 8–11–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cargill, Incorporated and Continental Grain Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Cargill, Inc. and Continental Grain Company*, Civil Action No. 99–1875. The Complaint in this case alleged that the proposed acquisition of Continental Grain Company's (Continental) worldwide commodity marketing business by Cargill, Inc. (Cargill) would substantially lessen competition for grain purchasing services to farmers and other suppliers in many areas in the United States, and would increase the concentration of authorized delivery capacity for settlement of Chicago Board of Trade corn and soybean futures contracts, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint further alleged that the Covenant Not To Compete in the Purchase Agreement between the two companies is an unreasonable agreement in restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The proposed Final Judgment requires Cargill to divest all of its property rights in its port elevator in Seattle, Washington and its river elevators in East Dubuque and Morris, Illinois. The proposed Final Judgment further requires Continental to divest all of its property rights in its river elevators at Lockport, Illinois and Caruthersville, Missouri, its rail elevators at Salina, Kansas and Troy, Ohio; and its port elevators at Beaumont, Texas, Stockton, California, and Chicago, Illinois. Cargill is also required to enter into a "throughput agreement" to make one-third of the loading capacity at its Havana, Illinois river elevator available to an independent grain company. Cargill is prohibited from acquiring any interest in the facilities being divested by Continental, or in the river elevator at Birds Point, Missouri in which Continental previously held a minority interest. The proposed Final Judgment also makes Cargill subject to various restrictions if it seeks to enter into an throughput agreement with the acquirer of the Seattle port facility.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, which will be published in the Federal Register and filed with the Court. Comments, should be directed to: Roger Fones; Chief, Transportation, Energy, and Agriculture Section, Antitrust Division; U.S. Department of Justice, 325 Seventh Street, NW; Room 500; Washington, DC 20530 (telephone: (202) 307–6351).

Constance K. Robinson,

Director of Operations.

Stipulation and Order

It is hereby *stipulated* by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. Defendants shall prepare and deliver reports in the form required by the provisions of Section VI.B of the proposed Final Judgment commencing no later than twenty (20) calendar days after the filing of this Stipulation, and every thirty (30) calendar days thereafter pending entry of the Final Judgment.

6. In the event that the plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, or the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continuing compliance with the terms and provisions of the proposed Final Judgment, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

7. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Respectfully submitted,

For Plaintiff United States of America

Robert L. McGeorge,

Attorney, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, Telephone: (202) 307–6361, Facsimile (202) 307–2784.

For Defendant Cargill, Incorporated

Marc G. Schildkraut

Howrey & Simon, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004, Telephone: (202) 383–7448, Facsimile: (202) 383–6610.

For Defendant Continental Grain Company

Paul T. Denis,

Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, N.W.; Suite 300; Washington, DC 20007–5116, Telephone: (202) 424–7810, Facsimile: (202) 424–7645.

Jack Quinn,

Arnold & Porter, 555 Twelfth Street, N.W., Washington, DC 20004, Telephone: (202) 942–5000, Facsimile: (202) 942–5999.

Dated: July 8, 1999.

Order

It is *so ordered*, this _____ day of _____, 1999.

_____

United States District Court Judge

Final Judgment

Whereas plaintiff, the United States of America (hereinafter "United States"), having filed its Complaint herein, and defendants Cargill, Incorporated ("Cargill") and Continental Grain Company ("Continental"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law of fact herein;

And whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture of certain assets to third parties is the essence of this agreement;

And whereas, the United States requires defendants to maker certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the person or persons to whom defendants shall transfer the Assets (as defined in subsection B).

B. "Assets" means all property rights held by Cargill or Continental in the river, rail and port elevators defined in subsections C, F, H, J, L, M, Q, R, T and V.

C. "Beaumont port elevator" means the port elevator operated by Continental at or near Beaumont, Texas, and all Related Assets.

D. "Capacity" when used in connection with a grain elevator may be based on the maximum number of bushels that can be stored in the facility at any one time (storage capacity), or the maximum number of bushels that can be moved through the facility over the course of a designated unit of time (throughput capacity). When one grain company obtains the right to a certain percentage of the capacity of the storage or loading capacity at another grain company's elevator pursuant to a throughput agreement or other

commercial arrangement, it obtains the right to the stipulated portion of total storage or throughput capacity at the facility, and not necessarily the exclusive right to use a specific area in that facility.

E. "Cargill" means defendant Cargill, Incorporated, and includes its successors and assigns, their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

F. "Caruthersville river elevator" means the river elevator operated by Continental at or near Caruthersville, Missouri, and all Related Assets.

G. "Continental" means defendant Continental Grain Company and includes its successors and assigns, their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

H. "Chicago port elevator" means the river elevator operated by Continental (also known as "Chicago B") at or near Chicago, Illinois, and all Related Assets.

I. "Divest" means to sell or transfer a defendant's rights in property that it owns, or to assign or sublease a defendant's rights in property that it leases or rents.

J. "East Dubuque river elevator" means the river elevator operated by Cargill at or near East Dubuque, Illinois, and all Related Assets.

K. "Grain" means corn, wheat and other grains, and soybeans and other oilseeds, in their unprocessed, commodity form.

L. "Lockport river elevator" means the river elevator operated by Continental at or near Lockport, Illinois, and all Related Assets.

M. "Morris river elevator" means the river elevator operated by Cargill at or near Morris, Illinois, and all Related Assets.

N. "Person" means any natural person, corporation, association, firm or other business or legal entity.

O. "Property rights" means all legal rights possessed by defendants relating primarily to the use, control or operation of a specific river, rail or port elevator, including but not limited to: fee simple ownership rights, easements and all other real property rights for land, improvements and fixtures owned by that defendant; leasehold and rental rights for facilities that are leased or rented to that defendant, including all renewal or option rights; personal property ownership rights for equipment and other personal property owned by that defendant and used in the operation of those facilities; stockholder interests; and contract rights.

P. "Related Assets" means all real, personal and contract rights associated primarily with the operation of a particular river, rail or port elevator, including but not limited to: all bins, silos and other grain storage facilities; all improvements and equipment used for handling, receiving, unloading, weighing, sampling, grading, elevating, storing, drying, conditioning and loading grain; all of the real property on which the facility is located; all inventory, accounts receivable, pertinent correspondence, files, customer lists and information and advertising materials relating to the facility; and all assignable contract rights specific to a facility with suppliers, customers and transportation firms for that specific facility.

Q. "Salina rail elevator" means the elevator with outbound rail capability (also known as "Salina East") operated by Continental at or near Salina, Kansas, and all Related Assets.

R. "Seattle port elevator" means the port elevator operated by Cargill at or near Seattle, Washington (commonly referred to as "Pier 86"), and all Related Assets.

S. "Standard Throughput Agreement" means an agreement that allows one grain company to move its grain through an elevator operated by another person, with unloading, storage, loading and ancillary services provided by the operator pursuant to terms, conditions and rates that are common in the grain industry.

T. "Stockton port elevator" means the port elevator operated by Continental at or near Stockton, California, and all Related Assets.

U. "Tacoma port elevator" means the port elevator operated by Continental at or near Tacoma, Washington.

V. "Troy rail elevator" means the elevator with outbound rail capability operated by Continental at or near Troy, Ohio, and all Related Assets.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. The pertinent defendant shall require, as a condition of the divestiture of the Assets, that the Acquirer agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Assets

A. Cargill is hereby ordered and directed, within five (5) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest all of its property rights in the East Dubuque river elevator and Morris river elevator to an Acquirer acceptable to the United States in its sole discretion. It is hereby ordered and directed, within six (6) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest all of its property rights in the Seattle port elevator to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of the time period, and shall notify the Court in such circumstances.

B. Notwithstanding Section IV.A, the Acquirer of the Seattle port elevator may enter into a Standard Throughput Agreement with Cargill, or any joint venture involving the Tacoma elevator to which Cargill is a party (the "Cargill Joint Venture"), provided that: (1) the Acquirer has no interest in Cargill or the Cargill Joint Venture; (2) the throughput agreement gives Cargill or the Cargill Joint Venture no more rights concerning the operations of the facility than are commonly granted to sublessees in Standard Throughput Agreements; (3) and Cargill or the Cargill Joint Venture obtains continuing rights to move no more than 8.5 million bushels of grain and oilseeds combined in any given month through the Seattle port elevator.

C. Notwithstanding Section IV.A and IV.B, Cargill need not divest the Seattle port elevator if it does not buy, lease or otherwise acquire an interest in Continental's port elevator at or near Tacoma, Washington.

D. Continental is hereby ordered and directed, within five (5) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest all of its property rights in the Lockport river elevator, Caruthersville river elevator, Salina rail elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator and Chicago port elevator to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of the time period, and shall notify the Court in such circumstances.

E. Unless the United States consents in writing, the divestiture pursuant to

Section IV or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Assets defined above (as qualified by Section IV.B and IV.C). Divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Assets can and will be operated by the Acquirer as a viable, ongoing business. Divestiture of the Assets, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to an Acquirer for whom it is demonstrated to the sole satisfaction of the United States that: (1) the purchase is for the purpose of using the Asset to compete effectively in the grain business, (2) the Acquirer has the managerial, operational, and financial capability to use the Asset to compete effectively in the grain business; and (3) none of the terms of any agreement between the Acquirer and defendant(s) give defendant(s) the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability or incentive of the Acquirer to compete effectively. Moreover, the United States must be satisfied, in its sole discretion, that any Standard Throughput Agreement that may be negotiated between Cargill or the Cargill Joint Venture and the Acquirer of the Seattle port elevator: (1) would leave the Acquirer with sufficient capacity for it to be a viable and effective competitor for the purchase of corn and soybeans in the Pacific Northwest draw area; and (2) would not adversely affect the Acquirer's ability or incentives to compete vigorously for the origination of corn and soybeans in the Pacific Northwest draw area, by raising the Acquirer's costs, lowering its efficiency, or otherwise interfering in the ability or incentive of the Acquirer to compete effectively.

F. In accomplishing the divestiture ordered by this Final Judgment, defendants shall make known, by usual and customary means, the availability of the Assets. Defendants shall provide any person making inquiry regarding a possible purchase a copy of the Final Judgment. The pertinent defendant shall also offer to furnish to any prospective purchaser, subject to customary confidentiality assurances, all information regarding the Assets customarily provided in a due diligence process, except such information subject to attorney client privilege or attorney work product privilege. The pertinent defendant shall make available such information to the United States at the same time that such information is made available to any other person. The pertinent defendant shall permit prospective purchasers of the Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Defendants shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility involves the use of the Assets.

H. Defendants shall take all reasonable steps to accomplish the prompt divestitures contemplated by this Final Judgment. Defendants shall not take any action other than in the ordinary course of business that will impede in any way the operation of the Assets.

I. Cargill shall not purchase, lease or acquire any interest in the Lockport river elevator, Caruthersville river elevator, Salina rail elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator or Chicago port elevator, or any interest in the river elevator at or near Birds Point, Missouri (in which Continental formerly owned a minority interest, and had a right of first refusal to purchase grain). If another firm acquires the Tacoma port elevator pursuant to a right of first refusal (and Cargill therefore retains the Seattle port elevator), Cargill shall not subsequently purchase or lease the Tacoma port elevator. If another firm acquires the Tacoma port elevator pursuant to a right of first refusal, Cargill shall not subsequently acquire any other interest in that facility (including a joint venture interest) without the written consent of the United States.

J. Cargill shall enter into a throughput agreement that makes one-third (⅓) of the daily loading capacity at its river elevator located at or near Havana, Illinois, or one barge-load per day, whichever is greater, to an independent grain company acceptable to the United States in its sole discretion (the "Havana Throughput Agreement"). Daily loading capacity shall be the capacity registered with the CBOT. The independent grain company that obtains the throughput right from Cargill (the "third party") must be qualified under CBOT rules and regulations to make delivery of at least one barge-load of corn and soybeans per day for the settlement of CBOT corn and soybean futures contracts, and must agree to register that capacity at the Havana facility with the CBOT.

The Havana Throughput Agreement shall allow the third party to use its share of the loading capacity at the Havana facility to transload grain from trucks onto barges for commercial purposes unrelated to futures contract deliveries, as well as to make deliveries under CBOT futures contracts. Cargill shall not be obligated by this Final Judgment to provide storage services to the third party in excess of the storage services required to accommodate the transloading of grain shipments from trucks to barges. Cargill's load-out fees, and its fees for any storage services that Cargill elects to provide for storage in excess of twenty-four hours from the time of truck unload to barge loading, may not exceed the load-out fees and daily storage rates published in applicable CBOT tariffs.

As part of the Havana Throughput Agreement, any dispute or disagreement between Cargill and the third party arising from or relating to the throughput agreement or the third party's use of Cargill's loading capacity at Havana shall be submitted, governed, and resolved in accordance with the arbitration rules of the CBOT to the extent such dispute or disagreement falls within the jurisdiction of the CBOT Arbitration Committees. To the extent such dispute or disagreement does not fall within CBOT jurisdiction, such dispute or disagreement shall be submitted, governed and resolved in accordance with the arbitration rules of the National Grain and Feed Association, or other arbitration body that is mutually agreed upon by Cargill and the third party. Cargill shall abide by the decisions of such arbitrators.

Cargill shall enter into the Havana Throughput Agreement within five (5) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to an extension of the time period, and shall notify the Court in such circumstances. If Cargill has not entered into a Havana Throughput Agreement within this time period, a trustee shall be appointed to satisfy this requirement pursuant to the same conditions as are set forth in Section V.

V. Appointment of Trustee

A. In the event that Cargill has not divested the East Dubuque river elevator, Morris river elevator or Seattle port elevator, or entered in the Havana Throughput Agreement, to the extent required by Section IV of the Final Judgment within the time period specified therein, or that Continental has not divested the Lockport river elevator, Caruthersville river elevator, Salina rail elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator or Chicago port elevator, to the

extend required by Section IV of the Final Judgment, within the time period specified, it shall notify the United States of that fact in writing. In that event, and upon application of the United States, the Court shall appoint a trustee selected by the United States to effect the divestiture of the Assets. Until such time as a trustee is appointed, defendants shall continue their efforts to effect the divestiture as specified in Section IV.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest the Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V.C. of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of the pertinent defendant, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the Assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to the pertinent defendant and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The pertinent defendant shall use its best efforts to assist the trustee in accomplishing the required divestiture, including their best efforts to effect all regulatory approvals and its best efforts to obtain any necessary consent of any persons from whom they lease the Assets. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of, and relating to, the Assets, and the pertinent defendant shall develop financial or other information relevant to such Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture. The pertinent defendant shall permit any prospective Acquirer of the Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Assets. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

A. Within two (2) business days following execution of a definitive agreement with respect to any of the Assets, the pertinent defendant or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify the pertinent defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Assets, together with full details of the same. Within fifteen (15) calendar days after receipt of the notice, the United States may request from the pertinent defendant, the proposed purchaser, or any third party additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. The pertinent defendant or the trustee shall furnish the additional information within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after receipt of the additional information by the United States, whichever is later, the United States shall notify in writing the pertinent defendant and the trustee, if there is one, whether or not it objects to the proposed divestiture. If the United States notifies in writing the pertinent defendant and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to the pertinent defendant's limited right to object to the sale under Section V.B. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or V may not be consummated. Upon objection by a defendant under Section V.B., the proposed divestiture under Section V

shall not be accomplished unless approved by the Court.

B. Twenty (20) calendar days from the date of the filing of this Final Judgment, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, each defendant shall deliver to the United States a written affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, for each person who during the preceding thirty (30) calendar days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of the Assets, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Each such affidavit shall also include a description of the efforts that the pertinent defendant has taken to solicit an Acquirer for the relevant Assets and to provide required information to prospective Acquirers including the limitations, if any, on such information. Assuming that the information set forth in the affidavit is true and complete, any objection by the United States to the information provided by the defendants, including limitations of information, shall be made within fourteen (14) calendar days of receipt of such affidavit. Until one year after each defendant has completed such divestitures, that defendant shall maintain full records of all efforts made to divest all or any portion of the Assets.

VII. Financing

Defendants shall not finance all or any part of any purchase of the Assets made pursuant to Section IV or V of this Final Judgment. With respect to Assets leased by a defendant, however, the pertinent will not violate this condition if: (1) The lessor holds the pertinent defendant responsible for lease payments under an assignment or sublease of the defendant's leasehold interests; or (2) the pertinent defendant makes up any shortfall between its lease payment obligations and the lease payments negotiated by the person to whom it assigns or subleases its leasehold interests.

VIII. Hold Separate and Preservation of Assets Requirements

Unless otherwise indicated, from the date of filing of this proposed Final Judgment with the Court and until the divestitures required by Sections IV.A, IV.D and/or V of the Final Judgment, and the execution of the Havana Throughput Agreement required by Section IV.J, have been accomplished:

A. Subject to *force majeure*, defendants shall: (1) Take all steps necessary to assure that the Assets and Cargill's Havana river elevator are maintained as separate, distinct and salable assets; and extend all reasonable efforts to maintain these facilities in a condition that makes them usable as grain elevators; (2) not sell, assign, transfer, or otherwise dispose of theses facilities, or pledge them as collateral for loans, except in accordance with the Final Judgment; (3) take all steps necessary to preserve these facilities in a state of repair equal to their current state of repair, ordinary wear and tear excepted; (4) take all steps necessary to preserve the documents, books, customers lists and records relating to these facilities; (5) refrain from taking any actions that would jeopardize the sales of these facilities; and (6) continue to operate these facilities as grain elevators. Notwithstanding the foregoing: (a) if Continental's lease of the Salina rail elevator expired on or before April 30, 1999 and was not renewed, that facility shall not be subject to this section of the Final Judgment, and (b) if Cargill's lease of the East Dubuque river elevator expires prior to divestiture, Cargill shall not thereafter be subject to the provisions of this section if it has offered to extend the lease at rates and conditions substantially similar to the rates and conditions in its current lease, and the lessor has rejected that offer.

B. Except in the ordinary course of business or as is otherwise consistent with this Final Judgment, defendants shall not hire and shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employees who on June 24, 1999 worked at any of the Assets, unless such individual has a written offer of employment from a third party for a like or better position.

C. Until such time as the Assets are divested: William F. Winnie shall manage the Beaumont port elevator, Caruthersville river elevator, Chicago port elevator, Lockport river elevator, Stockton port elevator and Troy rail elevator; Peter Reed shall manage the East Dubuque river elevator; Sharon Spies shall manage the Morris river elevator; and Donald Vogt shall manage the Seattle port elevator. These individuals shall have complete managerial responsibility for the Assets, subject to the provisions of the Final Judgment. In the event that these individuals are unwilling or unable to perform these duties, defendants shall appoint, subject to the United States' approval, a replacement acceptable to the United States within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States may appoint a replacement.

D. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable Acquirer.

E. Continental shall operate the Lockport river elevator, Caruthersville river elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator and Chicago port elevator independently from and in competition with Cargill. Defendants shall not implement any non-compete agreements until all of the Assets have been divested. The term of any such non-compete agreement shall not be more than three (3) years.

IX. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matter contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview either informally or on the record, directors, officers, employees, and agents of defendants, which may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in Sections VIII or IX shall be divulged by any representative of the United States to any person other than a duly

authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to the United States, such defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give ten (10) calendar days' notice to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI. Termination of Provisions

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: July ____, 1999.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 8, 1999, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Cargill, Incorporated ("Cargill") of the Commodity Marketing Group of Continental Grain Company ("Continental") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Cargill is the second largest grain trader in North America, and that, until recently, Continental was the third largest grain trader in North America. The Complaint alleges that if the acquisition is permitted to proceed, it will substantially lessen competition for grain purchasing services to farmers and other suppliers in a number of areas in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint further alleges that unless the acquisition is enjoined, many American farmers and other suppliers likely will receive lower prices for their grain and oilseed crops, including corn, soybeans, and wheat (collectively referred to as "grain"). The request for relief in the Complaint seeks: (1) Preliminary and permanent injunctive relief preventing the consummation of the transaction; and (2) such other relief as is proper.

When the Complaint was filed, the United States also filed a proposed consent decree ("Final Judgment") that would permit Cargill to complete its acquisition of Continental's commodity marketing business, but requires divestitures and other relief that would preserve competition for grain purchasing services to farmers and other suppliers in a number of areas in the United States.[1] The proposed Final Judgment orders defendant Cargill to divest all of its property rights in the river elevators located in East Dubuque, Illinois and Morris, Illinois within five (5) months after the filing of the proposed Final Judgment or within five (5) calendar days after notice of entry of the Final Judgment, whichever is later. The proposed Final Judgment also orders defendant Cargill to divest all of its property rights in the Seattle port elevator within six (6) months after the filing of the proposed Final Judgment or within five (5) calendar days after notice of entry of the Final Judgment, whichever is later. The proposed Final Judgment orders defendant Continental to divest all of its property rights in the river elevators located at Lockport, Illinois and Caruthersville, Missouri, the rail elevators located at Salina, Kansas and Troy, Ohio, and the port elevators located at Beaumont, Texas, Stockton, California, and Chicago, Illinois within five (5) months after the filing of the proposed Final Judgment or within five (5) calendar days after notice of entry of the Final Judgment, whichever is later. The proposed Final Judgment also requires defendant Cargill to enter into a "throughput agreement"—an agreement providing for one grain trader to lease elevator capacity from another—to make one-third of the loading capacity at its Havana, Illinois river elevator available to an independent grain company, within five (5) months after the filing of the proposed Final Judgment or within five (5) calendar days after notice of entry of the Final Judgment, whichever is later.

In addition, the proposed Final Judgment prohibits defendant Cargill from acquiring any interest in the facilities to be divested by Continental, or the river elevator at Birds Point, Missouri, in which Continental until recently had held a minority interest. The proposed Final Judgment also makes defendant Cargill subject to various restrictions in the event it seeks to enter into a throughput agreement with the acquirer of the Seattle port facility.

If the defendants should fail to accomplish the divestitures or to enter into a Havana throughput agreement within the prescribed time periods, a trustee appointed by the Court would be empowered to divest these assets or otherwise satisfy the Havana throughput requirement.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violations

A. The Defendants and the Proposed Transaction

Cargill is a Delaware corporation with its principal place of business in Minnetonka, Minnesota. It is the second largest grain trader in North America. Continental is a Delaware corporation with its principal place of business in New York City, New York. It was, as recently as 1997, North America's third largest grain trader. The defendants are also the first and third largest U.S. grain exporters, collectively exporting approximately 40 percent of all U.S. agricultural commodities. Both Cargill and Continental purchase grain and

[1] Cargill and Continental entered into a Stipulation (filed contemporaneously with the Final Judgment) in which they agreed to be bound by the proposed final Judgment pending final determination by the Court.

other crops from farmers, brokers, and elevator operators throughout the United States.

On October 9, 1998, Cargill and Continental entered into an agreement entitled "Purchase Agreement" under which Cargill agreed to purchase Continental's Commodity Marketing Group.

B. The Grain Purchasing Market

Grain traders such as Cargill and Continental operate extensive grain distribution networks, which facilitate the movement of grain from farms to domestic consumers of these commodities and to foreign markets. Country elevators are often the first stage of the grain distribution system, with producers hauling wheat, corn, and soybeans by truck from their farms for sale to the country elevators. Here, the grain is off-loaded, sampled, graded, and put into storage. Sometimes other services are offered by the country elevators, such as grain drying and conditioning services. The grain is then transported by truck, rail, or barge to larger distribution facilities, such as river, rail, or port elevators, which may or may not be affiliated with the country elevators, or to feedlots or processors.

River elevators or rail terminals may receive grain directly from the farm or from country elevators. From the river elevator, grain typically moves outbound by barge to port elevators. From the rail terminal, grain typically moves outbound by rail to port elevators or to domestic feedlots or processors.

The final stage in the grain distribution system for grain intended for export is a port elevator, where it is transferred to ocean vessels for shipment to foreign buyers. Grain normally comes to port elevators from river elevators (via barge) and rail terminals, although some port elevators receive grain directly from farmers and country elevators located within a relatively short distance from the port elevator.

Because the transportation of grain is relatively costly and time-consuming, farmers generally sell their grain within a limited geographic area surrounding their farms, usually to a country elevator—although farmers located near river, rail, or port elevators sometimes bypass the country elevator and ship their grain directly to those facilities. Grain traders purchase grain at these country, rail, river, and port elevators from farmers and from other suppliers, such as brokers and independent elevator operators who have purchased grain from the farmers.

the Complaint alleges that the purchasing of wheat, corn, and soybeans each constitutes a relevant product market and a line of commerce within the meaning of the Clayton Act.

The draw area for a country, river, rail, or port elevator is the geographic area from which the facility receives grain. The draw area of one grain company's country, river, rail or port elevator will overlap the draw area of a competitor's elevator if their facilities are relatively close to each other—and the cost of shipping grain from the producer to both elevators is comparable. Cargill and Continental operate a number of facilities with overlapping draw areas, and therefore compete with one another in a number of markets for the purchase of wheat, corn, and soybeans from the same producers or other suppliers.

Many farmers and other suppliers located within overlapping Cargill/Continental draw areas depend solely on competition among Cargill, Continental, and perhaps a small number of other nearby grain companies to obtain a competitive price for their products. The areas in which these suppliers are located are referred to as "captive draw areas" in the Complaint. The Complaint alleges that these captive draw areas are relevant geographic markets and separate sections of the country within the meaning of the Clayton Act.

The following are the overlapping and captive draw areas for competing Cargill and Continental facilities:

- *The Pacific Northwest.* Cargill's port elevator in Seattle competes with Continental's port elevator in Tacoma for the purchase of corn and soybeans. The overlapping draw area for these facilities includes portions of North Dakota, South Dakota, Minnesota, Nebraska, and Iowa. Captive suppliers are located primarily in eastern North Dakota, eastern South Dakota, and western Minnesota.
- *Central California.* Cargill's port elevator in Sacramento competes with Continental's port elevator in Stockton for the purchase of wheat and corn. The overlapping draw area for these facilities is located in the Sacramento/Stockton area, where all suppliers are captive
- *Texas Gulf.* Cargill's port elevator in Houston competes with Continental's port elevator in Beaumont for the purchase of soybeans and wheat. The overlapping draw area for these facilities includes portions of Texas, Louisiana, Oklahoma, Kansas, New Mexico, Colorado, Nebraska, Missouri, Iowa, and Illinois. Captive suppliers are located primarily in eastern Texas and western Louisiana.
- *Rail and River Elevators.* Cargill and Continental compete for the purchase of grain from captive suppliers located near their rail elevators in Salina, Kansas and Troy, Ohio, and their river elevators in the vicinity of Morris, Illinois, Lockport, Illinois, Dubuque, Iowa/East Dubuque, Illinois, and New Madrid/Caruthersville, Missouri.

According to the Complaint, if Cargill were allowed to acquire the Continental facilities that purchase grain in these captive draw areas, it would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to farmers and other suppliers, because transportation costs would preclude them from selling to other grain traders or purchasers in sufficient quantities to prevent an anticompetitive price decrease.

The Complaint also alleges that producers of corn, soybeans, and wheat would not switch to an alternative crop in sufficient numbers to prevent a small but significant decrease in price because of the length of growing seasons and of the suitability of those crops to certain climates and regions. Nor are processors or fedlots that purchase grain to manufacture food products or fatten livestock likely to constrain pricing decisions by grain trading companies because their purchasing decisions are based on factors other than small but significant changes in crop prices. Therefore, significant changes in concentration among grain trading companies can have an anticompetitive impact upon prices received by farmers and other suppliers.

C. The Chicago Board of Trade Futures Markets

In addition, Cargill and Continental compete to purchase corn and soybeans from grain sellers seeking to deliver these crops to river elevators on the Illinois River that, beginning in year 2000, will be authorized as delivery points for the settlement of Chicago Board of Trade (CBOT) corn and soybean futures contracts. The provision of authorized delivery points for corn and soybean futures contracts is a relevant product market within the meaning of the Clayton Act. These delivery points are regulated by the Commodities Futures Trading Commission. The authorized delivery points, running the entire length of the Illinois River for soybeans, and from Chicago to Peoria, Illinois for corn, each constitutes a relevant geographic market within the meaning of the Clayton Act; and undue concentration in these markets would increase the possibilities

of anticompetitive manipulations of the futures markets.

D. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that Cargill's acquisition of Continental's Commodity Marketing Group will substantially lessen competition for the purchase of corn, soybeans, and wheat in each of the relevant geographic markets by enabling Cargill unilaterally to depress the prices paid to farmers and other suppliers. The Complaint further alleges that the proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress grain prices. Moreover, it is not likely that Cargill's exercise of market power in any of these relevant geographic markets would be thwarted by significantly increased purchases of corn, soybeans, or wheat by processors, feedlots, or other buyers, by new entry, by farmers and other suppliers transporting their products to more distant markets, or by any other countervailing force.

In addition, the Complaint alleges that by consolidating the Cargill and Continental river elevators on the Illinois River, this transaction would give two firms approximately 80% of the authorized delivery capacity for settlement of CBOT corn and soybeans futures contracts. This concentration would increase the likelihood of price manipulation of futures contracts by those firms, resulting in higher risks for buyers and sellers of futures contracts.

Finally, the Complaint alleges that the defendants' Purchase Agreement includes a Covenant Not to Compete that is longer than is reasonably necessary for Cargill to have a fair opportunity to gain the loyalty of Continental's suppliers and customers, and has the effect of unlawfully dividing markets between the two companies in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to preserve existing competition for grain purchasing services to farmers and other suppliers in numerous areas in the United States, and to prevent anticompetitive manipulation of CBOT corn and soybean futures markets. To preserve existing competition for grain purchasing services, it requires divestitures of Cargill or Continental river elevators at Morris, Illinois, Lockport, Illinois, East Dubuque, Illinois, and Caruthersville, Missouri; rail terminals at Troy, Ohio and Salina, Kansas; and port elevators at Beaumont, Texas, Stockton, California, and Seattle, Washington. This relief is intended to maintain the level of competition that existed preacquisition, and ensures that farmers and other suppliers in the affected markets will continue to have effective alternatives to Cargill when selling their crops. to prevent manipulations of CBOT corn and soybean futures markets, the proposed Final Judgment requires divestitures of Cargill or Continental elevators along the Illinois River at Morris, Lockport and Chicago, Illinois, as well as providing one-third of Cargill's capacity at Havana, Illinois to a new entrant pursuant to a throughput agreement.[2]

A. East Dubuque and Morris River Elevators, and Seattle Port Elevator Provisions

Section IV.A of the proposed Final Judgment provides that, within five (5) months from the filing of the proposed Final Judgment with the Court, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, defendant Cargill must divest all of its property rights in the East Dubuque, Illinois river elevator and the Morris, Illinois river elevator to an acquirer acceptable to the United States. Section IV.A of the proposed Final Judgment also provides that, within six (6) months from the filing of the proposed Final Judgment with the Court, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, defendant Cargill must divest all of its property rights in the Seattle port elevator to an acquirer acceptable to the United States.

Section IV.B of the proposed Final Judgment imposes conditions on Cargill and the acquirer of the Seattle port elevator, should the acquirer decide to enter into a throughput agreement with Cargill or any joint venture involving the Tacoma elevator to which Cargill is a party ("Cargill Joint Venture"). Throughput agreements, which are common in the grain industry, allow one firm to move its grain through another firm's elevator for a fee. Under the terms of the Final Judgment: (a) Cargill may not obtain continuing rights to move more than 8.5 million bushels of grain per month through the Seattle port elevator (which ensures that the acquirer of that facility will have continuing rights to a substantial majority of the facility's throughput capacity); (b) the throughput agreement gives Cargill no more rights concerning the operations of the Seattle facility than are commonly granted to sublessees in standard throughput agreements (which insures that the acquirer will retain overall operational control of the facility); and (c) that, in any event, the throughput agreement will not interfere with the ability or incentive of the acquirer to compete for the purchase of corn and soybeans.

Section IV.C of the proposed Final Judgment provides that Cargill need not divest the Seattle port elevator if it does not buy, lease, or otherwise acquire an interest in Continental's port elevator at or near Tacoma, Washington.

B. Lockport River Elevator, Caruthersville River Elevator, Salina Rail Elevator, Troy Rail Elevator, Beaumont Port Elevator, Stockton Port Elevator, and Chicago Port Elevator Provisions

Section IV.D of the proposed Final Judgment provides that, within five (5) months from the filing of the proposed Final Judgment with the Court, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, defendant Continental must divest all of its property rights in the river elevators located at Lockport, Illinois and Caruthersville, Missouri; the rail terminals located at Salina, Kansas and Troy, Ohio; and the port elevators located at Beaumont, Texas, Chicago, Illinois, and Stockton, California, to an acquirer acceptable to the United States. These facilities were originally part of the defendants' Purchase Agreement. This divestiture requirement will ensure that these facilities are sold to purchasers who will operate these assets as grain elevators; and it is intended to preserve the market structure that existed in those geographic areas prior to the acquisition.

C. General Divestiture Provisions

Sections IV.E through IV.H of the proposed Final Judgment apply to all the divestitures ordered in Sections IV.A and IV.D (as qualified by Sections IV.B and IV.C). Section IV.E provides that unless the United States consents in writing, the divestitures shall include the entire assets defined in Sections IV.A and IV.D. The divestitures must be accomplished in such a way to satisfy the United States, in its sole discretion, that the assets can and will be operated by the acquirer as a viable, ongoing entity capable of competing in the grain business. In addition, any Standard Throughput Agreement that may be

[2] The divestitures of the Morris and Lockport river elevators provide relief for both the grain purchasing markets and the CBOT futures markets.

negotiated between Cargill or the Cargill Joint Venture and the purchaser of the Seattle port elevator must be acceptable to the United States, in its sole discretion.

Under Section IV.F of the proposed Final Judgment, defendants shall make known, by usual and customary means, the availability of the assets and provide any prospective purchasers with a copy of the Final Judgment. The pertinent defendant is required to offer to furnish any prospective purchaser, subject to customary confidentiality assurances, all information regarding the assets customarily provided in a due diligence process, except such information subject to attorney-client privilege or attorney work-product privilege. The pertinent defendant must also permit prospective purchasers to have reasonable access to personnel and to make inspection of physical facilities and financial, operational, or other documents and information customarily provided as part of a due diligence process.

Section IV.G prohibits defendants from interfering with any negotiations by the purchaser to hire any employee whose primary responsibility involves the use of the assets. Under Section IV.H, defendants must take all reasonable steps necessary to accomplish the prompt divestitures contemplated by the proposed Final Judgment, and may not impede the operation of the assets.

Section IV.I of the proposed Final Judgment prohibits Cargill from purchasing, leasing, or acquiring any interest in any of the assests required to be divested by defendant Continental pursuant to Section IV.D, or any interest in the river elevator at or near Bird's Point, Missouri (in which Continental formerly owned a minority interest and had a right of first refusal to purchase grain). Section IV.I also prohibits Cargill from subsequently purchasing or leasing the Tacoma port elevator should another firm acquire that facility, or from acquiring any other interest in that facility (including a joint venture interest) without the written consent of the United States. Section IV.I does not explicitly prohibit Cargill from reacquiring the assets that it will divest, because that prohibition is inherent in the requirement that Cargill divest these assets for the ten-year term of the Final Judgment.

Pursuant to Section IV.J of the proposed Final Judgment, defendant Cargill must enter into a throughput agreement that makes one-third (⅓) of the daily loading capacity at its river elevator located at or near Havana, Illinois, or one barge-load per day, whichever is greater, to an independent grain company acceptable to the United States in its sole discretion (the "Havana Throughput Agreement").[3] Unless the United States agrees to an extension, Cargill must enter into the Havana Throughput Agreement within five (5) months from the date the Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later.

D. Trustee Provisions

If the defendants fail to complete any of the divestitures or to enter into the Havana Throughput Agreement within the required time periods, the Court will appoint a trustee, pursuant to Section V of the proposed Final Judgment, to accomplish the divestitures. Once appointed, only the trustee will have the right to sell the divestiture assets or enter into the Havana Throughput Agreement, and the pertinent defendant will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any such professionals or agents shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. The proposed Final Judgment also requires the pertinent defendant to use its best efforts to assist the trustee in accomplishing the required divestitures.

Pursuant to Section V.E, the trustee must file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee does not accomplish the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the United States and defendants, who will each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the term of the trustee's appointment.

E. Notification Provisions

Section VI of the proposed Final Judgment assures the United States an opportunity to review any proposed sale, whether by the pertinent defendant or the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchaser prior to consummation. Upon objection by the United States to a sale of any of the divestiture assets by the pertinent defendant or the trustee, any proposed divestiture may not be completed. Should a defendant object to a divestiture by the trustee pursuant to Section V.B., that sale shall not be consummated unless approved by the Court.

Section VII of the proposed Final Judgment prohibits defendants from financing all or any part of any purchase of the assets made pursuant to Sections IV or V of the Final Judgment. However, the pertinent defendant will not violate this condition with respect to assets leased by a defendant if: (1) The lessor holds the pertinent defendant responsible for lease payments under an assignment or sublease of the defendant's leasehold interests; or (2) the pertinent defendant makes up any shortfall between its lease payment obligations and the lease payments negotiated by the person to whom it assigns or subleases its leasehold interests.

F. Hold Separate Provisions

Under Section VIII of the proposed Final Judgment, defendants must take certain steps to ensure that, until the required divestitures and the execution of the Havana Throughput Agreement have been accomplished, all the previously defined assets and Cargill's Havana river elevator will be maintained as separate, distinct and saleable assets, and maintained as usable grain elevators. Until such divestitures, the defendants shall continue to operate these facilities as grain elevators. The defendants must maintain all these facilities so that they continue to be saleable, including maintaining all records, loans, and personnel necessary for their operation. Defendant Continental must operate the Lockport river elevator, Caruthersville river elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator, and Chicago port elevator independently from and in competition with Cargill.

[3] The divestitures of the facilities at Morris, Lockport, and Chicago were sufficient to resolve concerns about consolidation of authorized delivery points for CBOT corn futures markets, which extend from Chicago to Pekin. To resolve concerns about concentration of authorized delivery points for CBOT soybean futures markets, which extend the entire length of the Illinois River, it was necessary to provide delivery capacity for a new entrant on the southern portion of the Illinois River.

G. Non-Compete Provisions

The Cargill/Continental Purchase Agreement contains a five-year non-compete provision. Under the proposed Final Judgment, defendants are prohibited from implementing any non-compete agreements until all of the assets have been divested. Furthermore, the term of any such non-compete agreement may not be more than three (3) years.

H. Compliance Inspection, Retention of Jurisdiction and Termination Provisions

Section IX requires defendants to make available, upon request, the business records and the personnel of its businesses. This provision allows the United States to inspect defendants' facilities and ensure that they are complying with the requirements of the proposed Final Judgment. Section X provides for jurisdiction to be maintained by the Court. Section XI of the proposed Final Judgment provides that it will expire on the tenth anniversary of its entry by the Court.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides for a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

the United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Cargill and Continental. The United States is satisfied, however, that the divestitures and other relief contained in the proposed Final Judgment should preserve competition in grain purchasing services as it was prior to the proposed acquisition, and that the proposed Final Judgment would achieve all of the relief that the government would have obtained through litigation, but merely avoids the time and expense of a trial.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other consideration bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.[4] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the

[4] 119 Cong. Rec. 24598 (1973); *see also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted* in (1974) U.S.C.C.A.N. 6535, 6538.

effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'".[6]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and the Act does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America

Dated: July 23, 1999.

Respectfully submitted,

Robert L. McGeorge, D.C. Bar No. 91900,

Trial Attorney, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530, Telephone: (202) 307–6361 or (202) 307–6351, Facsimile: (202) 307–2784.

[FR Doc. 99–20806 Filed 8–11–99; 8:45 am]

BILLING CODE 4410–11–M

---

[5] *United States* v. *Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F. 2d 558, 565 (2d Cir. 1983).

[6] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc.; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by GPU Nuclear, Inc., (licensee) for an amendment to Facility Operating License No. DPR–50 issued to the licensee for operation of the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, PA.

The purpose of the portion of the licensee's amendment request that is denied was to seek approval from the Commission to allow the licensee to ignore the low temperature overpressure protection provisions related to high pressure injection pumps start and running restrictions during an emergency cooldown without having to invoke 10 CFR 50.54(x).

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated August 6, 1999.

By September 13, 1999, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 31, 1997, as supplemented June 3, 1998, and July 13, 1998, and (2) the Commission's letter to the licensee dated August 6, 1999.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/ Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 6th day of August 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20908 Filed 8–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8584]

Kennecott Uranium Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to renew NRC Source Material License SUA–1350 to authorize the licensee, Kennecott Uranium Company (KUC), to resume commercial milling operations at the Sweetwater facility, and to approve the plan for future reclamation of the mill facility, existing and proposed new tailings impoundment, and the proposed evaporation ponds, according to the 1997 Reclamation Plan, as amended. The Sweetwater uranium mill site is located in Sweetwater County, approximately 40 miles (64 kilometers) northwest of the town of Rawlins, Wyoming. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of KUC's license renewal for operation and the amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J9, Washington, D.C. 20555. Telephone 301/415–6606.

SUPPLEMENTARY INFORMATION:

Background

The Sweetwater uranium mill site presently is licensed by the NRC under Materials License SUA–1350 to possess

byproduct material in the form of uranium waste tailings, as well as other radioactive wastes generated by past milling operations. The mill operated from 1981 to 1983, but is currently in standby status. KUC has requested renewal of the license to allow operation of the mill (includes construction of one new impoundment and up to eight evaporation ponds), and the evaluation of that request has been completed. KUC also has requested approval of the reclamation plan to stabilize the existing tailings impoundment. In addition, the plan provides for the future stabilization of proposed new tailings impoundments, reclamation of land, and decommissioning of the mill facility.

Construction of an additional five new impoundments and two evaporation ponds may be requested if the mill operates for 20 years, and the impact of this was considered in the EA. The additional impoundments would be reclaimed according to the NRC-approved plan and any change in design would require review and approval by the NRC staff.

KUC submitted the operations plan, reclamation plan, and associated information by letters dated June 11, July 3, July 23, August 1, August 20, September 18, and October 7, 1997. The mill and land decommissioning plan portion of the reclamation plan was submitted May 28, 1998. Page changes to various submitted documents and responses to NRC staff comments were provided June 10, July 1, and July 20, 1998, as well as February 3, February 25, March 25, April 21, and June 21, 1999.

Summary of the Environmental Assessment

The NRC staff performed an assessment of the environmental impacts associated with the operations plan and reclamation plan, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. The license renewal would authorize KUC to resume operation of the mill at a maximum production rate of 4,100,000 pounds (1,859,748 kg) of yellowcake per year, and to possess byproduct material in the form of uranium waste tailings and other uranium byproduct wastes generated by the authorized milling operations. The actual resumption of operations will be conditional on: (1) The NRC review of standard operating procedures for mill operation; (2) a 90-day pre-startup notification to NRC; and (3) the completion of a pre-startup NRC inspection and resolution of any safety issues identified by the inspection. The renewed license also would approve KUC's proposed plan to stabilize and cover the tailings impoundments, and decommission the mill facility (including land and evaporation ponds). All conditions in the renewed license and commitments presented in the licensee's renewal documents are subject to NRC inspection.

In conducting its appraisal, the NRC staff considered the following: (1) Information contained in KUC's 1997 license renewal and amendment requests, as revised; (2) previous environmental and safety evaluations of the facility; (3) data contained in land use and environmental monitoring reports; (4) existing license conditions; (5) results of NRC staff site visits and inspections of the Sweetwater facility; and (6) consultations with the U.S. Fish and Wildlife Service, the U.S. Bureau of Land Management, the Wyoming State Historic Preservation Office, and the Wyoming Department of Environmental Quality. The staff evaluation of the Sweetwater operation plan and associated documents is being evaluated in a Safety Evaluation Report, and the technical aspects of the reclamation plan are discussed separately in a Technical Evaluation Report that will accompany the final agency licensing action.

The results of the staff environmental review are documented in an EA placed in the docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined actual and potential impacts associated with the operation of the mill, site decommissioning, and reclamation of the tailings impoundments, and has determined that the requested renewal of Source Material License SUA–1350 will: (1) be consistent with requirements of 10 CFR Part 40, Appendix A; (2) not be inimical to public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been and are expected to remain below the regulatory limits;

2. Mill tailings and process liquid effluents from the mill circuit will be discharged to a multi-lined impoundment with a leak detection system;

3. The licensee will conduct site decommissioning and reclamation activities in accordance with NRC-approved plans; and

4. Present and potential health risks to the public and risks of environmental damage from the proposed mill operation, decommissioning, and reclamation were assessed. Given the remote location, requirements in place, licensee's inspection and radiation safety programs, area of impact, and past activities on the site, the staff determined that the risk factors for health and environmental hazards are insignificant.

Because the staff has determined that there will be no significant impacts associated with approval of the license renewal (and associated amendments), there can be no disproportionally high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to renew NRC Source Material License SUA–1350, for operation of the mill, subsequent decommissioning of the facility, and reclamation of the tailings impoundments, as requested by KUC. Therefore, the principal alternatives available to NRC are to:

1. Approve the license renewal request as submitted; or

2. Renew the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

3. Deny the renewal request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of KUC's future operations or the denial of the license amendment. Additionally, in the TER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for reclamation, specified in 10 CFR Part 40, Appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed renewal of NRC Source Material License SUA–1350. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Kennecott Uranium Company, P.O. Box 1500, Rawlins, WY 82301;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 6th day of August 1999.

For the Nuclear Regulatory Commission.

John J. Surmeier,

Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–20909 Filed 8–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–0925]

Finding of No Significant Impact Related to Amendment of Materials License No. SNM–928, Kerr-McGee Corporation, Cimarron Fuel Fabrication Site, Crescent, Oklahoma

The U.S. Nuclear Regulatory Commission (hereafter referred to as NRC) is considering issuing a license amendment to Materials License No. SNM–923, held by the Kerr-McGee Cimarron Corporation (Cimarron or the licensee), to incorporate the licensee's proposed decommissioning plan (DP) for its Cimarron Fuel Fabrication Site (Cimarron site) located in Crescent, Oklahoma. Other proposals being considered include: (1) Establishment of a cleanup standard for the site; (2) revision of Cimarron's Radiation Protection Plan (RPP) that summarizes the overall radiation protection program for the Cimarron facility; and (3) revision of Cimarron's organizational structure.

Summary of Environmental Assessment

Background

Cimarron has environmental responsibility for a fuel fabrication facility site near the city of Crescent, Oklahoma. The Kerr-McGee Corporation (KMC) operated two plants at the Cimarron facility between 1965 and 1975, each under its own separate Atomic Energy Commission license. Radioactive Materials License SNM–928 was issued under 10 CFR Part 70 for the Uranium Fuel Fabrication Facility and Radioactive Materials License SNM–1174 was issued for the Mixed Oxide Fuel Fabrication Facility. In 1983, when KMC was divided into Sequoyah Fuels Corporation (SFC) and Quivera Mining Corporation, SFC became the owner of the Cimarron facility. Subsequently, in 1988, Cimarron Corporation, a subsidiary of KMC, became responsible for the Cimarron facility. Although the Cimarron facility poses no immediate threat to public health and safety, it is listed in the Site Decommissioning Management Plan to ensure timely decommissioning.

Proposed Action

The objectives of the proposed actions are to decontaminate and decommission the Cimarron site to permit release for unrestricted use and to terminate the Radioactive Materials License SNM–928. In accordance with 10 CFR 70.38(g), Cimarron submitted a proposed DP. In conjunction with this proposal, Cimarron has also proposed revisions to the Radioactive Materials License SNM–928, changes to its RPP, and changes to its organizational structure.

Decommissioning activities have been ongoing since 1976 when production activities were terminated. Many of the decommissioning activities at the site have been completed under existing license conditions. Decommissioning activities remaining to be performed at the Cimarron facility include: decontamination and decommissioning of facility structures; onsite disposal of contaminated soil meeting the Option 2 criteria of NRC's 1981 Branch Technical Position (BTP) [1], "Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations;" offsite disposal of soil or material exceeding the BTP Option 2 criteria; and groundwater remediation.

As previously noted, Cimarron proposed other related revisions to its license:

(1) Amending its license to add a new license condition specifically establishing the BTP Option 1 unrestricted-use, residual-contamination criteria as the cleanup standard for the Cimarron site;

[1] "Disposal or Onsite Storage of Thorium or Uranium Waste from Past Operations" (46 FR 52061, October 23, 1981).

(2) Amending license conditions to better delineate the handling of various classifications of contaminated material at the site, and revising License Condition 10 to only reference licensee commitments that pertain to Cimarron's current decommissioning status;

(3) Amending the RPP to clarify statements made in the RPP; incorporate references to a Quality Assurance Plan, and revise its Environmental Sampling Schedule; and

(4) Amending the license to incorporate changes in its organizational structure. These changes were and will continue to be caused by downsizing of staff at the Cimarron site as decommissioning activities are completed.

The Need for Proposed Action

The proposed actions are necessary for Cimarron to complete the remaining decommissioning activities needed for NRC to release the Cimarron site for unrestricted use and to terminate Radioactive Materials License SNM–928. License termination is a separate action that requires an NRC finding that the premises are suitable for release.

Alternative to Proposed Action

The only alternative considered in the Environmental Assessment (EA) was the no-action alternative. No action would mean that: (1) The site would not be approved to remediate now; (2) obsolete license conditions would continue to be in License SNM–928; (3) changes to the RPP would not be effective; and (4) Cimarron's organizational structure would be outdated.

NRC staff has evaluated the no-action alternative and determined that the no-action alternative would conflict with NRC's requirement, 10 CFR 70.38, for timely remediation at sites that have ceased operation. Although there is no immediate threat to the public health and safety from this site, not undertaking remediation at this time does not solve the regulatory and potential long-term health and safety problems associated with storing this waste. No action now would delay remediation until some time in the future, when costs could be much higher than they are today. It is even possible that no disposal option will be available in the future if the current low level waste disposal facilities are closed and no new ones are opened. Therefore, the no-action alternative is not acceptable.

Environmental Impacts of Proposed Action

Radiological impacts on members of the public may result from inhalation and ingestion of releases of radioactivity in air and in water during the remediation operations, direct exposure to radiation from radioactive material at the site during remediation operations, and transport for disposal. Decommissioning workers may receive doses primarily by ingestion, inhalation, and direct exposure during the decommissioning activities. In addition to impacts from routine operations, the potential radiological consequences of accidents were considered.

NRC staff has reviewed the potential impacts of the proposed decommissioning, both beneficial and adverse. NRC staff's conclusions are summarized as follows:

a. Radiation exposures of persons living or traveling near the site because of onsite operations and waste transportation will be well within limits contained in 10 CFR Part 20.

b. The potential radiological impacts off-site of potential onsite accidents are well below the radiation dose limit of 1 mSv/yr (100 mrem/yr) to the public and the radiation dose limit of 0.50 mSv/yr (5 rem/yr) to workers in accordance with 10 CFR Part 20.

c. The potential non-radiological impacts, such as socioeconomic, air quality, land and water use, etc., from decommissioning activities at Cimarron are negligible.

d. For conservatism, the site use is assumed to be equivalent to the resident farmer scenario described in the NRC Policy and Guidance Directive PG–8–08, "Scenarios for Assessing Potential Doses Associated with Residual Radioactivity." Under this scenario, the maximum radiation doses to a hypothetical resident farmer, who might establish a residence on the site, grow and consume food from the site, and consume drinking water from an onsite groundwater well, over a 1000-year period, were calculated assuming both with a cover and without a cover over the disposal cell. The predicted doses for both scenarios are less than 0.09 mSv/yr (9 mrem/yr), which is below NRC's Part 20 radiation dose for the public of 1 mSv/yr (100 mrem/yr).

e. Radiation doses to a remediation worker onsite from direct exposure are estimated to be less than 0.01 mSv (1 mrem) for a 2000-hour exposure period. Inhalation doses from a 2000-hour exposure would be less than 0.03 Sv (3 mrem). These predicted doses are substantially less than the occupation exposure limit of 0.50 mSv/yr (5 rem/yr) in 10 CFR Part 20.

f. The impacts from the transportation of radioactive materials are low and within NRC and Department of Transportation requirements. The potential consequences and probability of a transportation accident are low.

g. The licensee has a radiation protection program that will maintain radiation exposures and effluent releases within the limits of 10 CFR Part 20 and will maintain exposures as low as is reasonably achievable.

h. The population within a 6.5 kilometer (4 mile) radius of the licensee facility has minority and senior citizen populations lower than the county and the State averages, and has a median household income above that of the county and the State. Based on these statistics, there are no significant minorities and low-income households that will be exposed to impacts from the proposed activities at Cimarron. Because there are no significant impacts from the proposed activities, there will be no environmental justice impacts.

i. No reasonably available alternative to the licensee's proposed plan is obviously superior.

Conclusions

On the basis of its EA, NRC staff has concluded that the proposed action would not have any significant effect on the quality of the human environment and does not warrant the preparation of an environmental impact statement (EIS). The action called for, under NEPA and 10 CFR Part 51, is the issuance of a license amendment authorizing the licensee to perform decommissioning of the Cimarron site as proposed by the licensee and make the proposed revisions to the license.

In accordance with the requirements of Subpart L of 10 CFR part 2, an Opportunity for a Hearing[2] was offered on September 6, 1995. No requests for a hearing were received.

Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared an EA related to the issuance of a license amendment to Materials License SNM–928, authorizing decommissioning of the Cimarron Site. On the basis of this EA, NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment and does not warrant the preparation of an EIS. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

Further Information

For further details with respect to this action, the EA and other documents related to this proposed action are available for public inspection and copying at NRC's Public Document

[2] 60 FR 46315 (September 6, 1995).

Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland, this 8th day of August 1999.

For the U.S. Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–20907 Filed 8–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 112th meeting on September 14–15, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, September 14, 1999—8:30 a.m. until 6:00 p.m.

Wednesday, September 15, 1999—8:30 a.m. until 6:00 p.m.

The following topics will be discussed:

A. *ACNW Planning and Procedures*—The Committee will hear a briefing from its staff on issues to be covered during this meeting. The Committee will also consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

B. *Risk Communications*—The Committee will continue to prepare for sessions with the local stakeholders to be held this fall in the Las Vegas, Nevada, area.

C. *Results of the Arthur Andersen Review of the Division of Waste Management Activities*—The Deputy Director, NMSS, will discuss the results of recent strategic planning activities within the Division of Waste Management and potential impacts on ACNW activities.

D. *Progress Report on Waste Management Research Program Plan*—The Office of Research will present its plan to the Committee, which it believes is consistent with the recommendations in NUREG–1635, the most recent joint ACNW/ACRS report on NRC research activities.

E. *Decommissioning Standard Review Plan (SRP) and Dose Modeling*—NMSS will provide a scheduled update of its progress in this area. Included will be a discussion of the draft SRP modules and the status of dose models.

F. *Division of Waste Management Fiscal Year 2000 Budget and Operating Plan Overview*—NMSS managers will present an overview of their priorities as defined by available resources for Fiscal Year 2000.

G. *Preparation of ACNW Reports*—The Committee will discuss planned reports on the following topics: a White Paper on Near-Field Chemistry issues, a joint ACRS/ACNW letter report on an NMSS approach to risk-informed, performance-based regulation in NMSS, and other topics discussed during this and previous meetings as the need arises.

H. *Meeting with the Director, Division of Waste Management*—The Committee will meet with the Director informally to discuss items of mutual interest.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51967). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Associate Director for Technical Support, ACRS/ACNW, Dr. Richard P. Savio, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Associate Director for Technical Support, ACRS/ACNW, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Savio as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Richard P. Savio, Associate Director for Technical Support, ACRS/ACNW (Telephone 301/415–7363), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 6, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–20790 Filed 8–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Reactor Safety Chapter of the Strategic Plan Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment/notice of meeting.

SUMMARY: The Nuclear Regulatory Commission is requesting public comment on the draft Nuclear Reactor Safety Chapter of the NRC Strategic Plan. The NRC is conducting a workshop on August 20, 1999, to give stakeholders an opportunity to meet with agency representatives to ask questions and comment on the Nuclear Reactor Safety Chapter of the Strategic Plan that the Commission has under consideration. This workshop is open to the public and all interested parties may attend.

DATES: August 20, 1999, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: One White Flint North, NRC Commission Hearing Room, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: James L. Blaha, Mail Stop O16-E15, U.S.

Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Telephone: (301) 415–1703; FAX: (301) 415–2162; Internet: JLB@NRC.GOV.

Background

As part of the Government Performance and Results Act, the NRC is required to update its strategic plan triennially. The NRC's first strategic plan was issued in September 1997. Since that time, the NRC has implemented a Planning, Budgeting and Performance Measurement (PBPM) process which focuses on becoming more performance-based and outcome-oriented. The Nuclear Reactor Safety Chapter of the NRC Strategic Plan reflects this approach to long-range planning, as well as institutionalizing regulatory reforms that have been initiated within the last 18 months. The Nuclear Reactor Safety chapter has progressed to a point that further improvement will be enhanced by stakeholder input.

In the Fall of 1997 the agency undertook an effort to review and revise its strategic plan to better align and link the goals and strategies and to improve the logic and functionality of the strategic plan. The revision, however, did not fully consider the issues raised during the NRC's July 30, 1998, hearing before the Senate Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety; the July 17, 1998, Commission meeting with stakeholders; the Chairman's August 7, 1998, tasking memorandum; or the progress achieved to make NRC planning and budgeting more outcome-oriented. Since that time, the agency has begun an internal review to address these issues. This has resulted in a draft of selected portions of the strategic plan.

The draft of the Strategic Plan reflects revisions that focus on the Nuclear Reactor Safety arena and reflects the progress to date. Updates to this plan reflect changes in Commission policy over the past year, stakeholder input, as well as the development of new performance goals and measures. Also included in this package are edits to the front end sections that describe the Agency's mission, strategic goals, management goals, and strategic arenas. The Nuclear Reactor Safety Chapter reflects the new focus on four performance goals and the key strategies to be used to achieve these goals. Once completed, this chapter will be used as a model to revise and finalize the other program arena chapters.

This draft of the strategic plan is intended to reflect the results from the change process which has occurred over the past 18 months and which continues at the NRC. It also describes how this paradigm shift will become an integral part of NRC's future planning, budgeting, and performance management. A schedule to facilitate dialogue among the Commission staff, stakeholders, and Congress is provided below:

Revisions to the Nuclear Reactor Safety (NRS) Chapter of the Strategic Plan

August 3: Issue draft NRS chapter to stakeholders for comment
August 20: Stakeholder Workshop on NRS chapter
Early September: Revised NRS chapter to Commission
Late September: Senate Oversight hearing

The remaining Strategic Plan chapters (Nuclear Materials Safety, Nuclear Waste Safety, International Nuclear Safety Support) will be revised over the next year.

Stakeholder Input to the NRS Chapter of the Strategic Plan

While NRC recognizes work is yet to be finished, further improvements to the draft Strategic Plan will benefit from stakeholder input. The NRC is particularly interested in stakeholder views on the four performance goals and their associated measures and strategies. The draft specifically identifies a number of performance measures for which stakeholder input will be especially useful.

Stakeholder input is requested on the following broad areas:

- Do strategic goals, management goals, and performance goals address the appropriate areas requiring emphasis?
- Are the strategies to achieve these goals adequate to achieve success?
- Are the performance measures adequate to indicate whether we are achieving our goals? Are there better measures?
- Do goals and strategies reflect NRC's commitment to institutionalize change and become more performance based?

August 20, 1999 Workshop

NRC will be conducting a public workshop on August 10, 1999 at 1:00 p.m. in Rockville, Maryland, in the Commission Hearing Room to discuss the Nuclear Reactor Safety Chapter of the Strategic Plan. The NRC staff will answer questions and receive comments. Members of the public are invited to attend. Those wishing to participate in discussions are urged to contact Jim Blaha at 301–415–1703 to facilitate agenda planning.

In addition to participating in the workshop, stakeholders may submit written comments on the draft of the Strategic Plan to the NRC. Comments are requested by August 27, 1999. The draft Strategic Plan, as well as the ability to provide comments electronically, are available on the NRC web site at http://www.nrc.gov/NRC/COMMISSION/INITIATIVES/1999/index.html. Comments may also be provided in writing to the U.S. Nuclear Regulatory Commission, ATTN: Debra J. Corley, Mail Stop O–16E15, Washington, D.C. 20555–0001.

Stakeholder comments will be considered in another update of the draft Nuclear Reactor Safety chapter. This update will be provided to the Commission and made publically available prior to our Senate oversight hearing planned for September 1999. Stakeholders will also have other opportunities to comment on the NRC Strategic Plan which is required to be submitted to Congress by September 2000 in accordance with the Government Performance and Results Act.

The NRC is accessible to the White Flint Metro Station. Visitor parking near the NRC buildings is limited.

Dated at Rockville, Maryland, this 6th day of August, 1999.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Deputy Executive Director for Regulatory Programs, Office of Executive Director for Operations.

[FR Doc. 99–20910 Filed 8–11–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Information Collection Activities OMB Circular A–21; Request for Comments

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites comment on the proposed information request. This request proposes a standard format for submitting facilities and administrative rate proposals by educational institutions and will be required by OMB Circular A–21, "Cost Principles for Educational Institutions." The standard format would assist institutions in completing their proposals more efficiently and help the

Federal cognizant agency review each proposal on a more consistent basis. OMB proposed the use of and solicited input on the use of such a form in its proposed revision to OMB Circular A–21 on September 10, 1997. OMB received 35 comments from Federal agencies, universities and professional organizations in response to that section of the proposed revision to Circular A–21. All commenters were in favor of the development of such a form. OMB, with assistance from Federal agencies and universities, developed the attached form for inclusion in Circular A–21. OMB also proposes to revise Circular A–21 as shown below, to incorporate the new form.

DATES: Comments are due on or before October 12, 1999.

ADDRESSES: Comments should be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW, Room 6025, Washington, DC 20503. Comments up to three pages in length may be submitted via facsimile to 202–395–4915. Electronic mail comments may be submitted via Internet to Hai—M.—Tran@omb.eop.gov. Please include the full body of electronic mail comments in the text and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993.

SUPPLEMENTARY INFORMATION: OMB proposed on September 10, 1997 (62 FR 47721), to develop a standard format for the submission of facilities and administrative (F&A) proposals, that would assist educational institutions in completing their F&A proposals more efficiently and help the Federal cognizant agency review each proposal on a more consistent basis. It would also facilitate the Federal Government's effort to collect better information regarding educational institution F&A costs that could be useful in explaining variations in F&A rates among institutions. In addition, a standard format may allow electronic submission of F&A proposals to the Federal cognizant agency in the future.

Federal agencies, universities and professional organizations, through their submitted comments, favorably support the proposal for the development of a standard format. Accordingly, OMB, with the assistance from Federal agencies and university representatives, developed a standard format that includes two parts:

- A summary schedule of the institution's proposed F&A rates, along with the F&A cost pools and their allocations, and
- A listing of support documentation to be submitted with an F&A proposal.

OMB is proposing, through this notice, to include the standard format as Appendix C of the Circular. This notice is soliciting comments from members of the public and affected entities concerning the proposed information collection to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique of other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title: Appendix C, "OMB Circular A–21 Documentation Requirements for Facilities and Administrative (F&A) Proposals Claiming Costs Under the Regular Method".

Type of review: New collection.

Respondents: Large Universities.

Number of Responses: 282.

Estimated Time Per Response: 4 hours.

Needs and Uses: The proposed form will standardize the documentation requirements for facilities and administrative proposals submitted by large universities to their cognizant agency.

Issued in Washington, DC, August 4, 1999.

Norwood J. Jackson, Jr.,

Acting Controller.

OMB proposes the following revisions to Circular A–21.

1. Add Section G.12 to read as follows:

12. *Standard Format for Submission.* For facilities and administrative (F&A) proposals submitted on or after July 1, 2000, educational institutions shall use the standard format, shown in Appendix C, to submit their F&A rate proposal to the cognizant agency. The cognizant agency may, on an institution by institution basis, grant exceptions from the standard format requirement. This requirement does not apply to educational institutions which use the simplified method for calculating F&A rates, as described in Section H.

2. Add Appendix C (shown below):

Appendix C—OMB Circular A–21 Documentation Requirements for Facilities and Administrative (F&A) Proposals Claiming Costs Under the Regular Method

The documentation requirements for F&A rate proposals consist of two parts. Part I provides a schedule of summary data on the institution's F&A cost pools and their allocations, and the proposed F&A rates. An example of a completed Part I is included. Part II describes the standard documentation to be submitted with the institution's F&A proposal.

Part I—Summary Data Elements for F&A Proposal—Part A

Name of Institution: ____ Organization Number: (*Federal Use Only*)
Address: _____

a. Cognizant Federal Agency Rate Setting: _____ Audit: _____
b. Type of Institution Private ( ) Public/State ( )
c. Fiscal Year _____
d. Population Students: ____ Faculty: ____ Staff: ____
e. Status of Disclosure Statement Required to Submit (Y/N)? ____

Due Dates: Initial: ____ Revised: ____
Date Submitted ____
Approved ( ) Yes ( ) No Date: ____

f. Most Current F&A Rates (i.e., final, predetermined, fixed) (Last three fiscal years)

Type of rate	Fiscal year covered	Date of rate agreement	On-campus instruction	On-campus organized research	On-campus OSA*	Off-campus instruction	Off-campus organized research	Off-campus OSA*

(*OSA = Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (i.e., base year and four preceding years) by major functions proposed (in thousands).

	Instruction	Organized research	OSA
Building Depreciation or Use Allowance Interest Expense Operation and Maintenance			

h. Dollar amounts by major functions proposed—Base Year (in thousands)

	Instruction	Organized research	OSA
Salaries & Wages/Fringes: —Professional/Professorial —Other Labor Non-labor Costs Modified Total Direct Costs			

i. Percentage of cost pool dollars allocated to major functions proposed—Base Year

	Instruction	Organized research	OSA	Other	Total
Building Depreciation or Use Allowance Equipment Depreciation or Use Allowance Interest Expense Operation and Maintenance Library					

j. Proposed methodology for library costs:
Standard Method: ____
Special Study: ____

k. Procedure for claiming fringe benefit costs:
Specific Identification: ____
Negotiated Rate: ____
Other (see attached): ____

Part I—Summary Data Elements for F&A Proposal—Part B

Name of Institution: _____
Base (or Data) Year: _____

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION

[Dollars in thousands]

	Instruction	Organized research	OSA
FACILITIES GROUP			
Depreciation/Use Allowance:			
—Buildings	$____ ____%	$____ ____%	$____ ____%
—Equipment	$____ ____%	$____ ____%	$____ ____%
—Land Improvements	$____ ____%	$____ ____%	$____ ____%
Interest Expense	$____ ____%	$____ ____%	$____ ____%
Operation & Maintenance	$____ ____%	$____ ____%	$____ ____%
Library	$____ ____%	$____ ____%	$____ ____%

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION—Continued

[Dollars in thousands]

	Instruction	Organized research	OSA
ADMINISTRATIVE GROUP			
General	$___ ___%	$___ ___%	$___ ___%
Departmental	$___ ___%	$___ ___%	$___ ___%
Sponsored Projects	$___ ___%	$___ ___%	$___ ___%
Student Services	$___ ___%	$___ ___%	$___ ___%
Adjustment for 26% Limitation	___%	___%	___%
MODIFIED TOTAL DIRECT COST AND F&A RATES			
On-Campus	$___ ___%	$___ ___%	$___ ___%
Off-Campus	$___ ___%	$___ ___%	$___ ___%
Other	$___ ___%	$___ ___%	$___ ___%
Total	$___ ___%	$___ ___%	$___ ___%
COMPOSITION OF RATE BASE			
Federal Awards:			
On-Campus (negotiated rates)	$___	$___	$___
Off-Campus (negotiated rates)	$___	$___	$___
Research Training Awards	$___	$___	$___
Other Awards (not based on negotiated rates)	$___	$___	$___
Non-Federal Sources	$___	$___	$___
Total	$___	$___	$___
MISCELLANEOUS STATISTICS			
Cost Sharing in Rate Base	$___	$___	$___
Assignable Square Feet (ASF) by Major Function	___	___	___
Percent of ASF Financed	___%	___%	___%

Part I—Example–Summary Data Elements for F&A Proposal—Part A

Name of Institution: University of XYZ Organization Number: (*Federal Use Only*)
Address: 100 Main St
Somewhere, ST 12345

a. Cognizant Federal Agency Rate Setting: HHS Audit: HHS
b. Type of Institution Private ( ) Public/State (X)
c. Fiscal Year July 1, 1997–June 30, 1998
d. Population Students: 12,000 Faculty: 1,759 Staff: 2,798
e. Status of Disclosure Statement:

Required to Submit (Y/N)? Yes
Due Dates: Initial: 06/30/98 Revised: 12/31/98
Date Submitted: 12/10/98
Approved: (X) Yes ( ) No Date: 06/13/99

f. Most Current F&A Rates (i.e., final, predetermined, fixed) (Last three fiscal years)

Type of rate	Fiscal year covered	Date of rate agreement	On-campus instruction (percent)	On-campus organized research (percent)	On-campus OSA*	Off-campus instruction	Off-campus organized research	Off-campus OSA*
Pred	1999	09/15/96	78.0	52.5	38.3	26.0	26.0	20.0
Pred	1998	09/15/96	78.0	52.5	35.0	26.0	26.0	20.0
Pred	1997	09/15/96	76.0	53.0	35.0	26.0	26.0	20.0

(*OSA=Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (i.e., base year and four preceding years) by major functions proposed (dollars in thousands).

	Instruction	Organized research	OSA
Building Depreciation or Use Allowance	729	2,639	0
Interest Expense	0	1,794	0
Operation and Maintenance	1,280	4,632	0

h. Dollar amounts by major functions proposed—Base Year (in thousands)

	Instruction	Organized research	OSA
Salaries & Wages/Fringes:			
—Professional/Professorial	27,000	57,750	6,050
—Other Labor	9,400	6,000	5,000
Non-labor Costs	19,600	21,250	1,950
Modified Total Direct Costs	56,000	85,000	13,000

i. Percentage of cost pool dollars allocated to major functions proposed—Base Year

[In percent]

	Instruction	Organized research	OSA	Other	Total
Building Depreciation or Use Allowance	40.0	44.0	2.5	13.5	100.0
Equipment Depreciation or Use Allowance	34.2	27.7	2.1	36.0	100.0
Interest Expense	29.9	32.4	1.9	35.8	100.0
Operation and Maintenance	32.8	35.6	2.1	29.5	100.0
Library	75.3	10.9	0.9	12.9	100.0

j. Proposed methodology for library costs:
Standard Method: Yes
Special Study: No

k. Procedure for claiming fringe benefit costs:
Specific Identification: No
Negotiated Rate: Yes
Other (see attached) ____

Part I—Example—Summary Data Elements for F&A Proposal—Part B

Name of Institution: University of XYZ
Base (or Data) Year: 07/01/97 to 06/30/98

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION

[Dollars in thousands]

	Instruction		Organized research		OSA	
FACILITIES GROUP						
Depreciation/Use Allowance:						
—Buildings	4,861	9.6%	5,278	6.9%	306	2.6%
—Equipment	3,082	6.1%	2,496	3.3%	194	1.7%
—Land Improvements	1,992	4.0%	133	0.2%	17	0.1%
Interest Expense	1,944	3.9%	2,111	2.8%	122	1.0%
Operation & Maintenance	8,532	16.9%	9,264	12.1%	536	4.6%
Library	7,910	15.7%	1,146	1.5%	96	0.8%
ADMINISTRATIVE GROUP						
General	1,535	2.7%	2,330	2.7%	356	2.7%
Departmental	11,991	21.4%	17,239	20.3%	2,797	21.5%
Sponsored Projects	89	0.2%	2,693	3.2%	412	3.2%
Student Services	4,166	7.4%	0	0.0%	0	0.0%
Adjustment for 26% Limitation		−5.7%		−0.2%		−1.4%
MODIFIED TOTAL DIRECT COST AND F&A RATES						
On-Campus	50,400	82.2%	76,500	52.9%	11,700	38.3%
Off-Campus	5,600	26.0%	8,500	26.0%	1,300	26.0%
Other		00.0%		00.0%		00.0%
Total MTDC	56,000		85,000		13,000	
COMPOSITION OF RATE BASE						
Federal Awards:						
On-Campus (negotiated rates)		1,000		46,000		900
Off-Campus (negotiated rates)		120		5,000		400
Research Training Awards		0		0		0
Other Awards (not based on negotiated rates)		1,680		8,500		2,600
Non-Federal Sources		53,200		25,500		9,100

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION—Continued

[Dollars in thousands]

	Instruction	Organized research	OSA
Total	56,000	85,000	13,000
MISCELLANEOUS STATISTICS			
Cost Sharing in Rate Base	(10,000)	10,000	0
Assignable Square Feet (ASF) by Major Function	83,611	90,778	5,256
Percent of ASF Financed (1)	7.0	20.0	30.0

Note (1): Ratio of ASF subject to financing divided by total ASF. If 20% of a building's acquisition cost is financed, then 20% of the ASF is considered ASF financed.

Part II—Introduction

This Part contains the standard documentation requirements that are needed by your cognizant agency to perform a review of your institution's F&A cost proposal. This documentation supports the development of proposed rates shown in Part I and will be submitted with your F&A cost proposal.

This listing contains minimum documentation requirements.

Additional documentation may be needed by your cognizant agency before completing a proposal review.

If there are any questions about these requirements, please contact your cognizant agency.

Documentation requirements would be cross-referenced to appropriate schedule(s) within the submitted F&A cost proposal.

General Information

Reference:

___ 1. Copy of CPA audited certified (or State Auditor) financial statements including any affiliated organizations. The statements must be reconciled to the F&A base year cost calculation. Copy of most recently issued A–133 audit reports

___ 2. Copy of relevant detail supporting the financial statement, including a reconciliation schedule for each cost pool and rate base in the F&A base year cost calculation. A reconciliation schedule will show each reclassification and adjustment to the financial statements to arrive at the cost pools and rate bases in F&A base year cost calculation. Each reclassification and adjustment must be explained in notes to the reconciliation schedule

___ 3. Cost step-down schedule showing allocation of each F&A cost pool to the Major Functions and other cost pools

___ 4. Explanation for each proposed organized research rate component which exceeds 10% of the prior negotiated rate component

___ 5. Schedule by college or school breaking down the organized research base into amounts associated with (a) Federal awards receiving F&A cost based on the negotiated rate agreement, (b) Federal awards receiving less than the negotiated rates, (c) non-Federal awards, and (d) cost sharing

___ 6. Schedules clearly detailing composition and allocation base(s) of each F&A cost pool in base year cost calculation

___ 7. Narrative description of composition of each F&A cost pool and allocation methodology. If the institution has filed a DS–2 submission, specific references (rather than narrative descriptions) from the DS–2 may be used

___ 8. Narrative description of changes in accounting or cost allocation methods made since the institution's last F&A submission

___ 9. Copy of reports on the conduct and results of special studies

___ 10. Copy of the following:

(a) The Certificate of F&A Costs

(b) Lobbying Certification

(c) Description of procedures used to ensure that awards issued by the Federal Government do not subsidize the F&A costs allocable to awards made by non-Federal sources (e.g., industry, foreign governments)

(d) Statement concerning the physical inventory requirement to support claims for depreciation/use allowance charges

(e) Assurance Certification—for those institutions listed on Exhibit A—concerning disposition of Federal reimbursements associated with claims for depreciation/use allowances

(f) Assurance statement that institution is in compliance with Federal awarding agency limitations on compensation (e.g., NIH salary limitation, executive compensation)

___ 11. If applicable, reconciliation of carry-forward amounts from prior years used in the current proposal

___ 12. Transmittal letter stipulating the type(s) of rates proposed, the fiscal year(s) covered by the proposal and the base year used

Rate Proposal Summary by Major Function

___ 1. Summary of F&A base year rates calculated by Major Function and special rates (e.g., vessel rates) if applicable by component. These would be grouped by Administrative Components and Facilities Components. Total base year calculated rates would be disclosed, as well as allowable rates after the 26 percent limitation on Administrative Components

___ 2. Breakout of Modified Total Direct Cost (MTDC) rate base figures for each major function (and special rates, if applicable) by:

(1) On-Campus and Off-Campus amounts

(2) Federal awards

a. Based on Negotiated Rates—On-Campus

b. Based on Negotiated Rates—Off-Campus

c. Research Training Awards

d. Other Awards Not Based on Negotiated Rates

(3) Non-Federal Sources

___ 3. Miscellaneous Statistics including:

(1) Cost Sharing (including Mandatory and Voluntary amounts) in the Rate Base

(2) Assignable Square Feet (ASF) by Major Function

(3) Percentage of ASF which is financed (by Major Function)

(4) Breakout of Direct Salaries and Wages and fringe benefits by Professional/Professorial and Other (by Major Function)

___ 4. Future rate adjustments, if necessary, related to material changes since the base year. A clear description of the justification for each of the following:

(1) Changes by cost pool by year

(2) Changes in MTDC base by year

(3) Changes in F&A rates for future years

___ 5. Summary of future F&A rates, if necessary, by Major Function and special rates (e.g., vessel rates) which lists each administrative and facilities component by year.

Building Use Allowance and/or Depreciation

___ 1. Reconciliation of building cost used to compute use allowance and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amount with the financial statements.

Note: If an institution's financial statements do not disclose depreciation expense (those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

___ 2. Schedule showing amount by building of use allowance and/or depreciation distributed to all functions

___ 3. If a method different from the standard square footage allocation method was used, describe method. Provide justification for its use and a schedule of allocation. If institution has filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2.

___ 4. If depreciation is claimed, describe what useful lives by group and component have been used

Equipment Use Allowance and/or Depreciation

___ 1. Reconciliation of equipment cost used to compute use allowance and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amount with the financial statements.

Note: If an institution's financial statements do not disclose depreciation expense (those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

___ 2. Schedule showing amount by building of use allowance and/or depreciation distributed to all functions

___ 3. If a method different from the standard square footage allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If institution has filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

___ 4. If depreciation is claimed, describe what useful lives by asset class and component have been used

Interest

___ 1. Reconciliation of interest cost used in the F&A base year calculation to the financial statements

___ 2. Schedule showing amount of interest assigned to each building and a distribution to all benefitting functions within each building for each proposed Major Function

Space Survey

___ 1. Summary schedule of square footage by school, department, building and function

___ 2. The same schedule should then be sorted by school, building, department, and function

___ 3. Copy of space inventory instructions, forms, and definitions

Operations and Maintenance (O&M)

___ 1. Summary schedule of each activity in O&M cost pool. It must show the costs by S&W/fringe benefits and all non-labor cost categories

___ 2. Schedule showing amount of O&M costs distributed to all functions

General Administration (G&A)

___ 1. Summary schedule of each activity in the G&A cost pool. It must show the costs by S&W/fringe benefits and all non-labor cost categories

___ 2. Schedule of costs in the modified total costs (MTC) allocation base

___ 3. If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

Departmental Administration (DA)

___ 1. Schedule of the DA summary by school, department and allocated to Major Functions by department

___ 2. Schedule identifying costs by S&W/fringe benefits and non-labor costs by department for the following functions:

(1) Direct (Major Functions)
  a. Instruction
  b. Organized Research
  c. Other Sponsored Activities
  d. Other
(2) Departmental Administration (excluding Deans)
(3) Dean's office
(4) Other, as appropriate

S&W/fringe benefits shall be further identified as follows:
(1) Faculty and other professional
(2) Administrative (e.g., business officers, accountants, budget analysts, budget officers)
(3) Technicians (e.g., lab technicians, glass washers)
(4) Secretaries and clerical

___ 4. Complete description of allocation method, bases and allocation sequences (e.g., direct charge equivalent, 3.6 percent allowance). If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

___ 5. Show a detailed example (i.e., illustration of your Direct Charge Equivalent (DCE) methodology) of the allocation process used for one department which has Instruction and Organized Research functions from each of the following schools: Medicine, Arts & Sciences and Engineering, as applicable

Sponsored Projects Administration (SPA)

___ 1. Summary schedule for each activity included in SPA cost pool. It should show costs by S&W/fringe benefits and all non-labor cost categories

___ 2. Schedule of the sponsored projects direct costs in the MTC allocation base

3. If a method different from the standard sponsored projects MTC allocation method was used, describe method. Provide justification for its use and a schedule of allocation. If school filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

Library

1. Summary schedule for each activity included in library cost pool. It would show costs by salaries and wages, books, periodicals, and all other non-labor cost categories
2. Schedule listing all credits to library costs
3. Schedule of Full Time Equivalents (FTE) and salaries and wages in the bases used to allocate library costs to users of library services
4. If the standard allocation methodology was not used, describe the alternative method and provide justification for its use. Provide schedules of allocation statistics by function. If school filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

Student Services

1. If the proposed allocation base(s) differs from the stipulated standard allocation methodology provide:
(a) Justification for use of a non-standard allocation methodology;
(b) Description of allocation procedure; and
(c) Statistical data to support proposed distribution process
If school filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of approved DS–2

[FR Doc. 99–20699 Filed 8–11–99; 8:45 am]
BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 18, 1999, 9 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Occupational Disability—FCE Protocols
(2) Fiscal Year 2001 Budget
(3) Year 2000 Issues

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. (312) 751–4920.

Dated: August 10, 1999.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99–20947 Filed 8–10–99; 10:10 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41706; File No. SR–NTSE–99–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc., Relating to the Creation of a Floor Audit Trail

August 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4, 1998, the New York Stock Exchange, Inc. ("NYSE" or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change relating to the creation of a Floor audit trail. The Exchange submitted Amendment No. 1 to its proposal on December 21, 1998.[3] On June 8, 1999, the NYSE submitted Amendment No. 2.[4] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new provisions In NYSE Rule 123, to provide for the capturing of details of an order systemically on the Floor of the Exchange. The proposed provision would require that the details of all orders be recorded in an electronic system prior to being represented or executed on the Floor. The text of the proposed rule change follows. New text is italicized.

Rule 123—Records of Orders

Paragraphs headed "Given Out", "Receipt of Orders", "Cancelled or Executed", and "By Accounts", to be numbered (a), (b), (c) and (d), respectively.

(e) System Entry Required

No Floor member may represent or execute an order on the Floor of the Exchange unless the details of the order have been first recorded in an electronic system on the Floor. Any member organization proprietary system used to record the details of the order must be capable of transmitting these details to a designated Exchange data base within such time frame as the Exchange may prescribe. The details of each order required to be recorded shall include the following data elements, any changes in the terms of the order and cancellations, in such form as the Exchange may from time to time prescribe:

1. Symbol;
2. Clearing member organization;
3. Order identifier that uniquely identifies the order;
4. Identification of member or member organization recording order details;
5. Number of shares or quantity of security;
6. Side of market;
7. Designation as market, limit, stop, stop limit;
8. Any limit price and/or stop price;
9. Time in force;
10. Designation as held or not held;
11. Any special conditions;
12. System-generated time of recording order details, modification of terms of order or cancellation of order;
13. Such other information as the Exchange may from time to time require.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NYSE proposes to amend the discussion of the proposal contained in the purpose section of the original filing to provide additional information about the proposed floor audit trail system. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 16, 1998 ("Amendment No. 1").

[4] In Amendment No. 2, the NYSE proposes to delete from the proposal those portions of the filing relating to proposed amendments to NYSE Rule 134 (error accounts) and the adoption of new NYSE Rule 407A (member account disclosure). The NYSE also proposes, among other things, to revise the proposed rule text to include a list of data elements to be recorded in an electronic system before an order has been represented or executed on the Exchange's trading floor. *See* Letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated June 7, 1999 ("Amendment No. 2").

.20 Orders—For purposes of paragraph (e), an order shall be any written, oral or electronic instruction to effect a transaction.

.21 Orders not subject to paragraph (e) recording requirements—Any order executed by a specialist, Competitive Trader or Registered Competitive Market Maker for his or her own account and any orders which by their terms are incompatible for entry in an Exchange system relied on by a Floor member to record the details of the order in compliance with this rule shall be exempt from the order entry requirements of paragraph (e) above.

.22 Time standards—Any member organization proprietary system used to record the details of an order for purposes of this rule must be synchronized to a commonly used time standard and format acceptable to the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has proposed a series of initiatives to strengthen the regulation of activities of members on the Floor. One of the initiatives, proposed here, is the adoption of new provisions in NYSE Rule 123 for recording the details of an order, as well as any modification or cancellation of such order, in an electronic system prior to representing or executing an order on the Floor. The order initiatives, which consist of amendments to NYSE Rule 134 governing error accounts and the adoption of new Rule 407A regarding Floor member account disclosure, have been removed from this filing.[5] These proposed rule changes have been resubmitted in a separate filing.[6]

The proposed amendment to NYSE Rule 123 defines an order as any written, oral or electronic instruction to effect a transaction. Paragraph (e) of the proposed rule requires that, prior to being represented, an order, including any changes in its terms and any cancellations, must be entered into an electronic system that records the order details specified in the rule, and records the time the order details were entered into the system and the time of any modification or cancellation. This will be a system-generated timestamp. If a proprietary system is used, this timestamp will be generated by the proprietary system rather than at the NYSE. This will require that proprietary systems and NYSE systems be synchronized to a commonly used time standard and format, as provided in section .22 of the Supplementary material accompanying the proposed rule.

Members may use either a proprietary or an Exchange system to comply with the proposed rule. If a proprietary system is used, order details must be sent to a designated NYSE data base. The systemic entry requirement would not be applicable to transactions initiated on the floor and executed by a registered competitive market maker, a competitive trader or a specialist[7] for their own account, as such trades may be initiated on the Floor and are already reported to the Exchange.

Other than as noted above, before representing or executing an order on the Floor, a member, whether acting as agent for another member on the Floor or otherwise, is obligated to make sure that the details of such order have been entered in an electronic system in accordance with the requirements of this rule. The details of the order may be entered into the system by an individual or organization other than the member who is representing or executing the order, but this does not relieve such member of the obligation not to represent the order unless such details have been recorded in an electronic system.

This proposed rule change does not replace existing requirements for recording orders contained in Exchange or Commission rules. For example, NYSE Rule 123, under the heading "Receipt of Orders," requires each member to preserve for three years a record of every order received by that member on the Floor from off the Floor, including the time when such order was received. NYSE Rule 410 requires each member or member organization to preserve for three years a record of every order transmitted to the Floor or received and carried to the Floor by such member or member organization, including the name and amount of security, the terms of the order, the time it was transmitted or received, and the time an execution report was received.

Mandatory order details specified in the proposed amendments to NYSE Rule 123 consist of: symbol; clearing member organization; order identifier (as assigned by the member or member organization recording the order details)[8] that uniquely identifies the order; identification of member or member organization recording order details; quantity; side of market (*e.g.*, buy, sell long, sell short, sell short exempt); designation as market, limit, stop or stop limit; limit price, stop price or stop limit price (if applicable); time in force (*e.g.*, day, GTC, GTX);[9] designation as held or not held;[10] special conditions (*e.g.*, rule 10b–18, "G" order and any request by a customer that an order not be displayed); and, a system-generated timestamp. The proposed rule would also require the systemic entry of such other details as the Exchange may require from time to time.

Data elements tied to execution, such as executing broker, contra broker, execution time and price are not required to be entered by this rule, as they are not available at the time that order details are entered into the system. NYSE Rule 132, the Exchange's audit trail rule, requires that these items, as well as account type and other items specified in that rule,[11] be submitted for each round lot transaction effected on the Exchange, either directly to the Exchange (for non-regular way trades) or through a qualified clearing agency which has agreed to supply the Exchange with such data (for regular way trades). These requirements for

---

[5] *See* Amendment No. 2, *supra* note 4.

[6] *See* File No. SR–NYSE–99–25.

[7] See paragraph .20 of Supplementary Material accompanying the proposed rule.

[8] The Broker Booth Support System automatically assigns a unique order identifier to the order, but a member or member organization can choose instead to override this feature and assign its own unique identifier.

[9] NYSE Rule 13 provides that, if not executed, a day order expires at the end of the Exchange's 9:30 a.m. to 4:00 p.m. trading session; an order designated "GTC" remains in effect until it is either executed during the Exchange's 9:30 a.m. to 4:00 p.m. trading session or cancelled. An order designated "GTX" is similar to a GTC order, but is also eligible for execution during the Exchange's Off-Hours Trading Session. An order designated as good until a specific time would be recorded in a separate memo field (rather than in the time in force field) as a special condition or special instruction.

[10] Also recorded in a separate memo field (or fields) that will allow other special instructions and special conditions to be entered in a free format.

[11] NYSE Rule 132.30 requires the submission of the following trade data elements; (1) Security name or symbol; (2) number of shares or quantity of security; (3) transaction price; (4) time the trade was executed; (5) executing broker badge number or symbol; (6) contra side broker badge number or symbol; (7) clearing firm number or symbol; (8) contra side clearing firm number or symbol; (9) account type; and (10) such other information as the Exchange may require.

audit trail submissions have been in place since 1985 and are separate from the proposed rule change.[12]

The Exchange is proposing to design a data base system that will enable compliance with this rule and enhance its Broker Booth Support System ("BBSS") to support various trading floor business models, while minimizing the impact on the timely execution of orders. According to the NYSE, these systems are being developed in consultation with various member committees as well as the individuals on the Upstairs Traders Advisory Committee and the Exchange Traders Advisory Committee. In addition, the Exchange has interviewed individual brokers, member firm technology departments, and service bureaus.

In addition to the data elements required by NYSE Rule 123, the Exchange's data base system will be able to record optional order data elements, including special instructions (*e.g.*, go along, percent of volume), account type identifier (this is optional or order entry but mandatory on submission to trade comparison for audit trail), account number and any other information the firm chooses to include in the record, provided it is consistent with the format(s) accepted by the Exchange.

The Exchange also plans to modify the existing BBSS to enable compliance at trading floor booths for firms that choose a NYSE (versus a proprietary) system to comply with the proposed rule. The BBSS enables firms to enter orders that are phoned to the Floor; to receive orders delivered to the booth systemically via a proprietary system/NYSE system interface; and to enter orders from off-floor using a NYSE system. The planned enhancements to BBSS are designed to support entry of all order types and all required information as well as to speed data entry by providing quick entry templates and other data entry enhancements. The BBSS upgrade would also improve order and information management features resulting in operational efficiencies for the firms.

BBSS does not currently accept orders with fractional prices less than 1/64 or integer prices greater than 99,999. However, orders with such prices will be accepted when NYSE systems are converted to decimal format. In the event that BBSS cannot accommodate such orders at the time NYSE Rule 123 becomes effective, brokers relying on BBSS or comply with the Rule would be exempt for orders that could not be entered through BBSS until such time as BBSS is compatible with the entry of such orders. Section .21 of the Supplementary Material to the proposed rule would specify that any orders which by their terms are incompatible for entry in an Exchange system relied on by a Floor member to record the details of the order in compliance with the proposed rule shall be exempt from its order entry requirements. However, if a proprietary system is used, that system must be capable of transmitting details of all orders to the Exchange data base.

The NYSE's system development plan includes building a new database to collect and consolidate records of orders in NYSE systems and orders that are sent to the Exchange Floor for execution through a member firm's proprietary system. The NYSE systems will be designed to provide for member firms' proprietary systems interface to the NYSE data base in Common Message Switch ("CMS"), Financial Information Exchange Protocol ("FIX"), or other NYSE-approved industry standard format. Such systems must submit a copy of the order details to the NYSE data base upon receipt of the order by the member firm's proprietary system on the Floor.[3] An "as of" time indicator will be required for orders entered late due to system problems. Member firms would have to notify the Exchange by the end of the following day and provide documentation of the system problem that necessitated the use of an "as of" time indicator.

The Exchange intends to communicate its system plan to member firms, then finalize NYSE system specifications, and issue interface specifications to member firms. The effective date of the proposed rule will be based on the implementation of enhancements to NYSE systems as well as the state of readiness of the member firm community. The current target is to complete NYSE systems enhancements by the end of second quarter 2000. However, this is subject to the completion of specification and design work, as well as the finalization of development, testing, and cutover schedules.

The Exchange believes that the implementation of this system will allow the NYSE to track more accurately via systemic records whether an order has been received on the Floor prior to its execution. It also would address the issue of falsification of order entry times. Therefore, the Exchange believes that its ability to surveil for anomalous trading situations—such as on-Floor trading and the creation of inaccurate records, frontrunning of orders, and improper execution of customers' orders—will be enhanced.

If the Exchange, upon investigation, determines that a particular violation of this proposed rule is minor in nature, the Exchange could issue a cautionary letter. The Exchange would consider seeking approval to add the proposed provisions of NYSE Rule 123 to the list of rules contained in NYSE Rule 476A, which provides for the imposition of fines for minor violations of rules. In those instances where investigation reveals a more serious violation or repetitive violations of NYSE Rule 123, the Exchange would commence disciplinary procedures under NYSE Rule 476.[14]

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[15] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. According to the NYSE, the proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to surveil the Floor activities of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received any written comments on the proposed rule change.

---

[12] See File No. SR–NYSE–85–34 and Securities Exchange Act Release No. 22444 (September 20, 1985).

[13] "Upon receipt" means as soon as practicable, but no later than 60 seconds after receipt. This 60 seconds is intended to provide flexibility in implementation and is not intended to be incorporated into proprietary systems; e.g., a system that was programmed to routinely transmit a copy to the Exchange database system 60 seconds after receipt of an order would not comply with the system requirement.

[14] The Exchange does not include specific reference to disciplinary matters in each rule because it believes the language in NYSE Rules 476 and 476A in all-encompassing.

[15] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld form the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–25 and should be submitted by September 7, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20851 Filed 8–11–99; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41712; File No. SR–PCX–99–26]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Minimum Variation for Nasdaq-100 Shares and Disclaimer of Liability With Respect to the Nasdaq-100 Index

August 5, 1999.

Pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 1999,[3] the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange subsequently filed Amendment No. 2 on July 30, 1999.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and simultaneously is approving the filing.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules on trading differentials to permit dealings in Nasdaq-100 Shares of the Nasdaq-100 Trust ("Nasdaq-100 Shares") in increments of 1/64th of $1.00, and to amend its Portfolio Depositary Receipts rules to include a disclaimer of liability with respect to the Nasdaq-100 Index in connection with the trading of the Nasdaq-100 Shares.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was originally submitted on July 21, 1999, but was not complete. The Exchange subsequently submitted Amendment No. 1, which replaced the original filing in its entirety.

[4] In Amendment No. 2, the Exchange proposes (1) to add a new commentary .03 to PCX Rule 8.300 to state that the Exchange will trade, pursuant to unlisted trading privileges, Nasdaq-100 Shares that will be based on the Nasdaq-100 Index; and (2) to amend proposed PCX Rule 8.300(g) relating to disclaimers of liability of the Nasdaq-100 Index. *See* Letter from Robert P. Pacileo, Attorney, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated July 29, 1999 ("Amendment No. 2").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend PCX Rule 5.3(b), on trading differentials, to permit dealings in Nasdaq-100 Shares in increments of 1/64th of $1.00. The Nasdaq-100 Trust is a unit investment trust sponsored by Nasdaq-Amex Investment Product Services, Inc. with a portfolio based on the component stocks of the Nasdaq-100 Index. The Exchange intends to trade the Nasdaq-100 Shares pursuant to unlisted trading privileges under the Exchange's Portfolio Depositary Receipts Rules 8.300 *et seq.*[5] Further, the Exchange proposes to codify language in PCX Rule 8.300, Commentary .03, to reflect that the Exchange will trade Nasdaq-100 Shares pursuant to unlisted trading privileges.[6] These securities are currently traded on the Amex in increments of 1/64th of $1.00,[7] and thus, the Exchange believes that it is appropriate to trade these securities on the Exchange with the same minimum increment of 1/64th of $1.00 as well.

In connection with the Exchange's licensing agreement with the Nasdaq Stock Market ("Nasdaq"), relating to liability for the calculation of the Nasdaq-100 Index in connection with the trading of the Nasdaq-100 Shares, the Exchange proposes to add PCX Rule 8.300(g) to codify a rule governing disclaimers of liability relating to the Nasdaq-100 Index. The Exchange represents that proposed PCX Rule 8.300(g) is consistent with the

[5] The Exchange represents that American Stock Exchange's ("Amex") PDR Rules 1000 through 1003 and the PCX's PDR rules 8.300(a) through 8.300(f) are substantially the same.

[6] *See* Amendment No. 2, *supra* note 4.

[7] *See* Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (SR–Amex–98–34).

disclaimer of liability language adopted by the Amex in its Rule 1006.[8]

2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–26 and should be submitted by September 2, 1999.

[8] See Amendment No. 2, *supra* note 4.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2

The Commission finds that the PCX's proposed rule change and Amendment Nos. 1 and 2 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act [12] because it will facilitate transactions in securities by permitting the PCX: (1) To trade Nasdaq-100 Shares, on a UTP basis, in increments of 1/64th of $1.00, and (2) to adopt a disclaimer of liability rule relating to the Nasdaq-100 Index, consistent with the license agreement between Nasdaq and the Exchange.

The Exchange has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after the publication of the proposal in the **Federal Register**. The Commission believes that such action is appropriate, in that the proposed rule change establishes the same minimum trading variation as the Amex has adopted for Nasdaq-100 Shares. Further, the proposed rule relating to the disclaimer of liability with respect to the Nasdaq-100 Index (as stated in Amendment No. 2 of the proposed rule change) is identical to the disclaimer of liability adopted by the Amex.[13] For the reasons set forth above, the Commission does not believe that this proposal raises any new regulatory issues. Accordingly, the Commission finds that there is good cause for approving the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after the publication of the proposal in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change is hereby approved on an accelerated basis.

[11] In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The Amex disclaimer of liability provision was approved in Securities Exchange Act Release Nos. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (SR–Amex–98–34), and 41562 (June 25, 1999), 64 FR 36057 (July 2, 1999) (SR–Amex–99–22). It was subject to the full notice and comment process in Securities Exchange Act Release No. 41119 and no comments were received with respect to the disclaimer.

[14] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20849 Filed 8–11–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41711; File No. SR–PHLX–99–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Establishment of a Fee to Members for Receiving On-line Options Information

August 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] notice is hereby given that on June 29, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt a real-time, trade information fee of $.0025 per trade for members receiving option trade information on-line (i.e., electronically) from the Exchange, beginning on July 1, 1999.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the Exchange implemented an automation enhancement to the options floor that provides option trade information on-line (i.e. electronically) on a real-time basis. Members can now choose to connect and log on to an interface to the options risk management system to receive options (equity and index options) transaction information real-time. Specifically, once transaction information is in the AUTOM System,[3] it becomes available to members such as clearing firms, who may connect to the feature; clearing firms may determine to offer such information to floor traders electronically, but the Exchange is not proposing to do so at this time. The transaction information covered by this feature includes the type of information generally captured in Exchange systems as a trade.[4] Currently, such information is made available to members in hard-copy (paper ticket) form, which can be confirmed against floor trader positions. The Exchange has created this new electronic link to facilitate electronic position monitoring for options. The feature is voluntary and does not replace the current hard-copy printing of transaction information. Members choosing to log on to the feature will be charged $.0025 per trade.[5]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] The Exchange implemented the fee on July 1, 1999. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–99–24 and should be submitted by September 2, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20850 Filed 8–11–99; 8:45 am]

BILLING CODE 8010–01–M

[3] AUTOM is the Phlx Automatic Options Market System. *See* Phlx Rule 1080.

[4] This information includes the symbol, volume, price, time and clearing information of the traded security. Telephone conversation between Nandita Yagnik, Council, Phlx, and Heather Traeger, Attorney, Division of Market Regulation ("Division"), SEC, on July 16, 1999.

[5] The Exchange chose to charge a user fee rather than a flat fee to encourage more firms, including small firms, to use the feature because it is an important risk management tool. Telephone conversation between Nandita Yagnik, Council, Phlx, and Heather Traeger, Attorney, Division, SEC, on July 19, 1999.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 240.30–2(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203; Amendment #1]

State of Minnesota

In accordance with a notice received from the Federal Emergency Management Agency dated August 2, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on July 4, 1999 and continuing through August 2, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 25, 1999 and for economic injury the deadline is April 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 4, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–20795 Filed 8–11–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3199; Amendment #4]

State of North Dakota

In accordance with a notice received on August 2, 1999 from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster from August 6, 1999 to September 7, 1999.

All other information remains the same, i.e., the deadline for filing applications for economic injury is March 8, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 4, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–20796 Filed 8–11–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 3109]

Office of Mexican Affairs; Notice of Issuance of a Finding of No Significant Impact (FONSI) With Regard to the Issuance of a Presidential Permit for the Anzalduas International Crossing, McAllen, Texas

AGENCY: Department of State.

SUMMARY: Notice is hereby given that the Department of State has issued a Finding of No Significant Impact (FONSI) on the human environment for the Anzalduas International Crossing project sponsored by the Cities of McAllen, Hidalgo and Mission, Texas. An initial draft of the environmental assessment of the proposed Anzalduas International Crossing was prepared by Halff Associates, Inc.; Gutierrez, Smouse, Wilmut and Associates, Inc.; together with Dr. Michael E. Tewes, Mr. Joe Idecker and Dr. John Keller for the sponsors, the Cities of McAllen, Hidalgo and Mission, Texas.

Both the draft Environmental Assessment and the draft Final Environmental Assessment of the Department of State (Draft Final EA) have been reviewed by numerous federal and state agencies. Each such "cooperating agency" has approved or accepted the draft Final EA, provided, in certain cases, that mitigation recommendations are followed. These cooperating agencies are:

U.S. Government: The Immigration and Naturalization Service, U.S. Customs Service, Department of Agriculture, General Services Administration, United States Section of the International Boundary and Water Commission, Department of Transportation, Department of the Interior, U.S. Coast Guard, Environmental Protection Agency, Food and Drug Administration, Federal Emergency Management Administration, Department of Defense and Department of Commerce.

State of Texas: Texas Natural Resource Conservation Commission, Department of Public Safety, General Land Office, Texas Historical Commission, Texas Department of Transportation, Texas Parks and Wildlife Department, Lower Rio Grande Valley Development Council and Office of the Secretary of State.

Based upon the Department's independent review of the Draft EA, the Final EA, comments received during their preparation and comments received by the Department from federal and state agencies including measures which are proposed to be taken to prevent or mitigate potentially adverse environmental impacts which the Sponsors intend to take, the Department has concluded that issuance of a Presidential Permit authorizing construction of the proposed Anzalduas International Crossing, as proposed to be constructed in Road Alternative # 3 as set forth in the Final Environmental Assessment, would not have a significant impact on the quality of the human environment within the United States. Accordingly, a finding of no significant impact is adopted and an EIS will not be prepared.

ADDRESSES: Copies of the Presidential Permit may be obtained from Mr. David E. Randolph, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, Room 4258, Department of State, Washington, D.C. 20520, telephone (202) 647–8529. A copy of the Department's Final Environmental Assessment is available for inspection in Room 4258 of the Department of State during normal business hours.

SUPPLEMENTARY INFORMATION: The proposed action is to issue a Presidential Permit to the Cities of McAllen, Hidalgo and Mission, Texas, for the construction, operation and maintenance of an international vehicular and pedestrian bridge, its approaches and facilities at the international boundary between the United States and Mexico, southwest of McAllen, Texas, and adjacent to Reynosa, Tamaulipas, Mexico (the proposed "Anzalduas International Crossing").

Factors Considered

The Department in this case considered four roadway crossing construction alternatives. It should be noted that each alternative contemplates initial construction of a four-lane road with ultimate build-out to eight lanes. The draft Final Environmental Assessment was prepared with this information in mind. The alternatives are described in detail in the draft Final Environmental Assessment and in summary fashion as follows:

Road Alternative #1: This alternative comprises building a four-lane access road and bridge to a Border Station, assumed to be constructed on fill, immediately south of the Banker Floodway. Beyond the Border Station, a four-lane approach road at grade would be built to the main channel of the Rio Grande, and a four-lane international bridge elevated over the main channel.

Road Alternative #2: This alternative comprises a four-lane access road and bridge to an identical Border Station location for Road Alternative # 1. South of the Border Station, the road to the Rio Grande is entirely on structure using the four-lane international bridge section throughout. The length of this proposed bridge structure is approximately 4,800 feet.

Road Alternative #3: This alternative comprises a four-lane access road to a Border Station located approximately 1,000 feet north of the Banker Floodway. South of the Border Station, the roadway is to be constructed with four roadway lanes and a sidewalk on one side for the entire segment south to the Rio Grande. This segment is to be comprised of 2,200 feet of bridge across the Old Military Highway and the Banker Floodway (identical to the international bridge section), 6,100 feet of approach road at grade south of the Floodway and 700 feet of international bridge to the center of the Rio Grande main channel.

Road Alternative #4: This alternative is identical to Road Alternative # 3, except that with respect to this alternative, the road remains on structure from the south edge of the Border Station all the way to the Rio Grande. The road segment south of the Border Station is therefore 9,000 feet of international bridge.

Other Alternatives: Two other alternative options are addressed in the Final Environmental Assessment: (a) a no-action/no-build option; and (b) a mass transit option. The Department has considered each of these options as an alternative to construction of the Anzalduas International Crossing and has determined that neither is feasible.

In considering option (a), the no-action/no-build alternative, and option (b), the option of Sponsors providing expanded public transportation services between the cities of McAllen, Texas, and Reynosa, Mexico, the Department notes the continuing increase in traffic, including commercial truck traffic, on existing bridges in the general vicinity of the proposed Anzalduas International Crossing.

The Department further notes the significant and growing need for effective transportation of people, goods, and services between the United States and Mexico. (Between 1994 and 1998, the value of U.S. trade with Mexico nearly doubled, from $100.3 billion to $173.7 billion.) In the longer term, trade with Mexico is likely to continue to increase as a result of the increase in "maquiladoras" located in the vicinity of the sponsoring cities across the international boundary in Mexico. Reynosa is now one of the most successful cities along the northern Mexico frontier in attracting new maquiladora plants.

No action would likely result in saturation of the existing Hidalgo-Reynosa International Bridge causing worse delays and gradual deterioration of trade in the area. The Hidalgo-Reynosa International Bridge, heavily congested during many hours of each day, ranks among the top of all Texas border crossings with more than 40,000 vehicular crossings (two-way) on an average day. The preferred regional action is to move through traffic and commercial traffic away from the center of Reynosa, out to the Pharr International Bridge on the east and to the Anzalduas International Crossing on the west. The no-action/no-build alternative would force a significant portion of the cross-border trips to travel through the crowded downtown Reynosa street system or else divert up to ten miles to cross at the Pharr International Bridge. The diversion to Pharr could result in extra travel on the order of 30 million vehicle miles per year, with gradually worsening effects thereafter. The no-action/no-build alternative is believed to be detrimental to the region in terms of economic development, energy use and particularly air quality. The increased convenience offered by the new crossing capacity in the area is expected to alleviate these problems.

The provision of mass transit services for the existing international bridges would not meet projected commercial, non-passenger demands. There is currently mass transit offered at the existing Hidalgo-Reynosa International Bridge, which services some 80,000 commuters per month between Reynosa and downtown McAllen. The congestion at Hidalgo remains in spite of the use of mass transit, and the need for the Anzalduas crossing would not be removed by the mass transit proposal. The proposed Anzalduas International Crossing could have a beneficial effect on existing mass transit use in the area because it will reduce delays at the existing Hidalgo-Reynosa International Bridge. The resulting improvement in the frequency and speed of bus service may lead to increased use of this service. In sum, increasing population, urbanization, and commerce in the McAllen, Hidalgo and Mission, Texas/ Reynosa, Mexico, area mean that existing problems of traffic congestion, including those caused by commercial traffic, would likely negatively affect the environmental quality of the area if the additional route provided by the Anzalduas International Crossing were not provided.

Road Alternative #3 is the Sponsors' preferred alternative. It differs from Road Alternative #4 only with respect to proposed road construction south of the Banker Floodway. Road Alternative #3 initially contemplates a four-lane at-grade approach road while Road Alternative #4 would be constructed entirely on an elevated structure. Otherwise, and particularly with respect to potential environmental impacts, there is no significant difference between the two alternatives provided that agreed-upon mitigation measures with respect to Road Alternative #3 are taken. Since Road Alternative #3 was the Sponsors' preferred choice due to its substantially lower cost, a more detailed assessment of Road Alternative #4 was not considered necessary. Road Alternatives #1 and #2 involve filling in the flood plain of the Rio Grande and elicited a particularly negative response, based in part on environmental concerns, from federal agencies including the United States Section of the International Boundary and Water Commission (IBWC) and the Fish and Wildlife Service (FWS). Therefore, these Road Alternatives were not further evaluated.

Summary of the Assessment of the Potential Environmental Impacts Resulting From the Proposed Action

The Final Environmental Assessment provides information on the environmental effects of the alternatives outlined above regarding the placement of the Anzalduas International Crossing, and "no-action/no-build" and mass transit alternatives. On the basis of the Final Environmental Assessment, the Department makes the following determinations regarding the potential environmental impacts of Road Alternative #3, the preferred alternative.

Air Quality: This project is in an area that is in attainment of the National Ambient Air Quality Standards (NAAQS). A microscale analysis for Carbon Monoxide (CO) found that anticipated CO concentrations are less than the established CO standards of 35 parts per million (ppm) and 9 ppm for one and eight hour periods, respectively. The maximum anticipated CO concentration for the year 2014 is 36% for one hour and 60% for eight hours of the CO level of NAAQS. The impact on air quality from this project will not be significant.

While there is potential during the construction phase for any of the alternatives involving new construction to adversely affect air quality in the short term from fugitive dust emissions in and around the construction site due to construction operations, these effects may be mitigated by requiring contractors to minimize exhaust emissions through emissions control devices, using tarp covers on trucks transporting refuse and construction waste products on-site, wetting unpaved roadways, prohibiting any open burning of construction waste products on-site, and limiting unnecessary idling of construction vehicles. Restoration of the site by introducing grass and other brush-type plantings would further minimize fugitive dust emissions.

Surface Hydrology: Development of the Anzalduas International Crossing will result in an increase in storm water runoff due to the increase in impervious surfaces. The construction of the proposed project will adhere to the applicable portions of the McAllen/ Mission surface drainage criteria for the collection and discharge of runoff so as to not adversely impact downstream properties. Long-term adverse impacts to surface waters are not anticipated due to the proposed project.

River Channel and Floodplains: The proposed Border Station will be sited outside the Rio Grande flood plain, consistent with E.O. 11988 regarding a National Policy on Flood Plain Management which requires federal agencies to "avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of flood plains. . . ." The improvements result in zero rise in the upstream water surface and no loss of valley storage in the segment.

Embankments required for the bridge approaches between the Rio Grande and the Banker Floodway will be constructed with earth borrowed from the road right-of-way within the floodway. No new fill dirt will be imported into the floodway and the roadway will be designed to balance the existing conveyance within the floodway. A computer hydraulic analysis performed by the Sponsors indicates that the project should result in no adverse deflection or obstruction of the normal or flood flows of the Rio Grande. However, approval by the IBWC will be considered only after it receives conceptual plans from both the U.S. and the Mexican sponsors covering project components in the United States and Mexico.

Water Quality: The construction phase of the Anzalduas International Crossing may lead to minor temporary impacts on water quality. Existing water lines and sanitary sewer lines would be extended to serve the project site from the Cities of Mission and McAllen. Construction of the Crossing and related facilities will include measures to prevent sediments from entering the adjacent waterways. Refuse and wastes from demolition and excavation will be contained and hauled offsite to a

suitable place of disposal. Trucks will be routed and unloaded so as to prevent materials and debris from spilling into waterways. A storm water retention pond approximately 250 feet by 150 feet will be constructed south of the north abutment of the Rio Grande bridge that is designed to intercept and retain runoff from the bridge deck so as to contain contaminants or spills. A pipe drainage system will be constructed in the bridge superstructure in order to carry storm water to the pond.

Hazardous Wastes: The proposed project is not located on or near any known hazardous waste facilities and will not generate any hazardous wastes. No mitigation is required. The proposed Border Station will contain a hazardous waste containment unit in the truck dock area that would provide temporary storage of hazardous waste if a spill occurred. The international bridge is drained in a contained system back to a retention pond near the north abutment. This pond would provide temporary storage of hazardous waste if a spill occurred on the bridge deck.

Historical and Archeological Resources: The Texas Archaeological Research Laboratory determined that there are no recorded archaeological sites located in the project area. An archaeological and historical reconnaissance survey and shovel testing carried out at the direction of the Texas State Historic Preservation Office found no evidence of archaeological or historic features in the project area. An unmarked cemetery may exist in the vicinity of the entrance to Anzalduas County Park, well to the west of the project site. The La Lomita Historic District, which is listed on the National Register of Historic Places, is also located to the west and outside of the project site.

Land Use and Local Development Impacts: The majority of the land in the project area is used for agriculture and is unincorporated. The Cities of Mission and McAllen have extraterritorial boundaries that extend into the area; the Cities are cooperating in the development of a land use master plan. The City of Granjeno is located north of the bridge site and comprises approximately 90 homes; three other homes in the area are surrounded by farmland. The FWS owns several tracts of land along the Rio Grande which comprise a wildlife corridor. Anzalduas County Park is owned by Hidalgo County on land acquired as part of the Anzalduas Dam and Banker Floodway flood control projects.

The construction of the Border Station will require the displacement of two single-family homes located in agricultural fields. The Border Station and roadway will impact approximately 236 acres of cultivated fields; the Border Station will be located approximately 1,000 feet northwest of Granjeno.

The City of McAllen, under the city's property acquisition and relocation assistance policy, will compensate the property owners being displaced by the Border Station. The Border Station will be designed and constructed to minimize impacts to Granjeno; a large landscaped berm will be constructed along the east side of the Border Station property to shield the facility. A 500-feet-wide open space buffer will be preserved between the Border Station and Granjeno.

Threatened and Endangered Species: The FWS has identified four federally-listed endangered species that may be present in the project area: the jaguarundi, ocelot, northern aplomado falcon and Walker's manioc. The Sponsors have developed a detailed "Endangered Species Plan" in consultation and coordination with FWS to ensure that the bridge will not affect the federally-listed wildlife species known to exist in the Rio Grande Floodway corridor. Three large wildlife underpasses will be constructed at agreed locations under the at-grade segment of the roadway.

The Plan also includes the leasing of 160 acres of land located to the east of the proposed bridge to the FWS for $1.00 per acre to allow revegetation of farmlands. The initial lease of the land to the FWS will revert to a donation when traffic begins to cross the Anzalduas International Bridge. The Sponsors will execute payment of $50,000 to the FWS for expenses associated with revegetation after diplomatic notes have been exchanged between the United States and Mexico authorizing bridge construction to begin.

The Sponsors will grant Conservation Easements to the FWS covering a 400-foot-wide strip adjacent to the Rio Grande, a 60-foot-wide strip of land along the western edge of the right-of-way south of the Banker Floodway, and 1.6 acres of unused land under the proposed Banker Floodway Bridge. The Sponsors will also construct a stormwater retention pond south of the north abutment of the international bridge and three large wildlife underpasses under the at-grade segment of the roadway. The revegetation activities should not impede the conveyance of normal or flood flows in the river and its floodplain. Such activities will be considered in the same understandings as in *River Channel and Floodplains* (page 6 of the FONSI) regarding the deflection or obstruction these may present.

Traffic Noise: Construction noise is difficult to predict. Provisions should be included in the plans and specifications that require the contractor to make every reasonable effort to minimize construction noise through abatement measures such as work-hour controls, proper maintenance of equipment muffler systems and usage of noise-controlled construction equipment. An analysis of the existing and future traffic noise levels indicates that the proposed project will not result in any noise impacts at any adjacent land use activity areas.

Wetlands: The U.S. Army Corps of Engineers conducted a site visit and made a wetland determination of the project area on April 29, 1992. The Corps determined that the project would not impact any wetland areas subject to its jurisdiction. Because no wetland impacts are expected from the project, no wetland mitigation is required.

Environmental Justice: The project area is located in Hidalgo County, Texas, which the U.S. Census Bureau in 1995 estimated to have a population of 479,000. The county population is approximately 87% Hispanic. The majority (99%) of land in the project area is used for agriculture. As stated above, two houses in the project area will need to be acquired; one of these two residences is owned by a minority family. Acquisition of these properties will be accomplished under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Relocation resources and assistance will be available to all persons regardless of race, color, religion, sex or national origin. The proposed project is expected to have a positive impact on the economic characteristics of the area and therefore no mitigation is required.

Minority and low-income populations will not be impacted disproportionately in an adverse manner by the proposed bridge, nor will there be any negative impacts to community cohesion or neighborhood stability.

Conclusion

Analysis of the Environmental Assessment Submitted by the Sponsors

Based upon the Department's independent review of the Final Environmental Assessment, comments received during its preparation and comments received by the Department from federal and state agencies including measures which are proposed to be taken to prevent or mitigate potentially adverse environmental

impacts which the Sponsors intend to take, the Department has concluded that issuance of a Presidential Permit authorizing construction of the proposed Anzalduas International Crossing, as proposed to be constructed in Road Alternative #3 as set forth in the Final Environmental Assessment, would not have a significant impact on the quality of the human environment within the United States. Accordingly, a finding of no significant impact is adopted and an EIS will not be prepared.

Dated: July 23, 1999.

David E. Randolph,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 99–20900 Filed 8–11–99; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

Office of Mexican Affairs

[Public Notice No. 3110]

Notice of Issuance of a Presidential Permit to the cities of McAllen, Hidalgo and Mission, Texas, To construct, operate and maintain an international bridge, its approaches and facilities at the international boundary between the United States and Mexico

AGENCY: Department of State.

SUMMARY: Notice is hereby given that the Department of State has issued a Presidential Permit to the Cities of McAllen, Hidalgo and Mission, Texas, to construct, operate and maintain an international bridge, its approaches and facilities at the international boundary between the United States and Mexico (the "Anzalduas International Crossing"). The permit was issued July 23, 1999, pursuant to the International Bridge Act of 1972 (33 U.S.C. 535 *et seq.*) and Executive Order 11423 of 1968, as amended by Executive Order 12847 of 1993.

ADDRESSES: Copies of the Presidential Permit may be obtained from Mr. David E. Randolph, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, Room 4258, Department of State, Washington, D.C. 20520, telephone (202) 647–8529.

SUPPLEMENTARY INFORMATION: Notice of the application by the Cities of McAllen, Hidalgo and Mission, Texas, for a permit to build a new bridge, with access road, to be constructed across the Rio Grande river between McAllen, Texas, and Reynosa, Tamaulipas, Mexico, was published in the **Federal Register** on December 22, 1992, at 57 FR 60832. The bridge will carry pedestrian, vehicular and commercial traffic, and is intended to serve growing neighborhoods on the west side of the McAllen-Reynosa area. As a condition for the Presidential Permit, the Cities of McAllen, Hidalgo and Mission have agreed to begin construction of the bridge no earlier than April 1, 2003, and to open the bridge no earlier than January 1, 2005, unless prior to those dates the Secretary of State or the Secretary's delegate determines that the U.S. Congress has provided sufficient funds for construction, operation and support of the bridge.

Furthermore, permanent cargo import facilities will be constructed beginning no earlier than January 1, 2015 unless prior to that date the average northbound cargo traffic at the Pharr-Reynosa International Bridge reaches 15,000 vehicles per week.

The application for the Presidential Permit was reviewed and approved by numerous federal, state and local agencies. The final application and environmental assessment, which resulted in a finding by the Department of State of no significant impact ("FONSI") on the human environment, were reviewed and approved or accepted by the Immigration and Naturalization Service, General Services Administration, Department of Interior, Department of Agriculture, Department of Commerce, U.S. Customs Service, U.S. Coast Guard, Federal Highway Administration, Food and Drug Administration, International Boundary and Water Commission—U.S. Section, Department of Defense, Environmental Protection Agency, Department of State and appropriate Texas State Agencies: the Texas Parks and Wildlife Department, the Texas Department of Transportation, the Texas Historical Commission and the Texas Natural Resource Conservation Commission.

Dated: July 28, 1999.

David E. Randolph,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 99–20899 Filed 8–11–99; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lawrence County, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for a proposed highway project in Lawrence County, Ohio.

FOR FURTHER INFORMATION CONTACT: Scott McGuire, Field Operations Engineer, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare a supplement to the final environmental impact statement (EIS) on a proposal to improve State Route (SR) 7 and SR 607 in Lawrence County, Ohio. The original EIS for the improvements (FHWA–OH–EIS–72–8–F) was approved on January 31, 1974. The supplement is being prepared due to the time elapsed since the original approval in 1974 and to adequately address new legislative and regulatory requirements. In response to the October 28, 1995, Federal planning regulations, a major investment study for the corridor has been completed by KYOVA Interstate Planning Commission.

The existing facility, which travels thru the Villages of Chesapeake and Proctorville (on a two-lane roadway) is prone to heavy traffic numbers exacerbated by turning movements and resulting in a high accident situation. SR 7 in this area is also prone to flooding which results in roadway closure and impairs emergency vehicles. The section of roadway to be relocated is situated in southern Lawrence County across the Ohio river from Huntington, West Virginia, a major metropolitan area. This section of roadway is predominantly used for residents living in Ohio and working in the Huntington area. The project is situated in the Ohio River valley with steep hills to the north. The flatter lands to the south along the river have been developed for residential and commercial buildings. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand.

Alternatives under consideration include (1) taking no action; (2) building a 4-lane limited access facility on new alignment. The alignments under consideration are slightly north of Chesapeake, Proctorville, and Rome.

FHWA, ODOT and other local agencies invite participation in defining the alternatives to be evaluated in the supplemental EIS, and any significant social, economic, or environmental issues related to the alternatives. Information describing the purpose and

need of the project, the proposed alternatives, the areas to be evaluated, the citizen involvement program, and the preliminary project schedule may be obtained from the FHWA at the address provided above.

Coordination with concerned federal, state, and local agencies has been ongoing throughout project development. A public meeting was held on June 27, 1996 at a point in time when an EIS was not believed to be necessary. Coordination will be continued throughout the study with federal, state, and local agencies, and with private organizations and citizens who express or are known to have interest in this project. On August 26, 1999, a public meeting will be held to obtain input on a preferred alignment. A Public Hearing will be held and may take place in the year 2000. Public notice will be given of the exact time and place of the meeting and the hearing to be held for the project. The Draft EIS will be available for public and agency review and comment prior to the Public Hearing. No formal scoping meeting will be held.

To ensure that the full range of issues relating to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the supplemental EIS should be sent to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 29, 1999.

Scott A. McGuire, P.E.,

Field Operations Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 99–20918 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB–33 (Sub-No. 70)]

Union Pacific Railroad Company—Abandonment—Wallace Branch, ID

On June 18, 1999, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board), environmental information required to complete the environmental compliance process and to receive final approval to abandon and salvage its Wallace Branch line. The line extends 71.5 miles from milepost 16.5 near Plummer to milepost 80.4 and/or 0.00 near Wallace, and then to milepost 7.6 near Mullan, in Benewah, Kootenai, and Shoshone Counties, Idaho.[1] UP also filed a Notice of Intent to Complete Abandonment Proceeding, which was published once each week for three consecutive weeks in local newspapers in Benewah, Kootenai, and Shoshone Counties on May 26, and June 2 and 9, 1999.

Background

On August 22, 1991, UP filed an application with the ICC seeking authority under 49 U.S.C. 10903 and 10904 to abandon and discontinue operations over the Wallace Branch line. In a decision served November 2, 1992, in Docket No. AB–33 (Sub-No. 70) the ICC found that the public convenience and necessity permitted UP to abandon its Wallace Branch line. In that same decision, the ICC decided that UP could discontinue service immediately but could not fully abandon the line—salvage and permanently remove it from the rail network—until the environmental impact of the proposed abandonment was resolved. Specifically, the ICC imposed six environmental conditions[2] that require consultation and possible permitting and environmental review by various state and federal environmental agencies prior to any salvage of the track.

On judicial review (*State of Idaho, et al.* v. *ICC*, 35 F.3d 585 (D.C. Cir. 1994)), the court affirmed the ICC's decision to permit UP's immediate discontinuance of rail operations. Thus, that portion of this case is administratively final and no longer at issue. In addition, however, the court found that the ICC's environmental analysis was not complete because the ICC did not have all of the information to take a "hard look" at the environmental impact of salvage operations on the line. Accordingly, the court remanded the ICC's salvage authorization.

Pursuant to the court's decision, the ICC, by decision issued in December 1994, reopened that portion of the case to complete the environmental analysis of salvage and vacated its conditional authorization of salvage (except for the portion of the line within the Bunker Hill Superfund site).[3] Therefore, the grant of abandonment authority in this proceeding is not final, and UP cannot conduct salvage activities on the portion of the line outside the Superfund site before it submits the necessary environmental documentation to complete the environmental compliance process and receives final approval from the Board to salvage that portion of the line.

Environmental Compliance

On June 18, 1999, UP filed environmental documentation with the Board, that UP believes responds to the ICC's six environmental conditions, the court remand, and the ICC's decision reopening this proceeding. UP's environmental documents include (1)

[1] The line traverses the U.S. Postal Service zip codes 83851, 83861, 83833, 83810, 83839, 83837, 83873, 83846, and 83868. The Wallace Branch no longer has stations because rail service was discontinued in accordance with the approval of the predecessor agency of the Board, the Interstate Commerce Commission (ICC), and the discontinuance was upheld by the United States Court of Appeals for the District of Columbia Circuit.

[2] 1. UP shall not salvage any railroad infrastructure, including the rail and ties, along the entire right-of-way until it has consulted with the Idaho Department of Environmental Quality and the U.S. Environmental Protection Agency. This consultation will ensure that if and when salvage activity ultimately takes place, it will be in compliance with the Comprehensive Environmental Response, Compensation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, and/or other applicable laws and regulations.

2. Pursuant to the U.S. Fish and Wildlife Service ("USFWS") request, UP, prior to any salvage activity, shall determine, using National Wetland Inventory Maps, if wetlands are located along the right-of-way. If wetlands are located along the right-of-way, UP shall consult with USFWS prior to any disturbance of the right-of-way and comply with any applicable requirement of the U.S. Fish and Wildlife Coordination Act, 16 U.S.C. § 661.

3. UP shall not undertake any salvage activities on the Wallace Branch until compliance with § 7 of the Endangered Species Act of 1973, 16 U.S.C. § 1531, has been completed. As a part of the § 7 compliance process, UP shall retain an independent biological consultant, to work under the supervision of the Board's Section of Environmental Analysis (SEA) and in cooperation with USFWS to prepare a biological assessment.

4. A Water Pollution Control Act permit under 33 U.S.C. § 1251, *et seq.*, may be required prior to salvage of the portion of the Wallace Branch where it crosses the Coeur d'Alene River. Prior to any salvage activities, UP shall contact the Idaho Department of Health and Welfare, Division of Environmental Quality, to determine if such a permit is required and take the necessary steps to secure a permit.

5. The U.S. Army Corps of Engineers (CORPS) has expressed concern regarding impacts to wetlands and water quality if UP salvages the right-of-way. In addition, the CORPS has indicated that materials in the area through which the track passes should be tested prior to any attempt to remove it. Accordingly, UP shall consult with the CORPS prior to undertaking any salvage activities to determine what appropriate mitigation may be required.

6. UP shall retain its interest in and take no steps to alter the historic integrity of all structures, including the line itself, that are 50 years old or older until completion of the § 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f.

[3] Section 121(e)(1), 42 U.S.C. 9621(e)(1), relieves UP of the requirement to obtain ICC or Board approval if it salvages track in connection with remediation carried out in compliance with the Comprehensive Environmental Response, Compensation and Liability Act.

an Environmental Evaluation/Cost Analysis and a Track Salvage Work Plan developed in consultation with and with the approval of the U.S. Environmental Protection Agency and the Idaho Department of Environmental Quality; (2) relevant National Wetland Inventory Maps; (3) a biological assessment required by section 7 of the Endangered Species Act; (4) a cultural resource inventory report; and (5) correspondence from State and local government agencies. UP indicates that copies of these documents were made available for public review and comment for 20 days in May and June, 1999, at several locations near the Wallace Branch and were provided to interested persons who requested them. No comments were received by UP.

Interested persons should be aware that the SEA intends to prepare a Supplemental Environmental Assessment (Supplemental EA)[4] analyzing UP's environmental documentation, including any comments received and preliminarily determining whether the outstanding environmental issues have been resolved and UP has fully complied with the environmental review process. The Supplemental EA will be served on all persons on the Board's service list in Docket No. AB–33 (Sub-No. 70) and upon other affected agencies. Any other persons who would like to obtain a copy of the Supplemental EA must contact SEA.

There will be a 30-day period for all interested persons and agencies to review and comment on the Supplemental EA. Based on SEA's independent review of UP's environmental documentation, any further environmental review and consultation by SEA, and consideration of all timely comments received on the Supplemental EA, SEA will make final environmental recommendations to the Board. The Board will then issue a final decision granting or denying UP final authority to abandon the line and salvage the portion outside of the Superfund site, imposing any future environmental mitigation that it deems appropriate if final approval to abandon is granted.

Any offer of financial assistance (OFA) under 49 CFR 1151.27(b)(2) will be due no later than 10 days after service of a decision granting final approval for abandonment. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following any final approval by the Board to abandon and salvage the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 7, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.1(f)(27). If a trail use request is filed, UP will notify the Board whether and with whom it intends to negotiate a trail use agreement no later than September 22, 1999.

On August 3, 1999, the State of Idaho (State) and the Coeur d'Alene Tribe (Tribe) filed a request that a Certificate of Interim Trail Use (CITU) be issued and enclosed its "Statement of Willingness to Assume Financial Responsibility."[5] The State and the Tribe need not refile their trail use request, which will be considered by the Board at the time of the issuance of its final decision in this matter.

All interested persons may file written comments with the Board on any remaining issues no later than September 7, 1999.

All filings in response to this notice must refer to Docket No. AB–33 (Sub-No. 70) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Thomas Greenland, Environmental Counsel, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179, (402) 271–4634.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 45 CFR part 1152. Questions concerning environmental issues may be directed to Phillis Johnson-Ball at the SEA at (202) 565–1530.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 5, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–20874 Filed 8–11–99; 8:45 am]

BILLING CODE 4915–00–P

[4] SEA issued an Environmental Assessment for public review and comment on September 27, 1991, in connection with UP's original abandonment application.

[5] The ICC had received a request for the issuance of a CITU permitting interim trail use on the entire line in August 1995. The Board denied the trail use request as premature by decision issued November 15, 1996.

Federal Register

Thursday
August 12, 1999

Part II

Department of Housing and Urban Development

Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4512–N–01]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers from January 1, 1999 through March 31, 1999.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), HUD is required to make public all approval actions taken on waivers of regulations. This notice is the thirty-third in a series, published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This is the thirty-third notice of its kind to be published under section 106 of the HUD Reform Act. This notice updates HUD's waiver-grant activity from January 1, 1999 through March 31, 1999.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 58.73 (involving the waiver of a provision in 24 CFR part 58) would come early in the sequence, while waivers of 24 CFR part 990 would be among the last matters listed.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.)

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between April 1, 1999 through June 30, 1999.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: August 3, 1999.

Andrew Cuomo,

Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development January 1, 1999 Through March 31, 1999

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

For Items 1 Through 10, Waivers Granted for 24 CFR Parts 91 and 92, Contact: Cornelia Robertson Terry, Field Management Division, Office of Executive Services, Office of Community Planning and Development, Room 7184, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone (202) 708–2565 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

1. *Regulation:* 24 CFR 91.10(a), 24 CFR 92.300(a)(1), and 24 CFR 570.207(a)(1).

Project/Activity: The Municipality of Carolina requested the following waivers: waiver to permit the Municipality to use CDBG funds to rehabilitate city hall and construct new housing; waiver to suspend the 15 percent CHDO set-aside requirement; waiver to allow the Municipality to receive its HOME allocation in advance of the program year.

Nature of Requirement: 24 CFR 570.207(a)(1) prohibit grantees from using CDBG funds to assist in the development of city halls or the construction of new housing. 24 CFR 92.300(a)(1) requires that not less than 15 percent of each HOME grant be reserved for investment in housing to be developed, sponsored, or owned by CHDOs. 24 CFR 91.10 requires each grantee to administer the HOME, CDBG, ESG, and HOPWA programs on a concurrent program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 4, 1999.

Reasons Waived: HUD determined that these waivers were needed to assist the Municipality in recovering from Hurricane Georges. Section 122 of the Housing and Community Development Act of 1974 authorizes HUD to suspend program requirements for the use of funds designated by the recipient to address damage in a Presidentially declared disaster area.

2. *Regulation:* 24 CFR 91.402(a).

Project/Activity: The Cuyahoga County, Ohio Consortium requested a waiver to permit the Consortium members to continue to operate through the end of the consortium agreement (May 31, 1999) without being fully aligned. The request also asked HUD to permit the consortium members until

December 31, 2000, to revise and align their program years.

Nature of Requirement: 24 CFR 91.402(a) requires all units of general local government that are members of a consortium to be on the same program year for the CDBG, HOME, ESG, and HOPWA programs.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 7, 1999.

Reasons Waived: The consortium agreement was inadvertently approved without the years being aligned. Because this period ends on June 1, 1999, no program purpose would be served by requiring an aligned program year prior to this date. A partial waiver request is granted. The waiver request for an additional extension was denied.

3. *Regulation:* 24 CFR 91.520.

Project/Activity: The City of Des Moines, Iowa requested a waiver of the submission date for the City's Consolidated Annual CDBG Performance and Evaluation Report (CAPER).

Nature of Requirement: 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 22, 1999.

Reasons Waived: HUD determined that there was good cause for the waiver. The City needed additional time for the installation of a new accounting and data processing system and to adjust to recent staff changes. As a result of the system change, the City does not yet have complete year-end expenditure data needed to complete its CAPER. HUD is interested in ensuring that the performance report prepared by grantees is complete and accurate.

4. *Regulation:* 24 CFR 91.520.

Project/Activity: The City of New York requested a waiver of the submission date for the City's CAPER.

Nature of Requirement: 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 24, 1999.

Reasons Waived: HUD determined that there was good cause for the waiver. The City needed additional time for conversion to the IDIS in the middle of its 1998 program year. HUD is interested in ensuring that the performance report prepared by grantees is complete and accurate.

5. *Regulation:* 24 CFR 91.520.

Project/Activity: The State of Iowa requested a waiver of the submission date for the State's CAPER.

Nature of Requirement: 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 26, 1999.

Reasons Waived: HUD determined that there was good cause for the waiver in view of the reasons set forth in the incoming document. The State is in the process of converting its data management system from one based on multiple programs to an integrated Microsoft Office system. The transfer is time consuming and burdensome.

6. *Regulation:* 24 CFR 92.205(e).

Project/Activity: Peoria, Illinois requested a waiver of regulations regarding repayment of HOME funds when there is termination of a project prior to completion.

Nature of Requirement: 24 CFR 92.205(e) requires the repayment of HOME funds spent on a project that is terminated before completion.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 7, 1999.

Reasons Waived: The City disbursed $13,285.00 in HOME funds for this project, which was never completed. The homeowner of the single-family property died prior to completion. The owner had no will or heirs. The County seized the property, and to facilitate the County's disposition of the property, the City released its lien. The repayment of these funds would cause the City a serious financial hardship. HUD determined that, due to the unusual circumstances, there is good cause for a waiver.

7. *Regulation:* 24 CFR 92.214(a)(7).

Project/Activity: The State of Minnesota requested a waiver in order to commit additional HOME funds to a project up to 18 months after the original HOME-funded project was completed.

Nature of Requirement: 24 CFR 92.214(a)(7) of the HOME regulations states that HOME funds may not be used to provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction under 24 CFR 92.502 or 24 CFR 92.504.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 12, 1999.

Reasons Waived: HUD determined that there is good cause to grant the required waiver. The waiver will enable the Hubbard County Housing Rehabilitation Authority to provide for the construction of an elevator for residents in the Nevis elderly housing project.

8. *Regulation:* 24 CFR 92.251 & 24 CFR 92.502(d).

Project/Activity: The State of Wisconsin requested a waiver of minimum property standards in order to permit a single-family HOME-assisted property in the City of Sheboygen Falls to be considered complete even though it does not meet the minimum rehabilitation standards or local codes, as required by the HOME rule.

Nature of Requirement: 24 CFR 92.251 requires that housing assisted with HOME funds must, at a minimum, meet the housing quality standards.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: April 5, 1999.

Reasons Waived: HUD determined that there was good cause for the waiver. The work on the property could not be completed due to storm damage. The storm, which occurred on August 16, 1998, received a Presidential Disaster Declaration. The City condemned the property. However, prior to the storm, $2,396.69 in HOME funds was expended out of the $25,000.00 set aside for the project.

9. *Regulation:* 24 CFR 92.254(a)(2)(iii).

Project/Activity: The City of Newton, MA and the Brookline Newton Waltham WaterCity (BNWW) Consortium requested a waiver to permit the City of Newton to determine 95 percent of the median area purchase price on the median of housing sales within the City, rather than the sales within the entire Consortium.

Nature of Requirement: 24 CFR 92.254(2)(iii) requires that an increase in the maximum allowable housing purchase price to 95 percent of the median area purchase price must include all areas that are part of the BNWW Consortium.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 12, 1999.

Reasons Waived: Newton would not be able to provide significant homebuyer assistance (even for condominiums) if it had to abide by a single Consortium-wide limit. The waiver will enable Newton to offer a proposed first-time homebuyer's assistance program that will reach income eligible households. HUD determined that there is good cause to grant the requested waiver.

10. *Regulation:* 24 CFR 92.500(d)(1)(C).

Project/Activity: The City of St. Louis requested an extension of the five-year deadline for the expenditure of HOME disaster grant funds.

Nature of Requirement: 24 CFR 92.500 (d)(1)(C) requires HUD to recapture any HOME funds not expended within five years after the last day of the month in which HUD notified the grantee of its execution of the HOME partnership agreement.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 12, 1999.

Reasons Waived: The City will lose the unexpended grant funds if HUD fails to grant the extension. The City would suffer a significant hardship if the unexpended disaster funds cannot be used to complete these projects. HUD finds that these circumstances constitute good cause for an extension of the five year expenditure deadline.

For Item 11, Waiver Granted for 24 CFR Part 203, Contact: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the

Federal Information Relay Service at (800) 877–8339.

11. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Corinthian Mortgage Corporation requested a waiver of the requirements of 24 CFR 203.49(c) to extend the initial adjustment dates for adjustable rate mortgage (ARM) loans beyond the 12 to 18 month window currently provided for in the regulation.

Nature of Requirement: 24 CFR 203.49(c) requires that interest rate adjustments for ARMs must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the mortgagor's first debt service payment.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 20, 1999.

Reasons Waived: Approving the waiver enabled the lender to securitize the loan and rendered no harm to the borrowers or to HUD.

For Item 12, Waiver Granted for 24 CFR Part 291, CONTACT: Art Orton, Deputy Director, Asset Management Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

12. *Regulation:* 24 CFR 291.110(a).

Project/Activity: Waiver of the requirement of 24 CFR 291.110(a) to provide authority for governmental entities and private nonprofit organizations to purchase, on a direct sales basis and with mortgage insurance, HUD-owned single family properties and to provide discounts of 50 percent for use in the Officer Next Door Sales Program.

Nature of Requirement: 24 CFR 291.110(a) permits direct sales at deep discounts off the list price of properties sold without mortgage insurance to governmental entities and private nonprofit organizations for use in HUD and local housing or homeless programs.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 1999.

Reasons Waived: Approving the waiver enables governmental entities and nonprofit organizations to fully participate in the Officer Next Door Sales Program by purchasing properties eligible for mortgage insurance at a 50 percent discount for resale to law enforcement officers. Based on HUD's experience with REO sales, it would not be detrimental to the insurance fund to permit governmental entities and private nonprofit organizations to purchase properties offered with mortgage insurance on a direct sales basis or to provide discounts of 50 percent on properties sold for use in the Officer Next Door Sales Program.

For Items 13 Through 19, Waivers Granted for 24 CFR Parts 570, 574, and 576, Contact: Cornelia Robertson Terry, Field Management Division, Office of Executive Services, Office of Community Planning and Development, Room 7184, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone (202) 708–2565 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

13. *Regulation:* 24 CFR 570.200(h).

Project/Activity: The City of Oxnard requested a waiver to permit the City to reimburse itself over a period of four years for the purchase of property that will be used for the development of single-family housing for low-income families.

Nature of Requirement: 24 CFR 570.200(h) governs CDBG reimbursement for pre-award costs.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 22, 1999.

Reasons Waived: HUD determined that the project, which was included in Oxnard's 1995–1999 Consolidated Plan and was subject to public review and involvement through the citizen participation process, will provide affordable for-sale housing to low-income families. Because increasing homeownership is a priority for the City as well as a goal for the Secretary and the President, there is good cause to grant the waiver.

14. *Regulation:* 24 CFR 570.200(h)(1)(i).

Project/Activity: The City of Hazelton, Pennsylvania requested reimbursement for pre-award costs for an emergency sewer project.

Nature of Requirement: 24 CFR 570.200(h)(1)(i) allows a grantee to be reimbursed for pre-award costs, provided the activity for which the costs are being incurred is included in a consolidated action plan or an amended consolidated action plan (or an application under subpart M of 24 CFR part 570) prior to the costs being incurred.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 24, 1999.

Reasons Waived: The project was undertaken to correct street and sewer flooding as a result of a severe thunderstorm. The City would have to raise property taxes by 20 percent to pay for this emergency if CDBG funds could not be used. HUD determined that a failure to grant the waiver would result in an undue hardship for the City and its residents, and would be contrary to the goals of the Housing and Community Development Act of 1974.

15. *Regulation:* 24 CFR 574.330(a)(1).

Project/Activity: The City of Memphis, Tennessee requested a waiver of the HOPWA regulation that provides for a limit on the term of assistance for a resident of a short-term housing facility.

Nature of Requirement: 24 CFR 574.330(a)(1) provides for a limit on the term of assistance for a resident of a short-term housing facility of not more than 60 days during any six month period.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 7, 1999.

Reasons Waived: 24 CFR 574.330(a)(2) allows HUD to waive the limitation in 24 CFR 574.330(a)(1) based on the good faith effort of the grantee to provide permanent housing. The City of Memphis advised that the United Way of the Mid-South is assisting the client in obtaining permanent housing, which was expected to occur in mid-January 1999.

16. *Regulation:* 24 CFR 576.21.

Project/Activity: Morris County, New Jersey requested a waiver of the 30 percent spending limitation on essential services.

Nature of Requirement: 24 CFR 576.21 states that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in 42 U.S.C. 11374(a)(2) (section 414(a)(2) of the Stewart B. McKinney Homeless Assistance Act). 42 U.S.C. 11374(a)(2)(B) limits the use of assistance for essential services to 30 percent of the aggregate amount of all assistance to a State or local government under the ESG program.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: January 22, 1999.

Reasons Waived: 42 U.S.C. 11374(b) allows for a waiver if the grantee is able to demonstrate that other eligible activities under the program are already being carried out in the locality with other resources. Morris County provided information to HUD that indicated it was able to meet its commitment to rehabilitation, as well as its other immediate homeless and homeless prevention assistance needs through a combination of other Federal, State and county sources.

17. *Regulation:* 24 CFR 576.21.

Project/Activity: The State of California requested a waiver of the 30 percent spending limitation on essential services.

Nature of Requirement: 24 CFR 576.21 states that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in 42 U.S.C. 11374(a)(2) (section 414(a)(2) of the Stewart B. McKinney Homeless Assistance Act). 42 U.S.C. 11374(a)(2)(B) limits the use of assistance for essential services to 30 percent of the aggregate amount of all assistance to a State or local government under the ESG program.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 4, 1999.

Reasons Waived: 42 U.S.C. 11374(b) allows for a waiver if the grantee is able to demonstrate that other eligible activities under the program are already being carried out in the locality with other resources. The State has developed a certification to be executed by all applicants intending to use more than 30 percent of its funds for essential services certifying the availability of other funds to carry out the other eligible activities.

18. *Regulation:* 24 CFR 576.35(a)(1).

Project/Activity: The State of Alabama requested a waiver of the provision requiring recipients to spend their ESG funds within 180 days of the date of the grant award by HUD.

Nature of Requirement: 24 CFR 576.35(a)(1) requires States to spend their ESG funds within 180 days of the grant award by HUD.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: February 12, 1999.

Reasons Waived: Alabama's contracting practices precluded timely expenditure of ESG funds. HUD granted the State an expenditure date of April 30, 1999 for its homeless prevention activities. HUD determined that granting the waiver would further the purposes of the Act.

19. *Regulation:* 24 CFR 576.35(b).

Project/Activity: The City of Chicago, Illinois requested a waiver of the expenditure deadline for ESG funds.

Nature of Requirement: 24 CFR 576.35(b) requires Cities to spend their ESG funds within 24 months of the date of the grant award by HUD.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: March 26, 1999.

Reasons Waived: The City of Chicago's contracting practices encouraging the use of local businesses certified as Minority Business Enterprise (MBE) and Woman's Business Enterprise (WBE) have caused delays in contract execution. HUD determined that granting the waiver would further the purposes of the Act.

For Items 20 Through 21, Waivers Granted for 24 CFR Part 761, Contact: Jackie Johnson, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Room 4204, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–5000; telephone (202) 619–8201 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

20. *Regulation:* 24 CFR 761.30(b)(2) and (4).

Project/Activity: A request was made by the Salt River Community Housing Division (SRCHD) for a six-month extension to continue activities that deter juvenile violence and vandalism under the Public and Indian Housing Drug Elimination Grant Program (PIHDEP).

Nature of Requirement: The NOFA for the 1996 PIHDEP states that grant activities must be completed within 24 months, up to and including a maximum period of six months beyond the original grant agreement. Any extension beyond the six months must be approved by the Assistant Secretary for Public and Indian Housing.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: December 16, 1998.

Reasons Waived: The grantee exhibited administrative capability and the extension will permit the SRCHD to accomplish established goals and objectives.

21. *Regulation:* 24 CFR 761.30(b)(2) and (4).

Project/Activity: A request was made by the Absentee Shawnee Housing Authority (ASHA) for a retroactive seven-month extension.

Nature of Requirement: The NOFA for the 1996 PIHDEP states that grant activities must be completed within 24 months, up to and including a maximum period of six months beyond the original grant agreement. Any extension beyond the six months must be approved by the Assistant Secretary for Public and Indian Housing.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 23, 1999.

Reasons Waived: The ASHA submitted sufficient evidence that they have successfully completed many drug prevention activities and services for their residents and that additional time will enable them to sustain drug prevention measures.

22. *Regulation:* 24 CFR 761.30(b)(2) and (4).

Project/Activity: A request was made by the Pueblo of Acoma Housing Authority (PAHA) for an 18-month extension of their Fiscal Year 1995 Public and Indian Housing Drug Elimination Grant program (PIHDEP). The grant was originally awarded to the All Indian Pueblo Housing Authority (AIPHA), an umbrella housing authority that served 11 tribes in New Mexico including the Pueblo of Acoma. The AIPHA dissolved and did not take significant steps to implement PIHDEP activities so the grant was transferred to the PAHA.

Nature of Requirement: The NOFA for the 1995 PIHDEP states that grant activities must be completed within 24 months, up to and including a maximum period of six months beyond the original grant agreement. Any extension beyond the six months must be approved by the Assistant Secretary for Public and Indian Housing.

Granted by: Deborah Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 18, 1999.

Reasons Waived: The grantee has exhibited administrative capability and the extension will permit the PAHA to implement and complete all original activities in the comprehensive plan.

For Item 23, Waiver Granted for 24 CFR Part 811, Contact: James B. Mitchell, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, Room 6164, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–3730 (this is not a toll-free number). Hearing-or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

23. *Regulation:* 24 CFR 811.105(c)(3).

Project/Activity: Refunding of bonds that finance two Section 8 assisted projects in Newark, New Jersey: the Avon Hill Apartments, FHA No. 031–35228 and Cathedral Park Apartments FHA No. 031–35231.

Nature of Requirement: The regulation requires that bonds issued under section 11(b) of the United States Housing Act of 1937 (42 U.S.C. 14371i) be issued no more than 60 days after approval of such issuance by the parent entity of the issuer.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 29, 1999.

Reasons Waived: The Refunding Bonds were issued by the Housing Finance Corporation of Newark, New Jersey, 61 days after approval by the parent entity, the Newark Housing Authority. In that the delay of one day in issuance on February 6, 1999, was unavoidable, good cause was found to waive this section.

For Items 24 Through 71, Waivers Granted for 24 CFR Part 891, Contact: Willie Spearmon, Director, Office of Business Products, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

24. *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bivins Place, Richmond, Kentucky, Project Number: 083–HD040.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 22, 1999.

Reasons Waived: The owner took all reasonable measures to reduce project cost as well as to obtain other financing to cover a majority of the shortfall.

25. *Regulation:* 24 CFR 891.100(d).

Project/Activity: B'nai B'rith, New Haven, Connecticut, Project Number: 017–EE029.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 22, 1999.

Reasons Waived: The high development cost was due in part to delays caused by the city withholding issuance of the building permit for several months and the extraordinary expense for environmental abatement.

26. *Regulation:* 24 CFR 891.100(d).

Project/Activity: Norris Square Senior Housing, Philadelphia, Pennsylvania, Project Number: 034–EE068.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 22, 1999.

Reasons Waived: Additional funds were needed to pay for the contractor's price increase resulting from unavoidable delays to the construction start date.

27. *Regulation:* 24 CFR 891.100(d).
Project/Activity: Marian Manor, Louisville, Kentucky, Project Number: 083–EE050.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 2, 1999.
Reasons Waived: The sponsor/owner, architect, contractor, and consultant explored every avenue to save money on design, labor, and materials and, as a result, the shortfall was reduced from $227,100 to $16,928.

28. *Regulation:* 24 CFR 891.100(d).
Project/Activity: AHEPA/Daughters of Penelope #120, Peabody, Massachusetts, Project Number: 023–EE085.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 22, 1999.
Reasons Waived: The owner had to locate alternate source of financing to meet section 106 historic preservation requirement.

29. *Regulation:* 24 CFR 891.100(d).
Project/Activity: Full Harvest Housing, Osceola, Iowa, Project Number: 074–EE032.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 10, 1999.
Reasons Waived: The project was adversely affected by "economy of scale" issues connected to a project of 25 total units and by a construction boom in the area.

30. *Regulation:* 24 CFR 891.100(d).
Project/Activity: Clinton House, Detroit, Michigan,Project Number: 044–HD020.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 16, 1999.
Reasons Waived: The actual cost of the project exceeded the fund reservation amount. Requirements of the City of Detroit caused the additional cost for development of the project.

31. *Regulation:* 24 CFR 891.165.
Project/Activity: Southern New Hampshire Services; Project Number: 024–EE032.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 2, 1999.
Reasons Waived: The sponsor/owner changed sites twice due to denial of discretionary land use approvals by the towns.

32. *Regulation:* 24 CFR 891.165.
Project/Activity: The Elms, Project Number: 024–HD022.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 2, 1999.
Reasons Waived: The sponsor/owner had to change sites.

33. *Regulation:* 24 CFR 891.165.
Project/Activity: Interfaith Housing, Westport, Connecticut, Project Number: 017–HD015.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 8, 1999.
Reasons Waived: The sponsor had difficulty obtaining affordable sites in the Country's most affluent county.

34. *Regulation:* 24 CFR 891.165.
Project/Activity: McKinley III, Chicago, Illinois, Project Number: 071–HD093.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 8, 1999.
Reasons Waived: Time was needed for HUD to process the firm application and review the closing documents.

35. *Regulation:* 24 CFR 891.165.
Project/Activity: Barbara Chappelle Manor, Grenada, Mississippi, Project Number: 065–EE018.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 12, 1999.
Reasons Waived: The sponsor/owner was forced to change sites because of local opposition. Additional time was needed to conduct the appraisal and survey of the new site.

36. *Regulation:* 24 CFR 891.165.
Project/Activity: Jackson Place, Project Number: 136–HD009.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 22, 1999.
Reasons Waived: Cost problems resulted in the sponsor/owner having to identify additional funding resources for project feasibility.

37. *Regulation:* 24 CFR 891.165.
Project/Activity: Lake Champlain Housing Development, Project Number: 024–HD024.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 23, 1999.
Reasons Waived: Negotiations with local governmental agencies caused the delay in submission of the firm application.

38. *Regulation:* 24 CFR 891.165.
Project/Activity: Ellery Court Senior Housing, New York, New York, Project Number: 012–EE186.
Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable

Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 23, 1999.

Reasons Waived: Time was needed for HUD to process the firm application.

39. *Regulation:* 24 CFR 891.165.

Project/Activity: Rockland ARC Living Alternatives, New York, New York, Project Number: 012–HD061.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: February 26, 1999.

Reasons Waived: The sponsor/owner had to complete a very lengthy and complex New York State site approval process.

40. *Regulation:* 24 CFR 891.165.

Project/Activity: Council Towers IV, New York, New York, Project Number: 012–EE211.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date granted: February 26, 1999.

Reasons Waived: It took the professional cost estimator extra time to submit a product acceptable to HUD, and the sponsor's Firm Commitment application was revised several times in the course of 12 months in order to achieve feasibility.

41. *Regulation:* 24 CFR 891.165.

Project/Activity: Independent Living Apartment Complex, Project Number: 140–HD014.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 10, 1999.

Reasons Waived: Time was needed because during the processing of the firm commitment, a legal problem was discovered with the site. A new survey had to be completed in order to revise the legal description of the property. The delay was beyond the control of the owner.

42. *Regulation:* 24 CFR 891.165.

Project/Activity: Cross Lanes Unity Apartments, Cross Lanes, West Virginia, Project Number: 045–EE009.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 12, 1999.

Reasons Waived: Sponsor/owner had to acquire additional sources of funding for the project.

43. *Regulation:* 24 CFR 891.165.

Project/Activity: East 21st Street Midwood Residence, Project Number: 012–HD052.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 16, 1999.

Reasons Waived: Several review deficiencies had to be corrected by the sponsor prior to acceptance of the application for processing. Also, a lengthy New York State site review and approval process had to be completed.

44. *Regulation:* 24 CFR 891.165.

Project/Activity: Hale O Mana'O Lana Housing, Wailuku, Hawaii, Project Number: 140–HD015.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 16, 1999.

Reasons Waived: Additional time was needed for the owners to obtain a survey and file an application to subdivide the property in the Land Court.

45. *Regulation:* 24 CFR 891.165.

Project/Activity: W.K. Nursing Home Housing for the Elderly, New York, New York, Project Number: 012–EE212.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 16, 1999.

Reasons Waived: Time was needed for the sponsor/owner to address the site's environmental problems and for HUD to review the firm application.

46. *Regulation:* 24 CFR 891.165.

Project/Activity: Victoria Jennings Residences, Chicago, Illinois, Project Number: 071–HD088.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 16, 1999.

Reasons Waived: Time was needed for HUD to process the firm application and review the closing documents.

47. *Regulation:* 24 CFR 891.165.

Project/Activity: Crystal Court Apartments, Chicago, Illinois, Project Number: 071–HD009.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 16, 1999.

Reasons Waived: The sponsor/owner needed additional time to obtain a building permit from the City of Chicago.

48. *Regulation:* 24 CFR 891.165.

Project/Activity: Salvation Army Group Home-Pulaski, New York, New York, Project Number: 012–HD029.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 16, 1999.

Reasons Waived: Additional time was required to complete the approval process for city-owned land and to clear project for initial closing.

49. *Regulation:* 24 CFR 891.165.

Project/Activity: Salvation Army Group Home-Topping, New York, New York, Project Number: 012–HD027.

Nature of Requirement: HUD provides capital advances under section 202 of the

Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 16, 1999.

Reasons Waived: Additional time was required to complete the approval process for city-owned land and to clear the project for initial closing.

50. *Regulation:* 24 CFR 891.165.

Project/Activity: Randolph Housing Services, Randolph, Vermont, Project Number: 024–EE034.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 16, 1999.

Reasons Waived: Additional time was required for the sponsor/owner to resolve historic preservation concerns.

51. *Regulation:* 24 CFR 891.165.

Project/Activity: Jefferson Cottage, Charles Town, West Virginia, Project Number: 045–HD021.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 17, 1999.

Reasons Waived: The project was delayed due to the owner's inability to obtain subdivision approval from the local county commission in a timely manner.

52. *Regulation:* 24 CFR 891.165.

Project/Activity: Jefferson Villa, Charles Town, West Virginia, Project Number: 045–HD022.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 17, 1999.

Reasons Waived: Sponsor/owner was unable to obtain a timely subdivision approval from the local county commission.

53. *Regulation:* 24 CFR 891.165.

Project/Activity: Kaneohe Elderly, Kaneohe, Oahu, Hawaii, Project Number: 140–EH015.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 17, 1999.

Reasons Waived: Additional time was needed by HUD to process the firm commitment application and for the project to reach initial closing.

54. *Regulation:* 24 CFR 891.165.

Project/Activity: Hale Mahaolu Eono, Kaunakakai, Hawaii, Project Number: 140–EE014.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 17, 1999.

Reasons Waived: Time was needed for HUD to process the firm application.

55. *Regulation:* 24 CFR 891.165.

Project/Activity: Kaneohe Elderly, Kaneohe, Oahu, Hawaii, Project Number: 140–EH015.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 17, 1999.

Reasons Waived: The project is being developed in conjunction with units funded through other funding sources and delays have been caused by trying to get all funding commitments in order.

56. *Regulation:* 24 CFR 891.165.

Project/Activity: Becerra Apartments, Project Number: 136–HD008.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 18, 1999.

Reasons Waived: The initial closing was delayed due to the length of time it took the sponsor/owner to identify additional funding resources for project feasibility.

57. *Regulation:* 24 CFR 891.165.

Project/Activity: Accessible Space-Corpus, Corpus Christi, Texas, Project Number: 115–HD022.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 18, 1999.

Reasons Waived: Time was needed for HUD to process the firm application and review the closing documents.

58. *Regulation:* 24 CFR 891.165.

Project/Activity: Covenant Place, Project Number: 075–EE045.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 20, 1999.

Reasons Waived: Additional time was needed for HUD legal staff to review documents.

59. *Regulation:* 24 CFR 891.165.

Project/Activity: Tongore Pines, Project Number: 012–EE193.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 1999.

Reasons Waived: The project's original architect failed to produce a feasible project and the sponsor/owner had to retain a new project architect.

60. *Regulation:* 24 CFR 891.165.

Project/Activity: Royal Gardens, Chicago, Illinois, Project Number: 071–EE125.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 1999.

Reasons Waived: The sponsor/owner had difficulty identifying additional funding for the project.

61. Regulation: 24 CFR 891.165.

Project/Activity: Habilitative Systems, Chicago, Illinois, Project Number: 071-EE115.

Nature of Requirement: Request for fund reservation extension. Duration of capital advance.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 1999.

Reasons Waived: The sponsor/owner filed for secondary financing for money to cover other expenses needed for this project, and the Chicago staff is in the process of completing the mortgage credit review.

62. Regulation: 24 CFR 891.165.

Project/Activity: Evangeline Booth Garden Apartments, Ocala, Florida, Project Number: 063-EE011.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 24, 1999.

Reasons waived: Additional time was required for HUD to complete the processing for the project.

63. *Regulation:* 24 CFR 891.165.

Project/Activity: Passaic Consumer Home, Passaic, New Jersey, Project Number: 031–HD074.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 24, 1999.

Reasons waived: Time was needed for HUD to review the initial closing package and schedule a closing date.

64. *Regulation:* 24 CFR 891.165.

Project/Activity: Abraham Lincoln Centre, Chicago, Illinois, Project Number: 071–HD095.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 1999.

Reasons waived: Delays were caused by a new land acquisition policy for city-owned parcels that involved Aldermanic approval, and owner had to secure additional funding.

65. *Regulation:* 24 CFR 891.165.

Project/Activity: Franklin Place, Elizabethton, Tennessee, Project Number: 087–EE028.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 1999.

Reasons waived: Delays were caused by problems with the site, and HUD needed time to process the firm commitment-application.

66. *Regulation:* 24 CFR 891.165.

Project/Activity: Woodgrove Apartments, Maryville, Tennessee, Project Number: 087–HD033.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 1999.

Reasons waived: Due to neighborhood opposition, the owner had to relocate the project to another site.

67. *Regulation:* 24 CFR 891.165.

Project/Activity: Micki Thompson Apartments, Crossville, Tennessee, Project Number: 087–HD030.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 1999.

Reasons waived: Additional time was needed for the owner to obtain additional funds for feasibility and for HUD to process the firm application.

68. Regulation: 24 CFR 891.165.

Project/Activity: Lloyd Street Apartments, Oneida, Tennessee, Project Number: 087-HD031.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 1999.

Reasons Waived: The original site was lost due to a misrepresentation by the seller, and the owner had difficulty locating another site.

69. Regulation: 24 CFR 891.165.

Project/Activity: Chandler Supportive Housing, Chandler, Arizona, Project Number: 123–HD015.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 30, 1999.

Reasons Waived: Time needed for HUD to review firm application.

70. Regulation: 24 CFR 891.165.

Project/Activity: Kuehl Apartments, Project Number: 033–HD031.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 30, 1999.

Reasons Waived: Delays were caused by a change in construction methods from rehabilitation to new construction in order to make the project feasible.

71. Regulation: 24 CFR 891.165.

Project/Activity: Poux Apartments, Project Number: 033–HD030.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 31, 1999.

Reasons Waived: The sponsor/owner had to change sites due to public opposition.

For Items 72 Through 74, Waivers Granted for 24 CFR Part 891, Contact: Jerold Nachison, Eastern and Atlantic Servicing Branch, Office of Portfolio Management,

Room 6168, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telelphone (202) 708–3730 (this is not a toll-free number). Hearing-or speech impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

72. Regulation: 24 CFR 891.575 and 610(c).

Project/Activity: Long Beach, California (Village Congregational, Project No. 122–EH235). The Los Angeles Multifamily HUB has requested an income and age waiver for this project.

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to Very Low Income (VLI) elderly persons (i.e., households composed of 1 or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 22, 1999.

Reasons Waived: The Assistant Secretary granted the waiver, which provides guidance on project oversight and is based on the special circumstances of this case. The waiver is requested to assist the project in reaching full occupancy in the local market.

73. Regulation: 24 CFR 891.575 and 610(c).

Project/Activity: Muskegon, Michigan (Christian Manor, Project No. 047–EH069). The Detroit Multifamily HUB requested an income and age waiver for this project.

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to Very Low Income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner..

Date Granted: February 22, 1999.

Reasons Waived: The Assistant Secretary granted the waiver because of the area's "soft" housing market and the difficulty in renting remaining units. The waiver would allow project management additional flexibility in attempting to rent up these units and perhaps start a waiting list.

74. Regulation: 24 CFR 891.575 and 610(c).

Project/Activity: The Philadelphia Multifamily Hub requested waiver of the age requirement for 10 current heads of household/tenants under the age of 62 at the Sarah Allen Senior Housing Project, Project No. 034–EE018, in Philadelphia, Pennsylvania.

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to Very Low Income (VLI) elderly persons (i.e., households composed of 1 or more persons at least one of who is 62 years of age at time of initial occupancy).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 22, 1999.

Reasons Waived: The waiver is based on the circumstances of this case in which the sponsoring organization apparently did not pay attention at the application workshop nor properly read the materials, and used the same occupancy plan that was used with prior Section 202/811 projects. Hub staff have requested immediate revision of the occupancy plan, tenant selection criteria, and management plan as soon as possible for submission to the Hub Director for approval in efforts to restore the project to Section 202/PRAC for the elderly. Additionally, the waiting list for non-elderly disabled individuals or families must be abolished immediately and those inappropriately housed must be helped to locate to other subsidized projects in which they may be housed.

For Items 75 Through 80, Waivers Granted for 24 CFR Parts 982 and 983, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, Office of Public and Indian Housing, Room 4204, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–5000; telephone (202) 619–8201 (this is not a toll-free number). Hearing-or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

75. Regulation: 24 CFR 982.302(b) and (c); 982.305(a)(3), (c), (d), and (e); 982.307(b); 982.308(b), (c), and (d); 982.309; 982.310; 982.311; 982.313; part 982, subpart J; 982.622(b)(2) and (b)(4); and 982.623 (c) and (d).

Project/Activity: Section 557 of the Quality Housing and Work Responsibility Act of 1998 provides that HUD shall carry out a demonstration program during fiscal years 1999, 2000, and 2001. The purpose of the demonstration is to test the effectiveness of providing tenant-based assistance payments directly to manufactured home owners who wish to rent the manufactured home space with Section 8 assistance in cases where the owner of the real property (the manufactured home space) refuses to participate in the Section 8 rental assistance program. The statute limits public housing agency participation in this demonstration to the Housing Authority of the County of San Diego and the Housing Authority of the City of San Diego (the San Diego Housing Commission).

Nature of Requirement: The regulations provide that housing assistance payments must be made to the owner of the real property (manufactured home space) and include various other owner requirement (e.g., executing a housing assistance payment contract and security deposits, etc.).

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: February 10, 1999.

Reasons Waived: To permit the San Diego Housing Commission and Housing Authority of the County of San Diego to make Section 8 housing assistance payments for the rental of manufactured home spaces directly to manufactured home owners (participating families) under the manufactured housing demonstration program.

76. Regulation: 24 CFR 982.303(b)(1).

Project/Activity: Shrewsbury Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 20, 1999.

Reasons Waived: Approval of the waiver provided the certificate holder additional time to seek housing. The certificate holder experienced extreme difficulty in locating a suitable unit.

77. Regulation: 24 CFR 982.303(b)(1).

Project/Activity: Housing Authority of Alameda County, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: March 2, 1999.

Reasons Waived: The waiver provided extra search time to a certificate holder who was bedridden during the period the certificate was in effect.

78. Regulation: 24 CFR 982.303(b)(1).

Project/Activity: Housing Authority of Alameda County, California; Section 8 Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: March 2, 1999.

Reasons Waived: The waiver permitted a certificate holder to complete the necessary paperwork for moving into a suitable unit.

79. Regulation: 24 CFR 982.307(b)(i).

Project/Activity: Linn-Benton Housing Authority, Oregon; Section 8 Certificate Program.

Nature of Requirement: This section of the regulations requires the housing agency to provide the owner with specific information about the tenant.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: March 26, 1999.

Reasons Waived; As a reasonable accommodation to the family, the housing authority was not required to supply the family's previous address to the new landlord.

80. Regulation: 24 CFR 983.7(b)(2), 983.8, 983.101, and 983.203(a)(4).

Project/Activity: The New Brunswick Housing and Redevelopment Authority, New Jersey requested the waivers to provide project-based certificate assistance for 40 units at Providence Square Apartments.

Nature of Requirement: The regulations prohibit attachment of assistance to housing for which rehabilitation is started before an agreement execution (24 CFR 983.7(b)(2)), require a rehabilitation expenditure of $1,000 per unit (24 CFR 983.8), require an agreement to rehabilitate (24 CFR 983.101), and require that participants must be selected from the housing agency's waiting list (983.203(a)(4)).

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: January 6, 1999.

Reasons Waived: The waivers covered 40 elderly families who were living at Providence Square. Providence Square is a 98-unit apartment building for the elderly. Section 219 of HUD's 1997 Appropriations Act authorized PBC assistance for Providence Square. Approval of the waivers provided assistance to Section 8 eligible in-place elderly tenants and prevented hardship that would otherwise be caused by their displacement.

[FR Doc. 99–20802 Filed 8–11–99; 8:45 am]
BILLING CODE 4210–32–P

VOL
64
ISS
1
5
5
AG
12
999
UMI

federal register

Thursday
August 12, 1999

Part III

Department of Housing and Urban Development

24 CFR Part 108
Compliance Procedures for Affirmative Fair Housing Marketing; Nomenclature Change; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 108

[Docket No. FR–4514–F–01]

RIN 2529–AA87

Compliance Procedures for Affirmative Fair Housing Marketing; Nomenclature Change

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: HUD's regulations at 24 CFR part 108 cover compliance procedures for affirmative fair housing marketing. As a result of internal HUD organizational changes, the offices referred to in these regulations no longer exist as they did when the regulations were issued. This final rule updates these references. This final rule also incorporates language that all correspondence that could lead to an enforcement action against a small entity (such as audits, investigations, or compliance reviews) will notify the small entity of its right to comment to the National Small Business Ombudsman. This requirement is added in accordance with the Small Business Regulatory Enforcement Fairness Act.

DATES: *Effective date:* September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Pamela D. Walsh, Office of Fair Housing and Equal Opportunity, Room 5224, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–2000; telephone (202) 708–2288 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

HUD's regulations at 24 CFR part 108 cover compliance procedures for affirmative fair housing marketing. These regulations were published in 1979. Since then, HUD and the Office of Fair Housing and Equal Opportunity have experienced several reorganizations. As currently promulgated, the regulations define a compliance process that requires two offices to perform complementary monitoring and reviewing functions. An Area Office is primarily responsible for monitoring functions and a Regional Office is primarily responsible for reviewing functions. As a result of recent internal HUD organizational changes, however, these offices no longer exist as they did when the regulations were issued in 1979.

This final rule replaces references to Area Office and Regional Office with the terms *monitoring office* and *civil rights/compliance reviewing office*, respectively. These terms do not correspond to actual offices within HUD, but are intended to reflect the functions of each office within the compliance process. HUD will publish concurrently with this final rule a notice in the **Federal Register** that designates the specific offices within HUD that will act as monitoring and civil rights/compliance reviewing offices under this part. In the future, should HUD's internal organizational structure change again, the specific offices that will act as monitoring and civil rights/compliance reviewing offices will again be designated through a notice published in the **Federal Register**.

With respect to compliance reviews, which are addressed in 24 CFR part 108, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its notice describing HUD's actions on implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration (SBA) to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD. Accordingly, this rule adopts the language requested by the SBA and it is included in § 108.25(b).

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). For the following reasons, HUD finds that good cause exists to publish this rule for effect without first soliciting public comment.

This final rule makes nomenclature changes to 24 CFR part 108. As a result of internal HUD organizational changes the offices referred to in the current regulations no longer exist as they did when the regulations were issued. This final rule merely replaces references to Area Office and Regional Office with the terms *monitoring office* and *civil rights/compliance reviewing office*, respectively. This rule also amends 24 CFR part 108 to include "notification" language to small entities, consistent with SBREFA, which the SBA has requested Federal agencies adopt in their enforcement regulations, and which HUD has agreed to adopt in its enforcement regulations. Neither of these two amendments make any substantive changes to the compliance procedures contained in part 108. Therefore, we have determined that it is unnecessary to publish this rule for public comment prior to publishing the rule for effect.

III. Findings and Certifications

Environmental Impact

This final rule involves regulations that set out fair housing or nondiscrimination standards or enforcement procedures. Accordingly, under 24 CFR 50.19(c)(3), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (Public Law 91–190, 83 Stat. 852, codified as amended at 42 U.S.C. 4321–4347).

Regulatory Flexibility Act

Section 605(b). The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities. This final rule implements a nomenclature change only and does not make any substantive changes to the regulations at 24 CFR part 108. Therefore, the action taken by this rule (the nomenclature change) does not create any additional burden.

Section 610. HUD notes, however, that changes were last made to this rule in 1985. Section 610 of the Regulatory Flexibility Act requires Federal Agencies to review every ten years existing regulations that have or will have a significant economic impact on a substantial number of small entities. The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities. In deciding whether change is necessary, the Regulatory Flexibility Act establishes several factors that must be considered:

(1) Whether the rule is still needed;

(2) What type of complaints or comments were received from the public concerning the rule;

(3) The complexity of the rule;

(4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

During the years that the regulations in 24 CFR part 108 have been in effect, HUD has not received any data that indicates that the requirements of this part have had a significant economic impact on a substantial number of small entities. Nevertheless, HUD has reviewed this rule in accordance with the principles of section 610.

(1) This rule is only applicable to participants in certain HUD programs, as specified in § 108.1. Because HUD's mission is to provide a decent, safe and sanitary home and suitable living environment for every American, and this mission encompasses fighting for fair housing and increasing affordable housing and homeownership, HUD believes that this rule is needed for HUD's programs. HUD's programs should provide the leadership in marketing sales and rentals of homes that affirmatively furthers fair housing.

(2) HUD has not received complaints about this rule.

(3) The rule is not complex.

(4) The rule does not overlap, duplicate or conflict with other Federal rules, nor, to the extent feasible, with State and local governmental rules. Again, this rule is only applicable to HUD programs.

(5) The rule was last evaluated in 1995 as part of President Clinton's directive to all Federal agencies to review all existing regulations and determine which regulations were obsolete, no longer necessary or could be consolidated with other regulations. In 1995, HUD determined, as it has now, that this rule is needed, and that the rule did not duplicate other HUD regulations, and therefore consolidation with other regulations was not appropriate.

The marketing techniques addressed by this rule have changed given the change in technology. The rule, however, does not regulate the type of marketing techniques used. Rather, the rule provides that whatever marketing techniques the HUD program participant commits to utilize in its Affirmative Fair Housing Marketing (AFHM) plan, the participant utilizes such techniques to affirmatively further fair housing.

As noted earlier, although this rule makes no substantive changes to 24 CFR part 108, only nomenclature changes, HUD welcomes comments from its program participants about its part 108 regulation and their experience with its requirements to date. Comments that provide a factual basis for any views or suggestions presented are particularly helpful to HUD in its evaluation of this regulation. Comments should be submitted to: Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the docket number of FR–4514–F–01.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects in 24 CFR Part 108

Fair housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 108 as follows:

PART 108—COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

1. The authority citation for part 108 is revised to read as follows:

Authority: 42 U.S.C. 3608, 3535(d); E.O. 11063, 27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652; E.O. 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.

2. Add new paragraphs (e) and (f) to § 108.1 to read as follows:

§ 108.1 Purpose and application.

* * * * *

(e) The term monitoring office includes any office within HUD designated by HUD to act as a monitoring office. As necessary, HUD will designate specific offices within HUD to act as monitoring offices through a notice published in the **Federal Register**.

(f) The term *civil rights/compliance reviewing office* includes any office within HUD designated by HUD to act as a civil rights/compliance reviewing office. As necessary, HUD will designate specific offices within HUD to act as civil rights/compliance reviewing offices through a notice published in the **Federal Register**.

3. Revise the first and second sentences of § 108.15 to read as follows:

§ 108.15 Pre-occupancy conference.

Applicants shall submit a Notification of Intent to Begin Marketing to the monitoring office no later than 90 days prior to engaging in sales or rental marketing activities. Upon receipt of the Notification of Intent to Begin Marketing from the applicant, the monitoring office shall review any previously approved plan and may schedule a pre-occupancy conference. * * *

4. Revise § 108.20 to read as follows:

§ 108.20 Monitoring office responsibility for monitoring plans and reports.

(a) *Submission of documentation.* Pursuant to initiation of marketing, the applicant shall submit to the monitoring office reports documenting the implementation of the AFHM plan, including sales or rental reports, as required by the Department. Copies of such documentation shall be forwarded to the civil rights/compliance reviewing office by the monitoring office as requested.

(b) *Monitoring of AFHM plan.* The monitoring office is responsible for monitoring AFHM plans and providing technical assistance to the applicant in preparation or modification of such plans during the period of development and initial implementation.

(c) *Review of applicant's reports.* Each sales or rental report shall be reviewed by the monitoring office as it is received. When sales or rental reports show that 20% of the units covered by the AFHM plan have been sold or rented, or whenever it appears that the plan may not accomplish its intended objective, the monitoring office shall notify the civil rights/compliance reviewing office.

(d) *Failure of applicant to file documentation.* If the applicant fails to file required documentation, the applicant shall be sent a written notice indicating that if the delinquent documentation is not submitted to the monitoring office within 10 days from date of receipt of the notice, the matter will be referred to the civil rights/compliance reviewing office by the monitoring office for action which may lead to the imposition of sanctions.

5. Revise § 108.21 to read as follows:

§ 108.21 Civil rights/compliance reviewing office compliance responsibility.

The civil rights/compliance reviewing office shall be responsible for determining whether an applicant's actions are in apparent compliance with its approved AFHM plan, the AFHM regulations, and this part and for determining changes or modifications necessary in the plan after initiation of marketing.

6. Revise paragraphs (a), (b), (d), (e), (f), (g), and (h) of § 108.25 to read as follows:

§ 108.25 Compliance meeting.

(a) *Scheduling meeting.* If an applicant fails to comply with requirements under § 108.15 or § 108.20 or it appears that the goals of the AFHM plan may not be achieved, or that the implementation of the Plan should be modified, the civil rights/compliance reviewing office shall schedule a meeting with the applicant. The meeting shall be held at least ten days before the next sales or rental report is due. The purpose of the compliance meeting is to review the applicant's compliance with AFHM requirements and the implementation of the AFHM Plan and to indicate any changes or modifications which may be required in the Plan.

(b) *Notice of Compliance Meeting.* A Notice of Compliance Meeting shall be sent to the last known address of the applicant, by certified mail or through personal service. The Notice will advise the applicant of the right to respond within seven (7) days to the matters identified as subjects of the meeting and to submit information and relevant data evidencing compliance with the AFHM regulations, the AFHM Plan, Executive Order 11063 and title VIII of the Civil Rights Act of 1968, when appropriate. If the applicant is a small entity, as defined by the regulations of the Small Business Administration, the Notice shall include notification that the entity may submit comment on HUD's actions to the Small Business and Agriculture Regulatory Enforcement Ombudsman, and shall include the appropriate contact information.

* * * * *

(d) *Preparation for the compliance meeting.* The monitoring office will provide information concerning the status of the project or housing involved to be presented to the applicant at the meeting. The monitoring office shall be notified of the meeting and may send representatives to the meeting.

(e) *Resolution of matters.* Where matters raised in the compliance meetings are resolved through revision to the plan or its implementation, the terms of the resolution shall be reduced to writing and submitted to the civil rights/compliance reviewing office within 10 days of the date of the compliance meeting.

(f) *Determination of compliance.* If the evidence shows no violation of the AFHM regulations and that the applicant is complying with its approved AFHM plan and this part, the civil rights/compliance reviewing office shall so notify the applicant within 10 days of the meeting.

(g) *Determination of possible noncompliance.* If the evidence indicates an apparent failure to comply with the AFHM plan or the AFHM regulation, or if the matters raised cannot be resolved, the civil rights/compliance reviewing office shall so notify the applicant no later than ten (10) days after the date the compliance meeting is held, in writing by certified mail, return receipt requested, and shall advise the applicant that the Department will conduct a comprehensive compliance review or refer the matter to the Assistant Secretary for Fair Housing and Equal Opportunity for consideration of action including the imposition of sanctions. The purpose of a compliance review is to determine whether the applicant has complied with the provisions of Executive Order 11063, title VIII of the Civil Rights Act of 1968, and the AFHM regulations in conjunction with the applicant's specific AFHM plan previously approved by HUD.

(h) *Failure of applicant to attend the meeting.* If the applicant fails to attend the meeting scheduled pursuant to this section, the civil rights/compliance reviewing office shall so notify the applicant no later than ten (10) days after the date of the scheduled meeting, in writing by certified mail, return receipt requested, and shall advise the applicant as to whether the civil rights/compliance reviewing office will conduct a comprehensive compliance review or refer the matter to the Assistant Secretary for Fair Housing and Equal Opportunity for consideration of action including the imposition of sanctions.

7. Revise the first and second sentences of § 108.35 to read as follows:

§ 108.35 Complaints.

Individuals and private and public entities may file complaints alleging violations of the AFHM regulations or an approved AFHM plan with any monitoring office, civil rights/compliance reviewing office, or with the Assistant Secretary for FH&EO. Complaints will be referred to the civil rights/compliance reviewing office.

* * *

8. Revise paragraphs (a) and (b) of § 108.40 to read as follows:

§ 108.40 Compliance reviews.

(a) *General.* All compliance reviews shall be conducted by the civil rights/compliance reviewing office. Complaints alleging a violation(s) of the AFHM regulations, or information ascertained in the absence of a complaint indicating an applicant's failure to comply with an AFHM plan, shall be referred immediately to the civil rights/compliance reviewing office. The monitoring office shall be notified as appropriate of all alleged violations of the AFHM regulations or alleged failure to comply with an AFHM plan.

(b) *Initiation of compliance reviews.* Even in the absence of a complaint or other information indicating

noncompliance pursuant to paragraph (a), the civil rights/compliance reviewing office may conduct periodic compliance reviews throughout the life of the mortgage in the case of multi-family projects and throughout the duration of the Housing Assistance Payments Contract with the Department in the case of housing assisted under section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437.

* * * * *

§ 108.45 [Amended]

9. Remove the last sentence of § 108.45.

Dated: July 26, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99–20801 Filed 8–11–99; 8:45 am]

BILLING CODE 4210–28–P

VOL
64
ISS
1
5
5
AG
12
999
UMI

Federal Register

Thursday
August 12, 1999

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 17
Federal Acquisition Regulation; Executive Agent; Proposed Rule

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 17

[FAR Case 99–004]

RIN 9000–AI42

Federal Acquisition Regulation; Executive Agent

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to add another example of an interagency acquisition that is not subject to the Economy Act.

DATES: Comments should be submitted on or before October 12, 1999, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Stret, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.99–004@gsa.gov.

Please cite FAR case 99–004 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 99-004.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR 17.500(b) to add another example of an intergency acquisition that is not subject to the Economy Act. The new example is an acquisition of information technology by an agency that has been designated an executive agent by the Office of Management and Budget under the authority of Pub. L. 104–106, Section 5112(e).

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866. Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal Government administrative procedures. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 99–004), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 17

Government procurement.

Dated: August 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR part 17 be amended as set forth below:

PART 17—SPECIAL CONTRACTING METHODS

1. The authority citation for 48 CFR part 17 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 17.500 to read as follows:

17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). The Economy Act also provides authority for placement of orders between major organizational units within an agency. Agency regulations address procedures for these intra-agency transactions.

(b) The Economy Act applies when more specific statutory authority does not exit. Examples of interagency acquisitions to which the Economy Act does not apply include—

(1) Acquisitions from required sources of supplies prescribed in part 8, which have separate statutory authority; and

(2) Acquisitions of information technology from agencies designated by OMB as executive agents under the authority of Pub. L. 104–106, Section 5112(e) (40 U.S.C. 1412(e)).

[FR Doc. 99–20848 Filed 8–11–99; 8:45 am]

BILLING CODE 6820–EP–M

Reader Aids

Federal Register

Vol. 64, No. 155

Thursday, August 12, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998 2
41999–42264 3
42265–42578 4
42579–42822 5
42823–43042 6
43043–43254 9
43255–43598 10
43599–43896 11
43897–44100 12

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895

7 CFR

11 43043
610 41999
989 43897
1728 42005

Proposed Rules:
6 42288
354 43103
931 42858
932 42619
981 43298
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043
390 43902

Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049

Proposed Rules:
361 ..... 42861, 42862

13 CFR

Proposed Rules:
120 43636

14 CFR

4 43599
27 43016
29 43016
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907
254 41781
382 41781

Proposed Rules:
25 ..... 43570, 43943, 43946
39 ..... 41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966
65 42810
66 42810
71 ..... 42300, 42301
107 43321
108 43322
147 42810

15 CFR

734 42009
738 42009
740 42009
742 42009
902 42826

16 CFR

2 43599
5 42594

Proposed Rules:
1212 42302

17 CFR

9.....43254
10.....43071
12.....43071
200.....42594
240.....42031, 42594
249.....42594

Proposed Rules:

4.....41843
275.....43556

18 CFR

Proposed Rules:

101.....42304
343.....43600
357.....42623
385.....42307, 43600

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
151.....43608
162.....43262
173.....43262
174.....43262, 43608
178.....43608
181.....43262

Proposed Rules:

12.....41851
113.....41851, 42672
141.....41851

20 CFR

Proposed Rules:

404.....42310
416.....42310

21 CFR

101.....42277
172.....43072, 43908
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596, 43909
1308.....42432
1312.....42432

Proposed Rules:

101.....42315
207.....43114
314.....42625, 42873
607.....43114
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032

24 CFR

108.....44094
982.....43613

Proposed Rules:

990.....43641

26 CFR

1.....41783, 43072, 43267, 43613, 43910
31.....42831
301.....41783
602.....41783, 43072, 43613
801.....42834

Proposed Rules:

1.....43117, 43323, 43462, 43969
301.....43324
602.....43462

28 CFR

505.....43880

29 CFR

2570.....42246
2575.....42246

Proposed Rules:

2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75.....43280, 43286
90.....43283
202.....43506
206.....43286, 43506
250.....42597
914.....43911
943.....43913

Proposed Rules:

935.....42887
936.....43327

31 CFR

538.....41784
550.....41784
560.....41784
590.....43924

Proposed Rules

375.....42626

32 CFR

Proposed Rules:

230.....43856
231.....43858
231a.....43856

33 CFR

100.....42278, 42596, 43289
110.....42279
117.....42033, 42599
160.....41794
165.....43290, 43291

Proposed Rules:

100.....41853

34 CFR

611.....42837

Proposed Rules:

668.....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682.....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:

13.....41854
1191.....42056

37 CFR

Proposed Rules:

201.....42316

39 CFR

20.....43292

40 CFR

9.....42432, 43426, 43936
52.....42600, 43083
58.....42530
62.....43091
63.....42764
86.....43936
122.....42432, 43426
123.....42432, 43426
124.....42432, 43426
180.....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846
186.....41818
261.....42033
271.....41823, 42602
403.....42552
501.....42432, 43426
503.....42552
745.....42849

Proposed Rules:

52.....42629, 42888, 42891, 42892
147.....43329
261.....42317
62.....43123
97.....43124
300.....43970
271.....42630, 43331
281.....43336
300.....41875, 42328, 42630, 43129, 43641
372.....42222

41 CFR

301.....43254

Proposed Rules:

51-2.....41882
51-5.....41882

42 CFR

413.....42610
498.....43295
1001.....42174

Proposed Rules:

Ch. IV.....43338

44 CFR

61.....41825
64.....42852
206.....41827

Proposed Rules:

61.....42632
62.....42633

45 CFR

801.....42039

46 CFR

10.....42812
12.....42812

Proposed Rules:

535.....42057

47 CFR

0.....43618
1.....42854
5.....43094
43.....43618
62.....43937
63.....43095, 43618
64.....43618
73.....41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095
76.....42617, 42855
90.....43094

Proposed Rules:

Ch. 1.....41883, 42635
1.....41884, 41887
2.....41891, 43643
15.....41897
51.....41897
68.....41897
73.....41899, 43132
76.....41887
78.....41899
95.....41891

48 CFR

202.....43096
204.....43098
212.....43098
213.....43098
217.....43096
252.....43098
253.....43098
601.....43618
602.....43618
603.....43618
604.....43618
605.....43618
606.....43618
608.....43618
609.....43618
610.....43618
611.....43618
613.....43618
614.....43618
615.....43618
616.....43618
617.....43618
619.....43618
622.....43618
623.....43618
625.....43618
626.....43618
628.....43618
629.....43618
630.....43618
631.....43618
632.....43618
633.....43618
634.....43618
636.....43618
637.....43618
639.....43618
641.....43618
642.....43618
643.....43618
644.....43618
645.....43618
646.....43618
647.....43618
649.....43618

652.....43618
653.....43618
701.....42040
702.....42040
703.....42040
705.....42040
706.....42040
709.....42040
714.....42040
716.....42040
719.....42040
726.....42040
732.....42040
733.....42040
734.....42040
749.....42040
750.....42040
752.....42040
5416.....41834

Proposed Rules:
17.....44100

49 CFR

Proposed Rules:
190.....43972
571.....42330

50 CFR

17.....41835
600.....42286
622.....43941
635.....42855, 43101
648.....42042, 42045
660.....42286, 42856
679.....41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942

Proposed Rules:
17.....41903, 42058, 42250, 43132
32.....43834
36.....43834
600.....42335, 43137
622.....41905, 42068
648.....42071, 43137, 43138
679.....42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 12, 1999

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Freedom of Information Act; implementation; published 8-12-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf and South Atlantic fisheries—
Gulf of Mexico shrimp; correction; published 8-12-99
ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; motor vehicles and engines:
Federal test procedure for emissions from motor vehicles; reporting and recordkeeping requirements; published 8-12-99
FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Private land mobile services—
900 MHz specialized mobile radio service; construction requirements for Metropolitan Trading Area licensees; correction; published 7-23-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
New drug applications—
Sulfadimethoxine/ ormetoprim; published 8-12-99
Food additive petitions:
Sucralose; published 8-12-99
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; published 8-12-99
Texas; published 8-12-99
JUSTICE DEPARTMENT
Drug Enforcement Administration
Schedules of controlled substances:
Ketamine; placement into Schedule III; published 7-13-99
TREASURY DEPARTMENT
Foreign Assets Control Office
Angola (UNITA) sanctions; published 8-12-99
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Income tax return preparer; identifying number; published 8-12-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant related quarantine, domestic:
Oriental fruit fly; comments due by 8-16-99; published 6-15-99
Plant-related quarantine, domestic:
Mexican fruit fly; comments due by 8-16-99; published 6-15-99
COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; comments due by 8-20-99; published 7-21-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Findings on petitions, etc.—
Barndoor skate; comments due by 8-20-99; published 6-21-99
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 8-16-99; published 7-2-99
Puerto Rico and Virgin Islands coral reef resources; comments due by 8-20-99; published 6-21-99
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permits; comments due by 8-19-99; published 8-4-99
Northeastern United States fisheries—
New England Fishery Management Council; meetings; comments due by 8-16-99; published 7-2-99
West Coast States and Western Pacific fisheries—
West coast salmon; comments due by 8-20-99; published 8-6-99
COMMODITY FUTURES TRADING COMMISSION
Commodity Exchange Act:
Contract market rule review procedures; comments due by 8-16-99; published 7-15-99
DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
Double coverage policy; comments due by 8-16-99; published 6-17-99
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99
DEFENSE DEPARTMENT
Engineers Corps
Water resources development projects; public use; comments due by 8-19-99; published 7-20-99
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Rate schedules filing—
Regional Transmission Organizations; comments due by 8-16-99; published 6-10-99
Oil pipelines:
Annual report; technical conference; comments due by 8-20-99; published 8-5-99
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Off-site waste and recovery operations; comments due by 8-19-99; published 7-20-99
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 8-18-99; published 7-19-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-19-99; published 7-20-99
Louisiana; comments due by 8-18-99; published 7-19-99
Maryland; comments due by 8-19-99; published 7-20-99
Michigan; comments due by 8-20-99; published 7-21-99
Nevada; comments due by 8-16-99; published 6-17-99
Tennessee; comments due by 8-18-99; published 7-19-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Sethoxydim; comments due by 8-16-99; published 6-16-99
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Commercial mobile radio services—
Calling party pays service offering; regulatory obstacles removed; comments due by 8-18-99; published 7-16-99
Radio stations; table of assignments:
California; comments due by 8-16-99; published 7-6-99
Texas; comments due by 8-16-99; published 7-6-99
Wyoming and Utah; comments due by 8-16-99; published 7-6-99
Television broadcasting:
Cable television systems—
12 GHz relay service; eligibility requirements; comments due by 8-16-99; published 8-2-99
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99
Federal travel:
Income tax reimbursement allowance; comments due

by 8-17-99; published 6-18-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Reports and guidance documents; availability, etc.:
Veterinary Medicinal Products, International Cooperation on Harmonisation of Technical Requirements for Registration—
Anthelmintics efficacy; general and specific recommendations; comments due by 8-16-99; published 7-16-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Multifamily housing projects; tenant participation; comments due by 8-16-99; published 6-17-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 8-16-99; published 7-15-99
Maryland; comments due by 8-16-99; published 7-16-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
F and J nonimmigrant aliens; status duration period extension; comments due by 8-16-99; published 6-15-99
Correction; comments due by 8-16-99; published 7-6-99
H petitions filed after numerical cap is reached; treatment; comments due by 8-16-99; published 6-15-99

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Federal Tort Claims Act; comments due by 8-16-99; published 6-15-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Undercapitalized federally-insured credit unions; prompt corrective action system; comments due by 8-16-99; published 5-18-99

INTERIOR DEPARTMENT
National Indian Gaming Commission
Administrative practice and procedure:
Litigation involving agency; testimony, information, and response to subpoena; comments due by 8-16-99; published 7-15-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Supply management program; hearings; comments due by 8-18-99; published 6-21-99

STATE DEPARTMENT
Chemical Weapons Convention and Chemical Weapons Convention Implementation Act:
Sample taking and record keeping and inspections; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Gulf of Alaska, Narrow Cape, Kodiak Island, AK; safety zone; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Standard time zone boundaries:
Kentucky; comments due by 8-20-99; published 6-21-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Checked baggage; security on domestic flights; comments due by 8-17-99; published 6-11-99
Airworthiness directives:
Aerospatiale; comments due by 8-16-99; published 7-16-99
Airbus; comments due by 8-16-99; published 7-15-99
Bell; comments due by 8-16-99; published 6-17-99
Bombardier; comments due by 8-16-99; published 7-16-99
British Aerospace; comments due by 8-16-99; published 7-16-99
Cessna; comments due by 8-16-99; published 7-16-99
Construcciones Aeronauticas, S.A.; comments due by 8-16-99; published 7-16-99
Dornier; comments due by 8-16-99; published 7-16-99
Eurocopter France; comments due by 8-16-99; published 6-17-99
Fairchild; comments due by 8-16-99; published 7-16-99
Fokker; comments due by 8-16-99; published 7-16-99
Gulfstream Aerospace; comments due by 8-16-99; published 7-16-99
Gulfstream American; comments due by 8-16-99; published 7-16-99
International Aero Engines AG; comments due by 8-16-99; published 6-15-99
Lockheed; comments due by 8-16-99; published 7-16-99
McDonnell Douglas; comments due by 8-16-99; published 7-16-99
Mitsubishi; comments due by 8-16-99; published 7-16-99
Saab; comments due by 8-16-99; published 7-16-99
Sabreliner; comments due by 8-16-99; published 7-16-99
Short Brothers; comments due by 8-16-99; published 7-16-99
Airworthiness standards:
Special conditions—
Boeing Model 707-353B airplanes; comments due by 8-20-99; published 7-21-99
Class E airspace; comments due by 8-16-99; published 7-16-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Gross proceeds payments to attorneys; reporting; comments due by 8-19-99; published 5-21-99
Section 467 rental agreements—
Agreements involving payments of $2,000,000; comments due by 8-16-99; published 5-18-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 66/P.L. 106–45

To preserve the cultural resources of the Route 66 corridor and to authorize the Secretary of the Interior to provide assistance. (Aug. 10, 1999; 113 Stat. 224)

Last List August 9, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days before the shown date.

```
                                        /
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days before the shown date.

```
                                        /
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR)**; *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

106th Congress, 1st Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 1st Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 1st Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/98

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

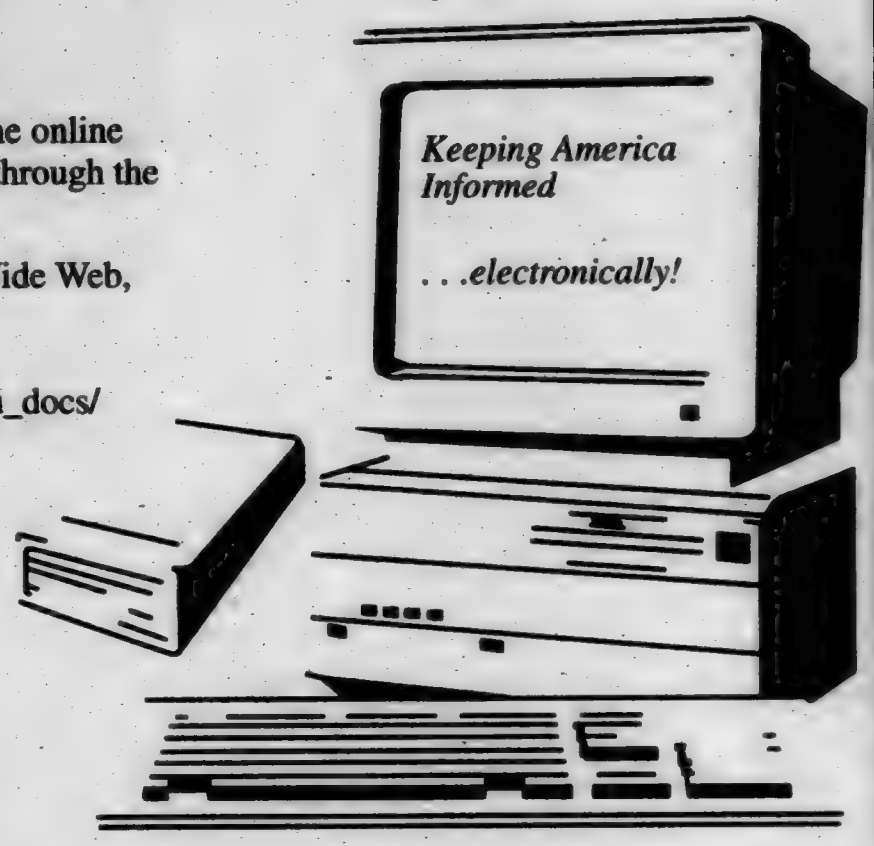

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

Order Now!

The United States Government Manual 1998/1999

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

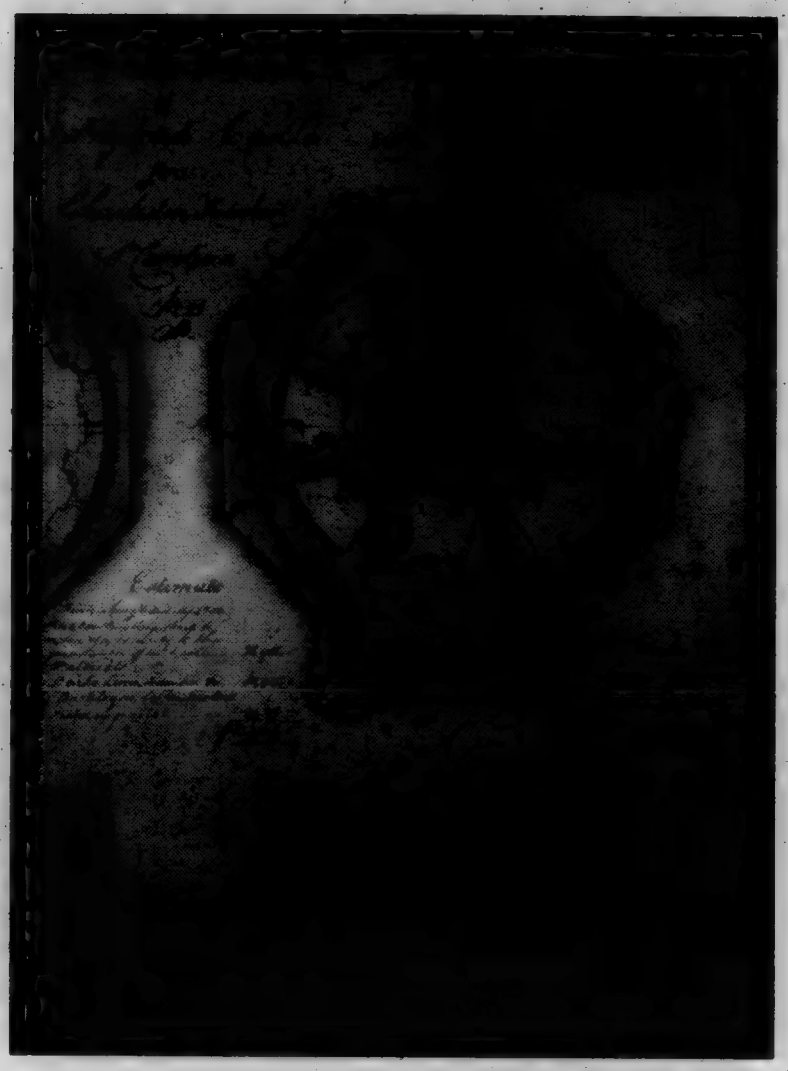

$41 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ☆ PERIODICALS ☆ ELECTRONIC PRODUCTS

Charge your order. It's Easy! MasterCard VISA

Order Processing Code:
*** 7917**

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please send me ——— copies of **The United States Government Manual** 1998/99, S/N 069–000–00076–2 at $41 ($50 foreign) each.

Total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

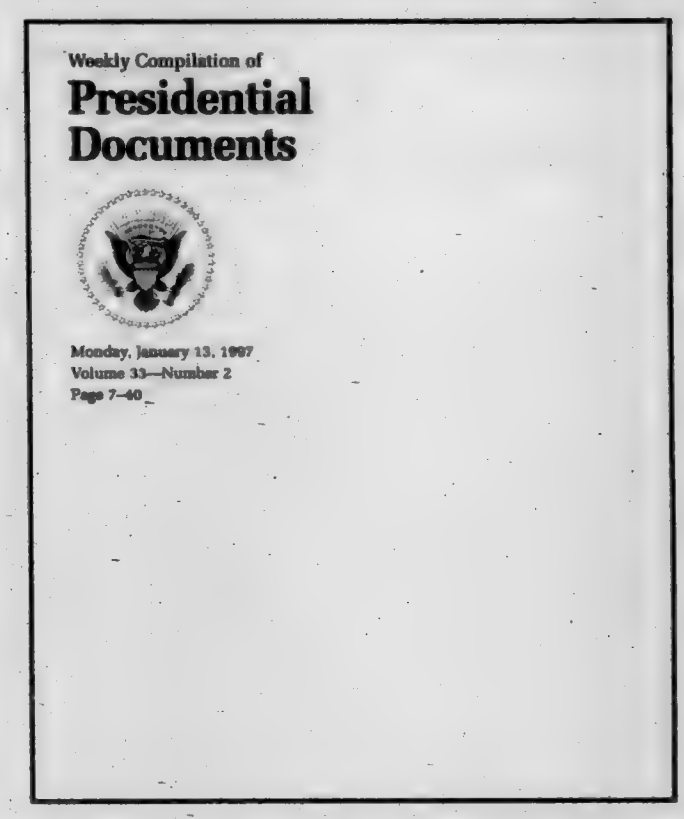

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
* 5420

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

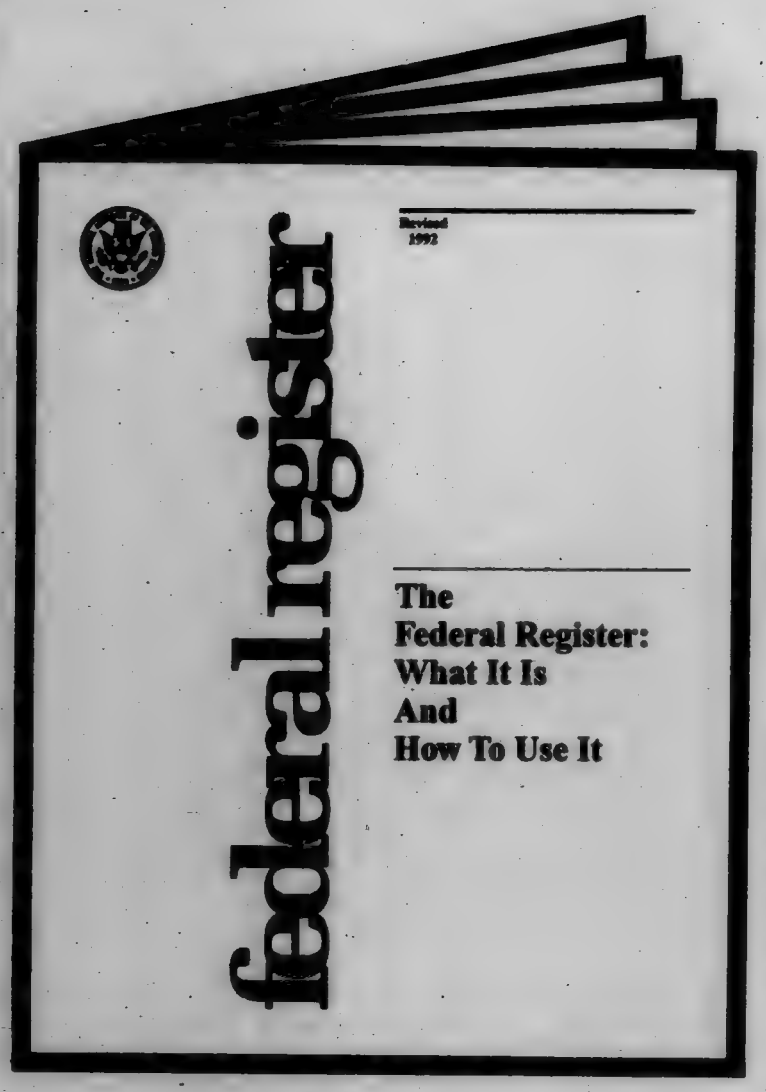

Announcing the Latest Edition

The Federal Register: What It Is And How To Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a simple research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*** 6173**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ copies of **The Federal Register: What It Is And How To Use It,** at $7.00 per copy. Stock No. 069–000–00044–4.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature (Rev.6/99)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VISA

2–2250
2–1800

4–4.

ge.

ents
]-[ ]

ou for
order!

(Rev.6/99)

54

VOL
64
ISS
1
5
5
AG
12
999
UMI

Printed on recycled paper

VOL
64
ISS
1
5
6
AG
13
999
UMI

8-13-99
Vol. 64

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United S
Governm
Printing
SUPERINTEN
OF DOCUME
Washington, D

OFFICIAL BU
Penalty for priv

8–13–99
Vol. 64 No. 156

federal register

Friday
August 13, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
1
5
6
AG
13
999
UMI

8-13-9
Vol. 64
Pages

ANN ARBOR MI 48106

8-13-99
Vol. 64 No. 156
Pages 44101-44396

Federal Register

Friday
August 13, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Contents

Federal Register
Vol. 64, No. 156
Friday, August 13, 1999

Advisory Commission on Electronic Commerce
See Electronic Commerce Advisory Commission

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Food Safety and Inspection Service
See Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44184–44185
Reports and guidance documents; availability, etc.:
Biobased products submission for listing by USDA; procedures, 44185–44193

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44193–44194

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Bonneville Power Administration
NOTICES
Electric power transmission, acquisition, and conservation:
2002 wholesale power rate adjustment; public hearing and comment request, 44317–44361
Firm power products and services rate schedule (FPS-96); correction of errors, 44361–44366

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44222–44224
Committees; establishment, renewal, termination, etc.:
National Vaccine Advisory Committee, 44224
Meetings:
HIV and STD Prevention Advisory Committee, 44224
National Institute for Occupational Safety and Health—
Best practices back injury prevention program in nursing homes; evaluation, 44224–44225

Coast Guard
RULES
Drawbridge operations:
Connecticut, 44131
New Jersey, 44129–44131
PROPOSED RULES
Drawbridge operations:
Connecticut, 44145–44151
New Jersey, 44148–44149

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 44197–44198

Defense Department
See Engineers Corps
See Navy Department

Electronic Commerce Advisory Commission
NOTICES
Federal, State, local, and international taxation and tariff treatment of Internet transactions; comment request, 44183
Meetings, 44183–44184

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44238

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 44239–44240

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Yucca Mountain; NV; spent nuclear fuel and high-level radioactive waste disposal; geologic repository, 44200–44202

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Everglades National Park, FL; modified water deliveries project; protection of Cape Sable seaside sparrow, 44199–44200

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 44134–44135
Minnesota, 44131–44134
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 44135–44136
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Minnesota, 44152

NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 44218–44219
Weekly receipts, 44217–44218
Pesticide programs:
Organophosphates; risk assessments and public participation in risk management—
Methyl parathion, 44219–44220
Superfund; response and remedial actions, proposed settlements, etc.:
Petroleum Products Site, 44220–44221
Water pollution control:
Clean Water Act—
Class II administrative penalty assessments, 44221

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 44110–44112
Pilatus Aircraft Ltd., 44112–44114
Class D and Class E airspace, 44114–44116
Class E airspace, 44116–44117
Class E airspace; correction, 44268
Standard instrument approach procedures, 44117–44121
PROPOSED RULES
Air traffic operating and flight rules, etc.:
High density rule; interpretation, 44145
Airworthiness directives:
Pilatus Aircraft Ltd., 44137–44139
Class E airspace, 44139–44145
NOTICES
Exemption petitions; summary and disposition, 44253–44254
Passenger facility charges; applications, etc.:
Pasco, WA, et al., 44254–44257

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 44221

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Central Hudson Gas & Electric Corp. et al., 44206–44208
Environmental statements; notice of intent:
Southern LNG Inc., 44209–44210
Hydroelectric applications, 44210–44217
Applications, hearings, determinations, etc.:
AG-Energy, L.P., et al., 44202
CP Power Sales Fifteen, L.L.C., et al., 44203
Duke Energy Moss Landing, LLC, et al., 44203
Edison Mission Marketing & Trading, Inc., et al., 44203
Equitrans, L.P., 44204
FPL Energy Power Marketing, Inc., et al., 44204
Logan Generating Co., L.P., et al., 44204
Mid Louisiana Gas Co., 44205
New England Power Co. et al., 44205
Williams Gas Pipelines Central, Inc., 44205–44206

Federal Housing Finance Board
RULES
Unpublished information availability, 44103–44109

Federal Railroad Administration
NOTICES
Environmental statements; availability, etc.:
Pennsylvania Station Redevelopment Project, NY, 44257–44258
Traffic control systems; discontinuance or modification:
CSX Transportation, Inc., 44258–44259
Union Pacific Railroad Co., 44259–44260

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 44221–44222

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Los Angeles, CA; Eastside Transit Corridor, 44260–44262

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Scaleshell mussel, 44171–44182
Migratory bird hunting:
Federal Indian reservations, off-reservation trust lands and ceded lands, 44383–44395
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44232–44234
Meetings:
Endangered Species of Wild Fauna and Flora International Trade Convention; correction, 44234
National Wildlife Refuge System Improvement Act of 1997; implementation:
Service Manual; comprehensive conservation plans and step-down management plans, 44367–44382

Food and Drug Administration
RULES
Food additives:
Acidified sodium chlorite solutions, 44122–44123
Petroleum wax, 44121–44122
NOTICES
Meetings:
Egg safety action plan, 44195–44196
Foodborne listeria monocytogenes; public health impact, 44225
Ready-to-eat foods; bare-hand contact, 44225–44226
Vibrio parahaemolyticus in molluscan shellfish; public health impact, 44226–44227

Food and Nutrition Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44194–44195

Food Safety and Inspection Service
NOTICES
Meetings:
Egg safety action plan, 44195–44196

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Oklahoma
Xerox Corp.; photocopier, printer toner, and cartridge manufacturing facilities, 44198–44199

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
California, 44196–44197

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Medicare:
Durable medical equipment and prosthetic devices; special payment limits, 44227–44231
Meetings:
Medicare Coverage Advisory Committee, 44231–44232

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 44269–44316

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Nisqually Tribe, WA, 44234
St Regis Mohawk Tribe, NY, 44234–44235

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service

International Trade Administration
NOTICES
Antidumping:
Live cattle from—
Canada, 44199

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44237–44238

Land Management Bureau
NOTICES
Closure of public lands:
Arizona, 44235
Environmental statements; availability, etc.:
Naval Air Station Fallon, NV; training complex requirements, 44235–44236
Realty actions; sales, leases, etc.:
Colorado, 44236

Management and Budget Office
NOTICES
Financial management systems (Circular A-127), 44246

Maritime Administration
PROPOSED RULES
Vessel financing assistance:
Obligation guarantees; Title XI program—
Putting customers first, 44152–44164

Minerals Management Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44236–44237

National Highway Traffic Safety Administration
PROPOSED RULES
Consumer information:
Seat belt positioners, 44164–44171
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 44262–44263
Importation eligibility; determinations; correction, 44268
Motor vehicle safety standards; exemption petitions, etc.:
American Honda Motor Co., Inc., 44263–44264
Aprilia, S.p.A., 44264–44265

National Institutes of Health
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Ontogeny, Inc., 44232

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
Public Affairs Advisory Group, 44242

Navy Department
NOTICES
Environmental statements; availability, etc.:
Naval Air Station Fallon, NV; training complex requirements, 44235–44236

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Risk-informed revisions, Option 3; workshop, 44137
NOTICES
Applications, hearings, determinations, etc.:
Energy Northwest, 44242–44243
Nebraska Public Power District, 44243
PECO Energy Co., 44243–44245
Tennessee Valley Authority, 44245–44246

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Factory Mutual Research Corp., 44240–44241
Underwriters Laboratories Inc., 44241–44242

Office of Management and Budget
See Management and Budget Office

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing benefits, 44128–44129
NOTICES
Multi-employer plans:
Interest rates and assumptions, 44246–44247

Personnel Management Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44247
Submission for OMB review; comment request, 44247–44248

Presidential Documents
ADMINISTRATIVE ORDERS
Export control regulations; continuation of emergency (Notice of August 10, 1999), 44101

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Research and Special Programs Administration
NOTICES
Hazardous materials transportation:
Preemption determinations, 44265–44267

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44248
Meetings; Sunshine Act, 44248
Self-regulatory organizations; proposed rule changes:
Government Securities Clearing Corp., 44249–44250
MBS Clearing Corp., 44250–44252
National Securities Clearing Corp., 44252–44253

Small Business Administration
RULES
Business loans:
Collateral liquidation and commercial loans sale, 44109–44110

State Department
NOTICES
Meetings:
International Communications and Information Policy Advisory Committee, 44253

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44267

United States Information Agency
RULES
Exchange visitor program:
Reinstatement of J-1 exchange visitors who fail to maintain valid program status; monitoring requirements, 44123–44128

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 44269–44316

Part III
Department of Energy, Bonneville Power Administration, 44317–44366

Part IV
Department of Interior, Fish and Wildlife Service, 44367–44382

Part V
Department of Interior, Fish and Wildlife Service, 44383–44395

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12924 (See Notice of Aug. 10, 1999) 44101
Administrative Orders:
Notice of Aug. 10, 1999 44101

10 CFR
Proposed Rules:
50 44137

12 CFR
905 44103

13 CFR
120 44109

14 CFR
39 (2 documents) 44110, 44112
71 (4 documents) 44114, 44116, 44117, 44268
97 (2 documents) 44117, 44119
Proposed Rules:
39 44137
71 (5 documents) 44139, 44140, 44141, 44142, 44144
93 44145

21 CFR
172 44121
173 44122

22 CFR
514 44123

29 CFR
4044 44128

33 CFR
117 (2 documents) 44129, 44131
Proposed Rules:
117 (5 documents) 44145, 44147, 44148, 44149, 44151

40 CFR
52 (2 documents) 44131, 44134
300 44135
Proposed Rules:
52 44152

46 CFR
Proposed Rules:
298 44152

49 CFR
Proposed Rules:
575 44164

50 CFR
Proposed Rules:
17 44171
20 55384

UMI

VOL

64

ISS

1
5
6

AG

13

999

UMI

Federal
Vol. 64
Friday,

Title

The

[FR Doc
Filed 8–
Billing c

Federal Register
Vol. 64, No. 156
Friday, August 13, 1999

Presidential Documents

Title 3—

The President

Notice of August 10, 1999

Continuation of Emergency Regarding Export Control Regulations

On August 19, 1994, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), I issued Executive Order 12924. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 19, 1994, must continue in effect beyond August 19, 1999. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order 12924.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
August 10, 1999.

[FR Doc. 99–21180
Filed 8–12–99; 8:45 am]
Billing code 3195–01–P

VOL
64
ISS
1
5
6
AG
13
999
UMI

Rule

This sec
contains
applicabi
are keye
Federal
50 titles

The Cod
the Supe
new boo
REGIST

FEDER
12 CFR
[No. 99-
RIN 306
Availab

AGENCY
Board.

ACTION:
for com

SUMMAR
Board (
part to
availab
The rul
person
request
informa
testimo
Board e
practic
Board w
request

DATES:
become
The Fi
comme
writing

ADDRES
Baker,
electro
regular
Financ
Washi
be avai
address

FOR FU
Janice
of Gen
408–25
kayej@
Federa
Street,

SUPPLE

Rules and Regulations

Federal Register
Vol. 64, No. 156
Friday, August 13, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 905

[No. 99–42]

RIN 3069–AA81

Availability of Unpublished Information

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adding a new part to its regulations governing the availability of unpublished information. The rule describes the procedures a person or entity must follow when requesting unpublished Finance Board information either by document or by testimony of current or former Finance Board employees or agents and the practices and procedures the Finance Board will use in responding to such requests.

DATES: The interim final rule will become effective on August 13, 1999. The Finance Board will accept comments on the interim final rule in writing on or before Ocotber 12, 1999.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Attorney-Advisor, Office of General Counsel, by telephone at 202/408–2505, by electronic mail at *kayej@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Finance Board, an independent agency in the Executive branch of the United States government, *see* 12 U.S.C. 1422a(a)(2), recently has received requests from attorneys representing private parties for access to information or documents acquired by Finance Board employees in their official capacity or in the course of performing official duties. The attorneys plan to use the information in connection with litigation in which neither the Finance Board nor the United States is a party. This type of information, referred to herein as "unpublished information," generally is not subject to release under the Freedom of Information Act (FOIA). *See* 5 U.S.C. 552. Because the Finance Board previously has not received requests for unpublished information, it has not established procedures for the efficient processing of such requests. In order to control the process and the use and disclosure of its unpublished information, the Finance Board has determined to adopt procedures that must be followed by persons or entities requesting unpublished Finance Board information, and practices and procedures the Finance Board will use in responding to such requests.

The so-called federal "housekeeping statute" authorizes an agency to issue regulations governing the conduct of agency employees and the custody, use, and preservation of agency records, papers, and property. *See* 5 U.S.C. 301. Pursuant to this authority, many federal agencies have issued regulations governing the circumstances and manner in which a current or former agency employee or agent, regulated entity, or other person or entity in possession of unpublished agency information must respond to demands for testimony or the production of documents. *See, e.g.,* 12 CFR 1710.31–40 (Office of Federal Housing Enterprise Oversight); 12 CFR 510.5 (Office of Thrift Supervision). In addition, section 2B of the Federal Home Loan Bank Act (Bank Act) empowers the Finance Board to supervise the Federal Home Loan Banks (FHLBanks) and promulgate and enforce such regulations as are necessary to carry out the provisions of the Bank Act. *See* 12 U.S.C. 1422b(a)(1). Therefore, pursuant to the authority provided by section 2B of the Bank Act and the housekeeping statute, the Finance Board is adding a new part 905 to its regulations governing the availability of unpublished Finance Board information by document or by testimony of current or former Finance Board employees or agents. This new rule will ensure that requests for unpublished information include everything the Finance Board needs to make an objective decision regarding use and disclosure of the requested information. The rule also will enable the Finance Board to fairly and effectively consider and respond to such requests.

II. Analysis of the Interim Final Rule

The interim final rule adds a new part 905 to the Finance Board's regulations to be codified in Title 12 of the Code of Federal Regulations. A more detailed description of the provisions of part 905 follows.

A. Purposes and Scope

Section 905.2 sets out the purposes and scope of part 905, which governs the availability of unpublished Finance Board information either by document or by testimony of current or former Finance Board employees or agents. Under part 905, the term "unpublished information" means: (1) information and documents created or obtained by the Finance Board in connection with the performance of official duties, whether the information or documents are in the possession of the Finance Board, a current or former Finance Board employee or agent, a FHLBank, the Office of Finance, or the Financing Corporation (*i.e.*, a supervised entity), a FHLBank member, or some other person, entity, or government agency; and (2) information and documents created or obtained by, or information in the memory of, a current or former Finance Board employee or agent, which was acquired in the person's official capacity or in the course of performing official duties. Unpublished information does not include information or records the Finance Board must disclose under the FOIA, Privacy Act, or the Finance Board's implementing regulations. *See* 5 U.S.C. 552 and 552a; 12 CFR parts 904 and 909.). It also does not include information or documents that were previously published or disclosed or are customarily furnished to the public in the course of the performance of official duties such as the annual report the

Finance Board submits to Congress pursuant to section 2B(d) of the Bank Act (12 U.S.C. 1422b(d)), press releases, Finance Board forms, and materials published in the **Federal Register**. The Finance Board expects that unpublished information will include confidential information that is privileged.

The rule covers former as well as current employees to allow the Finance Board to control the release of unpublished information a former employee possesses or information a former employee recalls regarding matters that remain confidential. It is not intended to restrict a former employee but rather to permit the Finance Board an opportunity to consult with the former employee and parties wishing to use the employee's testimony in advance of testimony being given in order to protect the confidentiality of unpublished information by prohibiting or limiting testimony as appropriate. Since the rule prohibits the release only of unpublished information the former employee acquired in an official capacity or in the course of performing official duties, it does not bar a former employee from appearing on general matters or otherwise employing his or her knowledge or expertise as, for example, an expert witness.

The purposes of the rule are to provide an orderly mechanism for expeditiously processing requests for unpublished information. The rule will conserve the time of employees for official duties and ensure that the Finance Board can deploy its resources in the most efficient manner while preserving the Finance Board's need to maintain the confidentiality of certain information. The rule also is intended to allow the Finance Board to remain impartial among private litigants. The rule does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against the Finance Board.

The Finance Board expects the majority of requests for unpublished information to arise in the course of a legal proceeding, such as an administrative, civil, or criminal proceeding, including a grand jury or discovery proceeding, in which neither the Finance Board nor the United States is a party. However, because requests also arise in a non-litigation context, the scope of the interim final rule is broad—it applies to *any* request for or disclosure of unpublished information by document or testimony. The rule is not intended to and will not apply to requests for unpublished information in connection with a legal proceeding in which the Finance Board or the United States is a party or requests for information or records the Finance Board must disclose under the FOIA or the Privacy Act. *See* 5 U.S.C. 552 and 552a. The interim final rule does not affect the rights and procedures governing access to records under the FOIA or the Privacy Act, which the Finance Board will continue to process under part 904 or 909 of the Finance Board's regulations, respectively. *See* 12 CFR parts 904 and 909. However, the interim final rule may permit the Finance Board to disclose documents that are exempt from disclosure under the FOIA.

B. Prohibition on Unauthorized Use and Disclosure of Unpublished Information

The Finance Board considers all unpublished information to be confidential. Thus, use or disclosure of unpublished information without the express authorization of the Finance Board is prohibited. Section 905.3 of the interim final rule makes clear that unpublished information in the possession or control of any person, supervised entity, FHLBank member, government agency, or other entity remains the property of the Finance Board. No person or entity may use or disclose unpublished information, even information lawfully in their possession or control, without Finance Board authorization. A person or entity that uses or discloses unpublished information without authorization may be subject to criminal penalties. *See* 18 U.S.C. 641. In addition, current Finance Board, FHLBank, or Office of Finance employees may be subject to administrative or disciplinary proceedings. *See, e.g.*, 12 U.S.C. 1422b(a)(2) and (b)(1).

C. Requests for Unpublished Information

Section 905.4 sets forth the procedure for making requests for unpublished information. The Finance Board only will consider complete written requests that include a detailed description of the basis for the request. Every request must demonstrate that the requested information is highly relevant to the purpose for which it is sought and is not available from any other source. The requester also must show that the need for the information clearly outweighs the need to maintain its confidentiality and the burden on the Finance Board to produce it. If a requester seeks a response in less than 60 days, the request must explain why it was not submitted earlier and why it should be expedited. At its discretion, the Finance Board may seek additional information from the requester, parties to the matter at issue, or other sources of information.

In addition to the basic requirements discussed above, a request for the production of documents must adequately describe the record or records sought by type and date. A request for the testimony of current or former Finance Board employees or agents also must set forth the intended use of the testimony, a summary of the scope of the testimony requested, and a showing that no document or the testimony of other non-Finance Board persons, including retained experts, could be provided and used in lieu of the testimony. In order to limit the time an employee or agent spends providing authorized testimony, the rule requires a requester to notify all other parties to the matter at issue of the request for testimony and permits another party to join in the request or submit its own request if the scope of the testimony sought is different.

If a request is made in connection with a legal proceeding, the requester must include detailed information about the legal proceeding. The Finance Board generally will not consider a request arising out of a legal proceeding unless the legal proceeding is already filed.

D. Consideration of Requests

Section 905.5(a) makes clear that a decision concerning the availability of unpublished information is at the sole discretion of the Finance Board. Absent exigent or unusual circumstances, the Finance Board will determine whether to grant a request for unpublished information in whole or in part within 60 days of receipt. The factors the Finance Board may consider in making a determination include, but are not limited to, the following:

- Whether and how the requested information is relevant to the purpose for which it is sought.
- Whether information reasonably suited to the requester's needs other than the requested information is available from another source.
- Whether the requested information is privileged.
- If the request is in connection with a legal proceeding, whether the proceeding has been filed.
- The burden placed on the Finance Board to respond to the request.
- Whether production of the information would be contrary to the public interest.
- Whether the need for the information clearly outweighs the need to maintain the confidentiality of the information.

The Finance Board may respond to a request by authorizing a person or entity in lawful possession or control of unpublished information to disclose the

information to a requester pursuant to an appropriate confidentiality order. This is intended to allow the person or entity in possession or control to assert its own claim of privilege or to argue that the information is not relevant or otherwise protected from disclosure.

The Finance Board generally will notify a FHLBank, FHLBank member, the Office of Finance, or Financing Corporation that it is the subject of a request. The Finance Board will not provide notice if it determines, in its sole discretion, that the notice would advantage or prejudice any of the parties to the matter at issue.

E. Duty of Persons and Entities With Access to Unpublished Information

Under section 905.6(a), a person or entity must immediately notify the Finance Board's Office of General Counsel of any request or legal process seeking the use or disclosure of unpublished information. Unless the Finance Board has authorized in writing disclosure of the requested information, the person or entity must decline to disclose the information. Section 905.6(b) requires a current or former Finance Board employee or agent or a supervised entity that must respond to a subpoena, order, or other legal process, to decline to disclose the requested information, citing this part as authority. The rule permits a non-Finance Board person or entity to disclose unpublished information only after the requester has sought the information from the Finance Board under this part and a Federal court in a judicial proceeding in which the Finance Board or the Department of Justice has had the opportunity to appear, has ordered disclosure.

If disclosure is not authorized, the Finance Board will provide a copy of part 905 to the requester and advise the requester or the court or other body that issued the legal process, that the Finance Board has prohibited disclosure. The Finance Board or the Department of Justice may intervene in the matter at issue, attempt to have the compulsory process withdrawn, or register other appropriate objections.

F. Available Information

Sections 905.7 and 905.8 prescribe limits on the scope of permissible document disclosure or testimony and the manner in which documents or testimony authorized for disclosure will be made available. The scope of permissible document disclosure or testimony is limited to that set forth in the written authorization granted by the Finance Board. The Finance Board may act to ensure that the scope of information provided is consistent with the written authorization, for instance, by reviewing copies of the documents provided to the requester or a transcript of deposition testimony. Upon request, the Finance Board will provide certified or authenticated copies of documents authorized to be disclosed. A party that wants to question a witness beyond the authorized scope must submit a request for expanded authorization to the Finance Board. The Finance Board will attempt to render decisions on such requests in an expedited manner. The Finance Board generally will not authorize a current employee or agent to provide expert or opinion testimony for a private party.

When the Finance Board has authorized testimony, it generally will make the witness available only through written interrogatories or deposition. Absent unusual circumstances, authorized deposition testimony will take place at the Finance Board's offices at a time convenient for the employee. All costs associated with the appearance must be borne by the requester, including provision of a copy of the transcript of the deposition at the request of the Office of General Counsel. The Finance Board will not authorize trial or hearing testimony unless the requester shows that properly developed deposition testimony could not be used or would not be adequate at the trial or hearing. If the authorized testimony is in connection with a legal proceeding, the requester must cause a subpoena to be served on the employee in accordance with applicable rules of procedure, with a copy by registered or certified mail to the Office of General Counsel.

The Finance Board's authorization to provide unpublished information may include restrictions on the use and disclosure of the information. With regard to testimony, the Finance Board may condition its authorization on an agreement of the parties to appropriate limitations, such as an agreement to keep the transcript of a deposition under seal or to make the transcript available only to the parties, the court or other body, or the jury. The Finance Board may condition a decision to disclose unpublished information by document on entry of a protective order satisfactory to the Finance Board, by the court or other body presiding in a legal proceeding or, in non-adversarial matters, on a written agreement of confidentiality that limits access of third parties to the unpublished information. In a legal proceeding in which a protective order already has been entered, the Finance Board may condition a decision to disclose unpublished information upon the inclusion of additional or amended provisions in the protective order. Upon request or on its own initiative, the Finance Board may authorize use of a deposition transcript or the disclosed documents in another legal proceeding or non-adversarial matter.

If the documents or testimony are disclosed in connection with a legal proceeding, the requester is responsible for promptly notifying all other parties to the legal proceeding of the disclosure, and, after entry of a protective order, providing copies of the documents or testimony to the other parties that are signatories and subject to the protective order. At the conclusion of the legal proceeding, the requester must retrieve the documents or testimony from the court or other body's file as soon as they are no longer required and certify to the Finance Board that every party covered by the protective order has destroyed the unpublished information.

G. Fees

Section 905.9 of the interim final rule concerns the assessment and collection of fees. The Finance Board generally will assess a fee for the actual costs of searching, copying, authenticating, or certifying unpublished information it authorizes for use or disclosure. The Finance Board will assess fees in the same manner it assesses fees for providing FOIA services under 12 CFR 904.9. The Office of Resource Management is responsible for billing and collecting the fees. The Finance Board generally will bill the requester upon completion of the production but, in certain instances, may require a requester to remit payment prior to providing the requested information. A requester promptly must pay the assessed fees by delivering a check or money order made payable to the "Federal Housing Finance Board" to the Office of Resource Management, located at the Federal Housing Finance Board's offices at 1777 F Street, N.W., Washington, D.C. 20006.

A requester also is responsible for paying witness fees and mileage computed in accordance with 28 U.S.C. 1821 upon completion of a testimonial appearance. If the witness is a current Finance Board employee or agent or a former employee or agent still in the employ of the United States, the requester promptly must remit the witness fees to the Office of Resource Management. If the witness is a former employee or agent that is not currently employed by the federal government, the requester promptly must remit the witness fees directly to the witness.

III. Notice and Public Participation

The Finance Board is promulgating this procedural rule as an interim final rule in order to fairly and effectively handle pending and anticipated requests for unpublished information. However, because this type of rulemaking generally requires notice and receipt of public comment, the Finance Board will accept written comments on the interim final rule on or before October 12, 1999.

IV. Effective Date

For the reasons stated in part III above, the Finance Board for good cause finds that the interim final rule should become effective on August 13, 1999. *See* 5 U.S.C. 553(d)(3).

V. Regulatory Flexibility Act

The Finance Board is adopting part 905 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2) and 603(a).

VI. Paperwork Reduction Act

The interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 905

Confidential business information, Federal home loan banks, Freedom of information, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board hereby adds 12 CFR part 905 to read as follows:

PART 905—AVAILABILITY OF UNPUBLISHED INFORMATION

Sec.
905.1 Definitions.
905.2 Purposes and scope.
905.3 Prohibition on unauthorized use and disclosure of unpublished information.
905.4 Requests for unpublished information by document or testimony.
905.5 Consideration of requests.
905.6 Persons and entities with access to unpublished information.
905.7 Availability of unpublished information by testimony.
905.8 Availability of unpublished information by document.
905.9 Fees.

Authority: 5 U.S.C. 301; 12 U.S.C. 1422b(a)(1).

§ 905.1 Definitions.

For purposes of this part:

(a) *Finance Board* means the agency established as the Federal Housing Finance Board.

(b) *Legal proceeding* means any administrative, civil, or criminal proceeding, including a grand jury or discovery proceeding, in which neither the Finance Board nor the United States is a party.

(c) *Unpublished information* means information and documents created or obtained by the Finance Board in connection with the performance of official duties, whether the information or documents are in the possession of the Finance Board, a current or former Finance Board employee or agent, a supervised entity, a Federal Home Loan Bank member, government agency, or some other person or entity; and information and documents created or obtained by, or in the memory of, a current or former Finance Board employee or agent, that was acquired in the person's official capacity or in the course of performing official duties. It does not include information or documents the Finance Board must disclose under the Freedom of Information Act (5 U.S.C. 552), Privacy Act (5 U.S.C. 552a), or the Finance Board's implementing regulations (12 CFR parts 904 and 909, respectively). It also does not include information or documents that were previously published or disclosed or are customarily furnished to the public in the course of the performance of official duties such as the annual report the Finance Board submits to Congress pursuant to section 2B(d) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(d)), press releases, Finance Board forms, and materials published in the **Federal Register**.

(d) *Supervised entity* means a Federal Home Loan Bank, the Office of Finance, and the Financing Corporation.

§ 905.2 Purpose and scope.

(a) *Purpose.* The purposes of this part are to:

(1) Maintain the confidentiality and control the dissemination of unpublished information;

(2) Conserve the time of employees for official duties and ensure that Finance Board resources are used in the most efficient manner;

(3) Maintain the Finance Board's impartiality among private litigants; and

(4) Establish an orderly mechanism for the Finance Board to process expeditiously and respond appropriately to requests for unpublished information.

(b) *Scope.* (1) This part applies to a request for and use and disclosure of unpublished information, including a request for unpublished information by document or testimony arising out of a legal proceeding in which neither the Finance Board nor the United States is a party. It does not apply to a request for unpublished information in a legal proceeding in which the Finance Board or the United States is a party or a request for information or records the Finance Board must disclose under the Freedom of Information Act, Privacy Act, or the Finance Board's implementing regulations.

(2) This part does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against the Finance Board.

§ 905.3 Prohibition on unauthorized use and disclosure of unpublished information.

(a) *In general.* Possession or control by any person, supervised entity, Federal Home Loan Bank member, government agency, or other entity of unpublished information does not constitute a waiver by the Finance Board of any privilege or its right to control, supervise, or impose limitations on, the subsequent use and disclosure of the information.

(b) *Current and former employees and agents.* Except as authorized by this part or otherwise by the Finance Board, no current or former Finance Board employee or agent may disclose or permit the disclosure in any manner of any unpublished information to anyone other than a Finance Board employee or agent for use in the performance of official duties.

(c) *Other persons or entities possessing unpublished information.* (1) Except as authorized in writing by the Finance Board, no person, supervised entity, Federal Home Loan Bank member, government agency, or other entity in possession or control of unpublished information may disclose or permit the use or disclosure of such information in any manner or for any purpose.

(2) All unpublished information made available under this part remains the property of the Finance Board and may not be used or disclosed for any purpose other than that authorized under this part without the prior written permission of the Finance Board.

(3) Reports of examination, supervisory correspondence, and other unpublished information lawfully in the possession of a supervised entity, Federal Home Loan Bank member, or government agency remains the property of the Finance Board and may not be used or disclosed for any purpose other than that authorized under this part without the prior written permission of the Finance Board.

(4) Any person or entity that discloses or uses unpublished information except as expressly authorized under this part may be subject to the penalties provided in 18 U.S.C. 641 and other applicable laws. A current Finance Board, Federal Home Loan Bank, or Office of Finance employee also may be subject to administrative or disciplinary proceedings.

(d) *Exception for supervised entities and Federal Home Loan Bank members.* When necessary or appropriate for business purposes, a supervised entity, Federal Home Loan Bank member, or any director, officer, employee, or agent thereof, may disclose unpublished information, including information contained in, or related to, supervisory correspondence or reports of examination, to a person or entity officially connected with the supervised entity or Federal Home Loan Bank member as officer, director, employee, attorney, agent, auditor, or independent auditor. A supervised entity, Federal Home Loan Bank member, or a director, officer, employee, or agent thereof, also may disclose unpublished information to a consultant under this paragraph if the consultant is under a written contract to provide services to the supervised entity or Federal Home Loan Bank member and the consultant has agreed in writing:

(1) To abide by the prohibition on the disclosure of unpublished information contained in this section; and

(2) That it will not to use the unpublished information for any purposes other than those stated in its contract to provide services to the supervised entity or Federal Home Loan Bank member.

(e) *Government agencies.* The Finance Board may make reports of examination, supervisory correspondence, and other unpublished information available to another federal agency or a state agency for use where necessary in the performance of the agency's official duties. As used in this paragraph, the term agency does not include a grand jury.

§ 905.4 Requests for unpublished information by document or testimony.

(a) *Form of requests.* A request for unpublished information must be submitted to the Finance Board in writing and include a detailed description of the basis for the request. At a minimum, the request must demonstrate that:

(1) The requested information is highly relevant to the purpose for which it is sought;

(2) The requested information is not available from any other source;

(3) The need for the information clearly outweighs the need to maintain its confidentiality; and

(4) The need for the information clearly outweighs the burden on the Finance Board to produce it.

(b) *Requests for documents.* If the request is for unpublished information by document, the request must include the elements in paragraph (a) of this section and also must adequately describe the record or records sought by type and date.

(c) *Requests for testimony.* (1) If the request is for unpublished information by testimony, the request must include the elements in paragraph (a) of this section and also must set forth the intended use of the testimony, a summary of the scope of the testimony requested, and a showing that no document or the testimony of other non-Finance Board persons, including retained experts, could be provided and used in lieu of the testimony.

(2) Upon submitting a request to the Finance Board for unpublished information by testimony, the requester must notify all other parties to the matter at issue of the request.

(3) After receipt of a request for unpublished information by testimony but before the requested testimony occurs, a party to the matter at issue who did not join in the request and who wishes to question the witness beyond the scope of the testimony sought by the request, must timely submit its own request for unpublished information pursuant to this part.

(d) *Requests in connection with legal proceedings.* If the request for unpublished information arises out of a legal proceeding, the Finance Board generally will require that the legal proceeding already be filed before it will consider the request. In addition to the elements in paragraph (a) of this section, requests in connection with legal proceedings must include the caption and docket number of the case; the forum; the name, address, phone number, and electronic mail address, if available, of counsel to all other parties to the legal proceeding; the requester's interest in the case; a summary of the issues in litigation; and the reasons for the request, including the relevance of the unpublished information and how the requested information will contribute substantially to the resolution of one or more specifically identified issues in the legal proceeding.

(e) *Expedited requests.* If a requester seeks a response in less than 60 days, the request must explain why the request was not submitted earlier and why the Finance Board should expedite the request.

(f) *Where to submit requests.* Send requests for unpublished information to the Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

(g) *Additional information.* (1) *From the requester.* The Office of General Counsel may consult with the requester to refine and limit the scope of the request to make compliance less burdensome or to obtain information necessary to make an informed determination on the request. A requester's failure to cooperate in good faith with the Office of General Counsel may serve as the basis for a determination not to grant the request.

(2) *From others.* The Office of General Counsel may inquire into the facts and circumstances underlying a request for unpublished information and rely on sources of information other than the requester, including other parties to the matter at issue.

§ 905.5 Consideration of requests.

(a) *Discretion.* Each decision concerning the availability of unpublished information is at the sole discretion of the Finance Board based on a weighing of all appropriate factors. The decision is a final agency action that exhausts administrative remedies for disclosure of the information.

(b) *Time to respond.* The Finance Board generally will respond in writing to a request for unpublished information within 60 days of receipt absent exigent or unusual circumstances and dependent upon the scope and completeness of the request.

(c) *Factors the Finance Board may consider.* The factors the Finance Board may consider in making a determination regarding the availability of unpublished information include:

(1) Whether and how the requested information is relevant to the purpose for which it is sought;

(2) Whether information reasonably suited to the requester's needs other than the requested information is available from another source;

(3) Whether the requested information is privileged;

(4) If the request is in connection with a legal proceeding, whether the proceeding has been filed;

(5) The burden placed on the Finance Board to respond to the request;

(6) Whether production of the information would be contrary to the public interest; and

(7) Whether the need for the information clearly outweighs the need to maintain the confidentiality of the information.

(d) *Disclosure of unpublished information by others.* When a person or

entity other than the Finance Board has a claim of privilege regarding unpublished information and the information is in the possession or control of that person or entity, the Finance Board, at its sole discretion, may respond to a request for the information by authorizing the person or entity to disclose the information to the requester pursuant to an appropriate confidentiality order. Finance Board authorization to disclose information under this paragraph does not preclude the person or entity in possession of the unpublished information from asserting its own privilege, arguing that the information is not relevant, or asserting any other argument to protect the information from disclosure.

(e) *Notice to supervised entities and Federal Home Loan Bank members.* The Finance Board generally will notify a supervised entity or Federal Home Loan Bank member that it is the subject of a request, unless the Finance Board, in its sole discretion, determines that to do so would advantage or prejudice any of the parties to the matter at issue.

§ 905.6 Persons and entities with access to unpublished information.

(a) *Notice to Finance Board.* Any person, including a current or former Finance Board employee or agent, or any entity, including a supervised entity, Federal Home Loan Bank member, or government agency that receives a request for, or is served with a subpoena, order, or other legal process to disclose unpublished information by document or testimony, must immediately notify the Office of General Counsel.

(b) *Response of person or entity served with request.* Unless the Finance Board has authorized in writing disclosure of the requested information:

(1) A current or former Finance Board employee or agent or a supervised entity that must respond to a subpoena, order, or other legal process, must decline to disclose the requested information, citing this part as authority.

(2) A non-Finance Board person or entity may not disclose unpublished information unless:

(i) The requester has sought the information from the Finance Board under this part; and (ii) After the Finance Board or the Department of Justice has had the opportunity to appear and oppose disclosure, a Federal court has ordered the person or entity to disclose the information.

(c) *Finance Board response.* If the Finance Board does not authorize in writing disclosure of the requested information, the Finance Board will provide a copy of this part to the person or entity at whose instance the process was issued and advise that person or entity or the court or other body that the Finance Board has prohibited disclosure of the information under this part. The Finance Board or the Department of Justice may intervene in the matter at issue, attempt to have the compulsory process withdrawn, or register other appropriate objections.

§ 905.7 Availability of unpublished information by testimony.

(a) *Scope.* (1) The scope of permissible testimony is limited to that set forth in the written authorization granted by the Finance Board. The Finance Board may act to ensure that the scope of testimony provided is consistent with the written authorization.

(2) A party to the matter at issue that did not join in a request for unpublished information who wishes to question a witness beyond the authorized scope must request expanded authorization under this part. The Finance Board will attempt to render decisions on such requests in an expedited manner.

(3) The Finance Board generally will not authorize a current employee or agent to provide expert or opinion testimony for a private party.

(b) *Manner in which testimony is given.* (1) The Finance Board ordinarily will make the authorized testimony of a former or current employee or agent available only through written interrogatories or deposition. The Finance Board will not authorize testimony at a trial or hearing unless the requester shows that properly developed deposition testimony could not be used or would be inadequate at the trial or hearing.

(2) If the Finance Board has authorized testimony in connection with a legal proceeding, the requester must cause a subpoena to be served on the employee in accordance with applicable rules of procedure, with a copy by registered or certified mail to the Office of General Counsel.

(3) If the authorized testimony is through deposition, the deposition ordinarily will take place at the Finance Board's offices at a time that will avoid substantial interference with the performance of the employee's official duties.

(4) The requester is responsible for all costs associated with an employee's appearance, including provision of a copy of a transcript of the deposition at the request of the Office of General Counsel. The person whose deposition was transcribed does not waive his or her right to review the transcript and note errors.

(c) *Restrictions on use and disclosure.* The Finance Board may condition its authorization of deposition testimony on an agreement of the parties to appropriate limitations, such as an agreement to keep the transcript of the testimony under seal or to make the transcript available only to the parties, the court or other body, or the jury. Upon request made pursuant to this part or on its own initiative, the Finance Board may authorize use of a deposition transcript in another legal proceeding or non-adversarial matter.

(d) *Responsibility of litigants.* If the testimony is disclosed in connection with a legal proceeding, the requester is responsible for:

(1) Promptly notifying all other parties to the legal proceeding of the disclosure, and, after entry of a protective order, providing copies of the testimony to the other parties who are signatories and subject to the protective order; and

(2) At the conclusion of the legal proceeding, retrieving the testimony from the court or other body's file as soon as it is no longer required and certifying to the Finance Board that every party covered by the protective order has destroyed the unpublished information.

§ 905.8 Availability of unpublished information by document.

(a) *Scope.* The scope of permissible document disclosure is limited to that set forth in the written authorization granted by the Finance Board. The Finance Board may act to ensure that the scope of documents provided is consistent with the written authorization.

(b) *Restrictions on use and disclosure.* The Finance Board may condition a decision to disclose unpublished information by document on entry of a protective order satisfactory to the Finance Board by the court or other body presiding in a legal proceeding or, in non-adversarial matters, on a written agreement of confidentiality that limits access of third parties to the unpublished information. In a legal proceeding in which a protective order already has been entered, the Finance Board may condition a decision to disclose unpublished information upon inclusion of additional or amended provisions in the protective order. Upon request made pursuant to this part or on its own initiative, the Finance Board may authorize use of the documents in another legal proceeding or non-adversarial matter.

(c) *Responsibility of litigants.* If the documents are disclosed in connection

with a legal proceeding, the requester is responsible for:

(1) Promptly notifying all other parties to the legal proceeding of the disclosure, and, after entry of a protective order, providing copies of the documents to the other parties that are signatories and subject to the protective order; and

(2) At the conclusion of the legal proceeding, retrieving the documents from the court or other body's file as soon as they are no longer required and certifying to the Finance Board that every party covered by the protective order has destroyed the unpublished information.

(d) *Certification or authentication.* If the Finance Board has authorized disclosure of unpublished information by document, it will provide certified or authenticated copies of the document upon request.

§ 905.9 Fees.

(a) *Fees for records search, copying, and certification.* Unless waived or reduced, a requester must pay a fee to the Finance Board for the costs of searching, copying, authenticating, or certifying unpublished information in accordance with 12 CFR 904.9. The Office of Resource Management generally will bill a requester upon completion of the production, but, in certain instances, may require a requester to remit payment prior to providing the requested information. To pay fees assessed under this section, a requester must deliver to the Office of Resource Management, located at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, a check or money order made payable to the "Federal Housing Finance Board."

(b) *Witness fees and mileage.* (1) *Current Finance Board or federal employees.* If the Finance Board authorizes disclosure of unpublished information by testimony of a current Finance Board employee or agent or a former Finance Board employee or agent who is still in the employ of the United States, upon completion of the testimonial appearance the requester must remit promptly to the Office of Resource Management payment for witness fees and mileage computed in accordance with 28 U.S.C. 1821.

(2) *Former employees or agents.* If the Finance Board authorizes disclosure of unpublished information by testimony of a former Finance Board employee or agent who is not currently employed by the United States, upon completion of the testimonial appearance the requester must remit promptly to the witness any witness fees or mileage due in accordance with 28 U.S.C. 1821.

Dated: August 6, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 99–21060 Filed 8–12–99; 8:45 am]

BILLING CODE 6725–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Liquidation of Collateral And Sale of Commercial Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: With this rule, SBA amends its regulation regarding the liquidation and sale of loans. As part of a government-wide initiative, federal credit agencies are being directed by the Office of Management and Budget (OMB) to sell their loan portfolios. Initially, SBA intends to sell its portfolio of direct and purchased loans made under the authorities of the 7(a) and 501, 502, 503, and 504 programs. This will include both secured and unsecured loans in performing and non-performing status. The loans will be sold to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale. SBA also intends to sell its disaster home loans and disaster business loans, but will publish separate regulations regarding these sales.

DATES: This rule is effective August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Blewett, 202–205–4202.

SUPPLEMENTARY INFORMATION: SBA promulgates, without change, a rule which it proposed on June 29, 1999 (64 FR 34745). SBA received no comments to the proposed rule.

13 CFR 120.540 sets forth SBA's policy for the liquidation of collateral and the sale of commercial loans. SBA amends and expands this rule to include the sale of direct and purchased loans in asset sales. Pub. L. 104–134, the "Debt Collection Improvement Act of 1996," enacted on April 26, 1996, provides that, "the head of an executive * * * agency may sell, subject to section 504(b) of the Federal Credit Reform Act of 1990 and using competitive procedures, any non-tax debt owed to the United States that is delinquent for more than 90 days." 31 U.S.C. 3711(i)(1).

The Small Business Act, 15 U.S.C. 634(b)(2), provides in pertinent part that "(The Administrator) may sell at public or private sale * * * in (her) discretion any evidence of debt * * * personal property, or security * * *" It further provides, in 15 U.S.C. 634(b)(7) that the Administrator may "take any and all actions * * * when [she] determines such actions are necessary or desirable in * * * liquidating or otherwise dealing with or realizing on loans * * *"

Pursuant to this statutory authority, SBA is establishing an Asset Sales Program to sell portions of its direct and participation loan portfolios. Under the new regulation, SBA may sell its direct and participation loans in bulk through competitive procedures at publicly advertised sales.

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this final rule is not a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

SBA certifies that this final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 12612, SBA certifies that this final rule has no federalism implications warranting preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA certifies that this final rule is drafted, to the extent practicable, to accord with the standards set forth in paragraph 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634 (b)(6) and 636(a) and (h).

2. In § 120.540, revise the section heading, add paragraph (b)(4), and revise paragraph (d) to read as follows:

§ 120.540 What are SBA's policies concerning the liquidation of collateral and the sale of business loans?

* * * * *

(b) * * *

(4) Sell direct and purchased 7(a) and 501, 502, 503 and 504 loans in asset sales. SBA will offer these loans for sale to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale.

* * * * *

(d) *Recoveries and security interests shared.* SBA and the Lender will share pro rata (in accordance with their respective interests in a loan) all loan payments or recoveries, including proceeds from asset sales, all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan and the payment of senior lienholders), and any security interest or guarantee (excluding SBA's guarantee) which the Lender or SBA may hold or receive in connection with a loan.

* * * * *

Dated: August 10, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–21062 Filed 8–12–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–275–AD; Amendment 39–11251; AD 99–17–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that requires repetitive inspections of the safety spring wear plate doublers attached to the auxiliary power unit (APU) firewall, measurement of wear of the doublers, and follow-on actions, if necessary. For certain airplanes, this amendment also requires a one-time inspection to detect improper clearance between the safety spring wear plate doubler and the APU firewall, and corrective action, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by reports indicating that excessive wear was found on the safety spring wear plate doublers on the APU firewall of Boeing Model 777 series airplanes. The actions specified by this AD are intended to detect and correct wear of the safety spring wear plate doublers on the APU firewall, which could result in a hole in the APU firewall, and consequent decreased fire protection capability.

DATES: Effective September 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on April 8, 1999 (64 FR 17130). That action proposed to require repetitive inspections of the safety spring wear plate doublers attached to the auxiliary power unit (APU) firewall, measurement of wear of the doublers, and follow-on actions, if necessary. For certain airplanes, that action also proposed to require a one-time inspection to detect improper clearance between the safety spring wear plate doubler and the APU firewall, and corrective action, if necessary. That action also provided for optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request for Extension of the Compliance Time

One commenter requests that the compliance time for the actions specified by paragraphs (a), (b), and (c) of the proposed AD be extended. The commenter states that it operates 34 airplanes affected by the proposed rule, including airplanes that have accumulated as many as 15,000 total flight hours. The commenter states that it has begun accomplishing the terminating action, and thus far, none of the removed wear plates show wear levels approaching penetration. Although the commenter supports the decision to mandate Boeing Alert Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999, it feels that the inspection compliance times specified in paragraphs (a), (b), and (c) of the proposal are unnecessarily conservative.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification. In consideration of these items, as well as the variability in the reported wear rate of the safety spring wear plate doublers attached to the APU firewall, the FAA has determined that the compliance times specified in paragraphs (a), (b), and (c) of the AD will not place an undue hardship on the majority of affected operators, and an acceptable level of safety can be maintained. No change to the final rule is necessary.

Explanation of Changes Made to the Applicability

The final rule has been revised to correct the applicability of the AD. In the preamble to the supplemental NPRM, the FAA discussed the difference between the effectivity listing of the alert service bulletin and the applicability of the AD. The supplemental NPRM stated that Model 777 series airplanes after line number 156 have stainless steel wear plate doublers installed prior to delivery. Since the issuance of the supplemental NPRM, the FAA has determined that there are four airplanes having line numbers less than 157 (line numbers 94, 102, 104, and 120) that had the stainless

steel wear plate doublers installed prior to delivery. The alert service bulletin identifies airplanes having line numbers 94, 102, 104, 120, and 157 through 183 inclusive, as Group 3 airplanes. None of these airplanes would be subject to the unsafe condition described above; therefore, the applicability of the final rule has been revised to include only Groups 1 and 2 airplanes, as listed in the alert service bulletin. The four affected airplanes were not included in the cost impact in the proposed rule; therefore, no change is required to the cost impact.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 152 airplanes of the affected design in the worldwide fleet. The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection to detect wear of the safety spring wear plate doublers, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $4,200, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the temporary repair, it will take approximately 2 work hours per airplane to accomplish the repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the temporary repair is estimated to be $120 per airplane.

Should an operator be required to accomplish the inspection to detect improper clearance between the safety spring wear plate doubler and the APU firewall, it will take approximately 1 work hour per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection is estimated to be $60 per airplane.

Should an operator be required or elect to accomplish the replacement of the wear plate doublers, it will take approximately 3 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts, if acquired from the manufacturer, will cost approximately $193 per airplane. Based on these figures, the cost impact of replacement of the wear plate doublers is estimated to be $373 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–17–02 Boeing: Amendment 39–11251. Docket 98–NM–275–AD.

Applicability: Model 777 series airplanes listed as Groups 1 and 2 airplanes in Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct wear of the safety spring wear plate doublers on the auxiliary power unit (APU) firewall, which could result in a hole in the APU firewall, and consequent decreased fire protection capability, accomplish the following:

Initial Inspection

(a) Perform a visual inspection of the two safety spring wear plate doublers on the APU firewall, and measure any wear of the doublers, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes that have accumulated 6,000 total flight hours or less as of the effective date of this AD: Inspect and measure prior to the accumulation of 6,300 total flight hours.

(2) For airplanes that have accumulated more than 6,000 but less than 10,000 total flight hours as of the effective date of this AD: Inspect and measure within 30 days after the effective date of this AD.

(3) For airplanes that have accumulated 10,000 total flight hours or more as of the effective date of this AD: Inspect and measure within 10 days after the effective date of this AD.

Note 2: Inspections, repairs, and modifications accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998, are considered acceptable for compliance with this AD, provided that the actions required by paragraph (f) of this AD, as applicable, are accomplished in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999.

Repetitive Inspections

(b) If, during the inspection required by paragraph (a) of this AD, the wear on each doubler measures less than 0.045 inch, repeat the inspection and measurement required by paragraph (a) of this AD thereafter at intervals not to exceed 60 days, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999; until paragraph (g) of this AD has been accomplished.

(c) If, during the inspection required by paragraph (a) of this AD, the wear on either doubler measures greater than or equal to 0.045 inch, but does not penetrate into or through the APU firewall: Repeat the inspection and measurement required by paragraph (a) of this AD thereafter at intervals not to exceed 30 days, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999; until paragraph (g) of this AD has been accomplished.

Corrective Actions

(d) If, during the inspection required by paragraph (a) of this AD, any wear penetrates through either doubler and into or through the APU firewall: Within 20 days after detection of the wear, accomplish either paragraph (d)(1) or (d)(2) of this AD in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999.

(1) Install a temporary stainless steel patch on both doublers, and within 4,000 flight cycles after installation of the temporary patch, accomplish the requirements of paragraph (e) of this AD.

(2) Accomplish the requirements of paragraph (e) of this AD.

(e) For airplanes on which wear is detected that penetrates through either doubler and into or through the APU firewall: Accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD at the time specified in paragraph (d) of this AD, as applicable.

(1) Repair the damage to the APU firewall in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Replace both existing wear plate doublers of the APU firewall with new stainless steel wear plate doublers in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

One-Time Inspection

(f) For airplanes having L/N 001 through 037 inclusive that have been modified prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998: Within 4 years after the effective date of this AD, perform a one-time visual inspection to detect improper clearance between the safety spring wear plate doublers and the APU firewall, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999.

(1) If the doublers are not in contact with the chemically milled pocket of the APU firewall, no further action is required by this paragraph.

(2) If the doublers are in contact with the chemically milled pocket of the APU firewall, prior to further flight, install shims between the safety spring wear plate doublers and the APU firewall, in accordance with Part 6 of the Accomplishment Instructions of the service bulletin.

Optional Terminating Action

(g) Replacement of the existing wear plate doublers of the APU firewall with new stainless steel wear plate doublers, in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999, constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraph (e)(1) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 777–53A0018, Revision 1, dated February 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on September 17, 1999.

Issued in Renton, Washington, on August 4, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20501 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–20–AD; Amendment 39–11250; AD 99–17–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires replacing all flap drive shafts with flap drive shafts of improved design, installing additional gaskets on the power drive unit, and modifying the attachment and supporting hardware. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent the flap drive shafts from corroding to the point where the flexible shafts in the flap drive system rupture, which could result in the inability to utilize the flap system with reduced airplane control.

DATES: Effective October 1, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–20–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 14, 1999 (64 FR 31756). The NPRM proposed to require replacing all flap drive shafts with flap drive shafts of improved design, installing additional gaskets on the power drive unit, and modifying the attachment and supporting hardware. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Pilatus Service Bulletin No. 27–003, dated March 8, 1999.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is being operated. For example, corrosion could develop on one of the affected airplanes at a certain time; then, if allowed to go undetected, the corrosion could develop into a more serious problem even if the airplane is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours time-in-service (TIS).

Cost Impact

The FAA estimates that 69 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 19 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer to the owners/operators of the affected aircraft free-of-charge. Based on these figures, the total cost impact of this AD on US operators is estimated to be $78,660, or $1,140 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–17–01 Pilatus Aircraft Ltd.: Amendment 39–11250; Docket No. 99–CE–20–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial number (MSN) 101 through 239, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the flap drive shafts from corroding to the point where the flexible shafts in the flap drive system rupture, which could result in the inability to utilize the flap system with reduced airplane control, accomplish the following:

(a) Within the next 4 calendar months after the effective date of this AD, accomplish the following in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 27–003, dated March 8, 1999:

(1) Replace all flap drive shafts with flap drive shafts of improved design (part numbers as specified in paragraphs (b)(1) and (b)(2) of this AD);

(2) Install additional gaskets on the power drive unit; and

(3) Modify the attachment and supporting hardware.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a flap drive shaft assembly that is not of the following part numbers (or FAA-approved equivalent part numbers):

(1) Part number 945.02.02.201: Flap Drive Shaft 953D100–5 (Inboard); and

(2) Part-number 945.02.02.202: Flap Drive Shaft 953D100–7 (Outboard).

Note 2: The FAA recommends that the owner/operator of the affected airplanes insert Pilatus Temporary Revision No. 27–07, dated January 8, 1999, into the PC12 Maintenance Manual at the same time this AD is accomplished to assure that the maintenance procedures for the improved design parts are current.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No: 27–003, dated March 8, 1999, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The replacements, installations, and modification required by this AD shall be done in accordance with Pilatus Service Bulletin No: 27–003, dated March 8, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swiss AD HB 99–241, dated May 8, 1999.

(g) This amendment becomes effective on October 1, 1999.

Issued in Kansas City, Missouri, on August 3, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20568 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–6]

Revision of Class D Airspace; Lake Hood, Elmendorf AFB, and Merrill Field, AK Revision of Class E Airspace; Elmendorf AFB and Merrill Field, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class D airspace at Lake Hood, AK, Elmendorf Air Force Base (AFB), AK, and Merrill Field, AK, as well as the Class E airspace (designated as surface areas) at Elmendorf AFB, AK, and Merrill Field, AK. The revision of the Anchorage, Alaska, Terminal Airspace Area segment boundaries affecting Lake Hood, AK, Elmendorf AFB, AK, and Merrill Field, AK, made this action necessary. With the exception of the internal boundary between Merrill Field, AK, and Lake Hood, AK, airspace areas, the adoption of this rule will result in the alignment of Class D airspace to coincide with the revised Anchorage Terminal Airspace segment boundaries, eliminating chart clutter and confusion between segment, Class D boundaries, and Class E boundaries. The adoption of this rule will also align the Elmendorf AFB, AK, and Merrill Field, AK, Class E airspace areas (designated as surface areas) with the Class D boundaries.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Durand, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

History

On October 1, 1997, the FAA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (62 FR 190) to revise the Anchorage, Alaska, Terminal Area (Docket No. 29029, Notice No. 97–14). In this rulemaking, the segment boundaries for the Merrill, Lake Hood, and Elmendorf AFB segments were revised. On March 29, 1999, the FAA published the final rule in the **Federal Register** (62 FR 14971) for the Anchorage, Alaska, Terminal Area, revising boundaries and descriptions for each segment with the effective date as June 17, 1999.

On April 20, 1999 a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class D and Class E airspace in the Anchorage, Alaska, Terminal Area was published in the **Federal Register** (64 FR 19310). The proposal was necessary to match the Class D and Class E airspace boundaries to the changes in segment boundaries in the Anchorage, Alaska, Terminal Area published in airspace docket 29029.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, however, the coordinates for West High School, Ship Creek, and Point Noname were published with errors. The corrected coordinates for West High School are 61°12′01″N., 149°55′00″W.; Ship Creek are 61°13′26″N., 149°53′37″W.; and Point Noname are 61°15′36″N., 149°55′39″W. Additionally, the Class D internal boundary between Lake Hood, AK, and Merrill Field, AK, was modified at the request of Merrill Field and Anchorage Airport Traffic Control Towers (ATCT) to return to the pre-existing boundaries for the following reasons: (1) increase lateral separation between Merrill Field's West High and Chester Creek arrival and departure routes; (2) increased lateral separation between Merrill Field traffic and Lake Hood traffic; (3) operational advantage to both Lake Hood ATCT and Merrill Field ATCT whereas aircraft traversing from Point MacKenzie Visual Check Point to the West High School Visual Check Point would not be spilling over into Lake Hood Class D airspace, requiring additional Lake Hood ATCT to Merrill Field ATCT coordination and communication; and (4) operational advantage to both Lake Hood ATCT and Merrill Field ATCT whereas aircraft, avoiding direct overflight of West High School, flying south of and around the school (current operational standard) would not be spilling over into Lake Hood Class D airspace.

The boundary change between Lake Hood and Merrill Field Class D airspaces is an internal boundary modification and does not affect the external Class D boundaries. The Lake Hood Class D airspace description will now read "* * * within a line beginning at Point Mackenzie, thence direct to the Mouth of Fish Creek, thence direct to the Northern Lights Boulevard (Blvd) railroad bridge, thence direct to the intersection of Tudor Road and the New Seward Highway, * * *" The Merrill Field Class D and Class E airspace descriptions will now read "* * * west along Tudor Road to the New Seward Highway, thence direct to the Northern Lights Blvd railroad bridge, thence direct to the Mouth of Fish Creek, thence direct to Point MacKenzie, * * *" The coordinates for Northern Lights Blvd railroad bridge and Mouth of Fish Creek have been added: Northern Lights Blvd railroad bridge (lat. 61°11′43″N., long 149°55′48″W.) and Mouth of Fish Creek (lat. 61°12′21″N., long. 149°55′59″W.).

The Federal Aviation Administration has determined that these changes are editorial in nature and will not increase the scope of this rule. Except for the non-substantive change just discussed, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class D airspace areas are published in paragraph 5000 and the Class E

airspace designated as surface areas are published in paragraph 6002 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class D and Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class D and Class E airspace in the Anchorage, Alaska, Terminal Area. With the exception of the internal boundary between Merrill Field, AK, and Lake Hood, AK, airspace areas, the intended effect of this action is to align the Class D airspace boundaries at Lake Hood, Elmendorf AFB, and Merrill Field, AK, to match the revised Anchorage, Alaska, Terminal Area segment boundaries and align the Class E airspace areas at Elmendorf AFB, AK, and Merrill Field, AK, to match the Class D boundaries.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AAL AK D Anchorage, Elmendorf AFB, AK [Revised]

Anchorage, Elmendorf AFB, AK
(Lat. 61°15′11″ N., long. 149°47′38″ W.)
Point Noname
(Lat. 61°15′36″ N., long. 149°55′39″ W.)
Ship Creek
(Lat. 61°13′26″ N., long. 149°53′37″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a line beginning at Point Noname; thence via the north bank of the Knik Arm to the intersection of the 4.7-mile radius of Elmendorf AFB; thence clockwise along the 4.7-mile arc of Elmendorf AFB to long. 149°46′44″ W., thence south along long. 149°46′44″ W. to lat. 61°19′10″ N., thence to lat. 61°17′58″ N. long. 149°44′08″ W., thence to lat. 61°17′30″ N. long. 149°43′08″ W., thence south along long. 149°43′08″ W. to the Glenn Highway, thence south and west along the Glenn Highway to Muldoon Road, thence direct to the Mouth of Ship Creek, thence direct to the point of beginning; excluding that airspace within the Anchorage International Airport, AK, Class C airspace. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL AK D Anchorage, Lake Hood, AK [Revised]

Anchorage, Lake Hood, AK
(Lat. 61°10′48″ N., long. 149°58′19″ W.)
Anchorage Air Traffic Control Tower
(Lat. 61°10′36″ N., long. 149°58′59″ W.)
Point MacKenzie
(Lat. 61°14′14″ N., long. 149°59′12″ W.)
Northern Lights Blvd Railroad Bridge
(Lat. 61°11′43″ N., long 149°55′48″ W.)
Mouth of Fish Creek
(Lat. 61°12′21″ N., long. 149°55′59″ W.).

That airspace extending upward from the surface to and including 2,500 feet MSL within a line beginning at Point Mackenzie, thence direct to the Mouth of Fish Creek, thence direct to the Northern Lights Blvd railroad bridge, thence direct to the intersection of Tudor Road and the New Seward Highway, thence south along the New Seward Highway to the 090° bearing from the Anchorage Air Traffic Control Tower, thence west direct to the Anchorage Air Traffic Control Tower, thence north along the 350° bearing from the Anchorage Air Traffic Control Tower to the north bank of Knik Arm, thence via the north bank of Knik Arm to the point of beginning; excluding that airspace within the Anchorage International Airport, AK, Class C airspace.

* * * * *

AAL AK D Anchorage, Merrill Field, AK [Revised]

Anchorage, Merrill Field, AK
(Lat. 61°12′52″ N., long. 149°50′46″ W.)
Point Noname
(Lat. 61°15′36″ N., long. 149°55′39″ W.)
Point MacKenzie
(Lat. 61°14′14″ N., long. 149° 59′12″W.)
Ship Creek
(Lat. 61°13′26″ N., long. 149°53′37″W.)
Northern Lights Blvd Railroad Bridge
(Lat. 61°11′43″ N., long 149°55′48″W.)
Nouth of Fish Creek
(Lat. 61°12′21″N., long. 149°55′59″W.).

That airspace extending upward from the surface to and including 2,500 feet MSL within a line beginning at Point Noname, thence direct to the Mouth of Ship Creek, thence direct to the intersection of the Glenn Highway and Muldoon Road, thence south along Muldoon Road to Tudor Road, thence west along Tudor Road to the New Seward Highway, thence direct to the Mouth of Fish Creek, thence direct to the Northern Lights Blvd railroad bridge, thence direct to Point MacKenzie, thence via the north bank of Knik Arm to the point of beginning; excluding that airspace within the Anchorage International Airport, AK, Class C airspace. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas

* * * * *

AAL AK E2 Anchorage, Elmendorf AFB, AK [Revised]

Anchorage, Elmendorf AFB, AK
(Lat. 61°15′11″N., long. 149°47′38″W.)
Point Noname
(Lat. 61°15′36″ N., long. 149°55′39″W.)
Ship Creek
(Lat. 61°13′26″ N., long. 149° 53′37″W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a line beginning at Point Noname; thence via the north bank of the Knik Arm to the intersection of the 4.7-mile radius of Elmendorf AFB; thence clockwise along the 4.7-mile arc of Elmendorf AFB to long. 149°46′44″ W., thence south along long. 149°46′44″ W. to lat. 61°19′10″ N., thence to lat. 61°17′58″ N. long. 149°44′08″ W., thence to lat. 61°17′30″ N. long. 149°43′08″ W., thence south along long. 149°43′08″ W. to the Glenn Highway, thence south and west along the Glenn Highway to Muldoon Road, thence direct to the Mouth of Ship Creek, thence direct to the point of beginning; excluding that airspace within the Anchorage International Airport, AK, Class C airspace. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective

date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL AK E2 Anchorage, Merrill Field, AK [Revised]

Anchorage, Merrill Field, AK (Lat. 61°12′52″ N., long. 149°50′46″ W.)
Point Noname
(Lat. 61°15′36″ N., long. 149°55′39″ W.)
Point MacKenzie
(Lat. 61°14′14″ N., long. 149°59′12″ W.)
Ship Creek
(Lat. 61°13′26″ N., long. 149°53′37″ W.)
Northern Lights Blvd railroad Bridge
(Lat. 61°11′43″ N., long 149°55′48″ W.)
Mouth of Fish Creek
(Lat. 61°12′21″ N., long. 149°55′59″ W.).

That airspace extending upward from the surface to and including 2,500 feet MSL within a line beginning at Point Noname, thence direct to the Mouth of Ship Creek, thence direct to the intersection of the Glenn Highway and Muldoon Road, thence south along Muldoon Road to Tudor Road, thence west along Tudor Road to the New Seward Highway, thence direct to the Mouth of Fish Creek, thence direct to the Northern Lights Blvd railroad bridge, thence direct to Point MacKenzie, thence via the north bank of Knik Arm to the point of beginning; excluding that airspace within the Anchorage International Airport, AK, Class C airspace. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Anchorage, AK, on August 6, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–21039 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–06]

Establishment of Class E Airspace: Ossining, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Ossining, NY. The development of a Standard Instrument Approach Procedure (SIAP), 014 helicopter Point in Space approach, based on the Global Positioning System (GPS) for the General Electric Company, Ossining, NY requires the establishment of controlled airspace extending upward from 700 feet Above Ground Level (AGL) to accommodate the SIAP.

EFFECTIVE DATE: 0901 UTC, Sept. 7, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 9, 1999, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Ossining, NY was published in the **Federal Register** (64 FR 30928). A GPS helicopter Point in Space, Standard Instrument Approach Procedure (SIAP) has been developed for the General Electric Helipad, Ossining, NY. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP.

The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace at Ossining, NY extending upward from 700 feet AGL for aircraft executing the GPS helicopter Point in Space SIAP to the General Electric helipad.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 . Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Ossining, NY [New]

General Electric Company Heliport, NY
(Lat. 41°11′16.38″ N. x long. 73°52′05.81″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of General Electric Heliport.

* * * * *

Issued in Jamaica, New York, on August 7, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–21020 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–9]

Amendment of Class E Airspace; Roosevelt Roads NS (Ofstie Field), PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Roosevelt Roads NS (Ofstie Field), PR. A Global Positioning System (GPS) Runway (RWY) 9 Standard Instrument Approach Procedure (SIAP) has been developed for Antonio Rivera Rodriquez Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Antonio Rivera Rodriquez Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On June 30, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Roosevelt Roads NS (Ofstie Field), PR (64 FR 35100). This action provides adequate Class E airspace for IFR operations at the Antonio Rivera Rodriquez Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Roosevelt Roads NS (Ofstie Field), PR, for the Antonio Rivera Rodriquez Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO PR E5 Roosevelt Roads NS (Ofstie Field), PR [Revised]

Roosevelt Roads NS (Ofstie Field), PR
(Lat. 18°14'53" N, long. 65°37'59" W)
Antonio Rivera Rodriquez Airport, PR
(Lat. 18°08'07" N, long. 65°29'30" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 12-mile radius of Roosevelt Roads NS (Ofstie Field) Airport and within a 6.5-mile radius of Antonio Rivera Rodriquez Airport, excluding that portion within the San Juan, PR, Class E airspace area and that portion within Restricted Area R–7104.

* * * * *

Issued in College Park, Georgia, on August 3, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–21034 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29683; Amdt. No. 1944]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and effective use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW, Washington, DC 20591; 2. The FAA Regional Office of the region in which the affected airport is located; or 3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW, Washington, DC 20591; or 2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on August 6, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective September 9, 1999*

Jacksonville, FL, Cecil Field, GPS RWY 9R, Orig
Jacksonville, FL, Cecil Field, GPS RWY 18L, Orig
Jacksonville, FL, Cecil Field, GPS RWY 27L, Orig
Jacksonville, FL, Cecil Field, GPS RWY 36R, Orig
Emporia, KS, Emporia Muni, GPS RWY 1, Orig
Corpus Christi, TX, Corpus Christi Intl, NDB RWY 13, Amdt 25
Corpus Christi, TX, Corpus Christi Intl, VOR OR TACAN RWY 17, Amdt 27
Corpus Christi, TX, Corpus Christi Intl, LOC RWY 31, Amdt 6
Corpus Christi, TX, Corpus Christi Intl, ILS RWY 13, Amdt 26
Corpus Christi, TX, Corpus Christi Intl, ILS RWY 35, Amdt 11
Corpus Christi, TX, Corpus Christi Intl, GPS RWY 13, Orig
Corpus Christi, TX, Corpus Christi Intl, GPS RWY 17, Orig
Corpus Christi, TX, Corpus Christi Intl, GPS RWY 31, Orig
Corpus Christi, TX, Corpus Christi Intl, GPS RWY 35, Orig
Falfurrias, TX, Brooks County, NDB RWY 35, Amdt 1
Falfurrias, TX, Brooks County, GPS RWY 17, Orig
Falfurrias, TX, Brooks County, GPS RWY 35, Orig
Hebbronville, TX, Jim Hogg County, NDB RWY 13, Amdt 3
Hebbronville, TX, Jim Hogg County, GPS RWY 13, Amdt 1
Kingsville, TX, Kleberg County, NDB RWY 13, Amdt 5
Kingsville, TX, Kleberg County, GPS RWY 13, Orig
Robstown, TX, Nueces County, VOR/DME–A, Amdt 3
Robstown, TX, Nueces County, GPS RWY 13, Orig

Sinton, TX, San Patricio County, VOR/DME RWY 14, Amdt 1
Sinton, TX, San Patricio County, VOR RWY 32, Amdt 8
Sinton, TX, San Patricio County, GPS RWY 14, Orig
Sinton, TX, San Patricio County, GPS RWY 32, Orig

. . . Effective October 7, 1999

Gainesville, FL, Gainesville Regional, RADAR–1, Orig
Leesburg, FL, Leesburg Regional, GPS RWY 13, Amdt 1
Leesburg, FL, Leesburg Regional, GPS RWY 31, Amdt 1
Punta Gorda, FL, Charlotte County, GPS RWY 3, Orig
Punta Gorda, FL, Charlotte County, GPS RWY 15, Orig
Punta Gorda, FL, Charlotte County, GPS RWY 21, Orig
Punta Gorda, FL, Charlotte County, GPS RWY 33, Orig
Punta Gorda, FL, Charlotte County, VOR/DME RNAV or GPS RWY 27, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, GPS RWY 4, Orig
Baltimore, MD, Baltimore-Washington Intl, GPS RWY 15L, Orig
Baltimore, MD, Baltimore-Washington Intl, GPS RWY 22, Orig
Duluth, MN, Duluth Intl, VOR OR TACAN OR GPS RWY 3, Amdt 19
Duluth, MN, Duluth Intl, VOR/DME OR TACAN RWY 21, Amdt 14
Duluth, MN, Duluth Intl, ILS RWY 9, Amdt 19
Duluth, MN, Duluth Intl, ILS RWY 27, Amdt 8
Duluth, MN, Duluth Intl, RADAR–1, Amdt 20
Perryville, MO, Perryville Muni, GPS RWY 2, Orig
Perryville, MO, Perryville Muni, GPS RWY 20, Orig
Seward, NE, Seward Municipal, GPS RWY 16, Orig
Seward, NE, Seward Municipal, GPS RWY 34, Orig
Solon Springs, WI, Solon Springs Muni, NDB OR GPS RWY 19, Amdt 2

. . . Effective November 4, 1999

Red Bluff, CA, Red Bluff Muni, GPS RWY 15, Orig
Red Bluff, CA, Red Bluff Muni, GPS RWY 33, Orig
Miami, FL, Opa Locka, VOR/DME RNAV RWY 9L, Orig, CANCELLED
Miami, FL, Opa Locka, VOR/DME RNAV RWY 27R, Orig, CANCELLED
Monroe, LA, Monroe Regional, VOR/DME RWY 4, Amdt 1
Monroe, LA, Monroe Regional, VOR RWY 22, Amdt 4
Monroe, LA, Monroe Regional, ILS RWY 4, Amdt 21
Monroe, LA, Monroe Regional, GPS RWY 4, Orig
Monroe, LA, Monroe Regional, GPS RWY 22, Orig
Fairfield, IL, Fairfield Muni, NDB RWY 9, Amdt 3
Fairfield, IL, Fairfield Muni, GPS RWY 9, Orig
French Lick, IN, French Lick Muni, GPS RWY 8, Orig
French Lick, IN, French Lick Muni, GPS RWY 26, Orig
Logansport, IN, Logansport Muni, GPS RWY 9, Orig
Logansport, IN, Logansport Muni, GPS RWY 27, Orig
Clarinda, IA, Schenck Field, NDB–A, Amdt 5
Clarinda, IA, Schenck Field, GPS RWY 2, Orig
Clarinda, IA, Schenck Field, GPS RWY 20, Orig
Jackson, MN, Jackson Muni, NDB OR GPS RWY 13, Amdt 9
Jackson, MN, Jackson Muni, GPS RWY 31, Amdt 1
Macon, MO, Macon-Fower Meml, VOR RWY 2, Amdt 1
Macon, MO, Macon-Fower Meml, VOR/DME OR GPS RWY 20, Amdt 1
Macon, MO, Macon-Fower Meml, GPS RWY 2, Orig
Albuquerque, NM, Albuquerque/Double Eagle II, GPS RWY 22, Orig
London, OH, Madison County, NDB RWY 9, Amdt 8
London, OH, Madison County, GPS RWY 9, Amdt 1
London, OH, Madison County, GPS RWY 27, Orig
Guthrie, OK, Guthrie Muni, GPS RWY 16, Orig
McAlester, OK, McAlester Regional, GPS RWY 1, Orig
McAlester, OK, McAlester Regional, GPS RWY 19, Orig
Oklahoma City, OK, Wiley Post, GPS RWY 17L, Orig
Oklahoma City, OK, Wiley Post, GPS RWY 35R, Orig
Columbia-Mt. Pleasant, TN, Maury County, GPS RWY 24, Orig
Millington, TN, Millington Muni, GPS RWY 4, Orig
Portland, TN, Portland Muni, GPS RWY 19, Orig
Llano, TX, Llano Muni, GPS RWY 17, Amdt 1
Llano, TX, Llano Muni, GPS RWY 35, Amdt 1
San Antonio, TX, San Antonio Intl, GPS RWY 21, Orig
Cable, WI, Cable Union, VOR/DME OR GPS–A, Amdt 5, CANCELLED
Cable, WI, Cable Union, NDB OR GPS–B, Amdt 10
Cable, WI, Cable Union, VOR/DME RNAV OR GPS RWY 34, Amdt 4, CANCELLED
Cable, WI, Cable Union, GPS RWY 34, Orig
Hayward, WI, Sawyer County, VOR/DME OR GPS RWY 2, Amdt 1, CANCELLED
Hayward, WI, Sawyer County, VOR RWY 20, Amdt 6, CANCELLED
Hayward, WI, Sawyer County, NDB RWY 20, Amdt 13
Hayward, WI, Sawyer County, GPS RWY 2, Orig
Hayward, WI, Sawyer County, GPS RWY 20, Orig
Logan, WV, Logan County, GPS RWY 6, Orig
Logan, WV, Logan County, GPS RWY 24, Orig

[FR Doc. 99–21031 Filed 8–12–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29684; Amdt. No. 1945]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; 2. The FAA Regional Office of the region in which affected airport is located; or 3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or 2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on August 6, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25, LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective Upon Publication

NFDC TRANSMITTAL LETTER

FDC Date	State	City	Airport	FDC No.	SIAP
06/09/99	NJ	Caldwell	Essex County	FDC 9/3961	NDB OR GPS–A AMDT 5.
06/09/99	NJ	Caldwell	Essex County	FDC 9/3962	LOC RWY 22 AMDT 1A.
07/23/99	CA	Oakdale	Oakdale	FDC 9/5344	VOR RWY 10 AMDT 5B.
07/23/99	WA	Seattle	Boeing Field/king County	FDC 9/5346	ILS RWY 13R AMDT 27.
07/26/99	LA	Patterson	Harry P. Williams Memorial	FDC 9/5438	LOC/DME RWY 24, AMDT 3.

NFDC TRANSMITTAL LETTER—Continued

FDC Date	State	City	Airport	FDC No.	SIAP
07/26/99	MO	Rolla/Vichy	Rolla National	FDC 9/5433	VOR/DME OR GPS RWY 4, AMDT 2A.
07/26/99	MO	Rolla/Vichy	Rolla National	FDC 9/5434	VOR RWY 22, AMDT 7A.
07/26/99	MO	Rolla/Vichy	Rolla National	FDC 9/5435	VOR/DME RNAV OR GPS RWY 22, AMDT 2A.
07/28/99	NY	Syracuse	Syracuse Hancock Intl	FDC 9/5482	VOR RWY 14 AMDT 22A.
07/28/99	NY	Syracuse	Syracuse Hancock Intl	FDC 9/5483	VOR OR TACAN RWY 32 ORIG–B.
07/28/99	NY	Syracuse	Syracuse Hancock Intl	FDC 9/5484	GPS RWY 32 ORIG–A.
07/28/99	NY	Syracuse	Syracuse Hancock Intl	FDC 9/5485	GPS RWY 14 ORIG–A.
07/29/99	FL	Miami	Kendall-Tamiami Executive	FDC 9/5508	ILS RWY 9R AMDT 8.
07/30/99	CT	Groton	Groton-New London	FDC 9/5524	VOR OR GPS RWY 23 AMDT 9.
07/30/99	ME	Bangor	Bangor Intl	FDC 9/5541	ILS RWY 15 AMDT 5 (CAT I, II, III).
07/30/99	NE	Omaha	Eppley Airfield	FDC 9/5540	ILS RWY 18, AMDT 6A.
08/03/99	FL	Miami	Miami Intl	FDC 9/5534	NDB OR GPS RWY 27L, AMDT 18B.
08/02/99	VA	Chesapeake	Chesapeake Muni	FDC 9/5593	VOR/DME RWY 23 AMDT 2B.

[FR Doc 99–21032 Filed 8–12–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 96F–0415]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Petroleum Wax

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(alkylmethacrylate) as a processing aid in the manufacture of petroleum wax. This action is in response to a petition filed by Nalco/Exxon Energy Chemicals.

DATES: This regulation is effective August 13, 1999; written objections and requests for a hearing by September 13, 1999. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 172.886(c)(2) (21 CFR 172.886(c)(2)), effective August 13, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 14, 1996 (61 FR 58417), FDA announced that a food additive petition (FAP 7A4524) had been filed by Nalco/Exxon Energy Chemicals, L. P., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 172.886 *Petroleum wax* to provide for the safe use of poly(alkylmethacrylate) as a processing aid in the manufacture of petroleum wax.

Based on the data in the petition and other relevant material, the agency has determined that: (1) Poly(alkylmethacrylate) closely resembles and functions as poly(alkylacrylate), which is currently listed in § 172.886(c)(2) for use as a processing aid in the manufacture of petroleum wax; (2) poly(alkylmethacrylate) is a high molecular weight polymer whose absorption across the gastrointestinal membrane would be minimal; and (3) the estimated daily intake of the monomeric impurity alkylmethacrylates from the proposed use, 0.1 milligram (mg)/person/day (d), is well below the acceptable daily intake of 30 mg/person/d established for alkylmethacrylates by the agency. Furthermore, the agency has determined that two methods incorporated by reference in § 172.886(c)(2) for the analysis of poly(alkylacrylate) entitled "Method for Determining Weight-Average and Number-Average Molecular Weight and for Determining Alkylacrylate Monomer Content of Poly(alkylacrylate) used as Processing Aid in Manufacture of Petroleum Wax" and "Method for Determining Residual Level of Poly(alkylacrylate) in Petroleum Wax," are applicable to the analysis of poly(alkylmethacrylate). Based on this information, FDA concludes that the proposed food use of poly(alkylmethacrylate) as a processing aid in the manufacture of petroleum wax is safe, the additive will achieve its intended technical effect, and therefore, 21 CFR part 172 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 13, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any

particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.886 is amended by revising paragraph (c)(2) to read as follows:

§ 172.886 Petroleum wax.

* * * * *

(c) * * *

(2) Poly(alkylacrylate) (CAS Reg. No. 27029–57–8), made from long chain (C_{16}–C_{22}) alcohols and acrylic acid, or poly(alkylmethacrylate) (CAS Reg. No. 179529–36–3), made from long chain (C_{18}–C_{22}) methacrylate esters, having:

(i) A number average molecular weight between 40,000 and 100,000;

(ii) A weight average molecular weight (MW_w) to number average molecular weight (MW_n) ratio (MW_w/MW_n) of not less than 3; and

(iii) Unreacted alkylacrylate or alkylmethacrylate monomer content not in excess of 14 percent, as determined by a method entitled "Method for Determining Weight-Average and Number-Average Molecular Weight and for Determining Alkylacrylate Monomer Content of Poly(alkylacrylate) used as Processing Aid in Manufacture of Petroleum Wax," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. Petroleum wax shall contain not more than 1,050 parts per million of poly(alkylacrylate) or poly(alkylmethacrylate) residues as determined by a method entitled "Method for Determining Residual Level of Poly(alkylacrylate) in Petroleum Wax," which is incorporated by reference. Copies are available from the addresses cited in this paragraph.

* * * * *

Dated: August 5, 1999.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–20889 Filed 8–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 98F–0014]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acidified solutions of sodium chlorite as an antimicrobial agent in processing water and ice intended for use in contact with seafood. This action is in response to a petition filed by Bio-Cide International, Inc.

DATES: The regulation is effective August 13, 1999; written objections and requests for a hearing by September 13, 1999. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 173.325(e) (21 CFR 173.325(e)), effective August 13, 1999.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 26, 1998 (63 FR 3749), FDA announced that a food additive petition (FAP 8A4568) had been filed by Bio-Cide International, Inc., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in 21 CFR part 173 to provide for the safe use of acidified sodium chlorite solutions in processing water and ice intended for use in contact with seafood. In its evaluation of the petition, the agency has concluded that the microbial population of the water and ice is reduced, as long as a residual level of available acidified solution of sodium chlorite is maintained.

Under the Antimicrobial Regulation Technical Corrections Act of 1998 (ARTCA) (Public Law 105–324), the use of an acidified solution of sodium chlorite used as an antimicrobial agent in water and ice that are used to rinse, wash, thaw, transport, or store seafood is subject to regulation by FDA as a food additive. Such solutions are to be used "in water that comes in contact with the food in the preparing, packing, or holding of the food for commercial purposes," and therefore, such use is exempt from the definition of the term "pesticide chemical" (21 U.S.C. 321(q)(1)(B)(i)). Moreover, as stated in the "Legal and Policy Interpretation of the Jurisdiction Under the Federal Food, Drug, and Cosmetic Act of the Food and Drug Administration and the Environmental Protection Agency Over the Use of Certain Antimicrobial Substances" (63 FR 54532 at 54541, October 9, 1998), FDA discussed, in the context of its jurisdiction over antimicrobial substances, what constitutes "processing" of seafood, which interpretation is unchanged by ARTCA. FDA stated that fish that is harvested is "processed." Consequently, activities done postharvest to seafood, such as handling, storing, preparing, heading, eviscerating, shucking, or holding, would be activities done to "processed food," not raw agricultural

commodities. Therefore, under ARTCA, fish processing operations and commercial fishing vessels would not be considered a "field" or a "treatment facility where raw agricultural commodities are the only food treated" (21 U.S.C. 321(q)(1)(B)(i)), and thus, an antimicrobial applied to water to which seafood is added at such locations would not be subject to regulation as a "pesticide chemical," but instead would be subject to regulation as a "food additive" under the Federal Food, Drug, and Cosmetic Act (the act).

Although the use of an acidified solution of sodium chlorite as an antimicrobial agent in water and ice that are used to rinse, wash, thaw, transport, or store seafood is regulated under section 409 of the act (21 U.S.C. 348) as a food additive, this intended use may nevertheless be subject to regulation as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, manufacturers intending to market acidified solutions of sodium chlorite for such use should contact the Environmental Protection Agency to determine whether this use requires a pesticide registration under FIFRA.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive to reduce the microbial contamination of water and ice that are used to rinse, wash, thaw, transport, or store seafood is safe, will achieve its intended technical effect, and therefore, that the regulation in § 173.325 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may, at any time on or before September 13, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in the brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.325 is amended by redesignating paragraph (d) as paragraph (e), and by adding new paragraph (d) to read as follows:

§ 173.325 Acidified sodium chlorite solutions.

* * * * *

(d) The additive is used as an antimicrobial agent in water and ice that are used to rinse, wash, thaw, transport, or store seafood in accordance with current industry standards of good manufacturing practice. The additive is produced by mixing an aqueous solution of sodium chlorite with any GRAS acid to achieve a pH in the range of 2.5 to 2.9 and diluting this solution with water to achieve an actual use concentration of 40 to 50 parts per million (ppm) sodium chlorite. Any seafood that is intended to be consumed raw shall be subjected to a potable water rinse prior to consumption.

* * * * *

Dated: August 5, 1999.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–20890 Filed 8–12–99; 8:45 am]

BILLING CODE 4160–01–F

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Reinstatement of Exchange Visitors Who Fail To Maintain Valid Program Status

AGENCY: United States Information Agency.

ACTION: Interim Final Rule with request for comments.

SUMMARY: This is an Interim Final Rule with request for comments being made by the United States Information Agency (hereinafter "the Agency"). The rule will amend the Agency's Exchange Visitor Program regulations regarding reinstatement of J–1 exchange visitors to valid program status. This Interim Final Rule supersedes the Agency's Statement of Policy which was published in the **Federal Register** on April 24, 1997.

EFFECTIVE DATE: This Interim Final Rule is effective on August 13, 1999. Comments regarding this rulemaking will be accepted until September 13, 1999.

ADDRESSES: United States Information Agency, Office of the General Counsel, 301 Fourth Street, SW, Room 700, Washington, DC 20547–0001.

FOR FURTHER INFORMATION CONTACT: Lorie J. Nierenberg, Office of the General Counsel, United States Informaiton Agency, 301 Fourth Street, SW, Washington, DC 20547; telephone (202) 619–6084.

SUPPLEMENTARY INFORMATION: While it is not the responsibility of the sponor to ensure that the exchange visitor timely departs the U.S., the Exchange Visitor Program regulations do require that a sponsor monitor its participating exchange visitors [22 CFR 514.10(e)]. Among other things, the sponsor must ensure that the activity in which the exchange visitor is engaged is consistent with the category and activity listed on the exchange visitor's Form IAP–66 [22 CFR 514.10(e)(1)]. The sponsor must also monitor the progress and welfare of the exchange visitor to the extent appropriate for the category [22 CFR 514.10(e)(2)]. Finally, the sponsor must require the exchange visitor to keep the sponsor apprised of his or her address and telephone number, and maintain such information [22 CFR 514.10(e)(3)].

The Agency believes that the monitoring requirements set forth in the existing Exchange Visitor Program regulations illuminate the sponsor's general obligation to monitor the exchange visitor's Form IAP–66 to ensure that such form accurately reflects the activities and the program dates of the exchange visitor and that the exchange visitor is advised of the limitations on his or her activities and authorized stay in the United States (Existing regulations also explicitly require the sponsor to notify the Agency in writing when the exchange visitor has withdrawn from or completed a program thirty or more days prior to the ending date on his or her Form IAP–66 or when the exchange visitor has been terminated from his or her program [22 CFR 514.13(c)].)

One of the purposes of the Fulbright-Hays Act is to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. When Congress enacted that Act, it amended the Immigration and Nationality Act by adding a new nonimmigrant visa category—the J visa—to be used solely for educational and cultural exchanges. Exchange visitors who come to the United States on the J visa come here as participants in exchange programs designated by the Director of the Agency. While the Agency has a programmatic role with respect to designating and monitoring programs in which exchange visitors will participate while in the United States on the J visa, it does not administer or enforce the provisions of the Immigration and Nationality Act, as amended. Administration and enforcement of that Act is solely under the jurisdiction of the Immigration and Naturalization Service ("the Service"). Oversight of the exchange visitor's program status is administered by the Agency, but the terms and conditions of the exchange visitor's nonimmigrant status are administered by the Service. Thus, responsible officers and exchange visitors must be aware that failure to maintain valid J–1 program status may at the same time be a failure to maintain valid immigration status, which may result in serious adverse consequences for an exchange visitor by operation of immigration law. Where there has been a failure to maintain valid immigration status, the Agency's reinstatement to valid program status does not serve as a reinstatement to valid immigration status.

Similarly, there may be instances where an exchange visitor may fail to maintain both valid nonimmigrant status and valid program status. For example, the Agency has been advised that a soon to be promulgated Service regulation will establish that a J–1 exchange visitor will be deemed to have failed to maintain valid nonimmigrant status and valid J–1 program status if the exchange visitor fails to pay the fee mandated by Public Law 104–208 (the "CIPRIS" fee). At the same time, failure to pay the fee would preclude reinstatement to valid J–1 program status under this interim final rule; i.e., reinstatement to valid program status could not be made until the fee is paid.

The Agency acknowledges that most program participants do not knowingly or wilfully engage in practices that would jeopardize their status in the United States. However, the Agency is aware that on occasion, whether through circumstances beyond the control of the exchange visitor or through administrative oversight, inadvertence, or neglect on the part of a Responsible Officer or an exchange visitor, or both, the exchange visitor may fail to maintain valid program status.

The Agency believes that the above principles apply to the subject of this rulemaking: Reinstatement to valid program status. Valid program status, in turn, relates directly to the concept of "duration of participation in an exchange visitor program." With one exception, the Exchange Visitor Program regulations establish a duration of participation for each specific program category. [Exchange visitors in the "college and university student" category have no fixed duration of participation as long as they meet certain requirements. See 22 CFR 514.23(h)]. Those limits to duration of participation were not set forth in the Mutual Educational and Cultural Exchange Act of 1961 (the Fulbright-Hays Act) that established the Exchange Visitor Program and created the J visa as part of the Immigration and Naturalization Act. Nevertheless, the vision of the authors of that legislation was that scholars, professors, trainees, and the other caregories of exchange visitors mentioned in the Act would come to the United States, accomplish the objective for which they came, and then return to their home country to share their new knowledge and skills with their countrymen. That vision would be frustrated and undermined if there were no finite limit on the period of time in which exchange visitors could remain in the United States. Moreover, the Agency believes that greatly extended periods of stay here tend to cause a closer identification with the United States and tend to work against the exchange visitor's eventual return home and completion of the desired "exchange."

Thus, the Exchange Visitor Program regulations impose limits on the duration of participation that vary from category to category in recognition of the fact that some categories require longer stays than others. (In some cases, the language in the sponsor's designation letter provides for less than the maximum duration of stay for program participation for that particular category.) When the Agency fails to require strict adherence to the established durations of participation, for example, by tolerating or enabling the exchange visitor to fail to maintain valid program status or otherwise remain in the United States beyond the expiration of thirty days after the end date of the exchange visitor's Form IAP–66, the Agency believes that it is departing from the intent of the Fulbright-Hays Act and the immigration laws of the United States. Moreover, remaining in the United States more than thirty days beyond the end date on the exchange visitor's Form IAP–66 will pace the exchange visitor in jeopardy of violating laws and regulations enforced by the Service.

The Agency recognizes that some exchange visitors commit minor or technical infractions of the Exchange Visitor Program regulations through sheer inadvertence or excusable neglect. The Agency is of the view that these minor or technical regulations do not constitute a failure to maintain valid J–1 program status. Under this Interim Final Rule, such minor or technical infractions may be corrected by the responsible Officer and an application for reinstatement need not be submitted to the Agency. The Responsible Officer's correction of a minor or technical infraction returns the exchange visitor

to the *status quo ante*, i.e., it is as if the minor or technical infraction never occurred.

The Interim Final Rule provides examples of minor or technical infractions. Nevertheless, it is impossible to foresee and list all possible such infractions. Thus, the Interim Final Rule establishes several criteria to guide the Responsible Officer in determining whether the infraction is a minor or technical one. If there is any question in the mind of the Responsible Officer as to whether the infraction is a minor or a substantive one, the Interim Final Rule requires that the Responsible Officer apply to the Agency for reinstatement on behalf of the exchange visitor.

The Exchange Visitor Program regulations, which appear at 22 CFR Part 514, do not include a regulation or reinstatement to valid program status. On April 24, 1997, the Agency published a Statement of Policy on reinstatement which was to be followed until a formal rulemaking was promulgated. 62 FR 19925. The Interim Rule supersedes and replaces the April 24, 1997 Statement of Policy. The Interim Rule establishes two categories with respect to reinstatement for failure to maintain valid program status: (1) those cases wherein a substantive violation of the regulations has occurred and which require application to the Agency for reinstatement; and, (2) those cases in which reinstatement will not be granted under any circumstances. For those cases identified in item 1 above, exchange visitors must provide evidence that they have at all times continued, or maintained an intent to continue, their program objective.

(1) *Substantive violations or infractions of the regulations.* The Interim Final Rule lists two violations which the Agency considers to be substantive violations or infractions of the regulations. If the Responsible Officer determines that the violation does not fit within one of the two listed violations, then the violation is either a technical violation which can be addressed by the Responsible Officer on his or her own initiative, or it is one of the violations for which reinstatement cannot be obtained.

While this Interim Rule on reinstatement for substantive violations fairly tracks the April 24, 1997 Statement of Policy, two additional exceptions follow. The Interim Final Rule requires the Responsible Officer, on behalf of the exchange visitor, to carry the burden of persuasion by demonstrating that the exchange visitor failed to maintain valid program status for less than 120 calendar days beyond the end date on the Form IAP–66, was pursuing or maintained an intent to pursue his or her original program objective, and (1) that the violation of status resulted from circumstances beyond the control of the exchange visitor or from administrative oversight, inadvertence, or neglect on the part of the Responsible Officer or the exchange visitor *or* (2) that the failure to receive reinstatement to valid program status would result in an unusual hardship to the exchange visitor. The Agency considers an unusual hardship to be a hardship that would not normally be expected to result from a failure to obtain reinstatement. For example, if an exchange visitor fails to maintain valid program status and, if denied reinstatement, must pay for a return airline ticket to his or her home country, the level of hardship would not be considered unusual. By contrast, if an exchange visitor doctoral candidate is in the final semester of a seven-year degree program and fails to maintain valid program status, the Agency would consider it an unusual hardship to be denied the opportunity to complete the final semester and obtain the doctoral degree. (This rulemaking changes the April 25, 1997 Statement of Policy. The latter required that in all cases both tests be met and, in addition, required a showing of unwarranted hardship, as opposed to unusual hardship.)

In addition, if the failure to maintain valid program status was equal to or more than 120 calendar days duration, then the Responsible Officer, on behalf of the exchange visitor, must demonstrate to the Agency that *both* tests are met, i.e., (1) that the violation of status resulted from circumstances beyond the control of the exchange visitor or from administrative delay or oversight, inadvertence, or neglect on the part of the Responsible Officer or the exchange visitor, *and* (2) that the failure to receive reinstatement to program status would result in unusual hardship to the exchange visitor.

Pursuant to this Interim Final Rule, where there has been a substantive violation or infraction of the regulations, the agency will consider reinstating to valid program status a J–1 exchange visitor who makes a request for reinstatement through his or her Responsible Officer. In such cases, the Responsible Officer is to direct a letter to the Exchange Visitor Program Services office containing a declaration from the Responsible Officer together with information demonstrating that the exchange visitor is pursuing or has at all time maintained an intent to pursue the original exchange program activity for which the exchange visitor was admitted to the United States, along with documentary evidence supporting the declaration. The declaration should also explain (1) why and how the violation of program status resulted from circumstances beyond the control of the Responsible Officer or the exchange visitor or from administrative delay or oversight inadvertence, or neglect on the part of the Responsible Office or the exchange visitor, or (2) why and how failure to receive reinstatement to valid program status would result in unusual hardship to the exchange visitor. (As stated above, *both* test must be met if the exchange visitor failed to maintain valid program status for 120 or more calendar days.) The Agency expects the Responsible Officer to make reasonable inquiries to verify that the information supporting the application for reinstatement is true, particularly with respect to the declaration that the exchange visitor is pursuing or was at all times intending to pursue the original exchange program activity for which the exchange visitor was admitted to the United States.

The request for reinstatement also is to include copies of all of the exchange visitor's Forms IAP–66 issued to date and a new completed Form IAP–66, indicating in Block 3 the date for which reinstatement is sought (namely, the new program end date). The new Form IAP–66 submitted to the Agency is to include all copies, including the green copy for the exchange visitor. The Form IAP–66 is to be prepared in the same manner as is done for an Extension of Program (§ 514.43), Transfer of Program (§ 514.42), or Change of Category (§ 514.41). In addition to marking "Extend an ongoing program," "Transfer to a different program," or "Begin a new program" in the "Purpose" box located in the Form's upper right hand corner, also mark "Reinstatement Request" in the "Purpose" box. If the older "E" series Form IAP–66 is still being used, type in the words "Reinstatement Request" in the "Purpose" box.

If the Agency determines that reinstatement is warranted, Box 6 on the new Form IAP–66 will be stamped, dated, and signed by the Agency to indicate that reinstatement has been granted. The effective date of the reinstatement will be the date on which the application for reinstatement was received by the Agency.

The Agency has consulted with the Service with respect to the date on which reinstatements are to be made effective. The Agency had considered making the reinstatement effective nunc pro tunc, i.e., effective on the date on which the exchange visitor first failed to

maintain valid program status. However, the Service has raised concerns that the agency's nunc pro tunc reinstatement provisions may be inconsistent with the Service's forthcoming F–1 (Student) regulations. In order to ensure regulatory consistency, the Agency has decided to make its reinstatement regulation mirror the Service's with respect to the date on which reinstatement is effective. The exchange community has voiced concern that the Agency's failure to make reinstatement effective nunc pro tunc will create a time gap wherein the exchange visitor might be deemed to have failed to maintain valid nonimmigrant status for a period of time, thus triggering the "unlawful presence" sanctions provided in the Illegal Immigration Reform And Immigrant Responsibility Act of 1996 (IIRAIRA). However, based on the Service's current interpretation of "unlawful presence" of nonimmigrants admitted for "duration of status" (D/S), the Agency remains convinced that the "gap" will not result in any prejudice to the exchange visitor. Should the Service alter its interpretation of "unlawful presence," the Agency will revisit this issue.

The new Form IAP–66 (minus the yellow copy) will be returned to the Responsible Officer. An Agency decision denying reinstatement is not appealable.

2. *Non-reinstatable violations.* The Interim Final Rule list six violations or other conditions which preclude reinstatement. These include instances: (1) when the exchange visitor willfully fails to maintain the health and accident insurance required under 22 CFR 514.14; (2) when the exchange visitor has engaged in employment not authorized by the Exchange Visitor Program's or the Service's regulations; (3) when the exchange visitor has been suspended or terminated from the most recent exchange visitor program; (4) when the exchange visitor has failed to maintain valid program status for more than 270 days; (5) when the exchange visitor has received a favorable recommendation from the Agency on an application of waiver of section 212(e) of the Immigration and Nationality Act (the two-year home residency requirement;) or, (6) when the exchange visitor has failed to pay the fee mandated by Public Law 104–208 (the "CIPRIS" fee). Note: The overwhelming majority of exchange visitors fall in the "college and university student" category. The Agency has decided on the 270-day outer limit, not because that number has any relevance to time periods set forth in the immigration laws. Rather, 270 days is the average length of an academic year, and it is the Agency's view that the failure to maintain valid program status for the equivalent of one academic year cannot arguably be considered to have been caused by circumstances beyond the control of the exchange visitor or by administrative delay or oversight, inadvertence or neglect. Moreover, the failure to maintain valid program status for more than 270 days presumptively demonstrates a failure to maintain an interest in continuing the exchange visitor's original program objective.

Comments

The Agency invites comments on this Interim Final Rule from all interested parties, notwithstanding the fact that it is under no legal obligation to do so. The oversight and administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedure Act, 5 U.S.C. 553(a)(1) (1989) specifically exempts foreign affairs functions from the rulemaking requirements of the Act.

The Agency will accept comments for 30 days following publication of this Interim Final Rule in the **Federal Register**. A final rule will be adopted upon Agency review of all comments received. Comments should be mailed to the address listed above.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a significant regulatory action within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated: August 6, 1999.

Les Jin,

General Counsel.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—EXCHANGE

1. The authority citation for part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(A)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 3 CFR Comp. P. 200; E.O. 12048 of March 27, 1978, 3 CFR, 1978 Comp. P. 168.

2. Section 514.45 is added to read as follows:

§ 514.45 Reinstatement to valid program status.

(a) *Definitions.* For purpose of this section—

You means the Responsible Officer or Alternate Responsible Officer;

Exchange visitor means the person who enters the United States on a J visa in order to participate in an exchange program designated by the Director of the United States Information Agency.

Fails or failed maintain valid program status means the status of an exchange visitor who has completed, concluded, ceased, interrupted, graduated from, or otherwise terminated the exchange visitor's participation in the exchange program, or who remains in the United States beyond the end date on the exchange visitor's current Form IAP–66.

Unauthorized employment means any employment not properly authorized by you or by the Attorney General, i.e., the Immigration and Naturalization Service, prior to commencement of employment. Unauthorized employment does not include activities that are normally approvable, as described in paragraph (c)(3) of this section.

We, our, or us means the office of Exchange Visitor Program Services of the United States Information Agency.

(b) *Who is authorized to correct minor or technical infractions of the Exchange Visitor Program regulations?* (1) If the exchange visitor committed a technical or minor infraction of the regulations, you are authorized to correct the exchange visitor's records with respect to such technical or minor infractions of the regulations in this part. Your correction of such an infraction(s) returns the exchange visitor to the status quo ante, i.e., it is as if the infraction never occurred.

(2) You may only correct the exchange visitor's record with respect to a technical or minor infraction of the regulations in this part if the exchange visitor is pursuing or intending to pursue the exchange visitor's original program objective.

(3) You may not correct the exchange visitor's records with respect to a technical or minor infraction of the regulations in this part if the exchange visitor has willfully failed to maintain insurance coverage during the period for which the record is being corrected; if the exchange visitor has engaged in unauthorized employment during that period, as defined in paragraph (a) of this section, of if the exchange visitor was involuntarily suspended or terminated from his or her program during the period.

(4) If the exchange visitor has failed to maintain valid program status because of a substantive violation of the

regulations in this part, you must apply to us for reinstatement.

(c) *What violations or infractions of the regulations in this part do we consider to be technical or minor ones, and how do you correct the record?* We consider the following to be examples of technical or minor infractions which you are authorized to correct:

(1) Failure to extend the Form IAP–66 in a timely manner (i.e., prior to the end date on the current Form IAP–66) due to inadvertence or neglect on your part or on the part of the exchange visitor.

(2) Failure on the part of the exchange visitor to conclude a transfer of program prior to the end date on the current Form IAP–66 due to administrative delay or oversight, inadvertence or neglect on your part or on the part of the exchange visitor;

(3) Failure to receive your prior approval and/or an amended Form IAP–66 before accepting an honorarium or other type of payment for engaging in a normally approvable and appropriate activity. Example, a lecture, consultation, or other activity appropriate to the category which is provided by a professor, research scholar, short-term scholar or specialist without prior approval or an amended Form IAP–66 issued prior to the occurrence of the activity.

(4) You correct the record *status quo ante* by issuing a Form IAP–66 or by writing an authorization letter to reflect the continuity in the program or the permission to engage in the activity that a timely issued document would have reflected.

(i) Forms IAP–66 should be:

(A) Issued to show continued authorized stay without interruption;

(B) Marked in the "purpose" box with the appropriate purpose (i.e., extension, transfer, etc.) and with the additional notation of "correct the record" typed in;

(C) Dated as of the date the Form was actually executed; and,

(D) Submitted to the Agency in the same way as any other notification.

(ii) Letters or other authorization documents should be:

(A) Issued according to the regulations in this part appropriate to the category and the activity;

(B) Marked or annotated to show "correct the record,"

(C) Dated as of the date the letter or document was actually executed; and,

(D) Attached to the exchange visitor's Form IAP–66 and/or retained in the sponsor's file as required by the regulations in this part for that particular type of letter or document.

(d) *How do you determine if an infraction, other than those examples listed above is a technical or minor infraction?* It is impossible to list every example of a technical or minor infraction. To guide you in making a determination, you are to examine the following criteria:

(1) Regardless of the reason, has the exchange visitor failed to maintain valid program status for more than 120 calendar days after the end date on the current Form IAP–66?

(2) Has the exchange visitor, by his or her actions, failed to maintain, at all relevant times, his or her original program objective?

(3) Has the exchange visitor willfully failed to comply with our insurance coverage requirements (§ 514.14)?

(4) Has the exchange visitor engaged in unauthorized employment, as that term is defined in paragraph (a) of this section?

(5) Has the exchange visitor category been involuntarily suspended or terminated from his or her program?

(6) Has an exchange visitor in the student category failed to maintain a full course of study (as defined in § 514.2) without prior consultation with you and the exchange visitor's academic advisor?

(7) Has the exchange visitor failed to pay the fee mandated by Public Law 104–208 (the "CIPRIS" fee)?

(8) If the answer to any of the above questions is "yes," then the infraction is not a technical or minor one and you are not authorized to reinstate the exchange visitor to valid program status.

(e) *Which violations or infractions do we consider to be substantive ones requiring you to apply to us for reinstatement?* The following are substantive violations or infractions of the regulations in this part by the exchange visitor which require you to apply to us for reinstatement to valid program status:

(1) Failure to maintain valid program status for more than 120 days after the end date on the current Form IAP–66;

(2) If a student, failure to maintain a full course of study (as defined in § 514.2) without prior consultation with you and the exchange visitor's academic advisor.

(f) *Which, if any, violations of the regulations in this part or other conditions preclude reinstatement and will result in a denial if application is made?* We will not consider requests for reinstatement (nor should you) when an exchange visitor has:

(1) Knowingly or willfully failed to obtain or maintain the required health insurance (§ 514.14) at all times while in the United States;

(2) Engaged in unauthorized employment, as that term is defined in paragraph (a) of this section;

(3) Been suspended or terminated from the most recent exchange visitor program;

(4) Failed to maintain valid program status for more than 270 calendar days;

(5) Received a favorable recommendation from the Agency on an application for waiver of section 212(e) of the Immigration and Nationality Act [8 U.S.C. 1182(e)]; or,

(6) Failed to pay the fee mandated by Public Law 104–208 (the "CIPRIS" fee.)

(g) *What if you cannot determine which category (technical, substantive, or non-reinstatable) the violation or infraction falls within?* If you cannot determine which category the violation or condition falls within, then you must, on behalf of the exchange visitor, apply to us for reinstatement.

(h) *If you determine that the exchange visitor's violation of the regulations in this part is a substantive one, how do you apply for a reinstatement to valid program status?* (1) If you determine that the violation of the regulations in this part is a substantive one, and that the exchange visitor has failed to maintain valid program status for 120 days or less, you must apply to us for reinstatement of the exchange visitor to valid program status. Your application must include:

(i) All copies of the exchange visitor's Forms IAP–66 issued to date;

(ii) A new, completed Form IAP–66, showing in Block 3 the date of the period for which reinstatement is sought, i.e., the new program end date;

(iii) A copy of the receipt showing that the Public Law 104–208 fee has been paid; and,

(iv) A written statement (and documentary information supporting such statement):

(A) Declaring that the exchange visitor is pursuing or was at all times intending to pursue the original exchange visitor program activity for which the exchange visitor was admitted to the United States; and,

(B) Showing that the exchange visitor failed to maintain valid program status due to circumstances beyond the control of the exchange visitor, or from administrative delay or oversight, inadvertence, or excusable neglect on your part or the exchange visitor's part; or,

(C) Showing that it would be an unusual hardship to the exchange visitor if we do not grant the reinstatement to valid program status.

(2) If you determine that the violation of the regulations is a substantive one, and that the exchange visitor has failed to maintain valid program status for more than 120 days, then you must apply to us for reinstatement of the

exchange visitor to valid program status. Your application must include:

(i) Copies of all the exchange visitor's Forms IAP–66 issued to date;

(ii) A new, completed Form IAP–66, showing in Block 3 the date for which reinstatement is sought, i.e., the new program end date;

(iii) A copy of the receipt showing that the Pub. L. 104–208 fee has been paid; and,

(iv) A written statement (together with documentary evidence supporting such statement):

(A) Declaring that the exchange visitor is pursuing or was at all times intending to pursue the exchange visitor program activity for which the exchange visitor was admitted to the United States; and,

(B) Showing that the exchange visitor failed to maintain valid program status due to circumstances beyond the control of the exchange visitor, or from administrative delay or oversight, inadvertence, or excusable neglect on your part or the exchange visitor's part; and,

(C) Showing that it would be an unusual hardship to the exchange visitor if we do not grant the reinstatement to valid program status.

(i) *How will we notify you of our decision on your request for reinstatement?* (1) If we deny your request for reinstatement, we will notify you by letter.

(2) If we approve your request for reinstatement, we will notify you:

(i) By stamping Box 6 on the new Form IAP–66 to show that reinstatement was granted, effective as of the date on which the application for reinstatement was received by the Exchange Visitor Program Services office; and

(ii) By returning the new Form IAP–66 for the exchange visitor.

(j) *How long will it take us to act on your request for reinstatement?* We will act on your request for reinstatement within forty-five days from the date on which we receive the request *and* supporting documentation.

(k) *Are you required to notify us each time that you correct a record?* No special notification is necessary. Submission of the notification copy of Form IAP–66 to the Agency serves as notice that a record has been corrected. Following the regulations in this part in issuing a letter or document serves as correction in the sponsor's file for those items not normally sent to the Agency under existing notification procedures.

[FR Doc. 99–20783 Filed 8–12–99; 8:45 am]
BILLING CODE 8230–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in September, 1999. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during September 1999.

For annuity benefits, the interest assumptions will be 6.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions are unchanged from those in effect for August 1999. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00 percent for the period during which a benefit is in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for August 1999.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during September 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 71 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used To Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . ., and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*	*	*	*	*	*
September 1999	.0630	1–20	.0525	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in< pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y < n_1 > n_2$), interest rate i_2 shall apply from the valuation date for a period of $y < n_1 > n_2$) years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_{1K-a2}$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
71	09–1–99	10–1–99	5.00	4.25	4.00	4.00	7	8

Issued in Washington, DC, on this 6th day of August, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–20927 Filed 8–12–99; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–010]

RIN 2115–AE47

Drawbridge Operation Regulations: Shrewsbury River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the Route 36 Bridge, mile 1.8, across the Shrewsbury River at Highlands, New Jersey. This final rule requires the drawbridge need open only at a quarter before and a quarter after the hour, May 15 through October 15, 7 a.m. to 8 p.m. This change is necessary to help alleviate vehicular traffic congestion caused by frequent bridge openings. This final rule is expected to relieve traffic congestion, synchronize the opening times of the two moveable bridges on the waterway, and still meet the reasonable needs of navigation.

DATES: This final rule is effective September 13, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 25, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Shrewsbury River, New Jersey, in the Federal Register (64 FR 28126). The Coast Guard received one letter commenting on the notice of proposed rulemaking. No public hearing was requested and none was held.

Background

The Route 36 Bridge, at mile 1.8, at Highlands, new Jersey, across the Shrewsbury River, has a vertical clearance of 35 feet at mean high water and 39 feet at mean low water.

The existing operating regulations for the Rt-36 Bridge, listed at 33 CFR 117.755(a), require the bridge to open on signal; except that, from Memorial Day through Labor Day on Saturdays, Sundays, and holidays, from 10 a.m. to 7 p.m., the draw need be opened only on the hour and half hour.

The bridge owner, the New Jersey Department of Transportation (NJDOT) asked the Coast Guard to change the operating regulations for the Route 36 Bridge to help alleviate vehicular traffic caused by bridge openings during the summer months. The Coast Guard published a notice of proposed rulemaking on May 25, 1999, which proposed that the Route 36 Bridge open on signal, except that, from May 15 through October 15, 7 a.m. to 8 p.m., the draw need open only on the hour and half hour.

The Coast Guard received one comment letter in response to the notice of proposed rulemaking suggesting that the Coast Guard synchronize the opening times for the Route 36 Bridge and the Monmouth County highway

bridge at mile 4.0, at Sea Bright, New Jersey, both across the Shrewsbury River. The synchronizing of the opening schedules at the bridges will allow vessels to transit through the bridges with minimum delay.

The bridge opening log data for the years 1995–1997 published by the Coast Guard in the notice of proposed rulemaking was incorrect. The correct opening log data is included in this final rule along with the addition of 1998 opening log data. The correct opening log data also supports the need to change the operating regulations for the Route 36 Bridge during the time period the bridge owner has requested.

The Route 36 Bridge opening data, May through October, for 1995, 1996, 1997, 1998, indicates the following number of openings: May, 186, 151, 149 and 146; June, 239, 384, 247 and 211; July, 398, 323, 302 and 327; August, 342, 488, 311 and 241; September, 280, 280, 199 and 228; October, 190, 298, 158 and 140, respectively.

The bridge owner originally requested that the Route 36 Bridge open on signal on the hour and half hour, 7 a.m. to 10 p.m., May 15 through October 15. The traffic counts indicated the hours 7 a.m. to 8 p.m. were the hours each day that most vehicles passed over the bridge. The vehicular traffic counts did not support the need to limit bridge openings during the 8 p.m. to 10 p.m. time period.

Discussion of Comments and Changes

The Coast Guard received one letter in response to the notice of proposed rulemaking. The Coast Guard has changed this final rule as a result of the comment letter received. The opening schedule published in the notice of proposed rulemaking required the Route 36 Bridge to need open only on the hour and half-hour. The Coast Guard, as a result of the comment received, has changed the opening schedule to require the Route 36 Bridge need open only at a quarter before the hour and a quarter after the hour. This change will synchronize the opening schedules for the two moveable bridges on the Shrewsbury River and will allow vessels to transit through the bridges with minimum delay.

The existing regulations refer to the Route 36 Bridge as the S36 Bridge. The reference to S36 Bridge in the regulations will be changed in this final rule to the Route 36 Bridge because it is a more recognizable description. The language requiring clearance gages for the Monmouth County Bridge listed at § 117.755(b) will be changed in this final rule to reference specifications listed under § 118.160 of this chapter. The notice of proposed rulemaking proposed to change the clearance gage requirements for the Route 36 Bridge only. This final rule will change the clearance gage requirements for both bridges.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge will open for vessel traffic two times an hour and the mariners will still be able to transit the waterway provided they schedule their transits in accordance with the operating schedule of the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.755 is revised to read as follows:

§ 117.755 Shrewsbury River.

(a) The Route 36 Bridge, mile 1.8, at Highlands, New Jersey, shall open on signal, except that, from May 15 through October 15, 7 a.m. to 8 p.m., the draw need open only at a quarter before the hour and a quarter after the hour. The owners of the bridge shall provide and keep in good legible condition, two clearance gauges, with figures not less than eight inches high, designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(b) The draw of the Monmouth County highway bridge, mile 4.0, at Sea Bright, shall open on signal; except that, from May 15 through September 30, on Saturdays, Sundays, and holidays, from 9 a.m. to 7 p.m., the draw need open only on the hour and half hour. The draw need not be opened at any time for a sailboat, unless it is under auxiliary power or is towed by a powered vessel. The owners of the bridge shall keep in good legible condition two clearance gages, with figures not less than eight inches high, designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Dated: August 2, 1999.

R. M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–20955 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–125]

Drawbridge Operation Regulations: Thames River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Amtrak Bridge, mile 3.0, across the Thames River in New London, Connecticut. This deviation from the regulations allows the bridge owner to require a two-hour advance notice for opening, Sunday through Thursday, 10 p.m. to 5 a.m., August 2, 1999, through September 30, 1999. This action is necessary to facilitate electrical modifications at the bridge.

DATES: This deviation is effective from August 2, 1999, through September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Bridge, mile 3.0, across the Thames River in New London, Connecticut, has a vertical clearance of 30 feet at mean high water, and 33 feet at mean low water in the closed position. The bridge owner, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the operating regulations to facilitate electrical modifications at the bridge. This deviation to the operating regulations allows the bridge owner to require a two-hour advance notice for bridge openings for the Amtrak Bridge, mile 3.0, across the Thames River in New London, Connecticut. This deviation will be in effect from Sunday through Thursday, 10 p.m. to 5 a.m., August 2, 1999, through September 30, 1999. Requests for bridge openings can be made by calling (860) 395–2355 or on marine radio channel 13 VHF/FM. Mariners requiring an emergency opening are advised to call Amtrak's Chief Dispatcher at (617) 345–7569. Vessels that can pass under the bridge without an opening may do so at all times during the closed periods.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 23, 1999.

R. M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–20958 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN44–02–7269a; FRL–6414–9]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving a supplemental revision to the Minnesota State Implementation Plan (SIP) for the Saint Paul particulate matter (PM) nonattainment area, located in Ramsey County, Minnesota. The Minnesota Pollution Control Agency (MPCA) submitted the supplemental SIP for the purpose of maintaining the attainment of the PM National Ambient Air Quality Standards (NAAQS) and is in response to our July 22, 1997 conditional approval (62 FR 39120), of the State's February 9, 1996 SIP revision for Red Rock Road. We are also taking action to revoke the Administrative Order for the Lafarge Corporation that we had approved into the SIP in our July 22, 1997 conditional approval. We are providing the rationale for the approval and other information in this notice.

DATES: This action is effective on October 12, 1999 without further notice, unless EPA receives relevant adverse comments by September 13, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

We have organized this Supplementary Information section as follows:

A. What Action Is EPA Taking Today?
B. Why Was this SIP Revision Needed?
C. Why Can We Approve this Request?
D. What Is the Background for this Rulemaking?

A. What Action Is EPA Taking Today?

We are approving MPCA's July 22, 1998 request for a revision to the Minnesota PM SIP. Specifically, we are approving the following: (A) the Title I (non-expiring) conditions of Minnesota Air Emission Permit No. 12300353–001, issued to Lafarge Corporation—Red Rock Terminal on April 14, 1998; (B) a modeled attainment demonstration for the Red Rock Road PM nonattainment area in Ramsey County, Minnesota; and (C) a request that we withdraw from the SIP the February 2, 1996 Administrative Order for Lafarge's Red Rock Road facility.

B. Why Was This SIP Revision Needed?

In response to monitored exceedances of the 24-hour PM NAAQS between 1992 and 1995, on February 9, 1996 the State submitted a SIP revision with emission limits and/or control measures for certain facilities located in the Red Rock Road area in order to bring the area into modeled attainment. Two of these facilities were required to commit to control measures to reduce their PM emissions and the third facility was required to either quantify their PM emissions to show that they can meet the NAAQS, or commit to control measures to reduce their PM emissions. The MPCA put these requirements into Administrative Orders (dated February 2, 1996) for St. Paul Terminals, Inc., AMG Resources Corporation and Lafarge Corporation.

We agreed that the February 9, 1996 submittal would more than satisfy the nonattainment area requirements. However, the attainment demonstration submitted with the Red Rock Road SIP revision was not fully approvable because specific emission limits for

Lafarge Corporation were not known due to the installation of new control equipment at the facility. Given this, and the State's need to further analyze other sources outside of the 2 kilometer area but within 4 kilometers from the ambient monitor, we approved the SIP submittal on July 22, 1997 at 62 FR 39120, conditioned upon the receipt of an approvable attainment demonstration and revised administrative orders incorporating the required information and changes. We also stated that an additional modeling analysis would need to be submitted by the State. Additional information regarding the details of our conditional approval is available in the July 22, 1997 **Federal Register** document and our June 6, 1997 Technical Support Document (TSD).

C. Why Can We Approve This Request?

We are approving the current SIP submittal as a Direct Final **Federal Register** document because the State has met the conditions set forth in our July 22, 1997 conditional approval of a February 9, 1996 SIP revision for Ramsey County, Minnesota. As detailed in our May 26, 1999 TSD, the attainment demonstration for the Red Rock Road portion of the Ramsey County PM nonattainment area is now fully approvable. In addition, we are withdrawing, at the State's request, the Administrative Order issued to Lafarge Corporation on February 2, 1996 from the SIP and are replacing it with the Title I SIP requirements found in the April 14, 1998 operating permit issued to Lafarge Corporation.

D. What Is the Background for This Rulemaking?

A portion of the St. Paul area was designated nonattainment for PM upon enactment of the Clean Air Act Amendments of 1990. The State submitted SIP revisions intended to satisfy the PM attainment demonstration requirements of the Act in 1991, 1992, and 1993. The enforceable element of the State's submittals were administrative orders for nine facilities in the St. Paul area. The EPA took final action on February 15, 1994 at 59 FR 7218, to approve Minnesota's submittals as satisfying the applicable requirements for the St. Paul PM nonattainment area.

However, an ambient monitor located on Red Rock Road monitored five exceedances of the 24-hour PM NAAQS between 1992 and 1995. The State determined that the exceedances were attributable to shifts and increases in local source activity (such as traffic newly occurring on unpaved surfaces) which had occurred since development of the prior plan, and not to any deficiencies in the prior plan. Based upon analysis of the monitoring conditions, it was determined that three companies located in the Red Rock Road area were significant contributors to the most recent monitored exceedances. On February 9, 1996 the State submitted a SIP revision with emission limits and/or control measures for these facilities in order to bring the area into modeled attainment. Two of these facilities were required to commit to control measures to reduce their PM emissions and the third facility was required to either quantify their PM emissions to show that they can meet the NAAQS, or commit to control measures to reduce their PM emissions. The MPCA put these requirements into Administrative Orders (dated February 2, 1996) for St. Paul Terminals, Inc., AMG Resources Corporation and Lafarge Corporation.

EPA Action

In this rulemaking action, EPA approves the Title I (non-expiring) conditions of Minnesota Air Emission Permit No. 12300353–001, issued to Lafarge Corporation—Red Rock Terminal on April 14, 1998 and the modeled attainment demonstration for the Red Rock Road PM nonattainment area in Ramsey County, Minnesota. In addition, EPA withdraws from the SIP the February 2, 1996 Administrative Order for Lafarge's Red Rock Road facility. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective October 12, 1999 without further notice unless relevant adverse comments are received by September 13, 1999. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 12, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 et seq., generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that this action will not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(50) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(50) On July 22, 1998 the State of Minnesota submitted a supplemental SIP revision for the control of particulate matter emissions from certain sources located along Red Rock Road, within the boundaries of Ramsey County. This supplemental SIP revision is in response to EPA's July 22, 1997 conditional approval (62 FR 39120), of a February 9, 1996 SIP revision for Red Rock Road. In addition, the previously approved administrative order for Lafarge Corporation (dated February 2, 1996) is revoked.

(i) Incorporation by reference.

(A) Air Emission Permit No. 12300353–001, issued by the MPCA to Lafarge Corporation—Red Rock Terminal on April 14, 1998, Title I conditions only.

(B) Revocation of Findings and Order, dated and effective July 21, 1998, to

Findings and Order issued to Lafarge Corporation on February 2, 1996.

(ii) Additional material.

(A) Letter submitting vendor certifications of performance for the pollution control equipment at Lafarge Corporation's facility on Red Rock Road in St. Paul, Minnesota, dated May 4, 1998, from Arthur C. Granfield, Regional Environmental Manager for Lafarge Corporation, to Michael J. Sandusky, MPCA Air Quality Division Manager.

(B) Letter submitting operating ranges for the pollution control equipment at Lafarge Corporation's facility on Red Rock Road in St. Paul, Minnesota, dated July 13, 1998, from Arthur C. Granfield, Regional Environmental Manager for Lafarge Corporation, to Michael J. Sandusky, MPCA Air Quality Division Manager.

[FR Doc. 99–20547 Filed 8–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–156; FRL–6409–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on May 4, 1999. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from solvent cleaning and motor vehicle refinish coating operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on September 13, 1999.

ADDRESSES: Copies of the revised rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted revised rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: SCAQMD Rules 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations, and Rule 1171—Solvent Cleaning Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on March 10, 1998.

II. Background

On May 4, 1999 in 64 FR 23813, EPA proposed to approve the following rules into the California SIP: SCAQMD's Rule 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations and SCAQMD's Rule 1171—Solvent Cleaning Operations. Rule 1151 and 1171 were amended by SCAQMD on June 13, 1997. Both rules were submitted by CARB to EPA on March 10, 1998. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRM cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM(s) cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 64 FR 23774 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated July 1998, SCAQMD's Rules 1171 and 1151).

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 23774. EPA received a comment from EPI Research (EPIR) regarding Rule 1171. EPIR commented that they did not have accurate information from SCAQMD during the rule making process and that lowered VOC and/or vapor pressure limits of cleaning solvents would be difficult, if not impossible to meet, or were not commercially available. For this reason EPIR requested that EPA withhold approval of SCAQMD's Rule 1171 into the California SIP. EPA has evaluated the information submitted by California regarding Rule 1171 and determined that it fulfills the procedural requirements of 40 CFR 51, Appendix V, including the requirements of 2.1(f) public notice, (g) public hearing, and (h) compilation of public comments and responses. Furthermore, under CAA section 110(a)(2), EPA may not consider the economic or technological feasibility of the provisions of the SCAQMD rule in approval of the SIP revision. *Union Electric* v. *EPA*, 427 U.S. 246, 265–266 (1976). As noted by the Supreme Court, it is the province of the State or local authorities to determine whether or not to impose more stringent limits that may require technology forcing. EPA must assess the SIP revision on the basis of factors set forth in CAA section 110(a)(2) which include reasonable notice and public hearings in the adoption process, but does not provide for the disapproval of a rule in a SIP based upon economic or technological infeasibility. For these reasons the comments submitted do not affect the incorporation of SCAQMD's Rule 1171 into the California SIP.

IV. EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in

accordance with the requirements of the CAA.

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 19, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (254)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(254) * * *

(i) * * *

(D) * * *

(*2*) Rule 1151, adopted on July 8, 1988 and amended on June 13, 1997, and Rule 1171, adopted on August 2, 1991 and amended on June 13, 1997.

* * * * *

[FR Doc. 99–21011 Filed 8–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6417–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Davis Glocester-Smithfield Regional (GSR) Landfill site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces the deletion of the Davis GSR Landfill site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Rhode Island have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Anna Krasko, Remedial Project Manager, U.S. EPA Region I, 1 Congress Street, Suite 1100 (HBO), Boston, MA 02114–2023, (617) 918–1232 or Matthew DeStefano, Project Manager, Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767, (401) 222–2797.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Davis Glocester-Smithfield Regional (GSR) Landfill site, Glocester/Smithfield, Rhode Island.

A Notice of Intent to delete for this site was published on June 17, 1999 (64 FR 32466). The closing date for comments on the Notice of Intent to Delete was July 19, 1999. EPA received comments from Town of Glocester Town Council, response to which is provided in a Responsiveness Summary included in a public docket which is located at EPA's Region 1 Records Center in Boston, MA (phone 617–918–1440) and at E. Smithfield Public Library, 50 Esmond Street, N. Smithfield, RI (phone 401–231–5150).

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of the Hazardous Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-Financed remedial actions in the unlikely event that conditions at the site warrant such action. 40 CFR 300.425(e)(3) of the NCP states that Fund-Financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site "Davis (GSR) Landfill, Glocester, Rhode Island."

Dated: July 23, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–20706 Filed 8–12–99; 8:45 am]

BILLING CODE 6560–60–P

Proposed Rules

Federal Register
Vol. 64, No. 156
Friday, August 13, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Domestic Licensing of Production Utilization Facilities; Risk-informed Revisions, Option 3 (SECY–98–300)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission has instructed the staff to pursue a study to explore changes to the body of the part 50 regulations, to incorporate risk-informed attributes which is Option 3 in Secy–98–300. This study will result in recommendations to the Commission on any specific regulatory changes that should be pursued, and the corresponding schedules and resource needs. The staff intends to conduct a workshop to solicit information related to these changes.

DATES: The workshop will be held on September 15, 1999.

ADDRESSES: The workshop will be held at the Doubletree Hotel, 1750 Rockville, Pike, Rockville, Maryland 20852. Telephone No. 301–468–1100.

FOR FURTHER INFORMATION CONTACT: Mary Drouin, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–6675 email: mxd@nrc.gov.

SUPPLEMENTARY INFORMATION: Listed below are example topics on which discussion and feedback are sought from the public at the workshop:

1. Which regulations of 10 CFR Part 50 are candidates for risk-informed revisions; what are the bases for choosing these candidates; and what are the proposed changes to these candidate regulations?

For example:

- Requirements result in unnecessary regulatory burden
- Additional requirements needed
- Requirements not commensurate with safety significance
- Risk-significant SSCs not covered by regulation

2. Are the problems with the regulations themselves or with their implementation (e.g., regulatory guides, standard review plans, branch technical positions)?

3. Are any of the regulations inconsistent or contradictory with other regulations? If so, where and which ones?

4. Is the current set of design basis accidents appropriate, are any modifications needed? If so, what are the needed modifications?

5. Are the principles stated in RG 1.174 appropriate in developing risk-informed revisions to Part 50?

6. What level of risk should be the basis for risk-informed regulatory change?

7. What should be the risk metrics and criteria?

Reference material (available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington DC 20555–0001; a free single copy of each document, to the extent of supply, may be requested by writing to Distribution Series, Printing and Mail Services, Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001) includes:

- SECY–98–300, "Options for Risk-Informed Revisions to 10 CFR part 50—"Domestic Licensing of Production and Utilization Facilities," December 23, 1998.
- "Staff Requirements—SECY–98–300-Options for Risk-Informed Revisions to 10 CFR part 50—'Domestic Licensing of Production and Utilization Facilities'," June 8, 1999.
- RG 1.174
- 10 CFR part 50

Workshop Meeting Information:

The Commission intends to conduct a workshop to solicit information related to the risk-informed revisions to 10 CFR part 50 (Option 3). Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Mary Drouin, Office of Nuclear Regulatory Research, MS: T10-E50, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001, (301) 415–6675, email: mxd@nrc.gov

Date: September 15, 1999

Agenda: Preliminary agenda is as follows (a final agenda will be available at the workshop):

7:45 am to 8:00 am Introduction, opening remarks
8:00 am to 9:15 am NRC Presentation on Risk-Informed Part 50 Study:
—Purpose
—Approach
—Status of Activities
—Plans
9:15 am to 9:30 am BREAK
9:30 am to 11:30 am Industry Presentations
11:30 am to 12:45 pm LUNCH
12:45 pm to 2:15 pm General Discussion of Issues/Topics
2:15 pm to 2:30 pm BREAK
2:30 pm to 4:15 pm General Discussion of Issues/Topics
4:15 pm to 4:45 pm Wrapup

Location: Doubletree Hotel, 1750 Rockville Pike Rockville Maryland 20852 (301) 468–1100

Registration: No registration fee for workshop; however, notification of attendance is requested so that adequate space, etc. for the workshop can be arranged. Notification of attendance should be directed to Mary Drouin, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001, (301) 415–6675, email: mxd@nrc.gov

Dated this 3rd day of August 1999.

For the Nuclear Regulatory Commission.

Thomas L. King,

Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 99–21052 Filed 8–12–99; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–54–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive

(AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed AD would require modifying the flap inboard attachment fittings through the installation of a reinforcement angle bracket on the inside of the center web of both flap inner attachment fittings. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent the potential of the inboard flap attachment fittings buckling while operating at full flaps with full power into a head-on wind gust, which could result in loss of control of the airplane.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA of Switzerland reports that static testing shows that insufficient safety margins could occur in certain situations. Operating the airplane at full flaps (at the maximum allowable aircraft speed) with full power into a head-on wind gust could result in the inboard flap attachment fittings buckling.

This condition, if not corrected, could result in loss of control of the airplane.

Relevant Service Information

Pilatus has issued Service Bulletin No. 57–004, dated June 11, 1999, which specifies procedures for modifying the flap inboard attachment fittings through the installation of a reinforcement angle bracket on the inside of the center web of both flap inner attachment fittings.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 99–353, dated July 12, 1999, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying the flap inboard attachment fittings through the installation of a reinforcement angle bracket on the inside of the center web of both flap inner attachment fittings. Accomplishment of the proposed action would be required in accordance with Pilatus Service Bulletin No. 57–004, dated June 11, 1999.

Cost Impact

The FAA estimates that 77 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $23,100, or $300 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 99–CE–54–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial number (MSN) 101 through MSN 300, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the potential for the inboard flap attachment fittings buckling while operating at full flaps with full power into a head-on wind gust, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, modify the flap inboard attachment fittings by installing a reinforcement angle bracket on the inside of the center web of both flap inner attachment fittings (Modification Kit Number 500.50.12.199). Accomplish this modification in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 57–004, dated June 11, 1999.

(b) As of the effective date of this AD, no person may install on any of the affected airplanes, flap inboard attachment fittings that do not have Modification Kit Number 500.50.12.199 incorporated.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No: 57–004, dated June 11, 1999, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD HB 99–353, dated July 12, 1999.

Issued in Kansas City, Missouri, on August 6, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21017 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–14]

Proposed Establishment of Class E Airspace; St. Helena, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish a Class E airspace area at St. Helena, CA. The establishment of a Special Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) Copter 293 Point In Space approach serving St. Helena Fire Department Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain helicopters executing the Special Copter GPS 293 Point In Space approach to St. Helena Fire Department Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at St. Helena Fire Department Heliport, St. Helena, CA.

DATES: Comments must be received on or before September 16, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–14, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, CA 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket 99–AWP–14." The postcard will be date/time stamped and returned to the commenter. All communications

received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, CA 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at St. Helena, CA. The establishment of a Special Copter GPS 293 Point In Space approach at St. Helena Fire Department Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain helicopters executing the Special Copter GPS 293 Point In Space approach to the St. Helena Fire Department Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for rotorcraft executing the Special Copter GPS 293 Point In Space approach to the St. Helena Fire Department Heliport, St. Helena, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 ST Helena, CA [New]

ST Helena Fire Department Heliport
Point In Space Coordinates
(Lat. 38°32'21"N, long. 122°29'35"W)

That airspace extending upward from 700 feet above the surface and within a 7-mile radius of a Point In Space serving the ST Helena Fire Department Heliport.

* * * * *

Issued in Los Angeles, California, on August 2, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–21027 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–15]

Proposed Establishment of Class E Airspace; Clearlake, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish a Class E airspace area at Clearlake, CA. The establishment of a Special Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) Copter 321 Point In Space approach serving Redbud Community Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain helicopters executing the Special Copter GPS 321 Point In Space approach to Redbud Community Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Redbud Community Hospital Heliport, Clearlake, CA.

DATES: Comments must be received on or before September 16, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–15, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, CA 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261; telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views,

or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AWP–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, CA 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Clearlake, CA. The establishment of a Special Copter GPS 321 Point In Space approach at Redbud Community Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain helicopters executing the Special Copter GPS 321 Point In Space approach to the Redbud Community Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for helicopters executing the Special Copter GPS 321 Point In Space approach to the Redbud Community Hospital Heliport, Clearlake, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Clearlake, CA [New]

Redbud Community Hospital Heliport
Point In Space Coordinates
(Lat. 38°55'01"N, long. 122°36'42"W)

That airspace extending upward from 700 feet above the surface and within a 6-mile radius of a Point In Space serving the Redbud Community Hospital Heliport.

* * * * *

Issued in Los Angeles, California, on August 2, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–21026 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–12]

Proposed Establishment of Class E Airspace; Fort Bragg, CA

AGENCY: Federal Aviation Administration (FAA, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish a Class E airspace area at Fort Bragg, CA. The establishment of a Special Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) Copter 158 Point In Space Approach serving Mendocino Coast District Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain helicopters executing the Special Copter GPS 158 Point In Space approach to Mendocino Coast District Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Mendocino Coast District Hospital Heliport, Fort Bragg, CA.

DATES: Comments must be received on or before September 16, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–12, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Office of the Regional Counsel,

Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, CA 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AWP–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, CA 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Fort Bragg, CA. The establishment of a Special Copter GPS 158 Point In Space approach at Mendocino Coast District Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain rotorcraft executing the Special Copter GPS 158 Point In Space approach to the Mendocino Coast District Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for rotorcraft executing the Special Copter GPS 158 Helicopter Point In Space approach to the Mendocino Coast District Hospital Heliport, Fort Bragg, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Fort Bragg, CA [New]

Medocino Coast District Hospital Heliport
Point In Space Coordinates
(Lat. 39°26'34" N, long. 123°48'04" W)

That airspace extending upward from 700 feet above the surface and within a 6-mile radius of the Point In Space serving the Medocino Coast District Hospital Heliport.

* * * * *

Issued in Los Angeles, California, on August 2, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–21025 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–17]

Proposed Establishment of Class E Airspace; Napa, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposed to establish a Class E airspace area at Napa, CA. The establishment of a Special Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) Copter 050 Point In Space approach serving Queen of the Valley Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward

from 700 feet or more above the surface of the earth is needed to contain helicopters executing the Special Copter GPS 050 Point In Space approach to Queen of the Valley Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Queen of the Valley Hospital Heliport, Napa, CA.

DATES: Comments must be received on or before September 16, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–17, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, CA 90261

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AWP–17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch 15000 Aviation Boulevard, Lawndale, CA 90261. Communications must identify the docket number of this NPRM. Persons interested in being on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a class E airspace area at Napa, CA. The establishment of a Special Copter 050 Point in Space approach at Queen of the Valley Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain helicopters executing the Special Copter 050 Point in Space approach at Queen of the Valley Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for helicopters executing the Special Copter 050 Point in Space approach at Queen of the Valley Hospital Heliport, Napa, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involved an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Napa, CA [New]

Queen of the Valley Hospital Heliport
Point In Space Coordinates
(Lat. 38°19′31″N, long. 122°18′53″W)

That airspace extending upward from 700 feet above the surface and within a 5-mile radius of a Point In Space serving the Queen of the Valley Hospital Heliport, excluding that portion within the Santa Rafael, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on August 2, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–21023 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–13]

Proposed Establishment of Class E Airspace; Gualala, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish a Class E airspace area at Gualala, CA. The establishment of a Special Global Positioning System (GPS) Standard instrument Approach Procedure (SIAP) Copter 015 Point In Space Approach serving Redwood Coast Medical Services Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain helicopters executing the Special Copter GPS 015 Point in Space approach to Redwood Coast Medical Services Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Redwood Coast Medical Services Hospital heliport, Gualala, CA.

DATES: Comments must be received on or before September 16, 1999.

EFFECTIVE DATE: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–13, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, CA 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AWP–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, CA 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Gualala, CA. The establishment of a Special Copter GPS 015 Point In Space approach at Redwood Coast Medical Services Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain rotocraft executing the Special Copter GPS 015 Point In Space approach to the Redwood Coast Medical Services Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for rotocraft executing the Special Copter GPS 015 Point In Space approach to the Redwood Coast Medical Services Hospital Heliport, Gualala, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP CA E5 Gualala, CA [New]

Redwood Coast Medical Services Hospital Heliport
Point In Space Coordinates
(Lat. 38°45'31" N, long. 123°32'20" W)

That airspace extending upward from 700 feet above the surface and within a 6-mile radius of the Point In Space serving the Redwood Coast Medical Services Hospital Heliport.

* * * * *

Issued in Los Angeles, California, on August 2, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–21024 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 29624]

High Density Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed interpretation; reopening of comment period.

SUMMARY: On July 2, 1999, the FAA published a Notice of proposed interpretation, which proposed to interpret the term "operator" as interpreted in the extra section provision of the FAA's High Density Rule to permit one airline code-share partner to operate an extra section of a regularly scheduled flight of another code-share partner. This notice announces the reopening of the comment period for an additional 30 days.

DATES: Comments must be submitted on or before September 13, 1999.

ADDRESSES: Comments regarding the notice of interpretation should be mailed, in triplicate, to Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 29624, 800 Independence Avenue, SW, Washington, DC 20591. Comments must be marked Docket No. 29624. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this action by submitting such written data, views, or arguments, as they may desire. Comments should identify the regulatory docket and should be submitted in triplicate to the Rules Docket address specified above. Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9–NPRM–CMTS@faa.gov. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include a preaddressed, stamped postcard marked "Comments to Docket 29624." The postcard will be date stamped and mailed to the commenter.

Availability of this Notice

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Federal Register's electronic bulletin board service (telephone: (202) 512–1661). Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/.htm or the Federal Register 12s web page at http://www.access.gop.gov/su docs for access to recently published rulemaking documents.

Background

On June 28, 1999, the FAA issued a notice proposing to interpret the term "operator" as interpreted in the extra section provision of the FAA's High Density Rule to permit one airline code-share partner to operate an extra section of a regularly scheduled flight of another code-share partner (64 FR 35963; July 2, 1999). The purpose of this proposed interpretation is to recognize the development of code-share arrangements in the aviation industry. The FAA issued this Notice with a 10-day comment that closed on July 12, 1999.

In the Notice, the FAA did not adequately identify the circumstances that prompted the proposed interpretation. This proposed interpretation arose as a result of an April 1, 1999, letter from Delta Air Lines, Inc. (Delta) requesting that the FAA confirm Delta's interpretation of the extra section provision set forth in 14 CFR 93.123(b)(4). Specifically, Delta interpreted this provision to permit code-share partners to operate an extra section of a scheduled flight operated by a second code-share partner. A copy of Delta's letter has been included in the docket for this matter.

In the past, the FAA has consistently interpreted the term operator to be the air carrier operating the flight. However, after consideration of Delta's proposal, the FAA believes that emerging use of code-share arrangement in the aviation industry requires a reevaluation of agency interpretation. As a result, the FAA issued the Notice of proposed interpretation.

Additionally, several commenters were concerned with the short comment period that was provided in the Notice. Therefore, in order to provide full disclosure of the circumstances that gave rise to the Notice, the FAA is reopening the comment period to ensure that all interested parties have full knowledge of the basis for the proposed interpretation and an opportunity to comment. Accordingly, the FAA is reopening the comment period for this proposed interpretation for an additional 30 days.

Issued in Washington, DC on August 9, 1999.

Nicholas G. Garaufis,

Chief Counsel.

[FR Doc. 99–21028 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–079]

RIN 2115–AE47

Drawbridge Operation Regulations; Mystic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules governing the US 1 Bridge, mile 2.8, across the Mystic River in Mystic, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six hour advance notice for openings in the evening during the winter months because there have been no requests to open the bridge during that time period. This rulemaking is expected to relieve the bridge owner of the burden of crewing the bridge at all times while meeting the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before October 12, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CG01–99–079) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background

The US 1 Bridge, mile 2.8, across the Mystic River, has a vertical clearance of 4 feet at mean high water and 7 feet at mean low water.

The existing operating regulations for the bridge listed at 33 CFR 117.211(b) require it to open on signal with a maximum delay of 20 minutes; except, from May 1 through October 31 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour, and from November 1 through April 30 from 7:15 p.m. to 5:15 a.m., the draw shall open on signal upon eight hours advance notice.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT), asked the Coast guard to change the regulations to require a six-hour advance notice for openings from November 1 through April 30, 8 p.m. to 4 a.m. This change is less restrictive than the existing regulations. The bridge opening log data for 1998 and 1999, November through April, indicate no requests to open the bridge during the time period 8 p.m. to 4 a.m.

Discussion of Proposal

The Coast Guard proposes to revise the operating rules, listed at 33 CFR 117.211(b)(2), which govern the US 1 Bridge, mile 2.8, cross the Mystic River. This change will require the bridge to open on signal; with a maximum delay of 20 minutes; except: (1) From May 1 through October 31 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour. (2) From November 1 through April 30, from 8 p.m. to 4 a.m., the draw will open on signal if at least a six-hour advance notice is given. This proposed rule will relieve the bridge owner of the requirement to crew the bridge during the winter months at night while meeting the reasonable needs of navigation.

The Coast Guard believes this proposal is reasonable because there have been no requests to open the bridge during the winter months at night.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under station 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge has not had any requests to open in the evening during the winter months. Mariners will still be able to obtain bridge openings during the regulated time period provided they give six-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, the Coast Guard certifies under section 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, it adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *set seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations has been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.211(b)(2) is revised to read as follows:

§ 117.211 Mystic River

* * * * *

(b) * * *

(1) * * *

(2) From November 1 through April 30, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six hours notice is given by calling the number posted at the bridge.

Dated: July 29, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–20953 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–085]

RIN 2115–AE47

Drawbridge Operation Regulations; Housatonic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules governing the US 1 Bridge, mile 3.5, across the Housatonic River in Stratford, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six hour advance notice for openings at night during the winter months because there have been few requests to open the bridge during that time period. This rulemaking is expected to relieve the bridge owner of the burden of crewing the bridge at all times while meeting the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before October 12, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identifying this rulemaking (CGD01–99–085) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background

The US 1 Bridge, mile 3.5, across the Housatonic River, in Stratford, Connecticut, has a vertical clearance of 32 feet at mean high water and 37 feet at mean low water.

The existing operating regulations listed at 33 CFR 117.207(a) for the bridge require it to open on signal; except that, from 7 a.m. to 9 a.m., Monday through Friday and 4 p.m. to 5:45 p.m. daily, the draw need not be opened for the passage of vessels.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT) has asked the Coast Guard to change the regulations to require a six-hour advance notice for openings from 8 p.m. to 4 a.m., December 1 through March 31. The bridge opening log data for 1998 and 1999, December 1 through March 31, from 8 p.m. to 4 a.m. indicate the following number of openings: December 1, N/A, January 5, 6, February 4, 3, March 0, 3, respectively.

Discussion of Proposal

The Coast Guard proposes to revise the operating rules, listed at 33 CFR 117.207(a), which govern the US 1 Bridge, mile 3.5, across the Housatonic River. This change will require the bridge to open on signal; except that, from 7 a.m. to 9 a.m., Monday through Friday and 4 p.m. to 5:45 p.m. daily, the draw need not be opened for the passage of vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six-hour advance notice is given. This proposal will relieve the bridge owner of the requirement to crew the bridge at night during the winter months while meeting the reasonable needs of navigation.

The Coast Guard believes this proposal is reasonable based upon the low number of opening requests at night during the winter months.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge has not had many requests to open in the evening during the winter months. Mariners will still be able to obtain bridge openings during the regulated time period provided they give six-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, the Coast Guard certifies under section 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.207(a) is revised to read as follows:

§ 117.207 Housatonic River

(a) The draw of the US 1 Bridge, mile 3.5, at Stratford, shall open on signal; except that, from 7 a.m. to 9 a.m.,. Monday through Friday, and 4 p.m. to 5:45 p.m. daily, the draw need not open for the passage of vessels. From December 1 through March 31, from 8 p.m. to 4 a.m, the draw shall open on signal if at least six hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: July 29, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–20954 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–076]

RIN 2115–AE47

Drawbridge Operation Regulations; Hackensack River, Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations governing the Harold J. Dillard (Court Street) Bridge, at mile 16.2, at Hackensack, across the Hackensack River, the Avondale Bridge, mile 10.7, at Lyndhurst, across the Passaic River, and the Douglas O. Mead (Union Avenue) Bridge, mile 13.2, at Rutherford, across the Passaic River, in New Jersey. The brige owner has asked the Coast Guard to change the regulations for these bridges to require a four-hour advance notice for openings at all times because there have been few requests to open these bridges since 1994. This rulemaking is expected to relieve the bridge owner of the burden of crewing the bridges at all times while meeting the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before October 12, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–076) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background

The Harold J. Dillard (Court Street) Bridge, mile 16.2, across the Hackensack River in Hackensack, New Jersey, has a vertical clearance of 3 feet at mean high water and 8 feet at mean low water. The Douglas O. Mead (Union Avenue) Bridge, mile 13.2, across the Passaic River, in Rutherford, New Jersey, has a vertical clearance of 13 feet at mean high water and 18 feet at mean low water. The Avondale Bridge, mile 10.7, across the Passaic River in Lyndhurst, New Jersey, has a vertical clearance of 7 feet at mean high water and 12 feet at mean low water.

The existing operating regulations for the Harold J. Dillard (Court Street) Bridge listed at § 117.723(g) require the

bridge to open on signal from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m., and at all times on weekends and Federal holidays, the draw shall open on signal if at least eight hours notice is given. The existing operating regulations for the Douglas O. Mead (Union Avenue) Bridge listed at § 117.739(o) require the bridge to open on signal; except that, from 4 p.m. to 8 a.m., the draw shall open if at least eight hours notice is given. The existing operating regulations for the Avondale Bridge listed at § 117.739(l) require the bridge to open on signal; except that, notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7 p.m.

The bridge owner, the County of Bergen, has asked the Coast Guard to change the regulations for these bridges to require a four-hour advance notice for openings at all times.

The bridges' log data indicates that the Harold J. Dillard (Court Street) Bridge and Douglas O. Mead (Union Avenue) Bridge have not received a request to open since 1994. The Avondale Bridge had 8 openings in 1996, 4 openings in 1997, 2 openings in 1998, and no openings thus far in 1999.

Discussion of Proposal

The Coast Guard proposes to revise the operating rules governing the Harold J. Dillard (Court Street) Bridge, listed at 33 CFR 117.723(g), for the Hackensack River and the operating rules for the Avondale and Douglas O. Mead (Union Avenue) bridges listed at 33 CFR 117.739 (l) and (o), respectively, for the Passaic River. This proposal will require all three bridges to open on signal at all times if at least four-hours notice is given. The advance notice requirements shall be posted at the bridges in accordance with 33 CFR 117.55(c) of this chapter. This proposal will relieve the bridge owner of the requirement to have personnel crew the bridges and still meet the needs of navigation.

The Coast Guard believes this proposal is reasonable based upon the low number of opening requests received since 1994.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that these bridges have had few requests to open since 1994. Mariners will continue to obtain bridge openings provided they give four-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, the Coast Guard certifies under section 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Education Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rules does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations has been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.723(g) is revised to read as follows:

§ 117.723 Hackensack River

* * * * *

(g) The draw of the Harold J. Dillard Memorial (Court Street) Bridge, mile 16.2, at Hackensack, shall open on signal if at least four hours notice is given.

* * * * *

3. Section 117.39(l) and (o) are revised to read as follows:

§ 117.739 Passiac River

* * * * *

(l) The draw of the Avondale Bridge, mile 10.7, at Lyndhurst, shall open on signal if at least four hours notice is given.

* * * * *

(o) The draw of the Douglas O. Mead, (Union Avenue) Bridge, mile 13.2, shall open on signal if at least four hours notice is given.

* * * * *

Dated: July 29, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc 99–20956 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–067]

RIN 2115–AE47

Drawbridge Operation Regulations; Niantic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules governing the

S156 Bridge, mile 0.1, across the Niantic River, at Niantic, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six hour advance notice for openings at night during the winter months because there have been no requests to open the bridge during that time period. This rulemaking is expected to relieve the bridge owner of the burden of crewing the bridge at all times while meeting the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before October 12, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–087) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background

The S156 Bridge, mile 0.1, across the Niantic River, at Niantic, Connecticut, has a vertical clearance of 9 feet at mean high water and 12 feet at mean low water.

The existing operating regulations listed at 33 CFR 117.215(b) require the bridge to open on signal; except that, from 7 a.m. to 8 a.m., and 4 p.m. to 5 p.m., Monday through Friday, except holidays, the draw shall open only for the passage of commercial vessels.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT) has asked the Coast Guard to change the regulations to require a six-hour advance notice for openings from 8 p.m. to 4 a.m., December 1 through March 31. The bridge opening log data for 1998 and 1999, December through March, 8 p.m. to 4 a.m., indicate no requests to open the bridge.

Discussion of Proposal

The Coast Guard proposes to revise the operating rules, listed at 33 CFR 117.215(b), which govern the S156 Bridge, mile 0.1, across the Niantic River. This change will require the bridge to open on signal; except that, from 7 a.m. to 8 a.m., and from 4 p.m. to 5 p.m., Monday through Friday, except holidays, the draw shall open only for the passage of commercial vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six-hour advance notice is given. This proposal will relieve the bridge owner of the requirement to crew the bridge at night during the winter months while meeting the reasonable needs of navigation.

The Coast Guard believes this proposal is reasonable because there have been no requests to open the bridge at night during the winter months.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge has not had any requests to open in 1998 and 1999, December through March, from 8 p.m. to 4 a.m. Mariners will still be able to obtain bridge openings during the regulated time period provided they give six-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, the Coast Guard certifies under section 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 2501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is available in

the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.215(b) is revised to read as follows:

§ 117.215 Niantic River.

* * * * *

(b) The draw of the S156 Bridge, mile 0.1, at Niantic, shall open on signal; except that, from 7 a.m. to 8 a.m., and 4 p.m. to 5 p.m., Monday through Friday, except holidays, the draw shall open only for the passage of commercial vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: July 29, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–20957 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–086]

RIN 2115–AE47

Drawbridge Operation Regulations; Pequonnock River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules governing the Stratford Avenue Bridge, mile 0.1, across the Pequonnock River at Bridgeport, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six hour advance notice for openings during the winter months at night because there have been few requests to open the bridge during that time period. This rulemaking is expected to relieve the bridge owner of the burden of crewing the bridge at all times while meeting the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before October 12, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–086) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background

The Stratford Avenue Bridge, mile 0.1, across the Pequonnock River at Bridgeport, Connecticut, has a vertical clearance of 8 feet at mean high water and 14 feet at mean low water.

The existing operating regulations for the bridge listed at § 117.219(b) require it to open on signal; except that, from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m., and 4:30 p.m. to 6:10 p.m., the draw need not open for the passage of vessels.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT), has asked the Coast Guard to change the regulations to require a six hour notice for openings from December 1 through March 31, 8 p.m. to 4 a.m. The bridge opening log data for 1998 and 1999, December through March, indicate the following number of openings during the time period, 8 p.m. to 4 a.m.: December 0, N/A, January 0, 0, February 2, 1, March 1, 2, respectively.

Discussion of Proposal

The Coast Guard proposes to revise the operating rules, listed at 33 CFR 117.219(b), which govern the Stratford Avenue Bridge, mile 0.1, across the Pequonnock River. This change will require the bridge to open on signal; except that, from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m., and 4:30 p.m. to 6:10 p.m., the draw need not open for the passage of vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six hour notice is given. This proposal will relieve the bridge owner of the requirement to crew the bridge during the winter months and meet the needs of navigation. The reference in the existing regulations to sound signals for bridge openings is being removed because it is now listed at § 117.15 of this chapter.

The Coast Guard believes this proposal is reasonable based upon the low number of opening requests at night during the winter months.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, us unnecessary. This conclusion is based on the fact that the bridge has not had many requests to open overnight during the winter

months. Mariners will still be able to obtain bridge openings during the regulated time period provided they give six-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. *Small entities* include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, the Coast Guard certifies under section 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.219(b) is revised to read as follows:

§ 117.219 Pequonnock River

* * * * *

(b) The Stratford Avenue Bridge, mile 0.1, at Bridge port, shall open on signal; except that, from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m., and 4:30 p.m. to 6:10 p.m., the draw need not open for the passage of vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: July 29, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–20959 Filed 8–12–99 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN44–02–7269b; FRL–6415–1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a supplemental revision to the Minnesota State Implementation Plan (SIP) for the Saint Paul particulate matter (PM) nonattainment area, located in Ramsey County Minnesota. The supplemental SIP was submitted by the State for the purpose of bringing about the attainment of the PM National Ambient Air Quality Standards (NAAQS) and is in response to our July 22, 1997, conditional approval (62 FR 39120), of a February 9, 1996 SIP revision for Red Rock Road. In the final rules section of this **Federal Register**, we are conditionally approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received by September 13, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–20548 Filed 8–12–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket No. MARAD–98–3468]

RIN 2133–AB14

Putting Customers First in the Title XI Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration ("MARAD") is seeking public comment

on a proposed rule which modifies certain provisions of the existing regulations which implement Title XI of the Merchant Marine Act, 1936, as amended ("Act"). This rule intends to improve administration of the Title XI program. Title XI guarantees are issued for all types of vessel construction and shipyard modernization and improvement projects, except for fishing vessels. The part of the Title XI program related to fishing vessels is administered by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 13, 1999.

ADDRESSES: You should mention the docket number that appears at the top of this document and submit your written comments to: Docket Management, Room PL–401, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. You may call Docket Management at (202) 366–9324. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit/. You may visit the docket room to inspect and copy documents at the above address from 10 a.m. to 5 p.m., local time, Monday through Friday, except on Federal holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: You may call Mitchell D. Lax of the MARAD Office of Ship Financing, at (202) 366–5744, or you may write to him at the following address: MAR–530, Room 8122, 400 Seventh Street, S.W., Washington, D.C. 20590.

SUPPLEMETARY INFORMATION:

Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the MARAD Chief Counsel at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket Room are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).
- On that page, click on "search."
- On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "MARAD–1999–1234," you would type "1234."
- After typing the docket number, click on "search."
- On the next page, which contains docket summary information for the docket you selected, click on the desire comments.
- You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Title XI of the Act authorizes the Secretary of Transportation (Secretary) to guarantee debt issued for the purpose of financing or refinancing: (a) the construction, reconstruction or reconditioning of U.S.-flag vessels or eligible export vessels built in United States shipyards, and (b) the construction of advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility located in the United States. You should submit Title XI applications to MARAD acting under authority delegated by the Secretary to the Maritime Administrator. Prior to execution of a guarantee, we must, among other things, make determinations of economic soundness of the project, and your financial and operating capability. The Title XI program enables you to obtain long-term financing on terms and conditions that may otherwise not be available.

National Performance Review

In response to a 1993 recommendation from Vice President Gore's National Performance Review team, President Clinton issued Executive Order 12862, September 11, 1993, calling for a revolution within the Federal Government to change the way it does business by putting customers first and striving for a customer-driven government that matches or exceeds the best service available in the private sector. In October 1997, the National Performance Review team reported that Federal agencies, implementing the Executive Order, had launched a massive effort to improve governmental service and had made a noticeable difference.

On December 1, 1997, in a memorandum to heads of Operating Administrations and Departmental offices at the United States Department of Transportation, Secretary of Transportation Rodney E. Slater urged all Departmental offices and heads of Operating Administrations to ask their customers what is important to them in the kinds and quality of services they

want and what is their level of satisfaction with existing services. Secretary Slater emphasized that it is "this customer feedback that will be the basis for improving, revising, adding, or deleting standards when it makes sense and, ultimately, for helping us become a more customer focused DOT."

ANPRM

We published an advanced notice of proposed rulemaking (ANPRM) on February 17, 1998, in the **Federal Register** (63 FR 7744) and are now issuing this notice of proposed rulemaking concerning program administration and how it can be improved. The ANPRM requested that you provide us with your views about how the Title XI program is administered and how it could be improved. Specifically, we solicited comments on ten sets of questions, which can be grouped into the following general categories:

- The standard application Form MA–163, including the requirement for vessel plans and specifications.
- The requirements for information on your and/or your operator's qualifications.
- The requirements for financial information and certain financial tests.
- The requirements for information on economic soundness and the economic soundness criteria.
- The inclusion in the Title XI regulations of the provisions of Maritime Administrative Order (MAO) No. 520–1, Amendment 2.
- The documentation requirements for a closing on a commitment to guarantee obligations.

On July 30, 1998, a notice was published in the **Federal Register** advising that the Title XI application form and closing documentation had been modified. The modifications were made after consideration of your comments received in response to the ANPRM and the notice invited your further comments on the modifications. Comments on the proposals were due by the end of August, 1998. Because most of the revisions of the application form and the closing documentation are not within the scope of this rulemaking, your comments received on these issues are not discussed herein, except to the limited extent that certain of the application and documentation requirements are contained in the Title XI regulations.

The ANPRM stated that any changes to the existing regulation that we proposed would be the subject of a future notice of proposed rulemaking. Our proposed changes are the subject of this rule. The following is a summary of the comments we received by nine commenters on the ANPRM which are divided into the above-mentioned categories, with the omission of the categories concerning the application form and closing documentation, for the reason previously discussed.

Applicant and Operator Qualifications

We solicited your comments as to whether the requirements for information on the your and/or your operator's qualifications referenced in section 298.12 are unnecessary, redundant or not generally required in commercial transactions of this type. Additionally, we solicited your comments as to whether the requirements ask sufficient information to permit us to screen out inexperienced and inappropriate applicants and operators. Finally, we solicited comments on what specific changes, if any, you thought should be made to the Title XI regulations.

As a general matter, you stated that too much information is required in section 298.12 regarding the applicant's and operator's qualifications, particularly for established companies and exceeds that ordinarily requested in commercial transactions. One commenter stated that this section is largely formatted and phrased for U.S. based firms and should be rewritten to focus more broadly on the global community. The commenter suggested that national shipping or shipbuilder's associations could endorse an applicant's qualifications. Another commenter stated that listing all vessels owned and operated is unnecessary as a brief statement for each type of equipment with the number and average vessel age should suffice. The commenter also maintained that naming each officer, director, and their principal business activity for the past five years is unnecessary as operational proficiency of company personnel is addressed under the economic soundness section of the regulations.

Regarding the applicant and operator qualification requirements, one commenter stated that tough requirements should be maintained to ensure that the Title XI project fosters long term Title XI goals. Another commenter suggested that the shipowner's operating ability should be addressed only insofar as it bears on market-share viability and preserving the ship asset value.

Financial Requirements

We asked whether the financial information requested in section 298.13 is unnecessary or redundant and if it is sufficient to permit us to make valid determinations. We also solicited comments on whether the financial requirements pose impractical or excessive tests and on suggested changes to the regulations.

With regard to the financial information requirements, comments were received concerning the requirement that, in the case of an eligible export vessel application, the applicant may provide financial information in the normal accounting system you are using provided that it is an accepted accounting system in your country of origin and provided that you submit a reconciliation of the major differences between the accounting system employed and U.S. Generally Accepted Accounting Principles (GAAP). Several commenters believe that the requirement for reconciliation of financial statements with GAAP is time-consuming, burdensome, and unnecessary. One commenter stated that we should either have the ability to analyze the financial statements as prepared by the applicant or should retain an accounting firm to handle the reconciliation to GAAP. Other commenters stated that we should accept statements prepared in accordance with international accounting standards.

We received several comments on the question of whether the financial requirements in section 298.13 pose impractical or excessive tests. One commenter stated that any significant changes to the financial requirements to make them more lenient would be unfair to previous applicants who were required to meet, and would still be subject to, the existing requirements. Another commenter thought that the existing qualifying requirements were too rigid and not current with commercial practice which focuses on coverage ratios. A third commenter stated that MARAD needs to assess an applicant's market share or its balance sheet but not both.

With respect to specific requirements, one commenter believes that the requirement for the Owner as Operator to maintain an equity level of 90 percent of the equity as shown on its most recent audited financial statement should be eliminated because this requirement is excessively restrictive to the Owner; the requirement of a 2:1 debt to equity ratio as well as the working capital requirements should be sufficient to ensure debt repayment. Another commenter believes that we should be more flexible with regard to the requirement for subordination of debt considered as equity.

We received some comments concerning the need for a waiver for the

inclusion of foreign material in vessel actual cost. One commenter recommended that all exclusions of foreign components and services in Title XI financing be waived so that U.S. shipyards have the greatest opportunity to attract new foreign customers. The commenter stated that many foreign shipowners specify outfitting, propulsion, bridge electronics or accommodation items that are original equipment manufactured in foreign countries in large part because the U.S. manufacturing industry has stopped producing the items or does not meet global standards. The commenter stated that "principles that apply to automobiles or computers may be considered so that the U.S. steel, assembly labor and overhead costs are the principal factors required for Title XI guarantees. When the U.S. share of the global shipbuilding market approaches five percent, then the existing restrictions could be reevaluated and reapplied." Another commenter believes that the exclusion of foreign content from actual cost is seen as arrogant in the international marketplace and adds difficulty to selling for export. The commenter states that a foreign buyer often has a distinct main engine preference because of his existing fleet and usually wants equipment he can resupply or repair locally. The commenter recommended that we scrap the foreign content waiver or revise it to conform to the Export-Import Bank's 15 percent foreign content allowance with no waiver and a higher percentage with a waiver.

Economic Soundness

We requested comments concerning the information requirements for an economic soundness determination under Section 298.14. We asked if the information required is unnecessary or redundant and if it is sufficient to permit us to make valid determinations. We also requested comments as to whether the requirements pose impracticable or excessive tests and what specific changes should be made.

Regarding the information required under section 298.14, one commenter stated that it is excessive. Another commenter said that the economic soundness criteria should be streamlined. A third commenter recommended consideration of additional economic factors such as double hull or safety or environmental requirements.

As to the criteria on which an economic soundness finding is based, several commenters suggested we should look not only at the cash flow generated by the project to determine if the borrower will have the ability to repay the Title XI debt but also at the overall financial strength of the applicant. Two commenters said that the economic soundness should be judged not only on the applicant's ability to ultimately repay the obligations but also upon the ability to successfully operate the project as a stand-alone project. Another respondent said that the applicant's demonstrated ability to repay its debts should be our primary criteria for approval and that we should place a greater emphasis on the applicant's overall credit and operational quality as opposed to the economic soundness of a project. One commenter said that the economic soundness criteria should consider the overall corporate entity rather than the specific project. Two respondents stated that the criteria should be tailored to the specific purpose of the application (vessel financing vs. shipyard modernization).

MAO 520–1, Amendment 2

We solicited as to whether the provisions of MAO 520–1, Amendment 2, should be included in the regulations. The administrative guidelines in the MAO were intended to clarify our existing policies and procedures with respect to economic considerations employed in evaluating Title XI applications.

Four commenters stated that the MAO provisions should be incorporated into the Title XI regulations to provide clarification and additional information as our requirements. Two of these commenters believe that the inclusion of the MAO will properly place emphasis on operating cash flow, with one commenter adding that historical operating experience will be emphasized as well. Another commenter stated that any changes in core policy should be determined before determining what policy belongs in the regulations.

Miscellaneous Issues

We received several comments on miscellaneous other requirements of the Title XI program. Two commenters opposed the lump sum prepayment feature of the guarantee fee, stating respectively that it is a disincentive to attracting business to U.S. shipyards and that it amounts to a prepayment penalty. One commenter stated that the performance bonding requirement and progress payment feature of construction period financing makes construction period financing prohibitive in terms of cost. Another commenter urged that we more proactively assist U.S. shipbuilders in obtaining business by expediting the Title XI review process and approving more risky projects. Finally, a commenter suggested that we consider disclosing to all applicants the range of fees charged by bond underwriters and the customary spread over the Treasury curve.

We advised in the ANPRM that, to seek further clarification of the written issues raised in response to the ANPRM, we may subsequently hold a public meeting if we believe that such a meeting would be helpful. Following a review of the detailed and specific comments received in response to the ANPRM, we have determined that such a public meeting is not necessary.

Whenever reference is made in these regulations to forms prescribed by us for applications or other filing requirements, the format of such forms in effect prior to the effective date of these regulations may be used pending revision and issuance of new forms, which must be approved by the Office of Management and Budget. To the extent necessary to reflect statutory requirements, any form submitted may be modified or supplemented to facilitate processing, but until new forms have been approved, these regulations do not require more extensive paperwork or reporting requirements than exist under the present Title XI regulations.

Discussion of Rulemaking Text

The discussion that follows notes where changes are proposed to be made to the Title XI regulations and the rationale therefor, and, where relevant, states why particular recommendations/suggestions have not been adopted.

We are proposing to amend our Obligation Guarantees regulations at 46 CFR Part 298. The proposed amendments are summarized as follows:

Section 298.2 Definitions

Section 298.2 is intended to provide convenient reference to the meaning of significant terminology used in Part 298. The definitions are based principally on statutory derivation and reflect the letter designation of the paragraphs respectively, contained in the final rule published on May 9, 1996, as amended on September 8, 1997, or as proposed to be redesignated in this rulemaking. As proposed:

Paragraph (c), "Advanced Shipbuilding Technology" is changed in order to include other modernization elements which are not previously listed in the definition and which contribute to a shipyard's efficiency or productivity.

Paragraph (n), "Guarantee Fee" is changed to delete the references to an annual fee and continuing Guarantees. The regulations now require that the guarantee fee for the entire term of the financing be paid in advance at the initial funding of the transaction, with no refund in the event the Obligations are retired early.

Paragraph (o), "Indenture Trustee" is changed to increase the amount of combined capital and surplus an indenture trustee must have to at least $25,000,000 as the current amount of $3,000,000 is not adequate.

Section 298.3 Applications

Paragraph (b) is amended to reflect that only two sets of documentation must be submitted to the Secretary for review.

Paragraph (d) is amended to delete the provision that, if an applicant does not claim a Freedom of Information Act (FOIA) exemption at the time an application or amendment is filed, MARAD will not oppose any subsequent request for disclosure pursuant to FOIA. Deletion of this provision reflects actual agency practice, which is to allow a request for exemption under FOIA at any time.

Paragraph (e) is amended to clarify that priority will be given for processing applications for vessels capable of serving as United States naval and military auxiliary in time of war or national emergency. In addition, the priority given to applications from general shipyard facilities that have engaged in naval vessel construction and that have pilot projects for shipyard modernization and vessel construction is being eliminated due to the fact that all the funds previously appropriated to the Department of Defense and transferred to the Department of Transportation for the Title XI program have been expended.

Section 298.11 Vessel Requirements

Paragraph (a) of this section is being amended to clarify that the vessel must be constructed in the United States.

Paragraph (b) of this section is revised to provide that the Secretary may contact the shipyard to request that it submit additional technical data, backup cost details, and other evidence if the Secretary has insufficient data.

Paragraph (c) of this section is being amended to delete the last sentence which is redundant with the last sentence of paragraph (a) of this section and to conform the regulations to our present practices which permit a U.S.-flag constructed vessel to meet the highest classification standard of a classification society other than the American Bureau of Shipping so long as the society meets the inspection standards of the United States Coast Guard.

Section 298.12 Applicant and Operator's Qualifications

MARAD concurs that too much information is requested in this section particularly with respect to the applicant's existing vessels, and certain background data, and the section has been modified to reduce the information required. With respect to the suggestion that the endorsement of industry associations be utilized by MARAD, the regulations do not preclude MARAD's consideration of such an endorsement when evaluating the applicant's and/or operator's qualifications.

A paragraph is being added to this section to reflect the MAO 520–1 provision requiring that an operator's historical performance record be considered in evaluating operating ability.

Section 298.13 Financial Requirements

MARAD is not proposing an amendment to paragraph (a)(2) of this section to eliminate the requirement for a waiver in order for foreign items to be included in Actual Cost. MARAD's interest is in promoting a shipbuilding industry including both shipyards and suppliers. Therefore, it would be inappropriate to permit wholesale use of foreign items in Title XI financings when comparable items are available from U.S. suppliers. MARAD believes such a practice would have an adverse impact on the U.S. shipbuilding industry as a whole. However, requests for waivers to include foreign items have not been unreasonably withheld by MARAD, so that the no-foreign-content-requirement without a waiver has not had a negative impact on the shipyards or shipowners. Therefore, MARAD will continue to review inclusion of foreign items on a case-by-case basis.

MARAD believes that the current inclusion in paragraph (a)(2) of the illustration of how the cost of foreign components of the hull and superstructure may be used to satisfy an applicant's equity requirements is unnecessary. Therefore, MARAD is deleting the illustration from the paragraph and the one sentence which refers to the illustration in the paragraph of the regulation.

The reference to guarantee fees in paragraph (a)(2)(iv) is being deleted as guarantee fees are eligible for inclusion in Actual Cost.

MARAD is proposing to amend paragraph (a)(4) to permit, in the case of Eligible Export Vessels, the acceptance of financial statements that are not reconciled to U.S. GAAP if a satisfactory justification is provided concerning the inability to reconcile. MARAD proposes to further amend the paragraph to eliminate the requirement for a debt amortization schedule and sources and uses statement, and to incorporate current financial definitions.

MARAD does not believe a change in financial requirements at Closing as set forth in paragraph (d) is necessary because applications are analyzed on a case-by-case basis and, where MARAD deems the existing qualifying financial requirements to be inappropriate, Section 298.13(h) authorizes the waiver of or modifications to the financial requirements if there is adequate security for the Guarantees. This authority allows MARAD to consider coverage ratios as appropriate.

MARAD believes that the 90 percent equity test in paragraph (d)(1)(ii)(B) of this section is useful and is not proposing an amendment to this paragraph. While the working capital and leverage tests are essential in analyzing the financial condition of the company, they do not necessarily identify reductions in net worth which are often an important element in determining a company's financial condition. Moreover, as the net worth amount is established only once, at the initial funding of the transaction, companies that are meeting their projected revenues and expenses should be able to continue to meet this requirement. Therefore, elimination of the 90 percent net worth requirement is not warranted.

MARAD is proposing elimination of the special financial requirements set forth in paragraph (e) due to the restrictive nature of the covenants that accompany these requirements and the fact that companies have not elected this alternative in the recent past. Therefore, in order to make clear that there is only one set of financial requirements, the word "primary" is being deleted from paragraph (d) and, later in the regulation, paragraphs 298.35(b), 298.35(e), and 298.35(e)(5).

MARAD is not proposing to change paragraph (g) of this section which allows the applicant to fund the 12½ percent equity requirement with subordinated debt. If MARAD allows greater flexibility with regard to the subordination requirements, the repayment of the Title XI debt portion of the transaction could be jeopardized.

Section 298.14 Economic Soundness

MARAD recognizes that much of the information requested under section 298.14 (a)(2)(iii) and (iv) was developed

for applications from companies involved in a liner service. MARAD has taken steps to simplify the regulations by reducing or eliminating requested information. Specifically, sections 46 CFR 298.14(a)(2)(iii), (iv), and (v), requesting information on expenses, have been deleted and are replaced by a new paragraph (iii) which will encompass all three parts. The new paragraph differentiates between applications for vessel financing and shipyard modernization projects.

MARAD does not propose to add a requirement to the economic soundness section concerning the applicant's financial strength because the existing requirements of Section 298.13, Financial Requirements, already require MARAD to make certain determinations concerning the financial position of the ultimate transaction credit.

In order to clarify the criteria used for economic soundness findings, MARAD proposes to include in this section the provisions of MAO 520–1 relating to economic soundness. Specifically, section (b) is being amended to include requirements concerning the ability to service debt at the time of delivery which will be based on market conditions at that time, and that primary consideration shall be given to operating cash flow. To enable MARAD to analyze cash flow, the applicant is requested to provide a five-year forecast of operating cash flow.

Section 298.15 Investigation Fee

Paragraph (b) of this section is being revised by correcting the reference to the filing fee to $5,000.

Section 298.16 Substitution of Participants

Paragraph (a) of this section is being amended to delete the last sentence which references an annual guarantee fee.

Section 298.18 Financing Advanced or Modern Shipbuilding Technology

Paragraph (a) of this section is being amended to eliminate from the initial criteria for Guarantee approval consideration of whether Guarantees will aid in the transition of a shipyard from naval to commercial shipbuilding. MARAD believes that giving weight to this factor could discourage otherwise desirable modernization projects from shipyards that have not engaged in naval vessel construction.

Section 298.19 Financing Eligible Export Vessels

Paragraph (b)(3) of this section is being modified by deleting the reference to the Export-Import Bank of the United States since the Export-Import Bank's risk assessments are reflected in the Inter-Agency Country Risk Assessment System.

Section 298.20 Term, Redemptions and Interest Rate

Paragraph (a)(2) of this section is being amended to clarify that for multiple vessels the maturity date of the Guarantees may be less than but in no event more than twenty-five years from the date of delivery from the shipyard of the last of multiple vessels but that the amount of the Guarantees shall relate to the depreciated actual cost of the multiple vessels as of the date of the Closing.

Section 298.21 Limits

This section is being amended to specify that no foreign, federal, state or local taxes, user fees, or other governmental charges shall be included in actual cost.

Section 298.22 Amortization of Obligations

The parenthetical phrase "straight line basis" is to be replaced with the phrase "level principal" to reflect current GAAP terminology.

Section 298.23 Refinancing

This section has been amended to clarify MARAD's position regarding the refinancing of debt on Advanced or Modern Shipbuilding Technology. Refinancing of non-Title XI debt on Advanced or Modern Shipbuilding Technology is not permitted.

Section 298.24 Financing Facilities and Equipment Related to Marine Operations

This section is deleted in its entirety as there is no current authority for MARAD to finance facilities and equipment related to marine operations.

Section 298.30 Nature and Content of Obligations

This section is amended to clarify that an indenture trustee is not required under MARAD's documents.

Section 298.31 Mortgage

This section has been amended to correct that a mortgage shall be filed with the United States Coast Guard's National Vessel Documentation Center.

Section 298.32 Required Provisions in Documentation

Section 298.32 (a)(1) remains unchanged. Under the current Title XI regulations, the Secretary may waive or modify the performance bond requirement, upon determining that the shipyard or manufacturer of Advanced or Modern Shipbuilding Technology has sufficient financial resources and operational capacity to complete the project. In instances where sufficient resources cannot be demonstrated, MARAD's interests as a guarantor must be fully protected. Furthermore, inasmuch as Section 298.21 of this part provides for performance bond premiums to be included as an item of actual cost and therefore financeable up to a maximum of 87½ percent, MARAD finds that the bonding requirement does not constitute an inordinate out of pocket expense.

MARAD proposes to modify Section 298.32 to delete the word "annual" in paragraph (b)(4) in reference to citizenship filing requirements. The citizenship requirements for the Title XI program were modified by a final rule which was published in the **Federal Register** and became effective on September 8, 1997, which no longer required the filing of annual citizenship affidavits for Title XI obligors.

Section 298.33 Escrow Fund

This section has been modified to conform to the documentation in the general provisions of the new security agreement.

Section 298.34 Construction Fund

This section has been modified to clarify the requirements regarding the construction fund and to eliminate the current redundancies in paragraphs (b) and (c) of this section regarding withdrawals and deposits, the procedure for which is described in Section 298.33 of this Part. MARAD requires that the items and amounts for which reimbursement is requested have been satisfactorily completed. To require otherwise, i.e., to issue interim payments prior to completion of work, would increase MARAD's overall project risk. MARAD must insure that adequate security exists for guarantees entered into during construction.

In response to requests by commenters to terminate the construction fund, legislation has been submitted to broaden our authority to hold bond proceeds in the escrow fund and to eliminate the need for a construction fund—see section 3 of H.R. 1557 introduced on April 26, 1999.

Section 298.35 Reserve Fund and Financial Agreement

This section has been modified in its entirety. Paragraph (c) of this section regarding financial covenants for companies meeting the special financial requirements has been deleted in its entirety pursuant to the discussion

above in section 298.13(e). The references to a Title XI company qualifying as either a section 12 or section 13 company are deleted and two sets of covenants for all Title XI companies are provided. One set of covenants will be imposed regardless of the company's financial condition (primary covenants) and the second set of covenants will only apply if the company does not meet the specific financial conditions (supplemental covenants).

Section 298.38 Partnership Agreements

MARAD proposes to modify this section to cover limited liability companies as well as partnership agreements.

Section 298.41 Remedies After Default

As all guarantee fees are to be paid up-front, it is proposed that paragraph (c)(1) of this section be deleted.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been reviewed under Executive Order 12866, and it has been determined that this is not a significant regulatory action. The rule is not likely to result in an annual effect on the economy of $100 million or more. Also, it has been determined to be a nonsignificant rule under the Department's Regulatory Policies and Procedures. Because the economic impact should be minimal, further regulatory evaluation is not necessary. These amendments are intended only to simplify and clarify the procedural requirements for obtaining Guarantees, principally to expedite the process for MARAD's review of applications. Its purpose is to encourage the construction of ships in U.S. shipyards both for the domestic and the export markets and to modernize and improve general shipyard facilities in the United States.

MARAD is publishing these amendments as a notice of proposed rulemaking, as necessary to carry out the Secretary's responsibilities under Title XI and to improve the efficient administration of the Title XI program.

This rulemaking document has been reviewed by the Office of Management and Budget under Executive Order 12866, "Regulatory Planning and Review."

Federalism

MARAD has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

MARAD certifies that this regulation will not have a significant economic impact on a substantial number of small entities because these amendments are intended only to simplify and clarify the procedural requirements for obtaining Guarantees, principally to expedite the process for MARAD's review of applications.

Environmental Assessment

MARAD has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains reporting requirements that have previously been approved by the Office of Management and Budget (Approval No. 2133–0018). Use of the present Maritime Administration Title XI Obligation Guarantees form will be continued pending revision and issuance of new forms, which must be approved by the Office of Management and Budget.

List of Subjects in 46 CFR Part 298

Loan programs-transportation, Maritime carriers, and Mortgages.

Accordingly, the Maritime Administration proposes to amend 46 CFR part 298 as follows:

PART 298—OBLIGATION GUARANTEES

1. The authority citation for part 298 continues to read as follows:

Authority: 46 App. U.S.C. 1114 (b), 1271 *et seq*, 49 CFR 1.66.

2. Section 298.2 is amended as follows:

a. By adding at the end of paragraph (2) of the definition of "Advanced Shipbuilding Technology" a semi-colon and the word, "and" and a new paragraph (3) to read as set forth below.

b. By revising the definition of *Guarantee Fee*, to read as set forth below.

c. By amending the definition of *Indenture Trustee*, by removing the number "$3,000,000" and adding in its place the number "$25,000,000".

d. By revising paragraph (2)(iv) of the definition of *Preferred Mortgage*, to read as set forth below.

§ 298.2 Definitions.

* * * * *

Advanced shipbuilding technology * * *

(3) Other elements contributing to a shipyard's efficiency or productivity assisting it to more effectively operate in the shipbuilding industry.

* * * * *

Guarantee fee means the fee payable to the Secretary in consideration for the issuance of the Guarantee.

* * * * *

Preferred Mortgage * * *

(2) * * *

(iv) Is otherwise in compliance with the provisions of Chapter 313 of Title 46 of the U.S. Code.

* * * * *

§ 298.3 [Amended]

3. Section 298.3 is amended as follows:

a. By removing the words "exhibit and schedule" in the fourth sentence of paragraph (a), and adding in their place the words "exhibits, schedules and attachments".

b. By removing the number "four" in the first sentence of paragraph (b)(2) and adding in its place the number "two".

c. By removing the third sentence in paragraph (d).

d. By amending the first sentence of paragraph (e) by adding before the word "naval", the words "United States" and removing the third sentence of this paragraph.

§ 298.11 [Amended]

4. Section 298.11 is amended as follows:

a. By adding in the first sentence of paragraph (a), between the words "Guarantee" and "is", the phrase "must be constructed in the United States. It shall be" and removing the word "is".

b. By adding in the second sentence of paragraph (b), between the words "Secretary" and "may", the phrase "may directly contact the shipyard and".

c. By revising the first sentence of paragraph (c), to read as follows: "The Vessel shall be constructed, maintained, and operated so as to meet the highest classification, certification, rating, and inspection standards for Vessels of the same age and type imposed by the American Bureau of Shipping (ABS) or another classification society that also meets the inspection standards of the United States Coast Guard with respect to the documentation of U.S.-flag vessels, or in the case of an Eligible Export Vessel, such standards as may be imposed by a member of the International Association of Classification Societies (IACS) classification societies to be ISO 9000 series registered or Quality Systems Certificate Scheme qualified IACS

members who have been recognized by the United States Coast Guard as meeting acceptable standards with such recognition including, at a minimum, that the society meets the requirements of IMO Resolution A.739(18) with appropriate certificates required at delivery, so long as the home country of the IACS member accords equal reciprocity, as determined by the Secretary, to United States classification societies."

d. By removing the last sentence of paragraph (c).

5. Section 298.12 is revised to read as follows:

§ 298.12 Applicant and operator's qualifications.

(a) *Operator's qualifications.* No Letter Commitment shall be issued by the Secretary without a prior determination that the applicant, bareboat charterer, or other Person identified in the application as the operator of the Vessel or Advanced or Modern Shipbuilding Technology, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel(s) or Advanced and Modern Shipbuilding Technology which serve as security for the Guarantees, and otherwise to comply with all requirements of this part.

(b) *Identity and ownership of applicant.* In order to assess the likelihood that the project will be successful, the Secretary needs information about the applicant and the proposed project. To permit this assessment, each applicant shall provide the following information in its application for Title XI guarantees.

(1) *Incorporated companies.* If the applicant or any bareboat charterer is an incorporated company, it shall submit the following identifying information:

(i) Name of company, place and date of incorporation, and tax identification number, or if appropriate, international identification number of the company;

(ii) Address of principal place of business; and

(iii) Certified copy of certificate of incorporation and bylaws.

(2) *Partnerships, limited partnerships, limited liability companies, joint ventures, associations, unincorporated companies.* If the applicant or any bareboat charterer is a partnership, limited partnership, limited liability company, joint venture, association, or unincorporated company, it shall submit the following identifying information:

(i) Name of entity, place and date of formation, and tax identification number, or if appropriate, international identification number of entity;

(ii) Address of principal place of business; and

(iii) Certified copy of certificate of formation, partnership agreement or other documentation forming the entity.

(3) *Other entities.* For any entity that does not fit the descriptions in paragraphs (b)(1) and (b)(2) of this section, MARAD will specify the information that the entity shall submit regarding its identity and ownership.

(4) The Applicant and any bareboat charterer shall provide a brief statement of the general effect of each voting agreement, voting trust or other arrangement whereby the voting rights of any interest in the Applicant or bareboat charterer are controlled or exercised by any person who is not the holder of legal title to such interest.

(5) The Applicant and any bareboat charterer shall provide the following information regarding the entity's officers, directors, partners or members:

(i) Name and address;

(ii) Office or position; and

(iii) Nationality and interest owned (e.g. shares owned and whether voting or non-voting).

(c) *Applicants: Business and affiliations.* The applicant shall include:

(1) A brief description of the principal business activities during the past five years of applicant;

(2) A list of all business entities that directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with the applicant. Also indicate the nature of the business transacted by each entity and the relationship between these entities. This information may be presented in the form of a chart. Indicate whether any of the affiliated entities have previously applied for or received Title XI assistance;

(3) A statement indicating whether the applicant, any predecessor or affiliated entity has been in bankruptcy or reorganization under any insolvency or reorganization proceeding and if so, give details; and

(4) A statement indicating whether the applicant or any predecessor or affiliated entity is now, or during the past five years has been, in default under any agreement or undertaking with others or with the United States of America, or is currently delinquent on any Federal debt, and if so, provide explanatory information.

(5) A list of the applicant's banking references:

(i) Principal bank(s) or lending institutions(s)—name and address

(ii) Nature of relationship

(iii) Individual references. Name(s), telephone and fax number of banking officer(s).

(d) *Management of applicant.* The applicant shall include:

(1) A brief description of the principal business activities during the past five years of each officer, director, partner or member of the applicant listed in paragraph (b)(5) of this section and if these persons (have) act(ed) as executive officers in other entities, indicate the names of these entities and whether such entities have defaulted on any U.S. Government debt, and

(2) The name and address of each organization engaged in business activities which have a direct financial relationship to those carried on or to be carried on by the applicant with which any person listed in paragraph (d)(2) of this section has any present business connection, the name of each such person and, briefly, the nature of such connection.

(e) *Applicant's property and activity.* The applicant shall provide:

(1) A brief description of the general character and location of the principal assets employed in the business of the applicant, other than vessels. Describe financial encumbrances, if any;

(2) Provide a general description of the vessels currently owned and/or operated by the applicant or its affiliates and a description of the areas of operation; and,

(3) In the case of an Eligible Shipyard which is an applicant for a guarantee for Advanced or Modern Shipbuilding Technology, a brief description of the general character (i.e., number of building ways, launch method, drydocks and size) and location (i.e., water depth, length of riverfront) of the principal properties of the applicant employed in its business. Describe financial encumbrances, if any.

(f) *Operating ability.* (1) In the case of an applicant for a vessel financing Guarantee, the applicant shall submit a detailed statement showing its ability to successfully operate the Vessel(s). If a company other than the applicant will operate the Vessel(s), then this information shall be provided for the operating company together with a copy of the operating agreement.

(2) The applicant shall submit a copy of any management agreement(s) between the applicant and any related or unrelated organization(s) which will affect the management of the Title XI vessel or shipyard.

(3) In the case of an Eligible Shipyard which is an applicant for a guarantee for Advanced or Modern Shipbuilding Technology, a detailed statement shall be submitted showing the ability of the

applicant to successfully operate the shipbuilding technology, including name, education, background of, and licenses held by, all senior supervisory personnel concerned with the physical operation of the shipbuilding technology.

(4) Where an operator has an historical performance record, this record shall be considered in evaluating the operating ability of the applicant. For newly formed entities, the performance of affiliates and/or companies associated with the principals (where the principals have a significant degree of control) shall be evaluated in determining the operating ability of the applicant. However, unless the affiliates or principals have an obligation with respect to the debt, historical performance shall not be considered in evaluating the creditworthiness of the application.

6. Section 298.13 is amended as follows:

a. By removing the sixth sentence in paragraph (a)(2)(i) and the illustration entitled "Illustration-Cost of Foreign Components Satisfying Equity Requirements." in their entirety.

b. By removing the words, "guarantee fees," in paragraph (a)(2)(iv).

c. By removing all references to the word, "primary", in paragraph (d).

d. By revising paragraph (a)(4)to read as set forth below.

e. By revising paragraphs (b)(2) through (b)(4), to read as set forth below.

f. By removing existing paragraph (e), and redesignating paragraphs (f), (g) and (h) as paragraphs (e), (f) and (g).

g. By removing "paragraphs (d) and (e)" in newly designated paragraph (e) and adding "paragraph (d)" in its place.

h. By removing "paragraphs (a)(3), (d) and (e)" in newly designated paragraph (f) and adding "paragraphs (a)(3) and (d)" in its place.

§ 298.13 Financial requirements.

* * * * *

(a) * * *

(4) Financial information. The applicant shall provide the following financial statements, footnoted to explain the basis for arriving at the figures:

(i) The most recent financial statement of the applicant, its parent and other significant participants, as applicable (year end or intermediate), and the three most recent audited statements with details of all existing debt. If the applicant is a new entity and is to be funded from or guaranteed by external source(s), it shall provide the above mentioned statements for such source(s) (for eligible export vessels, the applicant's financial statements shall be in accordance with U.S. generally accepted accounting principles (GAAP) if formed in the U.S. or reconciled to GAAP if formed in a foreign country unless a satisfactory justification is provided explaining the inability to reconcile);

(ii) A pro forma balance sheet of the applicant and guarantor (if applicable) as of the estimated date of execution of the Guarantees reflecting the assumption of the Title XI Obligations, including the current liability (for eligible export vessels, the applicant's financial statements shall be in accordance with GAAP if formed in the U.S. or reconciled to GAAP if formed in a foreign country unless a satisfactory justification is provided explaining the inability to reconcile); and,

(iii) Pro forma balance sheets of the applicant and guarantor (if applicable) for five years subsequent to the Closing.

(b) * * *

(2) *Working Capital* shall mean the excess of current assets over current liabilities, both determined in accordance with GAAP and adjusted as follows:

(i) In determining current assets there shall be deducted:

(A) Any securities, obligations or evidence of indebtedness of a Related Party or of any stockholder, director, officer or employee (or any member of his family) of the Company or of such Related Party, except advances to agents required for the normal current operation of the Company's vessels and current receivables arising out of the ordinary course of business and not outstanding for more than 60 days; and

(B) An amount equal to any excess of unterminated voyage revenue over unterminated voyage expenses.

(ii) In determining current liabilities there shall be deducted any excess of unterminated voyage expenses over unterminated voyage revenue.

(iii) In determining current liabilities there shall be added one half of all annual charter hire and other lease obligations (having a term of more than six months) due and payable within the succeeding fiscal year, other than charter hire and such other lease obligations already included and reported as a current liability on the Company's balance sheet.

(3) *Equity (net worth)* means, as of any date, the total of paid-in capital stock, paid-in surplus, earned surplus and appropriated surplus, and all other amounts that would be included in net worth in accordance with GAAP, but exclusive of:

(i) Any receivables from any stockholder, director, Officer or employee of the Company or from any Related Party (other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days) and

(ii) Any increment resulting from the reappraisal of assets.

(4) *Long Term Debt* means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in long term debt in accordance with GAAP. There shall also be included any guarantee or other liability for the debt of any other Person not otherwise included on the balance sheet.

7. Section 298.14 is amended as follows:

a. By adding after the first sentence in paragraph (a) the following two sentences: "The economic soundness and the applicant's ability to repay the Obligations shall be the primary basis for the Secretary's approval of a Letter Commitment. The collateral value of the asset for which Obligations are to be issued shall be only a secondary consideration in determining the applicant's ability to repay the Obligations."

b. By amending paragraph (a)(2)(ii) to add the following sentence after the first sentence and before the second sentence: "Vessel revenue projections shall include shipping/hire rates for current market conditions or market conditions expected to exist at the time of vessel delivery, taking into account seasonal or temporary fluctuations."

c. By revising paragraph (a)(2)(iii) to read as set forth below.

d. By revising paragraph (a)(2)(iv) to read as set forth below.

e. By removing paragraph (a)(2)(v).

f. By adding to paragraph (b)(1)(i) the words "or for" after the word "by".

g. By adding new paragraphs (b)(2) and (b)(3) to read as set forth below.

§ 298.14 Economic soundness.

(a) *Economic Evaluation.* * * *

(2) *Project Feasibility.* * * *

(iii) *Expenses.* (A) For applications for vessel financing, a statement of estimated vessel expenses including the following (where applicable):

(*1*) A detailed breakdown of estimated vessel daily operating expenses, including wages, insurance, maintenance and repair, fuel, etc. and a detailed projection of anticipated costs associated with long term maintenance of the vessel(s) such as drydocking and major mid-life overhauls, with a time frame for these events over the period of the Guarantee;

(*2*) If applicable, a detailed breakdown of those expenses associated with the vessel(s) voyage, such as port fees,

agency fees and canal fees that are assessed as a result of the voyage; and

(3) A detailed breakdown of annual capital costs and administrative expenses, segregated as to:

(i) Interest on debt;

(ii) Principal amortization; and

(iii) Salaries and other administrative expenses (indicate basis of allocation).

(B) For applications for Advanced or Modern Shipbuilding Technology, a statement of estimated expenses related to the Advanced or Modern Shipbuilding Technology, including the following (where applicable):

(1) A detailed breakdown of estimated daily operating expenses for the shipyard, such as wages, including staffing, and aggregated to a straight-line, overtime and fringe benefits; utility costs; costs of stores, supplies, and equipment; maintenance and repair cost; insurance costs; and, other expenses (indicate items included); and

(2) A detailed breakdown of annual capital costs and administrative expenses, segregated as to: interest on debt; principal amortization; and salaries and other administrative expenses (indicate basis of allocation).

(iv) *Forecast of Operations.* Utilizing the revenues and expenses provided in paragraphs (a)(2)(ii) and (iii) of this section, the applicant shall provide a forecast of operating cash flow, as defined in paragraph (b)(3) of this section, for the Title XI project for the first full year of operations and the next four years. The cash flow statements should be footnoted to explain the assumptions used.

(b) * * *

(2) In cases where market conditions are inadequate for the applicant to service the Obligation indebtedness at the time of vessel delivery, or shipyard modernization completion, applications may be approved only if there are sufficient outside sources of cash flow to service such indebtedness.

(3) With respect to the asset for which Obligations are to be issued, the operating cash flow to Obligation debt service ratio over the term of the Guarantee shall be in excess of 1:1. Operating cash flow is defined as revenues less operating and capital expenses including taxes paid but exclusive of interest, accrued taxes, depreciation and amortization for the Title XI asset. Debt service is defined as interest plus principal.

§ 298.15 [Amended]

8. Section 298.15 is amended by removing the figure "$1,000" in the second sentence of paragraph (b), and adding in its place the figure "$5,000".

§ 298.16 [Amended]

9. Section 298.16 is amended by removing the last sentence of paragraph (a).

§ 298.18 [Amended]

10. Section 298.18 is amended by removing the words, "will aid in the transition from naval shipbuilding to commercial ship construction for domestic and export sales", from the second sentence of paragraph (a).

§ 298.19 [Amended]

11. Section 298.19 is amended by removing the words "by the Export-Import Bank of the United States and country risk analyses" from the last sentence of paragraph (b)(3).

§ 298.20 [Amended]

12. Section 298.20, paragraph (a)(2) is amended by adding after the word "Guarantees" and before the semi-colon, the words "but that the amount of the Guarantees shall relate to the amount of the depreciated actual cost of the multiple Vessels as of the Closing".

13. Section 298.21 is amended by revising paragraph (c)(7) to read as follows:

§ 298.21 Limits.

* * * * *

(c) * * *

(7) Foreign, federal, state or local taxes, user fees, or other governmental charges.

* * * * *

§ 298.22 [Amended]

14. Section 298.22 is amended by removing from the second sentence of the introductory text the parenthetical phrase "straight line basis" and adding in its place the phrase "level principal".

15. Section 298.23 is revised to read as follows:

§ 298.23 Refinancing.

The Secretary may approve guarantees with respect to Obligations to be secured by one or more Vessels or Advanced or Modern Shipbuilding Technology and issued to refinance: existing Title XI debt only for Advanced or Modern Shipbuilding Technology, and existing debt for Vessels, whether or not covered by Title XI mortgage insurance or Guarantees, so long as the existing debt has been issued for one of the purposes set forth in Sections 1104(a)(1) through (4) of the Act. Section 1104(a)(1) of the Act requires that, if the existing indebtedness was incurred more than one year after the delivery or redelivery of the related Vessel or Advanced or Modern Shipbuilding Technology, the proceeds of such Obligations shall be applied to the construction, reconstruction or reconditioning of other Vessels or Advanced or Modern Shipbuilding Technology. The Secretary may permit the refinancing of existing debt but only if any security lien on the Vessel(s) or Advanced or Modern Shipbuilding Technology is discharged immediately prior to the placing of any Mortgage thereon by the Secretary. The applicant shall satisfy all the eligibility requirements set forth in subpart B of this part, including economic soundness, as may be necessary.

§ 298.24 [Removed and Reserved]

16. Section 298.24 is removed and reserved.

§ 298.30 [Amended]

17. Section 298.30 is amended by adding in the first sentence after the word "Trustee", before the period, the words "if any".

18. Section 298.31 is amended by revising paragraph (a)(5) to read as follows:

§ 298.31 Mortgage.

(a) * * *

(5) The Mortgage shall be filed with the United States Coast Guard's National Vessel Documentation Center, or with the proper foreign authorities with respect to an Eligible Export Vessel, and with respect to assets of a General Shipyard Facility a Mortgage and security interest shall be filed with the proper authorities within the appropriate state and shall be delivered to the Secretary after being recorded.

* * * * *

§ 298.32 [Amended]

19. Section 298.32, is amended by removing the word "annual" in the first sentence of paragraph (b)(4).

20. Section 298.33 is revised to read as follows:

§ 298.33 Escrow fund.

(a) *Escrow Fund Deposits.* At the time of the sale of the Obligations, the Obligor shall deposit with the Secretary in an escrow fund (the "Escrow Fund") all of the proceeds of that sale unless the Obligor is entitled to withdraw funds under paragraph (b) of this section. The Obligor shall also deposit into the Escrow Fund on the Closing date an amount equal to six months interest at the rate borne by the Obligations, unless the Secretary shall find the existence of adequate consideration or accept other consideration in lieu of the interest deposit.

(b) *Escrow Fund Withdrawals.* (1) The Secretary shall, within a reasonable time after written request from the Obligor,

disburse from the Escrow Fund directly to the Indenture Trustee, any Paying Agent for such Obligations, or any other Person entitled thereto, any amount which the Obligor is obligated to pay, or to the Obligor for any amounts it has paid, on account of the items and amounts or any other items approved by the Secretary, *provided that*, the Secretary is satisfied with the accuracy and completeness of the information contained in the following submissions:

(i) A responsible officer of the Obligor shall deliver an officer's certificate, in form and substance satisfactory to the Secretary, stating that:

(A) There is neither a default under the construction contract nor the Security Agreement;

(B) There have been no occurrences which have or would adversely and materially affect the condition of the Vessel, its hull or any of its component parts, or the Technologies;

(C) The amounts of the request is in accordance with the construction contract including the approved disbursement schedule and each item in these amounts is properly included in the Secretary's approved estimate of Actual Cost;

(D) With respect to the request, once the contractor is paid there will be no liens or encumbrances on the applicable Vessel, its hull or component parts, or the Technologies for which the withdrawal is being requested except for those already approved by the Secretary; and

(E) If the Vessel or Technologies has already been delivered, it is in class and is being maintained in the highest and best condition. The Obligor shall also attach an officer's certificate of the shipyard and other general contractors, in form and substance satisfactory to the Secretary, stating that there are no liens or encumbrances as provided in paragraph (d) of this section and attaching the invoices and receipts supporting each proposed withdrawal to the satisfaction of the Secretary.

(ii) No payment or reimbursement under this Section shall be made:

(A) To any Person until the Construction Fund, if any, has been exhausted,

(B) To any Person until the total amount paid by or for the account of the Obligor from sources other than the proceeds of such Obligations equals at least 12½% of the Actual Cost of the Vessel or Technologies is made;

(C) To the Obligor which would have the effect of reducing the total amounts paid by the Obligor pursuant to paragraph (B) of this section; or

(D) To any Person on account of items, amounts or increases representing changes and extras or owner furnished equipment, if any, unless such items, amounts and increases shall have been previously approved by the Secretary; *provided, however*, that when the amount guaranteed by the Secretary equals 75% or less of the Actual Cost and the Obligor demonstrates to the Secretary's satisfaction the ability to pay in the remaining 25%, then after the initial 12½% of Actual Cost has been paid by or on behalf of the Obligor for such Vessel or Technologies and up to 37½% of Actual Cost has been withdrawn from the Escrow Fund for such Vessel or Technologies, the Obligor shall pay the remaining Obligor's equity of at least 12½% (as determined by the Secretary) before additional monies can be withdrawn from the Escrow Fund relating to such Vessel or Technologies.

(2) The Secretary shall not be required to make any disbursement except out of the cash available in the Escrow Fund. If any sale or payment on maturity shall result in a loss in the principal amount of the Escrow Fund invested in securities so sold or matured, the requested disbursement from the Escrow Fund shall be reduced by an amount equal to such loss, and the Obligor shall pay to any Person entitled thereto, the balance of the requested disbursement from the Obligor's funds other than the proceeds of such Obligations.

(3) If the Secretary assumes the Obligor's rights and duties under the Obligations or the Secretary pays the Guarantees, all amounts in the Escrow Fund (including realized income which has not yet been paid to the Obligor), shall be paid to the Secretary and be credited against any amounts due or to become due to the Secretary under the Security Agreement and the Secretary's Note.

(4) Other rights and duties with respect to withdrawals from the Escrow Fund shall be set out in the closing documentation in form and substance satisfactory to the Secretary.

(c) *Investment and liquidation of the Escrow Fund.* The Secretary may invest the Escrow Fund in obligations of the United States. The Secretary shall deposit the Escrow Fund into an account with the U.S. Treasury Department and upon agreement with the Obligor, shall deliver to the U.S. Treasury Department instructions for the investment, reinvestment and liquidation of the Escrow Fund. The Secretary shall have no liability to the Obligor for acting in accordance with such instructions.

(d) Income on the Escrow Fund. Unless there is an existing default, any income realized on the Escrow Fund shall be paid to the Obligor upon receipt by the Secretary of such income.

(e) *Termination date of the Escrow Fund.* The Escrow Fund will terminate 90 days after the delivery date of the last Vessel or Technologies covered by the Security Agreement (the "Termination Date"). In the event that on such date the payment of the full amount of the aggregate Actual Cost of all of the Vessels or Technologies has not been made or the amounts with respect to such Actual Cost are not then due and payable, then the Obligor and the Secretary by written agreement shall extend the Termination Date for such period as they shall determine is sufficient to allow for such contingencies. Any amounts remaining in the Escrow Fund on the Termination Date which are in excess of 87½% or 75% of Actual Cost, as the case may be, shall be applied to retire a pro rata portion of the Obligations.

21. Section 298.34 is revised to read as follows:

§ 298.34 Construction fund.

(a) *Circumstances requiring deposits.* When the Security Agreement provides for an Escrow Fund and the Obligor submits a claim to the agency that it has previously paid for items of Actual Cost and is seeking reimbursement at the Closing, the Obligor shall also make Construction Fund deposits as follows. At the time of the sale of the Obligations, the Obligor shall deposit with the Depository cash equal to the principal amount of the Obligations issued at such time less the sum of the aggregate principal amount then required to be in the Escrow Fund and the amount in excess of 12½ or 25 percent of Actual Cost or Depreciated Actual Cost, as applicable (whichever is payable under § 298.33(e)) which the Secretary determines has been paid by or for the account of the Obligor. The Secretary shall have a security interest in and control over the Construction Fund and its proceeds. The balance of the proceeds from the sale of the Obligations, after depositing the amounts required to be deposited in the Escrow Fund and/or the Construction Fund, shall be retained by the Obligor.

(b) *Withdrawals and redeposits.* The Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, periodically approve disbursements from the Construction Fund under the same procedures and conditions as from the Escrow Fund in § 298.33(e), except the request for withdrawal will not be subject to § 298.33(e)(1) and (h)(1). The administration of the Construction Fund

shall also be subject to the terms and conditions of § 298.33(i), (j), and (k).

22. Section 298.35 is amended as follows:

a. By revising paragraph (b) to read as set forth below.

b. By removing paragraph (c) and redesignating paragraphs (d) through (g) as paragraphs (c) through (f).

§ 298.35 Reserve Fund and Financial Agreement.

* * * * *

(b) *Financial covenants.* There will be two sets of covenants. One set is covenants that will be imposed regardless of the Company's financial condition (primary covenants). The other set of covenants will be imposed only if the Company does not meet specific financial conditions (supplemental covenants). The primary and supplemental covenants are to be set forth in the Agreement. Covenants shall be imposed on the Company as follows:

(1) *Primary covenants.* So long as Guarantees are in effect the Company shall not, without the prior written consent of the Secretary:

(i) Except as hereinafter provided, make any distribution of earnings, except as may be permitted by paragraphs (b)(1)(i)(A) or (B) of this section:

(A) From retained earnings in an amount specified in paragraph (b)(1)(i)(C) of this section, *provided that,* in the fiscal year in which the distribution of earnings is made there is no operating loss to the date of such payment of such distribution of earnings, and there was no operating loss in the immediately preceding three fiscal years, or there was a one-year operating loss during the immediately preceding three fiscal years, but such loss was not in the immediately preceding fiscal year, and there was positive net income for the three year period;

(B) If distributions of earnings may not be made under paragraph (b)(1)(i)(A) of this section, a distribution can be made in an amount equal to the total operating net income for the immediately preceding three fiscal year period, *provided that,* there were no two successive years of operating losses, in the fiscal year in which such distribution is made, there is no operating loss to the date of such distribution, and the distribution of earnings made would not exceed an amount specified in paragraph (b)(1)(i)(C) of this section;

(C) Distributions of earnings may be made from earnings of prior years in an aggregate amount equal to 40 percent of the Company's total net income after tax for each of the prior years, less any distributions that were made in such years; or the aggregate of the Company's total net income after tax for such prior years, *provided that,* after making such distribution, the Company's Long Term Debt does not exceed its Net Worth. In computing net income for purposes of this paragraph (b)(1)(i)(C), extraordinary gains, such as gains from the sale of assets, shall be excluded;

(ii) Enter into any service, management or operating agreement for the operation of the Vessel or the Technologies (excluding husbanding type agreements), or appoint or designate a managing or operating agent for the operation of the Vessel or the Technologies (excluding husbanding agents) unless approved by the Secretary;

(iii) Sell, mortgage, transfer, or demise charter the Vessel or the Technologies or any assets to any non-Related Party except as permitted in paragraph (b)(1)(vii) of this section or sell, mortgage, transfer, or demise charter the Vessel or any assets to a Related Party, unless such transaction is at a fair market value as determined by an independent appraiser acceptable to the Secretary, and a total cash transaction or, in the case of demise charter, the charter payments are cash payments;

(iv) Enter into any agreement for both sale and leaseback of the same assets so sold unless the proceeds from such sale are at least equal to the fair market value of the property sold;

(v) Guarantee, or otherwise become liable for the obligations of any other Person, except in respect of any undertakings as to the fees and expenses of the Indenture Trustee, except endorsement for deposit of checks and other negotiable instruments acquired in the ordinary course of business and except as otherwise permitted in this section;

(vi) Directly or indirectly embark on any new enterprise or business activity not directly connected with the business of shipping or other activity in which the Company is actively engaged;

(vii) Enter into any merger or consolidation or convey, sell, demise charter, or otherwise transfer, or dispose of any portion of its properties or assets (any and all of which acts are encompassed within the words "sale" or "sold" as used herein), *provided that,* the Company shall not be deemed to have sold such properties or assets if the net book value of the aggregate of all the assets sold by the Company during any period of 12 consecutive calendar months does not exceed ten percent of the total net book value of all of the Company's assets; the Company retains the proceeds of the sale of assets for use in accordance with the Company's regular business activities; and the sale is not otherwise prohibited by paragraph (b)(1)(iii) of this section. Notwithstanding any other provision of this paragraph (b)(1)(vii), the Company may not consummate such sale without the prior written consent of the Secretary if the Company has not, prior to the time of such sale, submitted to the Secretary the financial statement referred to in paragraph (a) of this section, and any attempt to consummate a sale absent such approval shall be null and void *ab initio.*

(2) *Supplemental Covenants which may become applicable.* Unless, after giving effect to such transaction or transactions, during any fiscal year of the Company, the Company's Working Capital is equal to at least one dollar, the Company's Long-Term Debt does not exceed two times the Company's Net Worth and the Company's Net Worth is at least the amount specified by the Secretary, the Company shall not, without Secretary's prior written consent:

(i) Withdraw any capital;

(ii) Redeem any share capital or convert any of the same into debt;

(iii) Pay any dividend (except dividends payable in capital stock of the Company);

(iv) Make any loan or advance (except advances to cover current expenses of the Company), either directly or indirectly, to any stockholder, director, officer, or employee of the Company, or to any other Related Party;

(v) Make any investments in the securities of any Related Party;

(vi) Prepay in whole or in part any indebtedness to any stockholder, director, officer, or employee of the Company, or to any Related Party, which has a stated maturity of more than one year from such date;

(vii) Increase any direct employee compensation (as hereafter defined) paid to any employee in excess of $100,000 per annum; nor increase any direct employee compensation which is already in excess of $100,000 per annum; nor initially employ or re-employ any person at a direct employee compensation rate in excess of $100,000 per annum; provided, however, that beginning with January 20, 1999, the $100,000 limit may be increased annually based on the previous years" closing Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics. For the purpose of this subsection, the term "direct employee compensation" is the total amount of any wage, salary, bonus

commission, or other form of direct payment to any employee from all companies with guarantees under the Act as reported to the Internal Revenue Service for any fiscal year.

(viii) Acquire any fixed assets other than those required for the maintenance of the Company's existing assets, including normal maintenance and operation of any vessel or vessels owned or chartered by the Company;

(ix) Either enter into or become liable (directly or indirectly) under charters and leases (having a term of six months or more) for the payment of charter hire and rent on all such charters and leases which have annual payments aggregating in excess of an amount specified by the Secretary;

(x) Pay any indebtedness subordinated to the Obligations or to any other Title XI obligations;

(xi) Create, assume, incur, or in any manner become liable for any indebtedness, except current liabilities, or short term loans, incurred or assumed in the ordinary course of business as such business presently exists;

(xii) Make any investment whether by acquisition of stock or indebtedness, or by loan, advance, transfer of property, capital contribution, guarantee of indebtedness or otherwise, in any Person, other than obligations of the United States, bank deposits or investments in securities of the character permitted for monies in the Title XI Reserve Fund; and,

(xiii) Create, assume, permit or suffer to exist or continue any mortgage, lien, charge or encumbrance upon, or pledge of, or subject to the prior payment of any indebtedness, any of its property or assets, real or personal, tangible or intangible, whether now owned or thereafter acquired, or own or acquire, or agree to acquire, title to any property of any kind subject to or upon a chattel mortgage or conditional sales agreement or other title retention agreement, except loans, mortgages and indebtedness guaranteed by the Secretary under Title XI of the Act or related to the construction of a vessel approved for Title XI by the Secretary, and liens incurred in the ordinary course of business as such business presently exists.

§ 298.36 [Amended]

23. Section 298.36 is amended as follows:

a. By removing the word "Annual" from the heading of the section.

b. By amending paragraph (a) by removing the words in the first sentence "Secretary shall charge the Obligor an annual fee (Guarantee Fee)" and adding in their place the words "the Guarantee Fee rate shall be set".

c. By removing the third and fourth sentences of paragraph (e) and adding one sentence in their place to read as follows: "In calculating the present value used in determining the amount of the Guarantee Fee to be paid, MARAD will use a discount rate based on information contained in the Department of Commerce's Economic Bulletin Board annual rates."

24. Section 298.38 is revised to read as follows:

§ 298.38 Partnership and limited liability company agreements.

Partnership and limited liability company agreements shall be in form and substance satisfactory to the Secretary prior to any Guarantee closing, especially relating, but not limited to, four basic areas:

(a) Duration of the entity,

(b) Adequate partnership or limited liability company funding requirements and mechanisms,

(c) Dissolution of the entity and withdrawal of a general partner or member and

(d) The termination, amendment, or other modification of the entity without the prior written consent of the Secretary.

§ 298.41 [Amended]

25. Section 298.41 is amended by removing paragraph (c)(1) and redesignating existing paragraphs (c)(2) through (c)(6) as new paragraphs (c)(1) through (c)(5).

Dated: August 6, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–20757 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 99–5100]

RIN 2127–AG49

Consumer Information Regulations; Seat Belt Positioners

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petition for rulemaking; notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend our consumer information regulations to require seat belt positioners to be labeled as not suitable for children of a certain age, e.g., under 6 years old, or a certain height. Seat belt positioners alter the positioning of vehicle lap and shoulder belts on children. We found in tests of some of the devices that they inadequately restrained a 3-year-old child dummy and reduced the performance of vehicle belts restraining a 6-year-old child dummy. We are also requesting information on the alternative of establishing a minimum performance standard for seat belt positioners. We have issued this document in response to a petition for rulemaking from the American Academy of Pediatrics.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than October 12, 1999.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202–366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Overview

This document grants a petition for rulemaking from the American Academy of Pediatrics (AAP) requesting that NHTSA amend Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems" (49 CFR 571.213) (Standard 213), to include performance requirements applicable to aftermarket, add-on seat belt positioners. These devices alter the positioning of vehicle lap and shoulder belts. The statements on the packaging for some of these devices indicate that they are suitable for improving the fit of the belts on children, which in some cases includes 3- to 6-year-olds, and small adults.

The agency dynamically tested three types of belt positioning devices in 1994, using 3-year-old and 6-year-old dummies. We tested the dummies by restraining them in lap/shoulder belts

with, and without, the devices. When we compared the results, we found that in many of the tests with the 3-year-old dummy, the positioners reduced belt performance and contributed toward excessive head injury criterion (HIC) measurements (HICs were greater than 1000). The devices generally performed adequately with the 6-year-old dummy, in that the performance criteria of our child restraint standard were not exceeded, although there was some reduction in the performance of the vehicle belt system restraining the dummy.

In this document, we propose to amend our consumer information regulations (49 CFR Part 575) to require seat belt positioners to be labeled as not suitable for children of a certain age, e.g., 6 years, and younger. We also request information on the alternative, or additional, approach of establishing a minimum performance standard for seat belt positioners. Further, we also seek information on whether there is a real-world safety problem of sufficient magnitude to merit the agency's taking action.

Petition for Rulemaking

On January 31, 1996, AAP petitioned NHTSA to amend Standard 213, "Child Restraint Systems," to regulate aftermarket seat belt positioners. Aftermarket seat belt positioners, which are designed to improve the fit of the lap and shoulder belt system on a child or small adult, are not currently subject to any Federal motor vehicle safety standard. Standard 213 applies to "any device except Type I or Type II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 50 pounds or less." (S4) A seat belt positioner that does not restrain, seat or position children is not a device regulated by Standard 213. Safety Standard No. 208, "Occupant Crash Protection" (49 CFR 571.208) and Standard 210 (571.210), "Seat Belt Assembly Anchorages," apply to new, completed vehicles. Standard 209 (571.209), "Seat Belt Assemblies," applies to new seat belt assemblies. Because an aftermarket seat belt positioner is not installed as part of a completed vehicle or a seat belt assembly, Standards 208, 209 and 210 do not apply.[1]

AAP states that, because seat belt positioners are generally marketed as child occupant protection devices, the products should be subject to the same scrutiny and testing that child restraint systems undergo. AAP's concern is that some seat belt positioners "appear to interfere with proper lap and shoulder harness fit by positioning the lap belt too high on the abdomen, the shoulder harness too low across the shoulder, and by allowing too much slack in the shoulder harness." Accordingly, AAP believes that the devices should be subject to a safety standard so that they are required to meet a minimum level of performance. AAP believes that this would be especially appropriate because, AAP contends, some parents decide to have their older children sit directly on the vehicle seat and use a combination of vehicle seat belts and seat belt positioners instead of having those children sit in booster seats certified to Standard 213. (As explained below, NHTSA recommends that children weighing over 40 pounds (lb) be restrained in a booster seat until they are tall enough so that they can, without the aid of a booster seat: (1) Wear the shoulder belt comfortably across their shoulder, and secure the lap belt across their pelvis, *and* (2) bend their legs over the front of the seat when their backs are against the vehicle seat back.)

NHTSA's Previous Consideration of Seat Belt Positioners

We previously raised the question of whether seat belt positioners should be regulated by Standard 213 several years ago. In a rulemaking proceeding initiated in response to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act), we issued an NPRM seeking comment on, among other issues, the question of whether the standard should be applied to those devices, and if so, what requirements would be appropriate. We later issued a final rule amending Standard 213 in areas unrelated to seat belt positioners, but in that rule we discussed the public comments on this issue and announced our decision (60 FR 35126; July 6, 1995) not to propose applying the standard to these devices:

Six commenters responded to this issue. All believed the devices need to be subjected to safety standards to ensure that they provide occupants with proper safety protection. UM–CPP [University of Michigan Child Protection Program] stated that the primary problem with these devices is that there are "no formal test procedures and criteria for determining whether a given deflector is effective and/or better than nothing for certain vehicle belt/occupant combinations." IIHS [Insurance Institute for Highway Safety] strongly urged that these restraint devices to improve belt fit, be subject to Standard 213, as are booster seats. It said these devices are targeted to those children who have outgrown toddler seats but are too small to be appropriately restrained by adult seatbelts. Redlog, a manufacturer of belt adjustment devices, recommended that these devices be included in the definition of child restraints in FMVSS No. 213. Redlog recommended creating a sub-category within the existing definition of child restraints to accommodate these devices. It concluded by saying that dynamic crash testing and labeling for appropriate usage are essential requirements. Advocates [Advocates for Highway and Auto Safety] expressed its concern with the safety of these devices and said the agency has an obligation to test them to determine if they interfere with the safety performance of the restraint system. Safety BeltSafe said that "standards are essential for the new category of product which purports to reconfigure the shoulder lap belt to respond to the differing seated heights of passengers and drivers in vehicles." It, however, said at this time, it does not recommend use of such products if the passenger is able to use a belt-positioning booster. CompUTence said that FMVSS 213 should address all child and small adult safety devices relating to occupant restraint and that, currently, these devices are sold without knowledge of whether they provide the safety claimed by their manufacturers.

While commenters supported regulating the aftermarket devices, the agency is not prepared to undertake rulemaking at this time. NHTSA needs to better assess the safety benefits of such rulemaking, and the feasibility of a test procedure and practicability of performance requirements. (60 FR at 35137)

Agency Review of Petition

In reviewing AAP's petition, we were guided by a number of considerations. First, we believe that children's crash protection will be maximized if parents follow the recommendations we developed on what type of restraint should be used for children of particular sizes. One question for us was whether the positioners themselves, or the statements in their marketing and packaging, might encourage parents to use child restraints in a manner inconsistent with those recommendations. Second, we believe that use of belt positioners must not degrade the safety of children whose child restraint usage is consistent with the recommendations.

NHTSA Recommendations Regarding Child Restraint Usage

Our usage recommendations, which were published in November 1997 as part of an information brochure concerning on-off switches for air bags, are as follows:

[1] While seat belt positioners are not subject to the standards, they are items of motor vehicle equipment. Accordingly, their manufacturers are subject to the requirements in 49 U.S.C. 30119 and 30120 concerning the recall and remedy of products with safety related defects.

What Restraint Is Right For Your Child?

Weight or size of your child	Proper type of restraint (Put your child in back seat, if possible)
Children less than 20 pounds,* or less than 1 year	Rear-facing infant seat (secured to the vehicle by the seat belts).
Children from about 20 to 40 pounds* and at least 1 year	Forward-facing child seat (secured to the vehicle by the seat belts).
Children more than 40 pounds*	Booster seat, plus *both* portions of a lap/shoulder belt (except only the lap portion is used with some booster seats equipped with front shield).
Children who meet both criteria below:	*Both* portions of a lap/shoulder belt.
(1) Their sitting height is high enough so that they can, without the aid of a booster seat: wear the shoulder belt comfortably across their shoulder, and secure the lap belt across their pelvis, *and* (2) Their legs are long enough to bend over the front of the seat when their backs are against the vehicle seat back.	

*To determine whether a particular restraint is appropriate for your child, see restraint manufacturer's recommendations concerning the weight of children who may safely use the restraint.

We believe that it is important that seat belt positioners and other child passenger devices, and the statements in their marketing and packaging, not induce parents and other care givers to restrain children in a way that may be appropriate for a larger child, but not for that child. For example, children who cannot meet the sitting height and leg length criteria in the agency's recommendations should not be placed directly on a vehicle seat, restrained by the vehicle seat belts.

We believe that if seat belt positioners are marketed for children under 6 years old, they can induce people to act contrary to this advice. The 50th percentile 3-year-old male child weighs 33 lb. Under our recommendations, a 3-year-old child should be restrained by a forward-facing child restraint (a convertible or toddler seat) rather than by the vehicle's seat belts. When the child outgrows a forward-facing convertible or toddler seat, he or she should use a child booster seat, which lifts and positions the child to fit a vehicle's belt system. The booster seat should be used until the child is tall enough to wear the vehicle's lap and shoulder belts properly without an accessory, and can sit comfortably on the vehicle seat with knees bent over the front of the seat when the child's back is against the vehicle seat back.

We note that it is uncertain whether seat belt positioners are now generally marketed for use with 3-year-old children. We believe that the positioners are usually advertised in both their promotional materials and in statements on their packaging as being suitable for children who weigh 50 lb or more, which is approximately the weight of the 50th percentile 6-year-old male (48 lb). A positioner that, several years ago, had been advertised in packaging as suitable for use by children as young as 3 years old,[2] no longer is so recommended. Now, it is instead marketed as suitable for children weighing over 50 lb. Further, it is uncertain whether or to what extent seat belt positioners are being used with children 3- to 6-years old. State child restraint use laws requiring the use of child safety seats would indirectly prohibit use of a positioner alone in combination with vehicle seat belts (with no child safety seat), for restraining very young children (e.g., under the age of 4).

NHTSA's Dynamic Testing of Seat Belt Positioners

Following the issuance of the July 1995 rule, NHTSA published a report on an evaluation by our Vehicle Research and Test Center (VRTC) of three types of seat belt positioners. "Evaluation of Devices to Improve Shoulder Belt Fit," DOT HS 808 383, Sullivan and Chambers, August 1994.[3] The three devices were the ChildSafer, a plastic strip that attaches to the lap belt and that has three different openings through which the shoulder belt can be routed; the SafeFit, a pouch design through which the lap/shoulder belt is routed; and the Seatbelt Adjuster, a plastic clip that attaches to the lap belt, which has a flange through which the shoulder belt is rerouted. The ChildSafer was then recommended for occupants between the heights of 38 inches (the standing height of the average 3-year-old male child) to 60 inches. VRTC conducted a series of 35 sled tests using a dynamic test procedure to evaluate seat belt positioners using the standard frontal condition specified in Standard 213[4], as well as modified conditions to simulate oblique (15 degree offset) impacts. VRTC used test dummies representing a 3-year-old and 6-year-old child, and a 5th percentile adult female. In the test representing a 15 degree offset impact, the test seat assembly was placed in two different positions, rotated clockwise (occupant faces toward shoulder portion of seat belt) and rotated counterclockwise (occupant faces away from shoulder portion of seat belt).

VRTC found that injury criteria measurements were generally higher when a seat belt positioner was used in restraining the 3-year-old dummy than when the child dummy was restrained without a belt positioner. (The latter case is referred to as the "baseline" configuration. In the baseline tests conducted using the 3-year-old dummy, the dummy was positioned such that the shoulder belt was positioned across the shoulder and away from the neck area as best as possible.) When tested in the baseline configuration, i.e., with no positioner, the HIC values were less than 1000 for all tests. (However, the HIC value for the three-year-old dummy

[2] This positioner, the Child-Safer, was included in NHTSA's test program, infra, and tested with the 3-year-old dummy.

[3] While the study was conducted in 1994, preparation of the report for publication was not completed until 1995. The report is available from the National Technical Information Service, Springfield, VA 22161.

[4] Standard 213's dynamic test uses a standard vehicle seat assembly to which a child restraint system is attached by means of a vehicle seat belt. The seat assembly, along with the child restraint system, is subjected to a frontal 30 mph change of velocity over a duration of about 80 milliseconds.

in the baseline/clockwise orientation was marginal at 995.) When tested with the positioners, HIC levels, for the most part, exceeded the 1000 HIC limit of Standard 213.

In all of the tests (with and without seat belt positioners) with the 3-year-old dummy, the dummy's head hit his forearms. In some tests, these head impacts were more severe than in others. In some tests with a seat belt positioner, the forehead would hit one forearm and then bounce to the other forearm. These contacts contributed to the increase of the HIC measurements. However, although removing the effect of the head contact reduced the HIC values by about 6 percent, the HIC values were still above the Standard 213 criterion of 1000.

In other tests with a seat belt positioner, the shoulder belt portion of the lap/shoulder belt slipped off the shoulder, allowing the 3-year-old dummy to slip around the belt. In tests of the 3-year-old dummy in the frontal crash configuration with a seat belt positioner, the increased chest g's and head and knee excursions were still within the limits of the standard. One positioner lowered chest g measurements in the frontal and 15 degree offset crash configurations.

In tests with the 6-year-old dummy, when using a seat belt positioner, the dummy tended to "roll-out" of the seat belt positioner and around the shoulder belt. The HIC, chest g's, and head and knee excursions increased in some cases but were generally within the limits for all the tests (with and without seat belt positioners), except one of the seat belt positioners had chest g measurements exceeding the limit of Standard 213 in the frontal and 15 degree offset clockwise tests. That device introduced slack in the shoulder belt during the test. In some of the tests, the positioners resulted in injury criteria values that were lower than or approximately the same as those obtained in the baseline tests.

The complete test results are set forth in Tables 1 and 2 below. Those results should be compared to the requirements of Standard 213, which specifies testing in the frontal crash condition and limits HIC to 1000; chest acceleration to 60 g's; head excursion to 813 mm; and knee excursion to 915 mm.

TABLE 1.—INJURY CRITERIA AND EXCURSION FOR 3-YEAR-OLD DUMMY

	Fit device	HIC	Chest clip (g)	Head excursion (mm)	Knee excursion (mm)
	Limits of Standard 213	1000	60	813	915
3-Year-Old	Baseline (No Device)	874	48.7	477	553
Frontal	Child Safer	1309	55.1	560	615
	SafeFit	1095	56.5	496	618
	Seatbelt adjuster	999	48.1	551	583
3-Year-Old	Baseline (No Device)	995	48.5	411	535
15° Offset Clock-wise	Child Safer	1565	52.3	564	665
	SafeFit	1435	62.1	486	639
	Seatbelt adjuster	1238	45.4	452	580

TABLE 2.—INJURY CRITERIA AND EXCURSION FOR 6-YEAR-OLD DUMMY

	Fit device	HIC	Chest clip (g)	Head excursion (mm)	Knee excursion (mm)
	Limits of Standard 213	1000	60	813	915
6-Year-Old	Baseline (No Device)	657	50.4	481	628
Frontal	Child Safer	769	65.2	567	674
	SafeFit	427	49.1	566	649
	Seatbelt adjuster	634	50.8	473	604
6-Year-Old	Baseline (No Device)	595	54.3	435	602
15° Offset Clockwise	Child Safer	947	67.1	540	661
	SafeFit	621	57.7	461	580
	Seatbelt adjuster	794	55.1	493	640
6-Year-Old	Baseline (No Device)	409	48.5	516	607
15° Offset Counter-clockwise	Child Safer	509	50.1	628	605
	SafeFit	386	42.8	577	589
	Seatbelt adjuster	374	45.7	554	559

Agency Decision Regarding AAP's Petition

NHTSA is granting AAP's petition and is proposing to amend our labeling regulation to require seat belt positioners to be labeled with a warning against using the devices with children under the age of 6.[5] We also request comment on whether the requirements proposed in this NPRM should also apply to seat belt positioners installed as original equipment in a motor vehicle, in addition to seat belt positioners sold directly to consumers in the "aftermarket." We are also asking for information on other possible courses of action we could take with regard to the devices.

Issue 1: Is There a Safety Need for This Rulemaking Action?

A real-world safety problem has not been quantified thus far. There are no complaints in our crash files concerning seat belt positioners. AAP did not submit any information indicating that positioners are actually causing or exacerbating injuries.

The VRTC study found that there could be a potential safety problem. The study found that three types of positioners generally degraded the performance of the lap/shoulder belt system when tested with the 3-year-old dummy, by increasing the head and chest injury criteria measurements, and head and knee excursion measurements, over the measurements made in the baseline tests. One positioner slightly decreased chest clip values measured in the frontal and 15 degree offset tests. HIC levels for the positioners were at or exceeded the 1000 HIC limit of Standard 213 in all tests. When tested with the 6-year-old dummy, the positioners generally performed adequately, by keeping the injury criteria measurements within the limits of the standard. In some of the tests, the positioners resulted in injury criteria values that were lower than or approximately the same as those obtained in the baseline tests.

However, although HIC values generally exceeded the limit of Standard 213 in tests with the 3-year-old dummy, seat belt positioners might not be typically used with 3-year-old children. As noted above, the devices are typically marketed (in advertising literature and on packaging) for children who weigh 50 lb or more, which is approximately the weight of the 50th percentile 6-year-old male (48 lb). In view of the current marketing of seat belt positioners for use by children weighing 50 lb or more, we request comments on whether regulating the devices is warranted.

While the VRTC study compared the performance of the various seat belt positioners to a baseline configuration of the test dummy restrained without the positioner (i.e., positioned directly on the test seat and restrained by a lap/shoulder belt), we also compared the performance of the seat belt positioners (as measured in the VRTC study) to Standard 213 compliance test results of convertible child restraints and belt-positioning seats. We compared the VRTC test results of the seat belt positioning devices to compliance tests that were conducted by the agency between 1993 and 1998, using the 3-year-old dummy in convertible child restraints and the 6-year-old dummy in belt-positioning booster seats. The average HIC value in 363 compliance tests conducted on convertible child restraints using the 3-year-old dummy is 483.6, as compared to an average HIC of 1,134.3 for the three seat belt positioners tested (using the frontal crash scenario results only). This is a 57.3 percent reduction of HIC values when using the convertible-type child restraint. Test results also indicate that chest acceleration values are reduced to an average of 46.9 g's in the 363 compliance tests using the 3-year-old dummy in a convertible child restraint, from an average of 53.2 g's using the seat belt positioning devices.

The average head and knee excursion in the compliance tests of the convertible seats was found to be 28.9 inches and 32.5 inches, respectively. These values are somewhat greater than the 21.1 inches and 23.8 inches for head and knee excursion found for the belt positioning devices during the VRTC study, but still well within the limits of 32 inches and 36 inches prescribed in Standard 213. It should also be noted that beginning in September of this year, child restraints will be required to meet more stringent requirements with respect to the allowable head excursion in dynamic testing. Convertible child restraints manufactured on or after September 1, 1999 will be required to limit head excursion of the test dummy to a maximum of 28 inches (the restraints may incorporate a tether to meet this requirement).

The average values for each of the injury criteria measured with the 6-year-old dummy in compliance tests of belt-positioning booster seats are below those measured using the seat belt positioning devices in the VRTC study. HIC values in 17 compliance tests of belt-positioning booster seats using the 6-year-old dummy have averaged 464, as compared to 610 for the seat belt positioning devices in the VRTC study, and chest acceleration values have averaged 48.8 g's for belt-positioning booster seats, as compared to 55 g's for the seat belt positioning devices. Head and knee excursion are also reduced by an average of 1 inch each when using a belt-positioning seat.

The data above indicate that children are typically afforded greater levels of protection when using convertible-type and belt-positioning booster seats than when using the seat belt positioning devices tested in the VRTC study. These data indicate that a 3-year-old child should not be restrained using a seat belt positioning device. Children of this age should typically be restrained in a convertible-type child restraint, which often offers a 5-point harness for added protection in the event of a crash. Further, the data show that a 6-year-old child restrained in a belt-positioning booster seat is provided a greater level of safety protection than when using a seat belt positioning device.

Issue 2: Should We Require a Warning Label for the Devices?

Our tests of seat belt positioners indicate that they generally performed adequately with the 6-year-old dummy, but did not do so in tests with 3-year-old dummy. (The devices increased the latter dummy's HIC values to unacceptable levels.) In view of this, we are proposing to require that the devices be labeled with a warning that they must not be used with children under a certain age, e.g., 6 years. Alternatively, a child's height might be a better predictor of whether a positioner would perform adequately than a child's age. Thus, we also are requesting comments on whether the label should include a warning against using the devices with children under a certain height, e.g., the height of a 50th percentile 6-year-old male (47.5 inches, or 1206 mm), as an alternative or in addition to the warning referencing the child's age.

We are proposing that seat belt positioners be labeled with information that would maximize the correct positioning of the belts on the child. The lap and shoulder belt needs to be positioned so as to maximize the

[5] In November 1998, NHTSA Administrator Ricardo Martinez, M.D., formed a "Blue Ribbon Panel," consisting of representatives from the auto and child restraint safety communities, to examine ways to ensure the proper protection of children ages 5 to 16 in motor vehicles. On March 15, 1999, the panel released a set of recommendations, including a number in the areas of product design and research that directly address the issue of seat belt positioning devices. NHTSA will consider the recommendations of the panel in conjunction with those comments received in response to this notice in determining the appropriate course of action regarding the regulation of belt positioning devices.

distribution of the crash forces to the child's skeletal structure. The lap belt and the shoulder belt should not be positioned such that they would increase the loading of the soft tissues and organs of the child's abdomen. The shoulder belt should not be aligned so that the child might twist toward the middle of the vehicle in a crash, or adjusted with excessive slack in the belt. We thus propose that seat belt positioners be labeled with the statement: "Make sure that this device positions the lap belt low across the child's hips and not on the stomach. The shoulder belt must be snug and on the child's shoulder, not near the neck or off the shoulder." Comments are requested on this issue.

The regulatory text provided in this NPRM proposes a permanent label that includes the information, noted above, as to how the lap and shoulder belt should be properly fitted, and information as to the model name or number of the system, the manufacturer's name, and the place of manufacture. The latter information would be required to assist in identifying the equipment for purposes of a finding of a safety defect or a recall. Is there enough room on these devices for a permanent label which incorporates all of this information in a readable size? If not, are there alternative means to convey the same information, e.g., a permanent label warning "Do not use for children under 6" on the device, in conjunction with a requirement that the remaining information be provided with the packaging material?

Issue 3: Should the Devices Be Regulated by Standard 213?

The agency tentatively believes that it would not be appropriate for seat belt positioners to be regulated by Standard 213. Standard 213 does not apply to devices recommended for children weighing over 50 lb, which, NHTSA believes, is the recommended weight range for the users of most, if not all, positioners. Further, even if the current requirements of Standard 213 were extended to such devices, there is some question of whether those requirements could effectively assess belt positioners.

If the current test procedure and injury criteria of Standard 213 were used to test and evaluate the devices, it appears that belt positioners would generally pass Standard 213 when tested in accordance with the standard, i.e., with the 6-year-old dummy. This conformance would leave unaddressed and even obscure the question of whether the standard would be able to distinguish between acceptable and unacceptable performance of belt positioners. Belt positioning devices can cause the lap belt to rise above the hips in a crash and press into the soft abdominal area instead of staying lower and lying across the child's hips, thereby increasing the potential for abdominal injury. Currently there are no abdominal sensors on the child dummies used by NHTSA in compliance testing, or injury criteria developed, and thus no way to evaluate the potential for abdominal injury using the existing test protocols of Standard 213.[6]

If Standard 213 were applied to belt positioners, some consumers might erroneously conclude that a belt positioner certified to the Federal standard would provide the same level of protection as a child restraint system. Some parents might respond to the certification of belt positioners by prematurely moving their child out of a child safety seat into the vehicle seat belt system, believing that the "certified" belt positioner renders the vehicle belt system adequate for the child. The premature "graduation" of a child to the vehicle belt system would be contrary to NHTSA's recommendations on restraining children and could degrade the child's crash protection.

NHTSA believes that children who cannot properly wear the vehicle shoulder belt without a positioning device should still be using a child restraint system, such as a toddler seat or a belt-positioning booster, rather than the vehicle belt system. A toddler seat provides a high back for neck support and typically has side supports that cushion and protect the child in frontal and side impacts. Seat belt positioners do not provide such protection. In addition, toddler seats have an internal restraint system (a harness system which may include a shield or shelf) which fits the child better than vehicle belts and which does not allow direct contact of a vehicle lap belt with the child. Thus, the child restraint diverts and distributes dynamic crash forces away from vulnerable parts of the child's body. Further, a toddler or booster seat is more comfortable for children whose legs are too short to allow them to bend their knees when sitting upright against the vehicle seat back. These children will slouch down when seated directly on the vehicle seat cushion, so as to bend their knees, and in doing so are likely to reposition the vehicle's lap belt over the soft abdominal area.[7] The more comfortable fit of the child restraint system's platform seat therefore results in a safer fit of the lap restraint, compared to the fit of the lap belt on a child sitting directly on the vehicle cushion.

Older children who can fit in a belt-positioning booster seat would be safer in such seats than seated on a vehicle seat using the vehicle seat belts and a seat belt positioning device of the types discussed in this document. The main object of belt positioning devices is to adjust the shoulder belt portion of a Type II (lap and shoulder) belt so as not to cross the child's face or neck. Booster seats achieve this objective by raising the child in relation to the belts—rather than vice versa, as with belt positioning devices—and thereby make it less likely, than when using a positioning device, that the lap belt would be positioned over the child's abdomen. Boosters provide a seating platform that enable children to bend their knees without slouching, which may occur when the child is seated directly on the vehicle seat. As noted in the previous paragraph, slouching can result in the repositioning of a lap belt over the child's soft abdominal area. Booster seats also hold the child more securely and reduce the likelihood that excessive slack will be introduced into the belt system. Again, however, these differences would be obscured by the fact that both the seat belt positioner and the booster seat would be certified as complying with "all applicable Federal motor vehicle safety standards." Thus, consumers might mistakenly assume that both offer comparable levels of protection when they would not.

To avoid this misunderstanding, NHTSA tentatively believes seat belt positioners should not be considered as the same type of device as a child restraint system, or regulated by Standard 213. Comments are requested on this issue. (We also note, however, that use of booster seats for children weighing more than 40 pounds has been

[6] Similarly, belt positioning devices increased neck load and moments in the VRTC tests when used with the 5th percentile female dummy compared to baseline conditions (no device). No neck injury assessment was performed using child dummies because child dummies equipped with a neck load cell were not available at the time that the VRTC test program was conducted. On September 18, 1998, NHTSA proposed to amend Standard 208 to require the use of new 12-month-, 3-year-, and 6-year-old dummies that are instrumented with load cells to measure neck forces and moments when evaluating air bags in frontal crashes (63 FR 49957). The proposal also included neck injury criteria. If a procedure and criteria are adopted, seat belt positioners and other child safety devices may be evaluated for potential child neck injury.

[7] "Study of Older Child Restraint/Booster Seat Fit and NASS Injury Analysis," Klinich, Pritz, Welty, et al., DOT HS 808 248, November 1994.

documented to be very low. The availability of belt positioning devices may encourage some people to use the shoulder portion of a lap/shoulder belt who otherwise would put the shoulder belt behind their back due to physical discomfort. Putting the shoulder belt behind the back dramatically decreases restraint effectiveness.)

Issue 4: Should the Devices Be Subject to Performance Requirements? If Yes, What Requirements Would Be Appropriate?

Despite the tentative conclusion above, comments are requested regarding a performance requirement, in lieu of or in addition to, a labeling requirement. Comments are requested on the feasibility of developing a practical procedure to dynamically test the performance of these devices when used alone with the vehicle's belt system, and also in conjunction with a child restraint system. If commenters are supportive of performance requirements for seat belt positioners, NHTSA requests that they provide methods by which to assess the injury potential for areas of identified concern, such as abdominal and neck loading. As noted above in this document, NHTSA issued a September 18, 1998 proposal to amend Standard 208, to require the use of new child dummies that are instrumented with load cells to measure neck forces and moments when evaluating air bags in frontal crashes. The proposal included neck injury criteria. Comments are requested on the appropriateness of using the proposed procedure and criteria for evaluating neck injury potential using various child dummies restrained in seat belt positioners.

Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. NHTSA has prepared a preliminary regulatory evaluation (PRE) for this document which discusses issues relating to the potential costs, benefits and other impacts of this regulatory action. The PRE is available in Docket No. 99–5100 and may be obtained by contacting Docket Management at the address or telephone number provided at the beginning of this document. You may also read the document via the Internet, by following the instructions in the section below entitled, "How can I read the comments submitted by other people?" The PRE will be listed in the docket summary, along with the comments from other people.

The PRE notes that labeling positioners as proposed in this NPRM could be beneficial in helping assure that young children are restrained in the most appropriate manner for their size or age. This would help prevent the degradation of safety benefits that occurs when seat belts are not properly fitted across occupants' shoulders and hips. However, we cannot currently quantify these benefits because no data exist to determine the target population. The PRE estimates that labeling costs resulting from the proposed labeling requirements of this NPRM could be $0.05 to $0.08 for the manufacturer's cost, depending on the type of label used, and between $0.12 and $0.19 per positioner for the consumer. The cost to label the roughly 1.7 million positioners sold annually is expected to be between $204,000 and $323,000.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment a preliminary regulatory flexibility analysis (PRFA) describing the impact of proposed rules on small entities. NHTSA has included a PRFA in the PRE for this proposal.

Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration assistance. One of the criteria for determining size, as stated in 13 CFR 121.601, is the number of employees in the firm. To qualify as a small business in the Motor Vehicle Parts and Accessories category (SIC 3714), the firm must have fewer than 750 employees. The agency has considered the small business impacts of this proposed rule based on this criterion.

The PRFA discusses the possible impacts of this action on small businesses that manufacture belt positioning devices and requests information that would assist NHTSA in further analyzing those impacts. As noted above, possible labeling costs resulting from the labeling provisions of this NPRM are estimated to be $0.05 to $0.08 for the manufacturer's cost. Added consumer costs could be from $0.12 to $0.19. The agency tentatively believes that the cost increase would not significantly raise the price of seat belt positioners, and would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This proposed rule would not preempt the states from adopting laws or regulations on the same subject, except that it would preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on "search."

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1999–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments.

You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles.

PART 575—[AMENDED] CONSUMER INFORMATION REGULATIONS

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 575 as set forth below.

1. The authority citation for Part 575 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 575.4(a) would be revised to read as follows:

Subpart A—General

* * * * *

§ 575.4 Application

(a) General. Except as provided in paragraphs (b) through (d) of this section, each section set forth in subpart B of this part applies, according to its terms, to motor vehicles, tires and items of motor vehicle equipment manufactured after the effective date indicated.

* * * * *

3. Section 575.101 would be added to read as follows:

§ 575.101 Seat belt positioners

(a) *Scope.* This section requires manufacturers of seat belt positioners to provide information about the correct use of the devices and warn against the use of the devices with small children.

(b) *Purpose.* The purpose of this section is to provide purchasers information related to the performance of seat belt positioners with small children.

(c) *Application.* This section applies to seat belt positioners that are not an integral part of a motor vehicle.

(d) *Definitions. Seat belt positioner* means a device, other than a belt-positioning seat, that is manufactured to alter the positioning of Type I and/or Type II belt systems in motor vehicles.

(e) *Requirements.* Each manufacturer of a seat belt positioner shall permanently label the device with the following information:

(1) The model name or number of the system.

(2) The manufacturer's name, or a distributor's name, if the distributor assumes responsibility for all duties and liabilities imposed on the manufacturer with respect to the device by 49 U.S.C. 30101 *et seq.*

(3) The place of manufacture (city and State, or foreign country), or the location (city and State, or foreign country) of the principal offices of the distributor, if the distributor's name is used instead of the manufacturer's name.

(4) A statement warning that the device must not be used with children under the age of six [alternatively, or additionally, under the height of 47.5 inches (1206 mm).]

(5) The statement: "Make sure that this device positions the lap belt low across the child's hips and not on the stomach. The shoulder belt must be snug and on the child's shoulder, not near the neck or off the shoulder."

Issued on August 9, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–20950 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF57

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Scaleshell Mussel as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the scaleshell mussel (*Leptodea leptodon*). This species historically occurred in 13 states in the eastern United States. Currently, the species is known from a few scattered populations within the Mississippi River Basin in Missouri, Oklahoma, and Arkansas. Scaleshell inhabits medium-sized to large rivers with stable channels and good water quality. The abundance and

distribution of scaleshell have decreased due to habitat loss and adverse effects associated with water quality degradation, reservoir construction, sedimentation, channelization, and dredging. These habitat changes have resulted in significant extirpations, restricted and fragmented distributions, and poor recruitment. This proposed rule, if made final, would extend the Act's protection to the scaleshell mussel.

DATES: Send your comments to reach us on or before October 12, 1999. We will not consider comments received after the above date in making our decision on the proposed rule. We must receive requests for public hearings by September 27, 1999.

ADDRESSES: The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111–4056, (telephone 612–713–5342).

FOR FURTHER INFORMATION CONTACT: Andy Roberts at the U.S. Fish and Wildlife Service, Columbia Field Office, 608 East Cherry Street, Room 200, Columbia, Missouri 65201, (telephone 573–876–1911, ext. 110).

SUPPLEMENTARY INFORMATION:

Background

The scaleshell mussel (*Leptodea leptodon*) was described by Rafinesque in 1820. Synonymy includes *Unio velum* (Say), *Sympnynota tenuissima* (Lea), *Lampsilis blatchleyi* (Daniels), and *Lampsilis leptodon* (Rafinesque).

Buchanan (1980), Cummings and Mayer (1992), Oesch (1995), and Watters (1995) provide descriptions of the scaleshell mussel (scaleshell). The shell grows to about three to ten centimeters (one to four inches) in length. The shells are elongate, very thin, and compressed. The anterior end is rounded. In males, the posterior end is bluntly pointed. In females, the periostracum (the outside layer or covering of the shell) forms a wavy, fluted extension of the posterior end of the shell. The dorsal margin is straight and the ventral margin is gently rounded. Beaks (the raised or domed part of the dorsal margin of the shell) are small and low, nearly even with the hinge line. The beak sculpture is inconspicuously compressed and consists of four or five double-looped ridges. The periostracum is smooth, yellowish green or brown, with numerous faint green rays. The pseudocardinal teeth (the triangular, often serrated, teeth located on the upper part of the shell) are reduced to a small thickened ridge. The lateral teeth (the elongated teeth along the hinge line of the shell) are moderately long with two indistinct teeth occurring in the left valve and one fine tooth in the right. The beak cavity is very shallow. The nacre (the interior layer of the shell) is pinkish white or light purple and highly iridescent.

Life History

The general biology of scaleshell is similar to other bivalved mollusks belonging to the family Unionidae. Adults are filter-feeders, spending their entire lives partially or completely buried within the substrate (Murray and Leonard 1962). Their food includes detritus, plankton, and other microorganisms (Fuller, 1974). Unionids have an unusual mode of reproduction. Their life cycle includes a brief, obligatory parasitic stage on fish. Eggs develop into microscopic larvae (glochidia) within special gill chambers (ectobranchous marsupia) of the female. The female expels the mature glochidia and they must attach to the gills or the fins of an appropriate fish host to complete development. Host fish specificity varies among unionids. Some species appear to use a single host, while others can transform on several host species. Following proper infestation, glochidia transform into juveniles and excyst (drop off). For further information on the life history of freshwater mussels, see Gordon and Layzer (1989) and Watters (1995).

Mussel biologists know relatively little about the specific life history requirements of scaleshell. Baker (1928) surmised that scaleshell is a long-term brooder (spawns in fall months and females brood the larvae in their gills until the following spring or summer). Glochidia present in the ectobranchous marsupia in September, October, November, and March support that conclusion (Gordon 1991). The scaleshell mussel uses the freshwater drum (*Aplodinotus grunniens*) as the fish host for its larvae (Chris Barnhart, Southwest Missouri State University, pers. comm., 1998). Other species in the genus *Leptodea* and a closely related genus *Potamilus* are also known to use freshwater drum exclusively as a host (Roe and Lydeard 1997, Watters 1994).

Habitat Characteristics

The scaleshell occurs in a variety of river habitats. For example, Buchanan (1980, 1994) and Gordon (1991) reported scaleshell from riffle areas with substrate assemblages of gravel, cobble, boulder, and occasionally mud or sand. Oesch (1995) considered scaleshell a typical riffle species, occurring only in clear, unpolluted water with good current. Conversely, Call (1900), Goodrich and Van der Schalie (1944), and Cummings and Mayer (1992) reported collections from muddy bottoms of medium-sized and large rivers. The unifying characteristic appears to be an intact system (stable channels) with good water quality. This is consistent with the current distribution of scaleshell. Most extant populations are restricted to river stretches with stable channels (Buchanan 1980, Harris 1992) and that have maintained relatively good water quality (Oesch 1995). Scaleshell is usually collected in association with a high diversity of other freshwater mussels.

Distribution and Abundance

Scaleshell historically occurred across most of the eastern United States. While the scaleshell had a broad distribution, locally it was a rare species (Gordon 1991, Oesch 1995, Call 1900). Williams et al. (1993) reported the historical range as Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Mississippi, Missouri, Ohio, Oklahoma, South Dakota, Tennessee, and Wisconsin. Clarke (1996) also reported scaleshell occurrence from the Minnesota River, Minnesota. Within the last 50 years, this species has become increasingly rare and its range greatly restricted. Of the 53 historical populations, 13 remain scattered within the Mississippi River Basin, including the Meramec, Bourbeuse, Big, and Gasconade Rivers in Missouri; the South Spring, St. Francis, Little, Mountain Fork, Spring, and South LaFave Rivers and Frog Bayou and Gates Creek in Arkansas; and the Kiamichi River in Oklahoma.

Of the 13 extant scaleshell populations, three are thought to be stable (long term persistence is possible but unsure), two are declining, four are presumed to be declining (long term persistence is in doubt), and the status of four are unknown. Six additional populations may also persist but their current status is uncertain due to lack of recent collections or surveys (Szymanski 1998).

Upper Mississippi River Basin

Scaleshell formerly occurred in eight rivers and tributaries within the upper Mississippi River Basin, including the Mississippi River in Illinois, Iowa, and Wisconsin; the Minnesota River in Minnesota; Burdett's Slough in Iowa; the Iowa and Cedar Rivers in Iowa; and the Illinois, Sangamon, and Pecatonica Rivers in Illinois. However, the scaleshell has not been found in more

than 50 years in the Upper Mississippi Basin and is believed extirpated from that basin (Kevin Cummings, Illinois Natural History Survey, *in litt.* 1994).

Middle Mississippi River Basin

Historically, scaleshell occurred in 25 rivers and tributaries within the middle Mississippi River Basin including the Kaskaskia River in Illinois; the mainstem Ohio River in Kentucky and Ohio; the Wabash River in Illinois and Indiana; the White River and Sugar Creek in Indiana; the Green and Licking Rivers in Kentucky; the Scioto, St. Mary's, and East Fork Little Miami Rivers in Ohio; the Cumberland River in Kentucky and Tennessee, Beaver Creek in Kentucky; Caney Fork in Tennessee; the Tennessee River in Alabama and Tennessee; the Clinch, Holston, and Duck Rivers in Tennessee; Auxvasse Creek in Missouri; the Meramec, Bourbeuse, South Grand, Gasconade, and Big Piney Rivers in Missouri; and the mainstem Missouri River in South Dakota. The scaleshell has been extirpated from most of the middle Mississippi River Basin. Currently, the scaleshell is extant in four, possibly five, rivers within the Meramec River and Missouri River drainages in Missouri as described below.

Meramec River Basin (Missouri)—In 1979, Buchanan surveyed for mussels at 198 sites within the Meramec River Basin (Buchanan 1980). Of these sites, 14 had evidence of live or dead scaleshell. Seven of the 14 sites were in the lower 112 miles of the Meramec River, five in the lower 54 miles of the Bourbeuse River, and two in the lower 10 miles of the Big River. In addition to being restricted to only three rivers, scaleshell is also locally rare. Buchanan found that the species comprised less than 0.1 percent of the 20,589 living naiades found in the basin. He collected live specimens at four sites, three in the Meramec and one in the Bourbeuse. Although the lower 108 miles of the Meramec River had suitable habitat for many rare species, live scaleshell were found only in the lower 40 miles (Buchanan 1980). Both the Bourbeuse and Big Rivers had lower species diversity and less suitable habitat than the Meramec River. Suitable habitat occurs only in the lower 54 miles of the Bourbeuse River and lower 10 miles of the Big River (Buchanan 1980).

The Missouri Department of Conservation (MDC) sampled 78 sites in an intensive resurvey of the Meramec River Basin in 1997 (Sue Bruenderman, Missouri Department of Conservation, *in litt.* 1998). Similar to Buchanan's findings (1980), scaleshell represented only 0.4 percent of the living mussels, with specimens collected from the mainstem Meramec River (34 specimens from 9 sites), the Bourbeuse River (10 specimens from 5 sites), and the Big River (2 specimens from 1 site). The MDC documented live scaleshell at four of the five sites where Buchanan previously collected live specimens on the Meramec River (Sue Bruenderman, pers. comm. 1998). One site where they did not reconfirm scaleshell had only two live mussels where Buchanan had previously observed 93 living individuals. This site no longer supports suitable mussel habitat. Although portions of the Meramec River continue to provide suitable habitat, mussel species diversity and abundance have declined noticeably above mile 64 since 1980.

The number of scaleshell specimens MDC collected in 1997 is greater than that reported by Buchanan's study (Buchanan 1980); however, the small number of specimens collected, especially from the Bourbeuse and Big Rivers, indicates that the long-term viability of these populations is tenuous. Moreover, the limited availability of mussel habitat and the loss of mussel beds since 1980 from sedimentation, eutrophication, and unstable substrates (Buchanan *in litt.* 1997; Sue Bruenderman pers. comm. 1998) indicate that scaleshell populations within the Meramec River Basin are threatened.

Missouri River drainage (South Dakota, Missouri)—Within the Missouri River drainage, Buchanan (1980, 1994) and Oesch (1995) reported scaleshell from Missouri, Gasconade, Big Piney and South Grand Rivers and Auxvasse Creek. The last collection of Scaleshell from Auxvasse Creek was in the late 1960s (Buchanan, *in litt.* 1997). Similarly, the last known collection date for the South Grand is the early 1970s, and this collection site, now inundated by Truman Lake, is unsuitable for scaleshell (Buchanan, *in litt.* 1997). The only specimen reported from the mainstem Missouri River is from South Dakota adjacent to the Nebraska border (Hoke 1983). This occurrence represents the westernmost record within the Upper Mississippi River Basin. A subsequent survey failed to relocate live specimens or relict shells (Clarke 1996). However, high water conditions limited Clarke's survey and it is uncertain if scaleshell is still present below Gavin's Point Dam (Nell McPhillips, U.S. Fish and Wildlife Service, *in litt.* 1998). A single, fresh dead specimen was collected from Big Piney River in 1981 (Bruenderman, *in litt.* 1998). No other specimens of scaleshell have been documented from this river.

Buchanan (1994) surveyed the Gasconade River, and he found it to support 36 species of freshwater mussels. He collected scaleshell specimens at eight sites between river miles 6 and 57.7. Buchanan found only dead shells at two sites and eight live specimens at the remaining six sites. Overall, scaleshell comprised less than 0.1% of the mussels collected. If populations still exist in any of the rivers within the Missouri River drainage, their long-term persistence is undoubtably precarious.

Middle Mississippi River Basin summary—Of the 25 rivers and tributaries in the middle Mississippi River Basin, four, and possibly five, support scaleshell populations today. While populations in the Meramec and Bourbeuse Rivers are likely stable, numbers in the Big and Gasconade Rivers are presumed declining, and the status of populations in the Big Piney River are unknown (Szymanski 1998).

Lower Mississippi River Basin

Scaleshell historically occupied 20 rivers and tributaries in the lower Mississippi River Basin. These include the St. Francis, White, James, Spring, Little Missouri, Middle Fork Little Red, Saline, Ouachita, Cossatot, South Fourche LaFave, and Strawberry Rivers in Arkansas; South Fork Spring, Frog Bayou and Myatt Creek in Arkansas; Poteau, Little, and Kiamichi Rivers in Oklahoma; and Gates Creek and Mountain Fork in Oklahoma.

St. Francis River (Arkansas and Missouri)—Bates and Dennis (1983), Ahlstedt and Jenkinson (1987), Clarke (1985), and Rust (1993) conducted mussel surveys on the St. Francis River in Arkansas and Missouri. Records of dead mussels and relict shells indicate that at one time mussels were distributed throughout the river (Bates and Dennis 1983). Clarke (1985) documented scaleshell at two sites by single specimens. Bates and Dennis (1983) determined that of the 54 sites sampled, 15 were productive, 10 marginal, and 29 had either no shells or dead specimens only. Although scaleshell was not collected, they identified 48 miles of probable suitable mussel habitat: Wappapello Dam, to Mingo Ditch, Missouri; Parkin to Madison Arkansas; and Marianna to the confluence with the Mississippi River at Helena, Arkansas. They indicated that the remaining river miles were unsuitable for mussels. If scaleshell is extant in the St. Francis River, it will be restricted to the few patches of suitable habitat.

White River (Arkansas)—Clarke (1996) noted the collection, in 1902, of

a single specimen from the White River near Garfield, Arkansas. A late 1970s survey of the White River between Beaver Reservoir and its headwaters failed to relocate live or dead scaleshell individuals. Navigation maintenance activities have relegated mussel populations to a few refugial sites, none of which support scaleshell (Bates and Dennis 1983). Specimens have not been collected from the James River, a tributary of the White River, since before 1950 (Clarke 1996). It is unlikely that either river currently supports scaleshell.

Spring River (Arkansas)—An eight-mile section of the Spring River in Arkansas supports a diverse assemblage of freshwater mussels (Gordon et al. 1984, Arkansas Highway and Transportation Dept 1984, Miller and Hartfield 1986). The collections from this river total eight scaleshell specimens (Cummings *in litt.* 1994, Clarke 1996, Arkansas State Highway and Transportation Dept. 1984). Gordon et al. (1984) surveyed the river and reported suitable mussel habitat between river miles 3.2 and 11.0, although species richness below river mile 9 had declined markedly compared to past surveys. Gordon et al. (1984), as well as Miller and Hartfield (1986), reported that the lower three miles of river were completely depleted of mussels and contained no suitable habitat. Harris did not document scaleshell in a 1993 survey of the Spring River (John Harris, Arkansas State University, *in litt.* 1997).

Scaleshell was collected from the South Fork of the Spring River in 1983 and 1990. During the 1983 survey, Harris (*in litt.* 1997) collected four specimens near Saddle, Arkansas, and one specimen and one valve north of Hunt, Arkansas. During a subsequent visit in 1990, Harris collected young adults (Harris, pers. comm. 1995). Although juveniles were not found, the presence of young adults suggests that reproduction recently occurred.

Strawberry River and Myatt Creek (Arkansas)—Records of scaleshell from the Strawberry River and the Myatt Creek are based on single specimen collections (Harris *in litt.* 1997). In 1996, Harris collected a live specimen from the Strawberry River near the confluence with Clayton Creek in Lawrence County. He also collected a single relict specimen from Myatt Creek in Fulton County in 1996 (Harris *in litt.* 1997).

Little Red River (Arkansas)—The historical locality (near Shirley, Van Buren County, Arkansas) where a single, specimen of scaleshell was collected from the Middle Fork of the Little Red River no longer provides mussel habitat. Clarke (1987) stated that suitable mussel habitat was restricted to a six-mile stretch from the confluence of Tick Creek upstream to the mouth of Meadow Creek.

Arkansas River Basin (Oklahoma and Arkansas)—Scaleshell has been collected from the Arkansas River Basin in Oklahoma and Arkansas. The species is reported from the Poteau River in Oklahoma (Gordon 1991), Frog Bayou in Arkansas (Harris and Gordon 1987), and the South Fourche La Fave and Mulberry Rivers in Arkansas (Gordon 1991 and Harris 1992). Despite several freshwater mussel surveys of the Poteau River (Isely 1925, Branson 1984, Harris 1994), only a single, undated specimen has been collected (Gordon 1980). The persistence of scaleshell in Poteau River is doubtful.

Frog Bayou (Arkansas)—Gordon (1980) collected two scaleshell specimens from Frog Bayou. Beaver Reservoir now inundates one of the Frog Bayou collection sites. The most recent collection was a fresh dead individual during a 1979 survey (Gordon 1980). Gordon noted that stream bank bulldozing upstream recently disturbed this site and other nearby sites. He also reported in-stream gravel mining activities at several sites. Within Frog Bayou, potential habitat is restricted to the area between Rudy and the confluence of the Arkansas River. Above Rudy, two reservoirs impact the river; one near Maddux Spring and the other at Mountainburg. Live mussels have not been found at the confluence of the Arkansas River, likely due to dredging activities (Gordon 1980). Although the current status of scaleshell in Frog Bayou is uncertain, any remaining individuals are in potential jeopardy due to limited habitat and in-stream mining activities.

South Fork La Fave River (Arkansas)—The only scaleshell record from the South Fork La Fave River is based on a single live specimen found in 1991 (Harris 1992). The potential of discovering additional populations in this river is unlikely due to the limited availability of suitable substrate. Similarly, other major tributaries of the South Fourche La Fave River provide little mussel habitat. Like Frog Bayou, the persistence of scaleshell in this river is in doubt.

Mulberry River (Arkansas)—Although Gordon (1991) reported scaleshell from the Mulberry River, documentation is lacking (no written acknowledgment). A recent survey did not find the species in the Mulberry River (Craig Hilborne, U.S. Forest Service, pers. comm. 1995; Stoeckel et al. 1995). Persistence of scaleshell in the Mulberry River is unlikely.

Red River Drainage (Oklahoma)—In the Red River drainage, Valentine and Stansbery (1971) reported the collection of a single, undated specimen from Gates Creek, a tributary of the Kiamichi River. Isley (1925) first collected scaleshell from the Kiamichi River in 1925. Based on his account, the Kiamichi River historically supported a diverse and abundant mussel fauna. He collected 36 specimens of scaleshell at one of 22 stations visited. As recently as 1987, Clarke described the Kiamichi River as "in remarkably good condition" and a "faunal treasure" (Clarke 1987). However, despite extensive searches of the Kiamichi River over the last 11 years, only a single fresh dead shell of scaleshell (in 1987) has been collected (Caryn Vaughn, Oklahoma Biological Survey, pers. comm. 1997; Charles Mather, University of Science and Arts of Oklahoma, *in litt.* 1984 and 1995). Vaughn (pers. comm. 1997) failed to find even a dead shell during three years (1993–1996) of surveys in the Red River Basin. However, the Kiamichi River is in relatively good shape above the Hugo Reservoir, (Clarke 1987) and may still support a remnant population of scaleshell.

Little River, Red River Drainage (Oklahoma)—Although there is no evidence of scaleshell persisting in the Little River, above the Pine Creek Reservoir a healthy mussel population persists (Vaughn *in litt.* 1997). Below Pine Creek Lake, the mussel fauna is severely depleted but recovers with increasing distance from the impoundment (Vaughn *in litt.* 1997). Valentine and Stansbery (1971) reported a single specimen from Mountain Fork. Clarke (1987) hypothesized that, based on the presence of mussel populations at the confluence of Mountain Fork and beyond the Arkansas border, damage to Mountain Fork from the Broken Bow Reservoir has not occurred. However, Vaughn (*in litt.* 1997) indicated that these populations have been severely depleted with most no longer containing live mussels. Although extensive surveys throughout the length of the Little River have not documented scaleshell, suitable habitat remains and scaleshell individuals may persist (Vaughn *in litt.* 1997). However, the discharge of reservoir water from Pine Creek and periodic discharge of pollution from Rolling Fork Creek would seriously impact any remaining viable populations and prohibit any future recolonization (Clarke 1987).

If scaleshell still occurs in the Red River drainage in Oklahoma, extant populations are probably small and are

likely restricted to isolated areas of suitable habitat in the Kiamichi and Mountain Fork rivers. Given the extensive survey effort over the last decade, long-term survival of the scaleshell in Oklahoma is doubtful.

Cossatot and Saline Rivers (Arkansas)—Harris collected single specimens of scaleshell from the Cossatot and Saline Rivers in Arkansas in 1983 (Harris *in litt.* 1997) and 1987 (Harris pers. comm. 1995), respectively. No other information is available for either river. The existence of scaleshell in the Ouachita River and its two tributaries, the Saline River and Little Missouri River, is sporadic as well. Both the Little Missouri and Saline rivers records are based on single specimens. The Saline River specimen was collected in 1946 (Clarke 1996), and the Little Missouri River collection record is from 1995 (Harris *in litt.* 1997). Four undated museum specimens taken from Arkadelphia, Clark County, Arkansas document the occurrence of scaleshell in the Ouachita River (Clarke 1996). Based on the few collections and the limited habitat available, the long-term persistence of scaleshell in Cossatot, Saline, Little Missouri, and Ouachita Rivers is precarious.

Lower Mississippi River Basin summary—Of these 20 rivers and tributaries in the lower Mississippi River Basin, nine, and possibly an additional five, support scaleshell populations today. Of these populations, the South Spring River is likely stable; the St. Francis River, Kiamichi River, Little River, and Mountain Fork are declining; the Spring River, Frog Bayou, South Fourche LaFave River, and Gates Creek are presumed declining; and the status of populations in Mayatt Creek, Strawberry River, Cossatot River, Saline River and Little Missouri River are unknown (Szymanski 1998).

Previous Federal Action

We had identified the scaleshell as a Category 2 species in notices of review published in the **Federal Register** on May 22, 1984 (49 FR 21664). Scaleshell remained a Category 2 in subsequent notices including January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), November 15, 1994 (59 FR 58982). Prior to 1996, a Category 2 species was one that we were considering for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not available to support a proposed rule. We stopped designating Category 2 species in the February 28, 1996, Notice of Review (61 FR 7596). We now define a candidate species as a species for which we have on file sufficient information to propose it for protection under the Act. We designated scaleshell as a candidate species on October 16, 1998.

On May 8, 1998, we published Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings, giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. The processing of this proposed rule falls under Tier 2.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to scaleshell (*Leptodea leptodon*) are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.* The loss of mussel diversity in the United States has been well documented and is a major concern for conservation biologists. In a review of the conservation status of native freshwater fauna, the American Fisheries Society found that of the 297 native freshwater mussels, 71 percent are imperiled (Williams et al. 1993). Similarly, The Nature Conservancy recognizes 55 percent of North America's mussel fauna as extinct or imperiled (Master 1990 in LaRoe et al. 1995). Habitat loss and degradation are the primary causes of the precipitous decline of unionids (Neves 1993).

Arguably, the scaleshell has suffered a greater range restriction than any other unionid. The range of this species was once expansive, spanning the Mississippi River Basin in at least 53 rivers and 13 States. Today, the range is significantly reduced with known extant populations persisting in only 13 rivers in three states. Scaleshell has been eliminated from the entire upper and most of the middle Mississippi River drainages. Although much of the decline occurred before 1950, population declines continue in some portions of the species' range and numerous threats are likely to impact the few remaining viable extant populations. Water pollution, sedimentation, channelization, and impoundments contributed to the decline of scaleshell throughout its range. A general description of how these factors affect mussels is given below. Refer to Szymanski (1998) for a more detailed discussion.

Mussel biologists generally accept that contaminants are partially responsible for the decline of mussels (Havlik and Marking 1987, Williams et al. 1993, Biggins et al. 1996). Because mussels are sedentary, they are extremely vulnerable to toxic effluents and changes in water chemistry from point and nonpoint source pollution. Point source pollution is the entry of material from a discrete, identifiable source such as industrial effluents, sewage treatment plants, and solid waste disposal sites. Freshwater mussel mortality from toxic spills and polluted water are well documented (Ortmann 1909, Baker 1928, Cairns et al. 1971, Goudreau et al. 1988). Decline and elimination of populations may be due to acute and chronic toxic effects that result in direct mortality, reduced reproductive success, or compromised health of the animal or host fish. Nonpoint source pollution is the entry of material into the environment from a diffuse source such as runoff from cultivated fields, pastures, private wastewater effluents, agricultural feedlots and poultry houses, active and abandoned mines, construction, and highway and road drainage. Stream discharge from these sources may accelerate eutrophication (i.e., organic enrichment), decrease oxygen concentration, increase acidity and conductivity, and cause other changes in water chemistry that are detrimental to the survival of most mussel species and may impact host fishes (Goudreau et al. 1988, Dance 1981, Fuller 1974).

Sediment is material that is in suspension, is being transported, or has been moved as the result of erosion (USSCS 1988). Although sedimentation is a natural process, agricultural encroachment, channelization, impoundments, timber harvesting within riparian zones, heavy recreational use, urbanization, and other land use activities can accelerate erosion (Waters 1995, Myers et al. 1985,

Chesters and Schierow 1985). The water quality impacts caused by sedimentation are numerous. Generally, it affects aquatic biota by altering the substratum (Ellis 1936, USSCS 1988, Myers et al. 1985) and by altering the chemical and physical composition of the water (Ellis 1936, Myers et al. 1985, USSCS 1988). Sedimentation directly affects freshwater mussel survival by interfering with respiration and feeding. Due to their difficulty in escaping smothering conditions (Imlay 1972, Aldridge et al. 1987), a sudden or slow blanketing of stream bottom with sediment can suffocate freshwater mussels (Ellis 1936). Increased sediment levels may also reduce feeding efficiency (Ellis 1936), which can lead to decreased growth and survival (Bayne et al. 1981).

Channelization, sand and gravel mining, and other dredging operations physically remove mussels along with the dredged material and may also bury or crush mussels (Watters 1995). Other effects of dredging extend beyond the excavated area. Headcutting, the upstream progression of substrate destabilization and accelerated bank erosion, can affect an area much larger than the dredging site (Hartfield 1993). In severe cases, this erosional process can extend throughout an entire system (Smith and Patrick 1991). As relatively immobile benthic invertebrates, mussels are particularly vulnerable to channel degradation (Hartfield 1993). Accelerated erosion also releases sediment and pollutants, and in some instances, diminishes mussel diversity and habitat as documented in the Yellow and Kankakee rivers in Indiana, the Big Vermillion River in Illinois, and the Ohio River (Fuller 1974).

Impoundments affect both upstream and downstream mussel populations by inducing scouring, changing temperature regimes, and altering habitat, food, and fish host availability (Vaughn, *in litt.* 1997). Impoundments permanently flood stream channels and eliminate flowing water that are essential habitat for most unionids including scaleshell (Fuller 1974, Oesch 1995). Scouring is a major cause of mussel mortality below dams (Layzer et al. 1993). Most detrimental, however, is the disruption of reproductive processes. Impoundments interfere with movement of host fishes, alter fish host assemblages, and isolate mussel populations from each other and from host fishes (Stansbery 1973, Fuller 1974, Vaughn 1993, Williams et al. 1993). The result of these factors is diminished recruitment success (Layzer et al. 1993). Dams are effective barriers to fish host movement and migration that unionids depend on for dispersal. Upstream populations can become reproductively isolated causing a decrease in genetic diversity. Even small, lowhead dams can hinder fish movement and isolate mussel populations from fish hosts. For example, Watters (1996) determined that the upstream distribution of two mussel species, the fragile papershell (*Leptodea fragilis*) and pink heelsplitter (*Potamilus alatus*), which like scaleshell are also believed to use the freshwater drum as a sole host, stopped at lowhead dams.

Many of the same threats that caused the extirpation of historical populations of scaleshell still exist and continue to threaten extant populations. This species appears to be especially susceptible to contamination and sedimentation. Historically, the species was widespread and occurred in diverse habitat. Today, scaleshell no longer occurs at disturbed sites that still support other endangered unionids (Szymanski 1998). This suggests that scaleshell is especially sensitive to degraded water quality. Given the pervasiveness of the sources of pollution and sedimentation, it is apparent that these threats will continue to be problematic for the remaining scaleshell populations.

Upper Mississippi River Basin

Scaleshell formerly occurred in eight rivers and tributaries within the Upper Mississippi Basin. However, this species has not been found in more than 50 years and is believed extirpated from this region (Kevin Cummings, Illinois Natural History Survey, *in litt.* 1994). We believe the same factors that have caused declines and extirpations of other mussel species including impoundments, pollution, sedimentation, and channelization and dredging activities, have caused the disappearance of scaleshell from the Upper Mississippi River Basin.

Middle Mississippi River Basin

Similar to the Upper Mississippi River Basin, threats have lead to the extirpation of scaleshell from the entire Ohio River Basin. Many of these threats continue to adversely affect extant populations in the middle Mississippi River Basin. Scaleshell habitat in the Meramec River Basin has been reduced in recent years. Buchanan (1980) found scaleshell in the lower 112 miles of the Meramec River. In 1997, scaleshell was collected only in the lower 60 miles of the river. While portions of the lower reach continue to provide suitable habitat, mussel species diversity and abundance above mile 60 have declined noticeably in the last 20 years. Bruenderman (pers. comm. 1998) attributed this decline primarily to the loss of channel stability. The Bourbeuse River has undergone the greatest change with respect to mussel populations. In particular, mussel populations have declined in the lower river. Whereas Buchanan (1980) found this section of the Bourbeuse River to have the greatest mussel diversity, this stretch was nearly void of mussels when resurveyed in 1997. Buchanan (*in litt.* 1997) and Bruenderman (pers. comm. 1998) attributed this decline to several factors, including sedimentation, eutrophication, and unstable substrates.

The Big River has the lowest species diversity and abundance in the Meramec River Basin. Buchanan (1980) attributed this to the effects of lead and barite mining. While most mining operations have ceased, 45 dams retaining mine waste and numerous waste piles remain in the Big River Basin. Most of those dams were improperly constructed or maintained. The U.S. Army Corps of Engineers found that only one of the 45 dams was safe and 27 received the worst possible rating and could fail during a flood. The poor condition of the dams has led to large influxes of mine waste into the Big River from dam collapse (Missouri Department of Conservation 1997). For example, since 1978, a ruptured tailings dam has discharged 63,000 cubic meters (81,000 cubic yards) of mine tailings into the Big River covering 25 miles of stream and negatively impacting the lower 80 miles of the river (Alan Buchanan, Missouri Department of Conservation, *in litt.* 1995).

While no major impoundments exist in the Meramec River Basin, several old mill dams (low-head dams) affect the mainstem of the Big and Bourbeuse rivers. Five dams are still in place along the lower 30 miles of the Big River, and one dam exists in the lower Bourbeuse River. These structures are barriers to fish movement during normal flows (Missouri Department of Conservation 1997).

Gravel mining poses an imminent threat to scaleshell populations in the Meramec River Basin. In 1998, a court ruling deauthorized the Army Corps of Engineers (Corps) from regulating gravel mining in the basin. Prior to that ruling, the Corps required operators to obtain a permit and follow several guidelines, which avoided adverse effects to mussels. Except in very small tributaries, the Corps required all operators to establish a streamside and riparian buffer and prohibited removing gravel from flowing water (i.e., no in-stream mining) or from below the water table. There are many gravel mining

operations in the Meramec River Basin. Between 1994 and 1998, the Corps issued permits for 230 sites (excluding undocumented events). Existing and future mining operations will not need to obtain a permit or follow guidelines and may legally mine gravel directly from the Meramec River and all tributaries (Danny McKlendon, U.S. Army Corps of Engineers, St. Louis District, pers. comm. 1998).

In 1994, several areas of the Gasconade River were highly unstable, possibly a result of row-crop farming near the bank in conjunction with the 1993 flood. These areas had high cut mud banks with trees fallen into the river, unstable substrate, and contained very few mussels. Buchanan (1994) predicted that habitat degradation on this river would continue and postulated that the mussel fauna would be further impacted with some species possibly disappearing. He noted that below river mile 6, only one stable gravel bar contained a diverse mussel fauna. High silt deposition from the Missouri River prohibits the formation of mussel habitat below this area. If populations still exist in any of the rivers within the Missouri River drainage, their long-term persistence is undoubtably precarious.

Lower Mississippi River Basin

Channelization, levee construction, diversion ditches, control structures, and floodways have drastically altered much of the St. Francis River from the mouth above Helena, Arkansas to Wappapello Dam, Missouri (Ahlstedt and Jenkinson 1987, Bates and Dennis 1983). Bates and Dennis (1983) determined that of the 54 sites sampled, 15 were productive, 10 marginal, and 29 had either no shells or dead specimens only. They identified 48 miles that may still provide suitable mussel habitat, but did not collect scaleshell. All the remaining river miles are unsuitable for mussels. If the scaleshell is extant in the St. Francis River, it occurs in very small numbers and is restricted to the remaining few patches of suitable habitat.

The White River between Beaver Reservoir and its headwaters, due to municipal pollution, gravel dredging, and dam construction, is no longer suitable for mussels (Gordon 1980). Navigational maintenance activities continue to destroy habitat from Newport to the confluence of the Mississippi River (Bates and Dennis 1983). This habitat destruction has relegated mussel populations to a few refugial sites, none of which support scaleshell.

Species richness in the Spring River below river mile 9 has declined markedly from past surveys, with the lower three miles of river completely depleted of mussels and no longer supporting suitable habitat (Miller and Hartfield 1986, Gordon et al. 1984). Sand and gravel dredging, livestock movements (i.e., destruction of stream banks, disturbance of mussel beds, deposition of wastes, etc.), siltation, and surface run-off of pesticide and fertilizer appear to be contributing factors in the degradation of this river reach (Gordon et al. 1984).

Within Frog Bayou, potential habitat is restricted to the area between Rudy and the confluence of the Arkansas River. Within this area, streambank modifications and in-stream gravel mining are degrading scaleshell habitat. Two reservoirs, one near Maddux Spring and the other at Mountainburg, impact the river above Rudy. Below the confluence of the Arkansas River, Gordon (1980) did not find live mussels, likely due to dredging activities (Gordon 1980). Although the current status of scaleshell in Frog Bayou is uncertain, any remaining individuals are probably in jeopardy due to limited habitat and in-stream mining activities.

The proposed Tuskahoma Reservoir (located above Hugo Reservoir) is a potential threat to mussels in the Kiamichi River. Although the U.S. Army Corps of Engineers has authorized construction, the lack of a local sponsor has rendered the project "inactive" (David Martinez, U.S. Fish and Wildlife Service, pers. comm. 1997). If constructed, the adverse effects associated with reservoirs (including permanent flooding of the channel and disruption of reproduction) are likely to destroy the mussel fauna.

Sewage pollution, gravel dredging, and reservoirs continue to impact the Little River. Pine Creek Reservoir impounds the mainstem of the river. Further downstream, Broken Bow Reservoir impounds a major tributary to the Little River, the Mountain Fork River. Below Pine Creek Lake, the mussel fauna is severely depleted but recovers with increasing distance from the impoundment (Vaughn *in litt.* 1997). The discharge of reservoir water from Pine Creek and periodic discharge of pollution from Rolling Fork Creek, however, would seriously impact any remaining viable populations and prohibit any future recolonization (Clarke 1987).

Hydroelectric dams and artificial lakes have impacted the Ouachita River. The "Old River" (an oxbow system off the mainstem), is now essentially a series of muddy, stagnant pools with water quality problems resulting from surrounding dumps (Clarke 1987).

In summary, many of the same threats that caused the extirpation of historical populations of scaleshell still exist and continue to threaten extant populations. Nonpoint and point source pollution is currently affecting the Spring River in Arkansas (Gordon et al. 1984, Miller and Hartfield 1986) and the Little River in Oklahoma (Clarke 1987, Vaughn 1994). Sedimentation is causing deleterious effects in the Meramec and Bourbeuse Rivers, MO (Sue Bruenderman, pers. comm. 1998); Gasconade River, MO (Buchanan 1994); Frog Bayou, AR (Gordon 1980); and Spring River, AR (Gordon et al. 1984). Unregulated sand and gravel mining are eliminating important pool habitat (for both scaleshell and potential fish hosts) in the Meramec, Bourbeuse, Big, and Gasconade rivers in Missouri (Bruenderman pers. comm. 1998). Impoundments, channelization, and other dredging activities (e.g., sand and gravel mining) are destroying mussel populations and impairing water quality in Frog Bayou, AR (Gordon 1980); St. Francis River, AR (Ahlstedt and Jenkinson 1987); White River, AR (Bates and Dennis 1983); Spring River, AR (Gordon et al. 1984); and Ouachita River, AR (Clarke 1987). The proposed Kiamichi River Reservoir, if constructed, will have adverse impacts on any remaining populations in Oklahoma. Nearly all scaleshell populations are now restricted to small stretches of rivers with little, if any, potential for expansion or recolonization to other areas. For example, sewage pollution, gravel dredging, and reservoir construction have so degraded the Little River in Oklahoma that only a few small stretches are able to support mussel populations.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* It is unlikely that commercial mussel collectors ever purposefully collected scaleshell because of its small size and thin shell. It is probable, however, that over-harvesting activities that removed entire mussel beds impacted scaleshell populations. For example, according to local fishermen, during a period of extended drought mussel harvesters severely over-collected mussel beds in the Spring and Black rivers and completely destroyed most beds (Gordon et al. 1984). Thus, habitat destruction, removal of individuals from the stream and improper replacement may have indirectly impacted scaleshell populations. Today, incidental collecting could adversely affect

existing populations. In addition to disturbance of the stream bed, collection or improper replacement of only a few individuals, given that scaleshell now occurs in very small, isolated populations, could decimate an entire population. Even for mussels returned to the stream, mortality can still occur (Williams et al. 1993).

As scaleshell becomes more uncommon, the interest of scientific and shell collectors will increase. Populations considered in this rule are generally localized, easily accessible, exposed during low flow periods, and are vulnerable to take for fish bait, curiosity, or vandalism. Up to five freshwater mussels per day, including scaleshell, may be legally collected in Missouri and used for bait (Sue Bruenderman, pers. comm. 1998).

C. *Disease or Predation.* Although natural predation is not a factor for stable, healthy mussel populations, small mammal predation could potentially pose a problem for scaleshell populations (Gordon 1991). While the large size and/or thick shells of some species afford protection from small mammal predators, the small size and fragile shell of scaleshell makes it an easy and desirable prey species. A freshwater mussel survey of the Meramec and Bourbeuse Rivers found fresh scaleshell shells at several active racoon feeding areas (Sue Bruenderman pers. comm. 1998). Extant scaleshell populations in Arkansas and Oklahoma are small, isolated and have very limited recolonization potential. Consequently, predation could exacerbate ongoing population declines.

Bacteria and protozoans persist at unnaturally high concentrations in streams with high sediment load or in waterbodies affected by point source pollution, such as sewage treatment plants (Goudreau et al. 1988). At these densities, ova and glochidia are subject to infection (Ellis 1929) and mussel growth can be slowed (Imlay and Paige 1972). Disease and parasites may have caused major die-offs of freshwater mussels in the late 1970's throughout the eastern United States (Neves 1986). For example, significant die-offs of freshwater mussels occurred in 1977 and 1978 in the Meramec and Bourbeuse Rivers. Large numbers of mussels of all species, including scaleshell were lost. Buchanan (1986) presumed an epizootic or other disease caused the die-off since no environmental impact was reported or could be found.

D. *The Inadequacy of Existing Regulatory Mechanisms.* The passage of the Clean Water Act of 1972 (CWA) set the stage for the regulations and the water standards that exist today. Goals of the CWA include protection and enhancement of fish, shellfish, and wildlife; providing conditions suitable for recreation in surface waters; and eliminating the discharge of pollutants into U.S. waters.

Although the passage of these Acts has resulted in positive consequences (including a decrease in lead and fecal coliform bacteria), degraded water quality still presents problems for sensitive aquatic organisms such as freshwater mussels. Specifically, nationwide sampling has indicated increases in nitrate, chloride, arsenic, and cadmium concentrations (Neves 1993). Nonpoint pollution sources appear to be the cause of increases in nitrogen. Many of the impacts discussed above occurred in the past as unintended consequences of human development. Improved understanding of these consequences has led to regulatory (e.g., Clean Water Act) and voluntary measures (e.g., best management practices for agriculture and silviculture) and improved land use practices that are generally compatible with the continued existence of scaleshell. Nonetheless, scaleshell is highly restricted in numbers and distribution and shows little evidence of recovering from historic habitat losses.

Although recognized by species experts as threatened in Arkansas, the scaleshell is not afforded State protection. Missouri and Oklahoma list the scaleshell as a species of conservation concern (Bruenderman, *in litt.* 1998; Caryn Vaughn pers. comm. 1995). However, these designations are used primarily for planning and communication purposes and do not afford State protective status from direct take and habitat destruction (David Martinez; Paul McKenzie; U.S. Fish and Wildlife Service, pers. comm. 1997). Without habitat protection, populations of scaleshell will continue to decline.

E. *Other Natural or Manmade Factors Affecting Its Continued Existence.* As a consequence of the above factors, the inherent biological traits of freshwater mussels increase their vulnerability to extinction (Neves 1993). For example, the larval stage (glochidium) of most mussels is dependent on a few or a specific host fish (Neves 1993). The scaleshell is believed to use freshwater drum as a sole host. Despite the tremendous fecundity of female mussels, this trait greatly reduces the likelihood of contact between glochidia and suitable hosts. Watters (1995) postulated that the glochidia must acquire suitable hosts within 24 hours. Obviously, reduction or loss of host fish populations will adversely impact scaleshell populations. Once a larva successfully transforms on a host, it is further challenged with dropping off onto suitable habitat. Watters (1995) reported that estimated chances of successful transformation and excystment range between 0.0001 percent (Jansen and Hanson 1991) and 0.000001 percent (Young and Williams 1984). As a result of fish host-specificity and the difficulty of locating suitable habitat, freshwater mussel population growth occurs very slowly. Furthermore, the sedentary nature of mussels limits their dispersal capability. This trait, coupled with low recruitment success, translates into the need for decades of immigration and recruitment for re-establishment of self-sustaining populations.

The small number and low density of the remaining scaleshell populations exacerbate the threats to its survival posed by the above factors. Although the scaleshell was always locally rare if broadly distributed, the widespread loss of populations and the limited number of collections in recent years indicates that the current population densities are much lower (due to the previously identified threats) than historical levels. Despite any evolutionary adaptations for rarity, habitat loss and degradation increase a species' vulnerability to extinction (Noss and Cooperrider 1994).

Numerous studies have shown that with decreasing habitat availability, the probability of extinction increases. Similarly, as the number of occupied sites decreases, the likelihood of extinction increases (Vaughn 1993). This increased vulnerability is the result of chance events. Environmental variation, random or predictable, naturally causes fluctuations in populations. However, low density populations are more likely to fluctuate below the minimum viable population (i.e., the minimum number of individuals needed in a population to persist). If population levels stay below this minimum size, an inevitable, and often irreversible, slide toward extinction will occur. Small populations are also more susceptible to inbreeding depression and genetic drift. Populations subjected to either of these problems usually have low genetic diversity, which reduces fertility and survivorship. Lastly, chance variation in age and sex ratios can affect birth and deaths rates. Skewing of the demographics may lead to death rates exceeding the birth rates, and when this occurs in small populations there is a higher risk of extinction.

Similarly, the fertilization success of mussels may be related to population density, with a threshold density

required for any reproductive success to occur (Downing et al. 1993). Small mussel populations may have individuals too scattered to reproduce effectively. Many of the remaining scaleshell populations may be at or below this threshold density. These populations will be, if the aforementioned threats go unabated, forced below or forced to remain below the minimum threshold. As a result, the current decline to extinction will be accelerated.

Furthermore, species that occur in low numbers must rely on dispersal and recolonization for long-term persistence. In order to retain genetic viability and guard against chance extinction, movement between local populations must occur. Although the scaleshell naturally occurs in patches and necessarily possesses mechanisms to adapt to such a population structure, anthropogenic influences have fragmented and further lengthened the distance between populations. Empirical studies have shown that with increasing isolation, colonization rates decrease. Also, as previously explained, natural recolonization of mussels occurs at a very low rate (Vaughn 1993). Therefore, preservation of a metapopulation (interconnected subpopulations) structure is imperative for long-term freshwater mussel survival. Unfortunately, many of the extant scaleshell populations now occur as single, isolated sites. These insular populations are very susceptible to chance events and extinction with no chance of recolonization.

Lastly, the recent invasion of the exotic zebra mussel (*Dreissena polymorpha*) poses a substantial threat to native unionids (Herbert et al. 1989). The introduction of *Dreissena* into North America probably resulted from an ocean-crossing vessel that discharged freshwater ballast from Europe containing free-swimming larvae of the zebra mussel (Griffiths et al. 1991). The spread of this species has caused severe declines in native freshwater mussel species. Currently, the zebra mussel invasion of the Mississippi and Ohio rivers threaten native freshwater mussel fauna (Clarke 1995). Zebra mussels starve and suffocate native mussels by attaching to their shells in large numbers. The natural history of zebra mussels is not completely understood; therefore, effective control measures are not yet known. Given that recreational and commercial vessels greatly facilitate zebra mussel movement, and because of the proliferation and spread that has occurred, invasion of the zebra mussel into portions of the middle and lower Mississippi Basin is likely (Buchanan pers. comm. 1995). Massive unionid mortality and extinctions are expected in some areas colonized by zebra mussels (Biggins 1992). If zebra mussel invasion does occur, the continued survival of scaleshell will be further jeopardized.

Conclusion

Significant habitat loss, range restriction, and population fragmentation and size reduction have rendered the scaleshell mussel vulnerable to extinction. The scaleshell has disappeared from the entire upper and most of the middle Mississippi River drainages. Of the 53 known historical populations, 13 remain. Although much of the decline occurred before 1950, population declines continue in some portions of the species' range and numerous threats are likely to impact the few remaining viable extant populations. The small number and low density of the remaining scaleshell populations exacerbate the threats and effects of chance events to scaleshell. The survival of all scaleshell populations is threatened by water quality degradation, impoundments, sedimentation, channelization, or dredging. The recent deregulation of gravel mining is a significant threat to scaleshell populations in three rivers within the Meramec River Basin, Missouri.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the scaleshell in determining to make this proposed rule. The present distribution and abundance of the scaleshell is at risk given the potential for these impacts to continue. Federal listing under authority of the Endangered Species Act is the only mechanism we can presently identify that ensures protection to scaleshell. Therefore, based on this evaluation, the preferred action is to list the scaleshell mussel as an endangered species. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Endangered status is appropriate for the scaleshell due to habitat loss, range restriction, and population fragmentation.

Critical Habitat

Section 3 of the Act defines critical habitat as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not prudent for scaleshell for both reasons stated above.

Potential benefits of critical habitat designation derive from section 7(a)(2) of the Act, which requires Federal agencies, in consultation with us, to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat of such species. Critical habitat designation, by definition, directly affects only Federal agency actions. Since the scaleshell is aquatic, Federal actions that might affect this species and its habitat include those with impacts on stream channel geometry, bottom substrate composition, water quantity and quality, and stormwater runoff. Such activities that impact scaleshell habitat would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. The scaleshell has become so restricted in distribution that any significant adverse modification or destruction of occupied habitats would likely jeopardize the continued existence of this species. Additionally, our regulations (50 CFR part 402) specify that the jeopardy analysis, like the adverse modification or destruction of critical habitat analysis, consider the detrimental effect to both survival and recovery. Therefore, even as the species recovers

and its numbers increase, the jeopardy analysis would continue to protect scaleshell habitat. As part of the outreach from this proposed rule, we will notify the State and Federal agencies of this species' general distribution, and request that they provide data on proposed Federal actions that might adversely affect the species. Should any future projects be proposed in areas inhabited by this mussel, the involved Federal agency will have the distributional data needed to determine if their action may impact the species, and if needed, we will provide more specific distributional information. Therefore, habitat protection for the scaleshell can be accomplished through the implementation of section 7 jeopardy standard and there is no benefit in designating currently occupied habitat of this species as critical habitat.

Recovery of this species may require the identification of unoccupied stream and river reaches appropriate for reintroduction. Critical habitat designation of unoccupied stream and river reaches might benefit this species by alerting permitting agencies to potential sites for reintroduction and allowing them the opportunity to evaluate projects that may affect these areas. We are currently working with state and other Federal agencies to periodically survey and assess habitat potential of stream and river reaches for listed and candidate aquatic species. This process provides up to date information on instream habitat conditions in response to land use changes within watersheds. We distribute the information generated from river surveys and assessments through our coordination with other agencies. We will continue to work with State and Federal agencies, as well as private property owners and other affected parties, through the recovery process to identify stream reaches and potential sites for reintroduction of this species. Thus, any benefit that might be provided by designation of unoccupied habitat as critical will be accomplished more effectively with the current coordination process, and is preferable for aquatic habitats which change rapidly in response to watershed land use practices. In addition, we believe that any potential benefits to critical habitat designation on occupied and unoccupied habitats are outweighed by additional threats to the species that would result from such designation, as discussed below.

All known populations of scaleshell occur in streams flowing through private lands, and if unoccupied habitat is needed for recovery, private lands may also be involved. One threat to all surviving populations appears to be pollutants in stormwater runoff that originate from private land activities. Therefore, the survival and recovery of this species will be highly dependent on landowner cooperation in reducing land use impacts. Controversy resulting from critical habitat designation has been known to reduce private landowner cooperation in the management of species listed under the Act. Critical habitat designation could affect landowner cooperation within watersheds occupied by the scaleshell and in areas unoccupied that might be needed for recovery.

Though critical habitat designation directly affects only Federal agency actions, this process can arouse concern and resentment on the part of private landowners and other interested parties. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity or controversy accompanying critical habitat designation may increase the potential for vandalism as well as other collection threats. Scaleshell populations are especially vulnerable to vandalism. This species is found in shallow shoals or riffles in restricted stream and river segments and is relatively immobile and unable to escape collectors or vandals. It inhabits remote but easily accessed areas, and they are sensitive to a variety of easily obtained commercial chemicals and products. Because of these factors, vandalism or collecting could be undetectable and uncontrolled.

We believe that the potential for taking represents a significant threat to scaleshell populations. The rarity of this species increases the likelihood that it will be sought by shell collectors and for scientific purposes. The publication of critical habitat, maps, and other publicity accompanying critical habitat designation could increase that threat. The locations of populations of this species have consequently been described only in general terms for purposes of this rulemaking action.

Based on the above analysis, we have concluded that critical habitat designation would provide little additional benefit for this species beyond those that would accrue from listing under the Act. We also conclude that any potential benefit from such a designation would be offset by an increased level of vulnerability to vandalism or collecting and by a possible reduction in landowner cooperation to manage and recover this species. We have concluded therefore that the designation of critical habitat for scaleshell is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include the issuance of permits for reservoir construction, stream alterations, waste water facility development, water withdrawal projects, pesticide registration, agricultural assistance programs, mining, road and bridge construction, Federal loan programs, water allocation, and hydropower relicensing. In our experience, nearly all section 7 consultations result in protecting the species and meeting the project's objectives.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United

States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. We codified the regulations governing permits for endangered species at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that are or are not likely to constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the potential effects of this proposed listing on future and ongoing activities within a species' range. We believe that the following activities are unlikely to result in a violation of section 9:

(1) Existing discharges into waters supporting these species, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to sections 402, 404, and 405 of the Clean Water Act and discharges regulated under the National Pollutant Discharge Elimination System).

(2) Actions that may affect the scaleshell and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with any reasonable and prudent measures we have specified in accordance with section 7 of the Act.

(3) Development and construction activities designed and implemented pursuant to Federal, State, and local water quality regulations.

(4) Existing recreational activities such as swimming, wading, canoeing, and fishing.

We believe the following activities would be likely to result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collection or capture of the species;

(2) Unauthorized destruction or alteration of the species habitat (e.g., in-stream dredging, channelization, discharge of fill material);

(3) violation of any discharge or water withdrawal permit within the species' occupied range; and

(4) illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting the species.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public.

You should direct questions regarding whether specific activities may constitute a future violation of section 9 to the Field Supervisor of the Service's Columbia Field office (see **ADDRESSES** section). You may request copies of the regulations regarding listed wildlife from and address questions about prohibitions and permits to the U.S. Fish and Wildlife Service, Ecological Services Division, Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 (Phone 612/713–5350; Fax 612/713–5292).

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

We will take into consideration your comments and any additional information received on this species when making a final determination regarding this proposal. We will also submit the available scientific data and information to appropriate, independent specialists for review. We will summarize the opinions of these reviewers in the final decision document. The final determination may differ from this proposal based upon the information we receive.

The Act provides for a public hearing on this proposal, if requested. We must receive requests within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 608 East Cherry Street Room 200, Columbia, Missouri 65201.

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful in understanding the rule? (3) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.22.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES** section).

Authors: The primary authors of this proposed rule are Mr. Andy Roberts (see **FOR FURTHER INFORMATION CONTACT** section) and Ms. Jennifer Szymanski (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order, under *Clams* to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
CLAMS							
*	*	*	*	*	*	*	*
Mussel, Scaleshell ...	*Leptodea leptodon* ..	U.S.A. (AL, AR, IL, IN, IA, KY, MN, MO, OH, OK, SD, TN, WI).	NA	E		NA	NA
*	*	*	*	*	*	*	*

Dated: July 29, 1999.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–20965 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 156
Friday, August 13, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMISSION ON ELECTRONIC COMMERCE

Requests for Written Comment

The Advisory Commission on Electronic Commerce (the Commission) was established by Pub. L. 105–277 to conduct a thorough study of federal, state, local and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities. The Commission is to report its findings and recommendations to the Congress no later than April 21, 2000. Notice is hereby given that the Commission requests the submission of written comments from interested persons or organizations with respect to its mandates. These comments must be prepared in conformity with the guidelines set out below. Potential contributors should be aware of two deadlines. The deadline for receipt of documents to be available to the Commission for its September 14–15 meeting is September 1, 1999. Other submissions should be received as soon as possible, but no later than November 15, 1999. The Commission's Web site, www.ecommercecommission.org, will contain the latest information about meeting agendas and any written submission guideline updates.

The Commission may study the following issues:

- Barriers imposed in foreign markets on U.S. property, goods, services or information engaged in E-commerce and on United States providers of telecommunications services;
- How the imposition of such barriers affects U.S. consumers, the competitiveness of U.S. businesses in foreign markets and the growth of the Internet;
- The collection and administration of consumption taxes on E-Commerce in the U.S. and abroad, the impact this has on the global economy and the relationship between the collection and administration of such taxes when using the Internet or not using the Internet;
- The impact of the Internet and Internet access (particularly voice transmission) on the revenue base for taxes imposed under section 4251 of the Internal Revenue Code of 1986;
- Model state legislation that:

1. Provides uniform definitions of categories of property, goods, service or information subject to or exempt from sales and use taxes;

2. Ensures that Internet access services, online services, and communications and transactions using Internet, Internet access service, or online services are treated in a tax and technology neutral manner relative to other forms of remote sales;

- The effects of taxation (or absence of) on all interstate sales transactions, including those using the Internet, on retail businesses and on state and local governments. This examination may include a review of purchases from out-of-state sellers; and
- The ways to simplify federal, state and local taxes imposed on the provision of telecommunications services.

The Commission Must Adhere to These Other Parameters

- The Commission is not authorized to examine any fees or charges imposed by the Federal Communications Commission or states related to the following:

1. Obligations under the Communications Act of 1934 (47 U.S.C. 151 et seq.);

2. The implementation of the Telecommunications Act of 1996 (or amendments made by the Act);

- The Commission "shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project."

Written Submissions

Interested persons are invited to provide comments in writing to the Commission. Written comments should be related to the Commission's mandate. All those persons submitting comments should be aware that such comments will be available for public inspection. The following guidelines should be followed for written comments that will be considered by the Commission:

- All written comments and any accompanying exhibits must be typed in double-space.
- One version of all written comments should be sent electronically to *comments@ecommercecommission.org*. Thirty (30) hard copies of all written comments should be sent to: Advisory Commission on Electronic Commerce, 3401 North Fairfax Drive, Arlington, VA 22201–4498.
- Comments must contain the name, address, phone number and e-mail address (if available) and capacity of the person submitting the comments, as well as the names of any clients or persons or organizations for which the comments are submitted.
- For those comments exceeding two pages in length an executive summary must accompany the submission. The executive summary should not exceed two (2) pages in length.

For further information, contact the Advisory Commission on Electronic Commerce, 3401 North Fairfax Drive, Arlington, VA 22201–4498, (703) 993–8049.

Heather Rosenker,
Executive Director.

[FR Doc. 99–20941 Filed 8–12–99; 8:45 am]
BILLING CODE 0000–00–P

ADVISORY COMMISSION ON ELECTRONIC COMMERCE

Meetings

The Advisory Commission on Electronic Commerce was established by Public Law 105–277 to conduct a thorough study of federal, state, local and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities. The Commission is to report its findings and recommendations to the Congress no later than April 21, 2000. Notice is hereby given, that the Advisory Commission on Electronic Commerce will hold meetings on September 14, 1999, from 4:30 p.m. to 5:30 p.m. at the Millennium Hotel, 145 West 44th Street, New York, New York and on September 15, 1999, from 9:30 a.m. to 5:00 p.m. at the Digital Sandbox, 55 Broad St., New York, New York. The meetings of the Commission shall be open to the public.

Records shall be kept of all Commission proceedings and shall be available for public inspection given adequate notice at the Commission's offices at 3401 North Fairfax Dr., Arlington, Virginia 22201–4498.

A listing of the members of the commission and details concerning their appointment were published in the **Federal Register** on June 9, 1999, at 64 FR 30958.

Heather Rosenker,

Executive Director.

[FR Doc. 99–20942 Filed 8–12–99; 8:45 am]

BILLING CODE 6820–00–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 9, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential person who are to respond to the collection of information that such persons are not required to respond to the collection of information unless if displays a currently valid OMB control number.

Forest Service

Title: Grazing Permit Administration Forms.

OMB Control Number: 0596–0003.

Summary of Collection: Domestic livestock grazing currently exist on approximately 90 million acres of National Forest Service (NFS) lands. This grazing is subject to authorization and administrative oversight by the Forest Service (FS). Information is required for the issuance and administration of grazing permits, including fee collections, on NFS lands as authorized by the Federal Land Policy and Management Act, as amended. and the subsequent Secretary of Agriculture regulation 5 U.S.C. 301, 36 CFR 222, Subparts A and C. The bills for collection of grazing fees are based on the number of domestic livestock grazed on national forest lands and are a direct result of issuance of the grazing permit. Information must be collected on an individual basis through the permit issuance and administration process. FS will collect information using several forms.

Need and Use of the Information: FS will collect information on the ownership or control of livestock and base ranch property; the need for additional grazing to round out year long ranching operations; and citizenship. The information collected is used by FS in administering the grazing use program on NFS lands. If information is not collected, it would be impossible for the agency to administer a grazing use program in accordance with the statutes and regulations.

Description of Respondents: Business or other for-profit; not-for-profit institutions; farms, State, Local or Tribal Government; individuals or households.

Number of Respondents: 7,200.

Frequency of Responses: Reporting: Annually; Other (as needed basis).

Total Burden Hours: 2,950.

Economic Research Service

Title: Study of Re-Engineering the Welfare System.

OMB Control Number: 0536–NEW.

Summary of Collection: In 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), thereby dramatically changing the system that had provided welfare cash assistance and food stamp benefits to low-income households since the early 1970's. In addition to the changes enacted in PRWORA, states have begun the process of modernizing and improving their FSPs. New technological innovations have increased the use of computers to provide enhanced systems for service delivery, eligibility determination, benefit delivery and maintenance of program integrity. The primary purpose of the study is to provide USDA with a thorough view of the administrative changes states have made, are making, or will make to their Food Stamp Programs in FY 1999. The Economic Research Service (ERS) has awarded a contract to the Health Systems Research, Inc. (HSR) to collect existing documents from Food Stamp Directors and abstract data from these documents into a descriptive database. States will be requested to provide documents that fit within six basic re-engineering categories: the changing role of the caseworkers; organizational changes; changes in client tracking and accountability systems; changes in program accessibility and certification systems; increases in program monitoring and evaluation; and plans for implementing the simplified Food Stamp Program. ERS will collect information using mail and telephone surveys.

Need and Use of the Information: ERS will collect information on the number and percentage of states that have implemented or plan to implement administrative changes in their Food Stamp Program; the number and percentage of states and county-administered programs that have implemented or plan to implement administrative changes; methods used by states (regulatory, legislative, executive order, etc.) to implement changes; differences between the type of administrative changes made between states with state-administered FSPs and county-administered FSPs; number and percentage of states making organizational changes in their governmental structure as a result of welfare reform; the number and percentage of states making privatization efforts, by type of state and administrative activity; and the type of privatization efforts being made by states, by state demographic characteristics. The report will be used to assist ERS in determining future needs and measuring progress toward achieving Food Stamp Program goals.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 102.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 119.

Economic Research Service

Title: Emergency Food Assistance System Study.

OMB Control Number: 0536–0048.

Summary of Collection: Many emergency food providers are reporting increased demand for their services as a result of changes in the nation's welfare and food assistance safety net under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and decreasing ability to meet the additional demands. USDA is coordinating public and private efforts intended to increase the amount of surplus food channeled through Emergency Food Assistance System (EFAS) providers by 33 percent by the year 2000. On November 23, 1996, President Clinton signed an executive memorandum directing all Federal agencies to join the USDA effort to recover excess food and established a Federal interagency task force on gleaning and food recovery. USDA, through the Food and Nutrition Service, administers several food assistance programs that help low-income households obtain adequate and nutritious diets. The largest USDA food assistance program, the Food Stamp Program, is designed to provide food assistance programs by serving as a distribution outlet for Emergency Food Assistance Program (TEFAP) commodities and by providing temporary or supplemental food assistance to many of the same needy populations served by USDA programs. A study of the Emergency Food Assistance System is going to be conducted. The Economic Research Service (ERS) previously obtained OMB approval for the first phase of this study which was focused on identifying proper respondents for the purpose of establishing a statistically valid sampling frame. In the second phase, ERS proposes using the sampling frame to conduct the study survey. ERS will collect information in phase two using questionnaires and telephone interviews.

Need And Use Of The Information: ERS will collect information on providers' operating characteristics, service areas, resource base, quantity and type of food flowing into the system, number of people served, and providers' capacity to manage current and future changes in food demand and resources. Information collected by the EFAS study will help USDA assess emergency food providers ability to manage current and future changes in food demand and resources and determine whether additional programs to support EFAS are needed.

Description of Respondents: Not-for-profit institutions; Local or Tribal Government.

Number of Respondents: 9,046.

Frequency of Responses: Reporting: On occasion; Other (one time).

Total Burden Hours: 4,941.

Economic Research Service

Title: Evaluation of the Impact of EBT Customer Waivers on Recipients: New EBT User Survey.

OMB Control Number: 0536–NEW.

Summary Of Collection: In April 1992, the Food and Nutrition Service (FNS) issued regulations governing the design, implementation and use of electronic benefits transfer (EBT) systems for the issuance and redemption of food stamp benefits. Since 1992, the growth of EBT systems has been dramatic, and the U.S. Congress has now mandated the use of EBT systems in all states by October 1, 2002. Because experience with EBT systems was somewhat limited at the time the regulations were promulgated, the regulations included numerous measures intended to protect recipients' rights and to make EBT systems easy to use. Examples included regulations which require the FSP recipients: (a) are to be allowed to select their own personal identification number (PIN); (b) are to receive hands-on-training and experience in how to use EBT equipment; and (c) are to receive replacement EBT cards within two business days. As more states implement EBT and experience with these systems increased, however, efforts to reduce EBT administrative costs increase as well. State agencies are requesting waivers to the EBT regulations so they can try new and more efficient approaches to system implementation and operations. The Economic Research Service (ERS) will collect information using a survey to learn about the impact of three types of customers service waivers on recipients.

Need And Use Of The Information: ERS will collect information on service problems recipients have encounter with: PIN assignment rather than PIN selection; mailing of training materials to recipients rather than hands-on-training; and extending the time for card replacement from two days up to five days. The purpose of the study is to learn more about the actual impacts of the three customer service waivers on recipients and how the waivers may affect recipients and the recipients' responses. It will also provide preliminary estimates of the frequency of customer service problems in selected states with and without the waivers.

Description of Respondents: Individuals or households.

Number Of Respondents: 1,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 467.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–20922 Filed 8–12–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Procedures for Submission of Biobased Products for Listing by USDA

AGENCY: U.S. Department of Agriculture.

ACTION: Notice and request for comment.

SUMMARY: As required by Executive Order 13101, the U.S. Department of Agriculture (USDA) is proposing guidelines for listing commercially available commercial and industrial biobased products (a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials) available for purchase by Federal agencies. This notice includes a generic definition of biobased products; suggested criteria for including biobased items in a list to be put together by USDA, and a description of the process USDA will use in considering items for inclusion on the USDA Biobased Products List. USDA is seeking specific public comment on the criteria and process and other comments as appropriate. USDA will, after development of the first list, also be accepting items for listing on an on-going basis.

DATES: Comments should be received on or before September 13, 1999.

ADDRESSES: Individuals wishing to comment must send an original and two copies of their written comments to: J. R. Holcombe, Jr.; Office of Procurement and Property Management; U.S. Department of Agriculture; Mail Stop 9303; 1400 Independence Avenue, SW; Washington, DC 20250. Please place the phrase "USDA Biobased Products List" on your envelopes containing comments. The comments themselves also should be identified with the phrase "USDA Biobased Products List".

FOR FURTHER INFORMATION CONTACT: J. R. Holcombe, Jr., at the address above or by E-mail at *richard.holcombe@USDA.GOV*. Persons requiring accommodations, including sign language interpreters, should call J. R. Holcombe, Jr. through Terry Thir at (202)720–2531 or TDD (202)720–8372).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority
II. Background
III. Definitions
IV. Model
V. Methodology
VI. Criteria for Proposing Biobased Products
1. Contain biobased materials
2. Readily available
3. Reasonably priced
4. Performance
5. Meets EPA's EPP Guiding Principles
VII. Proposed Categories of Products for Consideration
Category 1: Absorbents/Adsorbents
Category 2: Adhesives/Inks/Coatings
Category 3: Alternative Fuels and Fuel Additives
Category 4: Construction Materials/Composites
Category 5: Lubricants/Functional Fluids
Category 6: Renewable Alternative Fiber Papers/Packaging
Category 7: Solvents/Cleaners/Surfactants
Category 8: Plant Based Plastics/Degradable Polymers/Films
Category 9: Landscaping Products
Category 10: Bioremediation Products
Category 11: New Fibers/Filler/Yarn/Insulation
Category 12: Enzymes/Intermediate Chemicals
Category 13: Other
(A.) Cosmetics
(B.) Pharmaceuticals/Nutraceuticals
(C.) Products no longer under consideration or for which USDA has inadequate information
(D.) Products USDA has decided not to designate
VII. Questions and Answers
IX. Appendix
1.USDA Biobased Products Coordination Council Functions by Member
2. Other Resources

I. Authority

The designation and consideration of biobased products is authorized by Executive Order (EO) 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998, as follows:

> Sec. 504. Designation of Biobased Items by the USDA. The USDA Biobased Products Coordination Council shall, in consultation with the FEE (Federal Environmental Executive), issue a Biobased Products List. (a) The Biobased Products List shall be published in the **Federal Register** by the USDA within 180 days after the date of this order and shall be updated biannually after publication to include additional items; (b) Once the Biobased Products List has been published, agencies are encouraged to modify their affirmative procurement program to give consideration to those products.

The requirement for Federal agencies to consider biobased products is not only in Executive Order 13101, but also in Office of Management and Budget (OMB)/Office of Federal Procurement Policy (OFPP) Policy Letter 92–4 and applies to all Federal agencies. E.O. 13101 is silent on micro-purchases, thus there is no threshold or other exception which would discourage agencies from purchasing biobased products. Nor is there any exemption for purchases using Federal credit cards. While there is no stated equivalent encouragement for state and local governments to purchase biobased products, generally state and local governments follow the Federal lead in such matters.

II. Background

Sustained economic growth depends on having a secure raw material source for industrial production. Petroleum, today's prevalent industrial feed stock, is neither sustainable nor environmentally friendly. Biobased products offer alternatives to petroleum and mineral-derived industrial products currently in the marketplace which may have negative environmental impacts. Biological plant and animal systems and processing streams in the U.S. food, feed and fiber industries are renewable over a short time frame and, in general, at the end of their life cycle are either recycled, or allowed to return in an environmentally friendly manner to the environment. Utilizing biobased materials to produce industrial products will expand the nation's capabilities to take advantage of new and exciting technologies and America's agricultural abundance.

From a procurement perspective, a broader range of biobased industrial products will assist agencies in successfully meeting environmental goals as outlined in E.O. 13101. From the USDA perspective, the issues extend well beyond good stewardship of the nation's resources.

USDA is engaged in research and development activities for biobased industrial products. These activities are conducted in-house, through universities and colleges, through private business, and through USDA's Alternative Agricultural Research and Commercialization Corporation. Partnerships with universities, industry, state and local government and other Federal agencies to create, apply and transfer knowledge and technology, have resulted in a broad range of non-food and non-feed products to meet expanding market needs. Some of these products offer many performance advantages over conventional products such as enhanced quality, durability, flexibility, and strength, and are biodegradable when appropriate.

Buying biobased products ensures that "biobased industrial products will be a major U.S. economic growth area in the next century as fossil-based industrial products, such as synthetic chemicals and liquid fuels, were in the 20th century. Biobased industrial products will improve economic security through use of domestic versus imported resources, optimal use of currently unused or underused land, and geographically widespread production and manufacture across the U.S." (Quote from Vision for Agricultural Research and Development in the 21st Century, December 14, 1998, prepared by the National Agricultural Biotechnology Council).

The Biobased Products List (BPL) does not qualify as a rule making under the Administrative Procedure Act, 5 U.S.C. 551 et seq. The Biobased Products Coordination Council (BPCC) listing of biobased products is without a binding effect. Agencies are not required to purchase biobased products, and listing does not guarantee any sales of such products. Listing heightens awareness in the Federal acquisition community that such products are available. Listing acknowledges that these products contain certain features that may make the products more desirable for Federal agencies. The BPCC also is not requiring any action be taken by the private sector. The listing is simply information dissemination. Even though not a rule, USDA is eager to obtain public involvement in the formulation of the biobased products list to develop a more utilitarian, comprehensive, and informed list. For those reasons, USDA is soliciting public comment through this notice.

As stated above, the designation of products by USDA and the resulting BPL is part of USDA's efforts to heighten awareness among those in the Federal acquisition community regarding the availability of such products. Simultaneously, as a collateral benefit, USDA believes such listing will promote the use of products made from agricultural materials. The intent of E.O. 13101 is to use the purchasing power of the Federal government to create new markets and stimulate the development of new environmentally preferable products, including biobased products, for the Federal market. As with recycled content products, Federal agency procurement of biobased products will: (1) demonstrate their performance and quality; (2) help to provide markets, thereby encouraging manufacturing; (3) drive the development of product specifications; (4) promote wider availability; (5) provide a model for State and local governments; and (6) remove barriers to procurement and use of these products.

The Federal market place is already well aware of mature biobased products,

such as cotton shirts and dimensional lumber. Because of the anticipated large number of biobased products of which Federal officials are unaware, and to help keep the BPL manageable and useful as an effective and efficient procurement information resource, USDA has decided not to list commonly known mature products. Instead, USDA is publishing the BPL to promote new uses for conventional crops, non-conventional crops, biological products, marine products, or forestry materials. Additionally, by increasing the acquisition of the number and kinds of biobased products available for purchase by Federal procurement officials, competition in contracting will be strengthened. Successful implementation of E.O. 13101 will have significant outcomes for U.S. agriculture and the environment. There will be economic, environmental and societal advantages from the development of industrial feed stocks from agricultural materials.

III. Definitions

A "biobased product' is defined in E.O. 13101 as a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

"Mature markets" means a product area that exists with sufficient commercial sales so that, within the judgment of USDA, no marketing support is needed.

"Environmentally preferable products" means products that have a lesser negative impact on human health or the environment when compared with competing products that serve the same purpose. This comparison should use principles recommended in guidance issued by the U.S. Environmental Protection Agency (EPA) (see Federal Acquisition Regulation 23.703).

These are commonly recognized definitions. The public is encouraged to comment on these definitions and suggest others.

IV. Model

This notice, and the proposed USDA methodology for designating biobased products, is patterned after the Guidelines for Procurement of Products Containing Recovered Material (Comprehensive Procurement Guidelines—CPG) published by the U.S. Environmental Protection Agency (EPA) which designates items that are or can be made with recovered materials (59 FR 18852, April 20, 1994). In like manner, the USDA BPL will identify commercial or industrial products made from agricultural, forestry and marine materials. The CPG implements section 6002(e) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, section 502 of E.O. 12873, and E.O. 13101. RCRA requires EPA to designate items that can be produced with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. E.O. 12873 and E.O. 13101 set forth procedures for EPA to follow in implementing section 6002(e) of RCRA. Specifically, EPA designates products for agencies to purchase and provides recommendations for purchasing those products containing recovered materials. Similarly, E.O. 13101 directs that USDA identify biobased products and prepare a list of biobased products and "agencies are encouraged to modify their affirmative procurement program to give consideration to those products." Updated information on CPG can be found at the web site: *http://www.epa.gov/cpg.*

V. Methodology

As soon as E.O. 13101 was signed on September 14, 1998, USDA began its efforts to compile a list of biobased products as required by the E.O. A committee was appointed by USDA's BPCC to prepare the appropriate notice for the **Federal Register**.

The committee is made up of individuals with commercialization, legal, legislative, marketing, procurement, rural development, research, and other technical expertise and who meet to work on the list. Early in the process, draft copies of the proposed listing process were shared with other Federal agencies, environmental organizations, and agri-industry groups, including the major commodity representatives. The Federal Trade Commission was contacted to seek their guidance with respect to labeling products biobased. The committee also utilized existing documents on biobased products referenced in the appendix of this document. Based on public input, research and the expertise of the committee, this notice for comment was prepared.

A number of questions were raised during the committee deliberations. Many of these related to the standard procurement requirements of price, performance, and availability. Some are answered below under the criteria section, while a number of other considerations are conveyed under section VII entitled "Questions and Answers'.

USDA proposes to designate biobased products by establishing and maintaining a list of product categories. For this document we have combined some categories of commercial and industrial products. Other categories are not listed because they do not designate products which are purchased by government procurement officials. This document is presented to the public for comment. USDA is providing an opportunity for interested parties to suggest changes (alterations, additions or deletions) to the designated categories. USDA will consider the timely comments and publish its decision in the **Federal Register** as a notice. Over time USDA will determine whether the world wide web or a similar electronic communication system may be adequate to allow open public review and comment. If this determination is made, the electronic system will be used to supplement publication in the **Federal Register**.

USDA also will issue guidance in the **Federal Register** on buying biobased products in a Biobased Products Advisory Notice (BPAN). The BPANs will recommend biobased content ranges or other descriptors for biobased products and will be based on current information on commercially available biobased content products. Content levels will be updated as marketplace conditions change. BPANs will be prepared and published in the **Federal Register** for public comment in the same manner as the BPL.

USDA will list products and sources for these products on a world wide web site to allow buyers to use the designation of products as a "yellow pages" to seek out biobased products for their use. Biobased products which USDA is aware of will be listed on the site. USDA will not guarantee the validity of the advertising claims presented by the vendor to inform USDA of the product. Vendors are advised that their advertising, labeling, and other marketing claims should comply with the U.S. Federal Trade Commission's Guides for the Use of Environmental Marketing Claims, 16 CFR Part 260. USDA also does not endorse any products on the list. Vendors may submit information to describe their products and its availability at any time after a suitable category is developed.

Products may be listed in more than one category. The extent of information to be offered USDA to support listing a product is determined by the vendor. Should USDA reject a proposed listing,

the vendor will be informed of the reasons and allowed to resubmit.

While directed primarily at Federal executive branch agencies, the BPL and BPAN information is helpful to everyone interested in purchasing biobased-content products. It is expected that state and local governments and commercial businesses will find the BPL and supporting information helpful.

As part of the BPL designation process, USDA will make its supporting documentation and background information available. In addition, product research information will be published in a technical background document that discusses product availability, performance, relevant specifications, government purchasing, and other pertinent issues.

All proposals, designations, and recommendations will be published in the **Federal Register** with a brief description for each of the designated products listed (BPAN). The public also can view USDA's recommended biobased content range, or other descriptors and a list identifying manufacturers, vendors, and suppliers for each product at a web site to be created.

USDA's method for identifying, proposing, and designating BPL products is developed based on the experience of EPA in the designation of recycled-content products and on the direction set up in E.O. 13101, section 504. Prior to issuing or revising the BPL, USDA will consult with Federal acquisition officials, EPA and the Federal Environmental Executive (FEE) required under E.O. 13101, to identify additional criteria to consider when selecting (product areas) products for designation.

However, these product categories are not all inclusive and other categories may be suggested through the comment process. Many of the products under these categories in this first list are those known to USDA or its partners because USDA has performed research, initiated technology transfer, or provided commercialization assistance for these products. USDA realizes there are many biobased industrial products developed by the private sector with little or no Federal assistance. These will also be considered for listing without bias. The biobased industrial products list will be amended periodically to incorporate additional products or categories based on public participation. Following is a summary of USDA's selection criteria.

VI. Criteria for Proposing Biobased Products

USDA proposes to evaluate five primary concerns, which every product must meet, when examining products for proposed listing. Products proposed for listing must:

(1) Contain Biobased Materials

Products with a higher percentage of biobased content, are considered better. Products must be manufactured with raw materials that are domestically produced from agricultural production—farming, ranching, forestry, aquaculture—or from materials derived during the processing of these biobased products. Particular attention is paid to those products produced from materials that are a significant component of the waste stream.

(2) Readily Available

The products USDA selects for designation are available from national, regional, or local sources. The relative availability of a product influences the ability of a procuring agency to secure a reasonable price and an adequate level of competition when procuring it. USDA does not intend to designate experimental or developmental products until it can be shown that they meet these evaluation criteria, in particular, commercial availability. Several of the technologies behind the products are new and supported by patents. Some of these products have been developed through Cooperative Research and Development Agreements (CRADAs) while other companies have licensed USDA developed technologies. Given this knowledge, the committee felt it would be in the Government's interest to purchase those products developed with Federal research and commercialization dollars. Sole-source products may be listed. Additionally, although competition is desirable, all applicable patents shall be recognized. However it was also felt that the promotion of these technologies would encourage other companies to commit funds to enter the market thus leading to greater competition.

(3) Reasonably Priced

It also is important for the product to be priced competitively. It is highly desirable that there is adequate competition among suppliers of the product.

(4) Performance

Products must meet commercial or Federal performance standards and specifications.

If product and service providers make marketing claims regarding the environmental attributes of their product or service, including claims of environmental preferability, the claims should conform to the Federal Trade Commission's (FTC's) Guides for the Use of Environmental Marketing Claims (Green Guides), 16 CFR Part 260. A copy of the Green Guides can be obtained through FTC's website: www.ftc.gov (select "Consumer Protection", then select "Environment", then select "Guides"). As explained in the FTC Green Guides (16 CFR 260.5), any party making a claim concerning a product's environmental attribute "must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." The Green Guides (16 CFR 260.5) provide guidance on the use of environmentally preferable claims, as well as other claims such as biodegradable, recycled, recyclable, non-toxic, and ozone friendly.

The Green Guides state that either an unqualified or inadequately qualified claim that a product is environmentally preferable implies to consumers that a product is generally environmentally superior to others. Such an overall superiority claim would be difficult to substantiate. Accordingly, environmentally preferable claims should be accompanied by language limiting the preferability claim to the particular attributes that can be substantiated. In other words, the claim should explain which specific product features or attributes benefit the environment (for example, the product is non-toxic, contains no VOCs, and comes in a recycled package). In addition, the Green Guides state in 16 CFR 260.6, 260.7 that when environmental seals-of-approval or other certifications are used, they should be accompanied by information explaining the basis for the award.

(5) Meets EPA's EPP Guiding Principles

Products must meet the Environmentally Preferable Products (EPP) Guiding Principles as published by the EPA. (See definitions section III above for the definition of EPP. The EPP Guiding Principles are listed below.)

Guiding Principle 1: Environment + Price + Performance = EPP

Environmental considerations should become part of normal purchasing practice, consistent with such traditional factors as product safety, price, performance, and availability.

Guiding Principle 2: Pollution Prevention

Consideration of environmental preferability should begin early in the acquisition process and be rooted in the ethic of pollution prevention which strives to eliminate or reduce, up front, potential risks to human health and the environment.

Guiding Principle 3: Life Cycle Perspective/Multiple Attributes

A product's or service's environmental preferability is a function of multiple attributes from a life cycle perspective.

Guiding Principle 4: Magnitude of Impact

Determining environmental preferability might involve comparing environmental impacts. In comparing environmental impacts, Federal agencies should consider: the reversibility and geographic scale of the environmental impacts, the degree of difference among competing products or services, and the overriding importance of protecting human health.

Guiding Principle 5: Environmental Performance Information

Comprehensive, accurate, and meaningful information about the environmental performance of products or services is necessary in order to determine environmental preferability.

Copies of EPA's final EPP guidance document can be obtained by calling the Pollution Prevention Information Clearinghouse (PPIC) at (202) 260–1023. The text included here is our understanding of the guidance being finalized. We intend to use the final guidance published by EPA in operation of the Biobased Products List. The proposed EPP guidance was published for public comment at 60 FR 50722, September 29, 1995, and is available on the Internet at (http://www/epa.gov/docs/EPA-TOX/1995/September/Day-29/pr-139.html). We will rely on manufacturers' advertising claims as a self-certification of these five principles.

VII. Proposed Categories of Products for Consideration

A key component of the BPL program is USDA's list of designated products and the accompanying biobased content recommendations. USDA is proposing to designate products in the categories listed below. USDA also will publish final or proposed biobased content recommendations for each product. At this point, the proposed categories are listed for informational and discussion purposes only. USDA is interested in learning about category areas for potential future designation. There is not a specific list of the information, which USDA requires before considering a product, although the discussion above under "Criteria for Proposing Biobased Products" should provide general guidance for those wishing to submit products for listing.

More details about USDA's information needs and the agency's decision-making process will be provided after public input is received from this notice.

Category 1: Absorbents/Adsorbents

Within this category, the environmental preferability of the entire product (e.g., absorbent/adsorbent and the casing or framework holding or enclosing the absorbent/adsorbent) must be addressed by the buyer. Product examples under consideration for listing include:

Vegetable starch
Cotton and cotton linters (cotton pads, oil absorbents)
Wool (low value wool is used to make adsorbent pads)
Kenaf (oil absorbent)
Agricultural wastes (such as corn stover, peanut hulls, and other crop residues to absorb liquids and petroleum)

Category 2: Adhesives/Inks/Coatings

Within this category a number of adhesives have been developed which utilize plant proteins, plant starches and plant oils. These adhesives generally have low or no emissions (below EPA standards where applicable) of hazardous air pollutants and volatile organic compounds (VOC's). Examples of products using biobased adhesive under consideration for listing include:

Plywood
Finger-jointed lumber
Engineered wood building components (laminated beams, trusses, etc.)
Decorative composites
Fiber board panels
Paper board

Plant oils are used to make inks. To be considered a plant-based ink, the ink must contain a minimum of 20 percent by volume of plant oil (Vegetable Ink Printing Act of 1994, Pub.L. 103–348). Examples under consideration for listing include:

Soy ink

(In regards to this product, in its own agency print shops, the Federal government buys ink. However, it also buys printing. The intent of this designation is to have Federal procurement officials purchase soy inks for in-house use and specify the ink for contracted printing.) Also in the development stage at this time is a broader range of inks such as silkscreen and flexography, toners for copiers and laser printers, inkjet printer inks, textile inks and higher soy content UV cured inks for a variety of purposes. When these products are commercially available, they will be designated if appropriate. Plant oils are also used in a number of paints and coatings. Examples under consideration include:

Concrete sealants and waterproofing
Concrete stains
Wood sealers and waterproofing
Architectural coatings
Metal coatings
Form release agents
Corrosion inhibitors and polishes.

Category 3: Alternative Fuels and Fuel Additives

Within this category agricultural raw materials, derivatives, or byproducts have been used to develop alternative fuels. Examples under consideration for listing include:

Motor Fuels
- Biodiesel (made from plant based oils or animal fats)
- Ethanol (made from corn or other biomass)

Energy Fuels

Fuel pellets (Generally such products contain over 60 percent by weight agricultural, forest, or other woody fiber, produce less than 20 percent ash after complete combustion, and contain less than 15 percent moisture.)

Category 4: Construction materials/ Composites

This category includes wood products and composites from woody and agricultural materials, residues, and wastes. Within this category, products must be derived from agricultural crop, forest materials, or crop residue (includes woody materials). The woody materials can be from activities such as thinning, or fuel reduction in plantation stands, regenerated forest stands, or intensively cultured short rotation woody stands, i.e. less than 10 years, or from wood residue, or recovered wood products. Products produced from recovered agricultural wastes (including waste paper) need not meet the short rotation woody crop requirement during the manufacturing process. Examples under consideration for listing include:

Wall systems made from compressed wheat straw or other plant fibers

Fiber board made from wheat or other cereal straw, sugarcane bagasse, or other plant fibers
Composites made from soybean meal or other plant proteins
Molded auto parts from vegetable fibers
Building or office furnishings (desks, tables, cabinets, etc.) made from biobased composites

This category includes wood products and composites from woody and agricultural materials which are bound with biobased resins. Examples under consideration for listing include:

Plywood
Finger-jointed lumber
Engineered wood building components (laminated beams,trusses, etc.)
Decorative composites

The category may also include thermoset plastics and reinforced plastic parts and plastic foam insulation materials made from vegetable oil or protein-based resins. Examples under consideration include:

Rigid foam insulation
Door and window components
Molded reinforced plastic automotive and equipment parts

Category 5: Lubricants/Functional fluids

Within this category products include oils and greases. Products are generally made from soybean, canola, rapeseed, corn or other plant materials. Examples under consideration for listing include:

Vehicle lubricants (crankcase oils, transmission fluids, fifth wheel grease, all purpose total loss lubricants)
Vehicle fluids (windshield washer fluid from ethanol)
Air-cooled engine lubricants (crankcase oils, greases)
Hydraulic fluids
Gearbox oils
Metal working fluids and cutting oils

Total loss lubricants: (including 2-cycle engine oils, rail and flange lubricants, wire rope and cable lubricants, pump drip oils, bar chain oils, lumber skid lubricants, asphalt release agents, concrete form release oils, and penetrating oils).

Category 6: Renewable alternative fiber papers/Packaging

Within this category, products must have at least 30 percent recovered content fiber (E.O. 13101), in addition to biobased content, and the manufacturing process should use less (or zero) chlorine during bleaching than traditional tree fiber produced papers. Crops must be of short rotation (less than ten years) cropping system required. Examples under consideration include papers which have as their raw materials source:

Kenaf
Other short term fibers

Because they are mature markets, rag and linen papers are not suggested for consideration.

Category 7: Solvents/Cleaners/ Surfactants

Within this category examples of products under consideration for listing include:

Citrus based cleaners
Soy-based cleaners and degreasers
Soy-based solvents
Soy-based paint strippers and graffiti removers
Soy-based adhesive removers
Pesticide adjuvants and surfactants
Dormant oil sprays for disease and insect control
Other plant oil based solvents and cleaners

Category 8: Plant based plastics /Degradable polymers/films

Within this category examples under consideration for listing include:

Plant starch compostable cutlery
Polylactic acid (PLA) compostable cutlery
Paper plates coated with starch
Protein derivatives or PLA (compostable)
Plant protein used to make films and biodegradable bags
Loose fill packing peanuts from starch or other natural plant materials
Flexible polyurethane foams made with soybean oil based polyols (molded cushions and pads for furniture, automotive seats, dashboards, etc.)
Resilient polyurethane components made with soybean oil based polyols (molded cases and covers for appliances, telephones, computers, etc.)
Rigid insulating foams made from soy proteins (insulation for refrigerators, freezers, coolers, appliances)

Category 9: Landscaping products

Within this category a number of landscape materials are produced by composting green wastes. Some biobased materials, when used as absorbents, can also bioremediate hydrocarbons. Examples under consideration for listing include:

Potting soil
Soil amendments
Protein-based mulching films

Category 10: Biocontrol/Bioremediation Media

Within this category are products which contain microbes which prevent plant diseases thus reducing or eliminating the need for chemical pesticides. Bioremediation products may also be used to simultaneously remove or separate toxic or hazardous substances from soil or surface water while promoting the development of native microbe populations to hasten biodegradation of residual amounts of hazardous substances. Examples under consideration for listing include:

Biocontrol potting mix
Cotton linters
Oil spill clean-up materials

Category 11: New fibers/Filler/Yarn/ Insulation

Within this category several new fibers, or fibers which were once common in the U.S., are under development or redevelopment. Examples under consideration for listing include:

Kenaf (used as absorbent, paper, and clothes)
Flax (clothes)
Ramie (clothes)
Low grade wool
Low grade cotton
Milkweed (yarn, pillow filler, oil)
Plant lignin as adhesives

Category 12: Enzymes/Intermediate Chemicals

Enzymes are sometimes referred to as biocatalysts. They can be used to accelerate a broad range of chemical reactions, which occur in everyday life and are used in production of a variety of materials. Agriculturally-based enzymes and chemicals are found in such products as pharmaceuticals, detergents, cleaning agents, cotton textile surface treatments, personal care products, and microbial agents. The committee had difficulty with this category. While we realize these are important manufacturing processes and utilize agricultural raw materials, we felt there was a need to directly link the use of an agricultural enzyme/chemical to a commercial product which would be available for purchase by Federal procurement officials, because that is the primary focus of this notice. Thus, we have only mentioned broad product categories. We seek public comment to decide what individual products should be listed under this category. We also seek public comments as to whether or not this should even be a category at all.

Category 13: Other

Cosmetics: Vegetable oils and small molecule plant starches are one of the raw ingredients in a number of cosmetic applications.

Pharmaceuticals/nutraceuticals: Bioactive compounds and complexes are being extracted from plant materials

for prevention and treatment of diseases.

Products No Longer Under Consideration

No entries at this time.

Products That USDA Has Decided Not To Designate

The committee has made the determination to focus on commercial and industrial products and to avoid mature products, be they product areas or products themselves. The committee does not foresee a need to designate products such as cotton fabrics or dimensional lumber presently in the commercial marketplace. Composite lumber, which utilizes low value woods or other fiber waste and is made using environmentally friendly glues and processes, would be considered however. Products must be produced from renewable and sustainable resources. Our emphasis is on biobased organic products, not natural or organic. Thus, mined products are generally not under consideration. Petroleum-based products are generally not under consideration unless the end product is distinguished by the incorporation of renewable biobased materials.

VIII. Questions and Answers

What is the Biobased Products Coordination Council (BPCC)?

The BPCC was established by virtue of a Decision Memorandum signed by the Secretary of Agriculture on September 13, 1995. The Council is chaired by the USDA Under Secretary for Research, Education, and Economics. The Council promotes commercial and industrial biobased product research, development, and commercialization through information sharing, implementation of strategic planning, and provision of policy advice to the Secretary. Ten USDA agencies are members of the Council and include: Forest Service, Agricultural Research Service, Cooperative State Research, Education, and Extension Service, Office of Energy Policy and New Uses, Alternative Agricultural Research and Commercialization Corporation, Foreign Agricultural Service, Natural Resources Conservation Service, Agricultural Marketing Service, Rural Business-Cooperative Service, and the Office of the Assistant Secretary for Administration.

Why Are Biobased Products Environmentally Preferable?

Because of their carbohydrate chemistry, biobased products are believed, within USDA, to be generally preferable to those made from hydrocarbons. However, not all biobased products are environmentally preferable. For the purposes of E.O. 13101, USDA is listing only those products which are considered by USDA to be within the U.S. Environmental Protection Agency (EPA) Environmentally Preferable Products Guidelines.

Should the Biobased Product List Contain Only Products That Are Commercially Available, or Should Products Now in the Research Stage Also Be Included? Is the Product Available Only in a Limited Geographic Area?

The committee unanimously agreed that generally only those products in commercial production and generally available nationally should be included. However, geographic exceptions can be considered. For instance, landscaping materials are usually produced and consumed regionally since it is not economical to transport such materials over long distances. Starch-based packing peanuts are another example. Both these products should be used near the point of production. In some instances, a company may be national in scope but have regional operations to address transportation and other economic issues.

Should There Be a Minimum Percentage of Biobased Materials in the Products Suggested for Listing?

Since the biobased products cover a wide range of industries, it was felt no one percentage could be fairly applied across the board. Instead, the committee agreed that each category of products could have their own percentage requirements by weight or volume based on what the committee could learn about that category. The committee does believe that the products should contain the largest percentage of biobased raw materials possible. Persons commenting on this notice are encouraged to address the percentage issue.

What About One Biobased Product Replacing Another?

In its deliberations, the committee considered the possibility of one biobased material displacing another biobased material as feedstock, thereby resulting in no net reduction in materials available. We also discussed whether the diversion of biobased materials from one product to another could possibly create shortages in feedstocks for one or both products; and the ability of manufacturers to obtain biobased materials in sufficient quantity to produce the product under consideration. The committee believes the likelihood of these displacements happening is not great, and that it is more important, at this juncture, to stimulate the production of biobased products. If substitution occurs at some future date, USDA will consider developing guidelines to deal with the situation.

Will Products Be Listed by Company Name?

One of the issues considered was whether or not to list products by manufacturer name and address in the initial notice. The committee believes it was prudent to first get full public comment on the guidelines, categories, criteria and methodology (process) before proceeding to list products by manufacturers. It is the intent of the USDA to incorporate these public comments into a notice 60 days after the publication of this request for comment. That notice will call for the submission of information from companies which have products they believe will fit the defined criteria. A document (BPAN) listing products by company name, address, phone numbers, and sales contact information will be produced in the future after all interested parties have had a reasonable opportunity to submit their information for listing. Those submissions will be evaluated by a team of technical experts and published in a separate document and will also be available on a web site to be created at a later date.

IX. Appendix

1. Biobased Products Coordination Council

Biobased products from agricultural and forestry resources provide renewable raw materials for the processing and manufacturing of a broad range of nonfood and nonfeed products, such as chemicals, fibers, construction materials, and energy sources. Development and commercialization of such products provide new and expanded markets, accelerate successful market penetration, and diversify agriculture while fostering rural and sustainable development.

The Biobased Products Coordination Council, established by the Secretary of Agriculture, is chaired by the USDA Under Secretary for Research, Education, and Economics. The Council promotes biobased industrial product research, development, and commercialization through information sharing, implementation of strategic planning, and provision of policy advice to the Secretary. Currently ten USDA agencies are members of the Council.

The activities of these agencies in the area of biobased industrial products are described as follows:

Forest Service

The Forest Service (FS) has Federal responsibility for national leadership in forestry and forestry-related issues. Through its research arm, the FS develops and communicates scientific and technological information to protect, manage, and use the Nation's 1.6 billion acres of forest and related rangeland.

The FS Resource Valuation and Use Research program and Cooperative Forestry program develop and provide scientific and technological information to support the harvesting, production, and use of wood products in ways that are efficient, safe, and environmentally beneficial. Specific areas of development include improved wooden transportation systems; fiber-reinforced cement products; uses for waste wood and plastics (ranging from very inexpensive, low-performance composites to expensive, high-performance building materials); housing components and systems made from recycled wood waste and wastepaper; and novel enzymes used to treat virgin and recycled wood fibers in the production of a variety of chemicals.

Agricultural Research Service

As the in-house research arm of USDA, the Agricultural Research Service (ARS) develops new knowledge and technology needed to solve a broad range of technical and agricultural problems of high national priority. ARS aims to ensure adequate production of high-quality food and agricultural products to meet the nutritional needs of the American consumer, to sustain a viable food and agricultural economy, and to maintain a quality environment and natural resource base.

Biobased industrial product research and development focuses on areas such as chemicals and industrial products from crops, cattle, and animal fats; starch-based biodegradable plastics; polysaccharide encapsulating agents; and new products from soybean oil, which are useful as additives to lubricants, fuels, and plastics, as surface coatings; and as inks for the printing industry. Additional areas include development of ion exchange resins based on agricultural residues, cotton-based fabrics with versatile new and improved properties, and fiber crops for specialized uses.

Cooperative State Research, Education, and Extension Service

The Cooperative State Research, Education, and Extension Service (CSREES), USDA's principal link to academia, participates in a nationwide agricultural research planning and coordination system that includes State land-grant universities and the agricultural industry. CSREES advances research and development in new uses for industrial crops and products through its Agricultural Materials program, National Research Initiative, Small Business Innovation Research program, and other activities.

Areas of interest include paints and coatings from new crops such as vernonia, euphorbia, and lesquerella; fuels and lubricants from soybeans, crambe, rapeseed, and canola; fiber products from kenaf and hesperaloe; natural rubber from guayule; and biobased polymers from vegetable oils and starches.

Office of Energy Policy and New Uses

The Office of Energy Policy and New Uses provides leadership, oversight, coordination, and evaluation for all USDA energy and energy-related activities with the exception of those delegated to the USDA Assistant Secretary for Administration. The Office analyzes existing and proposed energy policies, strategies, and regulation concerning or potentially affecting agriculture or rural America. It also evaluates the feasibility of new uses for agricultural products.

In collaboration with the U.S. Department of Energy and the U.S. Environmental Protection Agency, projects have focused on technologies that convert plant cellulose and hemicellulose into ethanol and electricity production using direct combustion or gasification technologies.

Alternative Agricultural Research and Commercialization Corporation

Created by Congress as part of the Farm Bill in 1990, the Alternative Agricultural Research and Commercialization Corporation (AARC) is a USDA agency that makes equity investments to commercialize industrial products from agricultural and forestry materials and animal byproducts. This activity complements the work of USDA's research agencies. AARC policy and program direction is provided by a nine-person Board of Directors—eight of whom are non-Federal—representing processing, financial, producer, and scientific interests.

Development and commercialization projects include vegetable oil lubricants for engines and transmissions; building materials made from wheat straw; cleaners and biodiesel fuel made from vegetable oil; a lightweight, high-strength molded fiber panel made from waste wood and kenaf; windshield washer solvent using ethanol made from corn; oil spill absorbents made from natural fibers; and a nontoxic biodegradable concrete release agent.

Foreign Agricultural Service

The Foreign Agricultural Service (FAS) maintains 75 overseas posts with the overall goal of supporting U.S. exports of agricultural, forest, and fish products. This is accomplished by reducing trade barriers, collecting and disseminating global trade and market information; and developing markets through the use of promotion, loan guarantees, food aid, and economic development activities.

FAS works through private industry to identify overseas markets for new products, promote exports of such products, and research and develop new products. FAS supports these activities through the Market Access Program, the Foreign Market Development Program, and scientific exchanges sponsored by the International Cooperation and Development program.

Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS) has national responsibility for helping farmers, ranchers, and other private landowners develop and implement voluntary efforts to conserve and protect our Nation's natural resources. Key NRCS programs provide technical assistance to land users and local government to sustain agricultural productivity while protecting and enhancing the natural resource base.

Activities emphasize reduction of soil erosion; improvements in soil and water quantity and quality; wetland conservation and improvement; enhancement of fish and wildlife habitat; improvements in air quality; improvements in the conditions of pastures and rangelands; reduction in upstream flooding; and improved woodlands.

Agricultural Marketing Service

The mission of the Agricultural Marketing Service (AMS) is to facilitate the strategic marketing of agricultural products in domestic and international markets while ensuring fair trading practices and promoting a competitive, efficient marketing system. Working with other government agencies, and the public, AMS establishes grades and standards for a wide array of

agricultural commodities and products and provides grading and classing services to certify the quality or condition of products in marketing channels.

AMS provides oversight of federally sanctioned marketing orders and agreements and industry wide market research and promotion programs. In addition, the agency administers certain pesticide reporting requirements, compiles data concerning pesticide residues on certain products, and conducts or administers research and technical assistance programs to improve the efficiency of the marketing and transportation system and to identify new or expanding market opportunities for U.S. farmers and agribusiness.

Rural Business-Cooperative Service

The Rural Business-Cooperative Service promotes economic development in rural communities by financing needed facilities, assisting business development and rural cooperatives, and planning national strategies for rural economic development.

Office of the Assistant Secretary for Administration

The USDA Assistant Secretary for Administration provides leadership and oversight in acquisition, asset management, civil rights, internal energy conservation, and recycling. As the USDA Energy Management Executive and the Environmental Executive (dual assignment with the Under Secretary for Research, Education and Economics), the Deputy Assistant Secretary has responsibility for coordinating environmentally preferable and energy-efficient initiatives and serves as an advocate for coordination of these initiatives in USDA facilities and programs across the country.

2. Other Resources

Agricultural Research, Extension, and Education Reform Act of 1998, Sec. 404 (7 U.S.C. 7624), provides authority to increase and coordinate biobased product activities in USDA.

Sustainable America, A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future, President's Council on Sustainable Development, Washington, D.C., 186 pp., 1996. Contains a national action strategy for sustainable development which includes actions to: (1) Diversify the mix of agricultural goods produced to enhance profitability and environmental quality; and (2) promote ongoing efforts to achieve sustainable forest management.

Strategic Direction for Biobased Products Work in USDA Through the Biobased Products Coordination Council (BPCC), BPCC, Washington, DC, 16 pp, 1999. A plan to carry out programs to increase the domestic research, development and commercialization of biobased industrial and commercial products.

Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, 63 FR 49643, Washington, D.C., September 16, 1998. Establishes guidelines and policy for each executive agency to increase and expand markets for recovered materials to create Federal Government preference and demands for such products.

The National Research Council, Biobased Industrial Products, National Academy Press, Washington D.C. (In Press). Provides an analysis of the potential benefits of encouraging a transition to more biobased industrial products through future public policies. Biological sciences are likely to make the same impact on the formation of new industries in the next century as the physical and chemical sciences have had on industrial development throughout the century now coming to a close. The biological sciences, when combined with recent and future advances in process engineering, can become the foundation for producing a wide variety of industrial products from renewable plant resources. These "biobased industrial products" will include fuels, chemicals, lubricants, plastics, and building materials. * * * The long-term growth of biobased industrial products will depend on development of cost-competitive technologies and access to diverse markets.

1995 Federal Research and Development Program in Materials Science and Technology, The Materials Technology Subcommittee of the National Science and Technology Council, Gaithersburg, MD, 1995. This report describes the materials R&D programs of nine Federal departments and agencies to facilitate collaboration among the public and private sector members of the broad materials R&D community.

Plant/Crop-Based Renewable Resources 2020 Program—A Vision to Enhance U.S. Economic Security Through Renewable Plant/Crop-Based Resource Use, Department of Energy, Washington, D.C., 1998. Develops a program to provide continued economic growth, healthy standards of living, and strong national security through the development of plant/crop-based renewable resources as a viable alternative to diminishing fossil feedstocks for biobased products.

Agenda 2020–A Technology Vision and Research Agenda for America's Forest, Wood and Paper Industry, American Forest and Paper Association, Washington, D.C., 1994. Develops a long-term strategy for sustainability of forest products by increasingly leveraging the virgin raw material with material recovery and recycling.

Vision for Agricultural Research and Development in the 21st Century, National Agriculture Biotechnology Council, Ithaca, NY 1998. Supports agricultural research and development to take the lead in providing technology for a biobased economy in the 21st century.

Done at Washington, D.C., on this 10th day of August, 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education and Extension.

[FR Doc. 99–21103 Filed 8–12–99; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–059–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations issued under the Animal Welfare Act for guinea pigs, hamsters, and rabbits.

DATES: Comments on this notice must be received by October 12, 1999 to be assured of consideration.

ADDRESSES: We invite you to comment regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information. Please send your comment and three copies to: Docket No. 99–059–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–059–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for guinea pigs, hamsters, and rabbits, 9 CFR, part 3, subparts B and C, contact Dr. Jerry DePoyster, Animal Care Staff Officer, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833; or e-mail: Jerry.D.Depoyster@usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Number: 0579–0092.

Expiration Date of Approval: October 31, 1999.

Type of Request: Extension of approval of an information collection.

Abstract: Regulations have been promulgated under the Animal Welfare Act (the Act) to promote and ensure the humane care and treatment of regulated animals under the Act. Title 9, part 3, subparts B and C, of the Code of Federal Regulations (CFR) address specific care and handling regulations for guinea pigs, hamsters, and rabbits. Enforcement of the Act and regulations require documentation of specified information concerning the transportation of these animals.

The regulations for transporting guinea pigs, hamsters, and rabbits require intermediate handlers and carriers to accept only shipping enclosures that meet the minimum requirements set forth in the regulations (§ 3.36) or are accompanied by documentation signed by the consignor verifying that the shipping enclosures comply with the regulations. If guinea pigs, hamsters, and rabbits are transported in cargo space that falls below 45 °F (7.2 °C), the regulations specify that the animals must be accompanied by a certificate of acclimation signed by a U.S. Department of Agriculture accredited veterinarian.

In addition, all shipping enclosures must be marked "Live Animals" and have arrows indicating the correct upright position of the container. Intermediate handlers and carriers are required to attempt to contact the consignee at least once every 6 hours upon the arrival of any live animals. Documentation of these attempts must be recorded by the intermediate handlers and carriers and maintained for inspection by Animal and Plant Health Inspection Service (APHIS) personnel.

The above reporting and recordkeeping requirements do not mandate the use of any official government form.

The burden generated by APHIS requirements that all shipping documents be attached to the container has been cleared by the Office of Management and Budget (OMB) under OMB No. 0579–0036.

The reporting and recordkeeping requirements of 9 CFR, part 3, subparts B & C, are necessary to enforce regulations intended to ensure the humane treatment of guinea pigs, hamsters, and rabbits during transportation in commerce.

We are asking the Office of Management and Budget to approve the continued use of this information collection.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .125 hours per response.

Respondents: Intermediate handlers, carriers, "A" and "B" dealers (as consignors), USDA accredited veterinarians.

Estimated annual number of respondents: 1,470.

Estimated annual number of responses per respondent: 1.408.

Estimated annual number of responses: 2,070.

Estimated total annual burden on respondents: 260 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 4th day of August 1999 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–20896 Filed 8–12–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; FNS–245, Negative Case Action Review Schedule; FNS–247, Statistical Summary of Sample Disposition; and FNS–248, Status of Sample Selection and Completion

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of the FNS–245, Negative Case Action Review Schedule; the FNS–247, Statistical Summary of Sample Disposition; and the FNS–248, Status of Sample Selection and Completion. The proposed collection is an extension of collection currently approved under OMB No. 0584–0034.

DATES: Written comments must be submitted on or before October 12, 1999.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of

information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Retha F. Oliver, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Retha F. Oliver, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Quality Control Negative Case Action Review Schedule

Statistical Summary of Sample Disposition

Status of Sample Selection and Completion.

OMB Number: 0584–0034.

Form Numbers: FNS–245, FNS–247, & FNS–248.

Expiration Date: September 30, 1999.

Type of Request: Reinstatement without change, of this previously approved collection of information.

Abstract: The FNS–245, Negative Case Action Review Schedule, is designed to collect QC data and serve as the data entry form for negative case action quality control (QC) reviews in the Food Stamp program. State agencies complete the FNS–245 for each negative case in their QC sample. The FNS–247, Statistical Summary of Sample Disposition, summarizes the data obtained from a State's active and negative QC samples over the course of each annual reporting period. The FNS–248, Status of Sample Selection and Completion, tracks a State's progress in sample selection and case completion on a monthly basis.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53.

Number of responses per respondent: 636.

Estimated Total annual responses: 33,718.

Hours per response: 3.0236.

Total annual reporting hours: 100,254.

Number of record keepers: 53.

Number of record keepings per respondent: 636.

Estimated Annual hours per record keepers: 15.

Hours per record keeping: 0.0236.

Total record keeping hours: 796.

Total annual reporting/record keeping hours: 101,049 (total hours per response plus total recordkeeping hours).

Dated: August 6, 1999.

Susan Carr Goesman,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 99–21061 Filed 8–12–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–045N2]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1230]

Egg Safety Action Plan; Public Meeting

AGENCIES: Food Safety and Inspection Service, USDA; Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the Food Safety and Inspection Service (FSIS) are announcing a public meeting to discuss the development of an action plan to address the presence of *Salmonella enteritidis* (SE) in shell eggs and egg products using a farm-to-table approach. The purpose of the action plan is: To promote the implementation of existing technologies, to control and prevent, to the extent possible, the presence of pathogens, particularly SE, in shell eggs and egg products, in order to reduce the incidence of foodborne illness; to examine alternative regulatory inspection structures to better coordinate the government's egg safety efforts from farm-to-table; to change, through education, unsafe egg handling practices by producers, distributors, retailers, and consumers, in part, by eliminating temperature abuse as required by FDA's proposed and USDA's final rules; and to identify and develop new technologies to ensure safer shell eggs and egg products through research. FDA and FSIS have established public dockets to receive comments about the egg safety action plan.

DATES: The meeting will be held on Thursday, August 26, 1999, from 9 a.m. to 5 p.m. Comments should be submitted to one of the dockets no later than September 11, 1999, to be considered in the development of the egg safety action plan.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Massachusetts Ave. and 14th St., Washington, DC. Thirty rooms have been blocked off at the government rate of $115 for a single under reference #3613. To guarantee a room with a credit card, call the hotel at 800–424–1140 or 202–842–1300.

FOR FURTHER INFORMATION CONTACT:

For registration: Sheila A. Johnson, FSIS, 202–501–7305 or FAX 202–501–7642. Persons requiring a sign language interpreter or other special accommodations should call by August 19, 1999.

For general information: Stephanie A. Smith, FDA, 202–205–0136 or FAX 202–205–4422, or Alice Thaler, FSIS, 202–690–2683.

SUPPLEMENTARY INFORMATION:

I. Background

The President's Council on Food Safety was established in August 1998 under Executive Order 13100 to strengthen and focus our efforts to coordinate food safety policy and resources. The Council on Food Safety was charged with developing a comprehensive, long-range strategic plan that can be used to set priorities, improve coordination and efficiency, identify gaps in the current system and how to fill those gaps, enhance and strengthen prevention and intervention strategies, and identify or develop measures to show progress.

On July 1, 1999, FDA and FSIS testified before the Senate Committee on Governmental Affair's Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia. The hearing explored concerns raised by an U.S. General Accounting Office report (GAO/RCED–99–184) relating to the Federal Government's current approach to shell eggs and egg products safety. During the hearing, the agencies committed to developing an action plan in 120 days to address the presence of SE in shell eggs and egg products using a farm-to-table approach. As part of the action plan development process, FDA and FSIS will hold a public meeting on August 26, 1999.

FDA and FSIS, in conjunction with the Centers for Disease Control and Prevention, the Agricultural Marketing Service, the Agricultural Research Service, and the Animal Plant and Health Inspection Service, have already begun the process of developing an egg

safety action plan by participating in interagency sessions. The purpose of the August 26, 1999, public meeting is to obtain stakeholder input on the draft goals, as well as on the development of the objectives and action items. The meeting is intended to be a working meeting, with breakout sessions, in order to provide the stakeholders in attendance the opportunity to offer comments and suggestions. Therefore, the agenda will include brief informational presentations to provide: (1) Background to individuals unfamiliar with the relevant issues, and (2) breakout sessions to facilitate public participation. The breakout sessions will be organized around the draft goals and will include members of the interagency planning workgroups to lead and facilitate discussions. Discussion summaries will be available within 30 days of the meeting. The draft goals for the egg safety action plan to be discussed at the meeting are as follows:

- Overarching Goal: To protect public health by significantly reducing the number of foodborne illnesses associated with SE in shell eggs and egg products through science-based and coordinated regulation, inspection, enforcement, research, and education programs.
- Goal 1: To promote the implementation of existing technologies, to control and prevent, to the extent possible, the presence of pathogens, particularly SE, in shell eggs and egg products, in order to reduce the incidence of foodborne illness;
- Goal 2: To examine alternative regulatory inspection structures to better coordinate the government's egg safety efforts from farm-to-table;
- Goal 3: To change, through education, unsafe egg handling practices by producers, distributors, retailers, and consumers, in part, by eliminating temperature abuse as required by FDA's proposed and USDA's final rules; and
- Goal 4: To identify and develop new technologies to ensure safer shell eggs and egg products through research.

Because the interagency workgroups will continue revising these goals and will begin developing objectives and action items in preparation for the August 26, 1999, meeting, the material distributed at the meeting may differ slightly from the information provided in this document.

II. Public Dockets and Submission of Comments

The agencies have established public dockets to which comments may be submitted. Comments should be directed either to FSIS, Docket No. 98–045N2, or to FDA, Docket No. 98N–1230, and all comments must include a docket number. Submit a disk with the written comments in WordPerfect 5.1/6.1 or ASCII file format. Submit written comments in triplicate to:

USDA/FSIS Hearing Clerk, 300 12th St. SW., rm. 102 Cotton Annex, Washington, DC 20250–3700.

FDA/Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Alternatively, comments may be submitted electronically to "fdadockets@oc.fda.gov". Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

III. Meeting Summaries

Summaries of the public meeting will be posted on the Internet at "www.foodsafety.gov". This website is a joint FDA, USDA, and Environmental Protection Agency food safety home page. It is linked to each agency for persons seeking additional food safety information. Summaries of the public meeting may also be requested in writing from the Dockets Management Branch (address above) approximately 30 business days after the meeting at a cost of 10 cents per page. The summaries of the public meeting will be available for public examination at the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 10, 1999.

Thomas J. Billy,

Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation, Food and Drug Administration.

[FR Doc. 99–21144 Filed 8–11–99; 1:11 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Cancellation of Designation Issued to Los Angeles Grain Inspection Service, Inc., and Opportunity for Designation in the Los Angeles Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: Los Angeles Grain Inspection Service, Inc. (Los Angeles), asked GIPSA to cancel their designation August 27, 1999. Any firms in the Los Angeles area that need official service after August 27, 1999, should contact GIPSA's California Federal State Office at 916–654–0743. GIPSA is asking persons interested in providing official services in the Los Angeles area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before September 13, 1999.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes the GIPSA Administrator to designate a qualified applicant to provide official services in a specified area after determining that such applicant is better able than any other applicant to provide such official services. GIPSA designated Los Angeles, main office located in Montebello, California, to provide official inspection services, under the Act on November 1, 1997.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designation of Los Angeles is scheduled to terminate on October 31, 2000. However, Los Angeles asked GIPSA to cancel its designation August 27, 1999, due to a decline in requests for official services. Any firms in the Los Angeles area that need official service after August 27, 1999, should contact GIPSA's California Federal State Office at 916–654–0743.

Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of California, is assigned to Los Angeles.

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino

National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder.

Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 seq.).

Dated: August 9, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–21066 Filed 8–12–99; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 13, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 25, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (64 F.R. 34187) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41,U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial

DLA Gadsden Depot,
Gadsden, Alabama

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 99–21041 Filed 8–12–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 13, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

3 Pack Nylon Scouring Pad

M.R. 568
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas.

"Welcome Aboard" Baby Gift Bag

M.R. 19525
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Tape, Measuring

5210–01–139–7444
NPA: Charleston Vocational Rehabilitation Center, Charleston Heights, South Carolina

Services

Administrative Services

Office of the U.S. Trade Representative, 1724 F Street, NW., and 600 17th Street, NW., Washington, DC
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia

Food Service

Marine Corps Base, Mess Halls 31611, 210702, 53502, 62502 and 22186, Camp Pendleton, California.
NPA: Job Options, Inc., San Diego, California
Marine Corps, Mess Halls #1620 and 569, San Diego, California,
NPA: Association for Retarded Citizens—San Diego, San Diego, California
Marine Corps Barracks,
8th & I Streets,
Washington, DC
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia
Marine Corps
Mess Hall #MCA 602, Norfolk, Virginia
NPA: Louise W. Eggleston Center, Inc., Norfolk, Virginia

Mail and Messenger Service

Headquarters, Naval Facilities Engineering Command, Naval Facilities Engineering Command (NAVFACENGCOM)
1322 Patterson Avenue, SE., Washington, DC
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia
Naval Engineering Field Activity Chesapeake,
Atlantic Division, Washington Navy Yard,
Naval Facilities Engineering Command (NAVFACENGCOM)
851 Sicard Street, SE
Washington, DC
NPA: Fairfax Opportunities Unlimited, Inc. Alexandria, Virginia

Management and Operation of Depot Safety Store

Corpus Christi Army Depot, Corpus Christi, Texas
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

The following services have been proposed for deletion from the Procurement List:

Administrative Services

Social Security Administration
Oxmoor South Industrial Park
Birmingham, Alabama
Janitorial/Custodial

U.S. Federal Building, Courthouse and Post Office

Moscow, Idaho

G. John Heyer,

General Counsel.

[FR Doc. 99–21042 Filed 8–12–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–99]

Foreign-Trade Zone 106—Oklahoma City, Oklahoma; Application for Foreign-Trade Subzone Status Xerox Corporation (Photocopier and Printer Toner and Cartridges); Oklahoma City, Oklahoma

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of the Greater Oklahoma City Area, grantee of FTZ 106, requesting special-purpose subzone status for the photocopier and printer toner and cartridge manufacturing facilities of Xerox Corporation (Xerox), located in Oklahoma City, Oklahoma. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 4, 1999.

The Xerox facility (443,000 mfg. sq. ft. on 123 acres) is located at 100 North Mustang Road and Route I–40, Oklahoma City (Canadian County), Oklahoma. The facility (400 employees) produces bulk and packaged toner and toner cartridges for photocopiers and printers. The plant also produces photoreceptors, developers and binder tape for photocopiers, but is not requesting to produce them under zone procedures at this time. Foreign-sourced materials will account for, on average, 14 percent of product value, and include the items listed below:

Material	HTSUS category	HTSUS No.	Duty rate (percent)
SMT5103	Pigment preparations	3206.11.0000	6.0
NA50 SH Additive	Other silicon dioxide	2811.22.5000	(1)
T77W	Polypropylene polymers	3902.10.0000	10.10
Bontron P–51	Quaternary ammonium, other	2923.90.0000	6.2
Wax 660P	Styrene polymers	3902.10.0000	7.0
P200 Wax	Polypropylene polymers	3902.10.0000	10.10
800P Wax	Polyethylene, GRV ≥ .94	3901.20.0000	10.10
T102STT127	Titanium oxides	2823.00.0000	5.6
TRH–SD CCA	Polypropylene polymers	3902.10.0000	10.10
CEO2 Additive	Cerium compounds	2846.10.0000	5.8
Various bulk toners, XP303 Resin, XP767, Resapol HT.	Chemical preps for Photographic uses	3707.90.3290	6.5

[1] Free.

The final products are listed below:

Product	HTSUS No.	Duty rate (percent)
Copier and Printer Bulk Toner	3707.90.3290	6.5
Copier and Printer Toner Resin	3707.90.3290	6.5

Product	HTSUS No.	Duty rate (percent)
Copier Toner Cartridges	9009.90.7090	(1)
Printer Toner Cartridges	8473.30.9000	(1)

[1] Free.

Zone procedures would exempt Xerox from Customs duty payments on foreign components used in export production (some 5–25% of production). On its domestic sales, Xerox would be able to choose the lower duty rate (duty free or 6.5%) that applies to the finished products for the foreign components noted above (duty free-10.1%, with a weighted average duty rate of 7.8%). FTZ procedures will also help Xerox implement a more cost-effective system for handling Customs requirements (including weekly entry filings, reduced brokerage fees and Customs merchandise processing fees). The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 27, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce, Export Assistance Center, 301 Northwest 63rd Street, Suite 330, Oklahoma City, Oklahoma 73116

Dated: August 4, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–21018 Filed 8–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–833]

Antidumping Investigation on Live Cattle from Canada: Notice of Extension of Deadline for Submission of Briefs and Hearing

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of deadline for submission of briefs and of hearing date.

EFFECTIVE DATE: August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, AD/CVD Enforcement, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–1442 or (202) 482–3813, respectively.

Extension of Time

On July 19, 1999, the Department postponed, until October 4, 1999, the deadline for the final determination in the antidumping investigation of live cattle from Canada. See Notice of Postponement of *Final Antidumping Determination: Live Cattle from Canada*, 64 FR 40351 (July 26, 1999). As a result of this postponement, the Department is extending the deadline for the submission of briefs. Case briefs are now due by August 13, 1999, and rebuttal briefs are due by August 20, 1999. In addition, the hearing date is anticipated to change. For more information regarding the hearing date, contact the parties stated above.

Dated: August 4, 1999.

Bernard Carreau,

Deputy Assistant Secretary, AD/CVD Enforcement Group II.

[FR Doc. 99–21067 Filed 8–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

Intent To Prepare an Environmental Impact Statement (EIS) on Interim Operations of the Central and Southern Florida (C&SF) Project To Project the Cape Sable Seaside Sparrow (Sparrow) Until the Modified Water Deliveries to Everglades National Park (Mod Waters) Project is Fully Constructed

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The congressionally authorized Mod Waters project consists of structural modifications and additions to the existing C&SF Project required to improve water deliveries for ecosystem restoration of Everglades National Park (ENP) without adverse impacts on adjacent private property. The current water management operational plan Test 7 of the Experimental Water Deliveries Program for the C&SF Project was developed in 1995 to allow experimentation and improvement of water delivery during the long construction phase of the Mod Waters Project. In February 1999, the U.S. Fish and Wildlife Service (FWS) issued a Biological Opinion under provisions of the Endangered Species Act that concluded that the Test 7 jeopardized the continued existence of the sparrow. They further concluded that ultimate protection for the species would be achieved by completing construction of the Mod Waters Project as quickly as possible. In the interim, they recommend that certain hydrologic conditions be maintained in the sparrow's breeding habitat to avoid jeopardizing the species. In response, the corps will develop an Interim Operational Plan (IOP) for the C&SF Project to meet the FWS's guidelines.

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232; Attn: Mr. Elmar Kurzbach, 904/232–2325.

SUPPLEMENTARY INFORMATION: .

1. The proposed action will consist of water management operatons of existing structural components of the C&SF Project to avoid flooding the sparrow

breeding habitats during the breeding season and to rehydrate breeding habitats during the annual wet season in order to prevent and reverse degradation from invasion of exotic vegetation and unnaturally high fire frequencies.

2. Alternatives to be discussed involve spartial variations in conveying water through the C&SF Project, tradeoffs in adverse effects on natural and manmade features of the environment, and degrees of infringement on private property rights these alternatives would cause.

3. A Scoping letter and public Scoping Meeting will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

4. The Draft EIS will analyze issues related to flooding of private property, water quality degradation, endangered species protection, urban development impacts, agricultural flood protection, and Everglades National Park ecosystem restoration.

5. The alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and Farmland Protection Act.

6. A scoping meeting will be held in Homestead, Florida at the Miami-Dade County Extension Office. The date and time will be announced in the Scoping letter.

7. The Draft EIS is expected to be available for public review in the 2nd quarter CY 2000.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–21057 Filed 8–12–99; 8:45 am]

BILLING CODE 3710–AS–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, NV

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS–0250D). The Department has prepared this Draft EIS in accordance with the Nuclear Waste Policy Act of 1982, as amended (NWPA), the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations that implement the procedural provisions of NEPA (40 CFR Parts 1500–1508), and the DOE procedures implementing NEPA (10 CFR Part 1021). The Draft EIS provides information on potential environmental impacts that could result from a Proposed Action to construct, operate and monitor, and eventually close a repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada. The Draft EIS also considers the potential environmental impacts from an alternative referred to as the No-Action Alternative, under which a repository would not be developed at Yucca Mountain. The locations of the public hearings to receive comments on the Draft EIS are listed below.

DATES: Comments on the Draft EIS will be accepted during a 180-day public comment period, which ends on February 9, 2000. DOE will consider comments received after February 9, 2000, to the extent practicable. DOE will conduct public hearings on the Draft EIS and will announce the dates in the **Federal Register** in the near future.

ADDRESSES: Written comments, requests for further information on the Draft EIS or the public hearings, and requests for copies of the document (or a CD–ROM version) should be directed to: Ms. Wendy R. Dixon, EIS Project Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, Nevada 89036–0307, Telephone 1–800–967–3477, Facsimile 1–800–967–0739.

Written comments transmitted by facsimile should include the following identifier: "Yucca Mountain Draft EIS." Addresses of the locations where the Draft EIS will be available for public review are listed in this Notice under "Availability of the Draft EIS."

Written comments or requests for copies of the document may also be submitted over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov,* under the listing "Environmental Impact Statement."

FOR FURTHER INFORMATION CONTACT: Ms. Wendy R. Dixon, EIS Project Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, Nevada 89036–0307, Telephone 1–800–967–3477, Facsimile 1–800–967–0739.

General information on the DOE NEPA process may be requested from: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, Telephone 1–202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1995, the Department published a Notice of Intent (60 FR 40164) to prepare an Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada. The purpose of the Notice of Intent was to inform the public of the proposed scope of the Repository EIS, to solicit public input, and to announce that scoping meetings would be held from August through October 1995. During that period, 15 public scoping meetings were held throughout the United States to obtain public comments regarding the scope, alternatives, and issues that should be addressed in the EIS. The scoping period closed on December 5, 1995. Due to subsequent budget reductions, EIS activities were deferred until Fiscal Year 1997. In May 1997, DOE published Summary of Public Scoping Comments Related to the Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-level Radioactive Waste at Yucca Mountain, Nye County, Nevada, which summarized the comments received by DOE during the scoping process and described how DOE planned at that time to address issues raised during scoping. A Notice of Availability for the Summary of Public Scoping Comments document was published on July 9, 1997 (62 FR 36789).

Alternatives Considered

The Draft EIS evaluates a Proposed Action and a No-Action Alternative. Under the Proposed Action, DOE would construct, operate and monitor, and eventually close a geologic repository at Yucca Mountain for the disposal of as much as 70,000 metric tons of heavy metal (MTHM) of spent nuclear fuel and high-level radioactive waste. The Proposed Action includes the transportation of spent nuclear fuel and high-level radioactive waste to Yucca Mountain from commercial and DOE sites. Under the No-Action Alternative, DOE would end site characterization activities at Yucca Mountain, and commercial and DOE sites would

continue to store spent nuclear fuel and high-level radioactive waste, packaged as necessary for their safe on-site management.

DOE developed implementing alternatives and analytical scenarios for estimating in the Draft EIS the reasonably foreseeable environmental impacts that could result from the Proposed Action. For example, DOE evaluated three thermal load scenarios, which correspond to a relatively high emplacement density of spent nuclear fuel and high-level radioactive waste (high thermal load—85 MTHM per acre), a relatively low emplacement density (low thermal load—25 MTHM per acre), and an intermediate case—60 MTHM per acre. DOE recognizes, however, that if the site is eventually approved for development of a repository, the designs of repository surface and subsurface facilities, and plans for the construction, operation and monitoring, and closure of the repository would continue to evolve and would depend on the outcome of the Nuclear Regulatory Commission's licensing review of the repository.

Two national transportation scenarios are evaluated in the Draft EIS. The mostly legal-weight truck [1] scenario assumes that most spent nuclear fuel and high-level radioactive waste would be shipped to the repository by legal-weight truck over existing highways, with a few exceptions. The mostly rail scenario assumes that most spent nuclear fuel and high-level radioactive waste would be shipped to Nevada by rail, with a few exceptions (based largely on the on-site loading limitations at some commercial sites). The Nevada transportation implementing alternatives parallel the national transportation scenarios; however, because no rail access currently exists to the repository site, the EIS considers different implementing alternatives for the construction of either a new branch rail line to the proposed repository, or an intermodal transfer station [2] with associated highway improvements for heavy-haul trucks.[3]

The No-Action Alternative considers two scenarios. Scenario 1 assumes that spent nuclear fuel and high-level radioactive waste would remain at the 72 commercial and 5 DOE sites under effective institutional control for at least 10,000 years. Scenario 2 also assumes spent nuclear fuel and high-level radioactive waste would remain at the 77 sites, but under effective institutional control for only about 100 years.

[1] Truck with a gross vehicle weight (both truck and cargo) of less than 80,000 pounds.

[2] An intermodal transfer station is a facility at the juncture of rail and road transportation used to transfer shipping casks containing spent nuclear fuel and high-level radioactive waste from rail to truck and empty casks from truck to rail.

[3] Shipment of a rail cask (weighing up to 300,000 pounds) on a special truck and trailer combination that would have a total weight of approximately 500,000 pounds.

Public Hearings and Invitation To Comment

The public is invited to provide oral and written comments on the Repository Draft EIS during the public comment period that ends on February 9, 2000. DOE will consider comments received during the comment period in preparation of the Final EIS. Comments received after February 9, 2000, will be considered to the extent practicable.

The Department will hold 16 public hearings (each following the same format in either the mid-morning or afternoon and evening) to receive oral and written comments from members of the public. The public hearings are currently planned to be held in the following Nevada locations: Pahrump, Goldfield, Caliente, Las Vegas, Reno, Austin, Crescent Valley, Amargosa Valley and Ely. Other hearing locations will include Washington, DC; Atlanta, Georgia; Denver, Colorado; Boise, Idaho; Salt Lake City, Utah; St. Louis, Missouri; and Lone Pine, California. DOE will publish the dates, times, and specific locations in the **Federal Register**, and will notify all recipients of the Draft EIS and the media in writing as soon as this information is available. In addition, this information will be available on the Yucca Mountain website at *http://www.ymp.gov* and on the toll-free information line at 1–800–967–3477.

Each of the public hearings will include a brief session in which an overview of the Draft EIS will be presented, a general question-and-answer session, and an opportunity to provide comments for the record. Members of the public who plan to present oral comments are asked to register in advance by calling 1–800–967–3477.

Availability of the Draft EIS

Copies of the Draft EIS are being distributed to Federal, State, Indian tribal, and local officials, agencies, and organizations and individuals who have indicated an interest in the EIS process. Copies of the document may also be requested by telephone (1–800-967–3477) or over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov*, under the listing "Environmental Impact Statement."

Copies of references considered in preparation of the Draft EIS are available at the following Public Reading Rooms: University of Nevada—Las Vegas, Nevada; University of Nevada—Reno, Nevada; Beatty Yucca Mountain Science Center, Nevada; and the DOE Headquarters Office in Washington, DC. Addresses of these Public Reading Rooms and of other Public Reading Rooms and libraries where the Draft EIS is available for public review are listed below.

Public Reading Rooms

Inyo County—Contact: Andrew Remus; (760) 878–0447; Inyo County Yucca Mountain Repository Assessment Office; 168 North Edwards Street; Post Office Drawer L; Independence, CA 93526

Oakland Operations Office—Contact: Annette Ross; (510) 637–1762; U. S. Department of Energy Public Reading Room; EIC; 1301 Clay Street, Room 700N; Oakland, CA 94612–5208

National Renewable Energy Laboratory—Contact: Sarah Manion; (303) 275–4709; Public Reading Room; 1617 Cole Boulevard; Golden, CO 80401

Rocky Flats Public Reading Room—Contact: Ann Smith; (303) 469–4435; College Hill Library; 3705 112th Avenue B121; Westminster, CO 80030

Headquarters Office—Contact: Carolyn Lawson; (202) 586–3142; U.S. Department of Energy; Room 1E–190, Forrestal Building; 1000 Independence Avenue, SW; Washington, DC 20585

Atlanta Support Office—Contact: Nancy Mays/Laura Nicholas; (404) 347–2420; Department of Energy; Public Reading Room; 730 Peachtree Street, Suite 876; Atlanta, GA 30308–1212

Southeastern Power Administration—Contact: Joel W. Seymour/Carol M. Franklin; (706) 213–3800/(706) 213–3813; U.S. Department of Energy; Reading Room; Samuel Elbert Building; 2 South Public Square; Elberton, GA 30635–2496

Boise State University Library—Contact: Adrien Taylor; (208) 385–1621; Government Documents; 1910 University Drive; P.O. Box 46; Boise, ID 83707–0046

Idaho Operations Office—Contact: Brent Jacobson/Gail Willmore; (208) 526–1144; Public Reading Room; 1776 Science Center Drive; Idaho Falls, ID 83402

Chicago Operations Office—Contact: John Shuler; (312) 996–2738; Document Department; University of Illinois at Chicago; 801 South Morgan Street; Chicago, IL 60607

Strategic Petroleum Reserve Project Management Office—Contact: Deanna Harvey; (504) 734–4316; U.S. Department of Energy; SPRPMO/SEB

Reading Room; 850 Commerce Road, East; New Orleans, LA 70123
Lander County—Contact: Tammy Manzini; (775) 964–2447; 610 Main Street; (P.O. Box 10); Austin, NV 89310
Beatty Yucca Mountain Science Center—Contact: Marina Anderson; (775) 553–2130; 100 North E Avenue; Beatty, NV 89003
Lincoln County—Contact: Eve Culverwell; (775) 726–3511; Box 1068 100 Depot Avenue; Caliente, NV 89008
Nevada State Clearinghouse—Contact: Heather Elliot; (775) 684–0209; Department of Administration; 209 Musser Street, Room 200; Carson City, NV 89701
White Pine County—Contact: Debra Kolkman; (775) 289–2033; 959 Campton Street; Ely, NV 89301
Eureka County—Contact: Leonard Fiorenzi; (775) 237–5372; Courthouse Annex; (P.O. Box 714); Eureka, NV 89316
Churchill County—Contact: Alan Kalt; (775) 423–5136; 190 West First Street; Fallon, NV 89046–2478
Esmeralda County—Contact: Tony Cain; (775) 485–3419; Repository Oversight Program; Elliot Street between Franklin and Euclid; P.O. Box 490; Goldfield, NV 89013
Mineral County—Contact: Commissioner Jackie Wells; (775) 945–2484; First & A Streets; (P.O. Box 1600); Hawthorne, NV 89415
Clark County—Contact: Dennis Bechtel; (702) 455–5175; 500 South Grand Central Parkway #3012; (P.O. Box 551751); Las Vegas, NV 89155–1751
Las Vegas, Nevada—Contact: Reference Desk; (702) 895–3409; University of Nevada Las Vegas; James R. Dickinson Library; Government Publications; 4505 Maryland Parkway; Las Vegas, NV 89154–7013
Las Vegas Yucca Mountain Science Center—Contact: Terri Brown; (702) 295–1312; 4101-B Meadows Lane; Las Vegas, NV 89107
Nye County—Contact: Les Bradshaw; (775) 727–7727; c/o Department of Natural Resources and Federal Facilities; 1210 E. Basin Avenue; Pahrump, NV 89048
Pahrump Yucca Mountain Science Center—Contact: Gordon Froman; (775) 727-0896; 1141 South Highway 160; Pahrump NV, 89041
Reno, Nevada—Contact: Kathie Brinkerhoff; (775) 784–6500, x-258; University of Nevada, Reno; The University of Nevada Libraries; Business and Government Information Center M/S 322; 1664 N. Virginia Street; Reno, NV 89557–0044
Albuquerque Operations Office—Contact: Shawna Schwartz; (702) 845–4939; U.S. DOE Contract Reading Room; Kirtland Air Force Base; Pennsylvania and H Street; Building 388; Albuquerque, NM 87116
Fernald Area Office—Contact: Gary Stegner; (513) 648–7480; U.S. Department of Energy; Public Information Room; 7400 Willey Road; Cincinnati, OH 45239
Bartlesville Project Office/National Institute for Petroleum and Energy Research—Contact: Josh Stroman; (918) 337–4371; BPO/NIPER Library; U.S. Department of Energy; 220 Virginia Avenue; Bartlesville, OK 74003
Southwestern Power Administration—Contact: Pam Bland; (918) 595–6624; U.S. Department of Energy; Public Reading Room; 1 West 3rd, Suite 1600; Tulsa, OK 74101
Bonneville Power Administration—Contact: Jean Pennington; (503) 230–7334; U.S. Department of Energy; BPA–C–ACS–1; 905 NE 11th Street; Portland, OR 97208
Pittsburgh Energy Technology Center—Contact: Ann C. Dunlap; (412) 892–6167; U.S. Department of Energy; Building 922/M210; Cochrans Mill Road; Pittsburgh, PA 15236–0940
Savannah River Operations Office—Contact: David Darugh; (803) 725–2497; Gregg-Graniteville Library; University of South Carolina—Aiken; 171 University Parkway; Aiken, SC 29801
University of South Carolina—Contact: Lester Duncan; (803) 777–4841; Thomas Cooper Library; Documents/Microforms Department; Green and Sumter Streets; Columbia, SC 29208
Oak Ridge Operations Office—Contact: Amy Rothrock/Teresa Brown; (423) 576-1216/(423) 241–4780; U.S. Department of Energy; Public Reading Room; P.O. Box 2001; American Museum of Science and Energy; 300 S. Tulane Avenue; Oak Ridge, TN 37831
Southern Methodist University—Contact: Stephen Short; (214) 768–2561; Central Union Libraries Fondren Library; Government Information; Airline and McFarland Streets; Dallas, TX 75275–0135
University of Utah—Contact: Walter Jones; (801) 581–8863; Marriott Library Special Collections; 295 South 15th East; Salt Lake City, UT 84112–0860
Richland Operations Center—Contact: Terri Traub; (509) 372–7443; U.S. Department of Energy; Public Reading Room; 2770 University Drive; Room 101L; PO Box 999; Mailstop H2–53; Richland, WA 99352

Issued in Washington, DC, August 5, 1999.

Lake Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 99–20661 Filed 8–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3912–000, ER99–3913–000, and ER99–3842–000]

AG-Energy, L.P.; Seneca Power Partners, L.P.; Sterling Power Partners, L.P.; Power City Partners, L.P.; Deseret Generation & Transmission Co-operative; Southern Company Services, Inc.

August 9, 1999.

Take notice that on July 30, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filings are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20983 Filed 6–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99-890-003, ER99-891-003, ER99-892-003, ER99-893-003, ER99-894-003, ER99-3878-000, ER99-3881-000, ER99-3882-000, ER99-3884-000, and ER99-3883-000]

CP Power Sales Fifteen, L.L.C., CP Power Sales Fourteen, L.L.C., CP Power Sales Thirteen, L.L.C., CP Power Sales Twelve, L.L.C., CP Power Sales Eleven, L.L.C., Cincinnati Gas & Electric Company and PSI Energy, Inc., ISO New England Inc., Penobscot Hydro, L.L.C., Oklahoma Gas and Electric Co., and Sunlaw Energy Partners I, L.P.; Notice of Filings

August 9, 1999.

Take notice that on July 30, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filings are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 20978 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99-3895-000, ER99-3896-000, ER99-3897-000, ER99-3898-000, ER99-3899-000, ER99-3900-000, ER99-3910-000, ER99-3921-000.]

Duke Energy Moss Landing, LLC, Duke Energy Moss Landing, LLC, Duke Energy South Bay, LLC, Duke Energy South Bay, LLC, Duke Energy Morro Bay, LLC, Duke Energy Morro Bay, LLC, Commonwealth Electric Company, Allegheny Energy; Notice of Filings

August 9, 1999.

Take notice that on July 30, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and download (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20982 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99-852-003, ER99-3893-000, ER99-3894-000, ER99-3902-000, ER99-3903-000, ER99-3904-000, ER99-3905-000, ER99-3906-000, ER99-3907-000, and ER99-3908-000]

Edison Mission Marketing & Trading, Inc., Duke Energy Oakland, LLC, Duke Energy Oakland, L.L.C., AmerGen Energy Company, L.L.C., The Detroit Edison Company, Mountainview Power Company, Riverside Canal Power Company, Southern Energy Canal, L.L.C., Southern Energy Kendall, L.L.C., and Southern Energy New England, L.L.C.; Notice of Filings

August 9, 1999.

Take notice that on July 30, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr,

Acting Secretary.

[FR Doc. 99–20977 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-363-001]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

August 9, 1999.

Take notice that on July 29, 1999, Equitrans, L.P. (Equitrans), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective August 1, 1999:

Substitute First Revised Sheet No. 288

Equitrans states that the purpose of this filing is to comply with the Commission's Letter Order dated July 20, 1999 in the captioned docket. In its order the Commission required Equitrans to incorporate in Section 26.3 of its General Terms and Conditions the omitted subcategory "Table of Contents" from the GISB standard 4.3.23. Equitrans has incorporated the omitted subcategory "Table of Contents" in Section 26.3 of its General Terms and Conditions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20974 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–3566–003, ER99–3923–000, ER99–3924–000, ER99–3925–000, ER99–3926–000, ER99–3927–000]

FPL Energy Power Marketing, Inc., FPL Energy Maine Hydro, Inc., FPL Energy Mason, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, and FPL Energy AVEC, LLC; Notice of Filings

August 9, 1999.

Take notice that on July 30, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protest will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20979 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3839–000; ER99–3840–000; ER99–3841–000; ER99–3843–000; ER99–3844–000; ER99–3846–000; ER99–3847–000; ER99–3848–000; and ER99–3860–000]

Logan Generating Company, L.P., Millennium Power Partners, L.P., CinCap VI, LLC, Consumers Energy Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), Northeast Utilities Service Company, Boralex Stratton Energy, Inc., AYP Energy, Inc., PECO Energy Company; Notice of Filings

August 9, 1999.

Take notice that on July 30, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20980 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–392–001]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 9, 1999.

Take notice that on August 4, 1999, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, with an effective date of August 1, 1999:

Substitute Fourth Revised Sheet No. 87

Mid Louisiana states that the purpose of the filing is to comply with Commission's July 23, 1999 order in Docket No. RP99–392–000, wherein the Commission directed Mid Louisiana Gas Company to revise its tariff to include the revised versions of GISB Standard 1.3.24 and GSIB Data Sets 3.4.1 through 3.4.3 in compliance with Order No. 587–K. Moreover, Mid Louisiana states that it submitted in the filing only the tariff sheet that incorporated by reference GISB Invoicing Data Sets 3.4.1, 3.4.2 and 3.4.3. Mid Louisiana attests that no modification was made to its tariff with respect to Standard 1.3.24, as the standard was incorporated by reference in FERC Docket No. RP97–151–002, but was inadvertently omitted from Appendix A of Mid Louisiana's July 1, 1999 Order 587–K compliance filing.

Mid Louisiana requests that the Commission grants a waiver of Section 154.207 of the Commission's Regulations thereby allowing the indicated tariff sheet to be accepted to be effective August 1, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20976 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–3849–000, ER99–3850–000, ER99–3851–000, ER99–3852–000, ER99–3853–000, ER99–3857–000, ER99–3858–000, and ER99–3891–000]

New England Power Company and AllEnergy Marketing Company, Indeck-Pepperell Power Associates, Inc., Denver City Energy Associates, L.P., Portland General Electric Company, New York State Electric & Gas Corporation and NGE Generations, Inc., Wisvest-Connecticut, L.L.C., Southwestern Public Service Company, South Eastern Electric Development Company; Notice of Filings

August 9, 1999.

Take notice that on July 30, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rimis.htm for viewing and downloading (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20981 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–464–000 and RP98–183–093]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 9, 1999.

Take notice that on August 3, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1999:

Eighth Revised Sheet No. 6
Eleventh Revised Sheet No. 6A

Williams states that pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1, it is filing to discontinue the GSR component of the maximum ITS rate established in Docket No. RP97–407, which became effective August 1, 1997, and has been in effect for its 24-month recovery period, and the Rate Schedule FTS surcharge and the GSR component of the maximum ITS rate established in Docket No. RP98–293, which became effective August 1, 1998, and has been in effect for its 12-month recovery period.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20975 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1523–011, et al.]

Central Hudson Gas & Electric Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 6, 1999.

Take notice that the following filings have been made with the Commission:

1. Central Hudson Gas & Electric Corporation

[Docket Nos. ER97–1523–011; OA97–470–010; and ER97–4234–008]

Take notice that on August 3, 1999, the Member Systems of the New York Power Pool (Member System), tendered for filing under sections 205 and 206 of the Federal Power Act amendments to the transmission agreement in effect between and among the individual Member Systems and/or various third parties consistent with the Commission's Order dated January 27, 1999. *See Central Hudson Gas & Electric Corp., et al.*, 86 FERC 61,062 (1999).

The Member Systems request all necessary waivers to make the amendments effective upon implementation of the New York Independent System Operator (NYISO) on September 1, 1999.

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New Energy Ventures, Inc.; Competitive Utility Services Corporation; C.C. Pace Resources, Inc., Hartford Power Sales, L.L.C.; CL Power Sales Seven, L.L.C., FirstEnergy Trading Services, Inc.; CinCap V, LLC

[Docket Nos. ER97–4636–007; ER97–1932–010; ER94–1181–020; ER95–393–024; ER96–2652–036; ER95–1295–013; and ER98–4055–004]

Take notice that on July 30, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Calpine Power Services Company

[Docket No. ER94–1545–019]

Take notice that on August 2, 1999, Calpine Power Services Company (Calpine Power Services), tendered for filing an updated market analysis in compliance with the Commission's March 9, 1995 order in Docket No. ER94–1545–000.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Gregory L. Nesbitt

[Docket No. ID–3150–001]

Take notice that on August 2, 1999, Cleco Evangeline LLC, tendered for filing abbreviated applications for Gregory L. Nesbitt, David M. Eppler, Thomas J. Howlin and Darrell Dubroc now holding or may hold interlocking positions involving Cleco Evangeline LLC.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket Nos. ER98–899–003; ER98–1923–001; and ER98–1923–003]

Take notice that on August 2, 1999, the California Independent System Operator Corporation (California ISO), tendered for filing a Compliance Report as required by the Letter Order issued by the Commission on May 28, 1998.

Copies of the filing have been served upon each person designated on the restricted service list compiled by the Presiding Judge in this proceeding.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Heard County Power, L.L.C.

[Docket No. EG99–210–000]

Take notice that on August 2, 1999, Heard County Power, L.L.C., 1000 Louisiana, Suite 5800, Houston, Texas tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Heard County Power, L.L.C., is a limited liability company, organized under the laws of the State of Delaware, and engaged directly and exclusively in owning and operating the Heard County Power, L.L.C., electric generating facility (the Facility) to be located in Heard County, Georgia, and selling electric energy and related ancillary services at wholesale from the Facility. The Facility will consist of three gas turbine generators that are nominally rated at approximately 166.87 MW each, for a total of approximately 500 MW, a metering station, and associated transmission interconnection components.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. DTE Energy Trading, Inc.; CL Power Sales Ten, L.L.C.; CL Power Sales Eight, L.L.C.; CL Power Sales Nine, L.L.C.; CL Power Sales Six, L.L.C.; Coral Power, L.L.C.; CL Power Sales Two, L.L.C.; Southern Energy Retail Trading; and Marketing, Inc.; Niagara Mohawk Energy Marketing, Inc.; and Constellation Power Source, Inc.

[Docket Nos. ER97–3834–007; ER96–2652–033; ER96–2652–035; ER96–2652–032; ER96–2652–034; ER96–25–017; ER95–892–044; ER98–1149–004; ER96–2525–012; and ER97–2261–011.

Take notice that on July 30, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filings are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. Edison Source; Duke Energy; Citizens Power Sales; DTE Edison America, Inc.; PG&E Power Service Company; CMS Marketing, Services and Trading; Sonat Power Marketing L.P.; Sonat Power Marketing Inc.; and Koch Energy Trading, Inc.

[Docket Nos. ER96–2150–014; ER96–108–018; ER94–1685–026; ER98–3026–004; ER94–1394–021; ER96–2350–018; ER96–2343–012; ER95–1050–018; and ER95–218–018]

Take notice that on July 30, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filings are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/

online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

9. American Electric Power Service Corporation

[Docket No. EL99–82–000]

Take notice that on August 2, 1999, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (AEP) submitted a Petition for Declaratory Order requesting that the Commission rule that discounted non-firm transmission services offered by AEP are consistent with AEP's open-access transmission tariff (OATT) and the Commission's *pro forma* transmission tariff. In the alternative, AEP requests that the Commission accept for filing revisions to Schedule 8 of AEP's OATT, which set forth additional terms for the discounting of Non-Firm Point-To-Point Transmission Service.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Company

[Docket No. ER99–3930–000]

Take notice that on August 2, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with Morgan Stanley Capital Group Inc. (MSCG) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on July 6, 1999.

Copies of the filing have been served on MSCG and the Florida Public Service Commission.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER99–3931–000]

Take notice that on August 2, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing Service Agreements between NYSEG and Duke Energy Trading and Marketing, L.L.C. (DETM) and NRG Power Marketing, Inc., (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of July 30, 1999 for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. CL Power Sales One, L.L.C.; CL Power Sales Three, L.L.C.; CL Power Sales Four, L.L.C.; CL Power Sales Five, L.L.C.; TXU Energy Trading; Mid-American Power,L.L.C.; WPS Power Development, Inc.; Unitil Resources, Inc.; Engage Energy US, L.P.; and NEV East, L.L.C.

[Docket No. ER95–892–045; Docket Nos. ER98–895–006; Docket No. ER96–1858–013; Docket No. ER96–1088–026; Docket No. ER97–2462–008; Docket No. ER97–654–011; and Docket No. ER97–4652–007]

Take notice that on July 30, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

13. Virginia Electric and Power Company

[Docket No. ER99–3932–000]

Take notice that on August 2, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreements for Non-Firm and Firm Point-to-Point Transmission Service to Consumers Energy Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of August 2, 1999, the date of filing of the Service Agreements.

Copies of the filing were served upon Consumers Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER99–3935–000]

Take notice that on August 2, 1999, MidAmerican Energy Company tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of certain reused tariff sheets consistent with the quarterly filing requirement.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in Southern Company Services, Inc., 75 FERC 61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the applicable quarter.

MidAmerican proposes an effective date of the first day of the applicable quarter for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the Southern Company Services, Inc., order and the effective date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Cleco Energy LLC

[Docket No. ER99–3947–000]

Take notice that on August 2, 1999, Cleco Energy LLC (Cleco Energy), Cleco Evangeline LLC (Cleco Evangeline), Cleco Marketing, & Trading LLC (CMT), tendered for filing their petition to the Commission for acceptance of Amendment No. 1 to Rate Schedule FERC No. 1 (Market-Based Rate Schedule), Supplement No. 1, Original Sheet Nos. 1–2, which the Commission accepted in its Order, issued February 17, 1998, in the captioned docket. In Cleco Energy's proposed amendment, Cleco Energy proposes to supersede Original Sheet Nos. 1–2 with Revised Sheet No. 1.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. South Carolina Electric & Gas Company

[Docket No. ER99–3929–000]

Take notice that on August 2, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing Alabama Municipal Electric Authority (AMEA) as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon AMEA and the South Carolina Public Service Commission.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Cleco Energy LLC

[Docket No. ER99–3946–000]

Take notice that on August 2, 1999, Cleco Energy LLC (formerly CLECO ENERGY, L.L.C.) (Cleco Energy), petitioned the Commission for acceptance of Amendment No. 1 to Rate Schedule FERC No. 1, Original Sheet Nos. 1–9, which the Commission accepted in its Order, issued February 17, 1998, in the captioned docket. In Cleco Energy's proposed amendment, Cleco Energy proposes to supersede Original Sheet Nos. 1–9 with Revised Sheet Nos. 1–2.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. InPower Marketing Corp.

[Docket No. ER99–3964–000]

Take notice that on August 2, 1999, InPower Marketing Corp. (InPower), tendered for filing a petition for Commission acceptance of InPower's Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission Regulations.

InPower intends to engage in wholesale electric power and energy purchases and sales as a marketer. InPower is not in the business of generating or transmitting electric power.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER99–2388–001]

Take notice that on August 2, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively, GPU Energy), tendered for filing a compliance filing in response to the Commission's letter order dated July 1, 1999 in the above-referenced docket. (Green Power Partners I LLC, *et al.*, 88 FERC ¶ 61,005 (1999)).

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Avista Corp.

[Docket No. ER99–3408–000]

Take notice that on August 2, 1999, Avista Corp., tendered for filing a clarification of the rates under an executed service agreement with Cogentrix Energy Power Marketing, Inc., for Dynamic Capacity and Energy Service at cost-based rates under Avista Corp.'s FERC Electric Tariff, Original Volume No. 10. The service agreement was filed with the Commission on June 29, 1999.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Citizens Utilities Company

[Docket No. ES99–55–000]

Take notice that on August 2, 1999, Citizens Utilities Company (Applicant), tendered for filing an application pursuant to Section 204 of the Federal Power Act requesting an order authorizing, for the maximum period, the issuance by the Applicant of: (I) Up to (a) $1,000,000,000 principal amount of unsecured promissory notes outstanding at any one time (Promissory Notes), (b) $1,000,000,000 aggregate principal amount of debt securities (Longer Term Debt Securities) with a final maturity or maturities of not less than nine months nor more than 50 years, (c) 80,000,000 shares of common stock of Applicant (Common Stock) (subject to adjustment for stock splits, stock dividends, recapitalizations and similar changes after the date of this Application), and $400,000,000 liquidation value of preferred stock of Applicant (Preferred Stock), and (d) $1,000,000,000 of assumption of obligations and liabilities as guarantor of obligations of its subsidiaries subject to an overall limitation, at any time, of the securities to be issued under (a), (b), (c) and (d) of $1,000,000,000, and; (II) up to an additional $3,000,000,000 principal amount of unsecured promissory notes outstanding at any one time for the purposes of temporary bridge financing that may be required for Applicant to meet its obligations arising under agreements for the acquisition of local exchange telephone access lines.

Applicant also requests, upon the issuance of authorization, that the Applicant's authority under Docket No. ES98–21–000 be canceled. The Applicant further requests that the foregoing be exempted from the competitive bidding and negotiated placement requirements of 18 CFR Part 34.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Atlanta Gas Light Services, Inc.; Calpine Power Services Company; Watts Works, L.L.C.; PP&L EnergyPlus Co., LLC; OST Energy Trading Inc.; Southern Energy Trading and Marketing, Inc.; Southern Company Energy Marketing L.P.; PG&E Energy Trading—Power; Cinergy Capital & Trading, Inc.; British Columbia Power Exchange Corporation; CinCap IV, LLC; Strategic Energy L.L.C.; Hinson Power Company; Progress Power Marketing, Inc.; Western Systems Power Pool; and NEV California, L.L.C.

[Docket Nos. ER97–542–008; ER94–1545–018; Docket No. ER98–4608–004; ER95–976–017; ER97–4024–009; ER91–195–039; and

Take notice that on July 30, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filings are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20925 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–579–000 and CP99–580–000]

Southern LNG Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Elba Island Terminal Recommissioning Project and Request for Comments on Environmental Issues

August 9, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Elba Island Terminal Recommissioning Project involving construction and operation of facilities by Southern LNG Inc. (Southern LNG) on Elba Island in Chatham County, Georgia.[1] The project involves returning Southern LNG's existing, certificated liquefied natural gas (LNG) marine import terminal (Elba Island Terminal) to active service. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Background

In 1972, in Docket No. CP71–264, the Federal Power Commission (FERC's predecessor) authorized Southern Energy Company (Southern LNG's predecessor), to construct and operate the Elba Island Terminal. Southern LNG initiated construction in 1973. The terminal encompasses about 140 acres on the 840-acre Elba Island in an estuary of the Savannah River. Elba Island lies approximately 8 miles upstream of the river's discharge into the Atlantic Ocean and approximately 5 miles downstream from Savannah, Georgia. The existing authorized facilities at the Elba Island Terminal include the following:

- LNG unloading facilities, including marine berth, pier, and arms for unloading LNG from vessels;
- LNG storage facilities, including three double-wall storage tanks, each with the capacity of 400,000 barrels (four billion cubic feet vaporized equivalent);
- LNG sendout facilities, including pumps and vaporizers with a maximum capacity of 540 million cubic feet per day;
- Boil-off compressors;
- Pressure relief, vent, and disposal systems;
- Spill containment facilities, including a 400,000-barrel capacity main spill containment for each LNG storage tank; and
- Fire water system sourced from a fresh-water pond and river water.

Southern LNG commenced operation in July, 1978. Between 1978 to 1980, the Elba Island Terminal was used to import LNG purchased from El Paso Algeria Corporation. El Paso Algeria Corporation transported LNG by cryogenic tankers to the point of unloading at the Elba Island Terminal. Southern LNG resold all of the vaporized LNG to Southern Natural Gas Company (Southern Natural).

In April, 1980, Southern LNG was unable to continue importation of LNG due to economic considerations. After LNG shipments were discontinued, Southern LNG retained an inventory of LNG through April, 1982. During this time, Southern LNG rendered peaking service to Southern Natural until depleting the remaining LNG.

Since 1982, the Elba Island Terminal has been maintained in a limited state of readiness to ensure that the plant could be safely and reliably reactivated. An ongoing preventative maintenance program has been in place since that time and needed repairs, replacements, enhancements and additions have been identified for implementing during the recommissioning process.

Summary of the Proposed Project

Southern LNG requests Commission authorization, in Docket No. CP99–580–000, to recommission the Elba Island Terminal for the purpose of providing open-access service to shippers desiring to contract for receipt, storage, and vaporization of LNG and delivery of vaporized LNG at the existing point of interconnect with the interstate pipeline of Southern Natural.

The storage and vaporization facilities would not be significantly altered, replaced or relocated. The storage and throughput capacity of the facilities would remain the same as originally placed in service in 1978. The recommissioning work will include the following:

- Install suction drum level control and minimum flow piping;
- Replace two LNG pumps;
- Install LNG recirculation piping;
- Install an additional boil-off compressor (1,000-horsepower);
- Install LNG tank level, density and temperature gauges;
- Upgrade fire protection system;
- Upgrade hazard detection system;
- Install intrusion detection system;
- Renew dredging of berthing area and turning basin;
- Increase dredged material basin capacity;
- Modify power distribution switchgear to allow parallel operation with utility (under consideration); and
- Install distributed control and data acquisition system.

The proposed improvements would bring the facilities into compliance with applicable current code requirements and would update the safety, security, operability and reliability of the terminal. The location of the project facilities is shown in appendix 1.[2]

In addition, in Docket No. CP99–579–000, Southern LNG requests section 3 authorization under subpart B of Part 153 of the Commission's regulations for siting of natural gas import facilities. This application is directly related to Southern LNG's proposal described above in Docket No. CP99–580–000.

Land Requirements for Construction

No additional land would be required by Southern LNG's proposal. All work would occur within previously disturbed and currently maintained areas. None of the proposed recommissioning tasks would result in substantial changes to the appearance or previous function of the existing facilities. Prior to restarting the facility, the ship berthing and turning basin areas would need to be dredged and maintained to −39 feet mean low water (MLW) with an over-dredge of two feet to −41 feet MLW.

The EA Process

The National environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents

[1] Southern LNG's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resource, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send **two** copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket Nos. CP99–579–000 and CP99–580–000; and
- **Mail your comments so that they will be received in Washington, DC on or before September 8, 1999.**

Beyond asking for written comments, in October, 1999, we will be conducting a site visit, holding a public scoping meeting, and conducting a cryogenic design and engineering review. The public meeting will be designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Further details on the dates and locations of the above events will be noticed at a later date.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding ends on August 13, 1999. If this date cannot be met, parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. **You do not need intervenor status to have your environmental comments considered.**

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–20928 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11753–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississipi Lock and Dam No. 10 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 10 on the Mississippi River, near the Town of Guttenburg, Clayton County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–

h. *Applicant:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a

particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 10, and would consist of the following facilities: (1) five new steel penstocks, each about 80-foot-long and 9.5-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 10,000 kilowatts; (3) a new 200-foot-long, 14.7-kilovolt transmission line, and (4) appurtenant facilities. The proposed average annual generation is estimated to be 61 gigawatthours. The cost of the studies under the permit will not exceed $2,000,000.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims/htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documentrs—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20970 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11754–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam No 21 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 21 of the Mississippi River, near the Towns of Quincy and Hannibal, Adams County, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Application Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44031, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor file comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 21, and would consist of the following facilities: (1) five new steel penstocks, each about 80-foot-long and 9-foot-in-diameters; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 10,000 kilowatts; (3) a new 1,000-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 61 gigawatthours. The cost of the studies under the permit will not exceed $2,000,000.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervenet in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing sums bear in all capital letter the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION', "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20971 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests:

August 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11755–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Cooperation.

e. *Name of Project:* Red River Lock and Dam No. 1 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 1 on the Red River, near the Town of Simmesport, Catahoula County, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 1, and would consist of the following facilities: (1) eight new steel penstocks, each about 80-foot-long and 9.5-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 16,200 kilowatts; (3) a new 500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 99 gigawatthours. The cost of the studies under the permit will not exceed $2,000,000.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet http://www.fer.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20972 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* P–11788–000.

c. *Date Filed:* July 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Kentucky L&D #8.

f. *Location:* On the Kentucky River, near the town of Camp Nelson,

Jessamine County, Kentucky, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron,OH 44301, (330) 535–7115.

i. *FERC Contact:* Chalres T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Kentucky River L&D #8 and would consist of: (1) 5 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 100-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 5 generating units having a total installed capacity of 7,000-kW; (3) a new exhaust apron; (4) a new 400-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 42 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing developing application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentions address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly form the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20973 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

August 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No:* 405–048

c. *Date Filed:* August 6, 1999.

d. *Applicant:* Susquehanna Power Company and Philadelphia Electric Power Company.

e. *Name of Project:* Conowingo Project.

f. *Location:* On the Susquehanna River, in Harford and Cecil Counties, Maryland and York and Lancaster Counties, Pennsylvania. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* William Jefferson, Jr., Susquehanna Electric Company, 2569 Shures Landing Road, Darlington, MD 21034, (410) 457–2401.

i. *FERC Contact:* John Mudre, john.mudre@ferc.fed.us, (202) 219–1208.

j. *Deadline for filing comments, motions to intervene and protest:* 10 days from the issuance date of this notice. Please include the project number (405–048) on many comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of Application:* On August 6, 1999, the Conowingo licensees requested Commission approval of a variance of the minimum flow requirements of the project license. According to the license, for the period June 1 to September 14, annually, the licensees must provide a minimum flow release (not including leakage) below the dam of 5,000 cubic feet per second (cfs), or inflow (as measured at the USGS gaging station in Marietta, PA), whichever is less. As of August 5, 1999, the river flow at Marietta was 2,960 cfs.

Because of the continuing drought, the City of Baltimore is preparing to withdraw water from the Conowingo Reservoir for consumptive purposes. The licensees and the Susquehanna River Basin Commission are concerned that the combination of continued drought, the minimum flow requirement, and the City's withdrawals will negatively impact the water levels in the Conowingo reservoir. Depending on its extent, a drawdown could impact generating capacity for system emergencies and recreation on the reservoir, as well as energy production of the Muddy Run Pumped Storage Project and the Peach Bottom Atomic Power Station.

To ensure their ability to maintain the elevation of the Conowingo reservoir, the licensees are requesting a variance of their minimum flow requirement to: (1) count leakage at the dam (about 800 cfs) towards the required minimum flow; and (2) subtract up to 240 cfs from their minimum flow requirement to compensate for consumptive losses from the reservoir to the City of Baltimore (up to 225 cfs) and the City of Chester (up to 15 cfs). As of August 5, 1999, a 240 cfs variance equals about 8% of the required flow release.

The licensees are requesting the minimum flow variance for the duration of the consumptive water withdrawal period, which is uncertain at this time. The noticing of the request for this longer-term period does not preclude the Commission from approving a variance for an interim period.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance) A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTEVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20984 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

August 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. This is a reissuance of the notice issued on January 28, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11652–000.

c. *Date filed:* December 28, 1998, and revised on March 26, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Muskingum L&D #7 Hydroelectric Project

f. *Location:* At the existing Muskingum Lock and Dam #7, which is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation, on the Muskingum River, near the Town of McConnelsville, Morgan County, Ohio.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or e-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* 30 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) the existing Muskingum Lock and Dam #7 with a storage of 2,999 acre-feet and a surface area of 442 acres at an upstream pool elevation of 650.15 feet m.s.l; (2) a powerhouse downstream of the dam having an installed capacity of 3,140 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 20 gigawatt hours. The cost of the studies under the permit will not exceed $1,500,000.

m. *Available Locations of Application:* A copy of the application

is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION, " "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20985 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

August 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. This is a reissuance of the notice issued on January 28, 1999.

a. *Type of Application:* Preliminary Permit

b. *Project No.:* P–11653–000.

c. *Date filed:* December 28, 1998, and revised on March 26, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Muskingum L&D #10 Hydroelectric Project.

f. *Location:* At the existing Muskingum Lock and Dam #10, which is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation, on the Muskingum River, near the Town of Zanesville, Muskingum County, Ohio.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(i).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* 30 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) the existing Muskingum Lock and Dam #10, with a storage of 3,410-acre-feet and a surface area of 470 acres at an upstream pool elevation of 687.55 feet m.s.l.; (2) a powerhouse downstream of the dam having an installed capacity of 4,000 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 26 gigawatt hours. The cost of the studies under the permit will not exceed $1,750,000.

l. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First, Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook

Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development application desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36-months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be received on or before the specified comment date of the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20986 Filed 8–12–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed August 02, 1999 Through August 06, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990276, Draft EIS, USN/BLM, NV, Fallon Naval Air Station (NAS), Proposal for the Fallon Range Complex Requirements, Federal and Private Lands, Churchill, Eureka, Lander, Mineral, Nye and Washoe Counties, NV, Due: October 12, 1999, Contact: Larry Jones (USN) (775) 885–6156 and Terri Knutson (BLM) (775) 426–2405. The US Navy's and US Department of Interior's Bureau of Land Management are Joint Lead Agencies for this Project.

EIS No. 990277, Draft EIS, AFS, CO, White River National Forest, Revised Land and Resource Management Plan, Implementation, Eagle, Garfield, Gunnison, Mesa, Moffat and Pitkin Counties, CO, Due: November 05, 1999, Contact: Martha Ketelle (970) 945–2521.

EIS No. 990278, Draft Supplement, FHW, NY, NY–120/22 Reconstruction Corridor, from Exits 2 Funding, COE Section 10 and 404 Permits, Town of North Castle, Westchester County, NY, Due: September 27, 1999, Contact: H.J. Brown (518) 472–3616.

EIS No. 990279, Draft EIS, FHW, NC, US–1 Transportation Improvements, From Sandhill Road (SR–197) to North to Fox Road (SR–1606), Funding and COE Section 404 Permit, City of Rockingham, Richmond County, NC, Due: September 27, 1999, Contact: Nicholas L. Graf, P.E. (919) 856–4346.

EIS No. 990280, Final EIS, FHW, WA, Interstate 90 (I–90) South Sammamish Plateau Access Road and Sunset Interchange Modifications, Construction, COE Section 404 Permit, Coastal Zone Management and NPDES Permits, King County, WA, Due: September 13, 1999, Contact: Gene Fong (360) 753–9413.

EIS No. 990281, Final EIS, AFS, ID, Eagle Bird Project Area, Timber Harvesting and Road Construction, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID, Due: September 13, 1999, Contact: Jon Johnson (307) 775–6116.

EIS No. 990282, Draft EIS, DOE, NV, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a geologic repository at Yucca Mountain, Nye County, NV, Due: February 08, 2000, Contact: Wendy R. Dixon (702) 794–5564.

Dated: August 10, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–21063 Filed 8–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 19, 1999 Through July 23, 1999 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–J65301–MT Rating EC2, North Belts Travel Plan/Maypie Confederate Vegetation Restoration Project, Improvements, Helena National Forest, Townsend and Helena Ranger District, Broadwater, Lewis and Clark and Meagher County, MT.

Summary: EPA expressed environmental concerns regarding the lack of information and commitment to carrying out a monitoring program to identify actual impacts from all the implementation activities. EPA also expressed concerned about aerial application of herbicides, and suggests the final EIS include recommendations to reduce adverse impacts from aerial spraying.

ERP No. D–COE–F36163–00 Rating EO2, Upper Des Plaines River Flood Damage Reduction Project, Recommended Plan to Construction a Lateral Storage Area, National Economic Development (NED), Lake County, IL and Kenosha and Racine Counties, WI.

Summary: EPA expressed objections based on the limited scope of analysis and range of alternative, and the potential significant adverse impacts to wetland and water quality.

ERP No. D–DOE–G06011–NM Rating LO, Sandia National Laboratories/New Mexico (SNL), Continue Operation, Site-Wide (DOE/EIS–0281), Albuquerque, NM.

Summary: EPA expressed a lack of objection to the continuation of the operation of the facility. Overall, the analyses indicates little difference in the environmental impacts among alternative.

ERP No. D–FHW–L40211–AK Rating EC2, C Street Corridor Project, Improvements from O'Malley Road to International Airport Road, NPDES and COE Section 404 Permits, Municipality of Anchorage, AK.

Summary: EPA expressed concerns related to alternatives evaluated in the EIS, air quality impacts, secondary/cumulative effects analysis, and wetland impacts and mitigation debits analysis. More information has been requested for the final EIS.

ERP No. D–FRC–F03006–00 Rating EO2, Independence Pipeline and Market Link Expansion Projects, Construction and Operation, Interstate National Gas Pipeline, (Docket Nos. CP97–315–001, CP97–319–000, CP98–200–000 and CP98–540–000), NPDES and COE Section 404 Permits, IL, IN, MI, OH, PA and NJ.

Summary: EPA expressed objections based on inadequate information in the following areas: (1) Purposed and Need, (2) Cumulative Impact Analysis, (3) Wetlands and mitigation, (4) Upland forests and mitigation, and (5) Water Quality.

ERP No. D–UAF–G11038–00 Rating EC2, Realistic Bomber Training Initiative, Improve the B–52 and B–1 Aircrews Mission Training and Maximize Combat Training Time, Barksdale Air Force Base, LA, NM and TX.

Summary: EPA has identified some environmental concerns that need to be resolved in the Final EIS to insure and fully insure compliance with the requirements of NEPA and the CEQ regulations. EPA specific comments focus on the need to provide more complete analysis of noise impacts and airspace management issues, and to provide references and citations to support the DEIS analysis.

ERP No. D1–IBR–K39050–CA Rating * * *, Programmatic—CALFED Bay-Delta Program, Develop and Implement Long-Term Comprehensive Plan to Restore Ecological Health and Improve Water Management, San Francisco Bay—Sacramento/San Joaquin River Bay-Delta, CA.

Summary: Review of the EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Final EISs

ERP No. F–AFS–J65299–MT Pinkham Timber Sales and Associated Activities, Implementation, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns regarding potential non compliance with forest standards for open road density, and concern regarding regeneration after timber harvest that may leave many large forest openings. EPA recommended that the final EIS describe water quality/aquatics monitoring that would be required assure efficacy of the mitigation actions.

ERP No. F–BLM–K65206–NV Caliente Management Framework Plan Amendment, Implementation, Management of Desert Tortoise Habitat (Gopherus agassizii), Northeastern Mojave Recovery Unit, Lincoln County, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–G36148–TX Dallas Floodway Extension, Implementation, Trinity River Basin, Flood Damage Reduction and Environmental Restoration, Dallas County, TX.

Summary: The Final EIS adequately responds to EPA comments offered on the Draft EIS.

ERP No. F–COE–L28007–OR Coos Bay-North Bend Water Board Water Supply Expansion Project, (Formerly Known as Joe Ney and Upper Pony Creek Reservoirs Expansion Project), COE Section 10 and 404 Permits, Coos County, OR.

Summary: The Final EIS satisfactorily addresses all of EPA's concerns and comments expressed in the draft EIS.

ERP No. F–FHW–K40231–AZ Red Mountain Freeway (Loop 202) Construction and Operation, between AR 87 (County Club Drive) and US–60 (Superstition Freeway), Funding, NPDES Permit and COE Section 404 Permit, City of Mesa, Maricopa County, AZ.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–F61018–MN Minnesota's Lake Superior Costal Program, Approval and Implementation, St. Louis and Cook Counties, MN.

Summary: EPA expressed a lack of objection to the proposed actions assessed in the FEIS.

ERP No. F–NRC–J09802–UT Uranium Mill Tailings Reclamation at Atlas Site, License Amendment Request for existing License No. SUA–917 along the Colorado River near Moab, UT.

Summary: EPA agrees in principle to issue a license amendment to conduct preliminary cleanup action. However, EPA continues to have objections to the proposed action due to the uncertainty

of whether the proposed reclamation of the site will meet the standards necessary to protect an endangered fish species from the leaching of contaminants into the Colorado River.

Dated: August 10, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–21064 Filed 8–12–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34161B; FRL–6093–4]

Organophosphate Pesticide: Methyl Parathion; Availability of Revised Risk Assessments and Public Participation on Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, methyl parathion. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas. These actions are in response to a joint initiative between EPA and the Department of Agriculture to increase transparency in the tolerance reassessment process for organophosphate pesticides. Although methyl parathion is beginning the 60-public participation process, to address dietary risk from food, the Agency has accepted voluntary cancellation of uses on crops that contributed most to children's diet. These canceled uses represent 90% of the dietary risk to children. Removal of these crops brings the acute dietary risk from food to below levels of concern (78% of the population adjusted dose). The agreement was signed and became effective August 2, 1999, with the basic producers of methyl parathion.

DATES: Comments, identified by docket control number OPP–34161B, must be received by EPA on or before October 12, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34161B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on methyl parathion, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34161B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPP–34161B in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34161B. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, methyl parathion. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the methyl parathion preliminary risk assessments, which where released to the public August 10, 1998 (63 FR 43175) (FRL–6024–3), December 18, 1998 (63 FR 70126) (FRL–6052–6), and January 15, 1999 (64 FR 2644) (FRL–6056–9), through notices in the **Federal Register**.

To address dietary risk from food, the Agency has accepted voluntary cancellation of uses on crops that contributed most to children's diet. These canceled uses represent 90% of the dietary risk to children. Removal of these crops brings the acute dietary risk from food to below levels of concern (78% of the population adjusted dose). The agreement was signed August 2, 1999, with the basic producers of methyl parathion. Specific terms of the agreement include:

Canceled uses—children's food: All fruit uses (apples, cherries, grapes, nectarines, peaches, pears, and plums); carrots, succulent beans, succulent peas, and tomatoes;

Other canceled food uses: Artichokes, broccoli, brussels sprouts, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, rutabagas, spinach, and turnips;

Canceled non-food uses: Ornamental plants, grasses grown for seed, mosquito use, and nursery stock.

Uses remaining: Alfalfa, almonds, barley, beets, cabbage, corn, cotton, dried beans, dried peas, grass, hops, lentils, oats, onions, pecans, rape seed, sugar (canola), rice, rye, soybeans, sunflower, sweet potato, walnuts, wheat, and white potato.

The cancellation of uses will take effect prior to the next growing season. Methyl parathion application for the canceled uses will be prohibited for the 2000 growing season.

Also, risk to handlers and re-entry workers exceed the Agency's level of concern. Cancellation of all fruits and many vegetables will reduce risks to workers. For many of the remaining uses, methyl parathion is applied aerially and these crops are typically not hand-harvested. Also, per the agreement, all non-agricultural uses of methyl parathion will be canceled. Prior to the next growing season, registrants have agreed to increase the reentry intervals to 4–5 days from 2 days.

For the 2001 growing season, the registrants have agreed to use enclosed cabs and cockpits, and closed mixing and loading systems. Registrants will also generate data to address uncertainties in the Agency's occupational risk assessment.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to comment on risk management for methyl parathion. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management ideas to the Agency on the chemical specified in this notice. The public may comment on the Agency's risk management position, which will be reflected in the documents associated with the revised risk assessments.

EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before October 12, 1999 at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 6, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–20873 Filed 8–12–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6421–2]

Petroleum Products Superfund Site; Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensastion and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a de minimis settlement at the Petroleum Products Superfund Site (Site) under an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. Approximately 300 parties have returned signature pages accepting EPA's settlement offer. Of these parties, eight major oil companies are also settling on behalf of approximately 1120 of their branded service stations that sent waste oil to the Site. EPA will

consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: August 3, 1999.

Franklin E. Hill,

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–21014 Filed 8–12–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6421–23]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty and Opportunity to Comment

EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under Section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under Section 311(b)(6), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of Section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3) may be administratively assessed a civil penalty of up to $137,500 by EPA in a "Class II" administrative penalty proceeding. In addition, under Section 311(b)(6), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility in violation of the regulations issued under Section 311(j) of the Clean Water Act, 33 U.S.C. 1321(j), ("Oil Pollution Prevention Regulations"—40 CFR part 112) may be assessed a civil penalty of up to $137,500 by EPA in a "Class II" administrative penalty proceeding. Class II proceedings under Section 311(b)(6) of the Clean Water Act are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits at 40 CFR Part 22 ("Part 22")".

Pursuant to Section 311(b)(6)(C) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(C), EPA is providing public notice of the following proposed Class II penalty proceeding initiated by the Oil Program, Superfund Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105:

In the Matter of Union Pacific Railroad Company (UPRR); Docket Number OPA–09–99–01, filed July 21, 1999; proposed penalty $125,000.00; for a violations of 311(b) and 311(j) of the Clean Water Act, 33 U.S.C. 1321(b) and 33 U.S.C. 1321(j), at UPRR's Norden Snowshed located at Milemarker 192.0, Roseville Subdivision in Norden, California.

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in Part 22. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of Part 22, review the Complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Danielle Carr, Regional Hearing Clerk (ORC–1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this notice.

Dated: July 20, 1999.

Keith A. Takata,

Director, Superfund Division, EPA Region 9.

[FR Doc. 99–20999 Filed 8–12–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, August 10, 1999, the Board of Directors of the Federal Deposit Insurance corporation met in closed session to consider matters relating to the Corporation's corporate, insurance, and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Ms. Carolyn Buck, acting in the place and stead of Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: August 10, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–21113 Filed 8–11–99; 11:02 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, August 18, 1999, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at

approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21116 Filed 8–11–99; 11:02 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, August 18, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Electronic delivery of federally mandated disclosures: (a) proposed rules for public comment authorizing the electronic delivery of disclosures required by Regulations B (Equal Credit Opportunity) (proposed earlier for public comment; Docket No. R–1006); E (Electronic Fund Transfers) (interim rule published earlier with request for comment; Docket No. R–1002); M (Consumer Leasing) (proposed earlier for public; Docket No. R–1004; Z (Truth in Lending) (proposed earlier for public comment; Docket No. R–1005); and DD (Truth in Savings) (proposed earlier for public comment; Docket No. R–1003); and (b) proposed interim rule under Regulation DD permitting depository institutions to provide periodic account activity statements electronically.

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: August 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21117 Filed 8–11–99; 11:02 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–18–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Evaluation of the Needlestick Injury Alert—NEW—The mission of the National Institute of Occupational Safety and Health (NIOSH)is to promote "safety and health at work for all people through research and prevention." NIOSH not only investigates and identifies occupational safety and health hazards, the Institute also develops recommendations for controlling those hazards. In some cases, NIOSH distributes these recommendations about the hazard directly to affected workplaces.

One way that NIOSH accomplishes this is through the Alert. The Alert is usually a six to ten page document that outlines the causes and detection of the hazard and recommendations for controlling the risk to workers. One of the central goals of the Alert is to educate employers and encourage them to take steps to reduce the risks to their workers. It is also important that the recommendations in the Alert provide them with sufficient information.

The Alert chosen for this study concerns the risk of needlestick injuries (NSI) to health care workers. Although there is not precise information about the frequency of NSI in the United States, it has been estimated that approximately 800,000 of these injuries occur each year. As a result of NSI, health care workers can be exposed to HIV, and the Hepatitis B and C viruses. It is believed that the incidence of NSI account for the majority of occupational transmission of these pathogens to health care workers.

In the proposed study, NIOSH will send the Alert to one of two individuals with formal responsibility for employee health and safety in hospitals—Directors of Infection Control and Directors of Health and Safety. NIOSH will then follow-up with a randomly selected sample of hospitals at two points in time. The recipient of the Alert will be interviewed two to six weeks after the Alert was sent and ten to fourteen weeks later, the other key individual will be interviewed.

Broadly, the goals of the study are to: (1) assess whether, and under what circumstances, the Alert encourages employers to adopt control measures, and (2) ascertain whether the information in the Alert assists employers in implementing control measures. Overall, the hope is that the study will reveal ways of making the Alert a more effective tool for primary prevention. The total burden hours are 294.

Respondents	No. of Respondents	No. of responses/respondent	Avg. burden per response
Directors of Infection Control	450	1	0.3333
Directors of Health and Safety	450	1	0.3333

Dated: August 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–20944 Filed 8–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–20–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

The Role of Positive and Negative Emotion in Promoting Hearing Conservation Behaviors Among Coal Miners—New—The mission of the National Institute of Occupational Safety and Health (NIOSH) is to promote "safety and health at work for all people through research and prevention." NIOSH investigates and identifies occupational safety and health hazards and conducts a variety of activities, including educational programs with workers, to help prevent work-related illness and injury.

One of the most widespread, but often overlooked, occupational hazards is noise. As a result, hearing loss is the most common occupational disease in the United States today. More than 30 million workers are exposed to hazardous noise levels.

The risk of hearing loss is particularly high in certain occupations. Research shows that more than 90 percent of coal miners will experience moderate to significant hearing loss by the time they reach retirement. This level of hearing loss has a number of negative implications for both the affected individual and others: (1) Impaired communication with family members, friends, and coworkers can result in social isolation; (2) Unrelenting tinnitus (ringing in the ears) can significantly lower one's quality of life; (3) a diminished ability to monitor the work environment (including warning signals, etc.) increases the risk of accidents and further injury at the workplace; and finally, (4) there are economic costs that result from workers compensation and lower productivity.

NIOSH believes that there are two broad strategies for reducing the risk of hearing loss. First, wherever possible, engineering controls have to be implemented at the source of the hazardous noise. Second, workers have to be educated about hazardous levels of noise and what they can do to prevent hearing loss. This study falls into the latter category.

The study is required because past efforts at educating coal miners about hearing loss have had only mixed success. Hearing loss occurs without pain or obvious physical abnormalities, so it has been difficult to create a sense of urgency about this problem among workers. NIOSH has to identify new and more effective ways of promoting hearing conservation behaviors.

In this study, NIOSH proposes working with the United Mine Workers of America, and experts in health communication, to test the effectiveness of several innovative approaches to communicating risk and promoting safer behaviors. Different messages will be sent to five different groups of coal miners. All participants will receive some beneficial information. The researchers will follow up with these groups at two different points in time to assess the relative effectiveness of the messages.

The central purpose of this study is to promote hearing conservation among coal miners. However, NIOSH believes that the results of this study will help in similar efforts with other worker populations. The total burden hours are 340.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden per response (in hrs.)
Coal Miners in Pretest	80	1	.5
Coal Miners in Study	300	2	.5

2. Measurement of Stress and Stressful Life Events in Black Women of Reproductive Age (0920–0356)—Reinstatement—National Center for Chronic Disease Prevention and Health Promotion. A review of studies of psycho-social factors and adverse pregnancy outcome supports the hypothesis that high levels of exposure to stressful life experiences put black women at increased risk for adverse reproductive outcome, particularly Pre-Term Delivery (PTD) and Very Low Birth Weight (VLBW). The purpose of this study is to evaluate the reliability and validity of existing instruments that measure stress and stressful life events in black women of reproductive age. Eligible subjects will be black women who live in the Atlanta metropolitan area. Subjects will be recruited from flyers, newspaper announcements, hospitals and clinics in the metropolitan Atlanta area. Subjects will be screened and selected based on age (18–30 or 31–45 years), years of education (12, 13–15, 16 or more), and pregnancy status (pregnant, not pregnant). A maximum of thirty women will be selected for each combination of age, education and pregnancy status. The minimum age for participation will be 18 to avoid the complications due to requirement of parental consent. Women will be excluded if they use illicit drugs, such as heroin, cocaine and marijuana because these substances may alter the metabolism of cortisol. The contact, timing and spacing of the interviews and laboratory collection are based on the methodology developed and used for conducting reliability and validity tests. Approximately one half of the women will be pregnant at the time of data collection.

Women enrolled in the study respond to a series of face-to-face and self-administered demographic and psycho-social questionnaires. Women are also asked to provide a saliva sample so that we can correlate reported levels of stress with biological measures of stress.

Participation in this study is voluntary and participants will receive compensation for their time. A written informed consent will be obtained and oversight will be provided by local institutional review board.

This project should take two years. One hundred fifteen (115) women will

participate only in the validity study and thirty-nine (39) women will participate in the validity and reliability study. The validity study requires one interview and one salivary sample. The reliability study requires a second interview and a second salivary specimen, approximately two weeks after the first interview.

During the first three months of the study, the Project Director will set up the office, hire staff and student assistants and provide interviewer and data entry training. The Project Director will also make contacts and explore potential sites for recruiting women for the study. During the next nine months, all of the interviews (approximately 115 validity subjects and 39 reliability subjects remaining) will be conducted and data entry of the quantitative instruments (i.e, Demographic Lifestyle Questionnaire, Cohen Perceived Stress Scale, Life Experience Survey (LES), ARIC/BAECKE Questionnaire of Habitual Physical Activity, Center for Epidemiologic Studies Depression Scale (CES–D), Profile of Mood States, Multiple Affect Adjustive Checklist, Speilberger Trait Anxiety Inventory—Self Evaluation Questionnaire) will be completed. Scoring for the qualitative instruments (i.e., Structured Event Probe and Narrative Rating Method (SEPRATE) and Life Events and Difficulties Schedule (LEDS) will be initiated during year 1, but the bulk of the qualitative scoring will be completed during Year 2. The data entry of the qualitative date will be completed during Year 2. Preliminary analyzes will be conducted during Year 2, with the technical assistance of CDC. The total burden hours are 579.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)
Reliability Study Group	39	2	3
Validity Study Group	115	1	3

Dated: August 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–20945 Filed 8–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the National Vaccine Advisory Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through July 30, 2001.

FOR FURTHER INFORMATION CONTACT: Robert F. Breiman, M.D., Executive Secretary, National Vaccine Advisory Committee, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, (A–11), Atlanta, Georgia 30333, telephone 404/639–4452 or fax 404/639–3036.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99–20943 Filed 8–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Time and Date: 8:30 a.m.–5 p.m., September 2, 1999.

Place: Hyatt Regency Atlanta Hotel, Hong Kong Conference Room, 265 Peachtree Street, NE Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 32 people.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be Discussed: Agenda items include issues pertaining to CDC's HIV Prevention budget. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–8600, e-mail pbf7@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–20949 Filed 8–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

NAME: Peer Review meeting on the NIOSH research study entitled "Evaluation of 'Best Practices Back Injury Prevention Program' in Nursing Homes."

TIME AND DATE: 8:30 a.m.–12 p.m., September 24, 1999.

LOCATION: National Institute for Occupational Safety and Health, Prete Building, Large Conference Room, 3040

University Avenue, Morgantown, West Virginia 26505–2888.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

PURPOSE: To provide a peer review of the draft research protocol for a study on a back injury prevention program among nursing home workers. Participants will provide NIOSH with comments regarding the technical and scientific aspects of the study protocol, "Evaluation of a 'Best Practices Back Injury Prevention Program' in Nursing Homes."

MATTERS TO BE DISCUSSED: The agenda will include a presentation/overview of the study; followed by comments on the technical and scientific aspects of the planned research. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited. Written comments will also be considered.

CONTACT PERSON FOR ADDITIONAL INFORMATION: James W. Collins, Ph.D., Project Officer, Division of Safety Research, NIOSH, CDC, M/S P–1133, 1095 Willowdale Road, Morgantown, West Virginia, 26505–2888. Telephone (304) 285-5998, E-mail joc4@cdc.gov. Copies of the draft protocol may be obtained by contacting Dr. Collins.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99–20948 Filed 8–12–99; 8:45 am]

BILLING CODE 4160–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1168]

Public Health Impact of Foodborne Listeria Monocytogenes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition, in conjunction with the National Advisory Committee on Microbiological Criteria for Foods, in cooperation with the Food Safety and Inspection Service, U.S. Department of Agriculture (FSIS/USDA) is announcing a public meeting to discuss issues related to the risk assessment models under development to examine the relationship between *Listeria monocytogenes* and human health. The sponsoring agencies invite comments on issues related to this meeting.

DATES: The public meeting will be held on Thursday, September 23, 1999, from 8 a.m. to 5 p.m. Submit registration and written notices of participation by September 13, 1999. Submit written comments by October 25, 1999.

ADDRESSES: The public meeting will be held at The Washington Plaza Hotel, 10 Thomas Circle, NW., at Massachusetts Ave. and 14th St., Washington, DC. Submit registration and written notices of participation to Catherine M. DeRoever (address below). Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Catherine M. DeRoever, Advisory Committee Office (HFS–22), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970, or e-mail "cderoeve@bangate.fda.gov".

Those persons interested in attending the public meeting should, by September 13, 1999, fax their name, title, firm name, address, and telephone number to Catherine M. DeRoever (fax number above).

Those persons interested in presenting information at the public meeting should, by September 13, 1999, fax their name, title, firm name, address, telephone number, and an outline of their presentation to Catherine M. DeRoever (fax number above).

There is no registration fee for this public meeting, but advance registration is suggested. Interested persons are encouraged to register early because space may be limited.

SUPPLEMENTARY INFORMATION: This public meeting will provide an opportunity for an open discussion of the initial calculations of the *L. monocytogenes* risk assessment. The integrating of food groups, *L. monocytogenes* presence in foods and food consumption data will be described and preliminary conclusions drawn. The scientific inferences and models that can be made from the completed search and analysis of epidemiology and dose-response information will be presented. The risk assessment team will request comments on the approaches and analyses presented and on any additional analyses that should be performed.

The sponsoring agencies encourage individuals with relevant scientific data or information to present such information at the meeting or in written comments to this record.

A transcript of the public meeting will be prepared. Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting.

The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 6, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20990 Filed 8–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0438]

Bare-Hand Contact of Ready-to-Eat Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition, in conjunction with the National Advisory Committee on Microbiological Criteria for Foods (the committee), and in cooperation with the Food Safety and Inspection Service, U.S. Department of Agriculture is announcing a public meeting to discuss issues related to the contamination of ready-to-eat foods in retail establishments. The sponsoring agencies invite comments on this issue at the request of the Conference for Food Protection.

DATES: The public meeting will be held on Tuesday, September 21, 1999, from 8 a.m. to 5 p.m., and on Wednesday,

September 22, 1999, from 8 a.m. to 12:30 p.m. Registration and written notices of participation must be submitted by September 13, 1999.

ADDRESSES: The public meeting will be held at The Washington Plaza Hotel, 10 Thomas Circle NW., at Massachusetts Ave. and 14th St., Washington, DC. Submit registration and written notices of participation to Catherine M. DeRoever (address below). Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Catherine M. DeRoever, Advisory Committee Office (HFS–22), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970, or e-mail "cderoeve@bangate.fda.gov".

Those persons interested in attending the public meeting should, by September 13, 1999, fax their name, title, firm name, address, and telephone number to Catherine M. DeRoever (fax number above).

Those persons interested in presenting information at the public meeting should, by September 13, 1999, fax their name, title, firm name, address, telephone number, and an outline of their presentation to Catherine M. DeRoever (fax number above). Oral comments may be made during the open public comment period, Tuesday, September 21, 1999, between 4 p.m. and 5 p.m. Time allotted to each public commentator may be limited to 3 minutes with time being assigned on a first-come-first-served basis.

There is no registration fee for this public meeting, but advance registration is suggested. Interested persons are encouraged to register early because space may be limited.

SUPPLEMENTARY INFORMATION: This public meeting will provide an opportunity for an open discussion of the issues related to bare-hand contact of ready-to-eat foods in retail establishments. The committee will be asked to consider the risk of transmitting bacterial, viral, and parasitic pathogens from foodworkers, via ready-to-eat foods, to consumers, and the effectiveness of interventions.

The sponsoring agencies encourage individuals with relevant scientific data or information (i.e., epidemiology and effectiveness of interventions to prevent or minimize risks associated with bare-hand contact of ready-to-eat foods) to present such information at the meeting or in written comments to this record.

A transcript of the public meeting will be prepared. Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 6, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20992 Filed 8-12-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1075]

Public Health Impact of Vibrio Parahaemolyticus in Molluscan Shellfish

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition, in conjunction with the National Advisory Committee on Microbiological Criteria for Foods, in cooperation with the Food Safety and Inspection Service, U.S. Department of Agriculture (FSIS/USDA) is announcing a public meeting to discuss issues related to a preliminary risk assessment model examining the relationship between *Vibrio parahaemolyticus* and human health.

DATES: The public meeting will be held on Friday, September 24, 1999, from 8 a.m. to 3:15 p.m. Submit registration and written notices of participation by September 13, 1999. Submit written comments by October 25, 1999.

ADDRESSES: The public meeting will be held at The Washington Plaza Hotel, 10 Thomas Circle, NW., at Massachusetts Ave. and 14th St., Washington, DC. Submit registration and written notices of participation to Catherine M. DeRoever (address below). Submit written comments to the Dockets Management Branch (HFA–305), Food an Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Catherine M. DeRoever, Advisory Committee Office (HFS–22), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970, or e-mail "cderoeve@bangate.fda.gov".

Those persons interested in attending the public meeting should, by September 13, 1999, fax their name, title, firm name, address, and telephone number to Catherine M. DeRoever (fax number above).

Those persons interested in presenting information at the public meeting should, by September 13, 1999, fax their name, title, firm name, address, telephone number, and an outline of their presentation to Catherine M. DeRoever (fax number above).

There is no registration fee for this public meeting, but advance registration is suggested. Interested persons are encouraged to register early because space may be limited.

SUPPLEMENTARY INFORMATION: This public meeting will provide an opportunity for review and comment of the preliminary *V. parahaemolyticus* risk assessment. The role of factors in the environment, post harvest handling and processing in the probability of illness will be described. Integration of epidemiology, consumption, and dose-response will be modeled. Scientific inferences, assumptions, and modeling tools will be made from the completed search of peer reviewed literature. Comments will be requested on the approaches and analyses presented and any additional information that should be included in the analyses.

The sponsoring agencies encourage individuals with relevant scientific data or information to present such information at the meeting or in written comments to this record.

A transcript of the public meeting will be prepared. Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 6, 1999.
Margaret M. Dotzel,
Acting Associate Commissioner for Policy.
[FR Doc. 99–20991 Filed 8–12–99; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1050–PN]

RIN 0938–AJ34

Medicare Program; Special Payment Limits for Certain Durable Medical Equipment and Prosthetic Devices

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice proposes special payment limits, for five items of durable medical equipment and one prosthetic device, to replace the current fee schedule amounts for these items. Currently, payment under the Medicare program for these items is equal to 80 percent of the lesser of the actual charge for the item or the fee schedule amount for the item. We have determined that the Medicare fee schedule amounts for five durable medical equipment items and one prosthetic device are not inherently reasonable because they are grossly excessive relative to the amounts paid for these items by the Department of Veterans Affairs. This notice proposes that payment for these items be 80 percent of the actual charges for the items or the special payment limits we set for these items, whichever is less. It is intended to prevent continuation of excessive payment for these items. The special payment limits would be based on the median wholesale prices paid by the Department of Veterans Affairs for these items plus an appropriate markup.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, by 5 p.m. on October 12, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1050–PN, P.O. Box 9016, Baltimore, MD 21244–9016.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1050–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Joel Kaiser, (410) 786–4499.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa, Discover, or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/nara/index.html, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

I. Background

A. Payment Under Reasonable Charges

Before January 1, 1989, payment for all durable medical equipment (DME) and prosthetic devices furnished under Part B of the Medicare program (Supplementary Medical Insurance) was made on a reasonable charge basis through contractors known as Medicare carriers and intermediaries. Reasonable charge determinations were generally based on customary and prevailing charges derived from historic charge data. The reasonable charges were established by the carriers using the methodology set forth in sections 1833 and 1842(b) of the Social Security Act (the Act) and 42 CFR part 405, subpart E of our regulations. The reasonable charge for an item was generally set at the lowest of the following factors:

- The supplier's actual charge for the item.
- The supplier's customary charge.
- The prevailing charge in the locality for the item.

(The prevailing charge could not exceed the 75th percentile of the customary charges of suppliers in the locality.)

- The inflation indexed charge. (The inflation indexed charge is defined in § 405.509(a) as the lowest of the fee screens used to determine reasonable charges for services, supplies, and equipment paid on a reasonable charge basis (excluding physicians' services) that is in effect on December 31 of the previous fee screen year, updated by the inflation adjustment factor.)

B. Payment Under Fee Schedules

Sections 1834(a) and (h) of the Act provide that Medicare payment for DME and prosthetics and orthotics, respectively, is equal to 80 percent of the lesser of the actual charge for the item or the fee schedule amount for the item. Section 1834(a) of the Act classifies DME into the following payment categories:

- Inexpensive or other routinely purchased DME.
- Items requiring frequent and substantial servicing.
- Customized items.
- Oxygen and oxygen equipment.
- Other covered items (other than DME).
- Other items of DME (capped rental items).

There is a separate methodology for determining the fee schedule payment amount for each category of DME.

The fee schedules for DME and prosthetic devices are calculated using average reasonable charges from 1986 and 1987 and are generally adjusted annually by the change in the Consumer Price Index for all Urban Consumers (CPI–U), that is, the covered item update, for the 12-month period ending June 30 of the preceding year. Section 1834(h)(2)(B) of the Act requires that regional fee amounts be calculated for prosthetic devices. The regional fee

amounts are equal to the weighted average of the local (Statewide) fee amounts in each of our 10 regions. In addition, the fee schedules for DME and prosthetics and orthotics are limited by a ceiling (upper limit) and floor (lower limit). For DME, the ceiling and floor are equal to 100 percent and 85 percent, respectively, of the median (mid-point) of the local (Statewide) fee amounts. For prosthetics and orthotics, the ceiling and floor are equal to 120 percent and 90 percent, respectively, of the regional fee amounts. The fee schedule amounts for areas outside the continental United States are not subject to the ceiling and floor limits for DME or the regional fee amounts and ceiling and floor limits for prosthetic devices. The local fee schedule amounts for areas outside the continental United States are not included in the calculation of the ceiling and floor limits or regional fee amounts.

C. Exception to the Standard Payment Methodologies—Special Payment Amounts

Section 1842(b)(8) of the Act states that we may establish special payment amounts for particular items or services, other than physicians' services, that are covered under Medicare Part B, for which we determine that the application of standard Part B pricing rules results in grossly excessive or grossly deficient payment amounts. The applicable regulations are located at § 405.502(g) and require us to consider relevant information in establishing payment limits that are realistic and equitable. The special payment limit is either a specific dollar amount or is based on a special method to be used in determining the payment amount.

Section 405.502(g)(1) provides the following examples of circumstances that may result in grossly deficient or excessive charges:

- The marketplace is not competitive.
- Medicare and Medicaid are the sole or primary source of payment for a category of items or services.
- The payment amounts do not reflect changing technology, increased facility with that technology, or changes in acquisition, production, or supplier costs.
- The payment amounts for a category of items or services in a particular locality are grossly higher or lower than the payment amounts in other comparable localities for the category of items or services, taking into account the relative costs of furnishing the category of items or services in the different localities.
- The payment amounts for a category of items or services are grossly higher or lower than acquisition or production costs for the category of items or services.
- There have been increases in payment amounts for a category of items or services that cannot be explained by inflation or technology.
- The payment amounts for a category of items or services are grossly higher or lower than the payments made for the same category of items or services by other purchasers in the same locality.

Section 405.502(g)(3) requires that we publish for public comment proposed payment limits in the **Federal Register**. We allow 60 days for receipt of public comments on the proposal. After we have considered all timely comments, we publish in the **Federal Register** a final notice announcing the special payment limits and our analyses and responses to the comments.

D. Items for Which Adjustments Are Proposed

Using the authority discussed above, we reviewed the current Medicare payment amounts for the following items:

- Folding walker (pickup), adjustable or fixed height—code E0135 in the HCFA Common Procedure Coding System (HCPCS).
- Folding walker, wheeled, without seat—HCPCS code E0143.
- Commode chair, stationary, with fixed arms—HCPCS code E0163.
- Transcutaneous Electrical Nerve Stimulator (TENS), two lead, localized stimulation—HCPCS code E0720.
- TENS, four lead, larger area/multiple nerve stimulation—HCPCS code E0730.
- Vacuum erection system—HCPCS code L7900.

Section 134 of the Social Security Act Amendments of 1994 specifically mandates that we review our payments for decubitus care equipment, TENS devices, and other items we consider appropriate. We gathered payment data on 20 items identified as either decubitus care equipment or TENS devices and 80 additional items drawn from a list of top 100 items ranked by Medicare expenditures. Based on a review of retail prices, wholesale prices, and prices paid by payers other than Medicare, we identified 20 items from this list of 100 items that warranted further review. We then obtained data on the average payments made by the Department of Veterans Affairs (VA) for these 20 items and, based on a review of this data, and as we explain below, we determined that payment adjustments were necessary for the six items listed above. These six items represent items that are generally purchased as opposed to being rented. We feel that more data on rental costs and services is needed in order to address the reasonableness of the Medicare payment amounts for rental items for which we obtained the VA data, that is, items which are generally furnished to Medicare beneficiaries on a rental basis.

With the exception of HCPCS code L7900, all items are covered as DME and classified under the inexpensive or routinely purchased DME fee schedule category. Medicare payment for these items is made on either a purchase or a rental basis. Total Medicare payment for rentals is limited to 100 percent of the fee schedule amount for purchase of the item. HCPCS code L7900 identifies a prosthetic device for which Medicare payment is made under the fee schedule on a purchase basis only. All of the items above are high volume items in terms of Medicare expenditures.

The 1998 fee schedule amounts for purchase of these items for areas within the continental United States range from $67.97 to $79.97 for code E0135; $97.48 to $114.68 for code E0143; $89.42 to $105.20 for code E0163; $298.02 to $350.61 for code E0720; $300.43 to $353.45 for code E0730; and $357.76 to $477.01 for code L7900. The 1998 fee schedule amounts for purchase of these items for areas outside the continental United States (that is Alaska, Hawaii, and Puerto Rico) range from $90.66 to $115.45 for code E0135; $107.85 to $145.22 for code E0143; $109.00 to $138.62 for code E0163; $207.89 to $465.26 for code E0720; $338.93 to $508.22 for code E0730; and $394.65 to $473.37 for code L7900.

Based on a comparison of Medicare payment amounts and payment amounts from the VA, we determined that the current payment amounts for these items are grossly excessive.

E. Comparison With the Department of Veterans Affairs

The VA also administers a national program that includes the furnishing of DME and prosthetic devices. Unlike Medicare, which is a payer of services and not a provider of services, the VA generally obtains these items by direct acquisition from manufacturers and wholesalers and provides them directly to veterans through its network of medical centers located throughout the United States. Therefore, the prices paid by the VA for these items represent wholesale prices as opposed to retail prices charged by outlets that supply these items to Medicare beneficiaries. To make a valid comparison between Medicare and VA payments, a price

markup must be applied to the VA wholesale prices to approximate retail prices.

We obtained the median wholesale payment amount for the items identified in section D above from a number of VA medical centers across the nation. We received data from 109 (approximately 63 percent) of the VA medical centers across the nation. We increased the median wholesale amount by a markup of 67 percent; that is, a two-thirds markup. The amount of the markup was based on data we compiled from over 200 HCPCS coding recommendations submitted by the industry to us for medical equipment and devices from 1989 to 1998. When submitting recommendations for new HCPCS codes, the requester, usually the manufacturer of the item, is required to list the wholesale and suggested retail prices for the item. The median markup calculated using these data was 67 percent. We consider 67 percent to be the upper end of a range of acceptable markups. If public comments or additional research indicate that a markup of less than 67 percent is appropriate, we reserve discretion to establish a markup of less than 67 percent. It should be noted that requests for new HCPCS codes generally involve new products or technology; therefore, it can be assumed that the markups for these items will be, in general, higher than markups for items that have been on the market for a number of years.

The VA and Medicare payments are compared in the table below.

Code	VA Payment	VA+67%	Medicare floor*	Medicare ceiling*
E0135	$30.24	$50.50	$67.97	$79.97
E0143	45.44	75.88	97.48	114.68
E0163	37.64	62.85	89.42	105.20
E0720	89.89	150.11	298.02	350.61
E0730	124.00	207.08	300.43	353.45
L7900	131.65	219.86	357.76	477.01

*Highest and lowest 1998 fee schedule amounts for States within the continental United States.

II. Provisions of This Proposed Notice

Below are the amounts we are proposing as the special payment limits:

A. Folding Walker (Pickup), Adjustable or Fixed Height—HCPCS Code E0135

The median VA wholesale payment amount for this item is $30.24. Using a markup of 67 percent results in an estimated retail payment amount of $50.50. We propose that the special payment limit for purchase of this item, when new and when furnished in the continental United States, be equal to $50.50. This amount is approximately 37 percent below the 1998 Medicare ceiling of $79.97 and 26 percent below the 1998 Medicare floor of $67.97. In keeping with the Medicare policy for calculating fee schedule amounts for the purchase of used equipment and the rental of equipment for which base fee schedule data (that is, reasonable charge data from 1986 and 1987) are not available (see section 5102.2.A.2 of the Medicare Carriers Manual), we propose that the special payment limit for purchase of this item, when previously used by other patients and when furnished in the continental United States, be equal to $37.88 or 75 percent of the special payment limit for purchase of a new item. We propose that the special payment limit for the monthly rental of this item, when furnished in the continental United States, be equal to $5.05 or 10 percent of the special payment limit for purchase of a new item.

B. Folding Walker, Wheeled, Without Seat—HCPCS Code E0143

The median VA wholesale payment amount for this item is $45.44. Using a markup of 67 percent results in an estimated retail payment amount of $75.88. We propose that the special payment limit for purchase of this item, when new and when furnished in the continental United States, be equal to $75.88. This amount is approximately 34 percent below the 1998 Medicare ceiling of $114.68 and 22 percent below the 1998 Medicare floor of $97.48. We propose that the special payment limit for purchase of this item, when previously used by other patients and when furnished in the continental United States, be equal to $56.91 or 75 percent of the special payment limit for purchase of a new item. We propose that the special payment limit for the monthly rental of this item, when furnished in the continental United States, be equal to $7.59 or 10 percent of the special payment limit for purchase of a new item.

C. Commode Chair, Stationary, With Fixed Arms—HCPCS Code E0163

The median VA wholesale payment amount for this item is $37.64. Using a markup of 67 percent results in an estimated retail payment amount of $62.85. We propose that the special payment limit for purchase of this item, when furnished in the continental United States, be equal to $62.85. This amount is approximately 40 percent below the 1998 Medicare ceiling of $105.20 and 30 percent below the 1998 Medicare floor of $89.42. We propose that the special payment limit for purchase of this item, when previously used by other patients and when furnished in the continental United States, be equal to $47.14 or 75 percent of the special payment limit for purchase of a new item. We propose that the special payment limit for the monthly rental of this item, when furnished in the continental United States, be equal to $6.29 or 10 percent of the special payment limit for purchase of a new item.

D. Transcutaneous Electrical Nerve Stimulator (TENS), Two Lead, Localized Stimulation—HCPCS Code E0720

The median VA wholesale payment amount for this item is $89.89. Using a markup of 67 percent results in an estimated retail payment amount of $150.11. We propose that the special payment limit for purchase of this item, when furnished in the continental United States, be equal to $150.11. This amount is approximately 57 percent below the 1998 Medicare ceiling of $350.61 and 50 percent below the 1998 Medicare floor of $298.02.

E. TENS, Four Lead, Larger Area/ Multiple Nerve Stimulation—HCPCS Code E0730

The median VA wholesale payment amount for this item is $124.00. Using a markup of 67 percent results in an estimated retail payment amount of $207.08. We propose that the special payment limit for purchase of this item, when furnished in the continental United States, be equal to $207.08. This amount is approximately 41 percent below the 1998 Medicare ceiling of

$353.45 and 31 percent below the 1998 Medicare floor of $300.43.

F. Vacuum Erection System—HCPCS Code L7900

The median VA wholesale payment amount for this item is $131.65. Using a markup of 67 percent results in an estimated retail payment amount of $219.86. We propose that the special payment limit for purchase of this item, when furnished in the continental United States, be equal to $219.86. This amount is approximately 46 percent below the highest 1998 Medicare regional fee schedule amount of $406.34 and 43 percent below the lowest 1998 Medicare regional fee schedule amount of $382.96.

G. Areas Outside the Continental United States

The 1998 DME and prosthetic device fee schedule amounts for areas outside the continental United States are, on average, 10 percent greater than the 1998 DME and prosthetic device fee schedule amounts for areas within the continental United States. For the six items identified above, we propose using a modified approach to set special payment limits for areas outside the continental United States (that is, Alaska, Hawaii, Puerto Rico). We propose that special payment limits be established by reducing the 1998 fee schedule amounts for these areas by the percentage difference between the 1998 national ceilings, or the highest regional fee schedule amount in the case of HCPCS code L7900, and the special payment limits proposed above for the continental United States. However, in no case can the special payment limit for an area outside the continental United States be lower than the special payment limit for the continental United States increased by 10 percent. We are, therefore, proposing that the special payment limits for areas outside the continental United States be at least 10 percent greater than the special payment limits for areas within the continental United States because of the unique costs of doing business in these areas. We base this 10 percent parameter on the fact that the fee schedule amounts for all DME and prosthetic devices for areas outside the continental United States, in general, are, on average, 10 percent greater than the fee schedule amounts for areas within the continental United States.

H. Applicability

The initial special payment limits we propose would apply to items furnished on or after the effective date of the published final notice. We propose that the fee schedule amounts for the six items identified be reduced incrementally by a factor of 15 percent or less per year until they are equal to the special payment limits applicable to each item. For each calendar year after the calendar year in which the proposed special payment limits are fully in effect, the special payment limits would be adjusted using the applicable covered item update (see "I. B. Payment Under Fee Schedules") for the appropriate calendar year. For example, as noted above, the 1998 fee schedule amounts for HCPCS code L7900 for areas within the continental United States range from $382.96 to $406.34. The special payment limit of $219.86 that we are proposing would be phased in over a number of years so that in any given year no adjustment would exceed 15 percent. We are proposing that the special payment amounts be phased in so that the impact of the reductions is spread out over multiple years and gives the suppliers an extended period in which to adjust to the reductions in payment. In addition, most DME suppliers are small businesses and applying the payment limits at one time would impose a serious burden on these types of entities, particulary those that specialize in furnishing the items addressed in this notice. The proposed special payment limit of $219.86 for HCPCS code L7900 would be phased in as follows:

Calendar year	Range in limits within continental U.S.
1998	$382.96 to $406.34.
1999	$325.52 to $345.39.
2000	$276.69 to $293.58.
2001	$235.19 to $249.54.
2002	$219.86 (special limit fully implemented).

For each calendar year after 2002, the special payment limit for HCPCS code L7900 would be equal to the special payment limit for the preceding calendar year increased by the appropriate covered item update for prosthetic devices. The ranges in the proposed payment limits, by calendar year, for all six HCPCS codes, for items furnished within the continental United States, are listed in the table below.

HCPCS	1999	2000	2001	2002	2003	2004
E0135	57.77 to 67.97	50.50 to 57.77	50.50[1]	(2)	(2)	(2)
E0143	82.86 to 97.48	75.88 to 82.86	75.88[1]	(2)	(2)	(2)
E0163	76.01 to 89.42	64.61 to 76.01 .85 to 64.61.	62.85[1]	(2)	(2).	
E0720	253.32 to 298.02	215.32 to 253.32	183.02 to 215.32	155.57 to 183.02	150.11 to 155.57	[1]150.11
E0730	255.37 to 300.43	217.06 to 255.37	[1]207.06 to 217.06	207.06	(2)	(2)
L7900	325.52 to 345.39	276.69 to 293.58	235.19 to 249.54	[1]219.86[1]	(2)	(2)

[1] Special payment limit fully implemented.
[2] Special payment limit equal to the special payment limit for the preceding calendar year increased by the appropriate covered item update.

I. Proposed Payment

We propose that payment for the six items identified equal 80 percent of the lesser of the actual charge for the system or the appropriate special payment limit, as described in sections A. through G. above.

J. Carrier-Granted Exceptions

Section 405.502(h)(3) states that we must set forth the criteria and circumstances, if any, under which a carrier may grant an exception to a special payment limit. We are not proposing any circumstances under which a carrier may grant an exception to the application of the proposed special payment limits. We are interested in receiving comments on any circumstances for which a commenter believes an exception should be granted.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

IV. Regulatory Impact Statement

We have examined the impacts of this proposed notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more annually). The reductions in total expenditures over the next 5 years are estimated to be: $10 million in 1999; $20 million in 2000; $30 million in 2001; $30 million in 2002; and $30 million in 2003. Since the proposed notice results in reductions in total expenditures of less than $100 million per year, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities either by non-profit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity. Based on data from the Small Business Administration (SBA), we estimate that 98 percent of suppliers of DME and prosthetic devices would be defined as small entities for purposes of the RFA. We estimate that 106,000 entities bill Medicare for DME, prosthetics, orthotics, surgical dressings, and other equipment and supplies each year. We believe the impact on small businesses will be minimal because the implementation of the payment amounts will be phased in over several years. The annual adjustment in payment will be no greater than 15 percent per year. Total Medicare expenditures for DME and prosthetics devices is approximately $5 billion per year. As indicated above, we estimate that the proposed payment reductions, when fully implemented, will reduce these expenditures by approximately $30 million per year. Therefore, the overall impact on the total industry annual receipts will be small, that is, less than 1 percent reduction in Medicare revenue. However, while the overall impact is small, some suppliers would be seriously affected as a result of the mix of DME and prosthetics that they furnish to Medicare beneficiaries.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has less than 50 beds. We are not preparing a rural impact analysis since we have determined that this proposed notice would not have a significant economic impact on the operation of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any proposed notice that may result in an annual expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100 million. The proposed notice would not have an effect on the governments mentioned, and private sector costs would be less than the $100 million threshold.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections 1834(a) and 1842(b) of the Social Security Act (42 U.S.C. 1395m and 1395u).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 21, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: April 28, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–20989 Filed 8–12–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3022–N]

Medicare Program; Meeting of the Drugs, Biologics, and Therapeutics Panel of the Medicare Coverage Advisory Committee—September 15 and 16, 1999

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Drugs, Biologics, and Therapeutics Panel of the Medicare Coverage Advisory Committee. The Panel will discuss presentations from interested persons regarding the combination of high dose chemotherapy and stem cell transplantation for the treatment of multiple myeloma. This meeting is open to the public and complies with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* September 15, 1999, from 1 p.m. until 4 p.m., E.D.T., and September 16, 1999, from 8 a.m. until 4 p.m., E.D.T.

Deadline for Presentation Submissions: August 20, 1999, 5 p.m., E.D.T.

Deadline for Submission of Final Comments: September 30, 1999, 5 p.m., E.D.T.

ADDRESSES: *The Meeting:* The meeting will be held at the Baltimore Convention Center, One West Pratt Street, Rooms 327–329, Baltimore, Maryland 21201–2499.

Presentations and Comments: Submit written presentations and comments to Lauren K. Geyer, MHS, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Lauren K. Geyer, MHS, Executive Secretary, (410) 786–2004.

SUPPLEMENTARY INFORMATION: We have established the Medicare Coverage Advisory Committee (MCAC) to provide advice and recommendations to us about clinical coverage issues. The MCAC is composed of an Executive Committee and six panels, each containing members with expertise in one or more of the following fields: clinical and administrative medicine, biologic and physical sciences, public health administration, health care data and information management and

analysis, the economics of health care, medical ethics, and other related professions. Each panel is composed of a chairperson, voting members, a nonvoting consumer representative, and a nonvoting industry representative.

Current Members of the Panel

Thomas V. Holohan, MA, MD, FACP (Chairperson); Leslie P. Francis, JD, Ph.D.; Judith A. Cahill, MA; Michael L. Friedland, MD; Kathy J. Helzlsouer, MD, MHS; Robert C. Johnson, MS; Ronald P. Jordan, R.Ph.; Mitchell Sugarman, MBA, MS; Cathleen M. Dooley, MPA; and Christine M. Grant, JD.

Topic of the Meeting

The Panel will discuss presentations from interested persons regarding the combination of high dose chemotherapy and stem cell transplantation for the treatment of multiple myeloma.

Procedure and Agenda

The Panel will hear oral presentations from the public for approximately 90 minutes on each day of the meeting. The Panel may limit the number and duration of oral presentations to the time available. If you wish to make a presentation during one of these sessions, you must submit the following to the Executive Secretary before the Deadline for Presentation Submissions date listed in the Dates section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of the time required to make the presentation. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the 90-minute public presentation on Day 2 of the meeting, we will make a presentation to the Panel. After our presentation, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. At the end of the Panel deliberations, the Panel will allow a 30-minute open public session for any attendee to address issues specific to the topic.

Submission of Final Comments

Interested persons not scheduled to make an oral presentation, unable to attend the meeting, or wishing to make further remarks, may submit written comments to the Executive Secretary by the Deadline for Submission of Final Comments in the Dates section of this notice.

HCFA Home Page

You may access detailed information regarding the agenda and schedule of presentations on our home page (www.hcfa.gov/quality/8b.htm) the day after the Deadline for Presentation Submissions in the Dates section of this notice.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 9, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–20988 Filed 8–12–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: A Basal Cell Carcinoma Tumor Suppressor Gene

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 08/857,636 filed May 16, 1997 entitled "A Basal Cell Carcinoma Tumor Suppressor Gene", PCT application US97/08433 filed May 16, 1997 designating all countries, except the U.S., entitled, "A Basal Cell Carcinoma Tumor Suppressor Gene" to Ontogeny, Inc., having a place of business in Cambridge, MA. The United States of America is the assignee or the exclusive licensee of the patent rights in this invention.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before October 12, 1999.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to Richard U. Rodriguez, M.B.A., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 287; Facsimile: (301) 402–0220; E-mail: rr154z@nih.gov.

SUPPLEMENTARY INFORMATION: In an effort to develop a method of detection and an efficacious treatment for basal cell carcinoma, nevoid basal cell carcinoma syndrome, and medulloblastoma, the inventors posit that the Basal Cell Carcinoma Tumor Suppressor Gene and the disclosed mutations thereof may play a key physiological role.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be limited to the fields of human diagnostics and therapeutics for indications consisting of nevoid basal cell carcinoma syndrome, basal cell carcinoma, and medulloblastoma and may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 6, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–20938 Filed 8–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has sent the collection of information described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction

Act of 1995. The public may obtain copies of the specific information collection requirements, related guidelines and explanatory material by contacting the Service Information Collection Clearance Officer at the address provided below.

DATES: We will consider all comments received on or before September 13, 1999. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must send your comments to OMB by the above referenced date.

ADDRESSES: Send your comments and suggestions on the requirement to Rebecca A. Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222—ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We are seeking clearance from the OMB to collect information in conjunction with a new Evaluation Grants Pilot Program to be conducted under the North American Wetlands Conservation Act (NAWCA) (Pub. L. 101–233, as amended; December 13, 1989). The Act, Section 19 (Assessment of Progress in Wetlands Conservation), requires the Secretary of the Interior, in cooperation with the North American Wetlands Conservation Council, to: "* * * 1) develop and implement a strategy to assist in the implementation of this Act in conserving the full complement of North American wetlands systems and species dependent on those systems, that incorporates information existing on the date of the issuance of the strategy in final form on types of wetlands habitats and species dependent on the habitats; and (2) develop and implement procedures to monitor and evaluate the effectiveness of wetlands conservation projects completed under this Act." To meet this requirement, we are embarking upon an Evaluation Grants Pilot Program initative that requires selected prospective grantees to submit pre-proposals and proposals that are geared specifically to project approaches that will readily provide data for monitoring and evaluation purposes. Current NAWCA projects do not, and cannot, provide the data and information necessary to meet the monitoring and evaluation requirements of Section 19. We are developing a unique set of evaluation grants guidelines, or instructions, that will provide the basis for information collection and this request. We do have available for review and comment the "Strategy For Implementing and Evaluating the Effectiveness of Wetland Conservation Projects Completed Under the NAWCA" (Sect. 19, part 1) and the "NAWCA Evaluation Grant Proposal Development and Review" outline (Sect. 19, part 2). Both of these documents are approved by the NAWCA Council and will be used to develop the guidelines. The Service is requesting a 3-year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Service previously published a 60-day notice on the information collections associated with this evaluation grants program (64 FR 6908) on Thursday, February 11, 1999. The comment period expired April 12, 1999. The Service, in this notice, is requesting comment for the 30-day period following its date of publication in the **Federal Register**. No comments were provided to the Service Information Collection Officer as a result of the February 11 notice.

We invite your comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Title: Information Collection In Support of Grant Programs Authorized by the North American Wetlands Conservation Act of 1989 (NAWCA).

Approval Number: 1018–0104. OMB emergency approval granted June 4, 1999.

Service Form Number(s): N/A.

Description and Use: The North American Waterfowl Management Plan (NAWMP), first signed in 1986, is a tripartite agreement among Canada, Mexico and the United States to enhance, restore and otherwise protect continental wetlands to benefit waterfowl and other wetland associated wildlife through partnerships between and among the private and public sectors. Because the 1986 NAWMP did not carry with it a mechanism to provide for broadly-based and sustained financial support for wetland conservation activities, Congress passed and the President signed into law the NAWCA to partially fill that funding need. The purpose of NAWCA is to use partnerships to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated habitat.

As well as providing for a continuing and stable funding base, NAWCA establishes an administrative body made up of a State representative from each of the four Flyways, three representatives from wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Service. This administrative body is chartered, under the Federal Advisory Committee Act, by the U.S. Department of the Interior as the North American Wetlands Conservation Council (Council). As such, the purpose of the Council is to periodically recommend wetlands conservation project proposals to the Migratory Bird Conservation Commission (MBCC) for funding.

Subsection (c) of Section 5 (Council Procedures) provides that the "* * * Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section * * *" which are consideration of projects and recommendations to the MBCC, respectively. The means by which the Council decides which project proposals are important to recommend to the MBCC is through grants programs that are coordinated through the Council Coordinator's office (NAWWO) within the Service.

Applications from partnerships competing for grant funds must describe in substantial detail project locations and other characteristics that will meet standards established by the Council and requirements of NAWCA. The Evaluation Grants Pilot Program will differ in that it will be a two-stage process wherein successful applicants will have submitted both a pre-proposal and a proposal. Pre-proposals are intended to allow screening such that

only the projects that have the greatest potential for contributing to the evaluation program will be continued into the proposal stage. The Council Coordinator's office currently publishes and distributes Standard and Small Grants instructional booklets that assist applicants in formulating project proposals for Council consideration. The guidelines for this new grants evaluation initiative, to be contained in the request for proposal, is an additional information collection instrument. The guidelines and instructions and other instruments, e.g., **Federal Register** notices on request for proposals, are the basis for this information collection request for OMB clearance. Information collected under this program is used to respond to such needs as: audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application For Federal Assistance), grant agreements, budget reports and justifications, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by NAWCA, etc. In the case of the additional Evaluation Grants Pilot Program guidelines, the request responds also to the statutory requirements of the Act.

In summary, information collection under this program is required to obtain a benefit, i.e., a cash reimbursable grant that will be given competitively to selected applicants based on eligibility and the relative value of their projects to contribute to meaningful technical evaluation of the success of the grants programs. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Occasional. We intend the Evaluation Grant Pilot Program to have one project proposal submissions window per year.

Description of Respondents: Households and/or individuals; business and/or other for-profit; not-for-profit institutions; farms; Federal Government; and State, local and/or Tribal governments.

Estimated Completion Time: We estimate the reporting burden, or time involved in writing project submissions, to be 8 hours for a pre-proposal and 40 hours for a proposal.

Number of Respondents: We estimate that 30 pre-proposals and 10 proposals will be submitted each year for the grants evaluation pilot program.

Dated: May 25, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–20962 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Eleventh Regular Meeting; Proposed Resolutions and Agenda Items Being Considered; Species Being Considered for Amendments to the CITES Appendices; Public Meeting; Observer Information

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice, correction.

In our July 8, 1999, **Federal Register** notice entitled "Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Eleventh Regular Meeting; Proposed Resolutions and Agenda Items Being Considered; Species Being Considered for Amendments to the CITES Appendices; Public Meeting; Observer Information" (64 FR 36893), we make the following correction:

On page 36909, in the fourth paragraph under item number 6 entitled "Atlantic swordfish (*Xiphias gladius*)," which appears in the second column on the page, the last sentence reading "The plan also includes limited entry for the commercial fishery and a time/area closure to reduce juvenile swordfish mortality" is corrected to read follows: "The plan also includes limited entry for the commercial fishery. Additionally, the National Marine Fisheries Service is working on analyses to implement a time/area closure that would protect small swordfish. The National Marine Fisheries Service proposed a time/area closure to protect small swordfish in the draft FMP. However, in response to comments indicating the ineffectiveness of the proposed Florida Straits closure, as well as updated analyses, the National Marine Fisheries Service deferred the implementation of a time/area closure for protection of small swordfish until a later date, pending further analyses and review of more effective, and probably larger, time/area closures."

Dated: August 2, 1999.

John G. Rogers,

Director.

[FR Doc. 99–20934 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the First Amendment to the Tribal/State Compact for Class III Gaming between the Nisqually Tribe and the State of Washington, which was executed on March 4, 1999.

DATES: This action is effective August 13, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: August 5, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–20932 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–00–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact taking effect.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his

delegated authority, is publishing notice that the Amendment to Appendix X to the Compact between the St. Regis Mohawk Tribe and the State of New York, executed on May 27, 1999, is considered to have been approved. By the terms of IGRA this amendment is considered approved, but only to the extent it is consistent with the provisions of IGRA.

DATES: This action is effective August 13, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, 1849 C Street, NW, MS 2070–MIB, Washington, D.C. 20240, (202) 219–4066.

Dated: August 9, 1999.

Kevin Gover,

Assistant Secretary-Indian Affairs.

[FR Doc. 99–20931 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. AZ–020–1210–00]

Emergency Closure of Harquahala Pack Trail; Phoenix Field Office, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: This notice is to inform the public that the Bureau of Land Management intends to temporarily close the Harquahala Pack Trail in the Harquahala Mountains Wilderness to all public use. This closure is being established due to recent flood damage that has rendered portions of the Harquahala Pack Trail extremely hazardous for public use. The closure will take effect upon publication of this notice and will remain in effect until completion of restoration of the trail, on or about May 31, 2000.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure: Employees of the BLM, Arizona Game and Fish Department, and local and federal law enforcement and fire protection personnel. Access by additional parties may be allowed, but must be approved in advance in writing by the Phoenix Field Manager. This closure is in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 USC 1701), and 43 CFR, Subpart 8364.1. Any person who fails to comply with the provisions of this closure may be subject to penalties outlined in 43 CFR Subpart 8360.0–7.

FOR FURTHER INFORMATION CONTACT. Michael A. Taylor, Field Manager, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027; (623) 580–5500.

Dated: August 5, 1999.

Michael A. Taylor,

Field Manager.

[FR Doc. 99–20936 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF DEFENSE

Department of the Navy

[NV–030–1492–00]

Notice of Availability for the Draft Environmental Impact Statement, Bureau of Land Management Carson City and Battle Mountain, Nevada Field Offices and Department of the Navy, Naval Air Station Fallon, Nevada

AGENCY: Bureau of Land Management, Department of the Interior and Naval Air Station Fallon, Nevada, Department of the Navy.

ACTION: Notice of availability of a draft environmental impact statement (EIS) for the Naval Air Station Fallon's proposed Fallon Range Training Complex Requirements.

Cooperating Agencies

Federal Aviation Administration, U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Indian Affairs, Yomba Shoshone Tribe, Fallon Paiute-Shoshone Tribe, Walker River Paiute Tribe, Nevada Division of Wildlife, Eureka, Lander, and Churchill County Commissions, and Kingston Town Board.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act (NEPA) and 40 CFR parts 1500–1508 Council on Environmental Quality Regulations (CEQ), notice is given that the Bureau of Land Management (BLM) Carson City and Battle Mountain, Nevada Field Offices and the Department of the Navy (Navy) Naval Air Station Fallon have jointly prepared, with the assistance of a third-party consultant, a Draft EIS on the proposed Fallon Range Training Complex Requirements, and has made the document available for public and agency review.

DATES: Comments will be accepted until October 13, 1999. Oral and/or written comments may also be presented at five public hearings, to be held:

September 8, 1999 (7–9pm)—Eureka Opera House, Eureka, NV
September 9, 1999 (7–9pm)—Austin Town Hall, Austin, NV
September 21, 1999 (7–9pm)—Gabbs Recreation Hall, Gabbs, NV
September 22, 1999 (7–9pm)—Fallon Convention Center, 100 Campus Way, Fallon, NV
September 23, 1999 (7–9pm)—BLM Nevada State Office, 1340 Financial Blvd, Reno, NV

ADDRESSES: Comments should be sent to: Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, Attn: Terri Knutson, Project Manager. Comments may also be sent via electronic mail to the following address: tknutson@nv.blm.gov or via fax: (775) 885–6147. A limited number of copies of the Draft EIS may be obtained at the above BLM Field Office in Carson City, NV, as well as, BLM Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820. In addition, the Draft EIS is available on the internet via the Carson City Field Office Home Page at: www.nv.blm.gov/carson.

Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m.-5 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Terri Knutson, Carson City BLM, at (775) 885–6156 or Gary Foulkes, Battle Mountain BLM, at (775) 635–4060, or Larry Jones, NAS Fallon, at (775) 426–2405.

SUPPLEMENTARY INFORMATION: The Naval Air Station Fallon completed the Fallon Range Training Complex Requirements Document in November 1998 which identifies and updates Navy training on public and Navy-owned lands in central Nevada. The requirements document

includes: Electronic Warfare, Airspace, Target Complex (B–16, B–17, B–19, B–20), Tracking/Communications, and Land Training.

This Draft EIS analyzes the environmental impacts associated with the proposed action, three action alternatives, and the no action alternative. Issues and resources analyzed in the Draft EIS include land use, airspace use, biological resources, geology, soils, and minerals, water resources, cultural resources, Native American Religious Concerns, visual resources, Environmental Justice and socioeconomics, recreation, grazing, wild horse and burros, air quality, noise, public safety and hazardous materials.

Public participation has occurred during the EIS process. A Notice of Intent was filed in the **Federal Register** on December 21, 1998, and an open scoping period was held until February 1999. Four public scoping meetings to solicit comments were held in January 1999 in Eureka, Austin, Fallon, and Reno, Nevada. All comments presented to the BLM and Navy throughout the EIS process have been considered.

To assist the BLM and Navy in identifying and considering issues and concerns regarding the proposed action and alternatives, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters in the document. Comments may address the adequacy of the Draft EIS and/or the merits of the alternatives formulated and discussed in the document.

After the comment period ends for the Draft EIS, comments will be analyzed and considered jointly by the BLM and the Navy in preparing the Final EIS.

Dated: July 29, 1999.

John Singlaub,

Manager, BLM Carson City.

Dated: July 28, 1999.

RADM T.R. Beard,

Commander, Naval Strike and Air Warfare Center Fallon.

[FR Doc. 99–20625 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[COC–57578; CO–200–1430–01]

Notice of Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease of public lands in gilpin county, colorado.

SUMMARY: The following described land is being considered for lease under the authority of Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), and 43 CFR Part 2920 at no less than appraised fair market rental:

6th Principal Meridian, Colorado

T. 3 S., R. 73 W., Section 13: SW¼NW¼ (2 parcels within) The two parcels, containing 0.94 acres, are isolated tracts of public land located within a parking facility owned by the City of Central, Colorado. This parking facility was developed by the City for use by gambling patrons. The parcels would be offered noncompetitively to the City under a 20-year renewable lease. Detailed information concerning the lease will be available upon request.

ADDRESSES: Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Canon City, Colorado 81212.

DATES: Interested parties may submit comments to the Field Office Manager at the above address until September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Lindell Greer, Realty Specialist at (719) 269–8532.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, who may sustain, modify, or vacate this realty action.

Levi Deike,

Field Office Manager.

[FR Doc. 99–20935 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request; Extension

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extension of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that MMS is planning to submit an information collection request to the Office of Management and Budget (OMB) to request an extension of a currently approved collection. Under the PRA, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of an existing collection of information titled Directed Third-Party Communications Between Operators and Deliverers of Federal RIK Production to Strategic Petroleum Reserve (OMB Control Number 1010–0130).

DATES: Submit written comments on the collection of information by October 12, 1999.

ADDRESSES: Submit written comments on the collection of information to the Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS–3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning this collection of information, please contact Richard Winnor, RIK Study Team, telephone (202) 208–3118. You may also obtain copies of this collection of information by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. Section 3506(c)(2)(A) of the PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, MMS is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, MMS invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of MMS's functions, including whether the information will have practical utility; (2) the accuracy of MMS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

In addition, the PRA requires agencies to estimate the total annual reporting

and recordkeeping "cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

Title: Directed Third Party Communications Between Operators and Deliverers of Federal RIK Production to Strategic Petroleum Reserve—Extension.

OMB Control Number: 1010–0130.

Abstract: The Secretary of the Interior, under the Mineral Leasing Act (30 U.S.C. 192) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for the management of royalties on minerals produced from leased Federal lands. MMS carries out these responsibilities for the Secretary. Most royalties are now paid in value—when a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the full value received for the minerals taken from leased lands. MMS may take the Government's royalty in the form of production, that is, as royalty-in-kind (RIK).

On February 11, 1999, the Department of the Interior announced that it will assist in an Administration initiative to collect RIK crude oil production from Federal lessees in the Gulf of Mexico and transfer the RIK to the Department of Energy (DOE). DOE will use the RIK oil to refill 28 million barrels of oil removed several years ago from the Strategic Petroleum Reserve (SPR). DOE published a Request for Offers in April 1999 for the exchange of Federal RIK crude oil for oil to be delivered to the SPR. This initiative is separate from MMS's RIK program for eligible refiners of crude oil. It is also separate from MMS's three RIK pilot projects and investigation of direct Federal consumption which are being conducted to show whether or not RIK is viable for the Federal Government.

To assure timely delivery to DOE of MMS's correct volume of RIK production, MMS is issuing letters directing lessees and operators, from whose Federal leases RIK is to be taken, to carry out all necessary communications needed during the exchanges and deliveries. OMB granted emergency approval (OMB Control Number 1010–0130, expiration date November 30, 1999) for MMS to instruct lessees or their operators through such a letter, which contains reporting and recordkeeping requirements, to conduct all necessary communications with RIK exchange contractors during RIK SPR activities.

The three kinds of directed communication between operators and exchange contractors are: (1) information about the volumes, quality, and delivery dates of production being made available as RIK; (2) information correcting volumes, quality, and timing of delivery and acceptance of RIK production; and (3) information concerning transportation costs, if needed. Experience with RIK Pilots demonstrates that the directed communication requirements differ according to the needs of each situation. We had reasoned that, by obtaining approval for these three kinds of reporting requirements (as opposed to approval of a number of specific letters to operators), we could draft situation-specific letters—that is letters including only the types of directed communications needed for each pilot situation. This logic and the substance of the situation applies to the SPR situation also.

The types of communication and supporting data we will require operators to use in setting up the monthly delivery of RIK to the SPR are standard business practices in the oil and gas industry. The information in the directed communication is essential to the delivery and acceptance of verifiable quantities and qualities of oil and gas and is exchanged as a normal part of the conduct of those business activities, even when operators are not directed to do so. No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Burden Statement: The reporting burden is estimated to average 2 minutes per response including the time for reviewing the instructions. In calculating the burden, we assume that respondents perform many of the requirements and maintain records in the usual and customary course of their business activities.

Respondents/Affected Entities: Lessees or operators of Federal oil or gas leases participating in delivery of Federal RIK production to the SPR.

Frequency of Collection: Monthly.

Estimated Number of Respondents: 42 in Year 1; and 42 in Year 2.

Estimated Total Annual Burden on Respondents: 26 hours in Year 1; and 46 in Year 2.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: August 6, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–20994 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 6, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (●202□ 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (●202□ 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Application of the Polygraph Protection Act.

OMB Number: 1215–0170.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit, not-for-profit institutions.

Number of Respondents: 328,000.

Estimated Time Per Respondent: 15–90 minutes.

Total Burden Hours: 82,406.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: These third-party notifications and recordkeeping requirements are necessary to insure polygraph examinees receive the protections and rights mandated by the Employee Polygraph Protection Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc 99–20996 Filed 8–12–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Trade Adjustment Assistance is soliciting comments concerning the proposed extension of data collection using Form ETA 563, Quarterly Determinations, Allowance Activities, and Reemployment Services Under the Trade Act.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before October 12, 1999.

ADDRESSES: Curtis K. Kooser, Information Specialist, Office of Trade Adjustment Assistance, Room C4318, 200 Constitution Ave., NW, Washington, DC 20210. Phone (202) 219–4845, ext. 111 (this is not a toll-free number), FAX (202) 218–5753.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Act of 1974, Section 236(d), as amended, requires the President to submit an annual report to the congress on the trade agreements program which includes information on trade adjustment assistance for workers. The information from this collection of data is also used in the Secretary's annual report to Congress on training waivers granted and revoked, as required by Section 231(c)(3) of the Trade Act, as amended by the Omnibus Trade and Competitiveness Act of 1988. Furthermore, key workload data on the Trade Adjustment Assistance (TAA) and North American Free Trade Agreement Transitional Adjustment Assistance (NAFTA–TAA) programs are needed to measure program performance and to allocate program and administrative funds to State agencies administering the programs for the Secretary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the Equality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a notice of proposed extension of collection of information currently approved by OMB and assigned—

OMB Control No.: 1205–0016.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Quarterly Determinations, Allowance Activities, and Reemployment Services Under the Trade Act.

OMB Number: 1205–0016.

Affected Public: State or Local Government.

Cite/Reference/Form/etc: Form ETA 563.

Total Respondents: 52.

Frequency: Quarterly.

Total Responses: An average of about 4,275 responses are received each quarter, or about 17,100 per year.

Average Time per Response: The average time per response is estimated to be 12 minutes.

Estimated Total Burden Hours: 3,472.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 10, 1999.

Edward A. Tomchick,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–20995 Filed 8–12–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington , DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT990001 (Mar. 12, 1999)
- CT990002 (Mar. 12 1999)
- CT990003 (Mar. 12, 1999)
- CT990004 (Mar. 12, 1999)
- CT990005 (Mar. 12, 1999)

Volume II

District of Columbia
- DC990001 (Mar. 12, 1999)

Maryland
- MD990001 (Mar. 12, 1999)
- MD990002 (Mar. 12, 1999)
- MD990010 (Mar. 12, 1999)
- MD990011 (Mar. 12, 1999)
- MD990012 (Mar. 12, 1999)
- MD990017 (Mar. 12, 1999)
- MD990022 (Mar. 12, 1999)
- MD990031 (Mar. 12, 1999)
- MD990035 (Mar. 12, 1999)
- MD990036 (Mar. 12, 1999)
- MD990037 (Mar. 12, 1999)
- MD990043 (Mar. 12, 1999)
- MD990046 (Mar. 12, 1999)
- MD990048 (Mar. 12, 1999)
- MD990056 (Mar. 12, 1999)
- MD990057 (Mar. 12, 1999)
- MD990058 (Mar. 12, 1999)

Pennsylvania
- PA990008 (Mar. 12, 1999)
- PA990012 (Mar. 12, 1999)
- PA990015 (Mar. 12, 1999)
- PA990021 (Mar. 12, 1999)
- PA990023 (Mar. 12, 1999)
- PA990024 (Mar. 12, 1999)
- PA990028 (Mar. 12, 1999)
- PA990035 (Mar. 12, 1999)
- PA990040 (Mar. 12, 1999)
- PA990052 (Mar. 12, 1999)
- PA990063 (Mar. 12, 1999)

Virginia
- VA990025 (Mar. 12, 1999)
- VA990078 (Mar. 12, 1999)
- VA990092 (Mar. 12, 1999)
- VA990099 (Mar. 12, 1999)

West Virginia
- WV990002 (Mar. 12, 1999)
- WV990003 (Mar. 12, 1999)

Volume III

None

Volume IV

None

Volume V

Iowa
- IA990005 (Mar. 12, 1999)
- IA990009 (Mar. 12, 1999)
- IA990013 (Mar. 12, 1999)
- IA990016 (Mar. 12, 1999)
- IA990024 (Mar. 12, 1999)
- IA990060 (Mar. 12, 1999)

Kansas
- KS990002 (Mar. 12, 1999)

Oklahoma
- OK990013 (Mar. 12, 1999)
- OK990014 (Mar. 12, 1999)
- OK990016 (Mar. 12, 1999)
- OK990017 (Mar. 12, 1999)
- OK990028 (Mar. 12, 1999)
- OK990034 (Mar. 12, 1999)
- OK990035 (Mar. 12, 1999)
- OK990036 (Mar. 12, 1999)
- OK990037 (Mar. 12, 1999)
- OK990038 (Mar. 12, 1999)
- OK990043 (Mar. 12, 1999)

Texas
- TX990005 (Mar. 12, 1999)
- TX990007 (Mar. 12, 1999)

VOLUME VI

Montana
- MT990001 (Mar. 12, 1999)

VOLUME VII

Hawaii
- HI990001 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400

Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 6th day of August, 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–20653 Filed 8–12–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–93]

Factory Mutual Research Corporation, Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Factory Mutual Research Corporation (FMRC) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on August 13, 1999 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while FMRC remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Factory Mutual Research Corporation (FMRC) as a Nationally Recognized Testing Laboratory (NRTL). FMRC's expansion request covers the use of additional test standards. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

FMRC submitted a request, dated October 8, 1998 (see Exhibit 7A), to expand its recognition as an NRTL to include four (4) additional test standards. Then it submitted a request, dated November 18, 1998 (see Exhibit 7B), to expand its recognition for one more test standard. OSHA published the required notice in the **Federal Register** (64 FR 18939, 4/16/99) to announce the application. The notice included a preliminary finding that FMRC could meet the requirements for expansion of its recognition, and OSHA invited public comment on the application by June 15, 1999. OSHA received no comments concerning this application.

FMRC's previous application as an NRTL covered its renewal of recognition as an NRTL (60 FR 16167, 3/29/95), which OSHA granted on August 16, 1995 (60 FR 42590).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210, telephone: (202) 693–2350. You should refer to Docket No. NRTL–3–93, the permanent records of public information on the FMRC recognition.

The current addresses of the testing facilities (sites) that OSHA recognizes for FMRC are:

Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062

Factory Mutual Research Corporation, 743 Reynolds Road, West Gloucester, Rhode Island 02814

Final Decision and Order

The NRTL Program staff has examined the application and other pertinent information, and the assessment staff recommended, in a memo dated February 10, 1999 (see Exhibit 8), expansion of FMRC's recognition to include the additional test standards listed below. Based upon this examination and recommendation, OSHA finds that FMRC has met the requirements of 29 CFR 1910.7 for expansion of its recognition to use the additional 5 test standards, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of FMRC, subject to these limitations and conditions. As is the case for any NRTL, FMRC's recognition is further limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace.

Limitations

OSHA hereby expands the recognition of FMRC for testing and certification of products to demonstrate compliance to the following 5 standards. OSHA has determined that each standard meets the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c).

ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
FMRC 2000 Automatic Sprinklers for Fire Protection
FMRC 2008 Early Suppression-Fast Response (ESFR) Automatic Sprinklers
FMRC 3260 Flame Radiation Detectors for Automatic Fire Alarm Signaling
FMRC 3990 Less or nonflammable Liquid-Insulated Transformers

The NRTL Program staff verified the designations and titles of the above test standards at the time of preparation of the notice of the preliminary finding. Also, the FMRC 3990 test standard was incorrectly listed as FMRC 3900 in the preliminary notice.

Conditions

Factory Mutual Research Corporation must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to FMRC's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If FMRC has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed

the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

FMRC must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, FMRC agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

FMRC must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

FMRC will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

FMRC will continue to meet the requirements for recognition in all areas where it has been recognized; and

FMRC will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC this 3rd day of August, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–20997 Filed 8–12–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–4–93]

Underwriters Laboratories Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Underwriters Laboratory Inc. (UL), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than October 12, 1999.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Underwriters Laboratories Inc. (UL), has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion covers the use of additional testing sites. OSHA recognizes an organization as an NRTL and processes applications related to such recognitions following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this notice of the preliminary finding on an application.

UL's previous application as an NRTL covered an expansion of recognition (62 FR 62359, 11/21/97), which OSHA granted on June 24, 1999 (64 FR 33913).

The current addresses of the testing facilities (sites) that OSHA already recognizes for UL are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709

Underwriters Laboratories Inc., 2600 NW Lake Road, Camas, Washington 98607

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District, Taipei, Taiwan

The current addresses of the additional UL testing sites covered by the expansion request are:

DEMKO A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark

Underwriters Laboratory International (U.K.) Ltd., 2 Station View, Guildford, Surrey, GU1 4JY, United Kingdom

Underwriters Laboratory International Italia S.r.l., Centro Direzionale Colleoni, Palazzo Andromeda/3, 1–20041 Agrate Brianza (MI), Milan, Italy

General Background on the Application and Note on Supplemental Programs

UL has submitted a request, dated March 4, 1998 (see Exhibit 19A), to expand its recognition as an NRTL to include three sites in Europe. UL then submitted supporting information concerning its request (see Exhibits 19B-D) and requested the use of all the "supplemental" programs at each of the 3 sites (see Exhibit 19E). The supporting information that UL has submitted for these additional sites provides a general description of UL operations and, as such, also applies to the sites already recognized by OSHA. Each of the three European sites is a subsidiary of UL. The site in Milan also includes a testing facility in Sardinia, Italy.

OSHA's recognition of the three additional sites will not be limited to any particular test standards. However, recognition of these sites will be limited to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for which OSHA has recognized UL. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. Also, OSHA will permit these sites to use of all eight of the "supplemental" programs. OSHA has already recognized UL for these programs and, as a result, we are not listing them again in this notice, but merely providing this information as a matter of public interest.

OSHA has described the supplemental programs referred to above in a March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice described nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. The notice also includes the criteria for the use by the NRTL of these eight, or supplemental, programs. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to permit the activities only when the

NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition, or for an expansion or renewal of recognition, under 29 CFR 1910.7.

Preliminary Finding on the Application

UL has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with these requests, OSHA carried out on-site reviews of the three sites covered by the expansion request during the period of September 14–29, 1998. Discrepancies noted by the review team during the on-site reviews were responded to following their completion and are included as an integral part of the on-site review report (see Exhibits 20). With the preparation of the final review report, the NRTL Program staff is satisfied that UL has addressed concerns arising from the review. In the report, the staff recommended that OSHA expand the recognition of UL to include the three (3) additional sites listed above. The staff also recommended that these sites be permitted to use all the supplemental programs.

Following a review of the application file and the on-site review report, the NRTL Program staff concluded that UL appeared to have met the requirements for the expansion of recognition to include the three (3) additional sites listed above. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved. This recognition will be limited to UL utilizing the additional sites for performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for which OSHA has recognized UL.

Based upon a review of the complete application, and the recommendations of the staff, the Assistant Secretary has made a preliminary finding that Underwriters Laboratory Inc., can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of its recognition to include the three additional sites listed above, subject to the above limitation. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether UL has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of UL's requests, the supporting information, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–4–93, the permanent records of public information on UL's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant UL's expansion request. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, D.C. this 3rd day of August, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–20998 Filed 8–12–99; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Director of the National Science Foundation has determined that the establishment of the Public Affairs Advisory Group is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Public Affairs Advisory Group (PAAG).

Purpose: The Group's objective is twofold. First, the Group will assess NSF's current public affairs programs, strategies and goals aimed at improving public understanding and appreciation of science and engineering research and education. Second, the Group will advise NSF on strategies and mechanisms for strengthening NSF's public affairs programs in the future. This includes help in building strategic partnerships between NSF and the private sector that will amplify the agency's public affairs programs.

Balanced Membership Plans. Members are broadly representative of communications and public affairs professions—public relations, print and broadcast journalism, science and technology publishing, science policy analysis, science and technology education and outreach, and entertainment—and engineering and science professionals successful in making science and technology accessible to large publics. Stature and familiarity with NSF and its programs are considered in selecting committee members. Every effort is made to achieve a balanced membership with representation including women, minority members, disabled persons as well as different geographic regions in the U.S. About 20 individuals will serve on this committee.

Responsible NSF Official: Susan Chase, Acting Section Head, Special Projects, Office of Legislative and Public Affairs, Room 1245, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, telephone, (703) 306–1070.

Dated: August 10, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–21065 Filed 8–12–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Energy Northwest, Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Energy Northwest (the licensee), formerly known as the Washington Public Power Supply System, to withdraw its October 15, 1996, application for proposed amendment to Facility Operating License No. NPF–21 for WNP–2, located in Benton County, Washington.

The proposed amendment would have revised the facility technical specifications pertaining to secondary containment drawdown time and secondary containment bypass leakage.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 23, 1998 (63 FR 50942). However, by letter dated July 16, 1999, the licensee withdrew the proposed change and stated that they planned to revise and resubmit the amendment request by November 12, 1999.

For further details with respect to this action, see the application for amendment dated October 15, 1999, as supplemented by letters dated December 4, 1997, April 12, 1999, and June 10, 1999, and the licensee's letter dated July 16, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, MD, this 4th day of August 1999.

For the Nuclear Regulatory Commission.

Jack Cushing,

Project Manager, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21055 Filed 8–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Nebraska Public Power District; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Nebraska Public Power District to withdraw its August 6, 1998, application for proposed amendment to Facility Operating License No. DPR–46 for the Cooper Nuclear Station, located in Nemaha County, Nebraska.

The proposed amendment would have revised the Updated Safety Analysis Report to reflect the as-built configuration of the reactor building isolation dampers.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 26, 1998 (63 FR 45526). However, by letter dated August 2, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 6, 1998, and the licensee's letter dated August 2, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Dated at Rockville, Maryland, this 6th day of August 1999.

For The Nuclear Regulatory Commission

S. Patrick Sekerak,

Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21056 Filed 8–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Co., Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–44 and DPR–56, issued to PECO Energy Company (the licensee), for operation of the Peach Bottom Atomic Power Station (PBAPS) Units 2 and 3, located in York County, Pennsylvania.

The proposed amendments would revise the Technical Specifications (TSs) contained in Appendix A to the Operating Licenses to incorporate a note into the TSs which will permit a one-time exemption, until September 30, 1999, from the 90 °F limit stated in Surveillance Requirement (SR) 3.7.2.2. This SR currently requires that the average water temperature of the normal heat sink be less than or equal to 90 °F as demonstrated on a 24-hour frequency. As stated in the proposed TS note, during the time period between approval and September 30, 1999, the average water temperature of the normal heat sink will be limited to less than or equal to 92 °F.

The licensee requested that these proposed amendments be processed as an exigent request pursuant to 10 CFR 50.91(a)(6) to permit implementation during this summer. The licensee's basis for the exigent request is as follows: "On August 1, 1999 at approximately 1500 hours, the normal heat sink temperature for the intake of Units 2 and 3 reached 89 °F. Based on the current and projected low rainfall conditions, above normal atmospheric temperatures, and below normal precipitation, the Conowingo Pond (Normal Heat Sink) temperature is expected to approach and/or exceed 90 °F on a periodic basis resulting in the failure to meet Technical Specification SR 3.7.2.2. This would require PBAPS, Units 2 and 3 to enter into Mode 3 [hot shutdown] operation within 12 hours and Mode 4 [cold shutdown] operation within 36 hours.

On July 18, 1999, the normal heat sink temperature reached 86 °F, which is four (4) degrees below the TS limit of 90 °F. At that time, PBAPS Engineering began to identify the design basis impacts of the increased cooling water temperatures, analyze the environmental conditions that impact the normal heat sink temperature, and develop the analysis which would support continued safe plant operation at elevated cooling water temperatures. Throughout this period, up to the submittal of this exigent license change, significant resources have been committed to performing engineering analysis and preparing related documents, reviews of the analysis by on-site and off-site review groups, and preparation of the license amendment package itself.

Shutdown of the plants would cause undue stress on the regional electrical grid which could potentially destabilize power flow to all customers and to the PBAPS offsite sources. During two periods in the month of July (July 6 and 19, 1999), energy demands resulted in voltage reduction situations. Loss of the PBAPS, Units 2 and 3, capacity during a period in which energy is needed most, could result in a load shedding situation. Additionally, the unforeseen weather conditions resulting in the recent abnormally high normal heat sink temperature did not permit the submittal of this change under the normal license amendment process."

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR

50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the probability of a Loss of Coolant Accident is independent of an increase in the normal heat sink temperature limit. The increase in the heat sink temperature does not affect any accident or transient initiators. The engineering analysis discussed has determined that ESW[Emergency Service Water]/HPSW[High Pressure Service Water] systems remain capable of their design safety functions at the increased normal heat sink temperature and will not impact the consequences of evaluated accidents.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because the requested change is increasing the heat sink temperature limit, and this in and of itself does not create the possibility of a new or different kind of accident. Increasing the heat sink temperature does not introduce any new accident initiator. Additionally, this change will not introduce any new failure mechanisms.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety, because the PBAPS, Units 2 and 3 ESW/HPSW heat exchangers have been analyzed using current plant conditions and performance data. This analysis has concluded that the ESW/HPSW systems will continue to be capable of performing their design bases heat removal functions with normal heat sink temperature as high as 92 °F. In order to maintain the margin of safety with a higher normal heat sink temperature, the performance of the equipment must be better than assumed in the design basis analyses. The actual performance of the affected heat exchangers is better than assumed in the accident analyses. Using the actual performance capability of the equipment, based on the most recent plant data and trending, more than compensates for the increased normal heat sink temperature. Additionally, many design calculations used a Normal Heat Sink temperature of 95 °F with minimum torus water level. Also, the containment heat-up analysis was performed with conservatisms including a decay heat input which is based on a rated power level which is nominally 5% above the maximum licensed operating power level. These are examples of additional conservative assumptions which remain in the analysis. Therefore, the increase in normal heat sink temperature does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, US Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 13, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania (Regional Depository), Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the

bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment requests involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment requests involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, US Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, US Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. W. Durham, Sr., Esquire, Sr. VP and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 6, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room, located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 9th day of August 1999.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21053 Filed 8–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–259]

Tennessee Valley Authority; (Browns Ferry Nuclear Plant Unit 1); Exemption

I.

The Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating License No. DPR–33 for operation of the Browns Ferry Nuclear Plant (BFN) Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the US Nuclear Regulatory Commission (Commission or NRC) now or hereafter in effect.

BFN is a boiling-water reactor located in Limestone County, Alabama.

II.

By letter dated February 2, 1999, TVA submitted a request for exemption from certain requirements in Title 10 of the Code of Federal Regulations (10 CFR). 10 CFR 50.65(a)(1) requires, in part, that holders of operating licenses granted under 10 CFR 50.21(b) or 10 CFR 50.22 shall monitor the performance or condition of structures, systems, or components (SSCs) against licensee-established goals to provide reasonable assurance that such SSCs as defined in paragraph (b) are capable of fulfilling their intended functions. Such goals shall be established commensurate with safety and, where practical, take into account industry-wide operating experience. When the performance or condition of a structure, system, or component does not meet established goals, appropriate corrective action shall be taken. Additionally, paragraph (b) of the rule, states that, "The scope of the monitoring program specified in paragraph (a)(1) of this section shall include safety related and non-safety related structures, systems, and components as follows:

"(1) Safety related structures, systems, and components that are relied upon to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in (subsection) 50.34(a)(1) or (subsection) 100.11 of this chapter, as applicable.

"(2) Non-safety related structures, systems, or components: (i) That are relied upon to mitigate accidents or transients or are used in plant emergency operating procedures (EOPs); or (ii) Whose failure could prevent safety related structures, systems, or components from fulfilling their safety related function; or (iii) Whose failure could cause a reactor scram or actuation of a safety related system."

III.

Section 50.12(a) of 10 CFR, "Specific exemptions," states that:

> The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. . . ."

The licensee's request for exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) was found to be appropriate. Application of the regulation is not necessary to achieve the underlying purpose of the rule for the reasons stated in the staff Safety Evaluation, dated August 9, 1999.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 43228).

This exemption is effective upon issuance.

Dated at Rockville, MD, this 9th day of August 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21054 Filed 8–12–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Circular A–127, "Financial Management Systems"

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final revision.

SUMMARY: The Office of Management and Budget (OMB) is adopting the interim final revision to OMB Circular A–127, "Financial Management Systems," that changes the process for acquiring software to meet core financial system requirements by eliminating the restriction to only acquire the software and related services from the FMSS Schedule, and to provide for software testing that is independent of the procurement process. These changes will result in the revision of Sections 8d and 9b, as well as adding a new Section 9a(3) and 9c. These changes are shown below.

DATES: Effective September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Jean Holcombe, Federal Financial Systems Branch, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The revisions to the Circular are available on the OMB Home Page at http://www.whitehouse.gov/OMB.

SUPPLEMENTARY INFORMATION: On July 1, 1999 (64 FR 35701), the Office of Management and Budget (OMB) issued an interim final revision to OMB Circular A–127, "Financial Management Systems." The interim final revision made changes to Sections 8d and 9b, as well as adding a new Section 9a(3) and 9c to Circular A–127, in order to eliminate the restriction to only acquire the software and related services from the FMSS Schedule, and to provide for software testing that is independent of the procurement process. No comments were received in response to the interim final revision. Accordingly, OMB is adopting in final form, without change, the interim final revision to Circular A–127 which was published at 64 FR 35701 on July 1, 1999.

Issued in Washington, DC, August 9, 1999.

Norwood J. Jackson, Jr.,

Acting Controller.

OMB Revises Circular A–127 as Follows

1. *Section 8d of the current Circular should be deleted in its entirety and replaced with the following:*

8d(1). *Use of "Off-the-Shelf" Software.* Agencies replacing software to meet core financial system requirements are required to use the GSA FMSS Multiple Award Schedule until its expiration on September 30, 1999. As of October 1, 1999 agencies replacing software to meet core financial system requirements are no longer required to use the GSA FMSS Multiple Award Schedule; they must use "off-the-shelf" software that has been tested and certified through the JFMIP software certification process as meeting JFMIP Core Financial Management System Requirements. Agencies may purchase this software using the strategy and procurement vehicle they believe will best enable them to meet their needs in a timely and effective manner following the competition requirements associated with the procurement vehicle being used to conduct the acquisition.

In addition, agencies will notify JFMIP that a core financial management software procurement is planned—preferably prior to, or in the early phases of, acquisition planning. JFMIP will electronically post a public message to permit interested certified system vendors to market agencies. The sole purpose of this message is to facilitate agency market research. This message is not intended to, and shall not, serve as an invitation for offerors to submit bids, proposals, or quotes.

OMB policy pertaining to using "off-the-shelf" software is contained in OMB Circular A–130 and must be followed when replacing financial management systems.

8d(2). *Software Certification Testing.* "Off-the-shelf" software will be tested to ensure that it meets core financial system requirements as defined in the *Core Financial System Requirements* document published by JFMIP. JFMIP will coordinate the testing process and issue software certifications. Information on the details of the certification testing process and its results will be available to any interested Federal agency for any certified software package.

2. *A new section 9a(3) is being added to the current Circular as follows:*

9a.(3). *Notify JFMIP on Plans to Acquire Core Financial System Software.* Agencies shall notify JFMIP on plans to acquire software supporting core financial system functions.

3. *Section 9b of the current Circular is revised to read as follows:*

9b. *GSA Responsibilities.* GSA is responsible for continuing to support existing contracts under the FMSS Schedule until their completion. GSA also will make procurement vehicles available to agencies for acquiring software which has been certified according to the processes in Section 8d(2).

4. *A new Section 9c is being added and will read as follows:*

9c. *JFMIP Responsibilities.* JFMIP will establish processes for testing "off-the-shelf" software supporting core financial system requirements which include:

—Developing and administering the certification test.

—Notifying GSA when a software package successfully completes the certification test.

—Providing interested parties with information on the core financial system requirements and their related testing scenarios.

—Providing interested parties with details on the results of the certification tests for certified software packages.

—Posting a public notice on planned core financial system procurements.

[FR Doc. 99–20930 Filed 8–12–99; 8:45 am]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published

elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in August, 1999. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in September, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in August 1999 is 5.08 percent (*i.e.*, 85 percent of the 5.98 percent yield figure for July 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between September 1998 and August 1999.

For premium payment years beginning in	The assumed interest rate is
September 1998	4.71
October 1998	4.42
November 1998	4.26
December 1998	4.46
January 1999	4.30
February 1999	4.39
March 1999	4.56
April 1999	4.74
May 1999	4.72
June 1999	4.94
July 1999	5.13
August 1999	5.08

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in September 1999 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 6th day of August, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–20926 Filed 8–12–99; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. SF 2823, Designation of Beneficiary for Federal Employees' Group Life Insurance, is used by any Federal employee or retiree covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

Comments are particularly invited on:

—Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology;

—And ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 1,000 SF 2823 forms are completed annually by annuitants. Each form takes approximately 15 minutes to complete for an annual estimated burden of 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before October 12, 1999.

ADDRESSES: Send or deliver comments to—Laura Lawrence, Senior Insurance Benefits Specialist, Insurance Planning & Evaluation Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3415, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Senior Management Analyst, Budget & Administrative Services Division, (202) 606–0623. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–20969 Filed 8–12–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 25–15

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 25–15, Notice of Change in Student's Status, collects information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

Approximately 2,500 certifications are processed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 1,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before September 13, 1999.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management 1900 E Street, NW, Room 3349, Washington, DC 20415–3540

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–20968 Filed 8–12–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Service, Washington, DC 20549

Extension:

Rule 10b–17, SEC File No. 270–427, OMB Control No. 3236/5–0476

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 10b–17, Untimely announcements of record dates (17 CFR 240.10b–17).

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following actions relating to such class of securities: (1) a dividend; (2) a stock split; or (3) a rights or other subscriptions offering. Notice shall be (1) given to the National Association of Securities Dealers, Inc.; (2) in accordance with the procedures of the national securities exchange upon which the securities are registered; or (3) may be waived by the Commission.

The information required by Rule 10b–17 is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. The consequences of not requiring the information collection pursuant to Rule 10b–17 is that sellers who have received distributions as recordholders may dispose of the cash or stock dividends or other rights received as recordholders without knowledge of possible claims of purchasers.

Annually, there are approximately 29,430 respondents (based on information received from the NASD that it received 15,586 responses in 1998 and the NYSE that it received 13,847 responses in 1998). It is estimated that each response takes about 10 minutes (or 0.1666 hours) to complete, thus imposing approximately 4,905 burden hours annually (29,430 x 0.1666). We believe that the average hourly cost to produce and file a response under the rule is about $50. Therefore, the annual reporting cost burden for complying with this rule is about $245.250 (4,940 x $50).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: August 5, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–20920 Filed 8–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 16, 1999.

A closed meeting will be held on Tuesday, August 17, 1999 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters will be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 17, 1999, at 11 a.m., will be:

Institution and settlement of injuctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Commissioner Johnson, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: August 10, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–21170 Filed 8–11–99; 2:24 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41715; SR–GSCC–99–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Acceptance of Letters of Credit as Clearing Fund Collateral

August 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 3, 1999, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on May 24, 1999, amended the proposed rule change [File No. SR–GSCC–99–03] as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to replace GSCC's current letter of credit form with a letter of credit form developed by the Unified Clearing Group.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC's Rule 4, Section 4, permits GSCC to accept letters of credit (in addition to cash and eligible netting securities) as clearing fund collateral. GSCC's rules define "eligible letter of credit" as a letter of credit that is, among other things, "in a form, and contains such other terms and conditions, as may be required by the Corporation." GSCC has determined that as of September 1, 1999, a letter of credit delivered to GSCC as clearing fund collateral must be in the form of the uniform letter of credit ("ULC") developed by the Unified Clearing Group ("UCG"). The UCG is an organization comprised of all major securities and futures clearing corporations and despositories in the United States.[4]

The ULC was developed to (i) foster uniformity among the various U.S. securities and futures clearing organizations with respect to letters of credit that are deposited as collateral, (ii) reduce operational burdens for industry participants and their letter of credit issues, and (iii) enhance the legal certainty that letters of credit received by UCG members as collateral will be enforceable. In developing, the ULC, the UCG consulted with the National Standby Letter of Credit Commerce of International Financial Services Association (formerly known as the U.S. Council on International Banking) and several letter of credit issuing banks.

The ULC consists of a (i) a cover page with variable terms and (ii) uniform terms. Variable terms include the name of the clearing member, the beneficiary clearing organization, the issuing bank, the amount of the credit, and the expiration date. General instructions drafted by the UCG assist clearing organization members in completing the ULC. In addition, GSCC has provided supplemental instructions to assist members specifically with letters of credit furnished to GSCC.

According to GSCC, the ULC provides that the presentment of a demand for payment can be accomplished at the discretion of the clearing corporation by hand delivery, facsimile transmission, and SWIFT. If the demand is made before 3:00 p.m. Central time, the bank issuing the letter of credit must effect payment within sixty minutes.

the uniform letter of credit also recites certain understandings regarding the issuing bank's obligation to honor a demand. GSCC states that these understandings restate the existing principles governing letters of credit and were added to reduce the likelihood of dispute. For example, the uniform letter of credit provides that payment will be made regardless of the solvency, existence, or condition (financial or other) of the GSCC member.

The proposed rule change will also amend GSCC's definition of "eligible letter of credit" to conform it with the uniform letter of credit.

It is expected that from time to time modifications will be made to the ULC by the UCG. If and when that occurs, GSCC will require its members to use the revised form.[5] Other UCG members that accept letters of credit as margin also will use the ULC beginning sometime during calendar year 1999.[6]

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because, among other things, it will promote the prompt and accurate clearance and settlement of transactions in securities by facilitating processing and will foster cooperation within the financial community.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Burden on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received. GSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve the proposed rule change, or

---

[1] 15 U.S.C. 78s(b)(1).

[2] GSCC attached a copy of the uniform letter of credit as Exhibit A to the filing.

[3] The Commission has modified the text of the summaries prepared by GSCC.

[4] The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, GSCC, MBS Clearing Corporation, National Securities Clearing Corporation, The Options Clearing Corporation, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

[5] GSCC will file proposed rule changes with the Commission prior to requiring members to comply with substantive changes made to the ULC by the UCG.

[6] See Securities Exchange Act Release No. 41486 (June 7, 1999), 64 FR 31889 (June 14, 1999) [File No. SR–OCC–99–01]. The National Securities Clearing Corporation and MBS Clearing Corporation have also filed proposed rule changes with the Commission [File Nos. SR–NSCC–99–05 and SR–MBSCC–99–05].

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GS–C–99–03 and should be submitted by September 3, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21043 Filed 8–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41717; SR–MDSCC–99–05]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating To Acceptance of Letters of Credit

August 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 25, 1999, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify MBSCC's rule regarding letters of credit accepted for clearing fund purposes to facilities implementation of the uniform letter of credit developed by the Uniform Clearing Group.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article IV, Rule 2, Section 9 of MBSCC's rules governs deposits of letters of credit by participants to the participants' fund for margin purposes. Currently, the rule requires participants to amend letters of credit expiring on September 1 by extending the expiration date to March 1 of the following year, and to deposit new letters of credit on March 1 of the following year. The proposed rule change will reverse these dates and require participants to annually provide new letters of credit by September 1 and to amend letters of credit by March 1. The proposed rule change will also require that letters of credit delivered to MBSCC on or after September 1, 1999, be in the form of the uniform letter of credit ("ULC") developed by the United Clearing Group ("UCG").

The UCG is an organization comprised of all of the major securities and futures clearing organizations and depositories in the U.S.[4] The ULC was developed to foster uniformity among the various U.S. securities and futures clearing organizations with respect to the acceptable terms of letters of credit that are deposited as margin and to reduce operational burdens for industry participants and their letters of credit issuers. In developing the ULC, the UCG consulted with the National Standby Letter of Credit Committee of the International Financial Services Association (formerly known as the U.S. Council on International Banking) and several letters of credit issuing banks.

The ULC consists of a cover page with variable terms plus preprinted uniform terms. Variable terms include the name of the participant, the beneficiary clearing organization, the issuing bank, the amount of the credit, and the expiration date. To assist letter of credit issues and participants in completing the ULC, the UCG has drafted general instructions. In addition, MBSCC has provided supplemental instructions relating specifically to letters of credit furnished by MBSCC.

MBSCC expects that in the future modifications may be made to the ULC. If and when that occurs, MBSCC will require its members to use the revised form.[5]

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because, among other things, it is designed to assure the safeguarding of securities and funds which are in the custody or control of MBSCC or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received. MBSCC will notify the Commission of any written comments it receives.

---

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] MBSCC attached a copy of the uniform letter of credit as Exhibit B to the filing.

[3] The Commission has modified the text of the summaries prepared by MBSCC.

[4] The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, MBSCC, National Securities Clearing Corporation, Options Clearing Corporation, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

[5] MBSCC will file proposed rule changes with the Commission prior to requiring members to comply with substantive changes made to the ULC by the UCG.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–99–05 and should be submitted by September 3, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21045 Filed 8–12–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41714; File No. SR–MBSCC–99–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving Proposed Rule Change Relating to MBSCC's Risk Management Rules and Procedures

August 6, 1999.

On April 15, 1999, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MBSCC–99–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of proposal was published in the **Federal Register** on June 21, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the rule change.

I. Description

The rule change makes several modifications to MBSCC's risk management rules. Specifically, the rule change: (i) Implements a net-out report, (ii) modifies financial reporting by participants, (iii) modifies certain special provisions applicable to nondomestic participants, (iv) adds a provision for additional assurances, and (v) clarifies MBSCC's role as agent in a liquidation.

The specific objectives of the rule change and the corresponding modifications to MBSCC's rules are described below.

1. Net-Out Report

The rule change modifies Article II, Rule 4 of MBSCC's rules to add a provision for a daily net-out report that will list all of a participant's open net-out obligations. Article I, Rule 1 of MBSCC's rules is also being modified to add a definition of the term "net-out report."

2. Financing Reporting

The rule change modifies Article III, Rule 1, Section 10 of MBSCC's rules to replace the general requirement for quarterly unaudited financial statements with a requirement that a participant must file unaudited financial statements as frequently as required by the participant's appropriate regulator. If a participant is not regulated or is a nondomestic participant, the participant must file monthly unaudited financial statements.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41516 (June 10, 1999), 64 FR 33125.

3. Non-Domestic Participants

The rule change modifies Article III, Rule 1, Section 13 of MBSCC's rules to codify the existing practice of requiring non-U.S. participants to: (i) Execute and deliver to MSBCC a master agreement, (ii) provide MBSCC with an opinion of counsel, and (iii) confirm the master agreement and opinion of counsel as MBSCC's may require. The master agreement and the opinion of counsel generally address the enforceability of MBSCC's rules. Article I, Rule 1 of MBSCC'S rules is also being modified to add definitions of the terms "master agreement" and "opinion of counsel."

4. Additional Assurances

The rule change modifies Article III, Rule 1 of MBSCC's rules by adding a new Section 16. The new section provides that any participant that contemplates it no longer will be in compliance with MBSCC's rules and procedures or will no longer be able to perform its contracts or satisfy its obligations to MBSCC or MBSCC participants must immediately notify MBSCC. If MBSCC has reasonable grounds to believe that a participant no longer will be in compliance with MBSCC's rules and procedures or no longer will be able to perform its contracts or satisfy its obligations to MBSCC or MBSCC participants, MBSCC may require additional information from such participant relating to its ability to comply with the rules and procedures, perform its contracts, and satisfy its obligations to MBSCC or MBSCC participants. MBSCC may also increase a participant's minimum required deposits to the participants fund if MBSCC has reasonable grounds to believe such conditions may exist. The new section also states that it does not restrict MBSCC from exercising its right at any time to cease to act for the participant pursuant to MBSCC's rules.

The new section providing for additional assurances is designed to enable MBSCC to better determine a participant's potential inability to meet its obligations and to increase the likelihood that a participant's collateral will be sufficient to satisfy its obligations.

5. MBSCC as Agent

The proposed rule change modifies Article III, Rule 3, Section 5(f) to make explicit that any distribution of funds relating to a participant for which MBSCC has ceased to act is made by MBSCC as agent. MBSCC's role as an agent in the distribution of funds is currently implied in MBSCC's rules

because MBSCC does not guarantee its participant's obligations.

II. Discussion

Section 17A(b)(3)(F)[3] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that each of MBSCC's rule changes is consistent with its obligations under the Act. The net-out report should provide participants with timely information regarding their open net-out obligations to enable them to better monitor potential risk exposure with original contra sides. This information is important because MBSCC's rules generally provide that if a defaulting participant's fund contribution is insufficient to cover the losses of the defaulting participant's non original contra sides, the deficiency is assessed against the defaulting participant's original contra sides. Therefore, the original contra sides remain liable for potential assessments even if as a result of MBSCC's netting process they net-out of transactions. This should help reduce the potential that the default of one participant will cause other participants to default on their obligations at MBSCC because of unexpected risk exposure.

Requiring participants to provide MBSCC with financial information as frequently as required by the participant's appropriate regulator and requiring participants to notify MBSCC in situations where the participant contemplates that it will be unable to meet its obligations will provide MBSCC with more timely information on the financial condition of certain participants.

The additional master agreement, opinion of counsel, and periodic confirmation requirements applicable to non-U.S. participants should better enable MBSCC to evaluate and to lesson or eliminate any negative effects that jurisdictional issues could have on MBSCC's exercise of its rights and remedies against a non-U.S. participant.

Requiring a participant to give notice of potential problems in meeting MBSCC's rules or in satisfying its obligations to MBSCC and other participants and MBSCC's right to require additional assurances and participants fund contributions as needed should better enable MBSCC to determine participants' continuing ability to meet their obligations and to have sufficient collateral on hand.

[3] 15 U.S.C. 78q–1(b)(3)(F).

Because MBSCC does not guaranty its participants' transactions, clarifying that MBSCC is acting as an agent when it ceases to act for a participant should eliminate any potential confusion and potential liability with respect to MBSCC's role.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–99–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21046 Filed 8–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41716; SR–NSCC–99–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Acceptance of Letters of Credit

August 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 20, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to replace NSCC's current letter of credit form with a letter of credit form developed by the Uniform Clearing Group.[2]

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] NSCC attached a copy of the uniform letter of credit as Exhibit A to the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 4, Section 1 of NSCC's Rules and Procedures permits NSCC to accept letters of credit in addition to cash and government securities as collateral for its clearing fund.[4] The proposed rule change will require that letters of credit delivered to NSCC on or after September 1, 1999, be in the form of the uniform letter of credit ("ULC") developed by the United Clearing Group ("UCG").

The UCG is an organization comprised of all the major securities and futures clearing corporations and depositories in the U.S.[5] The UCG developed the ULC to (i) foster uniformity among the various U.S. securities and futures clearing organization with respect to the acceptable terms of letters of credit that are deposited as margin and (ii) reduce operational burdens for industry participants and their letters of credit issuers. In developing the ULC, the UCG consulted with several letter of credit issuing banks and the National Standby Letter of Credit Committee of the International Financial Services Association (formerly known as the U.S. Council on International Banking).

The ULC consists of a cover page plus the uniform terms. All variable terms of the ULC, such as the name of the clearing member, the beneficiary clearing corporation, the issuing bank, the amount of the credit, and the

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] *See also* Securities Exchange Act Release No. 18052 (August 21, 1981), 46 FR 43341.

[5] The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, NSCC, The Options Clearing Corporation, MBS Clearing Corporation, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

expiration date, are set forth on the cover page. To assist members in completing the ULC, the UCG drafted general instructions. In addition, NSCC has provided supplemental instructions relating specifically to letters of credit furnished to NSCC.

NSCC expects that modifications may be made to the ULC in the future. If and when that occurs, NSCC will require its members to use the revised form.[6]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because, among other things, it will promote the prompt and accurate clearance and settlement of transactions in securities by facilitating processing and will foster cooperation within the financial community.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC–99–05 and should be submitted by September 3, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21044 Filed 8–12–99; 8:45 am]

BILLING CODE 8010–01–M

[6] NSCC will file proposed rule changes with the Commission prior to requiring members to comply with substantive changes made to the ULC.

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3112]

Advisory Committee on International Communications and Information Policy Meeting Notice

The Department of State is holding the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The featured guest speaker for this this quarterly meeting will be the Honorable William Kennard, Chairman, Federal Communications Commission who will speak on the subject of telecommunications development internationally. In addition, there will be reports of activities of the various working groups of the Advisory Committee.

This meeting will be held on Thursday, September 16, 1999, from 9:30 a.m.–12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, NW, Washington, DC 20520. Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Shirlett Thornton at (202) 647–8345 or by fax at (202) 647–0158. All attendees must use the "C" Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

FOR FURTHER INFORMATION CONTACT: Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov≤.

Dated: August 6, 1999.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 99–21058 Filed 8–12–99; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–25]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of disposition of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the

legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 26, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electrically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 10, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29655.
Petitioner: Rolls-Royce plc.
Section of the FAR Affected: 14 CFR 34.7(c)
Description of Relief Sought/ Disposition: To permit Rolls-Royce to obtain an exemption from the emissions standards of § 34.7(c) for 150 newly manufactured RB211–535E4/E4B engines.

Docket No.: 29630.
Petitioner: National Air Transportation Association, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and Appendices I & J of part 121
Description of Relief Sought: To permit NATA members to conduct local sightseeing flights, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. The flights would include, but would not be limited to (1) airport open house functions, (2) pancake breakfast functions, (3) fly-ins, (4) functions providing flights in War Birds and other classic aircraft, (5) charity and fundraising functions, and (6) other annual community-oriented functions.

Docket No.: 29468.
Petitioner: Aircraft Owners and Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and appendices I & J of part 121
Description of Relief Sought: To permit AOPA members to conduct local, nonstop, sightseeing flights under visual flight rules during the day for charity or community events, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Docket No.: 29651.
Petitioner: Experimental Aircraft Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and Appendices I & J of part 121
Description of Relief Sought: To permit members of local chapters of the EAA to conduct local sightseeing flights or provide flight experiences at various EAA chapter events, for compensation or hire, in experimental aircraft and aircraft with standard airworthiness certificates, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Dispositions of Petitions

Docket No.: 29513.
Petitioner: Fairchild Dornier/Dornier Luftfarht GmbH.
Sections of the FAR Affected: 14 CFR C36.9(e)(1).
Description of Relief Sought/ Disposition: To allow for the 1–g stall speed used for the 14 CFR part 25 airworthiness certification to also be used for the 14 CFR part 36 noise certification for the approach reference and test limitations on the Dornier 328–300 model aircraft.
GRANT, 6/14/99, Exemption No. 6900

Docket No.: 29572.
Petitioner: Spectrum Aeromed, Inc.
Section of the FAR Affected: 14 CFR 25.562 and 25.785(b).
Description of Relief Sought/ Disposition: To permit certification of medical stretchers for transport of persons whose medical condition dictates such accommodation. This exemption is for an installation on Gulfstream Model G–V model series airplanes.
GRANT, 7/1/99, Exemption No. 6911

Docket No.: 29593.
Petitioner: Empressa Brasileira da Aeronáutica S.A.
Sections of the FAR Affected: 14 CFR 25.783(f).
Description of Relief Sought/ Disposition: To exempt EMBRAER from the requirement for a pressurization prevention means of § 25.783(f) for the rear electronic compartment access hatch of the Embraer Model 135 airplane.
PARTIAL GRANT, 7/13/99, Exemption No. 69–19

Docket No.: 29614.
Petitioner: United Way Center for Human Service.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and Appendices I & J of part 121.
Description of Relief Sought/ Disposition: To permit UWCHS to conduct local sightseeing rides over the Lawrence, Kansas, vicinity at a charitable event on June 26 or 27, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
GRANT, 6/24/99, Exemption No. 6908

Docket No.: 29629.
Petitioner: We Rent Aircraft, Inc. dba Starrett Aviation.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and Appendices I & J of part 121.
Description of Relief Sought/ Disposition: To allow Starrett Aviation to conduct local sightseeing rides at an airshow at Fairfield County Airport in Lancaster, Ohio, on July 10 and 11, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
GRANT, 7/9/99, Exemption No. 6918

[FR Doc. 99–21040 Filed 8–12–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 1999, there were nine applications approved. Additionally, 13 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of

the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Port of Pasco, Pasco, Washington.
Application Number: 99–03–C–00–PSC.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $740,000.
Earliest Charge Effective Date: May 1, 2002.
Estimated Charge Expiration Date: December 1, 2003.
Class of Air Carriers not Required To Collect PFC'S: None.
Brief Description of Projects Approved for Collection and Use: Access road reconstruction. Terminal building upgrades. Loading bridge/mobile covered walkways. Security access system upgrade.
Decision Date: July 7, 1999.
For Further Information Contact: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: City of Des Moines, Iowa.
Application Number: 99–04–C–00–DSM.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $1,850,000.
Earliest Charge Effective Date: June 1, 2005.
Estimated Charge Expiration Date: March 1, 2006.
Class of Air Carriers not Required To Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.
Brief Description of Projects Approved for Collection and Use: Storm water detention facility.
Decision Date: July 9, 199.
For Further Information Contact: Lorna Sandridge, Central Region Airports Division. (816) 426–4730.

Public Agency: City of Killeen, Texas.
Application Number: 99–04–C–00–ILE.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $2,103,726.
Earliest Charge Effective Date: November 1, 1999.
Estimated Charge Expiration Date: July 1, 2005.
Class of Air Carriers Not Required To Collect PFC's: Part 135 charter operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Killeen Municipal Airport (ILE).
Brief Description of Projects Approved for Collection at ILE and Use at Robert Gray Army Airfield (GRK): Perform airport master planning, advanced design, and program management for a passenger terminal facility.
Joint use feasibility and environmental study.
Brief Description of Projects Approved for Collection and Use at ILE: Refurbish aircraft rescue and firefighting vehicle. Apron electrical and lighting upgrades.
Brief Description of Projects Approved for Collection Only at ILE for Future Use at GRK:
Terminal facility site work and utilities.
Construct passenger terminal building and apron.
Construct east side parallel and connecting taxiway to runway 15/33.
Decision Date: July 13, 1999.
For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: City of Boise, Idaho.
Application Number: 99–03–C–00–BOI.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $75,631,748.
Earliest Charge Effective Date: October 1, 2000.
Estimated Charge Expiration Date: August 1, 2016.
Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except air taxi/commercial operators operating public or private charters with a seating capacity of 10 or more.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Boise Air Terminal Airport.
Brief Description of Projects Approved in Part for Collection and Use: Terminal area renovation and expansion.
Determination: Partially approved. The non-revenue producing parking lot is ineligible in accordance with Program Guidance Letter 93–3.2, which limits the eligibility for parking facilities to airports which enplane less than 0.05 percent of the total annual national enplanements. Boise Air Terminal exceeds this threshold.
Decision Date: July 15, 1999.
For Further Information Contact: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: Houghton County Memorial Airport Committee, Hancock, Michigan.
Application Number: 99–07–C–00–CMX.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $113,389.
Earliest Charge Effective Date: October 1, 1999.
Estimated Charge Expiration Date: August 1, 2001.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
PFC account audit charges for fiscal years 1995 through 1998.
PFC application preparation.
Sanitary sewer upgrade, gravity sewer, phase II.
Sanitary sewer upgrade, Force main, phase III.
Mobile manual wheelchair lift.
Cost benefit analysis for the reconstruction of runway 13/31.
Construct and light taxiway "C" extension.
Decision Date: July 19, 1999.
For Further Information Contact: Jon Gilbert, Detroit Airports District Office, (734) 487–7281.

Public Agency: City of Rochester, Minnesota.
Application Number: 99–03–U–00–RST.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue To Be Used in This Decision: $215,000.
Charge Effective Date: May 1, 1996.
Estimated Charge Expiration Date: December 1, 2009.
Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.
Brief Description of Project Approved for Use: Acquire land.
Decision Date: July 19, 1999.
For Further Information Contact: Sandra E. Depottey, Minneapolis Airports District Office, (612) 713–4350.

Public Agency: Metropolitan Washington Airports Authority (MWAA), Alexandria, Virginia.

Application Number: 98–03–C–00–DCA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $23,563,086.

Earliest Charge Effective Date: November 1, 2000.

Estimated Charge Expiration Date: February 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: On-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Ronald Reagan Washington National Airport (DCA).

Brief Description of Project Approved in Part for Collection at DCA and Use at Washington Dulles International Airport: Airside tunnel complex—pedestrian "walkback".

Determination: The approved amount is less than the amount requested for PFC funding in the application due to the limitations placed on the amount of funding authority available to the MWAA under Pub. L. No. 106–6, as amended by Pub. L. 106–31 (1999). The FAA acknowledges the MWAA's intent, as stated in its June 7, 1999, letter, to seek additional PFC funds, to the amount requested in the application, once the statutory restrictions on further PFC approval are removed.

Decision Date: July 27, 1999.

For Further Information Contact: Terry Page, Washington Airports District Office, (703) 285–2570.

Public Agency: Mobile Airport Authority, Mobile, Alabama.

Application Number: 99–03–C–00–MOB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $5,694,289.

Earliest Charge Effective Date: October 1, 1999.

Estimated Charge Expiration Date: October 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Mobile Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Passenger ramp.
Land acquisition.
Airport beacon.
Taxiway rehabilitation.
Security system upgrade.
Runway overlay.
General aviation ramp.

Brief Description of Projects Withdrawn: Air bags.
Passenger shuttle.

Determination: These projects were withdrawn by the public agency in its letter dated June 28, 1999. Therefore, the FAA did not rule on these projects in this decision.

Decision Date: July 27, 1999.

For Further Information Contact: Keafur Grimes, Jackson Airports District Office, (601) 965–4628.

Public Agency: Joint Powers Board, Yellowstone Regional Airport, Cody, Wyoming.

Application Number: 99–22–00–COD.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $219,000.

Earliest Charge Effective Date: August 1, 1999.

Estimated Charge Expiration Date: July 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled, on-demand air carries filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Yellowstone Regional Airport.

Brief Description of Project Approved for Collection and Use: Rehabilitation of runway 4/22.

Brief Description of Projects Approved for Collection Only:

Encasement of irrigation canal.

Relocation/reconstruction of parallel taxiway.

Decision Date: July 28, 1999.

For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
95–07–I–02–CHO, Charlottesville, VA	04/06/99	$56,318	$57,471	07/01/04	12/01/04
97–10–C–01–CHO, Charlottesville, VA	04/06/99	1,023,120	1,033,600	07/01/04	12/01/04
97–11–C–01–CHO, Charlottesville, VA	04/06/99	30,000	205,900	07/01/04	12/01/04
98–03–C–01–BGM, Binghamton, NY	07/01/99	1,815,455	1,813,334	01/01/02	01/01/02
95–01–C–01–FLO, Florence, SC	07/12/99	881,600	669,334	09/01/99	11/01/99
96–03–C–01–ILE, Kileen, TX	07/13/99	816,500	162,830	11/01/99	11/01/99
97–02–C–01–ATW, Appleton, WI	07/19/99	656,250	754,688	04/01/03	06/01/03
98–05–C–01–RHI, Rhinelander, WI	07/20/99	20,500	36,500	04/01/01	07/01/00
93–01–C–04–EUG, Eugene, OR	07/21/99	5,256,888	6,256,888	02/01/00	01/01/01
96–03–C–01–EUG, Eugene, OR	07/22/99	805,335	1,577,459	02/01/00	01/01/01
96–04–C–3–YKM, Yakima, WA	07/22/99	850,957	965,075	03/01/00	06/01/00
98–03–C–01–IAD, Alexandria, VA	07/23/99	29,849,777	34,919,777	02/01/10	05/01/10
96–03–C–01–TUL, Tulsa, OK	07/30/99	12,206,000	13.586,900	08/01/99	11/01/99

Issued in Washington, DC. on August 6, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–21038 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Availability of an Environmental Assessment on the Proposed New York Pennsylvania Station Redevelopment Project

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability of the Environmental Assessment, request for public comment.

SUMMARY: Pursuant to the Council on Environmental Quality regulations and the FRA's Procedures for Considering Environmental Impacts, the FRA announces the availability of an Environmental Assessment for the proposed Pennsylvania Station Redevelopment Project in New York, New York. The Environmental Assessment examines the Pennsylvania Station Redevelopment Corporation's proposal to transform a portion of the James A. Farley Post Office (located directly across Eighth Avenue from Pennsylvania Station) into an intermodal transportation facility and commercial center. The FRA is soliciting comments on this Environmental Assessment. FRA will consider these comments in making a decision pursuant to the National Environmental Policy Act (NEPA) and the National Historic Preservation Act of 1966 (NHPA).

DATES: The Environmental Assessment will remain available for public comment through September 10, 1999.

ADDRESSES: Individuals wishing copies of the draft Environmental Assessment should immediately contact the FRA Office and personnel listed below. Copies of the Environmental Assessment are being mailed to agencies and individuals that have participated in the environmental assessment process. The complete Volume I of the Environmental Assessment has also been placed on FRA's Internet page at *http://www.fra.dot.gov/s/regs/env/pennstation.htm* Finally, the Environmental Assessment is also available for public inspection, by appointment, during normal business hours at the following locations:

Washington DC: Federal Railroad Administration, 1120 Vermont Avenue, NW., Room 6060, Washington, DC 20590, (202) 493–6380.

New York, NY.: Pennsylvania Station Redevelopment Corporation (PSRC), 633 Third Avenue, 36th Floor, New York, NY 10017, (212) 803–3642.

Boston, MA: McGinley Hart and Associates, 77 N. Washington Street, Boston, MA, 02114, (617) 227–2932.

Comments on the Environmental Assessment should be submitted to: Mr. Alexander V. Chavrid, Federal Railroad Administration, Office of Railroad Development, Mailstop-20, 1120 Vermont Avenue, NW, Washington, DC 20590, (202) 493–6380. Comments can also be submitted through E-mail to *pennstation@fra.dot.gov* (please include the sender's full name and mailing address).

FOR FURTHER INFORMATION CONTACT: Mr. Alexander V. Chavrid, at the above address and telephone number.

SUPPLEMENTARY INFORMATION: Efforts to improve the National Railroad Passenger Corporation's (Amtrak) rail passenger station facilities in New York City have been underway since 1991. New York Pennsylvania Station is an aging facility and inadequate to serve the thousands of daily intercity and commuter rail passengers that pass through it let alone the expected increases in intercity and commuter rail ridership over the coming years. The environmental impacts associated with an initial Amtrak proposal to expand the Station space by moving intercity rail passenger functions to the James A. Farley Post Office (located directly across the street from Pennsylvania Station with access to the tracks and platforms) was analyzed by the FRA in a 1995 environmental assessment. Amtrak's proposal was not progressed to final design and in 1995, a new corporation, the Pennsylvania Station Redevelopment Corporation (PSRC), was formed specifically to manage the Pennsylvania Station Redevelopment Project. PSRC is a subsidiary of the New York State Urban Development Corporation, a public benefit corporation of the State of New York. PSRC has proposed a comprehensive program of improvements at the Farley Building that would transform it into a major transportation facility and commercial center. Congress has appropriated Federal funds to the FRA for the redevelopment project in Department of Transportation Appropriations Acts, the Intermodal Surface Transportation Efficiency Act (as amended by the National Highway Designation Act of 1995) and the Transportation Equity Act for the 21st Century. FRA's provision of funds for project purposes is subject to NEPA and NHPA.

Alternatives Analyzed in the Draft Environmental Assessment

Alternative 1. No Action

Under this alternative, the only changes anticipated at Penn Station would be routine repairs and maintenance. Amtrak has underway and will very soon complete life safety improvements and modifications to meet the needs of the start up of Acela high-speed rail service in late 1999. The only changes anticipated on the exterior or interior of the Farley Building would be routine repairs and maintenance of the structure. The No Build alternative also includes minor work at the Eight Avenue Subway concourse at 33rd Street.

Alternative 2. The Build Alternative

The Build Alternative has been designed to meet New York's transportation needs into the 21st Century. PSRC proposes to redevelop the Farley Building into an intermodal transportation facility and commercial center, which includes an Amtrak station in the original Farley Building, an intermodal hall, a sky-lit train concourse, a postal loading dock below grade, and a commuter concourse as well as Eighth Avenue subway connection improvements and ancillary retail. The new station would have two midblock entrances on West 31st and West 33rd Streets. At these entrances, (complemented by entrances at the north and south corners of Eight Avenue), at-grade Americans With Disabilities Act-compliant access would be provided for all passengers and postal retail customers and covered areas would be included for taxi pick-up and drip-off. The United States Postal Service (USPS) would improve and continue to occupy the historic postal lobby, the offices on the upper floors of the original Farley Building, and the postal rail access facilities and mail processing and distribution functions on all floors of the Farley Building Annex. New, modern USPS loading facilities would be built on the train concourse and the first-floor levels of the Farley Building Annex, accessible by ramps from Ninth Avenue. Finally, the Build Alternative includes traffic improvements, operational measures, and pedestrian improvements to streets in the vicinity of the Farley Building.

All interested agencies, organizations, and individuals are urged to provide

comments on the draft Environmental Assessment. All comments received by the closing date will be considered by the FRA as it completes its NEPA and NHPA compliance.

Dated: August 9, 1999.

Mark E. Yachmetz,

Chief, Passenger Programs Division.

[FR Doc. 99–20967 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1999–5896

Applicant: CSX Transportation, Incorporated, Mr. E.G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, between milepost CAB–79.03 and milepost CAB–80.0, near Scottsville,Virgina, on the Rivanna Subdivision, C&O Business Unit, consisting of the following:

1. The discontinuance and removal of absolute controlled signals 70R, 70L, and C at East End Scottsville, milepost CAB–79.03;
2. Conversion of the power-operated switch at the East End Scottsville to hand operation, equipped with an electric lock;
3. The discontinuance and removal of absolute controlled signals 66R and 66L at West End Scottsville, milepost CAB–80.0; and
4. Installation of back to back intermediate signals at milepost CAB–79.1.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on August 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–21047 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1999–5753

Applicants:

CSX Transportation, Incorporated, Mr. E. G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

Consolidated Rail Corporation, Mr. R. E. Inman, Chief Engineer—C&S Assets, 1000 Howard Boulevard, Mount Laurel, New Jersey 08054.

CSX Transportation Incorporated (CSXT) and Consolidated Rail Corporation, jointly seek approval of the proposed temporary discontinuance of the current of traffic and interlocking signal systems, at Riverdale, Illinois, milepost DC–11.40, on the CSXT Barr Subdivision, Chicago Service Lane, for a period of approximately 60 days. During the temporary discontinuance, it is proposed to govern train movements by Yard Limit Rules under the direction of the train dispatcher, and utilize a switch tender handle all switches. The proposal is associated with major modifications to track and signal arrangements, and include the installation of a traffic control system.

The reason given for the proposed changes is to safely and efficiently expedite train movements during construction and cut-over.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on August 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–21050 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1999–5754

Applicant: CSX Transportation, Incorporated, Mr. E.G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed modification of the traffic control system, on Main Track No. 2, at milepost CA–403.1, South Fayette, West Virginia, on the New River Subdivision, C&O Business Unit, consisting of the following:

1. Discontinuance and removal of absolute controlled signals 58RA, 58RC, and 58L;
2. Conversion of the power-operated switch to hand operation; and
3. Installation of back to back intermediate signals 4030 and 4031, and signal E1.

The reason given for the proposed changes is to increase operating efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on August 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–21051 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1999–5751

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, of the Palestine Subdivision, near Palestine, Texas, consisting of the discontinuance and removal of automatic signals 06 and 07 at milepost 82.2 and automatic signals 11R and 12R at milepost 82.9.

The reason given for the proposed changes is that removal of switches and changes in train operation no longer require signals at these locations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on August 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–21048 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49, Code of Federal Regulations, Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification

of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1999–5752

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track and siding, near Delta, Missouri, milepost 138.6, on the Chester Subdivision, consisting of the discontinuance and removal of automatic signals 161, D161, 162, and D162.

The reason given for the proposed changes is that signals are no longer required since the at-grade railroad crossing is no longer in service and the tracks crossing the railroad have been retired.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on August 9, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–21049 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Supplemental Environmental Impact Statement on the Los Angeles Eastside Transit Corridor

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), as Federal lead agency, and the Los Angeles County Metropolitan Transportation Authority (MTA) intend to prepare a Re-Evaluation Major Investment Study (MIS) and a Supplemental Environmental Impact Statement (SEIS) in accordance with the National Environmental Policy Act of 1969 (NEPA) on a proposal by MTA to provide additional transit service to the Eastside communities within the Los Angeles metropolitan area. In addition to NEPA, the proposed project is subject to compliance with the California Environmental Quality Act (CEQA); therefore, a joint SEIS/Supplemental Environmental Impact Report (SEIR) will be prepared.

The Re-Evaluation MIS and the SEIS/SEIR will consider the following alternatives: (1) Exclusive busway alternatives between Union Station and Whittier/Atlantic via 1st St., Lorena, Whittier or other alternative arterial roadways that would be at-grade or elevated. (2) Light rail alternatives between Union Station and Whittier/Atlantic via 1st St., Lorena, Whittier or other alternative arterial roadways that would be at-grade or elevated. (3) A Heavy Rail alternative from Union Station to Chevaz/Soto without a Little Toyko station. (4) The Heavy Rail LPA initial operating segment (IOS–2, 3.7 miles) from Union Station to 1st/Lorena as identified in the Los Angeles Eastside Corridor Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FEIR), May 1994 and the FTA Record of Decision, December 1994 and is the currently suspended Locally Preferred Alternative project. (5) The Heavy Rail Locally Preferred Alternative (LPA) from Union Station to Whittier/Atlantic. This 6.8-mile alternative consists of a heavy rail subway that would follow the alignment identified in the 1994 FEIS/FEIR and the FTA Record of Decision, December 1994. (6) A Transportation Demand Management (TDM)/Transportation System Management (TSM) Alternative. (7) A No Build Alternative, which involves no change to transportation services or facilities in the corridor beyond already committed projects. Potential new feasible alternatives generated through the scoping process will also be considered.

The results of the Re-Evaluation MIS process is intended to narrow the alternatives to be evaluated in detail in the SEIS/SEIR. Scoping will be accomplished through correspondence with interested persons, organizations, and Federal, State, and local agencies; three public scoping meetings; and one-inter-agency scoping meeting.

DATES: Comment Due Date: Written comments on the scope of alternatives and impacts to be considered should be submitted by September 10, 1999. Written comments should be sent to Mr. Steven Byre, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Los Angeles, California 90012. Written comments may also be made at the public scoping meetings scheduled below. Scoping meeting: The public scoping meetings will take place on the following days and locations at the time indicated:

1. Tuesday, August 24, 1999, 4:30 p.m. to 8 p.m.—Resurrection Parish Hall, 3324 E. Opal Street, Los Angeles, CA 90023

2. Thursday, August 26, 1999, 4:30 p.m. to 8 p.m.—St. Alphonsus School Auditorium, 552 S. Amalia, Los Angeles, CA 90022

3. Wednesday, September 2, 1999, 4:30 p.m. to 8 p.m.—Montebello City Hall, City Council Chamber, 1600 West Beverly Blvd., Montebello, CA 90640

A scoping meeting for governmental agencies will be held on Wednesday, August 25 1999, 9 a.m. to 11 a.m.—Los Angeles County MTA, 1 Gateway Plaza, 3rd Floor Board Room, Los Angeles, CA 90012.

People with special needs should contact Steven Brye at MTA at the address below or by calling (213) 922–3078. The selected locations are accessible to people with disabilities.

The scoping meetings will be held in an "open-house" format, and representatives will be available to discuss the project throughout the time periods given. Informational displays and written material will also be available throughout the time periods given.

ADDRESSES: Written comments should be sent to Mr. Steven Brye, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Los Angeles, California 90012. Written comments may also be made at the scoping meetings. See **DATES** above for meeting locations.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hom, Director, Program Development, FTA Region IX, 201 Mission St., Suite 2210, San Francisco, CA 94105–1831. Phone: (415) 744–3133.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and MTA invite interested individuals, organizations, and Federal, State, and local agencies to participate in defining the alternatives to be evaluated in the Re-Evaluation Major Investment Study (MIS) and the SEIS/SEIR and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the location, the proposed alternatives, and the impact areas to be evaluated is being mailed to affected Federal, State, and local agencies. Others may request the scoping materials by contacting Mr. Steven Brye, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Los Angeles, California 90012, (213) 922–3078. Scoping comments may be made in writing at the public scoping meeting. See the **DATES** section above for the location and time. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are less costly or less environmentally damaging while meeting the identified mobility needs. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Re-Evaluation MIS and the Supplemental Draft EIS/EIR has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact: Mr. Steven Brye, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Los Angeles, California 90012, (213) 922–3078.

II. Description of the Study Area and Project Need

The Eastside Transit Corridor study area is a major travel corridor in the Los Angeles region as identified in the previous environmental documents referenced in the Summary above. For this Re-Evaluation MIS, the study area has been defined that includes that portion of East Los Angeles bounded by the Los Angeles Central Business District on the west (Alameda Avenue, Union Station), Interstate 10 (San Bernardino Freeway, to the I–710) and State Route 60 (Pomona Freeway, I–710 to 605) on the north, I–605 (San Gabriel River Freeway) on the east, and Interstate 5 (Santa Ana Freeway) on the south. MTA and FTA are interested in comments as to the possible need to extend the boundaries of this corridor study area to consider longer range transportation needs. The western part of the Los Angeles Central Business District (to the I–110 Harbor Freeway) may be considered a part of the study area depending on the extent of the alternatives considered west of Union Station and Alameda Avenue.

The MTA has considered extension of the Los Angeles Rail Rapid Transit Project (Metro Red Line) to the Eastside communities for many years. The most recent study led to the adoption of a Locally Preferred Alternative to extend the Metro Red Line as a subway for 6.8 miles into the Eastside communities. The initial phase (3.7 miles) of the Eastside heavy rail subway project continued into Final Design and right-of-way acquisition activities assuming the funding was available to construct the project, and MTA entered into a Full Funding Grant Agreement for the initial phase with FTA in December 1994. Subsequently, an evaluation of the current local funding available for the Eastside project and other rail projects in Los Angeles County led to a suspension of work in May 1998. Voters also approved a new County law in November 1998 that restricts the use of Proposition A and C sales tax revenues for "new subways". The MTA was directed to study viable and effective options for all parts of Los Angeles County, with an emphasis on the corridors in which rail project development efforts had been suspended. As a result, MTA has decided to undertake this current study that will involve an in-depth review of fixed guideway and other modal alternatives (rail and bus) that could lead to a project that is affordable, meets corridor mobility and related needs and goals, and is acceptable to the community. The Eastside community is one of the most transit-dependent and transit-oriented communities in Los Angeles County. Many of the highest MTA and Montebello Transit ridership bus routes are there. The commercial and shopping areas on Cesar Chavez Avenue, 1st Street and Whittier Boulevard are not only important to the community but serve the needs of a much larger area. The two colleges (California State University at Los Angeles and the East Los Angeles Community College) in the study area are important to the cultural and educational needs of the Eastside and require quality public transit accessibility.

III. Alternatives

The alternatives proposed for initial consideration in the Re-Evaluation Major Investment Study (see FTA Procedures below) include: (1) Exclusive busway alternatives between Union Station and Whittier/Atlantic via 1st St., Lorena, Whittier or other alternative arterial roadways that would be at-grade or elevated. (2) Light rail alternatives between Union Station and Whittier/Atlantic via 1st St., Lorena, Whittier or other alternative arterial roadways that would be at-grade or elevated. (3) A Heavy Rail alternative from Union Station to Chavez/Soto without a Little Toyko station. (4) The Heavy Rail LPA initial operating segment (IOS–2, 3.7 miles) from Union Station to 1st/Lorena as identified in the 1994 FEIS/FEIR and the FTA Record of Decision, December 1994 and is the currently suspended Locally Preferred Alternative project. (5) The Heavy Rail Locally Preferred Alternative (LPA) from Union Station to Whittier/Atlantic. This 6.8-mile alternative consists of a heavy rail subway that would follow the alignment identified in the 1994 FEIS/FEIR and the FTA Record of Decision, December 1994. (6) A Transportation Demand Management (TDM)/Transportation System Management (TSM) Alternative. (7) A No Build Alternative, which involves no change to transportation services or facilities in the corridor beyond already committed projects.

Other alignment alternatives involving rail or bus may be developed in the scoping process in the early stages of the study.

IV. Probable Effects

FTA and MTA will evaluate significant environmental, social, and economic impacts of the alternatives to be analyzed in the SEIS/SEIR. Among the primary transit issues to be evaluated are the expected increase in transit ridership, the expected increase in mobility for the corridor's transit dependent, the support of the region's air quality goals, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding

agencies. Potentially affected environmental and social resources proposed for analysis include land use and neighborhoods impacts, residential and business displacements and relocations, traffic and parking impacts near stations, traffic circulation, visual impacts, impacts on cultural and archaeological resources, and noise and vibration impacts. Impacts on air and water quality, groundwater, hazardous waste sites, and water resources will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate adverse impacts will be considered.

V. FTA Procedures

A Re-Evaluation Major Investment Study (MIS) will initially be prepared to evaluate several rail and bus mode and alignment options. The MIS/Draft SEIS/SEIR and the conceptual engineering for the project will be prepared simultaneously. Following FTA approval, Preliminary Engineering would be conducted during preparation of the Final SEIS/SEIR. The impacts of these initial alternatives will be evaluated on a corridor-level basis during the Re-Evaluation/MIS and SEIS/SEIR scoping phase. The alternatives coming out of this initial evaluation will then be assessed in the Draft SEIS/SEIR. The Draft SEIS/SEIR/conceptual engineering process will assess the social, economic, and environmental impacts of the proposed alternatives at a project-level while refining their design to minimize and mitigate any adverse impacts. After its publication, the Draft SEIS/SEIR will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft SEIS/SEIR and comments received, MTA will select a preferred alternative to carry forward into the Final SEIS/SEIR. The Final SEIS/SEIR will be based on information resulting from Preliminary Engineering.

Issued On: August 9, 1999.

Leslie Rogers,

Regional Administrator, Federal Transit Administration, Region IX.

[FR Doc. 99–20952 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6061]

Notice of Receipt of Petition for Decision That Nonconforming 1999–2000 Ferrari 360 Modena Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999–2000 Ferrari 360 Modena passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999–2000 Ferrari 360 Modena passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 13, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1999-2000 Ferrari 360 Modena passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1999–2000 Ferrari 360 Modena passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999–2000 Ferrari 360 Modena passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1999–2000 Ferrari 360 Modena passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999–2000 Ferrari 360 Modena passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*. *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*. *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*. *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and

302 *Flammability of Interior Materials. T3Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1999–2000 Ferrari 360 Modena passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies and rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button.

Standard No. 214 *Side Impact Protection:* installation of U.S.-model doorbars in vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm.] It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 9, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Windshield Retention, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials. Compliance.*

[FR Doc. 99–20960 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5696; Notice 2]

American Honda Motor Company, Inc.; Grant of Application for Second Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 122

For the reasons expressed below, we are granting the application by American Honda Motor Co., Inc., of Torrance, California ("Honda"), for a second renewal of its temporary exemption from the fade and water recovery requirements of Federal Motor Vehicle Safety Standard No. 122 *Motorcycle brake systems*. Honda asserted that an exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard.

We published notice of receipt of Honda's application on May 24, 1999, and afforded an opportunity for comment (64 FR 28025). No comments were received responding to this notice.

The discussion that follows is based on information contained in Honda's application.

Why Honda Needs Again To Renew Its Temporary Exemption To Make Easier the Development or Field Evaluation of a New Motor Vehicle Safety Feature Providing a Safety Level at Least Equal to the Safety Level of Standard No. 122

We previously granted Honda NHTSA Temporary Exemption No. 97–1, expiring September 1, 1998, from the following requirements of 49 CFR 571.122 Standard No. 122 *Motorcycle brake systems:* S5.4.1 Baseline check—minimum and maximum pedal forces, S5.4.2 Fade, S5.4.3 Fade recovery, S5.7.2 Water recovery test, and S6.10 Brake actuation forces (62 FR 52372, October 7, 1997). This exemption covered Honda's 1998 CBR1100XX motorcycle. Honda later applied for an extension of its exemption to September 1, 1999, to cover the 1999 model CBR1100XX motorcycle. This request was also granted (63 FR 65272, November 25, 1998). Now Honda has applied for the exemption to continue for another year to cover the 2000 model CBR1100XX motorcycle. The 2000 model of the CBR1100XX will be mechanically identical to the 1999 model. Under Temporary Exemption No. 97–1, Honda has sold far less than 2,500 exempted 1998 and 1999 model CBR1100XX motorcycles.

Honda's original and renewed requests concern exemption "from the requirement of the minimum hand-lever force of five pounds in the base line check for the fade and water recovery tests." The company continues to evaluate the marketability of an "improved" motorcycle brake system setting which is currently applied to the model sold in Europe. The difference in setting is limited to a softer master cylinder return spring in the European version. Using the softer spring results in a "more predictable (linear) feeling during initial brake lever application," and "allows a more predictable rise in brake gain." Honda considers that

motorcycle brake systems have continued to evolve and improve since Standard No. 122 was adopted in 1972, and that one area of improvement is brake lever force which has gradually been reduced. However, the five-pound minimum specification "is preventing further development and improvement" of brake system characteristics. This limit, when applied to the CBR1100XX "results in an imprecise feeling when the rider applies low-level front brake lever inputs."

On November 5, 1997, Honda submitted a petition for rulemaking to amend Standard No. 122 to eliminate the minimum brake actuation force requirement. We granted Honda's rulemaking petition on March 16, 1999. Honda interprets this action as "signifying that the agency believes a further review of the issues raised in the petition appears to have merit."

The CBR1100XX is equipped with Honda's Linked Braking System (LBS) which is designed to engage both front and rear brakes when either the front brake lever or the rear brake pedal is used. The LBS differs from other integrated systems in that it allows the rider to choose which wheel gets the majority of braking force, depending on which brake control the rider uses.

According to Honda, the overall braking performance remains unchanged from a conforming motorcycle. Exempted CBR1100XX vehicles meet "the stopping distance requirement but at lever forces slightly below the minimum."

Honda's Reasons Why a Temporary Exemption Is in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Honda argued in 1997 that granting an exemption would be in the public interest and consistent with objectives of traffic safety because it

> . . . should improve a rider's ability to precisely modulate the brake force at low-level brake lever input forces. Improving the predictability, even at very low-level brake lever input, increases the rider's confidence in the motorcycle's brake system.

Honda repeated those arguments in 1998 and 1999. It has asserted that a renewal allows further refinement and development of the LBS. It believes that the LBS has "many desirable characteristics—especially during emergency braking—that could reduce the number of rear brake locks-up crashes."

Our Findings in Support of Granting Honda's Application

We find persuasive the same reasons supporting granting Honda's application as we did before. As we said in granting Honda's initial petition in 1997 (62 FR 52372):

> The distinctive motorcycle brake system setting which Honda seeks to evaluate in the United States is a "new motor vehicle safety feature" that can be evaluated in the field. * * * Further, the level of safety provided should be at least equal to the level provided by Standard No. 122 * * Honda * * * asserts that the lower force to modulate the brake lever would improve the rider's control over the brake force. This improved control, and thus predictability over the brake's function, would also improve the rider's confidence in the brakes and motorcycle.
>
> NHTSA concurs with Honda that new technology that may lead to greater rider control over the brake force thus resulting in reduced stopping distances and better crash avoidance is in the public interest and consistent with efforts to improve traffic safety.

And we conclude that a renewal should allow further refinement and development of the LBS.

In consideration of the foregoing, it is hereby found that an exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of Standard No. 122. It is also hereby found that the renewal of the temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, NHTSA Temporary Exemption No. 97–1 is extended to, and will expire on, September 1, 2000.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.)

Issued on August 9, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–20961 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–4357; Notice 2]

Aprilia, S.p.A.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

We are granting the application by Aprilia S.p.A. of Noale, Italy, for a temporary exemption from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The basis of the request was that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. 30113(b)(3)(B)(iv).

We published notice of receipt of the application on August 28, 1998, and provided an opportunity for comment (63 FR 46097).

Paragraph S5.2.1 of Standard No. 123 requires that, if a motorcycle is equipped with rear wheel brakes, those brakes be operable through the right foot control, though the left handlebar is a permissible brake control location for motor driven cycles (Item 11, Table 1). Aprilia would like to use the left handlebar as the control for the rear brakes of its Leonardo 150 motorcycle, whose 150 cc engine produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. The Aprilia can attain speeds up to 106 km/h (65.7 mph). The frame of the Leonardo "has not been designed to mount a right foot operated brake pedal, which is a sensitive pressure point able to apply considerable stress to the frame, causing failure due to fatigue * * *." Aprilia "intends to begin sales into the United States for market testing purposes during the 1999 sales year and would like to present a model line including the Leonardo 150 motorcycle." Absent an exemption, it would be unable to do so because the vehicle would not fully comply with Standard No. 123. It requested an exemption for calendar years 1999 and 2000.

Aprilia argued that the overall level of safety of the Leonardo 150 equals or exceeds that of a non-exempted motor vehicle for the following reasons. The Leonardo 150 is equipped with an automatic transmission. As there is no foot operated gear change, "the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle." Thus, the Leonardo 150 can be operated without requiring special training or practice. In response to NHTSA's justification for standardization of motorcycle controls, Aprilia argued that "any driver will not hesitate when confronted with an emergency" because "the use of a left hand lever for the rear brake is highly 'intuitive" and easy to use * * *."

Admitting that "the human foot can apply much more force than can the hand," Aprilia believes that "with the modern hydraulically activated disc brakes used on the Leonardo 150, more than enough brake actuation force is available from the hand of even the smallest rider." Further, "it takes much longer for the rider's foot to be placed over the pedal, and the foot force applied, than it does for the rider to reach and squeeze the hand lever."

Aprilia argued that "reducing this "latency time" to a minimum, especially for inexperienced riders, has obvious safety benefits." Finally, the hand lever reduces the possibility of loss of control because of rear wheel locking in an emergency braking situation because of "the increased sensitivity to brake feedback with the hand lever."

Aprilia pointed out that European regulations allow motorcycle manufacturers the option of choosing rear brake application through either a right foot or left handlebar control, and that Australia permits the optional locations for motorcycles of any size with automatic transmissions.

An exemption would be consistent with objectives of motor vehicle safety, Aprilia argued, because it believes that its disc brake system provides "better resistance to fade and better performance under wet conditions." The design of the vehicle "has been tested by long use in Europe and the rest of the world" without safety concerns being raised. An exemption would be in the public interest because the emissions "of the small engines have been demonstrated to be lower than alternative means of transportation such as large motorcycles or automobiles." The introduction of "this type of motor vehicle will provide the American consumer with a broader range of choice of low-cost transportation."

NHTSA received one comment on Aprilia's application, from Peugeot Motocycles of France, which supported it.

In order to grant Aprilia's application, NHTSA must find that an exemption is consistent with the public interest and motor vehicle safety (49 U.S.C. Sec. 30113(b)(3)(A)), and that compliance with the brake control location requirement of Standard No. 123 would prevent Aprilia from selling a motorcycle with an overall safety level at least equal to the safety level of a nonexempt motorcycle (49 U.S.C. Sec. 30113(b)(3)(B)(iv)).

Aprilia has correctly identified NHTSA's principal area of concern: the standardization of motorcycle controls. In adopting Standard No. 123 in April 1972, effective September 1, 1974, the agency justified standardization of motorcycle controls as a means of minimizing operator error in responding to the motoring environment, saying that "a cyclist, especially the novice and the cyclist who has changed from one make of machine to another, must not hesitate when confronted with an emergency" (37 FR 7207).

Accordingly, after the close of the comment period, we asked Aprilia to comment on our concern that a left hand lever-operated rear brake may contribute to unfamiliarity and thus degrade a rider's overall braking reaction beyond what would exist on a motorcycle with conventionally configured controls. At the request of Aprilia's U.S. sales subsidiary, Aprilia U.S.A. Inc. of Woodstock, Georgia, Carter Engineering of Franklin, Tennessee, prepared a report on "Motorscooter Braking Control Study" (Report No. CE–99–APR–05, May 1999) comparing braking response times of riders using the left hand control of the Leonardo 150 and the right foot control of the Yamaha XC–125 Riva. We have placed a copy of this report in the docket. Aprilia U.S.A. comments that "[o]verall, the test subjects" reaction times on the Leonardo were approximately 20% quicker than their reaction times on the conventional motorcycle." Aprilia believes that "a less complex braking arrangement like that of the Leonardo will improve rider reaction in an emergency situation." We interpret the report as indicating that a Leonardo rider's braking response is not likely to be degraded by the different placement of the brake controls, thus directly addressing and meeting our safety concern.

With respect to the public interest and consistency with objectives of motor vehicle safety, the available information suggests that Aprilia's request to operate the rear brake with the left hand instead of the right foot may not degrade the rider's braking response. By allowing exempted vehicles to be sold on a temporary basis for two years, it will be possible for us to gather data on operators' experience with this alternative rear brake control. This information would allow us to make a more informed decision about locations for motorcycle brake controls.

In consideration of the foregoing, it is hereby found that to require compliance with Standard No. 123 would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. It is further found that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Aprilia, S.p.A. is hereby granted NHTSA Temporary Exemption No. EX99–9 from the requirement of Item 11, Column 2, Table 1 of 49 CFR 571.123 Standard No. 123, *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control. This exemption applies only to the Leonardo 150 and will expire on July 1, 2001. 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on: August 9, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–20951 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Preemption Determination No. PD–15(R); Docket No. RSPA–97–2968 (PDA–17(R))]

Public Utilities Commission of Ohio Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Decision on petition for reconsideration of administrative determination of preemption.

PETITIONERS: William E. Comley, Inc. (WECCO) and TWC Transportation Corporation (TWC).

STATE LAWS AFFECTED: Ohio Admin. Code § 4901:2–05–02.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: RSPA affirms its March 29, 1999 determination that there is insufficient evidence that the Public Utilities Commission of Ohio (PUCO) has applied or enforced requirements governing the transportation of hypochlorite solutions in any different manner than provided in the HMR.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

WECCO and TWC applied to RSPA for an administrative determination that Federal hazardous material transportation law preempts an alleged requirement of the State of Ohio, as supposedly applied and enforced by PUCO, with respect to cargo tank motor vehicles used to transport hypochlorite solutions. According to these two companies, PUCO brought enforcement cases against them based on their use of a non-DOT specification cargo tank motor vehicle to transport hypochlorite

solutions containing more than 5% but less than 16% available chlorine. WECCO and TWC have not paid the total of almost $25,000 in civil penalties assessed by PUCO.

RSPA dismissed the first application submitted by WECCO and TWC. After considering additional information supplied by these companies in support of their second application, on October 10, 1997, RSPA published a notice in the **Federal Register** inviting interested parties to comment on these companies' application. 62 FR 53049. In response to that notice, PUCO and the National Tank Truck Carriers, Inc. (NTTC) submitted comments opposing the application of WECCO and TWC. The applicants did not submit further comments.

In its decision in Preemption Determination (PD) No. 15(R), published in the **Federal Register** on March 29, 1999, RSPA found that written requirements of the State of Ohio applicable to the transportation of hazardous materials are consistent with the HMR and that there is "no evidence that PUCO applies or enforces a general requirement for the use of a DOT specification cargo tank motor vehicle to transport hypochlorite solutions with less than 16% available chlorine." 64 FR 14965, 14967. RSPA explained that WECCO and TWC could have appealed an individual misinterpretation or misapplication of the HMR's requirements in the PUCO enforcement proceedings and stated that:

> As a general matter, an inconsistent or erroneous interpretation of a non-Federal regulation should be addressed in the appropriate State or local forum, because "isolated instances of improper enforcement (e.g., misinterpretation of regulations) do not render such provisions inconsistent" with Federal hazardous material transportation law. IR–31, Louisiana Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572, 25584 (June 21, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992), quoted in PD–4(R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48940 (Sept. 20, 1993), decision on reconsideration, 60 FR 8800 (Feb. 15, 1995).
>
> PD–14(R), Houston, Texas Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials, 63 FR 67506, 67510 n.4 (Dec. 7, 1998), decision on petition for reconsideration, 64 FR 33949 (June 24, 1999), quoted from 64 FR 14967.

In Part II of its decision in PD–15(R), RSPA discussed the applicability of Federal hazardous material transportation law to the transportation of hazardous materials in commerce and the standards for making determinations of preemption. 64 FR 14965–66. As explained there, unless DOT grants a waiver or there is specific authority in another Federal law, a State (or other non-Federal) requirement is preempted if:

- —It is not possible to comply with both the State requirement and a requirement in the Federal hazardous material transportation law or regulations;
- —The State requirement, as applied or enforced, is an "obstacle" to accomplishing and carrying out the Federal hazardous material transportation law or regulations; or
- —The State requirement concerns a "covered subject" and is not "substantively the same as" a provision in the Federal hazardous material transportation law or regulations. Among the five covered subjects are (1) "the designation, description, and classification of hazardous material," and (2) the "packing, repacking, handling, labeling, marking, and placarding of hazardous material."

See 49 U.S.C. 5125 (a) & (b). These preemption provisions stem from congressional findings that State and local laws which vary from Federal hazardous material transportation requirements can create "the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting . . . regulatory requirements," and that safety is advanced by "consistency in laws and regulations governing the transportation of hazardous materials." Pub. L. 101–615 Sections 2(3) & 2(4), 104 Stat. 3244.

In PD–15(R), RSPA also explained its procedures for issuing preemption determinations and the rights to file a petition for reconsideration and/or judicial review. 63 FR at 67509, 67511.

Within the 20-day time period provided in 49 CFR 107.211(a), WECCO and TWC filed a petition for reconsideration of PD–15(R). These companies certified that they had mailed a copy of their petition to PUCO and NTTC, the only parties that had submitted comments. PUCO submitted comments on the City's petition for reconsideration.

II. Petition for Reconsideration

In their petition for reconsideration, WECCO and TWC acknowledge that the State of Ohio has adopted the Federal HMR verbatim. They argue that "RSPA's ruling claim of 'nsufficiency of evidence' is incomprehensible," and they present a lengthy list of complaints about the two enforcement proceedings brought against them. They assert such matters as

- —The right of these companies to represent themselves "pro se" in the PUCO enforcement hearings;
- —The failure of a PUCO commissioner to attend the PUCO enforcement hearings;
- —An alleged failure of PUCO to serve a "Notice of Apparent Violations;
- —The preponderance of the evidence in the PUCO enforcement hearings and allegations that "[t]he Department tampered with evidence and records while the [WECCO and TWC] trucks were impounded"; and
- —The Ohio Governor and other State officials "each became Party through malfeasance or misfeasance in office."

The conclusion of these parties is that "Ohio did enforce a variance and conflicting regulations against WECCO and TWC." They state that it would be "wrong, immoral, and illegal" for RSPA to "violate law by supporting the Ohio Department's lawlessness."

The petition for reconsideration submitted by WECCO and TWC contains the same arguments as previously considered by RSPA in PD–15(R). These companies still have not provided any information or evidence that PUCO has generally enforced requirements concerning the transportation of hazardous materials in a manner inconsistent with the HMR. As PUCO states in its responding comments, the petition for reconsideration "presents nothing new for RSPA's consideration and, instead, merely attempts to once again improperly invite RSPA to sit as an appeals court."

III. Ruling

RSPA denies the petition for reconsideration filed by WECCO and TWC and affirms its March 29, 1999 determination that there is insufficient evidence that PUCO has applied or enforced requirements governing the transportation of hypochlorite solutions in any different manner than provided in the HMR.

IV. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on the application of WECCO and TWC for a determination of preemption as to requirements of the State of Ohio, as applied and enforced by PUCO, concerning the transportation of hypochlorite solutions in cargo tank motor vehicles.

Issued in Washington, DC on August 9, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–21019 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: In order to comply with the requirements of the Paperwork Reduction Act of 1995 concerning proposed extensions of information collection requirements, the Financial Crimes Enforcement Network ("FinCEN") is soliciting comments concerning Internal Revenue Service ("IRS") Form 8362, Currency Transaction Report by Casinos ("CTRC"), which is filed for currency transactions involving casinos and card clubs under the Bank Secrecy Act regulations.

DATES: Written comments must be received on or before October 12, 1999.

ADDRESSES: Direct all written comments to the Financial Crimes Enforcement Network, Office of Program Development, Attn.: CTRC Comments, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to Leonard Senia, Senior Financial Enforcement Officer; Office of Program Development, (703) 905–3931; or Stacie A. Larson, Office of Chief Counsel, (703) 905–3590. A copy of the CTRC form, as well as all other forms required by the Bank Secrecy Act, can be obtained through the Internet at http://www.treas.gov/fincen/.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act (Titles I and II of Public Law 91–508), as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act, codified at 31 U.S.C. 5311–5314, 5316–5330, appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act regulations has been delegated to the Director of FinCEN.

Section 5313(a) authorizes the Secretary to issue regulations that require a report when "a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes." Regulations implementing section 5313(a) are found at 31 CFR 103.22. In general, the regulations require the reporting of transactions in currency in excess of $10,000 a day. Casinos as defined in 31 U.S.C. 5312(a)(2)(X) and 31 CFR 103.11(n)(7)(i) are financial institutions subject to the currency transaction reporting requirement. Card clubs, as defined in 31 CFR 103.11(n)(8)(i), are casinos subject to currency transaction reporting. (See 63 FR 1919, January 13, 1998.) The Currency Transaction Report by Casinos, IRS Form 8362, is the form casinos and card clubs use to comply with the currency transaction reporting requirements.

Information collected on the CTRC is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel solely in the official performance of their duties. The information contained is used in investigations involving international and domestic money laundering, tax violations, fraud, and other financial crimes.

This notice proposes no changes to the current text of the Form 8362 or its instructions.

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on Form 8362 is presented to assist those persons wishing to comment on the information collection. (Since the number of respondents has increased during 1998 because of the inclusion of card clubs under the Bank Secrecy Act, the estimates below are based on 1998 filings.)

Title: Currency Transaction Report by Casinos.

Form Number: IRS Form 8362.

OMB Number: 1506–0005.

Description of Respondents: All United States casinos and card clubs having gross annual gaming revenues in excess of $1 million, except for casinos in Nevada.

Estimated Number of Respondents: 550.

Estimated Number of Annual Responses: 140,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = 44,333 hours; recordkeeping burden estimate = 11,667 hours. Estimated combined total of 56,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $1,120,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: Extension of a currently approved information collection.

Request for Comments: FinCEN specifically invites comments on the following subjects: (a) whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: August 6, 1999.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 99–20966 Filed 8–12–99; 8:45 am]

BILLING CODE 4820–03–P

Corrections

Federal Register
Vol. 64, No. 156
Friday, August 13, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–17]

Revision of Class E Airspace; Antlers, OK

Correction

In rule document 99–20083 beginning on page 42591 in the issue of Thursday, August 5, 1999, make the following correction(s):

§ 71.1 [Corrected]

On page 42592, in § 71.1, in the second column, in the 5th line from the bottom, after "*ASW OK*" add "*E5*".

[FR Doc. C9–20083 Filed 8–12–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-99-6038]

Notice of Receipt of Petition for Decision that Nonconforming 1998-1999 Audi A6 Passenger Cars Are Eligible for Importation

Correction

In notice document 99–20179, beginning on page 42756, in the issue of Thursday, August 5, 1999, the docket line should appear as set forth above.

[FR Doc. C9–20179 Filed 8–12–99; 8:45 am]

BILLING CODE 1505–01–D

Friday
August 13, 1999

Part II

Department of Housing and Urban Development

Federal Housing Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MT), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–0515; DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Mr. Al Barth, Property Management, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–7283; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; VA: Mr. Anatolij Kushnir, Director, Asset & Enterprise Development Service, 181B, Department of Veterans Affairs, 811 Vermont Avenue, NW, Room 419, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: August 5, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 8/13/99

Suitable/Available Properties

Buildings (by State)

California

Bldg. 604
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010237
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010238
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010239
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Point Arena Air Force Station

Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010240
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010241
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010242
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010243
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010244
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010245
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 618
Point Arena Force Station
Co: Mendorino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010246
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

3 Bachelor Enlisted Quarters
U.S. Coast Guard Station
Humboldt Bay
Samoa CA 95564–9999
Landholding Agency: DOT
Property Number: 87199810001
Status: Unutilized
Comment: 2550 sq. ft. each, 2-story, wood, most recent use—residential, needs rehab, off-site use only.

Colorado

Bldg. #1
John Martin Reservoir Project
29955 County Road
Hasty Co: Bent CO 81044–9715
Landholding Agency: COE
Property Number: 31199930003
Status: Unutilized
Comment: 1400 sq. ft. brick veneer, presence of asbestos/lead paint, most recent use—residential/office, off-site use only.

Bldg. #2
John Martin Reservoir Project
29955 County Road
Hasty Co: Bent CO 81044–9715
Landholding Agency: COE
Property Number: 31199930004
Status: Unutilized
Comment: 1400 sq. ft. brick veneer, presence of asbestos/lead paint, most recent use—residential/office, off-site use only.

Connecticut

DG–12, DG14, DG28–DG46
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199930026
Status: Unutilized
Comment: 19 detached garages, off-site use only.

District of Columbia

William A. White Bldg.
2700 Martin Luther King Ave., SE
Washington Co: DC 20032–
Landholding Agency: GSA
Property Number: 54199930006
Status: Excess
Comment: 150,952 sq. ft. on 2 acres, needs repair, presence of asbestos/lead paint, controlled access, mental hospital campus
GSA Number: 4–F–DC–479.

Idaho

Bldg. 516
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 86348–
Landholding Agency: Air Force
Property Number: 18199520004
Status: Excess
Comment: 4928 sq. ft., 1 story wood frame, presence of lead paint and asbestos, most recent use—offices.

Bldg. 2201
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199520005
Status: Underutilized
Comment: 6804 sq. ft., 1 story wood frame, most recent us—temporary garage for base fire dept. vehicles, presence of lead paint and asbestos shingles.

Indiana

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230006
Status: Excess
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places.

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230007
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house.

Bldg. 7
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810001
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810002
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810003
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 18
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810004
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places.

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810005
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Iowa

Tract 141
Melos, Stanley, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199610005
Status: Excess
Comment: 1104 sq. ft., most recent use—storage, needs rehab, possible asbestos, off-site use only.

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 31199010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–

Location: SR 421 North from Frankfort, KY., to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 31199010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.

Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 31199011628
Status: Unutilized
Comment: 1539 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 31199011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Utility Bldg, Nolin River Lake
Moutardier Recreation Site
Co: Edmonson KY
Landholding Agency: COE
Property Number: 31199320002
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only.

Bldg.
Rough River Lake Project
Louisville Co: Breckenridge KY 40232–
Landholding Agency: COE
Property Number: 31199920001
Status: Excess
Comment: 469 sq. ft., concrete block, most recent use—water treatment, off-site use only.

Missouri

Riverlands Ofc. Bldg.
Melvin Price Locks & Dam
Access Road
West Alton Co: St. Charles MO 63386–
Landholding Agency: COE
Property Number: 31199730001
Status: Excess
Comment: 5000 sq. ft., steel, most recent use—office, flood damaged, off-site use only.

Project Residence
Long Branch Lake
30186 Visitor Center Road
Macon MO 63552–
Landholding Agency: COE
Property Number: 31199830001
Status: Excess
Comment: 1440 sq. ft., off-site use only.

Proj. Residence #1
Stockton Lake
Stockton Co: Cedar MO 65785–
Landholding Agency: COE
Property Number: 31199840001
Status: Excess
Comment: 1260 sq. ft. w/attached garage, most recent use—residence, off-site use only.

Proj. Residence #2
Stockton Lake
Stockton Co: Cedar MO 65785–
Landholding Agency: COE
Property Number: 31199840002
Status: Excess
Comment: 1260 sq. ft. w/attached garage, most recent use—residence, off-site use only.

Montana

Bldg. 112
Forsyth Training Site
Co: Rosebud MT
Landholding Agency: Air Force
Property Number: 18199610002
Status: Unutilized
Comment: 586 sq. ft., recent use—cold storage.

Nebraska

Bldg. 20
Offutt Communications Annex 4
Silver Creek Co: Nance NE 68663–
Landholding Agency: Air Force
Property Number: 18199610004
Status: Unutilized
Comment: 4714 sq. ft., most recent use—dormitory needs major repair.

New Jersey

Naval Reserve Center
53 Hackensack Ave.
Kearny Co: Hudson NJ 07302–
Landholding Agency: Navy
Property Number: 77199930038
Status: Excess
Comment: 12,180 sq. ft., minor repairs needed on 2.63 acres, most recent use—office.

New Mexico

16 Bldgs., Type A
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: 2160–2162, 2157, 2155, 2148, 2139, 2137, 2130, 2129, 2117, 2113, 2109, 2107, 2102, 2100
Landholding Agency: Air Force
Property Number: 18199910013
Status: Unutilized
Comment: 2733 sq. ft., presence of lead, most recent use—residential, off-site use only.

12 Bldgs., Type B
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location #2158, 2149, 2147, 2136, 2132, 2125–2128, 2121, 2115, 2103
Landholding Agency: Air Force
Property Number: 18199910014
Status: Unutilized
Comment: 2735 sq. ft., presence of lead, most recent use—residential, off-site use only.

15 Bldgs., Type C
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: #2164, 2159, 2156, 2150, 2142, 2143, 2140, 2135, 2122–2124, 2120, 2110, 2108, 2104
Landholding Agency: Air Force
Property Number: 18199910015
Status: Unutilized
Comment: 2790 sq. ft., presence of lead, most recent use—residential, off-site use only.

6 Bldgs., Type D
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: #2165, 2163, 2144, 2131, 2106, 2105
Landholding Agency: Air Force
Property Number: 18199910016
Status: Unutilized
Comment: 2936 sq. ft., presence of lead, most recent use—residential, off-site use only.

9 Bldg., Type E
Kirtland AFB
Single Units
Kirtland AFB Co: Bernalillo NM 87117—5000
Location: #2153, 2151, 2134, 2141, 2133, 2119, 2112, 2111, 2101
Landholding Agency: Air Force
Property Number: 18199910017
Status: Unutilized
Comment: 1482 sq. ft., presence of lead, most recent use—residential, off-site use only.

Quarters 1
Cochiti Lake Project
Pena Blanca Co: Sandoval NM 87041–
Landholding Agency: COE
Property Number: 31199930005
Status: Unutilized
Comment: 1400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Qtrs No. 2
Cochiti Lakes Project
Pena Blanca Co: Sandoval NM 87041–
Landholding Agency: COE
Property Number: 31199930006
Status: Unutilized
Comment: 1400 sq. ft., presence of asbestos/lead, most recent use—storage, off-site use only.

Qtrs. No. 3
Cochiti Lake Project
Pena Blanca Co: Sandoval NM 87041–
Landholding Agency: COE
Property Number: 31199930007
Status: Unutilized
Comment: 1400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

New York

Bldgs. 1106 & 184 acres
Forestport Test Annex
Forestport Co: Oneida NY 13338–
Landholding Agency: Air Force
Property Number: 18199920028
Status: Unutilized
Comment: 11,760 sq. ft. on 184 acres, most recent use—research lab, presence of asbestos/lead paint/endangered species.

Bldg. 1105
Forestport Test Annex
Forestport Co: Oneida NY 13338–
Landholding Agency: Air Force
Property Number: 18199920029
Status: Unutilized
Comment: 1920 sq. ft., most recent use—cold rsch. equip. storage, presence of asbestos lead paint.

Bldg. 1452 & 297 acres

AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Landholding Agency: Air Force
Property Number: 18199920030
Status: Unutilized
Comment: 11,000 sq. ft. on 297 acres (67 acres of wetland), most recent use—electronic research testing, presence of asbestos/lead paint.

Bldg. 1453
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Landholding Agency: Air Force
Property Number: 18199920031
Status: Unutilized
Comment: 266 sq. ft., most recent use—generator bldg., presence of asbestos.

Bldg. 1454
AVA Test Annex
Town of Ava Co: Oneida NY 13303–
Landholding Agency: Air Force
Property Number: 18199920032
Status: Unutilized
Comment: 53 sq. ft., most recent use—switch station, presence of asbestos.

North Dakota

Mobile Home
Tract V1999, Little Knife
Cabin Site
Lake Sakakawea Co: Mountrail ND 00000–
Landholding Agency: COE
Property Number: 31199930002
Status: Excess
Comment: 1040 sq. ft. double-wide mobile home, needs repairs, off-site use only.

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at Lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 31199120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Dwelling No. 2
Delaware Lake, Highway 23
North
Delaware OH 43015–
Landholding Agency: COE
Property Number: 31199810005
Status: Excess
Comment: 2-story brick w/basement, most recent use—residential, presence of asbestos/lead paint, of-site use only.

Oklahoma

Water Treatment Plant
Belle Starr, Eufaula Lake
Eufaula Co: McIntosh OK 74432–
Landholding Agency: COE
Property Number: 31199630001
Status: Excess
Comment: 16′×16′, metal, off-site use only.

Water Treatment Plant
Gentry Creek, Eufaula Lake
Eufaula Co: McIntosh OK 74432–
Landholding Agency: COE
Property Number: 31199630002
Status: Excess
Comment: 12′×16′, metal, off-site use only.

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 31199210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.

Dwelling
Lock & Dam 6, Allegheny
River, 1260 River Rd
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 311996210008
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes.

Govt. Dwelling
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/ basement, most recent use—residential.

Dwelling
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Landholding Agency: COE
Property Number: 31199710009
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only.

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740002
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #12
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740003
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #13
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740004
Status: Excess
Comment: 1847 sq. ft., most recent use—office, good condition, off-site use only.

Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 31199740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only.

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740006
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740007
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 31199740008
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199740009
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199830003
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential.

Bldg. 25—VA Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Landholding Agency: VA
Property Number: 97199210001
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab.

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 97199230012
Status: Underutilized
Comment: portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage, second floor—lacks elevator access.

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage.

Tennessee

Cheatham Lock & Dam
Tract D, Lock Road
Nashville Co: Davidson TN 37207–
Landholding Agency: COE
Property Number: 31199520003
Status: Unutilized

Comment: 1100 sq. ft. w/storage bldgs on 7 acres, needs major rehab, contamination issues, 1 acre in fldwy, off-site use only modif. to struct. subj. to approval of St. Hist. Presv. Ofc.

Utah

Salt Lake City Admin. Bldg.
1745 W 1700 S
Salt Lake City Co: UT 84104–
Landholding Agency: GSA
Property Number: 54199930005
Status: Surplus
Comment: 36,060 sq. ft., 2-story concrete/brick, needs repair, presence of asbestos, most recent use—office/storage.
GSA Number: 7–G–UT–429

Virginia

Peters Ridge Site
Gathright Dam
Covington VA
Landholding Agency: COE
Property Number: 31199430013
Status: Excess
Comment: 64 sq. ft., metal bldg.

Metal Bldg.
John H. Kerr Dam & Reservoir
Co: Boydton VA
Landholding Agency: COE
Property Number: 31199620009
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only.

West Virginia

Dwelling 1
Summersville Lake
Summersville Co: Nicholas WV 26651–9802
Landholding Agency: COE
Property Number: 31199810003
Status: Excess
Comment: 1200 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only.

Dwelling 2
Sutton Lake
Sutton Co: Braxton WV 26651–9802
Landholding Agency: COE
Property Number: 31199810004
Status: Excess
Comment: 1100 sq. ft., most recent use—residential, off-site use only.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 31199011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 31199011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 31199011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 31199011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010071
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010072
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010073
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010074
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010075
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010076
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Springs AR 71923–9361
Landholding Agency: COE
Property Number: 31199010077
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010078
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010079
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361

Landholding Agency: COE
Property Number: 31199010080
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010081
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 31199010083
Status: Unutilized
Comment: 46 acres.

California

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 97199240001
Status: Underutilized
Comment: 4 acres; landslide area.

Iowa

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199640002
Status: Unutilized
Comment: golf course, easement requirements.

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 31199010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 31199010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 31199010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 31199010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 31199010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 31199010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 31199010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 31199010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co. Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307

Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7 miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 9 miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River
Landholding Agency: COE
Property Number: 31199010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY, on the waters of Cypress Creek
Landholding Agency: COE
Property Number: 31199010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254
Landholding Agency: COE
Property Number: 31199010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY
Landholding Agency: COE
Property Number: 31199010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY
Landholding Agency: COE
Property Number: 31199011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon Ky 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon Ky 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract B—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 31199130002
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 31199130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 31199130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 31199140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 31199320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored.

Portion of Lock & Dam No. 2
Kentucky River
Lockport Co: Henry KY 40036–9999
Landholding Agency: COE
Property Number: 31199320004
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored.

Louisiana

Wallace Lake Dam and Reservoir

Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 31199011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo La 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 31199011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Maine

Irish Ridge NEXRAD Site
Loring AFB
Fort Fairfield Co: Aroostook ME 04742—
Location:
Landholding Agency: Air Force
Property Number: 18199640017
Status: Unutilized
Comment: 3.491 acres in fee simple.

Maryland

VA Medical Center
0500 North Point Road
Fort Howard Co: Baltimore MD 21052—
Landholding Agency: VA
Property Number: 97199010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Massachusetts

.07 acre
Westover Air Reserve Base
Off Rte 33
Chicopee Co: Hampden MA 01022—
Landholding Agency: Air Force
Property Number: 18199840007
Status: Excess
Comment: land, no utilities

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442—
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 31199011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760—
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 31199011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641—
Location: 1 mile from city of Federal Dam, Mn.
Landholding Agency: COE
Property Number: 31199011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

A

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011021
Status: Underutilized
Comment: 23 acres: no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Section 16, 17, 18 T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011022
Status: Underutilized
Comment: 490 acres: no utilities; intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Section 2 and 3, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011026
Status: Underutilized
Comment: 20 acres; acres: no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co:Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38901–10903
Landholding Agency: COE
Property Number: 31199011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 31199011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 31199011034
Status: Underutilized

Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 31199011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 31199030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Nebraska

Hastings Radar Bomb Scoring
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force.
Property Number: 18199810027
Status: Unutilized
Comment: 11 acres.

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 31199010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 31199010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 31199011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 31199011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 31199430012
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 31199010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 31199010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Locatin: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 31199010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010931
Status: Excess
2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 31199010932
Status: Excess
14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam
Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 31199010933
Status: Unutilized
11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 31199010934
Status: Excess
15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010935
Status: Excess
12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 31199010936
Status: Excess
10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Dover Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 31199010937
Status: Excess
96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 31199010938
Status: Excess
7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 31199010939
Status: Excess
1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 31199010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 31199010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707

Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 31199010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 31199010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 31199011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 31199130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140008
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements.

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 31199140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Texas

Land

Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TN 76504–
Landholding Agency: VA
Property Number: 97199010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

Washington

Spokane Satellite Tracking #1
Fairchild AFB
Portion of Site
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18199810028
Status: Unutilized
Comment: 1.14 acres w/water well pump house.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Bldgs. 001A&B
Spruce Cape Loran Station
Kodiak Co: Kodiak Is. Bor. AK 99615–
Landholding Agency: DOT
Property Number: 87199720001
Status: Excess
Comment: 12492 sq. ft. steel frame, most recent use—barracks and shops, needs extensive repairs, in Tsunami evacuation area.

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706–
Landholding Agency: COE
Property Number: 31199011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Colorado

Bldg. 9023
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 18199730010
Status: Underutilized
Comment: 4112 sq. ft., most recent use—preschool.

Bldg. 9027
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 18199730011
Status: Underutilized
Comment: 4112 sq. ft., most recent use—child care center.

Idaho

Bldg. 224
Mountain Home Air Force
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840008
Status: Unutilized
Comment: 1890 sq. ft., no plumbing facilities, possible asbestos/lead paint, most recent use—office.

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010002
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No: 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010003
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010004
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010005
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010006
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame.

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010007

Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Indiana

Bldg. 24, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230005
Status: Underutilized
Comment: 4135 sq. ft. 2-story wood structure, needs minor rehab, no sanitary or heating facilities, presence of asbestos, Natl Register of Historic Places.

Bldg. 122
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810006
Status: Underutilized
Comment: 37,135 sq. ft., presence of asbestos, most recent use—former dietetics bldg., National Register of Historic Places.

Iowa

Bldg. 00627
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310001
Status: Unutilized
Comment: 1932 sq. ft., 1-story concrete block bldg., most recent use—storage, pigeon infested, contamination investigation in progress.

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process.

Maine

Mount Desert Rock Light
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Landholding Agency: DOT
Property Number: 87199240023
Status: Unutilized
Comment: 1600 sq. ft., 2-story wood frame dwelling, needs rehab, limited utilities, limited access, property is subject to severe storms.

Little River Light
U.S. Coast Guard
Cutler Co: Washington ME
Landholding Agency: DOT
Property Number: 87199240026
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, well is contaminated, limited utilities.

Burnt Island Light
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Landholding Agency: DOT
Property Number: 87199240027
Status: Unutilized
Comment: 750 sq. ft., 2-story wood frame dwelling.

Massachusetts

Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 87199240024
Status: Unutilized
Comment: 1000 sq. ft., 2-story brick dwelling, large wave action with severe ocean storms.

Assistant Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 87199240025
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, large wave action with severe ocean storms.

Michigan

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010790
Status: Excess
Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010834
Status: Excess
Comment: 3000 sq. ft.; floor concrete block; most recent use—commissary facility.

Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.

Nebraska

Bldg. 64
Offutt AFB
Silver Creek Co: Nance NE 68113–
Landholding Agency: Air Force
Property Number: 18199720040
Status: Unutilized
Comment: 4000 sq. ft.; most recent use—admin., needs major rehab, possible asbestos/lead base paint.

New Hampshire

Bldg. 127
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199320057
Status: Excess
Comment: 698 sq. ft., 1-story, concrete and metal frame, possible asbestos, access restrictions, most recent use—storage.

Ohio

Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 31199640001
Status: Unutilized
Comment: 1420 sq. ft., 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access.

Pennsylvania

Tract 353
Grays Landing Lock & Dam Project
Greesnboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430019
Status: Unutilized
Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403B
Grays Landing Lock & Dam
Project
Greensboro Co: Greene PA 15338—
Landholding Agency: COE
Property Number: 31199430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood protected or removed off-site.

Tract 403C
Grays Landing Lock & Dam
Project
Greensboro Co: Greene PA 15338—
Landholding Agency: COE
Property Number: 31199430023
Status: Unutilized
Comment: 672 sq. ft., 2-story, carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood protected or removed.

Tract 434
Grays Landing Lock & Dam
Project
Greensboro Co: Greene PA 15338—
Landholding Agency: COE
Property Number: 31199430024
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame 2 apt. units, historic property, if used for habitation must be flood protected or removed off-site.

Tract 224
Grays Landing Lock & Dam
Project
Greensboro Co: Greene PA 15338—
Landholding Agency: COE
Property Number: 31199430001

Status: Unutilized
Comment: 1040 sq. ft., 2-story bldg., needs repair, historic struct, flowage easement, if habitation is desired property will be required to be flood protected or removed off site.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115—
Landholding Agency: COE
Property Number: 31199011526
Status: Unutilized
Comment: 1224 sq. ft., 2-story, brick/wood frame residence; needs rehab, secured area with alternate access.

Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI: 53295—
Landholding Agency: VA
Property Number: 97199830002
Status: Unutilized
Comment: 133730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage.

LAND

Georgia

Land—St. Simons Boathouse
St. Simons Islands Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 87199540003
Status: Unutilized
Comment: .08 acres, most recent use—pier and dockage for Coast Guard boats.

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultrie IL 62565–9804
Landholding Agency: COE
Property Number: 31199240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved 2/4 small equipment storage bldgs. and a small access road, easement restrictions.

Iowa

38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138—
Landholding Agency: VA
Property Number: 97199740001
Status: Unutilized
Comment: golf course.

Kentucky

Porton of Tract 3300
Fishtrap Lake
Co: Pike KY 41548–
Landholding Agency: COE
Property Number: 31199830002
Status: Excess
Comment: 0.40 acre encroachment, steep hill.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 97199010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Nebraska

Land/Offutt Comm. Annex No. 4
Silver Creek Co: Nance NE 68663–
Landholding Agency: Air Force
Property Number: 18199720041
Status: Unutilized
Comment: 354 acres, most recent use—radio transmitter site, wetlands, isolated area.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 97199010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easement, portion leased.

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 31199011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 31199210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field.

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 97199010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets
Landholding Agency: VA
Property Number: 97199010080
Status: Unutilized
Comment: 90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

Land—3416 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 97199340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer.

Tennessee

44 acres
VA Medical Center
3400 Lebanon Rd.
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: VA
Property Number: 97199740003
Status: Underutilized
Comment: intermittent use, partially landlocked, flooding.

Texas

Parcel #222
Lake Texoma
Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 31199010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 87199310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only.

Nauset Beach Light
Nauset Beach Co: Barnstable MA
Landholding Agency: DOT
Property Number: 87199420001
Status: Unutilized
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation.

Plymouth Light
Co: Plymouth MA
Landholding Agency: DOT
Property Number: 87199420003
Status: Unutilized
Comment: 250 sq. ft. tower, and 2096 sq. ft. dwelling, wood frame, most recent use—aid to navigation/housing.

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430005
Status: Excess
Comment: 66 ft. tower, 14'9" diameter, brick structure, scheduled to be vacated 9/94.

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430006
Status: Excess
Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94.

Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430007
Status: Excess
Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94.

Nahant Towers

Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 87199530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower.

New York

Bldg. 1
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530048
Status: Excess
Comment: 4955 sq. ft., 2 story concrete block, needs rehab, most recent use—adminstration.

Bldg. 2
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530049
Status: Excess
Comment: 1476 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop.

Bldg. 6
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530050
Status: Excess
Comment: 2466 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop.

Bldg. 11
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530051
Status: Excess
Comment: 1750 sq. ft., 1 story wod frame, needs rehab, most recent use—storage.

Bldg. 8
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530052
Status: Excess
Comment: 1812 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop communications.

Bldg. 14
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530053
Status: Excess
Comment: 156 sq. ft., 1 story wood frame, most recent use—vehicle fuel station.

Bldg. 30
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530054
Status: Excess
Comment: 3649 sq. ft., 1 story, needs rehab, most recent use—assembly hall.

Bldg. 31
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530055
Status: Excess
Comment: 8252 sq. ft., 1 story concrete block, most recent use—storage.

Bldg. 32
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530056
Status: Excess
Comment: 1627 sq. ft., 1 story concrete block, most recent use—storage.

South Carolina

5 Bldgs.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 101 Vector Ave., 112, 114, 116, 118 Intercept Ave.
Landholding Agency: Air Force
Property Number: 18199830035
Status: Unutilized
Comment: 1433 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential.

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 102 Vector Ave.
Landholding Agency: Air Force
Property Number: 18199830036
Status: Unutilized
Comment: 1545 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential.

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 103 Vector Ave.
Landholding Agency: Air Force
Property Number: 18199830037
Status: Unutilized
Comment: 1445 sq. ft. + 346 sq. ft. carport, lead base paint/exterior most recent use—residential.

18 Bldgs.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 104–107 Vector Ave., 108–111, 113, 115, 117, 119 Intercept Ave., 120–122 Radar Ave.
Landholding Agency: Air Force
Property Number: 18199830038
Status: Unutilized
Comment: 1265 sq. ft. + 353 sq. ft. carport, lead base paint/exterior most recent use—residential.

Land (by State)

Alaska

Gibson Cove Tract
Kodiak Co: AK 99619–
Landholding Agency: DOT
Property Number: 87199920001
Status: Unutilized
Comment: 37.55 acres, undeveloped land.

Georgia

Lake Sidney Lanier
Co: Forsyth GA 30130–
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 31199440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species.

Lake Sidney Lanier-3 parcels
Gainesville Co: Hall GA 30505–
Location: Between Gainesville, H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 31199440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species.

Indiana

Brookville Lake—Land
Liberty Co: Union IN 47353–
Landholding Agency: COE
Property Number: 31199440009
Status: Unutilized
Comment: 6.91 acres, limited utilities.

Kansas

Parcel #1
Fall River Lake
Section 26
Co: Greenwood KS
Landholding Agency: COE
Property Number: 31199010065
Status: Unutilized
Comment: 126.69 acres; most recent use—recreation and leased cottage sites.

Parcel No. #2, El Dorado Lake
Approx. 1mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 31199210005
Status: Unutilized
Comment: 14 acres, pat of a relocated railroad bed, rural area.

Massachusetts

Buffumville Dam
Fllod Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 31199010016
Status: Excess
Comment: 1.45 acres.

Minnesota

Tract #3
Lac Qui Parle Flood Control Project
County Rd. 13
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 31199340006
Status: Unutilized
Comment: approximately 2.9 acres, fallow land.

Tract #34
Lac Qui Parle Flood Control Project
Marsh Lake
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 31199340007
Status: Unutilized
Comment: approximately 8 acres, fallow land.

New York

14.90 Acres
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530057
Status: Excess
Comment: Fenced in compound, most recent use—Air Natl. Guard Communication & Electronics Group.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 31199010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 31199240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 426, Maxwell AFB
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 18199720027
Status: Unutilized
Reason: Secured Area Extensive deterioration.

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120001
Status: Excess
Reason: Floodway.

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120002
Status: Excess
Reason: Floodway.

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120003
Status: Excess
Reason: Floodway.

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120004
Status: Excess
Reason: Floodway.

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120005
Status: Excess
Reason: Floodway.

Bldg. 7
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730001
Status: Underutilized
Reason: Secured Area.

Bldg. 8
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730002
Status: Underutilized
Reason: Secured Area.

Alaska

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010296
Status: Unutilized
Reason: Isolated area, Not accessible by road, Contamination, Secured Area.

Bldg. 165
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010298
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area.

Bldg. 150
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010299
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area.

Bldg. 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010300
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area.

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010301
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area.

Bldg. 11–230
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010303
Status: Unutilized
Reasons: Contamination, Secured Area.

Bldg. 63–320
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010307
Status: Unutilized
Reasons: Contamination, Secured Area.

Bldg. 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010308
Status: Unutilized
Reasons: Contamination, Secured Area.

Bldg. 103
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010309
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area.

Bldg. 110
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010310
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area.

Bldg. 112
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010311
Status: Unutilized
Reasons: Isolated area Not accessible by road Contamination Secured Area.

Bldg. 113
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010312
Status: Unutilized
Reasons: Isolated area Not accessible by road Contamination Secured Area.

Bldg. 114
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010313
Status: Unutilized
Reasons: Isolated area Not accessible by road Contamination Secured Area.

Bldg. 115
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000

Landholding Agency: Air Force
Property Number: 18199010314
Status: Unutilized
Reasons: Isolated area Not accessible by road Contamination Secured Area.

Bldg. 118
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010315
Status: Unutilized
Reasons: Isolated area Not accessible by road Contamination Secured Area.

Bldg. 1018
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010317
Status: Unutilized
Reasons: Isolated area Not accessible by road Contamination Secured Area.

Bldg. 1025
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010318
Status: Unutilized
Reasons: Isolated area Not accessible by road Contamination Secured Area.

Bldg. 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010319
Status: Unutilized
Reasons: Isolated area Not accessible by road Contamination Secured Area.

Bldg. 107
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010320
Status: Unutilized
Reasons: Isolated area Not accessible by road Contamination Secured Area.

Bldg. 115
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010321
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured area.

Bldg. 113
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010322
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured area.

Bldg. 150
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 88506–5000
Landholding Agency: Air Force
Property Number: 18199010323
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured area.

Bldg. 152
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010324
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured area.

Bldg. 301
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010325
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured area.

Bldg. 1001
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010326
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured area.

Bldg. 1003
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010327
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured area.

Bldg. 1055
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010328
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured area.

Bldg. 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010329
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured area.

Bldg. 103
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010330
Status: Unutilized
Reasons: Isolated area
Not accessible by road
Contamination
Secured Area.

Bldg. 104
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010331
Status: Unutilized
Reasons: Isolated area
Not accessible by road
Contamination
Secured Area.

Bldg. 105
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010332
Status: Unutilized
Reasons: Isolated area
Not accessible by road
Contamination
Secured Area.

Bldg. 110
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010333
Status: Unutilized
Reasons: Isolated area
Not accessible by road
Contamination
Secured Area.

Bldg. 114
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010334
Status: Unutilized
Reasons: Isolated area
Not accessible by road
Contamination
Secured Area.

Bldg. 202
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010335
Status: Unutilized
Reasons: Isolated area
Not accessible by road
Contamination
Secured Area.

Bldg. 204
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010336
Status: Unutilized

Reasons: Isolated area
Not accessible by road
Contamination
Secured Area.

Bldg. 205
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010337
Status: Unutilized
Reasons: Isolated area
Not accessible by road
Contamination
Secured Area.

Bldg. 1001
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010338
Status: Unutilized
Reasons: Isolated area
Not accessible by road
Contamination
Secured Area.

Bldg. 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010339
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Contamination, Secured Area.

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010433
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Isolated and remote; arctic environment.

Bldg. 1548, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420001
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 1568, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420002
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 1570, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420003
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 1700, Galena Airport, Elmendorf AFB AK 99506–420
Landholding Agency: Air Force
Property Number: 18199420004
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 1832, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420005
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 1842, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420006
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 1844, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199420007
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 1853, Galena, Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199440011
Status: Unutilized
Reasons: Floodway, Secured Area.

Bldg. 142
Tin City Long Range Radar
Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 18199520013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 110
Tin City Long Range Radar
Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 18199520014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 646
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199520015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 2541
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 18199520016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1770
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 18199520017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520024
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520025
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration.

Bldg. 12
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520026
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration.

Bldg. 1
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520027
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration.

Bldg. 2
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520028
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration.

Bldg. 3
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 18199520029
Status: Unutilized
Reasons: Not accessible by road, Extensive deterioration.

Bldg. 3024
Tatalina Long Range Radar
Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3045
Tatalina Long Range Radar
Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 18
Lonely Dewline Site
Elmendorf ABF AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 23
Lonely Dewline Site
Elmendorf AFB AK 99506–4420

Landholding Agency: Air Force
Property Number: 18199530004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1015
Kotzebue Long Range Radar
Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 2
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 4100
Cape Romanzof Long Range
Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 200
Cape Newenham Long Range
Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 2166
Cape Newenham Long Range
Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530011
Status: Unutilized
Reasons: Extensive deterioration.

Bldg. 5500
Cape Newenham Long Range
Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 8
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 75
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 86
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3060
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 18199530016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 11–330
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199530017
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration.

Bldg. 21–870
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199530019
Status: Unutilized
Reason: Secured Area.

Bldg. 31–342
Elmendorf Air Force Base
Anchorge AK 99506–3240
Landholding Agency: Air Force
Property Number: 1819953022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 32–126
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199530023
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration.

Bldg. 221–737
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199540001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 52–651
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency; Air Force
Property Number: 18199740004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 132
Tin City Long Range Radar
Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199810003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldgs. 1001, 211
Murphy Dome AF Station
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199810004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1551
Galena Airport
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199810030
Status: Unutilized
Reasons: Within airport runway clear zone.

Bldg. 1771
Galena Airport
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199820001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 62–146
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199830007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 34–570
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number; 18199830008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 3
Oliktok Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 8
Oliktok Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 19
Lonely Short Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840012
Status: Unutilized

Reasons: Secured Area, Extensive deterioration.

Bldg. 20
Lonely Short Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 338
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 560
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 612
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 618
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 643
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 649
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 18199840019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 114
Indian Mountain Long Range
Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 18199840020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 34–636
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Extensive deterioration.

Bldg. 34–638
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Extensive deterioration.

Bldg. 140
Cape Lisburne Long Range
Radar Site
Elmendorf AFB AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 145
Cape Lisburne Long Range
Radar Site
Elmendorf AFB AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 310
Cape Lisburne Long Range
Radar Site
Elmendorf AFB AK 99506–3240
Landholding Agency: Air Force
Property Number: 18199840025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 27
Eareckson Air Station
Shemya Island, AK
Landholding Agency: Air Force
Property Number: 18199840026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 30
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 42
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840028
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 212
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840029
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 213
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840030
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 223
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 452
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840032
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 502
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840033
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 503
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840034
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 522
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840035
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 587
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840036
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 588
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840037
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 598
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840038
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 605
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840039

Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 613
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840040
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 614
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 615
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 616
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 617
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840044
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 624
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840045
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 700
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840046
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 718
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 727
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840048
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 731
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 751
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 753
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840051
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1001
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840052
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1005
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840053
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1010
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840054
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1025
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840055
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1030
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840056
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3016
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3062
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840058
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3063
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18199840059
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 32–189
Elmendorf Air Force Base
Anchorage Co: AK 99506–3230
Landholding Agency: Air Force
Property Number: 18199920001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 4893
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930001
Status: Unutilized
Reasons: Within airport runway clear zone.

Bldg. 4905
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930002
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area.

Bldg. 4913
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930003
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area.

Bldg. 5887
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area.

Bldg. 10449
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930005
Status: Unutilized
Reasons: Secured Area.

Bldg. 12759
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18199930006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 28
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000

Landholding Agency: DOT
Property Number: 87199210126
Status: Excess
Reasons: Within airport runway clear zone, Secured Area.

Bldg. 19
USCG Support Center
Kodiak Co: KOdiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210128
Status: Excess
Reasons: Within airport runway clear zone, Extensive deterioration, Secured Area.

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210132
Status: Excess
Reasons: Within airport runway clear zone, Secured Area
GSA Number: U–ALAS–655A.

Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210133
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. R1, Holiday Beach
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310014
Status: Unutilized
Reason: Secured Area.

Bldg. S–3
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310015
Status: Unutilized
Reason: Secured Area.

Bldg. S–16
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310016
Status: Unutilized
Reason: Secured Area.

Bldg. 624
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310021
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area.

Bldg. 456
Coast Guard—ISC Kodiak
Kodiak Co: Kodiak Borough AK 99615–
Landholding Agency: DOT
Property Number: 87199710002
Status: Excess
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration.

Bldg. 524A
USCG ISC Kodiak
Kodiak Co: Kodiak Is. Borough AK 99619–
Landholding Agency: DOT
Property Number: 87199710004
Status: Excess
Reasons: Floodway, Secured Area.

Bldg. R13, USCG ISC Kodiak
Holiday Beach
Kodiak Co: Kodiak Is. Borough AK 99619–
Landholding Agency: DOT
Property Number: 87199720003
Status: Excess
Reason: Secured Area.

Bldg. 172, USCG ISC Kodiak
Nyman's Pensinsula
Kodiak Co: Kodiak Is Bor AK 99619–
Landholding Agency: DOT
Property Number: 87199720004
Status: Unutilized
Reason: Secured Area.

Bldg. 160, USCG ISC Kodiak
Comsta/Buskin Lake
Kodiak Co: Kodiak IS Bor AK 99619–
Landholding Agency: DOT
Property Number: 87199720005
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Arizona

Facility 90002
Holbrook Radar Site
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 18199340049
Status: Unutilized
Reason: With airport runway clear zone.

Arkansas

Dwelling
Bull Shoals Lake/Dry Run Road
Okland Co: Marion AR 72661–
Landholding Agency: COE
Property Number: 31199820001
Status: Unutilized
Reason: Extensive deterioration.

California

Bldg. 707 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 18199010193
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 18199010195
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 502 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 18199010196
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 18199010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 100
Point Arena Air Force Station
(See Country) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010233
Status: Unutilized
Reason: Secured Area.

Bldg. 101
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010234
Status: Underutilized
Reason: Secured Area.

Bldg. 116
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010235
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 18199010236
Status: Unutilized
Reason: Secured Area.

Bldg. 201
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199010546
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199010547
Status: Unutilized
Reason: Secured Area.

Bldg. 203
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199010548
Status: Unutilized
Reason: Secured Area.

Bldg. 204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199010549
Status: Unutilized
Reason: Secured Area.

Bldg. 1823

Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 18199130360
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 10312
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199210026
Status: Unutilized
Reason: Secured Area.

Bldg. 16104, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 18199230020
Status: Underutilized
Reason: Secured Area.

Bldg. 5428, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199310015
Status: Unutilized
Reason: Secured Area.

Bldg. 7304, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199310030
Status: Unutilized
Reason: Secured Area.

Bldg. 8215
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199330016
Status: Unutilized
Reason: Secured Area.

Bldg. 1988
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 181993340003
Status: Unutilized
Reason: Electrical Power Generator Bldg. Secured Area.

Bldg. 1324
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340006
Status: Unutilized
Reason: Secured Area.

Bldg. 1341
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340007
Status: Unutilized
Reason: Secured Area.

Bldg. 1955
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340008
Status: Unutilized
Reason: Secured Area.

Bldg. 6443
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340020
Status: Unutilized
Reason: Secured Area.

Bldg. 7306
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340022
Status: Unutilized
Reason: Secured Area.

Bldg. 16164
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199340028
Status: Unutilized
Reason: Secured Area.

Bldg. 6521
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199410004
Status: Unutilized
Reason: Secured Area.

Bldg. 908
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199520016
Status: Excess
Reason: Detached Latrine

Bldg. 13004
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199520022
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 422
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530029
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 431
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530030
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 470
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 480
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530032
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 6606
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530037
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7307
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530039
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 10717
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 10722
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 13213
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530044
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 893
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199530043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 9350
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199620030
Status: Unutilized

Reasons: Secured Area, Extensive deterioration.
Bldg. 13003
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199620031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 13222
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199620032
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 815
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630040
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1850
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1853
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1856
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1865
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630044
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1874
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630045
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1875
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630046
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1877
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1879
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630048
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1885
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 1898
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 06445
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630052
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 21160
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199630055
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 06437
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199710014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 10715
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199710016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 21300
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199710020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 00835
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 00879
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 01630
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 01797
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 01830
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 01852
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 10003
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–

Landholding Agency: Air Force
Property Number: 18199720016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 10252
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 11345
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 13600
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 14019
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 14026
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 16162
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199720024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 22300
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199730002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 01310
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199740005
Status: Unutilized
Reasons: Secured Area.

Bldg. 08412
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199740006
Status: Unutilized
Reasons: Secured Area.

Bldg. 11153
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199740007
Status: Unutilized
Reasons: Secured Area.

Bldg. 11154
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199740008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldgs. 2–11, 20–21
Edwards AFB
P-Area Housing
Edwards AFB Co: Kern CA 93524–
Landholding Agency: Air Force
Property Number: 18199810029
Status: Unutilized
Reasons: Extensive deterioration.

Bldg. 00907
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1681
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 01839
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820004
Status: Unutilized
Reasons: Secured Area Extensive deterioration.

Bldg. 06519
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 06526
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 11167
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 11168
Vandenberg AFB
Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18199820008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Soil & Materials Testing Lab
Sausalito Co: CA 00000–
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reason: Contamination

Parker Dam Govt Housing Camp
Township 2 North
San Bernardino Co: CA 92401–
Landholding Agency: Interior
Property Number: 61199930001
Status: Excess
Reason: Extensive deterioration

Bldgs. 40, 62
Naval Air Station, North Island
Imperial Beach Co: CA 91932–
Landholding Agency: Navy
Property Number: 77199930024
Status: Excess
Reasons: Secured Area, Extensive deterioration

10 Bldg.
USCG Station Humboldt Bay
Samoa Co: Humboldt CA 95564–9999
Landholding Agency: DOT
Property Number: 87199440027
Status: Excess
Reason: Extensive deterioration.
Comment: Land to be relinquished to BLM (Public Domain Land).

Bldg. T102
U.S.C.G. Training Center
Petaluma Co: Sonoma CA 94952–
Landholding Agency: DOT
Property Number: 87199830001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Colorado

Bldg. 00910
"Blue Barn"—Falcon Air Force Base
Falcon Co: El Paso CO 80912–
Landholding Agency: Air Force
Property Number: 18199530046
Status: Underutilized
Reason: Secured Area.

Bldg. 1007
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 18199730003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 1008
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400

Landholding Agency: Air Force
Property Number: 18199730004
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 9214
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 18199730012
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

Bldg. 7067
USAF Academy
Co: El Paso CO 80840–
Landholding Agency: Air Force
Property Number: 18199810005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 8222
USAF Academy
Co: El Paso CO 80840–
Landholding Agency: Air Force
Property Number: 18199810006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9200
USAF Academy
Co: El Paso CO 80840–
Landholding Agency: Air Force
Property Number: 18199810007
Status: Unutilized
Reasons: Within airport runway clear zone; Secured Area.

Bldg. 888
Rocky Flats Environmental
Tech site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 87199010014
Status: Unutilized
Reason: Other environmental.
Comment: Contamination.

Connecticut

Bldg. 13
Bradley International
Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 18199640002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 10
Bradley International
Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 18199640003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 5
Bradley International
Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 18199640004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 4
Bradley International
Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 18199640005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency: COE
Property Number: 31199740001
Status: Unutilized
Reasons: Floodway Extensive deterioration.

DG1–DG8, DG10–DG–27
Dolphin Gardens
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199930025
Status: Unutilized
Reason: Extensive deterioration.

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 87199240031
Status: Unutilized
Reason: Floodway.

Florida

Bldg. 1179
Patrick Air Force Base
1179 School Avenue
Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 18199240030
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area.

Bldg. 575
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199320004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone, Extensive Deterioration, Secured Area.

Facility 90523
Cape Canaveral AFS
Cape Canaveral AFS Co: Brevard FL
Landholding Agency: Air Force
Property Number: 18199330001
Status: Underutilized
Reason: Secured Area.

Bldg. 921
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199430002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

23 Family Housing
MacDill Auxiliary Airfield
No. 1
Avon Park Co: Polk FL 33825–
Location: Include Bldgs: 448, 451 thru 470, 472 and 474
Landholding Agency: Air Force
Property Number: 18199520006
Status: Excess
Reason: Within airport runway clear zone.

Bldg. 240
MacDill Auxiliary Airfield
No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 18199520007
Status: Excess
Reason: Extensive deterioration.

Bldg. 243
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 18199540002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 510
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 18199540003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 521
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 18199540004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 872
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 18199540005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 30004
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 18199540006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 12513
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 18199540007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facility 36901
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199640006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facility 8816
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199640007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 12734, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199640011
Status: Unutilized
Reason: Secured Area.

Bldg. 12708, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199640012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 307
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 18199710022
Status: Unutilized
Reason: Secured Area.

Bldg. 315
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 18199710023
Status: Unutilized
Reason: Secured Area.

Bldg. 317
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 18199710024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 318
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 18199710025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 324
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 18199710026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facility No. 1114
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facility No. 1345
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710028
Status: Unutilized
Reason: Secured Area.

Facility No. 1346
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710029
Status: Unutilized
Reason: Secured Area.

Facility No. 1348
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710030
Status: Unutilized
Reason: Secured Area.

Facility No. 7805
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710031
Status: Unutilized
Reason: Secured Area.

Facility No. 7850
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710032
Status: Unutilized
Reason: Secured Area.

Facility No. 10831
Cape Canaveral Air Station
Cape Canaveral, AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710033
Status: Unutilized
Reason: Secured Area.

Facility No. 15500
Cape Canaveral Air Station
Cape Canaveral, AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710034
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facility No. 39764
Cape Canaveral Air Station
Cape Canaveral, AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710035
Status: Unutilized
Reason: Secured Area.

Facility No. 70580
Cape Canaveral Air Station
Cape Canaveral, AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710036
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facility No. 70662
Cape Canaveral Air Station
Cape Canaveral, AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710037
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facility No. 72920
Cape Canaveral Air Station
Cape Canaveral, AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199710038
Status: Unutilized
Reason: Secured Area.

Bldg. 897, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199710044
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 895, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199710045
Status: Unutilized
Reason: Extensive deterioration.

Facility No. 90520
Cape Canaveral AS
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199720038
Status: Underutilized
Reason: Secured Area.

Bldg. 312, Patrick AFB
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199720039
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 10686
Elgin AFB
Elgin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199740001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 10563
Elgin AFB
Elgin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199740002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 10352
Elgin AFB
Elgin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199740003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Fac. No. 09010
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199810008
Status: Unutilized
Reasons: Secured Area.

Fac. No. 15832
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199810009
Status: Unutilized
Reasons: Secured Area.

Bldg. 744
Elgin AFB
Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199820009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3008
Elgin AFB
Co: Okaloosa FL 32542–5133

Landholding Agency: Air Force
Property Number: 18199820010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3010
Eglin AFB
Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199820011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 12709
Eglin AFB
Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199820012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 08807
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820013
Status: Unutilized
Reason: Secured Area.

Bldg. 08809
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 21911
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 21914
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 32349
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199820017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facility 22
Malabar Transmitter Annex
Palm Bay Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199830001
Status: Unutilized
Reason: Secured Area.

Facility 27
Malabar Transmitter Annex
Palm Bay Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199830002
Status: Unutilized
Reason: Secured Area.

Facility 32
Malabar Transmitter Annex
Palm Bay Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199830003
Status: Unutilized
Reason: Secured Area.

Facility 36
Malabar Transmitter Annex
Palm Bay Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199830004
Status: Unutilized
Reason: Secured Area.

Facility 42
Malabar Transmitter Annex
Palm Bay Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199830005
Status: Unutilized
Reason: Secured Area.

Facility 44608
Cape Canaveral Air Station
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 18199830006
Status: Unutilized
Reasons: Witin 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 12577
Eglin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910001
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 12576
Eglin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910002
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 12534
Eglin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910003
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 12533
Eglin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910004
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 12528
Eglin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910005
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 9281
Eglin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910006
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 9280
Eglin AFB
Santa Rosa Island
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910007
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 609
Eglin AFB
Okaloosa Co: FL 32542–5133
Landholding Agency: Air Force
Property Number: 18199910008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 01103
Cape Canaveral Air Station
Brevard Co: FL 32925–
Landholding Agency: Air Force
Property Number: 18199910009
Status: Unutilized
Reason: Secured Area.

Bldg. 55152
Cape Canaveral Air Station
Brevard Co: FL 32925–
Landholding Agency: Air Force
Property Number: 18199910010
Status: Unutilized
Reason: Secured Area.

Facility 1737
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199920002
Status: Underutilized
Reason: Secured Area.

Facility 5200
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199920003
Status: Underutilized
Reason: Secured Area.

Facility 49950
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199920004
Status: Underutilized
Reason: Secured Area.

Bldg. 1704
Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–
Landholding Agency: Air Force
Property Number: 18199930007
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 01390
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199930008

Status: Unutilized
Reason: Secured Area.

Bldg. A–146
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930027
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–232
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930028
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–4020
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930029
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–#3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 87199210008
Status: Unutilized
Reason: Floodway Secured Area.

Bldg. A–103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 87199230001
Status: Unutilized
Reason: Floodway, Secured Area.

Exchange Building
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87199410004
Status: Unutilized
Reason: Floodway .

9988 Keepers Quarters A
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440009
Status: Underutilized
Reason: Floodway, Secured Area.

9988 Keepers Quarters B
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440010
Status: Underutilized
Reason: Floodway, Secured Area.

9990 Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440011
Status: Underutilized
Reason: Floodway, Secured Area.

9991 Plant Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440012
Status: Underutilized
Reasons: Floodway, Secured Area.

9992 Shop Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440013
Status: Underutilized
Reasons: Floodway, Secured Area.

9993 Admin. Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440014
Status: Underutilized
Reasons: Floodway, Secured Area.

9994 Water Pump Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440015
Status: Underutilized
Reasons: Floodway, Secured Area.

Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440016
Status: Underutilized
Reasons: Floodway, Secured Area.

9999 Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440017
Status: Underutilized
Reasons: Floodway, Secured Area.

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 87199510009
Status: Unutilized
Reasons: Floodway, Secured Area.

Cape St. George Lighthouse
Co: Franklin FL 32328–
Landholding Agency: DOT
Property Number: 87199640002
Status: Unutilized
Reason: Extensive deterioration.

Georgia

Coast Guard Station
St. Simons Island
Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 87199540002
Status: Unutilized
Reason: Extensive deterioration.

Guam

Anderson South
Anderson Admin. Annex
360 housing units & a commercial structure
Mangilao GU 96923–
Landholding Agency: Air Force
Property Number: 18199840009
Status: Underutilized
Reason: Secured Area.

Hawaii

Facility 1
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199930030
Status: Excess
Reasons: Secured Area Extensive deterioration.

Facility 187
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199930031
Status: Excess
Reasons: Secured Area Extensive deterioration.

Facility 191
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199930032
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Facility 1263
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199930033
Status: Excess
Reasons: Secured Area Extensive deterioration.

Facility S214
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199930034
Status: Excess
Reasons: Secured Area Extensive deterioration.

Facility 1271
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199930035
Status: Excess
Reasons: Secured Area Extensive deterioration.

Facility 408
Submarine Base
Pearl Harbor Co: Honolulu HI 96860–
Property Number: 77199930036
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Facility 645
Submarine Base
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199930037
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 1740
U.S. Coast Guard Air Station
Barbers Point
Honolulu Co: HI 96862–5800
Landholding Agency: DOT
Property Number: 87199910002
Status: Unutilized
Reason: Secured Area.

Idaho

Bldg. 1012
Mountain Home Air Force Base
7th Avenue
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199030004

Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 923
Mountain Home Air Force Base
7th Avenue
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199030005
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 604
Mountain Home Air Force Base
Pine Street
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199040857
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone.

Bldg. 4403
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83647–
Landholding Agency: Air Force
Property Number: 18199520008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 101
Mountain Home Air Force Base
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840001
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 105
Mountain Home Air Force Base
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840002
Status: Unutilized
Reason: Extensive deterioration.

Bldg. AFD0070
Albeni Falls Dam
Oldtown Co: Bonner ID 83822–
Landholding Agency: COE
Property Number: 31199910001
Status: Unutilized
Reason: Extensive deterioration.

Illinois

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 87199310005
Status: Excess
Reason: Secured Area.

Indiana

Brookville Lake—Bldg.
Brownsville Rd. in Union
Liberty Co: Union IN 47353–
Landholding Agency: COE
Property Number: 31199440004
Status: Excess
Reason: Extensive deterioration.

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230001
Status: Excess
Reason: Extensive deterioration.

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230002
Status: Excess
Reason: Extensive deterioration.

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230003
Status: Excess
Reason: Extensive deterioration.

Iowa

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310009
Status: Unutilized
Reason: Fuel pump station.

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310010
Status: Unutilized
Reason: Pump station.

House, Tract 100
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530002
Status: Excess
Reason: Extensive deterioration.

Play House, Tract 100
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530003
Status: Excess
Reason: Extensive deterioration.

House, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530004
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530005
Status: Excess
Reason: Extensive deterioration.

Garage, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530006
Status: Excess
Reason: Extensive deterioration.

Machine Shed, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530007
Status: Excess
Reason: Extensive deterioration.

Barn, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530008
Status: Excess
Reason: Extensive deterioration.

2-Car Garage, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530009
Status: Excess
Reason: Extensive deterioration.

Barn, Tract 128
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530010
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 128
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530011
Status: Excess
Reason: Extensive deterioration.

House, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530012
Status: Excess
Reason: Extensive deterioration.

Play House, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530013
Status: Excess
Reason: Extensive deterioration.

Kennel, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530014
Status: Excess
Reason: Extensive deterioration.

Corn Crib, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530015
Status: Excess
Reason: Extensive deterioration.

Barn W, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530016
Status: Excess
Reason: Extensive deterioration.

Barn W, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530017

Status: Excess
Reason: Extensive deterioration.

Shed, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530018
Status: Excess
Reason: Extensive deterioration.

House, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530019
Status: Excess
Reason: Extensive deterioration.

Out House, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530020
Status: Excess
Reason: Extensive deterioration.

Chicken House, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530021
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530022
Status: Excess
Reason: Extensive deterioration.

Barn, Tract 135
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530023
Status: Excess
Reason: Extensive deterioration.

Smokehouse, Tract 135
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530024
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530025
Status: Excess
Reason: Extensive deterioration.

Shed—White, Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530026
Status: Excess
Reason: Extensive deterioration.

Leanto, Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199530027
Status: Excess
Reason: Extensive deterioration.

Tract 116, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 31199630006
Status: Unutilized
Reason: Extensive deterioration.

Kansas

Bldg. 2703
Forbes Field
Topeka KS
Landholding Agency: Air Force
Property Number: 18199820018
Status: Unutilized
Reason: Extensive deterioration.

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 21199040416
Status: Unutilized
Reason: Spring House.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 21199040417
Status: Unutilized
Reason: Coal storage.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 21199040418
Status: Unutilized
Reason: Coal storage.

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 21199040419
Status: Underutilized
Reason: Extensive deterioration.

Latrine
Kentucky River Lock and Dam Number 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 31199040009
Status: Unutilized
Reason: Detached latrine.

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120010
Status: Unutilized
Reason: Floodway.

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120011
Status: Unutilized
Reason: Floodway.

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120012
Status: Unutilized
Reason: Floodway.

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120013
Status: Unutilized
Reason: Floodway.

Louisiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 18199140015
Status: Unutilized
Reason: Secured area.

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240005
Status: Unutilized
Reason: Floodway.

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240006
Status: Unutilized
Reason: Floodway.

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240007
Status: Unutilized
Reason: Floodway.

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240008
Status: Unutilized
Reason: Floodway.

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sagadahoc ME 04530–
Landholding Agency: DOT
Property Number: 87199240032
Status: Unutilized
Reason: Floodway.

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 87199240035
Status: Unutilized
Reason: Extensive deterioration.

Fort Popham Light

Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 87199320024
Status: Unutilized
Reason: Extensive deterioration.

Nash Island Light
U.S. Coast Guard
Addison Co: Washington ME 04606–
Landholding Agency: DOT
Property Number: 87199420005
Status: Unutilized
Reason: Inaccessible.

Bldg.—South Portland Base
U.S. Coast Guard
S. Portland Co: Cumberland ME 04106–
Landholding Agency: DOT
Property Number: 87199420006
Status: Unutilized
Reason: Secured Area.

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: Lincoln ME 04538–
Landholding Agency: DOT
Property Number: 87199430001
Status: Unutilized
Reason: Secured Area.

Maryland

Bldg. 3542
Andrews AFB
Andrews AFB MD 20652–25177
Landholding Agency: Air Force
Property Number: 18199810010
Status: Unutilized
Reason: Secured Area.

Bldg. 3543
Andrews AFB
Andrews AFB MD 20652–25177
Landholding Agency: Air Force
Property Number: 18199810011
Status: Unutilized
Reason: Secured Area.

7 Bldgs.
Davidsonville Family Housing
Annex 300, 301, 303, 305, 308, 309, 311
Davidsonville Co: Anne Arundel MD 20755–
Landholding Agency: Air Force
Property Number: 18199910011
Status: Unutilized
Reason: Extensive deterioration.

8 Bldgs.
Davidsonville Family Housing
Annex 302, 306, 307, 312–315
Davidsonville Co: Anne Arundel MD 20755–
Landholding Agency: Air Force
Property Number: 18199910012
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 38–39, 41, 43–46, 56
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 53
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 6
U.S. Coast Guard Yard, 2401
Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 59
U.S. Coast Guard Yard, 2401
Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Massachusetts

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 87199240001
Status: Underutilized
Reason: Secured Area.

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 87199240029
Status: Unutilized
Reason: Floodway, Secured Area.

Storage Shed
Highland Light
N. Truro Co: Barnstable MA 02652–
Location: DeSoto Johnson
Landholding Agency: DOT
Property Number: 87199430004
Status: Unutilized
Reason: Extensive deterioration.

Westview Street Wells
Lexington Co: MA 02173–
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reason: Extensive deterioration.

Michigan

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010810
Status: Excess
Reason: Sewage treatment and disposal facility.

Bldg. 99 (WATER WELL)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010831
Status: Excess
Reason: Water well.

Bldg. 100 (WATER WELL)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010832
Status: Excess
Reason: Water well.

Bldg. 118
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010875
Status: Excess
Reason: Gasoline Station.

Bldg. 120
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010876
Status: Excess
Reason: Gasoline Station.

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010877
Status: Excess
Reason: Pump lift station.

Bldg. 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010878
Status: Excess
Reason: Gasoline station.

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010889
Status: Excess
Reason: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 18199010890
Status: Excess
Reason: Water pump station.

Facility 20
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 21
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 30
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 98
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 103
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295

Landholding Agency: Air Force
Property Number: 18199630005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 116
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 129
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 152
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 156
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 181
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 509
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 562
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 573
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 801
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 827
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 832
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 833
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1005
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630018
Status: Unutilized
Reason: Secured Area.

Facility 1012
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630019
Status: Unutilized
Reason: Secured Area.

Facility 1017
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630020
Status: Unutilized
Reason: Secured Area.

Facility 1025
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630021
Status: Unutilized
Reason: Secured Area.

Facility 1031
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630022
Status: Unutilized
Reason: Secured Area.

Facility 1041
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1445
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1514
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630025
Status: Unutilized
Reason: Secured area

Facility 1575
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1576
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630027
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1578
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630028
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1580
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630029
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1582
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630030
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1583
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630031
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1584
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630032
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 1585
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199630033
Status: Unutilized
Reason: Secured Area.

Facilities 246, 248, 252–254
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

7 Facilities
Selfridge Air National Guard
#240, 242, 244, 245, 247, 250, 251
Mt. Clemens Co; Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facilities 237, 238
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710041
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

5 Facilities
Selfridge Air National Guard
#228, 230, 232, 234, 236
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710042
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 114
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18199710043
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 114
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18199930009
Status: Unutilized
Reason: Secured Area.

Bldg. 318
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18199930010
Status: Unutilized
Reason: Secured Area.

Quarters B
U.S. Coast Guard
Marquette MI 49855–
Landholding Agency: DOT
Property Number: 87199740001
Status: Unutilized
Reason: Secured Area.

Minnesota

Bldg.
Upper St. Anthony Falls
Minneapolis Co: Hennepin MN 55440–
Landholding Agency: COE
Property Number: 31199930001
Status: Unutilized
Reason: Extensive deterioration.

Matthew Marvin USARC
Winona Co: MN 55987–
Landholding Agency: GSA
Property Number: 54199930002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, GSA Number: 1–D–MN–576.

MG Clement Trott Mem. USARC
Walker Co: Cass MN 56484–
Landholding Agency: GSA
Property Number: 54199930003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, GSA Number: 1–D–MN–575.

Naval Ind. Rsv Ordnance Plant
Minneapolis Co: MN 55421–1498
Landholding Agency: GSA
Property Number: 54199930004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, GSA Number: 1–N–MN–570.

Mississippi

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121–
Landholding Agency: DOT
Property Number: 87199340002
Status: Unutilized
Reason: Extensive Deterioration.

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410001
Status: Unutilized
Reason: Floodway.

Bldg. 67
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 68
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410009
Status: Unutilized
Reason: Extensive deterioration.

Missouri

Tract 2222
Stockton Project
Aldrich Co: Polk MO 65601–
Landholding Agency: COE
Property Number: 31199510001
Status: Excess
Reason: Extensive deterioration.

Barn, Longview Lake
Kansas City Co: Jackson MO 64134–
Landholding Agency: COE
Property Number: 31199620001
Status: Excess
Reason: Extensive deterioration.

Montana

Bldg. 1189, Malstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199540013
Status: Underutilized
Reason: Secured Area.

Bldg. 1308, Malstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199540014
Status: Underutilized
Reason: Secured Area.

Bldg. 547
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199620025
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 23
Great Falls ANG Station
Great Falls Co: Cascade MT 59404–
Landholding Agency: Air Force
Property Number: 18199720030
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 24
Great Falls ANG Station
Great Falls Co: Cascade MT 59404–
Landholding Agency: Air Force
Property Number: 18199720031
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 35
Great Falls ANG Station
Great Falls Co: Cascade MT 59404–
Landholding Agency: Air Force
Property Number: 18199720033
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 230
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199810012
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1065
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199810013
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1305
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199810014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 22
Great Falls IAP
Great Falls Co: Cascade MT 59404–5570
Landholding Agency: Air Force
Property Number: 18199820019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 803
Malmstrom AFB
Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199840003
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1060
Malmstrom AFB
Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199840004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1846
Malmstrom AFB
Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199840005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1847
Malmstrom AFB
Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199840006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 1218, 1220
Malmstrom Air Force Base
Malmstron AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199920005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 1210, 1212, 1214, 1216
Malmstrom Air Force Base
Malmstron AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199920006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1701
Malmstrom Air Force Base
Malmstron AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18199920007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Nebraska

Offutt Communications Annex–#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 18199210006
Status: Unutilized
Reason: Former sewage lagoon.

Bldg. 637
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 18199230021
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 18199230022
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 31
Offutt Air Force Base
Sac Boulevard
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199240007
Status: Unutilized
Reason: Secured Area.

Bldg. 311
Offutt Air Force Base
Nelson Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 1819924008
Status: Unutilized
Reason: Secured Area.

Bldg. 401
Offutt Air Force Base
Custer Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 1819924009
Status: Unutilized
Reason: Secured Area.

Bldg. 416
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199240010
Status: Unutilized
Reason: Secured Area.

Bldg. 417
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199240011
Status: Unutilized
Reason: Secured Area.

Bldg. 545
Offutt Air Force Base
Offutt Co: Sarpy NE 68113
Landholding Agency: Air Force
Property Number: 18199240012
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320058
Status: Excess
Reason: Generator.

Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320059
Status: Excess
Reason: Contamination.

Bldg. 500
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320060
Status: Excess
Reason: Contamination.

Bldg. 502
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320061
Status: Excess
Reason: Contamination.

Bldg. 504
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320062
Status: Excess
Reason: Contamination.

Bldg. 506
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320063
Status: Excess
Reason: Contamination.

Bldg. 507
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320064
Status: Excess
Reason: Contamination.

Bldg. 509
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320065
Status: Excess
Reason: Contamination.

Bldg. 511
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320066
Status: Excess
Reason: Contamination.

Bldg. 512
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320067
Status: Excess
Reason: Contamination.

Bldg. 515
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320068
Status: Excess
Reason: Contamination.

Bldg. 517
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320069
Status: Excess
Reason: Contamination.

Bldg. 519
Hastings Family Housing
Hastings Radar Bomb Scoring Site

Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320070
Status: Excess
Reason: Contamination.

Bldg. 521
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320071
Status: Excess
Reason: Contamination.

Bldg. 523
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320072
Status: Excess
Reason: Contamination.

Bldg. 525
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320073
Status: Excess
Reason: Contamination.

Bldg. 526
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320074
Status: Excess
Reason: Contamination.

Bldg. 529
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320075
Status: Excess
Reason: Contamination.

Bldg. 531
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320076
Status: Excess
Reason: Contamination.

Bldg. 533
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320077
Status: Excess
Reason: Contamination.

Bldg. 534
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320078
Status: Excess
Reason: Contamination.

Bldg. 536
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320079
Status: Excess
Reason: Contamination.

Bldg. 538
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320080
Status: Excess
Reason: Contamination.

Bldg. 541
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320081
Status: Excess
Reason: Contamination.

Bldg. 542
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320082
Status: Excess
Reason: Contamination.

Bldg. 544
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320083
Status: Excess
Reason: Contamination.

Bldg. 546
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320084
Status: Excess
Reason: Contamination.

Bldg. 549
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320085
Status: Excess
Reason: Contamination.

Bldg. 550
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320086
Status: Excess
Reason: Contamination.

Bldg. 552
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320087
Status: Excess
Reason: Contamination.

Bldg. 553
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320088
Status: Excess
Reason: Contamination.

Bldg. 555
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320089
Status: Excess
Reason: Contamination.

Bldg. 557
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320090
Status: Excess
Reason: Contamination.

Bldg. 558
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320091
Status: Excess
Reason: Contamination.

Bldg. 560
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320092
Status: Excess
Reason: Contamination.

27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320093
Status: Excess
Reason: Contamination.

Bldg. 17
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320094
Status: Excess
Reason: Contamination.

Bldg. 16
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–

Landholding Agency: Air Force
Property Number: 18199320095
Status: Excess
Reason: Contamination.

Bldg. 18
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320096
Status: Excess
Reason: Contamination.

Bldg. 6
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320097
Status: Excess
Reason: Contamination.

Bldg. 547
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320098
Status: Excess
Reason: Contamination.

Bldg. 604
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199320099
Status: Excess
Reason: Contamination.

Bldg. 686
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199510021
Status: Unutilized
Reason: Secured Area.

Bldg. 439
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 18199510022
Status: Unutilized
Reason: Secured Area.

Bldg. 606
NE Air National Guard
Lincoln Co: Lancaster NE 68524–1888
Landholding Agency: Air Force
Property Number: 18199720028
Status: Unutilized
Reason: Floodway, Secured Area.

Bldg. 675
NE Air National Guard
Lincoln Co: Lancaster NE 68524–1888
Landholding Agency: Air Force
Property Number: 18199720029
Status: Unutilized
Reasons: Floodway Secured Area.

New Hampshire

Bldg. 101
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199320005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material.

Bldg. 102
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199320006
Status: Unutilized
Reason: Within 200 ft. of flammable or explosive material.

Bldg. 104
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199320007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 116
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199320016
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 117
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199320008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. 129
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199920009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 5210
Newington POL DFS
Newington Co: Rockingham NH 03801–
Landholding Agency: Air Force
Property Number: 18199920010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material.

Bldg. 155
Pease Air National Guard
Newington Co: Rockingham NH 03033–
Landholding Agency: Air Force
Property Number: 18199930011
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 87199240009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Chapel Hill Front Range
Light Tower
Middletown Co: Monmouth NJ 07748–
Landholding Agency: DOT
Property Number: 87199440002
Status: Unutilized
Reasons: Skeletal tower.

Bldg. 103
U.S. Coast Guard Station
Sandy Hook
Middleton Co: Monmouth NJ 07737–
Landholding Agency: DOT
Property Number: 87199610002
Status: Unutilized
Reasons: Secured Area.

New Mexico

Bldg. 831
833 CSG/DEER
Holloman AFR Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199130333
Status: Unutilized
Reasons: Secured Area.

Bldg. 21
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240032
Status: Unutilized
Reasons: Secured Area.

Bldg. 80
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240033
Status: Unutilized
Reasons: Secured Area.

Bldg. 98
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240034
Status: Unutilized
Reasons: Secured Area.

Bldg. 324
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240035
Status: Unutilized
Reasons: Secured Area.

Bldg. 598
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240036
Status: Unutilized
Reasons: Secured Area.

Bldg. 801
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240037
Status: Unutilized
Reasons: Secured Area.

Bldg. 802
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240038
Status: Unutilized
Reasons: Secured Area.

Bldg. 1095
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240039
Status: Unutilized
Reasons: Secured Area.

Bldg. 1096
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240040
Status: Unutilized

Reasons: Secured Area.
Facility 321
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240041
Status: Unutilized
Reasons: Secured Area.
Facility 75115
Holloman Air Force Base
Co: Otero NM 883390–
Landholding Agency: Air Force
Property Number: 18199240042
Status: Unutilized
Reasons: Secured Area.
Bldg. 874
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199320041
Status: Unutilized
Reasons: Extension Deterioration, Secured Area.
Bldg. 1258
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199320042
Status: Unutilized
Reasons: Extension Deterioration, Secured Area.
Bldg. 134
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430014
Status: Unutilized
Reasons: Secured Area.
Bldg. 640
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430015
Status: Unutilized
Reasons: Secured Area.
Bldg. 703
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430016
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.
Bldg. 813
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430017
Status: Unutilized
Reason: Secured Area.
Bldg. 821
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430018
Status: Unutilized
Reason: Secured Area.
Bldg. 829
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430019
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area.
Bldg. 867
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430020
Status: Unutilized
Reason: Secured Area.
Bldg. 884
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430021
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area.
Bldg. 886
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430022
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area.
Bldg. 908
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199430023
Status: Unutilized
Reason: Secured area.
Bldg. 599
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199510001
Status: Unutilized
Reason: Secured Area.
Bldg. 600
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199510002
Status: Unutilized
Reason: Secured Area.
Bldg. 599
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199610007
Status: Unutilized
Reason: Secured Area.
Bldg. 600
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199610008
Status: Unutilized
Reason: Secured Area.
Bldg. 995
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199610009
Status: Unutilized
Reason: Secured Area.
Bldg. 1257
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199740012
Status: Unutilized
Reason: Secured Area.
Bldg. 332
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199740013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 205
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199740014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 1089
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830009
Status: Unutilized
Reasons: Secured Area.
Bldg. 2149
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 2151
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 2176
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 2178
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199830013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 27
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.
Bldg. 31
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000

Landholding Agency: Air Force
Property Number: 18199010075
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 272
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199140022
Status: Excess
Reason: Secured Area.

Bldg. 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199140023
Status: Excess
Reason: Secured Area.

Facility 814, Griffiss AFB
NE of Weapons Storage Area
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199230001
Status: Excess
Reasons: Within airport runway clear zone Secured Area.

Facility 808, Griffiss AFB
Perimiter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199230002
Status: Excess
Reasons: Within airport runway clear zone Secured Area.

Facility 807, Griffiss AFB
Perimiter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18199230003
Status: Excess
Reasons: Within airport runway clear zone Secured Area.

Facility 126
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240020
Status: Unutilized
Reason: Secured Area.

Facility 127
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240021
Status: Unutilized
Reason: Secured Area.

Facility 135
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240022
Status: Unutilized
Reason: Secured Area.

Facility 137
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240023
Status: Unutilized
Reason: Secured Area.

Facility 138
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240024
Status: Unutilized
Reason: Secured Area.

Facility 173
Griffiss AFB
Sefridge Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240025
Status: Unutilized
Reasons: Secured Area.

Facility 261
Griffiss Air Force Base
McDill Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240026
Status: Unutilized
Reason: Secured Area.

Facility 308
Griffiss Air Force Base
205 Chanute Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240027
Status: Unutilized
Reason: Secured Area.

Facility 1200
Griffiss Air Force Base
Donaldson Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199240028
Status: Unutilized
Reason: Secured Area.

Facility 841
Griffiss Air Force Base
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 18199330097
Status: Unutilized
Reason: Secured Area.

Bldg. 740
Niagara Falls Air Force Reserve
Niagara Falls Co: Niagara NY 14304–5001
Landholding Agency: Air Force
Property Number: 18199720026
Status: Unutilized
Reasons: Within airport runway clear zone, Floodway Secured Area.

Bldg. 629
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199730006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 604
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 606
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 615
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199810018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 629
Hancock Field
Syracuse Co: Onondaga NY 13211—
Landholding Agency: Air Force
Property Number: 18199810019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 630
Hancock Field
Syracuse Co: Onondaga NY 13211—
Landholding Agency: Air Force
Property Number: 18199810020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 635
Hancock Field
Syracuse Co: Onondaga NY 13211—
Landholding Agency: Air Force
Property Number: 18199810021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 640
Hancock Field
Syracuse Co: Onondaga NY 13211—
Landholding Agency: Air Force
Property Number: 18199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 733
Hancock Field
Syracuse Co: Onondaga NY 13211—
Landholding Agency: Air Force
Property Number: 18199810023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 514
Niagara Falls ARS
Niagara Falls Co: Niagara NY 14304–5001
Landholding Agency: Air Force
Property Number: 18199810024
Status: Unutilized
Reasons: Floodway, Secured Area, Extensive deterioration.

Bldg. 614
Niagara Falls AFR
Niagara Falls Co: Niagara NY 14305–5001
Landholding Agency: Air Force
Property Number: 18199830014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 722
Niagara Falls AFR

Niagara Falls Co: Niagara NY 14305–5001
Landholding Agency: Air Force
Property Number: 18199830015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 750
Niagara Falls AFR
Niagara Falls Co: Niagara NY 14305–5001
Landholding Agency: Air Force
Property Number: 18199830016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 751
Niagara Falls AFR
Niagara Falls Co: Niagara NY 14305–5001
Landholding Agency: Air Force
Property Number: 18199830017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Facility 1200
Verona Text Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920011
Status: Unutilized
Reason: No public access.

Facility 1202
Verona Text Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920012
Status: Unutilized
Reason: No public access.

Facility 1203
Verona Text Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920013
Status: Unutilized
Reason: No public access.

Facility 1204
Verona Text Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920014
Status: Unutilized
Reason: No public access.

Facility 1205
Verona Text Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920015
Status: Unutilized
Reason: No public access.

Facility 1206
Verona Text Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920016
Status: Unutilized
Reason: No public access.

Facility 1207
Verona Text Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920017
Status: Unutilized
Reason: No public access.

Facility 1208
Verona Text Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920018
Status: Unutilized
Reason: No public access.

Facility 1209
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920019
Status: Unutilized
Reason: No public access.

Facility 1210
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920020
Status: Unutilized
Reason: No public access.

Facility 1259
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920021
Status: Unutilized
Reason: No public access.

Facility 1260
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920022
Status: Unutilized
Reason: No public access.

Warehouse
Whitney Lake Project
Whitney Point Co: Broome NY 13862–0706
Landholding Agency: COE
Property Number: 31199630007
Status: Unutilized
Reason: Extensive deterioration.

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 87199230005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240020
Status: Unutilized
Reason: Secured Area.

Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240021
Status: Unutilized
Reasons: Extensive deterioration, Secured Area.

Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240022
Status: Unutilized
Reasons: Extensive deterioration, Secured Area.

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 87199310003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199320025
Status: Unutilized
Reason: Secured Area.

Bldg. 138
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199410003
Status: Unutilized
Reason: Secured Area.

Bldg. 830
U.S. Coast Guard
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199320004
Status: Unutilized
Reason: Secured Area.

Bldg. 8
Rosebank—Coast Guard
Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530009
Status: Unutilized
Reason: Secured Area.

Bldg. 7
Rosebank—Coast Guard
Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 222
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620003
Status: Unutilized
Reason: Secured Area.

Bldg. 223
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620004
Status: Unutilized
Reason: Secured Area.

Bldg. 205
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620005
Status: Unutilized
Reason: Secured Area.

Bldg. 9
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630027
Status: Excess
Reason: Secured Area.

Bldg. 10
U.S. Coast Guard—Rosebank
Staten Island Co; Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630028
Status: Excess

Reason: Secured Area.
Bldg. 206, Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630029
Status: Excess
Reason: Secured Area.

North Carolina

Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 18199120233
Status: Underutilized
Reason: Secured Area.

Bldg. 607, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 18199330041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 910, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 18199420022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 912, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 18199420023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 914, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 18199420024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 633, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–
Landholding Agency: Air Force
Property Number: 18199540019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240018
Status: Unutilized
Reason: Secured Area.

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240019
Status: Unutilized
Reason: Secured Area.

Bldg. 54
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340004
Status: Unutilized
Reason: Secured Area.

Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340005
Status: Unutilized
Reason: Secured Area.

Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340006
Status: Unutilized
Reason: Secured Area.

USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 87199420007
Status: Excess
Reason: Secured Area.

Unit #71
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530011
Status: Unutilized
Comment: Floodway.

Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530012
Status: Unutilized
Comment: Floodway.

Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530013
Status: Unutilized
Comment: Floodway.

Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530014
Status: Unutilized
Reason: Floodway.

Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530015
Status: Unutilized
Reason: Floodway.

Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530016
Status: Unutilized
Reason: Floodway.

Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530017
Status: Unutilized
Reason: Floodway.

Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530018
Status: Unutilized
Reason: Floodway.

Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530019
Status: Unutilized
Reason: Floodway.

Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530020
Status: Unutilized
Reason: Floodway.

Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530021
Status: Unutilized
Reason: Floodway.

Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530022
Status: Unutilized
Reason: Floodway.

Unit #78
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530023
Status: Unutilized
Reason: Floodway.

Bldg. 45
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630020
Status: Unutilized
Reason: Secured Area.

Bldg. 47
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630021
Status: Unutilized
Reason: Secured Area.

Bldg. 53
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630022
Status: Unutilized
Reason: Secured Area.

Bldg. 57
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630023
Status: Unutilized
Reason: Secured Area.

Bldg. 9
VA Medical Center
1100 Tunnel road

Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 97199010008
Status: Unutilized
Reason: Extensive deterioration.

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 18199010724
Status: Underutilized
Reason: Secured Area.

Bldg. 50
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 18199310107
Status: Excess
Reason: Garbage incinerator.

Bldg. 119
Minot Air Force Base
Minot Co: Ward ND 58710–
Landholding Agency: Air Force
Property Number: 18199320034
Status: Unutilized
Reason: Secured Area.

Bldg. 526
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 18199320038
Status: Unutilized
Reason: Secured Area.

Bldg. 895
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 18199320039
Status: Unutilized
Reason: Secured Area.

Ohio

14 Bldgs.
Area B, Wright-Patterson AFB
Co: Montgomery OH 45433–
Location: 6036, 38, 42, 44, 45, 49, 54, 64, 65, 69, 75
Landholding Agency: Air Force
Property Number: 18199820030
Status: Unutilized
Reason: Within airport runway clear zone.

Bldg. 6104, 08, 09
Area B, Wright-Patterson AFB
Co: Montgomery OH 45433–
Landholding Agency: Air Force
Property Number: 18199820044
Status: Unutilized
Reason: Within airport runway clear zone.

Lab
Ohio River Division
Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 31199510002
Status: Unutilized
Reason: Secured Area.

Storage Facility
Ohio River Division
Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 31199510003
Status: Unutilized
Reason: Secured Area.

Office Building
Ohio River Division
Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 31199510004
Status: Unutilized
Reason: Secured Area.

Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920002
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 217
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 402
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920004
Status: Unutilized
Reasons: Extensive deterioration.

Bldg. 105
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920005
Status: Unutilized
Reason: Extensive deterioration.

Oklahoma

Bldg. 010
Tulsa IAP Base
Tulsa OK 74115–1699
Landholding Agency: Air Force
Property Number: 18199820031
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 305
Tulsa IAP Base
Tulsa OK 74115–1699
Landholding Agency: Air Force
Property Number: 18199820032
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Oregon

Bldg. 8
USCG Tongue Point Moorings
Astoria Co: OR 97103–2099
Landholding Agency: DOT
Property Number: 87199910001
Status: Unutilized
Reasons: Extensive deterioration.

Puerto Rico

NAFA Warehouse
U.S. Coast Guard Air Station
Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199310011
Status: Unutilized
Reason: Secured Area.

Storage Equipment Bldg.
U.S. Coast Guard Air Station
Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199330001
Status: Unutilized
Reason: Secured Area.

Bldg. 115
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510001
Status: Unutilized
Reason: Secured Area.

Bldg. 117
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510002
Status: Unutilized
Reason: Secured Area.

Bldg. 118
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510003
Status: Unutilized
Reason: Secured Area.

Bldg. 119
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510004
Status: Unutilized
Reason: Secured Area.

Bldg. 120
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510005
Status: Unutilized
Reason: Secured Area.

Bldg. 122
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510006
Status: Unutilized
Reason: Secured Area.

Bldg. 128
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510007
Status: Unutilized
Reason: Secured Area.

Bldg. 129
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510008
Status: Unutilized
Reason: Secured Area.

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882—
Landholding Agency: DOT
Property Number: 87199310002
Status: Unutilized
Reason: Extensive deterioration.

South Dakota

Bldg. 200, South Nike Ed Annex
Ellsworth Air Force Base

Ellsworth AFB Co: Pennington SD 57706—
Landholding Agency: Air Force
Property Number: 18199320048
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 201, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706—
Landholding Agency: Air Force
Property Number: 18199320049
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 203, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199320050
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 204, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199320051
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 205, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199320052
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 206, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199320053
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 88470
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199340033
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 7506
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199340037
Status: Unutilized
Reason: Secured Area.

Bldg. 111
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199730007
Status: Unutilized
Reason: Secured Area.

Bldg. 7530
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199830025
Status: Unutilized
Reason; Secured Area.

Bldg. 7504
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820034
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area.

Bldg. 4001
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820035
Status: Unutilized
Reason: Secured Area.

Bldg. 7239
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820036
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area.

Bldg. 1102
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820037
Status: Unutilized
Reason: Secured Area.

Bldg. 88307
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 88320
Ellsworth AFB
Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199820039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 608
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706—
Landholding Agency: Air Force
Property Number: 18199920023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area.

Bldg. 3501
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920024
Status: Unutilized
Reason: Secured Area.

5 Bldgs.
Ellsworth Air Force Base
6926, 6928, 6929, 6930, 6931
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920025
Status: Unutilized
Reason: Secured Area.

Bldg. 8001
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920026
Status: Unutilized
Reason: Secured Area.

Bldg. 609
Ellsworth AFB
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199930012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 7911
Ellsworth AFB
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199930013
Status: Unutilized
Reason: Secured Area.

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011499
Status: Unutilized
Reason: Floodway.

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Reason: Floodway.

Water Treatment Plant
Dale Hollow Lake & Dam
Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140011
Status: Excess
Reason: Water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam
Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landing Agency: COE
Property Number: 31199140012
Status: Excess
Reason: Water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140013
Status: Excess
Reason: Water treatment plant.

Texas

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 87199310012
Status: Unutilized
Reason: Secured Area.

WPB Building
Station Port Isabel
Coast Guard Station
South Padre Island Co: Cameron, TX 78597–6497

Landholding Agency: DOT
Property Number: 87199530002
Status: Unutilized
Reason: Floodway.

Aton Shops Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

WPB Storage Shed
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Flammable Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Battery Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Boat House
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Small Boat Pier
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 106
Fort Crockett/43rd St.
Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 87199630008
Status: Unutilized
Reason: Extensive deterioration.

Utah

Bldg. 789
Hill Air Force Base (See County) Co: Davis UT 84056–
Landholding Agency: Air Force
Property Number: 18199040859
Status: Unutilized
Reasons: Within airpport runway clear zone, Secured Area.

Vermont

Facility 100
Burlington IAP
Burlington Co: Chittenden VT 05403–5872
Landholding Agency: Air Force
Property Number: 18199730008
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 87199220003
Status: Excess
Reason: Floodway.

Virginia

Bldg. 417
Camp Pendleton
Virginia Beach VA 23451–
Landholding Agency: Air Force
Property Number: 18199710003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 418
Camp Pendleton
Virginia Beach VA 23451–
Landholding Agency: Air Force
Property Number: 18199710004
Status: Unutilized
Reason: Extensive deterioration.

Former Oceana HS
Naval Air Station
Virginia Beach Co: VA 23460–
Landholding Agency: Navy
Property Number: 77199930039
Status: Unutilized
Reasons: Within airport runway clear zone, Extensive deterioration.

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 87199230004
Status: Excess
Reason: Secured Area.

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 87199240014
Status: Unutilized
Reason: Secured Area.

Little Creek Station
Navamphib Base, West Annex,
U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 87199310004
Status: Unutilized
Reason: Secured Area.

Operations Bldg.
U.S. Coast Guard Group
Hampton Roads
Portsmouth VA 23703–
Landholding Agency: DOT
Property Number: 87199710003
Status: Unutilized
Reason: Secured Area.

Washington

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Number: 18199210004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2000
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 18199310058
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility 2450
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 18199310065
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1, Waste Annex
West of Craig Road
Co: Spokane WA 99022–
Landholding Agency: Air Force
Property Number: 18199320043
Status: Unutilized
Reason: Secured Area.

Bldg. 97
Naval Air Station
Whidbey Island
Oak Harbor Co: WA 98278–
Landholding Agency: Navy
Property Number: 77199930040
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 331
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 786
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Pistol Range Bldg.
USCG Port Angeles
Port Angeles Co: Clallam WA 98362–0159
Landholding Agency: DOT
Property Number: 87199630030
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration.

Floating Boathouse
Bellingham Co: Whatcom WA 98225–
Landholding Agency: DOT
Property Number: 87199820001
Status: Excess
Reason: Inaccessible.

Wisconsin

Rawley Point Light
Two Rivers Co: Manitowoc WI
Landholding Agency: DOT
Property Number: 87199540004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Wyoming

Bldg. 31
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–

Landholding Agency: Air Force
Property Number: 18199010198
Status: Unutilized
Reason: Secured Area.

Bldg. 34
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 18199010199
Status: Unutilized
Reason: Secured Area.

Bldg. 37
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 18199010200
Status: Unutilized
Reason: Secured Area.

Bldg. 284
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 18199010201
Status: Unutilized
Reason: Secured Area.

Bldg. 385
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 18199010202
Status: Unutilized
Reason: Secured Area.

Bldgs. 2565–2571
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18199720001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldgs. 2564, 2572
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18199720002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
2982–2986, 2989, 2991, 2994–2995
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18199720003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

6 Bldgs.
F.E. Warren AFB
2768, 2772, 2773, 2993, 2980, 2988
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18199720004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

8 Bldgs.
F.E. Warren AFB
2784, 2762–2764, 2769, 2775, 2777, 2981
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18199720005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

8 Bldgs.
F.E. Warren AFB
2785–2786, 2770–2771, 2774, 2776, 2990, 2992
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18199720006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldgs. 2460–2468
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18199830018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2469, 2470, 2508–2511, 2520, 2523, 2528
Landholding Agency: Air Force
Property Number: 18199830019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2471–2472, 2502, 2504–2507, 2544
Landholding Agency: Air Force
Property Number: 18199720020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

8 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2473, 2500, 2503, 2547, 2557, 2601, 2613, 2625
Landholding Agency: Air Force
Property Number: 18199830021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2512, 2514–2517, 2418, 2519, 2524, 2525
Landholding Agency: Air Force
Property Number: 18199830022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2513, 2530, 2537, 2606, 2626, 2700, 2707, 2720, 2750
Landholding Agency: Air Force
Property Number: 18199830023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2526, 2527, 2532–2534, 2439, 2608, 2610, 2612
Landholding Agency: Air Force
Property Number: 18199830024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2529, 2531, 2535–2536, 2538, 2540–2543
Landholding Agency: Air Force
Property Number: 18199830025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2545, 2546, 2548–2554
Landholding Agency: Air Force
Property Number: 18199830026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2555, 2556, 2558, 2559, 2603, 2605, 2607, 2609, 2611
Landholding Agency: Air Force
Property Number: 18199830027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2560, 2561, 2600, 2602, 2604, 2701, 2702, 2704, 2705
Landholding Agency: Air Force
Property Number: 18199830028
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2614, 2616, 2618, 2620, 2622, 2624, 2714, 2718, 2722
Landholding Agency: Air Force
Property Number: 18199830029
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2615, 2617, 2619, 2621, 2623, 2627
Landholding Agency: Air Force
Property Number: 18199830030
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2706, 2708–2713, 2715, 2716
Landholding Agency: Air Force
Property Number: 18199830031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2717, 2719, 2721, 2727, 2728, 2751, 2753, 2757, 2759

Landholding Agency: Air Force
Property Number: 18199830032
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

10 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2723–2726, 2752, 2754–2756, 2758, 2703
Landholding Agency: Air Force
Property Number: 18199830033
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

4 Bldgs.
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Location: 2739, 2740, 2760, 2761
Landholding Agency: Air Force
Property Number: 18199830034
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 919
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18199930015
Status: Unutilized
Reason: Secured Area.

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110004
Status: Unutilized
Reason: Sewage digester for disposal plant.

Bldg. 96
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110005
Status: Unutilized
Reason: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110006
Status: Unutilized
Reason: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110007
Status: Unutilized
Reason: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199110008
Status: Unutilized
Reason: Chlorination chamber for sewage disposal.

Bldg. 97
Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199410011
Status: Unutilized
Reason: Sewage disposal plant.

Structure 98
Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199410012
Status: Unutilized
Reason: Sludge bed/sewage disposal plant.

Bldg. 80
Medical Center
Sheridan WY 82801–
Landholding Agency: VA
Property Number: 97199840001
Status: Unutilized
Reasons: Floodway, Extensive deterioration.

Land (by State)

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010430
Status: Unutilized
Reasons: Isolated area, Not accessible by road, isolated and remote area; Arctic environ.

Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010431
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Isolated and remote area; Arctic coast.

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 18199010432
Status: Unutilized
Reasons: Isolated area, Not accessible by road, Isolated and remote area; Arctic coast.

Russian Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 87199440025
Status: Excess
Reason: Floodway.

Sargent Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 87199440026
Status: Excess
Reason: Floodway.

Land—Sanak Island
106+acres
Sanak Island Co: Sanak Harbor AK
Landholding Agency: DOT
Property Number: 87199640003
Status: Unutilized
Reason: Inaccessible.

Arizona

58 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630001
Status: Unutilized
Reason: Floodway

20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630002
Status: Underutilized
Reason: Floodway.

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 18199030003
Status: Excess
Reason: Floodway.

Land—approx. 220 acres
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440018
Status: Underutilized
Reason: Floodway, Secured Area.

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 97199230004
Status: Underutilized
Reason: Inaccessible.

Kentucky

Tract 4626
Barkley Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 31199010030
Status: Underutilized
Reason: Floodway.

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 31199010038
Status: Underutilized
Reason: Floodway.

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 31199010039
Status: Underutilized
Reason: Floodway.

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.

Landholding Agency: COE
Property Number: 31199010043
Status: Excess
Reason: Floodway.

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 31199611684
Status: Unutilized
Reason: Floodway.

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 31199120008
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120009
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 31199120014
Status: Underutilized
Reason: Floodway.

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 31199120015
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 31199120016
Status: Underutilized
Reason: Floodway.

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 31199120017
Status: Unutilized
Reason: Floodway.

Tract 6404, Cave Run Lake
U.S. Hwy 460
Index Co: Morgan KY
Landholding Agency: COE
Property Number: 31199240005
Status: Underutilized
Reason: Floodway.

Tract 6803, Cave Run Lake
State Road 1161
Pomp Co: Morgan KY
Landholding Agency: COE
Property Number: 31199240006
Status: Underutilized
Reason: Floodway.

8.04 acres
Taylorsville Lake Project
Taylorsville Co: Spenser KY 40071–9801
Landholding Agency: COE
Property Number: 31199840003
Status: Unutilized
Reason: Inaccessible.

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road,
Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 18199010263
Status: Unutilized
Comment: Secured Area.

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 31199240007
Status: Underutilized
Reason: Floodway.

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 87199120006
Status: Unutilized
Reason: Within airport runway clear zone.

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE
Property Number: 31199011037
Status: Excess
Reason: Highway right of way.

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Sterns MN 56303–
Landholding Agency: VA
Property Number: 97199010049
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

3.85 acres (Area #2)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740004
Status: Unutilized
Reason: Landlocked.

7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740005
Status: Underutilized
Reason: Secured Area.

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011018
Status: Underutilized
Reason: Within airport runway clear zone.

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 31199130001
Status: Unutilized
Reason: Floodway.

New Mexico

Facility 75100
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18199240043
Status: Unutilized
Reason: Secured Area.

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010011
Status: Unutilized
Reason: Secured Area.

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010012
Status: Underutilized
Reason: Secured Area.

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010013
Status: Underutilized
Reason: Secured Area.

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010014
Status: Unutilized
Reason: Secured Area.

North Dakota

0.23 acres
Minot Middle Marker Annex
Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 18199810001
Status: Unutilized
Reason: Within airport runway clear zone.

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440007
Status: Underutilized
Reason: Floodway.

Mosquito Creek Lake
Housel—Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440008
Status: Underutilized
Reason: Floodway.

36 Site Campground
German Church Campground
Berlin Center Co: Portage OH 44401–9707
Landholding Agency: COE
Property Number: 31199810001
Status: Unutilized
Reason: Floodway.

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 31199011564
Status: Unutilized
Reason: Floodway.

Mercer Recreation Area
Shenango Lake
Transfer Co: Mercer PA 16154–
Landholding Agency: COE
Property Number: 31199810002
Status: Unutilized
Reason: Floodway.

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44
Co: Shannon SD
Landholding Agency: Air Force
Property Number: 18199210003
Status: Unutilized
Reason: Secured Area.

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 21199040413
Status: Underutilized
Reason: Floodway.

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 21199040415
Status: Underutilized
Reasons: Floodway.

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 31199011478
Status: Underutilized
Reason: Floodway.

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011479
Status: Excess
Reason: Floodway.

Track 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 31199011480
Status: Unutilized
Reason: Floodway.

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011481
Status: Unutilized
Reason: Floodway.

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011482
Status: Underutilized
Reason: Floodway.

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011483
Status: Underutilized
Reason: Floodway.

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 31199011484
Status: Underutilized
Reason: Floodway.

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011485
Status: Underutilized
Reason: Floodway.

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011486
Status: Unutilized
Reason: Floodway.

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jakson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011487
Status: Unutilized
Reason: Floodway.

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011488
Status: Underutilized
Reason: Within airport runway clear zone, Floodway.

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011489
Status: Unuitlized
Reason: Floodway.

Tract 2403, Hensley Creek
Cordell Hull lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011490
Status: Unutilized
Reason: Floodway.

Tracts 2117C, 2118 and 2120
Cordell Hull lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 31199011491
Status: Unutilized
Reason: Floodway.

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011492
Status: Unutilized
Reason: Floodway.

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 31199011493
Status: Underutilized
Reason: Floodway.

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence raod Enon Springs Road
Landholding Agency: COE
Property Number: 31199011494
Status: Underutilized
Reason: Floodway.

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 31199011495
Status: Underutilized

Reason: Floodway.

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 31199011496
Status: Underutilized
Reason: Floodway.

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 31199011497
Status: Underutilized
Reason: Floodway.

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011498
Status: Underutilized
Reason: Floodway.

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 31199011500
Status: Underutilized
Reason: Floodway.

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564–
Landholding Agency: COE
Property Number: 31199011501
Status: Underutilized
Reason: Floodway.

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011502
Status: Unutilized
Reason: Floodway.

Tract 104 et al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 31199011504
Status: Underutilized
Reason: Floodway.

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 31199120007
Status: Underutilized
Reason: Floodway.

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
Landholding Agency: COE
Property Number: 31199130008
Status: Underutilized
Reason: Floodway.

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010397
Status: Underutilized
Reason: Floodway.

Part of Tract 201–3
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010398
Status: Underutilized
Reason: Floodway.

Part of Tract 323
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010399
Status: Underutilized
Reason: Floodway.

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010401
Status: Unutilized
Reason: Floodway.

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010402
Status: Unutilized
Reason: Floodway.

Utah

10.24 acres
Southern Utah Communication Site
Salt Lake UT
Landholding Agency: Air Force
Property Number: 1819810002
Status: Unutilized
Reason: Inaccessible.

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 18199010137
Status: Unutilized
Reason: Secured Area.

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 18199010138
Status: Unutilized
Reason: Secured Area.

Tract B–201
Geiger Heights Lagoon
Spokane Co: WA 99210–
Landholding Agency: Air Force
Property Number: 18199930014
Status: Excess
Reason: No public access

West Virginia

Morgantown Lock and Dam
Box 3 RD # 2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 31199011530
Status: Unutilized
Reason: Floodway.

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 31199011690
Status: Unutilized
Reason: 03 acres; very narrow strip of land loc.

Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601–
Landholding Agency: COE
Property Number: 31199810006
Status: Excess
Reason: inaccessible.

[FR Doc. 99–20563 Filed 8–12–99; 8:45 am]

BILLING CODE 4210–29–M

Federal Register

Friday
August 13, 1999

Part III

Department of Energy

Bonneville Power Administraiton

2002 Proposed Wholesale Power Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment and Proposed Correction of Errors in the Firm Power Products and Services Rate Schedule (FPS–96): Clarifying the Applicability of the FPS–96 Contract Rate to Certain Capacity With Energy Return Contracts, Public Hearing, and Opportunity for Public Review and Comment: Notices

DEPARTMENT OF ENERGY

Bonneville Power Administration

2002 Proposed Wholesale Power Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Proposed Wholesale Power Rates and Proposed Resolution of Certain Transmission-Related Issues.

SUMMARY: BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation WP–02. The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA.

By this notice, BPA announces its proposed 2002 wholesale power rates, a proposed methodology for treatment and allocation of inter-business line costs, and a cost allocation proposal for non-Federal transmission for Federal and non-Federal power purchases for BPA's current General Transfer Customers, to be effective on October 1, 2001. The rate case proceedings also include BPA's proposal to revise the Priority Firm Power (PF–96) rate schedule by applying a Targeted Adjustment Charge for Uncommitted Loads, to be effective January 1, 2001.

DATES: Written comments by participants must be received by November 5, 1999, to be considered in the Record of Decision (ROD).

ADDRESSES: Written comments should be submitted to the Manager, Corporate Communications—CK; Bonneville Power Administration; P.O. Box 12999; Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above. Interested persons may also call (503) 230–4328 or call toll-free 1–800–622–4519. Information also may be obtained from:

Mr. Allen L. Burns, Group Vice President, Power Business Line—PS–6, P.O. Box 3621, Portland, OR 97208
Mr. Stephen R. Oliver, Bulk Power Marketing—PSB–6, P.O. Box 3621, Portland, OR 97208
Mr. Richard J. Itami, Eastern Power Business Area—PSE, 707 W. Main, Suite 500, Spokane, WA 99201
Mr. John Elizalde, Western Power Business Area—PSW–6, P.O. Box 3621, Portland, OR 97208

Responsible Official: Ms. Diane Cherry, Manager for Power Products, Pricing and Rates, is the official responsible for the development of BPA's wholesale power rates.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Procedural Background
II. Purpose and Scope of Hearing
III. Public Participation
IV. Major Studies and Summary of Proposal
V. 2002 Wholesale Power Rate Schedules
A. Introduction
B. Summary of 2002 Wholesale Power Rate Schedules, 2002 GRSPs, and New 1996 GRSPs

Part I—Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, publication of notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a hearing officer; public opportunity for both oral presentation and written submission of views; data questions and argument related to the proposed rates; and a decision by the Administrator based on the record. This proceeding is governed by Section 1010.9 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611 (1986) (Procedures). These Procedures implement the statutory section 7(i) requirements. Section 1010.7 of the Procedures prohibits *ex parte* communications.

The Bonneville Project Act, 16 U.S.C. 832, the Flood Control Act of 1944, 16 U.S.C. 825s, the Federal Columbia River Transmission System Act, 16 U.S.C. 838, and the Northwest Power Act, 16 U.S.C. 839, provide guidance regarding BPA ratemaking. The Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of acquiring, conserving, and transmitting electric power, including amortization of the Federal investment in the FCRPS over a reasonable period of years, and the other costs and expenses incurred by the Administrator. In addition, rates for the Federal Energy Regulatory Commission (FERC)-ordered transmission service, including ancillary services, must satisfy section 212(i) of the Federal Power Act, 16 U.S.C. 824k(i). Such rates must also satisfy the comparability standard for the open access tariff reciprocity compliance requirements of FERC Order 888.[1] The inter-business line and General Transfer Agreement (GTA) issues discussed below will be used to develop ancillary service and transmission rates in the subsequent transmission rate case.

BPA's initial proposed 2002 Wholesale Power Rate Schedules and General Rate Schedule Provisions are published in Part V below. The studies addressing the factors used to develop these rates are listed in Part IV and will be available for examination on August 24, 1999, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor; 905 NE. 11th, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on August 24, 1999, from 9 a.m. to 12 p.m., Room 223, 911 NE. 11th, Portland, Oregon.

To request any of the studies by telephone, call BPA's document request line: (503) 230–4328 or call toll-free 1–800–622–4519. Please request the document by its listed title. Also state whether you require the accompanying documentation (these can be quite lengthy); otherwise the study alone will be provided. The studies and documentation will also be available on BPA's website at www.bpa.gov/power/ratecase.

BPA will release its 2002 initial wholesale power rate proposal on August 24, 1999, and expects to publish a final ROD on April 7, 2000. BPA will be conducting a formal evidentiary rate hearing attended by regional parties. Interested parties must file petitions to intervene in order to take part in the formal hearing. A proposed schedule for the formal hearing is stated below. A final schedule will be established by the Hearing Officer at the prehearing conference.

August 24, 1999: BPA files Direct Case/Prehearing Conference
October 14, 1999: Parties file Direct Cases
November 5, 1999: Close of Participant Comments
December 8, 1999: Litigants file Rebuttal Testimony
January 13, 2000: Cross-Examination
February 10, 2000: Initial Briefs Filed

[1] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs ¶ 31,036 (1996).

February 17, 2000: Oral Argument before the Administrator
March 10, 2000: Draft ROD issued
March 24, 2000: Briefs on Exceptions
April 7, 2000: Final ROD—Final Studies

BPA will also be conducting eight public field hearings in cities throughout the region. Public field hearings are an opportunity for persons who are not parties in the formal rate hearing to have their views included in the official record. Written transcripts will be made at all of the field hearings. The field hearings are scheduled to begin at 6 p.m. Following are the tentative dates and locations for the field hearings. Confirmation of these hearing dates will be made through mailings and public advertising or by calling BPA Corporate Communications at the telephone number listed above. Announcements will also be posted on BPA's wholesale power rate case website at www.bpa.gov/power/ratecase.

September 30, 1999: Idaho Falls, Idaho
October 4, 1999: Pasco, Washington
October 5, 1999: Missoula, Montana
October 6, 1999: Spokane, Washington
October 7, 1999: Everett, Washington
October 12, 1999: Olympia, Washington
October 13, 1999: Eugene, Oregon
October 14, 1999: Portland, Oregon

Part II—Purpose and Scope of Hearing

A. Overview of the Market

The wholesale electricity market facing BPA today is different from 1996, when BPA last set rates, although BPA anticipated that the market would become increasingly competitive. External influences such as the national and state-by-state deregulation of the power markets, changes in market price expectations, and continuing concerns about the environment are factors that BPA must take into account when establishing rates.

In 1996, it appeared that BPA's rates could exceed market prices and BPA was not sure it could sell all its power at rates that would recover its costs. By 2002, however, BPA's rates are anticipated to be lower than market prices through cost cutting and careful management, as well as an expectation that market prices could increase. Thus, customers have now indicated an interest in purchasing more power than BPA can produce from the FCRPS.

Despite customers' changed perceptions of the value of BPA power, BPA's business requirements are fairly constant and are dictated by legislation. BPA is required to sell power at a price that recovers all costs. These costs are determined by a number of factors, including, among other things, the cost of generating power; the costs of protecting, mitigating, and enhancing fish and wildlife; the costs of investing in public purposes; and the costs of repaying the Treasury for the capital investment in the hydro system. BPA has addressed these legislative requirements with policies that implement the statutory directives.

The major goal for many of BPA's policies, as stated in BPA's Subscription Strategy, is to promote the spread of the benefits of the FCRPS as broadly as possible, with special attention given to the residential and rural customers of the region. Due to the changing market, BPA must balance the competing demands for its low cost power. Public agency customers, known as preference customers, continue to have first priority to this low cost power. For this group, BPA proposes to sell Subscription power below market, with no increase in the average Priority Firm Power (PF) rate from BPA's 1996 rates. BPA's initial rate proposal also implements the Subscription Strategy plan to offer a combination of power and financial benefits to regional investor-owned utilities (IOUs) for the benefit of their residential and small farm customers. BPA's rate proposal also responds to the viability concerns of BPA's direct service industrial customers (DSIs) by offering power below market prices.

In addition to supplying low cost power to its customer groups, BPA policies also spread the benefits of the FCRPS to other stakeholders. BPA uses its funds to support its share of a wide range of activities designed to address fish and wildlife concerns by keeping open all the options for future fish alternatives. Finally, BPA protects the interests of the U.S. Treasury and Federal taxpayers by maintaining a high probability of making Treasury payments on time and in full.

BPA's major Subscription goal is supported by the other three goals of the Subscription Strategy. The second Strategy goal is to avoid rate increases through a creative and businesslike response to markets and additional aggressive cost reductions. By avoiding rate increases, BPA believes that it contributes to a stable customer base comprised of all customer groups. A stable customer base leads in turn to a stable revenue stream which enables BPA to cover its share of fish and wildlife and conservation costs in this rate period and in future rate periods. BPA has committed to pursue a number of financial strategies through rates and contracts that will allow it to meet its goal of avoiding rate increases, such as following the recommendations of a regional public process known as the Cost Review (described below) to reduce costs.

The third goal of BPA's Subscription Strategy was to allow BPA to fulfill its fish and wildlife obligations while assuring a high level of Treasury payment. There are a wide range of options currently under discussion for these fish and wildlife obligations. The options have different costs associated with them, so BPA's financial tools include methods to ensure that there will be sufficient money to meet the costs, such as risk mitigation measures in the event that future revenues are not as high as anticipated. BPA measures its ability to meet its obligations by setting an 88 percent probability goal of making its U.S. Treasury payment on time and in full. By setting a high Treasury Payment Probability (TPP), BPA assures that all other obligations are met before the Treasury payment is made.

BPA's Subscription Strategy has a final goal of continuing to support its important role of being a leader in the regional effort to capture the value of conservation and renewable resources. BPA intends to provide market incentives for these and other emerging technologies.

BPA's Subscription goal of spreading the benefits of the FCRPS through low cost power, as well as BPA's other goals, are reflected in all of BPA's actions. The rate case provides only one part of implementing BPA's goals—through rate levels and rate designs. Many actions, such as contract negotiations and setting spending levels, occur outside of the ratemaking process.

BPA has conducted a number of public processes over the last five years to gain public input into how to balance these major goals. Now it is about to start another one, the ratemaking process. Following is a list of the other important public processes that BPA has used to involve its customers and stakeholders in the important decisions of how BPA will continue to provide service to the citizens of the Pacific Northwest.

B. An Overview of the Public Processes

This section describes four major public review processes that BPA has undertaken in the last five years. Many important policy decisions were made in these processes. The ratemaking process is one vehicle to implement some of the decisions made in these other processes.

1. Business Plan Public Review Process

In 1995, BPA prepared a draft and final Business Plan, including a draft and final Environmental Impact

Statement (EIS). In the Business Plan, BPA announced its response to a changing market. For the first time, BPA's costs appeared to exceed market prices, so BPA found itself in a more competitive environment. It responded in 1996 with products and services that were competitively priced and that included more flexible terms. BPA began to change how it sold power, establishing posted prices for core requirements products, while selling other unbundled products and energy services at negotiated prices reflecting the true costs of providing services. The goal of these early changes was to give customers lower prices, stability, and flexible new choices, while giving BPA greater certainty about its expected loads and revenues. Unbundling products allowed customers to pay for only those products and services that they needed. Decisions made during the 1995 Business Plan process will not be revisited in this rate case.

The rate design in the current proposal continues the basic goals of the Business Plan, with some added features designed to allow BPA the flexibility of passing to customers the incremental cost of unanticipated expenses.

2. Cost Review Public Review Process

In September 1997, BPA and the Northwest Power Planning Council initiated a process called the Cost Review of the Federal Columbia River Power System (Cost Review). The primary objective of the Cost Review was to ensure that BPA's long-term power and transmission costs would be as low as possible, consistent with sound business practices, so that BPA could maximize its ability to fully recover costs through power rates that are at or below market prices.

The Cost Review process began with the establishment of a panel of five executives with considerable experience managing large organizations during periods of downsizing and competitive transition. The panel focused on costs to be recovered through power rates for the initial Subscription period, fiscal years (FY) 2002 through 2006. Costs associated with fish and wildlife recovery efforts were excluded from the scope of the Cost Review, while the following costs were recognized as subject to significant change in the rate development process:

- Short-term power purchases,
- Residential Exchange Program,
- General Transfer Agreements,
- Federal interest and depreciation, and
- Inter-business line expenses.

A draft of the panel's recommendations was circulated throughout the region, and public comments were received during a month-long period that included public meetings and briefings with various interest groups. Based on comments received during this public consultation process, the draft recommendations were modified and presented to the Administrator, the region's Governors, the Northwest Congressional delegation, and the U.S. House and Senate Committees on Appropriations in March 1998.

Additionally, both the recommendations and implementation plans were a subject of "Issues '98," a public comment process conducted by BPA in summer 1998. A key purpose of Issues '98 was to decide how the Cost Review recommendations would be implemented.

This rate proceeding will not revisit the methodology used to develop the Cost Review recommendations, the policy merits or wisdom of the specific recommendations, or BPA's implementation plans. For informational purposes only, the history of the Cost Review and implementation of the final recommendations will be summarized in the Revenue Requirement Study, WP–02–E–BPA–02.

3. Subscription Strategy Public Review Process

As noted previously, one of BPA's goals is to encourage the widest possible diversified use of electric energy while recovering costs. To define this broad concept in greater detail for the post-2001 period, BPA engaged in a multiyear process that culminated in BPA's Subscription Strategy.

In 1996, a regional effort began with the Comprehensive Review of the Northwest Energy System. In December 1996, the Final Report of the Comprehensive Review recommended that BPA capture and deliver the low-cost benefits of the Federal hydropower system to Northwest energy customers through a Subscription-based power sales approach.

A public process to develop a Subscription Strategy began in 1997. This process brought together all the regional stakeholders in an ongoing series of workgroups and meetings. BPA issued a final Subscription Strategy and Record of Decision in December 1998.

The Subscription Strategy provides a marketing policy framework for the power rate case. It reflects agency decisions on equitable distribution of the electric power generated by the FCRPS to BPA's customers within the framework of existing law. Although it did not establish any rates or rate designs, it suggested general rate design approaches to be considered in the formal ratemaking process.

The Subscription Strategy also provided a framework for the bilateral negotiations with each customer that will reflect the specific business relationships between BPA and that customer. Those contracts will be negotiated outside this rate case.

The Subscription Strategy recognized that the FCRPS is a regional resource, limited in size, and valued by the citizens of the Northwest. The Strategy seeks to balance potentially competing demands on the system, as described in the key marketing goals above. It guides the distribution of power among competing demands, while balancing the goals of avoiding PF rate increases, meeting fish and wildlife obligations, and funding public purposes.

After going through an extensive public process, BPA stated in its Subscription Strategy that it planned to offer 1,800 average megawatts (aMW) worth of benefits for the residential and small farm consumers of IOUs while meeting all public agency net firm load requirements. The Strategy also stated that BPA expected to be able to meet all loads that DSI customers asked BPA to serve. This rate case consists of the rates to serve all BPA customers.

4. Fish and Wildlife Obligations Public Review Process

Another important public review process has occurred since BPA's last ratemaking process in 1996. In late 1995, the Clinton Administration and the Northwest Congressional delegation agreed to stabilize BPA's fish and wildlife funding obligations over a six-year period, FY 1996 through FY 2001. In September 1996, the Secretaries of Energy, Commerce, Army and Interior signed a Memorandum of Agreement (MOA) on behalf of five Federal agencies—BPA, the National Marine Fisheries Service (NMFS), the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service (USF&W), and the Bureau of Reclamation. The MOA represents a multiagency commitment to stable BPA funding for fish and wildlife through FY 2001.

The MOA divides BPA's financial obligations for fish and wildlife into two major categories: (1) The financial impacts of the system operations called for in the 1995 Biological Opinions on the operation of the FCRPS issued by NMFS and the USF&W, as well as certain other operational measures specified in the MOA; and (2) a commitment of an average of $252 million per year for capital costs,

operation and maintenance of fish and wildlife facilities, and implementation of the Northwest Power Planning Council's Fish and Wildlife Program.

In addition, the Administration committed to provide cost-sharing assistance pursuant to section 4(h)(10)(C) of the Northwest Power Act, 16 U.S.C. Section 839b(4)(h)(10)(C), on a permanent basis for BPA's direct fish and wildlife expenses, and also to provide section 4(h)(10)(C) credits for BPA's power purchase costs related to its fish and wildlife programs through FY 2001. The Administration also established a Fish Cost Contingency Fund (FCCF) consisting of U.S. Treasury payment credits associated with section 4(h)(10)(C) that BPA has not yet exercised. The FCCF balance of $325 million in U.S. Treasury payment credits will be available to BPA in the case of low water years and under certain other conditions to defray fish and other water-related costs. Further, the Administration acknowledged that, to the extent necessary, BPA would reduce its build-up of cash reserves in FY 1996–2001. This action could make it more likely that BPA would have to reschedule a portion of its annual U.S. Treasury payments in future years.

In June 1997, all eight Senators representing the Northwest sent a letter to Vice President Gore requesting that the Administration work with the Northwest Congressional delegation and the four Northwest Governors through the Governors' Transition Review Board to develop a proposal for extending the MOA beyond FY 2001 to enable BPA to proceed with a Subscription process for post-FY 2001 power sales. As described above, the Subscription concept was created in 1996, during the year-long Comprehensive Review of the Northwest Energy System. The Comprehensive Review was sponsored by the four Northwest Governors and studied how the region's electricity system should be structured in the deregulated wholesale electricity market.

In the absence of a consensus on a post-FY 2001 fish and wildlife recovery strategy by mid-1998, concerned Federal agencies and regional stakeholders agreed that a strategy and mechanism were needed to establish post-FY 2001 fish and wildlife funding assumptions for Subscription and ratemaking purposes. This strategy is directed at "keeping the options open" for future decisions on long-term configuration of the FCRPS, including the potential drawdown of reservoirs behind the four Lower Snake River projects and John Day Dam on the mainstem of the Columbia. Without such a strategy and mechanism, BPA could not proceed with its Subscription process for post-FY 2001 power sales or its FY 2002–2006 power rates process because BPA could not provide the necessary cost certainty to its potential post-FY 2001 power sales customers nor assure adequate funding for fish and wildlife recovery efforts.

The Fish and Wildlife Funding Principles (Principles) were developed in consultation with constituents, customers, other Federal agencies, the Northwest Congressional delegation, and Columbia Basin Tribes in an extensive public involvement process. The parties focused on guidelines for structuring BPA's approach to Subscription and FY 2002–2006 power rates to ensure that BPA could meet its financial obligations, including those for fish and wildlife, given hydroconditions, market prices, fish recovery costs, and other uncertainties. The Principles specify that BPA will take into account the full range of potential fish and wildlife costs, as reflected in 13 long-term alternatives for configuration of the FCRPS, with each alternative assumed to be equally likely to occur.

The Principles also state that BPA will set rates to achieve a high probability that U.S. Treasury payments will be made in full and on time over the five-year rate period, and that BPA will adopt rates and contract strategies that are easy to implement and administer and that will minimize rate impacts on Pacific Northwest power and transmission customers. The contract strategies may include sales of Subscription products on staggered contract terms, a Cost Recovery Adjustment Clause (CRAC) in power sales contracts, and cost-based indexed pricing for some Subscription products.

The Principles also commit the Administration to extend the availability of section 4(h)(10)(C) U.S. Treasury payment credits and any remaining FCCF funds through FY 2006 under the same terms as those established for FY 1996 through FY 2001, and to support BPA's efforts to implement the Cost Review recommendations.

The Principles have been reviewed by the Office of Management and Budget and are consistent with the Administration's principles and priorities. These Principles were published on September 16, 1998, in a document entitled "Fish and Wildlife Funding Principles for Bonneville Power Administration Rates and Contracts." Vice President Gore announced the establishment of the Principles on September 21, 1998.

These Principles differ significantly from the MOA. BPA and the other participants are not establishing a budget for the FY 2002 through FY 2006 period. In fact, final decisions and approvals on a fish and wildlife recovery strategy and funding are not expected during this rate proceeding. Because rates are being set before decisions and approvals are made, the Principles take into account the broad range of potential costs associated with the hydrosystem configuration alternatives under consideration at the time the Principles were adopted. The Principles are intended to ensure that BPA's rates and power sales contracts yield a very high probability of meeting all post-FY 2001 financial obligations, including BPA funding obligations for the fish and wildlife recovery strategy that is eventually adopted.

A number of fish and wildlife initiatives are currently being developed, analyzed, and reviewed in the region. These include: (1) the 1999 decision on long-term configuration of the FCRPS called for in the 1995 NMFS Biological Opinion and the NMFS recovery plan for listed salmon and steelhead; (2) the Columbia Basin Forum "Four H" process, which focuses on development of a regional fish and wildlife plan through a broad ecosystem approach that takes into consideration the hydrosystem, habitat, hatcheries, and harvest; (3) the Multi-Species Framework initiated by the Northwest Power Planning Council and NMFS, in consultation with the region's Indian Tribes, to establish a coherent array of scientifically based options for the Columbia Basin; and (4) proposed revisions to the Northwest Power Planning Council's Fish and Wildlife Program. BPA believes that the range of costs associated with the 13 alternatives is sufficiently broad to cover any eventual decision made on potential activities to be undertaken, or any outcome reached through these other processes.

In December 1998, BPA published its implementation plan for the Principles. This document is entitled "How BPA's Subscription Strategy Implements the Fish and Wildlife Funding Principles." See Revenue Requirement Study Documentation, WP–02–E–BPA–02A, Volume 1, Chapter 13.

C. Scope of the 2002 Rate Case

Many of the decisions that guide BPA's marketing policies have been made or will be made in other public review processes. This section provides guidance to the Hearing Officer as to those matters that are within the scope

of the rate case, and those that are outside the scope.

1. Spending Levels

As described above, the Cost Review recommendations and BPA's planned implementation of those recommendations have already received extensive public review. Pursuant to section 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way visit the appropriateness or reasonableness of BPA's decisions on spending levels, as included in BPA's test period revenue requirement for FYs 2002 through 2006. If, and to the extent, any re-examination of spending levels is necessary, that re-examination will occur outside of the rate case. Excepted from this direction on account of their variable nature, dependency on BPA's rate case models, or timing, are: (1) forecasts of Residential Exchange benefits; (2) forecasts of short-term purchase power costs; (3) capital recovery matters such as interest rate forecasts, scheduled amortization, depreciation, replacements, and interest expense; (4) inter-business line expenses; and (5) General Transfer Agreements.

2. Subscription Strategy

As noted above, the Subscription Strategy has already received extensive public review and was accompanied by a Final ROD in December 1998. BPA's Subscription Strategy states that BPA will negotiate new power sales contracts with the DSIs but make the actual level of service under such contracts contingent on the availability of power remaining after the close of the Subscription window. The Subscription Strategy also notes that BPA was not prepared at the time of issuing the Strategy to make any final decisions regarding augmentation in order to serve DSI load. Since then BPA has decided to propose serving approximately 1,440 aMW of DSI load. BPA does not intend to conduct a separate public process to take comments on this proposal. Therefore, parties to the rate case may raise and discuss any issues regarding BPA's proposal to serve the DSIs, including any issues regarding the potential effects of this proposal on BPA's rates.

BPA's Subscription Strategy also provides that BPA will offer the equivalent of 1,800 aMW of Federal power to regional IOUs for the FY 2002–2006 period as a proposed settlement of the Residential Exchange Program. BPA has recently received a suggestion to increase the amount of power provided to regional IOUs from 1,800 aMW to 1,900 aMW for the FY 2002–2006 period. While the Subscription Strategy accurately reflects BPA's settlement proposal, any decision by BPA to change the amount of power offered to the IOUs will be made outside of this rate case. Parties to the rate case, however, may raise and discuss any issues regarding the potential effects of such an increase on BPA's rates.

BPA has developed the Conservation and Renewables (C&R) Discount over the past year based on public comment. The range of public opinion regarding the discount was discussed in the Subscription ROD. Working from the ROD, BPA has included the following proposal as part of the rate case. The C&R Discount will apply to all customers served under requirements rates including the Priority Firm Power rate (PF), the Industrial Firm Power rate (IP), the New Resource Firm Power rate (NR), the Residential Load Firm Power rate (RL), and Slice. The total eligibility for each customer will equal .5 mills per kilowatthour (kWh) based on Subscription loads. Customers will be accountable for demonstrating compliance with their expenditure target at the end of the contract term. The discount will be applied automatically on each customer's monthly bill. If a dividend is declared, based on better than expected revenues, the first $15 million will be disbursed to customers actively pursuing C&R Discount programs.

Also based on the Subscription ROD, BPA is addressing the following issues outside the rate case. Recommendations for measures that will be eligible for the C&R Discount will be submitted to BPA by the Regional Technical Forum. BPA will go through a separate public process to review and adopt these recommendations before the new rates go into effect. BPA will conduct a separate process in the fall of 1999 to discuss simplified eligibility criteria for small utilities and other administrative details.

The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit decisions that were made in BPA's Subscription Strategy, including the ROD for the Strategy.

3. Fish and Wildlife Funding Principles

The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way revisit the policy merits or wisdom of the strategy to "keep the options open" or of the Fish and Wildlife Funding Principles. The Principles were developed through extensive public involvement and comment processes, and have been adopted as policy at the highest levels of the Administration. The rate proceeding will, however, address implementation of the Principles in the Revenue Requirement Study (including repayment studies and risk mitigation), the Risk Analysis Study, the Loads and Resources Study, and the Wholesale Power Rate Development Study (including rate design, cost allocation, and revenue forecast).

Fish and wildlife issues that will be addressed in this rate proceeding include: (1) how the terms of access to the FCCF are modeled in the rate proposal and their impact on TPP and rates; (2) how section 4(h)(10)(C) credits are modeled in the rate proposal and their impact on TPP and rates; (3) the calculation and treatment of operations and maintenance and capital investment in repayment studies and the revenue requirement; (4) the selection, design, terms and conditions, assumptions, treatment, and impact of planned net revenues for risk, CRAC, indexed power sales contracts, stepped rates, and targeted adjustment charge; (5) the RiskMod, NORM, and Tool Kit model design, operation, inputs and outputs, and use of results; (6) the level of TPP that is targeted, from the range of potential TPP targets established in the Principles; and (7) the design, terms and conditions, assumptions, and treatment of the Dividend Distribution Clause (DDC), including the threshold for triggering a dividend distribution, the conditions under which a dividend is distributed, and the mechanism used to distribute dividends to certain power customers.

Included among the policy decisions, commitments, and assumptions that are not at issue in this rate proceeding are: (1) The Administration's decision to extend the existing terms of access to the FCCF and to roll over the existing formula for calculating section 4(h)(10)(C) credits from the current rate period to FY 2006; (2) the content, merits, or level of costs for the fish and wildlife recovery strategies reflected in each of the 13 alternatives; (3) the decision to include the full range of costs for all 13 alternatives for the purposes of BPA's repayment study, revenue requirement, revenue forecast, and risk management studies and strategies; (4) the TPP goal of 88 percent over the 5-year rate period with a "floor" of 80 percent; (5) the policy

objective that rates and contracts be designed to position BPA to achieve similarly high TPP post-FY 2006; (6) the incorporation of the full range of costs using the same probabilistic method BPA uses for other cost and revenue uncertainties in its ratemaking; (7) the assumption that all 13 alternatives are equally likely to occur; (8) the assumption that BPA's annual fish and wildlife operations and maintenance costs have an equal probability of falling anywhere within the range of $100 million and $179 million; (9) the adoption of a flexible approach in order to respond to a variety of different fish and wildlife cost scenarios, and in particular, the 35 to 45 percent goal of total post-FY 2001 sales in contract-term lengths of three years or less, in short-term surplus sales, and/or in cost-based indexed sales; and (10) the goals of adopting rates and contract strategies that are easy to implement and administer.

4. Transmission Related Issues

In setting rates for the period beginning October 1, 2001, BPA is bifurcating its general rate proceeding into separate power and transmission rate proceedings. BPA has voluntarily committed to marketing its power and transmission services in a manner modeled after the regulatory initiatives articulated by FERC in Order Nos. 888 and 889.[2] In Order No. 888, FERC directed public utilities regulated under the Federal Power Act to functionally unbundle transmission and ancillary services from their wholesale power services, and to establish separate rates for wholesale generation, transmission, and ancillary services. Establishing BPA's power and transmission and ancillary services rates in separate rate cases is consistent with FERC's unbundling paradigm because it will separately resolve power and transmission issues in the different rate cases.

The proposal for new and revised wholesale power rates, the methodology for the treatment and allocation of inter-business line costs, and the proposed cost allocation for non-Federal transmission costs for the Federal and non-Federal power purchases of GTA customers are discussed below. The Administrator will decide the inter-business line and GTA issues as part of the wholesale power rate case and will not revisit the decision on these issues in the subsequent transmission rate case. In addition, the scope of the wholesale power rate case does not include the merits of the business line separation or BPA's rates for transmission and ancillary services that will be marketed by the Transmission Business Line (TBL). All transmission and ancillary service rates and rate design issues will be addressed in the subsequent transmission rate case. A notice of BPA's transmission and ancillary services rate proposals will be announced and published in the **Federal Register** at a later date.

In BPA's 2002 power rate case, BPA will decide the appropriate treatment of costs that mutually affect both of its power and transmission business lines, or that assess costs from one business line to the other. The treatment of these "inter-business line" issues will determine whether the costs are recovered through power, transmission, or ancillary services rates. BPA plans to address in this power rate case: functionalization of corporate overhead costs; treatment of generation-integration and generation step-up transformer costs; determination of the generation input costs or unit costs that will become the basis for certain ancillary services rates; and determination of the costs of generation services used by the TBL, including Remedial Action Schemes and station service.

The other transmission-related issues to be proposed in the power rate case include all GTAs and GTA replacement costs for Federal power deliveries and for non-Federal power deliveries, and PBL responsibility, if any, for Delivery Segment costs. Resolution of the GTA issues for Federal and non-Federal power deliveries will allow GTA customers to make informed power purchase decisions and will affect the level of the power revenue requirement.

The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way address those transmission items which are not within the scope of this rate case as noted above.

5. Adjustment to PF–96 Rate: Targeted Adjustment Charge for Uncommitted Loads

This rate case also includes a proposal to establish a charge in the PF–96 rate schedule for customer loads that were uncommitted during the 1996 rate case but return to BPA as firm requirements load prior to September 30, 2001. There are no other changes to the PF–96 rate schedule proposed in this rate case.

The Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing on any issue regarding the proposed adjustment of the PF–96 rate schedule other than the Targeted Adjustment Charge for Uncommitted Loads.

D. The National Environmental Policy Act

BPA's initial rate proposal falls within the scope of the Final Business Plan EIS, completed in June 1995. The analysis in the EIS includes an evaluation of the environmental impacts of rate design issues for BPA's power products and services. Comments on the Business Plan EIS were received outside the formal rate hearing process, but will be included in the rate case record and considered by the Administrator in making a final decision establishing BPA's 2002 rates.

Part III—Public Participation

A. Distinguishing Between "Participants" and "Parties"

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by November 5, 1999. This date follows the anticipated submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications at the address listed in the **ADDRESSES** Section of this Notice. In addition, BPA will hold several field hearings in the Pacific Northwest region. Participants may appear at the field hearings and present oral testimony. The transcripts of these hearings will be a part of the record upon which the Administrator makes her final rate decisions.

Persons wishing to become a party to BPA's rate proceeding must notify BPA

[2] Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct (Order 889), FERC Stats. & Regs ¶ 31,035 (1996).

in writing. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by 9 a.m. on August 24, 1999. The petitions should be directed to: Christopher Jones, Hearing Clerk—LP, Bonneville Power Administration, 905 NE. 11th Ave., P.O. Box 12999, Portland, Oregon 97212.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and received by BPA within two days after service of the petition.

B. Developing the Record

The record will include, among other things, the transcripts of all hearings, any written material submitted by the parties, documents developed by BPA staff, BPA's environmental analysis and comments accepted on it, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates first will be expressed in the Administrator's Draft ROD. Parties will have an opportunity to respond to the Draft ROD as provided in BPA's Procedures. The Administrator will serve copies of the Final ROD on all parties. At the conclusion of the rate proceeding, BPA will file its rates with FERC for confirmation and approval.

BPA must continue to meet with customers in the ordinary course of business during the rate case. To comport with the rate case procedural rule prohibiting *ex parte* communications, BPA will provide necessary notice of meetings involving rate case issues for participation by all rate case parties. Parties should be aware, however, that such meetings may be held on very short notice and they should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding. Consequently, parties should be prepared to attend meetings every day during the course of the rate case.

Part IV—Major Studies and Summary of Proposal

A. Summary of Proposed 2002 Wholesale Power Rate Structure

1. List of Proposed 2002 Wholesale Power Rates

BPA is proposing five different rate schedules for its 2002 Wholesale Power Rates. All of these rate schedules are discussed in more detail in Part V of this Notice.

a. PF–02: Priority Firm Power Rate

The PF rate schedule is comprised of three rates: the PF Preference rate, the PF Exchange Program rate, and the PF Exchange Subscription rate.

The PF Preference rate applies to BPA's firm power sales to be used within the Pacific Northwest by public bodies, cooperatives, and Federal agencies. This power is guaranteed to be continuously available. The rate applies to the following products:

Full Service Product
Actual Partial Service Product—Simple
Actual Partial Service Product—Complex
Block Product
Block Product with Factoring
Block Product with Shaping Capacity
Slice Product

The PF Exchange Program rate applies to sales of power to regional utilities that participate in the Residential Exchange Program established under section 5(c) of the Northwest Power Act, 16 U.S.C. Section 839c(c).

The PF Exchange Subscription rate applies to sales of power to regional IOUs that participate in a settlement of the Residential Exchange Program. This proposed settlement was established in BPA's Subscription Strategy and includes a power sale component and a financial component. The Strategy noted that power sales under the settlement might be in the form of "in lieu" power sales under section 5(c) of the Northwest Power Act or requirements sales under section 5(b) of the Act. The PF Exchange Subscription rate applies to "in lieu" sales under the settlement.

b. RL–02: Residential Load Firm Power Rate

The RL rate applies to sales of power to regional investor-owned utilities that participate in a settlement of the Residential Exchange Program. As noted above, the Subscription Strategy indicated that power sales under the settlement might be in the form of "in lieu" power sales under section 5(c) of the Northwest Power Act or requirement sales under section 5(b) of the Act. The Residential Load rate applies to requirements sales under the settlement.

c. NR–02: New Resource Firm Power Rate

The NR rate applies to net requirements power sales to IOUs for resale to ultimate consumers for direct consumption, for construction, test, and start-up, and for station service. NR–02 firm power is also available to public utility customers for serving New Large Single Loads. This rate covers seven products:

New Large Single Loads
Full Service Product
Actual Partial Service Product—Simple
Actual Partial Service Product—Complex
Block Product
Block Product with Factoring
Block Product with Shaping Capacity

d. IP–02: Industrial Firm Power Rate

The IP rate applies to firm power sales to BPA's DSI customers. The IP rate applies to the firm take-or-pay Block Product for DSI customers that purchase under 2002 Industrial Firm Power Contracts. The IP–02 rate includes Targeted Adjustment Charges.

e. NF–02: Nonfirm Energy Rate

The NF rate applies to energy sold under an arrangement that does not have the guaranteed continuous availability of firm power. The rate provides for upward and downward pricing flexibility from an average cost. Any time that BPA has nonfirm energy for sale, any combination of the following rates may apply:

Standard Rate
Market Expansion Rate
Incremental Rate
Contract Rate
Western Systems Power Pool Transactions

End-user Rate

2. Rate Development Issues

a. Inter-Business Line Calculations

BPA is addressing certain inter-business line issues that must be resolved in order to determine BPA's power revenue requirement and to forecast associated revenues. In its power rate case, BPA is proposing: a methodology for functionalizing corporate overhead costs; unit costs for generation inputs for operating reserves and regulation ancillary services; the generation input cost for the reactive ancillary service; and the costs of station service and remedial action schemes needed by the TBL. In addition, BPA is proposing an allocation of generation integration and generation step-up transformer costs to the business lines. BPA does not propose to recover any Delivery Segment costs through wholesale power rates. BPA's proposal for treatment of Delivery Segment costs will be resolved in the separate transmission rate case.

b. Rate Mitigation Costs

The average proposed PF Preference rate is about the same as in 1996. However, due to rate design changes, some utilities will experience a rate increase and some will experience a rate decrease based on their individual usage.

BPA has proposed to mitigate rate impacts in a number of ways. These include modifying the monthly demand charge, capping the Load Variance Charge, and continuing the Low Density Discount. These items are described below. In addition, BPA proposes to have $4 million available each year to mitigate remaining impacts on certain customers.

c. System Augmentation Costs

Under the Subscription Strategy, BPA expects to be obligated to serve more firm load than is forecasted to be produced by the Federal Base System (FBS) under critical water conditions. Additional firm power will be needed to augment the FBS. For ratemaking purposes, this firm power will be defined as FBS replacements. The costs associated with this FBS replacement power will be allocated to power rate pools as specified by the rate directives in the Northwest Power Act.

Power purchases for system augmentation are distinguished from balancing power purchases by their longer duration. Balancing power purchases are shorter-term purchases needed to serve daily and monthly load obligations within the annual load/resource balance. System augmentation purchases are for a year or longer, and are needed on an annual basis to produce an annual load/resource balance.

BPA's initial proposal contains a provision that requires purchasers of the Slice product to pay their share of the net costs of system augmentation purchases. The net costs are the actual costs of the system augmentation purchases minus the revenue BPA derives from selling the equivalent amount of power at posted rates. The initial proposal also frees Slice purchasers from paying for shorter-term balancing purchases. These elements of the Slice product were designed at a time when the amount of purchases necessary to augment the system was anticipated to be relatively small.

The anticipated amount of power necessary to augment the system has increased significantly since Slice was initially proposed. Because of the increased augmentation purchases, the risks associated with having Slice purchasers only obligated to share the net costs of system augmentation may no longer be consistent with the underlying principle of the Slice product that there would be "no cost shifts." BPA intends to examine this issue in the rate case to ensure that having Slice purchasers share only the net costs of system augmentation does not create a cost shift.

d. Exchange Settlement Methodology

The Subscription Strategy proposes a settlement of the Residential Exchange Program with regional IOUs that includes both power and monetary benefits. The total package is valued at 1800 aMW at the RL–02 or PF Exchange Subscription rate. BPA will supply at least 1000 aMW at the RL–02 or PF Subscription rate. In addition, the remaining 800 aMW will be provided either in the form of monetary benefits or as physical power at BPA's discretion. For purposes of the rate case this 800 aMW of benefits will be calculated as the difference between a market forecasted price for power and the RL–02 or PF Exchange Subscription rate.

BPA does not know if the IOUs will accept the proposed settlement. (The IOUs have the choice of accepting this RL settlement or participating in the Residential Exchange Program.) Therefore, rates that will apply to the settlement, the RL–02 and PF Exchange Subscription rates, as well as a rate that will apply to the traditional Residential Exchange Program, the PF Exchange Program rate, must be established in the rate case.

3. Changes in Rate Design

BPA redesigned its rates in BPA's 1996 rate case to send price signals that reflected the market estimated at that time. BPA is generally continuing the same rate design for its 2002 rates, with some changes described below to account for current market and hydro conditions.

The major change that BPA has made in designing its rates is to add a "Subscription Settlement" step, which serves as the basis for calculating the RL and PF Exchange Subscription rates and for developing targeted adjustment charges for the IP and PF rates. More detail on this change is described later in this Notice under Rates Analysis Model.

a. Load Variance Charge

In this rate case BPA is eliminating the Load Shaping Charge and replacing it with a Load Variance Charge. The Load Variance Charge covers BPA's cost of standing ready to meet customers' load growth for reasons other than annexation or retail access load gain or loss. In addition, it provides Full and Partial Service purchasers the right to deviate from their monthly forecasted BPA purchases due to weather, economic business cycles, or plant energy consumption. The charge is set at 0.80 mill per kWh and is charged against the customer's Total Retail Load. Further details on these charges are found in the General Rate Schedule Provisions (GRSPs) (Part V of this Notice).

b. Stepped Up Multi-Year (SUMY) Block Charge

An additional adjustment is proposed by BPA to recover the added cost of serving a block purchase that increases over time. This is to compensate BPA for the incremental cost of serving an additional amount of load above first year loads.

c. Monthly Demand and Energy Charges

BPA is proposing to set monthly energy and demand charges for the FY 2002–2006 rate period. BPA's Marginal Cost Analysis shows substantial monthly differentiation in predicted energy rates for this period. In setting monthly charges for energy and demand, BPA is moving away from the six seasonal period energy charges and the annual demand charge used in BPA's 1996 rate case.

d. Demand Adjuster

In addition to the change in the development of the demand charge, BPA is making a change in the measurement of a customer's peak

demand. BPA will continue measuring Full Service customers' peak demand coincidental to BPA's generation peak. However, Partial Service customers' demand entitlement is measured on their system peak, and adjusted through a Demand Adjuster to compensate for the different demand billing basis compared to the demand billing basis of a Full Service customer.

e. Stepped Rates

A major change in BPA's proposal is the posting of Stepped Rates. The Rates Analysis Model (RAM) calculates an average five-year rate, however, rates that customers pay will be differentiated between the first three years and the last two years of the rate period. The rates for the FY 2002 to 2004 period will be 0.6 mills per kWh below the average five-year rate. The rates for the FY 2005 to 2006 period will be 0.9 mills per kWh above the average five-year rate. The effective differential is 1.5 mills per kWh.

4. New Adjustments to Rates

BPA is proposing a number of new adjustments and continuing some existing adjustments. These adjustments are listed alphabetically and are discussed in greater detail in Part V of this Notice.

a. Conservation and Renewables (C&R) Discount

BPA has included a C&R Discount in this rate case. In setting power rates, BPA has included the cost of this discount by applying 0.5 mills per kWh to loads served by posted rates and the Slice product. Within the PBL billing process, customers will receive a C&R Discount to encourage investment in qualifying new conservation and renewables. BPA and its customers will reconcile the actual conservation and renewable investments and C&R Discount eligibility. BPA is assumed to remain revenue neutral in this program. While IP–02 rate customers are eligible for the C&R Discount, the discount cannot be used to lower the IP rate below the DSI Floor Rate.

b. Cost Recovery Adjustment Clause (CRAC)

BPA is including a CRAC in its rate proposal as one of the risk mitigation tools intended to address the wide range of financial uncertainty BPA is facing in the FYs 2002–2006 rate period. The CRAC would cause posted power rates to be adjusted upward for one year if actual accumulated net revenues (AANR) fall below a threshold level: -$350 million for FYs 2001 and 2002 and $200 million for FYs 2003, 2004, and 2005. These levels of AANR are equivalent to reserve levels of $300 million for FYs 2001 and 2002, and $500 million for FYs 2003, 2004, and 2005. In the event that AANR falls below the threshold level for any of the years from FYs 2001–2005, rates will be increased for a 12-month period beginning with power deliveries in the following April. (In FY 2006, rates will only be increased for six months, through the end of FY 2006.) The CRAC is intended to generate additional revenue of up to $125 million, $135 million, $150 million, $150 million, and $87.5 million if the threshold levels are crossed for FYs 2001, 2002, 2003, 2004, or 2005, respectively. The CRAC is projected to have an average of about a 12 percent chance of triggering.

c. Cost-Based Indexed IP Rate

BPA is proposing a variable rate for the direct service aluminum companies in this rate filing. It will be a rate that is adjusted higher or lower to reflect the aluminum price forecast. The rate is designed to go no lower than 19 mills per kWh, with an upper ceiling of 28.5 mills per kWh. The variable rate will be designed to yield an average rate of 23.5 mills for those DSI customers that will be offered an Industrial Power Targeted Adjustment Charge (IP TAC) rate of 23.5 mills, and 25 mills for those DSI customers that will be offered an IP TAC rate of 25 mills.

d. Cost-Based Indexed PF Rate

This rate is designed to provide a market based alternative rate to all firm load requirements customers that wish to diversify their power portfolios. Customers can choose to convert their applicable PF rate to a market indexed or floating price adjusted for BPA's risk. The customer and BPA will choose a mutually agreeable reference point for the index, and the index price will be based on a current market forecast of the index selected.

e. Dividend Distribution Clause (DDC)

Because of a wide range of financial uncertainties, there is the potential that net revenues will accumulate in excess of what will be needed to ensure recovery of costs over time. BPA is proposing to distribute "dividends" if an accumulated net revenue threshold is exceeded and if a five-year net revenue forecast and risk analysis show that an 88 percent Treasury Payment Probability would still be met.

The DDC proposes criteria and process requirements that the Administrator will follow in determining the total amount of annual dividends. BPA intends to conduct a separate public consultation process before the beginning of the rate period to establish criteria for apportioning the amount of annual dividends among BPA stakeholders.

f. Excess Factoring Charges

Part of the rate design in this rate case includes the establishment of a Factoring Product and an Excess Factoring Charge. Factoring for purposes of the Core Subscription Products is specifically defined as the BPA service of shaping a given quantity of megawatt-hours among hours during certain periods to follow load. Factoring charges will be applied to Excess Load Factoring that exceeds the benchmark limits. The Factoring Charge is limited to customers that have dispatchable resources and that have purchased the Actual Partial Product or the Block Product with the Factoring Product.

g. Green Energy Premium

The Green Energy Premium (GEP) will be available to customers purchasing firm power. The GEP will be charged when a customer chooses to designate any portion (up to 100 percent) of its Subscription purchase as Environmentally Preferred Power.

The GEP will range from zero to $40/megawatthour depending on the specific products and associated costs selected by each customer.

h. Industrial Power Targeted Adjustment Charge (IP TAC)

BPA is proposing to apply a TAC to all IP sales to cover the incremental costs that it incurs from purchasing power to serve loads beyond the amount of firm inventory in the augmented FBS. It will apply to sales at both 23.5 mills and 25 mills. The IP TAC will prevent the transfer of these incremental costs to other customers. It is designed to recover costs to keep BPA whole, and is not designed to discourage purchases from BPA.

i. Low Density Discount (LDD)

BPA is continuing to offer the LDD to utilities with low system densities, such as rural electric cooperatives with high distribution costs resulting from sparsely populated service areas. The LDD principles, eligibility criteria, and discount calculation table appear in the GRSPs.

j. PF Targeted Adjustment Charge (PF TAC)

The purpose of the PF TAC is to allow BPA the flexibility of passing to customers the incremental cost of unanticipated or additional loads that are not embedded in the posted rates for

the FYs 2002–2006 rate period. The Subscription Strategy indicated that BPA would have inventory available during the Subscription window for customers. After the window closes, all "late signers" or public utilities with new or annexed load, including retail access load gain or returning load, will be subject to a PF TAC. The PF TAC also applies to requests for requirements service for customer loads previously served by a customer's own resources. If inventory is available to serve the request, the PF TAC is the PF rate. If BPA must buy power to serve the load, an adjustment charge reflecting the differences between PF–02 and BPA's cost to buy power is added to the PF rate.

BPA will provide limited exemptions from the PF TAC for those customers requesting requirements load previously served by renewable resources. In developing the posted rates, BPA is not forecasting that it will receive revenues under the PF TAC.

k. Slice True-Up Adjustment

Under the Subscription Strategy, BPA decided to offer a Slice product. Each year, BPA will calculate the difference between the Slice Revenue Requirement's audited actual expenses and credits and the expenses and credits that are forecast in this rate case. The true-up will be a charge to the Slice customer's bill.

l. Unauthorized Increase Charges for Power Sales

This rate proposal includes separate penalty charges for Unauthorized Increases in Energy and Unauthorized Increases in Demand. These charges will be applied to deliveries that exceed contractual entitlements for energy and demand, respectively. Further details on these charges are found in the GRSPs (Part V of this Notice).

m. Value of Reserves

Section 7(c)(3) of the Northwest Power Act, 16 U.S.C. 839e(c)(3), provides that the Administrator shall adjust rates to the direct service industrial customers "to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers." The DSIs may provide two types of reserves: Supplemental Contingency Reserves and Stability Reserves. The Initial Rate proposal assumes that Stability Reserves will be purchased by the TBL and addressed in TBL's transmission rate case.

The PBL is proposing a new approach to procuring Supplemental Reserves in this rate case. The PBL will purchase the most cost-effective Supplemental Reserves or provide those reserves itself. No Supplemental Reserves are explicitly forecasted to be provided by the DSIs in this rate case. Any payment to the DSIs for Supplemental Contingency Reserves will be negotiated within a specified range on an individual customer basis rather than a credit applied to some or all of BPA's DSI load. The range is stated in the IP rate schedule (see Part V of this Notice).

5. Development of IP Rate/7(c)(2) Adjustment

The IP–02 rate applies to firm power sales to BPA's DSI customers, including the firm take-or-pay Block Product for DSIs that purchase power under 2002 Industrial Firm Power contracts. Rates for the DSIs are set according to the rate directives contained in section 7(c) of the Northwest Power Act, 16 U.S.C. 839e(c). Section 7(c)(1)(B) provides that after July 1, 1985, the DSI rates will be set "at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region." 16 U.S.C. 839e(c)(1)(B). Pursuant to section 7(c)(2), the DSI rates are to be based on BPA's "applicable wholesale rates" to its preference customers and the "typical margins" included by those customers in their retail industrial rates. 16 U.S.C. 839e(c)(2). Section 7(c)(3) provides that the DSI rates are also to be adjusted to account for the value of power system reserves provided through contractual rights that allow BPA to restrict portions of the DSI load. 16 U.S.C. 839e(c)(3). This adjustment is typically made through a value of reserves (VOR) credit. As described above, for this rate case BPA is not proposing a uniform VOR credit to be applied against DSI rates. Thus, the DSI rates shall be set equal to the applicable wholesale rate, plus a typical margin, subject to the floor rate test. As a final step in rate design, BPA develops monthly and diurnally differentiated energy charges and monthly differentiated demand charges based on allocated costs and scaled based on the results of BPA's Marginal Cost Analysis.

The typical Industrial Margin is 0.46 mills per kWh. As stated above, a zero VOR credit is being forecast in this rate case. Thus, the net margin of 0.46 mills per kWh is added to the seasonal and diurnal PF energy charges.

Section 7(c)(2) of the Northwest Power Act requires that the DSI rates in the post-1985 period "shall in no event be less than the rates in effect for the contract year ending June 30, 1985." 16 U.S.C. 839e(c)(2). Accordingly, a floor rate test is performed to determine if the IP rate has been set at a level below the floor rate. If so, an adjustment is made that raises the DSI rate to recover revenues at the floor rate and credits other customers with the increased revenue from the DSIs. If the DSI rate has been set at a level above the floor rate, no floor rate adjustment is necessary.

The first step in calculating the floor rate is to apply the IP–83 Standard rate charges to test period (FY 2002—2006) DSI billing determinants. The resulting revenue figure is then divided by total IP test period loads to arrive at an average rate in mills per kWh. This rate is reduced by an Exchange Cost Adjustment and a deferral that were included in the IP–83 rate. Both adjustments are made on a mills per kWh basis.

BPA is conducting separate rate cases for power and transmission. Therefore, BPA has removed all transmission costs from the IP–83 rate to make a power-only floor rate comparison. These calculations result in a DSI floor rate of 20.98 mills per kWh. Because the proposed IP rate revenues are below the floor rate revenues, an adjustment was necessary. Therefore, the IP rate becomes the floor rate.

6. Changes in Methodology

a. AURORA Model

AURORA is a model used to estimate the variable cost of the marginal resource in a competitively priced energy market. In competitive market pricing, the marginal cost of production is equivalent to the market clearing price, which is the basis for determining BPA's bulk power revenues in the rate case.

AURORA models wholesale energy transactions within a competitive market pricing system. AURORA uses a demand forecast and supply cost information to estimate marginal cost. To determine the marginal cost in a given hour, AURORA models the dispatch of electric generating resources in least cost order to meet the load (demand) forecast. The price in the given hour is equal to the variable cost of the marginal resource. Over time, AURORA adds new resources and retires old resources based on the net present value of the resource.

b. Risk Mitigation

This rate proposal implements the TPP standard that all payments to Treasury of the power function be

recovered through power rates on time and in full over the 5-year rate period with 88 percent probability. Payments to Treasury are the lowest priority in BPA's priority of payments. For this reason, TPP measures the ability to recover costs in a timely fashion.

BPA has identified and analyzed its power risks and is proposing to implement several risk mitigation tools that, taken together, achieve an 88 percent TPP: access to the Fish Cost Contingency fund; starting FY 2002 financial reserves; a CRAC that adjusts posted rates upward as frequently as each year of the five-year rate period if actual accumulated net revenues attributable to the generation function fall below an accumulated net revenue threshold; and Planned Net Revenues for Risk, a component of the revenue requirement that is added to planned expenses.

c. Rates Analysis Model (RAM)

The RAM has been modified to have two steps. The first is the Rate Design Step, which uses the Northwest Power Act's rate directives to calculate posted rates, including the NR–02 rate and the PF Exchange Program rate. In this first step, BPA calculates rates by: (1) allocating costs to rate pools as noted in the Cost of Service Analysis (COSA); (2) adjusting these results to reflect revenue credits and statutory rate directives; and (3) using the marginal cost of power values to shape the annual costs into energy rates across months and time-of-day. In the second step, the Subscription Step, BPA adjusts the rates calculated from the first step to reflect the Subscription Strategy and to produce Subscription power rates.

7. Adjustment to PF–96: Targeted Adjustment Charge for Uncommitted Loads

The Targeted Adjustment Charge for Uncommitted Loads (TACUL) applies to purchases from BPA to serve customer loads that were uncommitted during the 1996 rate case due primarily to the diversification of customer loads. Uncommitted loads returning to BPA firm power requirements service from January 2001, through to the beginning of the 2002 rate period, will be subject to TACUL. The TACUL will prevent the erosion of reserves that could occur from additional costs of power purchases that may be required to meet customer returned load.

BPA is currently facing an energy deficit during the time period January 2001 to September 2001, and could face even greater deficits should BPA receive additional requests by customers to serve returning uncommitted load. These incremental loads will be charged the PF Preference (PF–96) rate, plus the TACUL, which is an adjustment charge reflecting the difference between the PF–96 rate and BPA's cost to supply this power. BPA will calculate the cost for the TACUL at the time a customer requests power or requests BPA to price power already purchased under this schedule. The TACUL will be finalized prior to signing of the final contract or before initial delivery. The TACUL will expire with the PF–96 rate schedule.

8. Payment of Non-Federal Transmission Costs for GTA Customers' Federal and Non-Federal Power Purchases

BPA's PBL and TBL are proposing to pay the non-Federal transmission cost for customers' Federal and non-Federal power purchases, respectively. PBL's and TBL's proposals are separate and distinct from one another.

PBL proposes to continue existing GTA service to current loads for delivery of Federal power through the FY 2001–2006 rate period. Continuation of GTA service for Federal power deliveries is consistent with BPA's historical practice and helps promote the widespread use of Federal power. The GTA costs associated with delivery of Federal power will be borne by PBL and are estimated to be around $42 million per year through the rate period.

TBL proposes to pay up to $6.5 million annually for non-Federal transmission to allow preference and DSI customers who have historically been served by GTAs to avoid "pancaked" transmission rates when serving their loads with non-Federal power. BPA proposes that the forecasted non-Federal transmission cost (up to the cap of $6.5 million) for GTA customers' non-Federal power purchases will be included in cost of the Network segment, or its successor, when it develops its transmission rate proposal. This rate treatment is included in the power rate case to resolve all issues that affect GTA customers and to enable GTA customers to make informed power purchase decisions.

B. Studies in Support of Initial Proposal

The studies that have been prepared to support BPA's 2002 Initial Wholesale Power Rate proposal are described in detail in this section.

Loads and Resources Study and Documentation (Study about 100 pages, documentation about 500 pages)
Revenue Requirement Study and Documentation (Study about 250 pages, documentation about 700 pages)
Risk Analysis Study and Documentation (Study and documentation are combined, approximately 130 pages)
Marginal Cost Analysis Study and Documentation (Study about 50 pages, documentation about 400 pages)
Wholesale Power Rate Development Study and Documentation (Study about 175 pages, documentation about 700 pages)
Section 7(b)(2) Rate Test Study and Documentation (Study about 50 pages, documentation about 350 pages)

1. Loads and Resources Study

The Loads and Resources Study represents the compilation of the load and resource data necessary for developing BPA's wholesale power rates. The Study has three major interrelated components: (a) BPA's Federal system load forecast; (b) BPA's Federal system resource forecast; and (c) the Federal system load and resource balances.

The Federal system load forecast is composed of customer group sales forecasts for public utilities and Federal agencies, DSIs, IOUs, and other BPA contractual obligations.

The Federal system resource forecast includes power generated by both Federal and non-Federal hydroprojects, return energy associated with BPA's existing capacity-for-energy exchanges, contracted resources, and other BPA hydrorelated contracts. The Federal system hydroresource estimates are derived from a hydroregulation study that estimates generation under 50 water conditions using the operating provisions of the Pacific Northwest Coordination Agreement. The seasonal shape and magnitude of the Federal system hydro generation depends on availability of all regional resources and coordination of those resources to meet regional loads.

The projections of Federal system resources are compared with projected Federal system firm loads for each month of Operating Years 2002–2007 (August 2001–July 2007) under 1937 water conditions. The resulting load and resource balances yield the firm energy surplus or deficit of the Federal system resources. Similarly, firm capacity surpluses and deficits are determined for the same period.

2. Revenue Requirement Study

The purpose of the Revenue Requirement Study is to establish the level of revenues from wholesale power rates necessary to recover, in accordance with sound business principles, the FCRPS costs associated with the

production, acquisition, marketing, and conservation of electric power. Power revenue requirements include recovery of the Federal investment in hydrogeneration, fish and wildlife recovery, and conservation; Federal agencies' operations and maintenance expenses allocated to power; capitalized contract expenses associated with such non-Federal power suppliers as Energy Northwest (formerly known as the Supply System); other purchase power expenses, such as short-term power purchases; power marketing expenses; cost of transmission services necessary for the sale and delivery of FCRPS power; and all other power-related costs incurred by the Administrator pursuant to law.

Cost estimates reflect implementation of Cost Review recommendations, the Principles, and certain components of the Subscription Strategy. No change in repayment policy or practice is proposed. The repayment study reflects actual implementation of the Appropriations Refinancing Act and a number of updates to actual and projected new repayment obligations. All new capital investments are assumed to be financed with debt or appropriations. The study includes a substantial level of planned net revenues to mitigate financial risk. This risk mitigation tool, in combination with other risk mitigation tools such as starting financial reserves, CRAC, and access to the FCCF, is designed to achieve the 88 percent TPP standard. The adequacy of projected revenues to recover test period revenue requirements and to meet repayment period recovery of the Federal investments is tested and demonstrated for the generation function.

3. Risk Analysis Study

The Risk Analysis Study evaluates both operational and non-operational risks. The portion addressing operational risks evaluates impacts of economic and generation resource capability variations on BPA's ability to meet its annual U.S. Treasury payment during the rate test period. The portion addressing non-operational risks evaluates the impacts of uncertainties in cost projections in the revenue requirement. The results are used to support the amount of planned net revenues for risk that are included in the revenue requirement. The risk variations are tested through the use of several risk simulation models including RiskMod, which quantifies net revenue risk; RevSim, a revenue and expense estimation model; RiskSim, a data management model; and the Non-Operating Risk Model (NORM), which quantifies the non-operating risks. The Risk Analysis, through the use of these models, captures the range of ordinary risks that BPA could reasonably expect to face during the rate test period. The models do not attempt to capture and measure the effects of extraordinary and/or unquantifiable risks such as State or Federal electricity deregulation legislation.

The Risk Analysis Study, with input from the Marginal Cost Analysis (MCA), is also used for estimating purchase power expense and secondary revenues.

4. Marginal Cost Analysis (MCA)

The MCA estimates the hourly variable cost of the marginal resource for transactions in wholesale energy market. The specific market used in this analysis is at the Mid-Columbia trading hub in the State of Washington.

The MCA is used for two purposes in the BPA rate case. First, the MCA is the basis for approximating the prices BPA may experience in the bulk power market. The MCA estimates are therefore used to inform, but not to directly set, the price used in BPA's bulk revenue forecast. Second, the MCA represents BPA's marginal cost in acquiring new energy, or the opportunity cost BPA may see in selling wholesale energy. The MCA is therefore used in rate design to send market based price signals.

The MCA uses a production cost model, AURORA, to estimate a market clearing price for wholesale energy. The fundamental theory behind this model is based on a competitive wholesale energy pricing structure. The model dispatches resources in a least cost order to meet a specified demand. Short-term prices are set at the variable cost of the marginal generator. Long-term capital investment decisions are based on economic profitability in an unregulated environment.

5. Wholesale Power Rate Development Study

The Wholesale Power Rate Development Study (WPRDS) is the primary source for details of the rates, reflecting the results of all the other studies. It documents the Rates Analysis Model and designs rates for BPA's wholesale power products and services. The WPRDS documents the development of Slice costs; the development and forecast of inter-business line revenues and costs; the development of charges for demand, load variance, unauthorized increase charges, and excess factoring charges, and the development of the three and two year rates. The end results of the WPRDS are the wholesale power rate schedules.

6. Section 7(b)(2) Rate Test Study

Section 7(b)(2) of the Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) Customers) for their general requirements for the rate test period, plus the ensuing four years, are no higher than the costs of power to those customers would be for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2) Customers' wholesale firm power rates from certain costs resulting from provisions of the Northwest Power Act. The rate test can result in a reallocation of costs from the 7(b)(2) Customers to other rate classes. The Section 7(b)(2) Rate Test Study describes the application and results of the Section 7(b)(2) Implementation Methodology.

The Section 7(b)(2) rate test triggers in this proposal, causing costs to be reallocated in the test period. The PF Preference rate applied to the general requirements of the 7(b)(2) Customers has been reduced by the 7(b)(2) amount while other rates, including the PF Exchange Program rate applied to customers purchasing under the Residential Exchange Program, have been increased by an allocation of the 7(b)(2) amount.

Part V—2002 Wholesale Power Rate Schedules

A. Introduction

BPA's 2002 Wholesale Power Rate Schedules cover five different rates:

PF–02: Priority Firm Power Rate
RL–02: Residential Load Firm Power Rate
NR–02: New Resource Firm Power Rate
IP–02: Industrial Firm Power Rate
NF–02: Nonfirm Energy Rate

The following section (Part B below) contains BPA's proposed 2002 wholesale power rate schedules, BPA's proposed 2002 GRSPs for power rates, and the new 1996 GRSP for the Targeted Adjustment Charge for uncommitted loads.

The proposed wholesale power rate schedules were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832 (1982); the Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Federal Columbia River Transmission System Act (Transmission System Act), 16 U.S.C. 838 (1982); and the Northwest Power Act, 16 U.S.C. 839 (1982).

BPA's 2002 proposed wholesale power rate schedules and the GRSPs associated with those rate schedules will supersede BPA's 1996 rate schedules, except for the FPS–96 rate schedule. The FPS–96 rate schedule continues in effect as modified in Docket No. FPS–96R. BPA proposes that its wholesale power rate schedules, including the GRSPs associated with these rate schedules, become effective upon interim approval or upon final confirmation and approval by FERC. BPA currently anticipates that it will request FERC approval of its revised rates effective October 1, 2001.

B. Summary of 2002 Wholesale Power Rate Schedules, 2002 GRSPs, and New 1996 GRSPs

Schedule PF–02

Section I. Availability

This schedule is available for the contract purchase of Firm Power or capacity to be used within the Pacific Northwest. Priority Firm Power may be purchased by public bodies, cooperatives, and Federal agencies for resale to ultimate consumers; for direct consumption; and for Construction, Test and Start-Up, and Station Service. Rates in this schedule are in effect beginning October 1, 2001, and are available for purchase under requirements Firm Power sales contracts for a three or five-year period. The Slice Product is only available for public bodies and cooperatives. Utilities participating in the Residential Exchange Program under section 5(c) of the Northwest Power Act may purchase Priority Firm Power pursuant to the Residential Exchange Program. Utilities participating in settlement of the Residential Exchange Program may purchase Priority Firm Power pursuant to their Subscription settlement agreement. Rates under contracts that contain charges that escalate based on BPA's Priority Firm Power rates shall be based on the five-year rates listed in this rate schedule in addition to applicable transmission charges.

Sales under the PF Exchange Subscription rate will be delivered in equal hourly amounts over the rate period. The consumer bills of participating IOUs should designate "Benefits of the Federal Columbia River Power System (FCRPS)" to describe the amount of benefits each consumer receives. Only the block product is available under this rate schedule.

This rate schedule supersedes the PF–96 rate schedule, which went into effect October 1, 1996. Sales under the PF–02 rate schedule are subject to BPA's 2002 General Rate Schedule Provisions (2002 GRSPs). Products available under this rate schedule are defined in the 2002 GRSPs. For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's 2002 GRSPs and billing process.

Section II. Rates Tables

The rates in this section apply to PF products. The PF Exchange Program rates and the PF Exchange Subscription rates are shown in Section III.

A. Demand Rate

1. Monthly Demand Rate for FY 2002 Through FY 2006

1.1 Applicability

These rates apply to customers purchasing Firm Power for three or five years. These rates are also used to implement the Pre-Subscription Contracts.

1.2 Rate Table

Applicable months	Rate (kW-mo)
January	$2.14
February	2.06
March	1.96
April	1.37
May	1.32
June	1.69
July	2.12
August	2.44
September	2.28
October	1.90
November	2.31
December	2.40

B. Energy Rate

1. Monthly Energy Rates for FY 2002 Through FY 2004

1.1 Applicability

These rates apply to customers purchasing power in the first three years of the rate period.

1.2 Rate Table

Applicable months	HLH rate (mills/kWh)	LLH Rate (mills/kWh)
January	19.06	13.45
February	17.95	12.84
March	17.18	12.09
April	11.64	8.55
May	11.21	7.02
June	14.51	8.61
July	18.85	15.60
August	29.24	19.23
September	20.09	19.40
October	16.68	13.35
November	20.56	17.77
December	21.40	17.67

2. Monthly Energy Rates for FY 2005 Through FY 2006

2.1 Applicability

These rates apply to purchases during the last two years of the rate period for customers purchasing for all five years of the rate period.

2.2 Rate Table

Applicable months	HLH rate (mills/kWh)	LLH Rate (mills/kWh)
January	20.56	14.95
February	19.45	14.34
March	18.68	13.59
April	13.14	10.05
May	12.71	8.52
June	16.01	10.11
July	20.35	17.10
August	30.74	20.73
September	21.59	20.90
October	18.18	14.85
November	22.06	19.27
December	22.90	19.17

3. Monthly Energy Rates for FY 2002 Through FY 2006

3.1 Applicability

These rates are used to implement the Pre-Subscription Contracts. These rates are also available to customers purchasing for all five years of the rate period under this rate table.

3.2 Rate Table

Applicable months	HLH rate (mills/kWh)	LLH Rate (mills/kWh)
January	19.66	14.05
February	18.55	13.44
March	17.78	12.69
April	12.24	9.15
May	11.81	7.62
June	15.11	9.21
July	19.45	16.20
August	29.84	19.83
September	20.69	20.00
October	17.28	13.95
November	21.16	18.37
December	22.00	18.27

C. Load Variance Rate

The Load Variance rate for FY 2002 through FY 2006 applies to all customers purchasing power under this rate schedule unless specifically excluded in Section IV below. The rate for Load Variance is 0.8 mills/kWh.

D. Slice Rate

The monthly rate for the Slice Product is $1,381,390 per 1 percent of the Slice System.

Section III. PF Exchange Rate Tables

The rates in this section apply to sales under the Residential Exchange Program and the Subscription settlements of the Residential Exchange Program.

A. Demand Rate

1. Monthly Demand Rate for FY 2002 Through FY 2006

1.1 Applicability

These rates apply to customers purchasing power for all five years of the rate period under the Residential Exchange Program and to customers purchasing power for all five years of the rate period under Subscription settlements of the Residential Exchange Program.

1.2 Rate Table

Applicable months	Rate kW-mo
January	$2.14
February	2.06
March	1.96
April	1.37
May	1.32
June	1.69
July	2.12
August	2.44
September	2.28
October	1.90
November	2.31
December	2.40

B. Energy Rate

1. PF Exchange Program Energy Rates for FY 2002 Through FY 2006

1.1 Applicability

These rates apply to customers purchasing power for all five years of the rate period under the Residential Exchange Program.

1.2 Rate Table

Applicable months	Energy rate mills/kWh
January	30.11
February	26.67
March	27.52
April	19.68
May	18.14
June	22.80
July	31.49
August	45.01
September	35.08
October	27.78
November	34.58
December	35.43

2. PF Exchange Subscription Energy Rates for FY 2002 Through FY 2006

2.1 Applicability

These rates apply to eligible customers purchasing power under Subscription settlements of the Residential Exchange Program for all five years of the rate period.

2.2 Rate Table

Applicable months	HLH Rate mills/kWh	LLH rate mills/kWh
January	19.66	14.05
February	18.55	13.44
March	17.78	12.69
April	12.24	9.15
May	11.81	7.62
June	15.11	9.21
July	19.45	16.20
August	29.84	19.83
September	20.69	20.00
October	17.28	13.95
November	21.16	18.37
December	22.00	18.27

C. Load Variance Rate

The Load Variance rate for FY 2002 through FY 2006 applies to all customers purchasing power under this rate schedule unless specifically excluded in Section IV.H below. The rate for Load Variance is 0.8 mills/kWh.

Section IV

The rates described above apply to the following:

Section IV.A. Full Service Product
Section IV.B. Actual Partial Service Product—Simple
Section IV.C. Actual Partial Service Product—Complex
Section IV.D. Block Product
Section IV.E. Block Product with Factoring
Section IV.F. Block Product with Shaping Capacity
Section IV.G. Slice Product
Section IV.H. Customers who purchase under the Residential Exchange Program or Subscription settlements of the Residential Exchange Program
1. Priority Firm Exchange Program Power
2. Priority Firm Exchange Subscription Power

A. Full Service Product

Purchases of the core Subscription Full Service Product are subject to the charges specified below.

1. Priority Firm Power

1.1 Demand Charge

The charge for Demand will be:

The Purchaser's Measured Demand on the Generation System Peak as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.
(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

The charge for Load Variance will be:

The Purchaser's Total Retail Load for the billing period *multiplied by* the Load Variance Rate from Section II.C.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost-Based Indexed PF Rate	II.D.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Flexible PF Rate Option	II.L.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

B. Actual Partial Service Product—Simple

Purchases of the core Subscription Actual Partial Service Product—Simple are subject to the charges specified below.

1. Priority Firm Power

1.1 Demand Charge

The charge for Demand will be:

(the Purchaser's Demand Entitlement *multiplied by* a Demand Adjuster) as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.
(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

The charge for Load Variance will be:

The Purchaser's Total Retail Load for the billing period *multiplied by* the Load Variance Rate from Section II.C.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount.	II.A.
Conservation Surcharge	II.B.
Cost-Based Indexed PF Rate	II.D.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Flexible PF Rate Option	II.L.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

C. Actual Partial Service Product—Complex

Purchases of the core Subscription Actual Partial Service Product—Complex are subject to the charges specified below.

1. Priority Firm Power

1.1 Demand Charge

The charge for Demand will be:

(The Purchaser's Demand Entitlement *multiplied by* a Demand Adjuster) as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.

(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

The charge for Load Variance will be:

The Purchaser's Total Retail Load for the billing period *multiplied by* the Load Variance Rate from Section II.C.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP Section
Conservation and Renewables Discount.	II.A.
Conservation Surcharge	II.B.
Cost-Based Indexed PF Rate	II.D.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Excess Factoring Charge	II.I.
Flexible PF Rate Option	II.L.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

D. Block Product

Purchases of the core Subscription Block Product are subject to the charges specified below.

1. Priority Firm Power

1.1 Demand Charge

The charge for Demand will be:

The Purchaser's Demand Entitlement as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.

(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

Not applicable to Block purchases unless the customer is also purchasing another product to which Load Variance is applicable as specified by contract.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP Section
Conservation and Renewables Discount.	II.A.
Conservation Surcharge	II.B.
Cost-Based Indexed PF Rate	II.D.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Excess Factoring Charge	II.I.
Flexible PF Rate Option	II.L.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Stepped Up Multiyear Block (SUMY).	II.S.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

E. Block Product With Factoring

Purchases of the core Subscription Block Product with Factoring are subject to the charges specified below.

1. Priority Firm Power

1.1 Demand Charge

The charge for Demand will be:

(The Purchaser's Demand Entitlement *multiplied by* a Demand Adjuster) as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.

(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

Not applicable to Block purchases unless the customer is also purchasing another product to which Load Variance is applicable as specified by contract.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount.	II.A.
Conservation Surcharge	II.B.
Cost-Based Indexed PF Rate	II.D.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Excess Factoring Charge	II.I.
Flexible PF Rate Option	II.L.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Stepped Up Multiyear Block (SUMY).	II.S.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

F. Block Product With Shaping Capacity

Purchases of the core Subscription Block Product with Shaping Capacity

are subject to the charges specified below.

1. Priority Firm Power

1.1 Demand Charge

The charge for Demand will be:

The Purchaser's Demand Entitlement as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.

(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

Not applicable to Block purchases unless the customer is also purchasing another product to which Load Variance is applicable as specified by contract.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount.	II.A.
Conservation Surcharge	II.B.
Cost-Based Indexed PF Rate	II.D.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Flexible PF Rate Option	II.L.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Stepped Up Multiyear Block (SUMY).	II.S.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

G. Slice Product

Purchases of the Subscription Slice Product are limited to Public Body Customers and are subject to the charges specified below.

1. Slice Product Charge

The charge for the Slice Product will be:

The elected Slice Percentage expressed as a decimal (.01 = 1%) *multiplied by* 100 *multiplied by* the Slice Rate in Section II.D.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount.	II.A.
Cost-Based Indexed PF Rate	II.D.
Cost Contributions	II.E.
Low Density Discount	II.P.
Slice True-Up Adjustment	II.R.
Unauthorized Increase Charge	II.V.

H. Customers Who Purchase Under Residential Exchange Program or Subscription Settlements of the Residential Exchange Program

The PF Exchange rates include: (1) the PF Exchange Program rate; and (2) the PF Exchange Subscription rate.

1. Priority Firm Exchange Program Power

This PF Exchange Program rate applies to the traditional implementation of the Residential Exchange Program.

a. Priority Firm Exchange Program Power Charges

1.1 Demand Charge

The charge for Demand will be:

(The Purchaser's Billing Demand, which is calculated by applying the load factor, determined as specified in the Residential Exchange Program agreement, to the Billing Energy for each billing period) *multiplied by* the Demand Rate from Section III.A.

1.2 Energy Charge

The monthly charge for energy will be:

(The Purchaser's Billing Energy, which is the energy associated with the utility's residential load for each billing period computed in accordance with the provisions of the Purchaser's Residential Exchange Program agreement) *multiplied by* the Energy Rate from Section III.B.1.

1.3 Load Variance Charge

The charge for Load Variance is embedded in the energy charge.

b. Transmission Charges

Customers purchasing under this rate schedule are charged for transmission services under the NT rate schedule or its successor.

Customers purchasing under this rate schedule are charged for Load Regulation under the applicable charge established by the TBL or its successor.

c. Adjustments, Charges, and Special Rate Provisions

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Unauthorized Increase Charge	II.V.

2. Priority Firm Exchange Subscription Power

This PF Exchange Subscription rate applies to sales under section 5(c) of the Northwest Power Act to investor-owned utilities (IOU) that participate in a settlement of the Residential Exchange Program as described in BPA's Subscription Strategy.

a. Priority Firm Exchange Subscription Power Charges

1.1 Demand Charge

The charge for Demand will be:

The Purchaser's Contract Demand *multiplied by* the Demand Rate from Section III.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Contract Energy *multiplied by* the HLH Energy Rate from Section III.B.2.

(2) The Purchaser's LLH Contract Energy *multiplied by* the LLH Energy Rate from Section III.B.2.

1.3 Load Variance Charge

Not applicable.

b. Adjustments, Charges, and Special Rate Provisions

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost-Based Indexed PF Rate	II.D.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Unauthorized Increase Charge	II.V.

Section IV. Transmission

All customers will need to obtain transmission for delivery of products

listed under this rate schedule, except for the exchange product listed under Section IV.H.1.

Schedule RL–02

Residential Load Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of Firm Power to be used within the Pacific Northwest. The Residential Load (RL) Firm Power Rate is available to investor-owned utilities (IOUs) under net requirement contracts for resale to ultimate residential consumers for direct consumption. Further, in order to purchase under this rate, the IOU must agree to waive its right to request benefits under section 5(c) of the Northwest Power Act for the term of the contract. Each IOU will be able to purchase a specified amount of Firm Power at the RL–02 rate. Additional sales of requirements power to IOUs will be made at the NR–02 rate.

The product will be delivered in equal hourly amounts over the rate period. The consumer bills of participating IOUs should designate "Benefits of the Federal Columbia River Power System (FCRPS)" to describe the amount of benefits each consumer receives.

Rates in this schedule are available for purchases under requirements sales contracts for a five-year period. Only the block product is available under this rate schedule. Sales under this schedule are subject to BPA's 2002 General Rate Schedule Provisions (2002 GRSPs) and billing process.

Section II. Rates Tables

The rates for the RL Firm Power product are identified below.

A. Demand Rate

1. Monthly Demand for FY 2002 through FY 2006

1.1 Applicability

These rates apply to eligible customers purchasing power for five years.

1.2 Rate Table

Applicable months	Rate (kW-mo)
January	$2.14
February	2.06
March	1.96
April	1.37
May	1.32
June	1.69
July	2.12
August	2.44
September	2.28
October	1.90
November	2.31
December	2.40

B. Energy Rate

1. Monthly Energy Rates for FY 2002 Through FY 2006

1.1 Applicability

These rates apply to eligible customers purchasing power for all five years of the rate period.

1.2 Rate Table

Applicable months	HLH rate (mills/kWh)	LLH rate (mills/kWh)
January	19.66	14.05
February	18.55	13.44
March	17.78	12.69
April	12.24	9.15
May	11.81	7.62
June	15.11	9.21
July	19.45	16.20
August	29.84	19.83
September	20.69	20.00
October	17.28	13.95
November	21.16	18.37
December	22.00	18.27

C. Load Variance Rate

Not applicable.

Section III. Billing Factors and Adjustments

Eligible customers purchasing power under a contract implementing Subscription settlements of the Residential Exchange Program are subject to the charges specified below.

1. Residential Load Firm Power

1.1 Demand Charge

The charge for Demand will be:

The Purchaser's Contract Demand multiplied by the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Contract Energy multiplied by the HLH Energy Rate from Section II.B; and

(2) The Purchaser's LLH Contract Energy multiplied by the LLH Energy Rate from Section II.B.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Unauthorized Increase Charge	II.V.

Section IV. Transmission

All customers will need to obtain transmission for delivery of products listed under this rate schedule unless BPA's Power Business Line (PBL) and the customer negotiate otherwise at time of sale.

Schedule NR–02

New Resource Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of Firm Power or capacity to be used within the Pacific Northwest. New Resource Firm Power is available to investor-owned utilities (IOU) under net requirements contracts for resale to ultimate consumers; for direct consumption; and for Construction, Test and Start-Up, and Station Service. New Resource Firm Power also is available to any public body, cooperative, or Federal agency to the extent such power is needed to serve any New Large Single Load (NLSL), as defined by the Northwest Power Act. That portion of the utility's load placed on BPA that is attributable to the NLSL will be billed under this rate schedule.

Rates in this schedule are available for purchases under contracts for which power deliveries begin on or after October 1, 2001 (2002 Contract), for a three or five-year period. Products available under this rate schedule are defined in BPA's 2002 General Rate Schedule Provisions (2002 GRSPs).

This rate schedule supersedes the NR–96 rate schedule, which went into effect October 1, 1996. Sales under the NR–02 rate schedule are subject to BPA's 2002 GRSPs and billing process.

Section II. Rates Tables

The rates in this section apply to NR products.

A. Demand Rate

1. Monthly Demand Rate for FY 2002 Through FY 2006

1.1 Applicability

These rates apply to eligible customers purchasing power for three or five years.

1.2 Rate Table

Applicable months	Rate (kW-mo)
January	$2.14
February	2.06
March	1.96
April	1.37
May	1.32
June	1.69
July	2.12
August	2.44
September	2.28
October	1.90
November	2.31
December	2.40

B. Energy Rate

1. Monthly Energy Rates for FY 2002 Through FY 2004

1.1 Applicability

These rates apply to eligible customers purchasing power in the first three years of the rate period.

1.2 Rate Table

Applicable months	HLH rate (mills/kWh)	LLH rate (mills/kWh)
January	40.75	29.41
February	38.50	28.19
March	36.96	26.68
April	25.76	19.52
May	24.88	16.41
June	31.56	19.64
July	40.34	33.76
August	61.32	41.09
September	42.83	41.44
October	35.94	29.22
November	43.78	38.15
December	45.47	37.95

2. Monthly Energy Rates for FY 2005 Through FY 2006

2.1 Applicability

These rates apply to purchases during the last two years of the rate period for eligible customers purchasing for all five years of the rate period.

2.2 Rate Table

Applicable months	HLH rate (mills/kWh)	LLH rate (mills/kWh)
January	42.25	30.91
February	40.00	29.69
March	38.46	28.18
April	27.26	21.02
May	26.38	17.91
June	33.06	21.14
July	41.84	35.26
August	62.82	42.59
September	44.33	42.94
October	37.44	30.72
November	45.28	39.65
December	46.97	39.45

3. Monthly Energy Rates for FY 2002 Through FY 2006

3.1 Applicability

These rates apply to eligible customers purchasing for all five years of the rate period under this rate table.

3.2 Rate Table

Applicable months	HLH rate (mills/kWh)	LLH rate (mills/kWh)
January	41.35	30.01
February	39.10	28.79
March	37.56	27.28
April	26.36	20.12
May	25.48	17.01
June	32.16	20.24
July	40.94	34.36
August	61.92	41.69
September	43.43	42.04
October	36.54	29.82
November	44.38	38.75
December	46.07	38.55

C. Load Variance Rate

The Load Variance rate for FY 2002 through FY 2006 is applicable to all customers purchasing power under this rate schedule unless specifically excluded in Section III below. The rate for Load Variance is 0.8 mills/kWh.

Section III. Billing Factors, and Adjustments for Each NR Product

This rate schedule contains seven subsections, corresponding to the products to which this rate schedule applies. The following seven products are available to serve NLSLs, or other loads served at the NR–02 rate.

Section III.A. New Large Single Load
Section III.B. Full Service Product
Section III.C. Actual Partial Service Product—Simple
Section III.D. Actual Partial Service Product—Complex
Section III.E. Block Product
Section III.F. Block Product with Factoring
Section III.G. Block Product with Shaping Capacity

A. New Large Single Load (NLSL) Service Product

Purchases of New Resource Firm Power to serve a NLSL are subject to the charges specified below.

1. New Resource Firm Power

1.1 Demand Charge

The charge for Demand will be:
The NLSLs Demand Entitlement as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2), unless BPA and the Purchaser agree to bill based on a contract amount of energy.

(1) The NLSLs HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.
(2) The NLSLs LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

The charge for Load Variance will be:
The NLSLs Measured Energy for the billing period as specified in the contract *multiplied by* the Load Variance Rate from Section II.C.

If the customer is already paying the Load Variance Charge on the NLSL load through this or another rate schedule, this charge does not apply.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Flexible NR Rate Option	II.K.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

B. Full Service Product

Purchases of the core Subscription Full Service Product are subject to the charges specified below.

1. New Resource Firm Power

1.1 Demand Charge

The charge for Demand will be:
The Purchaser's Measured Demand on the Generation System Peak as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied* by the HLH Energy Rate from Section II.B.
(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

The charge for Load Variance will be:

The Purchaser's Total Retail Load for the billing period *multiplied by* the Load Variance Rate from Section II.C.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Flexible NR Rate Option	II.K.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

C. Actual Partial Service Product—Simple

Purchases of the core Subscription Actual Partial Service Product—Simple are subject to the charges specified below.

1. New Resource Firm Power

1.1 Demand Charge

The charge for Demand will be:

(The Purchaser's Demand Entitlement *multiplied by* a Demand Adjuster) as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.

(2) The purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

The charge for Load Variance will be:

The purchaser's Total Retail Load for the billing period *multiplied by* the Load Variance from Section II.C.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Excess Factoring Charge	II.I.
Flexible NR Rate Option	II.K.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

D. Actual Partial Service Product—Complex

Purchases of the core Subscription Actual Partial Service Product—Complex are subject to the charges specified below.

1. New Resource Firm Power

1.1 Demand Charge

The charge for Demand will be:

(The Purchaser's Demand Entitlement *multiplied* by a Demand Adjuster) as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.

(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

The charge for Load Variance will be:

The Purchaser's Total Retail Load for the billing period *multiplied by* the Load Variance Rate from Section II.C.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Flexible NR Rate Option	II.K.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

E. Block Product

Purchases of the core Subscription Block Product are subject to the charges specified below.

1. New Resource Firm Power

1.1. Demand Charge

The charge for Demand will be:

The Purchaser's Demand Entitlement as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2. Energy Charge

The total monthly charge for energy shall be the sum of (1) and (2):

(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.

(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

Not applicable to Block purchases unless the customer is also purchasing another product to which Load Variance is applicable as specified by contract.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Flexible NR Rate Option	II.K.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Stepped Up Multiyear Block (SUMY)	II.S.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

F. Block Product With Factoring

Purchases of the core Subscription Block Product with Factoring are subject to the charges specified below.

1. New Resource Firm Power

1.1. Demand Charge

The charge for Demand will be:
(the Purchaser's Demand Entitlement *multiplied by* a Demand Adjuster) as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2. Energy Charge

The total monthly charge for energy will be the sum of (1) and (2):
(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.
(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

Not applicable to Block purchases unless the customer is also purchasing another product to which Load Variance is applicable as specified by contract.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below.

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Excess Factoring Charge	II.I.
Flexible NR Rate Option	II.K.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Stepped Up Multiyear Block (SUMY)	II.S.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

G. Block Product With Shaping Capacity

Purchases of the core Subscription Block Product with Shaping Capacity are subject to the charges specified below.

1. New Resource Firm Power

1.1. Demand Charge

The charge for Demand will be:
The Purchaser's Demand Entitlement as specified in the contract *multiplied by* the Demand Rate from Section II.A.

1.2. Energy Charge

The total monthly charge for energy shall be the sum of (1) and (2):
(1) The Purchaser's HLH Energy Entitlement as specified in the contract *multiplied by* the HLH Energy Rate from Section II.B.
(2) The Purchaser's LLH Energy Entitlement as specified in the contract *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

Not applicable to Block purchases unless the customer is also purchasing another product to which Load Variance is applicable as specified by contract.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below:

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewables Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Flexible NR Rate Option	II.K.
Green Energy Premium	II.M.
Low Density Discount	II.P.
Rate Melding	II.Q.
Stepped Up Multiyear Block (SUMY)	II.S.
Targeted Adjustment Charge	II.U.
Unauthorized Increase Charge	II.V.

Section IV. Transmission

All customers will need to obtain transmission for delivery of products listed under this rate schedule unless BPA's Power Business Line (PBL) and the customer negotiate otherwise at time of sale. Regulation and Frequency Response may have to be purchased for NLSLs.

IP–02

Industrial Firm Power Rate

Section I. Availability

This schedule is available, in conjunction with the IPTAC, to BPA's direct service industrial (DSI) customers for Firm Power to be used in their industrial operations. DSIs that purchase power under contracts for which power deliveries begin on or after October 1, 2001 (2002 Contracts), are eligible to purchase under this rate schedule for up to a five-year period.

This rate schedule supersedes the IP–96 rate schedule, which went into effect October 1, 1996. Sales under the IP–02 rate schedule are subject to BPA's 2002 General Rate Schedule Provisions (2002 GRSPs) and billing process.

Section II. Rates Tables

The rates for the IP Firm Power product are identified below.

A. Demand Rate for All IP/IPTAC Products

1. Flat Rate Demand for FY 2002 through 2006

1.1 Applicability

These rates apply to eligible customers purchasing power for all five years of the rate period.

1.2 Rate Table

Applicable months	Rate (kW-mo)
January	$2.14
February	2.06
March	1.96
April	1.37
May	1.32
June	1.69
July	2.12
August	2.44
September	2.28
October	1.90
November	2.31
December	2.40

B. Energy Rate

1. Monthly Energy Rates for FY 2002 Through FY 2006

1.1 Applicability

These energy rates are to be combined with one of the two IP Targeted Adjustment Charges specified in Section 2.2 or 3.2 below.

1.2 Rate Table

Applicable months	HLH rate (mills/kWh)	LLH rate (mills/kWh)
January	21.49	15.87
February	20.37	15.27
March	19.61	14.52
April	14.07	10.98
May	13.63	9.44
June	16.93	11.04
July	21.28	18.03
August	31.66	21.65
September	22.51	21.83
October	19.10	15.78
November	22.99	20.20
December	23.82	20.10

2. Monthly Energy Rates for FY 2002 Through FY 2006 for IPTAC (23.5 mills)

2.1 These rates apply to the eligible customers purchasing power under this rate schedule for all five years of the rate period.

2.2 A charge of 2.02 mills shall be added to each IP energy rate in the Rate Table in 1.2 above.

3. Monthly Energy Rates for FY 2002 Through FY 2006 for IPTAC (25.0 mills)

3.1 These rates apply to the eligible customers purchasing power under this rate schedule for all five years of the rate period.

3.2 A charge of 3.52 mills shall be added to each IP energy rate in the Rate Table in 1.2 above.

C. Load Variance Rate

The Load Variance rate for FY 2002 through FY 2006 applies to all customers purchasing power under this rate schedule unless specifically excluded in Section III below. The rate for Load Variance is 0.8 mills/kWh.

Section III. Billing Factors and Adjustments for Each IP Product

This rate schedule contains two subsections, corresponding to the products to which this rate schedule applies. Only the firm take-or-pay Block Product is available under these rate schedules.

SECTION III.A. DSI Customers Who Purchase Under 2002 Industrial Firm Power (IP) Contracts

SECTION III.B. DSI Customers Who Purchase Under 2002 Industrial Firm Power Targeted Adjustment Charge (IPTAC) Contracts

A. DSI Customers Who Purchase Under 2002 Industrial Firm Power (IP) Contracts

Purchases of power under a 2002 IP contract are subject to the charges specified below.

1. Industrial Firm Power

1.1 Demand Charge

The charge for Demand will be:

The Purchaser's monthly Contract Demand *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

The Total monthly charge for energy will be the sum of (1) and (2):

(1) The Purchaser's monthly HLH Contract Energy *multiplied by* the HLH Energy Rate from Section II.B; and

(2) The Purchaser's monthly LLH Contract Energy *multiplied by* the LLH Energy Rate from Section II.B.

1.3 Load Variance Charge

Not applicable to Block purchases unless the customer is also purchasing another product to which Load Variance is applicable as specified by contract.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below:

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewable Discount	II.A.
Conservation Surcharge	II.B.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Green Energy Premium	II.M.
Rate Melding	II.Q.
Supplemental Contingency Reserves Adjustment	II.T.
Unauthorized Increase Charge	II.V.

B. DSI Customers Who Purchase Under 2002 Industrial Firm Power Targeted Adjustment Charge (IPTAC) Contracts

Purchases of power under a 2002 IPTAC contract are subject to the charges specified below.

1. Industrial Firm Power

1.1 Demand Charge

The charge for Demand will be:

The Purchaser's monthly Contract Demand *multiplied by* the Demand Rate from Section II.A.

1.2 Energy Charge

Energy charges will be calculated pursuant to the GRSPs IPTAC at the time of contract negotiations.

1.3 Load Variance Charge

Not applicable to Block purchases unless the customer is also purchasing another product to which Load Variance is applicable as specified by contract.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the 2002 GRSPs. Relevant sections are identified below:

Adjustments, charges, and special rate provisions	2002 GRSP section
Conservation and Renewable Discount	II.A.
Conservation Surcharge	II.B.
Cost-Based Indexed IP Rate	II.C.
Cost Contributions	II.E.
Cost Recovery Adjustment Clause	II.F.
Dividend Distribution Clause	II.H.
Flexible IP Rate Option	II.J.
Green Energy Premium	II.M.
Industrial Firm Power Targeted Adjustment Charge	II.O.
Rate Melding	II.Q.
Supplemental Contingency Reserves Adjustment	II.T.
Unauthorized Increase Charge	II.V.

Section IV. Transmission

All customers will need to obtain transmission for delivery of products listed under this rate schedule unless BPA's Power Business Line (PBL) and the customer negotiate otherwise at time of sale.

NF–02

Nonfirm Power Rate

Section I. Availability

This schedule is available for the purchase of nonfirm energy to be used both inside and outside the United States including sales under the Western Systems Power Pool (WSPP) agreements and sales to consumers. The offer of nonfirm energy under this schedule shall be determined by BPA.

This rate schedule supersedes the NF–96 schedule, which went into effect on October 1, 1996. Sales under the NF–02 rate schedule are subject to BPA's 2002 General Rate Schedule Provisions (2002 GRSPs). For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's 2002 GRSPs and billing process.

Section II. Rates, Billing Factors, and Adjustments

The average cost of nonfirm energy is 24.98 mills/kWh. The NF–02 rate schedule provides for upward and downward pricing flexibility from this average nonfirm energy cost.

A. Rates for Nonfirm Energy

1. Standard Rate

The Standard rate is any offered rate not to exceed 29.98 mills/kWh.

2. Market Expansion Rate

The Market Expansion rate is any offered rate below the Standard rate in effect. BPA may have one or more Market Expansion rates in effect simultaneously.

3. Incremental Rate

The Incremental Rate is the Incremental Cost of energy plus 2.00 mills/kWh, where the Incremental Cost is defined as all identifiable costs (expressed in mills/kWh) that BPA would have avoided had it not produced or purchased the energy being sold under this rate.

4. Contract Rate

The Contract Rate is 24.98 mills/kWh.

B. Billing Factor for Nonfirm Energy

The billing factor for nonfirm energy purchased under this rate schedule shall be the Measured Energy unless otherwise specified by contract.

C. Adjustments for Nonfirm Energy

All adjustments are described in the 2002 GRSPs. The applicable sections are identified for each adjustment.

Adjustments, charges, and special rate provisions	2002 GRSP section
Cost Contributions	II.E.
Unauthorized Increase Charge	II.V.

Section III. Determination of the Applicable NF Rate

Any time that BPA has nonfirm energy for sale, the Standard rate, the Market Expansion rate, the Incremental rate, the Contract rate, or any combination of these rates may be in effect.

A. Standard Rate

The Standard rate is available for all purchases of nonfirm energy.

B. Market Expansion Rate

1. Application of the Market Expansion Rate

The Market Expansion rate applies when BPA determines that all markets at the Standard rate have been satisfied and BPA offers additional nonfirm energy.

2. Market Expansion Rate Qualification Criteria

In order to purchase nonfirm energy at the Market Expansion rate, a purchaser must:

a. Have a displaceable resource, displaceable purchase of electricity; or

b. Be an end-user load with a displaceable alternative fuel source. In addition, a purchaser must demonstrate one of the following:

a. Shutdown or reduction of the output of the displaceable resource associated with that purchase, in an amount equal to the amount of Market Expansion rate energy purchased; or

b. Reduction of a displaceable purchase and the output of the resource associated with that purchase, in an amount equal to the amount of Market Expansion rate energy purchased; or

c. Shutdown or reduction of the identified output of the resource(s) indirectly in an amount equal to the amount of Market Expansion rate energy purchased (for example, the purchase may be used to run a pumped storage unit); or

d. Decrease of an end-user alternate fuel source in an amount equivalent to the amount of Market Expansion rate energy purchased.

3. Eligibility Criteria for Market Expansion Rate

a. When only one Market Expansion rate is offered:

Purchasers satisfying the Market Expansion Rate Qualifying Criteria specified in Section III.B.2 above, who purchased nonfirm energy directly from BPA, are eligible to purchase power under the Market Expansion rate offered if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus 2.00 mills/kWh.

Purchasers qualifying under Section III.B.2 who purchase nonfirm energy through a third party are eligible to purchase power under the Market Expansion rate offered if the cost of the qualifying alternative fuel source is lower than the Standard rate in effect plus 4.00 mills/kWh.

b. When more than one Market Expansion rate is offered:

Purchasers qualifying under Section III.B.2 who purchase nonfirm energy directly from BPA are eligible to purchase power under the Market Expansion rate if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus 2.00 mills/kWh. The rate applicable to a purchaser will be the highest Market Expansion rate offered that is below the purchaser's qualifying decremental cost minus 2.00 mills/kWh.

C. Incremental Rate

The Incremental rate applies to sales of energy:

1. That is produced or purchased by BPA concurrently with the nonfirm energy sale;

2. That BPA may at its option not produce or purchase; and 3. that has an Incremental Cost greater than the Standard rate (plus the Intertie Charge, if applicable) minus 2 mills.

D. Contract Rate

The Contract rate applies to contracts (except power sales contracts offered pursuant to Sections 5(b), 5(c), and 5(g) of the Northwest Power Act) that refer to the Contract rate:

1. For sale of nonfirm energy; or

2. For determining the value of energy.

E. Western Systems Power Pool Transactions (WSPP)

BPA may make available nonfirm energy for transactions under the WSPP agreement. WSPP sales shall be subject to the terms and conditions specified in the WSPP agreement and will be consistent with regional and public preference. The rate for transactions under the WSPP agreement is any rate within the limits specified by the Standard, Market Expansion, and Incremental rates but may not exceed the maximum rate specified in the WSPP agreement. The rate for WSPP sales may differ from the actual rate offered for non-WSPP transactions in any hour. The rate for WSPP transactions is independent of any other rate offered concurrently under this rate schedule outside the agreement.

F. End-User Rate

BPA may agree to a rate formula for nonfirm energy purchases by end-users. Such rate or rate formula will be within the limits specified for the Standard and Market Expansion rates but may differ from the actual rates offered during any hour.

Section IV. Delivery

A. Rate of Delivery

BPA shall determine the amount of nonfirm energy to be made available for each hour. Such determination shall be made for each applicable nonfirm energy rate.

B. Guaranteed Delivery

1. Availability

BPA will determine the amount and duration of nonfirm energy to be offered on a guaranteed basis. Such daily or hourly amounts may be as small as zero or as much as all the nonfirm energy that BPA plans to offer for sale on such days.

2. Conditions

Scheduled amounts of guaranteed nonfirm energy may not be changed except:

a. When BPA and the purchaser mutually agree to increase or decrease the scheduled amounts; or

b. When BPA must reduce nonfirm energy deliveries in order to serve firm loads.

Section V. Transmission

All customers will need to obtain transmission for delivery of products listed under this rate schedule unless BPA's Power Business Line (PBL) and the customer negotiate otherwise at time of sale.

BPA'S 2002 General Rate Schedule Provisions for Power Rates

Index General Rate Schedule Provisions

Section I: Adoption of Revised Rate Schedules and General Rate Schedule Provisions

A. Approval of Rates
B. General Provisions

C. Late Payment Provisions
D. Notices

Section II: Adjustments, Charges, and Special Rate Provisions

A. Conservation and Renewables Discount (C&R Discount)
B. Conservation Surcharge (PF/NR only)
C. Cost-Based Indexed IP Rate
D. Cost-Based Indexed PF Rate
E. Cost Contributions
F. Cost Recovery Adjustment Clause (CRAC)
G. Demand Adjuster
H. Dividend Distribution Clause (DDC)
I. Excess Factoring Charges
J. Flexible IP Rate Option
K. Flexible NR Rate Option
L. Flexible PF Rate Option
M. Green Energy Premium
N. Guaranteed Delivery Charge (NF Only)
O. Industrial Firm Power Targeted Adjustment Charge (IPTAC)
P. Low Density Discount
Q. Rate Melding
R. Slice True-Up Adjustment
S. Stepped Up Multiyear Block (SUMY)
T. Supplemental Contingency Reserves Adjustment (SCRA)
U. Targeted Adjustment Charge
V. Unauthorized Increase Charge

Section III: Definitions

A. Power Products and Services Offered By the Power Business Line of BPA
1. Actual Partial Service Product—Simple/Complex
2. Block Product
3. Block Product with Factoring
4. Block Product with Shaping Capacity
5. Construction, Test and Start-Up, and Station Service
6. Core Subscription Products
7. Customer System Peak (CSP)
8. Full Service Product
9. Industrial Firm Power
10. Load Variance
11. New Resource Firm Power
12. Nonfirm Energy
13. Priority Firm Power
14. Regulation and Frequency Response
15. Residential Exchange Program Power
16. Slice Product

B. Definition of Rate Schedule Terms
1. 2002 Contract
2. Annual Billing Cycle
3. Billing Demand
4. Billing Energy
5. California Independent System Operator (California ISO)
6. California ISO Spinning Reserve Capacity
7. California ISO Supplemental Energy
8. California Power Exchange (California PX)
9. Contract Demand
10. Contract Energy
11. Control Area
12. Decremental Cost
13. Delivering Party
14. Demand Entitlement
15. Discount Period
16. Dow Jones Mid-C Indexes (DJ Mid-C Indexes)
17. Electric Power
18. Energy Entitlement
19. Federal System
20. Firm Power (PF–02, IP–02, NR–02, RL–02)
21. Full Service Customer
22. Generation System Peak
23. Heavy Load Hours (HLH)
24. Inventory Solution Costs
25. Light Load Hour (LLH)
26. Measured Demand
27. Measured Energy
28. Metered Demand
29. Metered Energy
30. Mid-Columbia Bus (Mid-C Bus)
31. Monthly Federal System Peak Load
32. NP15
33. NW1 (California-Oregon Border)
34. NW3 (Nevada-Oregon Border)
35. Partial Service Customer
36. Point of Delivery (POD)
37. Point of Integration (POI)
38. Point of Interconnection (POI)
39. Points of Metering (POM)
40. Pre-Subscription Contract
41. Purchaser
42. Receiving Party
43. Retail Access
44. Scheduled Demand
45. Scheduled Energy
46. Slice Administrative Costs
47. Slice Revenue Requirement
48. Subscription
49. Subscription Contract
50. System Obligations
51. Total Plant Load
52. Total Retail Load (TRL)
53. Utility Distribution Company

General Rate Schedule Provisions

Section I. Adoption of Revised Rate Schedules and General Rate Schedule Provisions

A. Approval of Rates

These 2002 Wholesale Power Rate Schedules and General Rate Schedule Provisions (2002 GRSPs) shall become effective upon interim approval or upon final confirmation and approval by the Federal Energy Regulatory Commission (FERC). Bonneville Power Administration (BPA) has requested that FERC make these rates and 2002 GRSPs effective on October 1, 2001, for customers who are billed by BPA on a calendar month basis and on the first day of the first billing month following that date for all other customers. All rate schedules shall remain in effect until they are replaced or expire on their own terms.

B. General Provisions

These 2002 Wholesale Power Rate Schedules and the 2002 GRSPs associated with these schedules supersede BPA's 1996 rate schedules (which became effective October 1, 1996) to the extent stated in the Availability section of each rate schedule. These schedules and 2002 GRSPs shall be applicable to all BPA contracts, including contracts executed both prior to, and subsequent to, enactment of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). All sales under these rate schedules are subject to the following acts as amended: The Bonneville Project Act, the Regional Preference Act (P.L. 88–552), the Federal Columbia River Transmission System (FCRTS) Act (P.L. 93–454), the Northwest Power Act (P.L. 96–501), and the Energy Policy Act of 1992 (P.L. 102–486).

These 2002 rate schedules do not supersede any previously established rate schedule which is required, by agreement, to remain in effect.

If a provision in an executed agreement is in conflict with a provision contained herein, the former shall prevail.

C. Late Payment Provisions

Bills not paid in full on or before close of business on the due date shall be subject to an interest charge of one-twentieth percent (0.05 percent) applied each day to the unpaid amount. This interest charge shall be assessed on a daily basis until such time as the unpaid amount is paid in full.

Remittances will be accepted without assessment of the charges referred to in the preceding paragraph provided payment was received on or before the due date. The due date is the 20th day after the issue date of the bill unless the 20th day is a Saturday, Sunday, or Federal holiday, in which case the due date is the next business day. Whenever a power bill or a portion thereof remains unpaid subsequent to the due date, and after giving 30 days' advance notice in writing, BPA may cancel the contract for service to the Purchaser. However, such cancellation shall not affect the Purchaser's liability for any previously accrued charges under such contract.

D. Notices

For the purpose of determining elapsed time from receipt of a notice applicable to rate schedule and GRSP administration, a notice shall be deemed to have been received at 0000 hours on the first calendar day following actual receipt of the notice.

Section II. Adjustments, Charges, and Special Rate Provisions

A. Conservation and Renewables Discount (C&R Discount)

1. Description of the Discount

To encourage and support the development of conservation projects and renewable resources in the Pacific Northwest, BPA is offering a Conservation and Renewables Discount (C&R Discount) to customers purchasing

under the Priority Firm (PF–02), New Resources (NR–02), and Residential Load (RL–02) rate schedules. Customers purchasing under the Industrial Firm Power Rate (IP–02) will be eligible to the extent that the C&R Discount does not reduce their effective rate below the DSI floor rate. Regional public agency customers with Pre-Subscription contracts with collared pricing provisions may be eligible for the C&R Discount subject to contract provisions. The amount of the Discount will be a fixed monthly amount based on the customer's forecasted purchases from BPA under its Subscription contract. Following the end of the Discount Period (which is the end of the rate period or the customer's contract term, whichever comes first), BPA will evaluate the customer's investments in eligible conservation and renewable resource projects during the Discount Period. Any customer that has not spent at least as much money on eligible activities as the cumulative discount received from BPA must reimburse the difference to BPA.

2. Calculation and Application of the Discount

a. Overview of the Discount

The C&R Discount will be included as a fixed dollar credit in the monthly power bill of each participating customer. The credit will equal the customer's forecasted average monthly Subscription contract (in megawatts) multiplied by the unit discount. (Because the average contract is used, the discount does not vary by month).

b. Determination of the "Unit Discount"

The unit discount will equal 0.5 mills per kilowatthour (kWh).

c. Determination of Individual Customer Discounts

For a participating customer buying power from BPA under a Subscription contract for the entire five-year rate period, BPA will determine the monthly dollar discount by multiplying the customer's forecasted average monthly power consumption over the rate period by the unit discount.

d. Annual Review of Individual Customer Discounts

At least 30 days prior to the start of each fiscal year, customers will submit adjustments to the section c monthly discounts based on changes to the customers load as specified in their BPA contract.

e. Application of the Discount

The C&R Discount will be applied after BPA has determined all other charges and credits on the participating customer's power bill.

BPA will provide the discount even in those months when the discount amount is larger than the customer's total power bill amount.

3. Qualifying Expenditures

Participating customers shall record all qualifying expenditures to ensure full credit for their conservation and renewable resource activities. Qualifying expenditures are those that meet technical standards developed by the Regional Technical Forum as approved by BPA.

Although BPA will provide the credit on a monthly basis, the customer has no obligation to adhere to any particular expenditure pattern. To retain the full discount provided by BPA, the participating customer must make qualifying expenditures during the Discount Period in an amount equal to, or exceeding, the cumulative C&R Discount received from BPA during the Discount Period.

4. Reporting

a. Interim Conservation and Renewable Reports

Participating customers shall submit to BPA annual Interim Conservation and Renewable Reports at the end of each fiscal year of the rate period (i.e., 10/01/01 to 9/30/02; 10/01/02, to 9/30/03; etc.). The Interim Report shall show the customer's cumulative discounts received to date and their cumulative qualifying expenditures. If the report shows that the customer's qualifying expenditures are less than or equal to its discount receipts by 5 percent or more, the customer must indicate in its report how it plans to adjust its expenditures to ensure that it will retain the full discount after the Discount Period.

b. Final Reconciliation Reports

At the end of the Discount Period the participating customer shall prepare a Final Reconciliation Report. This report shall be submitted and received by BPA one month after the end of the Discount Period (November 1, 2006, for participating customers' purchasing power from BPA for the full five-year rate period).

This report shall identify:

i. The cumulative C&R Discount that the customer has received from BPA during the Discount Period, and

ii. The total qualifying expenditures that the customer has made during the Discount Period segregated into the following four categories:

I. Incremental Conservation

II. Renewable Resources

III. Low Income Weatherization

IV. Support Activities (i.e., administrative, advertising, R&D, and evaluation

c. Certification of Incremental Spending

Each Interim Report and the Final Reconciliation Report shall include language certifying the participating customer's actual incremental spending, such as:

"[Customer] certifies that the expenditures documented in this report are incremental increases in this organization's budget for the current operating year beyond what we planned to spend absent the discount."

d. Exemption Language for State and Municipal Initiatives

If States, municipalities, or other governmental bodies in the BPA service territory require, by law or regulation, that a utility, which is a participating customer in the C&R Discount, to acquire or invest in new conservation and/or a new renewable resource project, then such acquisitions and investments will be deemed as incremental budget increases for the purposes of section 4.c. above.

5. Reimbursement

a. Customers Whose Expenditures Exceed the Threshold

No reimbursements are required of any participating customer whose total expenditures over the Discount Period equal or exceed the total cumulative C&R Discount received from BPA.

b. Customers Whose Expenditures Fall Below the Threshold

If a participating customer's Final Reconciliation Report shows that the cumulative discount received from BPA exceeds the customer's total qualifying expenditures, the customer may take an additional month (for a total of two months after the end of the Discount Period) to make the necessary qualifying expenditures and prepare a Revised Final Reconciliation Report. The final report is due to BPA within two months of the end of the Discount Period (December 1, 2006, for the five-year customers). If the customer's qualifying expenditures still do not equal or exceed its cumulative discount, the customer must reimburse the difference to BPA. Such reimbursement shall be made within the same two-month grace period and shall be made using the same payment method as the customer uses for paying its wholesale bill.

BPA will not assess interest on any reimbursement paid within the two-month window. However, any payment received after the due date (December 1, 2006, the five-year customers) shall be

subject to a late payment charge as described in their Subscription contract.

6. Revenue Dividends

a. Implementation

If BPA declares that there is a dividend during this rate period, the first $15 million will be allocated to conservation and renewable resource development. BPA will distribute the C&R portion of any declared dividend in the same manner outlined in this section with the following modifications:

1. In order to receive their portion of the C&R dividend, customers must be actively participating in the basic C&R Discount effort; and

2. Participating customers must spend two dollars on eligible activities to receive one dollar of their dividend share (i.e., any C&R dividend will be leveraged on a 2 for 1 basis).

3. The unit discount for participating customers receiving the dividend will set at $0.75 per MWh during the months the dividend is in effect.

B. Conservation Surcharge (PF/NR Only)

The Conservation Surcharge, where implemented shall be applied in accordance with relevant provisions of the Northwest Power Act, BPA's current conservation surcharge policy, and the customer's power sales contract with BPA. The PF and NR rate schedules are subject to the Conservation Surcharge.

C. Cost-Based Indexed IP Rate

The Cost-Based Indexed IP Rate option shall be offered at BPA's discretion to a DSI Purchaser who makes a contractual commitment to purchase power for all five years of the rate period from BPA that is subject to the IP Targeted Adjustment Charge (IPTAC). The charges and billing factors under this option shall be specified by BPA at the time the Administrator offers to make power available to a Purchaser under this option. The actual charges and billing factors will be mutually agreed to by BPA and the Purchaser. The following criteria will be used in establishing any flexible rate:

1. Equivalent Net Present Value Revenues: Forecasted revenues from a Purchaser under this rate option must be equivalent to or greater than, on a net present value basis, the revenues BPA would have received had the IPTAC specified in the IP–02 rate schedule been applied to the same sales.

2. Risk Adjustments: Risk, both credit risk associated with individual customers and price risk associated with power and commodity prices, will be factors in establishing any flexible rate option. Creditworthiness will be determined by BPA consistent with prevailing business standards, and applied consistently to each customer. Such credit risks will be dealt with through a "margin deposit" expense charge built into the rates, or other methods acceptable to BPA.

3. Industry Index: The Cost-Based Indexed IP Rate will be adjusted on a regular basis consistent with a negotiated cash or financial index. Adjusting the price of the Cost-Based Indexed IP Rate with the fluctuations in a world aluminum price index would be one use of an industry index.

4. Lower Rate Limit and Upper Rate Limit: A lower and upper rate limit will bound the Cost-Based Index and establish the minimum and maximum prices to be charged during the contract period.

D. Cost-Based Indexed PF Rate

The Cost-Based Indexed PF Rate will be offered to all firm load requirements customers who wish to convert their applicable PF rate under their contracts to a market-indexed or floating price adjusted for BPA's risk. The following are features of this rate:

1. BPA and the customer will choose during contract negotiations a mutually agreed reference point and sponsor for the index used. For example, the California-Oregon border (location) and the Dow Jones cash or the New York Mercantile Exchange futures (sponsor), or some other combination to arrive at an agreed upon index.

2. BPA will base the index pricing on a current market forecast of the market index referenced. The expected Net Present Value (NPV) revenue of the forecast index prices will be adjusted by a HLH and a LLH Market Index Monthly Adjustment (MIMA) to equal the expected NPV of the applicable PF rates. The MIMA reflects BPA's PF equivalent expected revenues at the time the contract is signed, including an insurance premium to ensure revenue sufficiency.

3. Customers must select this rate for the term of their Subscription contract that the 2002–2006 rate period covers. Customers who choose a contract length of less than five years and wish to renew will be subject to rates established under a new rate case.

4. Billing will be based on the index's average of the last 15 days of closing or posted daily prices at the reference point. The MIMA will be calculated as follows:

Index = average of last 15 days of closing or posted daily prices at the reference point.
PF = monthly PF HLH or LLH energy rate
Cost of Insurance = The premium on a physical and financial instrument used to mitigate the risk.
MIMA = Index – PF+Cost of Insurance

E. Cost Contributions

BPA has made the following resource cost determinations:

1. The forecasted average cost of resources available to BPA under average water conditions is 19.12 mills/kWh.

2. The approximate cost contribution of different resource categories to each rate schedule is as shown in Table A:

TABLE A

Rate schedule	Resource cost contribution		
	Federal base system*	Exchange*	New resources*
PF	100	0	0
IP	52.86	43.66	3.48
NR	52.86	43.66	3.48

*In percent.

F. Cost Recovery Adjustment Clause (CRAC)

The CRAC is an upward adjustment to posted power rates for Subscription sales on a temporary basis if Actual Accumulated Net Revenues (AANR) in the generation function fall below a threshold level.

The CRAC applies to power customers under these firm power rate schedules: Priority Firm Power [Preference (PF excluding Slice), Exchange Program, and Exchange

Subscription], IP–02, including under the IPTAC and Cost-Based Index Rate, RL–02 including the financial portion of any Residential Exchange Settlement under this rate schedule, NR–02, and Subscription purchase under FPS. The CRAC does not apply to Pre-Subscription rates or Slice purchases.

1. Formula for the Calculation of the Revenue Amount and CRAC Percentage

If the AANR in any fiscal year 2001 through 2004 falls below the CRAC Threshold for that same fiscal year, the CRAC triggers, and rates will be increased for a 12-month period beginning the following April. The Revenue Amount will be determined by the following formula:

Revenue Amount is the lower of:
CRAC Threshold—AANR; or
The annual Maximum Planned Recovery Amount, shown in Table B below.

Where Revenue Amount is the amount of additional revenue that an increase in rates under CRAC is intended to generate during the period that the rate increase is effective.

Where CRAC Threshold is the "trigger point" for invoking a rate increase under the CRAC. The threshold is pre-specified for the end of fiscal years 2001, 2002, 2003, 2004, and 2005 in Table B.

Where AANR is generation function net revenues, as accumulated since 1998, at the end of each of the fiscal years 2001 through 2005. Net revenues for any given fiscal year are accrued revenues less accrued expenses, in accordance with Generally Accepted Accounting Practices. Only generation function revenues and expenses, which is to say accrued revenues and accrued expenses that are associated with the production, acquisition, marketing, and conservation of electric power, will be included in determinations under the CRAC. Accrued revenues and expenses of the transmission function are excluded. The determination of AANR will be confirmed by BPA's independent auditing firm.

Where Maximum Planned Recovery Amount is the maximum amount planned to be recovered through the CRAC beginning in April following the end of a fiscal year in which the AANR falls below the CRAC Threshold.

If the AANR in fiscal year 2005 falls below the CRAC Threshold, the CRAC triggers, and rates will be increased for a six-month period beginning the following April. The Revenue Amount will be determined by the following formula:

Revenue Amount is the lower of:
(CRAC Threshold − AANR) divided by 2; or $87.5 million ($175 million divided by 2)

TABLE B

Fiscal year	CRAC threshold (AANR, $ millions)	Maximum planned recovery amount (beginning following April)
2001	−350	125
2002	−350	135
2003	−200	150
2004	−200	150
2005	−200	87.5

Once the Revenue Amount is determined, that amount will be converted to the CRAC Percentage. The CRAC Percentage is the percentage increase in each of the firm power rate schedules listed above. This percentage will be applied for a period of time to generate the additional (CRAC) revenue. The CRAC Percentage will be determined by the following formula:

CRAC Percentage =
Revenue Amount
Divided by
CRAC Revenue Basis,

Where CRAC Revenue Basis is the total generation revenue for the loads subject to CRAC, plus any Slice loads, for the fiscal year in which the CRAC implementation begins, based on the then most current revenue forecast.

Each non-Slice product's total charge for energy, demand and load variance will be increased by this CRAC Percentage amount.

2. CRAC Adjustment Timing

In January of each year of the rate period, the Administrator will determine whether the AANR at the end of the preceding fiscal year fell below the CRAC Threshold. If the AANR is below the CRAC Threshold, the Administrator will propose, in January, to increase applicable rates effective in the following April. The adjustment is applied to power deliveries beginning April 1. Any such increase beginning in fiscal years 2002–2005 remains in effect through March of the following year. An increase beginning in the final fiscal year of the rate period (2006) will remain in effect through September 2006.

3. CRAC Notification Process

BPA shall follow the following notification procedures:

a. Financial Performance Status Reports

By no later than August 31 of each year, BPA shall post on its electronic information access site (World Wide Web) a forecast of AANR attributable to the generation function for the fiscal year ending September 30. By no later than December 1 of each year, BPA shall also post on its World Wide Web site the unaudited AANR.

b. Notice of CRAC Trigger

BPA shall notify all customers and rate case parties on or about January 15 in each of the fiscal years 2002–2006, if the AANR fell below the CRAC Threshold for that fiscal year and rates will be adjusted under the CRAC. (If the December unaudited AANR report for the generation function indicated that the CRAC Threshold might be reached, and the audited actuals show that it has not triggered, customers and rate case parties will be so notified.) Notification will include the audited AANR for the prior fiscal year, the calculation of the Revenue Amount, and the estimated CRAC Percentage. The notice shall also describe the data and assumptions relied upon by BPA. Such data, assumptions and documentation, if non-proprietary and/or non-privileged, shall be made available for review at BPA upon request. The notice shall also contain the tentative schedule for the remainder of the CRAC implementation process.

On or about February 1 of any of the fiscal years 2002–2006 in which the AANR falls below the CRAC Threshold,

BPA staff shall conduct a public forum to explain the AANR result, the calculation of the Revenue Amount and the CRAC Percentage, and demonstrate that the CRAC has been implemented in accordance with the GRSPs. The forum will provide an opportunity for public comment.

On or about March 1 of any of the fiscal years 2002–2006 in which the AANR falls below the CRAC Threshold, the BPA Administrator shall notify all customers to whom the CRAC applies of the final calculation of the adjustment and the resulting rate increase (as a percentage) applicable to each rate schedule.

G. Demand Adjuster

The Demand Adjuster is applied to a customer's demand billing factor. It is a number less than or equal to one calculated by dividing the customer's Total Retail Load on the Generation System Peak by the customer's Total Retail Load on their system peak. The minimum Demand Adjuster is 0.6 (six tenths). The Demand Adjuster is used with the demand billing factor for the Actual Partial Service Products, and with the demand billing factor for the Block with Factoring.

H. Dividend Distribution Clause (DDC)

The DDC is a clause establishing criteria and public process requirements that the Administrator will use to decide whether dividends should be distributed and the amount that should be distributed. The DDC enables BPA to distribute dividends to customers and other stakeholders. The DDC also establishes the mechanism to be used to make a distribution to certain firm power customers.

The DDC applies to power customers under these firm power rate schedules: Priority Firm Power [Preference (PF excluding Slice), Exchange Program, and Exchange Subscription], IP–02 including under the IPTAC and Cost-Based Index Rate, RL–02 including the financial portion of any Residential Exchange Settlement under this rate schedule, NR–02, and Subscription purchases under FPS. The DDC does not apply to Pre-Subscription rates or Slice purchases, unless those customers participate in the C&R Discount and a distribution is made to eligible participants of that program.

The DDC does not apportion, or establish criteria for apportioning, dividends to customers under the above firm power rate schedules other than to qualifying power customers participating in the C&R Discount, or to other customers and stakeholders.

"Stakeholders" are groups that have a fundamental policy or financial interest in BPA's generation function. These groups include, but are not limited to, customers subject to the posted firm power rate schedules cited above. A full identification of stakeholders will be provided for comment in the public consultation process.

1. Formula for the Calculation of the Dividend Distribution Amount

The DDC process will be implemented if audited actual accumulated net revenues for the end of any of the fiscal years 2001–2005 are above the DDC Threshold value.

Actual Accumulated Net Revenues (AANR) are generation function net revenues, as accumulated since 1998, at the end of each of the fiscal years 2001 through 2005. Net revenues are accrued revenues less accrued expenses, in accordance with Generally Accepted Accounting Practices. Only generation function revenues and expenses, which is to say accrued revenues and accrued expenses that are associated with the production, acquisition, marketing, and conservation of electric power, are included in determinations under the DDC; accrued revenues and expenses of the transmission function are excluded. The determination of AANR will be confirmed by BPA's independent outside auditing firm.

DDC Threshold is the minimum level of AANR that must be realized before a dividend distribution is considered. The DDC Threshold is $500 million for the end of fiscal years 2001, 2002, 2003, 2004, and 2005.

DDC Amount is the aggregate amount that is available to be distributed to customers and stakeholders. The DDC Amount may be equal to zero and will be determined by the following formula:

DDC Amount is the lower of:
AANR − DDC Threshold; or
Cash in excess of that needed to meet the Treasury Payment Probability (TPP) Standard, based on the Five-Year Forecast

Where the TPP Standard is an 88 percent probability that all planned payments to the U.S. Treasury will be paid on time and in full over the Five-Year Forecast period (or equivalent financial criterion in the event that BPA replaces its TPP Standard); and

Where the Five-Year Forecast is the forecast of accrued revenues and expenses, and the risk analysis and assessment of TPP or any replacement financial criterion, for the current year and subsequent four years that the Administrator prepares and subjects to public review and comment if the DDC Threshold has been met.

The portion of the DDC Amount allocated to power customers (the Power Customers DDC Amount) will be determined according to a plan to be adopted in a public process BPA will conduct (see Section 3 below). The Power Customer DDC Amount will be converted to a percentage (the Power Customer DDC Percentage), which will be applied to all power customer rates subject to the DDC to arrive at the amount to be rebated on power bills for each of the included power customers.

The Power Customer DDC Percentage will be determined by the following formula:

Power Customer DDC Percentage equals:
Power Customer DDC Amount,
Divided by the DDC Revenue Basis

Where DDC Revenue Basis is the total generation revenue for the loads subject to the DDC for the fiscal year in which the DDC implementation begins, based on the then most current revenue forecast.

Each covered power customer will receive a rebate equal to the Power Customer DDC Percentage applied to their total charge for energy, demand and load variance. For any customer or stakeholder entitled to a dividend who is not a power customer, the Administrator will convert the DDC Percentage to a dollar figure.

2. Determination and Timing of a Dividend Distribution

On or about January 15 of each year of the rate period (FY 2002–2006), the Administrator will determine whether the AANR exceeds the DDC Threshold. If the AANR exceeds the DDC Threshold: (1) Customers and rate case parties will be so notified; and (2) the Administrator will prepare a Five-Year Forecast. On or about March 1, the Administrator will propose to distribute or not distribute dividends. The Administrator will issue a final decision on the proposal on or about April 15.

Dividends distributed to customers are included in energy deliveries beginning May 1, and, for any fiscal year 2002–2005, remain in affect for 12 months; i.e., through April 30 of the following year. In the last year of the rate period (FY 2006), the rebate would expire on September 30, 2006.

3. Determining How the Distribution is Allocated

The first $15 million of the DDC Amount, if the DDC Amount exceeds $15 million, or the entire DDC Amount if it equals $15 million or less, will be allocated to qualifying customers participating in the Conservation and Renewables Discount Program (C&R

Discount). The C&R Discount is a rate mechanism designed to encourage incremental conservation and renewable resource development by BPA's power purchasers under PF, IP, RL, and NR rate schedules. See Conservation and Renewables Discount GRSP, Section II.A.

BPA intends to conduct a separate public consultation process by October 1, 2001, to develop the criteria for allocating any remaining DDC Amount (exceeding the $15 million for the C&R Discount) among customers and stakeholders.

4. Dividend Distribution Notification Process

BPA shall follow the following notification procedures:

a. Financial Performance Status Reports

By no later than August 31 of each year, BPA shall post on its electronic information access site (World Wide Web) a forecast of AANR attributable to the generation function for the fiscal year ending September 30. By December 1 of each year, BPA shall post on its World Wide Web site the unaudited AANR.

b. Notice of DDC Trigger

On or about January 15 in each of the fiscal years 2002–2006, BPA will notify all power customers and rate case parties if the AANR exceeds the DDC Threshold. (If the December unaudited AANR report for the generation function indicated that the DDC Threshold might be exceeded, and the audited actuals show that it was not exceeded, customers will also be notified). Notification will include the AANR for the prior fiscal year, the DDC Amount, the calculation of the DDC Amount, and the estimated resulting Power Customer DDC Percentage for each applicable rate schedule. The notice shall also describe the data and assumptions relied upon by BPA. Such data, assumptions, and documentation, if non-proprietary and/or non-privileged, shall be made available for review at BPA upon request. The notice shall also contain the tentative schedule for the remainder of the DDC implementation process.

(1) On or about March 1 of any of the fiscal years 2002–2006 in which the AANR exceeds the DDC Threshold, the Administrator will post the Five-Year Forecast on BPA's World Wide Web site and will propose to distribute or not distribute dividends. During March, BPA will conduct a public review and comment process on the proposal.

(2) On or about April 15 of any of the fiscal years 2002–2006 in which the AANR exceeds the DDC Threshold, BPA shall notify customers to which the DDC applies of the decision on the proposal, the final calculation of the DDC Amount, the allocation of the DDC Amount, and, if applicable, the resulting level of the Power Customer DDC Percentage to be applied to each applicable firm power rate schedule.

I. Excess Factoring Charges

1. Excess Within-Day Factoring Charge

The within-day factoring test compares the hour-by-hour shape of the customer's load to the customer's hour-by-hour energy take from BPA within a day. This test identifies whether or not the hour-by-hour shape of the customer's take from BPA has used more within-day factoring service, measured in kilowatthours, than the underlying load would have used.

Excess Within-Day Factoring Charge, for any hour(s) in the month, applies to that amount of hourly energy in excess of the authorized maximum energy amounts defined by the customer's within-day load shape.

The total amount of Excess Within-Day Factoring Charge during the HLH's of the month shall be billed the greater of:

a. Five (5) mills/kWh;

b. Among all HLH periods of the billing month, the maximum within-day difference between the highest hourly HLH California ISO Supplemental Energy price (NP15) and the lowest hourly HLH California ISO Supplemental Energy price (NP15).

The total amount of Excess Within-Day Factoring Charge during the LLH's of the month shall be billed the greater of:

a. Five (5) mills/kWh;

b. Among all LLH periods of the billing month, the maximum within-day difference between the highest hourly LLH California ISO Supplemental Energy price (NP15) and the lowest hourly LLH California ISO Supplemental Energy price (NP15).

In the event that the index for ISO Supplemental Energy expires, that index will be replaced for the purpose of deriving Excess Within-Day Factoring Charges by another hourly energy index, such as the California PX (NW1 or NW 3), at a hub at which Northwest parties can trade.

2. Excess Within-Month Factoring Charges

The within-month factoring test compares the day-by-day shape of the customer's load to the customer's day-to-day energy take from BPA within a month. This test identifies whether the day-to-day shape of the customer's take from BPA used more within-month factoring service than the underlying load would have used. The within-day factoring test (see above) is not equipped to identify a factoring service issue if, for example, the customer resource deliveries were zero for a particular day. The within-month factoring test is equipped to address that type of instance. The within-month factoring test establishes an upper and lower boundary for each diurnal period of the day. Excess within-month factoring for each diurnal period is the greater of: (1) the sum of the amounts greater than the upper boundary; or (2) the sum of the amounts less than the lower boundary.

Excess Within-Month Factoring Charge applies to that amount of energy take that either exceeds or falls short of a range defined by: (1) a flat load placement on BPA; and (2) a load placement that follows the customer's actual load shape.

The Excess Within-Month Factoring quantities are reduced by any Unauthorized Increase Energy amounts in the like diurnal period, and only the residual is charged the Excess Within-Month Factoring Charge.

The Excess Within-Month Factoring during the HLH's of the month shall be billed the greater of:

a. Five (5) mills/kWh.

b. The highest peak DJ Mid-C Index price for firm power during the month LESS the lowest peak DJ Mid-C Firm Index price for firm power during the month.

c. The highest average HLH California ISO Supplemental Energy price (NP15) (average of hours 7 through 22, excluding Sundays) during the month LESS the lowest average HLH California ISO Supplemental Energy price (NP15) for the same period.

The Excess Within-Month Factoring during the LLH's of the month shall be billed the greater of:

a. Five (5) mills/kWh.

b. The highest offpeak DJ Mid-C Index price for firm power during the month LESS the lowest offpeak DJ Mid-C Index price for firm power;

c. The highest average LLH California ISO Supplemental Energy price (NP15) (average of hours 1 through 6, and 23, and 24 Monday through Saturday; average of hours 1 through 24 Sunday) during the month LESS the lowest average LLH California ISO Supplemental Energy price (NP15) for the same month in the same time period.

In the event that the index for ISO Supplemental Energy or DJ Mid-C Index expires, that index will be replaced for the purpose of deriving Excess Within-

Month Factoring Charges by another hourly or diurnal energy index, such as the California PX (NW1 or NW3), at a hub at which Northwest parties can trade.

J. Flexible IP Rate Option

The Flexible IP rate option will be offered at BPA's discretion to purchasers who make a contractual commitment to purchase under this option for all five years of the rate period. The charges and billing factors under this option will be specified by BPA at the time the Administrator offers to make power available to a Purchaser under this option. The actual charges and billing factors will be mutually agreed to by BPA and the Purchaser subject to satisfying the following condition:

Equivalent Net Present Value Revenues: Forecasted revenues from a Purchaser under the Flexible IP rate option must be equivalent, on a net present value basis, to the revenues BPA would have received had the appropriate charges specified in the IP rate schedule Section II been applied to the same sales.

The Flexible IP rate contract may establish a limit on the amount of power purchased at the Flexible IP rate. In this case, purchases beyond the contractual limit will be billed at the Demand and Energy charges specified in the IP rate schedule Section II unless such power would be charged as an Unauthorized Increase.

Risk Adjustments: Credit risk associated with individual customers will be a factor in establishing any flexible rate option. Creditworthiness will be determined by BPA consistent with prevailing business standards, and applied consistently to each customer. Such credit risks will be dealt with through a "margin deposit," expense charge, built into the rates, or other methods acceptable to BPA.

K. Flexible NR Rate Option

The Flexible NR rate option will be offered at BPA's discretion to purchasers who make a contractual commitment to purchase under this option. The charges and billing factors under this option shall be specified by BPA at the time the Administrator offers to make power available to a Purchaser under this option. The customers purchasing under the Flexible NR rate option purchase the same set of power products and services that they would otherwise purchase under the rate schedule. The actual charges and billing factors will be mutually agreed to by BPA and the Purchaser subject to satisfying the following condition:

Equivalent Net Present Value Revenues: Forecasted revenues from a Purchaser under the Flexible NR rate option must be equivalent, on a net present value basis, to the revenues BPA would have received had the appropriate charges specified in the NR rate schedule Section II been applied to the same sales.

The Flexible NR rate contract may establish a limit on the amount of power purchased at the Flexible NR rate. In this case, purchases beyond the contractual limit will be billed at the Demand and Energy (and Load Variance and SUMY, if appropriate) charges specified in the PF rate schedule Section II, unless such power would be charged as an Unauthorized Increase.

The Flexible NR rate option is only available for development of an energy rate that is stepped up in FY 2005 and 2006.

L. Flexible PF Rate Option

The Flexible PF rate option will be offered at BPA's discretion to purchasers who make a contractual commitment to purchase under this option. The charges and billing factors under this option shall be specified by BPA at the time the Administrator offers to make power available to a Purchaser under this option. The customers purchasing under the Flexible PF rate option purchase the same set of power products and services that they would otherwise purchase under the rate schedule. The actual charges and billing factors will be mutually agreed to by BPA and the Purchaser subject to satisfying the following condition:

Equivalent Net Present Value Revenues: Forecasted revenues from a Purchaser under the Flexible PF rate option must be equivalent, on a net present value basis, to the revenues BPA would have received had the appropriate charges specified in the PF rate schedule Section II been applied to the same sales.

The Flexible PF rate contract may establish a limit on the amount of power purchased at the Flexible PF rate. In this case, purchases beyond the contractual limit will be billed at the Demand and Energy (and Load Variance, and SUMY if appropriate) charges specified in the PF rate schedule Section II, unless such power would be charged as an Unauthorized Increase.

The Flexible PF rate option is only available for development of an energy rate that is stepped up in FY 2005 and 2006.

M. Green Energy Premium

1. Overview of the Premium

The Green Energy Premium (GEP) is a premium ranging from zero to $40/megawatthour (MWh) that a customer elects to pay BPA to ensure that BPA is producing some system power from Environmentally Preferred Power (EPP) resources. The GEP is the difference between the customer's applicable average annual energy charge under the PF–02, RL–02, NR–02, and IP–02 rates and the total cost of the EPP resource selected by the customer. The GEP is applied to the number of EPP MWhs that the customer has elected to purchase. BPA guarantees the customer paying the premium that BPA will produce an amount of EPP equal to the amount of energy subject to this adjustment. The GEP will be charged in a line item on the monthly power bill of each participating.

The costs to be considered in determining the applicable GEP include, but are not limited to:

- Costs of existing EPP resources, over and above the cost of BPA system resources.
- Costs of new EPP resources, over and above the cost of BPA system resources.
- Costs of BPA system resources.
- Endorsement fees for specific EPP resources.
- Market purchases of EPP resources.
- Transmission and other services required to integrate EPP resources into the BPA system.

2. Calculation and Application of the Premium

a. Determination of the Premium

For a customer buying power from BPA under a requirements firm power sales contract, the amount of EPP and the premium will be determined as part of the product selection process and will be completed as part of the power sales contract negotiation during the Subscription window. The charge will not exceed $40 per MWh and may be as low as zero. The premium will be zero if the unit cost of the GEP resource(s) dedicated to the customer is equal to, or less than, the energy charge of the applicable rate. The premium will be equal to the average unit cost of the GEP resource(s) minus the applicable average PF–02, RL–02, NR–02, and IP–02 energy charge.

b. Determination of Individual Customer GEP

(1) During the Subscription window, customers will be provided notice of the availability of specific GEP products and associated premiums. The total GEP

for the customer will be based on the customer's elections of product amounts and content.

(2) The average annual energy charge will be calculated as the average per kilowatthour (kWh) charge for an annual flat undelivered product using the energy charges applicable to the customer. Where customers are purchasing under more than one rate schedule, the average energy charge will be calculated using expected loads and applicable rate schedules.

(3) The individual customer GEP for billing will be the total cost of the product selected by the customer minus the average annual energy charge.

c. Application of the GEP

The GEP will be applied after BPA has determined all other charges and credits except the Conservation and Renewables Discount line item, on the participating customer's power bill.

d. Billing for the Premium

The customer's bill will include a line item showing the kWh amount of EPP purchased times the GEP for the products elected and the total cost. The calculation will appear as:

(EPP amount) kWh * GEP mills/kWh = $XXXXX

N. Guaranteed Delivery Charge (NF only)

A surcharge of 2.00 mills/kWh of Billing Energy is applied whenever BPA guarantees delivery of nonfirm energy to a Purchaser under the NF Standard rate or Market Expansion rate.

O. Industrial Firm Power Targeted Adjustment Charge (IPTAC)

1. Availability

The Industrial Firm Power Targeted Adjustment Charge (IPTAC) pertains to the IP rate schedule. The IPTAC will be applied to Firm Power requirements service of DSIs who take service from a combination of Federal inventory and power purchased from the market during the 2002 rate period.

The maximum total requirements service the IPTAC will be developed for, and applied to, is 1,440 aMW (flat, annual block). The total inventory used to provide this requirement service will be composed of 990 aMW from Federal inventory and 450 aMW of market purchases.

There will be two rates for the IPTAC product. 1210 aMW will be sold at $23.50 per MWh, and 230 aMW sold at $25 per MWh.

P. Low Density Discount

1. Application and Definitions

For eligible Purchasers as defined in section 2 below, a discount shall be applied each billing month to BPA's charges for the following components of Priority Firm Power, New Resources Firm Power and Residential Load Firm Power service: (1) Demand; (2) HLH purchases; (3) LLH purchases; and (4) Load Variance. The Low Density Discount (LDD) shall not be applied to Unauthorized Increase Charges, Excess Factoring Charges, transmission charges or any other charges. The discount shall be revised annually based on data supplied by June 30 of each Calendar Year (CY) for the previous CY and shall become effective on the upcoming October 1.

a. The Kilowatthour/Investment Ratio

The kWh/Investment (K/I) ratio is calculated annually based on the data supplied by June 30 for the previous CY. The K/I ratio is calculated by dividing the Purchaser's Total Retail Load during the CY by the value of the Purchaser's depreciated electric plant (excluding generation plant) at the end of the CY.

b. The Consumers/Mile of Line Ratio

The Consumers/Mile of Line (C/M) ratio is determined annually using the data supplied by June 30 for the previous CY. The C/M ratio is calculated by dividing the maximum number of consumers on the distribution system, in any one month during the CY, by the end of CY number of pole miles of distribution.

Consumer means every billed consumer regardless of usage. Separately billed services for water heating and security lights are not counted as an additional billed consumer.

The number of pole miles of distribution line means the end of CY pole miles. Distribution lines are defined as lines that deliver electric energy from a substation or metering point, at a voltage of 34.5 kilovolt or less, to the point of attachment to the consumer's wiring and include primary, secondary, and service facilities. (Service drops are considered service facilities.)

These calculations shall be based on CY data provided from the Purchaser's annual financial and operating reports. The Purchaser shall certify that the data submitted is correct and that no loads gained as provided in section 6, Retail Access Exclusion, are receiving LDD benefits.

In calculating these ratios, BPA shall compile the data submitted by the Purchaser based on the Purchaser's entire electric utility system in the Pacific Northwest (PNW). For Purchasers with service territories that include any areas outside the PNW, BPA shall compile data submitted by the Purchaser separately on the Purchaser's system in the PNW and on the Purchaser's entire electric utility inside and outside the PNW. BPA will apply the eligibility criteria and discount percentages to the Purchaser's system within the PNW and, where applicable, also to its entire system inside and outside the PNW. The Purchaser's eligibility for the LDD will be determined by the lesser amount of discount applicable to its PNW system or to its combined system inside and outside the PNW. BPA, in its sole discretion, may waive the requirement to submit separate data for the Purchaser with a small amount of its system outside the PNW. Results of the calculations shall not be rounded.

A Purchaser who has not provided BPA with the requisite pieces of data needed to calculate the K/I and C/M ratios by June 30 of each year, for the prior CY, shall be declared ineligible for the LDD, effective the upcoming October 1.

If a Purchaser's data was submitted on time and a revision is necessary to the data, the revised data must be resubmitted no later than 12 months after the original submission date to be considered for an adjustment.

2. Eligibility Criteria

To qualify for a discount, the Purchaser must meet all five of the following eligibility criteria:

a. The Purchaser must serve as an electric utility offering power for resale;

b. The Purchaser must agree to pass the benefits of the discount through to the Purchaser's eligible consumers within the region served by BPA;

c. The Purchaser's average retail rate for the reporting year must exceed the Purchaser's average cost of BPA power purchases under the applicable rate for the qualifying period by at least 10 percent. For CY 2001, the Purchaser's average cost of BPA power purchases under the applicable rate shall be under the applicable 1996 rate for the first nine months and under the applicable 2002 rate for the last three months. For CY 2002 and beyond, the Purchaser's average cost of BPA power purchases under the applicable rate shall be under the applicable rate for all 12 months;

d. The Purchaser's K/I ratio must be less than 100; and

e. The Purchaser's C/M ratio must be less than 12.

3. Discounts

The Purchaser shall be awarded the following discount beginning October 1, 2001, in accordance with section 4 below. The discount will be the sum of the two potential discounts for which the Purchaser qualifies, based on the following Table C. The discount shall not exceed 7 percent.

TABLE C.—LDD PERCENTAGE DISCOUNT TABLE

Percentage discount	Applicable range for KWh/investment (K/I) ratio	Applicable range for consumers/mile (C/M) ratio
0.0	35.0 ≤ X	12.0 ≤ X
0.5	31.5 ≤ X < 35.0	10.8 ≤ X < 12.0
1.0	28.0 ≤ X < 31.5	9.6 ≤ X < 10.83
1.5	24.5 ≤ X < 28.0	8.4 ≤ X < 9.6
2.0	21.0 ≤ X < 24.5	7.2 ≤ X < 8.4
2.5	17.5 ≤ X < 21.0	6.0 ≤ X < 7.2
3.0	14.0 ≤ X < 17.5	4.8 ≤ X < 6.0
3.5	10.5 ≤ X < 14.0	3.6 ≤ X < 4.8
4.0	7.0 ≤ X < 10.5	2.4 ≤ X < 3.6
4.5	3.5 ≤ X < 7.0	1.2 ≤ X < 2.4
5.0	X ≤ 3.5	X < 1.2

4. LDD Phase-Out Adjustment

If the Purchaser satisfies the eligibility criteria (2. a. through e.), and the calculated discount differs from the existing discount by more than one-half of 1 percent, the applicable discount will be:

a. The existing discount plus ½ percent if the calculated discount exceeds the existing discount; or

b. The existing discount minus ½ percent if the calculated discount is less than the existing discount.

The foregoing formula will be applied each October 1 until the then-current calculated discount is fully phased out.

The Purchaser is not eligible to receive any discount, effective each October, if the Purchaser fails to meet the eligibility criteria in section 2. a. through e.

5. Benefits Legislation Exclusion

If the Federal government or a State, or local government adopt(s) a law, regulation or other provision that establishes benefits for low density and/or rural electric systems that are similar to benefits provided by BPA's LDD, then the Purchaser's service territory within that jurisdiction shall no longer be eligible to receive the LDD. The effective date for discontinuation of the LDD and the Phase-Out Adjustment shall be the implementation date of the jurisdiction's benefits provision legislation. BPA will evaluate new provisions and determine, in BPA's judgment, whether they provide benefits similar to the LDD. If BPA concludes that the benefits are similar, BPA will conduct a public comment process before issuing a final decision.

6. Retail Access Exclusion

Load that is gained by a Purchaser as a direct result of retail access rights established by Federal, State, or local legislation, and that would not otherwise have been gained absent such legislation, is not eligible to receive the benefits provided by the LDD. The Purchaser shall not pass the benefits of the LDD to its gained load consumers.

Q. Rate Melding

BPA's rate proposal allows the customers more than one rate choice. Separately tracking and administering the customer's rate choices and maintaining the distinction would increase BPA's overall cost of providing rate choices. For administrative simplicity upon mutual agreement between BPA and the customer, BPA may offer to meld the customer's rate choices into a single composite set of rates that reflects the specific choices made by the customer. BPA will ensure that this melded set of rates will result in a bill that is nearly mathematically equivalent to applying the customer's individual choices throughout the rate period. BPA will provide the affected customer the calculations it used to establish the melded rates and provide 30 days for the customer to review and accept the melding calculation before it implements the melded rates. Melded rates established by BPA will continue until one of the customer's rate choices expires, or a rate adjustment occurs that is provided for under the chosen rate schedules (*e.g.*, Cost Recovery Adjustment Clause), or a significant change in the loads applicable to the rates occurs.

R. Slice True-Up Adjustment

By March 31 of each year, BPA will calculate the final true-up for the previous fiscal year based on the difference between the Slice Revenue Requirement's audited actual expenses (and credits) and those expenses (and credits) forecasted in the 2002 rate case (except for the Inventory Solution which is billed based on the estimate from the 2002 rate case). This true-up will be the True-Up Adjustment Charge and will be applied to the customer's May bill. In addition, an interim true-up adjustment procedure to allow for an intermediate true-up prior to March 31, will be developed in the power sales contracts with the customers.

S. Stepped Up Multiyear Block (SUMY)

The SUMY Block charge applies to Block purchases if the annual amounts increase (i.e., step up) over multiple years of a purchase commitment term due to increases in customer net requirement which are not subject to a Targeted Adjustment Charge (TAC).

The cost for the SUMY Block service is the difference between PF–02 rates and the AURORA On-and Off-Peak market price forecast in the final rate proposal.

The starting basis for computing the SUMY Block quantities will be the purchaser's subscribed block amount for the period October 2001 through September 2002. Costs will be computed for 24 monthly blocks (12 HLH and 12 LLH) for each year of the rate period. Each year's monthly amount above the base year's monthly amount is the stepped up quantity. Total cost is the sum of each month's HLH and LLH stepped up quantities times each month's HLH and LLH costs.

The SUMY charge is the total cost of the SUMY Block service divided by the total Block energy purchase including stepped up amounts. The charge is in addition to the PF and NR energy and demand rates that the customer will pay for these power purchases.

BILLING CODE 6450–01–P

Table D

BASIS FOR SLICE TRUE-UP ADJUSTMENT CHARGE

Generation Expenses ($thousands)	2002		2003		2004	
Operating Expenses	**Total**	**Slice**	**Total**	**Slice**	**Total**	**Slice**
CSRS Pension Expense	27,600	27,600	17,550	17,550	15,450	15,450
Power Marketing	16,000	16,000	15,700	15,700	8,800	8,800
Wheeling (GTAs)	52,000	50,000	52,000	50,000	52,000	50,000
Power Scheduling	20,900	20,900	12,800	12,800	12,100	12,100
ST Purchased Power/Upstr Benefits	154,900	1,990	151,402	2,050	160,205	2,111
PNCA Interchange	-	-	-	-	-	-
Generation Oversight	2,964	2,964	2,950	2,950	3,050	3,050
Conservation & Consumer Services (incl EE)	29,351	29,351	27,763	27,763	28,063	28,063
Fish & Wildlife	131,700	131,700	138,000	138,000	140,100	140,100
Administrative & Support Services	17,350	17,350	16,650	16,650	16,650	16,650
Planning Council	5,100	5,100	5,100	5,100	5,100	5,100
Corps of Engineers O&M	108,000	108,000	112,000	112,000	112,000	112,000
U.S. Fish & Wildlife O&M	15,400	15,400	16,197	16,197	16,995	16,995
Bureau of Reclamation O&M	47,000	47,000	48,300	48,300	48,300	48,300
Colville Settlement	16,000	16,000	16,000	16,000	16,000	16,000
Renewable Projects	20,302	20,302	20,117	20,117	19,968	19,968
WNP-1 O&M	400	400	384	384	384	384
WNP-2 O&M/Capital Requirements	154,094	154,094	163,824	163,824	170,724	170,724
WNP-3 O&M	3,086	3,086	3,169	3,169	3,169	3,169
Trojan Decommissioning	9,600	9,600	4,200	4,200	2,600	2,600
Between Business Line Expense [1]	151,941	41,662	157,689	45,309	165,524	54,947
LT Power Purchases	26,805	26,805	27,245	27,245	27,682	27,682
Rate Pledge Adjustment						

[1] Includes BPA Generation-Integration (under Ancillary Services), PF Transmission pass-through, PNCA and NTS Transmission, CEA Transmission, and Between Business Line Expenses.

	2005		2006		Rev Req
Operating Expenses	**Total**	**Slice**	**Total**	**Slice**	
CSRS Pension Expense	13,250	13,250	11,600	11,600	85,450
Power Marketing	6,800	6,800	5,000	5,000	52,300
Wheeling (GTAs)	52,000	50,000	52,000	50,000	250,000
Power Scheduling	12,800	12,800	12,700	12,700	71,300
ST Purchased Power/Upstr Benefits	169,125	2,174	176,294	2,240	10,565
PNCA Interchange	-	-	-	-	-
Generation Oversight	3,050	3,050	3,150	3,150	15,163
Conservation & Consumer Services (incl EE)	28,463	28,463	28,763	28,763	142,401
Fish & Wildlife	142,900	142,900	144,400	144,400	697,100
Administrative & Support Services	16,650	16,650	16,650	16,650	83,950
Planning Council	5,100	5,100	5,100	5,100	25,500
Corps of Engineers O&M	112,000	112,000	112,000	112,000	556,000
U.S. Fish & Wildlife O&M	17,892	17,892	18,789	18,789	85,273
Bureau of Reclamation O&M	48,300	48,300	48,300	48,300	240,200
Colville Settlement	16,000	16,000	16,000	16,000	80,000
Renewable Projects	19,885	19,885	19,836	19,836	100,109
WNP-1 O&M	384	384	384	384	1,936
WNP-2 O&M/Capital Requirements	173,824	173,824	179,824	179,824	842,290
WNP-3 O&M	3,169	3,169	3,169	3,169	15,762
Trojan Decommissioning	2,600	2,600	2,600	2,600	21,600
Between Business Line Expense [1]	163,763	55,003	164,130	55,061	251,982
LT Power Purchases	28,279	28,279	28,763	28,763	138,774
Rate Pledge Adjustment					

[1] Includes BPA Generation-Integration (under Ancillary Services), PF Transmission pass-through, PNCA and NTS Transmission, CEA Transmission, and Between Business Line Expenses.

	2002	2003	2004

	2002		2003		2004	
Operating Expenses	**Total**	**Slice**	**Total**	**Slice**	**Total**	**Slice**
System Operation & Maintenance	**1,010,492**	**745,303**	**1,009,040**	**745,308**	**1,024,864**	**754,193**
WNP-1	177,704	177,704	167,856	167,856	174,623	174,623
WNP-2	197,442	197,442	244,980	244,980	233,624	233,624
WNP-3	153,720	153,720	152,993	152,993	149,232	149,232
Trojan	9,947	9,947	9,954	9,954	9,964	9,964
Conservation Financing	5,578	5,578	5,577	5,577	5,577	5,577
Renewable Projects	2,880	2,880	2,880	2,880	2,880	2,880
LT Power Purchases	15,917	15,917	15,916	15,916	15,920	15,920
Total Non-Fed. Projects Debt Service	**563,187**	**563,187**	**600,156**	**600,156**	**591,820**	**591,820**
Depreciation	95,288	95,288	97,910	97,910	100,170	100,170
Amort.: Conservation & Fish & Wildlife	80,002	80,002	78,321	78,321	71,755	71,755
Total Federal Projects Depreciation	**175,290**	**175,290**	**176,231**	**176,231**	**171,925**	**171,925**
IOU Payment (in lieu of Residential Exchange)	-		-		-	
Total Operating Expenses	**1,760,119**	**1,483,780**	**1,785,427**	**1,521,695**	**1,788,609**	**1,517,938**
Net Federal Interest Expense	**214,665**	**214,665**	**213,507**	**213,507**	**219,193**	**219,193**
Total Operating & Net Interest Expenses	**1,974,784**	**1,698,445**	**1,998,934**	**1,735,202**	**2,007,802**	**1,737,131**
Miscellaneous Expense [2]						
TOTAL ACCRUED EXPENSES FOR SLICE TRUE-UP		**1,698,445**		**1,735,202**		**1,737,131**

Revenue Credits	2002		2003		2004	
	Total	**Slice**	**Total**	**Slice**	**Total**	**Slice**
Ancillary and Reserve Service Revs.		87,336		87,233		88,072
PBL PF Trans. Pass-Through Revs.		14,190		14,247		14,304
Canadian Entitlement Credit		1,000		1,000		1,000
COE & USBR Project Revenues		8,100		8,100		8,100
4(h)(10)(c)		86,523		90,187		88,258
Colville Credit		4,600		4,600		4,600
FCCF		43,559		27,132		20,387
Sup/Ent Cap; Irr. Pump		938		707		471
Energy Efficiency Revenues		13,046		13,345		13,345
Property Trnfrs & Misc.		3,416		3,416		3,416
Miscellaneous Credits [3]						
Total Revenue Credits		**262,708**		**249,967**		**241,953**

[2] Includes Slice administrative expenses, WNP-2 economic displacement charges, conservation & renewables surcharge expenses, etc. The amounts associated with these expenses will not be determined until they actually are incurred. In some years, the amount for any of these expenses could be zero. In addition, Slice Administrative expenses are shared equally amongst Slice.

[3] Includes potential applicable revenue credits, the type and amount of which will be determined as they are accrued.

BILLING CODE 6450-01-C

Operating Expenses	2005 Total	2005 Slice	2006 Total	2006 Slice	Rev Req
System Operation & Maintenance	**1,036,234**	**758,523**	**1,049,452**	**764,329**	**3,767,655**
WNP-1	167,910	167,910	179,992	179,992	868,085
WNP-2	187,825	187,825	211,976	211,976	1,075,847
WNP-3	149,480	149,480	147,836	147,836	753,261
Trojan	9,989	9,989	10,009	10,009	49,863
Conservation Financing	5,577	5,577	5,577	5,577	27,886
Renewable Projects	2,880	2,880	2,880	2,880	14,399
LT Power Purchases	15,933	15,933	15,935	15,935	79,621
Total Non-Fed. Projects Debt Service	**539,594**	**539,594**	**574,205**	**574,205**	**2,868,962**
Depreciation	102,215	102,215	104,164	104,164	499,747
Amort.: Conservation & Fish & Wildlife	69,466	69,466	64,950	64,950	364,494
Total Federal Projects Depreciation	**171,681**	**171,681**	**169,114**	**169,114**	**864,241**
IOU Payment (In lieu of Residential Exchange)	**-**		**-**		**-**
Total Operating Expenses	**1,747,509**	**1,469,798**	**1,792,770**	**1,507,647**	**7,500,858**
Net Federal Interest Expense	**224,550**	**224,550**	**221,653**	**221,653**	**1,093,568**
Total Operating & Net Interest Expenses	**1,972,059**	**1,694,348**	**2,014,423**	**1,729,300**	**8,594,426**
Miscellaneous Expense [2]					
TOTAL ACCRUED EXPENSES FOR SLICE TRUE-UP		**1,694,348**		**1,729,300**	**8,594,426**

Revenue Credits	2005 Total	2005 Slice	2006 Total	2006 Slice	Rev Req
Ancillary and Reserve Service Revs.		88,023		87,945	438,609
PBL PF Trans. Pass-Through Revs.		14,361		14,418	71,520
Canadian Entitlement Credit		1,000		1,000	5,000
COE & USBR Project Revenues		8,100		8,100	40,500
4(h)(10)(c)		89,687		92,149	446,804
Colville Credit		4,600		4,600	23,000
FCCF		10,600		6,492	108,170
Sup/Ent Cap; Irr. Pump		471		471	3,059
Energy Efficiency Revenues		13,345		13,345	66,426
Property Trnfrs & Misc.		3,416		3,416	17,080
Miscellaneous Credits [3]					
Total Revenue Credits		**233,603**		**231,936**	**1,220,168**

[2] Includes Slice administrative expenses, WNP-2 economic displacement charges, conservation & renewables surcharge expenses, etc. The amounts associated with these expenses will not be determined until they actually are incurred. In some years, the amount for any of these expenses could be zero. In addition, Slice Administrative expenses are shared equally amongst Slice.

[3] Includes potential applicable revenue credits, the type and amount of which will be determined as they are accrued.

Formula for Calculating a Charge for SUMY Block Service

Step 1: Determine HLH MWh of SUMY Block. October 2002 HLH Block minus October 2001 HLH Block = HLH MWh of SUMY Block for October 2002

Step 2: Determine LLH MWh of SUMY Block. October 2002 LLH Block minus October 2001 LLH Block = LLH MWh of SUMY Block for October 2002

Step 3: Determine Cost of HLH SUMY Block service. HLH MWh of SUMY Block * (Aurora October 2002 On-Peak Market Price minus October 2002 PF HLH energy and demand rate) = Total Cost of October 2002 HLH SUMY Block service.

Step 4: Determine Cost of LLH SUMY Block service. LLH MWh of SUMY Block * (Aurora October 2002 Off-Peak Market Price minus October 2002 PF LLH energy rate) = Total Cost of October 2002 LLH SUMY Block service.

Step 5: Determine Cost for all months of the rate period by repeating Steps 1–4 for each month of the remaining purchase period always calculating the MWh difference from the first year and corresponding month. Calculate the price difference using that year's and month's market price and PF rate.

Step 6: Custom Charge: Divide the Net Present Value (NPV) of the stream of costs derived from Steps 1–5 by the NPV of the total block purchase including SUMY Block in MWh for the five-year period. The NPV uses a 6.8 percent discount rate and is present valued to October 2001.

Step 7: Billing Determinant: Custom charge is applied to each MWh of block purchase including the SUMY Block amounts.

T. Supplemental Contingency Reserves Adjustment (SCRA)

The energy charges stated in the IP–02 rate schedule will be adjusted to reflect the negotiated SCRA adjustment. PBL will negotiate with any DSI interested in providing Supplemental Contingency Reserves (Supplemental Reserves). Supplemental Reserves refers to generating capacity, and associated energy, fully available within 10 minutes notice of a system disturbance. PBL has established a flexible rate with a cap that will permit BPA to negotiate a price according to the quality of reserves provided. The maximum amount PBL may pay for Supplemental Reserves from a DSI is capped at $5.92/kW-mo.

The suitability and quality of the Supplemental Reserves will be measured by whether they have certain characteristics, some of which are required and others optional. Any Supplemental Reserves purchased by PBL must be consistent with NERC, WSCC, and NWPP criteria:

1. The interruptible load must be offline within five minutes after a call by BPA;

2. In the event of a system disturbance, the interruptible load must be accessible prior to a request for reserves from other NWPP parties;

3. The interruptible load must be available to be offline for up to 60 minutes.

In addition to these required characteristics, the issues identified below will help define when PBL may pay the maximum value for Supplemental Reserves:

1. The extent to which PBL has the discretion when and how to use all operating reserves and to determine what resources to call on in the event of a system disturbance;

2. Whether there are limitations on the number of times or total minutes the reserves may be utilized.

U. Targeted Adjustment Charge

1. Availability

The Targeted Adjustment Charge (TAC) pertains to the PF rate schedule, except for PF exchange program and PF exchange Subscription rates. The TAC applies to firm power requirements service to regional firm load that results in an unanticipated increase in BPA's projected loads within the rate period. The TAC will be applied to the applicable rate for requirements service requested after the Subscription window closes.

TAC will also apply to subsequent requests made by a customer under a Subscription contract for requirements service for such customer's load(s) that had been previously served by that customer's 5(b)(1)(A) or 5(b)(1)(B) resources.

If a public agency customer that requests requirements service from BPA is annexing or otherwise taking on the obligation of load from another public agency customer and the request to annex or take on load obligation and the reduction in obligation are equal amounts such that BPA's total load obligation does not increase, BPA may exempt the newly acquired load from the TAC and apply PF–02. The TAC will apply if the annexed requirements service has been previously served by that customer's 5(b)(1)(A) or 5(b)(1)(B) resources.

Where a public agency customer annexes residential and small farm load previously served by an IOU and such load was receiving BPA power or financial benefits through Subscription, the public agency customer will receive through assignment the right to the IOUs power and/or financial benefits applicable to the annexed load. BPA will deliver the same amount of firm power that was assigned by the IOU to the annexing public agency customer at the PF–02 rate. Power provided by BPA to the public agency customer to meet the remaining annexed load not covered by the power assigned from the IOU will be subject to the TAC.

The TAC will apply for the duration of the Customer's contract or until 2006, whichever occurs first. For five-year contracts that guarantee rates for a multitude of periods (for example, contracts that have both three-year and five-year components) the TAC applies until the end of the five-year rate period. If a new public requests service, the TAC, if any, must apply until 2006.

If a PF Preference customer is serving a portion of its load with a certifiable renewable resource eligible for the C&R Discount, or contract purchases of certified renewable resource power eligible for the C&R Discount for a period less than the term of the customer's BPA requirements firm power contract, then the customer may request, during the 2002 to 2006 rate period, requirements firm power service for such load at the end of the specified contract period at PF Preference (PF–02) without being subject to the TAC. This limited exception applies to the first 200 aMW in any contract year, or to amounts that BPA specifies in accordance with its Policy on the Determination of Net Requirements.

2. Energy Charge

The TAC is a monthly mills/kWh adjustment to the HLH and LLH energy rates specified in the 2002 rate schedule, and is applied to that portion of the Purchaser's load that is subject to the TAC. The TAC rate adjustment will be established based on the following formula:

TAC = [(Incr $ * Incr Amt)—(Rate $ * Incr Amt)]/TAC Amt

Where:

TAC Amt = The amount of load subject to the TAC, determined monthly.

Rate $ = The monthly PF energy rate shown in the applicable rate schedule.

Inventory Amt=Amount of energy in inventory available to serve this load based on average annual Federal system firm resource capability,

Includes potential applicable revenue credits, the type and amount of which will be determined as they are accrued.

estimated using critical water excluding balancing purchases and purchases for system augmentation, from the 2002 rate case with updates if BPA determines that is necessary.

Incr $=Monthly cost to BPA, including a handling fee, of incremental power purchases expressed in mills/kWh. These costs also may include, where applicable, wheeling, ancillary, and other charges BPA may incur in purchasing power from other entities such as, but not limited to, the California ISO or the California PX.

Incr Amt=Amount of incremental power required, determined monthly and defined as the TAC Amt minus the Inventory Amt. (If there is no available Inventory Amt, the Incr Amt will equal the TAC Amt).

Incr $ is greater than Rate $ (If Incr $ is less than Rate $, the TAC is 0 mills/kWh).

TAC is the monthly rate adjustment in mills/kWh. BPA will calculate the cost (Incr $) per month in mills/kWh of the additional power per month (Incr Amt) for a specific customer request. BPA will establish the cost of the additional power by the following methods:

- BPA will establish the price based on BPA's monthly cost to purchase the incremental load by purchases of resources at market.

V. Unauthorized Increase Charge

1. Charge for Unauthorized Increase in Demand

The amount of Measured Demand during a billing hour that exceeds the amount of demand the purchaser is contractually entitled to take during that hour shall be billed at the greater of:

a. Three (3) times the applicable monthly demand charge;

b. The sum of hourly California ISO Spinning Reserve Capacity prices for all HLHs in the month, at path NW1 (COB); or

c. The sum of hourly California ISO Spinning Reserve Capacity prices for all HLHs in the month, at path NW3 (NOB).

In the event that the hourly California ISO Spinning Reserve Capacity market expires, the Unauthorized Increase Charge for demand shall be the greater of:

a. Three (3) times the applicable monthly demand charge;

b. The sum of hourly or diurnal prices for all HLHs in the month, at a hub at which Northwest parties can trade, established between October 1, 2001, and September 30, 2006.

2. Charge for Unauthorized Increase in Energy

The amount of Measured Energy during a diurnal period of a billing month, day, or hour that exceeds the amount of energy the purchaser is contractually entitled to take during that period shall be billed the greater of:

a. One hundred (100) mills/kWh; or

b. For the month in question, the greater of:

(1) the highest diurnal DJ Mid-C Index price for firm power; or

(2) the highest hourly ISO California Supplemental Energy price (NP15).

In the event that either the ISO California Supplemental Energy price index or the DJ Mid-C Index expires, the index will be replaced for purposes of the Unauthorized Increase Charge for energy by:

(1) The highest price experienced for the month at the California PX, NW1 (COB);

(2) The highest price experienced for the month at the California PX, NW3 (NOB); or

(3) The highest price experienced for the month from any applicable new hourly or diurnal energy index at a hub at which Northwest parties can trade, established between October 1, 2001, and September 30, 2006.

Section III. Definitions

A. Power Products and Services Offered By the Power Business Line of BPA

1. Actual Partial Service Product—Simple/Complex

The Actual Partial Service Products are core Subscription products that are available to purchasers who have a right to purchase from BPA for their requirements. These products are intended for customers who have contractual or generating resources with firm capabilities and therefore require a product other than Full Service. The Simple and Complex versions of this product category differ in that the Complex version is subject to the Factoring Benchmark tests in the billing process and to potential Excess Factoring Charges. The Simple version encompasses several possible approaches to customer resource declaration, all of which obviate the need for the Factoring Benchmark tests.

2. Block Product

The Block Product is a core Subscription product that is available to purchasers who have a right to purchase from BPA for their requirements. This product is available in HLH and LLH quantities per month, with the hourly amount flat for all hours in such periods.

3. Block Product with Factoring

The Block Product with Factoring is a combination of the Block Product with the core Subscription staple-on product for Factoring Service. Factoring provides the service of distributing Block energy to follow Purchaser hourly load needs to the extent of such Block energy.

4. Block Product With Shaping Capacity

The Block Product with Shaping Capacity is a combination of the Block HLH energy product and the core Subscription staple-on product for Shaping capacity. Shaping capacity allows the customer to preschedule Block energy with some limited shape among HLHs within a contractually specified bandwidth.

5. Construction, Test and Start-Up, and Station Service

Power for the purpose of Construction, Test and Start-Up, and Station Service for a generating resource or transmission facility shall be made available to eligible purchasers under the Priority Firm Power (PF–02), New Resources Firm Power (NR–02), and Firm Power Products and Services (FPS–96), rate schedules. Such power is not available for the PF Exchange Program rate, the PF Exchange Subscription rate, and the Residential Load rate.

Construction, Test and Start-Up, and Station Service power must be used in the manner specified below:

a. Power sold for construction is to be used in the construction of the project.

b. Power sold for test and start-up may be used prior to commercial operation, both to bring the project online and to ensure that the project is working properly.

c. Power sold for station service may be purchased at any time following commercial operation of the project. Once the project has been energized for commercial operation, the Purchaser may use station service power for start-up, shutdown, normal operations, and operations during a shutdown period.

d. Power sold for Construction, Test and Start-Up, and Station Service is not available for replacement of lost generation for forced or planned outages or resource underperformance.

6. Core Subscription Products

BPA's Core Subscription Products are described in the BPA Product Catalog. Core Subscription Products are available at the posted rates for customers who have a right to purchase them.

The core products are:

- Actual Partial Service Product—Simple/Complex
- Block Product
- Block Product with Factoring
- Block Product with Shaping Capacity

• Full Service Product

7. Customer System Peak (CSP)

Customer System Peak (CSP) is the largest measured HLH Total Retail Load (TRL) amount in kilowatts for the billing period.

8. Full Service Product

Full Service is a core Subscription product that is available to purchasers who have a right to purchase from BPA for their requirements. This product is available to customers who either have no resources or whose resources meet the criteria for small, non-dispatchable resources.

9. Industrial Firm Power

Industrial Firm Power is electric power that BPA will make continuously available to a direct-service industrial (DSI) purchaser subject to the terms of the Purchaser's power sales contract with BPA. Deliveries may be reduced or interrupted as permitted by the terms of the Purchaser's power sales contract with BPA. Adjustments as provided in the Purchaser's power sales contract shall be made for power restricted to provide reserves.

10. Load Variance

For core Subscription products, Load Variance is defined as the variability in monthly energy consumption within the BPA customer's system. Through the Load Variance charge under the Full and Actual Partial Service Products, the customer's billing factors will follow actual consumption. Load Variance is not applicable to Block Product purchases. For purposes of pricing and rate tests under Pre-Subscription contracts, the Load Variance charge is deemed to correspond to the PF–96 Load Shaping charge.

11. New Resource Firm Power

New Resource Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available:

a. For any New Large Single Load (NLSL); and

b. For Firm Power purchased by IOUs pursuant to power sales contracts with BPA.

New Resource Firm Power is to be used to meet the Purchaser's firm power load within the PNW. Deliveries of New Resource Firm Power may be reduced or interrupted as permitted by the terms of the Purchaser's power sales contract with BPA.

New Resource Firm Power is guaranteed to be continuously available to the Purchaser during the period covered by its contractual commitment, except for reasons of certain uncontrollable forces and force majeure events. New Resource Firm Power is power where BPA agrees to provide operating reserves in accordance with the standards established by the NERC, WSCC, and the NWPP.

12. Nonfirm Energy

Nonfirm Energy is energy that is supplied or made available by BPA to a Purchaser under an arrangement that does not have the guaranteed continuous availability feature of Firm Power. Nonfirm energy is sold primarily under the Nonfirm Energy rate schedule, NF–02. Nonfirm energy also may be supplied under the NF–02 rate schedule to the Western Systems Power Pool (WSPP) subject to terms and conditions agreed upon by the members participating in the WSPP and in accordance with BPA policy for such arrangements. Nonfirm Energy that has been purchased under a guarantee provision in the Nonfirm Energy rate schedule shall be provided to the Purchaser in accordance with the provisions of that schedule and the power sales contract if applicable. BPA may make Nonfirm Energy available to purchasers both inside and outside the United States.

13. Priority Firm Power

Priority Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available for direct consumption or resale by public bodies, cooperatives, and Federal agencies. Utilities participating in the Residential Exchange under section 5(c) of the Northwest Power Act may purchase Priority Firm Power pursuant to their Residential Exchange contracts with BPA. Priority Firm Power is not available to serve NLSLs. Deliveries of Priority Firm Power may be reduced or interrupted as permitted by the terms of the Purchaser's power sales contract with BPA.

Priority Firm Power is guaranteed to be continuously available to the Purchaser during the period covered by its contractual commitment, except for reasons of certain uncontrollable forces and force majeure events. Priority Firm Power is power where BPA agrees to provide operating reserves in accordance with the standards established by the NERC, WSCC, and NWPP.

14. Regulation and Frequency Response

Regulation and frequency response is the generating capacity of a power system that is immediately responsive to AGC control signals without human intervention. Regulation and frequency response is required to provide AGC response to load and generation fluctuations in an effective manner and to maintain desired compliance with NERC AGC Control Performance

15. Residential Exchange Program Power

Residential Exchange Program Power is power BPA sells to a Purchaser pursuant to the Residential Exchange Program. Under section 5(c) of the Northwest Power Act, BPA "purchases" power from PNW utilities at a utility's Average System Cost (ASC). BPA then offers, in exchange, to "sell" an equivalent amount of electric power to that customer at BPA's PF rate applicable to exchanging utilities. The amount of power purchased and sold is equal to the utility's eligible residential and small farm load. Benefits must be passed directly to the utility's residential and small farm customers.

16. Slice Product

The Slice product is a power sale based upon an eligible customer's annual net firm requirements load and is shaped to BPA's generation from the Federal system resources over the year. Slice purchasers are entitled to a fixed percentage of the energy generated by the FCRPS. The Slice purchaser's percentage entitlements are set by contract. The Slice product includes both service to net requirements firm load as well as an advance sale of surplus power.

B. Definition of Rate Schedule Terms

1. 2002 Contract

A 2002 contract is a contract for service in the FY 2002 through 2006 rate period that is signed after January 1, 1999.

2. Annual Billing Cycle

The Annual Billing Cycle is the 12 months beginning with the customer's first monthly power bill for deliveries in the first billing month starting on or after October 1.

3. Billing Demand

The Purchaser's Billing Demand is the amount of capacity to which the demand charge specified in the rate schedule is applied. When the rate schedule includes charges for several products, there may be a Billing Demand quantity for each product. The calculation of Billing Demand is described in the customer's contract.

4. Billing Energy

The Purchaser's Billing Energy is the amount of energy to which the energy

charge specified in the rate schedule is applied. When the rate schedule includes charges for several products, there may be a Billing Energy quantity for each product. Billing Energy is divided into HLH and LLH for this rate period.

5. California Independent System Operator (California ISO)

The FERC regulated control area operator of the ISO transmission grid. Its responsibilities include providing non-discriminatory access to the transmission grid, managing congestion, maintaining the reliability and security of the grid, and providing billing and settlement services. The ISO has no affiliation with any market participant.

6. California ISO Spinning Reserve Capacity

The portion of unloaded synchronized generating capacity, controlled by the California ISO, which is capable of being loaded in 10 minutes, and which is capable of running for at least two hours.

7. California ISO Supplemental Energy

Energy from generating units and other resources which have uncommitted capacity following finalization of the hour-ahead schedules and for which scheduling coordinators have submitted bids to the California ISO at least 30 minutes before the commencement of the settlement period.

8. California Power Exchange (California PX)

An independent agency responsible for conducting an auction for the generators seeking to sell energy and for loads which are not otherwise being served by bilateral contracts. The California PX is responsible for scheduling generation in its scheduling (e.g., day-ahead) markets, for determining hourly market clearing prices for its market, and for settlement and billing for suppliers and Utility Distribution Company's (UDC) using its market.

9. Contract Demand

The Contract Demand is the maximum number of kilowatts that the Purchaser agrees to purchase and BPA agrees to make available, subject to any limitations included in the applicable contract between BPA and the Purchaser.

10. Contract Energy

Contract Energy is the maximum number of kilowatthours that the Purchaser agrees to purchase and BPA agrees to make available, subject to any limitations included in the applicable contract between BPA and the Purchaser.

11. Control Area

A Control Area is the electrical (not necessarily geographical) area within which a controlling utility operating under all NERC standards has the responsibility to adjust its generation on an instantaneous basis to match internal load and power flow across interchange boundaries to other Control Areas.

12. Decremental Cost

Unless otherwise specified in a contractual arrangement, Decremental Cost as applied to Nonfirm Energy transactions is defined as:

a. All identifiable costs (expressed in mills/kWh) associated with the use of a displaceable thermal resource or end-use load with alternate fuel source to serve a purchaser's load that the purchaser is able to avoid by purchasing power from BPA, rather than generating the power itself or using an alternate fuel source; or

b. All identifiable costs (expressed in mills/kWh) to serve the load of a displaceable purchase of energy that the purchaser is able to avoid by choosing not to make the alternate energy purchase.

All identifiable costs as used in the above definition may be reduced to reflect costs of purchasing BPA energy such as transmission costs, losses, or loopflow constraints that are agreed to by BPA and the Purchaser.

13. Delivering Party

The entity supplying the capacity and/or energy to be transmitted at Point(s) of Interconnection.

14. Demand Entitlement

For purchases made under contracts for core Subscription products, Demand Entitlement is the largest HLH amount of power in kilowatts that the purchaser is entitled to receive from BPA during the billing period as specified in the contract.

15. Discount Period

The end of the rate period or the customer's contract term, whichever comes first.

16. Dow Jones Mid-C Indexes (DJ Mid-C Indexes)

Peak and offpeak price indexes for sale of firm and nonfirm power traded at the Mid-Columbia Bus.

17. Electric Power

Electric Power is electric peaking capacity (kilowatts) and/or electric energy (kilowatthours).

18. Energy Entitlement

For purchases made under contracts for core Subscription products, HLH and LLH Energy Entitlement is the sum in kilowatthours of amounts for HLH and LLH energy respectively, that the purchaser is entitled to receive from BPA as specified in the contract.

19. Federal System

The Federal System is the generating facilities of the FCRPS, including the Federal generating facilities for which BPA is designated as marketing agent; the Federal facilities under the jurisdiction of BPA; and any other facilities:

a. From which BPA receives all or a portion of the generating capability (other than station service) for use in meeting BPA's loads to the extent BPA has the right to receive such capability. "BPA's loads" do not include any of the loads of any BPA customer that are served by a non-Federal generating resource purchased or owned directly by such customer which may be scheduled by BPA;

b. Which BPA may use under contract or license; or

c. To the extent of the rights acquired by BPA pursuant to the 1961 U.S.-Canada Treaty relating to the cooperative development of water resources of the Columbia River Basin.

20. Firm Power (PF–02, IP–02, NR–02, RL–02)

Firm Power is electric power (capacity and energy) that BPA will make continuously available under contracts executed pursuant to Section 5 of the Northwest Power Act.

21. Full Service Customer

A Full Service customer is one who is purchasing power from BPA through the Full Service Product.

22. Generation System Peak

The Generation System Peak is the hour of the largest HLH output of the Federal System that occurs during the customer's billing period.

23. Heavy Load Hours (HLH)

Heavy Load Hours (HLH) are all those hours in the peak period hour ending 7 a.m. to the hour ending 10 p.m., Monday through Saturday, Pacific Prevailing Time (Pacific Standard Time or Pacific Daylight Time, as applicable). There are no exceptions to this definition; that is, it does not matter

whether the day is a normal working day or a holiday.

24. Inventory Solution Costs

Costs associated with BPA's potential actions to supplement the capability of the Federal System Resources, as a result of BPA's Subscription process. It is currently not known whether an Inventory Solution will be necessary, or what form the Inventory Solution will take.

25. Light Load Hours (LLH)

Light Load Hours (LLH) are all those hours in the offpeak period hour ending 11 p.m. to the hour ending 6 a.m., Monday through Saturday and all hours Sunday, Pacific Prevailing Time (Pacific Standard Time or Pacific Daylight Time, as applicable).

26. Measured Demand

The Purchaser's Measured Demand is that portion of its Metered or Scheduled Demand provided by BPA to the Purchaser. If more than one class of power is delivered to any point of delivery, the portion of the measured quantities assigned to any class of power shall be as specified by contract. Any delivery of Federal power not assigned to classes of power delivered under other agreements shall be included in the Measured Demand for PF, NR, or IP power as applicable. The portion of the total Measured Demand so assigned shall constitute the Measured Demand for each such class of power. Any residual quantity, after determination of the Purchaser's contractual entitlement at a particular rate, is considered "unauthorized." Unauthorized increases are billed in accordance with the provisions of these GRSPs.

In determining Measured Demand for any Purchaser who experiences an outage as defined pursuant to the Purchaser's agreement with BPA, BPA shall adjust any abnormal Integrated Demand due to, or resulting from:

a. Emergencies or breakdowns on, or maintenance of, the Federal System Facilities; and

b. Emergencies on the Purchaser's facilities to the extent BPA determines that such facilities have been adequately maintained and prudently operated.

BPA will follow its billing process in establishing the Billing Demand should an outage cause an unusual Billing Demand quantity. BPA will not give outage credits for demand.

27. Measured Energy

The Purchaser's Measured Energy is that portion of its Metered or Scheduled Energy that is provided by BPA to the Purchaser during a particular diurnal period (HLH or LLH) in a billing period. If more than one class of power is delivered to any point of delivery, the portion of the measured quantities assigned to any class of power shall be as specified by contract. Any delivery of Federal power not assigned to classes of power delivered under other agreements shall be included in the Measured Energy for PF, NR, or IP power as applicable. The portion of the total Measured Energy so assigned shall constitute the Measured Energy for each such class of power. Any residual quantity, after determination of the Purchaser's contractual entitlement at a particular rate, is considered "unauthorized." Unauthorized increases are billed in accordance with the provisions of these GRSPs.

28. Metered Demand

The Metered Demand in kilowatts shall be the largest of the 60-minute clock-hour Integrated Demands at which electric energy is delivered to a purchaser:

a. At each point of delivery for which the Metered Demand is the basis for determination of the Measured Demand;

b. During each time period specified in the applicable rate schedule; and

c. During any billing period.

Such largest Integrated Demand shall be determined from measurements made in accordance with the provisions of the applicable contract and these GRSPs. This amount shall be adjusted as provided herein and in the applicable agreement between BPA and the Purchaser.

29. Metered Energy

The Metered Energy for a purchaser shall be the number of kilowatthours that are recorded on the appropriate metering equipment, adjusted as specified in the applicable agreement and delivered to a Purchaser:

a. At all points of delivery for which metered energy is the basis for determination of the Measured Energy; and

b. during any billing period.

30. Mid-Columbia Bus (Mid-C Bus)

The switchyards associated with five non-Federal hydroelectric projects, including Rocky Reach, Priest Rapids, Wanapum, Douglas, and McKenzie. The following Federal switchyards which are operated by BPA and interconnected with the non-Federal switchyards are also included: Valhalla, Columbia, Midway, Sickler, and Vantage.

31. Monthly Federal System Peak Load

Monthly Federal System Peak Load is the peak load on the Federal System during a customer's billing month, determined by the largest hourly integrated demand produced from system generating plants in BPA's control area and scheduled imports for BPA's account from other control areas.

32. NP15

The portion of the California ISO's control area north of transmission path 15.

33. NW1 (California-Oregon Border)

California PX and California ISO designation for delivery at COB (Captain Jack/Malin).

34. NW3 (Nevada-Oregon Border)

California PX and California ISO designation for delivery at NOB.

35. Partial Service Customer

A Partial Service customer is any customer that is not a Full Service customer.

36. Point of Delivery (POD)

A Point of Delivery is the contractual interconnection point where power is delivered to the customer. Typically, a point of delivery is located at a substation site, but it could be located at the change of ownership point on a transmission line.

37. Point of Integration (POI)

A Point of Integration is the contractual interconnection point where power is received from the customer. Typically a point of integration is located at a resource site, but it could be located at some other interconnection point to receive system power from the customer.

38. Point of Interconnection (POI)

A Point of Interconnection is a point where the facilities of two entities are interconnected.

39. Points of Metering (POM)

The Points of Metering (POM) shall be those points specified in the contract at which TRL and Metered Amounts are measured.

40. Pre-Subscription Contract

A contract for service in the FY 2002 through 2006 rate period that was signed prior to January 1, 1999, is a Pre-Subscription Contract.

41. Purchaser

Pursuant to the terms of an agreement and applicable rate schedule(s), a Purchaser contracts to pay BPA for providing a product or service.

42. Receiving Party

The entity receiving the capacity and/or energy transmitted by BPA to a Point(s) of Delivery.

43. Retail Access

Retail Access is nondiscriminatory retail distribution access mandated either by Federal or State law which grants retail electric power consumers the right to choose their electricity supplier.

44. Scheduled Demand

For purposes of applying the rates herein to applicable purchases by the Purchaser, the Scheduled Demand in kilowatts is the largest of the hourly demands at which electric energy is scheduled by BPA for delivery to a purchaser:

a. To each system for which Scheduled Demand is the basis for determination of the Measured Demand;

b. During each time period specified in the applicable rate schedule; and

c. During any billing period.

Scheduled Demand is deemed delivered for the purpose of determining Billing Demand.

45. Scheduled Energy

For purposes of applying the rates herein to applicable purchases by the Purchaser, Scheduled Energy in kilowatthours shall be the sum of the hourly demands at which electric energy is scheduled by BPA for delivery to a purchaser:

a. For each system for which Scheduled Energy is the basis for determination of the Measured Energy; and

b. During any billing period.

Scheduled Energy is deemed delivered for the purpose of determining Billing Energy.

46. Slice Administrative Costs

All overhead costs incurred by BPA that are attributable to the implementation of the Slice product.

47. Slice Revenue Requirement

The Slice Revenue Requirement is comprised of all the line items in BPA's PBL revenue requirement as identified in all of the PBL's rate cases that are effective during the term of the Slice Purchaser's contract except for the following items: (1) transmission costs (other than those associated with the fulfillment of System Obligations); (2) power purchase costs (with the exception of those net costs incurred as part of the "Inventory Solution"); and (3) planned net revenues for risk.

See Table E for Slice Product Costing Table.

48. Subscription

Subscription refers to the Power Subscription Strategy issued by BPA on December 21, 1998, which is BPA's policy power sales beginning FY 2002.

49. Subscription Contract

See 2002 Contract.

50. System Obligations

BILLING CODE 6450-01-P

Table E

SLICE PRODUCT COSTING TABLE

PBL Costs ($000)	2002	2003	2004	2005	2006	TOTAL
GENERATION COSTS						
Federal Base System						
Hydro	$ 447,800	$ 455,373	$ 468,464	$ 479,149	$ 483,041	$ 2,333,825
Fish and Wildlife	$ 159,425	$ 167,905	$ 172,350	$ 176,722	$ 179,102	$ 855,504
Trojan	$ 19,547	$ 14,154	$ 12,564	$ 12,589	$ 12,609	$ 71,463
WNP #1	$ 178,104	$ 168,240	$ 175,007	$ 168,294	$ 180,376	$ 870,021
WNP #2	$ 351,536	$ 408,804	$ 404,348	$ 361,649	$ 391,800	$ 1,918,137
WNP #3	$ 153,720	$ 152,993	$ 149,232	$ 149,480	$ 147,836	$ 753,261
Total	$ 1,310,131	$ 1,367,469	$ 1,381,965	$ 1,347,883	$ 1,394,764	$ 6,802,211
New Resources						
Idaho Falls	$ 3,740	$ 3,737	$ 3,744	$ 3,754	$ 3,754	$ 18,729
Cowlitz	$ 14,914	$ 14,987	$ 15,051	$ 15,123	$ 15,196	$ 75,271
Firm Purchased Power	$ 17,723	$ 17,953	$ 18,187	$ 18,435	$ 18,681	$ 90,978
Other Acquisitions						
Total	$ 36,377	$ 36,677	$ 36,982	$ 37,312	$ 37,631	$ 184,978
Legacy Conservation	$ 131,799	$ 126,452	$ 114,284	$ 109,498	$ 101,240	$ 583,272
Energy Services Business	$ 11,349	$ 11,353	$ 11,321	$ 11,261	$ 11,227	$ 56,511
Other Generation Costs						
BPA Programs	$ 118,043	$ 98,774	$ 88,465	$ 84,222	$ 80,209	$ 469,713
Other						
WNP #3 Plant	$ 3,086	$ 3,169	$ 3,169	$ 3,169	$ 3,169	$ 15,762
Total	$ 121,129	$ 101,943	$ 91,634	$ 87,391	$ 83,378	$ 485,475
COSA Table Subtotal	$ 1,610,784	$ 1,643,893	$ 1,636,185	$ 1,583,345	$ 1,628,240	$ 8,112,447
CEA Transmission Costs	$ 13,514	$ 17,105	$ 26,685	$ 26,685	$ 26,685	$ 110,675
Ancillary and Reserve Service Costs	$ 8,000	$ 8,000	$ 8,000	$ 8,000	$ 8,000	$ 40,000
PBL PF Trans. Pass-Through Costs	$ 14,190	$ 14,247	$ 14,304	$ 14,361	$ 14,418	$ 71,520
PNCA & NTS Transmission Costs	$ 1,957	$ 1,957	$ 1,957	$ 1,957	$ 1,957	$ 9,785
General Transfer Agreement Costs	$ 50,000	$ 50,000	$ 50,000	$ 50,000	$ 50,000	$ 250,000
REVENUE REQUIREMENT CHECK	$ 1,698,445	$ 1,735,202	$ 1,737,131	$ 1,684,348	$ 1,729,300 0	$ 8,594,428
PF Conservation and Renewables Credit Costs						$ 96,416
IP Conservation and Renewables Credit Costs						$ 21,693
RL Conservation and Renewables Credit Costs						$ 21,900
LDD	$ 14,000	$ 14,000	$ 14,000	$ 14,000	$ 14,000	$ 70,000
S & I Rate Mitigation Costs	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 20,000
Non-COSA Table Subtotal						$ 230,009
Total PBL Revenue Requirement						$ 8,824,436

BILLING CODE 6450-01-C

Revenue Credits ($000)	2002	2003	2004	2005	2006	TOTAL
Ancillary and Reserve Service Revs.	$ 87,336	$ 87,233	$ 88,072	$ 88,023	$ 87,945	$ 438,610
PBL PF Trans. Pass-Through Revs.	$ 14,190	$ 14,247	$ 14,304	$ 14,361	$ 14,418	$ 71,520
Canadian Entitlement Credit	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 5,000
COE & USBR Project Revenues	$ 8,100	$ 8,100	$ 8,100	$ 8,100	$ 8,100	$ 40,500
4(h)(10)(c)	$ 86,523	$ 90,187	$ 88,258	$ 89,687	$ 92,149	$ 446,804
Colville Credit	$ 4,600	$ 4,600	$ 4,600	$ 4,600	$ 4,600	$ 23,000
FCCF	$ 43,559	$ 27,132	$ 20,387	$ 10,600	$ 6,492	$ 108,170
Sup/Ent Cap; Irr. Pump	$ 938	$ 707	$ 471	$ 471	$ 471	$ 3,059
Energy Efficiency Revenues	$ 13,046	$ 13,345	$ 13,345	$ 13,345	$ 13,345	$ 66,426
Property Trnfrs & Misc.	$ 3,416	$ 3,416	$ 3,416	$ 3,416	$ 3,416	$ 17,080
Total Revenue Credits						$ 1,220,168
Power Revenues Needed						$ 7,604,267
Firm System Augmentation (1112 aMWs on average	$ 252,064	$ 290,218	$ 253,541	$ 292,433	$ 279,879	$ 1,368,135
DSI Augmentation (450 aMWs)	$ 110,770	$ 110,770	$ 110,770	$ 110,770	$ 110,770	$ 553,851
Subscription Settlement Costs (800 aMWs in $s)	$ 54,310	$ 54,310	$ 54,310	$ 54,310	$ 54,310	$ 271,550
Total Cost of Inventory Solution	$ 417,144	$ 455,298	$ 418,621	$ 457,513	$ 444,959	$ 2,193,536
Revenue 1112 aMWs flat, 450 aMWs to DSIs	$ (301,889)	$ (301,889)	$ (301,889)	$ (301,889)	$ (301,889)	$ (1,509,444)
Net Cost of Inventory Solution	$ 115,255	$ 153,409	$ 116,732	$ 155,625	$ 143,071	$ 684,092

	($000)
Annual Slice Revenue Requirement	$ 1,657,672
Monthly Slice Revenue Requirement	$ 138,139
One Percent of Monthly Requirement	$ 1,381.39

Five Year Total	$ 8,288,359

System
not lin
associ
Canad
relate
Coordi
Hourly
Non-T
51. To
Tota
custom
facilit
any gi
custom
with B
52. To
Tota
consu
system
distrib
meteri
loads
made
BPA p
power
Total
Load.
53. Uti
A co
the dis
end-us
BPA's
Provis
A. Tar
Uncon
1. Ava
The
Uncon
to the
applie
purcha
were u
case w
power
period
subject
reduce
adding
under:
that ex
as may
Agreem
power
power
custom
Decemb
terms
contrac
period
will be
2001.
This
rate sc
Octobe

System Obligations include, but are not limited to, the transmission costs associated with the return of the Canadian Entitlement, and transactions related to the Pacific Northwest Coordination Agreement, Mid-Columbia Hourly Coordination, and the Canadian Non-Treaty Storage Agreement.

51. Total Plant Load

Total Plant Load means a DSI customer's total electrical energy load at facilities eligible for BPA service during any given time period whether the customer has chosen to serve its load with BPA power or non-Federal power.

52. Total Retail Load (TRL)

Total Retail Load is all electric power consumption including distribution system losses, within a utility's distribution system as measured at metering points, adjusted for unmetered loads or generation. No distinction is made between load that is served with BPA power and load that is served with power from other sources. For DSIs, Total Retail Load is called Total Plant Load.

53. Utility Distribution Company

A company that owns and maintains the distribution facilities used to serve end-use customers.

BPA's New 1996 General Rate Schedule Provisions for Power Rates

A. Targeted Adjustment Charge for Uncommitted Loads

1. Availability

The Targeted Adjustment Charge for Uncommitted Loads (TACUL) pertains to the PF rate schedule. The TACUL applies after December 7, 2000, to purchases to serve customer loads that were uncommitted during the 1996 rate case which are returned to BPA firm power requirements service during a period prior to FY 2002. Customers subject to the TACUL are those that reduced their purchases from BPA by adding firm resources to serve load under: (1) 1981 power sales contracts that expire on or before July 31, 2001, as may be amended; (2) Amendatory Agreement No. 7 (AA7) to the 1981 power sales contracts, or new "1996" power sales contracts where the customer provides BPA notice after December 7, 1998, consistent with the terms of the customer's power sales contract, for requirements service for the period prior to FY 2002. This charge will be in effect through September 30, 2001.

This rate schedule amends the PF–96 rate schedule, which went into effect October 1, 1996.

2. Energy Charge

The TACUL is a monthly mills/kWh adjustment to the HLH and LLH energy rates specified in the 1996 rate schedule, and is applied to that portion of the customer's load that is subject to the TACUL. The TACUL rate adjustment will be established based on the following formula:

TACUL = [(Incr $ * Incr Amt) – (Rate $ * Incr Amt)]/TACUL Amt

Where:

TACUL Amt = The amount of load subject to the TACUL, determined monthly.

Rate $ = The monthly PF energy rate shown in the applicable rate schedule.

Inventory Amt = Amount of energy available to serve this load based on an annual energy Federal system firm resource capability as defined in the Loads and Resources Study, and updated if BPA determines that is necessary.

Incr $ = Monthly cost to BPA, plus a handling fee, of incremental power for HLH and LLH expressed in mills/kWh (see below). These costs also may include where applicable, wheeling, ancillary, and other charges BPA may incur in purchasing power from other entities such as, but not limited to, the California ISO or the California PX.

Incr Amt = Amount of incremental power required, determined monthly and defined as the TACUL Amt minus the Inventory Amt. (If there is no available Inventory Amt, the Incr Amt will equal the TACUL Amt).

Incr $ is greater than Rate $ (If Incr $ is less than Rate $, the TACUL is 0 mills/kWh).

TACUL is the monthly rate adjustment in mills/kWh. BPA will calculate the cost (Incr $) per month in mills/kWh of the additional power per month (Incr Amt) for a specific Customer request. BPA will establish the cost of the additional power by the following methods:

a. BPA will establish the price based on BPA's monthly cost to purchase the incremental load by purchases of resources at market, or the monthly cost of BPA recallable power contracts, averaged, whichever is less.

b. A price plus handling fee calculated based on the following index.

BPA will calculate the price per month for HLH and LLH, based on an index calculated according to the following:

Price of HLH = ⅓ HLH (DJ Mid C) + ⅓ HLH (California PX) + ⅓ (NYMEX Mid C)

Price of LLH = ½ LLH (DJ Mid C) + ½ LLH (PX)

Where the California PX basis is adjusted to DJ Mid C

Where:

DJ Mid C = Dow Jones Firm On-peak (HLH) and Firm Off-peak (LLH) Mid-Columbia Electricity Price Index

California PX = California Power Exchange Day-Ahead Zonal Prices (Constrained)—the average of NW1 (Captain Jack/Malin—COB) and NW3 (NOB) for HLH and LLH

NYMEX Mid C = the New York Mercantile Exchange Futures Electricity Closing Price at Mid-C for the applicable month

California PX prices will be adjusted for basis difference between COB/NOB and the Mid-C using the IS/PTP Rates contained in BPA's 1996 Transmission Rate Schedules.

Issued in Portland, Oregon, on July 30, 1999.

Jack Robertson,

Deputy Administrator.

[FR Doc. 99–20805 Filed 8–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Correction of Errors in the Firm Power Products and Services Rate Schedule (FPS–96): Clarifying the Applicability of the FPS–96 Contract Rate to Certain Capacity With Energy Return Contracts, Public Hearing, and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Proposed Correction of Errors in the Firm Power Products and Services Rate Schedule (FPS–96): Clarifying the Applicability of the FPS–96 Contract Rate to Certain Capacity With Energy Return Contracts.

SUMMARY: BPA unbundled its wholesale power and transmission products in its 1996 rate case. Pursuant to this unbundling, several of BPA's wholesale power rate schedules included separate rates for sales of firm capacity with energy returns (commonly referred to as capacity without energy). Although clarifying language was mistakenly omitted from the FPS–96 rate schedule, the record established that it was BPA's intent that the firm capacity with energy returns product would be sold at a negotiated price.

Certain BPA contracts executed prior to October 1, 1996, provide that BPA supply capacity without energy at the demand charge in the Contract Rate of

the then applicable surplus firm power rate schedule. BPA erred in the FPS–96 rate schedule when it failed to expressly state in that schedule that the capacity without energy product would be priced at a negotiated rate. The demand charge in the Contract Rate section of FPS–96 was priced to be sold only in conjunction with the purchase of the separate energy product in that section. This action is intended to correct those errors.

DATES: The prehearing conference will be held on August 24, 1999, from 1:00 p.m. to 4:00 p.m., Room 223, 911 N.E. 11th, Portland, Oregon. Written comments by participants must be received by October 13, 1999, to be considered in the Record of Decision (ROD).

ADDRESSES: BPA's initial rate proposal in this proceeding will be available for examination on August 24, 1999 at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 N.E. 11th, Portland, Oregon. Written comments should be submitted to Mr. Michael Hansen, Public Involvement and Information Specialist; Bonneville Power Administration; P.O. Box 12999; Portland, Oregon 97212. The prehearing conference will be held on August 24, 1999, from 1:00 p.m. to 4:00 p.m., Room 223, 911 N.E. 11th, Portland, Oregon. To request documents in this proceeding by telephone, call BPA's document request line: (503) 230–4328 or call toll-free 1–800–622–4519. Please request the document by its listed title. BPA's initial proposal for FPS–96R will also be available on BPA's website at *www.bpa.gov/power/ratecase.*

Responsible Official: Ms. Diane Cherry, Manager for Power Products, Pricing and Rates, is the official responsible for the development of BPA's wholesale power rates.

SUPPLEMENTARY INFORMATION:

Part I—Introduction and Procedural Background

A. Relevant Statutory Provisions Governing This Rate Proceeding

Section 7 of the Northwest Power Act, 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the sale of electric energy and capacity. In particular, section 7(a)(1), 16 U.S.C. 839e(a)(1), provides in part that:

[S]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law.

Rates established by BPA are effective on an interim or final basis when approved by FERC. 16 U.S.C. 839e(a)(2). In addition to the Northwest Power Act, BPA ratemaking is governed by the Bonneville Project Act, 16 U.S.C. Section 832 *et seq.*, the Federal Columbia River Transmission System Act, 16 U.S.C. Section 838 *et seq.*, and the Flood Control Act of 1944, 16 U.S.C. 825s.

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be set according to certain procedures. These procedures include issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, or arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986), which implement and, in most instances, expand these statutory requirements.

Pursuant to section 1010.3(c) of the Procedures Governing Bonneville Power Administration Rate Hearings (BPA Procedures), this hearing will be conducted under Rule 1010.10, which governs Expedited Rate Proceedings. The expedited procedures will be used rather than the procedures for General Rate Proceedings conducted under Rule 1010.9. The procedures for General Rate Proceedings are intended for use when the Administrator proposes to revise all, or substantially all, of BPA's wholesale power and transmission rates. The proposed correction of the FPS–96 schedule does not impact any other part of the FPS–96 rate schedule, or any other rate schedule, and will be applicable to a very limited number of contracts. Therefore, the issues in this rate proceeding will be fewer and of more limited scope than the issues in a proceeding to adjust all BPA rates. BPA believes that the Expedited Rate Proceeding will be adequate to develop a full and complete record and to receive public comment and argument related to the proposed corrections. If more time is required, the Hearing Officer may request under section 1010.10(b) of the BPA Procedures that the BPA Administrator grant an extension.

B. Background

On July 17, 1995, BPA filed a notice in the **Federal Register** proposing new wholesale power and transmission rates to be effective on October 1, 1996, including the FPS–96 rate schedule. BPA's initial rate proposal was filed on July 10, 1995, and was supported by written testimony and studies. Parties to the proceeding filed their rebuttal to BPA's direct case and their own direct testimony on September 8, 1995. On December 8, 1995, litigants filed rebuttal to the parties' direct cases. BPA also filed a supplemental rate proposal on December 8, 1995, which consisted of written testimony and studies.

Parties filed their direct cases in response to BPA's supplemental rate proposal on January 26, 1996. Testimony responding to the parties' supplemental cases was filed on February 12, 1996. Rebuttal testimony was filed by all litigants on February 14, 1996. Cross-examination began on February 20, 1996. Parties submitted initial briefs on April 22, 1996. Oral argument before the BPA Administrator and Deputy Administrator was held on April 30, 1996. A Draft ROD was published and distributed to parties on May 4, 1996. Parties filed briefs on exceptions on May 30, 1996. BPA published its Final ROD on June 17, 1996.

BPA filed its proposed rates, including the FPS–96 schedule, with FERC on July 26, 1996. On September 25, 1996, FERC granted interim approval of the proposed rates effective October 1, 1996. United States Dept. of Energy-Bonneville Power Administration, 76 FERC ¶ 61,314 (1996). On July 30, 1996, FERC issued an order granting final confirmation and approval of BPA's rates, including the FPS–96 rate schedule. United Stated Dept. of Energy-Bonneville Power Administration, 80 FERC ¶ 61,118 (1997). The FPS–96 rate was approved for a 10-year period ending September 30, 2006.

C. Proposed Schedule Concerning This Rate Proceeding

BPA's initial rate proposal in this proceeding will be available for examination on August 24, 1999, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor; 905 N.E. 11th, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on August 24, 1999, from 1:00 p.m. to 4:00 p.m., Room 223, 911 N.E. 11th, Portland, Oregon.

To request documents in this proceeding by telephone, call BPA's document request line: (503) 230–4328

or call toll-free 1–800–622–4519. Please request the document by its listed title. BPA's initial proposal for FPS–96R will also be available on BPA's website at *www.bpa.gov/power/ratecase.*

As noted above, BPA will release its proposed revisions to the FPS–96 rate schedule on August 24, 1999. BPA expects to publish a final ROD on December 6, 1999. The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference:

August 24—Prehearing Conference (BPA files Direct Case) and deadline for petitions to intervene.
September 17—Data Requests on BPA's Direct Case Due.
September 24—Data Responses Due.
October 4—Parties' Direct Cases (including rebuttal to BPA's Direct Case).
October 12—Data Requests on Parties' Direct Cases Due.
October 13—Close of Public Comment.
October 19—Data Responses Due.
October 26—Litigants' Rebuttal Cases (no discovery).
November 2—Cross-Examination.
November 9—Initial Briefs.
November 17—Draft Record of Decision.
November 27—Briefs on Exceptions.
December 6—Final Record of Decision.

The procedural schedule established for Docket No. FPS–96R will provide an opportunity for interested persons to review BPA's proposed rates, to participate in the rate hearing, and to submit oral and written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

BPA expects to file its ROD with FERC by January 6, 2000, requesting that the proposed revisions go into effect on or before June 1, 2000.

Part II—Purpose and Scope of Hearing

The purpose of the proposed changes to the Firm Power Products and Services (FPS–96) rate schedule is to clarify and establish the rates that apply to the capacity without energy product.

The FPS–96 rate schedule includes a Contract Rate demand charge section, which contains a rate of $0.87/kW/month. The demand charge in this section was designed and priced to be used exclusively in conjunction with the purchase of the separate energy product included in the same section of FPS–96. The Contract Rate demand charge was not intended to apply to capacity without energy.

The FPS–96 rate schedule is a successor to the Surplus Firm Power (SP–93) rate schedule. However, prior to the product unbundling in the FPS–96 rate schedule, the Contract Rate demand charge in BPA's Surplus Firm Power rate schedules (SP–93, SP–91, SP–89 and SP–86) was priced to provide capacity without energy. The Contract Rate demand charge in each of these Surplus Firm Power rate schedules included: (1) firm energy; (2) firm capacity without energy; and (3) firm power. In addition, the demand charge in the Contract Rate in those schedules was priced to reflect the value of capacity, with or without energy.

Pursuant to BPA's product unbundling in the 1996 rate case, separate sections for the capacity without energy product were included in the Priority Firm Power (PF–96) and New Resource Power (NR–96) rate schedules. Consistent with this product unbundling, the FPS–96 rate schedule was also designed to unbundle capacity and energy products. Although clarifying language was mistakenly omitted from the FPS–96 rate schedule, it was BPA's stated intent that the capacity without energy product would be sold at a negotiated price, not under the Contract Rate demand charge. This is established by BPA's Final 1996 Wholesale Power Rate Development Study (WPRDS), WP–96–FS–BPA–01. Section 4.7 of the WPRDS states in pertinent part that:

> Firm capacity without energy is available under PF–96 and NR–96 rate schedules for Computed Requirements customers purchasing under the 1981 Contract. Firm capacity without energy is also available under the FPS–96 rate schedule, at negotiated prices and terms that may vary from those in the PF and NR rate schedules.

BPA entered into some contracts prior to the establishment of the FPS–96 rate schedule that provide for BPA to supply, under specified circumstances, capacity without energy, and further provide that such product should be priced under the Contract Rate demand charge section of the then applicable Surplus Firm Power rate schedule. As noted previously, the FPS–96 rate schedule is the successor to all prior Surplus Firm Power rate schedules. BPA erred in the FPS–96 rate schedule when it failed to expressly state in that schedule that contracts providing for capacity without energy would no longer be sold at the Contract Rate demand charge, but rather would be priced at a negotiated rate, and that the demand charge in the Contract Rate section in FPS–96 was for a firm power sale product. The fact that an error was made is reflected in the above quoted language from the WPRDS, and in the fact that the $0.87/kW/month price does not, and did not at the time the rate schedule was developed, recover the costs to BPA associated with providing energy during high cost periods and taking energy back during lower cost periods.

Because some contracts may require a posted, as opposed to a negotiated, rate for capacity without energy, BPA is proposing to post seasonally adjusted rates that may be used in instead of a negotiated rate. The posted rates shall be available only for those contracts in effect on or before October 1, 1996, that provide for capacity without energy to be priced at the Contract Rate demand charge in the then applicable Surplus Firm Power rate schedule.

BPA has assessed the potential environmental effects of its rate proposal, as required by the National Environmental Policy Act (NEPA), as part of BPA's Business Plan Environmental Impact Statement (EIS). The analysis includes an evaluation of the environmental impacts of a range of rate design alternatives for BPA's power services and an analysis of the environmental impacts of the rate levels resulting from the rates for such services under the business structure alternatives. BPA's proposal to revise the FPS–96 schedule falls within the range of alternatives evaluated in the Final Business Plan EIS. Comments on the Business Plan EIS were received outside the formal rate hearing process, but will be included in the rate case record and considered by the Administrator in making a final decision establishing BPA's revisions to the 1996 rate schedules. The Business Plan EIS was completed in June 1995.

Pursuant to Rule 1010.3(f) of BPA's Procedures, the Administrator limits the scope of this hearing to issues respecting the correction of the FPS–96 rate schedule as described in section II hereof. Other provisions of the existing FPS–96 rate schedule are not rate matters for the purposes of this hearing.

III. Public Participation

A. Distinguishing Between "Participants" and "Parties'

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges

of, parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted on or before October 13, 1999. Participants' written views, supporting information, questions, and arguments should be submitted to the address noted above. The second category of interest is that of a "party" as defined in Rules 1010.2 and 1010.4 of the BPA Procedures. 51 FR 7611 (1986). Parties may participate in any aspect of the hearing process.

B. Petitions for Intervention

Persons wishing to become a party to BPA's rate proceeding must notify BPA in writing. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by August 24, 1999. The petitions should be directed to: Christopher Jones, Hearing Clerk—LP, Bonneville Power Administration, 905 N.E. 11th Ave., P.O. Box 12999, Portland, Oregon 97212.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and received by BPA within two days after service of the petition.

C. Developing the Record

Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all litigants' direct and rebuttal testimony. Parties will have the opportunity to file initial briefs at the close of any cross-examination. After the close of the hearings, and following submission of initial briefs, BPA will issue a Draft ROD that states the Administrator's tentative decision(s). Parties may file briefs on exceptions, or when all parties have previously agreed, oral argument may be substituted for briefs on exceptions. When oral argument has been scheduled in lieu of briefs on exceptions, the argument will be transcribed and made part of the record. The record will include, among other things, the transcripts of any hearings, written material submitted by the participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will develop the final corrections to the FPS–96 rate schedule based on the entire record. The basis for the final corrections to the rate schedule will be expressed in the Administrator's Final ROD. The Administrator will serve copies of the ROD on all parties and will file the final proposed rate corrections, together with the record, with FERC for confirmation and approval. See 18 CFR Part 300.

IV. Summary of the Proposal

Below are the proposed corrections intended to the FPS–96 rate schedule.

1. Title to Section II. A. is corrected from "Firm Power" to "Firm Power and Capacity Without Energy Sales'

2. The following language will be added to 1.1 Contract Rate section of FPS–96:

The demand charge in the Contract Rate applies firm power sales. Firm capacity without energy is available under the FPS–96 rate schedule at the prices identified in section 1.3 unless otherwise agreed to by BPA and the Purchaser.

3. New FPS–96 Section 1.3:

1.3 Capacity Without Energy

Unless otherwise agreed to by the parties, the monthly charge for capacity without energy shall be the applicable rate for that month, multiplied by the Purchaser's Contract Demand associated with the purchase of capacity without energy.

Applicable months	Rate
September–December	$15.16/kW-mo.
January–March	11.11/kW-mo.
April	10.10/kW-mo.
May–June	$8.30/kW-mo.
July	13.39/kW-mo.
August	19.93/kW-mo.

The rates in the Contract Rate Section II.A.1.1 of FPS–96 apply only to a firm power sale.

V. The Revised FPS–96 Rate Schedule

The revised FPS rate schedule is set forth below. An interlined version of the revised rate schedule will be available for examination on August 24, 1999, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor; 905 N.E. 11th, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on August 24, 1999, from 1:00 p.m. to 4:00 p.m., Room 223, 911 N.E. 11th, Portland, Oregon. In addition, the interlined version of this revised rate schedule will be posted on BPA's website that same day. The website may be reached via www.bpa.gov/power/ratecase.

Schedule FPS–96

Firm Power Products and Services

Section I. Availability

This rate schedule is available for the purchase of Firm Power, Capacity Without Energy, Supplemental Control Area Services, Shaping Services, and Reservation and Rights to Change Services for use inside and outside the Pacific Northwest during the period beginning October 1, 1996, and ending September 30, 2006.

Products and services available under this rate schedule are described in the reprint of the 1996 GRSPs for FPS–96, Section III.A of Bonneville Power Administration (BPA's) General Rate Schedule Provisions (GRSPs). BPA is not obligated to enter into agreements to sell products and services under this rate schedule or make power or energy available under this rate schedule if such power or energy would displace sales under the PF–96, NR–96, IP–96, or VI–96 rates schedules or their successors. Sales under the FPS–96 rate schedule are subject to BPA's GRSPs. Transmission service over Federal Columbia River Transmission System facilities shall be charged under the applicable transmission rate schedule. Ancillary services shall be available under, or at charges consistent with, the Ancillary Products and Services (APS) rate schedule.

This rate schedule supersedes the Surplus Firm Power (SP–93) and

Emergency Capacity (CE–95) rate schedules. Rates under contracts that contain charges that escalate based on rates listed in this rate schedule shall include applicable transmission charges. For sales under this rate schedule, bills shall be rendered and payments due pursuant to BPA's Billing Procedures and/or as agreed to in purchase agreements.

Section II. Rates, Billing Factors, and Adjustments

For each product, the rate(s) for each product along with the associated billing factor(s) are identified below. Applicable adjustments, charges, and special rate provisions are listed for each product. This rate schedule contains four subsections, corresponding to the products offered under this rate schedule:

Section II.A. Firm Power and Capacity Without Energy
Section II.B. Supplemental Control Area Services
Section II.C. Shaping Services
Section II.D. Reservation and Rights to Change Services

A. Firm Power and Capacity Without Energy

1. Rates and Billing Factors

1.1 Contract Rate

The demand charge in the Contract Rate applies to purchases of a firm capacity with no energy return product exclusively, that is, a firm power sale product. Firm capacity with energy return (Capacity without Energy) is available under the FPS–96 rate schedule at the prices identified in section 1.3. Contracts entered into on or before September 30, 1996, that refer to the demand charge in the Contract Rate section of the then applicable surplus power schedule for pricing this product will be priced under section 1.3.

1.1.1 Demand Charge

The charge for demand shall be $0.87 per kilowatt per month in all months of the year, multiplied by the Contract Demand unless otherwise agreed by BPA and the Purchaser.

1.1.2 Demand Charge—Capacity Without Energy Sales

See section 1.3 for pricing.

1.1.3 Energy Charge

The total monthly charge for energy shall be the sum of (1) and (2):

(1) The applicable Heavy Load Hour (HLH) rate for that month, multiplied by the Purchaser's HLH Contract Energy unless otherwise agreed by BPA and the Purchaser; and

(2) The applicable Light Load Hour (LLH) rate for that month, multiplied by the Purchaser's LLH Contract Energy unless otherwise agreed by BPA and the Purchaser.

Applicable months	HLH rate (mills/kWh)	LLH rate (mills/kWh)
September–December	49.63	46.45
January–March	50.39	47.25
April	44.74	42.73
May–June	24.36	21.21
July	29.94	26.09
August	42.68	37.06

1.2 Flexible Rate

Demand and/or energy charges may be specified at a higher or lower average rate as mutually agreed by BPA and the Purchaser. Billing factors shall be Contract Demand and Contract Energy unless otherwise agreed by BPA and the Purchaser.

1.3 Capacity Without Energy

1.3.1 Flexible Rate

For sales not covered by section 1.3.2 the rate(s) for capacity without energy sales shall be as mutually agreed by BPA and the Purchaser.

1.3.2 Posted Rate

The posted rates are available exclusively for contracts entered into on or before September 30, 1996, that include Capacity without Energy provisions where payment shall be at the demand charge associated with the Contract Rate of the then applicable surplus power rate schedule. For sales pursuant to such contracts the monthly charge for Capacity without Energy shall be the applicable rate for that month, multiplied by the Purchaser's Contract Demand associated with the purchase of Capacity without Energy.

Applicable months	Rate
September–December	$15.16/kW-mo.
January–March	$11.11/kW-mo.
April	$10.10/kW-mo.
May–June	$8.30/kW-mo.
July	$13.39/kW-mo.
August	$19.93/kW-mo.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the GRSPs. Relevant sections are identified below.

2.1 Rate Adjustments

Rate adjustment	Section
Energy Return Surcharge	II.H.
Reactive Power Charge	II.O.
Unauthorized Increase Charge	II.R.

2.2 Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.D.

B. Supplemental Control Area Services

1. Rates and Billing Factors

The charge for Supplemental Control Area Services shall be the applicable rate(s) times the applicable billing factor(s), pursuant to the agreement between BPA and the Purchaser.

The rate(s) and billing factor(s) for Supplemental Control Area Services shall be as established by BPA or as mutually agreed by BPA and the Purchaser.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the GRSPs. Relevant sections are identified below.

2.1 Rate Adjustments

Rate adjustment	Section
Energy Return Surcharge	II.H.
Reactive Power Charge	II.O.
Unauthorized Increase Charge	II.R.

2.2 Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.D.

C. Shaping Services

1. Rates and Billing Factors

The charge for Shaping Services shall be the applicable rate(s) times the applicable billing factor(s), pursuant to the agreement between BPA and the Purchaser.

The rate(s) and billing factor(s) for use of Shaping Services shall be as established by BPA or as mutually agreed by BPA and the Purchaser.

2. Adjustments, Charges, and Special Rate Provisions

Adjustments, Charges, and Special Rate Provisions are described in the GRSPs. Relevant sections are identified below.

2.1 Rate Adjustments

Rate adjustment	Section
Energy Return Surcharge	II.H.
Reactive Power Charge	II.O.

Rate adjustment	Section
Unauthorized Increase Charge	II.R.

2.2 Special Rate Provisions

Special rate provisions	Section
Cost Contributions	II.D.

D. Reservation and Rights to Change Services

1. Rates and Billing Factors

The charge for Reservation and Rights to Change Services shall be the applicable rate(s) times the applicable billing factor(s), pursuant to the agreement between BPA and the Purchaser.

The rate(s) and billing factor(s) for Reservation and Rights to Change Services shall be as established by BPA or mutually agreed by BPA and the Purchaser.

2. Adjustments, Charges, and Special Rate Provisions

There are no additional adjustments, charges, or special rate provisions for the Reservation and Rights to Change Services.

Issued in Portland, Oregon, on July 30, 1999.

Jack Robertson,

Deputy Administrator.

[FR Doc. 99–20804 Filed 8–12–99; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Friday
August 13, 1999

Part IV

Department of the Interior

Fish and Wildlife Service

Draft Planning Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Planning Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We propose to establish requirements and guidance for National Wildlife Refuge System planning, including Comprehensive Conservation Plans (CCPs) and step-down management plans. This policy, which incorporates the CCP provisions of the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), will replace Part 602 Chapters 1, 2, and 3 of the Fish and Wildlife Service Manual.

Our policy for managing units of the National Wildlife Refuge System (System) is that we will manage all refuges in accordance with an approved CCP that: guides management decisions; sets forth goals, objectives, and strategies for achieving refuge purposes; contributes to the mission of the System; and meets other relevant mandates. We also may require step-down management plans to provide additional details about meeting goals and objectives and implementing management strategies identified in CCPs. Each plan will be consistent with principles of sound fish and wildlife management, available science, legal mandates, and our other policies, guidelines, and planning documents.

DATES: Submit comments on or before October 12, 1999.

ADDRESSES: Send comments concerning this draft planning policy via mail, fax or e-mail to: Chief, Division of Refuges, US Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; fax (703) 358–2248; e-mail: Planning_Policy_Comments@fws.gov

FOR FURTHER INFORMATION CONTACT: Liz Bellantoni, Refuge Planning Coordinator, Division of Refuges, US Fish and Wildlife Service, telephone (703) 358–2422.

SUPPLEMENTARY INFORMATION: The NWRSIA–1997 amends and builds upon the National Wildlife Refuge System Administration Act of 1966, providing an "Organic Act" for the National Wildlife Refuge System. It clearly establishes that wildlife conservation is the singular mission of the National Wildlife Refuge System; provides guidance to the Secretary of the Interior for management of the National Wildlife Refuge System; reinforces the importance of comprehensive planning for all units of the National Wildlife Refuge System; and gives refuge managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

Planning and the NWRSIA–1997

We will develop a CCP for each refuge or related complex of refuges by October 2012 and will revise each plan every 15 years thereafter or sooner as necessary. The NWRSIA–1997 also requires that we provide an opportunity for active public involvement during the preparation and revision of CCPs. These plans will guide management decisions and establish strategies for achieving the mission of the System and the purposes of each refuge unit.

The NWRSIA–1997 includes a number of provisions that specifically address planning. The following is a summary of those provisions and how they apply to us.

In general, we will propose a CCP for each refuge or related complex of refuges. For each proposed plan we will publish a notice of opportunity for public comment in the **Federal Register**. We will issue a final CCP for each planning unit consistent with the provisions of the NWRSIA–1997 and, to the extent practicable, consistent with the fish and wildlife and conservation plans of the State in which the refuge is located. We will revise the CCP every 15 years after issuance or sooner as necessary.

We shall manage each refuge or planning unit under plans in effect on the date of enactment of the NWRSIA–1997, to the extent such plans are consistent with the NWRSIA–1997, until new CCPs revise or supercede these plans. Uses or activities consistent with the NWRSIA–1997 may occur on any refuge or planning unit before we revise existing plans or issue new CCPs. Upon completion of a CCP for a refuge or planning unit, we shall manage the refuge or planning unit in a manner consistent with the CCP and revise the plan at any time if we determine that conditions affecting the refuge or planning unit have changed significantly.

In developing each CCP for a planning unit, the plan shall identify and describe: the purposes of each refuge comprising the planning unit; the distribution, migration patterns, and abundance of fish, wildlife, and plant populations and related habitats within the planning unit; the archaeological and cultural values of the planning unit; such areas within the planning unit that are suitable for use as administrative sites or visitor facilities; significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants within the planning unit and the actions necessary to correct or mitigate such problems; and opportunities for compatible wildlife-dependent recreational uses.

In preparing and revising each CCP, we shall, to the maximum extent practicable and consistent with the NWRSIA–1997, consult with adjoining Federal, State, local, and private landowners and affected State conservation agencies. We shall also coordinate the development of the CCP or revision with relevant State conservation plans for fish and wildlife and their habitats.

We shall develop and implement a process to ensure active public involvement in the preparation and revision of CCPs. At a minimum, the publication of any final CCP shall include a summary of the comments made by States, owners of adjacent or potentially affected land, local governments, and any other affected persons, and a statement of the disposition of concerns expressed in those comments.

Prior to the adoption of each CCP, we shall issue a public notice of the draft proposed CCP, make copies of the CCP available at our field and regional offices, and provide opportunity for public comment.

Purpose of This Draft Policy

This draft policy would establish requirements and guidance for National Wildlife Refuge System planning, including CCPs and step-down plans, and ensure that planning efforts comply with the provisions of the NWRSIA–1997. This draft planning policy describes a systematic decision-making process that fulfills the requirements we are establishing for developing a CCP. It is not the intent of this policy to provide step-by-step direction on how to prepare a CCP but rather to establish the requirements and standards to which we will hold all CCPs.

Fish and Wildlife Service Directives System

Because many of our field stations are in remote areas across the United States, it is important that all employees have available and know the current policy and management directives that affect their daily activities. Our Directives System, consisting of the Fish and Wildlife Service Manual, Director's Orders, and National Policy Issuances, is the vehicle for issuing our standing and continuing policy and management

directives. We post new directives on the Internet upon approval, ensuring that all employees have prompt access to the most current guidance.

The Fish and Wildlife Service Manual contains our standing and continuing directives with which our employees must comply and has force and effect within the Service. We use it to implement our authorities and to "step down" our compliance with statutes, executive orders, and departmental directives. It establishes the requirements and procedures to assist our employees in carrying out our authorities, responsibilities, and activities.

We limit Director's orders to temporary policy, procedures, delegations of authority, emergency regulations, special assignments of functions, and initial functional statements on the establishment of new organizational units. We convert all Director's orders, as needed, to appropriate parts of the Fish and Wildlife Service Manual. We generally do not issue material appropriate for immediate inclusion in the Fish and Wildlife Service Manual as a Director's order.

National Policy Issuances promulgate the Director's national policies for managing the Service and our programs. These policies are necessarily broad and generally require management discretion or judgment in their implementation. They represent the Director's expectations of how we will act in carrying out our official responsibilities.

The Fish and Wildlife Service Manual, Director's Orders, and National Policy Issuances are available on the Internet at http://www.fws.gov/directives/direct.html. When finalized, we will incorporate this policy on National Wildlife Refuge System planning into the Fish and Wildlife Service Manual as Part 602 Chapters 1, 2, and 3.

Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Chief, Division of Refuges, US Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203. You may comment via the Internet to: Planning_Policy_Comments@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–1744. You may also fax comments to: Chief, Division of Refuges, (703) 358–2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We seek public comments on this draft planning policy and will take into consideration comments and any additional information received during the 60-day comment period.

We will send a copy of the draft Fish and Wildlife Service Manual chapters on National Wildlife Refuge System planning to anyone who would like to receive them. In addition, these chapters will be available on the National Wildlife Refuge System web site (http://refuges.fws.gov [select link to "Library," then link to "Service Manual/Policy—Draft Chapters"]) during the 60-day comment period.

Primary Author: Elizabeth Bellantoni, Fish and Wildlife Biologist (Refuge Planning Coordinator), Division of Refuges, U.S. Fish and Wildlife Service, is the primary author of this notice.

Dated: July 14, 1999.

John G. Rogers,

Director.

Refuge Management

Part 602 National Wildlife Refuge System Planning

Chapter 1 Refuge Planning Overview

602 FW 1

1.1 What is the purpose of Part 602? Part 602 provides guidance for National Wildlife Refuge System (System) planning, including specific chapters on Comprehensive Conservation Plans (CCPs) and step-down management plans. This chapter (602 FW 1) provides an overview of refuge planning.

1.2 What does Part 602 apply to? Part 602 applies to all units of the National Wildlife Refuge System.

1.3 What is our policy for managing refuges? We will manage all refuges in accordance with an approved CCP that guides management decisions and sets forth goals, objectives, and strategies, which when implemented will achieve refuge purposes, contribute to the System mission, and meet all other relevant mandates. We also may require step-down management plans to provide additional details about meeting goals and objectives and implementing management strategies identified in CCPs. Each plan will be consistent with principles of sound fish and wildlife management, available science, legal mandates, and our other policies, guidelines, and planning documents.

1.4 What are our authorities? Authorities listed below include laws that require us to manage units of the System in accordance with approved CCPs and to integrate refuge planning decisions with the National Environmental Policy Act (NEPA) process.

A. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act). This law states that " * * * the Secretary shall—(i) propose a comprehensive conservation plan for each refuge or related complex of refuges * * * in the System; (ii) publish a notice of opportunity for public comment in the **Federal Register** on each proposed conservation plan; (iii) issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located; and (iv) not less frequently than 15 years after the date of issuance of a conservation plan under clause (iii) and every 15 years thereafter, revise the conservation plan as may be necessary." This law provides additional detail on conservation planning for the System.

B. Alaska National Interest Lands Conservation Act of 1980 as amended, 16 U.S.C. 140hh–3233, 43 U.S.C. 1602–1784 (ANILCA). Section 304 states, in part, "The Secretary shall prepare, and from time to time, revise, a comprehensive conservation plan * * * for each refuge." Find additional guidance on the content of these plans and on management direction in this and other sections of ANILCA. If any provisions of the Refuge Administration Act conflict with the provisions of

ANILCA, the provisions of ANILCA shall prevail for refuges in Alaska.

C. National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347, and the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1500–1508. NEPA is the basic national charter for the protection of the environment (NEPA, section 2). The procedural provisions in CEQ's regulations require Federal agencies to: integrate the NEPA process with other planning at the earliest possible time in order to provide a systematic interdisciplinary approach; identify and analyze environmental effects of their actions; describe appropriate alternatives to the proposal; involve the affected State and Federal agencies, Indian tribes, and the affected public in the planning and decision making process; and fully integrate all refuge proposals that may have an impact on the environment with the procedural provisions of NEPA (40 CFR 1501.2).

1.5 What are the goals of refuge planning?

A. To help ensure that we manage the System for the conservation of fish, wildlife, plants, and their habitats; and that refuge management accomplishes our policies, the System mission, and the purposes for which we established the refuge.

B. To help ensure that the administration of the System contributes to the conservation of biological diversity and integrity and to the structure and function of the ecosystems of the United States.

C. To help ensure that our other programs; Federal, State, and local agencies; Tribal governments; conservation organizations; adjacent landowners; and the public have opportunities to participate in the refuge planning process.

D. To provide a basis for adaptive management by monitoring progress, evaluating plan implementation, and updating refuge plans accordingly.

E. To promote efficiency, effectiveness, continuity and national consistency in refuge management.

F. To help ensure consistent Systemwide consideration of the six priority general public uses—hunting, fishing, wildlife observation and photography, and environmental education and interpretation—established by the Refuge Administration Act.

1.6 What do the following terms mean? (Quotations are from the Refuge Administration Act)

A. Alternative. Alternatives are different means of accomplishing refuge purposes and goals, contributing to the System mission, and resolving issues.

B. Comprehensive Conservation Plan/CCP. A document that describes the desired future conditions of the refuge and provides long-range guidance and management direction to accomplish the purposes of the refuge, contribute to the mission of the System, and meet other relevant mandates.

C. Coordination Area. A wildlife management area that is made available to a State, by "(A) cooperative agreement between the United States Fish and Wildlife Service and the State fish and game agency pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or (B) by long-term leases or agreements pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525; 7 U.S.C. 1010 *et seq.*)." States manage coordination areas but they are part of the Refuge System. We do not require CCPs for Coordination Areas.

D. Goal. Descriptive, open-ended, and often broad statement of desired future conditions that conveys a purpose but does not define measurable units.

E. Issue. Any unsettled matter that requires a management decision, e.g., an initiative, opportunity, resource management problem, threat to the resources of the unit, conflict in uses, public concern, or the presence of an undesirable resource condition.

F. National Wildlife Refuge (refuge). "A designated area of land, water, or an interest in land or water within the System, but does not include Coordination Areas." Find a complete listing of all units of the System in the current *Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service.*

G. National Wildlife Refuge System Mission (mission). "The mission of the System is to administer a national network of lands and waters for the conservation, management and, where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans."

H. Objective. An objective is a concise statement of what we want to achieve, how much we want to achieve, when and where we want to achieve it, and who is responsible for the work. Objectives derive from goals and provide the basis for determining management strategies, monitoring refuge accomplishments, and evaluating the success of the strategies. Make your objectives attainable and time-specific and state them quantitatively to the extent possible. If you cannot state objectives quantitatively, state them qualitatively.

I. Planning Area. A planning area may include lands outside existing planning unit boundaries currently studied for inclusion in the System and/or partnership planning efforts. It may also include watersheds or ecosystems that affect the planning unit.

J. Planning Team. Planning teams are interdisciplinary in membership and function. Teams generally consist of a Planning Team Leader; Refuge Manager and staff biologists; and other appropriate specialists (e.g., social scientist, ecologist, recreation specialist). Team members may come from our other programs and other Federal, Tribal, and State natural resource agencies. The planning team prepares the CCP.

K. Planning Team Leader. The Planning Team Leader typically is a professional planner or natural resource specialist knowledgeable of the requirements of the National Environmental Policy Act (NEPA) and who has planning experience. The Planning Team Leader manages the refuge planning process.

L. Planning Unit. A single refuge, an ecologically/administratively related refuge complex or distinct unit of a refuge.

M. Purposes of the Refuge. "The purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit."

N. Refuge Operating Needs System (RONS). The Refuge Operating Needs System is a national database which contains the unfunded operational needs of each refuge. We include projects required to implement approved plans, and meet goals, objectives, and legal mandates.

O. Step-down Management Plans. Step-down management plans deal with specific management subjects (e.g., habitat, public use, fire, safety) or groups of related subjects. Step-down management plans describe management strategies and implementation schedules.

P. Strategy. A specific action, tool or technique or combination of actions, tools, and techniques used to meet unit objectives.

Q. U.S. Fish and Wildlife Service Mission. Our mission is working with

others to conserve, protect, and enhance fish and wildlife and their habitats for the continuing benefit of the American people.

R. Wildlife-Dependent Recreational Use. "A use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation." These uses are the six priority general public uses of the Refuge System as established in the National Wildlife Refuge System Administration Act.

S. Vision Statement. A concise statement of what the planning unit could be, or what we could do, in the next 10 to 15 years, based primarily upon the System mission and specific refuge purposes, and other relevant mandates.

1.7 What is the relationship between the Refuge System, and other planning efforts? Refuge planning should maintain continuity and consistency with other planning initiatives. The relationship between these planning efforts is hierarchical, starting from national plans to regional, State, and ecoregion level plans stepping down to refuge-specific planning. See Exhibit 1. The process of adaptive management uses feedback from refuge research and monitoring, and evaluation of management actions to support or modify goals, objectives, and strategies at all planning levels.

A. National and Regional Plans. Opportunities and issues to address in refuge planning will consider other Service documents that address particular programs, species, habitats, public uses, economic uses, archaeological resources, etc. National and regional goals, objectives, strategies, and policies influence management planning for refuges. Source documents include the Service Manual, the North American Waterfowl Management Plan, National Outreach Strategy, regional resource plans, endangered species recovery plans, migratory bird and flyway plans, fishery resource plans, joint venture plans, Partners in Flight plans, and strategies to promote the conservation of natural biological diversity. The contribution of the refuge to achieving regional and national goals will help implement our mission and ensure the integrity of the System.

B. Service Ecoregion Plans, State Fish and Wildlife Conservation Plans, and Other Landscape Level Plans. Refuge planning will reflect conservation goals and objectives for the landscapes in which the refuges are located. Refuges must review goals and objectives of existing ecosystem plans and determine how the refuge can best contribute to the functioning of the ecosystem. Coordinate refuge planning with State conservation agencies, Tribal governments, other government agencies, and non-governmental organizations. To the extent practicable, the plans will be consistent with the fish and wildlife conservation plans of the State and the conservation programs of Tribal, public, and private partners within the ecosystem.

C. Land Acquisition Planning.

(1) Refuge planning typically begins before the establishment of an area as a unit of the System. Land acquisition planning, (usually resulting in a Land Protection Plan (LPP) and associated NEPA document) is a preliminary step in the continuous, integrated refuge planning process. This process eventually results in completion of a CCP and appropriate refuge step-down plans. Other land use, species, or habitat protection planning efforts, or legislative or executive directive may precede land acquisition planning. Initial refuge establishment documentation (LPP and associated NEPA document) should identify the approved refuge boundary, refuge purpose(s), goals, and general management direction.

(2) Planning for proposed new refuges or major expansions to existing refuges not undergoing a CCP will include the development of a Conceptual Management Plan (CMP) for the new unit. We design the CMP to provide general, interim management direction. The CMP should identify refuge purpose(s), interim goals, and pre-existing compatible wildlife-dependent recreational uses that we may allow to continue on an interim basis. We define the interim period as the duration of time between establishment of a new refuge or refuge expansion and the completion of an approved CCP. Fully integrate land acquisition planning efforts into CCP preparation whenever possible. Some proposed new refuges or refuge expansions may warrant CCP development at the time of acquisition planning. Include appropriate Realty staff on the planning team when considering land acquisition during the CCP process to ensure consistency with land acquisition policy. Also see 341 FW 2.

D. Comprehensive Conservation Plans (CCP). The CCP is a document that describes the desired future conditions of the refuge and provides long-range guidance and management direction for the Refuge Manager to accomplish the purposes of the refuge, contribute to the mission of the System, and to meet other relevant mandates. See 602 FW 2. For refuges established after October 9, 1997, prepare CCPs when the refuge obtains staff and acquires a land base sufficient to accomplish refuge purposes, but no later than 15 years after we establish the refuge. Convert refuge long-range management plans (e.g., master plans and refuge management plans), approved prior to October 9, 1997, into CCPs with appropriate public involvement and NEPA compliance no later than October 2012.

E. Step-down Management Plans. Step-down management plans provide the details necessary to implement management strategies identified in the CCP. CCPs will either incorporate or identify step-down plans required to fully implement the CCP. After completion of the CCP, modify existing step-down plans to accomplish stated objectives as needed. See 602 FW 3.

F. Integration with Budget Development and Implementation. We will use CCPs to guide annual budget requests. We will identify the unfunded costs of implementing strategies in refuge plans using our budget databases, including the Refuge Operating Needs System (RONS), Maintenance Management System (MMS), and Land Acquisition Priority System (LAPS). As we complete or update each plan, we will review and update these databases to incorporate projects identified in refuge plans. The total funding and staffing identified in these databases represents the additional resources required to fully implement the refuge plans.

1.8 Who are the responsible officials?

A. Director. The Director is responsible for providing national policy and ensuring adherence to refuge planning policy.

B. Regional Director. The Regional Director: (1) Ensures compliance with national planning policy, NEPA, and other applicable laws and policies; (2) approves CCPs and associated NEPA and other agency compliance documents; and (3) ensures that we manage refuges in accordance with approved CCPs. The Regional Director or designee approves step-down plans, determines planning priorities and allocates funds to develop and implement plans.

C. Refuge Programmatic Assistant Regional Director (PARD)/Geographic Assistant Regional Director (GARD). The Refuges and Wildlife Program Assistant Regional Directors are responsible for initiating and completing refuge plans, budgeting for planning, ensuring programmatic staff participation, and developing planning priorities with input from the Geographic Assistant Regional

Directors. The Geographic Assistant Regional Directors are responsible for ensuring that ecosystem teams participate in developing plans and implementing approved plans.

D. Refuge Planning Coordinators. The Washington Office, Division of Refuges and each Region will designate a Refuge Planning Coordinator. The Coordinators will periodically meet as a national team to review and recommend changes to planning policy, resolve common planning problems and issues, and help ensure national consistency. In cooperation with representatives of our National Conservation Training Center, the Coordinators will establish and maintain appropriate training courses. Refuge Planning Coordinators will provide guidance and direction to assist regional and field-based planning staff and planning team members. The coordinators are also responsible for maintaining regional planning schedules and updating status reports and funding needs for the planning program.

E. Planning Team Leader. The Planning Team Leader is responsible for initiation of the planning process, preparation and completion of refuge plans, and associated compliance requirements. The Planning Team Leader is responsible for identifying appropriate and proper representation on the interdisciplinary planning team, including core team members, support personnel, and outside or contract assistance. The Refuge Manager and Planning Team Leader submit the final CCP through line supervision for concurrence and approval by the Regional Director.

F. Refuge Supervisor. The Refuge Supervisor is responsible for overseeing participation of the Refuge Manager in CCP preparation and implementation, and for providing direction and guidance on compliance with System policy and regulations.

G. Refuge Manager. The Refuge Manager prepares the CCP working closely with the Planning Team Leader. The Refuge Manager assures that the refuge staff participates in plan development. The Refuge Manager and Planning Team Leader submit the final CCP through line supervision for concurrence and approval by the Regional Director. The Refuge Manager is responsible for making compatibility determinations and ensuring that agency compliance requirements are met and that the CCP, when implemented, will achieve the purposes of the refuge and will contribute to fulfilling the System mission. The Refuge Manager is responsible for implementing approved comprehensive and step-down plans, monitoring progress, and recommending changes to plans based on monitoring and evaluation. The Refuge Manager also reports plan accomplishments through standard reporting mechanisms and budgeting procedures.

H. Planning Team. The planning team, coordinated by the Planning Team Leader, is responsible for the initiation and completion of all planning steps, including public involvement and NEPA compliance, resulting in a refuge CCP. We describe the steps in 602 FW 2.4 C.

I. Regional Environmental (NEPA) Coordinator. The Regional Environmental (NEPA) Coordinator provides technical assistance on NEPA-related matters.

BILLING CODE 4310-55-P

Exhibit 1

Relationships Between Service, System, and Other Planning Efforts

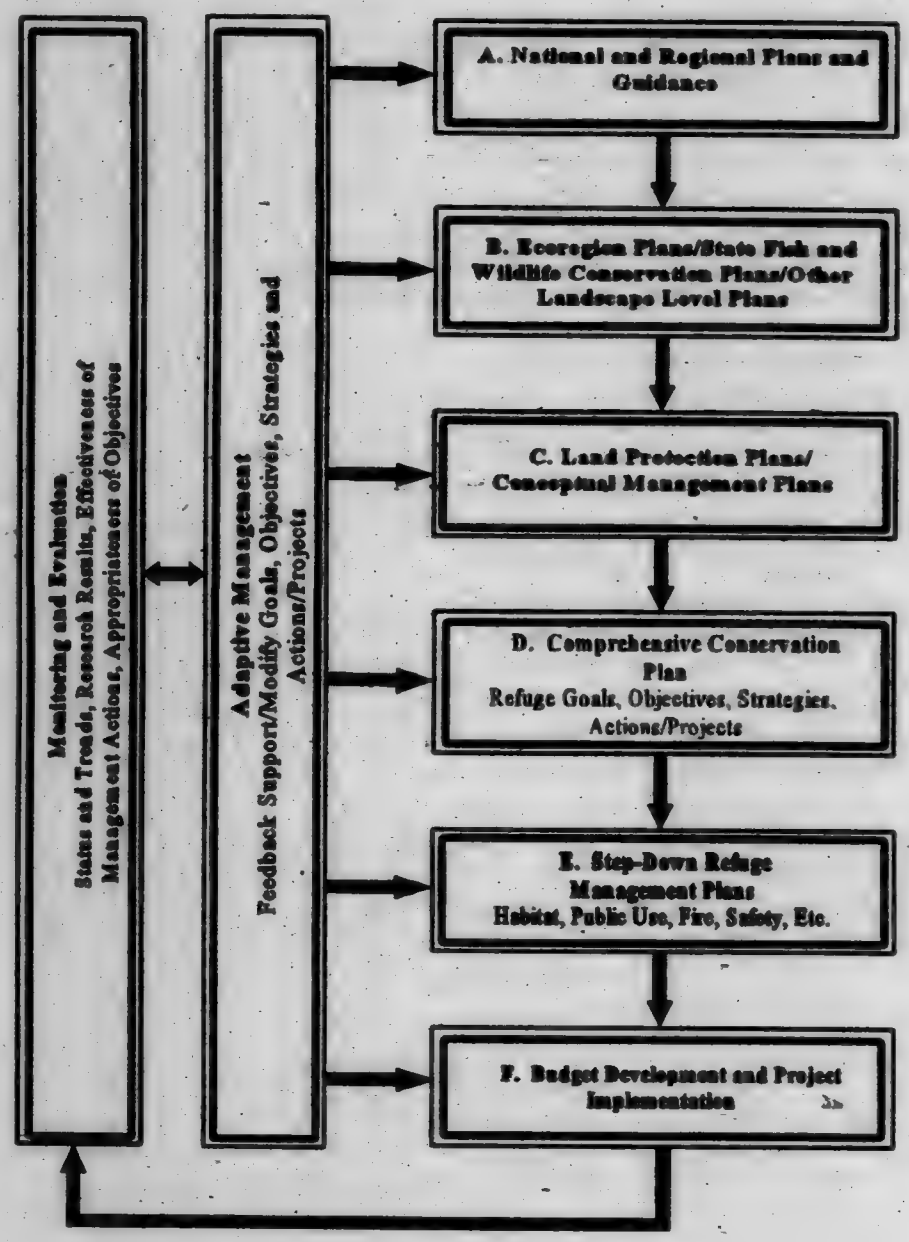

BILLING CODE 4310-55-C

Refuge Management

Part 602 National Wildlife Refuge System Planning

Chapter 2 Comprehensive Conservation Planning Process

602 FW 2

2.1 What is the purpose of this chapter? Comprehensive Conservation Plans (CCPs) describe the desired future conditions of a refuge, and provide long-range guidance and management direction for the Refuge Manager to accomplish the purposes of the refuge, contribute to the mission of the System, and meet other relevant mandates. The purpose of this chapter is to describe a systematic decision-making process that fulfills the requirements we are establishing for developing a CCP. It is not the intent of this policy to provide step-by-step direction on how to prepare a CCP but rather to establish the requirements and standards to which we will hold all CCPs. Experienced planners lead the CCP process. We strongly encourage the Refuge Manager and other key planning team members to attend the National Conservation Training Center (NCTC) course on Refuge Comprehensive Conservation Planning.

2.2 What is our policy for CCPs? We will prepare a CCP for each refuge in existence as of October 9, 1997, by October 2012. For refuges established after October 9, 1997, we will prepare CCPs when we staff the refuge and acquire a land base sufficient to accomplish refuge purposes, but no later than 15 years after establishment of the refuge. To the extent practicable, we will coordinate the development of CCPs with affected States. We will continue to manage each refuge or planning unit with existing plans effective prior to October 9, 1997, to the extent these plans are consistent with the Refuge Administration Act, until we revise such plans or new CCPs supercede them. Upon completion of a CCP, we will manage the refuge or planning unit in a manner consistent with the CCP. We will revise the CCP every 15 years thereafter, or earlier, if conditions that affect the refuge or planning unit change significantly.

2.3 What are our goals for Comprehensive Conservation Planning?

A. To provide a clear and comprehensive statement of desired future conditions for each refuge or planning unit.

B. To help ensure that we manage each refuge to fulfill the mission of the System as well as the specific purposes for which we established that refuge.

C. To encourage that we conduct refuge planning in concert with an ecosystem approach. This includes conducting concurrent refuge planning for refuges within the same watershed or ecosystem, and to consider the broader goals and objectives of the ecoregion, ecosystems and watersheds in which refuges are located when developing management direction.

D. To support management decisions and their rationale by sound professional judgment.

E. To provide a forum for the public to comment on the type, extent, and compatibility of uses on refuges.

F. To provide a uniform basis for budget requests for operational, maintenance, and capital improvement programs.

G. To ensure public involvement in refuge management decisions by providing a process for effective coordination, interaction, and cooperation with affected parties, including Federal agencies, State conservation agencies, Tribal governments, local governments, conservation organizations, adjacent landowners, and interested members of the public.

2.4 What is the Comprehensive Conservation Planning process?

A. The Comprehensive Conservation Planning process (see Exhibit 1) provides consistent guidelines for developing CCPs. We designed the planning process to result in the development of vision statements, goals, objectives, and management strategies that achieve refuge or planning unit purpose(s), contribute to the fulfillment of the System mission, and meet other relevant mandates.

B. Each CCP will comply with the provisions of the National Environmental Policy Act (NEPA) through the concurrent preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) that will accompany or be integrated with the CCP. We have integrated NEPA compliance requirements directly into the CCP planning process. When preparing an EA, consider integrating it into the draft CCP. When preparing an EIS with a CCP, integrate the documents. See Exhibit 1. Following completion of the final CCP/NEPA document, the product of the Comprehensive Conservation Planning process will be a stand-alone CCP, separate from the EA or EIS.

C. Our Comprehensive Conservation Planning process consists of the following eight steps. Although we display the steps sequentially, CCP planning and NEPA documentation are iterative processes. It is normal to cycle through some of the steps more than once or to have several steps occurring simultaneously. Actions within each of the eight steps may not be sequential.

(1) Preplanning: Plan the Plan

(a) Planning Team. Assemble the planning team, including the Planning Team Leader, the Refuge Manager and key staff members, and appropriate support staff or specialists from both regional and ecosystem teams (e.g., fisheries, cultural resources, endangered species, external affairs/outreach, realty, contaminants, migratory birds, water resources, etc.). The planning team also may include representatives from appropriate State or Tribal conservation agencies, and any agency that may have a direct land management relationship with the refuge.

(b) Identify Planning and Compliance Requirements and Special Designations. The planning team will identify planning and compliance requirements by reviewing our mission statements and those of the System, as well as refuge purposes and establishing legislation of the refuge. See Exhibit 2 for a list of laws and Executive Orders that may apply and Exhibit 3 for a checklist of elements we must include within a CCP. The planning team will identify and review other relevant mandates including laws, executive orders, regulations, and our policies, especially those with compliance requirements. The planning team also will review any existing special designation areas such as wilderness, research natural areas, wild and scenic rivers, wetlands of international importance, Western Hemisphere shorebird reserves, etc., and will specifically address the potential for any new special designations. Concurrent with the CCP process we will conduct a wilderness review and incorporate a summary of the review into the CCP. Refer to the wilderness section of the manual (Part 610) for guidance.

(c) Purpose and Need for the Plan. The purpose of developing the CCP is to provide the Refuge Manager with a 15-year management plan for the conservation of fish, wildlife, and plant resources and their related habitats, while providing opportunities for compatible wildlife-dependent recreational uses. The CCP, when fully implemented, should achieve planning unit purpose(s), contribute to the mission of the System, and address any relevant mandates. The CCP must be specific to the planning unit and identify the overarching wildlife, public, or management needs for the refuge.

(d) Planning Area, Data Needs, and Data Standards. Identify the relationship between the planning unit and its ecosystem(s) as well as relationships between the refuge and any other refuges or protected areas. Identify data available to address issues discussed in Step (g) Internal Scoping. You do not need to develop new data for the CCP; the CCP can identify the need for further data collection as a part of plan implementation and refinement. Identify and describe the following as appropriate (also see Exhibit 3).

(i) Distribution, migration patterns, and abundance of fish, wildlife, and plant populations, including any threatened or endangered species, and related habitats.

(ii) Significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants found within the planning unit and the actions necessary to correct or mitigate the problems.

(iii) Diversity of habitats and natural communities.

(iv) Archaeological and cultural resources.

(v) Land acquisition or habitat protection efforts.

(vi) Habitat management practices.

(vii) Natural and historic role of fire and other major disturbance agents affecting ecological processes.

(viii) Water resources including quality and quantity.

(ix) Known or suspected sources of environmental contaminants and their potential impacts on the planning unit (refer to the Contaminant Assessment Program).

(x) Opportunities for compatible wildlife-dependent recreation.

(xi) Potential need for administrative sites or visitor facilities.

(xii) Existing administrative resources, including staffing, funding, and facilities.

(xiii) Existing special management areas, or the potential for such designations (e.g., wilderness, research natural areas, and wild and scenic rivers).

(e) Review all available information, plans, data, maps, and data standards. Based on this review, determine what the initial planning area should include and identify any additional information and data needs, including mapping and GIS needs. **Note:** All Federal agencies and their contractors must comply with data standards endorsed by the Federal Geographic Data Committee (Executive Order 12906; 59 FR 17671, April 13, 1994). Of particular relevance to refuge planning are the Vegetation Classification Standard (FGDC–STD–005) and the Classification of Wetlands and Deep Water Habitats (FGDC–STD–004). Compliance with these standards will facilitate the sharing and exchange of high-quality vegetation and wetland data among Federal agencies and their partners. We also are developing other data standards, such as cartographic standards for delineation of refuge boundaries and land status.

(f) Vision and Goals. Review the existing planning unit vision statement and goals and determine the need for revision. If these do not exist, prepare draft vision and goals for consideration during public scoping. At a minimum each refuge should develop goals within the following management areas: habitat; fish, wildlife, and plant populations; compatible wildlife-dependent recreation; and other relevant mandates (such as refuge-specific legislation, executive orders, special area designations, etc.). In some cases, one or more of these areas will not require goal statements because opportunities do not exist in the management area. Goals will reflect planning unit purposes, contribute to the mission of the System, and will be consistent with relevant mandates and principles of sound fish and wildlife management. Planning unit goals will also reflect ecosystem goals to the extent these goals do not conflict with the System mission or the purposes for which we established the refuge. We also may develop refuge goals for our relevant mandates. Subsequently, we will develop objectives and strategies for planning unit goals (see 602 FW 2.5 (D)(a) Objective Development). For additional information on developing goals and objectives, see the *Writing Refuge Management Goals and Objectives: A Handbook* (March 1996).

(g) Internal Scoping. The planning team begins the internal scoping process by identifying management concerns, issues, and opportunities to resolve them, as well as any potential impacts and alternatives that we may need to address in the CCP and the NEPA analysis. Identify any significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants found within the planning unit (including candidate, threatened, and endangered species) and the actions necessary to correct or mitigate such problems. Make a preliminary assessment of water quality and quantity issues. See 403 FW1–3. Identify the potential need for administrative sites or visitor facilities, and land acquisition. Review the background, rationale, and the success or failure of any controversial management actions, and determine whether you need more information or data. Identify any additional information and data needed where appropriate.

(h) Public Involvement/Outreach Planning. The planning team will prepare a Public Involvement/Outreach Plan indicating how and when we will invite the affected public to participate in the development of the CCP. Establish a mailing list. Identify appropriate techniques and materials to use in public involvement efforts. Public involvement and outreach are integrated into each step and will continue throughout the planning process. For additional information on public involvement techniques, consult the *Public Participation Handbook* (U.S. Fish and Wildlife Service, 1985) or the NCTC *Refuge Comprehensive Conservation Planning Course Handbook and Reference Notebook.*

(i) Work Plan/Planning Schedule. Establish a work plan or planning schedule for the project. Determine who will be responsible for carrying out identified tasks, gathering information and data, and preparing products identified in the work plan or schedule. Identify all key NEPA compliance steps and public involvement activities. Identify any additional expertise, besides the planning team, required to prepare the CCP. This may include an economist, a facilitator for public and other meetings, contracted professional services, etc.

(j) Planning Record. Establish a Planning Record to document the preparation of the CCP and NEPA compliance, and assign its maintenance to a team member. The Planning Record will serve as a valuable reference source and provide important background and historical information. If there is a legal challenge to the CCP, use the Planning Record to construct the Administrative Record. For additional information on the Planning Record, consult the NCTC *Refuge Comprehensive Conservation Planning Course Handbook and Reference Notebook.*

(2) Initiate Public Involvement and Scoping

(a) Notice of Intent. Prepare a Notice of Intent (NOI) to prepare a CCP, with appropriate NEPA compliance, and publish the notice in the **Federal Register**. The notice initiates public scoping for the CCP/NEPA planning and decision-making process. If we initially determine that we will prepare an EIS for the CCP, the NOI should specify that. If at any time during the planning process we decide to prepare an EIS, we will publish a NOI to prepare an EIS in the **Federal Register**. A 30-day comment period will follow this notice.

(b) Public Scoping. Using news releases to the local media and other appropriate means, notify the affected public of the opportunity to participate in the preparation of the CCP and begin the scoping process. Conduct public involvement activities and gather public comments on any existing planning unit vision statements, goals, and objectives. Encourage the public to help identify potential issues, management actions and concerns, significant problems or impacts, and opportunities or alternatives to resolve them.

(c) Issues and Data Needs. Analyze all comments gathered and recorded during the scoping process. Identify any new issues, concerns, or significant problems, opportunities to resolve them, and potential refinements or revisions of existing planning unit vision statements, goals, and objectives. Based on this analysis, identify any additional information and data needed.

(3) Review Vision Statement and Goals and Determine Significant Issues

(a) Vision and Goals. Review and evaluate the public's comments on the planning unit vision statement and goals. Based on this review, modify the vision and goals for the planning unit as appropriate. See 602 FW2.5A(5).

(b) Determine Significant Issues. Review and evaluate all potential issues, management concerns, and problems and the opportunities to resolve them that the planning team or the public have identified. Identify those issues and concerns that are significant and that the CCP and associated NEPA document will address. Document the rationale for selecting significant issues, as well as the rationale for not selecting the other issues and concerns (e.g., outside the scope of the CCP, does not contribute to meeting refuge purposes/mission, etc.).

(4) Develop and Analyze Alternatives, Including the Proposed Action. This part of the process is not sequential, it is iterative. Iterations of issue assessment; refinement and development of goals, objectives, and strategies; analysis and comparison of impacts and benefits of management actions; and the packaging or combining of similar themes or programs to develop preliminary alternatives result in the development of alternative management plans, and assessment of their environmental consequences. Start the process by defining the No Action or Continuation of Current Management Alternative. The alternatives should reflect different sets of strategies and actions to achieve refuge purposes, goals and objectives. Consider presenting this information in a matrix comparing issues, impacts, and benefits for each alternative.

(a) No Action Alternative. Define the No Action Alternative, which usually will be a continuation of current planning unit management strategies, fish, wildlife, plant populations, habitat, and public use management with no changes, or changes that would have occurred without the CCP. Develop maps that depict the No Action Alternative and document current management strategies.

(b) A Range of Alternatives. Develop a range of alternatives, or different approaches to planning unit management, that we could reasonably undertake to achieve planning unit goals and resolve any significant issues identified. Combine different sets of objectives and strategies to provide alternatives for management of the refuge. Give an equal effort to each alternative regarding specific objectives and strategies so that the decision-maker can make an informed choice. NEPA requires an equal and full analysis of all alternatives considered for implementation.

(c) Proposed Action. Identify our proposed action. This may be the alternative that best achieves planning unit purpose(s), vision, and goals; contributes to the System mission; addresses the significant issues and relevant mandates, and is consistent with principles of sound fish and wildlife management. Our proposed action is, for all practical purposes, the draft CCP for the planning unit.

(d) Objective Development. Develop objectives to address each goal. Consult our manual chapters on habitat management, populations management, and wildlife-dependent recreation during the development of objectives. The planning team should develop detailed, quantitative objectives when possible, using available information. Developing detailed objectives at this stage will expedite development of step-down plans. Develop objectives for specific refuge habitat types, management units, key species (e.g., migratory birds and threatened and endangered species), wildlife-dependent recreation, monitoring populations of fish, wildlife, and plants and their habitats, and other areas of management. Objectives may also deal with station information needs (for example, including the development of baseline data), administrative needs, and any other issues we need to address to meet the goals of the refuge. Document the rationale which supports each objective. The planning team also should consult *Writing Refuge Management Goals and Objectives: a Handbook* (March 1996). Prepare step-down management plans to provide the specific details of how to implement some strategies, and accomplish some objectives, if needed.

(e) Strategy Development. Develop strategies to identify the specific actions, tools, or techniques which are necessary to accomplish each objective. Strategies represent specific projects that provide the detail required to assess and develop funding, staffing, and partnerships needed to implement the plan. Develop inventory and monitoring strategies to measure implementation results in quantifiable and verifiable ways. We may need step-down management plans to provide the specific details of how to implement some strategies.

(f) Environmental Consequences. Assess the environmental consequences of implementing each alternative as required by NEPA. Compare the consequences of implementing each alternative in relation to the No Action Alternative, which serves as a baseline. Describe the adverse and beneficial impacts of implementing each alternative on fish, wildlife, and plants, and their habitats; any threatened or endangered species; cultural resources; the local economy; the ability to provide opportunities for compatible wildlife-dependent recreational uses; and other issues identified earlier in the planning process. This analysis must provide the level of detail necessary to assess the compatibility of all proposed uses. Describe each alternative's ability to achieve planning unit purpose(s), vision, and goals; contribute to the System mission; and address the significant issues and relevant mandates. This assessment will also identify the funding, staffing, and facilities required for implementation of each alternative.

(5) Prepare Draft Plan and NEPA Document

(a) Draft CCP and NEPA Document. Concurrently prepare the draft CCP and appropriate NEPA documentation. When preparing an EA, consider integrating the draft CCP with the EA. When preparing an EIS with a CCP, integrate the documents. If you decide to prepare separate documents, see Exhibit 4 for a recommended CCP outline. If the documents are separate, the proposed action and alternatives in the EA/EIS must fully contain all of the major actions of the draft CCP. If you decide to merge the CCP and NEPA documents, see Exhibit 5 for a recommended outline. During the process of preparing the plan, refer to Exhibit 3 to ensure that you include all

required elements in the plan. Ensure compliance regarding other programs and policies, including Section 7 of the Endangered Species Act, Section 404 of the Clean Water Act, Section 106 and 110 of the National Historic Preservation Act, Section 14 of the Archaeological Resources Protection Act, Executive Order 13007—Protection of Sacred Sites, Executive Order 11990—Protection of Wetlands, Executive Order 11988—Floodplain Management, etc. See Exhibit 2 for a list of relevant mandates to consider during the planning process.

(b) Compatibility Determinations. Complete or recertify compatibility determinations as part of the CCP process for all individual uses, specific use programs, or groups of uses associated with our proposed action. Prepared concurrently with the CCP, incorporate the draft compatibility determinations into the draft CCP as an appendix. We require public review and comment for all compatibility determinations. We can achieve this concurrently through public review and comment of the draft CCP and NEPA document. While other alternatives do not require formal compatibility determinations, assess the environmental consequences, and, for all practical purposes, compatibility of all uses proposed in those alternatives in the NEPA document. For additional information on compatibility determinations, consult the Service Manual, Part 603, Chapter 3 (603 FW 3).

(c) Interim Compatibility Determinations. If our proposed action includes expanding the planning unit by acquiring new lands, the draft CCP and NEPA documents also must identify any existing wildlife-dependent recreational uses occurring on those lands. Also identify those uses deemed compatible that we may allow to continue on an interim basis once we acquire the lands, pending completion of the CCP. Incorporate these interim compatibility determinations into the draft CCP and NEPA document.

(d) Internal Review. Submit the draft CCP and NEPA document for internal review within the Region following established regional procedures. Also submit these documents for internal review to all Regional Planning Coordinators and the Washington Office Planning Coordinator. Consider all comments received from the internal reviews and make appropriate changes to the draft document. Print the draft CCP and NEPA document and prepare for public review.

(e) Public Notice, Review, and Comment. Prepare a Notice of Availability of the draft CCP and NEPA document and publish it in the **Federal Register**. Notify the affected public of the availability of these documents through other appropriate means, as identified in the Public Involvement/Outreach Plan. Public notices will make clear that we are seeking concurrent review on compatibility determinations. Provide a minimum of 30 days review for a draft CCP with an EA and 60 days for a draft CCP with a draft EIS. Make copies of the draft CCP and NEPA document available to appropriate elected officials; Federal, State, and local agencies; Tribal governments; organizations; libraries; adjacent landowners; and individuals requesting them. Conduct appropriate public involvement activities as called for in the Public Involvement/Outreach Plan. Document all public comments, both written and oral, received on the draft CCP and NEPA document as part of the planning record.

(6) Prepare and Adopt Final Plan

(a) Public Comment, Analysis, and Response. Review and analyze all written and oral comments received from the public on the draft CCP and NEPA document. Determine which comments are substantive and warrant written response. Modify the document(s) as appropriate. Prepare a summary of the public comments received and a statement of the disposition of concerns expressed in those comments, noting where we have changed the document(s) or why we did not make such changes. Incorporate the summary and statement of disposition into the final document(s) (usually in the NEPA document or a CCP appendix).

(b) Final CCP and NEPA Document(s). Identify our preferred alternative and prepare the final CCP and appropriate NEPA documentation. The preferred alternative can be the proposed action, no action alternative, or another alternative discussed in the draft CCP and NEPA document. Following completion of the final CCP/NEPA document, the product of the CCP process is a stand-alone CCP (the preferred alternative for the planning unit). During the process of preparing the final plan, refer to Exhibit 3 to ensure that you include all required elements.

(c) Internal Review. Submit the final document(s) for internal review within the region according to established regional procedures. Consider all comments received from the internal review and make appropriate changes to the final document(s).

(d) Decision Document. The decision document will certify that agency compliance requirements are met and that the CCP, when implemented, will achieve the purposes of the refuge and will contribute to fulfilling the System mission.

(i) CCP with an EA and FONSI. The Refuge Manager and Planning Team Leader submit the final CCP and the FONSI through line supervision for concurrence and approval by the Regional Director. The Regional Director will sign and date both the FONSI and the final CCP. Following approval, print and distribute the final documents and appropriate appendices. Provide the FONSI to all interested and affected parties. Concurrent with distribution of the FONSI, provide the final, approved CCP or a summary to all interested parties. In some cases we may require a 30-day public review period for the FONSI (see 550 FW 3.3 B(4)(c)). In these cases, we may not sign or release the final CCP until the end of the 30-day review.

(ii) CCP with an EIS and ROD. The Refuge Manager and Planning Team Leader submit the final CCP/EIS through line supervision for concurrence and approval to release these documents to the public. Provide the final EIS to interested and affected parties for at least 30 days prior to issuing a ROD. After a minimum of 30 days, submit the ROD through line supervision for concurrence and approval by the Regional Director. The Regional Director will sign and date both the ROD and the final CCP. Following approval, print the final documents and appropriate appendices. Provide the ROD or notification of its availability to all interested and affected parties. Concurrent with the release of the ROD, provide or make available the final, approved CCP or a summary to interested parties. Effective with the signing and release of the ROD, implement the CCP.

(iii) The final product of the CCP process is a stand-alone CCP (the preferred alternative for the planning unit).

(e) Public Notice. Prepare a Notice of Availability of the final approved CCP and NEPA document(s) and publish it in the **Federal Register**. Notify the affected public of the availability of the final document(s) and through other appropriate means, as identified in the Public Involvement/Outreach Plan. Send copies of all final documents to the regional and Washington Office Planning Coordinators. Make copies of the final approved CCP and NEPA document(s) available to appropriate elected officials; Federal, State, and local agencies; Tribal governments; organizations; libraries; adjacent

landowners; and individuals requesting them.

(7) Implement Plan, Monitor, and Evaluate. Following formal adoption of the CCP and public notification of the decision, implementation of the management strategies identified in the CCP may begin. Allocate funding and staff time to the priority management strategies as defined in the CCP. Initiate the monitoring and evaluation process identified in the CCP to determine if we are making progress in achieving the planning unit purpose(s), vision, goals, and objectives. Through adaptive management, evaluation of monitoring and research results may indicate the need to modify refuge objectives or management strategies.

(8) Review and Revise Plan

(a) Plan Review. Review the CCP periodically to decide if it requires any revisions. Modify management activities periodically if monitoring and evaluation determine that we need changes to achieve planning unit purpose(s), vision, goals, and objectives.

(b) Plan Revision. As set forth in the Refuge Administration Act, periodically review and revise the CCP at least every 15 years. Make minor plan revisions generally through the use of a categorical exclusion, if applicable. Document minor plan revisions that meet the criteria of a categorical exclusion in an Environmental Action Statement, in accordance with 550 FW 3.3C. Contact the Regional NEPA Coordinator for an up-to-date list of categorical exclusions. If the plan requires a major revision, then the CCP process starts anew at the pre-planning step.

(c) Ongoing Public Involvement. Continue informing and involving the public through appropriate means.

BILLING CODE 4310-55-P

Exhibit 1

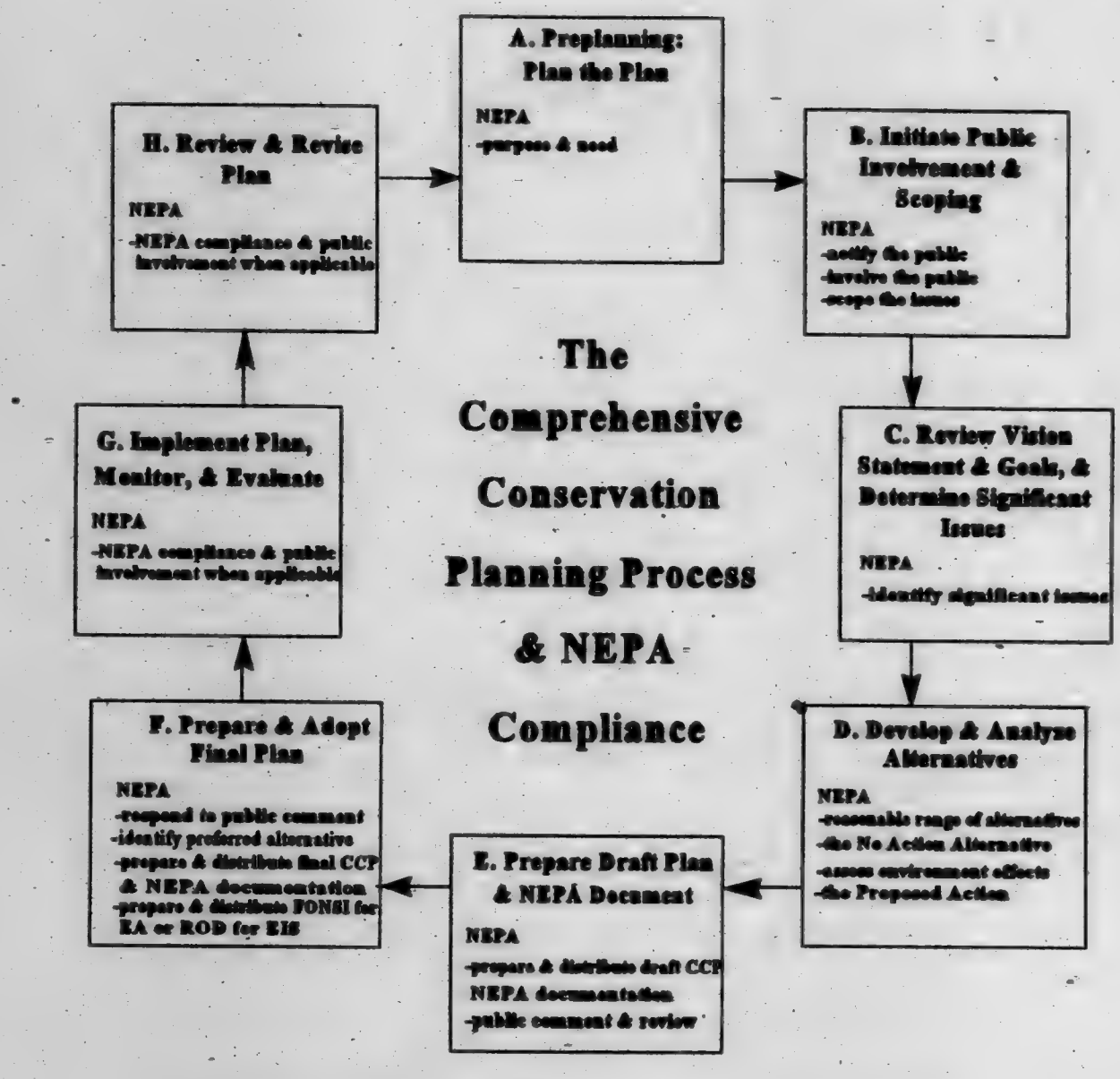

Note: Although the steps are sequential, CCP planning and NEPA documentation are iterative processes. It is normal to cycle through some of the steps more than once or to have several steps occurring simultaneously. Actions within each of the eight steps may not be sequential either.

BILLING CODE 4310-55-C

EXHIBIT 2—MANDATES TO CONSIDER DURING COMPREHENSIVE CONSERVATION PLANNING

	Applicable Yes/No
Statutes	
Alaska National Interest Lands Conservation Act of 1980, as amended	
American Indian Religious Freedom Act of 1978	
Americans with Disabilities Act of 1990	
Anadromous Fish Conservation Act of 1965, as amended	
Antiquities Act of 1906	
Archaeological and Historic Preservation Act of 1974	
Archaeological Resources Protection Act of 1979, as amended	
Bald and Golden Eagle Protection Act of 1940, as amended	
Clean Air Act of 1970	
Clean Water Act of 1974, as amended	
Coastal Zone Management Act of 1972, as amended	
Emergency Wetlands Resources Act of 1986	
Endangered Species Act of 1973, as amended	
Farmland Protection Act of 1981, as amended	
Federal Cave Protection Act of 1988	
Federal Noxious Weed Act of 1990	
Fish and Wildlife Act of 1956	
Fish and Wildlife Coordination Act of 1958	
Fishery (Magnuson) Conservation and Management Act of 1976	
Marine Mammal Protection Act of 1972, as amended	
Migratory Bird Conservation Act of 1929	
Migratory Bird Hunting and Conservation Stamp Act of 1934	
Migratory Bird Treaty Act of 1918, as amended	
National Environmental Policy Act of 1969	
National Historic Preservation Act of 1966, as amended	
National Wildlife Refuge System Administration Act of 1966, as amended	
Native American Graves Protection and Repatriation Act of 1990	
Refuge Recreation Act of 1962, as amended	
Rivers and Harbors Act of 1899	
Water Resources Planning Act of 1965 (sole-source aquifers)	
Wild and Scenic Rivers Act of 1972, as amended	
Wilderness Act of 1964, as amended	
Executive Orders	
Executive Order 11644, Use of Off-Road Vehicles on Public Lands	
Executive Order 11987, Exotic Organisms	
Executive Order 11988, Floodplain Management	
Executive Order 11990, Protection of Wetlands	
Executive Order 12898, Environmental Justice for Minority Populations	
Executive Order 12996, Management and General Public Use of the National Wildlife Refuge System	
Executive Order 13007, Indian Sacred Sites	
Executive Order 13084, Consultation and Coordination with Indian Tribal Governments	

Exhibit 3—Checklist of Required Comprehensive Conservation Plan Elements

Elements

____ Short description of the refuge to include:
- ____ Size
- ____ Establishment date
- ____ Regional setting (include area map)
- ____ Status of acquisition
- ____ Current management (including a map)
- ____ Current staffing
- ____ Existing partnerships
- ____ Purpose(s) for which we established the refuge

____ Refuge System mission and goals.
____ Ecosystem goals and objectives.
____ Goals and objectives for other landscape level plans.
____ National goals and objectives for species, species groups, or programs (e.g., shorebirds, an endangered species, priority public use program).
____ Identify any relevant mandates that apply to the area or the proposed plan.
____ Description of the refuge environment:
- ____ the distribution, migration patterns, and abundance of fish wildlife, and plant populations within the planning unit;
- ____ the archaeological and cultural values of the planning unit;
- ____ refuge land status map;
- ____ description of refuge (planning area) vegetation types (map required);
- ____ description of vegetation/land cover and wildlife habitat relationships;
- ____ description of wildlife habitat and species relationships;
- ____ describe the context of the refuge in meeting the habitat needs of fish, wildlife, and plants, as they occur throughout their natural ranges;
- ____ describe the natural and historic role of fire and other ecological processes;
- ____ identify any existing special management areas (e.g., wilderness, wild and scenic rivers);
- ____ the relationship between the planning unit and other refuges and protected areas.

Exhibit 3

____ Document and describe the following:
- ____ the need for administrative sites or visitor facilities and areas within the planning unit that are suitable for such sites;
- ____ significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants within the planning unit and the actions necessary to correct or

mitigate such problems;
___ summary of management history;
___ water quantity and quality requirements and issues;
___ identify all known or suspected sources of environmental contaminants and their potential impacts (i.e., Contaminant Assessment Program);
___ opportunities for compatible wildlife-dependent recreational uses;
___ other significant issues of management or public concern;
___ the potential for special management areas (e.g., wilderness, wild and scenic rivers, research natural areas).
___ Refuge Vision Statement
___ Refuge goals for at least the following areas:
___ habitat management (including land protection needs as appropriate);
___ fish, wildlife, and plant populations management;
___ wildlife-dependent recreation;
___ others as needed to meet relevant mandates (e.g., wilderness, wild and scenic rivers, cultural resources, etc.).
___ Objectives for each goal, including objectives to monitor the status and trends of fish, wildlife and plants which will evaluate the effectiveness of the plan.
___ Strategies to achieve each objective.
___ Map(s) of desired future conditions (e.g., habitat management areas, facilities, wildlife-dependent recreation sites, etc.).
___ Identify step-down management plans required to fully implement the plan.
___ Prioritized list of projects and estimated project costs (update priorities and cost estimates annually).
___ Staffing required to implement the plan.
___ Potential partnership opportunities.
___ Monitoring plan to evaluate the effectiveness of the plan and project implementation, including monitoring of target fish, wildlife, and plant populations and their habitats.
___ Summary of public involvement process, comments, and consultation and coordination with other Federal agencies, State conservation agencies, and adjacent landowners.
___ Compatibility determinations.
___ Wilderness review.
___ Habitat/Land Protection Plans (if applicable).
___ NEPA documentation.

Note: Some of these required elements may not be available. In these cases, you need to develop objectives or strategies in the plan to acquire that information.

Exhibit 4—Refuge Comprehensive Conservation Plan Recommended Outline

Cover Sheet
Title/Approval Page
Acknowledgments
Table of Contents
Summary
I. Introduction/Background
  Refuge Overview: History of Refuge Establishment, Acquisition and Management
  Purpose of and Need for Plan
  NWRS Mission, Goals and Guiding Principles
  Refuge Purpose(s)
  Refuge Vision Statement
  Legal and Policy Guidance
  Existing Partnerships
II. Planning Process
  Description of Planning Process
  Planning Issues
III. Summary Refuge and Resource Descriptions
  Geographic/Ecosystem Setting
  Refuge Resources, Cultural Values and Uses
  Special Management Areas
IV. Management Direction
  Refuge Management Direction: Goals, Objectives and Strategies/Projects
  Refuge Management Policies and Guidelines
V. Implementation and Monitoring
  Funding and Personnel
  Step-down Management Plans
  Partnership Opportunities
  Monitoring and Evaluation
  Plan Amendment and Revision
Appendices
  Glossary
  Bibliography
  RONS List
  MMS list
  Compatibility Determinations
  Habitat/Land Protection Plan(s)
  Compliance Requirements
  NEPA Documentation
  Summary of Public Involvement/ Comments and Consultation/ Coordination
  Mailing List
  List of Preparers
  Others, as appropriate

Exhibit 5—EA or EIS Incorporating Elements of a CCP Recommended Outline

Cover Sheet
Acknowledgments
Table of Contents
Summary
I. Introduction, Purpose of and Need for Action
  Purpose of and Need for Plan
  NWRS Mission, Goals and Guiding Principles
  History of Refuge Establishment, Acquisition and Management
  Legal and Policy Guidance
  Refuge Purpose(s)
  Refuge Vision Statement
  Refuge Management Direction: Goals
  Refuge Management Policies and Guidelines
  Step-down Management Plans
  Description of Planning Process
  Planning Issues
  Plan Amendment and Revision
II. Alternatives, Including the Service's Proposed Action
  Description of Each Alternative
    Refuge Management Direction: Objectives and Strategies
    Funding and Personnel
    Partnership Opportunities
    Monitoring and Evaluation
  Alternatives Considered, but Eliminated from Detailed Study
  Summary Comparison of Alternatives
III. Affected Environment
  Geographic/Ecosystem Setting
  Refuge Resources, Cultural Values and Uses
IV. Environmental Consequences
  Environmental Effects of Each Alternative
V. List of Preparers
VI. Consultation and Coordination with Others
  Summary of Public Involvement/ Comments
  Mailing List
Appendices
  Glossary
  Bibliography
  RONS List
  MMS List
  Compatibility Determinations
  Habitat/Land Protection Plan(s)
  Compliance Requirements
  Others, as appropriate

Refuge Management

Part 602 National Wildlife Refuge System Planning

Chapter 3 Step-Down Management Planning

602 FW 3

3.1 What is the purpose of this chapter? This chapter provides guidance on step-down management planning.

3.2 What is our policy for step-down management planning? Prepare step-down management plans when required by policy or identified in Comprehensive Conservation Plans (CCPs) and when they may be necessary to provide additional detail for achieving objectives or implementing management strategies identified in

CCPs. Step-down management plans should include public involvement and National Environmental Policy Act (NEPA) compliance documentation, as appropriate. Develop step-down management plans following the planning process guidance in 602 FW 2. (Consult your NEPA Coordinator.)

3.3 What is the applicability of step-down management planning and its relationship to Comprehensive Conservation Plans?

A. Step-down management planning is the formulation of detailed plans that describe management activities necessary to achieve objectives or implement management strategies identified in the CCP.

B. Step-down plans describe the specific management actions we are to follow, "stepping down" from general goals, objectives, and strategies. The preparation of new step-down plans or substantial changes to existing step-down plans typically will require further compliance with NEPA and other policies, and opportunity for public review. For public use plans or other step-down plans dealing with proposed uses of the refuge, prepare and append compatibility determinations to the plan.

C. The CCP will identify which step-down management plans are necessary and provide a schedule for their completion. While we require certain step-down plans for all refuges, we may require others, such as fire management and pest management depending on refuge resources, specific program requirements, or the need for additional details to implement management strategies identified in CCPs. In the absence of an approved CCP, we may develop step-down plans to describe goals, objectives, management strategies, and details necessary to implement a management program.

D. As an alternative to separate step-down management plans, we may address management programs in detail during the preparation of the CCP. Determining which programs we can address in detail in the CCP depends on several factors, including the degree of public interest, the amount of available information, and the complexity of the issues.

3.4 How do we combine step-down management plans? Address management subjects individually or combined into a single, integrated step-down plan. This decision rests with the Refuge Manager. Base the decision on management strategies defined in the CCP, the relationship between management program areas, and the complexity of the programs under consideration. Some program areas, such as fire management and habitat management, logically suggest an integrated approach.

3.5 What is the list of potential step-down management plans? Following is the current list of potential refuge step-down management plans. Consider all of these plans during the CCP process. The CCP will document which plans we require for the station.

Step-down management plans	Service manual reference
Occupational Safety and Health (required).	(Part 240)
Safety Program	(240 FW 1–9)
Safety Operations	(241 FW 1–8)
Industrial Hygiene	(242 FW 1–13)
Emergency Spill Response Plan.	(242 FW 6.1)
Compliance Requirements.	(Part 561)
Spill Prevention Control and Countermeasures Plan.	(561 FW 3)
Pollution Prevention Plan.	(560 FW 1 and 560 FW 2)
Hazardous Waste Contingency Plan.	(561 FW 6)
Special Management Areas.	(Part 611)
Research Natural Areas.	(611 FW 1)
Public Use Natural Areas.	(611 FW 2)
Wild and Scenic Rivers.	(611 FW 3)
National Trails	(611 FW 4)
Wilderness Area Management.	(Part 610)
Man in the Biosphere Reserve.	(National Park Service)
Western Hemisphere Shorebird Reserves.	
Ramsar Convention	(International Legal Materials 11:963–976)
Minerals Management	(Part 612)
Minerals and Mining	(612 FW 1)
Oil and Gas	(612 FW 2)
Long-Range Water Management Plan.	(403 FW 1.4)
Cultural Resources Management.	(Part 614)
Habitat Management Plan (HMT).	(Part 620)
Fire Management	(Part 621)
Wildlife-dependent Recreation.	(Part 605)
Hunting (required)	(605 FW 2)
Fishing (required)	(605 FW 3)
Wildlife Observation	(605 FW 4)
Wildlife Photography	(605 FW 5)
Environmental Education.	(605 FW 6)
Interpretation	(605 FW 7)
Law Enforcement	(Parts 440–459)
Populations Management	(Part 701)
Wildlife Inventories	(701 FW 2)
Propagation and Stocking.	(701 FW 3)
Marking and Banding.	(701 FW 4)
Disease Prevention and Control.	(701 FW 7)
Fishery Management	(Part 710)
Trapping	(631 FW 4)
Pest Management	(562 FW 2)
Exotic Species Management.	(Part 751)
Air Quality Management	(563 FW 2)

[FR Doc. 99–20923 Filed 8–12–99; 8:45 am]
BILLING CODE 4310–55–P

Federal Register

Friday
August 13, 1999

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1999–2000 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1999–2000 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 1999–2000 migratory bird hunting season.

DATES: To comment on these proposed regulations, you must do so by August 23, 1999.

ADDRESSES: Send your comments to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634–ARLSQ, 1849 C St., NW., Washington, DC 20240. You may inspect comments during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

SUPPLEMENTARY INFORMATION: In the May 3, 1999, **Federal Register** (64 FR 23742), we requested proposals from Indian tribes wishing to establish special migratory bird hunting regulations for the 1999–2000 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). We developed guidelines in response to tribal requests for recognition of their reserved hunting rights and, for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and non-tribal members, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines apply to those tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for non-tribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by non-tribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications to all State Directors, tribes and others interested parties. It is the responsibility of the States, tribes and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where it has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the 1916 Migratory Bird Convention with Canada, and does not adversely affect the status of the migratory bird resource.

Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for non-tribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of non-tribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

We may modify or establish regulations experimentally, after evaluation and confirmation of harvest information obtained by the tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and therefore, made them final beginning with the 1988–89 hunting season. It should be stressed here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Population Status

May Breeding Waterfowl and Habitat Survey

In the Western or Traditional survey area, breeding habitat conditions were generally good to excellent, and overall better than conditions in 1998. An early warm spring and plenty of precipitation resulted in abundant ponds and excellent nesting cover in most of the Dakotas, northern Saskatchewan, the Northwest Territories, and western Ontario. The exceptions to these good conditions were southern and central Alberta, central Saskatchewan, and western Montana, where a dry early spring limited nesting habitat; and Alaska, where spring was as much as 2 weeks late. The estimated number of May ponds in the traditional survey area (6.7 million) was 46% greater than that of 1998, and 37% greater than the 1974–98 average. Overall, the traditional survey area was in good to excellent condition this spring and good to excellent waterfowl production is expected this year.

An expanded area of Eastern habitat conditions was included this year in the East. Although these additional areas have been surveyed since 1996, information from them is included this year for the first time. Unlike the Western survey area, habitat conditions in the east were generally poorer this year than last year. Much of the eastern survey area was relatively dry, especially Maine, the Maritimes, southern Quebec, and southern Ontario. Conditions resulted in few temporary ponds and low water levels in permanent water bodies. The northern portions of the east were in good to excellent condition, but lack of brood rearing habitat is expected to also limit production from this area. Overall, the eastern survey area was in fair to good condition, with fair to good production expected this year.

The 1999 total duck population estimate for the traditional survey area was 43.4 million birds, an increase of 11% over that of 1998, and 32% higher than the 1955–98 average. Mallard abundance was 10.8 million, an increase of 12% over last year and 47% greater than the long term average. Blue-winged teal abundance was 7.1 million, similar to 1998, but 65% greater than the long term average. Northern pintail (3.0, +21%), scaup (4.4 million, +27%), green-winged teal (2.6, +26%), and northern shoveler (3.9 million, +22%) increased from 1998 estimates. Gadwall (3.2 million, +110%), green-winged teal (+51%), northern shoveler (+95%), redheads (0.9 million, +60%), and canvasbacks (0.7 million, +29%) were above their respective long term averages, while pintails (−30%) and scaup (−18%) were below their long term averages. In the eastern areas of Canada and the U.S., the total number of ducks (1.3 million) remained unchanged from last year and the 1995–98 average. Abundances of individual species in the east were similar to those of last year, except for increased estimates of goldeneye (+196%). Goldeneye was above it's long term average (+287%), while blue-winged teal (−95%) and scaup (−90%) were below theirs.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes appears to have stabilized following dramatic increases in the early 1980's. The Central Platte River Valley 1999 preliminary spring index, uncorrected for visibility, was 222,500. The photo-corrected 3-year average for the 1996–98 period was 477,911, which was 3% above the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, elected to allow crane hunting in portions of their respective States in 1998–99. About 8,700 hunters participated in these seasons, which was 8% higher than the previous year's seasons. About 21,849 cranes were harvested in 1998–99 in the Central Flyway, a 5% increase from the previous year's high estimate. Harvests from Pacific Flyway, Canada and Mexico are estimated to be about 13,700 for 1998–99 sport-hunting seasons. The total North American sport harvest, including crippling losses, was estimated to be about 41,414 for the Mid-Continent Population.

The fall 1998 pre-migration survey estimate for the Rocky Mountain Population was 18,202, which is similar to the 1997 estimate. Limited special seasons were held during 1998 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in an estimated harvest of 538 cranes.

Woodcock

Wing-collection and Singing-ground surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). The 1998 recruitment index for the Eastern Region (1.7 immatures per adult female) equaled the long-term regional average; the recruitment index for the Central Region (1.6 immatures per adult female) was 6% below the long-term regional average. The index of daily hunting success in the Eastern Region increased from 1.8 woodcock per successful hunt in 1997 to 1.9 woodcock per successful hunt in 1998, but seasonal hunting success declined 4%, from 6.9 to 6.6 woodcock per successful hunter in 1997 and 1998, respectively. In the Central Region, the daily success index in 1998 was unchanged from the 1997 index (2.1 woodcock per successful hunt) but the seasonal success index increased from 10.0 to 11.0 (10%) woodcock per successful hunter. Singing-ground Survey data indicated that the number of displaying woodcock in the Eastern Region was unchanged (P>0.1) from 1998 levels. In the Central Region, there was a 13.4% decrease in the number of woodcock heard displaying (P<0.01) compared to 1998 levels. Trends from the Singing-ground Survey during 1989–99 were negative (−3.3 and −3.7% per year for the Eastern and Central regions, respectively; P<0.01). There were long-term (1968–99) declines (P<0.01) of 2.4% per year in the Eastern Region and 1.6% per year in the Central Region.

Doves and Band-tailed Pigeons

Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over the most recent 10 years and the entire 34 years of the survey in all 3 management units. White-winged doves in Arizona are maintaining a fairly stable population since the late 1970's. A low harvest is being maintained compared with birds taken several decades ago. In Texas, the phenomenon of the white-winged dove range expansion continues. Birds are now seen in most large cities in north and central Texas. White-tipped doves in Texas are maintaining their population with a relatively low harvest level. For band-tailed pigeons, the Coastal population continues to show a significant decline as indicated by the Breeding Bird Survey (BBS) for the 10 and 32-year periods. In contrast, mineral spring counts at 10 selected sites in Oregon indicate an overall stable population in the state with an increasing trend since 1986. Call-count survey results in Washington show no significant trends in the bandtail population between 1975–98. Washington has not opted to select a hunting season for band-tail pigeons since 1991. The harvest of coastal pigeons is estimated to be less than 20,000 birds out of a population of about 3 million. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short or long-term time periods. Harvest is less than 1,000 birds.

Hunting Season Proposals From Indian Tribes and Organizations

For the 1999–2000 hunting season, we received requests from twenty-three tribes and Indian organizations appropriate for **Federal Register** publication. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage tribes to work with us to develop agreements for management of migratory bird resources on tribal lands. It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a late-August 1999 **Federal Register** that will include tribal regulations for the early-hunting season. The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. A final rule will also be published in a September 1999 **Federal Register** that will include regulations for late-season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed time frame for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as "Same as permitted Pacific Flyway States under final Federal frameworks," and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 22, 1999 (64 FR 38700); early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the twenty tribes with proposals that meet the established criteria are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Non-tribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 1999–2000 proposal, dated June 17, 1999, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 1999. Daily bag limits would be 10 mourning or 10 white-winged doves either singly or in the aggregate. The late season for doves is proposed to open November 19, 1999, and close January 3, 2000. A daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The tribes also propose duck hunting seasons. The season would likely open October 2, 1999, or on a Saturday and run for the maximum number of days allowed under the Pacific Flyway frameworks. The tribes propose the same season dates for coots and common moorhens. The daily bag limit for ducks, including mergansers, would be the same as that allowed in the Pacific Flyway. The possession limit would be twice the daily bag limit. The daily bag limit for coots and common moorhens would be 25, singly or in the aggregate. The possession limit for coots and common moorhens would be twice the daily bag limit. For geese, the Colorado River Indian Tribes propose a season of November 20, 1999, through January 16, 2000. The daily bag and possession limits for geese would be 4, but could include no more than 3 light geese or 2 dark geese.

In 1996, the tribe conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. As in the past, the regulations would apply both to tribal and non-tribal hunters, and non-toxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 1999–2000 hunting season.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Non-tribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation. The tribes proposed special regulations for waterfowl hunting were submitted in a June 8, 1999, proposal.

As in the past, tribal regulations for non-tribal members would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel, bismuth-tin, or other Federally-approved non-toxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

The requested season dates and bag limits are generally similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

We propose to approve the tribes' request for special migratory bird regulations for the 1999–2000 hunting season.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Non-tribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The tribe observes migratory

bird hunting regulations contained in 50 CFR part 20.

In their 1999 proposal, the tribe requested a duck and merganser season of October 9 to December 21, 1999, with a daily bag limit of 6 ducks, including no more that 5 mallards (1 hen mallard), 1 canvasback, 2 redheads, 2 wood ducks, 2 scaup, and 1 pintail. The merganser daily bag limit would be 5 and include no more than 1 hooded merganser. For Canada geese, the tribe proposes an October 9, 1999, to January 9, 2000, season with a 3 bird daily bag limit. For white-fronted geese, the tribe proposes an October 2 to December 12, 1999, season with a daily bag limit of 2. For snow geese, the tribe proposes an October 2 to December 25, 1999, and February 19 to March 10, 2000, season with a daily bag limit of 20. Similar to last year, the tribe also requests a sandhill crane season from September 18 to October 24, 1999, with a daily bag limit of 3. In all cases, except snow geese, the possession limits would be twice the daily bag limit. There would be no possession limit for snow geese. Shooting hours would be from one-half hour before sunrise to sunset.

The season and bag limits would be essentially the same as last year and as such the tribe expects similar harvest. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been less than 100 geese.

We propose to approve the tribe's requested seasons. We also remind the tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the tribe should contact us for further information on obtaining the needed permits. In addition, as with all other groups, we request the tribe continue to survey and report harvest.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

In 1996, for the first time, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's June 4, 1999, proposal covers land set apart for the band under the Treaty of 1854 in northeast Minnesota.

The band's proposal for 1999–2000 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 11 to November 23, 1999, season on ducks, mergansers, coots and moorhens, and a September 1 to November 28, 1999, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 1 to November 28, 1999, season. Proposed daily bag limits would consist of the following:

Ducks: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

Mergansers: 5 mergansers, including no more than 1 hooded merganser.

Geese: 10 geese.

Coots and Common Moorhens (Common Gallinules): 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: 25 sora and Virginia rails singly, or in the aggregate.

Common Snipe: 8 common snipe.

Woodcock: 3 woodcock.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The Band anticipates harvest will be fewer than 500 ducks and geese and 150 coots.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 1999–2000 season, the Grand Traverse Band of Ottawa and Chippewa Indians proposes a tribal member duck season that would run from September 20, 1999, through January 20, 2000. A daily bag limit of 10 would include no more than 1 pintail, 1 canvasback, 1 hooded merganser, 2 black ducks, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens). For Canada geese, the tribe proposes a September 1 through November 30, 1999, and a January 1 through February 8, 2000, season. For white-fronted geese, brant, and snow geese, the tribe proposes an October 1 through November 30, 1999, season. The daily bag limit for all geese (including brant) would be 5 birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the tribe.

For woodcock, snipe, and sora rail, the tribe proposes a September 1 to November 14, 1999, season. The daily bag limit shall not exceed 5 birds per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The tribe proposes to closely monitor harvest through game bag checks, patrols, and mail surveys. In particular, the tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indian's requested 1999-2000 special migratory bird hunting regulations.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific

regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87, hunting season. In 1987, the GLIFWC requested and we approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the Voigt case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

Recently, certain GLIFWC member bands have brought suit to resolve the issue of hunting, fishing and gathering rights in the Minnesota ceded areas covered under the 1837 and 1854 treaties. The Federal Government has intervened in support of the bands.

In a June 3, 1999, letter, the GLIFWC proposed off-reservation special migratory bird hunting regulations for the 1999–2000 seasons on behalf of the member tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member tribes of the Task Force are: the Bad River Band of Lake Superior Tribe of Chippewa Indians, The Lake Oreilles Band of Lake Superior Tribe of Chippewa Indians, the Lac du Flambeau Band of Lake Superior Tribe of Chippewa Indians, the Red Cliff Band of Lake Superior Tribe of Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), the Mille Lacs Band of Chippewa Indians in Minnesota, the Lac Vieux Desert Band of Chippewa Indians, and the Keweenaw Bay Indian Community in Michigan. Details of the proposed regulations are shown below. In general, the proposal is essentially the same as the regulations approved for the 1998–99 season.

Results of the 1998–99 hunter survey show that 599 ducks and 177 geese were harvested under an anticipated harvest of 3,000 ducks and 900 geese. Under the proposed regulations, harvest is expected to be similar to last year and most likely would not exceed 2,500 ducks and 800 geese.

We believe that regulations advanced by the GLIFWC for the 1999–2000 hunting season are biologically acceptable and recommend approval. If the regulations are finalized as proposed, we would request that the GLIFWC closely monitor the member band duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The GLIFWC's proposed 1999–2000 waterfowl hunting season regulations are as follows:

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 5 mergansers.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese: All Ceded Areas:

Season Dates: Begin September 1 and end December 1, 1999.

Daily Bag Limit: 10 geese.

Other Migratory Birds: All Ceded Areas

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

C. Common Snipe

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 8 common snipe.

D. Woodcock

Season Dates: Begin September 7 and end December 1, 1999.

Daily Bag Limit: 5 woodcock.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and

other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

(g) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Non-tribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

In a May 17, 1999, proposal, the tribe proposed a 1999–2000 waterfowl season opening date of October 2 and a closing date of November 30, 1999. Daily bag and possession limits would be the same as Pacific Flyway States. The tribe proposes a season on Canada geese with a 2-bird daily bag limit. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

The Jicarilla Game and Fish Department's annual estimate of waterfowl harvest is relatively small. In the 1998–99 season, estimated duck harvest was 608, a significant decrease from 816 in 1997–98. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised only 3 percent of the total harvest in 1998.

The proposed regulations are essentially the same as were established last year. The tribe anticipates the maximum 1999–2000 waterfowl harvest would be around 600 to 1,000 ducks and 20 to 50 geese.

We propose to approve the tribe's requested 1999–2000 hunting seasons.

(h) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Non-tribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The tribe enjoys excellent wildlife management relations with the State. The tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife. The non-tribal member seasons described below pertain to a 176-acre waterfowl management unit. The tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 1999–2000 migratory bird hunting seasons, the Kalispel Tribe proposed, in a May 13, 1999, letter, tribal and non-tribal member waterfowl seasons. For non-tribal members, the tribe requests seasons which begin September 1, 1999 and end January 31, 2000. In that period, non-tribal hunters would be allowed to hunt on weekends, holidays and continuously in the month of December and January for a total of about 110 days. Hunters should obtain further information on days from the Kalispel Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The tribe reports a 1998–99 non-tribal harvest of 74 ducks and 0 geese. Under the proposal, the tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of steel shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel proposes outside frameworks for ducks and geese of September 1, 1999, through January 31, 2000. However, during that period, the tribe proposes that the season run continuously. Daily bag and possession limits would be the same as those for the States of Washington and Idaho.

The tribe reports that there was no 1998–99 tribal harvest. Under the proposal, the tribe expects harvest to be less than 200 geese and 300 ducks. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe provided that the non-tribal seasons conform to final Federal frameworks for the Pacific Flyway. For the 1999–2000 season, outside Federal frameworks in the Pacific Flyway are October 2, 1999, through January 23, 2000 for ducks and geese with a 107-day maximum season length.

(i) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

In a July 26, 1999, communication, the Klamath Tribe proposed season dates of October 1, 1999, through January 31, 2000. Daily bag limits would be 9 for ducks and 6 for geese with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset.

Based on the number of birds produced in the Klamath Basin, the tribe expects that this year's harvest will be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath basin.

We propose to approve the Klamath Tribe's requested regulations.

(j) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations.

For the 1999–2000 season, the tribe proposed in a May 20, 1999 letter a tribal member duck and goose season that would run from September 25 through November 28, 1999. Daily bag limits for both ducks and geese would be 10. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

Based on past harvest surveys, the tribe expects less than 200 tribal hunters to participate and a harvest of less than 2,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's requested 1999–2000 special migratory bird hunting regulations.

(k) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Non-tribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via a MOA with the State of South Dakota. The MOA provided the tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. For the 1999–2000 season, the two parties have come to a tentative agreement and meetings between the Lower Brule Sioux Tribe and the South Dakota Department of Game, Fish and Parks are continuing. It is anticipated that an agreement will be established and management authority clarified to allow the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 1999–2000 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a duck and coot season length of 97 days, the same number of days tentatively allowed in the High Plains Management Unit for this season. The tribe's proposed season would run from October 2, 1999, through January 6, 2000. The daily bag limit would be 6 birds, including no more than 5 mallards (only 1 of which may be a hen), 1 pintail, 2 redheads, 2 wood ducks, 1 canvasback, 1 hooded merganser, and 1 mottled duck. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The tribe also proposes a youth waterfowl hunt on September 25, 1999.

The tribe's proposed Canada goose season would run from October 16, 1999, through January 16, 2000, with a daily bag limit of 3 Canada geese. The tribe's proposed white-fronted goose season would run from October 16 through December 26, 1999, with a daily bag limit of 2 white-fronted geese. The tribe's proposed light goose season would run from October 16, 1999, through January 16, 2000, and February 25 through March 10, 2000. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 1998–99 season, hunters harvested an estimated 1,971 geese and 355 ducks. In 1994, duck harvest species composition was primarily mallard (57 percent), gadwall (10 percent), and green-winged teal (10 percent). Goose harvest is traditionally 98% Canada geese.

The tribe anticipates a duck harvest similar to last year and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We propose to approve the tribe's requested regulations for the Lower Brule Reservation.

(l) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Non-tribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The nation owns almost all lands on the reservation and has full wildlife management authority.

In a May 28, 1999 proposal, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and non-tribal members for the 1999–2000 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits, permitted Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30. The Navajo Nation also proposes daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

In addition, the nation proposes to require tribal members and non-members to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The tribe anticipates a total harvest of less than 300 mourning doves, 100 band-tail pigeons, 500 ducks, coots, and mergansers, and 300 Canada geese.

We propose to approve the Navajo Nation request for these special regulations for the 1999–2000 migratory bird hunting seasons.

(m) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the tribe and Wisconsin.

In a May 6, 1999, letter, the tribe proposed special migratory bird hunting regulations. For ducks, the tribe described the general "outside dates" as being September 18 through November 19, 1999, inclusive. The tribe proposes a daily bag limit of 6 birds, which could include no more than 5 mallards (1 hen mallard), 5 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser.

For geese, the tribe recommends a season between September 1 and

December 31, 1999, with a daily bag limit of 5 brant, 3 Canada geese, and 5 snow geese. Hunters will be issued 8 tribal tags for geese in order to monitor goose harvest. Additional tags will be issued when birds are registered. The tribe will also close the season during the gun deer season of November 20 to 28, 1999. If a quota of 150 geese is attained before the season concludes, the tribe will recommend closing the season early.

For woodcock, the tribe proposes a season between September 11 and November 19, 1999, with a daily bag and possession limit of 5 and 10, respectively.

The tribe proposes shooting hours be one-half hour before sunrise to sunset. Tribal members and non-tribal members hunting on the Reservation or on lands under the jurisdiction of the tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR, with the following exceptions: Indian hunters would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity would not be limited to 3 shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin. We commend the tribe for their continuing efforts to closely monitor goose harvest and their other conservation efforts.

(n) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members Only)

For the first time in 1996, the Service and the Point No Point Treaty Tribes, consisting of the Skokomish, Port Gamble S'klallam, Jamestown S'klallam, and Elwha S'klallam tribes, cooperated to establish special regulations for migratory bird hunting. The four tribes have reservations located on the Olympic Peninsula in Washington. All four tribes have successfully administered tribal hunting regulations since 1985 and each tribe has a comprehensive hunting ordinance.

The tribes' May 28, 1999, proposal requests seasons for ducks, geese, brant, coots, snipe, and mourning doves. For ducks, coots, geese, brant, and snipe, the tribes request a September 15, 1999, to January 15, 2000, season with a daily bag limit of 7 ducks, 25 coots, 4 geese (including no more than 3 light geese), 2 brant, and 8 snipe. The duck daily bag limit would include mergansers and could include no more than 2 hen mallards, 2 pintails, 1 canvasback, and 2 redheads. The season is closed on harlequin ducks and Aleutian Canada geese. All possession limits would be twice the daily bag limit. For mourning doves, the tribes propose a September 1 to September 30, 1999, season with a daily bag limit of 10.

The tribes require that all hunters authorized to hunt migratory birds on the reservation obtain a tribal hunting permit from the respective tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office. Tribal harvest last year under similar regulations was approximately 212 ducks, 27 geese and 22 coots.

We propose to approve the Point No Point Treaty Tribes requested 1999–2000 regulations.

(o) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal Members and Non-tribal Hunters)

The Seminole Tribe of Florida and the Service have cooperated since 1995 to establish regulations for the 70,000 acre Big Cypress Seminole Reservation. Located northwest of Miami, the Big Cypress Seminole Reservation is totally tribally owned and the tribe has full wildlife management authority.

For the 1999–2000 season, the Seminole Tribe proposes establishing a mourning dove season from September 18, 1999, through January 20, 2000. Hunting would be allowed for tribal and non-tribal members, but would be on Saturdays only. Daily bag limits would be the same as those allowed within the Federal frameworks for the State of Florida. All other Federal regulations contained in 50 CFR part 20 would apply. In 1997, under identical regulations, hunters harvested 2,078 doves on the reservation. The tribe controls all entry to the hunt area.

We propose to approve the Seminole Tribe's requested 1999–2000 special migratory bird hunting regulations.

(p) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Non-tribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 1999–2000 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a May 14, 1999, proposal for the 1999–2000 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as last year, the season would have an opening date of October 4, 1999, and a closing date of January 4, 2000.

Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States. The tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 4, 1999, and a closing date of January 11, 2000. The tribes anticipate harvest will be between 4,000 and 6,000 geese.

Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 1999–2000 hunting season.

(q) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

The Squaxin Island Tribe usually outlines their migratory bird hunting

proposal through the Service's Region 1 Office, however, this year has not provided confirmatory information. The tribe would normally request establishing duck, coot, and snipe seasons that would run from September 15, 1999, through January 15, 2000. The daily bag limit for ducks would be 5 per day and could include only 1 canvasback. The season on harlequin ducks would be closed. For coots and snipe, the daily bag limit would be 25 and 8, respectively. For geese, the tribe would propose establishing a season that would run from September 15, 1999, through January 15, 2000. The daily bag limit for geese would be 4 per day and could include only 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese would be closed. For brant, the tribe normally would propose establishing a September 15 to December 31, 1999, season with a daily bag limit of 2 birds per day. The tribe also would propose a September 15 to December 1, 1999, season for band-tailed pigeons with a daily bag limit of 2 per day.

In all cases, the possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to one-half hour after sunset and steel shot would be required for migratory bird hunting. Further, the tribe requires all harvest be reported to their Natural Resources Office within 72 hours.

In 1995, the tribe reported that there was no harvest of any species. Tribal regulations are enforced by the tribe's Law Enforcement Department.

We propose to approve the Squaxin Island Tribe's 1999–2000 special migratory bird hunting regulations, provided the tribe provides the appropriate confirmation for the seasons.

(r) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian tribe consisting of the Suiattle, Skagit, and Kikialos tribes. The Swinomish Reservation was established by the Point Elliott Treaty of 1855 and lies in the Puget Sound area north of Seattle, Washington.

The Tribal Community usually outlines their migratory bird hunting proposal through the Service's Region 1 Office, however, this year has not provided confirmatory information. The tribe would normally request establishing an off-reservation duck, merganser, Canada goose, brant, and coot season opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes. Daily bag and possession limits would be the same as those allowed by the State except that the Swinomish request an additional three birds of each species over that allowed by the State.

The Community normally anticipates that the regulations will result in the harvest of approximately 200 to 300 ducks, 25 to 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish also utilize a tag and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community would propose a hunting season for the above mentioned species beginning on the earliest possible opening date and closing March 9, 1999. The Swinomish manage harvest by a tagging system and anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely effect migratory bird populations. We propose to approve the Tribal Community's regulations for the 1999–2000 season, provided the tribe provides the appropriate confirmation for the seasons.

(s) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Non-tribal Hunters)

The Tulalip Tribes are the successors in interest to the tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to non-member hunting unless opened by Tulalip Tribal regulations.

In a June 1, 1999, letter, the Tulalip Tribes proposed tribal and non-tribal hunting regulations for the 1999–2000 seasons. For ducks and coot, the proposed season for tribal members would be from September 15, 1999, through February 1, 2000. In the case of non-tribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed for the State of Washington under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 6 and 12 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established for the State of Washington in accordance with final Federal frameworks. For non-tribal hunters, bag and possession limits would be the same as those permitted the State of Washington under final Federal frameworks. Non-tribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region. For geese, tribal members are proposed to be allowed to hunt from September 15, 1999, through February 1, 2000. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese and dusky Canada geese would be those established for the Pacific Flyway in accordance with final Federal frameworks. For non-tribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the State of Washington. The Tulalip Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the tribe. Non-tribal hunters sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and non-tribal hunters under 1,000 ducks and 500 geese, annually.

We propose approval of the Tulalip Tribes request for the above seasons. We request that harvest be monitored closely and regulations be reevaluated

for future years if harvest becomes too great in relation to population numbers.

(t) White Earth Band of Chippewa, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Chippewa is a federally recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce conservation regulations. For the first time in the 1999–2000 season, the tribe proposes to establish migratory bird hunting seasons on reservation lands.

In a July 28, 1999, letter, the tribe proposed a duck, merganser, and coot season of September 18 to November 30, 1999. The daily bag limit of 7 would include no more than 2 mallards and 1 canvasback through September 24 and no more than 2 hen mallards and 2 canvasbacks through the remainder of the season. The merganser daily bag limit would be 5 with no more than 2 hooded mergansers, and the coot daily bag limit would be 20. For geese, the tribe proposes a September 1 to November 30, 1999, season with a daily bag limit of 5 geese.

For dove, rail, woodcock, and snipe, the tribe proposes a September 11 to December 1, 1999, season with daily bag limits of 25 rails, 10 snipe, 10 woodcock, and 25 doves. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Non-toxic shot is required.

Based on past harvest surveys, the tribe expects a harvest of less than 500 Canada geese and 1000 ducks.

We propose to approve the White Earth Band of Chippewa's requested 1999–2000 specjal migratory bird hunting regulations.

(u) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-tribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 1999–2000 season. All other waters of the reservation would be closed to waterfowl hunting for the 1999–2000 season.

For non-tribal and tribal hunters, the tribe proposes a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of October 23, 1999, and a closing date of January 17, 2000. The tribe proposes a daily duck (including mergansers) bag limit of 4, which may include no more than 2 redheads or 1 canvasback and 1 redhead, 1 pintail, and 3 mallards (including no more than 1 hen mallard). The daily bag limit for coots, gallinules and moorhens would be 25 singly, or in the aggregate. For geese, the season is proposing a season from October 23, 1999, through January 17, 2000. Hunting would be limited to Canada geese, and the daily bag limit would be 3.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 1 through September 12, 1999, in Wildlife Management Units 7 and 10, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 8, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and non-tribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the tribe for the 1999–2000 seasons.

(v) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Non-tribal Hunters)

On May 25, 1999, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 1999–2000 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and non-tribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For duck (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 9, 1999, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those adopted by the State of South Dakota. For geese, the tribe has requested a dark geese (Canada geese, brant, white-fronts) season starting October 30, 1999, and running for the maximum amount of days allowed under the final Federal frameworks. The daily bag limit would be 3 geese (including no more than 1 whitefront or brant). Possession limits would be twice the daily bag limit. For snow geese, the proposed hunting season would start October 30, 1999, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those adopted by the State of South Dakota.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 1998–99 hunting season, the tribe reported that 83 non-tribal hunters took 350 Canada geese, 40 snow geese, and 70 ducks. Tribal members harvested less than 75 geese and 40 ducks.

We concur with the Yankton Sioux proposal for the 1999–2000 hunting season.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests, and therefore desire to obtain the comments and suggestions of the public, other governmental agencies, non-governmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to

participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

Public Comments Received

We received two comments regarding the Notice of Intent published on May 3, 1999, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. The Wisconsin Department of Natural Resources (Wisconsin) commented on the GLIFWC's proposal. Wisconsin had no objections to the proposed duck or goose season dates and bag limits. Wisconsin requested that tribal members honor the noon opening for shooting hours for the first day of the State's duck season and comply with the State's open water hunting restrictions. The Michigan Department of Natural Resources commented on the establishment of tribal regulations on 1836 Treaty areas. Michigan believed it was premature of the Service to establish waterfowl regulations in areas covered by the 1835 Treaty until such time as the issue of 1836 Treaty hunting rights are affirmed by a court of competent jurisdiction.

Service Response: Our position is that the Federal Government does recognize the Treaty of 1836 as reserving to the affected tribes or bands hunting rights in the ceded territory. Further, the Federal courts have already confirmed the retention of reserved fishing rights in the territory ceded by the Treaty of 1836 in *United States* v. *Michigan*, 471 F.Supp. 192 (W.D. Mich. 1979), *remanded*, 623 F.2d 448 (6th Cir. 1980), *order modified*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981). That case and cases dealing with other treaty cessions, such as *Lac Courte Oreilles* v. *Wisconsin* (i.e., both the 1837 and the 1842 Treaties), provide persuasive precedent for the belief that hunting as well as fishing rights were reserved by the tribes in the Treaty of 1836. We have not altered our position on this matter.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address indicated under the caption **ADDRESSES**. In addition, an August 1985 Environmental Assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the same address.

Endangered Species Act Considerations

Prior to issuance of the 1999–2000 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

We will include findings from these consultations in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final rule will reflect any modifications. Our biological opinion resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Office of Migratory Bird Management, U.S. Fish and Wildlife Service, at the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request.

Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Taking Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of soon to be completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 1999, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and non-tribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers) and geese.

The rules that eventually will be promulgated for the 1999–2000 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

Dated: August 9, 1999.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–20963 Filed 8–12–99; 8:45 am]

BILLING CODE 4310–55–P

VOL
64
ISS
1
5
6
AG
13
999
UMI

Rea

CUSTO
Federal
General
aids
Laws
Presider
Executiv
The Unit
Other Se
Electroni
Privacy
Public L
TTY for

ELECTR
World W
Full text
publicati
Federal
Inspectio
E-mail
PENS (P
service f
subscrib
with the
Use lists
PENS. W
Referenc
Federal
The Fede
regulatio

FEDERA
41765–4
41999–4
42265–4
42579–4
42823–4
43043–4
43255–4
43599–4
43897–4
44101–4

Reader Aids

Federal Register

Vol. 64, No. 156

Friday, August 13, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998 2
41999–42264 3
42265–42578 4
42579–42822 5
42823–43042 6
43043–43254 9
43255–43598 10
43599–43896 11
43897–44100 12
44101–44396 13

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265
Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12924 (See Notice of Aug. 10, 1999) 44101
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895
Administrative Orders:
Notice of Aug. 10, 1999 44101

7 CFR

11 43043
610 41999
989 43897
1728 42005
Proposed Rules:
6 42288
354 43103
931 42858
932 42619
981 43298
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043
390 43902
Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823
Proposed Rules:
50 44137

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
905 44103
Proposed Rules:
361 ..... 42861, 42862

13 CFR

120 44109
Proposed Rules:
120 43636

14 CFR

4 43599
27 43016
29 43016
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905, 44110, 44112
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907, 44114, 44116, 44117, 44268
97 ..... 44117, 44119
254 41781
382 41781
Proposed Rules:
25 ..... 43570, 43943, 43946
39 ..... 41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137
65 42810
66 42810
71 ..... 42300, 42301, 44139, 44140, 44141, 44142, 44144
93 44145
107 43321

108.....43322
147.....42810

15 CFR

734.....42009
738.....42009
740.....42009
742.....42009
902.....42826

16 CFR

2.....43599
5.....42594

Proposed Rules:

1212.....42302

17 CFR

9.....43254
10.....43071
12.....43071
200.....42594
240.....42031, 42594
249.....42594

Proposed Rules:

4.....41843
275.....43556

18 CFR

Proposed Rules:

101.....42304
343.....43600
357.....42623
385.....42307, 43600

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
146.....43262
151.....43608
162.....43262
173.....43262
174.....43262, 43608
178.....43608
181.....43262

Proposed Rules:

12.....41851
113.....41851, 42872
141.....41851

20 CFR

Proposed Rules:

404.....42310
416.....42310

21 CFR

101.....42277
172.....43072, 43908, 44121
173.....44122
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596, 43909
1308.....42432
1312.....42432

Proposed Rules:

101.....42315
207.....43114
314.....42625, 42873
607.....43114
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032
514.....44123

24 CFR

108.....44094
982.....43613

Proposed Rules:

990.....43641

26 CFR

1 .....41783, 43072, 43267, 43613, 43910
31.....42831
301.....41783
602 .....41783, 43072, 43613
801.....42834

Proposed Rules:

1 .....43117, 43323, 43462, 43969
301.....43324
602.....43462

28 CFR

505.....43880

29 CFR

2570.....42246
2575.....42246
4044.....44128

Proposed Rules:

2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75.....43280, 43286
90.....43283
202.....43506
206.....43288, 43506
250.....42597
914.....43911
943.....43913

Proposed Rules:

935.....42887
936.....43327

31 CFR

538.....41784
550.....41784
560.....41784
590.....43924

Proposed Rules

375.....42826

32 CFR

Proposed Rules:

230.....43856
231.....43858
231a.....43856

33 CFR

100 .....42278, 42598, 43289
110.....42279
117 .....42033, 42599, 44129, 44131
160.....41794
165.....43290, 43291

Proposed Rules:

100.....41853
117 .....44145, 44147, 44148, 44149, 44151

34 CFR

611.....42837

Proposed Rules:

668 .....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682 .....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:

13.....41854
1191.....42056

37 CFR

Proposed Rules:

201.....42316

39 CFR

20.....43292

40 CFR

9 .....42432, 43426, 43936
52 .....42600, 43083, 44131, 44134
58.....42530
62.....43091
63.....42764
86.....43936
122.....42432, 43426
123.....42432, 43426
124.....42432, 43426
180 .....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846
186.....41818
261.....42033
271.....41823, 42602
300.....44135
403.....42552
501.....42432, 43426
503.....42552
745.....42849

Proposed Rules:

52 .....42629, 42888, 42891, 42892, 44152
147.....43329
261.....42317
62.....43123
97.....43124
300.....43970
271.....42630, 43331
281.....43336
300 .....41875, 42328, 42630, 43129, 43641
372.....42222

41 CFR

301.....43254

Proposed Rules:

51-2.....41882
51-5.....41882

42 CFR

413.....42610
498.....43295
1001.....42174

Proposed Rules:

Ch. IV.....43338

44 CFR

61.....41825
64.....42852
206.....41827

Proposed Rules:

61.....42632
62.....42633

45 CFR

801.....42039

46 CFR

10.....42812
12.....42812

Proposed Rules:

298.....44152
535.....42057

47 CFR

0.....43618
1.....42854
5.....43094
43.....43618
62.....43937
63.....43095, 43618
64.....43618
73 .....41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095
76.....42617, 42855
90.....43094

Proposed Rules:

Ch. 1.....41883, 42635
1.....41884, 41887
2.....41891, 43643
15.....41897
51.....41897
68.....41897
73.....41899, 43132
76.....41887
78.....41899
95.....41891

48 CFR

202.....43096
204.....43096
212.....43096
213.....43096
217.....43096
252.....43096
253.....43096
601.....43618
602.....43618
603.....43618
604.....43618
605.....43618
606.....43618
608.....43618
609.....43618
610.....43618
611.....43618
613.....43618
614.....43618

615 43618
616 43618
617 43618
619 43618
622 43618
623 43618
625 43618
626 43618
628 43618
629 43618
630 43618
631 43618
632 43618
633 43618
634 43618
636 43618
637 43618
639 43618
641 43618
642 43618
643 43618
644 43618
645 43618
646 43618
647 43618
649 43618
652 43618
653 43618
701 42040
702 42040
703 42040
705 42040
706 42040
709 42040
714 42040
716 42040
719 42040
726 42040
732 42040
733 42040
734 42040
749 42040
750 42040
752 42040
5416 41834

Proposed Rules:
17 44100

49 CFR

Proposed Rules:
190 43972
571 42330
575 44164

50 CFR

17 41835
600 42286
622 43941
635 ..... 42855, 43101
648 ..... 42042, 42045
660 ..... 42286, 42856
679 ..... 41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942

Proposed Rules:
17 ..... 41903, 42058, 42250, 43132, 44171
20 44384
32 43834
36 43834
600 ..... 42335, 43137
622 ..... 41905, 42068
648 ..... 42071, 43137, 43138
679 42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 13, 1999

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Grapes grown in—
California; published 7-14-99
Raisins produced from grapes grown in—
California; published 8-12-99
AGRICULTURE DEPARTMENT
Forest Service
National Forest System lands:
Occupancy and use; mediation of grazing disputes; published 7-14-99
ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; published 8-13-99
FEDERAL HOUSING FINANCE BOARD
Unpublished information availability; published 8-13-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additive petitions:
Acidified sodium chlorite solutions; published 8-13-99
Petroleum wax; published 8-13-99
SMALL BUSINESS ADMINISTRATION
Business loans:
Collateral liquidation and commercial loans sale; published 8-13-99
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Civil monetary penalties; inflation adjustment; published 7-14-99
Importation of vehicles and equipment subject to Federal safety, bumper, and theft prevention standards:
Show or display; limited conditions for exemption from compliance standards; published 7-14-99
UNITED STATES INFORMATION AGENCY
Exchange visitor program:
Reinstatement of exchange visitors (J visa) unlawfully present in United States; monitoring requirements; published 8-13-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant related quarantine, domestic:
Oriental fruit fly; comments due by 8-16-99; published 6-15-99
Plant-related quarantine, domestic:
Mexican fruit fly; comments due by 8-16-99; published 6-15-99
COMMERCE DEPARTMENT
Export Administration Bureau
Chemical Weapons Convention regulations; comments due by 8-20-99; published 7-21-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Findings on petitions, etc.—
Barndoor skate; comments due by 8-20-99; published 6-21-99
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 8-16-99; published 7-2-99
Puerto Rico and Virgin Islands coral reef resources; comments due by 8-20-99; published 6-21-99
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permits; comments due by 8-19-99; published 8-4-99
Northeastern United States fisheries—
New England Fishery Management Council; meetings; comments due by 8-16-99; published 7-2-99
West Coast States and Western Pacific fisheries—
West coast salmon; comments due by 8-20-99; published 8-6-99
COMMODITY FUTURES TRADING COMMISSION
Commodity Exchange Act:
Contract market rule review procedures; comments due by 8-16-99; published 7-15-99
DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
Double coverage policy; comments due by 8-16-99; published 6-17-99
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99
DEFENSE DEPARTMENT
Engineers Corps
Water resources development projects; public use; comments due by 8-19-99; published 7-20-99
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Rate schedules filing—
Regional Transmission Organizations; comments due by 8-16-99; published 6-10-99
Oil pipelines:
Annual report; technical conference; comments due by 8-20-99; published 8-5-99
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Off-site waste and recovery operations; comments due by 8-19-99; published 7-20-99
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 8-18-99; published 7-19-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-19-99; published 7-20-99
Louisiana; comments due by 8-18-99; published 7-19-99
Maryland; comments due by 8-19-99; published 7-20-99
Michigan; comments due by 8-20-99; published 7-21-99
Nevada; comments due by 8-16-99; published 6-17-99
Tennessee; comments due by 8-18-99; published 7-19-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Sethoxydim; comments due by 8-16-99; published 6-16-99
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Commercial mobile radio services—
Calling party pays service offering; regulatory obstacles removed; comments due by 8-18-99; published 7-16-99
Radio stations; table of assignments:
California; comments due by 8-16-99; published 7-6-99
Texas; comments due by 8-16-99; published 7-6-99
Wyoming and Utah; comments due by 8-16-99; published 7-6-99
Television broadcasting:
Cable television systems—
12 GHz relay service; eligibility requirements; comments due by 8-16-99; published 8-2-99
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99
Federal travel:
Income tax reimbursement allowance; comments due by 8-17-99; published 6-18-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Reports and guidance documents; availability, etc.:
Veterinary Medicinal Products, International

Cooperation on Harmonisation of Technical Requirements for Registration—
Anthelmintics efficacy; general and specific recommendations; comments due by 8-16-99; published 7-16-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Multifamily housing projects; tenant participation; comments due by 8-16-99; published 6-17-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 8-16-99; published 7-15-99
Maryland; comments due by 8-16-99; published 7-16-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
F and J nonimmigrant aliens; status duration period extension; comments due by 8-16-99; published 6-15-99
Correction; comments due by 8-16-99; published 7-6-99
H petitions filed after numerical cap is reached; treatment; comments due by 8-16-99; published 6-15-99

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Federal Tort Claims Act; comments due by 8-16-99; published 6-15-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Nondisplacement of qualified workers; comments due by 8-16-99; published 6-17-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Undercapitalized federally-insured credit unions; prompt corrective action system; comments due by 8-16-99; published 5-18-99

INTERIOR DEPARTMENT
National Indian Gaming Commission
Administrative practice and procedure:
Litigation involving agency; testimony, information, and response to subpoena; comments due by 8-16-99; published 7-15-99

NORTHEAST DAIRY COMPACT COMMISSION
Over-order price regulations:
Supply management program; hearings; comments due by 8-18-99; published 6-21-99

STATE DEPARTMENT
Chemical Weapons Convention and Chemical Weapons Convention Implementation Act:
Sample taking and record keeping and inspections; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Gulf of Alaska, Narrow Cape, Kodiak Island, AK; safety zone; comments due by 8-20-99; published 7-21-99

TRANSPORTATION DEPARTMENT
Standard time zone boundaries:
Kentucky; comments due by 8-20-99; published 6-21-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Checked baggage; security on domestic flights; comments due by 8-17-99; published 6-11-99
Airworthiness directives:
Aerospatiale; comments due by 8-16-99; published 7-16-99
Airbus; comments due by 8-16-99; published 7-15-99
Bell; comments due by 8-16-99; published 6-17-99
Bombardier; comments due by 8-16-99; published 7-16-99
British Aerospace; comments due by 8-16-99; published 7-16-99
Cessna; comments due by 8-16-99; published 7-16-99
Construcciones Aeronauticas, S.A.; comments due by 8-16-99; published 7-16-99
Dornier; comments due by 8-16-99; published 7-16-99
Eurocopter France; comments due by 8-16-99; published 6-17-99
Fairchild; comments due by 8-16-99; published 7-16-99
Fokker; comments due by 8-16-99; published 7-16-99
Gulfstream Aerospace; comments due by 8-16-99; published 7-16-99
Gulfstream American; comments due by 8-16-99; published 7-16-99
International Aero Engines AG; comments due by 8-16-99; published 6-15-99
Lockheed; comments due by 8-16-99; published 7-16-99
McDonnell Douglas; comments due by 8-16-99; published 7-16-99
Mitsubishi; comments due by 8-16-99; published 7-16-99
Saab; comments due by 8-16-99; published 7-16-99
Sabreliner; comments due by 8-16-99; published 7-16-99
Short Brothers; comments due by 8-16-99; published 7-16-99
Airworthiness standards:
Special conditions—
Boeing Model 707-353B airplanes; comments due by 8-20-99; published 7-21-99
Class E airspace; comments due by 8-16-99; published 7-16-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Gross proceeds payments to attorneys; reporting; comments due by 8-19-99; published 5-21-99
Section 467 rental agreements—
Agreements involving payments of $2,000,000; comments due by 8-16-99; published 5-18-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2565/P.L. 106–46

To clarify the quorum requirement for the Board of Directors of the Export-Import Bank of the United States. (Aug. 11, 1999; 113 Stat. 227)

Last List August 12, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Would you like to know. . .

If any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

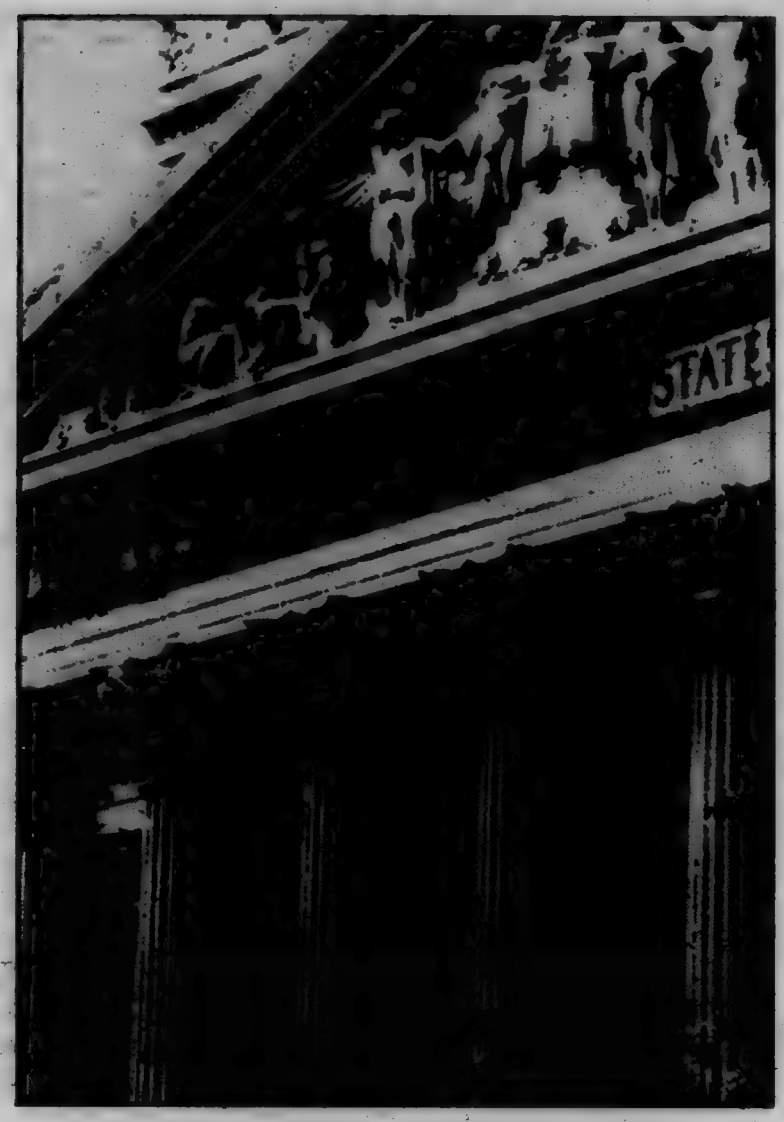

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

☐ **YES**, enter the following indicated subscriptions for one year:

_____ **LSA (List of CFR Sections Affected),** (LCS) for $27 per year.

_____ **Federal Register Index** (FRUS) $25 per year.

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days before the shown date.

```
AFR SMITH212J                DEC97 R 1-
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days before the shown date.

```
AFRDO SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

106th Congress, 1st Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 1st Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 1st Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/98

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VISA

12–2250
12–1800

ange.

ments
☐–☐

☐☐☐

you for
order!

11/98

954

VOL
64
ISS
1
5
6
AG
13
999
UMI

Printed on recycled paper

VOL
64
ISS
1
5
7
AG
16
999
UMI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

8-16-99
Vol. 64

United
Govern
Printing
SUPERINTE
OF DOCUM
Washington,

OFFICIAL B
Penalty for p

8-16-99
Vol. 64 No. 157

federal register

Monday
August 16, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
1
5
7
AG
16
999
UMI

8-16-99
Vol. 64
Pages

8–16–99
Vol. 64 No. 157
Pages 44397–44642

federal register

Monday
August 16, 1999

ANN ARBOR MI
481

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Contents

Federal Register
Vol. 64, No. 157
Monday, August 16, 1999

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Scientific Counselors Board, 44527

Agricultural Research Service
PROPOSED RULES
National Agricultural Library; loan and copying fees, 44633–44636

Agriculture Department
See Agricultural Research Service
See Food and Nutrition Service
See Forest Service

Air Force Department
NOTICES
Meetings:
Air University Board of Visitors, 44512

Centers for Disease Control and Prevention
NOTICES
Meetings:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 44527–44528

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44528–44529

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44478–44480

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Hong Kong, 44510

Commodity Futures Trading Commission
NOTICES
Privacy Act:
Systems of records, 44511–44512
Senior Executive Service:
Performance Review Board; membership, 44512

Congressional Budget Office
NOTICES
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings):
Sequestration update report for 2000 FY; transmittal to Congress and OMB, 44512

Defense Department
See Air Force Department

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 44512–44513

Employment and Training Administration
NOTICES
Adjustment assistance:
AMP Inc., 44540
Eaton Corp., 44540
Johansen Brothers Shoe Co., Inc., 44541
Johnson & Johnson Medical, Inc., et al., 44541
Leica Microsystems Inc., 44541
Mead Paper Corp., 44541–44542
Phelps Dodge et al., 44542–44543
REDA, A Camco Co., 44543
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
H-1B technical skill training programs, 44543–44554
NAFTA transitional adjustment assistance:
Horner Flooring Co., Inc., 44555
Thompson Crown Wood Products, 44555
Trim Master, Inc., 44555

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Classified matter or special nuclear material; criteria and procedures for determining access eligibility, 44433–44444
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN, 44513

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
North Dakota; correction, 44420–44421
Air quality implementation plans; approval and promulgation; various States:
Connecticut, 44411–44415
Minnesota, 44408–44411
New Hampshire, 44417–44420
Wisconsin, 44415–44417
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Connecticut, 44450–44451
Minnesota, 44450
New Hampshire, 44451–44452
Wisconsin, 44451
Clean Air Act:
Interstate ozone transport reduction—
Nitrogen oxides trading program; Section 126 petitions; findings of significant contribution and rulemaking, 44452
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 44452–44460

NOTICES
Agency information collection activities:
Proposed collection; comment request, 44518–44521
Drinking water:
Public water supply supervision program—
South Dakota, 44521–44522
Grants and cooperative agreements; availability, etc.:
Border XXI Program; U.S.-Mexico border; La Paz Agreement, 44522–44523
Meetings:
Children's Health Protection Advisory Committee, 44524

Executive Office of the President
See Presidential Documents
See Science and Technology Policy Office

Federal Aviation Administration
RULES
Class B and Class D airspace; correction, 44578
Class E airspace, 44397–44400
PROPOSED RULES
Airworthiness directives:
Pratt & Whitney, 44446–44448
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44572–44573
Exemption petitions; summary and disposition, 44573
Passenger facility charges; applications, etc.:
Akron-Canton Regional Airport, OH, 44573–44574
Detroit City Airport, MI, 44574–44575

Federal Communications Commission
RULES
Common carrier services:
Local exchange carriers provision of interexchange services; regulatory treatment, 44423–44426
NOTICES
International Settlements Policy and associated filing requirements; countries exempt from ISP requirements, list, 44524–44525

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Various States, 44421–44423
NOTICES
Disaster loan areas:
Iowa, 44525
Tennessee, 44525

Federal Energy Regulatory Commission
RULES
Interstate Commerce Act:
Oil pipeline regulations; revisions, 44400–44405
NOTICES
Applications, hearings, determinations, etc.:
California Independent System Operator Corp., 44513
Canyon Creek Compression Co., 44513–44514
Garden Banks Gas Pipeline Co., LLC, 44514
MIGC, Inc., 44514
Natural Gas Pipeline Co. of America, 44514
Northbrook New York, LLC, 44514–44515
NRG Power Marketing, Inc., et al., 44515
Pacific Gas & Electric Co., 44515
PG&E Gas Transmission, Northwest Corp., 44515–44516
Reliant Energy Gas Transmission Co.; correction, 44578
Sonat Energy Services Co. et al., 44516
Southwestern Public Service Co., 44516
Stingray Pipeline Co., 44516
Tennessee Gas Pipeline Co., 44516–44517
Trailblazer Pipeline Co., 44517
TransColorado Gas Transmission Co., 44517
UtiliCorp United Inc., 44517–44518

Federal Highway Administration
PROPOSED RULES
Motor carrier safety standards:
Transportation Equity Act for 21st Century; implementation—
Safety fitness procedures, 44460–44470

Federal Housing Finance Board
PROPOSED RULES
Federal home loan bank system:
Advance participations; sales of whole advances, 44444–44446

Federal Reserve System
PROPOSED RULES
Equal credit opportunity (Regulation B):
Revision, 44581–44631
NOTICES
Banks and bank holding companies:
Change in bank control, 44525
Formations, acquisitions, and mergers, 44526
Formations, acquisitions, and mergers; correction, 44526
Permissible nonbanking activities, 44526

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Golden sedge, 44470–44475
NOTICES
Comprehensive conservation plans; availability, etc.:
Kern National Wildlife Refuge Complex, CA, 44531–44532

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
Chrome antimony titanium buff rutile (C.I. Pigment Brown 24), 44407–44408
Nickel antimony titanium yellow rutile (C.I. Pigment Yellow 5), 44397–44398
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44529–44530
Food additive petitions:
Caudill Seed Co., Inc., 44530

Food and Nutrition Service
NOTICES
Meetings:
Maternal, Infant, and Fetal Nutrition National Advisory Council, 44477

Forest Service
NOTICES
Environmental statements; notice of intent:
Winema National Forest, OR, 44477–44478

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry

See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Japan, 44483–44488
Antidumping and countervailing duties:
Crude petroleum oil products from—
Various countries, 44480–44482
Countervailing duties:
Hot-rolled lead and bismuth carbon steel products from—
Germany, 44489
Pasta from—
Italy, 44489–44496
Welded carbon steel pipes and tubes and welded carbon steel line pipe from—
Turkey, 44496–44501

International Trade Commission
NOTICES
Import investigations:
Carbon steel butt-weld pipe fittings from—
Various countries, 44536–44537
Crude petroleum oil products from—
Various countries, 44537
Granular polytetrafluoroethylene resin from—
Italy and Japan, 44537–44538
Live cattle from—
Canada, 44538–44539

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44539–44540

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Northwest Colorado, 44532

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 44575
W.F. Mickey Body Co., Inc., 44575–44576

National Institutes of Health
NOTICES
Meetings:
National Center for Complementary and Alternative Medicine, 44530
National Institute on Alcohol Abuse and Alcoholism, 44530–44531
Scientific Review Center, 44531

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Northern rockfish, 44431
Sablefish, 44432
International fisheries regulations:
Inter-American Tropical Tuna Commission; recommendations; implementation plan, 44428–44431
PROPOSED RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Western Pacific Coral Reef Ecosystem and bottomfish and seamount groundfish, 44475–44476
NOTICES
Coastal zone management program and estuarine sanctuaries:
Minnesota; Lake Superior coastal program, 44501–44502
Committees; establishment, renewal, termination, etc.:
Billfish and Highly Migratory Species Fisheries Advisory Panels, 44503–44504
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic zone—
Prohibited species donation program, 44502–44503
Meetings:
International Commission on Conservation of Atlantic Tunas, U.S. Section Advisory Committee; correction, 44504
North Pacific Fishery Management Council, 44504–44505
New Bedford Harbor Trustee Council; request for restoration ideas for New Bedford Harbor, MA, 44505–44509
Permits:
Marine mammals, 44509–44510

National Park Service
NOTICES
Environmental statements; availability, etc.:
Big Cypress National Preserve, FL, 44532–44533
Lyndon B. Johnson National Historical Park, TX, 44533–44535
Meetings:
Delaware Water Gap National Recreation Area Citizen Advisory Commission, 44535
Native American human remains and associated funerary objects:
Los Angeles County Museum of Natural History, CA; inventory, 44535–44536

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Michigan Natural Resources Department, 44555–44557

Nuclear Waste Technical Review Board
NOTICES
Meetings:
Yucca Mountain, NV, repository, 44557–44558

Presidential Documents
EXECUTIVE ORDERS
Biobased products and bioenergy; development and promotion (EO 13134), 44637–44642

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention

See Food and Drug Administration
See National Institutes of Health

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous materials transportation—
Harmonization with UN recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization; 44426–44428
correction, 44578–44579,

Science and Technology Policy Office
NOTICES
National innovation system; Federal policy; call for issues papers, 44524

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44558
Submission for OMB review; comment request, 44558–44559
Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 44569–44571
Applications, hearings, determinations, etc.:
BHF Finance (Delaware) Inc., 44559–44560
Chapman Funds, Inc., et al., 44560–44562
Dow Target Variable Fund LLC, 44563–44565
First Commonwealth Fund, Inc., 44565–44567
WNC Housing Tax Credit Fund VI, L.P., Series 7 and 8, et al., 44567–44569

State Department
NOTICES
Arms Export Control Act:
Export licenses; Congressional notifications, 44571–44572

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Indiana, 44448–44450

Surface Transportation Board
NOTICES
Railroad services abandonment:
Norfolk Southern Railway Co., 44576–44577

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Separate Parts In This Issue

Part II
Federal Reserve System, 44581–44631

Part III
Department of Agriculture, Agricultural Research Service, 44633–44636

Part IV
The President, 44637–44642

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
13134.....44639

7 CFR
Proposed Rules:
505.....44634

10 CFR
Proposed Rules:
710.....44433

12 CFR
Proposed Rules:
202.....44582
935.....44444

14 CFR
71 (5 documents) 44397, 44398, 44399, 44400, 44578
Proposed Rules:
39.....44446

18 CFR
3.....44400
341.....44400
342.....44400
346.....44400
357.....44400
362.....44400
385.....44400

21 CFR
178 (2 documents) 44406, 44407

30 CFR
Proposed Rules:
914.....44448

40 CFR
52 (4 documents) 44408, 44411, 44415, 44417
62.....44420
Proposed Rules:
52 (5 documents) 44450, 44451, 44452
97.....44452
300 (4 documents) 44452, 44454, 44456, 44458

44 CFR
64.....44421

47 CFR
64.....44423

49 CFR
172 (2 documents) 44426, 44578
173.....44426
Proposed Rules:
385.....44460
390.....44460

50 CFR
300.....44428
679 (2 documents) 44431, 44432
Proposed Rules:
17.....44470
660.....44475

VOL
64
ISS
1
5
7
AG
16
999
UMI

Ru

This s
contai
applic
are ke
Federa
50 title

The C
the Su
new b
REGIS

DEPA

Feder

14 CF

[Airsp

Amer
MO

AGEN
Admi

ACTIO
comm

SUMM
E airs
Airpo
devel
(GPS)
31 St
Proce
Memo
contr
from
(AGL)
SIAPs
(IFR)
enlar
RWY
contr
The
provi
aircra
RWY
using
in ins
opera

DATES
on 09
Co
Docke
Septe

ADDR
the ru
Airsp
ACE–
Admi
ACE–
City,

Rules and Regulations

Federal Register
Vol. 64, No. 157
Monday, August 16, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–37]

Amendment to Class E Airspace; Ava, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Bill Martin Memorial Airport, Ava, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 13 and GPS RWY 31 Standard Instrument Approach Procedures (SIAPs) to serve Bill Martin Memorial Airport, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 13 and GPS RWY 31 SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 13 and GPS RWY 31 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 23, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–37, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 13 and GPS RWY 31 SIAPs to serve the Bill Martin Memorial Airport, MO. The amendment to Class E airspace at Ava, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Bill Martin Memorial Airport, MO, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Althought this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–37." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulations is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Ava, MO [Revised]

Ava, Bill Martin Memorial Airport, MO
(Lat 36°58′19″N., long. 92°40′55″W.)
Bilmart NDB
(Lat 36°58′11″N., long. 92°40′39″W.)
Dogwood VORTAC
(Lat 37°01′24″N., long. 92°52′37″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Bill Martin Memorial Airport and within 1.8 miles each side of the 107° radial of the Dogwood VORTAC extending from the 6.3-mile radius to the VORTAC and within 2.6 miles each side of the 142° bearing from the Bilmart NDB extending from the 6.3-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on August 5, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–21029 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–38]

Amendment to Class E Airspace; Lyons, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Lyons-Rice County Municipal Airport, Lyons, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17R and GPS RWY 35L Standard Instrument Approach Procedures (SIAPs) to serve Lyons-Rice County Municipal Airport, KS. Additional controlled airspace extending upward from 700 feet above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 17R and GPS RWY 35L SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 17R and GPS RWY 35L SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 23, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–38, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17R and GPS RWY 35L SIAPs to serve the Lyons-Rice County Memorial Airport, KS. The amendment to Class E airspace at Lyons, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Lyons-Rice County Municipal Airport, KS, will provide additional controlled airspace for airspace operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will

publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–38." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Lyons, KS [Revised]

Lyons-Rice County Municipal Airport, KS
(Lat. 38°20'34"N., long. 98°13'37"W.)
Lyons-NDB
(Lat. 38°20'50"N., long. 98°13'37"W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lyons-Rice Municipal Airport and within 2.6 miles each side of the 348° bearing from the Lyons NDB extending from the 6.5-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on August 5, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–21030 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–26]

Amendment to Class E Airspace; Rolla/Vichy, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Rolla/Vichy, MO.

DATES: The direct final rule published at 64 FR 31118 is effective on 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 10, 1999 (64 FR 31118). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 5, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–21035 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–24]

Amendment to Class E Airspace; Emporia, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Emporia, KS.

DATES: The direct final rule published at 64 FR 33012 is effective on 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 21, 1999 (64 FR 33012). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such as adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 5, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–21036 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 341, 342, 346, 357, 362, 385

[Docket No. RM99–1–000; Order No. 606]

Revisions to Oil Pipeline Regulations

Issued August 4, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations governing oil pipelines. The regulations to be modified or deleted are located in 18 CFR Parts 3, 341, 342, 343, 346, 357, 362, and 385. These revisions are intended to clarify the Commission's regulations and bring them up to date.

EFFECTIVE DATE: The regulations are effective September 15, 1999.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Travis R. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0696.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations governing oil pipelines at 18 CFR Parts 341, 342, 343, and 346 to remove various provisions that are either outdated or in conflict with other oil pipeline regulations. The goals of these revisions are to clarify the Commission's regulations and bring them up to date. The Commission is also revising 18 CFR Parts 3, 357, 362, and 385 to conform to the other changes adopted here.

II. Background

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline or to the establishment of valuations for pipelines, was transferred from the Interstate Commerce Commission (ICC) to the Commission pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act).[1] At the time the DOE Act transferred jurisdiction over oil pipeline rates to the Commission, the regulations governing oil pipelines were located in the ICC's regulations at Title 49 of the Code of Federal Regulations (CFR). Initially, the Commission ordered that the regulations concerning oil pipelines remain in effect until modified by the Commission. In Order No. 119,[2] the Commission started transferring some of the ICC's oil pipeline regulations from Title 49 of the Code of Federal Regulations to the Commission's regulations in Title 18. Parts 357[3] and 362[4] are among some of the Commission's current regulations that

[1] Department of Energy Organization Act, 42 U.S.C. 7155 and 7172(b) (1988).

[2] Regulation of Interstate Oil Pipelines, Order No. 119, 46 FR 9043 (Jan. 28, 1981), FERC Stats. & Regs. (Regulations Preambles, 1977–1981) ¶ 30,226 (Dec. 19, 1980).

[3] Part 357 addresses the annual special or periodic reports that carriers subject to Part I of the Interstate Commerce Act are required to file.

[4] 18 CFR Part 362 sets forth the various requirements for valuation.

were adopted from this initial transfer. In Order No. 225,[5] the Commission adopted the ICC's rules pertaining to paper hearings called the "modified procedure," currently codified at 18 CFR 385.1404 through 385.1414, and to *ex parte* communications, presently located at 18 CFR 385.1415, from 49 CFR Part 1100. Also, pursuant to Order No. 225, the Commission moved all of its Rules of Practice and Procedure from 18 CFR Part 1 to 18 CFR Part 385. Notwithstanding some limited revisions, most of the provisions in 18 CFR Parts 357, 362, and 385 are the same as they were in Title 49.

The Energy Policy Act of 1992 (Act of 1992) required the Commission to promulgate new regulations to provide a simplified and generally applicable ratemaking methodology for oil pipelines, and to streamline its procedures in oil pipeline proceedings.[6] Pursuant to Congress' directive in the Act of 1992, the Commission issued Order No. 561[7] and two companion rulemakings, Order Nos. 571[8] and 572[9]. In Order No. 561, the Commission established a simplified and generally applicable index-methodology for oil pipelines to change their rates and also provided alternatives to this methodology. In Order No. 571, the Commission addressed a cost-of-service rate filing alternative for oil pipelines. In Order No. 572, the Commission addressed market-based rates for oil pipelines. These rulemakings also included new rate filing requirements and procedural reforms to reflect the new ratemaking methodologies, and streamlined the Commission's internal processes for oil pipelines.

At the time the Commission adopted changes to its ratemaking methodologies and procedural requirements, it intended that its new regulations would supersede existing procedural rules that were in conflict and do away with those that were no longer necessary, such as those describing the modified procedure. The final rules, however, did not take steps to remove these outdated regulations. As a result, the current Commission regulations governing oil pipelines include both recent provisions adopted or modified pursuant to the Act of 1992 and conflicting regulations adopted from the ICC which have been superseded, unutilized, or are inconsistent.

On October 20, 1998, the Commission issued a Notice of Proposed Rulemaking in Docket No. RM99–1–000.[10] The Commission received comments from the Association of Oil Pipelines (AOPL).

III. Public Reporting Burden

The Commission believes that there will be no impact on the public reporting burden from the elimination of outdated and nonessential regulations, and the related modification of other regulations. Because the regulations being removed are outdated, they effectively ceased being a reporting burden years ago. As for the regulations being modified, they are simply clarifying, not augmenting, reporting requirements.

IV. Discussion

A. Part 341

Part 341 relates to the requirements for preparing, filing, and withdrawing oil pipeline tariffs. Section 341.6(3) pertains to the rules for partial adoption by a carrier of another carrier's tariffs. In the NOPR, the Commission proposed to amend this section by removing duplicative language from the provision that now requires a carrier to state the effective date of an adoption notice twice in a tariff supplement required to be filed with the Commission. The Commission did not receive any adverse comments in response to this proposal, so the Commission will implement this modification in its final rule.

Section 341.7 addresses the requirements for concurrences. The Commission proposed to modify this section to specify the information that should be included in letters of transmittal accompanying the filing of a tariff publication containing a joint carrier. Under the proposed revision, letters of transmittal would be required to include the address, phone number, and contact for each joint carrier listed in the tariff publication. This is information that the Commission, as a routine matter, has required carriers to submit. The Commission concluded that including it as part of the regulations will inform carriers that such information must be included with their filings and make it unnecessary for carriers to supplement their filings later.

AOPL supports the Commission's proposal to include the foregoing information concerning joint carriers in the transmittal letter for a joint tariff. However, AOPL contends that the better place for this requirement is in the Commission's regulations on transmittal letters in section 341.2(c)(1).

The Commission will adopt the proposed modifications and revise section 341.2(c)(1), not section 341.7, as recommended by AOPL. While section 341.2(c)(1) is not a perfect fit, since the modification involves information requirements for transmittal letters concerning joint carriers, and section 341.2(c)(1) pertains to general information requirements for transmittal letters, it appears to be more appropriate to include it there, rather than in the section on concurrences.

B. Part 342

Part 342 pertains to the methods that may be used to establish initial rates, or change existing rates. Section 342.3 discusses rate changes under the indexing methodology. Section 342.3(b)(1) currently provides:

> Carriers must specify in their letters of transmittal required in § 341.2(c) of this chapter the rate schedule to be changed, the proposed new rate, the prior rate, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

Under the revisions proposed in the NOPR, this section would require carriers filing for rate changes to include the prior rate ceiling level, in addition to the other information specified, in their letters of transmittal. Including the prior ceiling level will provide necessary information for the calculation of the index ceiling levels.

Section 342.3(b)(2) addresses the information required to be filed by carriers with their initial rate changes. It currently reads as follows:

> On March 31, 1995, or concurrently with its first indexed rate change filing made on or after January 1, 1995, whichever first occurs, carriers must file a verified copy of a schedule for calendar years 1993 and 1994 containing the information required by page

---

[5] Revisions of Rules of Practice and Procedure to Expedite Trial-Type Hearings, Order No. 225, 47 FR 19014 (May 3, 1982), FERC Stats. & Regs. [Regulations Preambles, 1982–1985) ¶ 30,358 (Apr. 28, 1982).

[6] The Energy Policy Act of 1992 (Act of 1992) contemplated two rulemakings—one on ratemaking methodology and another on streamlined procedures—and established separate deadlines for their completion. Energy Policy Act of 1992 Pub. L. No. 102–46, Title XVIII, 1801 to 1804, 106 Stat. 2776, 3010–3011 (codified as 42 U.S.C.A. 7172 note [West Supp. 1995)).

[7] Revisions to Oil Pipeline Regulations pursuant to Energy Policy Act of 1992, Order No. 561, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. [Regulations Preambles, 1991–1996) ¶ 30,985 (Oct. 22, 1993), *order on rehearing and clarification*, Order No. 561–A, 59 FR 40243 (Aug. 8, 1994) FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,000 (July 28, 1994).

[8] Cost-of-Service Reporting and Filing Requirements for Oil Pipelines, Order No. 571, 59 FR 59137 (Nov. 16, 1994) FERC Stats. & Regs. [Regulations Preambles, 1991–1996) ¶ 31,006 (Oct. 28, 1994), *order on rehearing and clarification*, Order No. 571–A, 60 FR 356 (Jan. 4, 1995) FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,012 (Dec. 28, 1994).

[9] Market-Based Ratemaking for Oil Pipelines, Order No. 572, 59 FR 59148 (Nov. 16, 1994), FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,007 (Oct. 28, 1994), *order denying rehearing*, Order No. 572–A, 69 FERC ¶ 61,412 (Dec. 28, 1994).

[10] Revisions to Oil Pipeline Regulations, 63 FR 57081 (Oct. 26, 1998), IV FERC Stats. & Regs. ¶ 32,537 (Oct. 20 1998).

700 of the 1995 edition of FERC Form No. 6. If actual data are not available for calendar year 1994 when the rate change filing is made, the information for calendar year 1994 must be comprised of the most recently available actual data annualized for the year 1994. A schedule containing the information comprised of actual data for calendar year 1994 must be filed not later than March 31, 1995. Thereafter, carriers must file page 700 as a part of their annual Form No. 6 filing.

This section directs carriers to file schedules containing the information required by page 700 of the 1995 edition of FERC Form No. 6. on March 31, 1995, or concomitantly with its first indexed rate change filing made on or after January 1, 1995, whichever occurs first. Because the one-time need for the requirements of this section has passed, the Commission proposed to delete it in its entirety.

Section 342.3(d)(3) states that a carrier must compute its ceiling level each index year without regard to the rates filed pursuant to this section. In *Kaneb Pipeline Operating Partnership, L.P.*,[11] and subsequent proceedings, the Commission explained that because there are numerous pipelines that file rates measured in hundredths of a cent, all ceiling level calculations for all pipelines should be rounded [12] to the nearest hundredth of a cent. As this explanation applies to all calculations by all carriers under section 342.3, the NOPR proposed to add this explanation to the regulations to assist carriers in making accurate and complete filings.

AOPL considers the proposed changes to be positive ones for the oil industry. AOPL also suggests including in the regulation an example demonstrating how the rounding works. At the very least, AOPL requests that the Commission include a more detailed explanation of the rounding process.

The Commission will adopt the modification to section 342.3 in the final rule as proposed in the NOPR. The regulations as revised will include a thorough explanation for pipelines to use in calculating their ceiling levels. Adding further material would add unnecessary detail to the regulations. Oil pipelines have been calculating their ceiling levels for a number of years under the current regulations, and have done so successfully. The material added here will address the area where pipelines, for the most part, have miscalculated. No pipelines considered it necessary to file comments on the proposal, so the revision adopted here should prove satisfactory.

C. Part 343

Part 343 discusses procedural matters related to oil pipeline proceedings under part 342. Section 343.2 describes the requirements for filing interventions, protests, and complaints. The Commission will adopt the NOPR's proposal to correct section 343(c)(4) so that it references paragraphs (c)(1), (2), or (3) within the section, rather than paragraphs (b)(1), (2), or (3) as at present.

D. Part 346

Part 346 sets forth the filing requirements for oil pipelines that seek to establish cost-of-service rates as permitted under Part 342. Section 346.2(c)(7) states in part: "If the presently effective rates are not at the maximum ceiling rate established under § 342.4(a) of this chapter, then gross revenues must also be computed and set forth as if the ceiling rates were effective for the 12 month period." The Commission will adopt the proposed revisions to section 346.2(c)(7) to correctly reference section 342.3, which is the section that sets forth the indexing methodology, rather than section 342.4(a), which describes cost-of-service rates.

E. Part 357

Part 357 concerns the annual special or periodic reports that carriers subject to Part I of the Interstate Commerce Act are required to file. Sections 357.3(a), (b), and (c) discuss the filing requirements for FERC Form No. 73. In Order No. 561, the Commission stated that it would be the oil pipeline carriers' responsibility in the future to perform depreciation studies to establish revised depreciation rates for oil pipelines. The specific requirements for such studies were adopted as Part 347 of the Commission's regulations in Order No. 571. Section 347.1(e)(5)(x) provides that a carrier must submit a Service Life Data Form (FERC Form No. 73) if the proposed depreciation rate adjustment is based on the remaining physical life of the properties. The Commission proposed that section 357.3(a) and (b), which address who must file FERC Form No. 73 and when the form must be submitted, be revised to include filings under section 347.1(e)(5)(x). The Commission also proposed to revise section 357.3(c) to update its mailing address. AOPL considers the proposed changes to be an appropriate clarification and the Commission will adopt them.

AOPL has pointed out that section 357.3(b), as proposed in the NOPR, contains a clerical error. The proposed section read as follows:

> Service life data is reported to the Commission by an oil pipeline company, as necessary, concurrently with a filing made pursuant to part 347 of this chapter and as directed during a depreciation rate investigation. (emphasis added)

AOPL correctly noted that the word "and" should really be the word "or." Accordingly, for the final rule, the Commission will adopt the proposal and will supplant the word "and" with the word "or."

F. Part 362

Part 362 sets forth the various requirements for valuation. Part 362 came into being as a result of Order No. 119,[13] which transferred the ICC's valuation section, in addition to several other sections pertaining to oil pipelines, from its regulations located at Title 49 of the Code of Federal Regulations to the Commission's regulations at Title 18. In Opinion No. 154,[14] the Commission intimated that it was considering abandoning the traditional ICC valuation formula; however, the Commission ultimately retained the valuation methodology. To the contrary, in Opinion No. 154–B,[15] the Commission adopted a methodology that is currently used in oil pipeline rate cases. This new methodology is predicated on a trended original cost (TOC) rate base and it does not follow the ICC's historic valuation rate base. Because Opinion No. 154–B rejects the valuation rate base methodology and thus eliminates the need for any valuation of oil pipelines, the filing of valuation reports as now required by Part 362 is no longer necessary. As a result, the Commission proposed to remove Part 362 from its regulations. Order No. 561 removed Parts 360 and 361 pertaining to reporting of data for valuation purposes. The proposal in the NOPR would complete the task of removing unnecessary valuation regulations.

AOPL welcomes removal of the rules on valuation, considering it to be long

[11] Kaneb Pipeline Operating Partnership, L.P., 71 FERC ¶ 61,409 (1995).

[12] If the third decimal place number is five or more, the second decimal number should be rounded up; if the third decimal place number is four or less, the second decimal place number should be rounded down. Kaneb Pipeline. 71 FERC ¶ 61,409 (1995), at p. 62,617 n.6.

[13] Regulation of Interstate Oil Pipelines, Order No. 119, 46 FR 9043 (Jan. 28, 1981), FERC Stats. & Regs. (Regulations Preambles, 1977–1981) ¶ 30,226 (Dec. 19, 1980).

[14] Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486 (D.C. Cir. 1984), *cert. denied sub nom.*, Williams Pipeline Company v. Farmers Union Central Exchange, Inc., 105 S.Ct. 507 (1984). The Commissions's opinion appears at 21 FERC ¶ 61,260 (1982), *reh'g denied*, 21 FERC ¶ 61,086 (1983).

[15] Williams Pipeline Company, 31 FERC ¶ 61,377 (1985).

overdue. The Commission will adopt the proposed changes.

G. Part 385

Part 385 governs the Commission's rules of practice and procedure. Section 385.101(b)(3) excepts ICC rules from Part 385 in cases where regulations in the Commission's Rules of Practice and Procedure are inconsistent with ICC rules that were not replaced by a Commission rule or order. Because the Commission has promulgated and codified its own rules governing oil pipelines, this section has become unnecessary; therefore, the Commission proposed to remove this section from its Rules of Practice and Procedure. Section 385.102(a), which defines "decisional authority," refers to authority or responsibility under "49 CFR Chapter X." As this is a reference to ICC regulations which have been replaced, the Commission proposed the removal of this section.

Section 385.1403 discusses the filing requirements for protests to tariff filings. This section is inconsistent with, and has been superseded by, section 343.3, which was adopted in Order No. 561. Accordingly, the Commission proposed to delete section 385.1403 from the Commission's Rules of Practice and Procedure.

Sections 385.1405 through 385.1414 set out the modified procedure rules for oil pipeline proceedings. These rules provide that the Commission can order a proceeding to be heard under a modified procedure if it appears that substantially all important issues of fact may be resolved by means of written materials without an oral hearing. These rules were adopted from the ICC's procedural regulations, 49 CFR 1100, pursuant to Order No. 225.[16] The regulations concerning the modified procedure have been superseded by, and are in conflict with, procedures and filing requirements in Parts 342, 343, 346, and 347 adopted in Order Nos. 561, 571, and 572. Therefore, the Commission proposed in the NOPR to remove them. The Commission stated it would continue to use paper hearing procedures in individual cases where warranted, but that these procedures are not used frequently enough to warrant continuing to include them in the regulations. Since the Commission proposed to remove the modified procedure rules, the NOPR also proposed to remove section 385.101(b)(4)(I) because it excepts sections 385.1404 through 1414 from Part 385.

AOPL objects to the removal of the modified procedure provisions. AOPL contends that inclusion of the rules, even if only used occasionally, may be of benefit to parties and the Commission in rapidly resolving a dispute. AOPL claims that although the Commission could still order paper hearings when necessary, the Commission would be less likely to do so without a clearly defined template already in place that sets out the rights and obligations of the parties in conducting such a proceeding. AOPL also argues that a paper hearing could prove beneficial to quickly resolving a complaint proceeding that is clear as to the issue in dispute, but unclear as to an appropriate resolution.

The Commission's modified procedure provisions have become outdated as the result of changes to the Commission's procedural regulations that specify resolution paths to be followed in particular instances. For example, the regulations at section 343.5 provide that the Commission may require parties to enter into good faith negotiations to settle oil pipeline rate matters and specify that the Commission will refer all protested rate filings to a settlement judge for recommended resolution. The Commission also has adopted new complaint procedures designed to encourage and support consensual resolution of complaints and otherwise ensure that complaints are resolved in a timely and fair manner. Thus, AOPL's concerns about there being in place procedures that recognize the rights and obligations of parties in large part have already been addressed. For those few instances where a proceeding may not fit neatly into an established resolution process, the Commission will be able to devise a procedure to ensure resolution of the dispute in a manner that best serves all.[17] Such a procedure could include a paper hearing process through which issues of material fact could be resolved by means of written statements. The Commission therefore considers the modified procedure regulations to be no longer necessary and will adopt the revisions proposed in the NOPR.

Some of the Commission's regulations include references to the Oil Pipeline Board. Section 385.102, the definitions section, contains Oil Pipeline Board references in paragraphs (a) and (e)(2). Part 3 pertains to organization, operation, information and requests, and it also refers to the Oil Pipeline Board. Section 385.502(a)(3), rules concerning the initiation of a hearing, contains an Oil Pipeline Board reference. Section 385.1902, rules for appealing staff action, also makes reference to the Oil Pipeline Board. Since the Commission abolished the Oil Pipeline Board in Order No. 561, the Commission proposed to remove all references to the Oil Pipeline Board, and adopts that proposal here.

H. AOPL's Suggestions

Finally, in addition to commenting on the revisions proposed in the NOPR, AOPL, on behalf of the oil pipeline industry, requests that the Commission implement two additional modifications in the final rule. First, as a reflection of the current way in which carriers and their shippers conduct business, AOPL suggests that the Commission modify the definition of "posting" or "post" in section 341.0(a)(7), the definitions and applications section, by allowing the placement of a carrier's tariff on the Internet to serve as an alternate means of "posting."

AOPL's final suggestion is for the Commission to delete section 385.208, which pertains to notices of protests to tentative oil pipeline valuations. According to AOPL, the sole purpose of this section was to permit objections to valuations of oil pipeline companies, which are no longer conducted.

The Commission finds that both of AOPL's suggestions are consistent with the goals of this rulemaking and thus will integrate them into the final rule. AOPL's suggestion to allow posting on the Internet as an alternative recognizes the growing availability and use of electronic media as a new way of conducting business. The change also will not impose a requirement or burden on pipelines as it is an alternative and wholly voluntary; thus, the Commission considers it unnecessary to request comment before adopting the change. The Commission will also delete section 385.208. As was stated by AOPL, this section is wholly germane to objections to oil pipeline valuations, which are no longer performed.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment

[16] Revisions of Rules of Practice and Procedure to Expedite Trial-Type Hearings, Order No. 225, 47 FR 19014 (May 3, 1982), FERC Stats. & Regs. [Regulations Preambles, 1982–1985] ¶ 30,358 (Apr. 28, 1982).

[17] *See, e.g.*, Express Pipeline Partnership, 75 FERC ¶ 61,303 (1996) (holding that the Commission will establish paper hearing procedures to address whether to approve proposed rates and a rate structure as a condition precedent to construction of a new oil pipeline); Platte Pipe Line Company, 78 FERC ¶ 61,307 (1997) (holding that the Commission will establish a technical conference to examine issues raised by the pipeline's filing); and *Sinclair Oil Corporation* v. *Platte Pipe Line Company*, 87 FERC ¶ 61,259 (1999) (holding that the Director of the Commission's Dispute Resolution Service is directed to arrange a process to foster negotiation and agreement).

or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[19] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[20] Therefore, neither an Environmental Impact Statement nor an Environmental Assessment is necessary and will not be prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[21] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Commission certifies that promulgating this rule does not represent a major federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

VII. Information Collection Statement

Office of Management and Budget (OMB) regulations[22] require that OMB approve certain information collection requirements imposed by agency rule. Since this rule does not impose new regulations and has no impact on current information collections, there is no need to obtain OMB approval as to the deletion and modification of these regulations. Nevertheless, the Commission is submitting a copy of the final rule to the OMB for informational purposes.

VIII. Effective Date and Congressional Notification

The regulations are effective September 15, 1999. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[23] That reporting requirement applies to this Final Rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a major rule as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 3

Organization and functions (Government agencies).

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 342

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 343

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 362

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and record keeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Parts 3, 341, 342, 343, 346, 357, 362, and 385, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 3—[REMOVED AND RESERVED]

1.–2. Part 3 consisting of § 3.4 is removed and reserved.

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

3. The authority citation for Part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

4. Section 341.0 is amended by revising paragraph (a)(7) to read as follows:

§ 341.0 Definitions; application.

(a) * * *

(7) *Posting* or *post* means making a copy of a carrier's tariff available during regular business hours for public inspection in a convenient form and place at the carrier's principal office and other offices of the carrier where business is conducted with affected shippers, or placing a copy on the Internet in a form accessible by the public.

* * * * *

5. Section 341.2 is amended by revising paragraph (c)(1) to read as follows:

§ 341.2 Filing requirements.

* * * * *

(c) * * *

(1) *Contents.* Letters of transmittal must describe the filing and explain any changes to the carrier's rates, rules, terms or conditions of service; state if a waiver is being requested, and specify the statute, section, regulation, policy or order requested to be waived; and identify the tariffs or supplement numbers and the proposed effective date of the tariff publication. Carriers must provide to the Commission, in the letter of transmittal accompanying the filing of a tariff publication containing a joint carrier, the address, phone number, and a contact for each joint carrier listed in the tariff publication.

* * * * *

6. Section 341.6 is amended by revising paragraph (d)(3) to read as follows:

§ 341.6 Adoption rule.

* * * * *

(d) * * *

(3) The former owner must immediately file a consecutively numbered supplement to each of its tariffs covered by the adoption notice, reading as follows:

Effective [date of adoption notice] this tariff became the tariff of [legal name of adopting carrier] for transportation movements [identify origin and destination points], as per its adoption notice FERC No. [number].

* * * * *

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES

7. The authority citation for Part 342 continues to read as follows:

Authority: 5 U.S.C. 571–583; 42 U.S.C. 7101–7532; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

8. Section 342.3 is amended by revising paragraph (b) in its entirety, and paragraph (d)(3) to read as follows:

---

[18] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. (Regulations Preambles, 1986–1990) ¶ 30,783 (Dec. 10, 1987).

[19] 18 CFR 380.4.

[20] 18 CFR 380.4(a)(2)(ii).

[21] 5 U.S.C. 601–612.

[22] 5 CFR Part 1320.

[23] 5 U.S.C. 801 (Supp. III 1997).

§ 342.3 Indexing.

* * * * *

(b) *Information required to be filed with rate changes.* The carrier must comply with Part 341 of this title. Carriers must specify in their letters of transmittal required in § 341.2(c) of this chapter the rate schedule to be changed, the proposed new rate, the prior rate, the prior ceiling level, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

* * * * *

(d) * * *

(3) A carrier must compute the ceiling level each index year without regard to the actual rates filed pursuant to this section. All carriers must round their ceiling levels each index year to the nearest hundredth of a cent.

* * * * *

PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS

9. The authority citation for Part 343 continues to read as follows:

Authority: 5 U.S.C. 571–583; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

10. Section 343.2 is amended by revising paragraph (c)(4) to read as follows:

§ 343.2 Requirements for filing interventions, protests and complaints.

* * * * *

(c) * * *

(4) A protest or complaint that does not meet the requirements of paragraphs (c)(1), (c)(2), or (c)(3) of this section, whichever is applicable, will be dismissed.

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

11. The authority citation for Part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

12. Section 346.2 is amended by revising paragraph (c)(7) to read as follows:

§ 346.2 Material in support of initial rates or change in rates.

* * * * *

(c) * * *

(7) *Statement G—revenues.* This statement must set forth the gross revenues for the actual 12 months of experience as computed under both the presently effective rates and the proposed rates. If the presently effective rates are not at the maximum ceiling rate established under § 342.3 of this chapter, then gross revenues must also be computed and set forth as if the ceiling rates were effective for the 12 month period.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

13. The authority citation for Part 357 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

14. Section 357.3 is revised to read as follows:

§ 357.3 FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis.

(a) *Who must file.* Any oil pipeline company requesting new or changed depreciation rates pursuant to Part 347 of this title if the proposed depreciation rates are based on the remaining physical life of the properties or if directed by the Commission to file service life data during an investigation of its book depreciation rates.

(b) *When to submit.* Service life data is reported to the Commission by an oil pipeline company, as necessary, concurrently with a filing made pursuant to Part 347 of this title or as directed during a depreciation rate investigation.

(c) *What to submit.* The format and data which must be submitted are prescribed in FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis, available for review at the Commission's Public Reference Section, Room 2A, 888 First Street, NE, Washington, D.C. 20426.

SUBCHAPTER 5—[REMOVED AND RESERVED]

PART 362—[REMOVED AND RESERVED]

14a. Subchapter 5 consisting of part 362, Uniform System of Records and Reports of Property Changes, is removed in its entirety and reserved.

PART 385—RULES OF PRACTICE AND PROCEDURE

15. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 385.101 [Amended]

16. Section 385.101 is amended by removing paragraphs (b)(3) and (b)(4)(i), and redesignating paragraph (b)(4)(ii) as paragraph (b)(4).

17. Section 385.102 is amended by revising paragraphs (a) and (e)(2) to read as follows:

§ 385.102 Definitions (Rule 102).

* * * * *

(a) *Decisional authority* means the Commission or Commission employee that, at the time for decision on a question, has authority or responsibility under this chapter to decide that particular question.

* * * * *

(e) * * *

(2) With respect to any proceeding not set for hearing under subpart E, any employee designated by rule or order to conduct the proceeding.

* * * * *

§ 385.208 [Removed and reserved].

18. Section 385.208 is removed and reserved.

19. Section 385.502 is amended by removing paragraph (a)(3) and revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 385.502 Initiation of hearing (Rule 502).

(a) * * *

(1) Order of the Commission; or

(2) Notice by the Secretary at the direction of the Commission or under delegated authority.

* * * * *

§§ 385.1403 and 385.1405–385.1415 [Removed]

§§ 385.1404 and 385.1415 [Redesignated as §§ 385.1403 and 385.1404]

20. Sections 385.1403 and 385.1405 through 385.1414 are removed and sections 385.1404 and 385.1415 are redesignated paragraphs 385.1403 and 385.1404.

21. Section 385.1902 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising paragraph (a) to read as follows:

§ 385.1902 Appeals from action of staff (Rule 1902).

(a) Any staff action (other than a decision or ruling of presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under subpart E of this part) taken pursuant to authority delegated to the staff by the Commission is a final agency action that is subject to a request for rehearing under Rule 713 (request for rehearing).

* * * * *

[FR Doc. 99–20574 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0571]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of nickel antimony titanium yellow rutile (C.I. Pigment Yellow 53) as a colorant for polymers intended for use in contact with food. This action responds to a petition filed by BASF Corp.

DATES: This regulation is effective August 16, 1999; written objections and requests for a hearing by September 15, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 27, 1998 (63 FR 40125), FDA announced that a food additive petition (FAP 8B4611) had been filed by BASF Corp., 3000 Continental Dr. North, Mt. Olive, NJ 07828–1234. The petition proposed to amend the food additive regulations to provide for the safe use of nickel antimony titanium yellow rutile (C.I. Pigment Yellow 53) as a colorant for polymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, the additive will achieve its intended technical effect, and therefore, that the regulations in 21 CFR 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 8B4611 (63 FR 40125). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 15, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * *	* * *
Nickel antimony titanium yellow rutile (C.I. Pigment Yellow 53, CAS Reg. No. 8007–18–9).	For use at levels not to exceed 1 percent by weight of polymers. The finished articles are to contact food only under conditions of use B through H as described in Table 2 of § 176.170(c) of this chapter.
* * *	* * *

Dated: August 9, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21079 Filed 8–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0570]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of chrome antimony titanium buff rutile (C.I. Pigment Brown 24) as a colorant for polymers intended for use in contact with food. This action responds to a petition filed by BASF Corp.

DATES: This regulation is effective August 16, 1999; written objections and requests for a hearing by September 15, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 23, 1998 (63 FR 39582), FDA announced that a food additive petition (FAP 8B4608) had been filed by BASF Corp., 3000 Continental Dr. North, Mt. Olive, NJ 07828–1234. The petition proposed to amend the food additive regulations to provide for the safe use of chromium antimony titanium buff rutile (C.I. Pigment Brown 24) as a colorant for polymers intended for use in contact with food.

During the review of the petition, it was determined that the correct nomenclature for the colorant, in consonance with the Chemical Abstract Services Registry No. (68186–90–3), is chrome antimony titanium buff rutile. Accordingly, the colorant is listed correctly in the codified section of this document.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in 21 CFR 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 8B4608 (63 FR 39582). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 15, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * *	* * *
Chrome antimony titanium buff rutile (C.I. Pigment Brown 24, CAS Reg. No. 68186–90–3).	For use at levels not to exceed 1 percent by weight of polymers. The finished articles are to contact food only under conditions of use B through H as described in Table 2 of § 176.170(c) of this chapter.
* * *	* * *

Dated: August 9, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21080 Filed 8–13–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN 49–01–7273a; FRL–6416–8]

Approval and Promulgation of State Implementation Plan; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving a December 31, 1998, request from the Minnesota Pollution Control Agency (MPCA) for new air pollution control requirements for the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for Marathon Ashland Petroleum LLC (Marathon). These requirements were submitted in the form of an Administrative Order (Order) and include revisions associated with the addition of a new stack, revised emission limits for numerous sources, and other changes. The revisions result in an overall decrease in allowable SO_2 emissions from the facility. The new requirements have been evaluated through a computerized modeling analysis and have shown that they will attain and maintain the National Ambient Air Quality Standard (NAAQS) for SO_2.

DATES: This direct final rule is effective on October 15, 1999, without further notice, unless we receive relevant adverse written comments by September 15, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Randall Robinson at (312) 353–6713 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Randall Robinson, Meteorologist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. Introduction

What Action Is EPA Taking Today?

Who Is Affected by This Action?

What Information Did the State Submit in Its Request?

What Are the National Ambient Air Quality Standards?

What is an Administrative Order?

How Did the State Support Its Request for Marathon?

How Does This Action Change the Administrative Order for Marathon?

Why Is the Request Approvable?

II. EPA Action

III. Administrative Requirements

I. Introduction

What Action Is EPA Taking Today?

In this action, we are approving a revision to the Minnesota SO_2 SIP for Marathon. The revision is referred to as Amendment Four and amends the Order for Marathon to reflect revisions associated with the addition of a new stack and revised emission limits for numerous sources. Other changes included in Amendment Four are discussed later in this document and more fully in the technical review document.

Who Is Affected by This Revision?

The revision to Minnesota's SIP for SO_2 is site-specific and, thus, only affects Marathon.

What Information Did the State Submit In Its Request?

On December 31, 1998, the Minnesota Pollution Control Agency (MPCA) submitted to EPA a site-specific SO_2 SIP revision request for Marathon. The SIP revision for Marathon was submitted in the form of an Order amendment, and referred to as Amendment Four. Amendment Four revises the present Order for Marathon and replaces prior amendments, Amendment Two and Three, by incorporating changes in response to EPA comments on Amendment Two and Amendment Three. The MPCA had previously submitted Amendment Two and Amendment Three to EPA on November 26, 1996, and October 17, 1997, respectively. EPA provided comments to MPCA regarding Amendment Two and Amendment Three, but did not take any other action on those amendments to the administrative order.

The 30-day public notice for the Order amendment, Amendment Four, appeared in the St. Paul Pioneer Press on March 4, 1998. No one from the public commented on the proposed revisions or requested a public hearing.

What Are the National Ambient Air Quality Standards?

The EPA has established concentration levels for each of six pollutants, called criteria pollutants, that are protective of human health (primary standard) and welfare (secondary standard). The primary NAAQS for SO_2 is 0.03 parts per million (ppm) annual arithmetis mean, and 0.14 ppm maximum 24-hour average concentration, not to be exceeded more than once per calendar year. The secondary NAAQS for SO_2 is 0.50 ppm maximum 3-hour average concentration, not to be exceeded more than once per calendar year. See 40 CFR 50.4.

What Is an Administrative Order?

Each state is obligated by section 110(a) of the Act, 42 U.S.C. 7410, to develop a plan which provides for "implementation, maintenance, and enforcement" of the NAAQS promulgated by EPA. An Order is a mechanism which the state uses to enforce applicable requirements established either by State or Federal law. The Orders are used to enforce requirements needed to meet the applicable NAAQS.

How Did the State Support Its Request for Marathon?

The MPCA provided EPA with a computerized modeling attainment demonstration. The modeling analysis was required to evaluate whether the air impacts from the proposed revisions will still provide for attainment of the NAAQS for SO_2. Details of the analysis are presented below.

Air Quality Model

The analysis utilized the Industrial Source Complex Model-Short Term (ISCST3) model. (The Integrated Gaussian Model (IGM), which has been demonstrated to be equivalent to ISCST3, was used to obtain source contributions.) ISCST3 is recommended for regulatory applications for estimating short-term impacts from complicated sources (i.e., sources with special problems such as aerodynamic downwash). The ISCST3 model also contains the COMPLEX–I algorithms

which allow for the prediction of ambient air impacts at receptors above stack top (i.e., complex terrain). Additionally, the ISCST3 model automatically implements the intermediate terrain policy which requires the user to predict concentrations on an hour-by-hour basis at receptors above stack top but below plume height using both a simple terrain model (ISCST3) and a complex terrain model (COMPLEX–I) and select the highest for each hour. This option was executed for the Marathon modeling.

Modeling Inputs

The SIP submittal revision submitted by the MPCA is specific to Marathon. The total ambient air impact from the revisions at the Company is the sum of the modeled impact from Company sources, modeled background sources from the Twin Cities area, and an unmodeled background value based on monitoring data. The value of the unmodeled background concentration is based on an analysis of historic monitored concentrations and has been used and approved in previous SO_2 SIP revisions. Marathon is located in the Mississippi River valley with bluffs exceeding the height of Marathon stacks. Consequently, weather data collected on-site was used to ensure representativeness. The modeling analysis used one year of meteorological data (1988) collected from a tower located at the facility. Concentrations were calculated over a receptor grid which featured 100 meter resolution. Concentrations calculated inside the fenced property boundary were not used in the analysis.

The modeling analysis used emission estimates based on maximum allowable emission rates (pounds of sulfur dioxide/hour and pounds of sulfur dioxide/mmBTU) and maximum design capacities (mmBTUs/hour). Stacks exceeding allowable good engineering practice stack height (GEP) were modeled using the calculated GEP height. Plume downwash due to building wake effects was also included in the analysis. The modeling was conducted in accordance with the general recommendations included in the Guideline on Air Quality Models, 40 Code of Federal Regulations part 51, appendix W. The results of the modeling are presented in the table below.

HIGH-SECOND-HIGH MODELED SULFUR DIOXIDE CONCENTRATIONS

[Micrograms/cubic meter]

Averaging time	Total concentration marathon+all background	NAAQS
Annual	65.1	80
24-hour	359.4	365
3-hour	946.5	1300

How Does This Action Change the Administrative Order for Marathon?

Amendment Four includes the following primary changes: (1) installation of a new sulfur reduction unit exhaust stack and subsequent rebuilding of one of two existing tail-gas incinerators, (2) a revised table of emission limits for various process and combustion equipment.

The table below lists the Emission Unit and the new emission limits, in pounds per hour and pounds per million British thermal units (BTU's) for those sources with revised emission limits.

NEW EMISSION LIMIT

Emission unit	lb/hr	lb/mmBTU
Process Steam Boiler	1.08	0.03
Crude Charge Heater	34.0	0.2834
Crude Vacuum Heater	1.20	0.03
Distillate Unifier Heater	1.41	0.03
Naphtha Unifier Heater	1.95	0.03
Platformer Charge Heater	1.95	0.03
Platformer Interheater #1	1.68	0.03
Asphalt Oxidizer	(*)	.....
Crude Charge	52.2	0.90
Crude Charge Preflash A (New)	0.89	0.03
Crude Charge Preflash B (New)	0.89	0.03
Platformer Heater #2	1.08	0.03
Guard Case Reactor	1.70	0.03
Reactor Heaters #1 & 2	2.10	0.03
Reactor Heaters #4 & 4E	0.63	0.03
Reactor Heaters #3 & 4W	1.05	0.03
Reactor Charge Heater	1.38	0.03
Product Stripper Re-boiler	0.78	0.03

NEW EMISSION LIMIT—Continued

Emission unit	lb/hr	lb/mmBTU
Reformer Heaters	3.48	0.03

* Removed.

Significant decreases in the pounds per hour emission limits occur at the crude charge heater (old limit=108 lb/hr), crude vacuum heater (old limit=23.4 lb/hr), and the crude charge plus preflash (old limit=105.5 lb/hr). Minor increases, less than 1 pound per hour, occur at other sources, mainly the heaters. Overall, the total allowable pounds per hour emissions have dropped from 6325 tons per year to 5698 tons per year.

The existing SIP for Marathon included emission limits specified during periods when the Shell Claus Offgas Treatment (SCOT) unit and the amine reduction unit (ARU) were undergoing regular scheduled maintenance. These maintenance period limits have been removed in Amendment Four. The limits associated with normal operating conditions and any other New Source Performance Standard (NSPS) limits apply at all times.

Other notable changes included in Amendment Four include:

(1) A requirement to keep records of calculated SO_2 emissions in pounds per hour.

(2) The addition of a diesel engine to pump water to the Alky unit during an emergency accidental release. Maximum emissions of 0.48 pound per hour SO_2.

(3) A restriction on steam air decoking more than one emission unit at the same time.

(4) Changing fuel oil sampling from a daily sample to a requirement to sample after receiving a transfer of fuel into their fuel supply tank, and a change from a weekly analysis of heating value of the fuel oil to quarterly.

(5) *Changes to other operating limits (Exhibits 1.1 and 1.4)*

Boiler 5—36.0 mmBTU/hr
Distillate Unifier Heater—47.0 mmBTU/hr
Naphtha Unifier Heater—65.0 mmBTU/hr
Platformer Charge Heater—65.0 mmBTU/hr
Platformer Interheater—56.0 mmBTU/hr
Crude Charge—58.0 mmBTU/hr
Crude Charge Pre—29.7 mmBTU/hr
Crude Charge Pre—29.7 mmBTU/hr
Platformer Heater #2—36.0 mmBTU/hr
Reactor Heaters 3 & 4W—35.0 mmBTU/hr
Modeled heat input values were added to the maximum heat input column

(6) *Changes to stack parameters (Exhibit 1.7).*

Modeled flow rates and temperatures were added

(7) *Changes not requiring a modification of the Administrative Order.*

Language was added which would allow certain changes to be made at the facility without obtaining a modified Order. A modification to the Order is not needed if the modification does not:

(A) Exceed any of the limits in Part I of the Order,

(B) Effect the stack parameters described in Exhibit 1.7, unless the change is made to a unit that no longer will be allowed to burn fuel oil (fuel oil supply disconnected),

(C) Result in an increase of 2.28 pounds of SO_2 per hour or more at any new unit.

Based on the modeled attainment demonstration submitted with the revision, these changes should not threaten the NAAQS. The limits on modifications identified in the Order should ensure that significant changes at the facility cannot occur without additional modeling showing that the NAAQS are protected. Additionally, language in the Order states that regardless of whether a modification of the order is required, the Company shall obtain a permit amendment if required by state or Federal law.

(8) *Recordkeeping revisions.*

An additional requirement to record the time period when burning fuel oil in New Source Performance Standard (NSPS) units.

(9) Two new continuous monitoring systems were installed to determine hydrogen sulfide content of commercial gas received from Northern States Power. These systems were installed at the crude heater and the reformer heaters.

(10) Name change from Ashland Petroleum Company to Marathon Ashland Petroleum, LLC.

(11) Property access restrictions. The company is required to maintain a fence to restrict public access around it's boundaries.

Other restrictions on operations, fuel use, and fuel quality remain in effect and unchanged from the previously Federally approved Order. The general compliance methodology consists of continuous emission monitors (CEMS), continuous monitoring systems (CMS), and fuel sampling and analysis.

Why Is the Request Approvable?

After review of the SIP revision request, EPA finds that Amendment Four meets the applicable requirements of Clean Air Act section 110(a) and that the revisions in Amendment Four have been shown to be protective of the applicable NAAQS.

II. EPA Action

EPA is approving the requested revision to the Minnesota SO_2 SIP for Marathon. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision in case written adverse comments are filed. This action will become effective without further notice unless the Agency receives relevant adverse written comments within 30 days from the date of publication. Should the Agency receive adverse comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This action is not subject to E.O. 13045 because it approves a state rule implementing a previously promulgated health or safety-based Federal standard, and preserves the existing level of pollution control for the affected areas.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the

requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur dioxide.

Dated: July 22, 1999

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding paragraph (c)(49) to read as follows:

§ 52.1220 Identification of plan

(c) * * *

(49) Approval—On December 31, 1998, the Minnesota Pollution Control Agency submitted a request for a revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for Marathon Ashland Petroleum LLC (Marathon). The site-specific SIP revision for Marathon was submitted in the form of an Administrative Order (Order), and referred to as Amendment Four.

(i) Incorporation by reference.

(A) For Marathon Ashland Petroleum, LLC, located in St. Paul Park, Minnesota:

(1) Amendment Four to the administrative order, dated and effective December 22, 1998, and submitted December 31, 1998.

(ii) Additional material.

(A) A letter from Peder A. Larson to David Ullrich, dated December 31, 1998, submitting Amendment Four for Marathon Ashland Petroleum, LLC.

[FR Doc. 99–21012 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R1–052–7211a; A–1–FRL–6417–5]

Approval and Promulgation of Air Quality Implementation Plan; Connecticut; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the State of Connecticut on February 7, 1996 and February 18, 1999, committing that the State will accept compliance with the National Low Emission Vehicle (National LEV) program requirements as a compliance option for new motor vehicles sold in the State, which had also adopted the California Low Emission Vehicle (CAL LEV) program. Auto manufacturers have agreed to sell cleaner vehicles meeting the National LEV standards throughout these States for the duration of the manufacturers' commitments to the National LEV program. This SIP revision is required as part of the agreement between States and automobile manufacturers to ensure the continuation of the National LEV program to supply clean cars throughout most of the country, beginning with 1999 model year vehicles in

Northeastern States and extending to other States beginning with 2001 model year vehicles.

DATES: This rule is effective on October 15, 1999 without further notice, unless EPA receives adverse comment by September 15, 1999. If we receive such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), US Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, US Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and Air and Radiation Docket and Information Center, US Environmental Protection Agency, 401 M Street, SW, (LE–131), Washington, DC 20460. In addition, the information is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1998, (63 FR 926) the Environmental Protection Agency (EPA) published a final rule outlining a voluntary nationwide clean car program, designed to reduce smog and other pollution from new motor vehicles. The National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA can mandate. The regulations provided that the program would come into effect only if northeastern States and the auto manufacturers voluntarily signed up for it. On March 9, 1998 (63 FR 11374), EPA found that nine northeastern States and 23 manufacturers had opted into the National LEV program and that the program is in effect. Now that it is in effect, National LEV is enforceable in the same manner as any other federal new motor vehicle program. National LEV will achieve significant air pollution reductions nationwide. In addition, the program provides substantial harmonization of federal and California new motor vehicle standards and test procedures, which enables manufacturers to design and test vehicles to one set of standards nationwide. The National LEV program demonstrates how cooperative, partnership efforts can produce a smarter, cheaper program that reduces regulatory burden while increasing protection of the environment and public health.

The National LEV program will result in substantial reductions in non-methane organic gases (NMOG) and nitrous oxides (NOx), which contribute to unhealthy levels of smog in many areas across the country. National LEV vehicles are 70% cleaner than today's model requirements under the Clean Air Act. This voluntary program provides auto manufacturers flexibility in meeting the associated standards as well as the opportunity to harmonize their production lines and make vehicles more efficiently. National LEV vehicles are estimated to cost an additional $76 above the price of vehicles otherwise required today, but it is expected that due to factors such as economies of scale and historical trends related to emission control costs, the per vehicle cost will be even lower. This incremental cost is less than 0.5% of the price of an average new car. In addition, the National LEV program will help ozone nonattainment areas across the country improve their air quality as well as reduce pressure to make further, more costly emission reductions from stationary industrial sources.

Because it is a voluntary program, National LEV was set up to come into effect, and will remain in effect, only if the Northeastern State and auto manufacturer participants commit to the program and abide by their commitments. The States and manufacturers initially committed to the program through opt-in notifications to EPA, which were sufficient for EPA to find that National LEV had come into effect. The National LEV regulations provide that the second stage of the State commitments is to be made through SIP revisions that incorporate the State commitments to National LEV in State regulations, which EPA will approve into the federally-enforceable SIPs. The National LEV regulations laid out the elements to be incorporated in the SIP revisions, the timing for such revisions, and the language (or substantively similar language) that needs to be included in a SIP revision to allow EPA to approve the revision as adequately committing the State to the National LEV program. In today's action, EPA is approving the National LEV SIP revision for Connecticut as adequately committing the State to the program. EPA expects to take similar actions for the other States that have elected to join the National LEV program in the future.

Connecticut has adopted a State clean vehicle program identical to the CAL LEV program (without the zero emission vehicle requirements) pursuant to section 177 of the Clean Air Act. The State has also modified that regulation accepting compliance with National LEV as an alternative for auto manufacturers to comply with the CAL LEV requirements. The State's regulation provides that for the duration of the State's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with a State program adopted pursuant to section 177. The regulation accepts National LEV as a compliance alternative for requirements applicable to passenger cars, light-duty trucks, and medium-duty trucks designed to operate on gasoline. The regulation further provides that the State's participation in National LEV extends until model year 2006, if by December 15, 2000, EPA adopts mandatory standards at least as stringent as the National LEV standards and such standards would apply to new motor vehicles beginning in model year 2004, 2005 or 2006. If EPA does not adopt such standards by that date, the State's participation in National LEV would extend only until model year 2004. Through these regulations, Connecticut has adequately committed to the National LEV program, as provided in the final National LEV rule.

The final National LEV rule also stated that if States submitted SIP revisions containing language substantively identical to the language in the regulations without additional conditions, and if the submissions met the Clean Air Act requirements for approvable SIP submissions, EPA would not need to go through notice-and-comment rulemaking to approve the SIP revisions. In the National LEV rulemaking, EPA already provided full opportunity for public comment on the language for the SIP revisions. Thus, as discussed in more detail in the final rule, the requirements for EPA approval are easily verified objective criteria. See 63 FR 936 (January 7, 1998). While EPA believes that it could have appropriately approved the Connecticut submission without providing for additional notice and comment, EPA nonetheless decided to take this action as a direct final rulemaking, which allows an opportunity for further public comment. Here, EPA is not under a timing constraint that would support a shorter rulemaking process, and thus EPA

decided there was no need to deviate from the Agency's usual procedures for SIP approvals.

Final Action

EPA has evaluated the submitted SIP revision submitted by Connecticut and has determined that it is consistent with the EPA National LEV regulations and meets the section 110 requirements for SIP approvals. Therefore, EPA is approving the Connecticut low emission vehicle rule as submitted on February 7, 1996 and February 18, 1999, into the Connecticut SIP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective October 15, 1999 without further notice unless the Agency receives adverse comment by September 15, 1999.

If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments received in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments that does not already exist as a matter of State law. EPA is simply approving a State regulation under the Clean Air Act. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not "economically significant" as defined under E. O. 12866, and does not involve an action that addresses environmental or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the

aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 28, 1999.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(79) to read as follows:

§ 52.370 Identification of plan

* * * * * *

(c) * * *

(79) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 7, 1996 and February 18, 1999.

(i) Incorporation by reference.

(A) Connecticut regulation section 22a–174–36, entitled "Low Emission Vehicles" as dated and effective by determination of the Secretary of State on December 23, 1994.

(B) Connecticut regulation section 22a–174–36(g), entitled "Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program" as dated and effective by determination of the Secretary of State on January 29, 1999.

(ii) Additional material

(A) Letter from the Connecticut Department of Environmental Protection dated February 7, 1996 submitting a revision to the Connecticut State Implementation Plan for the Low Emission Vehicle program.

(B) Letter from the Connecticut Department of Environmental Protection dated February 18, 1999 submitting a revision to the Connecticut State Implementation Plan for the National Low Emission Vehicle program to be a compliance option under the State's Low Emission Vehicle Program.

3. In § 52.385, Table 52.385 is amended by adding new entries in State citations for Section 22a–174–36, entitled "Low Emission Vehicles" and Section 22a–174–36(g), entitled "Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program" to read as follows:

§ 52.385 EPA—approved Connecticut Regulations

* * * * *

TABLE 52.385—EPA-APPROVED RULES AND REGULATIONS

Connecticut state citation	Title/ subject	Dates		Federal Register citation	52.370	Comments/ description
		Date adopted by State	Date approved by EPA			
22a–174–36	Low Emission Vehicles	12/23/94	August 16, 1999.	[Insert *FR* citation from published date].	(c)(79)	Approval of Low Emission Vehicle Program.
22a–174–36(g) ..	Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program.	1/29/99 ...	August 16, 1999.	[Insert FR citation from published date].	(c)(79)	Approval of Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program for the "California" low emission vehicle program adopted above.

TABLE 52.385—EPA-APPROVED RULES AND REGULATIONS—Continued

Connecticut state citation	Title/ subject	Dates: Date adopted by State	Dates: Date approved by EPA	Federal Register citation	52.370	Comments/ description
		* * * * * * *				

[FR Doc. 99–21004 Filed 8–13–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI91–01–7322a; FRL–6414–7]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving a site-specific revision to the Wisconsin sulfur dioxide (SO_2) State Implementation Plan (SIP) SIP for Murphy Oil located in Superior, Wisconsin. The Wisconsin Department of Natural Resources (WDNR) submitted this SIP revision on February 26, 1999 in response to a request for an alternate SO_2 emission limitation by Murphy Oil. The rationale for the approval and other information are provided in this document.

DATES: This action is effective on October 15, 1999 without further notice, unless EPA receives relevant adverse comments by September 15, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What Action Is EPA Taking Today?
B. Why Was this SIP Revision Submitted?
C. Why Can We Approve this Request?
D. What Is the Background for this Rulemaking?

A. What Action Is EPA Taking Today?

We are approving WDNR's February 26, 1999 request for a site-specific revision to the Wisconsin SO_2 SIP. Specifically, we are approving: (A) the SO_2 emission limits contained in Wisconsin Air Pollution Control Operation Permit No. 95–SDD–120–OP, issued by the WDNR to Murphy Oil, USA on February 17, 1999; and (B) a modeled attainment demonstration assessing the impact of the alternate SO_2 limits for Murphy Oil, located in Superior (Douglas County), Wisconsin.

B. Why Was this SIP Revision Submitted?

Murphy Oil owns and operates a petroleum refinery in Superior, Wisconsin. The categorical statewide emission limit that we had approved on May 21, 1993 for petroleum refineries is 0.8 pounds of SO_2 per million British Thermal Units (lbs/MMBTU). Also included in our May 21, 1993 final approval of Wisconsin's Statewide SO_2 rules was NR 417.07(5), which established the State's procedures for sources to obtain alternate emission limitations. However, in both our January 2, 1992 proposed rulemaking and our May 21, 1993 final action, we noted that Wisconsin had to submit for approval all relaxed State limits as site-specific SIP revisions pursuant to section 110 of the Clean Air Act. We also stated that any previous SIP limitations would remain in effect and enforceable until we approved the proposed relaxed limitations into the SO_2 SIP.

Both our alternative emission limit requirements and WDNR's NR 417.05(5) require, among other things, that before an alternate emission limit can be approved, it must be demonstrated that the proposed alternate limit will not delay attainment or prevent maintenance of the applicable National Ambient Air Quality Standards (NAAQS). Additionally, the federal requirement limits the demonstration to no more than 75 percent of the NAAQS. Murphy Oil has requested an alternate emission limit of 3.0 lbs/MMBTU for any combustion unit when combusting #6 fuel oil. The WDNR air quality modeling evaluates this alternate limit in comparison to the SO_2 NAAQS. Additional information is available in our June 6, 1997 Technical Support Document (TSD).

C. Why Can We Approve This Request?

We are approving the current SIP submittal as a Direct Final **Federal Register** document because the source has followed the procedures of Wisconsin State Rule NR 417.07(5) for obtaining alternate emission limits, which we approved on May 21, 1993 at 58 FR 29538. Our June 7, 1999 TSD contains details of the criteria Murphy Oil met to have the alternate emission limit approved. The State submitted modeling results incorporating the 3.0 lbs/MMBTU proposed alternative limit for two separate operating options, one with lower SO_2 emission limits and another with higher SO_2 emission limits. The NAAQS for SO_2 consist of a 3-hour level of 1300 micrograms per cubic meter ($\mu g/m^3$), a 24-hour level of 365 $\mu g/m^3$ and an annual arithmetic mean of 80 $\mu g/m^3$. Modeling results from the option with the higher SO_2 emission limits, combined with background concentrations, show a 3-hour concentration of 642.0 $\mu g/m^3$ (49.4 percent of NAAQS), a 24-hour concentration of 211.4 $\mu g/m^3$ (57.9 percent of NAAQS) and an annual concentration of 24.1 $\mu g/m^3$ (30.1 percent of NAAQS). Therefore, the modeling results for both options show that the NAAQS for SO_2 will be attained at the required 75 percent level.

D. What Is the Background for This Rulemaking?

On April 26, 1984 we notified the Governor of Wisconsin that the Wisconsin SO_2 SIP was inadequate to ensure the protection of the primary and

secondary SO_2 NAAQS. The State responded to the notice of SIP deficiency with a Statewide SO_2 emission limitations rule (NR 417.07). On January 2, 1992 at 57 FR 25, we proposed to approve the majority of Wisconsin's Statewide SO_2 rules. A final approval of the majority of NR 417.07 was published on May 21, 1993 at 58 FR 29538 [we took no action on NR 417.07(2)(e) and NR 417.07(2)(f)].

As allowed under NR 417.07(5), Murphy Oil initially submitted a request for an alternate SO_2 emission limit in 1985 and proposed the first alternate SO_2 emission limitations in 1986. The WDNR concluded in an August 1988 memorandum that Murphy Oil's request for an alternate SO_2 emission limit was approvable. However, the State did not proceed at that time to propose an operating permit incorporating the alternate emission limit or to request public input on the proposed alternate emission limit, as required by the State rule.

EPA Action

In this rulemaking action, EPA approves the SO_2 emission limits in Wisconsin Air Pollution Control Operation Permit No. 95–SDD–120–OP, issued by the WDNR to Murphy Oil USA on February 17, 1999, and the modeled attainment demonstration using the alternate SO_2 limits for Murphy Oil in Superior (Douglas County), Wisconsin. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective October 15, 1999 without further notice unless relevant adverse comments are received by September 15, 1999. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 15, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments and does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that this action will not have a significant impact on small entities. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a federal mandate that may

result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.2570 is amended by adding paragraph (c)(99) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(99) On February 26, 1999, the State of Wisconsin submitted a site-specific revision to the sulfur dioxide (SO_2) SIP for Murphy Oil USA located in Superior (Douglas County), Wisconsin. This SIP revision was submitted in response to a January 1, 1985, request for an alternate SO_2 emission limitation by Murphy Oil, in accordance with the procedures of Wisconsin State Rule NR 417.07(5) for obtaining alternate emission limits, as was approved by EPA in paragraph (c)(63) of this section.

(i) Incorporation by reference.

(A) AIR POLLUTION CONTROL OPERATION PERMIT NO. 95–DD–120–P, issued by the Wisconsin Department of Natural Resources (WDNR) to Murphy Oil USA on February 17, 1999.

(ii) Additional material.

(A) Analysis and Preliminary Determination for the Proposed Operation Permit for the Operation of Process Heaters and Processes Emitting Sulfur Dioxide for Murphy Oil, performed by the WDNR on September 18, 1998. This document contains a source description, analysis of the alternate emission limitation request, and an air quality review, which includes the results of an air quality modeling analysis demonstrating modeled attainment of the SO_2 NAAQS using the alternate emission limit for Murphy Oil.

[FR Doc. 99–21000 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH039–7166a; A–1–FRL–6416–2]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; General Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving New Hampshire's General Conformity Rule, incorporating it into the State Implementation Plan (SIP).

DATES: This direct final rule takes effect on October 15, 1999 without further notice, unless EPA receives adverse or critical comments by September 15, 1999. If EPA does receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may mail comments to Susan Studlien, Deputy Director, Office of Ecosystem Protection, EPA Region 1 (CAA), One Congress Street, Suite 1100 (CAA), Boston, MA 02114. You may also email comments to cairns.matthew@epa.gov.

You may review copies of the relevant documents to this action by appointment during normal business hours at the Office Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts; the Air and Radiation Docket and Information Center, USEPA, 401 M Street, S.W., (LE–131), Washington, DC; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns at 617–918–1667 or cairns.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What action is EPA taking today?
What is General Conformity?
Where does General Conformity apply?
Who must follow General Conformity?
How does General Conformity differ from Transportation Conformity?
What did New Hampshire submit to EPA for approval?
Why did New Hampshire have to develop its own General Conformity Rule?
Why must New Hampshire's Rule be federally enforceable?
How does New Hampshire's General Conformity Rule meet the requirements of a federally enforceable General Conformity Rule?
Does New Hampshire's General Conformity Rule differ from the Federal General Conformity rule?
How does General Conformity affect air quality in New Hampshire?
Where can I get copies of the New Hampshire General Conformity Rule?
What is the process for EPA's approval of these SIP revisions?

What Action Is EPA Taking Today?

EPA is approving New Hampshire's General Conformity Rule, incorporating it into the State Implementation Plan (SIP). This action makes New Hampshire's General Conformity Rule federally enforceable.

What is General Conformity?

General Conformity is a safeguard that no action by the Federal government interferes with a SIP's protection of the National Ambient Air Quality Standards (NAAQS). Under General Conformity, any action by the Federal government cannot:

- Cause or contribute to any new violation of any standard in any area;
- Interfere with provisions in the applicable SIP for maintenance of any standard;
- Increase the frequency or severity of any existing violation of any standard in any area; or
- Delay timely attainment of any standard of any required interim emission reductions or other milestones in any area.

General Conformity is a requirement of section 176(c) of the Clean Air Act Amendments of 1990 (CAA).

Where Does General Conformity Apply?

General Conformity applies in all nonattainment areas and maintenance areas for all the criteria pollutants under the CAA: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), particulate matter (PM), and sulfur dioxide (SO_2). It applies to Federal actions which produce reasonably foreseeable direct and indirect emissions of criteria pollutants or their precursors.

Who Must Follow General Conformity?

All Federal government agencies must follow General Conformity rules. The General Conformity rule establishes thresholds for triggering a conformity analysis. These rules and the requirements for a conformity analysis appear in detail in 40 CFR 51.851 and 93.151.

How Does General Conformity Differ From Transportation Conformity?

Transportation Conformity applies to transportation plans, programs, and projects funded or approved by the Federal Highway Administration or the Federal Transit Administration or recipients of fund from those agencies. General Conformity applies to all other Federal actions. When both Transportation Conformity and General Conformity apply to an action, if a transportation plan, program, or project meets the requirements of the Transportation Conformity rules in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A, it is considered to meet the requirements of General Conformity.

What Did New Hampshire Submit to EPA for Approval?

New Hampshire submitted its General Conformity Rule, titled "Chapter Env-A 1500—Conformity, Part Env-A 1502—Conformity of General Federal Actions," to EPA on July 10, 1996 as a revision to its SIP. The SIP revision for this rule incorporates by reference appropriate sections of 40 CFR part 51, subpart W and thereby establishes General Conformity criteria and procedures in the New Hampshire SIP.

Why Did New Hampshire Have to Develop Its Own General Conformity Rule?

The CAA requires each State to develop rules to implement the General Conformity rule. (See 40 CFR 51.851 and 93.151.) EPA believes that the Federal government does not have the primary responsibility for achieving clean air goals; Congress assigned that responsibility to State and local agencies. Therefore, each State must submit a revised SIP that includes General Conformity criteria and procedures that are consistent with the General Conformity rule. These criteria require that State Rules must be at least as stringent as the requirements specified in EPA's General Conformity rule. Furthermore, that they can only be more stringent if they apply equally to Federal and non-federal entities. .

Why Must New Hampshire's Rule Be Federally Enforceable?

New Hampshire's General Conformity SIP revision enables the State of New Hampshire to implement and enforce the Federal General Conformity rules in New Hampshire's nonattainment and maintenance areas at the State and local level. By approving New Hampshire's Rule into the SIP, EPA also gains the authority to enforce the Federal General Conformity rules and New Hampshire's General Conformity Rule at the Federal level.

How Does New Hampshire's General Conformity Rule Meet the Requirements of a Federally Enforceable General Conformity Rule?

Section 110 of the CAA requires each State to adopt and submit to EPA a plan providing for the implementation, maintenance, and enforcement of air quality standards and control programs.

The New Hampshire Office of Legislative Services has determined that this SIP revision will be enforceable under the Laws of New Hampshire, RSA 125-C:4 Rulemaking Authority; Subpoena Power. This law states in part, "The director shall adopt rules, subject to the written approval of the commissioner, under RSA 541–A, relative to:

(a) The prevention, control, abatement, and limitation of air pollution, including, but not limited to, open air source pollution, mobile source pollution, and stationary source pollution, and

(b) Primary and secondary ambient air quality standards."

Does New Hampshire's General Conformity Rule Differ From the Federal General Conformity Rule?

New Hampshire has incorporated the Federal General Conformity rule by reference, so New Hampshire's rule is no more stringent that the Federal rule and does not impose any additional controls on non-federal entities.

How Does General Conformity Affect Air Quality in New Hampshire?

If New Hampshire did not take steps to avoid pollution, air quality in New Hampshire would be degraded. The principle behind General Conformity is that the agency that sponsors or supports an activity is in the best position to limit the adverse air quality impacts of that activity. General Conformity is designed to hold those with the responsibility for a project accountable for the emissions that result from that project. The ultimate goal is to prevent actions that the Federal government supports from undermining State efforts to achieve and maintain clean air in a cost-effective manner.

Where Can I Get Copies of the New Hampshire General Conformity Rule?

As stated in the **ADDRESSES** section above, you may review copies of the New Hampshire General Conformity Rule by appointment during normal business hours at the Office Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts; the Air and Radiation Docket and Information Center, USEPA, 401 M Street, S.W., (LE–131), Washington, DC; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Concord, New Hampshire. You may also view a copy of the New Hampshire General Conformity Rule via the Internet at http://www.state.nh.us/des/ard/enva1502.pdf.

What Is the Process for EPA's Approval of These SIP Revisions?

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is also publishing a separate document that will serve as the proposal to approve this SIP revision should we receive relevant adverse comments. This action will be effective October 15, 1999 without further notice unless we receive relevant adverse comments by September 15, 1999.

If EPA does receive adverse comments, we will withdraw the direct final rule and publish a notice that the rule will not take effect. We will then

respond to all public comments received in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. If you are interested in commenting on this action, you should do so at this time. If no such comments are received, you should know that this rule will be effective on October 15, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

E. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 28, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(63) to read as follows:

§ 52.1520 Identification of plan.

* * * * * *

(c) * * *

(63) Revisions to the State Implementation Plan Submitted by the New Hampshire Department of Environmental Services on July 10, 1996.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Department of Environmental Services dated July 10, 1996 submitting a revision to the New Hampshire State Implementation Plan.

(B) Part Env-A 1502 of Chapter Env-A 1500 of the New Hampshire Code of Administrative Rules titled "Conformity of General Federal Actions," adopted in the State of New Hampshire on April 25, 1996.

For the State of New Hampshire

3. In § 52.1525, Table 52.1525 is amended by adding at the end of the table a new state citation for Conformity of General Federal Actions to read as follows:

§ 52.1525 EPA-approved New Hampshire state regulations.s

* * * * *

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
*	*	*	*	*	*	*
Conformity of General Federal Actions.	CH Env-A 1500, Part Env-A 1502.	April 19, 1996.	August 16, 1999.	[Insert *FR* citation from published date].	c(63)	None.

[FR Doc. 99–21002 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–6421–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: This action makes typographical corrections to the final regulations (FRL–6340–6), which were published in the **Federal Register** of Thursday May 13, 1999, (FR Doc. 99–12001). The regulations related to North Dakota's Hospital/Medical/Infectious Waste Incinerator (HMIWI) 111(d) state plan.

DATES: This correcting amendment is effective on August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser, Region 8, Office of Air and Radiation, at (303) 312–6526.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections documented the approved Clean Air Act section 111(d) Plan submitted by the North Dakota Department of Health on October 6, 1998, to implement and enforce the Emissions Guidelines (EG) for Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI).

On May 13, 1999, EPA published the direct final approval of North Dakota's section 111(d) State Plan for the control of Hospital/Medical/Infectious Waste Incinerator emissions. Four typographical errors occurred in which the word hazardous was substituted for the word hospital.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 F.R. 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 F.R. 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not

subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because it does not include any information collection requirements. This rule is not subject to the requirements of the National Technology Transfer and Advancement Act (NTTAA) because it does not include provisions for technical standards.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the US Senate, the US House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule correction will be effective on August 16, 1999.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 5, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII

Accordingly, 40 CFR part 62 is corrected by making the following correcting amendments:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671.

Subpart JJ—North Dakota

2. Revise the undesignated center heading and § 62.8610, 62.8611, and 62.8612 to subpart JJ to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.8610 Identification of Plan.

Section 111(d) Plan for Hospital/Medical/Infectious Waste Incinerators and the associated State regulation in section 33–15–12–02 of the North Dakota Administrative Code submitted by the State on October 6, 1998.

§ 62.8611 Identification of Sources.

The plan applies to all existing hospital/medical/infectious waste incinerators for which construction was commenced on or before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

§ 62.8612 Effective Date.

The effective date for the portion of the plan applicable to existing hospital/medical/infectious waste incinerators is July 12, 1999.

[FR Doc. 99–21166 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7719]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public

comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Connecticut: Vernon, town of, Tolland County.	090131	January 26, 1973, Emerg.; December 4, 1979, Reg.; August 9, 1999, Susp.	August 9, 1999	August 9, 1999.
Massachusetts: Bourne, town of, Barnstable County.	255210	April 30, 1971, Emerg.; June 29, 1973, Reg.; August 9, 1999, Susp.	.....do	Do.
Region III				
Pennsylvania: Upper Merion, township of, Montgomery County.	420957	December 17, 1973, Emerg.; November 16, 1977, Reg.; August 9, 1999, Susp.	.....do	Do.
Region IV				
North Carolina: Wilkesboro, town of, Wilkes County.	370259	April 15, 1974, Emerg.; June 1, 1987, Reg.; August 9, 1999, Susp.	.....do	Do.
Region X				
Washington: Brewster, city of, Okanogan County.	530275	February 14, 1975, Emerg.; September 1, 1977, Reg.; August 9, 1999, Susp.	.....do	Do.
Region I				
New Hampshire: Concord, city of, Merrimack County.	330110	July 17, 1974, Emerg.; March 4, 1980, Reg.; August 23, 1999, Susp.	August 23, 1999	August 23, 1999.
Region II				
New Jersey: Absecon, city of, Atlantic County.	340001	December 23, 1971, Emerg.; March 5, 1976, Reg.; August 23, 1999, Susp.	.....do	Do.
New York: Buffalo, city of, Erie County	360230	January 16, 1974, Emerg.; November 18, 1981, Reg.; August 23, 1999, Susp.	.....do	Do.
Region III				
Pennsylvania:				
Tunkhannock, borough of, Wyoming County.	420917	April 18, 1973, Emerg.; December 18, 1979, Reg.; August 23, 1999 Susp.	.....do	Do.
Tunkhannock, township of, Wyoming County.	422206	June 9, 1975, Emerg.; July 15, 1988, Reg.; August 23, 1999, Susp.	.....do	Do.
Region IV				
South Carolina:				
Atlantic Beach, town of, Horry County ...	450222	October 28, 1976, Emerg.; May 15, 1978, Reg.; August 23, 1999, Susp.	.....do	Do.
Aynor, town of, Horry County	450105	April 3, 1975, Emerg.; January 26, 1983, Reg.; August 23, 1999, Susp.	.....do	Do.
Briarcliffe Acres, town of, Horry County	450232	November 25, 1977, Emerg.; June 15, 1979, Reg.; August 23, 1999, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Conway, city of, Horry County	450106	November 7, 1974, Emerg.; September 28, 1979, Reg.; August 23, 1999, Susp.	.....do	Do.
Horry County, unincorporated areas	450104	December 8, 1980, Emerg.; February 15, 1984, Reg; August 23, 1999, Susp.	.....do	Do.
Loris, city of, Horry County	450108	August 6, 1975, Emerg.; September 1, 1986, Reg.; August 23, 1999, Susp.	.....do	Do.
Myrtle Beach, city of, Horry County	450109	October 15, 1971, Emerg.; July 5, 1977, Reg.; August 23, 1999, Susp.	.....do	Do.
North Myrtle Beach, city of, Horry County.	450110	August 23, 1974, Emerg.; October 14, 1977, Reg.; August 23, 1999, Susp.	.....do	Do.
Surfside Beach, town of, Horry County	450111	September 10, 1971, Emerg.; December 17, 1976, Reg.; August 23, 1999, Susp.	.....do	Do.
Sumter County, unincorporated areas	450182	September 17, 1979, Emerg.; January 5, 1989, Reg.; August 23, 1999, Susp.	.....do	Do.
Region VI				
Arkansas:				
Crawford County, unincorporated areas	050428	June 29, 1990, Emerg.; August 5, 1991, Reg.; August 23, 1999, Susp.	.....do	Do.
Crittenden County, unincorporated areas	050429	May 18, 1983, Emerg.; November 1, 1985, Reg.; August 23, 1999, Susp.	.....do	Do.
Earle, city of, Crittenden County	050054	June 20, 1974, Emerg.; January 3, 1986, Reg.; August 23, 1999, Susp.	.....do	Do.
Van Buren, city of, Crawford County	050053	January 16, 1974, Emerg.; November 16, 1977, Reg.; August 23, 1999, Susp.	.....do	Do.
Region VI				
New Mexico:				
Clovis, city of, Curry County	350010	May 1, 1974, Emerg.; February 4, 1981, Reg.; August 23, 1999, Susp.	.....do	Do.
Region VIII				
Colorado:				
Calhan, town of, El Paso County	080192	March 12, 1976, Emerg.; March 18, 1986, Reg.; August 23, 1999, Susp.	.....do	Do.
El Paso County, unincorporated areas	080059	March 9, 1973, Emerg.; December 18, 1986, Reg.; August 23, 1999, Susp.	.....do	Do.
Region IX				
California: East Palo Alto, city of, San Mateo County.	060708	March 19, 1984, Emerg.; September 19, 1984, Reg.; August 23, 1999, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: August 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–21142 Filed 8–13–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 96–149 and 96–61; FCC 99–103]

Regulatory Treatment of LEC Provision of Interexchange Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to allow independent local exchange carriers (LECs) that provide in-region, long distance services solely on a resale basis to do so through a separate corporate division rather than a separate legal entity.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Andrea Kearney, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order On Reconsideration adopted May 18, 1999, and released June 30, 1999 (FCC 99–103). The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 425 12th Street, SW, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Order/fcc99–103.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Second Order on Reconsideration

1. In this second order on reconsideration, we modify our conclusion in the *LEC Classification Order*, 62 FR 35974 (July 3, 1997) and allow independent LECs that provide in-region, long distance services solely on a resale basis to do so through a separate corporate division rather than a separate legal entity. The record indicates that this group includes most of the small and mid-sized LECs that currently provide in-region, long distance services. We also clarify the meaning of the term "interexchange" to avoid any possibility of unnecessary application of the Commission's separate affiliate requirements. In addition, we affirm our decision relaxing regulation of the BOCs' section 272 interLATA affiliates, i.e., by classifying these affiliates as non-

dominant for in-region, long distance services. We also address several other miscellaneous issues raised in the reconsideration petitions. Consistent with the *LEC Classification Partial Stay Order*, 63 FR 16696 (April 6, 1998) and the relief we grant in this order on reconsideration, any independent LEC that was providing long distance services on an integrated basis through the use or control of its own facilities must form a separate affiliate to provide such services within 60 days of the release of this order on reconsideration. Finally, we act on the Leaco Rural Telephone Cooperative, Inc. (Leaco) Petition for Waiver of the *LEC Classification Order* requirements.

V. Supplemental Final Regulatory Flexibility Analysis

2. As required by the Regulatory Flexibility Act (RFA), the Commission issued a Final Regulatory Flexibility Analysis (FRFA) in the *LEC Classification Order*, in which it certified that the rules adopted in that order would not have a significant impact on a substantial number of small entities. None of the petitions for reconsideration filed in this proceeding specifically addresses, or seeks reconsideration of, that FRFA. This present Supplemental FRFA addresses the potential effect on small entities of the rules we adopt in this order. This Supplemental FRFA incorporates and adds to our FRFA in the *LEC Classification Order*.

3. *Need for and Objectives of this Report and Order and the Regulations Adopted Herein.* The need for and objectives of the rules adopted in this order on reconsideration are the same as those discussed in the *LEC Classification Order's* FRFA. In general, the regulations adopted in the *LEC Classification Order* are intended to promote increased competition in the interexchange market. In this order on reconsideration, we clarify the *LEC Classification Order* and grant or deny petitions filed for reconsideration in order to further the same needs and objectives.

4. *Description and Estimates of the Number of Small Entities Affected by this Report and Order.* In this FRFA, we consider the impact of this order on two categories of entities, "small incumbent LECs" and "small non-incumbent LECs." Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns." We include "small non-incumbent LECs" in our analysis, even though we believe that we are not required to do so.

5. The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.

6. *Incumbent LECs.* SBA has not developed a definition of small incumbent LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,376 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,376 small incumbent LECs that may be affected by the decisions and regulations adopted in this order on reconsideration.

7. *Non-Incumbent LECs.* SBA has not developed a definition of small non-incumbent LECs. For purposes of this order, we define the category of "small non-incumbent LECs" to include small entities providing local exchange services that do not fall within the statutory definition in section 251(h), including potential LECs, LECs which have entered the market since the 1996 Act was passed, and LECs that were not members of the exchange carrier association pursuant to § 69.601(b) of the Commission's regulations. We believe it is impracticable to estimate the number of small entities in this category. We believe it is impossible to estimate the number of entities which may enter the local exchange market in the near future. Nonetheless, we will estimate the number of small entities in a subgroup of the category of "small non-incumbent LECs." According to our most recent data, 119 companies identify themselves in the category "Competitive Access Providers (CAPs) and Competitive LECs (CLECs)." A CLEC is a provider of local exchange services which does not fall within the definition of "incumbent LEC" in section 251(h). Although it seems certain that some of the carriers in this category are CAPs, are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of non-incumbent LECs that would qualify as small business concerns under SBA's definition.

8. *Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements.* In this order on reconsideration, we conclude that independent LECs that are in-region, long distance resellers are permitted to provide such services through a separate division rather than a separate legal entity, subject to the *Fifth Report and Order* requirements, as modified by the *LEC Classification Order*. No party to this proceeding suggests that permitting independent LECs to provide long distance resale through a separate division would affect small entities or small incumbent LECs. We determine that compliance with the separate division requirement, rather than a separate legal entity requirement, may require small incumbent LECs to use accounting, economic, technical, legal, and clerical skills.

9. *Steps Taken To Minimize Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* We believe that the modification of the separate legal entity requirement will facilitate entry of independent LECs into the long distance market. We believe that resale is an essential facilitator of competition in the long distance industry because it allows independent LECs, some of which may be small entities, and other providers to enter the market immediately, and add their own facilities when it becomes efficient to do so. The modification of the separate legal entity requirement for independent LEC long distance resellers seems likely to benefit independent LECs, some of which may be small entities, by helping to reduce the cost of entry and of providing service. We reject alternatives to exempt all independent

LECs, or small and rural independent LECs, from the separate legal entity requirement, for the reasons stated in Section III of this order on reconsideration.

10. *Report to Congress.* The Commission shall send a copy of this FRFA, along with this order on reconsideration, in a report to Congress pursuant to the SBREFA, 5 U.S.C. 801(a)(1)(A). A copy of this analysis will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

VI. Ordering Clauses

11. Accordingly, *It is Ordered* that pursuant to sections 1, 2, 4, 201, 202, 220, 251, 271, 272 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 152, 154, 201, 202, 220, 251, 271, 272, and 303(r), the ORDER ON RECONSIDERATION is hereby *Adopted*, and the requirements contained herein shall be effective 30 days after publication of a summary thereof in the **Federal Register**. The amendment to the Uniform System of Accounts for Telecommunications Companies, part 32 of the Commission's rules, shall be effective six months after publication in the **Federal Register**, although affected parties may elect to implement these changes upon adoption.

12. *It is further ordered* that part 64, subpart T of the Commission's rules, is AMENDED as set forth in the rule changes hereto.

13. *It is further ordered* that the petitions for reconsideration are *granted* in part, as described herein, and otherwise are *denied*.

14. *It is further ordered* that the Leaco Rural Telephone Cooperative, Inc. Petition for Waiver is *rendered moot* in part, as described herein, and the remainder is *denied*.

15. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this order on reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

LaVera F. Marshall,

Chief, Agenda Branch.

Rule Changes

For the reasons discussed in the preamble, Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS MATERIALS

1. The authority citation for part 64 continues to read:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

2. Section 64.1902 is revised to read as follows:

§ 64.1902 Terms and definitions.

Terms used in this part have the following meanings:

Books of Account. Books of account refer to the financial accounting system a company uses to record, in monetary terms, the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account.

Incumbent Independent Local Exchange Carrier (Incumbent Independent LEC). The term incumbent independent local exchange carrier means, with respect to an area, the independent local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and

(2) (i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this title; or

(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2)(i) of this section. The Commission may also, by rule, treat an independent local exchange carrier as an incumbent independent local exchange carrier pursuant to section 251(h)(2) of the Communications Act of 1934, as amended.

Independent Local Exchange Carrier (Independent LEC). Independent local exchange carriers are local exchange carriers, including GTE, other than the BOCs.

Independent Local Exchange Carrier Affiliate (Independent LEC Affiliate). An independent local exchange carrier affiliate is a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an independent local exchange carrier.

In-Region Service. In-region service means telecommunications service originating in an independent local exchange carrier's local service areas or 800 service, private line service, or their equivalents that:

(1) Terminate in the independent LEC's local exchange areas; and

(2) Allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas.

Local Exchange Carrier. The term local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

3. Section 64.1903 is revised to read as follows:

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) Except as provided in paragraph (c) of this section, an incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

(1) The affiliate shall maintain separate books of account from its affiliated exchange companies. Nothing in this section requires the affiliate to maintain separate books of account that comply with Part 32 of this title;

(2) The affiliate shall not jointly own transmission or switching facilities with its affiliated exchange companies. Nothing in this section prohibits an affiliate from sharing personnel or other resources or assets with an affiliated exchange company; and

(3) The affiliate shall acquire any services from its affiliated exchange companies for which the affiliated exchange companies are required to file a tariff at tariffed rates, terms, and conditions. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated exchange companies, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) Except as provided in paragraph (b) (1) of this section, the affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated exchange companies. The affiliate may be staffed by personnel of its affiliated exchange companies, housed in existing offices of its affiliated exchange companies, and use its affiliated exchange companies'

marketing and other services, subject to paragraph (a)(3) of this section.

(1) For an incumbent independent LEC that provides in-region, interstate domestic interexchange services or in-region international interexchange services using no interexchange switching or transmission facilities or capability of the LEC's own (i.e., "independent LEC reseller,") the affiliate required in paragraph (a) of this section may be a separate corporate division of such incumbent independent LEC. All other provisions of this Subpart applicable to an independent LEC affiliate shall continue to apply, as applicable, to such separate corporate division.

(2) [Reserved]

(c) An incumbent independent LEC that is providing in-region, interstate, domestic interexchange services or in-region international interexchange services prior to April 18, 1997, but is not providing such services through an affiliate that satisfies paragraph (a) of this section as of April 18, 1997, shall comply with the requirements of this section no later than August 30, 1999.

[FR Doc. 99–20887 Filed 8–13–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. RSPA–98–4195 (HM–215C)]

RIN 2137–AD15

Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; corrections and response to two petitions for reconsideration.

SUMMARY: On March 5, 1999, RSPA published a final rule under Docket HM–215C that amended the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) necessitated amendments to domestic regulations to provide consistency with international transport requirements and to facilitate the transport of hazardous materials in international commerce. This final rule makes certain corrections to the March 5 final rule and responds to two petitions for reconsideration.

DATES: *Effective Date:* October 1, 1999.

Delayed Compliance Date: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Richard, Assistant International Standards Coordinator, telephone (202) 366–0656 or Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, US Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 5, 1999, RSPA published a final rule under Docket HM–215C (64 FR 10742) to maintain alignment with recent changes to corresponding provisions in international standards. This final rule corrects various errors and denies two petitions for reconsideration to the March 5, 1999 final rule. A document correcting printing errors appears elsewhere in today's edition of the **Federal Register**.

II. Section-by-Section Review

Section 172.101

The Hazardous Materials Advisory Council (HMAC) petitioned RSPA to replace the plus sign ("+") with a different symbol for materials classified on the basis of human experience. (The plus sign fixes the proper shipping name, hazard class and packing group for a hazardous material entry in the Hazardous Materials Table, regardless of the actual hazard characteristics of the material.)

HMAC stated:

> To distinguish between materials that are classified on the basis of human experience and those that have been assigned a particular classification and/or packing group for other reasons, HMAC believes a different symbol, perhaps the pound (#) sign, would be better suited for this purpose. There are important differences in the ability of a shipper to reclassify dilute mixtures or solutions of these substances. For example, as pointed out in the preamble, a mixture or solution containing Epichlorohydrin, a material classified by human experience, could have a different PSN if the appropriate tests indicate it does not meet the corresponding hazard class. However, for materials assigned the "+" symbol for other reasons, § 172.101(b)(1) requires the authorization of the Associate Administrator for Hazardous Materials Safety to change the PSN and hazard class.

RSPA disagrees with the need to distinguish between materials that are classed on the basis of human experience and those that have been assigned a particular classification or packing group. First, any material preceded by a plus sign can be classed differently and assigned a different proper shipping name when in a solution or mixture which justifies that different classification. Second, any material preceded by a plus sign can be authorized by the Associate Administrator to be reclassed and assigned a different proper shipping name. Therefore, there is no apparent benefit for distinguishing between those "plus-marked" materials that are classed on the basis of human experience and those that are classed for other reasons, and the petition for reconsideration is denied.

The Hazardous Materials Table (HMT).

For the entries "Aviation regulated liquid, n.o.s." and "Aviation regulated solid, n.o.s.," the "A" was mistakenly omitted in the NPRM and the final rule and is reinstated in this document.

The entries "Compounds, tree killing, liquid *or* Compounds, weed killing, liquid," NA1760 and NA1993 were amended by adding a "G" in Column (1) of the HMT to identify the entries as requiring a technical name in parentheses and in association with the basic description. However, the entry "Compounds, tree killing, liquid *or* Compounds, weed killing, liquid," NA2810 was mistakenly omitted in the NPRM and the final rule. RSPA is reinserting that entry and adding the letter "G" in this final rule.

The entries "Hydrocarbon gas mixture, compressed, n.o.s." and "Hydrocarbon gas mixture, liquefied, n.o.s." are corrected by removing the letter "G" from Column (1). These two entries were listed correctly in the NPRM (63 FR 44312), as not requiring a technical name; however, in the final rule the letter "G" was mistakenly added.

Section 172.101 Appendix B to § 172.101—List of Marine Pollutants

For the entry "*normal*-heptaldehyde," RSPA proposed to remove the severe marine pollutant designation ("PP"). Due to a typographical error, this entry was misspelled and printed twice, one with the "PP" designation and one without. This final rule removes the entries and replaces them with "n-Heptaldehyde."

Section 172.203

RSPA is removing paragraphs (k)(1) and (m)(2), which require n.o.s. descriptions to be supplemented with the technical name. The final rule adopted the letter "G" in Column (1) of the HMT to identify generic and n.o.s. entries that must be supplemented with a technical name. Therefore, these paragraphs are no longer necessary. In addition, RSPA is adding a sentence to paragraph (k) introductory text to alert readers about the letter "G" designator in Column (1) of the HMT. With the removal of paragraph (k)(1), paragraphs (k)(2) and (k)(3) are redesignated as paragraphs (k)(1) and (k)(2), respectively. With the removal of paragraph (m)(2), paragraph (m)(3) is redesignated as paragraph (m)(2).

Section 172.504

Although the wording in the regulatory text is correct in the March 5, 1999 final rule, RSPA notes that the preamble discussion mistakenly included the words "or adjacent to the POISON label."

Section 173.28

Certain existing text, which was omitted in the final rule and resulted in the unintentional removal of an exception, is reinstated in this final rule. The exception provides that replacing a removable gasket or closure device on a UN 1H1 plastic drum with one of the same design and material providing equivalent performance does not constitute reconditioning.

Section 173.32c

Due to a typographical error in paragraph (j), the word "not" was inadvertently omitted from the first sentence concerning the filling restriction and is added in this document. The intent of this prohibition was clearly indicated in the preamble of the final rule.

Section 173.222

In introductory paragraph (c) and paragraph (c)(4), an incorrect limitation of this requirement to transportation by aircraft is removed. The requirement applies to all modes of transportation.

Section 178.603

RSPA received a petition for reconsideration from the Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA) requesting an amendment to § 178.603(f)(5) concerning the drop test criteria. COSTHA expressed concern that the requirements for combination packagings are more stringent than those for drums, jerricans and bags. COSTHA's request is beyond the scope of this rulemaking and will be considered in a separate rulemaking.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under items i, ii, iii and v above and, adopted as final, would preempt State, local, or Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements is February 14, 2000. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the Indian tribal communities, the funding and consultation requirements of the Executive Order do not apply.

D. Regulatory Flexibility Act

This final rule corrects certain provisions incorporated into the Hazardous Materials Regulations based on changes introduced in the tenth revised edition of the UN Recommendations, the 1997–98 ICAO Technical Instructions, and Amendment 29 to the IMDG Code (Docket HM–215C, 64 FR 10742). (The ICAO Technical Instructions and the IMDG Code were updated in a final rule, published October 29, 1998 (Docket HM–215C; 63 FR 44312).) This final rule applies to offerors and carriers of hazardous materials and will facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. The costs associated with this final rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2137–0034 for shipping papers and 2137–0557 for approvals. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

2. In the § 172.101 Hazardous Materials Table, in Column (1), as amended at 64 FR 10753 effective October 1, 1999, the following changes are made:

a. In Column (1), for the entries "Aviation regulated liquid, n.o.s." and "Aviation regulated solid, n.o.s.", the letter "A" is added in alphabetical order.

b. In Column (1), for the entry, "Compounds, tree killing, liquid *or* Compounds, weed killing, liquid" (NA2810), the letter "G" is added in alphabetical order.

c. For the entries "Hydrocarbon gas mixture, compressed, n.o.s." and "Hydrocarbon gas mixture, liquefied, n.o.s.", the letter "G" is removed each place it appears.

3. In Appendix B to § 172.101, the List of Marine Pollutants is amended by removing two entries and adding one entry in alphabetical order to read as follows:

APPENDIX B TO § 172.101—LIST OF MARINE POLLUTANTS

S.M.P. (1)	Marine pollutant (2)
[REMOVE:]	
PP	*normal*-Heptyl aldehyde. *normal*-heptaldehyde.
[ADD:]	
* * * * *	
	n-Heptaldehyde.
* * * * *	

4. In § 172.203, in paragraph (k) introductory text, a new sentence is added at the end to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(k) * * * Shipping descriptions for toxic materials that meet the criteria of Division 6.1, PG I or II (as specified in § 173.132(a) of this subchapter) or Division 2.3 (as specified in § 173.115(c) of this subchapter) and are identified by the letter "G" in Column (1) of the § 172.101 Table, must have the technical name of the toxic constituent entered in parentheses in association with the basic description.

* * * * *

§ 172.203 [Amended]

5. In addition, in § 172.203 as amended at 64 FR 10775 effective October 1, 1999, the following changes are made:

a. Paragraph (k)(1) is removed.

b. Paragraphs (k)(2) and (k)(3) are redesignated as paragraphs (k)(1) and (k)(2), respectively.

c. Paragraph (m)(2) is removed.

d. Paragraph (m)(3) is redesignated as paragraph (m)(2).

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

7. In § 173.28, in paragraph (c)(2)(iii), as revised at 64 FR 10776 effective October 1, 1999, "; and" is removed at the end of the sentence and a period is added in their place and a new sentence is added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(c) * * *

(2) * * *

(iii) * * * (For a UN 1H1 plastic drum, replacing a removable gasket or closure device with another of the same design and material that provides equivalent performance does not constitute reconditioning); and

* * * * *

§ 173.28 [Amended]

8. In addition, in § 173.28, in paragraph (c)(2) introductory text, as revised at 64 FR 10776 effective October 1, 1999, the wording "or a UN 1H1 plastic drum" is added immediately following the words "other than a metal drum'.

§ 173.32c [Amended]

9. In § 173.32c, in paragraph (j), as revised at 64 FR 10777 effective October 1, 1999, in the first sentence, the wording "may be loaded to" is removed and the words "may not be loaded to" are added in its place.

§ 173.222 [Amended]

10. In § 173.222, as revised at 64 FR 10779 effective October 1, 1999, the following changes are made:

a. In paragraph (c) introductory text, the wording "For transportation by aircraft, the" is removed and "The" is added in its place.

b. In paragraph (c)(4), the wording "and is offered for transportation by aircraft" is removed.

Issued in Washington, DC, on August 9, 1999, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–21074 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 990212047–9208–02; I.D. 111998C]

RIN 0648–AL28

International Fisheries Regulations; Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; implementation of Inter-American Tropical Tuna Commission (IATTC) recommendations.

SUMMARY: NMFS issues final regulations to implement recommendations of the

IATTC to conserve and manage the tuna fisheries of the Eastern Tropical Pacific Ocean (ETP). This rule provides for an annual announcement of tuna harvest quotas, closure of the U.S. fishery in the IATTC's Convention Area or in the Yellowfin Regulatory Area (CYRA) when quotas have been reached, and implementation of other measures recommended by the IATTC to ensure conservation and management of fishery resources. The rule also prohibits U.S. citizens from utilizing vessels that service fish-aggregating devices (FADs) and prohibits the transshipment at sea by U.S. purse seine vessels of purse seine-caught tuna. This final rule is intended to ensure that U.S. fisheries are conducted according to the IATTC's recommendations, as approved by the Department of State.

DATES: Effective September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Svein Fougner or James Morgan, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4030.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure conservation and management of yellowfin and skipjack tuna and other species taken by tuna fishing vessels in the ETP. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of tuna stocks and conditions in the fisheries. Each year, the IATTC recommends appropriate harvest levels (quotas) and/or other measures to prevent overexploitation and promote maximum sustainable yield (MSY). Each member country of the IATTC is responsible for enforcing quotas and other measures with respect to its own fisheries. As required by the Tuna Conventions Act of 1950, the recommendations of the IATTC must be approved by the Secretary of State before implementation for U.S. fisheries.

NMFS published a proposed rule on February 25, 1999 (64 FR 9296), that provided background on the 1998 recommendations that were not implemented and other permanent measures that are implemented by this rule. That background is not repeated here.

Comments and Responses

Three organizations commented on the proposed rule. Although most of the comments cannot be addressed by Federal regulations, the comments are summarized below with NMFS responses.

Comment 1: The U.S. Government should insist on the formation of a compliance committee in the IATTC to ensure that all member countries abide by IATTC recommendations.

Response: The United States has supported establishing such a committee under the auspices of the IATTC and has proposed terms of reference for a compliance committee. At its annual meeting in June 1999, the IATTC agreed to establish a Compliance Committee based on the U.S. terms of reference.

Comment 2: Fishermen should be prohibited from fishing all gear types, not only purse seines, when such a prohibition is necessary to reduce the harvest of small fish.

Response: This rule does not impose an immediate prohibition of sets on floating objects. Although the IATTC resolution of October 1998 specifically recommended prohibiting purse seines from being set on floating objects after the bigeye quota is reached, the prohibitions in § 300.28(b) have been revised to authorize the Southwest Regional Administrator, NMFS (Regional Administrator) to prohibit any fishing gear, as specified in the notification to fishermen, if such a prohibition is necessary for the conservation of fishery resources or other species.

Comment 3: One commenter expressed concern about the need for a quota on bigeye tuna and the quality of the data used to establish it. Questions were raised about using data obtained from foreign longline vessels, which may not have observers; the ability of observers on any vessel to distinguish between small yellowfin and bigeye tuna, and the effects of El Nino on the resource.

Response: A 45,000–metric ton (mt) quota on bigeye tuna was recommended by the IATTC and adopted by the member countries in 1998. The questions raised by the commenter, however, are legitimate and have a bearing on future decisions that the IATTC may make. Other nations also have questioned the quality of the data used to assess bigeye stocks and the effects of harvesting small bigeye on floating object sets. The IATTC staff are aware of these questions and have research underway to answer some of them. U.S. scientists are also obtaining U.S. vessels' catch and effort data to determine the extent to which those data confirm the IATTC staff analyses.

Comment 4: The prohibition on fishing on floating objects as a way of reducing the harvest of small fish is too simplistic. It implies that the only goal is the maximum productivity of tuna without recognizing the impact on other species. It also discriminates against nations that depend on this fishing strategy as a way to reduce the take of dolphins.

Response: This rule does not prohibit fishing on floating objects (natural or man-made); rather, it authorizes the Regional Administrator to prohibit fishing on floating objects in the future. The 1998 quota on bigeye would have been implemented by prohibiting sets on floating objects if and when the quota was reached. The bigeye quota is enforced this way because floating objects sets are responsible for virtually all the catch of small bigeye tuna. In fact, some nations may have been reluctant to set the 1999 quota in part because they did not want their vessels to be restricted from using a strategy on which they had become dependent. The U.S. supported the 1998 quota reluctantly because U.S. vessels are largely dependent on floating object fishing. However, in a meeting in January 1999, NMFS insisted that any consideration of management measures directed at any single fishing strategy be based on a full analysis of impacts on the stocks, on other ecosystem components (e.g., dolphin and other non-fish species), and on the vessels engaged in the fishery. The U.S. Department of State also actively seeks input from U.S. vessel owners to ensure that U.S. positions consider fully the impacts of alternative measures on U.S. firms.

Comment 5: The 15–percent incidental catch for yellowfin tuna that the IATTC recommended for the closed season in 1998 would allow uncontrolled mortality in excess of the estimated MSY.

Response: The IATTC resolutions in 1998 regarding yellowfin tuna included recommendations that apply to fishing vessels after the quota is reached, such as allowing a vessel to retain a 15–percent incidental harvest by weight of yellowfin tuna while fishing for other species of tuna. The 15–percent incidental catch allocation for yellowfin tuna will not allow uncontrolled mortality in excess of MSY. The IATTC estimates the amount of yellowfin tuna that will be caught during a closure and includes those data in its decision about when to close the fishery. The closure date is chosen so that the total yellowfin harvest (including incidental catch) will not exceed MSY. This final rule authorizes the Regional Administrator

to close the U.S. fishery for yellowfin tuna or other species of tuna at such time as the IATTC Director of Investigations advises that the quota will be reached.

Bigeye and FAD issues in 1999

In 1999, the IATTC recommended that action be taken to limit the catch of bigeye tuna to 40,000 mt by prohibiting purse seine sets on all types of floating objects in the Convention Area when this harvest level is reached. This would tend to reduce the harvest of small fish and increase the catch-per-recruit.

This final rule establishes a procedure for implementing future recommendations of the IATTC. In addition, this final rule implements the following two measures, which were recommended by the IATTC in 1998 and approved by the Department of State:

1. The use of tender vessels, which are vessels that do not engage in purse seining but tend FADS in support of tuna fishing operations, in the Convention Area is prohibited; and

2. The transshipment of tuna by purse seine vessels at sea in the Convention Area is prohibited.

NMFS will notify fishermen of any future resolutions adopted by the IATTC and approved by the Department of State.

Changes to the Proposed Rule

Changes to the proposed rule were made to the definition of Regional Administrator to allow a designee to act in his or her stead, and to the prohibitions section at § 300.28(b) to authorize the Regional Administrator to prohibit the use of any fishing gear around floating objects, if such a prohibition is necessary for the conservation of fishery resources or other species.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 300

Fish, Fisheries, Fishing, High seas fishing, International agreements, Reporting and recordkeeping requirements.

Dated: August 10, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Pacific Tuna Fisheries

1. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 951-961 and 971 *et seq.*

2. Section 300.20 is revised to read as follows:

§ 300.20 Purpose and scope.

The regulations in this subpart implement the Tuna Conventions Act of 1950 (Act) and the Atlantic Tunas Convention Act of 1975. The regulations provide a mechanism to carry out the recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States. They also carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas for the conservation of bluefin tuna, so far as they affect vessels and persons subject to the jurisdiction of the United States.

3. Section 300.21 is amended by removing the definition of "Regional Director" and adding definitions for "Bigeye tuna", "Commission's Yellowfin Regulatory Area (CYRA)", "Convention Area", "Fish aggregating device (FAD)", "Fishing trip", "Floating object", "Incidental catch or incidental species", "Land or Landing", "Observer", "Regional Administrator", "Tender vessel", "Transship", and "Transshipment receiving vessel" in alphabetical order to read as follows:

§ 300.21 Definitions.

* * * * *

Bigeye tuna means the species *Thunnus obesus.*

* * * * *

Commission's Yellowfin Regulatory Area (CYRA) means the waters bounded by a line extending westward from the mainland of North America along the 40° N. latitude parallel, and connecting the following coordinates:

40° N. lat., 125° W. long.;
20° N. lat., 125° W. long.;
5° N. lat., 120° W. long.;
5° N. lat., 110° W. long.;
10° S. lat., 110° W. long.;
10° S. lat., 90° W. long.;
30° S. lat., 90° W. long.; and then eastward along the 30° S. latitude parallel to the coast of South America.

Convention Area means the waters within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. lat. and 40° S. lat., and 150° W. long.

Fish aggregating device (FAD) means a manmade raft or other floating object used to attract tuna and make them available to fishing vessels.

Fishing trip means a period of time between landings when fishing is conducted.

* * * * *

Floating object means any natural object or FAD around which fishing vessels may catch tuna.

Incidental catch or *incidental species* means species caught while fishing with the primary purpose of catching a different species. An incidental catch is expressed as a percentage of the weight of the total fish on board.

Land or *Landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish on board the vessel are counted as part of the landing.

Observer means an individual placed aboard a fishing vessel under the IATTC observer program or any other international observer program in which the United States may participate.

* * * * *

Regional Administrator means the Administrator, Southwest Region, NMFS, or his designee.

* * * * *

Tender vessel means a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations.

Transship means to unload fish from a vessel that caught fish to another vessel.

Transshipment receiving vessel means any vessel, boat, ship, or other craft that is used to receive fish from a fishing vessel.

4. In § 300.28, the section heading is revised, paragraphs (a) through (c) are redesignated as (e) through (g), respectively, and new paragraphs (a) through (d) are added to read as follows:

§ 300.28 Prohibitions.

* * * * *

(a) Land any species of tuna during the closed season for that species in excess of the amount allowed by the Regional Administrator.

(b) Fish on floating objects in the Convention Area using any gear type specified by the Regional Administrator's notification of closure issued under § 300.29.

(c) Use tender vessels in the Convention Area.

(d) Transship purse seine-caught tuna at sea within the Convention Area.

* * * * *

5. Section 300.29 is added to Subpart C to read as follows:

§ 300.29 Eastern Pacific fisheries management.

(a) *Notification of IATTC recommendations.* The Regional Administrator will directly notify owners or agents of U.S. tuna vessels of any fishery management recommendations made by the IATTC and approved by the Department of State that will affect fishing or other activities by U.S. parties with fishery interests in the Convention Area. As soon as practicable after such notification, the Regional Administrator will announce approved IATTC recommendations in the **Federal Register**.

(b) *Tuna quotas.* (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) The Regional Administrator may close the U.S. fishery for yellowfin, bigeye, or skipjack tuna or any other tuna species in the Convention Area or portion of the Convention Area when advised by the Director of Investigations of the IATTC that the associated quota has been or is projected to be reached. Any such closure may include:

(i) An allowance for an incidental catch that may be landed while fishing for other tuna species;

(ii) A prohibition on the further setting of specified gear types on floating objects by U.S. vessels in the Convention Area;

(iii) Provisions for vessels that are at sea during an announced closure to fish unrestricted until the fishing trip is completed;

(iv) Provisions for vessels at sea with an observer on board during any closure to land fish unrestricted if the landing occurs after December 31; or

(v) Other measures to ensure that the conservation and management measures of the IATTC are achieved.

(3) The Regional Administrator will announce any such closures directly to the owners or agents of U.S. vessels who are fishing in or are eligible to fish in the Convention Area.

(4) As soon as practicable after being advised of the quota attainment or projection under paragraph (b)(2) of this section, the Regional Administrator will publish an announcement of the closure in the **Federal Register**.

(c) *Use of tender vessels.* No person subject to these regulations may use a tender vessel in the Convention Area.

(d) *Transshipments at sea.* No person subject to these regulations may transship purse seine-caught tuna from one vessel to another vessel at sea within the Convention Area.

PART 300—[AMENDED]

6. In addition to the amendments set forth under the authority of 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 973–973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371–3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*, in part 300, revise all references to "Regional Director" to read "Regional Administrator".

[FR Doc. 99–21196 Filed 8–13–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080999J]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 10, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of northern rockfish in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 4,150 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii). The directed fishery for northern rockfish in the Central Regulatory Area was closed under § 679.20(d)(iii) on July 19, 1999 (64 FR 39090, July 21, 1999), and reopened on August 6, 1999 (64 FR 43296, August 10, 1999).

On July 19, 1999 (64 FR 39090, July 21, 1999), in accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), determined that the 1999 TAC for northern rockfish would be reached. Therefore, the Regional Administrator established a directed fishing allowance of 3,650 mt, and set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of northern rockfish for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21094 Filed 8–10–99; 4:49 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080999F]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish by Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish 1999 total allowable catch (TAC) assigned to trawl gear in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 10, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(4)(ii)(B), the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) established the allocation of the 1999 sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA as 1,118 metric tons (mt).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21093 Filed 8–10–99; 4:49 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 157
Monday, August 16, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 710

RIN 1992–AA22

Office of Nonproliferation and National Security; Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

AGENCY: Office of Nonproliferation and National Security, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DOE proposes to amend its regulations concerning the procedures used to render final determinations of eligibility for access to classified matter and/or special nuclear material. The purpose of the amendments is to ensure that DOE procedures in this regard conform to the access eligibility determination provisions in Part 5 of Executive Order 12968,"Access to Classified Information," signed by the President in August 1995.

DATES: Comments may be submitted by October 15, 1999.

ADDRESSES: Ten (10) copies of comments should be sent to: A. Barry Dalinsky, Policy, Standards and Analysis Division, Office of Safeguards and Security, NN–512, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

FOR FURTHER INFORMATION CONTACT: A. Barry Dalinsky at the address above or telephone 301–903–5010.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Summary of Proposed Changes
III. Section by Section Discussion of Changes
IV. Procedural Requirements
A. Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the National Environmental Policy Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12988
F. Review Under the Unfunded Mandates Reform Act of 1995
G. Review Under the Treasury and General Government Appropriations Act, 1999
V. Opportunity for Public Comment

I. Introduction and Background

The DOE has established procedures to resolve questions concerning the access authorization eligibility for individuals (including consultants and agents) who are applicants for employment or employed by: the DOE; DOE contractors and subcontractors at any tier; DOE access permittees; and other persons designated by the Secretary of Energy for access to DOE classified matter and/or special nuclear material. This access authorization is commonly referred to as a security clearance. These procedures are codified in Subpart A of Title 10, Code of Federal Regulations, Part 710 (hereafter referred to as 10 CFR Part 710) which would be amended if today's proposed rule were promulgated as a final rule.

When the DOE proposes to deny or revoke an access authorization under current procedures, the individual is afforded an opportunity to appear before a DOE Hearing Officer. The Hearing Officer considers favorable and unfavorable information presented during the hearing and prepares a report of findings, relative to the merit of the DOE allegations, and an opinion as to whether access authorization for the individual should be granted or denied, or reinstated or revoked. The Hearing Officer's findings and opinion may be appealed by either the individual or the DOE to the Director, Office of Hearings and Appeals. The administrative record, which includes the opinions rendered by the Hearing Officer and the Director, Office of Hearings and Appeals, is then forwarded to the Director, Office of Security Affairs, who carefully considers the record and makes a final determination as to whether access authorization for the individual will be either granted or denied, or reinstated or revoked. On August 2, 1995, the President signed Executive Order 12968, "Access to Classified Information," which requires that an individual determined not to meet the standards for access authorization be provided an opportunity to appeal in writing a denial of access to a high level panel comprised of at least three members, two of whom shall be selected from outside the security field. As noted above, current DOE procedures allow for opinions to be rendered by the Hearing Officer and the Director, Office of Hearings and Appeals. However, the final determination in a case under review is rendered by the Director, Office of Security Affairs. In order to comply with the Executive Order requirement that an individual be afforded the opportunity to appeal to a high level panel, the DOE proposes to amend 10 CFR Part 710 to allow for: an initial decision concerning access authorization eligibility to be made by the local DOE Manager; a review decision to be made after completion of a hearing by a Hearing Officer; and a final decision to be made by a high level three member Appeal Panel (hereafter referred to as "Appeal Panel") at DOE Headquarters. This Appeal Panel, consistent with Executive Order 12968, would consist of one DOE security official and two other DOE officials outside the security field. The DOE proposes that its Appeal Panel be comprised of: the Director, Office of Security Affairs; an attorney from the Office of General Counsel; and a representative from the appropriate DOE Headquarters office. The notifications currently provided to the individual and the opportunity afforded the individual to participate in a hearing before a DOE Hearing Officer would not be affected by the amendments proposed today. The DOE also proposes several other amendments to 10 CFR Part 710 as described below.

II. Summary of Proposed Changes

As noted above, the proposed regulations will revise existing regulations to comply with Executive Order 12968. The proposed procedures continue to provide for a hearing before a Hearing Officer; however, the possibility of an appeal of the Hearing Officer's opinion to the Director, Office of Hearings and Appeals, is eliminated and the final determination currently rendered by the Director, Office of Security Affairs, is replaced by a final decision rendered by an Appeal Panel.

Under the proposed regulations, the initial decision is to be made by the local Manager to deny or revoke an individual's access authorization. The individual is advised of the initial decision and the reason(s) therefor and offered the opportunity to appear at a hearing before a DOE Hearing Officer. If the individual elects not to participate

in a hearing, the initial decision by the Manager is considered final unless the individual requests a review and final decision by the Appeal Panel. If the individual elects to participate in a hearing, the Hearing Officer will conduct a hearing and render a written decision upon completion of the hearing to either grant or deny, or reinstate or revoke, access authorization for the individual. The individual is advised of the Hearing Officer's decision which, if unfavorable to the individual, is referred at the individual's request to the Appeal Panel for further review and a final decision as to the individual's access authorization eligibility. If the individual fails to request a referral to the Appeal Panel, the decision rendered by the Hearing Officer is final. If the Hearing Officer's decision is favorable to the individual, either the Manager or Director, Office of Safeguards and Security, may elect to refer the individual's case to the Appeal Panel for further review and a final decision. If DOE officials elect not to refer the individual's case to the Appeal Panel for further review, the Hearing Officer's decision in the case is final. If a case is referred to the Appeal Panel by either the individual or DOE officials, the Appeal Panel members will review the administrative record and any additional material submitted for consideration by the parties, and render a final written decision, decided by majority vote of the panel members, as to the individual's access authorization eligibility. The decision will be made a part of the administrative record.

Upon issuance of the final rule, there will be a provision specifying that cases in process, wherein the individual has been provided a notification letter by the DOE, will continue to be subject to the current regulations.

III. Section by Section Discussion of Changes

Section 710.1 Purpose

Paragraph (b) of this section would be changed by: replacing the reference to Executive Order 12356 with a reference to Executive Order 12958; adding a reference to Executive Order 12968, "Access to Classified Information;" and adding a reference to a new Appendix B to the subpart.

Section 710.4 Policy

No substantive changes would be made to paragraphs (a), (b), (d); (e), and (f) of this section. Paragraph (c) would be amended to allow the DOE to determine whether further processing should be continued or suspended for an access authorization applicant who is awaiting trial. The DOE would consider the seriousness of the crime with which the individual has been charged before deciding whether to continue or suspend further processing of the access authorization request. A decision to suspend further processing of the access authorization request could be appealed by the individual under the newly added paragraph (g) to this section which would also allow the individual to appeal an unfavorable decision made under paragraphs (d) and (e) of this section to the Director, Office of Safeguards and Security.

Section 710.5 Definitions

Minor changes would be made to the definitions for Local Director of Security, National Security Information, and Operations Office Manager or Manager to reflect updated organizational changes and an updated reference to the Executive Order. A definition for Classified Matter would be added to this section.

Section 710.7 Application of the Criteria

Changes would be made to paragraph (a) to clarify that: the decision process applies not only to the granting but also the continuation of access authorization; any doubt as to access authorization eligibility would be resolved in favor of the national security (as required in Executive Order 12968); and, absent any derogatory information, a favorable decision usually would be made as to the individual's access authorization eligibility.

Section 710.8 Criteria

Minor nomenclature changes would be made to paragraph (f); paragraph (g) would be expanded to include classified and sensitive information technology systems; the term "other licensed physician" would be deleted from paragraphs (h) and (j), and the term "board-certified psychiatrist" would be changed in those paragraphs to "psychiatrist;" the word "Federal" would be inserted before the word "law" in paragraph (k); and the term "conflicting allegiances" would be added to the second sentence in paragraph (l).

Section 710.9 Action on Derogatory Information

This section is reformatted to clarify DOE internal procedures. The proposed changes will not affect the application of the procedures to the individual.

Section 710.10 Suspension of Access Authorization

Paragraph (a) is rewritten for clarity. Paragraphs (e) and (f) would be added to this section to clarify DOE internal procedures. No substantive changes are made to paragraphs (b), (c), and (d) of this section.

Section 710.21 Notice to Individual

Paragraph (b)(2) is expanded to require the DOE to advise the individual of the specific reason(s) the conduct and/or circumstances have raised a doubt concerning his/her access authorization eligibility. The current section 710.22, Additional information, would be incorporated into this section as a new paragraph (c). Paragraph (c)(3) would be modified to include explaining the individual's rights under the Freedom of Information Act as well as the Privacy Act. The proposed changes will not affect the application of the procedures to the individual.

Section 710.22 Initial Decision Process

This section is retitled and will establish the process by which the Manager renders an initial decision concerning the individual's access authorization eligibility when the individual elects not to request a hearing before a DOE Hearing Officer or fails to respond to the DOE's Notification Letter. The individual will then be notified in writing of the Manager's initial decision and the reason(s) therefor, and, if the initial decision is unfavorable to the individual, the right to file a written request for a review of the matter by the Appeal Panel. In unfavorable initial decisions, if the individual fails to respond to the Manager's notification or fails to file a written request for review by the Appeal Panel, the initial decision of the Manager is final. This initial decision process is similar to current regulations and would implement the first decision level of the three-tiered access eligibility decision process required by Executive Order 12968.

Section 710.23 Extension of Times by the Manager

The words "Operations Office" are deleted from the section title.

Section 710.27 Hearing Officer's Decision

Currently titled "Opinion of the Hearing Officer," this section is retitled and changed to allow the Hearing Officer to render a decision as to the individual's access authorization eligibility after completion of the hearing. Previously, the Hearing Officer rendered an opinion only as to the

individual's access authorization eligibility. The procedures used by the Hearing Officer in reaching the findings of fact are not changed.

Section 710.28 Action on the Hearing Officer's Decision

This section is retitled to reflect that the Hearing Officer will issue a decision rather than an opinion. Procedures are established for the individual or DOE officials to request that the case be reviewed by the Appeal Panel. If no such request is made, the decision of the Hearing Officer in the case is final. The party requesting a review of the case by the Appeal Panel is responsible for notifying the other party of the filing and providing the other party with a copy of the statement filed with the Appeal Panel. The Hearing Officer's decision represents the second level in the three-tiered access eligibility decision process required by Executive Order 12968.

Section 710.29 Final Appeal Process

Sections 710.29 through 710.34 would be redesignated as sections 710.30 through 710.34. A new section 710.29, "Final appeal process," is added to implement the third decision level of the three-tiered access eligibility decision process required by Executive Order 12968. Currently, the final decision as to the individual's access authorization eligibility is rendered by the Director, Office of Security Affairs, unless a final decision is rendered by the Manager under section 710.21(b)(8) or the Secretary of Energy under section 710.31. Under the proposed regulations, a final decision as to the individual's access authorization eligibility would be rendered by a three member Appeal Panel comprised of: the Director, Office of Security Affairs, serving as a permanent panel member and as the Appeal Panel Chairman; a DOE attorney designated by the General Counsel; and a DOE employee designated by the head of the appropriate DOE Headquarters element or, in special circumstances by the Director, Office of Security Affairs. Each panel member will be a United States citizen and hold a DOE Q access authorization. The Appeal Panel will convene in response to a request filed by the individual or a DOE official for further review of the individual's case; review the administrative record and any new material submitted by the individual or the DOE; and render a final decision in writing as to whether access authorization should be granted or denied, or reinstated or revoked for the individual. Appeals will be decided by a majority vote of the panel members. The individual will be informed in writing of the Appeal Panel's final decision. This section would be changed also to allow the Director, Office of Security Affairs, with the approval of the Secretary, to defer an Appeal Panel final decision if the individual is the subject of an unresolved inquiry or investigation of a matter that would affect the individual's DOE access authorization eligibility; and, in rare circumstances, to refer a case to the Secretary for a final decision if the Director is aware of information that can not for national security reasons be disclosed in the proceedings before a DOE Hearing Officer.

Section 710.30 New Evidence

Minor changes are made to this newly redesignated section to reflect the new decision structure in the process. The changes do not affect the application of the procedures to the individual.

Section 710.31 Action by the Secretary

Paragraphs (a), (b), and (c) of this newly designated section would be changed and a new paragraph (d) added to allow the Secretary to approve the deferral of an Appeal Panel final decision and to render a final decision in cases where information cannot be disclosed, for national security reasons, during the proceedings before a DOE Hearing Officer.

Section 710.32 Reconsideration of Access Eligibility

Paragraph (c) of this newly redesignated section has been clarified to reflect that only the individual can request reconsideration of his or her case.

Section 710.33 Terminations

This newly redesignated section is changed to allow final decisions to be made a part of the administrative record prior to the DOE being notified of the termination.

Section 710.34 Attorney Representation

No substantive changes are made to this newly redesignated section.

Section 710.35 Timeframes

No substantive changes are made to this newly redesignated section.

Section 710.36 Acting Officials

This section would be added to the current regulations to allow the authorities conferred in this subpart to be exercised by persons designated in writing as acting for, or in the temporary capacity of, the principal decision-makers.

Appendix B

This appendix is added to this subpart for reference purposes only. The Adjudicative Guidelines were developed by the Security Policy Board in March 1997 for distribution throughout the Executive Branch. The guidelines are not subject to public notice and comment rulemaking procedures.

IV. Procedural Requirements

A. Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of proposed rulemaking. Such an analysis is not required, however, if the agency certifies that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

DOE certifies that the amendments to 10 CFR Part 710 proposed today would not have a significant economic impact on a substantial number of small entities. This proposed rule, if promulgated as a final rule, would change the Department's procedures for eligibility determinations for access to classified matter and/or special nuclear material. The amendments, which are required to conform 10 CFR Part 710 to the requirements of Executive Order 12968, would affect only individual employees or applicants for employment. The rule does not directly regulate small entities.

C. Review Under the National Environmental Policy Act

DOE has concluded that the proposed rule, which would amend the Department's procedures for eligibility determinations for access to classified matter and/or special nuclear material, falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42

U.S.C. 4321 et seq.). Specifically, the proposed rule is categorically excluded from environmental review as the proposed rule is strictly procedural (Category Exclusion A6). Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Review Under the Paperwork Reduction Act

No new collection of information is proposed to be imposed by this rulemaking. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12988

Section 3 of Executive Order 12988 (61 FR 4729) instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 3 (a) and (b), include eliminating drafting errors and ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's proposed rule meets the requirements of sections 3 (a) and (b) of Executive Order 12988.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 et seq., requires each federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any federal mandate in an agency rule that may result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The rule amendments proposed today would not impose a federal mandate on state, local, or tribal governments or on the private sector. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Statement.

V. Opportunity for Public Comment

DOE believes that no substantial issue of fact or law exists with respect to the proposed amendments, and that the proposed amendments will not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, the DOE does not intend to provide an opportunity for oral presentation of views or arguments regarding the proposed amendments. Nevertheless, the DOE will consider scheduling a public hearing for the oral presentation of views and arguments if members of the public requesting a hearing present a reasonable argument that a hearing is appropriate. The public is invited to submit written comments regarding the proposed amendments set forth in this notice to the address indicated in the "addresses" section of this preamble. The designation "Amendment of Rules—10 CFR Part 710" should be indicated on the outside of the envelope and ten (10) copies of comments should be submitted. All comments received by the DOE will be available for public inspection and copying in the DOE's Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, telephone number (202) 586–3142, between 9:00 a.m. and 4:00 p.m., Monday through Friday excluding holidays.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Governments contracts, Nuclear materials.

Issued in Washington, DC, on August 3, 1999.

Rose Gottemoeller,

Assistant Secretary for Nonproliferation and National Security.

For the reasons set forth in the preamble, Part 710 of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 710 is revised to read as follows:

Authority: Atomic Energy Act of 1954, sec. 141, 68 Stat. 940, as amended (42 U.S.C. 2161); Atomic Energy Act of 1954, sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); Atomic Energy Act of 1954, sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 12958, 3 CFR 1995, comp., p. 333; E.O. 12968, 3 CFR 1995, comp., p. 391.

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

2. Section 710.1 is amended by revising paragraph (b) to read as follows:

§ 710.1 Purpose.

* * * * *

(b) This subpart is published to implement: Executive Order 12968, 60 FR 40245 (August 7, 1995); Executive Order 12958, 60 FR 19825 (April 20, 1995); Executive Order 10865, 25 FR 1583 (February 24, 1960), as amended; Executive Order 10450, 18 FR 2489 (April 27, 1954), as amended; and the 1997 Adjudicative Guidelines approved by the President and set forth in Appendix B to this subpart.

3. Section 710.4 is amended by revising paragraph (c) and adding paragraph (g) as follows:

§ 710.4 Policy.

* * * * *

(c) If the individual is currently awaiting hearing or trial, or has been convicted of a crime punishable by imprisonment of six (6) months or longer, or is awaiting or serving a form of preprosecution probation, suspended or deferred sentencing, court ordered probation, or parole in conjunction with an arrest or criminal charges initiated against the individual for a crime that is punishable by imprisonment of six (6) months or longer, DOE may suspend processing an application for access authorization until such time as the

hearing, trial, criminal prosecution, suspended sentencing, deferred sentencing, probation, or parole has been completed.

* * * * *

(g) If an individual believes that the provisions of paragraph (c), (d), or (e) of this section have been inappropriately applied, a written appeal may be filed with the Director, Office of Safeguards and Security, DOE Headquarters, within 30 calendar days of the date the individual was notified of the action. The Director, Office of Safeguards and Security, shall act on the written appeal as described in section 710.6(c).

4. Section 710.5 is amended by adding in alphabetical order a definition for the term "Classified Matter" and by revising the definitions for "Local Director of Security," "National Security Information," and "Operations Office Manager or Manager" as follows:

§ 710.5 Definitions.

* * * * *

Classified Matter means the material of thought or expression that is classified pursuant to statute or Executive Order.

* * * * *

Local Director of Security means the Operations Office or Naval Reactors Office Security and Safeguards Division Director, or other similar title; for Washington, DC area cases, the Director, Headquarters Operations Division; for the Idaho Operations Office, the Program Manager, Security and Resource Management Division; for the Pittsburgh Naval Reactors Office, the Director, Contracts and Securities Division; for the Savannah River Operations Office, the Director, Internal Security Division; and any person designated in writing to serve in one of the aforementioned positions in an "acting" capacity.

* * * * *

National Security Information means any information that has been determined, pursuant to Executive Order 12958 or any predecessor Order, to require protection against unauthorized disclosure and that is so designated.

* * * * *

Operations Office Manager or *Manager* means the Manager of a DOE Operations Office (Albuquerque, Chicago, Idaho, Nevada, Oak Ridge, Oakland, Richland, or Savannah River), the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schenectady Naval Reactors Office, and, for Washington, DC area cases, the Director, Office of Safeguards and Security.

* * * * *

5. Section 710.7 is amended by revising paragraph (a) to read as follows:

§ 710.7 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security. Absent any derogatory information, a favorable determination usually will be made as to access authorization-eligibility.

* * * * *

6. Section 710.8 is amended by adding the words "(or National Security)" between the words "Sensitive" and "Positions" in the first sentence of paragraph (f) and revising paragraphs (g), (h), (j), (k), and (l) to read as follows:

§ 710.8 Criteria.

* * * * *

(g) Failed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; or disclosed classified information to a person unauthorized to receive such information; or violated or disregarded regulations, procedures, or guidelines pertaining to classified or sensitive information technology systems.

(h) An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.

* * * * *

(j) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

(k) Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law.

(l) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

7. Section 710.9 is revised to read as follows:

§ 710.9 Action on derogatory information.

(a) If the reports of investigation of an individual or other reliable information tend to establish the validity and significance of one or more items in the criteria, or of other reliable information or facts which are of security concern, although outside the scope of the stated categories, such information shall be regarded as derogatory and create a question as to the individual's access authorization eligibility.

(b) If a question arises as to the individual's access authorization eligibility, the Local Director of Security shall authorize the conduct of an interview with the individual, or other appropriate actions, which may include a DOE-sponsored mental evaluation, and, on the basis of the results of such interview or actions, may authorize the granting of the individual's access authorization. If, in the opinion of the Local Director of Security, the question as to the individual's access authorization eligibility has not been favorably resolved, he shall submit the matter to the Manager with a recommendation that authority be obtained to process the individual's case under administrative review procedures.

(c) If the Manager agrees that unresolved derogatory information is present and that appropriate attempts to resolve such derogatory information have been unsuccessful, he shall submit a request for authority to conduct an administrative review proceeding, accompanied by an explanation of the security concerns and a duplicate Personnel Security File, to the Director, Office of Safeguards and Security. If the Manager believes that the derogatory

information has been favorably resolved, he shall direct that access authorization be granted for the individual. The Manager may also direct the Local Director of Security to obtain additional information in the matter prior to deciding whether to grant the individual access authorization or to submit a request for authority to conduct an administrative review proceeding. A decision in the matter shall be rendered by the Manager within 10 calendar days of its receipt.

(d) Upon receipt of the Manager's request for authority to conduct an administrative review proceeding, the Director, Office of Safeguards and Security, shall review the matter and shall authorize:

(1) The institution of administrative review proceedings set forth in sections §§ 710.20 through 710.32;

(2) The granting of access authorization; or

(3) Such other action as the Director deems appropriate.

(e) The Director, Office of Safeguards and Security, shall authorize one of these options within 30 calendar days of the receipt of the Manager's request unless an extension is granted by the Director, Office of Security Affairs.

8. Section 710.10 is amended by revising paragraph (a) and adding paragraphs (e) and (f) as follows:

§ 710.10 Suspension of access authorization.

(a) If information is received that raises a question concerning an individual's continued access authorization eligibility, the Local Director of Security shall authorize action(s), to be taken on an expedited basis, to resolve the question pursuant to section § 710.9(b). If the question as to the individual's continued access authorization eligibility is not resolved in favor of the individual, the Local Director of Security shall submit the matter to the Manager with a recommendation that the individual's access authorization be suspended pending the final determination resulting from the procedures in this subpart.

* * * * *

(e) Upon receipt of the Manager's request for authority to conduct an administrative review proceeding, the Director, Office of Safeguards and Security shall review the matter and shall authorize:

(1) The institution of administrative review procedures set forth in §§ 710.20 through 710.32;

(2) The reinstatement of access authorization; or

(3) Such other action as the Director deems appropriate.

(f) The Director, Office of Safeguards and Security, shall authorize one of these options within 30 calendar days of the receipt of the Manager's request unless an exception is granted by the Director, Office of Security Affairs.

9. Section 710.21 is amended by revising paragraphs (a) and (b)(2) and adding paragraph (c) to read as follows:

§ 710.21 Notice to the individual.

(a) Unless an extension is authorized by the Director, Office of Safeguards and Security, within 30 calendar days of receipt of authority to institute administrative review procedures, the Manager shall prepare and deliver to the individual a notification letter approved by the local Office of Chief Counsel, or the Office of General Counsel for Headquarters cases. Where practicable, the letter shall be delivered to the individual in person.

(b) * * *

(1) * * *

(2) The information which creates a substantial doubt regarding the individual's access authorization eligibility (which shall be as comprehensive and detailed as the national security permits) and why that information creates such doubt.

* * * * *

(c) The notification letter referenced in paragraph (b) of this section shall also:

(1) Describe the individual's access authorization status until further notice;

(2) Advise the individual of the right to representation at the individual's own expense at each and every stage of the proceedings;

(3) Provide the name and telephone number of the designated DOE official to contact for any further information desired concerning the proceedings, including an explanation of the individual's rights under the Freedom of Information and Privacy Acts; and

(4) Include a copy of this subpart.

10. Section 710.22 is revised to read as follows:

§ 710.22 Initial decision process.

(a) The Manager shall make an initial decision as to the individual's access authorization eligibility based on the existing information in the case if:

(1) The individual fails to respond to the notification letter by filing a timely written request for a hearing before a Hearing Officer or fails to respond to the notification letter after requesting an extension of time to do so;

(2) The individual's response to the notification letter does not request a hearing before a Hearing Officer; or

(3) The Hearing Officer refers the individual's case to the Manager in accordance with § 710.25(e) or § 710.26(b).

(b) Unless an extension of time is granted by the Director, Office of Safeguards and Security, the Manager's initial decision as to the individual's access authorization eligibility shall be made within 15 calendar days of the date of receipt of the information requested in paragraph (a) of this section. The Manager shall either grant or deny, or reinstate or revoke, the individual's access authorization.

(c) A letter reflecting the Manager's initial decision in the individual's case shall be signed by the Manager and delivered to the individual within 15 calendar days of the date of the Manager's decision unless an extension of time is granted by the Director, Office of Safeguards and Security. If the Manager's initial decision is unfavorable to the individual, the individual shall be advised:

(1) Of the Manager's unfavorable decision and the reason(s) therefor;

(2) That within 30 calendar days from the date of receipt of the letter, he may file a written request for a review of the Manager's initial decision through the Director, Office of Safeguards and Security, DOE Headquarters, to the DOE Headquarters Appeal Panel (hereafter referred to as the "Appeal Panel");

(3) That the Director, Office of Safeguards and Security, may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a review of the case by the Appeal Panel; and

(4) That if the written request for a review of the Manager's initial decision by the Appeal Panel is not filed within 30 calendar days of the individual's receipt of the Manager's letter, the Manager's initial decision in the case shall be final.

§ 710.23 [Amended]

11. Section 710.23 is amended by removing the words "Operations Office" from the section heading.

12. Section 710.27 is amended by revising the section heading, removing the words "an initial opinion" in the first sentence of paragraph (a) and inserting in their place the words "a decision," by removing sections 710.27(e), 710.27(f), and 710.27(g) and by revising section 710.27(d) to read as follows:

§ 710.27 Hearing Officer's decision.

* * * * *

(d) The Hearing Officer's decision shall be based on the Hearing Officer's findings of fact. If, after considering all

of the factors in light of the criteria set forth in this subpart, the Hearing Officer is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or reinstate access authorization for the individual, the Hearing Officer shall render a favorable decision; otherwise, the Hearing Officer shall render an unfavorable decision. Within 15 calendar days of the Hearing Officer's written decision, the Hearing Officer shall provide copies of the decision and the administrative record to the Manager and the Director, Office of Safeguards and Security.

13. Section 710.28 is revised to read as follows:

§ 710.28 Action on the Hearing Officer's decision.

(a) Within 10 calendar days of receipt of the decision and the administrative record, unless an extension of time is granted by the Director, Office of Safeguards and Security, the Manager shall:

(1) Notify the individual in writing of the Hearing Officer's decision;

(2) Advise the individual in writing of the appeal procedures available to the individual in paragraph (b) of this section if the decision is unfavorable to the individual;

(3) Advise the individual in writing of the appeal procedures available to the Manager and the Director, Office of Safeguards and Security, in paragraph (c) of this section if the decision is favorable to the individual; and,

(4) Provide the individual and/or counsel or representative, a copy of the Hearing Officer's decision and the administrative record.

(b) If the Hearing Officer's decision is unfavorable to the individual:

(1) The individual may file with the Director, Office of Safeguards and Security, a written request for further review of the decision by the Appeal Panel along with a statement required by paragraph (e) of this section within 30 calendar days of the individual's receipt of the Manager's notice;

(2) The Director, Office of Safeguards and Security may, for good cause shown, extend the time for filing a request for further review of the decision by the Appeal Panel at the written request of the individual provided the request for an extension of time is filed by the individual within 30 calendar days of receipt of the Manager's notice;

(3) The Hearing Officer's decision shall be considered final if the individual does not: file a written request for a review of the decision by the Appeal Panel or for an extension of time to file a written request for further review of the decision by the Appeal Panel in accordance with paragraphs (b)(1) or (b)(2) of this section; or, file a written request for a further review of the decision by the Appeal Panel after having been granted an extension of time to do so.

(c) If the Hearing Officer's decision is favorable to the individual, within 30 calendar days of the individual's receipt of the Manager's notice:

(1) The Manager or the Director, Office of Safeguards and Security, may file a written request for further review of the decision by the Appeal Panel along with the statement required by paragraph (e) of this section;

(2) The Director, Office of Security Affairs, may, at the written request of the Manager or Director, Office of Safeguards and Security, extend the time for filing a request for further review of the decision by the Appeal Panel; or

(3) The Manager, with the concurrence of the Director, Office of Safeguards and Security, shall grant or reinstate the individual's access authorization.

(d) A copy of any request for further review of the individual's case by the Appeal Panel filed by the Manager or the Director, Office of Safeguards and Security, shall be provided to the individual by the Manager.

(e) The party filing a request for review of the individual's case by the Appeal Panel shall include with the request a statement identifying the issues on which it wishes the Appeal Panel to focus. A copy of such statement shall be served on the other party, who may file a response with the Appeal Panel within 20 calendar days of receipt of the statement.

14. Sections 710.29 through 710.34 are redesignated as §§ 710.30 through 710.35 and a new Peace Corps § 710.29 is added to read as follows:

§ 710.29 Final appeal process.

(a) The Appeal Panel shall be convened by the Director, Office of Security Affairs, to review and render a final decision in an access authorization eligibility case referred by the individual, the Manager, or the Director, Office of Safeguards and Security, in accordance with §§ 710.22, 710.28, and 710.32 of this subpart.

(b) The Appeal Panel shall consist of three members, each of whom shall be a DOE Headquarters employee, a United States citizen, and hold a DOE Q access authorization. The Director, Office of Security Affairs, shall serve as a permanent member of the Appeal Panel and as the Appeal Panel Chairman. The second member of on the Appeal Panel shall be a DOE attorney designated by the General Counsel. The head of the DOE Headquarters element who has cognizance over the individual whose access authorization eligibility is being considered may designate an employee to act as the third member on the Appeal Panel; otherwise, the third member will be designated by the Chairman. Only one member of the Appeal Panel shall be from the security field.

(c) In filing a written request for a review by the Appeal Panel in accordance with §§ 710.22 and 710.28, the individual, or the counsel or representative, shall identify the relevant issues and may also submit any relevant material in support of the individual. The individual's written request and supportive material shall be made a part of the administrative record. The Director, Office of Safeguards and Security, shall provide staff support to the Appeal Panel as requested by the Director, Office of Security Affairs.

(d) Within 15 calendar days from the date of receipt of a request for a review of a case by the Appeal Panel, the Director, Office of Security Affairs, shall:

(1) Request the General Counsel to designate an attorney who shall serve as an Appeal Panel member;

(2) Either request the head of the cognizant DOE element to designate, or designate himself, an employee from outside the security field who shall serve as the third member of the Appeal Panel; and

(3) Arrange for the Appeal Panel members to convene to review the administrative record or provide a copy of the administrative record to the other Appeal Panel members for their independent review.

(e) The Appeal Panel may initiate an investigation of any statement or material contained in the request for an Appeal Panel review and use any relevant facts obtained by such investigation in the conduct of the final decision process. The Appeal Panel may solicit and accept submissions from either the individual or DOE officials that are relevant to the final decision process and may establish appropriate time frames to allow for such submissions. The Appeal Panel may also consider any other source of information that will advance the final decision process, provided that both parties are afforded an opportunity to respond to all third party submissions. All information obtained by the Appeal

Panel under this section shall be made a part of the administrative record.

(f) Within 45 work days of the closing of the administrative record, the Appeal Panel shall render a final written decision in the case predicated upon an evaluation of the administrative record, findings as to each of the allegations contained in the notification letter, and any new evidence that may have been submitted pursuant to § 710.30. Prior to the Appeal Panel reaching its decision, the Director, Office of Security Affairs, shall remind the other panel members that, in accordance with the requirements of Part 3—Access Eligibility Standards of Executive Order 12968, any doubt regarding access eligibility shall be resolved in favor of the national security. If a majority of the Appeal Panel members determine that it will not endanger the common defense and security and will be clearly consistent with the national interest, the Director, Office of Security Affairs, shall grant or reinstate access authorization for the individual; otherwise, the Director, Office of Security Affairs, shall deny or revoke access authorization for the individual. The Appeal Panel written decision shall be made a part of the administrative record.

(g) The Director, Office of Security Affairs, through the Director, Office of Safeguards and Security, shall inform in writing the individual involved and counsel or representative of the Appeal Panel's final decision. A copy of the correspondence shall also be provided to the other panel members and the Manager.

(h) If, upon receipt of a written request for a review of the individual's case by the Appeal Panel, the Director, Office of Security Affairs, is aware or subsequently becomes aware of information that the individual is the subject of an unresolved inquiry or investigation of a matter that could reasonably be expected to affect the individual's DOE access authorization eligibility, the Director may defer action by the Appeal Panel on the request until the inquiry or investigation is completed and its results available for review by the Appeal Panel. In such instances, the Director, Office of Security Affairs, shall:

(1) Obtain written approval from the Secretary to defer review of the individual's case by the Appeal Panel for an initial interval not to exceed 90 calendar days;

(2) Advise the individual and appropriate DOE officials in writing of the initial deferral and the reason(s) therefor;

(3) Request that the individual's employment status not be affected during the initial and any subsequent deferral interval, except at the written request of the individual;

(4) Obtain written approval from the Secretary to extend the deferral for each subsequent 90 calendar day interval and advise in writing all concerned parties of the Secretary's approval;

(5) Inform in writing all concerned parties when the inquiry or investigation has been completed and the results made available to the Appeal Panel.

(i) If, upon receipt of a written request for review of an individual's case by the Appeal Panel, the Director, Office of Security Affairs, is aware or subsequently becomes aware of information that adversely affects the individual's DOE access authorization eligibility and which can not for national security reasons be disclosed in the proceedings before a DOE Hearing Officer, the Director may refer the information and the administrative record to the Secretary for the final decision as to the individual's DOE access authorization eligibility. In such instances, the Director, Office of Security Affairs, shall notify in writing all concerned parties that the individual's case has been provided to the Secretary for a final decision in accordance with § 710.31 of this subpart.

15. Newly redesignated § 710.30 is amended by replacing the word "determination" with the word "decision" in paragraph (a) and replacing the words "an opinion" with the words "a decision" in paragraph (b)(1), by replacing the word "getting" with the word "receiving" in paragraph (b)(1), and by revising paragraph (b)(2) to read as follows:

§ 710.30 New evidence.

* * * * *

(b)(2) In those cases where the Hearing Officer's decision has been issued, the application for presentation of new evidence shall be referred to the Director, Office of Security Affairs. In the event that the Director, Office of Security Affairs, determines that the new evidence shall be received, he shall determine the form in which it, and the other party's response, shall be received.

* * * * *

16. Newly redesignated § 710.31 is revised to read as follows:

§ 710.31 Action by the Secretary.

(a) Whenever an individual has not been afforded an opportunity to cross-examine witnesses who have furnished information adverse to the individual under the provisions of §§ 710.26(l) or (o), or the opportunity to review and respond to the information provided by the Director, Office of Security Affairs, to the Secretary under § 710.29(i), only the Secretary may issue a final decision to deny or revoke DOE access authorization for the individual after personally reviewing the administrative record and any additional material provided by the Director, Office of Security Affairs. The Secretary's authority may not be delegated and may be exercised only when the Secretary determines that the circumstances described in §§ 710.26(l) or (o), or 710.29(i) are present, and such determination shall be final.

(b) Whenever the Secretary issues a final decision as to the individual's DOE access authorization eligibility, the individual and other concerned parties will be notified in writing, by the Director, Office of Security Affairs, of that decision and of the Secretary's findings with respect to each of the allegations contained in the notification letter and each substantial issue identified in the statement in support of the request for review to the extent allowed by the national security.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Secretary to issue subpoenas or to deny or revoke access to Restricted Data, national security information, or special nuclear material.

(d) Only the Secretary may approve initial and subsequent requests under section 710.29(h) by the Director, Office of Security Affairs, to defer the review of an individual's case by the Appeal Panel.

17. Newly redesignated § 710.32 is revised to read as follows:

§ 710.32 Reconsideration of access eligibility.

(a) If, pursuant to the procedures set forth in §§ 710.20 through 710.31 of this subpart, the Manager, Hearing Officer, Appeal Panel, or the Secretary has made a decision granting or reinstating access authorization for an individual, the individual's access authorization eligibility shall be reconsidered as a new administrative review under the procedures set forth in this subpart when previously unconsidered derogatory information is identified, or the individual violates a commitment or promise upon which the DOE previously relied to favorably resolve an issue of access authorization eligibility.

(b) If, pursuant to the procedures set forth in §§ 710.20 through 710.31 of this subpart, the Manager, Hearing Officer, Appeal Panel, or the Secretary has made a decision denying or revoking access authorization for the individual, the

individual's access authorization eligibility may be reconsidered only when the individual so requests, when there is a bona fide offer of employment requiring access to Restricted Data, national security information, or special nuclear material, and when there is either:

(1) Material and relevant new evidence which the individual and the individual's representatives are without fault in failing to present earlier, or

(2) Convincing evidence of rehabilitation or reformation.

(c) A request for reconsideration shall be submitted in writing to the Director, Office of Security Affairs, accompanied by an affidavit setting forth in detail the new evidence or evidence of rehabilitation or reformation. The Director, Office of Security Affairs, shall decide and notify the individual as to whether the individual's access authorization shall be reconsidered and, if so, the method by which reconsideration shall be accomplished.

(d) Final decisions regarding access authorization eligibility in reconsideration cases shall be made by the Appeal Panel.

18. Newly redesignated § 710.33 is revised to read as follows:

§ 710.33 Terminations.

If the individual is no longer an applicant for access authorization or no longer requires access authorization, the procedures of this subpart shall be terminated without a final decision as to the individual's access authorization eligibility, unless a final decision has been rendered prior to the DOE being notified of the change in the individual's pending access authorization status.

19. Newly redesignated § 710.35 is revised to read as follows:

§ 710.35 Timeframes.

Statements of time established for processing aspects of a case under this subpart are the agency's desired time frames in implementing the procedures set forth in this subpart. They shall have no impact upon the final disposition of an access authorization by a Manager, Hearing Officer, the Appeal Panel, or the Secretary, and shall confer no procedural or substantive rights upon an individual whose access authorization eligibility is being considered.

20. Section 710.36 is added to read as follows:

§ 710.36 Acting officials.

Except for the Secretary, the responsibilities and authorities conferred in this subpart may be exercised by persons who have been designated in writing as acting for, or in the temporary capacity of, the following DOE positions: the Local Director of Security, the Manager, the Director, Office of Safeguards and Security, or the General Counsel. The responsibilities and authorities of the Director, Office of Security Affairs, may be exercised in his absence only by the Deputy Director, Office of Security Affairs.

21. Appendix B to subpart A of Part 710 is added to read as follows:

Appendix B to Subpart A of Part 710—Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968

(The following guidelines, included in this subpart for reference purposes only, are reproduced as provided to the DOE by the Security Policy Board. The President may change the guidelines without notice.)

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information

1. *Introduction.* The following adjudicative guidelines are established for all U.S. government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs and are to be used by government departments and agencies in all final clearance determinations.

2. *The Adjudicative Process.* (a) The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

(1) The nature, extent, and seriousness of the conduct;

(2) the circumstances surrounding the conduct, to include knowledgeable participation;

(3) the frequency and recency of the conduct;

(4) the individual's age and maturity at the time of the conduct;

(5) the voluntariness of participation;

(6) the presence or absence of rehabilitation and other pertinent behavioral changes;

(7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and

(9) the likelihood of continuation or recurrence.

(b) Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.

(c) The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration of the following, each of which is to be evaluated in the context of the whole person concept, as explained further below:

(1) GUIDELINE A: Allegiance to the United States;

(2) GUIDELINE B: Foreign influence;

(3) GUIDELINE C: Foreign preference;

(4) GUIDELINE D: Sexual behavior;

(5) GUIDELINE E: Personal conduct;

(6) GUIDELINE F: Financial considerations;

(7) GUIDELINE G: Alcohol consumption;

(8) GUIDELINE H: Drug involvement;

(9) GUIDELINE I: Emotional, mental, and personality disorders;

(10) GUIDELINE J: Criminal Conduct;

(11) GUIDELINE K: Security violations;

(12) GUIDELINE L: Outside activities;

(13) GUIDELINE M: Misuse of Information Technology Systems.

(d) Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding, the whole person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

(e) When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

(1) Voluntarily reported the information;

(2) was truthful and complete in responding to questions;

(3) sought assistance and followed professional guidance, where appropriate;

(4) resolved or appears likely to favorably resolve the security concern;

(5) has demonstrated positive changes in behavior and employment;

(6) should have his or her access temporarily suspended pending final adjudication of the information.

(f) If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

Guideline A: Allegiance To The United States

3. *The Concern.* An individual must be of unquestioned allegiance to the United States.

The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

4. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Involvement in any act of sabotage, espionage, treason, terrorism, sedition, or other act whose aim is to overthrow the Government of the United States or alter the form of government by unconstitutional means;

(b) association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;

(c) association or sympathy with persons or organizations that advocate the overthrow of the United States Government, or any state or subdivision, by force or violence or by other unconstitutional means;

(d) involvement in activities which unlawfully advocate or practice the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

5. *Conditions that could mitigate security concerns include:*

(a) The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(b) the individual's involvement was only with the lawful or humanitarian aspects of such an organization;

(c) involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest;

(d) the person has had no recent involvement or association with such activities.

Guideline B: Foreign Influence

6. *The Concern.* A security risk may exist when an individual's immediate family, including cohabitants and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

7. *Conditions that could raise a security concern and may be disqualifying include:*

(a) An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

(b) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

(c) relatives, cohabitants, or associates who are connected with any foreign country;

(d) failing to report, where required, associations with foreign nationals;

(e) unauthorized association with a suspected or known collaborator or employee of a foreign intelligence service;

(f) conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;

(g) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion or pressure;

(h) a substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

8. *Conditions that could mitigate security concerns include:*

(a) A determination that the immediate family member(s) (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

(b) contacts with foreign citizens are the result of official United States Government business;

(c) contact and correspondence with foreign citizens are casual and infrequent;

(d) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons or organizations from a foreign country;

(e) foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Guideline C: Foreign Preference

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

10. *Conditions that could raise a security concern and may be disqualifying include:*

(a) The exercise of dual citizenship;

(b) possession and/or use of a foreign passport;

(c) military service or a willingness to bear arms for a foreign country;

(d) accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

(e) residence in a foreign country to meet citizenship requirements;

(f) using foreign citizenship to protect financial or business interests in another country;

(g) seeking or holding political office in the foreign country;

(h) voting in foreign elections; and

(i) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

11. *Conditions that could mitigate security concerns include:*

(a) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

(c) activity is sanctioned by the United States;

(d) individual has expressed a willingness to renounce dual citizenship.

Guideline D: Sexual Behavior

12. *The Concern.* Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress, or reflects lack of judgment or discretion. (The adjudicator should also consider guidelines pertaining to criminal conduct (Guideline J) and emotional, mental, and personality disorders (Guideline I) in determining how to resolve the security concerns raised by sexual behavior.) Sexual orientation or preference may not be used as a basis for a disqualifying factor in determining a person's eligibility for a security clearance.

13. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(b) Compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive high-risk behavior or that which is symptomatic of a personality disorder;

(c) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

(d) Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

14. *Conditions that could mitigate security concerns include:*

(a) The behavior occurred during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature;

(b) The behavior was not recent and there is no evidence of subsequent conduct of a similar nature;

(c) There is no other evidence of questionable judgment, irresponsibility, or emotional instability;

(d) The behavior no longer serves as a basis for coercion, exploitation, or duress.

Guideline E: Personal Conduct

15. *The Concern.* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or

(b) Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

16. *Conditions that could raise a security concern and may be disqualifying also include:*

(a) Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;

(b) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

(d) Personal conduct or concealment of information that may increase an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;

(e) A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

(f) Association with persons involved in criminal activity.

17. *Conditions that could mitigate security concerns include:*

(a) The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

(b) The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

(c) The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

(d) Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;

(e) The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

(f) A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;

(g) Association with persons involved in criminal activities has ceased.

Guideline F: Financial Considerations

18. *The Concern.* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

19. *Conditions that could raise a security concern and may be disqualifying include:*

(a) A history of not meeting financial obligations;

(b) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(c) Inability or unwillingness to satisfy debts;

(d) Unexplained affluence;

(e) Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

20. *Conditions that could mitigate security concerns include:*

(a) The behavior was not recent;

(b) It was an isolated incident;

(c) The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

(d) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

(e) The affluence resulted from a legal source; and

(f) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline G: Alcohol Consumption

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

22. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;

(b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;

(c) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(d) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(e) Habitual or binge consumption of alcohol to the point of impaired judgment;

(f) Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

23. *Conditions that could mitigate security concerns include:*

(a) The alcohol related incidents do not indicate a pattern;

(b) The problem occurred a number of years ago and there is no indication of a recent problem;

(c) Positive changes in behavior supportive of sobriety;

(d) Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Guideline H: Drug Involvement

24. *The Concern.*

(a) Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

(b) Drugs are defined as mood and behavior altering substances and include: (1) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.

(c) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

25. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any drug abuse (see above definition);

(b) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

(c) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(d) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

(e) Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

26. *Conditions that could mitigate security concerns include:*

(a) The drug involvement was not recent;

(b) The drug involvement was an isolated or aberrational event;

(c) A demonstrated intent not to abuse any drugs in the future;

(d) Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.

Guideline I: Emotional, Mental, and Personality Disorders

27. *The Concern.* Emotional, mental, and personality disorders can cause a significant defect in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability, or stability. A credentialed mental health professional (e.g., clinical psychologist or psychiatrist), employed by, acceptable to or approved by the government, should be utilized in evaluating potentially

disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider.

28. *Conditions that could raise a security concern and may be disqualifying include:*

(a) An opinion by a credentialed mental health professional that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability;

(b) Information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g., failure to take prescribed medication;

(c) A pattern of high-risk, irresponsible, aggressive, anti-social or emotionally unstable behavior;

(d) Information that suggests that the individual's current behavior indicates a defect in his or her judgment or reliability.

29. *Conditions that could mitigate security clearance concerns include:*

(a) There is no indication of a current problem;

(b) Recent opinion by a credentialed mental health professional that an individual's previous emotional, mental, or personality disorder is cured, under control or in remission and has a low probability of recurrence or exacerbation;

(c) The past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual is no longer emotionally unstable.

Guideline J: Criminal Conduct

30. *The Concern.* A history or pattern of criminal activity creates a doubt about a person's judgment, reliability and trustworthiness.

31. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

(b) A single serious crime or multiple lesser offenses.

32. *Conditions that could mitigate security concerns include:*

(a) The criminal behavior was not recent;

(b) The crime was an isolated incident;

(c) The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;

(d) The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur;

(e) Acquittal;

(f) There is clear evidence of successful rehabilitation.

Guideline K: Security Violations

33. *The Concern.* Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

34. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Unauthorized disclosure of classified information;

(b) Violations that are deliberate or multiple or due to negligence.

35. *Conditions that could mitigate security concerns include actions that:*

(a) Were inadvertent;

(b) Were isolated or infrequent;

(c) Were due to improper or inadequate training;

(d) Demonstrate a positive attitude towards the discharge of security responsibilities.

Guideline L: Outside Activities

36. *The Concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

37. Conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer, or employment with:

(a) A foreign country;

(b) Any foreign national;

(c) A representative of any foreign interest;

(d) Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.

38. *Conditions that could mitigate security concerns include:*

(a) Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities;

(b) The individual terminates employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities.

Guideline M: Misuse of Information Technology Systems

39. *The Concern.* Noncompliance with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's trustworthiness, willingness, and ability to properly protect classified systems, networks, and information. Information Technology Systems include all related equipment used for the communication, transmission, processing, manipulation, and storage of classified or sensitive information.

40. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Illegal or unauthorized entry into any information technology system;

(b) Illegal or unauthorized modification destruction, manipulation or denial of access to information residing on an information technology system;

(c) Removal (or use) of hardware, software, or media from any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations;

(d) Introduction of hardware, software, or media into any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations.

41. *Conditions that could mitigate security concerns include:*

(a) The misuse was not recent or significant;

(b) The conduct was unintentional or inadvertent;

(c) The introduction or removal of media was authorized;

(d) The misuse was an isolated event;

(e) The misuse was followed by a prompt, good faith effort to correct the situation.

[FR Doc. 99–20841 Filed 8–13–99; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 99–41]

RIN 3069–AA80

Advance Participations; Sales of Whole Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing Federal Home Loan Bank (Bank) advances to approve the sale of whole advances between Banks under certain limited circumstances. The amendment is consistent with the Finance Board's efforts to devolve ministerial and routine business matters to the Federal Home Loan Banks.

DATES: The Finance Board will accept comments in writing on or before September 15, 1999.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Jonathan Curtis, Senior Financial Analyst, Office of Policy, Research and Analysis, by telephone (202) 408–2866 or by electronic mail at *curtisj@fhfb.gov;* Jane S. Converse, Attorney-Advisor, Office of General Counsel, by telephone at (202) 408–2976 or by electronic mail at *conversej@fhfb.gov;* or Neil R. Crowley, Deputy General Counsel, Office of General Counsel, by telephone (202) 408–2990 or electronic mail at *crowleyn@fhfb.gov,* Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(d) of the Federal Home Loan Bank Act (Bank Act) authorizes any Bank to sell whole advances, or participations in advances, to any other Bank, subject to Finance Board approval. *See* 12 U.S.C. 1430(d).

The Finance Board has approved the sale and purchase of participation interests in Bank advances through the adoption of § 935.16. *See* 12 CFR 935.16. The Finance Board has not similarly approved the sale and purchase of whole advances between Banks, which has meant that such transactions still must be submitted to the Finance Board for approval.

Requests for Finance Board approval of the sales of whole advances between Banks have resulted from the merger or consolidation of members in different Bank districts, and the resultant cancellation of the charter and membership of the non-surviving member or members. Consequently, the surviving institution, which is a member of one Bank, typically has advances outstanding from two Banks. The Bank to which the disappearing member formerly belonged can retain the advance until it matures. The member, however, usually prefers the advance to be sold to its current Bank, because as long as the advance remains outstanding with the other Bank, the member must maintain collateral and stock at both Banks. While not required to call the advances, the Bank of the former member usually is willing to sell them to the other Bank. It is in this context that all recent requests for Finance Board approval have occurred. Such sales and purchases of advances have involved no safety and soundness issues, and the Banks that have participated in these transactions have negotiated the terms of the sales without Finance Board involvement.

Finance Board approval of such sale and purchase of whole advances has been granted routinely, typically through a Chairman's Order. In processing these requests, Finance Board staff has required that Banks provide certain information as a condition of approval. The information required includes the submission of a Sale, Purchase and Consent Agreement, or similar document, signed by both Banks and the acquiring member. In addition, the Banks must submit a listing, identification, and description of the advance or advances to be sold and a short history recounting the merger or other consolidation activity.

Prior to this year, the Finance Board would receive, on average, one or two advance sale and purchase requests per year. However, due to the increasing consolidation of the financial services industry, such requests have increased. Four were processed during the first six months of this year. The Finance Board expects to receive additional requests before the year's end, and is certain that the number of sale and purchase transactions will continue to increase.

Therefore, the Finance Board is proposing to approve by regulation any sale and purchase of advances between Banks that meets the conditions set forth in the regulation, which are much the same conditions as those that are currently imposed during case-by-case review. Any other advances transfers still must be submitted to the Finance Board for approval.

II. Analysis of the Proposed Rule

For the reasons discussed above, the Finance Board proposes to amend § 935.16 to approve the sale of advances between Banks under certain conditions. In addition, the section will be retitled and the current provisions regarding participations shall be redesignated as a separate paragraph.

A new paragraph (b) will be added to set forth specific criteria which would approve the sale and purchase of advances between Banks that occur as a consequence of a merger or other business combination of two or more members of different Banks, or where a member has become a member of another Bank, such as through a relocation of its principal place of business. Although the requests received to date have arisen as a result of mergers, it is possible for a member to redesignate, its principal place of business to another district in certain circumstances. *See* 12 CFR 933.18(c). In that case, the issues about a transfer of the outstanding advances would be much the same as those in a merger. Accordingly, the Finance Board requests comment on whether the regulation should apply to such transfers of Bank membership and, if so, whether any conditions other than those that apply in a merger context should be included.

Paragraph (b) also sets forth the following requirements that the sale and purchase transaction must meet in order for it to be approved by the Finance Board pursuant to the regulation: the sale and purchase of the advance(s) must be conducted pursuant to a written agreement between the Banks that identifies the advance(s) to be sold and sets forth the terms and conditions of the sale and purchase; the board of directors of each Bank must approve the sale and purchase and the terms of the agreement; the advance(s) must remain fully secured by eligible collateral at all times; the member of the Bank to which the advance(s) is being sold must purchase not less than the minimum amount of stock of the Bank required to support the advance.

Sales and purchases of Affordable Housing Program (AHP) advances made pursuant to Part 960 of the Finance Board regulations, 12 CFR Part 960, may also be approved pursuant to the regulation, provided that the written agreement includes an additional provision that all parties to the sale agree to comply with the requirements of Part 960, including the project monitoring requirements. The Finance Board believes that the Banks involved in the transaction are best able to assign responsibility for AHP compliance, but requests comment on whether the regulation should be revised to require a particular Bank assume that responsibility.

The proposal would add a new paragraph (c) which would make it clear that sales and purchases of advances that do not meet the requirements for approval pursuant to the regulation must be approved by the Finance Board.

In addition, the Finance Board requests comment on whether there are other circumstances to which the approval by regulation could be extended appropriately.

III. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*

IV. Paperwork Reduction Act

This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501, *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends 12 CFR PART 935 as follows:

PART 935–ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

2. Amend § 935.16 by revising the section heading designating the existing text as paragraph (a) and adding the heading *Participations*, and adding new paragraphs (b) and (c) to read as follows:

§ 935.16 Advance participations; sales of whole advances.

(a) *Participations.* * * *

(b) *Sales of whole advances.* A Bank may sell a whole advance to another Bank, and such other Bank may

purchase a whole advance, if the following conditions are met:

(1) The member to which the advance(s) was made originally has ceased to exist as a result of a merger or other business combination with and into a member of the purchasing Bank, or has become a member of the purchasing Bank;

(2) The sale and purchase of the advance(s) is done pursuant to a written agreement between the Banks that identifies the advance(s) to be sold and sets forth the terms and conditions of the sale and purchase;

(3) The board of directors of each Bank has approved the sale and purchase and the terms of the agreement described in paragraph (b)(2) of this section;

(4) The advance(s) remains fully secured by eligible collateral at all times;

(5) The member of the purchasing Bank maintains not less than the minimum amount of stock of that Bank required to support the advance; and

(6) If the advance(s) being sold was made pursuant to part 960 of this chapter as an Affordable Housing Program advance, the agreement described in paragraph (b)(2) of this section must provide that the parties will ensure that the advance remains in compliance with all of the requirements of part 960 of this chapter, including monitoring requirements, after the sale.

(c) *Finance Board approval.* Any proposed sale and purchase of an advance that does not meet the requirements of paragraph (b) of this section must be approved by the Finance Board pursuant to section 10(d) of the Bank Act.

Dated: August 6, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–21059 Filed 8–13–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT9D series turbofan engines, that currently requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts for enhanced inspection. This proposal is prompted by additional focused inspection procedures for other critical life-limited rotating engine parts that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by September 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7134, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 13, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–08–12, Amendment 39–11118 (64 FR 17954, April 13, 1999), to require revisions to the Time Limits section in the Engine Manual (EM) for certain Pratt & Whitney (PW) JT9D series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Since the issuance of that AD, additional focused inspection procedures for other critical life-limited rotating engine parts have been developed by PW.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–508–512 to require the additional critical life-limited rotating engine parts to be subject to focused inspection at each piece-part opportunity.

The FAA estimates that 1,372 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Based on these figures the total cost impact of the proposed AD on U.S. operators is estimated to be $82,320.

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11118 (63 FR 40220, April 13, 1999), and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney: Docket No. 98–ANE–47–AD. Supersedes AD 99–08–12, Amendment 39–11118.

Applicability: Pratt & Whitney (PW) JT9D–7, –7A, –7H, –7AH, –7F, –7J, –20, –20J, –59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 series turbofan engines, installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus Industrie A300 and A310 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"Mandatory Inspections"

(1) Perform inspections of the following parts at each piecepart opportunity in accordance with the instructions provided in the applicable manual provisions:

Engine model (manual P/N)	Part description	Part No.	FPI per inspection
7/7A/7AH/7F, 7H/7J/20/20J (646028*)	Fan Hub (Assy. P/N 648621 and 665321)	648501	72–31–04, Inspection –02.
7/7A/7AH/7F, 7H/7J/20/20J (646028*)	Fan Hub (Assy. P/N 665321, 719127, and 778621).	666101	72–31–04, Inspection –02.
7/7A/7AH/7F, 7H/7J/20/20J (646028*)	Fan Hub (Assy. P/N 678541,726641, and 778631).	690501	72–31–04, Inspection –02.
7/7A/7AH/7F, 7H/7J/20/20J (646028*)	Fan Hub (Assy. P/N 726941)	734901	72–31–04, Inspection –02.
59A/70A (754459)	Fan Hub (Assy. P/N 732721, and 804221)	745401	72–31–00, Heavy Maintenance Check.
7Q/7Q3 (777210)	Fan Hub (Assy. P/N 732721, and 804221)	745401	72–31–00, Inspection –03.
7R4's (785059, 785058, 789328)	Fan Hub (Assy. P/N 5001331–01)	5001701–01	72–31–00, Inspection –03.

*P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.

Engine model	Part description	FPI per Inspection	FPI per SPOP
59A/70A (754459)	All HPT, 1st disks	72–51–02, HMC–01	72–51–00, HMC–03.
	All HPT, 2nd Disks	72–51–02, HCM–02	72–51–00 HMC–03.
7Q/7Q3 (777210)	All HPT, 1st Disks	72–51–06, Insp–01	72–51–00, Insp–03.
	All HPT, 2nd Disks	72–51–07, Insp–01	72–51–00, Insp–03.
7/7A/7AH/7F 7H/7J/20/20J (646028*)	All HPT, 1st Disks	72–51–02, Insp–01	72–51–00, Insp–03.
	All HPT, 2nd Disks	72–51–02, Insp–03	72–51–00, Insp–03.
7R4's (785058, 785059, and 789328).	All HPT, 1st Disks	72–51–06, Insp/Chk–01	72–51–00, Insp/Chk–03.
	All HPT, 2nd Disks	72–51–07, Insp/Chk–01	72–51–00, Insp/Chk–03.

*P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual to either part number listed in the table above; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the ALS of the manufacturer's ICA.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380 (a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

Issued in Burlington, Massachusetts, on August 9, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–21178 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–143–FOR; State Program Amendment No. 98–5]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposes revisions to rules concerning revegetation standards for success for nonprime farmland for surface and underground coal mining and reclamation operations under IC 14–34. Indiana intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Indiana program and amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., e.s.t., September 15, 1999. If requested, we will hold a public hearing on the amendment on September 10, 1999. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on August 31, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, Bureau of Mine Reclamation, 402 West Washington Street, Room W–295, Indianapolis, Indiana 46204, Telephone: (317) 232–1291.

Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, Indiana 47438–9517, Telephone: (812) 665–2207.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, and 914.16.

II. Description of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. IND–1664), Indiana sent us an amendment to its program under SMCRA. This amendment replaces State Program Amendment No. 95–2, which we approved in the May 30, 1995 **Federal Register** (60 FR 28069). Indiana sent the amendment at its own initiative. Indiana proposes to amend the Indiana Administrative Code (IAC). Below is a summary of the changes proposed by Indiana. The full text of the proposed program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

310 IAC 12–5–64.1 (Surface) and 12–5–128.1 (Underground) Revegetation Standards for Success for Nonprime Farmland

Since the revisions being proposed for surface mining at § 12–5–64.1(c) are identical to those being proposed for underground mining at § 12–5–128.1(c), they will be combined for ease of discussion. These subsections provide the standards for success which are to be applied under the approved postmining land uses.

Indiana proposes paragraph notation changes to reflect the organizational changes made throughout subsections (c). Additionally, Indiana proposes revisions throughout subsections (c) to correct the reference to the "Soil Conservation Service" to the "Natural Resources Conservation Service."

Indiana proposes to revise subsection (c)(3)(B) by adding the requirement that if current Natural Resources Conservation Service predicted yield by soil map units are used to determine production of living plants, then the standard for success shall be a weighted

average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued.

Indiana proposes to delete the existing language in subsection (c)(3)(C) for determining production of living plants on pastureland and replace it with the following:

(C) A target yield determined by the following formula: Target Yield = NRCS Target Yield × (CCA/10 Year CA) where: NRCS Target Yield = the average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used, and shall be contained in the appropriate sections of the permit application. CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. 10 Year CA = the ten (10) Year Indiana Agricultural Statistics Service county average, consisting of the year being evaluated and the nine (9) preceding years.

Indiana proposes to add subsection (c)(3)(D) to allow other methods approved by the director of the Indiana Department of Natural Resources (IDNR) to be used in determining success of production of living plants on revegetated nonprime farmland pasture land.

Indiana proposes to delete existing subsection (c)(4), and redesignate existing subsections (c)(5), (c)(6), (c)(7), and (c)(8) as subsections (c)(4), (c)(5), (c)(6), and (c)(7), respectively.

At new subsection (c)(5)(B), Indiana proposes to revise the existing language by adding the requirement that if current Natural Resources Conservation Service predicted yield by soil map units are used to determine production of living plants, then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued.

At new subsection (c)(5)(C), Indiana proposes to delete the existing language for determining production of living plants on cropland and replace it with the following:

(C) A target yield determined by the following formula: Target Yield = CCA x (NRCSP/NRCSC) where: CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. NRCSP = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which existed on the permit at the time the permit was issued. NRCSC = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which is shown to exist in the county on the most current county soil survey. A croppable soil is any soil which the Natural Resources Conservation Service has defined as being in capability class I, II, III, or IV.

Indiana also proposes to add new subsections (c)(5)(D) and (c)(5)(E) to allow other methods approved by the director of the Indiana Department of Natural Resources (IDNR) to be used in determining success of production of living plants on revegetated nonprime farmland pasture land. Once the method for establishing the standards has been selected, it may not be modified without the approval of the director of IDNR.

Finally, Indiana proposes to revise the language in new subsection (c)(6) by removing the requirement that if current Natural Resources Conservation Service predicted yield by soil map units are used to determine production of living plants, then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. IN–143–FOR," your name, and your return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226–6700. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on August 31, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has

determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 6, 1999.

Charles Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–21138 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN48–01–7273b; FRL–6415–3]

Approval and Promulgation of State Implementation Plan; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a December 31, 1998, request from the Minnesota Pollution Control Agency for new air pollution control requirements for the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for Marathon Ashland Petroleum LLC (Marathon). These requirements were submitted in the form of an Administrative Order (Order) and include revisions associated with the addition of a new stack, revised emission limits for numerous sources and other changes. The revisions result in an overall decrease in allowable SO_2 emissions from the facility. The new requirements have been evaluated through a computerized modeling analysis and have shown that they will attain and maintain the National Ambient Air Quality Standard (NAAQS) for SO_2.

In the final rules section of the **Federal Register**, EPA is approving the State's submittal as a direct final rule without prior proposal because EPA views this action as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated, and the direct final rule will become effective. If EPA receives relevant adverse comments, the direct final rule with be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressd in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: We must receive comments by September 15, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Randall Robinson, Meteorologist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. (Please telephone Randall Robinson before visiting the Region 5 Office.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur dioxide.

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–21013 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R1–052–7211b; A–1–FRL–6417–4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut on February 7, 1996 and February 18, 1999, providing that the national low emission vehicle (National LEV) is an acceptable compliance option for new motor vehicles sold in the State, which had previously adopted the California low emission vehicle (CAL LEV) program. Auto

manufacturers have agreed to sell these cleaner vehicles throughout the State for the duration of the National LEV program. This SIP revision is required as part of the agreement between States and automobile manufacturers to ensure the continuation of this program to bring clean cars throughout the country, beginning with 1999 model year vehicles. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 15, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, (LE–131), Washington, DC 20460. In addition, the information is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: July 28, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–21005 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI91–01–7322b; FRL–6414–8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a site specific revision to the Wisconsin sulfur dioxide (SO_2) State Implementation Plan (SIP) for Murphy Oil, located in Superior, Wisconsin. In its submittal, the State has requested that we approve alternate SO_2 emission limits for Murphy Oil into the Wisconsin SIP. In the final rules section of this **Federal Register**, we are conditionally approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by September 15, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–21001 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–039–7166b; A–1–FRL–6416–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; General Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve New Hampshire's General Conformity Rule, incorporating it into the State Implementation Plan (SIP). In the Final Rules section of this **Federal Register**, EPA is approving New Hampshire's SIP submittal as a direct final rule without prior proposal because we view it as noncontroversial and anticipate no adverse comments. See the direct final rule for detailed rationale for the approval. If EPA receives no adverse comments in response to this action, no further activity is contemplated. If EPA does receive adverse comments, we will withdraw the direct final rule and respond to all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. If you are interested in commenting on this action, you should do so at this time.

DATES: Written comments must be received on or before September 15, 1999.

ADDRESSES: You may mail comments to Susan Studlien, Deputy Director, Office of Ecosystem Protection, EPA Region 1 (CAA), One Congress Street, Suite 1100 (CAA), Boston, MA 02114. You may also email comments to cairns.matthew@epa.gov.

You may review copies of the relevant documents to this action by appointment during normal business hours at the Office of Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts; the Air and Radiation Docket and Information Center, USEPA, 401 M Street, S.W., (LE–131), Washington, DC; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns at 617–918–1667 or cairns.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule, which is located in the Rules section of this **Federal Register**.

Dated: July 12, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 99–21003 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[FRL–6422–5]

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The EPA is reopening the comment period for the proposed rulemaking under section 126 of the Clean Air Act (CAA) that was published on June 24, 1999 (64 FR 33962), regarding petitions submitted by eight Northeastern States for the purpose of mitigating transport of ozone. The June 24 proposal established a 45-day comment period, which ended on August 9. The EPA believes this provided an adequate opportunity to comment on the specific issues raised by the proposal. However, in response to two requests from the public, EPA is extending the comment period to August 25, 1999.

DATES: The EPA is reopening the comment period to end on August 25, 1999.

ADDRESSES: Comments may be submitted (in duplicate form if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document.

Documents relevant to this action are available for inspection at the Docket Office, at the above address, between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3347.

SUPPLEMENTARY INFORMATION:

Background on June 24, 1999 Proposal

The June 24 action proposed to amend two aspects of the final rule, issued on April 30, 1999, regarding petitions submitted by eight Northeastern States for the purpose of mitigating transport of one of the main precursors of ground-level ozone, nitrogen oxides (NOX), across State boundaries (see 64 FR 28250, May 25, 1999). The proposal was necessary to address issues rising from two recent court rulings related to the 8-hour ozone national ambient air quality standard and the NOX State implementation plan call (NOX SIP call). The EPA is not reopening the remainder of the April 30 final rule for public comment and consideration.

Availability of Related Information

The official record for the section 126 rulemaking completed April 30, 1999, as well as the public version of the record, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). The EPA has added a new section to that docket for purpose of the June 24 proposed rulemaking. The public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonabale copying fee may be charged for copying. The rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. No confidential business information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1/8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–43. Electronic comments on the June 24, 1999 proposed rulemaking may be filed online at many Federal Depository Libraries.

In addition, the **Federal Register** rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/126. This notice of reopening the comment period was made immediately available after signature on that web site as well as on EPA's Airlinks web site at http://www.epa.gov/airlinks.

Dated: August 10, 1999.

Robert Brenner,

Acting Assistant Administrator, Air and Radiation.

[FR Doc. 99–21157 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6420–9]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Darling Hill Dump site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces its intent to delete the Darling Hill Dump Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA) as amended by the Superfund Amendments and Reauthorization Act. After consultation with the State of Vermont, EPA has determined that the responsible parties have implemented all appropriate response actions required.

DATES: Comments concerning this site must be submitted on or before September 15, 1999.

ADDRESSES: Comments may be mailed to: William Lovely, Remedial Project Manager, U.S. EPA Region I , 1 Congress Street, Suite 1100 (HBT), Boston, MA 02114–2023.

Comprehensive information on this site is available through the EPA Region I public records center, which is located at EPA's Region I office and is available for viewing by appointment only Monday through Friday, excluding holidays. Requests for appointments or copies of the contents from the Regional records should be directed to the EPA Region I Records Center.

The address for the Region I Records Center is: EPA Records Center, 1 Congress Street, Boston, MA 02114–2023, (617) 918–1440.

A copy of the public records is also available for viewing at the Darling Hill Dump Site information repository at: Town Hall, Town of Lyndon, 24 Main St., Lyndonville, VT 05851.

FOR FURTHER INFORMATION CONTACT: William Lovely, Remedial Project Manager, U.S. EPA Region I, 1 Congress St., Suite 1100 (HBT), Boston, MA 02114–2023, (617) 918–1240.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency, Region I announces its intent to delete the Darling Hill Dump, Lyndon, Vermont, from the National Priorities List (NPL) which constitutes appendix B of the NCP (40 CFR part 300), and requests public comment on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this proposal for thirty (30) days after publication of this document in the **Federal Register**.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1) of the NCP, sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response actions by responsible parties are appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures followed for adding sites to the NPL also should be used before the sites are deleted. Comments also were received in response to the amendments to the NCP proposed on February 12, 1985 (50 FR 5862). Formal notice and comment procedures for delisting sites from the NPL were subsequently added as part of the March 8, 1990 amendments to the NCP (55 FR 8666 and 8846). Those procedures are set out in § 300.425(e)(4) of the NCP. Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

Upon determination that at least one of the criteria described in § 300.425(e)(1) has been met, EPA may formally begin the deletion process. The following procedures were used for the intended deletion of this site:

(1) EPA Region I issued a Record of Decision which documented that no further CERCLA action is required at the Darling Hill Dump Site.

(2) EPA Region I has recommended deletion and prepared the relevant documents.

(3) The State of Vermont has concurred with EPA's decision to delete. The State has not made the determinations which underlie the decision to delete.

(4) Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials and other interested parties.

(5) The Region has made all relevant documents available in the Regional Office and the local site information repository.

These procedures have been completed for the Darling Hill Dump Site. This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the site, announces the initiation of a 30-day public comment period and the availability of the Notice of Intent to Delete. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are included in the information repository and deletion docket.

Upon completion of the 30-day public comment period, the EPA Regional Office (Region I) will evaluate the comments before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address comments received during the public comment period. The responsiveness summary will be made available to the public at the information repository. Members of the public are welcome to contact the EPA Regional Office to obtain a copy of the responsiveness summary, when available. If EPA still determines that deletion from the NPL is appropriate, after receiving public comments, a final notice of deletion will be published in the **Federal Register**. However, it is not until a final notice of deletion is published in the **Federal Register** that the site would be actually deleted.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for delisting the Darling Hill Dump site from the NPL.

The Darling Hill Dump is an inactive solid waste disposal facility located near the Village of Lyndonville, Vermont, within the Town of Lyndon, in Caledonia County, in the northeast part of Vermont. The 3.5 acre site is located on the top of the north-facing slope of Darling Hill which is bounded to the east and south by Darling Hill Road. The land east of Darling Hill Road slopes steeply downward to the east branch of the Passumpsic River. West of the Darling Hill Dump is a woodland area which slopes steeply down to the west branch of the Passumpsic River.

The Darling Hill Dump operated as a municipal and industrial waste disposal facility from 1952 though 1983. Routine testing by the State of Vermont in 1982 revealed the presence of low level, volatile organic compounds (VOC) in the Village of Lyndonville's Municipal Wellfield. Given the wellfield's close proximity to the Site (0.5 mile), the State of Vermont completed a Preliminary Assessment (PA) and Site Inspection (SI) of the dump in 1985 to determine whether or not it was the source of contamination. The SI report concluded that the dump was a possible source of contamination at the municipal well field and recommended further study. EPA subsequently performed an Expanded Site Inspection

(ESI) of the Darling Hill Dump from 1986 to1989 and concluded that it was the most likely source of contamination. As a result of this conclusion, the Darling Hill Dump was proposed to the NPL in June 1988 and promulgated on October 4, 1989.

Following the addition of the Darling Hill Dump to the NPL, the potentially responsible parties (PRPs) for the site contamination signed two Administrative Orders by Consent in 1989 that required them to: (1) Perform a Remedial Investigation and Feasibility Study under EPA oversight and; (2) install a carbon filtration system at the municipal well field. The purpose of the remedial investigation was to delineate the nature and extent of contamination in all media (i.e. air, soil, surface water, groundwater and sediment) throughout the Site and determine whether such contamination posed a threat to human health and the environment. Installation of the carbon filtration system would prevent ingestion of the low levels of contamination previously identified.

In January 1992, EPA published a fact sheet which summarized the findings of the RI/FS. Although the RI/FS found low levels of contamination in both soil and groundwater, a Baseline Risk Assessment concluded that contamination from the Darling Hill Dump does not pose an unacceptable risk to human health or the environment. Moreover, installation of the carbon filter in the municipal water supply helps to ensure that the groundwater at the municipal well field remains within Federal drinking water standards. The Village of Lyndonville is responsible for monitoring the carbon filtration system and municipal well field.

Based on the results of the RI/FS, a Proposed Plan recommending No Action was released for thirty (30) day public comment period. Following the public comment period, a Record of Decision (ROD) for the Site was signed on June 30, 1992. The ROD documented the decision that no further CERCLA action was necessary at the Darling Hill Dump. As such, the statutory requirements of CERCLA section 121 for remedial actions are not applicable and no five year review is required. However, to ensure the long term effectiveness of the initial actions, EPA and the PRPs entered into an Administrative Order by Consent which required a minimum of five years of post-ROD monitoring. This monitoring concluded in 1997 since the analytical results supported the earlier decision that no further CERCLA actions were necessary.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "Responsible parties or other persons have implemented all appropriate response actions required." EPA, with concurrence from the State of Vermont, believes that this criterion for deletion has been met. As a result, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the public records center.

Dated: July 29, 1999.

Donald Berger,

Acting Director, Office of Site Remediation and Restoration, Region I.

[FR Doc. 99–21010 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6420–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Materials Technology Laboratory—Watertown Arsenal Development Corporation parcel and Commander's Quarters parcel (also known as Zones 1–4) from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Watertown Arsenal Development Corporation (WADC) parcel and the Commander's Quarters parcel (jointly known as Zones 1–4) of the Materials Technology Laboratory (MTL) site from the National Priorities List (NPL) and request public comment on this action. Zones 1 through 4 of MTL include a portion of Operable Unit (OU) No. 1 and OU No. 3. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete Zones 1 through 4 of OU No. 1 and OU No. 3 on the determination by EPA and the Commonwealth of Massachusetts, through the Department of Environmental Protection, that all appropriate actions under CERCLA have been implemented. Moreover, EPA and the Commonwealth have determined that remedial activities conducted to date at OU No. 1 (Zones 1 through 4) and OU No. 3 have been protective of human health, welfare and the environment. Institutional controls, which have been established as part of the remedy, will ensure continued protectiveness in the future. Institutional controls are provided for in a Grant of Environmental Restriction and Easement.

This partial deletion pertains only to Zones 1 through 4 of OU No. 1 and OU No. 3 of the MTL Site and does not include the River Park portion of OU No. 1 or OU No. 2. The River Park Portion of OU No. 1 and OU No. 2 will remain on the NPL, and response activities will continue at these OUs.

DATES: The EPA will accept comments concerning its proposal for partial deletion until September 15, 1999.

ADDRESSES: Comments may be mailed to: Ms. Meghan Cassidy, Remedial Project Manager, Office of Site Remediation and Restoration, U.S. Environmental Protection Agency, One Congress Street, Suite 1100–HBT, Boston, MA 02114–2023.

Comprehensive information on the MTL Site, the Administrative Record for OU Nos. 1 and 3, and the Deletion Docket for this partial deletion is maintained at the following information repository: Watertown Free Library, 123 Main Street, Watertown, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Ms. Meghan Cassidy, Remedial Project Manager, Office of Site Remediation and Restoration, U.S. Environmental Protection Agency, One Congress Street, Suite 1100–HBT, Boston, MA 02114–2023, (617) 918–1387.

SUPPLEMENTARY INFORMATION:

I. Introduction
II NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region I announces its intent to delete a portion of the Material Technology Laboratory (MTL) Superfund Site located in Watertown, Middlesex County, Massachusetts from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this proposed partial deletion.

This proposal for partial deletion pertains to the portion of OU No. 1, which includes the areas known as the WADC and the Commander's Quarters parcels. In addition, this proposal for

partial deletion pertains to OU No. 3 which includes Area I. OU No. 3 is within the WADC parcel. These parcels are also known as Zones 1–4. Zones 1 through 4 are bounded by Arsenal Street to the north; Talcott Street to the east; North Beacon Street to the south; and the Burnham Manning Post #1105, Veterans of Foreign War to the west. A figure and the exact coordinates that define the deleted property at the Site are contained in the NPL Deletion Docket.

Section II of this document explains the criteria for partially deleting portions of a site from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the MTL Site and explains how partial deletion criteria are met for this Site.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA must determine, in consultation with the state, whether any of the following criteria have been met: (i) Responsible parties or other parties have implemented all appropriate response actions required; (ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or (iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Site releases may not be deleted from the NPL until the state in which the site is located has concurred with the proposed deletion. EPA is required to provide the state with thirty (30) working days for review of the deletion document prior to its publication in the **Federal Register**.

As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL are eligible for further remedial actions should future conditions warrant such action. If new information becomes available which indicates the need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended partial deletion of this site: (1) All appropriate response under CERCLA has been implemented and no further CERCLA response is appropriate; (2) the Commonwealth of Massachusetts has concurred with the partial deletion; (3) a notice has been published in the local newspaper and has been distributed to the appropriate Federal, State and local officials and other interested parties announcing the commencement of the 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available in the local site information repository.

Deletion from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

EPA's Region I office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete the specified parcel. If necessary, Region I will prepare a Responsiveness Summary to address any significant public comments received.

If EPA determines, with the State's concurrence, that the partial deletion is appropriate after consideration of public comment, then EPA will place a final Notice for Partial Deletion in the **Federal Register**, completing the process. Public notices and copies of the Responsiveness Summary, if necessary, will be available in the site information repository.

IV. Basis for Intended Partial Site Deletion

The following summary provides EPA's rationale for the proposed deletion of the Watertown Arsenal Development Corporation (WADC) and Commander's Quarters parcels of MTL Site from the NPL.

Site Description

MTL is located in Watertown, Massachusetts. The approximately 47.5-acre MTL NPL site, is located on the north bank of the Charles River, approximately five miles west of Boston. MTL is bounded by Arsenal Street to the north; a fence line located beyond Talcott street to the east; the Charles River to the south; and to the west by the Veterans of Foreign Wars, USA, Burnham Manning Post No. 105 and other private properties. To facilitate the environmental investigation and remediation, and ultimate transfer of the property, MTL was divided into several parcels.

The WADC Parcel , an approximately 29.42-acre property, provides the entire northern boundary of the MTL site along Arsenal Street and is bounded to the east by Talcott Street to the fence line; to the southeast by the Commander's Quarters Parcel; and to the south by North Beacon Street. The WADC Parcel, constitutes over 60 percent of the entire MTL site. Future use of the WADC Parcel includes industrial/commercial and limited residential purposes.

The Commander's Quarters Parcel is approximately 7.21 acres, and covers the southeastern corner of the site north of North Beacon Street. The Commander's Quarters Parcel is bounded to the west and north by the WADC parcel; to the east by Talcott Street to the fence line; and to the south by North Beacon Street. This parcel constitutes approximately 15 percent of the MTL site. The plan for the landscaping of the grounds on this parcel was developed by the Olmsted Brothers, a prominent landscape architecture firm. The Commander's residence located on the Commander's Quarters Parcel and grounds are listed on the National Register of Historic Places. The Commander's Quarters Parcel has a designated future use as open space/park land.

No wetlands or surface waters are located at either the WADC or Commander's Quarters Parcels. The groundwater beneath these parcels is not considered suitable as a potential source of drinking water based on the classification by the Massachusetts Department of Environmental Protection.

Site History

MTL was established in 1816 and has been used throughout the years for a variety of missions, including storage, repair and issue of small arms and ordnance supplies; material testing, arms manufacturing; and as the home of the Army's first materials research nuclear reactor (deactivated in 1970).

Historical property uses on the WADC Parcel include miscellaneous industrial activities to support the facility's mission. The buildings and structures situated within the WADC parcel (both existing and demolished) served a variety of purposes, especially research, prototype development, and other industrial uses. There are two buildings within the WADC Parcel that were used for residential purposes.

The Commander's Quarters Parcel includes four structures including the former Commander's residence, two storage bunkers and a Sentry Station. Also included are a tennis court and garden area. Past use of this parcel was for residential and open space purposes.

In 1994, EPA added MTL to the NPL on May 31, 1994 (59 FR 27989). In 1995, the Army and EPA entered into a Federal Facility Agreement to coordinate environmental activities at MTL. In 1989, the Department of Defense designated MTL for closure as an active military facility under the Base Realignment and Closure Act.

The Army, under the Installation Restoration Program, completed several investigations at MTL. Studies completed at MTL which pertain to the WADC and Commander's Quarters parcels include a Phase I Remedial Investigation (RI) (1991); a Phase 2 RI incorporating a Baseline Risk Assessment (1994); a Final Terrestrial Ecological Risk Assessment (1995); a Final Outdoor Feasibility Study (1996).

The results of these various studies showed that there were various areas on both the WADC and Commander's Quarters parcels where soil contamination exceeded acceptable risk levels for human health. The contaminants of concern included polynuclear aromatic hydrocarbons (PAHs), pesticides and limited PCBs. In addition, several locations in the Commander's Quarters parcel posed a potential risk to ecological receptors based on pesticide and metal contamination. Groundwater beneath the site was not deemed a media of concern based on the State's groundwater classification.

The remedy for the areas of concern contained within the WADC and Commander's Quarters parcels was selected and documented in the Area I Record of Decision (ROD) issued in June 1996; the Soil and Groundwater ROD issued in September 1996; and an Explanation of Significant Difference (ESD) issued in January 1998. The remedy as outlined in the above-mentioned decision documents required excavation of soils in exceedance of established clean-up criteria, off-site disposal of excavated soil, confirmatory sampling to confirm compliance with clean-up criteria, backfilling of excavations with clean fill, and implementation of institutional controls in order to ensure the continued protectiveness of the remedy in the future. The majority of the clean-up levels established were set at background.

The Department of the Army implemented the selected remedy and completed all necessary soil excavation on the WADC and Commander's Quarters parcels in November 1997. Confirmatory soil sampling performed during excavation work documented compliance with the established clean-up criteria. Necessary institutional controls are provided for in a Grant of Environmental Restriction and Easement (Grant). This document spells out the pertinent restrictions for various areas within the WADC and Commander's Quarters parcel and provides survey maps outlining the areas subject to restrictions. Through this Grant, the Department of the Army transferred certain rights to enforce and oversee the institutional controls to the Commonwealth of Massachusetts DEP. The Grant also provides that the Army will retain certain of these enforcement and related access rights which it will hold co-extensively with DEP.

The requirements of OSWER Directive 9355.7–02 dated May 23, 1991, provide that five-year reviews will be conducted as a matter of policy at sites for which the remedy was selected prior to the passage of the Superfund Amendments and Reauthorization Act (SARA); or where hazardous substances will remain on-site above levels that allow for unlimited use and unrestricted exposure. OSWER Directive 9355.7–02A dated July 26, 1994 clarifies that Executive Order 12580 delegates responsibility for five-year reviews at Federal facilities to the Departments of Energy and Defense. Since the level of residual contamination on the WADC and Commander's Quarters parcels requires limitations to the future use of the site, five-year reviews will be performed.

Community Involvement

Community input has been sought by the Materials Technology Laboratory throughout the cleanup process. Community relations activities have included the formation of a Restoration Advisory Board (RAB); regular meetings of the RAB; public meetings/hearings prior to the signing of the RODs; several public notices in local newspapers; and several site tours/open houses at the facility.

A copy of the Deletion Docket can be reviewed by the public at the Watertown Free Library. The Deletion Docket includes this Notice, the RODs, ESD, Remedial Action Reports, Grant of Environmental Restrictions and Easements, and correspondence documenting that no further remedial action is necessary at the WADC and Commander's Quarters parcels (formerly referred to as Zones 1–4).

Current Status

One of the three criteria for site deletion specifies that EPA may delete a site (or portion of a site) from the NPL if "responsible parties or other parties have implemented all appropriate response actions required." EPA believes that this criterion has been met for this partial deletion. In a letter dated December 28, 1998, the Commonwealth of Massachusetts provided their concurrence on the proposed deletion of the WADC and Commander's Quarters parcels, formerly known as Zones 1 through 4, of the Materials Technology Laboratory Site. A copy of this letter is available for review in the Information Repository as part of the Deletion Docket. Subsequently, EPA is proposing partial deletion of these parcels from the NPL.

Dated: July 26, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–21009 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6420–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Tansitor Electronics site from the National Priority List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Tansitor Electronics Site from the National Priority List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Vermont Agency of Natural Resources (Vermont ANR) have determined that the Site poses no significant threat to public health or the environment and therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site will be accepted on or before September 15, 1999.

ADDRESSES: Address comments to: Terrence Connelly, Remedial Project Manager, U.S. EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114–2023.

Comprehensive information concerning this Site is available through the EPA Region I public docket, which is located at EPA's Region I office. It is available for viewing by appointment only from Monday through Friday, excluding holidays. Requests for appointment or copies of the contents from the Regional public docket should be directed to the EPA Region I Records Center.

The address for the Region I Records Center is: EPA Records Center, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1417.

This information is also available for viewing at the Tansitor Electronics Site information repository at the following location: Bennington Free Library, 101 Silver Street, Bennington, Vermont 05201–2403, (802) 442–9051.

FOR FURTHER INFORMATION CONTACT: Terrence Connelly, U.S. EPA Region 1, at (617) 918–1373.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Tansitor Electronics Site in Bennington, Vermont from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites which appear to be a significant risk to the public health and welfare or to the environment. The NPL is maintained as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions without application of the Hazard Ranking System (HRS) in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this Site from the NPL for thirty days following publication of this document in the **Federal Register** and in newspapers in the vicinity of Bennington, Vermont.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Tansitor Electronics Site, the remedial action which has been carried out, and explains the manner in which the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that sites may be deleted from, or recategorized on the NPL where no further remedial action is necessary. When deciding to delete a site from the NPL, EPA shall consider, in consultation with the state, whether the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment, and, therefore, taking further remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, in accordance with CERCLA, EPA will conduct a review at least every five years after the initiation of the remedial action to ensure that the site remains protective of public health and the environment. In the case of the Tansitor Electronics Site, the selected remedy is protective of human health and the environment, but does not allow for unlimited and unrestricted use of the Site. Due to this condition, surveys of the Site will be conducted by the EPA and Vermont ANR to ensure that the remedial action is meeting the requirements of protecting human health and the environment. If new information becomes available which indicates a need for further action, EPA will initiate further remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

EPA has taken the following steps in accordance with the agency's deletion procedures:

i. EPA and Vermont ANR surveyed the Tansitor Electronics Site and declared that with the environmental easement, groundwater reclassification, and long-term monitoring in place, it presented no harm to human health or the environment. Following the survey, EPA prepared a Final Close-out Report which documented that no further remedial action is necessary.

ii. EPA has obtained Vermont ANR concurrence with the proposed deletion decision;

iii. A notice has been published in the local newspaper and has been distributed to state and local officials announcing the commencement of a 30-day public comment period of EPA's Notice of Intent to Delete;

iv. All relevant documents have been made available for public review in the EPA Region 1 Records Center and in the local information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or responsibilities. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not render the site ineligible for further response actions.

Prior to deletion of the Tansitor Electronics Site, EPA's Region 1, will accept and evaluate public comments on EPA's Notice of Intent to Delete the Site before making a final decision to delete. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator or his or her designee places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis of Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

The Site consists of approximately 44 acres of land on West Road (Route 9) in the Town of Bennington, Vermont, and is approximately 3.5 miles west of Bennington Center. Most of the Site is located to the north of Route 9, with the remainder of the Site located to the south of Route 9. The portion of the Site located to the south of Route 9 consists of wetlands.

The Site is located in an area zoned rural residential with a commercial corridor overlay along Route 9. As a manufacturing facility, Tansitor's industrial use of the Site represents a grandfathered non-conforming use under the zoning laws. It is bounded to the north by privately owned woodland; to the east by Houran Road and a commercial property; to the south by wetlands; and to the west by agricultural/residential areas. Pleasant

Valley School is located approximately 1,200 feet east and upgradient of the Site. Potable water supplies within the vicinity of the Site, including the water supply on the Site, are provided by private bedrock wells.

Tansitor Electronics, Inc., currently manufactures electronic capacitors at the Site. Major site features include Tansitor's operating manufacturing/office building, an Etch House, a man-made pond (known as the Fire Pond), parking areas, a Solid Waste Disposal Area, a Disposal Area, a Concrete Pad Area, and a Borrow Area.

Since the 1950's, various owners have used the Site as a manufacturing facility for electronic capacitors. Over the period from 1956 and 1979 an estimated equivalent of 117 drums of process waste were disposed in the Disposal Area, with an occasional discharge of waste detergents and dilute acid solutions into the two leach fields or directly into the intermittent stream north of its manufacturing/office building, and some release of process wastes on the Concrete Pad.

Prior to the remedial action, the risk assessment concluded that unacceptable carcinogenic and noncarcinogenic risks would result from ingestion of overburden groundwater for future residents. The risk is based on a future scenario since no individuals are currently ingesting contaminated groundwater at the Site.

After conducting a Remedial Investigation, a Record of Decision (ROD) was issued in 1995 for the Tansitor Electronics Site. The Remedial Action Objectives selected were intended to prevent exposure to the groundwater, prevent migration offsite, and to restore groundwater to drinking water standards if technically practicable. These objectives have been met by the following actions:

- Implementation of an environmental easement to prevent the use of contaminated groundwater;
- Long-term monitoring of groundwater on a regular basis to evaluate changes in conditions over time;
- Establishment of contingencies for future additional investigation or further action should the long-term monitoring reveal that contaminants have migrated beyond their current vertical or horizontal extent; and
- A review of the Site every five years to ensure that the remedy remains protective of human health and the environment.

In addition to the environmental easement, the November 23, 1993 (and subsequently modified on March 15, 1994) Vermont Groundwater Reclassification Order also serves to restrict use of the Site groundwater.

The environmental easement was recorded into the Bennington County Registry of Deeds. Monitoring for the Groundwater Reclassification Order began in May 1994. The monitoring was then adjusted in October 1998 to meet the long-term monitoring requirement of the Record of Decision.

As noted in section II above, EPA may delete a site from the NPL when "Responsible parties or other persons have implemented all appropriate response actions required". As EPA, with Vermont ANR concurrence, has determined that this criterion is met, EPA announces its intent to delete the Tansitor Electronics Site from the National Priorities List.

Dated: August 2, 1999.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 99–21008 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6420–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Saco Tannery Waste Pits Site from the National Priority List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Saco Tannery Waste Pits Site from the National Priority List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Maine Department of Environmental Protection (Maine DEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this site will be accepted on or before September 15, 1999.

ADDRESSES: Address comments to: Terrence Connelly, Remedial Project Manager, U.S. EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114–2023.

Comprehensive information concerning this site is available through the EPA Region I public docket, which is located at EPA's Region I office. It is available for viewing by appointment only from Monday through Friday, excluding holidays. Requests for appointment or copies of the contents from the Regional public docket should be directed to the EPA Region I Records Center.

The address for the Region I Records Center is: EPA Records Center, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1417.

Information concerning this Site is also available for viewing at the information repository at the following location: Dyer Library, 371 Main Street, Saco, Maine 04072, (207) 283–3861 or (207) 282–3031.

FOR FURTHER INFORMATION CONTACT: Terrence Connelly at (617) 918–1373.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Saco Tannery Waste Pits (STWP) Site in Saco, Maine from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites which appear to be a significant risk to the public health and welfare or to the environment. The NPL is maintained as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions without application of the Hazard Ranking System (HRS) in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for thirty days following publication of this notice in the **Federal Register** and in newspapers in the vicinity of Saco, Maine.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Saco Tannery Waste Pits Site, the

remedial action which has been carried out, and explains the manner in which the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that sites may be deleted from, or recategorized on the NPL where no further remedial action is necessary. When deciding to delete a site from the NPL, EPA shall consider, in consultation with the state, whether the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment, and, therefore, taking further remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of the Saco Tannery Waste Pits Site, the selected remedy is protective of human health and the environment, but does not allow for unlimited and unrestricted use of the site. Due to this condition, surveys of the site will be conducted by the EPA and Maine DEP to ensure that the remedial action is meeting the requirements of protecting human health and the environment. If new information becomes available which indicates a need for further action, EPA will initiate further remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

EPA has taken the following steps in accordance with the agency's deletion procedures:

i. EPA and the Maine DEP surveyed the Saco Tannery Waste Pit Site and declared that the remedial actions are complete and remain protective of human health and the environment. Following the survey, a Final Closure Report has documented that no further remedial action is necessary.

ii. EPA has obtained Maine DEP concurrence with the proposed deletion decision;

iii. A notice has been published in the local newspaper and has been distributed to appropriate state and local officials and other interested parties announcing the commencement of a 30-day public comment period of EPA's Notice of Intent to Delete;

iv. All relevant documents have been made available for public review in the EPA Region 1 Records Center and in local Site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or responsibilities. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not render the site ineligible for further response actions.

Prior to deletion of the Saco Tannery Waste Pits Site, EPA's Region 1 Office will accept and evaluate public comments on EPA's Notice of Intent to Delete the Site before making a final decision to delete. If necessary, the EPA will prepare a Responsive Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator or his or her designee places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis of Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this site from the NPL.

The 213-acre STWP Site is located in a rural section of Saco, Maine. The Site is bounded by the Maine Turnpike to the east, residential property along Hearn Road to the west, the Saco-Scarborough town line to the north, and Flag Pond Road to the south. Automotive entry to the Site is limited to Flag Pond Road; all-terrain vehicle trails enter the Site from the north and west.

The Site is located in an area which is undergoing a transition from rural farming to suburban residential housing. There were approximately sixty single family homes located within a half-mile radius of the Site at the time of the remedy selection in 1989 and the number has gradually increased as farmland is being turned into residential properties. Residential development is concentrated along Hearn Road and Flag Pond Road. These homes rely on groundwater for their water supply from private drinking wells. The groundwater aquifer in the area of the Site is classified under federal standards as IIB, suitable for public water supplies.

The majority of the Site is forested, both upland and wetland; unforested land consists of remediated areas, scrub-shrub wetlands, and bedrock outcrops. A 100-year flood plain is located within the property boundaries, but none of the waste pits or lagoons are located within the flood plain.

The Saco Tanning Corporation used the site for waste disposal from 1959 to the late 1970s. Upon investigation, fifty-seven waste pits, two lagoons, and two separate areas beyond the waste pits totaling thirteen acres were determined to be contaminated with tannery waste. Contaminants within the site include arsenic, chromium, lead, volatile organic compounds, and semi-volatile organic compounds.

After conducting a Remedial Investigation, a Record of Decision (ROD) was issued in 1989 for the STWP Site. The Remedial Action objectives selected for this site were intended to prevent physical contact with the waste and exposure to the groundwater. The first objective has been met through the creation of a soil cover acting as a physical barrier between humans and wildlife and sludge and sediments in the pits, lagoons, wet and seep areas. The second objective has been met through the enactment of State legislation designating the Site as a Wildlife Preserve. This institutional control prohibits groundwater use on the Site. Long-term monitoring has shown that contaminated groundwater is not flowing off the STWP Site.

The primary remedial action includes:

- A soil cover system comprised of geotextile, rock, stone, till, and vegetation layers;
- Permanent fencing enclosing the waste pits and lagoons;
- Institutional control of designating the entire site, by State of Maine legislative act, as a wildlife preserve;
- Long-term groundwater monitoring;
- Long-term monitoring of surface water and sediments; and
- Wetlands compensation on and offsite for the compensation of wetlands lost through the construction of the soil covers.

The design for the Soil Cover System and Compensatory Wetland Construction was completed in September 1992. The remedial action was phased with initial site work completed in November 1992 and the soil covers phase completed in October

1993. On September 17, 1993 the EPA and the Maine DEP surveyed the site and declared that the soil cover system was completed according to the requirements in the ROD. Revegetation of the area was carried out in October of 1993. Purchase of 247 acres of the nearby Saco Heath from a peat mining company as compensation for the permanent loss of ten wetland acres onsite was completed in December 1993, and restoration of the remaining excavated wetland was completed in September 1994.

Maintenance of the site has included quarterly inspections for the first five years of remediation and semi-annual inspections since then. Per the Superfund State Contract between EPA and Maine DEP, these inspections are to be carried out by the State for thirty years following the remediation. These inspections of the Site will be conducted to ensure that the actions taken to form a physical barrier between humans and wildlife and the waste in the pits and lagoons are maintained. Monitoring of groundwater, surface water, and sediment will continue, as outlined in the O&M Plan, to measure water quality within the site and around the perimeter. These State-performed inspections and monitoring activities began in April 1995.

The survey of the Site and approval of the Remedial Action by the EPA and Maine DEP demonstrated that the Saco Tannery Waste Pits Site no longer poses a threat to human health and welfare or the environment.

As noted in section II above, EPA may delete a site from the NPL when "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate". As EPA, with Maine DEP concurrence, has determined that this criterion is met, EPA announces its intent to delete the Saco Tannery Waste Pits Site from the National Priorities List.

Dated: August 2, 1999.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 99–21007 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 385 and 390

[FHWA Docket No. FHWA–99–5467]

RIN 2125–AE56

Safety Fitness Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to implement section 4009 of the Transportation Equity Act for the 21st Century (TEA–21) by amending the safety fitness procedures of the Federal Motor Carrier Safety Regulations. This action would prohibit all motor carriers found by the Secretary to be unfit from operating commercial motor vehicles (CMVs) in interstate commerce. The FHWA is proposing to treat an unsatisfactory safety rating under the safety fitness procedure regulations as a determination of unfitness. The FHWA also would revise the listing for locations of motor carrier and highway safety field offices to reflect recent changes to the Federal Highway Administration organizational structure.

DATES: Comments must be received on or before September 15, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund or Mr. William C. Hill, Office of Motor Carrier Research and Standards, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Background

Section 4009 of TEA–21 (Public Law 105–178, 112 Stat. 107, at 405, June 9, 1998) amends 49 U.S.C. 31144 and requires the Secretary of Transportation to maintain by regulation a procedure for determining the safety fitness of an owner or operator [of commercial motor vehicles (CMVs)]. The procedure shall include, at a minimum, the following elements:

(1) Specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness.

(2) A methodology the Secretary will use to determine whether an owner or operator is fit.

(3) Specific time frames within which the Secretary will determine whether an owner or operator is fit. 49 U.S.C. 31144(b).

Because these provisions are very similar to the previous 49 U.S.C. 31144(a)(1), which was enacted by section 215 of the Motor Carrier Safety Act (MCSA) of 1984 (Public Law 98–554, 98 Stat. 2832), the FHWA regulations at 49 CFR parts 385 and 386 already include most of the requirements listed above.

Section 4009 of TEA–21 introduced two important changes. First, it transferred the substance of 49 U.S.C. 5113 to section 31144. Section 5113 codified section 15(b) of the MCSA of 1990 (Public Law 101–500, 104 Stat. 1213, 1218, November 3, 1990), which prohibited motor carriers rated unsatisfactory from using CMVs to transport, in interstate commerce, more than 15 passengers (including the driver) or hazardous materials (HM) in quantities requiring placarding, starting on the 46th day after the rating was issued. The regulation implementing section 5113 has been in effect since 1991 (49 CFR 385.13). By attaching this prohibition to a regulatory standard already used by the FHWA (i.e., unsatisfactory), Congress equated that rating with a determination that

passenger and HM motor carriers were not fit to operate on the highways.

Second, section 4009 of TEA–21 prohibits all owners and operators of CMVs not previously subject to 49 U.S.C 5113—that is, those owners and operators using CMVs to transport freight that does not include HM in quantities requiring placarding—from using those vehicles in interstate commerce starting on the 61st day after being found "unfit." Also, Federal agencies are now prohibited from using those owners and operators to provide interstate transportation.

Because 49 U.S.C. 31144(b), as amended by section 4009, provides that "[t]he Secretary shall *maintain* [emphasis added] by regulation a procedure for determining the safety fitness of an owner or operator," the FHWA believes that Congress authorized the continued use of the safety fitness rating regulation in effect on June 9, 1998, the date of enactment of TEA–21, until the agency adopts a final rule based upon this NPRM.

The parallelism between 49 U.S.C. 31144(c)(2) and (3) and the previous 49 U.S.C. 31144(a)(1) leads the FHWA to believe that Congress intended section 4009 to authorize the application of the principles embodied in section 15(b) of the MCSA of 1990 to the entire range of motor carriers that operate CMVs in interstate commerce. The only difference is that carriers of general freight would have 60 days, while passenger and HM carriers have 45 days, after the FHWA makes a determination of "unfitness" in which to improve or cease operations. Because the MCSA of 1990 explicitly referred to the three-part rating scheme used by the FHWA (satisfactory, conditional, unsatisfactory) and directed the FHWA to prohibit unsatisfactory rated motor carriers from transporting passengers and HM after the 45 day period, the FHWA has concluded that the functionally equivalent, though not identical, requirements of section 4009 authorize, but do not require, the FHWA to continue using its current safety fitness rating standards and methodology. The FHWA is therefore proposing to use an unsatisfactory rating assigned under the Safety Fitness Rating Methodology (SFRM) in part 385 as a determination of "unfitness." This policy is congruent with that of section 15(b) of the MCSA of 1990. There is nothing in the legislative history concerning section 4009 of TEA–21 that suggests the FHWA should implement a different approach.

The proposed prohibition on the operation of CMVs would not be applied retroactively. Passenger and HM carriers rated unsatisfactory would have either improved their ratings since 1991 or ceased operating in interstate commerce. However, there were significant numbers of general freight carriers that held unsatisfactory ratings at the time TEA–21 was enacted; their operations were not illegal. The prohibition on unfit/unsatisfactory general freight carriers in section 4009 must be understood as applying only to those rated unsatisfactory by the FHWA after the effective date of a final rule generated by this proceeding. However, if a motor carrier that had been rated unsatisfactory prior to the effective date of the final rule received another unsatisfactory rating after the effective date of the final rule as a result of another compliance review, the new provisions would apply and the motor carrier would be required to cease its operations in interstate commerce within 60 days.

Section 4009 also specifies time periods for the FHWA to perform a compliance review requested by an unfit (i.e., unsatisfactory) rated motor carrier. For unsatisfactory carriers of passengers and HM, the follow-up compliance review must be completed within 30 days of the carrier's request; for all other carriers rated unsatisfactory, the follow-up review must be completed within 45 days after the carrier's request.

Under this proposal, the FHWA would continue to perform administrative reviews under § 385.15 and corrective-action reviews under § 385.17 for motor carriers regardless of their projected or final safety rating. The current § 385.15(d) states that the FHWA will notify a petitioning motor carrier of the agency's decision on administrative review within 30 days after the agency receives a petition. The current § 385.17 does not specify a time limit for the FHWA to perform a review based upon a motor carrier's request to change a safety rating because of its corrective actions, but it does allow the agency to extend the period before a proposed safety rating becomes effective for up to 10 days (§ 385.17(d)). The agency is proposing to revise its regulations and procedures, now to be codified at §§ 385.15(c) and 385.17(e), to give priority to reviews of motor carriers with proposed or final unsatisfactory safety ratings because of the prohibition against operating in interstate commerce with such safety ratings.

This priority handling would not extend to non-passenger and non-HM motor carriers with unsatisfactory safety ratings that became final before the effective date of the final rule because the regulation would not be retroactive. Although the FHWA would continue to review proposed and final conditional safety ratings, the agency needs to place a higher priority on the proposed and final unsatisfactory safety ratings because of the severe operational consequences for the affected motor carriers. However, as explained above, if a motor carrier of non-HM freight that held an unsatisfactory safety rating issued prior to the effective date of a final rule were to receive a follow-up proposed unsatisfactory rating after the effective date of a final rule, the FHWA would provide those motor carriers the same priority handling as motor carriers receiving a proposed unsatisfactory safety rating for the first time.

The DOT Office of Inspector General (OIG) has observed that unsatisfactory motor carriers of non-HM freight may continue to operate in interstate commerce under the current regulations. These motor carriers may continue to operate under the proposed regulations unless they were to receive another unsatisfactory rating after the effective date of a final rule. The OIG also contends that some motor carriers of HM freight or of passengers continue to operate despite their unsatisfactory safety ratings, and are doing so illegally. The FHWA intends to carefully track the safety of operations of the first group to ensure that the traveling public is not exposed to increased risk from a motor carrier's operation that has been documented to have fallen below an acceptable level of safety. The agency will bring swift and appropriate enforcement actions against motor carriers that are operating in spite of having been directed to cease their operations in interstate commerce.

Rating Criteria

In the preamble of the 1997 final rule amending 49 CFR part 385 (62 FR 60035), the FHWA announced that it intended to review the entire rating system. On July 20, 1998, the agency published an advance notice of proposed rulemaking (ANPRM) which, among other things, began the process of creating a more performance-based means of determining the safety fitness of motor carriers (63 FR 38788). The FHWA is reviewing the comments to that docket, along with the possibility and practicality of incorporating alternative safety fitness information that would improve the effectiveness of the rating system. For the present, however, the FHWA is proposing to continue using the current SFRM included in appendix B to part 385 until it is ready to propose the elements of a revised process.

The American Trucking Associations (ATA) and Truckers United for Safety had challenged the decision in the 1997 final rule to use an amended version of the FHWA's SFRM that the agency uses to make safety fitness determinations. That challenge was rejected by the U.S. Court of Appeals for the District of Columbia Circuit in *American Trucking Associations, Inc.* v. *United States Department of Transportation*, 166 F. 3d 374 (D.C. Cir. 1999).

The FHWA is continuing its efforts to increase the level of reliable safety data and other information needed to create a more performance-based means of determining a motor carrier's safety fitness. The FHWA conducted a demonstration project, the Commercial Vehicle Information System (CVIS), recently renamed the Performance and Registration Information System Management (PRISM) Program. It also produced a new safety risk assessment model, the Motor Carrier Safety Status Measuring System (SAFESTAT). Both of these were described in the ANPRM of July 20, 1998. The FHWA plans to expand PRISM to as many as five new States this year. However, today's proposed rulemaking action does not reach these issues.

Terms: "Motor Carrier" and "Owner or Operator"

Prior to the 1998 TEA–21 amendment, 49 U.S.C. 31144 applied to "owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers." As amended, the section now refers to these entities as "owner[s] or operator[s]" of commercial motor vehicles, but not "motor carriers." Although no explanation is provided in the committee reports, the FHWA believes this was done to cure an anomaly. Section 31144 was the only section in 49 U.S.C. chapter 311 which used the term "motor carrier;" it was not included in the definitions in section 31132. The Motor Carrier Safety Act of 1984, from which chapter 311 was derived, used the jurisdictional term "commercial motor vehicle." "Motor carrier" and "motor private carrier" were defined separately in those provisions of title 49 of the United States Code administered by the Interstate Commerce Commission; the definitions are now codified at 49 U.S.C. 13102. The FMCSRs have long treated owners and operators of CMVs as "motor carriers" (see 49 CFR 390.5). The regulatory text of 49 CFR part 385 would continue to use the term "motor carrier" as equivalent to "owners and operators" specified by amended section 31144.

Effect of Rating

Since 1991, motor carriers receiving an unsatisfactory safety rating from the FHWA have been prohibited from using CMVs to transport more than 15 passengers, including the driver, or placardable quantities of HM, in interstate commerce. Furthermore, those motor carriers could not be used by Federal agencies. These prohibitions and the procedures for applying them are contained in 49 CFR 385.13, which implemented section 15(b) of the Motor Carrier Safety Act of 1990. The TEA–21 provision expands the same prohibition, under virtually identical conditions, to all other motor carriers, irrespective of their cargo, which are found by the FHWA to be unfit. These owners and operators may not operate CMVs in interstate commerce beginning on the 61st day after such fitness determination.

Despite the change in the language, nothing in the amending provision would indicate any intention on the part of Congress to require the FHWA to change the effect of an unsatisfactory rating applied to a motor carrier of passengers or placardable HM. Although it extends the prohibitions to all other motor carriers, section 4009 does not require that another standard be applied. Consequently, the FHWA is proposing to require all other motor carriers with a proposed unsatisfactory safety rating to cease operations when that rating becomes final. As is already the case with passenger and HM carriers, these other motor carriers would be given an appropriate period of time within which to improve that proposed rating.

Proposed Ratings; Effective Date of Final Rating

One of the changes to 49 CFR part 385 made in the November 6, 1997, final rule was the adoption of a "proposed" safety rating. A motor carrier is informed of its proposed rating at the end of a compliance review. If the proposed rating is unsatisfactory, it becomes the final rating 45 days later (if improvements are not forthcoming), and the carrier must halt its transportation of passengers or HM on the 46th day. The 45-day period after the proposed safety rating is announced provides the motor carrier with an opportunity to assess its operations and request the FHWA to reconsider the rating either because (1) it believes the FHWA proposed an erroneous rating, or (2) the motor carrier has taken corrective actions so that its operations meet the safety standards and factors specified in § 385.9 of the FMCSRs.

The FHWA adopted "proposed" ratings in 1997, and is retaining them in this NPRM, in the interest of basic fairness to motor carriers. Section 15(b) of the MCSA of 1990 and section 4009 of TEA–21 both require carriers to cease interstate operations 45 or 60 days after receiving an unsatisfactory rating or a determination of unfitness. A final rating is public information which must be released under the Freedom of Information Act (FOIA), Public Law 89–487, 80 Stat. 250, as amended; in fact, the FHWA posts final ratings on its Safety and Fitness Electronic Records System (SAFER) web site [*http://www.safersys.org*] and makes them available through telephone inquiries to (800) 832–5660. An unsatisfactory rating can have an almost immediate impact on business once it becomes public, yet both the MCSA and TEA–21 provide carriers a substantial grace period after an unsatisfactory rating. In other words, the FOIA may defeat one of the essential elements of the 1990 and 1998 amendments by subjecting carriers to a serious, and potentially fatal, loss of business before they have had a chance to improve their safety posture. The FHWA believes the purposes of these statutes can best be reconciled by issuing "proposed" unsatisfactory and conditional safety ratings which are not releasable under the FOIA because they do not yet constitute the agency's final decision. The FHWA requests comment, however, on what harm would ensue if the "proposed" unsatisfactory rating became public before a final unsatisfactory rating were to be issued.

Under the rules proposed today, a motor carrier warned by the FHWA that its proposed rating is unsatisfactory would have an opportunity in the next 45 or 60 days to demonstrate its renewed commitment to safety and regulatory compliance, or to argue that the FHWA made a mistake in assigning that rating. A number of motor carriers have successfully used the 45-day grace period to improve their ratings since the 1997 rule went into effect. But if no such improvements are forthcoming, the carrier would be required to halt its CMV operations in interstate commerce the day after an unsatisfactory rating becomes final (i.e., on the 46th or 61st day after the carrier was notified of the proposed safety rating). The agency would then post the final rating to the SAFER web site and make it available by telephone. Although this procedure requires carriers to shut down one day, rather than 46 or 61 days, after the final rating of unsatisfactory, the FHWA believes the "proposed" safety rating followed by a 45- or 60-day grace period

achieves the same purpose as, and is entirely consistent with, section 4009.

Subsection (c) of 49 U.S.C. 31144 also provides discretionary power to the FHWA to allow unsatisfactory motor carriers that do not transport passengers or HM to operate for an additional 60 days, if the agency determines the motor carrier is making a good faith effort to improve its safety fitness. As noted above, the FHWA would not make a final determination of unfitness in its initial notification—the final determination would occur at the end of the 45- or 60-day period. Reiterating its commitment to highway safety, and responding to another comment by the DOT OIG, the FHWA intends to continue to provide careful, timely, and effective safety oversight of changes made by these motor carriers as they attempt to improve their safety ratings within the first 60-day period, and, if needed, during the second 60-day period.

Section 31144(d) specifies the time limits for the FHWA to review motor carriers' compliance with regulatory provisions that contributed to the fitness determination. For motor carriers of passengers or HM, the review must be performed within 30 days of the carrier's request. For all other motor carriers, the FHWA must perform the review within 45 days of the carrier's request.

In the preamble to the August 16, 1991, interim final rule that implemented the provisions of the MCSA of 1990 (56 FR 40801, at 40802), the FHWA said it would "make its determination expeditiously because the 'unsatisfactory' safety rating may well affect a motor carrier's ability to continue in business. In the event the FHWA is unable to make its determination within the 45-day period, the agency may conditionally suspend any 'unsatisfactory' safety rating and rescind any related administrative order for a period of up to 10 additional calendar days." The current regulation, at 49 CFR 385.17(d), continues to allow for this additional time: "If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and a final determination cannot be made within the 45-day period, the period before the proposed safety rating becomes effective may be extended for up to 10 days at the discretion of the Regional Director." The NPRM retains this provision (as § 385.17(f)) because there may be circumstances under which competing demands for FHWA staff time would make it impossible to complete a review within the time limit specified by the statute. The agency does not expect that to happen frequently, but it does not wish to penalize motor carriers for delays not of their own making. The extension would be allowed at the discretion of the Enforcement Program Manager in the FHWA Resource Center for the appropriate geographic area—the agency no longer has Regional offices. The list of Resource Centers would appear under § 390.27.

Other Rating Issues

The FHWA does not currently issue safety ratings to two categories of motor carriers of passengers: (1) Non-business private motor carriers of passengers, such as churches or social groups, and (2) owners and operators of vehicles designed to transport fewer than 16 passengers, including the driver, for compensation. As to the first category, the FHWA does not believe that Congress intended the agency to include this group, because the occasional nature of the transportation these motor carriers provide does not readily lend itself to safety fitness evaluation. These motor carriers are not required to maintain most of the records otherwise mandated by the FMCSRs. However, they are still subject to many of the substantive regulations and to safety enforcement at roadside. The FHWA would continue its practice of not issuing a safety rating to this type of motor carrier.

The second category of passenger motor carrier is comprised mainly of limousine and van owners and operators. These entities are currently required to obtain operating authority from the FHWA, but are not subject to most provisions of the FMCSRs because their vehicles do not qualify as "commercial motor vehicles" under 49 CFR 390.5. However, section 4008 of TEA–21 changed part of the statutory definition of "commercial motor vehicle" to include those designed or used to transport "more than 8 passengers (including the driver) for compensation" (49 U.S.C. 31132(1)(B)). Motor carriers operating such vehicles would require safety fitness determinations. Most of the FMCSRs (except parts 382, 383, 387, and a few other requirements) became applicable to these smaller passenger vehicles on June 9, 1999. The FHWA is considering exempting for six months the operation of these small passenger-carrying vehicles from all of the FMCSRs, to allow time for the completion of a rulemaking on that issue.

Motor Carriers With Less Than Satisfactory Safety Ratings

In its April 26, 1999 audit of the FHWA's motor carrier safety program, the OIG recommended that the FHWA perform follow-up visits and monitoring of those motor carriers with a lower than satisfactory safety rating. The OIG recommended that these visits and monitoring take place at varying intervals to ensure that safety improvements are sustained, or if safety has deteriorated, that appropriate sanctions are invoked. The FHWA has made a practice of monitoring the safety performance of motor carriers under its regulatory jurisdiction, and to place special compliance program emphasis upon those with performance outcomes (such as accident rates and vehicles and drivers out-of-service rates that exceed thresholds set according to the type and volume of the operation) that indicate a potential safety problem. The agency will continue to devote its resources to improve highway safety, and will continue to work with its State partners toward this goal.

Docket Comments Concerning Section 4009

A few commenters to the July 20, 1998, ANPRM concerning safety fitness procedures addressed issues related to section 4009 of TEA–21. We summarize their comments here.

The Oregon Department of Transportation, Motor Carrier Transportation Branch (Oregon), stated that motor carriers that pose an imminent danger to the public or themselves should be prohibited from operating. Oregon believes that 49 CFR 385.13 adequately addresses unfit motor carriers of HM and passengers, and that the prohibition that section 4009 would impose on other motor carriers should be implemented by including additional performance-based data in the rating methodology. That data might include driver citations, driver out-of-service violations, and vehicle size and weight violations.

FHWA response. The FHWA will continue to use the authority in 49 U.S.C. 521(b)(5)(A) to deal with imminent hazards. (The implementing regulation is codified at 49 CFR 386.72, and is not included in today's rulemaking activity.) That authority is limited, however, to extreme cases. The FHWA agrees that performance-based information, where available, would be valuable in making safety fitness determinations. We will address this issue in future rulemaking.

The Transportation Lawyers Association's Committee on Federal Agency Practice criticized what it considered the FHWA's "repetitive rulemakings on the same issue without new rules being developed." It also highlighted concerns with due process

because safety ratings entail severe economic "punishment" and the data upon which ratings are based are allegedly so erroneous as to be meaningless.

FHWA response. The FHWA described in detail its rulemaking actions, and their background, in the July 20, 1998, ANPRM (63 FR 38788). The safety rating process incorporates due-process protections in §§ 385.15 and 385.17. The agency believes these have proven to be adequate. Finally, the FHWA is continually updating records and improving the quality and effectiveness of the information in its Motor Carrier Management Information System (MCMIS) database. The agency continues to receive more timely and better quality data from its field staff and its State partners.

The FHWA is continuing to assess its methods for assigning safety ratings to motor carriers. The agency recognizes that the consequences of an *unsatisfactory* safety rating are extremely serious for motor carriers that cannot or will not improve their commitment to safety. We acknowledge the need to exercise great care in reviewing information that could result in an *unsatisfactory* rating, but the statutory mandate is clear.

The American Trucking Associations (ATA) stated that it supported Section 4009 of TEA–21, but went on to say:

> We take issue, however, with how the agency has characterized the Congressional mandate. In the subject notice, the agency states that the prohibition on transportation should apply to carriers with unsatisfactory ratings. In fact, the Act did not use the term "unsatisfactory rating" but instead deliberately used the term "not fit to operate." * * * The industry believes this distinction is an important one. As stated earlier, unsatisfactory compliance does not always result in unsafe performance. In fact, some carriers who have received unsatisfactory safety ratings under the current system have acceptable accident rates. Instead, the term "not fit to operate" should be reserved for carriers whose performance is so poor that to allow them to continue to operate would be a certain and substantial threat to highway safety. Specifically, carriers with high accident rates who have failed to act on the opportunity to improve should be placed in this category.

FHWA response. As discussed above, the FHWA believes this proposed rule is consistent with the statutory mandate. Congress used the term "unsatisfactory" in the 1990 MCSA, and gave no indication that it intended to require a different result in TEA–21. Even the 45-day grace period for passenger and HM carriers was retained. Therefore, the change in wording, from "unsatisfactory" in section 5113 to "not fit" in section 31144, does not support the interpretation urged on the agency by the ATA.

The National Tank Truck Carriers, Inc. (NTTC) believes the safety rating system's fundamental purpose is to provide an alert to the public, including shippers, of the shortcomings of unsafe motor carriers. The NTTC also believes the enforcement community should give priority attention to unsafe motor carriers: the more the rating system "singles out" the unsafe carrier, the more responsive it will be to congressional intent.

Advocates for Highway and Auto Safety criticized what it considers the FHWA's inadequate stewardship of motor carrier safety, but did not offer any comment on the contents of section 4009.

FHWA response. In TEA–21, Congress provided the agency with specific direction to prohibit all unfit motor carriers—not only passenger and HM carriers—from operating in interstate commerce. As indicated above, there is nothing in the statute or legislative history of this provision which suggests that Congress intended to require the FHWA to adopt a standard for evaluating "fitness" that differs from the current safety rating system in Part 385.

The Department of California Highway Patrol (CHP) expressed a concern with the 45-day period between a motor carrier's receipt of the FHWA's proposed safety rating and the time the rating becomes final. The CHP believes that allowing a motor carrier to continue to operate would appear to defeat the purpose of the ratings, and also that a motor carrier's corrective action taken during the 45-day period could cause the FHWA's intended rating downgrade to become moot.

FHWA response. The CHP appears to be concerned about the regulatory grace period that the FHWA addressed in the November 6, 1997, final rule (62 FR 60035, at 60039). The Motor Carrier Safety Act of 1990 specified a 45 day period before an unsatisfactory motor carrier was required to cease passenger or HM operations. Section 4009 of TEA–21 also requires this time period. The previous regulations, as well as those proposed today, are consistent with the purpose of the statutes. As explained above, the FHWA believes motor carriers should not be penalized by having their proposed unsatisfactory ratings released during the time period they are given to improve their proposed ratings.

Consolidated Safety Services, Inc. (CSS), a safety services provider, expressed some reservation about the practical effects of the statute's prohibitions. The CSS described its work for two Federal agency clients, the Military Traffic Management Command (MTMC) and the U.S. Postal Service (USPS). According to CSS, the MTMC requires motor carriers to have a DOT satisfactory safety rating in order to be considered for a contract to provide passenger transportation. The USPS, on the other hand, refuses to allow unsatisfactory-rated motor carriers to transport mail, but motor carriers rated conditional, as well as unrated carriers, are eligible. Because of the FHWA's inability (due to resource constraints) to rate all the motor carriers the USPS had requested to be rated, CSS developed a "DOT Equivalency Inspection Program" for the USPS. With the support of the National Star Route Mail Contractors Association, CSS inspected over 100 mail carriers and advised the USPS that "over 80 percent of those contracted postal carriers inspected could not meet the FHWA's minimums." According to CSS, the USPS reverted to its original position, excluding only those motor carriers specifically required by statute to be excluded (i.e., those with unsatisfactory ratings from the FHWA).

FHWA response. The USPS did not provide comments to this docket, and since CSS did not describe the criteria it used to assess the safety status of the USPS contract motor carriers, it is unclear whether the 80 percent that failed the CSS program would also be rated unsatisfactory under the FHWA's standards.

The Canadian Council of Motor Transport Administrators commented that the TEA–21 prohibition against an unfit motor carrier's transportation of any property would make the U.S. approach similar to that of Canada.

The Public Utilities Commission of Ohio (PUCO) expressed concern that the FHWA had not prepared cost-benefit analyses for the ANPRM because the FHWA had maintained that the issues raised in the ANPRM did not constitute "significant regulatory action." The PUCO's comments reflected its concern about potentially extensive changes to the safety fitness program and the current and future role of States in conducting motor carrier safety compliance reviews.

FHWA response. The FHWA used the ANPRM to gather information as a prelude to a rulemaking. The ANPRM did not propose specific new or revised regulations, therefore the FHWA did not have the basis to perform detailed regulatory analyses at that time.

Federal Government Agency Use of Unsatisfactory Rated Motor Carriers

Since 1991, any department, agency, or instrumentality of the United States Government has been prohibited from using a passenger or HM motor carrier with an unsatisfactory safety rating. Section 4009 of TEA–21 extends this prohibition to cover all motor carriers found to be unfit. As written, the prohibition applies to the Federal agency and not to the motor carrier.

The FHWA would continue to advise a motor carrier of its proposed safety rating as soon as possible after the FHWA's compliance review, but not later than 30 days afterwards. At the end of the 45- or 60-day period (or longer, if extended), the proposed rating would become the motor carrier's final safety rating if the FHWA has no basis to change it. On the effective date of a final unsatisfactory safety rating, Federal government agencies will be precluded from using, or continuing to use, these motor carriers' transportation services.

Changes to FHWA Organizational Structure

The FHWA has recently undergone a significant reorganization of its field and headquarters offices. The nine FHWA Regions have been eliminated and four Resource Centers have been established that provide support to the FHWA Division offices located in each State.

In headquarters, many of the functions of the former Office of Safety and Technology and Office of Field Operations under the Associate Administrator for Motor Carriers have been combined into a new Office of Motor Carrier Enforcement. The decision regarding safety fitness has been elevated to the Program Manager for Motor Carrier and Highway Safety, the senior manager of this operating unit of the FHWA (the agency no longer uses the title Associate Administrator). We have revised the appropriate sections of part 385 and section 390.27 to reflect these changes in organizational structure and titles.

Rulemaking Analyses and Notices

The proposed changes to 49 CFR part 385 are a straightforward implementation of the amendments to 49 U.S.C. 31144 made by section 4009 of TEA–21. The regulatory changes, like the statutory amendments, simply expand a prohibition on interstate operations, which had previously applied only to HM and passenger carriers, to all other motor carriers. Section 15(b) of the MCSA of 1990 added to the FHWA's existing safety rating a mandate to require that passenger and HM carriers cease conducting those operations in interstate commerce 45 days after they received an unsatisfactory rating. Section 4009 of TEA–21 clearly authorizes the FHWA to take the same course in shutting down all other carriers 60 days after they receive an unsatisfactory rating. The agency is undertaking a separate rulemaking action (see RIN 2125–AE37) to explore means to improve its safety fitness determination process in relation to its overall safety compliance and enforcement program, as well as the application of those determinations within the truck and bus industries.

The proposed rule would only apply prospectively. Motor carriers which are currently rated unsatisfactory, which do not transport passengers or HM, would not be affected unless the FHWA issued an unsatisfactory safety rating in a follow-up compliance review conducted on or after the rule's effective date. For the non-passenger and non-HM motor carriers that receive a notice of a proposed unsatisfactory safety rating on or after the effective date of a final rule, the regulation would provide 60 days, with the possibility of an additional 60 days, to challenge the rating, or to demonstrate improvement in their safety practices.

The FHWA will carefully consider comments it receives to evaluate whether any changes to this proposal are required. Because U.S. Government agencies would be precluded from contracting with unfit motor carriers for non-HM freight transportation service, we are working informally with the federal agencies that utilize substantial amounts of contracted transportation (the United States Postal Service, the General Services Administration, and the Military Traffic Management Command) to advise them concerning this proposed rulemaking. The FHWA particularly invites motor carriers who provide this transportation to government agencies to comment on this proposed rulemaking.

All comments will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed regulatory action is significant within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the DOT because of the substantial public interest in the provision of safe interstate motor freight and passenger transportation. This NPRM was reviewed by the Office of Management and Budget. This proposed rule would require any motor carrier in interstate commerce that the FHWA rates unsatisfactory to cease providing CMV transportation after a grace period of 45 days (for HM and passenger operations) or 60 days (for all other motor carriers). A motor carrier would be allowed to commence those operations again only if the FHWA determines its safety rating is no longer unsatisfactory. Although these requirements have been in place since 1991 for passenger and HM motor carriers, this is the first time they would be applied to other motor carriers.

Motor carriers of passengers and of placardable quantities of HM would not be subject to new sanctions for noncompliance as a result of this regulatory action. In fact, under the new regulations, the FHWA would have to respond to any requests for a follow-up review of an unsatisfactory safety rating within 30 days—the current regulations require this to be accomplished within 45 days. This revision is required by 49 U.S.C. 31144(d)(2) and (3).

As of December 31, 1998, the FHWA's MCMIS listed 477,486 motor carriers as active. Summary statistics of these motor carriers follow:

Motor carriers of passengers: 10,728 in MCMIS 3,242 rated (23 percent), 33 rated unsatisfactory (1 percent of rated passenger carriers, 0.24 percent of all passenger carriers).

Motor carriers of HM: 41,723 in MCMIS 23,447 rated (56 percent), 565 rated unsatisfactory (2.4 percent of rated HM carriers, 1.4 percent of all HM carriers).

Motor carriers of property, non-HM: 421,793 in MCMIS 102,517 rated (24 percent), 8,999 rated unsatisfactory (8.8 percent of rated carriers, 2 percent of all motor carriers of non-HM property).

The number of motor carriers with unsatisfactory safety ratings is a small fraction of all the rated motor carriers in MCMIS, and a minute fraction of the motor carriers of passengers and of HM. Although a larger number of motor carriers of non-HM freight in MCMIS

have unsatisfactory safety ratings, the FHWA believes this is the result of two factors. First, until this time, an unsatisfactory rating did not prohibit a non-HM-freight motor carrier from operating in interstate commerce. Second, many motor carriers in MCMIS may have ceased operating in interstate commerce or are no longer in business. Since there is no requirement for motor carriers to notify the FHWA of a change in status, they continue to be counted as "active" interstate motor carriers. The MCMIS contains a motor carrier's last rating of record, and, unless the motor carrier requested the FHWA to reassess its safety posture with a view toward revising the safety rating, this rating remains on file.

The following summary gives a recent history of follow-up compliance reviews (CRs) on motor carriers performed by the FHWA in fiscal year 1998. The columns represent the number of power units operated by the motor carrier.

TABLE 1.—FOLLOW UP COMPLIANCE REVIEWS, FISCAL YEAR 1998 (10/1/1997–09/30/1998)

	1–6	7–20	21–100	101–500	501–1000	1001+	Total	Percent
Property carriers:								
Start Unsat	113	101	53	5	0	0	272	100.0
End Sat	40	32	13	1	0	0	86	31.6
End Cond	33	33	19	2	0	0	87	32.0
End Unsat	19	22	15	1	0	0	57	21.0
End Not Rated	21	14	6	1	0	0	42	15.4
HM carriers:								
Start Unsat	22	59	51	17	1	1	151	100.0
End Sat	12	23	22	7	0	0	64	42.4
End Cond	7	26	23	8	1	1	66	43.7
End Unsat	1	10	6	2	0	0	19	12.6
End Not Rated	2	0	0	0	0	0	2	1.3
Pass. carriers:								
Start Unsat	19	12	3	0	2	0	36	100.0
End Sat	17	7	2	0	0	0	26	72.2
End Cond	2	5	1	0	1	0	9	25.0
End Unsat	0	0	0	0	1	0	1	2.8
End Not Rated	0	0	0	0	0	0	0	0.0

For example, in fiscal year 1998, 272 re-rated motor carriers of property (non-HM) had received an initial unsatisfactory safety rating. All but 57 of them received a conditional or satisfactory safety rating from the FHWA resulting from follow-up reviews performed during the year; the 42 motor carriers that ended the year in the "not rated" category were no longer operating in interstate commerce. Supplemental Item 1 of this docket contains summary statistics and detailed data from calendar years 1994–1998 for passenger, HM, and non-HM property motor carriers.

The FHWA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. Based upon the statistics on follow-up compliance reviews conducted during calendar years 1994 through 1998, the FHWA expects that between 50 and 100 motor carriers might not improve an initial proposed unsatisfactory safety rating. These motor carriers would be required to cease their operations in interstate commerce until they could demonstrate to the FHWA that they had improved the safety of their operations. The vast majority of motor carriers with unsatisfactory safety ratings have been able to achieve improved ratings during follow-up CRs performed by the FHWA and its State partners. The very few motor carriers that did not achieve improved ratings represent the very few that have elected not to devote resources to safety and regulatory compliance, both of which should have been cornerstones of any responsible operation. However, the FHWA is unable to determine the precise impact this rulemaking would have on non-HM interstate motor carriers of property. As of late 1998, the FHWA has provided safety ratings to approximately 25 percent of those motor carriers identified in the MCMIS as active. The FHWA is interested in any information that will assist the agency in determining the economic impact of this proposed rule on this portion of the motor carrier industry and any additional impacts on its customers.

With respect to motor carriers of non-HM freight, a small number may be adversely affected by this regulatory action. A motor carrier of non-HM freight that receives a notice of a proposed unsatisfactory safety rating would be prohibited from providing transportation in interstate commerce starting 61 days from the date of that notice, unless the FHWA revises that rating as the result of (1) an administrative review or (2) a demonstration by the motor carrier that it has taken corrective action. If the FHWA determines a motor carrier is making a good faith effort to improve its safety posture, the agency could extend the initial 60-day period for up to 60 additional days.

Based upon its analysis of statistical information concerning motor carriers' improvement in their safety ratings, the FHWA believes that the vast majority of motor carriers interested in continuing their operations would be able to do so. The agency believes that any potential adverse economic impact to those relatively few motor carriers who are unwilling or unable to demonstrate an improvement in the safety of their operations within the 60 to 120 day period specified in TEA–21 is entirely consistent with the intent of the statute. The FHWA believes the traveling public would derive a safety benefit from the removal from the Nation's highways of CMVs operated in interstate commerce by those few motor carriers found to be unfit to operate them safely. In addition, shippers of non-HM freight would derive direct and indirect economic gains through the improved safety and corresponding efficiency of their commercial motor freight transportation.

This proposed rule would only affect the operations of the small number of motor carriers determined to be unfit to operate CMVs based on the frequency and severity of their safety violations, poor outcomes of roadside inspections, and accident experience. The number of motor carriers of non-HM freight that do

not improve their safety rating from unsatisfactory is expected to continue to be small—fewer than 100 motor carriers per year. The FHWA believes the number of motor carriers potentially subject to this level of impact is much smaller than the number of motor carriers that ceases operations as a result of normal economic fluctuations. This rulemaking reinforces the importance of complying with the safety regulations by putting into place a mechanism to force unfit motor carriers to improve their operational safety. There are no new costs associated with this rulemaking and the overall adverse economic effects would be minimal.

This rulemaking, if adopted, would allow the FHWA to require that those few motor carriers of non-HM freight that cannot or will not improve their safety performance above the level that produced an unsatisfactory safety rating, to cease their operations in interstate commerce. The FHWA believes that removing these motor carriers from the public highways will provide a very important, although unquantifiable, safety benefit. The agency believes these motor carriers pose a significant safety risk to the traveling public because of their demonstrated refusal, or inability, to comply with the FMCSRs. This proposed rule would provide the FHWA with an essential tool to take prompt and effective action against these motor carriers.

This rulemaking would not result in inconsistency or interference with another agency's actions or plans. It would, however, implement a specific congressional directive prohibiting Federal agencies from using any motor carrier with an unsatisfactory safety rating to provide "any transportation service." Therefore, all Federal agencies that contract for motor carrier passenger or freight transportation in CMVs must review the safety ratings of new and prospective motor carrier contractors. The FHWA believes that the United States Postal Service, the General Services Administration, and the Military Traffic Management Command are the primary agencies affected; the FHWA is working with these agencies to solicit their views on this rulemaking action.

The FHWA believes that the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed rulemaking on small entities. The motor carriers to be economically impacted by this rulemaking would be those who are rated unsatisfactory and fail to take appropriate actions to improve their rating. As of March, 1999, some 79 percent of the 483,385 active motor carriers in MCMIS were in the "very small" or "small" category (less than 21 power units). The FHWA's statistical information contained in MCMIS indicates that relatively few small motor carriers of passengers or HM have received unsatisfactory safety ratings since 1994, the earliest date for which information is readily available, and fewer still did not improve their safety ratings based upon the FHWA's follow-up compliance reviews.

The following tables show statistics for follow-up compliance reviews of motor carriers of property (non-HM) for calendar years 1994 through 1998.

TABLE 2.—MOTOR CARRIERS OF PROPERTY INITIALLY RATED UNSATISFACTORY, BY NUMBER OF DRIVERS

	1–4	5–19	20–49	50–99	100–299	300+	Total
CY 94	475	293	89	36	19	7	919
CY 95	196	204	109	35	15	2	561
CY 96	158	208	102	30	11	6	515
CY 97	94	168	54	16	9	0	341
CY 98	81	152	46	7	4	0	290

TABLE 3: MOTOR CARRIERS OF PROPERTY STARTING AND ENDING UNSATISFACTORY, BY NUMBER OF DRIVERS

	1–4	5–19	20–49	50–99	100–299	300+	Total
CY 94	37	41	17	5	3	0	103
CY 95	23	24	21	9	1	0	78
CY 96	17	37	14	3	1	0	72
CY 97	5	7	3	2	0	0	17
CY 98	15	28	9	3	1	0	56

Between 81 and 475 motor carriers of property that employed between 1 and 4 drivers began a calendar year with an unsatisfactory safety rating. By the end of the calendar year, all but between 5 and 37 had improved their safety rating. During that same period, between 152 and 293 motor carriers of property that employed between 5 and 19 drivers began the calendar year with an unsatisfactory safety rating. All but between 7 and 37 had improved their safety rating by the end of the year. As long as these motor carriers held (or were able to improve) their safety ratings to conditional or satisfactory, § 385.13 of this proposed rule would not have affected their ability to operate in interstate commerce. There is no reason to believe that this proposed regulatory action would increase those impacts.

Therefore, the FHWA certifies that this regulatory action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposal under Executive Order 13045, "Protection of Children from Environmental Health

Risks and Safety Risks." This proposed rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would implement a statutory mandate to prohibit interstate motor carrier operations found to be unsafe and therefore unfit. Motor carriers can avoid all of the implications of an unsatisfactory safety rating simply by complying with the FMCSRs. Furthermore, motor carriers with a proposed unsatisfactory safety rating would have at least 45 or 60 days, depending on the type of operation, to correct deficiencies identified by the FHWA before halting operations in interstate commerce. Finally, even if a motor carrier were to suspend its operations, it can resume operations by correcting its deficiencies, coming into compliance with the FMCSRs, and demonstrating these improvements to the FHWA. The FHWA therefore certifies that this rule has no takings implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The FHWA has determined this proposed rule does not have sufficient federalism impacts to warrant the preparation of a Federalism Assessment.

These proposed changes to the FMCSRs would not directly preempt any State law or regulation. They would not impose additional costs or burdens on the States. Although section 4009 of TEA–21 requires the FHWA to revise part 385 of the FMCSRs, States are not required to adopt part 385 as a condition for receiving Motor Carrier Safety Assistance Program (MCSAP) grants. Also, this action would not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed action would not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have an adverse effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: August 6, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, Chapter III, parts 385 and 390 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 31136, 31144, and 31502; and 49 CFR 1.48.

2. Revise § 385.1 to read as follows:

§ 385.1 Purpose and scope.

(a) This part establishes the FHWA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a CMV.

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers and motor carriers conducting for-hire operations of passenger CMVs with a capacity of 8–15 persons, including the driver.

3. Revise § 385.11 to read as follows:

§ 385.11 Notification of safety fitness determination.

(a) The FHWA will provide a motor carrier written notice of any rating resulting from a safety fitness review as soon as practicable, but not later than 30 days after the review. The notice will take the form of a letter issued from the FHWA's headquarters office and will include a list of FMCSR and HMR compliance deficiencies which the motor carrier must correct.

(b) If the safety rating is "satisfactory" or improves a previous "unsatisfactory" safety rating, it is final and becomes effective on the date of the notice.

(c) In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after the following time periods:

(1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(d) A proposed safety rating of "unsatisfactory" is a notice to the motor carrier that the FHWA has made a preliminary determination that the motor carrier is "unfit" to continue operating in interstate commerce, and that the prohibitions in § 385.13 will be imposed after 45 or 60 days if necessary safety improvements are not made.

(e) A motor carrier may request the FHWA to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in § 385.15.

(f) A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in § 385.17.

4. Revise § 385.13 to read as follows:

§ 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) A motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the FHWA on the internet at http://www.safersys.org, or by telephone, (800) 832–5660.

(1) Motor carriers transporting hazardous materials in quantities

requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after receiving the FHWA's notice of proposed "unsatisfactory" rating.

(2) All other motor carriers rated after [date 30 days after the date of publication of the final regulations in the **Federal Register**] are prohibited from operating a CMV beginning on the 61st day after the motor carrier receives the FHWA's notice of proposed "unsatisfactory" rating. If the FHWA determines the motor carrier is making a good-faith effort to improve its safety fitness, the FHWA may allow the motor carrier to operate for up to 60 additional days.

(b) A Federal agency must not use a motor carrier that holds a "unsatisfactory" rating to transport passengers or to transport hazardous materials in quantities requiring placarding in a CMV.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an "unsatisfactory" rating which became effective on or after [date 30 days after the date of publication of the final regulations in the **Federal Register**].

5. Revise § 385.15 to read as follows:

§ 385.15 Administrative review.

(a) A motor carrier may request the FHWA to conduct an administrative review if it believes the FHWA has committed an error in assigning its proposed or final safety rating.

(b) The motor carrier's request must explain the error it believes the FHWA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the FHWA, Program Manager, Office of Motor Carrier and Highway Safety, 400 Seventh Street, SW., Washington DC 20590.

(1) If a motor carrier has received a notice of a proposed "unsatisfactory" rating, it should submit its request within 15 days from the date of the notice.

(2) A motor carrier must make a request for an administrative review within 90 days of the date of the proposed or final safety rating issued by the FHWA under the provisions of § 385.11, or within 90 days after denial of a request for a change in rating under § 385.17(i).

(d) The FHWA may ask the motor carrier to submit additional data and attend a conference to discuss the safety rating. If the motor carrier does not provide the information requested, or does not attend the conference, the FHWA may dismiss its request for review.

(e) The FHWA will notify the motor carrier in writing of its decision following the administrative review. The FHWA will complete its review:

(1) Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" safety rating.

(2) Within 45 days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" safety rating.

(f) The decision constitutes final agency action.

(g) Any motor carrier may request improvement in the safety rating under the provisions of § 385.17.

6. Revise § 385.17 to read as follows:

§ 385.17 Change to safety rating based upon corrective actions.

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(b) A motor carrier must make this request in writing to the FHWA Resource Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Resource Centers are listed in § 390.27.

(c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standards and factors specified in §§ 385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the FHWA to consider.

(d) The FHWA will make a final determination on the request for change based upon the documentation the motor carrier submits, and any additional relevant information.

(e) The FHWA will perform reviews of requests made by motor carriers with a proposed or final "unsatisfactory" safety rating in the following time periods after the motor carrier's request:

(1) Within 30 days for motor carriers transporting passengers in CMVs or placardable quantities of hazardous materials.

(2) Within 45 days for all other motor carriers.

(f) The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in § 385.13(a)(1) for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and the FHWA cannot make a final determination within the 45-day period, the period before the proposed safety rating becomes effective may be extended for up to 10 days at the discretion of the FHWA.

(g) The FHWA may allow a motor carrier with a proposed rating of "unsatisfactory" (except those transporting passengers in CMVs or placardable quantities of hazardous materials) to continue to operate in interstate commerce for up to 60 days beyond the 60 days specified in the proposed rating, if the FHWA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin the 61st day after the date of the proposed "unsatisfactory" rating.

(h) If the FHWA determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.

(i) If the FHWA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standards and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing.

(j) Any motor carrier whose request for change is denied in accordance with paragraph (i) of this section may request administrative review under the procedures of § 385.15. The motor carrier must make the request within 45 days of the denial of the request for rating change. If the proposed rating has become final, it shall remain in effect during the period of any administrative review.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

7. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504; sec. 204 of Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.48.

8. Revise § 390.27 to read as follows:

§ 390.27 Locations of motor carrier and highway safety resource centers.

The following table sets forth the locations and territories for the four resource centers that are established to provide support to the FHWA division offices located in each State:

Resource center	Territory included	Location of office
Eastern	CT, DC, DE, MA, MD, ME, NJ, NH, NY, PA, PR, RI, VA, VT, WV.	City Crescent Building, #10 South Howard Street, Suite 4000, Baltimore, MD 21201–2819.
Midwestern	IA, IL, IN, KS, MI, MO, MN, NE, OH, WI	19900 Governors Drive, Suite 210, Olympia Fields, IL 60461–1021.
Southern	AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX	61 Forsyth Street, SW, Suite 17T75, Atlanta, GA 30303–3104.
Western	American Samoa, AK, AZ, CA, CO, Guam, HI, ID, Mariana Islands, MT, ND, NV, OR, SD, UT, WA, WY.	201 Mission Street, San Francisco, CA 94105.

[FR Doc. 99–20905 Filed 8–13–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF68

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Carex lutea (Golden Sedge)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to determine endangered status for *Carex lutea* (golden sedge) under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is presently known from only eight populations in Pender and Onslow counties, North Carolina. *C. lutea* is endangered throughout its range because of habitat alteration; conversion of its limited habitat for residential, commercial, or industrial development; mining; drainage activities associated with silviculture and agriculture; and suppression of fire. In addition, herbicide use, particularly along utility or road rights-of-way, may also be a threat. This proposal, if made final, will extend the protection of the Act to *C. lutea*. We are seeking data and comments from the public.

DATES: Send your comments to reach us on or before October 15, 1999. We will not consider comments received after the above date in making our decision on the proposed rule. We must receive public hearing requests by September 30, 1999.

ADDRESSES: Send comments, materials, and requests for a public hearing concerning this proposal to the State Supervisor, Asheville Field Office, US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora A. Murdock at the above address (828/258–3939, extension 231).

SUPPLEMENTARY INFORMATION:

Background

Carex lutea (LeBlond) is a perennial member of the sedge family (Cyperaceae) known only from North Carolina. Fertile culms (stem) may reach one meter (3 feet) or more in height. The yellowish green leaves are grasslike, with those of the culm mostly basal and up to 28 centimeters (cm) (10 inches (in)) long, while those of the vegetative shoots reach a length of 65 cm (25 in). Fertile culms produce two to four flowering spikes (multiple flowering structure with flowers attached to the stem), with the terminal (end) spike being male and the one to three (usually two) lateral spikes being female. Lateral spikes are subtended by leaflike bracts (a much-reduced leaf). The male spike is about 2 to 4 cm (0.75 to 1.5 in) long, 1.5 to 2.5 millimeters (mm) (0.05 to 0.10 in) wide, with a peduncle (stalk) about 1 to 6 cm (0.5 to 2 in) long. Female spikes are round to elliptic, about 1 to 1.5 cm (0.5 in) long and 1 cm (0.5 in) wide. The upper female spike is sessile (not stalked; sitting), while lower female spikes, if present, have peduncles typically 0.5 to 4.5 cm (0.2 to 1.75 in) long. When two to three female spikes are present, each is separated from the next, along the culm, by 4.5 to 18 cm (1.75 to 7 in). The inflated perigynia (sac which encloses the ovary) are bright yellow at flowering and about 4 to 5 mm (.16 to .20 in) long; the perigynia beaks (point) are out-curved and spreading, with the lowermost in a spike strongly reflexed (turned downward). *C. lutea* is most readily identified from mid-April to mid-June during flowering and fruiting. It is distinguished from other *Carex* species that occur in the same habitat by its bright yellow color (particularly the pistillate (female) spikes), by its height and slenderness, and especially by the out-curved beaks of the crowded perigynia, the lowermost of which are reflexed (LeBlond *et al.* 1994).

LeBlond *et al.*, in 1994 described *Carex lutea* from specimens collected in 1992 by R. J. LeBlond, B. A. Sorrie, A. A. Reznicek, and S. A. Reznicek in Pender County, North Carolina. It is the only member of the *Carex* section *Ceratocystis* found in the southeastern United States.

Carex lutea grows in sandy soils overlying coquina limestone deposits, where the soil pH is unusually high for this region, typically between 5.5 and 7.2 (Glover 1994). Soils supporting the species are very wet to periodically shallowly inundated. The species prefers the ecotone (narrow transition zone between two diverse ecological communities) between the pine savanna and adjacent wet hardwood or hardwood/conifer forest (LeBlond 1996; Schafale and Weakley 1990). Most plants occur in the partially shaded savanna/swamp where occasional to frequent fires favor an herbaceous ground layer and suppress shrub dominance. Other species with which this sedge grows include tulip poplar (*Liriodendron tulipifera*), pond cypress (*Taxodium ascendens*), red maple (*Acer rubrum* var. *trilobum*), wax myrtle (*Myrica cerifera* var. *cerifera*), colic root (*Aletris farinosa*), and several species of beakrush (*Rhynchospora* spp.). At most sites, *C. lutea* shares its habitat with Cooley's meadowrue (*Thalictrum cooleyi*), federally listed as endangered, and with Thorne's beakrush (*Rhynchospora thornei*), a species of concern to us. All known populations are in the northeast Cape Fear River watershed in Pender and Onslow counties, North Carolina. As stated by LeBlond (1996):

> . . . localities where *Carex lutea* have been found are ecologically highly unusual . . . The combination of fairly open conditions underlain by a calcareous substrate is very rare on the Atlantic coastal plain. Many rare plant species are associated with these localities, and several have very restricted distributions, either being endemic to a small area or with a few highly scattered occurrences. The affinities of these taxa are variable, but include connections to the calcareous savannas of the Gulf Coast States; alkaline marshes of the Atlantic tidewater; calcareous glades, barrens, and prairies of the Appalachian region and the ridge and valley

province of Georgia and Alabama; and pinelands of the Carolinas and southern New Jersey.

These rare savannas, underlain by calcareous deposits, support unusual assemblages of plants, including several species known from less than a dozen sites worldwide (Schafale 1994). LeBlond (1996) characterizes these habitats as ". . . a small archipelago of phytogeographic islands . . ." that form a refuge for these rare and unique species. Despite extensive searches of the Gulf Coast in northern Florida and southern Alabama, and Atlantic Coast sites in South Carolina, Georgia, and Florida, no other populations of *Carex lutea* were found outside the North Carolina coastal plain. The species appears to be a very rare, narrowly restricted endemic to an area within a 2-mile radius of the Onslow/Pender County line in southeastern North Carolina (LeBlond 1996). It is listed as endangered by the State of North Carolina (Amoroso and Weakley 1995; M. Boyer, North Carolina Department of Agriculture, personal communication, 1998).

Previous Federal Activities

Federal government actions on this species have only recently begun, since the species was unknown to science before 1991 and its official description was not published until 1994. In 1995, we funded a survey to determine the status of *Carex lutea* throughout its known and potential range; we accepted the final report on this survey in 1997. A 1998 status report confirmed the species' precarious status (LeBlond 1998). We elevated *C. lutea* to candidate status (species for which we have sufficient information on status and threats to propose the taxon for listing as endangered or threatened) on October 16, 1998.

On May 8, 1998 (63 FR 25502), we published Listing Priority Guidance for Fiscal Years 1998 and 1999. The guidance clarifies the order in which we will process rulemakings, giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Summary of Factors Affecting the Species

The procedures for adding species to the Federal lists are found in section 4 of the Act and the accompanying regulations (50 CFR part 424). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Carex lutea* (golden sedge) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Seven of the eight known populations of *Carex lutea* are on privately owned land and are potentially threatened with the destruction or adverse modification of their habitat from residential, commercial, or industrial development; mining; drainage activities associated with silviculture and agriculture; and suppression of fire. The eighth population, on land now owned by the North Carolina Department of Transportation (NCDOT), was severely disturbed in the 1980s by clearcutting, ditching, and draining prior to NCDOT ownership. This site has been purchased by the NCDOT as a mitigation site and is currently under study for the restoration of natural communities and protection and enhancement of rare species populations. At least some of the original *C. lutea* plants survived the previous damage to the site, and the remaining population appears stable.

As described in the "Background" section, the habitat upon which this species depends is extremely rare. Most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters. Three of the sites have populations composed of fewer than 50 individuals. Although little is known about natural population fluctuations in this species, severe population declines (exceeding 83 percent) were noted between 1992 and 1996 at three of the eight remaining sites. The exact causes for these losses are unknown. One population is located on a roadside, and another is on a power line right-of-way, where they are exceptionally vulnerable to destruction from highway expansion or improvement or herbicide application. All the known sites have been damaged to some degree in the past by ditching and drainage, mining, logging, bulldozing, and/or road building. Because the species was only recently discovered, it is impossible to know exactly what its historic distribution and population numbers might have been. However, LeBlond (1996) states: "It is probable that drainage ditches (that lower the water table over a large area) have reduced, perhaps greatly, the amount of suitable habitat available for *Carex lutea* and other rare species at these sites."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known commercial trade in *C. lutea* at this time. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased publicity. Most populations are too small to support even the limited collection of plants for scientific or other purposes.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Carex lutea* is listed by the State of North Carolina as endangered. As such, it is afforded legal protection within the State by North Carolina General Statutes, § 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provide for protection from intrastate trade (without a permit) and for the monitoring and management of State-listed species and prohibit the taking of plants without a permit and written permission from the landowner. However, State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitats, such as disruption of drainage patterns and water tables or exclusion of fire. Two of the sites are somewhat protected by registry agreements between the landowner and the North Carolina Natural Heritage Program. These agreements are strictly voluntary, however, and may be canceled by the landowner at any time. Part of another population is owned by The Nature Conservancy; however, this site is next to a quarry, and the rest of the population is vulnerable to destruction.

Section 404 of the Clean Water Act represents the primary Federal law that may provide some regulation of the species' wetland habitats. However, the Clean Water Act by itself does not provide adequate protection for the species. Although the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. § 1251), no specific provisions exist that address the need to conserve rare species. The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. Under section 404, the Corps may issue nationwide permits

for certain activities that are considered to have minimal impacts. However, the Corps seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized. The Corps may also authorize activities by an individual or regional general permit when the project does not qualify for authorization under a nationwide permit. These projects include those that would result in more than minimal adverse environmental effects, either individually or cumulatively, and are typically subject to more extensive review. Regardless of the type of permit deemed necessary under section 404, rare species such as *Carex lutea* may receive no special consideration with regard to conservation or protection unless they are listed under the Act.

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this proposed rule, many remaining populations are small in numbers of individuals and in area covered by the plants. This may suggest low genetic variability within populations, making it more important to maintain as much habitat and as many remaining colonies as possible.

Little is known about the life history of this species or about its specific environmental requirements. However, its apparent restriction to wet pine savannas is a strong indication that it is adapted to the pyric (associated with burning) and hydrological conditions associated with this community type. Such habitats were historically exposed to wildfires approximately every 3 to 5 years, usually during the growing season, which maintained the open habitats favored by *Carex lutea* and dozens of other fire-adapted species. During winter and spring, the soils where *C. lutea* grows are often shallowly flooded. At other times of the year these sites are very wet to saturated. Such high water tables also serve to control woody growth in undisturbed savanna habitats. However, without regular fire, which has been intensively suppressed on the Atlantic coastal plain for half a century, and with the lowering of water tables due to ditching, the open savannas are rapidly changing to dense thickets dominated by the trees and shrubs of the adjacent uplands. As a result, the extraordinary plant diversity characteristic of the savannas is being eliminated, and species such as *C. lutea* are disappearing from the landscape. Even where such habitat is owned by an organization that is able to manage the land with prescribed fire, like The Nature Conservancy, increasingly restrictive smoke management regulations make burning very difficult.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in making this determination. Based on this evaluation, the preferred action is to list *Carex lutea* as an endangered species. Endangered status is more appropriate than threatened status because of the following factors: this species occurs in only 2 counties; only 8 populations survive, all of which have already been damaged to some degree; most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters; three of the remaining populations are composed of fewer than 50 individuals; there are documented severe population declines (exceeding 83 percent) between 1992 and 1996 at three of the eight remaining sites; and all of the remaining populations are currently threatened by fire suppression, highway expansion, right-of-way management with herbicides, and drainage ditching.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate any critical habitat at the time the species is listed as endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat for *Carex lutea* is not prudent because such designation would not be beneficial to the species.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. None of the known populations of *Carex lutea* occur on Federal land. However, Federal involvement with this species may occur through the use of Federal funding for power line construction, maintenance, and improvement; highway construction, maintanance and improvement; drainage alterations; and permits for mineral exploration and mining on non-Federal lands. The use of such funding for projects affecting occupied habitat for this species would be subject to review under section 7(a)(2), whether or not critical habitat was designated. The precarious status of *C. lutea* is such that any adverse modification or destruction of its occupied habitat would also jeopardize its continued existence. Thus, the only potential benefit that would result from critical habitat designation would be notification to Federal, State and local government agencies and private landowners. However, during the listing process, and after a species is listed, we conduct public outreach in affected local communities and with government agencies. All involved parties and landowners are aware of the location and importance of protecting this species' habitat. For these reasons, we believe that designation of currently occupied habitat of this species as critical habitat would not result in any additional benefit to the species and that such designation is not prudent.

Because this species occupies an extremely rare habitat type, little of which remains in an unaltered, functional state, we do not expect that reintroduction to currently unoccupied habitat is essential for recovery efforts. Therefore, we believe that designation of currently unoccupied habitat of this species as critical habitat would not result in any additional benefit to the species and, therefore, such designation is not prudent.

Most populations of this species are small, and the loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Taking without a permit is prohibited by the Act from locations under Federal jurisdiction; however, none of the known populations are

located on Federal land. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species to collection, but would not increase its protection under the Act. The contractor we hired to conduct the rangewide status survey declined to include directions to the occupied sites in his report, stating: "Due to the extreme rarity of *Carex lutea* and its vulnerability to extinction, a description of site boundaries or precise directions to population micro sites cannot be provided here" (LeBlond 1996). The owners and managers of all the known populations of *C. lutea* have been made aware of the plant's location and how important it is to protect the plant and its habitat. Since no additional benefits would result from designation of critical habitat, and there are some risks associated with potential collection, we conclude that it is not prudent to designate critical habitat for *C. lutea*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could impact *Carex lutea* and its habitat in the future include, but are not limited to, the following: power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; drainage alterations; and permits for mineral exploration and mining. We will work with the involved agencies to secure protection and proper management of *C. lutea* while accommodating agency activities to the extent possible.

If the species is added to the Federal List of Endangered and Threatened Wildlife and Plants, additional protection from taking will be provided when the taking is in violation of any State law, including State trespass laws. It would also provide protection from inappropriate commercial trade and encourage active management for *Carex lutea*. Specifically, the Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and to State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued, because the species is not common in cultivation or in the wild. You may request copies of the regulations on plants from and direct inquiries about prohibitions and permits to the US Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia (telephone 404/679–7313).

It is our policy, published on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The eight remaining populations of *Carex lutea* occur on non-Federal land. We believe that, based upon the best available information, you can take the following actions without resulting in a violation of section 9, only if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., wetland modification; power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; and permits for mineral exploration and mining) when such activity is conducted in accordance with any reasonable and prudent measures given by us according to section 7 of the Act.

(2) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices.

(3) Normal landscape activities around your own personal residence.

We believe that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Removal, cutting, digging up, damaging, or destroying endangered plants on non-Federal land if conducted in knowing violation of State law or regulation or in violation of State criminal trespass law. North Carolina prohibits the intrastate trade and take of *C. lutea* without a State permit and written permission from the landowner.

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. In particular, we are seeking comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Carex lutea*;

(2) The location of any additional populations of *Carex lutea* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Carex lutea*.

We will consider your comments and any additional information received on this species when making a final determination regarding this proposal. The final determination may differ from this proposal based upon the information we receive.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the State Supervisor (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the "Supplementary Information" section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.62.

References Cited

Amoroso, J., and A. Weakley. 1995. Natural Heritage Program list of the rare plant species of North Carolina. Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Glover, L. 1994. *Carex lutea:* alive and well in Pender County, North Carolina. Report prepared by the North Carolina Chapter of The Nature Conservancy, Durham.

LeBlond, R. 1998. Supplement to the status survey for *Carex lutea*. Unpublished report submitted to the Asheville Field Office, U.S. Fish and Wildlife Service, Asheville, NC.

———. 1996. Status survey for *Carex lutea* LeBlond. Unpublished report submitted to the Asheville Field Office, U.S. Fish and Wildlife Service, Asheville, NC.

LeBlond, R., A. Weakley, A. Reznicek, and W. Crins. 1994. *Carex lutea* (Cyperaceae), a rare new coastal plain endemic from North Carolina. *SIDA* 16:153–161.

Schafale, M. 1994. Inventory of longleaf pine natural communities in North Carolina. Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Schafale, M., and A. Weakley. 1990. Classification of the natural communities of North Carolina (third approximation). Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Author

The primary author of this document is Ms. Nora A. Murdock (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Carex lutea	Golden sedge	U.S.A. (NC)	Cyperaceae	E		NA	NA
•	•	•	•	•	•	•	

Dated: July 12, 1999.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–20964 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 080499B]

Environmental Impact Statement (EIS) for the Proposed Fishery Management Plan (FMP) for the Coral Reef Ecosystem Fishery Management Plan of the Western Pacific Region (Coral Reef Ecosystem FMP); EIS for the FMP for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region; (Bottomfish and Seamount Groundfish Fisheries FMP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare EISs; request for comments; notice of scoping meeting.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed Coral Reef Ecosystem FMP, and an EIS for the Bottomfish and Seamount Groundfish Fisheries FMP. The Western Pacific Fishery Management Council (Council) will hold a public scoping hearing in American Samoa on management alternatives to be analyzed under both EISs.

DATES: Written comments on the intent to prepare the EISs will be accepted on or before August 26, 1999. A public scoping meeting is scheduled for August 19, 1999.

ADDRESSES: Written comments on the intent to prepare the EISs or other aspects of the scoping documents, which contain suggested alternatives and potential impacts should be sent to and copies of the scoping documents are available from Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, and to Charles Karnella, Administrator, National Marine Fisheries Service, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814.

The following location and time have been set for the scoping meeting: American Samoa, August 19, 1999, 3–5 p.m., Conference Room, Division of Marine and Wildlife Resources, Pago Pago, AS. Phone contact 684–633–4456 for information. Subsequent public scoping meetings are tentatively planned for Hawaii (details regarding times and locations will follow in a separate **Federal Register** announcement).

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, at 808–522–8220.

SUPPLEMENTARY INFORMATION: A summary of the Coral Reef Ecosystem FMP will be presented including initial recommendations for management action, as described here. Comments will be solicited from the public on these and any other management alternatives the public cares to offer.

Management measures that might be adopted in the Coral Reef Ecosystem FMP include permit and reporting requirements for non-subsistence harvest of coral reef resources, marine protected areas to ensure greater conservation and management to special locations, allowable gear types to harvest coral reef resources in the U.S. exclusive economic zone (EEZ), prohibition on use of gear in ways destructive to habitat, and a framework management process to add future new measures. The FMP would also include essential fish habitat and habitat areas of particular concern, including fishing and non-fishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). An additional measure, still under consideration for possible inclusion, is a ban on the possession or collection, for commercial purposes; of wild "live rock" and coral (other than coral covered by the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region). The collection of live rock or coral for scientific and research purposes and the collection of small amounts of live coral as brood-stock for captive breeding/aquaculture would be allowed by permit.

The Coral Reef Ecosystem FMP, and its associated EIS, would be the Council's fifth FMP for the EEZ for all U.S. Pacific Islands. This area includes nearly 11,000 km^2 (4,000 square miles) of coral reefs. Development of the Coral Reef Ecosystem FMP is timely, considering such new mandates and initiatives as the April 1999 report to Congress by the Ecosystem Principles Advisory Panel on Ecosystem-Based Fishery Management, the President's 1998 Executive Order on Coral Reefs (E.O. 13089), and priorities of the U.S. Coral Reef Task Force and the U.S. Coral Reef Initiative, as well as the provisions of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act. The draft Coral Reef Ecosystem FMP would describe the importance of coral reef resources to the region and current and potential threats that warrant an FMP at this time. Information regarding the harvest of these resources in the EEZ is largely unknown. Potential for unregulated harvest and bio-prospecting for reef fish, live grouper, live rock and coral exists throughout the region. Marine debris, largely from fishing gear, is adversely impacting reefs in the Northwestern Hawaiian Islands.

The public is also invited to assist the Council in developing the scope of alternatives and impacts that should be analyzed in an EIS for the Bottomfish and Seamount Groundfish Fisheries FMP. An EIS has not been prepared for the FMP. Since the FMP was implemented in 1986, many changes have occurred in this fishery, and with the stocks and management regimes. As part of the scoping process for the EIS for this FMP, the public is also invited to comment on an alternative being considered for the addition of bottomfish species, in the EEZ around the U.S. Pacific Island possessions (and the Commonwealth of the Northern Mariana Islands (CNMI)), to the management unit of the Bottomfish and Seamount Groundfish FMP. Federal regulations for the EEZ off the U.S. Island possessions (and the CNMI) that would provide basic protection and conservation measures are already established in the EEZs for other parts of the Western Pacific Region, and include no taking with explosives, poisons, trawl nets or bottom-set gillnets. A definition of overfishing for a list of identified FMP management unit species would be established and evaluated annually, with required action in the event of overfishing.

Public Information Meetings

Additional public information meetings and public hearings on the proposed EISs may be held in Hawaii later in the year. These meetings will be advertised in the **Federal Register** and the local newspapers.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (see **ADDRESSES**), 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: August 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21073 Filed 8–11–99; 9:37 am]

BILLING CODE 3510-22-F

Notices

Federal Register
Vol. 64, No. 157
Monday, August 16, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

DATE AND TIME: September 14–16, 1999, 9:00 a.m.–5:00 p.m.

PLACE: Food and Nutrition Service, 3101 Park Center Drive, 4th Floor Conference Room, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP). The agenda items will include a discussion of general program issues.

STATUS: Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below before or after the meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Persons wishing additional information about this meeting should contact Jackie Rodriguez, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Telephone: (703) 305–2747.

Dated: August 3, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–21203 Filed 8–13–99; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

Red Knight Restoration Project, Winema National Forest, Klamath County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) for restoration projects within the Red Knight planning area on the Chemult Ranger District of the Winema National Forest. Red Knight planning area is located in T29S, T30S, R10E, R11E, Willamette Meridian and covers an area of approximately 36,000 acres. The planning area is located west/northwest of Yamsay Mountain Semiprimitive Recreation Area and south of the Silver Lake Highway. Jackson Creek traverses the planning area. The Winema National Forest invites written comments on this proposal and the scope of analysis. The agency will give notice of the full environmental analysis and decision-making process so interested and affected persons may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received by September 20, 1999.

ADDRESSES: Send written comments to Red Knight Project, Chemult Ranger District, P.O. Box 150, Chemult, Oregon 97731.

FOR FURTHER INFORMATION CONTACT: Jayne Goodwin, 541–365–7072 or e-mail at: jgoodwin/r6pnw__winema@fs.fed.us.

SUPPLEMENTARY INFORMATION: This project will be consistent with the Winema National Forest Land and Resource Management Plan as amended by the Revised Environmental Assessment for the Continuation of Interim Management Direction Establishing Riparian, Ecosystem and Wildlife Standards for Timber Sales (Eastside Screens) and the Inland Native Fish Strategy Environmental Assessment (INFISH). The Eastside screens were designed to offer conservative protection to riparian, ecosystem, and wildlife values. INFISH provides interim direction to protect habitat and populations of resident native fish outside of anadromous fish habitat. The Red Knight planning area incorporates the following Forest Plan Management Areas (MA): Scenic Management (MA–3) designed to maintain and create visually pleasing scenery; Old-Growth Ecosystems (MA–7) designed to provide, maintain and enhance existing mature and old-growth communities; Riparian Areas (MA–8) designed to protect soil, water, wetland, floodplain, wildlife, and fish resource values; Timber Production (MA–12) designed to produce a high level of growth and timber production; and Upper Williamson (MA–15) designed to provide a natural-appearing forest setting for dispersed recreation activities and special wildlife habitats. The planning area is within former Klamath India Reservation lands.

Purpose and Need

Portions of the Red Knight planning area are crowded with trees that are competing for nutrients, water, and growing space. Dwarf mistletoe infections are present. Mature and old-growth ponderosa pine and mixed conifer habitat is at risk from competition-induced mortality and wildlife. Aspen stands are declining due to lodgepole pine encroachment. Fire suppression and growth of stands have resulted in development of excessive fuel accumulations and a decline in forage production. Prior to recognition of the value of standing and down dead trees, past harvest practices created a shortage of snags and down logs. Current open road densities exceed recommendations for big game habitat. Densities average approximately 5 miles of open road per section (a section is one square mile).

The existing conditions described above have created needs—(1) for sustainable mature and old-growth habitat and quaking aspen habitat for support of populations of native species; (2) for reduced risk of stand replacement fires within the planning area; and (3) for sustainable habitat for big game. Scoping may identify more needs.

Proposed Action

Proposed activities include approximately 12,000 areas of commercial thinning (thinning-from-below) and 24,000 acres of precommercial thinning. Approximately 11,000 of the 24,000 acres of precommercial thinning would occur within proposed commercial thinning areas. Other proposed activities are approximately 400 acres of pruning of dwarf mistletoe-infected trees, 50 acres of quaking aspen regeneration, 10,000 acres of prescribed burning or mowing of shrubs, seedlings, and small saplings, creation of 2,000 snags, evaluate access and travel opportunities, 50 miles of road closures, and 37 miles of road obliteration.

Alternatives

The No Action alternative will serve as a baseline for comparison of alternatives and will be fully developed and analyzed. With the No Action alternative, there would be no activities implemented based on the Red Knight analysis. Previously approved activities, and routine protection and maintenance activities will continue. The proposed action, as described above, will be considered and other alternatives developed around the proposed action to address issues identified in the scoping and public involvement process.

Issues

Preliminary issues identified are—Klamath Tribes culture and treaty resources (subsistence hunting, fishing, and gathering), mature and old-growth habitat, forest health, and wildfire risk.

Public Involvement

Scoping determines issues to be addressed and identifies the significant issues related to a proposed action. The Forest Service will seek information and comments from Tribes, Federal, State, and local agencies and other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. Scoping will be achieved through mailings, newspaper notices, website postings (www.fs.fed.us/r6/winema), and field trips. Field trips to the planning area are scheduled for August, September, and October of 1999.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Estimated Dates for Draft and Final EIS

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by April 2000. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,55 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that the substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments on the draft EIS will be analyzed, considered, and responded to by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed in July 2000. The Forest Service is the lead agency. Forest Supervisor, Winema National Forest, is the responsible official. The responsible official will document the decision and rationale for the decision for the Red Knight Restoration Project in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: July 29, 1999.

Mary C. Erickson,

Acting Deputy Forest Supervisor, Winema National Forest.

[FR Doc. 99–21110 Filed 8–13–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Science and Technology.

Title: Malcolm Baldrige Quality Award Application.

Agency Form Number: None.

OMB Approval Number: 0693–0006.

Type of Request: Reinstatement, with change, of a previously approved collection.

Burden Hours: 10,000.

Number of Respondents: 100.

Average Hours Per Response: 100.

Needs and Uses: The Malcolm Baldrige Quality Award is nationwide award to promote the awareness of performance excellence, recognize excellent performance achievements of U.S. organizations, and to share successful quality strategies and practices. The information provided is used to evaluate the applicant's eligibility to receive the Award.

Affected Public: U.S. organizations that choose to apply for the Malcolm Baldrige National Quality Award.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *LEngelme@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: August 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21099 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Export Assistance Center Website Form.

Agency Form Number: N/A.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 417 hours.

Number of Respondents: 5,000.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: The New York Export Assistant Center, which is a combined effort of the U.S. Department of Commerce's International Trade Administration (ITA), Export-Import Bank, and Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. In 1998, it launched an interactive website, www.nyuseac.org that is geared to the needs of New York and New Jersey metropolitan industry. One electronic form is proposed to be added to the website in order to improve the usefulness of the site. The form will ask U.S. exporting firm respondents to provide general background information and identify which service(s) they are interested in. This generic form will also be available for use by all of ITA's Export Assistance Centers.

Affected Public: Businesses or other for profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, N.W., Washington D.C. 20230 (or via the internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington D.C. 20503 within 30 days of the publication of this notice.

Dated: August 10, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21100 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: BISNIS Publication Subscription Form.

Agency Form Number: N/A.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 170 hours.

Number of Respondents: 2,040.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: The International Trade Administration's (ITA) Business Information Service for the Newly Independent States (BISNIS) program offers business information and counseling to U.S. companies seeking to export or to invest in the countries of the former Soviet Union.

A critical component of the program is the dissemination of information regarding market conditions and opportunities in various industries and countries of the former Soviet Union. These information products provided by BISNIS are in the form of emails, faxes, and paper mailers. The Publication Subscription form is a quick way for interested parties to tell BISNIS which products they want and what is their industry and country interests.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Roster, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 (or via the internet at *LEngelme@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent to David Roster, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503 within 30 days of the publication of this notice.

Dated: August 10, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer

[FR Doc. 99–21101 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census Employment Inquiry.

Form Number(s): BC–170.

Agency Approval Number: 0607–0139.

Type of Request: Revision of a currently approved collection.

Burden: 762,500 hours.

Number of Respondents: 3,050,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The BC–170, Census Employment Inquiry, is used by the Census Bureau to collect information such as personal data and work experience from job applicants. The BC–170 is used throughout the census and intercensal years in situations which require the establishment of a temporary

office and/or involve special, one-time survey operations. Applicants completing the form are applying for temporary jobs in office and field positions (clerks, enumerators, crew leaders, supervisors). Selecting officials review the information shown on the form to determine the best qualified applicants. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management Optional Forms that are available for use by the public when applying for Federal positions.

Current efforts to hire an enormous temporary workforce for Census 2000 will significantly increase the usage of the BC–170. The 2000 Census is the largest peacetime mobilization of civilians that enumerate and account for the population of the United States. We expect to recruit approximately 3,000,000 applicants for Census 2000 jobs.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13 USC, Section 23.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 or via the internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21102 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–505–801, A–201–825, A–517–802, A–307–817, C–505–802, C–201–826, C–517–803, C–307–818]

Dismissal of Antidumping and Countervailing Duty Petitions: Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Thomas Schauer (Antidumping) or Roy Malmrose (Countervailing Duty), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4794, (202) 482–0410, or (202) 482–5414, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348).

The Petitions

On June 29, 1999, the Department received petitions filed in proper form by Save Domestic Oil, Inc. (hereinafter referred to as the petitioner), an organization composed of producers of crude oil. The Department received supplemental submissions during June, July, and August 1999.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of crude oil from Iraq, Mexico, Saudi Arabia, and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, a regional [1] industry in the United States. In addition, in accordance with section 702(b)(1) of the Act, the petitioner alleges that producers or exporters of crude oil from Iraq, Mexico, Saudi Arabia, and Venezuela received countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that the petitioner is an interested party as defined in section 771(9)(E) of the Act. However, as discussed below, the petitioner has not demonstrated that it filed the petitions on behalf of the domestic industry. Because the petitioner has failed to demonstrate sufficient industry support, as required by sections 702(c)(4) and 732(c)(4) of the Act, the Department has no basis to initiate the requested investigations (see the "Determination of Industry Support for the Petitions" section, below).

Scope of the Petitions

For purposes of these petitions, the product covered is all crude petroleum oils and oils obtained from bituminous minerals testing at, above, or below 25 degrees A.P.I. The merchandise covered by these petitions is classifiable under subheadings 2709.00.10 and 2709.00.20 of the Harmonized Tariff Schedule of the United States.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Governments of Mexico, Saudi Arabia, and Venezuela for consultations with respect to the countervailing duty petitions filed. On August 2, 1999, consultations were held with representatives of the Government of Venezuela. On August 5, 1999, consultations were held with representatives of the Governments of Mexico and Saudi Arabia. See the August 3, 1999; August 5, 1999, and August 6, 1999, memoranda to the file regarding these consultations.

Determination of Industry Support for the Petitions

a. The Regional Industry

The petitioner alleges that there is a regional industry for the domestic like product. In support of its allegation, the petitioner provided sufficient information, reasonably available to the petitioner, regarding the criteria set out in section 771(4)(C) of the Act: (1) the producers within such market sell all or almost all of their production of the domestic like product in question in that market; (2) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States; and (3) appropriate

[1] The region identified by the petitioner consists of the 48 contiguous states, excluding Arizona, California, Nevada, Oregon, and Washington.

circumstances exist to divide the United States into the two markets alleged.

In accordance with sections 702(c)(4)(C) and 732(c)(4)(C) of the Act, if the petitioner alleges that the industry is a regional industry, the Department shall determine whether the petition has been filed by or on behalf of the industry by applying the requirements set forth in sections 702(c)(4)(A) and 732(c)(4)(A) of the Act on the basis of the production in the region. The Department has reviewed the adequacy and accuracy of the information supplied by the petitioner with respect to its regional-industry claim. Based upon this review and in accordance with the statutory criteria stated above, the petitioner has made an adequate regional-industry claim for initiation purposes. For a further discussion regarding the regional-industry claim, see Memorandum from Laurie Parkhill to Richard W. Moreland, dated August 8, 1999.

b. Scope of the Industry Examined for Support

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the Department's analysis of the domestic like product begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The "Scope of the Petitions" section above sets forth the domestic like product identified in the petitions. In addition to the products included in the petitioner's definition of domestic like product, parties have argued that two other products, refined products and "lease condensates," should be included within the domestic like product.

With respect to refined products, we determine that there is a clear dividing line between the characteristics and uses of crude oil and refined products. Crude oil, which is the input product used to produce a refined product, must undergo a distinct and significant process to become a refined product such as gasoline and other fuel oils. While both crude oil and refined products consist of hydrocarbon compounds, the refining process changes the physical structure and characteristics of the compounds found originally in the crude oil such that generally there remains no significant similarities between the two products in terms of physical characteristics and uses. Because of the differences in characteristics and uses, we determine that refined products are not within the domestic like product for purposes of determining industry support for the petitions. See Memorandum from the Team to Richard W. Moreland, regarding "Domestic Like Product," dated August 9, 1999, for additional analysis.

The issue of whether "lease condensates" are included properly within the domestic like product is more complicated. Lease condensates consist essentially of a mixture of certain hydrocarbon compounds that, in terms of weight and complexity, fall between natural gas and crude oil. They are liquids formed from natural gas as a result of temperature or pressure changes. Often lease condensates are mixed with crude oil and the resulting mixture is sold to a refinery as crude oil.

The petitioner argues that the Department should not include lease condensates in the domestic like product because the mixture of hydrocarbon compounds in lease condensates is different from the mixture of hydrocarbon compounds in crude oils. Consequently, it asserts, lease condensates can only be refined into a limited range of products. Opposing the petitioner's position, other parties have argued that lease condensates are very similar in physical characteristics and uses to light crude oil and that, when mixed, they simply become an indistinguishable part of the crude-oil stream which is sent to the refinery.

In addition to the extremely complex technical nature of the issue, ascertaining the precise nature of available production and distribution data as well as attempting to establish the appropriate analytical framework for a very diverse industry has been problematic for the Department. However, it is not necessary to decide this issue because, as discussed below, we have determined that the petitioner does not have the requisite industry support, regardless of how the issue of lease condensates is resolved.

c. Calculation of Industry Support Within the Region

Sections 702(b)(1) and 732(b)(1) of the Act require that a petition be filed on behalf of the domestic industry. In particular, sections 702(c)(4)(A) and 732(c)(4)(A) of the Act provide that a petition meets this requirement if the domestic producers or workers in the region who support the petition account for: (1) at least 25 percent of the total production of the domestic like product in the region; and (2) more than 50 percent of the production of the domestic like product produced in the region by that portion of the industry expressing support for, or opposition to, the petition.

The petitioner alleges that, based on the support of individual producers and support by a number of industry associations, the petitions have the required support of the industry. As of July 27, 1999, the Department had received letters from 20 domestic producers opposing the petitions. In the aggregate, these producers accounted for approximately 50 percent of total production within the region. Because there was a question as to whether the petitioner met the statutory requirements concerning industry support cited above, we exercised our statutory discretion under sections 702(c)(1)(B) and 732(c)(1)(B) of the Act to extend the deadline for determining whether to initiate investigations to a maximum of 40 days from the date of filing in order to resolve this issue. See Memorandum from the Industry Support Team to Richard W. Moreland, regarding "Determination of Industry Support," dated July 30, 1999.

In order to determine the level of industry support for the petitions, the Department surveyed (1) each of the 410 largest producers in the region, which

[2] See *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988), and *High Information Content Flat Panel Displays and Display Glass Therefor from Japan; Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

accounted for over 86 percent of regional production, and (2) a 401-company sample of the remaining producers in the region. The purpose of the survey was to ascertain the companies' positions with regard to the petitions. We received responses from 41 percent of the 410 companies and 18 percent of the sampled 401 companies.

As mentioned above, we received letters of opposition from a number of companies who accounted for approximately 50 percent of total regional production. Based on the surveys, additional companies indicated that they opposed the petitions.

The petitioner submitted comments alleging that certain companies opposed to the petitions are related to producers in the subject countries and that a number of those companies are importers of subject merchandise. The petitioner argues that, consistent with sections 702(c)(4)(B) and 732(c)(4)(B) of the Act, the positions of these companies should be disregarded.

Sections 702(c)(4)(B) and 732(c)(4)(B) of the Act provide that the position of certain domestic producers may be disregarded for purposes of determining industry support. Specifically, subsection (B)(i) provides that the position of domestic producers who oppose the petition shall be disregarded "if such producers are related to foreign producers * * * unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping [or countervailing] duty order." Additionally, subsection (B)(ii) provides that the position of domestic producers of a domestic like product who are importers of the subject merchandise may be disregarded.

Our analysis of whether to disregard any positions focused on whether the opposing companies have demonstrated that their interests as domestic producers would be affected adversely by the imposition of an antidumping or countervailing duty order. Because we are able to resolve the issue on this basis, we need not determine whether these companies are related to foreign producers. We note, however, that we have serious questions about the sufficiency of the petitioner's allegations. For example, we question whether the petitioner has provided sufficient evidence of any relationship, as defined in section 771(4)(B) of the Act, and, in the case of alleged relationships as defined in section 771(4)(B)(ii)(IV) of the Act, that these relationships would cause the domestic producer to act differently than a non-related producer. We have not resolved these questions; rather, we looked first at the question of whether the opposing domestic producers had established that their interests as domestic producers would be adversely affected by the imposition of an antidumping or countervailing duty order, in which case the issue of whether they are related parties becomes moot. In this regard, we focused our analysis on the API Ad Hoc Free Trade Committee (the Committee) because it is composed of the largest U.S. producers in opposition to the petitions and because its treatment is dispositive of the industry support issue.

The Committee argues that its opposition is not based on foreign interests or imports, but rather on the based on the fact that the Committee members' interests as domestic producers would be adversely affected by the imposition of antidumping or countervailing duties. The Committee also argues that the petitioner has not alleged that each U.S. producer about which allegations were made is related to a foreign producer in each of the subject countries. Moreover, the petitioner has provided no basis for assuming that a relationship in one country would cause a producer to oppose a case against another country with potentially competing suppliers.

Even assuming there are relationships, the Committee argues, because the interest of domestic producers opposing the petition would be adversely affected by the imposition of an order, the Department must consider their views. The arguments and information presented by the Committee to demonstrate the adverse affects it believes would ensue are described in its August 2, 1999, and August 4, 1999, submissions. Finally, with respect to imports, the Committee argues that importing is a standard practice in the U.S. oil industry and that the large producers account for only a small portion of total imports. Moreover, the Committee argues, domestic producers which oppose the petition are not bound to imports from the subject countries. Therefore, the Committee argues, the Department should not disregard its opposition.

After reviewing comments submitted by all parties, we believe that the Committee and other opposing companies have demonstrated that their interests as domestic producers would be adversely affected by the imposition of an antidumping or countervailing duty order. Accordingly, we have not disregarded the opposition of the Committee members alleged to be related to foreign producers. In addition, we have determined that the Committee members who import should not be excluded because those domestic producers have demonstrated that their opposition to the petitions is based on their concern that the imposition of an antidumping or countervailing duty order would adversely affect their interests as domestic producers. For a further discussion, see Memorandum from the Industry Support Team to Richard W. Moreland, regarding "Consideration of Opposition from Domestic Producers Alleged to Be Related to Foreign Producers and/or Importing Subject Merchandise," dated August 9, 1999.

Based on the opposition we received from companies we have determined not to disregard, we find that the petitions do not have support from more than 50 percent of the production in the region of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petitions. The opposition of the Committee and companies not challenged by the petitioner ranges from 65 to 68 percent across the various cases. See Memorandum from the Industry Support Team to Richard W. Moreland, regarding "Calculation of Industry-Support Percentages," dated August 9, 1999. Accordingly, we determine that the petitions are not filed on behalf of the domestic industry within the meaning of sections 702(b)(1) and 732(b)(1) of the Act.

There are a number of complex issues regarding the 25-percent test which we are not addressing because the 50-percent test has not been met.

Because the petitions did not have the required industry support, all other issues are moot. Notice is hereby given that the petitions are dismissed and the proceedings terminated.

International Trade Commission Notification

We have notified the ITC of our determination, as required by sections 702(d) and 732(d) of the Act.

This notice is published pursuant to section 777(i) of the Act.

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21197 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Japan.

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. This review covers two manufacturers of the subject merchandise. The period of review ("POR") is August 1, 1997 through July 31, 1998.

We have preliminarily determined that certain sales subject to this review have been made below normal value ("NV"). If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price ("EP") and the NV.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Brandon Farlander, or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0413, 482–0182, or 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

Background

On July 19, 1993, the Department published in the **Federal Register** (58 FR 37154) the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. On August 31, 1998, Nippon Steel Corporation ("*NSC*") and Kawasaki Steel Corporation ("*KSC*") requested reviews of their exports to the United States of corrosion-resistant steel. On September 29, 1998, in accordance with section 751 of the Act, we published a notice of initiation of administrative review of this order for the period August 1, 1997 through July 31, 1998 (63 FR 51893).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On February 24, 1999, the Department published a notice of extension of the time limit for the preliminary results of this review to August 1, 1999. *See Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 64 FR 9127 (February 24, 1999). Petitioners submitted comments for consideration for the preliminary results for NSC and KSC on July 22, 1999, and July 20, 1999, respectively. The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of Reviews

This review covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by NSC and sales and cost information provided by KSC, using standard verification procedures, including on-site inspection of the

manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports, which are on file with the Department in the Central Records Unit, Room B-099.

Transactions Reviewed

In accordance with section 751 of the Act, the Department is required to determine the EP (or Constructed Export Price ("CEP")) and NV of each entry of subject merchandise.

NSC

On October 9, 1998, respondent requested that it be relieved from reporting certain information, *e.g.*, price adjustments, for home market sales by certain of NSC's affiliated manufacturers. Respondent argued that it should not be required to report such information on sales by these affiliated manufacturers because these sales were not exported to the United States and would not provide the most similar product matches to the subject merchandise under review. Therefore, respondent reported only matching characteristics for these sales.

In addition, for other home market sales by affiliated parties, NSC stated that it was unable to collect sales data from all affiliated resellers. *See* Questionnaire Response, dated December 8, 1998 at p. B–5. For further discussion of NSC's downstream sales, *see* Normal Value (Section C, "Downstream Sales"), below.

KSC

KSC reported export sales that occurred in only one month and consisted of only prime merchandise. On October 6, 1998, KSC requested that it report sales from only a six-month home market period because KSC's export sales occurred in only one month. On October 20, 1998, we allowed KSC to report sales for a six month period in accordance with section 351.414(e)(2)(ii)–(iii) of the Department's regulations. On November 12, 1998, KSC requested that the Department allow it to report only merchandise similar to U.S. sales. Specifically, KSC requested that it only report sales and cost information for prime merchandise. On November 20, 1998, we granted KSC's requests, subject to verification that its U.S. sale of subject merchandise consisted of only prime merchandise and occurred in only one month.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by respondents covered by the description in the "Scope of the Review" section of this notice, (*supra*), and sold in the home market during the period of review ("POR"), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's September 19, 1998 antidumping questionnaire. In making product comparisons, we matched foreign like products based on the physical characteristics reported by respondents and verified by the Department. Consistent with Department practice, we matched a given U.S. sale to foreign market sales of the next most similar model when all sales of the most comparable model were below cost.

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP to the NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Level of Trade ("LOT")

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

NSC

In the present review, NSC claimed that only one LOT existed and did not request a LOT adjustment. To evaluate LOTs, we examined information regarding the distribution systems in both the U.S. and home market, including the selling functions, classes of customer, and selling expenses.

NSC reported one LOT in the home market based on two classes of customers: trading companies and end-users. We examined the reported selling functions and found that NSC provides the same selling functions to its home market customers regardless of channel of distribution. We preliminarily conclude that the selling functions between the reported channels of distribution are sufficiently similar to consider them as one LOT in the comparison market.

NSC stated that it sells to one LOT in the United States: trading companies. We compared the selling functions performed at the home market LOT and the LOT in the United States and found them substantially similar. Of the thirteen selling functions reported for home market sales, twelve of the selling functions were identical to U.S. sales. For a further discussion of the Department's LOT analysis, *see Analysis Memorandum: Preliminary Results of the Antidumping Review of Corrosion-Resistant Carbon Steel Flat Products for NSC ("Analysis Memo: Preliminary Results for NSC")*, (August 2, 1999). Therefore, the Department preliminarily finds that no LOT adjustment is warranted for NSC.

KSC

To evaluate LOTs, we examined information regarding the distribution systems in both the U.S. and home market, including the selling activities, classes of customers, and selling expenses. In the present review, KSC reported two LOTs in the home market and one LOT in the U.S. market. KSC stated that the LOTs in the home market have consistent price differences. Thus, KSC requested an LOT adjustment if sales at different LOTs are compared. In the U.S. market, KSC reported one channel of distribution in the one LOT, *i.e.*, sales through an unaffiliated trading company.

In the home market, KSC reported two channels of distribution in the first LOT:

(1) sales to unaffiliated trading companies; and (2) sales directly to end-users (unaffiliated and affiliated). In both channels of distribution, sales were made by either KSC or its affiliated producer, Kawatetsu Galvanizing Co., Ltd. ("Kawahan"). KSC reported one channel of distribution in the second LOT: sales through KSC's affiliated reseller, Kawasho Corporation ("Kawasho") to distributors and end-users. These sales were made by both KSC and Kawahan.

For the preliminary results, we disagree with KSC's classification for the above channels of distribution, and have established the following two LOTs in the home market: (1) affiliated and unaffiliated trading companies; and (2) end-users. KSC and Kawahan sold subject merchandise to two types of customers: (1) trading companies (affiliated or unaffiliated), and (2) end-users. These sales represent two different points in the chain of distribution between the producers and the final end-user. That is, in the one instance (sales to trading companies), the subject merchandise passes through the intermediary parties, while in the other case, sales are made without any intervening parties. As a result, these sales to different points in the distribution chain appear to represent different levels of trade in the home market.

The Department then examined whether any differences existed with respect to the selling activities KSC performed in making sales to these two types of customers. Regarding the selling activities with respect to the sales to end-users, KSC and Kawahan conducted the following twelve selling activities: market intelligence, end-user information, end-user contact lead role, marketing services, credit checks, end-user price negotiations, daily issues end-user contact, warehousing, processing, arranging for freight, payment collection, and evaluating warranty claims. KSC and Kawahan's level of involvement in these twelve selling activities was high.

Regarding sales to trading companies, KSC and Kawahan conducted the following nine selling activities to its affiliated trading company: market intelligence, end-user information, end-user contact lead role, marketing services, end-user price negotiations, daily issues end-user contact, warehousing, processing, and evaluating warranty claims. KSC and Kawahan's level of involvement in these nine selling activities was at a low level except for evaluating warranty claims, which was at a high level. KSC and Kawahan conducted the following eleven selling activities to its unaffiliated trading companies: market intelligence, end-user information, end-user contact lead role, marketing services, credit checks, end-user price negotiations, daily issues end-user contact, warehousing, processing, arranging for freight, and evaluating warranty claims. However, KSC and Kawahan's level of involvement in these eleven selling activities was at a low level, except for warehousing, processing, arranging for freight, and evaluating warranty claims, which were at a high level. Based on this information, we find that KSC and Kawahan's selling activities to its trading companies, whether affiliated or unaffiliated, were at the same LOT.

We determined that differences existed with respect to selling activities KSC and Kawahan performed in making sales to these two types of customers. For sales to end-users, KSC and Kawahan's level of involvement for all twelve selling activities was high, whereas, for sales to trading companies (either affiliated or unaffiliated), KSC and Kawahan's level of involvement was in only nine selling activities for the affiliated trading company and eleven selling activities for the unaffiliated trading companies, as noted above. In addition, of these nine selling activities that KSC and Kawahan was involved in for its affiliated trading company, KSC and Kawahan's level of involvement was low for eight selling activities. Finally, of the eleven selling activities that KSC and Kawahan was involved in for its unaffiliated trading companies, KSC and Kawahan's level of involvement was low for seven selling activities.

Based on the different points in the chain of distribution and the differences in selling functions between the trading companies and the end-users, the Department preliminarily finds that two levels of trade exist for KSC's sales in the home market. Furthermore, the U.S. sales were at the same LOT as KSC's home market sales to trading companies.

The Department then checked to determine whether a pattern of consistent price differences existed between the two home market levels of trade. The Department found that no pattern of consistent price differences existed between the home market LOTs by running a pattern of price difference SAS program. Therefore, we did not adjust NV to account for any differences in LOT. For a further discussion of the Department's LOT analysis, *see Analysis Memorandum: Preliminary Results of the Antidumping Review of Corrosion-Resistant Carbon Steel Flat Products for KSC ("Analysis Memo: Preliminary Results for KSC")* (August 2, 1999).

Date of Sale

It is the Department's current practice normally to use the invoice date as the date of sale; we may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i) (62 FR at 27411).

NSC

For its home market and U.S. sales, NSC reported the date of shipment. NSC stated that the invoice/shipment date best reflects the date on which the material terms of sale are established, and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. To ascertain whether NSC accurately reported the date of sale, the Department requested information concerning the nature and frequency of price and quantity changes occurring between the date of order confirmation and date of invoice. *See* Supplemental Questionnaire for Section A (November 13, 1998).

In its December 11, 1998, December 29, 1998 and February 18, 1999, responses, NSC indicated that there were numerous instances in which the essential terms of sale changed subsequent to the confirmation of the original orders in the U.S. and home markets. NSC reported the percentage of total quantity shipped that had changes in the material terms of sale subsequent to the confirmation of original orders in the U.S. and home markets. *See* December 11, 1998 Supplemental Response at p. 1; Verification Exhibit 1, Revised Exhibit SS–A5 of the February 19, 1999 Supplemental Response; and *Analysis Memo: Preliminary Results for NSC* (August 2, 1999).

At verification, we examined NSC's selling practices and found that it records sales in its financial records by date of invoice/shipment. We reviewed several sales observations for which the price and quantity changed subsequent to the original order. We reviewed and confirmed the accuracy of NSC's reported percentage of the number of sales that had material changes in terms of sale subsequent to the order confirmation. We are satisfied that the date of invoice/shipment best reflects the date on which material terms of sale were established for NSC's U.S. and home market sales. Therefore, the Department is preliminarily using the dates of sales reported by NSC.

KSC

For its home market and U.S. sales, KSC reported the date of invoice/shipment as the date of sale. KSC stated that the invoice/shipment date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. To ascertain whether KSC accurately reported the date of sale, the Department requested information concerning the nature and frequency of price and quantity changes occurring between the date of order confirmation and date of invoice. *See* Supplemental Questionnaire for Section A dated November 13, 1998.

In its December 4, 1998 and March 22, 1999 supplemental questionnaire responses, KSC indicated that there were numerous instances in which material terms of sales, such as price and quantity, changed subsequent to the confirmation of the original orders in the U.S. and home markets. KSC reported the percentages of orders which had a change in the material terms of sale after the order confirmation date (*see* KSC's March 22, 1999 Supplemental Questionnaire Response at p. 6–7) and the percentages of home market sales of subject merchandise that were revised after shipment (*Id.* at pp. 9–10; *Sales Verification Exhibit ("SVE") 37).* As this involves proprietary information, *see Analysis Memo: Preliminary Results for KSC* (August 2, 1999).

At verification, we examined KSC's selling practices and found that KSC records sales in its financial records by date of invoice/shipment. We reviewed several sales observations for which the price and quantity changed subsequent to the original order. We reviewed and confirmed the accuracy of KSC's reported percentage of the number of sales that had material changes in terms subsequent to the order confirmation. We are satisfied that the date of invoice/shipment best reflects the date on which material terms of sales were established for KSC's U.S. and home market sales. Therefore, the Department is preliminarily using the dates of sales reported by KSC.

United States Price

For calculation of the price to the United States, we used EP because the subject merchandise was sold prior to importation, directly or indirectly to the first unaffiliated purchaser in the United States and CEP was not otherwise warranted.

NSC

The Department calculated EP for NSC based on packed, prepaid or delivered prices to customers in the United States. We made adjustments to the starting price, net of billing adjustments, for movement expenses (foreign and U.S. movement, brokerage and handling, and U.S. Customs duties), in accordance with section 772(c)(2) of the Act.

KSC

The Department calculated EP for KSC based on packed, prepaid or delivered prices to customers in the United States. We made adjustments to the starting price, net of billing adjustments, for movement expenses (foreign and U.S. movement, brokerage and handling, and U.S. Customs duties), in accordance with section 772(c)(2) of the Act.

Normal Value

After testing home market viability and whether home market sales were made at prices that were below the cost of production, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparison" sections of this notice. In addition, in accordance with section 773(a)(1)(B)(i) of the Act, where possible, we based NV on sales at the same level of trade ("LOT") as the U.S. price. *See* the Level of Trade section above.

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for both respondents. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices for each company, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers net of all applicable discounts, rebates, billing adjustments, movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length and used those sales in determining NV. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length prices and, therefore, excluded them from our LTFV analysis. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar product.

C. Downstream Sales

Pursuant to section 351.403 of the Department's regulations, the Department does not normally require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales of the foreign like product. The questions concerning the reporting of downstream sales are complicated, and the resolution of such questions depends on a number of considerations, including the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length. *Id.* In addition, the Department normally will not require the respondent to report the affiliate's downstream sales unless the sales to the affiliate fail the arm's length test. *Id.* The Department believes that imposing the burden of reporting small numbers of downstream sales often is not warranted, and that the accuracy of determinations generally is not compromised by the absence of such sales. *Id.*

As discussed below, after examining the data placed on the record, the Department has preliminarily determined that for both NSC and Kawasaki, there are sufficient matches

of sales in the home market, and that the downstream sales in question account for less than five percent of each firm's total home market sales of subject merchandise. Thus, for purposes of these preliminary results, the Department has allowed this limited reporting for downstream sales since we found adequate home market matches to U.S. sales.

NSC

In its response to the questionnaire, NSC stated that it was unable to collect sales data from all affiliated resellers. *See* Questionnaire Response, dated December 8, 1998 at p. B–5. (As this involves proprietary information, *see Analysis Memo: Preliminary Results for NSC*, August 2, 1999.) Thus, NSC only reported sales by one affiliated reseller. *Id.* The Department requested that NSC further explain its selection methodology for reporting sales by affiliated resellers. *See* Second Supplemental Questionnaire dated November 13, 1998 at p. 1. NSC elaborated concerning its inability to report sales, its methodology in reporting certain transactions and the impact of reporting resales on the dumping margin. *See* Second Supplemental Questionnaire Response dated December 11, 1998 at pp. 4–5. Based on these responses, for the preliminary results, we have used the data as provided by NSC for the purposes of establishing NV.

KSC

KSC stated that it was not able to report all affiliated downstream sales information, because neither KSC nor its affiliates maintain the necessary information. *See* KSC's March 22, 1999 Supplemental Response, page 21. As reported by KSC, KSC/Kawahan sells to Kawasho Corporation ("Kawasho"), who then sells the product to affiliated processors/distributors. At verification, we examined documentation for these transactions. However, as reported by KSC, when the affiliated processor/distributor sells the merchandise back to Kawasho (after further processing the merchandise), most of the affiliated processors/distributors do not maintain information to link these sales to the prior purchases from Kawasho. Thus, KSC provided limited downstream sales made by its affiliated reseller, Kawasho (specifically, KSC reported downstream sales for only one of Kawasho's affiliated processors/distributors); and reported sales made by Kawahan (itself a producer of subject merchandise affiliated with KSC) to its affiliates and non-affiliates, but did not report Kawahan's affiliates' sales to its downstream customers. KSC was unable to report Kawahan's affiliates' sales to its downstream customers because Kawahan cannot recover any product characteristic data to link its affiliates' sales to Kawahan's sale to its affiliates. In addition, one of Kawahan's affiliated customers refused to provide its downstream sales data, despite Kawahan's request. At verification, we examined KSC's ability to report the sales from affiliates of Kawahan and Kawasho. *See* Sales Verification Report for additional information. We also reviewed, at verification, Kawasaki's claim that Kawasho's total sales of KSC- and Kawahan-produced subject merchandise to affiliated resellers are less than five percent of total home market sales, as stated in KSC's October 28, 1998, section A response, page A–3. We found no discrepancies. *See SVE 31*, Analysis of Kawasho's Sales to Affiliated Resellers. Because this issue includes proprietary information, *see Analysis Memo: Preliminary Results for KSC* for further discussion. Based on these responses, for the preliminary results, we have used the data as provided by KSC for the purposes of establishing NV.

D. Cost of Production (COP) Analysis

For the class or kind of merchandise under review, the Department disregarded sales below the cost of production ("COP") in the last completed review as of the date of the issuance of the antidumping questionnaire for NSC (*Certain Corrosion-Resistant Carbon Steel Flat Products Final Results of Antidumping Duty Administrative Review*, 64 FR 12951 (Mar 16, 1999) and for Kawasaki (*Certain Corrosion-Resistant Carbon Steel Flat Products from Japan:(see Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Determinations of Sales at Less Than Fair Value)*, 58 FR 37154 (July 9, 1993)). We therefore had reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP. Pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales by respondents in the home market.

1. Calculation of COP

We compared each respondent's sales of the foreign like product in the home market with each respondent's model-specific COP figure for the POR. In accordance with section 773(b)(3) of the Act, we calculated each respondent's COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus SG&A expenses and all costs and expenses incidental to placing the foreign like product in condition packed and ready for shipment. In our COP analysis, we used each respondent's home market sales and COP information provided in its questionnaire responses, with the following exceptions. First, where KSC reported more than one cost for the same CONNUM, we calculated a single weighted-average cost for each CONNUM using the reported production quantities. Second, we revised variable cost of manufacturing because KSC double counted labor costs. Third, we revised KSC's financial expense rate. *See Analysis Memo: Preliminary Results for KSC* for further information.

2. Test of Home Market Prices

After calculating each respondent's COP, we tested whether home market sales of subject merchandise were made at prices below COP and, if so, whether the below-cost sales were made within an extended period of time in substantial quantities and at prices that did not permit recovery of all costs within a reasonable period of time. Because each individual price was compared to the POR average COP, any sales that were below cost were also not at prices which permitted cost recovery within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model during the POR were at prices less than the weighted-average COPs for the POR, we disregarded the below-cost sales because they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

4. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COP included in the calculation of CV as noted above, in the "Calculation of COP" section of the notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

NSC

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated purchasers, as well as affiliated purchasers passing the arm's length test, in accordance with 19 CFR 351.403. Home market prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market.

We calculated the starting price net of discounts, and other sales adjustments, where applicable. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale ("COS") in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit, royalties, discounts, and warranty expenses, where applicable) and adding U.S. direct selling expenses (credit, warranty, royalties, and discounts, where applicable).

KSC

For those models for which there was a sufficient quantity of sales at prices at or above COP, we based NV on home market prices to unaffiliated purchasers, as well as affiliated purchasers passing the arm's length test, in accordance with 19 CFR 351.403. Home market prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market.

We calculated the starting price net of billing adjustments and rebates, where applicable. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale ("COS") in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit, advertising, royalties, technical service, and warranty expenses, where applicable) and adding U.S. direct selling expenses (credit, and advertising expenses, where applicable).

Price-to-CV Comparisons

For price-to-CV comparisons, if necessary, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins for NSC and KSC, for the period August 1, 1997 through July 31, 1998, to be as follows:

Manufacturer/exporter	Time period	Margin (percent)
NSC	08/01/97–07/31/98	2.48
KSC	08/01/97–07/31/98	1.32

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication or the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in those briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we calculated an importer-specific ad valorem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) the cash deposit rate for NSC and KSC will be that established in the final results of review (except that if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, no cash deposit rate will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 40.19 percent, established in the LTFV investigation for corrosion-resistant steel products from Japan (*see Final Determination*, 58 FR 37154 (July 9, 1993)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These results of the administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21200 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–812]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Notice of Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1999.

SUMMARY: On April 24, 1998, the Department of Commerce (the Department) published in the **Federal Register** a notice (63 FR 20378) announcing the initiation of an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany, covering the period January 1, 1997 through December 31, 1997. Because the sole respondent company did not export any subject merchandise to the United States during the period of administrative review, the Department is now terminating this administrative review.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4136.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). All citations to the Department's regulations reference 19 CFR Part 351(April 1998), unless otherwise indicated.

Background

On March 22, 1993, the Department published in the **Federal Register** (58 FR 15325) the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany. On March 11, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" (63 FR 11868) of this countervailing duty order. We received a timely request for review from Saarstahl AG (Saarstahl), the sole respondent company to this proceeding. On April 24, 1998, we initiated the review, covering the period January 1, 1997 through December 31, 1997 (63 FR 20378). In accordance with 19 CFR 351.213(b), this review covered only those producers or exporters for which a review was specifically requested. Accordingly, this review covered Saarstahl.

On November 19, 1998, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. *See Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany: Extension of the Time Limit for Preliminary Results of Countervailing Duty Administrative Review* (63 FR 64235). On April 7, 1999, we published our preliminary results of administrative review. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany: Preliminary Results of Countervailing Duty Administrative Review* (64 FR 16915). Subsequently, based on a request by Inland Steel Bar Company and USS/KOBE Steel Co. (petitioners), we conducted verification of the questionnaire responses submitted.

Termination of Review

At verification, we discovered that Saarstahl misreported that it had exported subject merchandise to the United States during 1997. We verified that the company did not have any exports of subject merchandise to the United States during the period of review. Therefore, pursuant to section 351.213(d)(3) of the Department's regulations, the Department is terminating this administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with section 751(a)(1) of the Act.

Dated: August 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21199 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 12, 1999, the Department of Commerce published in the **Federal Register** its preliminary results of the second administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1997 through December 31, 1997. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, see the Final Results of Review section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the Final Results of Review section of this notice.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Sally Hastings or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1780, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815, 482–3464 or 482–0176, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 (1998).

Background

On July 24, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy.

In accordance with 19 CFR 351.213(b), this review of the order covers the producers or exporters of the subject merchandise for which a review was specifically requested. They are:

Audisio Industrie Alimentari S.p.A. ("Audisio"); the affiliated companies Delverde SrL, Industrie Alimentari di Capitanata SrL, Sangralimenti SrL, and Pietro Rotunno SrL ("Delverde/Tamma"); Pastificio Fabianelli S.p.A. ("Fabianelli"); and Pastificio Riscossa F.lli Mastromauro SrL ("Riscossa"). The petitioners in this review are Borden, Inc., Hershey Foods Corp. and Gooch Foods, Inc. This review covers 25 programs.

Since the publication of the preliminary results of the second administrative review of the countervailing duty order on certain pasta from Italy on April 12, 1999 (*See Certain Pasta from Italy: Preliminary Results of Countervailing Duty Administrative Review* (64 FR 17618) (*Preliminary Results*), the following events have occurred. On May 4, 1999, we issued supplementary questionnaires to the Government of Italy ("GOI"), the European Union ("EU"), and the Government of the Piedmont Region. We received responses to these questionnaires on May 20, 1999. From May 24 through May 28, 1999, we verified the questionnaire responses of Audisio and Fabianelli. On May 12, 1999, Riscossa submitted its case brief. On June 22, 1999, petitioners and respondents Delverde/Tamma submitted case briefs. Respondents Audisio, Delverde/Tamma, and Fabianelli and petitioners filed rebuttal briefs on May 29, 1999. The Department did not conduct a hearing in this review because none was requested.

Scope of Review

The merchandise under review consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricoltura Biologica ("AMAB"), by Bioagricoop Scrl, or by QC&I International Services.

The merchandise under review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999.

Period of Review

The period of review (POR) for which we are measuring subsidies is from January 1, 1997 through December 31, 1997.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: The companies under review did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under review were given. Therefore, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate for years prior to 1995. For the years 1995 through 1997, we used the Italian Bankers Association ("ABI") interest rate increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges. For a further discussion of the interest rates used in these final results, see Memorandum to File from Team, "Calculation Memorandum for Final Results—Interest Rates," dated July 31, 1999.

Allocation Period: In *British Steel plc.* v. *United States*, 879 F.Supp. 1254, 1289 (CIT 1995) ("British Steel I"), the U.S. Court of International Trade (the Court) ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix*, appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) ("*GIA*"). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies is a company-specific average useful life ("AUL") of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F.Supp 426, 439 (CIT 1996) ("*British Steel II*"). Accordingly, the Department has applied this method to those non-recurring subsidies that were not countervailed in the original investigation.

For non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in the investigation, it is neither reasonable nor practicable to reallocate those subsidies over a different period of time. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each non-recurring subsidy countervailed in the original investigation on the basis of the allocation period established in the original investigation. This conforms with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997).

For non-recurring subsidies not countervailed in the original investigation, each company under review submitted an AUL calculation

based on depreciation and asset values of productive assets reported in its financial statements. Each company's AUL was derived by dividing the sum of average gross book value of depreciable fixed assets over the past ten years by the average depreciation charges over this period. We found this calculation to be reasonable and consistent with our company-specific AUL objective. We have used these calculated AULs for the allocation period for non-recurring subsidies not countervailed in the original investigation.

Changes in Ownership

One of the companies under review, Delverde, purchased an existing pasta factory from an unrelated party. The previous owner of the purchased factory had received non-recurring countervailable subsidies prior to the transfer of ownership, which took place in 1991.

We have calculated the amount of the prior subsidies that passed through to Delverde with the acquisition of the factory, following the spin-off methodology described in the Restructuring section of the *GIA*, 58 FR at 37265. (For further discussion, see Comment 4 below.)

Affiliated Parties

In the present review, we have examined several affiliated companies (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, such companies that produce the subject merchandise or that have engaged in certain financial transactions with the company subject to review are required to respond.

In the *Preliminary Results*, and consistent with our determination in *Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy* 61 FR 30288, 30290 (June 14, 1996) *(Pasta from Italy)* we have treated Delverde SrL, Tamma Industrie Alimentari, SrL, Sangralimenti SrL, and Pietro Rotunno, SrL as a single company with a combined rate. We did not receive any comments on this treatment from the interested parties, and our review of the record has not led us to change this determination.

Analysis of Programs

I. Programs Previously Determined To Confer Subsidies

A. Industrial Development Grants

1. Law 64/86 Benfits

Delverde/Tamma and Riscossa benefitted from industrial development grants under Law 64/86 during the POR. In the *Preliminary Results* and in *Pasta from Italy*, we found that this program conferred regionally specific, countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by interested parties, summarized below in Comment 5, have not led us to change our findings for Delverde/Tamma and Riscossa. Accordingly, the net subsidies for this program have not changed from the *Preliminary Results* and are as follows: Delverde/Tamma 2.18 percent *ad valorem* and Riscossa 0.74 percent *ad valorem*.

2. Law 488/92 Benefits

Delverde/Tamma also benefitted from industrial development grants under Law 488/92 during the POR. In the *Preliminary Results*, we found that this program conferred regionally specific, countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings for Delverde/Tamma. Accordingly, the net subsidy for this program has not changed from the *Preliminary Results* and is as follows: Delverde/Tamma 0.23 percent *ad valorem*.

B. Industrial Development Loans Under Law 64/86

Delverde/Tamma received industrial development loans with interest contributions from the GOI. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations from the *Preliminary Results*. Accordingly, the net subsidy for this program remains unchanged and is as follows: Delverde/Tamma—0.65 percent *ad valorem*.

C. Export Marketing Grants Under Law 304/90

Delverde/Tamma received a grant under this program for a market development project in the United States. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations for Delverde/Tamma. Accordingly, the net subsidy for this program remain unchanged from the *Preliminary Results* and is as follows: Delverde/Tamma—0.22 percent.

D. Social Security Reductions and Exemptions

1. Sgravi Benefits

Delverde/Tamma and Riscossa received countervailable social security reductions and exemptions during the POR. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred regionally-specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma—0.31 percent *ad valorem* and Riscossa—0.37 percent *ad valorem*.

2. Fiscalizzazione Benefits

Delverde/Tamma and Riscossa received the higher levels of fiscalizzazione deductions available to companies located in the Mezzogiorno during the POR. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred regionally-specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma—0.07 percent *ad valorem* and Riscossa—0.21 percent *ad valorem*.

3. Law 407/90 Benefits

Delverde/Tamma received the higher level of Law 407 deductions available to companies located in the Mezzogiorno during the POR. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred regionally specific countervailable subsidies on the

subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations. Accordingly, the net subsidies for this program remains unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma—0.00 percent *ad valorem*.

4. Law 863 Benefits

Delverde/Tamma received the higher level of Law 863 deductions available to companies located in the Mezzogiorno during the POR. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred regionally specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the *Preliminary Results* and is as follows: Delverde/Tamma 0.17 percent *ad valorem*.

E. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77

Fabianelli obtained export credit insurance under this program for its exports to the United States and, therefore, was exempted from the insurance tax. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the *Preliminary Results* and is as follows: Fabianelli—0.03 percent *ad valorem*.

F. European Social Fund

The European Social Fund ("ESF"), one of the Structural Funds operated by the EU, was established to improve workers' opportunities through training and to raise workers' standards of living throughout the European Community by increasing their employability. There are six different objectives identified by the Structural Funds: Objective 1 covers projects located in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to the employment of persons under 25, Objective 4 funds training for employees in companies undergoing restructuring, Objective 5 pertains to agricultural areas, and Objective 6 pertains to regions with very low population (i.e., the far north).

During the POI, Audisio received an ESF training grant under Objective 4 for the purpose of training its workers to increase productivity.

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. See *Pasta From Italy* 61 FR at 30294. Since companies normally incur the costs of training to enhance the job-related skills of their own employees, we determine that this ESF grant relieves Audisio of obligations it would have otherwise incurred. Consequently, the ESF grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to the recipient in the amount of the grant.

Consistent with prior cases, we have examined the specificity of the ESF funding under Objective 4 separately from any funding under other objectives. See *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Italy* 63 FR 40474, 40487 (July 29, 1998) *(Wire Rod from Italy)*.

In this case, the Objective 4 grant received by Audisio emanated from a regional operational program, which had been set up pursuant to the Single Programming Document for Italy, negotiated by the EU, the GOI and Italian regional authorities. The funding for this regional operational program came from the EU, the GOI and the regional government of Piedmont. For the reasons set forth in *Wire Rod from Italy*, we have examined each level separately to determine specificity.

In the case of Objective 4 funding, the Department has determined in past cases that the EU portion of the funding is *de jure* specific because its availability is limited on a regional basis within the EU. In this regard, although Objective 4 funding is available throughout the Member States, the EU negotiates a separate programming document to govern the implementation and administration of the program with each Member State. The GOI funding was also determined to be *de jure* specific because eligibility is limited to the center and north of Italy (non-Objective 1 regions). See *Wire Rod from Italy* 63 FR at 40487. The specificity of the regional funding, meanwhile, has been a *de facto* issue.

Audisio argues that all of the Objective 4 agreements negotiated between the EU and Member States should be considered together. If this were done, according to Audisio, the Department by its own admission would arguably be unable to determine that the program is *de jure* specific at the EU level. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy* 64 FR 15508, 15517 (March 31, 1999) *(Plate from Italy)*.

While we agree with Audisio that it may be appropriate for the Department to revisit its decision in *Wire Rod from Italy* on this issue, this is not the case to do it in. Given the lack of information on the use of Objective 4 funds by the EU, the GOI or the Piedmont regional government, we must base the specificity determination on facts available. In addition, we determine that it is appropriate to use adverse facts available because, in our view, information on the distribution of benefits by industry and by region could have been provided given a reasonable effort by the GOI and the Piedmont regional government to do so. *See* 19 U.S.C. 1677e(b). The EU and the GOI stated that they were unable to provide the Department with the industry and region distribution information for each Objective 4 grant in Italy despite requests in our original questionnaire and a supplementary questionnaire. In addition, while the GOI provided a list of grantees that received funds under the multiregional operating programs in non-Objective 1 regions, it did not identify the industry and region of such grantees. Although this information may not have been on file with the GOI, it was, in our view, information that was readily accessible to the GOI and could have been provided to us given a reasonable effort on the part of the GOI. Furthermore, the regional government similarly refused to cooperate to the best of its ability in this investigation despite Department requests. In its supplementary questionnaire response, the Piedmont regional government simply indicated that certain information was on file at its offices and that we could review this information during verification. The regional government made no effort to provide the information as requested.

Therefore, as adverse facts available, we continue to find that the aid received by Audisio is specific. Accordingly, we determine that the ESF grants received by Audisio are countervailable within the meaning of section 771(5) of the Act.

The Department normally considers the benefits from worker training programs to be recurring. See *GIA* 58 FR at 37255. However, consistent with the Department's determination in *Wire Rod from Italy* 63 FR at 40488, that these grants relate to specific, individual projects, we have treated these grants as non-recurring grants because each required separate government approval. Because the amount of funding for

Audisio's project was less than 0.5 percent of Audisio's sales in the year of receipt, which was the POI, we have expensed the grant received in the year of receipt. To calculate the benefit from Audisio's ESF grant, we divided the grant amount by total sales in the POR because the grant benefitted sales of all of the company's products. On this basis, we calculated a benefit of 0.04 percent *ad valorem*.

G. Export Restitution Payments

Delverde/Tamma, Fabianelli, Audisio and Riscossa received export restitution payments during the POR on shipments of subject merchandise to the United States. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma 0.22 percent *ad valorem*, Audisio—1.03 percent *ad valorem*, Riscossa—0.81 percent *ad valorem* and Fabianelli—0.42 percent *ad valorem*.

II. Programs Preliminarily Determined To Be Not Used

In the *Preliminary Results*, we determined that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs during the POR:

A. Local Income Tax ("ILOR") Exemptions
B. VAT Reductions
C. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy
D. Export Credits Under Law 227/77
E. Capital Grants Under Law 675/77
F. Retraining Grants Under Law 675/77
G. Interest Contributions on Bank Loans Under Law 675/77
H. Interest Grants Financed by IRI Bonds
I. Preferential Financing for Export Promotion Under Law 394/81
J. Corporate Income Tax ("IRPEG") Exemptions
K. Urban Redevelopment Under Law 181
L. Debt Consolidation Law 341/95
M. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market ("PRISMA")
N. European Agricultural Guidance and Guarantee Fund ("EAGGF")
O. European Regional Development Fund ("ERDF")

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the *Preliminary Results*.

Analysis of Comments

Comment 1

Petitioners claim that ESF aid provided to Audisio is de jure specific within the meaning of section 771(5A)(D)(iv) because it is limited to enterprises in certain regions. In *Wire Rod from Italy* at 40474 the Department determined that ESF aid was *de jure* specific because the European Union ("EU") negotiates a separate program document with each Member State and because GOI funding of Objective 4 projects is available only in central and northern Italy.

Further, petitioners claim that Objective 4 aid is *de facto* specific because the GOI and the EU have failed to provide information on the distribution of Objective 4 benefits by industry and by region.

Audisio claims that the Department indicated in *Plate from Italy* at 15517 that it is appropriate to consider all the Member States of the European Union together and that, therefore, the Department is "unable to determine that the program is *de jure* specific." Additionally, Audisio, the EU and the GOI have provided sufficient evidence for the Department to determine that the ESF funding received by Audisio during this review was not *de facto* specific.

DOC Position

We agree with Audisio that it may be appropriate for the Department to revisit its previous decision in *Wire Rod from Italy* regarding the *de jure* specificity of assistance distributed under the ESF Objective 4 Single Programming Document in Italy, as explained in *Plate from Italy*. However the EU, the GOI and the Piedmont Regional Government failed to provide a breakdown of the number of companies by industry and by region, which received ESF Objective 4 benefits in 1996 and each of the previous three years. In addition, they failed to provide information on the amount of benefits received by industry and by region in 1996 and each of the previous three years. The three governments stated that this information was not maintained by the administering agencies because region of the country and type of industry were not taken into consideration in awarding ESF Objective 4 grants. As explained above, however, in our view the information was readily accessible and could have been provided to the Department given a reasonable effort on the part of the administering agencies. For these reasons, we have found that the three governments did not act to the best of their ability to comply with our information requests and, on the basis of adverse facts available, have determined that the ESF Objective 4 aid is *de facto* specific.

Comment 2

Petitioners claim that the "separately incorporated" test used by the Department in *Pasta from Italy* to determine whether subsidies to the mills should be attributed to the production of pasta elevates form over substance. In *Pasta from Italy*, the Department attributed subsidies received by semolina mills not only to semolina but also to pasta in those instances where the mills and the pasta factories were owned and operated by a single corporation. Where the mills and pasta factories were owned by affiliated but separately incorporated companies, however, the Department determined that it would not consider subsidies to mills absent the filing of an upstream subsidy allegation.

Petitioners further claim that the recently published substantive countervailing duty regulations reflect a change in the Department's policy in this regard. Petitioners quote from the preamble to section 351.525(b) of the new regulations which states that "where the input and downstream production takes place in separately incorporated companies with cross-ownership * * * and the production of the input product is primarily dedicated to the production of the downstream product, paragraph (b)(6)(iv) requires the Department to attribute the subsidies received by the input producer to the combined sales of the input and downstream products (excluding the sales between the two corporations)." (*See Countervailing Duties: Final Rule*, 63 FR 65,401.)

Petitioners claim that Tamma/Delverde meet the cross-ownership provision and that subsidies to Tamma's mill should be attributed to both Tamma and Delverde.

Delverde claims that the Department has consistently included Law 64 grants benefitting Tamma's semolina mill in its calculation of the Delverde/Tamma subsidy rate. The Department has "collapsed" the two companies since the original investigation. *See Pasta from Italy*. Consequently, the Department has in each of the previous proceedings attributed to Delverde subsidies that benefitted Tamma's semolina mill. The Department has done so on the basis of the fact that

Tamma's semolina mill is not separately incorporated. It is simply an operating unit of the Tamma corporation.

DOC Position

We agree with Delverde. In *Pasta from Italy*, we did not countervail subsidies to affiliated mills that were separately incorporated, indicating that we would not consider such subsidies absent an upstream allegation. However, in Delverde's case, the Department collapsed Delverde and Tamma treating the two as one company because of stock ownership between the companies and common board members. Moreover, because Tamma's mill was not separately incorporated from Tamma's pasta production operation, subsidies to Tamma's mill were included as subsidies to Tamma's pasta. As a result, subsidies to Tamma's mill were viewed as benefitting both Tamma and Delverde and were allocated over the combined sales of both companies excluding intercompany sales. In both the preliminary and final results of this review, we have done the same.

Comment 3

Petitioners claim that there is no evidence on the record of this review regarding the countervailability or non-countervailability of Sabatini benefits to companies in northern Italy. In *Pasta from Italy*, the Department found that Sabatini benefits to companies in the North were widely distributed by industry and by region and, therefore, were not specific. Petitioners argue, however, that the finding in the original investigation that Sabatini benefits in northern Italy were not specific is insufficient to support such a finding in later periods. In addition, petitioners claim that it is unfair for the Department to require them to provide information indicating that Sabatini benefits in the North may no longer be provided on a non-specific basis before the Department will again examine the question of specificity. Petitioners maintain that the GOI is in the best position to provide the relevant information and because it has not done so, the Department should countervail Sabatini benefits received by companies in the North.

Fabianelli claims that it does not qualify for the special concessionary rate available to companies in southern Italy because its only production facilities are located in Castiglion Fiorentino, which is not in the southern Italy. Further, Fabianelli claims that the Department did not refer to the Sabatini Law in its *Preliminary Results* because benefits to companies in the North are no longer an issue.

DOC Position

In the original investigation, Sabatini Law benefits were found to be widely distributed and to benefit many companies representing a broad cross section of industries throughout Italy. In the original investigation, we found that during the years 1988 through 1993, assistance under the program was distributed over 19 sectors and that benefits to the food producing industry amounted to only 4.9 percent of all benefits granted, which did not represent a disproportionately large share of benefits. Given this compelling evidence of non-specificity of benefits to pasta production, the Department sees no reason to re-open the question of specificity absent information that changes have occurred. The Department has consistently followed this practice regarding programs previously found not countervailable. *See, e.g., Preliminary Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Belgium*, 57 FR 57750, 57758 (December 7, 1992) and *Preliminary Affirmative Countervailing Duty Determination: Extruded Rubber Thread from Malaysia*, 56 FR 67276, 67280 (December 30, 1991).

Comment 4

Delverde maintains that the change of ownership provision contained in the Uruguay Round Agreements Act requires the Department to analyze the facts in each change of ownership situation in order to determine whether and to what extent subsidies received by the original owner are passed through to the new owner. The change of ownership provision recognizes that an arm's length sale of an enterprise or an asset does not require a determination by the Department that a past countervailable subsidy received by the enterprise no longer continues to be countervailable. However, the change in ownership provision plainly does not preclude such a conclusion. For this reason, the Department must carefully analyze the facts of each change of ownership situation.

According to Delverde, the Department's "privatization/restructuring" methodology as described in the GIA does not provide for an analysis of the facts of each change of ownership separately and on its own merits. Rather, this methodology presumes as a matter of law that subsidies travel from the seller to the buyer in all circumstances. Only the amount of the subsidies that passes through varies as determined by the gamma calculation depending on the facts in each case.

In Delverde's view careful analysis of the facts in this case will show that the preliminary results in this administrative review fail to meet the post-URAA requirement that the Department find both a financial contribution to and a benefit conferred on current production. Delverde purchased MI.BI in an arm's length transaction at a purchase price established by an independent, court-ordered appraiser. Consequently, prior subsidies received by MI.BA did not benefit Delverde; they simply increased the profit realized by MI.BA upon the sale of its pasta factory.

Petitioners claim that the change in ownership provision contained in section 251(a) of the URAA, amending section 771(5) of the Tariff Act of 1930, reiterated and formally codified the Department's practice, affirmed by the CAFC on no less than five occasions, that an arm's length sale of a firm or asset does not automatically extinguish previously bestowed countervailable subsidies. (*See, e.g, Saarstahl AG* v. *United States*, 78 F. 3d 1539, 1544 (Fed. Cir. 1996)).

In addition, according to petitioners, the URAA statutory definitions of "benefit" and "financial contribution" do not require any different agency scrutiny or lead to any different conclusions in examining the countervailability of subsidies following a change of ownership than was true under pre-URAA law. This is clear from the SAA's plain statement that this benefit standard merely reflects the longstanding Commerce standard and does not inject a new requirement into the law. (*See* SAA at 925–928.) Petitioners claim that Delverde is seeking to superimpose on the statute the requirement that there be a beneficial competitive effect on the acquiring company's operations when the change in ownership occurred as a result of the original subsidy. This "effect" requirement, however, has been rejected by the Court in pre-URAA cases and the new statute expressly states that no beneficial "effect" of a subsidy is required. (*See* 19 U.S.C. 1677(5)(C)).

DOC Position

We agree with petitioners. The arguments which Delverde raises in this comment are addressed fully in the remand determination which the Department filed with the CIT on April 2, 1998 in *Delverde, Srl.* v. *United States*, Consol. Ct. No. 96–08–01997. The CIT later sustained that remand determination and upheld the

Department's methodology in *Delverde, Srl.* v. *United States*, 24 F. Supp. 2d 314 (CIT 1998).

Comment 5

Riscossa claims that in calculating the benefit from two Law 64 grants received by the company, the Department incorrectly countervailed the full amount of the benefit received under Law 64 including both the grant amount and the reduction in interest according to the terms of the lease. Riscossa claims that the benefit from the interest rate reduction has expired because the leases in question are no longer outstanding.

Petitioners claim that in both the original investigation and the *Preliminary Results*, the Department correctly treated the Law 64 lump-sum contributions to the leasing companies as grants to Riscossa. In its November 9, 1998 questionnaire response, Riscossa describes the contributions as grants to the leasing companies, which had the effect of lowering Riscossa's lease payments. Riscossa had no repayment obligation as a result of these grants as would be the case for a Law 64 loan. Therefore, the Department should not treat these grants as reduced rate loans.

DOC Position

We agree with petitioners. The GOI made lump-sum payments to leasing companies on Riscossa's behalf. We view these payments as grants. Since 1984, the Department has allocated non-recurring grants such as these over a period corresponding to the average useful life of the recipient firm's or the industry's fixed assets. (*See Subsidies Appendix* appended to *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina* 49 FR 18006, 18018). We do not, as Riscossa suggests, look to how the recipient uses the funds received from the government. Therefore, the fact that Riscossa used its grants to reduce its payments under two lease agreements, which have since expired, is not relevant to our calculations. Therefore, as in the original investigation, the Department has allocated the grants over 12 years.

Comment 6

Petitioners claim the Department should use the ABI rate as a benchmark rate for long-term loans. They claim that in the *Preliminary Results*, the Department used an average interest rate reported by the Bank of Italy based on a survey of 114 Italian banks. In addition, petitioners claim that a spread of 2.275 percent should be added to the ABI rate because this has been Department practice in the last three investigations of Italian products. *See Wire Rod from Italy* 63 FR at 40476–40477; *Plate from Italy* 64 FR at 15510–15511; and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from Italy* 64 FR 30624, 30626–30627 (June 8, 1999).

DOC Position

In the *Preliminary Results*, in the section on *Benchmarks for Long-term Loans and Discount Rates*, we explained that we used the average interest rate on medium-and long-term loans as reported by the Bank of Italy based on a survey of 114 banks for our benchmark interest rate. This explanation was not correct. In our calculations, we actually used the ABI rate plus a spread of 2.275 percent as the benchmark interest rate following the practice in the three earlier cases cited above by petitioners. In these final results, we have also used this benchmark in our subsidy calculations and have correctly described it in the *Subsidies Valuation* section of this notice. We also used this benchmark in the first administrative review of the *Pasta from Italy* order because in *Wire Rod from Italy*, based on information obtained during verification, the Department determined that the ABI rate is the most suitable benchmark for long-term financing to Italian companies.

We note that during verification in this review, we obtained information from a commercial bank confirming the fact that the ABI rate was appropriate for establishing a benchmark interest rate. (*See* June 16, 1999 Memorandum to the File: Meeting with Commercial Bank Officers.) In addition, information from the bank officers regarding the typical spread plus charges which are added to the ABI rate served to confirm the spread which was added in calculating a benchmark in the earlier investigations.

The ABI rate for 1997, as reported in our discussion with officers of the commercial bank, was lower than that reported in the Bank of Italy's February 1998 *Economic Bulletin*. The ABI rate in the *Economic Bulletin*, however, corresponded closely with the 1997 lending rates published for Italy in the International Monetary Fund's June 1999 *International Financial Statistics*. Therefore, we used the ABI rate as published in the *Economic Bulletin* plus a spread as the appropriate benchmark interest rate for this review.

Comment 7

Petitioners claim that in its subsidy calculation, the Department has used a longer, company-specific AUL of 15 years to allocate non-recurring subsidies received well before the current period of review. They claim that the 12-year period used in the original investigation should apply to these earlier subsidies.

DOC Response

We have continued to use 12 years as the allocation period for those non-recurring subsidies countervailed in the original investigation. As we explained in the first *Pasta from Italy* review, it is neither reasonable nor practicable to reallocate these subsidies over a different time period. 63 FR 43905, 43906 (August 17, 1998) For all other non-recurring subsidies, however, whether received during the current POR or prior to the current POR, we have used a company-specific AUL for allocation purposes.

As indicated in the section entitled "Allocation Period," the Department is applying the Court's decision in *British Steel II* and calculating company-specific allocation periods based on the average useful life of each respondent's physical assets. Thus, for subsidies not previously allocated over a particular allocation period, we are using company-specific AULs. (*See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France* 64 FR 30774, 30778 (June 8, 1999).)

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below.

AD VALOREM RATES

Producer/exporter	01/01/97 through 12/31/97
Delverde/Tamma	4.05
Audisio Industrie Alimentari di Capitanata S.p.A	1.03
Pastificio Fabianelli S.p.A	0.49
Pastificio Riscossa F.lli Mastromauro SrL	2.13

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all

shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate in effect at the time of entry of the subject merchandise and cash deposits must continue to be collected at the previously ordered rate. Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. ("Barilla") and Gruppo Agricoltura Sana S.r.L. ("Gruppo") (which were excluded from the order during the investigation), at the most recent rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy* (61 FR 38544, July 24, 1996), or those established in *Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review* (63 FR 43905, August 17, 1998), whichever notice provides the most recently published countervailing duty rates for companies not reviewed in this administrative review. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is completed. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Barilla and Gruppo (which were excluded from the order during the original investigation).

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.301. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21201 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 7, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty orders on certain welded carbon steel pipes and tubes (pipe and tube) and welded carbon steel line pipe (line pipe) from Turkey for the period January 1, 1997 through December 31, 1997 (64 FR 16924). The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Eric Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), these reviews cover only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, the review on pipe and tube covers Yucel Boru ve Profil Endustrisi A.S., and its affiliated companies, Cayirova Boru Sanayi ve Ticaret A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucel Boru Group), and the review on line pipe covers Mannesmann—Sumerbank Boru Endustrisi T.A.S. (Mannesmann). These reviews also cover 21 programs during the period January 1, 1997 through December 31, 1997.

Since the publication of the preliminary results on April 7, 1999 (64 FR 16924), the following events have occurred. We invited interested parties to comment on the preliminary results. On May 7, 1999, case briefs were submitted by the Yucal Boru Group, which exported pipe and tube, and Mannesmann, which exported line pipe, to the United States during the review period (respondents). On May 12, 1999, a rebuttal brief was submitted by Maverick Tube Corporation and Wheatland Tube Company (petitioners).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. Because these administrative reviews were initiated in April 1998, 19 CFR part 355 is applicable.

Scope of the Reviews

Imports covered by these reviews are shipments from Turkey of two classes or kinds of merchandise: (1) Certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–135, A–500, or A–501; and (2) certain welded carbon steel line pipe with an outside diameter of 0.375 inch or more, but not more than 16 inches, and with a wall thickness of not less than .065 inch. These products are produced to various American Petroleum Institute (API) specifications for line pipe, most notably API–L or API–LX. These products are classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10 and 7306.30.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

Analysis of Programs

Based upon the responses to our questionnaires and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

1. Pre-Shipment Export Credit

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Yucel Boru Group	0.84

Manufacturer/exporter of line pipe	Rate (percent)
Mannesmann	0.19

2. Foreign Exchange Loan Assistance

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties. In the preliminary results, we stated that Mannesmann received foreign currency loans that were used for shipments to the United States and Germany. For the denominator, we used the indexed monthly total exports of the subject merchandise to the United States, and the company's total export sales (unindexed) of the subject merchandise to Germany. We subsequently requested the monthly total export sales of the subject merchandise to Germany so that we could index for inflation, as we had indexed sales of subject merchandise to the United States. We have now indexed the monthly total exports of the subject merchandise to the United States and to Germany to account for Turkey's high rate of inflation. *See Preliminary Results*, 64 FR 16924, 16926, where we found that Turkey experienced an inflation rate of 81 percent during the POR. Accordingly, the net subsidies for this program changed from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Yucel Boru Group	0.00

Manufacturer/exporter of line pipe	Rate (percent)
Mannesmann	0.58

3. Freight Program

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Yucel Boru Group	0.00

Manufacturer/exporter of line pipe	Rate (percent)
Mannesmann	3.43

II. Program Found Not To Confer Subsidies Special Importance Sector Under Investment Allowances

In the preliminary results we found this program did not confer subsidies during the POR. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings from the preliminary results.

III. Programs Found To Be Not Used

In the preliminary results we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Resource Utilization Support Fund
B. State Aid for Exports Program
C. Advance Refunds of Tax Savings
D. Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility (Eximbank)
E. Past Performance Related Foreign Currency Export Loans (Eximbank)
F. Export Credit Insurance (Eximbank)
G. Subsidized Turkish Lira Credit Facilities
H. Subsidized Credit for Proportion of Fixed Expenditures
I. Fund Based Credit
J. Investment Allowances (in excess of 30% minimum)
K. Resource Utilization Support Premium
L. Incentive Premium on Domestically Obtained Goods
M. Deduction from Taxable Income for Export Revenues
N. Regional Subsidies
1. Additional Refunds of VAT (VAT + 10%)
2. Postponement of VAT on Imported Goods
3. Land Allocation (GIP)
4. Taxes, Fees (Duties), Charge Exemption (GIP)

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

IV. Program Found To Be Terminated

In the preliminary results we found the following program to be terminated and that no residual benefits were being provided:

Export Incentive Certificate Customs Duty & Other Tax Exemptions

We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Appropriate Benchmark Interest Rates

The Yucel Boru Group argues that the Department's use of monthly-average interest rates is inconsistent with the Department's policies and practices in antidumping cases. They argue that it is the Department's policy, in high inflation economies, to require contemporaneity for measurements that are affected by inflation. In support of their argument, they cite the *Final Determination of Sales at Less than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, (June 14, 1996), in which the Department used daily exchange rates for currency conversion. Therefore, according to the Yucel Boru Group, because currency exchange rates and interest rates reflect the degree of inflation in the economy, they both should be treated the same way under the principle of contemporaneity in antidumping cases, as well as countervailing duty cases, as provided for under 19 CFR 351.415 (Currency Conversion). Thus, they argue that the Department should use, as a benchmark, the weekly short-term interest rates rather than the monthly average short-term interest rates based on a simple average of the weekly figures corresponding for that month.

The Yucel Boru Group also argues that the Department selected the

incorrect short-term weekly rates from *The Economist*. Therefore, they argue that if the Department elects to retain the monthly average methodology, the Department should select the correct short-term weekly rates from *The Economist*.

Department's Position: We disagree with the Yucel Boru Group's contention that the Department should use the weekly short-term interest rate rather than the average monthly rate in calculating the benefit from the pre-shipment export credit program. First, the Group is incorrect in equating antidumping duty practice and the currency conversion regulation (351.415) (only applicable in antidumping duty cases) with countervailing duty practice. In antidumping duty cases because we are comparing costs and prices in different markets, contemporaneous comparisons are necessary to ensure that the comparisons are appropriate and not unduly influenced by exchange rate fluctuations. With regard to prices, our regulation on currency conversion effectuates this purpose. *See* 19 CFR 351.415. In countervailing duty cases we are not comparing prices or costs, rather, in choosing a benchmark interest rate, we are determining whether a benefit exists to the extent that the amount a firm pays on a government-provided loan is less than the amount the firm would pay on a comparable commercial loan obtained during the year in which the government-provided loan was given, in accordance with section 771(5)(E(ii) of the Act. If the government-provided loan is a short-term loan, the Department calculates a single, annual average benchmark interest rate, unless short-term interest rates in the country in question fluctuated significantly during the year in question. Because we determine that Turkey continued to experience a high rate of inflation, based on a Wholesale Price Index rate of approximately 81 percent during the POR, we find that using an average monthly rate as the short-term benchmark interest rate sufficiently accounts for such inflation. It has been the Department's practice in countervailing duty cases to use the average monthly interest rate for purposes of deriving a benchmark interest rate in an inflationary economy. *See e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30367 (June 14, 1996). In prior countervailing duty reviews of subject merchandise, the Department has consistently used, as the benchmark interest rates, the monthly average interest rates. *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews*, 62 FR 16782,16783 (April 8, 1997) and *Final Results*, 62 FR 43984 (August 18, 1997) (*1995 Pipe and Tubes and Line Pipe*), and *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results and Partial Recission of Countervailing Duty Administrative Reviews*, 62 FR 64808, 64809 (December 9, 1997) and *Final Results*, 63 FR 18885 (April 16, 19998) (*1996 Pipes and Tubes and Line Pipe*). Moreover, we note that Mannesmann, the other producer of subject merchandise in the instant reviews, supplied the Department with the monthly average cost of its company-specific borrowing rates during the POR.

We also disagree with the Yucel Boru Group's contention that the Department used the incorrect benchmark interest rate. The Group's contention appears to stem from their argument that interest rate benchmarks should be contemporaneous with when the interest payments are made. As discussed above, in selecting an appropriate benchmark, we are not comparing prices or costs. Instead, we are determining what the interest rate would have been had the company obtained a commercial loan comparable to the government-provided loan. Therefore, the Department bases its benchmark interest rate on the date the government-provided loan is taken out because the interest rate on a comparable commercial loan would have been established at the time the loan is given, and not on the date the interest payment is made, as argued by the Yucel Boru Group. *See 1996 Pipes and Tubes and Line Pipe*, 62 FR 64308, 64809.

Comment 2: Countervailability of Exempted Loan Fees

The Yucel Boru Group argues that the Department's inclusion of loan fees in the benchmark interest rate used to calculate the benefit of the pre-shipment loan program is contrary to both the World Trade Organization (WTO) Agreement and section 771 of the Tariff Act of 1930. Specifically, they argue that while section 771(5)(E)(iii) of the Act and Part V, Article 14(c) of the Agreement on Subsidies and Countervailing Measures (SCM), dealing with loan guarantees, include provisions for adjusting for fees, the statutory provisions addressing loans in section 771(5)(E)(ii) of the Act and part V, Article 14(c) of the SCM contain no such provision with respect to fees incurred on direct loans. Thus, they argue that because the statute and the WTO do not explicitly include a provision for adjusting for fees in the case of loans, the Department should not include fees in benchmark interest rate used to calculate the benefit under the pre-shipment export credit program.

Petitioners counter that the Yucel Boru Group's contention is not tenable. Rather, according to petitioners, the waived fees are export promotion subsidies and are prohibited. Petitioners also counter that the adjustment for loan guarantee fees is necessary to prevent a finding of a subsidy where the net effect of the guarantee transaction provides no interest benefit to the loan recipient. However, the waiver of fees, which would otherwise be applicable to a loan, but for the fact the loan finances export sales, is an export subsidy in its own right. Therefore, to exclude the fee from the benchmark interest rates would ignore the subsidy benefit.

Department's Position: We disagree with the Yucel Boru Group's contention that the Department's inclusion of loan fees in the benchmark interest rate used to calculate the benefit under the pre-shipment export credit program is contrary to law. Although there is no explicit reference to adjusting for fees on direct loans in either Articles 14(b) and 14(c) of the SCM, and sections 771(5)(E)(ii) and 771(5)(E)(iii) of the Act, the Department has interpreted language contained in both provisions as permitting the Department to add exempted fees to benchmark interest rates used to calculate the benefit in appropriate circumstances. Section 771(5)(E)(ii) of the Act defines the benefit in the case of loans as,

> "* * * [the] difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market."

The Department believes that this interpretation is in compliance with the SCM and the Act because the inclusion of loan fees in the benchmark interest rate to calculate the benefit accurately derives the amount that the recipient would pay on a comparable commercial loan.

While section 351.505 of the Department's regulations are not in effect for the instant reviews, the Preamble restates the Department's practice of using the "effective interest rate" rather than the "nominal interest rate" because effective interest rates are intended to take account of the actual cost of the loan, including the amount

of any fees, commissions, compensating balances, government charges or penalties paid in addition to the nominal interest. *See* section 351.505(a)(1); *Preamble to the Regulations,* 63 FR 65362 (November 25, 1998).

As explained in the *Preliminary Results* at 16926, the pre-shipment export credit program allows for the exemption of certain fees that are normally charged on loans, provided that the loans are used in financing exportation and other foreign exchange earning activities. In light of the exemption granted under this program, the only way to determine the amount that the recipient would normally pay on a comparable commercial loan would be to factor in the fees a recipient would incur on this type of transaction. For this reason, consistent with the Department's practice, we compare effective rates rather than nominal rates. *See e.g., Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review,* 60 FR 44843 (August 29, 1995) (*Castings from India*).

Comment 4: Measurement of Countervailable Benefit: Earned Versus Receipt Basis

Mannesmann argues that the Department deviated from its long-standing practice of measuring benefits on an earned basis, *i.e.*, on the date of export where the benefit is earned, either as a fixed percentage of the f.o.b. value or as a fixed amount per ton, on a shipment-by-shipment basis, and the exporter knows the total amount of the benefit at the time of export. Mannesmann cites several cases, which they claim demonstrates that the Department has taken this approach even in cases where the benefit was denominated in local currency, in high inflationary economies, and in cases where there were long delays between the date of exportation and the date of actual receipt of the benefit.

They argue that the Department measured the benefits on an earned basis in Brazilian, as well as Mexican cases in the 1980's, a period in which both countries experienced high inflation, although the benefits could not have been known at the time of export because of the ongoing currency devaluations. Further, Mannesmann argues that because the Department is not applying its long-standing practice in the instant case, it is arbitrarily changing its methodology without an explanation, which is contrary to the principle of administrative law.

According to Mannesmann, the fact that the benefit was fixed for a period of time in U.S. dollars before being converted into local currency means that the value of the benefit was more stable during that period in the Turkish case than it was in the Brazilian and Mexican cases. In the Brazilian and Mexican cases, the value of the benefit was converted into local currency at the time of exportation and began immediately to lose value during the period between the date of export and the date of receipt of the benefit because of the effects of inflation. Furthermore, Mannesmann argues that in the Turkish, Brazilian and Mexican cases, the "real" value of the benefit that would ultimately be received by the exporters was not known at the time of export. Thus, the benefits from the Freight Rebate program should be measured on the same basis as the Brazilian and Mexican cases.

Mannesmann states that in *1995 Pipe and Tube and Line Pipe,* the Department countervailed benefits received under the Export Performance Credit program on the date they were earned, and not when they were received. Mannesmann argues that despite the Department's attempts to distinguish the Freight Rebate program from the Export Performance Credit program, the two programs were virtually identical. Mannesmann also argues that the exporters did not know, at the time of export, the exact exchange rate that would be used to convert the dollar amount to Turkish Lira (TL) in either program; therefore, the exporters did not know the "precise" amount of the benefit in TL on the date of export. On the other hand, they argue that under both programs, the exporters knew the exact U.S. dollar amount of the benefit on the date of export, and the exporters expected to receive the equivalent value in TL at a later date. Therefore, they argue that the price effect and the volume effect of the benefit were exerted at the time of export and not at a later date.

Petitioners counter that the Brazilian cases cited by Mannesmann do not contradict the Department's finding in the instant case. In the Brazilian cases, the respondents knew the exact amount of local currency they would receive as a benefit at the time of exportation. However, in the instant case, the amount of local currency to be received was not known at the time of export. Petitioners also contend that the focus on local currency is critical because this is how the benefit was paid. According to petitioners, in inflationary economies, valuing a benefit at the time it is earned, where conversion from U.S. dollars to local currency will occur at some future date, understates the value of the benefit received. Furthermore, because the conversion to local currency occurred at a future date renders the value of the benefit uncertain at the time it is earned.

Department's Position: The Department has previously addressed the arguments raised by Mannesmann. *See 1996 Pipe and Tube and Line Pipe,* 63 FR at 18887–88. No new information has been presented that would warrant reconsideration of the Department's prior findings. Our normal practice is to countervail benefits when they affect the firm's cash flow, usually when the company receives the benefit. *See e.g., Ferrochrome from South Africa, Final Results of Countervailing Duty Administrative Review,* 56 FR 33254, 33255 (July 19, 1991) (*Ferrochrome from South Africa*). However, the Department has deviated from its long-standing practice to countervail an export subsidy on the date the benefit is received on an "earned basis" where the benefit is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis, and the exact amount of the countervailable subsidy is known at the time of export. *See e.g., Castings from India,* 60 FR at 44844. As stated in *1995 Pipe and Tube and Line Pipe,* and in *1996 Pipe and Tube and Line Pipe,* the exporter could not have known at the time of export the exact amount of the countervailable benefit from the Freight Rebate program because the freight payments were only stated in U.S. dollars per ton, but the benefit was not tied to the U.S. dollar. The Government of Turkey (GRT) did not initially commit to use the exchange rate existing on the date of export. Therefore, because of the high rate of inflation in Turkey, the exporters could not have known the amount of the benefit ultimately to be received at the time of export. *See 1996 Pipe and Tube and Line Pipe,* 63 FR at 18888. In the Brazilian and Mexican cases cited by Mannesmann, the benefits in these high inflationary economies were paid at the time of export, thus exporters knew with certainty the benefit to be received in the local currency at the time of export. *See e.g., Final Affirmative Countervailing Duty Determinations: Certain Stainless Steel Products from Brazil,* 48 FR 21610, 21612 (May 13, 1983) and *Toy Balloons (Including Punchballs) and Playballs from Mexico: Final Results of Administrative Review of Countervailing Duty Order,* 49 FR 45039, 45040 (November 14, 1984).

We also disagree with Mannesmann's arguments that the Freight Rebate program is indistinguishable from the Export Performance Credit program. We previously determined that the

programs are distinguishable. *See 1995 Pipe and Tube and Line Pipe*, 62 FR at 43991, and *1996 Pipe and Tube and Line Pipe*, 63 FR at 18888. Under the Export Performance Credit program, because the value of the benefit was tied to the U.S. dollar, the benefit remained the same in U.S. dollar terms. Therefore, the value of the benefit from the Export Performance Credit program was known at the time of export, and could be calculated on an earned basis.

Comment 5: Policy Considerations for Measurement of Benefits

Mannesmann argues that policy considerations and the Department's Regulations require the Freight Rebate program be countervailed on the date the benefit was earned because the benefits should be countervailed when they will have the greatest potential effect on a company's export volumes or pricing to the United States. Mannesmann states that since the Freight Rebate program was terminated at the end of 1994, there were no longer any incentive for companies to export. Therefore, they argue that because the countervailing duty law is intended to offset export subsidies, it makes little sense for the Department to countervail a benefit once a program has been terminated.

In support of its policy argument, Mannesmann points to section 351.514 of the Department's regulations, which deals with freight charges. Mannesmann states that although this provision relates to domestic freight charges on export shipments, it is instructive in that it specifically recognizes that freight-related benefits should be countervailed on the date that the subsidies were actually used to encourage shipments to the United States. Therefore, they argue that the Department should follow this policy when countervailing benefits from the Freight Rebate program.

Petitioners counter that regardless of whether a countervailable program has been terminated, the Department should not ignore the residual benefits received under the program.

Department's Position: The Department has previously addressed the arguments raised by Mannesmann. *See 1996 Pipe and Tube and Line Pipe*, 63 FR at 18888. No new information has been presented that would warrant reconsideration of the Department's prior findings. We continue to disagree with Mannesmann's argument that it makes little sense for the Department to countervail a benefit once a program has been terminated. As we stated, under section 771(5)(C), we are not required to consider the potential effect of a subsidy. Moreover, under the Act, a benefit that is contingent upon export is an export subsidy and thus countervailable. *See* Section 771(5A)(B). Finally, under the logic of respondents argument, we could never countervail export subsidies unless the benefit could be measured at the time of shipment. This clearly conflicts with the Act and our long-standing practice to countervail benefits at the time the subsidy affects the company's cash flow, which includes residual benefits from a terminated program. *See e.g., Ferrochrome from South Africa*, 56 FR 33254, 33255 (July 19, 1991).

Mannesmann's citation to section 351.514 is not applicable to the instant reviews. However, Mannesmann's argument that this section of the regulations is instructive is flawed. We previously determined that the Freight Rebate program was a freight bonus, *i.e.*, a benefit contingent upon export. Therefore, we continue to follow our normal practice and countervail this benefit at the time the financial contribution affects the cash flow of the company, which is when the company receives the payment of the subsidy to which it is entitled as a result of prior exportations. *See 1996 Pipe and Tube and Line Pipe*, 63 FR at 18889.

Comment 6: Treatment of Foreign Exchange Difference (Kur Farki)

The Yucel Boru Group argues that the Department's statement that "we find that foreign exchange differences are not viewed as sales income generated by a company's main operations," is contrary to Turkish accounting principles, as well as the Turkish government's own Standard Accounting Plan. The Yucel Boru Group also argues that the Department's quote from Price Waterhouse's publication, *Doing Business in Turkey* (1992, as amended July 31, 1995) that "the lack of clearly defined commercial accounting principles and the predominance of tax law mean that Turkish law should be treated with extreme caution, and international accounting standards are preferred" has nothing to do with income classification issues. The Group claims that the same article directly addresses the treatment of exchange gains and losses, and states that "exchange gains and losses are part of normal trading income and expense to be taken into account when realized." Thus, they argue that *kur farki* should be considered as trading revenue for purposes of the denominator of subsidy calculations (total net sales).

The Yucel Boru Group also discusses the Department's treatment of costs, interest expense, and price adjustment in the context of two antidumping cases that involve cost issues, both in a high inflationary economy (Turkey) and a non-high inflationary economy (Germany). The Group argues that in those cases, the Department treated the foreign exchange gain as sales income, and that the Department should do likewise in the instant case.

Petitioners counter that the Yucel Boru Group points to one source cited by the Department. However, the Group does not address the extensive citations the Department provided from other publications regarding the treatment of income obtained from foreign exchange gains and losses. Petitioners also counter that there is overwhelming support in the record that foreign exchange gain or loss is not related to sales activities, and is therefore "other income."

Department's Position: The Yucel Boru Group mistakenly argues that the Department excluded foreign exchange gains and losses from the total sales figure used as the denominator for the calculation of the subsidy. However, we note that we used the total sales denominator reported by the companies. In addition, as stated in the preliminary results, the Department departed from how it had treated such gains and losses in earlier reviews of subject merchandise, and in the instant reviews the Department has indexed both the subsidy benefits (numerator) and sales revenue (denominator), as reported in the questionnaire responses. *See Preliminary Results* at 16925–26. Thus, the Group's argument regarding whether foreign exchange gains or losses constitute sales revenue or other income and should be included in the sales denominator is not germane to the Department's calculation of the net subsides in the instant reviews.

The Group's discussion of the antidumping cases also lacks merit. In the instant case, we are examining neither cost issues nor price adjustments. However, as discussed above, to account for high inflation in Turkey, the Department has used indexation in the instant case, as well as in the *Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta from Turkey*, 63 FR 68429, 68435.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy to be as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Yucel Boru Group	0.84

Manufacturer/exporter of line pipe	Rate (percent)
Mannesmann	4.20

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of each class or kind of merchandise from reviewed companies, entered, or withdrawn from warehouse for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Reviews, 53 FR 9791.* These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(7)).

Dated: August 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21198 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Approval of Minnesota's Lake Superior Coastal Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service.

ACTION: Notice of the National Oceanic and Atmospheric Administration, National Ocean Service's approval of Minnesota's Lake Superior Coastal Program pursuant to the Coastal Zone Management Act of 1972, as amended 16 U.S.C. 1451 et seq.

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration, (NOAA) approved Minnesota's Lake Superior Coastal Program (MLSCP) on July 6, 1999, pursuant to the provisions of section 306 of the Federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1455 (CZMA). The MLSCP is described in Minnesota's Lake Superior Coastal Program and Final Environmental Impact Statement (P/FEIS) published in June, 1999.

Minnesota is the 33rd state to receive Federal approval of its coastal management program. Minnesota submitted a proposed coastal program to NOAA in July, 1998. Upon reaching a preliminary decision that the program met the requirements of the CZMA, and in order to meet its responsibilities under the National Environmental Policy Act, NOAA published Minnesota's Statement (P/DEIS) for public review on August 7, 1998. NOAA published the P/FEIS including public comments on the P/DEIS and responses to those comments on June 4, 1999. NOAA has also fulfilled its responsibilities under the Endangered Species Act through consultations with the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

The MLSCP is the culmination of several years of development by the State of Minnesota, interest groups, the general public, Federal agencies, and in consultation with NOAA. The MLSCP consists of numerous state policies on diverse coastal management issues which are prescribed by statute and other legal mechanisms and made enforceable under state law. The MLSCP will improve the decision making process for determining appropriate coastal land and water uses in light of resource consideration and increase public awareness of coastal resources and processes. The MLSCP will increase long term protection of the state's coastal resources while providing for sustainable economic development.

NOAA approval of the MLSCP makes the state eligible for Federal financial assistance for program administration and enhancement under sections 306, 306A, 308 and 309 of the CZMA (16 U.S.C. 1455, 1455a, 1456a, and 1456b). Minnesota has submitted an application for $652,000 in FY 1999 Federal CZMA funds which are available to it. These funds will generally be used to assist the state in administering the various state and local authorities included in the MLSCP as well as be used to fund local management efforts to sustain ecosystems, sustain coastal communities, and increase public access.

NOAA approval of the MLSCP also makes operational, as of the date of this **Federal Register** Notice, the CZMA Federal consistency requirement with respect to the MLSCP (16 U.S.C. 1456; 15 CFR part 930). Therefore, as of today, direct Federal activities occurring within or outside the Minnesota Coastal

Zone that are reasonably likely to affect any land or water use or natural resources of the Minnesota Coastal Zone must be consistent to the maximum extent practicable with the enforceable policies of the MLSCP. In addition, activities within or outside the Minnesota Coastal Zone requiring a Federal license or permit listed in the P/FEIS, and Federal financial assistance to state agencies and local governments that are reasonably likely to affect any land or water use or natural resource of the Minnesota Coastal Zone must be consistent with the enforceable policies of the MLSCP.

Part V, Chapter 3 of the P/FEIS identifies the enforceable policies of the Minnesota program, Part V, Chapter 6 of the P/FEIS as well as the CZMA regulations at 15 CFR part 930, identifies Federally licensed or permitted activities subject to the Federal consistency requirements and provides specific procedures to be used in the Federal/State coordination process.

ADDRESSES: For further information please contact Neil Christerson at (301) 713–3113, Extension 167; or via fax at (301) 713–4367; or via e-mail at neil.christerson@noaa.gov

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 6, 1999.

John Oliver,

Director, Management and Budget Office, National Ocean Service.

[FR Doc. 99–21083 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980212037–8142–02; I.D. 080498A]

RIN 0648–AJ87

Fisheries of the Exclusive Economic Zone off Alaska; Prohibited Species Donation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Selection of an authorized distributor.

SUMMARY: NMFS announces the selection of Northwest Food Strategies (NFS) as an authorized distributor for purposes of distributing Pacific salmon to economically disadvantaged individuals under the prohibited species donation (PSD) program. These salmon are caught incidentally during groundfish fishing operations off Alaska. This action is necessary to comply with provisions of the PSD Program.

DATES: Effective August 16, 1999, through August 16, 2002.

ADDRESSES: Copies of the PSD Permit for Salmon may be obtained from the Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–21668, Attn: Lori Gravel. Copies of Amendments 50/50 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). These FMPs were prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679.

NMFS approved Amendments 26/29 to the BSAI and GOA FMPs, respectively, on July 10, 1996, and implemented a Salmon Donation Program. These amendments were superseded by Amendments 50/50 to the FMPs, which were approved by NMFS on May 6, 1998, and authorize the PSD Program for salmon and Pacific halibut. A final rule implementing Amendments 50/50 was published in the **Federal Register** on June 12, 1998 (63 FR 32144). A full description of, and background information on the PSD Program may be found in the preamble to the proposed rules for Amendments 26/29 and 50/50 (May 16, 1996, 61 FR 24750 and March 4, 1998, 63 FR 10583, respectively).

Regulations at § 679.26 authorize the voluntary distribution of Pacific salmon taken incidentally in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through an authorized distributor. The Regional Administrator, Alaska Region, NMFS (Regional Administrator), may select one or more tax-exempt organizations to be authorized distributors, as defined by § 679.2, based on the information submitted by applicants under § 679.26. After review of qualified applicants, NMFS must announce the selection of authorized distributor(s) in the **Federal Register** and issue the selected distributor(s) PSD permits.

On June 29, 1999, the Regional Administrator received an application from NFS. This application was submitted to renew an existing PSD permit issued to NFS on August 16, 1996 (August 16, 1996, 61 FR 42591), which authorized the voluntary distribution of Pacific salmon taken incidentally in groundfish trawl fisheries off Alaska through August 16, 1999. The Regional Administrator reviewed the application and determined that it provided the required information and that NFS met the requirements for an authorized distributor. As required by § 679.26(b)(2), the Regional Administrator based his selection on the following criteria:

1. *The number and qualifications of applicants for PSD permits.* As of the date of this notice, only the application from NFS has been received to distribute salmon taken incidentally in the Alaska groundfish trawl fisheries. NFS has been coordinating the distribution of salmon taken incidentally in these fisheries since 1993 under exempted fishing permits and the Salmon Donation Program. NFS employs independent seafood quality control experts to ensure product quality and has received support from cold storage facilities and common carriers servicing the areas where Pacific salmon are donated.

2. *The number of harvesters and the quantity of salmon that applicants can effectively administer.* The number of processors and vessels currently participating in the PSD program administered by NSF include: 4 shoreside processors, 11 catcher/processor vessels, and 47 catcher vessels. According to its application, NFS has the capacity to receive and distribute salmon from as many as 40 processors and their associated catcher vessels. In 1996, 1997, and 1998, NFS processed 102,735 lbs, 212,143 lbs, and 93,751 lbs, respectively, of salmon for distribution under a food bank program. NMFS does not have information to convert accurately these weights to numbers of salmon. Nonetheless, assuming a recovery rate of 30 percent and an average recovered weight of 8 lbs per fish, the above poundages could represent between 39,000 and 88,400 fish.

3. *The anticipated level of salmon incidental catch based on salmon incidental catch from previous years.* During 1997 and 1998, about 118,000 and 128,000 salmon, respectively, were caught incidentally in the BSAI groundfish trawl fisheries. Another 18,500 and 30,000 salmon, respectively, were taken in the GOA trawl fisheries.

4. *The potential number of vessels and processors participating in the groundfish trawl fisheries.* In 1997, about 8 shoreside processors, 59 trawl catcher/processors, 3 motherships, and 113 trawl catcher vessels participated in the BSAI groundfish trawl fisheries. During the same year, about 18 shoreside processors, 29 trawl catcher/processors, and 174 trawl catcher vessels participated in the GOA groundfish trawl fisheries.

This PSD permit is in effect for a 3-year period from the publication date of this notice unless suspended or revoked. It may not be transferred; however it may be renewed following the application procedures in § 679.26.

If the authorized distributor modifies any information on the PSD permit application submitted under § 679.26(b)(1)(xi) or (b)(1)(xiii), the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Administrator.

This permit may be suspended, modified, or revoked under 15 CFR part 904 for noncompliance with terms and conditions specified in the permit or for a violation of this section or other regulations in 50 CFR part 679.

Classification

This action is taken under 50 CFR 679.26.

Authority: 16 U.S.C. 773 *et seq.*, 1408 *et seq.*, and 3631 *et seq.*

Dated: August 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21097 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080499C]

Advisory Panels on Billfish and Highly Migratory Species Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for nominations.

SUMMARY: NMFS solicits nominations for the Billfish and Highly Migratory Species (HMS) advisory panels (APs). The purpose of the APs is to assist NMFS in the collection and evaluation of information relevant to the development of management plans, plan amendments, and regulatory amendments for Atlantic billfish and for Atlantic tunas, swordfish, and sharks. The APs include representatives from all interests in HMS fisheries.

DATES: Nominations must be submitted on or before September 13, 1999.

ADDRESSES: Nominations should be submitted by mail to Rebecca Lent, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910, or by fax: 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Alicon Morgan at (301) 713–2347.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, two Advisory Panels (APs) were established in 1997 to consult with NMFS in the collection and evaluation of information relevant to the development of fishery management plans (FMPs), FMP amendments, and regulatory amendments under the framework provisions for Atlantic billfish and Atlantic tunas, swordfish and sharks. Members of these two APs were selected to serve for approximately 2 years. The HMS AP Statement of Organization, Practices and Procedures (SOPPs) call for half of the AP members to be replaced after 2 years, with the other half being replaced 6 months later. This staggered renewal process was designed to allow for a more gradual adjustment as the AP members are replaced. The HMS AP SOPPs further state that, of the 22 non-federal members of the AP, 8 are representatives of the commercial fisheries for Atlantic HMS, 7 are representatives of the recreational fisheries for Atlantic HMS, 6 are from the academic and environmental community active in the conservation and management of Atlantic HMS, and 1 is from the U.S. Advisory Committee to the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Billfish AP SOPPs indicate that the membership term for all members of the Billfish AP expired June 1, 1999. Of the 7 non-federal voting members of the Billfish AP, 4 are representatives of the recreational fisheries for Atlantic HMS, 1 is a representative of commercial fisheries for whom billfish are incidental catch or bycatch, 1 is a representative of the environmental organizations active the conservation and management of Atlantic billfish, and 1 is a representative of the academic community.

Five additional members of the HMS AP include one representative each of the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 *ex-officio* participants: 20 representatives of the constituent states and 2 representatives of the constituent interstate commissions: the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

Five additional voting members of the Billfish AP include one representative each of the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The Billfish AP also includes 23 non-voting members: 20 representatives of the constituent states, 2 representatives of the constituent interstate commissions; the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission; and the chair, or his or her designee, of the U.S. Advisory Committee to ICCAT.

In order to determine which HMS AP members are to be replaced within 2 years and which within 2 1/2 years, NMFS selected every odd-numbered member from an alphabetically ordered list of the original appointees. Nevertheless, NMFS is soliciting nominations for replacing the entire membership of the AP at this time, with some new members to begin their 2-year term on October 11, 1999, and others on April 6, 2000. Selection of AP members will not be limited to those that are nominated.

The following HMS AP members' terms expire October 11 1999: Recreational representatives - Joe McBride, Ray Bogan, Bob Eakes and Mark Sampson; Commercial representatives - Rich Ruais and Peter Weiss; and academic/environmental representatives: John Dean, Sonja

Fordham, Bob Hueter and John Wingard.

The following HMS AP members' terms expire April 6, 2000: Recreational representatives - Jim Donofrio, Ellen Peel and Bob Zales; Commercial representatives - Nelson Beideman, Russell Hudson, Robert Fitzpatrick, Gail Johnson and Bob Spaeth; academic/environmental representatives - Carl Safina and David Wilmot; and ICCAT representative - John Graves.

All Billfish AP members' terms expired June 1, 1999. NMFS is soliciting nominations for replacing the entire membership of the Billfish AP.

The purpose of the APs is to assist NMFS in the development of FMPs, FMP amendments, and regulatory amendments under the FMP framework provisions for Atlantic billfish and Atlantic tunas, swordfish and sharks. The APs assist NMFS in meeting the requirements of the Magnuson-Stevens Act throughout the FMP development process.

Procedures and Guidelines

Procedures for Selecting Advisory Panel Members

Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental and quasi-governmental entities will be considered as members of the AP. Selection of AP members will not be limited to those nominated. Nominations may include current members of the billfish or HMS APs.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. Indication of whether the nomination is for the billfish AP, HMS AP, or both APs;
2. The name of the applicant or nominee and a description of his or her interest in or connection with billfish (for billfish AP) or with one species in particular from among billfish, sharks, swordfish, and tunas (for HMS AP);
3. A statement of background and/or qualifications; and
4. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP.

Participants

Nominations will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community. NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each interest must be adequately represented. The intent is to have a group that, as a whole, reflects an appropriate balance and mix of interests, given the responsibilities of the AP. Criteria for membership include one or more of the following:

1. Experience in the recreational fishing industry involved in catching swordfish, tunas, or sharks;
2. Experience in the commercial fishing industry for HMS;
3. Experience in connected industries (marinas, bait and tackle shops);
4. Experience in the scientific community working with HMS; and
5. Former or current representative of a private, regional, state, national, or international organization representing marine fisheries interests dealing with HMS.

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, NMFS will be unable to compensate participants with monetary support for their labor, as no funds were appropriated to support this activity in fiscal year 1999. Funding for travel costs of AP members is not always available; therefore, AP members may be expected to pay for travel costs related to the AP.

Tentative Schedule

Meetings of the AP will be held twice yearly or more frequently as necessary; the APs will meet jointly every year, in January or in February to review the Annual SAFE Report and to consider future management actions. Upcoming activities include consideration of regulatory amendments under the framework provisions, particularly measures to address bycatch.

Dated: August 10, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21194 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052599B]

ICCAT Advisory Committee; Public Meetings; correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting; Correction

SUMMARY: In a previous **Federal Register** notice, incorrect dates were given for the fall meeting of the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT). This document provides corrected dates for the meeting.

FOR FURTHER INFORMATION CONTACT: David Kerstetter at 301–713–2337 or Kimberly Blankenbeker at 301–713–2276.

SUPPLEMENTARY INFORMATION:

Correction

In the June 7, 1999, issue of the **Federal Register**, on page 30321, in the second column, the first sentence of the seventh paragraph under **SUPPLEMENTARY INFORMATION**, the dates should be corrected to read "October 24–26, 1999."

Dated: August 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21095 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081099C]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) has scheduled meetings during the month of September 1999.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times of meetings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of the meetings.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

1. The Council's Scientific and Statistical Committee will meet by teleconference on Wednesday September 1, 1999 to review the revised analysis of a proposed split of the Bering Sea/Aleutian Islands Pacific cod fixed gear quota between longline and pot gears, and to further discuss

establishing minimum stock size thresholds for groundfish. Public listening sites have been established as follows:

Seattle, WA: Room 2079, Bldg. 4, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE.,

Juneau, AK: NMFS Main Conference Room, #445C, 4th Floor Federal Building, 709 W. 9th Street

Kodiak, AK: Fishermen's Hall, 503 Marine Way

Anchorage, AK: NPFMC Offices, 605 W. 4th Avenue, 3rd Floor

2. A meeting of the Council/Alaska Board of Fisheries Joint Committee will meet September 15–16, 1999, at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. The agenda will include:

(a) Alternatives for resolving the fair-start issue.

(b) Review the Joint Protocol.

(c) Examination of the range of cross jurisdictional issues of mutual interest.

3. The Council's Ecosystem Committee will meet September 20, 1999, beginning at 8:30 a.m. at the Alaska Fisheries Science Center, Building 4, room 2079. The agenda includes discussion of following topics:

(a) Analysis of Habitat Areas of Particular Concern

(b) Evaluation of current management with National Research Council Recommendations for Sustainable Fisheries

(c) The Ecosystem-based Fisheries Report

(d) The 1999 Ecosystem Chapter for the Stock Assessment and Fishery Evaluation documents.

4. The Council's Crab Fishery Management Plan Team will meet September 27–28, 1999, at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. The meeting will begin at 1:00 p.m. on September 27th.

Agenda subjects will include:

(a) Review Tanner Crab Rebuilding Plan, survey information, and guideline harvest levels.

(b) Prepare and review the annual Stock Assessment and Fishery Evaluation Report.

(c) Review Category 2 and 3 proposals and any amendment proposals received.

(d) Review and discuss management of the Aleutian Islands red king crab fishery.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 11, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21195 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990730207–9207–01; I.D. 072899B]

RIN 0648–ZA68

New Bedford Harbor Trustee Council

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for restoration ideas for New Bedford Harbor.

SUMMARY: On behalf of the New Bedford Harbor Trustee Council (Council), NMFS, serving as the Administrative Trustee, announces this request for ideas for projects that will restore natural resources that were injured by the release of hazardous substances, including polychlorinated biphenyls (PCBs), in the New Bedford Harbor environment. The Council will evaluate ideas in three major areas: the restoration criteria established by the Council as described in section V.A.2 of this document, the legal requirements for eligibility, and the technical feasibility. The Council will also seek public comment on the ideas received. After receiving public comments, technical, public and other recommendations will be provided to the Council for its consideration in deciding which ideas, if any, be adapted into measures to be implemented.

DATES: The Council will accept project ideas through September 7, 1999.

ADDRESSES: The Council will accept project ideas at the following location: New Bedford Harbor Trustee Council, c/o National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, Attn: Jack Terrill, or New Bedford Harbor Trustee Council, 37 N. Second Street, New Bedford, MA 02740. Comments on the collection-of-information-requirement under the Paperwork Reduction Act can be submitted to the Office of Management and Budget (OMB) at: Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Coordinator, 978–281–9136, or Jack.Terrill@NOAA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

New Bedford Harbor is located in Southeastern Massachusetts at the mouth of the Acushnet River on Buzzards Bay. The communities of Acushnet, Dartmouth, Fairhaven, and New Bedford are adjacent to the harbor. The harbor and river are contaminated with high levels of hazardous materials, including PCBs, and as a consequence are on the U.S. Environmental Protection Agency's (EPA) Superfund National Priorities List. This site is also listed by the Massachusetts Department of Environmental Protection as a priority Tier 1 disposal site. The contamination resulted both directly from discharges into the Acushnet River estuary and Buzzards Bay and indirectly via the municipal wastewater treatment system into the same bodies of water.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund," 42 U.S.C. 9601 *et seq.*) provides a mechanism for addressing the Nation's hazardous waste sites, allowing states and the Federal Government to sue polluters for the clean-up and restoration of designated sites. CERCLA provides for the designation of "natural resource trustees:" Federal, state, or tribal authorities who represent the public interest in natural resources. Natural resource trustees may seek monetary damages (i.e., compensation) from polluters for injury, destruction, or loss of natural resources resulting from releases of specified hazardous substances. These damages, which are distinct from clean-up costs, must be used by the trustees to "restore, replace, or acquire the equivalent of" (CERCLA) the natural resources that have been injured, after the trustees have approved a restoration plan.

The parties responsible for the New Bedford Harbor discharges were electronics manufacturers who were major users of PCBs from the time their operations commenced in the late 1940s until 1977, when EPA banned the use and manufacture of PCBs. PCBs are human carcinogens that can be introduced to humans through eating contaminated fish and shellfish. PCBs also have adverse effects on such

natural resources as shellfish, birds, and higher mammals.

Executive Order 12580 and the National Contingency Plan, which is the implementing regulation for CERCLA, designate the Secretaries of Agriculture, Commerce, Defense, Energy, and Interior to be Federal trustees for natural resources. Federal trustees are designated because of their statutory responsibilities for protection and/or management of natural resources or management of federally owned land. In addition, the governor of each state is required to designate a state trustee.

Trustee responsibilities include assessing damages resulting from the release of hazardous substances, pursuing recovery of both damages and costs from the responsible party or parties, and using recovered funds to restore, replace or acquire the equivalent of natural resources that were injured by the release. For the New Bedford Harbor Superfund Site, there are three natural resource trustees on the Council: Department of Commerce (DOC), the Department of the Interior, and the Commonwealth of Massachusetts. The Secretary of Commerce has delegated DOC trustee responsibility to NOAA; within NOAA, NMFS has responsibility for natural resource restoration. The Secretary of the Interior has delegated trustee responsibility to the U.S. Fish and Wildlife Service. The Governor of Massachusetts has delegated trustee responsibility to the Secretary of Environmental Affairs.

In 1983, the Federal and state trustees filed complaints against the electronic manufacturers in Federal District Court in Boston alleging causes of action under CERCLA for injuries to natural resources under their trusteeship that had resulted from releases of hazardous substances, including PCBs. The complaints were resolved as of 1992 through settlement agreements with the electronic manufacturers who paid $109 million for (1) cleanup of the harbor, (2) restoration of injured natural resources, and (3) reimbursement of funds already expended. The Council was created as a result of the settlements.

CERCLA defines natural resources to include land, fish; wildlife, biota, air, water, groundwater, drinking water supplies or other resources under the control or management of the Federal or state government. Natural resources within the New Bedford Harbor environment showing documented injury or having a high probability of injury include fish, shellfish, other marine organisms, birds, marine sediment and the water column. The fish species include winter flounder, tautog, scup, mackerel, silverside, mummichog, and American eels and herring. Shellfish injured by the release of PCBs include mussels, clams, quahogs, oysters, various species of crabs and lobster. PCB contamination also affected other organisms such as amphipods, diatoms and copepods that are part of the food chain and are a means for further transmission of PCBs.

The Council issued an initial "Request for Restoration Ideas" in October 1995 (60 FR 52164, October 5, 1995)(the first round). Fifty-six ideas were received from the local communities, members of the public, academia, and state and Federal agencies. The ideas were the basis for the alternatives listed in the Council's "Restoration Plan for the New Bedford Harbor Environment" (Restoration Plan) that was developed to guide the Council's restoration efforts. An environmental impact statement was prepared in conjunction with the Restoration Plan to fulfill requirements of the National Environmental Policy Act. A record of decision was issued on September 22, 1998, for both the Restoration Plan and the environmental impact statement. The issuance of the record of decision allowed the implementation of 11 preferred restoration projects analyzed in the Restoration Plan.

The Restoration Plan also identifies an "event based" process that allows the Council to proceed with additional restoration activities as more information on EPA's remediation becomes available or as portions of the harbor remediation are completed. Because EPA has issued the "Record of Decision for the Upper and Lower Harbor Operable Unit" (September 25, 1998), which describes the methods and actions EPA will undertake to clean up the site, the Council now believes it is appropriate to issue another request for restoration ideas (the second round).

II. Guidance For Development of Natural Resource Project Proposals

Following the conclusion of the first round of funding for restoration projects, members of the public requested further information regarding potential project proposals to be submitted to the Council for consideration in the second round, particularly potential water quality projects such as sewer and septic related construction projects. At its May 7, 1999 meeting, the Council provided the following legal guidelines to be considered during development of restoration project proposals to be submitted to the Council for funding from the New Bedford Harbor Natural Resource Damages Restoration Trust Fund. In addition to these legal guidelines, the Council must also consider restoration requirements (see V.A.2 of this document). Please understand that this summary cannot provide a complete explanation of everything that the Council may consider in evaluating proposed projects and that the following summary does not constitute an official rule, regulation, or law.

Further, it is important to note that a project's consistency with these legal guidelines does not guarantee that it will be funded, but merely establishes that the Council will/may consider the project for possible funding. Conversely, rejection of a proposed project based upon the legal guidelines means that the Council will not use natural resource damage settlement funds for that project, even though the proposed project may yield a restoration benefit to an injured natural resource.

(1) The Council may fund a restoration project only if the primary purpose of the project is to, in a manner consistent with the Restoration Plan, restore, replace, or acquire the equivalent of a natural resource that was injured by the release of PCBs into the New Bedford Harbor environment.

The primary purpose of a project must be the restoration of an injured natural resource or the services that the resource provided to a condition comparable to that which would have existed in the absence of the release of PCBs into the harbor environment.[1] The Council will not select a proposed project for funding if the restoration benefit to the injured natural resource or to its related services is only incidental to the objective of the project. For example, although a proposed project may provide an incidental restoration benefit to an injured resource, the Council will not fund it if its cost is disproportionate to or exceeds the restoration benefit or if its primary purpose appears to be to alleviate financial hardship for one or more private individuals. The Council will consider projects that ameliorate conditions that may limit the effectiveness of any restoration action (for example, the removal of residual sources of contamination) or would accelerate an injured resource's return to its "baseline condition."[2] However, the Council may give lower priority to

[1] *See* section 107(f)(1) of CERCLA, 42 U.S.C. 9607.

[2] "Baseline" means the condition that would have existed in the area where the natural resources have been affected by the release of hazardous substances had the release not occurred. 43 CFR 11.14.

projects that propose to restore, replace, or acquire the equivalent of injured natural resources by addressing such limiting conditions instead of providing an affirmative restoration benefit to the resource.

(2) The Council has determined that it will not fund a restoration project if there is an independent, prior obligation to perform the project pursuant to statute, regulation, ordinance, consent decree, judgement, court order, permit condition or contract or if otherwise required by Federal, state, or local law.

Please note that this summary cannot cover all possible laws that may apply to a restoration proposal.[3] Specifically, in deciding whether a proposed project regarding water quality is "otherwise required", the Council will consider: (1) The legal requirements of the Federal Clean Water Act and the analogous provisions of Massachusetts law; (2) the legal requirements of Title 5, which consists of the Massachusetts regulations governing on-site sewage treatment and disposal, codified at 310 CMR 15.00; and (3) whether the project is otherwise required by Federal, state, or local law, consent decree, judgement, court order, permit condition or contract, or could be required by enforcement of such law, consent decree, judgement, court order, permit condition or contract.

Regardless of whether a governmental agency has elected to exercise its discretion to enforce a provision of law, if a governmental agency has the authority to order certain work (for example, EPA or the Massachusetts Department of Environmental Protection (DEP) has the authority to request a municipality to upgrade a combined sewer overflow or Publicly Owned Treatment Works (POTW) due to an improper point source discharge under the Clean Water Act, or DEP or a local board of health has the authority to order a homeowner to address a failed system under Title 5), then the Council will consider the project to be "otherwise required" and not appropriate to be considered for funding. Further, even though a project may not be currently required by an independent prior obligation, the Council will not fund it if there is an established deadline after which such an obligation will exist.

For proposed projects that involve connecting a facility (currently serviced by a Title 5–regulated on-site sewage treatment and disposal system) to a municipal or private sanitary sewer, the project proponent upon request, must provide the Council with adequate documentation that (1) the facility is not the subject of an order or agreement to upgrade its system or connect the system to a sanitary sewer or shared system; (2) no inspection of the system is required pursuant to 310 CMR 15.301 or, if an inspection is required, a currently valid certificate of compliance has been issued for the system by the approving authority; and (3) the system does not fail to protect "public health and safety and the environment" pursuant to 310 CMR 15.303 and 304.[4]

For proposed projects covered under the Clean Water Act and involving the treatment or elimination of point source discharges of pollutants to surface waters, including, for example, sewage, industrial wastewater, and/or storm water, the project proponent must demonstrate to the Council upon request and with adequate documentation, that the proposed project goes beyond what is required by applicable National Pollutant Discharge Elimination System permits, enforcement orders and consent decrees. In the case of a discharge for which no permit has been issued, the project proponent must demonstrate, upon request, that the project would go beyond the requirements that would apply to the discharge pursuant to the Clean Water Act, its implementing regulations, and state water quality standards, as well as to any enforcement action which has been initiated. The question of whether a proposed project would result in pollution control beyond Clean Water Act requirements is complex and must be answered on a case-by-case basis.

If, during its review of a proposed project pursuant to this requirement, the Council determines that an "otherwise required" issue may exist, the Council will seek further clarification and information from the proponent and/or other governmental entities before making a final determination.

(3) In determining whether a proposed restoration project will be funded, the Council will consider whether the project fits, in terms of the project's costs, with the Council's plan to retain sufficient funds to accomplish meaningful and necessary restoration work after EPA's cleanup is finished.

The Council has not established a definite cap on funding for the second round; however, the Council has decided that it will not expend an amount of funds whose spending would impair its ability to accomplish meaningful restoration following the completion of EPA's remediation. In recognition of this limitation, the Council plans to select a suite of projects that will accomplish restoration priorities and whose total cost is consistent with the Restoration Plan. Project proponents should scale proposals accordingly.

(4) The Council will not fund a restoration project that will be undone or negatively impacted by EPA's future remediation work or that will interfere with any ongoing remediation related work.

Even if the Council's analysis of a proposed project indicates that it will yield a cost-effective restoration benefit to an injured resource, the Council will not fund the project in this round if it will be undone or negatively impacted by EPA's future remediation work. The Council intends to closely coordinate its actions with those of EPA during the development of the remediation plans and to inform the public as to EPA's cleanup schedule so that restoration proposals may be developed accordingly.

Although a proponent may have a general sense of the New Bedford Harbor environment and the injured natural resources sufficient for an initial identification of projects, precise legal meanings of certain terms are provided in the Restoration Plan. Please consult the Restoration Plan prior to submitting a project proposal (for example, see Figure 1.1 in chapter 1 of the Restoration Plan for the meaning of the "affected" New Bedford Harbor environment, and chapter 2.1 for definitions of certain terms including "injury" and "natural resources").

If a municipality proposes a project, the Council suggests that the proposal be reviewed by the municipality's legal counsel prior to submission. In addition, please remember that information submitted to the Council by all parties is included in a public record and is subject to disclosure pursuant to the Federal Freedom of Information Act and the Massachusetts Public Records Law. Please note that, prior to selection of any project for funding, all proposals will be subject to public review and comment as part of an open public comment process.

III. Restoration Priorities

The Council has identified the following list of priorities for restoration of injured natural resources:

1. Marshes and/or wetlands,
2. Recreation areas,

[3] The Council has limited discussion in this section to the Clean Water Act and to Massachusetts Title 5, as interested parties primarily and specifically requested information concerning the effect of those laws on water quality related project ideas.

[4] For purposes of this section, "facility" has the meaning as defined by Title 5, 310 CMR 15.002 not as defined by CERCLA.

3. Water column,
4. Habitats,
5. Living resources, and
6. Endangered species.

Project ideas should address these priorities but respondents are not limited to these areas alone. New priorities can be identified, if appropriate, and incorporated into the restoration planning process provided that they meet legal requirements, technical feasibility, and selection criteria.

IV. How to Submit Ideas

This is not a formal solicitation for contract or grant proposals. Instead this is a request for ideas that could eventually lead to contracts or grants. Depending on the activity involved in a project and the project's proponent, the funding award could be a grant, a contract, or, if appropriate, work performed by Federal or state agencies. Please note that the type of submission expected under this solicitation for restoration ideas is significantly different from that for Federal assistance programs.

Respondents are reminded that, once an idea has been submitted, the idea will be made available to the public. Even if the idea is chosen and a solicitation is conducted for accomplishing that idea, there is still no guarantee that the proponent of the idea will be chosen to perform that work. It is possible that an idea may be implemented, after public review (see IV.B.1), through a sole source contract or grant if the idea meets the appropriate criteria for such an award. Because proposals will be subject to public review, respondents who are concerned about revealing proprietary interests or methods should present only enough information to provide the Council with an understanding of the idea.

A. Eligible Submissions

All individuals are eligible to submit ideas, and all submissions are welcomed and encouraged. Respondents are asked to evaluate their idea(s) against criteria developed by the Council in the Restoration Plan (see V.A.2).

Assistance from Council staff is available by telephone or through meetings. Assistance will be limited to such issues as the Council's goals, restoration priorities, selection criteria, application procedures, and responding to questions regarding completion of application forms. Assistance will not be provided for conceptualizing, developing, or structuring proposals. Information can be obtained at the offices of the Council (see **ADDRESSES**).

B. Duration and Terms of Funding

Direct awards of funding will not occur under this solicitation for restoration ideas. Rather, this solicitation for restoration ideas will result in prioritization of proposed ideas by the Council considering public review and comment. The Council will then determine the most appropriate means of implementing approved project ideas that may or may not require further solicitation.

The Council has a fixed amount of money to implement restoration projects. The cost of the project constitutes an important consideration in determining which project ideas are to be implemented. Estimated cost information allows the Council to develop a spending plan for future years and allows both the public to understand and the Council to determine how many project ideas can actually be funded. In describing the project idea, respondents should consider whether funding would be needed for a single or multiyear basis. This information will in no way affect consideration of the merits of the proposal but instead will assist the Council in its planning.

Since this announcement is only a request for restoration ideas, publication of this request does not obligate the Council to award any specific grant or contract or to obligate any part or the entire amount of funds available.

C. Cost sharing

One way of extending the fixed amount of money the Council has to work with is through cost sharing (often referred to as providing "matching funds"). It is not required that project ideas contain cost sharing. However, the Council does encourage respondents to think about cost sharing and, if it is appropriate for a project idea, to discuss within the idea the degree to which cost sharing may be possible. If cost sharing is proposed, the respondent is asked to account for both the Council and non-Council amounts. This information will allow the Council to better plan future expenditures.

D. Format

The forms described below are available from the Council's offices (see **ADDRESSES**) or through the internet at http://www.darp.noaa.gov/neregion/newbed.htm.

1. *Project idea summary*: An applicant must complete "Request for Restoration Ideas", Project Summary form, for each project. This form is required in addition to the project narrative described below:

2. *Project idea budget*: Since this is a solicitation of ideas and not a competitive bidding process for work to be performed, a project budget is not required. However, the Council requests that a cost estimate be provided in order to better plan for a proposed allocation of available funds. In determining the estimate for total project cost, the respondent should take into account direct costs, indirect costs, and any cost sharing. Fees or profits should not be included in the estimated budget.

The total costs of the project idea include all costs incurred in accomplishing its objectives during the life of the project.

3. *Project idea narrative description*: The project idea should be completely and accurately described, as follows:

a. *Project idea goals and objectives*: State what the proposed project idea is expected to accomplish.

b. *Project idea statement of work*: Describe the work to be performed that will achieve the Council goals, priorities, and criteria: Include the work, activities, or procedures to be undertaken and the types of individuals expected to perform such work.

c. *Federal, state, and local government activities*: List any Federal, state, or local government programs or activities that this project idea would affect, if known, including activities under Massachusetts Coastal Zone Management Plans and those requiring consultation with the Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project idea and these plans or activities.

d. *Project idea evaluation criteria*: Describe how the project idea would address the criteria contained in V.A.2.

V. Evaluation Criteria and Selection Procedures

A. Evaluation of Restoration Project Ideas

1. *Consultation with interested parties*: The Council will evaluate ideas in consultation with Federal trust agencies, Commonwealth of Massachusetts trust agencies, other Federal and state agencies, the Council's advisors, and others outside the Federal and state trust agencies who have knowledge in the subject matter of the project ideas or who would be affected by the project ideas.

2. *Technical evaluation criteria*: The Council will solicit technical evaluations of each project idea from appropriate private and public sector

experts. Point scores will be given to project ideas up to the maximum value shown below, based on the following evaluation criteria:

(a) Project ideas must restore the injured natural resources and associated activities of the area. The idea will be evaluated on whether it restores, replaces, or acquires the equivalent of natural resources that were injured as a result of the release of hazardous materials, including PCBs, in the New Bedford Harbor environment. (25 points)

(b) Priority will be given to project ideas within the New Bedford Harbor environment, however, project ideas within the affected marine ecosystem that have a direct, positive impact on the harbor environment will be considered. Project ideas that are outside the New Bedford Harbor environment will be considered if they restore injured natural resources within the New Bedford Harbor environment. (15 points)

(c) Priority will be given to project ideas that give the largest ecological and economic benefit to the greatest area or greatest number of people affected by the injury. The Council is seeking project ideas that will provide the greatest good. A project idea will be evaluated on the basis of whether it provides positive benefits to a more comprehensive area or population. Project ideas that benefit a particular individual rather than a group of individuals would be scored lower under this criterion. (15 points)

(d) Ecological or economic effects of the project ideas should be identifiable and measurable so that changes to the New Bedford Harbor environment can be documented. The idea will be evaluated on whether it has discrete quantifiable results so that a determination can be made on its success or failure. (10 points)

(e) Preferred project ideas are those that employ proven technologies that have high probabilities of success. In evaluating a project idea, the reviewers will determine the likelihood of success based on the method being proposed. To assist in this evaluation, the respondent should provide information on whether the technique has been used before and whether it has been successful. (10 points)

(f) Project ideas should be cost effective. The justification and allocation of a project's budget in terms of the work to be performed will be evaluated. Project ideas which would result in high implementation costs will be taken into account. (10 points)

(g) Project ideas should enhance the aesthetic surroundings of the harbor environment to the greatest extent possible, while acknowledging the ongoing industrial uses of the harbor. The extent that a project idea recognizes the multiple number of uses and the project idea's impacts on those uses will be evaluated as well as the project idea's ability to enhance the overall beauty of the harbor environment. (5 points)

(h) Project ideas should ultimately enhance the public's ability to use, enjoy, or benefit from the harbor environment. Besides a project idea's success at restoring natural resources, it will be evaluated on the basis of collateral gains in the public's ability to utilize the harbor environment. (5 points)

(i) Project ideas should provide an opportunity for community involvement that should be allowed to continue even after the Council's actions have ended. Project ideas will be evaluated on whether the public can be involved in various facets after the Council has completed its funding and the project is completed. (5 points)

3. *Project idea ranking*: Utilizing the numerical scores resulting from the technical evaluation described at V.A.2., project ideas will be ranked in order of the highest to the lowest score. Project ideas scoring the highest will be considered as "preliminary preferred" alternatives, with the other ideas as alternatives. The ranking is used only to provide guidance to the Trustees, but is not controlling. Project ideas that fail to meet criterion (a) may be excluded from further consideration though respondents may be provided other opportunities through later Council solicitations.

B. Selection Procedures and Project Funding

After project ideas have been evaluated and ranked, the review team will develop recommendations for preferred projects. These recommendations will be submitted to the Council which will review the recommendations, accept or modify the recommendations, and make a preliminary determination on the approximate number of project ideas it expects to undertake.

1. *Public review*: Once a preliminary determination is made on the preferred project ideas and on the number of project ideas to be funded, the Council will initiate a 30-day public comment period and hold a public hearing to receive comment on the Council's recommendations.

2. *Trustee Council determination*: At the conclusion of the 30-day comment period, the Council will consider the comments from the public and its advisors before making its final decisions on funding. Factors the Trustees may consider include, but are not limited to, the total cost of the highest ranked projects, the cost of individual projects, the amount available to be spent, and the potential impact of clean up activities on the project.

3. *Project solicitation*: Upon the Council's final decisions, the Council may solicit restoration projects for the selected ideas. If necessary, the solicitation will be a formal request following the appropriate contract or grant procedures. The projects ultimately selected could be awarded to private entities, commercial firms, educational institutions, or local, state, or Federal agencies.

Classification

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the OMB under OMB control number 0648–0302. No person is required to respond to the collection of information unless it displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

The public reporting burden for this collection is 1 hour per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Jack Terrill and OMB (see **ADDRESSES**).

Authority: 42 U.S.C. 4321 *et seq.* and 9601 *et seq.*

Dated: August 9, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 99–21096 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080999C]

Marine Mammals; File No. 495–1524

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that John L. Bengtson, Ph.D., Polar Ecosystems Program Leader, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, has applied in due form for a permit to take Antarctic pinnipeds for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before September 15, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to take six species of pinnipeds: crabeater seals, Weddell seals, leopard seals, Ross seals, southern elephant seals and Antarctic fur seals. The research is part of several integrated projects studying the ecology of Antarctic pack ice seals to better understand the ecological relationships between distributions of pack ice seals and their environment. Animals will be captured, sampled, and instrumented with satellite-linked transmitters.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 9, 1999.

Eugene Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–21098 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

August 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 17, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67948, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 17, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II 347/348	6,795,766 dozen of which not more than 6,756,378 dozen shall be in Categories 347–W/348–W [2] and not more than 5,120,239 dozen shall be in Category 348–W.
638/639	4,931,644 dozen.
Within Group II Subgroup 351	1,200,935 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–21115 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974: System of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of new system of records and proposed routine uses.

SUMMARY: This notice adds a new system of records to the Commission's systems of records under the Privacy Act. The new system contains information necessary to collect debts arising from civil monetary penalties and orders of restitution and disgorgement imposed in administrative or injunctive actions. The Commission is proposing that, as a routine use, debt collection records may be forwarded to the Department of the Treasury or the Department of Justice for further collection action.

DATES: Comments on the establishment of the new system of records must be received no later than September 15, 1999. The new system of records will be effective September 27, 1999, unless the Commission receives comments which would result in a contrary determination.

ADDRESSES: Comments should be addressed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St. NW, Washington, DC 20581. Comments may be sent via electronic mail to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Office of the Executive Director, (202) 418–5157, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and the Commission's implementing regulations, 17 CFR part 146, the Commission is publishing a description of a new system of records. The new system contains records related to the activities the Commission engages in to collect debts incurred as civil monetary penalties or orders of restitution or disgorgement through administrative or injunctive enforcement actions. The information maintained in the system or records is necessary to collect delinquent debts in accordance with the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701, et seq.

This new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Oversight and Reform of the U.S. House of Representatives, the Committee on Governmental Affairs of the U.S. Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated July 15, 1994. Accordingly, the Commission is giving notice of the establishment of the following system of records:

CFTC–42

SYSTEM NAME:

Debt Collection Files.

SYSTEM LOCATION:

Division of Trading and Markets, Three Lafayette Centre, 1155 21st St. NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe a civil monetary penalty to the Commodity Futures Trading Commission or who have not complied with an order of restitution or disgorgement resulting from an administrative or injunctive enforcement actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Debt collection letters and correspondence to and from the debtor and others related to the debt. The files will generally contain information including the name and address of the debtor, the taxpayer's identification number (which may be the social security number); records of each collection made; and notice(s) to the debtor demanding payment and describing the consequences of non-payment. The files may also contain credit reports; reports of asset searches; copies of income tax returns; financial statements reflecting the net worth of the debtor; if applicable, date by which the debt must be referred to the Department of the Treasury or Department of Justice for further collection action; documentation of judgments or liens; and citation or basis on which the debt was terminated or compromised.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3701, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Including categories of User and the Purpose of Such Uses: In addition to the Commission's "General Statement of Routine Uses," (64 FR 33829), the records regarding the debt and the actions taken to collect the monies may be forwarded to the Department of the Treasury or the Department of Justice for further collection action. Once the records are forwarded to the Department of the Treasury, they are covered by the Treasury/Financial Management Services System 014, Debt Collection Operations. If the records are forwarded to the Department of Justice, they are covered by the Department's system JMD–006, Debt Collection Management System. Information about the delinquent debt may be disclosed to consumer or commercial reporting agencies as required by 31 U.S.C. 3711(e) and 4 CFR part 102. Reporting may be done directly by the Commission or through the Department of the Treasury upon referral of the delinquent debt for further collection action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records stored in files; computer database.

RETRIEVABILITY:

Records are retrievable by CFTC docket number and by the name of the debtor.

SAFEGUARDS:

In addition to general building security, paper records are maintained in areas accessible only to authorized personnel. Computer security measures limit access to electronic data.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 6.

SYSTEM MANAGERS AND ADDRESS:

Robert P. Shiner, Assistant Director, Division of Trading and Markets, Three Lafayette Centre, 1155 21st street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures," above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures," above.

RECORD SOURCE CATEGORIES:

Commission orders, judicial orders, debtors, credit reports from commercial credit bureaus, asset search databases, Department of the Treasury, Department of Justice.

Issued in Washington, DC on August 10, 1999.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–21202 Filed 8–15–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership Change of Performance Review Board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is given that the following employees will serve as members of the Commission's Performance Review Board.

Members: Donald L. Tendick, Acting Executive Director, Office of the Executive Director; Phyllis Cela, Acting Director, Division of Enforcement; I. Michael Greenberger, Director, Division of Trading and Markets; David R. Merrill, Acting General Counsel, Office of the General Counsel; John R. Mielke, Acting Director, Division of Economic Analysis.

DATES: This action will be effective on August 10, 1999.

ADDRESSES: Commodity Futures Trading Commission, Office of Human Resources, Three Lafayette Centre, Suite 4100, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Marsha Scialdo, Director, Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, Suite 400, Washington, DC 20581, (202) 418–5003.

SUPPLEMENTARY INFORMATION: This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, June 7, 1999.

Issued in Washington, DC on August 10, 1999.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 99–21075 Filed 8–13–99; 8:45 am]

BILLING CODE 6351–01–M

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Update Report for Fiscal Year 2000 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its *Sequestration Update Report for Fiscal Year 2000* to the House of Representatives, the Senate, and the Office of Management and Budget.

David M. Delquadro,

Assistant Director, Administration and Information Division, Congressional Budget Office.

[FR Doc. 99–21114 Filed 8–13–99; 8:45 am]

BILLING CODE 99–0702–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

The Air University Board of Visitors will hold an open meeting on November 14–17, 1999, with the first business session beginning at 8:00 a.m. in the Air University Conference Room at Headquarters Air University, Maxwell Air Force Base, Alabama (five seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Alabama 36112–6335, (334) 953–5159.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–21186 Filed 8–13–99; 8:45 am]

BILLING CODE 5001–05–U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

Time and Date of Meeting: 9:00 a.m., September 9, 1999.

Place: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

Status: Open.

Matters To Be Considered: Status of the Department of Energy's Implementation Plan for Board Recommendation 94–1, The Remediation of Nuclear Materials in the Defense Nuclear Facilities Complex.

Contact Person for More Information: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Supplementary Information: Recommendation 94–1 has driven the Department of Energy (DOE) to accomplish significant risk reduction and nuclear material stabilization during the past four years. Under the original implementation plan, urgent risks were mitigated and DOE made progress in stabilizing plutonium, special isotopes, and spent nuclear fuel. Additionally, compensatory measures were implemented to ensure safe storage of the remaining materials awaiting stabilization.

However, the Defense Nuclear Facilities Safety Board is concerned about the DOE's rate of progress in implementing the revised Recommendation 94–1 implementation plan, The Remediation of Nuclear Materials in the Defense Nuclear Facilities Complex, received by the Board in December 1998. The Board has not yet received the outstanding plans and schedules required to complete the necessary stabilization activities.

The Board issued Recommendation 94–1 on May 26, 1994 to encourage the Department of Energy to act more quickly to place surplus nuclear materials in safe forms for interim storage. When production of nuclear weapons ceased in the early 1990's, large inventories of plutonium, uranium, spent nuclear fuel, and other hazardous materials were stored in temporary arrangements awaiting processing into weapons components or other disposition. The Board was concerned that such materials, some of which are in unstable chemical forms, may rupture or leak from their temporary containers, or may cause or contribute to accidents, material releases, and radiological exposures. The Board accordingly recommended that the DOE initiate or accelerate programs to process and repackage such materials so that they could be safely stored. The Secretary of Energy accepted Recommendation 94–1 in full, and a mutually agreeable Implementation Plan was issued in February 1995 and accepted by the Board. During 1998, DOE prepared an updated implementation plan that was submitted to the Board in December 1998. In January 1999 the Board conditionally accepted the revised plan provided that the DOE complete planning for all stabilization activities. DOE has not yet provided this supplemental information to the Board's satisfaction.

This public meeting will examine the reasons for delays in finalizing the revised implementation plan and also explore the causes of delays in specific stabilization activities at selected DOE sites. DOE will be

requested to identify corrective actions necessary to complete the remaining stabilization activities in a timely manner. Department of Energy personnel will present the status of delayed nuclear material stabilization activities to process uranium, plutonium, and other actinides into stable storage forms, package plutonium for interim storage, stabilize spent fuel, and maintain the facilities needed to perform these activities over the next few years. The largest Recommendation 94–1 programs are at the Savannah River Site, the Hanford Site, the Rocky Flats Environmental Technology Site, and Los Alamos National Laboratory, although most other defense nuclear sites are affected to some degree.

The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: August 11, 1999.

John T. Conway,

Chairman.

[FR Doc. 99–21289 Filed 8–12–99; 11:40 am]

BILLING CODE 3670–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 1, 1999: 6:00–9:30 p.m. Board Meeting.

ADDRESSES: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation on the "Draft Environmental Sampling Plan for the Scarboro Community, Oak Ridge, Tennessee" provided by Ms. Camilla Warren, Environmental Protection Agency, Region 4.

2. Public Comment.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0314.

Issued at Washington, DC on August 10, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21120 Filed 8–13–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–899–003; ER98–1923–002]

California Independent System Operator Corporation; Notice of Filing

August 10, 1999.

Take notice that on July 27, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a partial compliance filing as required by the Letter Order issued by the Commission on May 28, 1998.

Copies of the filing have been served upon each person designated on the official service list.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21121 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–417–001]

Canyon Creek Compression Company; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, Canyon Creek Compression Company (Canyon), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Substitute Fourth Revised Sheet No. 104
Substitute Second Revised Sheet No. 121A
Substitute Fifth Revised Sheet No. 193

Canyon states that these tariff sheets were filed in compliance with the Commission's Letter Order issued on July 23, 1999, at Docket No. RP99–417–000.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1999.

Canyon states that copies of the filing are being mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–417.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21132 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–382–001]

Garden Banks Gas Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 10, 1999.

Take notice that on July 29, 1999, Garden Banks Gas Pipeline Company, LLC (GBGP), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with a proposal to become effective August 1, 1999:

Sub Sixth Revised Sheet No. 136
Sub Original Sheet No. 137

GBGP states that the purpose of this filing is to comply with the Letter Order issued July 26, 1999 in Docket No. RP99–382–000 whereby GBGP was directed to reflect Version 1.3 standards for all standards and definitions. The tariff sheets filed herein reflect Version 1.3 for all standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21125 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–395–001]

MIGC, Inc.; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain tariff sheets with a proposed effective date of August 1, 1999.

MIGC states that the purpose of the filing is to comply with a Letter Order dated July 22, 1999 related to Order No. 587–K issued in Docket No. RM96–1–011.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21126 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–416–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Sixth Revised Sheet No. 409.

Natural states that this filing is being submitted to reflect a correction to its Order No. 587–K compliance filing submitted on July 1, 1999 at Docket No. RP99–416–000. Natural states that this submittal reflects the inclusion of GISB Standards 1.1.15, 1.2.6 and 1.3.26 which were inadvertently eliminated in its filing on July 1, 1999 in this proceeding.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit Substitute Sixth Revised Sheet No. 409 to become effective August 1, 1999.

Natural states that copies of the filing are being mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–416.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21131 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES99–56–000]

Northbrook New York, LLC; Notice of Filing

August 9, 1999.

Take notice that on August 2, 1999, Northbrook New York, LLC, a Delaware limited liability company (Northbrook), petitioned the Commission under section 204 of the Federal Power Act for the granting of blanket approval to issue securities and a waiver of Commission regulations with respect to the competitive bidding and negotiated placement requirements of 18 CFR 34.2. In the alternative, Northbrook requests approval for the issuance of $20 million in debt, approval to issue membership interests, and an exemption from the competitive bidding and negotiated placement requirements of 18 CFR 34.2. Northbrook seeks such authorizations

and waivers in order to issue securities to finance the acquisition of a 33 MW (net) hydroelectric facility known as Glen Park Hydroelectric Project, Glen Park, Jefferson County, New York, FERC Project No. 4796.

Northbrook is exclusively engaged in the acquisition, ownership and operation of the Glen Park Hydroelectric Project. Northbrook is owned 50% by Omega Energy, LLC., and 50% by NEO Corporation. NEO Corporation is an indirect subsidiary of Northern States Power Company, a Minnesota electric utility company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such motions and protests should be filed on or before August 27, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21136 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4281–008; Docket No. ER99–3996–000; Docket No. ER99–3997–000; Docket No. ER99–3998–000; and Docket No. ER99–3999–000]

NRG Power Marketing, Inc., et al; Notice of Filings

August 9, 1999.

Take notice that on July 30, 1999, NRG Power Marketing, Inc. (NRG–PM), Dunkirk Power LLC, Astoria Gas Turbine Power LLC, Authur Kill Power LLC and Huntely Power LLC, tendered for filing for transactions during the calendar quarter ending June 30, 1999 under its Market-Based Rate Tariff.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21134 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meeting

August 10, 1999.

Take notice that the Commission staff will hold a public meeting with Pacific Gas & Electric Company (PG&E) the applicant for the Mokelumne Hydroelectric Project No. 137, the U.S. Forest Service, and other interested parties participating in a collaborative process to develop an agreement on streamflow issues in the Mokelumne relicensing proceeding.

The meeting will be held on Wednesday, August 25, 1999, and Thursday, August 26, 1999, from 9:00 a.m. to 4:00 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696 so that they can get through security. All interested persons are invited to attend the meeting.

For further information, please contact Elizabeth Molloy at (202) 208–0771.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21123 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–399–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 6, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute Eight Revised Sheet No. 52, Fourth Revised Sheet No. 53, Fifth Revised Sheet No. 54, Fourth Revised Sheet No. 54A, First Revised Sheet No. 54B, Fifth Revised Sheet No. 81A.06, and Substitute Sixth Revised Sheet No. 144, with an effective date of August 1, 1999.

PG&E GT–NW states that these tariff sheets are filed in compliance with the Commission's July 29, 1999 Letter Order in docket No. RP99–399–000.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, interested state regulatory agencies and all parties on the Commission's official service list for this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21127 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–465–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

August 10, 1999.

Take notice that on August 6, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, third Revised Sheet No. 139. PG&E GT–NW requests that the above-referenced tariff sheet become effective September 6, 1999.

PG&E GT–NW asserts that the purpose of this filing is to define the types of conforming discount PG&E GT–NW and Shippers may agree to under PG&E GT–NW's tariff.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21133 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–102–000]

Sonat Energy Services Company, AGL Power Services, Inc. and Sonat Power Marketing L.P.; Notice of Filing

August 9, 1999.

Take notice that on August 2, 1999, Sonat Energy Services Company (SES) and AGL Power Services, Inc., (AGLPS), tendered for filing an application under Section 203 for approval of a transaction whereby SES will acquire AGLPS' interest in Sonat Power Marketing L.P. (SPMLP). Under the proposed transaction SPMLP will become a wholly-owned subsidiary of SES.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 1, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21137 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL99–74–000 and ER99–3965–000]

Southwestern Public Service Company v. El Paso Electric Company; Notice of Filing

August 10, 1999.

Take notice that on July 26, 1999, El Paso Electric Company (EPE), and Southwestern Public Service Company (SPS), and tendered for filing a Settlement Agreement, an Explanatory Statement in support of the Settlement Agreement and an agreement to EPE to provide specified amounts of monthly firm transmission service to SPS.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 20, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21122 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–415–001]

Stingray Pipeline Company; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, Stingray Pipeline Company (Stingray), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Substitute Fifth Revised Sheet No. 104
Substitute Second Revised Sheet No. 119A
Substitute Fifth Revised Sheet No. 199

Stingray states that these tariff sheets were filed in compliance with the Commission's Letter Order issued on July 23, 1999, at Docket No. RP99–415–000.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1999.

Stingray states that copies of the filing are being mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–415.

Any person desiring to protest this filing should file a protest with the Federal Energy Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protest must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21130 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–412–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 6, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Ninth Revised Sheet No. 412 and Fourth Revised Sheet No. 413. Tennessee requests that the attached tariff sheets be made effective August 1, 1999.

Tennessee states the attached tariff sheets are submitted in compliance with

the Commission's July 23, 1999 Letter order (July 23 Order) in Docket No. RP99–412. Tennessee states that in the July 23 Order, the Commission required Tennessee to file revised tariff sheets which (1) separately identifies as Version 1.2 the existing data sets for which an extension of time was grated and (2) incorporates as Version 1.3 Data Set 3.4.4, which Tennessee excluded from its extension request as related to a service which it did not provide. Tennessee further states that the attached revised tariff sheets reflect the required changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21128 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–414–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, Trailblazer Pipeline Company (Trailblazer), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Substitute Fifth Revised Sheet No. 104
Substitute Second Revised Sheet No. 124A
Substitute Sixth Revised Sheet No. 203

Trailblazer states that these tariff sheets were filed in compliance with the Commission's Letter Order issued on July 23, 1999, at Docket No. RP99–414–000.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1999.

Trailblazer states that copies of the filing are being mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–414.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21129 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–340–001]

TransColorado Gas Transmission Company; Notice of Tariff Filing

August 10, 1999.

Take notice that on august 5, 1999, TransColorado Gas Transmission Company (TransColorado), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Substitute Sixth Revised Sheet No. 203
Substitute Third Revised Sheet No. 203.01

TransColorado states that the filing is being made in compliance with the Commission's July 22, 1999, letter order in Docket No. RP99–340–000.

In the July 22 order, the Commission accepted tariff sheets to be effective, subject to TransColorado revising its tariff sheets within 15 days of the order as required by the Commission's directives to reflect the deletion of GISB Standard 4.3.4, which was not adopted by the commission. In addition all standards have been changed to be identified as Version 1.3 even if the standards themselves have not changed.

TransColorado states that a copy of this filing has been served upon its customers, the Colorado Public Utilities Commission and the New Mexico Public Regulatory Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the Web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21124 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES99–58–000]

UtiliCorp United Inc.; Notice of Application

August 9, 1999.

Take notice that on August 4, 1999, UtiliCorp United Inc. (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue, from time to time during a two-year period, unsecured notes and other obligations, including financial guarantees of securities issued by subsidiaries and affiliates up to and including $500,000,000, in the aggregate at any one time outstanding, for periods of time not exceeding twelve months after issuance.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 27, 1999. Protests will be considered in by Commission to determine the appropriate action to be taken, but will not serve to make the protestants parties

to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21135 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6421–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; See List of ICRs Planned To Be Submitted in Section A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

DATES: Comments must be submitted on or before October 15, 1999.

ADDRESSES: U.S. Environmental Protection Agency, Mail code 2223A, OECA/OC/METD, 401 M Street, SW., Washington, D.C. 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in section B of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For specific information on the individual ICRs see section B of the Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. List of ICRs Planned to be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) NSPS subpart L; New Source Performance Standards (NSPS) for Secondary Lead Smelters (40 CFR part 60, subpart L); EPA ICR No 1128.05, OMB Control No. 2060–0080; Expires 01/31/00.

(2) NSPS subparts KKK and LLL, New Source Performance Standards (NSPS) for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants (40 CFR part 60, subpart KKK) and New Source Performance Standards (NSPS) for Onshore Natural Gas Processing: SO2 emissions (40 CFR part 60, subpart LLL); EPA ICR No 1086.05, OMB Control No. 2060–0120; Expires 01/31/00.

(3) MACT subpart L; National Emission Standards for Coke Oven Batteries (40 CFR part 63, subpart L); EPA ICR No 1362.04, OMB Control No. 2060–0253; Expires 12/31/99.

B. Contact Individuals for ICRs

(1) NSPS subpart L; New Source Performance Standards (NSPS) for Secondary Lead Smelters (40 CFR part 60, subpart L); Deborah Thomas at (202) 564–5041 or via E-mail at *thomas.deborah@epa.gov;* EPA ICR No. 1128.05, OMB Control No. 2060–0080; Expires 01/31/00.

(2) NSPS subparts KKK and LLL, New Source Performance Standards (NSPS) for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants (40 CFR part 60, subpart KKK) and New Source Performance Standards (NSPS) for Onshore Natural Gas Processing: SO_2 emissions (40 CFR part 60, subpart LLL); Dan Chadwick at (202) 564–7054 or via E-mail at *chadwick.dan@epa.gov;* EPA ICR No. 1086.05, OMB Control No. 2060–0120; Expires 01/31/00.

(3) MACT subpart L; National Emission Standards for Coke Oven Batteries (40 CFR part 63, subpart L; Maria Malavé at (202) 564–7027 or via E-mail to *malave.maria@epa.gov.* EPA ICR No. 1362.04, OMB Control No. 2060–0253; Expires 12/31/99.

Information may also be acquired electronically through the Internet Web site at www.epa.gov/fedrgstr.

C. Individual ICRs

(1) NSPS subpart L; New Source Performance Standards (NSPS) for Secondary Lead Smelters (40 CFR part 60, subpart L); EPA ICR No. 1128.05, OMB Control No. 2060–0080; Expires 01/31/00.

Affected Entities: Entities potentially affected by this action are secondary lead smelters. Specifically, the affected facility in each smelter is any pot furnace of more than 250 kg charging capacity, blast (cupola) furnaces, and reverberatory furnaces.

Abstract: Secondary lead smelters produce elemental lead from scrap, providing the primary means for recycling lead-acid batteries (automotive) into useable products. Currently upwards of 95% of all lead-acid batteries are recycled by these facilities. Secondary lead smelters emit lead and non-lead particulate matter in quantities that, in the Administrator's judgement, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as electrostatic precipitators or scrubbers.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (See 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

Burden Statement: In the previously approved ICR, the average annual burden to industry to meet these record-keeping and reporting requirements was estimated at 34.5 person-hours. This is based on an estimated 23 respondents. The average annual burden for reporting only is projected to be less than 10 hours. This is because virtually all reporting requirements apply to new facilities only, and no new secondary lead smelters are anticipated over the next three years. There is a chance that some existing facility might need to report a physical or operational change; however, these reports are very rare, and might only involve one facility over the three-year period, with a burden of less than 10 hours.

(2) NSPS subparts KKK and LLL, New Source Performance Standards (NSPS) for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants (40 CFR part 60, subpart KKK) and New Source Performance Standards (NSPS) for Onshore Natural Gas Processing: SO_2 emissions (40 CFR part 60, subpart LLL); EPA ICR No. 1086.05, OMB Control No. 2060–0120; Expires 01/31/00.

Affected Facilities: Those entities which process natural gas onshore and are subject to NSPS subpart KKK and or NSPS subpart LLL.

Abstract: There are 586 facilities subject to NSPS subpart KKK and 62 subject to NSPS subpart LLL. There is no expected growth rate in the onshore natural gas processing industry. Subpart KKK regulates VOC emissions and subpart LLL regulates SO_2 emissions. In the Administrator's judgement these pollutants cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices and leak detection and repair protocols.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions. Recordkeeping requirements for subpart KKK affected facilities follows a general leak detection program regimon. It consists of inventorying the applicable pumps, pressure relief devices, sampling connections, valves, flanges and compressors; taking note of any leaks found at these pieces of equipment; and recording information regarding repairs. In general, gas leaks are monitored monthly and a visual inspection for liquid leaks is performed weekly.

The initial report for facilities subject to subpart KKK is required to be submitted within six months of affected facility startup. This report shall identify all process units and identify all valves, pumps, and compressors that are subject to the standards. All subsequent reports are due semiannually. These semiannual reports shall include information on applicable valves, pumps, and compressors, including the amount of valves, pumps, and compressors found leaking during the reporting period and information on repair, including the amount of valves, pumps, and compressors that did not have leaks repaired.

Recordkeeping requirements for subpart LLL affected facilities involve recording the measurements and calculations regarding determining initial and continuous SO_2 emission reduction efficiency, and periods of excess emissions must be recorded. Excess emissions are defined as any 24-hour period during which the average sulfur emission reduction efficiency (as measured by operating temperature) is less than the appropriate operating temperature as determined in the performance test. Each 24 hour period must consist of at least 96 temperature measurements equally spaced over the 24 hours. A semiannual report is required for facilities subject to Ssbpart LLL. These reports shall contain information on periods of excess emissions as defined for facilities using sulfur emission reduction efficiency and those using CEMs.

All reports are sent to the delegated state or local authority. In the event that there is no delegated authority, the reports are sent directly to the EPA Regional office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standards. The reviewing authority may then inspect the source to check if the required records are being kept and the pollution control devices have been properly installed and are being operated correctly. Performance test reports are needed for SO_2 since they serve as the Agency's record of a source's initial capability to comply with the SO_2 standards, and provide information on the operating conditions under which compliance was achieved. Excess emission reports are submitted for problem identification, as a check on source operation and maintenance, and for compliance determinations.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory. Records of the calculations and measurements required to show applicability and compliance with the standard and compliance with monitoring requirements must be kept for at least 2 years following the date of the measurements. This requirement is also in the general provisions at section 60.7(d). To certify that a facility is exempt from the control requirements of these standards, each owner or operator of a facility with a design capacity less than 2 Long Tons per Day (LT/D) of H_2S in the acid gas shall keep, for the life of

the facility, an analysis demonstrating that the facility's design capacity is less than 2 LT/D acid gas. Each owner or operator who elects to comply with section 60.646(e) shall keep, for the life of the facility, a record demonstrating that the facilities design capacity is less than 150 LT/D of H_2S expressed as sulfur.

Burden Statement: The burden for NSPS subpart KKK includes 70 hours to prepare semiannual reports, and 80 hours to file and maintain records of measurements. The total burden hours for NSPS subpart KKK is 31,020. The burden for NSPS subpart LLL includes 16 hours to write the excess emissions report, Two hours to implement activities, 30 min to maintain records of start-up, shut-down, and/or malfunction, 1.5 hours to record the required monitoring measurements, and 2 hours for the capacity data records. The total burden hours for NSPS subpart LLL is 15,012. The total for both subparts combined is 46,032 hours.

(3) MACT subpart L; National Emission Standards for Coke Oven Batteries (40 CFR part 63, subpart L; EPA ICR No 1362.04, OMB Control No. 2060–0253; Expires 12/31/99.

Affected Entities: These standards apply to owners or operators of by-product and non-recovery coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted. It also applies to all batteries using the conventional by-product recovery, the nonrecovery process, or any new recovery process. Applicability dates vary depending on the emission limitation the affected facility is subject to.

Abstract: The National Emissions Standards for Coke Oven Batteries were proposed on December 4, 1992 and promulgated on October 27, 1993. Under this rule, all existing batteries must choose a compliance track. Three compliance approaches are available under the rule: the "MACT (Maximum Achievable Control Technology) track," the "LAER (Lowest Achievable Emission Rate) extension track," and straddling both tracks (until January 1, 1998).

Owners or operators of coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted, are required to comply with the following monitoring, recordkeeping and reporting requirements. Monitoring requirements include: daily monitoring of coke oven batteries by a certified observer for each emission point and calculate the 30-run rolling average; daily performance tests for each coke oven battery are needed to determine compliance with the visible emission limitations for coke oven doors, topside port lids, offtake systems, and charging operations; monitoring of pollution control equipment operation and maintenance (e.g., flare system); and daily inspection of the collecting main for leaks according to Method 303. The recordkeeping requirements include: maintain records of the startup, shutdown, or malfunction plan developed under section 63.310; maintain records of the coke oven emission control work practice plan developed under section 63.306; maintain records of maintenance and inspection on leaks for by-product coke oven batteries; maintain records of daily operating parameters and design characteristics for nonrecovery coke oven batteries; maintain records of bypass/bleeder stack flare system or an approved alternative control device; and maintain records onsite for at least a year. Thereafter records must be accessible within three working days upon the Administrator's request. The reporting requirements include: submit one-time notifications to elect a compliance track and to certify initial compliance; if applicable, respondents also would submit one-time notifications or requests for constructing a new, brownfield, or padup rebuild by-product coke oven battery using a new recovery technology; restarting a cold-idle battery shutdown prior to November 15, 1990; obtaining an exemption from control requirements for bypass/bleeder stacks by committing to permanent closure of a battery or using an equivalent alternative control system for the stacks; and obtaining an alternative standard for coke oven doors on a battery equipped with a shed; if a malfunction occurred, respondents must notify the enforcement agency and follow up with a written report. A report also would be required if coke oven gas were vented through a bypass/bleeder stack and not flared as required under the rule; report for the venting of coke oven gas other than through a flare system; and submit semiannual compliance certifications.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated.

Based on recorded and reported information, EPA and states can identify compliance problems and what records or processes should be inspected at the plant. The records the plant maintains help indicate whether plants are in compliance with the standard, reveal misunderstanding about how the standard is to be implemented, and indicate to EPA whether plant personnel are operating and maintaining their process equipment properly. Specifically, the information and data will be used by EPA and states to: identify batteries subject to the standards; ensure that MACT and LAER are properly applied; and ensure that daily monitoring and work practice requirements are implemented as required. Effective enforcement of the standard is particularly necessary in light of the hazardous nature of coke oven emissions.

Reporting and recordkeeping requirements on the part of the respondent are mandatory under sections 112 and 114 of the Clean Air Act as amended. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (See 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

Burden Statement: In the previously approved ICR, the recordkeeping and reporting burden were estimated to average $10,740 total annual hours and 306.9 hours per respondent per year. The total annual cost for recordkeeping and reporting was estimated to average $365,626 based on 35 respondents. The estimated operation and maintenance cost documented was $2,364,954 due to the total burden hours associated with monitoring requirements (i.e., 69,469 hours). The burden has been calculated on the basis of estimated hourly rates as follows: technical $35, management $51, and clerical $16. There were no capital and start-up cost since no new sources were expected over the next three years. The total average annual burden to industry over the next three years of the ICR is estimated to be $2,730,580.

Several general assumptions were made for both by-product batteries and nonrecovery batteries in calculating the respondent burden associated with this regulation, as described below. Owners or operators of by-product batteries are required to have daily performance tests for each emission point on each battery conducted by a certified observer provided by the state. Therefore, respondent will reimburse the state through permit fees for all costs associated with daily inspections using

the formula provided in the standard. Other indirect costs attributable to respondents would include the cost of observer certification. It was assumed in this analysis that of the 34 by-product recovery plants only 10% would be required to implement the work practice procedures, specified in the work practice plan, which is require following the second independent exceedance of an applicable visible emission limitation for an emission point. It was also assumed in the analysis that 10% of the 34 by-product plants would experience a venting episode where emissions are released through bypass/bleeder stacks without flaring and, therefore, require to submit a notification and written report to EPA. The nonrecovery plants are not required to use a certified observer to monitor the oven pressure to control emissions from coke oven doors. However, nonrecovery plants are subject to work practices for charging operations for which they need to keep records.

Other specific assumptions made in calculating the burden estimate analysis include: (1) One plant per year will submit a notification for construction or reconstruction, use of new recovery technology, and startup of cold-idle batteries; (2) the enforcement agency will receive requests for an alternative door standard; (3) 1 plant would permanently close batteries and would be required to submit a notification; (4) 1 plant will submit a compliance certification, all existing plants have already submitted by the required date initial compliance certifications; (5) all plants will submit semiannual compliance certifications; (6) 20% of the 35 existing plants had initially selected to comply with the LAER extension compliance track or to straddle both the MACT and LAER compliance track, and would have to submit by January 1998 a notification on whether they want to continue this extension track until the end of the allowable period or comply with the 1995 MACT limits and residual risk standards; (7) no requests for an alternative control system would be submitted to the enforcement agency; and (8) 2 of the 35 existing plants may experience malfunction and, therefore are required to submit a notification and a written report to the enforcement agency.

Dated: August 6, 1999.

Ken Gigliello,

Acting Director, Manufacturing Energy, and Transportation Division.

[FR Doc. 99–21167 Filed 8–13–99; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6418–4]

Public Water System Supervision Program Revision for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300g–2, and 40 CFR part 142, subpart B-Primary Enforcement Responsibility, that the State of South Dakota has revised its Public Water System Supervision (PWSS) Primacy Program. South Dakota's PWSS program, administered by the Drinking Water Program of the South Dakota Department of Environment and Natural Resources (DENR), has adopted regulations for lead and copper in drinking water that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141, subpart I (56 FR 26460–26564, June 7, 1991). The Environmental Protection Agency (EPA) has completed its review of South Dakota's primacy revisions and has determined that they are no less stringent than the NPDWRs. EPA therefore proposes to approve South Dakota's primacy revisions for the Lead and Copper Rule. Today's approval action does not extend to public water systems in Indian Country as that term is defined in 18 U.S.C. 1151. Please see Indian Country section.

DATES: Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before September 15, 1999. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

ADDRESSES: Written comnents and requests for a public hearing should be addressed to: William P. Yellowtail, Regional Administrator, c/o Linda Himmelbauer (8P–W–MS), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: Linda Himmelbauer, Municipal Systems Unit, EPA Region 8 (8P–W–MS), 999 18th Street, Suite 500, Denver, Colorado 80202–2466 telephone 303–312–6263.

SUPPLEMENTARY INFORMATION:

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this document, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of South Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of South Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. A final determination will be made upon review of the hearing record.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, EPA will publish a final on the primacy revision. Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region VIII, Municipal Systems Unit, 999 18th Street (4th floor), Denver, Colorado 80202–2466; (2) South Dakota Department of Environment and Natural Resources, Drinking Water Program, 523 East Capital Avenue, Pierre, South Dakota 57501.

Indian Country

EPA has been consulting with the affected Tribes and has had discussions with the State regarding the extent of Indian country in South Dakota. Based on these discussions, we propose the following language. Recognizing that the affected parties may have differing opinions, we invite comment from the Tribes, the State and others.

EPA's decision to approve this primacy revision for the South Dakota PWSS Program does not include any land that is, or becomes after the date of this authorization, "Indian country," as defined in 18 U.S.C. 1151, including:

1. Land within formal Indian reservations located within or abutting the State of South Dakota, including the:
   a. Cheyenne River Indian Reservation,
   b. Crow Creek Indian Reservation,
   c. Flandreau Indian Reservation,
   d. Lower Brule Indian Reservation,
   e. Pine Ridge Indian Reservation,
   f. Rosebud Indian Reservation,
   g. Standing Rock Indian Reservation,
   h. Yankton Indian Reservation.
2. Any land held in trust by the United States for an Indian tribe,
3. Any other land, whether on or off a reservation, that qualifies as Indian country.

Moreover, in the context of these principles, a more detailed discussion for three reservations follows.

Rosebud Sioux Reservation

In the September 16, 1996, FR notice, EPA noted that the U.S. Supreme Court in *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584 (1977), determined that three Congressional acts diminished the Rosebud Sioux Reservation and that it no longer includes Gregory, Tripp, Lyman and Mellette Counties. Accordingly, EPA proposes to approve the primacy revision for the South Dakota PWSS program for all land in Gregory, Tripp, Lyman and Mellette Counties that was formerly within the 1889 Rosebud Sioux Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This proposed approval does not include any trust or other land in Gregory, Tripp, Lyman and Mellette Counties that qualifies as Indian country.

Lake Traverse (Sisseton-Wahpeton) Reservation

In the September 16, 1996, FR notice, EPA noted that the U.S. Supreme Court in *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975), determined that an Act of Congress disestablished the Lake Traverse (Sisseton-Wahpeton) Reservation. Therefore, EPA proposes to approve the South Dakota PWSS program for all land that was formerly within the 1867 Lake Traverse Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This proposed approval does not include any trust or other land within the former Lake Traverse Reservation that qualifies as Indian country.

Yankton Sioux Reservation

The U.S. Supreme Court's ruling in *South Dakota* v. *Yankton—Sioux Tribe*, 522 U.S. 329 (1998), found that the Yankton Sioux Reservation has been diminished by the unallotted, "ceded" lands, that is, those lands that were not allotted to Tribal members and that were sold by the Yankton Sioux Tribe to the United States pursuant to an Agreement executed in 1892 and ratified by the United States Congress in 1894. Accordingly, EPA proposes to approve the South Dakota PWSS program for unallotted, ceded lands that were ceded as a result of the Act of 1894, 28 Stat. 286 and do not otherwise qualify as Indian country under 18 U.S.C. 1151. This proposed approval does not include any trust or other land within the original boundaries of the Yankton Sioux Reservation that qualifies as Indian country under 18 U.S.C. 1151. EPA acknowledges that there may be further interpretation of land status by the final federal court decision in *Yankton Sioux Tribe* v. *Gaffey*, Nos. 98–3893, 3894, 3986, 3900. If Indian country status changes as a result of Gaffey, EPA will act to modify this authorization as appropriate.

Dated: August 4, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 99–21006 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6417–7]

U.S.-Mexico Border Grants; Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency is requesting grant proposals from U.S. nongovernment organizations, municipalities, federally recognized tribes, communities, higher education facilities, and schools for projects within the U.S.-Mexico Border region, that area within 100 km on either side of the inland and maritime U.S.-Mexico border as defined in the La Paz Agreement (1983).

DATES: The original proposal plus one (1) copy must be mailed to the appropriate regional contact (see below) for the state in which the project will occur no later than October 22, 1999. Proposals received after that date will not be considered for funding. EPA expects to announce grant awards in January 2000. Applicants should anticipate project start dates no earlier than March 1, 2000. Grants will be managed separately by EPA staff in Region 6 and Region 9.

ADDRESSES: Grant Applications should be submitted to: Region 6 (TX, NM): Gina Weber, U.S.-Mexico Border Coordinator (6WQ–D); U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733; Telephone: 214–665–8188; Email: weber.gina@epa.gov.

Region 9 (CA, AZ): Wendy Laird-Benner, U.S.-Mexico Border Coordinator (WTR4); U.S. Environmental Protection Agency, Region 9; 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: 415–744–1168; Email: laird-benner.wendy@epa.gov.

Additional copies of this grant application can also be obtained through the EPA Border Liaison Offices located in El Paso (915–533–7273) or San Diego (619–235–4765). Or call 1–800–334–0741.

FOR FURTHER INFORMATION CONTACT: Region 6 (TX, NM): Gina Weber, U.S.-Mexico Border Coordinator (6WQ–D); Telephone: 214–665–8188; Email: weber.gina@epa.gov

Region 9 (CA, AZ): Wendy Laird-Benner, U.S.-Mexico Border Coordinator (WTR4); Telephone: 415–744–1168; Email: laird-benner.wendy@epa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

This is a regionally managed grants program whose goals and objectives directly relate to and are linked with the Border XXI Program. Successful grant applications will meet objectives of the Border XXI Program as outlined in the U.S.-Mexico Border XXI Program Framework Document and/or the annual Implementation Plans (1996, 1997–1998, 1998). The mission of the Border XXI Program is to protect public health and natural resources, and encourage sustainable development along the U.S.-Mexico border. For purposes of this grants program, sustainable development is defined as "conservation oriented social and economic development that emphasizes the protection and sustainable use of resources, while addressing both current and future needs, and present and future impacts of human actions as defined in the Border XXI environmental program developed by U.S. and Mexican authorities' (for further information see the Border Environmental Cooperation Commission Project Certification Criteria). This definition is based on the

internationally accepted sustainable development definition from the Rio Declaration on Environment and Development: development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

A total of $250,000 will be awarded for ten (10) grants not to exceed $25,000 each. Each Region expects to award five (5) grants. The project period is for one (1) year upon award of the grant. US EPA Region 6 and Region 9 will jointly manage the U.S.-Mexico Border Grants Program.

Entities receiving grants under this program are required to contribute a minimum 5% matching share (in dollars or in-kind goods/services). The U.S.-Mexico Border Grants Program strongly encourages partnering with community members, business, and government agencies to work cooperatively to identify and develop innovative, effective and efficient projects.

Eligibility

Applicants who are eligible to receive these grants include, but are not limited to, the following: U.S. county and city governments, U.S. councils of government, U.S. Indian tribes, U.S. nongovernment organizations, and U.S. schools and universities. Special consideration will be given to U.S. counties, schools, community colleges, and nongovernment organizations who meet the above criteria and submit a complete proposal by the stated deadline.

No awards will be granted for the purchase of equipment for projects or for maintaining existing equipment.

Applicants must identify the environmental statute the project will address. Projects must fall within one of the below environmental statutes:

a. Clean Water Act, Section 104(b)(3): conduct and promote research investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution.

b. Safe Drinking Water Act, Section 1442(b)(3): develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

c. Solid Waste Disposal Act, Section 8001(a): conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs and studies relating to solid waste.

d. Clean Air Act, Section 103(b)(3): conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

e. Toxic Substances Control Act, Section 10(a): conduct research, development of monitoring activities on toxic substances.

f. Comprehensive Environmental Response and Sanctuaries Act, Section 311(a): conduct basic research and training related to the detection, assessment, and evaluation of the risks and human effects of exposure to hazardous substances.

Applications

The original and one (1) copy of the project proposal must be sent to the regional contact listed below for the state in which the project will take place. Proposals are limited to one (1) cover page and a five (5) page, double spaced narrative of the proposed project. Proposals must include the following:

(1) *Cover Sheet* (not to exceed one page) that must include:

(a) Project title;

(b) Applicant's name, address, phone number and organization type (i.e. community college, nongovernment organization, tribe);

(c) A list identifying project staff;

(d) A list of entities or organizations that will be providing matching funds to the project and their organization type; and

(e) Environmental statute that the project will address (see Eligibility above).

(2) *Narrative* (not to exceed five pages, double spaced) that must include:

(a) Project goals;

(b) Workplan;

(c) Proposed schedule for the workplan;

(d) Anticipated results, measures of success, and "where possible—anticipated environmental improvements as a direct result of project implementation;

(e) Budget (i.e., salaries, supplies, travel, consultants, other direct costs, and overhead); and

(f) Plan for evaluating the success of the project.

The proposal must also include letters of commitment from all contributing partners matching funds to the project. These letters must specify the nature of the match (whether it is in-kind services or cash) and the estimated dollar value of the match. These attachments will not be counted in the five (5) page narrative limit. Any other attachments or enclosures will not be considered as part of the proposal.

Final Report

Upon completion of the project, one (1) final report will be required which includes the following information: (a) description of project results, including an evaluation of overall project performance and any environmental improvements directly resulting from project implementation, and (b) financial report. Grants are subject to audit.

Criteria

EPA will use the following evaluation criteria in reviewing proposals (weighting of each criterion is indicated in parentheses):

- The application presents a clear description of a U.S.-Mexico border transboundary issue or concern (20 points);
- The application identifies realistic goals in addressing objectives and priorities as outlined in the U.S.-Mexico Border XXI Program Framework Document and/or annual Implementation Plans (20 points);
- The proposed project focuses on sustainable development, practices and improvements in the following areas: environmental health, risk reduction, hazardous and solid waste reduction, recycling, and water conservation at the local and/or regional level, defined above (20 points);
- The proposal outlines how the applicant will measure improvements in one or more of the above mentioned areas resulting from implementation of the project (15 points);
- The application involves a number and variety of bi-national and U.S.-Mexico border collaborators (i.e., community, nongovernment organizations, Indian tribes, local and regional governments, schools, and universities) (15 points);
- Project funding will be utilized as seed money, supporting innovative projects that would empower communities to take an integral role in protecting their environment (10 points).

No awards will be granted for the purchase of equipment for projects or for maintaining existing equipment.

Dated: August 10, 1999.

Alan D. Hecht,

Principal Deputy Assistant Administrator, Office of International Activities.

[FR Doc. 99–21168 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6422–4]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held September 14–16, 1999, at the Baltimore Hilton, 20 West Baltimore Street, Baltimore, MD 21201. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Tuesday, September 14, 1999, Work Group meetings only; plenary sessions Wednesday, September 15 and Thursday, September 16, 1999.

ADDRESS: Baltimore Hilton Hotel, 20 West Baltimore Street, Baltimore, MD 21201; 410–539–8400.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Science and Research Work Group, the Economics Work Group and the Regulatory Process Work Group will meet from 10:00 a.m. to 5:00 p.m. on Tuesday, September 14, 1999. The Outreach and Communications Work Group will meet on Thursday, September 16, 1999, from 11:30 a.m. to 3:30 p.m.

The plenary session will begin on Wednesday, September 15 from 9:00 a.m. to 6:00 p.m. and Thursday, September 16, from 9:00 a.m. to 11:30 a.m. The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include discussion of economics questions and recommendations and reports from the other Work Groups. There will be a public comment period on Wednesday, September 15, 1999, from 5:30 p.m. to 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: Contact Paula R. Goode, Office of Children's Health Protection, USEPA, MC 1107, 401 M Street, SW, Washington, D.C. 20460, (202) 260-7778, goode.paula@epa.gov.

Dated: August 10, 1999.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 99–21169 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–U

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Call for Issues Papers on Federal Policy in Support of a National Innovation System

AGENCY: Office of Science and Technology Policy.

ACTION: Notice—Call for Issues Papers.

SUMMARY: The Committee on Technology (CT) of the National Science and Technology Council (NSTC) is seeking to develop and implement an action plan for Federal policy and regulatory reform that will enhance innovation. While numerous reviews and articles have been appeared in recent years about the innovation process and the Federal government's role, this will be the first attempt to develop a specific national reform program for Federal support of innovation and establish priorities for Federal action.

As a first step, the CT is soliciting via this announcement input from industry, academia, non-profits, and state, local and Federal government on opportunities for Federal policy and regulatory reforms that will enhance our national innovation system. The CT is inviting submissions in the form of "issues papers" that identify top priorities and outline ideas for reforming Federal support of innovation.

Authority: National Science and Technology Policy, Organization, and Priorities Act of 1976 (Public Law 94–282).

DATES: Deadline for issues paper submissions is September 17, 1999.

ADDRESSES: We urge you to submit your papers electronically (in Microsoft Word or Word Perfect formats) to information@ostp.eop.gov. Please include PRIORITIES FOR FEDERAL INNOVATION REFORM in your subject line. The Title Page of the issues paper should also be clearly marked PRIORITIES FOR FEDERAL INNOVATION REFORM and include the following information: Submitting Organization, Contributing Organizations, Contact Name, Address, telephone, fax number and e-mail address.

Alternately, you may submit hardcopies (3 copies please) to: National Science and Technology Council, Committee on Technology, Old Executive Office Building, Room 423, Washington, DC 20502.

FOR FURTHER INFORMATION CONTACT: Please send your inquiries to the Attention of the NSTC Committee on Technology at information@ostp.eop.gov or fax to 202–456–6023.

SUPPLEMENTARY INFORMATION: The detailed Call for Issues Papers is available on the OSTP website under the "What's New" section. (http://www.whitehouse.gov/WH/EOP/OSTP/html/OSTP_Home.html.) The call can be directly accessed at http://www.whitehouse.gov/WH/EOP/OSTP/html/998_5_2.html. You may also obtain a copy of the Call for Issues Papers by faxing a request to the NSTC Council on Technology at 202–456–6023.

Dated: August 10, 1999.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 99–21104 Filed 8–13–99; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1510]

List of International Routes That Satisfy Criteria for Relief From the International Settlements Policy and Associated Filing Requirements

AGENCY: Federal Communications Commission.

ACTION: Public Notice.

SUMMARY: This document contains a list of international routes that satisfy criteria for relief from the International Settlements Policy (ISP) and associated filing requirements. This list contains countries that currently meet the standard adopted in the Commission's *International Settlement Rates* proceeding, IB Docket No. 96–261. With this action, the Commission provides carriers with a list to determine which countries are exempt from the ISP requirements.

FOR FURTHER INFORMATION CONTACT: Lisa Choi or Jackie Ruff, Attorney-Advisors, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

The Commission announced today the international routes that qualify for relief from the international settlements policy and associated filing requirements. In *1998 Biennial*

Regulatory Review: Reform of the International Settlements Policy, IB Docket No. 98–148, CC Docket 90–337 (Phase II), IB Docket 95–22, Report and Order and Order on Reconsideration, FCC 99–73 (rel. May 6, 1999) (*ISP Reform Order*), (64 FR 34734, June 29, 1999), the Commission modified its international settlements policy to no longer apply to arrangements for the exchange of international traffic on routes where U.S. carriers are able to terminate at least 50 percent of U.S.-billed traffic at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in *International Settlement Rates*, IB Docket 96–261, Report and Order, 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997). The countries that currently meet this standard, based on information on file with the Commission, are listed below. This list will be posted on the International Bureau's web page (www.fcc.gov/ib) and will be updated by notice in the **Federal Register** and on the web as new countries are added to the list. A party that seeks to add a foreign market to the list or remove a foreign market from the list may do so by filing a Petition for Declaratory Ruling, along with the appropriate supporting documentation. See 47 CFR 43.51(g)(2) as amended in the *ISP Reform Order*. These countries are Canada, Denmark, France, Germany, Hong Kong, Ireland, Italy, The Netherlands, Norway, Sweden, and United Kingdom.

For additional information, please contact Lisa Choi or Jackie Ruff, Telecommunications Division, International Bureau, (202) 418–1460.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20693 Filed 8–13–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1282–DR]

Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1282–DR), dated July 22, 1999, and related determinations.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include Public Assistance in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1999:

Black Hawk, Bremer, Butler, Cerro Gordo, Chickasaw, Floyd, Woodbury, and Worth Counties for Public Assistance (already designated for Individual Assistance).

Clayton and Crawford Counties for Public Assistance.

Fayette, Howard, and Mitchell Counties for Individual Assistance and Public Assistance.

Buchanan County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–21141 Filed 8–13–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1262–DR]

Tennessee; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1262–DR), dated January 19, 1999, and related determinations.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following area among the areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 19, 1999:

Franklin County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–21140 Filed 8–13–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Cynthia Woychic, trustee of the Donna Mae Smith Family Trust, River Falls, Wisconsin; to acquire voting shares of First National Bancorp of River Falls, River Falls, Wisconsin, and thereby indirectly acquire voting shares of First National Bank of River Falls, River Falls, Wisconsin.

Board of Governors of the Federal Reserve System, August 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21087 Filed 8–13–99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to merge with CNB Bancshares, Inc., Evansville, Indiana, and thereby indirectly acquire Civitas Bank, St. Joseph, Michigan.

Board of Governors of the Federal Reserve System, August 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21084 Filed 8-13-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-19342) published on pages 4112-41123 of the issue for Tuesday, July 29, 1999.

Under the Federal Reserve Bank of Boston heading, the entry for Norway Bancorp, MHC, Norway, Maine, and Norway Bancorp, Inc., Norway, Maine, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Norway Bancorp, MHC, Norway, Maine, and Norway Bancorp, Inc., Norway, Maine; to become bank holding companies by acquiring 100 percent of the voting shares of Norway Savings Bank, Norway, Maine.

In connection with this application, Norway Bancorp, MHC, and Norway Bancorp, Inc., both of Norway, Maine; have also applied to acquire Financial Institutions Service Corp., Lewiston, Maine, and thereby engage in data processing activities, pursuant to §§ 225.28(b)(1), (10), and (14) of Regulation Y.

Comments on this application must be received by August 23, 1999.

Board of Governors of the Federal Reserve System, August 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21086 Filed 8–13–99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire Bradford Pointe of Evansville, L.P., Evansville, Indiana, and thereby indirectly acquire Bradford Pointe of Evansville, II, L.P., Evansville, Indiana; House Investments Prestwick Columbus II, L.P., Indianapolis, Indiana; Housing Partners, Inc., The Armory L.P., Columbus, Indiana; Housing Credit Partners I, Ltd., Evans/Bajandas Project, Evansville, Indiana; Pedcor Investments 1987-I, L.P., Indianapolis, Indiana; Shelbyville High Apartments, L.P., Evansville, Indiana, and thereby engage in permissible community development activities, pursuant to § 225.28(b)(12) of Regulation Y; IndFed Mortgage Company, Valapariso, Indiana, and thereby engage in permissible community development activities and related financial and investment advisory activities, pursuant to § 225.28(b)(12) of Regulation Y; Pinnacle Financial Consultants, Inc., Valapariso, Indiana, and thereby engage in permissible financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y, and in permissible agency transactional services for customer accounts, pursuant to § 225.28(b)(7) of Regulation Y; and Citizens Life Assurance Company, Phoenix, Arizona, and thereby engage in permissible credit reinsurance activities, pursuant to § 225.28(b)(11)(i) of Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. National Bancshares Corporation of Texas, San Antonio, Texas; to engage *de novo* through its subsidiary, NBC Financial, Inc., San Antonio, Texas, in securities brokerage activities and other transactional services, pursuant to § 225.28(b)(7) of Regulation Y; and in underwriting and dealing in government obligations and money market instruments, pursuant to § 225.28(b)(8)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21085 Filed 8-13-99; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Community/Tribal Subcommittee (C/TS) of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Roundtable Discussion

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following roundtable discussion.

Name: Community/Tribal Subcommittee Health Assessment Roundtable Discussion.

Times and Dates: 1 p.m.–5:30 p.m., August 30, 1999. 9 a.m.–3 p.m., August 31, 1999.

Place: Marriott Fisherman's Wharf, 1250 Columbus Avenue, San Francisco, California 94133.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 80 people (public comment periods may be limited due to agenda time constraints and the number of non subcommittee attendees).

Purpose: A Roundtable Discussion will provide the Community and Tribal Subcommittee members and special consultants with an overview of the mechanism the Agency uses to conduct health assessments and how follow-up recommendations are determined. This subcommittee discussion will result in recommendations that are presented to the Board of Scientific Counselors for discussion to recommend to ATSDR a course of action for health assessments. The Board will make recommendations on the quality of science in ATSDR-supported research, identify emerging problems which require scientific investigation, discuss the accuracy and currency of the science in ATSDR reports, and suggest program areas to emphasize and/or to de-emphasize. In addition, the Board shall make recommendations regarding research programs and conferences that ATSDR may support through grants to make grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

Matters To Be Discussed: The agenda will include a discussion of ATSDR's Health Assessment Process with the Community and Tribal Subcommittee and Special Consultants.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Sandra Coulberson, Designated Federal Official, C/TS, ATSDR, M/S E–56, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–6002, or toll-free at 1–888–422–8737. Media interested in interviewing staff should contact Mike Groutt, Public Affairs Specialist, at (404) 639–0501, or toll-free at 1–888–422–8737.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 10, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–21109 Filed 8–13–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee (C/TS) of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Community/Tribal Subcommittee

Times and Dates: 9:00 a.m.–5 p.m., September 1, 1999. 9:00 a.m.–12 p.m., September 2, 1999

Place: Marriott Fisherman's Wharf, 1250 Columbus Avenue, San Francisco, California 94133.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 80 people (public comment periods may be limited due to agenda time constraints and the number of non subcommittee attendees).

Purpose: The Community/Tribal Subcommittee will convene its quarterly meeting. This subcommittee will bring to the Board of Scientific Counselors advice and citizen input, as well as recommendations on community and tribal programs, practices, and policies of the Agency. The subcommittee will report directly to the Board of Scientific Counselors.

Matters to be Discussed: Issues and concerns of the Community/Tribal Subcommittee as it relates to ATSDR's community and tribal programs. The meeting's primary agenda item will be a discussion of how the agency conducts activities at federal facility sites. The agency will present the process for conducting health assessments at federal facilities: protocol and procedures for working with the Department of Energy and the Department of Defense. A discussion will be held to obtain community and tribal input. Recommendations will then be developed and forwarded to the ATSDR, BSC for action. Written comments are welcome and should be received by the contact person prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Sandra Coulberson, Designated Federal Official, C/TS, ATSDR, M/S E–56, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–6002, or toll-free at 1–888–422–8737. Media interested in interviewing staff should contact Mike Groutt, Public Affairs Specialist, at (404) 639–0501, or toll-free at 1–888–422–8737.

The Director, Management and Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 10, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–21111 Filed 8–13–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 1 p.m.–9 p.m., September 22, 1999. 8:30 a.m.–5 p.m., September 23, 1999.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020. Telephone 513/367–5610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and

other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions form the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose

This subcommittee is charged with providing advice and recommendations to the Director, CDC and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed

Agenda items include presentations from the National Center for Environmental Health (NCEH) and the National Institute for Occupational Safety and Health (NIOSH) regarding the progress of current studies. There will also be a preliminary Public Health Assessment report for the Fernald area from the Agency for Toxic Substances and Chemical Registry (ATSDR).

Agenda items are subject to change as priorities dictate.

Contact Persons For More Information: Dr. David Pedersen, Health-Related Energy Research Branch, Division of Surveillance, Hazard Evaluations and Field Studies, NIOSH, CDC, Robert A. Taft Laboratory, 4676 Columbia Parkway, M/S R–44, Cincinnati, Ohio 45226. Telephone 513/841–4400, Fax 513/841–4470.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 10, 1999.

Carolyn J. Russell

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21108 Filed 8–13–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Leveraging Report	70	1	38	2,660

Estimated Total Annual Burden Hours: 2,660.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Title: Low Income Home Energy Assistance Program (LIHEAP) Leveraging Report.

OMB No.: 0970–0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged nonfederal home energy resources for low income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to HHS for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary.

The Leveraging report obtains information on the resources leveraged by LIHEAP grantees each fiscal year (as cash, discounts, waivers, and in-kind); the benefits provided to low income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation); and the fair market value of these resources/benefits. HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine countability and valuation of grantees' leveraged nonfederal home energy resources, and to determine grantees' shares of leveraging incentive funds. HHS proposes to request a 3-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

Respondents: State and Tribal Governments.

Dated: August 10, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–21092 Filed 8–13–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2695]

Agency Emergency Processing Under OMB Review; Survey of Biomedical Equipment Manufacturers for Year 2000 Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information, originally approved under OMB control number 0900–0003, concerns a survey of manufacturers of biomedical equipment about the Year 2000 (Y2K) compliance of their products.

DATES: Submit written comments on the collection of information by August 19, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Thomas B. Shope, Office of Science and Technology (HFZ–140), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–3314, ext. 132, or FAX 301–443–9101.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. This collection is needed immediately because some manufacturers have not yet provided data on their noncompliant products and because other manufacturers have provided either incomplete or preliminary, not final, information. Health care facilities and others are depending upon the information in the FDA-operated Federal Y2K Biomedical Equipment Clearinghouse (the Clearinghouse) as they assess the Y2K compliance of the biomedical equipment used in their facilities. In order to continue this collection activity, it is necessary to extend this activity until February 29, 2000. FDA is requesting OMB approval by August 19, 1999.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Survey of Biomedical Equipment Manufacturers for Year 2000 Compliance

The Deputy Secretary of the Department of Health and Human Services, on behalf of the governmentwide Biomedical Equipment Subgroup of the Chief Information Officer Council's Y2K Subcommittee, is surveying manufacturers of biomedical equipment about the Y2K compliance of their products. The existence of a Y2K date problem in biomedical equipment could pose potentially serious health and safety consequences.

Manufacturers have been asked to post information about noncompliant products on a website and link this to a government website on biomedical equipment. If all of a manufacturer's products are compliant, they may provide a notice of total product compliance. Manufacturers have the option to mail the information to the Department of Health and Human Services (DHHS) for posting on the government website, or they may provide it electronically. All information collected is available to the public through the government website.

FDA, on behalf of DHHS, is continuing to solicit product status information from manufacturers that have not responded to this request and to seek clarification or expansion of specific information that has been received, but is incomplete.

To be Y2K compliant, a product must be able to accurately process date information in the Y2K and between the 20th and 21st centuries, including leap year calculations. Medical devices and scientific laboratory equipment may experience problems beginning January 1, 2000, if the computer systems, software applications, or embedded chips used in these devices and equipment contain two-digit fields for year representation.

FDA regulates medical devices and needs information regarding the Y2K compliance of these products. Under a previous good manufacturing practices regulation and the current quality system regulation, effective June 1, 1997, manufacturers must investigate and correct problems with medical devices that present a significant risk to public health. This includes devices that fail to operate according to their specifications because of inaccurate date recording and/or calculations. Also, section 518 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360h) requires notification of users or purchasers when a device presents an unreasonable risk of substantial harm to public health. These regulations, however, do not apply to all biomedical equipment, such as scientific laboratory equipment, but only to medical devices. Therefore, a proactive collection of Y2K compliance information of all biomedical equipment is necessary to prevent a Y2K date problem from causing any public health risk in the patient care services and health research initiatives of the next century.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
450	1	450	8	3,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on mailing lists and data bases on product approvals, FDA believes that approximately 150 manufacturers have not yet provided data to the Clearinghouse on Y2K compliance status of their products. Based on analysis of data already in the Clearinghouse, approximately 300 manufacturers have provided information that is either incomplete or that requires clarification. FDA estimates that it will take manufacturers an average of 8 hours to collect, prepare, and submit the requested information.

William K. Hubbard.

Dated: August 10, 1999

Senior Associate Commissioner for Policy, Planning, and Coordination.

[FR Doc. 99–21082 Filed 8–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2673]

Caudill Seed Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Caudill Seed Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of irradiation to control microbial pathogens in alfalfa and other sprouting seeds.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3116.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9M4673) has been filed by Caudill Seed Co., Inc., 1402 West Main St., Louisville, KY 40203. The petition proposes to amend the food additive regulations in part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) to provide for the safe use of sources of ionizing radiation to control microbial pathogens in alfalfa and other sprouting seeds.

The agency has determined under 21 CFR 25.32(j) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 1, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21081 Filed 8–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Complementary and Alternative Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: August 31–September 1, 1999.

Open: August 31, 1999, 8:30 AM to 1:00 PM.

Agenda: The agenda includes introduction of new Council members, remarks by the Acting Director, NCCAM, and other business of the Council.

Place: Doubletree Hotel, Plaza III Room, 1750 Rockville Pike, Rockville, MD 20852.

Closed: August 31, 1999, 1:00 PM to 6:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Doubletree Hotel, Plaza III Room, 1750 Rockville Pike, Rockville, MD 20852.

Open: September 1, 1999, 8:30 AM to 1:00 PM.

Agenda: Continuation of Council business.

Place: Doubletree Hotel, Plaza III Room, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard Nahin, Phd, Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 9000 Rockville Pike, Room 5B36, Bethesda, MD 20892, 301–594–2013.

Dated: August 6, 1999.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 99–21105 Filed 8–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 12–13, 1999.

Time: 10:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 25, 1999.

Time: 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 9, 1999.

Anna Snouffer,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–21107 Filed 8–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 17, 1999.
Time: 10:00 AM to 12:01 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 18, 1999.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, 301–435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 18, 1999.
Time: 12:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 19, 1999.
Time: 12:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21106 Filed 8–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Kern National Wildlife Refuge, California

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for the Kern National Wildlife Refuge Complex, Kern and Tulare Counties, California.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) intends to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Kern National Wildlife Refuge (Refuge) Complex. The Service is gathering information necessary to prepare a CCP and EA pursuant to the National Wildlife Refuge System Improvement Act and the National Environmental Policy Act (NEPA). The public is invited to participate in the planning process. The Service is furnishing this notice in compliance with the Service CCP policy to accomplish the following:

(1) Advise other agencies and the public of our intentions;

(2) Obtain suggestions and information on the scope of issues to include in the planning documents; and

(3) announce public scoping workshops on August 30 and 31, 1999.

DATES: Public scoping workshops will be held at the following locations beginning at 7:00 pm and ending no later than 9:00 pm on the dates indicated:

Date	Location
August 30, 1999	Tulare Community Center Tulare, California.
August 31,1999	Beale Library (Auditorium) Bakersfield, California.

Interested persons are encouraged to attend the workshops to identify issues, concerns, and opportunities to be addressed in the CCP. To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received on or before September 30, 1999.

ADDRESSES: Send written comments on the EA or CCP or requests to be added to the mailing list to the following address: Planning Team Leader—Kern NWR Complex, California/Nevada Refuge Planning Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–1916, Sacramento, California, 95825.

FOR FURTHER INFORMATION CONTACT: Mark Pelz, Planning Team Leader, by phone at (916) 414–6504, or email at mark___pelz@fws.gov, or David Hardt, Project Leader, by phone at (661) 725–2767, or email at dave___hardt@fws.gov.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended, mandates that all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP will guide management decisions by identifying Refuge goals, long-range objectives and management strategies for achieving the Refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection, wildlife-dependant recreation and other public uses, cultural resources, and environmental effects. Public input into this planning process is important. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will manage the Refuge Complex.

The Service is soliciting information from the public via written comments and public meetings. Interested parties are urged to submit their names and addresses to be added to the Service's mailing list. The Service will periodically send out special planning updates to those who are interested in the Refuge Complex. Among other things, these mailings will provide information on how to participate in the CCP planning process. Comments received will be used to identify key issues and to develop goals, objectives, and management strategies. Additional opportunities for public participation will occur throughout the process, which is expected to be completed in mid 2001.

The Kern Refuge Complex is composed of three refuges: Kern, Pixley, and Blue Ridge. Kern Refuge is located 19 miles west of Delano, California at the southern end of the San Joaquin Valley. It was established in 1960 to provide wintering habitat for waterfowl in the southern San Joaquin Valley. The Kern Refuge consists of a single, 10,618-acre unit owned by the Federal government. The Refuge purpose is to provide "* * * an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d (Migratory Bird Conservation Act).

Pixley Refuge is located approximately 19 miles south of the City of Tulare, northeast of Kern Refuge. This Refuge was set aside in 1959 to provide wintering habitat for waterfowl as well as the endangered blunt-nosed leopard lizard. Pixley Refuge is composed of a 8,800 acres, of which about 70 percent are owned by the Federal government. The Refuge purposes are: (1) "* * * a land-conservation and land-utilization program * * *" 7 U.S.C. 1011 (Bankhead-Jones Farm Tenant Act); (2) "* * * as refuges for migratory birds and other wildlife: * * *" Secretarial Order 2843, dated Nov. 17, 1959; and (3)"* * * to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants * * *" 16 U.S.C. 1534 (Endangered Species Act of 1973).

Blue Ridge Refuge is located in central Tulare County, northeast of Porterville, in the foothills of the Sierra Nevada. This Refuge was established in 1982 to protect critical roosting habitat for the California condor. The 897 acres in the Blue Ridge Refuge are all owned by the Federal government. The refuge purpose is "* * * to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants * * *" 16 U.S.C. 1534 (Endangered Species Act of 1973).

The outcome of this planning process will be a CCP to guide Refuge management for the next 15 years and accompanying NEPA document. It is estimated that a draft CCP and NEPA document will be made available for public review in the latter part of 2000.

Dated: August 9, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations.

[FR Doc. 99–20946 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Wednesday, September 29, 1999, at the Garfield County Courthouse in Glenwood Springs, Colorado.

DATES: Wednesday, September 29, 1999.

ADDRESSES: For further information, contact Lynn Barclay, Bureau of Land Management (BLM), 455 Emerson Street, Craig, Colorado 81625; Telephone (970) 826–5096.

SUPPLEMENTARY INFORMATION: The Northwest Resource Advisory Council will meet on September, 29, 1999, at the Garfield County Courthouse, County Commissioners Meeting Room, 109 8th Street, Glenwood Springs, Colorado. The meeting will start at 9 a.m. and include discussions of the proposed statewide recreation guidelines, grazing permit renewals, and wilderness review.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained at the Bureau of Land Management Offices in Grand Junction and Craig, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: August 10, 1999.

Mark T. Morse,

Center Manager, Northwest Center.

[FR Doc. 99–21176 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Off-Road Vehicle Management Plan/Supplement to the Final Environmental Impact Statement

AGENCY: National Park Service, Big Cypress National Preserve, Florida.

SUMMARY: This Off-Road Vehicle Management Plan/Supplement to the Final Environmental Impact Statement (ORVMP/SFEIS) identifies and assesses potential impacts of alternative options for the management of off-road vehicles within the Big Cypress National Preserve. The ORVMP/SFEIS describes management concerns which include the need to protect natural resources while providing recreational ORV access to the Preserve.

DATES: The ORVMP/SFEIS will be available for review August 13, 1999, until November 12, 1999. Written comments must be received by the Superintendent at the address below or postmarked no later than November 12, 1999. Public meetings will be held in the Preserve area at times to be published in local newspapers.

ADDRESSES: The ORVMP/SFEIS may be viewed on the Internet at www.nps.gov/BICY/ORVPLAN. Copies of the ORVMP/SFEIS are available from the Superintendent at the following address. Superintendent, Big Cypress National Preserve, HCR 61, Box 110,

Ochopee, Florida 34141, Telephone: (941) 695–2000.

Copies of the ORVMP/SFEIS may also be read at the following libraries:

Barron Public Library, P.O. Box 785, La Belle, FL 33935, Telephone: (941) 675–0833

Glades County Public Library, P.O. Box 505, Moore Haven, FL 33471, Telephone: (941) 946–0744

Monroe County Public Library, 700 Fleming Street, Key West, FL 33040, Telephone: (305) 292–3595

Collier County Public Library, 850 Central Avenue, Naples, FL 34102, Telephone: (941) 261–8208

Miami-Dade Public Library, 101 W. Flagler Street, Miami, FL 33130, Telephone: (305) 375–2665

Broward County Public Library, 100 South Andrews Avenue, Ft. Lauderdale, FL 33301, Telephone: (954) 357–7444

Palm Beach County Public Library, 3650 Summit Boulevard, West Palm Beach, FL 33406, Telephone: (561) 233–2600

Lee County Public Library, 2050 Lee Street, Fort Myers, FL 33901, Telephone: (941) 479–4620

FOR FURTHER INFORMATION CONTACT: For additional information, please contact the Superintendent.

Dated: August 6, 1999.

Daniel W. Brown,

Regional Director, Southeast Region.

[FR Doc. 99–21072 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision; Final Environmental Impact Statement General Management Plan; Lyndon B. Johnson National Historical Park, Texas

Introduction

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190 (as amended), and the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2 the Department of the Interior, National Park Service, has prepared the following Record of Decision on the Final Environmental Impact Statement (EIS) for the General Management Plan for Lyndon B. Johnson National Historical Park.

This Record of Decision is a concise statement of what decisions were made, what alternatives were considered, the environmentally preferred alternative, the basis for the decision, and the mitigating measures developed to avoid or minimize environmental impacts.

Decision (Selected Action)

The National Park Service will implement Alternative 3, the proposed action, as described in the Draft and Final Environmental Impact Statements.

Concept

This alternative significantly expands the park operations, maintenance, and interpretation levels in Johnson City and at the ranch. It greatly increases park outreach to the region and allows the public much greater access to the Texas White House.

This alternative depends heavily on construction of a new combination bus maintenance facility/interpretive ranger office south of the Pedernales River. This new facility would allow the ranch maintenance and ranch operations to move into the existing bus maintenance facility and a visitor contact station to be installed in Klein's shop. Without this new facility, none of the other operations could be moved and this alternative could not be implemented. All facets of visitor interpretation and transportation would be affected.

Interpretation and Visitor Use

Interpretive programs and facilities throughout the park would present all primary and many secondary interpretive themes to enhance the visitor experience. Visitors would find opportunities to participate in a range of orientation, education, and interpretive activities for differing levels of interest, understanding, and sophistication. They would be able to explore the park's diverse resources, visualize the setting associated with the historic time period interpreted, and identify with the experience and feelings of personalities who historically lived at or visited this site. They would have access to accurate, balanced, and in-depth information about Johnson's life and legacy.

The interpretation would be designed to significantly increase the number of repeat visitors who return to the park for additional programs and special events. The return of the wagon transport in Johnson City and the opening of the Texas White House is expected to create considerable interest initially in visiting the park and the variety and number of new programs and events would continue to bring visitors back. The improved park experience and greater outreach programs would enhance the park's position within the crowded tourism market of south-central Texas and would be expected to substantially increase visitation at both the Johnson City and LBJ Ranch districts.

Johnson City District

All facilities in this district would be open on a daily basis. Additional interpretive staff (up to 14 FTEs) would provide creative, well-researched, high quality interpretive programs. The visitor center would function as it does now, but with extended emphasis on children's interpretation, lectures, and additional interpretive presentations on a variety of topics.

Ranger-led tours of the LBJ boyhood home would continue to be provided daily on a regularly scheduled basis. Education program opportunities would be expanded to educational institutions and schools throughout the region.

Significant improvements in interpretive opportunities would be implemented at the Johnson settlement. Interpretation would be expanded to provide costumed interpreters at the cabin and chuckwagon on a daily basis. A wagon would be used to provide transportation for visitors from a staging area (the Smith house site) outside the historic area to the exhibit center, and to set the mood for the costumed interpretive program.

LBJ Ranch District

Cooperative arrangements with the Lyndon B. Johnson State Historical Park and the Southwest Parks and Monuments Association would remain positive and strong with increased dependence on each organization to share in the responsibility of effectively presenting both parks' stories in all interpretive programs and materials when feasible. The cooperative arrangement between the state and national historical parks would be expanded to include cooperation/assistance with exhibits and interpretation and better overall integration of programs. Both parks would work together to encourage package bus tours from around the region and country.

Interpretation at the show barn would be expanded to include personal services, exhibits, and audiovisual productions. There would be an upgrade of exhibits in the barn as well as a display of historic farming and ranching equipment. There would also be an increase in special events and education programs.

In phase 2, the Texas White House complex would become the focal point of the interpretive program at the LBJ Ranch. Visitors would also have access to several other historic features of the Texas White House complex. The Secret Service command post would be restored and interpreted. The airplane hangar would become a flexible exhibit

area with multipurpose space for interpretive programs, audiovisual presentations, lectures, and films. The Martin barn would contain exhibits relating to early agricultural history on the LBJ Ranch. Klein's shop would be used as a visitor contact station with a limited SPMA sales area and restrooms.

Facility Development and Maintenance

Johnson City District

Although the park would not look substantially different than it does today, some changes would be noticeable. The level of maintenance on buildings and landscape would be higher than at present. A cultural landscape report would determine the feasibility and desirability of restoring the landscape of the Johnson cabin and the boyhood home to a more historical appearance. If restoration is not considered feasible or desirable, the landscapes would continue to be maintained at the present level. The nonhistoric Smith house would be removed and the site landscaped to function as a staging area for the horse-drawn wagons. The nonhistoric Hobbs house would be disposed of either by exchanging the property for the historic Alexander house (which the park rents and maintains) or by selling the house and requiring that it be moved off the property. The site would then be landscaped open space.

A new maintenance facility for the Johnson City district would be constructed south of the settlement in the back 40. The red maintenance building, a historic structure that is not a part of the park's interpretive story, would be adaptively reused or leased under the historic leasing program or used for other park purposes. The park would attempt to acquire the Masonic Lodge, the Cox tract, and the Alexander house. If acquired, the Alexander House would be adaptively reused. Scenic easements would be sought for the area along Town Creek between the education center (Taylor house) and the Volunteers in Parks campsites to the south. Town Creek provides an excellent backdrop for the settlement, and vegetation along its banks would protect its viewshed from any future development to the south and east. The park would work with park neighbors to ensure that any development does not detract from the historic character of the park.

As a part of its ongoing research, the park would develop a cultural landscape report for the entire district to improve interpretation of historic resources and to ensure accuracy of historic landscapes.

Visitors with disabilities would continue to be able to drive on existing maintained roads to the settlement exhibit center or ride accessible buses.

LBJ Ranch District

Expanded cooperation with the state historical park could extend to construction of a new joint bus maintenance facility on state historical park property. Should that prove infeasible, the park would seek to purchase the Weinheimer property across the road west of the state historical park's maintenance facility.

The Junction School would be restored on the exterior and rehabilitated on the interior for educational programs. Restrooms and utilities would be installed. A trail would be constructed from the Junction School to the Texas White House complex so that visitors could walk rather than ride the bus should they so desire.

The show barn would be rehabilitated with new exhibits of ranching and historic farm equipment, as well as new restroom facilities and upgraded utilities. The ranching operation office would move to the vacated bus maintenance facility with the show barn becoming an interpretive/visitor use area.

Utilities at the Volunteers in Parks site would be upgraded immediately. However, because the trailer pads are tightly arranged and unsatisfactory, the entire Volunteers in Parks site facility would eventually be moved to a site east of the communications tower/hay barn/boneyard and screened by vegetation and topography. Four new concrete RV pads would be constructed as well as a gravel access road.

Ranch lands would be maintained in accordance with current NPS policies and procedures to look essentially as they did during the president's lifetime. A cultural landscape report would determine whether missing historic features of the landscape would be restored.

Scenic easements would be purchased, wherever possible, over those properties within the authorized ranch boundary but not within NPS ownership, as a means of ensuring that the visual impact of any such development within those easements would be minimal.

Development concept plans and design guidelines for the LBJ Ranch district would be required.

In phase 2, the Texas White House would be stabilized and opened to the public. The maintenance operation would be moved out of Klein's shop and the structure converted to a visitor contact station/SPMA sales operation serving the LBJ Ranch. Once the new bus maintenance facility is constructed south of the Pedernales River, the vacated bus barn would be converted for ranch maintenance operations moved from Klein's shop and the ranching operation moved from the show barn.

In phase 2, the Martin barn would be preserved with walk-through exhibits. The communications trailers would be stabilized, the exteriors restored, and the communications equipment preserved. The Secret Service command post would be restored for interpretive purposes. The LBJ hangar would be preserved and use for exhibits, lectures, and films. The poolhouse would be preserved as an important feature of the Texas White House landscape, but the interior would be adaptively reused.

Other Alternatives Considered

Two other alternatives to the selected plan were evaluated in the draft and final environmental impact statements.

Alternative 1 (no action) would continue the existing conditions at the park. It would not provide the level of access to the Texas White House that is expected by the public. It would "mothball" several historic structures and leave park maintenance within a historic structure in the ranch house complex. Bus maintenance and ranch interpretation would continue as at present in inadequate facilities. In Johnson City, the maintenance facility would remain in a historic structure inappropriate for such use and no attempt to protect the national historical park's setting would be made despite the influx of growth.

Alternative 2, a "minimum requirements alternative," is characterized by small, incremental changes in everyday maintenance, interpretation, and administration. It raise the level of maintenance and preservation, provides additional personal services for interpretation, modestly expands educational outreach to the local community, and provides the additional staff necessary to prepare the Texas White House for opening to the public on a limited schedule. At the Ranch District, the maintenance facility would be moved to a new structure in the vicinity of the communications tower. Several historic structures would be stabilized or adaptive reused that are currently preserved in a less than usable state. In Johnson City, the park would seek to acquire the Alexander House and two properties along U.S. Route 290 to protect an important Johnson family related structure and the south viewshed from the park.

Environmentally Preferred Alternative

A Record of Decision must identify the environmentally preferable alternative, an alternative that causes the least damage to the biological environment, and that best protects, preserves, and enhances historic, cultural, and natural resources. Alternative 3, the selected action, is the environmentally preferred alternative. It provides the greatest level of preservation of historic structures of all alternatives, provides the largest economic benefits to Blanco and Gillespie counties, and provides the most comprehensive interpretive experience for the visitor. Similar impacts on soils and water resources and quality occur among the three alternatives. Alternative 3 has the most impact upon floodplains. It proposes construction in Johnson City that may occur within a floodplain. The proposed new bus maintenance facility on the state historical park property may be within the 500 year floodplain. Further evaluation would determine whether mitigating measures are required but only minor impact on the floodplains of Town Creek and the Pedernales River is expected because both sites already have development and the area of new impact would be small.

Basis for Decision

The selected action includes a combination of actions that the National Park Services believes will provide the best interpretative experience for visitors, provide the highest level of preservation for historic structures, and provide a high level of educational outreach to the community. In particular, the Texas White House would be open to the public to the greatest extent possible and with the highest level of interpretation. The selected action has only a minor impact upon the national historical park's natural resources.

Measures To Minimize Harm

The Texas State Historic Preservation Office was consulted throughout the development of alternative and "strongly supports the implementation of Alternative #3, which is the National Park Service's proposed course of action." Further consultation will occur prior to implementation of individual actions described within the plan.

A floodplain delineation along Town Creek will be necessary within Johnson City prior to construction to determine whether mitigation measures need to be implemented prior to construction of maintenance facilities. Any bus maintenance facilities constructed for the Ranch District would be designed to be out of the 500 year floodway.

Conclusion

The above factors and considerations justify selection of the alternative identified as the proposed action in the final environmental impact statement.

Dated: August 15, 1999.

John T. Tiff,

Acting Superintendent, Lyndon B. Johnson National Historic Park.

[FR Doc. 99–21070 Filed 8–13–99; 8:45 am]

BILLING CODE 4710–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an emergency meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission concerning the recent critical incidents in the park. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday, August 12, 1999 at 4:00 p.m.

Address: New Jersey District Office, Route 615, Layton, NJ.

The agenda will include a report on the drownings from Superintendent Bill Laitner and comments from members of the Citizen Advisory Commission. The meeting will be open to the public and there will be an opportunity for public comment on this issue.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: August 5, 1999.

William G. Laitner,

Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg
U.S. Senate
SH–506 Hart Senate Office Building
Washington, D.C. 20510–3002

Honorable Robert G. Torricelli
U.S. Senate
Washington, D.C. 20510–3001

Honorable Richard Santorum
U.S. Senate
SR 120 Senate Russell Office Bldg.
Washington, D.C. 20510

Honorable Arlen Specter
U.S. Senate
SH–530 Hart Senate Office Bldg.
Washington, D.C. 20510–3802

Honorable Pat Toomey
U.S. House of Representatives
Cannon House Office Bldg.
Washington D.C. 20515

Honorable Don Sherwood
U.S. House of Representatives
2370 Rayburn House Office Bldg.
Washington, D.C. 20515–3810

Honorable Margaret Roukema
U.S. House of Representatives
2244 Rayburn House Office Bldg.
Washington, D.C. 20515–3005

Honorable Tom Ridge
State Capitol
Harrisburg, PA 17120

Honorable Christine Whitman
State House
Trenton, NJ 08625

[FR Doc. 99–21071 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Woodlake, CA in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Woodlake, CA in the possession of the Los Angeles County Museum of Natural History, Los Angeles, CA.

A detailed assessment of the human remains was made by Los Angeles County Museum of Natural History professional staff in consultation with representatives of the Tule River Indian Tribe of the Tule River Reservation and the Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1932, human remains representing one individual were recovered from the Robla Lomas Ranch, Woodlake, CA under unknown circumstances by person(s) unknown. In 1972, these human remains were donated to the Los

Angeles County Museum of Natural History by Helen Phillips Spears. No known individual was identified. No associated funerary objects are present.

Collections documentation indicates this individual was found with ten other individuals on the Robla Lomas Ranch. Documentation also suggests that these human remains are probably those of an individual killed by the Spanish during a battle known to have occured at the Robla Lomas Ranch in 1832.

Ethnohistoric information indicates that the Robla Lomas Ranch is within the historic territory traditionally occupied by the Southern Valley Yokuts, now represented by the present-day Tule River Indian Tribe of the Tule River Reservation. Consultation with representatives of the Tule River Indian Tribe of the Tule River Reservation confirm that these human remains are affiliated with the Tule River Indian Tribe of the Tule River Reservation.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Tule River Indian Tribe of the Tule River Reservation.

This notice has been sent to officials of the Tule River Indian Tribe of the Tule River Reservation and the Santa Rosa Indian Community of the Santa Rosa Rancheria. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Margaret A. Hardin, Anthropology Section, Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA 90007; telephone: (213) 763-3382; e-mail: Mhardin@nhm.org, before September 15, 1999. Repatriation of the human remains to the Tule River Indian Tribe of the Tule River Reservation may begin after that date if no additional claimants come forward.

Dated: August 10, 1999.

Richard Waldbauer,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 99–21068 Filed 8-13-99; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Navajo County, AZ in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Navajo County, AZ in the possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

A detailed assessment of the human remains was made by Los Angeles County Museum of Natural History professional staff in consultation with representatives of the Hopi Tribe.

Between 1935 and 1965, human remains representing one individual were removed from the Homolobi (Homolovi t4) site in Navajo County, AZ under unknown circumstances by person(s) unknown. In 1969, these human remains were donated by Gordon Pond to the Los Angeles County Museum of Natural History. No known individuals were identified. No associated funerary objects are present.

Based on ethnohistoric information and Hopi oral tradition, the Homolobi site has been identified as ancestral to the Hopi Tribe. Consultation with representatives of the Hopi Tribe indicate the Homolobi site was inhabited exclusively by ancestors of the Hopi Tribe.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Margaret A. Hardin, Anthropology Section, Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA 90007; telephone: (213) 763-3382; e-mail: Mhardin@nhm.org, before September 15, 1999. Repatriation of the human remains to the Hopi Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: August 10, 1999.

Richard Waldbauer,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 99–21069 Filed 8-13-99; 8:45 am]

BILLING CODE 4310-70-F

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–308–310 and 520–521 (Review)]

Cargon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-

impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 23672, May 3, 1999) were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on October 4, 1999, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before October 7, 1999, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by October 7, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 11, 1999.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99–21171 Filed 8–13–99; 8:45 am]
BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–397–400 (Preliminary) and 731–TA–842–845 (Preliminary)]

Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Notice of discontinuation of countervailing duty and antidumping investigations.

SUMMARY: On August 9, 1999, the Department of Commerce issued a determination to not initiate antidumping and countervailing duty investigations on crude oil from Iraq, Mexico, Saudi Arabia, and Venezuela. Accordingly, the Commission gives notice that its countervailing duty and antidumping investigations concerning those products (Investigations Nos. 701–TA–397–400 (Preliminary) and 731–TA–842–845 (Preliminary)) are discontinued.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

Issued: August 10, 1999.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99–21173 Filed 8–13–99; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–385–386 (Review)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 5, 1999.

---

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the responses submitted by Mill Iron Works, Trinity Fitting and Flange Group, Tube Forgings of America, and Weldbend to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 23677, May 3, 1999) of the subject five-year reviews were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on September 20, 1999, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before September 23, 1999, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 23, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 11, 1999

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21172 Filed 8–13–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701–TA–386 and 731–TA–812 (Final)

Live Cattle From Canada

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–812 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Canada of live cattle.[1]

Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling of the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that countervailable subsidies are not being provided to producers and exporters of live cattle from Canada, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–386 (Final) under section 705(b) of the Act (19 U.S.C. 1671d(b)). The Commission is taking this action so that the final phases of the countervailing duty and antidumping investigations may proceed concurrently in the event that Commerce makes an affirmative final countervailing duty determination. If Commerce makes a final negative countervailing duty determination, the Commission will terminate its countervailing duty investigation under section 705(c)(2) of the Act (19 U.S.C. 1671d(c)(2)), and section 207.21(d) of the Commission's rules.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

---

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission found the response submitted by E.I. DuPont de Nemours & Co. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

[1] For purposes of these investigations, Commerce has defined the subject merchandise as all live cattle except: (1) Imports of dairy cows for the production of milk for human consumption; and (2) purebred or other cattle specially imported for breeding purposes. The merchandise subject to these investigations is provided for in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States (HTS), with the exception of statistical reporting numbers 0102.90.40.72 and 0102.90.40.74.

Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of the antidumping investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of live cattle from Canada are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The final phase of the countervailing duty investigation is being scheduled, under waiver of section 207.21(b), discussed above, for purposes of efficiency. The investigations were requested in a letter filed on November 12, 1998, by the Ranchers-Cattlemen Action Legal Foundation ("R-Calf") (Columbus, MT), and its supporting trade associations and individual cattlemen and cattlewomen. Counsel for R-Calf withdrew its petitions and addenda in countervailing duty investigation No. 701–A–385 (Preliminary) and antidumping investigations 731–TA–809–810 (Preliminary) on November 10, 1998. The letter received on November 12, 1998, petitioning for institution of antidumping and countervailing duty investigations, requested that the petition and addenda filed in the discontinued investigations be incorporated by reference in the instant investigations.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of the investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 23, 1999, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 6, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 1, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 4, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing *testimony in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 30, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 14, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 14, 1999. On November 2, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 4, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 10, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21174 Filed 8–13–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

August 10, 1999.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44

U.S.C. Chapter 35). OMB approval has been requested by August 25, 1999. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Ira L. Mills at 202–219–5095.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the, Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503.

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Bureau of Labor Statistics.
Title: Labor Market Information (LMI) Cooperative Agreement.
OMB Number: 1220–0079 (revision).
Frequency: Monthly, Quarterly, and Annually.
Affected Public: State Governments.
Number of Respondents: 55.
Estimated Time per Respondent: 14 hours (average).
Total Burden Hours: 781 hours (average).
Total Burden Cost: (capital/startup): $0.
Total Burden Cost: (operating/maintaining): $0.
Description: The Bureau of Labor Statistics (BLS) enters into Cooperative Agreements annually with State Employment Security Agencies (SESAs) in the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa to provide them financial assistance for the production and operation of one or more of the following LMI statistical programs, which themselves have been approved by OMB separately: Current Employment Statistics, Local Area Unemployment Statistics, Occupational Employment Statistics, Employment and Wages Report, and Mass Layoff Statistics. The Cooperative Agreement provides the basis for managing the administrative and financial aspects of these programs.

The collection of information allows Federal staff to negotiate the Cooperative Agreement with the SESAs and monitor their financial and programmatic performance, and to adhere to administrative requirements imposed by regulations implementing OMB Circular A–102 and other grant-related regulations. The information collected also is used for planning and budgeting at the Federal level and for meeting Federal reporting requirements.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 99–21156 Filed 8–13–99; 8:45 am]
BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,595]

AMP Incorporated, Harrisburg, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 26, 1999 in response to a worker petition which was filed on behalf of workers and former workers at AMP Incorporated, located in Harrisburg, Pennsylvania (TA–W–35,598).

The Department of Labor has determined that the petition is invalid. Under the Trade Act of 1974, a petition may be filed by a group of three or more workers in an appropriate subdivision of a firm, by a company official, or by their union or other duly authorized representative. the petitioners do not share a common work location and the petitioners are not authorized to file on behalf of all workers of the company. Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of July 1999.

Grant D. Beale,
Program Manager, Office of Trade Adjustment Assistance.
[FR Doc. 99–21148 Filed 8–13–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 873]

Eaton Corporation, Cutler-Hammer Industrial Controls Division, Bowling Green, Kentucky; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 9, 1998, applicable to workers of Eaton Corporation, Cutler-Hammer Industrial Controls Division located in Bowling Green, Kentucky. The notice was published in the **Federal Register** on October 23, 1998 (63 FR 56943).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of electrical industrial controls. New information shows that worker separations occurred at Eaton Corporation's Bowling Green, Kentucky facility after the September 30, 1998 termination date. The short lapse of coverage from March 21, 1998 through September 30, 1998 excluded the remaining workers. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–34, 873 is hereby issued as follows:

All workers of Eaton Corporation, Bowling Green, Kentucky who became totally or partially separated from employment on or after March 21, 1998 through October 9, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of August, 1999.

Grant D. Beale,
Program Manager, Office of Trade Adjustment Assistance.
[FR Doc. 99–21153 Filed 8–13–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,230 and TA–W–36,230A]

Johansen Brothers Shoe Company, Inc., Harrisburg, Arkansas and Corning, Arkansas; Notice of Termination of Certification

This notice terminates the Determination Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on July 14, 1999, applicable to all workers of Johansen Brothers Shoe Company, Inc. located in Harrisburg and Corning, Arkansas. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the worker certification. The workers were engaged in employment related to the production of women's casual and dress shoes. Findings on review show that on July 2, 1999, the Department issued a certification of eligibility applicable to all workers of Johansen Brothers Shoe Company, Inc., Corning, Arkansas (TA–W–36,109), and Harrisburg, Arkansas (TA–W–36,109A). Workers separated from employment with the subject firm on or after April 7, 1998 through July 2, 2001, are eligible to apply for worker adjustment assistance.

Based on this new information, the Department is terminating the certification for petition number TA–W–36,230 and TA–W–36,230A. Further coverage for workers under this certification would serve no purpose, and the certification has been terminated.

Signed in Washington, DC, this 2nd day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21146 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,704]

Johnson & Johnson Medical, Inc., Including Workers of Ethicon, Inc., Kelly Services, Inc., and Altemps, Arlington, Texas; Amended Certification Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 25, 1999, applicable to workers of Johnson & Johnson Medical, Inc, located in Arlington, Texas. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25372).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce surgical latex gloves. Company information shows that Ethicon, Inc. is the parent firm of Johnson & Johnson Medical located in Arlington, Texas. The company also reports that some workers separated from employment at Johnson & Johnson Medical, Inc., Arlington, Texas had their wages reported under three separate unemployment insurance (UI) tax accounts, at Ethicon, Inc., Kelly Services, Inc., and Altemps, Arlington, Texas. Workers from these companies produced surgical latex gloves at the Arlington, Texas facility of Johnson & Johnson Medical, Inc.

Based on these findings, the Department is amending the certification in include workers from Ethicon, Inc., Kelly Services, Inc., and Altemps who were engaged in the production of surgical latex gloves at Johnson & Johnson Medical, Inc., Arlington, Texas.

The intent of the Department's certification is to include all workers of Johnson & Johnson Medical, Inc. adversely affected by imports.

The amended notice applicable to TA–W–35,704 is hereby issued as follows:

All workers of Johnson & Johnson Medical, Inc., Arlington, Texas and workers of Ethicon, Inc., Kelly Services, Inc. and Altemps, Arlington, Texas engaged in employment related to the production of surgical latex gloves for Johnson & Johnson Medical, Inc., Arlington, Texas who became totally or partially separated from employment on or after April 19, 1999 through March 25, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 5th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21154 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,156]

Leica Microsystems Incorporated, Depew, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 3, 1999 in response to a petition filed on March 18, 1999 on behalf of workers at Leica Microsystems, Inc., Depew, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 30th day of July, 1999

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–21151 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,090 et al]

Mead Paper Corporation, Rumford, Maine et al; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 12, 1999, applicable to workers of Mead Paper Corporation, Rumford, Maine. The notice was published in the **Federal Register** on April 27, 1999 (64 22648).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations will occur in September and December, 1999 at various support function facilities due to the company closing its' Specialty business operations. These facilities provide sales and marketing services for the production of predominantly groundwood coated paper at the Rumford, Maine location of Mead Paper Corporation.

The intent of the Department's certification is to include all workers of Mead Paper Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–35,090 is hereby issued as follows:

All workers of Mead Paper Corporation, Rumford, Maine (TA–W–35,090); and the Specialty business operations at the various locations cited below, who became totally or partially separated from employment on or after October 5, 1997 through February 12, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–35,090A Portland, Maine
TA–W–35,090B Arlington Heights, Illinois
TA–W–35,090C Augusta, Maine
TA–W–35,090D East Wakefield, New Hampshire
TA–W–35,090E Skowhegan, Maine
TA–W–35,090F Alburtis, Pennsylvania.

Signed at Washington, DC, this 5th day of August, 1999.

Grant D. Beale,

Progam Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21152 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 26, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 26, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 26th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 07/26/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,581	Phelps Dodge Hidalgo, Inc (Comp)	Playas, NM	07/19/99	Copper Anode.
36,582	Portland General Electric (Comp)	Portland, OR	07/15/99	Decommission Nuclear Power Plant.
36,583	Texas Jean Co (Wrks)	El Paso, TX	07/10/99	Jean Pants, Shirts, etc.
36,584	Dino/DLA (UNITE)	New York, NY	07/09/99	Men's and Ladies Jackets.
36,585	Jackie Evans Fashion, Inc (Comp)	Passaic, NJ	07/09/99	Ladies' Suits.
36,586	REDA, A Camco Co (Comp)	Bartlesville, OK	07/09/99	Electrical Submergible Pumps.
36,587	5B's Inc (Wrks)	Martinsville, VA	06/28/99	Embroidery.
36,588	Lorraine Wardy Enterprise (Wrks)	El Paso, TX	06/20/99	Ladies' Sportswear.
36,589	Kvaerner, Inc. (Wrks)	Houston, TX	07/01/99	Engineering Documents.
36,590	BioChem Immunosystems (Wrks)	Allentown, PA	07/12/99	Research & Medical Instrumentation.
36,591	Marietta Cutting L.L.C (Comp)	Marietta, OK	07/06/99	Men's Slacks.
36,592	Intermedics, Inc (Comp)	Angleton, TX	06/18/99	Medical Devices.
36,593	Shaer Shoe—Franklin (Wrks)	Farmington, ME	07/12/99	Women's Shoes.
36,594	Brazos Sportswear (Wrks)	Batavia, OH	07/13/99	Embroidered & Silk Screened Garments.
36,595	AMP, Inc (Wrks)	Harrisburg, PA	07/08/99	Connectors.
36,596	Ashmore Sportswear, Inc (Comp)	Leola, PA	07/07/99	T-Shirts.
36,597	Pelton Co. (Comp)	Penca City, OK	07/14/99	Seismic Electronic Equipment.
36,598	Pacific Softwoods (Wrks)	Philomath, OR	07/15/99	Wood.
36,599	Brazos Sportswear (Wrks)	Staten Island, NY	07/10/99	Knit Sportswear.
36,600	Copper Range Co (Wrks)	White Pine, MI	07/06/99	Copper.
36,601	Venco, Inc (Wrks)	Denver, Co	07/14/99	Petroleum & Natural Gas.
36,602	Tinsley Drilling & Co (Wrks)	Odessa, TX	07/14/99	Oil and Gas.
36,603	Snyder Area Contractor (Comp)	Snyder, TX	07/12/99	Oil and Gas.
36,604	Total Minatome Corp (Wrks)	Houston, TX	06/15/99	Oil and Gas.
36,605	Allegro Operating Inc (Comp)	Abilene, TX	07/12/99	Oil and Gas
36,606	Phillips Petroleum Co (Comp)	Bartlesville, OK	07/16/99	Oil and Gas.
36,607	Big "6" Drilling (Wrks)	Houston, TX	07/12/99	Oil and Natural Gas.
36,608	Western Gas Resources (Wrks)	Midland, TX	06/09/99	Oil and Gas.
36,609	Baker Hughes/Western Geo (Wrks)	Houston, TX	07/15/99	Seismic Data.

[FR Doc. 99–21155 Filed 8–13–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36, 586]

Reda, A Camco Company, Bartlesville, Oklahoma; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 26, 1999 in response to a worker petition on behalf of workers at REDA, A Camco Company, Bartlesville, Oklahoma.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 26th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21149 Filed 8–13–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) H–1B Technical Skill Training Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: *This notice contains all of the necessary information and forms needed to apply for grant funding.* The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of grant funds for skill training programs for unemployed and employed workers. Funding for these grants is coming from the user fee mandated for applicants for new H–1B nonimmigrant visa workers and established under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA).

Eligible applicants for these grants will be private industry councils (PICs) established under Section 102 of the Job Training Partnership Act (JTPA), local Workforce Investment Boards (WIBs) established under section 117 of the Workforce Investment Act (WIA) that will carry out such programs or projects through one-stop delivery systems established under section 121 of WIA, or regional consortia of PICs or local boards. Regional consortia may be interstate.

WIA provides a framework for a national workforce investment and employment system designed to meet both the needs of the nation's businesses and the needs of job seekers and workers who want to further their careers. ACWIA will provide resources for skill training in occupations that are in employer demand; one measure of this demand is employer H–1B applications for workers. In particular, industries that appear to generate the most H–1B demand include information technology and health. Appendix A to this Solicitation provides information on the kinds of occupations certified under the H–1B program by the Department of Labor for Fiscal Year 1999 (Oct.1, 1998 to May 1999), and the number of job openings certified in each occupation.

This notice describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, and how grantees will be selected. It is anticipated that about $25 million will be available for funding the projects covered in this first-round solicitation, that approximately fifteen to twenty projects will be selected for funding, and that the maximum grant award will not exceed $1.5 million. There is a 50 percent non-Federal matching requirement.

DATES: Applications for grant awards will be accepted commencing August 16, 1999. The closing date for receipt of applications shall be 75 days after date of publication in the **Federal Register** at 4:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Diemle Phan, SGA/DFA 99–019, 200 Constitution Avenue, NW, Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Diemle Phan, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. This is not a toll free number. All inquiries should include the SGA number (DFA 99–019) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Homepage at http://www.doleta.gov. Award notifications will also be published on this Homepage.

BACKGROUND: This initiative will build on recent ETA initiatives, specifically the June 1998 dislocated worker technology demonstration and the new dislocated worker technology demonstration. These two recent efforts were intended to strengthen linkages between employers experiencing skill shortages in specific occupations and the publicly funded workforce development system. In June 1998, $7.5 million in JTPA Title III dislocated worker funds was awarded to 11 organizations throughout the country to train workers in skills related to the information technology industry. In June 1999, over $9.57 million was awarded to 10 grantees to train dislocated workers in the skills necessary to obtain work requiring advanced skills in occupations in manufacturing industry settings, including computers and electronics manufacturing, machinery and motor vehicles, chemicals and petroleum, specialized instruments and devices, and biomedics.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for the conduct of demonstration projects to provide technical skills training for workers, including both employed and unemployed workers.

This announcement consists of three parts:

- Part I discusses the procedures for eligible applicants who wish to apply for these funds.
- Part II provides the detailed Statement of Work together with applicable reporting requirements.
- Part III describes the selection process/criteria for award.

Legislative Mandate

The relevant portions of ACWIA dealing with the establishment of a fund for implementing a program of H–1B skill training grants state:

"Section 286(s)—H–1B Nonimmigrant Petitioner Account

(1) In General—There is established in the general fund of the Treasury a separate account, which shall be known as the "H–1B Nonimmigrant Petitioner Account." Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(9).

(2) Use of Fees for Job Training—56.3 percent of amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Secretary

of Labor until expended for demonstration programs and projects described in section 104(c) of the American Competitiveness and Workforce Improvement Act of 1998."

Section 104(c) Demonstration Programs and Projects To Provide Technical Skills Training for Workers.—

(1) In General—In establishing demonstration programs under section 452(c) of the Job Training Partnership Act (29 U.S.C. 1732(c)), as in effect on the date of the enactment of this Act, or demonstration programs of projects under section 171(b) of the Workforce Investment Act of 1998, the Secretary of Labor shall use funds available under section 286(s) to establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(2) Grants—The Secretary of Labor shall award grants to carry out the programs and projects described in paragraph (1) to—

(A)(i) private industry councils established under section 102 of the Job Training Partnership Act (29 U.S.C.1512), as in effect on the date of the enactment of this Act; or

(ii) local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act of 1998; or

(B) regional consortia of councils or local boards described in subparagraph (A).

The Immigration and Nationality Act (INA)(section 101(a)(15)(H)(i) (b)) defines the "H–1B alien as one who is coming temporarily to the United States to perform services in a specialty occupation or as a fashion model."

The INA (Section 214(i)) sets criteria to define the term "specialty occupation:"

(1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph 2, a "specialty occupation" means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge and,

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States

(2) For purposes of section 101(a)(15)(H)(i)(b)), the requirements of this paragraph with respect to a specialty occupation are—

(A) full state licensure to practice in the occupation, if such licensure is required.

(B) completion of the degree described in paragraph (1)(B) for the occupation, or (C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Part I—Application Process

A. Eligible Applicants

ACWIA specifies under Section 104(c)(2) that the Secretary shall award grants to private industry councils (PICs) established under section 102 of the Job Training Partnership Act (JTPA), or local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act (WIA) of 1998, or regional consortia of councils or local boards.

While the statute is quite specific about the fact that only PICs, local boards and consortia may apply for and receive these grant awards, it does not preempt the participation of other concerned entities which are integral to the process of planning for and conducting skill training in skill shortage areas. The Department of Labor is requiring that eligible applicants must demonstrate that they have the involvement of a wide representation of the business community in their region. They are also strongly encouraged to reach out widely and involve a broad spectrum of other organizations such as labor unions, community colleges and other postsecondary educational institutions, and community based organizations in a partnership or consortium arrangement. Applicants are encouraged to associate with entities which possess a sound grasp of the job marketplace in the region and which are in a position to address the issue of skill shortage occupations. Such organizations would include private, for profit businesses—including small- and medium-size businesses; business, trade, or industry associations such as local Chambers of Commerce and small business federations; and labor unions. Also, those entities should include businesses and business associations which have experienced first hand the problems of coping with skill shortages and which employ workers engaged in skill shortage occupations. This Solicitation will not prescriptively define the roles of individual entities within the partnership beyond requiring, as ACWIA states, that the PICs, local workforce investment boards, or consortia be the applicant and the recipient of grant funds. It is anticipated, however, that the proposal will provide a detailed discussion of participating organizations' respective responsibilities. The proposal should describe a consortium of several employers that will lead the consortium and provide matching funds and who intend to employ workers participating in the technical skills training.

Based on Department of Labor experiences, regional partnerships that actively engage a wide range of participation from community groups—particularly with strong private employer involvement—appear to be successful. In general, applicants will be encouraged to include a broad spectrum of stakeholder groups, including such employers, in their partnership effort. Also, PICs or local workforce investment boards or consortia thereof representing more than one region that share common economic goals may band together as one applicant rather than applying individually.

A signed certification of the authorized signatory for a PIC or a local workforce investment board, or the authorized signatory for each PIC or local board in the case of a consortium, is required. The attestation must identify who the grant recipient is and describe its capacity to administer this project; it shall also indicate that the project is consistent with and will be coordinated with the workforce investment system(s) that are involved in technical skills activities in the region(s) encompassed by the applicant.

Part III of this announcement enumerates and defines in depth a series of criteria that will be utilized to rate applicant submissions. Briefly, these criteria are:

- Statement of Need
- Service Delivery Strategy
- Target Population
- Linkages with Key Partners/ Sustainability
- Outcomes
- Cost Effectiveness

B. Submission of Proposals

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) separate and distinct parts, Parts I and II.

- Part I of the proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix B) and the Budget Information Form (Appendix C). The individual signing the (SF) 424 on behalf of the applicant shall represent the responsible financial and administrative entity for a grant should that application result in an award. The individual who signs the application should be the same individual who signs the certification discussed in the previous section. According to the

Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

In preparing the Budget Information Sheet, the applicant must provide a concise narrative explanation to support the request. The statutory language of ACWIA is specific and exclusive in stating that grant resources are to be expended for programs or projects to provide technical skills training. Therefore, no ACWIA grant resources may be utilized for the costs of administration. The budget narrative should discuss precisely how the costs of necessary administration are being borne by non-ACWIA resources. To the extent that these resources are non-Federal in nature, they may comprise part of the match.

Part II must contain a technical proposal that demonstrates the Offeror's capabilities in accordance with the Statement of Work contained in this announcement. A grant application is limited to twenty (20) double-spaced, single-side, 8.5 inch × 11 inch pages with 1-inch margins. The Offeror may provide statistical information and related material in attachments. Attachments may not exceed fifteen (15) pages. Letters of commitment from partners or from those providing matching resources may be submitted as attachments; however, letters of support are not required. Such letters will not count against the allowable maximum page total. The Applicant must briefly enumerate those entities in the text of the proposal. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities and an Executive Summary not to exceed two pages. The Time Line and the Executive Summary do not count against the 25 page limit. No cost data or reference to price is included in the technical proposal.

C. Hand Delivered Proposals

If proposals are hand delivered, they must be received at the designated place by 4:00 p.m., Eastern Time [insert date x number of days after date of publication in the **Federal Register**]. All overnight mail will be considered to be hand delivered and must be received at the designated place by 2:00 on the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before award is made and it:

- Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., a proposal submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);
- Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence that an application was sent in accordance with these requirements is a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

E. Period of Performance

The initial period of performance will be up to 24 months from the date of execution of the grant documents. It is anticipated that about $25 million will be disbursed. It is also anticipated that 15–20 grant awards will be made for up to $1.5 million. Based on successful performance and the availability of resources, these grants may be extended for an additional period not to exceed 36 months in total.

F. Definitions

For purposes of this solicitation:

- *Technical skills training* includes occupational skills training—that may combine academic and work-place learning and related instruction, customized training with a commitment of an employer or group of employers to employ an individual upon successful completion of training, and that may be tailored to meet the needs of the individual participant. Section 134 (d)(4)(D) of WIA provides a definition of training services that shall be viewed as generally applicable to the term "technical skills training" in this Solicitation. This definition of technical skills training specifically allows the use of grant funds to provide necessary books.
- *Region* means an area which exhibits a commonality of economic interest. Thus, a region may comprise a few labor market areas, one large labor market, one labor market area joined together with a couple of adjacent rural districts, a few special purpose districts, or a few contiguous PICs or local boards. Clearly, if the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate. Although the rating criteria will provide more detail, it is the applicant's responsibility to demonstrate the regional nature of the area which that application covers. Also, a region may be coterminous with a single PIC or local board.
- *Younger workers (ages 18–24) who may have fewer educational or occupational credentials* means those individuals who have the educational or occupational credential level enumerated in Sec. 101 (33) of WIA (which, in another context, is employed to describe an "out of school youth"). Specifically, that definition refers to a school dropout or someone who has received a secondary school diploma or its equivalent but is basic skills deficient, unemployed or underemployed.

G. Matching Requirement

No applicant may receive a grant unless that applicant agrees to provide resources equivalent to at least 50 percent of the grant award amount as a match. That match may be provided in cash or in kind. In view of the fact that the singular focus of grant resources is to provide skill training, ETA particularly encourages the provision of essential capital equipment, such as computer equipment, as part of the match. The match will not be tied to the drawdown of funds, however, the amount and nature of it must be clearly described in the application.

Part II—Statement of Work/Reporting Requirements

A. Principles

Six basic key principles underlie this effort:

- *Local Board (or PIC) Participation:* The initiative should help local boards achieve the goals of their strategic plans established under WIA. While this legislation requires that the local board or PIC or a regional consortium of boards or PICs be the eligible applicant, this Solicitation encourages local boards or PICs to move beyond simply being the applicant and become actively engaged in the design and implementation of this grant and, thus, reinforce and strengthen the delivery systems emerging under the Workforce Investment Act of 1998. This concept ties in clearly to two rating criteria: Service Delivery Strategy (What is the

range of potential training providers?; How will the types of training planned for project participants be determined?) and Links with Key Partners/ Sustainability (What role each partner in the endeavor will play).

• *Partnership Sustainability:* The grant awards will be of relatively short duration—up to 24 months. Although the primary focus of these awards is technical skill training, ETA intends that regional partnerships sustain themselves over the long term—well after the federal resources from this initiative have been exhausted. The 50 percent non-Federal matching requirement is an integral part of ensuring sustainability; matching resources will help sustain the skill shortages training effort beyond the term of the grant. This concept relates to Links with Key Partners/Sustainability (What resources does each partner bring to the table and how does this contribution assist in building the foundation for a permanent partnership?)

• *Business Involvement:* Business is an essential partner. It articulates skill requirements, hires skilled workers, and provides support for lifelong learning. Under WIA, business plays a critical role in planning and overseeing training and employment activities. WIA requires that the majority of the membership of State and local boards be business representatives, and that the State and local board chairs be drawn from business. For the purpose of these grants, it is imperative that businesses represented include businesses with current skill shortages who intend to hire graduates of the technical skills training. This concept relates to three Rating Criteria: Statement of Need (Assists in determining what skill shortage occupations are in demand in the region), Linkages with Key Partners/ Sustainability (What private sector involvement is there in the partnership; what resources does each of the partners bring to the table; how do contributions assist in building the foundation for a permanent partnership?), and Outcomes (Businesses involved in the partnerships will provide a key resource in hiring/ upgrading workers who have been trained).

• *Current Skills Gap:* Current skill shortages are the immediate focus of this initiative. Training investments should be targeted in occupational areas that have been identified on the basis of H–1B occupations as skill shortage areas. This concept relates to Statement of Need (The most important issue to be addressed under this section is identifying the particular skill shortages that manifest themselves in the region . . .) and Service Delivery Strategy (How will skill training meet the skill needs of the region.)

• *Innovative and Effective Tools:* The grantees will use innovative or proven tools and approaches to close particular skills gaps and provide strategies for training that promote regional development. This concept relates to Service Delivery Strategy (There can be innovation in the way training services are provided.) and Cost Effectiveness (Innovative tools and approaches may more effectively deliver training services to individual participants thereby resulting in better employment outcomes and higher levels of skill achieved by those participants for the same cost.)

• *Target Population:* This initiative should reach out widely to include all segments of the workforce—for example, high- and low-skilled workers, minorities, women, and people with disabilities. The primary emphasis of the ACWIA technical skills training will be to focus on workers who can be placed directly in the highly skilled H–1B occupations. However, linked resources under WIA, JTPA, and other similar programs will be used to train individuals so they can secure immediate jobs that launch them on H–1B occupation-related career paths. This relates to the rating criterion, Target Population (Discussion of who the targeted workers are.)

B. Skills Shortages

Section 104(c) of ACWIA mandates that the grants awarded under this authority be used for technical skill training to employed and unemployed workers. The basis of the funding for the grants, however, is a user fee paid by an employer seeking nonimmigrant alien workers (H–1B) that possess qualifications in occupations with skill shortages at high skill levels in American industry. Thus, training conducted under these auspices should be in occupations that have been demonstrated to be in short supply.

What is a labor shortage? In the simplest terms possible, shortages occur in a market economy when the demand for workers for a particular occupation is greater than the supply of workers who are qualified, available, and willing to do that job. Although, some of the explanations for why this demand or supply disequilibrium exists are fairly complex, the basic concept is straightforward. In many instances, labor markets adjust quickly and the skill shortage is resolved.

Problematic skills shortages occur when there is imbalance between worker supply and demand for an unusual period of time. The H–1B visa program is a response to those shortages, and this skill training grant program helps alleviate such shortages. It should be noted that the concept of skill shortages also may include an imbalance between the demand and supply of workers at some definable skill level.

C. Skills Standards

As noted earlier, the definition of the minimum proficiency level required to be considered an H–1B occupation, contained in section 214 (i) of INA, speaks to a very high skill level for these "specialty occupations" (8 U.S.C. 1184 (i)). To reiterate, these are occupations that require "theoretical and practical application of a body of highly specialized knowledge," and full state licensure to practice in the occupation (if it is required). These occupations also must require either completion of at least a bachelor's degree or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In examining the occupational goals to target the training, it may be appropriate for applicants to identify intermediate occupational skill-level steps that linked resources will assist in addressing. To the extent that applicants target younger workers (age 18–24) or low wage workers who may have fewer educational and occupational credentials, it is important that the applicant spell out career paths which will help individuals acquire the high proficiency levels explicitly and implicitly contained in the H–1B occupations.

Skill standards represent a benchmark by which an individual's achieved competence can be measured. Much work has been done in this area—some by private industry and trade associations, some by registered apprenticeship training systems, some by public and private partnerships, including local School-to-Work partnerships, and the Job Corps. Succinctly stated, well-defined skill standards can be a useful tool in matching training goals to targeted occupational areas. Applicants are encouraged to survey the progress to date in developing occupational skill standards in their communities. Do companies that will be seeking skilled workers for H–1B occupations have a clearly defined set of expectations for the requisite capabilities of those workers?

D. Regional Planning

Applicants must describe the local area or region that will be served. The proposal must also identify the political jurisdictions to be included as well as provide an enumeration of the specific local areas under JTPA or WIA. This description should include a discussion of skill shortages in the local area or region. Although comprehensive occupational vacancy data do not exist, current H–1B applicant data should be utilized to the extent feasible to describe occupational shortages. Attachment A to this Solicitation is a listing by occupation of the most current H–1B applicant data. Applicants may take into consideration that occupations listed in high demand among those for which H–1B visas were sought nationally also might be in short supply in their region.

However, applicants should avail themselves of all available local data including data provided by area businesses and business associations in making determinations as to shortages. They are encouraged to research widely and be inclusive in utilization of labor market information. In addition to the sources already described, applicants are encouraged to analyze data made available by the Bureau of Labor Statistics and through the local One-Stop delivery system.

E. Service Delivery and Supportive Services

Applicants should carefully describe skill training in context of the goals that are to be achieved by participants. These goals should be expressed in terms of targeted occupations. The Statement of Work should provide a detailed discussion of the kinds of training to be provided and the mechanisms to be used to provide it. Applicants also should build linkages to the One-Stop system established under WIA to reach out, inform, and recruit individuals to participate in the H–1B financed training. It is expected that the applicant's work statement will include a discussion of the types of skills being trained for, the necessary skill levels that are targeted, how they will be measured, and how skill shortages in the local area or region will be met through this training

The central role of the local boards or PICs in the planning and policy activity surrounding these grants is critical. WIA requires the local board to prepare a strategic workforce investment plan for the area that it embraces. The local board also designates One-Stop service center operators and selects eligible training providers. In short, local boards are already engaged in much of the necessary work that could provide a solid foundation for the training activities to be undertaken in ACWIA. The PIC under JTPA is very much in a similar role except that the PIC may provide direct services; under WIA however, the presumption is that local boards only provide services under certain circumstances and for a limited time period.

ACWIA requires that grant resources be used solely for technical skills training. However, ETA anticipates that applicants may need to make available a range of supportive services to enhance the quality and effectiveness of the skill training provided under the grant. Grant funds may not be used to provide supportive services. Appropriately focused services, however—such as transportation or child care and others defined by section 4(24) of JTPA and section 101(46) of WIA—could be viewed as an important factor enhancing the technical skills training package. To the extent that these services are provided utilizing non-Federal resources, applicants may present them as part of the proposed matching requirement. Federal resources such as coenrollment in WIA or JTPA while participating in ACWIA training for supportive services clearly cannot be counted toward the matching requirement; however, such coordinated coenrollment and services are clearly desirable features of these projects. Successful applicants are encouraged to leverage such Federal resources as part of making the technical skills training more effective.

F. Reporting Requirements

The Grantee is required to provide the reports and documents listed below:

• Quarterly Financial Reports. The grantee must submit to the Grant Officer's Technical Representative (GOTR) within the 30 days following each quarter, two copies of a quarterly Financial Status Report (SF269) until such time as all funds have been expended or the period of availability has expired.

• Progress Reports. The grantee must submit brief narrative quarterly reports to the GOTR within the 30 days following each quarter. Two copies are to be submitted; the report provides a detailed account of activities undertaken during that quarter including:

a. A discussion of occupational areas for which skill training is being provided,

b. Job placements in skill shortage occupations, and

c. An indication of any current problems which may affect performance and proposed corrective action.

• Final Report. A draft final report which summarizes project activities and employment outcomes and related results of the demonstration shall be submitted no later than the expiration date of the grant. The final report shall be submitted in 3 copies no later than 60 days after the grant expiration date.

G. Evaluation

ETA will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s) under the direction of ETA.

Part III—Review Process & Rating Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

A. Statement of Need (20 Points)

The underlying statute authorizing this competitive grant program—ACWIA—is a response to skill shortages around the country in specific occupations. ETA has provided the most recent H–1B application data as an attachment to this solicitation. The most important issue to be addressed under this section is identifying, to the extent possible, the particular skill shortages that manifest themselves in the region that is encompassed by the application. Applicants are encouraged to utilize all available data resources—H–1B applications, newspaper want ads, expressed employer consortium hiring desires, and One Stop system's labor market information—in responding to this criterion.

To provide a focused backdrop for the discussion of skill shortages, applicants should describe clearly the region for which services are to be provided. What are the characteristics that make this area a cohesive region? What are the particular characteristics of the local political, economic and administrative

jurisdictions—PICs, local workforce investment boards, labor market areas, special district authorities—that caused them to associate for the purpose of this application?

There are several useful items of information that could be provided to enhance the description of the region. A general discussion of the region should include socioeconomic data—with a particular focus on the general education and skill level prevalent in the area. Also, it is useful to include such items as transportation patterns, demographic information (such as age and general income of residents). Judicious use of statistical information is encouraged. Other pertinent questions that will provide greater depth of description include: What is the general business environment? What industries and occupations are growing, and which ones are contracting? What are the characteristics of the major employers in the region? What is the particular situation of the consortium member companies?

B. Service Delivery Strategy (22 points)

Applicants must lay out a comprehensive strategy for providing the technical skills training that is mandated as the core activity of these grant awards. Concomitantly, there needs to be a discussion of how this skill training will meet the skill needs of the region. Several specific issues must be focused on as part of this section. Those issues include:

What is the range of potential training providers, what kinds of skill training will be offered, how will that meet the regional skill needs, and how will training be provided? How will the types of training planned for project participants be determined? Also, although there is a separate section on outcomes, it is strongly recommended that some brief mention in context of the service delivery strategy, be made of them here. Such outcomes would include job placements in skill shortage occupations, increased salary, and measurable skill gains or certificates obtained that demonstrate how the training will alleviate skill shortages.

Supportive services, per se, are not an allowable activity with grant funds. However, making such services available on an as needed basis (utilizing other available resources) is encouraged.

Innovation in the context of service delivery can represent a wide variety of items. There can be innovation in the way training services are provided—e.g., distance learning to provide instruction, interactive video self-instructional materials, and flexible class scheduling (sections of the same class scheduled at different times of the day to accommodate workers whose schedules fluctuate). Creativity in developing the service strategy is also encouraged.

C. Target Population (18 Points)

The eligibility criterion for skill training enumerated in ACWIA is extremely broad—employed and unemployed workers. This section should include an extensive focused discussion of who the targeted workers are, including their characteristics, and why they are being targeted. A discussion of what assessment procedures are to be used is integral.

In the case of employed workers, there should be some articulation of what is to be accomplished. The applicant should address some specific issues relating to the target employed worker population such as:

—How many employed workers will be targeted for services and why?
—What are the technical skills training needs of those workers to fulfill skill shortage occupations?

In the case of unemployed workers, there needs to be an extensive discussion of criteria to be used to assess and enroll individuals. It is true that the target occupations and specific jobs to be trained for within the H–1B rubric are statutorily geared to a very high skill standard.

However, applicants are encouraged to identify intermediate skill level steps (or in the words of the INA—"progressively responsible positions relating to the specialty" (8 U.S.C. 1184(i)(2)(c)(2)) so that linked resources—e.g., from WIA, JTPA, and other similar programs—may be used to train younger less skilled workers to "back fill" those positions.

In this light, ETA is interested in opening opportunities for these positions to younger workers (ages 18–24) who may have fewer educational or occupational credentials, individuals with disabilities, or low-wage workers. ETA also is very interested in serving underrepresented communities and populations, particularly those that may reside in Empowerment Zones and Enterprise Communities (EZ/ECs).

Applicants are strongly encouraged to describe in detail how linked resources will meet the needs of individuals in these groups. Applications are also strongly encouraged to target one or more of these groups and describe in realistic terms the training goals that can be attained by that group(s). The businesses that will employ these individuals do not need to be located in the EZ or EC.

D. Linkages With Key Partners/ Sustainability (17 Points)

The applicant should enumerate who the partners are in this endeavor and how they will link together—i.e., what role each will play. In particular, this section should articulate ties to the private sector, including ties with small- and medium-sized businesses and small business federations.

The Service Delivery Strategy section of the Statement of Work described the role each of the actors would play in providing services. This section looks at the linkages from a somewhat different more structural perspective with particular emphasis on the employers in the consortium that are experiencing skill shortages. What resources does each partner bring to the table? The application will specify a management entity (together with a staffing pattern and resumes of major staff members) and will articulate with some precision the roles of various actors. A short portion of this discussion should dwell upon the organizational capacity and track record of the primary actors in the partnership.

There is a 50 percent matching requirement. To what extent does any of these partners provide matching funds or services and how does this contribution assist in building the foundation for a permanent partnership, i.e., sustainability?

As noted earlier, Federal resources cannot be counted against the matching requirement; however, it is important that such resources be provided as part of the project because they certainly support and strengthen the quality of the technical skills training provided in the project and contribute materially toward sustainability. Because ACWIA resources are limited to training individuals to fill high skill H–1B jobs, it is vitally important that applicants link job training resources under JTPA, WIA and other similar programs so that individuals possessing lesser levels of educational and/or occupational skills may also benefit from this initiative. For example, local boards could commit through One-Stop centers such valuable participant services as participant assessment and case management. Applicants are encouraged to enumerate these leveraged resources under this section as examples of leveraged resources. This section should also enumerate any specific existing contractual commitments.

Briefly stated, the sustainability issue can be addressed by providing concrete evidence that activities supported by the demonstration grant will be continued

after the expiration date of the grant using other public or private resources.

E. Outcomes (15 Points)

Applicants must describe the predicted outcomes resulting from this training. It is posited that the projected results will be somewhat varied given the broad range of people that will probably be served. For example, employed workers may be trained to achieve a higher skill level than most unemployed workers. Their success could manifest itself through job placements in H–1B skill shortage occupations, increased wages, or skill attainment in H–1B occupations.

By contrast, using linked WIA or JTPA resources, unemployed workers, particularly those in the underrepresented groups discussed above, might be trained to "backfill" the jobs previously occupied by the incumbent workers whose skills have been upgraded. These unemployed individuals may be measured in terms of gaining employment as well as skills attainment. There also could be an effort to project target salary levels for them as a result of the training received.

There are, however, unemployed workers who may well already possess a very high skill level. They could receive refresher technical skills training to update their skills. The outcomes for this group may also be projected in terms of gaining employment and skills attainment; those outcomes would simply be at a somewhat higher level than for those unemployed workers who do not possess similar skills at the outset.

Ideally, the applicant's outcomes section will describe some version of a relatively cohesive mosaic that weaves together the outcomes for both employed and unemployed workers in the context described in the preceding three paragraphs. Additionally, the outcomes section should focus very specifically on the changes that occur because of the training. Thus, an applicant might state that a certain skill level is projected for a given group; but the applicant should couch that outcome in context of what the initial pre-training skill level had been for the group.

F. Cost Effectiveness (8 Points)

Applicants will provide a detailed cost proposal including a discussion of the expected cost effectiveness of their proposal in terms of the expected cost per participant compared to the expected benefits for these participants. Applicants should address the employment outcomes and the levels of skills to be achieved (such as attaining State licensing in an occupation) relative to the amount of training that the individual had to receive to achieve those outcomes. Benefits can be described both qualitatively in terms of skills attained and quantitatively in terms of wage gains. Cost effectiveness may be demonstrated in part by cost per participant and cost per activity in relation to services provided and outcomes to be attained.

This section must contain a detailed discussion of the size, nature, and quality of the non-Federal match. Proposals not presenting a detailed discussion of the non-Federal match or not meeting the 50 percent match requirement will be considered nonresponsive.

Applicants are advised that discussions and/or site visits may be necessary in order to clarify any inconsistencies in their applications. The reviewers' evaluations are only advisory to the Grant Officer. The final decisions for grant award will be made by the Grant Officer after considering the panelists' scoring decisions. The Grant Officer's decisions will be based on what he or she determines is most advantageous to the Federal Government in terms of technical quality and other factors.

Signed in Washington, D.C. , this 10th day of August 1999.

Laura Cesario,

Grant Officer.

Appendix A—Selected H–1B Professional, Technical and Managerial Occupations, and Fashion Models: Number of Job Openings Certified by the U.S. Department of Labor, Fiscal Year 1999 (Oct. 1, 1998–May 31, 1999)

Occupational code	Occupational title	Number of openings certified
030	Occupations In Systems Analysis And Programming	360,745
076	Therapists	181,665
160	Accountants, Auditors, And Related Occupations	35,665
039	Other Computer-Related Occupations	28,529
003	Electrical/Electronic Engineering Occupations	16,859
070	Physicians And Surgeons	11,264
019	Other Occupations In Architecture, Engineering And	11,175
090	Occupations In College And University Education	9,028
199	Miscellaneous Professional, Technical, And Manager	8,964
189	Miscellaneous Managers And Officials	8,824
007	Mechanical Engineering Occupations	7,115
050	Occupations In Economics	5,608
163	Sales And Distribution Management Occupations	5,368
033	Occupations In Computer Systems Technical Support	4,573
161	Budget And Management Systems Analysis Occupations	4,263
169	Other Occupations In Administrative Occupations	4,135
031	Occupations In Data Communications And Networks	4,121
041	Occupations In Biological Sciences	3,981
079	Other Occupations In Medicine And Health	3,764
012	Industrial Engineering Occupations	2,725
186	Finance, Insurance And Real Estate Managers And Off	2,624
020	Occupations In Mathematics	2,599
001	Architectural Occupations	2,490
141	Commercial Artists: Designers & Illustrators, Graphics	2,371
297	Fashion Models	2,367
092	Occupations In Preschool, Primary, Kindergarten Ed.	2,359
187	Service Industry Managers And Officials	2,347
022	Occupations In Chemistry	2,345
005	Civil Engineering Occupations	2,186
032	Occupations In Computer System User Support	1,595

Occupational code	Occupational title	Number of openings certified
091	Occupations In Secondary School Education	1,579
110	Lawyers	1,353
029	Other Occupations In Mathematics And Physical Sciences	1,306
131	Interpreters and Translators	1,270
166	Personnel Administration Occupations	1,229
165	Public Relations Management Occupations	1,216
185	Wholesale And Retail Trade Managers And Officials	1,183
008	Chemical Engineering Occupations	1,075
168	Inspectors And Investigators, Managerial & Public	974
142	Environmental, Product And Related Designers	955
119	Other Occupations In Law And Jurisprudence	882
099	Other Occupations In Education	841
023	Occupations In Physics	836
010	Mining And Petroleum Engineering Occupations	777
164	Advertising Management Occupations	773
132	Editors: Publication, Broadcast, And Script	748
078	Occupations In Medical And Dental Technology	699
183	Manufacturing Industry Managers And Officials	681
184	Transportation, Communication, And Utilities Management	659
049	Other Occupations In Life Sciences	612
162	Purchasing Management Occupations	604
040	Occupations In Agricultural Sciences	574
074	Pharmacists	508
159	Other Occupations In Entertainment And Recreation	506

Technical Note: The Immigration and Nationality Act (Act) assigns responsibility to the Department of Labor with respect to the temporary entry of foreign professionals to work in specialty occupations in the U.S. under H–1B nonimmigrant status. Before the Immigration and Naturalization Service will approve a petition for an H–1B nonimmigrant worker, the employer must have filed and had certified by the Department a Labor Condition Application. The employer must indicate on the application the number of H–1B nonimmigrant workers sought, the rate of pay offered to the nonimmigrants, and the location where the nonimmigrants will work, among other things.

The Act limits the number of foreign workers who may be assigned H–1B status in each fiscal year, however, there is no limit on the number of job openings that may be certified by the Department. Historically, the actual number of job openings certified by the Department each year far exceeds the number of available visas. This excess in the number of certified openings is due to a number of factors: extension of status filings that are not subject to the annual cap; openings certified for anticipated employment that does not transpire; or movement from one employer to another (again, not subject to cap).

The occupational codes in the left-hand column represent the three-digit occupational groups codes for professional, technical and managerial occupations from the Dictionary of Occupational Titles (DOT).

BILLING CODE 4510–30–P

APPENDIX B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State — H. Independent School Dist. B. County — I. State Controlled Institution of Higher Learning C. Municipal — J. Private University D. Township — K. Indian Tribe E. Interstate — L. Individual F. Intermunicipal — M. Profit Organization G. Special District — N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$ .00	
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	
g. TOTAL	$ .00	

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX C

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution	$		
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel.*

2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*

3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*

6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. *Total, Direct Costs: Add lines 1 through 7.*

9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. *Training /Stipend Cost: (If allowable)*

11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 99-21143 Filed 8-13-99; 8:45 am]
BILLING CODE 4510-30-C

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03237]

Horner Flooring Company, Incorporated, Dollar Bay, Michigan; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 6, 1999 in response to a petition filed by the company on behalf of workers at Horner Flooring Company, Incorporated, Dollar Bay, Michigan.

The petitioner has requested that the petition be withdrawn until such time as the workers will be laid off. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21150 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3093]

Thompson Crown Wood Products, Mocksville, North Carolina; Notice of Revised Determination on Reopening

By letter of July 14, 1999, a company official requested reconsideration of the Department's negative determination applicable to workers and former workers of the subject firm.

The initial investigation resulted in a negative determination issued on June 17, 1999, because worker separations at Thomson Crown Wood Products in Mocksville, North Carolina were attributable to a change in the manufacturing process at the plant which required fewer workers to manufacture television cabinets produced at the plant. Additionally, production increased as employment declined during the relevant time period. The denial notice was published in the **Federal Register** on July 20, 1999 (64 FR 38922).

New information obtained from the company shows that the assembly of television cabinets that was performed by the workers in Mocksville, North Carolina, has been shifted to Mexico.

Conclusion

After careful consideration of the new facts obtained on reconsideration, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers to Thomson Crown Wood Products, Mocksville, North Carolina, who became totally or partially separated from employment on or after April 8, 1998, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21147 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003256]

Trim Master, Inc., Rancho Cucamonga, California; Notice of Termination

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–1) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on June 7, 1999, in response to a petition filed on behalf of workers at Trim Master, Inc., Rancho Cucamonga, California. Workers produce wood trim for the automotive industry.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 6th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21145 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9015]

Notice of Issuance of Environmental Assessment, Finding of No Significant Impact, and Opportunity for Hearing for Michigan Department of Natural Resources License at Tobico Marsh Site

The U.S. Nuclear Regulatory Commission is considering issuance of a license to Michigan Department of Natural Resources (MDNR) to possess thorium (Th) and uranium (U) at the state-owned portion of the former Hartley and Hartley Landfill (Tobico Marsh site) in Kawkawlin, Michigan. The license application was submitted on September 5, 1997, as supplemented on July 27, 1998, and March 8, 1999. The Th and U currently exist at the MDNR Tobico Marsh site in the form of magnesium-Th slag, contaminated soil, and other material and debris contaminated above background levels. MDNR also requested to include possession of sealed sources for instrument calibration on a license.

Environmental Assessment

Introduction

MDNR submitted a source material license application to possess Th and U at the Tobico Marsh site. The site is located at 2301 Two Mile and Beaver Roads, Kawkawlin Township, Kawkawlin, Bay County, Michigan, northeast of Bay City, Michigan. The Tobico Marsh site covers approximately 3 acres (1.2 hectare) adjacent to the former Hartley and Hartley Landfill that is currently owned by SCA Services, Inc. (SCA). The SCA site is being decommissioned under NRC License No. SUC–1565. In 1962, it was discovered that the entire property, owned by the Hartley and Hartley waste handling company, was being used as a landfill.

In 1972, the State of Michigan acquired in trade a portion of the Hartley and Hartley Landfill. Waste disposal activity on the state-owned portion of the site ended by 1972, but the Hartley and Hartley organization continued to operate the site until 1978 when operations at the landfill ceased.

In 1980, the State of Michigan conducted an aerial radiological survey of the landfill because State authorities were concerned that radioactive material from another facility in Michigan may have been disposed at the landfill. The survey indicated an excess of Thallium-208, a progeny of Thorium-232 (Th-232), over the landfill. In May

1983, the State of Michigan, Division of Radiological Health, informed NRC Region III that radioactive material was found in the Tobico Marsh site. Contamination was also found on the adjacent property owned by SCA.

The State of Michigan requested input from the NRC on whether the encapsulation measures being taken for the non-radiological hazardous wastes also would provide protection for the radioactive hazard. In response to this request, NRC staff agreed to perform a radiological survey of the Tobico Marsh site.

In July 1984, Oak Ridge Associated Universities undertook a radiological survey of the Tobico Marsh site. The survey included surface radiation scans, measurements of direct radiation levels, and analyses of radionuclide concentrations in soil, sediment, and water samples. The results of this survey indicated a 0.15 to 0.20-meter (m) (0.5 to 0.7 feet (ft)) thick layer of Th contaminated slag near the surface. The contaminated slag appeared to be distributed in a 10 to 20-m (33 to 66-ft) wide strip near the center of the property, extending almost the entire north/south length of the site.

NRC and State of Michigan staff concluded, on the basis of the radiological survey, that the Th contamination exceeded the Option 1 level (0.37 Becquerel per gram (Bq/g) (10 picoCurie per gram (pCi/g)) of Thorium-232 + Thorium-228) of the 1981 Branch Technical Position (BTP) entitled, "Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations" (46 *FR* 52061). They also concluded that the mixture of non-radiological hazardous and radioactive waste would make the wastes unacceptable at a chemical or radioactive waste disposal site (other than an authorized mixed waste disposal facility) and agreed to implement a monitoring program and to place a restriction on the deed prohibiting intrusion. NRC agreed that these measures would likely make the encapsulation of the Th contamination acceptable for the short term.

In 1984, MDNR undertook encapsulation measures at the Tobico Marsh site to isolate and prevent the migration of the non-radiological hazardous wastes. Encapsulation measures included the installation of a 1.5-m-thick (5-ft) clay cap and 0.9-m-thick (3-ft) bentonite slurry walls.

In 1985 and 1986, ABB Environmental Services, Inc. (formerly E.C. Jordan Company) performed an investigation to assess the nature and extent of environmental contamination around the encapsulation area. The investigation indicated that the level of leachate inside the encapsulation was approximately 0.9 m (3 ft) higher than the level of the surrounding area and that volatile organic chemicals were detected in the soils and groundwater outside the encapsulation.

In 1987 and 1988, GZA/Donohue performed a feasibility study of the Tobico Marsh site. The study recommended that site access be restricted by fencing, that monuments be installed stating the nature of the contaminants, that the clay cap be repaired where erosion had occurred, that hydraulic isolation be maintained by withdrawal of leachate from inside the encapsulated area, and that the leachate be treated and disposed.

In March 1990, the MDNR Tobico Marsh site was added to NRC's Site Management Decommissioning Plan (SDMP) list because of the quantity of Th-contaminated materials, the potential for mixed waste, and the fact that MDNR did not have a license. The purpose of the SDMP is to ensure safe and timely remediation of nonroutine decommissioning sites.

In 1991, design of the Leachate Collection and Treatment System (LCTS) and preliminary design of the pretreatment system was completed. In 1993 and 1994, the LCTS, treatment building, and the force main were installed. However, the LCTS has not operated for several reasons. They include possible presence of low-level radioactive materials in the leachate, insoluble radioactive material less than or equal to one μm (3.3 μft) in diameter in the treated effluent, no holding tanks to verify effluent quality before discharge to the waste water treatment plant, and potential metal concentrations that are unacceptable for the waste water treatment plant.

Proposed Action

The primary purpose for issuing Source Material License No. SUC–1581, is to authorize MDNR to possess source material Th and U and sealed sources at the Tobico Marsh site in order to control the material to ensure the protection of the public health and safety and the environment. The license covers all source material Th and U present in concentrations exceeding natural background. This license also authorized possession of sealed sources at the site for instrument calibration. The sealed sources allow proper calibration of instruments for the radiation types to be encountered at the site.

MDNR proposes to sample Th and U material during site characterization activities. The proposed site characterization is intended to characterize the concentration, lateral extent, and volume of radiologically contaminated material at the Tobico Marsh site. The decommissioning alternatives for this site will depend on the information obtained from the site characterization.

At a later date, MDNR will provide proposal(s) for the disposition of any Th and U material found at the site in a Decommissioning Plan (DP). The DP will describe remediation alternatives and the proposed procedures for site remediation, final survey, and license termination.

The Need for the Proposed Action

Th and U exist on the Tobico Marsh site in concentrations that pose a long-term risk to the public and the environment. Before encapsulation measures were taken in 1984, Th-232 and Th-228 had been identified in the soil in concentrations up to 20.8 Bq/g (561 pCi/g) and 9.5 Bq/g (527 pCi/g), respectively. U–238 concentrations were elevated in samples with elevated Th levels.

MDNR applied for a specific license to possess, use, or transfer Th and U during site characterization activities because U–238, Th-228, and Th-232 activity levels may result in doses substantially in excess of the unrestricted release requirements in 10 CFR Part 20. The issuance of License No. SUC–1581 would ensure that the radioactive material at the Tobico Marsh site is possessed, used, or transferred in accordance with NRC regulations, and that MDNR will have a structured regulatory program in place to protect public health and safety.

Alternatives to the Proposed Action

NRC staff considered no action as an alternative to the proposed action. The no-action alternative would result in no specific license and would not ensure MDNR will have a structured regulatory program in place to protect public health and safety.

Environmental Impacts of the Proposed Action

The activities that NRC staff proposes to authorize through the issuance of License No. SUC–1581 are expected to have an insignificant impact on the environment. In fact, the activities are anticipated to improve control of the Th and U-contaminated material. The control of the Th and U-contaminated material under license will reduce the potential for the release of radiological contamination to the environment.

During the proposed site characterization, the primary potential

radiological impact on the environment would be the release of radioactive material during excavation and handling of contaminated materials. No waste water that is contaminated with radionuclides above the 10 CFR Part 20, Appendix B limits, will be allowed to be discharged to sewers and drains from the site.

The proposed activities that would be licensed at this site are for the purpose of controlling and characterizing the radiologically contaminated material. Because MDNR has committed to comply with NRC requirements, has adequate radiation protection procedures and capabilities, and will implement an acceptable as low as is reasonably achievable (ALARA) program, the proposed actions are not anticipated to result in a dose to workers or the public in excess of 10 CFR Part 20 limits. Past experiences with site characterization activities at sites similar to the MDNR Tobico Marsh site indicate that public and worker exposure will be far below the limits found in 10 CFR Part 20.

The proposed action will result in the irreversible use of energy resources during excavation and handling of contaminated material. There are no reasonable alternatives to these resource uses and there are no unresolved conflicts concerning alternative uses of available resources.

Agencies and Individuals Consulted

This environmental assessment (EA) was prepared entirely by NRC staff. The staff from the State of Michigan Department of Environmental Quality (MDEQ) and MDNR reviewed a draft of this EA. MDEQ had no comments. MDNR has suggested editorial corrections and noted that the presence of U–238 has not been unequivocally proven at the Tobico Marsh site in the Need for Proposed Action section. Their comments have been incorporated in this version. No other sources were used beyond those referenced in this EA.

Conclusions

Issuance of Source Material License No. SUC–1581 to authorize the possession and control of source material located on the MDNR Tobico Marsh site will have an insignificant impact on the environment. Proposed activities at the site are designed to improve control and reduce the potential for release of radiological contamination to the environment. In addition, based on information to be gathered at the site, the licensee will develop a plan for the cleanup of radiological contamination at the site.

Finding of No Significant Impact

NRC has prepared this EA related to the proposed license application by MDNR for the Tobico Marsh site. On the basis of the EA, NRC has concluded that this licensing action would not significantly affect the quality of the environment and has determined not to prepare an environmental impact statement for the proposed action.

Opportunity for a Hearing

NRC hereby provides notice that this is a proceeding on an application for a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm, Federal workdays; or

2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Michigan Department of Natural Resources, P.O. Box 30028, Lansing, MI 48909, Attention: Ms. Kelli Sobel; and

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm, Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further details with respect to this action, copies of the license application dated September 5, 1997, the complete EA, and supporting documentation are available for inspection at NRC's Public Document Room, 2120 L Street N.W., Washington, DC 20555–0001.

For Further Information Contact: Ms. Sherry W. Lewis, General Engineer, Facilities Decommissioning Section, Decommissioning Branch, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards. Telephone: (301) 415–6619.

Dated at Rockville, Maryland, this 9th day of August 1999.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–21179 Filed 8–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: September 14–15, 1999—Arlington, Virginia: Review of the Department of Energy's Safety Strategy for a Potential Repository at Yucca Mountain, Nevada, and of Scientific Studies Undertaken at the Yucca Mountain Site

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board (Board) will hold a meeting on Tuesday and Wednesday, September 14 and 15, in Alexandria, Virginia, to review the U.S. Department of Energy's (DOE) waste isolation and containment strategy for a potential repository at Yucca Mountain, Nevada. The meeting will be open to the public.

The meeting will be held at the Ramada Plaza Hotel, 901 North Fairfax Street, Alexandria, Virginia 22314–1501. The telephone number is 703–683–6000. The Board meeting sessions will begin at 9 a.m. on both days.

On the morning of September 14, the DOE will update the Board on events that have taken place recently within the civilian radioactive waste

management program and the Yucca Mountain project. Presentations will be on important issues related to the performance of a potential repository including the effects of waste heat on repository behavior, the significance of chlorine-36 isotopes found in exploratory tunnels, the characteristics and processes of the saturated zone that will affect radionuclide releases, and results from corrosion tests of waste package materials. An update on repository design also will be presented.

In the afternoon, the DOE will make a series of presentations on the latest version of its repository safety strategy. Included will be an analysis of the "defense in depth" envisioned for the repository system and identification of key research priorities that the project will address over the next 18 months.

The morning session on September 15 will focus on the DOE's work to revise its total system performance assessment (TSPA) and on its use of multiple lines of evidence to develop a strategy for demonstrating the safety of the proposed Yucca Mountain repository. Included among the presentations will be a discussion of the treatment of uncertainty in TSPA, especially the use of bounding analyses. The use of natural analogs, or naturally occurring phenomenon that could increase understanding of conditions at Yucca Mountain, also will be discussed. The afternoon session will be devoted to presentations on model validation by the DOE and a subsequent roundtable discussion on this issue.

The meeting will be open to the public on both days. Time for public comment will be set aside at approximately 11:30 a.m. on both days and at the end of the afternoon session (approximately 4:30 p.m.) on September 14. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. Depending on the number of requests, a time limit may be imposed on oral statements, but written comments of any length may be submitted for inclusion in the record of the meeting. Interested parties also may submit questions in writing to the Board. As time permits, written questions will be answered during the sessions.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning on October 18, 1999. For further information, contact Karyn Severson, Director of External Affairs, NWTRB, at 2300 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. Its purpose is to evaluate the technical and scientific validity of activities undertaken by the DOE related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: August 10, 1999.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 99–21088 Filed 8–13–99; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 18f–1, Form N–18F–1, SEC File No. 270–187; OMB Control No. 3235–0211

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 18f–1 [17 CFR 270.18f–1] enables a registered open-end management investment company ("fund") that may redeem its securities in kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940. A fund relying on the rule must file Form N–18F–1 [17 CFR 274.51] to notify the Commission of this election. The Commission staff estimates that approximately 106 funds file the Form annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 106 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: August 10, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–21189 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form F–6, SEC File No. 270–270, OMB Control No. 3235–0229

Regulation S–T, SEC File No. 270–375, OMB Control No. 3235–0424

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission

("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

The Commission exercised its authority under Section 19 of the Securities Act of 1933 to establish Form F–6 for registration of American Depositary Receipts (ADRs) of foreign companies. Form F–6 requires disclosure of information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. Such information is available for public inspection. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and the foreign company. It has been estimated that there are 339 respondents annually resulting in an estimated annual total burden of 306 hours.

The information provided on Form F–6 is mandatory to best ensure full disclosure of ADRs being issued in the United States. All information provided to the Commission is available for public review upon request.

Regulation S–T sets forth the general rules and regulations for electronic filings. Registrants who have to file electronically are the likely respondents. Regulation S–T is only assigned one burden hour for administrative convenience because it does not directly impose any information collection requirements.

The electronic filing requirement is mandatory for all companies required to file electronically. All information provided to the Commission is available to the public for review.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 9, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21190 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Release No. 23939; 812–11566]

BHF Finance (Delaware) Inc.; Notice of Application

August 10, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the Act") from all provision of the Act.

SUMMARY OF APPLICATION: Applicant, BHF Finance (Delaware) Inc. ("BHF Finance"), seeks an order to permit BHF Finance to sell securities and use the proceeds to finance the business activities of its parent company, BHF–BANK Aktiengesellschaft ("BHF"), and certain companies controlled by BHF.

FILING DATES: The application was filed on March 17, 1999, and amended on August 4, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1999, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, 590 Madison Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. BHF is a commercial bank organized under the laws of the Federal Republic of Germany ("Germany"). BHF provides, directly or through its subsidiaries, a wide range of financial services to individuals businesses, governments and financial institutions throughout Germany and internationally. As of December 31, 1998, BHF was the seventh largest publicly traded commercial bank in Germany in terms of consolidated total assets, which totaled approximately DM 89 billion. BHF Finance is a Delaware corporation and wholly-owned subsidiary of BHF that was organized to engage in financing activities and to provide funds for BHF and companies controlled by BHF.

2. On December 30, 1998, approximately 39% of the shares of BHF were indirectly acquired by ING Groep N.V. ("ING Group"), a Netherlands corporation engaged in insurance activities in the United States. BHF Finance states that ING Group's investment is considered a controlling interest under the Bank Holding Company Act of 1956 ("BHCA"), which prohibits a foreign entity from engaging directly or indirectly in banking and insurance activities in the United States at the same time. Accordingly, BHF is in the process of terminating all banking activities, as defined in the BHCA, in the United States ("de-banking").

3. BHF Finance previously issued and sold commercial paper in the United States pursuant to an SEC order issued in 1986 and amended in 1993 ("Prior Order") exempting it from all provisions of the Act.[1] BHF Finance has discontinued the issuance and sale of commercial paper pursuant to the Prior Order in connection with the de-banking. All of the commercial paper issued pursuant to the Prior Order matured on or prior to June 18, 1999. The order requested by BHF Finance will supersede the Prior Order.

4. BHF intends to continue to engage in some business activities in the BHF Finance, primarily the business of extending commercial credit to third parties, through BHF (USA) Capital Corporation ("BHF Capital"), a Delaware corporation, which is an

[1] *Berliner Handels-Und Frandfurter Bank and BHF Finance (Delaware) Inc.*, Investment Company Act Release Nos. 19603 (July 38, 1993) (notice) and 19649 (Aug. 24, 1993) (order); Berliner Handels-Und Frandfurter Bank and BHF Finance (Delaware) Inc., Investment Company Act Release Nos. 15188 (July 2, 1986) (notice) and 15230 (July 29, 1986) (order).

indirect, wholly-owned subsidiary of BHF. All of the outstanding securities of BHF Capital are indirectly owned by BHF.

5. BHF Finance proposes to issue commercial paper in the United States pursuant to the exemption contained in section 3(a)(3) of the Securities Act of 1933 (the "1933 Act"). BHF Finance may also offer debt securities other than commercial paper or non-voting preferred stock in the United States, and lend the proceeds to or invest the proceeds in BHF, BHF Capital and other companies that, after giving effect to the exemption requested in the application, will be companies controlled by BHF within the meaning of rule 3a–5(b) under the Act as discussed below ("Controlled Companies"). Rule 3a–5 generally exempts finance subsidiaries of operating companies from the definition of investment company.

6. Any issuance of debt securities or non-voting preferred stock by BHF Finance will be guaranteed unconditionally by BHF with a guarantee that meets the requirements of rule 3a–5(a)(1) or (2), respectively (the "Guarantee"). In accordance with rule 3a–5(a)(5), at least 85% of any cash or cash equivalents raised by BHF Finance will be invested in or loaned to BHF and Controlled Companies as soon as practicable, but in no event later than six months after BHF Finance's receipt of such cash or cash equivalents. In accordance with rule 3a–5(a)(6), all investments by BHF Finance, including temporary investments, will be made in government securities, securities of BHF and Controlled Companies, or debt securities that are exempted from the provisions of the 1933 Act by section 3(a)(3) of the 1933 Act.

7. In connection with BHF Finance's offering of securities guaranteed by BHF, BHF will submit to the jurisdiction of any state or Federal court in the County of New York, State of New York and will appoint an agent to accept any process which may be served in any action based upon BHF's obligations to BHF Finance as described in the application. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to securities issued by BHF Finance as described in the application have been paid.

Applicant's Legal Analysis

1. BHF Finance requests relief under section 6(c) of the Act for an exemption from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a). Certain of BHF's subsidiaries do not fit within the definition of "companies controlled by the parent company" because they derive their non-investment company status from section 3(c) of the Act. In addition, BHF engages in certain activities (including certain investment activities) through BHF Capital. BHF Capital has no outstanding securities other than those owned directly or indirectly by BHF (excluding short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration). BHF Capital would be eligible for exemption under rule 3a–3 under the Act, except that BHF is a foreign bank.[2] Accordingly, BHF Finance requests exemptive relief to permit it to lend the proceeds of its debt offerings to certain subsidiaries of BHF that are excluded from the definition of investment company by virtue of section 3(c) and subsidiaries that would be excluded by virtue of rule 3a–3, but for BHF's status as their parent company. BHF Finance states that neither itself, nor BHF, nor BHF Capital engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the SEC, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. BHF Finance submits that its exemptive request meets the standards set out in section 6(c).

Applicant's Condition

BHF Finance agrees that the order granting the requested relief will be subject to the following condition:

BHF Finance will comply with all of the provisions of rule 3a–5 under the Act, except paragraph 9b)(3)(i) to the extent that BHF Finance will be permitted to invest in or make loans to entities that do not meet the portion of the definition of "company controlled by the parent company" solely because they are:

(1) subsidiaries of BHF that would be excluded from the definition of investment company by virtue of rule 3a–3 under the Act, but for BHF's status as their parent company; or

(2) corporations, partnerships, and joint ventures that are excluded from the definition of investment company by section 3(c)(1), (2), (4), (6) or (7) of the Act, provided that any such entity:

(a) if excluded from the definition of investment company pursuant to section 3(c)(1) or section 3(c)(7) of the Act, will be engaged solely in lending, leasing or related activities (such as entering into credit derivatives to manage the credit risk exposures of its lending and leasing activities) and will not be structured as a means of avoiding regulation under the Act; and

(b) if excluded from the definition of investment company pursuant to section 3(c)(6) of the Act, will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21192 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule 3a–3 generally exempts an issuer from the definition of investment company if all of its outstanding securities (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are owned by an eligible parent company. A parent company generally is eligible if it meets certain asset and income tests and (i) it is not an investment company as defined in section 3(a) of the Act; (ii) it is excluded from the definition of investment company by section 3(b) of the Act; or (iii) it is deemed not to be an investment company under rule 3a–1 of the Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23940; 812–11382]

The Chapman Funds, Inc., et al.; Notice of Application

August 10, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under

the Act and certain disclosure requirements.

SUMMARY OF APPLICATION: The requested order would permit applicants, The Chapman Funds, Inc. ("Company") and Chapman Capital Management ("CCM"), to hire subadvisers and materially amend subadvisory agreements without shareholder approval, and grant relief from certain disclosure requirements.

FILING DATES: The application was filed on October 29, 1998, and was amended on April 14, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 7, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, World Trade Center-Baltimore, 28th Floor, 401 East Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Michael W. Mundt, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Company is organized as a Maryland corporation and registered under the Act as an open-end management investment company which offers shares in seven series (collectively, the "Funds"), each of which has its own investment objectives, policies, and restrictions.[1] CCM is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is a subsidiary of Chapman Capital Management Holdings, Inc. CCM serves as the investment adviser to each Fund pursuant to advisory agreements between CCM and the Company ("Advisory Agreements").

2. For certain Funds ("Multi-Manager Funds"), CCM will seek to enhance performance and reduce market risk by allocating Fund assets among one or more subadvisers ("Subadvisers").[2] Each Subadviser is registered as an investment adviser under the Advisers Act. For the Multi-Manager Funds, CCM will monitor the performance of both the total Fund portfolio and the portion of the total Fund portfolio allocated to each Subadviser and will reallocate Fund assets among Subadvisers, or recommend to the Company's board of directors ("Board") that the Fund employ or terminate particular Subadvisers. Under agreements between CCM and the Subadvisers ("Sub-Advisory Agreements"), the specific investment decisions for each Multi-Manager Fund will be made by Subadvisers subject to the general supervision of CCM and the Board. The Funds pay investment advisory fees to CCM, and CCM will pay Subadvisers out of its fees.

3. Applicants request an exemption from section 15(a) of the Act and rule 18f–2 under the Act to permit Subadvisers approved by the Board to serve as Subadvisers for the Multi-Manager Funds, without the necessity of obtaining shareholder approval. Shareholder approval would continue to be required for any Subadviser that is an "affiliated person," as defined in section 2(a)(3) of the Act, of the Company or CCM, other than by reason of serving as a Subadviser to one or more of the Multi-Manager Funds (an "Affiliated Subadviser").

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Multi-Manager Funds to disclose the fees paid by CCM to the Subadvisers. For each Fund, the Company will disclose the following (both as a dollar amount and as a percentage of the Fund's net assets): (1) Aggregate fees paid to CCM and any Affiliated Subadvisers; and (2) aggregate fees paid to Subadvisers other than Affiliated Subadvisers ("Limited Fee Disclosure"). For any fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to such Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract approved by a majority of the investment company's outstanding voting shares. Rule 18f–2 under the Act provides that each series of class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Form N1–A is the registration statement used by open-end investment companies. Items 3, 6(a)(1)(ii), and 15(a)(3) of Form N–1A (and items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A prior to the amendments effective June 1, 1998) require disclosure of the method and amount of the investment adviser's compensation.

3. Form N–14 is the registration statement form for business combinations involving open-end management investment companies. Item 3 of Form N–14 requires a fee table that shows current fees for the registrant and the company being acquired, and pro forma fees, if different, for the registrant after giving effect to the transaction.

4. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act"). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee will be increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and

[1] Applicants request that the relief also apply to all subsequently registered open-end management investment companies that in the future are advised by CCM or any entity controlling, controlled by, or under common control with CCM and that use the multi-manager structure described in this application ("Future Companies"), and to any series of the Company or Future Companies that may be created in the future. Applicants state that all registered open-end management investment companies that currently intend to rely on the requested order are named as applicants, and any Future Company that relies on the order will comply with the terms and conditions contained in the application.

[2] On behalf of DEM Multi-Manager Equity Fund and DEM Multi-Manager Bond Fund, CCM currently intends to enter into Sub-Advisory Agreements with twelve Subadvisers and four Subadvisers, respectively.

proposed fees and the difference between the two fees.

5. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including subadvisers.

6. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

7. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

8. Applicants assert that investors in a Multi-Manager Fund rely on CCM to select appropriate Subadvisers. Applicants contend that the role of the Subadvisers, from the perspective of the investor, will be comparable to that of the individual portfolio managers employed by other investment advisory firms. Applicants note that the Advisory Agreements will continue to be subject to section 15 of the Act and rule 18f–2 under the Act.

9. Applicants assert that the information provided in the Limited Fee Disclosure will permit each investor to determine whether the fees for investment advisory services are competitive. In addition, applicants contend that some Subadvisers use a "posted" rate schedule to set their fees and may be unwilling to serve as Subadvisers at any rate other than their "posted" fee rates, unless the rates negotiated for the Funds are not publicly disclosed. Applicants state that requiring disclosure of Subadvisory fees would deprive CCM of its bargaining power to negotiate lower rates.

Applicants' Conditions

Applicants agree that the order shall be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities, as defined in the Act, of the Fund, or, in the case of a new Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

2. Any Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, such Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that CCM has ultimate responsibility to oversee Subadvisers and to recommend their hiring, termination and replacement.

3. CCM will provide general management and administration services to any Fund relying on the requested order, including overall supervisory responsibility for the general management and investment of such Fund, and subject to the review and approval of the Board will (1) set the overall investment strategies of the Fund; (2) evaluate, select and recommend Subadvisers; (3) allocate, and when appropriate, reallocate, the assets of the Fund among Subadvisers; (4) monitor and evaluate the investment performance of the Subadvisers; and (5) implement procedures reasonably designed to ensure that the Subadvisers comply with the investment objectives, policies, and restrictions of the Fund.

4. At all times, a majority of the Board will be persons who are not "interested persons" of the Company as defined in section 2(a)(19) of the Act ("Independent Directors"), and the nomination of new or additional Independent Directors will be placed within the discretion of the then existing Independent Directors.

5. CCM will not enter into a Sub-Advisory Agreement with an Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

6. When a change of a Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that any such change of Subadviser is in the best interest of the Fund and its shareholders, and does not involve a conflict of interest from which CCM or the Affiliated Subadviser derives an inappropriate advantage.

7. No director or officer of the Company or director or officer of CCM will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director or officer) any interest in a Subadviser except for ownership of interests in CCM or any entity that controls, is controlled by, or is under common control with CCM, or ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Subadviser or controls, is controlled by, or is under common control with a Subadviser.

8. Within ninety days of the hiring of any Subadviser, the affected Fund will furnish its shareholders with all information about the new Subadviser that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Subadviser. The Fund will meet this condition by providing shareholders, within ninety days of the hiring of a Subadviser, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Limited Fee Disclosure.

9. The Company will disclose in its registration statement the Limited Fee Disclosure.

10. CCM will provide the Board, no less frequently than quarterly, information about CCM's profitability for each Fund that relies on the requested relief. Such information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

11. Whenever a Subadviser is hired or terminated, CCM will provide the Board information showing the expected impact on CCM's profitability.

12. At all times, independent counsel knowledgeable about the Act and the duties of Independent Directors will be engaged to represent the Independent Directors. The selection of such counsel will remain within the discretion of the Independent Directors.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21191 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23938; File No. 812–11594]

Dow Target Variable Fund LLC; Notice of Application

August 10, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant seeks an order under Section 6(c) of the Act amending an existing order (Investment Company Act Release No. 23628, Dec. 20, 1998). The amended order would exempt Applicant and any other existing or future open-end management investment company or portfolio thereof that is advised by its investment adviser, Ohio National Investments, Inc. (the "Adviser"), or any entity controlled by or under common control with the Adviser that follows an investment strategy that is the same as one of the two investment strategies described in the application ("Future Funds") from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit their portfolios: (a) to invest up to 10.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities; or (b) to invest up to 20.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

APPLICANT: Dow Target Variable Fund LLC.

FILING DATE: The application was filed on March 18, 1999, and amended on July 23, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on August 31, 1999, and must be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, Dow Target Variable Fund LLC, One Financial Way, Cincinnati, Ohio 45242.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 [tel. (202) 942–8090].

Applicant's Representations

1. Applicant is a registered, open-end management investment company (File No. 811–09019). It currently consists of twelve non-diversified portfolios, each named after a calendar month (January Portfolio, February Portfolio, etc.) (collectively, the "Dow Target 10 Portfolios"). Applicant proposes to add another twelve non-diversified portfolios, also named after the calendar months (collectively, the "Dow Target 5 Portfolios").

2. Applicant was organized under the laws of Ohio as a limited liability company on September 21, 1998. Under Ohio law, a limited liability company does not issue shares of stock. Instead, ownership rights are contained in membership interests. Each membership interest of Applicant ("Interest") represents an undivided interest in the stocks held in one of Applicant's portfolios.

3. The Interests are not offered directly to the public. The only direct owner of the Ohio National Life Insurance Company ("Ohio National Life") through its variable annuity separate accounts. Those of Ohio National Life's variable annuity owners who have contract values allocated to any of Applicant's portfolios have indirect beneficial rights in the Interests and have the right to instruct Ohio National with regard to how it votes the Interests that it holds in its variable annuity separate accounts.

4. Applicant's investment adviser is Ohio National Investment, Inc. (the "Adviser"), a wholly owned subsidiary of Ohio National Life. First Trust Advisors L.P. ("First Trust") is the sub-adviser to each of Applicant's portfolios.

5. Each of Applicant's Dow Target 10 Portfolios invests approximately 10% of its total assets in the common stock of the ten companies in the Dow Jones Industrial Average (the "Dow") having the highest dividend yield as of the close of business on the next to last business day of the month preceding the month for which the portfolio is named (the "Stock Selection Date"). These ten companies are popularly known as the "Dogs of the Dow." On or about the first business day of the month for which a portfolio is named, First Trust sets the proportionate relationship among the ten stocks to be held in that portfolio for the next twelve months. At the end of a portfolio's twelfth month, the portfolio will be rebalanced with a new mix of Dogs of the Dow stocks.

6. Each of Applicant's Dow Target 5 Portfolios will invest approximately 20% of its total assets in the common stock of the five companies of the Dogs of the Dow having the lowest per share stock price as of the close of business on the Stock Selection Date. On or about the first business day of the month for which a portfolio is named, First Trust will set the proportionate relationship among the five stocks to be held in that portfolio for the next twelve months. At the end of a portfolio's twelfth month, the portfolio will be rebalanced with a new mix of five Dogs of the Dow stocks.

7. Stocks held in any portfolio are not expected to reflect the entire index, and the prices of Interests are not intended to parallel or correlate with movements in the Dow. Generally, it will not be possible for all of a portfolio's funds to be invested in the prescribed mix of applicable stocks at any given time. However, the Adviser and First Trust will try, to the extent practicable, to maintain a minimum cash position at all times. Applicant represents that normally the only cash items held will represent amounts expected to be deducted as charges and amounts too small to purchase additional proportionate round lots of the stocks.

8. The Dow consists of 30 stocks selected by Dow Jones & Company, Inc. as representative of the broader domestic stock market and of American industry. Dow Jones and Company, Inc. is not affiliated with the Applicant and has not participated, and will not participate, in any way in the creation of the portfolios or the selection of the stocks purchased by the portfolios.

9. Until the end of the initial month of a portfolio, Interests may be purchased by variable annuity separate accounts of Ohio National Life. After the initial month of a portfolio, no further Interests in that portfolio may be purchased until eleven months later. Interests may be redeemed at any time.

10. Any purchase of Interests made after the initial business day of the month for which the portfolio is named will duplicate, as nearly as is practicable, the original proportionate relationships of the applicable stocks

held by that portfolio. Because the prices of each of the stocks will change nearly every day, the ratio of the price of each to the total price of the entire group of applicable stocks will also change daily. However, the proportion of stocks held by that portfolio will not change materially as a result of the sales of additional Interests after the first business day of the month for which the portfolio is named.

11. Applicant is not a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). Nonetheless, it does not pay federal income tax on its interest, dividend income or capital gains. As a limited liability company whose interests are sold only to Ohio National Life, it is disregarded as an entity for purposes of federal income taxation. Ohio National Life, through its variable annuity separate accounts, is treated as owning the assets of the portfolios directly and its tax obligations thereon are computed pursuant to Subchapter L of the Code (which governs the taxation of insurance companies). Under current tax law, interest, dividend income and capital gains of Applicant are not taxable to Applicant, and are not currently taxable to Ohio National Life or to contract owners, when left to accumulate within a variable annuity contract.

12. Section 817(h) of the Code provides that in order for a variable contract that is based on a segregated asset account to qualify as an annuity contract under the Code, the investments made by that account must be "adequately diversified in accordance with Treasury regulations.

13. Each portfolio must comply with the Section 817(h) diversification requirements. Therefore, the Adviser and First Trust may depart from the portfolio investment strategy, if necessary, in order to satisfy the Section 817(h) diversification requirements. Under all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each portfolio are chosen solely according to the formula described above and are not based on the research opinions or buy or sell recommendations of the Adviser or First Trust. Neither the Adviser nor First Trust has any discretion as to which common stocks are purchased. Securities purchased for each portfolio may include securities of issuers in the Dow that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

14. The existing order permits Applicant's Dow Target 10 Portfolios to invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities. Applicant now proposes to extend the relief to permit Applicant's portfolios and Future Funds: (a) to invest up to 10.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities; or (b) to invest up to 20.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser. Rule 12d3–1 under the Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter or principal underwriter of the affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer. Each of Applicant's portfolios undertakes to comply with all of the requirements of Rule 12d3–1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities of a securities related issuer.

2. Section 6(c) of the Act provides that the SEC, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant states that Section 12(d)(3) was intended: (a) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses; (b) to prevent potential conflicts of interest; (c) to eliminate certain reciprocal practices between investment companies and securities related businesses; and (d) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. A potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant states that this concern does not arise in this situation. Applicant states that generally, none of Applicant, the Adviser or First Trust has discretion in choosing the common stock or amount purchased. Applicant states that the stock must first be included in the Dow, which is unaffiliated with Applicant, the Adviser or First Trust. In addition, the stock must also qualify as one of the ten companies in the Dow that has the highest dividend yield as of the close of business on the Stock Selection Date. In the case of Dow Target 5 Portfolios, the stock must then qualify as one of the five companies of the Dogs of the Dow that have the lowest per share stock price as of the close of business on the Stock Selection Date.

5. The Adviser and First Trust are obligated to follow the investment formula described above as nearly as practicable. Applicant represents that the only time any deviation from the formula would be permitted would be where circumstances were such that the investments of a particular portfolio would fail to be "adequately diversified" under the Section 817(h) diversification requirements, and would thus cause the annuity contracts to fail to qualify as annuity contracts under the Code. Applicant states that the likelihood of this exception arising is extremely remote. In such a situation, Applicant submits that it must be permitted to deviate from the investment strategy in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Applicant asserts that this limited discretion does not give rise to the potential conflicts of interest or to the possible reciprocal practices between investment companies and securities related businesses that Section 12(d)(3) is designed to prevent.

6. Applicant states that the liquidity of a portfolio is not a concern here since each common stock selected is a component of the Dow, listed on the New York Stock Exchange, and among the most actively traded securities in the United States.

7. In addition, Applicant submits that the effect of a portfolio's purchase of the stock of parents of broker-dealers would be *de minimis*. Applicant states that the common stocks of securities related issuers represented in the Dow are widely held with active markets and

that potential purchases by a portfolio represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers. Therefore, Applicant argues that it is almost inconceivable that these purchases would have any significant effect on the market value of any of these securities related issuers.

8. Another possible conflict of interest is where a broker-dealer may be influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Applicant states that because of the large market capitalization of the Dow issuers and the small portion of these issuers' common stock and trading volume that are purchased by a portfolio, it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a portfolio is invested in the broker-dealer or a parent thereof.

9. Finally, another potential conflict of interest could occur if any investment company directed brokerage to an affiliated broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of this application, that no company whose stock is held in any portfolio, nor any affiliate of such a company, will act as broker or dealer for any portfolio in the purchase or sale of any security.

10. Applicant seeks relief not only with respect to the Dow Target 10 Portfolios and the Dow Target 5 Portfolios, but also with respect to Future Funds. Applicant states that without the requested class relief, exemptive relief for any Future Fund would have to be requested and obtained separately. Applicant asserts that these additional requests for exemptive relief would present no issues under the Act not already addressed in the application. Further, if Future Funds were to repeatedly seek exemptive relief with respect to the same issues, investors would receive no additional protection or benefit, and investors could be disadvantaged by increased costs from preparing the additional requests for relief. Applicant argues that class relief is appropriate in the public interest because the relief will promote competitiveness in the variable insurance products market by eliminating the need for Future Funds to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Also, eliminating the delay and the expenses of repeatedly seeking exemptive relief would enhance the ability of Future Funds to effectively take advantage of business opportunities as such opportunities arise.

Applicant's Conditions

Applicant agrees that any order granting the requested relief from Section 12(d)(3) of the Act shall be subject to the following conditions:

1. The common stock is included in the Dow as of the Stock Selection Date;

2. With respect to Dow Target 10 Portfolios, the common stock represents one of the ten companies in the Dow that have the highest dividend yield as of the close of business on the Stock Selection Date;

3. With respect to Dow Target 5 Portfolios, the common stock represents one of the five companies with the lowest dollar per share stock price out of the ten companies in the Dow that have the highest dividend yield as of the close of business on the Stock Selection Date;

4. With respect to Dow Target 10 Portfolios, as of close of business on the Stock Selection Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of any portfolio's total assets, but in no event more than 10.5% of the value of the portfolio's total assets;

5. With respect to Dow Target 5 Portfolios, as of close of business on the Stock Selection Date, the value of the common stock of each securities related issuer represents approximately 20% of the value of any portfolio's total assets, but in no event more than 20.5% of the value of the portfolio's total assets; and

6. No company whose stock is held in any portfolio, nor any affiliate thereof, will act as broker or dealer for any portfolio in the purchase or sale of any security for that portfolio.

Conclusion

For the reasons summarized above, Applicant asserts that the order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21091 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23936, 812–11738]

The First Commonwealth Fund, Inc.; Notice of Application

August 9, 1999.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: The First Commonwealth Fund, Inc., requests an order to permit it to make up to twelve distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution plan with respect to its common stock calling for monthly distributions of a fixed percentage of its net asset value.

FILING DATES: The application was filed on August 5, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the requests, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 2, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Nadya Roytblat, Assistant Director at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The applicant is organized as a Maryland corporation and registered under the Act as a closed-end, non-

diversified management investment company. The applicant's primary investment objective is to provide high current income, primarily through investment in fixed-income securities of issuers in, or denominated in the currency of Australia, Canada, New Zealand, and the United Kingdom. The applicant's common shares are listed on the New York Stock Exchange and have consistently traded at a discount to net asset value. EquitiLink International Management Limited is the investment manager to the applicant and is registered as an investment adviser under the Investment Advisers Act of 1940.

2. On June 10, 1999, the applicant's board of directors (the "Board"), including a majority of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act, adopted a distribution plan ("Monthly Distribution Plan") that calls for regular monthly distributions at a monthly cash distribution rate ("Monthly Cash Distribution Rate") set once a year by the Board. Among other things, the Board considered empirical evidence that, in some cases, market discounts to net asset value have narrowed upon adoption of similar distribution policies by other closed-end funds. The Board has set the annualized Monthly Cash Distribution Rate for the period March 1999, through February 2000, at 7.75 cents per share. If, for any taxable year, the total distributions required by its Monthly Distribution Plan exceed the applicant's annual net investment income and net realized capital gains, the excess will generally be treated as a return of capital (up to the amount of the stockholders's adjusted tax basis in his share).

3. The applicant requests relief to permit it, so long as it maintains in effect the Monthly Distribution Plan, to make up to twelve distributions of long-term capital gains in any one taxable year.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in Section 852(b)(3)(c) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to Section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under Section 4982 of the Code.

2. The applicant asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions the applicant may make with respect to any one year, would prohibit the applicant from including available net long-term capital gains in certain of its fixed monthly distributions. As a result, the applicant states that it could be required to fund these monthly distributions with returns of capital (to the extent net investment income and net realized short-term capital gains are insufficient to cover a monthly distribution). The applicant further asserts that, in order to distribute all of its long-term capital gains within the limits in rule 19b–1, the applicant may be required to make total distributions in excess of the annual amount called for by the Monthly Distribution Plan or retain and pay taxes on the excess amount. The applicant asserts that the application of rule 19b–1 to the applicant's Monthly Distribution Plan may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. The applicant submits that the concerns underlying section 19(b) and rule 19b–1 are not present in the applicant's situation. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The applicant states that its Monthly Distribution Plan has been described in the applicant's periodic communications to its shareholders. The applicant states that, in accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution will accompany each distribution (or the confirmation of the reinvestment thereof under the applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of each monthly distribution during the year will be included with the applicant's IRS Form 1099–DIV report sent to each shareholder who received distributions during the year (including shareholders who have sold shares during the year).

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could improperly influence distribution practices including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend ("selling the dividend"), when the dividend results in an immediate corresponding reduction in net asset value and is, in effect, a return of the investor's capital. The applicant submits that this concern does not arise with regard to closed-end management investment companies, such as the applicant, that do not continuously distribute their shares. The applicant also states that the condition to the requested relief would further assure that the concern about selling the dividend would not arise in connection with a rights offering by the applicant.

5. The applicant further states that any offering of transferable rights will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any such offering by applicant of transferable rights will also comply with any applicable NASD rules regarding the fairness of compensation.

6. The applicant states that increased administrative costs are a concern underlying section 19(b) and rule 19b+1. The applicant asserts that this concern is not present because the applicant will continue to make monthly distributions regardless of whether long-term capital gains are included in any particular distribution.

7. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, the applicant believes that the requested relief satisfies this standard.

Applicant's Condition

The applicant agrees that the order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the applicant of its common shares other than:

(i) a rights offering with respect to holders of the applicant's common stock, in which (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising rights will not be entitled to receive such dividend, and (c) the

applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) an offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the applicant;

unless the applicant has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

[FR Doc. 99–21089 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23937; 812–11590]

WNC Housing Tax Credit Fund VI, L.P., Series 7 and 8, and WNC & Associates, Inc.; Notice of Application

August 9, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the "Act") granting relief from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

APPLICANTS: WNC Housing Tax Credit Fund VI, L.P., Series 7 and WNC Housing Tax Credit Fund VI, L.P., Series 8 (each a "Series," and collectively, the "Fund"), and WNC & Associates, Inc. (the "General Partner").

SUMMARY OF APPLICATION: Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATES: The application was filed on April 22, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 2, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549–0609. Applicants, 3158 Redhill Avenue, Suite 120, Costa Mesa, California 92626–3416.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. no. 202–942–8090).

Applicants' Representations

1. Each Series was formed in 1997 as a California limited partnership. Each Series will operate as a "two-tier" partnership, i.e., each Series will invest as a limited partner in other limited partnerships ("Local Limited Partnerships"). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986, as amended.

2. The objectives of each Series are (a) to provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal income tax liabilities, (b) to preserve and protect capital, and (c) to provide cash distributions from sale or refinancing transactions.

3. On April 16, 1999, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicly, in two series of offerings, 25,000 units of limited partnership interest ("Units") at $1,000 per unit. The minimum investment will be five units for most investors, although employees of the General Partner and its affiliates and/or investors in syndications previously sponsored by the General Partner may purchase a minimum of two Units. Purchasers of the Units will become limited partners ("Limited Partners") of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) as a net worth (exclusive of home, furnishings, and automobiles), of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $75,000. Units will be sold only to investors who meet these suitability standards, or such more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest in such partnerships. From 95% to 100% of the proceeds from a sale or refinancing of an apartment complex normally will be paid to the Series until it has received a full return of the capital invested in the Local Limited Partnership (which may be reduced by any cash flow distributions previously received). A Series also will receive a share of any remaining sale or refinancing proceeds, which may range from 10% to 50%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partnership on the basis of performance, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. Applicants state that the Partnership Agreement and prospectus of the Series contain provisions designed to ensure fair dealing by the General Partner with the Limited Partners. Applicants also state that all compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. Applicants believe that the fees and other forms of compensation that will be paid to the General Partner and its affiliates are fair and on terms no less favorable to the Series than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a dealer-manager fee and a nonaccountable expense reimbursement in amounts equal to 2% and 4%, respectively, of capital contributions. The General Partner has agreed to pay all organizational and offering expenses (excluding selling commissions, the dealer-manager fee, and the nonaccountable expense reimbursement).

10. During the acquisition phase, the Fund will pay the General Partner or its affiliates a fee equal to 7% of capital contributions for analyzing and evaluating potential investments in Local Limited Partnerships and for various other services. The General Partner and its affiliates will receive a nonaccountable acquisition expense reimbursement equal to 2% of capital contributions in consideration of which the General Partner will pay all acquisition expenses of the Fund. Aggregate fees and expenses paid in connection with the organization of the Fund, the offering of Units, and the acquisition of Local Limited Partnerships interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administrators Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to the Fund be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 0.1% of any cash available for distribution, and the Fund may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of the Fund and ongoing management of the Fund. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 0.1% of profits and losses of the Fund for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the Limited Partners, the Fund will pay the General Partner or its affiliates a fee equal to 1% of the sales price of the apartment complexes sold in which the General Partner or its affiliates have provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds.

13. All proceeds from a Series' public offering of Units initially will be placed in an escrow account with the Southern California Bank ("Escrow Agent"). Pending release of offering proceeds to the Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escrow will be released to the Series and held by it pending investment in local Limited Partnerships.

14. If more than one entity that the General Partner or its affiliates advises or manages may invest in a particular investment opportunity, the decision as to the entity that will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, (a) any entity that was formed to invest primarily in apartment complexes eligible only for Federal low income housing credits will be given priority with respect to any investment that is not eligible for state low income housing credits, and (b) any entity that was formed to invest primarily in apartment complexes eligible for state low income housing credits as well as for Federal credits will be given priority with respect to any investment that is eligible for the state credits.

Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be "investment companies" under sections 3(a)(1)(A) or 3(a)(1)(C) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under section 6(c) and 6(e) of the Act from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

2. Section 3(a)(1)(A) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants believe that the Fund will not be an investment company under section 3(a)(1)(A) because the Fund will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(1)(C) of the Act provides that an issuer is an "investment company" if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Applicants state that although the Local Limited Partnership interests may be deemed "investment securities," they are not readily marketable, cannot be sold without severe adverse tax consequences, and have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships.

4. Applicants believe that the two-tier structure is consistent with the purpose and criteria set forth in the SEC's release concerning two-tier real estate partnerships (the "Release").[1] The Release states that investment

[1] Investment Company Act Release No. 8465 (Aug. 9, 1974).

companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the SEC to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to quality for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interests.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21090 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41719; File No. SR–NSCC–99–10]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Arrangements to Integrate the National Securities Clearing Corporation and The Depository Trust Company

August 9, 1999

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on august 5, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–99–10) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change filed by NSCC involves proposed arrangements to integrate NSCC and The Depository Trust Company ("DTC"). The proposal provides for the following:

- DTC and NSCC will form a New York corporation ("Holding Company") for the purpose of owning directly all of the outstanding stock of NSCC and owning indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.
- After receipt of all necessary regulatory approvals, the Holding Company will conduct exchange offers in which current DTC stockholders will have the opportunity to exchange their DTC shares for newly-issued Holding Company common stock on a one-for-one basis and the two current stockholders of NSCC will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares ("Exchange Offers").
- The Holding Company will elect as the Directors of DTC and NSCC the persons elected by the stockholders of the Holding Company.
- As subsidiaries of the Holding Company, DTC and NSCC will continue to operate as they do currently, and each will offer its own services to its own members pursuant to separate legal arrangements and separate risk management procedures.
- The Holding Company itself will not engage in clearing agency activities. Certain support functions, including Human Resources, Finance, Audit, General Administration, Corporate Communications, and Legal will be centralized in the Holding Company, and the Holding Company will provide those services to each of the two subsidiary clearing agencies pursuant to service contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At their meetings in February 1999, the Boards of Directors of DTC and NSCC voted to proceed with a plan for the integration of the two clearing agencies. A principal goal of the plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at DTC and NSCC for the clearance and settlement of both institutional and broker transactions. This strategy is intended to accommodate shortened settlement cycles and increased volumes, to improve risk management, and to lower transaction processing costs.

An initial step in the plan was the identification from among the incumbent directors of both Boards of a single group of individuals to serve as the Board of Directors for each of the two companies. Since simply adding the membership of NSCC's Board to DTC's Board would have resulted in certain user and marketplace organizations having more than one representative, each of these organizations was asked to select only one representative. Through this process and with the inclusion of DTC and NSCC management Directors, a group of twenty-seven persons was identified. That group has been elected as NSCC Board of Directors by NSCC's

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

stockholders. Since federal banking law applicable to DTC limits the maximum size of DTC's Board to twenty-five members, two of the persons elected to NSCC's Board will participate in DTC Board meetings as non-voting advisors. The remaining twenty-five persons have been elected as DTC Board of Directors by DTC stockholders.[3]

The next steps in the integration plan, conducting the Exchange Offers and implementing certain stock ownership and corporate governance arrangements for the Holding Company, are the subjects of the proposed rule change.

The Holding Company will issue two classes of stock in connection with the Exchange Offers: common stock to be owned initially by current DTC stockholders and preferred stock to be owned in equal amounts by the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"), the current stockholders of NSCC. As explained in more detail below, NSCC believes that DTC and NSCC will satisfy the fair representation requirement of Section 17A(b)(3)(C) of the Act[4] in the Holding Company structure by (1) giving participants and members of DTC and NSCC the right to purchase shares of Holding Company common stock on a basis that reflects their use of the services and facilities of DTC and NSCC (based on a system analogous to the system now employed by DTC for reallocating entitlements to purchase shares of DTC stock) and (2) selecting individuals to be directors of the holding Company (who will also be directors of DTC and NSCC) on a basis that will insure that all major constituencies in the securities industry will have a voice in the business and affairs of DTC and NSCC (based on a process analogous to the process now employed by the two clearing agencies for selecting their directors).

In connection with the exchange offer for shares of DTC stock, the current DTC Stockholders Agreement will be amended to provide that if a specified supermajority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) any DTC stockholders that fail to tender their shares of DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as and when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participants or members of DTC and NSCC.[5]

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents")[6] contain provisions designed to preserve the rights that the stockholders of DTC and NSCC currently have and in particular to satisfy the fair representation requirement of Section 17A of the Act. In this regard, the Basic Documents provide for the following:

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Directors of the Holding Company, and that person will also serve on the Boards of DTC and NSCC. All other Directors will be elected annually by the owners of Holding Company common stock.
- As discussed above, the rights to purchase Holding Company common stock will be reallocated to the users of both clearing agencies based upon the users' usage. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.
- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

With respect to the nomination process, each year the Holding Company's Board of Directors will appoint a nominating committee that may include both members and non-members of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Since the Basic Documents provide for cumulative voting, one or more owners of Holding Company common stock could arrange to elect a person not on the slate nominated for election by the Board.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it is designed to coordinate further the activities of DTC and NSCC in order to help assure the continued prompt and accurate clearance and settlement of securities transactions in the face of changing business and regulatory requirements for the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. DTC and NSCC are utilities created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members compete with one another.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from NSCC members have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

---

[3] See Securities Exchange Act Release No. 41520 (June 11, 1999), 64 FR 33336 [File No. SR–NSCC–99–08] (order approving proposed rule change).

[4] 15 U.S.C. 78q–1(b)(3)(C).

[5] NSCC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

[6] NSCC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through NSCC.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. all submissions should refer to File No. SR–NSCC–99–10 and should be submitted by September 7, 1999.

For the commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21193 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice No. 3107]

Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. § 2776).

EFFECTIVE DATE: As shown on each of the ten (10) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated July 29, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls.

United States Department of State

Washington, D.C. 20520.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense services to Finland for the final assembly and ramp flight of the F/A–18 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 3–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services for the design and development of the Hyper Shower Commercial Communication Satellite system in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 78–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of two S–70A helicopters for use by the Turkish Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 80–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached notification involves the export of one Telestar commercial communications satellite to French Guiana for launch into outer space.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 74–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves a technical assistance agreement for the design, manufacture, and launch of two direct broadcasting satellites for Japan.

The United States Government is prepared to license the export of these items having

[7] 17 CFR 200.30–3(a)(12).

taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 23–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of amorphous silicon solar arrays for a commercial satellite program (SkyBridge) in France.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 32–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of amorphous silicon solar arrays for a commercial satellite program (Teledesic) in France and the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 35–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36 (c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the design and production F/A–18E/F Nose Landing Gear, in Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 44–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of hardware kits and components to manufacture and assemble an additional 117,000 M16A2 rifles, M4 carbines and 7,000 M203 grenade launchers for end use by the Greek Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 81–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to Singapore in support of the manufacture of F404, F414 and T700 aircraft engine components and equipment.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 82–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

[FR Doc. 99–21188 Filed 8–13–99; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 6, 1999, (FR 64, page 24447).

DATES: Comments must be submitted on or before September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Security Programs for Indirect Air Carriers, 14 CFR Part 109.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0505.

Forms(s): None.

Affected Public: Indirect Air Carriers.

Abstract: Security programs required by 14 CFR Part 109 set forth procedures to be used by indirect air carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorists activities in the forwarding of package cargo by passenger aircraft.

Estimated Annual Burden Hours: 664 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 11, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–21181 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received,and corrections. The purpose of this notice is to improve the pubic's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 22, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule docket (AGC–200), Petition docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 11, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29285.

Petitioner: United Parcel Service.

Section of the FAR Affected: 14 CFR 121.344(b)(3).

Description of Relief Sought/ Disposition: To permit UPS to complete the required digital flight data recorder installations on an alternate schedule rather than at the next heavy maintenance check after August 20, 1999.

Dispositions of Petitions

Docket No.: 27429.

Petitioner: Community College of the Air Force.

Section of the FAR Affected: 14 CFR 146.31(c)(2)(iii).

Description of Relief Sought/ Disposition: To permit the CCAF to allow U.S. Air Force aviation maintenance technicians who have completed military aviation maintenance training courses to be evaluated using the criteria that is used for the civilian sector. *Grant, 06/04/99, Exemption No. 6094B.*

Docket No.: 28826.

Petitioner: GE Caledonian Limited.

Section of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Caledonian to provide individuals in certain departments with a copy of the repair station inspection procedures manual in lieu of providing a copy of the manual to all supervisory and inspection personnel. This exemption is further amended by changing the references to Greenwich Caledonian Limited to GE Caledonian Limited. *Grant, 04/15/99, Exemption No. 6617A.*

Docket No.: 28878.

Petitioner: A Skydive Las Vegas, Inc.

Section of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To allow ASLV to permit nonstudent parachutists who are foreign nationals to make intentional parachute jumps for the purpose of training and recreational activities at ASLV's facilities without complying with the parachute equipment and packing requirements of § 105.43(a). *Grant, 06/04/99, Exemption No. 6443A.*

[FR Doc. 99–21118 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Akron-Canton Regional Airport, North Canton, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 15, 1999.

ADDRESSES: Comments on this application may be mailed or delivered

in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frederick J. Krum, Director of Aviation of the Akron-Canton Regional Airport Authority Board at the following address: Akron-Canton Regional Airport Authority Board, 5400 Lauby Road, Box #9 North Canton, Ohio 44720–1598.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Akron-Canton Regional Airport Authority Board under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie R. Swann, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7277). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 16, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Akron-Canton Regional Airport Authority Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part; no later than November 5, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–04–C–00–CAK.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2002.

Proposed charge expiration date: July 1, 2005.

Total estimated PFC revenue: $3,175,200.00.

Brief description of proposed projects:

Impose Only: Ground Run-up Enclosure; Relocate Mt. Pleasant & Frank Roads; Runway 1 Extension and Runway 19 Threshold Relocation.

Impose and Use: SRE Spreader Trucks; Ground Run-up Noise Study; Storm Water Drainage Improvements; Passenger Loading Bridge; Storm Water Pollution Prevention Plan; Environmental Assessment (EA) RWY 1 Extension Phase II; Benefit Cost Analysis for Runway 1 Extension; Part 107 Security Access Control System Upgrade; Terminal Master Plan; Airport Entrance Road Signage Design; Land Acquisition-Kuhar and Daily; Airport Layout Plan Update; Airport Entrance Road Signage and Storm Water Drainage Control.

Class or classes of air carriers, which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operations.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Akron-Canton Regional Airport Authority Board.

Issued in Des Plaines, Illinois, on August 6, 1999.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–21182 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Detroit City Airport, Detroit, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Detroit City Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 15, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael G. Trout, Director, Detroit City Airport, Michigan at the following address: City of Detroit, 1110 City-County Building, Detroit, MI 48226.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Detroit under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gary J. Migut, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734) 487–7278. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on this application to: impose and use the revenue from a PFC at Detroit City Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 2, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Detroit was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 12, 1999.

PFC Application No.: 99–01–C–00–DET.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: February 28, 2004.

Total estimated PFC revenue: $3,650,000.00.

Brief description of proposed projects:

Impose and Use: Jetways, Snow Removal Equipment, Terminal Expansion Study.

Impose Only: Terminal Expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxis/Commercial Operators (ATCOs).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the City of Detroit.

Issued in Des Plaines, Illinois, on August 6, 1999.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–21183 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5056; Notice 2]

Grant of Application for Determination of Inconsequential Noncompliance with Federal Motor Vehicle Safety Standard 108—Lamps, Reflective Devices and Associated Equipment

General Motors Corporation (GM), determined that GM S10 Electric Trucks (S10 trucks equipped with an electric propulsion system) fail to meet the turn signal bulb outage requirements found in S5.5.6 of Federal Motor Vehicle Safety Standard (FMVSS) 108—Lamps, Reflective Devices and Associated Equipment. Pursuant to Title 49 of the United States Code, Sections 30118 and 30120, GM applied to the National Highway Traffic Safety Administration (NHTSA) for a decision that the noncompliance is inconsequential as it relates to motor vehicle safety. In accordance with 49 CFR 556.4(b)(6), GM also submitted a 49 CFR 573 noncompliance notification to the agency .

A notice of receipt of an application was published in the **Federal Register** (64 FR 27034) on May 18, 1999. Opportunity was afforded for comments until June 17, 1999. No comments were received.

FMVSS 108 S5.5.6 requires:

S5.5.6 Each vehicle equipped with a turn signal operating unit shall also have an illuminated pilot indicator. Failure of one or more turn signal lamps to operate shall be indicated in accordance with SAE Standard J588e, Turn Signal Lamps, September 1970, except when a variable-load turn signal flasher is used on a truck, bus, or multipurpose passenger vehicle 80 or more inches in overall width, on a truck that is capable of accommodating a slide-in camper, or on any vehicle equipped to tow trailers.

The design of the S10 Electric Truck is based on the design of conventional S10 trucks powered by internal combustion engines, with modifications to accommodate the electric propulsion system. The conventional S10 trucks are capable of towing, have a variable load flasher, and, therefore, are not required by the Standard to provide bulb outage indication. The use of an S10 Electric Truck for towing is not practical and is not recommended. The impact of that fact was overlooked in the process of carrying over the design of the turn signal system from the conventional S10 to the S10 Electric and, therefore, the non complying vehicles were not equipped to indicate bulb outage and do not meet that requirement of FMVSS 108 S5.5.6. This was corrected in the 1998 model year production of the S10 Electric.

GM believed that this noncompliance is inconsequential to motor vehicle safety for these reasons:

The S10 Electric Trucks are identical in appearance to the normal production vehicles. Except for the lack of towing capability, the subject vehicles are functionally the same as fully compliant S10 trucks.

There were only 209 vehicles produced and, therefore, the exposure is extremely small.

Most of the subject vehicles are part of commercial and government fleets (they have been purchased by electric utility companies and state and municipal government agencies). As such, they will be exposed to routine maintenance schedules that are more rigorous than the average consumer practices.

Most trucks currently produced are capable of trailer towing and, thus, are not required to detect bulb outage. As a result, individuals and fleets who are accustomed to truck operation do not necessarily have an expectation that turn signal bulb outage will be indicated. In addition, other lamps required by FMVSS 108 are not required to provide bulb outage indication. As a result, the lack of that feature on these vehicles is not likely to be noticed by the vehicle operators, and they will continue to discover turn signal bulb outage the way they would on other trucks that are capable of towing.

GM is not aware of field complaints due to the subject condition.

GM asserted that the noncomplying trucks present the same level of safety as the millions of other vehicles with variable load flashers currently on the roads and highways. GM thus argued that this noncompliance is inconsequential as it relates to motor vehicle safety. In consideration of the foregoing, GM petitioned that it be exempted from the notification and remedy provisions of the Safety Act for this specific noncompliance with FMVSS No. 108.

The agency recognizes that these electric vehicles are mainly used in fleet service and in such use do receive regular periodic maintenance where detection of the failure of a turn signal lamp and replacement thereof is more likely than in individual ownership of such a vehicle. Thus, the agency is convinced that this noncompliance is inconsequential to motor vehicle safety. The likelihood of these S10 Electric Trucks having any sustained period of outage, relative to a normal S10, or even to vehicles with turn signal failure indication is expected to be a relatively infrequent event.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described above is inconsequential to motor vehicle safety. Accordingly, its application is granted, and the applicant is exempt from providing the notification of noncompliance required by 49 U.S.C. 30118, required by 49 CFR 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 10, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–21184 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6009]

W.F. Mickey Body Company, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

W.F. Mickey Body Company, Inc. (Mickey Body), a manufacturer of trailers (beverage bodies, van bodies, and vending bodies), is a corporation organized under the laws of the State of North Carolina with its principal place of business located in High Point, North Carolina. Mickey Body has determined that its tire and rim label information, on some units, is not in full compliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Vehicles Other Than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Mickey Body has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other

exercise of judgment concerning the merits of the application.

Paragraph S5.3 of FMVSS No. 120 states that each vehicle shall show the information specified on the tire information label in both English and metric units. The standard also shows an example of the prescribed format.

From March 1996 to March 1999, Mickey Body manufactured approximately 2,464 beverage trailers, 4,222 beverage bodies, 5,822 van bodies, and 472 vending bodies that do not meet the requirements stated in the standard. The certification label affixed to these Mickey Body's units pursuant to Part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and Mickey Body did not separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120. The use of metric measurements is required by FMVSS No. 120, pursuant to *Federal Motor Vehicle Safety Standards: Metric Conversion*, 50 FR 13639, published on March 14, 1995, and effective on March 14, 1996.

Mickey Body supports its application for inconsequential noncompliance with the following statements:

1. NHTSA has previously granted an exemption for inconsequential noncompliance [to Dorsey Trailers, Inc.] under circumstances virtually identical to [Mickey Body's] present case.

2. The omission of the metric data from Mickey Body's certification label is highly unlikely to have any effect whatsoever on motor vehicle safety.

3. Mickey Body currently includes a certification label that expresses the GVWR, GAWR and tire pressure in both English and metric units.

4. Mickey Body is not aware of any accident that was allegedly caused by the omission of metric measurements from a certification label.

5. Mickey Body did not receive reasonable notice of what is required by [paragraph S5.3 of FMVSS No. 120] and, therefore, the imposition of notification and remedy requirements are a violation of Mickey Body's due process rights under the Fifth Amendment of the [United States] Constitution.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 15, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 10, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–21185 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 206X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Madison County, IL

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 7.5-mile line of railroad between milepost A–13.0 at Bluffs Junction to milepost A–20.5 at Troy Junction, in Edwardsville, Madison County, IL. The line traverses United States Postal Service Zip Codes 62025 and 62034.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years and any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 15, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 26, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 7, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 20, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NS's filing of a notice of consummation

---

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

by August 16, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: August 6, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–20875 Filed 8–13–99; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register
Vol. 64, No. 157
Monday, August 16, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-200-043]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 99–20772 appearing on page 43685 in the issue of Wednesday, August 11, 1999, the Docket No. is corrected to read as in the above heading.

[FR Doc. C9–20772 Filed 8–13–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–4]

RIN 2120–AA66

Modification of the Orlando Class B Airspace Area, Orlando, FL; and Modification of the Orlando Sanford Airport Class D Airspace Area, Sanford, FL

Correction

In rule document 99–20022 beginning on page 42585 in the issue of Thursday, August 5, 1999, make the following corrections:

1. On page 42589, in the first column, in the second full paragraph, in the fourth line, "Sate" should read "State".

2. On the same page, in the third column, in the second paragraph, in the 11th line, "28°22°14″N" should read "28°22′14″N".

3. On the same page, also in the third column, also in the second paragraph, in the 18th line, "28°27′05″N" should read "28°27′00″N".

4. On page 42590, in the billing code line below the diagram, "Filed 8–5–99" should read "Filed 8–4–99".

[FR Doc. C9–20022 Filed 8–13–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–98–4185 (HM–215C)]

RIN 2137–AD15

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

Correction

In rule document 99–4517, beginning on page 10742, in the issue of Friday, March 5, 1999, make the following corrections:

§ 172.101 [Corrected]

1. On page 10754, in the table, in column (2), the entry, "Battery, wet, with wheelchair, see Wheelchair, electric." should read, "*Battery, wet, with wheelchair, see* Wheelchair, electric.

2. On page 10760, in the table, in the fifth entry, in column (9B), "75" should read "75 kg".

3. On the same page, in the table, in the entry "Dyes, solid, corrosive, n.o.s. *or* Dye intermediates, solid, corrosive, n.o.s." in column (5), "1" should read "I".

4. On the same page, in the table, in column (2), in the ninth entry beginning "Elevated temperature liquid" in the last line of the entry, "ect" should read "etc".

5. On page 10762, in the table, in column (2), the entry "Metal alkyl hydrides, water-reactive, n.o.x. *or* Metal aryl hydrides, water-reactive, n.o.s." should read, "Metal alkyl hydrides, water-reactive, n.o.s. *or* Metal aryl hydrides, water-reactive, n.o.s."

6. On page 10764, in the table, in column (2), the entry "Pyrethroid pesticide, liquid, flammable, toxic, *flashpoint not less than 23*°C.", should read "Pyrethroid pesticide, liquid, toxic, flammable, *flashpoint not less than 23*°C."

7. On the same page, in the table, in column (2), the entry "Pyrethroid pesticide, soild, toxic." should read "Pyrethroid pesticide, solid, toxic."

8. On the same, in the table, in the same entry, in column (8C), sixth entry, "230" should read "240".

9. On the same page, in the table, in the tenth entry in column (4), "UN3305" should read "UN3005".

10. On page 10765, in the table, in the entry for "Xanthates", in column (3) , "42" should read "4.2".

11. On the same page, in the table, in column (2), the entry "Aminophenols (o–; m–; p)" should read "Aminophenols (o–; m–; p–)".

12. On the same page, in the table, in column (7), last entry, "TI" should read "T1".

13. On page 10766, in the table, the first entry in column (2) is corrected to read, "Ammonium nitrate fertilizers: *uniform non–segregating mixtures of nitrogen/phosphate or nitrogen/potash types or complete fertilizers of nitrogen/phosphate/potash type, with not more than 70 percent ammonium nitrate and not more than 0.4 percent total added combustible material or with not more than 45 percent ammonium nitrate with unrestricted combustible material*".

14. On the same page, in the table, in the first entry labeled "Articles, explosive, n.o.s" in column (9B), "75 kb" should read "75 kg".

15. On the same page, in the table, in column (2), the fifth entry is corrected to read "Batteries, wet, filled with acid, *electric storage*".

16. On the same page, in the table, in column (2), the sixth entry is corrected to read "Batteries, wet, filled with alkali, *electric storage*".

17. On page 10767, in the table, in column (2), the entry "dichloroamilines, liquid" should read "'dichloroanilines, liquid".

18. On page 10768, in the table, in the entry for "Isobutyl isocyanate" in column (7), "T37698" should read "T38".

19. On page 10773, in the first column, in the 13th line, "AND" should read "and".

20. On the same page, in the same column in the 17th line, "I and III)" should read "I, II and III)".

21. On the same page, in the same column, "Toxic liquid, inorganic, n.o.s. (UN3287, Hazard Zones A and B)" should be added after line 17.

22. On the same page, in the same column, in the 28th line "orgnic" should read "organic".

23. On the same page, in the same column, in the 34th line "UN3132" should read "UN3123".

24. On the same page, in the second column, in the third line, "organic" should read "inorganic".

[FR Doc. C9–4517 Filed 8–13–99; 8:45 am]
BILLING CODE 1505–01–D

VOL
64
ISS
1
5
7
AG
16
999
JMI

Federal Register

Monday
August 16, 1999

Part II

Federal Reserve System

12 CFR Part 202
Equal Credit Opportunity; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1008]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is issuing this proposal to revise Regulation B, which implements the Equal Credit Opportunity Act (ECOA or Act), pursuant to the Board's policy of periodically reviewing its regulations. The Act makes it unlawful for creditors to discriminate against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, marital status, sex, age, and other specified bases. Major proposed revisions include removing the general prohibition against noting information about applicant characteristics such as national origin or sex, although such information still generally may not be considered in extending credit; requiring creditors to retain records for certain prescreened credit solicitations; and extending the record retention period for most business credit applications. Proposed revisions to the Official Staff Commentary are also included.

DATES: Comments must be received by November 10, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1008, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor or Kathleen C. Ryan, Staff Attorneys, Jane Jensen Gell, Senior Attorney, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Diane Jenkins, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on ECOA and Regulation B

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, prohibits a creditor from discriminating against an applicant in any aspect of a credit transaction on the basis of the applicant's race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). The ECOA is implemented by the Board's Regulation B.

When enacted in 1974, the ECOA prohibited discrimination on the basis of marital status and sex. In 1976, the Act was amended to add all of the other prohibited bases of discrimination. Over the years, several significant amendments have been made to the ECOA, including the following. In 1989, the ECOA was amended by the Women's Business Ownership Act of 1988 (Pub. L. No. 100–533, 102 Stat. 2692) to require that creditors give written notice to business applicants of the right to a written statement of reasons for a credit denial, and to impose a record retention requirement for certain business credit applications. In 1991, the ECOA was amended by the Federal Deposit Insurance Corporation Improvement Act (Pub. L. 102–242, 105 Stat. 2236) to provide applicants with a right to obtain a copy of any appraisal report used in connection with an application for credit to be secured by residential real property; the amendments also expanded the enforcement responsibilities of the federal financial supervisory agencies when information about possible violations of the ECOA becomes known. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) amended the ECOA to create a privilege for information developed by creditors as a result of "self-tests" they conduct.

II. The 1998 Review of Regulation B

Pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1994, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the Board is reviewing Regulation B. The Board's last comprehensive review of Regulation B occurred in 1985. The Board began the current review of Regulation B in March 1998 by publishing an Advance Notice of Proposed Rulemaking (Advance Notice) (63 FR 12326, March 12, 1998). In addition to soliciting general comment on revisions to the regulation, the Board identified specific issues for comment involving: (1) Preapplication marketing practices, (2) the distinction between an inquiry about credit and an application for credit, (3) data notation for nonmortgage products, (4) the definition of creditor, (5) documentation for business credit, and (6) exceptions for business credit.

The Board received 330 comment letters on the Advance Notice. Most commenters addressed only the six issues identified in the Advance Notice. Based on its review and on the comments received, the Board now proposes revisions to Regulation B and the official staff commentary. In addition to comments on the proposed revisions, the Board requests specific suggestions for other revisions that would facilitate compliance with, or improve, the regulation.

III. Discussion of Proposed Revisions to the Regulation

Major proposed revisions include rules that remove the general prohibition against the notation—but not the use—of certain prohibited basis information (§ 202.5); extend the record retention period for certain business credit applications (§ 202.12); and require record retention for preapproved credit solicitations (§ 202.12). The following discussion covers the proposed revisions to the regulation section-by-section. A section-by-section discussion of proposed revisions to the commentary appears in Part IV.

Section 202.1—Authority, Scope and Purpose

No revisions are proposed in this section.

Section 202.2—Definitions

Revisions are proposed in the definitions of adverse action, application, and creditor in §§ 202.2(c)(1) and (c)(2), 202.2(f), and 202.2(l).

2(c) Adverse Action

2(c)(1)

Adverse action on a class of accounts—Section 202.2(c)(1)(ii) provides that adverse action includes a creditor's termination of or unfavorable change to the terms of an account, unless the action affects "all or a

substantial portion of a class of the creditor's accounts." Commenters asked the Board to clarify the exception—namely, the meaning of "class of accounts" and "substantial portion" of a class of accounts. Section 202.2(c)(1)(ii) would be revised to clarify the exception by changing the language from "substantial portion" to substantially all" so that a creditor's action must affect the overwhelming majority of accounts in a designated class to be excluded from the definition of adverse action.

The ECOA and Regulation B require creditors to give consumers reasons for an adverse credit decision. The notice requirement enables some recipients to identify and remedy credit problems, and may also help detect unlawful credit discrimination. The exception in § 202.2(c)(1)(ii) is intended to address the circumstance where a creditor takes action that affects all or most of a type of its accounts, rather than targeting specific customers, and an adverse action notice seems unnecessary. For example, if a creditor terminates its secured credit card program entirely, adverse action notices will not likely serve the intended educational or anti-discrimination goals.

2(c)(2)

Section 202.2(c)(2)(iii) would be revised to conform to changes proposed under § 202.2(c)(1)(ii).

2(f) Application

The Board believes that a request for a preapproved loan under procedures in which a creditor issues creditworthy persons a written commitment to extend credit up to a designated amount that is valid for a designated period of time—even if subject to conditions—is an application. A "preapproval" without procedures involving a written commitment would be treated as a prequalification for purposes of the regulation. Section 202.2(f) of the regulation would be revised accordingly. In addition, technical revisions would be made to the definition of application for clarity.

2(l) Creditor

Section 202.2(l) would be revised to clarify that the definition of "creditor" applies to a person who regularly participates in making a credit decision, including setting terms—not just the decision of whether to extend or deny credit. (*See* detailed discussion of the definition of "creditor" in "Part IV. Discussion of Proposed Revisions to the Official Staff Commentary" under § 202.2(l).)

Section 202.3—Limited Exceptions for Certain Classes of Transactions

Revisions are proposed in §§ 202.3(a)(2), 202.3(b)(2), and §§ 202.3(c)(1) and (2) relating to public-utilities, securities, and incidental credit.

The regulation provides certain exceptions for public-utilities, securities, incidental, and government credit. Each of these types of credit remains subject to the general prohibition on discrimination; the exceptions generally cover issues such as record retention, inquiries about marital status and spousal information, and furnishing credit information. Credit that does not meet the definitions is subject to the full coverage of Regulation B.

The Board is required periodically to review the exceptions to determine whether they should be retained. The Act provides that the Board may extend an exception for a class of transactions if the Board determines, after making an express finding, "that the application of [the Act] or of any provision of [the Act] of such transaction would not contribute substantially to effecting the purposes of [the Act]." 15 U.S.C. 1691b. After analysis, the Board believes that extending some of the exceptions is still appropriate, and that applying the rules of Regulation B in their entirety would not contribute substantially to effectuating the purposes of the Act, as discussed below.

3(a) Public-Utilities Credit

3(a)(2) Exceptions

Public-utilities credit refers to extensions of credit that involve public-utility services if the charges for the service, delayed payment, and any discount for prompt payment are filed with or regulated by a governmental unit, such as a public-utilities commission. Public-utilities credit is subject to all of the regulatory requirements except those relating to collecting information about marital status, furnishing credit information to consumer reporting agencies, and retaining records. The proposed rule would retain the relief from the record retention requirements only. Regulation B permits inquiries into an applicant's marital status only in limited circumstances. The exception from this provision permits creditors offering public-utilities credit to request information concerning marital status in all instances. The Board believes this exception is no longer needed and is proposing to remove the exception. Specific comment is solicited on this change.

The proposed rule also would remove the exception relating to the furnishing of credit information under § 202.10 (concerning accounts held or used by spouses). The requirements of § 202.10 apply only to creditors that furnish credit information to consumer reporting agencies or to other creditors. Such creditors are required to furnish information that reflects the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account. Creditors are considering public-utilities payments more frequently as a source of repayment history for underwriting purposes. Thus, the Board believes that it would be helpful to consumers if public-utility companies that furnish credit payment information were subject to the same reporting requirements as other creditors subject to the ECOA. The Board seeks comment on this approach.

The regulation requires creditors to retain certain records. Public-utilities credit is not subject to the record retention requirements. The Board would retain the exception regarding record retention because public-utility companies must keep records pursuant to regulations of other governmental bodies—often for longer periods of time than required by the ECOA. The Board believes that extending this exception is appropriate because requiring record retention would not contribute substantially to effectuating the purposes of the Act.

3(b) Securities Credit

3(b)(2) Exceptions

Securities credit is credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation under that act. Brokers and dealers are required to inquire about the financial activities of spouses to comply with the rules of the Securities Exchange Act and the National Association of Securities Dealers. For this reason, Regulation B excepts securities credit from several provisions including, among others, signature rule requirements, rules relating to record retention, and requesting information about the sex of an applicant. Given that the Board proposes to remove the prohibition against the collection of information about certain applicant characteristics, the current exception in § 202.3(b)(2)(iii) would be redundant. The Board believes that it is appropriate to extend the other exceptions related to information concerning a spouse or former spouse, marital status, name designations, open-end accounts, spousal signature

requirements, the furnishing of credit information, and record retention. Securities credit is subject to an extensive regulatory scheme, and applying those provisions of Regulation B would not contribute substantially to effectuating the purposes of the ECOA. Technical revisions would be made for clarity, with no substantive change intended.

3(c) Incidental Credit

3(c)(1) Definition

Currently, incidental credit is limited to consumer credit that is not: (1) Made pursuant to the terms of a credit card account, (2) subject to a finance charge under Regulation Z (Truth in Lending), or (3) payable by agreement in more than four installments. This type of credit might be extended, for example, by a local merchant that does not normally extend credit, to a long-standing customer; or by a doctor or lawyer, as an accommodation to a patient or a client.

The proposed rule would expand the exception for incidental credit to include incidental business credit, as the Board believes that full regulatory coverage of such credit does not contribute substantially to effectuating the purposes of the Act. Incidental business credit would be defined as business credit that is not made pursuant to the terms of a credit card account, is not subject to interest charges or fees, and is not payable by agreement in more than four installments. The Board solicits specific comment on this proposed change.

3(c)(2) Exceptions

Incidental credit is excepted from a number of provisions in the regulation including requesting information about an applicant's marital status, spouse or former spouse, and certain sources of an applicant's income. The proposed rule would eliminate the exception for requesting information about the sex of an applicant, in light of the Board's proposal to remove the prohibition against the collection of information related to a prohibited basis. The proposed rule would extend the other exceptions concerning information about an applicant's spouse or former spouse, marital status, income sources, signatures, notifications, the furnishing of credit information, and record retention. The Board believes that, given the nature of the credit extension, applying these rules would not contribute substantially to effectuating the purposes of the Act.

3(d) Government Credit

With regard to government credit, the exceptions apply to extensions of credit made *to* governments or governmental subdivisions, agencies or instrumentalities. The Board believes that extending these exceptions remains appropriate, as applying the rules would not contribute substantially to effectuating the purposes of the Act.

Section 202.4—General Rule Prohibiting Discrimination

Revisions are proposed in § 202.4. In the Advance Notice, the Board solicited comment on how and to what extent creditors are using prohibited bases in preapplication marketing—specifically, prescreened solicitations—to determine whether the coverage of the regulation should be expanded to such practices. Although this section includes a discussion of the issue, the proposed rule does not recommend expanding the regulation's coverage to prescreened solicitations; however, § 202.12(b)(7) would require creditors to retain certain records related to preapproved credit solicitations.

General Rules

Section 202.4 would be revised to incorporate general rules that apply under the regulation, some of which are currently in other sections of the regulation and official staff commentary. The Board believes this approach would facilitate compliance with the regulation. Section 202.4(a) would provide the general rule against discrimination. Section 202.4(b) would provide the general rule against discouraging applications. Section 202.4(c) would provide the rule for when written applications are required.

Section 202.4(d) would contain new clear and conspicuous and retainability standards that the Board is proposing to apply to the disclosures and other information required to be in writing. In March 1998, the Board requested public comment on a proposal to permit the electronic delivery of disclosures for four of its consumer protection regulations: Regulation B; Regulation M, Consumer Leasing; Regulation Z, Truth in Lending; and Regulation DD, Truth in Savings (63 FR 14533–14552, March 25, 1998). Except for Regulation B, each of those regulations expressly provides that creditors must present required information in a clear and conspicuous manner, in a form the consumer may keep. Accordingly, the Board proposed that the clear and conspicuous and retainability standards be applied to information required under Regulation B (63 FR 14552, March 25, 1998). Their inclusion in § 202.4 is consistent with that proposal.

Prescreened Solicitations

The ECOA prohibits discrimination by a creditor against an *applicant* on a prohibited basis regarding any aspect of a credit transaction. Regulation B defines an applicant as a person who has requested or received credit. A credit transaction is defined by Regulation B as covering every aspect of an applicant's dealings with a creditor, beginning with requests for information. Thus, the coverage of the ECOA is generally limited to a person who has, at a minimum, sought credit information. The law does not generally extend to a creditor's preapplication marketing practices—such as the selection of persons solicited for a credit card. The regulation applies only after individuals respond to a creditor's offer of credit. But because a person could be discouraged from seeking credit or credit information, the regulation expressly prohibits a creditor from engaging in any practice that would discourage a reasonable person (on a prohibited basis) from applying for credit. The regulation also applies to advertising.

Creditors use a number of techniques to identify potential recipients of credit. For instance, creditors will often specify criteria to consumer reporting agencies, which then draw on information from credit files to compile mailing lists of persons who meet those criteria. This marketing technique—involving prescreened solicitations—is typically carried out through mailed solicitations as well as by telemarketing.

There has been concern through the years that Regulation B generally does not apply to preapplication marketing. During the 1985 review of Regulation B, the staff presented to the Board the issue of whether prescreened solicitations should be made subject to the regulation, but recommended against coverage. While recognizing the potential for unfair treatment in such practices, available evidence did not support a finding that creditors were improperly making use of prohibited characteristics. Moreover, it was thought that prescreened solicitations could result in a greater availability of credit to many consumers. Accordingly, the Board did not propose to expand the regulation's coverage to such practices.

Over the past several years, the Board has become aware (through its own observations and those of other federal financial regulatory agencies) of instances in which creditors, primarily in the credit card industry, use age to identify potential recipients of

preapproved credit. In some instances, creditors have used zip codes to exclude credit solicitations in low-income areas that represent predominantly minority neighborhoods. In other cases, creditors have used ethnicity or gender to target potential customers in affirmative-outreach programs.

The Board raised the issue of prescreened solicitations for public comment in its Advance Notice. Specifically, the Board requested comment on how and to what extent creditors are using a prohibited basis in preapplication marketing. Of the industry commenters who addressed preapplication marketing, only a few discussed the extent to which the selection criteria include a prohibited basis. These commenters indicated that except for using age to identify consumers too young to be approved for credit, or to identify potential customers for unique products such as reverse mortgages, they do not directly use prohibited bases in preapplication marketing.

The majority of commenters—primarily creditors and their trade associations—addressed the more general issue of whether the Board should expand the regulation's coverage to preapplication marketing practices. Most of these commenters opposed any expansion. These commenters were concerned that an expansion of Regulation B would prevent creditors from marketing their products to those most likely to respond. They stated, for example, that a creditor offering products that are used predominantly by women might be prohibited from targeting consumers on a mailing list for a magazine geared toward women. Some commenters believed that the regulation's protections need not apply to prescreened solicitations because they are only one aspect of a creditor's overall marketing program, and that consumers who are not solicited may nevertheless obtain credit from the creditor. A few questioned the Board's legal authority to expand the regulation's coverage beyond "applicants."

Others—including most of the federal financial enforcement agencies and consumer advocates that commented—favored expanding the coverage of Regulation B to preapplication marketing practices. Some of these commenters expressed concern that currently a creditor is permitted to use a prohibited basis to limit or avoid extending credit by target marketing to certain groups. Other commenters believed that regulatory coverage of solicitations is necessary to fulfill the Act's purpose, arguing that those not solicited are denied information that could lead them to apply for credit. Some commenters expressed concern about the inconsistent approaches between the Fair Housing Act, which extends coverage to preapplication marketing, and the ECOA, which does not.

Prescreened credit solicitations are not new, particularly credit card solicitations. The use of prescreened solicitations has become more commonplace beyond credit cards, however, and in some instances may be the primary vehicle for offering credit. In the marketing of some credit cards, prescreened solicitations often offer discounted introductory rates, attractive terms, and enhancements (such as purchase discounts) to those solicited that may not be available through other application channels. Prescreened solicitations can be used to target consumers most likely to use a particular credit product, or to target segments of the population that in the creditor's experience are most likely to respond to the offer of credit. Conversely, prescreened solicitations can be used to exclude some consumers from offers of credit. They can also be used to target consumers in certain neighborhoods for less favorable credit products or less favorable terms.

Covering credit solicitations without providing many exceptions could have unintended consequences. For example, it could result in prohibiting practices that increase credit availability. Targeted marketing through prescreened solicitations can effectively increase access to credit for consumers. Moreover, while there is anecdotal evidence that creditors do target potential applicants on the basis of age and geographic location, such evidence is somewhat limited; it does not suggest that the application of Regulation B rules is warranted at this time. Because of concerns about the potential impact on some segments of the population, however, the Board believes that taking other steps would enable the Board and the other enforcement agencies to monitor solicitation practices in a more systematic way than has been possible to date.

The ECOA directs the Board to prescribe regulations to carry out the purposes of the Act. Further, section 703(a)(1) of the Act authorizes the Board to make "such classifications * * * adjustments and exceptions * * * as in the judgment of the Board are necessary or proper to effectuate the purposes of [the law] * * * or to prevent circumvention or evasion * * *." 15 U.S.C. 1691b. The Board proposes to use this exception authority to require creditors to keep records related to certain prescreened solicitations—namely, preapproved credit solicitations. The Board's proposal adds a new § 202.12(b)(7).

For purposes of the proposed rule, a preapproved credit solicitation is defined as the "firm offer of credit" described in 15 U.S.C. 1681a(l) of the Fair Credit Reporting Act (FCRA). Under the FCRA, a person that receives a list of consumers from a consumer reporting agency in connection with credit transactions not initiated by the consumers must generally offer credit to the consumers on the list, subject to certain exceptions. 15 U.S.C. 1681b(c)(1)(B). A creditor must maintain the criteria used to select the consumers for three years after the date the credit offer is made. 15 U.S.C. 1681m(d)(3). The Board's draft rule would require creditors to retain (for 25 months after a creditor solicits potential applicants for credit) certain information related to preapproved credit solicitations: the list of criteria used to select potential customers, the text of the solicitation mailing, correspondence (to and from selected potential customers) related to complaints—whether formal or informal—about the solicitation, and the portion of the marketing plan (including any response model) to which the solicitation relates.

The draft rule would require creditors to retain information that the Board believes they already retain for business and other reasons. The Board solicits comment on the incremental burden associated with retaining information beyond the records creditors already retain under the FCRA or for business purposes.

The information required by the proposed rule—the criteria for selection, the solicitation, correspondence, and the marketing plan to which the solicitation relates—should allow for an effective review and analysis of creditors' possible use of prohibited bases in preapproved credit solicitations. For entities that are regularly examined, the Board believes that the most effective way to review and evaluate creditor practices would be through the use of the examination process.

Section 202.5—Rules Concerning Taking of Applications

Section 202.5 of the regulation would be revised.

Because the ECOA makes it unlawful for creditors to consider any of the prohibited bases of discrimination in a credit transaction, Regulation B generally has prohibited creditors from inquiring about, or noting, those

applicant characteristics in any aspect of a credit transaction. This general prohibition was intended to discourage discrimination, based on the premise that if creditors cannot inquire about or note such information, they are less likely to unlawfully consider the information. For home mortgage lending (given frequent allegations and concerns about unlawful discrimination) the regulation has required creditors, since 1977, to note the applicant's national origin or race, marital status, sex, and age in applications for home purchase loans, so that enforcement agencies can better monitor home mortgage lenders' compliance with the ECOA. The Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.* (implemented by Regulation C), imposed a similar data collection requirement in 1989 that applies to mortgage loans more broadly, encompassing home improvement loans in addition to home purchase loans.

In 1995, the Board proposed to remove the prohibition against noting an applicant's race, color, religion, national origin, and sex for *nonmortgage* credit products. The proposed revision was published at the time the banking agencies were revising regulations that implement the Community Reinvestment Act; the proposal responded to concerns about whether creditors were meeting the needs of their communities, particularly for small business and small farm lending. The majority of the comments received on the 1995 proposal opposed removal of the prohibition, generally expressing concern that voluntary data notation would lead to mandatory data collection and result in substantially increased costs and burden. In addition, many commenters raised concerns about the quality of the data that would be obtained, given that supplying information would be voluntary and not all applicants would choose to provide it. Commenters who supported removal of the prohibition believed that the data would allow creditors to better identify underserved groups and design programs to address unmet credit needs; they also believed that it would provide useful data for evaluating creditors' compliance with fair lending laws. After extensive deliberation, the Board withdrew the proposal in December 1996, and stated that, given the political sensitivity of the issues involved, the matter was better left to the Congress.

The Board's 1998 Advance Notice solicited comment on whether the Board should again consider removing the prohibition for nonmortgage credit products, in its review of Regulation B. The Advance Notice raised the issue in response to concerns that continue to be expressed by the Department of Justice and some of the federal financial enforcement agencies, pointing to anecdotal evidence of discrimination in connection with small business and other types of credit. These agencies believe that the ability to obtain and analyze data about race and ethnicity (such as creditors might collect on a voluntary basis) would aid fair lending enforcement. In addition, some creditors continue to express interest in being able to note—on a voluntary basis—information about the ethnicity, sex, and race of their applicants and borrowers to evaluate compliance with fair lending laws, as well as for marketing and outreach initiatives. Small-business owners and community groups also continue to strongly support data notation, particularly for small business lending.

More than 300 commenters addressed the issue in response to the Advance Notice. Many commenters—primarily banks and banking trade associations—urged the Board not to remove the prohibition. These commenters believed that, if the prohibition were to be removed, examiners and others would pressure depository institutions to collect data. They feared that a requirement to collect data would soon follow, which would impose a substantial burden on institutions. These commenters expressed concern that creditors that obtained data about race, ethnicity, and other applicant characteristics would be subjected to greater scrutiny by enforcement agencies. They also stated that data notation is intrusive of consumers' privacy, and would encourage a perception of creditors' using the data to discriminate. Some commenters stated that data noted on a voluntary basis would be unreliable and that the lack of standards for notation could render the quality of data questionable. (In some cases, commenters used this criticism to argue against lifting the prohibition; in other cases, they used it to argue for mandatory data collection.) Commenters also suggested that the current rule effectively discourages discrimination because loan officers often do not have access to information that would enable them to discriminate on a prohibited basis.

Many other commenters—including most of the federal financial enforcement agencies, the Department of Justice, the Department of Housing and Urban Development, small businesses and their trade associations, consumer advocates, community organizations, and some banks—favored removing the prohibition. A number of commenters favored removing it for all nonmortgage credit products, but most of those who favored lifting the ban were focused on small business lending. Some of these commenters believed that the most effective way to monitor and enforce fair lending compliance on small business loans is with mandatory collection, although they see voluntary notation for such loans as an important first step. They said that allowing data notation would enable creditors and government agencies to monitor for possible discriminatory practices, and might enable creditors to better target underserved markets for small business or other lending. Some commenters suggested that, in the case of home mortgage lending, the mandatory collection and disclosure of data have increased access to those products for low-income and minority consumers.

The Board proposes to remove the prohibition against noting information about an applicant's race, color, religion, national origin, and sex for all credit products. Consideration of such information in evaluating creditworthiness, except as permitted by law, would continue to be prohibited by the ECOA and Regulation B. The Board recognizes that removing the prohibition would allow loan officers to have access to information on applicant characteristics that might not otherwise be available and, thus, could provide the opportunity for unlawful discrimination. Also, the Board recognizes that the usefulness of the data for fair lending enforcement purposes would depend on whether creditors implement standards for uniform collection of the data—such as by product, for all applicants, for all borrowers, etc. On balance, however, removing the prohibition for all nonmortgage credit may allow issues of credit discrimination to be better addressed. Because notation would be on a voluntary basis, creditors could target those products where particular concern exists about potential discrimination.

The proposed rule provides that applicants may not be required to provide information about their race, color, religion, national origin, or sex. It also requires creditors who request information on applicant characteristics to disclose—at the time they request the information— that providing it is optional, and that the creditor will not take the information (or the applicant's decision not to provide the information) into account in any aspect of the credit transaction. (See proposed § 202.5(a)(4).) (A proposed model notice is included in Appendix C.) The Board seeks comment on this approach.

Section 202.5(a) would be moved to § 202.4. Sections 202.5(b)–(d) would be redesignated as §§ 202.5(a)–(c), and the rules in those sections barring information requests about sex, race, color, religion and national origin would be removed. The proposed removal does not extend to substantive rules relating to marital status that effectuate the antidiscrimination provisions of the Act. Some technical edits would be made to newly-designated §§ 202.5(a)(1), (a)(2), and (a)(3), and to newly-designated §§ 202.5(b)(2) and (b)(3). Part of existing § 202.5(d)(5) concerning inquiries about permanent residency and immigration status would be moved to newly-designated § 202.5(c)(5). Also, § 202.5(e) would be moved to § 202.4 to facilitate compliance with the regulation.

Section 202.5a—Rules on Providing Appraisal Reports

No revisions are proposed in this section.

Section 202.6—Rules Concerning Evaluation of Applications

Revisions are proposed in § 202.6(b).

6(b) Specific Rules Concerning Use of Information

6(b)(8)

Section 202.6(b)(8) would be added to clarify that a creditor may not evaluate married and unmarried applicants by different standards. The Board believes that this guidance— currently in the commentary—is more appropriately placed in the regulation.

6(b)(9)

A new paragraph 202.6(b)(9) would be added to make clear that a creditor may not consider race, color, religion, national origin, or sex to determine an applicant's creditworthiness, except as permitted by law; nor may the creditor consider the applicant's decision not to provide the information.

Section 202.7—Rules Concerning Extensions of Credit

Revisions are proposed in § 202.7(d)(1).

7(d) Signature of Spouse or Other Person

Section 202.7(d)(1) would be revised to clarify the rule concerning joint applications for credit. Regulation B does not require written applications for business credit. Often, requests are made orally or without a formal written application. In such cases, a creditor usually requests that the applicant submit a financial statement for evaluation. As a general rule, Regulation B prohibits creditors from requiring the signature of a person other than the applicant on any credit instrument if the applicant is individually creditworthy. Where the financial statement submitted by the applicant lists jointly held property and is signed by both property owners (attesting to the accuracy of the data), some creditors are treating the financial statement as an indication that the owners are making a joint application for credit. In those cases, both owners often are being required to sign the promissory note—even where the request for credit has been made only by the property owner engaged in operating the business. The Board believes that a joint property owner's signature on a financial statement (to attest to the accuracy of information) alone does not represent definitive evidence of a joint application.

In the Advance Notice of Proposed Rulemaking, the Board asked whether additional guidance should clarify the mechanisms through which an application for joint credit can be evidenced. Although some commenters stated that a written application is the best mechanism to establish an application for joint credit, other commenters believed the Board should provide additional guidance on the issue.

The Board does not propose to require written applications for business credit. Section 202.7(d)(1), however, would be revised to clarify that the submission of joint financial information or other evidence of jointly held assets does not of itself constitute an application for joint credit. The rule would apply to both consumer and business credit. In addition, the official staff commentary would be amended to suggest ways in which a creditor may obtain a clear indication of a joint application. (See proposed comment 7(d)(1)–3.)

Section 202.8—Special-Purpose Credit Programs

Technical revisions are proposed in § 202.8(a)(3).

8(a) Standards for Programs

Section 202.8(a)(3) of the regulation, which addresses special-purpose credit programs offered by for-profit organizations, would be revised. The Board believes that paragraphs (a)(3)(i) and (ii) set forth the criteria; the phrase regarding "special social needs" would be deleted to eliminate confusion.

Section 202.9—Notifications

Revisions are proposed in §§ 202.9(a)(3) and 202.9(b)(2).

9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons

9(a)(3) Notification to Business Credit Applicants

The regulation provides for exceptions from certain notification and record retention requirements for business credit if the business had gross revenues in excess of $1 million in its preceding fiscal year, or if the business requested an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit. The Board is required periodically to review the exceptions to determine whether they should be retained. The Act provides that the Board may extend an exception if the Board determines, after making an express finding, "that the application of [the Act] or any provision of [the Act] of such transaction would not contribute substantially to effecting the purposes of [the Act]." (*See* 15 U.S.C. 1691b.)

The Advance Notice of Proposed Rulemaking requested comment on whether the limited exceptions are still appropriate. Some commenters stated that the exceptions should be eliminated; they believe business applicants, like consumer applicants, need adverse action notices to ensure that they have been treated fairly and not denied credit on a prohibited basis. Most commenters, however, favored retaining the current exceptions. These commenters stated that business applicants tend to be more sophisticated than consumer applicants and, therefore, generally do not need the same protections as consumers. Some commenters suggested changing the test for when the exceptions apply; some commenters suggested lowering the $1 million threshold. Others suggested using the amount of the credit request rather than the size of the business.

The Board believes that applying the rules in full or changing the current test, which is based on a $1 million gross revenue threshold, would not contribute substantially to effectuating the purposes of the ECOA. Accordingly, the Board believes the exceptions based on the current threshold are still appropriate and should be extended. The $1 million threshold is consistent with the legislative history of the Women's Business Ownership Act of 1988 (Pub. L. No. 100–533, 102 Stat. 2692), which amended the ECOA. That history suggests that the amendments were intended primarily to apply to small businesses. When the rule was adopted in 1989, 86 percent of all businesses had gross revenues of $1 million or less a year. Retaining the $1

million threshold would provide nearly the same percentage of all businesses (currently 85 percent) with the additional protections. In addition, the Board believes that a gross revenue test is easier for creditors to administer than other suggested tests, such as basing the exceptions on the sophistication of the applicant.

Section 202.9(a)(3)(ii) would be revised to require that creditors disclose, to businesses with gross revenues in excess of $1 million in the preceding fiscal year, the right to a written statement of reasons for adverse action. Currently, creditors must provide a written statement of reasons for adverse action if the applicant requests the statement within 60 days of being notified of adverse action. Requiring disclosure of the right should not significantly increase burden for creditors, and will benefit applicants who may not be aware of their right to the written statement of reasons.

9(b) Form of ECOA Notice and Statement of Specific Reasons

9(b)(2) Statement of Specific Reasons

Section 202.9(b)(2) would be revised to clarify that whether a creditor's denial of credit is based on the creditworthiness of the applicant, a joint applicant, or guarantor, the reasons for adverse action must be specific. For example, a general statement that "the joint applicant did not meet the creditor's standards of creditworthiness" is insufficient.

Section 202.10—Furnishing of Credit Information

No revisions are proposed in this section.

Section 202.11—Relation to State Law

Technical revisions would be made in this section.

Section 202.12—Record Retention

Revisions are proposed in § 202.12(b). Proposed § 202.12(b)(7) provides the record retention requirements for preapproved credit solicitations. (See detailed discussion in § 202.4.)

12(b) Preservation of Records

Section 703(a)(4) of the Act requires creditors to retain records or other data related to business loans "as may be necessary" to evidence compliance with the Act. These records must be retained no less than one year, unless otherwise excepted. Currently, § 202.12(b) requires creditors to retain credit applications and other records for 12 months for business credit. Under the proposal, a 25-month record retention period would apply to credit applications involving businesses with gross revenues of $1 million or less; the rule would remain unchanged for credit applications involving other businesses.

The Board believes that increasing the record retention period would assist the federal financial regulatory agencies, in particular, in monitoring and enforcing compliance with the Act, given the relatively low volume of business loans on a yearly basis for some institutions, and given the agencies' reduction of examination frequency (from 18 to 24 months, and in some instances to 36 months). Sections 202.12(b)(1), (2), (3), and (4) would be revised accordingly. In 1989, the Board proposed to establish a 25-month record retention period. Creditors expressed concern about the space required to store documents and the costs associated with longer storage, and the Board adopted the 12-month record retention period. The Board believes these concerns may no longer be compelling given technological advances and the use of electronic storage. The Board seeks specific comment on the potential burden associated with retaining information for the additional period.

12(b)(7) Preapplication Marketing Information

A new paragraph 202.12(b)(7) would be added to the regulation to include the record retention requirements for certain preapplication marketing information.

Section 202.13—Information for Monitoring Purposes

No revisions are proposed in this section.

Section 202.14—Enforcement, Penalties and Liabilities

Revisions are proposed in § 202.14(c). Technical revisions would be made in § 202.14(b).

14(c) Failure of Compliance

Section 202.14(c) would be revised to reflect the Board's proposal to remove the prohibition in Regulation B against the collection of certain information.

Section 202.15—Incentives for Self-Testing and Self-Correction

Minor revisions are proposed in § 202.15(d)(1).

15(d)(1) Scope of Privilege

Section 202.15(d)(1)(ii) would be revised, consistent with proposed changes to §§ 202.4 and 202.5(a).

Appendix A to Part 202—Federal Enforcement Agencies

Revisions are proposed in Appendix A to reflect changes in the names and addresses of some agencies.

Appendix B to Part 202—Model Application Forms

Appendix B would be revised to reflect proposed revisions to § 202.5. Technical revisions would also be made for clarity.

The "Residential loan application" model form would be replaced with an updated "Uniform residential loan application" form (FHLMC 65/FNMA 1003). The Board solicits specific comment on whether revisions should be made to the other model application forms.

Appendix C—Sample Notification Forms

Appendix C would be revised to reflect proposed revisions to § 202.5. A new model form C–10 would be added to provide the disclosure requirements for creditors who request information voluntarily on applicant characteristics. Also, the Board solicits specific comment on whether revisions should be made to the existing sample notification forms.

IV. Discussion of Proposed Revisions to the Official Staff Commentary

The following discussion covers the proposed revisions to the official staff commentary section-by-section. Such revisions include clarifying: the definition of adverse action (§ 202.2(c)); the definition of application in regard to certain preapprovals (§ 202.2(f)); the disclosure requirement if a creditor asks for applicant characteristics (§ 202.5(a)); and the nonapplicability of the self-testing privilege to information requested voluntarily about applicant characteristics (§ 202.15(b)).

Section 202.1—Authority, Scope, and Purpose

No revisions are proposed in this section of the commentary.

Section 202.2—Definitions

Revisions are proposed in comments to §§ 202.2(c)(1) and (c)(2), 202.2(f), 202.2(l), and 202.2(z).

2(c) Adverse Action

2(c)(1)

Counteroffers in connection with credit solicitations—Proposed comment 2(c)(1)(i)–2 addresses credit solicitations. The comment would clarify that where a consumer who receives a solicitation requests a specific

amount of credit and the creditor offers a different amount, the creditor's action constitutes a counteroffer.

Adverse action on a class of accounts—Proposed comment 2(c)(1)(ii)–1 would clarify the terms "substantially all" and "class of accounts." Existing comments 2(c)(1)(ii)–1 and –2 would be renumbered.

2(c)(2)

Express agreement—Proposed comment 2(c)(2)(i)–1 would clarify when an adverse action notice is required for a change in the terms of an account. This comment solely addresses when a creditor is required to provide an adverse action notice; it does not affect a creditor's ability to change the terms under its agreement with the consumer.

Current delinquency or default—An adverse action notice is not required if a creditor takes action on an account due to a current delinquency or default on that account. Comment 2(c)(2)(ii)–2 would be revised, and an example would be added, to clarify this interpretation.

Activity on a different account—Proposed comment 2(c)(2)(ii)–3 would clarify that an adverse action notice is required if a creditor treats an account as delinquent or in default due to activity on another account. This comment solely addresses when a creditor is required to provide an adverse action notice; it does not address what activity constitutes a delinquency or default under the agreement between the parties.

2(f) Application

Inquiries about or applications for credit

In the Advance Notice, the Board solicited comment on whether it should provide additional guidance to further clarify the current distinction between an inquiry about credit and an application for credit. Specifically, the Board asked whether it should devise a different test for determining when a discussion becomes an application and, if so, what should be the test.

The ECOA requires creditors to provide notice of action taken within certain time frames following the creditor's receipt of a completed application. Regulation B defines an application as "an oral or written request for an extension of credit that is made in accordance with procedures established by the creditor for the type of credit requested." This enables the creditor to establish as formal or informal a process as it wishes.

The official staff commentary, through examples, encourages creditors to provide consumers with information that will assist them in the credit shopping process. The flexibility provided allows creditors to give information without entering into a formal application process, and thus to avoid triggering the notice and recordkeeping rules. To deter creditors from discouraging prospective applicants on a prohibited basis, however, the rule deems a creditor's negative response to an inquiry to represent the denial of an application for credit. That is, a credit inquiry can be deemed an application if, in giving credit information to a potential applicant, the creditor evaluates information about the individual, decides that the individual does not meet the creditor's criteria for creditworthiness, and informs the individual accordingly. In that case, an adverse action notice is required and records are retained.

Many industry commenters expressed concern that the current test is difficult to apply because when a creditor has "declined" a request is not always clear. According to these commenters, it is often unclear when a creditor's discussion of negative factors, such as a person's poor payment history on loans, triggers an adverse action notice. Some commenters noted that, due to this lack of clarity, they often provide an adverse action notice to consumers to whom they give negative information—a procedure they view as burdensome and not necessarily helpful to many consumers. They believe the notice may discourage some consumers from later applying for credit, especially if those consumers initially were only seeking information.

Other commenters supported the current test; they believe that the test provides the flexibility they need. These commenters expressed reservations about changing a rule that creditors are already familiar with. They also expressed concern that a change in the rule could require creditors to change the way they conduct business. Some commenters, including industry and consumer representatives, stated that adverse action notices should be given whenever consumers are informed that they are ineligible or lack the qualifications for credit, regardless of the stage in the credit process.

In response to commenters' concerns about when an adverse action notice is required, the Board considered whether a different test is appropriate. The Board focused on creditors' use of new delivery channels for loan products and information (such as the Internet), and growth in credit counseling and prequalification programs. Many of these developments result in consumers asking for and receiving information about credit products—and about their own creditworthiness—prior to submitting an application for credit.

The Board solicited comment on a number of issues concerning the definition of "application." The Board asked whether a "bright-line" test would best distinguish between an inquiry and an application (for example, whether obtaining a credit report should always trigger an application). Some commenters believed that such a test could eliminate confusion and inconsistent treatment among lenders. Others opposed a bright-line test, stating that any proposed test needs to have sufficient flexibility to accommodate evolving approaches to lending (such as prequalification requests) and homeownership and small business loan counseling. Commenters noted that given rapid changes in lending practices and technology, today's bright-line test might not be appropriate in the future.

The Board also asked whether it would be desirable or possible to apply the current notification rules to homeownership counseling programs that engage in credit evaluations; often, a credit report is obtained to determine the consumer's financial circumstances and to assist in an ongoing counseling process. Most commenters did not believe the current rules should be applied to such programs. They generally supported a rule that would encourage counseling without imposing burdensome notification requirements.

Finally, the Board solicited comment on whether the issue of distinguishing an inquiry from an application also arises in nonmortgage credit, such as credit card, automobile, and small business lending. Most commenters believed the issues were similar, and that there was nothing unique about nonmortgage credit that requires a different test; they generally believed that, for purposes of consistency, all credit should be subject to the same test.

Given changes in technology, and creditors' use of varying procedures and mechanisms to deliver their credit products, on balance the Board believes that retaining the flexibility of the current test is appropriate. Comment 2(f)–3 would clarify that prequalifications are subject to the test currently applicable to inquiries. Under that test, a creditor provides an adverse action notice if the creditor communicates a denial. Proposed comment 2(f)–5 gives an example of preapprovals that are treated as applications, in keeping with the

proposed addition to § 202.2(f) of the regulation. Existing comment 2(f)–5 would be redesignated.

2(l) Creditor

The ECOA and Regulation B prohibit a creditor from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction. The ECOA's definition of creditor includes anyone who "regularly extends" or "regularly arranges for" the extension of credit, as well as any assignee of an original creditor who "participates in the decision" to extend credit. Regulation B combines these concepts and defines a creditor as a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit, including persons such as a potential purchaser of an obligation who influences the creditor's decision. Brokers or others who regularly refer applicants to creditors (or who select or offer to select creditors to whom applications can be made) are creditors for purposes of §§ 202.4 and 202.5(a) (the prohibitions against discrimination and discouragement) which are §§ 202.4(a) and (b), respectively, under the proposed rule. Regulation B also provides that a person (who may otherwise be a creditor) is not a "creditor" with respect to a violation of the ECOA or the regulation committed by another creditor unless the creditor "knew or had reasonable notice of" the act, practice, or policy that constituted the violation before becoming involved in the credit transaction.

In the Advance Notice of Proposed Rulemaking, the Board requested comment on the definition of the term "creditor." The Board noted that creditors" distribution systems for lending services and products have expanded over the years, and that creditors have increasingly asked for guidance about how the term applies when a lender acts in conjunction with other creditors and discrimination occurs. Specifically, the Board solicited comment on whether it is feasible for the regulation to provide more specific guidance given that most issues will depend on the facts of a particular case. A slight majority of commenters asked the Board to provide more specific guidance. Some of these commenters requested that the Board provide a clearer description of the conduct that triggers liability. Other commenters requested that the Board expressly state the types of persons that are considered to be creditors under the regulation. Some commenters opposed more specific guidance on the belief that whether the definition applies must be determined on a case-by-case basis.

The Board also solicited comment on whether the current test—which relies on whether a person knew or had reasonable notice of an act of discrimination—should be modified. Some commenters believed that the test should be modified to clarify that a creditor is not responsible for the acts of another creditor where the creditor does not have control over the other creditor's activities. Some commenters stated that the Board should change the test to "actual" notice. Other commenters were concerned that the Board may change the test to impose a stricter standard; these commenters believed that a stricter standard could force creditors to discontinue many types of credit programs. Some consumer advocates expressed concern that the current test encourages creditors to pass on the ultimate underwriting responsibilities to avoid knowledge of another creditor's activities. Most commenters believed the current test should not be modified. Some of these commenters stated that the Board should clarify through the staff commentary what constitutes "reasonable notice."

Finally, comment was solicited on whether the regulation should address under what circumstances a creditor must monitor the pricing or other credit terms when another creditor (for example, a loan broker) participates in the transactions and sets the terms. Some commenters believed the regulation should address monitoring to explicitly state that there is no such requirement. Some of these commenters stated that creditors would not have sufficient information to evaluate another creditor's practices and policies. Other commenters stated that monitoring could force creditors to restrict the third parties with whom they do business based on the size and capability of their monitoring systems. Some commenters believed that the regulation should explicitly state that there is a monitoring requirement implicit in the "reasonable notice" test. A slight majority of commenters opposed the regulation's addressing whether a creditor must monitor the acts of other creditors.

The Board considered whether, given the wide variety of ways that creditors conduct business involving more than one creditor, a new test could provide clearer guidance. While the application of the current test is subject to interpretation, the Board believes that it is not possible to specify with particularity by regulation the circumstances under which a creditor may—or may not—be liable for a violation committed by another creditor. Accordingly, Regulation B retains the "reasonable notice" standard for when a creditor may be responsible for the discriminatory acts of other creditors.

The Board believes that, depending on the circumstances, the "reasonable notice" standard may carry with it the need for a creditor to exercise some degree of diligence with respect to third-parties' involvement in credit transactions, such as brokers or the originators of loans. The Board also believes, however, that it is not feasible to specify by regulatory interpretation the degree of care that a court of law may find to be required in specific cases.

Comment 2(l)–2 would be revised to clarify the type of creditors subject only to the general prohibitions against discrimination and discouragement.

2(z) Prohibited Basis

A technical revision would be made to comment 2(z)–1 for clarity. Comment 2(z)–3 reflects the change in the name of the Aid to Families with Dependent Children program.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

A technical revision would be made to comment 3–1 for clarity.

Section 202.4—General Rule Prohibiting Discrimination

Substantial revisions are proposed in comments to § 202.4.

Former comment 4(a)–1 would be divided into two comments 4(a)–1 and 2. Additional examples of disparate treatment would be included in comment 4(a)–2. Proposed comments 4(b)–1 and 2 are existing comments 5(a)–1 and 2, respectively, with minor revisions. References to "potential" applicants in existing comment 5(a)–1, which is comment 4(b)–1 under the proposal, would be changed to "prospective" applicants with no substantive change intended. Proposed comments 4(c)–1, 2, and 3 are existing comments 5(e)–1, 2, and 3, respectively. Proposed comment 4(d)–1 is new and would clarify the clear and conspicuous requirement.

Section 202.5—Rules Concerning Taking of Applications

Substantial revisions are proposed in comments to § 202.5.

Comments 5(a)–1 and 2 would be moved to proposed comments 4(b)–1 and 2, respectively, consistent with proposed changes to the regulation. Comments 5(b)(2)–1, 2, and 3 would be removed, consistent with proposed

changes to the regulation. Comments 5(d)(1)–1 and 5(d)(2)–1, 2, and 3 would be redesignated. Comments 5(e)–1, 2, and 3 would be removed and transferred to § 202.4(c) of the commentary.

Section 202.5a—Rules on Providing Appraisal Reports

No revisions are proposed in this section of the commentary.

Section 202.6—Rules Concerning Evaluation of Applications

Revisions are proposed in comments to §§ 202.6(b)(1), (b)(2), (b)(5), and (b)(8).

6(b)(1)

Comment 6(b)(1)–1 would be removed. The portion of the comment related to the consideration of marital status for the purpose of ascertaining the creditor's rights and remedies would be moved to comment 6(b)(8)–1 in light of proposed changes to the regulation. Other portions of comment 6(b)(1)–1 related to evaluating married and unmarried applicants by the same standards would be moved to § 202.6(b)(8) of the regulation. Comment 6(b)(1)–2 would be renumbered.

6(b)(2)

Technical revisions would be made to comment 6(b)(2)–3 with no substantive change intended. Also, a technical amendment to comment 6(b)(2)–6 reflects the change in the name of the Aid to Families with Dependent Children program.

6(b)(5)

Comments 6(b)(5)–1 and 6(b)(5)–4 would be revised for further clarity and to remove references to "protected income." No substantive change is intended.

6(b)(8)

The Board is proposing to add a new § 202.6(b)(8) to the regulation to clarify that a creditor may not evaluate married and unmarried applicants by different standards. New comment 6(b)(8)–1 would be added to incorporate part of the language from existing comment 6(b)(1)–1 related to the consideration of marital status for the purpose of ascertaining the creditor's rights and remedies.

Section 202.7—Rules Concerning Extensions of Credit

Revisions are proposed in comments to § 202.7(d)(1).

7(d) Signature of Spouse or Other Person

A new comment 7(d)(1)–1 would clarify that when an applicant is individually creditworthy, a creditor may not require the signature of any person besides the applicant on a credit instrument. Existing comment 7(d)(1)–1 would be redesignated as comment 7(d)(1)–2. Comment 7(d)(1)–3 would be added to provide guidance on how creditors may document that applicants have requested joint credit.

Section 202.8—Special Purpose Credit Programs

Minor revisions are proposed in comments to §§ 202.8(a), 202.8(c), and 202.8(d).

8(a) Standards for Programs

Comment 8(a)–5 would be revised to clarify how creditors can determine the need for a special-purpose credit program.

8(c) Special Rule Concerning Requests and Use of Information

Comments 8(c)–1 and 2 would be revised to conform with the Board's proposal to remove the prohibition in Regulation B against the collection of certain information; no substantive change is intended.

8(d) Special Rule in the Case of Financial Need

Comment 8(d)–1 would be revised to conform with the Board's proposal to remove the prohibition in Regulation B against the collection of certain information; no substantive change is intended.

Section 202.9—Notifications

Revisions are proposed in comments to §§ 202.9, 202.9(b)(2), and 202.9(g). Minor revisions would be made to comment 9–5 concerning prequalifications. Also, the discussion of preapprovals would be removed. Certain preapprovals are included in the proposed definition of "application" in § 202.2(f) of the regulation.

9(b) Form of ECOA Notice and Statement of Specific Reasons

9(b)(2)

Comment 9(b)(2)–7 would clarify the rules on providing reasons for adverse action in a combined credit scoring and judgmental system.

9(g) Applications Submitted Through a Third Party

Comment 9(g)–1 would be revised to clarify the information that must be included in an adverse action notice provided on behalf of more than one creditor, with minor revisions made for clarity.

Section 202.10—Furnishing of Credit Information

No revisions are proposed in comments to § 202.10.

Section 202.11—Relation to State Law

No revisions are proposed in comments to § 202.11.

Section 202.12—Record Retention

Revisions are proposed in comments to § 202.12(b), consistent with a proposed change to the regulation concerning retention of certain preapplication marketing information.

12(b)(7) Preapplication Marketing Information

Three new comments to proposed § 202.12(b)(7) would be added to clarify the record retention requirements for certain preapplication marketing information. (*See* detailed discussion in "Part III. Discussion of Proposed Revisions to the Regulation" under § 202.4.)

Section 202.13—Information for Monitoring Purposes

Revisions are proposed in comments to §§ 202.13(a) and (b).

13(a) Information To Be Requested

Comment 13(a)–7 would be removed, consistent with proposed revisions to the regulation.

13(b) Obtaining of Information

Comment 13(b)–4 would be revised to make the treatment of applications received electronically consistent with comment 203.4(a)(7)–5 of Regulation C (Home Mortgage Disclosure), 12 CFR part 203, for the purpose of collecting monitoring information.

Comment 13(b)–7 would be deleted to reflect the Board's proposal to remove the prohibition in Regulation B against the collection of certain information.

Section 202.14—Enforcement, Penalties, and Liabilities

No revisions are proposed in comments to § 202.14.

Section 202.15—Incentives for self-testing and self-correction

Revisions are proposed in comments to § 202.15(b)(3).

15(b)(3)

As discussed earlier, the Board proposes to remove the prohibition in Regulation B against the notation of information about an applicant's race, national origin, religion, color, or sex in connection with nonmortgage credit products. The Board has received questions about whether the self-testing

provisions of § 202.15 would apply to the voluntary collection of this information.

A self-test is defined as a program, practice, or study that is designed and used specifically to determine compliance with the ECOA and Regulation B, and creates data or factual information that is not available and cannot be derived from loan application files or other records related to credit transactions. If a self-test meets this definition, the results are privileged and cannot be obtained by a government agency in any examination or investigation, or by an agency or an applicant in any proceeding or civil action alleging a violation of Regulation B. The privilege may be lost or waived, however, under certain circumstances.

Creditors that elect to collect information about credit applicants' race or ethnicity, for example, will likely do so on the application form or in the application process. The Board believes that such collection of data in connection with nonmortgage credit, even though voluntary on the part of the creditor, is not a self-test privileged under the ECOA. The collection of information about an applicant's characteristics, standing alone or in combination with other information obtained or derived from loan application files or other records, does not qualify for the privilege. Comment 15(b)(3)(ii)–2 would be added to clarify this point.

Appendix B to Part 202—Model Application Forms

Comments 1 and 2 to Appendix B would be revised to reflect the Board's proposal to remove the prohibition in Regulation B against the collection of certain information.

Appendix C—Sample Notification Forms

No revisions are proposed in comments to Appendix C.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1008, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

VI. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed revisions under the authority delegated to the Board by the Office of Management and Budget.

The collections of information that are proposed for revision by this rulemaking are found in 12 CFR Part 202. This information is mandatory to evidence compliance with the requirements of 15 U.S.C. 1691b(a)(1) and Public Law 104–208, § 2302(a), and also to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et. seq.*). The respondent/recordkeepers are for-profit financial institutions, including small businesses. Creditors are required to retain records for twelve to twenty-five months as evidence of compliance.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0201.

The current estimated total burden for this information collection is 123,892 hours; about 95 percent of this burden arises from disclosures to credit applicants, both consumers and businesses, and 5 percent arises from recordkeeping requirements. This amount reflects the burden estimate of the Federal Reserve System for the 988 state member banks under its supervision. This regulation applies to all types of creditors, not just state member banks. Under Paperwork Reduction Act regulations, however, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

It is believed that the paperwork burden will increase slightly due to the three proposed additions to the recordkeeping requirements: retaining certain information related to preapproved credit solicitations; keeping records associated with the proposal removing the general prohibition against obtaining information about characteristics of applicants for nonmortgage credit; and extending the retention period for most business credit applications from twelve to twenty-five months. In particular, the Federal Reserve solicits comment on (1) the incremental burden associated with retaining certain information on preapproved credit solicitations beyond the records creditors already retain under the FCRA or for business purposes, and (2) the number of institutions that will collect the proposed permissible information on characteristics of applicants for nonmortgage credit and the amount of burden this voluntary information collection will impose.

The Federal Reserve estimates that there will be no additional burden imposed by the requirement to disclose to credit applicants that providing applicant characteristic information is optional and that creditors will not take the information into account in any aspect of the credit transaction; the Federal Reserve has provided a proposed model notice to help alleviate the burden on creditors. The Federal Reserve also estimates that there will be no additional burden imposed by the requirement to notify businesses with gross revenues in excess of $1 million of their right to a written statement of reasons for adverse action.

Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. Any information collected by the respondents, however, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)). The adverse action disclosure is confidential between the institution and the consumer involved.

Comments are invited on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments to be sent to Mary M. West, Chief, Financial Reports Section, Division of Research and Statistics, Mail

Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

VII. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 603) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis—a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are addressed in the supplementary material above.

Some provisions in the proposal should reduce burden. For example, creditors are not required to provide a notice of action taken for incidental credit. By broadening the definition of incidental credit to cover incidental business credit, fewer notices would be required.

The proposal to lift the prohibition against data notation for nonmortgage products should not impose any burden on institutions, because data notation would be voluntary. However, to the extent creditors collect this data, the proposal would require a disclosure to be given to applicants. This would impose a new requirement for creditors that request data. The Board has sought to minimize burden by proposing a model form.

Creditors would be required to retain certain records in connection with preapproved credit solicitations. This would impose a new requirement. However, the Board has sought to minimize burden by tracking existing legal requirements and current business practices. For example, users of consumer reports are required to retain some prescreening information under the Fair Credit Reporting Act. The proposal parallels this requirement. In addition, many lenders retain part or much of the solicitation information for business purposes, such as to evaluate marketing plans.

Creditors would be required to retain records for a longer period of time for certain types of business credit. Creditors would be required to retain records for 25 months rather than 12 months. This approach would track the record retention rules for consumer credit and could simplify compliance. Burden should be minimized in light of the variety of methods that could be used to retain these records.

In light of the purposes of the Equal Credit Opportunity Act, the Board believes it is not feasible to create different rules for large and small creditors; and therefore, except as discussed above, alternatives for small creditors are not provided. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Certain conventions have been used to highlight the proposed revisions to the text of the regulation and the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Paragraphs are numbered to comply with **Federal Register** publication rules.

For the reasons set forth in the preamble, 12 CFR part 202 is proposed to be revised as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

Regulation B (Equal Credit Opportunity)

Sec.

202.1 Authority, scope and purpose.
202.2 Definitions.
202.3 Limited exceptions for certain classes of transactions.
202.4 General [rule] ►rules◄ [prohibiting discrimination].
202.5 Rules concerning [taking of applications] ►requests for information◄.
202.5a Rules on providing appraisal reports.
202.6 Rules concerning evaluation of applications.
202.7 Rules concerning extensions of credit.
202.8 Special purpose credit programs.
202.9 Notifications.
202.10 Furnishing of credit information.
202.11 Relation to state law.
202.12 Record retention.
202.13 Information for monitoring purposes.
202.14 Enforcement, penalties and liabilities.
202.15 Incentives for self-testing and self-correction.

Appendix A to Part 202—Federal Enforcement Agencies

Appendix B to Part 202—Model Application Forms

Appendix C to Part 202—Sample Notification Forms

Appendix D to Part 202—Issuance of Staff Interpretations

Supplement I to Part 202—Official Staff Interpretations

Authority: 15 U.S.C. 1691–1691f.

§ 202.1 Authority, scope and purpose.

(a) *Authority and scope.* This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Except as otherwise provided herein, the regulation applies to all persons who are creditors, as defined in § 202.2(l). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0201.

(b) *Purpose.* The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

§ 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

(a) *Account* means an extension of credit. When employed in relation to an account, the word *use* refers only to open-end credit.

(b) *Act* means the Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or [a

substantial portion] ►substantially all◄ of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant.

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that [account] ►account◄;

(iii) A refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or [a substantial portion] ►substantially all◄ of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

(d) *Age* refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

Applicant means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of § 202.7(d), the term includes guarantors, sureties, endorsers and similar parties.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures [established] ►used◄ by a creditor for the type of credit requested. ►The term includes a request for a preapproval under procedures in which a creditor will issue to creditworthy persons a written commitment for credit up to a specified amount that is valid for a designated period of time, even if the commitment is conditional.◄ The term ►application◄ does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A *completed application* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in §§ 202.3(a), (b), and (d).

(h) *Consumer credit* means credit extended to a natural person primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in [the decision of whether or not to extend credit] ►a credit decision◄. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§ 202.4►(a)◄ and ►(b)◄ [202.5(a)], the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means age 62 or older.

(p) *Empirically derived and other credit scoring systems*—(1) A *credit scoring system* is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an *empirically derived, demonstrably and statistically sound, credit scoring system*, the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1)(i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new

credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable state law. The term "unmarried" includes persons who are single, divorced, or widowed.

(v) *Negative factor or value*, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended under a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness*, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Board.

(aa) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public-utilities credit*—(1) *Definition.* Public-utilities credit refers to extensions of credit that involve public-utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions.* [The following provisions of this regulation] ►Section 202.12(b) relating to record retention◄ [do] ►does◄ not apply to public-utilities credit[:] ►.◄

[(i) Section 202.5(d)(1) concerning information about marital status;

(ii) Section 202.10 relating to furnishing of credit information; and

(iii) Section 202.12(b) relating to record retention.]

(b) *Securities credit*—(1) *Definition.* Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions.* The following provisions of this regulation do not apply to securities credit:

(i) Section ►202.5(b)◄ [202.5(c)] concerning information about a spouse or former spouse;

(ii) Section ►202.5(c)(1)◄ [202.5(d)(1)] concerning information about marital status;

[(iii) Section 202.5(d)(3) concerning information about the sex of an applicant;]

[(vi)] ►(iii)◄ Section 202.7(b) relating to designation of name[, but only] to the extent necessary to [prevent violation of] ►comply with◄ rules regarding an account in which a broker or dealer has an interest, or rules [necessitating] ►regarding◄ the aggregation of accounts of spouses [for the purpose of determining] ►to determine◄ controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

[(v)] ►(iv)◄ Section 202.7(c) relating to action concerning open-end accounts, [but only] to the extent the action taken is on the basis of a change of name or marital status;

[(vi)] ►(v)◄ Section 202.7(d) relating to the signature of a spouse or other person;

[(vii)] ►(vi)◄ Section 202.10 relating to furnishing of credit information; and [(viii)] ►(vii)◄ Section 202.12(b) relating to record retention.

(c) *Incidental credit*[.] ►—◄ (1) *Definition.* Incidental credit refers to extensions of consumer ►and business◄ credit other than [credit of] the types described in paragraphs (a) and (b) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4) ►for consumer credit, or not subject to interest charges or fees for business credit◄; and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions.* The following provisions of this regulation do not apply to incidental credit:

(i) Section ►202.5(b)◄ [202.5(c)] concerning information about a spouse or former spouse;

(ii) Section ►202.5(c)(1)◄ [202.5(d)(1)] concerning information about marital status;

(iii) Section ►202.5(c)(2)◄ [202.5(d)(2)] concerning information about income derived from alimony, child support, or separate maintenance payments;

[(iv) Section 202.5(d)(3) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;]

[(v)] ►(iv)◄ Section 202.7(d) relating to the signature of a spouse or other person;

[(vi)] ►(v)◄ Section 202.9 relating to notifications;

[(vii)] ►(vi)◄ Section 202.10 relating to furnishing of credit information; and

[(viii)] ►(vii)◄ Section 202.12(b) relating to record retention.

(d) *Government credit*—(1) *Definition.* Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability* of regulation. Except for § 202.4 ►(a)◄, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

§ 202.4 General rule ►s◄ [prohibiting discrimination].

►(a) *Discrimination.*◄ A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

►(b) *Discouragement.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(c) *Written applications.* A creditor shall take written applications for the dwelling-related types of credit covered by § 202.13(a).

(d) *Disclosures and other required information.* A creditor shall provide the disclosures and information required to be in writing by §§ 202.5, 202.5a, 202.9, and 202.13(c), in a clear and conspicuous manner and in a form the person may retain.◄

§ 202.5 Rules concerning [taking of applications] ►requests for information◄.

[(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.]

[(b)] ►(a)◄ *General rules concerning requests for information*[.] ►—◄(1) Except as provided in paragraphs ►(b) and◄ (c) [and (d)] of this section, a creditor may request any information in connection with an application.[1]

(2) *Required collection of information.* Notwithstanding paragraphs ►(b) and◄ (c) [and (d)] of this section, a creditor shall request information for monitoring purposes as required by § 202.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the Act, this regulation, or other federal or state statute or regulation.

(3) *Special-purpose credit.* A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in § 202.8►(b),◄ (c)►,◄ and (d).

►(4) *Obtaining information.* Except as otherwise permitted or required by law, a creditor shall not require an applicant to supply information about race, color, religion, national origin, or sex in connection with a credit transaction. A creditor that requests information on applicant characteristics shall disclose, orally or in writing, at the time the information is requested, that:

(i) Providing the information is optional; and

(ii) That the information (or the applicant's decision not to provide the information) will not be taken into account in any aspect of the credit transaction.◄

[(c)] ►(b)◄ Information about a spouse or former spouse[.] (1) Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) *Permissible inquiries.* A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph ►(b)(2)(v)◄ [(c)(2)(v)] of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or property on which the applicant is relying as a basis for repayment of the credit requested is located in such a state; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) *Other accounts of the applicant.* A creditor may request an applicant to list any account [upon] ►on◄ which the applicant is liable and to provide the name and address [in which] ►of the person in whose name◄ the account is [carried] ►held◄. A creditor may also ask ►an applicant to list◄ the names in which [an] ►the◄ applicant has previously received credit.

[(d)] ►(c)◄ *Other limitations on information requests*—(1) *Marital status.* If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms *married, unmarried,* and *separated.* A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

(2) *Disclosure about income from alimony, child support, or separate maintenance.* A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

(3) *Sex.* [A creditor shall not inquire about the sex of an applicant.] An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) *Childbearing, childrearing.* A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

[(5) *Race, color, religion, national origin.* A creditor shall not inquire about the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire about an applicant's permanent residency and immigration status.]

►(5) *Permanent residency, immigration status.* A creditor may inquire about an applicant's permanent residency and immigration status in connection with a credit transaction.◄

[(e) *Written applications.* A creditor shall take written applications for the types of credit covered by § 202.13(a) but need not take written applications for other types of credit.]

§ 202.5a Rules on providing appraisal reports.

(a) *Providing appraisals.* A creditor shall provide a copy of the appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling. A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.

(1) *Routine delivery.* A creditor may routinely provide a copy of the appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) *Upon request.* A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant's written request.

(i) *Notice.* A creditor that provides appraisal reports only upon request

[1] This paragraph does not limit or abrogate any federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be given at any time during the application process but no later than when the creditor provides notice of action taken under § 202.9 of this part. The notice shall specify that the applicant's request must be in writing, give the creditor's mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) *Delivery.* A creditor shall mail or deliver a copy of the appraisal report promptly (generally within 30 days) after the creditor receives an applicant's request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant's request is received more than 90 days after the creditor has provided notice of action taken on the application under § 202.9 of this part or 90 days after the application is withdrawn.

(b) *Credit unions.* A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisals available is not subject to this section.

(c) *Definitions.* For purposes of paragraph (a) of this section, the term dwelling means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. The term *appraisal report* means the document(s) relied upon by a creditor in evaluating the value of the dwelling.

§ 202.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this regulation, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis.[2]

(b) *Specific rules concerning use of information.* (1) Except as provided in the Act and this regulation, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

(2) *Age, receipt of public assistance.* (i) Except as permitted in this paragraph (b)(2), a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

(3) *Childbearing, childrearing.* In evaluating creditworthiness, a creditor shall not use assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

(4) *Telephone listing.* A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit but may take into account whether there is a telephone in the applicant's residence.

(5) *Income.* A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) *Credit history.* To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) *Immigration status.* A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

►(8) *Marital status.* Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

(9) *Race, color, religion, national origin, sex.* Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant's decision not to provide the information) in any aspect of a credit transaction.◄

(c) *State property laws.* A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the Act or this regulation.

§ 202.7 Rules concerning extensions of credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open-end accounts*—(1) *Limitations.* In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change

[2] The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) *Requiring reapplication.* A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

(d) *Signature of spouse or other person*—(1) *Rule for qualified applicant.* Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. ►A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.◄

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) *Unsecured credit-community property states.* If a married applicant requests unsecured credit and resides in a community property state, or if the property upon which the applicant is relying is located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) *Secured credit.* If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) *Additional parties.* If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested, a creditor may request a cosigner, guarantor, or the like. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) *Rights of additional parties.* A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) *Insurance.* A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

§ 202.8 Special purpose credit programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the Act and this regulation permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

(1) Any credit assistance program expressly authorized by federal or state law for the benefit of an economically disadvantaged class of persons;

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization or in which such an organization participates [to meet special social needs], if:

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Rules in other sections.*[ ]►—◄(1) *General applicability.* All of the provisions of this regulation apply to each of the special purpose credit programs described in paragraph (a) of this section unless modified by this section.

(2) *Common characteristics.* A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this regulation.

(c) *Special rule concerning requests and use of information.* If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

(d) *Special rule in the case of financial need.* If financial need is one of the criteria under a special purpose program described in paragraph (a) of this section, the creditor may request and consider, in determining an applicant's eligibility for the program, information regarding the applicant's marital status; alimony, child support, and separate maintenance income; and the spouse's financial resources. In addition, a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if the signature is required by federal or state law.

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action of an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(3) *Notification to business credit applicants.* For business credit, a creditor shall comply with the requirements of this paragraph in the following manner:

(i) With regard to a business that had gross revenues of $1,000,000 or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a)(1) and (2), except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure is in a form the applicant may retain and contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made solely by telephone, a creditor satisfies the requirements of this paragraph by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of $1,000,000 in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) ►Within a reasonable time of the action taken,◄ [Notify] ►notify◄ the applicant, orally or in writing, [within a reasonable time] of the action taken ►and of the applicant's right to a written statement of reasons◄; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of being notified of the adverse action.

(b) *Form of ECOA notice and statement of specific reasons*—(1) *ECOA notice.* To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A of this regulation).

(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant►, joint applicant, or similar party◄ failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

(c) *Incomplete applications*—(1) *Notice alternatives.* Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) *Oral request for information.* At its option, a creditor may inform the applicant orally of the need for additional information; but if the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) *Oral notifications by small-volume creditors.* The requirements of this section (including statements of specific reasons) are satisfied by oral notifications in the case of any creditor that did not receive more than 150 applications during the preceding calendar year.

(e) *Withdrawal of approved application.* When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(f) *Multiple applicants.* When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must comply with this section,

directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

§ 202.10 Furnishing of credit information.

(a) *Designation of accounts.* A creditor that furnishes credit information shall designate:

(1) Any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

(b) *Routine reports to consumer reporting agency.* If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) *Reporting in response to inquiry.* If a creditor furnishes credit information in response to an inquiry concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

§ 202.11 Relation to state law.

(a) *Inconsistent state laws.* Except as otherwise provided in this section, this regulation alters, affects, or preempts only those state laws that are inconsistent with the Act and this regulation and then only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of an applicant.

(b) *Preempted provisions of state law.* (1) A state law is deemed to be inconsistent with the requirements of the Act and this regulation and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that the law:

(i) Requires or permits a practice or act prohibited by the Act or this regulation;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the Act or this regulation;

(iv) Prohibits asking ►about◄ or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer ►a◄ [as] special purpose credit program as defined by § 202.8.

(2) A creditor, state, or other interested party may request the Board to determine whether a state law is inconsistent with the requirements of the Act and this regulation.

(c) *Laws on finance charges, loan ceilings.* If married applicants voluntarily apply for and ►obtain◄ [obtained] individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

(d) *State and federal laws not affected.* This section does not alter or annul any provision of state property laws, laws relating to the disposition of decedents' estates, or federal or state banking regulations directed only toward insuring the solvency of financial institutions.

(e) *Exemption for state-regulated transactions*—(1) *Applications.* A state may apply to the Board for an exemption from the requirements of the Act and this regulation for any class of credit transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to the Act and this regulation or that applicants are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Liability and enforcement.* (i) No exemption will extend to the civil-liability provisions of section 706 or the administrative-enforcement provisions of section 704 of the Act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by federal law) will constitute the requirements of the Act and this regulation.

§ 202.12 Record retention.

(a) *Retention of prohibited information.* A creditor may retain in its files information that is prohibited by the Act or this regulation in evaluating applications, without violating the Act or this regulation, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the Act and this regulation or other federal or state statutes or regulations.

(b) *Preservation of records*—(1) *Applications.* For 25 months [(12 months for business credit)] after the date that a creditor notifies an applicant of action taken on an application or of incompleteness ►(except as provided in paragraph (b)(5) of this section)◄, the creditor shall retain in original form or a copy thereof:

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this regulation.

(2) *Existing accounts.* For 25 months [(12 months for business credit)] after the date that a creditor notifies an applicant of adverse action regarding an existing account ►(except as provided in paragraph (b)(5) of this section)◄, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this regulation.

(3) *Other applications.* For 25 months [(12 months for business credit)] after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 202.9 ►(except as provided in paragraph (b)(5) of this section)◄, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information beyond 25 months [(12

months for business credit)] ►(except as provided in paragraph (b)(5) of this section)◄ if [it] ►the creditor◄ has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this regulation by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.14 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business with gross revenues in excess of $1,000,000 in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

(6) *Self-tests.* For 25 months after a self-test (as defined in § 202.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

►(7) *Preapplication marketing information.* For 25 months after the date that a creditor solicits potential customers for credit (12 months for business credit subject to paragraph (b)(5) of this section), the creditor shall retain in original form or a copy thereof:

(i) Any preapproved credit solicitation, the list of criteria the creditor used to select potential recipients of the solicitation, any correspondence (to and from the selected recipients) related to complaints about the solicitation; and

(ii) Any component of a marketing plan to which such solicitation relates.◄

§ 202.13 Information for monitoring purposes.

(a) *Information to be requested.* ►(1)◄ A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

[(1)] ►i.◄ Race or national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

[(2)] ►ii.◄ Sex;

[(3)] ►iii.◄ Marital status, using the categories married, unmarried, and separated; and

[(4)] ►iv.◄ Age.

►(2)◄ *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

(b) *Obtaining [of] information.* Questions regarding race or national origin, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the race or national origin and sex of the applicant(s) on the basis of visual observation or surname.

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) that the information regarding race or national origin, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the race or national origin and sex on the basis of visual observation or surname.

(d) *Substitute monitoring program.* A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) ►of this section◄.

§ 202.14 Enforcement, penalties and liabilities.

(a) *Administrative enforcement[.]* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this regulation regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Interstate Commerce Commission, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, and Secretary of Transportation.

(2) Except to the extent that administrative enforcement is specifically assigned to other authorities, compliance with the requirements imposed under the Act and this regulation is enforced by the Federal Trade Commission.

(b) *Penalties and liabilities[.]* (1) Sections 706(a) and (b) and 702(g) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 704(b), (c), and (d) and 702(g) of the Act, violations of the Act or ►this regulation◄ [regulations] also constitute violations of other federal laws. Liability for punitive damages is restricted to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) As provided in section 706(f), a civil action under the Act or this regulation may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within two years after the alleged violation.

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this ►regulation◄ [part], it may refer the matter to the Attorney General of the United States. In addition, if the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration

has reason to believe that one or more creditors engaged in a pattern or practice of discouraging or denying applications in violation of the Act or this regulation, the agency shall refer the matter to the Attorney General. Furthermore, the agency may refer a matter to the Attorney General if the agency has reason to believe that one or more creditors violated section 701(a) of the Act.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors engaged in a pattern or practice in violation of the Act or this ►regulation◄ [part], the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(5) If the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, conducting a consumer compliance examination, or otherwise) that a violation of the Act or this regulation has occurred which is also a violation of the Fair Housing Act, and the matter is not referred to the Attorney General, the agency shall notify:

(i) The Secretary of Housing and Urban Development; and

(ii) The applicant that the Secretary of Housing and Urban Development has been notified and that remedies for the violation may be available under the Fair Housing Act.

(c) *Failure of compliance.* A creditor's failure to comply with §§ 202.6(b)(6), 202.9, 202.10, 202.12 or 202.13 is not a violation if it results from an inadvertent error. On discovering an error under §§ 202.9 and 202.10, the creditor shall correct it as soon as possible. [If a creditor inadvertently obtains the monitoring information regarding the race or national origin and sex of the applicant in a dwelling-related transaction not covered by § 202.13, the creditor may act on and retain the application without violating the regulation.]

§ 202.15 Incentives for self-testing and self-correction.

(a) *General rules*—(1) *Voluntary self-testing and correction.* The report or results of the self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) *Corrective action required.* The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) *Other privileges.* The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or this regulation; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) *Types of information privileged.* The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) *Types of information not privileged.* The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if it has been aggregated, summarized, or reorganized to facilitate analysis.

(c) *Appropriate corrective action*—(1) *General requirement.* For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) *Determining the scope of appropriate corrective action.* A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) *Types of relief.* Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) *No admission of violation.* Taking corrective action is not an admission that a violation occurred.

(d)[(1)] *Scope of privilege*[.]►—(1) *Use of privileged self-test.*◄ The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the Act or this regulation; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of §►202.4(b)◄ [202.5(a)]) in any proceeding or civil action in which a violation of the Act or this regulation is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results:

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the Act or regulation; or

(iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under § 202.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 202.12.

(3) *Limited use of privileged information.* Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the Act or this regulation has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this

paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

Appendix A to Part 202—Federal Enforcement Agencies

The following list indicates the federal agencies that enforce Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National Banks, and Federal Branches and Federal Agencies of Foreign Banks

Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Avenue, Suite 3710, Houston, Texas 77010.

State Member Banks, Branches and Agencies of Foreign Banks (other than federal branches, federal agencies, and insured state branches of foreign banks), Commercial Lending Companies Owned or Controlled by Foreign Banks, and Organizations Operating Under Section 25 or 25A of the Federal Reserve Act

Federal Reserve Bank serving the district in which the institution is located.

Nonmember Insured Banks and Insured State Branches of Foreign Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered saving►s◄ banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)

Office of Thrift Supervision Regional Director for the region in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

Creditors Subject to ►Surface Transportation Board◄ [Interstate Commerce Commission]

Office of Proceedings, [Interstate Commerce Commission, Washington, DC 20523] ►Surface Transportation Board, Department of Transportation, 1925 K Street NW, Washington, DC 20423◄

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies

U.S. Small Business Administration, ►409 Third Street, SW,◄ [1441 L Street, NW,] Washington, DC 20416.

Brokers and Dealers

Securities and Exchange Commission, Washington, DC 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

Retailers, Finance Companies, and All Other Creditors Not Listed Above

FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Appendix B to Part 202—Model Application Forms

►1.◄ This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property states; and the fifth in residential mortgage transactions[. The appendix also] ►which◄ contains a model disclosure for use in complying with § 202.13 for certain dwelling-related loans. All forms contained in this appendix are models; their use by creditors is optional.

►2.◄ The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by § 202.5; by deleting any information request; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries must be included in the appropriate places if the items to which they relate appear on the creditor's form.

►3.◄ If a creditor uses an appropriate Appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs ►(b) and◄ (c) [and (d)] of § 202.5 [of this regulation].

BILLING CODE 6210-01-P

[Open-end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.
- ☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.
- ☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Open-end, unsecured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	

(Credit References)

		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes ☐	No ☐	If "yes" for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes ☐ No ☐	Amount $	If "yes" to whom owed?	
Have you been declared bankrupt in the last 14 years?	Yes ☐ No ☐	If "yes" where?		Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Closed-end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.
- ☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets or another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐ _____

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐ _____

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Closed-end, secured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)

		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Briefly describe the property to be given as security.)

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed-end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.
- ☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Closed-end, unsecured/secured credit]

SECTION C—MARITAL STATUS
(Do not complete if this is an application for individual unsecured credit.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any): _____

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Spouse, Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Community property]

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

Mortgage Applied for: ☐ VA ☐ FHA ☐ Conventional ☐ FmHA ☐ Other: | Agency Case Number | Lender Case No.

Amount $ | Interest Rate % | No. of Months | Amortization Type: ☐ Fixed Rate ☐ GPM ☐ Other (explain): ☐ ARM (type):

Subject Property Address (street, city, state, & ZIP) | No. of Units

Legal Description of Subject Property (attach description if necessary) | Year Built

Purpose of Loan ☐ Purchase ☐ Refinance ☐ Construction ☐ Construction-Permanent ☐ Other (explain): | Property will be: ☐ Primary Residence ☐ Secondary Residence ☐ Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	$	$	$	$	$

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements ☐ made ☐ to be made
	$	$		Cost: $

Title will be held in what Name(s) | Manner in which Title will be held | Estate will be held in: ☐ Fee Simple ☐ Leasehold (show expiration date)

Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)

Borrower

Borrower's Name (include Jr. or Sr. if applicable) | Co-Borrower's Name (include Jr. or Sr. if applicable)

Social Security Number	Home Phone (incl. area code)	Age	Yrs. School

☐ Married ☐ Unmarried (include single, divorced, widowed) ☐ Separated | Dependents (not listed by Co-Borrower) no. ages

Present Address (street, city, state, ZIP) ☐ Own ☐ Rent _____ No. Yrs.

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP) ☐ Own ☐ Rent _____ No. Yrs.

Former Address (street, city, state, ZIP) ☐ Own ☐ Rent _____ No. Yrs.

Name & Address of Employer ☐ Self Employed	Yrs. on this job	Yrs. employed in this line of work/profession
Position/Title/Type of Business	Business Phone (incl. area code)	

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Name & Address of Employer ☐ Self Employed	Dates (from - to)	Monthly Income
Position/Title/Type of Business	Business Phone (incl. area code)	

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	$	$	$	Rent	$	
Overtime				First Mortgage (P&I)		$
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		
Dividends/Interest				Real Estate Taxes		
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
Total	$	$	$	Total	$	$

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income. *Notice:* Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.

B/C		Monthly Amount
		$

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed ☐ Jointly ☐ Not Jointly

ASSETS Description	Cash or Market Value
Cash deposit toward purchase held by:	$
List checking and savings accounts below	
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Stocks & Bonds (Company name/number & description)	$
Life insurance net cash value Face amount: $	$
Subtotal Liquid Assets	$
Real estate owned (enter market value from schedule of real estate owned)	$
Vested interest in retirement fund	$
Net worth of business(es) owned (attach financial statement)	$
Automobiles owned (make and year)	$
Other Assets (itemize)	$
Total Assets a.	$

Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.

LIABILITIES	Monthly Pmt. & Mos. Left to Pay	Unpaid Balance
Name and address of Company Acct. no.	$ Pmt./Mos.	$
Name and address of Company Acct. no.	$ Pmt./Mos.	$
Name and address of Company Acct. no.	$ Pmt./Mos.	$
Name and address of Company Acct. no.	$ Pmt./Mos.	$
Name and address of Company Acct. no.	$ Pmt./Mos.	$
Name and address of Company Acct. no.	$ Pmt./Mos.	$
Name and address of Company Acct. no.	$ Pmt./Mos.	$
Alimony/Child Support/Separate Maintenance Payments Owed to:	$	
Job Related Expense (child care, union dues, etc.)	$	
Total Monthly Payments	$	
Net Worth (a minus b)	$	Total Liabilities b. $

[redacted]

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
		$	$	$	$	$	$
	Totals	$	$	$	$	$	$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number

a. Purchase price	$
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	
e. Estimated prepaid items	
f. Estimated closing costs	
g. PMI, MIP, Funding Fee	
h. Discount (if Borrower will pay)	
i. Total costs (add items a through h)	
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain)	
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	
p. Cash from/to Borrower (subtract j, k, l & o from i)	

If you answer "yes" to any questions a through i, please use continuation sheet for explanation.	Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
a. Are there any outstanding judgments against you?	☐	☐	☐	☐
b. Have you been declared bankrupt within the past 7 years?	☐	☐	☐	☐
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?	☐	☐	☐	☐
d. Are you a party to a lawsuit?	☐	☐	☐	☐
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of Lender, FHA or VA case number, if any, and reasons for the action.)	☐	☐	☐	☐
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.	☐	☐	☐	☐
g. Are you obligated to pay alimony, child support, or separate maintenance?	☐	☐	☐	☐
h. Is any part of the down payment borrowed?	☐	☐	☐	☐
i. Are you a co-maker or endorser on a note?	☐	☐	☐	☐
j. Are you a U.S. citizen?	☐	☐	☐	☐
k. Are you a permanent resident alien?	☐	☐	☐	☐
l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.	☐	☐	☐	☐
m. Have you had an ownership interest in a property in the last three years?	☐	☐	☐	☐
(1) What type of property did you own–principal residence (PR), second home (SH), or investment property (IP)?				
(2) How did you hold title to the home–solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?				

The undersigned specifically acknowledges and agrees that: (1) the loan requested by this application will be secured by a first mortgage or deed of trust on the property described herein; (2) the property will not be used for any illegal or prohibited purpose or use; (3) all statements made in this application are made for the purpose of obtaining the loan indicated herein; (4) occupation of the property will be as indicated above; (5) verification or reverification of any information contained in the application may be made at any time by the Lender, its agents, successors and assigns, either directly or through a credit reporting agency, from any source named in this application, and the original copy of this application will be retained by the Lender, even if the loan is not approved; (6) the Lender, its agents, successors and assigns will rely on the information contained in the application and have a continuing obligation to amend and/or supplement the information provided in this application if any of the material facts which I/we have represented herein should change prior to closing; (7) in the event my/our payments on the loan indicated in this application become delinquent, the Lender, its agents, successors and assigns, may, in addition to all their other rights and remedies, report my/our name(s) and account information to a credit reporting agency; (8) ownership of the loan may be transferred to successor or assign of the Lender without notice to me and/or the administration of the loan account may be transferred to an agent, successor or assign of the Lender with prior notice to me; (9) the Lender, its agents, successors and assigns make no representations or warranties, express or implied, to the Borrower(s) regarding the property, the condition of the property, or the value of the property.

Certification: I/We certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and acknowledge my/our understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq. and liability for monetary damages to the Lender, its agents, successors and assigns, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I/we have made on this application.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

The following information is requested by the Federal Government for certain types of loans related to a dwelling, in order to monitor the Lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a Lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish it, under Federal regulations this Lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the above information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the Lender is subject under applicable state law for the particular type of loan applied for.)

	BORROWER	CO-BORROWER
	☐ I do not wish to furnish this information	☐ I do not wish to furnish this information
Race/National Origin:	☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander ☐ Black, not of Hispanic origin ☐ White, not of Hispanic Origin ☐ Other (specify) ☐ Hispanic	☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander ☐ Black, not of Hispanic origin ☐ White, not of Hispanic Origin ☐ Other (specify) ☐ Hispanic
Sex:	☐ Female ☐ Male	☐ Female ☐ Male

To be Completed by Interviewer	Interviewer's Name (print or type)	Name and Address of Interviewer's Employer
This application was taken by: ☐ Face-to-face interview ☐ by mail ☐ by telephone	Interviewer's Signature Date	
	Interviewer's Phone Number (incl. area code)	

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower:	Agency Case Number:
	Co-Borrower:	Lender Case Number:

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature:	Date	Co-Borrower's Signature:	Date
X		X	

Appendix C to Part 202—Sample Notification Forms

►1.◄ This appendix contains nine sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 202.9(a) (1) and (2)(i) [of this regulation]. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 202.9(a) (1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under § 202.9(a)(3). Form C–9 is designed for use in notifying an applicant of the right to receive a copy of an appraisal under § 202.5a.

►2.◄ Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615 (a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that played a part in the credit decision). A creditor must provide the 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing *either* the 615(a) or 615(b) disclosure.

►3.◄ The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if "inadequate down payment" or "no deposit relationship with us" are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

►4.◄ If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose "insufficient bank references," not "insufficient credit references." Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check "other" and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say "length of residence" rather than "too short a period of residence."

►5.◄ A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C–1 through C–4 will satisfy the requirement of § 202.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with §§ 202.9(a)(2)(ii) and 202.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of §§ 202.9(a)(2) (i) and (ii), respectively, for applications for business credit. Proper use of Form C–9 will satisfy the requirements of § 202.5a of this part. ►Proper use of Form C–10 will satisfy the requirements of § 202.5(a)(4).◄

Form C–1—Sample Notice of Action Taken and Statement of Reasons

Statement of Credit Denial, Termination or Change

Date: _____
Applicant's Name: _____
Applicant's Address: _____
Description of Account, Transaction, or Requested Credit:

_____

Description of Action Taken:

_____

_____

Part I—Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

____Credit application incomplete
____Insufficient number of credit references provided
____Unacceptable type of credit references provided
____Unable to verify credit references
____Temporary or irregular employment
____Unable to verify employment
____Length of employment
____Income insufficient for amount of credit requested
____Excessive obligations in relation to income
____Unable to verify income
____Length of residence
____Temporary residence
____Unable to verify residence
____No credit file
____Limited credit experience
____Poor credit performance with us
____Delinquent past or present credit obligations with others
____Garnishment, attachment, foreclosure, repossession, collection action, or judgment
____Bankruptcy
____Value or type of collateral not sufficient
____Other, specify: _____

Part II—Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

____Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____
Address: _____

_____

[Toll-free] Telephone number: _____ _____

____Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

_____

If you have any questions regarding this notice, you should contact:

Creditor's name: _____
Creditor's address: _____
Creditor's telephone number: _____

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–2—Sample Notice of Action Taken and Statement of Reasons

Date:

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

___ is below our minimum requirement.
___ is insufficient to sustain payments on the amount of credit requested.
___ could not be verified.

Your Employment:

___ is not of sufficient length to qualify.
___ could not be verified.

Your Credit History:

___ of making payments on time was not satisfactory.
___ could not be verified.

Your Application:

___ lacks a sufficient number of credit references.
___ lacks acceptable types of credit references.
___ reveals that current obligations are excessive in relation to income.

Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency is unable to supply specific reasons why we have denied credit to you. You do, however, have a right under the Fair Credit Reporting Act to know the information contained in your credit file. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency].

If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–3—Sample Notice of Action Taken and Statement of Reasons (Credit Scoring)

Date:

Dear Applicant: Thank you for your recent application for _____. We regret that we are unable to approve your request.

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The reporting agency played no part in our decision other than providing us with credit information about you. Under the Fair Credit Reporting Act, you have a right to know the information provided to us. It can be obtained by contacting: [name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

If you have any questions regarding this letter, you should contact us at:

Creditor's Name: _____
Address: _____
_____
Telephone: _____

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–4—Sample Notice of Action Taken, Statement of Reasons and Counteroffer

Date:

Dear Applicant: Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s):

_____

We can, however, offer you credit on the following terms: _____

_____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____.

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age ►(provided the applicant has the capacity to enter into a binding contract)◄ because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in appendix A].

Sincerely,

Form C–5—Sample Disclosure of Right To Request Specific Reasons for Credit Denial

Date:

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address [Toll-free]
Telephone number

Sincerely,

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating

against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–6—Sample Notice of Incomplete Application and Request for Additional Information

Creditor's name
Address
Telephone number
Date:

Dear Applicant: Thank you for your application for credit. The following information is needed to make a decision on your application: _____

_____

We need to receive this information by *(date)*. If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

Form C–7—Sample Notice of Action Taken and Statement of Reasons (Business Credit)

Creditor's Name
Creditor's address
Date:

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as►:◄
Value or type of collateral not sufficient►;◄
Lack of established earnings record►;◄
Slow or past due in trade or loan payments)

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

Form C–8—Sample Disclosure of Right To Request Specific Reasons for Credit Denial Given at Time of Application (Business Credit)

Creditor's name
Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

Form C–9—Sample Disclosure of Right To Receive a Copy of an Appraisal

You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.

[In your letter, give us the following information:]

►Form C–10—Sample Disclosure About Voluntary Data Notation

We are requesting the following information [to monitor our compliance with the federal Equal Credit Opportunity Act]. You are not required to provide this information. The law provides that a creditor may not discriminate based on this information, or based on whether or not you choose to provide it.◄

Appendix D to Part 202—Issuance of Staff Interpretations

►1.◄ *Official Staff Interpretations.* Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protection afforded under section 706(e) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

►2.◄ *Requests for Issuance of Official Staff Interpretations.* A request for an official staff interpretation should be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

►3.◄ *Scope of Interpretations.* No staff interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

Supplement I to Part 202—Official Staff Interpretations

Following is an official staff interpretation of Regulation B ►(12 CFR part 202)◄ issued under authority delegated by the Federal Reserve Board to officials in the Division of Consumer and Community Affairs. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 *et seq.*).

Introduction

1. *Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Federal Reserve Board. This commentary is the means by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(e) of the Act.

2. *Issuance of interpretations.* Under appendix D to the regulation, any person may request an official staff interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the **Federal Register**. Except in unusual circumstances, official staff interpretations will be issued only by means of this commentary.

3. *Status of previous interpretations.* Interpretations of Regulation B previously issued by the Federal Reserve Board and its staff have been incorporated into this commentary as appropriate. All other previous Board and staff interpretations, official and unofficial, are superseded by this commentary.

4. *Footnotes.* Footnotes in the regulation have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

5. *Comment designations.* The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to § 202.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)–1 and comment 2(c)(2)(ii)–1.

Section 202.1—Authority, Scope, and Purpose

1(a) *Authority and scope.*

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor. If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending) ►(12 CFR part 226)◄. Further, the definition of

creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. *Foreign applicability.* Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

3. *Board.* The term *Board*, as used in this regulation, means the Board of Governors of the Federal Reserve System.

Section 202.2—Definitions

2(c) *Adverse action.*

Paragraph 2(c)(1)(i)

1. *Application for credit.* A refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor's procedures.

►2. *Counteroffer.* If an applicant responds to a credit solicitation by requesting a specific amount of credit and the creditor provides a different amount, the creditor's action is a counteroffer—even if the solicitation discloses that the consumer may not receive the amount of credit requested. An adverse action notice is required unless the applicant expressly accepts or uses the credit. For example, assume an applicant receives a credit card solicitation offering credit "up to $10,000," and responds by requesting $8,000 in a balance transfer to pay off an existing credit card account; and that the creditor sends a credit card and informs the applicant that a $5,000 balance transfer and an additional $500 of credit has been approved. An adverse action notice is required unless the applicant uses the credit card or expressly accepts the credit offered before the balance transfer occurs.◄

Paragraph 2(c)(1)(ii)

►1. *Termination or unfavorable change to substantially all of a class of the creditor's accounts.* If a creditor terminates or makes an unfavorable change to the terms of all but a small proportion of a class of accounts, the creditor need not give adverse action notices to customers affected by the termination or unfavorable change. Class of accounts is a broad category. For example, overdraft lines of credit or distinct credit card programs such as "secured" credit cards represent a class of accounts. But a category designated according to characteristics of customers, such as by their credit scores, is not a class of accounts.◄

[1.] ►2.◄ *Move from service area.* If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is adverse action for purposes of the regulation unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under § 202.9.

[2.] ►3.◄ *Termination based on credit limit.* If a creditor terminates credit accounts that have low credit limits (for example, under $400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under § 202.9.

►Paragraph 2(c)(2)(i)

1. *Express agreement.* If a creditor changes the terms of an account pursuant to an express agreement, the creditor need not give adverse action notices to customers affected by the change. An express agreement exists where the specific change and the specific circumstance under which the change will occur are stated in the agreement. For example, if a credit card agreement provides that the rate on a consumer's credit card will be increased if the consumer misses two consecutive payments, and the missed payments occur, an increase in the rate is not adverse action. However, if a credit card agreement provides that the rate on a consumer's credit card will be increased if the consumer's financial circumstances change or if the creditor deems itself "insecure," imposing a higher rate is adverse action subject to the notice requirements of § 202.9.◄

Paragraph 2(c)(2)(ii)

1. *Default—exercise of due-on-sale clause.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse-action notice need not be given to the mortgagor or the transferee. (See comment 2(e)–1 for treatment of a purchaser who requests to assume the loan.)

2. *Current delinquency or default.* The term adverse action does not include a creditor's termination of ►or other action on◄ an account when the accountholder is currently in default or delinquent on that account. ►For example, if a credit agreement defines default to include the consumer's filing for bankruptcy, an adverse action notice is not required if the creditor terminates the consumer's account when the consumer files for bankruptcy.◄ Notification in accordance with § 202.9 of the regulation generally is required, however, if the creditor's action is based ►not on a current but◄ on a past delinquency or default on the account.

►3. *Performance on a different account.* If a creditor takes adverse action on an account because of the consumer's performance (such as poor payment history) on a different account, an adverse action notice is required—even if the performance is defined as a default under the terms of the credit agreement.◄

Paragraph 2(c)(2)(iii)

1. *Point-of-sale transactions.* Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

[•] ►i.◄ A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.

[•] ►ii.◄ The amount of a transaction exceeds a cash advance or credit limit.

[•] ►iii.◄ The circumstances (such as excessive use of a credit card in a short period of time) ►suggest◄ [suggests] that fraud is involved.

[•] ►iv.◄ The authorization facilities are not functioning.

[•] ►v.◄ Billing statements have been returned to the creditor for lack of a forwarding address.

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action, except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

Paragraph 2(c)(2)(v)

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under § 202.9.

2(e) *Applicant.*

1. *Request to assume loan.* If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

2(f) *Application.*

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *Procedures established.* The term refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit ►decisions◄ [decision] based on oral requests, the creditor's established procedures are to accept both oral and written applications.

3. *When an inquiry* ►or prequalification request◄ becomes an application. A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the applicant, decides to decline the request, and communicates this to the applicant, the creditor has treated the inquiry ►or prequalification request◄ as an application and must then comply with the notification requirements under § 202.9. Whether the inquiry ►or prequalification request◄ becomes an application depends on how the creditor responds to the applicant, not on what the ►applicant◄ [applicant] says or asks.

4. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place:

[•] ►i.◄ When a consumer calls to ►ask◄ [asks] about loan terms and an

employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ►ratio◄ [ratio], and debt-to-income ratio.

[•]►ii.◄ When a consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and ►sales◄ [sale] price of the car and the amount of the ►downpayment◄ [down-payment], then ►gives◄ [given] the consumer the rate.

[•]►iii.◄ When a consumer asks about terms for a loan to purchase ►a◄ home and tells the loan officer her income and intended ►downpayment◄ [down-payment], but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

[•]►iv.◄ When a consumer calls to ask about terms for a loan to purchase vacant land and states his income and the ►sales◄ [sale] price of the property to be financed, and asks whether he qualifies for a loan, and the employee responds by describing the general lending policies, explaining that he would need to look at all of the ►consumer's◄ [applicant's] qualifications before making a decision, and offering to send an application form to the consumer.

►5. *Examples of an application.* i. An application for credit includes the case in which a person asks a financial institution to "preapprove" her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution evaluates her creditworthiness and issues a letter documenting that she has been preapproved (subject to, for example, adequate collateral value, a contract for sale, and lack of material change in the person's financial circumstances) and stating that the loan offer is valid, say, for 30 days.

ii. Under the same facts as above, if the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval, an adverse action notice must be provided.

iii. If the creditor's procedures do not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.◄

[5]►6.◄ *Completed application—diligence requirement.* The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or telephone number needed to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)–3, which discusses the creditor's option to deny an application on the basis of incompleteness.)

2(g) *Business credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

2(j) *Credit.*

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). For purposes of Regulation B►,◄ a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

2(l) *Creditor.*

1. *Assignees.* The term *creditor* includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.

2. *Referrals to creditors.* For certain purposes, the term *creditor* includes persons such as real estate brokers►, automobile dealers, home builders, and home-improvement contractors◄ who do not participate in credit decisions but who [regularly] ►solely accept applications,◄ refer applicants to creditors►,◄ or [who] select or offer to select creditors to whom credit requests can be made. These persons must comply with § 202.4►(a)◄, the general rule prohibiting discrimination, and with § [202.5(a),]►202.4(b), the general rule against◄ [on] discouraging applications.

2(p) *Empirically derived and other credit scoring systems.*

1. *Purpose of definition.* The definition under § 202.2(p)(l)►(i)◄ through (iv) sets the criteria that a credit system must meet in order for the system to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a "pertinent element of creditworthiness." (Both types of systems may favor an elderly applicant. See § 202.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. To meet the requirements for statistical soundness, the credit scoring system must be revalidated frequently enough to ►ensure◄ [assure] that it continues to meet recognized professional statistical standards. To ensure that predictive ability is being maintained, creditors must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1)(i) through (iv) of this section are met.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test).

2(w) *Open-end credit.*

1. *Open-end real estate mortgages.* The term *open-end credit* does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2(z) *Prohibited basis.*

1. *Persons associated with applicant. Prohibited basis* as used in this regulation refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in § 202.4►(a)◄, a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. *Public assistance program.* Any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is *public assistance* for purposes of the regulation. The term includes (but is not limited to) [Aid to Families with Dependent Children]►Temporary Aid to Needy Families◄, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

1. *Scope.* This section relieves burdens with regard to certain types of credit for which full application of the procedural requirements of the regulation is not needed. All classes of transactions remain subject to the general rule given in § 202.4►(a)◄, barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) *Public*►.◄ utilities credit.

1. *Definition.* This definition applies only to credit for the purchase of a utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equipment, or other durable goods, or for insulation or other home improvements—is not excepted.

2. *Security deposits.* A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation.

3. *Telephone companies.* A telephone company's credit transactions qualify for the exceptions provided in § 202.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

3(c) *Incidental credit.*

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer or retailer) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in the regulation.

3(d) *Government credit.*

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government by a creditor in the private sector is covered by this exception, but credit extended to consumers by a federal or state housing agency does not qualify for special treatment under this category.

Section 202.4—General Rule►s◄ [Prohibiting Discrimination]

►Paragraph 4(a)◄

1. *Scope of [section]* ►rule◄. The general rule stated in § 202.4►(a)◄ covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other sections of the regulation identify specific practices that the Board has decided are impermissible because they could result in credit discrimination on a basis prohibited by the Act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule. Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.

►2. *Examples. i.*◄ Disparate treatment would be found, for example,

►A. Where a creditor provides information only on "subprime" and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.

B. Where a creditor provides more comprehensive information to men than to similarly situated women.

C.◄ [where] ►Where◄ a creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.

►D.◄ [Disparate treatment also would be found where] ►Where◄ a creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.

►ii.◄ Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

►Paragraph 4(b)

1. *Prospective applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the act—to promote the availability of credit on a nondiscriminatory basis—§ 202.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:

i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

ii. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the act.

iii. The use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.

Paragraph 4(c)

1. *Requirement for written applications.* Model application forms are provided in appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by § 202.13 can meet the requirements for written applications by writing down pertinent information that is provided by the applicant(s).

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to § 202.13(b), *Applications through electronic media* and *Applications through video.)*

Paragraph 4(d)

1. *Clear and conspicuous.* This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.◄

Section 202.5—Rules Concerning [Taking Applications] ►Information Requests◄

[5(a) Discouraging applications.

1. *Potential applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the act—to promote the availability of credit on a nondiscriminatory basis § 202.5(a) covers acts or practices directed at potential applicants. Practices prohibited by this section include:

- A statement that the applicant should not bother to apply, after the applicant states that he is retired.
- Use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the act.
- Use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.]

[5(b)] ►5(a)◄ General rules concerning requests for information.

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section 202.6 governs how information may be used.

[Paragraph 5(b)(2)

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a "state" statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race or national origin and sex of applicants for home improvement loans and home purchase loans, including some types of loans not covered by § 202.13. Certain creditors with assets under $30 million, though covered by HMDA, are not required to collect and report these data; but they may do so at their option under HMDA, without violating the ECOA or Regulation B.

3. *Collecting information on behalf of creditors.* Loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from

collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another federal or state statute or regulation requiring data collection.]

[5(d)] ►5(c)◄ *Other limitations on information requests.*

Paragraph [5(d)(1)] ►5(c)(1)◄

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

[•] ►i.◄ The applicant's obligation to pay alimony, child support, or separate maintenance.

[•] ►ii.◄ The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

[•] ►iii.◄ Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

[•] ►iv.◄ The ownership of assets, which could disclose the interest of a spouse.

Paragraph [5(d)(2)] ►5(c)(2)◄

1. *Disclosure about income.* The sample application forms in appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance, a creditor may not make such an inquiry on an application form without prefacing the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support, or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

[5(e) Written applications.

1. *Requirement for written applications.* The requirement of written applications for certain types of dwelling-related loans is intended to assist the federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act. Model application forms are provided in appendix B to the regulation, although use of a printed form of any kind is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by § 202.13 can meet the requirements for written applications by writing down pertinent information that is provided by the applicant(s).

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to section 202.13(b), *Applications through electronic media and Applications through video.*)]

Section 202.5a—Rules on Providing Appraisal Reports

5a(a) *Providing appraisals.*

1. *Coverage.* This section covers applications for credit to be secured by a lien on a dwelling, as that term is defined in § 202.5a(c), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to finance a child's education).

2. *Renewals.* If an applicant requests that a creditor renew an existing extension of credit, and the creditor obtains a new appraisal report to evaluate the request, this section applies. This section does not apply to a renewal request if the creditor uses the appraisal report previously obtained in connection with the decision to grant credit.

5a(a)(2)(i) Notice.

1. *Multiple applicants.* When an application that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

5a(a)(2)(ii) Delivery.

1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by state or other law. If the consumer has already paid for the report—for example, as part of an application fee—the creditor may not require additional fees for the appraisal (other than photocopy and postage costs).

5a(c) Definitions.

1. *Appraisal reports.* Examples of appraisal reports are:

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of value.

ii. A document prepared by the creditor's staff which assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

2. *Other reports.* The term "appraisal report" does not cover all documents relating to the value of the applicant's property. Examples of reports not covered are:

i. Internal documents, if a third-party appraisal report was used to establish the value of the property.

ii. Governmental agency statements of appraised value.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

Section 202.6—Rules Concerning Evaluation of Applications

6(a) *General rule concerning use of information.*

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 202.5 from obtaining.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e ►*et seq.*◄ [*et seq.*]), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94–589, pp. 4–5; and in the House Report that accompanied H.R. 6516, No. 94–210, p. 5. The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have incomes in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and non-minority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) *Specific rules concerning use of information.*

Paragraph 6(b)(1)

[1. *Prohibited basis—marital status.* A creditor may not use marital status as a basis for determining the applicant's creditworthiness. However, a creditor may consider an applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral. Except to the extent necessary to determine rights and remedies for a specific credit transaction, a creditor that offers joint credit may not take the applicants' marital status into account in credit evaluations. Because it is unlawful for creditors to take marital status into account, creditors are barred from applying different standards in evaluating married and unmarried applicants. In making credit decisions, creditors may not treat joint applicants differently based on the existence, the absence, or the likelihood of a marital relationship between the parties.

2.] ►1.◄ *Prohibited basis—special purpose credit.* In a special purpose credit

program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See § 202.8.)

Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of § 202.8.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is "demonstrably and statistically sound," as defined in § 202.2(p), with one limitation: applicants ►age◄ 62 years or older must be treated at least as favorably as applicants who are under ►age◄ 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* A creditor may segment the population into scorecards based on the age of an applicant. In such a system, one card covers a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card covers all other applicants who are evaluated under the attributes predictive for that broad class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system does not score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in § 202.2(t), a creditor may not ►decide whether or not to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other "pertinent elements of creditworthiness" that are drawn from the particular facts and circumstances concerning the applicant.◄ [take age directly into account in any aspect of the credit transaction.] For example, [the] ►a◄ creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. [For example:] ►As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:◄

[•]►i.◄ A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

[•]►ii.◄ A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. (An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.)

[•]►iii.◄ A creditor may consider the applicant's age to assess the significance of the length of the applicant's employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

[As the examples above illustrate, the evaluation must be made in an individualized, case-by-case manner; and it is impermissible for a creditor, in deciding whether to extend credit or in setting the terms and conditions, to base its decision on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other "pertinent elements of creditworthiness" that are drawn from the particular facts and circumstances concerning the applicant.]

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home►,◄ or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under § 202.6(b)(2)(iv). In addition, under § 202.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

5. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as "empirically derived" under § 202.2(p) may consider other factors (such as ►a◄ credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as "demonstrably and statistically sound." While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a "pertinent element of creditworthiness." (See comment 6(b)(2)–3.)

6. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

[•]►i.◄ The length of time an applicant will likely remain eligible to receive such income.

[•]►ii.◄ Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (such as [Aid to Families with Dependent Children] ►Temporary Aid to Needy Families◄ or Social Security payments to a minor).

[•]►iii.◄ Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5)

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance, retirement benefits, or public assistance [(all referred to as "protected income")] on an individual basis, not on the basis of aggregate statistics, and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. *Consideration of income.* ►i.◄ A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

[•]►A.◄ A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income.

[•]►B.◄ A creditor may evaluate each component of the applicant's income, and then score or take into account reliable income separately from income that is not reliable, or the creditor may disregard that portion of income that is not reliable before aggregating it with reliable income.

[•]►C.◄ A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

►ii.◄ In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an individual applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a

primary source. [However, the] ►The◄ creditor ►, however,◄ may not score or otherwise take into account the number of sources for [protected] income[—for example,] ►such as◄ retirement income, Social Security, ►Supplemental Security Income, and◄ alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from ►, for example,◄ a part-time job.

Paragraph 6(b)(6)

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. However, on the applicant's request, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7)

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* Under the regulation ►, ◄ a denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

►Paragraph 6(b)(8)

1. *Prohibited basis—marital status.* A creditor may consider an applicant's or joint applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.◄

Section 202.7—Rules Concerning Extensions of Credit

7(a) *Individual accounts.*

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. However, the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a nonspouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) *Designation of name.*

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit card(s) issued on the account. But the creditor may not require that the name be the husband's name. (See § 202.10 for ►rules◄ [rule] governing the furnishing of credit history on accounts held by spouses.)

7(c) *Action concerning existing open-end accounts.*

Paragraph 7(c)(1)

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

[•] ►i.◄ Repudiate responsibility for future charges on the joint account.

[•] ►ii.◄ Request separate accounts in their own names.

[•] ►iii.◄ Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement, reaching a particular age, or change in name or marital status—to trigger such a request.

Paragraph 7(c)(2)

1. *Procedure pending reapplication.* A creditor may require a reapplication from a contractually liable party, even when there is no evidence of unwillingness or inability to repay, if [(1)] the credit was based on the qualifications of a person who is no longer available to support the credit and [(2)] the creditor has information indicating that the account holder's income by itself may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) *Signature of spouse or other person.*

1. *Qualified applicant.* The signature rules ►ensure◄ [assure] that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant applies for individual credit but does not alone meet a creditor's standards, the creditor may require a cosigner, guarantor or the like—but cannot require that it be the spouse. (See commentary to § 202.7(d)(5) and (6).)

Paragraph 7(d)(1)

►1. *Signature of another person.* It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner—even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis.◄

[1.] ►2.◄ *Joint applicant.* The term *joint applicant* refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

►3. *Evidence of joint application.* A creditor must document in some manner a person's intent to become jointly liable for a credit extension. For example, the creditor may provide a check box on an application or on a financial statement for indicating whether two individuals intend to apply for joint credit; or a place for a signature or initials for affirming their intent to apply for joint credit. The method provided must be distinct from the means used by an individual to affirm the accuracy of information submitted on a financial statement, for example.◄

Paragraph 7(d)(2)

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the form of ownership prior to or at consummation, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property may be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the nonapplicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to provide additional support for the extension of credit. For example:

A. Requesting an additional party (see § 202.7(d)(5));

B. Offering to grant the applicant's request on a secured basis (see § 202.7(d)(4)); or

C. Asking for the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (e.g., a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3)

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4)

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require them to do so.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to ensure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be required to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5)

1. *Qualifications of additional parties.* In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

2. *Reliance on income of another person—individual credit.* An applicant who requests individual credit relying on the income of another person (including a spouse in a non-community property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See § 202.6(c) on consideration of state property laws.)

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not, release the additional party.

Paragraph 7(d)(6)

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only from the married officers of a business or married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in § 202.7(d) bar a creditor from requiring a signature of a *guarantor's spouse* just as they bar the creditor from requiring the signature of an *applicant's spouse.* For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of a spouse in appropriate circumstances in accordance with § 202.7(d)(2).

7(e) *Insurance.*

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used, however, for determining eligibility and premium rates for insurance, and not in making the credit decision.

Section 202.8—Special Purpose Credit Programs

8(a) *Standards for programs.*

1. *Determining qualified programs.* The Board does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an "economically disadvantaged class of persons." The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under § 202.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with federal and state law.

3. *Expressly authorized.* Credit programs authorized by federal or state law include programs offered pursuant to federal, state, or local statute, regulation or ordinance, or by judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

5. *Determining need.* In designing a special purpose program under § 202.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies. For example, ►a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or,◄ a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special-purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

8(b) *Rules* [is] ►in◄ *other sections.*

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action [taker] ►taken◄ as required by § 202.9.

8(c) *Special rule concerning requests and use of information.*

1. *Request of prohibited* ►basis◄ *information.* This section permits a creditor to request and consider [certain] information ►such as race or national origin◄ [that would otherwise be prohibited by §§ 202.5

and 202.6] to determine an applicant's eligibility for a particular program.

2. *Examples.* Examples of programs under which the creditor can ask for and consider [information related to] ►a◄ prohibited basis are:

[•] ►i.◄ Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.

[•] ►ii.◄ Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

8(d) *Special rule in the case of financial need.*

1. *Request of prohibited* ►basis◄ information. This section permits a creditor to request and consider [certain] information ►such as race or national origin◄ [that would otherwise be prohibited by §§ 202.5 and 202.6], and to require signatures that would otherwise be prohibited by § 202.7(d).

2. *Examples.* Examples of programs in which financial need is a criterion are:

[•] ►i.◄ Subsidized housing programs for low- to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.

[•] ►ii.◄ Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See § 202.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 202.9—Notifications

1. *Use of the term adverse action.* The regulation does not require that a creditor use the term *adverse* ►*action*◄ in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by § 202.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under § 202.9. (The creditor must, however, comply with the record retention requirements of the regulation. See § 202.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under § 202.9 may appear on either or both sides of a form or letter.

5. *Prequalification* ►requests◄ [and preapproval programs]. Whether a creditor must provide a notice of action taken for a prequalification [or preapproval] request depends on the creditor's response to the request, as discussed in [the commentary to section 202.2(f)] ►comment 2(f)–3◄. For instance, a creditor may treat the request as an inquiry if the creditor [provides general information such as loan terms and] ►evaluates specific information about the consumer and tells the consumer◄ the maximum amount [a consumer] ►she◄ could borrow under various loan programs, explaining the process [the consumer] ►she◄ must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of § 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if in reviewing ►the◄ [a] request for prequalification, ►the◄ [a] creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in ►her◄ [the consumer's] record, the creditor has denied an application for credit.

9(a) *Notification of action taken, ECOA notice, and statement of specific reasons.*

Paragraph 9(a)(1)

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment [2(f)–5] ►2(f)–6◄.)

2. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

3. *Incomplete application—denial for incompleteness.* When an application is incomplete regarding matters that the applicant can complete and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under § 202.9(c).

4. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application and notify the applicant under this section as appropriate. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance the incompleteness of the application cannot be given as the reason for the denial.

5. *Length of counteroffer.* Section 202.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

6. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 202.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C–4 of Appendix C to the regulation.

7. *Denial of a telephone application.* When an application is conveyed by means of telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

Paragraph 9(a)(3)

1. *Coverage.* In determining the rules in this paragraph that apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in § 202.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules in the paragraph govern the application. However, if an applicant applies for business purpose credit as an individual, the rules in paragraph 9(a)(3)(i) apply unless the application is for trade or similar credit.

2. *Trade credit.* The term *trade credit* generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

3. *Factoring.* Factoring refers to a purchase of accounts receivable, and thus is not subject to the act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in § 202.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.

4. *Manner of compliance.* In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with § 202.9(a)(3)(i).

5. *Timing of notification.* A creditor subject to § 202.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of § 202.9(a)(1) is deemed reasonable in all instances.

9(b) *Form of ECOA notice and statement* ►of◄ *specific reasons.*

Paragraph 9(b)(1)

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is "substantially similar" to the notice contained in § 202.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2)

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other

adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under §§ 202.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say "length of residence" rather than "too short a period of residence."

4. *Credit scoring system.* If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, "age of automobile") even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. *Judgmental system.* If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

7. *Combined credit scoring and judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. ►If the application is not approved or denied as a result of the credit scoring, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(b)(2)–1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.◄

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act ►(FCRA)◄ requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or from its own files. Disclosing that a credit report was obtained and used to deny the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's ►delinquent◄ [delinguent] credit obligations. To satisfy the FCRA requirement, the [credit] ►creditor◄ must also disclose that a credit report was obtained and used to deny credit. Sample forms C–1 through C–5 of Appendix C of the regulation provide for the two disclosures.

9(c) *Incomplete applications.*

Paragraph 9(c)(2)

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3)

1. *Oral inquiries for additional information.* If the applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in §§ 202.9(c)(1) and (c)(2). If the applicant does provide the information, the creditor shall take action on the application and notify the applicant in accordance with § 202.9(a).

9(g) *Applications submitted through a third party.*

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted[.]►, or by a noncreditor third party.◄ [Alternatively, the third party may be a noncreditor.] ►If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.◄

2. *Third-party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

Section 202.10—Furnishing of Credit Information

1. *Scope.* The requirements of § 202.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of § 202.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by § 202.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name.

10(a) *Designation of accounts.*

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor should change the designation on the account to reflect the new parties and should furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse upon the account and does not require a creditor to change the name in which the account is maintained.

Section 202.11►—◄Relation to State Law

11(a) *Inconsistent state laws.*

1. *Preemption determination—New York.* Effective November 11, 1988, the Board has determined that the following provisions in the state law of New York are preempted by the federal law:

[•] ►i.◄ Article 15, section 296a(1)(b)—Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

[•] ►ii.◄ Article 15, section 296a(1)(c)—Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

2. *Preemption determination—Ohio.* Effective July 23, 1990, the Board has determined that the following provision in the state law of Ohio is preempted by the federal law:

[•] ►i.◄ Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

Section 202.12—Record Retention

12(a) *Retention of prohibited information.*

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in § 202.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by § 202.6.

12(b) *Preservation of records.*

1. *Copies.* A copy of the original record includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a written copy of a document (for example, an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 202.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 202.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3)

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9–2.) In such cases, the 25-month requirement runs from the date of application, as when:

[•] ►i.◄ An application is withdrawn by the applicant.

[•] ►ii.◄ An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

12(b)(6) *Self-tests*

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

►12(b)(7) *Preapplication marketing information.*

1. *Preapproved credit solicitations.* The rule requires creditors to retain copies of preapproved credit solicitations. For purposes of this regulation, a preapproved credit solicitation is an "offer of credit" as described in 15 U.S.C. 1681a(l) of the Fair Credit Reporting Act. A creditor complies with this rule if it retains a copy of each solicitation mailing that contains different terms, such as the amount of credit offered, annual percentage rate, annual fee, etc.

2. *List of criteria.* A creditor must retain the list of criteria used to select potential recipients. This includes the criteria used by the creditor both to determine the potential recipients of the particular solicitation, as identified by the consumer reporting agency, and to determine who will actually be offered credit.

3. *Marketing plan.* The marketing plan to which the solicitation relates refers to any written plan, including any response model, that describes the creditor's goals pertaining to the particular solicitation. Thus, if a creditor sends preapproved credit solicitations to women business owners as part of its goal to increase lending to those persons, the creditor complies with [this rule] ►§ 202.12(b)(7)◄ by retaining that part of the plan designed to accomplish this goal.◄

Section 202.13—Information for Monitoring ►Purposes◄ [purposes]

13(a) *Information to be requested.*

1. *Natural person.* Section 202.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of § 202.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two- to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 202.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to § 202.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of § 202.13.

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to ►the◄ information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

[7. *Data collection under Regulation C.* See comment 5(b)(2)–2.]

13(b) *Obtaining of information.*

1. *Forms for collecting data.* A creditor may collect the information specified in § 202.13(a) either on an application form or on a separate form referring to the application.

2. *Written applications.* The regulation requires written applications for the types of credit covered by § 202.13. A creditor can satisfy this requirement by recording in writing or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.* ►i.◄ If an applicant does not apply in person for the credit requested, a creditor does not have to complete the monitoring information. For example:

[•] ►A.◄ When a creditor accepts an application by telephone, it does not have to request the monitoring information.

[•] ►B.◄ When a creditor accepts an application by mail, it does not have to make a special request to the applicant if the applicant fails to complete the monitoring information on the application form sent to the creditor.

►ii.◄ If it is not evident on the face of the application that it was received by mail or telephone, the creditor should indicate on the form or other application record how the application was received.

4. *Applications through electronic media.* If an applicant applies through an electronic medium (for example, the Internet or a facsimile) without video capability that allows the creditor to see the applicant, the creditor [may treat] ►treats◄ the application as if it were received by mail [or telephone].

5. *Applications through video.* If a creditor takes an application through a medium that allows the creditor to see the applicant, the creditor treats the application as taken in person and must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

6. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C ►(12 CFR part 203)◄ which generally requires creditors to report, among other things, the sex and race or national origin of an applicant on brokered applications or applications received through a correspondent.

[7. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by § 202.13, the creditor may process and retain the application without violating the regulation.]

13(c) *Disclosure to applicant(s).*

1. *Procedures for providing disclosures.* The disclosures to an applicant regarding the monitoring information may be provided in writing. Appendix B contains a sample disclosure. A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the applicant to provide the monitoring information if it is requested in writing.

13(d) *Substitute monitoring program.*

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to that required by this section.

Section 202.14—Enforcement, ►Penalties, and Liabilities◄ [penalties, and liabilities]

14(c) *Failure of compliance.*

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§ 202.12 and 202.13, this section requires that they be corrected prospectively only.

Section 202.15—Incentives for Self-testing and Self-correction

[*15(a) General Rules*] ►15(a) General rules◄

[*15(a)(1) Voluntary Self-Testing and Correction*] ►15(a)(1) *Voluntary self-testing and correction*◄

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for federal, state, and local governments.

[*15(a)(2) Corrective Action Required*] ►*15(a)(2) Corrective action required*◄

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this regulation. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an *in camera* inspection of the privileged documents.

[*15(a)(3) Other privileges*] ►15(a)(3) *Other privileges*◄

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work►-◄product privilege. Self-testing data may still be privileged under this section, whether or not the creditor's assertion of another privilege is upheld.

[*15(b) Self-test Defined*] ►15(b) *Self-test defined*◄

[*15(b)(1) Definition*] ►15(b)(1) *Definition*◄

[*Paragraph 15(b)(1)(i)*] ►Paragraph 15(b)(1)(i)◄

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the Act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

[*Paragraph 15(b)(1)(ii)*] ►Paragraph 15(b)(1)(ii)◄

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

[*15(b)(3) Types of Information Not Privileged*] ►15(b)(3) *Types of information not privileged*◄

[*Paragraph 15(b)(3)(i)*] ►Paragraph 15(b)(3)(i)◄

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether pre-application testers were used or data were compiled by surveying loan applicants. Information about the scope of the self-test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

[*Paragraph 15(b)(3)(ii)*] ►Paragraph 15(b)(3)(ii)◄

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

►2. Information noted by a creditor in the credit application process about an applicant's age, race, color, religion, national origin, or sex is not privileged.◄

[*15(c) Appropriate Corrective Action*] ►*15(c) Appropriate corrective action*◄

1. The rule only addresses what corrective actions are required for a creditor to take advantage of the privilege in this section. A creditor may still be required to take other actions or provide additional relief if a formal finding of discrimination is made.

[*15(c)(1) General Requirement*α ►15(c)(1) *General requirement*◄

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

[*15(c)(2) Determining the Scope of Appropriate Corrective Action*] ►15(c)(2) *Determining the scope of appropriate corrective action*◄

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are the likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

[*15(c)(3) Types of Relief*] ►15(c)(3) *Types of relief*◄

[*Paragraph 15(c)(3)(ii)*] ►Paragraph 15(c)(3)(ii)◄

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant that was subject to discrimination on a prohibited basis, in order to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor would not be required under this paragraph to identify other applicants who might also have been adversely affected.

[*Paragraph 15(c)(3)(iii)*] ►Paragraph 15(c)(3)(iii)◄

1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible from obtaining certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

[*15(d)(1) Scope of Privilege*] ►15(d)(1) *Scope of privilege*◄

1. The privilege applies with respect to any examination, investigation or proceeding by federal, state, or local government agencies relating to compliance with the Act or this regulation. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases, for example, litigation filed solely under a state's fair lending statute. In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); creditors may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntary disclosure under paragraph 15(d)(2).

[*15(d)(2) Loss of Privilege*] ►15(d)(2) *Loss of privilege*◄

[*Paragraph 15(d)(2)(i)*] ►Paragraph 15(d)(2)(i)◄

1. Corrective action taken by a creditor, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. Disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

[*Paragraph 15(d)(2)(ii)*] ►Paragraph 15(d)(2)(ii)◄

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

[*Paragraph 15(d)(2)(iii)*] ►Paragraph 15(d)(2)(iii)◄

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

[*Paragraph 15(d)(3) Limited use of Privileged Information*] ►Paragraph 15(d)(3) *Limited use of privileged information*◄

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with this requirement does not evidence the creditor's intent to forfeit the privilege.

Appendix B—Model Application Forms

1. *FHLMC/FNMA form—residential loan application.* The uniform residential loan application form (FHLMC 65/FNMA 1003), including supplemental form (FHLMC 65A/FNMA 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated [May 1991] ►October 1992◄ may be used by creditors without violating this regulation even though the form's listing of race or national origin categories in the "Information for Government Monitoring Purpose" section differs from the classifications currently specified in § 202.13(a)(1). The classifications used on the FNMA–FHLMC form are those required by the U.S. Office of Management and Budget for notation of race and ethnicity by federal programs in their administrative reporting and statistical activities. [Creditors that are governed by the monitoring requirements of Regulation B (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to ensure that they do not collect

the information.] Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with the substitute program or HMDA.

2. *FHLMC/FNMA form—home-improvement loan application.* The home-improvement and energy loan application form (FHLMC 703/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form's section "Information for Government Monitoring Purposes." [Creditors that are governed by § 202.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to assure that they do not collect the information.] Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) may use the form as issued, in compliance with that substitute program.

Appendix C—Sample Notification Forms

►1:◄ *Form C–9.* Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

By order of the Board of Governors of the Federal Reserve System, August 5, 1999.

Jeannifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–20598 Filed 8–13–99; 8:45 am]

BILLING CODE 6210–01–P

VOL
64
ISS
1
5
7
AG
16
999
UMI

federal register

Monday
August 16, 1999

Part III

Department of Agriculture

Agricultural Research Service

7 CFR Part 505
National Agricultural Library Fees for Loans and Copying; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 505

National Agricultural Library Fees for Loans and Copying

AGENCY: Agricultural Research Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) seeks comments on a proposed rule establishing a fee schedule for loans of materials, and establishing a fee schedule for copying of materials in the collections of the National Agricultural Library. Establishing a flat fee allows the customer to estimate their costs more effectively and allows the library to eliminate the cost of multiple steps currently necessary in determining pro-rated fees.

DATES: Comments must be submitted on or before September 15, 1999.

ADDRESSES: Address all comments to Eileen McVey, Access Services Librarian, Document Delivery Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville MD 20705–2351. Telephone: 301–504–6503. Email: userfees@nal.usda.gov

FOR FURTHER INFORMATION CONTACT: Carol Ditzler, Head Document Delivery Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville MD 20705–2351.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12866, and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlement, grants or user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Department of Agriculture certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and record keeping requirements that will be imposed in implementation of this proposed rule have been submitted to OMB for approval. Those requirements would not become effective prior to OMB approval.

Title: Collection of information regarding requests for loans or copies of materials in the collections of the NAL.

Summary: The purpose of this collection of information is to collect, either orally or by use of a form, contact information from persons who request loans, or copies, of materials in the collections of the NAL for which a fee will be charged. Information to be collected will include the name, address, telephone number, and signature of the representative of the party requesting the loan and/or copies of NAL material.

Need for the Information: The information is needed for NAL to deliver loans and/or copies from NAL collection materials and to keep records of parties to whom fees are chargeable and who are accountable for the custody of loaned NAL property.

Respondents: Respondents to the collection of information will be those libraries or other institutions or organizations that request interlibrary loans or copies of material in the NAL collections. Each respondent will have to furnish the information for each loan or copying request. The NAL expects to receive approximately 6,000 domestic and Canadian non-USDA requests for loans and approximately 22,000 domestic and Canadian non-USDA requests for copies of NAL materials per year.

Estimate of burden: The estimated burden on respondents for each loan or copying request is >.08 hours. The total annual reporting and record keeping burden on respondents will be de minimis.

Comments: Comments on this proposed collection of information may be submitted to Eileen McVey at the address listed above within 60 days after date of publication or to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Office for USDA. Reference should be made to the volume, page, and date of this **Federal Register** publication.

Background

Section 1410A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3125a), as added by section 1606(a) of Pub. L. 101–624, expanded existing statutory authorities for the NAL. In particular, section 1410A(e) authorized the NAL Director to make copies of NAL bibliographies, to make microforms and other reproductions of books and other library materials in USDA, to provide any other library and information products and services, and to sell those products and services at such price (not less than the total costs of disseminating the products and services) as the Secretary of Agriculture deems appropriate. Receipts from such sales must be deposited to the credit of appropriations available to the NAL and remain available until expended.

Currently, USDA regulations (7 CFR part 1, Appendix A) supply a fee schedule for copying of NAL materials requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552. NAL proposes in this regulation to adopt a fee schedule for copying of NAL materials pursuant to interlibrary loan or other research requests, and to cover the costs of interlibrary loans of materials from NAL collections.

Fee Schedule for Loans of Materials From the NAL Collection

The NAL proposes to charge fees for interlibrary loans of original materials from the NAL collection to other non-Federal and non-USDA libraries and institutions in the United States and Canada. By original materials, it is meant that NAL will provide loans of original works, and not copies, except in rare instances where works are too fragile or valuable for shipment. Libraries are encouraged to obtain materials locally and to view the NAL as a library of last resort. Loans directly to individuals are not permitted.

A flat fee of $15.00 per loaned item will be charged. Fees generated will be used to recover actual processing costs and to offset general wear and tear on the collection when items are loaned. The $15.00 amount is based on a study of current library costs and market comparisons. There will be no charge for renewals.

Costs for replacement of lost or damaged materials will be the actual cost to purchase a replacement or a flat

fee if the exact cost cannot be determined. A processing cost will be added to all lost or damaged materials.

Fee Schedule for Paper Copying, Duplication, and Reproduction Services From the NAL Collection

The NAL proposes to adopt a fee schedule, separate from the fee schedule applicable to FOIA requests under 7 CFR part 1, Appendix A, for paper copying, duplication, and reproduction services provided to non-USDA and non-federal libraries and institutions in the United States. These services will be provided only in response to an interlibrary loan request from a library. Use of the interlibrary loan system ensures that NAL receives the request in an appropriate form and format for response. In some exceptions, services will be provided for requests from individuals who have not been able to obtain materials through their local resources or who have made special arrangements with the Special Collections section using their forms.

Copying of articles is subject to a maximum limitation of 50 pages per article for purposes of copyright compliance. This limitation is based on the CONTU Guidelines (National Commission on New Technological Uses of Copyright Works) and the Agency's interpretation of the applicable provisions of 17 U.S.C. chapter 1.

The NAL proposes to charge in its schedule of fees for photocopying of paper materials and paper copying of microfiche or microfilm. NAL is switching from a per page-based charge to a per item flat fee because, historically, the average request is between 10 and 20 pages. Establishing a flat fee allows the customer to estimate their costs more effectively and allows the library to eliminate the cost of multiple steps currently necessary in determining pro-rated fees. Fees established are based on actual costs (staffing, contract costs, supplies, copier maintenance, normal wear and tear on the collection, delivery costs, etc.) as well as based on a review of comparable fees across the nation charged by other research and academic libraries. All fees will apply to non-USDA and non-federal library requests that meet standard interlibrary loan format requirements and apply to copying of materials from the NAL collections only.

NAL also proposes a flat rate for the costs of duplication of NAL owned microfiche and microfilm. Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product, plus a flat rate for preparation costs.

Payment Submission Requirements

The National Technical Information Service (NTIS) within the United States Department of Commerce provides a number of services to Federal Agencies, one of which is billing and collection services. NAL currently uses and proposes to use NTIS as the preferred method for invoicing and payment of fees under this fee schedule. Use of NTIS by NAL is preferred because it is the only agency providing this service to Federal offices. NAL encourages institutional users to establish deposit accounts with NTIS. Payment for services will be made by check , money order or credit card in U.S. funds directly to the NTIS upon receipt of invoice from NTIS.

Subject to service charges for the actual costs of performing the invoicing service, funds received by NTIS will be returned to NAL to the credit of the appropriation account charged with the costs of providing the loan or copying service.

List of Subjects in 7 CFR Part 505

Agriculture, Agricultural research, Libraries, Research, User fees.

For the reasons set out in the preamble, chapter V of Title 7 of the Code of Federal Regulations is amended as set forth below:

Part 505 is added to read as follows:

PART 505—NATIONAL AGRICULTURAL LIBRARY FEES FOR LOANS AND COPYING

Sec.

505.1 Scope and purpose.
505.2 Fees for loans of materials in library collections.
505.3 Fees for copying, duplicating, and reproduction of materials in library collections.
505.4 [Reserved].
505.5 [Reserved].
505.6 [Payment of fees].

Authority: 5 U.S.C. 301; 7 U.S.C. 3125a.

§ 505.1 Scope and purpose.

These regulations establish fees for loans, paper copying, duplication, or reproduction of materials in the collections of the National Agricultural Library (NAL) within the United States Department of Agriculture (USDA).

§ 505.2 Fees for loans of materials in library collections.

(a) NAL will make loans of original materials from its collections, and charge fees for such loans, to other non-Federal and non-USDA libraries and institutions in the United States and Canada only. Loans will not be made directly to individuals.

(b) Loans will be made at a flat fee of $15.00 per loaned item.

(c) Cost for replacement of lost or damaged items will be the actual cost to purchase a replacement plus a $50.00 processing fee; or if the cost cannot be determined, a flat rate of $75.00 for monographs or $150.00 for audiovisuals per item, plus a $50.00 processing fee.

(d) All services in this section will incur a billing surcharge per invoice generated in addition to the above fees which may change as vendor's charges change. This fee, currently $10.00, is billed as a direct cost recovery based on charges to the library by the billing vendor. Interlibrary loan requests submitted by participants in the ILL Fee Management (IFM) program under the Online Computer Library Center, Inc. (OCLC) will not incur the billing surcharge as their activities will not generate an invoice.

§ 505.3 Fees for paper copying, duplicating, and reproduction of materials in library collections.

(a) Photocopy reproduction of paper copy will be set as a flat fee of $13.00 for domestic requests and $16.00 for international requests for each document requested with a maximum of 50 pages per article for copyright compliance. Materials delivered to international addresses via the Internet will be charged at the domestic rate. Photocopy reproduction of paper copy that requires special handling due to size or condition will incur special handling fees to recover costs at $20.00 per half hour or fraction thereof.

(b) Paper copies of microfilm or microfiche will be produced at a flat fee of $13.00 for requests delivered domestically and $16.00 for requests requiring delivery to a international address. This charge is for each document requested with a maximum of 50 pages per article for copyright compliance.

(c) Duplication of NAL owned microfiche will be charged a flat fee of $13.00 per each 5 microfiche duplicated or fraction thereof. Duplication of NAL owned microfilm will be charged a flat fee of $20.00 for each reel produced.

(d) Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product (slides, transparencies, etc.) plus a preparation fee of $25.00 per half hour or fraction thereof.

(e) All services in this section will incur a billing surcharge, currently $10.00, per invoice generated in addition to the above fees. This fee is a direct cost recovery based on charges to

the library by the billing vendor and is subject to change. Interlibrary loan requests submitted by participants in the IFM program on OCLC will not incur the billing surcharge as their activities will not generate an invoice.

§ 505.4–505.5 Reserved.

§ 505.6 Payment of fees.

Charges which include billing and handling are invoiced quarterly by the National Technical Information Service (NTIS) of the United States Department of Commerce. The NAL encourages users to establish deposit accounts with NTIS. Payment for services will made by check, money order or credit card in U.S. funds directly to the NTIS upon receipt of invoice from NTIS. Subject to a reduction for the actual costs of performing the invoicing service by NTIS, all funds received will be returned to NAL for credit to the appropriations account charged with the cost of processing the loan or copying request.

Done at Washington, DC, this 10th day of August, 1999.

Dr. Edward B. Knipling,

Associate Administrator, Agricultural Research Service.

[FR Doc. 99–21139 Filed 8–13–99; 8:45 am]

BILLING CODE 3410–03–P

Federal Register

Monday
August 16, 1999

Part IV

The President

Executive Order 13134—Developing and Promoting Biobased Products and Bioenergy

VOL
64
ISS
1
5
7
AG
16
999
UMI

Title
The

Federal Register
Vol. 64, No. 157
Monday, August 16, 1999

Presidential Documents

Title 3—

The President

Executive Order 13134 of August 12, 1999

Developing and Promoting Biobased Products and Bioenergy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to stimulate the creation and early adoption of technologies needed to make biobased products and bioenergy cost-competitive in large national and international markets, it is hereby ordered as follows:

Section 1. *Policy.* Current biobased product and bioenergy technology has the potential to make renewable farm and forestry resources major sources of affordable electricity, fuel, chemicals, pharmaceuticals, and other materials. Technical advances in these areas can create an expanding array of exciting new business and employment opportunities for farmers, foresters, ranchers, and other businesses in rural America. These technologies can create new markets for farm and forest waste products, new economic opportunities for underused land, and new value-added business opportunities. They also have the potential to reduce our Nation's dependence on foreign oil, improve air quality, water quality, and flood control, decrease erosion, and help minimize net production of greenhouse gases. It is the policy of this Administration, therefore, to develop a comprehensive national strategy, including research, development, and private sector incentives, to stimulate the creation and early adoption of technologies needed to make biobased products and bioenergy cost-competitive in large national and international markets.

Sec. 2. *Establishment of the Interagency Council on Biobased Products and Bioenergy.* (a) There is established the Interagency Council on Biobased Products and Bioenergy (the "Council"). The Council shall be composed of the Secretaries of Agriculture, Commerce, Energy, and the Interior, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Assistant to the President for Science and Technology, the Director of the National Science Foundation, the Federal Environmental Executive, and the heads of other relevant agencies as may be determined by the Co-Chairs of the Council. Members may serve on the Council through designees. Designees shall be senior officials who report directly to the agency head (Assistant Secretary or equivalent).

(b) The Secretary of Agriculture and the Secretary of Energy shall serve as Co-Chairs of the Council.

(c) The Council shall prepare annually a strategic plan for the President outlining overall national goals in the development and use of biobased products and bioenergy in an environmentally sound manner and how these goals can best be achieved through Federal programs and integrated planning. The goals shall include promoting national economic growth with specific attention to rural economic interests, energy security, and environmental sustainability and protection. These strategic plans shall be compatible with the national goal of producing safe and affordable supplies of food, feed, and fiber in a way that is sustainable and protects the environment, and shall include measurable objectives. Specifically, these strategic plans shall cover the following areas:

(1) biobased products, including commercial and industrial chemicals, pharmaceuticals, products with large carbon sequestering capacity, and other materials; and

(2) biomass used in the production of energy (electricity; liquid, solid, and gaseous fuels; and heat).

(d) To ensure that the United States takes full advantage of the potential economic and environmental benefits of bioenergy, these strategic plans shall be based on analyses of: (1) the economic impacts of expanded biomass production and use; and (2) the impacts on national environmental objectives, including reducing greenhouse gas emissions. Specifically, these plans shall include:

(1) a description of priorities for research, development, demonstration, and other investments in biobased products and bioenergy;

(2) a coordinated Federal program of research, building on the research budgets of each participating agency; and

(3) proposals for using existing agency authorities to encourage the adoption and use of biobased products and bioenergy and recommended legislation for modifying these authorities or creating new authorities if needed.

(e) The first annual strategic plan shall be submitted to the President within 8 months from the date of this order.

(f) The Council shall coordinate its activities with actions called for in all relevant Executive orders and shall not be in conflict with proposals advocated by other Executive orders.

Sec. 3. *Establishment of Advisory Committee on Biobased Products and Bioenergy.* (a) The Secretary of Energy shall establish an "Advisory Committee on Biobased Products and Bioenergy" ("Committee"), under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), to provide information and advice for consideration by the Council. The Secretary of Energy shall, in consultation with other members of the Council, appoint up to 20 members of the advisory committee representing stakeholders including representatives from the farm, forestry, chemical manufacturing and other businesses, energy companies, electric utilities, environmental organizations, conservation organizations, the university research community, and other critical sectors. The Secretary of Energy shall designate Co-Chairs from among the members of the Committee.

(b) Among other things, the Committee shall provide the Council with an independent assessment of:

(1) the goals established by the Federal agencies for developing and promoting biobased products and bioenergy;

(2) the balance of proposed research and development activities;

(3) the effectiveness of programs designed to encourage adoption and use of biobased products and bioenergy; and

(4) the environmental and economic consequences of biobased products and bioenergy use.

Sec. 4. *Administration of the Advisory Committee.* (a) To the extent permitted by law and subject to the availability of appropriations, the Department of Energy shall serve as the secretariat for, and provide the financial and administrative support to, the Committee.

(b) The heads of agencies shall, to the extent permitted by law, provide to the Committee such information as it may reasonably require for the purpose of carrying out its functions.

(c) The Committee Co-Chairs may, from time to time, invite experts to submit information to the Committee and may form subcommittees or working groups within the Committee to review specific issues.

Sec. 5. *Duties of the Departments of Agriculture and Energy.* The Secretaries of the Departments of Agriculture and Energy, to the extent permitted by law and subject to the availability of appropriations, shall each establish a working group on biobased products and biobased activities in their respective Departments. Consistent with the Federal biobased products and bio-

energy strategic plans described in sections 2(c) and (d) of this order, the working groups shall:

(1) provide strategic planning and policy advice on the Department's research, development, and commercialization of biobased products and bioenergy; and

(2) identify research activities and demonstration projects to address new opportunities in the areas of biomass production, biobased product and bioenergy production, and related fundamental research.

The chair of each Department's working group shall be a senior official who reports directly to the agency head. If the Secretary of Agriculture or Energy serves on the Interagency Council on Biobased Products and Bioenergy through a designee, the designee should be the chair of the Department's working group.

Sec. 6. *Establishment of a National Biobased Products and Bioenergy Coordination Office.* Within 120 days of this order, the Secretaries of Agriculture and Energy shall establish a joint National Biobased Products and Bioenergy Coordination Office ("Office") to ensure effective day-to-day coordination of actions designed to implement the strategic plans and guidance provided by the Council and respond to recommendations made by the Committee. All agencies represented on the Council, or that have capabilities and missions related to the work of the Council, shall be invited to participate in the operation of the Office. The Office shall:

(a) serve as an executive secretariat and support the work of the Council, as determined by the Council, including the coordination of multi-agency, integrated research, development, and demonstration ("RD&D") activities;

(b) use advanced communication and computational tools to facilitate research coordination and collaborative research by participating Federal and nonfederal research facilities and to perform activities in support of RD&D on biobased product and bioenergy development, including strategic planning, program analysis and evaluation, communications networking, information and data dissemination and technology transfer, and collaborative team building for RD&D projects; and

(c) facilitate use of new information technologies for rapid dissemination of information on biobased products and bioenergy to and among farm operators; agribusiness, chemical, forest products, energy, and other business sectors; the university community; and public interest groups that could benefit from timely and reliable information.

Sec. 7. *Definitions.* For the purposes of this order: (a) The term "biomass" means any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, wood and wood residues, animal wastes, and other waste materials.

(b) The term "biobased product," as defined in Executive Order 13101, means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

(c) The term "bioenergy" means biomass used in the production of energy (electricity; liquid, solid, and gaseous fuels; and heat).

(d) The term "old growth timber" means timber of a forest from the late successional stage of forest development. The forest contains live and dead trees of various sizes, species, composition, and age class structure. The age and structure of old growth varies significantly by forest type and from one biogeoclimatic zone to another.

Sec. 8. *Judicial Review.* This order does not create any enforceable rights against the Unites States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
August 12, 1999.

[FR Doc. 99-21392
Filed 8-13-99; 11:04 am]
Billing code 3195-01-P

Reader Aids

Federal Register

Vol. 64, No. 157

Monday, August 16, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998 2
41999–42264 3
42265–42578 4
42579–42822 5
42823–43042 6
43043–43254 9
43255–43598 10
43599–43896 11
43897–44100 12
44101–44396 13
44397–44642 16

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12924 (See Notice of Aug. 10, 1999) 44101
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895
13134 44639

Administrative Orders:
Notice of Aug. 10, 1999 44101

7 CFR

11 43043
610 41999
989 43897
1728 42005

Proposed Rules:
6 42288
354 43103
505 44634
931 42858
932 42619
981 43298
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043
390 43902

Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823

Proposed Rules:
50 44137
710 44433

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
905 44103

Proposed Rules:
202 44582
361 ..... 42861, 42862
935 44444

13 CFR

120 44109

Proposed Rules:
120 43636

14 CFR

4 43599
27 43016
29 43016
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905, 44110, 44112
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907, 44114, 44116, 44117, 44268, 44397, 44398, 44399, 44400, 44578
97 ..... 44117, 44119
254 41781
382 41781

Proposed Rules:
25 ..... 43570, 43943, 43946
39 ..... 41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446

65.....42810
66.....42810
71.....42300, 42301, 44139, 44140, 44141, 44142, 44144
93.....44145
107.....43321
108.....43322
147.....42810

15 CFR

734.....42009
738.....42009
740.....42009
742.....42009
902.....42826

16 CFR

2.....43599
5.....42594

Proposed Rules:

1212.....42302

17 CFR

9.....43254
10.....43071
12.....43071
200.....42594
240.....42031, 42594
249.....42594

Proposed Rules:

4.....41843
275.....43556

18 CFR

3.....44400
341.....44400
342.....44400
346.....44400
357.....44400
362.....44400
385.....44400

Proposed Rules:

101.....42304
343.....43600
357.....42623
385.....42307, 43600

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
151.....43608
162.....43262
173.....43262
174.....43262, 43608
178.....43608
181.....43262

Proposed Rules:

12.....41851
113.....41851, 42872
141.....41851

20 CFR

Proposed Rules:

404.....42310
416.....42310

21 CFR

101.....42277
172.....43072, 43908, 44121
173.....44122
178.....44406, 44407
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596, 43909
1308.....42432
1312.....42432

Proposed Rules:

101.....42315
207.....43114
314.....42625, 42873
607.....43114
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032
514.....44123

24 CFR

108.....44094
982.....43613

Proposed Rules:

990.....43641

26 CFR

1.....41783, 43072, 43267, 43613, 43910
31.....42831
301.....41783
602.....41783, 43072, 43613
801.....42834

Proposed Rules:

1.....43117, 43323, 43462, 43969
301.....43324
602.....43462

28 CFR

505.....43880

29 CFR

2570.....42246
2575.....42246
4044.....44128

Proposed Rules:

2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75.....43280, 43286
90.....43283
202.....43506
206.....43288, 43506
250.....42597
914.....43911
943.....43913

Proposed Rules:

914.....44448
935.....42887
936.....43327

31 CFR

538.....41784
550.....41784
560.....41784
590.....43924

Proposed Rules:

375.....42626

32 CFR

Proposed Rules:

230.....43856
231.....43858
231a.....43856

33 CFR

100.....42278, 42598, 43289
110.....42279
117.....42033, 42599, 44129, 44131
160.....41794
165.....43290, 43291

Proposed Rules:

100.....41853
117.....44145, 44147, 44148, 44149, 44151

34 CFR

611.....42837

Proposed Rules:

668.....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682.....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:

13.....41854
1191.....42056

37 CFR

Proposed Rules:

201.....42316

39 CFR

20.....43292

40 CFR

9.....42432, 43426, 43936
52.....42600, 43083, 44131, 44134, 44408, 44411, 44415, 44417
58.....42530
62.....43091, 44420
63.....42764
86.....43936
122.....42432, 43426
123.....42432, 43426
124.....42432, 43426
180.....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846
186.....41818
261.....42033
271.....41823, 42602
300.....44135
403.....42552
501.....42432, 43426
503.....42552
745.....42849

Proposed Rules:

52.....42629, 42886, 42891, 42892, 44152, 44450, 44451, 44452
62.....43123
97.....43124, 44452
147.....43329
261.....42317
271.....42630, 43331
281.....43336
300.....41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458
372.....42222

41 CFR

301.....43254

Proposed Rules:

51-2.....41882
51-5.....41882

42 CFR

413.....42610
498.....43295
1001.....42174

Proposed Rules:

Ch. IV.....43338

44 CFR

61.....41825
64.....42852, 44421
206.....41827

Proposed Rules:

61.....42632
62.....42633

45 CFR

801.....42039

46 CFR

10.....42812
12.....42812

Proposed Rules:

298.....44152
535.....42057

47 CFR

0.....43618
1.....42854
5.....43094
43.....43618
62.....43937
63.....43095, 43618
64.....43618, 44423
73.....41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095
76.....42617, 42855
90.....43094

Proposed Rules:

Ch. 1.....41883, 42635
1.....41884, 41887
2.....41891, 43643
15.....41897
51.....41897
68.....41897
73.....41899, 43132
76.....41887
78.....41899
95.....41891

48 CFR

202.....43096
204.....43096

212.....43098
213.....43098
217.....43098
252.....43098
253.....43098
601.....43618
602.....43618
603.....43618
604.....43618
605.....43618
606.....43618
608.....43618
609.....43618
610.....43618
611.....43618
613.....43618
614.....43618
615.....43618
616.....43618
617.....43618
619.....43618
622.....43618
623.....43618
625.....43618
626.....43618
628.....43618
629.....43618
630.....43618
631.....43618
632.....43618
633.....43618
634.....43618
636.....43618
637.....43618
639.....43618
641.....43618
642.....43618
643.....43618
644.....43618
645.....43618
646.....43618
647.....43618
649.....43618
652.....43618
653.....43618
701.....42040
702.....42040
703.....42040
705.....42040
706.....42040
709.....42040
714.....42040
716.....42040
719.....42040
726.....42040
732.....42040
733.....42040
734.....42040
749.....42040
750.....42040
752.....42040
5416.....41834

Proposed Rules:
17.....44100

49 CFR

172.....44426, 44578
173.....44426

Proposed Rules:
190.....43972
385.....44460
390.....44460
571.....42330
575.....44164

50 CFR

17.....41835
300.....44428
600.....42286
622.....43941
635.....42855, 43101
648.....42042, 42045
660.....42286, 42856
679.....41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942, 44431, 44432

Proposed Rules:
17.....41903, 42058, 42250, 43132, 44171, 44470
20.....44384
32.....43834
36.....43834
600.....42335, 43137
622.....41905, 42068
648.....42071, 43137, 43138
660.....44475
679.....42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 16, 1999

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Agricultural commodities:
Perishable Agricultural Commodities Act; rules of practice; published 7-15-99
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Cut flowers; importation; published 7-15-99
DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Brand name item descriptions use; published 6-17-99
Brooks Act application; published 6-17-99
Competition under multiple award task and delivery order contracts; published 6-17-99
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Iowa; published 6-17-99
North Dakota; published 6-16-99
Texas; published 6-17-99
Air quality implementation plans; approval and promulgation; various States:
Colorado; published 6-17-99
Florida; published 6-16-99
Louisiana; published 6-17-99
Maryland; published 6-17-99
Pennsylvania; published 6-17-99
Clean Air Act:
State operating permits programs—
North Dakota; published 6-17-99
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
South Carolina; published 7-14-99
Texas; published 7-14-99
Utah and Wyoming; published 7-14-99
Various States; published 7-19-99
FEDERAL EMERGENCY MANAGEMENT AGENCY
Nondiscrimination in federally-assisted programs; discrimination complaints filing deadline extension; published 7-16-99
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Brand name item descriptions use; published 6-17-99
Brooks Act application; published 6-17-99
Competition under multiple award task and delivery order contracts; published 6-17-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adjuvants, production aids, and sanitizers—
Chrome antimony titanium buff rutile; published 8-16-99
Food additives:
Adjuvants, production aids, and sanitizers—
Nickel antimony titanium yellow rutile; published 8-16-99
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Brand name item descriptions use; published 6-17-99
Brooks Act application; published 6-17-99
Competition under multiple award task and delivery order contracts; published 6-17-99
SOCIAL SECURITY ADMINISTRATION
Supplemental security income:
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation—
Benefits application effective date; published 6-15-99
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Pratt & Whitney; published 7-16-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (sweet) grown in—
Washington; comments due by 8-23-99; published 6-24-99
Potatoes (Irish) grown in—
California and Oregon; comments due by 8-24-99; published 6-25-99
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Recognition of animal disease status of regions in European Union; comments due by 8-24-99; published 6-25-99
Foreign quarantine notices:
Mexican Haas avocados; comments due by 8-24-99; published 6-25-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Essential fish habitats; comments due by 8-23-99; published 7-9-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 8-25-99; published 7-26-99
Western Pacific Coral Reef Ecosystem and bottomfish and seamount groundfish; comments due by 8-26-99; published 8-16-99
COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Contract market designation applications—
Commission review and approval; procedures; comments due by 8-26-99; published 7-27-99
DEFENSE DEPARTMENT
Acquisition regulations:
Cargo preference-subcontracts for commercial items; comments due by 8-23-99; published 6-22-99
Overseas use of purchase card; comments due by 8-25-99; published 7-29-99
EDUCATION DEPARTMENT
Postsecondary education:
Secretary's recognition of accrediting agencies; comments due by 8-24-99; published 6-25-99
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Outer Continental Shelf Lands Act; implementation:
Natural gas transportation through pipeline facilities on Outer Continental Shelf; comments due by 8-27-99; published 7-13-99
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-23-99; published 7-23-99
Indian; comments due by 8-25-99; published 7-26-99
Indiana; comments due by 8-25-99; published 7-26-99
Montana; comments due by 8-27-99; published 7-28-99
Clean Air Act:
Interstate ozone transport reduction—
Nitrogen oxides trading program; Section 126 petitions; findings of significant contribution and rulemaking; comments due by 8-25-99; published 8-16-99
Hazardous waste:
Project XL program; site-specific projects—
University of Massachusetts et al.; university laboratories; comments due by 8-26-99; published 7-27-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 8-25-99; published 7-26-99
Water programs:
Clean Water Act—
State and Tribal water quality standards;

review and approval; comments due by 8-23-99; published 7-9-99

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:
Maritime services—
Privately owned accounting authorities; accounts settlement; streamlining; biennial regulatory review; comments due by 8-23-99; published 7-28-99

Radio stations; table of assignments:
Arizona; comments due by 8-23-99; published 7-14-99
Arkansas; comments due by 8-23-99; published 7-14-99
Kentucky and Virginia; comments due by 8-23-99; published 7-14-99
New York; comments due by 8-23-99; published 7-14-99
North Caroline; comments due by 8-23-99; published 7-14-99
Texas; comments due by 8-23-99; published 7-14-99

Television stations; table of assignments:
New York; comments due by 8-23-99; published 7-14-99

FEDERAL MARITIME COMMISSION

Shipping Act of 1984; implementation:
Ocean common carriers; definition clarification; comments due by 8-24-99; published 6-25-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:
Admission and occupancy—
Pet ownership in public housing; comments due by 8-23-99; published 6-23-99
Public housing agency organization; required resident membership on board of directors or similar governing body; comments due by 8-23-99; published 6-23-99
Public Housing Assessment System; comments due by 8-23-99; published 6-22-99

INTERIOR DEPARTMENT
Fish and Wildlife Service

Endangered and threatened species:
Tidewater goby; northern populations; comments due by 8-23-99; published 6-24-99

Migratory bird hunting:
Federal Indian reservations, off-reservation trust lands and ceded lands; comments due by 8-23-99; published 8-13-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Kansas; comments due by 8-25-99; published 7-26-99
Mississippi; comments due by 8-25-99; published 7-26-99
Ohio; comments due by 8-23-99; published 8-6-99
Oklahoma; comments due by 8-25-99; published 8-10-99

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Credit union service organizations—
Real estate brokerage services; grandfather exemption; comments due by 8-23-99; published 6-22-99

PERSONNEL MANAGEMENT OFFICE

Retirement:
Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS)—
State income tax withholding and voluntary allotment program; expansion; comments due by 8-23-99; published 6-23-99

SMALL BUSINESS ADMINISTRATION

Business loans:
Loan loss reserve fund; comments due by 8-25-99; published 7-26-99

TRANSPORTATION DEPARTMENT
Coast Guard

Drawbridge operations:
Iowa and Illinois; comments due by 8-23-99; published 7-22-99

Ports and waterways safety:
Lower New York Bay and Raritan Bay, NY; safety zone; comments due by 8-23-99; published 7-7-99
Vessels and marine facilities; Year 2000 (Y2K) reporting requirements; comments due by 8-23-99; published 6-23-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 8-23-99; published 7-23-99
Avions Mundry et Cie; comments due by 8-27-99; published 7-19-99
Bell; comments due by 8-23-99; published 6-24-99
Boeing; comments due by 8-23-99; published 6-23-99
Dassault; comments due by 8-23-99; published 7-22-99
McDonnell Douglas; comments due by 8-23-99; published 7-23-99
MD Helicopters Inc.; comments due by 8-23-99; published 6-23-99
Rolls-Royce plc; comments due by 8-23-99; published 6-23-99
Saab; comments due by 8-23-99; published 7-22-99
Sikorsky; comments due by 8-23-99; published 6-24-99

Class D airspace; comments due by 8-23-99; published 7-7-99
Class E airspace; comments due by 8-24-99; published 7-19-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration

Hazardous materials:
Hazardous materials transportation—
Loading, unloading, and storage; regulatory applicability; comments due by 8-25-99; published 7-28-99

TREASURY DEPARTMENT
Internal Revenue Service

Income taxes:
Simplified production, and resale methods with historic absorption ratio election; special rules; comments due by 8-23-99; published 5-24-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2565/P.L. 106–46

To clarify the quorum requirement for the Board of Directors of the Export-Import Bank of the United States. (Aug. 11, 1999; 113 Stat. 227)

Last List August 12, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L
Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512–1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2250.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-034-00001-1)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869-038-00002-4)	20.00	[1] Jan. 1, 1999
4	(869-034-00003-7)	7.00	[5] Jan. 1, 1999
5 Parts:			
1-699	(869-038-00004-1)	37.00	Jan. 1, 1999
700-1199	(869-038-00005-9)	27.00	Jan. 1, 1999
1200-End, 6 (6 Reserved)	(869-038-00006-7)	44.00	Jan. 1, 1999
7 Parts:			
1-26	(869-038-00007-5)	25.00	Jan. 1, 1999
27-52	(869-038-00008-3)	32.00	Jan. 1, 1999
53-209	(869-038-00009-1)	20.00	Jan. 1, 1999
210-299	(869-038-00010-5)	47.00	Jan. 1, 1999
300-399	(869-038-00011-3)	25.00	Jan. 1, 1999
400-699	(869-038-00012-1)	37.00	Jan. 1, 1999
700-899	(869-038-00013-0)	32.00	Jan. 1, 1999
900-999	(869-038-00014-8)	41.00	Jan. 1, 1999
1000-1199	(869-038-00015-6)	46.00	Jan. 1, 1999
1200-1599	(869-038-00016-4)	34.00	Jan. 1, 1999
1600-1899	(869-038-00017-2)	55.00	Jan. 1, 1999
1900-1939	(869-038-00018-1)	19.00	Jan. 1, 1999
1940-1949	(869-038-00019-9)	34.00	Jan. 1, 1999
1950-1999	(869-038-00020-2)	41.00	Jan. 1, 1999
2000-End	(869-038-00021-1)	27.00	Jan. 1, 1999
8	(869-038-00022-9)	36.00	Jan. 1, 1999
9 Parts:			
1-199	(869-038-00023-7)	42.00	Jan. 1, 1999
200-End	(869-038-00024-5)	37.00	Jan. 1, 1999
10 Parts:			
1-50	(869-038-00025-3)	42.00	Jan. 1, 1999
51-199	(869-038-00026-1)	34.00	Jan. 1, 1999
200-499	(869-038-00027-0)	33.00	Jan. 1, 1999
500-End	(869-038-00028-8)	43.00	Jan. 1, 1999
11	(869-038-0002-6)	20.00	Jan. 1, 1999
12 Parts:			
1-199	(869-038-00030-0)	17.00	Jan. 1, 1999
200-219	(869-038-00031-8)	20.00	Jan. 1, 1999
220-299	(869-038-00032-6)	40.00	Jan. 1, 1999
300-499	(869-038-00033-4)	25.00	Jan. 1, 1999
500-599	(869-038-00034-2)	24.00	Jan. 1, 1999
600-End	(869-038-00035-1)	45.00	Jan. 1, 1999
13	(869-038-00036-9)	25.00	Jan. 1, 1999
14 Parts:			
1-59	(869-038-00037-7)	50.00	Jan. 1, 1999
60-139	(869-038-00038-5)	42.00	Jan. 1, 1999
140-199	(869-038-00039-3)	17.00	Jan. 1, 1999
200-1199	(869-038-00040-7)	28.00	Jan. 1, 1999
1200-End	(869-038-00041-5)	24.00	Jan. 1, 1999
15 Parts:			
0-299	(869-038-00042-3)	25.00	Jan. 1, 1999
300-799	(869-038-00043-1)	36.00	Jan. 1, 1999
800-End	(869-038-00044-0)	24.00	Jan. 1, 1999
16 Parts:			
0-999	(869-038-00045-8)	32.00	Jan. 1, 1999
1000-End	(869-038-00046-6)	37.00	Jan. 1, 1999
17 Parts:			
1-199	(869-038-00048-2)	29.00	Apr. 1, 1999
200-239	(869-038-00049-1)	34.00	Apr. 1, 1999
240-End	(869-038-00050-4)	44.00	Apr. 1, 1999
18 Parts:			
1-399	(869-038-00051-2)	48.00	Apr. 1, 1999
400-End	(869-038-00052-1)	14.00	Apr. 1, 1999
19 Parts:			
1-140	(869-038-00053-9)	37.00	Apr. 1, 1999
141-199	(869-038-00054-7)	36.00	Apr. 1, 1999
200-End	(869-038-00055-5)	18.00	Apr. 1, 1999
20 Parts:			
1-399	(869-038-00056-3)	30.00	Apr. 1, 1999
400-499	(869-038-00057-1)	51.00	Apr. 1, 1999
500-End	(869-038-00058-0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1-99	(869-038-00059-8)	24.00	Apr. 1, 1999
100-169	(869-038-00060-1)	28.00	Apr. 1, 1999
170-199	(869-038-00061-0)	29.00	Apr. 1, 1999
200-299	(869-038-00062-8)	11.00	Apr. 1, 1999
300-499	(869-038-00063-6)	50.00	Apr. 1, 1999
*500-599	(869-038-00064-4)	28.00	Apr. 1, 1999
600-799	(869-038-00065-2)	9.00	Apr. 1, 1999
800-1299	(869-038-00066-8)	35.00	Apr. 1, 1999
1300-End	(869-038-00067-9)	14.00	Apr. 1, 1999
22 Parts:			
1-299	(869-038-00068-7)	44.00	Apr. 1, 1999
300-End	(869-038-00069-5)	32.00	Apr. 1, 1999
23	(869-038-00070-9)	27.00	Apr. 1, 1999
24 Parts:			
0-199	(869-038-00071-7)	34.00	Apr. 1, 1999
200-499	(869-034-00072-0)	28.00	Apr. 1, 1998
500-699	(869-038-00073-3)	18.00	Apr. 1, 1999
700-1699	(869-038-00074-1)	40.00	Apr. 1, 1999
1700-End	(869-038-00075-0)	18.00	Apr. 1, 1999
25	(869-038-00076-8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1-1.60	(869-038-00077-6)	27.00	Apr. 1, 1999
§§ 1.61-1.169	(869-038-00078-4)	50.00	Apr. 1, 1999
§§ 1.170-1.300	(869-038-00079-2)	34.00	Apr. 1, 1999
§§ 1.301-1.400	(869-038-00080-6)	25.00	Apr. 1, 1999
§§ 1.401-1.440	(869-038-00081-4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501-1.640	(869-038-00083-1)	27.00	[7] Apr. 1, 1999
§§ 1.641-1.850	(869-038-00084-9)	35.00	Apr. 1, 1999
§§ 1.851-1.907	(869-038-00085-7)	40.00	Apr. 1, 1999
§§ 1.908-1.1000	(869-038-00086-5)	38.00	Apr. 1, 1999
§§ 1.1001-1.1400	(869-038-00087-3)	40.00	Apr. 1, 1999
§§ 1.1401-End	(869-038-00088-1)	55.00	Apr. 1, 1999
2-29	(869-038-00089-0)	39.00	Apr. 1, 1999
30-39	(869-038-00090-3)	28.00	Apr. 1, 1999
40-49	(869-038-00091-1)	17.00	Apr. 1, 1999
50-299	(869-038-00092-0)	21.00	Apr. 1, 1999
300-499	(869-038-00093-8)	37.00	Apr. 1, 1999
500-599	(869-038-00094-6)	11.00	Apr. 1, 1999
600-End	(869-038-00095-4)	11.00	Apr. 1, 1999
27 Parts:			
1-199	(869-038-00096-2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200-End	(869-034-00097-5)	17.00	[6] Apr. 1, 1998
26 Parts:			
0-42	(869-034-00098-3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
27 Parts:			
0-99	(869-034-00100-9)	26.00	July 1, 1998
100-499	(869-034-00101-7)	12.00	July 1, 1998
*500-899	(869-034-00102-1)	40.00	[8] July 1, 1999
900-1899	(869-034-00103-3)	20.00	July 1, 1998
1900-1910 (§§ 1900 to 1910.999)	(869-034-00104-1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869-034-00105-0)	27.00	July 1, 1998
1911-1925	(869-034-00106-8)	17.00	July 1, 1998
1926	(869-034-00107-6)	30.00	July 1, 1998
1927-End	(869-034-00108-4)	41.00	July 1, 1998
30 Parts:			
1-199	(869-034-00109-2)	33.00	July 1, 1998
200-699	(869-034-00110-6)	29.00	July 1, 1998
700-End	(869-034-00111-4)	33.00	July 1, 1998
31 Parts:			
0-199	(869-034-00112-2)	20.00	July 1, 1998
200-End	(869-034-00113-1)	46.00	July 1, 1998
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-034-00114-9)	47.00	July 1, 1998
191-399	(869-034-00115-7)	51.00	July 1, 1998
400-629	(869-034-00116-5)	33.00	July 1, 1998
630-699	(869-034-00117-3)	22.00	[4] July 1, 1998
700-799	(869-034-00118-1)	26.00	July 1, 1998
800-End	(869-034-00119-0)	27.00	July 1, 1998
33 Parts:			
1-124	(869-034-00120-3)	29.00	July 1, 1998
125-199	(869-034-00121-1)	38.00	July 1, 1998
200-End	(869-034-00122-0)	30.00	July 1, 1998
34 Parts:			
1-299	(869-034-00123-8)	27.00	July 1, 1998
300-399	(869-034-00124-6)	25.00	July 1, 1998
400-End	(869-034-00125-4)	44.00	July 1, 1998
35	(869-034-00126-2)	14.00	July 1, 1998
36 Parts			
1-199	(869-034-00127-1)	20.00	July 1, 1998
200-299	(869-034-00128-9)	21.00	July 1, 1998
300-End	(869-034-00129-7)	35.00	July 1, 1998
37	(869-034-00130-1)	27.00	July 1, 1998
38 Parts:			
0-17	(869-034-00131-9)	34.00	July 1, 1998
18-End	(869-034-00132-7)	39.00	July 1, 1998
39	(869-034-00133-5)	23.00	July 1, 1998
40 Parts:			
1-49	(869-034-00134-3)	31.00	July 1, 1998
50-51	(869-034-00135-1)	24.00	July 1, 1998
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998
52 (52.1019-End)	(869-034-00137-8)	33.00	July 1, 1998
53-59	(869-034-00138-6)	17.00	July 1, 1998
60	(869-034-00139-4)	53.00	July 1, 1998
61-62	(869-034-00140-8)	18.00	July 1, 1998
63	(869-034-00141-6)	57.00	July 1, 1998
64-71	(869-034-00142-4)	11.00	July 1, 1998
72-80	(869-034-00143-2)	36.00	July 1, 1998
81-85	(869-034-00144-1)	31.00	July 1, 1998
86	(869-034-00144-9)	53.00	July 1, 1998
87-135	(869-034-00146-7)	47.00	July 1, 1998
136-149	(869-034-00147-5)	37.00	July 1, 1998
150-189	(869-034-00148-3)	34.00	July 1, 1998
190-259	(869-034-00149-1)	23.00	July 1, 1998
260-265	(869-034-00150-9)	29.00	July 1, 1998
266-299	(869-034-00151-3)	33.00	July 1, 1998
300-399	(869-034-00152-1)	26.00	July 1, 1998
400-424	(869-034-00153-0)	33.00	July 1, 1998
425-699	(869-034-00154-8)	42.00	July 1, 1998
700-789	(869-034-00155-6)	41.00	July 1, 1998
790-End	(869-034-00156-4)	22.00	July 1, 1998
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-034-00157-2)	13.00	July 1, 1998
101	(869-034-00158-1)	37.00	July 1, 1998
102-200	(869-034-00158-9)	15.00	July 1, 1998
201-End	(869-034-00160-2)	13.00	July 1, 1998
42 Parts:			
1-399	(869-034-00161-1)	34.00	Oct. 1, 1998
400-429	(869-034-00162-9)	41.00	Oct. 1, 1998
430-End	(869-034-00163-7)	51.00	Oct. 1, 1998
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-034-00166-1)	48.00	Oct. 1, 1998
45 Parts:			
1-199	(869-034-00167-0)	30.00	Oct. 1, 1998
200-499	(869-034-00168-8)	18.00	Oct. 1, 1998
500-1199	(869-034-00169-6)	29.00	Oct. 1, 1998
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
1-40	(869-034-00171-8)	26.00	Oct. 1, 1998
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-034-00174-2)	26.00	Oct. 1, 1998
140-155	(869-034-00175-1)	14.00	Oct. 1, 1998
156-165	(869-034-00176-9)	19.00	Oct. 1, 1998
166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
47 Parts:			
0-19	(869-034-00180-7)	36.00	Oct. 1, 1998
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
40-69	(869-034-00182-3)	24.00	Oct. 1, 1998
70-79	(869-034-00183-1)	37.00	Oct. 1, 1998
80-End	(869-034-00184-0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1-51)	(869-034-00185-8)	51.00	Oct. 1, 1998
1 (Parts 52-99)	(869-034-00186-6)	29.00	Oct. 1, 1998
2 (Parts 201-299)	(869-034-00187-4)	34.00	Oct. 1, 1998
3-6	(869-034-00188-2)	29.00	Oct. 1, 1998
7-14	(869-034-00189-1)	32.00	Oct. 1, 1998
15-28	(869-034-00190-4)	33.00	Oct. 1, 1998
29-End	(869-034-00191-2)	24.00	Oct. 1, 1998
49 Parts:			
1-99	(869-034-00192-1)	31.00	Oct. 1, 1998
100-185	(869-034-00193-9)	50.00	Oct. 1, 1998
186-199	(869-034-00194-7)	11.00	Oct. 1, 1998
200-399	(869-034-00195-5)	46.00	Oct. 1, 1998
400-999	(869-034-00196-3)	54.00	Oct. 1, 1998
1000-1199	(869-034-00197-1)	17.00	Oct. 1, 1998
1200-End	(869-034-00198-0)	13.00	Oct. 1, 1998
50 Parts:			
1-199	(869-034-00199-8)	42.00	Oct. 1, 1998
200-599	(869-034-00200-5)	22.00	Oct. 1, 1998
600-End	(869-034-00201-3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-038-00047-4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

106th Congress, 1st Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 1st Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 1st Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/98

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VISA

2–2250

2–1800

nge.

ents

– □

□□

ou for

order!

11/98

54

VOL
64
ISS
1
5
7
AG
16
999
UMI

Printed on recycled paper

VOL
64
ISS
1
5
8
AG
17
999
UMI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

8-17-9
Vol. 64
United
Goverr
Printin
SUPERINT
OF DOCU
Washingto
OFFICIAL
Penalty for

8-17-99
Vol. 64 No. 158

federal register

Tuesday
August 17, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

VOL
64
ISS
1
5
8
AG
17
999
UMI

8-17-99
Vol. 64
Pages 4

8-17-99
Vol. 64 No. 158
Pages 44643-44816

federal register

Tuesday
August 17, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Contents

Federal Register

Vol. 64, No. 158

Tuesday, August 17, 1999

Agricultural Marketing Service
RULES
Pork promotion, research, and consumer information order, 44643–44644
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44685

Agriculture Department
See Agricultural Marketing Service
See Food Safety and Inspection Service
See Forest Service

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 44737–44739

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Native American financial assistance, 44789–44805

Coast Guard
RULES
Merchant marine officers and seamen:
Licenses, certificates of registry, and merchant mariner documents; user fees
Correction, 44786–44787
Ports and waterways safety:
Ports of New York and New Jersey; safety zone, 44658–44659
NOTICES
Meetings:
Towing Safety Advisory Committee, 44775
Ports and waterways safety:
Maritime Global Positioning System navigation; interference by Mobile Satellite System telephones and other electronic devices on vessels; comment request, 44775–44777

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Customs Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44780–44782

Defense Department
See Navy Department
RULES
Vocational rehabilitation and education:
Veterans education—
Educational assistance test program; increased allowances, 44660–44661
NOTICES
Acquisition regulations:
Comprehensive small business subcontracting plans negotiation; test program, 44690–44692
Agency information collection activities:
Submission for OMB review; comment request, 44692–44693
Arms sales notification; transmittal letter, etc., 44693–44697
Committees; establishment, renewal, termination, etc.:
Defense Policy Board Advisory Committee, 44697
Meetings:
Science Board task forces, 44697
Women in Services Advisory Committee, 44697–44698
Privacy Act:
Systems of records, 44698–44716

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44719–44722
Economic Cooperation and Development Organization area; transfrontier movements of wastes destined for recovery operations; information request, 44722–44730

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Kodak Albuquerque International Balloon Fiesta, NM; airspace and flight operations requirements, 44813–44816
Airworthiness directives:
Israel Aircraft Industries, Ltd., 44650–44652
PROPOSED RULES
Airworthiness directives:
Airbus, 44663–44665
Allison Engine Co., 44667–44670
BMW Rolls-Royce GmbH, 44666–44667
NOTICES
Reports and guidance documents; availability, etc.:
Passenger facility charge audit guide for air carriers, 44777–44778

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Commercial mobile radio services—
Calling party pays service offering; regulatory obstacles removed, 44682–44683
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44730–44732
Submission for OMB review; comment request, 44732–44733

Federal Energy Regulatory Commission
RULES
Filing fees:
Annual update, 44652–44653
NOTICES
Environmental statements; availability, etc.:
Pennsylvania Electric Co. et al., 44719
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 44717

Koch Gateway Pipeline Co., 44717
Pine Needle LNG Co., LLC, 44717–44718
Questar Pipeline Co., 44718
Select Energy, Inc., et al., 44718
Transcontinental Gas Pipe Line Corp., 44718

Federal Labor Relations Authority
NOTICES
Amicus curiae briefs in representation proceedings pending before FLRA; opportunity to submit, 44733–44734

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 44734
Formations, acquisitions, and mergers, 44734–44735
Permissible nonbanking activities, 44735
Edge corporations; proposals to organize:
CLS Services, Ltd., 44735
Meetings; Sunshine Act, 44735–44736

Food and Drug Administration
RULES
Human drugs:
Colloidal silver ingredients or silver salts (OTC); active ingredients not recognized as safe and effective or are misbranded, 44653–44658
PROPOSED RULES
Human drugs:
Topical otic products (OTC) for drying water-clogged ears; final monograph amendment, 44671–44674
NOTICES
Reports and guidance documents; availability, etc.:
Creutzfeldt-Jakob Disease and new variant; measures to reduce possible risk of transmission by blood and blood products; industry guidance, 44739–44740
Post donation information reports; evaluation and processing; compliance policy guide for FDA personnel, 44740–44741
Prescription Drug User Fee Act; information request and discipline review letters; industry guidance, 44741–44742

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Soy protein concentrate, modified food starch, and carrageenan; use as binders, 44644–44645

Forest Service
NOTICES
National Forest System lands:
Stewardship contracting pilot projects; multiparty monitoring and evaluation process, 44685–44689

General Services Administration
PROPOSED RULES
Acquisition regulations:
Architect-engineer procurements; selection criteria, 44683
NOTICES
Interagency Committee for Medical Records:
Medical record-physical examination (SF 506)—
Automation, 44736–44737
Revision, 44736

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Meetings:
Rural Health National Advisory Committee, 44742

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44743–44744
Grant and cooperative agreement awards:
Economic Development Initiative Program, 44744–44745

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44747–44748
Submission for OMB review; comment request, 44748–44749

Interior Department
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44782–44785

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental statements; notice of intent:
Rio Grande Canalization Project, NM and TX, 44751–44752

International Trade Administration
NOTICES
Export trade certificates of review, 44689–44690

International Trade Commission
NOTICES
Meetings; Sunshine Act, 44747

Justice Department
See Immigration and Naturalization Service
See Justice Programs Office
See Juvenile Justice and Delinquency Prevention Office
See National Institute of Justice

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44749–44750

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Internet Crimes Against Children Task Force Training and Technical Assistance Program, 44807–44811

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
California Desert District Advisory Council, 44745
Realty actions; sales, leases, etc.:
California, 44745–44746

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

National Credit Union Administration
PROPOSED RULES
Credit unions:
Undercapitalized federally-insured credit unions; prompt corrective action system
Correction, 44663

National Institute of Justice
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44750–44751

National Institute of Standards and Technology
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Kalibrant Ltd., 44690

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 44742
National Institute of Nursing Research, 44742–44743
Scientific Review Center, 44743

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, 44661–44662
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Snake River spring/summer chinook salmon, 44683–44684

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
Missouri/Niobrara/Verdigre Creek National Recreational Rivers, NE; maps, 44746–44747

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 44752–44756

Navy Department
NOTICES
Environmental statements; notice of intent:
San Clemente Island Range Complex, CA, 44716–44717

Nuclear Regulatory Commission
RULES
Gaseous diffusion plants; certification renewal and amendment processes, 44645–44650
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 44760
Applications, hearings, determinations, etc.:
GPU Nuclear Inc. et al., 44756–44759

Occupational Safety and Health Administration
NOTICES
Meetings:
Occupational Safety and Health National Advisory Committee, 44751

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Curbside mailboxes; design standards; Consensus Committee establishment and meeting, 44681–44682
NOTICES
Postage meters:
Information Based Indicia Program—
Postage evidencing product submission procedures, 44760–44766

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Railroad Retirement Board
PROPOSED RULES
Emergency regulations:
Plan of operation during national emergency; procedures update, 44670–44671

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Anchor Resource & Commodity Trust et al., 44766–44767
John Hancock Mutual Life Insurance Co. et al., 44767–44771
Oppenheimer Senior Floating Rate Fund et al., 44771–44773
Tejon Ranch Co., 44773

State Department
NOTICES
Meetings:
International Telecommunications Advisory Committee, 44773
International Telecommunications Advisory Committee et al., 44773–44774
Shipping Coordinating Committee, 44774

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Illinois, 44674–44681

Transportation Department
See Coast Guard
See Federal Aviation Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 44774
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 44774–44775

Treasury Department
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44778–44780

Veterans Affairs Department
RULES
Medical benefits:
Denied claims; reconsideration procedures, 44659–44660
Vocational rehabilitation and education:
Veterans education—
Educational assistance test program; increased allowances, 44660–44661

Separate Parts In This Issue

Part II
Department of Health and Human Services, Children and Families Administration, 44789–44805

Part III
Department of Justice, Juvenile Justice and Delinquency Prevention Office, 44807–44811

Part IV
Department of Transportation, Federal Aviation Administration, 44813–44816

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1230.....44643

9 CFR
318.....44644
319.....44644

10 CFR
76.....44645

12 CFR
Proposed Rules:
702.....44663
747.....44663

14 CFR
39.....44650
91.....44814
Proposed Rules:
39 (3 documents).....44663, 44666, 44667

18 CFR
381.....44652

20 CFR
Proposed Rules:
375.....44670

21 CFR
310.....44653
Proposed Rules:
310.....44671
344.....44671

30 CFR
Proposed Rules:
913.....44674

33 CFR
165.....44658

38 CFR
17.....44659
21.....44660

39 CFR
Proposed Rules:
111.....44681

46 CFR
10.....44786
12.....44786

47 CFR
Proposed Rules:
20.....44682

48 CFR
Proposed Rules:
536.....44683

50 CFR
648.....44661
Proposed Rules:
226.....44683

VOL
64
ISS
1
5
8
AG
17
999
UMI

Ru

This se
contain
applica
are key
Federa
50 title

The Co
the Sup
new bo
REGIS

DEPA

Agricu

7 CFR

[No. LS

Pork P
Consu
Decre

AGENC
USDA

ACTION

SUMMA
Promo
Inform
Pork P
Consu
issued
decrea
cent p
assess
pork a
decrea
price f
This a
value
such i
were c
values
These
contin
impor
pork p

EFFECT

FOR FU
Ralph
Progra

SUPPLI

Execut
Regula
Paperv

This
not sig
Order
review
and Bu

Rules and Regulations

Federal Register
Vol. 64, No. 158
Tuesday, August 17, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–99–03]

Pork Promotion, Research, and Consumer Information Order—Decrease in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this final rule decreases by sixteen-hundredths of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1998 five-market average price for domestic barrows and gilts. This action brings the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

EFFECTIVE DATE: September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988 and Regulatory Flexibility Act and the Paperwork Reduction Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which such person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA)(5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 1,000 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.601).

This final rule decreases the amount of assessments on imported pork and pork products subject to assessment by sixteen-hundredths of a cent per pound, or as expressed in cents per kilogram, thirty-five-hundredths of a cent per kilogram. This decrease is consistent with the decrease in the annual price of domestic barrows and gilts for calendar year 1998. The average annual market price decreased from $51.30 per hundredweight in 1997 to $31.82 per hundredweight in 1998, a decrease of about 38 percent. Adjusting the assessments on imported pork and pork products would result in an estimated decrease in assessments of $888,000 over a 12-month period. Assessments collected for 1998 were $3,834,656. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29962). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29962, 60 FR 33681, and 60 FR 58501) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork products were produced. This final rule decreases the assessments on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule August 28, 1998, and effective September 28, 1998; (63 FR 45935). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1998 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments will make the equivalent market value of the live

porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This final rule will not change the current assessment rate of 0.45 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the Department's Statistical Bulletin No. 697 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price decreased from $51.30 in 1997 to $31.82 in 1998, a decrease of about 38 percent. This decrease will result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110, 63 FR 45935; August 28, 1998, of an amount equal to sixteen-hundredths of a cent per pound, or as expressed in cents per kilogram, thirty-five-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1998, through December 31, 1998, the decrease in assessment amounts would result in an estimated $888,000 decrease in assessments over a 12-month period.

On June 10, 1999, AMS published in the **Federal Register** (64 FR 31158) a proposed rule which would decrease the per pound assessment on imported pork and pork products consistent with decreases in the 1998 average prices of domestic barrows and gilts to provide comparability between imported and domestic assessments. The proposal was published with a request for comments by July 12, 1999. No comments were received.

Accordingly, this final rule establishes the new per-pound and per-kilogram assessments on imported pork and pork products.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. In § 1230.110 paragraph (b) is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

* * * * *

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000	.20	.440920
0203.12.1010	.20	.440920
0203.12.1020	.20	.440920
0203.12.9010	.20	.440920
0203.12.9020	.20	.440920
0203.19.2010	.24	.529104
0203.19.2090	.24	.529104
0203.19.4010	.20	.440920
0203.19.4090	.20	.440920
0203.21.0000	.20	.440920
0203.22.1000	.20	.440920
0203.22.9000	.20	.440920
0203.29.2000	.24	.529104
0203.29.4000	.20	.440920
0206.30.0000	.20	.440920
0206.41.0000	.20	.440920
0206.49.0000	.20	.440920
0210.11.0010	.20	.440920
0210.11.0020	.20	.440920
0210.12.0020	.20	.440920
0210.12.0040	.20	.440920
0210.19.0010	.24	.529104
0210.19.0090	.24	.529104
1601.00.2010	.28	.617288
1601.00.2090	.28	.617288
1602.41.2020	.31	.683426
1602.41.2040	.31	.683426
1602.41.9000	.20	.440920
1602.42.2020	.31	.683426
1602.42.2040	.31	.683426
1602.42.4000	.20	.440920
1602.49.2000	.28	.617288
1602.49.4000	.24	.529104

Dated: August 11, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–21303 Filed 8–16–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 319

[Docket No. 94–015N]

RIN 0583–AB82

Use of Soy Protein Concentrate, Modified Food Starch, and Carrageenan as Binders in Certain Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date for direct final rule.

SUMMARY: On May 24, 1999, the Food Safety and Inspection Service (FSIS) published a direct final rule, "Use of Soy Protein Concentrate, Modified Food Starch, and Carrageenan as Binders in Certain Meat Products" (64 FR 27901). This direct final rule notified the public of FSIS's intention to amend the Federal meat inspection regulations to allow the use of soy protein concentrate, both singly and in combination with

modified food starch or carrageenan, as a binder in cured pork products labeled "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product—X% of Weight is Added Ingredients," and to increase the permitted use level of modified food starch as a binder in "Ham and Water Product—X% of Weight is Added Ingredients" products. These binders will be used to reduce purging of the pumped brine solution from the products. FSIS received one comment in response to the direct final rule. However, the comment was not an adverse comment or notice of intent to submit an adverse comment. Therefore, FSIS is affirming the July 23, 1999, effective date for this direct final rule.

EFFECTIVE DATE: The direct final rule published on May 24, 1999 at 64 FR 27901 is effective July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Post, Director, Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1999, FSIS published a direct final rule "Use of Soy Protein Concentrate, Modified Food Starch, and Carrageenan as Binders in Certain Meat Products." On June 23, 1999, FSIS received a comment in response to that rulemaking from Protein Technologies International (PTI), a manufacturer of domestically produced soy proteins used in a wide variety of food applications. PTI requested that the direct final rule not be published until the rule could be amended pursuant to PTI's position, which would be enunciated in a supplemental comment to be submitted in the future.

The commenter requested that the direct final rule be modified to include isolated soy protein at appropriate levels consistent with the usage contemplated by the direct final rule with respect to soy protein concentrate. The commenter also suggested that FSIS permit combinations of these substances to include any other approved binder, and not be limited solely to modified food starch, and that such combinations be permitted in any of the categories of ham products established by FSIS regulations.

The direct final rule indicates that the Agency will permit the use of soy protein concentrate, both singly and in combination with modified food starch or carrageenan, as a binder in cured pork products labeled "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product—X% of Weight is Added Ingredients," as well as allow an increase in the permitted use level of modified food starch as a binder in "Ham and Water Product—X% of Weight is Added Ingredients" products. These provisions are based on the specific use requests contained in petitions submitted to FSIS by Central Soya and the National Starch and Chemical Company and informal requests from several food manufacturers and the accompanying data submitted to support the effectiveness of these combined uses. These data supported only the specific use requests submitted to FSIS as reflected in the direct final rule. Neither the data nor the direct final rule addressed the three issues raised by the commenter. The commenter's requests are therefore outside the scope of this rule.

The comment is not adverse with respect to the promulgation of the direct final rule because it was not opposed to the rulemaking. Rather, the comment suggests that provisions of the direct final rule should be extended by FSIS to matters outside the scope of the direct final rule (i.e., to another binder, to other combinations of binders, and to other ham products). Therefore, the effective date remains as July 23, 1999. However, FSIS welcomes the submission of information in support of the request made by the commenter. Upon receipt of data in support of the request, and based on the merits of the data, the Agency will consider further amendments to the meat regulations to include isolated soy protein singly and in combination with other approved binders for use in cured pork and other products.

Done at Washington, DC, on: August 10, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–21304 Filed 8–16–99; 8:45 am]

BILLING CODE 3410–DM–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 76

RIN 3150–AF85

Certification Renewal and Amendment Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the regulations governing the U.S. Enrichment Corporation's (USEC or the Corporation) gaseous diffusion plants to modify the certification renewal and amendment processes. The amendments are intended to improve these processes so that they are more effective and efficient. The final rule modifies the process for certificate renewals, establishes a process for certificate amendments comparable to the process currently used to amend a fuel cycle license, revises the appeal process for amendments, eliminates the "significant" designation for amendments, simplifies the criteria for persons who are eligible to file a petition for review of an amendment action, removes references to the initial application because the initial certificates have been issued, and lengthens the time periods associated with filing a petition for review.

EFFECTIVE DATE: September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Telford, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6229, e-mail JLT@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations establishing NRC's requirements for USEC's Paducah and Portsmouth gaseous diffusion plants (GDPs) were published on September 23, 1994 (59 FR 48960). Subsequently, the Atomic Energy Act (AEA) of 1954 was modified to increase the period for certificate renewals from 1 year to up to 5 years. The regulations implementing this modification to the AEA were published on February 12, 1997 (62 FR 6670). On March 3, 1997, the GDP's came under NRC's oversight. Since 1997, the NRC has implemented the initial certification and numerous certificate amendments. As a result, the NRC staff identified several areas where changes would improve the effectiveness and efficiency of the certificate renewal and amendment processes.

On September 15, 1998 (63 FR 49301), the NRC published a proposed rule that presented amendments to 10 CFR Part 76 intended to make the certification renewal and amendment processes more effective and efficient.

Comments on the Proposed Rule

The Commission received one letter commenting on the proposed rule. A copy of the letter is available for public inspection and copying for a fee at the

Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, D.C. This letter came from USEC, which leases and operates the GDPs. The Corporation supported the proposed rule, but had two specific comments.

Comment 1: "The proposed wording states that a certificate amendment will be effective when issued by the NRC staff. Immediate implementation upon issuance of the amendment may be possible in some cases; however, in most cases some implementation time will be required. USEC anticipates that in submitting amendment requests, it will continue the current practice of requesting that site implementation occur within a certain period of time (e.g., 30 days) or after completion of certain activities (e.g., equipment installation, testing) after the staff's issuance of the amendment. USEC assumes that the NRC, in granting an immediately effective certificate amendment, will continue to provide the requisite flexibility and time for effective implementation."

Response: The Commission agrees with the comment. When granting an amendment, the NRC staff intends to allow an appropriate implementation period (e.g., 30 days). To clarify this intent further, the regulatory text has been modified to make an amendment effective on a date specified by the NRC staff.

Comment 2: "These paragraphs [76.45 (d) and (e)] specify requirements for obtaining the Director's review of the staff's determination and the Commission's review of a Director's decision on an amendment application. These paragraphs state that if the Director or Commission does not issue a decision or otherwise act after receiving a petition for review, the determination on the amendment application remains in effect. However, the ability of the Corporation to implement an effective amendment should a petition be received is unclear. Therefore, USEC requests that the proposed wording in § 76.45(d) and § 76.45(e) be clarified to indicate that, should a petition on an effective amendment be received, implementation of the amendment at the gaseous diffusion plants may continue, unless and until the Director modifies or sets aside the findings, conclusions, conditions or terms in the staff's amendment determination or the Commission modifies or sets aside the findings, conclusions, conditions or terms in the Director's amendment review decision. Should either the staff's decision or the Director's decision be modified or set aside, upon NRC notification, the Corporation would take the required actions with respect to implementation of the effective amendment. USEC's comments in this regard could be addressed with the addition of the following language to §§ 76.45 (d) and (e):

The pendency of a petition [for review] under this subsection shall not delay the effective date of the amendment as issued by the staff under § 76.45(c) above."

Response: The language of § 76.45 (d) and (e) does not need to be revised. If a petition for review is pending, the Commission believes that the Corporation may implement an effective certificate amendment because of the statements in § 76.45 (c), (d), and (e). In particular, if a petition for review is pending, it would not delay the effective date of the certificate amendment. The Corporation may continue implementation of an effective certificate amendment unless and until it is modified or set aside by either the Director or the Commission.

The Final Rule

This final rule makes the following changes:

Currently, § 76.37 specifies that the Director of the Office of Nuclear Material Safety and Safeguards (the Director) shall publish a **Federal Register** notice of receipt of an application for renewal. This final rule replaces "shall" with "may, at his or her discretion," and inserts "for renewal" after the first occurrence of the word "application" in paragraphs (a), (b), and (c). Replacing "shall" with "may, at his or her discretion," allows the Director to determine if a **Federal Register** notice is warranted for an application for renewal on a case-by-case basis. There are two reasons for this action. First, if the application does not address any new safety issues or there have not been any major changes to the facility or its operating procedures that would substantially increase the risk associated with the facility, the Director may decide that a **Federal Register** notice is not necessary. This flexibility allows the NRC to focus its resources on safety issues that have significant potential risk. Second, there is no requirement in the AEA to notice an application for certificate renewal. Furthermore, similar actions for 10 CFR Parts 30, 40, and 70 facilities are not noticed. Adding "for renewal" clarifies that the application is specifically for renewal.

In § 76.39, the phrase "for renewal" is being inserted after each occurrence of the word "application." This clarifies that the application being discussed in § 76.39 is specifically for renewal.

Section 76.45(a) is being changed to remove the responsibility for making the initial decision on an amendment application from the Director. This change allows the decision to grant or deny an amendment application to be delegated to the branch chief. This action contributes to a more efficient use of NRC resources and is comparable to the process used for facilities regulated by the Commission under 10 CFR Parts 30, 40, and 70.

Section 76.45(b) is being deleted. The first sentence currently requires that the Director determine whether the proposed activities are "significant" and, if so, follow the procedures specified in §§ 76.37 and 76.39. This sentence is being deleted because the procedures specified in § 76.37 to be followed by the Director will be discretionary, and the procedures specified in § 76.39 are currently discretionary. Accordingly, it would not be logical to compel the Director to follow either of them. This action eliminates the current distinction between "significant" and not significant proposed activities. This action also provides a more flexible and efficient regulatory process. However, the public's opportunity to follow each amendment remains the same because licensing documents are placed in the Commission's Public Document Room, and in the near future, the NRC plans to place these documents on NRC's website. Accordingly, the public will have an opportunity to file a petition for review of an amendment as described in revised § 76.45(d). In addition, the last sentence in § 76.45(b) is being deleted because decisions on certificate amendment applications will be delegated to the branch chief. This delegation is comparable to the process currently used for 10 CFR Parts 30, 40, and 70 facilities.

The current § 76.45(c) is being redesignated as paragraph (b) because the current paragraph (b) is being deleted.

In a new § 76.45(c), the first sentence provides that a certificate amendment will be effective on a date specified by the NRC staff. This allows the NRC staff to handle issues that need to be addressed quickly to avoid an unnecessary operational upset of a GDP, ensure adequate protection of public health and safety from radiological hazards, and/or provide for the common defense and security. The second sentence of § 76.45(c) provides that the NRC staff may, at its discretion, publish a notice of its decision on an amendment application in the **Federal Register**. The NRC staff will take this action when publication of a notice is

warranted on a case-by-case basis. If the application does not address any new safety issues or there have not been any major changes to the facility or its operating procedures that would substantially increase the risk associated with the facility, the NRC staff may decide that a **Federal Register** notice is not necessary. This flexibility allows the NRC to devote its resources to safety issues that have significant potential risk. The AEA does not require that a certificate amendment application be noticed. Furthermore, the Commission does not notice similar actions for 10 CFR Parts 30, 40, and 70 facilities.

Currently, a decision on an amendment application may be appealed by filing a request for the Commission's review. A new § 76.45(d), concerning the NRC staff's determination on an amendment application, establishes procedures for the Corporation, or any person whose interests may be affected, to file a petition for the Director's review. Because the initial determination on a certificate amendment application may be delegated to the branch chief, it is logical for the Director to be the first level of review. This process contributes to a more efficient use of agency resources because an appeal issue may be resolved by the Director and not require the Commission's review.

A new § 76.45(e), concerning the Director's decision, establishes procedures for either the Corporation, or any person whose interests may be affected and who filed a petition for review or filed a response to a petition for review under § 76.45(d), to file a petition for the Commission's review. Because the initial review of an NRC staff determination on an amendment application is rendered by the Director, it is logical for the Commission to be the final level of review.

In revised § 76.62(c), the phrase, "who submitted written comments in response to the Federal Register notice on the application or compliance plan under § 76.37, or provided oral comments at any meeting held on the application or compliance plan conducted under § 76.39," is removed. This action eliminates restrictions that limit those entities who may file a petition requesting review of the Director's decision regarding issuance of a certificate and/or approval of a compliance plan. Eliminating these restrictions is consistent with the Commission's practice for 10 CFR Parts 30, 40, and 70 facilities. Further, if a Federal Register notice is not issued for a certificate renewal, a notice of the Director's decision will provide the first published opportunity for a person whose interest may be affected to be aware of the action.

The number of days specified in § 76.62(c) is being increased from 15 to 30 days. This provides more time for the Corporation or other members of the public whose interests may be affected to file a petition for review on a certificate renewal action. Because the time period for a certificate renewal was recently extended from annually to up to 5 years, the need to act within 15 days because of the time constraint formerly associated with annual renewals is removed.

The sentence, "Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of the **Federal Register** notice, the Director's initial decision on the certificate application or compliance plan becomes effective and final," is being revised to read: "If the Commission does not issue a decision or take other appropriate action within 90 days after the publication of the **Federal Register** notice, the Director's decision remains in effect." This change clarifies that the Director's decision is effective upon issuance and, if a petition for review is filed, eliminates a potential 60-day suspension of the effectiveness of the Director's decision. The Director's decision remains in effect unless it is changed by the Commission. This procedure is also more consistent with the process for license renewals pursuant to 10 CFR Parts 30, 40, and 70. In addition, to accommodate the increased time for both filing a petition for review and responding to a petition, the time provided for the Commission to act is being increased from 60 to 90 days following publication of the **Federal Register** notice.

The changes made in § 76.62(c) are also being made in § 76.64(d) for the same reasons.

In the introductory text of § 76.91, reference to § 76.35(d) is being changed to § 76.35(f) to correct a typographical error.

In addition, Part 76 is being modified to remove references to the initial certification application or initial certification decision that are no longer relevant because the initial certificates have been issued. In §§ 76.33(a)(1), (b), (c), (d), and (e), and 76.35, references to "initial" are being removed. Section 76.9(c) is being removed as no longer relevant because the condition of effectiveness at the time of the initial certification application has been satisfied. Phrases in §§ 76.21(a), 76.36(a), 76.60(e)(2), and 76.91(n) concerning initial certification are being removed. References in §§ 76.7(e)(1), 76.60(c)(2), 76.60(d)(2), and 76.60(e)(1) to the NMSS Director's decision on the initial certificate are also being removed.

Section 76.33 is being amended to correct a printing error in the regulatory text. In § 76.33(a)(2), the redundant phrase "the names, addresses, and citizenship of its principal office," is being removed.

Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" that was approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), Part 76 is classified as compatibility Category "NRC". The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or provisions of Title 10 of the Code of Federal Regulations.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in the final revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this notice.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending the regulations governing the gaseous diffusion plants to modify the process used to renew or amend a certificate of compliance. The amended regulations are procedural and apply to a specific entity. Therefore, this action does not establish a technical standard of generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

The information collection requirements contained in this final rule of limited applicability affect fewer than ten respondents. Therefore, Office of Management and Budget approval is not required pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

This final rule modifies the process for certificate renewals, establishes a process for certificate amendments comparable to the process currently used to amend a fuel cycle license, revises the appeal process for amendments, eliminates the "significant" designation for amendments, simplifies the criteria for persons who are eligible to file a petition for review of an amendment action, removes references to the initial application because the initial certificates have been issued, and lengthens the time periods associated with filing a petition for review.

Part 76 contains a process for amending a certificate and the GDP certificates have been amended several times. These actions identified several deficiencies in the § 76.45 process that should be corrected. The NRC staff examined how the process could be revised and improved so that it is more effective and efficient. The amendment process for GDP certificates as modified by this final rule parallels the process currently used for 10 CFR Parts 30, 40, and 70 facilities. This final rule also removes the ambiguity associated with determining who can petition the NRC for review of an amendment application decision.

Because the statute has been amended to allow up to a 5-year certificate renewal period instead of an annual certificate renewal requirement, the lengthened certificate period has permitted consideration of improvements to the certificate renewal process. Because the annual certification time constraint has been removed, the final rule makes appropriate changes to the time for appeals and lifts restrictions on who may appeal a certification decision. As a result, the certificate renewal process more closely resembles the process for renewal of materials and fuel cycle facility licenses under 10 CFR Parts 30, 40, and 70.

A no-change option retains the deficiencies and ambiguities identified in the current certification renewal and amendment processes and precludes an improved process that is more effective and efficient.

Impacts on the Corporation

An uncomplicated certificate amendment process provides a more timely regulatory process. If the identified deficiencies and ambiguities in the amendment process are not corrected, there is a potential for expense due to plant operational delays and reduced efficiencies that may be related to amendment requests.

Clarification of who can petition the Director for review of an NRC staff determination on an amendment application and/or extension of the period for requesting a review may result in additional petitions. Similarly, lifting restrictions on who can petition for review of a certification renewal decision and lengthening the time for this type of petition may result in additional petitions. This rulemaking is not expected to have any adverse economic impacts on the Corporation.

Benefit

An uncomplicated process for certificate amendment will result in a more effective and efficient NRC review process. This, in turn, provides for more timely completion of amendment reviews. Clarification of who can petition the Director for review of a certificate amendment determination will remove undesirable ambiguities. Specifically, the final rule removes a restriction on who can petition for review by eliminating the current requirement that a petition for review may only be filed by a person who had previously provided comments. The final rule will allow anyone whose interests may be affected to file a petition for review. The extension of the time periods associated with filing a petition for review provides more time for the public to participate in the amendment process. The final rule also removes the same restrictions on who may petition for review of a certification renewal decision and extends the time period for accepting petitions for review of a certification renewal decision. The final rule also provides for NRC staff discretion in publishing the **Federal Register** notice of receipt of the application for Certificate renewal. This discretion permits the NRC staff to use its resources in the most effective and efficient manner.

Preferred Option

The preferred option is amending the regulations to eliminate ambiguities, reduce inefficiencies, better define the processes for certificate renewals and amendments, allow immediately effective amendments, and allow more time for public participation, while continuing to ensure adequate protection of public health and safety.

This constitutes the regulatory analysis for the final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities because it only addresses USEC or its successor. The Corporation does not fall within the scope of the definition of "small entities" set forth in 10 CFR 2.810 or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 76.76. Therefore, a backfit analysis is not required for this final rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 76.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec.

76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

2. In § 76.7, paragraph (e)(1) is revised to read as follows:

§ 76.7 Employee protection.

* * * * *

(e)(1) The Corporation shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted during the term of the certificate and for 30 days following certificate termination.

* * * * *

§ 76.9 [Amended]

3. In § 76.9, paragraph (c) is removed.

4. In § 76.21, paragraph (a) is revised to read as follows:

§ 76.21 Certificate required.

(a) The Corporation or its contractors may not operate the gaseous diffusion plants at Piketon, Ohio, and Paducah, Kentucky, unless an appropriate certificate of compliance, and/or an approved compliance plan is in effect under this part. Unless authorized by the NRC under other provisions of this chapter, a person other than the Corporation or its contractors may not acquire, deliver, receive, possess, use, or transfer radioactive material at the gaseous diffusion plants at Piketon, Ohio, and Paducah, Kentucky.

* * * * *

5. Section 76.33 is revised to read as follows:

§ 76.33 Application procedures.

(a) *Filing requirements.* (1) An application for a certificate of compliance must be tendered by filing 20 copies of the application with the Director, Office of Nuclear Material Safety and Safeguards, with copies sent to the NRC Region III Office and appropriate resident inspector, in accordance with § 76.5.

(2) The application must include the full name, address, age (if an individual), and citizenship of the applicant. If the applicant is a corporation or other entity, the application must indicate the State where it was incorporated or organized; the location of the principal office; and the names, addresses, and citizenship of its principal officers. The applicant shall include any known information concerning the control or ownership, if any, exercised over the applicant by any alien, foreign corporation, or foreign government.

(b) *Oath or affirmation.* An application for a certificate of compliance must be executed in a signed original by a duly authorized officer of the Corporation under oath or affirmation.

(c) *Pre-filing consultation.* The Corporation may confer with the Commission's staff before filing an application.

(d) *Additional information.* At any time during the review of an application, the Corporation may be required to supply additional information to the Commission's staff to enable the Commission or the Director, as appropriate, to determine whether the certificate should be issued or denied, or to determine whether a compliance plan should be approved.

(e) *Withholdable information.* If an application contains Restricted Data, National Security Information, Safeguards Information, Unclassified Controlled Nuclear Information, proprietary data, or other withholdable information, the applicant shall ensure that the withholdable information is separate from the information to be made publicly available.

6. In § 76.35, the section heading and introductory paragraph are revised to read as follows:

§ 76.35 Contents of application.

The application for a certificate of compliance must include the information identified in this section.

* * * * *

7. In § 76.36, paragraph (a) is revised to read as follows:

§ 76.36 Renewals.

(a) The Corporation shall file periodic applications for renewal, as required by § 76.31.

* * * * *

8. Section 76.37 is revised to read as follows:

§ 76.37 Federal Register notice.

The Director may, at his or her discretion, publish in the **Federal Register**:

(a) A notice of the filing of an application for renewal (specifying that copies of the application, except for Restricted Data, Unclassified Controlled Nuclear Information, Classified National Security Information, Safeguards Information, Proprietary Data, or other withholdable information will be made available for public inspection in the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC, and in the local public document room at or near the location of the plant);

(b) A notice of opportunity for written public comment on the application for renewal; and

(c) The date of any scheduled public meeting regarding the application for renewal.

9. In § 76.39, paragraph (a), and paragraphs (b)(1) and (b)(4) are revised to read as follows:

§ 76.39 Public meeting.

(a) A public meeting will be held on an application for renewal if the Director, in his or her discretion, determines that a meeting is in the public interest with respect to a decision on the application for renewal.

(b) * * *.

(1) The Director shall conduct any public meeting held on the application for renewal.

* * * * *

(4) Members of the public will be given an opportunity during a public meeting to make their views regarding the application for renewal known to the Director.

* * * * *

10. Section 76.45 is revised to read as follows:

§ 76.45 Application for amendment of certificate.

(a) *Contents of an amendment application.* In addition to the application for certification submitted under § 76.31, the Corporation may at any time apply for an amendment of the certificate to cover proposed new or modified activities. The amendment application should contain sufficient information for the NRC to make findings of compliance or acceptability for the proposed activities in the same manner as was required for the original certificate.

(b) *Oath or affirmation.* An application for an amendment of the certificate of compliance must be executed in a signed original by the Corporation under oath or affirmation.

(c) *Amendment application determinations.* If the NRC staff approves an application for a certificate amendment, it will be effective on a date specified by the NRC staff. If an application for a certificate amendment is not approved by the NRC staff, the Corporation will be informed in writing. The NRC staff may, at its discretion, publish notice of its determination on an amendment application in the **Federal Register**.

(d) *Request for review of staff's determination on an amendment application.* The Corporation, or any person whose interest may be affected,

may file a petition requesting the Director's review of an NRC staff determination on an amendment application. A petition requesting the Director's review may not exceed 30 pages and must be filed within 30 days after the date of the NRC staff's determination. Any person described in this paragraph may file a written response to a petition requesting the Director's review. This response may not exceed 30 pages and must be filed within 15 days after the filing date of the petition requesting the Director's review. The Director may adopt, modify, or set aside the findings, conclusions, conditions, or terms in the NRC staff's amendment determination by providing a written basis for the action. If the Director does not issue a decision or take other appropriate action within 60 days after receiving the petition for review, the NRC staff's determination on the amendment application remains in effect.

(e) *Request for review of a Director's decision.* The Corporation, or any person whose interest may be affected and who filed a petition for review or filed a response to a petition for review under § 76.45(d), may file a petition requesting the Commission's review of a Director's decision on an amendment application.

(1) A petition requesting the Commission's review may not exceed 30 pages and must be filed within 30 days after the date of the Director's decision. A petition requesting the Commission's review may be either:

(i) Delivered to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(ii) Sent by mail or telegram to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

(2) Any person described in paragraph (e) of this section may file a written response to a petition requesting the Commission's review. This response may not exceed 30 pages and must be filed within 15 days after the filing date of the petition requesting the Commission's review.

(3) The Commission may adopt, by order, further procedures that, in its judgment, would serve the purpose of review of the Director's decision. The Commission may adopt, modify, or set aside the findings, conclusions, conditions, or terms in the Director's amendment review decision and will state the basis of its action in writing. If the Commission does not issue a decision or take other appropriate action within 90 days after receiving the petition for review, the Director's decision, under § 76.45(d), on the amendment application remains in effect.

11. In § 76.60, paragraphs (c)(2), (d)(2), (e)(1), and (e)(2) are revised to read as follows:

§ 76.60 Regulatory requirements which apply.

* * * * *

(c) * * *

(2) The Corporation shall post NRC Form 3 during the term of the certificate and for 30 days following certificate termination.

(d) * * *

(2) The Corporation shall comply with the requirements in this part or as specified in an approved plan for achieving compliance.

(e) * * *

(1) The Corporation shall comply with the requirements in §§ 21.6 and 21.21.

(2) Under § 21.31, procurement documents issued by the Corporation must specify that the provisions of 10 CFR Part 21 apply.

* * * * *

12. In § 76.62, paragraph (c) is revised to read as follows:

§ 76.62 Issuance of certificate and/or approval of compliance plan.

* * * * *

(c) The Corporation, or any person whose interest may be affected, may file a petition, not to exceed 30 pages, requesting review of the Director's decision. This petition must be filed with the Commission not later than 30 days after publication of the **Federal Register** notice. Any person described in this paragraph may file a response to any petition for review, not to exceed 30 pages, within 15 days after the filing of the petition. If the Commission does not issue a decision or take other appropriate action within 90 days after the publication of the **Federal Register** notice, the Director's decision remains in effect. The Commission may adopt, by order, further procedures that, in its judgment, would serve the purpose of review of the Director's decision.

* * * * *

13. In § 76.64, paragraph (d) is revised to read as follows:

§ 76.64 Denial of certificate or compliance plan.

* * * * *

(d) The Corporation, or any person whose interest may be affected, may file a petition for review, not to exceed 30 pages, requesting review of the Director's decision. This petition for review must be filed with the Commission not later than 30 days after publication of the **Federal Register** notice. Any person described in this paragraph may file a response to any petition for review, not to exceed 30 pages, within 15 days after the filing of the petition for review. If the Commission does not issue a decision or take other appropriate action within 90 days after the publication of the **Federal Register** notice, the Director's decision remains in effect. The Commission may adopt, by order, further procedures that, in its judgment, would serve the purpose of review of the Director's decision.

* * * * *

14. In § 76.91, the introductory paragraph and paragraph (n) are revised to read as follows:

§ 76.91 Emergency planning.

The Corporation shall establish, maintain, and be prepared to follow a written emergency plan. The emergency plan submitted under § 76.35(f) must include the following information:

* * * * *

(n) Comment from offsite response organizations. The Corporation shall allow the offsite response organizations that are expected to respond in case of an accident 60 days to comment on the emergency plan before submitting it to NRC. The Corporation shall provide any comments received within the 60 days to the NRC with the emergency plan.

* * * * *

Dated at Rockville, Maryland, this 11th day of August, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–21306 Filed 8–16–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–204–AD; Amendment 39–11254; AD 99–17–05]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Astra SPX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is

applicable to certain Israel Aircraft Industries Model Astra SPX series airplanes. This action requires repetitive inspections to detect cracking of the main fuel tube assemblies of the left and right engines, and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct fuel line fractures, which could result in in-flight engine shutdowns or an increased risk of engine nacelle fires.

DATES: Effective September 1, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries Model Astra SPX series airplanes. The CAAI advises that cracking of the main fuel tube assembly on the left engine was found at the base of the "T" joint weld (fuel pressure switch boss), which resulted in fuel leakage on one occasion. Such cracking may be caused by excessive vibration of the tube-mounted fuel pressure switch. This condition, if not corrected, could result in fuel line fractures and consequent in-flight engine shutdowns or an increased risk of engine nacelle fires.

Explanation of Relevant Service Information

Israel Aircraft Industries has issued Astra Alert Service Bulletin 1125–73A–191, dated April 2, 1999, which describes procedures for a repetitive fluorescent penetrant inspection to detect cracking of the main fuel tube assemblies of the left and right engines, and corrective action, if necessary. The CAAI classified this alert service bulletin as mandatory and issued Israeli airworthiness directive 73–99–07–05, dated July 11, 1999, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect cracking of the main fuel tube assemblies of the left and right engines, which could result in fuel line fractures and consequent inflight engine shutdowns or an increased risk of engine nacelle fires. This AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–204–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency

regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–17–05 Israel Aircraft Industries, Ltd.: Amendment 39–11254. Docket 99–NM–204–AD.

Applicability: Model Astra SPX series airplanes, serial numbers 089 through 115 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the main fuel tube assemblies of the left and right engines, which could result in fuel line fractures and consequent in-flight engine shutdowns or an increased risk of engine nacelle fires, accomplish the following:

Repetitive Inspections and Corrective Action

(a) Within 5 hours time-in-service after the effective date of this AD: Perform a fluorescent penetrant inspection to detect cracking of the main fuel tube assemblies of the left and right engines around the bases of the "T" joint welds of the pressure transmitter tubes, in accordance with Astra Alert Service Bulletin 1125–73A–191, dated April 2, 1999. Repeat the inspection thereafter at intervals not to exceed 25 hours time-in-service. If any crack is detected during any inspection required by this paragraph, prior to further flight, replace the fuel tube assembly with a new or serviceable part, in accordance with the alert service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Astra Alert Service Bulletin 1125–73A–191, dated April 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 73–99–07–05, dated July 11, 1999.

(e) This amendment becomes effective on September 1, 1999.

Issued in Renton, Washington, on August 6, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20878 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM99–11–000]

Annual Update of Filing Fees

August 11, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Payroll Utilization Reporting System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 1998.

EFFECTIVE DATE: September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Troy Cole,Office of Finance, Accounting and Operations,Federal Energy Regulatory Commission, 888 First Street, NE, Room 42–80,Washington, DC 20426,202–219–2970.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII, WordPerfect 6.1 and WordPerfect 8.0 format. User assistance is available at 202–208–2222 or by E-mail to CipsMaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's

Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to § 381.104 of the Commission's regulations, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 1998 costs. The adjusted fees announced in this notice are effective September 16, 1999. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of SBREFA. [5 U.S.C. § 804(2)] The Commission is submitting this final rule to both Houses of Congress and to the Comptroller General.

The new fee schedule is as follows:

FEES APPLICABLE TO THE NATURAL GAS POLICY ACT	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	$7,320
FEES APPLICABLE TO GENERAL ACTIVITIES	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))	14,710
2. Review of a Department of Energy remedial order: Amount in controversy	
$0–9,999. (18 CFR 381.303(b))	100
$10,000–29,999. (18 CFR 381.303(b))	600
$30,000 or more. (18 CFR 381.303(a))	21,470
3. Review of a Department of Energy denial of adjustment: Amount in controversy	
$0–9,999. (18 CFR 381.304(b))	100
$10,000–29,999. (18 CFR 381.304(b))	600
$30,000 or more. (18 CFR 381.304(a))	11,260
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	4,220
FEES APPLICABLE TO NATURAL GAS PIPELINES	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	1,000
FEES APPLICABLE TO COGENERATORS AND SMALL POWER PRODUCERS	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	12,650
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	14,320
3. Applications for exempt wholesale generator status. (18 CFR 381.801)	1,460

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Thomas R. Herlihy,

Executive Director and Chief Financial Officer.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, Code of Federal Regulations, *as set forth below.*

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

2. In § 381.302, paragraph (a) is amended by removing "$14,360" and inserting "$14,710" in its place.

§ 381.303 [Amended]

3. In § 381.303, paragraph (a) is amended by removing "$20,960" and inserting "$21,470" in its place.

§ 381.304 [Amended]

4. In § 381.304, paragraph (a) is amended by removing "$10,990" and inserting "$11,260" in its place.

§ 381.305 [Amended]

5. In § 381.305, paragraph (a) is amended by removing "$4,120" and inserting "$4,220" in its place.

§ 381.403 [Amended]

6. Section 381.403 is amended by removing "$7,140" and inserting "$7,320" in its place.

§ 381.505 [Amended]

7. In § 381.505, paragraph (a) is amended by removing "$12,340" and inserting "$12,650" in its place and by removing "$13,970" and inserting "$14,320" in its place.

§ 381.801 [Amended]

8. Section 381.801 is amended by removing "$1,620" and inserting "$1,460" in its place.

[FR Doc. 99–21280 Filed 8–16–99; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 96N–0144]

Over-the-Counter Drug Products Containing Colloidal Silver Ingredients or Silver Salts

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that all over-the-counter (OTC) drug products containing colloidal silver ingredients or silver

salts for internal or external use are not generally recognized as safe and effective and are misbranded. FDA is issuing this final rule because many OTC drug products containing colloidal silver ingredients or silver salts are being marketed for numerous serious disease conditions and FDA is not aware of any substantial scientific evidence that supports the use of OTC colloidal silver ingredients or silver salts for these disease conditions.

DATES: This regulation is effective September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Bradford W. Williams, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0063.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 15, 1996 (61 FR 53685), FDA published a proposed rule to declare that all OTC drug products containing colloidal silver ingredients or silver salts are not generally recognized as safe and effective, and are new drugs and misbranded within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). Colloidal silver is a suspension of silver particles in a colloidal base. In recent years, colloidal silver preparations of unknown formulation have been appearing in retail outlets. These products are labeled for numerous disease conditions, many of which are serious diseases. The dosage form of these colloidal silver products is usually oral, but product labeling also contains directions for topical and, occasionally, intravenous use.

FDA has not approved a new drug application (NDA) for any colloidal silver product. None of the silver salts evaluated as part of FDA's OTC drug review was found to be generally recognized as safe and effective for its intended use(s). FDA is not aware of any substantial scientific evidence that supports the use of OTC colloidal silver ingredients or silver salts for disease conditions. The agency invited any interested parties to collect and submit any existing data and information that support the safety and effectiveness of colloidal silver ingredients or silver salts for any of the uses not already evaluated under the OTC drug review. Interested persons were invited to submit written comments on the proposed regulation and on the agency's economic impact determination by January 13, 1997.

In response to the proposal, the agency received 251 responses. Copies of these comments are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Additional information that has come to the agency's attention since publication of the proposal is also on public display in the Dockets Management Branch.

Based on the information set forth in the proposed rule, and after consideration of the information submitted by the public comments (as summarized as follows), FDA is declaring that all OTC drug products containing colloidal silver ingredients or silver salts are not generally recognized as safe and effective, and are new drugs and misbranded within the meaning of section 201(p) of the act. Adequate safety and effectiveness data have not been provided to establish general recognition of the safety and effectiveness of colloidal silver or silver salt ingredients for any OTC drug uses. The data submitted did not include the required absorption, metabolism, tissue distribution, accumulation, excretion, and pharmacodynamics (effect of the drug at its action site) of silver in the body, both when taken internally and applied externally, and of the effect of the particle size of the silver on these systemic effects.

FDA is amending subpart E of part 310 (21 CFR part 310) to add § 310.548 for OTC drug products containing colloidal silver ingredients or silver salts. The agency has expanded proposed § 310.548(a) to include some additional silver ingredients.

II. Public Comments and the Agency's Response

A. General Comments

1. Many comments agreed with the proposed rule. One of these comments cautioned against the dangers of using untested drugs and recalled that Laetrile misled unsuspecting people in search of a quick cancer cure. Another comment provided personal experience as a victim of argyria who had been disfigured for 40 years as a result of using colloidal silver. This comment included an excerpt from a book that recorded 114 cases of argyria compiled in the 1930's. The comment contended that many marketers of colloidal silver deny the potential for harm and often misquote or distort the historical articles dealing with these products.

A physician, who was formerly a pharmacist, recounted his own experience in reviewing cases of argyria. The victims had ingested silver products in the 1940's and 1950's. The physician was concerned that a product that does not have any rational use would lead to the redevelopment of argryia as a clinical problem. Another physician/ophthalmologist commented that colloidal silver is dangerous quackery.

The agency appreciates these comments in support of its proposal.

B. Comments on Safety and Effectiveness

2. One comment expressed concern that many different silver products being marketed are inferior products and are not even true colloids. Another comment stated that the vast majority of silver products being sold are fraudulent products. The comment noted that it had tested a number of these products and found that several actually had no silver content, one did not contain the silver particle size as stated on the label, and only one product exceeded all stated purity and stability claims found on the label. The comment added that many of the products were only duplicates of older colloidal silver products. The comment considered these "newer" products as having the same dangers, intermittent effectiveness, and lack of stability as the older products. The comment contended that the vast majority of the colloidal silver products it tested are totally useless, some were dangerous to ingest, and some were possibly a threat to life. The comment stated that it is a major problem to keep off the market these so-called "colloidal silver" products that contain significant amounts of silver ions and silver salts. The comment suggested a revision of the United States Pharmacopeia (USP) specifications for these products.

Another comment stated that many of the colloidal silver products it analyzed are considered "Bredig Sols" (simple colloidal silver), referring to Bredig, Heidelberg, 1893. The comment added that a pure Bredig Sol is simply elemental silver in distilled water, while some Bredig Sols are mixed with saline to make them isotonic. The comment mentioned that the silver content in these products (a viable product could contain 0.005 percent silver) is many magnitudes less than the silver content of the products discussed by FDA in its safety and effectiveness evaluation (61 FR 53685 at 53686). The comment contended that the agency had not reviewed the Bredig Sols and disagreed with the agency's assumptions that there is an analogous comparison between colloidal silver proteins and other silver compounds to a simple Bredig Sol.

These comments highlight the existing problems in trying to establish whether any silver salts or colloidal silver ingredients can be generally recognized as safe and effective. Because of the acknowledged differences in silver content and particle size of the silver in various products, it is difficult to draw conclusions from clinical studies conducted on different silver products. The agency has minimal manufacturing controls information on these products. The agency does not have information that assures the strength, quality, purity, and potency of various silver products used in clinical studies and other reports included in the comments.

Concerning the comment suggesting a revision of USP specifications, the proposed rule stated that none of the formerly recognized colloidal silver preparations (e.g., colloidal silver iodide, strong (or mild) silver protein, ammoniacal silver nitrate solution) has been official in the USP or the National Formulary (N.F.) since 1975. It is industry's responsibility to have these silver ingredients reinstated in the USP or N.F. and to revise the specifications used in the former compendial monographs. Concerning "Bredig Sols," the comment did not provide any specific safety and effectiveness data; thus, the agency is not able to establish that such products are generally recognized as safe and effective.

3. Several comments submitted information purporting to support the safety of colloidal silver and other silver ingredients. The comments contended that silver is nontoxic and has minimal side effects. One comment stated that silver is poorly absorbed and not readily retained in the body when taken orally. Another comment stated that colloidal silver is harmless to the liver, kidneys, other internal organs, human enzymes, and the eyes; contains no free radicals; and has no reaction with other medications. Several comments mentioned that argyria, a blue skin discoloration resulting from prolonged administration of silver compounds and accumulation in the body, is the main side effect that occurs. One comment explained that argyria occurs because a small amount of the silver compound is absorbed and deposited in the skin, where it is reduced by light to metallic silver; the resulting skin discoloration persisting almost indefinitely, although there are no associated toxic effects. The comment contended that colloidal silver is the only known form of silver that is not deposited under the skin even with large doses. Another comment added that most of the reported cases of argyria resulted from the use of silver nitrate, various ionic silver salts, or highly concentrated mild silver protein. The comment concluded that the dilute, mild silver protein products marketed today are similar to pre-1938 colloidal silver solutions and do not cause argyria. The comment also discussed the levels of silver in the majority of silver products marketed today and indicated that the amount of silver ingested from these products and the diet are within the Environmental Protection Agency's maximum daily exposure reference dose of 350 micrograms per day for a 70 kilogram (kg) adult.

Another comment presented the results of several animal (rat) studies involving acute or chronic administration of various amounts of colloidal silver (mild silver protein in colloidal suspension), approximately 1,500 parts per million (ppm), either by intravenous (IV) injection or in drinking water. The IV studies included an initial acute dose finding study followed by a chronic study (0.15 or 0.015 milligram (mg) per 1 milliliter (mL)). Two groups of four rats received each dosage; two rats served as controls and received 1 mL of physiological saline solution. Each rat received a total of 12 injections. The investigator reported that no abnormal clinical or behavioral signs were observed after 12 days of treatment. In another followup chronic IV rat study, three rats were injected with 1,500 ppm colloidal silver three times per week for 4 weeks (a total of 18 mg per 300 gram (g) rat), and three rats served as controls. All treated and control rats were weighed at the time of injection. At the completion of the study, there were no differences in body weight and no clinical signs or gross pathologic changes between the treated and control groups. The drinking water study involved 15 rats fed 1.5 ppm mild silver protein solution in their drinking water for 40 days. The rats showed no clinical signs of gross pathological changes at the end of the treatment period. Three rats received regular drinking water and served as controls. The investigator stated that the data do not provide information about the metabolic fate of the silver, but support safety if extrapolated to humans because a 60-kg person would have to be given 3,600 mg to receive an amount equivalent to the rats' highest dose (18 mg/300 g rat).

The agency does not consider this information adequate to establish general recognition of the safety of silver salts or colloidal silver ingredients for OTC drug use. The comments themselves indicate that ionic silver salts and highly concentrated mild silver protein clearly are not safe for OTC use. The animal data indicate that mild silver protein in colloidal suspension at low concentrations may be safe in rats when administered in specific concentrations for up to 40 days. Additional data are needed in humans on the absorption, metabolism, tissue distribution, accumulation, excretion, and pharmacodynamics of silver in the body, both when taken internally and applied externally, and of the effect of the particle size of the silver on these systemic effects. The agency concludes that a full pharmacologic profile that is relevant to human use is needed.

4. Several comments submitted information purporting to support the effectiveness of colloidal silver and other silver ingredients. One comment provided a partial list of the more than 650 diseases that colloidal silver has been used against and included a number of testimonials. Another comment stated that silver will kill 650 disease organisms, but it does not cure 650 diseases. The comment added that a Bredig Sol of silver at 30 ppm is an effective germicide for both gram-positive and gram-negative bacteria, fungi, yeasts, and viruses. Another comment noted the antimicrobial and bacteriostatic effects of diluted colloidal silver protein solutions. One comment provided a number of case reports involving the use of a colloidal silver (200 ppm) suspension with protein and distilled water and a mild silver protein cream to treat various conditions (e.g., rash, pain, and sore gums).

Another comment, from a physician, described a double-blind clinical study that he conducted using a commercial colloidal silver product (concentration not provided) in 22 men ages 50 to 82, with a mean age of 61.9 years. The physician obtained a brief medical history from each man and did a rectal examination. The men reported that nocturia (frequency of urination) ranged from one to five times a night. The physician assumed that the men had benign prostatic hypertrophy because of their age and the onset of symptoms in recent years. Of the 22 men, 15 took colloidal silver and 7 took placebo (colored water). The dose was 1 teaspoon (tsp) of the products morning and evening, and the duration of the study was from 19 to 23 days, with one exception of 10 days for a late entry. At the end of the study, four men (all on the colloidal silver) reported considerable improvement in the nocturia, with a reduction from 2 to 4 times to 1 time each night, while six other men (five on the colloidal silver) noted some improvement in the nocturia. Two men with a history of

transurethral resection of the prostate, who were on the colloidal silver, did not report any improvement.

Subsequently, all of the men continued on colloidal silver (1 tsp daily) for the next 8 weeks. The men were interviewed after about 4 more weeks, and each completed an American Urological Association (AUA) Symptom Index representing symptoms at the time of the interview. The men also completed an AUA index representing symptoms before starting the colloidal silver. The AUA index is based on answers to seven questions, graded from 0 (not at all) to 5 (almost always), with the score being a sum of the answers to the questions. The one man who reported improvement on placebo reported marked improvement on the colloidal silver, with his nocturia decreasing from 2 to 3 times to 1, and occasionally 0, time each night. His AUA index was 9+ at the beginning and improved to a 3 at the last interview. One man moved, and a followup was not obtained. Of the remaining 21 men, 16 reported improvement of varying degrees. All reported decreased nocturia, with five men recording an improvement of 2 or less on the AUA index and nine men reporting an improvement of 3 to 10 on the AUA index. One man reported that he had been taking a prescription drug for benign prostatic hypertrophy before starting the colloidal silver. The last two men had improvements of 14 and 18 on the AUA index, with nocturia decreasing by 3 and 2 times, respectively. Five men reported no improvement during the study. Two of these men had a history of transurethral resection of the prostate, one had been taking a prescription drug for this condition for the past 6 months and his nocturia had already improved to 1 time each night, and the other two had been having symptoms for 6 and 15 years, respectively, and had an enlarged prostate when the study began. The physician noted that because the four men with a tender prostate improved, it was reasonable to suggest that the beneficial action of the colloidal silver was due to its antibacterial activity. He hypothesized that there may be some subclinical prostatitis in many men with benign prostatic hypertrophy, and this might explain why the colloidal silver resulted in a remarkable reduction in the men's symptoms. The physician concluded that the results of this study merit further investigation by the medical community.

The physician also commented on some other observations from about 50 men who had taken colloidal silver (most for symptoms of prostatism) under his direction before, during, and after the study (a period of about 6 months). Six noted clearing of acne or other infectious lesions of the skin, three reported improvement of mucus in the throat and associated cough of long duration, two indicated that irritation around the anus had cleared, one stated that he had no summer colds for 3 months (which was unusual for him), eight reported improvement in nasal discharge and sinus trouble (especially when using colloidal silver in a nasal spray), two noted a reduction in upset stomach and abdominal pain, and two reported that their sexual enjoyment and performance had improved. The physician concluded that these observations suggested some areas that needed to be investigated further.

The agency finds that the previous studies are not adequate and well-controlled clinical studies of the type described in § 314.126 (21 CFR 314.126) that need to be conducted. The studies have major methodic flaws. There needs to be a clear statement of the objectives of the investigation and a protocol containing a specific study design, the method of subject selection (with inclusion and exclusion criteria), the method of assigning subjects to treatment and control groups, well-defined methods for measuring the subjects' responses, and methods for analysis of the study results. Adequate measures need to be taken to minimize bias on the part of the subjects, observers, and analysts of the data, which is done by adequate blinding. The agency is unable to determine the adequacy of the blinding in the physician's study because the placebo was described as "colored water." The agency is not able to ascertain the degree of similarity or difference that existed in the appearance of the colloidal silver product and the placebo to determine how well the study was blinded. The studies need replication by other investigators and need to follow § 314.126. Likewise, the conditions described in the case reports provided by one comment need to be studied in adequate and well-controlled clinical trials. Finally, the information that silver will kill 650 disease organisms and that a Bredig Sol of silver at 30 ppm is an effective germicide for both gram-positive and gram-negative bacteria, fungi, yeasts, and viruses needs to be related to in vivo treatment for specific disease conditions. The agency concludes that the data and information submitted are not sufficient to establish general recognition of effectiveness for colloidal silver or other silver ingredients for any specific OTC condition.

C. The Grandfather Clauses of the Act

5. One comment claimed that the silver products marketed today are the same as the more dilute mild silver protein products marketed pre-1938 that did not cause argyria. The comment made the following recommendation: FDA should set guidelines of the acceptable levels of the solutions and the dosage based on current EPA safety standards and what was available pre-1938, so that a "grandfathered" standard is implemented. Another comment stated that not approving its colloidal silver product as a grandfathered colloidal silver would be to deprive the public of the use of an extremely safe and effective product already in use for 4 years.

The "grandfather exemption" was discussed in detail in the proposed rule (61 FR 53685 to 53686). None of the comments provided any evidence to show that the composition and the labeling of colloidal silver or silver salt drug products have remained unchanged since 1938 or 1962. Without such evidence, the products cannot qualify for either grandfather exemption, and there is no need to set any guidelines as requested by one comment.

D. Freedom of Choice

6. A number of comments included individual testimonials or expressions of belief that colloidal silver benefited their health and that of their family members or friends. A few comments mentioned benefits experienced by pets. Many of the comments stated that the proposed rule would deny them the freedom of choice to select their own drugs.

FDA's statutory mandate includes protection and promotion of the public health by ensuring that drugs are not only safe but also effective for their intended use. The Commissioner of Food and Drugs' decision on the status of Laetrile, published in the **Federal Register** of August 5, 1977 (42 FR 39788), expresses the agency's position on freedom of choice with respect to ensuring that drugs are not only safe, but also effective. That statement reads in part:

> In passing the 1962 Amendments to the act—the amendments that require that a drug be proved effective before it may be marketed—Congress indicated its conclusions that the absolute freedom to choose an ineffective drug was properly surrendered in exchange for the freedom from the danger to each person's health and well-being from the sale and use of worthless drugs * * *. To the extent that any freedom

has been surrendered by the passage of the legislation which bans from the marketplace drugs that have not been proven to be effective, that surrender was a rational decision which has resulted in the achievement of a greater freedom from the dangers to health and welfare represented by such drugs.

Agency regulations in 21 CFR 330.10(a)(4)(ii) state that the standards for effectiveness for an OTC drug that is generally recognized as effective include a requirement for controlled clinical investigations. Isolated case reports, random experience, and reports lacking the details that permit scientific evaluation are not considered adequate to establish effectiveness. Testimonials from consumers cannot be considered as adequate proof of effectiveness or safety. None of the comments presented any evidence of safety or effectiveness beyond personal experience.

In the absence of data demonstrating that the ingredients present in OTC drug products containing colloidal silver ingredients or silver salts are generally recognized as safe and effective, these ingredients cannot be included in an OTC drug product. After the effective date of the final regulation, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce (unless it is the subject of an approved NDA, of which there currently are none) that is not in compliance with this regulation will be subject to regulatory action.

E. The Dietary Supplement Health and Education Act (DSHEA)

7. Several comments, from consumers, stated that the specific product they used did not make any claims and might be considered a dietary supplement. None of the comments provided any labeling or specifics about the products they used.

This final rule addresses products marketed as OTC drugs. A product that is not intended for OTC "drug" use in accord with section 201(g)(1) of the act would not be subject to this final rule. A product containing silver could, under certain circumstances, be marketed as a dietary supplement if it meets the definition in section 201(ff) of the act and other applicable requirements. Among other things, such a product's label must state that the product is a dietary supplement and meet other labeling requirements of the act. (See, e.g., section 403(q), (r), and (s) of the act (21 U.S.C. 343(q), (r), and (s)).) It must also meet the safety requirements of the act. (See, e.g., 21 U.S.C. 342(a), (f), and (g).) FDA may take regulatory action against a product marketed as a dietary supplement when authorized to do so by the act.

A dietary supplement containing colloidal silver or silver salts may not be labeled in whole or in part for topical use. Section 201(ff)(2)(A)(i) of the act requires that a dietary supplement is a product that is "intended for ingestion." The term ingestion has been addressed by the court in *United States* v. *Ten Cartons, Ener-B Nasal Gel*, 888 F. Supp. 393 (E.D.N.Y.), *aff'd*, 72 F.3d 285 (2d Cir. 1995). A topical product could not be a dietary supplement.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). As the agency stated in the proposed rule, this rulemaking is not expected to pose a significant impact on small business because only a limited number of products are affected (61 FR 53685 at 53687).

The agency believes that this final rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this final rule is to establish that all OTC drug products containing colloidal silver ingredients or silver salts for internal or external use are not generally recognized as safe and effective and are misbranded. The agency's Drug Listing System identifies a multitude of silver-containing products. These products may contain silver, silver ion, silver chloride, silver cyanide, silver iodide, silver oxide, or silver phosphate.

All of these manufacturers are considered small entities, using the U.S. Small Business Administration designation for this industry (750 employees).

Manufacturers will no longer be able to market OTC drug products containing any silver ingredients after the effective date of the final rule. While the manufacturers may incur a loss of revenue from some of these products, some silver products for internal use may be able to continue to be marketed as dietary supplements, provided they meet, among other regulatory requirements applicable to dietary supplements, the definition of dietary supplements in section 201(ff) of the act and meet the labeling requirements of section 403 of the act.

Manufacturers have been aware of the possible effects on the status of these OTC silver drug products since October 1996 and have not submitted adequate safety and effectiveness data to the agency. Since publication of the 1996 proposal and with the 30-day implementation date after publication of the final rule, manufacturers should have ample time to deplete most of their remaining stock of OTC drug products containing the affected ingredients.

The agency has considered a longer effective date for this final rule. However, manufacturers have not submitted the necessary data, and safety and effectiveness have not been established for the ingredients included in this final rule. Consumers will benefit from the removal from the marketplace of OTC drug products containing ingredients for which safety and effectiveness have not been established. If consumers purchase these products marketed as dietary supplements and if the product bears a statement claiming a benefit related to a classical nutrient deficiency disease and discloses the prevalence of such disease in the United States, describes the role of a nutrient or dietary ingredient intended to affect the structure or function of the body in humans, characterizes the documented mechanism by which a nutrient or dietary supplement acts to maintain such structure or function, or describes general well-being from consumption of a nutrient or dietary ingredient, then the labeling will have to inform them that "This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease." (See 21 U.S.C. 343(r)(6).)

While this final rule may cause manufacturers to discontinue marketing or reformulate or relabel some products, these manufacturers have known for some time that if adequate data were not submitted to support safety and effectiveness, cessation of marketing of the current OTC drug products would be required, in any event, when the final

rule was published and became effective.

The analysis shows that this final rule is not economically significant under Executive Order 12866 and that the agency has considered the burden to small entities. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Reform Act does not apply to the final rule because it would not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

2. Section 310.548 is added to subpart E to read as follows:

§ 310.548 Drug products containing colloidal silver ingredients or silver salts offered over-the-counter (OTC) for the treatment and/or prevention of disease.

(a) Colloidal silver ingredients and silver salts have been marketed in over-the-counter (OTC) drug products for the treatment and prevention of numerous disease conditions. There are serious and complicating aspects to many of the diseases these silver ingredients purport to treat or prevent. Further, there is a lack of adequate data to establish general recognition of the safety and effectiveness of colloidal silver ingredients or silver salts for OTC use in the treatment or prevention of any disease. These ingredients and salts include, but are not limited to, silver proteins, mild silver protein, strong silver protein, silver, silver ion, silver chloride, silver cyanide, silver iodide, silver oxide, and silver phosphate.

(b) Any OTC drug product containing colloidal silver ingredients or silver salts that is labeled, represented, or promoted for the treatment and/or prevention of any disease is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product containing colloidal silver or silver salts labeled, represented, or promoted for any OTC drug use is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs as set forth in part 312 of this chapter.

(d) After September 16, 1999, any such OTC drug product containing colloidal silver or silver salts initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: July 14, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21253 Filed 8–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–135]

RIN 2115–AA97

Safety Zone Port of New York/New Jersey Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing a number of Safety Zone regulations for annual fireworks displays. This action is necessary to update the current regulations for Safety Zones. This action is intended to remove regulations for events that are now covered by other regulations.

DATES: This rule is effective August 17, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. These procedures are unnecessary because this regulation is strictly administrative in nature. This final rule merely removes obsolete sections in 33 CFR part 165. The safety zones being removed have gone through notice and comment rulemaking and are included in the First Coast Guard District Fireworks list in 33 CFR 100.114.

Background and Purpose

One June 28, 1999, the First Coast Guard District published a Final rule in the **Federal Register** (64 FR 34543) updating the regulations for Fireworks displays within the First Coast Guard District (33 CFR 100.114). The following regulations for fireworks displays from 33 CFR part 165 were added to the list in § 100.114 and are no longer required in part 165:

1. § 165.161 Safety Zone; Annual "Fireworks on the Navesink" Fireworks Display Navesink River, Red Bank, New Jersey.
2. § 165.166 Safety Zone; Annual Burlington Independence Day Celebration Fireworks Display, Burlington Bay, Vermont.
3. § 165.167 Safety Zone; Annual Rensselaer Festival Fireworks Display, Hudson River, New York.
4. § 165.170 Safety Zone; Heritage of Pride Fireworks Display, Hudson River, New York.

5. § 165.174 Safety Zone; Annual South Street Seaport New Year's Eve Fireworks Display, East River, New York.

6. § 165.175 Safety Zone; Annual South Street Seaport Memorial Day Fireworks Display, East River, New York.

7. § 165.178 Safety Zone; Annual North Hempstead Memorial Day Fireworks Display, Hempstead Harbor, New York.

Regulatory Evaluation

This final rule is not a significant regulatory action under section (f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that this regulation is strictly administrative in nature and that the regulations have gone through notice and comment rulemaking while being added to the list of First Coast Guard District fireworks displays in 33 CFR 100.114.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coat guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

(Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

§ 165.161 [Removed]

2. Remove § 165.161.

§ 165.166 [Removed]

3. Remove § 165.166.

§ 165.167 [Removed]

4. Remove § 165.167.

§ 165.170 [Removed]

5. Remove § 165.170

§ 165.174 [Removed]

6. Remove § 165.174.

§ 165.175 [Removed]

7. Remove § 165.175.

§ 165.178 [Removed]

8. Remove § 165.178.

Dated: August 6, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–21269 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AJ03

Reconsideration of Denied Claims

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' "Medical" regulations by adding a new section to set forth reconsideration procedures regarding claims for benefits administered by the Veterans Health Administration. These procedures would not only allow for more reflective decisions at the local level but would also allow some disputes to be resolved without the need for further appeal to the Board of Veterans' Appeals.

DATES: Effective Date: August 17, 1999.

FOR FURTHER INFORMATION CONTACT: Troy L. Baxley, Health Administration Service (10C3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC 20420, telephone (202) 273–8301. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on February 27, 1998 (63 FR 9990), we proposed to amend the "Medical" regulations (38 CFR part 17) by adding a new section to set forth reconsideration procedures regarding claims for benefits administered by the Veterans Health Administration (VHA). We provided a 60-day comment period, which ended April 28, 1998. We received comments from two sources.

Both commenters asserted that the VA person rendering a decision upon reconsideration should not be the same person who rendered the original decision. We agree and have delegated the authority for making the reconsideration decision to the immediate supervisor of the initial VA decision-maker.

One commenter asserted that under § 17.133(a) of the proposed rule, the examples provided are, indeed, examples and are not all inclusive. We agree. We have revised the text to more clearly emphasize that, unless other reconsideration procedures apply, the reconsideration procedures of this rule apply to VHA decisions that are appealable to the Board of Veterans' Appeals. Also, we have clarified the procedures to state that they do not apply to decisions made outside VHA, such as rating decisions made by the Veterans Benefits Administration and adopted by VHA for decisionmaking.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has cleared the information collection and has assigned an OMB control number 2900–0600.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this final rule would not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Although the adoption of the final rule could affect small businesses, it would not have a significant impact on any small business. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There are no Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 28, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is amended to read as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, an undesignated center heading and § 17.133 are added to read as follows:

Reconsideration of Denied Claims

§ 17.133 Procedures.

(a) *Scope.* This section sets forth reconsideration procedures regarding claims for benefits administered by the Veterans Health Administration (VHA). These procedures apply to claims for VHA benefits regarding decisions that are appealable to the Board of Veterans' Appeals (e.g., reimbursement for non-VA care not authorized in advance, reimbursement for beneficiary travel expenses, reimbursement for home improvements or structural alterations, etc.). These procedures do not apply when other regulations providing reconsideration procedures do apply (this includes CHAMPVA (38 CFR 17.270 through 17.278) and spina bifida (38 CFR 17.904) and any other regulations that contain reconsideration procedures). Also, these procedures do not apply to decisions made outside of VHA, such as decisions made by the Veterans Benefits Administration and adopted by VHA for decisionmaking. These procedures are not mandatory, and a claimant may choose to appeal the denied claim to the Board of Veterans' Appeals pursuant to 38 U.S.C. 7105 without utilizing the provisions of this section. Submitting a request for reconsideration shall constitute a notice of disagreement for purposes of filing a timely notice of disagreement under 38 U.S.C. 7105(b).

(b) *Process.* An individual who disagrees with the initial decision denying the claim in whole or in part may obtain reconsideration under this section by submitting a reconsideration request in writing to the Director of the healthcare facility of jurisdiction within one year of the date of the initial decision. The reconsideration decision will be made by the immediate supervisor of the initial VA decision-maker. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for the dispute will be returned to the sender without further consideration. The request for reconsideration may include a request for a meeting with the immediate supervisor of the initial VA decision-maker, the claimant, and the claimant's representative (if the claimant wishes to have a representative present). Such a meeting shall only be for the purpose of discussing the issues and shall not include formal procedures (e.g., presentation, cross-examination of witnesses, etc.). The meeting will be taped and transcribed by VA if requested by the claimant and a copy of the transcription shall be provided to the claimant. After reviewing the matter, the immediate supervisor of the initial VA decision-maker shall issue a written decision that affirms, reverses, or modifies the initial decision.

Note to § 17.133: The final decision of the immediate supervisor of the initial VA decision-maker will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0600)

(Authority: 38 U.S.C. 511, 38 U.S.C. 7105)

[FR Doc. 99–21249 Filed 8–16–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ40

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1998–99 academic year should be increased by 5% over the rates payable for the 1997–98 academic year. The regulations dealing with these rates are amended accordingly.

DATES: This rule is effective August 17, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the

amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 5% in the 1997–98 academic year. Accordingly, this final rule changes 38 CFR 21.5820 and 21.5822 to reflect a 5% increase in the rates payable in the 1998–99 academic year. These changes to § 21.5820 include removing provisions for adjustments to compensate for rounding, which were not applicable because this year the resulting numerical values did not involve rounding. Other nonsubstantive changes are made for the purpose of clarification.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 there is good cause for finding that notice and public procedure are impractical, unnecessary and contrary to the public interest and there is good cause for dispensing with a 30-day delay of the effective date. The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act. The other changes made by this document are merely nonsubstantive changes for the purpose of clarification.

Regulatory Flexibility Act

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 10, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Approved: May 19, 1999.

Curtis B. Taylor,

Colonel U.S. Army, Principal Director, (Military Personnel Policy), Department of Defense.

For the reasons set out above, 38 CFR part 21 (subpart H) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H, is revised to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

2. In § 21.5820, paragraph (b)(1) is amended by removing "1997–98" and adding, in its place, "1998–99" and by removing "$3,103" and adding, in its place, "$3,258"; paragraph (b)(2)(ii) introductory text is amended by removing "1997–98" and adding, in its place, "1998–99"; paragraph (b)(2)(ii)(A) is amended by removing "$344.78" and adding, in its place, "$362" and by removing "$172.39" and adding, in its place, "$181"; paragraph (b)(2)(ii)(B) is amended by removing "$11.49" and adding, in its place, "$12.07" and by removing "$5.75" and adding, in its place, "$6.03"; paragraph (b)(3)(ii) introductory text is amended by removing "1997–98" and adding, in its place, "1998–99"; paragraph (b)(3)(ii)(A) is amended by removing "$344.78" and adding, in its place, "$362" and by removing "$172.39" and adding, in its place, "$181"; paragraph (b)(3)(ii)(B) is amended by removing "$11.49" and adding, in its place, "$12.07" and by removing "$5.75" and adding, in its place, "$6.03"; and paragraphs (b)(2)(ii)(C) and (b)(3)(ii)(C) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) Adding the two results.

(3) * * *

(ii) * * *

(C) Adding the two results; and

* * * * *

§ 21.5822 [Amended]

3. In § 21.5822, paragraph (a) introductory text is amended by removing "payable to" and adding, in its place, "payable to"; paragraph (b)(1)(i) is amended by removing "$773" and adding, in its place, "$812", by removing "1997–98" and adding, in its place, "1998–99", and by removing "year," and adding, in its place; "year."; paragraph (b)(1)(ii) is amended by removing "$386.50" and adding, in its place, "$406", by removing "1997–98" and adding, in its place, "1998–99", and by removing "year," and adding, in its place, "year."; paragraph (b)(2)(i) is amended by removing "1997–98" and adding, in its place, "1998–99", by removing "$773" and adding, in its place, "$812", and by removing "day:" and adding, in its place, "day."; and paragraph (b)(2)(ii) is amended by removing "1997–98" and adding, in its place, "1998–99", by removing "$386.50" and adding, in its place, "$406", and by removing "day;" and adding, in its place, "day.".

[FR Doc. 99–21248 Filed 8–16–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 081099A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 1999, unless additional quota becomes available through a transfer. Regulations

governing the summer flounder fishery require publication of this notification to advise the Commonwealth of Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective from 0001 hours, August 16, 1999, through 2400 hours, December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 1999 calendar year was set equal to 11,110,300 lb (5,039,547 kg)(64 FR 5196, February 3, 1999, corrected at 64 FR 9068, February 24, 1999). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, or 757,842 lb (343,751 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the Commonwealth of Massachusetts has attained its quota for 1999.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours August 16, 1999, further landings of summer flounder in Massachusetts by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1999 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the same date, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21299 Filed 8–12–99; 3:16 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 158
Tuesday, August 17, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 747

Prompt Corrective Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 3, 1999, the NCUA issued a proposed rule establishing a system of prompt corrective action to be taken by NCUA and by federally-insured credit unions if they become undercapitalized. The proposed rule was published in the **Federal Register** on May 18, 1999 (see 64 FR 27090). The proposed rule stated that comments must be received by August 16, 1999. Due to a request made, the NCUA Board has decided to extend the comment period for an additional 15 days to August 31, 1999.

DATES: The comment period is being extended from August 16, 1999 to August 31, 1999. Comments must be postmarked or received by August 31, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

By the National Credit Union Administration Board on August 10, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–21212 Filed 8–16–99; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–25–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, A321, A330, and A340 Series Airplanes Equipped With AlliedSignal RIA–35B Instrument Landing System Receivers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, A321, A330, and A340 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to require the flightcrew to discontinue use of any Instrument Landing System (ILS) receiver for which a certain caution message is displayed. It also requires, for certain airplanes, replacing any faulty ILS receiver with a new, serviceable, or modified unit, and provides for optional terminating action for the AFM revisions. That amendment was prompted by a pilot's report of errors in the glide slope deviation provided by an ILS receiver. This action would require accomplishment of the previous optional terminating action. The actions specified by this proposal are intended to detect and correct faulty ILS receivers and to ensure that the flightcrew is advised of the potential hazard of performing ILS approaches using a localizer deviation from a faulty ILS receiver, and advised of the procedures necessary to address that hazard. An erroneous localizer deviation could result in a landing outside the lateral boundary of the runway.

DATES: Comments must be received by September 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–25–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.

99–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 6, 1998, the FAA issued AD 98–17–05, amendment 39–10707 (63 FR 43294, August 13, 1998), applicable to certain Airbus Model A319, A320, A321, A330, and A340 series airplanes, to require the flightcrew to discontinue use of any Instrument Landing System (ILS) receiver for which a certain caution message is displayed and, for certain airplanes, replacement of any faulty ILS receiver with a new, serviceable, or modified unit. That AD also provides for an optional terminating action for the AFM revisions. That action was prompted by a pilot's report of errors in the glide slope deviation provided by an ILS receiver. The requirements of that AD are intended to detect and correct faulty ILS receivers, to ensure that the flightcrew is advised of the potential hazard of performing ILS approaches using a localizer deviation from a faulty ILS receiver, and advised of the procedures necessary to address that hazard, which could result in a landing outside the lateral boundary of the runway.

Actions Since Issuance of Previous Rule

In the preamble to AD 98–17–05, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary to require replacement of all existing RIA–35B ILS receivers with modified parts, which would constitute terminating action for the AFM revisions. This proposed AD follows from that determination and allows opportunity for public comment.

In light of the criticality of the unsafe condition (an error in the glide slope deviation provided by an ILS receiver, which could result in a landing outside of the lateral boundary of the runway), reliance on the AFM procedures to require the flightcrew to discontinue use of any ILS receiver for which a certain caution message is displayed and replacement of faulty ILS receivers may not provide the degree of safety assurance necessary for the transport airplane fleet. Therefore, replacement of all existing RIA–35B ILS receivers with modified parts is necessary to ensure long-term continued operational safety.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–34–1163, Revision 01, dated August 19, 1998 (for Model A319, A320 and A321 series airplanes), Service Bulletin A330–34–3068, dated April 28, 1998 (for Model A330 series airplanes), and Service Bulletin A340–34–4073, dated April 28, 1998 (for Model A340 series airplanes). These service bulletins provide information on the installation of RIA–35B ILS receivers that have been modified in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4431 (RIA–35B–34–7), Revision 1, dated May 1998, onto the airplane.

Airbus has developed production modification 27251 (for Model A319, A320, and A321 series airplanes) and production modification 46264 (for Model A330 and A340 series airplanes). These modifications involve the installation of modified ILS receivers on these airplanes during production, which would eliminate the need for the AFM limitations required by the existing AD.

U.S. Type Certification of the Airplanes

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–17–05 to continue to require the flightcrew to discontinue use of any ILS receiver for which a certain caution message is displayed. For certain airplanes, the proposed AD would continue to require replacement of any faulty ILS receiver with a new, serviceable, or modified unit. The proposed AD would add a new requirement for replacement of all existing RIA–35B ILS receivers with modified parts, which would constitute terminating action for the AFM revisions described previously. The replacement would be required to be accomplished in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4431 (RIA–35B–34–7), Revision 1, dated May 1998 (described previously in AD 98–17–05).

Explanation of the Applicability of the Proposed Rule

The FAA notes that its general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in a limited number of airplane models, an AD is issued so that it is applicable to those airplanes, rather than the item. The reason for this is simple: making the AD applicable to the airplane models on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents "unknowing non-compliance" on the part of the operator.

Cost Impact

There are approximately 191 airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision that is currently required by AD 98–17–05, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $11,460, or $60 per airplane.

The new replacement that is proposed in this AD action would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $157 per airplane. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $87,287, or $457 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not

a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10707 (63 FR 43294, August 13, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–25–AD. Supersedes AD 98–17–05, Amendment 39–10707.

Applicability: Model A319, A320, A321, A330, and A340 series airplanes; certificated in any category; equipped with AlliedSignal RIA–35B Instrument Landing System (ILS) receivers, part number (P/N) 066–50006–0202; excluding airplanes on which RIA–35B ILS receiver P/N 066–50006–1202 [Airbus Modification 27251 (for Model A319, A320, and A321 series airplanes) or Modification 46264 (for Model A330 and A340 series airplanes)] has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct faulty ILS receivers and to ensure that the flightcrew is advised of the potential hazard of performing ILS approaches using a localizer deviation from a faulty ILS receiver, and advised of the procedures necessary to address that hazard, accomplish the following:

Restatement of Actions Required by AD 98–17–05, Amendment 39–10707

(a) Within 10 days after August 28, 1998 (the effective date of AD 98–17–05, amendment 39–10707), accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"Instrument Landing (ILS) 1(2) Fault

If "ILS 1(2) FAULT," electronic centralized aircraft monitor (ECAM) caution, is triggered at any time during the flight, the affected ILS receiver must be considered as no longer available until it is replaced, and the flight crew must make the appropriate entry in the aircraft maintenance log prior to the next flight.

During an ILS or LOC approach, the glide slope deviation and localizer deviation from ILS receivers 1 and 2 must be monitored and compared.

If a discrepancy between the glide slope deviation and/or localizer deviation provided by ILS receivers 1 and 2 is experienced, interrupt the ILS approach.

Do not conduct ILS or LOC approaches using a single ILS receiver.

If ILS 1 has experienced an unannunciated failure there may be late or false ground proximity warning system (GPWS) alerts/callouts. Affected GPWS features may include sink rate alerts, glide slope deviation alerts, and altitude callouts."

(2) Following accomplishment of the AFM revision required by paragraph (a)(1) of this AD, if a caution message reading "ILS 1 FAULT," "ILS 2 FAULT," or "ILS 1+2 FAULT" is displayed intermittently or continuously on ECAM during any portion of any flight: Within 10 days after the message is first displayed, remove the faulty ILS receiver and install either a new or serviceable part that has the same P/N as the ILS receiver that was removed from the airplane or a part that has been modified in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4431 (RIA–35B–34–7), Revision 1, dated May 1998.

Note 2: The ECAM messages described in paragraph (a)(2) of this AD, when displayed to the pilot, are normally preceded by "NAV" indicating a fault in the navigation system.

(b) As of August 28, 1998, no person shall install on any airplane an AlliedSignal RIA–35B ILS receiver, P/N 066–50006–0202, that has been found to be discrepant [that is, an ILS receiver for which one of the caution messages specified in paragraph (a)(2) of this AD was displayed on the ECAM] unless the discrepancy has been corrected by modifying the ILS receiver in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4431 (RIA–35B–34–7), Revision 1, dated May 1998.

New Actions Required by This AD

(c) Within 6 months after the effective date of this AD, replace all RIA–35B ILS receivers, P/N 066–50006–0202, with RIA–35B ILS receivers that have been modified in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4431 (RIA–35B–34–7), Revision 1, dated May 1998; on which the P/N's have been converted to 066–50006–1202. Such replacement constitutes terminating action for the requirements of paragraph (a) of this AD. After the replacement has been accomplished, the limitations required by paragraph (a)(1) of this AD may be removed from the AFM.

Note 3: Modification of all AlliedSignal RIA–35B ILS receivers, P/N 066–50006–0202, accomplished prior to August 28, 1998, in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4431 (RIA–35B–34–7), dated April 1998, is considered acceptable for compliance with the modification specified in this amendment.

Note 4: Airbus Industrie Service Bulletin A320–34–1163, Revision 01, dated August 19, 1998 (for Model A319, A320 and A321 series airplanes), Service Bulletin A330–34–3068, dated April 28, 1998 (for Model A330 series airplanes), and Service Bulletin A340–34–4073, dated April 28, 1998 (for Model A340 series airplanes), provide additional information on the installation of RIA–35B ILS receiver part number 066–50006–1202.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector or Principal Avionics Inspector or Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 11, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21333 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–74–AD]

Airworthiness Directives; BMW Rolls-Royce GmbH Models BR700–710A1–10 and BR700–710A2–20 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD) applicable to BMW Rolls-Royce GmbH (BRR) Models BR700–710A1–10 and BR700–710A2–20 turbofan engines. The existing AD currently requires initial and repetitive visual inspections of the engine compressor and combustion core fairings (also referred to as the engine core fairings) and fasteners for correct installation and damage, and verification that the engine core fairing fasteners are torqued to a higher torque value. This action would increase the repetitive inspection interval to 150 hours time-in-service (TIS) following an initial inspection and follow-on inspection at the current 50 hours TIS interval. This action also would require an initial inspection and follow-on inspection at a 50 hours TIS interval following any engine core fairing or fastener removal, repair, or replacement. Repair of engine core fairings has been added as an alternate to engine core fairing replacement, and an inspection for loose engine core fairing(s) has been included to verify correct installation on the engine. This proposal is prompted by results of repetitive inspections that indicate that the inspection interval can be increased safely. The actions specified by the proposed AD are intended to prevent engine compressor or combustion core fairing detachment and damage to the engine bypass duct, resulting in engine failure and damage to the airplane.

DATES: Comments must be received by September 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–74–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BMW Rolls-Royce GmbH, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 011–49–33–7086–1883; fax 011–49–33–7086–3276. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–74–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–74–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On February 16, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 98–24–03, Amendment 39–11050 (64 FR 9056, February 24, 1999), following a priority letter AD issued November 12, 1998, applicable to BMW Rolls-Royce GmbH (BRR) Models BR700–710A1–10 and BR700–710A2–20 turbofan engines. That AD requires initial and repetitive visual inspections of the engine compressor and combustion core fairings (also referred to as the engine core fairings) and fasteners for correct installation and damage, and verification that the engine core fairing fasteners are torqued to the higher torque value. That action was prompted by a report of an engine compressor core fairing failure during engine ground runs on a BRR Model BR700–710A1–10 turbofan engine installed on a Gulfstream G–V aircraft. That condition, if not corrected, could result in engine compressor or combustion core fairing detachment and damage to the engine bypass duct, resulting in engine failure and damage to the airplane.

Since the issuance of that AD, the Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, has notified the FAA that they have determined, based on ongoing investigations and results of successful repetitive inspections, that the inspection interval can be safely increased. They also determined that if an engine core fairing was removed, an initial inspection and follow-on inspection at the current 50 hour TIS interval would be required to insure correct installation, before the 150 hour repetitive time-in-service (TIS) interval is permitted. They also instituted an inspection requirement for loose engine core fairings to verify proper installation and allowed the use of repaired engine core fairings. The LBA issued AD 1998–467/2 following publication of BRR Service Bulletin (SB) No. BR700–72–900062, Revision 3, dated March 24,1999, that increases the repetitive inspection intervals.

This engine model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and

determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 98–24–03 to increase the repetitive inspection interval to 150 hours time-in-service (TIS) following a successful initial inspection and one follow-on inspection at the current 50 hours TIS inspection interval. Any engine core fairings or fasteners that have been removed, repaired, or replaced will require an initial inspection before flight and one follow-on inspection at the 50 hours TIS interval before the 150 hour TIS inspection interval is allowed.

There exists no adverse economic impact because this proposed rule only increases the repetitive inspection interval.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11050 (64 FR 9056, February 24, 1999), and by adding a new airworthiness directive, to read as follows:

BMW Rolls-Royce GmbH: Docket No. 98–ANE–74–AD. Revises AD 98–24–03, Amendment 39–11050.

Applicability: BMW Rolls-Royce GmbH (BRR) Model BR700–710A1–10 and BR700–710A2–20 turbofan engines installed on, but not limited to, Gulfstream Aerospace G–V and Bombardier BD–700–1A10 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine compressor and combustion core fairing (also referred to as the engine core fairing) detachment which could result in damage to the engine bypass duct, engine failure and damage to the aircraft, accomplish the following:

(a) Prior to further flight, visually inspect the engine core fairings and fasteners to ensure correct installation and for cracks, loose fairings, or fasteners, and if loose, cracked, damaged, or improperly installed, repair or replace with serviceable parts. Torque all the fasteners to the increased torque value, in accordance with BRR Service Bulletin (SB) BR700–72–900062, Revision 1, dated October 29, 1998, or Revision 2, dated November 3, 1998, or Revision 3, dated March 24, 1999.

(b) Thereafter, except as provided in paragraphs (c) or (d) of this AD, at intervals not to exceed 50 hours time-in-service (TIS) since last inspection, visually inspect the engine core fairings and fasteners for cracks, loose fairings, or fasteners, and, if loose, cracked, or damaged, repair or replace with serviceable parts. Torque all the fasteners to the increased torque value, in accordance with BRR SB BR700–72–900062, Revision 2, dated November 3, 1998, or Revision 3, dated March 24, 1999.

(c) Following an initial inspection in accordance with paragraph (a) of this AD, and one follow-on inspection in accordance with paragraph (b), if both inspections found no cracks, damage, loose fairings or fasteners the repetitive inspection interval may be increased to 150 hours TIS since last inspection in accordance with the procedures described in paragraph (b) of this AD.

(d) Reinspection and retorquing prior to further flight is required in accordance with paragraph (a) of this AD, following any engine core fairing or fastener which has been removed, repaired or replaced. One successful follow-on inspection and retorque in accordance with paragraph (b) of this AD must be accomplished before the repetitive 150 hour TIS inspection interval described in paragraph (c) of this AD is permitted.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Issued in Burlington, Massachusetts, on August 11, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–21332 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–07–AD]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company AE 3007A and AE 3007C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would require revisions to the Airworthiness Limitations Section of the Allison Engine Company AE 3007A and AE 3007C Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. Air carriers with an approved continuous airworthiness maintenance program

would be allowed to either maintain the records showing the current status of the inspections using the record keeping system specified in the air carrier's maintenance manual, or establish an acceptable alternate method of record keeping. This proposal is prompted by an FAA study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by September 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–07–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chung-Der Young, Aerospace Engineer Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7309, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–07–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–07–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A recent FAA study analyzing 15 years of accident data for transport category airplanes identified several failure mode root causes that can result in serious safety hazards to transport category airplanes. This study identified uncontained failure of critical life-limited rotating engine parts as the leading engine-related safety hazard to airplanes. Uncontained engine failures have resulted from undetected cracks in rotating parts that initiated and propagated to failure. Cracks can originate from causes such as unintended excessive stress from the original design, or they may initiate from stresses induced from material flaws, handling damage, or damage from machining operations. The failure of rotating parts can present a significant safety hazard to the airplanes by release of high energy fragments that could injure passengers or crew by penetration of the cabin, damage flight control surfaces, sever flammable fluid lines, or otherwise compromise the airworthiness of the airplane.

Accordingly, the FAA has developed an intervention strategy to significantly reduce uncontained engine failures. This intervention strategy was developed after consultation with industry and will be used as a model for future initiatives. This intervention strategy is to conduct enhanced, nondestructive inspections of fan disks which could most likely result in a safety hazard to the airplane in the event of a disk fracture. The FAA is also considering the need for additional rule making. Future ADs may be issued introducing additional intervention strategies to further reduce or eliminate uncontained engine failures.

Properly focused enhanced inspections require identification of the parts whose failure presents the highest safety hazard to the airplane, identifying the most critical features to inspect on these parts, and utilizing inspection procedures and techniques that improve crack detection. The FAA, with close cooperation of the engine manufacturers, has completed a detailed analysis that identifies the most safety significant parts and features, and the most appropriate inspection methods.

Critical life-limited high-energy rotating parts are currently subject to some form of recommended crack inspection when exposed during engine maintenance or disassembly. As a result of this AD, the inspections currently recommended by the manufacturer will become mandatory for those parts listed in the compliance section.

Furthermore, the FAA intends that additional mandatory enhanced inspections resulting from this AD serve as an adjunct to the existing inspections. The FAA has determined that the enhanced inspections will significantly improve the probability of crack detection while the parts are disassembled during maintenance. All mandatory inspections must be conducted in accordance with detailed inspection procedures prescribed in the manufacturer's Engine Manuals.

Additionally, this AD allows for air carriers operating under the provisions of 14 CFR part 121 with an FAA-approved continuous airworthiness maintenance program, and entities with whom those air carriers make arrangements to perform this maintenance, to verify performance of the enhanced inspections by retaining the maintenance records that include the inspections resulting from this AD, provided that the records include the date and signature of the person performing the maintenance action. These records must be retained with the maintenance records of the part, engine module, or engine until the task is repeated. This will establish a method of record preservation and retrieval typical to those in existing continuous airworthiness maintenance programs. Instructions must be included in an air carrier's maintenance manual providing procedures on how this record preservation and retrieval system will be implemented and integrated into the air carrier's record keeping system.

This proposal would require, within the next 30 days after the effective date of this AD, revisions to the

Airworthiness Limitations Section in the Allison Engine Company AE 3007A and AE 3007C Engine Manuals, and, for air carriers, the approved continuous airworthiness maintenance program. Allison Engine Company, the manufacturer of AE 3007A and AE 3007C series turbofan engines, used on 14 CFR part 25 airplanes, has provided the FAA with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined below in the compliance section, rather than specific time inspection intervals.

The FAA estimates that 450 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $27,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Allison Engine Company: Docket 99–NE–07–AD.

Applicability: Allison Engine Company AE 3007A, A1/1, A1/2, A1and AE 3007C series turbofan engines, installed on but not limited to EMBRAER EMB–145 series and Cessna Citation X series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Allison Engine Company AE 3007A and AE 3007C Engine Manuals, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"Mandatory Inspections

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
Wheel, Fan	All	72–21–21 (Task 72–21–21–200–801)

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is completely disassembled when done in accordance with the disassembly instructions in the engine manufacturer's Heavy Maintenance Manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Airworthiness Limitations Section of the Allison Engine Company AE 3007A and AE 3007C Engine Manuals.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Airworthiness Limitations Section and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting

from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

Issued in Burlington, Massachusetts, on August 9, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–21331 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 375

RIN 3220–AB36

Plan of Operation During a National Emergency

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations to update its emergency procedures in light of recent internal reorganizations. This would allow the Board to more effectively continue service and handle payments to civilian employees and their dependents in the event of a national emergency.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Comments may be submitted to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 375 of the regulations of the Board provides for operations of the Board during emergencies. This rulemaking would amend part 375 to refer to procedures of the Office of Personnel Management regarding advances, evacuation payments, and allowances for civilian employees in time of national emergency. Also, the rulemaking would update references to offices in the Board to reflect recent reorganizations.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 375

Civil defense, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 375—PLAN OF OPERATION DURING A NATIONAL EMERGENCY

1. The authority citation for part 375 is revised to read as follows:

Authority: 45 U.S.C. 231f(b)(5), 362(l).

2. In § 375.1, paragraph (a) is revised and a new paragraph (c) is added to read as follows:

§ 375.1 Purpose.

(a) The Railroad Retirement Board has adopted a plan to provide basic organization and methods of operation which may be needed to continue uninterrupted service during a period of national emergency as defined in § 375.2.

* * * * *

(c) For purposes of Government-wide uniformity, the procedures of the Board regarding payments during evacuation to employees and their dependents shall conform to those contained in subpart D of part 550 of the regulations of the Office of Personnel Management pertaining to "Payments During Evacuation" (5 CFR Part 550, Subpart D).

§ 375.2 [Amended]

3. Section 375.2 is amended by removing "chairman" and adding in its place "Chair" and by adding "or her" after "his" in two places.

4. In § 375.5, revise paragraphs (a), (b) introductory text, (b)(1) and (b)(2) to read as follows:

§ 375.5 Organization and functions of the Board, delegations of authority, and lines of succession.

(a) During a national emergency, as defined in § 375.2, the respective functions and responsibilities of the Board shall be, to the extent possible, as set forth in the U.S. Government Manual, which is published annually by the Office of the Federal Register, and is available on the Internet at http://www.nara.gov/fedreg/, under *Other Publications*.

(b) The following delegation of authority is made to provide continuity in the event of a national emergency:

(1) The Chair of the Board shall act with full administrative authority for the Board.

(2) In the absence or incapacity of the Chair, the authority of the Chair to act shall pass to the available successor highest on the following list:

Labor Member of the Board
Management Member of the Board
Director of Administration
Director of Programs
General Counsel
Chief Information Officer
Director of Supply and Service
Regional Directors in order of length of Board service

* * * * *

§ 375.5 [Amended]

5. Paragraph (b)(3) of § 375.5 is amended by removing "Chairman" and by adding in its place "Chair", by removing "bureau" and adding in its place "office" in three places, and by adding "or her" after "his" in three places.

6. Paragraphs (a), (b)(1), (b)(2) introductory text and (c)(1) of § 375.6 are revised to read as follows:

§ 375.6 Personnel, fiscal, and service functions.

(a) *Personnel.* In a national emergency as defined in § 375.2, when it is no longer possible for a regional director to communicate with the Chair or his or her successor as set forth in § 375.5, complete responsibility and authority for administration of the personnel function are delegated to such regional director for his or her respective geographic area.

(b) *Fiscal.* (1) In a national emergency, as defined in § 375.2, the Chair of the Board or his or her successor, as set forth in § 375.5, shall designate an individual to assume the responsibilities of the Chief Financial Officer in the event that he or she is unable to assume those responsibilities.

(2) In a national emergency, incumbents of the following positions are hereby authorized to appoint emergency certifying officers:

Director of Administration
Director of Programs
Chief Financial Officer
Regional Directors

* * * * *

(c) *Supply and service.* (1) In a national emergency, as defined in

§ 375.2, complete responsibility and authority for the procurement of needed supplies, equipment, space, communications, transportation, and repair services, are delegated to each regional director for his or her geographic area.

* * * * *

§ 375.7 [Amended]

7. Section 375.7 is amended as follows:

a. In paragraph (a)(2), by removing "Director of Retirement Claims" and adding in its place "Director of Programs".

b. In paragraph (b)(1)(ii), by removing "such as claim file folders or magnetic tape master records".

c. In paragraph (b)(1)(vi), by removing "and in the regions" and "or if those offices become inoperative".

d. In paragraph (b)(2), by removing "Director of Unemployment and Sickness Insurance" and adding in its place "Director of Programs".

e. Paragraph (c) is removed.

8. Section 375.8 is revised to read as follows:

§ 375.8 Regulations for employers.

(a) In a national emergency, as described in § 375.2, employers shall continue to follow, to the greatest extent possible, the requirements pertaining to employers in subchapters A, B, and C of this chapter.

(b) Where a national emergency, as described in § 375.2, prevents an employer from following any requirement imposed by paragraph (a) of this section, the employer shall comply with such requirement as soon as possible after the cessation of the national emergency.

(c) In a national emergency, as defined in § 375.2, all communications by employers shall be directed as set forth in § 375.4.

Dated: August 5, 1999.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99–20912 Filed 8–16–99; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 344

[Docket No. 77N–3348]

RIN 0910–AA01

Topical Otic Drug Products for Over-the-Counter Human Use; Products for Drying Water-Clogged Ears; Proposed Amendment of Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would amend the final monograph for over-the-counter (OTC) topical otic drug products (the regulation that establishes conditions under which these drug products are generally recognized as safe and effective and not misbranded). The amendment would add conditions for marketing topical otic drug products for drying water-clogged ears. Concurrently, the agency is proposing to remove water-clogged ears from one part of the regulation that lists conditions that are not generally recognized as safe and effective and that are misbranded. This proposal contains labeling in the new OTC drug format and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written comments on the proposed regulation by November 15, 1999. Please see section VIII for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Ryland, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 9, 1982 (47 FR 30012), the agency published a tentative final monograph for OTC topical otic drug products used as earwax removal aids. Subsequently, in the **Federal Register** of July 30, 1986 (51 FR 27366), the agency proposed to amend this tentative final monograph to consider OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears. At that time, no topical otic drug products for these conditions were proposed as generally recognized as safe and effective and not misbranded. The agency, however, did propose Category I (monograph) labeling for such products in case data were submitted that resulted in upgrading any ingredient(s) to monograph status in the final rule.

In the **Federal Register** of August 8, 1986 (51 FR 28656), the agency issued a final rule establishing part 344 (21 CFR part 344) for topical otic drug products for OTC human use. The monograph included one active ingredient for use as an earwax removal aid.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective (hereinafter referred to as the 1990 final rule). The 1990 final rule was effective on May 7, 1991, and included in § 310.545(a)(15) (21 CFR 310.545(a)(15)) the active ingredient acetic acid, which had been under consideration as part of this rulemaking for OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears. After the 1990 final rule published, only two ingredients remained to be evaluated in this rulemaking: Isopropyl alcohol and anhydrous glycerin.

In the **Federal Register** of February 15, 1995 (60 FR 8916), the agency issued a final rule establishing that OTC topical otic drug products for prevention of swimmer's ear or for drying water-clogged ears were not generally recognized as safe and effective for OTC use and were new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The agency listed the ingredients considered in the rulemaking (i.e., glycerin, anhydrous glycerin, and isopropyl alcohol) in § 310.545(a)(15)(ii), with an effective date of August 15, 1995, after which products containing these ingredients for these uses could no longer be initially introduced or initially delivered for introduction into interstate commerce. Acetic acid, which had been listed solely in § 310.545, was now listed in § 310.545(a)(15)(i), with the same effective date of May 7, 1991. This final rule did not affect the conclusion reached in the 1990 final rule that acetic acid was not generally recognized as safe and effective for the prevention of swimmer's ear. The phrase "approved

as of May 7, 1991" in § 310.545(a)(15)(i) indicates when this conclusion became effective for acetic acid.

Subsequently, a drug manufacturer submitted new data (Ref. 1) to support the use of a product containing 95 percent isopropyl alcohol in a 5 percent anhydrous glycerin base for drying water-clogged ears. The agency has determined that the data support the use of this product for drying water-clogged ears (Ref. 2). Accordingly, in the **Federal Register** of August 16, 1995 (60 FR 42435), the agency issued a partial stay of the August 15, 1995, effective date for § 310.545(a)(15)(ii) for products containing 95 percent isopropyl alcohol in a 5 percent anhydrous glycerin base used for the drying of water-clogged ears. This partial stay applied only to products with these ingredients for drying water-clogged ears. The new data and the stay did not involve other ingredients, such as acetic acid, and did not pertain to the prevention of swimmer's ear. The August 15, 1995, effective date for § 310.545(a)(15)(ii) remains in effect for the listed ingredients when used in topical otic drug products for the prevention of swimmer's ear.

II. The Agency's Proposal

A. Evaluation of the Data

The new data (Ref. 1) included the results of a double-blinded, three-arm, parallel study to evaluate the effectiveness and tolerability of isopropyl alcohol in drying water-clogged ears in 90 adult volunteers. Subjects were recruited if they were otherwise healthy but had a history of water-clogged ears. A screening test was performed by instilling five drops of water into the ear designated for testing and then examining the ear using an operating microscope. Subjects who had only mild residual fluid, or none, were disqualified from the study. Subjects with moderate fluid retention (defined as having an amount of liquid that placed the meniscus up to one-half of the visible height of the eardrum to the umbo) or greater were then randomized into one of the three treatment arms: Isopropyl alcohol 95 percent in anhydrous-glycerin 5 percent, isopropyl alcohol 100 percent, and no treatment. While subjects in the no-treatment control arm received no drug, the study nurse conveyed a sense of treatment by adding five drops of air from an empty dropper to the subjects' ears.

The results of the study showed that isopropyl alcohol (with and without glycerin) is effective in drying excess water in the subjects' ear canal compared to no treatment, even though the size was insufficient to detect a statistical difference in efficacy between the two isopropyl alcohol treatment arms. Many subjects in both alcohol arms complained of burning/warming after even a single treatment. The intensity of this sensation (as determined by each subject) was up to 40 on a visual analog score (VAS) 50-point scale. No irritation (excessive burning) was documented after a single use. Overall, the results showed that subjects who received isopropyl alcohol with glycerin had better numerical scores than those on isopropyl alcohol alone relative to both effectiveness and tolerability. Subjects on isopropyl alcohol with glycerin had lower burning scores than those on isopropyl alcohol alone, even though the power of this study was insufficient to show a statistically significant difference. Thus, the agency has determined that it would be preferable for consumers to use a product containing 95 percent isopropyl alcohol in 5 percent anhydrous glycerin instead of a product containing 100 percent isopropyl alcohol. The agency's detailed comments and evaluations of the data (Ref. 2) are on file in the Dockets Management Branch (address above).

Based on these new data, the agency is proposing to amend part 344 to include "ear drying aid" drug products. The monograph active ingredient for these products is 95 percent isopropyl alcohol in 5 percent anhydrous glycerin base.

B. Labeling

In the July 30, 1986, proposal (51 FR 27366 at 27373), the agency proposed Category I labeling in the event that data were submitted that resulted in upgrading any ingredient(s) to monograph status in the final rule. The agency stated that although the term "water-clogged ears" is not a recognized clinical entity, it is a term consumers use to refer to the temporary retention of water in the ears after swimming, showering, washing the hair, bathing, etc. (51 FR 27366 at 27370). The agency also stated that claims such as "helps relieve the discomfort of water-clogged ears by drying excess water," and "helps dry water in the ear," would be acceptable because these claims relate to the relief of the symptoms as described in the previous sentence. At this time, the agency is proposing language that is consistent with the earlier version but is more concise, that is, "Dries water in the ear," or that incorporates some of the common causes of water-clogged ears, that is, "Dries and relieves water-clogged ears after swimming, showering, bathing, or washing the hair." The agency is also allowing other truthful and nonmisleading statements to be used as provided in § 330.1(c)(2) (21 CFR 330.1(c)(2)). The proposed statement of identity for these products is "ear drying aid."

The agency is proposing the same warnings previously proposed in § 344.52(c)(1), (c)(2), (c)(3), and (c)(5) of the July 30, 1986, tentative final monograph (51 FR 27366 at 27373) but is proposing them in the new OTC drug labeling format (see 64 FR 13254, March 17, 1999). The agency is changing the warning previously proposed in § 344.52(c)(4), which stated: "Discontinue use and consult a doctor if undue irritation or sensitivity occurs." The agency is expanding the term "irritation" to include "too much burning" and is deleting the term "sensitivity" because the alcohol treatment products in the clinical study (Ref. 1) produced some burning (intensity was moderate to severe during a single use (up to 40 on a 50-point scale)). The agency is concerned about repeated use and long-term use. Accordingly, the agency is revising the language in the proposed warning in § 344.52(c)(4) to now read: "Stop use and ask a doctor if [in bold type] irritation (too much burning) or pain occurs". One manufacturer expressed disagreement (Ref. 3) with the inclusion of the phrase "too much [or excessive] burning," and the agency requested the manufacturer to provide additional data on this subject (Ref. 2). However, no data were ever provided. Based on the clinical study (Ref. 1), the agency is proposing the following directions: "apply 4 to 5 drops in each affected ear".

Existing part 344 currently includes only topical otic drug products used as earwax removal aids. The current headings for §§ 344.10 and 344.50 refer to a topical otic active ingredient and labeling of topical otic drug products, respectively. Accordingly, §§ 344.10 and 344.50 will become "Earwax removal aid active ingredient" and "Labeling of earwax removal aid drug products," respectively. The agency is proposing new §§ 344.12 and 344.52 as "Ear drying aid active ingredient," and "Labeling of ear drying drug products," respectively. The agency is proposing to delete § 344.50(e), which refers to substitution of the word "physician" for the word "doctor" because this is now covered in § 330.1(i)(23) (21 CFR 330.1(i)(23)). Likewise, the agency is not proposing previously proposed § 344.52(e) (concerning substitution of "physician" for "doctor") (51 FR 27366 at 27373) because it is also covered by § 330.1(i)(23).

III. Summary of Agency Changes

1. Section 344.52(b), under the heading "Use," follows the new OTC drug labeling format in § 201.66(d)(4) (21 CFR 201.66(d)(4)) and provides several options to customize the uses.

2. Section 344.52(c), under the heading "Warnings," follows the new OTC drug labeling format in § 201.66(c)(5) (21 CFR 201.66(c)(5)) and states all of the warnings after the new appropriate subheadings.

3. The agency has revised the format of the headings for § 310.545(a)(15), (a)(15)(i), and (a)(15)(ii).

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to establish conditions for drug products used to dry water-clogged ears containing alcohol and glycerin. This proposed rule amends the final monograph for OTC topical otic drug products containing alcohol and glycerin for the drying of water-clogged ears and will require some product relabeling. The agency's Drug Listing System identifies only one manufacturer/marketer of one stockkeeping unit (SKU) (individual product, package, and size) of OTC topical otic drug products with these ingredients for drying water-clogged ears. There may be other manufacturers/marketers not identified in sources FDA reviewed, but the agency believes there are a limited number.

The agency has been informed that relabeling costs of the type required by this proposal generally average about $2,000 to $3,000 per SKU. Assuming there could be as many as five affected OTC SKU's in the marketplace, total one-time costs of relabeling would be $10,000 to $15,000. The agency believes that actual costs would be lower for several reasons.

First, the agency has proposed the revised labeling in the new OTC drug labeling format (64 FR 13254). Therefore, manufacturers will not incur expenses determining how to state the new information in product labeling. Manufacturers, however, will incur some expense to redesign product labeling. Manufacturers will be able to incorporate the revised labeling changes with the new general OTC drug labeling final rule, implementing all labeling changes at one time. Thus, the relabeling costs resulting from two different but related final rules will be individually reduced by implementing both required changes at the same time.

The agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The one identified manufacturer/marketer is a small entity using the U.S. Small Business Administration designations for this industry (750 employees). The agency believes that any other unidentified manufacturer of these products is probably also a small entity. Based on the limited number of SKU's (usually only one) each manufacturer has to relabel, the cost for each manufacturer should be minimal.

This analysis shows that this proposed rule is not economically significant under Executive Order 12866. Finally, this analysis shows that the Unfunded Mandates Reform Act does not apply to the proposed rule because it would not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling requirements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Request for Comments

Interested persons may, on or before November 15, 1999, submit written comments to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before November 15, 1999. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective 12 months after its date of publication in the **Federal Regiser**.

IX. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. CP1, Docket No. 77N–334S, Dockets Management Branch.

2. Letter from W. E. Gilbertson, FDA, to N. Buc, Buc Levitt & Beardsley, attorneys for Del Pharmaceuticals, Inc., coded LET13, Docket No. 77N–334S, Dockets Management Branch.

3. Comment No. C7, Docket No. 77N–334S, Dockets Management Branch.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 344

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 344 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by revising the headings of paragraphs (a)(15), (a)(15)(i), and (a)(15)(ii) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(15) *Topical otic drug products*—(i) *For the prevention of swimmer's ear and for the drying of water-clogged ears, approved as of May 7, 1991.*

(ii) *For the prevention of swimmer's ear, approved as of August 15, 1995.*

* * * * *

PART 344—TOPICAL OTIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

3. The authority citation for 21 CFR part 344 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

4. Section 344.3 is amended by adding paragraphs (c) and (d) to read as follows:

§ 344.3 Definitions.

* * * * *

(c) *Water-clogged ears.* The retention of water in the external ear canal, thereby causing discomfort and a sensation of fullness or hearing impairment.

(d) *Ear drying aid.* A drug used in the external ear canal to help dry water-clogged ears.

5. Section 344.10 is amended by revising the section heading to read as follows:

§ 344.10 Earwax removal aid active ingredient.

* * * * *

6. Section 344.12 is added to subpart B to read as follows:

§ 344.12 Ear drying aid active ingredient.

The active ingredient of the product consists of isopropyl alcohol 95 percent in an anhydrous glycerin 5 percent base.

7. Section 344.50 is amended by revising the section heading and by removing paragraph (e) to read as follows:

§ 344.50 Labeling of earwax removal drug products.

* * * * *

8. Section 344.52 is added to subpart C to read as follows:

§ 344.52 Labeling of ear drying aid drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "ear drying aid."

(b) *Indications.* The labeling of the product states, under the heading "Use," the following: "dries water in the ears" (optional, which may be followed by: "and relieves water-clogged ears") (which may be followed by any or all of the following: "after: [bullet][1] swimming [bullet] showering [bullet] bathing [bullet] washing the hair"). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in paragraph (b) of this section, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Flammable [in bold type]: Keep away from fire or flame."

(2) "Do not use [in bold type] in the eyes."

(3) "Ask a doctor before use if you have [in bold type] [bullet] ear drainage or discharge [bullet] pain, irritation, or rash in the ear [bullet] had ear surgery [bullet] dizziness."

(4) "Stop use and ask a doctor if [in bold type] irritation (too much burning) or pain occurs."

(d) *Directions.* The labeling of the product contains the following statement under the heading "Directions": [optional, bullet] "apply 4 to 5 drops in each affected ear."

Dated: August 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21252 Filed 8–16–99; 8:45 am]

BILLING CODE 4160–01–F

[1] See § 201.66(b)(4) of this chapter.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–097–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; withdrawal of a previously proposed amendment and public comment period and opportunity for public hearing for a new proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing the withdrawal of a previously proposed amendment and the receipt of a new amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois is replacing its previously proposed amendment dated November 24, 1998, with a new amendment dated August 2, 1999. Both amendments include changes to Illinois' regulations to reflect changes required by the Energy Policy Act of 1992 regarding repair or compensation for material damage caused by subsidence from underground coal mining operations and replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations. The new amendment also includes revisions to and additions of regulations concerning performance bond adjustment; siltation structures; impoundments; hydrologic balance; disposal of noncoal mine wastes; revegetation; backfilling and grading; prime farmland; and State inspections. Illinois intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, to clarify ambiguities, and to improve operational efficiency.

This document gives the times and locations that the Illinois program and the new amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., e.s.t., September 16, 1999. If requested, we will hold a public hearing on the amendment on September 13, 1999. We will accept

requests to speak at the hearing until 4:00 p.m., e.s.t. on September 1, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, 300 W. Jefferson Street, Suite 300, Springfield, IL 62701, Telephone (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Withdrawal of Proposed Amendment

By letter dated November 24, 1998 (Administrative Record No. IL–5028), Illinois sent us an amendment to its program under SMCRA. Illinois proposed to amend its regulations concerning repair or compensation for material damage caused by subsidence from underground coal mining operations and replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations. We announced receipt of the proposed amendment in the December 10, 1998, **Federal Register** (63 FR 68218) and invited public comment on its adequacy. The public comment period ended January 11, 1999. During our review of the amendment, we identified issues concerning Illinois' policy for implementing the proposed regulations. Illinois' implementation policy appeared to contain requirements and exemptions that were not specified in the regulation language. We met with Illinois on February 22, 1999, to discuss our findings. On April 1, 1999, we notified Illinois of additional concerns (Administrative Record No. IL–5042). On August 2, 1999, Illinois sent us a new amendment that responds to our concerns and reflects the April 27, 1999, decision by the U.S. Court of Appeals for the District of Columbia Circuit regarding the March 31, 1995, Federal regulations relating to subsidence (National Mining Ass'n v. Babbitt, 98–5320, D.C. Cir. 1999). The new amendment replaces Illinois' amendment dated November 24, 1998. Therefore, we are withdrawing the proposed amendment announced in the December 10, 1998, **Federal Register**.

III. Description of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. IL–5044), the Illinois Department of Natural Resources (Department) sent us a new amendment to the Illinois program under SMCRA. The Department sent the amendment in response to our letters dated May 20, 1996, June 17, 1997, and January 15, 1999 (Administrative Record Nos. IL–1900, IL–2000, and IL–5036, respectively), that we sent to Illinois under 30 CFR 732.17(c). The amendment also includes changes made at the Department's own initiative. The Department proposes to amend Title 62 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by the Department. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Subsidence Repair or Compensation and Water Replacement

On March 31, 1995, OSM promulgated rules to implement new section 720 of SMCRA. Section 720, which took effect on October 24, 1992, as part of the Energy Policy Act of 1992, Public Law 102–486, 206 Stat. 2776, requires all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage caused by subsidence to noncommercial buildings and occupied residential dwellings and related structures. It also requires the replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations conducted after that date. By letter dated May 20, 1996, under 30 CFR 732.17(c), we notified Illinois to amend its program to be no less effective than the changes which resulted from the enactment of section 720 of SMCRA and the promulgation of implementing Federal regulations on March 31, 1995 (Administrative Record No. IL–1900). In response to this notification, Illinois proposed the following changes to its regulations:

1. 62 IAC 1701. Appendix A—Definition of Drinking, Domestic or Residential Water Supply

Illinois proposes to add the following definition for "drinking, domestic or residential water supply":

"Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

2. 62 IAC 1701. Appendix A—Definition of Material Damage

Illinois proposes the following definition for "material damage":

"Material damage," in the context of 62 Ill. Adm. Code 1784.20 and 62 Ill. Adm. Code 1817.121 means:

Any functional impairment of surface lands, features, structures or facilities;

Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

3. 62 IAC 1701. Appendix A—Definition of Replacement of Water Supply

Illinois proposes to define "replacement of water supply" as follows:

"Replacement of water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of

the increased annual operation and maintenance costs for a period agreed to by the operator and the water supply owner.

If the affected water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

4. 62 IAC 1784.14 Hydrologic Information—Underground Mining Permit Applications

a. Illinois revised subsection (b)(1) by adding the word "shadow." This subsection now requires the permit application to contain the location and ownership for the permit, shadow and adjacent area of existing wells, springs, and other ground water resources, seasonal quality and quantity of ground water and water usage.

b. Illinois revised subsection (b)(1)(A)(i) by adding the phrase "for the permit area and its adjacent area." For the permit area and its adjacent area, the revised subsection requires that ground water quality descriptions include pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron, total manganese, and chlorides.

c. Illinois added new subsection (b)(1)(A)(ii) to require that ground water quality descriptions include, at a minimum:

for the shadow area and its adjacent area, pH, total dissolved solids, total iron and total manganese. The Department shall allow the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site-specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored.

d. Illinois revised subsection (b)(1)(B) by adding the phrase "for the permit, shadow and adjacent areas." The revised subsection requires ground water quantity descriptions for the permit, shadow and adjacent areas to include, at a minimum, rates of discharge or usage and elevation of the potentiometric surface in the coal to be mined. It also requires this information for each water bearing stratum above the coal to be mined and in each water bearing stratum which may be potentially impacted below the coal to be mined.

e. Illinois added the following new provision at subsection (e)(3)(D) to require that the determination of the probable hydrologic consequences include the following finding:

Whether the underground mining activities conducted after January 19, 1996 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit, shadow or adjacent areas.

5. 62 IAC 1784.20 Subsidence Control Plan—Underground Mining Permit Applications

a. Illinois removed the introductory paragraph of 62 IAC 1784.20 and added its substantive provisions to subsections (a) and (b).

b. Subsection (a) is entitled "Pre-subsidence survey." Subsection (a)(1) requires the permit application to include a map of the permit, shadow and adjacent areas at a scale of 1:12,000 or larger if determined necessary. The map must show the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence. It must also show the location, depth and type of drinking, domestic and residential water supplies that could be contaminated, diminished or interrupted by subsidence.

c. Subsection (a)(2) requires the permit application to include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

d. Subsection (b) contains the requirements for a subsidence control plan. If the Department agrees, the applicant does not have to provide further information if the survey shows that: (1) No structures or protected water supplies or renewable resource lands exist; or (2) no material damage or diminution in value or reasonably foreseeable use of such structures or lands exist and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence. The application must include a subsidence control plan if the survey shows that structures, renewable resource lands or water supplies exist and that: (1) Subsidence could cause material damage or diminution in value or reasonably foreseeable use of structures; or (2) contamination, diminution, or interruption of protected water supplies; or (3) if the Department determines that damage, diminution in value or foreseeable use or contamination, diminution, or interruption could occur.

e. Existing subsection (a) was recodified as subsection (b)(1) and the reference to "other extraction methods" was removed.

f. Existing subsection (b) was recodified as subsection (b)(2) and revised to require the map of underground workings to identify all areas where measures described in subsections (b)(4), (b)(5) and (b)(7) will be taken to prevent or minimize subsidence and subsidence-related damage and, when applicable, to correct subsidence-related material damage.

g. Existing subsection (c) was recodified as subsection (b)(3) and revised to require the pre-subsidence survey to include a description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying and underlying strata. It also requires a description of geotechnical stability parameters that affect the likelihood or extent of subsidence and subsidence related damage or potential underground mining impacts on ground water supplies.

h. Existing subsection (d)(5) was recodified as subsection (b)(4) and revised to require a description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with 62 Ill. Adm. Code 1817.121(c).

i. Existing subsection (d) was recodified as subsection (b)(5). It requires a detailed description of the subsidence control measures for those areas where planned subsidence is not projected to be used. Existing subsections (d) (1) through (3) were recodified as subsections (b)(5) (A) through (C) without change. Existing subsection (d)(4) was recodified as subsection (b)(5)(D) and revised to require the description of the subsidence control measures to include those measures to be taken on the surface to prevent or minimize material damage or diminution in value of the surface. New subsection (b)(5)(E) requires a description of the geotechnical and engineering analysis of the mining geology and geometry, percent extraction, and historic performance to substantiate a stable subsidence control plan.

j. Existing subsection (e) was recodified as subsection (b)(6) without change.

k. Existing subsection (f) was removed.

l. New subsection (b)(7) was added for those areas where unplanned subsidence is projected to be used. It requires the subsidence control plan to

include a description of procedures to determine the quantity and quality of drinking, domestic and residential water supplies in accordance with 62 Ill. Adm. Code 1817.121(a)(2), if impacts could reasonably be expected to cause material damage. The applicant may request an exemption from conducting surveys of protected water supplies if the applicant can demonstrate that material damage resulting from underground mining is not likely to occur. The demonstration must be based on site specific geotechnical information, stability design, and historical performance provided in subsections (b)(3) and (b)(5).

m. For those areas where planned subsidence is projected to be used, new subsection (b)(8)(A) requires the subsidence control plan to include a description of the methods to be used to minimize damage from planned subsidence to structures and facilities; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair. New subsection (b)(8)(B) requires a description of procedures to determine the condition of structures and facilities and the quantity and quality of drinking, domestic and residential water supplies, if impacts could reasonably be expected to cause material damage. If the applicant can demonstrate that material damage resulting from underground mining is not likely to occur, the applicant may request an exemption from conducting structure condition surveys and/or surveys of drinking, domestic and residential water supplies required by 62 Ill. Adm. Code 1817.121(a)(2). The demonstration must be based on site specific geotechnical information, stability design and historical performance provided under subsections (b)(3) and (b)(6).

n. New subsection (b)(9) requires a description of the measures to be taken in accordance with 62 Ill. Adm. Code 1817.41(j) and 1817.121(c) to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures. At subsection (b)(9)(A) the applicant must provide procedures to determine the existence and degree of material damage or diminution of value or foreseeable use of the surface, structures and facilities, or water quality and quantity. The procedures must address resolution of disputes between the landowner and the permittee over the existence, amount, level or degree of damage, such as third party arbitration. At subsection (b)(9)(B), the applicant must provide a plan for determining an appropriate present worth amount and describe how to resolve disputes between the landowner and the applicant over this amount, such as third party arbitration.

o. Existing subsection (g) was recodified as subsection (b)(10) with only editorial changes.

6. 62 IAC 1817.41 Hydrologic Balance Protection

Illinois proposes to add the following new provision at 62 IAC 1817.41(j):

Drinking, domestic or residential water supply. The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after January 19, 1996, if the affected well or spring was in existence before the date the Department received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in 62 Ill. Adm. Code 1780.21 and 1784.14 and the geologic information concerning baseline hydrologic conditions required in 62 Ill. Adm. Code 1780.22 and 1784.22 will be used to determine the impact of mining activities upon the water supply.

7. 62 IAC 1817.121 Subsidence Control

Illinois changed the word "operator" to "permittee" throughout this section and proposed the following changes:

a. At section 1817.121(a), Illinois added the heading "Measures to prevent or minimize damage"; numbered the existing language in the first sentence as subsection (a)(1); and removed the last sentence.

b. New subsection (a)(2) requires that based on the requirements of 62 Ill. Adm. Code 1784.20(b)(7) and (b)(8), the permittee must perform a survey of the condition of all structures and facilities that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence. The permittee must also perform a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area, subsidence shadow area, and adjacent area that could be contaminated, diminished, or interrupted by subsidence. The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such structures and facilities and the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner.

c. Subsection (a)(2)(A) requires the permittee to perform or schedule the condition survey of structures and facilities a minimum of 120 days prior to undermining. A lesser time may be approved by the Department if justified by the permittee in writing. The permittee must provide a copy of the condition survey to the property owner and maintain a copy that must be provided to the Department upon request. The permittee must provide the Department with verification that the survey has been completed and forwarded to the property owner.

d. Subsection (a)(2)(B) requires the permittee to complete the survey of drinking, domestic and residential water supplies 120 days prior to the water delivery system being undermined. A lesser time may be approved by the Department if justified by the permittee in writing. The permittee must provide a copy of the water survey to the property owner and to the Department.

e. At new subsection (a)(3), if a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to structures and facilities. Measures to minimize material damage are not required: (1) If the permittee has the written consent of the owners of the structures and facilities; or (2) unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

f. Subsection (a)(4) provides that nothing in this Part prohibits the standard method of room-and-pillar mining.

g. The substantive language of subsection (b) was not changed.

h. At subsection (c), Illinois added the heading "Repair of damage."

i. At subsection (c)(1), Illinois added the heading "Repair of damage to surface lands" and made minor language changes.

j. At subsection (c)(2), Illinois added the heading "Repair or compensation for damage to structures and facilities." Illinois also revised subsection (c)(2) to require the permittee to promptly repair or compensate the owner for material damage resulting from subsidence caused to any structure or facility that existed at the time of the coal extraction under or adjacent to the materially damaged structure. If the repair option is selected, the permittee must fully

rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. These requirements apply only to subsidence-related damage caused by underground coal extraction conducted after February 1, 1983.

k. Existing subsection (c)(3) was removed. New subsection (c)(3) provides requirements for adjustment of the performance bond amount when subsidence-related material damage to protected land, structures or facilities occur or when contamination, diminution, or interruption to a water supply occurs. The Department must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owners, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply. The additional performance bond must remain in force until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. This time frame may be extended, but not to exceed one year, if the permittee demonstrates that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonable anticipated changes have occurred affecting protected water supplies. The permittee may also use appropriate terms and conditions for liability insurance to assure that the financial responsibility to comply with subsection (c) is in place.

l. Illinois removed the last sentence of subsection (g).

8. Policy and Justification for Subsidence Repair and Water Replacement Regulations

The amendment includes a letter and a side-by-side comparison of the proposed subsidence-related regulations and the counterpart Federal regulations to supplement Illinois changes concerning subsidence repair and water replacement. The letter discusses:

(1) What operations must perform pre-mining structure condition surveys. Applicable changes: 62 IAC 1784.20 (a)(1), (b)(3), (b)(5)(E), (b)(8) and 1817.121 (a)(2) and (a)(2)(A);

(2) What operations must perform pre-mining water quality and quantity surveys. Applicable changes: 62 IAC 1784.20 (a)(1), (b)(3), (b)(5)(E), (b)(7), (b)(8) and 1817.121 (a)(2) and (a)(2)(B);

(3) When should specific water surveys be required. Applicable changes: 62 IAC 1784.14 (b)(1), (e)(3)(D), 1784.20 (a)(1), (b)(7), (b)(8), (b)(9) and 1817.121 (a)(2) and (a)(2)(B);

(4) Where are condition surveys to be kept. Applicable change: 62 IAC 1817.121(a)(2)(A);

(5) Where is water quality and quantity survey information to be kept. Applicable change: 62 IAC 1817.121(a)(2)(B).

(6) How will compensation for water replacement costs be managed. Applicable change: 62 IAC 1784.20(b)(8)(B).

B. Siltation Structures, Impoundments, Banks, Dams, and Embankments

By letters dated June 17, 1997, and January 15, 1999, under 30 CFR 732.17(c), we notified Illinois that changes to the Illinois regulations relating to siltation structures, impoundments, banks, dams, and embankments were needed to be no less effective than the changes that were made to the Federal regulations on October 20, 1994 (59 FR 53022). In the October 20, 1994, rulemaking, OSM included standards from the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985) as part of the Federal requirements for siltation structures and impoundments. These changes were made as the result of decisions by the U.S. District Court of the District of Columbia in In Re: Permanent Surface Mining Regulation Litigation (II), No. 79–1144 (D.D.C. July 15, 1985) and In Re: NWF v. Lujan, No. 88–3345 (D.D.C. August 30, 1990). In response to this notification, Illinois proposed the following changes to its regulations:

1. 62 IAC 1780.25 (Surface Mining) and 1784.16 (Underground Mining) Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments

a. Illinois removed all references to sedimentation ponds and added references to siltation structures. Illinois also revised all outdated citation references.

b. Illinois added the following new language at the beginning of subsections (a)(2):

Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR–60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA).

c. Illinois revised the introductory language of subsections (a)(3) to read as follows:

Each detailed design plan for a structure not included in subsection (a)(2) above shall:

d. Illinois revised subsections (f) to require that each plan under subsections (b), (c), and (e) include a stability analysis if the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of 30 CFR 77.216(a).

2. 62 IAC 1816.46 (Surface Mining Operations) and 1817.46 (Underground Mining Operations) Hydrologic Balance: Siltation Structures

Illinois removed the existing language from subsections (c)(2) and added the new language shown below. The only difference between the surface mining language and the underground mining language is a citation reference. We placed the citation reference for underground mining operations in brackets.

Spillways. A sediment pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in section 1816.49(a)(9) [1817.49(a)(9)] of this Part.

3. 62 IAC 1816.49 (Surface Mining Operations) and 1817.49 (Underground Mining Operations) Impoundments

a. Illinois added new subsections (a)(1) to read as follows:

Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), "Earth Dams and Reservoirs," 1985 shall comply with "Minimum Emergency Spillway Hydrology Criteria" table in TR–60 and the requirements of this section.

b. Illinois redesignated existing subsections (a)(1) through (a)(11) as (a)(2) through (a)(12). Illinois also revised outdated citation references and changed the term "operator" to the term "permittee" throughout these sections.

c. Illinois revised redesignated subsections (a)(4)(A) to read as follows:

An impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

d. Illinois revised redesignated subsections (a)(4)(B) by removing the language "Impoundments meeting the size or other criteria of 30 CFR 77.216(a)" and adding the language

"Impoundments included in subsection (a)(4)(A) above."

e. Illinois added the following new sentence to redesignated subsections (a)(5):

Impoundments meeting the SCS Class B or C criteria for dams in TR–60 shall comply with the freeboard hydrology criteria in the "Minimum Emergency Spillway Hydrology Criteria" table in TR–60.

f. Illinois revised redesignated subsections (a)(6)(A) to require that impoundments meeting the Class B or C criteria for dams in TR–60 meet the same requirements that are specified in these subsections for impoundments meeting the size or other criteria of 30 CFR 77.216(a).

g. Illinois revised redesigned subsections (a)(10)(A) to require that impoundments meeting the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) be inspected, examined and certified in accordance with 30 CFR 77.216.

h. Illinois revised redesigned subsections (a)(11) to require that impoundments that do not meet the SCS Class B or C criteria for dams in TR–60 or that are not subject to 30 CFR 77.216(a) must be examined at least quarterly for appearances of instability, structural weakness, or other hazardous conditions. The permittee must designate a qualified person to do the quarterly examinations.

i. Illinois revised subsections (b)(9)(A) by also requiring that permanent impoundments not meeting the Class B or C criteria for dams in TR–60 be provided with a spillway that meets the requirements specified in these subsections for those not meeting the size or other qualifying criteria of 30 CFR 77.216(a).

j. Illinois added new subsections (b)(9)(C) to read as follows:

Permanent impoundments meeting the Class B or C criteria for dams in TR–60, shall be provided with a spillway that meets the criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

k. Illinois revised subsections (c)(1) by also requiring that temporary impoundments not meeting the Class B or C criteria for dams in TR–60 be provided with a spillway that meets the requirements specified in these subsections for those not meeting the size or other qualifying criteria of 30 CFR 77.216(a). Illinois also added the following new provision at the end of subsections (c)(1):

Temporary impoundments meeting the Class B or C criteria for dams in TR–60, shall be provided with a spillway that meets the criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

l. Illinois revised subsections (c)(2)(B)(i) to require that temporary impoundments meeting the SCS Class B or C criteria for dams in TR–60 be designed to control the same precipitation event specified for impoundments meeting the size or other criteria of 30 CFR 77.216(a).

m. Illinois revised subsections (c)(2)(B)(ii) by replacing the language "meeting the size or other criteria of 30 CFR 77.216(a)" with the language "included in subsection (c)(2)(B)(i) above."

C. Performance Bonds

1. Administrative Review of Bond Adjustment Determinations

Illinois is revising its regulations for bond adjustment and administrative review as a result of Court Case No. 99–MR–214, Sangamon County, Illinois. The court found that the Department's rules lacked a mechanism for administrative hearing in the case of bond adjustments. The court ruled that this was in violation of the Illinois Administrative Procedure Act and enjoined the Department from increasing performance bond under its current regulations.

a. 62 IAC 1800.15 Adjustment of Performance Bond.

Illinois revised subsection (b) to provide the permittee an opportunity for administrative review under 62 Ill. Adm. Code 1847.3 of any proposed adjustment to the performance bond amount.

b. 62 IAC 1847.3 Permit Hearings.

Illinois revised subsection (a) to provide that the hearing procedures outlined in 62 IAC 1847.3 also apply to review of bond adjustment determinations under 62 Ill. Adm. Code 1800.15.

2. 62 IAC 1800.40 Requirement to Release Performance Bonds

a. Illinois revised subsection (a)(1) to allow permittees to authorize a person to act on their behalf in filing an application for bond release and to allow the Department to initiate an application for bond release.

b. In subsections (a)(2) and (3), the term "operator" is changed to "applicant."

c. In subsection (b)(2), Illinois removed a reference to the term "county." Illinois also added a requirement that the municipality in which the surface coal mining operation is located be notified by certified mail of the Department's final administrative decision to release or not to release all or part of the performance bond.

D. 62 IAC 1816.89 (Surface Mining Operations) and 1817.89 (Underground Mining Operations) Disposal of Noncoal Mine Wastes

At subsections (b), Illinois is requiring that areas reclaimed to cropland capability have a minimum of four feet of suitable soil cover.

E. 62 IAC 1817.101 (Underground Mining Operations)—Backfilling and Grading: General Requirements

Illinois revised subsection (a) to require that surface areas disturbed incident to underground mining activities be backfilled and graded not later than 12 months after cessation of active use as determined by the Department.

F. Revegetation

1. 62 IAC 1816.111 (Surface Mining Operations) and 1817.111 (Underground Mining Operations) Revegetation: General Requirements

a. Illinois revised outdated citation references in 62 IAC 1816.111(b)(5).

b. At 62 IAC 1816.111(d) and 1817.111(d), Illinois removed the requirement that those prime farmlands granted an exemption in accordance with 62 Ill. Adm. Code 1785.17(a)(5) meet the requirements of 62 Ill. Adm. Code 1823.15.

2. 62 IAC 1816.116 (Surface Mining Operations) and 1817.116 (Underground Mining Operations) Success of Revegetation.

Illinois added a provision at subsections (b)(2) that require the person who conducts mining activities to:

Initiate a soil compaction and fertility testing plan, subject to the approval of the Department, for areas which have incurred five unsuccessful attempts to meet the production required by subsections (a)(3)(C) or (E) above or 62 Ill. Adm. Code 1785.15, or shall initiate deep tillage on the areas.

Illinois redesignated existing subsections (b)(2) as subsections (b)(3).

G. 62 IAC 1823.14 Prime Farmland: Soil Replacement

Illinois revised subsection (d) by adding the following new requirement:

In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the permittee shall engage in deep tillage or other appropriate means to restore premining capabilities.

H. 62 IAC 1840.11 Inspections by the Department

Illinois revised subsection (f)(2) by adding the language "or the Department has determined that the reclamation required for Phase II bond release has been completed" at the end of the existing language. This will allow a surface coal mining and reclamation operation that meets the new criteria to be designated inactive for inspection purposes.

I. Miscellaneous Changes

Throughout the sections discussed above, Illinois corrected typographical errors, punctuation, citation references, and other editorial-type errors; made minor wording changes; and simplified its use of numbers. To reflect recodification of the Illinois Surface Mining Land Conservation and Reclamation Act that occurred in 1992, Illinois replaced its citation references for the "Ill. Rev. Stat. 1989, ch. 96½, pars. 7901.01 *et seq.*" with references to "225 ILCS 720." Illinois also made some of the same types of corrections and changes in 62 IAC 1777.11, 1800.13, 1840.14, and 1846.18.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Illinois program.

Written Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. IL–097–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226–6700.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on September 1, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

V. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 10, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–21258 Filed 8–16–99; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 111

Standards Governing the Design of Curbside Mailboxes

AGENCY: Postal Service.

ACTION: Notice of intent to establish a Consensus Committee and notice of first meeting.

SUMMARY: The Postal Service intends to establish a Consensus Committee to develop recommendations for revision of USPS STD 7A, which governs the design of curbside mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including mailbox manufacturers, mailbox accessory manufacturers, and postal customers. The purpose of this Notice is to apprise the public of the intent to establish the committee; provide the public with information regarding the committee and the issues to be addressed; solicit public comment on the proposal to establish the committee, the issues to be addressed, and the proposed membership and procedures of the committee; explain how persons may apply or nominate others for membership on the committee; and announce the tentative date of the first committee meeting.

DATES: The Postal Service must receive written comments, requests for representation or membership on the committee, and nominations for membership on the committee no later than September 14, 1999. The first committee meeting is tentatively scheduled for September 15 and 16, 1999.

ADDRESSES: The first committee meeting is tentatively scheduled to be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, DC 20260. Mail comments and all other communications regarding the committee to Annamarie Gildea, Room 7142, at the same address. Committee documents will be available for public inspection and copying between 9:00 a.m. and 4:00 p.m. weekdays at the address above.

FOR FURTHER INFORMATION CONTACT: Annamarie Gildea, (202) 268–3558.

SUPPLEMENTARY INFORMATION:

I. Background

U.S. Postal Service Standard, Mailboxes, City and Rural Curbside, USPS STD 7A, governs the design of curbside mailboxes. The current standard, adopted in 1992, prescribes design limitations in terms that are no longer consistent with the operational requirements of the Postal Service. Primary issues to be addressed by the committee will include increasing design flexibility within the Postal Service's operational requirements; simplification and clarification of the standard; revising provisions on secure mailboxes; and adding provisions on accessories and electronic technologies. The committee may also consider other issues at its discretion and within the scope set forth in paragraph II.

II. Scope of the Rule

The contents of the new standard will be limited to regulations on curbside mailbox and accessory design characteristics that affect the operations of the Postal Service. Other issues, including but not limited to design characteristics relating to roadside safety, are not within the scope of the new standard.

III. Consensus Process

In a consensus process, representatives of interests that would be substantially affected by the new rule meet as an advisory committee to negotiate among themselves and with the agency to reach a consensus on a proposed rule. As part of the consensus process, the agency agrees to use the committee's recommendation as the basis of the proposed rule, and each private interest agrees to support the committee's recommendation and the proposed rule to the extent that it reflects the recommendation.

A feasibility study, performed by a neutral convenor, and using the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* as a guide, recommended that the Postal Service initiate a consensus process. In reaching this recommendation, the convenor determined that: (1) There is a need for the rule; (2) there are a limited number of identifiable interests significantly impacted by the rule; (3) a committee can be created with balanced representation which can represent the identified interests and can negotiate in good faith; (4) consensus on the issues appears likely; (5) the consensus process will not unduly delay the issuance of the rule; (6) the agency has resources and is willing to assist the consensus process; and (7) the agency, within the constraints of the law, will use the advisory committee's consensus as the basis of the rule for notice and comment.

IV. Participants

The committee will include a representative from the Postal Service and representatives, to be selected by the Postal Service, from persons and/or organizations that will be significantly affected by this rule. Each representative may also name an alternate who may attend all committee meetings and will serve in place of the primary representative if necessary. The designated Postal Service representative will be authorized to represent the agency in the committee, and will participate in its activities, discussions, and deliberations.

The convenor has recommended that the Postal Service invite the following organizations to participate in the consensus process. The convenor has contacted these organizations, which have indicated their willingness to serve on the committee. The Postal Service proposes to invite the following organizations to participate in the consensus process:

1. At Ease Technologies, Inc.
2. Cutler Manufacturing Corporation
3. Imperial Mail Box Systems, Inc.
4. Janzer Corporation
5. Magazine Publishers of America
6. National Association of Homebuilders
7. Parcel Shippers Association
8. Steel City Corporation
9. Step 2 Corporation
10. Rubbermaid, Inc.
11. The Solar Group

It is expected that these organizations would represent the following interests:

-Mailbox manufacturers
  —Larger general manufacturers
  Steel City Corporation
  The Solar Group
  —Specialty manufacturers—metal
  Cutler Manufacturing Corporation
  Imperial Mail Box Systems, Inc.
  Janzer Corporation
  —Specialty manufacturers—non-metal
  Step 2 Corporation
  Rubbermaid, Inc.

-Accessory manufacturers
At Ease Technologies, Inc.
-Mailers
Magazine Publishers of America
Parcel Shippers Association
-Consumers/Mailbox purchasers
National Association of Homebuilders

I. Tentative Schedule

The first committee meeting is tentatively scheduled for September 15 and 16, 1999 at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, DC. Subsequent meetings will be scheduled by the committee, at the same location, and are expected to occur approximately four weeks apart through approximately January 2000.

II. Nominations and Applications

Persons and organizations that will be significantly affected by this rule may apply for membership on the committee or nominate another person or organization for membership. Each nomination or application should include: (1) The name of the applicant or nominee and a description of the interests that person or organization represents; (2) evidence that the applicant or nominee is authorized to represent the interests the person proposes to represent; (3) the reasons the applicant or nominator believes its interests or those of its nominee are sufficiently different from those of organizations listed above that those interests would not be adequately represented by the members of the committee as proposed. All nominations and applications must be received by the Postal Service at the address above no later than September 14, 1999. The Postal Service reserves the right to refuse nominations and applications that do not fulfill these requirements. The Postal Service, with the advice of the convenor, will select committee members that provide adequate representation of each significantly affected interest rather than representatives of every individual and organization affected by the rule.

III. Procedures and Guidelines

(A) Facilitator

The Postal Service has selected a neutral, impartial facilitator to serve as chairman of the committee meetings. The facilitator will assist committee members conduct discussions, help committee members define issues and reach consensus, and manage the minutes, agendas, and other records of the committee.

(B) Good Faith

Committee members must be committed to negotiate in good faith and be authorized by the individuals and/or organization(s) they represent to do so. Therefore, senior individuals within each interest group should be designated to serve on the committee. Also, committee members must commit to support the final consensus recommendation of the committee.

(C) Administrative Support

Administrative support will be provided by the Postal Service at its headquarters offices.

(D) Consensus

"Consensus" is defined for the purposes of this rulemaking as the unanimous concurrence among the committee members unless the committee explicitly adopts a different definition.

(E) Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish procedures and ground rules.

(F) Records

The facilitator will prepare minutes of all committee meetings. These minutes will be placed in the public docket for this rulemaking.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–21324 Filed 8–16–99; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 97–207; DA 99–1566]

Calling Party Pays Service Offering in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This document extends the time for filing comments and reply comments in this proceeding to the close of business on September 17, 1999, and October 18, 1999, respectively. A modest extension has been granted to allow interested parties more time to provide more substantive and complete comments on the issues associated with Calling Party Pays (CPP).

DATES: Comments are due on or before September 17, 1999 and reply comments are due on or before October 18, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph Levin or David Siehl, Policy Division, Wireless Telecommunications Bureau (202) 418–1310.

SUPPLEMENTARY INFORMATION: The following synopsis contains the text in chief of the Order Extending Comment and Reply Comment Periods, DA 99–1566, adopted August 6, 1999, and released August 6, 1999, in the proceeding on Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97–207. The complete text of the entire released document containing the Order is available for inspection and copying during normal business hours in the FCC Reference Information Center (Courtyard level), 445 12th Street, SW, Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857–3800, 445 12th Street, SW, CY–B400, Washington, DC 20054.

Synopsis of Order Extending Comment and Reply Comment Periods

1. This document extends the time for filing comments and reply comments in the captioned proceeding to the close of business on September 17, 1999, and October 18, 1999, respectively.

2. On July 7, 1999, the Commission released a Notice of Proposed Rulemaking (NPRM) in this proceeding that invited interested parties to comment no later than August 18, 1999, and to reply to filings by other parties no later than September 8, 1999. 64 FR 38396, July 16, 1999.

3. On August 2, 1999, the Personal Communications Industry Association (PCIA) requested an extension of the comment and reply comment dates until September 30, 1999, and October 22, 1999, respectively. PCIA cites the need for additional time to enable it to reflect in its comments the results of studies it is conducting on CPP use in other countries, and on technical and billing issues associated with CPP implementation in the United States.

4. The Policy Division, Wireless Telecommunications Bureau, agrees with PCIA that a modest extension of the comment and reply comment deadlines would enable them and other interested parties to provide more substantive and complete comments on the many issues associated with CPP. Consequently, the grant of an extension of the comment deadlines will enhance the overall quality of the comments and reply comments, and will provide a more complete record for consideration.

However, extension of the comment deadlines to the dates that PCIA requests could unduly delay the Commission's determination of the issues, in view of their significance to commenting parties and the public. Therefore, it is concluded that modifying PCIA's request for the extension, as specified below, is in the public interest.

Ordering Clause

Accordingly, it is ordered, pursuant to § 1.46 of the Commission's rules regarding the time for filing comments, that the request of PCIA is granted to the extent indicated. The comment deadline in the CPP proceeding is extended to the close of business on September 17, 1999, and the reply comment deadline is extended to the close of business on October 18, 1999.

Federal Communications Commission.

Kris Monteith,

Chief, Policy Division, Wireless Telecommunications Bureau.

[FR Doc. 99–21272 Filed 8–16–99; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 536

[GSAR Notice 5–421]

RIN 3090–AH07

General Services Administration Acquisition Regulation; Clarification on the Use of Selection Criteria for Architect-Engineer Procurements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes to amend the GSA Acquisition Regulation (GSAR) to provide additional guidance concerning the use of selection criteria for Architect-Engineer procurements.

DATES: Comments should be submitted in writing to address shown below on or before October 18, 1999.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia L. Davis, GSA Acquisition Policy Division, (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Background

The GSAR is proposed to amended to supplement the language provided in the FAR on the use of selection criteria for Architect-Engineer procurements. This proposed rule would eliminate unnecessary restrictions to competition in GSA's use of geographic limitations in the evaluation process for Architect-Engineer procurements.

B. Executive Order 12866

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 536

Government Procurement.

Accordingly, 48 CFR part 536 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 536 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2. Part 536 is proposed to be amended by adding Subpart 536.6 to read as follows:

Subpart 536.6—Architect—Engineer Services

536.602 Selection of firms for architect-engineer contracts.

536.602–1 Selection criteria.

(a) FAR 36.602–1 requires that agencies include "location in the general geographical area of the project and knowledge of locality of the project" as one of several selection criteria.

(1) This evaluation factor shall not be used as a minimum qualification requirement for determining whether a firm is eligible to compete for a proposed project.

(2) This factor shall not exceed 5 percent of the total weight of all evaluation criteria. In order to receive the maximum score for this factor, the architect-engineer firm(s) must demonstrate that at least 35 percent of the architect-engineer contract services (based on the total contract price) will be accomplished with the geographical boundaries established for the project.

(3) Under an approved class deviation from FAR 36.602–1(a)(5), this factor does not apply to projects determined by the Chief Architect of GSA to be of national significance.

(b) The public announcement (Commerce Business Daily notice) for a proposed project should identify the general geographical area of the project by either:

(1) A radius in miles or other appropriate unit of measure; or,

(2) The Standard Metropolitan Statistical Area, county(ies), state(s) surrounding the project, or other appropriate geographic boundaries.

(c) Architect-engineer selections under the Design Excellence Program shall apply the geographical evaluation criteria in the second phase.

(d) The public announcement (Commerce Business Daily notice) may require the architect-engineer of record to establish a significant production capability within the general geographical area of the project within 45 calendar days after contract award.

Dated: July 28, 1999.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–21319 Filed 8–16–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[I.D. No. 120197A]

Designated Critical Habitat; Re-opening of Comment Period and Notice of Public Hearing on Proposed Revision of Critical Habitat for Snake River Spring/Summer Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public hearing and re-opening of public comment period.

SUMMARY: NMFS is re-opening the public comment period until September

8, 1999, and announcing a public hearing on a proposed regulation to revise critical habitat for Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*).

DATES: The public hearing date is Tuesday, August 31, 1999, 6:30 p.m. to 9:00 p.m local time. Written comments on the proposed rule must be received on or before September 8, 1999.

ADDRESSES: The hearing will be held at the Natural Resource Center, Bureau of Land Management, 1387 South Binnell Way, Boise, Idaho. Written comments should be sent to: Garth Griffin, NMFS, Protected Resources Division, 525 NE Oregon St. - Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at (503) 231–2005, or Chris Mobley at (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 1999, NMFS published a proposal to revise critical habitat for threatened Snake River spring/summer chinook salmon (64 FR 29618). The proposed revision would specifically exclude areas upstream of Napias Creek Falls (located on a tributary to Panther Creek, in Lemhi County, Idaho) as critical habitat for the species. NMFS has received a request from the Shoshone-Bannock Tribes for a public hearing on the proposal. The agency finds the request to be reasonable and, hereby, announces a public hearing and re-opens the comment period until September 8, 1999, to allow time to conduct the hearing and solicit additional public comment.

NMFS is soliciting information, comments and/or recommendations on any aspect of this proposal from all concerned parties (see **ADDRESSES**); comments must be received by September 8, 1999. In particular, NMFS is requesting any data, maps, or reports describing areas of the Napias Creek watershed that currently or historically supported chinook salmon populations and that may require special management considerations. NMFS will consider all information received before reaching a final decision.

Special Accommodations

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Garth Griffin (see **ADDRESSES**) by August 24, 1999.

Dated: August 9, 1999.

Art Jeffers,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–21323 Filed 8–16–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 158
Tuesday, August 17, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST–99–005]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the Regulations Governing the Plant Variety Protection Act.

DATES: Comments on this notice must be received by October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Ann Marie Thro, Commissioner, Plant Variety Protection Office, Science & Technology, AMS, USDA, NAL Building, Room 500, 10301 Baltimore Boulevard, Beltsville, MD 20705–2351, (301) 504–5518, or Fax: (301) 504–5291.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Application for Plant Variety Protection Certificate and Reporting Requirements under the Plant Variety Protection Act.

OMB Number: 0581–0055.

Expiration Date of Approval: February 28, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Plant Variety Protection Act ("PVPA") (7 U.S.C. 2321 *et seq.*) was established "To encourage the development of novel varieties of sexually reproduced plants and make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promote progress in agriculture in the public interest."

The PVPA is a voluntary user funded program which grants intellectual property rights protection to breeders of new, distinct, uniform, and stable seed reproduced and tuber propagated plant varieties. To obtain these rights the applicant must provide information which shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires. Application forms, descriptive forms, and ownership forms are furnished to applicants to identify the information which is required to be furnished by the applicant in order to legally issue a certificate of protection (ownership). The certificate is based on claims of the breeder and cannot be issued on the basis of reports in publications not submitted by the applicant. Regulations implementing the PVPA appear at 7 CFR part 92.

Form ST–470, Application for Plant Variety Protection Certificate, Form ST–470 series, Objective Description of Variety (Exhibit C to Form ST–470P), and Form ST–470–E, Statement of the Basis of Applicant's Ownership, are the basis by which the determination, by experts in the Plant Variety Protection Office (PVPO), is made as to whether a new, distinct, uniform, and stable seed reproduced or tuber-propagated variety in fact exists and is entitled to protection.

The application form would be revised slightly to clarify that applicants may specify not only that the variety be sold only as a class of certified seed (Foundation, Registered, or Certified) but that the applicant may specify a limitation on the number of generations within each class. The information received on applications, with certain exceptions, is required by law to remain confidential until the certificate is issued (7 U.S.C. 2426).

The information collection requirements in this request are essential to carry out the intent of the PVPA, to provide applicants with certificates of protection, to provide the respondents the type of service they request, and to administer the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Businesses or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 116.

Estimated Number of Responses per Respondent: 3.49.

Estimated Total Annual Burden on Respondents: 1691 hours.

Copies of this information collection can be obtained from Lashawn Smith, Plant Variety Protection Office, at (301) 504–5518.

Comments are invited on: (a) Whether the collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0055 and be sent to: Ann Marie Thro, Commissioner, Plant Variety Protection Office, Science & Technology, AMS, USDA, NAL Building, Room 500, 10301 Baltimore Boulevard, Beltsville, MD 20705–2351. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 11, 1999.

William J. Franks, Jr.,

Deputy Administrator, Science and Technology.

[FR Doc. 99–21302 Filed 8–16–99; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Stewardship Contracting Pilot Projects: Multiparty Monitoring and Evaluation Process

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Section 347 of the FY 1999 Omnibus Appropriations Act authorizes the Forest Service to enter into 28 stewardship end results contracts. These contracts are intended to provide a means for pilot-testing an array of potential new authorities for giving national forest managers greater administrative flexibility to improve forest conditions and potentially help meet the needs of local communities. One of the key provisions of the statute, embodied in subsection (g) of the Act, is a provision requiring the establishment of a process for multiparty monitoring and evaluation of the stewardship contracts. The Forest Service hereby gives notice that a draft framework for multiparty monitoring and evaluation has been developed and is now available for public review and comment.

DATES: Comments must be received, in writing, on or before September 16, 1999.

ADDRESSES: Written comments on this proposal may be sent to Cliff Hickman, USDA Forest Service, Forest Management Staff, Mail Stop 1105, P.O. Box 96090, Washington, D.C. 20090–6090 or electronically to chickman/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Cliff Hickman, Forest Management Staff, (202) 205–1162, or chickman/wo@fs.fed.us. Electronic copies of the Act, and of this proposed framework for multiparty monitoring and evaluation, may be obtained via the INTERNET at www.fs.fed.us/land/fm/stewardship.

SUPPLEMENTARY INFORMATION: Section 347 of the FY 1999 Omnibus Appropriations Act (Act) authorizes the Forest Service to implement up to 28 stewardship end results contracts. The Forest Service provided background information about the provisions of Section 347 and its progress in implementing the legislation, in a notice that appeared in the July 9, 1999, issue of the **Federal Register** (64 FR 37096). That notice identified the stewardship pilot projects that the agency had already selected. This notice sets out the proposed framework and requests public comment. A notice summarizing the public comment and the agency's response to that comment will be published along with the finalized framework.

The framework that the agency proposes to use to comply with the requirements of subsection (g) of Section 347 of the Act consists of two parts: (1) A process for securing multiparty monitoring and evaluation, and (2) a set of criteria to be considered during monitoring and evaluation. Besides ensuring proper documentation of any treatments and their resulting environmental effects, the proposed framework is intended to provide an objective basis for assessing the implications of the stewardship pilots regarding the following:

(1) The potential advantages of greater collaboration during period planning and implementation;

(2) The potential for new authorities to facilitate efficient implementation of desired ecosystem restoration, maintenance, or protection activities; and

(3) The potential of stewardship contracting to help meet the needs of local communities.

This proposed framework represents only one option for satisfying the multiparty monitoring and evaluation requirement of the Act. It is designed to comply with the provisions of the Federal Advisory Committee Act (FACA). The proposed framework is being developed to facilitate the data inventory required by Section 347 of the Act and is not a public information survey. Comments and suggestions on this proposal and on other ways to accomplish multiparty monitoring and evaluation, that would be in compliance with FACA requirements, are requested.

Proposed Process

At the national level, a single Advisory Committee will be established under the provisions of the Federal Advisory Committee Act (FACA). The framework proposes establishing two types of teams at the local (project) level: (1) Data Inventory teams, and (2) Assessment and Evaluation Teams. Due to the composition, duties, and purpose of these teams, FACA chartering is not required. Additional details concerning the structure and functions of these proposed groups are provided below:

Local Data Inventory Teams. Each forest with a stewardship pilot project will be responsible for organizing a team of interested publics to gather the data needed to assess project and program results. These teams will operate under the direction of a Forest Service employee who will encourage participation of all team members, develop monitoring methods, schedule team assignments, compile and validate the team's data, and interact, as needed, with the appropriate Assessment and Evaluation Team. Where a Forest has more than one pilot project, separate Data Inventory teams will be established to compile the relevant data for each project.

As the name suggests, the principal function of the Data Inventory teams will be to gather project (local) level data for analysis by the appropriate Assessment and Evaluation Team. The criteria that the Data Inventory teams will be required to consider are described under the subheading "Criteria for Local Data Inventory Teams." Once validated, the facts gathered by the Data Inventory teams will be made available for public review and use.

The Data Inventory teams will be free to compile facts and other evidence deemed relevant by the responsible Assessment and Evaluation Team, but any additional data must be factual rather than interpretive data. Limiting the role of these teams to the compilation of factual evidence eliminates the need to establish a FACA committee. Participation on the teams will be open to all interested parties.

Local Monitoring Assessment and Evaluation Team. Each forest with a stewardship pilot project will be responsible for organizing a team of government employees, federal, state, local, or tribal. This Monitoring Assessment and Evaluation Team's tasks are to assess and evaluate the data compiled by the corresponding Data Inventory Team and, also, to formulate appropriate recommendations. The Assessment and Evaluation Teams will operate under the direction of a Forest Service employee, serving as chairperson. A non-Forest Service person will be selected as the vice-chairperson of the committee. If other governmental entities are unavailable or unwilling to participate in the evaluation process, a Forest Service team will be organized. Where a forest has more than one stewardship pilot, only one Assessment and Evaluation Team will be established to deal with all the projects on that forest.

As already suggested, a key function of the Assessment and Evaluation Teams will be to analyze and weigh the significance of the factual evidence compiled by the Data Inventory Teams. The criteria that the Assessment and Evaluation Teams will be required to consider are described under the subheading "Criteria for Local Assessment and Evaluation Teams." These teams, at their discretion, will be free to develop other site-specific criteria that they deem relevant—e.g., additional criteria pertaining to forest conditions before and after treatment, effects on the local economy, and relations between and among community members, including the Forest Service. Finally, the Assessment and Evaluation Teams will be free to interact with the Data Inventory Teams and the National Advisory Committee, as needed.

The Assessment and Evaluation Teams will be responsible for making judgments, reaching conclusions, and formulating recommendations on the basis of the data assimilated. Because the teams, as envisioned in this proposal, will be comprised of government employees only, they qualify for the FACA requirement exemption, authorized by Section 204 of the Unfunded Mandates Act of 1995. Section 204 provides for the formation of intergovernmental committees to exchange official views concerning the implementation or administration of intergovernmental responsibilities.

A second key function of the local Assessment and Evaluation teams will be to prepare annual reports to the National Advisory Committee. Annual reports will be submitted to the National Advisory Committee within 60 days of the close of each fiscal year. In situations where a forest has more than one stewardship pilot, each project will be analyzed, evaluated, and discussed in a separate report.

The local Assessment and Evaluation Team reports will include the descriptive data that has been compiled by the local Data Inventory Teams, the responses to the criteria described under the subheading "Critria for Local Assessmet and Evaluation Teams," and any other issues that the teams determine to be relevant.

The Assessment and Evaluation Teams will actively seek input from the public. Therefore, they will open their meetings to the public and give adequate notice of the times and locations of their meetings. Draft annual evaluation results will be shared with the public for comment by posting a notice of availability of the results in the local newspapers, posting the results on each forest's INTERNET website (if available), and by holding one or more public meetings. Public comments will be considered in preparing the annual reports to the National Advisory Committee. All public comments will be retained in the monitoring and evaluation file for each project.

National Advisory Committee. A FACA advisory committee will be chartered to monitor and evaluate the stewardship pilot program at the national level. The Forest Service will recommend potential National Advisory Committee members to the Office of the Secretary of USDA. Committee representation will reflect the need to represent all communities of interest and to ensure that there is balance in the views represented. To ensure a connection to the projects at the local level, at least two Committee members will be people serving on local monitoring and evaluation teams. This arrangement will help ensure that the broad array of criteria considered and the resulting recommendations present an accurate, coherent picture of what the section 347 stewardship pilots have actually accomplished and demonstrated. Notices concerning the National Advisory Committee's establishment, its membership, and meeting information will be published in the **Federal Register**. The Forest Service will provide organizational support to the National Committee.

The National Advisory Committee will be responsible for obtaining the information it needs from the local monitoring and evaluation teams and will interact with these teams as needed to discharge its duties. The Committee, at a minimum, will consider the criteria described under the subheading "Criteria for the National Advisory Committee." These criteria focus on national issues, such as, whether national forest policies and priorities were advanced by the new authorities (processes and procedures) being tested, whether the interests of non-local publics were adequately considered, and whether agency accountability for actions and outcomes was appropriately maintained. The National Committee will also identify and evaluate the important "lessons learned" from the stewardship pilots; they will assess what worked well and what did not work well. As part of this process, they will describe any barriers that had to be overcome or that prevented smooth implementation of the pilot projects.

The National Advisory Committee will be responsible for preparing annual reports to the Forest Service's Washington Office Forest Management Staff. The Committee's reports will form the basis for the Forest Service's required annual reports to Congress.

The Committee's annual reports are to be completed within 60 days of its receiving the reports from the local Assessment and Evaluation Teams. These reports will contain a compilation of descriptive data pertaining to such things as: the acreages treated for different purposes; the costs incurred; the sources of project funding; the types of products produced; the revenues generated; the types of collaborators involved in project planning, implementation, and monitoring; the roles played by different collaborators; and the processes and procedures that were tested. The reports also will address the information requested by Congress, the criteria listed under the subheading "Criteria for National Advisory Committee," and any other issues that the National Committee determines to be important.

Other Process Principles. Other principles guiding the monitoring and evaluation process include the following:

* All monitoring and evaluation teams will be structured so as to encompass a diverse mix of resource management skills.

* As needed and as is reasonable, the Forest Service will compensate monitoring and evaluation team members for any travel costs that they incur as a result of their service to the agency.

* All monitoring and evaluation team members will be encouraged to network with their constituents and bring new information and issues forward.

* Whenever possible, pilots will be designed to include two types of controls: (1) areas where no vegetative treatment is occurring, and (2) areas where standard timber sale and/or service contracting procedures are being observed.

Proposed Criteria

To measure whether the new authorities have achieved the desired results, four categories of criteria will be considered by the different monitoring and evaluation (ME) groups. These categories are: (1) Biophysical critiera, (2) economic criteria, (3) social criteria, and (4) administrative criteria.

Within each category, some of the criteria call for compiling numerical or descriptive data, while other criteria require that some aspect of a pilot project's performance be assessed. As noted earlier, to assure compliance with FACA requirements, the local Data Inventory Teams will consider only the criteria calling for numerical or descriptive responses. Within this constraint, and recognizing that there may be certain questions that may be relevant in some, but not all, situations, it is proposed that all teams be free to entertain questions beyond those listed. In all instances, however, the criteria that are listed, as a minimum, would be addressed by the designated groups. In addition to addressing the criteria set-forth, the local Data Inventory Teams will be encouraged to establish photo points that will record the condition of the landscape, before, during, and after project implementation.

Criteria for the Local Data Inventory Teams. The local Data Inventory Teams will answer, at a minimum, the 16 criteria listed in this section. Additional criteria may be added, but they must be of an objective, factual nature.

Biophysical Criteria will include:

(1) The stated purpose and need for the project.

(2) The project objectives.

(3) The land management treatments being applied. All treatments applied in connection with a particular are to be considered, including: the mileage of road maintained or obliterated; the mileage of trails maintained or obliterated; the acreage of soil and water improvement; the acreage of terrestrial habitat restored or enhanced; the mileage of stream habitat restored or enhanced; the acreage of fuels management by mechanical means and/or prescribed burning; the acreage treated to decrease insect, disease, or fire risks, and/or to enhance forest health; and the acreage of noxious and/or exotic weed control. For each treatment that is applied, the local Data Inventory teams with gather data on the accomplishments realized to date using regular appropriations, the exchange of goods for services, or retained receipts.

Economic Criteria will include:

(4) The total project costs, and the breakdown of these costs into the following categories: formal project planning and NEPA (including citizen/public involvement in the process); sale/contract preparation; sale/contract administration; citizen involvement (during project implementation); monitoring, evaluation & reporting (including citizen involvement in this process); and other (to be specified).

(5) The funding of project implementation, and the breakdown of this funding into the following categories: exchange of goods for services; retained receipts; regular appropriations; cooperator contributions (cash); cooperator contributions (materials or in-kind services); and other funding sources (to be specified). For appropriated funds, the local Data Inventory teams will show the amounts provided from each of the Forest Service's recognized fund codes.

(6) The types and amounts of forest products produced, including: sawtimber; pulpwood; posts and poles; and different types of special forest products (ferns, pine boughs, pine straw, mushrooms, etc.). In all instances, productt amounts will be expressed in terms of commonly recognized units.

(7) The total project receipts, and the proportion of these receipts attributable to: timber products; special forest products; and other products (to be specified).

(8) The disposition of the project receipts, showing the amounts: returned to Treasury; exchanged for services; retained and reinvested; or distributed in some other manner (to be specified).

(9) The manner in which the pilot changed employment or entrepreneurial opportunities in the local community.

(10) The special skills required of a contractor for the project.

(11) The difficulties encountered in hiring contractors with the needed skills.

(12) The average wage paid in connection with the project and whether this wage rate represented woods a worker, service contract, or Davis-Bacon wage rate.

(13) The duration of the contract for this project and whether the contract period was longer or shorter than what is common with conventional timber sale or service contract projects.

Social Criteria will include:

(14) The individuals and/or groups (other than the Forest Service) who collaborated in planning, implementing, or monitoring the project, and the manner in which they were selected.

(15) The roles that each collaborator performed.

Administrative Criteria will include:

(16) The new processes and/or procedures that were used in connection with the project. The possibilities to be considered include: awarding of contracts on a "best value" basis (specify how "best value" was determined); designation by prescription; end results contracting; exchange of goods for services; retention of receipts; use of an appraisal method other than standard procedures (method to be specified); offering sales (appraised value of over $10,000) without advertisement; using state foresters as federal agents; using service contracts of over 5 years duration; using contract logging with subsequent sale of the cut products; or using some other new process or procedure (to be specified).

Criteria for the Local Assessment and Evaluation Teams. The local Assessment and Evaluation teams will use the evidence compiled by the local Data Inventory teams to, as a minimum, address the 14 criteria that follow. The Assessment and Evaluation teams may consider any additional criteria that they deem relevant.

Biophysical Criteria will include:

(1) An assessment as to whether the stated purposes and needs for the project were fulfilled and the basis for the conclusion.

(2) An assessment as to whether the resource management objectives of the project were realized and an explanation for the conclusion.

(3) An assessment as to whether the Forest Service was able to do a better job of ecosystem management by giving a single contractor the responsibility for a "bundled group" of resource work activities (e.g., timber extraction, watershed restoration, habitat improvement, and road obliteration) on the project area and an explanation of the conclusion.

Economic Criteria will include:

(4) An assessment as to whether employment opportunities for local communities were enhanced as a result of the project and the basis for the conclusion.

(5) An assessment as to whether the prevailing wage rate in the local community was enhanced as a result of the project and the basis for the conclusion.

Social Criteria will include:

(6) An assessment as to whether the dynamics of the collaborative process permitted all interested parties to participate and the basis for the conclusion.

(7) An assessment as to whether and how collaboration facilitated planning, implementing, and monitoring for the project.

Administrative Criteria will include:

(8) An assessment as to whether difficulties were experienced in interpreting or implementing the Section 347 authorities.

(9) An assessment as to whether the project planning and implementation timelines were being met and what contributed to that outcome.

(10) An assessment as to how the new processes and/or procedures that were tested in this project compare to the Forest Service's conventional timber sale or service contract authorities. As appropriate, in making that determination, the teams will consider the following performance variable: attractiveness to potential bidders; fairness to potential bidders; implications for the Forest Service's ability to maintain accountability for the treatments being applied and the forest products being removed; implications for the Forest Service's ability to implement ecosystem management projects efficiently and effectively; implications for the Forest Service's ability to successfully manage small diameter, under-utilized material; the ease of administration; the agency's ability to help meet the needs of rural, resource dependent communities; and their performance with regard to any other indicators deemed to be relevant.

(11) An assessment as to how useful the new, tested authorities were overall and the team's recommendations for applying the authorities more broadly.

(12) An assessment as to what other legislative, regulatory, or administrative changes would have helped make the project more effective.

(13) An assessment as to what type of contractual non-compliance problems occurred, if any, and how expeditiously they were resolved.

(14) A recommendation as to what should be done differently on another pilot project.

Criteria for the National Advisory Committee. The National Advisory Committee will be required to address the following nine criteria. Some of the criteria are the same as those asked at the local level. Where this is the case, the duplication is deliberate and reflects the belief that these criteria have relevancy at both levels. The national team members, like their local counterparts, will be free to address other criteria that they deem to be relevant; however, it is worth noting that their ability to do so may be constrained by the nature of the data compiled locally.

Biophysical Criteria will include: Based on the collective experience of the pilot projects;

(1) A determination as to whether the stated purposes and needs for the projects were fulfilled and an explanation for the conclusion.

(2) A determination as to whether the resource management objectives of the projects were realized and the basis for the conclusion.

(3) An assessment as to whether the Forest Service was able to do a better job of ecosystem management by giving a single contractor the responsibility for a "bundled group" of resource work activities (e.g., timber extraction, watershed restoration, habitat improvement, and road obliteration) on the project area and an explanation for the conclusion.

Economic Criteria will include: Based on the collective experience of the pilots:

(4) A determination as to whether any of the new processes and procedures that were tested appear to represent effective ways to create new or enhance existing employment or entrepreneurial opportunities in local communities.

(5) A determination of what administrative costs were incurred at the regional and national levels in order to carry out the stewardship pilots.

Social Criteria will include: Based on the collective experience of the pilots:

(6) An assessment as to what steps were taken to ensure that regional and/or national publics were not excluded or placed at a disadvantage in the collaborative process, and a determination of whether the steps taken were effective.

(7) A determination as to the potential for stewardship contracting to improve the quality of life within local resource-dependent communities (jobs, environmental conditions, economic infrastructure, etc.).

Administrative Criteria will include: Based on the collective experience of the pilots:

(8) An assessment as to what difficulties were experienced in interpreting or implementing the Section 347 authorities.

(9) An assessment as to how the new processes and/or procedures that were tested compare to the Forest Service's conventional timber sale or service contract authorities. As appropriate, in making these determinations, the committee will consider the following performance variables: attractiveness to potential bidders; fairness to potential bidders; implications for the Forest Service's ability to maintain accountability for the treatments being applied and the forest products being removed; implications for the Forest Service's ability to implement ecosystem management projects efficiently and effectively; implications for the Forest Service's ability to successfully manage small diameter, under-utilized material; ease of administration; ability to help meet the needs of rural, resource dependent communities; and any other indicators deemed to be relevant.

Lastly, the National Advisory Committee will make a recommendation for which of the new authorities that were tested appear to warrant broader application on a permanent basis.

Dated: August 10, 1999.

Phil Janik,

Acting Chief.

[FR Doc. 99–21247 Filed 8–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke export trade certificate of review No. 88–00011.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Abdullah Diversified Marketing, Inc. ("ADMI"). Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to ADMI.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on October 19, 1988 to ADMI.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to ADMI on October 9, 1998, a letter containing annual report questions with a reminder that its annual report was due on December 3, 1998. Additional reminders were sent on February 10, 1999, and on March 16, 1999. The Department has received no written response to any of these letters.

On August 11, 1999, and in accordance with Section 325.10 (c)(1) of the Regulations, a letter was sent by certified mail to notify ADMI that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they

are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: August 11, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–21258 Filed 8–16–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent 5,389,523, titled, "Liposome Immunoanalysis By Flow Injection Assay", filed July 23, 1992; NIST Docket No. 92–054C to Kalibrant Limited, having a place of business at 2 Oakwood Drive, Loughborough Park, Loughboro, Leics LE11 3NH, United Kingdom. The grant of the license would be for the following fields of use (1) Human Clinical Diagnostics and Prognostics Including Central Lab Testing and Blood Screening/Typing, specifically excluding Point-of-Care Patient Monitoring, (2) Drug Discovery Including Combinatorial Chemistry and High Throughput Screening Applications.

FOR FURTHER INFORMATION CONTACT: J. Terry Lunch, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899–2200.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the **Federal Register**, Vol. 57, No. 226 (November 23, 1992). NIST and Kalibrant Limited may enter into a Cooperative Research and Development Agreement (CRADA) to further development of the invention.

U.S. Patent application 07/917,426 is owned by the U.S. Government, as represented by the Secretary of Commerce. The present invention relates to a method of immunoanalysis that combines immobilized immunochemistry with the technique of flow injection analysis, and employs microscopic spherical structures called liposomes, or lipid vesicles, as carriers of detectable reagents. Liposomes are modified on their surface with analytical reagents, and carry in their internal volume a very large number of fluorescent or electroactive molecules. Aspects of this embodiment of the invention include chemistry for covalent immobilization of antibody fragments in a specified orientation, the use of liposomes in a flow injection analysis system, and with reusable immunoreactants. Another aspect of the invention involves the non-covalent binding of liposomes to a receptor for use in a homogeneous assay. In another aspect of the invention the intensity of scattered light is quantitated as a measure of liposome aggregation in response to a concentration-dependent immunospecific reaction.

Dated: August 9, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–21205 Filed 8–16–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Notice of test program.

SUMMARY: The Department of Defense is amending its Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans to reflect the implementation of the HUBZone Act of 1997 in the Federal Acquisition Regulation (FAR) which results in the addition of HUBZone small businesses to the categories of small business concerns that must be addressed by comprehensive small business subcontracting plans.

EFFECTIVE DATE: August 17, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ivory Fisher, Office of Small and disadvantaged Business Utilization, OUSD (A&T) SADBU, 1777 North Kent Street, Suite 9100, Arlington, VA 22209, telephone (703) 588–8616, telefax (703) 588–7561.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with Section 834 of Public Law 101–189, as amended, the Department of Defense (DoD) established a Test Program for negotiation of Comprehensive Small Business Subcontracting Plans (the Program) to determine whether the use of comprehensive subcontracting plans on a corporate, division, or plant-wide basis would increase subcontracting opportunities for small business concerns. DoD is amending the Program to implement the requirements to Section 822 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). The amendments (1) provide for subcontracts that are awarded by participating contractors performing as subcontractors, under DoD contracts, to be included in comprehensive small business subcontracting plans, and (2) extend the Program through September 30, 2000.

Ivory Fisher,

Office of Small and Disadvantaged Business Utilization.

The revised test plan is as follows:

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

I. Purpose

This document implements Section 834 of Public Law 101–189, the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended. The

primary purpose of the Comprehensive Small Business Subcontracting Plan Test Program (the Program) is to determine whether the negotiation and administration of comprehensive small business subcontracting plans will reduce administrative burdens on contractors while enhancing subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals under Department of Defense (DoD) contracts.

II. Authority

The Program is established pursuant to Section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended.

III. Program Requirements

A. The Program shall be conducted from October 1, 1990, through September 30, 2000.

B. The selection of contractors for participation in the Program shall be in accordance with Section 811(b)(3) of the National Defense Authorization Act For Fiscal Year 1996, Public Law 104–106. Eligible contractors are large business concerns at the major (total) corporate level that, during the preceding fiscal year:

1. Were performing under at least three DoD prime contracts; furnished supplies or services (including professional services) to DoD, engaged in research and development for DoD, or performed construction for DoD; and were paid $5,000,000 or more for such contract activities; and

2. Achieved a small disadvantaged business (SDB) subcontracting participation rate of 5 percent or more during the preceding fiscal year. However, this requirement does not apply to the eight original contractors accepted into the Program. Additionally, a large business with an SDB subcontracting participation rate of less than 5 percent during the preceding fiscal year may request, through the designated contracting activity, to participate in the Program if the firm submits a detailed plan with milestones leading to attainment of at least a 5 percent SDB subcontracting participation rate by September 30, 2000.

C. Contractors selected for participation shall:

1. Be eligible in accordance with paragraph III(B);

2. Establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during the preceding fiscal year, except that a division or plant that historically reported through a higher-level division, but would meet the criteria of paragraph III(B)(2), shall be permitted to participate in the Program if the lower-level division, plant or profit center can demonstrate a 5 percent or greater subcontract performance level with SDB concerns;

3. Have reported to DoD on the SF 295 for the previous fiscal year, except as provided in paragraph III(C)(2);

4. Accept an SDB goal for each fiscal year of not less than 5 percent, or an SDB goal that is in accordance with the milestone established under paragraph III(B)(2);

5. Comply with the requirements of Defense Federal Acquisition Regulation Supplement (DFARS) Section 215.605 for source selection purposes;

6. Offer a broad range of subcontracting opportunities;

7. Voluntarily agree to participate; and

8. Have at least one active contract that requires a subcontracting plan at the designated DoD buying activity responsible for negotiating the Comprehensive Subcontracting Plan.

IV. Elements of the Comprehensive Small Business Subcontracting Plan

A. The comprehensive small business subcontracting plan shall address each of the 11 elements set forth in paragraph (d) of the clause at FAR 52.219–9, "Small Business Subcontracting Plan."

1. The subcontracting plan, percentage and corresponding dollar goals for awards to small business, HUBZone small business, small disadvantaged business and women-owned small business concerns shall be developed by the contractor for its entire business operation in support of all DoD contracts and subcontracts under DoD contacts regardless of dollar value.

2. Participating contractors shall include separate specific goals and timetables for the awarding of subcontracts in two industry categories which have not historically been made available to small business and small disadvantaged business concerns. These industry categories will be recommended by the contractor and approved by the contracting officer. Subcontract awards made in support of the specific industry categories shall also count towards attainment of the overall small business and small disadvantaged business goals.

3. The subcontracting plan shall set forth the prime contractor's actions to publicize prospective subcontract opportunities for small business, HUBZone small business, small disadvantaged business and women-owned small business concerns.

B. Subcontracting plans to be established under the Program shall be submitted each year by participating contractors to the designated contracting officer 45 days prior to the end of the Government's fiscal year (September 30). However, new contractors requesting participation under the Program shall submit contracting plans to the contracting officer as far in advance as possible to the beginning of the fiscal year in which the contractor proposes to participate.

V. Procedures

A. The Service Acquisition Executive within each military department and defense agency having contractors that meet the requirements of paragraphs III (B) and (C) shall designate at least three but not more than five contracting activities to participate in the Program. In selecting the contracting activities to participate in the Program, the Service Acquisition Executive shall ensure that the designated activities cover a broad range of supplies and services.

B. The designated contracting activity will accomplish the following:

1. With the coordination of the Director, Office of Small and Disadvantaged Business Utilization, for their military department or defense agency, select as many eligible prime contractors (at least five) for participation under the Program as deemed appropriate.

2. Establish a "Comprehensive Small Business Subcontracting Plan" negotiating team(s) composed as follows:

a. A contracting officer(s) who will be responsible for negotiation and approval of the comprehensive subcontracting plan(s) as well as the responsibilities at FAR 19.705.

b. The contracting activity's Small and Disadvantaged Business Utilization Specialist.

c. The Small and Disadvantaged Business Utilization Specialist of the cognizant contract administration activity that administers the preponderance of the selected prime contractor's contracts and/or the appropriate individuals who will administer contractor performance under the test in accordance with FAR 19.706 and the provisions herein.

d. Production specialist, price analyst and other functional specialists as appropriate.

C. The designated contracting officer shall:

1. Encourage prime contractors interested in participating in the

program to enter the program on a plant or facility basis.

2. Solicit proposed comprehensive subcontracting plans from selected contractor(s) as soon as possible and by July 1, annually thereafter.

3. By October 1, and annually thereafter, review, negotiate and approve on behalf of DoD a comprehensive subcontracting plan for each selected contractor.

4. Distribute copies of the approved subcontracting plan in accordance with paragraph VI(A).

5. Upon negotiation and acceptance of the comprehensive subcontracting plan, obtain from the contractor:

a. A listing of all active DoD contracts that contain individual subcontracting plans required by Section 211 of Public Law 95–507.

b. The listing shall include the following:

i. Contract number.

ii. Name and address of the contracting activity.

iii. Contracting officer's name and phone number.

6. Upon receipt of the information provided by the participating contractor under paragraph V(C)(4), direct the designated administrative contracting officer to issue a comprehensive change order, which modifies all of the contractor's active DoD contracts that include subcontracting plans. The modification will substitute the contractor's approved comprehensive subcontracting plan for the individual plans, will substitute the clause at DFARS 252.219–7004 for the clause at FAR 52.219–9, and will delete the clauses at FAR 52.219–10 and 52.219–16 and DFARS 252.219–7003 and 252.219–7005, as appropriate.

7. Review annually, with the contract administration activity, the contractor's performance under the plan. Document the review findings and distribute, in accordance with paragraph VI(A), within 45 days of the end of the fiscal year.

8. By November 15 of the year after acceptance, and annually thereafter, determine whether the contractor has met its comprehensive subcontracting goals. If the goals have not been met, determine whether there is any indication that the contractor failed to make a good faith effort and take appropriate action.

9. By December 15, 2000, prepare and submit a report on each participating contractor's performance which details the results of the Program. The report must compare the contractor's performance under the Program with its performance for the three fiscal years prior to acceptance into the Program. The report distribution will be in accordance with paragraph VI(A).

D. Participating contractors:

1. Shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the SF 295 during the preceding fiscal year, except that those contractors that historically reported through a higher headquarters can elect to participate as a separate (lower-level) reporting profit center, plant or division if the contractor achieved an SDB subcontracting performance rate of 5 percent or greater in the preceding fiscal year.

2. Upon negotiation of an acceptance comprehensive subcontracting plan, shall be exempt from individual contract-by-contract reporting requirements for DoD contracts and subcontracts under DoD contracts unless otherwise required in accordance with paragraph III(C)(5).

3. Shall continue individual contract reporting on non-DoD contracts.

4. Shall comply with the flow-down provisions of Section 211 of Public Law 95–507 for large business subcontractors which are not participating in the Program. Consequently, large business concerns which are not participating in the Program receiving a DoD subcontract in excess of $500,000 ($1,000,000 for construction) are required to adopt a plan similar to that mandated by the clause at FAR 52.219–9. Participating contractors are prohibited from flowing down the "Comprehensive" subcontracting deviation provisions of DFARS 252.219–7004. Accordingly, large business subcontractors to the participating contractors who themselves are not participating in the Program shall be required to establish individual subcontracting plans with specific goals for awards to small business, small disadvantaged business and women-owned small business concerns.

5. Upon expulsion from the Program or Program termination on September 30, 2000, shall negotiate and establish individual subcontracting plans on all future DoD contracts that otherwise meet the requirements of Section 211 of Public Law 95–507.

VI. Monitoring and Reporting of Comprehensive Subcontracting Plans and Goals

A. Upon negotiation and acceptance of comprehensive subcontracting plans and goals, the designated activity shall immediately forward one copy of the plan to each of the following:

1. Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (Acquisition and Technology), 1777 North Kent Street, Suite 9100, Arlington, VA 22209.

2. Director, Small and Disadvantaged Business Utilization, for the military department or defense agency of the activity that negotiated and accepted the comprehensive subcontracting plan.

3. The cognizant contract administration office.

B. Each participating contractor shall complete the SF 295 "Summary Subcontract Report" in accordance with the instructions on the back of the form on a semi-annual basis, except as noted below:

1. One copy of the SF 295 and attachments shall be submitted to Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (Acquisition and Technology), 1777 North Kent Street, Suite 9100, Arlington, VA 22209.

2. Participating contractors shall enter in Item 14 Remarks block the annual corporate, division or plant-wide small business, small disadvantaged business and women-owned small business percentage and corresponding dollar goals.

3. Participating contractors shall also enter separately in Item 14 the percentage and corresponding dollar goals for each of the two selected industry categories (see paragraph IV(A)(2)).

4. Participating contractors shall also enter separately in Item 14 on a semi-annual cumulative basis the percentage and corresponding dollar amount of subcontract awards made in each of the two selected industry categories.

5. Participating contractors shall be exempt from the completion of SF 294 "Subcontract Report For Individual Contracts" for DoD contracts during their participation in the Program.

Dated: August 11, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–21232 Filed 8–16–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Armed Forces Health Professions Loan Repayment Program Loan Information and Verification Form; DD Form 2801; OMB Number 720—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Responses: 100.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 50.

Needs and Uses: Title 10, U.S.C., requires applicants to submit this form, to their Service representative, prior to participation in the Health Loan Repayment Program (HPLR). Lenders will verify the data submitted and respond back to the Service Representative. All loans must meet federal standards and be approved by the Defense Finance and Accounting Service prior to disbursement of funds.

Affected Public: Individuals or households; Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD (Health Affairs), Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 11, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21233 Filed 8–16–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–27]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperative Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–27 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 11, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

2 AUG 1999
In reply refer to:
I-99/009077

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-27, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Brazil for defense articles and services estimated to cost $39 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-27

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Brazil

(ii) Total Estimated Value:

Major Defense Equipment*	$ 33 million
Other	$ 6 million
TOTAL	$ 39 million

(iii) Description of Articles or Services Offered: Twenty HARPOON missiles, containers, spare and repair parts, support and test equipment, supply support, publications, personnel training and training equipment, U.S. Government personnel, contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (AHG)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See annex attached.

(vii) Date Report Delivered to Congress: 2 AUG 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Brazil - HARPOON Missiles

The Government of Brazil has requested a possible sale of 20 HARPOON missiles, containers, spare and repair parts, support and test equipment, supply support, publications, personnel training and training equipment, U.S. Government personnel, contractor technical assistance and other related elements of logistics support. The estimated cost is $39 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the South America.

Brazil will use these missiles on their four leased frigates and augment their inventory anti-ship warfare capability. Brazil will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Military Aircraft and Missile, St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. Government representatives for one week in Brazil. There will be ten U.S. Government and contractor representatives for one week intervals twice annually to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Guidance Section Components

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Brazil can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This possible sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc 99–21234 Filed 8–16–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Defense Policy Board Advisory Committee

SUMMARY: The Defense Policy Board was renewed, effective August 3, 1999, in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The DPBAC provides the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense (Policy) advice on a wide range of critical issues, including arms control, the momentous changes in Europe and Russia, the future prospects for conflict or cooperation in East Asia, and the situation in the Persian Gulf and Southwest Asia.

The DPBAC will continue to be composed of a balanced membership of approximately twenty five persons, including representatives of academia, active managers of high technology enterprises, eminent analysts working on current defense issues, retired senior military officers and former government officials.

FOR FURTHER INFORMATION: Contact Mjr. Cheryl Shumate, Defense Policy Board Advisory Committee, (703) 697–4557.

Dated: August 11, 1999.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21230 Filed 8–16–99; 8:45 am]
BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Improving Fuel Efficiency of Weapons Platforms; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Improving Fuel Efficiency of Weapons Platforms will meet in open session on August 17–18, 1999 at the Institute for Defense Analyses in Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Commander Brian D. Hughes at (703) 695–4157.

Dated: August 11, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21231 Filed 8–16–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming Quarterly Executive Committee Meeting

of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Executive Committee Meeting is to review the responses to the recommendations and requests for information adopted by the committee at the DACOWITS 1999 Spring Conference.

DATES: September 13, 1999, 8:00 a.m.–4:00 p.m.

ADDRESSES: OSD Conference Room 1E801, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Susan E. Kolb, ARNGUS, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: Meeting agenda:

Monday September 13, 1999

Time and Event

8:00 a.m.—Chair Commences Meeting, Acting AASD(FMP) Remarks, Introduction of Executive Committee And MilReps/Liaisons (1E801–Rms 2 and 3)
8:15 a.m.—Submarine Personnel Assignment (Forces Development and Utilization RFI#1) (1E801–Rms 2 and 3) (Open to Public)
9:15 a.m.—Break
9:30 a.m.—TRICARE PRIME Access (Quality of Life RFI#2) (1E801–Rms 2 and 3) (Open to Public)
11:00 a.m.—Break
11:30 a.m.—Offical Luncheon with DSCPERS (DACOWITS Members only)
1:15 p.m.—Study of Investigative Practices of Military Criminal Investigative Organizations Relating To Sex Crimes (Quality of Life RFI#1) (1E801–Rms 2 and 3) (Open to Public)
2:30 p.m.—Break
2:45 p.m.—EEO Survey Questions (Open to Public)
3:15 p.m.—Fall Conference Overview and Wrap Up (Open to Public)
4:00 p.m.—Depart the Pentagon

Dated: August 11, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21229 Filed 8–16–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Marine Corps

Privacy Act of 1974; System of Records

AGENCY: Marine Corps, DoD.

ACTION: Amend records systems.

SUMMARY: The U.S. Marine Corps proposes to amend systems of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: These actions will be effective without further notice on September 16, 1999 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed actions are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: August 11, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

MMN00002

SYSTEM NAME:

Listing of Retired Marine Corps Personnel *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Commandant of the Marine Corps (Code MMSR-6), Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5103.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the second, third, and fourth paragraphs.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commandant of the Marine Corps (Code MMSR-6), Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5103.'

* * * * *

MMN00002

SYSTEM NAME:

Listing of Retired Marine Corps Personnel.

SYSTEM LOCATION:

Commandant of the Marine Corps (Code MMSR-6), Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5103.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All retired members of the Marine Corps, including those former Marines in the receipt of disability benefits from the Department of Veterans Affairs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is a microfiche listing derived from automated sources depicting the retiree's name, Social Security Number, grade, mailing address and retirement component code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record of all retired members for use in determination of benefits and entitlements as a retiree.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Leatherneck Magazine and Marine Corps Gazette - For maintaining their mailing lists of subscribers to these semi-official, professional publications.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Controlled distribution microfiche listing. Stock copies maintained in locked room.

RETRIEVABILITY:

Listing in alphabetical order, with officer personnel listed separate from enlisted personnel.

SAFEGUARDS:

Building employs security guards. Distribution is strictly controlled.

RETENTION AND DISPOSAL:

Destroyed upon being superseded by updated monthly listing.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (Code MMSR-6), Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5103.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code MMSR-6), Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5103.

The letter should contain the full name and signature of the requester.

Individuals may visit the installation at 3280 Russell Road, Quantico, VA 22134-5103 on normal work days between 8:00 a.m. and 4:30 p.m. Proof of identification may consist of individual's active, reserve or retired identification card, Armed Forces Report of Transfer or Discharge (DD Form 214), discharge certificate, driver's license or other data sufficient to ensure that the individual is the subject.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps (Code MMSR-6), Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5103.

The letter should contain the full name and signature of the requester.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Staff agencies and subdivisions of Headquarters, U.S. Marine Corps and the Department of Veterans Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMN00034

SYSTEM NAME:

Personnel Procurement Working Files *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

SYSTEM LOCATION:

After the words 'Personnel Procurement Branch,' add 'Commanding General, Marine Corps Recruit Depots/Western and Eastern Recruiting Region.'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

RETRIEVABILITY:

Delete the entry and replace with 'Information retrieved alphabetically by the last name of individual, according to program.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records maintained for two years from application, then they are destroyed.'

* * * * *

MMN00034

SYSTEM NAME:

Personnel Procurement Working Files.

SYSTEM LOCATION:

Headquarters, U.S. Marine Corps, Personnel Procurement Branch, Commanding General, Marine Corps Recruit Depots/Western and Eastern Recruiting Region, Marine Corps Districts, Recruiting Stations, Officer Selection Offices, Organized Marine Corps Reserve units, U.S. Marine Corps recruiting substations, Inspector-Instructor staff.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilians and prior service individuals who are prospective applicants for enlistment in the Marine Corps, Marine Corps Reserve or a Marine Officer program, individuals on which a written waiver for enlistment has been requested; Platoon Leader Class Candidates receiving financial assistance while attending college; all individuals applying for various officer programs; Marine Corps Reserve enlistees who are serving on their 6 months active duty prior to return to Organized Marine Corps Reserve unit maintaining their record; Personnel enlisted in the Marine Corps Reserve assigned to a formal school upon enlistment; Secondary school students who participated in the Marine Corps Youth Physical Fitness meet held annually in Washington, DC, and the coach fielding each team; any individual recommended for enlistment in the Marine Corps by a recruiting officer even though the applicant does not meet the enlistment requirements set forth in current guidance as set forth by the Commandant of the Marine Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

All files contain name (last, first, middle, (maiden, if any), Jr., Sr.), Social Security Number, home of record. Files relating specifically to enlistment or officer procurement contain citizenship, sex, race, ethnic group, present address, marital status, number of dependents, date of birth, religious reference, highest grade completed, selective service system data, foreign language and skill, driver's license information, mental and aptitude test results, medical examination result, delayed enlistment program information, accession data, educational experience, citizenship verification, history of prior military service, names of relatives to include date and place of birth, present address and citizenship, listing of commercial life insurance policies and number, relatives and alien friends living in foreign countries to include name and relationship, age, occupation, address and citizenship, all previous residences since 10th birthday, previous employment record to include company name and address, job title and supervisor's name, data concerning previous employment by foreign governments, prior membership in youth programs, history of foreign travel. Declarations from the individual concerning; previous rejection by the Armed Forces of the United States, conscientious objector status, previous deserter status, retired pay, disability allowance, or severance pay or a pension from the Government of the United States, status as only child; understandings by the applicant; date of interview and name, organization, title of interviewer; history of prior use of drugs except as prescribed by a licensed

physician; martial status and dependency; membership in groups for purpose of unlawful overthrow of the Government; history and record of involvement with police or judicial authorities; parental/guardian consent for enlistment; enlistment options; current income; whether own, buying or renting present residence; outstanding debts to include total amounts and monthly payments; status of savings account and checking account; spouses' employment and monthly income; police checks, character references; record of prior service; court documents; marriage certificates; birth certificates; record of medical record of medical examination; record of examination; record of medical history; consultations statement of personal history; divorce decrees; death certificates; photographs; high school diploma; college diploma; grade transcript; General Educational Development certificates of high school equivalency; sole surviving son statements; statement of understanding; wife's consent form; applications for General Educational Development certificates of high school equivalency. Files relating to Marine Corps personnel on active duty contain information pertaining to name, Social Security Number, sex, unit of assignment, home of record, education, Armed Services Vocational Aptitude Battery Test scores, vision, military occupational specialty training information, Quota Serial Number, training authorized.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record on individuals for use in the execution of Official duties with regard to personnel procurement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information retrieved alphabetically by the last name of individual, according to program.

SAFEGUARDS:

Access is limited to Reserve unit command, recruiting, and administrative personnel and law enforcement or Federal agents upon presentation of proper credentials.

After working hours the office and building is locked.

RETENTION AND DISPOSAL:

Records maintained for two years from application, then they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander of unit holding file. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visiting the Commander of unit holding file. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Provide full name and military status. Proof of identity may be established by military identification card or DD 214 or driver's license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visiting the Commander of unit holding file. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Provide full name and military status. Proof of identity may be established by military identification card or DD 214 or driver's license.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

High school lists, DD 214's prospect interviews/referrals, local newspapers, youth fitness programs, individual contacts, Marine Corps officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MIL00019

SYSTEM NAME:

Equipment and Weapons Receipt or Custody Files *(February 22, 1993, 58 FR 10630)*.

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

MIL00019

SYSTEM NAME:

Equipment and Weapons Receipt or Custody Files.

SYSTEM LOCATION:

System is decentralized. Records are maintained at Marine Corps commands, organizations, or activities that issue said equipment or weapons.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

System contains name, rank, Social Security Number, unit address, and date.

CATEGORIES OF RECORDS IN THE SYSTEM:

This file contains name, rank, Social Security Number, itemized list of equipment issued, date issued, and possibly unit and section/Department to which assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record of individuals who have government property in their possession for use in the management of that property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in binder, file folder, box, vertical card file, or index cards.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

After working hours, the office and building are locked. A guard is located in the general vicinity.

RETENTION AND DISPOSAL:

These records are destroyed upon the return of the property listed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity.

Provide full name and military status. Proof of identity may be established by military identification card or DD Form 214 and drivers license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity.

Provide full name and military status. Proof of identity may be established by military identification card or DD Form 214 and drivers license.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is entered by visual certification of property, issued and identification presented by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MIL00021

SYSTEM NAME:

Working Files, Division Supply Sections and Wing Supply Sections *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

RETENTION AND DISPOSAL:

Delete the last two paragraphs and replace with 'Investigations - Two years after the end of the fiscal year in which the investigation as completed. All files are destroyed after being maintained the required time.'

* * * * *

MIL00021

SYSTEM NAME:

Working Files, Division Supply Sections and Wing Supply Sections.

SYSTEM LOCATION:

Division Supply Section, Regiments, Battalions, Separate Companies, Wing Supply Sections, Groups, Separate Squadrons

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel responsible for government property, reimbursing government for damages/loss of property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Equipment Custody Records (ECR) - This file contains the date, voucher number, remarks, quantity, signature, control number, description and unit.

Memorandum Receipt for Individual/ Garrison Equipment (IMR) - This file includes the name, grade, Social Security Number, date, organization, signature and unit.

Memorandum Receipt for Individual Weapons and Accessories - This file includes the name, grade, Social Security Number, organization, signature and unit.

Personal Effects Log - This file includes the date, name, Social Security Number, grade and signature.

Letter of Appointment/Authorization - These files include the date, name, grade, Social Security Number, description of duties/authorizations and sample signature.

Voucher Files - Cash Collection - This file includes the name, grade, Social Security Number, unit, description of sales and signature.

Voucher Files - Investigations - This file includes the name, grade, Social Security Number of investigating officer, subject, serial number, date investigation received, date sent to unit for correction (if applicable), due date to be returned and remarks. File also contains a copy of the investigation.

Special Order Clothing - This file includes the name, rank, Social Security Number, msg number, individual unit, and remarks regarding receipt of clothing.

Base Property Log - Contains a list of names of personnel who have lost and paid for government property.

Serialized Blank Forms Register - Contains a listing of personnel by name who issue/receive serialized blank forms.

Quarterly Inventory of Sets, Chests and Kits - Contains a file of inventories made on contents of sets, chests and kits including the name, rank and Social Security Number of the individual inventorying property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record, by units, of supplies, property and responsible property management personnel for maintenance and accountability of government property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

ECR - Vertical file cards.

IMR; Individual Weapons and Accessories, Special Clothing - card file.

Personal Effects; Investigation; Base Property Log; Serialized Blank Forms Register-Log Book.

Letters of Appointment/ Authorization; Voucher Files, investigations; Quarterly inventories of Sets, Chests and Kits - paper records in file folders.

RETRIEVABILITY:

ECR - filed by unit or responsible officer.

IMR; Individual Weapons and Accessories; Special Clothing - filed alphabetically by name.

Personal Effects, Investigation Log; Letter of Appointment/Authorization; Voucher Files; Base Property Log; Serialized Blank Form Register; Quarterly Inventory of Sets, Chests and Kits - as it occurs by name.

SAFEGUARDS:

IMR; Individual Weapons and Accessories Records - maintained in secured area within armories accessible only to personnel authorized to be in the area.

ECR; Personal Effects Log; Letters of Authority; Voucher Files; Investigations; Special Clothing; Base Property Log; Serialized Blank Forms Register; Quarterly Inventory of Sets, Chests and Kits - Personnel within supply/S–4 sections authorized access, no special safeguard implemented.

RETENTION AND DISPOSAL:

ECR; IMR; Weapons Custody Records; Special Clothing retain until accountable balance is zero.

Personal Effects Log; Quarterly Inventory of Sets, Chests and Kits - one year.

Letters of Appointment/Authorization - five (5) years.

Voucher Files; Investigation Log; Base Property Log; Serialized Blank Forms - two years.

Investigations - Two years after the end of the fiscal year in which the investigation as completed.

All files are destroyed after being maintained the required time.

SYSTEM MANAGER(S) AND ADDRESS:

Division Supply Officers, Marine Corps Division; Wing Supply Officers, Marine Corps Aircraft Wings. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Division Supply Officers, Marine Corps Division; Wing Supply Officers, Marine Corps Aircraft Wings. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Written requests for information should contain the full name and grade of the individual as well as the unit to which he is/was attached which would reflect information pertaining to him.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Division Supply Officers, Marine Corps Division; Wing Supply Officers, Marine Corps Aircraft Wings. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Written requests for information should contain the full name and grade of the individual as well as the unit to which he is/was attached which would reflect information pertaining to him.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and/or individual's SRB or OQR or other listing unit may have which contains required information.

Incoming messages for Special Order Clothing.

Base Locator.

Completed investigations submitted.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00003

SYSTEM NAME:

Magistrate Court Case Files *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files maintained for two years after case closed, then retired to Federal Records Center.'

* * * * *

MJA00003

SYSTEM NAME:

Magistrate Court Case Files.

SYSTEM LOCATION:

All Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilians pending and tried by the assigned Federal magistrate for crimes committed on military reservation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative reports, complaints, summons and warrants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record of summons, warrants, investigative reports and complaints for use by military prosecutors in the preparation of cases of trial.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name. Conventional indices are required for retrieval.

SAFEGUARDS:

Maintained in file cabinet in locked building.

RETENTION AND DISPOSAL:

Files maintained for two years after case closed, then retired to Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in the system should address written inquires to the Commanding Officer of the Marine Corps installation concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems or records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Law enforcement reports, bad check transmittal letters from Government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00004

SYSTEM NAME:

In Hands of Civil Authorities Case Files *(February 22, 1993, 58 FR 10630).*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'File maintained by command until civil action resolved, then incorporated into Official Military Personnel File (OMPF).'

* * * * *

MJA00004

SYSTEM NAME:

In Hands of Civil Authorities Case Files.

SYSTEM LOCATION:

All Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel who are in hands of civil authorities or have charges pending against them by civil authorities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Civil court documents, advise to respondent, health statements/certificates, written agreement releasing the Marine to civilian authorities and supporting documents pertaining to individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 814.

PURPOSE(S):

To provide a record of Marines in the hands of civil authorities for use in the administrative processing of such individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual by calendar year in which processing is completed.

SAFEGUARDS:

Files are stored in filing cabinets accessible only to authorized personnel. Doors are locked and full-time security guards are employed after normal working hours.

RETENTION AND DISPOSAL:

On discharge personnel, record incorporated into administrative discharge file. Others retained for two years after completion of calendar year in which processed, then destroyed in accordance with the Navy and Marine Corps Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Judge Advocate or legal officer of the activity concerned.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Staff Judge Advocate or legal officer of the activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Requester must be able to provide satisfactory identifying information.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the Staff Judge Advocate or legal officer of the activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Requester must be able to provide satisfactory identifying information.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Warrant for arrest, service records, health records, civil court documents, law enforcement personnel and various DOD agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00005

SYSTEM NAME:

Financial Assistance/Indebtedness/Credit Inquiry Files *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy, 10 U.S.C. 5041, Headquarters, Marine Corps.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records maintained two years after issue closed, then destroyed.'

SYSTEM MANAGER(S) AND ADDRESS:

Add to entry 'U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.'

* * * * *

MJA00005

SYSTEM NAME:

Financial Assistance/Indebtedness/ Credit Inquiry Files.

SYSTEM LOCATION:

All Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marines identified as owing debts and/or having dependents requiring financial aid.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, rank, Social Security Number, military occupational specialty component, marital and dependency status and supporting documents pertaining to indebtedness, financial assistance and credit inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy, 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record of Marines identified as owing debts or having need for financial aid for use in processing correspondence relating to financial assistance, credit inquiry or indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Records are retrieved by name and Social Security Number of the individual concerned.

SAFEGUARDS:

File accessible only to authorized personnel in the execution of their official duties. Maintained in locked building with full time duty personnel present during non-working hours.

RETENTION AND DISPOSAL:

Records maintained two years after issue closed, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Requester must be able to provide satisfactory identifying information.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Requester must be able to provide satisfactory identifying information.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Previous and current commanders, private individuals and commercial creditors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99-21235 Filed 8-16-99; 8:45 am]

BILLING CODE 5001-10-F

DEPARTMENT OF DEFENSE

Defense Security Service

Privacy Act of 1974; System of Records

AGENCY: Defense Security Service, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Defense Security Service (DSS) is amending existing Privacy Act systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

In addition, the name of the agency is being changed to 'DEFENSE SECURITY SERVICE' in the preamble to the agency's compilation of systems of records notices.

DATES: The actions will be effective on September 16, 1999, comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Office of the General Counsel, Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Blake (703) 325-9450.

SUPPLEMENTARY INFORMATION: The Defense Security Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

In addition, the name of the agency is being changed to 'DEFENSE SECURITY SERVICE' in the preamble to the agency's compilation of systems of records notices.

Dated: August 11, 1999.

L. M. BYNUM,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions
V4–06

SYSTEM NAME:

Federal Personnel Management System (FPMS) *(February 22, 1993, 58 FR 10904).*

Reason: Records contained within this system of records are covered by multiple government-wide Privacy Act systems of records notices.

V7–02

SYSTEM NAME:

Guest/Instructor Identification Records *(February 22, 1993, 58 FR 10904).*

Reason: Records contained within this system of records have been incorporated into V7-01, entitled 'Enrollment, Registration and Course Completion Record'.

V8–01

SYSTEM NAME:

Industrial Personnel Security Clearance File *(February 22, 1993, 58 FR 10904).*

Reason: Records contained within this system of records have been incorporated into V5-03, entitled 'Case Control Management System'.

Amendments
V4–07

SYSTEM NAME:

Adverse Actions, Grievance Files, and Administrative Appeals *(August 9, 1993, 58 FR 42304).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations, Chapter 77; and E.O. 9397 (SSN).'

* * * * *

V4–07

SYSTEM NAME:

Adverse Actions, Grievance Files, and Administrative Appeals.

SYSTEM LOCATION:

Defense Security Service, Employee Relations Office, 1340 Braddock Place, Alexandria, VA 22314–1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All agency employees and some former employees who are directly affected by grievances, complaints, and adverse actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files and related records pertaining to administrative inquiries into allegations of misconduct, statements of witnesses, employee's statements, reports of interviews and hearings, hearing notices, letters of decision, records of appeals and reconsideration requests, reversals of actions, notices of proposed action with supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, Chapter 77; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used in the investigation and preparation of a case for initial disposition, and possible subsequent determinations in the event of appeal or reconsideration. Records are available for use by the examiner of the original case, or at the appellate level, both within and outside DSS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records are maintained in locked containers accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Disciplinary action files are destroyed four years after the case is closed. Grievance and administrative appeals files are destroyed four years after the case is closed. Letters of Reprimand are destroyed within two years of the date the case is closed. Performance-based action files are destroyed one year after the case is closed. Destruction is accomplished by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Service, Chief, Employee Relations Office, 1340 Braddock Place, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

Individuals need to provide full name and all maiden and alias names under which files may be maintained. *Note: Social Security Numbers may be necessary for positive identification of certain records.*

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Supervisors, complainants, investigators, and appropriate law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V4–11

SYSTEM NAME:

DSS Drug–Free Workplace Files *(February 22, 1993, 58 FR 10904).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Replace first sentence with 'Records are destroyed after two years.'

* * * * *

V4–11

SYSTEM NAME:

DSS Drug–Free Workplace Files.

SYSTEM LOCATION:

Defense Security Service, Employee Relations Office, 1340 Braddock Place, Alexandria, VA 22314–1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of, and applicants for positions with, the Defense Security Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the selection, notification, and urinalysis testing of employees and applicants for illegal drug use; collection authentication and chain of custody documents; and laboratory test results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301 and 7361; Pub. L. 100–71; E.O. 12564, Drug-Free Federal Workplace and 9397 (SSN); and Department of Defense Directive 1010.9, DoD Civilian Employee Drug Abuse Testing Program.

PURPOSE(S):

The system contains Drug Program Coordinator records on the selection, notification, and testing (i.e., urine specimens, drug test results, chain of custody records, etc.) of employees and applicants for employment for illegal drug use.

Records contained in this system are also used by the Defense Security Service's Medical Review Officer; the Administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials having authority to recommend or take adverse actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with provisions of 5 U.S.C. 7301, the DSS 'Blanket Routine Uses' do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Electronic records exist on diskettes or other machine-readable media.

RETRIEVABILITY:

Records are retrieved by employee or applicant name, Social Security Number, collection site, and/or date of testing.

SAFEGUARDS:

Paper records and diskettes are maintained in locked containers accessible only to authorized personnel. All employee and applicant records are maintained and used with the highest regard for the individual's privacy. Only persons with a need-to-know and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Records are destroyed after two years. Records regarding applicants not accepted for employment will be destroyed 6 months after the testing date. Destruction of paper records is accomplished by shredding or burning. Electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Service, Chief, Employee Relations Office, 1340 Braddock Place, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

The individual must provide their full name, Social Security Number, the title, series, and grade of the position they occupied or applied for when the drug test was conducted, and the month and year of the test.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

The request for access must contain the individual's full name and Social Security Number.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DIS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Urine specimen collection facilities, drug testing laboratories, Medical Review Officers, and test subjects.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V5–01

SYSTEM NAME:

Investigative Files System *(February 22, 1993, 58 FR 10904)*.

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Personnel Security Investigative File Automation Subsystem'.

SYSTEM LOCATION:

Delete entry and replace with 'Defense Security Service, Investigative Files Division, P.O. Box 46060, Baltimore, MD 21240-6060.'

* * * * *

STORAGE:

Delete entry and replace with 'Records are maintained on magnetic media to include disk, tape and microfilm. Some paper records may still exist on cases which have not yet been converted to magnetic media and on records containing classified information.'

RETRIEVABILITY:

Delete entry and replace with 'Information is retrieved Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Completed investigative records are stored in secured areas accessible only to authorized DSS personnel who have a need-to-know. Paper records are maintained in safes and locked rooms and magnetic media records are protected from access by 'fail-safe' system software. The entire building housing these records are controlled by guards/visitor register.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Defense Security Service, Director, Operations Center Baltimore, P.O. Box 46060, Baltimore, MD 21240-6060.'

* * * * *

V5–01

SYSTEM NAME:

Personnel Security Investigative File Automation Subsystem.

SYSTEM LOCATION:

Defense Security Service, Investigative Files Division, P.O. Box 46060, Baltimore, MD 21240-6060.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel who are active duty; applicants for enlistment or appointment; members of Reserve units; National guardsmen; DoD civilian personnel who are paid from appropriated funds; industrial or contractor personnel who are working in private industry in firms which have contracts involving access to classified DoD information or installations; Red Cross personnel and personnel paid from nonappropriated funds who have DoD affiliation; ROTC cadets; former military personnel; and individuals residing on, have authorized official access to, or conducting or operating any business or other functions at any DoD installation or facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official Reports of Investigation (ROIs) prepared by DSS or other DoD, federal, state, or local official investigative activities; industrial security administrative inquiries (AISs).

Attachments to ROIs or AISs including exhibits, subject or interviewee statements, police records, medical records, credit bureau reports, employment records, education records, release statements, summaries of, or extracts from other similar records or reports.

Case control and management documents which are not reports of investigation, but which serve as the basis for investigation, or which serve to guide and facilitate investigative activity, including documents providing the data to open and conduct the case; and documents initiated by the subject.

DSS file administration and management documents accounting for the disclosure of, control of, and access to a file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, Security Requirements for Government Employment; DoD Directive 5105.42, Defense Security Service; DoD Directive 5200.2, Department of Defense Personnel Security Program; DoD Directive 5200.27 (Section IV A and B), Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Program Review; DoD Directive 5220.28, Application of Special Eligibility and Clearance Requirements in the SIOP-ESI Program for Contractor Employees, and 18 U.S.C. 3056, Powers and Duties of the Secret Service and E.O. 9397 (SSN).

PURPOSE(S):

To ensure that the acceptance or retention of persons in sensitive DoD positions or granting individuals including those employed in defense industry access to classified information is clearly consistent with national security.

To determine the loyalty, suitability, eligibility, and general trustworthiness of individuals for access to defense information and facilities.

To determine the eligibility and suitability of individuals for entry into and retention in the Armed Forces.

To provide information pertinent to the protection of persons under the provisions of 18 U.S.C. 3056, Powers and Duties of the Secret Service.

For use in criminal law enforcement investigations, including statutory violations and counterintelligence as well as counterespionage and other security matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

For maintenance and use by the requesting activity when collected during reciprocal investigations conducted for other DoD and federal investigative elements.

For dissemination to federal agencies or other DoD components when information regarding personnel security matters is reported by Information Summary Report.

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media to include disk, tape and microfilm. Some paper records may still exist on cases which have not yet been converted to magnetic media and on records containing classified information.

RETRIEVABILITY:

Information is retrieved Social Security Number.

SAFEGUARDS:

Completed investigative records are stored in secured areas accessible only to authorized DSS personnel who have a need-to-know. Paper records are maintained in safes and locked rooms and magnetic media records are protected from access by 'fail-safe' system software. The entire building housing these records are controlled by guards/visitor register.

RETENTION AND DISPOSAL:

Retention of closed DSS investigative files is authorized for 15 years maximum, except as follows:

(1) Files which have resulted in final adverse action against an individual will be retained 25 years;

(2) Files developed on persons who are being considered for affiliation with the Department of Defense will be destroyed within one year if the affiliation is not completed. In cases involving a pre-appointment investigation, if the appointment is not made due to information developed by investigation, the file will be retained 25 years upon notification from the requester for which the investigation was conducted. If the appointment is not made due to information developed by investigation, the file will be retained 25 years upon notification from he requester for which the investigation was conducted. If the appointment is not made for another reason not related to the investigation, the file will be destroyed within one year upon notification from the requesting agency service;

(3) Files concerning unauthorized disclosure of classified information and other specialized investigation files will be retained for 15 years; and

(4) Information within the purview of the Department of Defense Directive 5200.27, Acquisition of Information concerning Persons and Organizations not Affiliated with the Department of Defense, is destroyed within one year after acquisition by DSS unless its retention is required by law or unless its

retention has been specifically authorized by the Secretary of Defense or his designee;

(5) Reciprocal investigations are retained for only 60 days; and

(6) Partial duplicate records of personnel security investigations are retained for 60 days by DSS field elements.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Service, Director, Operations Center Baltimore, P.O. Box 46060, Baltimore, MD 21240-6060.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should send written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1615.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquires to the Defense Security Service, Privacy Act Branch, PO Box 46060, Baltimore, MD 21240-6060.

A request for information must contain the full name and Social Security Number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Privacy Act Branch, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria VA 22314-1651.

RECORD SOURCE CATEGORIES:

Subjects of investigations, records of other DoD activities and components, Federal, state, county, and municipal records, employment records of private business and industrial firms. Educational and disciplinary records of schools, colleges, universities, technical and trade schools. Hospital, clinic, and other medical records.

Records of commercial enterprises such as real estate agencies, credit bureaus, loan companies, credit unions, banks, and other financial institutions which maintain credit information on individuals.

The interview of individuals who are thought to have knowledge of the subject's background and activities.

The interview of witnesses, victims, and confidential sources.

The interview of any individuals deemed necessary to complete the DSS investigation.

Miscellaneous directories, rosters, and correspondence.

Any other type of record deemed necessary to complete the DSS investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 321. For additional information contact the system manager.

V5–02

SYSTEM NAME:

Defense Central index of Investigations (DCII) *(February 22, 1993, 58 FR 10904).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Defense Clearance and Investigations Index (DCII)'.

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Defense Security Service, Operation Center-Baltimore, 881 Elkridge Landing Road, Linthicum, MD, 21090-2902.

Secondary locations: Air Force (Headquarters 497th IG/INS); Air Force Office of Special Investigations; Army Central Clearance Facility; Army Crime Records Center; Army Investigative Records Repository; Defense Intelligence Agency; Defense Office of Hearings and Appeals; DoD Inspector General; Joint Staff; National Reconnaissance Office; National Security Agency; Naval Criminal Investigative Service; Navy Central Adjudicative Facility; U.S. Coast Guard; and the Washington Headquarters Services. For specific addresses of the secondary locations, please contact the Primary location.

CATEGORIES OF RECORDS IN THE SYSTEM:

In 1st sentence delete 'DCII MASTER INDEX'. At the end of the 1st paragraph add 'The index may also include investigative record information/ clearance data submitted by other Federal agencies (i.e. National Security Agency, Coast Guard).'

In paragraph 5, add 'NAC Histories that were opened after January 4, 1999 will reflect investigations for subjects that do not require a clearance (e.g. Red Cross or USO personnel being assigned with the Armed Forces overseas).'

Replace paragraph 6 with 'CLEARANCE TRACING: A record of a clearance determination by an adjudicative agency. It identifies the individual by name and personal identifiers, the agency that submitted the clearance entry, the date it was granted, the eligibility level of the clearance, the level of access granted, the access granted date, the type and date of the investigation that formed the basis for the clearance determination, the category of the subject, the separation date and any files used in the adjudicative process.

DCII IMPERSONAL TITLE TRACING: A record of organizations, contractor locations and incidents that were subjects of DoD investigations or DSS Facility NACs. There have been no new impersonal titles added to the DCII since April 19, 1997, when DSS stopped conducting Facility NACs.'

* * * * *

STORAGE:

Delete entry and replace with 'The DCII is stored on disk within a Corporate Database (CDB). The CDB has a mirrored structure (duplicate file) to provide immediate recovery in case of disk failure. It is regularly backed up onto magnetic tape for storage as a contingency in case of system of disk failure.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'The DSS facility housing the DCII is protected by security personnel (guards) at all times. Access to the computer room is controlled by combination lock and identification badges, which are issued only to authorized individuals. Generalized validation is provided through online and batch edit criteria that must be honored before an information request or update will occur. Identification (account codes and passwords) and authentication is required at the DSS firewall and again at the database before information can be accessed. All data transfers and information retrievals that use remote communication facilities are encrypted. Activities must be a part of DoD/Federal Government and accredited on the basis of authorized requirements before a new terminal is established or before batch request will be honored and processed. Organizations authorized access are responsible for ensuring that individuals and organizations to whom they disclose DCII information have appropriate authority and need-to-know.'

* * * * *

V5–02

SYSTEM NAME:

Defense Clearance and Investigations Index (DCII).

SYSTEM LOCATION:

Primary location: Defense Security Service, Operation Center-Baltimore, 881 Elkridge Landing Road, Linthicum, MD, 21090-2902.

Secondary locations: Air Force (Headquarters 497th IG/INS); Air Force Office of Special Investigations; Army Central Clearance Facility; Army Crime Records Center; Army Investigative Records Repository; Defense Intelligence Agency; Defense Office of Hearings and Appeals; DoD Inspector General; Joint Staff; National Reconnaissance Office; National Security Agency; Naval Criminal Investigative Service; Navy Central Adjudicative Facility; U.S. Coast Guard; and the Washington Headquarters Services. For specific addressees of the secondary locations, please contact the Primary location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person described as a subject or a victim or who is a cross-reference in an investigation completed by or for a DoD investigative organization when that investigation is retained by the organization and the name is submitted for central indexing.

CATEGORIES OF RECORDS IN THE SYSTEM:

The index is composed of investigations conducted by DoD investigative organizations, locator references to such investigations, and security clearances granted by DoD components. Records contain names and other personal identifying information on individuals, including security clearance data on Department of Defense contractor employees who are indexed. The index may also include investigative record information/clearance data submitted by other Federal agencies (i.e. National Security Agency, Coast Guard).

FILE TRACING: Reference to an investigation maintained by one of the investigative records repositories. It identifies the individual by name and personal identifiers, the custodian of the file, the year indexed, and the number used by the repository to locate the file.

OPEN CASE TRACING: A record input by DoD investigative activities or the National Security Agency reflecting the existence of an investigation in progress. It identifies the subject individual by name and personal identifiers, the location of the open investigation, the year indexed, and the number used to locate the investigative number.

NAC PENDING TRACING: Record of a National Agency Check (NAC) investigation in progress. It identifies the subject individual by name, personal identifiers, the case number, the category of the requester of the NAC, and the type of NAC being run.

NAC HISTORY TRACING: A record of completed favorable, or incomplete, national agency checks. It identifies the individual by name and personal identifiers, the date the NAC was completed, and the agencies that were checked. NAC Histories that were opened after January 4, 1999 will reflect investigations for subjects that do not require a clearance (e.g. Red Cross or USO personnel being assigned with the Armed Forces overseas).

CLEARANCE TRACING: A record of a clearance determination by an adjudicative agency. It identifies the individual by name and personal identifiers, the agency that submitted the clearance entry, the date it was granted, the eligibility level of the clearance, the level of access granted, the access granted date, the type and date of the investigation that formed the basis for the clearance determination, the category of the subject, the separation date and any files used in the adjudicative process.

DCII IMPERSONAL TITLE TRACING: A record of organizations, contractor locations and incidents that were subjects of DoD investigations or DSS Facility NACs. There have been no new impersonal titles added to the DCII since April 19, 1997, when DSS stopped conducting Facility NACs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, Security Requirements for Government Employment; DoD Directive 5200.2, DoD Personnel Security Program (32 CFR part 156); DoD Directive 5105.42, Defense Security Service; and E.O. 9397 (SSN).

PURPOSE(S):

To determine the existence and location of DoD investigative records for granting clearances, for access to defense installations, and for entry into military service or employment in sensitive civilian positions; and to reflect security clearance information pertaining to DoD Components and Defense contractor personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The DCII is stored on disk within a Corporate Database (CDB). The CDB has a mirrored structure (duplicate file) to provide immediate recovery in case of disk failure. It is regularly backed up onto magnetic tape for storage as a contingency in case of system of disk failure.

RETRIEVABILITY:

Index records are accessed through name and at least one personal identifier (PID). Personal identifiers are: date of birth, place of birth, and Social Security Number. Inquiries may enter the system by being keyed in at remote terminals. A nonstandard retrieval capability also exists which permits retrieval without PID or on parts of a name and produces references to all individuals by that name. It should be noted that in many cases the subject's SSN is necessary to make a positive identification. Name Only Index records

are accessed through the name or some portion thereof. Records are retrieved based on an exact match with the name submitted. Inquiries are made by local and remote terminals via compliant client-server software.

SAFEGUARDS:

The DSS facility housing the DCII is protected by security personnel (guards) at all times. Access to the computer room is controlled by combination lock and identification badges, which are issued only to authorized individuals. Generalized validation is provided through online and batch edit criteria that must be honored before an information request or update will occur. Identification (account codes and passwords) and authentication is required at the DSS firewall and again at the database before information can be accessed. All data transfers and information retrievals that use remote communication facilities are encrypted. Activities must be a part of DoD/Federal Government and accredited on the basis of authorized requirements before a new terminal is established or before batch request will be honored and processed. Organizations authorized access are responsible for ensuring that individuals and organizations to whom they disclose DCII information have appropriate authority and need-to-know.

RETENTION AND DISPOSAL:

OPEN CASE TRACINGS are retained for as long as the investigation is open. Upon completion of the investigation, the open case tracings are replaced by a file tracing.

FILE TRACINGS are retained for a period corresponding to the retention of investigative files described in DSS Personnel Security Investigative File Automation Subsystem. However, each agency has the responsibility of deleting their own file tracings.

NAC PENDING TRACINGS are retained until completion of the NAC. At that time they are replaced by a NAC history tracing.

NAC HISTORY TRACINGS are automatically deleted 15 years from the date of completion of the NAC. Specific action may be taken to delete the record sooner. A subsequent favorable NAC will be entered as a new history record and automatically delete the previous history record.

CLEARANCE TRACINGS are maintained until deleted by the submitting agency. For DSS this is when the clearance is denied, revoked or no longer needed by the subject (death or separation from service/employment).

DCII IMPERSONAL TITLE TRACINGS are retained for a period corresponding to the retention of investigative files described in the DSS Personnel Security Investigative File Automation Subsystem (V5-01).

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Assistant Secretary of Defense (C3I), Deputy Director for Personnel Security, 3040 Defense Pentagon, Washington, DC 20301–3040.

Defense Security Service, Director, Operations Center Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Defense Security Service, Privacy Act Branch, P.O. Box 46060, Baltimore, MD 21240-6060.

A request for information must contain the full name and Social Security Number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Privacy Act Branch, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01-13: 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD SOURCE CATEGORIES:

DoD investigative organizations listed in the 'System location' caption (excluding DISCO); Defense Logistics Agency, ATTN: DLAH-T; Director of Security, National Security Agency, ATTN: M–552, Fort Meade, MD 20755; Assistant Chief of Staff of Intelligence (ACSI), Department of the Army, ATTN: Counterintelligence Division, Washington, DC 20314.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 321. For additional information contact the system manager.

V5–04

SYSTEM NAME:

Counterintelligence Issues Database (CII-DB) *(October 3, 1995, 60 FR 51781)*.

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Defense Security Service, Information Assurance and Counterintelligence Office (IACI), 1340 Braddock Place, Alexandria, VA 22314–1651.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to the end of the entry 'Persons who have solicited from industrial contractors/DoD installations information which may appear to be sensitive in nature'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Defense Security Service, Information Assurance and Counterintelligence, 1340 Braddock Place, Alexandria, VA 22314–1651.'

* * * * *

V5–04

SYSTEM NAME:

Counterintelligence Issues Database (CII-DB).

SYSTEM LOCATION:

Defense Security Service, Information Assurance and Counterintelligence Office (IACI), 1340 Braddock Place, Alexandria, VA 22314–1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons of Counterintelligence interest in the following categories: Military personnel who are on active duty; applicants for enlistment or appointment; members of Reserve units; National Guard members; DoD civilian personnel, who are paid with

appropriate or non appropriated funds; industrial or contractor personnel who are working in private industry in firms which have contracts involving access to classified DoD information or installations; Red Cross; ROTC cadets; former military personnel and individuals residing on, have authorized official access to, or conducting, operating any business or other functions at any DoD installation or facility. Persons who have solicited from industrial contractors/DoD installations information which may appear to be sensitive in nature.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records involving either suspected or actual Counterintelligence (CI) issues detected in Personnel Security Investigations (PSI) or Industrial Security Administrative Inquires (AI). The database will include subject name, title, origin of the issue, location of employment, residence, country, date action was received, date action was closed, agency where action was referred, narrative summary of issue, identity of any additional sources (person/agency/company) who may of provided DSS with CI information, type of action, type of issue, agent's name, company name, target technology, country of origin and miscellaneous agents notes and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, Security Requirements for Government Employment; DoD Directive 5200.2, Department of Defense Personnel security Program; DoD Dir 5200.27 (Section IV A and B), Acquisition of information concerning Persons and organizations not affiliated with the DoD; DoD Dir 5220.28, Application of Special Eligibility and Clearance Requirements in the SIOP-ESI program for contractor employees.

PURPOSE(S):

Provides a central database to document, refer, track, monitor and evaluate CI indicators/issues surfaced during PSI and through AIs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized database, paper records, microfilm, diskettes, are maintained at the IACI.

RETRIEVABILITY:

Information in the automated system is retrieved through any entry in the data base to include name and file number.

Paper files are retrieved by name or file number.

SAFEGUARDS:

Paper records are contained and stored in regulation safes , filing cabinets and on magnetic tape which is located in a secure area with limited access. The database is maintained in secure office space with password entry to the system. Access is provided on a need-to-know basis only.

RETENTION AND DISPOSAL:

Automated records are maintained for 15 years. CI paper records relating to the automated system and not associated with a PSI will be retained for one year; Files developed on persons who are being considered for affiliation with the Department of Defense will be destroyed within one year if the affiliation is not completed.

Information within the purview of DoD Directive 5200.27 will be retained no longer than one year.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Service, Information Assurance and Counterintelligence, 1340 Braddock Place, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria VA 22314–1651.

Requesters should provide full name and any former names used, date and place of birth, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Security Service, Office of FOI and PA, Alexandria, VA 22314–1651.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01-13: 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD SOURCE CATEGORIES:

Federal, State and local law enforcement/intelligence agencies; Industrial Security Administrative inquiries and Personnel Security Investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 321. For additional information contact the system manager.

V6–01

SYSTEM NAME:

Personnel Security Files (PSF) *(February 22, 1993, 58 FR 10904).*

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders. Electronic

records are maintained in disk, magnetic tapes.'

* * * * *

V6–01

SYSTEM NAME:

Personnel Security Files (PSF).

SYSTEM LOCATION:

Primary location: Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651.

Secondary locations: Defense Security Service Operating Locations, Operations Center-Baltimore and Operations Center-Columbus. Specific addresses can be obtained from the Primary location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Every Defense Security Service employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Certificates of Personnel Security Investigation, Certificates of Security Clearance and Access Authorization, Adjudicative Summary Sheets, Sensitive Compartmented Information (SCI) Access Records, certificates of clearance for other agencies, Security Briefing Statements, security clearance downgrade and discontinuation statements, Security Termination Statement and Debriefing Certificates, Defense Clearance and Investigations Index (DCII) check results, requests for Personnel Security Investigations, Badge and Credential receipts, and related documents which may vary in certain cases. Personal identifying data to confirm identities is also contained in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Regulation 5200.2, DoD Personnel Security Program; DSS Regulation 25–3, Personnel Security Program, and E.O. 9397 (SSN).

PURPOSE(S):

Files are used during an individual's employment with the agency to provide a basis for determining eligibility for assignment to, or retention in, a sensitive position; granting security clearance; evidence of clearance and access to classified defense information; and to verify security clearance information of individuals visiting other offices regarding classified matters. File information may be provided to other authorized government departments, agencies or offices when a change of the individual's employment is considered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders. Electronic records are maintained on disk and magnetic tapes.

RETRIEVABILITY:

Paper records are filed alphabetically by last name and by location (Operating Location). Summary data is retrievable by Social Security Number or by name.

SAFEGUARDS:

All system records are maintained in locked security containers accessible only to authorized personnel. Summary data is accessed only by authorized personnel using assigned system passwords.

RETENTION AND DISPOSAL:

Records are kept for two years after termination of an individual's employment with DSS. Longer retention, not to exceed five years after termination of employment, may be approved by the Chief, Office of Security, DSS. Paper records are destroyed by burning or shredding; electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Service, Chief, Office of Security, 1340 Braddock Place, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

A request for information must contain the full name and Social Security number of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01-13: 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD SOURCE CATEGORIES:

Application and related forms from the individual, summaries of information from background investigations of the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V7–01

SYSTEM NAME:

Enrollment, Registration and Course Completion Record *(February 22, 1993, 58 FR 10904)*.

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Defense Security Service, Training Office, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

Decentralized location: Department of Defense Polygraph Institute. Specific address can be obtained from the Primary location.'

* * * * *

STORAGE:

Delete entry and replace with 'Records are retained in electronic format on disk and magnetic tape. Some hard copy paper records still exist and are maintained in file folders.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Data is retrievable by Social Security Number or by student's name.'

SAFEGUARDS:

Delete entry and replace with 'Paper records are maintained in locked security containers accessible to only authorized personnel. Only authorized

personnel using assigned system passwords access electronic data.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Electronic and paper records are retained for ten years at which time they are either erased from the system or destroyed by shredding.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Training Office, Defense Security Service, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

Director, Department of Defense Polygraph Institute, Building 3195, Fort McClellan, AL 36205-5114.

* * * * *

V7–01

SYSTEM NAME:

Enrollment, Registration and Course Completion Record.

SYSTEM LOCATION:

Primary location: Defense Security Service, Training Office, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

Decentralized locations: Department of Defense Polygraph Institute. Specific addresses can be obtained from the Primary location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are scheduled for or who have attended courses of instruction offered by the DSS Training Office or DoD Polygraph Institute. Guest speakers and assigned instructors/faculty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information may include individual's name and other personal identifying and administrative data pertaining to attendance at the DSS Training Office or Polygraph Institute to include employer, course completion, and other similar data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 9397 (SSN); E.O. 10865; E.O. 10909; DoD Directive 5105.42, Defense Security Service; and DoD Directive 5200.32, Department of Defense Security Institute.

PURPOSE(S):

Used by DSS Training Office or Polygraph Institute personnel to prepare class rosters and provide basic administrative information on attendees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are retained in electronic format on disk and magnetic tape. Some hard copy paper records still exist and are maintained in file folders.

RETRIEVABILITY:

Data is retrievable by Social Security Number or by student's name.

SAFEGUARDS:

Paper records are maintained in locked security containers accessible to only authorized personnel. Only authorized personnel using assigned system passwords access electronic data.

RETENTION AND DISPOSAL:

Electronic and paper records are retained for ten years at which time they are either erased from the system or destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Training Office, Defense Security Service, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

Director, Department of Defense Polygraph Institute, Building 3195, Fort McClellan, AL 36205-5114.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

A request for information must contain the full name and Social Security Number of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Privacy Act Branch, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01-13: 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD SOURCE CATEGORIES:

The student, his/her employer, and the DSS Training Office or Polygraph Institute.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V8–02

SYSTEM NAME:

Key Contractor Management Personnel Listing *(November 14, 1995, 60 FR 57229)*.

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Defense Security Service, Operations Center-Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

Remote terminals are located at Defense Security Service, Operations Center-Columbus, 3990 East Broad Street, Building 306, Columbus OH 43213–1138, and the Defense Investigative Service, 1340 Braddock Place, Alexandria, VA 22314–1651.'

* * * * *

V8–02

SYSTEM NAME:

Key Contractor Management Personnel Listing.

SYSTEM LOCATION:

Primary location: Defense Security Service, Operations Center-Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

Remote terminals are located at Defense Security Service, Operations Center-Columbus, 3990 East Broad Street, Building 306, Columbus OH 43213–1138, and the Defense Investigative Service, 1340 Braddock Place, Alexandria, VA 22314–1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Key management personnel of government contractor facilities which have been issued, now possess, are, or have been in process for a facility clearance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include individual's name, Social Security Number, date of birth, place of birth, citizenship, and date and level of security clearance granted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12829; E.O. 9397 (SSN); E.O. 10865; E.O. 10909; DoD Directive 5105.42, Defense Security Service; DoD Regulation 5200.2-R, DoD Personnel Security Program; and DoD 5220.22-M, National Industrial Security Program Operating Manual.

PURPOSE(S):

Records serve to provide a listing of key management personnel at civilian contractor facilities falling under the National Industrial Security Program for use by the Defense Security Service, Operation Center-Columbus. Information will be used to track, monitor and expedite personnel clearance processing of those personnel who require a security clearance in conjunction with the facility clearance in order to expedite initial facility clearance processing and to assist in maintaining facility clearances in a valid status.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained in computer disk packs, magnetic tapes and associated data processing files.

RETRIEVABILITY:

Records are accessed by Social Security Number or name, or both.

SAFEGUARDS:

Specific codes are required to access the automated records.

RETENTION AND DISPOSAL:

Records are retained as long as the individual is a key management person at a DoD contractor facility in the National Industrial Security Program, and are destroyed immediately upon notification that the individual no longer occupies such a position. Electronic records are erased or overwritten.

EXCEPTION: Records released in accordance with the Privacy Act or the Freedom of Information Act are retained for two years from date of release.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Service, Director, Operations Center-Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090-2902.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

A request for information must contain the full name and Social Security Number of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

A request for information must contain the full name and Social Security Number of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Reports from civilian contractors participating in the National Industrial Security Program. Business records of civilian contractors participating in the National Industrial Security Program. Federal, state, county and municipal records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V9–01

SYSTEM NAME:

Litigation Case Files *(February 22, 1993, 58 FR 10904).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations and DoD Directive 5105.42, Defense Security Service.'

* * * * *

V9–01

SYSTEM NAME:

Litigation Case Files.

SYSTEM LOCATION:

Defense Security Service, Office of the General Counsel, 1340 Braddock Place, Alexandria, VA 22314–1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Indivduals who have been the subject of adverse actions generated by the agency employee relations process, Merit Systems Protection Board (MSPB) appellants and Equal Employment Opportunity Commission (EEOC) complainants, Freedom of Information Act (FOIA) and Privacy Act litigants, and individuals involved in litigation against DIS or other government agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal or factual memoranda, legal briefs, correspondence, decisions, claims, grievances, MSPB, EEO, FOIA and Privacy Act materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and DoD Directive 5105.42, Defense Security Service.

PURPOSE(S):

To collect documentation pertinent to litigation, disciplinary matters, and administrative actions concerning the Agency. Information is compiled to support various legal-related activities of the Department of Defense, Department of Justice, the Office of

Personnel Management, or other adjudicative agencies of the U.S. Government as may be necessary or required in the disposition of an individual case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders and electronic records.

RETRIEVABILITY:

Alphabetically by surname of individual.

SAFEGUARDS:

Records are kept in locked cabinets and are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are held 5 years after date of last action, then retired to the Washington National Records Center. They are destroyed when 25 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Service, Office of the General Counsel, 1340 Braddock Place, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

A request for information must contain the full name and Social Security number of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Defense Security Service, Privacy Act Office, 1340 Braddock Place, Alexandria, VA 22314-1651.

A request for information must contain the full name and Social Security number of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Privacy Act Office, 1340 Braddock Place, Alexandria, VA 22314-1651.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Information is provided by DSS field elements, Employee Relations Branch; Director, DSS Office of Affirmative Action and Equal Opportunity Policy; Directorates of Industrial Security and Investigations; Office of the Secretary of Defense; other DoD components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V10–01

SYSTEM NAME:

Investigation and Inspection Supplier Contract Files *(February 22, 1993, 58 FR 10904)*.

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Defense Security Service, Office of the Comptroller, 1340 Braddock Place, Alexandria, VA 22314-1651.

Secondary locations: Defense Security Service Operating Locations (OLs) within the U.S. Specific addresses can be obtained from the Primary location.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and electronic files on disk and magnetic tapes.'

* * * * *

V10–01

SYSTEM NAME:

Investigation and Inspection Supplier Contract Files.

SYSTEM LOCATION:

Primary location: Defense Security Service, Office of the Comptroller, 1340 Braddock Place, Alexandria, VA 22314-1651.

Secondary locations: Defense Security Service Operating Locations (OLs) within the U.S. Specific addresses can be obtained from the Primary location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual contractors who perform personnel security investigations or industrial security inspections on an as-needed basis for the Defense Security Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain any or all of the following: Contractor Information Sheet, copies of contracts, Purchase Orders, Request for Payment, Request for Bulk Funds Order, Order for Supplies and Services, Contract Distribution, Public Voucher for Purchases and Services Other than Personal. Operating Location Chiefs and field office supervisors may file other documentation, originals or copies, such as resumes, applications, or DD Forms 398, Personnel Security Questionnaires.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5105.42, Defense Security Service (32 CFR part 361); and E.O. 9397 (SSN).

PURPOSE(S):

To retain personal identification information provided by individual contract suppliers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders and electronic files on disk and magnetic tapes.

RETRIEVABILITY:

Regional and field office copies are filed alphabetically by surname of individual. Acquisition and accounting copies are filed by contract number.

SAFEGUARDS:

Records are kept in secured areas accessible only to authorized personnel and electronic records are accessed only

by authorized personnel using assigned system passwords.

RETENTION AND DISPOSAL:

Operating Location and field office copies are destroyed upon termination of the contract. Acquisition and accounting copies are destroyed three years after final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Security Service, Office of the Comptroller, 1340 Braddock Place, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

A request for information must contain the full name and Social Security number of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Defense Security Service, Privacy Act Office, P.O. Box 1211, Baltimore, MD 21203–1211.

A request for information must contain the full name and Social Security number of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Contract supplier who is subject of the file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–21237 Filed 8–16–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement and Overseas Environmental Impact Statement for the San Clemente Island Range Complex

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) to evaluate the potential environmental effects of enhancing the capabilities and increasing the frequency and scale of training on the San Clemente Island Range Complex (SCIRC).

DATES: The meetings will be held September 14–16, 1999, beginning at 6:00 p.m. each day. Additional information concerning meeting times will be available at the San Clemente Island EIS web page located at: http://www.cnbsd.navy.mil/Facility/sci.htm.

ADDRESSES: The first meeting will be held at Bayside Convention Center, 2575 Stockton Road, Building 623 (the old Base Chapel), Naval Training Center San Diego. The second meeting will be held at Sheraton Los Angeles Harbor Hotel, 601 S. Palos Verdes Street, San Pedro, California. The third meeting will be held at DoubleTree Guest Suites, 34555 Casitas Place, Dana Point, CA. The meetings will be announced in local newspapers.

Written statements and/or questions regarding the scoping process should be mailed no later than October 1, 1999 to: Naval Air Station, North Island, Environmental Department, (Attn: Carrie Anne Downey, San Clemente Island, Environmental Impact Statement Comments) P.O. Box 357088 San Diego, CA 92135–7088. To be most helpful, comments should clearly describe specific issues or topics which the commentator believes the EIS should address.

FOR FURTHER INFORMATION CONTACT: Carrie Anne Downey, Naval Air Station, North Island, Environmental Department, San Clemente Island, P.O. Box 357088 San Diego, CA 92135–7088, telephone (619) 545–3845, FAX (619) 545–3489, e-mail SCIEIS@CNRSW.NAVY.MIL.

SUPPLEMENTARY INFORMATION: The SCIRC consists of San Clemente Island (SCI) land, air and sea training ranges and designated operational areas to the south and west of SCI which are controlled by a single command and control system on SCI.

The geographic scope of the EIS/OEIS is the SCIRC. This integrated set of ranges and operational areas covers approximately 2,620 square nautical miles (nm) and is located 68 nm west of San Diego. The command and control system and supporting infrastructure emanate from SCI which is approximately 21 nm (39 km) long and 4 and one-half nm (8.3 km) at its widest point. The SCIRC consists of more than six dozen ranges and operational areas. The extent of these areas range from the ocean floor to an altitude of 80,000 feet. The study area extends from the shore of SCI about 10 nm (18 km) to the north and east and 60 nm (111 km) to the west and south.

San Clemente Island has been operated by Navy as a tactical training range and testing area for over 70 years. Tactical training ranges and operational areas provide space and facilities where U.S. military forces can conduct exercises in a safe, controlled environment. The SCIRC is the cornerstone of tactical training in the Southern California region. The primary purpose of the Complex is to provide readiness training for units and personnel who deploy overseas to meet the national strategy of forward presence and global engagement. Among the evolving needs that precipitated the proposed action are the need for more training in: littoral warfare, including mine countermeasures; electronic warfare; missile firing; operations in the shore bombardment area (SHOBA), amphibious operations; and Naval Special Warfare. Increased need for test and evaluation activities is also anticipated.

The proposed action would enhance the capabilities of the SCIRC to meet current and anticipated fleet training and readiness needs, and support research, development, test and evaluation (RDT&E) activities by: (a) Instrumenting a shallow water extension to the current deep-water range; (b) expanding the scope of amphibious operations to include a battalion size landing; (c) defining land training areas and ranges (TARS); (d) increasing the frequency of training and testing activities currently conducted at SCIRC; (e) reviewing the optimum

configuration of land uses on San Clemente Island; and (f) developing procedures to ensure statutory obligations for endangered species, natural, and cultural resources are met while minimizing operational constraints. Each of these qualitative actions is needed for Navy and Marine Corps units to reach the fully ready level required for deployment.

The EIS/OEIS will consider a range of alternatives consisting of various combinations of the above elements. The No Action Alternative, consisting of training and testing activities at current levels of operations, will also be evaluated.

Environmental issues that will be addressed in the EIS/OEIS include but are not limited to: air quality, noise, vegetation and wildlife (including marine mammals and endangered species), cultural resources, land use, water quality, public health and safety and socioeconomics (including environmental justice).

In accordance with NEPA, Navy will initiate a public scoping process to assist in identifying relevant environmental issues to be analyzed in this EIS/OEIS. Federal, state, and local agencies and other interested parties are invited and encouraged to participate in the scoping process. Navy will hold three public meetings. Each meeting will consist of an informal information session, staffed by Navy representatives, to be followed by a brief presentation which discusses current operations in the SCI Range Complex and a description of the proposed action and alternatives. Comments will be entered into the official record in several ways. Members of the public can contribute oral or written comments at the scoping meetings, or subsequent to the meetings by mail, fax, or e-mail. Technical statements or statements of considerable length should be submitted in writing. Oral comments may be made at the scoping meeting and will be limited to 3 minutes per individual. All comments, whether oral or written, will receive the same consideration during EIS/OEIS preparation. Individuals or groups with special needs, such as accessibility, foreign language translation, assistance for the blind or hearing impaired, should contact this agency by September 5, 1999.

Dated: August 11, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–21318 Filed 8–16–99; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RP95–363–16]

El Paso Natural Gas Company; Notice of Filing

August 11, 1999.

On August 4, 1999, El Paso Natural Gas Company filed an Offer of Settlement and Request for Approval of Joint Settlement Agreement (Settlement). Under the Commission's settlement rules, initial comments are due twenty days after the Settlement is filed, and reply comments are due ten days thereafter.

Initial comments on El Paso's August 4, 1999 Settlement are due to be filed on or before August 24, 1999. Reply comments shall be filed on or before September 3, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21282 Filed 8–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–397–001]

Koch Gateway Pipeline Company; Notice of Compliance Filing

August 11, 1999.

Take notice that on August 6, 1999, Koch Gateway Pipeline Company (Koch), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1999:

Substitute Seventh Revised Sheet No. 802
Substitute Sixth Revised Sheet No. 803

Koch filed the above referenced tariff sheets to comply with the Commission's Letter Order issued July 22, 1999, in Docket No. RP99–397–000.

Any person desiring to protest this filing should file a protest with the Fedeal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21287 Filed 8–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–394–001]

Pine Needle LNG Company, LLC; Notice of Tariff Filing

August 11, 1999.

Take notice that on August 6, 1999, Pine Needle LNG Company, LLC (Pine Needle), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 89, to become effective August 1, 1999.

Pine Needle states that the purpose of the instant filing is to revise its tariff sheet to incorporate certain of the GISB definitions and revise certain of the GISB standards and data sets to Version 1.3 pursuant to the Commission order issued July 23, 1999. Accordingly, the only data sets listed in the tariff sheet under Version 1.2 are those for which Pine Needle has requested, and the Commission has granted, a waiver. The July 23 order granted Pine Needle an extension of time until June 1, 2000 to incorporate Version 1.3 of those data sets.

Additionally, Pine Needle is submitting a table attached as Appendix A showing the GISB Version 1.3 standard, the complying tariff sheet number, and an explanatory statement, if necessary, describing any reasons for deviation for deviation from or changes to each GISB standard.

Pine Needle states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21286 Filed 8–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–338–001]

Questar Pipeline Company; Notice of Tariff Filing

August 11, 1999.

Take notice that on August 5, 1999, Questar Pipeline Company (Questar) of its FERC Gas Tariff, First Revised Volume No. 1, tendered for filing and in compliance with the Commission's July 22, 1999, letter order in Docket No. RP99–338–000 (the July 22 order), and acceptance, to be effective August 1, 1999, the following tariff sheets:

Substitute Third Revised Sheet No. 84
Substitute Fourth Revised Sheet Nos. 99A, 99B, 99C and 99D
Substitute First Revised Sheet No. 99E
Substitute Original Sheet No. 99F

In the July 22 order, the Commission accepted tariff sheets to be effective, subject to Questar revising its tariff sheets within 15 days of the order to reflect corrections discussed in the July 22 order. The tariff filing was tendered as required by the Commission's directives.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21284 Filed 8–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–99–14–004; ER99–1751–003–; ER99–2337–001; ER99–3858–000; ER99–3866–000; ER99–3867–000; ER99–3885–000; ER99–3369–000 and ER99–3928–000]

Select Energy, Inc.; Aquila Energy Marketing Corporation; FPL Services, Inc.; Southwestern Public Service Company; Mobile Energy Services Company; Entergy Services, Inc.; Louisville Gas and Electric Company and Kentucky Utilities; Fitchburg Gas and Electric Light Company; Duquesne Light Company; Notice of Filings

August 9, 1999.

Take notice that on July 30, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21281 Filed 8–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–380–001]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

August 11, 1999.

Take notice that on August 6, 1999, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1. The effective date for the tariff sheet is August 1, 1999.

Transco states that the purpose of the instant filing is to revise its tariff sheet to incorporate certain of the GISB definitions and revise certain of the GISB standards and data sets to Version 1.3 pursuant to the Commission order issued July 26, 1999. Accordingly, the only data sets listed in the tariff sheet under Version 1.2 are those for which Transco has requested, and the Commission has granted, a waiver. The July 26 order granted Transco an extension of time until June 1, 2000 to incorporate Version 1.3 of those data sets.

Additionally, Transco is submitting a table attached as Appendix A showing the GISB Version 1.3 standard, the complying tariff sheet number, and an explanatory statement, if necessary, describing any reasons for deviation from or changes to each GISB standard.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21285 Filed 8–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 309–PA]

Pennsylvania Electric Co.; GPU Generation, Inc.; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

August 11, 1999.

Pursuant to the Energy Policy Act of 1992, and as part of the license application, the Pennsylvania Electric Company/GPU Generation, Inc. (GPU) intends to prepare an Applicant Prepared Environmental Assessment (APEA) to file along with the license application, with the Federal Energy Regulatory Commission (Commission) for the Piney Project No. 309. The license for the project expires on October 12, 2002.

In February 1998, GPU started the consultation process with preparation and distribution of the Initial Information Package. This was followed by an initial consultation meeting on March 10, 1998. Study plans were subsequently drafted and reviewed, and field studies commenced in January 1999.

Recently GPU discussed the APEA process for the relicensing of the Piney Project with fish and wildlife agencies, and on June 24, 1998, GPU requested Commission approval to enter into the alternative licensing process. Notice of GPU's request was issued on July 15, 1999, and the Commission has not acted on the request. As part of the APEA process, GPU has prepared a Scoping Document I (SDI), which provides information on the scoping process, APEA schedule, background information, environmental issues, and proposed project alternatives.

The purpose of this notice is to: (1) Advise all parties as to the proposed scope of the environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The SDI will be circulated to enable appropriate federal, state, and local resource agencies, Indian tribes, NGOs, and other interested parties to participate in the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of issues.

Scoping Meetings and Site Visit

GPU and Commission staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist in identifying the scope of environmental issues that should be analyzed in the APEA.

The scoping meetings will be held on August 26, 1999, at the Clarion Holiday Inn in Clarion, Pennsylvania. The agency scoping meeting will be held from 10:00 am to 4:00 pm, and the public scoping meeting will be held from 7:00 pm to 9:30 pm. The public is invited to attend either or both meetings. For more details, interested parties should contact Thomas Teitt of GPU at (814) 533–8788 or (717) 948–8177, prior to the meeting date.

Objectives

At the scoping meetings, NEP and Commission staff will: (1) summarize the environmental issues identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the APEA. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist in defining and clarifying the issues to be addressed.

Meeting Procedures

The meeting will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting, the Commission will not conduct another scoping meeting when the application and APEA are filed with the Commission in the Fall of 2000.

The meetings may be recorded by a stenographer or tape, and become a part of the formal record of the Commission proceeding on the Piney Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record no later than September 9, 1999.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Piney Project, FERC No. 309. A copy of each filing should also be sent to Thomas R. Tiett, GPU Generation, Inc., 1001 Broad St., Johnstown, PA 15907.

Based on all written comments, a Scoping Document II (SDII) may be issued. SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the APEA scoping process, please contact William Guey-Lee, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 at (202) 219–2809, or Thomas Tiett (717) 948–8177.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21283 Filed 8–16–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6423–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Synopses of Proposed Contract Actions and Market Research Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Synopses of Proposed Contract Actions and Market Research Activity, EPA ICR Number 1910.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1910.01.

SUPPLEMENTARY INFORMATION:

Title: Synopses of Proposed Contract Actions and Market Research Activity; OMB Control No: not yet assigned, EPA ICR No: 1910.01. This is a new collection.

Abstract: EPA's Office of Acquisition Management is required by the Federal Acquisition Regulation (FAR), parts 5 and 10, to publicize certain contract actions, and to conduct market research activity prior to solicitation of certain contract requirements. In addition to the mandated requirements, the FAR encourages the publication of contract actions and the conduct of market research in other instances. The information collected from these activities is used to make procurement decisions such as: the supply or service to procure, which sources to utilize, extent of small business participation, contract type, etc. Responses to synopses notices and market research inquiries are voluntary, but may be required in order to be considered for the award of an Agency contract.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 5/14/99, 64 FR 26408. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3.03 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses; Not-for-profit institutions.

Estimated Number of Respondents: 8100

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 24,559 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1910.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 12, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–21312 Filed 8–16–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6423–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program, OMB Control Number 2040–0164, EPA ICR Number 1654.03, expiring October 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1654.03.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program (OMB Control No. 2040–0164; EPA ICR No. 1654.03) expiring October 31, 1999. This is an extension of a currently approved collection.

Abstract: EPA initially collects facility information and thereafter annually collects water, energy, and cost savings information from participants in the WAVE program. WAVE Partners are commercial businesses or institutions that voluntarily agree to implement cost-effective water efficiency measures in their facilities. Initially the WAVE Program targeted the lodging industry, but is expanding to include office buildings, educational institutions and medical facilities. Another type of participant, "Supporters," will work with EPA to promote water efficiency. Supporters are equipment manufacturers, water management companies, utilities, state and local governments, or the like.

The purpose of the WAVE Program is pollution prevention. As defined by EPA, pollution prevention means "source reduction" as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or through protection of natural resources by conservation. By promoting water efficiency, WAVE prevents pollution in two basic ways. First, wastewater flows are reduced which can increase treatment efficiency at wastewater treatment plants resulting in reduced pollutant loads. Second, less water used means that less energy will be used to treat, transport, and heat drinking water and to transport and treat wastewater. To the extent that the reduced energy use so achieved is electrical energy, power plant emissions are reduced. Water efficiency also causes less water to be withdrawn and helps preserve streamflow to maintain a healthy aquatic environment; in addition, less pumping of groundwater lowers the

chance that pollutants that may be in the groundwater will be drained into a water supply well.

EPA uses the information to maintain a profile of program membership and to monitor the success of the program, demonstrate that pollution prevention can be accomplished with a non-regulatory approach, and to promote the program to potential partners. Participation in the WAVE Program is voluntary; however, a participant joins the program by signing and submitting a Membership Agreement and an annual Results Report to EPA to receive and retain program benefits, such as software and publicity. No participant is required to submit confidential business information. EPA maintains and distributes a list of program participants, and presents aggregated data only in its program progress reports.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 29, 1999 (64 FR 23069); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average three hours and three minutes per Membership Agreement response, and five hours and 54 minutes per Results Report response. Approximately 870 facilities will be subject to this information collection for an estimated annual burden of 2,556 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses, Institutions, State and local governments.

Estimated Number of Respondents: 870.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 2556 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1654.03 and OMB Control No. 2040–0164 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 11, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–21313 Filed 8–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6423–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, New Source Performance Standards for Volatile Organic Compound Emissions From the Polymer Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance of Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry, OMB Control No. 2060–0145, expiration date November 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1150.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance of Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry, Subpart DDD, OMB Control No. 2060–0145; EPA ICR No. 1150.05, expiring 11/30/99. This is a request for extension of a currently approved collection.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 60.560, subpart DDD, Standards of Performance for VOC Emissions from the Polymer Manufacturing Industry. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 06/04/99 (64 FR 30019); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 59 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of the Polymer Manufacturing Industry.

Estimated Number of Respondents: 105.

Frequency of Response: Initial and semi-annual.

Estimated Total Annual Hour Burden: 14,691.

Estimated Total Annualized Capital, O&M Cost Burden: $765,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1150.05 and OMB Control No. 2060–0145 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 11, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–21314 Filed 8–16–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6423–3]

Request for Information Concerning Transfrontier Movements of Wastes Destined for Recovery Operations Within the OECD Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is requesting specific information from interested parties, and the U.S. regulated community in particular, on imports and exports of secondary materials, wastes and hazardous wastes moving toward recycling operations in the 29 member countries of the Organization for Economic Cooperation and Development (OECD). This information will be used by EPA and other federal agencies in developing U.S. positions with respect to potential harmonization of certain provisions of OECD Council Decision C(92)39 concerning the control of transfrontier movements of wastes destined for recovery operations with those of the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* ("Basel Convention" or "the Convention"), including the possible replacement of the OECD waste lists (green, amber, and red) with the Basel waste lists (Annexes VIII and IX).

DATES: Responses to this document should be submitted no later than September 30, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–TMWA–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–1999–TMWA–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing this document electronically, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ms. Julia Gourley, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone: (703) 308–8751; fax: (703) 308–0514; e-mail: gourley.julie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Access

This document may be accessed at the following internet address: *http://www.epa.gov/epaoswer/hazwaste/exp-imp/oecd.htm.*

I. Background

A. Relationship of OECD Council Decision C(92)39 to the Basel Convention

The Basel Convention is an international treaty under the United Nations Environment Program (UNEP) that applies to transboundary movements (exports and imports) of hazardous and other wastes and their disposal. It opened for signature upon the conclusion of UNEP negotiations on March 22, 1989 and entered into force, 90 days after the 20th ratification, on May 5, 1992. As of June 17, 1999 there are 123 parties to the Basel Convention (countries and others that have ratified, acceded to, approved, or otherwise accepted it). The U.S. signed the agreement on March 22, 1990, but has not ratified it. The Basel Convention, therefore, does not apply to the U.S. at the present time.

The Basel Convention prohibits imports and exports of covered wastes between parties to it and non-parties; however, Article 11 of the Convention provides for an exception to this prohibition for those parties and non-parties that have entered into separate agreements that are consistent with the environmentally sound management provisions of the Convention. The member countries of the Organization

for Economic Cooperation and Development (OECD) [1] entered into an agreement governing transfrontier movements of wastes destined for recovery (recycling) operations pursuant to Article 11 paragraph 2 of the Basel Convention (see 61 FR 16290 for a detailed discussion). This agreement, known as OECD Council Decision C(92)39/FINAL, was adopted by the OECD Council on March 30, 1992, and is legally binding on all member countries that have accepted it (presently all but Hungary and Poland, or 27 of the 29 member countries). It is a pre-existing agreement pursuant to Article 11 paragraph 2 of the Basel Convention. The U.S. accepted the agreement and promulgated implementing regulations under the Resource Conservation and Recovery Act (RCRA) on April 12, 1996 (40 CFR part 262, subpart H). Nothing in today's document alters or amends these regulations, which remain in full force and effect.

B. History of OECD Harmonization Efforts

In April 1997, the Environment Policy Committee (EPOC) of the OECD directed one of its subsidiary bodies, the Working Group on Waste Management Policy (WGWMP) (formerly known as the Waste Management Policy Group or WMPG) to identify areas where it would be feasible and appropriate to harmonize the procedures and requirements of OECD Council Decision C(92)39/FINAL (hereafter referred to as C(92)39) with those of the Basel Convention, to identify areas where duplication between the two agreements could be eliminated, and to report back to it in spring 1999.

In fulfillment of this mandate, the WGWMP made the following eight recommendations to the EPOC:

(1) The OECD Control System and the related Council Acts should be retained in a streamlined form which would make the OECD Control System more efficient and effective and enhance harmonization with the Basel Convention;

(2) Certain procedural elements of the OECD Control System, such as time limits for the approval process for transfrontier movement, tacit consent (as well as the possibility for a written consent) and preauthorization procedures, should be retained. The definitions of waste and hazardous waste, and the general principles concerning transfrontier movements of wastes should be retained;

(3) The OECD Control System should be harmonized with the Basel Convention by: (i) replacing the OECD green, amber, and red lists of wastes with Annexes VIII and IX of the Basel Convention, (ii) applying the green procedure to Annex IX wastes and the amber procedure (including the possibility of written consent) to Annex VIII wastes, and (iii) eliminating the present OECD Review Mechanism, but retaining the possibility of applying differing levels of control within the OECD Control System, in exceptional cases, to Annex VIII and Annex IX wastes, from those applied under the Basel Convention;

(4) The mandatory OECD data collection on exports and imports of waste, and periodic or annual review of action taken by Member countries in pursuance of a number of Council Acts should be eliminated;

(5) All waste related Council Acts except Council Decision C(92)39 should be consolidated into one Act;

(6) Work towards further harmonization of the different international control systems for transfrontier movements of wastes should be continued, with the ultimate goal of achieving a globally harmonized control system;

(7) The OECD work in the field of waste management should be reoriented to focus on emerging cross-cutting issues regarding reuse and recycling of waste such as: (i) adapting the control procedures to encourage the implementation of end-of-life product take-back programs and to facilitate closed-loop recycling of materials; and (ii) developing standards for environmentally sound management of wastes destined for recovery operations; and,

(8) WGWMP activities should be continued as a Part I program to facilitate participation of all Member countries in the work.

At its March 24–26, 1999 meeting, the EPOC endorsed these recommendations. The WGWMP is now exploring options for their implementation, including streamlining C(92)39 and harmonizing it with the Basel Convention where appropriate and consolidating the other legally-binding waste-related Council Acts into one Act. Formal negotiations between the member countries resulting in consensus agreement will be required before amendments to these Council Acts can be forwarded to the OECD Council for adoption and entry into force.

EPA believes the harmonization of C(92)39 with the Basel Convention will be of interest to US stakeholders, including environmental interest groups and industry. The Agency calls attention to recommendation number 3 which is of particular significance because it would have the greatest impact on the operation of C(92)39. In addition to potential effects on transboundary movements of regulated hazardous wastes, this recommendation could affect movements of non-hazardous wastes, non-wastes, and secondary materials which may be within the scope of C(92)39.

II. Differences Between the OECD Control System and the Basel Convention

The overall goal of the Basel Convention is to protect human health and the environment against the adverse effects from the generation and management of hazardous wastes and other wastes. The main objectives of the Basel Convention are to:

—Reduce transboundary movements of Basel wastes to a minimum consistent with their environmentally sound management;
—Dispose of the wastes as close as possible to their source of generation;
—Minimize the generation of hazardous wastes in terms of quantity and hazardousness;
—Ensure strict control on the movement of wastes across borders as well as the prevention of illegal traffic;
—Prohibit shipments of waste to countries lacking the legal, administrative and technical capacity to manage and dispose of them in an environmentally sound manner; and
—Assist developing countries and countries in transition in environmentally sound management of their own wastes.

The Basel Convention establishes a system for controlling transboundary movements of hazardous wastes and other wastes for both final disposal and recycling (note: recycling is considered a type of disposal under the Convention). It sets out general obligations and specifies restrictions and prohibitions on imports and exports of such wastes. Its primary purpose is to protect developing countries from waste mismanagement.

In September 1995, the third meeting of the Conference of the Parties (COP III) adopted Decision III/1 containing an amendment to the Convention adding a new Article 4A prohibiting exports of hazardous waste for final disposal and

[1] The member countries of the OECD (also known as the "OECD area") are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, S. Korea, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

recycling from parties listed in Annex VII (OECD countries, European Community and Liechtenstein) to states not listed in Annex VII. This amendment will enter into force when 3/4 of the parties present and voting at COP III (i.e., 62 parties) have ratified it. As of June 1999, 14 ratifications were registered with the UN Depository.

OECD Council Decision C(92)39 establishes a control system, complementary to the Basel Convention, for transfrontier movements of wastes destined for recovery operations within the OECD area. It designates three "tiers" of wastes according to their potential overall environmental risk: the green, amber and red tiers which have corresponding waste lists. C(92)39 requires control of transfrontier movements of amber and red tier wastes, but requires no control for green tier wastes destined for recovery operations, other than those normally applied to commercial transactions. Red list wastes are subject to a control procedure, which is almost identical to the Basel Convention. Amber list wastes are subject to somewhat less stringent control procedures, including allowing the competent authorities to use "tacit" (presumed) consent as a means of approval for a notified movement of waste, and to grant "pre-consent" to domestic facilities to accept amber list wastes under a streamlined set of requirements.

A. Comparison of OECD and Basel Convention Waste Lists

Both the Basel Convention and C(92)39 contain waste lists which generally define the scope of coverage of each agreement. Annex VIII of the Basel Convention contains the list of hazardous wastes that are generally subject to the requirements of the Convention when they are exported or imported. It is an elaboration of the categories and constituents of Annex I. Annex IX of the Convention contains the list of wastes and secondary materials that are generally outside the scope of the Convention, and thus are not subject to its provisions when exported or imported.

As mentioned above, C(92)39 contains three waste lists. The green list contains wastes and secondary materials generally considered to be non-hazardous in most or all OECD member countries. The amber list contains wastes generally considered to be hazardous by the member countries, while the red list consists of wastes considered extremely hazardous and that warrant full export/import controls.

The OECD lists were developed according to the following environmental risk-based criteria in Annex 2 of C(92)39. These criteria reflect both the environmental hazard presented by the waste and the typical management practice (recycling operation) applied to it:

Properties

(1) Does the waste normally exhibit any of the hazardous characteristics listed in Table 5 of OECD Council Decision C(88)90? Furthermore, it is useful to know if the waste is legally defined as or considered to be a hazardous waste in one or more member countries.

(2) Is the waste typically contaminated?

(3) What is the physical state of the waste?

(4) What is the degree of difficulty of cleanup in the case of accidental spillage or mismanagement?

(5) What is the economic value of the waste bearing in mind historical price fluctuations?

Management:

(6) Is there technological capability to recover the waste?

(7) Is there a history of adverse environmental incidents arising from transfrontier movements of the waste or associated recovery operations?

(8) Is the waste routinely traded through established channels and is that evidenced by commercial classification?

(9) Is the waste usually moved internationally under the terms of a valid contract or chain of contracts?

(10) What is the extent of reuse and recovery of the waste and how is any portion separated from the waste but not subject to recovery managed?

(11) What are the overall environmental benefits arising from the recovery operations?

Another important distinguishing feature of the OECD waste lists is the inclusion of Customs codes. The OECD WGWMP coordinates closely with the Nomenclature and Classification Division of the World Customs Organization in comparing the waste listings with the Harmonized Commodity Description and Coding System (Harmonized System, or HS) and assigns HS codes accordingly, where applicable. In addition, the text of some OECD waste listings identically matches the counterpart text in the HS, which facilitates transboundary movements through Customs ports in the OECD member countries.

By contrast, the Basel Convention waste lists in Annexes VIII and IX of the Convention were developed based on the "intrinsic hazard" of the waste (e.g. poisonous, ignitable, corrosive, etc.), and do not take into account how the waste is typically managed, and other environmental risk-based factors. The Basel Convention does not distinguish between disposal and recycling, so its lists contain wastes that are both recycled and disposed (whereas the OECD lists, for the most part, contain wastes and secondary materials that are typically recycled). In addition, the Basel lists do not, at present, contain HS (Customs) codes.

The remainder of this section describes some of the significant differences in the waste lists of the two agreements.

1. OECD Green List vs. Basel Convention Annex IX

The following six Basel Convention Annex IX listings do not have corresponding entries on the OECD green list:

B1010 Thorium scrap
B1030 Refractory metals containing residues
B1050 Mixed, non-ferrous metal, heavy fraction scrap, not containing Annex I materials in concentrations sufficient to exhibit Annex III characteristics [2]
B1100 Wastes of refractory linings, including crucibles, originating from copper smelting
B3110 Fellmongery wastes not containing hexavalent chromium compounds or biocides or infectious substances
B3120 Wastes consisting of food dyes

The following 21 entries on the OECD green list do not have corresponding entries on Basel Annex IX:

GA190 Molybdenum waste and scrap
GA200 Tantalum waste and scrap
GA300 Chromium waste and scrap
GC030 Vessels and other floating structures for breaking up, properly emptied of any cargo and other materials arising from the operation of the vessel which may have been classified as a dangerous substance or waste
GC040 Motor vehicle wrecks, drained of liquids
GC090 Molybdenum
GC100 Tungsten
GC110 Tantalum
GC120 Titanium
GC130 Niobium
GC140 Rhenium

[2] If the OECD member countries agree to replace the OECD lists with the Basel Convention lists, minor wording changes will be necessary to correct language unique to the Basel Convention. For example, in Basel Annex IX listing B1050 above, the term "Annex I" could be deleted, while the phrase "exhibit Annex III characteristics" could be changed to "render it hazardous" or similar language conveying the same idea.

GE020 Glass fiber wastes
GF010 Ceramic wastes which have been fired after shaping, including ceramic vessels (before and/or after use)
GG160 Bituminous material (asphalt wastes) from road construction and maintenance, not containing tar
GH013 Waste, parings, and scrap of plastics of polymers of vinyl chloride
GJ140 Waste textile floor coverings, carpets
GM140 Waste edible fats and oils of animal or vegetable origin (e.g. frying oils)
GN010 Waste of pig's, hog's, or boar's bristles and hair or of badger hair and other brush making hair
GN020 Horsehair waste, whether or not put up as a layer with or without supporting material
GN030 Wastes of skins and other parts of birds, with their feathers or down, of feathers and parts of feathers (whether or not with trimmed edges) and down, not further worked than cleaned, disinfected or treated for preservation
GO040 Parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles, excluding leather sludges

The following six OECD green listings correspond to four Basel Annex IX listings, but with different wordings (Table 1).

TABLE 1.—DIFFERENCES IN WORDING BETWEEN OECD GREEN LIST AND BASEL ANNEX IX

OECD green listing	Basel annex IX listing
GB030 Aluminum skimmings (excluding those that are flammable or emit, upon contact with water, flammable gases in dangerous quantities).	B1100 Aluminum skimmings (or skims) excluding salt slag.
GC020 Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc.) and reclaimed electronic components suitable for base and precious metal recovery.	B1110 Waste electrical and electronic assemblies or scrap (not including scrap from electrical power generation) (including printed circuit boards) not containing components such as accumulators and other batteries included on Annex VIII, mercury switches, glass from cathode ray tubes and other activated glass and PCB capacitors, or not contaminated with Annex I constituents (e.g. cadmium, mercury, lead, PCB) or from which these have been removed, to an extent they do not possess any of the characteristics contained in Annex III. B1110 Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for direct reuse (reuse can include repair, refurbishment or upgrading, but not major reassembly) and not for recycling or final disposal (in some countries these materials destined for direct reuse are not considered wastes).
GC150 Gold GC160 Platinum (the expression "platinum" includes platinum, iridium, osmium, palladium, rhodium, and ruthenium) GC170 Other precious metals, e.g. silver.	B1150 Precious metals and alloy wastes (gold, silver, the platinum group, but not mercury) in a dispersible, non-liquid form with appropriate packaging and labeling.
GH014 Waste, parings, and scrap of plastics of polymers of fluorinated ethylene (teflon, PTFE).	B3010 The following fluorinated polymer wastes: perfluoroethylene/propylene (FEP), perfluoroalkoxy alkane (PFA), perfluoroalkoxy alkane (MFA), polyvinylfluoride (PVF), polyvinylidenefluoride (PVDF).

EPA is interested in comments regarding the significance of the differences between the non-hazardous lists of the two agreements and, in particular, whether the narrower scope of Basel Annex IX could have any significant bearing on intra-OECD trade in these wastes and materials.

2. OECD Amber and Red Lists vs. Basel Convention Annex VIII

Of perhaps greater significance are the differences in the lists of regulated hazardous wastes of the two agreements. A waste is classified as hazardous under the Basel Convention if it is linked to either a category or constituent in Annex I, unless it does not exhibit any of the characteristics of hazardous waste contained in Annex III (Article 1 paragraph 1(a)).[3] If these criteria are not satisfied, the waste or material is not covered by the Convention (and may therefore either be placed on Annex IX or remain unlisted). The scope of coverage in C(92)39, however, is not determined by such a combination of categories/constituents and hazard characteristics; thus, Basel's scope of coverage is narrower than that of C(92)39.

Two amber listings are covered by Annex II of the Basel Convention, "Categories of Wastes Requiring Special Attention: AB020 (residues arising from the combustion of municipal/household wastes), and AD160 (municipal/household wastes).

One OECD red listing (RB020, ceramic-based fibers of physico-chemical characteristics similar to those of asbestos) and the following 27 OECD amber listings do not directly correspond to entries on Basel Annex VIII (in most cases there is no linkage to Basel Annex I; in order to add them to Basel Annex VIII, at a minimum an amendment of Basel Annex I would be required):

AA010 Dross, scalings and other wastes from the manufacture of iron and steel
AA050 Aluminum ashes and residues
AA060 Vanadium ashes and residues
AA070 Ashes and residues containing metals or metal compounds not elsewhere specified or included
AA110 Residues from alumina production not elsewhere specified or included
AA190 Magnesium waste and scrap that is flammable, pyrophoric or emits, upon contact with water, flammable gasses in dangerous quantities
AB010 Slag, ash and residues, not elsewhere specified or included
AB030 Wastes from non-cyanide based systems which arise from surface treatment of metals
AB070 Sands used in foundry operations
AB120 Inorganic halide compounds, not elsewhere specified or included
AB130 Used blasting grit

[3] In addition, wastes considered hazardous under a party's domestic laws and regulations are also subject to control under the Basel Convention (Article 1 paragraph 1(b)).

AB150 Unrefined calcium sulfite and calcium sulfate from flue gas desulfurization (FGD)
AC020 Bituminous materials (asphalt waste) not elsewhere specified or included
AC060 Hydraulic fluids
AC070 Brake fluids
AC080 Antifreeze fluids
AC140 Triethylamine catalyst for setting foundry sands
AC150 Chlorofluorocarbons
AC160 Halons
AC170 Treated cork and wood wastes
AC250 Surface active agents (surfactants)
AC260 Liquid pig manure; feces
AC270 Sewage sludge
AD090 Wastes from the production, formulation and use of reprographic and photographic chemicals and materials not elsewhere specified or included
AD100 Wastes from non-cyanide based systems which arise from surface treatment of plastics
AD120 Ion exchange resins
AD150 Naturally-occurring organic material used as a filter medium (such as bio-filters)

The following nine Annex VIII listings do not correspond to any OECD amber or red listing. There are several possible explanations for this: (i) these wastes are not typically recycled; (ii) the Basel parties and OECD member countries disagree as to their hazardousness; and/or (iii) there are different criteria for listing wastes in Basel (intrinsic hazard) vs. C(92)39 (risk):

A1040 Wastes having as constituents: metal carbonyls; hexavalent chromium compounds
A1180 Waste electrical and electronic assemblies or scrap containing components such as accumulators and other batteries included in Annex VIII, mercury switches, glass from cathode ray tubes and other activated glass and PCB capacitors, or contaminated with Annex I constituents (e.g. cadmium, mercury, lead, PCB) to an extent that they possess any of the characteristics contained in Annex III (note the related entry on Annex IX: B1110)
A2060 Coal-fired power plant fly ash containing Annex I substances in concentrations sufficient to exhibit Annex III characteristics (note the related entry on Annex IX: B2050)
A3100 Waste parings and other waste of leather or of composition leather not suitable for the manufacture of leather articles containing hexavalent chromium compounds or biocides (note the related entry on Annex IX: B3090)
A3110 Fellmongery wastes containing hexavalent chromium compounds or biocides or infectious substances (note the related entry on Annex IX: B3110)
A4020 Clinical and related wastes; that is, waste arising from medical, nursing, dental, veterinary, or similar practices, and wastes generated in hospitals or other facilities during the investigation or treatment of patients, or research projects
A4130 Waste packages and containers containing Annex I substances in concentrations sufficient to exhibit Annex III hazard characteristics
A4140 Waste consisting of or containing off specification or out-dated chemicals corresponding to Annex I categories and exhibiting Annex III hazard characteristics
A4150 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on human health and/or the environment are not known

The following 13 amber listings are broader in scope than their corresponding Annex VIII listings (Table 2).

TABLE 2.—AMBER LISTINGS BROADER IN SCOPE THAN CORRESPONDING ANNEX VIII LISTINGS.

OECD amber listing	Basel convention annex VIII listing
AA020 Zinc ashes and residues	A1080 Waste zinc residues not included in Annex IX, containing lead and cadmium in concentrations sufficient to exhibit Annex III characteristics.
AA040 Copper ashes and residues	A1090 Ashes from the incineration of copper wire. A1100 Dusts and residues from gas cleaning systems of copper smelters. A1110 Spent electrolytic solutions from copper electrorefining and electrowinning operations. A1120 Waste sludges, excluding anode slimes, from copper electrorefining and electrowinning operations. A1130 Spent etching solutions containing dissolved copper. A1140 Waste cupric chloride and copper cyanide catalysts.
AA161 Ash from incineration of printed circuit boards	A1150 Precious metal ash from incineration of printed circuit boards not included in Annex IX.
AA180 Used batteries or accumulators, whole or crushed, other than lead-acid batteries, and waste and scrap arising from the production of batteries and accumulators, not otherwise specified or included.	A1170 Unsorted waste batteries excluding mixtures of only Annex IX batteries. Waste batteries not specified on Annex IX containing Annex I constituents to an extent to render them hazardous.
AB110 Basic solutions	A4090 Waste acidic or basic solutions, other than those specified in the corresponding entry on Annex IX (note the related entry on Annex IX: B2120).
AB140 Gypsum arising from chemical industry processes	A2040 Waste gypsum arising from chemical industry processes, when containing Annex I constituents to the extent that it exhibits an Annex III hazardous characteristic (note the related entry on Annex IX: B2080).
AC030 Waste oils unfit for their originally intended use	A3020 Waste mineral oils unfit for their originally intended use.
AC090 Waste from production, formulation, and use of resins, latex, plasticizers, glues and adhesives.	A3050 Waste from production, formulation, and use of resins, latex, plasticizers, glues/adhesives excluding such wastes specified on Annex IX (note the related entry on Annex IX: B4020).
AC130 Ethers	A3080 Waste ethers not including those specified on Annex IX.
AC180 Leather dust, ash, sludges and flours	A3090 Waste leather dust, ash, sludges and flours when containing hexavalent chromium compounds or biocides (note the related entry on Annex IX: B3100).

TABLE 2.—AMBER LISTINGS BROADER IN SCOPE THAN CORRESPONDING ANNEX VIII LISTINGS.—Continued

OECD amber listing	Basel convention annex VIII listing
AD070 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish.	A4070 Wastes from the production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish excluding any such waste specified on Annex IX (note the related entry on Annex IX: B4010).
AD110 Acidic solutions	A4090 Waste acidic or basic solutions, other than those specified in the corresponding entry on Annex IX (note the related entry on Annex IX: B2120).
AD130 Single use cameras with batteries	A1180 Waste electronic assemblies or scrap containing components such as accumulators and other batteries in Annex VIII.

The following 18 Annex VIII listings are broader in scope than their corresponding amber listings (Table 3).

TABLE 3.—ANNEX VIII LISTINGS BROADER IN SCOPE THAN CORRESPONDING AMBER AND RED LISTINGS.

OECD amber or red listing	Basel convention annex VIII listing
AA030 Lead ashes and residues	A1010 Metal wastes consisting of alloys of lead, but excluding such wastes as specifically listed on Annex IX. A1020 Wastes having as constituents or contaminants, excluding metal waste in massive form, lead or lead components.
AA080 Thallium waste and residues	A1010 Metal wastes and waste consisting of alloys of thallium, but excluding such wastes specifically listed on Annex IX. A1030 Wastes having as constituents or contaminants thallium; thallium compounds.
AA090 Arsenic waste and residues	A1010 Metal wastes and waste consisting of alloys of arsenic, but excluding such wastes specifically listed on Annex IX. A1030 Wastes having as constituents or contaminants arsenic; arsenic compounds.
AA100 Mercury waste and residues	A1010 Metal wastes and waste consisting of alloys of mercury, but excluding such wastes specifically listed on Annex IX. A1030 Wastes having as constituents or contaminants mercury; mercury compounds.
AB080 Waste catalysts not on the green list	A2030 Waste catalysts but excluding such wastes specified on Annex IX. A1140 Waste cupric chloride and copper cyanide catalysts.
AC010 Waste from the production/processing of petroleum coke and bitumen, excluding anode butts.	A3010 Waste from the production or processing of petroleum coke and bitumen.
AC040 Leaded petrol (gasoline) sludges	A3030 Wastes that contain, consist of or are contaminated with leaded anti-knock compound sludges.
DRC030 Leaded anti-knock compound sludges	
AC120 Polychlorinated naphthalenes	A3180 Waste, substances and articles containing, consisting of or contaminated with polychlorinated naphthalene (PCN).
AC190 Fluff light fraction from automobile shredding	A3120 Fluff—light fraction from shredding.
AD170 Spent activated carbon having hazardous characteristics and resulting from its use in the inorganic chemical, organic chemical and pharmaceutical industries, waste water treatment, gas/air cleaning processes and similar applications.	A4160 Spent activated carbon not included in Annex IX (note the related entry on Annex IX: B2060).
RA010 Wastes, substance and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB) and/or polychlorinated terphenyl (PCT) and/or polybrominated biphenyl (PBB), including any other polybrominated analogues of these compounds, at a concentration level of 50 mg/kg or more.	A3180 Wastes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB), polychlorinated terphenyl (PCT), polychlorinated naphthalene (PCN) or polybrominated biphenyl (PBB), or any other polybrominated analogues of these compounds at a concentration level of 50 mg/kg or more.
RC040 Peroxides other than hydrogen peroxide	A4120 Wastes that contain, consist of or are contaminated with peroxides.

EPA is interested in comments regarding the significance of the differences between the OECD amber/red lists and Basel Annex VIII for intra-OECD trade purposes.

3. OECD Green List vs. Basel Annex VIII, OECD Amber List vs. Basel Annex IX, and "Mirror Listings"

Finally, there are a number of entries in both C(92)39 and the Basel Convention that are either partially or entirely covered by entries on the opposite list in the other agreement. For example, 18 Annex IX listings are at least partially covered by 17 amber listings (Table 4). This is largely due to the fact that the Basel Convention lists contain "mirror listings" "listings on both Annexes VIII and IX that differ either by specifying the particular contaminants or constituents that distinguish hazardousness from non-hazardousness, or by simply re-stating the Convention's scope of coverage (which is also the Annex IX chapeau); namely whether the waste contains Annex I material in sufficient quantities to cause the waste to exhibit an Annex III characteristic. These mirror listings can be confusing for regulators and, in particular, Customs officials at border crossings who must make decisions about a particular shipment including verifying shipping documents and assessing tariffs. For example, it could be quite challenging for a Customs officer to fulfill his/her duties for a shipment of material coming under the following Basel mirror listing: "B1160 Precious metal ash from the incineration of printed circuit boards (note the

related entry on Annex VIII A1150)". When the Customs official looks to the mirror listing on Annex VIII, they would find the following wording: "A1150 Precious metal ash from incineration of printed circuit boards not included on Annex IX." Because many of the Basel mirror listings are not easily distinguishable, it is possible that transboundary movements within the OECD area could be affected. EPA is interested in comments on this issue.

While there are some mirror listings on the OECD lists, they are significantly fewer in number and are typically distinguished more precisely, usually with one listing quite specific and its mirror listing board; for example, magnesium waste and scrap is mirror listed as follows: "GA210 Magnesium waste and scrap (excluding those listed in AA190)" and, "AA190 Magnesium waste and scrap that is flammable, pyrophoric or emits, upon contact with water, flammable gasses in dangerous quantities." Table 4 presents the listings on Basel Annex IX which are at least partially covered by broader OECD amber listings.

TABLE 4.—BASEL ANNEX IX LISTINGS PARTIALLY COVERED BY OECD AMBER LISTINGS

OECD amber listing	Basel convention annex IX listing
AA020 Zinc ashes and residues	B1080 Zinc ash and residues including zinc alloys residues in dispersible form unless containing Annex I constituents in concentrations sufficient to exhibit Annex III characteristics or exhibiting hazardous characteristic H4.3. B1220 Slag from zinc production, chemically stabilized, having a high iron content (above 20%) and processed according to industrial specifications (e.g. DIN 4301) mainly for construction.
AA040 Copper ashes and residues	B1070 Waste of copper and copper alloys in dispersible form, unless they contain Annex I constituents to an extent that they exhibit Annex III characteristics. B1240 Copper oxide mill scale.
AA150 Precious metal bearing residues in solid form which contain traces of inorganic cyanides.	B1140 Precious-metal bearing residues in solid form which contain traces of inorganic cyanides.
AA161 Ash from incineration of printed circuit boards	B1160 Precious metal ash from the incineration of printed circuit boards (note the related entry on Annex VIII: A1150).
AA162 Photographic film ash	B1170 Precious metal ash from the incineration of photographic film.
AA180 Used batteries or accumulators, whole or crushed, other than lead-acid batteries, and waste and scrap arising from the production of batteries and accumulators, not otherwise specified or included.	B1090 Waste batteries conforming to a specification, excluding those made with lead, cadmium or mercury.
AB050 Calcium fluoride sludge	B2070 Calcium fluoride sludge.
AB090 Waste hydrates of aluminum AB100 Waste alumina	B2100 Waste hydrates of aluminum and waste alumina and residues from alumina production excluding such materials used for gas cleaning, flocculation or filtration processes.
AB110 Basic solutions	B2120 Waste acidic or basic solutions with a pH greater than 2 and less than 11.5, which are not corrosive or otherwise hazardous (note the related entry on Annex VIII: A4090).
AB140 Gypsum arising from chemical industry processes	B2080 Waste gypsum arising from chemical industry processes not included on Annex VIII (note the related entry on Annex VIII: A2040).
AC090 Waste from the production, formulation and use of resins, latex plasticizers, glues and adhesives.	B4020 Wastes from production, formulation, and use of resins, latex, plasticisers, glues/adhesives, not listed on Annex VIII, free of solvents and other contaminants to an extent that they do not exhibit Annex III characteristics, e.g., water based, or glues based on casein starch, dextrin, cellulose, ethers, polyvinyl alcohols (note the related entry on Annex VIII: A3050).
AC130 Ethers	B3130 Waste polymer ethers and waste non-hazardous monomer ethers incapable of forming peroxides.
AC180 Leather dust, ash, sludges and flours	B3090 Leather dust, ash, sludges, or flours not containing hexavalent chromium compounds or biocides (note the related entry on Annex VIII: A3090).
AD070 Wastes from production, formulation an use of inks, dyes, pigments, paints, lacquers, varnish.	B4010 Wastes consisting mainly of waste-based/latex paints, inks and hardened varnishes not containing organic solvents, heavy metals, or biocides to an extent to render them hazardous (note the related entry on Annex VIII: A4070).
AD110 Acidic solutions	B2120 Waste acidic or basic solutions with a pH greater than 2 and less than 11.5, which are not corrosive or otherwise hazardous (note the related entry on Annex VIII: A4090).
AD130 Single use cameras with batteries	B4030 Used single use cameras with batteries not included in Annex VIII.

In addition, five green listings are potentially covered by corresponding listings on Annex VIII (Table 5).

TABLE 5.—OECD GREEN LISTINGS AT LEAST PARTIALLY COVERED BY BASEL ANNEX VIII LISTINGS

OECD green listing	Basel convention annex VIII listing
GB020 Zinc-containing drosses: GB021 Galvanizing slab zinc top dross (>90% Zn) GB022 Galvanizing slab zinc bottom dross (>92% Zn) GB023 Zinc die casting dross (>85% Zn) GB024 Hot dip galvanizer slab zinc dross (batch) (>92% Zn) GB025 Zinc skimmings	A1080 Waste zinc residues not included on Annex IX, containing lead and cadmium in concentrations sufficient to exhibit Annex III characteristics.
GB040 Slags from precious metals and copper processing for further refining.	A1100 Dusts and residues from gas cleaning systems of copper smelters.
GC050 Spent Fluid Catalytic Cracking (FCC) catalysts (e.g. aluminum oxide zeolites).	A2030 Waste catalysts but excluding such wastes as specified on Annex IX.
GG040 Coal fired power plant fly ash	A2060 Coal fired power plant fly ash containing Annex I substances in concentrations sufficient to exhibit Annex III characteristics (note the related entry on Annex IX: B2050).
GN040 Parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles, excluding leather sludges.	A3100 Waste parings and other waste of leather or of composition leather not suitable for the manufacture of leather articles containing hexavalent chromium compounds or biocides (note the related entry on Annex IX: B3090).

Germany, possibly along with other OECD member countries, will submit applications to the Basel Convention review procedure for each of the missing 21 green listings seeking to add them to Basel Annex IX. These applications will be submitted in time to be placed on the agenda for the next meeting of the Technical Working Group (TWG) (which performs the review procedure functions within the Basel Convention) in spring 2000. The purpose of this is to attempt to minimize the inconsistencies between the lists as quickly as possible, with a view to the goal of substitution of the Basel lists for the OECD lists in C(92)39. The 27 missing amber listings will be addressed later, including whether and how to add them in light of the Annex I/Annex III scope of coverage. The issue of the different wording between the two sets of lists for the same or similar wastes and whether to submit applications to the Basel TWG to modify the Basel Annex VIII listings had not been discussed to date.

EPA is interested in learning whether members of the U.S. regulated community or others have an interest in submitting applications to the Basel TWG. Any such applications require the support of and must be submitted through at least one government—either a party or a non-party. Applications submitted through the U.S. government would need the support of and would be submitted by EPA.

III. Purpose of Today's Document

The purpose of today's document is to bring to the public's attention recommendation number 3 above and to solicit, on a voluntary basis, further information on the potential impacts of and issues associated with harmonization of C(92)39 with the Basel Convention. Interested parties are welcome to provide information on any of the other recommendations; however, EPA is most interested in receiving information on recommendation number 3 at this time. EPA may publish future **Federal Register** documents seeking voluntary information regarding the other recommendations.

In consultations with members of the U.S. regulated community, EPA has been made aware of a number of general concerns. Most of these concerns fall into two main categories: (i) the proposed replacement of the green, amber, and red lists with Basel Annexes VIII and IX; and, (ii) the proposed replacement of the Review Mechanism with the adjustment procedure. In order for EPA and other federal agencies to fully understand the potential impacts of harmonizing OECD Council Decision C(92)39 with the Basel Convention, today's notice requests specific information from interested parties.

A. Specific Information Requested by EPA

In addition to other information requested throughout this notice, EPA is asking the U.S. regulated community and other interested parties to provide the following specific information. EPA notes that this request is strictly voluntary in nature; however, the Agency encourages any and all interested parties to provide the requested information as it will be helpful to negotiators in identifying potential areas of concern.

1. Waste Lists

Regarding replacement of the OECD green, amber, and red lists with Basel Convention Annexes VIII and IX, general concerns have been expressed that use of the Basel lists could affect the flow of secondary materials and wastes throughout the OECD area. EPA is interested in specific, concrete examples of these concerns in addition to the following information:

a. *Statistics and Data.* For any and all items listed on the OECD green, amber, and red lists, and Basel Convention Annexes VIII and IX, the Agency is interested in any and all reasonably available information on: (i) established and anticipated future trade patterns within the OECD area, (ii) economic value of the trade in these wastes and materials, (iii) volumes of the wastes and materials moving within the OECD area, and (iv) any other relevant information. Of particular importance is information on secondary materials which, when recycled in certain ways, are excluded from the definition of solid waste under RCRA (e.g. characteristically hazardous sludges which, when reclaimed (including when exported within the OECD area for reclamation), are not solid wastes). Because these materials are not solid wastes in the U.S., but may be considered solid and hazardous waste in other OECD countries (and could therefore be subject to C(92)39 in those countries), EPA has no knowledge of the volume and economic value of this trade, and therefore does not fully understand how substitution of the Basel lists for the OECD lists could affect transboundary movements of these materials. EPA is also interested in receiving statistics on items listed in C(92)39, but that are not listed on Annexes VIII and IX (e.g. see section I(C)(1) above).

It should be noted that because the U.S. implements the terms of C(92)39 through RCRA, the current and any future OECD waste lists serve as guidance for the U.S. regulated

community as to how other OECD member countries likely regulate a material or waste under the terms of C(92)39. The scope of coverage for purposes of U.S. implementation of any harmonized OECD agreement will remain as it is under RCRA until and unless EPA obtains other statutory authorities that would allow or require changes to the current scope of coverage (such as, for example, amendments to RCRA to ratify and implement the Basel Convention).

b. Potential Effects on Transboundary Movements. The Agency is interested in any and all information regarding potential problems that could arise from the use of Basel Annexes VIII and IX to implement C(92)39 as compared to the green, amber, and red lists. For example, the OECD waste lists contain Harmonized System (HS), or Customs, codes where applicable. The Basel lists do not currently contain HS codes. Another example of how potential problems could arise is in the actual wording differences between the lists. For example, OECD green listing number GC020 has the following wording: "Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc.) and reclaimed electronic components suitable for base and precious metal recovery", while the corresponding wording in Basel Annex IX listing number B1110 is: "Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for direct reuse (reuse can include repair, refurbishment or upgrading, but not major assembly), and not for recycling or final disposal (in some countries these materials destined for direct reuse are not considered wastes)". Another example would be OECD amber listing number AA060 "Vanadium ashes and residues" which has no corresponding Basel Annex VIII listing because vanadium does not belong to any category in Annex I of the Basel Convention, and therefore cannot be included in Annex VIII (i.e. vanadium is outside the scope of the Basel Convention). In practice, this could result in uneven control within the OECD area.

2. Waste List Review Procedures

The Agency is interested in comments regarding changing the current Review Mechanism for adjusting the green, amber, and red lists, to a new adjustment procedure. Currently, C(92)39 mandates a standing Review Mechanism to adjust, on a regular basis, the green, amber, and red lists of wastes in appendices 3, 4, and 5 respectively. Any government, regulated entity, or other interested party can submit an application to the Review Mechanism to add, delete, move, or adjust a waste listing as long as the application is supported by at least one member government. Although some have indicated an interest in doing so, to date, no U.S. entity has ever submitted an application to the OECD Review Mechanism through EPA. This apparent lack of interest could indicate that the U.S. regulated community is generally satisfied with the OECD waste lists. Alternatively, it could mean that given the OECD waste lists serve only as guidance for the U.S. regulated community, there is not a strong need for waste list adjustments because there is no direct impact on the regulated community presented by the lists (although there can be significant indirect impacts if U.S. trading partners impose OECD controls on wastes or materials not regulated as hazardous under U.S. laws and regulations).

The future operation of C(92)39, in terms of adjustments to its new waste lists, would include a body similar to the Review Mechanism to be called the adjustment procedure. While the actual operation of the adjustment procedure would be similar to the current Review Mechanism, there would be some significant differences. Under this new ad-hoc body, a U.S. entity interested in applying to make changes to the OECD waste lists (e.g. to modify the wording of a particular listing or to move a particular listing from one list to the other) would be required to first submit an application to the Basel Convention review procedure. For example, and as previously discussed, Germany plans to submit applications for the 21 OECD green listings not currently in Basel Annex IX. If the resulting decision by the Basel COP was considered to be insufficient for purposes of intra-OECD trade, or if the COP declined to take action at all, the U.S. entity could then, with the support of EPA, submit an application to the OECD adjustment procedure seeking relief in the OECD forum. If approved by the OECD Council, the waste listing would take effect for intra-OECD transboundary movements. If not approved by the Council, several options are possible. One option would be that the Basel listing, as approved by the Basel COP, would apply within the OECD, as would be the case when no objection to a Basel listing were raised to the OECD Secretariat by an OECD member country. Another option would be that in the case where the Basel COP declines action, the unlisted waste or material would move within the OECD according to the green tier (which would apply to Basel Annex IX wastes) if non-hazardous or to the amber tier (which would apply to Basel Annex VIII wastes) if hazardous. This is very similar to the status quo where unlisted wastes that are non-hazardous move according to the green tier, and unlisted hazardous wastes move according to the red tier (note: the European Union member countries implement this provision differently in that all unlisted wastes default to red tier controls, regardless of their hazardousness). Because the red list and the corresponding red tier control procedure would be eliminated in the harmonized agreement, and amber tier controls are envisioned to apply to Annex VIII wastes, the default control procedure for an unlisted hazardous waste would be amber tier controls. A third option would be that the unlisted waste would be subject to the national procedures of the concerned OECD member countries. EPA is specifically interested in comments on these options.

3. Other Issues

Finally, EPA is interested in public comment on any other aspect of amending and harmonizing C(92)39 with the Basel Convention, including but not limited to: the value of the streamlined administrative procedures (e.g. tacit consent and pre-consent under the amber tier), the value of the risk-based approach to waste listing (including the criteria in Annex 2 of C(92)39, and the value of Customs codes in waste listings.

Dated: August 10, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–21311 Filed 8–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 5, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency

may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 18, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0423.

Title: Section 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.

Form Number: None.

Type of Review: Extension of Currently Approved Collection.

Respondents: Business or other for-profit.

Number of Respondents: 50 petitioners.

Estimated Time Per Response: 20 minutes—8 hours (20 minutes consultation; 8 hours contracted attorney).

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 16 hours.

Total Annual Costs: $42,500.

Needs and Uses: Section 73.3588 requires a petitioner to obtain approval from the FCC to dismiss or withdraw its petition to deny when it is filed against a renewal application and applications for new construction permits, modifications, transfers and assignments. This request for approval must contain a copy of any written agreement, an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition and an itemization of the expenses for which it is seeking reimbursement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that a petition to deny or informal objection was filed under appropriate circumstances and not to extract payments in excess of legitimate and prudent expenses.

OMB Control Number: 3060–0452.

Title: Section 73.3589 Threats to file petitions to deny or informal objections.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 AM/FM/TV stations.

Estimated Time Per Response: 20 minutes—1 hour (20 minute consultation time; 1 hour contracted attorney).

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 2 hours.

Total Annual Costs: $1,000.

Needs and Uses: Section 73.3589 requires an applicant or licensee to file with the FCC a copy of any written agreement related to the dismissal or withdrawal of a threat to file a petition to deny or informal objection and an affidavit certifying that neither the would-be petitioner nor any person or organization related to the would-be petitioner has not or will not receive any consideration in excess of legitimate and prudent expenses incurred in threatening to file. The data is used by FCC staff to ensure that a threat to file a petition to deny or informal objection was made under appropriate circumstances and not to extract payments in excess of legitimate and prudent expenses.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21207 Filed 8–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

August 9, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 18, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0711.

Title: Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as amended by the Telecommunications Act of 1996, NPRM (GC Docket No. 96–101, FCC 96–192), and Report and Order, (GC Docket No. 96–101, FCC 96–376, released September 12, 1996).

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; and Federal Government.

Number of Respondents: 15.

Estimated Time per Response: 7 hours.

Frequency of Responses: One-time reporting requirement.

Total Annual Burden: 105 hours.

Total Annual Costs: $9,000.

Needs and Uses: The information will be used by the Commission to determine whether persons satisfy the statutory criteria for "exempt telecommunications company" status. Without such information, the Commission could not determine whether persons satisfied the requisite statutory criteria and therefore fulfill its responsibility under section 34(a)(1) of PUHCA, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21245 Filed 8–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

August 2, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 16, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0718

Title: Part 101 Governing the Terrestrial Microwave Fixed Radio Service

Form Number: N/A

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 1,025.

Estimate Time Per Response: 1.77 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements

Total Annual Burden: 1,609 hours.

Total Annual Costs: $90,624.

Needs and Uses: The information requirements are used to determine technical, legal, and other qualifications of applicants to operate a station in the public and private operational fixed services. The information is also used to ensure the applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act, 47 U.S.C. Section 310. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21206 Filed 8–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 6, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 16, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0053.

Title: Application for Consent to Transfer of Control of Corporation Holding Station License.

Form Number: FCC 703.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 2,000.

Estimate Time Per Response: 36 mins. (0.6 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 1,200 hours.

Total Annual Costs: $82,000.

Needs and Uses: This collection of information is used to determine eligibility for licenses, without which, violations of ownership regulations could occur. FCC Rules require that applicants in the Private Land Mobile (Part 90), General Mobile (Part 95), Marine (Part 80), Aviation (Part 87), and Experimental (Part 5) Radio Services submit FCC 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station. Form 703 is required by the Communications Act of 1934, as amended; International Radio Regulations, General Secretariat of International Telecommunications Union, and FCC Rules, 47 CFR 1.922, 1.924, 5.55, 80.19, 87.21, 87.31, 90.119, and 95.111. The form is being revised to delete the collection of payment type information, as this information is submitted on FCC Form 159 (Remittance Advice) now required with any payment to the FCC. The form's instructions, Privacy Act, and public burden statements are being updated, too.

OMB Control Number: 3060–0641.

Title: Notification to File Progress Report.

Form Number: FCC 218–I.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; and Individuals or households.

Number of Respondents: 500.

Estimate Time Per Response: 1 hour.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 500 hours.

Total Annual Costs: None.

Needs and Uses: The data are used by FCC staff to determine whether the 218–219 MHz licensee (previously IVDS) is entitled to their authorization to operate. From this data, the Commission is able to confirm that service has been made available to at least 30 percent of the population or land area within three years of license grant, and 50 percent of the population or land area within five years of license grant. The data collected ensure that licensees are making proper use of the frequency spectrum.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21246 Filed 8–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. AT–RP–80005]

Notice of Opportunity To Submit Amicus Curiae Briefs in a Representation Proceeding Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority is considering the standard to be applied to decide whether an election is necessary to determine representation of separate units of employees, represented by different labor organizations, when a reorganization results in transfer of the employees into one, new organization.

SUMMARY: The Federal Labor Relations Authority is providing an opportunity for all interested persons to file briefs as amici curiae on a significant issue arising in a case pending before the Authority. The Authority is considering the case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994 and Supp. III 1997) (the Statute) and its regulations, set forth at 5 CFR part 2422. The issue concerns how the Authority should resolve a representation case arising from an agency reorganization when separate units of employees, represented by different labor organizations, have been transferred into one, new organization.

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Office of Case Control by 5 p.m. on September 16, 1999. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

FORMAT: All briefs shall be captioned "*Department of the Army, U.S. Army Aviation Missile Command (AMCOM), Redstone Arsenal, Alabama*, Case Nos. AT–RP–80005 and AT–RP–80007." Briefs must contain separate, numbered topic headings corresponding to the three questions at the end of this notice. Parties must submit an original and four copies of each amicus brief, on 8½ by 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27 (a) and (c). The designated representatives are: Steve Fesler, Deputy Director, Membership and Organization Department, American Federation of Government Employees, AFL–CIO, 80 F Street, NW., 7th Floor, Washington, DC 20001; John M. Paolino, Director of Collective Bargaining, National Federation of Federal Employees, 1016 16th Street, NW., Washington, DC 20036; John C. Points, Jr., AMCOM Legal, U. S. Army Aviation and Missile Command, Redstone Arsenal, AL 35898; and Brenda M. Robinson, Regional Director, Federal Labor Relations Authority, Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, GA 30303–1270.

ADDRESSES: Mail or deliver briefs to Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Room 415, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: On July 23, 1999, the Authority granted an application for review of the Regional Director's Decision and Order on Clarification of Units in *Department of the Army, U.S. Army Aviation Missile Command (AMCOM), Redstone Arsenal, Alabama*, Case Nos. AT–RP–80005 and AT–RP–80007, 55 FLRA No. 108 (July 23, 1999). The Authority also denied AFGE Local 1858's request for a stay of the election, Member Wasserman dissenting on this aspect of the decision. A summary of that case follows. A copy of the Authority's complete decision may be obtained by telephoning Peter Constantine at the number listed above.

A. Background

American Federation of Government Employees, Local 1858, AFL–CIO (AFGE Local 1858), and National Federation of Federal Employees, Local 405 (NFFE Local 405) are the exclusive representatives of units of employees at two activities that were disestablished as a result of a reorganization, and were transferred to a newly created entity known as Army Aviation Missile Command (AMCOM), located in Redstone Arsenal, Alabama. AFGE Local 1858 represented separate professional and nonprofessional units, totaling 4,711 employees, at the former U.S. Army Missile Command (MICOM), located at Redstone Arsenal, Alabama.

NFFE Local 405 represented a unit of professional and nonprofessional employees at the former Aviation Troop Command (ATCOM), St. Louis, Missouri, from which 1,384 employees accepted transfer.

The issue is whether there is a question concerning representation regarding the former MICOM and ATCOM employees who have been transferred to AMCOM, or whether an election is unnecessary because of the relative number of employees in the respective former units, in which case all employees would be represented by the exclusive representative of the larger former unit.

B. The Regional Director's Decision

The Regional Director found that AMCOM's mission is a combination of the missions of ATCOM and MICOM. She found that separate units consisting of the former MICOM and ATCOM employees are no longer appropriate. The Regional Director further found that AMCOM is not a successor employer, and that the former ATCOM employees did not accrete to the unit represented by AFGE Local 1858.

The Regional Director directed an election among the former MICOM and ATCOM employees to determine whether they preferred to be represented by AFGE Local 1858, NFFE Local 405, or no labor organization. In directing the election, the Regional Director stated that the Authority has not defined when a group of employees represented by one labor organization will be "sufficiently predominant" over a number of employees in another unit so as to render unnecessary an election when the two groups are transferred to a new organization. The Regional Director then determined that in the circumstances, where AFGE Local 1858 represented 4,711 employees and NFFE Local 405 represented 1,384 employees, an election is necessary.

C. The Application for Review

AFGE Local 1858 filed the application for review, contending that review of the regional director's decision is warranted under 5 CFR 2422.31, because, among other things, there is an absence of precedent.

D. Questions on Which Briefs Are Solicited

The Authority granted the application for review under 5 CFR 2422.31(c). The Authority found that there is an absence of Authority precedent on two matters. First, it has not determined whether, in a situation where the possibility of accretion has not been recognized under Authority precedent because a reorganization has rendered inappropriate separate, preexisting bargaining units represented by different unions, an election is always necessary to certify one of them as exclusive representative in the new, appropriate unit. Second, if the Authority were to develop such doctrine through application of the "sufficiently predominant" or some other test, it would be necessary to determine how to assess when one group is "sufficiently predominant" to render an election unnecessary.

The Authority directed the parties in the case to file briefs addressing the following questions:

1. Should the Authority's "successorship" and/or "accretion" doctrine be modified to apply to situations where more than one unit of employees represented by different exclusive collective bargaining representatives are transferred to (a) a *new entity* with a new mission or (b) a *new entity* with a mission that is a combination of the missions of previously existing organizations? If so, why, and what should the modification be?

2. Is a question concerning representation necessarily raised when more than one group of employees, represented by different labor organizations, are transferred to a newly established organization, and neither our current successorship doctrine nor our current accretion doctrine permits certification without an election? If not, is it consistent with the Statute and appropriate to apply the "sufficiently predominant" or some other doctrine to determine whether an election is not required?

3. If Authority doctrine is modified, what guidelines, numerical or otherwise, should the Authority use to determine whether a group represented by one labor organization is sufficiently predominant to render an election unnecessary?

As this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these questions.

Dated: August 12, 1999.

For the Authority.

Peter Constantine,

Director of Case Control.

[FR Doc. 99–21279 Filed 8–16–99; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Gregory W. Levenson, Austin, Texas; to acquire voting shares of Las Vegas Bancorporation, Las Vegas, New Mexico, and thereby indirectly acquire voting shares of The Bank of Las Vegas, Las Vegas, New Mexico.

Board of Governors of the Federal Reserve System, August 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21209 Filed 8–16–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to merge with Peoples Bank Corporation of Indianapolis, Indianapolis, Indiana, and thereby indirectly acquire Peoples Bank & Trust Company, Indianapolis, Indiana.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Old Mission Bancorp, Inc., Sault Saint Marie, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Old Mission Bank, Sault Saint Marie, Michigan.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Harbor Bancorp, Aberdeen, Washington; to merge with Pacific Financial Corporation, Long Beach, Washington, and thereby indirectly acquire Bank of the Pacific, Long Beach, Washington.

Board of Governors of the Federal Reserve System, August 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21210 Filed 8–16–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Citigroup, Inc., and Citicorp, both of New York, New York; to acquire through Citicorp Strategic Technology Corporation, New York, New York, an investment in 724 Solutions, Inc., Toronto, Canada, and engage in the development, manufacture, and distribution of software designed to provide electronic banking, brokerage and other services to consumers, pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21208 Filed 8–16–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

De Novo Corporation To Do Business Under Section 25A of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25A of the Federal Reserve Act (Edge Corporation) 12 U.S.C. 611 *et seq.* The Edge Corporation will operate as a subsidiary of the applicant, Valley National Bank, Passaic, New Jersey. The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.4).

The application may by inspected at the Federal Reserve Bank of New York or at the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Comments regarding the application must be received by the Reserve Bank indicated or at the offices of the Board of Governors not later than September 16, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. CLS Services, Ltd., London, England; to establish CLS Bank International, New York, New York, as an Edge Corporation, pursuant to § 25A of the Federal Reserve Act, and a wholly owned subsidiary of CLS Services Ltd., London, England, which will offer a continuous linked settlement service intended to reduce settlement risk associated with foreign exchange trading, pursuant to § 25A of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, August 12, 1999.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 99–21328 Filed 8–16–99; 8:45 am]

BILLING CODE 6210–01–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, August 23, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 13, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21479 Filed 8–13–99; 3:49 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Revision of SF 506, Medical Record—Physical Examination

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is revising the SF 506, Medical Record—Physical Examination to update the information collected on the patient and make the form authorized for local reproduction. You can obtain the updated form in two ways:

On the internet. Address: http://www.gsa.gov/forms/forms.htm, or;

From Forms—XR, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective August 17, 1999.

Dated: August 9, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99–21320 Filed 8–16–99; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Automation of Medical Standard Form 506

AGENCY: General Services Administration.

ACTION: Guideline on automating medical standard forms.

Background

The Interagency Committee on Medical Records (ICMR) is aware of numerous activities using computer-generated medical forms, many of which are not mirror-like images of the genuine paper Standard/Optional Form. With GSA's approval the ICMR eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The committee proposes to set required fields standards and that activities developing computer-generated versions adhere to the required fields but not necessarily to the image. The ICMR plans to review medical Standard/Optional forms which are commonly used and/or commonly computer-generated. We will identify those fields which are required, those (if any) which are optional, and the required format (if necessary). Activities may not add data elements that would change the meaning of the form. This would require written approval from the ICMR. Using the process by which overprints are approved for paper Standard/Optional forms, activities may add other data entry elements to those required by the committee. With this decision, activities at the local or headquarters level should be able to develop electronic versions which meet the committee's requirements. This guideline controls the "image" or required fields but not the actual data entered into the field.

SUMMARY: With GSA's approval, the Interagency Committee on Medical Records (ICMR) eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The following fields must appear on the electronic version of the following form:

ELECTRONIC ELEMENTS FOR SF 506

Item	Placement*
Text:	
Title: Physical Examination	Top of form.
Form ID: Standard Form 506 (Rev.)	Bottom right corner of form.
Data Entry Fields:	
Date of Exam	
Height	
Weight—Average	
Weight—Maximum	
Weight—Present	
Temperature	
Pulse	
Blood Pressure	
Instructions—Describe (1) General Appearance and Mental Status; (2) Head and Neck (General); (3) Eyes; (4) Ears; (5) Nose; (6) Mouth; (7) Throat; (8) Teeth; (9) Cheek (General); (10) Breast; (11) Lungs; (12) Cardiovascular; (13) Abdomen; (14) Hernia; (15) Genitalia; (16) Pelvic; (17) Rectal; (18) Prostate; (19) Back; (20) Extremities; (21) Neurological; (22) Skin; (23) Lymphatics.	
Relationship to Sponsor	
Sponsor's Name—Last	
Sponsor's Name—First	
Sponsor's Name—MI	
Sponsor's ID Number (SSN or other)	
Department/Service	
Hospital or Medical Facility	
Records Maintained At	
Physical Examination	
Initial Impression	
Signature of Physician	
Name of Physician	

ELECTRONIC ELEMENTS FOR SF 506—Continued

Item	Placement*
Patient's Name—last, first, middle	Bottom left corner of form.
Patient's ID No. or SSN	Do.
Patient's Sex	Do.
Patient's Date of Birth	Do.
Patient's Rank/Grade	Do.
Register No.	Do.
Ward No.	Do.

*If no placement indicated, items can appear anywhere on the form.

FOR FURTHER INFORMATION CONTACT: CMD Steven S. Kerrick, National Naval Medical Center, Department of Ophthalmology, Bethesda, MC 20889–5000 or E-Mail at StevenK966@aol.com.

Dated: August 9, 1999.

CMD Steven S. Kerrick,

Chairperson, Interagency Committee on Medical Records.

[FR Doc. 99–21321 Filed 8–16–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for Non-Governmental Organizations Partnerships Pilot Project

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for Non-Governmental Organizations Partnerships Pilot Project, Program Announcement #99144.

Times and Dates: 8:30 a.m.–9:00 a.m., August 19, 1999 (Open); 9:00 a.m.–4:30 p.m., August 19, 1999 (Closed); 8:30 a.m.–4:30 p.m., August 20, 1999 (Closed).

Place: CDC, National Center for HIV, STD and TB Prevention, Executive Park, Building 16, Conference Rooms A and B, Atlanta, GA 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99144. Due to administrative delays, this notice is published less than 15 days prior to the meeting.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail EOW1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 11, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21259 Filed 8–12–99; 1:42 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for Capacity-Building Assistance to Community-Based Organizations Serving African-American Populations Heavily Affected by the Human Immunodeficiency Virus

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for Capacity-Building Assistance to Community-Based Organizations Serving African-American Populations Heavily Affected by the Human Immunodeficiency Virus, Program Announcement #99095.

Times and Date: 8:30 a.m.–9:00 a.m., August 23, 1999 (Open); 9:00 a.m.–4:30 p.m., August 23, 1999 (Closed).

Place: Professional and Scientific Associates, 2635 Century Parkway, Suite 990, Atlanta, GA 30345. Telephone 404/633–6477.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99095. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail EOW1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21260 Filed 8–12–99; 1:41 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for Human Immunodeficiency Virus Prevention Projects for African-American Faith-Based Organizations

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for Human Immunodeficiency Virus Prevention Projects for African-American Faith-Based Organizations, Program Announcement #99096.

Times and Dates: 8:30 a.m.–9:00 a.m., August 24, 1999 (Open); 9:00 a.m.–4:30 p.m., August 24, 1999 (Closed); 8:30 a.m.–4:30 p.m., August 25, 1999 (Closed).

Place: Professional and Scientific Associates, 2635 Century Parkway, Suite 990, Atlanta, GA 30345. Telephone 404/633–6477.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99096. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact Person for More Information: Megan Foley, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail mzf3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21261 Filed 8–12–99; 1:41 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Innovative Demonstration Projects to Screen and Treat Asymptomatic Males for Chlamydia Trachomatis Infection Using Urine-Based Diagnostic Tests: Translational Research

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Innovative Demonstration Projects to Screen and Treat Asymptomatic Males for Chlamydia Trachomatis Infection Using Urine-based Diagnostic Tests: Translational Research, Program Announcement #99104.

Times and Dates: 8:30 a.m.–9:00 a.m., August 24, 1999 (Open); 9:00 a.m.–4:30 p.m., August 24, 1999 (Closed); 8:30 a.m.–4:30 p.m., August 25, 1999 (Closed).

Place: CDC, National Center for HIV, STD, and TB Prevention, Corporate Square Office Park, Building 12, Room 3106, Atlanta, GA 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99104. Due to administrative delays this notice is published less than fifteen days prior to the meeting.

Contact Person for More Information: Megan Foley, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail mzf3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21262 Filed 8–12–99; 1:41 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Intervention Research Addressing the Primary and Secondary Prevention Needs of HIV-Seropositive Injection Drug Users

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Intervention Research Addressing the Primary and Secondary Prevention Needs of HIV-Seropositive Injection Drug Users, Program Announcement #99090.

Times and Dates: 8:30 a.m.–9:00 a.m., August 26, 1999 (Open); 9:00 a.m.–4:30 p.m., August 26, 1999 (Closed).

Place: CDC, National Center for HIV, STD and TB Prevention, Executive Park, Building 57, Fifth Floor Conference Room, Atlanta, GA 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99090.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail EOW1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21263 Filed 8–12–99; 1:42 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Strategies to Prevent Genital Herpes Simplex Infections: Building a National Prevention Program

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Strategies to Prevent Genital Herpes Simplex Infections: Building a National Prevention Program, Program Announcement #99115.

Times and Dates: 8:30 a.m.–9:00 a.m., August 17, 1999 (Open); 9:00 a.m.–4:30 p.m., August 17, 1999 (Closed); 8:30 a.m.–Noon, August 18, 1999 (Closed)

Place: CDC, National Center for HIV, STD and TB Prevention, Corporate Square, Building 12, Conference Room 3106, Atlanta, GA 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99115. Due to administrative delays, this notice is published less than 15 days prior to the meeting.

Contact Person For More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail EOW1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21264 Filed 8–12–99; 1:42 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Community Coalition Development Projects for African American Communities

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Community Coalition Development Projects for African American Communities, Program Announcement #99094.

Times and Dates: 8:30 a.m.–9:00 a.m., August 19, 1999 (Open); 9:00 a.m.–4:30 p.m., August 19, 1999 (Closed); 8:30 a.m.–4:30 p.m., August 20, 1999 (Closed);

Place: Professional and Scientific Associates, 2635 Century Parkway, Suite 990, Atlanta, GA 30345. Telephone 404/633–6477.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99094. Due to administrative delays, this notice is published less than 15 days prior to the meeting.

Contact Person for More Information: Megan Foley, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail mzf3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21265 Filed 8–12–99; 1:42 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Community-Based HIV Prevention Services and Capacity-Building Assistance to Organizations Serving Gay Men of Color at Risk for HIV Infection

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Community-Based HIV Prevention Services and Capacity-Building Assistance to Organizations Serving Gay Men of Color at Risk for HIV Infection, Program Announcement #99091.

Times and Dates: 8:30 a.m.–9:00 a.m., August 26, 1999 (Open); 9:00 a.m.–4:30 p.m., August 26, 1999 (Closed); 8:30 a.m.–4:30 p.m., August 27, 1999 (Closed).

Place: Professional and Scientific Associates, 2635 Century Parkway, Suite 990, Atlanta, GA 30345. Telephone 404/633–6477.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99091. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact Person for More Information: Megan Foley, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail mzf3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21266 Filed 8–12–99; 1:42 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0318]

Guidance for Industry: Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for Industry: Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products." The guidance document is intended to provide recommendations to all registered blood and plasma establishments and all establishments engaged in manufacturing plasma derivatives. The guidance document is intended to replace the FDA guidance entitled "Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) by Blood and Blood Products" issued on December 11, 1996.

DATES: Written comments may be submitted at any time, however, comments should be submitted by October 18, 1999, to ensure adequate consideration in preparation of a revised document, if warranted. The agency is soliciting public comment, but is implementing this guidance document immediately because of the public health concerns related to the possible risk of transmission of CJD and nvCJD by blood and blood products.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Guidance for Industry: Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled "Guidance for Industry: Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products." The guidance document is intended to replace the FDA guidance entitled "Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) by Blood and Blood Products" sent by mail to blood and plasma establishments and plasma derivatives manufacturers on December 11, 1996. See notice of availability (62 FR 49694, September 23, 1997).

Recommendations addressed in the guidance document include: (1) Donor screening questions and deferral criteria, (2) disposition of implicated products, (3) consignee notification and recipient counseling, and (4) product labeling.

The guidance document represents the agency's current thinking on precautionary measures to reduce the possible risk and to assure that blood and blood products are not adulterated or misbranded, within the meaning of the Federal Food Drug and Cosmetic Act, and are safe, pure and potent within the meaning of the Public Health Service Act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The guidance document is intended to provide information and does not set forth requirements.

II. Comments

The agency is soliciting public comment, but is implementing this guidance document immediately because of the public health concerns related to the possible risk of transmission of CJD and nvCJD by blood and blood products. Additionally, the guidance presents a less burdersome policy for the management of blood components and plasma derivatives in cases where the donor has classic CJD or CJD risk factors. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Written comments may be submitted at any time, however, comments should be submitted by October 18, 1999, to ensure adequate consideration in preparation of a revised document, if warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: August 4, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21251 Filed 8–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2407]

Evaluation and Processing of Post Donation Information Reports; Compliance Policy Guide; Guidance for FDA Personnel; Availability; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new compliance policy guide (CPG) entitled "Evaluation and Processing of Post Donation Information Reports" (section 230.140). This document provides guidance to FDA field and headquarters staff regarding FDA's policy related to the evaluation and processing of post donation information reports for blood and blood components.

DATES: Written comments may be provided at any time.

ADDRESSES: Submit written requests for single copies of the CPG entitled "Evaluation and Processing of Post Donation Information Reports" (section 230.140) to the Director, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs (ORA), 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests, or you may fax your request to 301–827–0482. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Written comments should be identified with the docket number found in brackets in the heading of this document and should be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon O'Callaghan, Center For Biologics Evaluation and Research (CBER) (HFM–650), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–1191.

SUPPLEMENTARY INFORMATION:

I. Background

CBER issued a memorandum to blood establishments on December 10, 1993, that provided guidance concerning process control procedures that should be established and maintained for the receipt, evaluation, investigation, and followup of post donation information reports. Post donation information includes information provided by the donor or other source and received or obtained following a donation, or at a subsequent donation during the health history screening process that relates to the suitability of the donor or of the blood or blood component. This CPG provides regulatory guidance relative to the evaluation and processing of this information.

This Level 2 guidance document is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on the evaluation and processing of post donation reports. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

II. Request for Comments

Written comments concerning the guidance may be submitted to the Dockets Management Branch (address above) at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Written comments and requests for copies are to be identified with the docket number found in brackets in the heading of this document. A copy of the CPG and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of the CPG (section 230.140) is also available on the Internet by connecting to the ORA home page at "http://www.fda.gov/ora/compliance_ref/default.htm".

Dated: August 9, 1999.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 99–21255 Filed 8–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2405]

Draft "Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act." This draft guidance is intended to provide guidance to industry on the use of certain types of letters by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) as part of the review of marketing applications for certain drug and biological products.

DATES: Written comments may be submitted at any time, however, comments should be submitted by November 15, 1999, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self addressed adhesive label to assist the office in processing your request. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document. Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400; or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act." In a November 1997 letter to Congress regarding the reauthorization of the Prescription Drug User Fee Act (PDUFA) as part of the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), the Secretary of Health and Human Services (the Secretary) committed FDA to certain user fee performance goals and additional procedures related to the review of products in human drug applications as defined in section 735(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g(1)) (PDUFA products). As one of the additional procedures intended to help expedite the development of drugs and biologics, the Secretary specified that FDA intends to provide early agency thoughts on possible deficiencies to applicants in a letter as each discipline finishes its initial review of its portion of the pending application. The procedures and policies described in this draft guidance are intended to explain how the agency will issue and use information request letters and discipline review letters during the review of PDUFA products.

This draft guidance document represents the agency's current thinking on information request letters and discipline review letters under PDUFA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide

information and does not set forth requirements.

II. Comments

This draft document is being distributed for comment purposes only, and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Written comments may be submitted at any time, however, comments should be submitted by November 15, 1999, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document using the World Wide Web (WWW). For WWW access, connect to CDER at "http://www.fda.gov/cder/guidance/index.htm", or CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: August 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21254 Filed 8–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1999.

The National Advisory Committee on Rural Health will convene its thirty-third meeting at the time and place specified below:

Name: National Advisory Committee on Rural Health

Date and Time: September 13, 1999; 8:30 a.m.– 5:00 p.m.; September 14, 1999; 8:30 a.m.–5:00 p.m.; September 15, 1999; 8:30–11:30 a.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008, Phone: (202) 234–7000.

Purpose: The National Advisory Committee on Rural Health provides advice and recommendations to the Secretary with respect to the delivery, research, development, and administration of health care services in rural areas.

Agenda: The plenary session on Monday morning, September 13, at 8:30 a.m., will include Office of Rural Health Policy update, legislative updates, NRHA Policy Institute overview, and presentation on the rural public health infrastructure project. After lunch, the Committee will begin formulating recommendations and review committee process and organization. Tuesday morning, September 14, will be spent exploring future committee options, topics and issues for the Committee. After lunch, a presentation on the Medicare Reform and its Implication for Rural: A Review of the Premium Support and the Administration proposal will be followed by panelist and Committee discussion. Late afternoon the Committee will continue formulating recommendations.

The final plenary session will be convened on Wednesday, at 8:30 a.m. During this session the Committee will conclude discussions on recommendations, Committee structure and future activities. The meeting will adjourn at 11:30 a.m.

Anyone requiring information regarding the subject Committee should contact Wayne W. Myers, M.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Sandi Lyles or Lilly Smetana, Office of Rural Health Policy, (301) 443–0835.

Agenda items are subject to change as priorities dictate.

Dated: August 11, 1999.

James J. Corrigan,

Associate Administrator for Operations and Management.

[FR Doc. 99–21256 Filed 8–16–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; PA–98–052 "Mentored Patient-Oriented Research Career Development Award" also PA–98–053 "Midcareer Investigator Award in Patient-Oriented Research".

Date: September 28–29, 1999.

Time: September 28, 1999, 7 pm to 9 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Time: September 29, 1999, 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Diane M. Reid, MD, Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21219 Filed 8–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Individual National Research Service Award Applications (NRSA).

Date: August 20, 1999.
Time: 1 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21218 Filed 8–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 16, 1999.
Time: 1:30 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 18, 1999.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, 301–435–1249, jelsemac@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 23, 1999.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, 301–435–1251, bannerc@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 23, 1999.
Time: 2 p.m. 4:01 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1215, richard.marcus@nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 23, 1999.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 24, 1999.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Edmund Copeland, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1715.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21217 Filed 8–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3950–N–07]

Notice of Proposed Information Collection: Comment Request Application for Designation as a Single Family Foreclosure

AGENCY: Office of General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 18, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Patricia A. Wash, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 10245, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Assistant General Counsel, Single Family Mortgage Division, (202) 708–0080. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Albright.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 13, 1999.

Gail W. Laster,

General Counsel.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Notice of Application for Designation as a Single Family Foreclosure Commissioner (FR–3950).

Office: General Counsel.

OMB Approval Number:

Description of the Need for the Information and its Proposed Use: Under the Single Family Mortgage Foreclosure Act of 1994, HUD may exercise a nonjudicial Power of Sale of single family HUD-held mortgages and may appoint Foreclosure Commissioners to do this. HUD needs the Notice and resulting applications for compliance with the Act's requirements that commissioners be qualified. Most respondents will be attorneys, but anyone may apply.

Form Number: None.

Respondents: Business or Other For-Profit and Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applicants (1999)	30		1		.5		15
Applicants (Later Years)	30		1		.5		15

Total Estimated Burden Hours: 30.

Status: Extension of a currently approved collection.

Contact Persons and Telephone Numbers (these are not toll-free numbers) for copies of available documents: Bruce S. Albright, Assistant General Counsel, Single Family Mortgage Division, (202) 708–0080; Matthew C. Forman, Deputy Assistant General Counsel, Single Family Mortgage Division, (202) 708–0080; Wayne Eddins, Reports Management Officer, (202) 708–1305.

[FR Doc. 99–21239 Filed 8–16–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4410–FA–06]

Announcement of Funding Awards for the Economic Development Initiative Program, Fiscal Year 1999

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Economic Development Initiative (EDI) Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Donner Buchet, Director, Community and Economic Development Services, Office of Community Planning and Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–2290 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999.

SUPPLEMENTARY INFORMATION: The EDI program was enacted in 1994 and is intended to complement and enhance the Section 108 Loan Guarantee program. The purpose of EDI grant funds is to further minimize the potential loss of future CDBG allocations by: strengthening the economic feasibility of the projects financed with Section 108 funds; directly enhancing the security of the guaranteed loan; or through a combination of these or other risk mitigation techniques. EDI and Section 108 funds are intended to finance projects and activities that will provide near-term results and demonstrable economic benefits, such as job creation and increases in the local tax base.

The competition was announced in the SuperNOFA published in the **Federal Register** on February 26, 1999 (64 FR 9791). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

A total of $34,623,263 was awarded to 28 projects nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees

and amounts of the awards in Appendix A to this document.

Dated: August 11, 1999.

Joseph A. D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A

City of Huntington Park, CA
$825,000
City of Long Beach, CA
$1,000,000
County of Los Angeles, CA
$2,000,000
City of Monterey Park, CA
$340,000
City of Richmond, CA
$1,000,000
City of San Diego, CA
$1,485,000
City of Visalia, CA
$375,000
City of Hartford, CT
$2,000,000
City of New Haven, CT
$2,000,000
City of Fort Myers, FL
$300,000
County of Miami-Dade, FL
$2,000,000
City of Tallahassee, FL
$1,500,000
City of New Bedford, MA
$250,000
County of Prince Georges, MD
$1,000,000
City of Flint, MI
$700,000
City of Minneapolis, MN
$2,000,000
City of Gastonia, NC
$1,000,000
City of Reno, NV
$300,000
City of Buffalo, NY
$2,000,000
City of Mount Vernon, NY
$1,989,496
City of New York, NY
$1,998,000
City of New York, NY
$2,000,000
City of Yonkers, NY
$1,000,000
City of Lancaster, OH
$1,662,500
City of Columbia, SC
$2,000,000
City of Spartanburg, SC
$398,267
City of Sumter, SC
$500,000
City of Charleston, WV
$600,000

[FR Doc. 99–21238 Filed 8–16–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–09–0777–42]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of the BLM-administered public lands within the Northern and Eastern Mojave Planning Area on Friday, September 24, 1999, and meet in formal session on Saturday, September 25 from 8 a.m. to 5 p.m. The Saturday meeting will be held at the California State University Desert Studies Center, located at Soda Springs, eight miles southwest of Baker, California and 60 miles east of Barstow, California. To reach the Center, take the Zzyzx Road exit off Interstate 15 and drive south four miles to the Center.

The Council and interested members of the public will assemble for the field tour at the Desert Studies Center parking lot at 7:15 a.m. and depart at 7:30 a.m. Members of the public are welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch.

The Saturday meeting agenda will include discussions on the bioregional planning efforts, the recreation fee demonstration pilot program, the Army's proposed expansion of the National Training Center at Fort Irwin, and a proposed National Monument designation for the San Jacinto and Santa Rosa Mountains.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the beginning of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Carole Levitzky at (909) 697–5217 or Doran Sanchez at (909) 697–5220, BLM California Desert District Public Affairs.

Dated: August 11, 1999.

Tim Salt,

District Manager.

[FR Doc. 99–21267 Filed 8–16–99; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–99–1430–01: CA 39262]

Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Placer County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Recreation and Public Purposes (R&PP) Act Classification; Placer County, California.

SUMMARY: The following public lands in Placer County, California have been examined and found suitable for classification for conveyance to the Iowa Hill Community Club under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Iowa Hill Community Club proposes to use the following lands for a fire station.

Mount Diablo Meridian, California

T. 15 N., R. 10 E.,
sec. 33, lot 66.
Containing 2.50 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with the current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. An easement for streets, roads, and utilities in accordance with the transportation plan for Placer County.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land

laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Manager, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630.

Classification Comments

Interested parties may submit comments involving the suitability of the lands. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the applications and plan of developments, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Montgomery, BLM Folsom Field Office, (916) 985–4474.

D.K. Swickard,

Field Manager.

[FR Doc. 99–21326 Filed 8–16–99; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–99–1430–01: CA 40276]

Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Tuolumne County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—Recreation and Public Purposes (R&PP) Act Classification; Tuolumne County, California.

SUMMARY: The following public lands in Tuolumne County, California have been examined and found suitable for classification for lease or conveyance to the Mariposa, Amador, Calaveras, Tuolumne (MACT) Indian Health Board under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The MACT proposes to use the following lands for a health clinic and cultural center.

Mount Diablo Meridian, California

T. 1 N., R. 16 E.,
sec. 5, lot 16.
Containing 15.35 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with the current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. An easement for streets, roads, and utilities in accordance with the transportation plan for Tuolumne County.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Manager, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630.

Classification Comments

Interested parties may submit comments involving the suitability of the lands. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the applications and plan of developments, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Montgomery, BLM Folsom Field Office, (916) 985–4474.

D.K. Swickard,

Field Manager.

[FR Doc. 99–21327 Filed 8–16–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Missouri/Niobrara/Verdigre Creek National Recreational Rivers

AGENCY: National Park Service.

ACTION: Availability of final boundary map.

SUMMARY: In accordance with section 3(b) of the Wild and Scenic Rivers Act (62 Stat. 906 as amended; 16 U.S.C. 1274), notice is hereby given that the official, detailed boundary maps, drawing number 652–80001, dated July 12, 1999, for the Missouri/Niobrara/Verdigre Creek National Recreational Rivers are completed and available.

FOR FURTHER INFORMATION CONTACT: Superintendent Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, telephone 402–336–3970.

SUPPLEMENTARY INFORMATION: On May 24, 1991, the 25-mile segment of the Niobrara River from the western boundary of Knox County to its confluence with the Missouri River, including that segment of the Verdigre Creek from the north municipal boundary of Verdigre, Nebraska, to its confluence with the Niobrara, along with the 39-mile segment of the Missouri River from the headwaters of Lewis and Clark Lake to the Ft. Randall Dam, all were designated recreational rivers by Public Law 102–50, an amendment to the Wild and Scenic Rivers Act. In accordance with section 3(c) of the Wild and Scenic Rivers Act

notice is hereby given that the above said maps are now available for inspection at the following eight locations: The Department of the Interior, National Park Service, Land Resources Division, 1849 C Street NW, Room 2444, Washington, DC 20240; Midwest Regional Office, Land Resources Division, 1709 Jackson Street, Omaha, Nebraska 68102; Niobrara/Missouri National Scenic Riverways Headquarters, 114 North 6th Street, O'Neill, Nebraska 68763–0591; Gregory County Court House, County Clerk's Office, 221 East 8th Street, Burke, South Dakota; Charles Mix County Court House, County Clerk's Office, 400 Main Street East, Lake Andes, South Dakota; Bon Homme County Court House, County Auditor's Office, 300 West 18th Street, Tyndall, South Dakota; Boyd County Court House, County Clerk's Office, 117 Thayer Street, Butte, Nebraska; Knox County Court House, County Clerk's Office, Court House Square, Center, Nebraska. Maps are also available in five public libraries as follows: Lynch, Niobrara, and Verdigre, Nebraska; Gregory and Wagner, South Dakota. Please address any questions or requests to Superintendent at the address given above.

Dated: August 6, 1999.

Catherine Damon,

Acting Regional Director, Midwest Region.

[FR Doc. 99–21221 Filed 8–16–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 23, 1999 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–401 and 731–TA–852–855 (Preliminary) (Certain Structural Steel Beams from Germany, Japan, Korea, and Spain)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on August 23, 1999.)
5. Inv. No. 731–TA–282 (Review) (Petroleum Wax Candles from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on September 1, 1999.)
6. Outstanding action jackets:
   (1) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 12, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21435 Filed 8–13–99; 2:26 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; study of employment eligibility.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" until October 18, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Study of Employment Eligibility.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–21). Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The surveys will be used to collect data that will be analyzed to determine the effectiveness of the pilots to deter the hiring of aliens who are not legally authorized to work.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,327 respondents with 7,158 responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,323 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 11, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc 99–21335 Filed 8–16–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: application to preserve residence for naturalization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" until October 18, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–470. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 11, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21336 Filed 8–16–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: election form to participate in an employment eligibility confirmation pilot program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45262, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 16, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Election Form to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–876. SAVE Program, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Businesses or other for-profit. The information gathered from employers will assist the INS in allocating resources and priorities in

conducting the three pilot programs mandated by Pub. L. 104–208.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 11, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21337 Filed 8–16–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed collection; Comment Request

ACTION: Notice of information collection under review; new collection (reinstatement, with change, of a previously approved collection for which approval has expired); Equal Employment Opportunity Plan Certification and Short Form.

The Department of Justice, Office of Justice Programs, Office for Civil Rights, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 15, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 16, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Equal Employment Opportunity Plan Certification and Short Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State and Local governmental instrumentalities.

Other: For Profit Institutions.

28 CFR 301 *et seq.* authorizes the Department of Justice to collect information from State or local units of government, agencies of State and local governments, and private entities, institutions or organizations to which financial assistance is extended regarding their employment practices.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 1,500 respondents receiving a grant of $500,000 or more will complete a 1-hour Equal Employment Opportunity Plan Short Form and submit it to the Office of Justice Programs. In addition, an estimated 10,000 of respondents seeking grants ranging from $25,000 up to $500,000 will be required to complete the ¼ hour certification stating that they are maintaining a current Equal Employment Opportunity Plan on file and submit the certification to the Office of Justice Programs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the Equal Employment Opportunity Plan Short Form is 24,000 hours. The total hour burden to complete the EEOP certification is 40,000. The annual burden hours is 64,000.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: August 10, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–21241 Filed 8–16–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of information collection under review; reinstatement, with change, of a previously approved

collection for which approval has expired. Census of State and Federal Adult Correctional Facilities, Form CJ–43.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty 60 day" until: October 18, 1999. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Darrell K. Gilliard, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 810 7th Street, NW, Washington, DC 20530.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Census of State and Federal Adult Correctional Facilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms CJ–43, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, and District prison authorities. The Census of State and Federal Adult Correctional Facilities is conducted every five to six years, obtaining information on each type of facility designed to house adults sentenced to confinement by a State, District, or Federal court. These facilities include prisons, penitentiaries, and correctional institutions; boot camps; prison farms; reception, diagnostic, and classification centers; road camps; forestry and conservation camps; youthful offender facilities (except in California); vocational training facilities; prison hospitals; drug and alcohol treatment facilities; and State operated local detention facilities. Questions included in the Census will cover facility characteristics such as security level, use of space, capacity, planned changes, court orders or consent decrees, average daily population, internal units, staffing, assaults, mental and health issues, and programs. The Census will also include questions on inmate demographics, offense characteristics, deaths, and custody levels. The census also furnishes the sampling frame for the Survey of Inmates in State Correctional Facilities, the Survey of Inmates in Federal Correctional Facilities, and other facility-based sample surveys. The Omnibus Crime Control and Safe Street Act of 1968, as amended (42 U.S.C. 3732) authorizes the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice to collect this information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,750 respondents will complete a 2-hour census form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total number of burden hours to complete the Census of State and Federal Adult Correctional Facilities is 3,500 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, Washington Center, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: August 11, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–21250 Filed 8–16–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

Office of Research and Evaluation; Agency Information Collection Activities: Extension of a Previously Approved Collection for Which Approval Has Expired; Comment Requested

ACTION: Notice of information collection under review; Reinstatement, without change, of a previously approved collection for which approval has expired.

Crime Mapping Survey

The Department of Justice, National Institute of Justice, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by August 20, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Office of Research and Evaluation, National Institute of Justice, 810 7th Street, NW, Washington, DC 20531, or via facsimile (202) 616–0275, Attention: La Vigne.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Crime Mapping Survey.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: none. Office of Research and Evaluation, National Institutes of Justice, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be as or required to respond, as well as a brief abstract: Primary:* Law enforcement Agencies. *Other:* None. This national survey is designed to determine the extent to which police departments, specifically crime analysts, are using computerized crime mapping. Surveys will be mailed to randomly select sample of police departments. The questionnaire will determine the level of crime mapping within departments, both in terms of hardware and software resources, as well as the types of maps that are produced and how they are used. The information collection from this survey will be used to advise the activities of the Crime Mapping Research Center.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 2,798 respondents for an average of 33 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 652 burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 850, Washington Center, 1001 G Street NW, Washington, DC 20530.

Dated: August 11, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States, Department of Justice.

[FR Doc. 99–21240 Filed 8–16–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on September 21 and 22, 1999, in Room N 3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, D.C. The meeting is open to the public and will begin at 1:00 p.m. lasting until approximately 5:00 p.m. the first day, September 21. On September 22, the meeting will begin at 9:00 a.m. and last until approximately 4:00 p.m.

During its November 1998 meeting, NACOSH decided that one of its areas of activity over the next two years would be to study OSHA'S standards development process. The Committee plans to continue this study at its September meeting by studying the role of professional associations and consensus standards setting organizations in the standards development process. NACOSH has invited five consensus standards setting organizations and five professional associations related to occupational safety and health to participate in panel discussions on OASHA's standards development process. Members of the public are invited to submit written comments.

Other agenda items will include: an overview of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH), a discussion of NIOSH surveillance activities and a discussion of OSHA training, in addition to workgroup reports.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Theresa Berry (phone: 202–693–1999; FAX: 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW, Washington, DC, 20210 (phone: 202–693–2400; FAX: 202–693–1641; e-mail joanne,goodell@osha.gov; or at www.osha.gov).

Signed at Washington, DC, this 11th day of August, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–21291 Filed 8–16–99; 8:45 am]

BILLING CODE 4510–26–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Intent To Prepare an Environmental Impact Statement for the Rio Grande Canalization Project, Sierra and Doña Ana Counties, New Mexico and El Paso County, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice advises the public that pursuant to section 102(2) (c) of the National Environmental Policy Act of 1969, as amended, the United States Section, International Boundary and

Water Commission (USIBWC) proposes to gather information necessary to analyze and evaluate the impacts of a River Management Plan by the USIBWC on the existing Rio Grande Canalization Project in Sierra and Doña Ana counties, New Mexico and El Paso County, Texas and prepare an EIS to document those effects. This notice is being provided as required by the Council on Environmental Quality Regulations (40 CFR 1501.7) and the USIBWC's Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Public meetings will be held to obtain community input to ensure all concerns are identified and addressed in the EIS.

DATES: The USIBWC will conduct two public scoping meetings from 6:00 to 8:00 p.m. MST on Tuesday, October 5, 1999 at the Las Cruces Hilton, 705 South Telshor Boulevard, Las Cruces, New Mexico, and on Wednesday, October 6, 1999 at the EL Paso Airport Hilton, 2027 Airways Boulevard, El Paso, Texas. Full public participation by interested federal, state, and local agencies as well as other interested organizations and the general public is encouraged during the scoping process which will end 60 days from the date of this notice. Public comments on the scope of the EIS, reasonable alternatives that should be considered, anticipated environmental problems, and actions that might be taken to address them are requested.

FOR FURTHER INFORMATION CONTACT: Comments will be accepted for 60 days following the date of this notice by Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, EL Paso, Texas 79902. Telephone: 915/832–4741, Facsimile: 915/832–4167. E-mail: dougechlin@ibwc.state.gov.

SUPPLEMENTARY INFORMATION: .

1. Proposed Action

The Rio Grande Canalization Project (Canalization Project) extends for about 106 miles along the Rio Grande from Percha Diversion Dam, located downstream from Caballo Dam in Sierra County, New Mexico, to the vicinity of American Diversion Dam in El Paso County, Texas. The Canalization Project was constructed between 1938 and 1943 in compliance with the convention between the United States and Mexico concluded May 21, 1906, to provide for the equitable division of the waters of the Rio Grande for use in the two countries. The project included acquisition of right of way for the river channel and adjoining floodways and improvement of the alignment and efficiency of the river channel to convey deliveries to Mexico, as well as conveyance of deliveries to the United States Bureau of Reclamation Rio Grande Project in the El Paso valley of Texas. The Canalization Project also controls floods in the river reach which extends through the Rincon and Mesilla valleys of New Mexico. Proposed construction activities that will be studied in this EIS include but may not be limited to raising and strengthening existing levees, channel improvements such as widening or armoring with riprap, and installation of grade control structures. In addition, the EIS will study the environmental effects of a long-range maintenance plan that will be developed.

2. Alternatives

The USIBWC as lead agency proposes to collect information necessary for the preparation of an EIS; to analyze flood protection measures and alternatives to current management, including watershed-oriented and non-structural alternatives and collaborative measures with other agencies and landowners; to determine to what extent project management can support restoration of native riparian and aquatic habitats, as well as the restoration of natural fluvial processes such as channel meanders and overbank flooding. The EIS will consider a range of alternatives, including the no action alternative, based on issues and concerns associated with the project.

The EIS will identify, describe, and evaluate the existing environmental, cultural, sociological and economical, and recreational resources; explain the flood protection project; and evaluate the impacts associated with the alternatives under consideration. Significant issues which have been identified to be addressed in the EIS include but are not limited to impacts to water resources, water quality, cultural and biological resources, threatened and endangered species, and recreation.

Coordination with the United States Fish and Wildlife Service will ensure compliance with the Fish and Wildlife Coordination Act and section 7 of the Endangered Species Act of 1973, as amended. Cultural resources reconnaissance for the project area will be coordinated with both the New Mexico State Historic Preservation Officer and the Texas State Historic Preservation Officer. Other federal and state agencies, as required, will also be consulted to ensure compliance with federal and state laws and regulations.

The USIBWC has invited several agencies including the United States Bureau of Reclamation and United States Fish and Wildlife Service to participate as cooperating agencies pursuant to 40 CFR 1501.6, to the extent possible. Other agencies may be invited to become cooperators as they are identified during the scoping process.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, CEQ Regulations (40 CFR Parts 1500—1508), other appropriate federal regulations, and the USIBWC procedures for compliance with those regulations. Copies of the EIS will be transmitted to federal and state agencies and other interested parties for comments and will be filed with the Environmental Protection Agency in accordance with 40 CFR Parts 1500–1508 and USIBWC procedures.

The USIBWC anticipates the Draft EIS will be made available to the public by March 2001.

Dated: August 10, 1999.

William A. Wilcox, Jr.,

Legal Advisor.

[FR Doc. 99–21390 Filed 8–16–99; 8:45 am]

BILLING CODE 4710–09–M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 13, 1999. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755,

Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctica Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant:* Steven D. Emslie, Department of Biological Sciences, University of North Carolina, Wilmington, NC 28403

[Permit Application No. 2000–001]

Activity for Which Permit Is Requested

Take, Enter Antarctic Specially Protected Areas and Import Into the U.S.A.

The applicant proposes to conduct surveys and excavations of modern and abandoned penguin colonies by surveying ice-free areas to locate evidence of a breeding colony (pebble and/or bone sconcentrations, and rich vegetation). The sites will be sampled by placing a test pit, no more than 1x1 meter in size, in the colony and excavating in 5–10 cm level until bedrock or non-ornithogenic sediments are encountered. To minimize impacts, test pits will be placed in areas with little or no vegetation when possible. Upon completion of the excavation, test pits will be refilled and any vegetation disturbed on the surface will be replaced. Collected sediments will be taken to the laboratory for processing. Sediments will be washed through fine-mesh screens; all organic remains will be sorted from the sediments and preserved for identification and analysis.

The applicant proposes to enter the following Antarctic Specially Protected Areas to conduct surveys: ASPA 106—Cape Hallett, Victoria Land; ASPA 113—Litchfield Island, Arthur Harbor; ASPA 121—Cape Royds, Ross Island; ASPA 124—Cape Crozier, Ross Island; ASPA 125—Fildes Peninsula, King George Island; ASPA 128—Western shore of Admiralty Bay, King George Island; ASPA 129—Rothera Point, Adelaide Island; ASPA 132—Potter Peninsula, King George Island; ASPA 139—Biscoe Point, Anvers Island; and ASPA 151—Lions Rump, King George Island.

The applicant also wishes to salvage and import into the U.S. whole remains of native Antarctic birds, or partial specimens, that are found on beaches or at the colonies. The specimens will be shipped to the University of North Carolina, Wilmington, for identification and analysis. All specimens will remain at the University or other appropriate universities or museums for permanent storage.

Results of the research will provide information on the former distribution of penguins in Antarctica. These data will be compared to the paleoclimatic record to investigate patterns in population fluctuations of penguins in relation to climate change in the past. This information, in addition to data on modern population changes with global warming, will test hypotheses on how penguins respond to climate change and will help develop predictive model for future responses by these species to continued global warming.

Location

ASPA 106—Cape Hallett, Victoria Land;
ASPA 113—Litchfield Island, Arthur Harbor;
ASPA 121—Cape Royds, Ross Island
ASPA 124—Cape Crozier, Ross Island;
ASPA 125—Fildes Peninsula, King George Island;
ASPA 128—Western shore of Admiralty Bay, King George Island;
ASPA 129—Rothera Point, Adelaide Island;
ASPA 132—Potter Peninsula, King George Island;
ASPA 139—Biscoe Point, Anvers Island; and
ASPA 151—Lions Rump, King George Island.

Dates

January 1, 2000 to December 31, 2005

2. *Applicant:* Donald B. Siniff, Department of Ecology, Evolution and Behavior, 100 Ecology Building, University of Minnesota, St. Paul, Minnesota 55108

[Permit Application No. 2000–003]

Activity for Which Permit Is Requested

Taking, Export from the U.S. and Import into the U.S.

The applicant proposes to tag and collect epidermal and adipose tissue (0.5 cm by 0.5 cm) from the rear flipper of several seal species. Modern molecular genetic methods will be used to analyze the DNA extracted from the tissue samples. The project is part of a large international program studying Antarctic Pack Ice Seals (APIS). This particular project is to address the genetic patterns among the four species of Antarctic pack ice seals (Weddell, Leopard, Ross and Crabeater seals). The project is investigating the patterns of heterozygosity among the four species and relating these patterns to their overall life history characteristics. The work will contribute to the understanding of the evolutionary history of pack ice species with respect to the origin of ecological separation. Samples collected by other investigators will contribute to a continent-wide assessment of the degree of genetic variation with populations of Antarctic phocids.

In addition, the applicant wishes to salvage any seal skulls that are found. These samples will be cleaned and analyzed for age and placed on permanent loan to the National Marine Mammal Lab or the University of Minnesota Bell Museum of Natural History and will be used for educational purposes.

Location

Pack ice areas in the Ross Sea and Bellingshausen Sea

Dates

December 12, 1999 to February 15, 2000

3. *Applicant:* Paul J. Ponganis, CMBB/ Scripps Institute of Oceanography, University of California, San Diego, La Jolla, CA 92093–0204

[Permit Application No. 2000–004]

Activity for Which Permit Is Requested

Taking and Import Into the U.S.

The applicant proposes to capture up to 60 Emperor adults and equip them with various depth recorders, physiological recorders, or a video camera unit. These instruments will measure temperature change and mechanisms of heat loss during diving. The video camera research will document the frequency and techniques of prey capture, and relate feeding events to temperature change.

The applicant also proposes to capture up to 40 Emperor chicks to biopsy muscle samples. This will allow examination of myoglobin mRNA content in relation to myoglobin concentration in both adults and developing chicks. The chicks will be biopsied over several months to sample different age groups. In addition, a

group of approximately 15 Emperor chicks will be transported to McMurdo and maintained there for about a month in order to obtain samples in older (post-fledge) chicks. All birds will be released back into the wild at the end of the study.

The applicant also wishes to salvage up to 10 Emperor carcasses per year and transport them back to the U.S. for anatomical studies at Scripps Institute of Oceanography.

Location

McMurdo Sound sea ice, Cape Washington and McMurdo Station

Dates

September 1, 1999 to February 28, 2002

4. *Applicant:* Michael A. Castellini, Institute of Marine Science, University of Alaska, Fairbanks, Alaska 99775

[Permit Application No. 2000–005]

Activity for which Permit is Requested

Taking and Import into the United States

The applicant is a participant in a multi-institutional program to study Antarctic Pack Ice Seals (APIS). As a component of this project, the applicant proposes to capture up to 200 Weddell, Crabeater and Leopard seals each, and up to 10 each of Ross, Fur and Elephant seals. Blood and biopsy samples of blubber will be collected. The blood and biopsy samples, along with a suite of morphometric analyses, will be collected from all seals to assess a suite of bio-indicators of health. Data will be taken along with other program components which will provide medical examinations of each seal, acoustic and behavioral studies, oceanographic, ice and weather observation and capture of prey items. The combined results will provide the most detailed model of the link between ice seals and their environment.

Location

Sea Ice areas of the Ross and Amunden Seas

Dates

December 15, 1999 to April 1, 2001

5. *Applicant:* Wayne Z. Trivelpiece, P.O. Box 271, Antarctic Ecosytsem Research, Southwest Fisheries Science Center, La Jolla, CA 92038

[Permit Application No. 2000–006]

Activity for Which Permit is Requested

Take and Enter Antarctic Specially Protected Area.

The applicant is continuing a study of the behavioral ecology and population biology of the Adelie, Gentoo, and Chinstrap penguins and the interactions among these species and their principal avian pedators: skuas, gulls, sheathbills, and giant petrels. The applicant proposes to band 1000 Adelie and Gentoo penguin chicks, plus adults of all three penguin species, as needed (not greater than 150 per species), to fulfill research goals. In addition, bands will be applied to adults and chicks of the avian predator species as necessary. The applicant will continue a study of the penguins' foraging habits which involves the application of radio-transmitters (Txs), satellite tags (PTTs), and time-depth recorders (TDRs) to a maximum of 50 adult penguins per species. The study of foraging habits also involves the stomach pumping of a maximumn of 40 adult penguins per species. Finally the applicant will collect one (1) milliliter blood samples from a maximum of 20 breeding adults of each penguins species for use in DNA analysis.

Location

Admiralty Bay (ASPA #128 King George Island, South Shetland Islands

Dates

October 1, 1999 to April 2000

6. *Applicant:* David Ainley, H.T. Harvey & Associates, P.O. Box 1180, Alviso, CA 95002

[Permit Application No. 2000–007]

Activity for Which Permit Is Requested

Taking and Enter Antarctic Specially Protected Areas

The applicant is conducting research to attempt to explain why penguin populations have been increasing in the Ross Sea, by intensive studies at colonies on Ross Island. This work will be incorporated into the long-term study of populations dynamics mentioned in the Royds management plan. The applicant proposes to enter Cape Crozier (ASP #124) and Cape Bird for purposes of banding up to 1,000 chicks at each site. Furthermore the applicant proposes to band up to 400 chicks each at Cape Royds (ASPA # 121) and Beaufort Island (ASPA *105). Approximately 150 adults will be banded at these four sites. The banding of chicks at Beaufort Island is necessary to test the theory that the Adelie Penguin Colony at Beaufort could be a "source" colony for emigrants that eventually breed at other Ross Island colonies. It is believed Beaufort is a source colony because there is very little availability of additional nesting sites. Banding a sample of chicks and looking for them at nearby colonies in subsequent years would test this theory.

Approximately, 15 adult Adelies per year at Royds, Bird and Crozier, and 7 at Beaufort Island will be fitted with radio transmitters to be worn for 2–3 weeks during January and then removed. The radio transmitters will provide information on the penguins foraging area offshore. Additionally, 25 adult Adelies at Cape Bird and Cape Crozier and 15 adults at Cape Royds will be fitted with time-depth-recorders (TDRs). The TDR's will record swimming depth, frequency of dives and number of dives per foraging trip. PIT tags (Passively Interrogated Transponder) will also be fitted to 10–20 adults each year at Capes Bird, Royds and Crozier. The goal is to have 70 tagged birds at each colony each year; thus, new birds given the tags each year replace only those that did not reappear one year to the next.

To obtain an index on chick condition, between 30–50 chicks will be measured and weighed weekly for a month at Capes Royds, Bird and Crozier. Only 30 chicks will be weighed and measured at the Beaufort Island colony on one of two trips to the site during the season. The applicant proposes to conduct studies of the foraging energetic of Adelie Penguins on Ross Island. This involves the capturing of up to 25 birds each at Cape Crozier and Cape Bird and possibly Cape Royds. The birds will be weighed, a 3 cc blood sample drawn and then injected with 0.6 cc's of double-labeled water. The birds will be held for 3 hours to allow the injected water to equilibrate, then a second blood sample will be drawn. The doubly labeled water studies will provide information on the energetics of foraging, and specifically, if longer foraging trips are more energy demanding than shorter ones for penguins at Cape Bird or Cape Royds.

Samples collected in the field will be returned to the U.S. for complete analysis.

Location

Cape Crozier (ASPA #124), Cape Royds (ASPA #121) and Cape Bird, Ross Island, and Beaufort Island (ASPA 105), Ross Sea.

Dates

December 1, 1999 to February 15, 2002

7. *Applicant:* W. Berry Lyons, Department of Geology, University of Alabama, Box 870338, Tuscaloosa, AL 35487–0338

[Permit Application No. 2000–008]

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area

The applicant proposes to enter Antarctic Specially Protected Area (ASPA #131), Canada Glacier, Lake Fryxell, Taylor Valley, for purposes of conducting studies under the Long-Term Ecological Research (LTER) Program. The applicant proposes to enter the site to conduct maintenance on the previously installed continuously recording stream gage station that provides one of the longest records of discharge in the Taylor Valley. In addition, the applicant proposes to collect water quality samples of the meltwater coming off the Canada Glacier and along the length of the stream to study in-stream biogeochemical processes. Samples of the microbial mats may also be collected once per summer field season.

The applicant also proposes to enter the Antarctic Specially Protected Area to study the site's unique soil content. The Canada stream has occasional algal blooms, and the system is of interest because of its relatively high primary production unlike the typical dry valley soils. The LTER team plans to collect soil samples on a transect starting in the stream channel and working eastward perpendicular to the stream channel.

The Canada Glacier is the most intensively studied glacier in the LTER study program. One particularly import aspect of the glacier mass balance study is the calving and melting of ice from the glacier walls. Therefore, the applicant requests access to the glacier wall twice during each field season to take measurements.

Location

Antarctic Specially Protected Area #131: Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land

Dates

October 1, 1999 to February 2005

8. *Applicant:* John E. Carlstrom, Center for Astrophysical Research in Antarctica (CARA), Department of Astronomy and Astrophysics, University of Chicago, 5640 South Ellis Avenue, Chicago, IL 60637

[Permit Application No. 2000–010]

Activity for Which Permit Is Requested

Introduce a non-indigenous species into Antarctica

The applicant plans to ship 200 pounds of active dry baking yeast (*Saccharomyces cerevisiae*) to Amundsen-Scott South Pole Station as part of an educational outreach project in conjunction with NASA and their new thrust in astrobiology and extremophiles. The commercial packaging consists of strips of 3-quarter ounce packages. The yeast will remain in the commercial packaging, in plastic bags, in a container while in Antarctica. The containerized yeast will be exposed to the extreme climate of the South Pole during the summer and winter months. Middle and elementary school students will be able to follow the deployment of the yeast, and the weather conditions at the Pole via a web site. The web site will have many facets such as a question and answer section, a travel log of the deployment, weather conditions, digital images of the trip and the yeast container as the season progresses. The goal of the project is to motivate students to try hands-on experiments to learn more about Antarctica and the scientific research conducted there. After a year, the yeast container will be shipped back to the States where the yeast packages will be distributed nationally to schoolchildren. The students will conduct experiments to look for changes in the yeast's metabolic activity and volume of carbon dioxide production, under given conditions, after being exposed to months of extreme cold temperatures.

Location

Amundsen-Scott South Pole Station

Dates

October 1, 1999 to January 1, 2002

9. *Applicant:* Brent S. Stewart, Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA 92109

[Permit Application: 2000–011]

Activity for Which Permit is Requested

Taking and Import Into the United States

The applicant is a participant in a multidisciplinary research program to study the foraging ecology, reproduction, demography, disease and pathology, and population and immunogenetics of Antarctic seals in the circumpolar pack ice zone. The applicant proposes to capture, collect samples, and release up to 800 Crabeater seals, 400 Leopard and Weddell seals, and 75 Ross, Antarctic Fur and Elephant seals. Physical exams will be performed to evaluate the musculoskeletal system, cardiovascular system, integument, eyes, ears, nares and oral cavity. Blood will be collected from the extradural vein or interdigital vein of phocids and from the caudal gluteal vein of otariids. Approximately 40–60 ml will be collected from each seal for evaluation of petroleum hydrocarbon and pollutant exposure, hematology, serum biochemistry, disease exposure, genetics, nutritional status, and reproductive endocinology. Ocular, nasal, vaginal, and rectal microbiological samples will be collected. Ectoparasites will be collected when encountered. Urine will be collected opportunistically. Skin scrapings and cultures will be made when lesions are observed and to provide normal control samples. Hair, skin and blubber samples will also be collected. All collections of samples will be coordinated directly with other components of the multidisciplinary research program to prevent duplicate takings and to maximize use of collected materials.

The applicant plans to import collected samples into the United States for further scientific study. In addition, the applicant wishes to export samples from the U.S. and share them with investigators collaborating in other countries.

Location

Circumpolar pack ice and sites ashore

Dates

September 1, 1999 to August 30, 2004

10. *Applicant:* Ron Naveen, Oceanities, Inc., P.O. Box 15259, Chevy Chase, MD 20825

[Permit Application: 2000–012]

Activity for Which Permit Is Requested

Taking; and Enter Antarctic Specially Protected Area

The applicant plans to continue data collection under the Antarctic Site Inventory Project. Various sites will be regularly surveyed and censused in the Antarctic Peninsula/South Shetland Islands region, with a concentration of visits expected at heavily visited tourist sites. The applicant wishes to enter Antarctic Specially Protected Area #128, Western Shore of Admiralty Bay, to coordinate the Site Inventory Project with the researchers working within the site.

Location

Antarctic Peninsula and South Shetland Island sites, and ASPA #128, Western Shore of Admiralty Bay, King George Island

Dates

September 1, 1999 to August 31, 2000

11. *Applicant:* Norbert Wu, Norbert Wu Productions, 1065 Sinex Avenue, Pacific Grove, CA 93950

[Permit Application: 2000–013]

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area

The applicant is a participant in the U.S. Antarctic Program's Artists and Writers Program and is continuing work on "A Photographic Survey of Antarctic Marine Species" and producing a film entitled "Under Antarctic Ice." The applicant proposes visit and camp at Cape Crozier during two different time periods to ensure filming success.

The applicant proposes to conduct general photography and filming of Adelie penguins, Emperor penguins, Leopard seals, Orcas, and Minke whales. Some of the work will involve underwater photography. Visit to the site will be selected to target Adelie penguin events (nesting, egg tending, and hatching), such as population peak in the rookery. The applicant plans to skirt the edges of the Adelie and Emperor rookeries and will not enter into the midst of the nesting penguins.

The applicant plans to camp near the East Colony outside the Specially Protected Area for easier access to the water and ease the encumbrance of hauling heavy photography and dive equipment.

Location

Antarctic Specially Protected Area #124, Cape Crozier, Ross Island

Dates

November 1, 1999 to February 28, 2000

12. *Applicant:* Gary miller, Biology Department, University of New Mexico, Albuquerque, NM 87131–0001

[Permit Application: 2000–014]

Activity for Which Permit Is Requested

Taking and Import into the United States

The applicant plans to continue his analysis of the phylogenetic relationships and population genetics of 2 major genera of penguins. He will collect blood and tissues samples from Magellanic (*S. magellanicus*), Adelie (*P. adeliae*), Chinstrap (*P. antarctica*), Gentoo (*P. papua*), Macaroni (*Eudyptes chrysalophus*), and Emperor (*Aptenodytes* forsteri) penguins throughout their distribution. The Macaroni and Emperor samples are to be used as out-groups to help elucidate the relationships of the other species. Using a combination of Cytochrome b and microsatellite markers, he will investigate their genetic variation on a variety of geographic scales.

The applicant will travel onboard tour ships as a lecturer and will repeatedly visit many sites during the next two Antarctic summer season. He plans to collect 1.0–1.5 ml of whole blood from live penguins and collect tissue samples from penguin carcasses. No more than 15 samples will be collected from any given site. Blood samples will be stored in a lysis buffer, and tissue samples will be homogenized into a buffer solution to stabilize the DNA. Samples will be returned to either the University of Western Australia or to the University of New Mexico for processing.

In addition, the applicant will work in collaboration with a research team from the University of Western Australia who will investigate the diseases of penguins and skuas around Australia's Davis Station. Blood samples and swabs from the throat and cloaca of each bird will be collected. Blood samples will be spun down to separate the plasma and then preserved for later laboratory work. The Australian research team will secure all necessary permits for this project.

Location

Antarctic Peninsula and associated islands, South Shetland Islands, South Orkney Islands, East Antarctica and the Ross Sea region

Dates

October 1, 1999 to April 1, 2001

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 99–21204 Filed 8–16–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Inc., et al., (Three Mile Island Nuclear Station, Unit 1); Confirmatory Order Modifying License, Effective Immediately

I

GPU Nuclear Inc. (GPUN or the Licensee) is the holder of Facility Operating License No. DRP–50, which authorizes operation of Three Mile Island Nuclear Station, Unit 1 located in Dauphin County, Pennsylvania.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees using Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the time period 1992–1994, the NRC staff issued Generic Letter (GL) 92–08, "Thermo-Lag 330–1 Fire Barriers," and subsequent requests for additional information that asked licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed corrective plans and schedules from all licensees. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates would be delayed between 6 months and 3 years. The NRC staff has met with licensees of plants that have scheduled completion beyond 1997 to discuss the progress of the licensees' corrective actions and the extent of licensee management attention regarding completion of Thermo-Lag corrective actions. In addition, the NRC staff discussed with licensees the possibility of accelerating their completion schedules.

At the meeting with GPUN, NRC staff reviewed the schedule of Thermo-Lag corrective actions described in the eight GPUN submittals to the NRC dated February 10, and December 5, 1994; July 7, 1995; August 16, November 5, and December 31, 1996; and August 19, and November 23, 1997, to complete implementation of Thermo-Lag 330–1 fire barriers corrective actions by December 31, 1999, except for those corrective actions that were the subject of a pending exemption request dated December 31, 1996, and supplemented by three letters dated July 31, September 8, and December 30, 1997. On the basis of the information submitted by GPUN and presented during the meeting, the NRC staff concluded that the GPUN schedule was reasonable and issued a Confirmatory Order Modifying License on May 22, 1998, with regard to that schedule.

Subsequently, the NRC staff denied portions of the Licensee's exemption request of December 31, 1996, and the Licensee has committed in its letter of June 2, 1999, to complete additional Thermo-Lag corrective actions in areas which were the subject of those parts of the exemption request that was denied by June 30, 2000. The staff has concluded that this schedule is reasonable. This conclusion is based on (1) The amount of installed Thermo-Lag, (2) the complexity of the plant-specific fire barrier configurations and issues, (3) the need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power, and (4)

integration with other significant but unrelated issues that GPUN is addressing at its plant. In order to remove compensatory measures such as fire watches, it has been determined that resolution of all Thermo-Lag corrective actions by GPUN must be completed by June 30, 2000. By letter dated June 21, 1999, the NRC staff notified GPUN of its plan to incorporate GPUN's schedule commitment with regard to issues which were the subject of the exemption request into a requirement by issuance of an order and requested consent from the Licensee. By letter dated July 1, 1999, the Licensee consented to issuance of a Confirmatory Order.

III

The Licensee's commitment as stated in its letter of July 1, 1999, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule delay and to assure public health and safety, the NRC staff has determined that the Licensee's commitment in its July 1, 1999, letter be confirmed by this Order. The Licensee has agreed to this action. On this basis, and on the basis of the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered,* effective immediately, that:

GPU Nuclear, Inc., et al. shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at Three Mile Island Nuclear Station, Unit 1, described in the GPU Nuclear, Inc., submittal to the NRC dated June 2, 1999, by June 30, 2000.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, US Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. Any request for a hearing must be submitted to the Secretary, US Nuclear Regulatory Commission, Attention: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555–0001. Copies of the hearing request must also be sent to the Director, Office of Nuclear Reactor Regulation, US Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, US Nuclear Regulatory Commission, 475 Allendale Road., King of Prussia, PA 19406–1415, and to the Licensee, Mr. James W. Langenbach, Vice President and Director—TMI–1, GPU Nuclear, Inc., P.O. Box 480, Middletown, PA 17057. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and must address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 11th day of August 1999.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21307 Filed 8–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Oyster Creek Nuclear Generating Station; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16 issued to GPU Nuclear, Inc. and Jersey Central Power & Light Company (the licensee) for operation of the Oyster Creek Nuclear Generating Station (OCNGS) located in Ocean County, New Jersey.

The proposed amendment would modify the OCNGS Technical Specifications to reflect installation of additional spent fuel pool storage racks. The additional new racks will provide 390 additional spent fuel assembly storage locations.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The following previously analyzed accident scenarios have been considered as part of the analyses required to support the installation of the high density spent fuel storage racks:

(a) Spent Fuel Assembly Drop—The criticality acceptance criteria, K_{eff} [less than or equal to] 0.95, is maintained for postulated abnormal occurrences such as a fuel assembly misloading or assembly drop. The radiological consequences of a fuel handling

accident in the spent fuel pool remain well within the guidelines of 10 CFR 100 and Standard Review Plan 15.7.4.

(b) Loss of Spent Fuel Pool Cooling System Flow—The spent fuel pool cooling system will continue to provide acceptable cooling of the stored assemblies. Approximately 5 hours is available before reaching the Technical Specification limit of 125 °F and approximately 45 hours is available before reaching the analyzed peak bulk pool temperature. Therefore, sufficient time is available to respond to the spent fuel pool water temperature control room alarm (120 °F) and to provide an alternate means of cooling in the event of a failure in the cooling system. Therefore, the proposed change has no affect on this accident scenario.

(c) Seismic Event—The new racks are designed and fabricated to remain functional during and after a Safe Shutdown Earthquake under all loading conditions. Analysis has demonstrated that no rack-to-wall impacts occur. Analyzed potential rack-to-rack impacts demonstrates the stored fuel configuration remains unaffected. Spent fuel pool structural analysis demonstrates that for the bonding factored load combinations, including the weight of a shipping cask (100 tons), structural integrity is maintained when the pool is assumed to be fully loaded with 3,035 spent fuel assemblies. Therefore, the proposed change has no affect on this accident scenario.

(d) Spent Fuel Cask Drop—Structural analysis of the spent fuel pool demonstrates that the pool structure remains adequate for the loadings associated with normal operation and the condition resulting from the postulated cask drop accident.

Accordingly, the proposed modification does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. Administrative controls during rack installation would preclude the movement of a new rack directly over any fuel. The new racks will be lifted using the 100-ton overhead crane which has a sufficient safety factor such that potential single failure mechanisms need not be considered. The lifting device designed for handling and installation of the new racks is in compliance with NUREG–0612. A postulated rack drop analysis demonstrates that the pool structure would not sustain significant damage from the postulated rack drop. The analysis shows that the rack pedestal would pierce the pool liner with localized concrete cracking. Any leakage resulting from such localized damage would be detectable and capability is provided to make up the loss of inventory to the pool. No unproven technology is involved either in the installation process or in the analytical techniques utilized to evaluate the planned fuel storage expansion. The basic technology for fuel pool expansion has been developed and demonstrated in over 80 applications for fuel pool capacity increases previously approved by NRC. The proposed modification has been evaluated in accordance with the guidance of NRC Position Paper, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," April 14, 1978, and Addendum dated January 18, 1979. Therefore, this change has no affect on the possibility of creating a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. Analysis has demonstrated that the established criticality acceptance criteria, K_{eff} [less than or equal to] 0.95 including uncertainties, is maintained with the racks fully loaded with fuel of the highest anticipated reactivity. Thermal-hydraulic analyses demonstrate that the pool bulk temperatures are maintained below 125 °F for the normal refueling offload and the full-core offload discharge scenarios using the augmented fuel pool heat exchanger, and that the maximum local water temperature along the hottest fuel assembly is below the nucleate boiling condition value. The maximum bulk pool temperatures for each of the analyzed scenarios confirms that adequate time is available to provide an alternative means of cooling in the event of a failure in the cooling system. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural analyses have demonstrated that the proposed change maintains spent fuel pool structural integrity and margins of safety. The new racks are designed and fabricated to remain functional during and after a Safe Shutdown Earthquake. Therefore, this change has no affect on the margins of safety related to nuclear criticality, thermal and structural integrity, and material compatibility.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received maybe examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW. , Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 16, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated June 18, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 11th day of August 1999.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Sr. Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21308 Filed 8–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee meeting on Planning and Procedures scheduled to start at 1:00 p.m. on *Tuesday, August 31, 1999, has been changed to start at 9:00 a.m.* Notice of this meeting was published in the **Federal Register** on Tuesday, August 10, 1999 (64 FR 43410). All other items pertaining to this meeting remain the same as previously published.

For further information contact:, Dr. John T. Larkins, Cognizant ACRS staff person (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: August 11, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–21305 Filed 8–16–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Postage Evidencing Product Submission Procedures

AGENCY: Postal Service.

ACTION: Proposed Procedure.

SUMMARY: The **Federal Register**, dated September 2, 1998, provided proposed product submission procedures for all postage evidencing products, including those in the Information Based Indicia Program (IBIP). In response to the solicitation of public comments, only one submission was received. The comments in this submission were considered in making the changes incorporated in the current version. The current proposed procedures revise, clarify, and expand the earlier proposed procedures to include a new section on approval of product changes and a new section addressing intellectual property issues. The proposed procedures now indicate where steps in the product submission process can be concurrent rather than sequential and discuss the Postal Service response. Providers are asked to update documentation to reflect the "as approved" product prior to final approval. The current proposed procedures address all postage evidencing products, including, but not limited to, traditional meter products and IBI products. However, changes clarify which requirements apply only to IBIP products and not to traditional meter products. A requirement was added for a document describing how the Address Matching System (AMS) CD-ROM will be integrated in an IBIP Open System product. A requirement was added to the comprehensive test plan to include a test of the physical security of the Provider's site and firewall where applicable, and of the processes for administrative access and configuration control. Requirements were also added with respect to the responsibilities of the laboratories testing products with cryptographic modules.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Metering Technology Management, Room 8430, 475 L'Enfant Plaza SW, Washington DC 20260–2444. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268–5311.

SUPPLEMENTARY INFORMATION: With the expansion of postage application methods and technologies, it is essential that product submission procedures for all postage evidencing products be clearly stated and defined. The Postal Service evaluation process can be effective and efficient if these procedures are followed explicitly by all suppliers. In this way, secure and convenient technology will be made available to the mailing public with minimal delay and with the complete assurance that all Postal Service technical, quality, and security requirements have been met. These procedures apply to all proposed postage evidencing products and systems, whether the Provider is new or is currently authorized by the Postal Service.

39, Code of Federal Regulations (CFR) Section 501.9, Security Testing, currently states, "the Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any meter submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution." For products meeting the performance criteria for postage evidencing under the Information Based Indicia Program (IBIP), including PC Postage products, the equivalent section is 39 CFR Section 502.10, Security Testing, published as a proposed rule in the **Federal Register**, September 2, 1998. When the Postal Service elects to retest a previously approved product, the Provider will be required to resubmit the product for evaluation according to part or all of the proposed procedures. Full or partial compliance with the procedures will be determined by the Postal Service prior to resubmission by the Provider.

The proposed submission procedures will be referenced in 39 CFR Parts 501 and 502 but will be published as a separate document as Metering Technology Management, Postage Evidencing Product Submission Procedures.

1. Product Submission Procedures

In submitting any postage evidencing product for Postal Service evaluation, the proposed Provider must provide detailed documentation and comply with requirements in the following areas:

- Letter of Intent
- Nondisclosure Agreements
- Concept of Operations (CONOPS)
- Software and Documentation Requirements
- Provider Infrastructure Plan
- USPS Address Matching System (AMS) CD–ROM Integration
- Product Submission/Testing
- Provider Infrastructure Testing
- Field Test (Beta) Approval (Limited Distribution)
- Provider/Product Approval (Full Distribution)

The Provider shall indicate the specific requirement(s) addressed by each document submitted in compliance with these Postage Evidencing Product Submission Procedures. The Postal Service requests that the documentation includes a matrix showing where each specific requirement is addressed. Documentation shall be in English and formatted for standard letter size (8.5″ × 11″) paper, except for engineering drawings, which shall be folded to the required size. Where appropriate, documentation shall be marked as "Confidential." The steps in the Postage Evidencing Product Submission Procedures must be completed in sequential order, except as detailed below.

1.1. Letter of Intent

The Provider must submit a Letter of Intent to the Manager, Metering Technology Management, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444.

A. The Letter of Intent must include:

(1) Date of correspondence.

(2) Name and address of all parties involved in the proposal. In addition to the Provider, the parties listed shall

include those responsible for assembly, distribution, management of the product/device,[1] hardware/firmware/software development, testing, and other organizations involved (or expected to be involved) with the product, including suppliers of significant product components.

(3) Name and phone number of official point of contact for each company identified.

(4) Provider's business qualifications (i.e., proof of financial viability, certifications and representations, proof of ability to be responsive and responsible).

(5) Product/device concept narrative.

(6) Provider infrastructure concept narrative.

(7) Narrative that identifies the internal resources knowledgeable of current Postal Service policies, procedures, performance criteria, and technical specifications to be used to develop security, audit, and control features of the proposed product.

(8) The target Postal Service market segment the proposed product is envisioned to serve.

B. The Provider must submit with the Letter of Intent a proposed product development plan of actions and milestones (POA&M) with a start date coinciding with the date of the Letter of Intent. Reasonable progress must be shown against these stated milestones.

C. The Manager, Metering Technology Management, will acknowledge in writing the receipt of the Provider's Letter of Intent and will designate a Postal Service point-of-contact. Upon receipt of this acknowledgment, the Provider may continue with the sequential requirements of the product submission process.

1.2. Nondisclosure Agreements

These agreements are intended to ensure confidentiality and fairness in business. The Postal Service is not obligated to provide product submission status to any parties not identified in the Letter of Intent. After obtaining signed nondisclosure agreements, the Provider may continue with the sequential requirements of the product submission process.

1.3. Concept of Operations

A. The Provider must submit a Concept of Operations (CONOPS) that discusses at a moderate level of detail the features and usage conditions for the proposed product. The Provider should submit 10 serialized hard copies and one electronic copy on a PC-formatted 3.5″ floppy disk. Additionally, the Provider must also submit a detailed process model supporting each CONOPS section.

Note: The Postal Service will not be obligated to provide consulting guidance on any current Postal Service policy, procedure, performance criteria, or specification beyond publicly available publications.

B. At a minimum, the CONOPS should cover the following areas:

(1) System Overview
- (a) Concept overview/business model
- (b) Concept of production/maintenance administration
- (c) For Information Based Indicia (IBI) PC Postage products, the system design overview, including:
  - (i) Postal Security Device (PSD) implementation (stand-alone, LAN, WAN, hybrid)
  - (ii) Features
  - (iii) Components, including the digital signature algorithm
- (d) Product lifecycle overview
- (e) Adherence to industry standards, such as Federal Information Processing Standard (FIPS) 140–1, as required by the Postal Service

(2) For proposed IBI PC Postage products, the system design details, including:
- (a) PSD features and functions
- (b) Host system features and functions
- (c) Other components required for normal use conditions

(3) Product Lifecycle
- (a) Manufacturer
- (b) Postal Service certification of product/device
- (c) Production
- (d) Distribution
- (e) Product/device licensing and registration
- (f) Initialization
- (g) Product authorization and installation
- (h) Postage Value Download (PVD) process
- (i) Product and support system audits
- (j) Inspections
- (k) Product withdrawal/replacement
- (i) Overall process
- (ii) Product failure/malfunction procedures
- (l) Scrapped product process

(4) Finance Overview
- (a) Customer account management
  - (i) Payment methods
  - (ii) Statement of account
  - (iii) Refund
- (b) Individual product finance account management
  - (i) PVD
  - (ii) Refund
- (c) Daily account reconciliation
  - (i) Provider reconciliation
  - (ii) Postal Service detailed transaction reporting
- (d) Periodic summaries
  - (i) Monthly reconciliation
  - (ii) Other reporting, as required by the Postal Service

(5) Interfaces
- (a) Communications and message interfaces with Postal Service infrastructure, including but not limited to:
  - (i) PVDs
  - (ii) Refunds
  - (iii) Inspections
  - (iv) Product audits
  - (v) Lost or stolen product procedures
- (b) Communications and message interfaces with applicable Postal Service financial functions, including but not limited to:
  - (i) Postage settings, including those done remotely
  - (ii) Daily account reconciliation
  - (iii) Refunds
- (c) Communication and message interfaces with Customer Infrastructure, including but not limited to:
  - (i) Cryptographic key management
  - (ii) Product audits (device and host system)
  - (iii) Inspections
- (d) Message error detection and handling

(6) Technical Support and Customer Service
- (a) User training and support
- (b) Software Configuration Management (CM) and update procedures
- (c) Hardware/firmware CM and update procedures

(7) Other
- (a) Change control procedures
- (b) Postal rate change procedures
- (c) Address Management System ZIP+4 CD–ROM updates, if applicable
- (d) Physical security
- (e) Personnel/site security

C. Supplementary requirements, CONOPS.

(1) The CONOPS must be accompanied by substantiated market analysis supporting the target Postal Service market segment the proposed product is envisioned to serve, as identified in the Letter of Intent.

(2) The CONOPS must include a list and a detailed explanation of any proposed deviations from Postal Service performance criteria or specifications. Any proposed deviation to audit and control functions required by current Postal Service policy, procedure, performance criteria, or specification must be accompanied by an independent assessment by a nationally recognized, independent, certified

[1] When speaking generically about processes, etc., the term "product" is used. However, the term "product" includes "product/device."

public accounting firm attesting to the proposed auditing method. The report of this information is to be signed by an officer of the accounting firm.

D. Postal Service response.

(1) The Postal Service will respond in a timely manner.

(2) For each submission, the Postal Service will appoint a Product Review Control Officer. All communications between the Provider and the Postal Service are to be coordinated through the Product Review Control Officer.

(3) The Postal Service will acknowledge, in writing, receipt of the CONOPS and perform an initial review. The Postal Service will provide the Provider with a written summary of the CONOPS review. In the written review, the Postal Service will provide authorization to continue with the product submission process, or a listing of CONOPS requirements that are not met.

(4) If, in the sole opinion of the Postal Service, it is determined that significant CONOPS deficiencies do exist, the Postal Service, at the discretion of the Manager, Metering Technology Management, may return the CONOPS to the Provider without further review. It will then be incumbent on the Provider to resubmit a corrected CONOPS.

(5) The Provider may continue with the product submission process upon receipt of authorization to proceed from the Postal Service.

1.4. Software and Documentation Requirements

A. The Provider must submit to the Postal Service five copies of executable code and one copy of full and source code for all software included in the product.

B. The Provider must submit a detailed design document of the product. For IBI products, this shall include the proposed IBIP indicia design, which must be approved by the Manager, Metering Technology Management.

C. Additionally, depending on the product, the Postal Service requires design documentation that includes, but is not limited to, the following:

(1) Operations manuals for product usage
(2) Interface description documents for all proposed communications interfaces
(3) Maintenance manuals
(4) Schematics
(5) Product initialization procedures
(6) Finite state machine models/ diagrams
(7) Block diagrams
(8) Security features descriptions
(9) Cryptographic operations descriptions

Detailed references for much of this documentation are listed in FIPS 140–1, Appendix A. The Postal Service will determine the number of copies needed of the aforementioned documentation based on the CONOPS review. The Postal Service will notify the Provider of the required number of copies. The required number of copies are to be uniquely numbered for control purposes.

D. The Provider must submit a comprehensive test plan that will validate that the product meets all Postal Service requirements and, where appropriate, the requirements of FIPS 140–1. With respect to the Provider's internet server, the test plan shall indicate how the Provider will test to ensure the physical security of the Provider's server and administrative site and the firewall, and to ensure the security of the processes for remote administrative access and configuration control. With respect to the process for initializing customer accounts, the test plan shall describe the tests for ensuring secure distribution or transmission of software and cryptographic keys. The test plan must list the parameters to be tested, test equipment, procedures, test sample sizes, and test data formats. Also, the plan must include detailed descriptions, specifications, design drawings, schematic diagrams, and explanations of the purposes for all special test equipment and nonstandard or noncommercial instrumentation. Finally, this test plan must include a proposed schedule of major test milestones.

E. The Provider must submit a benchmark assessment plan. Postal Service Engineering will provide reference standards, performance criteria, specifications, etc., to be used as a basis for the Provider to produce this plan.

F. Postal Service Response:

(1) The Postal Service will provide its response in a timely manner.

(2) The Postal Service will acknowledge, in writing, receipt of the Provider's design and test plans and will perform an initial review. The Postal Service will furnish the Provider with a written summary of the design plan and test plan reviews. In the written review, the Postal Service will provide authorization to continue with the product submission process, or will provide a listing of design plan requirements or test plan requirements that are not met, and perhaps other deficiencies.

(3) If, in the sole opinion of the Postal Service, it is determined that significant design plan or test plan deficiencies do exist, the Postal Service, at the discretion of the Manager, Metering Technology Management, may return the plans to the Provider without further review. It will then be incumbent on the Provider to resubmit revised plans that address the identified deficiencies.

(4) The Provider may continue with the product submission process upon receipt of authorization to proceed from the Postal Service.

1.5. Provider Infrastructure Plan

A. The Provider Infrastructure Plan may be submitted concurrently with the design and test plans described in paragraph 1.4, Software and Documentation Requirements. At this point in the product submission process, the Postal Service will provide additional performance criteria and specifications for the IBIP public key infrastructure, if required for the product/device, for use as a basis for the applicable elements of the Provider's Infrastructure Plan.

B. The Provider must submit a Provider Infrastructure Plan that describes how the processes and procedures described in the CONOPS will be met or enforced. This includes, but is not limited to, a detailed description of all Provider-related and Postal Service-related operations, computer systems, and interfaces with both customers and the Postal Service that the Provider shall use in manufacturing, producing, distribution, customer support, product/device lifecycle, inventory control, print readability quality assurance, and reporting.

C. Postal Service Response

(1) The Postal Service will respond in a timely manner.

(2) The Postal Service will acknowledge in writing the receipt of the Provider's Infrastructure Plan and will perform an initial review. The Postal Service will provide the Provider with a written summary of the Infrastructure Plan review. In the written review, the Postal Service will provide authorization to continue with the product submission process, or a listing of the Infrastructure Plan requirements that are not met, and perhaps other deficiencies.

(3) If, in the sole opinion of the Postal Service, it is determined that significant Provider Infrastructure Plan deficiencies do exist, the Postal Service, at the discretion of the Manager, Metering Technology Management, may return the Infrastructure Plan to the Provider without further review. It will then be incumbent on the Provider to resubmit

a revised Infrastructure Plan to address the identified deficiencies.

(4) The Provider may continue with the product submission process upon receipt of authorization to proceed from the Postal Service.

1.6. USPS Address Matching System (AMS) CD–ROM Integration

A. The USPS AMS CD–ROM is a required component of IBIP open systems. For such systems, the Provider shall initiate an agreement with the USPS National Customer Support Center (NCSC). This signed agreement shall describe responsibilities of the AMS CD–ROM supply chain processes, including roles of the Provider. The only functionality of the AMS CD–ROM available through an IBIP system shall be address matching and ZIP+4 coding of input addresses.

B. The Provider shall submit a detailed description of how the USPS AMS CD–ROM will be integrated in the product, including a description of the process by which an address is ZIP+4 coded, including all possible optional and required parameters. The Provider can submit this information concurrent with submission of the Software and Documentation Requirements and/or Provider Infrastructure Plan described above.

C. Any CONOPS or products proposed for which the Provider requests a variance to the AMS CD–ROM requirements must be approved by the Manager, Metering Technology Management, prior to proceeding with the next step in the submission process.

1.7. Product Submission/Testing

A. The product/device Provider must be prepared to submit up to five complete production systems of each product/device for which Postal Service evaluation is requested. The required number of submitted systems will be determined by the Postal Service. The Provider must provide any equipment required in order to use the submitted product/device in the manner contemplated by the CONOPS.

Thorough Provider testing of the product prior to submission of the product to the Postal Service will avoid unnecessary delays in the review and evaluation process. If, in the opinion of the Postal Service, it is determined that significant product deficiencies exist, the Postal Service, at the discretion of the Manager, Metering Technology Management, may return the product to the Provider without further review. The Provider would have the option to resubmit a corrected product.

B. If the product contains a cryptographic module, the Provider must submit the proposed product to a laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) for FIPS 140–1 certification, or equivalent, as authorized by the Postal Service. Upon completion of the FIPS 140–1 certification, or equivalent, the Postal Service requires the following to be forwarded directly from the accredited laboratory to the Manager, Metering Technology Management for review:

(1) A copy of all information given to the laboratory by the Provider, including a summary of all information transmitted orally.

(2) A copy of all instructions from the Provider with respect to what is or is not to be tested for.

(3) A copy of the letter of recommendation for the product as submitted by the laboratory to the National Institute of Standards and Technology (NIST) of the United States of America.

(4) Copies of all proprietary and nonproprietary reports and recommendations generated during the test process.

(5) A copy of the certificate, if any, issued by NIST for the product.

(6) Written full disclosure identifying any contribution of the NVLAP laboratory to the design, development, or ongoing maintenance of the product/device.

C. If the product is submitted to an accredited test laboratory to meet the requirements of paragraph B, above, the laboratory must meet all the requirements specified by NIST in the Implementation Guidance for FIPS PUB 140–1 and the Cryptographic Module Validation Program; NIST document 150–17, Cryptographic Module Testing; and other documents issued by NIST to govern the conduct of accredited laboratories.

D. All products submitted to an accredited laboratory for testing under paragraph B above shall be retained by the laboratory for three years from date of product approval by the Postal Service.

E. The Provider may submit the product to the Postal Service for test and evaluation prior to completion of any required FIPS 140–1 testing, provided a letter is submitted from the NVLAP laboratory to the Postal Service indicating:

(1) That the product is being tested under FIPS 140–1 for the required security levels, in accordance with the current, relevant performance criteria.

(2) That the product has a reasonable chance of meeting the FIPS 140–1/USPS security levels.

(3) The timeline for FIPS 140–1 test completion.

F. The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any product submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.

G. Upon satisfactory completion of the Postal Service testing and NVLAP laboratory testing (where required), the Postal Service will provide authorization to continue the product submission process. The Provider may continue with the product submission process upon receipt of authorization to proceed from the Postal Service.

1.8. Product Infrastructure Testing

A. Prior to approval for distribution of any product/device, the Provider must achieve test and approval of all reporting requirements, including, but not limited to, Postal Service/customer licensing support, product status activity reporting, total product population inventory, irregularity reporting, lost and stolen reporting, financial transaction reporting, account reconciliation, digital certificate acquisition, product initialization, cryptographic key changes, rate table changes, print quality assurance, device authorization, device audit, product audit, and remote inspections.

B. Testing of these activities and functions includes computer-based testing of all interfaces with the Postal Service, including but not limited to the following:

(1) Product manufacture and lifecycle (including leased, unleased, new product/device stock, installation, withdrawal, replacement, key management, lost, stolen, and irregularity reporting)
(2) Product distribution and initialization (including product authorization, product initialization, customer authorization, and product maintenance)
(3) Licensing (including license application, license update, and license revocation)
(4) Finance (including cash management, individual product financial accounting, refund management, daily summary reports, daily transaction reporting, and monthly summary reports)
(5) Audits and inspections, including site audits

C. The Provider must complete a "Product-Provider Infrastructure-Financial Institution-USPS Infrastructure" (Alpha) test involving all entities in the proposed architecture. At

a minimum this includes the proposed product, Provider Infrastructure, financial institution and Postal Service Infrastructure systems and interfaces. Alpha testing is intended to demonstrate the proposed product utility, and its functionality and compatibility with other systems. Alpha testing may be conducted in a laboratory environment.

D. Provider Infrastructure Testing (Alpha) test note: The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any Provider Infrastructure system supporting a postage evidencing product/device approved by the Postal Service for manufacture and distribution. Initial Provider Infrastructure testing and (Alpha) testing schedules will be supported at the convenience of the Postal Service.

E. Demonstrable evidence of successful completion for each test is required prior to proceeding.

F. The Provider may continue with the product submission process upon receipt of authorization to proceed from the Postal Service.

1.9. Field Test (Beta) Approval (Limited Distribution)

A. The Provider will submit a proposed Field (Beta) Test Plan identifying test parameters, product quantities, geographic location, test participants, test duration, test milestones, and product recall plan. The Beta Test Plan will be in accordance with the Beta Test Strategy in effect for the given product type. The Postal Service will supply the appropriate Beta Test Strategy to the Provider upon request. The purpose of the Beta test is to demonstrate the proposed product's utility, security, audit and control, functionality, and compatibility with other systems, including mail entry, acceptance and processing, in a real-world environment. The Beta test will employ available communications and will interface with current operational systems to conduct all product functions. The Manager, Metering Technology Management, will determine acceptance of Provider-proposed Beta Test Plans based on, but not limited to, assessed risk of the product, product impact on Postal Service operations, and requirements for Postal Service resources. Proposed candidates for Beta test participation must be approved by the Postal Service. Beta test approval consideration will be based in whole or in part on the location, mail volume, mail characteristics, and mail origination and destination patterns.

B. The Provider has a duty to report security weaknesses to the Postal Service to ensure that each product/device model and every product/device in service protects the Postal Service against loss of revenue at all times. Beta participants must agree to a nondisclosure confidentiality agreement when reporting product security, audit, and control issues, deficiencies, or failures to the Provider and the Postal Service. A grant of Field Test Approval (FTA) does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue-protection capabilities of the product/device. After approval is granted to manufacture and distribute a product/device, no change affecting the basic features or safeguards of a product/device may be made except as authorized or ordered by the Postal Service in writing from the Manager, Metering Technology Management.

C. The Provider may continue with the product submission process upon receipt of authorization to proceed from the Postal Service.

1.10. Provider/Product Approval (Full Distribution)

A. Upon receipt of the final certificate of evaluation from the national laboratory, where required, and after obtaining positive results of internal testing of the product/device, successful completion of Provider infrastructure testing, Alpha testing, demonstration of limited distribution activities (Beta testing), and audits of Provider site security, the Postal Service will administratively review the submitted product, the Provider infrastructure, and the Provider/manufacturer qualification requirements for final approval of full distribution. In preparation for the administrative review, the Provider shall update any product submission documentation submitted in compliance with the requirements of the Postage Evidencing Product Submission Procedure that is no longer accurate with respect to the product in review.

Note: Copies of Draft 39 CFR Part 502 containing IBIP Provider/Manufacturer qualification requirements as published in the **Federal Register** on September 2, 1998, are available by contacting USPS, Metering Technology Management, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444. Copies of CFR Part 501 pertaining to postage meters are available also at the above address.

B. The Postal Service may require, at any time, that models/versions of approved products, and the design and user manuals and specifications applicable to such product, and any revisions thereof, be deposited with the Postal Service.

2. Change Control Procedure

2.1. Overview

A. After approval is granted to manufacture and distribute a product/device, no change affecting the basic features or safeguards of a product/device may be made except as authorized or ordered by the Postal Service in writing from the Manager, Metering Technology Management. The submission of a change proposal and the subsequent test and acceptance of a product change are designed to ensure not only that the changed product meets all requirements and performance criteria but also that the stated changes made to a product do not introduce any unintended, unidentified, unexpected, or undesirable changes to the form, fit, function, or security of the product.

B. Once a postage evidencing product/device has received final approval from the Postal Service, the Provider is required to submit any change(s) to that product for Postal Service approval. Changes covered by this process include, but are not limited to, the following:

(1) Changes to the form, fit, function, or security of the product/device
(2) Changes resulting from new Postal Service regulations, such as an updated postal rate table
(3) Changes to the software or firmware
(4) Changes to the PSD, for products using such a device
(5) Changes to the physical configuration of the product
(6) Changes to product documentation or packaging
(7) Changes to product distribution methods
(8) Changes to third-party providers of significant product components

C. For an IBI product, the changed product shall be in compliance with the IBI performance criteria and all other Postal Service regulations in effect at the time the change is implemented. All changes to previously approved products must be approved by the Postal Service before implementation. The Postal Service must also approve the timetable and procedures for implementing changes.

D. Providers are encouraged to consolidate multiple changes in a single change proposal to enable the Postal Service to expedite their review of the changes.

E. The Provider shall fully document all changes, in accordance with the requirements described in the following sections.

2.2. Provider Responsibilities

A. The Provider shall be responsible for notifying the Postal Service of any

proposed changes made as described in Section 2.1. The Provider shall be responsible for having a Postal Service-approved process for configuration management of the versions of each approved product. The Provider's process shall ensure that no changes can be made without proper tracing of design changes, records of authorization, and notification to the Postal Service. The Provider is responsible for submitting a change proposal in accordance with the requirements of this procedure and for achieving Postal Service approval before implementing any change.

B. Detailed Provider Actions:

(1) Letter of Intent to Change. The first step in the submission of a change proposal is to submit a Letter of Intent to Change, similar to the Letter of Intent described under Product Submission Procedures, above. The Letter of Intent to Change shall be submitted to the Manager, Metering Technology Management, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444. The letter must include:

(a) Date of correspondence.

(b) Name and address of all parties involved in the change proposal, including those responsible for assembly, distribution, management of the product/device, hardware/firmware/software development or testing, and other organizations involved (or expected to be involved) with the changed product.

(c) Name and phone number of official point of contact for each party identified above.

(d) Change concept narrative. A description of the proposed change, identifying any changes to the form, fit, function, or security of the product.

(e) Discussion of the reasons for the change.

(f) Discussion of the implications of the change for product security, product identification, and Provider procedures such as distribution, operations, or financial transactions, as well as any cost impact and impact on product customers. The document shall also discuss the impact of the change on Postal procedures such as mail entry, mail acceptance, and mail processing, as well as the impact on the interfaces between the Provider and the Postal Service and/or customers.

(g) An outline of the actions the Provider will take in support of the change proposal, including a listing of the documentation the Provider will submit in support of the change, and the testing that will be performed to ensure the changes meet Postal Service requirements.

(h) The timetable for submission, test, acceptance, and implementation of the proposed change.

(i) The procedure for implementation of the proposed change.

(2) Additional documentation. Once the Letter of Intent to Change is submitted, the Provider shall review the following documents and submit any changes needed to ensure they are still current. Additional documentation may be required at the discretion of the Postal Service.

(a) Nondisclosure Agreements
(b) Concept of Operations
(c) Software and Documentation
(d) Provider Infrastructure Plan
(e) USPS Address Matching System (AMS) CD–ROM Integration, if required for the product.

(3) Testing. The Provider will test the product changes as described in the Postage Evidencing Product Submission Procedures to the extent required by the proposed change, in accordance with Postal Service direction. The Provider shall document the tests performed on product changes and shall submit this documentation along with verification of successful completion of the testing.

2.3. Postal Service Responsibilities

A. The Postal Service will execute its responsibilities in a timely manner.

B. The Postal Service will review the Letter of Intent to Change and accept or reject each component of the Provider's proposed approach for product change, documentation submittal and testing, and schedule for release.

C. The Postal Service will complete testing of the changes as required to ensure the changes meet Postal Service performance criteria and provide written comments to the Provider. Approval of the change will be granted in writing by the Postal Service by the Manager, Metering Technology Management.

D. The Postal Service reserves the right to determine if a proposed change is extensive enough to constitute a new product, rather than a change to a previously approved product. If such a determination is made, the Provider shall comply with all requirements of the Postage Evidencing Product Submission Procedures, including field testing.

3. Intellectual Property and License Considerations

A Provider is responsible for determining if and how it can make products that meet the Postal Service performance criteria or specifications applicable to the given product/device, in view of applicable technical, commercial, and legal constraints. Thus, it is the Provider-not the Postal Service-who is responsible for determining whether the production and use of a product/device requires the use of patented technology. If so, the Provider is responsible for resolving applicable intellectual property issues.

In accordance with this policy, the Postal Service generally will not evaluate or arbitrate conflicting patent claims by Providers, publicly assess the validity or scope of the patents that have been cited with respect to any performance criteria, or offer any opinion as to whether a license is required under such patents to meet performance criteria.

Each Provider should seek its own legal counsel with respect to these matters, and, if it determines that a patent license is required, should procure one. Companies that are unwilling or unable to acquire any necessary patent licenses to produce their proposed product should assess the wisdom of remaining in the market or the possibility of producing a different type of product.

To implement this policy, the Postal Service may enter into an agreement ("Agreement") with the Provider stating that the Provider is solely responsible for determining, on an ongoing basis, whether its approved products are subject to any third-party patents. If so, the Provider must procure any required licenses to allow the Provider to make, use, sell, or (if applicable) import its products, and to allow the Provider's customers to use the products to create postage indicia, apply the indicia to mail, and deposit the mail with the Postal Service.

Providers would not be responsible under such an Agreement for procuring any license rights with respect to mailing activities conducted by the Postal Service. However, each Provider is required to indemnify the Postal Service for any claims against the Postal Service based on the Provider's failure to procure necessary patent or other rights with respect to its product offering.

4. Request for Comment

It is emphasized that the proposed procedures for initial product submission and changes to already approved products are being published for comments and are subject to final definition.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rule making by 39 U.S.C. 410 (a), the Postal

Service invites public comments on the proposed procedures.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–21242 Filed 8–16–99; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23942; 812–11704]

Anchor Resource and Commodity Trust, et al.; Notice of Application

August 11, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit Anchor Resource and Commodity Trust to acquire the assets and liabilities of Anchor Strategic Assets Trust (the "Reorganization"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Anchor Resource and Commodity Trust ("ARCT"), Anchor Strategic Assets Trust ("ASAT," ARCT and ASAT each a "Trust," and together the "Trusts") an Anchor Investment Management Corporation ("Adviser").

FILING DATES: The application was filed on June 25, 1999. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 1, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 579 Pleasant Street, Suite 4, Paxton, Massachusetts 01612.

FOR FURTHER INFORMATION CONTACT: Susan K. Pascocello, Senior Counsel, at (202) 942–0674, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trusts, both Massachusetts business trusts, are registered under the Act as open-end management investment companies. The Adviser, a Massachusetts corporation, serves as the investment adviser to the Trusts and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser is under common control with Societe D'Etudes et de Gestion Financieres Meeschaert, S.A. ("Societe D'Etudes"), which owned in excess of 99% of the outstanding shares of ARCT and in excess of 60% of the outstanding shares of ASAT as of June 1999.

2. On June 21, 1999, the boards of trustees of each Trust (together, the "Boards"), including all of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), unanimously approved an agreement and plan of reorganization ("Reorganization Agreement") under which ARCT will acquire the assets and liabilities of ASAT in exchange for ARCT shares. The number of ARCT shares to be issued to ASAT will be determined on the basis of the relative net asset value per share and aggregate net assets of ARCT and ASAT as of the close of business on the closing date of the Reorganization ("Closing Date"), currently anticipated to occur in early September 1999. Portfolio securities of ARCT and ASAT will be valued in accordance with the valuation practices of each Trust, which are described in each Trust's current prospectus and statement of additional information. As soon as practicable after the Closing Date, ASAT will liquidate and distribute *pro rata* to its shareholders the ARCT shares. No sales charges will be imposed upon ASAT shareholders in connection with the Reorganization.

3. Applicants state that the investment objectives, restrictions and limitations of ARCT are similar to those of ASAT. Neither ASAT nor ARCT impose any sales charges or distribution related fees.

4. The Boards, including all of the Independent Trustees, determined that the Reorganization is in the best interests of each Trust, and that the interests of the existing shareholders of each Trust would not be diluted by the Reorganization. In assessing the Reorganization, the Boards considered various factors, including: (a) the compatibility of each Trust's investment objective, policies and restrictions, and shareholder services; (b) the terms and conditions of the Reorganization; (c) the expense ratios of each Trust; (d) the tax-free nature of the Reorganization; and (e) the estimated costs of the Reorganization. All Reorganization expenses will be borne by ARCT, as determined by its Board.

5. The Reorganization is subject to a number of conditions, including that: (a) the Reorganization is approved by each Board and the shareholders of ASAT; (b) the Trusts receive opinions of counsel that the Reorganization will be tax-free; and (c) applicants receive exemptive relief from the SEC as requested in the application. The Reoganization Agreement may be terminated by ASAT by resolution of its Board if the Board determines that circumstances have changed to make the Reorganization inadvisable. Applicants agree not to make any material changes to the Reorganization Agreement without prior SEC approval.

6. A registration statement on Form N–14 was filed with the SEC on June 23, 1999, and became effective on July 29, 1999. Definitive proxy solicitation materials have been filed with the SEC and were mailed to ASAT shareholders on July 29, 1999. A special meeting of ASAT shareholders is scheduled for August 20, 1999.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Trusts may be deemed to be affiliated by reasons other than having a common investment adviser. Applicants state that Societe D'Etudes, affiliate of the Adviser, owns more than 25% of the outstanding voting securities of each of the Trusts.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants believe that the terms of Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the Reorganization will be based on the Trusts' relative net asset values. In addition, applicants state that the Boards, including all of the Independent Trustees, have determined that the participation of each Trust in the Reorganization is in the best interests of each Trust and that such participation will not dilute the interests of shareholders of each Trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21274 Filed 8–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23941; 813–200]

John Hancock Mutual Life Insurance Company, et al.; Notice of Application

August 11, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") exempting the applicants from all provision of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j), section 30 (except for certain provisions of sections 30(a), (b), (e), and (h)), and sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited liability companies and other entities formed for the benefit of key employees John Hancock Mutual Life Insurance Company ("John Hancock") and its affiliates from certain provisions of the Act. Each limited liability company or other entity will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

APPLICANTS: John Hancock Employees' Securities Company I LLC ("Initial Company") and John Hancock, on behalf of other limited liability companies or other investment vehicles that may be formed in the future (together, with the Initial Company, the "Companies").

FILING DATES: The application was filed on October 22, 1998, and amended on February 18, 1999, May 17, 1999 and August 10, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1999, and should be accomplished by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o John A. Tisdale, John Hancock Mutual Life Insurance Company, 200 Clarendon Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. John Hancock is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts. John Hancock is also an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). John Hancock and its affiliates as defined in rule 12b-2 of the Securities Exchange Act of 1934 (the "Exchange Act") are referred to in this notice collectively as the "John Hancock Group" and individually as a "Jon Hancock Group entity."

2. The Initial Company is a limited liability company organized under the laws of the State of Delaware. John Hancock formed the Initial Company to provide certain investment opportunities to certain key employees of the John Hancock Group. John Hancock is the sole Managing Member (as defined below) of the Initial Company.

3. The John Hancock Group may organize additional Companies in the future (the "Subsequent Companies"). Each Company will be either a limited liability company, a business trust, or a limited partnership formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, management investment company and may be diversified or non-diversified. The Companies will be established primarily for the benefit of highly compensated employees of the John Hancock Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Company will be voluntary.

4. John Hancock will act as the managing member of the Initial Company (together with any John Hancock Group entity that acts as a

Company's managing member or general partner, the "Managing Member"). The Managing Member will manage and operate each of the Companies. The Managing Member will be authorized to delegate management responsibility to a John Hancock Group entity. A John Hancock Group entity will act as the investment adviser to a Company and will register as an investment adviser under the Advisers Act, if required under applicable law.

5. The Managing Member of a Company may charge the Company an annual management fee, a flat administrative charge or a carried interest, including a fee meeting the requirements of rule 205–3 under the Advisers Act. Both the management fee and the administrative fee, if any, will serve to reimburse the Managing Member for its costs of managing the Company, and will include expenses charged by a John Hancock Group entity for services actually rendered to the Company, but without any additional markup. Any management fee charged to a Company will not be duplicative of any management fee charged to a Client Fund (as defined below). A Managing Member may receive reimbursement of its out-of-pocket expenses, including the allocable portion of the salaries of its employees who work on the Companies' affairs.

6. Interests in the Companies ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act"), or Regulation D under the Securities Act, and will be sold without a sales load only to "Eligible Employees" and other "Qualified Participants," in each case as defined below, or to a John Hancock Group entity (collectively, "Members"). Prior to offering Interests to an Eligible Employee or Qualified Family Member (as defined below), the Managing Member must reasonably believe that such individual will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Company and is able to afford a complete loss of any investment. An Eligible Employee is an individual who is a current or former employee, officer, or director of John Hancock Group and, except for certain individuals ("ESC Investors") who manage the day-to-day affairs of the Company in question and certain individuals ("JH Investors") who manage the day-to-day affairs of the Client Funds or the Co-Investors (both as defined below), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act (an "Accredited Investor").

7. ESC Investors, who also will qualify as Eligible Employees, will have primary responsibility for operating the Company in which they invest. These responsibilities will include, among other things, monitoring investments for the Company, communicating with the Members in the Company, maintaining the books and records of the Company, addressing day-to-day tax issues involving the Company, and evaluating investments for the Company. Each ESC Investor will (a) be closely involved with the knowledgeable about the Company's affairs and investments, (b) be an officer or employee of John Hancock Group, and (c) have reportable income from all sources (including any profit sharing and bonuses) in the two calendar years immediately preceding the ESC Investor's participation in the Company in excess of $100,000 and have a reasonable expectation of reportable income of at least $100,000 in the years in which the ESC Investor invests in a Company.

8. JH Investors, who also will qualify as Eligible Employees, will have primary responsibility for operating (i) the investment partnerships or other investment entities managed by John Hancock ("Client Funds") in which the Companies invest, provided that such Client Funds represent the sole investments of the Company in which the JH Investor invests or (ii) any other investor organized or managed by a John Hancock Group entity that generally will co-invest with such Client Funds on a pari passu basis (the "Co-Investors"). These responsibilities will include, among other things, monitoring investments for the Client Funds or Co-Investors, communicating with the members or other representatives of the Client Funds or Co-Investors, maintaining the books and records of the Client Funds or Co-Investors, addressing day-to-day tax issues involving the Client Funds or Co-Investors, marketing units in the Client Funds or Co-Investors, and evaluating investments for the Client Funds or Co-Investors. Each JH Investor will (a) be closely involved with and knowledgeable about the affairs and investments of the Client Funds or Co-Investors, (b) be an officer or employee of John Hancock Group, (c) have a graduate degree in business, law or accounting, (d) have a minimum of five years of consulting, investment banking or similar business experience, and (e) have reportable income from all sources (including any profit sharing and bonuses) in the two calendar years immediately preceding the JH Investor's participation in the Company in excess of $100,000 and have a reasonable expectation of reportable income of at least $140,000 in the years in which the JH Investor invests in a Company. In addition, a JH Investor will not be permitted to invest in any year more than 10% of such person's income from all sources for the immediately preceding year in the aggregate in a Company and in all other Companies in which that JH Investor has previously invested.

9. A Qualified Participant is an Eligible Employee, Qualified Family Member (as defined below) or Qualified Investment Vehicle (as defined below). A "Qualified Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee, and must be an Accredited Investor. A "Qualified Investment Vehicle" is a trust or other investment vehicle established for the benefit of an Eligible Employee or Qualified Family Members. A Qualified Investment Vehicle must be either (i) an accredited investor or (ii) an entity for which an Eligible Employee or Qualified Family Member is a settlor and principal investment decision-maker.

10. The terms of investment in a Company will be fully disclosed to each Qualified Participant in a private placement memorandum, which will be furnished at the time the Eligible Employee is invited to participate in the Company. Each Company will send audited financial statements to each Member as soon as practicable after the end of its fiscal year. In addition, each member will receive a report setting forth such tax information as shall be necessary for the preparation by the Member of his or her federal and state income tax returns.

11. Interests in a Company will be non-transferable except with the prior written consent of the Managing Member. No person will be admitted into a Company as a Member unless the person is a Qualified Participant or a John Hancock Group entity.

12. A Member's interest in a Company may be subject to repurchase if: (a) The Eligible Employee's relationship with John Hancock Group is terminated for cause; or (b) the Eligible Employee accepts employment of any nature with a firm that the Managing Member determines is competitive with any business of John Hancock Group. Upon repurchase, the Managing Member will pay to the Member the lesser of (a) the amount actually paid by the Member to acquire the Interest (less prior distributions, plus interest and dividends), and (b) the fair value of the

Interest as determined at the time of termination in good faith by the Managing Member.

13. Subject to the terms of the applicable limited liability company agreement (for other constitutive documents), a Company will be permitted to enter into transactions involving (a) a John Hancock Group entity, (b) a Client Fund or other portfolio company, (c) any Member or any person or entity affiliated with a Member, or (d) any partner or other investor in any entity in which a Company invests. These transactions may include a Company's purchase or sale of an investment or an interest from or to any John Hancock Group entity or Client Fund, acting as principal. Prior to entering into these transactions, the Managing Member must determine that the terms are fair to the Members. A Company will not acquire any security by a registered investment company if immediately after the acquisition, the Company will own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Companies from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), sections 36 through 53 of the Act, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) a member of the John Hancock Group or a Client Fund, acting as principal, to engage in any transaction directly or indirectly with any Company or any entity controlled by such Company; (b) a Company to invest in or engage in any transaction with any entity, acting as principal (i) in which such Company, any company controlled by such Company or any John Hancock Group entity or a Client Fund has invested or will invest or (ii) with which such Company, and company controlled by such Company or any John Hancock Group entity is or will otherwise become affiliated; and (c) a partner or other investor in any entity in which a Company invests, acting as a principal, to engage in transactions directly or indirectly with the related Company or any company controlled by such Company.

4. Applicants state than an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Companies. Applicants state that the Members in each Company will be fully informed of the extent of the Company's dealings with the John Hancock Group. Applicants also state that, as professionals engaged in financial services businesses, Members will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Members and John Hancock Group will serve to reduce any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request relief to permit affiliated persons of each Company, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Company or a company controlled by the Company is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Company because of its affiliation with John Hancock Group, John Hancock Group's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Company often require each investor to make funds available in an amount that may be substantially greater than what a Company may make available on its own. Applicants contend that, as a result, the only way in which a Company may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Company will be organized for the benefit of Eligible Employees as an incentive for them to remain with John Hancock Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with John Hancock Group are prohibited, the appeal of the Companies would be significantly diminished.

7. Applicants state that the possibility that permitting co-investments by John Hancock Group and a Company might lead to less advantageous treatment of the Company is minimal in light of the John Hancock Group's intention in establishing a Company so as to reward Eligible Employees and to attract and retain highly qualified personnel, and because senior officers and directors of John Hancock Group entities will be investing in the Company. In addition, applicants assert that strict compliance with section 17(d) would cause the Company to forego investment opportunities simply because a Member or other affiliated person of the Company (or any affiliate of the affiliated person) made a similar investment.

8. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit the Managing Member to make certain approvals and ratifications, rather than a majority of the board of directors of a Company, as would be required by rule 17f–1 (a) and (d). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants

further request an exemption from rule 17f–1(c)'s requirement of transmitting to the SEC a copy of any contract executed pursuant to rule 17f–1. Applicants state that, because of the community of interest between John Hancock Group and the Companies and the independent audit of annual financial statements, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

9. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request relief to permit the Managing Member's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the Managing Member will be affiliated persons, a Company could not comply with rule 17g–1 without the requested relief. Applicants also state that each Company will comply with all other requirements of rule 17g–1.

10. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Companies.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Companies and would entail administrative and legal costs that outweigh any benefit to the Members.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(b) of the Act and rule 17d–1 under the Act to which a Company is a party (the "Section 17 Transactions") will be effected only if the Managing Member determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the members and do not involve overreaching of the company or its Members on the part of any person concerned; and (b) the transaction is consistent with the interests of the members, the Company's organizational documents, and the Company's reports to its Members. In addition, the Managing Members will record and preserve a description of all Section 17 Transactions, the Managing Member's findings, the information or materials upon which their findings are based, and the basis for the findings. All such records will be maintained for the life of the Companies and at least two years thereafter, and will be subject to examination by the SEC and its staff.[1]

2. In connection with the Section 17 Transactions, the Managing Member will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, will respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Company, or any affiliated person of such person, promoter, or principal underwriter.

3. The Managing Member will not invest the funds of any Company in any investment in which an "Affiliated Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Company and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the Managing Member sufficient, but not less than one days, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Company has the opportunity to dispose of the Company's investment prior to or concurrently with, on the same terms as, and pro rata with the Affiliated Co-Investor. The term "Affiliated Co-Investor" with respect to any Company means any person who is an "affiliated person" (as defined in the Act) of the Company or an affiliated person of such person. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Affiliated Co-Investor or a trust or other investment vehicle established for any such family member; or (c) when the investment is comprised of securities that are (i) listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (ii) national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (iii) government securities as defined in section 2(a)(16) of the Act.

4. Each Company and the Managing Member will maintain and preserve, for the life of each such Company and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the members, and each annual report of the Company required to be sent to the Members, and agree that all such records will be subject to examination by the SEC and its staff.[2]

5. The Managing Member of each Company will send to each Member in the Company who had an interest in a Company, at any time during the fiscal year then ended, Company financial statement audited by the Company's independent accountants. At the end of each fiscal year, the Managing Member will make a valuation or have a valuation made of all of the assets of the company as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the company. In addition, within 90 days after the end of each fiscal year of each Company or as soon as practicable thereafter, the Managing Member of the Company will send a report to each person who was a Member in the company at any time during the fiscal year then ended,

[1] Each Company will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[2] Each Company will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

setting forth such tax information as shall be necessary for the preparation by the member of his or its federal and state income tax returns, and a report of the investment activities of the Company during that year.

6. Whenever a Company makes a purchase from or sale to an entity affiliated with the Company by reason of a 5% or more investment in such entity by a John Hancock Group director, officer, employee, or person on retainer, such individual will not participate in the Managing Member's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21273 Filed 8–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23945; 812–11652]

Oppenheimer Senior Floating Rate Fund, et al.; Notice of Application

August 12, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares, and impose asset-based distribution fees and early withdrawal charges.

APPLICANTS: Oppenheimer Senior Floating Rate Fund ("Fund"), OppenheimerFunds Distributor, Inc. ("Distributor"), and OppenheimerFunds, Inc. ("Adviser").

FILING DATES: The application was filed on June 10, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 1, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Andrew J. Donohue, Esq., OppenheimerFunds, Inc., Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act and organized as a Massachusetts business trust. The Adviser is registered under the Investment Advisers Act of 1940 and will serve as investment adviser to the Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, will distribute the Fund's shares. Applicants request that the order also apply to any other registered closed-end investment company for which the Adviser or the Distributor or any entity controlling, controlled by, or under common control with the Adviser or the Distributor acts as investment adviser or principal underwriter.[1]

2. The Fund's investment objective is to seek a high level of current income and preservation of capital. The Fund will invest primarily in senior secured floating rate loans made by commercial banks, investment banks and finance companies to commercial and industrial borrowers ("Loans"). Under normal circumstances, at least 80% of the Fund's total assets will be invested in Loans. Up to 20% of the Fund's total assets may be invested in U.S. dollar-denominated loans to certain foreign borrowers, junior debt obligations, short-term investment-grade or non-investment-grade debt obligations, secured and unsecured loans and equity securities, including stocks and warrants.

3. The Fund intends to continuously offer its shares to the public at net asset value. The Fund's shares will not be offered or traded in the secondary market and will not be listed on any exchange or quoted on any quotation medium. The Fund intends to operate as an "interval fund" pursuant to rule 23c–3 under the Act and make periodic repurchase offers to its shareholders.

4. The Fund seeks the flexibility to be structured as a multiple-class fund and currently intends to offer three classes of shares. The Fund will offer Class B Shares at net asset value without a front-end sales charge, but subject to an early withdrawal charge ("EWC") on shares that are repurchased by the Fund within five years of the end of the month in which they were purchased. Class B shares will automatically convert to Class A shares 72 months after the end of the month in which they were purchased. The Fund may in the future offer Class A shares with a front-end sales charge. The Fund will offer Class C shares at net asset value without a front-end sales charge, but subject to an EWC on shares that are repurchased by the Fund within one year of the end of the month in which they were purchased. Class A, Class B, and Class C shares will be subject to an annual shareholder service fee of up to .25% of average daily net assets. Class A, Class B, and Class C shares will be subject to an annual distribution fee of up to .75% of average daily net assets. Applicants represent that the service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD") as if the Fund were an open-end investment company. Applicants also represent that the Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale, as is required for open-end multi-class funds under Form N–1A.

5. All expenses incurred by the Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees (including transfer agency fees), and any other incremental expenses attributable to that class. Expenses of the Fund allocated to a particular class of shares

[1] Any registered closed-end investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application.

will be borne on a pro rata basis by each outstanding share of that class. The Fund may create additional classes of shares in the future that may have different terms from Class A, Class B, and Class C shares. Applicants state that the Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end fund.

6. The Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation, or elimination of the EWC, the Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

7. The Fund may offer its shareholders an exchange feature under which shareholders of the Fund may exchange their shares for shares of the same class of other funds in the Oppenheimer Funds group of investment companies. Exchanges of Fund shares will be allowed only during periodic repurchase intervals. Any exchange option will comply with rule 11a–3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a–3, the Fund will treat the EWC as if it were a contingent deferred sales charge ("CDSC").

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to permit the Fund to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end fund.

Early Withdrawal Charges

5. Section 23(c) of the Act provides, in relevant part, that no registered closed-end fund will purchase any securities of which it is the issuer except: (a) on a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

6. Rule 23c–3 under the Act permits a registered closed-end fund (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

7. Section 23(c)(3) provides that the SEC may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act. Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares submitted for repurchase that have been held for less than a specified period.

8. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end funds to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end funds under rule 6c–10 under the Act. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs and that EWCs may discourage investors from moving their money quickly in and out of the Fund, a practice that applicants submit imposes costs on all shareholders. Applicants will comply with rule 6c–10 under the Act as if that rule applied to closed-end funds. The Fund also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that the Fund will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

9. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the SEC issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the SEC considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and to the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end funds to enter into distribution arrangements pursuant to rule 12b–1. Applicants also request an order under section 17(d) and rule 17d–1 to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act and NASD Conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21329 Filed 8–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–7183]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Tejon Ranch Co., Common Stock, Par Value $.50 Per Share)

August 9, 1999.

Tejon Ranch Co. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Security has been listed for trading on the Amex and, pursuant to a Registration Statement on form 8–A filed with the Commission which became effective on July 23, 1999, on the New York Stock Exchange, Inc. ("NYSE"). Trading in the Security on the NYSE commenced at the opening of business on July 28, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Exchange and by setting forth in detail to the Amex the reasons for such proposed withdrawal, and the facts in support thereof. The Amex has in turn informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the Exchange.

In making the decision to withdraw its Securities from listing on the Amex, the Company considered that (a) listing on the NYSE would likely increase the number of institutional investors able to purchase the Security; (b) listing on the NYSE would give the Company and its Security higher visibility in the investment community, which the Company believes would result in increased trading of shares of its Security and greater facility in raising equity capital; and (c) withdrawing the Security from listing on the Amex would avoid the direct and indirect costs arising from maintaining dual listings, as well as the resultant division of the market for the Security.

The Company's application relates solely to the withdrawal of the Security from listing on the Amex and shall have no effect upon the continued listing of the Security on the NYSE. Moreover, by reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports pursuant to Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before August 27, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–21275 Filed 8–16–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 3114]

International Telecommunications Advisory Committee, Radiocommunication Sector (ITAC–R); Notice of Meeting

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee Radiocommunication Sector (ITAC–R). The purpose of the Committee is to advise the Department on policy and positions with respect to the International Telecommunication Union and international radiocommunication matters.

The ITAC–R will meet from 1:30 to 3:30 on August 26, 1999 at the Department of State (east auditorium) to review ITU Registration activities with respect to the nine year period for bringing into use proposed satellite networks, including orbit positions around 60 degrees—65 degrees W.L. at C and Ku bands.

Members of the general public may attend this meeting and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend ITAC–R meeting and subsequent preparatory meetings for the CPM should send a fax to (202) 647–7407 no later than 24 hours before the meeting. The fax should include the name of the meeting (ITAC–R National Committee), date of the meeting, your name, social security number, date of birth, and organization. One of the following will be required for admission: U.S. driver's license, U.S. passport, or U.S. Government identification card. Enter from the "C" Street Main Lobby; in view of escorting requirement, non-government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: August 11, 1999.

John T. Gilsenan,

Chairman, ITAC–R National Committee.

[FR Doc. 99–21340 Filed 8–16–99; 8:45 am]

BILLING CODE 4710–45–U

DEPARTMENT OF STATE

[Public Notice No. 3113]

International Telecommunications Advisory Committee (ITAC) and Telecommunication Standardization Sector (ITAC–T) National Committee; Notice of Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee and International Telecommunication Advisory Committee—Telecommunication Standardization (ITAC–T). The purpose of the Committees is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization. Except where noted, meetings will be held at the Department of State, 2201 "C" Street, NW, Washington, DC.

The ITAC will meet from 9:30 to noon on September 8, 1999 (room to be announced) to continue preparations for a meeting of the ITU Working Group on ITU Reform.

The ITAC–T National Committee will meet from 9:30 to 4:00 on September 9, 1999 (rather than September 14), October 6, 1999, and November 18, 1999 (rooms to be announced) to prepare for the next ITU Telecommunication Sector Advisory Group (TSAG) and World Telecommunication Sector Assembly (WTSA) meetings.

Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend ITAC–T National Committee meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC or ITAC–T National Committee and date of meeting), your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: US driver's license, US passport, US Government identification card. Enter from the "C" Street Main Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: August 11, 1999.

Richard C. Beaird,

Director of Multilateral Affairs, Department of State.

[FR Doc. 99–21339 Filed 8–16–99; 8:45 am]

BILLING CODE 4710–45–U

DEPARTMENT OF STATE

[Public Notice No. 3115]

Shipping Coordinating Committee: International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Monday, September 27, 1999, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC The purpose of this meeting is to prepare for the Eightieth Session of the International Maritime Organization Legal Committee (LEG 80), and the Joint International Maritime Organization/ International Labor Organization Ad Hoc Expert Working Group, to held concurrently October 11–15, 1999 in London.

It is anticipated that LEG 80 will focus primarily, if not exclusively, on completing its work on a draft protocol to the Athens Convention, therefore the SHC will focus primarily on this topic at the September 27 meeting. The Joint IMO/ILO Ad Hoc Expert Working Group will be focusing on the subject of liability and compensation regarding claims for death, personal injury and abandonment of seafarers, therefore the SHC will also focus on this topic. Other topics that will be briefly addressed include: the draft IMO Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims and a draft convention regarding bunker fuel spills. Time will also be allotted to address any other issues on the LEG work program on which there are questions or comments.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Captain Malcolm J. Williams, Jr., or Lieutenant William G. Rospars, U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, SW, Washington, DC 20593–0001; telephone (202) 267–1527; fax (202) 267–4496.

Dated: August 11, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–21341 Filed 8–16–99; 8:45 am]

BILLING CODE 4710–07–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending August 6, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6055.
Date Filed: August 3, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0488 dated 30 July 1999
Composite Expedited Resolution 002p
(Amends Resolution 016a which does not apply in USA/US Territories)
(Extract of Minutes and Summary included)
Intended effective date: 1 September 1999.

Docket Number: OST–99–6058.
Date Filed: August 4, 1999.
Parties: Members of the International Air Transport Association.
Subject:
CSC/21/Meet/005/99 dated June 15, 1999 r1–10
Book of Finally Adopted Resos/ Recommended Practices
MINUTES—CSC/21/Meet/004/99 dated June 15, 1999
Intended effective date: 1 October 1999.

Docket Number: OST–99–6074.
Date Filed: August 5, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 AFR 0066 dated 6 August 1999 (Adoption)
PTC2 AFR 0064 dated 9 July 1999 (Issuance)
Mail Vote 024—Resolution 010x
TC2 from Africa to Libya Resolutions
Intended effective date: 15 August 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–21278 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 6, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6048.
Date Filed: August 2, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 30, 1999.
Description: Application of Air Class, S.A. de C.V. pursuant to 49 U.S.C. Section 41301 *et seq.* and Subpart Q, applies for a foreign air carrier permit to

engage in charter foreign air transportation of persons, property and mail between any point or points in Mexico and any point or points in the United States, and in other charter trips in foreign air transportation.

Docket Number: OST–99–6076.

Date Filed: August 5, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 2, 1999.

Description: Application of Societe Air France pursuant to 49 U.S.C. Section 41302, Part 211 and Subpart Q, applies for amendment of its foreign air carrier permit to engage in foreign air transportation: (1) Of person, property and mail from points behind France via a point or points in France to a point or points in the United States, and beyond to two points in the Western Hemisphere, points in the French Department of America and points in the French Territories in the Pacific. (2) Of property and mail from points behind France via a point or points in France and intermediate points to a point or points in the United States, and beyond. (3) Of persons, property and mail from points behind the French Department of America via a point or points in the French Department of America and intermediate points to a point or points in the United States and beyond. (4) Of persons, property and mail from points behind French Polynesia via French Polynesia and intermediate points to a point in the United States and beyond. *Provided, that* all such services are operated in conformity with the provisions and annexes of the Air Transport Agreement between the United States and France dated June 18, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–21277 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6064]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: TSAC will meet on Thursday, September 16, 1999, from 8 a.m. to 12:30 p.m. The working groups will meet on Wednesday, September 15, 1999, from 8 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 7, 1999. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before September 3, 1999.

ADDRESSES: TSAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The working groups will begin meeting in the same room and may move to separate spaces designated at that time. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Assistant Executive Director, Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, telephone 202–267–0229, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Towing Safety Advisory Committee (TSAC) and working group meetings.

The agendas tentatively include the following:

(1) Introduction of the new Executive Director.

(2) Progress report of the Voyage Planning Work Group.

(3) Progress report of the Electronic Charting Work Group.

(4) Progress report from the Tug Assistance and Remote Anchor Work Group.

(5) Progress report of the Communications Work Group.

(6) Progress report of the Casualty Analysis Work Group.

(7) Status update on Cargo Securing Practices.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than September 7, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than September 3, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Assistant Executive Director no later than August 27, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: August 9, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–21271 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6060]

Interference to Maritime Global Positioning System (GPS) Navigation by Mobile Satellite System (MSS) Phones and Other Electronic Devices

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard requests comments regarding actual or potential interference to Global Positioning System (GPS)-based maritime navigation systems, caused by Mobile Satellite Service (MSS) telephones and other electronic devices on vessels. Telephones using satellites for transmission (not land-based cellular telephones) and other electronic devices may block or interfere with radio wave signals provided to GPS and Differential GPS (DGPS) receivers. This interference has the potential to adversely affect the safe navigation and operation of vessels that use GPS (including DGPS) for positioning, autopilot input, or Automatic Identification System (AIS) transponders that communicate ship position and navigation information to other AIS-equipped vessels or to shore-based Vessel Traffic Services.

DATES: Comments must reach the Docket Management Facility on or before November 15, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza Level of the Nassif Building between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may submit comments by fax to the docket management facility at 202–493–2251. You may also submit comments via the Internet at *http://dms.dot.gov*. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the above-mentioned means.

The docket management facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For general questions on this notice, contact LT Terry Johns, Office of Aids to Navigation, Radio Aids Division (G–OPN–3), Coast Guard, telephone 202–267–6538. For technical questions relating to this notice, contact, Chief, Spectrum Management Division (G–SCT–2) at Commandant (G–SCT–2), Coast Guard at 202–267–2860 or via e-mail at CGComms@comdt.uscg.mil. For questions on GPS/DGPS call the Coast Guard's Navigation Information Center at (703) 313–5900, or visit the Internet site at http://www.navcen.uscg.mil.

For questions on viewing the docket, contact Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages you to respond to this notice by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–1999–6060], and the specific section of this notice to which each comment applies, and give the reason for each comment. You may submit comments by mail, hand-delivery, fax or electronic means to the docket management facility at the address under **ADDRESSES**. If you submit them by mail or hand-delivery, please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

If you submit them by mail and want acknowledgment of receipt of your comments at the facility, enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

The Coast Guard is opening a 90-day comment period for response to this notice. To ensure widest dissemination of this notice, the Coast Guard will publish a summary article in our Marine Safety Newsletter, and post it on our Marine Safety Regulations web site at http://www.uscg.mil/hq/g-m/regs/current.html. In addition, this information will be provided through Broadcast Notice to Mariners and through the Navigation Information Center web site at http://www.navcen.uscg.mil.

Public Meeting

We do not plan to hold public meeting(s) concerning this notice. You may request a public meeting by writing to the Docket Management Facility at the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If we determine that the opportunity for oral presentations will be helpful, we will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The transmitters in handheld telephones using satellite communications operate on frequencies adjacent to those for GPS. These frequencies are designated for specific use by the International Telecommunications Union and the Federal Communications Commission. Frequencies used for GPS purposes are also regulated, and are allocated the radio frequency band of 1559–1610 MHz. MSS is assigned the radio frequency bands on both sides of the GPS band from 1525–1559 MHz and 1610–1660.5 MHz. The GPS signals from the satellites are of extremely low power at the earth's surface. MSS handsets also operate with relatively low power levels. However, even with these low power levels, MSS handset transmissions are relatively high power when compared to the GPS satellite signals arriving on the surface. Even though MSS and GPS operate on different frequencies, some energy extends outside the allowed satellite telephone frequency band to the GPS frequency band. The Federal Communications Commission, in a Notice of Proposed Rulemaking, (IB Docket 99–67, Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite) released March 5, 1999, proposes to limit wideband emission of MSS mobile earth terminals in the bands used by GPS to −70 dBw (decibels above 1 watt per MegaHertz), and narrowband emissions to −80 dBw. Even with these limitations, interference between GPS and MSS is still possible. In addition, the impact of multiple satellite phones may be cumulative, resulting in increased effects on GPS receivers. For maritime use, a separation as much as 500 feet may be necessary in some cases to prevent a single MSS mobile earth terminal from causing interference to a shipboard GPS receiver.

The Coast Guard and the National Telecommunications and Information Administration (NTIA) are considering testing and documenting interference issues relating to MSS phones and GPS. In addition, the agencies are working with standards organizations to ensure maritime GPS receivers include means limiting their susceptibility to interference. However, additional alternatives such as developing regulations prohibiting or restricting the use of MSS on certain vessels may be necessary. For example, airline regulations currently prohibit the use of portable electronic devices, such as personal cellular phones, on commercial aircraft because of the potential for interference with on-board systems. This ban may eventually be applied to MSS phones. Airline regulations may serve as a model for similar restrictions needed to protect vessel navigation safety. Feedback provided by the maritime community will assist in developing solutions to this potential problem.

Comment Issues

The Coast Guard seeks information that may be useful when it considers the impact of actual or potential interference to GPS-based maritime navigation systems, caused by MSS or other electronic devices on vessels.

We need feedback from you on the following issues:

(1) The impact of potential regulations that prohibit or restrict the use of portable electronic devices, such as MSS, aboard vessels. How would any potential regulations affect you? Any suggestions for the content of these regulations?

(2) What, if any standards, should be established to limit susceptibility of GPS receivers to interference?

(3) We would like to hear about instances of GPS/MSS interference or other GPS interference cases. For comments reporting on specific instances of GPS (including Differential GPS) interference, please describe the incident as completely as possible. Useful information may include location of incident (latitude/longitude), type and description of vessel, description of equipment involved,

distances between GPS antenna and MSS/electronic device.

Dated: August 10, 1999.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 99–21270 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Passenger Facility Charge Audit Guide for Air Carriers—Procedures for Examining Air Carrier Passenger Facility Charge Collection, Remittance, and Reporting Practices

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Federal Aviation Administration (FAA) is issuing interim guidance for conducting annual audits of air carrier Passenger Facility Charge (PFC) collection, remittance, and reporting practices. An air carrier collecting PFC's from at least 50,000 passengers annually is required to provide for an annual audit of its PFC accounts by an accredited independent public accountant. An auditor engaged to audit the air carrier's PFC accounts is required to report "on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenues." In addition, an auditor is required to report whether the quarterly reports of PFC accounts that the air carriers must provide to airports "fairly represent the net transactions in the PFC account."

The interim guidance is issued for a one-year review and comment period. It is intended that this interim guidance be used for air carrier PFC audits will final guidance is issued, which will occur after the evaluation and disposition of comments from the review period. Use of the interim and final guidance is voluntary, although the FAA will have greater confidence in audits conducted in accordance with the guide.

Interested parties may access the Passenger Facility Charge Audit Guide for Air Carriers through the Internet at http://www.faa.gov/arp/audit.htm. Alternatively, the guide may be obtained by contacting the individual listed below under the heading **FOR FURTHER INFORMATION CONTACT.**

DATES: Interim guidance effective August 17, 1999; Comments must be submitted must be submitted on or before August 16, 2000.

ADDRESSES: Comments should be mailed, in triplicate, to Federal Aviation Administration, Airports Financial Assistance Division, Attention: Passenger Facility Charge Branch (APP–530), 800 Independence Avenue, S.W., Room 619, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Joseph Hebert, Program Analyst, Passenger Facility Charge Branch, Airports Financial Assistance Division (APP–530), Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, (202) 267–3845.

SUPPLEMENTARY INFORMATION: Title 49, USC, Section 40117, authorizes the Secretary of Transportation (further delegated to the FAA Administrator) to approve the local imposition of a PFC of $1, $2, or $3 per enplaned passenger for use on certain airport projects. On May 29, 1991, the FAA issued 14 CFR Part 158 outlining policies and procedures for the PFC program. Under Part 158, public agencies controlling commercial service airports can apply to the FAA for authority to impose a PFC for use on eligible projects. The proceeds from such PFC's are to be used to finance approval, eligible airport-related projects.

Once a public agency's application for the imposition of a PFC is approved by the FAA, it must notify air carriers and foreign air carriers required to collect PFC's at its airport(s) of the approval. Once notified, an air carrier is required to collect PFC's on tickets it issues showing an enplacnement at that airport (with certain exceptions). The air carrier is also required to notify its agents, including other issuing carriers, of the collection requirements. Air carriers or their agents collect PFC's from passengers on behalf of the public agency at the time of air travel ticket (or its equivalent) issuance. Air carriers are responsible for all PFC funds from the time of collection to remittance to the public agency and must provide quarterly reports to the public agency showing the total amounts of PFC revenue collected and refunded, as well as any amount withheld by the air carrier as collection compensation in accordance with section 158.53 of Part 158. For the purposes of an audit under section 158.69, collection is defined as the point when agents or other intermediaries remit PFC revenue to the carrier.

An air carrier collecting PFC's from at least 50,000 passengers annually is required to provide for an annual audit of its PFC accounts by an accredited independent public accountant. The audit shall be made available to the public agency, upon request. Although not specifically required by the regulation, the audit should also be submitted to the FAA, upon request. Auditors engaged to audit the air carrier's PFC accounts are required to report " on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenues." In addition, auditors are required to report whether the quarterly reports of PFC accounts that the air carriers must provide to airports "fairly represent the net transactions in the PFC account" (section 158.69(b)(1) of Part 158). The FAA expects these audits to be filed in a timely manner and should normally coincide with the carrier's fiscal year and annual corporate audit cycle.

To facilitate the conduct of audits that meet the requirements of the statute and regulation, the FAA has prepared the Passenger Facility Charge Audit Guide for Air Carriers. The procedures contained in the guide for testing and reporting on PFC's collected, withheld, refunded/exchanged, and remitted during the year are intended to assist the auditor in accomplishing the audit and internal control structure attestation. This guide is not intended to supplant the auditor's judgment of procedures to be performed. The auditor should use professional judgment to tailor the procedures so that the audit objectives are achieved. However, the auditor must address all applicable internal control requirements.

The interim guidance describes the collection, remittance, and reporting requirements of 14 Code of Federal Regulations (CFR) Part 158 (the implementing regulation for Title 49, United States Code (USC), Section 40117, that established PFC authority) in a requirements-objective-procedure format. This format is similar to that used in the FAA Airport Improvement program supplement to OMB Circular A–133 and should appear familiar to auditors.

The guide also relies on the testing of nonstatistical samples of lifted tickets or equivalent records as an agreed-upon procedure for providing an airport-level assessment of air carrier compliance with part 158 collection and remittance requirements. An air carrier utilizing these procedures should provide copies of the agreed-upon procedures to requesting public agencies. The carrier should also provide a copy of the reports to the FAA, if requested.

The use of this guide by auditors on behalf of the air carriers will provide the FAA and airports collecting PFC's with

an acceptable level of assurance that the air carrier has followed regulatory procedures. Although the guide is not intended to define the sole method of complying with the audit requirements of section 158.69 of Part 158, the FAA has determined that the use of the procedures in this audit guide by the auditors for an air carrier will provide sufficient assurance that the air carrier has met the requirements of Part 158 such that the FAA would not normally require additional reports, undertake an audit of the carrier, or request Department of Transportation, Office of the Inspector General (DOT OIG), intervention on the FAA's behalf. The FAA would not normally initiate further monitoring efforts unless an airport or other source subsequently substantiates a significant violation of the regulation.

The FAA will not have the same level of confidence with an air carrier whose auditors have not used the procedures outlined in this guide. Accordingly, alleged collection and remittance discrepancies raised by airports through their monitoring of local PFC revenue against air carriers whose auditors have not used this guidance are more likely to trigger additional FAA monitoring activities, including requiring additional reports, the undertaking of an audit, or a request for DOT OIG intervention. This guidance shall not, however, foreclose other FAA options for enforcing correct collection and remittance procedures and responding to allegations of improper collection and remittance practices. The FAA expects air carriers to attain a reasonable level of accuracy with regard to PFC remittances.

Issued in Washington, DC on August 10, 1999.

Catherine M. Lang,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 99–21276 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 6, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 16, 1999 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0061.
Form Number: Customs Form 1304.
Type of Review: Extension.
Title: Crew Effects Declaration.
Description: Customs Form 1304 is completed by the master of the arriving carrier to record and list the crew's effects that are accompanying them on the trip, which are defined as merchandise under U.S. statutes. It is also used by the master of the vessel to attest to the truthfulness of the merchandise being carried aboard the vessel as crew's effects.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 9,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17,168 hours.

OMB Number: 1515–0069.
Form Number: Customs Forms 3461 and 3461 Alternate.
Type of Review: Extension.
Title: Immediate Delivery Application.
Description: Customs Form 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and release imported cargo.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 6,100.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 949,500 hours.

OMB Number: 1515–0124.
Form Number: None.
Type of Review: Extension.
Title: Disclosure of Information on Vessel Manifest.
Description: This information is used to grant a domestic importer's, consignee's, and exporter's request for confidentially of its identity from public disclosure.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 578.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 289 hours.

OMB Number: 1515–0151.
Form Number: None.
Type of Review: Extension.
Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement.
Description: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statute and regulations. The operator will furnish Customs an annual certification of their compliance.
Respondents: Business or other for-profit, Not-for-profit institutions
Estimated Number of Recordkeepers: 260.
Estimated Burden Hours Per Recordkeeper: 1 hr., 10 min.
Frequency of Response: Annually.
Estimated Total Recordkeeping Burden: 195 hours.

OMB Number: 1515–0175.
Form Number: None.
Type of Review: Extension.
Title: Documents Required Aboard Private Aircraft.
Description: The documents required by Customs regulations for private aircraft arriving from foreign countries pertain only to baggage declarations. Customs' also requires that the pilots present documents required by FAA to be on the plane.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 150,000.
Estimated Burden Hours Per Respondent: 1 minute.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,490 hours.

OMB Number: 1515–0178.
Form Number: None.
Type of Review: Extension.
Title: Automotive Products Trade Act of 1965.
Description: Under the Automotive Products Trade Act (APTA), Canadian articles may enter the United States so long as they are intended for use as original motor vehicle equipment in the United States. If diverted to other purposes, they are subject to duties. This information collection is issued to track these diverted articles and to collect the proper duties on them.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 240.
Estimated Burden Hours Per Respondent/Recordkeeper: 15 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 3,100 hours.

OMB Number: 1515–0212.
Form Number: None.
Type of Review: Extension.
Title: Prior Disclosure Regulations.
Description: This collection of information is required to implement a provision of the Customs Modernization of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 3,500.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,500 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–21297 Filed 8–16–99; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 6, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 16, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0003.
Form Number: IRS Forms SS–4 and SS–4PR.
Type of Review: Extension.
Title: Application for Employer Identification Number (SS–4); and Solicitud de Número de Identificación Patronal (EIN) (SS–4PR).
Description: Taxpayers required to have an identification number for use on any return, statement, or other document must prepare and file Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by the IRS and the SSA in tax administration and by the Bureau of the Census for business statistics.
Respondents: Business or other for-profit, Individuals and households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 2,419,064.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form SS–4 (in minutes)	Form SS–4PR (in minutes)
Recordkeeping	7	7
Learning about the law or the form	22	25
Preparing the form	46	46
Copying, assembling, and sending the form to the IRS	20	20

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 3,846,692 hours.

OMB Number: 1545–0091.
Form Number: IRS Form 1040X.
Type of Review: Extension.
Title: Amended U.S. Individual Income Tax Return.
Description: Form 1040X is used by individuals to amend an original tax return to claim a refund of income taxes, pay additional income taxes, or designate $3 to the Presidential Election Campaign Fund. The information is needed to help verify that the individual has correctly figured his or her income tax.
Respondents: Individuals or households, Business or other for-profit, Farms.
Estimated Number of Respondents/ Recordkeepers: 2,929,311.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 19 min.
Learning about the law or the form.	28 min.
Preparing the form	1 hr., 11 min.
Copying, assembling, and sending the form to the IRS.	35 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 10,369,761 hours.

OMB Number: 1545–0127.
Form Number: IRS Form 1120–H.
Type of Review: Extension.
Title: U.S. Income Tax Return for Homeowners Associations.
Description: Homeowners associations file Form 1120–H to report income, deductions, and credits. The form is also used to report the income tax liability of the homeowners association. The IRS uses Form 1120–H to determine if the income, deductions, and credits have been correctly computed. The form is also used for statistical purposes.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 112,311.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	11 hr., 29 min.
Learning about the law or the form.	5 hr., 20 min.
Preparing the form	13 hr., 12 min.
Copying, assembling, and sending the form to the IRS.	2 hr., 9 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,611,922 hours.

OMB Number: 1545–1467.
Form Number: IRS Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, 9789(SP), and 12252.
Type of Review: Extension.
Title: Electronic Federal Tax Payment System (EFTPS).
Description: Enrollment is vital to the implementation of the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service will use to accept electronically transmitted federal tax payments. This system is a necessary outgrowth of advanced information and communication technologies.
Respondents: Individuals or households, Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Respondents: 4,471,000.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: On occasion, Quarterly.
Estimated Total Reporting Burden: 1,490,019 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–21298 Filed 8–16–99; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request, Reporting Requirements for Vessels, Vehicles, and Individuals

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Reporting Requirements for Vessels, Vehicles, and Individuals. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 18, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Reporting Requirements for Vessels, Vehicles, and Individuals.

OMB Number: 1515–0203.

Form Number: N/A.

Abstract: These regulations pertain to the arrival, entry, and departure reporting requirements applicable to vessels, vehicles, and individuals and informs the public regarding applicable penalty, seizure, and forfeiture provisions for violating these requirements.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions and individuals.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 1 minutes.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annualized Cost on the Public: $18,000.

Dated: August 11, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–21223 Filed 8–16–99; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Transfer of Cargo to a Container Station

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Transfer of Cargo to a Container Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 18, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Transfer of Cargo to a Container Station.

OMB Number: 1515–0142.

Form Number: N/A.

Abstract: The container station operator may file an application for transfer of a container intact to a

container station which is mover from the place of unlading or from a bonded carrier after transportation in-bond before filing of the entry for the purpose of breaking bulk and redelivery.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 360.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1,872.

Estimated Total Annualized Cost on the Public: $18,720.

Dated: August 11, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–21224 Filed 8–16–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Textile and Textile Products

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Textile and Textile Products. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 18, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Textile and Textile Products.

OMB Number: 1515–0140.

Form Number: N/A.

Abstract: Information is needed for Customs to be able to identify the Country of Origin of Textiles. The requirement prevents circumvention of bilateral agreements and ensures the proper assessment of duties. The declaration will be executed by the foreign manufacturer, exporter, or U.S. importer to be filed with the entry.

Current Actions: There are no changes to the information collection.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 45,810.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 133,582.

Estimated Total Annualized Cost on the Public: $51,469,402.00.

Dated: August 11, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–21225 Filed 8–16–99; 8:45 am].

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 18, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the

Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.

OMB Number: 1515–0108.

Form Number: N/A.

Abstract: The declaration is used under conditions where articles are imported and then exported and then reimported free of duty due to the declaration, it is used insured Customs control over duty free merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 292.

Estimated Total Annualized Cost on the Public: $5,942.

Dated: August 11, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–21226 Filed 8–16–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration of Owner of Merchandise Obtained (Other Than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 18, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent.

OMB Number: 1515–0050.

Form Number: Customs Forms 3347 and 3347A.

Abstract: Customs Form 3347 and 3347A allows an agent to submit, subsequent to making the entry, the declaration of the importer of record which is required by statute. These forms also permits a nominal importer of record to file the declaration of the actual owner and to be relieved of statutory liability for the payment of increased duties.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 950.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 570.

Estimated Total Annualized Cost on the Public: $12,312.

Dated: August 11, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–21227 Filed 8–16–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–38–90]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–38–90 (TD 8382), Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund (§§ 1.6694–2(c) and 1.6694–3(e)).

DATES: Written comments should be received on or before October 18, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or Claim for Refund.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 (Final).

Abstract: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 50,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 10, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–21213 Filed 8–16–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–83–90]

Proposed Collection; Comment Request For Regulation Project.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–83–90 (TD 8383), Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer (§ 301.7216–2(o)).

DATES: Written comments should be received on or before October 18, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

OMB Number: 1545–1209.

Regulation Project Number: IA–83–90 (Final).

Abstract: These regulations govern the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 10, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–21214 Filed 8–16–99; 8:45 am]

BILLING CODE 4830–07–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8693.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8693, Low-Income Housing Credit Disposition Bond.

DATES: Written comments should be received on or before October 18, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Disposition Bond.

OMB Number: 1545–1029.

Form Number: 8693.

Abstract: Section 42(j)(6) of the Internal Revenue Code states that when a taxpayer disposes of a building (or an interest therein) on which the low-income housing credit has been claimed, the taxpayer may post a bond in lieu of paying the recapture tax if the building continues to be operated as a qualified low-income building for the remainder of the compliance period. Form 8693 is used to post a bond under Code section 42(j)(6) to avoid recapture of the low-income housing credit.

Current Actions: There are no changes being made to Form 8693 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hr., 7 min.

Estimated Total Annual Burden Hours: 1,120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–21215 Filed 8–16–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8837

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8837, Notice of Adoption of Revenue Procedure Model Amendments.

DATES: Written comments should be received on or before October 18, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice of Adoption of Revenue Procedure Model Amendments.

OMB Number: 1545–1497.

Form Number: 8837.

Abstract: Form 8837 acts as a transmittal document and is used by sponsors of master or prototype plans, regional prototype plans, and volume submitter plans. Revenue procedures implementing law changes or other changes may be issued at any time requiring changes in plan documents. These changes or amendments can be submitted to the IRS using Form 8837.

Current Actions: There are no changes being made to Form 8837 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 2 hrs., 39 min.

Estimated Total Annual Burden Hours: 7,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–21342 Filed 8–16–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 941–M.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 941–M, Employer's Monthly Federal Tax Return.

DATES: Written comments should be received on or before October 18, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer's Monthly Federal Tax Return.

OMB Number: 1545–0718.

Form Number: 941–M.

Abstract: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than a quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941–M monthly.

Current Actions: There are no changes being made to Form 941–M at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 13 hr., 52 min.

Estimated Total Annual Burden Hours: 166,320.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–21343 Filed 8–16–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 64, No. 158
Tuesday, August 17, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[USCG-1997-2799]

RIN 2115-AF49

User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents

Correction

In rule document 99–20037, beginning on page 42812, in the issue of Thursday, August 5, 1999, make the following corrections:

§ 10.109 [Corrected]

1. On page 42815, in § 10.109, the table is corrected to read as follows:

TABLE 10.109—FEES

If you apply for...	And you need... Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
License:			
Original upper level	$115	$110	$45
Original lower level	115	95	45
Raise of grade	100	45	45
Modification or removal of limitation or scope	50	45	45
Endorsement	50	45	45
Renewal	50	45	45
Renewal for continuity purposes	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	[1] 45
Radio Officer License:			
Original	85	n/a	45
Endorsement	50	45	45
Renewal	50	n/a	45
Renewal for continuity purposes	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	[1] 45
Certificate of Registry:			
Original (MMD holder)	105	n/a	45
Original (MMD applicant)	120	n/a	45
Renewal	50	n/a	45
Renewal for continuity purposes	n/a	n/a	45
*Endorsement	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	[1] 45
STCW Certification:			
Original	No fee	No fee	No fee
Renewal	No fee	No fee	No fee

[1] Duplicate for document lost as result of marine casualty—No Fee.

§ 12.02-18 [Corrected]

2. On page 42816, in § 12.02-18, the table is corrected to read as follows:

TABLE 12.02–18—FEES

If you apply for...	And you need... Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
Merchant Mariner Document:			
Original without endorsement	$110	n/a	$45

TABLE 12.02–18—FEES—Continued

If you apply for...	And you need... Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
Original with endorsement	110	140	45
Endorsement for qualified rating	95	140	45
Upgrade or Raise in Grade	95	140	45
Renewal without endorsement for qualified rating	50	n/a	45
Renewal with endorsement for qualified rating	50	45	45
Renewal for continuity purposes	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	[1] 45
STCW Certification:			
Original	No fee	No fee	No fee
Renewal	No fee	No fee	No fee
Other Transactions:			
Duplicate Continuous Discharge Book	n/a	n/a	10
Duplicate record of sea service	n/a	n/a	10
Copy of certificate of discharge	n/a	n/a	10

[1] Duplicate for document lost as result of marine casualty—No Fee.

[FR Doc. C9–20037 Filed 8–16–99; 8:45 am]

BILLING CODE 1505–01–D

VOL
64
ISS
1
5
8
AG
17
999
UMI

federal register

Tuesday
August 17, 1999

Part II

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans: Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–001]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA),ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiians, Alaska Natives and Native American Pacific Islanders.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 2000 funds in three competitive areas:

(1) Governance and social and economic development;

(2) Governance and social and economic development for Alaska Native entities; and

(3) Environmental regulatory enhancement.

Financial assistance provided by ANA in support of projects in these three areas is intended to promote the goal of self-sufficiency for Native Americans.

APPLICATION KIT: Application kits are approved by the Office of Management and Budget (OMB) under control number 0980–0204, which expires August 31, 1999. ANA has asked OMB for a six month extension to use the kit while a new version is developed, reviewed and approved. We anticipate that the new kit will be available in January 2000. The current application kit remains valid and contains the necessary forms and instructions to apply for a grant under this program announcement.

Application kits may be obtained from ANA training and technical assistance providers. ANA employs contractors to provide short-term training and technical assistance (T/TA) to eligible applicants. T/TA is available under these contracts for a wide range of needs, however, the contractors are not authorized to write applications. The T/TA is provided at no cost.

To obtain an application kit and/or, training and technical assistance, applicants are encouraged to contact the appropriate T/TA provider within the appropriate service area. If you do not know the identity of the contractor currently serving the region you are located in, you may identify the contractor by calling: Administration for Native Americans, Applicant Help Desk, 202–690–7776; or visit ANA's web site listing of current providers at: *www.acf.dhhs.gov/programs/ana/.*

The ANA providers serve six areas divided as follows:

Area 1, Eastern serves federally recognized Tribes in AL, AR, CT, DC, DE, FL, GA, IL, IN, KY, KS, LA, MA, MD, ME, MI, MN, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI and WV.

Area 2, Central federally recognized Tribes in AZ, CO, IA, KA, ND, NE, NE, NM, MO, MT, OK, SD, UT, WY, NV, ID and TX.

Area 3, Western serves federally recognized Tribes in CA, OR and WA.

Area 4, Alaska serves all eligible applicants in AK.

Area 5, Pacific serves all eligible applicants in Hawaii (HI) and the Pacific Islands of AS (American Samoa), GU (Guam), MP (Northern Mariana Islands) and PW (Palau).

Area 6, National serves all eligible applicants on the mainland United States not served by providers for areas 1 through 5. This includes non-federally recognized Tribes, Urban Indians, off-reservation rural Indian communities, Native Americans served through non-federally recognized urban and consortia arrangements and Organizations serving Native Hawaiians and Pacific Island Natives on the Mainland.

Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: *www.acf.dhhs.gov/programs/ana/.*

The printed **Federal Register** notice is the only official program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 2000 funds, authorized under the Native American Programs Act of 1974 (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in three competitive areas. Funding authorization is provided under sections 803(a), and 803(d) of the Native American Programs Act of 1974, as amended (Public Law 93–644, 88 Stat. 2324, 42 U.S.C. 2991b).

The Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Administration for Native Americans assists eligible applicants for the three competitive areas to undertake 12 to 36 month development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency.

In order to streamline the application process for eligible applicants under three competitive areas, ANA is issuing a single program announcement for fiscal year 2000 funds. Information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for all three competitive areas are included in this announcement.

The Administration for Native Americans promotes the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. The Native American Programs Act also authorizes ANA to establish an additional program for environmental regulatory enhancement.

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 2000 and the availability of funds for the three competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

ANA continues a variety of requirements directed towards enforcing its policy that an eligible grant recipient may only have one active ANA grant awarded from a competitive area at any time. Therefore, while eligible applicants may compete for a grant in each of the three competitive areas, an applicant may only submit one application per competitive area and no applicant may receive more than one grant in each competitive area, including any existing ANA grant. Also, an Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the May closing date. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both. *All applicants must clearly demonstrate a plan for an employee fringe benefit package which includes an employee retirement plan*

benefit, and the funding of travel for key personnel to attend post-award grant management and administration training sponsored by ANA.

Before receiving a grant, every successful applicant will be required to commit in writing to, and budget for an employee retirement fringe benefit that meets the standards found in the budget evaluation criteria within this announcement.

New for fiscal year 2000, to foster goals under the Executive Order on tribally controlled colleges and universities (TCUs), TCUs may now independently apply for an ANA grant without impacting eligibility of the Tribe to apply. Previously, only one application was accepted, either from the Tribe or the TCU. Now both the Tribe and TCU may compete for and receive ANA grants at the same time, in the same program(s).

This program announcement consists of three parts.

Part I. ANA Policy and Goals

Provides general information about ANA's policies and goals for the three competitive areas. This section contains information pertaining to all applicants.

Part II. ANA Competitive Areas

Describes the three competitive areas under which ANA is requesting applications:

- Area 1: Governance, Social and Economic Development (SEDS);
- Area 2: Governance, Social and Economic Development (SEDS) for Alaska Native entities;
- Area 3: Environmental Regulatory Enhancement.

Each competitive area includes the following sections which provide information to be used to develop an application:

A Purpose and Availability of Funds
B Background
C Proposed Projects To Be Funded
D Eligible Applicants
E Grantee Share of the Project
F Review Criteria
G Application Due Date(s)
H Contact Information

Part III. General Application Information and Guidance

Provides important information and guidance that applies to all three competitive areas and that must be taken into account in developing an application for any of the three areas.

A Definitions
B Activities That Cannot Be Funded
C Multi-Year Projects
D Intergovernmental Review of Federal Programs
E The Application Process
F The Review Process
G General Guidance to Applicants
H Paperwork Reduction Act of 1995
I Receipt of Applications

PART I—ANA Policy and Goals

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. Governance: To assist tribal and Alaska Native village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

2. Economic Development: To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.

3. Social Development: To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

Applicants must comply with certain of the following administrative policies:

- Current grantees whose grant project period extends beyond September 30, 2000, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the same program area. Current SEDS or Alaska-specific SEDS grantees with project periods beyond September 30, 2000, may not compete for additional SEDS or Alaska-specific SEDS grants. Current Indian Environmental Regulatory Enhancement grantees with project periods beyond September 30, 2000, may not compete for additional Indian Environmental Regulatory Enhancement grants.
- Applicants for any competitive area may propose 12 to 36 month projects.
- Applicants must describe a locally-determined strategy to carry out a proposed project with fundable objectives and activities.
- Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.
- If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.
- An applicant may submit a separate application under any of the competitive areas, as long as the applicant meets the eligibility requirements. However, for the May closing, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both.
- Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community.
- Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal

Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

• If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community, applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

• Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for these organizations for the purpose of eligibility for ANA funds.

• Grantees must provide at least 20 percent of the total approved cost of the project; i.e., the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20% of the total $125,000 project cost).

As per 45 CFR Part 74.2, In-Kind contributions are defined as "the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where legislation or regulations authorize using specific types of funds for match and provided the source relates to the ANA project; examples follow:

• Indian Child Welfare funds, through the Department of Interior;

• Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and

• Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

• If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

• A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

• Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, for the ANA grants under these announced programs, no match is required for grants to these insular areas.

Part II—ANA Competitive Areas

The three competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, special application requirements, and review criteria. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

This competitive area promotes the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately $14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. ANA anticipates awarding approximately 120 competitive grants ranging from $30,000 to $1,000,000.

B. Background

ANA assists tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy uses the following definitions:

• "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.

• "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.

• "Social infrastructure" includes those components through which health, economic well-being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In

designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

ANA encourages the development and maintenance of comprehensive strategic plans which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

C. Proposed Projects To Be Funded

This section provides descriptions of activities which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives. The types of projects which ANA may fund include, but are not limited to, the following:

Governance

- Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or the development of tribal court systems);
- Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);
- Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, executive orders, administrative and court decisions, or as citizens of a particular state, territory, of the United States;
- Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgment or in response to any obvious deficiencies cited by the Bureau of Acknowledgment and Research (BAR), Department of Interior, in a petition from a Native group seeking Federal recognition; and
- Development of and/or amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

Economic Development

- Development of a community economic infrastructure that will result in businesses, jobs, and an economic support structure;
- Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, light and/or heavy manufacturing, technology, fabrication and construction companies, housing and fisheries or aqua-culture
- Stabilizing and diversifying a Native community's economic base through business development ventures.

Social Development

- Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;
- Developing local and intertribal models related to comprehensive planning and delivery of services;
- Developing programs or activities to preserve and enhance tribal heritage and culture; and
- Establishing programs which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

Other SEDS Relationships. ANA encourages projects designed to use the SEDS approach to help achieve current priorities of the Administration for Children and Families which are to:

- Address welfare reform initiatives such as moving families to work.
- Help ensure child support from both parents.
- Create access to affordable child care for low income working families.
- Reach children earlier to promote full development, including links to Head Start, Early Head Start and Child Care.
- Help enroll children in quality Head Start and prepare them to be ready to learn.
- Provide safety, permanency and well-being for children and double the number of adoptions from the public child welfare system.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these islands or on the continental United States);
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and
- Tribally controlled community colleges, Tribally controlled cost-secondary vocational institutions, and Native controlled colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.
- Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA SEDS grantees whose grant project period ends on or before September 30, 2000 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the "Financial Assistance Award" document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2000.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefitting Native Americans or Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community except that a tribally controlled college or university (TCU) may apply in addition to the Tribe. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and program goals described in the Background section of this competitive area; include a social and economic development strategy which reflects the needs and specific circumstances of the local community; and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).
- In discussing their community-based, long-range goals, and the objectives for the proposed projects, non-Federally recognized and off-reservation groups must include a description of what constitutes their specific community.

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, not merely letters of support. "Letters of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources and therefore carry less significance.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed

in the Objective Work Plan and in the proposed budget. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities (45 Points)

The application proposes specific project Objective Work Plan(s) with activities related to each specific objective.

The Objective Work Plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the planned ANA grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- *Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. The applicant must provide a retirement plan fringe benefit for grant funded employees salaries of five (5) percent.*

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

- The plan must be "qualified", i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

G. Application Due Dates

The closing dates for submission of applications under this competitive area are: October 8, 1999, January 28, 2000 and May 5, 2000.

H. Contact Information

Contact the ANA Applicant Help Desk at 202–690–7776 for assistance.

Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

This competitive area funds Alaska Native social and economic development projects. Approximately $1.5 million of financial assistance is anticipated to be available for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 15–18 grants under this competitive area. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to $150,000, commensurate with approved multi-village objectives.

B. Background

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined

strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203.

While the Administration for Native Americans does not fund objectives or activities for the core administration of an organization. ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

C. Proposed Projects To Be Funded

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

Governance

- Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;
- Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;
- Develop agreements between the State and villages that transfer programs jurisdictions, and/or control to Native entities;
- Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;
- Assist in status clarification activities;
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;
- Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);
- Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;
- Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

Economic Development

- Assist villages in developing businesses and industries which: (1) use local materials; (2) create jobs for Alaska Natives; (3) are capable of high productivity at a small scale of operation; and (4) complement traditional and necessary seasonal activities;
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;
- Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;
- Assist in the establishment or expansion of native-businesses; and
- Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

- Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;
- Develop local models related to comprehensive planning and delivery of social services;
- Develop new service programs, initially established with ANA funds, which will be funded by local communities or the private sector for continued operation after the ANA grant expires.
- Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;
- Assist in obtaining licenses to provide housing or related services from State or local governments; and
- Develop businesses to provide relief for caretakers needing respite from human service-related care work.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes in Alaska;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
- Nonprofit Native organizations in Alaska with village specific projects.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA SEDS grantees in Alaska whose project period ends on or before September 30, 2000 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the "Financial Assistance Award" document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2000.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefitting Native Americans or Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or

Native American community except that a tribally controlled college or university (TCU) may apply in addition to the Tribe. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use for-profit regional corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area 1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, not merely letters of support. "Letters of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities (45 Points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. All applicants are expected to coordinate and organize any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- *Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. The applicant must provide a retirement plan fringe benefit of five (5) percent of grant funded employees' salaries.*

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

- The plan must be "qualified", i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

G. Application Due Date

The closing date for submission of applications under this competitive area is: May 12, 2000. Applicants are reminded that for this May closing, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both.

H. Contact Information

Contact the ANA Applicant Help Desk at 202–690–7776 for assistance.

Competitive Area 3. Indian Environmental Regulatory Enhancement Projects

A. Purpose and Availability of Funds

This competitive area funds environmental regulatory enhancement projects. Approximately $3 million of financial assistance is anticipated to be available for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000. An applicant may propose project periods of between 12 and 36 months.

B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before Congressional committees include:

- The need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- The lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- The lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality.

As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups. "Environmental regulatory enhancement" includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental

laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Development of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

C. Proposed Projects To Be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure the tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes;
- Incorporated non-federally and State recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.
- Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

The following organizations are not eligible to apply based on the determination that they do not own or manage resources for which environmental regulatory projects are directed and therefore are not empowered to perform such projects:

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and the Republic of Palau;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA Indian Environmental Regulatory Enhancement project grantees whose grant project period ends on or before September 30, 2000 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the "Financial Assistance Award" document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2000.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefitting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a

whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific environmental regulatory enhancement long-range goal(s) relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The applicant's specific environmental regulatory needs; and
- A clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

Similarly, a tribal organization may submit resolutions supporting the project proposal from each of its member tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, not merely letters of support. "Letters of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications (15 Points)

(a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed-Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities (40 Points)

The application proposes specific project objective work plans with activities arelated to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. All applicants are expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate

the determination of cost allowability and the relevance of these costs to the proposed project; and

• Requests funds which are appropriate and necessary for the scope of the proposed project.

• Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.

• For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

• *Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. The applicant must provide a retirement plan fringe benefit of five (5) percent of grant funded employees-salaries. grant project.*

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

• The plan must be "qualified", i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.

• The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.

• The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

G. Application Due Date

The closing date for submission of applications under this competitive area is February 25, 2000.

H. Contact Information

Contact the ANA Applicant Help Desk at 202–690–7776 for assistance.

Part III—General Application Information and Guidance

A. Definitions

Funding areas in this program announcement are based on the following definitions:

• A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.

• A "multi-year project" is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

• "Budget Period" is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

• "Core administration" is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

• "Environmental regulatory enhancement" includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

• "Real Property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

• "Construction" is the term which specifies a project supported through a discretionary grant or a cooperative agreement, to support the initial building of a facility.

• "Core administration" is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

B. Activities That Cannot Be Funded

The Administration for Native Americans does not fund:

• Projects that operate indefinitely or require ANA funding on a recurring basis.

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• ANA will not fund the purchase of real property.

• ANA will not fund construction.

• Objectives or activities for the support of core administration of an organization.

• Costs of fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the

organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section G, General Guidance to Applicants, below.

C. Multi-Year Projects

A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

D. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

E. The Application Process

1. Application Submission by Mail

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the specific closing date of each ANA competitive area to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, S.W., Mail Stop HHH 326–F, Washington, D.C. 20447–0002, Attention: Lois B. Hodge, ANA No. 93612–001.

2. Application Submission by Courier

Hand delivered applications are accepted between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, if they are either received on or before the deadline date or postmarked on or before the established closing date at: Administration for Children and Families, ACYF/Office of Grants Management, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, Attention: Lois B. Hodge, ANA No. 93612–001.

2. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA. An incomplete application is one that is:
- Missing Form SF 424
- Does not have a signature on Form SF 424
- Does not include proof of non-profit status, if applicable
- The application (Form 424) must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and environmental issues, as appropriate, evaluate each application using the published criteria in each funding competitive area. As a result of the review, a normalized numerical score will be assigned to each application. A normalized score reflects the average score from the reviewers, adjusted to reflect the average score from the panels.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.
- Each tribe, Native American organization, or other eligible applicant may compete for a grant award in each of the three competitive areas. However, no applicant may receive more than one SEDS grant. The Administration for Native Americans will accept only one application per competitive area from any one applicant. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both. Therefore, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both at the same time.
- If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

F. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application is signed and submitted by the deadline explained in section G, Application Due Date, in each competitive area of this announcement.
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an

independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.

After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants who are initially excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

G. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

• The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.

• Projects will not be ranked on the basis of general financial need.

• In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.

• In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific "community."

• Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For tribes, a current signed resolution from the governing body of the tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

• Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.

• An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.

• The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

• Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.

• In the ANA Project Narrative, Section A of the application package, "Resources Available to the Proposed Project," the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

• Applicants proposing an Economic Development project should address the project's feasibility. A business plan describing the project's feasibility and approach for the implementation and marketing of the business is recommended. ANA has included sample business plans in the application kit. It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.

• Applications which were not funded under a previous closing date and revised for resubmission should make reference to the changes, or reasons for not making changes, in their current application.

2. Technical Guidance

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

• If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.

• For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian tribes which are not included on this list (e.g., those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.

• The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award

regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

• The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. "Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per "unit." During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project by ANA.

• Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Grant Administrative Guidance

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful.

• An application with an original signature and two additional copies are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.

• Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• Applicants may propose a 17-month project period. However, the project period for the first year of a multi-year project may only be 12 months.

4. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are *not an essential part* of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding "wish lists" of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.

• Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

• Project goals which are not responsive to one or more of the funding competitive areas.

• Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. Proposals from consortia of tribes should have individual objectives which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period. All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

• Once a tribe has been denied federal recognition through the BIA Federal Acknowledgment Process, ANA will not fund objectives relating to the attainment of federal recognition, unless the objectives deal specifically and exclusively with the formal appeal of a denial.

• ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.

• Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

I. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section E, The Application Process. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regardless of date or time of submission

and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Applications and related materials postmarked after the closing date will be classified as late.

1. Deadlines

• Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant, SW, Mail Stop HHH 326–F, Washington, DC 20447–0002 Attention: Lois B. Hodge ANA No. 93612–001.

• Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

• Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8:00 am and 4:30 pm at: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

• ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

• No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; and 93.581 Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality)

Dated: August 9, 1999.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 99–21173 Filed 8–16–99; 8:45 am]

BILLING CODE 4184–01–P

VOL
64
ISS
1
5
8
AG
17
999
JMI

Federal Register

Tuesday
August 17, 1999

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Internet Crimes Against Children Task Force Training and Technical Assistance Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1242]

RIN 1121–ZB76

Internet Crimes Against Children Task Force Training and Technical Assistance Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Announcement of Discretionary Competitive Assistance Grant.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Public Law 105–277, October 19, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, is requesting applications from organizations to provide a training and technical assistance program that will assist OJJDP in developing and delivering programs and activities designed to counter the computer-facilitated sexual exploitation of children. Congress has directed OJJDP to sponsor "town meetings to focus on cybercrimes against children in local communities across the country" and to deliver "highly technical sophisticated computer training for State and local law enforcement." In addition to town meetings, activities will include delivering computer forensic training to State and local law enforcement officers, and providing OJJDP with the technical assistance capacity to administer the Internet Crimes Against Children Task Force (ICAC Task Force) Program.

DATES: Applications must be received by October 1, 1999.

ADDRESSES: Interested applicants must obtain an application kit from the Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about.html/#kit.

FOR FURTHER INFORMATION CONTACT: Michael Medaris, ICAC Task Force Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–616–8937.

This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Purpose

This program has two purposes. The first is to assist State and local law enforcement agencies enhance their investigative response to sexual exploitation of children by offenders using the Internet, online communication systems, or other computer technology. The second is to assist OJJDP to administer the ICAC Task Force Program through the provision of training and technical assistance and other activities as determined by OJJDP. For purposes of this program announcement, "Internet crimes against children" refers to sexual exploitation of children facilitated by computers and includes crimes of child pornography and online solicitation for sexual purposes.

Background

Industry experts estimate that more than 10 million children currently go online and, by the year 2002, 45 million children will use cyberspace to talk with friends, explore the universe, or complete homework assignments. While providing almost limitless opportunities to learn, the Internet has also become the new venue for predators seeking children to victimize. Cloaked in the anonymity of cyberspace, sex offenders can capitalize on the natural curiosity of children, seeking victims with little risk of detection. Preferential sex offenders [1] can roam from chat room to chat room trolling for children susceptible to victimization. This alarming trend has grave implications for parents, teachers, and law enforcement officers because it circumvents conventional safeguards in place for the physical world and provides sex offenders virtually unlimited opportunities for unsupervised contact with children.

The Internet has also become a major medium for distribution of child pornography. In 1982, in *New York* v. *Ferber*, 458 U.S. 747 (1982), the Supreme Court stated: "The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children . . . the materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation." Child pornography not only depicts the sexual assault of a child, but is also used by child molesters to recruit, seduce, and control future victims. It is used to break down inhibitions, validate sex between children and adults as normal, and control the victim throughout the molestation. When the offender loses interest, it is often used as blackmail to ensure the child's silence and in these most egregious cases, child pornography allows the molester to go unpunished and the victim untreated. It is clear to OJJDP that the intersecting of the increasing online presence of children, the proliferation of child pornography, and preferential sex offenders ceaselessly searching for unsupervised contact with underage victims presents a significant threat to the health and safety of children.

In response to this threat, Congress in the FY 1998 Omnibus Appropriations Act, Public Law 105–119, authorized OJJDP to stimulate the creation of "State and local law enforcement cyber units to investigate child sexual exploitation." In September 1998, with 10 awards to State and local law enforcement agencies across the Nation, OJJDP initiated a national program to counter the emerging threat of offenders using the Internet or other online technology to sexually exploit children. Designed to encourage communities to adopt a multidisciplinary, multijurisdictional response to online enticement and child pornography cases, the Internet Crimes Against Children Task Force (ICAC Task Force) Program ensures that participating State and local law enforcement agencies can acquire the necessary knowledge, equipment, and personnel resources to prevent, interdict, or investigate ICAC offenses. Under this program, ICAC Task forces serve as regional sources of prevention, education, and investigative expertise to provide assistance to parents, teachers, law enforcement, and other professionals working on child victimization issues.

Agencies receiving ICAC Task Force Program funding in FY 1998 were Bedford County, Virginia, Sheriff's Department; Broward County, Florida, Sheriff's Department; Colorado Springs, Colorado, Police Department; Dallas, Texas, Police Department; Illinois State Police; New York State Division of Criminal Justices Services; Portsmouth, New Hampshire, Police Department; Sacramento County, California, Sheriff's Office; the South Carolina Office of the Attorney General; and the Wisconsin Department of Justice.

Under a cooperative agreement with OJJDP, the National Center for Missing and Exploited Children (NCMEC) also plays a crucial role in enhancing the national response to Internet crimes against children by providing a wide range of activities including the CyberTipline, which provides a way for children, parents, and concerned citizens to report information online about suspected child exploitation activity to law enforcement; prevention and education programs; and training courses for law enforcement. For example, NCMEC's Protecting Children

[1] For the purposes of this program, preferential sex offenders are defined as individuals whose primary sexual focus is on children.

Online course provides investigators specific information regarding behavior characteristics, technical demands of Internet investigations, interviewing and interrogation techniques, and other aspects of law enforcement essential to effective investigation of these offenses. Its Protecting Children Online Unit Commander Seminar focuses on the broader policy and procedural issues that confront law enforcement managers developing strategies for responding to Internet crimes against children.

In FY 1999, OJJDP will provide continuation funding to the 10 original task forces. It will also expand the ICAC Task Force Program by adding 8 new agencies.

OJJDP ICAC Task Force Program Management

Nearly all law enforcement investigations start with a determination of jurisdiction and in making that determination, time, place, and location are important considerations. However, this conventional approach is virtually meaningless in the electronic world of cyberspace, and preferential sex offenders have quickly developed substantial expertise in adapting this ambiguity to further their criminal activities.

Few ICAC cases begin and end within the same jurisdiction, and investigations usually cross town, State, or even international borders. Accordingly, nearly all ICAC investigations involve multiple jurisdictions and require interagency coordination and communication. Absent meaningful case coordination, it is likely that law enforcement will simultaneously investigate identical suspects and organizations or target undercover operatives of other law enforcement agencies. Lack of communication can also contribute to law enforcement officers inadvertently disrupting clandestine investigations of other agencies.

The obvious need for interagency cooperation and coordination also stimulates interest in establishing standards for ICAC undercover investigations. Representatives from Federal, State, and local law enforcement agencies have repeatedly expressed concern about initiating investigations based on outside agency referrals that may be predicated on information acquired through inappropriate officer conduct or investigative techniques.

The clandestine nature of undercover operations along with the Internet's metaphysical aspect significantly increases these concerns. Undercover operations, when executed and documented properly, collect virtually unassailable evidence regarding a suspect's predilection to sexually exploit children. These operations allow law enforcement to go on the offensive and—what is most important—children do not have to be victimized to bring a case. While there is substantial consensus that carefully managed undercover operations by well-trained officers are very effective, they also generate significant concerns regarding legal, coordination, communication, and resource management issues.

To address these concerns, OJJDP has established ICAC Task Force operational and investigative standards (Standards) through a collaborative process with the 10 original ICAC Task Force agencies and Federal prosecutorial and law enforcement agencies.[2] The Standards were designed by the Task Force agencies to foster information sharing, coordinate investigations, ensure the probative quality of undercover operations, and facilitate interagency case referrals through standardization of investigative practices.

OJJDP has also established an ICAC Task Force Review Board (Board), composed of local prosecutors and law enforcement executives from participating agencies, to review proposed undercover operations for compliance with the principles of the Standards, formulate policy, encourage case coordination, and facilitate information sharing on trends, investigative techniques, and prosecution strategies.

In sum, program management for the OJJDP ICAC Task Force involves:

- Ensuring that ICAC Task Force personnel are adequately trained and equipped.
- Maintaining ICAC investigative standards to facilitate interagency case referrals.
- Advocating coordination and collaboration among Federal, State, and local law enforcement agencies investigating ICAC offenses.
- Fostering meaningful information sharing to avoid redundant investigations or disruptive activities to ongoing investigations of other agencies.
- Maintaining an advisory board to review undercover operations proposals and to formulate policy for the operation of the ICAC Task Force Program.

[2] Participating in development of the Standards were representatives from the United States Customs Service (USCS), the United States Postal Inspection Service (USPIS), the National Center for Missing and Exploited Children (NCMEC), and—from the Department of Justice—OJJDP, the Federal Bureau of Investigation, the Child Exploitation and Obscenity Section (CEOS) of the Criminal Division, and the Executive Office for United States Attorneys.

Goal

To develop a training and technical assistance program to assist State and local law enforcement to respond to ICAC offenses and to assist OJJDP in supporting the ICAC Task Force Program.

Objectives

The project must accomplish the following objectives:

- Develop and deliver a technical investigative course that complements the curriculum of NCMEC's Protecting Children Online course. This new technical investigative course must feature a hands-on approach and be capable of being offered regionally. It should provide information regarding legal issues, hardware and software specifications, evidence collection procedures, and specific investigative techniques to assist law enforcement to effectively respond to computer-facilitated sexual exploitation cases.
- Using the "town meeting" concept, assist OJJDP and NCMEC to sponsor events to promote awareness and encourage jurisdictions to develop communitywide prevention and interdiction efforts related to ICAC offenses.
- Develop a logistical support program to facilitate OJJDP ICAC Task Force Board meetings.
- Develop a technical assistance capacity composed of a cadre of expert practitioners who have expertise in task force implementation including the development of multiagency response protocols, information sharing, performance measures, Federal grant reporting requirements, and investigative and technical aspects of ICAC investigations.
- Develop an ICAC offense training and technical assistance directory that includes information regarding existing prevention and education programs and publications and provides a list of technical and investigative course providers that offer training relevant to ICAC investigations.
- Develop an ongoing needs assessment system to assist OJJDP to plan future training and technical assistance programs.

Program Strategy

OJJDP is consolidating a wide range of training, technical assistance, and town meeting activities to achieve cost savings and to ensure that these activities are carried out with a consistent point of view and comply with the OJJDP ICAC Task Force

Standards. Because the Standards contain sensitive investigative information, they will not be made available to organizations during the application phase of this program. However, for the purposes of responding to this request for proposals, applicants should be aware that the Standards express broad law enforcement themes that pertain to target selection, supervision, media releases, evidence collection procedures, undercover conduct, and other issues regarding ICAC investigations. OJJDP will make the Standards available to the successful applicant once the award is made.

During the implementation of these activities, the applicant will be expected to collaborate with NCMEC and to work closely with OJJDP.

Eligibility Requirements

OJJDP invites applications from public and private nonprofit agencies. Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly indicated as the primary applicant (for correspondence, award, and management purposes) and the others indicated as coapplicants.

Selection Criteria

OJJDP will convene a peer review panel to evaluate and rank applications and to make a funding recommendation to the OJJDP Administrator. Although peer review recommendations are given weight, they are advisory only and the final award decision will be made by the OJJDP Administrator. OJJDP will negotiate specific terms of the award with applicants being considered for the award. Applicants will be rated and evaluated according to the criteria outlined below.

Problem(s) To Be Addressed (10 points)

The applicant should clearly demonstrate an understanding of the program concept and in particular, an understanding of a program requiring reconciliation of Federal oversight responsibilities with the interests of State and local law enforcement agencies.

Goals and Objectives (10 points)

Applicants must establish goals and objectives for this program that are clearly defined, measurable, and attainable.

Project Design (25 points)

The applicant must present a clear workplan that contains program elements directly linked to the achievement of the project objectives. The workplan must indicate significant project milestones, product due dates, and the nature of the products to be delivered. In addition, applicant should present a clear concept of how it intends to deliver a technical computer investigative course that is designed to be offered regionally and features a hands-on approach.

Management and Organizational Capability (40 points)

The project's management structure and staffing must be appropriate for the successful implementation of the project. Applicants must present résumés of staff (either permanent or contractual) with expertise in meeting logistics, computer forensics, curriculum development, and law enforcement task force implementation and maintenance issues. Applicants must also present a workplan that identifies responsible individuals, their time commitment, and their relation to major tasks and milestones.

The applicant's organizational ability to administer the project successfully must be clearly documented in the proposal and should include available computer technology to be utilized in attaining the objectives. Documentation must include past or current organizational experience in the subject areas and skills required to achieve the objectives and with projects of the magnitude and complexity described in this program announcement. In addition, applicants must demonstrate an ability and history of handling sensitive information in a confidential and prudent manner.

Budget (15 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken. Applicants should consider the following OJJDP expectations for budget planning purposes:

- Deliver at least 8 regional sessions of the technical investigative course with a projected capacity of no less than 20 students.
- Design, support, and deliver at least four town meetings. (OJJDP anticipates centering these activities around existing ICAC Task Force jurisdictions.)
- Facilitate eight ICAC Task Force Board meetings. Although transportation and lodging expenses of Board members will be the responsibility of individual ICAC Task Forces, all other activities or expenses associated with Board meetings will be the responsibility of the applicant. This includes, but is not limited to, identifying and securing meeting space, providing onsite support, communicating with Board members regarding meeting arrangements, arranging for audiovisual equipment as necessary, and reimbursing travel and lodging expenses of guest speakers (no more than two per meeting).
- Perform a technical assistance function ranging from telephone consultation to direct onsite support, using a cadre of expert practitioners. At the direction of OJJDP, technical assistance will be provided to assist ICAC Task Forces to comply with the Standards, assist the Board to formulate and document operational by-laws for the Program, and based on the availability of funds, assist other jurisdictions interested in improving their response to ICAC offenses.

Format

The narrative must not exceed 35 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½ by 11-inch paper, double-spaced on one side of the paper in a standard 12-point font. These requirements are necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

Award Period

The project will be funded as a cooperative agreement for up to an 18-month budget and project period. Funding of the project in subsequent budget periods will be contingent upon OJJDP's assessment of continuing need, availability of funds, and the performance of the grantee.

Award Amount

OJJDP intends to award one cooperative agreement of up to $400,000 for an 18-month project period.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.543. This form is included in OJJDP's Application Kit, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The kit is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting

applicants to provide information on the following: (1) active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. *Note: In the lower left-hand corner of the envelope, the applicant must clearly write "Internet Crimes Against Children Task Force Training and Technical Assistance Program."*

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. EDT on October 1, 1999.

Contact

For further information, call Michael Medaris, Program Manager, ICAC Task Force Program Manager, 202–616–3637, or send an e-mail inquiry to medarism@ojp.usdoj.gov.

References

Burgess, A., and Grant, C. 1988. *Children Traumatized in Sex Rings.* Arlington, VA: National Center for Missing and Exploited Children.

Cage, R., and Pence, D. 1997. *Criminal Investigation of Child Sexual Abuse.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Dressler, K. 1997. *Multijurisdictional Task Forces: Ten Years of Research and Evaluation: A Report to the Attorney General.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

Farley, R., and Lanning, K. 1997. *Understanding and Investigating Child Sexual Exploitation.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Fuller, K., and Saywitz, K. 1997. *Interviewing Child Witnesses and Victims of Sexual Abuse.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Hammerschlag, M. 1997. *Sexually Transmitted Diseases and Child Sexual Abuse.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Lanning, K. 1992. *Child Molesters: A Behavioral Analysis for Law Enforcement Officers Investigating Cases of Child Sexual Exploitation.* Arlington, VA: National Center for Missing and Exploited Children.

Lanning, K. 1992. *Child Sex Rings: A Behavioral Analysis for Criminal Justice Professionals Handling Cases of Child Sexual Exploitation.* Arlington, VA: National Center for Missing and Exploited Children.

Magid, L. 1994. *Child Safety on the Information Highway* (pamphlet). Arlington, VA: National Center for Missing and Exploited Children, 1994.

Magid, L. 1998. *Teen Safety on the Information Highway* (pamphlet). Arlington, VA: National Center for Missing and Exploited Children.

National Center for Missing and Exploited Children. 1998. *Know the Rules* (pamphlet). Arlington, VA: National Center for Missing and Exploited Children.

Quarantiello, L. 1997. *Cyber Crime: How to Protect Yourself from Computer Criminals.* Lake Geneva, WI: Tiare Publications.

Rosenblatt, K. 1995. *High-Technology Crime: Investigating Cases Involving Computers.* San Jose, CA: KSK Publications.

Whitcomb, D. 1995 *Child Sexual Exploitation: Improving Investigations and Protecting Victims: A Blueprint for Action.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.

Dated: August 11, 1999.

John J. Wilson,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 99–21228 Filed 8–16–99; 8:45 am]

BILLING CODE 4410–18–P

VOL
64
ISS
1
5
8
AG
17
999
UMI

federal register

Tuesday
August 17, 1999

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Airspace and Flight Operations Requirements for the Kodak Albuquerque International Balloon Fiesta; Albuquerque, NM; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29279; SFAR No. 86]

RIN 2120–AG79

Airspace and Flight Operations Requirements for the Kodak Albuquerque International Balloon Fiesta; Albuquerque, NN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a temporary flight restriction (TFR) area for the periods of October 2 through October 10, 1999, and October 7 through October 15, 2000, for the 1999 and 2000 Kodak Albuquerque International Balloon Fiestas (KAIBF). This TFR is necessary to manage aircraft operating in the vicinity of the KAIBF, and to prevent unsafe congestion of aircraft that are sightseeing over and around the KAIBF.

DATES: Effective date for 1999: October 2 through October 10, 1999; effective date for 2000: October 7 through October 15, 2000.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322–2722 or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the SFAR number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplies by a small entity.

If your organization is a small entity and you have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analysis Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (888) 551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

The KAIBF will be held on October 2 through October 10, 1999, and the following year on October 7 through October 15, 2000, at a site 9 miles north of Albuquerque International Sunport, in Albuquerque, NM.

This Special Federal Aviation Regulations (SFAR) establishes a TFR area to provide for the safety of persons and property in the air and on the ground during the KAIBF. The TFR are will restrict aircraft operations in a specified location; however, access to this area maybe allowed with the appropriate air traffic control (ATC) authorization from the Albuquerque International Sunport Airport Traffic Control Tower (ATCT). ATC will retain the ability to manage aircraft through the TFR area in accordance with established ATC procedures.

Specifically, the TFR area will be 9 miles north of the Albuquerque International Sunport ATCT and just west of Interstate Highway 25 (I–25). The TFR area will be centered on the Albuquerque Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) 038° radical 14 distance measuring equipment (DME) fix. The are will encompass a 4 nautical mile (NM) radius, extending from the surface up to but not including 8,000 feet mean sea level (MSL). The TFR area will be in effect between the hours of 0530 Mountain Daylight Time (MDT) and 1200 MDT, and from 1600 MDT until 2200 MDT on October 2 through October 10, 1999, and October 7 through October 15, 2000. Unauthorized aircraft will be required to remain clear of this area during these times.

The location, dimensions, and effective times of the TFR area will be published and disseminated via the Notice to Airmen (NOTAM) system.

Exceptions

This SFAR contains provisions to provide for flexible, efficient management and control of air traffic. ATC has the authority to give priority to, or exclude from the requirements of the SFAR, certain flight operations dealing with or containing personnel or equipment for essential military, medical emergency, rescue, or law enforcement purposes, and transportation of the President, or heads of state.

Notice to Airmen Information

Time-critical aeronautical information that is of a temporary nature, or is not sufficiently known in advance to permit publication on aeronautical charts or in other operational publications, receives immediate dissemination via the NOTAM system. All domestic operators planning flight to the KAIBF will need to pay particular attention to NOTAM D and Flight Data Center (FDC) NOTAM information.

NOTAM D contains information on airports, runways, navigational aids, radar services, and other information essential to flight. An FDC NOTAM contains information that is regulatory in nature, such as amendments to aeronautical charts and restrictions to flight. FDC NOTAM and NOTAM D information will also be provided to international operators in the form of International NOTAMs. NOTAMs are distributed through the National Communications Center is Kansas city, MO, for transmission to all air traffic facilities having telecommunications access.

Pilots and operators will need to consult the monthly NOTAM Domestic/International publication. This publication contains NOTAM FDC and D NOTAMs. Special information, including graphics, will be published in the biweekly publication in advance of the KAIBF. For more detailed information concerning the NOTAM

system, refer to the Aeronautical Information Manual "Preflight" section.

Other U.S. Laws and Regulations

Aircraft operators should understand that the SFAR is in addition to other laws and regulations of the U.S. The SFAR will not waive or supersede any U.S. statute or obligation. When operating within the jurisdictional limits of the U.S., operators of foreign aircraft must conform to all applicable requirements of U.S. Federal, State, and local governments. In particular, aircraft operators planning flights into the U.S. must be aware of and conform to the rules and regulations established by the:

1. U.S. Department of Transportation regarding flights entering the U.S.;
2. U.S. Customs Service, Immigration and other authorities regarding customs, immigrations, health, firearms, and imports/exports;
3. U.S. FAA regarding flight within or into U.S. airspace. This includes compliance with Parts 91, 121 and 135 of Title 14 of the code of Federal Regulations regarding operations into or within the U.S. through air defense identification zones, and compliance with general flight rules; and,
4. Airport management authorities regarding use of airports and airport facilities.

Discussion of Comments

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on May 18, 1999 (64 FR 27160) and a correction was published on May 28, 1999 (64 FR 28945). No comments were received regarding this proposal. Except for minor editorial changes, this amendment is adopted as proposed in the NPRM.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this final rule.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is not "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by OMB. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade.

This regulatory evaluation examined the costs and benefits of the SFAR applicable for the periods October 2 through October 10, 1999, and October 7 through October 15, 2000. This SFAR establishes a TFR area for the 1999 and 2000 KAIBFs to be held in Albuquerque, NM. Since the impacts of the change are relatively minor, this economic summary constitutes the analysis, and no regulatory evaluation will be placed in the docket.

The major economic impact, in this case, will be the inconvenience of circumnavigation to operators who may want to operate in the area of the TFR. An aircraft operator could avoid the restricted airspace by flying over it or by circumnavigating the restricted airspace. Because the possibility of such occurrences is for a limited time and the restricted areas are limited in size, any circumnavigation costs will be negligible.

The benefits of the TFR airspace will primarily be a lowered risk of midair collisions between aircraft and balloons due to increased positive control of TFR airspace. While benefits cannot be quantified, the FAA believes the benefits are commensurate with the small costs attributed to the temporary inconvenience of the flight restrictions for operators near the TFR area.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance, that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulations." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination and the reasoning should be clear.

The FAA conducted the required review of this final rule and determined that it will not have a significant economic impact on a substantial number of small entities. As previously stated, the major economic impact, in this case, will be the inconvenience of circumnavigation to operators who may want to operate in the area of the TFR. Because the possibility of such occurrences is for a limited time and the restricted areas are limited in size, any circumnavigation costs will be negligible.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The provisions of this rule will have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Federalism Implications

The regulations herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications

to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires a Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any 1 year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any 1 year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, this rulemaking action qualifies for a categorical exclusion.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airports, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of Title 14, Code of Federal Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Amend part 91 by adding Special Federal Aviation Regulation No. 86 to read as follows:

SFAR No. 86—Airspace and Flight Operations Requirements for the 1999 and 2000 Kodak Albuquerque International Balloon Fiestas, Albuquerque, NM

1. *General.* (a) Each person shall be familiar with all NOTAMs issued pursuant to this SFAR and all other available information concerning that operation before conducting any operation into or out of an airport or area specified in this SFAR or in NOTAMs pursuant to this SFAR. In addition, each person operating an international flight that will enter the U.S. shall be familiar with any international NOTAMs issued pursuant to this SFAR. NOTAMs are available for inspection at operating FAA air traffic facilities and regional air traffic division offices.

(b) Notwithstanding any provision of the Title 14, Code of Federal Regulations, no person may operate an aircraft contrary to any restriction procedure specified in this SFAR or by the Administrator, or through a NOTAM issued pursuant to this SFAR.

(c) As conditions warrant, the Administrator is authorized to—

(1) Restrict, prohibit, or permit IFR/VFR operations in the temporary flight restricted area designated in this SFAR or in a NOTAM issued pursuant to this SFAR;

(2) Give priority to or exclude the following flights from provisions of this SFAR and NOTAMs issued pursuant to this SFAR:

(i) Essential military.

(ii) Medical and rescue.

(iii) Presidential and Vice Presidential.

(iv) Flights carrying visiting heads of state.

(v) Law enforcement and security.

(vi) Flights authorized by the Director, Air Traffic Service.

(d) For security purposes, the Administrator may issue NOTAMs during the effective period of this SFAR to cancel or modify provisions of this SFAR and NOTAMs issued pursuant to this SFAR if such action is consistent with the safe and efficient use of airspace and the safety and security of persons and property on the ground as affected by air traffic.

2. *Temporary Flight Restriction.* At the following location, flight is restricted during the indicated dates and times: That airspace within a 4 NM radius centered on the Albuquerque VORTAC 038° radial 14 DME fix from the surface up to but not including 8,000 feet MSL unless otherwise authorized by Albuquerque ATCT.

3. *Dates and Times of Designation.* (a) October 2 through October 10, 1999, and October 7 through October 15, 2000, from 0530 MDT until 1200 MDT.

(b) October 2 through October 10, 1999, and October 7 through October 15, 2000, from 1600 MDT until 2200 MDT.

4. *Expiration.* This Special Federal Aviation Regulation expires on October 16, 2000.

Issued in Washington, DC, on August 11, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–21268 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–13–M

Reader Aids

Federal Register

Vol. 64, No. 158

Tuesday, August 17, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998	2
41999–42264	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43598	10
43599–43896	11
43897–44100	12
44101–44396	13
44397–44642	16
44643–44816	17

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12924 (See Notice of Aug. 10, 1999) 44101
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895
13134 44639

Administrative Orders:
Notice of Aug. 10, 1999 44101

7 CFR

11 43043
610 41999
989 43897
1230 44643
1728 42005

Proposed Rules:
6 42288
354 43103
505 44634
931 42858
932 42619
981 43298
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043
318 44644
319 44644
390 43902

Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823
76 44645

Proposed Rules:
50 44137
710 44433

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
905 44103

Proposed Rules:
202 44582
361 ..... 42861, 42862
702 44663
747 44663
935 44444

13 CFR

120 44109

Proposed Rules:
120 43636

14 CFR

4 43599
27 43016
29 43016
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905, 44110, 44112, 44650
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907, 44114, 44116, 44117, 44268, 44397, 44398, 44399, 44400, 44578
91 44814
97 ..... 44117, 44119
254 41781
382 41781

Proposed Rules:
25 ..... 43570, 43943, 43946
39 ..... 41841, 41842, 42289,

42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667
65.....42810
66.....42810
71.....42300, 42301, 44139, 44140, 44141, 44142, 44144
93.....44145
107.....43321
108.....43322
147.....42810

15 CFR

734.....42009
738.....42009
740.....42009
742.....42009
902.....42826

16 CFR

2.....43599
5.....42594

Proposed Rules:

1212.....42302

17 CFR

9.....43254
10.....43071
12.....43071
200.....42594
240.....42031, 42594
249.....42594

Proposed Rules:

4.....41843
275.....43556

18 CFR

3.....44400
341.....44400
342.....44400
346.....44400
357.....44400
362.....44400
381.....44652
385.....44400

Proposed Rules:

101.....42304
343.....43600
357.....42623
385.....42307, 43600

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
151.....43608
162.....43262
173.....43262
174.....43262, 43608
178.....43608
181.....43262

Proposed Rules:

12.....41851
113.....41851, 42872
141.....41851

20 CFR

Proposed Rules:

375.....44670
404.....42310
416.....42310

21 CFR

101.....42277
172.....43072, 43908, 44121
173.....44122
178.....44406, 44407
310.....44653
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596, 43909
1308.....42432
1312.....42432

Proposed Rules:

101.....42315
207.....43114
310.....44671
314.....42625, 42873
344.....44671
607.....43114
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032
514.....44123

24 CFR

108.....44094
982.....43613

Proposed Rules:

990.....43641

26 CFR

1.....41783, 43072, 43267, 43613, 43910
31.....42831
301.....41783
602.....41783, 43072, 43613
801.....42834

Proposed Rules:

1.....43117, 43323, 43462, 43969
301.....43324
602.....43462

28 CFR

505.....43880

29 CFR

2570.....42246
2575.....42246
4044.....44128

Proposed Rules:

2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75.....43280, 43286
90.....43283
202.....43506
206.....43288, 43506
250.....42597
914.....43911
943.....43913

Proposed Rules:

913.....44674
914.....44448
935.....42887
936.....43327

31 CFR

538.....41784
550.....41784
560.....41784
590.....43924

Proposed Rules

375.....42626

32 CFR

Proposed Rules:

230.....43856
231.....43858
231a.....43856

33 CFR

100.....42278, 42598, 43289
110.....42279
117.....42033, 42599, 44129, 44131
160.....41794
165.....43290, 43291, 44658

Proposed Rules:

100.....41853
117.....44145, 44147, 44148, 44149, 44151

34 CFR

611.....42837

Proposed Rules:

668.....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682.....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:

13.....41854
1191.....42056

37 CFR

Proposed Rules:

201.....42316

38 CFR

17.....44659
21.....44660

39 CFR

20.....43292

Proposed Rules:

111.....44681

40 CFR

9.....42432, 43426, 43936
52.....42600, 43083, 44131, 44134, 44408, 44411, 44415, 44417
58.....42530
62.....43091, 44420
63.....42764
86.....43936
122.....42432, 43426
123.....42432, 43426
124.....42432, 43426
180.....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846
186.....41818
261.....42033
271.....41823, 42602
300.....44135
403.....42552
501.....42432, 43426
503.....42552
745.....42849

Proposed Rules:

52.....42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452
62.....43123
97.....43124, 44452
147.....43329
261.....42317
271.....42630, 43331
281.....43336
300.....41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458
372.....42222

41 CFR

301.....43254

Proposed Rules:

51-2.....41882
51-5.....41882

42 CFR

413.....42610
498.....43295
1001.....42174

Proposed Rules:

Ch. IV.....43338

44 CFR

61.....41825
64.....42852, 44421
206.....41827

Proposed Rules:

61.....42632
62.....42633

45 CFR

801.....42039

46 CFR

10.....42812, 44786
12.....42812, 44786

Proposed Rules:

298.....44152
535.....42057

47 CFR

0.....43618
1.....42854
5.....43094
43.....43618
62.....43937
63.....43095, 43618
64.....43618, 44423
73.....41827, 41828, 41829,

41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095
76 ..... 42617, 42855
90 43094

Proposed Rules:
Ch. 1 ..... 41883, 42635
20 44682
1 ..... 41884, 41887
2 ..... 41891, 43643
15 41897
51 41897
68 41897
73 ..... 41899, 43132
76 41887
78 41899
95 41891

48 CFR

202 43096
204 43098
212 43098
213 43098
217 43096
252 43098
253 43098
601 43618
602 43618
603 43618
604 43618
605 43618
606 43618
608 43618
609 43618
610 43618
611 43618
613 43618
614 43618
615 43618
616 43618
617 43618
619 43618
622 43618
623 43618
625 43618
626 43618
628 43618
629 43618
630 43618
631 43618
632 43618
633 43618
634 43618
636 43618
637 43618
639 43618
641 43618
642 43618
643 43618
644 43618
645 43618
646 43618
647 43618
649 43618
652 43618
653 43618
701 42040
702 42040
703 42040
705 42040
706 42040
709 42040
714 42040
716 42040
719 42040
726 42040
732 42040
733 42040
734 42040
749 42040
750 42040
752 42040
5416 41834

Proposed Rules:
17 44100
536 44683

49 CFR

172 ..... 44426, 44578
173 44426

Proposed Rules:
190 43972
385 44460
390 44460
571 42330
575 44164

50 CFR

17 41835
300 44428
600 42286
622 43941
635 ..... 42855, 43101
648 ..... 42042, 42045, 44661
660 ..... 42286, 42856
679 ..... 41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942, 44431, 44432

Proposed Rules:
17 ..... 41903, 42058, 42250, 43132, 44171, 44470
20 44384
226 44683
32 43834
36 43834
600 ..... 42335, 43137
622 ..... 41905, 42068
648 ..... 42071, 43137, 43138
660 44475
679 42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 17, 1999

DEFENSE DEPARTMENT
Vocational rehabilitation and education:
Veterans education—
Educational assistance test program; increased allowances; published 8-17-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Illinois; published 6-18-99

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Ports of New York and New Jersey; safety zone; published 8-17-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
LET Aeronautical Works; published 6-28-99
New Piper Aircraft, Inc.; published 6-28-99
Pilatus Aircraft Ltd.; published 6-28-99

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Denied claims; reconsideration procedures; published 8-17-99
Vocational rehabilitation and education:
Veterans education—
Educational assistance test program; increased allowances; published 8-17-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (sweet) grown in—
Washington; comments due by 8-23-99; published 6-24-99
Potatoes (Irish) grown in—
California and Oregon; comments due by 8-24-99; published 6-25-99

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Recognition of animal disease status of regions in European Union; comments due by 8-24-99; published 6-25-99
Foreign quarantine notices:
Mexican Haas avocados; comments due by 8-24-99; published 6-25-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Essential fish habitats; comments due by 8-23-99; published 7-9-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 8-25-99; published 7-26-99
Western Pacific Coral Reef Ecosystem and bottomfish and seamount groundfish; comments due by 8-26-99; published 8-16-99

COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Contract market designation applications—
Commission review and approval; procedures; comments due by 8-26-99; published 7-27-99

DEFENSE DEPARTMENT
Acquisition regulations:
Cargo preference-subcontracts for commercial items; comments due by 8-23-99; published 6-22-99
Overseas use of purchase card; comments due by 8-25-99; published 7-29-99

EDUCATION DEPARTMENT
Postsecondary education:
Secretary's recognition of accrediting agencies; comments due by 8-24-99; published 6-25-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Outer Continental Shelf Lands Act; implementation:
Natural gas transportation through pipeline facilities on Outer Continental Shelf; comments due by 8-27-99; published 7-13-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-23-99; published 7-23-99
Indian; comments due by 8-25-99; published 7-26-99
Indiana; comments due by 8-25-99; published 7-26-99
Montana; comments due by 8-27-99; published 7-28-99
Clean Air Act:
Interstate ozone transport reduction—
Nitrogen oxides trading program; Section 126 petitions; findings of significant contribution and rulemaking; comments due by 8-25-99; published 8-16-99
Hazardous waste:
Project XL program; site-specific projects—
University of Massachusetts et al.; university laboratories; comments due by 8-26-99; published 7-27-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 8-25-99; published 7-26-99
Water programs:
Clean Water Act—
State and Tribal water quality standards; review and approval; comments due by 8-23-99; published 7-9-99

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Maritime services—
Privately owned accounting authorities; accounts settlement; streamlining; biennial regulatory review; comments due by 8-23-99; published 7-28-99
Radio stations; table of assignments:
Arizona; comments due by 8-23-99; published 7-14-99
Arkansas; comments due by 8-23-99; published 7-14-99
Kentucky and Virginia; comments due by 8-23-99; published 7-14-99
New York; comments due by 8-23-99; published 7-14-99
North Carolina; comments due by 8-23-99; published 7-14-99
Texas; comments due by 8-23-99; published 7-14-99
Television stations; table of assignments:
New York; comments due by 8-23-99; published 7-14-99

FEDERAL MARITIME COMMISSION
Shipping Act of 1984; implementation:
Ocean common carriers; definition clarification; comments due by 8-24-99; published 6-25-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Admission and occupancy—
Pet ownership in public housing; comments due by 8-23-99; published 6-23-99
Public housing agency organization; required resident membership on board of directors or similar governing body; comments due by 8-23-99; published 6-23-99
Public Housing Assessment System; comments due by 8-23-99; published 6-22-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Tidewater goby; northern populations; comments due by 8-23-99; published 6-24-99
Migratory bird hunting:
Federal Indian reservations, off-reservation trust lands and ceded lands; comments due by 8-23-99; published 8-13-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land

reclamation plan submissions:
Kansas; comments due by 8-25-99; published 7-26-99
Mississippi; comments due by 8-25-99; published 7-26-99
Ohio; comments due by 8-23-99; published 8-6-99
Oklahoma; comments due by 8-25-99; published 8-10-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Credit union service organizations—
Real estate brokerage services; grandfather exemption; comments due by 8-23-99; published 6-22-99

PERSONNEL MANAGEMENT OFFICE
Retirement:
Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS)—
State income tax withholding and voluntary allotment program; expansion; comments due by 8-23-99; published 6-23-99

SMALL BUSINESS ADMINISTRATION
Business loans:
Loan loss reserve fund; comments due by 8-25-99; published 7-26-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Iowa and Illinois; comments due by 8-23-99; published 7-22-99
Ports and waterways safety:
Lower New York Bay and Raritan Bay, NY; safety zone; comments due by 8-23-99; published 7-7-99
Vessels and marine facilities; Year 2000 (Y2K) reporting requirements; comments due by 8-23-99; published 6-23-99

TRANSPORTATION DEPARTMENT
Economic regulations:
Domestic baggage liability; comments due by 8-27-99; published 6-28-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 8-23-99; published 7-23-99
Avions Mundry et Cie; comments due by 8-27-99; published 7-19-99
Bell; comments due by 8-23-99; published 6-24-99
Boeing; comments due by 8-23-99; published 6-23-99
Dassault; comments due by 8-23-99; published 7-22-99
McDonnell Douglas; comments due by 8-23-99; published 7-23-99
MD Helicopters Inc.; comments due by 8-23-99; published 6-23-99
Rolls-Royce plc; comments due by 8-23-99; published 6-23-99
Saab; comments due by 8-23-99; published 7-22-99
Sikorsky; comments due by 8-23-99; published 6-24-99
Class D airspace; comments due by 8-23-99; published 7-7-99
Class E airspace; comments due by 8-24-99; published 7-19-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Loading, unloading, and storage; regulatory applicability; comments due by 8-25-99; published 7-28-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Simplified production, and resale methods with historic absorption ratio election; special rules; comments due by 8-23-99; published 5-24-99

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5419

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

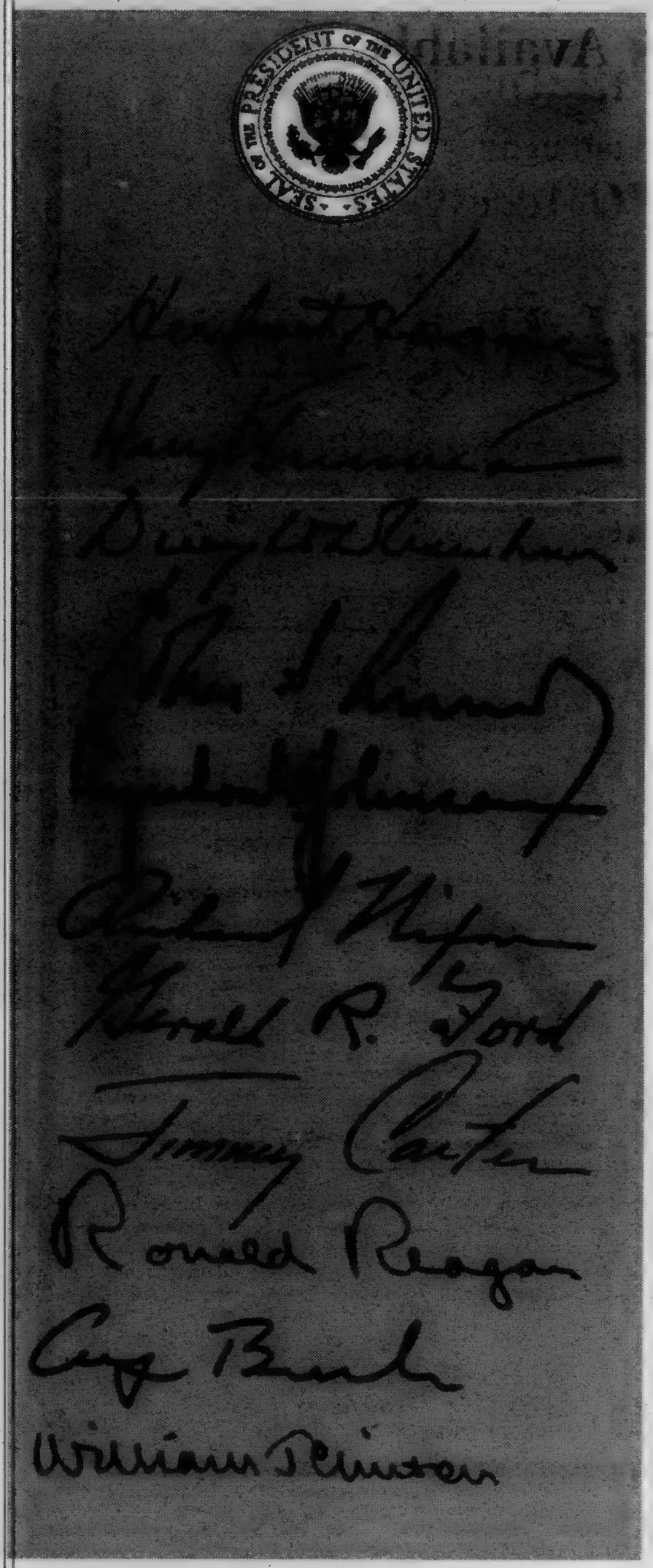

Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

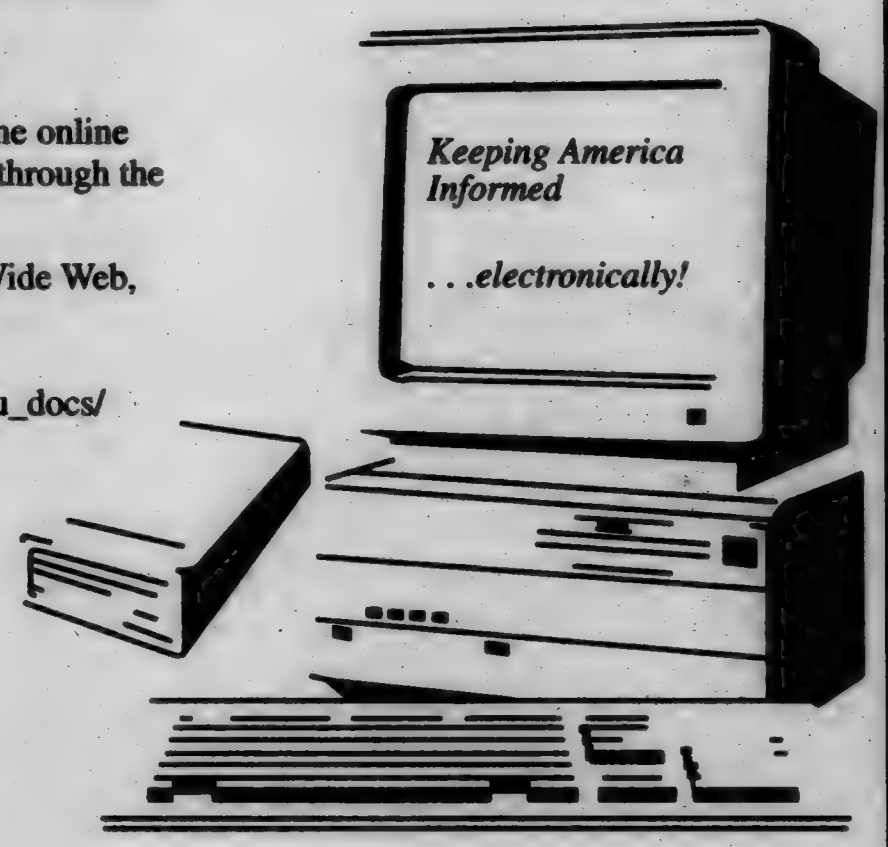

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

Order Now!

The United States Government Manual 1998/1999

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

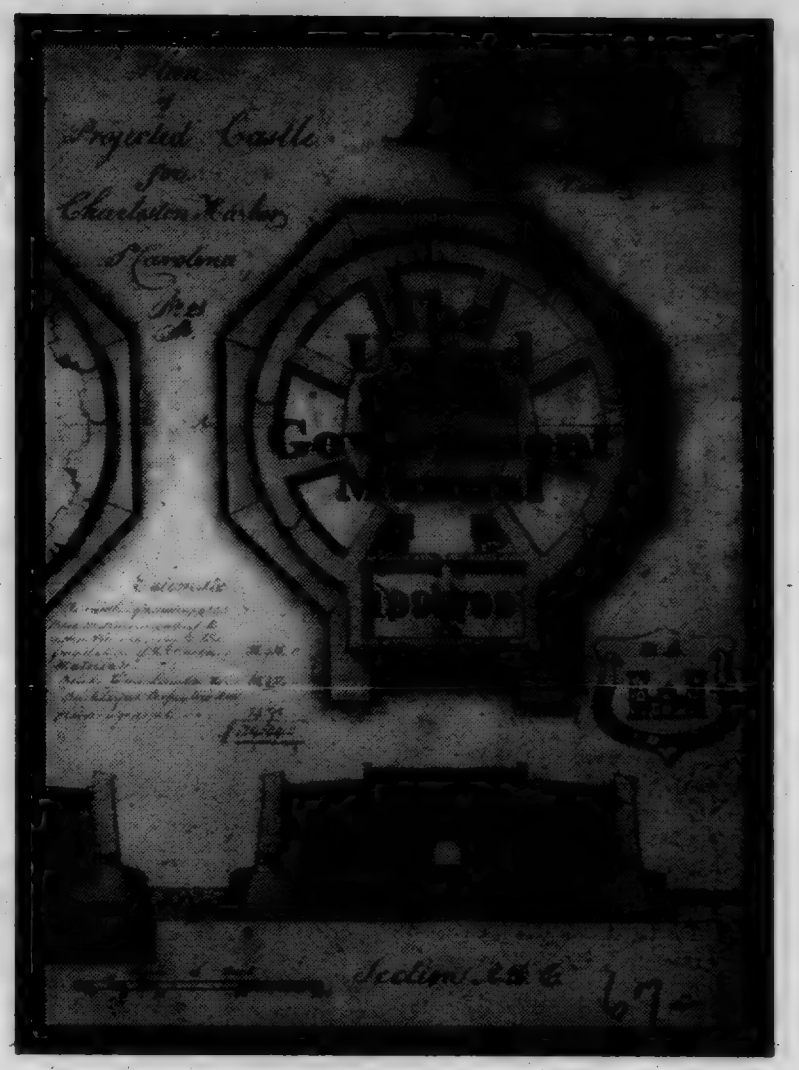

$41 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
★ **7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 1998/99, S/N 069–000–00076–2 at $41 ($50 foreign) each.

Total cost of my order is $ ———— . **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
64
ISS
1
5
8
AG
17
999
UMI

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

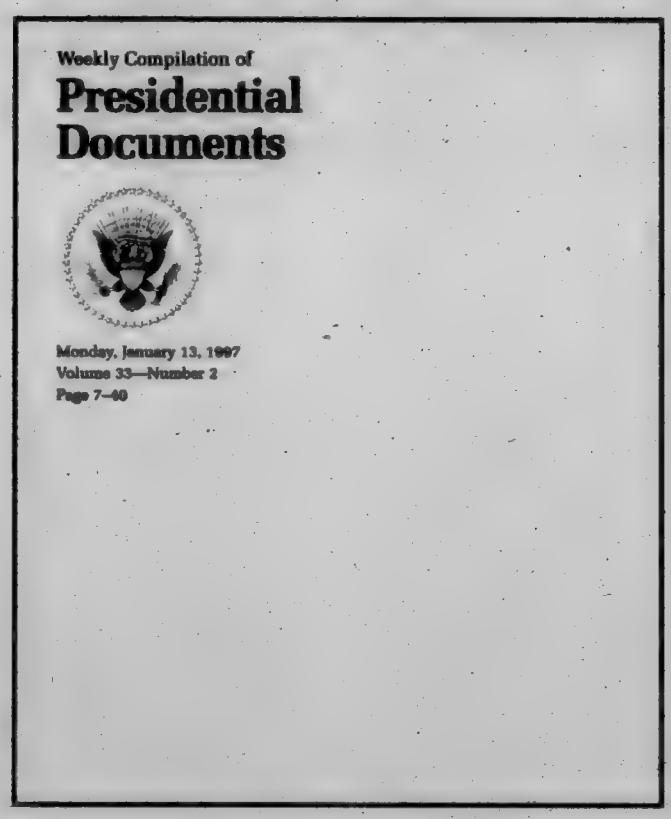

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! VISA

Order Processing Code:
*** 5420**

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

re

f the
l

VISA

2–2250
2–1800

so I can

hange.

nents
☐–☐

☐☐☐

you for
r order!

11/3

7954

VOL
64
ISS
1
5
8
AG
17
999
UMI

Printed on recycled paper

VOL
64
ISS
1
5
9
AG
18
999
UMI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

8–18–99
Vol. 64
N

United States
Government
Printing Offic
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 2040

OFFICIAL BUSINESS
Penalty for private use

8–18–99
Vol. 64 No. 159

federal register

Wednesday
August 18, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

OL
64
SS
1
5
9
AG
18
99
MI

8-18-99
Vol. 64 No
Pages 44817-

8–18–99
Vol. 64 No. 159
Pages 44917–45148

federal register

Wednesday
August 18, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Contents

Federal Register
Vol. 64, No. 159
Wednesday, August 18, 1999

Agriculture Department
See Forest Service

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Aetna Inc. et al., 44946–44958
National cooperative research notifications:
Health Information Initiative Consortium, 44958–44959
Sarnoff HDTV Broadcast Technology Consortium, 44959
Southwest Research Institute Joint Industry Program, 44959–44960

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44889–44891

Coast Guard
RULES
Drawbridge operations:
Connecticut, 44826
NOTICES
Meetings:
Lower Mississippi River Waterway Safty Advisory Committee, 45007

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44889

Defense Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44894
Arms sales notification; transmittal letter, etc., 44894–44903
Environmental statements; availability, etc.:
Northern Mariana Islands; military training activities, 44904–44909

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44909–44911
Submission for OMB review; comment request, 44911
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
State Program Improvement Program, 45121–45147

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
PROPOSED RULES
Polygraph examination regulations, 45061–45070
NOTICES
Meetings:
Fusion Energy Sciences Advisory Committee, 44911–44912

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 44912
Reports and guidance documents; availability, etc.:
Federal Energy Management Program measurement and verification guidelines; comment request, 44912–44913

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
Texas, 44836–44841
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glufosinate ammonium, 44829–44836
Pyriproxyfen, 44826–44829
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Chromium emissions from hard and decorative chromium electroplating and anodizing tanks, etc., 45115–45120
Hazardous waste:
Identification and listing—
Exclusions, 44866–44876
Hazardous waste program authorizations:
Texas, 44876–44877
Water pollution; effluent guidelines for point source categories:
Industrial laundries; withdrawn, 45071–45087
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 44918–44919
Grants, State and local assistance:
Grantee performance evaluation reports—
Various States, 44919–44920
Meetings:
Ethoprop, fenamiphos, phorate, and terbufos; revised organophosphate pesticide risk assessments, 44920–44921
Pesticide programs:
Organophosphates; risk assessments and public participation in risk management—
Chlorethoxyfos, 44921–44922
Pesticide registration, cancellation, etc.:
Neurotoxic pesticides; Data Call-In notice; correction, 44922–44923

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 44821–44823
Empresa Brasileira de Aeronautica S.A., 44819–44821
Schweizer Aircraft Corp., 44823–44825

Airworthiness standards:
Rotorcraft; normal category—
Maximum weight and passenger seat limitation, 45091–45095
Special conditions—
GEC-Marconi/Boeing Model 737-800 airplane, 44817–44819
Class E airspace, 44825–44826
PROPOSED RULES
Air carrier certification and operations:
Aging airplane safety, 45089–45090
Class D and Class E airspace, 44865–44866
NOTICES
Exemption petitions; summary and disposition, 45007–45008
Grants and cooperative agreements; availability, etc.:
Airport Improvement Program, 45008–45011
Meetings:
RTCA, Inc., 45011–45012

Federal Communications Commission
RULES
Radio and television broadcasting:
Competitive bidding procedures—
Commercial broadcast and instructional television fixed service licenses, 44856–44858
PROPOSED RULES
Common carrier service:
Incumbent local exchange carriers; accounting and reporting requirements; comprehensive review, 44877–44883
NOTICES
Common carrier services:
Telecommunications reporting worksheet for contributions to universal service support mechanisms, 44923
Number conservation measures; petitions:
Connecticut, 44924
Rulemaking proceedings; petitions filed, granted, denied, etc., 44924–44925

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 44925

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
KN Energy, Inc., et al., 44916–44918
Hydroelectric applications, 44918
Applications, hearings, determinations, etc.:
Arkansas Western Pipeline, L.L.C., 44913
Dynegy Midstream Pipeline, Inc., 44913
Great Lakes Gas Transmission L.P., 44913
High Island Offshore System, L.L.C., 44914
Northern Natural Gas Co., 44914
Petal Gas Storage Co., 44914–44915
Puget Sound Energy, Inc., 44915
Southern Co. Services, Inc., 44915
U-T Offshore System, 44915
Venice Gathering System, L.L.C., 44915–44916

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Jefferson, Chambers, and Galveston Counties, TX, 45012–45013

Federal Maritime Commission
NOTICES
Agreements filed, etc., 44925–44926
Casualty and nonperformance certificates:
American Classic Voyages Co. et al., 44926
American West Steamboat Co. LLC et al., 44926
Complaints filed:
Carolina Marine Handling, Inc., 44926–44927
Freight forwarder licenses:
Danco Freight Forwarding Co. et al., 44927–44928
Investigations, hearings, petitions, etc.:
Kelly, David P., et al., 44928

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 44928

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Canada lynx, 44883

Food and Drug Administration
NOTICES
Harmonisation International Conference; guidelines availability:
Biotechnological/biological products; test procedures and acceptance criteria, 44928–44935
Reports and guidance documents; availability, etc.:
Levothyroxine sodium; industry guidance, 44935

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Ohio, 44891–44892

Forest Service
NOTICES
Meetings:
Blue Mountains Natural Resources Institute Board of Directors, 44889

Geological Survey
NOTICES
Washington State; geologic map of Silver Lake Quadrangle; contribution acceptance from Weyerhaeuser Corp., 44938

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Care Financing Administration
RULES
Medicare:
Graduate medical education; incentive payments under plans for voluntary reduction in number of residents, 44841–44856

Health Resources and Services Administration
NOTICES
Competitive comprehensive grants preview (1999 FY); availability, 45015–45059

Interior Department
See Fish and Wildlife Service

See Geological Survey
See Land Management Bureau
See National Park Service
See Reclamation Bureau
NOTICES
Senior Executive Service:
Performance Review Board; membership, 44937–44938

International Trade Administration
NOTICES
Antidumping:
Steel concrete reinforcing bars from—
Turkey, 44892
Welded carbon steel pipes and tubes from—
Thailand, 44892–44893

International Trade Commission
NOTICES
Import investigations:
CD-ROM controllers and products containing same, 44941
Meetings; Sunshine Act, 44941–44942

Justice Department
See Antitrust Division
See Justice Programs Office
See National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
Community oriented policing services (COPS)—
Tools and products for policing agencies; development, 44942–44945
Information processing standards, Federal:
Data Encryption Standard; waivers, 44945
Pollution control; consent judgments:
A&D Recycling, Inc., et al., 44945
Greenwood Chemical Co., 44945–44946

Justice Programs Office
NOTICES
Grants and cooperative agreements; availability, etc.:
County and municipal agency domestic preparedness equipment support program, 44960–44961

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Closure of public lands:
Oregon, 44938
Meetings:
Resource Advisory Councils—
New Mexico, 44938–44939

Maritime Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45013

National Institute of Justice
NOTICES
Meetings:
Future of DNA Evidence National Commission, 44961

National Institutes of Health
NOTICES
Meetings:
National Human Genome Research Institute, 44935–44936
National Institute of Child Health and Human Development, 44937
National Institute of Neurological Disorders and Stroke, 44936–44937
National Institute on Alcohol Abuse and Alcoholism, 44936
National Institute on Deafness and Other Communication Disorders, 44936

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific perch, 44859
Rockfish, 44858–44859
PROPOSED RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna, 44885–44888
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico Region fishery management plans, 44884–44885
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Vandenberg Air Force Base, CA; space launch vehicles; harbor seals and California sea lions, 44893–44894

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 44939–44940

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Noncombustible fire barrier penetration seal materials; requirement eliminated, etc., 44860–44865
NOTICES
Meetings; Sunshine Act, 44965–44966
Reports and guidance documents documents; availability, etc.:
Nuclear Reactor Regulation projects; redefining role; workshop summary, 44966–44969
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 44962–44964
North Atlantic Energy Service Corp. et al., 44965

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards:
Nationally recognized testing laboratories; fees; reduction of public comment period on recognition notices, 45098–45114
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44962

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 44969–44970

Reclamation Bureau
NOTICES
Meetings:
Bay-Delta Advisory Council, 44940–44941

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 44976–44980
Chicago Board Options Exchange, Inc., 44980–44982
Emerging Markets Clearing Corp., 44982–44983
National Association of Securities Dealers, Inc., 44983–44985
New York Stock Exchange, Inc., 44985–44986
Applications, hearings, determinations, etc.:
Intertape Polymer Group Inc., 44970–44971
Parkstone Advantage Fund et al., 44971–44976

Small Business Administration
NOTICES
Organization, functions, and authority delegations:
Administrator; order of succession, 44986
Small business size standards:
Full table of four-digit Standard Industrial Classification codes; publication, 44986–45007

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration

Treasury Department
NOTICES
Senior Executive Service:
Combined Performance Review Board; membership, 45013–45014

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Resources and Services Administration, 45015–45059

Part III
Department of Energy, 45061–45070

Part IV
Environmental Protection Agency, 45071–45087

Part V
Department of Transportation, Federdal Aviation Administration, 45089–45090

Part VI
Department of Transportation, Federal Aviation Administration, 45091–45095

Part VII
Department of Labor, Occupational Safety and Health Administration, 45097–45114

Part VIII
Environmental Protection Agency, 45115–45120

Part IX
Department of Education, 45121–45147

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR
Proposed Rules:
50 44860
709 45062
710 45062
711 45062

14 CFR
25 44817
27 45092
39 (3 documents) 44819, 44821, 44823
71 44825
Proposed Rules:
71 44865
119 45090
121 45090
129 45090
135 45090
183 45090

29 CFR
Proposed Rules:
1910 45098

33 CFR
117 44826

40 CFR
180 (2 documents) 44826, 44829
271 44836
Proposed Rules:
63 45116
261 44866
271 44876
441 45072

42 CFR
413 44841

47 CFR
73 44856
Proposed Rules:
32 44877
43 44877
64 44877

50 CFR
679 (2 documents) 44858, 44859
Proposed Rules:
17 44883
622 44884
635 44885

Rules

This section o
contains regul
applicability a
are keyed to a
Federal Regul
50 titles pursu

The Code of F
the Superinten
new books ar
REGISTER is

DEPARTME

Federal Avi

14 CFR Part

[Docket No. N
25–146–SC]

Special Con
Boeing Mod
Intensity Ra

AGENCY: Fed
Administrat

ACTION: Fina
for commen

SUMMARY: T
issued for th
airplane, as
The Model
high-techno
that perform
applicable t
do not cont
safety stand
this system
intensity ra
special con
additional s
Administrat
ensure that
system perf
the airplane

DATES: The
special con
Comments
before Octo

ADDRESSES:
conditions
to: Federal
Transport A
Attention: R
Docket No.
SW., Renton
or delivered
Transport A
above addr
marked: Do
may be insp

Rules and Regulations

Federal Register
Vol. 64, No. 159
Wednesday, August 18, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM161, Special Conditions No. 25–146–SC]

Special Conditions: GEC-Marconi; Boeing Model 737–800 Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 737–800 airplane, as modified by GEC-Marconi. The Model 737–800 is equipped with a high-technology digital avionics system that performs critical functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions this system performs are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is July 29, 1999. Comments must be received on or before October 4, 1999.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM161, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM161. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gerry Lakin, FAA, Transport Airplane Directorate, Aircraft Certification Service, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1187; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM161." The postcard will be date stamped and returned to the commenter.

Background

On September 28, 1998, the Los Angeles Aircraft Certification Office received an application from GEC-Marconi Avionics (GMA) Ltd., Airport Works, Rochester, Kent, England, for a supplemental type certificate to modify Type Certificate No. A16WE for the Boeing Model 737–800.

The Boeing Model 737–800 is a low-wing, pressurized airplane with twin, wing-mounted, jet engines that is configured for approximately 162 passengers. The airplane has a maximum standard takeoff weight of 155,500 pounds, a maximum landing weight of 146,300 pounds, a maximum operating altitude of 41,000 feet, and a range of 3370 nautical miles. The overall length of the Boeing Model 737–800 is 129 feet, 6 inches, the height is 41 feet, 2 inches, and the wing span is 112 feet, 7 inches. The modification incorporates a head up display (HUD) system for display of critical flight parameters (altitude, airspeed, and attitude) to the crew. The display can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, GEC-Marconi must show that the Model 737–800 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certifications basis." The certification basis for the modified Boeing Model 737–800 airplanes is as follows:

For airworthiness and environmental standards for components and areas not affected by the change, the original certification basis for the Model 737–800 is shown on Type Certificate Data Sheet (TCDS) No. A15WE, revision 25, dated September 9, 1998. The Model 737–800 was certified to part 25, as amended by Amendments 25–1 though 25–77, with reversions to earlier Amendments, voluntary compliance to later Amendments, special conditions, equivalent safety findings and exemptions listed in the TCDS.

For airworthiness and environmental standards for components and areas affected by the change, the certification basis for the Model 737–800 is 14 CFR

part 25, effective February 1, 1965, including Amendments 25–1 through 25–97, which is the amendment level in effect on the date of application.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 737–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 737–800 must comply with the part 25 fuel and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should GEC-Marconi apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

Boeing Model 737–800 will incorporate a head up display (HUD) system that performs critical functions. This system may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the applicable regulations incorporated by reference, special conditions are needed for the Boeing Model 737–800, which require that new electrical and electronic systems, such as the HUD, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 **OR** 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz—100 kHz	50	50
100 kHz—500 kHz	50	50
500 kHz—2 MHz	50	50
2 MHz—30 MHz	100	100
30 MHz—70 MHz	50	50
70 MHz—100 MHz	50	50
100 MHz—200 MHz	100	100
200 MHz—400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee. In general, these standards are less critical than the threat level that was previously used as the basis for some earlier special conditions.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 737–800 airplanes modified by GEC-Marconi. Should GEC-Marconi apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on Boeing Model 737–800 airplanes modified by GEC-Marconi. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 737–800 airplanes modified by GEC-Marconi.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields*

(HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 29, 1999.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–20858 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–233–AD; Amendment 39–11253; AD 99–17–04]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires replacement of the fairlead support assemblies of the aileron control cable located in the nacelle outboard fittings with new, improved assemblies; and replacement of certain attachment screws with new screws. This amendment also provides an option for performing repetitive inspections until accomplishment of the replacement. This amendment is prompted by reports of aileron cable wear due to chafing found between the aileron control cables and nylon grommets. The actions specified by this AD are intended to prevent such chafing, which could result in failure of the aileron cables, and consequent reduced controllability of the airplane.

DATES: Effective September 22, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 22, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Capezutto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on September 3, 1998 (63 FR 46932). That action proposed to require replacement of the fairlead support assemblies of the aileron control cable located in the nacelle outboard fittings with new, improved assemblies; and replacement of certain attachment screws with new screws.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Withdraw Proposed Rule

Two commenters state that the proposed rule is not warranted and cannot be justified. One commenter, an operator, does not agree that this is a safety of flight issue and states that the proposed AD does not specify the amount of wear found on the cables, or that the cables were in danger of, or close to, failure. In support of withdrawal of the proposed rule, the commenter references two instances, one in 1991 and one in 1997, in which the Brazilian Centro Tócnico Aeroespacial (CTA) documented that if a single cable failed during flight, the airplane would be able to land safely. The commenter also states that the EMB–120 Maintenance Review Board (MRB) inspection interval for the aileron cables is sufficient to ensure continued airworthiness in lieu of issuance of the final rule.

Another commenter, the manufacturer, states that inspections of certain airplanes conducted at its facility revealed cables with polished areas, but no indication of wear or rupture was detected. The commenter states also that operators that have not incorporated Revision 2 of the service bulletin have a rigorous inspection interval of every 400 flight hours, per the MRB. For operators that have incorporated Revision 2 of the service bulletin, the cable inspections are to be accomplished at each "5A" check (2,000 flight hours). The commenter states that during the past 10 years it has performed 25 "C" checks with no record of aileron cable replacement due to broken wires.

The FAA does not concur with the commenters' requests. The FAA does consider this a safety issue based on the determination that if the aileron cable were to break during a critical portion of the flight, such as during a steep turn or on approach for landing, it would result in reduced controllability of the airplane.

In addition, an investigation of service difficulties conducted by the FAA revealed over 200 reports of aileron cable wear. Although most of these occurred in the early 1990's, several cases were reported in 1997 and two through mid-1998. This suggests that not all operators are incorporating the service bulletin.

Based on this information, the FAA finds that issuance of the final rule is necessary to ensure an adequate level of safety for the affected fleet.

Request To Revise Inspection Intervals

One commenter states that Parts I, II, and III of EMBRAER Service Bulletin 120–27–0068, Change 02, dated March 20, 1998, include a statement referring to MRB Tasks 27–07 and 27–65 [the correct reference as stated in the service bulletin is Maintenance Planning Guide (MPG) Tasks 27–07 and 27–64] for inspection intervals of the specified areas, both pre- and post-mod. The commenter requests that the inspection interval of the post-mod installation be based on an analysis of inspection

findings and an agreement between the operator and its Principal Maintenance Inspector (PMI).

The FAA does not concur with the commenter's request. The FAA finds that, at this time, insufficient data exist to support allowing PMI's to make an assessment of aileron cable wear in order to increase the regular post-mod inspection intervals called out in the MPG. The FAA may, however, approve a request for an adjustment of the post-mod inspection intervals if data are submitted to substantiate that such an adjustment would provide an equivalent level of safety.

Request To Extend Compliance Time and Add Repetitive Inspections

One commenter requests that the FAA extend the proposed compliance time for the modification from within 400 hours time-in-service after the effective date of this AD, to within 500 hours time-in-service after the effective date of this AD. The commenter also requests that if the FAA proceeds with issuing this AD, inspections of the aileron cables be added; the inspections should be accomplished at intervals not to exceed 500 flight hours until installation of the modification. The commenter indicates that accomplishment of the modification cannot be completed within 400 hours time-in-service due to lack of availability of the kits used for the modification. The commenter states that one-third of the compliance time will be used waiting for delivery of the kits.

The FAA partially concurs with the commenter's request. The FAA has determined that allowing repetitive inspections of the aileron cables at intervals not to exceed 500 flight hours "until installation of the modification" is not appropriate in this case because it allows the inspections to continue indefinitely, which does not address the unsafe condition in a timely manner. However, the manufacturer has stated that parts kits are available 90 days after submission of the purchase request. In light of the time required to obtain the parts, the FAA agrees to revise the compliance time for accomplishment of the modification, and to add an option for repetitive inspections in accordance with procedures specified in the airplane maintenance manual. The FAA finds that repetitive inspections of the aileron cable at intervals not to exceed 400 hours time-in-service until accomplishment of the modification, for a time period not to exceed 6 months after the effective date of this AD, will not adversely affect safety, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. The Summary section, as well as paragraphs (a) and (b) of this final rule, have been revised accordingly.

Explanation of Change to Proposal

The FAA has added "Note 2" to the final rule to clarify the definition of a general visual inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 227 airplanes of U.S. registry will be affected by this AD.

For airplanes identified in Part I of EMBRAER Service Bulletin 120–27–0068, Change 02, it will take approximately 4 work hours per airplane to accomplish the required replacement of the fairlead support assemblies of the aileron control cable, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,464 per airplane. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $386,808, or $1,704 per airplane.

For airplanes identified in Part II of EMBRAER Service Bulletin 120–27–0068, Change 02, it will take approximately 1 work hour per airplane to accomplish the required replacement of the fairlead support assemblies of the aileron control cable, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,292 per airplane. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $306,904, or $1,352 per airplane.

For airplanes identified in Part III of EMBRAER Service Bulletin 120–27–0068, Change 02, it will take approximately 1 work hour per airplane to accomplish the required replacement of the fairlead support assemblies of the aileron control cable, at an average labor rate of $60 per work hour. Required parts will cost approximately $501 per airplane. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $127,347, or $561 per airplane.

For airplanes identified in Part IV of EMBRAER Service Bulletin 120–27–0068, Change 02, it will take approximately 1 work hour per airplane to accomplish the required replacement of the attachment screws, at an average labor rate of $60 per work hour. Required parts cost will be minimal. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $13,620, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional repetitive inspections provided by this AD action, it would take approximately 2 work hours per airplane, per inspection cycle, to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections would be $60 per airplane, per inspection cycle.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–17–04 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–11253. Docket 98–NM–233–AD.

Applicability: Model EMB–120 series airplanes, as listed in EMBRAER Service Bulletin 120–27–0068, Change 02, dated March 20, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been otherwise modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing between the aileron control cables and nylon grommets, which could result in failure of the aileron cables, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD.

Repetitive Inspections

(1) Perform a general visual inspection to detect chafing between the aileron control cables and nylon grommets, in accordance with the procedures specified in EMBRAER EMB–120 Airplane Maintenance Manual, Chapters 20–20–01, 27–00–01, and 27–11–00.

(i) If any chafing is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(ii) If no chafing is detected: Repeat the inspection thereafter at intervals not to exceed 400 hours time-in-service until the requirements of paragraph (b) of this AD have been accomplished.

General Visual Inspection

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Accomplish the requirements of paragraph (b) of this AD.

Replacement

(b) Except as provided by paragraph (a)(2) of this AD: Within 6 months after the effective date of this AD, accomplish the requirements of paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable, in accordance with EMBRAER Service Bulletin 120–27–0068, Change 02, dated March 20, 1998. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspections specified in paragraph (a)(1) of this AD.

(1) For airplanes having serial numbers 120003, 120004, and 120006 through 120217 inclusive, on which the modification specified in EMBRAER Service Bulletin 120–27–0068, dated February 28, 1991, has not been accomplished: Replace the fairlead support assemblies of the aileron control cable (provided with fairleads in both Teflon and nylon) located in the nacelle outboard fittings with new, improved assemblies (Part I), in accordance with the service bulletin.

(2) For airplanes having serial numbers 120003, 120004, and 120006 through 120217 inclusive, on which the modification specified in EMBRAER Service Bulletin 120–27–0068, dated February 28, 1991, has been accomplished; and airplanes having serial numbers 120218 through 120331 inclusive: Replace the fairlead support assemblies of the aileron control cable (provided with fairleads in Teflon) located in the nacelle outboard fittings with new, improved assemblies (Part II), in accordance with the service bulletin.

(3) For airplanes having serial numbers 120003, 120004, and 120006 through 120331 inclusive, on which the modification specified in EMBRAER Service Bulletin 120–27–0068, dated February 28, 1991, or Change 01, dated August 1, 1997, has been accomplished; and airplanes having serial numbers 120332 and 120333: Replace the attachment screws and the fairlead support assemblies of the aileron control cable with new, improved assemblies (Part III), in accordance with the service bulletin.

(4) For airplanes having serial numbers 120334, 120335, and 120336: Replace the attachment screws of the fairlead support assemblies of the aileron control cable (Part IV), in accordance with the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with EMBRAER Service Bulletin 120–27–0068, Change 02, dated March 20, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington; or FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on September 22, 1999.

Issued in Renton, Washington, on August 6, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20880 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–125–AD; Amendment 39–11255; AD 99–17–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires repetitive inspections and tests to detect missing or damaged vespel bushes on the slat system universal joint assemblies of the left- and right-hand wings; and replacement of the universal joints with new joints, if necessary. This

amendment also provides for an optional terminating modification for the repetitive inspection and test requirements. This amendment is prompted by a report of loose and migrated vespel bushes and partial cracking within unsupported bush areas found on the slat system universal joint assemblies. The actions specified by this AD are intended to prevent rupture of the universal joints, which could result in inadvertent movement of the slats, and consequent reduced controllability of the airplane.

DATES: Effective September 22, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 22, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 14, 1998 (63 FR 55061). That action proposed to require repetitive inspections and tests to detect missing or damaged vespel bushes on the slat system universal joint assemblies of the left- and right-hand wings; and replacement of the universal joints with new joints, if necessary. That action also provided for an optional terminating modification for the repetitive inspection and test requirements.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Removal of Visual Inspection (Manual Backlash Check) Requirement

In response to the original NPRM, two commenters request that paragraph (a) of the proposed AD be revised to remove the visual inspection, or "manual backlash check", to detect missing or damaged vespel bushes on the slat system universal joint assemblies of the left- and right-hand wings. One commenter states that the visual inspection is very unreliable and results are difficult to quantify. Further, the commenter states that the electrical continuity test that is also required by paragraph (a) of the proposed AD is sufficient in itself for ensuring the integrity of the universal joint and confirming the possibility of a missing vespel bushing.

Another commenter, the manufacturer, states that the manual backlash check is impractical and difficult to evaluate, thus the proposed AD requires inspecting in a way that is not feasible. This commenter states that the referenced Airbus and Lucas service bulletins are undergoing revision to remove the procedures for the manual backlash check contained therein, and requests that the proposed AD refer to the later revisions, thus removing the requirement for the manual backlash check.

The FAA does not concur with the request to remove the requirement for visual inspection. The FAA acknowledges that results of the visual inspection may be difficult to assess reliably, as described in Lucas Service Bulletin 525A–27–618, dated October 5, 1992 (which is referenced in Airbus Service Bulletin A310–27–2061 as an additional source of service information). However, the visual inspection is intended to provide only an initial assessment for presence of vespel bushes and is to be followed by the electrical continuity test to finalize such a determination.

Since issuance of the original NPRM, Airbus Service Bulletin A310–27–2061, Revision 1, dated October 3, 1997, has been issued, and this revision was cited as an appropriate source of service information in the supplemental NPRM. This later revision still contains procedures for accomplishment of the visual inspection. Since no additional information has been provided by the manufacturer or vendor regarding the acceptability of eliminating the visual inspection, the FAA has determined that the visual inspection should be accomplished in addition to the electrical continuity test, as described in the Airbus service bulletin. No change is made to the final rule in this regard.

Correction of Typographical Error

One commenter notes that the preamble to the supplemental NPRM contains an incorrect reference to an Airbus Model A320 series airplane, rather than Model A310 series airplanes to which this proposed AD is applicable. The FAA acknowledges the error, however, because this section of the preamble to the supplemental NPRM is not restated in the final rule, no change to the AD is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required inspection and test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection and test required by this AD on U.S. operators is estimated to be $49,200, or $1,200 per airplane, per inspection and test cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating modification provided by this AD action, it would take approximately 11 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the optional terminating modification would be $660 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–17–06 Airbus Industrie: Amendment 39–11255. Docket 93–NM–125–AD.

Applicability: Model A310 series airplanes, except those on which Airbus Modification 10092 (Airbus Service Bulletin A310–27–2060, Revision 01, dated October 3, 1997) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the universal joints, which could result in inadvertent movement of the slats, and consequent reduced controllability of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Prior to the accumulation of 15,000 total landings, or within 400 flight hours after the effective date of this AD, whichever occurs later, perform a visual inspection and an electrical continuity test to detect missing or damaged vespel bushes on the slat system universal joint assemblies of the left- and right-hand wings, in accordance with Airbus Service Bulletin A310–27–2061, dated November 4, 1992, or Revision 01, dated October 3, 1997. Repeat this inspection and test thereafter at intervals not to exceed 15,000 landings.

(b) If any vespel bushes are missing or damaged, prior to further flight, replace the universal joint with a new joint in accordance with Airbus Industrie Service Bulletin A310–27–2061, dated November 4, 1992, or Revision 01, dated October 3, 1997. After replacement, continue to repeat the inspection and test required by paragraph (a) of this AD at intervals not to exceed 15,000 landings.

Optional Terminating Modification

(c) Modification of the slat system universal joint and shaft assemblies in accordance with Airbus Service Bulletin A310–27–2060, Revision 01, dated October 3, 1997, constitutes terminating action for the repetitive inspection and test requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A310–27–2061, dated November 4, 1992, or Airbus Service Bulletin A310–27–2061, Revision 01, dated October 3, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 92–275–139(B)R1, dated December 17, 1997.

(g) This amendment becomes effective on September 22, 1999.

Issued in Renton, Washington, on August 6, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20879 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–31–AD; Amendment 39–11258; AD 99–17–10]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A–1, 269B, 269C, 269C–1, and 269D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Schweizer Aircraft Corporation (SAC) Model 269A, 269A–1, 269B, 269C, 269C–1, and 269D helicopters. This action requires inspecting the tail rotor swashplate shaft (shaft) nut for looseness and, if loose, inspecting the shaft for proper size; subsequently inspecting the shafts not previously inspected; and replacing any undersized shaft prior to further flight. This amendment is prompted by the discovery of an undersized replacement shaft during routine maintenance. The actions specified in this AD are intended to prevent failure of the shaft and subsequent loss of control of the helicopter.

DATES: Effective September 2, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 1999. Comments for inclusion in the Rules Docket must be received on or before October 18, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–31–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George J. Duckett, Aerospace Engineer, New York Aircraft Certification Office, FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581, telephone (516) 256–7525, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD applicable to SAC Model 269A, 269A–1, 269B, 269C, 269C–1, and 269D helicopters with shaft, part number (P/N) 269A6049–3, installed. The undersized shafts were shipped from the factory as spares between September 1 and December 1, 1998. This action requires the following inspections and replacement:

- Within the next 10 hours time-in-service (TIS) and thereafter at intervals not exceeding 10 hours TIS until the next 100-hour or annual inspection, whichever occurs first, inspect the shaft nut, P/N 269A6258, for looseness by using a firm hand pressure. If the shaft nut is loose, inspect the shaft for the proper size.
- At the next 100-hour or annual inspection, whichever occurs first, inspect the shaft, P/N 269A6049–3, for the proper size.
- Prior to further flight, replace any undersized shaft with an airworthy shaft of the proper size.

This amendment is prompted by the discovery of an undersized replacement shaft during routine maintenance. The actions specified in this AD are intended to prevent failure of the shaft and subsequent loss of control of the helicopter.

The FAA has reviewed SAC Service Bulletins B–271, DB–007, and C1B–009, all dated March 12, 1999, which describe procedures for inspecting the shaft nut, P/N 269A6258, for looseness by using a firm hand pressure and the shaft, P/N 269A6049–3, for proper size.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 269A, 269A–1, 269B, 269C, 269C–1, and 269D helicopters of the same type design, this AD is being issued to prevent failure of the shaft and subsequent loss of control of the helicopter. This AD requires inspecting the shaft nut, P/N 269A6258, for looseness; inspecting the shaft, P/N 269A6049–3, for the proper size; and replacing any undersized shaft with an airworthy shaft of the proper size. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspecting the shaft nut, P/N 269A6528, for looseness is required within the next 10 hours TIS and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 28 helicopters will be affected by this AD. For each helicopter, it will take 0.25 work hour to accomplish the 10-hour inspection, 3.6 work hours to accomplish the inspection and replacement, if necessary, at the 100-hour or annual inspection interval. The average labor rate is $60 per work hour. Required parts will cost approximately $1400 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $45,668.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–31–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–17–10 Schweizer Aircraft Corporation: Amendment 39–11258. Docket No. 99–SW–31–AD.

Applicability: Model 269A, 269A–1, 269B, 269C, 269C–1, and 269D helicopters, with a tail rotor swashplate shaft (shaft), part number (P/N) 269A6049–3, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the shaft and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) and thereafter at intervals not to exceed 10 hours TIS until the next 100-hour or annual inspection, whichever occurs first, cut the lockwire; retract the boot on the pitch control assembly; and inspect the shaft nut, P/N 269A6258, for looseness by using a firm hand pressure. If the shaft nut is loose and can be turned by hand, determine if the shaft, P/N 269A6049–3, is undersized in accordance with Part II of Schweizer Aircraft Corp. Service Bulletins B–271, DB–007, or C1B–009, all dated March 12, 1999 (SB), as applicable.

(b) At the next 100-hour or annual inspection, whichever occurs first, inspect the shaft, P/N 269A6049–3, for the proper size, in accordance with Part II of the applicable SB.

(c) Prior to further flight, replace any undersized shaft in accordance with Part II of the applicable SB.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspection shall be done in accordance with Schweizer Aircraft Corp. Service Bulletins B–271, DB–007, or C1B–009, all dated March 12, 1999, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 2, 1999.

Issued in Fort Worth, Texas, on August 4, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–21177 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR 71

[Airspace Docket No. 99–AEA–04FR]

Amendment to Class E Airspace; Frederick Municipal Airport, MD

AGENCY: Federal Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace area extending upward from 700 feet Above Ground Level (AGL) at Frederick Municipal Airport, Frederick, MD. The development of revised Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS), and the Localizer (LOC) at Frederick Municipal Airport has made this action necessary. This action is intended to provide adequate Class E airspace from instrument flight rules (IFR) operations by aircraft executing the revised Global Positioning System (GPS) Runway (RWY) 05 Standard Instrument Approach Procedure (SIAP), Instrument Landing System (ILS) RWY 23 SIAP and VHF Omni-directional Radio range (VOR) or GPS–A SIAP at Frederick Municipal Airport and for Instrument Flight Rules (IFR) operations.

EFFECTIVE DATE: 0901 UTC, August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, airspace Specialist, Airspace Branch, AEA–520, Air traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 10, 1999, a proposal notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace extending upward from 700 feet above the surface at Frederick Municipal Airport, MD, was published in the **Federal Register** (64 FR 11820).

Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. No comments to the proposal were receive. The rule is adopted as proposed.

The coordinate for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward form 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides sufficient controlled Class E airspace extending upward from 700 feet AGL for aircraft executing amended SIAPs at Frederick, MD.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (30 does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities unoer the criteria of the Regulatory Flexibility Act.

List of Subjec's in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation(air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

1. The authority citation for 14 CFR Part 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5, Frederick, MD [Revised]

Frederick Municipal Airport, MD
(Lat 39°25″03″ N long 77°22′28″ W.)

That airspace extending upward from 700 feet above the surface within a 10 mile radius of Frederick Municipal Airport.

* * * * *

Issued in Jamaica, New York, on August 7, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–21021 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–140]

Drawbridge Operation Regulations: Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the CONRAIL Middletown-Portland Bridge, mile 32.0, across the Connecticut River between Middletown and Portland, Connecticut. This deviation from the regulations allows the bridge owner to keep the bridge in the closed position from August 5, 1999, through September 13, 1999, Thursday through Monday, 6 a.m. to 4:30 p.m. This action is necessary to facilitate repairs to replace structural steel on the bridge.

DATES: This deviation is effective from August 5, 1999, through September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION:

The CONRAIL Middletown-Portland Bridge, mile 32.0, across the Connecticut River has vertical clearances of 25 feet at mean high water, and 27 feet at mean low water in the closed position. The operation regulations are in 33 CFR 117.205(b).

The bridge owner, Connecticut Department of Transportation (CONNDOT), requested a temporary deviation from the operating regulations for the CONRAIL Middletown-Portland Bridge in order to conduct necessary repairs to the structural steel on the bridge. During the process of this work the bridge cannot be opened. Vessels that can pass under the bridge without an opening may do so at all times during the closed period. This work is essential for public safety and the continued operation of the bridge. In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

This deviation to the operating regulations authorizes CONNDOT to keep the CONRAIL Middletown-Portland Bridge, mile 32.0, across the Connecticut River between Middletown and Portland, Connecticut, in the closed position for repairs from August 5, 1999, through September 13, 1999, Thursday through Monday, 6 a.m. to 4:30 p.m.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 9, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–21376 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300909; FRL–6098–1]

RIN 2070–AB78

Pyriproxyfen; Re-establishment of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for residues of the insecticide pyriproxyfen and its metabolites in or on citrus fruit at 0.3 part per million (ppm), citrus juice at 1.0 ppm; citrus oil at 300 ppm, dried citrus pulp at 1.0 ppm; and pears at 0.2 ppm, for an additional 1½–year period. These tolerances will expire and are revoked on January 31, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on citrus and pears. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective August 18, 1999. Objections and requests for hearings, identified by docket control number OPP–300909, must be received by EPA on or before October 18, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300909 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703)308–9356; and e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
.....	112	Animal production
.....	311	Food manufacturing
.....	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300909. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of May 13, 1998 (63 FR 26466) (FRL–5788–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of pyriproxyfen and its metabolites in or on citrus fruit at 0.3 ppm; citrus juice at 1.0 ppm; citrus oil at 300 ppm; dried citrus pulp at 1.0 ppm; and pears at 0.2 ppm, with an expiration date of July 31, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of pyriproxyfen on citrus and pears for the current growing season due to both situations remaining an emergency. For citrus, the California Department of Pesticide Regulation requested the use for control of red scale, which has developed resistance to available pesticides and caused significant economic losses. For pears, the Oregon Department of Agriculture requested use for control of pear psylla, which had developed resistance to currently available pesticides, and was expected to cause significant economic loss if not controlled. After having reviewed the submissions, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of pyriproxyfen on citrus and pears for control of red scale and pear psylla, respectively.

EPA assessed the potential risks presented by residues of pyriproxyfen in or on citrus and pears. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 13, 1998 (63 FR 26466) (FRL–5788–2). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are re-established for an additional 1½–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on January 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on citrus and pears after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300909 in the subject line on the first page of your submission. All

requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 18, 1999.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission be labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300909, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 371.

§ 180.510 [Amended]

2. In § 180.510, by amending the table in paragraph (b) by changing the date "7/31/99" to read "1/31/01" for the entries for citrus fruit; citrus juice; citrus oil; citrus pulp, dried; and pears.

[FR Doc. 99–21427 Filed 8–17–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300900; FRL–6092–8]

RIN 2070–AB78

Glufosinate Ammonium; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt and its metabolite, 3-methylphosphinico-propionic acid in or on sweet corn (kernels and cob with husk removed), sweet corn forage, sweet corn stover, canola meal and canola seed. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sweet corn and canola. This regulation establishes a maximum permissible level for residues of glufosinate ammonium in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on December 1, 1999.

DATES: This regulation is effective August 18, 1999. Objections and requests for hearings must be received by EPA on or before October 18, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300900], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300900], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300900]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 284, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463; e-mail: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt and its metabolite, 3-methylphosphinico-propionic acid, in or on sweet corn (kernels and cob with husk removed) at 4.0 part per million (ppm), sweet corn forage at 4.0 ppm, sweet corn stover at 6.0 ppm, canola meal at 1.1 ppm and canola seed at 0.4 ppm. These tolerances will expire and are revoked on December 1, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations

governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Glufosinate Ammonium on Sweet Corn and Canola and FFDCA Tolerances

The Wisconsin Department of Agriculture, Trade, and Consumer Protection requested an emergency exemption for use of glufosinate ammonium on sweet corn to control weeds. The applicant states that only a limited number of broadleaf herbicides are registered for use in sweet corn. Traditionally, triazine herbicides have been widely used. However, Wisconsin's ground water law restricts the use of atrazine, and in sensitive areas, cyanazine and simazine may also contribute to problems and are best not used. Approximately 36,900 acres of Wisconsin's sweet corn production is located in ground water-sensitive areas. Additionally, approximately 24,700 acres of Wisconsin's cropland used to grow sweet corn are infested with triazine-resistant weeds. 2,4-D, registered for use on sweet corn to control weeds, often injures sweet corn hybrids resulting in reduction of crop yields. Bentazon is also registered but fails to control the two most serious annual broadleaf weeds (common lambsquarters and pigweed species). Other alternatives such as ametryne, linuron or paraquat require specialized application equipment not available to most Wisconsin sweet corn growers. In addition, sweet corn is frequently infested by two difficult-to-control annual grasses, wild-proso millet and woolly cupgrass. Registered soil applied grass herbicides are largely ineffective against these species.

Weather in North Dakota and Minnesota was responsible for serious losses in wheat due to disease and to serious losses due to water damage and to inability to harvest wet fields. Even good revenue years for wheat have netted less than those for canola. This use of Liberty on canola is needed to maintain grower solvency. The "above-average" returns from alternative crops such as canola are urgently needed to maintain economic viability for producers in North Dakota and Minnesota.

EPA has authorized under FIFRA section 18 the use of glufosinate ammonium on sweet corn in Wisconsin and on canola in North Dakota and Minnesota for control of weeds. After having reviewed these submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of glufosinate ammonium in or on sweet corn and canola. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 1, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sweet corn and canola after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether glufosinate ammonium meets EPA's registration requirements for use on sweet corn and canola or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of glufosinate ammonium by a State for special local needs under FIFRA section 24(c). Nor does these tolerances serve as the basis for any State other than Wisconsin, North Dakota, and Minnesota to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for glufosinate ammonium, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of these actions. EPA has sufficient data to assess the hazards of glufosinate ammonium and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt and its metabolite, 3-methylphosphinico-propionic acid on sweet corn (kernels and cob with husk removed) at 4.0 ppm, sweet corn forage at 4.0 ppm, sweet corn stover at 6.0 ppm, canola meal at 1.1 ppm and canola seed at 0.4 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by glufosinate ammonium are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* An acute reference dose (aRfD) of 0.50 milligrams/kilograms/day (mg/kg/day) has been identified for females 13+ years old. The aRfD is derived from a no observable adverse effect level (NOAEL) of 50 mg/

kg/day, based on developmental toxicity characterized as dilated renal pelvis and/or hydroureter, from a rat developmental toxicity study, and an uncertainty factor (UF) of 100 (10x for interspecies extrapolation and 10x for intraspecies variability). The 10x FQPA Safety factor to account for enhanced sensitivity of infants and children (as required by FFDCA section 408 (b)(2)(C)) was reduced to 3x for acute exposures. The acute Population Adjusted Dose (aPAD) is a modification of the aRfD to accommodate the FQPA Safety Factor. The aPAD is equal to the aRfD divided by the FQPA Safety Factor. Therefore, the dietary aPAD is 0.167 mg/kg/day. The dietary aPAD applies only to the female 13+ years old subgroups since the endpoint of concern is based on developmental toxicity. No acute dietary endpoint was identified for the general population including infants and children.

2. *Short- and intermediate-term toxicity.* For short- and intermediate-term exposure scenarios for dermal exposure, the dermal NOAEL of 100 mg/kg/day from the 21–day dermal toxicity study in rats, based on neurological clinical signs (hyperactivity, aggressive behavior, piloerection) at the lowest observed adverse effect level (LOAEL) of 300 mg/kg/day, has been identified as the endpoint for risk assessment. A margin of exposure (MOE) of 100 is required (10x for interspecies extrapolation and 10x for intraspecies variability). Short-term inhalation exposure should be converted to an oral equivalent dose (using 100% inhalation absorption) and compared to the NOAEL of 50 mg/kg/day from the oral rat developmental toxicity study. Intermediate-term inhalation exposure should be converted to an oral equivalent dose (using 100% inhalation absorption) and compared to the NOAEL of 2.1 mg/kg/day from the 2–year chronic feeding study in rats. MOEs of 100 are required to account for interspecies extrapolation (10x) and intraspecies variability (10x).

3. *Chronic toxicity.* EPA has established the chronic RfD (cRfD) for glufosinate ammonium at 0.021 mg/kg/day. This RfD is derived from a NOAEL of 2.1 mg/kg/day, based on increases in absolute and relative kidney weights in males at the LOAEL of 7.6 mg/kg/day in a 2–year chronic feeding study in rats and an UF of 100 (10x for interspecies extrapolation and 10x for intraspecies variability). The 10x FQPA Safety factor to account for enhanced sensitivity of infants and children (as required by FFDCA section 408(b)(2)(C)) was reduced to 3x for chronic exposures. The chronic Population Adjusted Dose (cPAD) is a modification of the cRfD to accommodate the FQPA Safety Factor. The cPAD is equal to the cRfD divided by the FQPA Safety Factor. Therefore, the dietary cPAD is 0.007 mg/kg/day.

4. *Carcinogenicity.* There is no cancer concern based on negative results observed in three guideline studies available for the carcinogenicity screen (the chronic feeding study in rats, carcinogenicity study in rats and the carcinogenicity study in mice).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.473) for the combined residues of glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt and its metabolite, 3-methylphosphinico-propionic acid, in or on a variety of raw agricultural commodities. Time-limited tolerances have also been established as a result of secondary residues in/on eggs and meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep. Risk assessments were conducted by EPA to assess dietary exposures and risks from glufosinate ammonium as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. At the 95th percentile exposure level, assuming 100% crop treated and tolerance level residues for all commodities, 6% of the aPAD was utilized for females (13+ nursing), the subgroup with the highest exposure. The results of the acute analyses indicate that the acute dietary risk associated with the existing and proposed uses of glufosinate ammonium is below the Agency's current level of concern.

ii. *Chronic exposure and risk.* The chronic DEEM analysis assumed tolerance level residues for all commodities except for milk. Anticipated residues were used for milk. Maximum percent crop treatment data were incorporated into the chronic dietary estimate. Percent crop treated (PCT) data for sweet corn was incorporated by determining the amount of sweet corn produced in Wisconsin versus that produced in the United States. Assuming tolerance level residues for all commodities except milk where anticipated residues were used and PCT values, 4% of the cPAD was utilized for the U.S. Population and 9% of the cPAD was utilized for non-nursing infants, the subgroup with the highest exposure. The results of this analysis indicate that the acute dietary risk associated with existing uses and the proposed use of glufosinate ammonium is below the Agency's level of concern.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

A routine chronic dietary exposure analysis for glufosinate ammonium was based 1% of apples, 4% of field corn, and less than 1% of soybeans were treated. PCT data for sweet corn was incorporated by determining the amount of sweet corn produced in Wisconsin versus that produced in the United States. Based on this information the time-limited tolerance for sweet corn only supports a section 18 for use in Wisconsin.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. EPA finds that the PCT information is reliable and has a valid basis. Before the petitioner can increase production of product for treatment of greater than 30,000 acres of sweet corn, permission from the Agency must be obtained. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing glufosinate ammonium in a particular area.

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for glufosinate ammonium. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on GENEEC and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and SCI-GROW, which predicts pesticide concentrations in ground water. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. Based on the GENEEC and SCI-GROW models, the acute drinking water concentration values are estimated to be 237 parts per billion (ppb) for surface water and 1.16 ppb for ground water. The chronic drinking water concentration values are estimated to be 59.43 ppb for surface water and 1.16 pbb for ground water.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to glufosinate ammonium, they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* Glufosinate ammonium is currently registered for use on the following residential non-food sites: spot spraying around trees, shrubs, fences, walks, patios, driveways, sidewalks, in flower beds, around houses, buildings, wooded lots, storage and recreational areas, and for spot-kill weeds in lawns. The risk estimates indicate that the potential risks from the registered residential uses of glufosinate ammonium do not exceed the Agency's level of concern. These risk estimates are based on the Agency's Draft HED Standard Operating Procedures (SOPs) for Residential Exposure Assessments, December 18, 1998.

i. *Acute exposure and risk.* Acute dietary exposure and risks are not expected from use of glufosinate ammonium as a result of non-dietary, non-occupational exposure.

ii. *Chronic exposure and risk.* Chronic-term residential exposures are not expected from the proposed section 18 use of glufosinate ammonium, therefore a risk assessment was not conducted.

iii. *Short- and intermediate-term exposure and risk.* There are potential short-term exposures from the registered residential uses of glufosinate ammonium. Therefore, a risk assessment was conducted to estimate the potential risks from garden uses. The estimated MOEs from residential uses ranged from 190 (dermal exposures to homeowner/handler) to 330,000 (inhalation exposures).

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether glufosinate ammonium has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glufosinate ammonium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that glufosinate ammonium has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* An acute dietary endpoint was identified only for the females 13+ years old subpopulations. Using the exposure assumptions of 100% crop treated and tolerance level residues for all commodities, at the 95th percentile, 6% of the aPAD was utilized for females (13+, nursing) the subgroup with the highest exposure. EPA generally has no concern for exposures below 100% of the aPAD. Despite the potential for exposure to glufosinate ammonium in drinking water, after calculating a DWLOC (4730 ppb) for the females (13+ nursing) and comparing it to conservative model estimates of acute concentrations of glufosinate ammonium in surface and ground water (237 ppb and 1.16 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions of tolerance level residues for all commodities except milk where anticipated residues were used and PCT values, 4% of the cPAD was utilized for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at

or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for chronic exposure to glufosinate ammonium in drinking water, after calculating a DWLOC (236 ppb) for the U.S. population and comparing it to conservative model estimates of concentrations of glufosinate ammonium surface and ground water (59.43 ppb and 1.16 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. There are registered residential uses for glufosinate ammonium. The estimated MOEs from residential uses ranged from 190 (dermal exposures to homeowner/handler) to 330,000 (inhalation exposures). These estimates indicate that the potential inhalation exposures will not be a significant contribution to the aggregate risk. The potential dermal exposures were not aggregated because the toxic effects for short- and intermediate-term exposure (neurological clinical signs) and chronic exposure (increases in absolute and relative kidney weights) are different. Therefore, based on the best available data and current policies, potential risks do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* There is no cancer concern based on negative results observed in three guideline studies available for the carcinogenicity screen: the chronic feeding study in rats, carcinogenicity study in rats and the carcinogenicity study in mice.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to glufosinate ammonium residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of glufosinate ammonium, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal-and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal (systemic) NOAEL was 10 mg/kg/day, based on vaginal bleeding and hyperactivity at the LOAEL of 50 mg/kg/day. The developmental (fetal) NOAEL was 50 mg/kg/day, based on dilated renal pelvis and/or hydroureter at the LOAEL of 250 mg/kg/day.

In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 2 mg/kg/day, based on decreases in body weight, body weight gain and food consumption and increased kidney weight at the LOAEL of 6 mg/kg/day. The developmental (pup) NOAEL was 2 mg/kg/day based on absent/incomplete ossification, with fetal death at 20 mg/kg/day.

iii. *Reproductive toxicity study.* In the 2–generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 2 mg/kg/day based on increased kidney weights in males and females ate 6 mg/kg/day. The reproductive/developmental NOAEL was 6 mg/kg/day based on decreased pup viability in all generations at 18 mg/kg/day.

iv. *Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity for glufosinate ammonium is complete with respect to current data requirements. There are no prenatal or postnatal susceptibility concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2–generation reproduction study.

v. *Conclusion.* There is a complete toxicity data base for glufosinate ammonium and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Although the data indicate that there is no additional sensitivity to young rats or rabbits following prenatal and/or postnatal exposure to glufosinate ammonium in the developmental and reproductive toxicity studies; the Agency has determined that the FQPA Safety Factor should not be removed but instead reduced to 3x due to the presence of neurotoxicity in several studies in the toxicology data base, and the absence of acute neurotoxicity data, subchronic neurotoxicity data, and developmental neurotoxicity data.

2. *Acute risk.* An acute dietary RfD was not identified for any subpopulation other than female 13+ years old.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to glufosinate ammonium from food will utilize 9% of the cPAD for non-nursing infants, the major identifiable subgroup with the highest aggregate exposure. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for chronic exposure to glufosinate ammonium in drinking water, after calculating a DWLOC (64 ppb) for non-nursing infants and comparing it to conservative model estimates of concentrations of glufosinate ammonium in surface and ground water (59.43 ppb and 1.16 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses. There are registered residential uses for glufosinate ammonium, however, based on the use patterns (spot treatments), potential post application exposures to infants and children from these uses will not contribute significantly to the overall risks. The estimated MOE from post application exposures was 330 (based on conservative estimates). Therefore, the Agency concludes that there is a reasonable certainty that no harm will result to infants and children from short- and intermediate-term

aggregate exposures to residues of glufosinate ammonium.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to glufosinate ammonium residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. *Plants.* The nature of the residues of glufosinate ammonium is considered to be understood. The Agency has concluded that the residues of concern are glufosinate ammonium and its metabolites 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid expressed as glufosinate free acid equivalents.

2. *Animals.* The nature of the residues of glufosinate ammonium in/on animals is considered to be understood. The Agency has concluded that the residues of concern in ruminants and hens are glufosinate ammonium and its metabolite 3-methylphosphinico-propionic acid expressed as glufosinate free acid equivalents.

B. Analytical Enforcement Methodology

Method AE-24 is an adequate tolerance enforcement method for determination of glufosinate ammonium related residues. This method is a modification of the current enforcement Analytical Method HRAV-5A. Method AE-24, includes an additional post-extraction cation exchange procedure to allow for separate detection and measurement of each residue component. Final determination is made by gas chromatography with flame photometric detection (GC/FPD) operating in the phosphorus selective mode (P-mode). Residues are expressed as glufosinate-ammonium free acid equivalents.

C. Magnitude of Residues

Residues of glufosinate ammonium are not expected to exceed 4.0 ppm in/on sweet corn (kernels and cob with husk removed), sweet corn forage at 4.0 ppm, sweet corn stover at 6.0 ppm, canola seed at 0.4 ppm and canola meal at 1.1 ppm as a result of these section 18 uses. Secondary residues in animal commodities are not expected to exceed the previously established tolerances as a result of this section 18 use.

D. International Residue Limits

There are no Canadian or Mexican MRLs established for glufosinate ammonium in/on sweet corn.

E. Rotational Crop Restrictions

A 120–day plant back interval is required for all crops.

V. Conclusion

Therefore, the tolerance is established for combined residues of glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt and its metabolite, 3-methylphosphinico-propionic acid in sweet corn (kernels and cobs with husk removed) at 4.0 ppm, sweet corn forage at 4.0 ppm, sweet corn stover at 6.0 ppm, canola seed at 0.4 ppm and canola meal at 1.1 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 18, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300900] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 29, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.473, is amended as follows:

i. By redesignating (b)(1), and (b)(2) as paragraphs (a)(3) and (a)(4).

ii. By adding a new paragraph (b).

§ 180.473 Glufosinate Ammonium; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of the herbicide (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt and its metabolite, 3-methylphosphinico-propionic acid in connection with use of section 18 emergency exemptions granted by EPA.

The tolerances will expire and are revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/ Revocation date
Canola, meal	1.1	12/1/99
Canola, seed	0.4	12/1/99
Corn, sweet, forage	4.0	12/1/99
Corn, sweet, kernels and cobs with husks removed	4.0	12/1/99
Corn, sweet, stover	6.0	12/1/99

* * * * *

[FR Doc. 99–20869 Filed 8–17–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6424–1]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Texas has applied for final authorization to revise its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization. The EPA reviewed Texas's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Texas' Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Texas final authorization for the program modifications contained in the revision.

DATES: This action is effective on October 18, 1999 without further notice, unless EPA receives relevant adverse comments by September 17, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the immediate final rule or identify the issues raised, respond to the comments, and affirm that the immediate final rule will take effect as scheduled.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana, 70810, (504) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. What is Resource Conservation and Recovery Act (RCRA) State Authorization?

The RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), provides for authorization of State hazardous waste programs under subtitle C. Under RCRA Section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste program. *See* 40 Code of Federal Regulations (CFR) part 271. In fact, Congress designed RCRA so that the entire subtitle C program would eventually be administered by the States in lieu of the Federal Government. This is because the States are closer to, and more familiar with, the regulated community and therefore are in a better position to administer the programs and respond to local needs effectively.

After receiving authorization, the State administers the program in lieu of the Federal government, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Authorized States are required to revise their programs when EPA promulgates Federal Standards that are more stringent or broader in scope than existing Federal standards. States are not required to modify their programs to address Federal changes that are less stringent than the existing Federal program or that reduce the scope of the existing Federal program. These changes are optional and are noted as such in the **Federal Register** (FR) documents. However, EPA encourages States to adopt optional rules because they provide benefit to environmental protection.

B. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, 270, 273, and 279.

C. What is the Effect of This Authorization?

This authorization should have little impact because the State's requirements are already effective. However, upon approval of the revisions, Texas will be authorized to administer federal rules referred by EPA as RCRA Cluster V (these rules are listed in a chart in this FR document). Currently, federal cluster V rules are administered by the EPA.

D. What is the History of Texas' Final Authorization and Its Revisions

Texas received final authorization to implement its hazardous waste management program on December 12, 1984, effective December 26, 1984 (49 FR 48300). This authorization was clarified in a notice published in the FR on March 26, 1985 (50 FR 11858). Texas received final authorization for revisions to its program in notices published in the FR on January 31, 1986, effective October 4, 1985 (51 FR 3952), on December 18, 1986, effective February 17, 1987 (51 FR 45320). We authorized the following revisions: March 1, 1990, effective March 15, 1990 (55 FR 7318), on May 24, 1990, effective July 23, 1990 (55 FR 21383), on August 22, 1991, effective October 21, 1991 (56 FR 41626), on October 5, 1992, effective December 4, 1992 (57 FR 45719) and on April 11, 1994, effective June 27, 1994, (59 FR 16987); on April 12, 1994, effective (59 FR 17273), September 12, 1997, effective November 26, 1997, (62 FR 47947), and on September 19, 1997, effective December 3, 1997, (62 FR 49163). Effective December 3, 1997 (62 FR 49163), EPA incorporated by reference the State of Texas Base Program into CFR. On February 11, 1999, Texas submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21.

In 1991, Texas Senate Bill 2 created the TNRCC which combined the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993.

Under the Texas Solid Waste Disposal Act (codified in Chapter 361 of the Texas Health and Safety Code), the

TNRCC has primary responsibility for administration of laws and regulations concerning hazardous waste. The TNRCC is authorized to administer the RCRA program. However, Under the Texas Natural Resources Code, title 3, and Texas Water Code, Chapter 27, waste (both hazardous and nonhazardous) resulting from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, is regulated by the Railroad Commission of Texas (RRC). A list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 TAC sections 3.8(a)(30) and at 30 TAC 335.1. Such wastes are termed "oil and gas wastes." The TNRCC has responsibility to administer the RCRA program, however, hazardous waste generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TNRCC until the RRC is authorized by EPA to administer RCRA. When the RRC is authorized by EPA to administer RCRA program for these wastes, jurisdiction over such hazardous waste will transfer from the TNRCC to the RRC. The EPA has designated the TNRCC to be the lead agency to coordinate RCRA activities between the two agencies. The EPA is responsible for the regulation of hazardous waste for which TNRCC has not been previously authorized.

The TNRCC has rules necessary to implement EPA's RCRA Cluster V revisions to the Federal Hazardous Waste Program from July 1, 1994, to June 30, 1995. The TNRCC authority to incorporate Federal rules by reference can be found at Texas Government Code Annotated section 311.027 and adoption of the hazardous waste rules in general are pursuant to the following statutory provisions: (1) Texas Water Code Annotated section 5.103 (Vernon 1988 & Supplement 1998), effective September 1995, as amended, (2) Texas Health and Safety Code Annotated section 361.024 (Vernon 1992 & supplement 1998), effective September 1, 1995, as amended, (3) Texas Health and Safety Code Annotated section 361.078 (Vernon 1992), effective September 1, 1989.

In this authorization the EPA has also clarified the jurisdiction of the TNRCC and the RRC. Effective May 31, 1998, the TNRCC and the RRC signed a Memorandum of Understanding that clarified the jurisdiction between the agencies for waste associated with exploration, development, production and refining of oil and gas.

E. What Revisions are we Approving With Today's Action?

The State of Texas submitted a final complete program revision application, seeking authorization of their revisions in accordance with 40 CFR 271.21. Texas' revisions consist of regulations which specifically govern Federal Hazardous Waste promulgated from July 1, 1994 to June 30, 1995 (RCRA Cluster V). Texas requirements are listed on the chart included in this document. The EPA is now making an immediate final decision, subject to receipt of written comments that oppose this action, that Texas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Texas final authorization for the following program revisions:

Federal citation	State analog
1. Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste; Recovered Oil Exclusion, [59 FR 38536–38545] July 28, 1994. (Checklist 135).	Texas Water Code Annotated (TWCA) §§ 5.102, 5.103 (Vernon 1988 & Supplement (Supp.) 1998), effective September 1, 1995, as amended; § 5.105 (Vernon 1988) effective September 1, 1985; Texas Health and Safety Code Annotated (THSCA) § 361.003 (Vernon 1992 & Supp. 1998), effective September 1, 1997, as amended, THSCA § 361.017 and 361.024 (Vernon 1992 & Supp. 1998), effective September 1, 1995, as amended, THSCA § 361.078 (Vernon 1992) effective September 1, 1989; 30 Texas Administrative Code (TAC) §§ 335.1(56), 335.1(119), 335.24, and 335.221, effective October 19, 1998, as amended.
2. Removal of the Conditional Exemption for Certain Slag Residues, [59 FR 43496–43500] August 24, 1994. (Checklist 136).	TWCA §§ 5.102 (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended; TWCA 5.103 (Vernon 1988 & 1998), effective 1, 1995, as amended; TWCA 5.105 (Vernon 1988) effective September 1, 1985, TWCA 26.011 (Vernon 1988 & Supp. 1998), effective March 28, 1991, as amended; THSCA §§ 361.017 (Vernon 1992 & Supp. 1998), effective September 1, 1995, as amended; THSCA 361.024 (Vernon 1992 & Supp. 1998), effective September 1, 1995, as amended; THSCA 361.078 (Vernon 1992), effective September 1, 1989; 30 TAC §§ 335.211, and 335.431, effective October 19, 1998, as amended.
3. Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Waste and Newly Listed Wastes [59 FR 47982–48110] September 19, 1994, as amended at [60 FR 242–302], January 3, 1995. (Checklist 137).	TWCA §§ 5.102, 5.103, (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended, TWCA § 5.105 (Vernon 1988), effective September 1, 1985; THSCA §§ 361.003, 361.017, 361.024, (Vernon 1992 & Supp. 1998), effective September 1, 1995, as amended, and 361.078 (Vernon 1992), effective September 1, 1989; 30 TAC §§ 335.1(119), 335.18, 335.19, as amended, effective October 19, 1998; 335.20, as amended, effective May 29, 1986, 335.21, 335.41, 335.214, 335.221, and 335.431, as amended, effective October 19, 1998. At 40 CFR 268.7(a) (tolling agreements), the State regulations are more stringent than the Federal regulations because the State regulations do not contain an explicit provision analogous to 40 CFR part 268.79(a)(10).
4. Testing and Monitoring Activities Amendment I, [60 FR 3089–3095] January 13, 1995. (Checklist 139).	TWCA §§ 5.102, 5.103, (Vernon 1988 & Supp. 1998), effective 1, 1985, as amended, 5.105, (Vernon 1988, effective September 1, 1985; THSCA §§ 361.017, 361.024, (Vernon 1992 & Supp. 1998), effective September 1, 1995, as amended, 361.078, (Vernon 1992), effective September 1, 1989; 30 TAC § 335.31, effective October 19, 1998, as amended.
5. Carbamate Production Identification and Listing of Hazardous Waste, [60 FR 7824–7859], February 9, 1995, as amended at [60 FR 19165], April 17, 1995, and at [60 FR 25619], May 12, 1995. (Checklist 140).	TWCA §§ 5.102, 5.103, (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended, 5.105, (Vernon 1988) effective September 1, 1985; THSCA §§ 361.003, 361.017, 361.024, 361.078 (Vernon 1992 & Supp. 1998), effective September 1, 1997, as amended, 361.078 (Vernon 1992), effective September 1, 1989; 30 TAC §§ 335.29, and 335.1(56), effective September 19, 1998, as amended. The State statutory and regulatory definitions of hazardous waste incorporate by reference the Federal definition, automatically including any changes. The State rule is broader in scope because the waste vacated by the November 1, 1996, decision by United States Court of Appeals For the District of Columbia Circuit in Dithiocarbamate Task Force v. EPA. However, this has no impact on the equivalency of the definition of hazardous waste.

Federal citation	State analog
6. Testing and Monitoring Activities Amendment II, [60 FR 17001–17004], April 4, 1995. (Checklist 141).	TWCA §§5.102, 5.103 (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended, 5.105 (Vernon 1988), effective September 1, 1985; 26.011 (Vernon 1988 & Supp. 1998), effective March 28, 1991, as amended, THSCA §§361.017, 361.024 (Vernon 1992 & Supp. 1998), as amended, 361.078 (Vernon 1992), effective September 1, 1989; 30 TAC §335.31, effective October 19, 1998, as amended.
7. Universal Waste: General Provisions, [60 FR 25492–25551] May 11, 1995. (Checklist 142 A).	TWCA §§5.102, 5.103 (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended, 5.105 (Vernon 1988), effective September 1, 1985; 26.011 (Vernon 1988 & Supp. 1998), effective March 28, 1991, as amended; THSCA §§361.003 (Vernon 1992 & Supp. 1998), effective September 1, 1997, as amended, 361.017, 361.024 (Vernon 1992 & Supp. 1998), effective September 1, 1995, as amended, 361.078l (Vernon 1992), effective September 1, 1989; 30 TAC §§335.1, 335.2(l), 335.41(j), 335.61(g), 335.62, 335.78(c), (f), and (g), 335.261, 335.431, effective October 19, 1998, as amended.
8. Universal Waste Rule: Specific Provisions for Batteries, [60 FR 25492–2551] May 11, 1995. (Checklist 142 B).	TWCA §§5.102, 5.103 (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended, 5.105 (Vernon 1988), effective September 1, 1985, 26.011 (Vernon 1988 & Supp. 1998), effective March 28, 1991; THSCA §§361.003 (Vernon 1992 & Supp. 1998), effective September 1, 1997, as amended, 361.017, 361.024 (Vernon 1992 & Supp. 1998), effective September 1, 1995, 361.078 (Vernon 1992), effective September 1, 1989; 30 TAC §§335.1, 335.2(l), 335.24(c), 335.41(j), 335.251, 335.261, and 335.431, effective October 19, 1998.
9. Universal Waste Rule: Specific Provisions for Pesticides, [60 FR 25492–25551] May 11, 1995. (Checklist 142 C).	TWCA §§5.102 (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended, 5.103 (Vernon 1988 & Supp. 1998), effective September 1, 1995, 5.105 (Vernon 1988), effective September 1, 1985, 26.011 (Vernon 1988 & supp. 1998), effective March 28, 1991, as amended; THSCA §§361.003 (Vernon 1992 & Supp. 1998), effective September 1, 1997, as amended, 361.017, 361.024, (Vernon 1992 & Supp. 1998), effective September 1, 1995 as amended, 361.078 (Vernon 1992), effective September 1, 1989; 30 TAC §§335.1, 335.2(l), 335.41(j) 335.261, and 335.431, effective October 19, 1998, as amended.
10. Universal Waste rule: Specific Provisions for Thermostats, [60 FR 25492–25551] May 11, 1995. (Checklist 142 D).	TWCA §§5.102 (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended, 5.103 (Vernon 1988 & Supp. 1998), effective September 1, 1995, as amended, 5.105 (Vernon 1988), effective September 1, 1985, 26.011 (Vernon 1988 & Supp. 1998), effective March 28, 1991, as amended; THSCA §§361.003 (Vernon 1992 & Supp. 1998) effective September 1, 1997, as amended, 361.017, 361.024 (Vernon 1992 & Supp. 1998), effective September 1, 1995, 361.078 (Vernon 1992), effective September 1, 1989; 30 TAC 335.1, 335.2(l), 335.41(j), 335.261, 335.431, effective October 19, 1998.
11. Universal Waste Rule: Petition Provisions to Add a New Universal Waste, [60 FR 25492–25551] May 11, 1995. (Checklist 142 E).	TWCA §§5.102 (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended, 5.103 (Vernon 1988 & Supp. 1998), effective September 1, 1995, as amended, 5.105 (Vernon 1988), effective September 1, 1985, 26.011 (Vernon 1988 & Supp. 1998), effective March 28, 1991, as amended; THSCA §§361.003 (Vernon 1992 & Supp. 1998) effective September 1, 1997, as amended, 361.017, 361.024 (Vernon 1992 & Supp. 1998), effective September 1, 1995, 361.078 (Vernon 1992), effective September 1, 1989; 30 TAC §§20.15, effective June 8, 1998, as amended, 335.261, effective October 19, 1998 as amended.
12. Removal of Legally Obsolete Rules, [60 FR 33912–33915 June 29, 1995. (Checklist 114).	TWCA §§5.102 (Vernon 1988 & Supp. 1998), effective September 1, 1985, as amended, 5.103 (Vernon 1988 & Supp. 1998), effective September 1, 1995, as amended, 5.105 (Vernon 1988), effective September 1, 1985, 26.011 (Vernon 1988 & Supp. 1998), effective March 28, 1991, as amended; THSCA §§361.003 (Vernon 1992 & Supp. 1998) effective September 1, 1997, as amended, 361.017, 361.024 (Vernon 1992 & Supp. 1998), effective September 1, 1995, 361.078 (Vernon 1992), effective September 1, 1989; 30 TAC §§305.42, 335.1, 335.221(a)(11), 335.221(a)(15), effective October 19, 1998, as amended, 305.50(4)(G), effective November 20, 1996, and 335.223(b), effective July 29, 1992.

F. What Decisions Have We Made?

We conclude that Texas' application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Texas is granted final authorization to operate its hazardous waste program as revised, assuming no adverse comments are received as discussed above. Upon effective final approval Texas will be responsible for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Texas also will have primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

G. How Do the Revised State Rules Differ From the Federal Rules?

EPA considers the following State requirement to be more stringent than the Federal: The State section 335.431(c)(2) does not contain a explicit provision analogous to 40 CFR 268.7(a)(10) (tolling agreement). These requirements are part of Texas' authorized program and are federally enforceable. In this authorization of the State of Texas' program revisions for RCRA Cluster V, the following provisions are broader in scope: Sections 335.29(4) and 335.29(5) which corresponds to 40 CFR part 261, appendix VII and VIII, and section 20.15 which corresponds to 40 CFR 260.20(a). The Texas regulations are broader in scope because the waste listing vacated by the November 1, 1996, decision by the United States Court of Appeals for the District of Columbia Circuit in Dithiocarbamate Task Force v. EPA, 98 F. (D.C. Cir. 1996), remain reflected in the State's adoption by reference of the February 9, 1995, version of 40 CFR part 261, appendix VII and VIII. However, this has no impact on the equivalency of the definition of hazardous waste. Broader in scope requirements are not part of the authorized program and EPA cannot enforce them.

H. Who Handles Permits After This Authorization Takes Effect?

Texas will issue permits for all the provisions for which it is authorized and will also administer program

revisions for Federal rules promulgated from July 1, 1994 to June 30, 1995 (RCRA Cluster V). EPA will continue to administer any RCRA hazardous waste permits or portions of permits which it issued prior to the effective date of this authorization until they expire or are terminated. EPA will not issue any more permits or portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which the State is not yet authorized. HSWA requirements are effective in all States and are administered by EPA until States are authorized to do so.

I. Why Wasn't There a Proposed Rule Before Today's Notice?

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and do not expect comments that oppose this action. EPA is providing an opportunity for public comment now. In the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization, that document will serve as a proposal to authorize the changes.

J. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number TX–99–1. We must receive your comments by September 17, 1999. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

K. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments which oppose this authorization, a second **Federal Register** notice will be published before the time the immediate final rule takes effect. The second notice may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled.

L. When Will This Approval Take Effect?

Unless EPA receives comments that oppose this action, this final authorization approval will become effective without further notice on October 18, 1999.

M. Where Can I Review the State's Application?

You can view and copy the State of Texas' application from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin TX 78711–3087, (512) 239–6757 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

N. Now Does Today's Action Affect Indian Country in Texas?

Texas is not authorized to carry out its hazardous waste program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian country.

O. What is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart SS for this authorization of Texas' program changes until a later date.

Administrative Requirements

Compliance With Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of E.O. 12866.

Compliance Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) the OMB determines is "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 and 205 of the UMRA, the EPA must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Texas' program, and today's action does not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce,

not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires the EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate hazardous waste treatments, storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by the EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1966), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if any agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

Executive Order 12875 Enhancing Intergovernmental Partnerships

Under E.O. 12875, the EPA may not issue regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, the EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, the EPA may not issue a regulation that is not require by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments. If the mandate is unfunded, the EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian governments. The State of Louisiana is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that the EPA implements in the Indian country within the State.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

Authority

This document is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 30, 1999.
W.B. Hathaway,
Acting Regional Administrator, Region 6.
[FR Doc. 99–21423 Filed 8–17–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1001–IFC]

RIN 0938–AI27

Medicare Program; Graduate Medical Education (GME): Incentive Payments Under Plans for Voluntary Reduction in the Number of Residents

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements section 1886(h)(6) of the Social Security Act, as added by section 4626(a) of the Balanced Budget Act (BBA) of 1997. Section 4626(a) of the BBA allows qualifying hospitals to receive incentive payments over a 5-year period for voluntarily reducing the size of their residency programs. A hospital seeking incentive payments must submit, to HCFA and its Medicare intermediary, an application that specifies reductions in its number of residents by 20 to 25 percent.

DATES: *Effective date:* This interim final rule with comment period is effective September 17, 1999.

Comment Period: Comments will be considered if we receive them at the appropriate address, as provided in the **ADDRESSES** section, no later than 5 p.m. on October 18, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1001–IFC, P.O. Box 9010, Baltimore, MD 21244–9010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–16–03, Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

For comments that relate to information collection and recordkeeping requirements, mail copies of comments directly to the following:

Health Care Financing Administration, Office of Information Services, Security Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850; and the

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Rebecca Hirshorn, (410) 786–3411.

SUPPLEMENTARY INFORMATION:

Comments

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1001–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

I. Background

Since the inception of Medicare in 1965, the program has shared in the costs of educational activities incurred by participating providers. Our regulations at 42 CFR 413.85(b) define approved educational activities to mean formally organized or planned programs of study usually engaged in by providers in order to enhance the quality of patient care in an institution. These activities include approved training programs for physicians, nurses, and certain allied health professionals. Medicare makes payments for both the direct and indirect costs of graduate medical education (GME). Under section 1886(h) of the Social Security Act (the Act) and 42 CFR 413.86, Medicare pays hospitals for the costs of direct GME. Under 1886(d)(5)(B) of the Act and 42 CFR 412.105, Medicare pays hospitals for the costs of indirect medical education (IME).

A. Direct Graduate Medical Education

Under sections 1886 (a)(4) and (d)(1)(A) of the Act and 42 CFR 412.113, direct GME costs are excluded from the definition of a hospital's operating costs and, accordingly, are not included in the calculation of payment rates under the hospital inpatient prospective payment system or in the calculation of the rate-of-increase limit for hospitals excluded from the prospective payment system. Under section 1886(h) of the Act and 42 CFR 413.86, hospitals are paid for direct GME costs based on Medicare's share of a hospital-specific per resident amount multiplied by the number of full-time equivalent (FTE) residents.

B. Indirect Medical Education (IME)

Medicare has made payments to short-term acute care hospitals under section 1886(d) of the Act on the basis of the prospective payment system since 1983. Under the prospective payment system, hospitals receive a predetermined payment for each Medicare discharge. Section 1886(d)(5)(B) of the Act specifically directs the Secretary to provide an additional payment under the inpatient operating prospective payment system to hospitals for IME costs. This additional payment, which reflects the higher operating costs associated with GME, is based in part on the applicable IME adjustment factor. The adjustment factor is calculated by using a hospital's ratio of residents-to-beds in the formula set forth at section 1886(d)(5)(B)(iii) and specified in regulations at § 412.105.

Psychiatric and rehabilitation hospitals and units as well as long-term care, cancer, and children's hospitals are excluded from the prospective payment system and are paid on a reasonable cost basis under section 1861(v)(1)(A) of the Act, subject to a rate-of-increase limit. Payments to excluded hospitals for their IME costs are included in their payments for operating costs and are therefore subject to the rate-of-increase limit.

Under section 1886(g) of the Act and § 412.322 of the existing regulations, we also make capital GME payments to hospitals on the basis of each respective hospital's ratio of residents to average daily census.

C. The Balanced Budget Act of 1997

Section 4626(a) of the Balanced Budget Act (BBA) of 1997, Public Law 105–33 (enacted on August 5, 1997), added section 1886(h)(6) to the Act to set forth provisions that allow Medicare participating hospitals to receive incentive payments over a 5-year period under approved plans for voluntarily reducing the number of residents that are in their approved medical residency training programs. Section 1886(h)(6)(C) of the Act defines the entities that may qualify for incentive payments under a voluntary reduction plan and section 1886(h)(6)(B) of the Act sets forth

participation and reduction criteria that the plan applications must meet for approval.

Section 1886(h)(6)(B)(i) of the Act specifies that the application for a voluntary resident reduction plan must be submitted in a form and manner specified by the Secretary and must be received no later than November 1, 1999. Section 1886(h)(6)(B)(ii) of the Act specifies that the application must provide for the operation of a plan for reducing the number of FTE residents in approved medical residency training programs consistent with the requirements of section 1886(h)(6)(D) of the Act.

Sections 1886(h)(6)(B)(iii) and (iv) of the Act provide that the applying entity—

- Must elect in the application the period of residency training years (not greater than 5) over which the reduction will occur; and
- Must not reduce the proportion of its residents in primary care (to the total number of residents) below such proportion in effect as of the applicable time described in section 1886(h)(6)(D)(v) of the Act.

The statute directs the Secretary to determine whether the application, the entity, and plan meet such other requirements as the Secretary specifies in regulations.

Sections 1886(h)(6) (D) and (E) of the Act specify the requirements for percentage reductions in the number of residents and the manner in which the reductions are to take place. Section 1886(h)(6)(F) provides for a penalty for noncompliance with approved voluntary residency reduction plans. Section 1886(h)(6)(G) specifies that the Secretary shall establish rules regarding the treatment of rotating residents as it relates to providers participating in the voluntary residency reduction plan.

II. Provisions of the Interim Final Regulations

We are establishing interim final regulations under a new § 413.88 under 42 CFR Part 413, to incorporate requirements for incentive payments under voluntary residency reduction plans to implement section 1886(h)(6) of the Act, as added by section 4626(a) of the BBA. The specific statutory provisions and the corresponding regulatory provisions are described below.

A. Participation Criteria

Participation in the residency reduction program under section 1886(h)(6) of the Act is voluntary. Section 1886(h)(6)(A) of the Act specifies that each hospital that is part of a "qualifying entity" may receive incentive payments. Section 1886(h)(6)(C) defines a "qualifying entity" as—

- An individual hospital that operates one or more approved residency training programs;
- Two or more hospitals that operate one or more approved residency training programs and apply for treatment as a single qualifying entity; or
- A qualifying consortium as described in section 4628 of BBA.

Section 4628(b) of the BBA defines a consortium as an entity that consists of a teaching hospital with one or more approved medical residency training programs and one or more of the following:

—A school of allopathic or osteopathic medicine.
—Another teaching hospital, which may be a children's hospital.
—A Federally qualified health center.
—A medical group practice.
—A managed care entity.
—An entity furnishing outpatient services.
—Any other entity that the Secretary determines to be appropriate.

The members of the consortium must have agreed to participate in the GME programs that are operated by the entities in the consortium, and have agreed on a method of allocating the payments among the members. The consortium must meet such additional requirements as the Secretary may establish as necessary.

We are incorporating the provision of section 1886(h)(6)(C) of the Act in the regulations at § 413.88(b). Any hospital that is entitled to receive direct or indirect medical education payments, or both, from Medicare may participate in the voluntary reduction plan as an individual hospital. In addition, two or more hospitals that receive direct or indirect medical education payments, or both, from Medicare may participate as a single entity (joint applicant) and apply for a collective annual resident reduction target.

Section 1886(h)(6)(C)(iii) of the Act cross refers the description of a qualifying consortium for purposes of making voluntary residency reduction incentive payments to the description specified in section 4628 of the BBA. Section 4628 requires the Secretary to establish a demonstration project under which, instead of making GME payments to individual teaching hospitals, under section 1886(h) of the Act, the payments would be made to each consortium.

At this time, we are in the initial phase of developing the demonstration project on the use of consortia and have not yet established the criteria that a qualifying consortium will have to meet beyond that described under section 4628(b) of the BBA. Therefore, we have not included in this interim final regulation provisions related to consortia and we will not be accepting applications for voluntary residency reduction plans from entities that may be qualifying consortia until we have established these additional criteria. If qualifying entities express an interest in participating as a consortia, when the criteria for consortia are finalized for the demonstration project, we will publish a regulation outlining how consortia qualify for the voluntary residency reduction plan. However, until we have established these additional criteria, we are allowing a multihospital entity, that may later qualify as a consortium, to apply as a joint applicant. In addition, we are allowing an individual hospital that may later qualify to participate as a member of a consortium to apply as an individual applicant. In both cases, participation of an individual hospital or a multihospital entity in the voluntary reduction plan does not preclude the entity from later applying to participate as a member(s) of a consortium once the consortia demonstration criteria have been finalized. We are considering whether to allow these applicants to modify their applications so that they can be treated as a consortium for the remainder of their individual or joint voluntary residency reduction plans once the consortium definition is finalized. If we were to allow this alternative, a qualifying entity that is interested in downsizing its resident numbers in accordance with the percentages required under section 1886(h)(6) of the Act would be able to participate and establish its base number of residents prior to knowing whether it would qualify as a consortium.

B. Submission of Applications and Effective Date of Plans

Section 1886(h)(6)(B)(i) of the Act, as added by the BBA, specifies that the application must be submitted "in a form and manner specified by the Secretary and by not later than November 1, 1999." We are requiring each qualifying entity to sign a statement indicating voluntary participation in the residency reduction plan (§ 413.88(d)(8)). We will accept applications from qualifying entities at least one day prior to the first day of the period over which voluntary reduction will occur but in no case later than the November 1, 1999 application date specified in the statute (§ 413.88(e)). We

believe that allowing plan applications to be submitted during this period will ensure that qualifying entities can apply for incentive payments for voluntary reduction plans applicable to residency training programs that begin as early as July 1, 1999.

We also are specifying in § 413.88(e) that each qualifying entity must submit its application to its Medicare fiscal intermediary for review. A copy of the application must also be sent to the HCFA Central Office at the following address: Voluntary Residency Reduction Plan, Health Care Financing Administration, Plan and Provider Purchasing Policy Group, Division of Acute Care, Room C4–07–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Interested entities may contact the Division of Acute Care at (410) 786–3411 for questions on the application process.

Accordingly, we are specifying under § 413.88(f) that residency reduction plans that are submitted to the fiscal intermediary on or after September 17, 1999 but on or before November 1, 1999, may be effective for portions of cost reporting periods beginning no earlier than the day after the date of the application. In other words, as long as the application is submitted on or before November 1, 1999, the entity can choose the effective date of the plan to be as early as the day after the date of application.

C. Contents and Format of Applications

In accordance with section 1886(h)(6)(B) of the Act, we are specifying in § 413.88(d) that the qualifying entity must submit an application that contains the statutorily specified information and agreements. In addition, under the authority of section 1886(h)(6)(B)(v) of the Act, we are establishing additional requirements for submittal of data to enable verification of compliance with the percentage reduction requirements of the statute by the fiscal intermediary and for annual monitoring and audit purposes.

Under § 413.88(d)(1), we require an application to include a description of the operation of a plan for reducing the FTE residents in the qualifying entity's approved medical residency training programs, consistent with the percentage reduction requirements specified in section 1886(h)(6)(D) of the Act and described under section II.E. of this preamble. To ensure that we have sufficient data and information to ascertain that the voluntary reduction plan meets the percentage reductions specified in the statute, under § 413.88(d)(3) we further require the qualifying entity to submit FTE counts for its base number of residents (as defined in section II.D. of this preamble), with a breakdown of the number of primary care residents compared to the total number of residents. A primary care resident is defined in the existing Medicare regulations at § 413.86(b) as a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine or osteopathic general practice. We also are requiring the entity to submit its direct and indirect FTE counts as of June 30, 1997. For joint applicants, these counts must be provided individually and collectively. This information will be verified by the fiscal intermediary.

In addition, in § 413.88(d)(4) we are requiring the qualifying entity to submit, with the application, data on the annual and cumulative targets for reducing the number of FTE residents and the ratios of the number of primary care residents to the total number of residents for the year used to determine the base number and for each year in the 5-year reduction period. For joint applicants, these data must be provided individually and collectively. In the case of joint applicants, the group of participating hospitals will be held to a collective target. None of the participating hospitals will receive incentive payments unless the collective target is met.

In accordance with section 1886(h)(6)(D)(iii) of the Act, the application must include an election of the period of residency training years during which the reductions will occur (§ 413.88(d)(2)). The reductions must be fully implemented by not later than the fifth residency training year in which the plan is effective.

Under § 413.88(d)(5) and in accordance with section 1886(h)(6)(B)(iv) of the Act, we are requiring the qualifying entity in its application to agree to not reduce the proportion of its primary care residents to its total number of residents below the proportion that exists in the residency training program year that the entity used to determine the base number of residents, as described in section II.D. of this preamble.

Under the Secretary's authority under section 1886(h)(6)(B)(v) of the Act to determine other requirements for voluntary reduction plans and entities as necessary, we are requiring under § 413.88(d)(7) that for a qualifying entity that is also member of an affiliated group as defined in § 413.86(b), a statement be submitted along with the application that all members of the affiliated group (that are not a part of the qualifying entity) agree to an aggregate FTE cap that reflects the resident count during each year of the qualifying entity's plan and the 1996 FTE count of the other hospital(s) in the affiliated group. In addition, we are requiring under § 413.88(d)(6) that the qualifying entity, in its application, agree to comply with data submission requirements deemed necessary by HCFA to make annual incentive payments during the 5-year residency reduction plan, and to fully cooperate with additional audit and monitoring activities deemed necessary by HCFA.

D. Definition of the Base Number of Residents

Under section 1886(h)(6)(D), the residency reduction requirement for a qualifying entity depends on the entity's base number of residents. Section 1886(h)(6)(D)(vi) of the Act, as added by section 4626(a) of the BBA, defines the term "base number of residents" to mean—

> * * * with respect to a qualifying entity (or its participating hospitals) operating approved medical residency training programs, the number of full-time equivalent residents in such an entity's programs (before application of weighting factors) of the entity as of the most recent residency training year ending before June 30, 1997 or, if less, for any subsequent residency training year that ends before the date the entity makes application under this paragraph.

Under § 413.88(g)(1) of these interim final regulations, we define the base number of residents using the counting rules for determining a hospital's direct GME FTE count under existing § 413.86 with two changes to reflect the provisions of section 4626 of the BBA. First, consistent with section 1886(h)(6)(D)(vi), we specify that the base number of residents will be determined on the basis of a July 1 to June 30 "residency training year," rather than the hospital's cost reporting period. Second, under existing § 413.86(g), a weighting factor is applied to each resident included in a hospital's direct GME FTE count. Residents within an initial residency period are weighted at 1.0 FTE and residents beyond the initial residency period are weighted at 0.5 FTE. However, consistent with section 1886(h)(6)(D)(vi) of the Act, in determining the base number of residents for voluntary residency reduction plans, we are requiring under § 413.88(g)(1)(i) that FTEs be counted "before application of weighting factors," so that each resident will be weighted at 1.0 FTE.

In summary, we are specifying in § 413.88(g)(1)(i) that the base number of residents means the lesser of (1) The number of FTE residents in all approved medical residency training programs of the qualifying entity (before application of weighting factors under § 413.86(g)) for the most recent residency training year ending June 30, 1996; or (2) the number of FTE residents in all approved medical residency training programs of the qualifying entity (before application of weighting factors under § 413.86(g)) for any subsequent residency training year that ends before the date the entity submits its plan to the fiscal intermediary and HCFA. The residency training year used to determine the base number of residents is the "base year" for determining residency reduction requirements described under section II.E. of this preamble.

E. Residency Reduction Requirements

Section 1886(h)(6)(D) of the Act, as added by the BBA, specifies the methodology for determining the number of FTE residents in all of the qualifying entity's approved medical residency training programs that must be reduced in order for each type of qualifying entity to receive incentive payments.

1. Qualifying Entities That Are Individual Hospitals

a. *Hospitals with a base number of residents that is greater than 750.* If an individual hospital's base number of residents exceeds 750 residents, the voluntary plan must specify a reduction in the base number of residents by at least 20 percent.

b. *Hospitals with a base number of residents between 601 and 750.* If an individual hospital's base number of residents exceeds 600 but is not in excess of 750, the voluntary plan must specify a reduction in the base number of residents by at least 150 residents. Alternatively, the plan may specify a reduction of at least 20 percent if the base number of residents in primary care is increased during the plan by at least 20 percent.

c. *Hospitals with a base number of residents that is 600 or fewer.* Hospitals with a base number of residents of 600 or less have the option of reducing the base number of residents by at least 25 percent. Alternatively, the plan may specify a reduction of at least 20 percent if the number of primary care residents is increased by at least 20 percent.

We have incorporated these provisions at § 413.88(g)(2).

2. Qualifying Entities With Two or More Hospitals (Joint Applicants)

Joint applicants must reduce their combined base number of residents by 25 percent; or if there is an increase in the combined base number of primary care residents of at least 20 percent, by at least 20 percent. Section 413.88(g)(3) contains this provision.

3. Consortia Applicants

The statute specifies that consortia applicants must reduce the combined base number of residents by at least 20 percent. As indicated earlier, we are not accepting applications from consortia until we have established criteria for consortia under section 4628 of the BBA and have some experience with the demonstration project. Therefore, this interim final rule does not contain provisions relating to consortia. However, until we have issued these criteria, a qualifying entity that may later qualify as a consortium may apply in the interim as an individual hospital or multihospital joint applicant as described above.

Under section 1886(h)(6)(B)(iv) of the Act, a qualifying entity applicant may not reduce the base year proportion of its primary care residents to its total number of residents below the proportion that exists in the residency training program year used to determine the base number of residents. In other words, the proportion of residents in primary care at the end of the plan must be at least the same as or greater than the proportion of total residents in primary care in the base number of residents. We have incorporated these provisions at § 413.88(g)(2)(ii)(B), (g)(2)(iii)(B) and (g)(3)(ii).

Section 1886(h)(6)(D)(iv) of the Act specifies that voluntary residency reductions in the base number of residents must be fully effective no later than the fifth residency training year in which the application is effective. The following table illustrates the resident reduction options under the voluntary plans for the different types of qualifying entity applicants:

Type of applicant	Reduction option (5 year plan)
Individual Hospitals:	
More than 750 Residents	≥20%.
601 to 750 Residents	≥150 Residents or ≥20% if primary care residents increase by ≥20%.
600 or fewer Residents	≥25% or ≥20% if number of primary care residents increased by ≥20%.
Joint Applicants	≥25% or ≥20% if number of primary care residents increased by ≥20%.
Consortia Applicants	≥20%.
All Applicants	May Not Reduce Primary Care/Total Resident Ratio.

F. Incentive Payments

Sections 1886(h)(6)(A) and (E) of the Act prescribe the formula for calculating the amount of incentive payments. Although hospitals may participate as a joint applicant (or later as a consortium, as discussed earlier in this preamble), incentive payments will be made to individual hospitals through the regular Medicare payment process via cost reports.

Incentive payments will be made on the basis of a cost reporting period even though residency reductions under the plan are made on a July 1 to June 30 medical residency program year. If a hospital cost reporting period coincides with a residency program training year, incentive payments may begin at the beginning of the first cost reporting period in which resident reductions are made under the voluntary residency reduction plan. For instance, if a hospital chooses to participate in the voluntary residency reduction plan for the residency training year July 1, 2000 to June 30, 2001 and the hospital has a July 1 to June 30 cost reporting period, the first year in which Medicare may make incentive payments for voluntary residency reductions would be the hospital's July 1, 2000 to June 30, 2001 cost reporting period. If a hospital's cost reporting period does not coincide with a residency training year, the first year in which incentive payments may be made under the voluntary residency reduction plan would be the hospital's cost reporting period that overlaps the July 1, 2000 beginning date of the voluntary residency reduction plan. For instance, if a hospital participates in the residency reduction plan effective July 1, 2000, and the hospital has a January 1 to December 31 cost reporting period, incentive payments may be made under the voluntary residency plan beginning

in the hospital's January 1, 2000 to December 31, 2000 cost reporting period. If the hospital's cost reporting period does not coincide with a July 1 to June 30 residency training year, the applicable hold-harmless percentages described earlier would be prorated accordingly over the respective cost reporting period(s). In addition, if the hospital's cost reporting period does not coincide with a July 1 to June 30 residency training year, for purposes of calculating the number of residents in each plan year, the number of FTE residents would be prorated over the respective cost reporting periods.

In § 413.88(j), we specify that annual incentive payments through cost reports will only be made to hospitals that are or are part of qualifying entities over the 5-year reduction period if the qualifying entity meets specified annual residency reduction goals. An incentive payment will be made for any given year only when the participant meets or exceeds the cumulative annual target applicable to that year. Consistent with section 1886(h)(6)(F) of the Act, if a participating entity fails to comply with its residency reduction plan by the end of the fifth residency training year, the hospitals that comprise the qualifying entity will be liable for repayment of all incentive payments.

We will allow an entity to update its annual targets as specified in its plan only under limited circumstances. If the entity has failed to meet any of its annual targets in a plan year, it will not receive incentive payment for that particular plan year. To be eligible for future incentive payments for the duration of the plan, the entity may update future annual targets for the remaining years of the plan in order to comply with its cumulative target. We would require the updated plan to be submitted prior to the beginning of each July 1 medical residency training year during the plan years.

In accordance with section 1886(h)(6)(A) of the Act, each individual entity participating in the plan will receive incentive payments based on the following calculation (as specified under § 413.88(h)): The sum of the entity's direct and indirect GME payment based on 95 percent of the total number of weighted residents in the approved medical residency training programs of the qualifying entity on June 30, 1997 subtracted by the sum of the qualifying entity's direct and indirect GME payment based on 100 percent of the number of weighted FTE residents in each of the 5 plan years. This difference will be multiplied by a decreasing hold-harmless percentage for the given plan year, to arrive at an individual hospital's incentive payment.

In accordance with section 1886(h)(6)(E) of the Act, the applicable hold-harmless percentages are as follows (as specified under § 413.88(i)):

Plan year	Percentage
1	100
2	100
3	75
4	50
5	25

As stated above, the applicable hold-harmless percentages must be prorated over two hospital cost reporting periods if the hospital's cost reporting period does not coincide with the residency training program year. For instance, a hospital participating in the voluntary plan will be making reductions on the basis of a July 1 to June 30 program year. If the hospital has a January 1 to December 31 cost reporting period, the applicable hold-harmless percentages will change on July 1 of each year, which is in the middle of the hospital's cost reporting period. For this reason, the applicable hold-harmless percentage for the cost reporting period will reflect a weighted average of the residency reductions in each portion of the cost reporting period. In addition, in calculating the incentive payments we will apply weighting factors to the total resident count as of June 30, 1997 and for each plan year. This is consistent with our existing policy under § 413.86(g) of applying weighting factors to resident FTE counts.

We are providing the following simplified example to illustrate application of the incentive payment calculation.

Assume a hospital's resident program year is the same as its cost reporting year, and that it receives $10 million for direct and indirect GME based on 100 FTE residents as of June 30, 1997. Also assume that the hospital's average payment per resident for indirect and direct GME of $100,000 (derived from $10 million/100 residents) does not change from June 30, 1997 to the end of the 5-year reduction plan. If the hospital agrees to reduce its FTE count by 5 residents per year and 25 residents over 5 years, it would be paid as follows:

BILLING CODE 4120-01-P

	Resident Reduction Plan Year					Total Payment (in millions)
	1st	2nd	3rd	4th	5th	
FTEs on June 30, 1997 *(a)*	100	100	100	100	100	----
Cumulative FTE resident reduction *(b)*	5	10	15	20	25	----
FTE residents in each plan year *(c)* *(c= a-b)*	95	90	85	80	75	----
Adjusted June 30, 1997 FTEs *(d)* *(d= a (0.95))*	95	95	95	95	95	----
FTE loss applied to incentive calculation *(e)* *(e= c-d)*	0	5	10	15	20	----
Total direct & indirect GME payments for residents in each plan year *(f)* (in millions) *(f= c ($100,000))*	$9.5	$9.0	$8.5	$8.0	$7.5	$ 42.5
Total direct & indirect GME loss relative to June 30, 1997 FTE count *(g)* (in millions) *(g= b ($100,000))*	$0.5	$1	$1.5	$2.0	$2.5	----
Total direct & indirect GME loss applied to incentive calculation *(h)* (in millions) *(h= e ($100,000))*	$0	$0.5	$1.0	$1.5	$2.0	----
Hold-Harmless percentage *(i)*	1.0	1.0	0.75	0.50	0.25	----
Incentive payment *(j)* (in millions) *(j= h (i))*	$0	$0.5	$0.75	$0.75	$0.5	$ 2.5
Grand Total Payments *(k)*	----	----	----	----	----	$ 45.0

BILLING CODE 4120-01-C

As depict
any year of
plan, the ho
payments b
number of r
In each year
payment is
percentage
line (i) in th
hospital's di
payment los
reduction b
number of r
example, th
indirect and
declined by
million-$42.
period if the
number of r
plan. A hosp
voluntary pl
million in in
million diffe
million). $2.
harmless po
remaining $
percent adju
residents on

Under sec
Act, the dete
payments fo
the basis of t
provisions "
deadline dat
to which the
Thus, the an
payment dep
provisions ir
deadline dat
specified ear
filed at least
effective dat
than Novemb
a hospital wa
provision to
1, 1999, the
would be Au
the Medicare
effect on Aug
used to calcu
incentive pay
applying for
November 1,

G. Repayment of Incentive Payments

Section 18
added by the
repayment p
qualifying en
voluntary res
which the en
payments if t
number of re
in its plan. W
§ 413.86(k) th
repayment fo
incentive pay
FTE residenti
number of su

As depicted in the preceding chart, in any year of the residency reduction plan, the hospital receives incentive payments based on 95 percent of its number of residents on June 30, 1997. In each year of the plan, the incentive payment is based on a declining percentage (hold-harmless percentage, line (i) in the preceding chart) of the hospital's direct and indirect GME payment loss associated with residency reduction below 95 percent of its base number of residents line (h). In this example, the hospital's revenues for indirect and direct GME would have declined by a total of $7.5 million ($50 million-$42.5 million) over a 5-year period if the hospital did not reduce the number of residents according to the plan. A hospital participating in the voluntary plan, however, received $2.5 million in incentive payments. Of the $5 million difference ($7.5 million-$2.5 million), $2.5 million is due to the hold-harmless percentage (i) and the remaining $2.5 million is due to the 5-percent adjustment to the number of residents on June 30, 1997.

Under section 1886(h)(6)(A) of the Act, the determination of the incentive payments for any year must be made on the basis of the Medicare payment provisions "in effect on the application deadline date for the first calendar year to which the reduction plan applies." Thus, the amount of the incentive payment depends on the Medicare provisions in effect on the application deadline date (§ 413.88(h)(2)). As specified earlier, applications must be filed at least one day prior to the effective date of the plan but no later than November 1, 1999. For example, if a hospital wants the reduction plan provision to go into effect on September 1, 1999, the deadline for the application would be August 31, 1999. Therefore, the Medicare payment provisions in effect on August 31, 1999, would be used to calculate the amount of the incentive payment. The latest date for applying for incentive payments is November 1, 1999.

G. Repayment Penalty Provision

Section 1886(h)(6)(F)(ii) of the Act, as added by the BBA, sets forth a repayment penalty following a qualifying entity's completion of a voluntary residency reduction plan in which the entity received incentive payments if the entity exceeds the number of residents that it has agreed to in its plan. We are specifying in § 413.88(k) that the entity is liable for repayment for the total amount of the incentive payments if the number of FTE residents increases above the number of such residents permitted under the reduction plan after the completion of the plan. If the number of FTE residents increases above the number of residents permitted under the voluntary reduction plan, the following provisions of repayment apply:

- In any postplan year, a qualifying entity that successfully completed the reduction plan either as an individual hospital or a member of a joint applicant is subject to the total repayment provisions if its resident count exceeds the number of residents specified in the voluntary residency reduction plan.
- As contained in § 413.88(l)(1), the end-of-plan residency cap will equal the unweighted FTE count used for direct medical education payments for the last residency training program year in which a qualifying entity participates in a plan. For each subsequent cost reporting year that ends after the end of the reduction plan, the unweighted direct FTE resident count will be compared to the unweighted direct GME FTE resident count for the last residency training program year. If the unweighted direct GME FTE resident count for a cost reporting period post plan exceeds the resident count specified in the voluntary residency reduction plan, the qualifying entity is subject to the total repayment provision.
- The repayment provision applies until such time when a full credit has been made against the total amount of incentive payments made to the qualifying entity. For individual hospitals, the total incentive payment amount equals all of the incentive payments made to the hospital. For joint participants, the total payment amount equals the sum of all incentive payments made to the individual hospitals that make up the membership of the joint participant.
- For the purpose of calculating the credit amount in each postplan year to which the total repayment provision applies, an individual hospital's direct and indirect GME payments will be calculated based on the hospital's actual FTE resident counts in that year. Payments are made to the hospital up to the amount that applies to the end-of-plan FTE resident count. The remainder is credited against the total repayment amount. The total repayment amount is equal to the actual annual incentive payments made during the voluntary reduction plan years. An example would be a hospital that had a base number of 200 FTE residents and by the end of the plan reduces its FTE count to its cumulative target of 160 FTE residents. If, at a later date after the completion of the plan, the entity increases its FTE count from 160 FTEs to 161 FTEs, the repayment penalty provision would be in effect. The entity would be required to repay the entire amount it received as incentive payments during the plan years. However, the method of repayment is limited to the direct and indirect payments the entity would have received for the 161st resident. These direct and indirect GME payments are credited against the total repayment amount the entity is required to repay.
- Once the total penalty is repaid, the qualifying entity's adjusted FTE cap reverts back to its original 1996 FTE cap, since effectively all benefits of participating in the plan will have been eliminated (§ 413.88(l)(2)(ii)).

H. Related BBA Provisions and Their Effect on Voluntary Plan Reduction Provisions

Several other provisions of the BBA that were implemented in the **Federal Register** on August 29, 1997 (62 FR 46003 through 46007), and on May 12, 1998 (63 FR 26318) have an effect on incentive payments under the voluntary residency reduction plan.

1. Reduction in the Indirect Medical Education Adjustment

Section 4621 of the BBA revised section 1886(d)(5)(B) of the Act to reduce the level of the IME adjustment in effect prior to the enactment of the BBA (approximately 7.7 percent for every 10-percent increase in the resident-to-bed ratio) over several years. The schedule for the IME adjustment is as follows: 7.0 percent for discharges during FY 1998; 6.5 percent during FY 1999; 6.0 percent during FY 2000; and 5.5 percent during FY 2001 and thereafter. In determining the voluntary residency reduction incentive payment calculation, the respective IME adjustment factors will apply for the number of FTE residents in each of the 5 plan years and to the number of FTE residents as of June 30, 1997.

2. Caps on the Number of FTEs

Sections 4621 and 4623 of the BBA amended section 1886 of the Act to limit the number of residents that a hospital can count for purposes of determining payment for indirect and direct GME costs. For cost reporting periods beginning on or after October 1, 1997, the total number of allopathic and osteopathic medical residents that a hospital may include in its FTE count in either a hospital or nonhospital setting for IME payments is limited to the total number of such resident FTEs included in the hospital's most recent cost reporting period ending on or before December 31, 1996. Similarly, for direct GME payments, the number of

allopathic and osteopathic medical residents that a hospital may include in its unweighted direct medical education FTE count for cost reporting periods beginning on or after October 1, 1997, is limited to the number included in the hospital's most recent cost reporting period ending on or before December 31, 1996. The August 29, 1997 final rule with comment period and the May 12, 1998 final rule amended §§ 412.105 and 413.86 of the regulations to implement these provisions for indirect and direct GME, respectively.

Since the counting rules for indirect and direct GME in hospital cost reports ending on or before December 31, 1996 were different, the FTE caps may also be different. Prior to enactment of the BBA, a hospital's IME FTE count could only include residents working in inpatient areas of the hospital subject to the prospective payment system and hospital outpatient departments. Residents in nonhospital settings and areas of the hospital not subject to the prospective payment system could not be counted. For direct GME, a hospital could include residents in all areas of the hospital complex (including areas not subject to the prospective payment system) and nonhospital settings (if the criteria of § 413.86(f)(1)(iii) are met). However, residents in subspecialty training and residents otherwise beyond the initial residency period included in a hospital's direct GME FTE count are weighted at 0.5 FTE under § 413.86(g).

The BBA limits the FTE caps to allopathic and osteopathic medical residents and does not apply FTE caps to podiatry and dentistry residents. For purposes of the voluntary residency reduction plans, the base number of residents under section 1886(h)(6)(D)(vi) of the Act includes all of a hospital's residents (including residents in dentistry and podiatry). Therefore, we will determine whether a hospital is eligible for incentive payments under the voluntary residency reduction plan by counting all residents participating in approved medical residency training programs. Accordingly, a hospital that receives incentive payments under the voluntary residency reduction plan remains subject to the indirect and direct GME FTE caps mandated under sections 1886(d)(5)(B) and 1886(h)(4)(H) of the Act and §§ 412.105 and 413.86 of the regulations.

3. Counting Residents Based on a 3-Year Average in the Plan Year

Section 1886(d)(5)(B)(vi)(II) of the Act, as amended by section 4621 of the BBA, provides that a hospital's IME FTE resident count for a cost reporting period beginning during FY 1998 will be based on the average of the number of residents for the cost reporting period and the prior cost reporting period. The hospital's IME FTE count for cost reporting periods beginning in FY 1999 and subsequent years will be based on an average of the FTE count for the cost reporting period and the prior two cost reporting periods. Similarly, section 1886(h)(4)(G) of the Act, as amended by section 4623 of the BBA, provides that a hospital's direct GME FTE resident count for a cost reporting period beginning during FY 1998 will be based on the average of number of residents for the cost reporting period and the prior cost reporting period. The hospital's direct GME FTE count for cost reporting periods beginning in FY 1999 and subsequent years will be based on an average of the FTE count for the cost reporting period and the prior two cost reporting periods.

We determine the level of payments for the cost reporting period using the number of residents as of June 30, 1997 without regard to averaging rules. However, the averaging rules described above are applicable when determining incentive payments for the hospital's actual residents in a voluntary plan year.

4. Capital IME Payment

Section 1886(h)(6)(A) of the Act limits the incentive payments to direct GME payments and operating IME payments. However, under section 1886(g) of the Act and § 412.322 of the existing regulations, we also make capital IME payments on the basis of the hospital's ratio of residents to average daily census. Since capital IME payments are also a function of the number of residents in approved programs, we believe we have discretion to provide incentive payments for capital IME using a methodology similar to the one used for determining operating IME payments under this interim final rule. We are including language in § 413.86(h)(1)(iii) that will allow hospitals participating in voluntary residency reduction plans to receive incentive payments for capital IME.

5. Counting FTEs in Nonhospital Settings

Under § 413.86(f)(1)(iii), on or after July 1, 1987 and before January 1, 1999, a resident may be included in a hospital's direct GME FTE count if the resident spends time in patient care activities outside of the hospital and there is a written agreement between the hospital and the nonhospital entity that the resident's compensation for training time spent outside of the hospital setting is to be paid by the hospital. Section 4621(b)(2) of the BBA amended section 1886(d)(5)(B)(v) of the Act to allow all the time spent by residents in patient care activities under an approved medical residency training program in a nonhospital setting to be counted towards the determination of FTEs for IME, if the hospital incurs all, or substantially all, of the costs for the training program in the nonhospital setting. In accordance with section 1886(h)(4)(E) of the Act, we are currently using the same criteria for determining whether a hospital may include a resident in its FTE count for direct GME. However, in the July 31, 1998 **Federal Register** (63 FR 41005), we revised the definition of "all or substantially all of the costs" in order to implement section 4625 of the BBA, which permits payment to certain nonhospital providers. The revised rule requires the written agreement to indicate that the hospital will incur the costs of the resident's compensation in the nonhospital site and provide reasonable compensation to the nonhospital site for supervisory teaching activities. If a hospital includes residents in nonhospital settings in its IME FTE count, consistent with section 1886(d)(5)(B)(v) of the Act, the hospital must include those residents in determining whether it has exceeded its IME FTE cap. In addition, if a hospital included residents in nonhospital settings in its direct GME FTE count, the hospital must include these residents in determining whether it has exceeded its direct GME FTE cap.

A hospital that incurs "all or substantially all of the costs" and is counting the FTE for the time a resident spends in a nonhospital site for purposes of direct and indirect GME payments must also include the FTE in the nonhospital site for purposes of counting the FTE in making the target reductions under the plan. In other words, qualifying entities that include the FTE in nonhospital sites for GME payment must also include it when making the target reductions.

6. New Medical Residency Training Programs

Section 1886(h)(5)(H) of the Act permits special rules in the case of medical residency training programs established on or after January 1, 1995. Under a final rule published in the **Federal Register** on May 12, 1998 (63 FR 26333) such new medical residency training programs are permitted to have an adjustment to the FTE cap. (We have proposed to further clarify the requirements for receiving an adjustment to the FTE cap for new medical residency training programs in

a notice of proposed rulemaking published in the **Federal Register** on May 7, 1999 (64 FR 24735)).

For purposes of this interim final rule with comment period, however, since section 1886(h)(6) of the Act does not provide for adjustments to the FTE counts, we will not adjust a hospital's base number of residents for adjustments that may be otherwise made to hospital FTE caps for new medical residency training programs. For example, a hospital that had a 100 FTE cap that qualifies for a new medical residency training program adjustment to raise its FTE cap to 120 FTE residents would not be able to count the 20 FTE adjustment for purposes of calculating the base number of residents for the voluntary residency reduction plan.

7. Hospitals That Meet the Definition of Affiliated Groups

Section 1886(h)(5)(H)(ii) of the Act allows the Secretary to prescribe rules that allow institutions that are members of the same affiliated group to elect to apply the FTE caps on an aggregate basis. In the May 12, 1998 final rule (63 FR 26358), an affiliated group is defined as follows:

- Two or more hospitals located in the same urban or rural area (as those terms are defined in § 412.62(f)) or in contiguous areas if individual residents work at each of the hospitals during the course of the program; or
- If the hospitals are not located in the same or contiguous rural and urban areas, hospitals that are jointly listed—

++ As sponsor, primary clinical site, or major participating institution for one or more of the programs as those terms are used in the *Graduate Medical Education Directory*, 1997–1998; or

++ As the sponsor or under affiliations and outside rotations for one or more programs in operation in *Opportunities, Directory of Osteopathic Postdoctoral Education Programs*; or

- Hospitals that are under common ownership.

For purposes of this interim final rule with comment period, we will permit applications from one or more hospitals that qualify as an affiliated group under § 413.86. A qualification that must be met for affiliated groups that involve one or more member hospitals participating in the voluntary residency reduction plan is that all members of the affiliated group agree to an aggregate FTE cap that reflects the resident count during each plan year of the hospital that is in the voluntary reduction plan.

As stated earlier, section 1886(h)(6)(F)(ii) of the Act requires a qualifying entity to refund all incentive payments if it has more residents after the end of the plan than it was permitted under the plan. Affiliated groups that include hospitals in the voluntary residency reduction plan that have successfully completed the plan must also agree to an aggregate cap based on the 1996 FTE count of each hospital in the affiliated group, adjusted for the participating hospital's final FTE count under the voluntary residency reduction plan. However, in the event that a qualifying entity increases its FTE count above its target reduction and has refunded all incentive payments received under the plan (since effectively all benefits of participation in the plan will have been eliminated), the aggregate FTE cap would include that entity's FY 1996 FTE cap.

In accordance with the requirement established under § 413.88(g)(4), a hospital participating in the voluntary residency reduction plan and is a member of an affiliated group, may not achieve its residency reduction goals by rotating residents to other members of the affiliated group that are not participating in the voluntary residency reduction plan.

8. Payments to Hospitals for Indirect and Direct GME Costs Associated with Medicare+Choice Enrollees

Section 4622 of the BBA added section 1886(d)(11) to the Act to provide for IME payments to teaching hospitals for discharges associated with Medicare+Choice enrollees for portions of cost reporting periods occurring on or after January 1, 1998. The additional payment is equal to an applicable percentage of the estimated average per discharge amount that would have been made for the discharge for IME if the beneficiary were not enrolled in managed care. The applicable percentage set forth in section 1886(h)(3)(D)(ii) of the Act is equal to 20 percent in 1998, 40 percent in 1999, 60 percent in 2000, 80 percent in 2001, and 100 percent in 2002 and subsequent years.

Section 4624 of the BBA amended section 1886(h)(3) of the Act to provide a 5-year phase-in of the payments to teaching hospitals for direct GME costs associated with services to Medicare+Choice discharges for portions of cost reporting periods occurring on or after January 1, 1998. The amount of payment is equal to the product of the per resident amount, the total weighted number of FTE residents working in all areas of the hospital (and nonhospital settings in certain circumstances) subject to the limit on the number of FTE residents under section 1886(h)(4)(F) of the Act and the averaging rules under section 1886(h)(4)(G) of the Act, the ratio of the total number of inpatient bed days that are attributable to Medicare+Choice enrollees to total inpatient days and an applicable percentage. The applicable percentages are 20 percent in 1998, 40 percent in 1999, 60 percent in 2000, 80 percent in 2001, and 100 percent in 2002 and subsequent years.

The effect of this provision for qualifying entities participating in voluntary residency reduction plans is that the level of payments for the cost reporting period will be determined using the actual number of residents reflective of the additional indirect and direct GME payments associated with Medicare+Choice discharges. The difference between the hospital's payments using the number of residents as of June 30, 1997, and the actual number of residents in a voluntary residency reduction plan year, including the effect of adjustments for payments associated with Medicare+Choice discharges, will be the basis for the incentive payment calculation.

I. Other Issues

1. Mergers, Acquisitions, and Related Changes

We recognize that hospitals participating in an approved voluntary residency reduction plan may undergo hospital mergers, acquisitions, or related changes (for example, system dissolution) that may affect the qualifying entity. We invite comments on how we can most appropriately address such situations.

2. Evaluation

We do not have specific plans to evaluate the impact of the voluntary residency reduction plans at this time. However, we may request information from entities approved for participation in a voluntary residency reduction plan. If a full evaluation is conducted, cooperation will be voluntary.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 413.88(d) of this document contains information collection requirements. However, given that we anticipate the submission of less than 10 applications on an annual basis, these collection requirements are not subject to the PRA. Therefore, at this time we are not submitting a copy of this document to OMB for its review of these information collection requirements. If we determine, at a later date, that we will receive more than 10 applications prior to the November 1, 1999 application submission deadline, we will submit these information collection requirements to the OMB, as required by section 3504(h) of the PRA.

Although we believe that these information collection requirements are not subject to the PRA, we still welcome public comment on each of the following issues for the section of this document that contains information collection requirements:

Section 413.88(d) requires that a qualified entity must submit a voluntary residency reduction plan application that contains the following information or documents:

(1) A description of the operation of a plan for reducing the FTE residents in its approved medical residency training programs, consistent with the percentage reduction requirements described under section II.E. of this preamble.

(2) An election of the period of residency training years during which the reductions will occur;

(3) FTE counts for the base number of residents, with a breakdown of the number of primary care residents compared to the total number of residents; and the direct and indirect GME FTE counts for the entity on June 30, 1997. For joint applicants, these counts must be provided individually and collectively;

(4) Data on the annual and cumulative targets for reducing the number of FTE residents and the ratios of the number of primary care residents to the total number of residents for the base year and for each year in the 5-year reduction period. For joint applicants, these data must be provided individually and collectively;

(5) An agreement to not reduce the proportion of its primary care residents to its total number of residents below the proportion that exists in the base year;

(6) An agreement to comply with data submission requirements deemed necessary by HCFA to make annual incentive payments during the 5-year residency reduction plan, and to fully cooperate with additional audit and monitoring activities deemed necessary by HCFA; and

(7) For a qualifying entity that is also member of an affiliated group as defined in § 413.86(b), a statement that all members of the affiliated group—that are not part of the qualifying entity—agree to an aggregate FTE cap that reflects the resident count during each year of the qualifying entity's plan and the 1996 FTE count of the other hospital(s) in the affiliated group; and

(8) A statement indicating voluntary participation in the plan under the terms of this section, signed by each hospital that is part of the applying entity.

Each applicant will determine its own annual and cumulative targets for the number of FTE reductions. Annual and collective targets must be included in the application. In the case of a joint applicant, the group of participating hospitals will be held to a collective target. None of the participating hospitals will receive incentive payments unless the collective target is met.

Qualifying entities with approved voluntary resident reduction plans will be required to submit data on annual and cumulative targets deemed necessary by HCFA. Qualifying entities will also be required to submit update plan if annual targets are not met and if the qualifying entities wish to request that future annual targets be adjusted to comply with their cumulative targets.

We anticipate that on average it will require 15 hours for an applicant to complete and submit the required information.

Organizations and individuals that wish to submit comments on the information collection and recordkeeping requirements set forth in this interim final rule should direct them to HCFA and OMB officials whose names appear in the **ADDRESSEES** section of this preamble.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. Under the Administrative Procedure Act (APA), however, this procedure can be waived if an agency finds good cause that prior notice-and-comment procedures are impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule. As explained below, we find for good cause that it would be impracticable to undertake prior notice-and-comment procedures with respect to this rule before the provisions of the rule take effect.

The BBA was enacted on August 5, 1997. In section 4626(c), the Congress specifically authorized (but did not require) the Secretary to promulgate interim final rules "by not later than 6 months after the date of the enactment of [the BBA]." Thus, if the Secretary had published this document by February 5, 1998, the Secretary could have issued this rule on an interim final basis by exercising the specific authority in section 4626(c) of the BBA, rather than waiving notice-and-comment procedures in accordance with the APA.

Because of the numerous obligations imposed by the BBA, we were not able to promulgate this rule by February 5, 1998. The BBA required development of complex regulations establishing, among other things: hospital specific FTE caps; aggregate FTE caps in affiliated group arrangements; GME payments to nonhospital providers; and adjustment to FTE caps for new residency programs. Each of these represented a significant and complex change affecting Medicare payment for indirect and direct GME.

Nevertheless, we believe that the Congress' grant of specific authority to issue interim final rules evinces an intent to allow hospitals to begin participating in the voluntary residency reduction plans at the earliest practicable date; if we undertook prior notice-and-comment procedures now, we would have to allow for a 60 day comment period before publishing final regulations, and this would further delay the effective date of this rule.

We also find good cause to waive the prior notice of proposed rulemaking with respect to the provisions of this document concerning capital IME. Capital IME payments—like operating IME and direct GME payment—are a function of the number of residents in approved programs. Consistent with our broad authority to implement the capital prospective payment system, this interim final rule with comment period provides that the amount of incentive payments reflects the effect of the residency reduction on capital IME. Given that we find good cause to waive prior notice and comment procedures with respect to the other provisions of this rule, and given our interest in

promoting uniformity and consistency, we believe it would be impracticable to conduct prior notice and comment procedures for the provisions of this document concerning capital IME payments.

For all these reasons, as well as the statutory requirement that applications for incentive payments must be received no later than November 1, 1999, we find good cause to waive the prior notice of proposed rulemaking and to issue this final rule on an interim basis. We invite written comments on this interim final rule and will consider comments we receive by the date and time specified in the **DATES** section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Impact Analysis

A. Background

We have examined the impacts of this interim final rule with comment period as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, most hospitals, and most other providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually.

B. Executive Order 12866 and RFA Analysis

Without knowing the number of applications that we will receive and the characteristics of the hospitals that will apply, we believe it is difficult to assess the impact of this interim final rule with comment period. However, we do believe that few hospitals will apply for the voluntary residency reduction plan. As stated earlier, section 4623 of the BBA requires the Secretary to determine incentive payment based on an average of the hospital's FTE count for the cost reporting period and the prior two cost reporting periods (the prior one cost reporting period for the hospital's first cost reporting period beginning on or after October 1, 1997). Using the 3-year averaging rule, Medicare makes a partial payment for each resident eliminated and no longer included in a hospital's resident FTE counts by phasing in the reduction over 3 years. Therefore, the 3-year averaging rule provides similar incentives to those available under the voluntary residency reduction plan without requiring a permanent minimum reduction of either at least 25 percent or, with an increase in primary care residents of at least 20 percent, at least 20 percent. Further, under the 3-year averaging rules, the regulations do not mandate the hospital to maintain the proportion or increase the number of residents in primary care. Finally, hospitals participating in the voluntary plan will be subject to repayment of all incentive funds if they subsequently increase the number of residents. Hospitals that receive additional payments by downsizing residents under the 3-year averaging rules are not subject to a similar refund provision. We are providing the following hypothetical examples that illustrate how hospitals could potentially be affected under the voluntary residency reduction plan.

BILLING CODE 4120-01-P

Example 1--A Hospital Participates in the Voluntary Residency Reduction Plan (20% Reduction)

Year	FTEs	3-Year Rolling Avg. FTE	Per Resident Payment	Direct GME Payments	Hold-Harmless Percentage	Incentive Payments	Total Payments
Base Year[2]	200	200.00	$ 50,000.00	$10,000,000.00	--	--	--
95% of Base	190	190.00	$ 50,000.00	$ 9,500,000.00	--	--	--
Year 1	192	197.33[1]	$ 50,000.00	$ 9,866,500.00	100		$9,866,500.00
Year 2	184	192.00	$ 50,000.00	$ 9,600,000.00	100	--	$9,600,000.00
Year 3	176	184.00	$ 50,000.00	$ 9,200,000.00	75	$225,000.00	$9,425,000.00
Year 4	168	176.00	$ 50,000.00	$ 8,800,000.00	50	$350,000.00	$9,150,000.00
Year 5	160	168.00	$ 50,000.00	$ 8,400,000.00	25	$275,000.00	$8,675,000.00
5 Year Total				$45,866,500.00		$850,000.00	$46,716,500.00

[1] Assumes that the 3-year Rolling Average FTE = ((200+200+192)/3)
[2] Base year = number of FTE residents on June 30, 1997

Example 2--Hospital Does Not Participate in the Voluntary Residency Reduction Plan (20% Reduction)

Year	FTEs	3-Year Rolling Avg. FTE	Per Resident Payment	Total Payments
Base Year[2]	200	200	$ 50,000.00	--
Year 1	192	197.33[1]	$ 50,000.00	$9,866,500.00
Year 2	184	192	$ 50,000.00	$9,600,000.00
Year 3	176	184	$ 50,000.00	$9,200,000.00
Year 4	168	176	$ 50,000.00	$8,800,000.00
Year 5	160	168	$ 50,000.00	$8,400,000.00
5 Year Total				$45,866,500.00

[1] Assumes that the 3-year Rolling Average FTE = ((200+200+192)/3)
[2] Base year = number of FTE residents on June 30, 1997

BILLING CODE 4120

Example 3—Hospital Does Not Participate in the Voluntary Residency Reduction Plan (19% Reduction)				
Year	FTEs	Average FTE	Per Resident Payment	Total Payments
Base Year[2]	200	200.00	$ 50,000.00	--
Year 1	192	197.33[1]	$ 50,000.00	$9,866,500.00
Year 2	184	192.00	$ 50,000.00	$9,600,000.00
Year 3	176	184.00	$ 50,000.00	$9,200,000.00
Year 4	168	176.00	$ 50,000.00	$8,800,000.00
Year 5	162	168.67	$ 50,000.00	$8,433,500.00
5 Year Total				$45,900,000.00

[1] Assumes that the 3-year Rolling Average FTE = ((200+200+192)/3)
[2] Base year = number of FTE residents on June 30, 1997

Example 4—Hospital Does Not Participate in the Voluntary Residency Reduction Plan (15% Reduction)				
Year	FTEs	Average FTE	Per Resident Payment	Total Payments
Base Year[2]	200	200.00	$ 50,000.00	-------
Year 1	194	197.33[1]	$ 50,000.00	$9,990,000.00
Year 2	188	192.00	$ 50,000.00	$9,700,000.00
Year 3	182	184.00	$ 50,000.00	$9,400,000.00
Year 4	176	176.00	$ 50,000.00	$9,100,000.00
Year 5	170	168.67	$ 50,000.00	$8,800,000.00
5 Year Total	-----	-------	---------	$46,850,000.00

[1] Assumes that the 3-year Rolling Average FTE = ((200+200+192)/3)
[2] Base year = number of FTE residents on June 30, 1997

BILLING CODE 4120-01-C

These examples are simplified but do illustrate the impact on hospital revenues from various reduction options assuming fixed Medicare per resident payment amounts under several reduction options. The examples do not take into account any changes in IME payments, updates to the per resident amounts, changes in Medicare utilization or other factors that affect Medicare payment for direct and indirect GME. However, generally IME payments are twice the amount of direct GME payments for the average hospital. In each of these examples, the hospital's payments under current law are based on a 3-year average of the FTEs. The hospital's Medicare direct GME payments are equal to the product of the average FTEs and the Medicare per resident payment amount. The difference between the payments based on the number of residents on June 30, 1997 and plan year payments are multiplied by the hold-harmless percentage to determine incentive payments. The incentive payments are added to the hospital's Medicare direct GME payments to determine total payments.

In example 1, the hospital participates in the voluntary residency reduction plan under the 20-percent option (this option would also require an increase in the number of primary care residents by 20 percent which is not illustrated). The hospital achieves its residency reduction under the plan by reducing 4 percent per year from the base number of residents. The incentive payments are based on the difference in payments using 95 percent of the count of residents as of June 30, 1997, and rate year payments using the 3-year average count of residents. In example 1, the hospital does not receive an incentive payment during the first 2 years of the plan because its average count of FTEs is more than 95 percent of its number of residents as of June 30, 1997. The hospital receives incentive payments for the remaining 3 years of the voluntary plan and its total incentive payments are $850,000. Its total direct GME payments over the 5 plan years are $46.72 million. If the hospital increases residents above the level it has at the end of the plan, the hospital will be required to refund $850,000. Although the hospital could receive higher incentive payments by making larger reductions in year 1 and year 2 of the plan, our experience indicates that hospitals are actually planning smaller reductions in the first 2 years of the plan because of prior commitments made to residents. In fact, we believe this example may actually present a larger resident reduction in the first 2 years of the plan than hospitals are likely to make.

In example 2, all of the variables are the same as example 1 except the hospital does not participate in the voluntary plan. Since the hospital does not participate in the voluntary plan, it does not receive incentive payments and its total payments are $850,000 less over 5 years than the hospital in example 1. This hospital can subsequently increase its residents to its FTE caps and will not be liable for any refunds.

In example 3, all of the variables are the same as example 2 except the hospital reduces its number of residents from the count as of June 30, 1997 by 19 percent. In this example, the hospital receives slightly higher payments than the hospital in example 2 because it has more residents over 5 years. Its payments are $816,500 lower than the hospital that participated in the voluntary plan. Again, this hospital can increase its residents to its FTE cap level without being liable for refunds of incentive payments to Medicare.

In example 4, the hospital does not participate in the voluntary plan and reduces its number of residents from the count on June 30, 1997 by 15 percent. In this example, the hospital actually receives higher total payments than the hospital in any of the previous examples, including the hospital participating in the voluntary residency reduction plan because of Medicare revenues associated with a higher count of residents.

We recognize that there are many factors that may induce a hospital to participate in the voluntary residency reduction plan. Medicare direct and indirect medical education revenues are only one factor in deciding whether to participate. We urge hospitals to carefully consider all factors before deciding whether to participate in the voluntary plans. However, we believe Medicare incentive payments for resident reductions made under this provision may not provide a strong incentive to participate in the voluntary plan unless a hospital is already planning permanent residency reductions of 20 to 25 percent even in the absence of the voluntary residency reduction plan. Even if the hospital is planning residency reductions of 20 to 25 percent, it may be reluctant to participate in the plan because of the requirement that the hospital refund all incentive funds if the hospital increases its residents higher than the level permitted under its voluntary residency reduction plan.

In summary, we do not believe many hospitals are likely to participate in the voluntary residency reduction plans because the 3-year average count provides similar incentives without mandating reductions of 20 to 25 percent, non-receipt of incentive payments for the first 5 percent of resident reduction, and full refund of all incentive payments if a hospital ever increases its number of residents in training. We believe that only hospitals that anticipate making reductions of 20 to 25 percent over the next 5 years are likely to consider participating.

C. Rural Hospital Impact

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any interim final rule with comment period that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the R.F.A. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural hospital impact statement since we have determined, and certify, that this interim final rule with comment period will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this interim final rule with comment period was reviewed by the Office of Management and Budget.

We have reviewed this interim final rule with comment period under the threshold criteria of Executive Order 12612. We have determined that it does not significantly affect States' rights, roles, and responsibilities.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

2. A new § 413.86 is added to subpart F to read as follows:

§ 413.86 Incentive payments under plans for voluntary reduction in number of medical residents.

(a) *Statutory basis.* This section implements section 1886(h)(6) of the Act, which establishes a program under which incentive payments may be made to qualifying entities that develop and implement approved plans to voluntarily reduce the number of residents in medical residency training.

(b) *Qualifying entity defined.* "Qualifying entity" means:

(1) An individual hospital that is operating one or more approved medical residency training programs as defined in § 413.86(b) of this chapter; or

(2) Two or more hospitals that are operating approved medical residency training programs as defined in § 413.86(b) of this chapter and that submit a residency reduction application as a single entity.

(c) *Conditions for payments.* (1) A qualifying entity must submit an application for a voluntary residency reduction plan that meets the requirements and conditions of this section in order to receive incentive payments for reducing the number of residents in its medical residency training programs.

(2) The incentive payments will be determined as specified under paragraph (g) of this section.

(d) *Requirements for voluntary plans.* In order for a qualifying entity to receive incentive payments under a voluntary residency reduction plan, the qualifying entity must submit an application that contains the following information, documents, and agreements—

(1) A description of the operation of a plan for reducing the full-time equivalent (FTE) residents in its approved medical residency training programs, consistent with the percentage reduction requirements specified in paragraphs (g)(2) and (g)(3) of this section;

(2) An election of the period of residency training years during which the reductions will occur. The reductions must be fully implemented by not later than the fifth residency training year in which the plan is effective;

(3) FTE counts for the base number of residents, as defined in paragraph (g)(1) of this section, with a breakdown of the number of primary care residents compared to the total number of residents; and the direct and indirect FTE counts of the entity on June 30, 1997. For joint applicants, these counts must be provided individually and collectively;

(4) Data on the annual and cumulative targets for reducing the number of FTE residents and the ratios of the number of primary care residents to the total number of residents for the base year and for each year in the 5-year reduction period. For joint applicants, these data must be provided individually and collectively;

(5) An agreement to not reduce the proportion of its primary care residents to its total number of residents below the proportion that exists in the base year, as specified in paragraph (g)(1) of this section;

(6) An agreement to comply with data submission requirements deemed necessary by HCFA to make annual incentive payments during the 5-year residency reduction plan, and to fully cooperate with additional audit and monitoring activities deemed necessary by HCFA;

(7) For a qualifying entity that is a member of an affiliated group as defined in § 413.86(b), a statement that all members of the group agree to an aggregate FTE cap that reflects—

(i) The reduction in the qualifying entity's FTE count as specified in the plan during each year of the plan; and

(ii) The 1996 FTE count of the other hospital(s) in the affiliated group.

(8) A statement indicating voluntary participation in the plan under the terms of this section, signed by each hospital that is part of the applying entity.

(e) *Deadline for applications.* A qualifying entity must submit an application that meets the requirements of paragraph (d) of this section at least one day prior to the first day of the period to which the plan would be effective but no later than November 1, 1999. The application must be submitted to the fiscal intermediary, with a copy to HCFA.

(f) *Effective dates of plans.* Residency reduction plans that are submitted to the fiscal intermediary on or after September 17, 1999 but on or before November 1, 1999, may be effective for portions of cost reporting periods beginning no earlier than the day after the date of the application.

(g) *Residency reduction requirements*—(1) *Base number of residents defined.* (i) "Base number of residents" means the lesser of—

(A) The number of FTE residents in all approved medical residency training programs of the qualifying entity (before application of weighting factors under § 413.86(g)) for the most recent residency training year ending June 30, 1996; or

(B) The number of FTE residents in all approved medical residency training programs of the qualifying entity (before application of weighting factors under § 413.86(g)) for any subsequent residency training year that ends before the date the entity submits its plan to the fiscal intermediary and HCFA.

(ii) The residency training year used to determine the base number of residents is the "base year" for determining reduction requirements.

(iii) The qualifying entity's base number of residents may not be adjusted to reflect adjustments that may otherwise be made to the entity's FTE caps for new medical residency training programs.

(2) *Qualifying entity consisting of individual hospital.* The base number of FTE residents in all the approved medical residency training programs operated by or through a qualifying entity consisting of an individual hospital must be reduced as follows:

(i) If the base number of residents exceeds 750, residents, by at least 20 percent of the base number.

(ii) If the base number of residents exceeds 600 but is less than or equal to 750 residents—

(A) By 150 residents; or

(B) By 20 percent, if the qualifying entity increases the number of primary care residents included in the base number by at least 20 percent.

(iii) If the base number of residents is 600 or less residents—

(A) By 25 percent; or

(B) By 20 percent, if the qualifying entity increases the number of primary care residents included in the base number of residents by at least 20 percent.

(3) *Qualifying entity consisting of two or more hospitals.* The base number of FTE residents in the aggregate for all the approved medical residency training programs operated by or through a qualifying entity consisting of two or more hospitals must be reduced—

(i) By 25 percent; or

(ii) By 20 percent, if the qualifying entity increases the number of primary care residents included in the base number of residents by at least 20 percent.

(4) *Treatment of rotating residents.* A qualifying entity will not be eligible for incentive payments for a reduction in the base number of residents if the reduction is a result of the entity rotating residents to another hospital that is not a part of its voluntary residency reduction plan.

(5) *Updates to annual and cumulative targets.*—(i) Except as provided in paragraph (g)(5)(ii) of this section an entity with an approved voluntary residency reduction plan may not change the annual and cumulative reduction targets that are specified in its plan in accordance with paragraphs (g)(2) and (g)(3) of this section.

(ii) An entity may update annual reduction targets specified in its plan only if—

(A) It has failed to meet a specified annual target for a plan year in the 5-year period; and

(B) It wishes to adjust future annual targets for the remaining years of the plan in order to comply with its cumulative target.

(iii) An updated plan allowed under paragraph (g)(5)(ii) of this section must be submitted prior to the beginning of each July 1 medical residency training year during the plan years.

(h) *Computation of incentive payment amount.* (1) Incentive payments to qualifying entities that meets the requirements and conditions of paragraphs (d) and (g) of this section will be computed as follows:

(i) *Step 1.* Determine the amount (if any) by which the payment amount that would have been made under § 413.86(d) if there had been a 5-percent reduction in the number of FTE residents in the approved medical education training programs of the hospital as of June 30, 1997, exceeds the amount of payment that would have been made under § 413.86(d) in each year under the voluntary residency reduction plan, taking into account the reduction in the number of FTE residents under the plan.

(ii) *Step 2.* Determine the amount (if any) by which the payment amount that would have been made under § 412.105 of this chapter if there had been a 5-percent reduction in the number of FTE residents in the approved medical education training programs of the hospital as of June 30, 1997, exceeds the payment amount made under § 412.105 of this chapter in each year under the voluntary residency reduction plan, taking into account the actual reduction in the number of FTE residents.

(iii) *Step 3.* Determine the amount (if any) by which the payment amount that would have been made under § 412.322 of this chapter if there had been a 5-percent reduction in the number of FTE residents in the approved medical education training programs of the hospital as of June 30, 1997, exceeds the payment amount made under § 412.322 of this chapter in each year under the voluntary residency reduction plan, taking into account the actual reduction in the number of FTE residents.

(iv) *Step 4.* Multiply the sum of the amounts determined under paragraph (h)(i), (ii), and (iii) of this section by the applicable hold harmless percentages specified in paragraph (i) of this section.

(2) The determination of the amounts under paragraph (h)(1) of this section for any year is based on the applicable Medicare statutory provisions in effect on the application deadline date for the voluntary reduction plan specified under paragraph (e) of this section.

(i) *Applicable hold-harmless percentage.* The applicable hold-harmless percentages for each year in which the residency reduction plan is in effect are as follows:

(1) 100 percent for the first and second residency training years;

(2) 75 percent for the third year;

(3) 50 percent for the fourth year; and

(4) 25 percent for the fifth year.

(j) *Payments to qualifying entities.* Annual incentive payments through cost reports will be made to each hospital that is or is part of a qualifying entity over the 5-year reduction period if the qualifying entity meets the annual and cumulative reduction targets specified in its voluntary reduction plan.

(k) *Penalty for noncompliance*—(1) *Nonpayment.* No incentive payment may be made to a qualifying entity for a residency training year if the qualifying entity has failed to reduce the number of FTE residents according to its voluntary residency reduction plan.

(2) *Repayment of incentive amounts.* The qualifying entity is liable for repayment of the total amount of incentive payments it has received if the qualifying entity—

(i) Fails to reduce the base number of residents by the percentages specified in paragraphs (g)(2) and (g)(3) of this section by the end of the fifth residency training year; or

(ii) Increases the number of FTE residents above the number of residents permitted under the voluntary residency reduction plan as of the completion date of the plan.

(l) *Postplan determination of FTE caps for qualifying entities*—(1) *No penalty imposed.* Upon completion of a voluntary residency reduction plan, if no penalty is imposed, the qualifying entity's 1996 FTE count is permanently adjusted to equal the unweighted FTE count used for direct GME payments for the last residency training year in which a qualifying entity participates.

(2) *Penalty imposed.* Upon completion of the voluntary residency reduction plan—

(i) *During repayment period.* If a penalty is imposed under paragraph (k)(2) of this section, during the period of repayment, the qualifying entity's FTE count is as specified in paragraph (l)(1) of this section.

(ii) *After repayment period.* Once the penalty repayment is completed, the qualifying entity's FTE reverts back to its original 1996 FTE cap.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: July 7, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: July 27, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–21322 Filed 8–17–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[MM Docket No. 97–234, GC Docket No. 92–52, and GEN Docket No. 90–264; FCC 99–201]

Implementation of Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concludes that it is appropriate for the Federal Communications Commission to attribute the mass media interests of investors holding more than a 33% equity and/or debt interest in a broadcast auction bidder claiming a New Entrant Bidding Credit, even if such an interest is non-voting.

DATES: The effective date is August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This item contains information collections requirements for which we have received OMB approval, OMB Control Number 3060–0896. This *Memorandum Opinion and Order* concludes that it is

appropriate for the Federal Communications Commission to attribute the mass media interests of investors holding more than a 33% equity and/or debt interest in a broadcast auction bidder claiming a New Entrant Bidding Credit, even if such an interest is non-voting. This action is a further refinement of the eligibility standards for the New Entrant Bidding Credit available to bidders in broadcast auctions created by the Commission as a means to promote and facilitate the diversification of ownership in the mass media. In an earlier *Memorandum Opinion and Order*, 64 FR 24523 (May 7, 1999), the Commission revised the eligibility standards for the New Entrant Bidding Credit to ensure that those standards are consistent with the Commission's general attribution standards. In this Memorandum Opinion and Order, the Commission determined that it was appropriate to attribute the mass media interests held by very substantial investors in any broadcast auction applicant claiming a New Entrant Bidding Credit. The Commission explained that it was taking this action to ensure that only true new entrants qualify for the bidding credit, because holders of otherwise nonattributable interests may well have a "realistic potential" to influence bidders claiming new entrant status. The Commission further determined, based upon a review of the record in the broadcast attribution proceeding and the precedent provided by its long-standing cross-interest policy, that setting the attribution threshold at 33% is appropriate in the new entrant context.

Supplemental Regulatory Flexibility Analysis (FRFA)

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix B of the *First Report and Order*, 63 FR 48615 (September 11, 1998) in this proceeding. In addition, a Supplemental Final Regulatory Flexibility Analysis (First Supplemental FRFA) was incorporated in Appendix B of the *Memorandum Opinion and Order*, 64 FR 24523 (May 7, 1999) in this proceeding that resolved various petitions for reconsideration filed against the *First Report and Order*. The Commission's Supplemental Final Regulatory Flexibility Analysis (Second Supplemental FRFA) in this *Memorandum Opinion and Order* reflects revised or additional information to that contained in the FRFA and First Supplemental FRFA. This Second Supplemental FRFA is thus limited to issues addressed in this *Memorandum Opinion and Order*. This Second Supplemental FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA); see generally 5 U.S.C. 601 *et seq.* Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

I. Need For and Objectives of Action

In the *First Report and Order* in this proceeding, the Commission adopted rules and procedures to implement provisions of the Balanced Budget Act of 1997 expanding its competitive bidding authority, under Sections 309(j) and 309(l) of the Communications Act of 1934, 47 U.S.C. 309(j), 309(l), to include, inter alia, the commercial broadcast services. In a recent *Memorandum Opinion and Order* resolving numerous petitions for reconsideration filed against the *First Report and Order* the Commission generally upheld its previous determinations made with respect to auction rules and procedures for the various broadcast services. That *Memorandum Opinion and Order* did, however, refine the eligibility standards for the "new entrant" bidding credit, which, as adopted in the *First Report and Order*, provides a tiered credit for broadcast auction bidders with no, or very few, other media interests. In particular, the Commission concluded in its previous *Memorandum Opinion and Order* that the eligibility standards for the new entrant bidding credit should be amended to be consistent with the general broadcast attribution standards, by which the Commission defines what constitutes an attributable interest in applying the broadcast multiple ownership rules. In addition to attributing mass media interests for purposes of the new entrant bidding credit to the same extent that such media interests are considered attributable for purposes of the broadcast multiple ownership rules, the Commission determined in that *Memorandum Opinion and Order* to also consider, in a further order, whether to attribute the mass media interests of any individual or entity who holds a significant equity and/or debt interest in a broadcast auction bidder claiming new entrant status, even if such an interest is nonvoting. The above-referenced *Memorandum Opinion and Order* does in fact determine to attribute the mass media interests of investors holding more than a 33% equity and/or debt interest in a broadcast auction bidder claiming new entrant status, even if such an interest is nonvoting.

II. Significant Issues Raised by Public in Response to Final Regulatory Flexibility Analysis

No petitions or comments were received in response to the FRFA or the First Supplemental FRFA. Small business-related issues were raised indirectly by some parties filing petitions for reconsideration against the *First Report and Order*. These issues were addressed in detail in the previous *Memorandum Opinion and Order* and the First Supplemental FRFA.

III. Description and Estimate of the Number of Small Entities Involved

In the FRFA and First Supplemental FRFA, the Commission utilized the definition of "small business" promulgated by the Small Business Administration (SBA), even though, as discussed in detail in the FRFA, we tentatively believed that the SBA's definition of "small business" overstated the number of radio and television broadcast stations that were small businesses and was not particularly suitable for our purposes. No petitions or comments were received concerning the Commission's use of the SBA's small business definition for purposes of the FRFA and First Supplemental FRFA, and we will therefore continue to employ such definition for this Second Supplemental FRFA. As we are utilizing the same definition of small business for this Second Supplemental FRFA, the description and number of small entities affected by the rule change adopted in this *Memorandum Opinion and Order* should be the same as the entities described in both the FRFA and First Supplemental FRFA, and include, specifically, commercial broadcast stations (television, low power television, television translator, AM, FM and FM translator stations).

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *First Report and Order* adopted a number of rules that included reporting, recordkeeping and compliance requirements. These requirements were described in detail in the FRFA, and, as discussed in the First Supplemental FRFA, generally remained unchanged by the rule amendments adopted in the previous *Memorandum Opinion and Order*. The rule change adopted in this *Memorandum Opinion and Order* does not include any additional or different reporting or recordkeeping requirements, but only affects the

standards for qualifying for the new entrant bidding credit.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The FRFA and First Supplemental FRFA described in considerable detail the steps taken in the *First Report and Order* and in the previous *Memorandum Opinion and Order* to minimize significant economic impact on small entities and the alternatives considered. The rule amendment adopted in this *Memorandum Opinion and Order* further refines the eligibility standards for the new entrant bidding credit. The Commission believes that attributing the mass media interests (if any) held by very substantial investors in bidders claiming new entrant status will help properly limit the scope of the bidding credit to those truly new entities intended to benefit from the credit (and who are likely to be small businesses). In addition, adoption of this attribution policy should reduce the likelihood of bidder manipulation of the eligibility standards for the bidding credit.

The Commission also believes that setting this attribution benchmark at 33% reasonably balances its interest in capturing investor relationships that provide a realistic potential to influence the core operating functions of broadcast auction applicants, and the needs of prospective auction applicants (including small businesses) to obtain financing. This 33% equity/debt attribution standard does not preclude an individual or entity (including any existing broadcaster) from investing any amount in a prospective broadcast auction applicant. Nor does this 33% equity/debt standard require an applicant claiming new entrant status to contribute a minimum amount of equity, or otherwise affect an applicant's right to participate in a broadcast auction. Because this standard only establishes that the attributable media interests (if any) of an investor who holds more than a 33% equity and/or debt interest in a broadcast auction bidder will be attributable to that bidder for determining its status as a new entrant, the Commission concludes that adoption of the 33% equity/debt standard should not unduly hinder the ability of broadcast licensees generally, or broadcast auction applicants specifically, to obtain capital.

VI. Report to Congress

The Commission will send a copy of this *Memorandum Opinion and Order*, including this Second Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Memorandum Opinion and Order*, including the Second Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Memorandum Opinion and Order* and Second Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Authority for issuance of this *Memorandum Opinion and Order* is contained in Sections 4 (i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l) and 403.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Reporting and recordkeeping requirements, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Change

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.5008 is amended by revising paragraph (c) to read as follows:

§ 73.5008 Definitions applicable for designated entity provisions.

* * * * *

(c) An *attributable interest* in a winning bidder or in a medium of mass communications shall be determined in accordance with § 73.3555 and Note 2. In addition, the attributable mass media interests, if any, held by an individual or entity with an equity and/or debt interest(s) in a winning bidder shall be attributed to that winning bidder for purposes of determining its eligibility for the new entrant bidding credit, if the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed thirty-three (33) percent of the total asset value (defined as the aggregate of all equity plus all debt) of the winning bidder.

[FR Doc. 99–21471 Filed 8–17–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 081399A]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 13, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of northern rockfish in the Western Regulatory Area of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 840 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for northern rockfish has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 740 mt, and is setting aside

the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of northern rockfish for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 13, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21434 Filed 8–13–99; 3:14 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 081299A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska management area (GOA). This action is necessary to fully utilize the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR 600 and 50 CFR part 679.

The 1999 TAC of Pacific ocean perch in the West Yakutat District of the GOA was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 820 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

The Administrator, Alaska Region, NMFS, has established a directed fishing allowance of 670 mt, and set aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific ocean perch in the West Yakutat District of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on July 19, 1999, (64 FR 39090, July 21, 1999).

NMFS has determined that as of July 31, 1999, 217 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific ocean perch in the West Yakutat District of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific ocean perch TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 13, 1999

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21433 Filed 8–13–99; 3:14 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 159
Wednesday, August 18, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG22

Elimination of the Requirement for Noncombustible Fire Barrier Penetration Seal Materials and Other Minor Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its fire protection regulations to remove the requirement that fire barrier penetration seal materials be noncombustible, and to make other minor changes. The proposed rule would also include editorial changes to comply with the Presidential memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing."

DATES: Submit comments by November 1, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff, Mail Stop O–16C1.

Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

You may also submit comments via the NRC's interactive rulemaking Web site through the NRC home page <http://ruleforum.llnl.gov>. This site provides the availability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher at 301–415–5905; or by e-mail at CAG@nrc.gov. Comments received may also be viewed and downloaded electronically at this Web site.

Single copies of NUREG–1552, "Fire Barrier Penetration Seals in Nuclear Power Plants," and NUREG–1552, Supp. 1, which are related to this rulemaking, may be obtained by writing to U.S. Nuclear Regulatory Commission, Reproduction and Distribution Services Section, OCIO, Washington, DC 20555–0001; or by fax at 301–415–5272.

FOR FURTHER INFORMATION CONTACT: Daniele Oudinot, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–3731; e-mail DHO@nrc.gov

SUPPLEMENTARY INFORMATION:

I. Background

The NRC conducted a technical assessment of fire barrier penetration seals. The NRC documented the results of its assessment in SECY–96–146, "Technical Assessment of Fire Barrier Penetration Seals in Nuclear Power Plants," July 1, 1996; in NUREG–1552, "Fire Barrier Penetration Seals in Nuclear Power Plants," July 1996; and in NUREG–1552, Supplement 1, January 1999. In these reports, the NRC stated that, on the basis of its findings, the noncombustibility criterion for penetration seal materials that is specified in the NRC fire protection regulation and review guidance does not contribute significantly to safety, and recommended that this noncombustibility criterion be deleted.

II. Proposed Action

The NRC is proposing to amend the regulations governing fire protection in § 50.48, and Appendix R to Part 50 of Title 10 of the Code of Federal Regulations (Appendix R). The proposed amendments would remove the words "shall utilize only noncombustible materials and" in 10 CFR Part 50, Appendix R, Section III.M, "Fire Barrier Cable Penetration Seal Qualification;" remove footnote 3 from § 50.48(a); remove footnote 4 from § 50.48(b); remove §§ 50.48 (c), (d), and (e); correct a spelling error in footnote 2 of Appendix R, Section III.G., "fire protection of safe shutdown capability;" and make editorial changes.

III. Discussion

1. Fire Barrier Penetration Seals

Appendix R, Section III.M currently states: "Penetration seal designs shall utilize only noncombustible materials and shall be qualified by tests that are comparable to tests used to rate fire barriers." The NRC is proposing to amend Appendix R, Section III.M, by removing the words "shall utilize only noncombustible materials and . . ."

The technical basis for removing the noncombustibility requirement for fire barrier penetration seal materials is documented in NUREG–1552 and NUREG–1552, Supplement 1. A summary of the technical basis for this action follows.

NRC requirements and guidelines for penetration seals appear in a number of documents. In 1971, the NRC promulgated General Design Criterion (GDC) 3, "Fire protection," and subsequently developed specific guidance for implementing GDC 3; Branch Technical Position (BTP) Auxiliary Power Conversion Systems Branch (APCSB) 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants," May 1, 1976; and Appendix A to BTP APCSB 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976," February 24, 1977. Most licensees complied with most of the implementing guidance. To resolve the contested issues, the NRC published the final fire protection rule (§ 50.48) and Appendix R to 10 CFR Part 50 on November 10, 1980 (45 FR 76602). It is important to note that Appendix R is not a set of generically applicable fire protection requirements and applies only to plants that were operating before January 1, 1979.

The record for Appendix R does not disclose technical basis for including the noncombustibility criterion in Appendix R. The noncombustibility criterion is not included in BTP APCSB 9.5–1, Appendix A to BTP APCSB 9.5–1, or in the industry fire endurance test standards. Also, § 50.48 does not address the use of combustible materials. Although GDC 3 states that noncombustible and heat-resistant materials must be used wherever practical, GDC 3 does not preclude the use of combustible materials. In fact, combustible materials are installed in nuclear power plants. In general, when these materials are incorporated as

integral components of the plant fire protection program, including the fire hazard analysis, they are acceptable.

Fire barrier penetration seals are one element of the defense-in-depth concept at nuclear power plants. The objectives of the defense-in-depth concept are to:

(1) Prevent fires from starting;

(2) Promptly detect, control, and extinguish those fires that do occur; and

(3) Protect structures, systems, and components important to safety so that a fire that is not extinguished promptly will not prevent the safe shutdown of the plant.

To achieve defense in depth, each operating reactor maintains an NRC-approved fire protection program. Nuclear power plants are divided into separate areas by structural fire barriers, such as walls and floor-ceiling assemblies whose fire-resistance rating, typically 1, 2, or 3 hours, is determined by testing. The function of these structural barriers is to prevent a fire that starts in one area from spreading to another area. Penetration seals are used to close openings through the structural fire barriers. The intended design function of the penetration seal is to confine a fire to the area in which it started and to protect important equipment within an area from a fire outside the area. As for other fire barriers, the fire-resistance rating of the penetration seals is determined by testing.

The ability of a particular penetration seal to achieve its intended design function (i.e., to contain a fire), as determined by a fire endurance test conducted in accordance with an industry standard, is the foremost design consideration. In the report documenting the results of the fire barrier penetration seal reassessment, the NRC concluded the following:

(1) There are no reports of fires that challenged the ability of nuclear power plant fire-rated penetration seals to confine a fire.

(2) A large body of fire endurance tests had established the fire-resistive capabilities of the penetration seal materials, designs, and configurations installed in nuclear power plants.

(3) If penetration seals are properly designed, tested, configured, installed, inspected, and maintained, there is reasonable assurance that they will provide the fire resistance of the tested configuration, maintain the fire-resistive integrity of the fire barriers in which they are installed, and confine the fire to the area of origin.

The NRC evaluated silicone-based penetration seal materials that are combustible and are the most widely used materials for penetration seals throughout the commercial nuclear power industry. In presenting the results of its evaluation in NUREG–1552 and in NUREG–1552, Supplement 1, the NRC concluded the following:

(1) Properly tested, configured, installed, and maintained silicone-based penetration seals are not credible fire hazards.

(2) Despite the fact that a silicone-based penetration seal could contribute some fuel to a fire, its relative contribution to overall fire severity would be negligible.

(3) Qualified silicone-based fire barrier penetration seals can accomplish their intended design function; and

(4) The benefits of the silicone-based penetration seal materials outweigh any potential concerns regarding material combustibility.

2. Footnotes 3 and 4 in § 50.48

Footnote 3 in § 50.48(a) states that basic fire protection guidance for nuclear power plants is contained in two NRC documents: Branch Technical Position (BTP) Auxiliary Power Conversion System Branch (APCSB) 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants" (for new plants docketed after July 1, 1976), dated May 1976, and Appendix A to BTP APCSB 9,5–1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976" (for plants that were operating or in various stages of design or construction before July 1, 1976), dated August 23, 1976. Footnote 3 also refers to footnote 4 in § 50.48(b), that lists four additional documents related to permissible alternatives to satisfy Appendix A to BTP APCSB 9.5–1. The six documents that are referred to in footnotes 3 and 4 no longer reflect accurately the guidance documents published by the NRC.

Footnotes 3 and 4 were not intended to be rulemaking requirements but rather statements of fact. The footnotes reflected the Commission's approval of the NRC staff's practice, as reflected in Branch Technical Position (BTP) APCSB 9.5–1 and in its Appendix A, that the date of the docketing of the construction permit would determine the NRC staff's review criteria for verifying compliance with General Design Criterion (GDC) 3, and that compliance with the guidance of BTP APCSB 9.5–1 or its Appendix A and the other listed guidance documents would establish compliance with GDC 3. The NRC has completed its review of the fire protection programs at all operating reactors and has issued license conditions that establish the licensing bases for each reactor. The licensing bases may include the documents listed in footnotes 3 and 4 but typically include a number of other guidance documents that the NRC issued after it promulgated § 50.48. In addition, the licensees included the fire protection licensing basis for each reactor in the Updated Final Safety Analysis Report for the facility. Footnotes 3 and 4 have served their purpose and are not needed by the NRC or the licensees to maintain the fire protection licensing bases for the reactors.

The proposed rule change would not affect or change the licensing basis for any plant. However, it would make 10 CFR 50.48 consistent with other reactor regulations that do not identify guidance documents. It would also eliminate the need to update the footnotes to include the large number of guidance documents that the NRC has issued since it promulgated § 50.48 and to conduct future rulemakings to add new guidance documents as they are issued. The proposed change would also resolve an inconsistency between the information in footnote 3 to § 50.48 and the regulatory requirements of § 50.34(g)(1)(ii). Specifically § 50.34(g)(1)(ii) states, in part, that "Applications for light water cooled nuclear power plant construction permits, manufacturing licenses, and preliminary or final design approvals for standard plants docketed after May 17, 1982, shall include an evaluation of the facility against the SRP * * *," whereas, footnote 3 indicates that the fire protection portions of these applications would be reviewed against BTP APCSB 9.5–1.

3. Implementation Requirements in § 50.48 (c), (d), and (e)

Paragraphs (c) and (d) of § 50.48 currently list schedule requirements that were added to the Code of Federal Regulations when Appendix R became effective on February 17, 1981. These requirements apply to nuclear power plants licensed before January 1, 1979, and involve fire protection installation modifications, revisions of administrative controls, manpower changes, and training. These requirements were to be completed on a schedule determined by the provisions specified in § 50.48 (c) and (d). All schedular requirements of § 50.48 (c) and (d) have been implemented and need not be retained.

Paragraph (e) of § 50.48 currently specifies that nuclear power plants licensed after January 1, 1979, shall complete all fire protection modifications needed to satisfy GDC 3 of Appendix A to 10 CFR Part 50 in accordance with the provisions of their licenses. License conditions pertaining

to fire protection have been implemented at all plants. Therefore, § 50.48(e) has been implemented and need not be retained.

4. Grammatical Correction

Footnote 2 to Section III.G.3 of Appendix R currently reads, "Alternative shutdown capability is provided by rerouting, relocating, or modificating of existing systems; dedicated shutdown capability is provided by installing new structures and systems for the function of post-fire shutdown." This amendment would replace the words "modificating of" with "modifying."

IV. Plain Language

The Presidential memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal Government's writing be in plain language (63 FR 31883, June 10, 1998). In compliance with this directive, editorial changes have been made in these proposed amendments to improve the readability of the existing language of the provisions being revised. These types of changes are not discussed further in this document. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used in this notice. Comments on the language used should be sent to the NRC as indicated under the ADDRESSES heading.

V. Finding of No Significant Environmental Impact

Environmental Assessment

The NRC has determined, in accordance with the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that the proposed amendments, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required.

1. The Proposed Action

The NRC is proposing to amend its regulations that require fire barrier penetration seal materials to be noncombustible and to make minor changes to § 50.48 and to Appendix R.

These minor changes are to remove footnote 3 from § 50.48(a) and footnote 4 from § 50.48(b); remove paragraphs (c), (d), and (e) from § 50.48; correct a grammatical error in footnote 2 to Section III.G.3 of Appendix R; and make editorial changes.

2. Need for the Rulemaking Action

The technical basis for removing the noncombustibility requirement for fire barrier penetration seal materials is documented in NUREG–1552, "Fire Barrier Penetration Seals in Nuclear Power Plants," July 1996; and in NUREG–1552, Supplement 1, January 1999. In these reports, the NRC staff stated that the noncombustibility criterion for penetration seal materials specified in the NRC fire protection regulations and review guidance does not contribute significantly to safety and recommended that this noncombustibility criterion be deleted. In a staff requirements memorandum dated June 30, 1998, the Commission directed the NRC staff to amend Section III.M of Appendix R to Part 50 of Title 10 of the Code of Federal Regulations (Appendix R) to eliminate the noncombustibility requirement for penetration seal material and to make other minor changes to the fire protection regulations. These minor changes include the deletion of references that no longer reflect accurately the guidance documents published by the NRC in footnotes 3 and 4 of § 50.48, the deletion of schedular requirements that have been implemented in § 50.48(c) and (d), and a grammatical correction in footnote 2 to Section III.G.3 of Appendix R. The NRC is also taking advantage of this rulemaking to make editorial changes to comply with the Presidential memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing." The proposed change would remove a requirement that does not contribute significantly to safety. It constitutes a burden reduction for the NRC and for the licensees.

3. "No Regulatory Action" Alternative

No regulatory action would continue the regulatory burden on licensees and on the NRC. Silicone-based material is currently the material of choice for fire barrier penetration seals and is combustible. The NRC has performed an assessment of silicone-based penetration seal materials and concluded that the benefits of the silicone-based materials in penetration seals, such as high-temperature stability, flexibility, and resistance to the effects of radiation exposure and aging, outweigh any potential concerns regarding material combustibility. In the past, licensees using silicone-based penetration seal materials have requested and been granted exemptions from the requirement of Section III.M of Appendix R to Part 50, regarding the use of noncombustible materials, provided the seals are qualified by fire endurance tests conducted in accordance with an industry standard. Under the current rule, licensees who choose penetration seals made of silicone-based materials for the replacement of existing seals or the installation of new seals must request exemptions from the requirement of Section III.M of Appendix R to the extent that the silicone-based material is combustible. These requests for exemption would increase the regulatory burden on both the NRC and on the licensees, and would present no safety benefit. No regulatory action regarding the removal of footnote 3 in § 50.48(a), footnote 4 in § 50.48 (b), and §§ 50.48 (c), (d), and (e) would have a negative regulatory impact for the following reasons. Footnotes 3 and 4 in § 50.48 are inaccurate and incomplete. In addition, the information in footnote 3 is inconsistent with the regulatory requirements contained in § 50.34(g)(1)(ii). The requirements in §§ 50.48 (c), (d), and (e) have been implemented and need not be retained. No regulatory action regarding the correction of a grammatical error in footnote 2 to Section III.G.3 of Appendix R to Part 50, which is administrative in nature, would not have any regulatory impact.

4. Environmental Impacts of the Proposed Amendment and the Alternative

The environmental impacts of the proposed amendment, as well as the alternative, are considered negligible by the NRC. The NRC has determined that the ability of a particular penetration seal to achieve its intended design function (i.e., to contain a fire), as determined by a fire endurance test conducted in accordance with an industry standard, is the foremost design consideration. The proposed amendment would not impact the ability to shut down the plant safely in the event of a fire and would provide a level of safety equivalent to that attained by compliance with Section III.M of Appendix R to 10 CFR Part 50. There is no environmental impact associated with the other changes which are administrative in nature. On this basis, the NRC concludes that there are no radiological environmental impacts associated with this proposed amendment. If no regulatory action were taken in regard to the noncombustibility requirement of Section III.M of Appendix R there would be no radiological environmental impact, the same as the proposed action. No regulatory action regarding the changes in § 50.48 (and the correction of an error in footnote 2 to Section III.G.3 of

Appendix R, which is administrative in nature) would have no radiological impact on the environment.

With regard to potential nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

5. List of Agencies and Persons Consulted

Much of the technical information required for this rulemaking was obtained directly from technical experts within the NRC. No other agencies were consulted in preparing this environmental assessment.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VII. Regulatory Analysis

The NRC has prepared the following regulatory analysis for the proposed rule.

1. Statement of the Problem

The NRC is proposing to amend its regulations regarding the requirement for fire barrier penetration seal materials to be noncombustible and is also proposing to make minor changes to § 50.48 and to Appendix R to 10 CFR Part 50. The proposed changes would remove footnote 3 from § 50.48(a) and footnote 4 from § 50.48(b); remove paragraphs (c), (d), and (e) from § 50.48; correct a grammatical error in footnote 2 to Section III.G.3 of Appendix R; and make editorial changes to comply with the Presidential memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing."

2. Objectives of the Rulemaking

The main objective of the proposed rule is to remove the requirement of Section III.M of Appendix R to 10 CFR Part 50 that fire barrier penetration seal materials be noncombustible. In addition, this rule would remove certain parts of § 50.48, correct a grammatical error in Appendix R, and make editorial changes.

3. Alternative

The alternative of no regulatory action would continue the unnecessary regulatory burden on licensees and on the NRC.

4. Consequences

Removing the requirement that fire barrier penetration seal materials be noncombustible from Section III.M of Appendix R to Part 50 would lessen the unnecessary regulatory burden on licensees and on the NRC staff. It would allow licensees to use combustible materials in penetration seals without requesting an exemption from the requirement in Section III.M of Appendix R regarding the noncombustibility of penetration seal materials, provided the seals are qualified by fire endurance tests comparable to those used to rate fire barriers and conducted in accordance with an industry standard. The other minor changes are administrative and would not affect the regulatory burden on licensees.

5. Value Impact Analysis

The value (benefit) and impact (cost) of the proposed changes are estimated below. Section III.M of Appendix R to 10 CFR Part 50 applies to the plants that were operating before January 1, 1979, and had open items when Appendix R was published. As detailed in NUREG–1552, Supplement 1, Section III.M of Appendix R applies to 5 operating reactors. In order to estimate the benefit of the proposed change, the NRC assumed that the licensees for these plants may replace some of their penetration seals with penetration seals made of silicone-based combustible material and that these licensees request an exemption from the technical requirements of Section III.M of Appendix R. Labor cost is $145/hr for a power reactor licensee and $75/hr for NRC. The change to Section III.M of Appendix R would save licensees the cost of preparing an exemption request and would save the NRC the cost of preparing a safety evaluation and processing the request. Assuming a cost saving of approximately $7500 for licensees and approximately $2500 for NRC for each exemption request, the total cost saving from the change to Section III.M would be approximately $50,000. There would be no benefit or cost associated with the other proposed changes.

6. Decision Rationale

The NRC reviewed the requirement of Section III.M of Appendix R during its reassessment of fire barrier penetration seals and determined that this requirement does not contribute significantly to safety. The removal of the requirement of Section III.M would reduce the regulatory burden on the licensee without reducing safety. In addition, the proposed rule would make the following minor changes: remove footnote 3 from § 50.48(a) and footnote 4 from § 50.48(b); remove paragraphs (c), (d), and (e) from § 50.48; correct an error in footnote 2 to Section III.G.3 of Appendix R; and make editorial changes to comply with the Presidential memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing." The other changes as discussed above would not change the regulatory burden on the licensees and do not affect safety.

VIII. Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule if adopted would not have a significant impact on a substantial number of small entities. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act (15 U.S.C. 632) or the Commission's size standards at 10 CFR 2.810 (60 FR 18344; April 11, 1995).

IX. Backfit Analysis

The NRC has determined that these amendments do not involve any provisions that would impose backfits because it does not meet the definition of backfit contained in § 50.109(a)(1) for the following reasons. The removal of the requirement that fire barrier penetration seals be noncombustible is a permissive relaxation of an existing requirement and does not constitute imposition of a new requirement. The removal of footnotes 3 and 4 from § 50.48 does not affect the licensing basis for existing plants, does not constitute a change in design requirements for existing plants, and is not applicable to future plants. The schedular requirements contained in paragraphs (c) and (d) of § 50.48 apply to plants licensed before February 17, 1981, and have been implemented at these plants. The requirements contained in paragraph (e) of § 50.48 apply to existing plants and have been implemented at all applicable plants. Therefore, the removal of paragraphs (c),

(d), and (e) from § 50.48 does not affect the licensing basis and does not constitute a change in design or optional requirements for these plants. The correction of a grammatical error in footnote 2 to Section III.G.3 of Appendix R and the changes in the language of § 50.48 in accordance with the Executive Order on Plain English are administrative changes that do not change any requirement and need not be considered in this backfit determination. For the reasons stated above, a backfit analysis need not be prepared.

X. Voluntary Consensus Standards

The National Technology Transfer Act of 1995, Pub. L.104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC proposes to delete the Government-unique standard in 10 CFR Part 50, Appendix R, Section III.M, which requires that fire barrier penetration seals utilize only noncombustible materials. The NRC is not aware that deletion of this requirement is inconsistent with any voluntary consensus standard. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain how the voluntary consensus standard supports retention of the Government-unique standard or is otherwise inconsistent with deletion of the requirement and why the voluntary consensus standard should be used in lieu of implementing the action to delete the identified Government-unique standard.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons given in the preamble and under the authority for the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Section 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.Q. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.Q. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.Q. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.Q. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.Q. 2234). Appendix F also issued under sec. 187, 68 Stat. 954 (42 U.S.Q. 2237).

2. In § 50.48, paragraphs (a), (b), and (f) are revised to read as follows:

§ 50.48 Fire protection.

(a)(1) Each operating nuclear power plant must have a fire protection plan that satisfies Criterion 3 of appendix A to this part. This fire protection plan must:

(i) Describe the overall fire protection program for the facility;

(ii) Identify the various positions within the licensee's organization that are responsible for the program;

(iii) State the authorities that are delegated to each of these positions to implement those responsibilities; and

(iv) Outline the plans for fire protection, fire detection and suppression capability, and limitation of fire damage.

(2) The plan must also describe specific features necessary to implement the program described in paragraph (a)(1) of this section such as—

(i) Administrative controls and personnel requirements for fire prevention and manual fire suppression activities;

(ii) Automatic and manually operated fire detection and suppression systems; and

(iii) The means to limit fire damage to structures, systems, or components important to safety so that the capability to shut down the plant safely is ensured.

(3) The licensee shall retain the fire protection plan and each change to the plan as a record until the Commission terminates the reactor license. The licensee shall retain each superseded revision of the procedures for 3 years from the date it was superseded.

(b) Appendix R to this part establishes fire protection features required to satisfy Criterion 3 of appendix A to this part with respect to certain generic issues for nuclear power plants licensed to operate before January 1, 1979.

(1) Except for the requirements of Sections III.G, III.J, and III.O, the provisions of appendix R to this part do not apply to nuclear power plants licensed to operate before January 1, 1979, to the extent that—

(i) Fire protection features proposed or implemented by the licensee have been accepted by the NRC staff as satisfying the provisions of appendix A to Branch Technical Position (BTP) APCSB 9.5–1 reflected in NRC fire protection safety evaluation reports issued before the effective date of February 19, 1981; or

(ii) Fire protection features were accepted by the NRC staff in comprehensive fire protection safety evaluation reports issued before appendix A to Branch Technical Position (BTP) APCSB 9.5–1 was published in August 1976.

(2) With respect to all other fire protection features covered by appendix R, all nuclear power plants licensed to operate before January 1, 1979, must satisfy the applicable requirements of appendix R to this part, including specifically the requirements of Sections III.G, III.J, and III.O.

* * * * *

(f) Licensees that have submitted the certifications required under § 50.82(a)(1) shall maintain a fire protection program to address the potential for fires that could cause the release or spread of radioactive materials (i.e., that could result in a radiological hazard).

(1) The objectives of the fire protection program are to—

(i) Reasonably prevent such fires from occurring;

(ii) Rapidly detect, control, and extinguish those fires that do occur and that could result in a radiological hazard; and

(iii) Ensure that the risk of fire-induced radiological hazards to the public, environment and plant personnel is minimized.

(2) The licensee shall assess the fire protection program on a regular basis.

The licensee shall revise the plan as appropriate throughout the various stages of facility decommissioning.

(3) The licensee may make changes to the fire protection program without NRC approval if these changes do not reduce the effectiveness of fire protection for facilities, systems, and equipment that could result in a radiological hazard, taking into account the decommissioning plant conditions and activities.

3. In Appendix R, footnote 2 to Section III.G.3 and Section III.M are revised to read as follows:

Appendix R to Part 50—Fire Protection Program for Nuclear Power Facilities Operating Before January 1, 1979

* * * * *

III. Specific Requirements * * *

G. * * *

3. Alternative of dedicated shutdown capability and its associated circuits,[2] independent of cables, systems or components in the area, room, zone under consideration should be provided: * * *

[2] Alternative shutdown capability is provided by rerouting, relocating, or modifying existing systems; dedicated shutdown capability is provided by installing new structures and systems for the function of post-fire shutdown.

* * * * *

M. Fire barrier cable penetration seal qualification. Penetration seal designs must be qualified by tests that are comparable to tests used to rate fire barriers. The acceptance criteria for the test must include the following:

1. The cable fire barrier penetration seal has withstood the fire endurance test without passage of flame or ignition of cables on the unexposed side for a period of time equivalent to the fire resistance rating required of the barrier;

2. The temperature levels recorded for the unexposed side are analyzed and demonstrate that the maximum temperature is sufficiently below the cable insulation ignition temperature; and

3. The fire barrier penetration seal remains intact and does not allow projection of water beyond the unexposed surface during the hose stream test.

* * * * *

Dated at Rockville, Maryland, this 11th day of August, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–21396 Filed 8–17–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–14]

Proposed Amendment to Class D and Establishment of Class E2 Airspace; Fort Rucker, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class D hours of operation and establish Class E2 airspace at Fort Rucker, AL, for the Cairns Army Air Field. The control tower at Cairns Army Air Field is now open 0600–0100 daily. Therefore, the Class D airspace hours of operation are amended from continuous to part time. This action requires establishment of Class E2 surface area airspace when the tower is closed and approach control service is provided by Cairns Army Radar Approach Control Facility.

DATES: Comments must be received on or before September 17, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–14, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D hours of operation and establish Class E2 surface area airspace at Fort Rucker, AL, for the Cairns Army Air Field. The control tower at Cairns Army Air Field is open 0600–0100 daily. Therefore, the Class D airspace would be amended from continuous to part time. This action would also establish Class E2 surface area airspace when the tower is closed and approach control service is provided by Cairns Army Radar Approach Control Facility. Class D airspace designations and Class E airspace areas designated as a surface area for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lislt of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO AL D Fort Rucker, AL [Revised]

Cairns Army Air Field, AL
(Lat. 31°16'14" N., long. 85°43'58" W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 5-mile radius of lat. 31°18'30" N. long. 85°42'20" W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the DOD IFR—Supplement Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

ASO AL E2 Fort Rucker, AL [New]

Within a 5-mile radius of lat. 31°18'30" N., long. 85°42'20" W. This Class E surface area airspace is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the DOD IFR—Supplement Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on August 3, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–21037 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6424–4]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is proposing to grant a petition submitted by DuraTherm, Incorporated (DuraTherm). DuraTherm petitioned the Agency to exclude (or delist) desorber solid waste generated at its recycling facility from the lists of hazardous wastes contained in 40 CFR 261.24, 261.31, and 261.32.

DuraTherm submitted the petition under §§ 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of §§ 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We believe that DuraTherm's petitioned waste is nonhazardous with respect to the original listing criteria and that the waste process DuraTherm uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. Their process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until October 4, 1999. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

ADDRESSES: Please send three copies of your comments: Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send the third copy to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle. Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: "F–99–TXDEL–DURATHERM."

You should address requests for a hearing to the Acting Director, Robert E. Hannesschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Your requests for a hearing must reach EPA by September 2, 1999. The request must contain the information prescribed in § 260.20(d).

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Michelle Peace, Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–7430.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
- A. What action is EPA proposing?
- B. Why is EPA proposing to approve this delisting?
- C. How will DuraTherm manage the waste if it is delisted?
- D. When would the proposed delisting exclusion be finalized?
- E. How would this action affect states?

II. Background
- A. What is the history of the delisting program?
- B. What is a delisting petition, and what does it require of a petitioner?
- C. What factors must EPA consider in deciding whether to grant a delisting petition?

III. EPA's Evaluation of the Waste Data
- A. What wastes did DuraTherm petition EPA to delist?
- B. Who is DuraTherm, and what process do they use?

C. How did DuraTherm sample and analyze the waste data in this petition?
D. What were the results of DuraTherm's analysis?
E. How did EPA evaluate the risk of delisting this waste?
F. What did EPA conclude about DuraTherm's analysis?
G. What other factors did EPA consider?
H. What is EPA's final evaluation of this delisting petition?
IV. Next Steps
A. With what conditions must the petitioner comply?
B. What happens if DuraTherm violates the terms and conditions?
V. Public Comments
A. How may I as an interested party submit comments?
B. How may I review the docket or obtain copies of the proposed exclusions?

I. Overview Information

a. What Action is EPA Proposing?

The EPA is proposing:

(1) To grant DuraTherm's petition to have their desorber solids excluded, or delisted, from the definition of a hazardous waste; and (2) to use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency uses this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

B. Why is EPA Proposing To Approve This Delisting?

DuraTherm petitioned the Agency to exclude, or delist, the desorber solids because they do not believe that the petitioned waste meets the criteria for which EPA listed it. DuraTherm also believes no additional constituents or factors could cause the wastes to be hazardous.

Based on our review, described below, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If our review had found that the waste remained hazardous based on the factors for which DuraTherm originally listed the waste, we would have proposed to deny the petition.)

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* § 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3).

We also evaluated the waste for other factors or criteria to assess whether these additional factors could cause the waste to be hazardous. These factors included, (1)whether the waste is considered acutely toxic; (2) the toxicity of the constituents, (3) the concentration of the constituents in the waste, (4) the waste constituent's tendency to migrate and to bioaccumulate, (5) its persistence in the environment once released from the waste, (6) plausible and specific types of management of the petitioned waste, (7) the quantity of waste produced, and (8) waste variability.

The EPA believes that the petitioned waste does not meet the criteria for which we listed the waste, and therefore, should be delisted. The EPA's decision to delist waste from DuraTherm's facility is based on the description of the thermal desorption treatment system and analytical data from the San Leon facility submitted to support today's rule.

C. How Will DuraTherm Manage the Waste if It Is Delisted?

If the petitioned waste is delisted, DuraTherm intends to manage it in one of three off-site municipal solid waste landfills. If the waste is stabilized, DuraTherm must ensure that the stabilized waste will also meet the delisting levels. DuraTherm currently disposes of the petitioned waste (desorber solids) generated at its facility in two off-site RCRA hazardous waste landfills that are not owned/operated by DuraTherm.

D. When Would the Proposed Delisting Exclusion Be Finalized?

The HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

This rule, if finalized, will become effective immediately upon final publication. The HSWA amended § 3010 of RCRA allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of § 3010, and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. What States Would Be Affected By This Action?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If DuraTherm transports the petitioned waste to or manages the waste in any State with delisting authorization, DuraTherm must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials,

industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to demonstrate that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because they do not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for the listed wastes. The criteria for which EPA lists a waste are in § 261.11 and in the background documents for the listed wastes.

In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. *See* § 260.22, 42 U.S.C. § 6921(f) and the background documents for the listed wastes.

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a), in 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous. *See* the Hazardous and Solid Waste Amendments (HSWA) of 1984.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* §§ 261.3(a)(2)(iv) and (c)(2)(I), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the EPA on procedural grounds. *See Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278). Consult these references for more information about mixtures derived from wastes.

III. EPA's Evaluation of the Waste Information and Data

A. What Wastes Did DuraTherm Petition EPA To Delist?

On November 6, 1998, DuraTherm in San Leon, Texas, petitioned the EPA for a standard exclusion of 20,000 cubic yards of desorber solids, per calendar year, resulting from its thermal desorption treatment process. The Agency has presently listed the resulting waste under § 261.3(c)(2)(I) (the "derived from" rule), as EPA Hazardous Waste No. F037, F038, K048, K049, K050 and K051. Table 1 lists the constituents of concern for these waste codes.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTE STREAMS

Waste Code	Basis for Characteristics/Listing
F037	Benzene, benzo(a)pyrene, Chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, Chrysene, lead, chromium.
K048	Hexavalent Chromium, Lead
K049	Hexavalent Chromium, Lead.
K050	Hexavalent Chromium.
K051	Hexavalent Chromium, Lead.

B. What Information and Analyses Did DuraTherm Submit To Support This Petition?

To support its petition, DuraTherm submitted:

(1) Descriptions of its thermal desorption processes associated with petitioned wastes;

(2) results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) results for reactive sulfide,

(5) results for reactive cyanide,

(6) results for pH,

(7) results of the metals concentrations in the Multiple Extraction Procedure extract, and

(8) results of ignitability.

DuraTherm tested and analyzed the waste stream under five conditions to properly account for variables in the waste stream: during start-up operations, shut-down operations, slow feed rates, fast feed rates, and normal operations. For wastes that failed to meet the estimated delisting levels, DuraTherm stabilized the wastes to prevent leaching metal constituents from the wastes. The facility submitted results from the Multiple Extraction Procedure run on the stabilized materials.

C. Who Is DuraTherm, and What Process Do They Use To Generate the Petitioned Waste?

DuraTherm is an environmental waste management and resource recovery company specializing in separation technologies applicable to hydrocarbon contaminated wastes. The company has operated a RCRA Part B permitted thermal desorber facility since 1994. The facility processes large volumes of hazardous waste from petroleum industries. The DuraTherm process recovers hydrocarbons from hydrocarbon contaminated soils and sludges and reduces the volume of solids requiring landfill disposal. The thermal desorption process uses high temperatures to volatilize organics from a waste matrix in a nonoxidizing atmosphere, while pulverizing the waste material.

The thermal desorption system:

(1) Consists of a rotating drum that a gas-fired convection heater externally heats.

(2) Has support systems for feed, vapor condensation, recovery and phase separation of liquids, solids, cooling and handling and airs pollution control devices.

(3) Uses countercurrent inert gas or nitrogen purge/sweep to maintain oxygen levels below those required for combustion. The purge/sweep system also directs volatilized contaminants to the vapor exit.

(4) Uses a continuous feed system. Feed rates can vary from 2,000 to 8,000 pounds per hour depending on moisture content. Weight scales in the hopper monitor the feed rates.

Hot air that is circulated around the drum heats the rotary drum. A high temperature fan pulls the hot air away

from the enclosed burner box through the stationary heater shell and across the finned section of the rotary drum.

The solids are removed from the drum by water jacketed hollow shaft screw conveyors that are split to two parallel lines and then discharged through an air lock into roll-off containers. These containers are sealed under hydraulically controlled lids to eliminate particulate emissions. The facility moves roll-off containers of filled with desorber solids to a container storage area.

DuraTherm then samples and tests the desorber solids. They ship the waste when the analysis is complete and results indicate the materials meet applicable land disposal restrictions.

DuraTherm sells the recovered oil that meets the used oil specifications as product. The company sells the oil that fails the used oil specifications to petroleum refiners for use in the refining process.

D. How Did DuraTherm Sample and Analyze the Data in This Petition?

DuraTherm generated the waste samples from the thermal desorption unit under five different operating conditions: at start-up, shutdown, high feed rates, low feed rates, and under normal operating conditions.

For sampling, DuraTherm developed a list of constituents of concern from comparing a list of all raw materials used in the plant that could potentially appear in the petitioned waste with those in 40 CFR Appendix IX part 264.

During a twenty-one day operational period, DuraTherm conducted its sampling. Using the list of constituents of concern, DuraTherm developed a sampling list based on the availability of test methods and process knowledge. DuraTherm analyzed the forty composite samples:

(1) For the total concentrations (that is, the mass of a particular constituent per mass of waste) of selected volatiles and semivolatiles, and metals from Appendix IX.

(2) to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide.

(3) for TCLP concentrations (that is, the mass of a particular constituent per unit volume of extract) of selected volatiles, semivolatiles, and metals on the Appendix IX list.

DuraTherm Used These Methods	To Quantify
SW–846 Method 8260A, 8270B, and 6010.	The total constituent concentrations of 40 CFR, part § 264 Appendix IX Volatiles Appendix IX Semivolatiles (excluding PCBs, Pesticides, Herbicides) and Appendix IX Metals.
SW–846 Methods 1311, 8260A, 8270B, 6010, 8290.	The TCLP concentrations of constituents in the extract.
SW–846 1320	The concentration of metal constituents in the extract after the Multiple Extraction Procedure.
SW–846 Methods 7470A, 7471A.	Mercury.
SW–846 9071A	Total oil and grease.
SW–846 9045A	pH.
SW–846 9030	Reactive Sulfide.
SW–846 9010A	Reactive Cyanide.

E. What Were the Results of DuraTherm's Analysis?

The Desorber Solids do not meet the definitions for characteristic waste as defined by §§ 261.21–261.24. Table 2 presents the maximum total constituent and leachate concentrations for the Desorber Solids.

Twenty-six of the forty samples tested exceeded the maximum allowable leachate concentration for antimony. For this petition the maximum allowable leachate concentration for antimony is 0.162 mg/L. The EPA did not base its listing of F037, F038, K048, K049, K050 or K051 on the presence of antimony. One of the twenty-six waste samples exceeded the maximum allowable leachate concentration for lead (0.405 mg/L). We eliminated these samples from the delisting evaluation. The EPA evaluated fourteen samples of waste. We believe that these fourteen samples are representative of the waste codes to be delisted. DuraTherm also anticipated the failures, stabilized the waste with Portland Cement, and analyzed three of these samples using the Multiple Extraction Procedure. The Multiple Extraction Procedure detected metals concentrations for zinc (3.98 mg/l), antimony (0.15 mg/l), barium (3.37 mg/l), chromium (0.01 mg/l), and vanadium (0.03 mg/l). These concentrations were below the maximum allowable leachate concentrations EPA sets as delisting criteria.

TABLE 2. MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS DESORBER SOLIDS [1]

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Antimony	107	0.14
Arsenic	67.1	0.67
Barium	7,750	2.86
Benzene	5.56	0.0129
Benzo (a) anthracene.	0.241	ND
Beryllium	4.73	0.006
Bis ethylhexyl phthalate.	0.356	ND
Butanone (MEK) ...	1.76	0.0315
Cadmium	7.19	0.11
Carbon Disulfide ...	0.67	ND
Chromium	987	0.18
Chrysene	0.08	ND
o-Cresol	0.134	0.0044
m,p cresols	0.088	0.0053
Ethylbenzene	0.15	ND
Fluoranthene	0.166	ND
Lead	3,910	0.23
Nickel	1,310	2.37
Phenanthrene	0.284	ND
Phenol	0.259	0.0135
Pyrene	0.153	ND
Selenium	58.6	0.22
Silver	8.05	0.02
Styrene	0.38	ND
Toluene	1.16	0.0008
Vanadium	3,760	0.11
Xylene	0.17	ND
Zinc	6,290	26.5
Reactive sulfide	60	
Total sulfide	21,800	
Total cyanide	2.3	
Oil and grease	4,700	
pH	5.97–12.4	

ND Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituent found in any sample. These levels do not necessarily represent the specific levels found in one sample.

F. How Did EPA Evaluate the Risk of Delisting This Waste?

The EPA considered the appropriateness of alternative waste management scenarios for DuraTherm's desorber solids. Based on the information provided in the petition, we decided that disposing of the desorber solids in a municipal solid waste landfill is the most reasonable, worse-case scenario for the desorber solids.

Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated DuraTherm's petitioned wastes using the modified EPA Composite Model for Landfills/Surface Impoundments (EPACML). The model predicts the potential for ground water

contamination from wastes disposed of in a landfill.

You can find a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting in 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991) and the RCRA public docket. This model includes both unsaturated and saturated zone transport modules. It uses the reasonable worse-case contaminant levels in ground water at a compliance point; that is, a receptor well serving as a drinking-water supply.

Specifically, the model estimates the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground water recharge for a specific volume of waste. The EPA requests comments on using the EPACML to evaluate DuraTherm's desorber solids.

To evaluate DuraTherm's petitioned waste, we used the EPACML to evaluate the mobility of the hazardous constituents detected in the extract of samples of DuraTherm's desorber solids. Typically, the EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming that an ongoing process generates wastes for 20 years. The DAF for the waste volume of desorber solids is 20,000 cubic yards/year, assuming 20 years is 27.

The EPA's evaluation of the desorber solids using a DAF of 27, an estimated maximum waste volume of 20,000 cubic yards, and the maximum reported TCLP concentrations (see Table 2), yielded compliance point concentrations (see Table 3) that are below the current health-based levels.

TABLE 3.—COMPLIANCE POINT CONCENTRATIONS

Constituents	Compliance point concentration	Regulatory limit
Antimony	0.005	0.006
Arsenic	0.02	0.05
Barium	0.106	2
Benzene	0.0005	0.005
Beryllium	0.0002	0.004
Butanone (MEK)	0.0012	20
Cadmium	0.004	0.005
Chromium	0.006	0.1
o Cresol	0.002	2
m,p cresols	0.009	0.2
Lead	0.008	0.015
Nickel	0.087	0.1
Phenol	0.009	20
Selenium	0.008	0.05
Silver	0.0007	0.2
Styrene	0.0002	0.1
Toluene	0.0004	1
Vanadium	0.004	0.2
Zinc	0.981	10

The maximum reported or calculated leachate concentrations of barium, benzene, and selenium in the desorber solids yielded compliance point concentrations below the health-based levels used in the delisting decision-making.

The EPA did not evaluate the mobility of the remaining constituents (for example, anthracene and pyrene) from DuraTherm's waste because DuraTherm did not detect them in the leachate using the appropriate analytical test methods (see Table 2). As explained above, we do not evaluate nondetectable concentrations of a constituent of concern in a petitioner's modeling efforts for delisting.

We believe the TCLP is the appropriate analytical method to use in evaluating this petition. DuraTherm's waste streams range in pH between 5.97 and 12.4. We also know the disposal scenarios used. The EPA believes that the TCLP will adequately predict the leachability of constituents in the waste. To confirm that the waste will not leach at concentrations that may affect human health and the environment, EPA will require DuraTherm to analyze the constituents in the waste at varying pH conditions during the verification testing.

G. What Did EPA Conclude About DuraTherm's Analysis?

After reviewing DuraTherm's processes, the EPA concludes that:

(1) No additional hazardous constituents of concern are likely to be present or formed as reaction products or by-products in DuraTherm's waste.

(2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* §§ 261.21, 261.22, and 261.23, respectively.

H. What Other Factors Did EPA Consider in Its Evaluation?

During the evaluation of DuraTherm's petition, the EPA also considered the potential impact of the petitioned waste via air emission and surface run-off.

Potential Impact Via Air Emission

The Agency evaluated the potential hazards resulting from airborne exposure to the hazardous constituents released from the desorber solids. We investigated the potential hazard from exposure to particulates released from the surface of an open landfill.

We considered exposure to hazardous constituents through: (1) Inhalation of particulates and absorption into the lungs, (2) ingestion of particulates eliminated from respiratory passages and subsequently swallowed, and (3) air deposition of particulates and subsequent ingestion of the soil/waste mixture.

We believe that exposure to airborne contaminants from DuraTherm's petitioned wastes is unlikely. DuraTherm's waste should have no appreciable air releases under the proposed disposal conditions.

The results of this worse-case analysis suggested no substantial present or potential hazard to human health from airborne exposure to constituents from DuraTherm's desorber solids.

The estimated levels of the hazardous constituents of concern released into the air are below health-based levels for human health, ingestion, and inhalation levels of concern, and the EPA Concentration-Based Exemption Criteria for Soils (57 FR 21450, May 20, 1992).

For a description of the EPA's assessment of the potential impact of DuraTherm's waste on airborne dispersion of waste contaminants, see the RCRA public docket for today's proposed rule.

Potential Impact Via Surface Run-off Water Routes

The EPA also considered the potential impact of the petitioned wastes via a surface water route. The EPA believes those containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations prohibit pollutant discharges into surface waters. *See* 56 *FR* 50978, October 9, 1991.

The concentrations of any hazardous constituents dissolved in the run-off might be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP.

We believe leachate derived from the waste is unlikely to directly enter a surface water body. The leachate will not enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water. The leachable concentration shows the fraction of the constituent that mobilizes in surface water and ground water.

For the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, we evaluated the potential impacts on surface water if release of constituents of DuraTherm's waste by runoff and erosion occurs. *See* the RCRA public docket for today's

proposed rule. The estimated levels of the hazardous constituents of concern in surface water are below health-based levels for human health and the EPA Chronic Water Quality Criteria for aquatic organisms (EPA, OWRS, 1987).

The EPA, therefore, concluded that DuraTherm's desorber solids waste is not a substantial or potential hazard to human health and the environment via surface water exposure.

I. What Is EPA's Final Evaluation of This Delisting Petition?

The descriptions of the DuraTherm hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the exclusion. We conclude DuraTherm's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Their process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant DuraTherm a conditional exclusion for the desorber solids. The EPA believes the data submitted in support of the petition show DuraTherm's process can render the desorber solids nonhazardous.

We have reviewed the sampling procedures used by DuraTherm and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the desorber solids. The data submitted in support of the petition show that constituents in DuraTherm's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that DuraTherm has successfully demonstrated that the desorber solids are nonhazardous.

The EPA therefore, proposes to grant a conditional exclusion to the DuraTherm Corporation, in San Leon, Texas, for the desorber solids described in its petition. The EPA's decision to conditionally exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the desorber solids.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, DuraTherm, must comply with the requirements in 40 CFR part 261, Appendix IX, Tables 1 and 2. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents that DuraTherm must test the leachate from the desorber solids, below which these wastes would be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) because of information in the petition. We compiled the list from the composition of the waste, descriptions of DuraTherm's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making.

We established the proposed delisting levels by calculating the Maximum Allowable Leachate (MALs) concentrations from the Health-based levels (HBL) for the constituents of concern and the EPACML chemical-specific DAF of 27, that is, MAL = HBL × DAF. We also limited the MALs so the concentrations would not exceed non waste water concentrations in the Land Disposal Restriction treatment standards for F037, F038, K048, K049, K050, and K051 in 40 CFR part 268. These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that DuraTherm manages and disposes of any desorber solids that might contain hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Holding the desorber solids until characterization is complete will protect against improper handling of hazardous material. If EPA determines that the data collected under this Paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective when we sign it, but the disposal cannot begin until the verification sampling is completed.

(3) Verification Testing Requirements

(A) *Initial Verification Testing:*

If the EPA determines that the data from the initial verification period shows the treatment process is effective, DuraTherm may request that EPA allow it to conduct verification testing quarterly. If EPA approves this request in writing, then DuraTherm may begin verification testing quarterly.

The EPA believes that an initial period of 60 days is adequate for a facility to collect sufficient data to verify that the data provided for the desorber solids, in the 1998 petition, is representative.

We are requiring DuraTherm to conduct a multiple pH analysis because in our experience more leaching can occur from disposed waste when the pH of the waste is extremely acidic or basic. DuraTherm's desorber solids vary greatly in pH, from 5.97 to 12.4. The pH of the desorber solid cannot exceed a pH of 12.5 when measured using SW–846, Method 9045C. DuraTherm must analyze 10 samples of the desorber solids using a multiple pH extraction procedure. The 10 waste samples should consist of both the non-stabilized and stabilized residual solids samples. If none of the samples collected during the 60 day test period need to be stabilized, DuraTherm should provide multiple pH data on the first sample of stabilized wastes generated. The multiple pH test is similar to the TCLP, but the test uses different pH extraction fluids. DuraTherm should design the analytical test to show that the petitioned waste when disposed of in an acidic and basic landfill environment would not leach concentrations above the levels of regulatory concern. The third condition should reflect how the petitioned waste will behave when it is disposed in a landfill environment similar to the pH of the waste. The EPA believes that evaluating the leachate generated from using extraction fluids over a range of pHs can simulate general disposal conditions and provide added assurance that the waste will remain nonhazardous when disposal conditions change. The petitioner must perform these analyses to confirm that the leachate concentrations do not exceed the concentrations in Paragraph 1 over a wide pH range. While the waste's pH does vary, the Agency believes that under the various pH conditions the waste will remain stable, and thus will proceed with the promulgation of the proposed decision.

If we determine that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification period demonstrate that the treatment process is effective, DuraTherm may request quarterly testing. EPA will notify DuraTherm, in writing, if and when they may replace the testing conditions in paragraph

(3)(A)(i) with the testing conditions in (3)(B).

(B) *Subsequent Verification Testing:* The EPA believes that the concentrations of the constituents of concern in the desorber solids may vary over time. As a result, to ensure that DuraTherm's treatment process can effectively handle any variation in constituent concentrations in the waste, we are proposing a subsequent verification testing condition.

The proposed subsequent testing would verify that DuraTherm operates the thermal desorption as it did during the initial verification testing. It would also verify that the desorber solids do not exhibit unacceptable levels of toxic constituents. The EPA is proposing to require DuraTherm to analyze representative samples of the desorber solids quarterly during the first year of waste generation. DuraTherm would begin quarterly sampling on the anniversary date of the final exclusion as described in Paragraph (3)(B). They must also use the multiple pH extraction procedure for samples collected during the quarterly and annual sampling.

(C) *Termination of Organic Testing:* The EPA is proposing to end the subsequent testing conditions for organics during the first year in Paragraph (1)(C) after DuraTherm has demonstrated that the waste consistently meets the delisting levels. Annual testing requires the full list of components in Paragraph 1.

If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, DuraTherm must notify the Agency according to the requirements in Paragraph 6. We will take the appropriate actions necessary to protect human health and the environment. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

To confirm that the characteristics of the waste do not change significantly over time, DuraTherm must continue to analyze a representative sample of the waste for organic constituents annually. If operating conditions change as described in Paragraph (4); DuraTherm must reinstate all testing in Paragraph (1)(A). They must prove through a new demonstration that their waste meets the conditions of the exclusion. DuraTherm must continue organic testing of the desorber solids for the exclusion of that waste.

(4) Changes in Operating Conditions

Paragraph (4) would allow DuraTherm the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, DuraTherm must prove the effectiveness of the modified process and request approval from the EPA. DuraTherm must manage wastes generated during the new process demonstration as hazardous waste until they have obtained written approval and Paragraph (3) is satisfied.

(5) Data Submittals

To provide appropriate documentation that DuraTherm's facility is properly treating the waste, DuraTherm must compile, summarize, and keep delisting records on-site for a minimum of five years. They should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that DuraTherm furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 20,000 cubic yards of desorber solids, generated annually at the DuraTherm facility after successful verification testing.

We would require DuraTherm to file a new delisting petition under any of the following circumstances:

(a) If they significantly alter the thermal desorption treatment system except as described in Paragraph (4)

(b) If they use any new manufacturing or production process(es), or significantly change from the current process(es) described in their petition; or

(c) If they make any changes that could affect the composition or type of waste generated.

DuraTherm must manage waste volumes greater than 20,000 cubic yards of desorber solids as hazardous until we grant a new exclusion.

When this exclusion becomes final, DuraTherm's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. DuraTherm must either treat, store, or dispose of the waste in an on-site facility. If not, DuraTherm must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste.

(6) Reopener Language

The purpose of Paragraph 6 is to require DuraTherm to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. DuraTherm must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition if presented.

This provision expressly requires DuraTherm to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that DuraTherm provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. DuraTherm must provide this notification within 60 days of commencing this activity.

D. What Happens if DuraTherm Violates the Terms and Conditions?

If DuraTherm violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will

continue to evaluate these events on a case-by-case basis. The Agency expects DuraTherm to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraphs 3, 4, 5 and 6 of the exclusion.

V. Public Comments

A. How May I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

Please send three copies of your comments: Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send the third copy to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: F–99–TXDEL–DURATHERM.

You should address requests for a hearing to the Acting Director, Robert E. Hannesschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order (E.O.) 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of E.O. 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law (Pub. L.) 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovermental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

XI. Executive Order 13045

The E.O. 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines: (1) Is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866.

XII. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of E.O. 13084 do not apply.

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act (NTTAA), the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the NTTAA requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards, and thus the Agency has no need to consider the use of voluntary consensus standards in developing this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: July 13, 1999.

Robert E. Hannesschlager,

Acting Division Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFYING AND LISTING HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Tables 1 and 2, of Appendix IX of Part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility and address	Waste description
*	*
DuraTherm, Incorporated San Leon, Texas.	Desorber solids, (at a maximum generation of 20,000 cubic yards per calendar year) generated by DuraTherm using the thermal desorption treatment process, (EPA Hazardous Waste No. F037 and F038) and that is disposed of in Subtitle D landfills after [publication date of the Final exclusion]. For the exclusion to be valid, DuraTherm must implement a testing program that meets the following Paragraphs: (1) Delisting Levels: All leachable concentrations for those constituents must not exceed the following levels (ppm). The petitioner must use an acceptable leaching method, for example SW-846, Method 1311 to measure constituents in the waste leachate. Desorber solids— (i) Inorganic Constituents Arsenic—1.35; Antimony—0.162; Barium-21.0; Beryllium—0.108; Cadmium-0.135; Chromium-2.7; Lead-0.405; Nickel—2.7; Selenium-0.82; Silver-0.43; Vanadium-4.3; Zinc-270. (ii) Organic Constituents Anthracene—0.28; Benzene—0.135; Benzo(a) anthracene—0.059; Benzo(b)fluoranthene—0.11; Benzo(a)pyrene—0.061;Bis-ethylhexylphthalate—0.28; Carbon Disulfide—3.8; Chlorobenzene—0.057; Chrysene—0.059; o,m,p Cresols—54; Dibenzo(a,h) anthracene—0.055; 2,4 Dimethyl phenol—18.9; Dioctyl phthalate—0.017; Ethylbenzene—0.057; Fluoranthene—0.068; Fluorene—0.059; Naphthalene—0.059; Phenanthrene—0.059; Phenol—6.2; Pyrene—0.067; Styrene—2.7; Trichloroethylene—0.054; Toluene—0.08; Xylene—0.032 (2) Waste Holding and Handling: DuraTherm must store the desorber solids as described in its RCRA permit, or continue to dispose of as hazardous all desorber solids generated, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the desorber solids that do not exceed the levels set forth in Paragraph (1) are nonhazardous. DuraTherm can manage and dispose the nonhazardous desorber solids according to all applicable solid waste regulations.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description

(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), DuraTherm must retreat or stabilize the batches of waste used to generate the representative sample until it meets the levels. DuraTherm must repeat the analyses of the treated or stabilized waste.

(D) If the facility has not treated or stabilized the waste, DuraTherm must manage and dispose the waste generated under Subtitle C of RCRA.

(3) *Verification Testing Requirements:* DuraTherm must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, DuraTherm may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). DuraTherm must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B).

(A) *Initial Verification Testing:* After EPA grants the final exclusion, DuraTherm must do the following:

(i) Collect and analyze composites of the desorber solids.

(ii) Make two composites of representative grab samples collected.

(iii) Analyze the waste, before disposal, for all of the constituents listed in Paragraph 1.

(iv) Sixty (60) days after this exclusion becomes final, report the operational and analytical test data, including quality control information.

(v) Submit the test plan for conducting the multiple pH leaching procedure to EPA for approval at least 10 days before conducting the analysis.

(vi) Conduct a multiple pH leaching procedure on 10 samples collected during the sixty-day test period.

(vii) The ten samples should include both non-stabilized and stabilized residual solids. If none of the samples collected during the sixty-day test period need to be stabilized, DuraTherm should provide multiple pH data on the first sample of stabilized wastes generated.

(vii) Perform the toxicity characteristic leaching procedure using three different pH extraction fluids to simulate disposal under three conditions. Simulate an acidic landfill environment, basic landfill environment, and a landfill environment similar to the pH of the waste.

(B) *Subsequent Verification Testing:* Following written notification by EPA, DuraTherm may substitute the testing conditions in (3)(B) for (3)(A)(i). DuraTherm must continue to monitor operating conditions, and analyze representative samples each quarter of operation during the first year of waste generation. The samples must represent the waste generated in one quarter. DuraTherm must run the multiple pH procedure on these waste samples.

(C) *Termination of Organic Testing:*

(i) DuraTherm must continue testing as required under Paragraph (3)(B) for organic constituents in Paragraph (1)(A)(ii), until the analytical results submitted under Paragraph (3)(B) show a minimum of two consecutive samples below the delisting levels in Paragraph (1)(A)(i), DuraTherm may then request that EPA stop quarterly organic testing. After EPA notifies DuraTherm in writing, the company may end quarterly organic testing.

(ii) Following cancellation of the quarterly testing, DuraTherm must continue to test a representative composite sample for all constituents listed in Paragraph (1) annually (by twelve months after final exclusion).

(4) *Changes in Operating Conditions:* If DuraTherm significantly changes the process described in its petition or starts any processes that generate(s)the waste that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify EPA in writing; they may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from EPA.

(5) *Data Submittals:* DuraTherm must submit the information described below. If DuraTherm fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. DuraTherm must:

(A) Submit the data obtained through Paragraph 3 to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD-O) within the time specified.

(B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years.

(C) Furnish these records and data when EPA or the State of Texas request them for inspection.

(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. §1001 and 42 U.S.C. §6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(6) *Reopener Language—*

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
	(A) If, anytime after disposal of the delisted waste, DuraTherm possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, DuraTherm must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If DuraTherm fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) Notification Requirements: DuraTherm must do following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility and address	Waste description
DuraTherm, Incorporated San Leon, Texas.	Desorber Solids, (at a maximum generation of 20,000 cubic yards per calendar year) generated by DuraTherm using the treatment process to treat the Desorber solids, (EPA Hazardous Waste No. K048, K049, K050, and K051 and disposed of in a Subtitle D landfill. DuraTherm must implement the testing program found in Table 1. Wastes Excluded From Non-Specific Sources, for the petition to be valid.

[FR Doc. 99–21422 Filed 8–17–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6423–6]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA (also, "the Agency" in this preamble) is proposing to grant final authorization to the Texas Natural Resource Conservation Commission (TNRCC) for its hazardous waste program revisions, specifically, revisions needed to meet Resource Conservation and Recovery Act (RCRA) Cluster V, which contains Federal rules promulgated between July 1, 1994 to June 30, 1995. In the "Rules and Regulations" section of this **Federal Register** (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 17, 1999.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the

following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana, 70810, (504) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 30, 1999.

W.B. Hathaway,

Acting Regional Administrator, Region 6.

[FR Doc. 99–21424 Filed 8–17–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 43, and 64

[CC Docket No. 99–253; FCC 99–174]

Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirement for Incumbent Local Exchange Carriers: Phase 1

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission is initiating a comprehensive review of its accounting and reporting requirements. In this comprehensive review, we plan to reevaluate our existing accounting and reporting requirements to determine whether they should be modified or eliminated as changes occur in the industry. We also consider the appropriate timing of accounting and reporting changes to assure that we will continue to have the information we need to make informed decisions.

DATES: Interested parties may file written comments on the proposed information collections by August 23, 1999 and reply comment on or before September 9, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before October 18, 1999.

ADDRESSES: Office of the Secretary, Room TW–B204, Federal Communications Commission, 445 12th Street, NW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, NW., Washington, DC 20054, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Accounting Safeguards Division, Common Carrier Bureau, (202) 418–0384 or Andy Mulitz, Accounting Safeguards Division, Common Carrier Bureau, (202) 418–0850. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), CC Docket 99–253, adopted on July 13, 1999, and released on July 14, 1999. It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. The full text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street NW., Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, Washington, DC 20036, telephone (202) 857–3800.

OMB Approval No.: None.

Title: Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1, CC Docket No. 99–253 (NPRM).

Form No.: FCC Report 43–02.

Type of Review: New Collections.

Respondents: Business or other for profit.

Title	No. of respondents	Estimated hours per response	Total annual burden
Uniform Systems of Accounts	239	9540	2,280,080
Annual Auditors Attestations	19	268	5,100
ARMIS USOA Report	52	284	14,770
Allocation of Cost, Cost Allocation Manual	18	300	10,800
Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996 (Affiliate Transaction Only)	20	24	480

Total Annual Burden: 2,311,230.

Estimated Costs Per Respondent: $1,200,000.

Needs and Uses: In CC Docket No. 99–253, the Commission is initiating a comprehensive review of its accounting and reporting requirements. The Commission seeks comment on its proposals to reduce or further streamline its recordkeeping requirements for common carriers, audit requirements for the large incumbent LECs and reduce filing requirements of accounting record changes on the part of affected common carriers. The information is needed so that the Commission can fulfill its statutory responsibilities and obligations.

Summary of Notice of Proposed Rulemaking

We are performing this comprehensive review in two phases. Phase 1, which commences with this Notice of Proposed Rulemaking (NPRM) and will conclude by the end of the year, will address accounting and reporting reform measures that can be implemented without delay and still retain sufficient information for the Commission and state commissions to meet their responsibilities. Phase 2, which will begin in the last quarter of 1999, will examine the current accounting and reporting structure and address long-term changes needed as local exchange markets become competitive. During this process, the Common Carrier Bureau will continue to work closely with the National Association of Regulatory Utility Commissioners (NARUC) and state commissioners so that, in addition to eliminating unnecessary reporting requirements, the Commission and states will focus on further steps necessary to eliminate unnecessary

overlap of Federal and state reporting requirements.

In this first phase of the comprehensive review, we seek comment on the following accounting issues: eliminating or revising the matrix used to classify expenses in the Uniform System of Accounts (USOA); reducing the audit burdens on incumbent local exchange carriers (ILECs); adopting a *de minimis* exception to our affiliate transactions rules; eliminating the 15-day prefiling for cost pool changes; eliminating the notifications and approvals required in §§ 32.13(a)(3) and 32.25; and revising the accounting requirements for §§ 32.2002 and 32.2003. In addition, we seek comment on streamlining the reporting requirements in the ARMIS 43–02 USOA Report. Specifically, we seek comment on eliminating certain corporate information collected in the "C" series tables and on consolidating certain information into one table. We also seek comment on eliminating certain information concerning balance sheet accounts reported in the "B" series tables and income statement accounts reported in the "I" series tables.

A. Accounting Rules

1. Expense Matrix

Section 32.5999(f) of the Commission's rules requires carriers to maintain disaggregated financial data in subsidiary record categories to be reported in an expense matrix. The Commission uses the detailed data contained in the carriers' expense subsidiary record categories in performing studies and trend analyses, and in its overall monitoring efforts. The additional information provided by the expense matrix helps the Commission analyze a carrier's expenses. In particular, the Commission has relied heavily upon the salaries and wages and rent data detailed in the expense matrix. For example, when the Financial Accounting Standards Board (FASB) promulgated new accounting standards for post-employment benefits and post-retirement benefits other than pensions, the Commission used the salaries and wages data in its analysis of the reasonableness of carrier projections related to implementation of the new accounting standards. The Commission also uses the salaries and wages data in calculating productivity factors used to adjust price cap indices. This expense data would be needed for future productivity studies if the price cap formula is revised. Expense matrix data is also used in tracking the salaries and wages and rents portion of maintenance expense in the analysis of service quality. Furthermore, carriers, competitors, and the Commission use the pole rents information detailed in the expense matrix in the formula to calculate carriers' pole attachment rates.

We tentatively conclude that we can eliminate the expense matrix or reduce it to the minimum amount necessary to meet other regulatory purposes. We believe that this information could be provided by the carriers on an as-needed basis even if the Commission did not prescribe it to be maintained. We seek comment on this tentative conclusion. Commenters should discuss whether it would be more burdensome to maintain and file the expense matrix or to keep such data, at the same level of disaggregation, for several years, to provide to the Commission if requested. We seek comment on whether, as an alternative, the reporting burden would be alleviated by reducing the expense matrix to two classifications: (1) salary and wages and (2) other. Commenters should specifically address whether this would affect the analysis of the price cap performance/productivity factor calculations. In addition, we seek comment on whether, and how, elimination of the expense matrix would affect the jurisdictional separations process, universal service support calculations, or service quality studies.

In the *Accounting Reductions Report and Order*, FCC No. 99–106, released June 30, 1999, we required mid-sized ILECs to maintain subsidiary record categories to capture the pole attachment data currently provided in the Class A accounts. We believe it is necessary to require subsidiary records for data needed in pole attachment formulas to assure that the data is publicly available, uniformly maintained among the carriers, and maintained in a manner that can be audited. We propose that, if the expense matrix is eliminated, carriers maintain subsidiary records to provide the data used in the pole attachment formulas and report in their ARMIS reports the information necessary for the Commission, carriers, and competitors to calculate pole attachment rates. We seek comment on this proposal.

2. Audits

The Commission has established accounting safeguards governing the allocation of costs between the carriers' regulated and nonregulated activities. These safeguards are designed to promote fair cost allocations and to protect regulated ratepayers from absorbing the costs of nonregulated activities. One of the accounting safeguards, prescribed in § 64.904 of the Commission's rules, is that carriers obtain an independent audit of reported cost allocation data. Before adoption of the *Accounting Reductions Report and Order*, our rules required that the audit be performed annually for ILECs required to file cost allocation manuals, that it provide a positive opinion, that the reported data is presented fairly in all material respects, and that it be conducted in accordance with generally accepted auditing standards.

In the *Accounting Reductions Report and Order*, we revised the audit requirement for mid-sized ILECs. Under rules adopted in that Order, mid-sized ILECs are required to obtain a less stringent attestation every two years (covering the prior two year period) instead of an annual financial audit requiring a positive opinion. The financial audit requires that an ILEC's independent auditor provide assurance that the reported data are fairly reported. An attestation requires that the auditor provide assurance that specific management assertions are fairly stated. An attestation generally provides less assurance and is governed by less stringent standards of testing, reporting, and expression of opinion than the financial audits required by § 64.904 for large ILECs.

We tentatively conclude that, if properly implemented, a less stringent audit requirement for the large ILECs will provide the necessary assurance that the carriers' cost allocations are consistent with our rules and at the same time result in significant savings in both time and money for the carriers. We note that in other instances the Commission requires something less than a positive opinion audit. For example, we have new audit requirements specifically for § 272 affiliates. Section 272 of the Act permits a BOC to manufacture equipment, originate in-region, interLATA telecommunications services, and provide interLATA information services only if it does so through one or more separate affiliates. The BOC and its affiliate(s) must, among other things, obtain a joint Federal/State audit every two years conducted by an independent auditor. Our rules require that the independent auditor perform an agreed-upon procedures engagement as specified by the regional Federal/State biennial oversight team.

We tentatively conclude that we can reduce our audit requirements for the large ILECs—the BOCs and GTE—by extending the same audit requirements to the large ILECs that we adopted for mid-sized ILECs in the *Accounting Reductions Report and Order, i.e.,*

allowing carriers to obtain an attestation, instead of an annual financial audit requiring a positive opinion. We seek comment on this tentative conclusion. Furthermore, we seek comment on whether we should adopt an audit requirement similar to the § 272 biennial audit, an agreed-upon procedures engagement, for the large ILECs. Commenters should discuss whether these alternatives would provide the necessary assurance that the reported cost allocation data is an accurate reflection of the carrier's CAM and the Commission's rules. Commenters should also discuss any other alternatives to an annual financial audit requiring a positive opinion. In addition, commenters should address whether the new audit procedure should be an annual requirement.

3. Affiliate Transactions Rules

In the *Accounting Safeguards Order*, 62 FR 02918 (January 21, 1997) the Commission amended the affiliate transactions rules for services provided by a carrier to its affiliate and services received by a carrier from its affiliate that are not subject to: (1) an existing tariff rate, (2) a publicly-filed agreement or statement, or (3) a qualified prevailing price valuation. Services provided by a carrier to its affiliate must be recorded at the higher of fair market value or fully distributed cost. Services received by a carrier from its affiliate must be recorded at the lower of fair market value or fully distributed cost. The Commission further required carriers to make a good faith determination of fair market value in those instances when a fair market value was not readily available so that the carrier could assign the appropriate value to the service when recording its value under the affiliate transactions rules.

Based on our experience enforcing these requirements over the past two years, we tentatively conclude that when the total annual value of transactions for that service is *de minimis*, the regulatory benefits of requiring carriers to make a good faith determination of the fair market value of a service are outweighed by the administrative cost and effort of making such a determination. We tentatively conclude that such a *de minimis* exception will not lessen the effectiveness of the Commission's affiliate transactions rules, and at the same time, will reduce the burden associated with the requirement that carriers make a good faith determination of fair market value. We, therefore, propose to eliminate the requirement that carriers make a good faith determination of fair market value for each service in which the total annual value of transactions for that service is less than $250,000. We propose that in such cases the service should be recorded at fully distributed cost, and carriers should continue to report such transactions in their cost allocation manuals and ARMIS reports.

We seek comment on our proposals and tentative conclusions. We also seek comment on whether a different threshold should serve to delineate the *de minimis* treatment. Commenters proposing a different threshold should explain why their proposed threshold should be higher or lower than $250,000. In addition, commenters should address whether affiliate transaction services conducted pursuant to §§ 260, and 271–276 of the Act should be included in the services eligible for the *de minimis* exception.

4. Elimination of 15-Day Prefiling for Cost Pool Changes

Section 64.903 of the Commission's rules requires that carriers update their CAMs at least annually except that changes to the cost apportionment table and time-reporting procedures must be filed at least 15 days before the carrier plans to implement changes. Once a CAM change has been filed, the Chief, Common Carrier Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective. BellSouth claims that the 15-day special filing requirement for changes in cost pools discloses sensitive competitive service information. We tentatively conclude that we should eliminate the 15-day pre-filing requirement in order to eliminate any disclosure of sensitive data in advance of implementation of a service. If we adopt this proposal, carriers would file the necessary CAM changes contemporaneous with the implementation of the change. We seek comment on this tentative conclusion.

5. Revision to Section 32.13, Accounts—General

Section 32.13(a)(3) of the Commission's rules permits carriers to establish temporary or experimental accounts provided they notify the Commission of the nature and purpose of the accounts within 30 days of establishing them. This requirement was adopted to allow the Commission to review the nature of the proposed temporary or experimental accounts prior to the effective date. Carriers use these temporary accounts as clearing accounts, which are closed each financial period and do not alter the Part 32 accounting structure. We tentatively conclude that this 30-day notification is not necessary because other accounting safeguards, such as ARMIS reporting and our audit program, together with our ability to obtain additional information as necessary, are sufficient for our regulatory oversight. Accordingly, we propose to modify § 32.13(a)(3) by eliminating the notification requirement. We seek comment on our tentative conclusion and proposal.

6. Revision to Section 32.25, Unusual Items and Contingent Liabilities

Section 32.25 of the Commission's rules requires carriers to submit journal entries detailing extraordinary items, contingent liabilities, and material prior period adjustments for Commission approval before recording them in their books of account. This requirement was established as a safeguard to prevent carriers from inflating their rate base through the use of accounting adjustments. We tentatively conclude that prior Commission review of journal entries is not necessary for the Commission's regulatory oversight, and that other accounting safeguards, such as the ARMIS reporting and our audit program, together with our ability to obtain additional information as necessary, are sufficient to assure that carriers will comply with our accounting requirements. We tentatively conclude, therefore, that it is no longer necessary to require the routine filing of these journal entries. Accordingly, we propose to eliminate the § 32.25 filing requirement. We seek comment on our tentative conclusion and proposal.

7. Revision to Section 32.2002, Property Held for Future Telecommunications Use

Section 32.2002 of the Commission's rules requires that carriers record to Account 2002 the costs of property held for no longer than two years under a definite plan for use in telecommunications service. After two years, § 32.2002 requires that the carrier reclassify the cost of the property to Account 2006, Nonoperating plant. BellSouth states that this reclassification is burdensome and that the property could remain recorded in Account 2002, but be removed from the ratebase in a less burdensome manner. We tentatively conclude that we should allow carriers to maintain the costs in Account 2002 but we should require carriers to exclude the cost of such property, and the associated depreciation reserve, from the ratebase. The depreciation expense associated with such property should also be excluded from ratemaking considerations. These

amounts would be reported in the ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (l) Other Adjustments. We believe that adoption of this tentative conclusion will provide the same protection for ratepayers while alleviating the burden on carriers to reclassify these costs to Account 2006. We seek comment on this tentative conclusion.

8. Revisions to Section 32.2003, Telecommunications Plant Under Construction

Section 32.2003 of the Commission's rules requires that carriers record to Account 2003 the original cost of construction projects including all related direct and indirect costs as provided under § 32.2000(c). If the construction project has been suspended for six months or more, the cost of the project must be reclassified to Account 2006, Nonoperating plant. If the project is eventually abandoned, these costs must be charged to Account 7370, Special charges. BellSouth states that this reclassification is burdensome and that the property could remain recorded in Account 2003 but be excluded from the ratebase in a less burdensome manner. We tentatively conclude that carriers be permitted to maintain the costs in Account 2003 and that carriers be required to remove the cost of suspended projects after six months from the ratebase. Additionally, carriers would be required to discontinue capitalization of allowance for funds used during construction under § 32.2000(c)(2)(x) until construction is resumed. These amounts would be reported in the ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (l) Other Adjustments. Carriers would still charge Account 7370 if the project were abandoned. We believe that adoption of this tentative conclusion will provide the same protection for ratepayers while alleviating the burden on carriers to reclassifying these costs to Account 2006. We seek comment on this tentative conclusion.

B. ARMIS Reporting Requirements

1. Reductions to ARMIS 43–02 USOA Report

In the ARMIS 43–02 USOA Report, carriers report their annual operating results for every account in the USOA. The USOA contains both balance sheet and income statement accounts which report the results of operational and financial events. Information provided by these accounts is used to review the overall investment and expense levels, affiliate transactions, property valuation, and depreciation rates of regulated carriers. The ARMIS 43–02 USOA Report contains a total of 27 tables, and is one of the most voluminous reporting requirements in ARMIS. The tables are set out in three series: (1) the "C" series, which includes 5 tables that provide corporate information; (2) the "B" series, which includes 15 tables that provide information about the balance sheet accounts of the carrier; and (3) the "I" series, which includes 7 tables that provide information about the carriers' income and expenses.

In light of the objectives we seek to achieve in Phase 1 of our comprehensive review, we are proposing significant reductions in reporting requirements in the ARMIS 43–02 USOA Report for the largest ILECs. For the reasons discussed below, we tentatively conclude that the filing burden imposed on the largest ILECs by ARMIS 43–02 USOA Report should be reduced by eliminating the requirement to file 14 of 27 tables, adding one short-form table, and changing the threshold level of reporting required in 3 of the remaining 13 tables. We propose eliminating or modifying the reporting requirements for the following tables: C–1 (Identity of Respondent); C–2 (Control Over Respondent); C–3 (Board of Directors and General Officers); C–4 (Stockholders); C–5 (Important Changes During the Year); B–8 (Capital Leases); B–9 (Deferred Charges); B–11 (Long-Term Debt); B–12 (Net Deferred Income Taxes); B–13 (Other Deferred Credits); B–14 (Capital Stock); and B–15 (Capital Stock and Funded Debt Reacquired or Retired During the Year); I–3 (Pension Costs); I–4 (Operating Other Taxes); I–5 (Prepaid Taxes and Accruals); I–6 (Special Charges); and I–7 (Donations or Payments for Services Rendered by Persons Other Than Employees).

We seek comment generally on our tentative proposal to streamline the ARMIS 43–02 USOA Report for the largest ILECs. Specifically, we seek comment on whether alternative sources of information would provide sufficient protection against the potentially anti-competitive practices we identified in the *ARMIS Reductions Report and Order*, FCC No. 99–107, released June 30, 1999. For instance, we believe that much of the information contained in the series "C" tables can be obtained from the carrier's Form 10-K Annual Report filed with the Securities and Exchange Commission (SEC), as well as in other publicly available reports. We also believe that, to a large extent, balance sheet and income statement information reported in the series "B" and "I" tables may be obtained from underlying source data and can be readily provided by the carrier upon request. Although we continue to believe that access to information is crucial for our processes as well as for the state commissions, we believe access to this information may be more efficiently obtained through other sources. We also believe that the need for obtaining certain data on a regular basis may not be so vital to regulatory mandates as to outweigh the burden imposed on the ILECs in reporting this information. We seek comment on these overall tentative conclusions.

2. ARMIS 43–02 USOA Report: Table C Reductions

The "C" series tables of the ARMIS 43–02 USOA Report include five tables containing carrier and stockholder information. We believe we could reduce the burdens imposed on the carriers by modifying these tables. We believe that most of the data contained in C–1 (Identity of Respondent), C–2 (Control Over Respondent), and C–4 (Stockholders), are available in public filings. Our experience suggests that routine filing of information contained in C–3 (Board of Directors and General Officers) may not be needed if the information is made available upon request. We tentatively conclude that because carriers must publicly file most of the information in these tables with the SEC in their Form 10–K Annual Reports, which are available on the Internet, and because we may request and obtain this information as necessary, streamlining these reporting requirements will not impair our ability to perform necessary oversight functions but will reduce the filing burden on large ILECs. Certain basic information contained in these reports, however, may be needed for purposes of efficiency in administering and managing the database. Thus, we tentatively propose to consolidate all basic information into one table, which would generally provide information on the carrier's name, carrier's address, operating states, and executive officers. We seek comment on these proposals and tentative conclusions.

Table C–5 (Important Changes During the Year) provides information on significant events, such as extensions of systems, substantial portions of property sold, changes in direct and indirect control of the carrier, important contracts or agreements entered into, and important changes in service and rate schedules. We believe the reporting requirements for table C–5 could be streamlined by eliminating the requirement to report certain information. For instance, we believe

that the data reported on changes in direct and indirect control may no longer be needed on a recurring basis. We believe this information may be available in the carrier's Form 10–K Annual Reports or in the carrier's cost allocation manuals, and where necessary, could be obtained from the carrier upon request. Thus, we tentatively conclude that the reporting requirements concerning changes in direct and indirect control of the carrier be eliminated. We seek comment on this tentative conclusion and proposal to modify table C–5 in this manner. We also believe that the information collected in table C–5 could be reduced further by collecting information only where the change involves a significant or material change. Thus, we seek comment on whether we should adopt a threshold amount for items reported in table C–5 (such as important contracts or agreements entered into, or important changes in service and rate schedules), and if so, what an appropriate threshold level would be. We seek comment on the above proposals for streamlining table C–5 reporting requirements.

3. ARMIS 43–02 USOA Report: Table B Reductions

The "B" series tables contain data about the balance sheet accounts. Table B–1 (Balance Sheet) and Table B–2 (Statement of Cash Flows) are basic financial statements that are essential to our analysis of a carrier's financial condition. Several other supporting tables are important in our analysis of investment in and transactions with affiliates and in evaluating carrier depreciation reserves. We are not proposing changes in these tables. We believe, however, that several other tables in the "B" series need not be routinely reported as long as we have continued access to the underlying data and source documents supporting these tables. Further, we believe that the carrier's own accounting practices, which are governed by standard accounting practices and procedures and subject to internal and external audits, should assure that these accounts are properly maintained. Thus, we propose to eliminate the following "B" tables: B–8: (Capital Leases); B–9 (Deferred Charges); B–11 (Long-Term Debt); B–12 (Net Deferred Income Taxes); B–13 (Other Deferred Credits); B–14 (Capital Stock); and B–15 (Capital Stock and Funded Debt Reacquired or Retired During the Year). We seek comment on these tentative conclusions and proposals. We are concerned that we not eliminate information that may be needed to carry out our responsibilities. We ask parties to address this concern and whether information concerning these accounts are readily available from other sources, such as in the carrier's Annual 10–K Report or through other internal records. We also ask parties to identify specific needs for this information and whether alternative sources of information provide sufficient level of detail to meet these needs.

4. ARMIS 43–02 USOA Report: Table I Reductions

We have also examined the continuing need for routine reporting of information contained in the "I" series tables, specifically I–3 (Pension Costs); I–4 (Operating Other Taxes); and I–5 (Prepaid Taxes and Accruals). For the reasons stated above with respect to the accounts reported in the "B" series, we tentatively conclude that carriers should no longer be required to report the information required in tables I–3, I–4, and I–5 annually to the Commission. We believe that as long as we have continued access to underlying data and source documents supporting these tables, this information can be obtained from the ILECs on an as-needed basis. We seek comment on these tentative conclusions and proposals.

Our review of table I–6 (Special Charges) finds that the information reported in this table continues to be essential. Data reported in this table are below-the-line amounts, i.e., are not an allowable expense to be charged against regulated revenues. Special Charges reported on this table include lobbying expenses, membership fees and dues, abandoned construction projects amounting to $100,000 or more, penalties and fines amounting to $100,000 or more, and charitable, social, or other community welfare expenses. We find it necessary to maintain routine reporting of these items to ensure that these expenses, especially if material, are properly recorded on the ILECs' books. The $100,000 reporting threshold, however, for reporting abandoned construction projects, penalties and fines may be relatively immaterial in light of the strong revenue growth since the outset of ARMIS in 1989. We seek comment, therefore, on whether the reporting threshold should be raised to a higher amount and, if so, what amount to establish as the reporting threshold.

Similarly, our review finds that information reported in table I–7 (Donations or Payments for Services by Persons Other than Employees) continues to be essential for regulatory monitoring purposes to ensure that material costs claimed against regulated revenues are appropriate. The information reported in table I–7 requires that carriers report all amounts paid to academia; amounts exceeding $250,000 paid for advertising and information services, clerical and office services, computer and data processing services, personnel services, printing and design services, and security services; amounts exceeding $25,000 paid for audit and accounting services, consulting and research services, financial services, and legal services; and amounts exceeding $10,000 for membership fees and dues. Again, in light of the tremendous growth in ILEC revenues, the reporting thresholds may now be too low. We seek comment, therefore, on whether the reporting thresholds for each of the above mentioned payments to outside vendors should be raised to a higher amount and, if so, what amounts to establish as the reporting thresholds.

IV. Procedural Issues

A. Ex Parte Presentations

This is a permit but disclose rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

B. Final Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

This Notice of Proposed Rulemaking proposes to eliminate or revise the matrix used to classify expenses in the Uniform System of Accounts (USOA); reduce the audit burdens on incumbent local exchange carriers (ILECs); adopt a *de minimis* exception to the Commission's affiliate transactions rules; eliminate the 15-day prefiling for

cost pool changes; eliminate the notifications and approvals required in §§ 32.13(a)(3) and 32.25; and revise the accounting requirements for §§ 32.2002 and 32.2003. In addition, with respect to ARMIS reporting requirements, the Notice of Proposed Rulemaking seeks comment on eliminating certain corporate information collected in the "C" series tables and on consolidating certain information into one table. The Notice of Proposed Rulemaking also seeks comment on eliminating certain information concerning balance sheet accounts reported in the "B" series tables and income statement accounts reported in the "I" series tables.

Neither the Commission nor SBA has developed a definition of "small entity" specifically applicable to LECs. The closest definition under SBA rules is that for establishments providing "Telephone Communications, Except Radiotelephone," which is Standard Industrial Classification (SIC) code 4813. Under this definition, a small entity is one that, including affiliates of the entity, employs no more than 1,500 persons. For the purpose of this present certification we would assume that an ILEC can be characterized as non dominant for the purpose of analysis under the Regulatory Flexibility Act.

We certify that the proposals in this Notice of Proposed Rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Pursuant to long-standing rules, ILECs with annual operating revenues equal to or exceeding the indexed revenue threshold must comply with the Commission's record keeping rules and CAM audit requirements. The Commission proposes to reduce certain of these CAM and record retention requirements. These changes should be easy and inexpensive for ILECs to implement and will not require costly or burdensome procedures. We therefore expect that the potential impact of the proposal rules, if such are adopted, is beneficial and does not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of these issues in their comments.

The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Notice of Proposed Rulemaking, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the **Federal Register**.

C. Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on information collections contained in this Notice of Proposed Rulemaking, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Notice of Proposed Rulemaking. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before August 23, 1999, and reply on or before September 9, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Ernestine Creech, Accounting Safeguards Division, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 99–253, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

Written comments by the public on the proposed information collections are due on or before August 23, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before October 18, 1999. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

V. Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 4(j), 11, 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 161, 201(b), 303(r), and 403, this Notice of Proposed Rulemaking *is adopted.*

It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, *shall*

send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 605(b).

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts

47 CFR Part 43

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone

47 CFR Part 64

Communications common carriers, Federal Communications Commission, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21402 Filed 8–17–99; 8:45 am]

BILLING CODE 6701–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants: Reopening of Comment Period for Proposed Rule To List the Contiguous United States Distinct Population Segment of the Canada Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We are reopening the comment period on the proposal to list the contiguous United States distinct population segment of the Canada lynx to invite comment from all interested parties on new information contained within a U.S. Forest Service science report that we are accepting into the administrative report. This report contains new information pertinent to our findings and conclusions of the proposed rule of July 8, 1998. The information contained within available chapters of this report and all comments received in response to this information will be considered in our final decision on whether to list the Canada lynx under the Endangered Species Act.

DATES: Comments must be postmarked or emailed by September 25, 1999.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office, 100 N. Park Avenue, Suite 320, Helena, Montana 59601; or email <lynx@fws.gov>.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor (see **ADDRESSES** section) (telephone 406/449–5225, facsimile 406/449–5339). The Internet is the fastest method for obtaining a copy of the report. Finalized chapters from the report can be retrieved from the Internet at <http://www.fs.fed.us/rl>.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1998 (63 FR 36994), we published a proposed rule to list the contiguous United States distinct population of the Canada lynx (*Lynx canadensis*) as threatened under the Endangered Species Act of 1973, as amended. As described in the proposed rule, the range of the lynx included portions of States of Washington, Oregon, Idaho, Montana, Utah, Wyoming, Colorado, Minnesota, Wisconsin, Michigan, Maine, New Hampshire, Vermont, New York, Pennsylvania, and Massachusetts. Threats to this population segment of the Canada lynx were considered to be human alteration of forests, low numbers as a result of past overexploitation, expansion of the range of competitors (bobcats (*Felis rufus*) and coyotes (*Canis latrans*)), and elevated levels of human access into lynx habitat. The rule also proposed to list the captive population of Canada lynx within the coterminous United States (lower 48 States) as threatened due to similarity of appearance and permitted the continued export of captive-bred Canada lynx.

We published notice of a 6-month extension on the proposed rule to list the lynx on July 8, 1999 (64 FR 36836). The final decision on the proposal is now due January 8, 2000.

Public Comments Solicited

We are reopening the comment period on our July 8, 1998, proposal to list the contiguous United States distinct population segment of the Canada lynx. We are seeking additional comment on our proposal based on new information contained within a report, "The scientific basis for lynx conservation in the contiguous United States." This report is being completed by a team led by Rocky Mountain Research Station, U.S. Forest Service. We are accepting finalized chapters of this report into the administrative record. The report contains new information pertinent to our findings and conclusions in the proposed rule. The information contained within available chapters of this report and all comments received in response to this information will be considered in our final decision on whether to list the Canadian lynx under the Endangered Species Act.

At this time, three chapters of the report are final and available to the public. These three chapters represent substantive new information pertinent to the scientific basis for our findings and conclusion regarding our final decision on whether to list the Canadian lynx under the Endangered Species Act. Additional chapters of the report are expected to be finalized and released to the public throughout the comment period. This will be the only notice of the availability of chapters of this report.

Finalized chapters from the report can be retrieved from the Internet at <http://www.fs.fed.us/rl>. The Internet is the best method for making the report rapidly available. If you cannot get the report through the Internet, please call the Montana Field Office (see **ADDRESSES** section). Please check this website regularly or call the Montana Field Office to obtain new chapters, which will be made available as soon as they are finalized. Your written comments on the proposal based on new information contained in this report must be postmarked or e-mailed by September 24, 1999, to the Montana Office (see **ADDRESSES** section above).

Author

The author of this notice is Lori Nordstrom (see **ADDRESSES** section.)

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated August 12, 1999.

Mary L. Gessner,

Regional Director.

[FR Doc. 99–21391 Filed 8–17–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 072699D]

RIN 0648–AL81

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Compliance with Sustainable Fisheries Act Provisions for Management Plans in the Gulf of Mexico; Generic Amendment to the Fishery Management Plans of the Gulf of Mexico Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a generic amendment to fishery management plans for the Gulf of Mexico Region; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted to NMFS its Generic Sustainable Fisheries Act Amendment (SFA Amendment) to the fishery management plans of the Gulf of Mexico for review, approval, and implementation. This amendment would set standards regarding overfishing levels and stock rebuilding on which future management measures will be based. Written comments are requested from the public.

DATES: Written comments must be received on or before October 18, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the amendment, which includes a regulatory impact review and an environmental assessment, should be sent to the Gulf of Mexico Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; phone: 813–228–2815; fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Roy Crabtree, NMFS; phone: 727-570-5305; fax 727–570–5583.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires Regional Fishery Management Councils to submit proposed fishery management plans (plans) or amendments to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment from a Council, immediately publish a document in the **Federal Register** stating that the plan or amendment is available for public review and comment. This document constitutes such notice for the SFA Amendment.

In 1998, NMFS published the National Standard Guidelines to assist Regional Fishery Management Councils in: Describing fisheries and fishing communities; establishing criteria to determine when a stock is overfished; proposing measures to prevent or end overfishing and rebuild overfished stocks: and assessing bycatch and proposing measures to minimize bycatch (63 FR 24212, May 1, 1998). The Council developed its SFA Amendment based on these guidelines.

The SFA Amendment describes Gulf of Mexico fishing communities; these descriptions are based on existing U.S. Census data and information about regional landings and about fishing participants in various fisheries for each of the Gulf of Mexico coastal states. The Council believes that these community descriptions are based on the best available information and comply with the national standard guidelines.

The SFA Amendment describes bycatch in Gulf fisheries and reflects the Council's conclusion that measures currently in place already minimize bycatch and bycatch mortality to the extent practicable. Under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, the Council has required bycatch reduction devices to minimize bycatch of red snapper and other species in shrimp trawls fished in the exclusive economic zone west of Cape San Blas, Florida. Under the FMP for stone crab, the Council's SFA Amendment proposes changes in the construction of stone crab pots intended to reduce finfish bycatch. Under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, the Council is phasing out fish traps in the reef fish fishery by 2007, in part to reduce bycatch. Under the Fishery Management Plan for Coastal Migratory Pelagic Species of the Gulf of Mexico and South Atlantic, minimum mesh sizes are required for gillnets in the coastal migratory pelagics fishery to reduce bycatch.

NMFS' Marine Recreational Fisheries Statistics Survey provides information on bycatch in the recreational fisheries. The SFA Amendment discusses additional measures to improve bycatch reporting. The Council anticipates that cooperative state-Federal programs developed or under development by the Gulf States Marine Fisheries Commission will provide adequate information on bycatch for all fisheries within the Council's area of jurisdiction. NMFS intends to improve bycatch reporting by requiring it in all commercial logbooks by January 1, 2001.

The SFA Amendment specifies fishing targets and overfishing thresholds for each FMP. For stocks other than shrimp and spiny lobster, static spawning potential ratio (SPR) proxies are used to define maximum sustainable yield (MSY), optimal yield (OY), and maximum fishing mortality thresholds (MFMT). For penaeid shrimp, MSY, OY, and MFMT are specified in numbers of spawning individuals remaining after the fishery. For royal red shrimp, MSY is specified as a range in pounds/kilograms, as recommended by the Crustacean Stock Assessment Panel; however, in its discussion of MSY, the Council expresses its view that the proposed MSY may be an underestimate of the true MSY. For spiny lobster, MSY, OY, and MFMT are specified as transitional SPR based on spawning biomass per recruit rather than based on fecundity. For stone crab, SPR is identified as realized egg production per recruit as a percentage of potential egg production in the unfished state. In general, SPR proxies for OY are greater than those for MSY, and MFMT is a fishing mortality rate set at the SPR rate equal to MSY (i.e. F_{MSY}). The SPR proxies for the parameters MSY, OY, and MFMT within each of the following fisheries—shrimp, red drum, Nassau grouper, jewfish, and stone crab—are the same. The SPR values for the three parameters for the above listed species are higher than those for other stocks, i.e., they are more conservative than those for other stocks. For shrimp, MSST is specified as the number of spawning individuals remaining after the annual fishery; for stone crab an SPR proxy is specified for MSST. MSST is not specified for other stocks but will be incorporated through the framework procedures of the Council's FMPs as MSST estimates are derived. .

The SFA Amendment would establish rebuilding periods for red snapper (period of 1999–2033) and Gulf-group king mackerel (period of 1999–2009). The Council states that data are insufficient to develop rebuilding schedules for Nassau grouper, jewfish, or red drum but that such schedules would be specified and implemented through the framework procedures of its FMPs as such schedules are developed.

The SFA Amendment briefly addresses the Magnuson-Stevens Act requirement to describe fishing sectors and to quantify trends in landings by

sector. The SFA Amendment states that with the exception of the charter sector, trends in landings have been previously quantified for all FMPs except those for stone crab and spiny lobster. The amendment includes recently prepared descriptions of the Florida west-coast stone crab fishery and the Florida spiny lobster fishery.

The SFA Amendment would adopt the construction characteristics of stone crab traps set forth in Chapter 46–13.002(2)(a) of Florida law.

The SFA Amendment would modify the existing Council FMPs' framework procedures for regulatory adjustments. These framework procedures provide a streamlined rulemaking process that allows the Council to propose additional or modified measures under an FMP and for NMFS to approve and implement them without an FMP amendment. The amendment would add the following measures to those that can be implemented under the framework procedures: Biomass-based estimates for MSY, OY, and MSST; new estimates of MFMT; and rebuilding schedules for reef fish. The Council would use the modified framework procedures when estimates of these added measures are provided by NMFS, reviewed by the Stock Assessment Panels, and adopted by the Council.

In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the SFA Amendment, the Magnuson-Stevens Act, and other applicable law. Comments received by [*insert date 60 days after date of publication in the FEDERAL REGISTER*], whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the SFA Amendment. NMFS will not consider comments received after that date in this decision. NMFS will address in the final rule all comments received on the amendment or the proposed rule during their respective comment periods.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21468 Filed 8–17–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 990811217–9217–01; I.D. 061899A]

RIN 0648–AM82

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Fishery; Regulatory Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic highly migratory species (HMS) fisheries to remove the 250 metric ton (mt) limit on allocating Atlantic bluefin tuna (BFT) landings quota to the Purse Seine category. Without this restriction, the annual allocation of BFT to the Purse Seine category would be 18.6 percent of the total landings quota available to the United States. The proposed regulatory amendments are necessary to achieve domestic management objectives for HMS fisheries. NMFS received extensive comment on this issue during the comment period for the rule to implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (FMP) and during a recent meeting of the HMS Advisory Panel (AP). However, NMFS will hold two public hearings to receive additional comments from fishery participants and other members of the public regarding these proposed amendments.

DATES: Comments are invited and must be received on or before September 27, 1999. The public hearings dates are:

1. Wednesday, September 1, 1999, 3:30–6:00 p.m. in Silver Spring, MD.
2. Tuesday, September 7, 1999, 7:00–9:00 p.m. in Fairhaven, MA.

ADDRESSES: Comments on the proposed rule should be sent to, Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Copies of supporting documents, including a Draft Environmental Assessment (EA), which includes a Draft Regulatory Impact Review (RIR), are available from Pat Scida, Highly Migratory Species Management Division, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

The public hearing locations are:

1. Silver Spring (Wednesday, September 1, 1999), NMFS, SSMC III - Room 4527, 1315 East-West Highway, Silver Spring, MD 20910.
2. Fairhaven (Tuesday, September 7, 1999), Seaport Inn, 110 Middle Street, Fairhaven, MA 02719.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the Office of Sustainable Fisheries, and is administered by the HMS Management Division.

Background

Based on the 1998 revised stock assessment, parties at the 1998 meeting of ICCAT adopted a 20-year west Atlantic BFT rebuilding program, beginning in 1999 and continuing through 2018. ICCAT has adopted an annual total allowable catch (TAC) for western Atlantic BFT of 2,500 mt whole weight (ww), inclusive of dead discards, to be applied annually until such time as the TAC is changed based on advice from the Standing Committee on Research and Statistics. The annual landing quota allocated to the United States was set at 1,387 mt ww. Regulations at 50 CFR 635.27 subdivide the U.S. BFT quota recommended by ICCAT among the various domestic fishing categories.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP that was adopted and made available to the public in April 1999. The HMS FMP and the implementing regulations established percentage quota shares for the ICCAT-recommended U.S. BFT landing quota for each of the domestic fishing categories. These percentage shares were based on historical allocations as had been adjusted in recent years. In the final rule, NMFS adopted a limit (cap) on the amount of the annual quota that would be

allocated to the Purse Seine category, establishing a percentage share of 18.6 percent of the overall U.S. BFT landings quota, or 250 mt, whichever is less. Under this cap, if 18.6 percent of the total ICCAT recommended annual landings quota would exceed 250 mt, only the 250 mt would be allocated to the Purse Seine category and the amount over 250 mt would be allocated to the Reserve.

In the final HMS FMP it was noted that discussions held at the HMS AP meetings were not conclusive regarding the purse seine category allocation with respect to a situation of increased quotas from ICCAT. NMFS indicated that although the final HMS FMP had adopted the cap of 250 mt, further discussions with the HMS AP were needed to clarify the issue, especially since ICCAT had recommended a small increase in landings quota available to the U.S. in 1999. NMFS therefore stated in the HMS FMP that, after later consultation with the HMS AP, the purse seine cap could be adjusted by regulatory amendment under the framework provisions of the FMP. Pending that consultation with the HMS AP, NMFS proceeded to issue final BFT quota specifications for the 1999 fishing year.

Purse Seine Quota Specification

The ICCAT-recommended 1999 U.S. BFT landings quota is 1,387 mt, 18.6 percent of which is 258 mt, or 8 mt over the cap. NMFS indicated in the HMS FMP that the additional 8 mt would be held in reserve until after the AP had discussed the issue. Thus, under the regulatory cap, the Purse Seine category was initially allocated a 250 mt BFT landings quota for 1999, and the additional 8 mt were allocated to the Reserve category. Given the regulatory provisions for interannual adjustments, an additional 2 mt Purse Seine category quota that was not harvested in 1998 was added to the category's quota for 1999, for an adjusted Purse Seine category quota of 252 mt (64 FR 29806, June 3, 1999).

The AP met in Silver Spring, MD on June 10 and June 11, 1999, and discussed, among other things, the Purse Seine category cap. After extensive discussion, a majority favored removal of the cap. The AP provided information and advice to NMFS on the issue of fairness in the context of allocation to the Purse Seine category. Among the points used by the AP in support of removing the cap were the following: (1) a cap on one category and not on others is not fair and equitable, (2) a cap on the only category in the fishery which is managed under limited access does not promote the objectives of limited access management systems, and (3) retention of a cap on the Purse Seine category's BFT quota allocation may cause purse seine vessels to increase fishing effort on yellowfin tuna, which is an important commercial and recreational species for vessels in other Atlantic tunas permit categories, and for which there is an ICCAT recommendation in place to limit effective fishing effort.

After considering the input from the HMS AP, NMFS transferred 8 mt of BFT quota from the Reserve to the Purse Seine category (64 FR 36818, July 8, 1999) for the 1999 fishing year. As a result of this transfer, the adjusted Purse Seine category quota for 1999 is 260 mt.

Proposed Management Measure

In addition to its commitment to considering the AP's advice on this issue, as stated in the FMP and its implementing regulations, NMFS is concerned that Purse Seine category vessels may increase fishing effort on yellowfin tuna if the cap is retained. As mentioned earlier, yellowfin tuna is an important commercial and recreational species for vessels in other Atlantic tunas permit categories, and for which there is an ICCAT recommendation in place to limit effective fishing effort. As yellowfin tuna is considered a fully-exploited species, and the latest ICCAT Standing Committee on Research and Statistics report indicates that the current fishing mortality may be higher than that which would support maximum sustainable yield on a continuing basis, any additional fishing effort directed at yellowfin tuna could have adverse impacts on optimum yield in that fishery.

Removing the cap on the Purse Seine category is also consistent with the Magnuson-Stevens Act in that it contributes to the goal of allocating restrictions needed to prevent overfishing and recovery benefits from rebuilding fairly and equitably among sectors of the fishery, in that no one quota category would be restricted in its allocation while others would not. It is also consistent with the objectives of the FMP to preserve traditional fisheries and historical fishing patterns, in the fact that the Purse Seine fishery is a historical component of the overall U.S. Atlantic BFT fishery, participating in the fishery since the 1950's.

NMFS proposes this action to remove the purse seine allocation cap under the framework provisions described in the FMP. NMFS believes that the allocation of a percentage of the BFT landings quota, without a cap, is consistent with management measures in the FMP, and is an appropriate regulatory action in order to meet the goals and objectives of the FMP.

After reviewing public comments and additional information or data that may be available, NMFS will, if appropriate, make final determinations regarding the consistency of this proposed measure with the objectives of the FMP, the national standards of the Magnuson-Stevens Act, and other applicable law.

Technical Correction

When NMFS first established a limited access and individual vessel allocation system for the Purse Seine category, the vessel allocations were made transferable. Initially, the allocations were transferable in whole, but in subsequent rulemaking, the allocations were made transferable in whole or in part (61 FR 30187, June 14, 1996). The allowance for partial transfers was made to reduce bycatch mortality during the last few sets as vessels approached the limits of individual allocations. In the final consolidated rule to implement the HMS FMP, NMFS inadvertently reissued the older procedures for notification of transfer of the entire allocation from one permitted purse seine vessel to another, omitting the newer procedures for notification of partial transfers. The proposed rule would reinstate updated notification procedures for transfers.

Public Hearings and Special Accommodations

The public hearing sites are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Murray-Brown (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (e.g., alcohol is prohibited from the hearing room, attendees will be called to give their comments in the order in which they registered to speak, each attendee will have an equal amount of time to speak, attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public are able to comment, if they so choose, regardless of the controversiality of the subject(s). Attendees are expected to respect the ground rules, and if they do not, they will be asked to leave the hearing.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* Preliminarily, the AA has determined that the regulations contained in this proposed rule are consistent with the FMP, the Magnuson-Stevens Act, and the 1998 ICCAT recommendation (ICCAT Rebuilding Program).

NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. In addition, a draft RIR was prepared with a preliminary finding of no significant impact. The reasons this action is being considered and the objectives of, and legal basis for, the proposed rule are as stated in the preamble here. There are no relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. NMFS considered alternatives to the preferred alternative, including: no action (maintaining cap of 250 mt for the Purse Seine category), removal of the cap on the Purse Seine category, and reduction of the Purse Seine category percentage share allocation by 50 percent.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule restates an information collection requirement relating to purse seine landings quota allocations. Written requests for purse seine allocations for Atlantic tunas and notification of transfers as required under § 635.27 are not currently approved by OMB. However, requests for purse seine allocations and transfer notifications are not subject to the PRA because, under current regulations, a maximum of five vessels could be subject to reporting under this requirement. Since it is impossible for 10 or more respondents to be involved, the information collection is exempt from the PRA clearance requirement.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would remove the 250 metric ton (mt) maximum allocation restriction (cap) on the Purse Seine fishery for Atlantic bluefin tuna (BFT), establishing the Purse Seine category BFT quota allocation at 18.6 percent of the overall U.S. BFT landings quota (1,347 metric tons for 1999). Because the overall U.S. BFT landings quota would remain the same, and the amount of BFT quota that would be allocated to the Purse Seine category through this proposed action (8 metric tons) was previously allocated to the Reserve, and not to any particular fishing category, additional revenues would accrue to small businesses associated with the purse seine fishery without directly affecting other fishing categories.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS initiated formal consultation on the HMS and billfish fisheries on May 12, 1998. The consultation request concerned the possible effects of management measures in the HMS FMP and Billfish Amendment. On April 23, 1999, NMFS issued a Biological Opinion (BO) under section 7 of the Endangered Species Act. The BO applies to the Atlantic pelagic fisheries for tunas, sharks, swordfish, and billfish.

The BFT purse seine fishery is currently listed as a category III fisheries under the Marine Mammal Protection Act. This fishery was observed in 1996, with near 100–percent coverage. Six pilot whales, one humpback whale, and one minke whale were observed as encircled by the nets during the fishery. All were released alive or dove under the nets and escaped before being pursed. Purse seines are set when a school of fish is located, after which the vessel pays out the net in a circle around the school. This affords considerable control over what is encircled by the net and the net does not remain in the water for any considerable amount of time. Therefore, this gear-type is not likely to result in mortality or serious injury of marine mammals or sea turtles.

The BO states that after reviewing the current status of the subject species, the environmental baseline for the action area, the effects of the continued operation of the Atlantic HMS fisheries and associated management actions, and the cumulative effects, it is NMFS' BO that the continued operation of the purse seine fishery may adversely affect, but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction. A similar conclusion was reached for the other fisheries which are allocated BFT quota - the Atlantic pelagic longline fishery and the harpoon, hand gear, and rod and reel fisheries for Atlantic HMS.

This proposed rule would remove the 250 mt cap on the annual Purse Seine category BFT quota allocation. Because the only fisheries which may be affected by this proposed rule are Category III fisheries, the proposed rule is not expected to increase endangered species or marine mammal interaction rates.

The area in which this proposed action is planned has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council and the Highly Migratory Species Division of NMFS. It is not anticipated that this action will have any adverse impacts to EFH and therefore no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: August 12, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

2. In § 635.27, introductory paragraph (a) and paragraphs (a)(4)(i) and (iii) are revised to read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes

the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas. BFT landings quotas are specified in whole weight.

* * * * *

(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota. The Purse Seine fishery under this quota commences on August 15 each year.

* * * * *

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (mt) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not altered by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether retained.

* * * * *

[FR Doc. 99–21344 Filed 8–12–99; 3:18 pm]
BILLING CODE 3510–22–F

Notic

This section contains do proposed ru public. Notic committee r rulings, dele petitions an statements examples o section.

DEPARTM

Forest Se

Blue Mou Institute, Northwes

AGENCY: F

ACTION: N

SUMMARY: Resources Directors 1999, at Is Avenue, L meeting w continue to be cove Discussion Institute d comments are open t citizens ar Members make a bri meeting sh BMNRI, 1 Oregon 97 than 5:00 have time

FOR FURTH Direct que to Lynn St 1401 Geke 97850, 541

Dated: Au

Lynn Starr, *Acting Man*

[FR Doc. 99

BILLING CODE

DEPARTM

Submissio Comment

DOC has Manageme clearance collection

Notices

Federal Register
Vol. 64, No. 159
Wednesday, August 18, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Blue Mountains Natural Resources Institute, Board of Directors, Pacific Northwest Research Station, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Blue Mountains Natural Resources Institute (BMNRI) Board of Directors will meet on September 15, 1999, at Island City Hall, 10605 Island Avenue, La Grande, Oregon. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. Agenda items to be covered will include: (1) Discussion and decision on new Institute direction, and (2) public comments. All BMNRI Board Meetings are open to the public. Interested citizens are encouraged to attend. Members of the public who wish to make a brief oral presentation at the meeting should contact Lynn Starr, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6548, no later than 5:00 p.m. September 10, 1999, to have time reserved on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Lynn Starr, Acting Manager, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6548.

Dated: August 9, 1999.

Lynn Starr,

Acting Manager.

[FR Doc. 99–21430 Filed 8–17–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Survey of Manufactures.

Form Number(s): MA–1000(L), MA–1000(S).

Agency Approval Number: 0607–0449.

Type of Request: Revision of a currently approved collection.

Burden: 190,080 hours.

Number of Respondents: 55,000.

Avg Hours Per Response: Three and a half hours.

Needs and Uses: The Census Bureau has conducted the Annual Survey of Manufactures (ASM) since 1949 to provide key measures of manufacturing activity during intercensal periods. In census years ending in "2" and "7", we mail and collect the ASM as part of the census of manufactures. This survey is an integral part of the Government's statistical program. The ASM furnishes up-to-date estimates of employment and payrolls, hours and wages of production workers, value added by manufacture, cost of materials, value of shipments by product class, inventories, and expenditures for both plant and equipment and structures. The survey provides data for most of these items for each of the 474 industries as defined in the North American Industry Classification System (NAICS). It also provides geographic data by state at a more aggregated industry level.

The survey also provides valuable information to private companies, research organizations, and trade associations. Industry makes extensive use of the annual figures on product class shipments at the U.S. level in its market analysis, product planning, and investment planning. The ASM data are used to benchmark and reconcile monthly and quarterly data on manufacturing production and inventories.

The content of the questionnaires for the 1999–2001 ASM is identical to the 1998 ASM report forms with the exception of our plans to use the ASM to collect some very basic base-line information about manufacturers use of e-commerce and e-business. We are still in the process of determining whether to include the questions on the bottom of the current ASM form or to put them on a separate one-page flier. We will make that determination based on how best to reach the appropriate respondent and our own internal processing efficiencies. These questions will be asked only during the 1999 ASM collection.

We are also still working on the exact wording and structure of the questions. The basic content will not change and is included with this submission. We will continue to refine the wording of these questions over the next few weeks. We estimate that these questions can be completed without referring to company records and can be completed in five minutes or less.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 13, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21462 Filed 8–17–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Program Dynamics—2000

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 18, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael McMahon, U.S. Census Bureau, FOB 3, Room 3375, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Survey of Program Dynamics (SPD) is a household-based survey designed as a data collection vehicle that can provide the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress and meeting the needs of the American people.

The SPD is a large, longitudinal, nationally-representative study that measures participation in welfare programs, including both programs that are being reformed and those that remain unchanged. The SPD measures other important social, economic, demographic, and family changes that will allow analysis of the effectiveness of the welfare reforms.

With the August 22, 1996, signing of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub L. 104–193), the Census Bureau is required to conduct the SPD, using as the sample the households from the 1992 and 1993 Survey of Income and Program Participation (SIPP). The information obtained will be used to evaluate the impact of this law on a sample of previous welfare recipients and future recipients of assistance under new state programs funded under this law as well as assess the impact on other low-income families. Issues of particular attention include welfare dependency, the length of welfare spells, the causes of repeat welfare spells, educational enrollment and work training, health care utilization, out-of-wedlock births, and the status of children.

The 2000 SPD is the third year of data collection using the same core questions. A one-time topical module will collect the residential histories of children. The previous wave, conducted in the spring of 1999, collected core data plus extended measures of child well-being. The 1998 SPD included an adolescent self-administered questionnaire. A bridge survey using the Current Population Survey March questionnaire was conducted in the spring of 1997 to provide a link to baseline data for the period prior to the implementation of the welfare reform activities.

II. Method of Collection

The SPD is a longitudinal study of welfare-related activities with the sample respondents originally selected from 1992 and 1993 SIPP panels. Interviews were conducted in 1997, 1998, and 1999. Subsequent data collections are scheduled for 2000 to 2002. Data are collected using a computer-assisted interviewing (CAI) instrument from a nationally representative sample of the noninstitutionalized resident population living in the U.S. for all persons, families, and households. Persons who are at least 15 years of age at the time of the interview will be eligible to be in the survey.

A small sample of households is scheduled for reinterview. The reinterview process assures that all households were properly contacted and that the data are valid.

III. Data

OMB Number: 0607–0838.

Form Number: CAI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Household Respondents: 42,000.

Estimated Number of Reinterview Respondents: 1,500.

Estimated Time Per Response: 36 minutes per respondent, 10 minutes per reinterview.

Estimated Total Annual Burden Hours: 25,150.

Estimated Total Annual Cost: No costs to the respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, section 182, and Pub. L. 104–193, Section 414 (signed 8/22/96), Title 42, United States Code, Section 614.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice are summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 13, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21463 Filed 8–17–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Annual Capital Expenditures Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 18, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles Funk, Census Bureau, Room 1285–3, Washington, DC 20233, (301) 457–3324.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans the continuing information collection for the 1999 through 2001 Annual Capital Expenditures Survey (ACES). The basic annual survey collects data on fixed assets and depreciation, sales and

receipts, and capital expenditures for new and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending by domestic, private, nonfarm businesses operating in the United States. Employer and nonemployer businesses are included in the survey.

The Bureau of Economic Analysis (BEA), the primary Federal user of our annual program statistics, uses the information in refining and evaluating annual estimates of investment in structures and equipment in the national income and product accounts, compiling annual input-output tables, and computing gross domestic product (GDP) by industry. The Federal Reserve Board (FRB) uses the data to improve estimates of investment indicators for monetary policy. The Bureau of Labor Statistics (BLS) uses the data to improve estimates of capital stocks for productivity analysis.

Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

Changes from the previous ACES are the elimination of detailed capital expenditures by type of structure and type of equipment, the incorporation of the North American Industry Classification System (NAICS) into the ACES, and a supplemental questionnaire requesting information on electronic business (E-business) processes used by businesses.

Detailed capital expenditures by type of structure and type of equipment data were collected last year in the 1998 ACES. These data, collected together once every five years, are not scheduled to be requested again until the 2003 ACES.

Previous year's estimates of capital expenditures were published on the Standard Industrial Classification (SIC) basis. Beginning with the 1999 ACES, we will publish data on the NAICS. Due to the major restructuring of industries that occurred under the NAICS, we will collect and publish data for approximately 132 industries. This is an increase from 97 industries under the SIC system.

We are planning a supplemental questionnaire requesting information on E-business processes used by businesses. Although questions are not yet finalized, we anticipate collecting check-box information on whether businesses use or plan to use E-business processes for activities such as procurement, production control, automated stock replenishment, marketing, electronic selling, payment processing, customer management and support, automated employee services, training, information sharing, video conferencing, and recruiting.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Respondent companies are permitted to respond via facsimile machine to our toll-free number. Companies will be asked to respond to the survey within 30 days of the initial mailing. Letters and/or telephone calls encouraging participation will be directed to respondents that have not responded by the designated time.

III. Data

OMB Number: 0607–0782.

Form Number: ACE–1 (Sent to employer companies reporting payroll to the Internal Revenue Service), ACE–2 (Sent to nonemployer businesses), and ACE–B (Sent to employer and nonemployer businesses for E-business information).

Type of Review: Regular Review.

Affected Public: Businesses or other for-profit organizations, non-profit institutions, small businesses or organizations, and self-employed individuals.

Estimated Number of Respondents: There are 57,000 (42,000 employer companies, and 15,000 nonemployer businesses) under NAICS for the basic annual survey. The increase of 11,000 respondents is due to the expansion of industries under the NAICS. All 57,000 businesses will receive the E-business supplement.

Estimated Time Per Response: The average for all respondents is 1.234 hours. For companies completing form ACE–1, the range is 2 to 16 hours, averaging 2.857 hours. For companies completing form ACE–2, the range is less than 1 hour to 2 hours, averaging 1 hour. For companies completing the ACE–B, the range is estimated at less than five minutes to ten minutes, averaging six minutes (.10 hours).

Estimated Total Annual Burden Hours: The total annual burden is 140,700 hours.

Estimated Total Annual Cost: The total cost to all respondents is estimated to be $1,968,393 based on the hourly salary of $13.99 for entry level accountants and auditors. (Occupational Employment Statistics—Bureau of Labor Statistics 1997 National Occupational Employment and Wage Estimates for Professional, Paraprofessional, and Technical Occupations). http://stats.bls.gov/oes/national/oes_prof.htm

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 13, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21464 Filed 8–17–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 40–99]

Foreign-Trade Zone 8—Toledo, Ohio Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, requesting authority to expand its zone in the Toledo, Ohio area, within the Toledo/Sandusky Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 5, 1999.

FTZ 8 was approved on October 11, 1960 (Board Order 51, 25 FR 9909, 10/15/60) and expanded on January 22, 1973 (Board Order 92, 38 FR 3015, 1/31/73); January 11, 1985 (Board Order 277, 50 FR 2702,1/18/85); and, August 19, 1991 (Board Order 532, 56 FR 42026, 8/26/91). The general-purpose zone currently consists of 2 sites (487 acres) in the Toledo area: *Site 1* (150 acres)—within the Port of Toledo complex at the Overseas Cargo Center, Toledo; and, *Site 2* (337 acres)—at the Toledo Express

Airport, in Swanton, Ohio, some 5 miles west of Toledo.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site: *Proposed Site 3* (10 acres)—at the First Choice Packaging warehouse facility (owned by Eveready Battery Company, Inc.), 1501 West State Street, Fremont. The facility will be operated by First Choice as a public warehouse facility with packaging services.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 18, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (November 1, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Toledo-Lucas County, Port Authority, One Maritime Plaza, 7th Floor, Toledo, OH 43604–1866

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: August 10, 1999.

Dianne Finver,

Acting Executive Secretary.

[FR Doc. 99–21459 Filed 8–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars from Turkey; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a timely withdrawal of a request for a review by Colakoglu Metalurji A.S. and because the Department of Commerce has determined that there were no entries of the subject merchandise made by Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S. during the period of review, we are rescinding the 1998—1999 administrative review of certain steel concrete reinforcing bars from Turkey.

EFFECTIVE DATE: August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Background

On April 30, 1999, Colakoglu Metalurji A.S. (Colakoglu) requested that the Department conduct an administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey for the period April 1, 1998, through March 31, 1999. Also on April 30, 1999, ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S. (ICDAS) requested that the Department conduct an administrative review for the period August 1, 1998, through March 31, 1999. No other interested party requested that the Department conduct an administrative review.

On May 28, 1999, the Department published in the **Federal Register** a notice of initiation of administrative review with respect to Colakoglu and ICDAS. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part;* 64 FR 28973 (May 28, 1999).

On June 18, 1999, ICDAS informed the Department that it made no sales of subject merchandise to the United States during the period of review (POR). On August 9, 1999, Colakoglu withdrew its request for an administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Given that the review has not progressed substantially and there would be no undue burden on the parties or the Department, the Department has determined that it is reasonable to accept Colakoglu's withdrawal of request for review.

Pursuant to 19 CFR 351.213(d)(3), the Department will rescind an administrative review, in whole or in part, if it determines that there have been no shipments of subject merchandise during the POR. The Department has determined that no subject merchandise produced or exported by ICDAS entered into the United States for consumption during the POR and, thus, there are no entries subject to the review. Because ICDAS had no U.S. entries for consumption of covered merchandise during the POR, there is no basis for continuing this administrative review.

Therefore, the Department is rescinding this review. This rescission of the administrative review and notice are in accordance with section 751 of the Act and 19 CFR 351.213(d).

Dated: August 11, 1999.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–21461 Filed 8–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 18, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 1997–1998 antidumping duty administrative review for the antidumping order on certain welded carbon steel pipes and tubes from Thailand, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

FOR FURTHER INFORMATION CONTACT: John Totaro, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–1374.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Richard O. Weible to Robert S. LaRussa (August 11, 1999).

Because it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results until September 10, 1999.

Dated: August 11, 1999.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–21460 Filed 8–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080599C]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed modification to a letter of authorization; request for comments.

SUMMARY: On August 3, 1999, the 30th Space Wing, U.S. Air Force, requested a modification to the Letter of Authorization (LOA) issued to it on April 2, 1999. The letter requests that a new rocket, the Minotaur, be added to the list of rockets authorized to take harbor seals and California sea lions incidental to rocket launches from Vandenberg Air Force Base (Vandenberg) in California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to amend the LOA issued to the 30th Space Wing to authorize this new rocket type. The U.S. Air Force has not requested, and NMFS does not propose, to increase the number of annual launches from Vandenberg that are authorized to take marine mammals under the LOA.

DATES: Comments and information must be received no later than September 2, 1999.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the request for modification, the LOA and the supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

In accordance with the MMPA, as amended, and implementing regulations, a 1-year LOA to take small numbers of seals and sea lions was issued on April 2, 1999, to the 30th Space Wing (64 FR 17145, April 8, 1999). On August 3, 1999, the 30th Space Wing requested NMFS to amend the LOA to include a new rocket, the Minotaur, to the list of rockets authorized to take harbor seals and California sea lions incidental to activities at Vandenberg.

Discussion and Analysis

Spaceport Systems International (SSI) wants to begin launching the OSP Space Launch Vehicle, the Minotaur rocket, from the California Commercial Spaceport (CCS) on Vandenberg. The Minotaur contains 2 segments of Minuteman II solid-fuel motors and 2 Orion upperstage motors. According to SSI, the sound emitted during the launch should be no more than what a Minuteman II would emit.

Because this is a new launch vehicle, it was not included in the LOA issued to Vandenberg on April 2, 1999. Therefore, in order for NMFS to authorize the takings by harassment incidental to this new rocket, NMFS must be assured that the takings will not exceed the level of incidental harassment considered when it made its negligible impact finding on March 1, 1999 (64 FR 9925). First, Vandenberg is authorized to harass pinnipeds incidental to 10 missile launches from North Vandenberg and 20 rocket launches annually from South Vandenberg. This authorized level of launches for incidental takes of marine mammals will not be modified by NMFS to add this additional rocket to the LOA. Second, as mentioned previously, the Minotaur rocket consists of the first two segments of Minuteman II solid-fuel motors and two Orion upperstage motors. For incidental takes of pinnipeds on the Vandenberg coastline, only the first one or two motors are important for assessing impacts along the California coast. The Minotaur, like the Minuteman II missiles launched from North Vandenberg, use Thiokol first-stage rocket motor with 202,600 pounds (lbs) of thrust and a second-stage motor made by Aerojet with 60,000 lbs of thrust. As a result, launch noises would be similar to those expected at North Vandenberg during a Minuteman II launch.

Third, Vandenberg has requested a small take of harbor seals (and possibly a few California sea lions) by incidental harassment for this rocket launched

from the CCS, an area close to Space Launch Complex (SLC)–6. While the CCS was identified in the 30th Space Wing's July 11, 1997, application for a small take authorization and in the U.S. Air Force's Programmatic Operations Environmental Assessment for small takes of marine mammals, because the CCS was under construction at the time, no rocket types were identified for launching at that time of the application to NMFS. As a result, an incidental take assessment could not be made for this location by either NMFS or the 30th Space Wing during the rulemaking. However, impacts to pinnipeds from launches at nearby SLC–6 by Lockheed Martin's family of Athena rockets was analyzed on July 21, 1998 (63 FR 39055) and previously (see 60 FR 24840, May 10, 1995).

Finally, because the Minotaur rocket's first stage solid-fuel booster is half the size of the first-stage booster of the Athena 1 launched from SLC–6, it can be expected to impact the nearby harbor seal haulouts to a lesser, but unknown, level than the Athena. NMFS estimated that the Athena rocket would, under typical conditions, result in a sound pressure level (SPL) of 127 dB (107 dBA) re 20 μPa at the harbor seal haulouts at Rocky Point, which are about 1.5 mi (2.4 km) to the south and southwest of SLC–6. This level is sufficient to cause harbor seals to leave the beach at Point Arguello, Rocky Point, and Boathouse Flats. However, because the CCS is only 1 mile (1.6 km) from the closest haulout at Rocky Point whereas SLC–6 is approximately 2.5 mi (4.0 km) away from the nearest haulout, NMFS expects that SPLs from the launch of the Minotaur will be similar to levels expected from the Athena rocket at the Rocky Point haulout.

Because the addition of the Minotaur rocket to the launch list at Vandenberg will not result in an increase in the number of launches authorized to take pinnipeds under the LOA, NMFS does not expect additional cumulative impacts to occur and therefore, NMFS has preliminarily determined that the takes will remain small and not have more than a negligible impact on seals and sea lions at Vandenberg.

Monitoring and Reporting

Under an amended LOA, if issued, the 30th Space Wing would be required to monitor the impacts of the Minotaur launches at CCS. Because this is a new launch vehicle, the 30th Space Wing would be required under the LOA to measure the noise profiles from the rocket at the time of its first launch and to monitor impacts on marine mammals at nearby active, pinniped haulouts.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request (see **ADDRESSES**). Issuance of a modified LOA will be based on a finding that the total takings will have no more than a negligible impact on the seal and sea lion populations off the Vandenberg coast and on the Northern Channel Islands.

Dated: August 12, 1999.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–21469 Filed 8–17–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Facilities Available for the Construction or Repair of Ships; SF Form 17; OMB Number 0703–0006.

Type of Request: Reinstatement.

Number of Respondents: 151.

Responses Per Respondent: 1.

Annual Response: 151.

Average Burden Per Response: 4.5 hours.

Annual Burden Hours: 680.

Needs and Uses: This collection of information provides the Naval Sea Systems Command (NAVSEASYSCOM) and the maritime Administration with a list of facilities available for construction or repair of ships, and information utilized in a data base for assessing the production capacity of the individual shipyards. Respondents are businesses involved in shipbuilding and/or repair.

Affected Public: Business or Other For-Profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 12, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21349 Filed 8–17–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–26]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–26 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 12, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

5 AUG 1999
In reply refer to:
I-99/008957

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-26, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Spain for defense articles and services estimated to cost $25 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) (C) Prospective Purchaser: Spain

(ii) (C) Total Estimated Value:

Major Defense Equipment*	$ 22 million
Other	$ 3 million
TOTAL	$ 25 million

(iii) (C) Description of Articles or Services Offered: Twelve JAVELIN anti-tank missile systems (consisting of 12 JAVELIN command launch units, 226 JAVELIN missile rounds, and three lot acceptance missiles), support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.

(iv) (C) Military Department: Army (VKU)

(v) (C) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) (C) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) (C) Date Report Delivered to Congress: 5 AUG 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Spain - JAVELIN Anti-tank Missile Systems

The Government of Spain (GOS) has requested a possible sale of 12 JAVELIN anti-tank missile systems (consisting of 12 JAVELIN command launch units, 226 JAVELIN missile rounds, and three lot acceptance missiles), support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $25 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Spain and enhancing weapon system standardization and interoperability of this important NATO ally.

The GOS will use these JAVELIN anti-tank missile systems to enhance their anti-tank ground forces and to increase interoperability with U.S. forces. Spain will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be JAVELIN Joint Venture (Raytheon and Lockheed Martin), Orlando, Florida. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team to Spain for two weeks to assist in the delivery and deployment of the missiles. Two contractor representatives will be required for training courses during a two week period and two will be required in-country for two years to perform maintenance services.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The JAVELIN weapon system is intended to replace the DRAGON. At this time, there are no hardware differences in the missile rounds for the U.S. Army and export customers. The difference between U.S. Forces and export customers is in the missile software that is loaded into the Command Launch Unit and is downloaded to the missile prior to launch. If the software was compromised it could result in the sensitive technology being lost and reveal the performance capabilities of the JAVELIN Missile System. Reverse engineering of the software would require a substantial effort.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Spain can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–21350 Filed 8–17–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–28]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–28 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 12, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

5 AUG 1999
In reply refer to:
I-99/009393

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-28, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $42 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Japan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 30 million
Other	$ 12 million
TOTAL	$ 42 million

(iii) Description of Articles or Services Offered: Sixteen SM-2 Block III STANDARD missiles, containers, canisters, spare and repair parts, supply support, and other related elements of logistics support.

(iv) Military Department: Navy (AOB)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 5 AUG 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - SM-2 Block III STANDARD Missiles

The Government of Japan has requested a possible sale of 16 SM-2 Block III STANDARD missiles, containers, canisters, spare and repair parts, supply support, and other related elements of logistics support. The estimated cost is $42 million.

This case will contribute to the foreign policy and national security objectives of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the East Asia.

Japan will use these missiles to update older or less reliable missiles currently in the Japanese Self Defense Force fleet. Japan, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractor will be Standard Missile Company, McLean, Virginia. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The possible sale of STANDARD SM-2 missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile guidance section, Target Detecting Device (TDD), warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. STANDARD missile documentation to be provided will include:

a. Parametric documents (C)
b. Missile Handling Procedures (U)
c. General Performance Data (C)
d. Firing Guidance (C)
e. Dynamics Information (C)
f. Flight Analysis Procedures (C)

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–21351 Filed 8–17–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Commander in Chief, U.S. Pacific Command Representative, Guam and the Commonwealth of the Northern Mariana Islands (USCINCPAC REP Guam/CNMI); Record of Decision for Military Training in the Marianas

Introduction

The Department of Defense (DOD) through Commander, U.S. Naval Forces Marianas (COMNAVMARIANAS), as the designated USCINCPAC REP GUAM/CNMI, pursuant to Section 102 (2) (C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C 4332 (2) (C), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to continue to use suitable DOD controlled lands in the Mariana Islands to support various specific military training activities to ensure the readiness of U.S. forces tasked with fulfilling regional readiness and operational contingency missions.

The Commander-in-Chief, U.S. Pacific Command (USCINCPAC) is responsible for an area comprising 105 million square miles (272 million square kilometers [km^2]). The force structure assigned to USCINCPAC is comprised of approximately 100,000 personnel in all of the military services. These military forces include active duty, national guard and reserve organizations stationed on Guam, multi-service forces assigned to the continental United States, Alaska, Hawaii, the Republic of Korea, Japan, and Okinawa. Forces permanently assigned to Guam, deployed forces in transit to the Western Pacific and Indian oceans, and forces tasked by USCINCPAC to participate in large-scale joint or combined exercises training in the Mariana Islands. The large exercises are designed for each military service to sustain its skills as part of a larger multi-service force. Primary training management responsibility is assigned to Commander, U.S. Naval Forces Marianas (COMNAVMARIANAS) as the USCINCPAC Representative. Commander, 36 Air Base Wing (36 ABW), headquartered at Andersen Air Force Base on Guam, is also responsible for training management and support, which includes the strategic and tactical movement of exercise personnel and equipment.

Record of Decision

This Record of Decision (ROD) addresses the continued use of suitable DoD-controlled lands in the Mariana Islands to support various training activities in a manner that maximizes the use of available training lands giving consideration to environment impacts. This decision ensures the military readiness of the multi-service forces by providing varying terrain for field training, amphibious landings, supporting airfields, amphibious craft and helicopter landing zones, parachute drop zones, live-fire small-arms weapons ranges, and underwater demolition sites. The lands used for specific training activities support day-to-day training requirements, as well as the more infrequent larger-scale exercises. The environmental impacts of activities have been fully evaluated in the Marianas Training Plan (MTP) Environmental Impact Statement (EIS).

The areas controlled by COMNAVMARIANAS include military bases on Guam (Waterfront Annex, Ordnance Annex, and two Communications Annexes), the Military Lease Area (MLA) on Tinian, and Farallon de Medinilla (FDM), where the leased island and a three-mile safety radius comprise Navy Training Range 7201. Commander, 36 ABW, manages training lands at Andersen Air Force Base including its Main Base, Northwest Field, and Andersen South. The EIS also evaluated a few smaller nonmilitary properties on Guam, Tinian, and Rota presently used for specific training functions or proposed for new activities with the express permission of the landowners.

The training lands available for training and applicable to this ROD include the entire island of FDM (206 acres [83 hectares] of leased land); 15,844 acres (6590 hectares) comprising the MLA on Tinian; 18,100 acres (7,341 hectares) on Navy bases on Guam, and 17,534 acres (7,100 hectares) of Air Force property on Guam.

Process

USCINCPAC REP GUAM/CNMI analyzed the potential impacts caused by multi-service military training activities in an Environmental Impact Statement (EIS) as required by NEPA. Military training and support activities were evaluated on three islands in CNMI—Farallon de Medinilla (FDM), Tinian and Rota—and the Territory of Guam.

The Notice of Intent to develop the EIS was published in the Pacific Daily News on November 18, 19 and 20, 1995, and the **Federal Register** on November 28, 1995. Public scoping meetings were conducted on Tinian, Rota, and Guam in December 1995. Two iterations of the Draft EIS (DEIS) were distributed to federal, state, and local government agencies, elected officials, community groups and business associations, and interested persons in January 1997 and June 1998. During the 45-day review period, oral and written comments were received from between 25 to 30 correspondents. After public notification was provided in the Pacific Daily News and Marianas Variety, USCINCPAC REP GUAM/CNMI conducted eight public hearings on Saipan, Tinian, Rota and Guam to receive additional comments during March 1997. The responses to all public comments were incorporated into the Final EIS (FEIS) which was distributed to the public on June 11, 1999 for a 30-day review period and written responses were provided to seven correspondents with comments regarding the preferred alternative and mitigation measures.

Alternatives Considered

Four training land use alternatives represent a spectrum of training possibilities: conducting no training; reducing existing training land uses; taking no (new) action; and increasing training activities and sites to encompass all of the training requirements that are identified in the U.S Pacific Command's "Marianas Training Plan" (MTP). The result of the evaluation is a fifth alternative, the Preferred Training Land Use Alternative for the Mariana Islands, which retains ongoing training activities and sites, and adds a few of the new training requirements in the MTP to maximize training land value or to eliminate training deficiencies. The alternatives were based on the need to maintain a high level of operational readiness and joint service operation capabilities among units stationed and operating in the Western Pacific and Indian Ocean.

No Training Land Use Alternative

Land areas presently in use would no longer be used for training. This alternative could be selected for a portion of a training area if it were necessary to protect biological or cultural resources or to ensure public safety by totally restricting access. The No Training Land Use Alternative is the environmentally preferred alternative but is not the preferred alternative since it fails to meet the purpose and need for the proposed action.

Reduced Training Land Use Alternative

Land areas presently in use would be used by fewer personnel or for less intensive training activities. Selection of this alternative was evaluated against ongoing training activities, which comprise about 90 percent of the evaluated training land uses. The EIS

did not determine that there were any environmental impacts of ongoing activities that require reducing training on FDM, the MLA and Guam's military bases as the preferred alternative.

No New Training Land Use Alternative

The "No Action Alternative" for this EIS can also be defined as a "no new action," "ongoing training" or "continuing action" alternative. Training activities within existing sites, existing mitigation measures and training constraints would continue to be performed unchanged.

Maximum Training Land Use Alternative

This alternative would include all of the training activities and training sites that were identified in the MTP, as well as expand or introduce new activities and sites. This alternative proposed expanding range training on FDM by incorporating ground artillery, mortar, and anti-tank rocket firing. On Tinian, this alternative proposed additional landing beaches in the MLA and the development of live-fire weapons ranges and training structures. On Guam, this alternative proposed additional landing beaches and underwater demolition sites at Waterfront Annex, live-fire weapons training ranges modifications at Waterfront Annex, and new weapons range development at Ordnance Annex. Andersen Air Force Base training activities would remain unchanged, but a new, permanent location would be selected for ongoing rapid runway repair training.

Preferred Training Land Use Alternative

The selected alternative is the result of analyzing potential environmental impacts. This alternative encompasses a mitigated/constrained set of ongoing training activities and the adoption of a few, but not all, of the new training initiatives to offset some existing training area deficiencies. FDM (Navy Range 7201) will continue to be used for naval and aerial bombardment. Training frequency and amounts of munitions to be expended on an annual basis have been determined. Impact areas have been modified to protect migratory seabird colonies, and Micronesian megapode habitat enhancement is underway on Sarigan Island as compensatory mitigation.

The MLA on Tinian will continue to be a major field maneuver area, with two beaches suitable for landings by landing craft air-cushioned (LCAC) and additional beaches suitable for small inflatable raiding craft. North Field runways will continue to be used for airborne and airmobile exercises. The shared use of Tinian's municipal airport and harbor continue for exercise support activities planned in concert with civilian and commercial requirements. Live-fire training will be limited to Training in the Urban Environment (TRUE) scenarios using a World War II structure. Logistic activities will continue to be conducted by Naval Special Warfare (NSW) units on Rota to support its special boat team training activities that are conducted between Guam and FDM.

Full use of Navy and Air Force bases on Guam will continue. The existing live-fire ranges on Orote Peninsula will be modified as proposed in the EIS to provide a fire-and-maneuver capability and stress course. A sniper range and jungle trail range will be constructed in the Ordnance Annex. Additional sites for underwater demolition training, established offshore of Dadi Beach and at the Agat Drop Zone, will be used to ease the frequency of underwater demolition training presently conducted in and near the mouth of Apra Harbor.

Training Constraints

Limitations to training activities to avoid generating significant impacts have been established by COMNAVMARIANAS and Commander, 36 ABW within certain portions of training areas on FDM, Tinian, and Guam. These constraints will continue to be used as the primary means to protect endangered and threatened species and areas of cultural significance from impacts caused by military personnel and equipment being introduced into training areas by landing craft and amphibious vehicles, aircraft, and vehicles for subsequent maneuver, range training, and bivouacs. Constraints are also established to ensure the safety of personnel in or near active training areas. The constraints—No Wildlife Disturbance (NWD), No Cultural Resource Disturbance (NCRD), and No Training (NT)—will be published in training orders, directives, and exercise plans as maps and overlays and distributed to the units responsible for day-to-day training and larger exercises. The restrictions on military activities can be summarized as follows:

Within areas designated as NWD, to protect vegetation and nesting sites, forces are prohibited from conducting cross-country, off-road vehicle travel. During the nesting season of the threatened Tinian monarch (*Monarchus takasukasae*), field maneuvers cannot be conducted in tangantangan habitat areas. To reduce the potential for field fires and loss of vegetation habitat, the use of pyrotechnics or demolitions (except for emergency signaling) is not authorized. The use of live and blank ammunition is not allowed so that unexpected, disturbing noises are curtailed. Potential loss of habitat is also controlled by allowing no mechanized vegetation clearing and establishing the maximum size of brush suitable as camouflage material. Flight altitude restrictions have been established as necessary to protect endangered species habitat. No flights below 1,000-ft (305-m) above ground level (AGL) are authorized over known endangered Mariana crow habitat at Northwest Field. No helicopter landings are authorized except at designated landing zones.

NCRD areas are established to protect known or potential cultural resources. Sub-surface disturbances are prohibited in these areas. There will be no cross-country, off-road vehicle travel, and vehicle parking is confined to surfaced areas and cleared road shoulders only. The use of pyrotechnics and demolition charges is also restricted. No digging or excavation is permitted without prior approval of COMNAVMARIANAS or 36 ABW environmental monitors. During major exercises on Tinian, authorized traffic routes through NCRD areas are marked with engineer tape to facilitate movement between the beaches and inland maneuver areas without impact. NCRD constraints maps have been included in a recently developed Programmatic Agreement and a Memorandum of Agreement executed to protect cultural resources in the CNMI and Guam.

Areas designated as NT are off-limits, meaning that there is absolutely no training allowed in these areas. Entry to some of these areas can be authorized for administrative troop and vehicle movement on designated roads or trails only. NT areas have been established to protect both endangered species habitat and areas of particularly sensitive cultural value. NT areas are also established for safety purposes in the vicinity of the munitions storage areas on Andersen Air Force Base and the Ordnance Annex.

Environmental Impacts

USCINCPAC REP GUAM/CNMI has analyzed the direct, indirect, and cumulative impacts of proposed training in the Mariana Islands across a spectrum of alternatives ranging from no training activities to maximizing training by adopting all of the activities published in the MTP. Each alternative was evaluated for potential effects on the physical environment (climate, geology and hydrology, water quality, air quality, noise, visual setting/aesthetics, and natural hazards and

constraints), biological environment (terrestrial and marine), cultural resources (archaeological and historical), infrastructure, utilities and public services, and the socioeconomic environment on the affected islands.

The alternatives were also evaluated with respect to their consistency with policies established by Executive Orders for Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, Coral Reef Protection, Protection of Wetlands, Protection of Children from Environmental Health Risks and Safety Risks, and Invasive Species.

From the outset, three training activities were identified as environmentally controversial and potentially significant. One was the potential for damage to nearshore coral caused by contact with landing craft utility (LCU) and tracked assault amphibian vehicles (AAVs) on Tinian and Guam. Beaches free of nearshore coral and suitable for landing craft and AAVs were identified at the Waterfront Annex. No suitable site for displacement hull LCUs and AAVs was found in the MLA on Tinian, and therefore, LCU/AAV landings will remain confined to Tinian Harbor. Potential impacts to coral in shallow nearshore waters and reefs by landing craft, air-cushion (LCAC) were evaluated in a marine biological survey at Unai Chulu, Tinian. No significant impacts are caused by the LCAC when operated within acceptable parameters. A similar marine biological survey will be conducted to revalidate the lack of impacts to shallow coral by LCAC landings at Unai Dankulo, Tinian and Dadi Beach, Guam. Potentially significant damage to nearshore coral has been eliminated by identifying the suitable types of craft that will be allowed to use each landing beach on Tinian and Guam.

The second issue was underwater demolition training by Explosive Ordnance Disposal (EOD) and NSW units that cause portions of Apra Harbor to be temporarily closed to other uses and may have a significant impact on marine species. Closure of the harbor, which interferes with commercial boating and diving activities, will be minimized by use of additional underwater training sites in open ocean waters to lessen the frequency of use of Apra Harbor. Training site selection will favor the ocean sites unless weather conditions dictate otherwise. USCINCPAC REP GUAM/CNMI continues to work with Guam Environmental Protection Agency (Guam EPA) and Division of Aquatic and Wildlife Resources (DAWR) to select additional sites and to continue using demolition training protocol that minimizes potential impacts to marine biota and provides advance coordination with affected commercial enterprises. Although potentially significant impacts are not anticipated, the activity may remain controversial with respect to the commercial ocean recreation sector and government agencies responsible for protection of endangered and threatened marine species.

The continued use of FDM as a naval gunfire and aerial bombardment range is the third issue. Used as a bombardment range since at least 1971, the island has been the subject of a series of biological evaluations by federal, commonwealth, and military experts. Although the bombardment of FDM may significantly impact endangered species and habitat vegetation, no alternative bombardment range sites are available to USCINCPAC forces for this training requirement. Therefore, compensatory mitigation measures have been enacted in cooperation with U.S. Department of Interior, U.S. Fish and Wildlife Service (USFWS) and CNMI Division of Fish and Wildlife (DFW) to enhance the population of the endangered Micronesian megapode on Sarigan, another uninhabited island in the CNMI. Mitigation measures include controlling the types and amounts of ordnance to be dropped and confining the impact areas to minimize impacts on biological resources. The Navy will conduct aerial evaluations of vegetation habitat and birds in conjunction with major bombardment activities. The condition of nearshore coral and the effects of bombardment on the marine environment will be surveyed annually for the next three years by USCINCPAC REP GUAM/CNMI in cooperation with National Marine Fisheries Service (NMFS), USFWS, and CNMI DFW.

Environmental Mitigation

COMNAVMARIANAS analyzed the potential impacts of the selected action on the following: natural or biological resources, cultural resources, environmental quality, infrastructure deficiencies on Tinian, public safety, and socioeconomic quality.

Natural Resources

In addition to identifying areas subject to NWD or NT constraints, mitigation measures to reduce training impacts to nonsignificant levels include adhering to operational requirements for beach landing craft to minimize impacts to shallow reefs and nearshore coral, requiring qualified biologists to conduct pre-training surveys to ensure that training will not impact sea turtle nesting, and adhering to updated brown tree snake (*Boigus irregularis*) control and interdiction methods to prevent the introduction and proliferation of the BTS from Guam to other locations. These and other mitigation measures identified in the FEIS are now in effect and will be published in Navy and Air Force training orders, directives, and plans. The BTS Control and Interdiction Plan will be updated and published as a COMNAVMARIANAS directive to regulate routine as well as training material/cargo movement from Guam.

With the exception of the continued use of FDM as a naval gunfire and aerial bombardment range, the Preferred Training Land Use Alternative does not significantly impact listed threatened or endangered species. Impacts are reduced to nonsignificant levels by establishing training area boundaries, implementing mitigation measures and training constraints, and conducting environmental monitoring and evaluation. Particular attention has focused on enhancing endangered Micronesian megapode (*Megapodius laperous*) habitat in the CNMI, protecting the threatened Tinian monarch (*Monarcha takasukasae*) during nesting seasons, restricting maneuver in areas of Mariana common moorhen (*Gallinula chloropus guami*) habitat, causing little or no disturbance to the island swiflet (*Aerodramus vanikorensis bartschi*) and three species of federal and Guam endangered fruit bats, and restricting maneuver in areas of Ordnance Annex recently identified as habitat of tree snails being considered for federal listing. Mariana crow (*Corvus kubaryi*) nests at Northwest Field will continue to be monitored by Guam Division of Aquatics and Wildlife Resources (DAWR). As nesting activities are found, this information will be made known to Flight Operations to ensure no overflights at unauthorized altitudes. Protective measures for hawksbill turtles (*Eretmochelys imbricata*) and green sea turtles (*Chelonia mydas*) are in place to minimize or avoid impacts on these species that may enter training beaches and open waters during amphibious training and underwater demolitions.

On FDM, migratory seabirds, federally endangered Micronesian megapodes and Mariana fruit bats may be killed by ordnance or displaced by a loss of habitat. These impacts are mitigated by avoiding certain munitions and by relocating targets so that the majority of ordnance delivered will avoid the most sensitive areas for nesting and roosting birds. Formal consultation in accordance with Section 7 of the

Endangered Species Act has been completed and the protective measures recommended in the biological opinions of USFWS and NMFS have been adopted.

Due to the increased danger of field fires being caused by training during periods of drought and high winds, fire prevention and response plans will be enforced at all ranges and maneuver areas. During periods of high risk, training activities with potential fire-causing effects will be suspended as necessary. Crash-fire-rescue (CFR) vehicles will be available during flight operations in case of a crash and resulting fire.

Cultural Resources

The Preferred Training Land Use Alternative would not significantly impact sites listed or eligible for listing in the National Register of Historic Places (NRHP). Such sites located on land and off-shore could be damaged by off-road vehicles, construction, rapid runway repair, excavation, vandalism, small arms and mortar fire, and shock waves generated by deepwater explosives. These impacts will be mitigated to nonsignificant levels by designating areas with listed or eligible NRHP sites as "No Training" or "No Cultural Resources Disturbance" areas, which would prohibit digging within three feet of historic structures with concrete walls or in any cave, require pre-training archaeological surveys in historic structures used for urban warfare scenarios, and require post-training evaluation for evidence of impacts that would require additional mitigation. The consultation process with the CNMI and Guam Historic Preservation Offices has been completed in accordance with Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f (1994). A Programmatic Agreement has been signed by the USCINCPAC REP GUAM/CNMI, CNMI Historic Preservation Officer, and the Advisory Council on Historic Preservation (ACHP) regarding the conduct of military training on Tinian. The agreement (signed in June 1999), provides direction in the identification of historic properties, establishment of constrained areas, instructions to training participants, field mitigation and monitoring, coordination of training program revisions, response to public objections, reporting requirements and proposed long-term site protection at Unai Chulu, Tinian. A Memorandum of Agreement (MOA) signed in June 1999 by the USCINCPACREP GUAM/CNMI, COMNAVMARIANAS, 36th ABW, Guam Historic Preservation Officer, and the ACHP identifies protective measures to be carried out while developing live-fire weapons ranges in the Ordnance Annex and activities on Northwest Field. The MOA also addresses the continued use of constraints maps as one means to protect cultural resources from training impacts.

Environmental Quality

The Preferred Training Land Use Alternative would not have a significant impact on air quality, climate, geology, surface water quality, flooding, or groundwater. Existing military standing operating procedures (SOPs) and regulations prevent significant impacts on these resources. Major construction projects once proposed on Tinian that could have impacted groundwater quality will not be conducted at this time. If any construction is proposed in the future, appropriate environmental evaluations would be conducted. The concern that live-fire ranges could cause lead contamination in groundwater has been eliminated since there will be no small arms range development. The military is also developing lead-free small-arms ordnance for all range training.

Tinian Infrastructure

Wastewater disposal has been a major logistic issue for all large-scale exercises. Tinian presently has no large-scale municipal wastewater treatment facility and there has been concern that temporary overuse of the systems would impact groundwater resources, air quality, and public health. Leasing portable toilets, contracting pumping services and disposing wastes in municipal systems was the standard practice to handle large quantities of black-water wastes. The shared use of municipal septic tanks during major exercises is no longer necessary. Navy Public Works constructed a septic tank and leach field based on the requirement to support up to 2,500 exercise personnel. This tank was first available during Tandem Thrust 99 (March–April 1999). Its availability has eliminated concerns about cumulative impacts on the island's municipal system capacity.

Tinian has no EPA-approved solid waste landfill and no hazardous waste or hazardous material handling facility. Training activities routinely generate varying amounts of solid waste (primarily cardboard and paper) and may generate very small amounts of hazardous materials and used oil. Collecting, compacting, and transporting solid wastes off Tinian will continue as a requirement for any military exercise on Tinian. The Tinian municipal landfill will not be used. Hazardous materials, used oils and expended lithium batteries will be handled as stipulated in exercise plans for removal from the island of Tinian to authorized waste streams. Maintenance activities that could generate hazardous materials will be minimized while on Tinian, with scheduled maintenance conducted on military bases or while aboard ship.

Public Safety

The Preferred Training Land Use Alternative would not have a significant impact on public health and safety. The COMNAVMARIANAS policy limiting access to FDM remains in effect, allowing only active duty, DoD-trained explosive-qualified personnel responsible for range operations and maintenance. The proposal to expand the range for firing ground weapons such as artillery, mortars, and anti-tank missiles is not approved due to the existence of unexploded ordnance throughout the island. Biological surveys will continue to be conducted from the air by helicopter.

Range safety and control measures are presently in place on Guam at Orote Peninsula, the Communications Annex at Finegayan, and Andersen Air Force Base. Risks to public safety from projectiles from small arms and rifle ranges will be avoided by adhering to range regulations, conducting required range area sweeps and surveillance during training on affected land and water areas, installing and maintaining coastal warning devices of the presence of ranges, and temporarily restricting range access when necessary. Prior to the activation of new and modified live-fire training ranges on Guam, the ranges will be evaluated and certified by the Naval Facilities Engineering Command. At the Ordnance Annex, the design will also be reviewed and approved by the Naval Ordnance Command. The orientation of the sniper firing range at Ordnance Annex has been modified to avoid intersection of the range's Surface Danger Zone and a public hiking trail that infringes Navy property.

The proposed small arms fire and maneuver range will not be constructed on Tinian at this time. An alternative fire-and-maneuver range site is being developed on a former small arms range at Orote Point on Guam. This decision eliminates potential safety impacts to civilians or non-training personnel who could encroach on the range training area.

The proposed 60mm mortar range will not be developed on Tinian. This eliminates potential safety risks due to unexploded ordnance remaining in

areas that could be encroached by the public and difficult to control access restrictions to 100 percent certainty.

Proposed construction of a permanent shooting house or breacher trainer will not be undertaken on Tinian at this time. Whenever the former World War Two Japanese Command Center is in use as a shooting house, area access will be restricted. Alternative urban training facilities are also available on Guam.

Notice to Airmen (NOTAMS) and Notice to Mariners (NOTMARS) will be published and broadcast to forewarn of naval gunfire and aerial bombardment at FDM. The island range and its three-mile radius surface danger zone will be surveyed prior to commencing training to ensure that the area is clear of all non-training related activity.

Potential impacts between civilian and military aircraft will be avoided through the coordinated efforts of military and FAA air traffic controllers in accordance with military SOPs and FAA regulations. NOTAMS will be published in advance of training that involves the use of airspace over FDM, Tinian and Guam.

There will be no hazards to ordnance, fuel storage, and personnel from electromagnetic radiation during training. Required clearance distances are maintained between field emitter sites and ordnance, fuel, and personnel. There would be no risk to public health caused by transmissions from the International Broadcasting Bureau's site recently constructed in the MLA on Tinian. The acreage has been removed from the areas in the MLA used for training.

Impacts to boaters and divers from shallow and deepwater mines will be avoided by continuing to clear and patrol demolition sites and exclusion zones prior to all exercises. To avoid potential sympathetic detonation of depth charges located on the Tokai Maru, a sunken Japanese World War II vessel in Outer Apra Harbor, the present demolition site will remain unchanged and the size of the explosive charge limited to ten pounds.

Civilian ports of entry will not be significantly impacted. On Tinian and Rota, approval from civilian authorities will be obtained 30 days prior to any exercise. To avoid significant impacts on customs and immigration services, local authorities will be notified 30 days prior to large exercises. Noise impacts from training at Tipalao and Dadi beaches will be temporary. To eliminate potentially significant impacts, training will be conducted during the day.

The Preferred Training Land Use Alternative will not have a significant impact on roadways and traffic. Military traffic control will be used as necessary to move military convoys through Tinian town. AAVs using public roads will have track pads installed to avoid damaging road surfaces.

Socioeconomic Environment

Tinian's relatively small population is isolated from many economic opportunities that are available to Saipan residents. Training activities offer potential economic benefits through the purchase of local goods and services. Temporary exclusion of tours from active training sites in the EMUA could have a negative effect. One casino hotel has opened and another is planned, and cumulative socioeconomic impacts may result from the combination of military training and increased tourism.

USCINCPAC REP GUAM/CNMI will continue to provide advance information to CNMI agencies and affected commercial enterprises whenever military training safety considerations require temporary restrictions to areas on Tinian normally open to the public. Affected agencies and firms have requested at least a 30-day notice, which in almost all instances can be accommodated. This interaction will include the CNMI and Tinian municipal governments, the Commonwealth Port Authority, and tourist agencies in advance of all training on Tinian that may interfere with tourist activities in the MLA, nearshore waters or the harbor. Whenever active training is not taking place in portions of the MLA, these areas will be opened to visitors.

Underwater demolition by EOD and NSW units in Guam's Outer Apra Harbor requires certain areas of the harbor (including a number of popular dive sites) to be closed to civilian activities once a month for approximately four hours. This public safety measure may cause loss of income to commercial boat and dive operators. SOPs practiced by EOD and NSW units will continue to provide advance information to affected commercial firms so that they can seek alternative dive, boating and fishing sites during the temporary closures. This process will continue along with the use of NOTMARs and coordination with GEPA and DAWR to actively observe and monitor training.

Executive Orders

The FEIS considered federal policies under Executive Orders pertaining to Environmental Justice, Protection of Children from Environmental Health and Safety Risks, Protection of Wetlands, Coral Reef Protection, and Invasive Species, to ensure that training will be conducted in compliance with said policies and that appropriate mitigation actions will be taken to eliminate or reduce potentially significant impacts.

Preventive practices to address the potentially significant impacts that could be caused by brown tree snakes have been addressed and remain a subject of periodic review and updates to ensure that the latest proven methods have been incorporated. Appendix E of the FEIS compiles the measures taken to prevent BTS impacts to date. An updated order defining BTS control/interdiction protocols will be published by COMNAVMARIANAS.

The prevention of coral damage or destruction was a primary criterion in selecting beaches for landings by displacement hull landing craft and tracked amphibious assault vehicles. The lack of impact to shallow coral by LCACs was demonstrated at Unai Chulu, Tinian, and similar studies will be conducted at Unai Dankulo, Tinian, and Dadi Beach, Guam, prior to final approval as LCAC landing sites.

Marianas Training Management Regulations

Implementation of the Preferred Training Land Use Alternative requires the COMNAVMARIANAS and 36th ABW to implement mitigation measures and training constraints for their respective areas of responsibility and to cooperate in monitoring and corrective measures. The mitigation and constraints identified in the FEIS will be incorporated into training orders and directives. Compliance with these directives is the responsibility of each military organization involved in Marianas training. The military will conduct advance coordination as needed with agencies of the territorial and commonwealth governments and affected commercial enterprises to avoid training area use conflicts.

Comments Received on FEIS

The CNMI Historic Preservation Officer (HPO) identified an additional cultural resource site in the vicinity of Unai Dankulo, Tinian. The training constraints map for Tinian training will be modified to incorporate an additional NCRD area south of the landing beach site. The HPO also expressed concern regarding the lack of an archaeological survey on FDM. Conducting such a survey is not feasible due to potential danger to the surveyors since the island is an impact area and replete with unexploded ordnance.

CNMI Department of Lands and Natural Resources (DLNR) commented

on the need to follow LCAC operational protocols to protect the beach environment. The lessons learned during LCAC operations at Unai Chulu, Tinian during Tandem Thrust 99 will be incorporated into COMNAVMARIANAS training orders. The department's Division of Fish and Wildlife (DFW) suggested a change in the timing for setting up portable BTS barriers at cargo points on Guam and Tinian. When updating the BTS Control/Interdiction protocols, the process for using portable snake barriers at ports of entry and shipment will be defined by military representatives and CNMI, Guam, and federal regulators.

U.S. Environmental Protection Agency, Region IX commented on the BTS Control/Interdiction Plan update requirement, compensatory mitigation measures for impacted biological resources, and prevention of impacts by amphibious landings during coral spawning. COMNAVMARIANAS will continue to monitor and mitigate these concerns as necessary.

Guam Environmental Protection Agency has concerns regarding training at the Waterfront Annex's Dadi Beach and instead, favors the use of the beach and waters at Tipalao for amphibious landings and underwater demolition training. Site surveys and evaluations between the Navy and GEPA will continue in regard to any activities at either beach.

U.S. Department of Agriculture, APHIS, Wildlife Services provided a list of lessons learned from Tandem Thrust 99 that will be incorporated in the updated BTS Control/Interdiction directive.

U.S. Department of Interior, U.S. Fish and Wildlife also identified the need to update the COMNAVMARIANAS BTS Control/Interdiction Plan, initiate compensatory mitigation for impacts to migratory seabirds on FDM, and to initiate a Section 7 Endangered Species Act consultation for target placement on FDM. This agency participated in the development of the 1996 BTS Control/Interdiction Plan and will be asked to participate in the process to update the plan as a COMNAVMARIANAS BTS Control/Interdiction directive. Compensatory mitigation measures will continue for endangered and threatened species. Target material selection and placement is an ongoing action, which will be incorporated in the update of the BTS Control/Interdiction directive.

Conclusion

USCINCPACREP GUAM/CNMI, in cooperation with federal, territorial and commonwealth regulatory agencies, will conduct all necessary steps to avoid or minimize environmental harm that could be caused by military training.

The Preferred Training Land Use meets the purpose and need to train in the Mariana Islands while avoiding or minimizing impacts on the existing environment. The preferred alternative and its mitigation and constraints are fully responsive to the concerns expressed by regulatory agencies and members of the public, local economic conditions, and required levels of public safety. Although the "No Training Alternative" may be perceived as causing no significant environmental impacts, it does not necessarily foster continued stewardship in areas that will remain free of development, and does not meet the stated purpose and need for maintaining the operational readiness of USCINCPAC forces.

The EIS evaluated a mix of activities with variable schedules of activities at each site, training event duration, and numbers and types of participating units. The findings of the EIS reflect this dynamic training environment and potential changes to military training missions that require continuous environmental monitoring and evaluation of direct, indirect, and cumulative impacts. Training management measures will be modified whenever (1) it is discovered that the environmental effects of ongoing activities are significantly and qualitatively different or more severe than predicted, and (2) a new training activity represents a substantial change from existing activities and has the potential for generating significant environmental impacts. Under these circumstances, USCINCPAC REP GUAM/CNMI will review the issues with appropriate regulatory agency representatives to determine and implement appropriate mitigation measures.

Accordingly, training in the Mariana Islands will be conducted in a manner that is consistent with the Preferred Training Land Use Alternative as identified in the Marianas Training Environmental Impact Statement.

Dated: July 28, 1999.

Rear Admiral J.W. Greenert,

USCINCPAC REP GUAM/CNMI.

[FR Doc. 99–21375 Filed 8–17–99; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 18, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 12, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Evaluation of Effective Adult Basic Education Programs and Practices.

Frequency: Three times total for each respondent: 1st month, 9th month, 21st month.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,385.
Burden Hours: 3,923.

Abstract: This study will investigate the following research questions: (1) How much do first-level adult learners who participate in adult basic education programs improve their reading skills and increase the frequency of their reading-related behaviors?; (2) What characteristics of first-level learners affect the amount of improvement that they make in their reading skills or reading-related behaviors after participating in adult basic education programs?; (3) How are the operational and instructional characteristics of adult basic education programs related to the amount of improvement in reading skills or reading-related behaviors among first-level learners?

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *Vivian__Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or electronically contact her at her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs.

Type of Review: Extension.
Title: Income Contingent Repayment Plan Consent to Disclosure of Tax Information.
Frequency: Once every five years.
Affected Public: Individuals or households.
Reporting and Recordkeeping Burden:
Responses: 114,000.
Burden Hours: 22,800.

Abstract: This form is the means by which a William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan provides written consent for the Internal Revenue Service to disclose certain tax return information to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *Vivian__Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically contact him at his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: Reinstatement.
Title: Income Contingent Repayment Plan Alternative Documentation of Income.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting and Recordkeeping Burden:
Responses: 25,000.
Burden Hours: 8,250.

Abstract: A William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan uses this form to submit alternative documentation of income if the borrower's adjusted gross income is not available or does not accurately reflect the borrower's current income.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *Vivian__Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically contact him at his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: Reinstatement.
Title: William D. Ford Federal Direct Loan Program Statutory Forbearance Forms.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Burden:
Responses: 2,400.
Burden Hours: 480.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to request statutory forbearance on their loans..

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *Vivian__Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically contact him at his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Designation of Exemplary and Promising Programs.
Frequency: Only required when submitting program for review.
Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs
Reporting and Recordkeeping Hour Burden:
Responses: 200.
Burden Hours: 1,200.

Abstract: The purpose of the expert panel system is to oversee a valid and viable process for identifying and designating promising and exemplary educational programs so that practitioners can make better-informed decisions in their ongoing efforts to improve the quality of student learning. The Office of Educational Research and Improvement (OERI) requires that each program submit descriptive information and an abstract in order to be considered for review. The information submitted by the entity will serve as the basis upon which the expert panel will

judge the program according to the selection criteria for promising and exemplary.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–21382 Filed 8–17–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 17, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 12, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Program Evaluation of the European Community/United States of America Joint Consortia for Cooperation in Higher Education and Vocational Education.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 680.

Burden Hours: 422.

Abstract: Program evaluation of the 1996, 1997, and 1998 fiscal year projects in the EC/US Joint Consortia Program. The evaluation will gauge the educational quality and cost effectiveness of the student exchanges and curriculum development programs and inform future grant competitions.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *Vivian—Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or by e-mail at joe____schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–21383 Filed 8–17–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 8, 1999, 9:00 a.m. to 5:30 p.m.; Thursday, September 9, 8:30 a.m. to 12:30 p.m.

ADDRESSES: Holiday Inn/Goshen Hall; 2 Montgomery Village Avenue; Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To finalize the Committee's report to the Department of Energy providing an assessment of the restructured Fusion Energy Sciences Program, including recommendations for further redirection given projected flat budgets in the future. The report will also include recommendations on the ongoing proof-of-principle experiments and the balance between tokamak and non-tokamak physics and between magnetic and inertial fusion energy.

Tentative Agenda

Wednesday, September 8, 1999

9:00 a.m. Discussion of Report to DOE on October 9, 1998 Charge
1:30 p.m. Public Comment
3:15 p.m. Finalize Report to DOE
5:30 p.m. Adjourn

Thursday, September 9, 1999

8:30 a.m. DOE Perspective
10:00 a.m. Presentation of Findings to DOE
11:00 a.m. Other Business
12:30 p.m. Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker@science.doe.gov (email). You must make your request for an oral statement at least 5 business

days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, S.W.; Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on August 13, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21419 Filed 8–17–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: September 30, 1999 from 9:00 am to 5:00 pm, and October 1, 1999 from 9:00 am to 12:00 pm.

ADDRESSES: Shell Island Beach Resort Hotel, Wrightsville Beach, North Carolina. Phone: 800/689–6765 or 910/256–8696.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals, objectives, programmatic, and administrative policies; and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- Review of the release of the STEAB Seventh Annual Report titled "Making Markets Work in Energy Efficiency and Renewable Energy"
- Deploying technology from DOE laboratories to the States;
- Status of Weatherization Assistance Program and future funding
- Federal efforts to market energy efficiency and renewable energy technologies.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 13, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21421 Filed 8–17–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Program

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE is releasing an updated draft of the Federal Energy Management Program (FEMP) Measurement and Verification (M&V) Guidelines for Federal Energy Projects for public comment. DOE will consider comments and recommendations for the new version of the Guidelines.

DATES: Submit comments on or before September 17, 1999.

ADDRESSES: Mail comments to Tanya Sadler, Office of Federal Energy Management Programs, EE–90, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121, or by e-mail to tanya.sadler@ee.doe.gov. Electronic copies of the draft Guidelines are available from the following Internet web address: http://eande.lbl.gov/CBS/femp/MVdoc.html. Printed copies will be sent upon request.

FOR FURTHER INFORMATION CONTACT: Tanya Sadler, Program Manager for Energy Savings Performance Contracting, (202) 586–7755 by phone or (202) 586–3000 by fax.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (EPACT) and the resulting energy savings performance contracting regulation, 10 CFR Part 436, authorize Federal agencies to enter into contracts where the contractor incurs project costs and is paid from the energy cost savings resulting from the project. Energy cost savings are defined in 10 CFR Part 436 as "reductions in cost * * * from a base cost * * * established through a methodology set forth in a contract * * *" Further, 10 CFR 436.37 requires an annual energy audit that "shall verify the achievement of annual energy cost savings." FEMP provided detailed guidance on performing these procedures when it released the FEMP M&V Guidelines for Federal Energy Projects in 1996. The FEMP M&V Guidelines were designed to provide specific instructions to Federal users on how to apply energy savings determination procedures that are defined in the industry-wide document, the International Performance Measurement and Verification Protocol (IPMVP). In the past three years, the IPMVP has been updated to reflect lessons learned. In order to maintain consistency with the IPMVP, respond to recommendations for improvements, and add new features for Federal agency users, FEMP will release an update of the M&V Guidelines called FEMP M&V Guidelines for Federal Energy Projects, Version 2.1. The new version contains the following updates to the 1996 version: new M&V methods for cogeneration, new construction, operations and maintenance, renewables, and water conservation projects. FEMP plans to update the Guidelines on an as needed basis.

Issued in Washington, DC, on August 11, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 99–21420 Filed 8–17–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–348–001]

Arkansas Western Pipeline, L.L.C.; Notice of Compliance Filing

August 12, 1999.

Take notice that on August 9, 1999, Arkansas Western Pipeline, L.L.C. (AWP L.L.C.) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 1999:

Substitute First Revised Sheet No. 81
Substitute First Revised Sheet No. 84
Substitute First Revised Sheet No. 109

AWP L.L.C. asserts that the purpose of this filing is to comply with the Commission's Letter Order in this proceeding dated July 23, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21408 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–379–001]

Dynegy Midstream Pipeline, Inc.; Notice of Compliance Filing

August 12, 1999.

Take notice that on August 6, 1999, Dynegy Midstream Pipeline, Inc. (DMP), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Substitute Second Revised Sheet Nos. 32 and 34

DMP states that it is submitting these revised tariff sheets to comply with the Commission's July 23 Order in the above-captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21410 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–466–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

August 12, 1999

Take notice that on August 10, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Order No. 587–I issued on September 29, 1998, in docket No. RM96–1–009. 84 FERC ¶ 61,328 (1998). In addition, Great Lakes requested a one-month extension, until October 1, 1999 to implement Internet nominations and scheduling as required by Order No. 587–I and the implementation schedule established by the Gas Industry Standards Board (GISB).

In Order No. 587–I, the Commission extended the deadline for the complete transition to Internet communications to June 1, 2000, but required pipelines to implement the transition according to the schedule established by the Gas Industry Standards Board (GISB). Under GISB's implementation schedule, each pipeline must offer the nomination and scheduling process through its Internet web site by September 1, 1999.

Great Lakes states that it is proposing the necessary revisions to its tariff to provide such capabilities. However, due to severe difficulties encountered in the last phases of Great Lakes' programming process, Great Lakes has determined that it will require an additional month for the implementation of Internet nominations and scheduling.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21412 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–468–000]

High Island Offshore System, L.L.C.; Notice of Tariff Sheet Filing

August 12, 1999.

Take notice that on August 10, 1999, High Island Offshore System, L.L.C. (HIOS), tendered for filing a part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective September 1, 1999.

First Revised Sheet No. 175

HIOS states that the purpose of this tariff filing is to revise the Monthly Imbalance provision of section 8.2 of the General Terms and Conditions of HIOS' FERC Gas Tariff to reflect the OBAs that the Commission recently required HIOS to implement to its system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to invervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed. us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21414 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–597–000]

Northeren Natural Gas Company; Notice of Application

August 12, 1999.

Take notice that on August 4, 1999, Northern Natural Gas Company (Northern), 111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP99–597–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon, by transfer to Sonat Exploration GOM, Inc. (Sonat), certain non-contiguous pipeline facilities, with appurtenances, located in the Grand Isle Area, Offshore Louisiana. The subject facility is known as the Grand Isle Block 80 Lateral (GI 80 Lateral). Northern also requests approval, concurrent with the conveyance of the facilities, to abandon, certain services rendered through the subject facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Communications concerning this filing should be addressed to: Michele Winckowsk, Senior Regulatory Analyst @ 402–398–7082 or Keith L. Petersen, Director of Certificates and Reporting, Northern Natural Gas Company, Post Office Box 3330, Omaha, Nebraska 68103–0330, Telephone: 402–398–7421, Fax: 402–398–7592.

The GI 80 Lateral consists of approximately 5.4 miles of 8-inch pipeline, with appurtenances, and extends from Grand Isle Block 80 to an underwater tap valve on Trunkline Gas Company's facilities located in Grand Isle Block 82. The subject facilities are located on the Outer Continental Shelf (OCS) and are subject to Sections 5(e) and 5(f) of the OCS Lands Act (OCSLA).

It is stated that the GI 80 Lateral was initially installed to connect new gas supplies required for Northern's merchant sales obligation, but that the subject facilities are no longer needed by Northern as its role in the marketplace has changed from a merchant to a transponder of natural gas. Northern further states that the subject facilities are non-contiguous to it's traditional transmission pipeline system, and that the Grand Isle 80 facilities were declared non-jurisdictional gathering pursuant to the Commission's Order issued February 13, 1995 in Docket No. CP92–498–005.

Northern avers that on or about November 4, 1998, a gas leak was discovered in the vicinity of the GI 80 Lateral. It was subsequently determined that damage to the GI 80 Lateral had caused the gas leak. After considering the repair cost for the GI 80 Lateral, Northern negotiated to convey the subject facilities to Sonat. It is stated that Sonat intends to repair the lateral when it completes the drilling of its new production wells which will ultimately be connected to the GI 80 Lateral.

Northern indicates that it currently provides interruptible transportation service on the subject facilities, on a month-to-month basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 2, 1999, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants partics to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in any subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21406 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–430–001]

Petal Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff]

August 12, 1999.

Take notice that on August 9, 1999, Petal Gas Storage Company (Petal)

tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fourth Revised Sheet No. 129, with a proposed effective date of August 1, 1999.

Petal states that its filing is made in compliance with a July 26, 1999, letter order of the Office of Pipeline Regulation (OPR), which directed Petal to revise Sheet No. 129 to reference the GISB standards which it has incorporated by reference as Version 1.3 standards.

Petal states that Substitute Fourth Revised Sheet No. 129 has been revised to make it clear that the standards and data sets incorporated by reference are Version 1.3 standards and data sets.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21411 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Puget Sound Energy, Inc.; Notice of Filing

[Docket No. ER99–3967–000]

August 10, 1999.

Take notice that on August 3, 1999, Puget Sound Energy, Inc. (Puget), tendered for filing the Agreement Regarding Canadian Entitlement between Puget and Public Utility District No. 2 of Grant County (Grant).

A copy of the filing was served upon Grant.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 23, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21404 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4055–000]

Southern Company Services, Inc.; Notice of Filing

August 12, 1999.

Take notice that on July 27, 1999, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively Southern Companies) tendered for filing an Offer of Settlement.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 23, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21405 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–467–000]

U–T Offshore System; Notice of Proposed Change in FERC Gas Tariff

August 12, 1999.

Take notice that on August 10, 1999 U–T Offshore System (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective September 1, 1999:

First Revised Sheet No. 49A

UTOS states that the purpose of this tariff filing is to revise the Monthly Imbalance provision of section 8.2 of the General Terms and Conditions of UTOS' FERC Gas Tariff to reflect the OBAs that the Commission recently required UTOS to implement on its systems.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests should be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21413 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP 99–376–011]

Venice Gathering System, L.L.C.; Notice of Compliance Filing

August 12, 1999.

Take notice that on August 6, 1999, Venice Gathering System, L.L.C. (VGS), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the

following tariff sheets, with an effective date of August 1. 1999:

Second Revised Sheet No. 47
Substitue Second Revised Sheet No. 50

VGS states that it is submitting these tariff sheets to comply with the Commission's July 23, 1999 Order in the above-captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21409 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–103–000, et al.]

K N Energy, Inc. and Kinder Morgan, Inc., et al.; Electric Rate and Corporate Regulation Filings.

August 10, 1999.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc., and Kinder Morgan, Inc.

[Docket No. EC99–103–000]

Take notice that on August 3, 1999, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations, K N Energy, Inc., and Kinder Morgan, Inc., filed a joint application for approval of the disposition of K N Energy's indirect 50-percent interest in Front Range Energy Associates, L.L.C. (Front Range) as a result of a proposed merger of K N Energy and Kinder Morgan. Front Range is developing an independent power production facility located in Colorado, and has been granted market-based rate authority by the Commission.

This application has been served upon the Colorado Public Utilities Commission, the California Public Utilities Commission and the Wyoming Public Service Commission.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Energy Trading and Marketing L.L.C. and NP Energy, Inc.

[Docket No. ER96–2921–016 and ER97–1315–011]

Take notice that on July 30, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in above-referenced proceedings for information only. These filings are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Geysers Power Company, LLC

[Docket No. ER99–3863–000]

Take notice that on July 30, 1999, Geysers Power Company, LLC, tendered for filing a transaction report for quarter ended June 30, 1999. Also take notice that on August 4, 1999, Geysers Power Company, LLC tendered for filing a revised transaction report.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Light Company

[Docket No. ER99–3950–000].

Take notice that on August 3, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and four service agreements with four new customers, Aquila Energy Marketing Corp., Constellation Power Source, Inc., Koch Energy Trading Inc., and TransAlta Energy Marketing (U.S.).

CILCO requested an effective date of July 30, 1999, for the Index.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER99–3951–000]

Take notice that on August 3, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, TransAlta Energy Marketing (U.S.).

CILCO requested an effective date of July 30, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Oklahoma Gas and Electric Company

[Docket No. ER99–3952–000]

Take notice that on August 3, 1999, Oklahoma Gas and Electric Company (OG&E), tendered for filing a service agreement for Central Illinois Light Company (CILCO) to take service under its short-term power sales agreement.

Copies of this filing have been served on each of the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Duquesne Light Company

[Docket No. ER99–3953–000]

Take notice that on August 3, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated August 2, 1999 with FPL Energy Power Marketing, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds FPL Energy Power Marketing, Inc., as a customer under the Tariff.

DLC requests an effective date of August 2, 1999, for the Service Agreement.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER99–3954–000]

Take notice that on August 3, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated August 2, 1999 with FPL Energy Power Marketing, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds FPL Energy Power Marketing, Inc., as a customer under the Tariff.

DLC requests an effective date of August 2, 1999, for the Service Agreement.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER99–3956–000]

Take notice that on August 3, 1999, Public Service Company of New Mexico (PNM), tendered for filing executed

service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with TXU Energy Trading Company (2 agreements, for Non-Firm and Short-Term Firm Service, dated July 29, 1999 and July 27, 1999, respectively); and with Los Angeles Department of Water and Power Wholesale Marketing (2 agreements dated July 16, 1999, for Non-Firm and Short-Term Firm Service).

PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Rochester Gas and Electric Corporation

[Docket No. ER99–3957–000]

Take notice that on July 14, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and Monroe County (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of July 14, 1999 for TransAlta Energy Marketing (U.S.) Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER99–3955–000]

Take notice that on August 3, 1999, Cinergy Services, Inc., collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and TransAlta Energy Marketing (U.S.) Inc. (TEMUS).

Cinergy and TEMUS are requesting an effective date of July 5, 1999.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–3959–000]

Take notice that on August 3, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing an Interconnection and Operating Agreement between Entergy Gulf States and Air Liquide America Corporation (Air Liquide).

Entergy Services requests waiver of the notice provisions necessary to permit the interconnection agreement to be made effective as of June 17, 1999.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER99–3960–000]

Take notice that on August 3, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (EGSI), tendered for filing a Generator Imbalance Agreement with Sabine Cogen L.P.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER99–3961–000]

Take notice that on August 3, 1999, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an amendment to the Interconnection Agreement between Entergy Gulf States, Inc. and Sabine Cogen L.P.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER99–3962–000]

Take notice that on August 3, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing an Interconnection and Operating Agreement between Entergy Gulf States and Sabine Cogen L.P., (Sabine Cogen).

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, (Allegheny Power)

[Docket No. ER99–3963–000]

Take notice that on August 3, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 59 to add FPL Energy Services, Inc., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is August 2, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER99–3966–000]

Take notice that on August 3, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Cargill-Alliant, LLC (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 2, 1999.

Copies of this filing were served upon Customer.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Energy, Inc.

[Docket No. ER99–3968–000]

Take notice that on August 3, 1999, Puget Sound Energy, Inc. (Puget), tendered for filing the Agreement Regarding Canadian Entitlement between Puget and Public Utility District No. 2 of Grant County (Grant).

A copy of the filing was served upon Grant.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21381 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application

August 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Proposal To Lower Holter Lake.

b. *Project No.:* 2188–043.

c. *Date Filed:* August 2, 1999.

d. *Applicant:* Montana Power Company.

e. *Name of Project:* Missouri-Madison Project.

f. *Location:* The Holter hydroelectric dam which creates Holter Lake is on the Missouri River at river mile 2,211 about 43 miles northeast of Helena in Lewis and Clark County, Montana.

g. *Applicant Contact:* Mr. John C. Van Daveer, Montana Power Company, 40 East Broadway, Butte, MT 59701.

h. *FERC Contact:* Any questions on this notice should be addressed to Steve Hocking, e-mail address: *steve.hocking@ferc.fed.us,* or telephone (202) 219–2656.

i. *Deadline for filing comments and recommendations, motions to intervene, and protests:* September 8, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of the Application:* Montana Power Company (MPC) proposes to drawdown Holter Lake, part of the Missouri-Madison Hydroelectric Project. The lake would be lowered from its normal operating level of elevation 3,564 feet msl to the crest of the dam at elevation 3,548 feet msl—a total of about 16 feet. The drawdown would begin September 20, 1999. Water levels would be reduced over a two week period of time; the lake would be maintained at its minimum elevation of 3,548 feet msl for two days; then the lake would be refilled over the next nineteen days. The drawdown would enable MPC to replace the dam's deteriorating flashboards and support stanchions.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST," "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21407 Filed 8–17–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6424–5]

Agency Information Collection Activities: Submission for OMB review; Comment Request; 1999 EPCRA Implementation Status Questionnaire for State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs) and California Certified Unified Program Agencies (CUPAs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 1999 EPCRA Implementation Status Questionnaire for State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs), and California Certified Unified Program Agencies (CUPAs), EPA ICR No. 1905.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 17, 1999.

FOR FURTHER INFORMATION: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No.1905.01.

SUPPLEMENTARY INFORMATION: *Title:* 1999 EPCRA Implementation Status Questionnaire for State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs) and California Certified Unified Program Agencies (CUPAs), EPA ICR No. 1905.01. This is a new collection.

Abstract: The Environmental Protection Agency, Region IX, proposes to conduct a Regional survey of State

Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs) and California Certified Unified Program Agencies (CUPAs). The information collected in this survey will be used to assess the general progress, status, and activity level of SERCs, LEPCs and CUPAs. The information will also be used by Region IX staff to have a better understanding of their Region's actual implementation of EPCRA.

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) introduced a fundamental change in the regulation of chemical facilities and the prevention of and preparedness for chemical accidents. This law seeks to improve emergency preparedness and reduce the risk of chemical accidents by providing information to citizens about the chemicals in their community. EPCRA is premised on the concept that the more informed local citizens are about chemical hazards in their communities the more involved they will be in prevention and preparedness activities. For this "informational regulation" to be effective, the public must receive accurate and reliable information, which is easy to understand and practical to use. EPCRA sought to create partnerships between all levels of government, the public and the regulated community to identify, prevent, plan, prepare and respond to hazardous material risks in our communities, and the purpose of this survey is to obtain input from these organizations to improve Region IX's EPCRA program.

The primary goals of this research are to: (1) track the progress of SERCs, LEPCs and CUPAs by updating baseline data on a series of key performance indicators; and (2) probe current SERC, LEPC and CUPA practices and preferences regarding several important sets of issues—particularly including communications with local citizens, proactive accident prevention efforts, and the effectiveness of selected Region IX products and services. Region IX wants to improve customer service and meet the changing needs of hazardous material prevention and emergency response planning, which are influenced by new electronic capabilities and a rapidly expanding knowledge base of environmental issues.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on 5/14/99 (FRL–6341–7). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one and a half hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: SERCs, LEPCs, CUPAs.

Estimated Number of Respondents: 190.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 285 hours.

Estimated Total Annualized Capital and Operating and Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses: (please refer to EPA ICR No.1905.01 in any correspondence):

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 12, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–21426 Filed 8–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6424–8]

Availability of FY 98 Grant Performance Reports for Alabama, Florida, Georgia, Mississippi, North Carolina, Tennessee and South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed end-of-year evaluations of seven state air pollution control programs [Alabama Department of Environmental Management, Florida Department of Environmental Protection, Georgia Department of Natural Resources, Mississippi Bureau of Pollution Control, North Carolina Department of Environment and Natural Resources, South Carolina Department of Health and Environmental Control] and 16 local programs [Knox County Department of Air Pollution Control, TN; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Memphis-Shelby County Health Department, TN; Nashville-Davidson County Metropolitan Health Department, TN; Jefferson County Air Pollution Control District, KY; Western North Carolina Regional Air Pollution Control Agency, NC; Mecklenburg County Department of Environmental Protection, NC; Forsyth County Environmental Affairs Department, NC; Palm Beach County Public Health Unit, FL; Hillsborough County Environmental Protection Commission, FL; Dade County Environmental Resources Management, FL; Jacksonville Air Quality Division, FL; Broward County Environmental Quality Control Board, FL; Pinellas County Department of Environmental Management, FL; City of Huntsville Department of Natural Resources, AL; Jefferson County Department of Health, AL]. The 23 evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection. The Commonwealth of Kentucky's evaluation will be made

available for public review at a later date.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW, Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Linda Thomas, (404) 562–9064, at the above Region 4 address, for information concerning the state agencies in Alabama, Florida, Mississippi, Georgia, and the local agencies in those states. Vera Bowers, (404) 562–9053, at the above Region 4 address, for information concerning the state agencies in Kentucky, North Carolina, South Carolina, Tennessee, and the local agencies in those states.

Dated: August 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–21425 Filed 8–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34194; FRL–6099–5]

Ethoprop, Fenamiphos, Phorate, and Terbufos, Revised Organophosphate Pesticide Risk Assessments; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present to interested stakeholders the revised risk assessments for four organophosphate pesticides: Ethoprop, fenamiphos, phorate, and terbufos. This public meeting, called a "Technical Briefing," will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessments for the four organophosphates mentioned in this notice. In addition, representatives of the U.S. Department of Agriculture (USDA) will provide ideas on possible risk management for ethoprop, fenamiphos, phorate, and terbufos.

DATES: The technical briefing will be held on Thursday, September 2, 1999.

ADDRESSES: The technical briefing will be held at the Ramada Plaza-Old Town, 901 North Fairfax St., Alexandria, VA, (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphates, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A brief summary of the ethoprop, fenamiphos, phorate, and terbufos revised risk assessments are now available at: http://www.epa.gov/pesticides/op/status.htm/, as well as in paper as part of the public version of the official record as described in Unit I.B.2. of this document. To access information about the revised risk assessments, which are scheduled for release on the day of the technical briefing, for the four organophosphates mentioned in this notice, go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/op/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34194. However, a docket control number was established for each of the chemicals in this document by previous **Federal Register** documents. A sequential alphabet designation is added to the docket control number each time a new **Federal Register** document in this subject category is published. Use the table in this unit to determine the docket control number you need.

Chemical name	Docket control number
Ethoprop	34144B
Fenamiphos	34134A
Phorate	34137A
Terbufos	34139B

The official record consists of the documents specifically referenced in this action, any public comments received during the applicable comment period, and other information related to this action, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during the applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

II. What Action Has EPA Taken?

This document announces the Agency's intention to hold a technical briefing for the organophosphate pesticides ethoprop, fenamiphos, phorate, and terbufos. The Agency is presenting the revised risk assessments for the chemicals listed in this notice to interested stakeholders. Technical briefings are designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessments, including: The major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessments affected the revised risk assessments; and the pesticide use information/data that was used in developing the revised risk assessments. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management for ethoprop, fenamiphos, phorate, and terbufos.

Technical briefings are part of the pilot public participation process that

EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefing, the Agency will also release for public viewing the ethoprop, fenamiphos, phorate, and terbufos revised risk assessments and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. of this document. In addition, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60-day public participation period during which the public may submit recommendations and proposals for transition.

III. Technical Briefing Schedule

8:30 a.m. to 10:00 a.m.	Ethoprop
10:30 a.m. to 12:00 noon	Fenamiphos
12:00 noon to 1:00 p.m.	Lunch
1:00 p.m. to 2:30 p.m.	Terbufos
3:00 p.m. to 4:30 p.m.	Phorate

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 12, 1999.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–21429 Filed 8–17–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34170A; FRL–6095–3]

Chlorethoxyfos; Availability of Organophosphate Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessment and related documents for one organophosphate pesticide, chlorethoxyfos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34170A, must be received by EPA on or before October 18, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34170A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessment and submitting risk management comments on chlorethoxyfos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessment and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34170A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPP–34170A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records

Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. PIRIB is open 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34170A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action Is EPA Taking in This Notice?

EPA is making available for public viewing the revised risk assessment and related documents for one organophosphate, chlorethoxyfos. These documents have been developed as part of the pilot public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the chlorethoxyfos preliminary risk assessment, which where released to the public on January 15, 1999 (64 FR 2644) (FRL–6056–9), through a notice in the **Federal Register**.

As part of the pilot public participation process, EPA and USDA may hold public meetings (called Technical Briefings) to provide interested stakeholders with opportunities to become more informed about revised organophosphate risk assessment. During the Technical Briefings, EPA describes the major points (e.g. risk contributors), use data that were used (e.g. data from USDA's Pesticide Data Program (PDP)), and discusses how public comments impacted the assessment. USDA provides ideas on possible risk management. Stakeholders have an opportunity to ask clarifying questions, and all meeting minutes are placed in the OPP public docket. Technical Briefings may not be held for chemicals that have limited use patterns or low levels of risk concern. The use pattern of chlorethoxyfos is limited to corn. Therefore, no Technical Briefing is planned. In cases where no Technical Briefing is held, the Agency will make a special effort to communicate with interested stakeholders in order to better ensure their understanding of the revised assessment and how they can participate in the organophosphate pilot public participation process. EPA has a good familiarity with the stakeholder groups associated with the use of chlorethoxyfos who may be interested in participating in the risk assessment/risk management process, and will contact them individually to inform them that no Technical Briefing will be held. EPA is willing to meet with stakeholders to discuss the chlorethoxyfos revised risk assessment. Minutes of all meetings will be docketed.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for chlorethoxyfos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before October 18, 1999 at the addresses given under the **ADDRESSES** section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 10, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–21244 Filed 8–17–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34192A; FRL–6099–2]

Neurotoxic Pesticides, Availability of Data Call-In Notice; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA is correcting the availability date of the Data Call-In

Notice requiring registrants of neurotoxic pesticides to conduct acute, subchronic, and developmental neurotoxicity studies and submit the results to EPA.

DATES: The Data Call-In Notice is available August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460; telephone numbers: (703) 308–8004 and fax number: (703) 308–8005; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To obtain electronic copies of the Neurotoxicity Data Call-In Notice mentioned in this notice, you can go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34192A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. What Action Is EPA Taking in This Notice?

On August 6, 1999, EPA published a document (FRL–6097–9) in the **Federal Register** on page 42945, announcing the availability of a Data Call-In Notice for cholinesterase-inhibiting organophosphates. Through an administrative error, the wrong date was inserted in the document under the caption "DATES."

On page 42945, in the third column under the caption "DATES" the date is corrected to read: "August 6, 1999."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 6, 1999.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–21428 Filed 8–17–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1520]

Common Carrier Bureau Announces Release of September Version of Telecommunications Reporting Worksheet (FCC Form 499–S) for Contributions to the Universal Service Support Mechanisms

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On July 30, 1999, the Common Carrier Bureau released a public notice announcing the release of the September version of the Telecommunications Reporting Worksheet (FCC Form 499–S) and its accompanying instructions. The intended effect of this action is to make the public aware of the new worksheet and to remind contributors to the universal service support mechanisms of the need to file the worksheet on September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Scott K. Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418–7102; or Jim Lande, Industry Analysis Division, Common Carrier Bureau at (202) 418–0948.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released July 30, 1999 (DA 99–1520). The September version of the Telecommunications Reporting Worksheet (FCC Form 499–S) and its accompanying instructions are attached to the Public Notice. The full text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Federal Communications Commission.

Alan Feldman,

Deputy Chief, Industry Analysis Division, Common Carrier Bureau.

[FR Doc. 99–21401 Filed 8–17–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–98; DA 99–1555]

Connecticut Department of Public Utility Control's Petition Requesting Additional Authority To Implement Area Code Conservation Measures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 5, 1999, the Commission released a public notice requesting public comment on a petition from the Connecticut Department of Public Utility Control ("Petition") requesting additional authority to implement measures related to conservation of area codes. The intended effect of this action is to make the public aware of, and to seek public comment on, this request.

DATES: Comments are due by September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Jared Carlson at (202) 418–2320 or jcarlson@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, S.W., Suite 6-A320, Washington, D.C. 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On September 28, 1998, the Federal Communications Commission ("Commission") released an order in the matter of a Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Memorandum Opinion and Order and Order on Reconsideration*, FCC 98–224, CC Docket No. 96–98, 63 FR 63613, NSD File No. L–97–42 (rel. September 28, 1998) ("Pennsylvania Numbering Order"). The Pennsylvania Numbering Order delegated additional authority to state public utility commissions to order NXX code rationing, under certain circumstances, in jeopardy situations and encouraged state commissions to seek further limited delegations of authority to implement other innovative number conservation methods.

The Connecticut Department of Public Utility Control ("CTDPUC") has filed a request for additional delegation of authority to implement area code conservation methods in their state. *See* Common Carrier Bureau Seeks Comment on the Connecticut Department of Public Utility Control's Petition for Delegation of Additional Authority to Implement Area Code Conservation Measures, *Public Notice*, NSD File No. L–99–62, DA 99–1555 (rel. August 5, 1999).

The additional authority measures sought by the CTDPUC relate to issues under consideration in the *Numbering Resource Optimization Notice*. Numbering Resource Optimization, *Notice of Proposed Rulemaking*, CC Docket No. 99–200, FCC 99–122 (rel. June 2, 1999), 64 FR 32471. Because the CTDPUC faces immediate concerns regarding the administration of area code resources in Connecticut, we find it to be in the public interest to address this petition as expeditiously as possible, prior to completing the rulemaking proceeding.

We hereby seek comment on the issues raised in the CTDPUC's petition for delegated authority to implement various area code conservation measures. A copy of this petition will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Suite CY–A257, Washington, D.C. 20554, (202) 418–0267.

Interested parties may file comments concerning these matters on or before September 6, 1999. All filings must reference NSD File Number L–99–62 and CC,Docket 96–98. Send an original and four copies to the Commission Secretary, Magalie Roman Salas, Portals II, 445 12th Street, S.W., Suite TW–A325, Washington, D.C. 20554 and two copies to Al McCloud, Network Services Division, Portals II, 445 12th Street, S.W., Suite 6A–320, Washington, D.C. 20554.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, including "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

This is a "permit but disclose" proceeding for purposes of the Commission's *ex parte* rules. *See generally* 47 CFR 1.1200–1.1216. As a "permit but disclose" proceeding, *ex parte* presentations will be governed by the procedures set forth in 1.1206 of the Commission's rules applicable to non-restricted proceedings. 47 CFR 1.1206.

Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in 1.1206(b) as well. For further information contact Jared Carlson of the Common Carrier Bureau, Network Services Division, at (202) 418–2320 or jcarlson@fcc.gov. The TTY number is (202) 418–0484.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–21356 Filed 8–17–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2351]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 12, 1999.

Petitions for reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 2, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing options has expired.

Subject: Assessment and Collection of Regulatory Fees for Fiscal Year 1999 (MD Docket No. 98–200).

Number of Petitions Filed: 1.

Subject: Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996 (CS Docket No. 96–85).

Number of Petitions Filed: 3.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21400 Filed 8–17–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, August 19, 1999, 10:00 a.m., meeting Open to the Public.

The following item was added to the agenda: Audit Report on the San Diego Convention and Visitors Bureau, Inc.

DATE & TIME: Tuesday, August 24, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, August 26, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth floor)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Title 26 Final Rules and Explanation and Justification covering several issues in 11 CFR Parts 9001–9039. (Tentative)

Status of PricewaterhouseCoopers (PwC) Recommendations.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99–21577 Filed 8–16–99; 3:25 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011516–003
Title: Voluntary Intermodal Sealift Discussion Agreement
Parties:
American President Lines, Ltd.
Crowley American Transport, Inc.
Crowley Marine Services, Inc.
Farrell Lines Inc.
Lykes Lines Limited, L.L.C.
Maersk Lines, Limited
Matson Navigation Company
Sea-Land Service, Inc.
Totem Ocean Trailer Express, Inc.
Synopsis: The proposed modification extends the term of the agreement from October 1, 1999, to an indefinite term.

Agreement No.: 217–011548–003
Title: Hanjin/Sinotrans Slot Charter Agreement
Parties:
China National Foreign Trade Transportation Corp.
Hanjin Shipping Co., Ltd.
Synopsis: The proposed Amendment modifies Article 5.4.1 of the Agreement to increase the number of slots made available to Sinotrans under Hanjin's CAX–I service.

Agreement No.: 203–011668
Title: Columbus Line/Hapag-Lloyd Cooperative Service Contract Agreement
Parties:
Hapag-Lloyd Container Linie GmbH
Columbus Line
Synopsis: The proposed Agreement would permit the parties to jointly negotiate, enter into, or amend service contracts with shippers for the transportation of cargo between all United States ports and points and all foreign ports and points. The parties would also be permitted to discuss and agree upon rates, rules, and terms and conditions of service applicable to service contracts and would permit the parties to reconcile revenues earned under a particular agreement to the extent necessary to maximize efficiencies in the service.

Agreement No.: 203–011669
Title: ATL/CMT Cooperative Working Agreement
Parties:
Associated Transport Line, L.L.C.
Crowley Marine Tansport
Synopsis: The proposed agreement would authorize the parties to charger space to each other, coordinate sailings, utilize common port facilities, exchange equipment and information, and discuss and reach nonbinding agreement on rates in the trade between U.S. Gulf ports, and U.S. inland points via those ports, and ports and points in Colombia, Mexico, Trinidad, and Venezuela. The parties have requested expedited review.

Agreement No.: 217–011670
Title: Libra/FMC Agreement No. 232–011642 (ECUA/ECSA) Space Charter Agreement
Parties:
Companhia Libra de Navegacao ("Libra") East Coast United States/East Coast South America ("ECUA/ECSA") Vessel Sharing Agreement FMC Agreement No. 232–011642
Synopsis: The proposed Agreement permits the ECUA/ECSA Vessel Sharing Agreement to charter space to Libra in the trade between ports on the East Coast of the United States (Eastport, ME to Key West, FL) and ports in Argentina, Brazil, Paraguay, Uruguay and Venezuela.

Agreement No.: 232–011671
Title: Med-Pacific Express/Contship Space Charter and Sailing Agreement
Parties:
d'Amico Societa di Navigazione S.p.A. and Italia di Navigazione, S.p.A. d/b/a Med-Pacific Express ("Med-Pacific")
Contship Containerlines Limited ("Contship")
Synopsis: The proposed Agreement would permit Med-Pacific to charter space to Contship on vessels it operates in the trade between United States Pacific Coast ports and ports in countries bordering on the Mediterranean Sea. It would also permit them to agree on certain aspects of sailings in the trade and on other cooperative activities related to the chartering of space.

Agreement No.: 203–011672
Title: CSAV Group Cooperative Working Agreement
Parties:
Compania Sud Americana de Vapores S.A.
Euroatlantic Container Line S.A.

Braztrans Transportes Maritimos Limitada
Montemar Maritima S.A.
Companhia Libra de Navegacao

Synopsis: The proposed agreement would authorize any two or more parties to coordinate and rationalize all aspects of their operations, including the chartering of vessels and vessel space, coordinate sailings, interchange equipment, and share facilities in the trade between ports and inland points in the United States and ports and inland points worldwide.

By Order of the Federal Maritime Commission.

Dated: August 13, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–21436 Filed 8–17–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

American Classic Voyages Company, 1380 Port of New Orleans Place, New Orleans, LA 70130–1890

Vessel: Columbia Queen

American West Steamboat Company LLC, 2 Union Square, 601 Union Street, Suite 4343, Seattle, WA 98101

Vessel: Queen of the West

Carnival Corporation, 3655 NW 87th Avenue, Miami, FL 33178–2193

Vessels: Carnival Spirit and Carnival Victory

Celebrity Cruises Inc. (d/b/a Celebrity Cruises), 1050 Caribbean Way, Miami, FL 33132

Vessels: Millennium, Millennium II, Millennium III and Millennium IV

New Commodore Cruise Lines Limited (d/b/a Crown Cruise Line), 4000 Hollywood Blvd., Suite 385 South, Hollywood, FL 33021

Vessel: Crown Dynasty

New Commodore Cruise Lines Limited (d/b/a Capri Cruises), 4000 Hollywood Blvd., Suite 385 South, Hollywood, FL 33021

Vessel: Enchanted Capri

New Commodore Cruise Lines Limited (d/b/a Commodore Cruise Line), 4000 Hollywood Blvd., Suite 385 South, Hollywood, FL 33021

Vessel: Enchanted Isle

New Commodore Cruise Lines Limited (d/b/a Commodore Day Cruises), 4000 Hollywood Blvd., Suite 385 South, Hollywood, FL 33021

Vessel: Enchanted Sun

New Commodore Cruise Lines Limited (d/b/a World Explorer Cruises), 4000 Hollywood Blvd., Suite 385 South, Hollywood, FL 33021

Vessel: Universe Explorer

Norwegian Cruise Line Limited (d/b/a Norwegian Cruise Line and Orient Lines), 7665 Corporate Center Drive, Miami, FL 33126

Vessel: Crown Odyssey

Dated: August 13, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–21438 Filed 8–17–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

American West Steamboat Company LLC and QW Boat Company LLC, 2 Union Square, 601 Union Street, Suite 4343, Seattle, WA 98101

Vessel: Queen of the West

Carnival Corporation and Utopia Cruises, Inc., 3655 NW 87th Avenue, Miami, FL 33178–2193

Vessel: Carnival Triumph

Disney Cruise Vacations, Inc., Magical Cruise Company, Limited (d/b/a Disney Cruise Line) and DCL Services Ltd., 210 Celebration Place, Suite 400, Celebration, FL 34747–4600

Vessel: Disney Wonder

Holland America Line Westour Inc., Holland America Line N.V. and HAL Nederland N.V., 300 Elliot Avenue West, Seattle, WA 98119

Vessels: Volendam and Zaandam

Norwegian Cruise Line Limited (d/b/a Norwegian Cruise Line and Orient Lines) and Orient Lines Ltd., 7665 Corporate Center Drive, Miami, FL 33126

Vessel: Crown Odyssey

Norwegian Cruise Line Limited (d/b/a Norwegian Cruise Line), 7665 Corporate Center Drive, Miami, FL 33126

Vessel: Norwegian Sky

Dated: August 13, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 21437 Filed 8–17–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 99–16]

Carolina Marine Handling, Inc. v. South Carolina State Ports Authority, Charleston Naval Complex Redevelopment Authority, Charleston International Projects Inc., and Charleston International Ports, LLC; Notice of Filing of Complaint and Assignment

Notice is given that a complaint was filed by Carolina Marine Handling, Inc. ("Complainant"), against South Carolina State Ports Authority ("SPA"), Charleston Naval Complex Redevelopment Authority ("RDA"), Charleston International Projects, Inc. ("CIP"), and Charleston International Ports, LLC ("CIP"), herein collectively referred to as ("Respondents"). The complaint was served on August 13, 1999. Complainant alleges that Respondents violated sections 10(d)(1) and, pursuant to provisions of section 20(e)(3), sections 10(b)(11), 10(b)(12), 10(d)(3) and 10(d)(4) of the Shipping Act of 1984, 46 U.S.C. app. 1709(d)(1) and, pursuant to the provisions of § 1719(e)(3), §§ 1709(b)(11), (b)(12, (d)(3) and (d)(4), by refusal to negotiate with or to make available to Complainant adequate and suitable terminal, pier, dock, and storage facilities; interference with Complainants right to use of such facilities; and by granting terminal space and concessions to Respondent CIP and others while unreasonably denying comparable terminal space and concessions to Complainant.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held,

shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature off the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 14, 2000, and the final decision of the Commission shall be issued by December 12, 2000.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–21446 Filed 8–17–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding revocation dates shown below:

License No.: 3581
Name: Aleta W. Vernon d/b/a Danco Freight Forwarding Co.
Address: 163 Deertract Loop, Stoneville, NC 27048
Date Revoked: June 9, 1999
Reason: Failed to maintain a valid bond.

License No.: 3408
Name: Atlanta Customs Brokers and Freight Forwarders, Inc.
Address: 650 Atlanta South Parkway, Ste. 250, Atlanta, GA 30349
Date Revoked: June 15, 1999
Reason: Surrendered license voluntarily.

License No.: 4056
Name: Brian Min d/b/a B & A Express
Address: 18747 Laurel Park Road, Rancho Dominquez, CA 90220
Date Revoked: July 12, 1999
Reason: Surrendered license voluntarily.

License No.: 2947
Name: Kintetsu Intermodal (U.S.A.), Inc.
Address: 1035 Watson Center Road, Carson, CA 90745
Date Revoked: May 1, 1999
Reason: Surrendered license voluntarily.

License No.: 1234
Name: Margarita T. Kuyoomjian d/b/a California International Forwarders
Address: 502 S. Irving Blvd., Los Angeles, CA 90020
Date Revoked: April 29, 1999
Reason: Surrendered license voluntarily.

License No.: 3138
Name: Multi-Modal International, Inc.
Address: 3531 Casa Real Way, P.O. Box 81873, Las Vegas, NV 89180–1873
Date Revoked: May 6, 1999
Reason: Surrendered license voluntarily.

License No.: 4565
Name: Mundial Forwarding, Inc.
Address: 918 Dunwood Drive, Houston, TX 77076
Date Revoked: June 8, 1999
Reason: Surrendered license voluntarily.

License No.: 2806
Name: Oceanflight, Inc.
Address: 3199 Kinross Court, Herndon, VA 20171
Date Revoked: May 1, 1999
Reason: Surrendered license voluntarily.

License No.: 2755
Name: Pasco Associates Limited Partnership
Address: 1050 17th Street, N.W., Ste. 450, Washington, DC 20036
Date Revoked: April 29, 1999
Reason: Surrendered license voluntarily.

License No.: 2742
Name: Pegasus (N.Y.) Inc.
Address: 175–01 Rockaway Blvd., Ste. 203, Jamaica, NY 11434
Date Revoked: March 27, 1999
Reason: Failed to maintain a valid surety bond.

License No.: 2101
Name: Cosdel International Company, Inc.
Address: 55 New Montgomery Street, San Francisco, CA 94105
Date Revoked: April 21, 1999
Reason: Surrendered license voluntarily.

License No.: 4053
Name: Exincargo, Inc.
Address: 7855 NW 29th Street, Suite 150, Miami, FL 33122
Date Revoked: May 14, 1999
Reason: Surrendered license voluntarily.

License No.: 3352
Name: Fairway Express, Inc.
Address: 5250 W. Century Blvd., Ste. 415, Los Angeles, CA 90045–5941
Date Revoked: May 1, 1999
Reason: Surrendered license voluntarily.

License No.: 1896
Name: Fernando Rogus/Smith & Johnson (Warehouse) Inc.
Address: c/o Wilson UTC, Inc., 750 Walnut Avenue, Cranford, NJ 07016
Date Revoked: May 5, 1999
Reason: Surrendered license voluntarily.

License No.: 4047
Name: Heywal Soo Kahng d/b/a Maturity International Transport
Address: 2039 W. Artesia Blvd., St. 144, Torrance, CA 90504
Date Revoked: April 30, 1999
Reason: Surrendered license voluntarily.

License No.: 4155
Name: King Senderax, Inc. d/b/a King Senderax Cargo
Address: 17310 Crenshaw Blvd., Torrance, CA 90504
Date Revoked: June 8, 1999
Reason: Surrendered license voluntarily.

License No.: 2039
Name: Seven Seas Brokers Inc.
Address: 5453 N.W. 72nd Avenue, P.O. Box 661109, Miami Springs, FL 33266–1109
Date Revoked: May 27, 1999
Reason: Surrendered license voluntarily.

License No.: 3848
Name: Suanna Widjaja Rossi and Robert William Rossi d/b/a Neptune Forwarding Co.
Address: 2127 Kendall Way, Acworth, GA 30102
Date Revoked: June 7, 1999
Reason: Surrendered license voluntarily.

License No.: 795
Name: The Svensson Shipping Agency, Inc.
Address: 802 Garfield Avenue, Duluth, MN 55802
Date Revoked: June 17, 1999
Reason: Faled to maintain a valid bond.

License No.: 4325
Name: Trico American Air Freight & Forwarding Co.
Address: 5433 Eagle Industrial Court, Hazelwood, MO 63042
Date Revoked: June 23, 1999
Reason: Surrendered license voluntarily.

License No.: 732
Name: Universal Transport (N.J.) Corporation
Address: One Parker Plaza, Fort Lee, NJ 07024–2941
Date Revoked: June 29, 1999

Reason: Surrendered license voluntarily.

T. A. Zook,

Deputy Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–21439 Filed 8–17–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 99–15]

Notice of Investigation

Notice is given that the Commission, on August 13, 1999, served an Order of Investigation and Hearing on respondents David P. Kelly and West Indies Shipping and Trading, Inc. The Order institutes a formal investigation to determine whether respondents violated sections 8(a)(1), 10(a)(1), 19(a) and 19(b)(1) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1707(a)(1), 1709(a)(1), 1718(a) and 1718(b)(1), by operating as a non-vessel-operating common carrier without a tariff on file with the Commission prior to May 1, 1999, and thereafter without a license, a publicly available tariff, a bond or other form of surety; and by providing inaccurate descriptions of cargo to ocean common carriers in order to obtain lower rates. Moreover, should violations be found, the proceeding will determine whether to impose civil penalties and, if so, in what amount, and whether to issue an appropriate cease and desist order. The full text of the Order may be viewed on the Commission's home page at www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–21440 Filed 8–17–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community National Bancorporation, Ashburn, Georgia; to acquire 100 percent of the voting shares of Cumberland National Bank, St. Marys, Georgia, (in organization).

2. Equitex, Inc., Englewood, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First TeleBanc Corporation, Boca Raton, Florida, and thereby indirectly acquire Net First National Bank, Boca Raton, Florida.

3. Florida Business Bancgroup, Inc., Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Bay Cities Bank, Tampa, Florida, (in organization).

Board of Governors of the Federal Reserve System, August 13, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21432 Filed 8–17–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0374]

International Conference on Harmonisation; Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides guidance on general principles for the selection of test procedures and the setting and justification of acceptance criteria for biotechnological and biological products. The guidance is intended to assist in the establishment of a uniform set of international specifications for biotechnological and biological products to support new marketing applications.

DATES: Effective August 18, 1999. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Neil D. Goldman, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0377.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of June 9, 1998 (63 FR 31506), FDA published a draft tripartite guidance entitled "Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products." The notice gave interested persons an opportunity to submit comments by July 24, 1998.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on March 11, 1999.

In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The guidance provides guidance on general principles for the selection of test procedures and the setting and justification of acceptance criteria for biotechnological and biological products. The guidance is intended to assist in the establishment of a uniform set of international specifications for biotechnological and biological products to support new marketing applications.

This guidance represents the agency's current thinking on the selection of test procedures and the setting and justification of acceptance criteria for biotechnological and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or at CBER's World Wide Web site at "http://www.fda.gov/cber/publications.htm".

The text of the guidance follows:

Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products[1]

Table of Contents

1.0 Introduction
1.1 Objective
1.2 Background
1.3 Scope
2.0 Principles for Consideration in Setting Specifications
2.1 Characterization
2.1.1 Physicochemical Properties
2.1.2 Biological Activity
2.1.3 Immunochemical Properties
2.1.4 Purity, Impurities and Contaminants
2.1.5 Quantity
2.2 Analytical Considerations
2.2.1 Reference Standards and Reference Materials
2.2.2 Validation of Analytical Procedures
2.3 Process Controls
2.3.1 Process-Related Considerations
2.3.2 In-process Acceptance Criteria and Limits
2.3.3 Raw Materials and Excipient Specifications
2.4 Pharmacopoeial Specifications
2.5 Release Limits versus Shelf-Life Limits
2.6 Statistical Concepts
3.0 Justification of the Specification
4.0 Specifications
4.1 Drug Substance Specification
4.1.1 Appearance and Description
4.1.2 Identity
4.1.3 Purity and Impurities
4.1.4 Potency
4.1.5 Quantity
4.2 Drug Product Specification
4.2.1 Appearance and Description
4.2.2 Identity
4.2.3 Purity and Impurities
4.2.4 Potency
4.2.5 Quantity
4.2.6 General Tests
4.2.7 Additional Testing for Unique Dosage Forms
5.0 Glossary
6.0 Appendices
6.1 Appendix for Physicochemical Characterization
6.1.1 Structural Characterization and Confirmation
6.1.2 Physicochemical Properties
6.2 Appendix for Impurities
6.2.1 Process-Related Impurities and Contaminants
6.2.2 Product-Related Impurities Including Degradation Products

1.0 Introduction

1.1 Objective

This guidance document provides guidance on general principles for the setting and justification, to the extent possible, of a uniform set of international specifications for biotechnological and biological products to support new marketing applications.

1.2 Background

A specification is defined as a list of tests, references to analytical procedures, and appropriate acceptance criteria which are numerical limits, ranges, or other criteria for the tests described. It establishes the set of

[1] This guidance represents the agency's current thinking on the selection of test procedures and the setting and justification of acceptance criteria for biotechnological and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

criteria to which a drug substance, drug product, or materials at other stages of its manufacture should conform to be considered acceptable for its intended use. "Conformance to specification" means that the drug substance and drug product, when tested according to the listed analytical procedures, will meet the acceptance criteria. Specifications are critical quality standards that are proposed and justified by the manufacturer and approved by regulatory authorities as conditions of approval.

Specifications are one part of a total control strategy designed to ensure product quality and consistency. Other parts of this strategy include thorough product characterization during development, upon which many of the specifications are based, adherence to good manufacturing practices, a validated manufacturing process, raw materials testing, in-process testing, stability testing, etc.

Specifications are chosen to confirm the quality of the drug substance and drug product rather than to establish full characterization and should focus on those molecular and biological characteristics found to be useful in ensuring the safety and efficacy of the product.

1.3 Scope

The principles adopted and explained in this document apply to proteins and polypeptides, their derivatives, and products of which they are components (e.g., conjugates). These proteins and polypeptides are produced from recombinant or nonrecombinant cell-culture expression systems and can be highly purified and characterized using an appropriate set of analytical procedures.

The principles outlined in this document may also apply to other product types, such as proteins and polypeptides isolated from tissues and body fluids. To determine applicability, manufacturers should consult with the appropriate regulatory authorities.

This document does not cover antibiotics, synthetic peptides and polypeptides, heparins, vitamins, cell metabolites, deoxyribonucleic acid (DNA) products, allergenic extracts, conventional vaccines, cells, whole blood, and cellular blood components. A separate ICH draft guidance, "Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances" addresses specifications and other criteria for chemical substances.

This document does not recommend specific test procedures or specific acceptance criteria, nor does it apply to the regulation of preclinical and/or clinical research material.

2.0 Principles for Consideration in Setting Specifications

2.1 Characterization

Characterization of a biotechnological or biological product (which includes the determination of physicochemical properties, biological activity, immunochemical properties, purity, and impurities) by appropriate techniques is necessary to allow relevant specifications to be established. Acceptance criteria should be established and justified based on data obtained from lots used in preclinical and/or clinical studies, data from lots used for demonstration of manufacturing consistency, data from stability studies, and relevant development data.

Extensive characterization is performed in the development phase and, where necessary, following significant process changes. At the time of submission, the product should have been compared with an appropriate reference standard, if available. When feasible and relevant, it should be compared with its natural counterpart. Also, at the time of submission, the manufacturer should have established appropriately characterized in-house reference materials which will serve for biological and physicochemical testing of production lots. New analytical technology and modifications to existing technology are continually being developed and should be utilized when appropriate.

2.1.1 Physicochemical properties

A physicochemical characterization program will generally include a determination of the composition, physical properties, and primary structure of the desired product. In some cases, information regarding higher-order structure of the desired product (the fidelity of which is generally inferred by its biological activity) may be obtained by appropriate physicochemical methodologies.

An inherent degree of structural heterogeneity occurs in proteins due to the biosynthetic processes used by living organisms to produce them; therefore, the desired product can be a mixture of anticipated post-translationally modified forms (e.g., glycoforms). These forms may be active and their presence may have no deleterious effect on the safety and efficacy of the product (section 2.1.4). The manufacturer should define the pattern of heterogeneity of the desired product and demonstrate consistency with that of the lots used in preclinical and clinical studies. If a consistent pattern of product heterogeneity is demonstrated, an evaluation of the activity, efficacy, and safety (including immunogenicity) of individual forms may not be necessary.

Heterogeneity can also be produced during manufacture and/or storage of the drug substance or drug product. Since the heterogeneity of these products defines their quality, the degree and profile of this heterogeneity should be characterized to ensure lot-to-lot consistency. When these variants of the desired product have properties comparable to those of the desired product with respect to activity, efficacy, and safety, they are considered product-related substances. When process changes and degradation products result in heterogeneity patterns that differ from those observed in the material used during preclinical and clinical development, the significance of these alterations should be evaluated.

Analytical methods to elucidate physicochemical properties are listed in appendix 6.1. New analytical technology and modifications to existing technology are continually being developed and should be utilized when appropriate.

For the purpose of lot release (section 4), an appropriate subset of these methods should be selected and justified.

2.1.2 Biological activity

Assessment of the biological properties constitutes an equally essential step in establishing a complete characterization profile. An important property is the biological activity that describes the specific ability or capacity of a product to achieve a defined biological effect.

A valid biological assay to measure the biological activity should be provided by the manufacturer. Examples of procedures used to measure biological activity include:

- Animal-based biological assays, which measure an organism's biological response to the product;
- Cell culture-based biological assays, which measure biochemical or physiological response at the cellular level; and
- Biochemical assays, which measure biological activities such as enzymatic reaction rates or biological responses induced by immunological interactions.

Other procedures, such as ligand and receptor binding assays, may be acceptable.

Potency (expressed in units) is the quantitative measure of biological activity based on the attribute of the product that is linked to the relevant biological properties, whereas quantity (expressed in mass) is a physicochemical measure of protein content. Mimicking the biological activity in the clinical situation is not always necessary. A correlation between the expected clinical response and the activity in the biological assay should be established in pharmacodynamic or clinical studies.

The results of biological assays should be expressed in units of activity calibrated against an international or national reference standard, when available and appropriate for the assay utilized. Where no such reference standard exists, a characterized in-house reference material should be established and assay results of production lots reported as in-house units.

Often, for complex molecules, the physicochemical information may be extensive but unable to confirm the higher-order structure which, however, can be inferred from the biological activity. In such cases, a biological assay, with wider confidence limits, may be acceptable when combined with a specific quantitative measure. Importantly, a biological assay to measure the biological activity of the product may be replaced by physicochemical tests only in those instances where:

- Sufficient physicochemical information about the drug, including higher-order structure, can be thoroughly established by such physicochemical methods, and relevant correlation to biologic activity demonstrated; and
- There exists a well-established manufacturing history.

Where physicochemical tests alone are used to quantitate the biological activity (based on appropriate correlation), results should be expressed in mass.

For the purpose of lot release (section 4), the choice of relevant quantitative assay (biological and/or physicochemical) should be justified by the manufacturer.

2.1.3 Immunochemical properties

When an antibody is the desired product, its immunological properties should be fully characterized. Binding assays of the antibody to purified antigens and defined regions of antigens should be performed, as feasible, to determine affinity, avidity and immunoreactivity (including cross-reactivity). In addition, the target molecule bearing the relevant epitope should be biochemically defined and the epitope itself defined, when feasible.

For some drug substances or drug products, the protein molecule may need to be examined using immunochemical procedures (e.g., enzyme linked immunosorbent assay (ELISA), Western-blot) utilizing antibodies that recognize different epitopes of the protein molecule. Immunochemical properties of a protein may serve to establish its identity, homogeneity, or purity, or serve to quantify it.

If immunochemical properties constitute lot release criteria, all relevant information pertaining to the antibody should be made available.

2.1.4 Purity, impurities, and contaminants

- *Purity*

The determination of absolute, as well as relative, purity presents considerable analytical challenges, and the results are highly method dependent. Historically, the relative purity of a biological product has been expressed in terms of specific activity (units of biological activity per milligram of product), which is also highly method dependent. Consequently, the purity of the drug substance and drug product is assessed by a combination of analytical procedures.

Due to the unique biosynthetic production process and molecular characteristics of biotechnological and biological products, the drug substance can include several molecular entities or variants. When these molecular entities are derived from anticipated post-translational modification, they are part of the desired product. When variants of the desired product are formed during the manufacturing process and/or storage and have properties comparable to the desired product, they are considered product-related substances and not impurities (section 2.1.1).

Individual and/or collective acceptance criteria for product-related substances should be set, as appropriate.

For the purpose of lot release (section 4), an appropriate subset of methods should be selected and justified for determination of purity.

- *Impurities*

In addition to evaluating the purity of the drug substance and drug product, which may be composed of the desired product and multiple product-related substances, the manufacturer should also assess impurities which may be present. Impurities may be either process- or product-related. They can be of known structure, partially characterized, or unidentified. When adequate quantities of impurities can be generated, these materials should be characterized to the extent possible and, where possible, their biological activities should be evaluated.

Process-related impurities encompass those that are derived from the manufacturing process, i.e., cell substrates (e.g., host cell proteins, host cell DNA), cell culture (e.g., inducers, antibiotics, or media components), or downstream processing (see appendix, section 6.2.1). Product-related impurities (e.g., precursors, certain degradation products) are molecular variants arising during manufacture and/or storage that do not have properties comparable to those of the desired product with respect to activity, efficacy, and safety.

Further, the acceptance criteria for impurities should be based on data obtained from lots used in preclinical and clinical studies and manufacturing consistency lots.

Individual and/or collective acceptance criteria for impurities (product-related and process-related) should be set, as appropriate. Under certain circumstances, acceptance criteria for selected impurities may not be necessary (section 2.3).

Examples of analytical procedures that may be employed to test for the presence of impurities are listed in appendix 6.2. New analytical technology and modifications to existing technology are continually being developed and should be utilized when appropriate.

For the purpose of lot release (section 4), an appropriate subset of these methods should be selected and justified.

- *Contaminants*

Contaminants in a product include all adventitiously introduced materials not intended to be part of the manufacturing process, such as chemical and biochemical materials (e.g., microbial proteases) and/or microbial species. Contaminants should be strictly avoided and/or suitably controlled with appropriate in-process acceptance criteria or action limits for drug substance or drug product specifications (section 2.3). For the special case of adventitious viral or mycoplasma contamination, the concept of action limits is not applicable, and the strategies proposed in ICH guidances "Q5A Quality of Biotechnological/Biological Products: Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin" and "Q5D Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products" should be considered.

2.1.5 Quantity

Quantity, usually measured as protein content, is critical for a biotechnological and biological product and should be determined using an appropriate assay, usually physicochemical in nature. In some cases, it may be demonstrated that the quantity values obtained may be directly related to those found using the biological assay. When this correlation exists, it may be appropriate to use measurement of quantity rather than the measurement of biological activity in manufacturing processes, such as filling.

2.2 Analytical Considerations

2.2.1 Reference standards and reference materials

For drug applications for new molecular entities, it is unlikely that an international or national standard will be available. At the time of submission, the manufacturer should have established an appropriately characterized in-house primary reference material, prepared from lot(s) representative of production and clinical materials. In-house working reference material(s) used in the testing of production lots should be calibrated against this primary reference material. Where an international or national standard is available and appropriate, reference materials should be calibrated against it. While it is desirable to use the same reference material for both biological assays and physicochemical testing, in some cases, a separate reference material may be necessary. Also, distinct reference materials for product-related substances, product-related impurities, and process-related impurities may need to be established. When appropriate, a description of the manufacture and/or purification of reference materials should be included in the application. Documentation of the characterization, storage conditions, and formulation supportive of reference material(s) stability should also be provided.

2.2.2 Validation of analytical procedures

At the time the application is submitted to the regulatory authorities, applicants should have validated the analytical procedures used in the specifications in accordance with the ICH guidances "Q2A Validation of Analytical Procedures: Definitions and Terminology" and "Q2B Validation of Analytical Procedures: Methodology," except where there are specific issues for unique tests used for analyzing biotechnological and biological products.

2.3 Process Controls

2.3.1 Process-related considerations

Adequate design of a process and knowledge of its capability are part of the strategy used to develop a manufacturing process that is controlled and reproducible, yielding a drug substance or drug product that meets specifications. In this respect, limits are justified based on critical information gained from the entire process spanning the period from early development through commercial-scale production.

For certain impurities, testing of either the drug substance or the drug product may not be necessary and may not need to be included in the specifications if efficient control or removal to acceptable levels is demonstrated by suitable studies. This testing can include verification at commercial scale in accordance with regional regulations. It is recognized that only limited data may be available at the time of submission of an application. This concept may, therefore, sometimes be implemented after marketing authorization, in accordance with regional regulations.

2.3.2 In-process acceptance criteria and action limits

In-process tests are performed at critical decision-making steps and at other steps where data serve to confirm consistency of the process during the production of either the drug substance or the drug product. The results of in-process testing may be recorded as action limits or reported as acceptance criteria. Performing such testing may

eliminate the need for testing of the drug substance or drug product (section 2.3.1). In-process testing for adventitious agents at the end of cell culture is an example of testing for which acceptance criteria should be established.

The use of internal action limits by the manufacturer to assess the consistency of the process at less critical steps is also important. Data obtained during development and validation runs should provide the basis for provisional action limits to be set for the manufacturing process. These limits, which are the responsibility of the manufacturer, may be used to initiate investigation or further action. They should be further refined as additional manufacturing experience and data are obtained after product approval.

2.3.3 Raw materials and excipient specifications

The quality of the raw materials used in the production of the drug substance (or drug product) should meet standards appropriate for their intended use. Biological raw materials or reagents may require careful evaluation to establish the presence or absence of deleterious endogenous or adventitious agents. Procedures that make use of affinity chromatography (for example, employing monoclonal antibodies) should be accompanied by appropriate measures to ensure that such process-related impurities or potential contaminants arising from their production and use do not compromise the quality and safety of the drug substance or drug product. Appropriate information pertaining to the antibody should be made available.

The quality of the excipients used in the drug product formulation (and in some cases, in the drug substance), as well as the container/closure systems, should meet pharmacopoeial standards, where available and appropriate. Otherwise, suitable acceptance criteria should be established for the nonpharmacopoeial excipients.

2.4 Pharmacopoeial Specifications

Pharmacopoeias contain important requirements pertaining to certain analytical procedures and acceptance criteria which, where relevant, are part of the evaluation of either the drug substance or drug product. Such monographs, applicable to biotechnological and biological products, generally include, but are not limited to, tests for sterility, endotoxins, microbial limits, volume in container, uniformity of dosage units, and particulate matter. With respect to the use of pharmacopoeial methods and acceptance criteria, the value of this guidance is linked to the extent of harmonization of the analytical procedures of the pharmacopoeias. The pharmacopoeias are committed to developing identical or methodologically equivalent test procedures and acceptance criteria.

2.5 Release Limits Versus Shelf-Life Limits

The concept of release limits versus shelf-life limits may be applied where justified. This concept pertains to the establishment of limits which are tighter for the release than for the shelf-life of the drug substance or drug product. Examples where this may be applicable include potency and degradation products. In some regions, the concept of release limits may only be applicable to in-house limits and not to the regulatory shelf-life limits.

2.6 Statistical Concepts

Appropriate statistical analysis should be applied, when necessary, to quantitative data reported. The methods of analysis, including justification and rationale, should be described fully. These descriptions should be sufficiently clear to permit independent calculation of the results presented.

3.0 Justification of the Specification

The setting of specifications for drug substance and drug product is part of an overall control strategy which includes control of raw materials and excipients, in-process testing, process evaluation or validation, adherence to good manufacturing practices, stability testing, and testing for consistency of lots. When combined in total, these elements provide assurance that the appropriate quality of the product will be maintained. Since specifications are chosen to confirm the quality rather than to characterize the product, the manufacturer should provide the rationale and justification for including and/or excluding testing for specific quality attributes. The following points should be taken into consideration when establishing scientifically justifiable specifications.

- Specifications are linked to a manufacturing process.

Specifications should be based on data obtained from lots used to demonstrate manufacturing consistency. Linking specifications to a manufacturing process is important, especially for product-related substances, product-related impurities, and process-related impurities. Process changes and degradation products produced during storage may result in heterogeneity patterns which differ from those observed in the material used during preclinical and clinical development. The significance of these alterations should be evaluated.

- Specifications should account for the stability of drug substance and drug product.

Degradation of drug substance and drug product, which may occur during storage, should be considered when establishing specifications. Due to the inherent complexity of these products, there is no single stability-indicating assay or parameter that profiles the stability characteristics. Consequently, the manufacturer should propose a stability-indicating profile. The result of this stability-indicating profile will then provide assurance that changes in the quality of the product will be detected. The determination of which tests should be included will be product specific. The manufacturer is referred to the ICH guidance "Q5C Stability Testing of Biotechnological/Biological Products."

- Specifications are linked to preclinical and clinical studies.

Specifications should be based on data obtained for lots used in preclinical and clinical studies. The quality of the material made at commercial scale should be representative of the lots used in preclinical and clinical studies.

- Specifications are linked to analytical procedures.

Critical quality attributes may include items such as potency, the nature and quantity of product-related substances, product-related impurities, and process-related impurities. Such attributes can be assessed by multiple analytical procedures, each yielding different results. In the course of product development, it is not unusual for the analytical technology to evolve in parallel with the product. Therefore, it is important to confirm that data generated during development correlate with those generated at the time the marketing application is filed.

4.0 Specifications

Selection of tests to be included in the specifications is product specific. The rationale used to establish the acceptable range of acceptance criteria should be described. Acceptance criteria should be established and justified based on data obtained from lots used in preclinical and/or clinical studies, data from lots used for demonstration of manufacturing consistency, data from stability studies, and relevant development data.

In some cases, testing at production stages rather than testing at the finished drug substance or drug product stages may be appropriate and acceptable. In such circumstances, test results should be considered as in-process acceptance criteria and included in the specification of drug substance or drug product in accordance with the requirements of the regional regulatory authorities.

4.1 Drug Substance Specification

Generally, the following tests and acceptance criteria are considered applicable to all drug substances (for analytical procedures, see section 2.2.2). Pharmacopoeial tests (e.g., endotoxin detection) should be performed on the drug substance, where appropriate. Additional drug substance specific acceptance criteria may also be necessary.

4.1.1 Appearance and description

A qualitative statement describing the physical state (e.g., solid, liquid) and color of a drug substance should be provided.

4.1.2 Identity

The identity test(s) should be highly specific for the drug substance and should be based on unique aspects of its molecular structure and/or other specific properties. More than one test (physicochemical, biological, and/or immunochemical) may be necessary to establish identity. The identity test(s) can be qualitative in nature. Some of the methods typically used for characterization of the product as described in section 2.1 and in appendix 6.1 may be employed and/or modified as appropriate for the purpose of establishing identity.

4.1.3 Purity and impurities

The absolute purity of biotechnological and biological products is difficult to determine and the results are method dependent (section 2.1.4). Consequently, the purity of the drug substance is usually estimated by a combination of methods. The

choice and optimization of analytical procedures should focus on the separation of the desired product from product-related substances and from impurities.

The impurities observed in these products are classified as process-related and product-related:

- Process-related impurities (section 2.1.4) in the drug substance may include cell culture media, host cell proteins, DNA, monoclonal antibodies or chromatographic media used in purification, solvents, and buffer components. These impurities should be minimized by the use of appropriate, well-controlled manufacturing processes.
- Product-related impurities (section 2.1.4) in the drug substance are molecular variants with properties different from those of the desired product formed during manufacture and/or storage.

For the impurities, the choice and optimization of analytical procedures should focus on the separation of the desired product and product-related substances from impurities. Individual and/or collective acceptance criteria for impurities should be set, as appropriate. Under certain circumstances, acceptance criteria for selected impurities may not be necessary (section 2.3).

4.1.4 Potency

A relevant, validated potency assay (section 2.1.2) should be part of the specifications for a biotechnological or biological drug substance and/or drug product. When an appropriate potency assay is used for the drug product (section 4.2.4), an alternative method (physicochemical and/or biological) may suffice for quantitative assessment at the drug substance stage. In some cases, the measurement of specific activity may provide additional useful information.

4.1.5 Quantity

The quantity of the drug substance, usually based on protein content (mass), should be determined using an appropriate assay. The quantity determination may be independent of a reference standard or material. In cases where product manufacture is based upon potency, there may be no need for an alternate determination of quantity.

4.2 Drug Product Specification

Generally, the following tests and acceptance criteria are considered applicable to all drug products. Each section (4.2.1–4.2.5) is cross-referenced to respective sections (4.1.1–4.1.5) under Drug Substance Specification. Pharmacopoeial requirements apply to the relevant dosage forms. Typical tests found in the pharmacopoeia include, but are not limited to, sterility, endotoxin, microbial limits, volume in container, particulate matter, uniformity of dosage units, and moisture content for lyophilized drug products. If appropriate, testing for uniformity of dosage units may be performed as in-process controls, and corresponding acceptance criteria are set.

4.2.1 Appearance and description

A qualitative statement describing the physical state (e.g., solid, liquid), color, and clarity of the drug product should be provided.

4.2.2 Identity

The identity test(s) should be highly specific for the drug product and should be based on unique aspects of its molecular structure and other specific properties. The identity test(s) can be qualitative in nature. While it is recognized that in most cases a single test is adequate, more than one test (physicochemical, biological, and/or immunochemical) may be necessary to establish identity for some products. Some of the methods typically used for characterization of the product as described in section 2.1 and in appendix 6.1 may be employed and/or modified as appropriate for the purpose of establishing identity.

4.2.3 Purity and impurities

Impurities may be generated or increased during manufacture and/or storage of the drug product. These may be either the same as those occurring in the drug substance itself, process-related, or degradation products which form specifically in the drug product during formulation or during storage. If impurities are qualitatively and quantitatively (i.e., relative amounts and/or concentrations) the same as in the drug substance, testing is not considered necessary. If impurities are known to be introduced or formed during the production and/or storage of the drug product, the levels of these impurities should be determined and acceptance criteria established.

Acceptance criteria and analytical procedures should be developed and justified, based upon previous experience with the drug product, to measure changes in the drug substance during the manufacture and/or storage of the drug product.

The choice and optimization of analytical procedures should focus on the separation of the desired product and product-related substances from impurities including degradation products, and from excipients.

4.2.4 Potency

A relevant, validated potency assay (section 2.1.2) should be part of the specifications for a biotechnological and biological drug substance and/or drug product. When an appropriate potency assay is used for the drug substance, an alternative method (physicochemical and/or biological) may suffice for quantitative assessment of the drug product. However, the rationale for such a choice should be provided.

4.2.5 Quantity

The quantity of the drug substance in the drug product, usually based on protein content (mass), should be determined using an appropriate assay. In cases where product manufacture is based upon potency, there may be no need for an alternate determination of quantity.

4.2.6 General tests

Physical description and the measurement of other quality attributes are often important for the evaluation of the drug product functions. Examples of such tests include pH and osmolarity.

4.2.7 Additional testing for unique dosage forms

It should be recognized that certain unique dosage forms may need additional tests other than those mentioned above.

5.0 Glossary

Acceptance criteria: Numerical limits, ranges, or other suitable measures for acceptance of the results of analytical procedures which the drug substance or drug product or materials at other stages of manufacture should meet.

Action limit: An internal (in-house) value used to assess the consistency of the process at less critical steps.

Biological activity: The specific ability or capacity of the product to achieve a defined biological effect. Potency is the quantitative measure of the biological activity.

Contaminants: Any adventitiously introduced materials (e.g., chemical, biochemical, or microbial species) not intended to be part of the manufacturing process of the drug substance or drug product.

Degradation products: Molecular variants resulting from changes in the desired product or product-related substances brought about over time and/or by the action of, e.g., light, temperature, pH, water, or by reaction with an excipient and/or the immediate container/closure system. Such changes may occur as a result of manufacture and/or storage (e.g., deamidation, oxidation, aggregation, proteolysis). Degradation products may be either product-related substances or product-related impurities.

Desired Product: (1) The protein that has the expected structure, or (2) the protein that is expected from the DNA sequence and anticipated post-translational modification (including glycoforms), and from the intended downstream modification to produce an active biological molecule.

Drug product (Dosage form; Finished product): A pharmaceutical product type that contains a drug substance, generally in association with excipients.

Drug substance (Bulk material): The material that is subsequently formulated with excipients to produce the drug product. It can be composed of the desired product, product-related substances, and product- and process-related impurities. It may also contain excipients including other components, such as buffers.

Excipient: An ingredient added intentionally to the drug substance which should not have pharmacological properties in the quantity used.

Impurity: Any component present in the drug substance or drug product that is not the desired product, a product-related substance, or an excipient including buffer components. It may be either process- or product-related.

In-house primary reference material: An appropriately characterized material prepared by the manufacturer from a representative lot(s) for the purpose of biological assay and physicochemical testing of subsequent lots, and against which in-house working reference material is calibrated.

In-house working reference material: A material prepared similarly to the primary

reference material that is established solely to assess and control subsequent lots for the individual attribute in question. It is always calibrated against the in-house primary reference material.

Potency: The measure of the biological activity using a suitably quantitative biological assay (also called potency assay or bioassay), based on the attribute of the product which is linked to the relevant biological properties.

Process-related impurities: Impurities that are derived from the manufacturing process. They may be derived from cell substrates (e.g., host cell proteins, host cell DNA), cell culture (e.g., inducers, antibiotics, or media components), or downstream processing (e.g., processing reagents or column leachables).

Product-related impurities: Molecular variants of the desired product (e.g., precursors, certain degradation products arising during manufacture and/or storage) which do not have properties comparable to those of the desired product with respect to activity, efficacy, and safety.

Product-related substances: Molecular variants of the desired product formed during manufacture and/or storage which are active and have no deleterious effect on the safety and efficacy of the drug product. These variants possess properties comparable to the desired product and are not considered impurities.

Reference standards: International or national standards.

Specification: A list of tests, references to analytical procedures, and appropriate acceptance criteria which are numerical limits, ranges, or other criteria for the tests described. It establishes the set of criteria to which a drug substance, drug product, or materials at other stages of its manufacture should conform to be considered acceptable for its intended use. "Conformance to specification" means that the drug substance and drug product, when tested according to the listed analytical procedures, will meet the acceptance criteria. Specifications are critical quality standards that are proposed and justified by the manufacturer and approved by regulatory authorities as conditions of approval.

6.0 Appendices

6.1 Appendix for Physiochemical Characterization

This appendix provides examples of technical approaches that might be considered for structural characterization and confirmation, and evaluation of physicochemical properties of the desired product, drug substance, and/or drug product. The specific technical approach employed will vary from product to product, and alternative approaches, other than those included in this appendix, will be appropriate in many cases. New analytical technology and modifications to existing technology are continuously being developed and should be utilized when appropriate.

6.1.1 Structural characterization and confirmation

(a) Amino acid sequence

The amino acid sequence of the desired product should be determined to the extent possible using approaches such as those described in items (b) through (e) and then compared with the sequence of the amino acids deduced from the gene sequence of the desired product.

(b) Amino acid composition

The overall amino acid composition is determined using various hydrolytic and analytical procedures and compared with the amino acid composition deduced from the gene sequence for the desired product, or the natural counterpart, if considered necessary. In many cases, amino acid composition analysis provides some useful structural information for peptides and small proteins, but such data are generally less definitive for large proteins. Quantitative amino acid analysis data can also be used to determine protein content in many cases.

(c) Terminal amino acid sequence

Terminal amino acid analysis is performed to identify the nature and homogeneity of the amino- and carboxy-terminal amino acids. If the desired product is found to be heterogeneous with respect to the terminal amino acids, the relative amounts of the variant forms should be determined using an appropriate analytical procedure. The sequence of these terminal amino acids should be compared with the terminal amino acid sequence deduced from the gene sequence of the desired product.

(d) Peptide map

Selective fragmentation of the product into discrete peptides is performed using suitable enzymes or chemicals, and the resulting peptide fragments are analyzed by high pressure liquid chromatography (HPLC) or other appropriate analytical procedures. The peptide fragments should be identified to the extent possible using techniques such as amino acid compositional analysis, N-terminal sequencing, or mass spectrometry. Peptide mapping of the drug substance or drug product using an appropriately validated procedure is a method that is frequently used to confirm desired product structure for lot release purposes.

(e) Sulfhydryl group(s) and disulfide bridges

If, based on the gene sequence for the desired product, cysteine residues are expected, the number and positions of any free sulfhydryl groups and/or disulfide bridges should be determined, to the extent possible. Peptide mapping (under reducing and nonreducing conditions), mass spectrometry, or other appropriate techniques may be useful for this evaluation.

(f) Carbohydrate structure

For glycoproteins, the carbohydrate content (neutral sugars, amino sugars, and sialic acids) is determined. In addition, the structure of the carbohydrate chains, the oligosaccharide pattern (antennary profile), and the glycosylation site(s) of the polypeptide chain are analyzed, to the extent possible.

6.1.2 Physicochemical properties

(a) Molecular weight or size

Molecular weight (or size) is determined using size exclusion chromatography, sodium dodecyl sulfate (SDS)-polyacrylamide gel electrophoresis (under reducing and/or nonreducing conditions), mass spectrometry, and other appropriate techniques.

(b) Isoform pattern

This is determined by isoelectric focusing or other appropriate techniques.

(c) Extinction coefficient (or molar absorptivity)

In many cases, it will be desirable to determine the extinction coefficient (or molar absorptivity) for the desired product at a particular ultraviolet (UV)/visible wavelength (e.g., 280 nanometers). The extinction coefficient is determined using UV/visible spectrophotometry on a solution of the product having a known protein content as determined by techniques such as amino acid compositional analysis or nitrogen determination. If UV absorption is used to measure protein content, the extinction coefficient for the particular product should be used.

(d) Electrophoretic patterns

Electrophoretic patterns and data on identity, homogeneity, and purity can be obtained by polyacrylamide gel electrophoresis, isoelectric focusing, SDS-polyacrylamide gel electrophoresis, Western-blot, capillary electrophoresis, or other suitable procedures.

(e) Liquid chromatographic patterns

Chromatographic patterns and data on the identity, homogeneity, and purity can be obtained by size exclusion chromatography, reverse-phase liquid chromatography, ion-exchange liquid chromatography, affinity chromatography, or other suitable procedures.

(f) Spectroscopic profiles

The UV and visible absorption spectra are determined as appropriate. The higher-order structure of the product is examined using procedures such as circular dichroism, nuclear magnetic resonance (NMR), or other suitable techniques as appropriate.

6.2 Appendix for Impurities

This appendix lists potential impurities, their sources, and examples of relevant analytical approaches for detection. Specific impurities and technical approaches employed, as in the case of physicochemical characterization, will vary from product to product, and alternative approaches other than those listed in this appendix will be appropriate in many cases. New analytical technology and modifications to existing technology are continuously being developed and should be applied when appropriate.

6.2.1 Process-related impurities and contaminants

These are derived from the manufacturing process (section 2.1.4) and are classified into three major categories: Cell substrate-derived, cell culture-derived and downstream-derived.

(a) Cell substrate-derived impurities include, but are not limited to, proteins derived from the host organism and nucleic acid (host cell genomic, vector, or total DNA). For host cell proteins, a sensitive assay, e.g., immunoassay, capable of detecting a wide range of protein impurities is generally utilized. In the case of an immunoassay, a polyclonal antibody used in the test is generated by immunization with a preparation of a production cell minus the

product-coding gene, fusion partners, or other appropriate cell lines. The level of DNA from the host cells can be detected by direct analysis on the product (such as hybridization techniques). Clearance studies, which could include spiking experiments at the laboratory scale, to demonstrate the removal of cell substrate-derived impurities such as nucleic acids and host cell proteins may sometimes be used to eliminate the need for establishing acceptance criteria for these impurities.

(b) Cell culture-derived impurities include, but are not limited to, inducers, antibiotics, serum, and other media components.

(c) Downstream-derived impurities include, but are not limited to, enzymes, chemical and biochemical processing reagents (e.g., cyanogen bromide, guanidine, oxidizing and reducing agents), inorganic salts (e.g., heavy metals, arsenic, nonmetallic ion), solvents, carriers, ligands (e.g., monoclonal antibodies), and other leachables.

For intentionally introduced, endogenous, and adventitious viruses, the ability of the manufacturing process to remove and/or inactivate viruses should be demonstrated as described in ICH guidance "Q5A Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin."

6.2.2 Product-related impurities including degradation products

The following represents the most frequently encountered molecular variants of the desired product and lists relevant technology for their assessment. Such variants may need considerable effort in isolation and characterization in order to identify the type of modification(s). Degradation products arising in significant amounts during manufacture and/or storage should be tested for and monitored against appropriately established acceptance criteria.

(a) Truncated forms. Hydrolytic enzymes or chemicals may catalyze the cleavage of peptide bonds. These may be detected by HPLC or SDS–PAGE. Peptide mapping may be useful, depending on the property of the variant.

(b) Other modified forms. Deamidated, isomerized, mismatched S–S linked, oxidized, or altered conjugated forms (e.g., glycosylation, phosphorylation) may be detected and characterized by chromatographic, electrophoretic, and/or other relevant analytical methods (e.g., HPLC, capillary electrophoresis, mass spectroscopy, circular dichroism).

(c) Aggregates. The category of aggregates includes dimers and higher multiples of the desired product. These are generally resolved from the desired product and product-related substances and quantitated by appropriate analytical procedures (e.g., size exclusion chromatography, capillary electrophoresis).

Dated: August 11, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21352 Filed 8–17–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2636]

Draft Guidance for Industry on Levothyroxine Sodium; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Levothyroxine Sodium." The draft guidance is intended to answer questions concerning applications for orally administered levothyroxine sodium drug products.

DATES: Written comments on the draft guidance may be submitted by October 18, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Levothyroxine Sodium." In the **Federal Register** of August 14, 1997 (62 FR 43535), FDA announced that orally administered levothyroxine sodium drug products are new drugs. The notice stated that manufacturers who wish to continue to market these products must submit applications as required by section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and 21 CFR part 314. The notice stated that FDA is prepared to accept new drug applications for these products, including applications under section 505(b)(2) of the act. A number of questions have arisen with respect to applications for levothyroxine sodium. This draft guidance is intended to answer questions about submitting applications for orally administered levothyroxine sodium drug products.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on issues concerning applications, including applications under section 505(b)(2) of the act, for levothyroxine sodium. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21353 Filed 8–17–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential

trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 13–14, 1999.

Open: September 13, 1999, 8:30 AM to 2:00 PM.

Agenda: The meeting will be open to the public on Monday, September 13, 8:30 am to approximately 2:00 pm to discuss administrative details or other issues relating to Council activities.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Closed: September 13, 1999, 2:00 PM to Adjournment on September 14, 1999.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Elke Jordan, PhD, Deputy Director, National Human Genome Research Institute, National Institutes of Health, PHS, DHHS, 31 Center Drive, Building 31, Room 4B09, Bethesda, MD 20892, 301 496–0844.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 11, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21386 Filed 8–17–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: September 9, 1999.

Time: 1:00 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd. Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Craig A. Jordan, PHD, Acting Director, NIH/NIDCD/DEA, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8693.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–21384 Filed 8–17–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(5), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel

Date: August 27, 1999.

Time: 10:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Wilco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call)

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–70003, 301–443–97878, etaylor@niaaa.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: September 1, 1999.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Ronald Suddendorf, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: October 14–15, 1999.

Time: 8:30 AM to 5:00 PM

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–21385 Filed 8–17–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given for a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: September 26–28, 1999.

Closed: September 26, 1999, 7:00 PM to 10:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 31 Center Drive, Bethesda, MD 20892.

Open: September 27, 1999, 9:00 AM to 10:55 AM.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 31 Center Drive, Bethesda, MD 20892.

Closed: September 27, 1999, 11:10 AM to 11:40 AM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 31 Center Drive, Bethesda, MD 20892.

Open: September 27, 1999, 1:00 PM to 3:25 PM.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 31 Center Drive, Bethesda, MD 20892.

Closed: September 27, 1999, 3:25 PM to 5:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 31 Center Drive, Bethesda, MD 20892.

Closed: September 28, 1999, 8:30 AM to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Activities, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 92.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 12, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21387 Filed 8–17–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Dates: September 16–17, 1999.

Open: September 16, 1999, 10 AM to 5:00 PM.

Agenda: The agenda includes: Report of the Director, NICHD, a presentation by the Contraception and Reproductive Health Branch, and other business of the Council.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: September 17, 1999, 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Open: September 17, 1999, 1:00 PM to Adjournment.

Agenda: The meeting will reopen to discuss any policy issues that were raised.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 12, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21388 Filed 8–17–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board Appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95–454, 5 U.S.C. 4314(c)(4).

DATES: These appointments are effective August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Carolyn Cohen, Director of Personnel Policy, Office of the Secretary, Department of the Interior, 1849 C Street, NW, Washington, DC 20240, Telephone Number: (202) 208–6761.

1999 SES PERFORMANCE REVIEW BOARD

The following Senior Executive Service members have been appointed to serve on the Department of the Interior 1999 Performance Review Board:

Charles E. Breece, Office of Policy, Management and Budget (Career Appointee)

Carolyn Cohen, Office of Policy, Management and Budget (Career Appointee)

E. Melodee Stith, Office of Policy, Management and Budget (Career Appointee)

Daryl W. White, Office of Policy, Management and Budget (Career Appointee)
Barbara J. Griffin, National Park Service (Career Appointee)
Robert L. Arnberger, National Park Service (Career Appointee)
Martha B. Aikens, National Park Service (Career Appointee)
Gary T. Cummins, National Park Service (Career Appointee)
Denise E. Sheehan, Fish and Wildlife Service (Career Appointee)
Elaine Y. Zielinski, Bureau of Land Management (Career Appointee)
Mary Josie Blanchard, Office of Surface Mining (Career Appointee)
Richard J. Seibel, Office of Surface Mining (Career Appointee)
Robert E. Brown, Minerals Management Service (Career Appointee)
Margaret W. Sibley, Bureau of Reclamation (Career Appointee)
Carmen R. Maymi, Bureau of Reclamation (Career Appointee)
Larry J. Ludke, U.S. Geological Survey (Career Appointee)
David P. Russ, U.S. Geological Survey (Career Appointee)
Barbara J. Ryan, U.S. Geological Survey (Career Appointee)
Deborah Maddox, Bureau of Indian Affairs (Career Appointee)
Terrance L. Virden, Bureau of Indian Affairs (Career Appointee)
Linda Richardson, Bureau of Indian Affairs (Career Appointee)

Dated: August 11, 1999.

Carolyn Cohen,

Director of Personnel Policy.

[FR Doc. 99–21465 Filed 8–17–99; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Acceptance of Contribution for Geologic Mapping

AGENCY: Geological Survey, Interior.

ACTION: Notice of acceptance of contributed funds.

SUMMARY: The U.S. Geological Survey (USGS) announces that it has accepted a contribution of $13,000 from the Weyerhaeuser Corporation towards the completion of a geologic map of the Silver Lake Quadrangle in southwestern Washington. The USGS would be pleased to consider contributions from other sources for similar purposes.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Gautier, Chief Scientist, USGS Western Geologic Mapping Team, 345 Middlefield Road, Mail Stop 975, Menlo Park, CA 94023, phone (650) 329–4909

SUPPLEMENTARY INFORMATION: None.

Dated: August 4, 1999.

Linda C. Gundersen,

Associate Chief Geologist For Operations.

[FR Doc. 99–21467 Filed 8–17–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–096–09–6332–02: GP99–0289]

Emergency Closure of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of public lands and access roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including vehicle operation, camping, open fires, shooting, hiking and sightseeing, erecting structures and storing personal property, from August 15, 1999 through December 31, 1999 at 6 p.m. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 18 S., R. 1 E.
Sec. 25: A tract of land located in the N½;
Sec. 24: A tract of land located in the SW¼SW¼;
Sec. 26: Road No. 18–1E–26.

The area described contains approximately 360 acres.

SUPPLEMENTARY INFORMATION: The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchaser of BLM timber within the closure area and its employees and subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to, but not limited to, the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as well as the penalties provided under Oregon State law.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to protect persons from potential harm from logging operations, to protect valuable public timber resources from unauthorized damage, to facilitate authorized timber harvest operations, and to protect natural resources from fire, unauthorized uses, unsanitary conditions, degradation and to provide for public and employee safety.

DATES: This closure is effective from August 15, 1999 through December 31, 1999 at 6 p.m.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available during business hours (7:45 a.m. to 4:15 p.m.) from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, OR 97440.

FOR FURTHER INFORMATION CONTACT: Doug Huntington, Public Information Officer, Eugene District Office, at (541) 683–6600.

Dated: August 12, 1999.

Denis Williamson,

District Manager, Eugene District.

[FR Doc. 99–21393 Filed 8–17–99; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–09–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of New Member Orientation Meeting and Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces an orientation meeting of the New Mexico Resource Advisory Council (RAC). This meeting is focused toward the new RAC members. Existing RAC members may also attend.

The one-day orientation meeting will be held on Wednesday October 6, 1999 at the Holiday Inn, 600 E. Broadway, Farmington, NM 87401. This meeting starts at 8 a.m. The draft agenda for the orientation meeting includes presentation and discussion on the

regulations and laws under which the RAC functions, the RAC Charter, travel voucher procedures, summaries of recent RAC recommendations, the BLM/New Mexico Strategic Plan and minutes from previous RAC meetings. The agenda items may be changed depending on the needs of the new RAC members. This orientation RAC meeting is open to the public. The end time of 4:30 p.m. for the orientation meeting may be changed depending on the needs of the new RAC members.

Also being announced is the regular RAC meeting which will be held on Thursday October 7 and Friday October 8, 1999 at the Holiday Inn, 600 Broadway, Farmington, NM 87401. The meeting on October 7 and 8, 1999 starts at 8 a.m. both days. The draft agenda for the RAC meeting includes getting acquainted and welcome, agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last RAC meeting on June 17 and 18, 1999 in Albuquerque, NM, check in with RAC members, an update on the New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management project, Oil and Gas presentations, public comment to the RAC, a field trip looking at Navajo land uses on BLM, Clean Water Action Plan presentation, BLM road closure policy and transportation planning presentation, future of RAC and priorities, BLM Field Managers presentations, RAC selection of draft agenda items and location for next RAC meeting, and RAC assessment of this meeting. Specific agenda items, dates, times and locations may be adjusted with approval of the RAC. The time for the public to address the RAC is 10 a.m. to 12 noon, Thursday, October 7, 1999. The RAC may reduce or extend the end time of 12 noon depending on the number of people wishing to address the RAC.

The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its agenda items. The meeting on October 7, 1999, is planned to end at the conclusion of the field trip. Transportation on the field trip will be provided for RAC members and supporting BLM staff. Others who wish to participate on the field trip will need to provide their own transportation. The meeting on October 8, 1999 is planned to end at 4:30 p.m.; however this time may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, PO Box 27115, Santa Fe, NM 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for public land health and guidelines for livestock grazing management.

Dated: August 12, 1999.

M.J. Chávez,

State Director.

[FR Doc. 99–21449 Filed 8–17–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 7, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 2, 1999.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Coconino County

Two Spot Logging Train (Logging Railroad Resources of the Coconino and Kaibab National Forests MPS), Jct. of San Francisco St. and US 66, Flagstaff, 99001066

Pinal County

Cox, William, Building, 501 N. Marshall St., Casa Grande, 99001068

Paramount Theatre, 420 N. Florence St., Casa Grande, 99001067

Yavapai County

Mile High Park Historic District, Roughly along Oregon Ave., and Josephine St., from Gail Gardner Way and Lindberg Dr., Prescott, 99001069

ARKANSAS

Pope County

Old South Restaurant, (Arkansas Highway History and Architecture MPS), 1330 E. Main St., Russellville vicinity, 99001064

Maricopa County

Ellis, George, House (Residential Properties Designed by George Ellis MPS), 105 Cattle Track, Scottsdale, 99001065

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Mount Vernon Square Historic District, Roughly bounded by New York Ave., 7th St., N St., and 1st St. NW, Washington, 99001071

ILLINOIS

Cook County

Raymond M. Hilliard Center Historic District, Jct. of Cermak Rd. and S. State St., Chicago, 99001072

INDIANA

Clay County

Tide Water Pumping Station, SW corner of 900S and 300E, Coal City vicinity, 99001076

Floyd County

New Albany Downtown Historic District, Roughly between W. First St., and E. Fifth St., W. Main St. to E. Spring St., New Albany, 99001074

Marion County

Fairbanks, Charles W., House, 2960 N. Meridian St., Indianapolis, 99001073

Owen County

Osgood, Dr. H. G., House, 11 E. North St., Gosport, 99001075

Wabash County

North Wabash Historic District, Roughly bounded by W. Maple, N. Carroll, Ferry, Miami, Pawling, N. Wabash, and Union Sts., Wabash, 99001077

MARYLAND

Baltimore Independent City

Hotel Kernan, 306–312 W. Franklin St., Baltimore, 99001079

Stewart's Department Store, 226–232 W. Lexington St., Baltimore, 99001078

MASSACHUSETTS

Hampden County

Palmer Memorial Hall, 1029 Central St., Palmer, 99001082

Hampshire County

Huntington Village Historic District, Roughly along E. Main, Main, Russell, Upper Russell and Basket Sts., Huntington, 99001080

Plymouth County

Paragon Park Carousel, 1 Wharf Ave., Hull, 99001081

NEVADA

Clark County

Spirit Mountain, Address Restricted, Laughlin vicinity, 99001083

OHIO

Summit County

Point, Nathaniel, Farm (Agricultural Resources of the Cuyahoga Valley MPS), 4606 Akron-Peninsula Rd., 4631 Akron-Peninsula Rd., Penisula vicinity, 99001084

OKLAHOMA

Beaver County

Gate School, Jct. of 4th and Texas, Gate, 99001087

Rogers County

Beck, I.W.W., Building, 146 W. Cooweescoowee Ave., Oologah, 99001086

Tulsa County

Ambassador Hotel, 1314 S. Main, Tulsa, 99001085

OREGON

Clackamas County

Bagsby Guard Station, Bagby Trail #544, Forest Service Rd. 70, Estacada vicinity, 99001088

UTAH

Garfield County

Oak Creek Dam (Capitol Reef National Park MPS), Oak Creek, N of N. Coleman Canyon, Torrey vicinity, 99001091

Wayne County

Behunin, Elijah Cutler, Cabin (Capitol Reef National Park MPS), UT 24, 1.5 mi. SE of tip of Horse Mesa, Torrey vicinity, 99001094

Cathedral Valley Corral (Capitol Reef National Park MPS), Middle Desert, SE of Confluence of Cathedral Mountain and Cathedral Valley, Torrey vicinity, 99001093

Civilian Conservation Corps Powder Magazine (Capitol Reef National Park MPS), S of Fremont R., N of Cuts Canyon, Torrey vicinity, 99001090

Hanks' Dugouts (Capitol Reef National Park MPS), Confluence of Pleasant Creek and South Draw, Torrey vicinity, 99001095

Morrell, Lesley, Line Cabin and Corral (Capitol Reef National Park MPS), Confluence of Middle Desert Wash and Cathedral Valley, Torrey vicinity, 99001096

Oyler Mine (Capitol Reef National Park MPS), Confluence of Grand Wash and Cohab Canyon, Torrey vicinity, 99001092

Pioneer Register (Capitol Reef National Park MPS), SW of confluence of Capitol Wash and Waterpocket Canyon, Torrey vicinity, 99001097

A request for REMOVAL has been made for the following resources:

ARKANSAS

Columbia County

Bank of Waldo (Thompson, Charles L., Design Collection TR), Locust and Main Sts., Waldo, 82000801

Conway County

Morrilton Male and Female College, E. Church St., Morrilton, 79000436

Cross County

Missouri—Pacific Depot—Wynne (Historic Railroad Depots of Arkansas MPS), SW of jct. of N. Front St. and E. Hamilton Ave., Wynne, 82000623

Hempstead County

McRae House (Thompson, Charles L., Design Collection TR), 113 E. 3rd. St., Hope, 82000826

Ozan Methodist Church, Mulberry St., Ozan, 82000827

Howard County

Missouri—Pacific Railroad Depot—Nashville (Historic Railroad Depots of Arkansas MPS), S. of E. Hempstead, between S. Front and S. Ansley Sts., Nashville, 92000618

Nevada County

Bemis Florist Shop (Thompson, Charles L., Design Collection TR), 117 E. Second, Prescott, 82000868

Phillips County

Barlow—Coolidge House, 917 Ohio St., Helena, 75000402

Prairie County

DeValls Bluff First Baptist Church, Jct. of Prairie and Mason Sts., SE corner, Prairie, 92001616

Pulaski County

George, Alexander, House, 1007 E. 2nd St., Little Rock, 76000454

Saline County

Missouri—Pacific Railroad Depot—Benton (Historic Railroad Depots of Arkansas MPS), Benton, 92000602

Washington County

Kantz House, E of Fayetteville at 2650 Mission St., Fayetteville, 80000788

[FR Doc. 99–21357 Filed 8–17–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting; Bay-Delta Advisory Council's Ecosystem Restoration Program FY 2000 Priority Public Workshop

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss key issues in addressing CALFED critical issues, focusing on Finance, Governance, the Draft Preferred Alternative and Restoration Coordination. There will also be a site tour of Battle Creek leaving from and returning to Wild Bill's Restaurant in Red Bluff. A reception and meeting at the Red Bluff Community/Senior Center will follow the tour.

CALFED's Ecosystem Restoration Program will sponsor a FY 2000 Priority Setting Workshop on August 31, 1999, to discuss priorities for FY 2000. This meeting is open to the public. Interested persons may make oral statements or may file written statements for consideration.

DATES: BDAC will tour Battle Creek in Red Bluff on Thursday, September 16, 1999. The tour will run from 12:30 p.m. to 5:30 p.m., leaving from and returning to, Wild Bill's Restaurant in Red Bluff. The evening reception will be on September 16, 1999 at the Red Bluff Community/Senior Center from 6:30 p.m. to 8 p.m.

BDAC will meet from 8:30 a.m. to 5 p.m. on Friday, September 17, 1999 at the Red Bluff Community/Senior Center.

The Bay-Delta Advisory Council's Ecosystem Restoration Program FY 2000 Priority Public Workshop will be held from 9 a.m. to 1 p.m. on Tuesday, August 31, 1999 in the Auditorium at 714 P Street in Sacramento.

ADDRESSES: BDAC will rendezvous from Wild Bill's Restaurant, 500 Riverside, Red Bluff, CA 96080. The BDAC evening reception and meeting will be held at the Red Bluff Community/Senior Center, 1500 South Jackson Street, Red Bluff, CA 96080.

The Bay-Delta Advisory Council's Ecosystem Restoration Program FY 2000 Priority Public Workshop will be held in the auditorium at 714 P Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For information on the BDAC tour, reception and meeting contact Eugenia Laychak, CALFED Bay-Delta Program at (916) 657–2666.

For information on the Bay-Delta Advisory Council's Ecosystem Restoration Program FY 2000 Priority Public Workshop, contact Wendy Halverson Martin, CALFED Bay-Delta Program at (916) 657–2666.

If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that

must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems to the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring the developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as Advisory Council BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: August 13, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–21394 Filed 8–17–99; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–409]

Certain CD–ROM Controllers and Products Containing the Same—II; Notice of Decision To Extend by 45 Days the Target Date for Completing the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by 45 days, or until September 27, 1999, the target date for completing the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3152. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 13, 1998, based on a complaint filed by Oak Technology, Inc. 63 FR 26625 (1998). The complaint named four respondents: MediaTek, Inc., United Microelectronics Corporation (UMC), Lite-On Technology Corp., and AOpen, Inc. Actima Technology Corporation, ASUSTek Computer, Incorporated, Behavior Tech Computer Corporation, Data Electronics, Inc., Momitsu Multi Media Technologies, Inc., Pan-International Industrial Corporation, and Ultima Electronics Corporation were permitted to intervene in the investigation.

In its complaint, Oak alleged that respondents violated section 337 by importing into the United States, selling for importation, and/or selling in the United States after importation electronic products and/or components that infringe claims of U.S. Letters Patent 5,581,715. The presiding administrative law judge (ALJ) held an evidentiary hearing from January 11, 1999, to January 28, 1999.

On May 10, 1999, the ALJ issued an initial determination (ID) (Order No. 15) granting the motion of respondent UMC for a summary determination terminating UMC from the investigation on the basis of a license agreement. On May 12, 1999, the ALJ issued his final ID in which he found that there was no violation of section 337.

Complainant Oak filed a petition for review of Order No. 15 and respondent UMC and the Commission investigative attorneys (IAs) filed responses to Oak's petition for review of Order No. 15. Oak, respondents UMC, MediaTek, Lite-On Technology, and AOpen, and the IAs filed petitions for review of the final ID, and all parties subsequently responded to each other's petitions for review of the final ID.

On June 28, 1999, the Commission determined not to review the ALJ's findings with respect to the preamble of claim 1 and its digital signal processor (DSP) element, and determined to review the remainder of the final ID and Order No. 15.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.51 of the Commission's rules of practice and procedure (19 CFR § 210.51).

Copies of the public version of the ALJ's IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: August 13, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21470 Filed 8–17–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting; Emergency Notice of Commission Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 20, 1999 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Outstanding action jacket:

(1) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).

In a meeting held on Friday, August 13, 1999, the Commission determined to

delay consideration of the above referenced document until Friday, August 20, 1999 at 10:00 a.m. No earlier announcement of this emergency meeting was possible.

Issued: August 13, 1999.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21528 Filed 8–16–99; 12:58 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Solicitation for the Development of Tools and Products for Policing Agencies To Enhance Community Policing and Problem Solving

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Office of Community Oriented Policing Services (COPS) is seeking proposals to fund the development and dissemination of information, guidelines, tools, and products to facilitate the implementation of community policing and problem solving. This solicitation provides background on the COPS Office and its grant programs. It also outlines the purpose of the solicitation and the needs it seeks to address, and identifies issues to be discussed by applicants seeking to provide services under grants or cooperative agreements. Areas of interest to the COPS Office include community policing and collaborative problem solving, organizational transitions, and uses of technology to advance community policing.

This solicitation is being announced as an open competition and requires a three-week turnaround. Awardees will be expected to begin work immediately upon selection.

DATES: Applications are due on September 15, 1999, by 5:00 p.m. EST. Please fax a short letter notifying the COPS Office of your intent to apply. The letter should be faxed to the attention of COPS/PPSE c/o Stacy Curtis Bushée at (202) 633–1386 no later than September 3, 1999. The selected awardees will be notified by phone and letter and should plan to begin meeting with the COPS Office in Washington, D.C. as early as mid October 1999 to begin work on the project.

REQUIREMENTS/LIMITATIONS: Package should include the original application and three copies. Applications should not exceed 15 double-spaced, 12-point typed pages. Budget materials, letters of support/cooperation, and time lines are considered acceptable appendices and do not count toward the narrative page limit.

ADDRESSES: Please send application package to: Office of Community Oriented Policing Services; Program/Policy Support and Evaluation Division, c/o Stacy Curtis Bushée, 1100 Vermont Ave, NW, Washington, DC 20530 (20005 for express services).

FOR FURTHER INFORMATION CONTACT: Please contact Stacy Curtis Bushée at (202) 633–1297 or Karin Schmerler at (202) 633–1321 to obtain additional information about this solicitation. Application forms and materials on the COPS Office and its grant programs are also available by calling the U.S. Department of Justice Response Center at 1–800–421–6770 or by visiting the COPS Office Internet web site at www.usdoj.gov/cops.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322). Title I of the "crime bill," the Public Safety Partnership and Community Policing Act of 1994, authorizes the Attorney General to make grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia thereof to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community, to address crime and disorder problems, to support innovative community policing projects, and to otherwise enhance public safety.

Since 1994, the COPS Office has awarded grants to more than 11,000 policing agencies across the country. The COPS Office has funded the hiring of officers, the redeployment of officers through the purchase of technology and the hiring of civilians, and a variety of innovative policing grants to combat crime and enhance public safety. Innovative grants include, for example, funding to foster collaborative problem solving between policing agencies and community-based agencies or schools, and partnerships between policing agencies and domestic violence programs. The COPS Office has also funded the creation of Regional Community Policing Institutes (RCPIs) to foster training in community policing at the regional level. The goal of programs developed and funded by the COPS Office is to provide resources to enhance community policing efforts throughout the country. The purpose of this solicitation is to fund the development and dissemination of informative, easy-to-understand, and easy-to-use products and tools that will continue to facilitate the adoption and implementation of community policing and collaborative problem solving.

Funding Availability

The COPS Office anticipates providing a total of up to $600,000 from FY99 funds to award projects in the areas described below. Depending on the fundability of proposals received by the COPS Office, funding amounts may be increased or decreased within categories. In addition, all categories/parts may not receive funding based upon the quality and utility of proposed projects. Awards under this solicitation are not dependent on FY00 appropriations to the COPS Office. Additional projects may be funded from this solicitation with FY00 appropriations if such appropriations are forthcoming. Grants or cooperative agreements are awarded for a one year period.

Category I. Collaborative Problem Solving ($150,000)

Since 1997, the COPS Office has awarded over 450 Problem Solving Partnerships (PSP) grants and 150 School-Based Partnerships (SBP) grants. The purpose of these grants is to provide policing agencies and their community partners with resources that will enhance their ability to use the collaborative problem solving approach to address their focus crime or disorder problems. PSP and SBP grantees are addressing a wide variety of problems, including:

PSP Program

Assault
Street-Level Drug Dealing
Loitering and Disorder
Residential Burglary
Auto Theft/Theft from Auto
Domestic Violence
Commercial Burglary
Underage Drinking
Vandalism/Graffiti
Larceny/Theft
Driving While Intoxicated
Disputes

SBP Program

Assault
Loitering and Disorder
Bullying, Threat and Intimidation
Disputes
Drug Dealing/Alcohol Consumption on School Grounds

Larceny/Theft
Vandalism/Graffiti

To continue to enhance the ability of policing agencies and communities to effectively address specific crime or disorder problems the COPS Office seeks proposals to:

Category I—Part A. Develop tools to address specific crime or disorder problems.

Problem-specific tools include, but are not limited to: analytical instruments (such as environmental surveys, business and residential surveys, victim and offender interviews, incident report addendums), that will help agencies collect information on particular crime or disorder problems; practical, user-friendly information guides outlining the state of knowledge on particular crime or disorder problems; and/or blueprints on how to apply a problem-solving approach to specific crime and disorder problems. Tools and guidelines on how to implement and sustain problem-solving collaborations between policing agencies and communities/schools that focus on particular crime and disorder problems are also welcome. Applicants may suggest additional tools that would assist policing agencies and community partners attempting to address specific crime and disorder problems.

Category I—Part B. Develop problem-solving software.

Implementing a problem-solving approach—for example, one that includes phases such as scanning, analyzing, responding, and assessing—to reduce crime and disorder requires knowledge of the basic strategy and structure of such an approach. Problem-solving software that can help guide police practitioners and community members through the model to address specific problems and help users develop effective, tailored responses would help meet the need for individualized assistance in applying the problem-solving approach to target problems. Although such software could be used in a training settling, the primary purpose of this type of software would be to serve as a blueprint for taking a problem-solving approach to addressing crime or disorder problems.

Applicants interested in proposing projects in the Collaborative Problem Solving category should propose tools or products that will enhance the ability of policing agencies and community organizations to collect, analyze and understand different types of information that will aid in collaborative problem-solving efforts.

Category II. Organizational Transitions ($250,000)

As a policing agency transitions ideologically from conducting traditional policing activities to operating under the philosophies that guide community policing, organizational transformations typically occur that will support the new approach. Such transformations include altering the structure of a department to enable the community policing philosophy and associated functions to be incorporated into the responsibilities of department personnel. To assist COPS grantees in making such transitions, the COPS Offices seek proposals to do the following:

Category II—Part A. Review and describe the major variations in the implementation of community policing among select COPS grantees and compile lessons learned from the ways these agencies are implementing community policing.

Policing agencies have implemented community policing in a variety of ways. Approaches to implementing community policing include the use of specialized units or officers primarily responsible for community policing activities; specialized officers within a particular district with community policing responsibilities; a split-force approach wherein community policing, traditional patrol, and other functions are split between major police divisions; a department-wide orientation; and combinations of the above. Some agencies begin implementing community policing through one approach, and subsequently go on to implement one or more different approaches for a variety of reasons. A compilation of the experiences of selected COPS grantees that have undertaken differing approaches to implementing community policing would help inform other policing agencies that are in the process of developing and implementing strategies to fit their particular needs.

This compilation should review the topology described above and examine the successes, pitfalls, lessons learned, and resulting benefits and drawbacks of each approach.

Category II—Part B. Develop a practical, easy-to-understand guidebook for policing practitioners on designing and implementing call management strategies to support community policing.

The COPS Office is also seeking proposals on the topic of call management strategies. An important aspect of organizational transition for many policing agencies is the development and implementation of call management strategies that support an agency's community policing goals. Policing agencies have approached call management in a variety of ways, including: managing calls for service through telephone and mail-in reporting systems, delaying police response, scheduling appointments, and tasking non-sworn personnel to respond to lower priority calls. The short-term goal of these strategies has been to free-up officer time for collaborative problem-solving efforts; the long-term goal has been to increase the effectiveness of the police response to community problems.

The COPS Office seeks proposals to develop a call management guidebook that draws upon the promising work and lessons learned by policing agencies in the United States and abroad. The guidebook should serve as a resource for a wide variety of agencies seeking step-by-step assistance in designing and implementing basic call management strategies to support community policing efforts. In addition to providing information on basic call management strategies, the guidebook should include information on cutting-edge experiments with call management initiatives that fully integrate problem-oriented policing concepts into call receipt, dispatch and resolution.

Category III. Technology ($200,000)

Through the COPS MORE grant program (Making Officer Redeployment Effective), the COPS Office has provided information technology resources to support community policing operations. Policing agencies nationwide have received and implemented a variety of technology applications, including records management, mapping, and computer-aided dispatch systems. However, the market for law enforcement technology development is largely vendor-driven. There is limited information about the universe of applications available for police, and many agencies have not had the opportunity to take full advantage of advanced information technology tools due to constraints in both design and utilization. As such, the COPS Office is seeking proposals to:

Category III—Part A. Develop guidelines for information technology acquisition and utilization to support community policing.

The transition to community policing has placed additional information demands on state and local police agencies. These demands include the need for real-time data accessibility for problem analysis at the beat/sector level, the capacity for data sharing

among multiple components of local government (i.e., public works, sanitation, police, fire), and enhanced mechanisms for the distribution of non-sensitive police records to the public. In order to respond to these evolving needs, COPS grantees have informally requested assistance in the way of minimum-threshold functional requirements for information systems that they can use in strategic and organizational planning.

In response to this growing demand, the COPS Office is seeking proposals for the development of guidelines to meet the evolving information technology needs of policing agencies transitioning to community policing. Applicants interested in submitting proposals under this section should identify the critical elements that an information technology (IT) platform must contain in order to facilitate the successful implementation to community policing and meet these corresponding information demands.

Proposals should include an examination of the necessary functional elements for a community-oriented IT platform, the necessary IT components, and the steps to take to ensure successful interface with other local government counterparts. The development of specific technical requirements for IT components (i.e., database architecture, wireless communications infrastructure) are not sought under this solicitation.

Category III—Part B. Examine applications of information technology among policing agencies.

The ways in which leading law enforcement agencies use data to support management decisions, allocate personnel resources, and implement community policing/problem solving vary considerably. Some agencies have provided information technology (IT) tools to officers for crime analysis at the beat level, whereas others have placed greater emphasis on making real-time information available to command staff. Given these variations, applicants could propose to compare and contrast various applications of technology in policing agencies, and to assess the subsequent impact on departmental operations, community policing, and ultimately, public safety. For example, applicants could propose to conduct a critical examination of a top-down accountability-based policing model in comparison to a decentralized or problem-oriented policing model, leading to the development of a new IT paradigm for policing structured around the most successful elements of each strategy. Proposed products could include site-specific case studies or comparative documents that include process/impact assessment findings.

Applicant Criteria

Successful applicants must demonstrate a clear understanding of community policing and problem solving principles and processes. Applicants should have extensive backgrounds in the implementation of community policing, including the impact and importance of community participation, and the ways in which the implementation of community policing can bring about organizational changes within policing agencies. Applicants should also be familiar with the uses of technology to enhance the delivery of police services and effectiveness of community policing efforts. Applicants must state clearly the goals and methods of the project, project deliverables, and include a task time line for the life of the grant.

Applicants may submit multiple applications within or across categories and parts. For example, an applicant could propose to develop deliverables under Part B of the Organizational Transitional category, and Parts A and B of the Technology category. However, each distinct project must be described in detail in a narrative as discussed below and separate budget worksheets and narratives must be provided for each project. Supporting documentation such as the SF 424, Assurances, Certifications, and Disclosures need not be submitted more than once. Applicants are encouraged to be innovative in their proposals and should collaborate with policing agencies or personnel in the development of applications and in the testing of tools and products to assure their usefullness.

Applicants should meet the following criteria:

1. Possess relevant expertise in the areas of community policing, collaborative problem-solving, police management, and organizational change.
2. Possess significant understanding of and experience working with policing agencies operating under the guiding philosophies of community policing in rural, suburban, and urban jurisdictions ranging from 15,000 to over 1,000,000 persons.
3. Possess significant experience developing tools or products aimed at policing audiences.
4. Possess experience administering federal grants or cooperative agreements of more than $100,000.
5. Have a proven record of working collaboratively on projects with other organizations.

How to Apply

Those interested in submitting proposals in response to this solicitation must complete the required application forms and submit related required documents. Applicants must include the following information/forms to qualify for consideration:

- Standard Form (SF) 424—application for Federal assistance
- Table of Contents
- Proposal Abstract (include the category and part under which you are applying)
- Project Narrative (see additional detail in Items #1–6 below)
- Project Time Line (Item #7)
- Budget Detail Worksheet (see additional detail in Item #8)
- Budget Narrative (see additional detail in Item #8)
- Names and affiliations of all key project staff, including subcontractor(s), advisors, and consultants
- Resumes of key project staff (relevant experience for proposed project should be highlighted)
- Assurances
- Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (one form)
- Disclosure of Lobbying Activities

The project narrative should not exceed 15 pages and should detail the proposed project and the deliverables that will result, including planes to pilot test deliverables with policing agencies to assure the ease of use and utility of such deliverables. The required forms, resumes, time line and budget information do not count toward the page length. Each proposed project must be described in a separate narrative and must be accompanied by a separate budget narrative and worksheets.

Capabilities

Project narratives should address the following issues. If you or your organization is proposing more than one distinct project under this solicitation, include a discussion of all items except for Item #4 in each of the project narratives.

1. Describe in detail the project you would undertake. Be specific with regard to the kinds of deliverables that would result and how those deliverables would assist policing agencies implementing community policing and problem solving. Be sure to describe how the deliverables would be pilot tested within policing agencies to assure the ease of use and utility of such deliverables.
2. Discuss your management plan for implementing this project with respect

to internal and external management of personnel and resources.

3. Discuss how information collected or products/tools developed under this project could be disseminated to promote the implementation of community policing and problem-solving approaches in the future. Discuss how police practitioners, community members, and others with an interest in crime prevention could access the products developed under this project.

4. Describe your understanding of and experience with community policing and problem solving. Describe your background and experience in developing tools or other products aimed at facilitating the use of new approaches to crime reduction by policing agencies.

5. Describe your understanding of policing agencies and their culture, as it applies to the focus area addressed in your proposal.

6. Based on your experience with the evolution of community policing and problem solving, please describe the primary organizational obstacles to the implementation of community policing, and how your proposed deliverables would assist COPS grantees and other agencies in institutionalizing community policing and problem solving.

Timeline

7. Provide a detailed one-year task time line to describe the activities included in your project plan.

Budget

8. Prepare a detailed budget and budget narrative for a one-year agreement. Awards are expected to range from $50,000 to $350,000, depending on the scope of the initiative and proposed deliverables. The budget may include travel and per diem costs related to collaborating with policing agencies, mailing or telephone costs for information collection, and production, pilot testing, and dissemination costs for all deliverables.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: August 6, 1999.

Mary Lou Leary,

Acting Director, Office of Community Oriented Policing Services, U.S. Department of Justice.

[FR Doc. 99–21452 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Executive Office for U.S. Attorneys

[Docket No. 97592]

Waiver of the Data Encryption Standard; Federal Information Processing Standards Publication (FIPS) 46–2; "Data Encryption Standard (DES)"

AGENCY: Executive Office for U.S. Attorneys, Department of Justice.

ACTION: Notice.

SUMMARY: The Federal Information Processing Standards Publication (FIPS) 46–2 entitled "Data Encryption Standard (DES)" requires that a notice be published in the **Federal Register** whenever a waiver to the DES standard is approved.

DATES: The waiver was approved on June 9, 1999.

ADDRESSES: U.S. Department of Justice, Executive Office for U.S. Attorneys, 600 E Street N.W., Suite 6004, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Harvey Press (202) 616–6442.

SUPPLEMENTARY INFORMATION: FIPS 46–2 "Data Encryption Standards (DES)" requires a notice be published in the **Federal Register** whenever a waiver is granted. The Executive Office for U.S. Attorneys (EOUSA) of the Department of Justice (DOJ), because of our concerns that single DES has been shown vulnerable to attack, we intend to utilize Triple DES. Therefore, the EOUSA, to provide stronger security, will utilize Triple DES as its encryption algorithms for its Virtual Private Network (VPN)/ firewall implementation.

Harvey Press,

Assistant Director for Telecommunication and Technical Development Staff.

[FR Doc. 99–21367 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–07–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Degree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent-decree in *United States* v. *A&D Recycling, Inc., et al.*, Civil Action No. 1:CV–99–1332 (M.D. Pa.) was lodged with the court on July 28, 1999.

The proposed decree resolves claims of the United States against 120 defendants under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, for response costs and actions at the Jack's Creek Superfund Site in Mifflin County, PA. The decree requires 40 of the defendants to perform the EPA-selected remedial action to address hazardous substance contamination at the site. That remedial action includes, inter alia, excavation and off-site disposal of certain contamination and on-site consolidation and capping of other contamination. The remaining 80 defendants are accorded de minimis treatment and required to pay a total of $3.05 million toward cleanup of the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *A&D Recycling, Inc., et al.*, Civil Action No. 1:CV–99–1332 (M.D. Pa.), DOJ Ref. #90–11–2–911. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $27.50 (25 cents per page reproduction costs), payable to the Consent Degree Library. A copy of the exhibits to the decree may be obtained from the same source for an additional charge of $50.00

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–21466 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 4, 1999 two proposed consent decrees in *United States* v. *Greenwood Chemical Company*, Civ. Action No. 97–0147 (W.D. Va), were lodged with the United

States District Court for the Western District of Virginia.

In this action, the United States is recovering past and future response costs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* in connection with the Greenwood Chemical Company Superfund ("Site"), located in Albermarle County, Virginia.

The consent decrees that were lodged would resolve the United States' claims against two of the four defendants. One defendant, High Point Chemical Corporation, will pay $4 million to settle claims against it. The second defendant, Clarence Hustrulid, will pay $100,000 to resolve claims against him. In both cases, 90% of the money will be paid to the United States and the remaining 10% to the Commonwealth of Virginia, which is a co-plaintiff in the case.

The consent decrees includé covenants not to sue by the United States under sections 106 and 107 of CERCLA, and under section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The Department of Justice will receive for a period for thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be sent to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Greenwood Chemical Company*, D.J. Ref. 90–11–2–679. Commenters may request an opportunity for a public hearing in the affected area, in accordance with section 7003(d) of RCRA.

The proposed consent decrees may be examined at the Office of the United States Attorney, Thomas B. Mason Building, 105 Franklin Rd., SW, Suite One, Roanoke, VA 24011; at US EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $14.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement, Section Environment and Natural Resources Division.

[FR Doc. 99–21366 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 3–99CV1398–H]

United States of America, and the State of Texas v. Aetna Inc. and The Prudential Insurance Company of America Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, Stipulation, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Texas (Dallas Division) in *United States of America and the State of Texas* v. *Aetna Inc. and The Prudential Insurance Company of America*, Civil Action No. 3–99CV1398–H. On June 21, 1999, the United States and the State of Texas filed a Complaint to enjoin defendant Aetna's proposed acquisition of certain health insurance-related assets of the Prudential Insurance Company of America, an acquisition which would have violated section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed with the Complaint requires Aetna to divest its interests in NYLCare Health Plans of the Gulf Coast, Inc. and NYLCare Health Plans of the Southwest, Inc., providers of health insurance in the Houston and Dallas areas, respectively. Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Suite 200, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the Northern District of Texas (Dallas Division).

Public comment on the proposed Final Judgment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gail Krush, Chief, Healthcare Task Force, 325 Seventh Street, NW, Room 404, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: (202) 307–5799).

Constance Robinson,

Director of Operation & Merger Enforcement.

United States District Court for the Northern District of Texas (Dallas Division)

[Civil Action No.: 3–99CV1398–H]

United States of America, and the State of Texas, Plaintiffs, v. Aetna Inc., and The Prudential Insurance Company of America, Defendants.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue is proper in this Court.

(2) The proposed Final Judgment attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that the plaintiffs have not withdrawn their consent, which they may do at any time before entry of the proposed Final Judgment by serving notice thereof on all other parties and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulation shall apply with equal and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event the plaintiffs withdraw their consent, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this

Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Respectfully submitted,

Dated: June 21, 1999.

For Plaintiff, United States of America.

Paul J. O'Donnell,

Massachusetts Bar #547125, U.S. Department of Justice, Antitrust Division, Health Care Task Force, 325 Seventh Street, NW., Suite 400, Washington, DC 20530; Tel: (202) 616–5933, Facsimile: (202) 514–1517.

For Plaintiff, State of Texas.

Mark Tobey,

State Bar No. 20082960, Assistant Attorney General, Chief, Antitrust Section, Office of the Attorney General, P.O. Box 12548, Austin, TX 78711–2548; Tel: (512) 463–2185, Facsimile: (512) 320–0975.

For Defendant, Aetna Inc.

Robert E. Bloch,

D.C. Bar #175927, Mayer, Brown & Platt, 1909 K Street, NW., Washington, DC 20006; Tel: (202) 263–3203, Facsimile: (202) 263–3300.

For Defendant, The Prudential Insurance Company of America.

Michael L. Weiner,

New York Bar #MW0294, Skadden, Arps, Slate, Meagher & Flom, LLP, 919 Third Avenue, New York, NY 10022; Tel: (212) 735–2632, Facsimile: (212) 451–7446.

[Civil Action No.: 3–99CV1398–H]

United States of America, and the State of Texas, Plaintiffs, v. Aetna Inc., and the Prudential Insurance Company of America, Defendants.

Hold Separate Stipulation and Order

It is hereby stipulated by and between the undersigned parties, by their respective attorneys, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Aetna" means defendant Aetna Inc., a Connecticut corporation with its headquarters and principal place of business in Hartford, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents, and employees.

B. "NYLCare-Gulf Coast" means NYLCare Health Plans of the Gulf Coast, Inc., a wholly-owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Houston, Brazoria, Galveston, Austin, San Antonio, and Corpus Christi, Texas.

C. "NYLCare-Southwest" means NYLCare Health Plans of the Southwest, Inc., a wholly-owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Dallas, Fort Worth, and several smaller cities in North Texas, including Paris, Tyler, Longview, and Amarillo.

D. "Prudential" means defendant The Prudential Insurance Company of America, a New Jersey mutual insurance company with its principal place of business in Newark, New Jersey, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents, and employees.

II. Objectives

A. The proposed Final Judgment filed in this case is meant to ensure Aetna's prompt divestiture of NYLCare-Gulf Coast and NYLCare-Southwest for the purpose of maintaining viable competitors in the sale of HMO and HMO-based POS plans and the purchase of physician services, and to remedy the effects that the United States and the State of Texas allege would otherwise result from Aetna's proposed acquisition of Prudential's health care assets.

B. This Hold Separate Stipulation and Order is intended to ensure, prior to such divestiture, that NYLCare-Gulf Coast and NYLCare-Southwest, which are being divested, be maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestiture.

III. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Aetna shall immediately begin to take all steps necessary to preserve, maintain, and operate NYLCare-Gulf Coast and NYLCare-Southwest as independent competitors with management, sales, service, underwriting, administration, and operations held entirely separate, distinct, and apart from those of Aetna. Aetna shall not coordinate the pricing, marketing, or sale of health care services from NYLCare-Gulf Coast and NYLCare-Southwest with the pricing, marketing, or sale of health care services by Aetna. Within twenty-five (25) calendar days of the filing of the Complaint in this matter, Aetna will comply and inform plaintiffs of the steps taken to comply with this provision.

B. Aetna shall take all steps necessary to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are maintained and operated as independent, ongoing, economically viable, and active competitors, including but not limited to the following:

1. Aetna will appoint experienced senior management to run the combined business of NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture required by the Final Judgment has been accomplished. These executives may be recruited from within the existing Aetna or NYLCare organizations, with plaintiffs' approval, subject to Section IV.C, or from outside the company.

2. Aetna will create a separate and independent sales organization for NYLCare-Gulf Coast and NYLCare-Southwest.

3. Aetna will create a separate and independent provider relations organization for NYLCare-Gulf Coast and NYLCare-Southwest.

4. Aetna will create a separate and independent patient management/quality management organization for NYLCare-Gulf Coast and NYLCare-Southwest.

5. Aetna will create a separate and independent commercial operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

6. Aetna will create a separate and independent network operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

7. Aetna will create a separate and independent underwriting organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

8. Pursuant to transition services agreements approved by plaintiffs, subject to Section IV.C, Aetna will provide certain support services to NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture. These services may include human resources, legal, finance, actuarial, software and computer operations support, and other services which are now provided to NYLCare-Gulf Coast and NYLCare-Southwest by other Aetna companies. These transition services agreements will contain appropriate confidentiality provisions to ensure that Aetna employees (other than the employees performing services under the agreements) do not receive information that Aetna is prohibited from receiving under paragraph III.C of this Hold Separate Stipulation and Order.

C. Aetna shall take all steps necessary to ensure that the management of NYLCare-Gulf Coast and NYLCare-Southwest will not be influenced by Aetna except as necessary to meet

Aetna's obligations as described below, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with NYLCare-Gulf Coast and NYLCare-Southwest will be kept separate and apart from the operations of Aetna. Aetna's influence over NYLCare-Gulf Coast and NYLCare-Southwest shall be limited to that necessary to carry out Aetna's obligations under this Hold Separate Stipulation and Order, the Final Judgment, and any applicable regulatory requirements, including all reserve or capital requirements. Aetna may receive aggregate historical financial information (excluding rate or pricing information) relating to NYLCare-Gulf Coast and NYLCare-Southwest to the extent necessary to allow Aetna to prepare financial reports, tax returns, personnel reports, regulatory filings, and other necessary or legally required reports.

D. Aetna shall maintain at either current levels or at the highest levels approved during the year prior to Aetna's acquisition of NYLCare-Gulf Coast and NYLCare-Southwest, whichever are higher, promotional, advertising, sales, technical assistance, marketing, and merchandising support for NYLCare-Gulf Coast and NYLCare-Southwest, but in any event at levels sufficient to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are economically viable businesses.

E. Aetna shall provide and maintain all required reserves and sufficient working capital to maintain NYLCare-Gulf Coast and NYLCare-Southwest as economically viable, ongoing businesses.

F. Aetna shall provide and maintain sufficient lines and sources of credit to maintain NYLCare-Gulf Coast and NYLCare-Southwest as economically viable, ongoing businesses.

G. Aetna shall not take any action to consummate the proposed acquisition of Prudential's health care business pursuant to the Asset Transfer and Acquisition Agreement, dated as of December 9, 1998, or any subsequent agreement between Aetna and Prudential, until such time as the plaintiffs in their sole discretion, subject to Section IV.C, have determined that NYLCare-Gulf Coast and NYLCare-Southwest are independent, viable competitors and that Aetna has complied with this Hold Separate Stipulation and Order, or until the divestitures required by the Final Judgment are complete.

H. Aetna shall not, except in the ordinary course of business, or as otherwise permitted under this Hold Separate Stipulation and Order, or as part of a divestiture approved by the plaintiffs in their sole discretion, subject to Section IV.C, remove, sell, lease, assign, transfer, pledge as collateral for loans, or otherwise dispose of, any asset, tangible or intangible, of NYLCare-Gulf Coast and NYLCare-Southwest.

I. Aetna shall maintain, in accordance with sound accounting principles, separate, true, accurate, and complete financial ledgers, books, and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit, and loss of NYLCare-Gulf Coast and NYLCare-Southwest.

J. Until such time as NYLCare-Gulf Coast and NYLCare-Southwest are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, Aetna shall not hire, transfer, terminate, or alter, to the detriment of any employee, any current employment or salary agreement for any employee who on the date of the signing of this Hold Separate Stipulation and Order is employed at NYLCare-Gulf Coast or NYLCare-Southwest.

K. Aetna may retain an independent consultant (the "Consultant") to monitor the operations of NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture(s) required by the Final Judgment has been accomplished. The Consultant shall have no role in the management of NYLCare-Gulf Coast and NYLCare-Southwest, but shall be given reasonable access to files, data, reports, and other information regarding the operations of NYLCare-Gulf Coast and NYLCare-Southwest. The Consultant's sole responsibility will be to report at least monthly to Aetna's Director of Internal Audit, stating the Consultant's opinion on the question whether NYLCare-Gulf Coast and NYLCare-Southwest are being managed in accordance with applicable law, consistent with prudent underwriting and other industry standards, and consistent with the fiduciary duties of its management. If the Consultant's opinion on this question is anything other than an unqualified "yes," the Consultant shall submit a written report stating the basis for its opinion to the Director of Internal Audit, with a copy to the plaintiffs. The Consultant shall not transmit to Aetna any information that Aetna is prohibited from receiving under paragraph III.C of this Hold Separate Stipulation and Order. After receiving the Consultant's written report, and with the consent of the plaintiffs in their sole discretion, subject to Section IV.C, Aetna may take appropriate corrective action.

IV. Other Provisions

A. Aetna shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to a suitable purchaser.

B. Prudential shall take no action that would hinder or obstruct Aetna's ability or efforts to comply with this Hold Separate Stipulation and Order.

C. In the event plaintiffs are unable to agree on a course of action regarding any item within their discretion in seven days, then the United States may, in its sole discretion, act alone (or decline to act) with respect to that course of action.

D. With the consent of the plaintiffs, in their sole discretion, subject to Section IV.C, Aetna may exclude certain NYLCare-Gulf Coast and NYLCare-Southwest assets from this Hold Separate Stipulation and Order.

E. This Hold Separate Stipulation and Order shall remain in effect until the divestitures required by the Final Judgment are complete, or until further Order of this Court.

Respectfully submitted,

For Plaintiff, United States of America.

Paul J. O'Donnell,

Massachusetts Bar #547125, U.S. Department of Justice, Antitrust Division, Health Care Task Force, 325 Seventh Street, NW, Suite 400, Washington, DC 20530; Tel: (202) 616–5933, Facsimile: (202) 514–1517.

For Plaintiff, State of Texas.

Mark Tobey,

State Bar No. 20082960, Assistant Attorney General, Chief, Antitrust Section, Office of the Attorney General, P.O. Box 12548, Austin, TX 78711–2548; Tel: (512) 463–2185, Facsimile (512) 320–0975.

For Defendant, Aetna Inc.

Robert E. Bloch,

D.C. Bar #175927, Mayer, Brown & Platt, 1909 K Street, NW, Washington, DC 20006; Tel: (202) 263–3203, Facsimile: (202) 263–3300.

For Defendant, The Prudential Insurance Company of America.

Michael L. Weiner,

New York Bar #MW0294, Skadden, Arps, Slate, Meagher & Flom, LLP, 919 Third Avenue, New York, NY 10022; Tel: (212) 735–2632, Facsimile: (212) 451–7446.

It Is So Ordered.

Dated _____, 1999.

United States District Judge.

C. This Hold Separate Stipulation and Order shall remain in effect until the divestitures required by the Final Judgment are complete, or until further Order of this Court.

Respectfully submitted,

For Plaintiff, United States of America.

Paul J. O'Donnell,

Massachusetts Bar #547125, U.S. Department of Justice, Antitrust Division, Health Care Task Force, 325 Seventh Street, NW, Suite 400, Washington, DC 20530; Tel: (202) 616–5933, Facsimile: (202) 514–1517.

For Plaintiff, State of Texas.

Mark Tobey,

State Bar No. 20082960, Assistant Attorney General, Chief, Antitrust Section, Office of the Attorney General, P.O. Box 12548, Austin, TX 78711–2548; Tel: (512) 463–2185, Facsimile (512) 320–0975.

For Defendant, Aetna Inc.

Robert E. Bloch,

D.C. Bar #175927, Mayer, Brown & Platt, 1909 K Street, NW, Washington, DC 20006; Tel: (202) 263–3203, Facsimile: (202) 263–3300.

For Defendant, The Prudential Insurance Company of America.

Michael L. Weiner,

New York Bar #MW0294, Skadden, Arps, Slate, Meagher & Flom, LLP, 919 Third Avenue, New York, NY 10022; Tel: (212) 735–2632, Facsimile: (212) 451–7446.

[Civil Action No. 3–99CV 1398–H]

United States of America, and the State of Texas, Plaintiff, v. Aetna Inc., and The Prudential Insurance Company of America, Defendants.

Revised Final Judgment

Whereas, plaintiffs, the United States of America and the State of Texas, filed a Complaint in this action on June 21, 1999, and plaintiffs and defendants, by their respective attorneys, having consented to the entry of this Revised Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Revised Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Revised Final Judgment pending its approval by the Court;

And whereas, plaintiffs intend to preserve competition by requiring Aetna to divest its interests in the Houston operations of NYLCare Health Plans of the Gulf Coast, Inc., and the Dallas operations of NYLCare Health Plans of the Southwest, Inc., consisting of, among other assets, approximately two hundred sixty thousand (260,000) and one hundred sixty seven thousand (167,000) commercially insured HMO and HMO-based POS enrollees, respectively;

And whereas, plaintiffs require defendants to make the divestitures for the purpose of establishing a viable competitor in the development, marketing, and sale of HMO and HMO-based POS health plans in the Houston and Dallas areas;

And whereas, plaintiffs require defendants to make the divestitures for the purpose of redressing the effects that the United States and the State of Texas allege would otherwise result from Aetna's proposed acquisition of Prudential's health care assets, including the ability to depress physicians' reimbursement rates in Houston and Dallas, which is likely to lead to a reduction in quantity or a degradation in the quality of physician services provided to patients in those areas;

And whereas, defendants have represented to plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Revised Final Judgment:

A. "Aetna" means Aetna, Inc., a Connecticut corporation with its headquarters and principal place of business in Hartford, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and its directors, officers, managers, agents, and employees.

B. "Dallas" means the entire service area of NYLCare-Southwest including, but not limited to, the following Texas counties: Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant.

C. "Excluded Assets" means those businesses of NYLCare-Gulf Coast and NYLCare-Southwest that need not be divested, which consist of: (1) All Medicare HMO plans; (2) commercial HMO and HMO-based POS accounts not located in Houston or Dallas; (3) provider network rental arrangements for PPO plans; and (4) administrative services contracts with self-funded plans.

D. "Houston" means the following Texas counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

E. "NYCare-Gulf Coast" means NYLCare Health Plans of the Gulf Coast, Inc., a wholly owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Central and Southeastern Texas, excepting the Excluded Assets, and includes:

1. All tangible assets necessary to compete in the sale or administration of HMO and HMO-based POS plans; all personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, facilities, and other tangible property or improvements used in the sale or administration of HMO and HMO-based POS plans, all licenses, permits, and authorizations issued by any governmental organization relating to HMO and HMO-based POS plans; contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees; all other contracts, agreements, leases, commitments, and understandings pertaining to HMO and HMO-based POS plans; all contracts with accounts located in Houston, all customer lists and credit records; and all other records maintained in connection with the sale and administration of HMO and HMO-based POS plans in Houston or Dallas;

2. All intangible assets relating to the sale or administration of HMO and HMO-based POS plans, including but not limited to any licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, programs, and all manuals and technical information provided to employees, customers, suppliers, agents, or licenses.

F. "NYLCare-Southwest" means NYLCare Health Plans of the Southwest, Inc., a wholly owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Dallas, Fort Worth, and several smaller cities in North Texas, including Paris, Tyler, Longview and Amarillo, excepting the Excluded Assets, and includes:

1. All tangible assets necessary to compete in the sale or administration of HMO and HMO-based POS plans; all personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, facilities, and other tangible property or improvements used in the sale or administration of HMO

and HMO-based POS plans; all licenses, permits, and authorizations issued by any governmental organization relating to HMO and HMO-based POS plans; contracts or agreements for coverage of approximately one hundred sixty seven thousand (167,000) commercially insured HMO and HMO-based POS plan enrollees; all other contracts, agreements, leases, commitments, and understandings pertaining to HMO and HMO-based POS plans; all contracts with accounts located in Dallas; all customer lists and credit records,; and all other records maintained in connection with the sale and administration of HMO and HMO-based POS plans in Dallas or Houston;

2. All intangible assets relating to the sale or administration of HMO and HMO-based POS plans, including but not limited to any licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, programs, and all manuals and technical information provided to employees, customers, suppliers, agents, or licenses.

G. "Prudential" means The Prudential Insurance Company of America, a New Jersey mutual insurance company with its principal place of business in Newark, New Jersey, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

III. Applicability

A. The provisions of this Revised Final Judgment apply to Aetna and Prudential and to all other persons in active concert or participation with any of them who shall have received actual notice of this Revised Final Judgment by personal service or otherwise.

B. Aetna shall require, as a condition of the sale or other disposition of NYLCare-Gulf Coast and NYLCare-Southwest, that the acquirer agree to be bound by the provisions of this Revised Final Judgment.

IV. Divestiture

A. Aetna is hereby ordered and directed in accordance with the terms of this Revised Final Judgment to divest its interests in NYLCare-Gulf Coast and NYLCare-Southwest, excepting only the Excluded Assets, to an acquirer(s) acceptable to the plaintiffs, in their sole discretion, subject to Section XII.

B. Aetna is obligated to cause NYLCare-Gulf Coast and NYLCare-Southwest to maintain contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees in Houston and contracts or agreements for coverage of approximately one hunded sixty seven thousand (167,000) commerically insured HMO and HMO-based POS plan enrollees in Dallas through the date of signing the definitive purchase and sale agreement(s) for the divestiture of the two NYLCare entities. Aetna may include related PPO business as a part of the sale of the NYLCare entities, and the actual number of such PPO enrollees as of the date of signing of the definitive purchase and sale agreement(s) of the divestiture of the NYLCare entities will be taken into account in determining Aetna's compliance with the membership targets described herein.

C. Aetna shall use its best efforts to accomplish the divestitures as expeditiously as possible and will accelerate the timetable for executing the definitive purchase and sale agreement(s) for the divestiture of the NYLCare entities to a target date of October 1, 1999. In any event, Aetna shall execute definitive purchase and sale agreement(s) and shall file all required applications for regulatory approval within one-hundred and twenty (120) calendar days after June 21, 1999. Aetna shall complete the divestitures within five (5) business days after it receives all necessary regulatory approvals for divestiture of NYLCare-Gulf Coast and NYLCare-Southwest and the acquisition of Prudential, or five (5) business days after notice of the entry of this Revised Final Judgment by the Court, whichever is later.

D. The plaintiffs, in their sole discretion, subject to Section XII, may extend the time period for any divestitures for an additional period of time not to exceed sixty (60) calendar days. If a further extension is required to obtain necessary regulatory approvals, the plaintiffs, in their sole discretion, subject to Section XII, may grant the time necessary to obtain such approvals.

E. In accomplishing the divestitures ordered by this Revised Final Judgment, Aetna promptly shall make known, by usual and customary means, the availability for purchase of NYLCare-Gulf Coast and NYLCare-Southwest. Aetna shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Revised Final Judgment and shall provide such person with a copy of this Revised Final Judgment. Aetna shall also offer to furnish to all prospective purchasers, subject to reasonable confidentiality assurances, all information regarding NYLCare-Gulf Coast and NYLCare-Southwest customarily provided in a due diligence process, except information subject to the attorney-client privilege or the attorney work-product privilege. Aetna shall make available such non-privileged information to the United States and the State of Texas at the same time that such information is made available to prospective purchasers.

F. Aetna shall permit prospective purchasers to have reasonable access to all NYLCare-Gulf Coast's and NYLCare-Southwest personnel, physical facilities, and any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

G. Aetna shall not take any action that will impede in any way the operation of NYLCare-Gulf Coast and NYLCare-Southwest; shall immediately cease all actions directed at the integration of NYLCare-Gulf Coast and NYLCare-Southwest into Aetna.

H. Aetna shall take all steps necessary to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are maintained and operated as independent, on-going, economically viable, and active competitors until completion of the divestitures ordered by this Revised Final Judgment, including but not limited to the following:

1. Aetna will appoint experienced senior management to run the combined business of NYLCare-Gulf Coast and NYLCare-Southwest. These executives may be recruited from within the existing Aetna or NYLCare organizations, with plaintiff's approval, subject to Section XII, or from outside the company.

2. Aetna will create a separate and independent sales organization for NYLCare-Gulf Coast and NYLCare-Southwest.

3. Aetna will create a separate and independent provider relations organization for NYLCare-Gulf Coast and NYLCare-Southwest.

4. Aetna will create a separate and independent management/quality management organization for NYLCare-Gulf Coast and NYLCare-Southwest.

5. Aetna will create a separate and independent commercial operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

6. Aetna will create a separate and independent commercial operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

7. Aetna will create a separate and independent underwriting organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

8. Pursuant to transition services agreements approved by plaintiffs, subject to Section XII, Aetna will

provide certain support services to NYLCare-Gulf Coast and NYLCare-Southwest. These services may include human resources, legal, finance, actuarial, software and computer operations support, and other services which are now provided to NYLCare-Gulf Coast and NYLCare-Southwest by other Aetna companies. These transition services agreements will contain appropriate confidentiality provisions to ensure that Aetna employees (other than the employees performing services under the agreements) do not receive information that Aetna is prohibited from receiving under Section III.E of the Revised Hold Separate Stipulation and Order entered earlier.

9. Aetna will provide any additional transitional services requested by the management of NYLCare-Gulf Coast and/or NYLCare-Southwest in order to maintain the membership targets described in Section IV.B. Such additional services may include, but not be limited to, funding of service quality guarantees, subject to the approval of the plaintiffs in their sole discretion, pursuant to Section XII.

10. Aetna will fund an incentive pool of at least $500,000, which will be available to management of the NYLCare entities if they meet the membership targets described in Section IV.B as of the closing date for the sale of the NYLCare entities.

I. Aetna shall not take any action to consummate the proposed acquisition of Prudential's heath care business pursuant to the Asset Transfer and Acquisition Agreement, date as of December 9, 1998, or any subsequent agreement between Aetna and Prudential, until such time as plaintiffs, to their sole satisfaction, subject to Section XII, have determined that NYLCare-Gulf Coast and NYLCare-Southwest are independent, viable competitors, that Aetna has complied with the terms of the Revised Hold Separate Stipulation and Order entered previously, or until the divestitures required by this Revised Final Judgment are complete.

J. Aetna shall request that the NYLCare entities provide the plaintiffs with bi-weekly reports on total membership of the entities until the divestitures required by this Revised Final Judgment are complete.

K. Unless the plaintiffs, in their sole discretion, subject to Section XII, consent in writing, the divestitures pursuant to Section IV (or by trustee appointed pursuant to Section V) shall include the entire NYLCare-Gulf Coast and NYLCare-Southwest businesses, excepting only the Excluded Assets, operated pursuant to the Revised Hold Separate Stipulation and Order entered previously in this proceeding, and shall be accomplished by selling or otherwise conveying NYLCare-Gulf Coast and NYLCare-Southwest to a purchaser(s) in such a way as to satisfy the plaintiffs in their sole discretion, subject to Section XII, that NYLCare-Gulf Coast and NYLCare-Southwest can and will be used by the purchaser(s) as part of a viable, ongoing business engaged in the sale of HMO and HMO-based POS plans. These divestitures may be made to one or more purchasers provided that in each instance it is demonstrated to the sole satisfaction of the plaintiffs, subject to Section XII, that the acquirer(s) will remain viable competitors. The divestitures, whether pursuant to Section IV or Section V, shall be made to a purchaser(s) for whom it is demonstrated to the plaintiffs' sole satisfaction, subject to Section XII: (1) Has the capability and intent of competing effectively in the sale of HMO and HMO-based POS plans in Dallas and Houston; (2) has the managerial, operational, and financial capability to compete effectively in the sale of HMO and HMO-based POS plans in Houston and Dallas; and (3) is not restrained through any agreement with Aetna or otherwise in its ability to compete effectively in the sale of HMO and HMO-based POS plans in Dallas and Houston.

L. For a period of one year from the date of the completion of the divestiture, Aetna shall not hire or solicit to hire any individual who, on the date of the divestiture, was an employee of NYLCare-Gulf Coast and NYLCare-Southwest, unless such individual has (1) a written offer of employment from a third party for a like position, or (2) a written notice from the acquirer of NYLCare-Gulf Coast or NYLCare-Southwest, stating that the company does not intend to continue to employ the individual in a like position.

V. Appointment of Trustee

A. In the event that Aetna has not divested NYLCare-Gulf Coast and NYLCare-Southwest within the time specified in Section IV, the Court shall appoint, on application of the plaintiffs, a trustee selected by the plaintiffs in their sole discretion, subject to Section XII, to effect the required divestitures.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell NYLCare-Gulf Coast and NYLCare-Southwest, as described in Sections II.E and II.F. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VI, and shall have such other powers as the Court shall deem appropriate. Subject to Section V.C, the trustee shall have the power and authority to hire, at the cost and expense of Aetna, any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to the plaintiffs in their sole discretion, subject to Section XII, shall have the power and authority to require Aetna to sell NYLCare's PPO business in Houston and Dallas if the plaintiffs, in the exercise of their sole discretion, subject to Section XII, determine that such a sale is necessary for the preservation of competition, and shall have such other power and authority at this Court shall deem appropriate. Aetna shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Aetna must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

C. The trustee shall serve at the cost and expense of Aetna, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Aetna and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Aetna shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Aetna shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence

process as the trustee may reasonably request, subject to customary confidentiality assurances. Aetna shall permit prospective purchasers of NYLCare-Gulf Coast and NYLCare-Southwest to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Revised Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Revised Final Judgment, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports may be filed under seal for *in camera* review. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports may be filed under seal for *in camera* review. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs, subject to Section XII.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Revised Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Section IV or Section V, Aetna or the trustee, whichever is then responsible for effecting the divestitures, shall notify the United States and the State of Texas of the proposed divestitures. If the trustee is responsible, it shall similarly notify Aetna. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that is the subject of the binding contract, together with full details of same. Within ten (10) calendar days of their receipt of such notice, the United States or the State of Texas may request from Aetna, the trustee, the proposed purchaser, or any other third party additional information concerning the proposed divestitures and the proposed purchaser. Aetna and the trustee shall furnish any additional information requested from them within ten (10) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calender days after receipt of the notice or within twenty (20) calender days after the plaintiffs have been provided the additional information requested from Aetna, the trustee, the proposed purchaser, and any third party, whichever is later, the plaintiffs, in their sole discretion, subject to Section XII, shall provide written notice to Aetna and the trustee, if there is one, stating whether it objects to the proposed divestitures. If the plaintiffs provide written notice to Aetna and the trustee that they do not object, then the divestitures may be consummated, subject only to Aetna's limited right to object to the sale under Section V.B. Absent written notice that the plaintiffs do not object to the proposed purchaser or upon objection by the plaintiffs, such divestitures proposed under Section IV or Section V may not be consummated. Upon objection by Aetna under Section V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty-five (25) calendar days of the June 21, 1999 filing of the original Hold Separate Order and Stipulation in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed, whether pursuant to Section IV or Section V, Aetna shall deliver to the United States and the State of Texas an affidavit as to the fact and manner of compliance with Section IV or Section V. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Aetna has made to solicit a buyer for NYLCare-Gulf Coast and NYLCare-Southwest and to provide required information to prospective purchasers including the limitations, if any, on such information.

B. Within twenty-five (25) calendar days of the June 21, 1999 filing of the original Hold Separate Order and Stipulation in this matter. Aetna shall deliver to the United States and the State of Texas an affidavit that describes in detail all actions Aetna has taken and all steps Aetna has implemented on an on-going basis to preserve NYLCare-Gulf Coast and NYLCare-Southwest pursuant to Section VIII and the Revised Hold Separate Stipulation and Order previously entered by this Court. The affidavit also shall describe, but not be limited to, Aetna's efforts to maintain and operate NYLCare-Gulf Coast and NYLCare-Southwest as active competitors, and the plans and timetable for Aetna's integration of Prudential's healthcare assets. Aetna shall deliver to the United States and the State of Texas an affidavit describing any changes to the efforts and actions outlined in Aetna's earlier affidavit(s) filed pursuant to this Section VII.B within fifteen (15) calendar days after such change is implemented.

C. Until one year after the divestitures required by this Revised Final Judgment have been completed, Aetna shall preserve all records of all efforts made to preserve the businesses to be divested and effect the divestitures.

VIII. Hold Separate Order

Until the divestitures required by this Revised Final Judgment have been accomplished, Aetna shall take all steps necessary to comply with Section IV and the Revised Hold Separate Stipulation and Order entered by this Court, to preserve the assets of NYLCare-Gulf Coast and NYLCare-Southwest, and to ensure that NYLCare-Gulf Coast and NYLCare-Southwest remain viable competitors in the sale of HMO and HMO-based POS plans in Dallas and Houston. Defendants shall take no action that would jeopardize the

divestitures of NYLCare-Gulf Coast and NYLCare-Southwest.

IX. Financing

Aetna is ordered and directed not to finance all or any part of any purchase by an acquirer(s) made pursuant to Section IV or Section V.

X. Compliance Inspection

For the purpose of determining or securing compliance with this Revised Final Judgment or for determining whether this Revised Final Judgment should be modified or terminated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division, or the State of Texas, upon written request by the Texas Attorney General, and on reasonable notice to Aetna made to its principal offices, shall be permitted:

1. Access during Aetna's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents, including computerized records, in the possession or under the control of Aetna, which may have counsel present, relating to any matters contained in this Revised Final Judgment and the Revised Hold Separate Stipulation and Order;

2. Subject to the reasonable convenience of Aetna and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General of the United States, the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of the State of Texas, made to Aetna's principal offices, Aetna shall submit such written reports, under oath if required, with respect to any matter contained in this Revised Final Judgment and the Revised Hold Separate Stipulation and Order entered earlier by this Court.

C. No information or documents obtained by the means provided in Section VII or Section X shall be divulged by any representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States or of the State of Texas, except in the course of legal proceedings to which the United States or the State of Texas is a party (including grand jury proceedings), or for the purpose of securing compliance with this Revised Final Judgment, or as otherwise required by law.

D. If at any time Aetna furnishes to the United States or the State of Texas information or documents, Aetna represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Aetna marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States or the State of Texas shall give ten (10) calendar days' notice to Aetna prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Aetna is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Revised Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Revised Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII. Miscellaneous

In the event plaintiffs are unable to agree on a course of action regarding Sections IV.A, IV.D, IV.H, IV.I, IV.K, V.A, V.B, V.F, and VI in seven days, then the United States may, in its sole discretion, act alone (or decline to act) with respect to the course of action.

XIII. Termination

Unless this Court grants an extension, this Revised Final Judgment will expire on the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Revised Final Judgment is in the public interest.

Dated _____, 1999.

United States District Judge.

[Civil Action No.: 3–99CV1398–H]

United States of America, and the State of Texas, Plaintiffs, v. Aetna Inc., and The Prudential Insurance Company of America, Defendants.

Revised Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C 16(b)–(h), the United States submits this Competitive Impact Statement to assist the Court in assessing the proposed Revised Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on June 21, 1999, alleging that the proposed acquisition by Aetna Inc. ("Aetna") of The Prudential Insurance Company of America's ("Prudential") health care business would violate Section 7 of the Clayton Act ("Section 7"), 15 U.S.C. 18. The State of Texas, by and through its Attorney General, is co-plaintiff with the United States in this action.

The Complaint alleges that Aetna and Prudential compete head-to-head in the sale of health maintenance organization ("HMO") and HMO-based point-of-service ("HMO–POS") health plans in Houston and Dallas, Texas; that such competition has benefited consumers by keeping prices low and quality high; and that the proposed acquisition would end such competition and give Aetna sufficient market power to increase prices or reduce quality in the sale of HMO and HMO–POS plans in these geographic areas (Complaint ¶ 26.) The Complaint also alleges that the acquisition would enable Aetna to unduly depress physicians' reimbursement rates in Houston and Dallas, resulting in a reduction of quantity or a degradation in quality of physicians' services in these area. (Complaint ¶ 33.)

When the Complaint was filed, the plaintiffs also filed a proposed settlement that would permit Aetna to complete its acquisition of Prudential but would require divestitures of certain assets sufficient to preserve competition in the sale of HMO and HMO–POS plans and the purchase of physicians' services in Houston and Dallas. This settlement consisted of a proposed Final Judgment, Hold Separate Stipulation and Order, and Stipulation. To further clarify certain aspects of the proposed Final Judgment, on August 4, 1999, the parties made a joint motion to the Court for entry of a Revised Hold Separate Stipulation and Order, as well as a joint motion to file a Revised Final Judgment and Revised Stipulation.

The proposed Revised Final Judgment requires Aetna to divest its interests in the Houston-area commercial HMO and HMO–POS businesses of NYLCare Health Plans of the Gulf Coast, Inc. ("NYLCare-Gulf Coast"), a previously acquired health plan serving Houston and other areas in south and central Texas, and the commercial HMO and

HMO–POS businesses of NYLCare Health Plans of the Southwest, Inc. ("NYLCare-Southwest"), a previously acquired health plan serving the Dallas area. If Aetna does not complete the divestitures within the time frame established in the proposed Revised Final Judgment, a trustee appointed by the Court will be empowered to sell NYLCare-Gulf Coast and NYLCare-Southwest. If the assets are not sold within six (6) months after the appointment of the trustee, the Court shall enter such orders as it shall deem appropriate to carry out the purpose of the trust. (Revised Final Judgment ¶ V.A., F.)

The Revised Hold Separate Stipulation and Order ensure that NYLCare-Gulf Coast and NYLCare-Southwest function as independent, economically viable, ongoing business concerns and that competition is maintained prior to the divestitures. It requires Aetna to immediately take steps to preserve, maintain, and operate NYLCare-Gulf Coast and NYLCare-Southwest as independent competitors until the completion of the divestitures ordered by the Revised Final Judgment, with management, sales, service, underwriting, administration, and operations held entirely separate, distinct, and apart from those of Aetna. In addition, Aetna is obligated to cause NYLCare-Gulf Coast and NYLCare-Southwest to maintain contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees in Houston and contracts or agreements for coverage of approximately one hundred sixty seven thousand (167,000) commercially insured HMO and HMO-based POS plan enrollees in Dallas through the date of signing the definitive purchase and sale agreement(s) for the divestiture of the two NYLCare entities. Until the plaintiffs, in their sole discretion, determine the NYLCare-Gulf Coast and NYLCare-Southwest can function as effective competitors, Aetna may not take any action to consummate the proposed acquisition of Prudential. (Revised Final Judgment ¶ IV,I.)

The United States, the State of Texas, and the defendants have stipulated that the proposed Revised Final Judgment may be entered after compliance with the APPA. Entry of the proposed Revised Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Revised Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Aetna is a Connecticut corporation providing health and retirement benefits and financial services with its principal place of business in Hartford, Connecticut. Through its wholly owned subsidiary, Aetna U.S. Healthcare, Aetna offers an array of health insurance products, including indemnity ("fee-for-service"), preferred provider organization ("PPO"), POS, and HMO plans. Aetna also purchases physicians' services for its health plan members, which it offers to members through Aetna's health plans. In 1998, Aetna U.S. Healthcare reported revenues of over $14 billion and was the largest health insurance company in the country, providing health care benefits to approximately 15.8 million people in 50 states and the District of Columbia.

Prudential is a New Jersey mutual life insurance company with its principal place of business in Newark, New Jersey. Like Aetna, Prudential offers indemnity, PPO, POS, and HMO plans and also buys physicians' services, which it offers to its enrollees through Prudential's health plans. In 1998, Prudential HealthCare reported total revenues of approximately $7.5 billion and was the nation's ninth largest health insurance company, serving approximately 4.9 million health insurance beneficiaries in 28 states and the District of Columbia.

B. Description of the Events Giving Rise to the Alleged Violations

Aetna and Aetna Life Insurance Company, a wholly owned subsidiary of Aetna, entered into an Asset Transfer and Acquisition Agreement ("Agreement") dated December 9, 1998, with Prudential and PRUCO, Inc., a wholly owned subsidiary of Prudential. Under the terms of the Agreement, Aetna would acquire substantially all of Prudential's assets related to issuing, selling, and administering group medical, dental indemnity, and managed care plans, including HMO and HMO–POS plans. The purchase price stated in the Agreement is $1 billion, consisting of $465 million in cash, $500 million in three-year promissory notes, $15 million in cash payable under a Coinsurance Agreement, and $20 million in cash to be paid under a Risk-Sharing Agreement.

C. Anticompetitive Effects of the Proposed Acquisition

1. The Sale of HMO and HMO–POS Plans

Aetna's proposed acquisition of Prudential would be likely to substantially lessen competition in the sale of HMO and HMO–POS plans in Houston and Dallas, Texas, in violation of Section 7.

a. Product Market

Managed care companies, such as Aetna and Prudential, contract with employers and other group purchasers to provide health insurance services or to administer health care coverage to employees and other group members. There are a variety of managed care products available to employers and other group purchasers which provide health care services at an agreed-upon rate, subject to certain utilization review and management requirements. These products, which include HMO, PPO, and POS plans, have become increasingly popular options for employers, largely because of the managed care companies' ability to obtain competitive rates from health care providers and to control utilization of health care services.

As the Complaint alleges, HMO and HMO–POS products differ from PPO or indemnity plans in terms of benefit design, cost, and other factors. (Complaint ¶ 15.) For example, HMOs provide superior preventative care benefits, but they place limits on treatment options and generally require use of a primary care physician "gatekeeper." PPO plans, which do not require enrollees to go through a "gatekeeper" and do not emphasize preventative care, are generally more expensive than HMOs. POS plans can be based on either an HMO or PPO network and fall between HMO and PPO plans in terms of access and cost. That is, POS plans offer patients more flexibility at a higher cost relative to HMOs. In general, then, PPOs and indemnity options are more expensive, provide better benefits with respect to coverage when ill, and allow greater access to providers. In contrast, HMO and HMO-based POS options are generally less expensive, provide better benefits with respect to health maintenance or preventaive care, place greater limits on treatment, and restrict access to providers. (*Id.*)

Not only do these plans in fact differ by cost and benefit configuration, they are perceived as different by purchasers; neither employers nor employees view PPO plans as adequate substitutes for HMO or HMO–POS plans. Instead, they

view them as distinct products, meeting different needs and appealing to different types of enrollees. Indeed, enrollees who leave an HMO disproportionately select another HMO (or HMO–POS), not a PPO, for their next health care benefit plan. (Complaint ¶ 17.)

Moreover, analyses of the data obtained from the parties and from other plans strongly indicate that consumers—employers and employees—view HMO and HMO–POS plans as distinct from other health plans and that PPO or indemnity plans are not thought to be ready substitutes for HMO and HMO–POS plans. These analyses demonstrate that the elasticity of demand for HMO and HMO–POS plans is sufficiently low that a small but significant price increase for all HMO and HMO–POS plans would be profitable because consumers would not shift to PPO and indemnity plans in sufficient numbers to render such an increase unprofitable.

Together with consistent evidence from numerous witnesses interviewed, these analyses support the conclusion that HMO and HMO–POS plans constitute the relevant product for analysis of the proposed transaction. (Complaint ¶ 18.)

b. Geographic Markets

Virtually all managed care companies establish provider networks in the areas where employees work and live, and they compete on the basis of these local provider networks. The relevant geographic markets in which HMO and HMO–POS plans compete are thus generally no larger than the local areas within which HMO and HMO–POS enrollees demand access to providers. More specifically, a small but significant increase in the price of HMO and HMO–POS plans would not cause a sufficient number of customers to switch to health plans outside of these regions to make such a price increase unprofitable. For this reason, the Department's analysis focused on MSAs in and around Houston and Dallas as the relevant geographic markets. (Complaint ¶ 20.)

c. Competitive Effects

Aetna and Prudential are among each other's principal competitors in the sale of HMO and HMO–POS plans in Houston and Dallas, and employers currently view them as close substitutes based on product design and quality. Maintaining Prudential as a competitor to Aetna in Houston and Dallas has become particularly important since Aetna's 1998 acquisition of NYLCare, a transaction that propelled Aetna's HMO and HMO–POS market share from 13% to 44% in Houston and from 11% to 26% in Dallas. (Complaint ¶ 22.) The proposed acquisition of Prudential would further enhance Aetna's position by eliminating competition between the two companies, giving Aetna market shares of 63% in Houston and 42% in Dallas. (*Id.*)

As the Complaint alleges, potential or current competitors will not be able to constrain Aetna's exercise of its post-merger market power in the defined geographic markets. (Complaint ¶ 25). Effective new entry for a HMO or HMO–POS plan in Houston or Dallas typically takes two to three years and costs approximately $50 million. (Complaint ¶ 23.) In such an environment, *de novo* entry is unlikely to defeat a price increase over the short term. (*Id.*) Furthermore, companies currently offering PPO or indemnity plans are unlikely to shift their resources to provide HMO or HMO–POS plans in Houston or Dallas in the event of a small but significant price increase. A number of managed care providers have stated during interviews that such a shift would be difficult, expensive, and time consuming, and that they would not enter the HMO or HMO–POS markets even if Aetna were to raise its prices a "small but significant amount." (Merger Guidelines ¶ 1.11.) Finally, managed care companies that presently offer HMO or HMO–POS plans in Houston and Dallas are unlikely to be able to expand or reposition themselves sufficiently to restrain anticompetitive behavior by Aetna in either area following the transaction. (Complaint ¶ 24.) Not only would these companies face some of the costs and difficulties of a new entrant, they would be unable to contend successfully with Aetna's advantages in national reputation, quality accreditation, product array, and provider network (*Id.*) It is therefore unlikely that either new entry or expansion by competitors could counteract a post-merger price increase. (Complaint ¶ 25.)

For all of these reasons, the proposed transaction would enable the merged entity to increase prices or reduce the quality of HMO and HMO–POS plans available to consumers in these areas, in violation of Section 7.

2. The Purchase of Physicians' Services

As alleged in the Complaint, Aetna's acquisition of Prudential will also consolidate its purchasing power over physicians' services in Houston and Dallas, enabling the merged entity to unduly reduce the rates paid for those services. 5

a. Product Market

Physician's services are those medical services provided and sold by physicians, and the only purchasers are individual patients or the commercial and government health insurers that purchase their services on behalf of individual patients. (Complaint ¶ 27.) As a result, physicians cannot seek other purchasers in the event of a small but significant decrease in the prices paid by these buyers. (*Id.*) Nor will such a price decrease cause physicians to stop providing their services or shift towards other activities in numbers sufficient to make such a price reduction unprofitable. (*Id.*) Physicians' services thus constitute the relevant product market within which to assess the likely effect of Aetna's acquisition of Prudential. (*Id.*)

b. Geographic Markets

The geographic markets for the purchase and sale of physicians' services are localized. In Houston and Dallas, as elsewhere, patients seeking medical care generally prefer to have access to treatment close to where they work or live. As a result, commercial and government health insurers—the primary purchasers of physicians' services—seek to have in their provider networks physicians whose offices are convenient to where their enrollees work or live. (Complaint ¶ 19.) Consequently, physicians could not shift their services towards purchasers outside of these areas in numbers sufficient to make a price paid to physicians practicing in Houston or Dallas.

Furthermore, an established physician who has invested time and expense in building a practice in Houston or Dallas (or any other locale) would incur considerable costs in moving his or her practice to a new geographic area, including the substantial costs of building new relationships with hospitals, other physicians, employees, and patients in the new area. (Complaint ¶ 28.) For these reasons, a small but significant decrease in the prices paid to physicians practicing in Houston or Dallas would not cause physicians to relocate their practices in numbers sufficient to make such a price reduction unprofitable. (Complaint ¶ 29).

For all of these reasons, the MSAs in and around Houston and Dallas constitute the relevant geographic markets. (*Id.*; Merger Guidelines ¶ 1.21.)

c. Competitive Effects

In Houston and Dallas, as elsewhere, the contract terms a physician can

obtain from a managed care company such as Aetna or Prudential depend on the physician's ability to terminate, or to credibly threaten to terminate, his or her relationship if the company demands unfavorable contract terms. (Complaint ¶ 30). Since physician's services, unlike certain tangible products, cannot be stored until the physician finds a more acceptable buyer, failing to replace lost business expeditiously imposes an irrevocable loss of revenue upon a physician. Consequently, a physician's ability to terminate, or credibly threaten to terminate, a provider relationship depends on his or her ability to make up that lost business promptly. (*Id.*)

Physicians, however, generally have only a limited ability to encourage patients to switch health care plans or providers. (Complaint ¶ 31.) To retain a patient after terminating a plan requires the physician to convince the patient either to switch to another employer-sponsored plan in which the physician participates (which might not be an option) or to pay considerably higher out-of-pocket costs, either in the form of increased copayments for use of an out-of-network physician (if allowed) or by absorbing the total cost of the physicians' services as unreimbursed medical expenses. As a result, a physician who discontinues his or her relationship with Aetna could expect to lose a significant share of his or her Aetna patients.

A physician's ability to replace, in a timely manner, such lost business is significantly diminished when a large number of patients need to be replaced. (Complaint ¶ 32.) Because of Aetna's all products clause"—which requires a physician to participate in all of Aetna's health plans if he or she participates in any Aetna plan—a physician would lose patients from all Aetna plans if he or she rejects the rates or other terms of any one Aetna plan. Thus, the cost of replacing Aetna patients will be greater when Aetna plans collectively account for a larger share of a physician's total revenue.

Furthermore, the ability to replace a given number of Aetna patients is diminished when a physician's non-Aetna sources of patients are more limited. Consequently, the cost of replacing Aetna patients will be greater the larger Aetna's share of all patients in a locality.

Aetna's proposed acquisition of Prudential, following its recent acquisition of NYLCare, will give it control over both a large share of the revenue of a substantial number of physicians in Houston and Dallas and a large share of all patients in those areas. (Complaint ¶ 33.) In light of the limited ability of physicians to encourage patient switching, a significantly larger number of physicians' in Houston and Dallas would be unable to reject Aetna's demands for more adverse contract terms if Aetna were allowed to acquire Prudential. (*Id.*) The proposed acquisition thus would give Aetna the ability to unduly depress physician reimbursement rates in Houston and Dallas, likely leading to a reduction in quantity or degradation in the quality of physicians' services. (*Id.; see also* Merger Guidelines ¶ 0.1.)

III. Explanation of the Proposed Revised Final Judgment

The proposed Revised Final Judgment orders and directs Aetna to divest its interests in the Houston operations of NYLCare-Gulf Coast and the Dallas operations of NYLCare-Southwest, consisting of, among other assets, approximately 260,000 and 167,000 commercially insured HMO and HMO–POS enrollees in Houston and Dallas, respectively. 6 (Revised Final Judgment ¶ II.E, F.)

The provisions of the proposed Revised Final Judgment are designed to eliminate the two anticompetitive effects of the proposed acquisition. First, the divestitures will preserve competition and protect consumers from higher prices for HMO and HMO–POS plans by establishing a new, independent, and economically viable competitor—or by significantly strengthening the existing competitors—in the development, marketing, and sale of HMO and HMO–POS plans in the Houston and Dallas areas. Second, the divestitures will prevent the consolidation of purchasing power over physicians' services in Houston and Dallas and thereby deny Aetna the ability to unduly depress physician reimbursement rates.

In order to meet these two objectives, the proposed Revised Final Jugdment requires that Aetna promptly make NYLCare-Gulf Coast and NYLCare-Southwest available for purchase. (Revised Final Judgment ¶ IV.A.) Aetna must give all prospective purchasers reasonable access to all NYLCare-Gulf Coast's and NYLCare-Southwest's personnel, physical facilities, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process. (Revised Final Judgment ¶ IV.F.) At the same time, Aetna must immediately cease all actions directed at the integration of NYLCare-Gulf Coast and NYLCare-Southwest into Aetna and must take all steps necessary to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are maintained and operated as independent, on-going, economically viable, and active competitors until completion of the divestitures ordered by the Revised Final Judgment. (Revised Final Judgment ¶ IV.G, H.) Such steps must include the appointment of experienced senior management to run NYLCare-Gulf Coast and NYLCare-Southwest until the divestitures required by the Final Judgment have been accomplished, as well as the creation of a separate and independent sales organization, provider relations organization, patient management/quality management organization, commercial operations organization, network operations organization, and underwriting organization. (Revised Final Judgment ¶ IV.H.1–7.) To maintain the viability of the NYLCare entities, Aetna is also required to provide certain support services (i.e., legal, financial, actuarial, software, and computer operations support) to NYLCare-Gulf Coast and NYLCare-Southwest until the divestitures are completed. (Revised Final Judgment ¶ IV.H.8, 9.)

Aetna is obligated to cause NYLCare-Gulf Coast and NYLCare-Southwest to maintain contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees in Houston and contracts or agreements for coverage of approximately one hundred sixty-seven thousand (167,000) commercially insured HMO and HMO-based POS plan enrollees in Dallas through the date of signing the definitive purchase and sale agreement for the divestitures of the two NYLCare entities. (Revised Final Judgment ¶ IV.B.) Aetna is required to use its best efforts to accomplish the divestiture as expeditiously as possible and will accelerate the timetable for executing the definitive purchase and sale agreement(s) for the divestiture of the NYLCare entities to a target date of October 1, 1999. (Revised Final Judgment ¶ IV.C.) In addition, Aetna will request that the NYLCare entities provide bi-weekly reports on total enrollment to the plaintiffs until the divestitures are complete. (Revised Final Judgment ¶ IV.J.) Aetna will also fund an incentive pool of at least $500,000, which will be available to the management of the NYLCare entities if they meet the membership targets described above as of the closing date for the sale of the entities. (Revised Final Judgment ¶ IV.H.10.)

Finally, Aetna may offer PPO related business as part of the sale of the NYLCare entities. (Revised Final Judgment IV.B.) The actual number of such PPO enrollees as of the signing date of the definitive purchase and sale

agreement for the divestitures of the NYLCare entities will be taken into account in determining compliance with the membership targets described in Section IV.B of the proposed Revised Final Judgment. (*Id.*) This last provision in no way lessens Aetna's obligation to divest itself of all of the assets of NYLCare-Gulf Coast and NYLCare-Southwest, excepting only the Excluded Assets.

The proposed Revised Final Judgment prohibits Aetna from taking any action to consummate the proposed acquisition until such time as plaintiffs, in their sole discretion, are satisfied that NYLCare-Gulf Coast and NYLCare-Southwest are independent and viable competitors and that Aetna has complied with the terms of the Revised Hold Separate Stipulation and Order or until the divestitures required by this Revised Final Judgment are completed. (Revised Final Judgment ¶ IV.I.) The divestitures must be accomplished by selling or conveying NYLCare-Gulf Coast and NYLCare-Southwest to a purchaser(s) in such a way as to satisfy the plaintiffs, in their sole discretion, that the entities conveyed can and will be used by the purchaser(s) as part of a viable, ongoing business engaged in the sale of HMO and HMO–POS plans in Houston and Dallas. (Revised Final Judgment ¶ IV.K.) The divestitures may be made to one or more purchasers provided that in each instance it is demonstrated, to the sole satisfaction of the plaintiffs, that the acquirer(s) will remain viable competitors. (*Id.*) The divestitures must be made to a purchaser(s) which is shown, to the plaintiffs' sole satisfaction, to have (1) the capability and intent of competing effectively in the sale of HMO and HMO–POS plans in Houston and Dallas, (2) the managerial, operational, and financial capability to complete effectively in the sale of HMO and HMO–POS plans in Houston and Dallas, and (3) no limitation, through any agreement with Aetna or otherwise, in its ability to compete effectively in the sale of HMO and HMO–POS plans in Houston and Dallas. (*Id.*)

Aetna must file all required applications for regulatory approval of the divestitures within one-hundred twenty (120) calender days after June 21, 1999, the date on which the original proposed Final Judgment was filed, and must complete the divestitures within five (5) business days after it receives all necessary regulatory approvals, or five (5) business days after the notice of the entry of this Revised Final Judgment by the Court, whichever is later. (Revised Final Judgment ¶ IV.C.) The plaintiffs may extend the time period for the divestitures by no more than sixty (60) calendar days and may, in their sole discretion, grant any further time extension needed by Aetna to obtain regulatory approval of the divestitures. (Revised Final Judgment ¶ IV.D.)

If Aetna cannot accomplish these divestitures within the above-described period, the proposed Revised Final Judgment provides that, upon application by the plaintiffs, the Court will appoint a trustee to effect the divestitures. (Revised Final Judgment ¶ V.A.) After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures. (Revised Final Judgment ¶ V.E.) If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee and the parties will make recommendations to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, including, if necessary, extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs. (Revised Final Judgment ¶ V.F.)

The proposed Revised Final Judgment also requires Aetna to deliver affidavits to plaintiffs as to the fact and manner of its compliance with the Revised Final Judgment within twenty-five (25) calendar days of the Court's June 21, 1999 entry of the original Hold Separate Order and Stipulation, and every thirty (30) calendar days thereafter, until divestitures have been completed, (Revised Final Judgment ¶ VII.A.) Aetna must also submit, within twenty-five (25) calendar days of the Court's entry of the original Hold Separate Order and Stipulation, an affidavit that describes in detail all actions Aetna has taken and all steps Aetna has implemented on an on-going basis to preserve NYLCare-Gulf Coast and NYLCare-Southwest, describing Aetna's efforts to maintain and operate NYLCare-Gulf Coast and NYLCare-Southwest as active competitors, and the plans and timetable for Aetna's integration of Prudential's health care assets. (Revised Final Judgment ¶ VII.B.)

The relief sought has been tailored to safeguard Houston and Dallas consumers from an increase in price or a reduction in quality of HMO and HMO–POS products. The relief sought also ensures that physicians in these markets will be protected from an undue depression of reimbursement rates, which could have led to a reduction in the quantity or a degradation in the quality of physicians' services.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Revised Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), entry of the proposed Revised Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Aetna or Prudential.

V. Procedures Available for Modification of the Proposed Revised Final Judgment

The parties have stipulated that the proposed Revised Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiffs have not withdrawn their consent. The APPA conditions entry upon the Court's determination that the proposed Revised Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Revised Final Judgment within which any person may submit to the United States written comments regarding the proposed Revised Final Judgment. Any person should comment within sixty (60) days of the date this Competitive Impact Statement is published in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Revised Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Gail Kursh, Chief, Health Care Task Force, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 400, Washington, D.C. 20530. The proposed Revised Final Judgment provides that the Court will retain jurisdiction over this action and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Revised Final Judgment.

VI. Alternatives to the Proposed Revised Final Judgment

The Department considered, as an alternative to the proposed Revised Final Judgment, a full trial on the merits of the Complaint against the defendants. The Department is satisfied, however, that the divestitures of the assets and other relief contained in the proposed Revised Final Judgment will preserve viable competition in the sale of HMO and HMO–POS products and in the purchase of physicians' services in Houston and Dallas, Texas that otherwise would be affected adversely by the acquisition. Thus, the proposed Revised Final Judgment would achieve the relief the Department would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Revised Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determined whether entry of the proposed Revised Final Judgment "is in the public interest." In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment; [and]

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail.

15 U.S.C. §16(e).

As the United States Court of Appeals for the District of Columbia Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the plaintiff's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995). In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 7 Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *MidAmerica Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508 at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d. 456, 462 (9th Cir. 1988) (*citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th cir. 1981)); *see also Microsoft*,, 56 F.3d. at 1460–62.

The law requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.8

A proposed final judgment, therefore, need not eliminate every anticompetitive effect of a particular practice, nor guarantee free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability: "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'"9

The proposed Revised Final Judgment here offers strong and effective relief that fully addresses the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents of the type described in Section 2(b) of the APPA, 15 U.S.C. § 16(b), that were considered by the United States in formulating the proposed Revised Final Judgment. Consequently, none are filed herewith.

Dated: August 3, 1999.

Respectfully submitted,

Paul J. O'Donnell
John B. Arnett, Sr.
Steven Brodsky
Deborah A. Brown
Claudia H. Dulmage
Dionne C. Lomax
FredericK S. Young,

Attorneys, U.S. Department of Justice, Antitrust Division, Health Care Task Force, 325 Seventh St., N.W., Suite 400, Washington, D.C. 20530, Tel: (206) 616–5933, Facsimile: (202) 514–1517.

[FR Doc. 99–21368 Filed 8–17–99; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Information Initiative Consortium

Notice is hereby given that, on January 26, 1999, pursuant to Section 6(a) of the Naitonal cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("The Act"), Health Information Initiative Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing its intention to disband. Specifically, as of November 30, 1998, said project was completed and the consortium and its steering committee have disbanded. The participation Agreement, which formed the basis for all authority and action by the consortium, is no longer in effect. Accordingly, The Koop Foundation Incorporated (KFI), as convener, has no further legal authority to act with respect to this project and has no ownership in any product of the project. KFI will continue to maintain its books and records relating to its activities and responsibilities as convener. KFI will respond to any questions concerning its responsibilities under the Particpating Agreement. KFI is aware of no legal authority which would assign to KFI any present or future rights, duties or responsibilities with respect to any aspect of this project.

On March 30, 1995, Health Information Initiative Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section

6(b) of the Act on June 28, 1995 (60 FR 33432).

Constance K. Robinson,

Director of Operaitons, Antitrust Division.

[FR Doc. 99–21370 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sarnoff: HDTV Broadcast Technology Consortium

Notice is hereby given that, on May 21, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Sarnoff: HDTV Broadcast Technology Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Wegener Communications, Duluth, GA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Sarnoff: HDTV Broadcast Technology Consortium intends to file additional written notification disclosing all changes in membership.

On September 11, 1995, Sarnoff: HDTV Broadcast Technology Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 13, 1995 (60 FR 64079).

The last notification was filed with the Department on March 11, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28518). This notice rescinds and replaces the May 26, 1999 **Federal Register** notice.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–21369 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sarnoff: HDTV Broadcast Technology Consortium

Notice is hereby given that, on May 4, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Sarnoff: HDTV Broadcast Technology Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, New Jersey Public Broadcasting Authority, Trenton, NJ has been added as a party to this venture. Also, Philips Laboratories, Briarcliff Manor, NY; and MCI Telecommunications, Richardson, TX have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Sarnoff: HDTV Broadcast Technology Consortium intends to file additional written notification disclosing all changes in membership. This group research project remains open, and Sarnoff: HDTV Broadcast Technology Consortium intends to file additional written notification disclosing all changes in membership.

On September 11, 1995, Sarnoff: HDTV Broadcast Technology Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 13, 1995 (60 FR 64079).

The last notification was filed with the Department on March 11, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28518). This notice rescinds and replaces the May 26, 1999 **Federal Register** notice.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–21371 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To the National Cooperative Research and Production Act Of 1993—Southwest Research Institute ("SWRI") Joint Industry Program—Development of An Instrument For Corrosion Detection In Insulated Pipes Using A Magnetostrictive Sensor

Notice is hereby given that, on March 23, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SWRI") Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASCG Inspection, Inc., Anchorage, AK has been added as a party to this venture. Also, CTI Alaska, Inc., Anchorage, AK has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute ("SWRI") Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor intends to file additional written notification disclosing all changes in membership.

On October 19, 1995, Southwest Research Institute ("SWRI") Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 23, 1996 (61 FR 7020).

The last notification was filed with the Department on October 8, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on November 28, 1997 (62 FR 63389).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–21372 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)–1247]

RIN 1121–ZB81

Announcement of the FY 1999 County and Municipal Agency Domestic Preparedness Equipment Support Program Applications

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Justice Programs is soliciting grant applications for equipment acquisition assistance from the Chief Executive Officers (CEO) of the nation's 157 largest metropolitan jurisdictions, including cities and counties, as well as the 50 States under a separate grant program.

DATES: Proposals for funding must be received by the Office of Justice Programs by 5:00 p.m. ET on Thursday, September 30, 1999.

ADDRESSES: An original and two copies of the application must be mailed to: Office of Justice Programs, 810 Seventh Street NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: The National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 or the U.S. Department of Justice Response Center at 1–800–421–6770.

The Office of Justice Programs is offering eligible applicants the opportunity to submit their jurisdiction's application electronically through the Grant Management System (GMS) on the OJP Web site. To submit electronic applications, applicants must possess a user I.D. and a GMS password, which can be obtained by contacting the Office for State and Local Domestic Preparedness Support at 202–305–9887 or by creating a new account online. Instructions regarding electronic submissions are provided on the OJP Web site at www.ojp.usdoj.gov/fundopps.htm.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, October 21, 1998, 112 Stat. 2681).

Background

The Office for State and Local Domestic Preparedness Support will distribute FY 1999 funding to provide the maximum number of communities with a basic defensive capability to respond to domestic terrorism incidents. This program ensures that first responders are properly equipped and prepared to respond to incidents of domestic terrorism involving chemical and biological agents, as well as radiological and explosive devices. This program will provide grants to the 157 largest cities and localities, to procure personal protective, chemical, biological and radiological detection and communications equipment in accordance with the FY 1999 Authorized Equipment Purchase List.

Application Kits

Application kits will be mailed to the Chief Executive Officers in each of the targeted jurisdictions. Interested eligible applicants are encouraged to contact the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to ensure that they receive an application kit for the FY 1999 County and Municipal Agency Domestic Preparedness Equipment Support Program.

Eligible Applicants

Eligible applicants are the chief executive officers (CEOs) in the nation's 157 largest metropolitan jurisdictions, listed in the following table. However, if the county or municipal government is not responsible for the fire services, emergency medical services, hazardous materials response units, and/or law enforcement agencies in its jurisdiction, then the appropriate State or local agency that provides that service must be consulted in the development of the application. All eligible applicants are grouped by a population index based on 1992 census data.

Certain county jurisdictions may not provide any qualifying services or have authority to apply for this program. In those instances, an appropriate State or municipal-level agency must apply on behalf of the jurisdictions within the county. If your county falls into this category, please contact OJP at 202–305–9887 for guidance in meeting the application requirements.

Group A (up to $300,000)	Group B (up to $200,000)	Group C (up to $100,000)
1—Los Angeles County, CA	51—DuPage County, IL	101—Nashville/Davidson County, TN
2—New York City, NY	52—Indianapolis/Marion County, IN	102—Kent County, MI
3—Cook County, IL	53—City of San Jose, CA	103—Bristol County, MA
4—City of Los Angeles, CA	54—Montgomery County, MD	104—Camden County, NJ
5—Harris County, TX	55—Essex County, NJ	105—San Joaquin County, CA
6—City of Chicago, IL	56—Salt Lake County, UT	106—City of Cleveland, OH
7—San Diego County, CA	57—Prince George's County, MD	107—Snohomish County, WA
8—Orange County, CA	58—Macomb County, MI	108—City of Austin, TX
9—Maricopa County, AZ	59—San Francisco City/County, CA	109—Bernalillo County, NM
10—Wayne County, MI	60—City of Baltimore, MD	110—Union County, NJ
11—Dade County, FL	61—Monroe County, NY	111—New Orleans/Orleans Parish, LA
12—Dallas County, TX	62—Orange County, FL	112—Ramsey County, MN
13—City of Houston, TX	63—Fresno County, CA	113—Denver City/County, CO
14—King County, WA	64—Baltimore County, MD	114—Lake County, IN
15—Philadelphia City/County, PA	65—Jacksonville/Duval County, FL	115—Cobb County, GA
16—San Bernardino County, CA	66—Pima County, AZ	116—Onondaga County, NY
17—Santa Clara County, CA	67—Montgomery County, PA	117—City of Portland, OR
18—Cuyahoga County, OH	68—Ventura County, CA	118—Passaic County, NJ
19—Middlesex County, MA	69—Middlesex County, NJ	119—City of Fort Worth, TX
20—Alameda County, CA	70—Essex County, MA	120—Lucas County, OH
21—Allegheny County, PA	71—Jefferson County, KY	121—Wake County, NC
22—Suffolk County, NY	72—Fulton County, GA	122—Jefferson Parish, LA
23—Broward County, FL	73—San Mateo County, CA	123—Jefferson County, CO
24—Nassau County, NY	74—Jefferson County, AL	124—Oklahoma City, OK
25—Riverside County, CA	75—City of Columbus, OH	125—Kansas City, MO

Group A (up to $300,000)	Group B (up to $200,000)	Group C (up to $100,000)
26—Bexar County, TX	76—Jackson County, MO	126—City of Long Beach, CA
27—Tarrant County, TX	77—El Paso County, TX	127—City of Charlotte, NC
28—City of San Diego, CA	78—Norfolk County, MA	128—City of Tucson, AZ
29—Oakland County, MI	79—Pierce County, WA	129—City of Virginia Beach, VA
30—Sacramento County, CA	80—City of Milwaukee, WI	130—City of Albuquerque, NM
31—Hennepin County, MN	81—City of Memphis, TN	131—City of Atlanta, GA
32—City of Dallas, TX	82—Travis County, TX	132—City of St. Louis, MO
33—City of Phoenix, AZ	83—Oklahoma County, OK	133—City of Sacramento, CA
34—City of Detroit, MI	84—Multnomah County, OR	134—City of Fresno, CA
35—St. Louis County, MO	85—Kern County, CA	135—City of Tulsa, OK
36—City of San Antonio, TX	86—Washington, DC	136—City of Oakland, CA
37—Franklin County, OH	87—Montgomery County, OH	137—City of Pittsburgh, PA
38—Erie County, NY	88—Monmouth County, NJ	138—City of Minneapolis, MN
39—Milwaukee County, WI	89—De Kalb County, GA	139—City of Miami, FL
40—Palm Beach County, FL	90—Bucks County, PA	140—City of Cincinnati, OH
41—Westchester County, NY	91—Boston/Suffolk County, MA	141—City of Omaha, NE
42—Hamilton County, OH	92—Hudson County, NJ	142—City of Toledo, OH
43—Pinellas County, FL	93—City of El Paso, TX	143—City of Buffalo, NY
44—Honolulu City/County, HI	94—Delaware County, PA	144—City of Wichita, KS
45—Hillsborough County, FL	95—Lake County, IL	145—City of Mesa, AZ
46—Fairfax County, VA	96—Worcester County, MA	146—City of Las Vegas, NV
47—Clark County, NV	97—Mecklenburg County, NC	147—City of Colorado Springs, CO
48—Shelby County, TN	98—Summit County, OH	148—City of Santa Ana, CA
49—Contra Costa County, CA	99—City of Seattle, WA	149—City of Tampa, FL
50—Bergen County, NJ	100—Tulsa County, OK	150—City of Anaheim, CA
		151—City of Newark, NJ
		152—City of Arlington, TX
		153—City of St. Paul, MN
		154—City of Louisville, KY
		155—City of Corpus Christi, TX
		156—City of Birmingham, AL
		157—City of Norfolk, VA

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 99–21346 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1246]

RIN 1121–ZB90

National Institute of Justice Announcement of the Seventh Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the seventh meeting of the National Commission on the Future of DNA Evidence.

SUPPLEMENTARY INFORMATION: The seventh meeting of the National Commission on the Future of DNA Evidence will take place beginning on Sunday, September 26, 1999, 1:00 PM—5:00 PM Eastern Daylight Time and will continue on Monday, September 27, 1999, 9:00 AM—5:00 PM Eastern Daylight Time. The meeting will take place in the Polaris Room at the Ronald Reagan Building and International Trade Center, located at 1300 Pennsylvania Avenue, NW, Washington, DC 20004; Phone: 202–312–1300.

The National Commission on the Future of DNA Evidence, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director (202) 616–8123.

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

Background

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–21345 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–17]

Derricks (Inspection Certification Records) and Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed decrease in, and extension of, the information collection requirements (inspection certification records) contained in the standard on Derricks (29 CFR 1910.181).

Request for Comment: The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before October 18, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–17, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in 29 CFR 1910.181 (inspection certification records) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers are necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657). The major purpose of the information collection requirements in 29 CFR 1910.181 are to provide information for properly maintaining derricks and, therefore, to ensure safe operating conditions for employees. Specifically, employers must establish certification records to demonstrate that derrick inspections comply with the requirements specified in the standard. Failure of the employer to collect and distribute the information collected under the requirements contained in the standard will affect significantly OSHA's effort to control and reduce injuries and fatalities in the workplace.

II. Proposed Actions

OSHA proposes to decrease its earlier estimate of 28,508 burden hours for the information collection requirements in 29 CFR 1910.181 (g)(1) and (g)(3) to 28,500 burden hours.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above provisions.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Derricks (Inspection Certifications) (29 CFR 1910.181 (g)(1) and (g)(3)).

OMB Number: 1218–0222.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 10,000.

Frequency: Monthly; semi-annually.

Average Time per Response: 15 minutes (0.25 hour).

Estimated Total Burden Hours: 28,500.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 12th day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–21431 Filed 8–17–99; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–72 and NPF–77, issued to the Commonwealth Edison Company (ComEd, the licensee), for Braidwood Station, Unit Nos. 1 and 2, respectively, located in Will County, Illinois.

The proposed amendments would temporarily change the Technical Specifications (TS) to increase the upper temperature limit for the Ultimate Heat Sink (UHS) from 98 degrees Fahrenheit to 100 degrees Fahrenheit. The proposed temporary change would be in effect until September 30, 1999.

Prolonged hot weather has resulted in sustained, elevated UHS temperatures at Braidwood Station. Continued hot weather may result in the UHS

temperature exceeding 98 degrees Fahrenheit. This would be expected to occur before the Commission could publish a Notice in the **Federal Register** that would allow 30 days for public comment.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Analyzed accidents are assumed to be initiated by the failure of plant structures, systems or components. An inoperable UHS is not considered as an initiator of any analyzed events. The analyses for Braidwood Station, Units 1 and 2, assume an UHS temperature of 100 degrees Fahrenheit. Therefore, continued operation with an UHS temperature less than or equal to 100 degrees Fahrenheit, until September 30, 1999, will not increase the consequences of an accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. The proposed change does not involve any physical alteration of plant systems, structures or components. A UHS temperature of up to 100 degrees Fahrenheit does not increase the failure rate of systems, structures or components because the systems, structures or components are rated and analyzed for operation with Essential Service water temperatures of 100 degrees Fahrenheit and the design allows for higher temperatures than at which they presently operate.

The basis provided in Regulatory Guide 1.27 "Ultimate Heat Sink for Nuclear Power Plants," Revision 2, dated January 1976, was employed for the temperature analysis of the Braidwood Station UHS to implement General Design Criteria 44 and 2 of Appendix A to 10 CFR Part 50. This Regulatory Guide was employed for both the original design/licensing basis of the Braidwood Station UHS and a subsequent evaluation which investigated the potential for increasing the average water temperature of the UHS from less than or equal to 98 degrees Fahrenheit to less than or equal to 100 degrees Fahrenheit. The meteorological conditions chosen for the Braidwood Station UHS analysis utilized a synthetic 36-day period consisting of the most severe 5 days, most severe 1 day, and the most severe 30 days based on historical data. The heat loads selected for the UHS analysis considered one Braidwood Unit in a LOCA [Loss-of-Coolant Accident] condition concurrent with a Loss-of-Offsite Power (LOOP) and the remaining Braidwood unit undergoing a normal plant shutdown. In the analysis, these heat loads are removed by the UHS using only SX [essential service water] pumps. The main condenser cooling pond is conservatively assumed not to be available at the start of the event. The analysis shows that with an initial UHS temperature of 100 degrees Fahrenheit, the required heat loads can be met for 30 days while maintaining essential service water temperatures at acceptable values.

Based on the above facts and reasoning, it has been demonstrated that the increase of the initial UHS temperature from less than or equal to 98 degrees Fahrenheit to less than or equal to 100 degrees Fahrenheit at the start of the design basis event will result in the continued ability of the equipment and components supplied by the SX system to perform their safety functions.

Therefore, increasing the average water temperature of the UHS from less than or equal to 98 degrees Fahrenheit to less than or equal to 100 degrees Fahrenheit in TS 3.7.9, has no impact on any analyzed accident. Raising this limit does not introduce any new equipment, equipment modifications, or any new or different modes of plant operation, nor does it affect the operational characteristics of any equipment or systems. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed action does not involve a physical alteration of the units. There is no change being made to the parameters within which the units are operated that is not bounded by the analyses. There are no setpoints at which protective or mitigative actions are initiated that are affected by this proposed action. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures that ensure the units remain within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed action does not alter assumptions made in the safety analysis.

Increasing the average water temperature of the UHS in TS 3.7.9 has no impact on plant operation. The proposed temperature limits does not introduce new failure mechanisms for systems, structures or components. The engineering analyses performed to support the UHS temperature increase provides the basis to conclude that the equipment is designed for the operation at elevated temperatures. In addition, design and construction codes provided sufficient margin to accommodate the proposed temperature change.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed action allows operation with the UHS temperature less than or equal to 100 degrees Fahrenheit until September 30, 1999. The margin defined by the difference in the assumed steady state SX temperature and the calculated SX temperature profile integrated over the duration of the event is not significantly impacted. The margin of safety is determined by the design and qualification of the plant equipment, the operation of the plant within analyzed limits, and the point at which protective or mitigative actions are initiated. The proposed action does not impact these factors. There are no required design changes or equipment performance parameter changes associated with this change. No protection setpoints are affected as a result of this change. This temperature increase will not change the operational characteristics of the design of any equipment or system. All accident analysis assumptions and conditions will continue to be met. Thus, the proposed increase in temperature does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 17, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated July 30, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 12th day of August 1999.

For the Nuclear Regulatory Commission.

Stewart Bailey,

Project Manager, Section 2, Project Directorate 3, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21399 Filed 8–17–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation, et al., (Seabrook Station Unit No. 1); Order Approving Application Regarding Corporate Merger (Canal Electric Company)

I

North Atlantic Energy Service Corporation (North Atlantic) is authorized to act as agent for the joint owners of the Seabrook Station Unit No. 1 (Seabrook) and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Facility Operating License NPF–86. Canal Electric Company (Canal), one of the joint owners, holds a 3.52317-percent possessory interest in Seabrook. The Nuclear Regulatory Commission (NRC) issued Facility Operating License NPF–86 on March 15, 1990, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in Seabrook Township, Rockingham County, on the southeast coast of the State of New Hampshire.

II

Under cover of a letter dated February 11, 1999, North Atlantic forwarded an application by Canal requesting approval of the indirect transfer of control of Canal's interest in the operating license (OL) for Seabrook. The application was supplemented on February 23, March 5, and March 17, 1999 (collectively referred to hereinafter as the application).

According to the application, Canal is a wholly owned subsidiary of Commonwealth Energy System (CES). On December 5, 1998, CES and BEC Energy (BEC) entered into an Agreement and Plan of Merger under which those entities will merge into a new surviving Massachusetts corporation (the "New Company"). Upon consummation of the merger, Canal will become a wholly owned subsidiary of the New Company, thereby effecting an indirect transfer of Canal's interest in Seabrook's OL. North Atlantic, the sole licensed operator of the facility, would remain as the managing agent for the 11 joint owners of the facility and would continue to have exclusive responsibility for the management, operation, and maintenance of Seabrook. The application does not propose a change in the rights, obligations, or interests of the other joint owners of Seabrook. In addition, no physical changes to Seabrook or operational changes are being proposed. No direct transfer of the license will result from the proposed merger.

Approval of the indirect transfer was requested pursuant to 10 CFR 50.80. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on April 27, 1999 (64 FR 22657). No hearing requests were filed.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that the proposed merger will not affect the qualifications of Canal as a holder of the Seabrook license, and that the transfer of control of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission subject to the conditions set forth herein. The foregoing findings are supported by a safety evaluation dated August 11, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* That the indirect license transfer referenced above is approved, subject to the following conditions:

1. Canal shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Canal to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Canal's consolidated net utility plant as recorded on Canal's books of accounts.

2. Should the transfer not be completed by August 1, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated February 2, 1999, and supplements dated February 23, March 5, and March 17, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 11th day of August 1999.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21398 Filed 8–17–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of August 16, 23, 30, September 6, *and* October 18, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 16

There are no meetings scheduled for the Week of August 16.

Week of August 23—Tentative

Tuesday, August 24

2:00 p.m.
Briefing by Executive Branch (Closed—ex. 1)

3:30 p.m.
Briefing on Threat Assessment (Closed—ex. 1)

Wednesday, August 25

9:55 a.m.
Affirmation Session (Public Meeting) (If needed)

Week of August 30—Tentative

Wednesday, September 1

9:25 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of September 6—Tentative

Tuesday, September 7

9:15 a.m.
Affirmation Session (Public Meeting) (if needed)

9:20 a.m.
Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

AND

Week of October 18—Tentative

Thursday, October 21

9:30 a.m.

Briefing on Part 35—Rule on Medical Use of Byproduct Material (Contact: Cathy Haney, 301–415–6825) (SECY–99–201, *Draft Final Rule—10 CFR Part 35, Medical Use of Byproduct Material*, is available in the NRC Public Document Room or on NRC web site at "www.nrc.gov/NRC/COMMISSION/SECYS/index.html". Download the *zipped version* to obtain all attachments.)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contract the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to whm@nrc.gov or dkw@nrc.gov.

Dated: August 13, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–21527 Filed 8–16–99; 11:59 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Summary of Workshop on Redefining the Role of NRR Projects

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: On July 23, 1999, the Nuclear Regulatory Commission sponsored a public workshop involving NRR Division of Licensing Project Management, licensing officials representing the nuclear industry, and other stakeholders. The purpose of the meeting was to provide a forum for constructive dialogue on the agency's efforts to redefine the responsibilities of the Division of Licensing Project Management. The discussion focused on three program areas: Licensing Authority, Interface, and Regulatory Improvements. A brief version of the meeting summary is attached. The complete summary of the July 23, 1999, meeting with all attachments dated August 9, 1999, is available for public inspection at the Commission's public document room located at the Gelman Building, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sheri Peterson, Mail Stop O–8–G–9, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852–2738; Telephone: (301) 415–1193; *Internet:SRP@NRC.GOV*.

Dated at Rockville, Maryland, the 10th day of August 1999.

For the Nuclear Regulatory Commission.

Suzanne Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

Summary—July 23, 1999, Meeting With Stakeholders on Redefining the Role of the Division of Licensing Project Management in the Office of Nuclear Reactor Regulation

On July 23, 1999, representatives of various licensees and members of the public met in a public meeting with members of the U.S. Nuclear Regulatory Commission (NRC) staff at NRC Headquarters in Rockville, Maryland. The NRC invited representatives of various nuclear utilities, other groups, and the public to participate in a workshop to discuss the responsibilities of the Division of Licensing Project Management (DLPM) and solicit feedback on the Division's ongoing redefinition process from interested stakeholders. A list of attendees is provided as Attachment 1. The workshop agenda is provided as Attachment 2. The Division's re-invention report provided during the meeting is included as Attachment 3. The feedback obtained from the meeting participants during the breakout sessions is included as Attachment 4. The written comments received to date on the role of DLPM are included as Attachment 5.

DLPM is in the process of redefining its responsibilities. Previous audits and reviews had indicated that the function of operating reactor licensing project managers needed to be reevaluated, clearly defined, and communicated. In addition, the staff is attempting to correlate the functions of DLPM with the four strategic objectives of maintaining safety, reducing unnecessary regulatory burden, increasing public confidence, and increasing efficiency and effectiveness of key NRC processes. DLPM shared the results of its redefinition process with external stakeholders to solicit feedback so that the responsibilities can be further refined.

After introductory remarks, the meeting participants broke into four groups to discuss the questions summarized in Attachment 4 (also published in the **Federal Register**, Volume 64, Number 133 dated July 13, 1999). Discussions focused on the project manager being the primary NRC interface for licensees and the public on operating plant licensing matters, the need for consistency, cost and schedular control of licensing actions, and the importance of maintaining staff with the required knowledge, skills and abilities for effectively carrying out the project manager function. The feedback presented by the various participants during the breakout sessions, and included as Attachment 4, was very extensive and will be useful to the NRC in DLPM's initiatives involving the project manager function within the Office of Nuclear Reactor Regulation.

Attachments:

1. Attendance List
2. Agenda (available in PDR)
3. DLPM Re-invention Report (available in PDR)
4. Feedback from breakout sessions
5. Written comments on the role of DLPM (available in PDR)

ATTACHMENT 1

PURPOSE: Redefining the Role of the Division of Licensing Project Management

Date: July 23, 1999.

Location: TWFN Auditorium.

Name	Affiliation
Steve Wideman	WCNOC
Pat Nugent	PGBE
Roger DeWolfe	TXU
Kenneth Russell	First Energy
John A. Zwolinski	NRR–DLPM
Philip A. Rose	SCE&G
Jeff Sobotka	NAFISCO
George Wrobel	RG&E
Mike Krupa	Entergy
Mike Brandon	Entergy W3
Paul Blanch	Millstone
Mark J. Ajluni	Southern Nuclear Oper. Co.
Joe Sheppard	STPNOC
Jon Hopkins	NRC/NRR/DLPM
Patrick Sekerak	NRC/NRR/DLPM
Alan Wang	NRC/NRR/DLPM
Helen Pastis	NRC/NRR/DLPM
Jack Cushing	NRC/NRR/DLPM
Marsha Gamberoni	NRC/NRR/DLPM
Lee Berry	NRC/NRR/DLPM
James Perselter	North Atlantic
Mike Runchark	AEP
Norm Peterson	Detroit Edison
R. M. Kruch	ConEd
Jerry Roberts	Entergy Ops GGRS
Roger Huston	Licensing Support Services

Name	Affiliation
James Priest	PSE&G
Nate Haskell	Consumers Energy
Stuart Richards	NRC/NRR/DLPM
Ram Subbaratnam	NRC/NRR/DLPM
Chris Jozwick	NRC/NRR/DLPM
L. N. Olshan	NRC/NRR/DLPM
Bob Martin	NRC/NRR/DLPM
Harold Chernoff	CP&L
Rich Laufer	NRC/NRR/DLPM
Byran Ford	Millstone 1
William Heyser	EPU Nuclear
Sheri Peterson	NRC/NRR/DLPM
Steve Bethay	Entergy-Pilgrim
Bill Reckley	NRC/NRR/DLPM
Jim Clifford	NRC/NRR/DLPM
Al Passwater	AmenemVE
Johnny Eads	CP&L
Glenn Michael	Arizona Public Service Co.
Merrill Atkins	Yankee Atomic/DE&S
S. Singh Bajwa	NRC/NRR/DLPM
C. Stephen Brennigan	Entery, PNPS
John Hufnagel	PECO Energy
Don Palmrose	NUSIS
George W. Busch	GPU Nuclear Inc.
Suzanne Black	NRC/NRR/DLPM
Frank Rinaldi	NRC/NRR/DLPM
Duke Wheeler	NRC/NRR/DLPM
Gordon Edison	NRC/NRR/DLPM
Claudia Craig	NRC/NRR/DLPM
Paul Inserra	Energy Northwest
Gene Eckholdt	NSP
C. Jeff Thomas	Duke Energy
Paul Pace	TVA
Steve Bennett	Entergy-ANO
Paul Willoughby	Northeast Nuclear
Mike Schoppman	NEI
Tom Elwood	Illinois Power
Marc Koth	Northern States Power
Bob Gramm	NRC/NRR/DLPM
Scott Hega	STP Nuclear Op.
Elaine Chobanan	Northeast Utilities
Donna Skay	NRC/NRR/DLPM
John Harrison	NRC/NRR/DLPM
John Kelly	NYPA
Kathy Harvey Gibson	NRC/RII
Eileen McKenna	NRC/NRR
Thomas Shaub	VA Power
Bill Gleaves	NRC/NRR/DLPM
Tom Elwood	Illinois Power

Region I

Attachment 4

1. Principal role of projects.

General comment: 72 tasks are too many to expect an individual to perform well.

(1) Support/Process licensing actions

(a) Make it happen (authority)

—Active, up-front planning with licensees to facilitate NRC and licensee resource planning.

—Effective use of RAI process.

(2) Serve as the conscience of the staff.

(3) Be the advocate for the project.

(4) Focal point for resolving staff and licensee concerns (and other stakeholders).

(5) Balancing/accomplishing NRC and licensee priorities.

2. Five activities most important.

(1) Timely completion of licensing actions (on agreed-upon schedule).

(2) Communicate, manage difficulties with licensing actions effectively.

(3) Tasks 1–4, 8, 22, 37, 19, 26, 29, 59.—most important overall are tasks 1 through 12 (all licensing actions).

3. Reasons these activities are important (2).

(1) Keep plants safe.

(2) Allow efficient operation of the plant.

4. Other activities projects should perform.

(1) Manage public documents (ensuring incoming and outgoing documents are rapidly and readily available to the public and to licensees.

(2) Ensure timely notification of meetings.

(3) Communication clearing house (timely transmittal to licensee, particularly for those requiring responses).

(4) Manage/Control potential Violations during resolution of ongoing generic reviews.

(5) Cost management (fee billing)/ Communicate targets up front, PM monitor during review (hold both staff and licensee accountable).

(6) Development/training/ qualifications in project management skills and communication skills.

5. Reasons these activities are important (4).

(1) Reduce licensee burden (efficiency).

(2) Improve public confidence.

6. What types of performance indicators would be useful?

(1) Age of licensing actions.

(2) Accuracy of product.

—number of correction letters

—rework

(3) Stakeholder approval rating (including PM evaluation).

(4) Number of teleconferences per action.

(5) Number of review hours vs. complexity of item.

(6) Performance to schedule (specific tasks).

7. Five activities least important.

(1) Task #39 (from attachment 3 available in PDR)—Enforcement actions.

(2) #28—Transition of assignments.

(3) #70—Future rule changes.

(4) #57—Section meetings.

(5) #23—Petitions and requests from non-licensees.

(6) #60—Web page management.

(7) #64—Freedom of Information Act (FOIA) requests post-ADAMS (Agencywide document access and management system).

8. Reasons these activities (7) are less important.

(1) Not role of PM in meeting licensee priorities.

9. Any activities projects organization should not perform?

(1) see response to 7.

10. Additional input.

(1) Periodic face to face feedback sessions.

(2) Planning for peak periods.

(3) PMs need guidance of how much authority they have and when.

(4) Training of PMs (including behavioral skills).

(5) Ensure consistency with prior NRC approvals.

(6) PM should facilitate, coordinate, and manager accomplishment of licensing actions.

(7) Allow PM to focus on licensees as customers, maintaining his other obligations.

(8) Does PM have the authority commensurate with his responsibilities?

11. Other issues.

(1) None.

Region II

1. Principal role of projects.

(1) Process Technical Specification changes/licensing actions.

(2) Deliverer of licensee information for licensing actions.

(3) Primary interface with licensee and region (single point of contact).

(4) Coordinate/ensure communication (filter out unnecessary interactions)—requires PM knowledge of submittal and licensing basis.

(5) Coordinate meetings.

(6) Source of information on NRC policy/procedures (important for "filter" mentioned in 4 above).

(7) Contact on plant issues.

(8) Facilitate licensing work/ streamline process.

(9) Owner of licensing basis.

2. Five activities most important.

(1) Process licensing actions [**Federal Register** notice, processing Requests for Additional Information, Environmental Assessments]; including all actions that require prior NRC approval before the licensee implements—[10 CFR 52.90; 50.54]; Determine review method, schedule [work planning], and be responsible for implementation—Project Manager; Writing Safety evaluations, and other licensing tasks.

(2) Interface with licensee.

(a) Headquarter interfaces (provide filter for unnecessary regulatory burden)

(3) Administrative /Coordinator of NRC business functions;

(a) Review fees (billing licensee for staff review effort/cost control and administrative oversight).

(b) Manage to Office Letter 803 staff review time estimates/hours (for all licensing actions and other licensing tasks beyond amendments) and communicate with licensees/ensure accountability for hours charged to a review

(4) Other licensing tasks: Conflict resolution, ensuring consistent treatment of licensing actions/licensees, provide feedback on quality of licensee's submittals, and maintaining licensing basis.

(5) Interface with Office of General Counsel/Hearings.

3. Reasons these activities are important (2)

(1) Licensing actions

–Reduce unnecessary burden

–Maintain safety

(a) Project managers writing Safety evaluations

–Effectiveness and Efficiency, maintain safety.

(2) Interface with Licensee (as well as, NRC headquarters and Region)

–Efficiency and effectiveness

–Public confidence (accuracy of information).

(3) Administration/Cost control

–Reduce unnecessary burden

–Effectiveness and efficiency

(4) Other licensing tasks

–Public confidence (lack of "open" safety issues)

–Maintain safety

–Reduce unnecessary burden

4. Other activities projects should perform

(1) Cost control (look at Nuclear Energy Institute (NEI) talking points in enclosure 5).

(2) Task-oriented project management, i.e., license renewal, SG issues/ replacement, Power uprates, etc.

(3) Skill development/maintenance for effective project management.

5. Reasons these activities are important (4).

(1) Cost control

–Reduce burden

–Safety (best use of $$)

(2) Task-oriented Project Managers

–Effectiveness and efficiency

(3) Skills/Development

–Effectiveness and efficiency

6. What types of performance indicators would be useful?

(1) Supported NEI proposal (provided in enclosure 5)

(2) Overall timeliness, schedule adherence

(3) Average median ages (encourage staff to post data on the Web, including comparisons between NRC groups)

(4) NRC staff should conduct Benchmarking

(5) Customer surveys and feedback at the individual level (up to performance appraisal input on effectiveness of being the focal point.)

(6) Comparison of actual performance compared to a work plan vs. averages (ages, etc.)

7. Five activities least important.

(1) Maintaining licensing documents (need to do but shouldn't interfere with work).

(2) 50.59 reviews of annual report.

(3) Conducting surveys.

(4) Collateral duties/LPMs.

8. Reasons these activities are less important (7).

(1) Do not contribute to the four goals.

9. Any activities projects organization should not perform?

(1) As determined by priorities above.

10. Additional input.

(1) NRC budget process should be more timely and in advance.

(2) Role of Project Manager supervisor

–budget control

–conflict resolution (various staff and licensees)

–schedule adherence

(3) Customer orientation (NRR-licensee, NRR-region, NRR-public; watch out for escalating cost of public interaction).

(4) Redefining—Reprioritizing for current effort.

(5) Move toward approaches like inspection/oversight process

–define need to do/safety significance.

(6) Maintain separation of licensing and oversight.

11. Other issues.

Region III

1. Principal role of projects.

(1) PMs should run interference to ensure reviewers are being consistent.

(2) PMs need decision authority to actively manage their issues.

(3) PMs need knowledge of licensing basis—tools—i.e., use a "licensing notebook," evaluate a plant against its licensing basis vs. Standard review plan (SRP should not be imposed on non-SRP plants).

(4) Still need to work on Office Letter 803 implementation. Some PMs read requests for additional information (RAI) questions instead of faxing them to licensee. Some PMs don't review RAI questions to ensure they are appropriate (e.g., consistent with design basis) before sending them to licensee.

(5) PMs need to work with licensee for most efficient way to do review.

(6) Proactive PM/"advocate" of efficient/effective review.

(7) PMs should provide for timely Technical Specification interpretations/ commitments/regulation.

(8) "DLPM" should initiate "Task Interface Agreement-like" process for questions from licensee.

(9) Continue daily interface with region

(10) Improvement with PM doing own reviews.

(11) Staff should be consistent with past decisions.

2. Five activities most important (only 4 were selected).

(1) Management of licensing issues (including notices of enforcement discretion).

(2) Routine interface during licensing action reviews.

(3) Reduce regulatory burden through reduced reporting requirements.

(4) Communications—bring balance and perspective to regulation of power plant.

3. Reasons these activities are important (2)

(1) Maintains safety, improves efficiency and effectiveness and enhances public confidence.

(2) Reduce unnecessary regulatory burden.

(3) Reduce unnecessary regulatory burden, improve safety by allowing licensees to concentrate on safety significant issues.

(4) Improve public confidence, improve efficiency and effectiveness and decrease unnecessary regulatory burden.

4. Other activities projects should perform

(1) Maintain a licensing notebook for licensing basis reference.

(2) Develop a standard process for PM turnover, etc.

(3) Communication/plant visits on open item (i.e, TAC list, etc.). Include reviewers on a case-by-case basis.

(4) Prioritize generic issues by risk significance so licensee's don't have to work them all at once.

5. Reasons these activities are important (4).

(3) Improves efficiency and effectiveness and improves safety (through better PM knowledge of plant).

(4) Improves efficiency and effectiveness.

(5) Improves efficiency and effectiveness, decreases regulatory burden and increases public confidence.

(6) Improves safety, decreases regulatory burden and increases public confidence.

6. What types of performance indicators would be useful?

(1) Rating PM behaviors, attributes and leadership

(2) Formal feedback mechanism—surveys, errors in safety evaluation reports (SERs).

(3) Self assessments.

(4) Schedule vs. priority
(5) Measure percentage of closed activities as a multiple of how fast they were requested to be closed out.
(6) Internal review to ensure quality; develop a standard. SERs should be reviewed by independent group.
(7) At licensing workshops, get attributes for quality submittals and SERs.
7. Five activities least important.
(1) Use of PMs as acting resident.
(2) Collateral duties (e.g., lead PM assignments).
(3) Requirement to submit routine reports that don't appear to receive NRC review.
(4) Should review 10 CFR 50.54 changes on audit basis instead of reviewing and approving each change.
(5) PMs should not be responsible for ensuring accuracy of licensing basis. That's the licensee's responsibility.
8. Reasons these activities are less important (7).
(1) Not efficient or effective use of PM.
(2) Not efficient or effective use of PM, could harm safety by distracting PM from primary responsibility.
(3) Regulatory burden with no benefit.
(4) Regulatory burden with no benefit.
(5) Not efficient or effective use of PM.
9. Any activities projects organization should not perform?
(1) DLPM should not be doing technical specifications bases reviews in some cases (Distinguish between improved technical specifications (ITS) and non-ITS plants for TS bases changes (bases control program)).
10. Additional input/Other Issues.
(1) "Cherry picking"—NRC should issue Generic Letter identifying what new improved technical specifications items they can get.
(2) Administrative support
—OGC—work of OGC should be better controlled to improve process
—Concurrence chain "empowerment"—concurrences should be minimized
—There should be enough administrative support to prevent typing/distribution causing delays in the licensing process.
(3) Clarify role of PM/NRR in new oversight process
—ensure consistency
—role in 50.59 inspection
—SDP—NRR may need to support regional Senior Risk Analysts/others
—Plant performance reviews
(4) NRR should have input to new process (PMs)
(5) Need more informal ways of taking advantage of generic resolutions
(6) Need to define role of PM in license renewal and decommissioning. Need to retain same PM.
(7) Need the Infrastructure to support PM.
(8) For informal surveys, need to ensure consistency; timeliness; NRC expectations;
(9) TIA process should be more open to allow licensee input.

Region IV

There was a fair bit of discussion about the need to distinguish between what PMs should do, and what DLPM/NRR should do when the group considered the following questions. In some cases, the group has delineated their responses accordingly.
1. Principal role of projects.
(1) Coordination.
(2) Interface with NRR/Licensee.
—advocate for licensee
—(or) representative of licensee
—on schedule
(3) Screening Requests for additional information (RAIs) and staff decisions for regulatory basis/achieve burden reduction.
Advance reactor safety by providing a knowledgeable interface between NRC and licensees and ensuring licensing actions are processed efficiently.
2. Five activities most important.
The following items are important for PMs:
(1) Licensing action coordination (true project management role).
(1a) licensing action review/approval performed by PM (personal approval).
(2) Communication with licensees—explain what is needed/required by the staff, and why it is needed (regulatory basis).
(3) Screening RAIs, and guarding the licensing basis.
(4) Keep senior NRC management informed of activities at that plant.
The following items are important for DLPM:
(5) Coordination/prioritization with other divisions.
(6) NRR/region interface.
(7) Regulatory improvements.
3. Reasons these activities are important (2).
(1) PM should evaluate licensing actions, RAIs, work priorities, etc. against outcome goals and reject those that don't conform with outcome goals.
4. Other activities projects should perform.
(1) Relationship with media, and maintain sensitivity when providing information that has financial or commercial consequences.
(2) Participate in site inspections.
(3) Be more involved with enforcement.
(4) Be more involved with new performance assessment process.
5. Reasons these activities are important (4).
(1) Relationship to outcome goals.
6. What types of performance indicators would be useful?
(1) Number of days deviation from project schedule (joint agreement between staff and licensee on schedule).
(2) Current goals, e.g., 95% < 1 year, *not* appropriate for all licensing actions.
(3) Number of RAIs.
(4) Quality of licensing action, e.g., number of errors.
(5) Percentage of licensing actions performed by project manager.
7. Five activities least important.
(1) 2.206, other Federal agency interface (this is important for DLPM, not PM).
(2) 50.59 evaluation reviews.
(3) Review of inspection reports.
(4) Maine Yankee, Millstone lessons learned.
(5) Support for Congressional Affairs.
8. Reasons these activities are less important (7).
(1) Not supportive of outcome goals and primary licensing action work.
9. Any activities projects organization should not perform?
(1) None identified.
10. Additional input.
See 11.
11. Other issues.
(1) Dedicated project manager for plant is key ingredient for success.
—In some cases 1 PM could handle more than 1 plant (if plants were similar)
—is billing an issue?
—varies by commonality of licensing tasks
—varies with workload
—decision to assign PM to more than 1 plant, and assignment of significant co-lateral duties should include licensee input
—NRR needs to have flexibility.
(2) TIA process.
—need licensee involvement to provide information for NRR consideration.
—currently little communication with licensee until decision is made.
(3) Better coordination of generic issues—need for generic issue project managers, not necessarily plant PMs.
(4) Should review 72 items against the priorities in Question 2.

[FR Doc. 99–21397 Filed 8–17–99; 8:45 am]
BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of

the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are Invited on:

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information-Collecting

Gross Earnings Reports; OMB 3220–0132.

In order to carry out the financial interchange provisions of section 7(c)(2) of the Railroad Retirement Act (RRA), the RRB obtains annually from railroad employer's the gross earnings for their employees on a one-percent basis, i.e., 1% of each employer's railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits "30." the gross earnings are used to compute payroll taxes under the financial interchange.

The gross earnings information is essential in determining the tax amounts involved in the financial interchange with the Social Security Administration and Health Care Financing Administration. Besides being necessary for current financial interchange calculations, the gross earnings file tabulations are also an integral part of the data needed to estimate future tax income and corresponding financial interchange amounts. These estimates are made for internal use and to satisfy requests from other government agencies and interested groups. In addition, cash flow projections of the social security equivalent benefit account, railroad retirement account and cost estimates made for proposed amendments to laws administered by the RRB are dependent on input developed from the information collection.

The RRB utilizes Form BA–11 or its electronic equivalent to obtain gross earnings information from railroad employers. One response is requested of each railroad employer. Completion is mandatory.

No changes are proposed to Form BA–11.

Estimate of Annual Respondent Burden

Gross earnings reports are required annually from all employers reporting railroad service and compensation. There are approximately 633 railroad employers who currently report gross earnings to the RRB. Most large railroad employers include their railroad subsidiaries in their gross earnings reports. This results in the RRB collecting *less* than 633 earnings reports. Also, there are a large number of railroad employers have worked forces so small that they do not have employees with social security numbers ending in "30." Currently, there are 382 such employers in this category who file "negative" BA–11 responses to the RRB. Overall, on an annual basis, the RRB receives 16 reports consisting of computer prepared tapes or diskettes and 138 by means of manually prepared Form BA–11. The RRB estimates an average preparation time of 5 hours for each gross earnings report submitted by computer tape or diskette and 30 minutes for each manually prepared BA–11.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 21374 Filed 8–17–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Intertape Polymer Group Inc., Common Stock, Without Nominal or Par Value) File No. 1–10928

August 11, 1999.

Intertape Polymer Group Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Security has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A filed with the Commission on August 6, 1999, is slated to become listed on the New York Stock Exchange ("NYSE"). Trading in the Securities on the NYSE is expected to commence on or about August 16, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Exchange and by setting forth in detail to the Amex the reasons for such proposed withdrawal, and the facts in support thereof. The Amex has in turn informed the Company that it will not interpose any objection to the withdrawal of the Company's Security from listing on the Exchange.

In making the decision to withdraw its Security from listing on the Amex and to list it instead on the NYSE, the Company has stated its belief that listing on the NYSE will benefit its shareholders by providing the Security exposure to a larger trading market.

The Company's application relates solely to the withdrawal of the Security from listing on the Amex and shall have no effect upon the pending listing of the Security on the NYSE. Moreover, by reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company would continue to be obligated to file reports with the Commission and the NYSE under Section 13 and other applicable sections of the Act.

Any interested person may, on or before September 1, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–21358 Filed 8–17–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23944; File No. 812–11604]

Parkstone Advantage Fund et al.; Notice of Application

August 11, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of any current or future series of the Parkstone Advantage Fund (the "Fund") and shares of any other investment company that is designed to fund variable insurance products and for which the National City Investment Management Company (the "Adviser"), or any of its affiliates, may serve now or in the future, as investment adviser, (the Fund, together with such other investment companies, the "Insurance Products Funds") to be offered and sold to, and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") and qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans").

APPLICANTS: Parkstone Advantage Fund and National City Investment Management Company.

FILING DATE: The application was filed on May 3, 1999, and amended and restated on July 19, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 7, 1999, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Audrey C. Talley, Esq., Drinker Biddle & Reath LLP, 1345 Chestnut Street, Suite 1100, Philadelphia, PA 19107–3496.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Attorney, or Kevin Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representation

1. The Fund is a Massachusetts business trust that is registered under the 1940 Act as an open-end management investment company. The Fund consists of three series which are currently offered. The Fund may in the future issue shares of additional series.

2. The Adviser, a Michigan corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser for the Fund.

3. Shares of the Fund are offered to separate accounts of Participating Insurance Companies to serve as investment vehicles for variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium contracts) (collectively, "Variable Contracts"). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration.

4. The Participating Insurance Companies will establish their own separate accounts and design their own Variable Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. The role of the Insurance Products Funds will be limited to that of offering their shares to separate accounts of Participating Insurance Companies and to Qualified Plans and fulfilling the conditions set forth in the application and described later in this notice. Each Participating Insurance Company will enter into a fund participation agreement with the Insurance Products Fund in which the Participating Insurance Company invests.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Insurance Products Funds to be offered and sold to, and held by: (a) Variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company ("mixed funding"); (b) separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) ("shared funding"); and (c) qualified pension and retirement plans outside the separate account context.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated insurance company. The relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to a variable annuity separate account of the same insurance company or to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The relief granted by Rule 6e–2(b)(15) also is not available if the shares of the Insurance Products Funds also are sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance

contracts issued through a separate amount registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both, or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, the exemptions provided by Rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding or if the fund sells its shares to Qualified Plans.

4. Applicants state that the current tax law permits the Insurance Products Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of Variable Contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

5. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law the sale of shares of the same underlying fund to separate accounts and to Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants request relief for a class or classes of persons and transactions consisting of Participating Insurance Companies and their scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such separate accounts) investing in any of the Insurance Products Funds.

7. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

9. Applicants state that the relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals who do not directly participate in the administration or management of the Insurance Products Funds, who are employed by the various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Products Funds as the funding medium for Variable Contracts. Applicants do not expect the Participating Insurance Companies to play any role in the management or administration of the Insurance Products Funds. Applicants assert, therefore, that applying the restrictions of Section 9(a) to individuals employed by Participating Insurance Companies serves no regulatory purpose.

10. Applicants state that the relief requested should not be affected by the proposed sale of Insurance Products Funds to Qualified Plans because the Plans are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings.

Pass-Through Voting

11. Applicants submit that Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a "pass-through voting" requirement with respect to management investment company shares held by a separate account. Applicant state that Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirements in limited situations, assuming the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying investment company if such instructions would require such shares to be voted to cause an underlying investment company to make, or refrain from making, certain investments which would result in changes in the sub-classification or investment objectives of such company, or to approve or disapprove any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that an insurance company may disregard contract owners' voting instructions with regard to changes initiated by the contract owners in the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is based on specific good faith determinations.

12. Shares of the Insurance Products Fund sold to Qualified Plans will be held by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Section 403(a)

also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Qualified Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Where a Qualified Plan does not provide Qualified Plan participants with the right to give voting instructions. Applicants state that they do not see any potential for irreconcilable material conflicts of interest between or among Variable Contract holders and Plan participants with respect to voting of the respective Insurance Products Fund's shares. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since the Plans are not entitled to pass-through voting privileges. Even if a Qualified Plan were to hold a controlling interest in an Insurance Products Fund, the Applicants do not believe that such control would disadvantage other investors in such Insurance Products Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, the Applicants submit that investment in an Insurance Products Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or share funding.

13. Applicants state that some of the Qualified Plans may provide for the trustee(s), investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from Qualified Plan participants. Applicants state that, in such cases, the purchase of shares by such Qualified Plans does not present any complications not otherwise occasioned by mixed or shared funding.

Conflicts of Interest

14. Applicants state that no increased conflict of interest would be presented by the granting of the requested relief. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants note that when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. The possibility, however, is no different or greater than exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

15. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth in the application and later in this notice (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Products Funds.

16. Applicants also assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. The potential for disagreement is limited by the requirements that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if the Participating Insurance Company's decision to disregard Variable Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund and no charge or penalty will be imposed upon the Variable Contract owner, as a result of such withdrawal.

17. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what those policies would or should be if such Insurance Products Fund or series thereof funded only variable annuity or variable life insurance contracts. In this regard, Applicants note that a fund's adviser is legally obligated to manage the fund in accordance with the fund's investment objectives, policies and restrictions as well as any guidelines established by the fund's Board. Applicants submit that no one investment strategy can be identified as appropriate in a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Insurance Products Funds. In addition, permitting mixed and shared funding also will facilitate the establishment of additional series of Insurance Products Funds serving diverse goals.

18. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if the Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

19. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that the tax consequences do not raise any conflicts

of interest. When distributions are to be made, and the separate account of the Participating Insurance Company or Qualified Plan cannot net purchase payments to make the distributions, the separate account or Qualified Plan will redeem shares of the Insurance Products Funds at their respective net asset values. The Qualified Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

20. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan. As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or Variable Contract owners under their Variable Contracts, the Qualified Plans and the separate accounts of Participating Insurance Companies have rights only with respect to their respective shares of the Insurance Products Funds. They can redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

21. Applicants assert that there are no conflicts between the Variable Contract owners and the Plan participants with respect to state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. While time-consuming, complex transactions must be undertaken to accomplish redemptions and transfers by separate accounts trustees of Qualified Plans can quickly redeem shares from Insurance Products Funds and reinvest in other funding vehicles without the same regulatory impediments or, as in the case with most Qualified Plans, even hold cash or other liquid assets pending suitable alternative investment. Applicants maintain that even if there should arise issues where the interests of Variable Contract owners and the interests of participants in Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Insurance Products Funds.

22. Applicants submit that mixed and shared funding should provide benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Insurance Products Funds, thereby promoting economies of scale, by permitting increased safety through greater diversification and by making the addition of new series more feasible. Therefore, making the Insurance Products Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts, and this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges.

23. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Qualified Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions.

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each a "Board") shall consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Board member or members, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the remaining Board members; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies, or (c) for such longer period as the Commission may prescribe by other upon application.

2. Each Insurance Products Fund's Board will monitor their respective Insurance Products Fund for the existence of any material irreconcilable conflict among the interests of the Variable Contract owners of all separate accounts investing in the Insurance Products Funds and of the Plan participants and Qualified Plans investing in the Insurance Products Funds. The Board will determine what action, if any, shall be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. The Adviser (or any other investment adviser of an Insurance Products Fund), any Participating Insurance Company and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Products Fund (collectively, "Participants"), will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards, will be contractual obligations of all Participating Insurance Companies and Qualified Plans investing in the Insurance Products Funds under their respective agreements governing

participation in the Insurance Products Fund, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Variable Contract owners and, if applicable, Plan participants.

4. If a majority of an Insurance Fund's Board members, or a majority of the disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans shall, at their own expense and to the extent reasonably practicable as determined by a majority of the disinterested Board members, take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) In the case of Qualified Plans, withdrawing the assets allocable to some or all of the Qualified Plans from the Insurance Products Fund and reinvesting such assets in a different investment medium; (b) in the case of Participating Insurance Companies, withdrawing the assets allocable to some or all of the separate accounts from the Insurance Product Fund or any series thereof and reinvesting such assets in a different investment medium, including another series of an Insurance Product Fund or another Insurance Product Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Variable Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate amount. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote then the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw the insurer's separate account investment in such Insurance Products Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund, to withdraw its investment in such Insurance Products Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Products Funds, and these responsibilities shall be carried out with a view only to the interests of the Variable Contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested Board members of the applicable Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Insurance Products Fund or the Adviser (or any other investment adviser of the Insurance Products Funds) be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if any offer to do so has been declined by vote of a majority of the Variable Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan shall be required by Condition 4 to establish a new funding medium for any Qualified Plan if: (a) A majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without a Plan Participant vote.

6. The determination of the Board of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participating Insurance Companies and Qualified Plans.

7. Participating Insurance Companies will provide pass-through voting privileges to Variable Contract owners who invest in registered separate accounts so long as and to the extent that the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners. As to Variable Contracts issued by unregistered separate accounts, pass-through voting privileges will be extended to participants to the extent granted by issuing insurance companies. Each Participating Insurance Company will also vote shares of the Insurance Products Fund held in its separate accounts for which no voting instructions from contract owners are timely received, as well as shares of the Insurance Products Funds which it owns, in the same proportion as those shares of the Insurance Products Funds for which voting instructions from contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their registered separate accounts participating in the Insurance Products Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing participating in the Insurance Products Funds. Each Plan will vote as required by applicable law and governing Plan documents.

8. All reports of potential or existing conflicts received by the Board of an Insurance Products Fund and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of meetings of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. Each Insurance Products Fund will notify all Participating Insurance Companies that separate disclosure in their respective separate account prospectuses may be appropriate to advise accounts regarding the potential risks of mixed and shared funding. Each Insurance Products Fund shall disclose in its prospectus that: (a) The Insurance Products Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) due to differences of tax treatment and other considerations, the interests of Variable Contract owners participating in the Insurance Products Fund and/or the interests of Qualified Plans investing in the Insurance Products Fund may at some time be in conflict; and (c) the Board will monitor events in order to identify any material conflicts and to determine what action, if any should be taken in response to any such conflict.

10. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, shareholders will be the persons having a voting interest in the shares of the Insurance Products Funds), and in particular, the Insurance Products Funds either will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rules 6e–2 or 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the Application, then the Insurance Products Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or proposed Rule 6e–3, as adopted, to the extent such Rules are applicable.

12. The Participants and/or their Adviser, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonably request so that the Board may fully carry out obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when the Board so reasonably requests, shall be a contractual obligation of all Participants under their agreements governing participation in the Insurance Products Funds.

13. If a Qualified Plan should ever become a holder of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a participation agreement with the Insurance Products Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21359 Filed 8–17–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41721; File No. SR–Amex–98–31]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change Relating to Options on the Cure for Cancer Common Stock Index

I. Introduction

On August 14, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to authorize options on the Cure for Cancer Common Stock Index ("Index"). The Exchange submitted Amendment No. 1 to its proposal on January 28, 1999,[3] Amendment No. 2 on February 24, 1999,[4] and Amendment No. 3 on May 19, 1999.[5]

The proposed rule change, including Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on March 4, 1999.[6] No comments were received on the proposal. This order approves the proposal, as amended.

II. Description of Proposal

A. General

The Exchange proposes to trade standardized options on the Index, a cash-settled narrow based index developed by the Amex. The Index is composed of the stocks of twelve companies engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes. The Exchange will use an equal dollar weighted methodology to calculate the Index.[7] The Index was initialized at a level of 100.00 as of the close of trading on December 31, 1992.

B. Eligibility Standards for Index Components

Amex, as developer of the Index, is responsible for selecting and maintaining the companies to be included in the Index. The Exchange represents that the Index conforms with the criteria of Exchange Rule 901C for including stocks in an index on which standardized options trade. In addition, all of the component securities currently meet the following standards: (1) Each component has a market capitalization of at least $75 million, except one that has a market value of at least $50 million and accounts for no more than 10% of the weight of the Index; (2) more than 80% of the weight of the Index is accounted for by securities each having a trading volume of not less than 1,000,000 shares over each of the last six months and the remaining 20% of the weight of the Index is accounted for by components having a trading volume of not less than 850,000 shares over each of the last six months,[8] (3) at least 75% of the Index's components and its numerical index value currently underlie standardized options; (4) foreign country securities or American Depositary receipts ("ADR") thereon are

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amended Rule 19b–4 Filing ("Amendment No. 1").

[4] *See* Letter from Scott Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 23, 1999 ("Amendment No. 2").

[5] In Amendment No. 3, the Exchange submitted a revised list of component securities for the Index and confirmed that the revised list of component securities satisfied all of the criteria set forth in the notice. *See* Letter from Scott Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated May 17, 1999 ("Amendment No. 3").

[6] *See* Securities Exchange Act Release No. 41100 (February 24, 1999), 64 FR 10512.

[7] *See infra* Section II.C. entitled "Index Calculation" for a description of this calculation method.

[8] Previously, one component of the Index specifically agreed to by the Commission was permitted to have a trading volume of not less than 350,000 shares. However, because the Amex revised the component securities comprising the Index (*see* Amendment No. 3, *supra* note 5), this provision is no longer needed. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on May 21, 1999.

not currently represented in the Index; (5) all component stocks are either listed on the New York Stock Exchange ("NYSE"), Amex, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("Nasdaq") and are reported National Market System ("NMS") securities; and (6) no component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.[9]

The Exchange believes the potential for manipulation of the Index is minimized for the following reasons: (1) No single component dominates the Index, which is equal dollar weighted, with each component constituting approximately 8.3% of the Index; (2) at least 75% of the value of the Index is accounted for by stocks which currently underlie standardized options; and (3) the component stocks are substantial and liquid, having an average market capitalization of $402.47 million, an average of 26.57 million shares outstanding, and a six-month average monthly trading volume of 5.8 million shares.[10]

C. Index Calculation

The Index will be calculated by the Amex using an "equal dollar weighted" methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. The following is a description of the methodology. As of the market close on December 31, 1992, a portfolio of stocks was established representing an investment of approximately $100,000 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of share of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 100.00 as of the close of trading on December 31, 1992. Quarterly, following the close of trading on the third Friday of February, May August and November, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in "equal" dollar amounts. If necessary, a divisor adjustment is made during the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the average dollar value of the remaining components will be calculated and that amount invested in the stock of the new component to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calucated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

D. Index Maintenance

The Index will be maintained by the Exchange consistent with it original purpose (*i.e.*, to include components engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes). As stated above, the number of shares of each component stock in the Index portfolio will remain fixed between quarterly rebalances except in the event of certain types of corporate actions. If necessary in order to maintain continuity of the Index, its divisor may be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, stock distributions, stock splits, reverse stock splits, spin-offs, certain rights issuance, recapalitalizations, reorganizations, and mergers and acquisitions. All stock replacement and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.

The Exchange will maintain the Index so that (1) the Index is comprised of no less than nine component securities; (2) the component securities constituting the top 90% of the Index by weight, will have a minimum market capitalization of $75 million and the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of $50 million; (3) 75% of the Index's numerical index value will meet the then current criteria for standardized option trading set forth in Amex Rule 915, except that one component included in the 75% may meet the then current criteria set forth in Amex Rule 916 if submitted to and approved by the Commission,[11] (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component stocks will either be listed on Amex, NYSE, or Nasdaq/NMS; and (6) each of the component stocks shall have a minimum monthly trading volume of at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the Index that in the aggregate account for no more than 10% of the weight of the Index, trading volume must be at least 400,000 shares for each of the last six months.[12]

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the

[9] The Amex confirmed that the individual component securities satisfy all of the criteria set forth in the notice. *See* Amendment No. 3, *supra* note 5.

[10] *See* Amendment No. 3, *supra* note 5.

[11] The Commission previously agreed to a specific component security that could satisfy Amex Rule 916 in lieu of Amex Rule 915. The Index, however, no longer needs this specific component to satisfy the 75% requirement. Nevertheless, the Amex has requested that it be allowed the flexibility to have any one of the components meet the maintenance requirements in Amex Rule 916 in complying with the 75% options eligibility requirement should that be necessary in the future. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on May 21, 1999. The Commission has determined to allow Amex to utilize the exception in maintaining the Index provided that Amex submits to the Commission for its review and approval the proposed security that would satisfy Amex Rule 916 in lieu of Amex Rule 915. The factors the Commission will examine in determining whether to permit Amex to utilize Amex Rule 916 standards include, among other things, the security's market capitalization, daily and six month trading volume, and the last six months price history.

[12] The Amex raised the trading volume limit for the bottom 10% of the weight of the Index from 350,000 to 400,000 shares. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on May 21, 1999.

Exchange not to be significant and the Commission concurs in that determination.

E. Expiration and Settlement

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the Nasdaq system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.[13]

F. Contract Specifications

The proposed options on the Index will be European style (*i.e.*, exercises permitted at expiration only) and cash settled. Standard option trading hours (9:30 a.m. to 4:02 p.m. (ET)) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

G. Listing of Long-Term Options on the Full or Reduced Value of the Index

The Exchange plans to list option series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer term option series having up to thirty-six months to expiration and FLEX Index options [14] may be traded on the Index. Instead of such long-term options on a full value Index level, the Exchange may list long-term, reduced value put and call options based on one-tenth (1/10th) of the Index's full value. The interval between expirations months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options, either full or reduced value, would be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have European style exercise.

H. Exchange Rules Applicable to Stock Index Options

Amex Rules 980C will apply to the trading of option contracts based on the Index. These Exchange Rules cover issues such as surveillance, exercise prices and position limits. The Index is deemed to be a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Amex Rule 900C(b)(1). With respect to Amex Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current Index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Amex Rule 904C(c) will result in a position limit of 15,000 contracts with respect to options on this Index.

I. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading options on the Index. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group ("ISG") Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[15]

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[16] and in particular, with the requirements of Section 6(b)(5).[17] Specifically, the Commission finds that the trading of options on the Index, including FLEX and long term full-value and reduced value index options, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the cancer research industry.[18]

The trading of options on the Index and reduced-value Index, however, raises several issues relating to index design, customer protection, surveillance and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these issues.

A. Index Design and Structure

The Commission believes it is appropriate for the Exchange to designate the Index as narrow-based for purposes of index options trading. The Index is comprised of a limited number of stocks intended to track a discrete industry group: the cancer research sector of the stock market. Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the proposed Index options.[19]

---

[13] The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's ("OCC") by-laws, OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. *See* Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (order approving SR–OCC–95–19).

[14] *See* Securities Exchange Act Release No. 39928 (April 28, 1998), 63 FR 25130 (May 6, 1998) (approving FLEX options trading on all indices, including stock index industry groups). The Commission notes that the Amex has established position limits for industry index FLEX options at four times the position limits for standard options on the respective underlying industry index. Therefore, in the present case, the position limit could not exceed 60,000 contracts. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on August 9, 1999.

[15] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock, and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[16] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options in the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the cancer research sector in the U.S. markets.

[19] *See supra* Section II.H. entitled "Exchange Rules Applicable to Stock Index Options."

The Commission also believes that the liquid markets, relatively large capitalizations of the stocks comprising a majority of the weight of the Index, and relative weightings of the Index's component stocks minimize the potential for manipulation of the Index. First, most of the stocks are actively traded. The minimum monthly trading volume in the aforementioned top weighted component stocks of the Index as of May 14, 1999, ranged from 2.11 million to 5.81 million shares. Second the market capitalization of those stocks are relatively large, ranging from roughly $117.66 million to $1.19 billion. Third, because the Index is equal dollar weighted, no one particular stock or group of stocks dominates the Index. In addition, the Commission notes that the Exchange will review and maintain the Index consistent with its original purpose. Fourth, the Index will be maintained so that in addition to the other maintenance criteria discussed above in Section II.D., at each rebalancing, at least 75% of the Index's numerical value will be composed of securities eligible for standardized options trading, except that one component included in the 75% and specifically agreed to by the Commission may meet the then current criteria set forth in Amex Rule 916. Finally, the Commission believes that Amex's existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks in the Index will help deter as well as detect any illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Index, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading, and (3) special compliance procedures are applicable to options accounts. Accordingly, because options on the Index will be subject to the same regulatory regime as other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options on the Index. Finally, the Amex has stated that it will distribute information circulars to the public to notify the public of changes in the composition of the Index and the handling of non-routine corporate actions at least ten business days in advance of the change, whenever possible. The Commission believes this should help to protect investors and avoid investor confusion.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities market. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[20] In this regard, markets on which the components of the Index currently trade and the market on which all component stocks trade are members of the ISG, which provides for the exchange of all necessary surveillance information.

D. Market Impact

The Commission believes that the listing and trading of options on the Index, including long-term full-value and reduced-value Index options, on the Amex will not adversely impact the underlying securities markets.[21] First, as noted above, due to the equal dollar weighting methodology, no one stock or group of stocks dominates the Index. Second, as noted above, most of the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, the currently applicable 15,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contraparty non-performance will be minimized because the options on the Index will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiration options on the Index (including long-term full-value and reduced-value Index options) based on the opening process of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for stock underlying options on the Index.[22]

The Commission also finds Amendment No. 3 consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[23] because it removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing investors with an additional means to hedge exposure to market risk associated with stocks in the cancer research industry while ensuring that only those component securities that satisfy the requirements set forth above are included in the Index.

The Commission finds good cause to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 3 merely clarifies the composition of the Index and revises the trading data for all component securities. Accordingly, the Commission finds that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[24] to approve Amendment No. 3 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

---

[20] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[21] In addition, the Amex and the OPRA have represented that the Amex and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of options on the Index. *See* Letters from Scott Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated October 21, 1998, and from Joe Corrigan, Executive Director, OPRA, to Richard Strasser, Assistant Director, Division, Commission, dated January 15, 1999.

[22] *See* Securities Exchange Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5) and 78s(b).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–98–31 and should be submitted by September 8, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–Amex–98–31), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21361 Filed 8–17–99; 8:45 am]

BILLING CODE 8010–01–M

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41727; File No. SR–CBOE–99–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Market-Maker Surcharge Fee Schedule

August 11, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 23, 1999, the Chicago Board Options Exchange, Inc., ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage.*[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[4]
For Motor Company (F)	$0.14	$0.00

[4] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

The fee for Ford Motor Company will be effective as of August 2, 1999. All of the fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)[5] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19B–4(f)(2).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–39 and should be submitted by September 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21360 Filed 8–17–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41732; File No. SR–CBOE–99–30]

August 11, 1999.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Elimination of the Prohibition Against Market-Maker Surcharges on Single-List Issues

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage,* to eliminate the restriction against a surcharge from being assessed on trades in classes not traded on another options exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of a and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently received approval from the Commission to assess a surchange on market-makers trading in multiply-listed classes pursuant to new CBOE Rule 2.40.[3] The Exchange believes CBOE Rule 2.40 will enable the Exchange to compete for order flow more effectively against other options exchanges.

In this present filing, the Exchange proposes to eliminate a restriction in paragraph (e) of CBOE Rule 2.40 which prohibits a surcharge from being assessed on trades in classes not traded on another options exchange. When the Commission approved Exchange Rule 2.40 recently, the Commission stated that it believes "that the proposed rule change, as amended, is a reasonable effort by CBOE to better enable its competitive market-maker crowds to compete for multiply-listed options with other exchanges that employ a specialist system."[4] While the Exchange agrees that the proposed rule provides the Exchange with the tools to compete more effectively in attracting order flow in multiple list issues, the Exchange believes CBOE Rule 2.40 would be more effective and useful if the restriction against imposing a surcharge on single-list issues was eliminated.

The Exchange believes CBOE Rule 2.40 would be more effective by eliminating this restriction,[5] because specialists on other exchanges, who may trade both single-list and multiple-list issues, have greater flexibility than CBOE market-makers currently having using CBOE Rule 2.40 to adjust their transaction fees. Specifically, these specialists are able to seek to attract customer loyalty and a larger portion of their order flow in the multiple-listed issues by reducing fees and charges not just for those multiple-listed classes, but also for the single-list classes. Consequently, the Exchange will find it more and more difficult to compete for order flow in multiple-listed issues—even with Exchange Rule 2.40 in place—as long as specialists are able to entice firms to send order flow to them by more broadly reducing their fees, to include their single-list issues. The elimination of the single-list prohibition will allow the Exchange to provide the surcharge to floor brokers (thereby inducing a reduction in their brokerage rates on customer orders) and/or to reduce the book brokerage rate in single-list issues which will expand the benefit of this program and the potential benefit to customers.

In requesting the Exchange to revise its original proposal to limit the surcharge to multiple-listed issues only, the Exchange is aware that the commission believed that competition among exchanges in the multiple-listed classes would obviate the risk that the spreads in these classes would not be widened to compensate for the cost of market-makers of any surcharges. As the need for the proposed rule change makes clear, that same rationale extends to single-list classes, since the overall competition for order flow encompasses all issues, whether single- or multiple-list. Moreover, the Exchange believes that current safeguards in CBOE Rule 2.40 will protect against a widening of the spreads on the single-list issues which become subject to a surcharge. Specifically, the cap on the surcharge amount of $0.25/contract should help to ensure that spreads are not widened in the single-list issues.[6] Of course, the Exchange is also obligated to analyze data comparing spreads before and after the imposition of the surcharge so any

---

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 1123 (March 9, 1999).

[4] *Id., 64 FR at 11525.*

[5] The Exchange added the prohibition against imposing the surcharge on single list issues at the suggestion of Commission staff.

[6] As the Exchange noted in Amendment No. 1 to SR–CBOE–98–35 (dated February 26, 1999), the minimum bid-ask spread for the option class is $6.25 (one sixteenth of a dollar ($0.0625) times a multiplier of 100 since one option contract represents 100 shares of stock) although the actual spread for many options in wider. (Given that the spread is usually at $6.25 or greater, the Exchange believes it is unlikely that spreads would be adjusted to account for a surcharge of $0.25 or less.

possible ill effects of the elimination of the prohibition will be readily noted. Finally, the Exchange believes the elimination of this prohibition against imposing the surcharge on single-list issues would be fair. Specialists on the other exchanges today are able to change their fees on their single-list issues without having to study or justify any possible effect this action may have on the spreads in those issues. The Exchange wants to provide its marketmakers with the same ability to apply the surcharge to single-list issues.[7]

2. Statutory Basis

The CBOE believes that the proposed rule change is in furtherance of Section 6(b)(5) the Act[8] in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–99–30 and should be submitted by September 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21444 Filed 8–17–99; 8:45 am]

BILLING CODE 8010–01–M

[7] Under CBOE Rules 2.40 the appropriate Floor Procedure Committing actually imposes the surcharge on a class of options but the market-makers in the training crowd may recommend a surcharge amount.

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release 34–41733; File No. 600–30]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

August 12, 1999.

Notice is hereby given that on July 1, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") an application pursuant to Section 19(a)(1) of the Securities Exchange Act of 1934 ("Act")[1] requesting that the Commission extend EMCC's temporary registration as a clearing agency for one year.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend EMCC's temporary registration as a clearing agency until August 20, 2000.

[1] 15 U.S.C. 78s(a)(1).

[2] Letter from Richard Paley, Associate Counsel, EMCC (July 1, 1999) and Form CA–1 (July 1, 1999).

On February 13, 1998, pursuant to Sections 17A(b) and 19(a)(1) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted EMCC's application for registration as a clearing agency until August 20, 1999.[5] EMCC was created to facilitate the clearance and settlement of transactions in U.S. dollar denominated Brady Bonds.[6]

EMCC began operating on April 6, 1998, with ten dealer members and five interdealer brokers clearing through Daiwa Securities America, Inc.[7] In its first month of operation, EMCC members achieved an average trade-date matching the rate of over 97 percent on 71 eligible securities for an average volume of over 360 sides per day.[8] Prior to EMCC beginning its operations, approximately only 40 percent of trades compared on trade date resulting in a considerable number of failed transactions.[9] During its temporary registration period, EMCC typically handled 700 sides per day. However, during the market crisis in Asia, Latin America, and Russia, EMCC successfully handled volume in excess of 1,000 sides per day.[10]

During its temporary registration period, EMCC expanded the list of eligible instruments to include not only Brady Bonds but also the sovereign debt of any emerging market country.[11] EMCC also modified its rules to allow it to accept data directly from either its members or from service bureaus and to compare trades.[12]

As part of EMCC's temporary registration, the Commission granted EMCC temporary exemptions from Section 17A(b)(3)(B) of the Act because EMCC did not provide for the admission of some of the categories of members

[3] 15 U.S.C. 78q–1(b) and 78s(a)(1).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 39661, International Series Release No. 1117 (February 13, 1998), 63 FR 8711 (February 20, 1998) ("Registration Order").

[6] Brady bonds are restructured bank loans. They were first issued pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady to assist debt-ridden countries restructure their sovereign debt into commercially marketable securities. The plan provided for the exchange of bank loans for collateralized debt securities as part of an internationally supported sovereign debt restructuring. Typically, the collateral would be U.S. Treasury securities.

[7] EMCC has been advised that Daiwa will stop providing clearing services for interdealer brokers by the end of September 1999.

[8] EMCC Annual Report, p. 2.

[9] *Id.*

[10] *Id.*

[11] Securities Exchange Act Release No. 40363 (August 25, 1998), 63 FR 46 46263 (August 31, 1999).

[12] Securities Exchange Act Release No. 41247 (April 2, 1999), 64 FR 17705 (April 12, 1998).

required by that section.[13] To date, EMCC continues to limit the categories of entities eligible for membership to U.S. broker-dealers, United Kingdom broker-dealers, U.S. banks, and non-U.S. banks. As the Commission noted in the Registration Order, the Commission believes that providing for limited categories of members is appropriate at least during a clearing agency's initial phases of operations especially when no one in a category not covered by EMCC desires to be a member. Accordingly, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(B).

The Commission also granted EMCC a temporary exemption from Sections 17A(b)(3)(A) and 17A(b)(3)(F) of the Act to permit EMCC to use, subject to certain limitations, ten percent of its clearing fund to collaterize a line of credit at Euroclear to finance on an intraday basis the receipt by EMCC of eligible instruments from one member that EMCC will redeliver to another member.[14] The Registration Order limited EMCC's use of clearing fund deposits for this intraday financing to the earlier of one year after EMCC commenced operations or the date on which EMCC begins its netting service. On April 2 and May 17, 1999 the Commission approved rule changes that permitted EMCC to implement a netting service and that extended EMCC's ability to use clearing fund deposits for intraday financing at Euroclear until all EMCC members are netting members (as opposed to the date on which netting services are available or EMCC's first anniversary).[15] Accordingly, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(A) and (F).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[16] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600–30 and should be submitted by September 8, 1999.

It is therefore ordered, pursuant to Section 19(a) of the Act, that EMCC's registration as a clearing agency (File No. 600–30) be and hereby is temporarily approved through August 20, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21441 Filed 8–17–99; 8:45 am]

BILLING CODE 8010–01–M

[13] Registration Order at 8716.

[14] Registration Order at 8720.

[15] Securities Exchange Act Release Nos. 41247 (April 2, 1999), 64 FR 17705 (April 12, 1999) and 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999).

[16] 15 U.S.C. 78s(a)(1).

[17] 17 CFR 200.30–3(a)(16).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41731; File No. SR–NASD–99–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Riskless Principal Trade Reporting Rules

August 11, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting a stated policy and interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1)[4] thereunder, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq filed with the SEC an interpretation to NASD Rules 4632, 4642, 4652, and 6620, regarding riskless principal trade-reporting. The interpretation, which will be issued as a *Notice to Members*, addresses how mark-ups and other fees will be treated for determining whether trades are executed at the "same" price, for purposes of the aforementioned NASD rules. The text of the proposed rule change is available at the NASD, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. On March 24, 1999, the Commission approved a proposal to amend the trade reporting rules relating to riskless principal transactions in Nasdaq National Market, The Nasdaq SmallCap Market, Nasdaq convertible debt, and non-Nasdaq OTC equity securities.[5] When the SEC approved the rule change, the Commission asked Nasdaq to submit an interpretation providing examples of how mark-ups, mark-downs, and other fees will be excluded for purposes of the amended riskless principal rules.[6] As requested, Nasdaq is distributing *Notice to Members* 99–65,[7] which provides examples of how mark-ups and other fees will be excluded for purposes of the riskless principal trade-reporting rules, as an interpretation to existing NASD Rules 4632, 4642, 4652, and 6620.

[5] *See* Securities Exchange Act Release No. 41208 (March 24, 1999) 64 FR 15366 (March 31, 1999) (SR–NASD–98–59).

[6] *See id.* at footnote 15.

[7] The NASD has submitted *Notice to Members* 99–65 as Exhibit 2 to this rule filing. The Notice is available for inspection at the NASD and at the Commission.

Substance of the Interpretation. Under the riskless principal trade reporting rules approved by the Commission, a market maker reports as "riskless" principal once if the market maker receives an order to buy (sell) a security, and then purchases (sells) the security as principal at the same price as the order in hand to satisfy the order to buy (sell). As stated in the interpretation contained in *Notice to Members* 99–65, to determine whether two transactions are executed at the same price, a market maker must compare the price reported to the Automated Confirmation Transaction Service ("ACT")[8] pursuant to NASD trade reporting rules, which require members to exclude any mark-up or mark-down, commission-equivalent, or other fee when trade reporting ("tape price"), and the price of the offsetting trade with the customer, exclusive of any mark-up or mark-down, commission-equivalent, or other fee ("net price"). If the tape price and the net price to the customer are the same, then the transaction must be reported as riskless principal to the NASD and the offsetting leg with the customer should not be reported to the NASD. If a market maker is executing a large order through a series of trades and has an arrangement to charge the customer an average price based on the various executions received, the net price to the customer and the volume weighted average price ("VWAP") of the trades must be the same for the transaction to receive riskless principal treatment.

Notice to Members 99–65 also states that the riskless principal trade reporting rules do not mandate the prices at which market makers must execute the various legs of "riskless principal" transactions. Nor do the rules prohibit market makers from trading on a net basis. Thus, a market maker is not precluded from accumulating a position at one price and executing the offsetting trade with the customer at another price (with no mark-up, mark-down, commission-equivalent or other fee), provided such arrangement satisfies the member's best execution obligation and is consistent with SEC and NASD statements regarding the matching of limit and market orders.[9]

Nasdaq recognizes that there are times when a market maker will, while holding a customer's order, effect a buy (sell) at one price and an offsetting sell (buy) with the customer at another price, such as when a market maker is trading "net" with an institution. If what otherwise would appear to be a riskless principal trade is effected at two different net prices, a market maker is required to report both legs of the transaction to the tape.[10] *Notice to Members* 99–65 instructs, however, that if a member is working an order for an institutional account or a block size and the member finds the other side of the order, the presumption will be that the orders will be matched off at the same price (exclusive of any mark-up or mark-down, commission equivalent or other fee) and reported as riskless principal, unless the customer has specifically requested that the order be traded on a net basis, at a different price. The *Notice to Members* 99–65 further notes that, while net trading is not impermissible, market makers should endeavor to trade at one price when executing riskless principal transactions because this will provide greater transactional integrity and will have the corollary benefit of reducing SEC transaction fees (commonly known as "Section 31 fees").[11]

The following provides an example of how Nasdaq believes the riskless principal trade reporting rules will operate:

Nasdaq Inside Market: $10—10⅜, 10 × 10

Question—MMA receives a not-held order from an institutional customer to sell 6,000 shares, with instructions to obtain the best price available with a "bottom" of $10⅛. Using the phone, MMA sells 4,000 shares at $10⅜ to MMB and 2,000 shares at $10 to MMC. What are MMA's trade reporting obligations?

Answer—MMA must report to ACT the sell to MMB of 4,000 shares at $10⅜ and the sell to MMC of 2,000 shares at $10. (Note that the volume weighted average price for this trade is $10¼.) If MMA buys 6,000 shares from his customer at a volume weighted average price (VWAP) of $10¼, she/he will not be required to report to the tape the offsetting buy with the customer. The NASD believes that it would be consistent with the SEC No Action Letter Regarding SEC Rule 10b–10[12] for MMA to disclose on the confirmation a reported price of $10¼—the VWAP—instead of a reported price for each individual transaction. The confirmation must contain a notation that the disclosed price is an average price, ad must note that details regarding the actual price are available to the customer upon request.[13] If market maker charged a mark-down, commission-equivalent, or other fee on top of the $10¼, it also would be permissible for the confirmation to disclose the fee as a single amount.

Alternatively, if MMA trades on a net basis and buys 6,000 shares from his customer at $10 (or another price different than the VWAP of $10¼), MMA would also report the buy with its customer to the tape because the VWAP and the buy from the customer are different prices. The confirmation would disclose a reported price of $10, a price to the customer of $10, and no differential.

2. *Statutory Basis*

The NASD and Nasdaq believe that the new interpretation increases investor protection and clarifies a member's obligations under the NASD trade reporting rules. Accordingly, the NASD and Nasdaq believe that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to; and perfect the mechanism of a free market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Completion

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule change and timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[15] and Rule 19b–4(f)(1)[16] in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[8] *See* NASD Rule 4651(b).

[9] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (Order Handling Rules Adopting Release); NASD *Notice to Members* 96–65 (October 1996); NASD *Notice To Members* 97–57 (September 1997).

[10] The NASD and Nasdaq currently are examining whether trade reporting rules should be further amended to cover market makers reporting riskless principal trades at different prices.

[11] *See* Section 31 of the Act, 16 U.S.C. 78ee.

[12] *See, e.g.*, SEC No-action letter from Catherine McGuire, SEC, to Eugene Lopez, Nasdaq, dated May 6, 1997 (permitting the issuance of a single confirmation at an average price and with multiple capacities for a single customer order effected with multiple executions).

[13] *See id.*

[14] 15 U.S.C. 78o–3(b)(6).

[15] 15 U.S.C. 78s–(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(1).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–39 and should be submitted by September 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21443 Filed 8–17–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41726; File No. SR–NYSE–99–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Cancellation Procedures for MOC/LOC Orders

August 11, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Exchange's market-at-the-close ("MOC") and limit on-close ("LOC") procedures to prohibit cancellation of MOC an LOC orders for any reason after 3:50 p.m.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Current procedures[3] utilized for MOC and LOC orders prohibit the cancellation of MOC orders and LOC orders after 3:40 p.m., except (1) in the case of legitimate error or; (2) to comply with the provisions of Exchange Rule 80A[4] or; (3) when a regulatory trading halt is in effect at or after 3:40 p.m.[5]

The Exchange is proposing to prohibit cancellation or reduction in size of MOL/LOC orders after 3:50 p.m. for *any* reason, *including* cases of legitimate error or to comply with the provisions of Rule 80A. If Rule 80A goes into effect *before* 3:50 p.m., members and member organizations must cancel MOC index arbitrage orders that are related to a derivative index product that is not expiring and that do not meet the Rule's tick, restrictions no later than 3:50 p.m.

In June 1998, the Commission approved amendments to procedures regarding entry of MOC and LOC orders and the publications of order imbalances.[6] The Commission noted in its approval order that the enhanced publication requirements (*e.g.*, at 3:50 p.m. and the integration of marketable LOC orders in the imbalance may help ease market volatility at the close by attracting additional offsetting MOC/LOC orders for stocks that have a significant order imbalance at 3:50 p.m.

Historically, the window of opportunity for correcting errors has been from 3:50 p.m. to 4:00 p.m. When the cutoff time for MOC/LOC order entry on non-expiration days was moved from 3:50 p.m. to 3:40 p.m.,[7] the Exchange did not revisit the issue of cancellations to correct errors. Upon review, the exchange has determined that it is appropriate to move the ten-minute window for error correction to 3:40 p.m. This would put the responsibility on members and member organizations to make sure by 3:50 p.m. that MOC/LOC orders entered are accurate. In turn, this will ensure that the 3:50 p.m. imbalance publication is accurate when offsetting orders are entered.

The Exchange believes that canceling MOC/LOC orders after 3:50 p.m. could exacerbate an order imbalance or cause a reversal in an order imbalance near the close. Precluding such cancellations would enhance the effectiveness of the MOC/LOC publication procedures in reducing volatility at the close.

Upon Commission approval of this proposed rule change, the Exchange intends to issue an information Memo to inform its members of the revised procedures.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act[8] that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

---

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998).

[4] Rule 80A requires index arbitrage orders in any stock in the Standard & Poor's 500 Stock Price Index entered on the Exchange to be stabilizing (*i.e.*, the order must be marked either buy minus or sell plus) when the Dow Jones Industrial Average ("DJIA") advances or declines from its closing value on the previous trading day by 2% of the DJIA average closing value from the last month of the previous calendar quarter. Current procedures require that, when the Rule goes into effect, an MOC index arbitrage order without the appropriate tick restriction must be canceled unless it is related to an expiring derivative index product.

[5] See Securities Exchange Act Release No. 41497 (June 9, 1999), 64 FR 32595 (June 17, 1999). If a regulatory trading halt is in effect at or after 3:40 p.m., MOC/LOC orders can be canceled until 3:50 p.m. or the time the stock reopens, whichever occurs first.

[6] *See supra* note 3.

[7] *See supra* note 3.

[8] 15 U.S.C. 78f(b)(5).

system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–26 and should be submitted by September 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21442 Filed 8–17–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 22

This document replaces and supercedes "Delegation of Authority No. 1–A, Revision 21." It is a "Line of Succession Designation," and not a "delegation of authority," consistent with the provisions of Small Business Administration's internal standard operating procedure (SOP) 00 01.

Line of Succession Designation No. 1–A, Revision 22

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) If I am absent from the office the Deputy Administrator will assume all functions and duties of the Administrator. In the event both I and the Deputy Administrator are absent from the office, I designate the officials in listed order below to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief of Staff;

(2) General Counsel;

(3) Associate Deputy Administrator for Management and Administration;

(4) Associate Deputy Administrator for Capital Access;

(5) Associate Deputy Administrator for Government Contracting and Minority Enterprise Development;

(6) Associate Deputy Administrator for Entrepreneurial Development.

(b) An individual serving in an acting capacity in any of the positions listed in paragraph (a)(1) through (6) is not also included in this Line of Succession. Instead, the next non-acting incumbent on the list shall serve as Acting Administrator.

(c) This designation shall remain in full force and effect until revoked or superceded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(d) Serving as Acting Administrator has no effect on the officials listed in paragraph (a) (1) through (6), above, with respect to their full-time position's authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: August 9, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–21354 Filed 8–17–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Regulations; Full Table of Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Notice of publication of full table of small business size standards.

SUMMARY: The U.S. Small Business Administration (SBA) is publishing a full table of small business size standards by four-digit Standard Industrial Classification (SIC) code. The table reflects changes made to size standards since publication of SBA's Small Business Size Regulations on January 31, 1996. This table does not create, establish or modify any size standards currently in existence. This table merely presents all four-digit SIC codes for which SBA has established a small business size standard as a convenient reference for users of SBA's size standards.

FOR FURTHER INFORMATION CONTACT: SBA Office of Size Standards at (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA is publishing below a full table of small business size standards in accordance with 13 CFR 121.101. On January 31, 1996, SBA published in the **Federal Register** (61 FR 3280) a Final Rule that clarified and streamlined its small business size standards and related eligibility requirements under 13 CFR Part 121, "Small Business Size Regulations." The simplification of SBA's Small Business Size Regulations reduced the apparent size of the table of small business size standards in § 121.201 by listing general size standards by SIC Division. Those standards apply to all industries in that Division except those two-digit major group or four-digit industry codes listed with other specific standards. This streamlined table eliminated the duplication of common industry size standards within a Division and reduced the Code of Federal Regulations by fourteen pages.

Since the January 31, 1996, publication of the streamlined size standards table in § 121.201, SBA has published two final rules in the **Federal Register** changing small business size standards. They are the following:

SIC
0111
0112
0115
0116
0119
0131

[9] 17 CFR 200.30–3(a)(12).

1. **Very Small Business.** On September 2, 1998, SBA published in the **Federal Register** (63 FR 46640) a Final Rule incorporating the Very Small Business (VSB) Set-Aside Pilot Program. The Final Rule became effective immediately. Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103–403) authorized the VSB program and defined a "Very Small Business" as one that has 15 or fewer employees together with average annual receipts that do not exceed $1 million. The VSB Program is a pilot in 10 SBA district offices, and will expire on September 30, 2000. The VSB Program is in SBA's Regulations at 13 CFR 121.401, 121.413.

2. **Engineering, Architectural, Surveying, and Mapping Services.** On May 14, 1999, SBA published in the **Federal Register** (64 FR 26275) a Final Rule increasing the small business size standards for general Engineering (part of SIC 8711), Architectural (SIC 8712), Surveying (SIC 8713), and Mapping Services (part of SIC 7389). The new size standards for each of these is $4 million in average annual revenues, effective June 14, 1999.

The Very Small Business rule does not affect this table. The Engineering, Architectural, Surveying, and Mapping Services rule does change specific size standards, which this table incorporates. Interested parties may refer to the **Federal Register** notices for further detail on these final rules. The table published below is complete and does not itself create, establish or modify any size standards currently in existence, but only presents all size standards in an expanded and more convenient format. Changes or modifications to 13 CFR 121 are only made in accordance with the Administrative Procedure Act. Any changes to the table of small business size standards will be reflected in the annual publication of the full list of size standards. SBA will also provide copies of any size related rules on its Internet web site at http://www.sba.gov/. Those with access to the Internet can obtain and download the current table of size standards, listed by four-digit SIC industry code, at http://www.sba.gov/regulations/siccodes/. SBA's Small Business Size Regulations, 13 CFR 121, are available at *http://www.sba.gov/library/lawroom.html*. Also, SBA's "Guide to SBA Definitions of Small Business" is available at http://www.sba.gov/size/. Others may contact any SBA office to verify size standards currently in effect.

Purpose of This Table

SBA was aware when it published the streamlined table of size standards that many users prefer a table listing size standards for each four-digit SIC code. SBA recognizes that the entire list of small business size standards for the four-digit SIC codes often makes it easier for users to apply the proper standards to their needs, and that it should also reduce the chance for error. The entire table of small business size standards also provides users with additional size standards information without expanding Federal regulations. Therefore, 13 CFR 121.101 states that SBA will publish an entire table annually in the **Federal Register**. Accordingly, this notice contains a table matching a small business size standard with each four-digit SIC code for which SBA has established a size standard.

Since the publication of the streamlined size standards table, SBA has received questions as to whether small business size standards apply to the four-digit SIC codes that are not specifically listed in the text of § 121.201. The paragraph at the head of the table in § 121.201 states that "Size standards are listed by Division and apply *to all industries in that Division* [emphasis added] except those specifically listed with separate size standards for a specific two-digit major group or four-digit industry code." That is, *all* four-digit SIC codes within that major group have the same size standard, except those that SBA otherwise lists as exceptions. For example, the size standard for management consulting services, SIC code 8742, is $5 million in average annual revenues. Although this industry is not specifically listed in the size table in 13 CFR 121.201, a size standard does exist for that industry.

Proper application of the size standards table in § 121.201 is very important, because eligibility for programs reserved for small businesses requires that a concern qualify as a small business under the size standard for the appropriate SIC industry. In connection with SBA financial assistance programs, § 121.301 states that "(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant must not exceed the size standard for the industry [emphasis added] in which: (1) The applicant combined with its affiliates is primarily engaged; and (2) The applicant alone is primarily engaged." Also, to be eligible as a small business for Federal procurement programs, a concern must meet the size standard specified in the solicitation, which the contracting officer selects giving primary consideration "to the *industry descriptions in the SIC Manual*, * * * [emphasis added]" (§ 121.402).

The 1987 SIC Manual, Appendix B (page 699), designates "industry" by a four-digit SIC code. The industries described in the SIC Manual are all four-digit industries. SBA's small business size standards were established and continue to exist for the various SIC industries, which are identified solely by their four-digit codes. By publishing this full table of small business size standards annually, SBA intends to facilitate the correct use of the small business size standards.

The full table of small business size standards follows:

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
	DIVISION A — AGRICULTURE, FORESTRY AND FISHING	
	MAJOR GROUP 01 — AGRICULTURAL PRODUCTION — CROPS	
0111	Wheat	$0.5
0112	Rice	$0.5
0115	Corn	$0.5
0116	Soybeans	$0.5
0119	Cash Grains, N.E.C.	$0.5
0131	Cotton	$0.5

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
0132	Tobacco	$0.5
0133	Sugarcane and Sugar Beets	$0.5
0134	Irish Potatoes	$0.5
0139	Field Crops, Except Cash Grains, N.E.C.	$0.5
0161	Vegetables and Melons	$0.5
0171	Berry Crops	$0.5
0172	Grapes	$0.5
0173	Tree Nuts	$0.5
0174	Citrus Fruits	$0.5
0175	Deciduous Tree Fruits	$0.5
0179	Fruits and Tree Nuts, N.E.C.	$0.5
0181	Ornamental Floriculture Nursery Products	$0.5
0182	Food Crops Grown Under Cover	$0.5
0191	General Farms, Primarily Crop	$0.5
	MAJOR GROUP 02 — LIVESTOCK AND ANIMAL SPECIALTIES	
0211	Beef Cattle Feedlots (Custom)	$1.5
0212	Beef Cattle, Except Feedlots	$0.5
0213	Hogs	$0.5
0214	Sheep and Goats	$0.5
0219	General Livestock, Except Dairy and Poultry	$0.5
0241	Dairy Farms	$0.5
0251	Broiler, Fryer, and Roaster Chickens	$0.5
0252	Chicken Eggs	$9.0
0253	Turkeys and Turkey Eggs	$0.5
0254	Poultry Hatcheries	$0.5
0259	Poultry and Eggs, N.E.C.	$0.5
0271	Fur-Bearing Animals and Rabbits	$0.5
0272	Horses and Other Equines	$0.5
0273	Animal Aquaculture	$0.5
0279	Animal Specialties, N.E.C.	$0.5
0291	General Farms, Primarily Livestock and Animal Specialties	$0.5
	MAJOR GROUP 07 — AGRICULTURAL SERVICES	
0711	Soil Preparation Services	$5.0
0721	Crop Planting, Cultivating, and Protecting	$5.0
0722	Crop Harvesting, Primarily by Machine	$5.0
0723	Crop Preparation Service for Market, Except Cotton Ginning	$5.0
0724	Cotton Ginning	$5.0
0741	Veterinary Services for Livestock	$5.0
0742	Veterinary Services for Animal Specialties	$5.0
0751	Livestock Services, Except Veterinary	$5.0
0752	Animal Specialty Services, Except Veterinary	$5.0
0761	Farm Labor Contractors and Crew Leaders	$5.0
0762	Farm Management Services	$5.0
0781	Landscape Counseling and Planning	$5.0
0782	Lawn and Garden Services	$5.0
0783	Ornamental Shrub and Tree Services	$5.0
	MAJOR GROUP 08 — FORESTRY	
0811	Timber Tracts	$5.0
0831	Forest Nurseries and Gathering of Forest Products	$5.0
0851	Forestry Services	$5.0
	MAJOR GROUP 09 — FISHING, HUNTING, AND TRAPPING	
0912	Finfish	$3.0
0913	Shellfish	$3.0
0919	Miscellaneous Marine Products	$3.0
0921	Fish Hatcheries and Preserves	$3.0
0971	Hunting and Trapping, and Game Propagation	$3.0

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
	DIVISION B — MINING	
	MAJOR GROUP 10 — METAL MINING	
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium	500
1081	Metal Mining Services	$5.0
1094	Uranium-Radium-Vanadium Ores	500
1099	Miscellaneous Metal Ores, N.E.C.	500
	MAJOR GROUP 12 — COAL MINING	
1221	Bituminous Coal and Lignite Surface Mining	500
1222	Bituminous Coal Underground Mining	500
1231	Anthracite Mining	500
1241	Coal Mining Services	$5.0
	MAJOR GROUP 13 — OIL AND GAS EXTRACTION	
1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services	$5.0
1389	Oil and Gas Field Services, N.E.C.	$5.0
	MAJOR GROUP 14 — MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS	
1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals Services, Except Fuels	$5.0
1499	Miscellaneous Nonmetallic Minerals, Except Fuels	500
	DIVISION C — CONSTRUCTION	
	MAJOR GROUP 15 — BUILDING CONSTRUCTION — GENERAL CONTRACTORS AND OPERATIVE BUILDERS	
1521	General Contractors — Single-Family Houses	$17.0
1522	General Contractors — Residential Buildings, Other than Single-Family	$17.0
1531	Operative Builders	$17.0
1541	General Contractors — Industrial Buildings and Warehouses	$17.0
1542	General Contractors — Nonresidential Buildings, Other than Industrial Buildings and Warehouses	$17.0
	MAJOR GROUP 16 — HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION — CONTRACTORS	
1611	Highway and Street Construction, Except Elevated Highways	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction	$17.0
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction	$17.0
1629	Heavy Construction, N.E.C.	$17.0
EXCEPT,	Dredging and Surface Cleanup Activities	[1] $13.5
	MAJOR GROUP 17 — CONSTRUCTION — SPECIAL TRADE CONTRACTORS	
1711	Plumbing, Heating, and Air-Conditioning	$7.0
1721	Painting and Paper Hanging	$7.0

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
1731	Electrical Work	$7.0
1741	Masonry, Stone Setting, and Other Stone Work	$7.0
1742	Plastering, Drywall, Acoustical and Insulation Work	$7.0
1743	Terrazzo, Tile, Marble, and Mosaic Work	$7.0
1751	Carpentry Work	$7.0
1752	Floor Laying and Other Floor Work, N.E.C.	$7.0
1761	Roofing, Siding, and Sheet Metal Work	$7.0
1771	Concrete Work	$7.0
1781	Water Well Drilling	$7.0
1791	Structural Steel Erection	$7.0
1793	Glass and Glazing Work	$7.0
1794	Excavation Work	$7.0
1795	Wrecking and Demolition Work	$7.0
1796	Installation or Erection of Building Equipment, N.E.C.	$7.0
1799	Special Trade Contractors, N.E.C.	$7.0
EXCEPT,	Base Housing Maintenance	[12] $7.0
	DIVISION D — MANUFACTURING [2]	
	MAJOR GROUP 20 — FOOD AND KINDRED PRODUCTS	
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products	500
2015	Poultry Slaughtering and Processing	500
2021	Creamery Butter	500
2022	Natural, Processed, and Imitation Cheese	500
2023	Dry, Condensed, and Evaporated Dairy Products	500
2024	Ice Cream and Frozen Desserts	500
2026	Fluid Milk	500
2032	Canned Specialties	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies	[3] 500
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings	500
2037	Frozen Fruits, Fruit Juices, and Vegetables	500
2038	Frozen Specialties, N.E.C.	500
2041	Flour and Other Grain Mill Products	500
2043	Cereal Breakfast Foods	1,000
2044	Rice Milling	500
2045	Prepared Flour Mixes and Doughs	500
2046	Wet Corn Milling	750
2047	Dog and Cat Food	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers	500
2052	Cookies and Crackers	750
2053	Frozen Bakery Products, Except Bread	500
2061	Cane Sugar, Except Refining	500
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2064	Candy and Other Confectionery Products	500
2066	Chocolate and Cocoa Products	500
2067	Chewing Gum	500
2068	Salted and Roasted Nuts and Seeds	500
2074	Cottonseed Oil Mills	500
2075	Soybean Oil Mills	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2077	Animal and Marine Fats and Oils	500
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C.	750
2082	Malt Beverages	500
2083	Malt	500
2084	Wines, Brandy, and Brandy Spirits	500
2085	Distilled and Blended Liquors	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C,	500
2091	Canned and Cured Fish and Seafoods	500
2092	Prepared Fresh or Frozen Fish and Seafoods	500
2095	Roasted Coffee	500
2096	Potato Chips, Corn Chips, and Similar Snacks	500
2097	Manufactured Ice	500

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
2098	Macaroni, Spaghetti, Vermicelli, and Noodles	500
2099	Food Preparations, N.E.C.	500
	MAJOR GROUP 21 — TOBACCO PRODUCTS	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Chewing and Smoking Tobacco and Snuff	500
2141	Tobacco Stemming and Redrying	500
	MAJOR GROUP 22 — TEXTILE MILL PRODUCTS	
2211	Broadwoven Fabric Mills, Cotton	1,000
2221	Broadwoven Fabric Mills, Manmade Fiber and Silk	500
2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing)	500
2241	Narrow Fabric and Other Smallwares Mills: Cotton, Wool, Silk and Manmade Fiber	500
2251	Women's Full-Length and Knee-Length Hosiery, Except Socks	500
2252	Hosiery, N.E.C.	500
2253	Knit Outerwear Mills	500
2254	Knit Underwear and Nightwear Mills	500
2257	Weft Knit Fabric Mills	500
2258	Lace and Warp Knit Fabric Mills	500
2259	Knitting Mills, N.E.C.	500
2261	Finishers of Broadwoven Fabrics of Cotton	500
2262	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk	1,000
2269	Finishers of Textiles, N.E.C.	500
2273	Carpets and Rugs	500
2281	Yarn Spinning Mills	500
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	500
2284	Thread Mills	500
2295	Coated Fabrics, Not Rubberized	500
2296	Tire Cord and Fabrics	1,000
2297	Nonwoven Fabrics	1,000
2298	Cordage and Twine	500
2299	Textile Goods, N.E.C.	500
	MAJOR GROUP 23 — APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS	
2311	Men's and Boys' Suits, Coats and Overcoats	500
2321	Men's and Boys' Shirts, Except Work Shirts	500
2322	Men's and Boys' Underwear and Nightwear	500
2323	Men's and Boys' Neckwear	500
2325	Men's and Boys' Separate Trousers and Slacks	500
2326	Men's and Boys' Work Clothing	500
2329	Men's and Boys' Clothing, N.E.C.	500
2331	Women's, Misses', and Juniors' Blouses and Shirts	500
2335	Women's, Misses', and Juniors' Dresses	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C.	500
2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear	500
2342	Brassieres, Girdles, and Allied Garments	500
2353	Hats, Caps, and Millinery	500
2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts	500
2369	Girls', Children's, and Infants' Outerwear, N.E.C.	500
2371	Fur Goods	500
2381	Dress and Work Gloves, Except Knit and All-Leather	500
2384	Robes and Dressing Gowns	500
2385	Waterproof Outerwear	500
2386	Leather and Sheep-Lined Clothing	500
2387	Apparel Belts	500
2389	Apparel and Accessories, N.E.C.	500
2391	Curtains and Draperies	500
2392	Housefurnishings, Except Curtains and Draperies	500
2393	Textile Bags	500
2394	Canvas and Related Products	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade	500
2396	Automotive Trimmings, Apparel Findings, and Related Products	500
2397	Schiffli Machine Embroideries	500
2399	Fabricated Textile Products, N.E.C.	500

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 24 — LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE	
2411	Logging	500
2421	Sawmills and Planing Mills, General	500
2426	Hardwood Dimension and Flooring Mills	500
2429	Special Product Sawmills, N.E.C.	500
2431	Millwork	500
2434	Wood Kitchen Cabinets	500
2435	Hardwood Veneer and Plywood	500
2436	Softwood Veneer and Plywood	500
2439	Structural Wood Members, N.E.C.	500
2441	Nailed and Lock Corner Wood Boxes and Shook	500
2448	Wood Pallets and Skids	500
2449	Wood Containers, N.E.C.	500
2451	Mobile Homes	500
2452	Prefabricated Wood Buildings and Components	500
2491	Wood Preserving	500
2493	Reconstituted Wood Products	500
2499	Wood Products, N.E.C.	500
	MAJOR GROUP 25 — FURNITURE AND FIXTURES	
2511	Wood Household Furniture, Except Upholstered	500
2512	Wood Household Furniture, Upholstered	500
2514	Metal Household Furniture	500
2515	Mattresses, Foundations, and Convertible Beds	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets	500
2519	Household Furniture, N.E.C.	500
2521	Wood Office Furniture	500
2522	Office Furniture, Except Wood	500
2531	Public Building and Related Furniture	500
2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers	500
2542	Office and Store Fixtures, Partitions, Shelving, and Lockers, Except Wood	500
2591	Drapery Hardware and Window Blinds and Shades	500
2599	Furniture and Fixtures, N.E.C.	500
	MAJOR GROUP 26 — PAPER AND ALLIED PRODUCTS	
2611	Pulp Mills	750
2621	Paper Mills	750
2631	Paperboard Mills	750
2652	Setup Paperboard Boxes	500
2653	Corrugated and Solid Fiber Boxes	500
2655	Fiber Cans, Tubes, Drums, and Similar Products	500
2656	Sanitary Food Containers, Except Folding	750
2657	Folding Paperboard Boxes, Including Sanitary	750
2671	Packaging Paper and Plastics Film, Coated and Laminated	500
2672	Coated and Laminated Paper, N.E.C.	500
2673	Plastics, Foil, and Coated Paper Bags	500
2674	Uncoated Paper and Multiwall Bags	500
2675	Die-Cut Paper and Paperboard and Cardboard	500
2676	Sanitary Paper Products	500
2677	Envelopes	500
2678	Stationery, Tablets, and Related Products	500
2679	Converted Paper and Paperboard Products, N.E.C.	500
	MAJOR GROUP 27 — PRINTING, PUBLISHING, AND ALLIED INDUSTRIES	
2711	Newspapers: Publishing, or Publishing and Printing	500
2721	Periodicals: Publishing, or Publishing and Printing	500
2731	Books: Publishing, or Publishing and Printing	500
2732	Book Printing	500
2741	Miscellaneous Publishing	500
2752	Commercial Printing, Lithographic	500
2754	Commercial Printing, Gravure	500
2759	Commercial Printing, N.E.C.	500
2761	Manifold Business Forms	500
2771	Greeting Cards	500
2782	Blankbooks, Looseleaf Binders and Devices	500
2789	Bookbinding and Related Work	500

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
2791	Typesetting	500
2796	Platemaking and Related Services	500
	MAJOR GROUP 28 — CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823	Cellulosic Manmade Fibers	1,000
2824	Manmade Organic Fibers, Except Cellulosic	1,000
2833	Medicinal Chemicals and Botanical Products	750
2834	Pharmaceutical Preparations	750
2835	In Vitro and In Vivo Diagnostic Substances	500
2836	Biological Products, Except Diagnostic Substances	500
2841	Soap and Other Detergents, Except Specialty Cleaners	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products	500
2861	Gum and Wood Chemicals	500
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	750
2869	Industrial Organic Chemicals, N.E.C.	1,000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
	MAJOR GROUP 29 — PETROLEUM REFINING AND RELATED INDUSTRIES	
2911	Petroleum Refining	[4] 1,500
2951	Asphalt Paving Mixtures and Blocks	500
2952	Asphalt Felts and Coatings	750
2992	Lubricating Oils and Greases	500
2999	Products of Petroleum and Coal, N.E.C.	500
	MAJOR GROUP 30 — RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and Inner Tubes	[5] 1,000
3021	Rubber and Plastics Footwear	1,000
3052	Rubber and Plastics Hose and Belting	500
3053	Gaskets, Packing, and Sealing Devices	500
3061	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods	500
3069	Fabricated Rubber Products, N.E.C.	500
3081	Unsupported Plastics Film and Sheet	500
3082	Unsupported Plastics Profile Shapes	500
3083	Laminated Plastics Plate, Sheet, and Profile Shapes	500
3084	Plastics Pipe	500
3085	Plastics Bottles	500
3086	Plastics Foam Products	500
3087	Custom Compounding of Purchased Plastics Resins	500
3088	Plastics Plumbing Fixtures	500
3089	Plastics Products, N.E.C.	500
	MAJOR GROUP 31 — LEATHER AND LEATHER PRODUCTS	
3111	Leather Tanning and Finishing	500
3131	Boot and Shoe Cut Stock and Findings	500
3142	House Slippers	500
3143	Men's Footwear, Except Athletic	500
3144	Women's Footwear, Except Athletic	500
3149	Footwear, Except Rubber, N.E.C.	500
3151	Leather Gloves and Mittens	500

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
3161	Luggage	500
3171	Women's Handbags and Purses	500
3172	Personal Leather Goods, Except Women's Handbags and Purses	500
3199	Leather Goods, N.E.C.	500
	MAJOR GROUP 32 — STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C.	750
3231	Glass Products, Made of Purchased Glass	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile	500
3253	Ceramic Wall and Floor Tile	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	750
3262	Vitreous China Table and Kitchen Articles	500
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles	500
3264	Porcelain Electrical Supplies	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick	500
3272	Concrete Products, Except Block and Brick	500
3273	Ready Mixed Concrete	500
3274	Lime	500
3275	Gypsum Products	1,000
3281	Cut Stone and Stone Products	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3295	Minerals and Earths, Ground or Otherwise Treated	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C.	500
	MAJOR GROUP 33 — PRIMARY METAL INDUSTRIES	
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills	1,000
3313	Electrometallurgical Products, Except Steel	750
3315	Steel Wiredrawing and Steel Nails and Spikes	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray and Ductile Iron Foundries	500
3322	Malleable Iron Foundries	500
3324	Steel Investment Foundries	500
3325	Steel Foundries, N.E.C.	500
3331	Primary Smelting and Refining of Copper	1,000
3334	Primary Production of Aluminum	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum	750
3341	Secondary Smelting and Refining of Nonferrous Metals	500
3351	Rolling, Drawing, and Extruding of Copper	750
3353	Aluminum Sheet, Plate, and Foil	750
3354	Aluminum Extruded Products	750
3355	Aluminum Rolling and Drawing, N.E.C.	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750
3357	Drawing and Insulating of Nonferrous Wire	1,000
3363	Aluminum Die-Castings	500
3364	Nonferrous Die-Castings, Except Aluminum	500
3365	Aluminum Foundries	500
3366	Copper Foundries	500
3369	Nonferrous Foundries, Except Aluminum and Copper	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C.	750
	MAJOR GROUP 34 — FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	
3411	Metal Cans	1,000
3412	Metal Shipping Barrels, Drums, Kegs, and Pails	500
3421	Cutlery	500
3423	Hand and Edge Tools, Except Machine Tools Handsaws	500
3425	Saw Blades and Handsaws	500

SIC		Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
3429	.....	Hardware, N.E.C.	500
3431	.....	Enameled Iron and Metal Sanitary Ware	750
3432	.....	Plumbing Fixture Fittings and Trim	500
3433	.....	Heating Equipment, Except Electric and Warm Air Furnaces	500
3441	.....	Fabricated Structural Metal	500
3442	.....	Metal Doors, Sash, Frames, Molding, and Trim	500
3443	.....	Fabricated Plate Work (Boiler Shops)	500
3444	.....	Sheet Metal Work	500
3446	.....	Architectural and Ornamental Metal Work	500
3448	.....	Prefabricated Metal Buildings and Components	500
3449	.....	Miscellaneous Structural Metal Work	500
3451	.....	Screw Machine Products	500
3452	.....	Bolts, Nuts, Screws, Rivets, and Washers	500
3462	.....	Iron and Steel Forgings	500
3463	.....	Nonferrous Forgings	500
3465	.....	Automotive Stampings	500
3466	.....	Crowns and Closures	500
3469	.....	Metal Stampings, N.E.C.	500
3471	.....	Electroplating, Plating, Polishing, Anodizing, and Coloring	500
3479	.....	Coating, Engraving, and Allied Services, N.E.C.	500
3482	.....	Small Arms Ammunition	1,000
3483	.....	Ammunition, Except for Small Arms	1,500
3484	.....	Small Arms	1,000
3489	.....	Ordnance and Accessories, N.E.C.	500
3491	.....	Industrial Valves	500
3492	.....	Fluid Power Valves and Hose Fittings	500
3493	.....	Steel Springs, Except Wire	500
3494	.....	Valves and Pipe Fittings, N.E.C.	500
3495	.....	Wire Springs	500
3496	.....	Miscellaneous Fabricated Wire Products	500
3497	.....	Metal Foil and Leaf	500
3498	.....	Fabricated Pipe and Pipe Fittings	500
3499	.....	Fabricated Metal Products, N.E.C.	500
		MAJOR GROUP 35 — INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT	
3511	.....	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	1,000
3519	.....	Internal Combustion Engines, N.E.C.	1,000
3523	.....	Farm Machinery and Equipment	500
3524	.....	Lawn and Garden Tractors and Home Lawn and Garden Equipment	500
3531	.....	Construction Machinery and Equipment	750
3532	.....	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment	500
3533	.....	Oil and Gas Field Machinery and Equipment	500
3534	.....	Elevators and Moving Stairways	500
3535	.....	Conveyors and Conveying Equipment	500
3536	.....	Overhead Traveling Cranes, Hoists, and Monorail Systems	500
3537	.....	Industrial Trucks, Tractors, Trailers, and Stackers	750
3541	.....	Machine Tools, Metal Cutting Types	500
3542	.....	Machine Tools, Metal Forming Types	500
3543	.....	Industrial Patterns	500
3544	.....	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds	500
3545	.....	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices	500
3546	.....	Power-Driven Handtools	500
3547	.....	Rolling Mill Machinery and Equipment	500
3548	.....	Electric and Gas Welding and Soldering Equipment	500
3549	.....	Metalworking Machinery, N.E.C.	500
3552	.....	Textile Machinery	500
3553	.....	Woodworking Machinery	500
3554	.....	Paper Industries Machinery	500
3555	.....	Printing Trades Machinery and Equipment	500
3556	.....	Food Products Machinery	500
3559	.....	Special Industry Machinery, N.E.C.	500
3561	.....	Pumps and Pumping Equipment	500
3562	.....	Ball and Roller Bearings	750
3563	.....	Air and Gas Compressors	500
3564	.....	Industrial and Commercial Fans and Blowers and Air Purification Equipment	500
3565	.....	Packaging Machinery	500
3566	.....	Speed Changers, Industrial High-Speed Drives, and Gears	500
3567	.....	Industrial Process Furnaces and Ovens	500
3568	.....	Mechanical Power Transmission Equipment, N.E.C.	500

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
3569	General Industrial Machinery and Equipment, N.E.C.	500
3571	Electronic Computers	1,000
3572	Computer Storage Devices	1,000
3575	Computer Terminals	1,000
3577	Computer Peripheral Equipment, N.E.C.	1,000
3578	Calculating and Accounting Machines, Except Electronic Computers	1,000
3579	Office Machines, N.E.C.	500
3581	Automatic Vending Machines	500
3582	Commercial Laundry, Drycleaning, and Pressing Machines	500
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment	750
3586	Measuring and Dispensing Pumps	500
3589	Service Industry Machinery, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves	500
3593	Fluid Power Cylinders and Actuators	500
3594	Fluid Power Pumps and Motors	500
3596	Scales and Balances, Except Laboratory	500
3599	Industrial and Commercial Machinery and Equipment, N.E.C.	500
	MAJOR GROUP 36 — ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS, EXCEPT COMPUTER EQUIPMENT	
3612	Power, Distribution, and Specialty Transformers	750
3613	Switchgear and Switchboard Apparatus	750
3621	Motors and Generators	1,000
3624	Carbon and Graphite Products	750
3625	Relays and Industrial Controls	750
3629	Electrical Industrial Apparatus, N.E.C.	500
3631	Household Cooking Equipment	750
3632	Household Refrigerators and Home and Farm Freezers	1,000
3633	Household Laundry Equipment	1,000
3634	Electric Housewares and Fans	750
3635	Household Vacuum Cleaners	750
3639	Household Appliances, N.E.C.	500
3641	Electric Lamp Bulbs and Tubes	1,000
3643	Current-Carrying Wiring Devices	500
3644	Noncurrent-Carrying Wiring Devices	500
3645	Residential Electric Lighting Fixtures	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures	500
3647	Vehicular Lighting Equipment	500
3648	Lighting Equipment, N.E.C.	500
3651	Household Audio and Video Equipment	750
3652	Phonograph Records and Prerecorded Audio Tapes and Disks	750
3661	Telephone and Telegraph Apparatus	1,000
3663	Radio and Television Broadcasting and Communications Equipment	750
3669	Communications Equipment, N.E.C.	750
3671	Electron Tubes	750
3672	Printed Circuit Boards	500
3674	Semiconductors and Related Devices	500
3675	Electronic Capacitors	500
3676	Electronic Resistors	500
3677	Electronic Coils, Transformers, and Other Inductors	500
3678	Electronic Connectors	500
3679	Electronic Components, N.E.C.	500
3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet	1,000
3694	Electrical Equipment for Internal Combustion Engines	750
3695	Magnetic and Optical Recording Media	1,000
3699	Electrical Machinery, Equipment, and Supplies	750
	MAJOR GROUP 37 — TRANSPORTATION EQUIPMENT	
3711	Motor Vehicles and Passenger Car Bodies	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicle Parts and Accessories	750
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C.	[9] 1,000
3731	Shipbuilding and Repair of Nuclear Propelled Ships	1,000
EXCEPT,	Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships	1,000

SIC		Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
		Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108th Meridian	1,000
		Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108th Meridian	1,000
3732		Boat Building and Repairing	500
3743		Railroad Equipment	1,000
3751		Motorcycles, Bicycles, and Parts	500
3761		Guided Missiles and Space Vehicles	1,000
3764		Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts	1,000
3769		Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000
3792		Travel Trailers and Campers	500
3795		Tanks and Tank Components	1,000
3799		Transportation Equipment, N.E.C.	500
		MAJOR GROUP 38 — MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL, AND OPTICAL GOODS; WATCHES AND CLOCKS	
3812		Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments	750
3821		Laboratory Apparatus and Furniture	500
3822		Automatic Controls for Regulating Residential and Commercial Environments and Appliances	500
3823		Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products	500
3824		Totalizing Fluid Meters and Counting Devices	500
3825		Instruments for Measuring and Testing of Electricity and Electrical Signals	500
3826		Laboratory Analytical Instruments	500
3827		Optical Instruments and Lenses	500
3829		Measuring and Controlling Devices, N.E.C.	500
3841		Surgical and Medical Instruments and Apparatus	500
3842		Orthopedic, Prosthetic, and Surgical Appliances and Supplies	500
3843		Dental Equipment and Supplies	500
3844		X-Ray Apparatus and Tubes and Related Irradiation Apparatus	500
3845		Electromedical and Electrotherapeutic Apparatus	500
3851		Ophthalmic Goods	500
3861		Photographic Equipment and Supplies	500
3873		Watches, Clocks, Clockwork Operated Devices, and Parts	500
		MAJOR GROUP 39 — MISCELLANEOUS MANUFACTURING INDUSTRIES	
3911		Jewelry, Precious Metal	500
3914		Silverware, Plated Ware, and Stainless Steel Ware	500
3915		Jewelers' Findings and Materials, and Lapidary Work	500
3931		Musical Instruments	500
3942		Dolls and Stuffed Toys	500
3944		Games, Toys, and Children's Vehicles, Except Dolls and Bicycles	500
3949		Sporting and Athletic Goods, N.E.C.	500
3951		Pens, Mechanical Pencils, and Parts	500
3952		Lead Pencils, Crayons, and Artists' Materials	500
3953		Marking Devices	500
3955		Carbon Paper and Inked Ribbons	500
3961		Costume Jewelry and Costume Novelties, Except Precious Metal	500
3965		Fasteners, Buttons, Needles, and Pins	500
3991		Brooms and Brushes	500
3993		Signs and Advertising Specialties	500
3995		Burial Caskets	500
3996		Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C.	750
3999		Manufacturing Industries, N.E.C.	500
		DIVISION E — TRANSPORTATION, COMMUNICATIONS ELECTRIC, GAS AND SANITARY SERVICES	
		MAJOR GROUP 40 — RAILROAD TRANSPORTATION	
4011		Railroads, Line-Haul Operating	1,500
4013		Railroad Switching and Terminal Establishments	500
		MAJOR GROUP 41 — LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION	
4111		Local and Suburban Transit	$5.0
4119		Local Passenger Transportation, N.E.C.	$5.0
4121		Taxicabs	$5.0

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
4131	Intercity and Rural Bus Transportation	$5.0
4141	Local Bus Charter Service	$5.0
4142	Bus Charter Service, Except Local	$5.0
4151	School Buses	$5.0
4173	Terminal and Service Facilities for Motor Vehicle Passenger Transportation	$5.0
	MAJOR GROUP 42 — MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	
4212	Local Trucking Without Storage	$18.5
EXCEPT,	Garbage and Refuse Collection, Without Disposal	$6.0
4213	Trucking, Except Local	$18.5
4214	Local Trucking With Storage	$18.5
4215	Courier Services, Except by Air	$18.5
4221	Farm Product Warehousing and Storage	$18.5
4222	Refrigerated Warehousing and Storage	$18.5
4225	General Warehousing and Storage	$18.5
4226	Special Warehousing and Storage, N.E.C.	$18.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	$5.0
	MAJOR GROUP 44 — WATER TRANSPORTATION	
4412	Deep Sea Foreign Transportation of Freight	500
4424	Deep Sea Domestic Transportation of Freight	500
4432	Freight Transportation on the Great Lakes—St. Lawrence Seaway	500
4449	Water Transportation of Freight, N.E.C.	500
4481	Deep Sea Transportation of Passengers, Except by Ferry	500
4482	Ferries	500
4489	Water Transportation of Passengers, N.E.C.	500
4491	Marine Cargo Handling	$18.5
4492	Towing and Tugboat Services	$5.0
4493	Marinas	$5.0
4499	Water Transportation Services, N.E.C.	$5.0
EXCEPT,	Offshore Marine Water Transportation Services	$20.5
	MAJOR GROUP 45 — TRANSPORTATION BY AIR	
4512	Air Transportation, Scheduled	1,500
4513	Air Courier Services	1,500
4522	Air Transportation, Nonscheduled	1,500
EXCEPT,	Offshore Marine Air Transportation Services	$20.5
4581	Airports, Flying Fields, and Airport Terminal Services	$5.0
	MAJOR GROUP 46 — PIPELINES, EXCEPT NATURAL GAS	
4612	Crude Petroleum Pipelines	1,500
4613	Refined Petroleum Pipelines	1,500
4619	Pipelines, N.E.C.	$25.0
	MAJOR GROUP 47 — TRANSPORTATION SERVICES	
4724	Travel Agencies	[6]$1.0
4725	Tour Operators	$5.0
4729	Arrangement of Passenger Transportation, N.E.C.	$5.0
4731	Arrangement of Transportation of Freight and Cargo	$18.5
4741	Rental of Railroad Cars	$5.0
4783	Packing and Crating	$18.5
4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation	$5.0
4789	Transportation Services, N.E.C.	$5.0
	MAJOR GROUP 48 — COMMUNICATIONS	
4812	Radiotelephone Communications	1,500
4813	Telephone Communications, Except Radiotelephone	1,500
4822	Telegraph and Other Message Communications	$5.0
4832	Radio Broadcasting Stations	$5.0
4833	Television Broadcasting Stations	$10.5
4841	Cable and Other Pay Television Services	$11.0
4899	Communications Services, N.E.C.	$11.0

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 49 — ELECTRIC, GAS, AND SANITARY SERVICES	
4911	Electric Services	4 million megawatt hrs.
4922	Natural Gas Transmission	$5.0
4923	Gas Transmission and Distribution	$5.0
4924	Natural Gas Distribution	500
4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution	$5.0
4931	Electric and Other Services Combined	$5.0
4932	Gas and Other Services Combined	$5.0
4939	Combination Utilities, N.E.C.	$5.0
4941	Water Supply	$5.0
4952	Sewerage Systems	$5.0
4953	Refuse Systems	$6.0
4959	Sanitary Services, N.E.C.	$5.0
4961	Steam and Air-Conditioning Supply	$9.0
4971	Irrigation Systems	$5.0
	DIVISION F — WHOLESALE TRADE	
	(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
	MAJOR GROUP 50 — WHOLESALE TRADE — DURABLE GOODS	
5012	Automobiles and Other Motor Vehicles	100
5013	Motor Vehicle Supplies and New Parts	100
5014	Tires and Tubes	100
5015	Motor Vehicle Parts, Used	100
5021	Furniture	100
5023	Homefurnishings	100
5031	Lumber, Plywood, Millwork, and Wood Panels	100
5032	Brick, Stone, and Related Construction Materials	100
5033	Roofing, Siding, and Insulation Materials	100
5039	Construction Materials, N.E.C.	100
5043	Photographic Equipment and Supplies	100
5044	Office Equipment	100
5045	Computers and Computer Peripheral Equipment and Software	100
5046	Commercial Equipment, N.E.C.	100
5047	Medical, Dental, and Hospital Equipment and Supplies	100
5048	Ophthalmic Goods	100
5049	Professional Equipment and Supplies, N.E.C.	100
5051	Metals Service Centers and Offices	100
5052	Coal and Other Minerals and Ores	100
5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials	100
5064	Electrical Appliances, Television and Radio Sets	100
5065	Electronic Parts and Equipment, N.E.C.	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	100
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies	100
5078	Refrigeration Equipment and Supplies	100
5082	Construction and Mining (Except Petroleum) Machinery and Equipment	100
5083	Farm and Garden Machinery and Equipment	100
5084	Industrial Machinery and Equipment	100
5085	Industrial Supplies	100
5087	Service Establishment Equipment and Supplies	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles	100
5091	Sporting and Recreational Goods and Supplies	100
5092	Toys and Hobby Goods and Supplies	100
5093	Scrap and Waste Materials	100
5094	Jewelry, Watches, Precious Stones, and Precious Metals	100
5099	Durable Goods, N.E.C.	100
	MAJOR GROUP 51 — WHOLESALE TRADE — NONDURABLE GOODS	
5111	Printing and Writing Paper	100
5112	Stationery and Office Supplies	100

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
5113	Industrial and Personal Service Paper	100
5122	Drugs, Drug Proprietaries, and Druggists' Sundries	100
5131	Piece Goods, Notions, and Other Dry Goods	100
5136	Men's and Boys' Clothing and Furnishings	100
5137	Women's, Children's, and Infants' Clothing and Accessories	100
5139	Footwear	100
5141	Groceries, General Line	100
5142	Packaged Frozen Foods	100
5143	Dairy Products, Except Dried or Canned	100
5144	Poultry and Poultry Products	100
5145	Confectionery	100
5146	Fish and Seafood	100
5147	Meats and Meat Products	100
5148	Fresh Fruits and Vegetables	100
5149	Groceries and Related Products, N.E.C.	100
5153	Grain and Field Beans	100
5154	Livestock	100
5159	Farm-Product Raw Materials, N.E.C.	100
5162	Plastics Materials and Basic Forms and Shapes	100
5169	Chemical and Allied Products, N.E.C.	100
5171	Petroleum Bulk Stations and Terminals	100
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	100
5181	Beer and Ale	100
5182	Wine and Distilled Alcoholic Beverages	100
5191	Farm Supplies	100
5192	Books, Periodicals, and Newspapers	100
5193	Flowers, Nursery Stock, and Florists' Supplies	100
5194	Tobacco and Tobacco Products	100
5198	Paints, Varnishes, and Supplies	100
5199	Nondurable Goods, N.E.C.	100

DIVISION G — RETAIL TRADE

(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)

MAJOR GROUP 52 — BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS

5211	Lumber and Other Building Materials Dealers	$5.0
5231	Paint, Glass, and Wallpaper Stores	$5.0
5251	Hardware Stores	$5.0
5261	Retail Nurseries, Lawn and Garden Supply Stores	$5.0
5271	Mobile Home Dealers	$9.5

MAJOR GROUP 53 — GENERAL MERCHANDISE STORES

5311	Department Stores	$20.0
5331	Variety Stores	$8.0
5399	Miscellaneous General Merchandise Stores	$5.0

MAJOR GROUP 54 — FOOD STORES

5411	Grocery Stores	$20.0
5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners	$5.0
5431	Fruit and Vegetable Markets	$5.0
5441	Candy, Nut, and Confectionery Stores	$5.0
5451	Dairy Products Stores	$5.0
5461	Retail Bakeries	$5.0
5499	Miscellaneous Food Stores	$5.0

MAJOR GROUP 55 — AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS

5511	Motor Vehicle Dealers (New and Used)	$21.0
5521	Motor Vehicle Dealers (Used Only)	$17.0
5531	Auto and Home Supply Stores	$5.0
5541	Gasoline Service Stations	$6.5
5551	Boat Dealers	$5.0
5561	Recreational Vehicle Dealers	$5.0

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
5571	Motorcycle Dealers	$5.0
5599	Automotive Dealers, N.E.C.	$5.0
EXCEPT,	Aircraft Dealers, Retail	$7.5
	MAJOR GROUP 56 — APPAREL AND ACCESSORY STORES	
5611	Men's and Boys' Clothing and Accessory Stores	$6.5
5621	Women's Clothing Stores	$6.5
5632	Women's Accessory and Specialty Stores	$5.0
5641	Children's and Infants' Wear Stores	$5.0
5651	Family Clothing Stores	$6.5
5661	Shoe Stores	$6.5
5699	Miscellaneous Apparel and Accessory Stores	$5.0
	MAJOR GROUP 57 — HOME FURNITURE, FURNISHINGS, AND EQUIPMENT STORES	
5712	Furniture Stores	$5.0
5713	Floor Covering Stores	$5.0
5714	Drapery, Curtain, and Upholstery Stores	$5.0
5719	Miscellaneous Homefurnishings Stores	$5.0
5722	Household Appliance Stores	$6.5
5731	Radio, Television, and Consumer Electronics Stores	$6.5
5734	Computer and Computer Software Stores	$6.5
5735	Record and Prerecorded Tape Stores	$5.0
5736	Musical Instrument Stores	$5.0
	MAJOR GROUP 58 — EATING AND DRINKING PLACES	
5812	Eating Places	$5.0
EXCEPT,	Food Service, Institutional	$15.0
5813	Drinking Places (Alcoholic Beverages)	$5.0
	MAJOR GROUP 59 — MISCELLANEOUS RETAIL	
5912	Drug Stores and Proprietary Stores	$5.0
5921	Liquor Stores	$5.0
5932	Used Merchandise Stores	$5.0
5941	Sporting Goods Stores and Bicycle Shops	$5.0
5942	Book Stores	$5.0
5943	Stationery Stores	$5.0
5944	Jewelry Stores	$5.0
5945	Hobby, Toy, and Game Shops	$5.0
5946	Camera and Photographic Supply Stores	$5.0
5947	Gift, Novelty, and Souvenir Shops	$5.0
5948	Luggage and Leather Goods Stores	$5.0
5949	Sewing, Needlework, and Piece Goods Stores	$5.0
5961	Catalog and Mail-Order Houses	$18.5
5962	Automatic Merchandising Machine Operators	$5.0
5963	Direct Selling Establishments	$5.0
5983	Fuel Oil Dealers	$9.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	$5.0
5989	Fuel Dealers, N.E.C.	$5.0
5992	Florists	$5.0
5993	Tobacco Stores and Stands	$5.0
5994	News Dealers and Newsstands	$5.0
5995	Optical Goods Stores	$5.0
5999	Miscellaneous Retail Stores, N.E.C.	$5.0
	DIVISION H — FINANCE, INSURANCE, AND REAL ESTATE	
	MAJOR 60 — DEPOSITORY INSTITUTIONS	
6021	National Commercial Banks	$100 million in Assets [7]
6022	State Commercial Banks	$100 million in Assets [7]
6029	Commercial Banks, N.E.C.	$100 million in Assets [7]

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
6035	Savings Institutions, Federally Chartered	$100 million in Assets [7]
6036	Savings Institutions, Not Federally Chartered	$100 million in Assets [7]
6061	Credit Unions, Federally Chartered	$100 million in Assets [7]
6062	Credit Unions, Not Federally Chartered	$100 million in Assets [7]
6081	Branches and Agencies of Foreign Banks	$100 million in Assets [7]
6082	Foreign Trade and International Banking Institutions	$100 million in Assets [7]
6091	Deposit Trust Facilities	$5.0
6099	Functions Related to Depository Banking, N.E.C.	$5.0
	MAJOR GROUP 61 — NONDEPOSITORY INSTITUTION	
6141	Personal Credit Institutions	$5.0
6153	Short-Term Business Credit Institutions, Except Agriculture	$5.0
6159	Miscellaneous Business Credit Institutions	$5.0
6162	Mortgage Bankers and Loan Correspondents	$5.0
6163	Loan Brokers	$5.0
	MAJOR GROUP 62 — SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES AND SERVICES	
6211	Security Brokers, Dealers and Flotation Companies	$5.0
6221	Commodity Contracts Brokers and Dealers	$5.0
6231	Security and Commodity Exchanges	$5.0
6282	Investment Advice	$5.0
6289	Services Allied With the Exchange of Securities or Commodities, N.E.C.	$5.0
	MAJOR GROUP 63 — INSURANCE CARRIERS	
6311	Life Insurance	$5.0
6321	Accident and Health Insurance	$5.0
6324	Hospital and Medical Service Plans	$5.0
6331	Fire, Marine, and Casualty Insurance	1,500
6351	Surety Insurance	$5.0
6361	Title Insurance	$5.0
6371	Pension, Health and Welfare Funds	$5.0
6399	Insurance Carriers, N.E.C.	$5.0
	MAJOR GROUP 64 — INSURANCE AGENTS, BROKERS, AND SERVICE	
6411	Insurance Agents, Brokers, and Service	$5.0
	MAJOR GROUP 65 — REAL ESTATE	
6512	Operators of Nonresidential Buildings	$5.0
6513	Operators of Apartment Buildings	$5.0
6514	Operators of Dwellings Other Than Apartment Buildings	$5.0
6515	Operators of Residential Mobile Home Sites	$5.0
EXCEPT,	Leasing of Building Space to Federal Government by Owners	[8] $15.0
6517	Lessors of Railroad Property	$5.0
6519	Lessors of Real Property, N.E.C.	$5.0
6531	Real Estate Agents and Managers	[8] $1.5
6541	Title Abstract Offices	$5.0
6552	Land Subdividers and Developers, Except Cemetaries	$5.0
6553	Cemetery Subdividers and Developers	$5.0
	MAJOR GROUP 67 — HOLDING AND OTHER INVESTMENT OFFICES	
6712	Offices of Bank Holding Companies	$5.0
6719	Offices of Holding Companies, N.E.C.	$5.0
6722	Management Investment Offices, Open-End	$5.0
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices	$5.0
6732	Educational, Religious, and Charitable Trusts	$5.0
6733	Trusts, Except Educational, Religious, and Charitable	$5.0
6792	Oil Royalty Traders	$5.0
6794	Patent Owners and Lessors	$5.0

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
6798	Real Estate Investment Trusts	$5.0
6799	Investors, N.E.C.	$5.0
	DIVISION I — SERVICES	
	MAJOR GROUP 70 — HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES	
7011	Hotels and Motels	$5.0
7021	Rooming and Boarding Houses	$5.0
7032	Sporting and Recreational Camps	$5.0
7033	Recreational Vehicle Parks and Campsites	$5.0
7041	Organization Hotels and Lodging Houses, on Membership Basis	$5.0
	MAJOR GROUP 72 — PERSONAL SERVICES	
7211	Power Laundries, Family and Commercial	$10.5
7212	Garment Pressing, and Agents for Laundries and Drycleaners	$5.0
7213	Linen Supply	$10.5
7215	Coin-Operated Laundries and Drycleaning	$5.0
7216	Drycleaning Plants, Except Rug Cleaning	$3.5
7217	Carpet and Upholstery Cleaning	$3.5
7218	Industrial Launderers	$10.5
7219	Laundry and Garment Services, N.E.C.	$5.0
7221	Photographic Studios, Portrait	$5.0
7231	Beauty Shops	$5.0
7241	Barber Shops	$5.0
7251	Shoe Repair Shops and Shoeshine Parlors	$5.0
7261	Funeral Service and Crematories	$5.0
7291	Tax Return Preparation Services	$5.0
7299	Miscellaneous Personal Services, N.E.C.	$5.0
	MAJOR GROUP 73 — BUSINESS SERVICES	
7311	Advertising Agencies	[8] $5.0
7312	Outdoor Advertising Services	[6] $5.0
7313	Radio, Television, and Publishers' Advertising Representatives	[6] $5.0
7319	Advertising, N.E.C.	[6] $5.0
7322	Adjustment and Collection Services	$5.0
7323	Credit Reporting Services	$5.0
7331	Direct Mail Advertising Services	$5.0
7334	Photocopying and Duplicating Services	$5.0
7335	Commercial Photography	$5.0
7336	Commercial Art and Graphic Design	$5.0
7338	Secretarial and Court Reporting Services	$5.0
7342	Disinfecting and Pest Control Services	$5.0
7349	Building Cleaning and Maintenance Services, N.E.C.	$12.0
7352	Medical Equipment Rental and Leasing	$5.0
7353	Heavy Construction Equipment Rental and Leasing	$5.0
7359	Equipment Rental and Leasing, N.E.C.	$5.0
7361	Employment Agencies	$5.0
7363	Help Supply Services	$5.0
7371	Computer Programming Services	$18.0
7372	Prepackaged Software	$18.0
7373	Computer Integrated Systems Design	$18.0
7374	Computer Processing and Data Preparation and Processing Services	$18.0
7375	Information Retrieval Services	$18.0
7376	Computer Facilities Management Services	$18.0
7377	Computer Rental and Leasing	$18.0
7378	Computer Maintenance and Repair	$18.0
7379	Computer Related Services, N.E.C.	$18.0
7381	Detective, Guard, and Armored Car Services	$9.0
7382	Security Systems Services	$9.0
7383	News Syndicates	$5.0
7384	Photofinishing Laboratories	$5.0
7389	Business Services, N.E.C.	$5.0
EXCEPT,	Map Drafting Services, Mapmaking (Including Aerial) and Photogrammetric Mapping Services	$4.0

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 75 — AUTOMOTIVE REPAIR, SERVICES, AND PARKING	
7513	Truck Rental and Leasing, Without Drivers	$18.5
7514	Passenger Car Rental	$18.5
7515	Passenger Car Leasing	$18.5
7519	Utility Trailer and Recreational Vehicle Rental	$5.0
7521	Automobile Parking	$5.0
7532	Top, Body, and Upholstery Repair Shops and Paint Shops	$5.0
7533	Automotive Exhaust System Repair Shops	$5.0
7534	Tire Retreading and Repair Shops	$10.5
7536	Automotive Glass Replacement Shops	$5.0
7537	Automotive Transmission Repair Shops	$5.0
7538	General Automotive Repair Shops	$5.0
7539	Automotive Repair Shops, N.E.C.	$5.0
7542	Carwashes	$5.0
7549	Automotive Services, Except Repair and Carwashes	$5.0
	MAJOR GROUP 76 — MISCELLANEOUS REPAIR SERVICES	
7622	Radio and Television Repair Shops	$5.0
7623	Refrigeration and Air-Conditioning Service and Repair Shops	$5.0
7629	Electrical and Electronic Repair Shops, N.E.C.	$5.0
7631	Watch, Clock, and Jewelry Repair	$5.0
7641	Reupholstery and Furniture Repair	$5.0
7692	Welding Repair	$5.0
7694	Armature Rewinding Shops	$5.0
7699	Repair Shops and Related Services, N.E.C.	[9] $5.0
	MAJOR GROUP 78 — MOTION PICTURES	
7812	Motion Picture and Video Tape Production	$21.5
7819	Services Allied to Motion Picture Production	$21.5
7822	Motion Picture and Video Tape Distribution	$21.5
7829	Services Allied to Motion Picture Distribution	$5.0
7832	Motion Picture Theaters, Except Drive-In	$5.0
7833	Drive-In Motion Picture Theaters	$5.0
7841	Video Tape Rental	$5.0
	MAJOR GROUP 79 — AMUSEMENT AND RECREATION SERVICES	
7911	Dance Studios, Schools, and Halls	$5.0
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services	$5.0
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	$5.0
7933	Bowling Centers	$5.0
7941	Professional Sports Clubs and Promoters	$5.0
7948	Racing, Including Track Operation	$5.0
7991	Physical Fitness Facilities	$5.0
7993	Coin-Operated Amusement Devices	$5.0
7996	Amusement Parks	$5.0
7997	Membership Sports and Recreation Clubs	$5.0
7999	Amusement and Recreation Services, N.E.C.	$5.0
	MAJOR GROUP 80 — HEALTH SERVICES	
8011	Offices and Clinics of Doctors of Medicine	$5.0
8021	Offices and Clinics of Dentists	$5.0
8031	Offices and Clinics of Doctors of Osteopathy	$5.0
8041	Offices and Clinics of Chiropractors	$5.0
8042	Offices and Clinics of Optometrists	$5.0
8043	Offices and Clinics of Podiatrists	$5.0
8049	Offices and Clinics of Health Practitioners, N.E.C.	$5.0
8051	Skilled Nursing Care Facilities	$5.0
8052	Intermediate Care Facilities	$5.0
8059	Nursing and Personal Care Facilities, N.E.C.	$5.0
8062	General Medical and Surgical Hospitals	$5.0
8063	Psychiatric Hospitals	$5.0
8069	Specialty Hospitals, Except Psychiatric	$5.0
8071	Medical Laboratories	$5.0
8072	Dental Laboratories	$5.0
8082	Home Health Care Services	$5.0

SIC
8092
8093
8099
8111
8211
8221
8222
8231
8243
8244
8249
8299
EXCEPT,
8322
8331
8351
8361
8399
8412
8422
8611
8621
8631
8641
8651
8661
8699
8711
EXCEPT,
EXCEPT,
EXCEPT,
8712
8713
8721
8731
EXCEPT,
EXCEPT,
EXCEPT,
8732
8733
8734
8741
EXCEPT,
8742
8743
8744
EXCEPT,
EXCEPT,
8748

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
8092	Kidney Dialysis Centers	$5.0
8093	Specialty Outpatient Facilities, N.E.C.	$5.0
8099	Health and Allied Services, N.E.C.	$5.0
	MAJOR GROUP 81 — LEGAL SERVICES	
8111	Legal Services	$5.0
	MAJOR GROUP 82 — EDUCATIONAL SERVICES	
8211	Elementary and Secondary Schools	$5.0
8221	Colleges, Universities, and Professional Schools	$5.0
8222	Junior Colleges and Technical Institutes	$5.0
8231	Libraries	$5.0
8243	Data Processing Schools	$5.0
8244	Business and Secretarial Schools	$5.0
8249	Vocational Schools, N.E.C.	$5.0
8299	Schools and Educational Services, N.E.C.	$5.0
EXCEPT,	Flight Training Services	$18.5
	MAJOR GROUP 83 — SOCIAL SERVICES	
8322	Individual and Family Social Services	$5.0
8331	Job Training and Vocational Rehabilitation Services	$5.0
8351	Child Day Care Services	$5.0
8361	Residential Care	$5.0
8399	Social Services, N.E.C.	$5.0
	MAJOR GROUP 84 — MUSEUMS, ART GALLERIES, AND BOTANICAL AND ZOOLOGICAL GARDENS	
8412	Museums and Art Galleries	$5.0
8422	Arboreta and Botanical or Zoological Gardens	$5.0
	MAJOR GROUP 86 — MEMBERSHIP ORGANIZATIONS	
8611	Business Associations	$5.0
8621	Professional Membership Organizations	$5.0
8631	Labor Unions and Similar Labor Organizations	$5.0
8641	Civic, Social, and Fraternal Associations	$5.0
8651	Political Organizations	$5.0
8661	Religious Organizations	$5.0
8699	Membership Organizations, N.E.C.	$5.0
	MAJOR GROUP 87 — ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED SERVICES	
8711	Engineering Services	$4.0
EXCEPT,	Military and Aerospace Equipment and Military Weapons	$20.0
EXCEPT,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	$20.0
EXCEPT,	Marine Engineering and Naval Architecture	$13.5
8712	Architectural Services (Other than Naval)	$4.0
8713	Surveying Services	$4.0
8721	Accounting, Auditing, and Bookkeeping Services	$6.0
8731	Commercial Physical and Biological Research	[10] 500
EXCEPT,	Aircraft	1,500
EXCEPT,	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts	1,000
EXCEPT,	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts	1,000
8732	Commercial Economic, Sociological, and Educational Research	$5.0
8733	Noncommercial Research Organizations	$5.0
8734	Testing Laboratories	$5.0
8741	Management Services	$5.0
EXCEPT,	Conference Management Services	[6] $5.0
8742	Management Consulting Services	$5.0
8743	Public Relations Services	$5.0
8744	Facilities Support Management Services	[11] $5.0
EXCEPT,	Base Maintenance	[12] $20.0
EXCEPT,	Environmental Remediation Services	[13] 500
8748	Business Consulting Services, N.E.C.	$5.0

SIC	Size standards by SIC industry description (N.E.C. = not elsewhere classified) (see endnotes, where indicated)	Size standards in number of employees or millions of dollars
	MAJOR GROUP 89 — SERVICES, NOT ELSEWHERE CLASSIFIED	
8999	Services, N.E.C.	$5.0
	DIVISION K — NONCLASSIFIABLE ESTABLISHMENTS	
9999	Nonclassifiable Establishments	$5.0

Endnotes

1. SIC code 1629—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

2. SIC Division D—Manufacturing: For rebuilding machinery or equipment on a factory basis, or equivalent, use the SIC code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a "manufacturer" although the activities may be classified under a manufacturing SIC code. Ordinary repair services or preservation are not considered rebuilding.

3. SIC code 2033: For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in § 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

4. SIC code 2911: For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

5. SIC code 3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(1) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(2) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. SIC codes 4724, 6531, 7311, 7312, 7313, 7319, and 8741 (part): As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

7. A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. *Assets* for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

8. SIC code 6515: Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

9. SIC codes 7699 and 3728: Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under SIC code 3728.

10. SIC code 8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(1) Research and Development means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(2) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

(3) Research and development for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

11. Facilities Management, a component of SIC code 8744, includes establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, or use of information systems (not programming).

12. SIC code 8744

(1) If one of the activities of base maintenance, as defined in paragraph 2) of this endnote, can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(2) "Base Maintenance" requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate SIC code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as "Base Maintenance."

13. SIC code 8744

(1) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated

materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(2) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate SIC codes or, in some instances (e.g., engineering), smaller sub-components of SIC codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate SIC code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

Dated: June 16, 1999.

Gary M. Jackson,

Assistant Administrator for Size Standards.

[FR Doc. 99–17003 Filed 8–17–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCGD08–99–050]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: LMRWSAC will meet on Wednesday, September 8, 1999, from 9 a.m. to 12 noon. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before August 31, 1999. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before August 31, 1999.

ADDRESSES: LMRWSAC will meet in the basement conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA. Send written material and requests to make oral presentations to M. M. Ledet, Committee Administrator, c/o Commander, Eighth Coast Guard District (m), 501 Magazine Street, New Orleans, LA 70130–3396. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact M. M. Ledet, Committee Administrator, telephone (504) 589–6271, Fax (504) 589–4999.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

(1) Introduction of committee members.
(2) Remarks by RADM P. Pluta, Committee Sponsor.
(3) Approval of the March 31, 1999 minutes.
(4) Old Business:
a. VTS update.
b. Bridge Clearance Gauge.
c. South Pass Dredging.
d. Southwest Pass Wingdam.
e. Soft Dikes Working Group Report.
(5) New Business:
(6) Next meeting.
(7) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than August 31, 1999. Written material for distribution at the meeting should reach the Coast Guard no later than August 31, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 28 copies to the Committee Administrator at the location indicated under Addresses no later than August 31, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under **ADDRESSES** as soon as possible.

Dated: July 29, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–21377 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–27]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 8, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. __, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 12, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29462.
Petitioner: Dallas Airmotive, Inc.
Section of the FAR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought: To allow DAI to issue export airworthiness approvals for Class II products that are located but not manufactured in the United States.

Docket No.: 29539.
Petitioner: City College of San Francisco.
Section of the FAR Affected: 14 CFR 65.3.
Description of Relief Sought: To permit mechanic certificats to be issued under subpart D of part 65, outside the United States, to persons trained by CCSF who are neither U.S. citizens nor resident aliens when the certificate is not needed for the operation or continued airworthiness of U.S.-registered aircraft.

Dispositions of Petitions

Docket No.: 18881.
Petitioner: International Aerobatic Club.
Sections of the FAR Affected: 14 CFR 91.151(a)(1).
Description of Relief Sought/ Disposition: To permit IAC and IAC members participating in IAC-sponsored and/or sanctioned aerobatic competitions conducted in accordance with IAC Official Contest Rules, to begin flight in an airplane, considering local conditions effecting fuel consumption, when there is enough fuel on board the aircraft to take off, complete the planned flight maneuvers, and land at the same airport with enough fuel to fly for an additional 10 minutes at normal cruising speed.
Grant, 07/15/99, Exemption No. 5745C.

Docket No.: 26160.
Petitioner: Massachusetts Institute of Technology.
Section of the FAR Affected: 14 CFR 91.319(c).
Description of Relief Sought/ Disposition: To permit MIT to operate certain multiengine and single-engine aircraft certficated in the experimental category, over densely populated areas or in congested airways.
Grant, 7/15/99, Exemption No. 5210E.

Docket No.: 26608.
Petitioner: ARCO/BPX Aviation and Alaska Airlines.
Section of the FAR Affected: 14 CFR 43.3(a), 43.7(a), 91.407(a)(2), 91.417(a)(2)(v), and 121.379.
Description of Relief Sought/ Disposition: To permit (1) ARCO Alaska and BPX to use ASA's approved maintenance recordkeeping procedures for Boeing 737–200 aircraft leased and operated by ARCO Alaska and BPX and (2) ASA to perform maintenance, preventative maintenance, alterations, inspections, major repairs, and major alterations, and subsequently return to service Boeing 737–200 aircraft leased and operated by ARCO Alaska and BPX in accordance with ASA's continuous airworthiness maintenance program and maintenance procedures.
Grant, 6/30/99, Exemption No. 5667C.

Docket No.: 27143.
Petitioner: Columbia Helicopters, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit CHI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft.
Grant, 6/18/99, Exemption No. 6905.

Docket No.: 27306.
Petitioner: NockAir Helicopter, Inc.
Section of the FAR Affected: 14 CFR 133.43(a).
Description of Relief Sought/ Disposition: To permit NockAir to use its helicopters to perform aerial trapeze acts without using an approved external-load attachment or quick-release device for carrying a person or trapeze bar.
Grant, 7/15/99, Exemption No. 6685A.

Docket No.: 27601.
Petitioner: Austral Lineas Aereas.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit ALA to use the calibration standards of the Instituto Nacional de Tecnologia Industrial (INTI), Argentina's national standards organization, for the calibration of standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards (NBS), to test its inspection and test equipment.
Grant, 6/30/99, Exemption No. 6651A.

Docket No.: 28834.
Petitioner: LifePort, Inc.
Section of the FAR Affected: 14 CFR 25.562 and 25.785(b).
Description of Relief Sought/ Disposition: To permit certification of medical stretchers for transport of persons whose medical condition dictates such accommodations. This exemption is for an installation on a Dassault Model Falcon 2000 airplane.
Grant, 7/13/99, Exemption No. 69–20.

Docket No.: 28884.
Petitioner: Aero Sky.
Section of the FAR Affected: 14 CFR 145.37(b).
Description of Relief Sought/ Disposition: To permit Aero Sky to continue to hold a FAA repair station certificate (certificate No. KQ7R556N) without having suitable permanent housing facilities for at least one of the heaviest aircraft within the weight class of the rating it holds.
Grant, 7/15/99, Exemption No. 6673A.

Docket No.: 29174.
Petitioner: Hawaii Helicopters, Inc.
Section of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit HHI to operate its Sikorsky S–61N (U.S. Registration No. N29111, Serial No. 61711) and its Sikorsky S–76A (Canadian Registration No. C–GHJG, Serial No. 760015) helicopters under part 135 without an approved DFDR.
Grant, 7/15/99, Exemption No. 6789A.

Docket No.: 29654.
Petitioner: Michigan City Aviators-EAA chapter 966.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.
Description of Relief Sought/ Disposition: To allow Michigan City Aviators-EAA chapter 966 to conduct local sightseeing flights at an airport in the Michigan City, Indiana, area for its annual pancake breakfast event on July 18, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 7/14/99, Exemption No. 69222.

[FR Doc. 99–21457 Filed 8–17–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Improvement Program Grant Assurances; Proposed Modifications and Opportunity to Comment

AGENCY: Federal Aviation Administration (FAA), US DOT.
ACTION: Notice of modification of Airport Improvement Program grant assurances and of the opportunity to comment.

SUMMARY: The FAA proposes to modify the standard grant assurances that are required of a sponsor before receiving a grant under the Airport Improvement Program (AIP). Pursuant to applicable law, the Secretary of Transportation is required to provide notice in the **Federal Register** of, and to provide an opportunity for public comment on, proposals to modify the assurances and on proposals for additional AIP assurances.

Modifications to the AIP grant assurances are being made for three reasons: To address the public comments received subsequent to the last publication of the assurances on June 2, 1997; to reflect new regulatory and Office of Management and Budget requirements incorporated in Assurance 1; and to more accurately reflect applicable statutory requirements.

For ease of reading, Title 49, Subtitle VII, as amended by the 1996 Act, will be cited throughout the remainder of this notice as Title 49, U.S.C., as amended. In the actual assurance, however, the reference further specifies Subtitle VII.

DATES: These modifications to the Grant Assurances will be effective September 1, 1999. Comments, however, are invited. Comments must be submitted at or before 30 calendar days after publication in the **Federal Register**. Any necessary or appropriate revision to the assurances resulting from the comments received will be adopted as of the date of a subsequent publication in the **Federal Register**.

ADDRESSES: Comments may be delivered or mailed to the FAA, Airports Financial Assistance Division, APP–500; Room 619, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. James Borsari, Manager, Program Guidance Branch, Airports Financial Assistance Division, APP 500, Room 619, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8822.

SUPPLEMENTARY INFORMATION: The Secretary must receive certain assurances from a sponsor (applicant) seeking financial assistance for airport planning, airport development, noise compatibility planning or noise mitigation under Title 49, U.S.C., as amended. These assurances are submitted as part of a sponsor's application for Federal assistance and are incorporated into all grant agreements. As need dictates, these assurances are modified to reflect new Federal requirements. Notice of such proposed modifications is published in the **Federal Register** and an opportunity is provided for comment by the public.

The current assurances were published on February 3, 1988, at 53 FR 3104 and amended on September 6, 1988, at FR 34361, on August 29, 1989, at 54 FR 35748 on June 10, 1994 at 59 FR 30076, on January 4, 1995, at 60 FR 521, and on June 2, 1997, at 62 FR 29761.

Discussion of Comments Received in Response to the Notice of Modification of Airport Improvement Grant Assurances

On June 2, 1997, the Federal Aviation Administration published in the **Federal Register** (62 FR 29761) modifications to the Airport Improvement Program grant assurances. The agency asked for public comment by July 2, 1997.

The FAA received a total of four comments on the notice of proposed modifications of the grant assurances. Only one of the four comments was received prior to the close of the comment period on July 2. However, because only a few comments were received and this process is not a formal rulemaking procedure, the FAA has decided to consider all comments. Comments were received from Airports Council International, North America (ACI–NA); the City of Houston Airport System, Houston, Texas; the City of Mesa, Arizona; and the Perry County Airport Authority, Tell City, Indiana.

ACI–NA recommended that Assurance 3, Sponsor Fund Availability, be modified to read "has or will have sufficient funds". The ACI–NA recommendation would allow the sponsor more time to accumulate the local matching share for Airport Improvement Program (AIP) projects. This would give the airport sponsor until the date of the grant award to have local funds available. The statute requires airport sponsors to have sufficient funds available at the time the grant application is submitted. Title 49 Section 47106(a)(3) states, "The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter". We believe that it is reasonable for an airport to affirm the availability of funds at the time of grant request. Therefore, the final notice retains the existing language in the assurance.

The City of Mesa, Arizona, requested clarification about the need for public hearings required by Assurance 9, Public Hearings. The City of Mesa wanted to know what constitutes a major runway extension, and how much of an increase in either runway length or runway weight bearing capacity requires a public hearing. Assurance 9 requires that the sponsor conduct a public hearing for projects involving the location of an airport, an airport runway, or a major runway extension. The assurance, as currently written, satisfies the provisions of Title 49 United States Code, Section 47106(c)(1) regarding environmental requirements, and does not need to be revised. Section 1506.6 of the Council on Environmental Quality (CEQ) Regulations sets forth procedures for public involvement in projects affecting the environment. FAA Order 5050.4A describes environmental requirements in detail, including the definition of a major runway extension. These orders should be consulted regarding public hearing requirements.

The City of Houston, Texas expressed concerns about the change in language of Assurance 22(a), Economic Non-Discrimination, effective June 2, 1997. The City of Houston maintained that the change in language may encourage more complaints being filed against the airport operator for violation of the Assurance 22(a). As an example, the city cited situations in which individuals have attempted to fuel general aviation aircraft from the back of pick-up trucks while asserting their right to do so under Assurance 22(a). Houston suggested that the assurance be revised to require all parties engaging in aeronautical activity be qualified and meet applicable safety standards.

The purpose of the revision to Assurance 22(a) was to clarify the assurance's application to the full range of aeronautical activities. The comment has caused the FAA to review the new wording of the assurance and the FAA believes that the new wording is not clear. We have decided to change the language to eliminate any confusion. The revised assurances will read as follows: "It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport." Furthermore, the FAA believes that an airport sponsor's minimum standards should reflect local safety requirements and quality of service requirements so long as these are reasonable, relevant to the activity, and applied without unjust discrimination.

The typographical error in Assurance 22(b)(2), Economic Non-Discrimination, has been noted and corrected. The sentence will be changed to read,

"charge reasonable, and not unjustly discriminatory, prices . . ."

ACI–NA also requested that Assurance 26, Reports and Inspections, be revised to permit airports to file their intergovernmental transfer reports as soon as practicable instead of leaving the filing deadline to the Secretary's discretion. Title 49 Section 47107(k) requires that the Secretary provide Congress with an annual summary of the reports submitted under 47107(a)(19). The ACI–NA proposed change would pose problems for the FAA in fulfilling its reporting requirements to Congress. Establishing the filing deadline at the Secretary's discretion will provide the flexibility for the Agency to collect the reports while assisting those airports who need more time to prepare their financial statements. FAA has not been convinced that the filing requirement of Assurance 26 needs to be changed.

ACI–NA suggested that Assurance 27, Use by Government Aircraft, be revised to redefine the term aircraft movement as both a landing and a takeoff. This would conform to standard industry usage. For the purpose of Assurance 27, the FAA has defined an aircraft movement as a landing. This methodology has been in place for many years. Changing the definition to include takeoffs would require the FAA to assess the number of movements in light of this change and the FAA believes that the change would not have an overall benefit. Therefore, the FAA retains the original language of the assurance.

ACI–NA also maintained that Assurance 31(a), Disposal of Land, is too restrictive regarding the disposal of land originally purchased for noise mitigation purposes. The existing assurance requires the sponsor to dispose of the land at fair market value when it is no longer needed for noise mitigation purposes. ACI–NA suggests that the assurance be revised to permit the airport to pursue land disposal as part of a commercial and development program. Such development programs tend to offer a higher financial contribution than fair market value. The existing assurance conforms to the statutory requirements of 49 U.S.C. 47107(c)(2)(A)(i), which directs an airport sponsor to dispose of the land as soon as practicable after the land is no longer needed for noise mitigation. The change proposed by ACI–NA is not consistent with this statutory provision. Therefore, the FAA will retain the original language of the assurance.

Perry County Airport Authority, Tell City, Indiana suggested changes to the Airport Improvement Program (AIP) priority system to consider the off airport economic benefits of AIP grant funded projects. Since revisions to the AIP grant assurances, and not the priority system, are the subject of this notice, no changes to the assurances are warranted to address this comment.

Discussion of Modifications

FAA uses three separate sets of standard assurances: Airport Sponsors (owners/operators); Planning Agency sponsors; and Non-Airport Sponsors Undertaking Noise Compatibility Program Projects (hereinafter referred to as Non-Airport Sponsor Assurances). FAA is modifying the assurances currently in effect to incorporate the below-noted changes. To simplify the discussion, the modifications are grouped based upon the sets of assurances that are affected.

The changes contained in this paragraph affect all three sets of assurances. Section C, Subsection 1, "General Federal Requirements" is amended in each set of assurances to add references to 49 CFR Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs". Part 26 was issued on February 2, 1999 and is the new rule covering the DOT DBE program. In addition, the reference to OMB Circular A–128 "Audits of State and Local Governments" is changed to A–133 "Audits of States, Local Governments, and Non-Profit Organizations". These changes reflect recent modifications to the referenced regulations and OMB guidelines.

References to 49 CFR Part 23 remain in the Airport Sponsor Assurances, since portions of the DBE rule were retained in Part 23. The title of Part 23 is changed to "Participation by Disadvantaged Business Enterprise in Airport Concessions."

The following changes affect only the Airport Sponsor Assurances:

(a) In Assurance 4, subparagraph a., the beginning is changed to read: "It, a public agency or the Federal government, holds good title . . ."

(b) In Assurance 21, Compatible Land Use, the words "to the extent reasonable" are placed directly after the words "appropriate action".

(c) In Assurance 22, subparagraph a is deleted in its entirety and replaced with the following: "a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport."

(d) Assurance 22, subparagraph B.(2), is revised to begin: "charge reasonable, and not unjustly discriminatory . . ."

(e) For Subsection B1, "Duration and Applicability", the second sentence is replaced with: "However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue, so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions and assurances with respect to real property acquired with Federal funds."

Modification (c) is made in response to comments, as discussed above. The other modifications are made to more accurately reflect current statutory language. The following changes affect only the Airport Sponsor Assurances, and the Non-Airport Sponsors Undertaking Noise Compatibility Program Projects Assurances:

(a) In Assurance 6, the second sentence beginning "For noise compatibility program projects," and ending with "reasonably consistent with the agency's plans regarding the property" is deleted.

This modification is made to more accurately reflect current statutory language.

The following assurance affects, and is added to the Airport Sponsor Assurances (as new Assurance 37), Planning Agency Sponsor Assurances (as new Assurance 13) and the Non-Airport Sponsors Undertaking Noise Compatibility Program Projects Assurances (as new Assurance 22). This assurance is added to reflect regulatory modifications.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

These assurances are issued pursuant to the authority of Title 49, United States Code.

Complete Text of Modified Provisions

tTe complete text of each provision, as modified, appears below.

(a) Airport Sponsor Assurance 4, "Good Title", subparagraph a.—

"It, a public agency or the Federal government, holds good title,

satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired."

(b) Airport Sponsor Assurance 21—"Compatible Land Use".

"It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended."

(c). Airport Sponsor Assurance 22, "Economic Nondiscrimination", subparagraph a.

"It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport."

(d). Airport Sponsor Assurance 22, "Economic Nondiscrimination", subparagraph b. (2)

"charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers."

(e) Airport Sponsor Assurances, Section B, "Duration and applicability", subsection 1, "Airport Development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor".

"The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit to the duration of the assurance regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights Assurance shall be specified in the assurances."

(f) Airport Sponsor Assurance 6 and Non-Airport Sponsors Undertaking Noise Compatibility Program Project Assurance 6. "Consistency with Local Plans"

"The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the state in which the project is located to plan for the development of the area surrounding the airport."

(g). Airport sponsor Assurance 37, Planning Agency Sponsor Assurance 13 and Non-Airport Sponsors Undertaking Noise Compatibility Program Project Assurance 22. "Disadvantaged Business Enterprises."

"The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carryout its approved program, the Department may impose sanctions as provided under Part 26, and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801)."

Upon acceptance of the AIP grant by an airport sponsor, the assurances become a contractual obligation between the airport sponsor and the Federal government.

Issued in Washington, DC on August 6, 1999.

Catherine M. Lang,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 99–21458 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195; Flight Information Services Communications (FISC)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–195 meeting to be held September 14–16, starting at 8:30 a.m. each day. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

The agenda will include: September 14: (1) Welcome and Introductions; (2) Final Review of Automet Minimum Operational Performance Standards; (3) Review of FIS–B Minimum Aviation System Performance Standards (MASPS) Section 4.0 Procedures for Performance Requirement Verification, Work Plan; (4) Detailed review of FIS–B MASPS. September 15: (5) Continue Detailed review of FIS–B MASPS. September 16: (6) Review FIS–B MASPS actions and address future work; (7) Date and location of next meeting; (8) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 12, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–21453 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 192 meeting to be held September 14, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140

Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Welcome and Introductory Remarks; (2) Review/Approval of Meeting Agenda; (3) Review/Approval of Summary of the Previous Meeting; (4) Brief out of Working Group 1; (5) Brief out of Working Group 2; (6) Discussion of Review Group for FAA Order 7400; (7) High Altitude Airspace Concept Discussion; (8) Set Agenda for Next Meeting; (9) Date and Location of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site).

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 12, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–21454 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Joint Special Committee 190/ Eurocae Working Group 52

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee (SC)–190/EUROCAE Working Group (WG)–52 meeting to be held September 20–24, 1999, starting at 11:00 a.m. on Monday, September 20. The meeting will be held at EUROCONTROL Headquarters, Rue de la Fusee 96, B–1130, Brussels, Belgium.

The agenda will include the following: Monday, September 20: 11:00 a.m.–5:00 p.m. (1) Plenary Session; (a) Welcome and Introductory Remarks; (b) Review and Approve Agenda; (c) Review Schedule; (d) Review and Approve Minutes of Previous Meeting; (e) Status of EUROCAE/RTCA Annual Report Publications; (f) EUROCONTROL Overview; (g) Reports of CNS/ATM, Executive, Development and Verification Committees; (h) Review papers for Plenary Approval. Tuesday, Wednesday, Thursday, September 21–23: 8:00 a.m.-5:30 p.m. (2) Working Group Breakout Sessions including preparation for Plenary. Friday, September 24: 8:00 a.m.–1:00 p.m. (3) Plenary Session; (a) Working Group Reports; (b) Executive Committee Report; (c) Review of Actions Items; (d) Date and Location of Next Meeting; (e) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 12, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–21455 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held September 14–16, 1999, starting at 8:30 a.m. on September 14. The meeting will be held at EUROCAE, 15 Rue Hamelin, Paris, FRANCE.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Editorial Team Meeting Report; (5) Leadership Team Meeting Report; (6) Review Action Items; (7) Plenary Disposition of Document Comments; (8) New Items for Consensus; (9) Special Committee 190 Committee Activity Report; (10) Other Business; (11) Establish Agenda for Next Meeting: (12) Date and Location of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 12, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–21456 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson, Chambers, and Galveston Counties, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Jefferson, Chambers, and Galveston Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Mack, District Engineer, Federal Highway Administration, 826 Federal Office Building, 300 E. 8th Street, Austin, Texas 78701, Telephone: (512) 916–5516.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and Jefferson County, will prepare an environmental impact statement (EIS) on a proposal to reconstruct State Highway 87 (SH 87) within a corridor between Sea Rim State park and High Island, a distance of approximately 17 miles, in Jefferson, Chambers and Galveston Countries, Texas. Improvements to the facility are considered necessary after this section of SH 87 was closed to through traffic after it was extensively damaged by Hurricane Jerry in October 1989. This proposed project would restore the roadway connection between the two communities of Sabine Pass and High Island as well as provide improved access to the area beaches and wildlife refuges.

Alternatives under consideration include (1) Taking no action; and (2) constructing a roadway on one of several proposed new alignments at more inland locations. Jefferson Country initiated environmental studies while

applying for a Section 404 permit for a roadway easement through the McFaddin National Wildlife Refugee in 1997. This resulted in a determination by the U.S. Army Corps of Engineers that an EIS should be prepared. The project study limits for the EIS are from the northward turn of SH 87 in Sabine Pass, Jefferson County, to SH 124 in High Island, Galveston County. A section of SH 87 presently exists within these study limits for a distance of about 15 miles from Sabine Pass to approximately three miles west of Sea Rim State Park. The existing roadway is an undivided two-lane highway.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interested in this proposal. A scoping meeting to discuss the proposed SH 87 project, as well as, other public meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities that apply to this program.)

John Mack,

District Engineer, Austin, Texas.

[FR Doc. 99–21373 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 7, 1999 [64 FR 30374].

DATES: Comments must be submitted on or before September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth Willis, Office of Sealift Support, MAR–630, Maritime Administration, MAR–630, Room 7307, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone 202–366–2323 or FAX 202–366–3889. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application and Reporting Elements for participation in the Maritime Security Program.

OMB Control Number: 2133–0525.

Type of Request: Extension of currently approved collection.

Affected Public: Operators of U.S.-flag vessels who are interested in participating in the Maritime Security Fleet.

Form (s): None.

Abstract: The Maritime Security Act of 1996 established the Maritime Security Program which supports the operations of U.S.-flag vessels in the foreign commerce of the United States through assistance payments. Participating vessel operators receive assistance payments and are required to make their ships and other commercial transportation resources available to the Government during times of war or national emergency. The vessel operators who are interested in participating in the Maritime Security Fleet are required to submit an application to MARAD for its review and approval.

Annual Estimated Burden Hours: Approximately four to six hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention MARAD Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on August 13, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–21447 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Senior Executive Service Combined Performance Review Board (PRB)

AGENCY: Treasury Department.

ACTION: Notice of members of Combined Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of Engraving and Printing, the Financial Management Service, the U.S. Mint and the Bureau of the Public Debt. The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the four bureaus, except for the executives below the Assistant Commissioner level in the Financial Management Service. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

Composition of Combined PRB

The Board shall consist of at least three voting members. In case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

Primary Members

Joel C. Taub, Associate Director (Management), E&P
Constance E. Craig, Assistant Commissioner, Information Resources, FMS
Jackqueline Fletcher, Associate Director for Information Resources/ CIO, Mint
Theodore P. Langlois, Deputy Executive Director (Marketing and Sales), PD

Alternate Members

Gregory D. Carper, Associate Director (Chief Financial Officer), E&P

Larry D. Stout, Assistant Commissioner, Federal Finance, FMS

Jay M. Weinstein, Associate Director for Policy and Management & CFO, Mint

Debra Hines, Associate Commissioner (Public Debt Accounting), PD

Date

Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT:

Constance E. Craig, Financial Management Service, Assistant Commissioner, Information Resources, 3700 East-West Highway, Room 1026D, Hyattsville, MD 20782, (202) 874–8000.

This notice does not meet the Department's criteria for significant regulations.

Constance E. Craig,

Assistant Commissioner, Information Resources, Financial Management Service.

[FR Doc. 99–21243 Filed 8–17–99; 8:45 am]

BILLING CODE 4840–01–M

federal register

Wednesday
August 18, 1999

Part II

Department of Health and Human Services

Health Resources and Services Administration

Availability of the HRSA Preview; Notice

DEPARTMENT OF HEALTH ANDHUMAN SERVICES

Health Resources and Services Administration

Availability of the HRSA Preview

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General notice.

SUMMARY: HRSA announces the availability of the HRSA Preview for summer 1999. This edition of the HRSA Preview is a comprehensive review of HRSA's Fiscal Year 2000 programs. The next edition of the HRSA Preview is scheduled to be published by early winter 1999.

The purpose of the HRSA Preview is to provide the general public with a single source of program and application information related to the Agency's competitive grant reviews. The HRSA Preview is designed to replace multiple **Federal Register** notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs. In this edition of the HRSA Preview, HRSA's programs which provide funding for loan repayments and scholarships to individuals have been included in the section "Other HRSA Programs." It should be noted that other program initiatives responsive to new or emerging issues in the health care area and unanticipated at the time of publication of the HRSA Preview may be announced through the **Federal Register** from time to time. Deadlines or other requirements appearing in the **Federal Register** are not changed by this notice.

The HRSA Preview contains a description of competitive and additional programs scheduled for review in Fiscal Year 2000 and includes instructions on how to access the Agency for information and receive application kits for all programs announced. Specifically, the following information is included in the HRSA Preview: (1) Program Title; (2) Legislative Authority; (3) Purpose; (4) Eligibility; (5) Estimated Amount of Competition; (6) Estimated Number of Awards; (7) Funding Priorities and/or Preferences; (8) Application Deadline; (9) Projected Award Date; (10) Application Kit Availability; (11) Catalog of Federal Domestic Assistance (CFDA) program identification number; and (12) Programmatic contact. Certain other information, including how to obtain and use the HRSA Preview and grant terminology, also may be found in the HRSA Preview.

This issue of the HRSA Preview includes funding for HRSA discretionary authorities and programs as follows:

Maternal and Child Health Programs

Genetic Services-National Genetic Consumer Center
Genetic Services-State Planning Grants
Improvement of Perinatal Health: The Collaborative Ambulatory Research Network
Maternal and Child Health Research Program
Maternal and Child Health Training in Pediatric Pulmonary Centers
Maternal and Child Health Training in Schools of Public Health
Continuing Education and Development
Continuing Education/Dynamic Learning (Distance Education)
SPRANS—Ph.D. Epidemiology—MCH/SPH Fellows Training Program
National Center for Cultural Competence
Partnership for Information and Communication MCH Cooperative Agreements
Adolescent Health Center for State Maternal and Child Health Personnel
Training and Technical Assistance Centers for Mental Health in Schools
National Training Institute for Child Care Health Consultants
National Health and Safety in Child Care Health Resource Center
Health Care Information and Education for Families of Children with Special Health Care Needs
SPRANS—State and Local Data Utilization and Enhancement Cooperative Agreements
Center for School Health Care
Integrated Health Care Programs for Children and Adolescents
Innovative Approaches to Promoting Positive Health Behaviors in Women
Health and Welfare Technical Advisory Group
Healthy Child Care America State Systems Development Grants
Community Integrated Service Systems Community Organization Grants Program
Universal Newborn Hearing Screening
Emergency Medical Services for Children, Implementations Grants
Emergency Medical Services for Children, Partnership Grants
Emergency Medical Services for Children, Targeted Issue Grants
Emergency Medical Services for Children, Native American Project
Traumatic Brain Injury, State Implementation Grants
Traumatic Brain Injury, State Planning Grants
Healthy Start: Eliminating Disparities in Perinatal Health
Healthy Start: Infrastructure/Capacity Building Projects
National Fetal and Infant Mortality Review Resource Center
Maternal and Child Health Provider Partnerships
Improving Systems of Care for Pregnant Women Experiencing Domestic Violence

HIV/AIDS Programs

Special Projects of National Significance (SPNS)
Ryan White Title III Funding for Early Intervention Services Grants: Existing Geographic Areas
Ryan White Title III Funding for Early Intervention Services Grants: New Geographic Areas
Ryan White Title III Funding for Early Intervention Services Planning Grants
Ryan White Title III HIV Funding for Early Intervention Services Planning Grants
Ryan White Title IV: Existing Geographic Areas
Ryan White Title IV: New Geographic Areas

Rural Health Programs

Rural Health Research Centers
Rural Health Outreach Grant
Rural Health Network Development
State Rural Hospital Flexibility Program

Primary Health Care Programs

Community and Migrant Health Centers
Health Care for the Homeless
Public Housing Primary Care
State Primary Care Offices
State Primary Care Associations
Grants to States for Loan Repayment Programs
Migrant Health Centers

Health Professions Programs

Academic Administrative Units in Primary Care (Family Medicine, General Internal Medicine and General Pediatrics)
Predoctoral Training in Primary Care (Family Medicine, General Internal Medicine and General Pediatrics)
Physician Assistant Training in Primary Care
Residency Training in Primary Care (Family Medicine, General Internal Medicine and General Pediatrics)
Faculty Development in Primary Care (Family Medicine, General Internal Medicine and General Pediatrics)
Podiatric Residency in Primary Care
Model State-Supported Area Health Education Centers
Basic/Core Area Health Education Centers
Health Careers Opportunity Program
Centers of Excellence
Allied Health Projects
Residencies in the Practice of Pediatric Dentistry
Chiropractic Demonstration Project Grants
Dental Public Health Residency Training Grants
Residencies and Advanced Education in the Practice of General Dentistry
Quentin N. Burdick Program for Rural Interdisciplinary Training
Public Health Training Centers Grant Program
Geriatric Education Centers
Geriatric Training Regarding Physicians and Dentists
Health Administration Traineeships & Special Projects
Nursing Workforce Diversity Grants
Basic Nurse Education and Practice Grants
Public Health Nursing Experiences in State and Local Health Departments for Baccalaureate Nursing Students
Advanced Education Nursing Grants
Advanced Education Nursing Traineeship Grants
Advanced Education Nursing—Nurse Anesthetist Traineeship Grant Program

Advancement of Telehealth

Rural Telemedicine Grant Program

Other HRSA Programs

Faculty Loan Repayment Program
Scholarships for Disadvantaged Students
Nursing Education Loan Repayment Program

FOR MORE INFORMATION CONTACT: Individuals may obtain the HRSA Preview by calling the toll free number, 1–888–333–HRSA until September 12, 1999. After September 12, the new toll free number will be 1–877–HRSA (4772)–123. The HRSA Preview may also be accessed on the World Wide Web on the HRSA Home Page at: http://www.hrsa.dhhs.gov/.

Dated: August 11, 1999.

Claude Earl Fox,

Administrator.

How To Obtain and Use the HRSA Preview

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions before contacting the general number 1–888–333–HRSA until September 12, 1999. After September 12, the new toll free number will be 1–877–HRSA (4772)–123. Likewise, we urge applicants to fully assess their eligibility for grants before requesting kits. As a general rule, no more than one kit per category will be mailed to applicants.

To Obtain a Copy of the HRSA Preview

To have your name and address added to or deleted from the HRSA Preview mailing list, please call the toll free number 1–888–333–HRSA until September 12, 1999 or e-mail us at hrsa.gac@hrsa.gov. After September 12, the new toll free number will be 1–877–HRSA (4772)–123. If you need special accommodations in accessing this information please call Jeanellen Kallevang, of the Grants Policy Branch, at 301–443–6507.

To Obtain an Application Kit

Upon review of the program descriptions, please determine which category or categories of application kit(s) you wish to receive and contact the 1–888–333–HRSA number, until September 12, 1999, to register on the specific mailing list. After September 12, the new toll free number will be 1–877–HRSA (4772)–123. Application kits are generally available 60 days prior to application deadline. If kits are already available, they will be mailed immediately.

World Wide Web Access

The HRSA Preview is available, under the grants section, on the HRSA Homepage via the World Wide Web at: http://www.hrsa.dhhs.gov/.

Application materials are currently available for downloading in the current cycle for some HRSA programs. HRSA's goal is to post application forms and materials for all programs in future cycles. You can download this issue of the HRSA Preview in Adobe Acrobat format (.pdf) from HRSA's web site.

Also, you can register on-line to be sent specific grant application materials by following the instructions on the web page. Your mailing information will be added to our database and material will be sent to you as it becomes available.

Grant Terminology

Application Deadlines

Applications will be considered "on time" if they are either received on or before the established deadline date or postmarked on or before the deadline date given in the program announcement or in the application kit materials.

Authorizations

The citations of provisions of the laws authorizing the various programs are provided immediately preceding groupings of program categories.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal programs, projects, services, and activities which provide assistance. Programs listed therein are given a CFDA Number.

Cooperative Agreement

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient is anticipated by the funding agency during performance of the project.

Eligibility

Authorizing legislation and programmatic regulations specify eligibility for individual grant programs. In general, assistance is provided to nonprofit organizations and institutions, State and local governments and their agencies, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The funding level listed is provided for planning purposes and is subject to the availability of funds.

Funding Priorities and/or Preferences

Special priorities or preferences are those which the individual programs have identified for the funding cycle. Some programs give preference to organizations which have specific capabilities such as telemedicine networking or established relationships with managed care organizations. Preference also may be given to achieve an equitable geographic distribution and other reasons to increase the effectiveness of the programs.

Key Offices

The Grants Management Office serves as the focal point for business matters. A "key" symbol indicates the appropriate office for each program area and the main telephone number for the office.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Project Period

The total time for which support of a discretionary project has been programmatically approved. The project period usually consists of a series of budget periods of one-year duration. Once approved through initial review, continuation of each successive budget period is subject to satisfactory performance, availability of funds and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

- That the estimated costs to the Government of the project is reasonable considering the level and complexity of activity and the anticipated results.
- That project personnel or prospective fellows are well qualified by training and/or experience for the support sought, and the applicant organization or the organization to provide training to a fellow has adequate facilities and manpower.
- That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.
- That the project objectives are capable of achieving the specific program objectives defined in the

program announcement and the proposed results are measurable.

• That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.

• That, in so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria as they are the basis upon which their applications will be judged.

Technical Assistance

A contact person is listed for each program and his/her e-mail address and telephone number provided. Some programs have scheduled workshops and conference calls as indicated by the "magnifying glass" in the HRSA Preview. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA web site http://www.hrsa.dhhs.gov/ for the latest technical assistance information.

Frequently Asked Questions

1. Where do I submit grant applications?

The address for submitting your grant application will be shown in the guidance document included in the application kit.

2. HRSA lists many telephone numbers and e-mail addresses. Who do I phone or e-mail and when?

Phone 1–888–333–HRSA until September 12, 1999, to register for application kits. After September 12, the new toll free number will be 1–877–HRSA (4772)–123. It will be helpful to the information specialist if you have the CFDA Number and title of the program handy for reference.

If, before you register, you want to know more about the program, an e-mail/telephone contact is listed. This contact can provide information concerning the specific program's purpose, scope and goals, and eligibility criteria. Usually, you will be encouraged to request the application kit so that you will have clear, comprehensive and accurate information available to you. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide technical assistance concerning your specific program, if you are unable to find the information within the materials provided.

3. The dates listed in the HRSA Preview and the dates in the application kit do not agree. How do I know which is correct?

First, register at 1–888–333–HRSA until September 12, 1999 for each program that you are interested in as shown in the HRSA Preview. After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

HRSA Preview dates for application kit availability and application receipt deadline are based upon the best known information at the time of publication, often nine months in advance of the competitive cycle. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit. Therefore, if you are registered at 1–888–333–HRSA or 1–877–HRSA (4772)–123 after September 12, you will receive the most current information.

4. Are programs announced in the HRSA Preview ever canceled?

Infrequently, programs announced may be withdrawn from competition. If this occurs, a cancellation notice will be provided through the HRSA Preview at the HRSA Homepage http://www.hrsa.dhhs.gov/.

If you still have unanswered questions, please contact John Gallicchio of the Grants Policy Branch at 301–443–6507 (jgallicchio@hrsa.gov).

HRSA PROGRAMS AT A GLANCE

Program name	CFDA No.	Deadline
Maternal and Child Health Programs		
Genetic Services—National Genetic Consumer Center	93.110A	02/29/2000
Genetic Services—State Planning Grants	93.110A	02/29/2000
Improvement of Perinatal Health: The Collaborative Ambulatory Research Network	93.110RA	04/01/2000
Maternal and Child Health Research Program	93.110RS	10/01/1999 & 03/01/2000
Maternal and Child Health Training in Pediatric Pulmonary Centers	93.110TJ	12/15/1999
Maternal and Child Health Training in Schools of Public Health	93.110TK	10/01/1999
Continuing Education and Development	93.110TO	01/15/2000
Continuing Education/Dynamic Learning (Distance Education)	93.110TQ	01/15/2000
SPRANS—Ph.D. Epidemiology—MCH/SPH Fellows Training Program	93.110TS	02/15/2000
National Center for Cultural Competence	93.110F	12/31/1999
Partnership for Information and Communication MCH Cooperative Agreements	93.110G	01/15/2000
Adolescent Health Center for State Maternal and Child Health Personnel	93.110J	01/15/2000
Training and Technical Assistance Centers for Mental Health in Schools	93.110M	01/15/2000
National Training Institute for Child Care Health Consultants	93.110P	01/15/2000
National Health and Safety in Child Care Health Resource Center	93.110P	01/15/2000
Health Care Information and Education for Families of Children with Special Health Care Needs (CSHCN)	93.110S	12/01/1999
SPRANS—State and Local Data Utilization and Enhancement (DUE) Cooperative Agreements	93.110U	03/15/2000
Center for School Health Care	93.110AE	01/15/2000
Integrated Health Care Programs for Children and Adolescents	93.110AF	01/15/2000
Innovative Approaches to Promoting Positive Health Behaviors in Women	93.110AH	01/17/2000
Health and Welfare Technical Advisory Group	93.110AI	01/15/2000
Healthy Child Care America State Systems Development Grants	93.110AQ	03/08/2000
Community Integrated Service Systems (CISS) Community Organization Grants Program	93.110AR	03/10/2000
Universal Newborn Hearing Screening	93.110ZZ	01/15/2000
Emergency Medical Services for Children (EMSC), Implementations Grants	93.127A	11/01/1999
Emergency Medical Services for Children (EMSC), Partnership Grants	93.127C	11/15/1999

HRSA PROGRAMS AT A GLANCE—Continued

Program name	CFDA No.	Deadline
Emergency Medical Services for Children (EMSC), Targeted Issue Grants	93.127D	11/01/1999
Emergency Medical Services for Children (EMSC), Native American Project	93.127G	11/01/1999
Traumatic Brain Injury (TBI), State Implementation Grants	93.234A	12/01/1999
Traumatic Brain Injury (TBI), State Planning Grants	93.234B	12/01/1999
Healthy Start: Eliminating Disparities in Perinatal Health	93.926E	03/01/2000
Healthy Start: Infrastructure/Capacity Building Projects	93.926F	03/15/2000
National Fetal and Infant Mortality Review (FIMR) Resource Center	93.926H	04/01/2000
Maternal and Child Health Provider Partnerships	93.926I	03/03/2000
Improving Systems of Care for Pregnant Women Experiencing Domestic Violence	93.926J	02/11/2000
HIV/AIDS Programs		
Special Projects of National Significance (SPNS)	93.928	06/01/2000
Ryan White Title III Funding for Early Intervention Services Grants: Existing Geographic Areas	93.918A	10/01/1999
Ryan White Title III Funding for Early Intervention Services Grants: New Geographic Areas	93.918B	07/17/2000
Ryan White Title III HIV Funding for Early Intervention Services Planning Grants	93.918C	06/02/2000
Ryan White Title III HIV Funding for Early Intervention Services Planning Grants	93.918D	06/02/2000
Ryan White Title IV: Existing Geographic Areas	93.153A	03/01/2000
Ryan White Title IV: New Geographic Areas	93.153B	03/01/2000
Rural Health Programs		
Rural Health Research Centers	93.155	05/01/2000
Rural Health Outreach Grant	93.912A	11/01/1999
Rural Health Network Development	93.912B	11/08/1999
State Rural Hospital Flexibility Program	93.241	06/01/2000
Primary Health Care Programs		
Community and Migrant Health Centers	93.224 and 93.246	Varies
Health Care for the Homeless	93.151	Varies
Public Housing Primary Care	93.927	10/01/1999
State Primary Care Offices	93.130	12/01/1999
State Primary Care Associations	93.129	12/01/1999
Grants to States for Loan Repayment Programs	93.165	05/01/2000
Migrant Health Centers	93.246	02/01/2000
Health Professions Programs		
Academic Administrative Units in Primary Care (Family Medicine, General Internal Medicine and General Pediatrics).	93.984A	01/06/2000
Predoctoral Training in Primary Care (Family Medicine, General Internal Medicine and General Pediatrics)	93.896A	11/29/1999
Physician Assistant Training in Primary Care	93.886A	11/15/1999
Residency Training in Primary Care (Family Medicine, General Internal Medicine and General Pediatrics)	93.884A	09/27/1999
Faculty Development in Primary Care (Family Medicine, General Internal Medicine and General Pediatrics)	93.895A	10/22/1999
Podiatric Residency in Primary Care	93.181	09/30/1999
Model State-Supported Area Health Education Centers	93.107	01/14/2000
Basic/Core Area Health Education Centers	93.824	01/14/2000
Health Careers Opportunity Program (HCOP)	93.822	01/10/2000
Centers of Excellence	93.157	01/15/2000
Allied Health Projects	93.191	02/22/2000
Residencies in the Practice of Pediatric Dentistry	93.897A	11/01/1999
Chiropractic Demonstration Project Grants	93.212	02/22/2000
Dental Public Health Residency Training Grants	93.236	11/01/1999
Residencies and Advanced Education in the Practice of General Dentistry	93.897	11/01/1999
Quentin N. Burdick Program for Rural Interdisciplinary Training	93.192	10/22/1999
Public Health Training Centers Grant Program	93.188A	12/06/1999
Geriatric Education Centers	93.969	12/09/1999
Geriatric Training Regarding Physicians and Dentists	93.156	12/09/1999
Health Administration Traineeships & Special Projects	93.962	10/15/1999
Nursing Workforce Diversity Grants	93.178A	12/17/1999
Basic Nurse Education and Practice Grants	93.359A	02/22/2000
Public Health Nursing experiences in State and Local Health Departments for Baccalaureate Nursing Students.	93.359B	11/17/1999
Advanced Education Nursing Grants	93.299A	01/28/2000
Advanced Education Nursing Traineeship Grants	93.299B	12/03/1999
Advanced Education Nursing—Nurse Anesthetist Traineeship Grant Program	93.299C	12/03/1999
Advancement of Telehealth		
Rural Telemedicine Grant Program	93.211	03/01/2000

HRSA PROGRAMS AT A GLANCE—Continued

Program name	CFDA No.	Deadline
Other HRSA Programs		
Faculty Loan Repayment Program (FLRP)	93.923	03/31/2000
Scholarships for Disadvantaged Students (SDS)	93.925	03/15/2000
Nursing Education Loan Repayment Program	93.908	05/01/2000

Maternal and Child Health Programs

Grants Management Office: 1–301–443–1440.

Genetic Services—National Genetic Consumer Center.

CFDA Number: 93.110A.
Application Availability: 12/15/1999.

To Obtain This Application Kit

Contact: 1–888–333-HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877-HRSA (4772)-123.
Letter of Intent Deadline: 01/15/2000.
Application Deadline: 02/29/2000.
Projected Award Date: 06/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

The purpose of this cooperative agreement is to support a national consumer center for the establishment of a national network to provide genetic information and education for consumers of genetic services and to outline national policy to improve the quality, accessibility and utilization of genetic services. The center's activities would include: (1) The involvement of national membership of consumer, family, professional, and support group organizations, with the acknowledgment of the need for membership representation to include geographic and ethnic diversity; (2) the development of support groups and consumer organizations by providing technical assistance, resources and training for consumer leaders; (3) a forum for interaction between consumers, the Maternal and Child Health Bureau (MCHB) and other relevant Federal, State and community organizations on issues related to genetic medicine, services and technology; (4) facilitate public, provider and consumer access to centralized resources, support and referral services that enhance the general public's ability to make informed decisions about genetic services; and (5) provide an effective and proactive consumer voice, facilitating representation of consumer perspectives and issues in public policy discussions and throughout the public policy decision-making processes.

Eligibility

42 CFR Part 51a.3*

(a) With the exception of training and research, as described in paragraph (b) of this section, any public or private entity, including Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding under this Part; (b) Only public or nonprofit private institutions of higher learning may apply for training grants. Only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants, contracts or cooperative agreements for research in maternal and child health services or in services for children with special health care needs.

Funding Priorities and/or Preferences

Preference will be given to nationally recognized consumer organizations with clearly demonstrated national expertise and capacity for addressing genetic medicine, services and technology issues related to consumers of genetic services and their families and to applicants building upon current family and professional partnerships, family training and empowerment activities in collaboration with the Title V discretionary grant efforts.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$400,000.

Estimated Number of Awards

1.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: Michele Puryear, M.D.
Phone Number: 1–301–443–1080.
E-mail: mpuryear@hrsa.gov.

Genetic Services-State Planning Grants

CFDA Number: 93.110A.
Application Availability: 12/15/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 1/15/2000.
Application Deadline: 2/29/2000.
Projected Award Date: 6/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

Projects that develop and demonstrate the use of information systems for the integration of State newborn screening programs with population based, community based and family centered early intervention programs that are tied to outcome driven systems of service to children with special health needs and families.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

A funding preference will be given to community/State agency partnerships in coalition with public and private community based providers.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$750,000.

Estimated Number of Awards

10.

Estimated Project Period

2 Years.

For Programmatic Questions

Contact Person: Michele Puryear, M.D.
Phone Number: 1–301–443–1080.
E-mail: mpuryear@hrsa.gov.

Improvement of Perinatal Health: The Collaborative Ambulatory Research Network

CFDA Number: 93.110RA.
Application Availability: 01/01/2000.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 02/01/2000.
Application Deadline: 04/01/2000.
Projected Award Date: 07/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

The purpose of this program is to establish a nationwide structure (network) for conducting research on ambulatory health care practices to improve perinatal health care. The goals of this program include examining and describing existing obstetrician-gynecologist knowledge base and practices. Information from this network should be used to develop better informed educational strategies and to disseminate information to physicians in areas where there is a knowledge deficit. The project will cooperate and work collaboratively with other MCHB funded projects in perinatal and women's health.

Eligibility

The American College of Obstetricians and Gynecologists (ACOG) is eligible to apply.

Sole Source

ACOG is the primary organization representing Ambulatory Obstetrics and Gynecology in the Nation and is the only organization which represents the majority of practitioners necessary to establish an adequate structural network.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$200,000.

Estimated Number of Awards

1.

Estimated Project Period

Up to 5 Years.

For Programmatic Questions

Contact Person: Gontran Lamberty, Dr. P.H. or Maurice Bryant.
Phone Number: 1–301–443–0765.
E-mail: glamberty@hrsa.gov or mbryant@hrsa.gov.

Maternal and Child Health Research Program

CFDA Number: 93.110RS.
Application Availability: 06/14/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 10/01/1999 & 03/01/2000.
Projected Award Date: 01/01/2000 & 07/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

The purpose of this program is to support applied research relating to maternal and child health services, which show promise of substantial contribution in knowledge, that when used in States and communities will result in health status and health services improvements.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

Fifteen issues/questions selected from 11 priority areas, and keyed to goals and objectives of the Bureau and HRSA strategic plans, will be given special consideration for funding. The special consideration consists of a 0.5 points favorable adjustment to the funding score assigned to an application, on a range of 1.0 to 5.0, when recommended for approval by the MCH Research Review Committee. The 15 issues/questions selected from the 11 priority areas are detailed in the guidance material contained in the application kit.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,900,000.

Estimated Number of Awards

10.

Estimated Project Period

1 to 4 Years.

For Programmatic Questions

Contact Person: Gontran Lamberty, Dr. P.H.
Phone Number: 1–301–443–2190.
E-mail: glamberty@hrsa.gov.

Maternal and Child Health Training in Pediatric Pulmonary Centers

CFDA Number: 93.110TJ.
Application Availability: 10/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 11/15/1999.
Application Deadline: 12/15/1999.
Projected Award Date: 07/01/2000.

Authorization

Social Security Act, Title V, Section 502, 42 U.S.C. 702.

Purpose

To provide interdisciplinary leadership training for several health professional disciplines, at the graduate and post graduate levels, to prepare them for leadership roles, including teaching, in the care of, research on, or development of organized systems of health care delivery for children with chronic respiratory conditions and their families.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

A preference will be given to Departments of Pediatrics in accredited medical schools that meet the special requirements for training programs in pediatric pulmonology.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$2,150,175.

Estimated Number of Awards

Approximately 7.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: Shelley Benjamin, M.S.W.
Phone Number: 1–301–443–2190.
E-mail: sbenjamin@hrsa.gov.

Maternal and Child Health Training in Schools of Public Health

CFDA Number: 93.110TK.

Application Availability: 07/29/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 09/01/1999.
Application Deadline: 10/01/1999.
Projected Award Date: 06/01/2000.

Authorization

Social Security Act, Title V, Section 502, 42 U.S.C. 702.

Purpose

To support and strengthen MCH Programs through long term training of a wide range of health professionals who serve children. Training is at the graduate and post graduate levels, with a special focus on family centered, community-based care. The programs are designed to develop leadership personnel to provide for comprehensive health care including health promotion and disease prevention and related services to mothers and children.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

A preference will be given to Schools of Public Health, accredited by the Council on Education for Public Health, with an established Maternal and Child Health Program.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$4,425,965.

Estimated Number of Awards

12–13.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: Nanette Pepper, BSRN, M.Ed.
Phone Number: 1–301–443–2190.
E-mail: npepper@hrsa.gov.

Continuing Education and Development

CFDA Number: 93.110TO.
Application Availability: 11/08/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 12/08/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 06/01/2000.

Authorization

Social Security Act, Title V, Section 502, 42 U.S.C. 702.

Purpose

Continuing Education and Development (CED) focuses on increasing leadership skills of MCH professionals; facilitating timely transfer and application of new information, research findings and technology related to MCH; and updating and improving the knowledge and skills of health and related professionals in programs serving mothers and children. CED programs will support conduct of short-term, non-degree related courses, workshops, conferences, symposia, institutes, and distance learning strategies and/or development of curricula, guidelines, standards of practice, and educational tools/strategies intended to assure quality health care for the MCH population.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$250,000.

Estimated Number of Awards

10.

Estimated Project Period

1–3 Years.

For Programmatic Questions

Contact Person: Diana Rule, M.P.H.
Phone Number: 1–301–443–2190.
E-mail: drule@hrsa.gov.

Continuing Education/Dynamic Learning (Distance Education)

CFDA Number: 93.110TQ.
Application Availability: 11/08/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 12/15/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 06/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

Alternative education methodologies provide an effective and economical means for professional staff to enhance and advance their skills while continuing to meet their daily on-site responsibilities. MCH managers need timely and available information to complete the functions for assessing need, developing policies and programs, addressing and resolving problems, monitoring progress and evaluating performance. Analytical skills are needed to convert data to information to better serve mothers and children living in high risk circumstances. This grant program encourages the development, implementation, creative utilization and application of distance education opportunities for the State and local MCH communities to improve the delivery of health care services to mothers and children. Courses will be developed and given annually using distance learning modalities and delivered to State and local MCH staffers. Technical support for specific analytical tasks will be provided via the Internet, compact discs and via satellite broadcasts to State and local agencies. Projects will work collaboratively with each other and the MCH Bureau to develop common formats, tools and approaches.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$715,000.

Estimated Number of Awards

Estimated Project Period

2 Years.

For Programmatic Questions

Contact Person: Aaron Favors, Ph.D.
Phone Number: 1–301–443–0392.
E-mail: afavors@hrsa.gov.

SPRANS—Ph.D. Epidemiologic-MCH/SPH Fellows Training Program

CFDA Number: 93.110TS.
Application Availability: 12/01/1999.

To obtain this application kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 01/01/2000.

Application Deadline: 02/15/2000.
Projected Award Date: 04/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

The Ph.D. Fellows grant was established to develop and promote epidemiologic analysis as a part of MCH health training program operations. It is intended to attract MCH doctoral students to the field of epidemiologic analysis and produce publications that further policy and program development. Currently, literature on the application of epidemiology to children's health is scarce. Little data and analysis is available on the effectiveness and benefits of child health services and information needed to improve resource allocation decisions. The purpose of this program is to increase the number of doctoral candidates and postdoctoral fellows who elect a relevant MCH epidemiologic analysis issue, applied to MCH service delivery, as the basis for their research and dissertation. Candidates and fellows are to produce creative, well thought out, dissertation subjects of interest that reflect the current trend of MCH and how the field of economic and epidemiologic analysis impacts upon it. This funding will support:

1. Recruitment and enrollment of 6 doctoral students who will develop dissertations with an emphasis on epidemiologic analysis.

2. Enhancement of student analytic capability as well as improved understanding of the epidemiologic of MCH services.

3. Development of publishable materials for distribution to the broader MCH community.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

A preference will be given to Schools of Public Health with MCH programs.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$150,000.

Estimated Number of Awards

6.

Estimated Project Period

1 Year.

For Programmatic Questions

Contact Person: Russ Scarato.
Phone Number: 1–301–443–0701.
E-mail: rscarato@hrsa.gov.

National Center for Cultural Competence

CFDA Number: 93.110F.
Application Availability: 09/30/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 10/30/1999.
Application Deadline: 12/31/1999.
Projected Award Date: 06/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

The purpose of this cooperative agreement competition is to assist State and local Title V Children with Special Health Care Needs (CSHCN) programs to plan, implement and evaluate culturally competent policies, procedures and practices in partnership with the Federal Central and Field Office MCHB/DSCSHCN staff, other Federal/State and local programs and consumers by assisting State programs: (1) Conduct agency cultural competency assessments; (2) incorporate cultural competence in their strategic and Title V Block Grant annual plans; (3) assist in the development of an evaluation of cultural competence activities, e.g., develop performance measures and outcome indicators related to access, health outcomes and consumer/provider satisfaction for CSHCN programs; and (4) promote the principles, values, skills and knowledge of culturally competent, family-centered care in related CSHCN programs, such as other SPRANS discretionary grants and State Child Health Insurance Programs.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

Funding preference will be given to an organization with demonstrated capability and experience in the area of cultural competence and with Title V CSHCN programs

Review Criteria

Final criteria are included in the application kit.

Estimated amount of this competition

$255,000.

Estimated Number of Awards

1.

Estimated Project Period

5 Year.

For Programmatic Questions

Contact Person: Diana Denboba.
Phone Number: 1–301–443–9332.
E-mail: ddenboba@hrsa.gov.

Partnership for Information and Communication (PIC) MCH Cooperative Agreements

CFDA Number: 93.110G.
Application Availability: 11/15/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 12/15/1999.
Application Deadline: 1/15/2000.
Projected Award Date: 4/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

To provide cooperative agreements with governmental, professional and private organizations represented by leaders concerned with issues related to maternal and child health and involved in sustaining systems of care and/or providing family support to persons affected by severe illness or injury. Specifically, this program is designed to facilitate the dissemination of new information in a format that will be most useful to them when developing MCH policies and programs in the private and public sectors at local, State and national levels, and understanding by the MCHB of the maternal and child health concerns held by these policy makers.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

A preference will be given to organizations currently receiving support as part of this cooperative agreement representing State governors and their staffs; county health policymakers, municipal health policymakers, nonprofit and/or for-profit managed care organizations and coalitions of organizations promoting the health of mothers and infants, national membership organizations representing survivors of traumatic brain injury (TBI), providing emergency medical care for children, and

representing State TBI and Emergency Medical Services programs, as well as national membership organizations representing groups or constituencies listed below.

To ensure continuity, membership for the organizations participating in PIC is rotated so that not all project periods coincide. For this year, only national membership organizations representing the following groups will be considered for funding: State legislators; private businesses, particularly self-insured businesses; philanthropic organizations; parent organizations; State Title V Directors; and State Head Injury Program Directors.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$2,351,840.

Estimated Number of Awards

7.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: David Heppel, M.D.
Phone Number: 1–301–443–2250.
E-mail: dheppel@hrsa.gov.

Adolescent Health Center for State Maternal and Child Health Personnel

CFDA Number: 93.110J.
Application Availability: 11/15/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 12/15/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 04/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

To assist States in promoting State core capacity in adolescent health by developing and implementing adolescent health action plans based on needs assessments, implementation of adolescent State interagency task forces, convening of expert advisory councils, and convening of youth advisory groups. Such a Center, to strengthen States' abilities to address adolescent health issues, was first established in 1995. States will set targets for Healthy People 2010 adolescent health objectives, develop and implement action plans to meet them, and will improve the measurable health status of adolescents.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$200,000.

Estimated Number of Awards

1.

Estimated Project Period

4 Years.

For Programmatic Questions

Contact Person: Trina Anglin, M.D., Ph.D.
Phone Number: 1–301–443–4026.
E-mail: tanglin@hrsa.gov.

Training and Technical Assistance Centers for Mental Health in Schools

CFDA Number: 93.110M.
Application Availability: 11/15/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 12/15/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 04/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

The intent of this category is to provide a mechanism for assistance for programs whose goal is to provide and enhance mental health resources and services for the school-age population. Centers funded under this category will provide assistance to targeted needs identified by those organizations and institutions requesting the training or technical assistance. Assistance should utilize, as much as possible, existing materials and training models that have demonstrated success and impact in the past. Methods utilized will also be adapted to suit the particular circumstances.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$590,000.

Estimated Numbers of Award

2.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: Trina Anglin, M.D., Ph.D.
Phone Number: 1–301–443–4291.
E-mail: tanglin@hrsa.gov.

National Training Institute for Child Care Health Consultants

CFDA Number: 93.110P.
Application Availability: 11/15/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 12/15/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 04/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

Quality Child Care, which pays attention to health and safety and protecting children from harm, is often a function of quality State licensure regulations and guidelines as well as local support. This support is best carried out by child care health consultants at the local level who train and support child care providers and families and assure that the child care guidelines are carried out. Child care health consultants are a new type of health professional. They view child care as a focal point for identifying children in need of health coverage including Medicaid and CHIP, and as a place to help families identify a medical home for their child. The MCHB funded the National Training Institute (NTI) for Child Care Healthy Consultants in 1996 to provide standardized training using Caring for Our Children and Stepping Stones as a basis of the curriculum. The model is "train the trainer," and there

is a distance learning component as well as on-site. The expected outcome is statewide networks of child care health consultants to the local level in every State.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

The current grantee is the University of North Carolina School of Public Health in collaboration with the Frank Porter Graham Child Development Center. They will apply, as well as organizations and universities which have expertise and an interest in health and safety in child care and the ability to create systems for training child care health consultants and technology transfer related to distance learning.

Special Consideration

Ability to conduct a training program for child care health consultants which is national in focus, and ability to conduct distance learning using state-of-the-art technology transfer.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$225,000.

Estimated Number of Awards

1.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: Phyllis Stubbs, M.D.
Phone Number: 1–301–443–6600.
E-mail: pstubbs@hrsa.gov.

National Health and Safety in Child Care Health Resource Center

CFDA Number: 93.110P.
Application Availability: 11/15/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 12/15/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 04/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

The National Resource Center (NRC) for Health and Safety in Child Care supports States in the development of quality child care health and safety programs through the performance of the following activities: maintain and update on the World Wide Web the computerized National Child Care standards database which contains the National Health and Safety Performance Standards; annually update health and safety standards for all States and territories and Stepping Stones to Caring for our Children; provide consultation, training and technical assistance to States on child care health and safety; maintain child care health and safety references collections; develop and maintain child care databases; arrange conferences and workshops; convene annual meetings of the NRC Advisory Committee; disseminate information to the public and to professional organizations; analysis of special issues; and develop programmatic approaches and participation/presentation at key child care conferences.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$350,000.

Estimated Number of Awards

1.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: Phyllis Stubbs, M.D.
Phone Number: 1–301–443–6600.
E-mail: pstubbs@hrsa.gov.

Health Care Information and Education for Families of Children With Special Health Care Needs (CSHCN)

CFDA Number: 93.110S.
Application Availability: 08/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 10/01/1999.
Application Deadline: 12/01/1999.
Projected Award Date: 03/01/2000.

Authorization

Public Health Service Act, Title III, Section 301, 42 U.S.C. 241

Purpose

The purpose of this competition is to support a cooperative agreement for implementation of a piloted national strategy to establish a national network of centers that will provide health care information and education to families of children with special health care needs. These centers will be planned and administered by families and will be built upon existing collaborative relationships with State Title V–CSHCN programs, providers and family advocates.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

Funding preference will be given to nationally recognized family organizations with clearly demonstrated national expertise and capacity in addressing health issues related to CSHCN and their families.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$500,000 pending availability of funds.

Estimated Number of Awards

1.

Estimated Project Period

5 years.

For Programmatic Questions

Contact Person: Diana Denboba.
Phone Number: 1–301–443–9332.
E-mail: ddenboba@hrsa.gov.

SPRANS—State and Local Data Utilization and Enhancement (DUE) Cooperative Agreements

CFDA Number: 93.11OU.
Application Availability: 01/03/2000.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 02/15/2000.
Application Deadline: 03/15/2000.
Projected Award Date: 05/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

Cooperative Agreements to State and local agencies, each of whom will contribute equal matching funds to:

support, develop and implement MCH State and local data activities, which may include developing standardized integrated data and communication systems within and between States; develop standardized mechanisms to better monitor managed care; and/or develop common data elements/model approaches to key emerging MCH data issues, including support for innovation in health systems and community assessment indicators; conduct a cost-effective analysis of MCH services, performance measures and outcome reporting; develop methods to measure unmet needs, gaps in services, and needs of special populations; propose new measures of morbidities and health; examine the quality of care and implementation of community health initiatives. Projects will work collaboratively with each other and the MCH Bureau to develop common definitions and data elements, model tools and approaches and performance standards.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$428,000.

Estimated Number of Awards

6.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Alicia Scott-Wright or Russ Scarato.
Phone Number: 1–301–443–0700 or 1–301–443–0701.
E-mail: ascottwright@hrsa.gov or rscarato@hrsa.gov.

Note: These six cooperative agreements represent a pilot effort to actively work with and support State and local development of integrated data systems and analytical models. Additional funds are needed to expand this effort beyond the restriction mandated by the current budget.

Center for School Health Care

CFDA Number: 93.110AE.
Application Availability: 11/15/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 12/15/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 04/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

To provide a means of providing up-to-date information on approaches to improving school-based health care. To enhance State and community level capacity for school health planning, policy development, and quality assurance; to promote growth in school health infrastructure; to identify and promote models of interdisciplinary training and team development for health and education personnel; to identify and disseminate state-of-the-art practices in school health and school based health care; and to identify and disseminate information on sustainability of school based health services, particularly concerning third party reimbursements.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

Funding preference will be given to any public or private organization that can function on a national level, demonstrate knowledge and experience with the issues to be addressed, and can demonstrate credibility in the health and education communities is eligible to apply.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$200,000.

Estimated Number of Awards

1.

Estimated Project period

4 Years.

For Programmatic Questions

Contact Person: Trina Anglin, M.D., Ph.D.
Phone Number: 1–301–443–4026.
E-mail: tanglin@hrsa.gov.

Integrated Health Care Programs for Children and Adolescents

CFDA Number: 93.110AF.
Application Availability: 11/15/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 12/15/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 04/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

These two year planning grants are designed to initiate and formalize a working relationship among community resources, in order to detail arrangements for establishing an integrated program of health service delivery for children and adolescents, in a targeted area with a total population of 100,000 to 250,000. The combined services are to include physical and psychosocial primary health care, comprehensive mental health services, and substance abuse prevention and treatment services. The plan that is produced is to include attention to organizational structure, staffing, facilities, information systems including protection of confidentiality, and fiscal arrangements.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$210,000.

Estimated Number of Awards

4.

Estimated Project Period.

2 years.

For Programmatic Questions

Contact Person: Trina Anglin, M.D., Ph.D.
Phone Number: 1–301–443–4291.
E-mail: tanglin@hrsa.gov.

Innovative Approaches to Promoting Positive Health Behaviors in Women

CFDA Number: 93.110AH.
Application Availability: 11/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999 .
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 12/17/1999.

Application Deadline: 01/17/2000.
Projected Award Date: 04/03/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

This three year demonstration program will develop and demonstrate innovative approaches that are effective in promoting positive health behaviors in women, particularly behaviors influencing preconceptional health (nutrition, smoking cessation, STD prevention, etc.) through partnerships with other organizations (business, child care, religious, etc.) in a variety of community settings. These approaches should target women who currently have limited access to health promotion services and should link women with Title V and other relevant health resources and services.

Eligibility

42 CFR Part 51a.3*.

Funding Priorities and/or Preferences

None.

Special Considerations

There may be only one application per State.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$450,000.

Estimated Number of Awards

3.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Ellen Hutchins, Ph.D.
Phone Number: 1–301–443–9534.
E-mail: ehutchins@hrsa.gov.

Health and Welfare Technical Advisory Group

CFDA Number: 93.110AI.
Application Availability: 11/15/1999.

To obtain this application kit

Contact: 1–888–333-HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 12/15/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 04/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701

Purpose

The Health and Welfare Technical Advisory Group is intended to: promote communication among State-level program directors in the areas of maternal and child health, Medicaid, Child Care, Child Welfare, Mental Health, and Head Start and their Federal counterparts; to collaborate on approaches to address family health and welfare issues; identify Federal and/or State actions which inhibit a coherent approach to meeting family health and welfare needs; and promote mechanisms to improve functioning across programs. These purposes are to be accomplished through development of an ongoing forum of representatives of these programs and a mechanism to provide information to and receive information from all State program directors. Specific topics of concern will be jointly selected. Items of particular concern to HRSA include child care, oral health, and school health issues.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

A funding preference will be given to any organization which can demonstrate a linkage with at least one and preferably more than one of the organizations representing the State-level programs listed in the Purpose section.

REview Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$200,000.

Estimated Number of Awards

1.

Estimated Project Period

2 years.

For Programmatic Questions

Contact Person: Stuart Swayze.
Phone Number: 1–301–443–2917.
E-mail: sswayze@hrsa.gov.

Healthy Child Care America State Systems Development Grants

CFDA Number: 93.110AQ.
Application Availability: 11/01/1999.

To Obtain this Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 01/10/2000.
Application Deadline: 03/08/2000.
Projected Award Date: 06/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

MCHB is currently funding 51 State Health Systems Development in Child Care-Healthy Child Care America (HSDGC) Grants. These grants were awarded in FY 1996 and are serving as State focal points for health and safety in child care, and are developing integrated health, child care and social service systems in their respective States. They are instituting measures to both improve the quality of child care and assure that children in child care settings receive the health services which they need. Building upon MCHB's investment, and based upon State Title V and Child Care program suggestions, a Phase II is planned. Healthy Child Care America-the Year 2000 Quality Initiative will focus on the development and implementation of State programs which address quality assurance (improved State regulations); infrastructure building (networks of child care health consultants); and outreach (related to Medicaid and CHIP).

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

A preference will be given to State and/or private nonprofit health or child care entities which can carry out programmatic expectations in relation to quality assurance, infrastructure development and outreach on a statewide basis. The current grants will apply vis-a-vis a limited competition. In addition, an entity from the States of New Jersey and Mississippi will be asked to apply.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$3,842,500.

Estimated number of Awards

1 per 53 States/Territories.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Phyllis Stubbs, M.D.
Phone Number: 1–301–443–6600.
E-mail: pstubbs@hrsa.gov.

Community Integrated Service Systems (CISS) Community Organization Grants Program

CFDA Number: 93.110AR.
Application Availability: 01/10/2000.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 02/08/2000.
Application Deadline: 03/10/2000.
Projected Award Date: 05/01/2000.

Authorization

Social Security Act, Title V, 42 U.S.C. 701.

Purpose

The CISS program is designed to enhance the development of service systems at the community level to address the physical, psychological, social well-being, and related needs of pregnant women, infants, and children, including children with special health care needs and their families. CISS programs should be designed to assist communities to better meet consumer identified needs, fill gaps in services, reduce duplication of effort, coordinate activities, increase availability of services, improve efficiency, and enhance quality of care. Programs must be developed in collaboration and coordination with the State MCH Services Block Grant programs and State efforts in community systems development.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, HRSA will place a funding priority on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories and subcategories in this notice for which applications from academic institutions are encouraged. This is in conformity with the Federal Government's policies in support of White House Initiatives on Historically Black Colleges and Universities (Executive Order 12876) and Educational Excellence for Hispanic Americans (Executive Order 12900).

An approved proposal from an HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Special Considerations

In the interest of equitable geographic distribution, special consideration for funding will be given to projects from communities without a currently funded CISS project.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$1,250,000.

Estimated Number of Awards

25.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Joseph A. Zogby, M.S.W.
Phone Number: 1–301–443–4393.
E-mail: jzogby@hrsa.gov.

Universal Newborn Hearing Screening

CFDA Number: 93.110ZZ.
Application Availability: 11/15/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 12/15/1999.
Application Deadline: 01/15/2000.
Projected Award Date: 04/01/2000.

Authorization

Public Health Service Act, Title III, Section 301, 42 U.S.C. 241.

Purpose

This program will fund: (1) Grants to States for the implementation of universal newborn hearing screening prior to hospital discharge with linkage to a medical home, and diagnostic evaluation and enrollment in a program of early intervention by 6 months of age for those infants identified with hearing loss. Applicants should describe relationships with both the Title V programs and the Early Intervention Program (Part C of IDEA) as well as systems for data collection and tracking of infants identified with hearing loss. Applicants should also describe mechanisms to assure sustainability of the program by engaging public and private payors and implementation of a fee for service plan. (2) One grant to an organization to provide technical assistance to States on a nationwide basis in the implementation of statewide universal newborn hearing screening, diagnosis and entry into early intervention.

States where newborn hearing screening is not being carried out at the present time may submit a plan for phase-in of statewide universal newborn screening to be completed by the end of year three of a four year project period.

Funding is contingent upon the availability of funds.

Eligibility

42 CFR Part 51a.3*

Funding Priorities and/or Preferences

A funding preference, for the national technical assistance award, will be given to an organization with demonstrated capability and experience in this area.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$4,000,000.

Estimated Number of Awards

30.

Estimated Project Period

4 Years.

For Programmatic Questions

Contact Person: Irene Forsman, M.S., R.N.
Phone Number: 1–301–443–9023.
E-mail: iforsman@hrsa.gov.

Emergency Medical Services for Children (EMSC), Implementation Grants

CFDA Number: 93.127A.
Application Availability: 09/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 09/30/1999.
Application Deadline: 11/01/1999.
Projected Award Date: 03/01/2000.

Authorization

Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300w–9.

Purpose

Implementation grants will improve the capacity of a State's EMS program to address the particular needs of children. Implementation grants are used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS, MCH, and CSHCN systems, using the experience and products of previous EMSC grantees. Applicants are encouraged to consider activities that: (1) Address identified needs within their State EMS system and that lay the groundwork for permanent changes in that system; (2) develop or monitor pediatric EMS capacity; and (3) will be institutionalized within the State EMS system.

Eligibility

States and accredited schools of medicine are eligible applicants.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$500,000.

Estimated Number of Awards

2.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: David E. Heppel, M.D.
Phone Number: 1–301–443–2250.
E-mail: dheppel@hrsa.gov.

Emergency Medical Services for Children (EMSC), Partnership Grants

CFDA Number: 93.127C.
Application Availability: 09/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 09/30/1999.
Application Deadline: 11/15/1999.
Projected Award Date: 03/01/2000.

Authorization

Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300w–9.

Purpose

State partnership grants will fund activities that represent the next logical step or steps to take to institutionalize EMSC within EMS and to continue to improve and refine EMSC. Proposed activities should be consistent with documented needs in the State and should reflect a logical progression in enhancing pediatric capabilities. For example, funding might be used to address problems identified in the course of a previous implementation grant; to increase the involvement of families in EMSC; to improve linkages between local, regional, or State agencies; to promulgate standards developed for one region of the State under previous funding to include the entire State; to devise a plan for coordinating and funding poison control centers; or to assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources.

Eligibility

States and accredited schools of medicine are eligible applicants.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,900,000.

Estimated Number of Awards

19.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: David E. Heppel, M.D.
Phone Number: 1–301–443–2250.
E-mail: dheppel@hrsa.gov.

Emergency Medical Services for Children (EMSC), Targeted Issue Grants

CFDA Number: 93.127D.
Application Availability: 09/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 09/30/1999.
Application Deadline: 11/01/1999.
Projected Award Date: 03/01/2000.

Authorization

Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300w–9.

Purpose

Targeted issue grants are intended to address specific, focused issues related to the development of EMSC knowledge and capacity with the intent of advancing the state-of-the-art, and creating tools or knowledge that will be helpful nationally. Proposals must have well-conceived methodology for analysis and evaluation. Targeted issue priorities have been identified based on the EMSC Five Year Plan. The targeted issue priorities are: cost-benefit analysis related to EMSC, implications of managed care for EMSC, evaluations of EMSC components, models for improving the care of culturally distinct populations, evaluation of systems for provision of emergency health care within day care and/or school settings, and evaluation of family-centered care models. Proposals may be submitted on emerging issues that are not included in the identified priorities. However, any such proposal must demonstrate relevance to the Plan and must make a persuasive argument that the issue is particularly critical.

Eligibility

States and accredited schools of medicine are eligible applicants.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$450,000.

Estimated Number of Awards

3.

Estimated Project Period

2 Years.

For Programmatic Questions

Contact Person: David E. Heppel, M.D.
Phone Number: 1–301–443–2250.
E-mail: dheppel@hrsa.gov.

Emergency Medical Services for Children (EMSC), Native American Project

CFDA Number: 93.127G.
Application Availability: 10/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 11/01/1999.
Projected Award Date: 12/01/1999.

Authorization

Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300w–9.

Purpose

Project will stimulate the development and enhancement of EMSC for Native Hawaiians.

Applicants are encouraged to consider activities that: (a) Identify needs of Native Hawaiian populations; (b) develop or monitor pediatric EMS capability, especially as it relates to provisions of services to isolated populations; and (c) develop and evaluate special projects designed to address problems related to emergency medical care for Native Hawaiian and Alaska Native populations, including prevention, prehospital care, hospital services, rehabilitation, and linkages with primary care.

Eligibility

States and accredited schools of medicine are eligible applicants.

Funding Priorities and/or Preferences

Competition is limited to the State of Hawaii.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$250,000.

Estimated Number of Awards

1.

Estimated Project Period

2 Years.

For Programmatic Questions

Contact Person: David E. Heppel, M.D.
Phone Number: 1–301–443–2250.
E-mail: dheppel@hrsa.gov.

Traumatic Brain Injury (TBI), State Implementation Grants.

CFDA Number: 93.234A.
Application Availability: 09/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 11/01/1999.
Application Deadline: 12/01/1999.
Projected Award Date: 04/01/2000.

Authorization

Public Health Service Act, Title XII, Section 1242, 42 U.S.C. 300d–42.

Purpose

The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Implementation grants provide funding to assist States in moving toward statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility

State governments are eligible applicants.

Funding Priorities and/or Preferences

None.

Matching Requirement

The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,200,000.

Estimated Number of Awards

6.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: David E. Heppel, M.D.
Phone Number: 1–301–443–2250.
E-mail: dheppel@hrsa.gov.

Traumatic Brain Injury (TBI), State Planning Grants

CFDA Number: 93.234B.
Application Availability: 09/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 11/01/1999.
Application Deadline: 12/01/1999.
Projected Award Date: 04/01/2000

Authorization

Public Health Service Act, Title XII, Section 1242, 42 U.S.C. 300d–42.

Purpose

The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Implementation grants provide funding to assist States in moving toward statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility

State governments are eligible applicants.

Funding Priorities and/or Preferences

None

Matching Requirement

The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$300,000.

Estimated Number of Awards

4.

Estimated Project Period

2 Years.

For Programmatic Questions

Contact Person: David E. Heppel, M.D.
Phone Number: 1–301–443–2250.
E-mail: dheppel@hrsa.gov.

Healthy Start: Eliminating Disparities in Perinatal Health

CFDA Number: 93.926E.
Application Availability: 12/21/1999.

To Obtain This Application Kit

Contact: 1–888–333-HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 01/28/2000.
Application Deadline: 03/01/2000.
Projected Award Date: 06/01/2000.

Authorization

Public Health Service Act, Title III, Section 301, 42 U.S.C. 241.

Purpose

To enhance a community's service system to address significant disparities in perinatal health indicators. Funding would be made available for up to 15 community projects which have: (1) Significant infant mortality and morbidity rates among one or more subpopulations; (2) existing active consortia of stakeholders with over one year's experience in infant mortality reduction initiatives; and (3) a feasible plan to reduce barriers, improve the local perinatal system of care, and work towards eliminating existing disparities in perinatal health. These sites must have or plan to implement/adapt Healthy Start models of consortium, case management, outreach and

enhanced clinical services. In addition, they must demonstrate established linkages with key State and local services and resource systems such as Title V, Title XIX, Title XXI, WIC, Enterprise Communities/Empowerment Zones, federally-funded Community and Migrant Health Centers, and Indian/Tribal Health Services. For this competition, "community" is broadly defined so that a statewide or multi-county project serving racial/ethnic groups (e.g., Hmongs, Mexican Hispanics, African American, etc.) would be eligible.

Eligibility

Public or nonprofit organizations are eligible to apply.

Estimated Amount of This Competition

$14,800,000.

Estimated Number of Awards

Up to 15.

Estimated Project Period

4 Years.

Funding Priorities and/or Preferences

Preference will be given to: (1) Past (FY 1999) projects of HSI-Infrastructure/Capacity Building grants, and (2) communities in States and territories which do not have a currently federally-funded Healthy Start project. Priority will be given to: (1) Communities with significant racial/ethnic disparities in perinatal indicators for three years (1995–1997); (2) border communities (within 62 miles of the Mexican border); and (3) proposals with emphasis/specific activities addressing qualitative issues (e.g., social/economic, violence, psychological services) for its perinatal populations.

Special Considerations

Current Healthy Start implementation grantees are not eligible to apply.

Review Criteria

Final criteria are included in the application kit.

For Programmatic Questions

Contact Person: Maribeth Badura.
Phone Number: 1–301–443–0543.
E-mail: mbadura@hrsa.gov.

Healthy Start: Infrastructure/Capacity Building Projects

CFDA Number: 93.926F.
Application Availability: 01/04/2000.

To Obtain This Application Kit

Contact: 1–888–333-HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 02/28/2000.
Application Deadline: 03/15/2000.
Projected Award Date: 06/01/2000.

Authorization

Public Health Service Act, Title III, Section 301, 42 U.S.C. 241.

Purpose

The purpose of this program is to build infrastructure/capacity in targeted communities/areas of the State where racial disparities in perinatal indicators exist, including among Hispanics, American Indians, African Americans, Alaska Natives, Asian/Pacific Islanders, immigrant populations, particularly those living in border counties. Funding would be made available to up to 15 communities to support the development of local plans to fill gaps in/or expand data systems to identify and monitor perinatal outcomes, train personnel and strengthen local reporting systems, establish networks and links to other systems, assist in needs assessment, and consortium/coalition development.

Eligibility

Public or nonprofit organizations are eligible to apply.

Funding Priorities and/or Preferences

Preference will be given to communities in States and territories which do not have a current federally-funded Healthy Start project. Priority will be given to: (1) Communities with significant racial/ethnic disparities in perinatal indicators for three years (1995–1997); (2) States with (national) border communities; and (3) communities applying as or on behalf of an existing community-based consortium which have infant mortality reduction initiatives already underway.

Special Considerations

Current Healthy Start implementation grantees are not eligible to apply.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$2,250,000.

Estimated Number of Awards

Up to 15.

Estimated Project Period

2 Years.

For Programmatic Questions

Contact Person: Maribeth Badura.
Phone Number: 1–301–443–0543.
E-mail: mbadura@hrsa.gov.

National Fetal and Infant Mortality Review (FIMR) Resource Center

CFDA Number: 93.926H.
Application Availability: 01/24/2000.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 02/28/2000.
Application Deadline: 04/01/2000.
Projected Award Date: 07/01/2000.

Authorization

Public Health Service Act, Title III, Section 301, 42 U.S.C. 241.

Purpose

The purpose of the resource center is to provide technical support to States and communities, particularly Healthy Start communities, as they develop and implement the community-based fetal and infant mortality review process. The resource center will be responsible for working with the MCHB to promote the FIMR process, provide assistance to communities setting up the process, share pertinent information among communities and States, develop refinements and new approaches to the FIMR process to make it more responsive and efficient, and expand the use of FIMR as a needs assessment and quality improvement tool to build capacity in the State Title V program.

Eligibility

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 405b), is eligible to apply.

Funding Priorities and/or Preferences

Preference will be given to national organizations with expertise in the provision of FIMR training and technical assistance and with an existing infrastructure to respond to requests for technical assistance, technology transfer and information sharing from States and communities that are developing, coordinating and/or sustaining FIMRs.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$500,000.

Estimated Number of Awards

1.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: Ellen Hutchins, Ph.D.
Phone Number: 1–301–443–9534.
E-mail: ehutchins@hrsa.gov.

Maternal and Child Health Provider Partnerships

CFDA Number: 93.926I.
Application Availability: 01/03/2000.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 02/07/2000.
Application Deadline: 03/03/2000.
Projected Award Date: 06/01/2000.

Authorization

Public Health Service Act, Title III, Section 301, 42 U.S.C. 241.

Purpose

This program will support Cooperative Agreements with MCH providers' membership organizations to advance the field of perinatal and women's health and ultimately improve the health status of women through improved health care services and systems. The Partners will be expected to identify relevant needs in perinatal and women's health from their perspective, develop and/or implement organizational and collective strategies, and facilitate information sharing and communication within the field. Particular attention of the Partnership will be to address health promotion/risk reduction behaviors among women through coordinated and culturally competent services and systems of care. Projects will cooperate and work collaboratively with each other and with other MCHB funded projects in perinatal and women's health.

Eligibility

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 405b), is eligible to apply.

Funding Priorities and/or Preferences

Preference will be given to national membership organizations representing providers of obstetrical, gynecological, and general women's health services.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$400,000.

Estimated Number of Awards

2.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Brenda Lisi.
Phone Number: 1–301–443–9991.
E-mail: blisi@hrsa.gov.

Improving Systems of Care for Pregnant Women Experiencing Domestic Violence

CFDA Number: 93.926J.
Application Availability: 12/03/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 01/14/2000.
Application Deadline: 02/11/2000.
Projected Award Date: 05/01/2000.

Authorization

Public Health Service Act, Title III, Section 301, 42 U.S.C. 241.

Purpose

This three year demonstration program will develop/enhance systems of care that identify pregnant women who are experiencing domestic violence/abuse and provide appropriate information, referrals, and linkages to interventions.

Eligibility

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 405b), is eligible to apply.

Funding Priorities and/or Preferences

Preference will be given to State/Territorial MCH Title V Agencies, tribal health agencies or their designees.

Special Consideration

There may be only one application per State.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$600,000.

Estimated Number of Awards

4.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Brenda Lisi.
Phone Number: 1–301–443–9991.
E-mail: blisi@hrsa.gov.

HIV/AIDS Programs

Grants Management Office: 1–301–443–2280.

Special Projects of National Significance (SPNS)

CFDA Number: 93.928.
Application Availability: 04/01/2000.

To Obtain This Application Kit

Contact: 1–888–333-HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 06/01/2000.
Projected Award Date: 09/15/2000.

Authorization

Public Health Service Act, Title XXVI, Section 2691, as amended by the Ryan White Care Act Amendments of 1996, Public Law 104–146, 42 U.S.C. 300ff-10

Purpose

Development, demonstration and assessment of innovative and potentially replicable HIV service delivery models that address a continually changing epidemic, the quality of emerging HIV therapies, changes in the economies of health care affecting HIV care networks, and interventions that can document outcomes.

Eligibility

Public and nonprofit entities are eligible to apply.

Funding Priorities and/or Preferences

None.

Special Considerations

Special consideration will be given to certain populations referenced in the statute: Native Americans, the homeless, adolescents, hemophiliacs, and the incarcerated.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,500,000.

Estimated Number of Awards

5–6.

Estimated Project Period

2–5 Years.

For Programmatic Questions

Contact Person: Steven Young.
Phone Number: 1–301–443–7136.
E-mail: syoung@hrsa.gov.

Ryan White Title III Funding for Early Intervention Services Grants: Existing Geographic Areas

CFDA Number: 93.918A.
Application Availability: 06/18/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 10/01/1999.
Projected Award Date: 01/01/2000 and 06/30/2000.

Authorization

Public Health Service Act, Title XXVI, Part C, Section 2641, as amended by the Ryan White Care Act Amendments of 1996, Public Law 104–146, 42 U.S.C. 300ff-41.

Purpose

The purpose of Title III funding is to provide, on an outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected. All Title III programs must provide: HIV counseling and testing; counseling and education on living with HIV; appropriate medical evaluation and clinical care; and other essential services such as oral health care, outpatient mental health services and nutritional services, and appropriate referrals for specialty services.

Eligibility

Eligible applicants are public or nonprofit private entities that are Section 330 Health Centers, grantees funded under Section 1001 regarding Family Planning, Comprehensive Hemophilia Diagnostic and Treatment Centers, Federally Qualified Health Centers, or nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV disease.

Limited Competition

Eligible applicants are public or nonprofit private entities that are currently funded Title III programs whose project periods expire in FY 2000 and new organizations proposing to serve the same populations currently being served by these existing projects. These areas are:

State	Areas
AL	Jefferson County, Mobile County.
AZ	Pima County.
CA	Los Angeles County, San Diego County, Mendocino County, Sonoma County, Santa Barbara County.
CO	Denver County.
CT	New Haven County.
DC	Washington.
DE	Counties statewide.
FL	Dade County.
GA	Counties of Baker, Calhoun, Dougherty, Lee, Mitchell, Worthy, Terrell, Colquitt, Thomas, Grady, Seminole, Miller, Early, Decatur, Counties of Glynn, Camden, McIntosh, Long, Liberty, Bryan.
IA	Woodbury County.
IL	Counties of Peoria, Taylwell, McLean, Fulton, Know, Bureau, Henry, Marshall, Putnam, Woodford, Schuyler, McDonough, LaSalle, Livingston, Mason, Warren, Stark, Cook County.
LA	Parishes of Calcasieu, Cameron, Beauregard, Jeff Davis, Allen, Parishes of Orleans, Jefferson, East Baton Rouge, St. Tammany, Washington, Iberville, St. Bernard.
MA	Middlesex County, Suffolk County, Essex County.
MD	Counties of Harford, Carroll, Dorchester, Caroline, Talbot, Cecil, Baltimore, Anne Arundel, Frederick, Howard, Montgomery, Baltimore City.
MI	Counties of Washtenau, Livingston, Jackson, Wayne, Lenawee, Oakland,. MaComb, St. Claire, Monroe, Counties of Ionia, Kent, Manistee, Mason,. Mecosta, Muskegon, Newaygo, Oceana, Ottawa.
MO	Counties of North, South, West and St. Louis City.
MS	Counties of Coahoma, Tate, Tallahatchie, Leflore, Lowdens, Bolivar, Tunica, Quitman, Panola, Desoto, Marshall.
NJ	Counties of Essex, Union, Hudson, Bergen, Passaic, Morris, Middlesex County, Mercer County, Hudson County.
NY	Counties of Ulster, Dutchess, Orange, Sullivan, New York City,. Weschester County, Suffolk County.
OH	Ross County.
OR	Counties of Multnomah, Clackamas, Washington, Yamhill, Columbia.
OK	Oklahoma County.
PA	Philadelphia County.
PR	Territory of Puerto Rico.
SC	Counties of Richland, Sumter, Fairfield.
TX	El Paso County, Counties of Willaey, Cameron, Hidalgo.
VA	Counties of Fairfax, Prince William, Loudoun.
WA	King County, Yakima County.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$29,866,051.

Estimated Number of Awards

69.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Andrew Kruzich.
Phone Number: 1–301–443–0735.
E-mail: akruzich@hrsa.gov.

Ryan White Title III Funding for Early Intervention Services Grants: New Geographic Areas

CFDA Number: 93.918B.
Application Availability: 04/17/2000.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 07/17/2000.
Projected Award Date: 09/30/2000.

Authorization

Public Health Service Act, Title XXVI, Part C, Section 2641, as amended by the Ryan White Care Act Amendments of 1996, Public Law 104–146, 42 U.S.C. 300ff-41.

Purpose

The purpose of Title III funding is to provide, on an outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected. All Title III programs must provide: HIV counseling and testing; counseling and education on living with HIV; appropriate medical evaluation and clinical care; and other essential services such as oral health care, outpatient mental health services and nutritional services, and appropriate referrals for specialty services.

Eligibility

Eligible applicants are public or nonprofit private entities that are Section 330 Health Centers, grantees funded under Section 1001 regarding Family Planning, Comprehensive

Hemophilia Diagnostic and Treatment Centers, federally Qualified Health Centers, or nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV disease.

Funding Priorities and/or Preferences

In awarding these grants, preference will be given to approved/unfunded applicants who submitted an application for funding in FY 1999 and to applicants who previously received Title III planning grants. Preference for funding may also be given to applicants which help to achieve an equitable geographic distribution of programs across all States and Territories, especially programs that provide services in rural or underserved communities where the HIV/AIDS epidemic is increasing.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$23,400,000.

Estimated Number of Awards

78.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Andrew Kruzich.
Phone Number: 1–301–443–0735.
E-mail: akruzich@hrsa.gov.

Ryan White Title III HIV Funding for Early Intervention Services Planning Grants

CFDA Number: 93.918C.
Application Availability: 02/04/2000.

To Obtain This Application Kit

Contact: 1–888–333-HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 06/02/2000.
Projected Award Date: 09/30/2000.

Authorization

Public Health Service Act, Title XXVI, Part C, Section 2641, as amended by the Ryan White Care Act Amendments of 1996, Public Law 104–146, 42 U.S.C. 300ff-41.

Purpose

The purpose of this grant program is to support communities and health care service entities in their planning efforts to develop a high quality and broad scope of primary health care services for people in their service areas who are living with HIV or at risk of infection. Applications must propose planning activities which will lead to the establishment of comprehensive outpatient HIV primary care services. This grant program supports activities of the planning process and does not fund any service delivery or patient care.

Eligibility

Eligible applicants must be public or nonprofit private entities that are, or intend to become, eligible to apply for the Title III Early Intervention Services grant.

Limited Competition

Applicants for these funds cannot be current Ryan White Title III Early Intervention Services Program grant recipients and must be located in rural or underserved communities where HIV primary health care resources remain insufficient to meet the need for services or plan for such services.

Funding Priorities and/or Preferences

In awarding these grants, preference will be given to applicants located in rural or underserved areas where emerging or ongoing HIV primary health care needs have not been adequately met.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,234,000.

Estimated Number of Awards

24.

Estimated Project Period

1 Year.

For Programmatic Questions

Contact Person: Andrew Kruzich.
Phone Number: 1–301–443–0735.
E-mail: akruzich@hrsa.gov.

Ryan White Title III HIV Funding for Early Intervention Services Planning Grants

CFDA Number: 93.918D.
Application Availability: 02/04/2000.

To Obtain an Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 06/02/2000.
Projected Award Date: 09/30/2000.

Authorization

Public Health Service Act, Title XXVI, Section 2641, as amended by the Ryan White Care Act Amendments of 1996, Public Law 104–146, 42 U.S.C. 300ff–41.

Purpose

The purpose of this grant program is to support communities and health care service entities in their planning efforts to develop a high quality and broad scope of primary health care services for people in their service areas who are living with HIV or at risk of infection. Applications must propose planning activities which will lead to the establishment of comprehensive outpatient HIV primary care services. This grant program supports activities of the planning process and does not fund any service delivery or patient care.

Eligibility

Eligible applicants must be public or nonprofit private entities that are, or intend to become, eligible to apply for the Title III Early Intervention Services grant.

Limited Competition

Applicants for these funds cannot be current Ryan White Title III Early Intervention Service Program grant recipients unless they propose to open a new site in their current service area or in a new service area to serve African American communities highly impacted by HIV/AIDS. Applicants must also be organizations indigenous to the African American community which is defined as a community-based or public organization local to and supported by the African American population proposed to be served.

Funding Priorities and/or Preferences

In awarding these grants, preference will be given to applicants located in rural or underserved areas where there are many HIV+ African Americans and ongoing HIV primary health care needs have not been adequately met. Preference will also be given to applicants that are not currently Ryan White Title III Early Intervention Service Program grant recipients.

Special Considerations

Building HIV primary care capacity of indigenous organizations serving African American communities.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,000,000.

Estimated Number of Awards

Up to 60.

Estimated Project Period

Up to 2 Years.

For Programmatic Questions

Contact Person: Andrew Kruzich.
Phone Number: 1–301–443–0735.
E-mail: akruzich@hrsa.gov.

Ryan White Title IV: Existing Geographic Areas

CFDA Number: 93.153A.
Application Availability: 12/13/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 1/31/2000.
Application Deadline: 3/01/2000.
Projected Award Date: 8/01/2000.

Authorization

Public Health Service Act, Title XXVI, Section 2671, 42 U.S.C. 300ff–71.

Purpose

The purpose of the Title IV funding is to improve access to primary medical care, research, and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that: (1) Cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved at-risk and limited populations. Activities under these grants should address the goals of enrolling and maintaining clients in HIV primary care; increase client access to research by linking development and support of comprehensive, community-based and family centered care infrastructures, and emphasize prevention within the care system, particularly the prevention of perinatal HIV transmission.

Eligibility

Eligible organizations are public or private nonprofit entities that provide or arrange for primary care.

Limited Competition

Applicants are limited to currently funded Title IV programs whose project periods expire in FY 2000 and new organizations proposing to serve the same populations currently being served by these existing projects. These areas are:

State	Areas
CA	Oakland.
FL	Miami, Fort Lauderdale.
IL	Chicago.
LA	New Orleans.
MA	Boston, Holyoke, Brockton, Lowell, Lawrence, New Bedford.
NJ	Statewide.
NY	Northern Manhattan.
OH	Columbus.
PR	Statewide.
RI	Statewide.
TX	Fort Worth, Houston, San Antonio.
WA	Seattle.

Funding Priorities and/or Preferences

Preference for funding will be given to projects that support a comprehensive, coordinated system of HIV care serving children, youth, women and families and are linked with or have initiated activities to link with clinical trials or other research.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$15,663,000.

Estimated Number of Awards

16.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Lydia Soto-Torres, MD.
Phone Number: 1–301–443–9051.
E-mail: lsoto-torres@hrsa.gov.

Ryan White Title IV: New Geographic Areas

CFDA Number: 93.153B.
Application Availability: 12/13/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 01/31/2000.
Application Deadline: 03/01/2000.
Projected Award Date: 08/01/2000.

Authorization

Public Health Act, Title XXVI, Section 2671, 42 U.S.C. 300ff–71.

Purpose

Organizations should be able to demonstrate expertise in the coordination or provision of comprehensive medical and social services to children, youth, women and families. The purpose of the Title IV funding is to improve access to primary medical care, research and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that: (1) Cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved, at-risk and limited populations. Activities under these grants should address the goals of: enrolling and maintaining clients in HIV primary care; increasing client access to research by linking HIV/AIDS clinical research trials and activities with comprehensive care; fostering the development and support of comprehensive, community-based and family centered care infrastructures; and emphasizing prevention within the care system, particularly the prevention of perinatal HIV transmission

Eligibility

Eligible organizations are public or private nonprofit entities that provide or arrange for primary care.

Limited Competition

Applicants are limited to geographic areas where the HIV/AIDS epidemic is increasing among women, children and adolescents and where other resources targeted to these populations are limited or non-existent. These grants are for geographic areas *not* listed below.

State	Areas
AL	Statewide.
AZ	Phoenix.
CA	San Francisco; La Jolla, Los Angeles.
CO	Denver.
CT	Bridgeport, New Haven, Stamford, Hartford.
DC	Statewide.
FL	Orlando; Jacksonville, Tampa.
MD	Statewide.
MI	Lansing.
MO	St. Louis.
NH	Statewide.

State	Areas
NV	Las Vegas.
NY	Elmhurst; New York City (except Northern Manhattan), Bronx, Brooklyn, Albany, Stonybrook.
NC	Charlotte; Washington.
PA	Philadelphia.
SC	Statewide.
TN	Memphis.
TX	Dallas.
WI	Milwaukee.

Note: Additional sites may be added to this list in FY 2000 after the HRSA Preview publication date. Be sure to use the list provided in your application kit for eligibility purposes.

Funding Priorities and/or Preferences

Preference for funding may be given to applicants who help to achieve an equitable geographical distribution of programs across all States and Territories, especially programs that provide services in rural or underserved communities where the HIV/AIDS epidemic is increasing.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$800,000.

Estimated Number of Awards

3.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Lydia Soto-Torres, MD.
Phone Number: 1–301–443–9051.
E-mail: lsoto-torres@hrsa.gov.

Rural Health Programs

Grants Management Office: 1–301–594–4235.

Rural Health Research Centers

CFDA Number: 93.155.
Application Availability: 02/01/2000.

To Obtain an Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 04/01/2000.
Application Deadline: 05/01/2000.
Projected Award Date: 08/30/2000.

Authorization

Public Health Service Act, Title III, Section 301, 43 U.S.C. 241.

Purpose

The purpose of this program is to fund Rural Health Research Centers to conduct and disseminate policy relevant research on issues of multi-state and national significance in the area of rural health services. The centers study critical issues facing rural communities in their quest to secure adequate, affordable, high quality health services. Research findings are published in appropriate referred journals and disseminated to a national audience.

Eligibility

All public and private research oriented entities, both nonprofit and for-profit, are eligible to apply.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$2,500,000.

Estimated Number of Awards

5.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Joan F. Van Nostrand.
Phone Number: 1–301–443–0613.
E-mail: jvan__nostrand@hrsa.gov.

Rural Health Outreach Grant

CFDA Number: 93.912A.
Application Availability: 08/01/1999.

To Obtain an Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 11/01/1999.
Projected Award Date: 05/01/2000.

Authorization

Public Health Service Act, Title III, Section 330A, 42 U.S.C. 254c.

Purpose

The purpose of this grant program is to expand access to, coordinate, restrain the cost of, and improve the quality of essential health care services, including preventive and emergency services through the development of integrated health care delivery systems or networks in rural areas and regions. Funds are available for projects to support the direct delivery of health care and related services, to expand existing services, or to enhance health service delivery through education, promotion, and prevention programs. The emphasis is on the actual delivery of specific services rather than the development of organizational capabilities. Projects may be carried out by networks of the same providers (e.g. all hospitals) or more diversified networks.

Eligibility

A rural public or nonprofit private organization, that is part of a network of at least three entities that support the delivery of health care services and will work together to complete the proposed project, is eligible to apply. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or the applicant organization must be constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and supported under Section 330(g) of the Public Health Service (PHS) Act. Organizations that provide services to migrant and seasonal farmworkers in rural areas and are supported under Section 330(g) of the PHS Act are eligible regardless of the urban or rural location of the administrative headquarters.

Funding Priorities and/or Preferences

Funding preference may be given to applicant networks that include: (1) A majority of the health care providers serving in the area or region to be served by the network; (2) any Federally Qualified Health Center, Rural Health Clinic, and local public health department serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children (WIC) program, to improve access to and coordination of health care services.

Special Considerations

An applicant organization's central headquarters must be located in a rural area. (A list of eligible rural areas is included in the application kit.)

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$10,000,000.

Estimated Number of Awards

50.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Eileen Holloran.
Phone Number: 1–301–443–0835.
E-mail: eholloran@hrsa.gov.

Rural Health Network Development

CFDA Number: 93.912B.
Application Availability: 08/01/1999.

To Obtain an Application Kit

Contact: 1–888–333–HRSA until September 12, 1999 .
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 11/08/1999.
Projected Award Date: 05/01/2000.

Authorization

Public Health Service Act, Title III, Section 330A, 42 U.S.C. 254c.

Purpose

The purpose of this program is to support the planning and development of vertically integrated health care networks in rural areas. Vertically integrated networks must be composed of three different types of providers. The emphasis of the program is on projects to develop the organizational capabilities of these networks. The network is a tool for overcoming the fragmentation of health care delivery services in rural areas. As such, the network provides a range of possibilities for structuring local delivery systems to meet health care needs of rural communities.

Eligibility

A rural public or nonprofit private organization that is or represents a network which includes three or more health care providers or other entities that provide or support the delivery of health care services is eligible to apply. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or an organization constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and supported under Section 330(g) of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of the administrative headquarters.

Funding Priorities and/or Preferences

A funding preference may be given to applicant networks that include: (1) A majority of the health care providers serving in the area or region to be served by the network; (2) any Federally Qualified Health Center, Rural Health Clinic, and local public health department serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children (WIC) program to improve access to and coordination of health care services.

Special Considerations

An applicant organization's central headquarters must be located in a rural area. (A list of eligible rural areas is included in the application kit.)

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$4,000,000.

Estimated Number of Awards

23.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Sahira Rafiullah.
Phone Number: 1–301–443–0835.
E-mail: srafiullah@hrsa.gov.

State Rural Hospital Flexibility Program

CFDA Number: 93.241.
Application Availability: 03/01/2000.

To Obtain an Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 06/01/2000.
Projected Award Date: 08/31/2000.

Authorization

Social Security Act, Title XVIII, Section 1820, as amended by Public Law 105–33 Section 4201, 42 U.S.C. 1395I–4.

Purpose

The purpose of this grant program is to help States work with rural communities and hospitals to develop and implement a rural health plan, develop integrated networks of care, improve emergency medical services and designate critical access hospitals (CAHs).

Eligibility

Five States are eligible to apply: Connecticut, Delaware, Oregon, Pennsylvania and Utah. These are grants to States and only one application will be accepted from each eligible State.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$2,500,000.

Estimated Number of Awards

5.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Sahira Rafiullah or Jerry Coopey.
Phone Number: 1–301–443–0835.
E-mail: srafiullah@hrsa.gov or jcoopey@hrsa.gov.

Primary Health Care Programs

Grants Management Office: 1–301–594–4235.

Community and Migrant Health Centers

CFDA Number: 93.224 and 93.246.
Application Availability: Continuous.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: Varies.
Projected Award Date: Varies.

Authorization

Public Health Service Act, Title III, Section 330, 42 U.S.C. 254b and 254b(g).

Purpose

The Community Health Center and Migrant Health Center (C/MHC) programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations. It is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their provision of services to medically underserved populations. HRSA is committed to 100 percent access to primary care services with zero percent health disparities for the underserved. HRSA will open competition for awards under Section 330 of the Public Health Service Act (U.S.C. 254b for CHCs and U.S.C. 254b(g) for MHCs) to support health services in the areas currently served by

these grants. Two hundred-twenty C/MCH grantees will reach the end of their project periods during FY 2000. Applications are due 120 days before the expiration date.

Eligibility

Applicants are limited to currently funded programs whose project periods expire during FY 2000 and new organizations proposing to serve the same populations currently being served by these existing programs.

Funding Priorities and/or Preferences

None.

Special Considerations

Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a C/MHC. Technical assistance and detailed information about each service area, such as census grants, can be obtained by contacting the HRSA Field Office.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$220,000,000.

Estimated Number of Awards

220.

Estimated Project Period

1–5 Years.

For Programmatic Questions

Contact Person: Richard Bohrer.
Phone Number: 1–301–594–4300.
E-mail: rbohrer@hrsa.gov.

City	State	Deadline
HRSA Boston Field Office—(617) 565–1452		
Boston	MA	12/31/1999
Hartford	CT	12/31/1999
Bridgeport	CT (2)	01/31/2000
New Haven	CT	03/31/2000
Worcester	MA	03/31/2000
Salem	MA	03/31/2000
Lowell	MA	03/31/2000
Mattapan	MA	03/31/2000
New Haven	CT	05/31/2000
Boston	MA	05/31/2000
Worthington	MA	05/31/2000
Worcester	MA	05/31/2000
North Quincy	MA	05/31/2000
New Bedford	MA	05/31/2000
Lawrence	MA	05/31/2000
Burlington	VT	06/30/2000
Middletown	CT	06/30/2000
HRSA New York Field Office—(212) 264–2864		
New York	NY	11/30/1999
Newark	NJ	11/30/1999
White Plains	NY	11/30/1999
Brockport	NY	12/31/1999
Rushville	NY	12/31/1999
Brooklyn	NY	12/31/1999
Warrensburg	NY	12/31/1999
Rochester	NY	12/31/1999
Jersey City	NJ	01/31/2000
Bronx	NY	01/31/2000
Brooklyn	NY	01/31/2000
Naranjito	PR	05/31/2000
Schenectady	NY	05/31/2000
St. Thomas	VI (2)	05/31/2000
Arroyo	PR	06/30/2000
New York	NY	06/30/2000
Bronx	NY	06/30/2000
HRSA Philadelphia Field Office—(215) 861–4422		
Baltimore	MD	11/30/1999
Hancock	MD	11/30/1999
McKees Rocks	PA	11/30/1999
Scranton	PA	11/30/1999
Scarbro	WV	11/30/1999
Clay	WV	11/30/1999
Rock Cave	WV	11/30/1999
Arrington	VA	12/31/1999
Richmond	VA	12/31/1999
Fairmont	WV	01/31/2000
Saltville	VA	01/31/2000
Aylett	VA	01/31/2000
Bastian	VA	01/31/2000
Spencer	WV	01/31/2000
Chester	PA	01/31/2000
Harrisburg	PA	03/31/2000
New Canton	VA	03/31/2000
Beckley	WV	03/31/2000
Coalport	PA	03/31/2000
Onancock	VA	05/31/2000
Dungannon	VA	05/31/2000
Philadelphia	PA	05/31/2000
Baltimore	MD	05/31/2000
Laurel Fork	VA	05/31/2000
Man	WV	06/30/2000
Baltimore	MD	06/30/2000
Wilmington	DE	06/30/2000
Brandywine	MD	06/30/2000
Portsmouth	VA	06/30/2000
HRSA Atlanta Field Office—(404) 562–2996		
Palatka	FL	11/30/1999
Savannah	GA	11/30/1999
Louisville	KY	11/30/1999
Manson	NC	11/30/1999
Orangeburg	SC	11/30/1999
Parrish	FL	11/30/1999
Mound Bayou	MS	11/30/1999
Kinston	NC	11/30/1999
Fellsmere	FL	12/31/1999
Lexington	KY	12/31/1999
Fort Myers	FL	12/31/1999
Savannah	TN	12/31/1999
Eutaw	AL	01/31/2000
Montgomery	AL	01/31/2000
Miami	FL (3)	01/31/2000
Jellico	TN	01/31/2000
Pearl	MS	01/31/2000
Rock Hill	SC	01/31/2000
Eastover	SC	01/31/2000
Covington	KY	01/31/2000
Trenton	GA	01/31/2000
Liberty	MS	01/31/2000
Olanta	SC	01/31/2000
Laurel	MS	03/31/2000
Hendersonville	NC	03/31/2000
Columbia	SC	03/31/2000
Charleston	SC	03/31/2000
Tampa	FL	03/31/2000
Meridian	MS	03/31/2000
Conway	SC	03/31/2000
Washburn	TN	03/31/2000
Troy	AL	03/31/2000
Tallahassee	FL	03/31/2000
Atlanta	GA	05/31/2000
Durham	NC	05/31/2000
Memphis Hlth Ctr	TN	05/31/2000
Huntsville	TN	05/31/2000
Greenwood	SC	05/31/2000
Selma	AL	05/31/2000
Palmetto	GA	05/31/2000
Hollister	NC	05/31/2000
Roxboro	NC	05/31/2000
Mobile	AL	05/31/2000
Fayette	MS	05/31/2000
Shubuta	MS	05/31/2000
Jefferson	SC	05/31/2000
Bolivar	TN	06/30/2000
Greenville	KY	06/30/2000
HRSA Chicago Field Office—(312) 353–1715		
Toledo	OH	11/31/1999
St. Paul	MN	11/31/1999
Indianapolis	IN	11/31/1999
Columbus	OH	11/31/1999
Cleveland	OH	12/31/1999
Chicago	IL	12/31/1999
East St. Louis	IL	12/31/1999
Lisbon	OH	12/31/1999
Moorhead	MN	01/31/2000
Anna	IL	01/31/2000
Kalamazoo	MI	01/31/2000
Traverse City	MI	03/31/2000
Wautoma	WI	03/31/2000
Fremont	OH	03/31/2000
Sterling	MI	03/31/2000
Temperence	MI	03/31/2000
Milwaukee	WI	03/31/2000
Lincoln	MI	05/31/2000
Grand Marais	MN	05/31/2000
Cook	MN	05/31/2000
Indianapolis	IN	06/30/2000
Cashton	WI	06/30/2000
Minneapolis	MN	06/30/2000
Waukegan	IL	06/30/2000
Beloit Area	WI	06/30/2000
HRSA Dallas Field Office—(214) 767–3872		
De Leon	TX	11/30/1999
Augusta	AR	12/31/1999
Pecos	NM	12/31/1999
Pharr	TX	12/31/1999
Houston	TX	12/31/1999
Greenville	TX	01/31/2000
San Antonio	TX (2)	01/31/2000
Lake Charles	LA	01/31/2000
La Marque	TX	03/31/2000
Port Arthur	TX	03/31/2000
Laredo	TX	03/31/2000
Cotulla	TX	03/31/2000
San Antonio	TX	03/31/2000
Tulsa	OK	03/31/2000
Levelland	TX	05/31/2000

City	State	Deadline
New Iberia	LA	05/31/2000
Konawa	OK	05/31/2000
Baton Rouge	LA	05/31/2000
Newton	TX	05/31/2000
Benavides	TX	05/31/2000
El Rito	NM	06/30/2000
HRSA Kansas Field Office—(816) 426–5296		
Richland	MO	11/30/1999
Junction City	KS	12/31/1999
Cape Girardeau	MO	12/31/1999
St. Louis	MO	01/31/2000
Omaha	NE	01/31/2000
New Madrid	MO	03/31/2000
Des Moines	IA	05/31/2000
Ellington	MO	05/31/2000
Topeka	KS	06/30/2000
HRSA Denver Field Office—(303) 844–3203		
Lamar	CO	12/31/1999
Salt Lake City	UT	12/31/1999
Norwood	CO	01/31/2000
Butte	MT	01/31/2000
Isabel	SD	03/31/2000
Enterprise	UT	03/31/2000
Fort Lupton	CO	05/31/2000
Bicknell	UT	05/31/2000
Boulder	CO	06/30/2000
HRSA San Francisco Field Office—(415) 437–8090		
San Fernando	CA	11/30/1999
Phoenix	AZ	11/30/1999
Madera	CA	11/30/1999
San Francisco	CA	12/31/1999
Union City	CA	12/31/1999
Salinas	CA	12/31/1999
Los Angeles	CA	12/31/1999
Arcata	CA	12/31/1999
Marana	AZ	12/31/1999
Las Vegas	NV	12/31/1999
Palikir	FM	12/31/1999
San Francisco	CA	01/31/2000
Porterville	CA	01/31/2000
Los Angeles	CA	01/31/2000
Alviso	CA	03/31/2000
San Francisco	CA	03/31/2000
Oakland	CA	03/31/2000
Ventura	CA	03/31/2000
Brawley	CA	05/31/2000
Olivehurst	CA	05/31/2000
Page	AZ	05/31/2000
Susanville	CA	05/31/2000
Nipomo	CA	05/31/2000
Santa Ana	CA	05/31/2000
San Joaquin	CA	06/30/2000
Ukiah	CA	06/30/2000
Reno	NV	06/30/2000
Redding	CA	06/30/2000
Elfrida	AZ	06/30/2000
HRSA Seattle Field Office—(206) 615–2491		
Wenatchee	WA	03/31/2000
Seattle	WA	03/31/2000
Cornelius	OR	03/31/2000
Kent	WA	03/31/2000
Okanogan	WA	03/31/2000
Medford	OR	05/31/2000
Glenns Ferry	ID	05/31/2000
Cave Junction	OR	06/30/2000
Plummer	ID	06/30/2000
Fairbanks	AK	06/30/2000
Tillamook	OR	06/30/2000

Health Care for the Homeless

CFDA Number: 93.151.
Application Availability: Continuous.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: Varies.
Projected Award Date: Varies.

Authorization

Public Health Service Act, Title III, Section 330(h), 42 U.S.C. 254b(h).

Purpose

The Health Care for the Homeless (HCH) program is designed to increase the access of homeless populations to cost-effective, case managed, and integrated primary care and substance abuse services provided by existing community-based programs/providers. It is the intent of HRSA to continue to support health services to the homeless people in these areas/locations given the continued need for cost-effective, community-based primary care services. Thirty-four HCH grantees will reach the end of their project periods during FY 2000. Applications are due 120 days before the expiration date.

Eligibility

Applicants are limited to currently funded programs whose project periods expire during FY 2000 and new organizations proposing to serve the same populations currently being served by these existing programs.

Funding Priorities and/or Preferences

None.

Special Considerations

Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding an HCH. Technical assistance and detailed information about each service area, such as census grants, can be obtained by contacting the HRSA Field Office.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$15,207,000.

Estimated Number of Awards

34.

Estimated Project Period

1–5 Years.

For Programmatic Questions

Contact Person: Monica Toomer.
Phone Number: 1–301–594–4430.
E-mail: mtoomerz@hrsa.gov.

City	State	Deadline
HRSA Boston Field Office—(617) 565–1482		
Hartford	CT	12/31/1999
New Haven	CT	05/31/2000
Burlington	VT	06/30/2000
HRSA New York Field Office—(212) 264–2664		
New York	NY	10/31/1999
Rochester	NY	10/31/1999
Camden	NJ	10/31/1999
White Plains	NY	11/30/1999
Jersey City	NJ	03/31/2000
HRSA Philadelphia Field Office—(215) 861–4422		
Richmond	VA	10/31/1999
HRSA Atlanta Field Office—(404) 562–2996		
Miami	FL	10/31/1999
Tampa	FL	03/31/2000
Durham	NC	05/31/2000
Memphis	TN	05/31/2000
HRSA Chicago Field Office—(312) 353–1715		
Grand Rapids	MI	10/31/1999
Evansville	IN	10/31/1999
Toledo	OH	11/30/1999
Indianapolis	IN	11/30/1999
Columbus	OH	11/30/1999
Kalamazoo	MI	01/31/2000
HRSA Dallas Field Office—(214) 767–3872		
Tulsa	OK	03/31/2000
San Antonio	TX	03/31/2000
HRSA Kansas Field Office—(816) 426–5296		
Omaha	NE	01/31/2000
Des Moines	IA	05/31/2000
HRSA Denver Field Office—(303) 844–3203		
Salt Lake City	UT	10/31/1999
Cheyenne	WY	10/31/1999
HRSA San Francisco Field Office—(415) 437–8090		
San Mateo	CA (2)	10/31/1999
San Fernando	CA	11/30/1999
Las Vegas	NV	12/31/1999
Alviso	CA	03/31/2000

City	State	Deadline
Nipomo	CA	05/31/2000
Reno	NV	06/30/2000
HRSA Seattle Field Office—(206) 615–2491		
Seattle	WA	10/31/1999
Seattle	WA	03/31/2000

Public Housing Primary Care

CFDA Number: 93.927.
Application Availability: 06/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 10/01/1999.
Projected Award Date: 02/01/2000.

Authorization

Public Health Service Act, Title III, Section 330(I), 42 U.S.C. 254D.

Purpose

The mission of the Public Housing Primary Care (PHPC) program is to increase access to comprehensive primary and preventive health care and to improve the physical, mental and economic well-being of public housing residents. The Bureau of Primary Health Care (BPHC) is opening competition for Federal funds to provide services to residents of public housing. The goal of this open competition is to provide the best possible health care services to residents of public housing, to ensure that Federal funds are utilized most effectively and efficiently, and to ensure that PHPC grantees are prepared and equipped to handle the challenges of the future. The three priorities for promoting access to primary care and improving the well being of residents of public housing are: resident involvement and participation in program development and implementation, innovative service delivery systems that address the special health needs of public housing residents, and collaborations with other health, education and community-based organizations. Central to the programs' past and future success is the commitment to the provision of health care that emphasizes improving the availability, accessibility, comprehensiveness, continuity and quality of health services to residents of public housing.

Eligibility

Public and private nonprofit organizations are eligible to apply.

Funding Priorities and/or Preferences

Final administrative funding preferences are included in the application materials.

Special Considerations

Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a PHPC. Technical assistance and detailed information about each service area, such as census grants, can be obtained by contacting the HRSA Field Office.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$11,000,000.

Estimated Number of Awards

20–25.

Estimated Project Period

1–5 Years.

For Programmatic Questions

Contact Person: Sherilyn Pruitt.
Phone Number: 1–301–594–4473.
E-mail: spruitt@hrsa.gov.

State Primary Care Offices

CFDA Number: 93.130.
Application Availability: 10/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 12/01/1999.
Projected Award Date: 04/01/2000.

Authorization

Public Health Service Act, Title III, Section 330, 42 U.S.C. 254b.

Purpose

The BPHC promotes partnerships with State Primary Care Offices (PCOs) to achieve the vision of 100 percent access to preventive and primary care services and zero percent health disparities in every community across this country. PCOs were established to improve primary care access of underserved and vulnerable populations in the State and enhance collaboration between the State, Federal, local, and private sector. PCOs are federally-supported entities within State government, located within the State health department, developed to implement a written primary care cooperative agreement within the State and Federal Government. PCOs have a statewide perspective on the public and private infrastructure needed to support primary care for the underserved. The PCO is expected to collaborate with the PCA to assist BPHC-supported and other community-based primary care delivery sites to the maximum degree possible, directly and through their influence on State programs. The PCO is responsible for identifying and working with underserved communities/populations and for working with all types of primary care providers, regardless of whether they receive BPHC resources. The purpose of this grant program is to improve primary care access of underserved and vulnerable populations in the State, and reduce health disparities and enhance collaboration between the State, Federal, local, and private sector. They promote, build and support community-based systems of comprehensive preventive primary care.

Eligibility

The 50 States are eligible to apply, as well as U.S. territories.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$10,500,000.

Estimated Number of Awards

52.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: James Macrae.
Phone Number: 1–301–594–4488.
E-mail: jmacrae@hrsa.gov.

State Primary Care Associations

CFDA Number: 93.129.
Application Availability: 10/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 12/01/1999.
Projected Award Date: 04/01/2000.

Authorization

Public Health Service Act, Title III, Section 330, 42 U.S.C. 254b.

Purpose

The BPHC promotes partnerships with State/Regional Primary Care

Associations (PCAs) to achieve the vision of 100 percent access to preventive and primary care services and zero percent health disparities in every community across this country. PCAs are private, nonprofit membership associations that represent BPHC-supported programs and other community-based providers of preventive and primary care to the underserved. PCAs are supported by grants from the Bureau to provide direct technical assistance to Bureau-supported programs, as well as to other community-based providers with similar missions. The Bureau's partnership strategy between its HRSA Field Office, the Primary Care Association and Primary Care Organization is to mobilize resources and assure that people receive access to needed primary and preventive care. PCAs are membership organizations, including both BPHC-supported and other community-based providers, and they have distinct responsibilities to their members. PCAs are expected to represent BPHC-supported programs and practices, as well as Federally Qualified Health Center "Look-Alikes" in the State. PCAs are expected to have a membership policy open to all BPHC-supported entities, public as well as private nonprofit. PCAs are also strongly encouraged to have a membership policy that includes other entities with similar missions and governance. The purpose of this grant program is to increase access to preventive and primary care services and reduce health disparities in the State. Through support to PCAs, the Bureau provides direct assistance to Bureau-supported and other community-based providers to build and maintain primary care capacity in underserved communities with an inadequate supply of primary care providers. PCAs also help to facilitate, coordinate and develop BPHC relationships with States and organizations that represent State, community and national interests.

Eligibility

The 50 States are eligible to apply, as well as U.S. territories.

Funding Prioities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$13,000,000.

Estimated Number of Awards

47.

Estimated Project Period

5 Years.

For Programmatic Questions.

Contact Person: James Macrae.
Phone Number: 1–301–594–4488.
E-mail: jmacrae@hrsa.gov.

Grants to States for Loan Repayment Programs

CFDA Number: 93.165.
Application Availability: 01/03/2000.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 05/01/2000.
Projected Award Date: 09/30/2000.

Authorization

Public Health Service Act, Title III, Section 338I, 42 U.S.C. 254Q–1.

Purpose

The purpose of these grant funds is to assist States in operating programs for the repayment of educational loans of health professionals in return for their practice in federally-designated Health Professional Shortage Areas to increase the availability of primary health services in health professional shortage areas.

Eligibility

Any State is eligible to apply for funding.

Funding Priorities and/or Preferences

None.

Special Considerations

States seeking support must provide adequate assurance that, with respect to the costs of making loan repayments under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for $1 of Federal funds provided in the grant. In determining the amount of non-Federal contributions in cash that a State has to provide, no Federal funds may be used in the State's match.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,000,000.

Estimated Number of Awards

8.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Susan Salter.
Phone Number: 1–301–594–4400.
E-mail: ssalter@hrsa.gov.

City	State	Deadline
HRSA Boston Field Office—(617) 565–1482		
Boston	MA	08/31/2000
Concord	NH	08/31/2000
HRSA Atlanta Field Office—(404) 562–2996		
Tallahassee	FL	08/31/2000
HRSA Chicago Field Office—(312) 353–1715		
St. Paul	MN	08/31/2000
HRSA Kansas Field Office—(816) 426–5296		
Des Moines	IA	08/31/2000
HRSA San Francisco Field Office—(415) 437–8090		
Sacramento	CA	08/31/2000

Migrant Health Centers

CFDA Number: 93.246.
Application Availability: 11/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 02/01/2000.
Projected Award Date: 05/01/2000.

Authorization

Public Health Service Act, Title III, Section 330, 42 U.S.C. 254b(k).

Purpose.

The Migrant Health Center program is designed to meet the total health and well-being of migrant and seasonal farmworkers, including the environmental/occupational health of this population. To this end, HRSA supports technical and non-financial assistance to federally-funded Migrant Health Centers to assist in this effort. It is the intent of HRSA to continue to support this technical assistance in the area of environmental/occupational health for migrant and seasonal farmworkers. HRSA will open competition for an award under Section 330 of the Public Health Service Act, 42 U.S.C. 254b(k) to support a cooperative

agreement which will address environmental/occupational health issues for this population.

Eligibility

Public and private nonprofit entities are eligible to apply.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$45,000.

Estimated Number of Awards

1.

Estimated Project Period

1–5 Years.

For Programmatic Questions

Contact Person: George Ersek.
Phone Number: 1–301–594–4303.
E-mail: gersek@hrsa.gov.

Health Professions Programs

Grants Management Office: 1–301–443–6960.

Academic Administrative Units in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics)

CFDA Number: 93.984A.
Application Availability: 09/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent: 11/06/1999.
Application Deadline: 01/06/2000.
Projected Award Date: 09/30/2000.

Authorization

Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose

Title VII authorizes funds to establish or expand teaching capacity in family medicine, general internal medicine and general pediatrics. Grant support is awarded to meet the costs of projects to establish, maintain or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine, general internal medicine, or general pediatrics. An academic unit in family medicine means a department or division of a school. Applications are being solicited for projects to address one or more of the following program purposes: (1) Establishment of an academic unit, (2) expansion of an academic unit, and (3) research infrastructure development within the academic unit.

Eligibility

Public or private nonprofit accredited schools of allopathic medicine or osteopathic medicine are eligible to apply.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A second preference is offered to qualified applicants for the establishment or the substantive expansion of an academic unit.

A priority will be available to those applicants that present collaborative projects between departments of primary care. The collaboration should involve the academic units of any two disciplines of family medicine, general internal medicine, and general pediatrics. There is a second priority (administrative) for establishment or expansion of research infrastructure proposals.

Special Considerations

Special consideration will be given to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

Review Criteria

Final criteria are included in the application kit.

Family Medicine

Estimated Amount of This Competitiion

$5,435,300.

Estimated Number of Awards

35.

Estimated Project Period

3 Years.

General Internal Medicine/General Pediatrics

Estimated Amount of This Competition

$1,500,000.

Estimated Amount of Awards

10.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Lafayette Gilchrist.
Phone Number: 1–301–443–1467.
E-mail: lgilchrist@hrsa.gov.
Technical Assistance Group Conference Calls: November 16, 1999 and November 18, 1999.

To participate call Mr. Lafayette Gilchrist at 1–301–443–1467. You may also fax the following information: name, title, institutional affiliation, telephone and fax numbers to 1–301–443–1945, or E-mail the program specialist at lgilchrist@hrsa.gov.

Predoctoral Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics)

CFDA Number: 93.896A.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 10/15/1999.
Application Deadline: 11/29/1999.
Projected Award Date: 06/30/2000.

Authorization

Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose

Grants are awarded to assist schools of medicine or osteopathic medicine to promote predoctoral training. The program assists schools in meeting the costs of projects to plan, develop and operate or participate in an approved predoctoral training program in the field of family medicine, general internal medicine, and general pediatrics. Proposed projects should seek to expand and enhance the quality of predoctoral initiatives: (1) Innovation, (2) Comprehensive Models, and (3) Establishment and Expansion of Required Clerkships.

Eligibility

Any accredited public or nonprofit private school of allopathic medicine or osteopathic medicine is eligible to apply.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Special Considerations

Special consideration will be given to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

Review Criteria

Final criteria are included in the application kit.

Family Medicine

Estimated Amount of This Competition

$5,435,300.

Estimated Number of Awards

35.

Estimated Project Period

3 Years.

General Internal Medicine/General Pediatrics

Estimated Amount of This Competition

$750,000.

Estimated Number of Awards

5.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Betty M. Ball.
Phone Number: 1–301–443–1467.
E-mail: bball@hrsa.gov.
Technical Assistance Group Conference Call: October 15, 1999 and October 20, 1999.

To participate call Ms. Betty Ball at 1–301–443–1467. You may also fax the following information: name, title, institutional affiliation, telephone and fax numbers to 1–301–443–1945, or E-mail the program specialist at bball@hrsa.gov.

Physician Assistant Training in Primary Care

CFDA Number: 93.886A.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 11/15/1999.
Projected Award Date: 06/30/2000.

Authorization

Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose

Grants are awarded for projects for the training of physician assistants, and for the training of individuals who will teach in programs to provide such training. The program assists schools to meet the costs of projects to plan, develop and operate or maintain such programs.

Eligibility

Accredited schools of medicine, osteopathic medicine or other public or private nonprofit entities are eligible to apply. Eligible physician assistant programs are those which are either accredited by the American Medical Association's Committee on Allied Health Education and Accreditation (AMA–CAHEA) or its successor organization, the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A priority will be offered to applicants that can demonstrate a record of training individuals from disadvantaged backgrounds (including racial/ethnic minorities under-represented in primary care practice).

Special Considerations

A special consideration will be given in awarding grants to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$2,872,340.

Estimated Number of Awards

19.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: CAPT Ed Spirer, MSW, MPH.
Phone Number: 1–301–443–1467.
E-mail: espirer@hrsa.gov.
Technical Assistance Group Conference Call: October 07, 1999. To participate call CAPT Ed Spirer, MSW, MPH at 1–301–443–1467. You may also fax the following information: name, title, institutional affiliation, telephone and fax numbers to 1–301–443–1945, or E-mail the program specialist at espirer@hrsa.gov.

Residency Training in Primary Care (Family Medicine, General Internal Medicine, General Pediatrics)

CFDA Number: 93.884A.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 09/27/1999.
Projected Award Date: 06/30/2000.

Authorization

Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k

Purpose

Grants are awarded to assist graduate training programs in family medicine, general internal medicine and general pediatrics to expand and improve the quality of residency training programs that prepare graduates to enter primary care practice. Residency training programs should emphasize national innovations aimed at primary care residency education across disciplines.

Eligibility

Applicant must be an accredited public or private nonprofit school of allopathic medicine or osteopathic medicine or a public or private nonprofit hospital or other public or private nonprofit entity. Each allopathic program must be fully or provisionally accredited by the Accreditation Council for Graduate Medical Education. Each osteopathic program must be approved by the American Osteopathic Association.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

A funding priority will be made available for applicants that can demonstrate training the greatest percentage of providers or demonstrating significant improvements in the percentage of providers which enter and remain in primary care practice. A second priority will be offered to applicants who can demonstrate a record of training individuals from disadvantaged backgrounds (including racial/ethnic minorities, under-represented in primary care practice).

Special Considerations

Special consideration will be given to projects that prepare practitioners to care for underserved populations and other high risk groups (i.e., elderly, HIV, AIDS, substance abusers, homeless and victims of domestic violence).

Review Criteria

Final criteria are included in the application kit.

Family Medicine

Estimated Amount of This Competition

$5,435,300.

Estimated Number of Awards

34.

Estimated Project Period

3 Years.

General Internal Medicine/General Pediatrics

Estimated Amount of This Competition

$3,350,756.

Estimated Number of Awards

35.

Estimated Project Period

3 Years.

For Programmatic Questions

Family Medicine

Contact Person: Ellie Grant.
Phone Number: 1–301–443–1467.
E-mail: ogrant@hrsa.gov.

General Internal Medicine/General Pediatrics

Contact Person: Brenda Williamson.
Phone Number: 1–301–443–1467.
E-mail: bwilliamson@hrsa.gov.

Technical Assistance Group Conference Call: August 24, 1999 and August 26, 1999. To participate call or e-mail Ms. Brenda Williamson or Ms. Ellie Grant by August 18 at phone and e-mail listed above. You may also fax the following information: name, title, institutional affiliation, telephone and fax numbers to 1–301–443–1945.

Faculty Development in Primary Care (Family Medicine, General Internal Medicine, General Pediatrics)

CFDA Number: 93.895A.
Application Availability: 08/06/1999

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 10/22/1999.
Projected Award Date: 06/30/2000.

Authorization

Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose

Grants are awarded to plan, develop and operate a program for the training of physicians who plan to teach in family medicine (including geriatrics), general internal medicine, general pediatrics, and to provide financial assistance (in the form of traineeships and fellowships) to physicians who are participating in any such program.

Eligibility

Accredited schools of medicine or osteopathic medicine, public or private nonprofit hospitals, or other public or private nonprofit entities are eligible to apply.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Special Considerations

Special consideration will be given to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless, and victims of domestic violence.

Review Criteria

Final criteria are included in the application kit.

Family Medicine

Estimated Amount of this Competition

$5,435,366.

Estimated Number of Awards

38.

Estimated Project Period

3 Years.

General Internal Medicine/General Pediatrics

Estimated Amount of This Competition

$3,350,757.

Estimated Number of Awards

20.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Elsie Quinones.
Phone Number: 1–301–443–1467.
E-mail: equinones@hrsa.gov.

Technical Assistance Group Conference Call: September 10, 1999 and September 17, 1999. To participate call Ms. Elsie Quinones at 1–301–443–1467. You may also fax the following information: name, title, institutional affiliation, telephone and fax numbers to 1–301–443–1945, or E-mail the program specialist at equinones@hrsa.gov.

Podiatric Residency in Primary Care

CFDA Number: 93.181.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 09/30/1999.
Projected Award Date: 06/30/2000.

Authorization

Public Health Service Act, Title VII, Section 755(b)(2), 42 U.S.C. 294e.

Purpose

Grants are awarded to plan and implement projects in preventive and primary care training for podiatric physicians in approved or provisionally approved residency programs that shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

Eligibility

Schools of podiatric medicine or public or private nonprofit hospitals or other appropriate public or private nonprofit entities are eligible to apply.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$119,969.

Estimated Number of Awards

2.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: CAPT Ed Spirer, MSW, MPH.
Phone Number: 1–301–443–1467.
E-mail: espirer@hrsa.gov.
Technical Assistance Group Conference Call: August 25, 1999. For additional information contact CAPT Ed Spirer at 1–301–443–1467; by fax at 1–301–443–1945 or E-mail at espirer@hrsa.gov.

Model State-Supported Area Health Education Centers

CFDA Number: 93.107.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 01/14/2000.
Projected Award Date: 08/30/2000.

Authorization

Public Health Service Act, Title VII, Section 751, 42 U.S.C. 294A.

Purpose

The program assists schools to improve the distribution, supply, and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the development, and operation of AHECs to implement educational system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational and clinical resources, the AHEC program establishes a network of health-related institutions to provide educational services to students, faculty and practitioners and ultimately to improve the delivery of health care in the service area. These programs are collaborative partnerships which address current health workforce needs within a region of a State or in an entire State.

Eligibility

The types of entities eligible to apply for this program include public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools, or the parent institutions of such schools. Applicants must also have previously received funds, but are no longer receiving funds under Section 751(a)(1) of the Public Health Service Act, and are operating an AHEC program.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Funds shall be awarded to approved applicants in the following order: (1) Competing continuations, (2) new starts in States with no AHEC program, (3) other new starts, and (4) competing supplementals.

Matching Requirements

Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) recurring non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the Model State-Supported AHEC Program.

Review Criteria

Final criteria are in the application kit.

Estimated Amount of This Competition

$2,000,000.

Estimated Number of Awards

4.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Louis D. Coccodrilli, MPH.
Phone Number: 1–301–443–6950.
E-Mail: lcoccodrilli@hrsa.gov.

Basic/Core Area Health Education Centers

CFDA Number: 93.824.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 01/14/2000.
Projected Award Date: 08/30/2000.

Authorization

Public Health Service Act, Title VII, Section 751, 42 U.S.C. 294A.

Purpose

Grants are awarded to assist schools to improve the distribution, supply and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the planning, development and operation of AHECs to initiate education system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health sciences center with local planning, educational and clinical resources, the AHEC program establishes a network of community-based training sites to provide educational services to students, faculty and practitioners in underserved areas and ultimately, to improve the delivery of health care in the service area. The program embraces the goal of increasing the number of health professions graduates who ultimately will practice in underserved areas.

Eligibility

The types of entities eligible to apply for this program include public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools, or the parent institutions of such schools. Also, in States in which no AHEC program is in operation, an accredited school of nursing is an eligible applicant.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. The statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Funds shall be awarded to approved applicants in the following order: (1) Competing continuations, (2) new starts in States with no AHEC program, (3) other new starts, and (4) competing supplementals.

Matching Requirements

Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) non-Federal contributions in cash in an amount that is not less than 50 percent of the operating costs of the AHEC program except that the Secretary may grant a waiver for up to 75 percent of the amount required in the first 3 years in which an awardee receives funds under Section 751(a)(1) of the Public Health Service Act.

Review Criteria

Final criteria are in the application kit.

Estimated Amount of This Competition

$9,000,000.

Estimated Number of Awards

9.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Louis D. Coccodrilli, MPH.
Phone Number: 1–301–443–6950.
E-Mail: lcoccodrilli@hrsa.gov.

Health Careers Opportunity Program (HCOP)

CFDA Number: 93.822.
Application Availability: 08/06/1999.

To Obtain An Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 01/10/2000.
Projected Award Date: 08/02/2000.

Authorization

Public Health Service Act, Title VII, Section 739, 42 U.S.C. 293c.

Purpose

The goal of the Health Careers Opportunity Program (HCOP) is to assist individuals from disadvantaged backgrounds to undertake education to enter a health profession. The HCOP program works to build diversity in the health fields by providing students from disadvantaged backgrounds an opportunity to develop the skills needed to successfully compete, enter, and graduate from health professions schools. The legislative purposes from which HCOP funds may be awarded are: (1) Identifying, recruiting, and selecting individuals from disadvantaged backgrounds for education and training in a health profession; (2) facilitating the entry of such individuals into such a school; (3) providing counseling, mentoring, or other services designed to assist such individuals to complete successfully their education at such a school; (4) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education and health research training designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; (5) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program; (6) paying scholarships, as the Secretary may determine, for such individuals for any period of health professions education at a health professions school; (7) paying such stipends for such individuals for any period of education in student-enhancement programs (other than regular courses), except that such a stipend may not be provided to an individual for more than 12 months and in an amount determined appropriate by the Secretary; (8) carrying out programs under which such individuals gain experience regarding a career in a field of primary health care through working at facilities of public or private nonprofit community-based providers of primary health services; or (9) conducting activities to develop a larger and more competitive applicant pool through partnerships with institutions of higher education, school districts, and other community-based entities.

Eligibility

Eligible applicants include accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatric medicine, public and nonprofit private schools that offer graduate programs in behavioral and mental health, programs for the training of physician assistants, and other public or private nonprofit health or educational entities.

Funding Priorities and/or Preferences

A funding preference will be given to approved applications for programs that involve a comprehensive approach by several public or nonprofit private health or educational entities to

establish, enhance and expand educational programs that will result in the development of a competitive applicant pool of individuals from disadvantaged backgrounds who desire to pursue health professions careers. A comprehensive approach means a network of entities which are formally linked programmatically. The network must include a minimum of four entities: a health professions school, an undergraduate institution, a school district, and a community-based entity.

Up to one third of available competitive funds will be reserved for applicants with approved proposals who have not been funded during the previous three competitive cycles.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$16,600,000.

Estimated Number of Awards

47.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: CAPT Richard C. Vause, Jr.
Phone Number: 1–301–443–2100.
E-mail: rvause@hrsa.gov.

Centers of Excellence

CFDA Number: 93.157.
Application Availability: 08/31/1999.

To Obtain an Application Kit

Contact: 1–888–333-HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877-HRSA (4772)–123.

Application Deadline: 01/15/2000.
Projected Award Date: 06/01/2000.

Authorization

Public Health Service Act, Title VII, Section 736, 42 U.S.C. 293.

Purpose

The goal of this program is to assist eligible schools in supporting programs of excellence in health professions education for under-represented minority individuals. The grantee is required to use the funds awarded: (1) To develop a large competitive applicant pool through linkages with institutions of higher education, local school districts, and other community-based entities and establish an education pipeline for health professions careers; (2) to establish, strengthen, or expand programs to enhance the academic performance of under-represented minority students attending the school; (3) to improve the capacity of such school to train, recruit, and retain under-represented minority faculty including the payment of stipends and fellowships; (4) to carry out activities to improve the information resources, clinical education, curricula and cultural competence of the graduates of the schools as it relates to minority health issues; (5) to facilitate faculty and student research on health issues particularly affecting under-represented minority groups, including research on issues relating to the delivery of health care; (6) to carry out a program to train students of the school in providing health services to a significant number of under-represented minority individuals through training provided to such students at community-based health facilities that provide such health services and are located at a site remote from the main site of the teaching facilities of the school; and (7) to provide stipends as appropriate.

Eligibility

Eligible applicants are: accredited schools of allopathic medicine, osteopathic medicine, dentistry, pharmacy, graduate programs in behavioral or mental health, or other public and nonprofit health or educational entities. Historically Black Colleges and Universities as described in Section 736(c)(2)(A) of the Public Health Service Act and which received a contract under Section 788B of the Public Health Service Act (Advanced Financial Distress Assistance) for fiscal year 1987 may apply for Centers of Excellence (COE) grants under Section 736 of the Public Health Service Act.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$20,100,000.

Estimated Number of Awards

16.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: A. Roland Garcia, Ph.D.
Phone Number: 1–301–443–2100.
E-mail: rgarcia@hrsa.gov.

Allied Health Projects

CFDA Number: 93.191
Application Availability: 10/01/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 02/22/2000.
Projected Award Date: 09/30/2000.

Authorization

Public Health Service Act, Title VII, Section 755, 42 U.S.C. 294e.

Purpose

Grants are awarded to assist eligible entities in meeting the costs associated with expanding or establishing programs that will: (1) Expand enrollments in allied health disciplines that are in short supply or whose services are most needed by the elderly; (2) provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences; (3) establish community-based training programs that link academic centers to rural clinical settings; (4) provide career advancement training for practicing allied health professionals; (5) expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained; (6) develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics; (7) expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly; (8) expand or establish demonstration centers to emphasize innovative models to link allied health, clinical practice, education, and research; and (9) meet the costs of projects to plan, develop, and operate or maintain graduate programs in behavioral and mental health practice.

Eligibility

Eligible entities are health professions schools, academic health centers, State or local governments or other appropriate public or private nonprofit entities.

Eligible academic institutions shall also be required to use funds in collaboration with two or more disciplines.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in Section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations.

A funding priority will be given to qualified applicants who provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900 and 13021. These will include such applicants as Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities serving Native Americans.

Special Considerations

Special consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,104,000.

Estimated Number of Awards

10–12.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Dr. Norman L. Clark or Young Song.
Phone Number: 1–301–443–1346 or 1–301–443–3353.
E-mail: nclark@hrsa.gov or ysong@hrsa.gov.

Residencies in the Practice of Pediatric Dentistry

CFDA Number: 93.897A.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 11/01/1999.
Projected Award Date: 04/30/2000.

Authorization

Public Health Service Act, Title VII, Section 747(a)(6), 42 U.S.C. 293k.

Purpose

This program shall provide grants to assist schools in planning, developing, or operating programs, and to provide financial assistance to residents in such programs, of pediatric dentistry. This program places particular emphasis on support of applications which encourage: (1) Practice in underserved areas; (2) provision of a broad range of pediatric dental services; (3) coordination and integration of care; (4) meeting the needs of special populations; and (5) recruitment and retention of under-represented minorities.

Eligibility

To be eligible for a grant for residency training in the practice of pediatric dentistry, the applicant shall include entities that have programs in dental schools, approved residency programs in the pediatric practice of dentistry, approved advanced education programs in the pediatric practice of dentistry, or approved residency programs in pediatric dentistry.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings and has the principal focus of serving residents of medically/dentally underserved communities; or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Priority shall be given to qualified applicants that have a record of training the greatest percentage of providers or that have demonstrated significant improvements in the percentage of providers which enter and remain in pediatric dentistry.

Priority shall be given to qualified applicants that have a record of training individuals who are from disadvantaged backgrounds (including racial and ethnic minorities under-represented in pediatric dentistry).

Special Considerations

Special consideration will be given to projects that prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV–AIDS, substance abusers, homeless, and victims of domestic violence.

Special consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Review Critiera

Final criteria are included in the application kit.

Estimated Amount of This Competition

$600,000.

Estimated Number of Awards

6.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: CDR Kathy Hayes or CDR Chris Halliday.
Phone Number: 1–301–443–4832 or 1–301–443–4142.
E-mail: khayes@hrsa.gov or challiday@hrsa.gov.

Chiropractic Demonstration Project Grants

CFDA Number: 93.212.
Application Availability: 12/22/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 02/22/2000.
Projected Award Date: 07/22/2000.

Authorization

Public Health Service Act, Title VII, Section 755(b)(3), 42 U.S.C. 294e.

Purpose

Grants are awarded to carry out demonstration projects in which chiropractors and physicians collaborate to identify and provide effective treatment for spinal and lower-back conditions.

The project requirements include: (1) The project must address the identification and treatment of spinal and/or lower-back conditions; (2) the project must be founded on collaborative efforts between the school(s) of allopathic or osteopathic medicine; (3) each project must include a strong research protocol which will result in a significant expansion of documented research in the area addressed and which is suitable for publication in refereed health professions journals, including research oriented publications; (4) the project must include an explicit strategy for case-finding and a strategy for making direct comparisons to other forms of treatment. The results must be generalizable to patients cared for in clinical practices addressing spinal and/or lower-back conditions; and (5) whenever feasible, minorities and women should be included in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study.

Eligibility

To be eligible for a Chiropractic Demonstration Project, the applicant shall be: a health professions school, an academic health center, a State or local government, other appropriate public or private nonprofit entity, a private nonprofit school, or a college or University of Chiropractic.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$786,000.

Estimated Number of Awards

3.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Dr. Norman Clark.
Phone Number: 1–301–443–1346.
E-mail: nclark@hrsa.gov.

Dental Public Health Residency Training Grants

CFDA NUMBER: 93.236.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 11/01/1999.
Projected Award Date: 04/30/2000.

Authorization

Public Health Service Act, Title VII, Section 768, 42 U.S.C. 295c.

Purpose

The purpose of this program is: (1) to plan and develop new residency training programs and to maintain or improve existing residency training programs in dental public health; and (2) to provide financial assistance to residency trainees enrolled in such programs.

Eligibility

A School of Public Health or Dentistry that offers a Dental Public Health Program accredited by the American Dental Association Commission on Dental Accreditation is eligible to apply. Each applicant must demonstrate that the institution has or will have available full-time faculty members with training and experience in the field of dental public health and support from other faculty members trained in public health and other relevant specialties and disciplines.

Funding Priorities and/or Preferences

Priority shall be given to qualified applicants that have a record of serving individuals who are from disadvantaged backgrounds (including under-represented racial and ethnic minorities) and graduating large proportions of individuals who serve in underserved communities.

Special Considerations

Special consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$600,000.

Estimated Number of Awards

6.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: CDR Kathy Hayes.
Phone Number: 1–301–443–4832.
E-mail: khayes@hrsa.gov.

Residencies and Advanced Education in the Practice of General Dentistry

CFDA Number: 93.897.
Application Availability: 08/06/1999.

To Obtain an Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 11/01/1999.
Projected Award Date: 04/30/2000.

Authorization

Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose

This program strives to increase the number of training opportunities in postdoctoral general dentistry and to improve program quality. For the upcoming grant cycle, applicants are encouraged to detail manners in which graduates of the general dentistry residency will be well trained in meeting the treatment needs of pediatric patient populations. This program places particular emphasis on support of applications which encourage practice in underserved areas, provision of a broad range of clinical services,

coordination and integration of care, meeting the needs of special populations, and recruitment and retention of under-represented minorities.

Eligibility

To be eligible for a grant for residency training in the practice of general dentistry, the applicant shall include entities that have programs in dental schools, approved residency programs in the general practice of dentistry, and approved advanced education programs in the general practice of dentistry.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings and have the principal focus of serving residents of medically/dentally underserved communities; or (B) during the two-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Priority shall be given to qualified applicants that have a record of training the greatest percentage of providers, or that have demonstrated significant improvements in the percentage of providers which enter and remain in general dentistry.

Priority shall be given to qualified applicants that have a record of training individuals who are from disadvantaged backgrounds (including racial and ethnic minorities under-represented in general dentistry).

Special Considerations

Special consideration shall be given to projects that prepare practitioners to care for under-served populations and other high risk groups such as the elderly, individuals with HIV–AIDS, substance abusers, homeless, and victims of domestic violence.

Special consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,900,000.

Estimated Number of Awards

10.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: CDR Kathy Hayes.
Phone Number: 1–301–443–4832.
E-mail: khayes@hrsa.gov.

Quentin N. Burdick Program for Rural Interdisciplinary Training

CFDA Number: 93.192.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 10/22/1999.
Projected Award Date: 06/01/2000.

Authorization

Public Health Service Act, Title VII, Section 754, 42 U.S.C. 294d.

Purpose

The goal of this program is to provide or improve access to health care in rural areas. Specifically, projects funded under this authority shall be designed to: (a) Use new and innovative methods to train health care practitioners to provide services in rural areas; (b) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care; (c) deliver health care services to individuals residing in rural areas; (d) enhance the amount of relevant research conducted concerning health care issues in rural areas; and (e) increase the recruitment and retention of health care practitioners from rural areas and make rural practice a more attractive career choice for health care practitioners.

Eligibility

Applications will be accepted from health professions schools, academic health centers, State or local governments or other appropriate public or private nonprofit entities for funding and participation in health professions and nursing training activities.

Applications shall be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas.

Applicants must designate a rural health care agency or agencies for clinical treatment or training including hospitals, community health centers, migrant health centers, rural health clinics, community behavioral and mental health centers, long-term care facilities, Native Hawaiian health centers or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Act.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in Section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations.

Special Considerations

Special consideration will be given to qualified applicants who provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900 and 13021. These will include such applicants as Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities serving Native Americans.

Special consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more

elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$2,150,459.

Estimated Number of Awards

11.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Judith E. Arndt.
Phone Number: 1–301–443–6867.
E-mail: jarndt@hrsa.gov.

Public Health Training Centers Grant Program

CFDA Number: 93.188A.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 12/06/1999.
Projected Award Date: 09/30/2000.

Authorization

Public Health Service Act, Title VII, Section 766, 42 U.S.C. 295a.

Purpose

The goal of the Public Health Training Centers Grant Program is to improve the Nation's public health system by strengthening the technical, scientific, managerial and leadership competencies and capabilities of the current and future public health workforce. Emphasis is placed on developing the existing public health workforce as a foundation for improving the infrastructure of the public health system and helping achieve the Healthy People 2010 Objectives. With respect to a public health training center, applicants must agree to: (1) Specifically designate a geographic area, including medically underserved populations, e.g., elderly, immigrants/refugees, disadvantaged, to be served by the Center that shall be in a location removed from the main location of the teaching facility of the school participating in the program with such Center; (2) assess the public health personnel needs of the area to be served by the Center and assist in the planning and development of training programs to meet such needs; (3) establish or strengthen field placements for students in public or nonprofit private public health agencies or organizations; and (4) involve faculty members and students in collaborative projects to enhance public health services to medically underserved communities.

Eligibility

Eligible applicants include accredited schools of public health or other public or nonprofit private institutions accredited for the provision of graduate or specialized training in public health.

Funding Priorities and/or Preferences

In awarding grants or contracts under this authority, the Secretary shall give preference to accredited schools of public health.

Special Considerations

Special consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$3,000,000.

Estimated Number of Awards

10.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: Ronald Merrill.
Phone Number: 1–301–443–3460.
E-mail: rmerrill@hrsa.gov.

Geriatric Education Centers

CFDA Number: 93.969.
Application Availability: 10/09/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 12/09/1999.
Projected Award Date: 06/01/2000.

Authorization

Public Health Service Act, Title VII, Section 753(a), 42 U.S.C. 294c.

Purpose

Grants are given to support the development of collaborative arrangements involving several health professions schools and health care facilities. Geriatric Education Centers facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, and prevention of disease, disability, and other health problems of the aged. Health professionals include allopathic physicians, osteopathic physicians, dentist, optometrists, podiatrists, pharmacists, nurse practitioners, physicians assistants, chiropractors, clinical psychologists, health administrators, and other allied health professionals. Projects supported under these grants must offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine, and must address one or more of the following statutory purposes: (a) Improve the training of health professionals in geriatrics, including geriatric residencies, traineeships, or fellowships; (b) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals; (c) support training and retraining of faculty to provide instruction in geriatrics; (d) support continuing education of health professionals who provide geriatric care; and (e) provide students with clinical training in geriatrics in nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers.

Eligibility

Grants may be made to accredited health professions schools as defined by Section 799B(1) of the Public Health Service Act, or programs for the training of physicians assistants as defined by Section 799B(3), or schools of allied health as defined in Section 799B(4), or schools of nursing as defined by Section 801(2).

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public

Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in Section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations.

A funding priority will be given to qualified applicants who provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900 and 13021. These will include such applicants as Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities serving Native Americans.

Special Considerations

Special consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$1,885,000.

Estimated Number of Awards

9–12.

Estimated Project Period

Up to 5 Years.

For Programmatic Questions

Contact Person: Diane Hanner.

Phone Number: 1–301–598–6887.

E-mail: dhanner@hrsa.gov.

Geriatric Training Regarding Physicians and Dentists

CFDA Number: 93.156.

Application Availability: 10/09/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.

After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 12/09/1999.

Projected Award Date: 06/01/2000.

Authorization

Public Health Service Act, Title VII, Section 753(b), 42 U.S.C. 294c.

Purpose

Grants are given for faculty training projects in geriatric medicine and dentistry. The purpose of this grant program is to provide support, including fellowships, for geriatric training projects to train physicians, dentists and behavioral and mental health professionals who plan to teach geriatric medicine, geriatric behavioral or mental health, or geriatric dentistry. Projects supported under these grants must offer a one-year retraining program in geriatrics for: (a) Physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and behavioral or mental health at schools of medicine and osteopathic medicine; dentists who are faculty members at schools of dentistry or at hospital departments of dentistry; and behavioral or mental health professionals who are faculty members in departments of behavioral or mental health; and (b) a two-year internal medicine or family medicine fellowship program which provides emphasis in geriatrics, which shall be designed to provide training in clinical geriatrics and geriatrics research for: physicians who have completed graduate medical education programs in internal medicine, family medicine, behavioral or mental health, neurology, gynecology, or rehabilitation medicine; dentists who have demonstrated a commitment to an academic career and who have completed postdoctoral dental training, including postdoctoral dental education programs or who have relevant advanced training or experience; and behavioral or mental health professionals who have completed graduate medical education programs in behavioral or mental health.

Eligibility

Grants may be made to accredited public or private nonprofit schools of medicine, schools of osteopathic medicine, teaching hospitals, or graduate medical education programs. Two-year fellowship programs must be under the programmatic control of a graduate medical education program in internal medicine or family medicine (including osteopathic general practice). The 1-year retraining program shall be based in a graduate medical education program in internal medicine or family medicine or in a department of geriatrics or psychiatry.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities; or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in Section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations.

A funding priority will be given to qualified applicants who provide community-based training experiences designed to improve access to health care services in underserved areas. This will include being responsive to population groups addressed in the President's Executive Orders 12876, 12900 and 13021. These will include such applicants as Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities serving Native Americans.

Special Considerations

Special consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote

rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,200,000.

Estimated Number of Awards

4.

Estimated Project Period

5 Years.

For Programmatic Questions

Contact Person: Barbara Broome.
Phone Number: 1–301–443–6887.
E-mail: bbroome@hrsa.gov.

Health Administration Traineeships and Special Projects

CFDA Number: 93.962.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 10/15/1999.
Projected Award Date: 07/01/2000.

Authorization

Public Health Service Act, Title VII, Section 769, 42 U.S.C. 295d.

Purpose

Grants are awarded to support eligible students enrolled in accredited graduate programs in health administration, hospital administration, or health policy analysis and planning, and to assist in the development or improvement of programs to prepare students for employment with public or nonprofit private entities.

Eligibility

Eligible applicants are State or local governments (that have in effect preventive medical and dental public health residency programs) or public or nonprofit private educational entities (including graduate schools of social work and business schools that have health management programs) that offer a graduate program in health administration, hospital administration or health policy analysis and planning accredited by the Accrediting Commission on Education in Health Services Administration. Applicants must assure that, in providing traineeships, priority will be given to students who demonstrate a commitment to employment with public or nonprofit private entities in health administration and management.

Funding Priorities and/or Preferences

Preference will be given to qualified applicants meeting the following conditions:

1. Not less than 25 percent of the graduates of the applicant are engaged in full-time practice settings in medically underserved communities;
2. The applicant recruits and admits students from medically underserved communities;
3. For the purpose of training students, the applicant has established relationships with public and nonprofit providers of health care in the community involved; and
4. In training students, the applicant emphasizes employment with public or nonprofit private entities.

Special Considerations

Special consideration will be given to qualified applicants who support the "Kids Into Health Careers" initiative by establishing linkages with one or more elementary, middle or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,044,600.

Estimated Number of Awards

55.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Thomas H. Perez.
Phone Number: 1–301–443–3231.
E-mail: tperez@hrsa.gov.

Nursing Workforce Diversity Grants

CFDA Number: 93.178A.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 12/17/1999.
Projected Award Date: 04/30/2000.

Authorization

Public Health Service Act, Title VIII, Section 821, 42 U.S.C. 296m.

Purpose

Grants are awarded to increase nursing education opportunities for individuals who are from disadvantaged backgrounds (including racial and ethnic minorities under-represented among registered nurses) by providing student scholarships or stipends, pre-entry preparation, and retention activities.

Eligibility

Eligible applicants are schools of nursing, nursing centers, academic health centers, State or local governments and other public or private nonprofit entities.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,300,000.

Estimated Number of Awards

8.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Ernell Spratley.
Phone Number: 1–301–443–5763.
E-mail: espratley@hrsa.gov.

Basic Nurse Education and Practice Grants

CFDA Number: 93.359A.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772–123.

Application Deadline: 02/22/2000.
Projected Award Date: 06/30/2000.

Authorization

Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose

Grants are awarded to enhance the educational mix and utilization of the basic nursing workforce by strengthening programs that provide basic nurse education, such as through: (1) Establishing or expanding nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities; (2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV–AIDS, substance abusers, the homeless, and victims of domestic violence; (3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems; (4) developing cultural competencies among nurses; (5) expanding the enrollment in baccalaureate nursing programs; (6) promoting career mobility for nursing personnel in a variety of training settings and cross training or specialty training among diverse population groups; or (7) providing education for informatics, including distance learning methodologies.

Eligibility

Eligible applicants for purposes one and five are schools of nursing. Eligible applicants for purposes two, three, four, six, and seven are schools of nursing, nursing centers, academic health centers, State or local governments and other public or private nonprofit entities.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,800,000.

Estimated Number of Awards

19.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Angela Martinelli.
Phone Number: 1–301–443–6333.
E-mail: amartinelli@hrsa.gov.

Public Health Nursing Experiences in State and Local Health Departments for Baccalaureate Nursing Students

CFDA Number: 93.359B.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Letter of Intent Deadline: 11/01/1999.
Application Deadline: 11/17/1999.
Projected Award Date: 03/31/2000.

Authorization

Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose

The purpose of this request for applications is to provide seed money to assist eligible entities to strengthen the public health nursing practice clinical experience (practicum) component of the baccalaureate nursing program. Funds may be used to assist the applicant to plan, implement, and evaluate a public health nursing practice experience that will expose students to: (1) Selected core functions of public health (assessment, policy development, and assurance) and essential services; (2) the mission of the State and/or local health departments; and (3) how a variety of public health practitioners function as a team in promoting, protecting, and maintaining the public's health. This plan may be implemented with a small number of baccalaureate nursing students.

Eligibility

Eligible applicants are schools of nursing and State or local governments.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 805 of the Public Health Service Act, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$250,000.

Estimated Number of Awards

10.

Estimated Project Period

1 year.

For Programmatic Questions

Contact Person: Joan Weiss, PhD, RN, CRNP.
Phone Number: 1–301–443–5486.
E-mail: jweiss@hrsa.gov.
Technical Assistance Conference Call: October 4, 1999.

To participate in the conference call or for additional information contact Joan Weiss at 301–443–5486; by fax at 1–301–443–8586 or E-mail at jweiss@hrsa.gov. Please indicate intent to submit an application by E-mail, phone or fax to Joan Weiss, PhD, RN, CRNP.

Advanced Education Nursing Grants

CFDA Number: 93.299A.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.
Application Deadline: 01/28/2000.
Projected Award Date: 06/30/2000.

Authorization

Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose

Grants are awarded to eligible institutions for projects that support the enhancement of advanced nursing education and practice. For the purpose of this section, advanced education nurses means individuals trained in advanced degree programs including individuals in combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse midwives, in certificate programs in existence on November 12, 1998, to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses.

Eligibility

Eligible applicants are schools of nursing, academic health centers, and other public or private nonprofit entities.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or

underserved populations or help meet public health nursing needs in State or local health departments.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$16,500,000.

Estimated Number of Awards

75.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Joan Weiss.
Phone Number: 1–301–443–6333.
E-mail: jweiss@hrsa.gov.

Advanced Education Nursing Traineeship Grants

CFDA Number: 93.299B.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 12/03/1999.
Projected Award Date: 04/28/2000.

Authorization

Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose

Grants are awarded to eligible institutions to meet the cost of traineeships for individuals in advanced nursing education programs. Traineeships are awarded to individuals by participating educational institutions offering Master's and doctoral degree programs, combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse midwives, certificate programs in existence on November 12, 1998 to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses. The traineeship program is a formula program and all eligible schools will receive awards.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Special Considerations

Traineeships for individuals in advanced education programs are provided under Section 811(a)(2) of the Public Health Service Act. A statutory special consideration, as provided for in Section 811(f)(3) of the PHS Act, will be given to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under Section 332 of the PHS Act.

Review Criteria

Final criteria are included in the application kit.

Eligible Organizations

Eligible applicants are schools of nursing, academic health centers, and other public or private nonprofit entities.

Estimated Amount of This Competition

$15,698,000 for traineeship awards.

Number of Expected Awards

280.

Expected Project Period

1 Year.

For Programmatic Questions

Contact Person: Marcia Starbecker.
Phone Number: 301–443–6333.
E-mail: mstarbecker@hrsa.gov.

Advanced Education Nursing—Nurse Anesthetist Traineeship Grant Program

CFDA Number: 93.299C.
Application Availability: 08/06/1999.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 12/03/1999.
Projected Award Date: 04/28/2000.

Authorization

Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose

Grants are awarded to eligible institutions for projects that support traineeships for licensed registered nurses enrolled as full-time students beyond the twelfth month of study in a Master's nurse anesthesia program. The traineeship program is a formula program and all eligible entities will receive awards.

Eligible Organization

Eligible applicants are schools of nursing, academic health centers, and other public and private nonprofit institutions which provide registered nurses with full-time nurse anesthetist education and have evidence of earned pre-accreditation or accreditation status from the American Association of Nurse Anesthetists (AANA) Council on Accreditation of Nurse Anesthesia Educational Programs.

Funding Priorities and/or Preferences

Statutory Funding Preference: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Considerations

Traineeships for individuals in advanced education programs are provided under Section 811(a)(2) of the Public Health Service Act. A statutory special consideration, as provided for in Section 811(f)(3) of the PHS Act, will be given to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under Section 332 of the PHS Act.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,200,000.

Number of Expected Awards

70.

Estimated Project Period

1 Year.

For Programmatic Questions

Contact Person: Marcia Starbecker.
Phone Number: 1–301–443–6333.
E-mail: mstarbecker@hrsa.gov.

Advancement of Telehealth •

Rural Telemedicine Grant Program

CFDA Number: 93.211.
Application Availability: 12/01/1999.

To Obtain an Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Letter of Intent Deadline: 01/31/2000.
Application Deadline: 03/01/2000.
Projected Award Date: 08/31/2000.

Authorization

Public Health Service Act, Title III, Section 330A, 42 U.S.C. 254c.

Purpose

To demonstrate how telemedicine/telehealth can be used as a tool in developing integrated systems of health care, improving access to health services for rural citizens and reducing the isolation of rural health care practitioners, and to collect information for the systematic evaluation of the feasibility, costs, appropriateness and acceptability of rural telemedicine/telehealth. Grantees may not use in excess of 40 percent of their Federal grant funds each year for the purchase or lease and installation of equipment (i.e., equipment used inside the health care facility or home for providing telehealth services such as codecs, cameras, monitors, computers, multiplexers, etc.). Grantees may not use Federal funds to purchase or install transmission equipment (i.e., microwave towers, large satellite dishes, amplifiers, or laying of telephone or cable lines). Grantees may not use Federal funds to build or acquire real property or for construction except to the extent that such funds are used for minor renovations related to the installation of telemedicine/telehealth equipment. No more than 20 percent of the amounts provided under the grants can be used to pay for the indirect costs associated with carrying out the activities of the grant.

Eligibility

In general, any public (non-Federal) or private nonprofit entity that is: (1) a health care provider and a member of an existing or proposed telemedicine/telehealth network, or (2) a consortium of providers that are members of an existing or proposed telemedicine/telehealth network. The applicant must be a legal entity capable of receiving Federal grant funds. The applicant may be located in either a rural or urban area. Other telemedicine network members may be public or private, nonprofit or for-profit. Health facilities operated by a Federal agency may be members of the network but not the applicant. A telemedicine/telehealth network shall, at a minimum, be composed of a multi-speciality entity that is located in an urban or rural area which can provide 24-hour-a-day access, as appropriate, to a range of diagnostic, therapeutic, ongoing management, preventive, and monitoring services. It must also have at least two rural health care facilities, which may include rural hospitals (fewer than 100 staffed beds), rural health professional office practices, rural health clinics, rural community or migrant health centers, rural publicly-funded mental health facilities, rural home care agencies, rural nursing homes, and rural school health programs/clinics. Any additional requirements based on legislative changes will be noted in the application kit.

Funding Priorities and/or Preferences

Funding preferences are included in the application kit.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$8,000,000.

Estimated number of awards

25.

Estimated Project Period

3 Years.

For Programmatic Questions

Contact Person: Cathy Wasem or Amy Barkin.
Phone Number: 1–301–443–0447.
E-mail: cwasem@hrsa.gov or abarkin@hrsa.gov.

Note to Potential Applicants

The Office for the Advancement of Telehealth anticipates announcing a similar telemedicine/telehealth program for urban underserved and hard-to-reach populations in December 1999, subject to the availability of funds.

Other HRSA Programs

Faculty Loan Repayment Program (FLRP)

CFDA Number: 93.923.
Application Availability: 01/03/2000.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 03/31/2000.
Projected Award Date: 09/01/2000.

Authorization

Public Health Service Act, Title VII, Section 738(a), 42 U.S.C. 293b.

Purpose

The FLRP encourages expansion of disadvantaged representation in health professions faculty positions. The program provides loan repayment, in amounts not to exceed $20,000 for each year of service, for individuals from disadvantaged backgrounds who agree to serve as members of the faculties of eligible health professions and nursing schools. Each recipient of loan repayment must agree to serve as a faculty member for at least 2 years.

Eligibility

Schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, nursing and graduate programs in behavioral and mental health are eligible to apply.

An individual is eligible to compete for participation in the FLRP if the individual is from a disadvantaged background and: (1) Has a degree in medicine, osteopathic medicine, dentistry, nursing, or another health profession; (2) is enrolled in an approved graduate training program in one of the health professions listed above; or (3) is enrolled as a full-time student in an accredited (as determined by the Secretary) school listed above and is in the final year of training leading to a degree from an eligible school.

Funding Priorities and/or Preferences

None.

Special Considerations

Special consideration will be given to the extent to which the individual meets the intent of the program to expand disadvantaged representation in health professions faculty positions.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$800,000.

Estimated Number of Awards

25.

Estimated Project Period

Not less than 2 Years.

For Programmatic Questions

Contact Person: Jeff Potts.
Phone Number: 1–301–443–1700.
E-mail: bflrp__info@hrsa.gov.

Scholarships for Disadvantaged Students (SDS)

CFDA Number: 93.925.
Application Availability: 02/01/2000.

To Obtain an Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 03/15/2000.
Projected Award Date: 05/31/2000.

Authorization

Public Health Service Act, Title VII, Section 737, 42 U.S.C. 293a.

Purpose

The SDS program contributes to the diversity of the health professions student and practitioner populations. The program provides funding to eligible health professions and nursing schools to be used for scholarships to students from disadvantaged backgrounds who have financial need for scholarships and are enrolled, or accepted for enrollment, as full-time students at the eligible schools.

Eligibility

(1) Schools of allopathic medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, veterinary medicine, public health, nursing, chiropractic, graduate programs in behavioral and mental health, physician assistants, or allied health are eligible to apply; and (2) schools with a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups.

Funding Priorities and/or Preferences

An applicant must provide assurances that preference in providing scholarships will be given to students for whom the costs of attending the schools would constitute a severe financial hardship and to former recipients of Exceptional Financial Need and Financial Assistance for Disadvantaged Health Professions Students Scholarships.

Funding Priorities and/or Preferences

A priority will be given to eligible entities that are health professions and nursing schools based on the proportion of graduating students going into primary care, the proportion of under-represented minority students, and the proportion of graduates working in medically underserved communities.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$38,966,000.

Estimated Number of Awards

1,000.

Estimated Project Period

1 Year.

For Programmatic Questions

Contact Person: Angie Lacy or Andrea Castle.
Phone Number: 1–301–443–4776.
E-mail: dpolicy@hrsa.gov.

Nursing Education Loan Repayment Program

CFDA Number: 93.908.
Application Availability: 03/01/2000.

To Obtain This Application Kit

Contact: 1–888–333–HRSA until September 12, 1999.
After September 12, the new toll free number will be 1–877–HRSA (4772)–123.

Application Deadline: 05/01/2000.
Projected Award Date: 09/01/2000.

Authorization

Public Health Service Act, Title VIII, Section 846, 42 U.S.C. 297m.

Purpose

Under the Nursing Education Loan Repayment Program (NELRP), registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary, under which the Public Health Service agrees to repay up to 85 percent of the nurse's indebtedness for nursing education loans. In exchange, the nurse agrees to serve for a specified period of time in certain types of health facilities identified in statue.

Eligibility

Applicants must have completed all of their training requirements for registered nursing and be licensed prior to beginning service. Individuals eligible to participate must: (a) Have received, prior to the start of service, a baccalaureate or associate degree in nursing; (b) Have unpaid education loans obtained for nurse training; (c) Be a citizen or Nation of the U.S.; (d) Have a current unrestricted license in the State in which they intend to practice; and (e) Agree to be employed for not less than two years in a full-time clinical capacity in: (1) An Indian Health Service Health Center; (2) a Native Hawaiian Health Center; (3) a public hospital (operated by a State, county, or local government); (4) a health center funded under Section 330 of the Public Health Service Act (including migrant, homeless, and public housing health centers); (5) a rural health clinic (Section 1861 (aa)(2) of the Social Security Act); or (6) a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses.

Estimated Amount of This Competition

$2,240,000.

Estimated Number of Awards

200.

Estimated Project Period

None.

Funding Priorities and/or Preferences

In making awards under this Section, preferences will be given to qualified applicants who have the greatest financial need and who agree to serve in the types of health facilities described above that are located in geographic areas determined by the Secretary to have a shortage of and need for nurses.

Review Criteria

Awards are determined by formula.

For Programmatic Questions

Contact Person: Winifred Lapp.
Phone Number: 1–301–594–4400.
E-mail: flapp@hrsa.gov.

HRSA's Approach to Performance Measurement

The Health Resources and Services Administration (HRSA) is the lead Federal agency in promoting access to health care services that create and improve the Nation's health. With a statutory emphasis on special needs, underserved, and vulnerable populations, HRSA mobilizes its bureaus, programs, staff and partners to assure access to quality health care.

HRSA is an agency with multiple programs but with a single strategic goal: Assure 100% access to health care and 0% disparities for all Americans. We do not rely solely on the HRSA budget or even other Federal funding in our quest to meet our goal. Instead, we work to establish alliances and partnerships with a broad array of organizations ranging from State and local governments to foundations and corporations.

In order to support our goal, HRSA has established four strategies:

- Eliminate Barriers to Care;
- Eliminate Health Disparities;
- Assure Quality of Care; and
- Improve Public Health and Health Care Systems.

Within each of these strategies there are three substrategies to fully implement them (see Model). We have aligned our strategic plan, our Government Performance and Results Act (GPRA) measures, and our budget under these activities.

The GPRA requires Federal agencies to prepare 5-year Strategic Plans setting out long-term goals and objectives, Annual Performance Plans committing to short-term performance goals, and Annual Performance Reports explaining and documenting how effective the Agency's actions have been at achieving the stated goals.

HRSA accomplishes its mission by:

- Working with States and communities which form the foundation for developing integrated service systems and the appropriate health workforce to help assure access to essential high-quality health care.
- Assuring that these systems take into account cultural and linguistic factors, geographic location, and economic circumstances.
- Assisting States and communities to identify and address unmet service needs and workforce gaps in the health care system.
- Promoting continuous quality improvement in health services delivery and health professions education.
- Supporting innovative partnerships to promote effective, integrated systems of care for all population groups.
- Promoting the recruitment, training, and retention of a culturally and linguistically competent and diverse health care workforce.

HRSA GOAL AND STRATEGIES

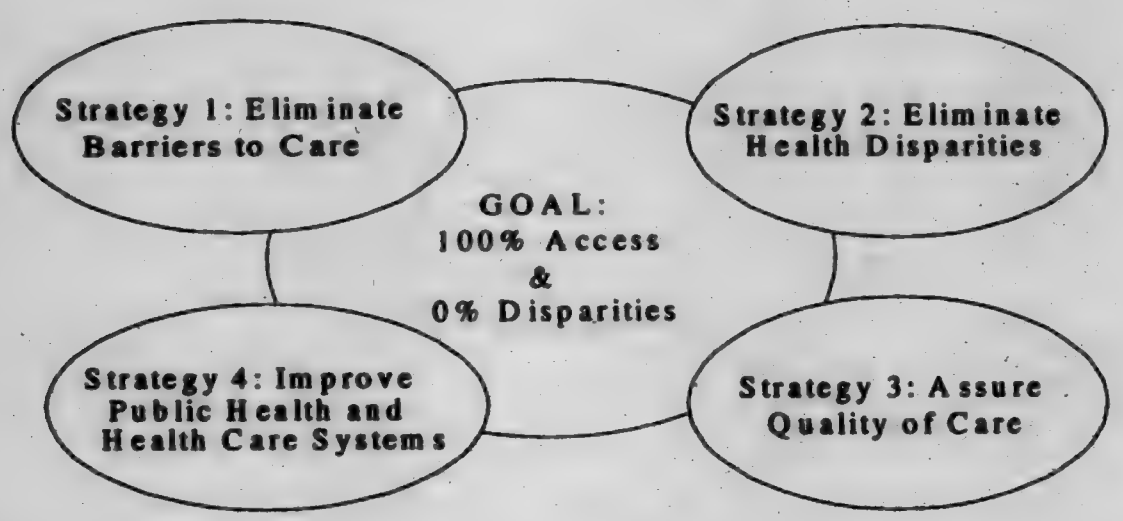

Strategy 1: Eliminate Barriers to Care

- Increase utilization for underserved
- Increase Access Points
- Focus on target population

Strategy 2: Eliminate Health Disparities

- Reduce incidence/prevalence of disease and morbidity/mortality
- Increase utilization for underserved populations
- Focus on target populations

Strategy 3: Assure Quality of Care

- Promote appropriateness of care
- Assure effectiveness of care
- Improve customer/patient satisfaction

Strategy 4: Improve Public Health and Health Care Systems

- Improve Information development and dissemination
- Promote education and training of the Public Health and Health Care Workforce
- Promote systems and infrastructure development

The overall approach that HRSA follows is focused on:

Primary Health Care for the Poor, Uninsured and Isolated

- HRSA supports a network of primary care health centers that deliver primary care—preventing disease and treating illness—in underserved areas. Each year, more than 9 million Americans receive care through HRSA health centers. More than half of those receiving care are members of working families with no health insurance.

Health Care for Americans With Special Health Care Needs

- A major HRSA focus is on the health of mothers, children and youth, particularly minority, low-income and uninsured individuals and families who face barriers to needed health services, such as prenatal care and immunization. Through the Maternal and Child Health Block Grant, each State assesses the health care needs of its pregnant women, children and adolescents, then develops and implements a plan to meet them.
- Ryan White CARE Act programs are designed to help people with HIV/AIDS live better and longer. Funding provides health and support services for under-or uninsured people with HIV/AIDS. The AIDS Drug Assistance Programs are designed to make available the latest therapeutic approaches to care for those who would not otherwise have access to such care.

Training Health Professionals to Serve the Underserved

- HRSA supports a variety of community-based training programs to train the next generation of physicians, nurses and other health professionals to work effectively in managed care, to become productive members of health care teams, and to increase the provision of services in underserved areas.

Approach to Performance Measurement

HRSA has made a strong effort to build a performance management approach into the way it conducts its business. The agency structured the development of its internal strategic planning process to be consistent with the requirements of the Government Performance and Results Act. The goals

developed in the process have guided the development of our Annual Performance Plans.

As part of that process, the agency outlined the central assessment question of organizational performance:

Can this organization, with a given set of resources, through a series of actions and decisions, produce outputs that have the desired effects and outcomes to benefit those it serves?

Technical assistance has been provided to each of the operating components to enhance ability to define performance goals and measures.

Look for HRSA at the Following Meetings/Conferences

Association of State and Territorial Health Officials (ASTHO) Annual Meeting

September 28–October 1, 1999.
Savannah, Georgia.
(www.astho.org).

Association of Military Surgeons of the United States (AMSUS) 106th Annual Meeting

November 7–12, 1999.
Anaheim, California.
(www.amsus.org).

127th Annual American Public Health Association Meeting

November 15–18, 1999.
Chicago, Illinois.
(www.apha.org).

12th National HIV/AIDS Update Conference

March 14–17, 2000.
San Francisco, California.
HRSA Contact: Steven Merrill, 1–301–443–2865 or E-mail smerrill@hrsa.gov.

Prevention 2000

March 23–26, 2000.
Atlanta, Georgia.
HRSA Contact: Seven Merrill 1–301–443–2865 or E-mail smerrill@hrsa.gov.

17th Annual Meeting of the Association for Health Services Research

June 25–27, 2000.
Los Angeles, California.
(www.ahsr.org).

National Association of County and City Health Officials (NACCHO) Annual Meeting

July 14–17, 2000.
Los Angeles, California.
(www.naccho.org).

2000 National Council of La Raza Conference

Specific dates and location to be announced.
(www.nclr.org).

National Conference of State Legislatures 26th Annual Meeting

July 16–20, 2000.
Chicago, Illinois.
(www.ncsl.org).

8th Annual National Association of Local Boards of Health (NALBOH) Conference

July, 2000.
Raleigh/Durham, North Carolina.
(www.nalboh.org).

Association of State and Territorial Health Officials (ASTHO) Annual Meeting

July 16–23, 2000.
Los Angeles, California.
(www.astho.org).

HRSA's Field Offices

Northeast Cluster

Philadelphia Field Office—Field Director, Joseph Healey, 215–861–4422.

Boston Field Office—Assistant Field Director, Kenneth Brown, 617–565–1482.

New York Field Office—Assistant Field Director, Ron Moss, 212–264–2664.

Southeast Cluster

Atlanta Field Office—Field Director, Ketty M. Gonzalez, 404–562–2996.

Midwest Cluster

Chicago Field Office—Field Director, Deborah Willis-Fillinger, 312–353–1715.

Kansas City Field Office—Assistant Field Director, Hollis Hensley, 816–426–5296.

West Central Cluster

Dallas Field Office—Field Director, Frank Cantu, 214–767–3872.

Denver Field Office—Assistant Field Director, Jerry Wheeler, 303–844–3203.

Pacific West Cluster

San Francisco Field Office—Field Director, Thomas Kring, 415–437–8090.

Seattle Field Office—Assistant Field Director, Richard Rysdam (Acting), 206–615–2491.

World Wide Web

HRSA Home Page

http://www.hrsa.dhhs.gov/.

DHHS Home Page

http://www.os.dhhs.gov/.

Grantsnet

http://www.hhs.gov/progorg/grantsnet/index.html.

PHS Grants Policy Statement

http://www.nih.gov/grants/policy/gps/.

Catalog of Federal Domestic Assistance (CFDA)

http://www.gsa.gov/fdac/.

Code of Federal Regulations

http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.

OMB Circulars

http://www.whitehouse.gov/WH/EOP/omb.

Federal Register

http://www.access.gpo.gov/su_docs/aces/aces140.html/.

Healthfinder

http://www.healthfinder.gov/.

Fedworld Information Network

http://www.fedworld.gov/.

HRSA Y2K Site

http://www.hrsa.gov/y2k_comp.htm.

[FR Doc. 99–21257 Filed 8–17–99; 8:45 am]
BILLING CODE 4160–15–P

OL
64
SS
1
5
9
AG
18
99
MI

federal register

Wednesday
August 18, 1999

Part III

Department of Energy

10 CFR Parts 709, 710, and 711
Polygraph Examination Regulation; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 709, 710, and 711

[Docket No. CN–RM–99–POLY]

RIN 1992–AA24

Polygraph Examination Regulation

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE or the Department) proposes regulations for the use of polygraph examinations for certain DOE and contractor employees, applicants for employment, and other individuals assigned or detailed to Federal positions at DOE. The proposed regulations describe the categories of individuals who would be eligible for polygraph testing and controls for the use of such testing and for prevention of unwarranted intrusion into the privacy of individuals. These regulations are being proposed to comply with various Executive Orders which require the Department to protect classified information. These regulations for the use of polygraph examinations for certain DOE and contractor employees are intended to protect highly sensitive and classified information and materials to which such employees have access. This rulemaking also proposes conforming changes to regulations governing the Department's Personnel Security Assurance Program and Personnel Assurance Program.

DATES: The comment period for this proposed rule will end on October 4, 1999. Public hearings will be held on: September 14, 1999 in Livermore, CA from 9 a.m. to 1 p.m. and 3 p.m. to 7 p.m.; September 16, 1999, in Albuquerque, NM from 9 a.m. to 1 p.m. and 3 p.m. to 7 p.m.; September 17, 1999, in Los Alamos, NM from 9 a.m. to 1 p.m. and 3 p.m. to 6 p.m.; and September 22, 1999, in Washington D.C. from 9 a.m. to 1 p.m.

Requests to speak at any of the hearings should be phoned in to Andi Kasarsky, (202) 586–3012, by September 10, for the Livermore, CA hearing; September 14, for the Albuquerque, NM hearing; September 15, for the Los Alamos, NM hearing; and September 20, for the Washington, DC hearing. Each presentation is limited to 5 minutes to ensure that all persons have an opportunity to speak.

ADDRESSES: Written comments (10 copies) should be addressed to Douglas J. Hinckley, Office of Counterintelligence, CN–1, Docket No. CN–RM–99–POLY, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. Alternatively, comments may be e-mailed to the following address: poly@hq.doe.gov. Where possible, commentors should identify the specific section of the proposed rule to which they are responding.

Copies of the public hearing transcripts, written comments received, technical reference material referred to in this notice, and any other docket material may be reviewed and copied at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The docket material for this rulemaking will be filed under "CN–RM–99–POLY." The **Federal Register** notice and supporting documentation can be located on DOE's Internet home page at the following address: http://home.doe.gov/news/fedreg.htm.

The public hearings for this rulemaking will be held at the following addresses:

Livermore, CA: Lawrence Livermore National Laboratory, Building 123 Auditorium (use South West Gate entrance, East Avenue).

Albuquerque, NM: Sandia National Laboratories, Steve Schiff Auditorium, Building 825.

Los Alamos, NM: Los Alamos National Laboratory, Administration Building, Main Auditorium (1st floor).

Washington, DC: U.S. Department of Energy, Auditorium (ground floor, E corridor), 1000 Independence Avenue, SW, Washington, DC.

For more information concerning public participation in this rulemaking proceeding, see Section V of this notice (Opportunity for Public Comment).

FOR FURTHER INFORMATION CONTACT:

Douglas Hinckley, U.S. Department of Energy, Office of Counterintelligence, CN–1, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–5901

Lise Howe, U.S. Department of Energy, Office of General Counsel, GC–73, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–2906

For information concerning the public hearings, requests to speak at the hearings, submission of written comments or docket file information contact: Andi Kasarsky at (202) 586–3012.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Description of Proposal
IV. Regulatory Review
A. National Environmental Policy Act
B. Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Unfunded Mandates Reform Act of 1995
E. Treasury and General Government Appropriations Act, 1999
F. Executive Order 12866
G. Executive Order 12612
H. Executive Order 12875
I. Executive Order 12988
J. Review Under Executive Order 13084
V. Opportunity for Public Comment

I. Introduction

The Atomic Energy Act of 1954 (AEA or Atomic Energy Act) assigns to DOE certain atomic energy defense production and clean-up obligations that are discharged at various DOE-owned, contractor-operated installations around the United States. Section 161 of the AEA authorizes DOE to adopt rules necessary to carry out those functions, 42 U.S.C. 2201. Under that authority, DOE today proposes regulations for using counterintelligence-scope polygraph examinations for national security purposes, and exculpatory polygraph examinations at the request of an individual, while protecting the rights of individuals. All such polygraph examinations will be voluntary. However, if an individual refuses to submit to an examination that is for national security purposes, DOE and its contractors may decline to select the individual for the sensitive positions specified in this rule, and DOE may deny the individual access to the information that justified conducting the examination.

II. Background

DOE, as the successor agency to the Atomic Energy Commission, has broad responsibilities under the AEA to direct the development, use, and control of atomic energy. These responsibilities include a specific mandate to protect sensitive and classified information and materials involved in the design, production, and maintenance of nuclear weapons, as well as a general obligation to ensure that permitting an individual to have access to information classified under the AEA will not endanger the nation's common defense and security.

In addition, various Executive Orders of government-wide applicability require DOE to take steps to protect classified information. Executive Order No. 12958, Classified National Security Information (April 17, 1995), requires the Secretary to establish controls to ensure that classified information is used only under conditions that provide adequate protection and prevent access

by unauthorized persons. Executive Order 12968, Access to Classified Information (August 2, 1995), requires the Secretary to establish and maintain an effective program to ensure that employee access to classified information is clearly consistent with the interests of national security. In addition, in February 1998, President Clinton issued Presidential Decision Directive–61, "U.S. Department of Energy Counterintelligence Program," a classified document containing the President's determination that DOE must do more to protect the highly sensitive and classified information at its facilities. The President instructed DOE to develop and implement specific measures to reduce the threat to such information, including implementation of a polygraph program. An unclassified version of the Presidential Decision Directive is available in the DOE Freedom of Information Reading Room.

As an element of carrying out its national security mission, DOE has instituted a counterintelligence program to strengthen its protection of information and technologies in connection with DOE's atomic energy defense activities. DOE believes that requiring counterintelligence-scope polygraph examinations for individuals in positions with access to the most sensitive information in connection with DOE's atomic energy defense activities is a necessary, prudent measure to fulfill DOE's national security responsibilities. A counterintelligence-scope polygraph examination both serves as a means to deter unauthorized disclosures of classified information and provides a means for possible early detection of disclosures to enable DOE to take steps promptly to prevent further harm to the national security.

A counterintelligence-scope polygraph examination also is an integral element of the DOE Accelerated Access Authorization Program (AAAP), a program that DOE utilizes to grant interim security clearances on an expedited basis. In addition, use of a polygraph examination when an individual requests one as a means of exculpation in order to resolve a counterintelligence investigation or personnel security issue hastens the DOE's prompt resolution of such issues.

The Employee Polygraph Protection Act (Pub. L. 100–347) (EPPA) generally prohibits the use of polygraph examinations in private employment settings, but that law does not apply to the Federal government or its employees. In addition, the EPPA specifically exempts from its prohibitions polygraph examinations administered by DOE in the performance of its counterintelligence function to any expert, consultant or contractor employee of DOE in connection with atomic energy defense activities, 29 U.S.C. 2006(b)(1)(B). The statute also specifically exempts polygraph examinations administered by a Federal agency, in the performance of an intelligence or counterintelligence function, to an individual whose duties involve access to top secret classified information or information designated as being within a Special Access Program (SAP), 29 U.S.C. 2006(b)(2). In DOE's view, polygraph examinations are a useful investigatory tool for counterintelligence purposes because they assist in eliciting comprehensive information, and in distinguishing between deception and non-deception. Congress left to DOE the discretion to develop rational procedures for evaluating and processing the results of polygraph examinations and for protecting individuals from misuse of such an examination.

Along with the strong need for protection of classified and sensitive information in its possession, DOE recognizes the importance of protecting individuals' rights. In the 1960s, President Lyndon B. Johnson issued a memorandum entitled "Use of Polygraph in the Executive Branch" which is intended to "prevent unwarranted intrusion into the privacy of individuals." The memorandum prohibits subjecting Federal employees to polygraph examinations except in limited situations. One of the exceptions permits an executive department or agency that has an intelligence or counterintelligence mission directly affecting national security to use polygraph examinations for employment screening and personnel investigations, and in intelligence and counterintelligence operations. In such cases, the agency must complete a review process with the Office of Personnel Management (OPM).

As an initial step toward developing and implementing a polygraph requirement for sensitive positions, DOE issued an internal DOE directive, DOE Notice 472.2, Use of Polygraph Examinations, that establishes a polygraph requirement for Federal employees who occupy or seek to occupy certain sensitive positions. The DOE Notice also provides for polygraph examinations to be administered to Federal employees as part of the AAAP and, upon request, as a means of exculpation. The DOE Notice has been submitted to OPM for its review. The Notice is publicly available at http://www.explorer.doe.gov:1776/htmls/regs/doe/newserieslist.html on the DOE Directives website.

As a second step, DOE is proposing today to expand the polygraph examination program to cover all employees at its facilities, contractor employees as well as Federal employees, in positions with access to the most sensitive categories of classified information and materials, as well as applicants for such positions. When final, this rule will establish polygraph examination regulations that apply to both Federal and contractor employees. DOE also has submitted a copy of this proposed rule to OPM.

DOE acknowledges that some individuals consider polygraph examination results to be generally unreliable and believe that they should not be used as the basis for any action with regard to an employee. However, DOE is aware of no scientific studies that establish that polygraph examination results are unreliable for use as an investigative tool, as DOE today has proposed to use them. As an investigative tool, polygraph examinations results are superior to random interviews relying on purely subjective evaluations. DOE also is aware that some individuals think today's proposed rule could have an effect on the recruitment and retention of qualified personnel. Nevertheless, DOE believes that established procedures for polygraph testing, limitations on the scope of questions, qualifications standards for polygraph examiners, and limitations on the use of polygraph examination results with regard to final adverse actions, will be perceived as fair by most potential employees and will protect the legitimate interests of existing employees. DOE invites members of the public to comment on the balance it has struck in today's proposal between legitimate national security interests and regulatory limitations to protect employees from inappropriate or imprudent use of polygraph examinations and the results of such examinations.

Today's action continues DOE's efforts to carry out its statutory responsibilities and Presidential direction to provide strong programs to protect against the disclosure of information and materials that could harm national defense and security.

III. Description of Proposal

PART 709, Subpart A—General Provisions

Section 709.3 What Are the Definitions of the Terms Used in This Part?

This section proposes definitions for terms used in the rule. The definition for the phrase "adverse personnel action" for Federal employees is derived from 5 U.S.C. Chapter 75, and for contractor employees from correlative principles under the National Labor Relations Act. The terms "counterintelligence" and "intelligence" are based on definitions in the National Security Act of 1947. 50 U.S.C. 401a. The definition for "polygraph" is the same as that used by the Department of Labor in its regulations implementing the EPPA. 29 CFR part 801. The definition for "Special Access Program or SAP" is based on the definition of that term in Executive Order 12958, Classified National Security Information (April 17, 1995).

Section 709.4 To Whom Does the Polygraph Examination Requirement Under This Part Apply?

This section proposes the programs whose employees would be eligible for polygraph examination. The programs include employees and applicants for employment with DOE and its contractors (including subcontractors at all tiers), and also individuals who may be assigned or detailed to Federal positions at DOE. There are eight program categories whose employees are eligible for polygraph examination. These include counterintelligence and intelligence positions; positions requiring access to special access programs; positions subject to the Personnel Assurance Program (PAP) or Personnel Security Assurance Program (PSAP); positions with a need-to-know or access to information specifically designated by the Secretary or his delegatee regarding the design and operation of nuclear weapons and associated use and control features; positions within the Office of Independent Oversight and Performance Assurance, or any successor thereto, involved in inspection and assessment of safeguards and security functions, including cyber security, of the Department; and positions within the Office of Security and Emergency Operations, or any successor thereto. DOE will establish an internal process to review these programs in order to develop the criteria for identifying the specific positions in the eight program categories that warrant polygraph examination and the order of priority for conducting polygraph examinations of the DOE and contractor employees in the eligible positions.

In addition to the programs whose employees would be eligible for a polygraph examination, there are two other circumstances under which DOE would administer polygraph examinations. First, a counterintelligence-scope polygraph examination is an element of the AAAP, which is a voluntary program under which an individual's DOE access authorization (security clearance) may be expedited. Second, individuals would be permitted, at their own option, to request a polygraph examination in order to resolve questions that have arisen in either the personnel security or counterintelligence areas; these examinations are referred to as exculpatory polygraph examinations.

Section 709.5 How Will an Individual Know If His or Her Position Will Be Eligible for Polygraph Examination?

As proposed, all employees of the programs described in § 709.4(a)(1)–(8) are eligible for polygraph examinations. If there is a vacant position within one of these programs, DOE or its contractors must indicate in the job or vacancy announcement that the employee selected would be eligible for a polygraph examination.

Subpart B—Polygraph Examination Protocols and Protection of National Security

Section 709.11 What Types of Topics Are Within the Scope of a Polygraph Examination?

Polygraph examinations would be counterintelligence-scope, designed to address the narrow topics of whether the individual has engaged, or is engaging, in espionage, sabotage, terrorism, unauthorized disclosures of classified information, unauthorized foreign contacts, or deliberate damage to or malicious misuse of a U.S. government information or defense system. The only time topics other than these would be within the scope of a polygraph examination is when an individual has requested an exculpatory examination. In the case of exculpatory examinations, the topics are limited to the personnel security or counterintelligence matter at issue.

Section 709.14 What Are the Consequences of a Refusal To Take a Polygraph Examination?

All polygraph examinations administered by DOE are voluntary. There may, however, be consequences resulting from a refusal to take, or failure to complete, a polygraph examination. This section describes the possible consequences of an individual's refusing to take, or failing to complete, a required polygraph examination.

Failure to complete the polygraph examination is treated the same as a refusal to take a polygraph examination. If an individual refuses to take, or terminates at any time prior to completion, a polygraph examination, that individual may be denied access to the information and denied involvement in the activities that justified conducting the examination, consistent with proposed § 709.15. In some circumstances, for example individuals with counterintelligence or intelligence responsibilities, the information or activities may be essential to the individual's ability to do his or her job. In such a case, the employer (whether it is DOE or a contractor) must make every effort to find a new position for which the individual would be suitable, consistent with that denial of access. If the individual is on assignment or detail to DOE from another agency, the individual may simply be returned to the employing agency.

If a DOE employee refuses to take a required polygraph examination, DOE cannot record the fact of that refusal in the individual's personnel file. Nevertheless, DOE may record the refusal in a personnel security file. The prohibition on recording a DOE employee's refusal to take a polygraph examination in an individual's personnel file is contained in President Lyndon B. Johnson's Memorandum on "Use of the Polygraph in the Executive Branch." Because that memorandum is not explicitly applicable to contractor employees and because DOE does not maintain personnel files for contractor employees, DOE has limited the prohibition in the rule to Federal employees. However, the Department recommends that its contractors adopt a similar policy with respect to contractor employees.

Exculpatory polygraph examinations are administered only at the request of the individual, and an individual is under no obligation to request an exculpatory polygraph

examination, DOE or its contractors may not take an adverse personnel action against an individual solely on the basis of refusing to take or complete such an exculpatory polygraph examination. Similarly, the fact that an individual has not requested an exculpatory examination may not be recorded in an individual's personnel security or investigative file or the personnel file of a Federal employee. Because DOE does not maintain personnel files for contractor employees, DOE has limited the prohibition in the rule to Federal employees. However, the Department recommends that its contractors adopt a similar policy with respect to contractor employees.

Section 709.15 How Does DOE Use Polygraph Examination Results?

If following the completion of the polygraph test there are any unresolved issues, the polygraph examiner must conduct an in-depth interview of the individual to address those unresolved issues. After the in-depth interview, if there are remaining unresolved issues that raise significant questions relevant to the individual's access to the information or involvement in the activities that justified the polygraph examination, DOE will so advise the individual and provide an opportunity for the individual to undergo an additional polygraph examination. If the additional polygraph examination is not sufficient to resolve the matter, DOE must undertake a comprehensive investigation of the individual, using the polygraph examination as an investigative lead.

After completion of the polygraph examination(s), the Department will conduct an eligibility evaluation that considers polygraph examination results, the individual's personnel security file, and other pertinent information. DOE may conduct a personal interview as an element of the eligibility evaluation. Based upon the eligibility evaluation, the individual may be denied access to the information and denied involvement in the activities that justified the polygraph examination. If the eligibility evaluation results raise questions of loyalty to the United States, DOE must refer the matter to the Federal Bureau of Investigation for investigation under section 145d of the Atomic Energy Act (42 U.S.C. 2165d). If the eligibility evaluation results reflect derogatory information and the individual already holds an access authorization, DOE may initiate an administrative review of the individual's access authorization eligibility under the DOE regulations governing eligibility for access authorization (security clearance) at 10 CFR part 710.

Subpart C—Safeguarding Privacy and Employee Rights

Section 709.21 When Is an Individual Notified That a Polygraph Examination Is Scheduled?

DOE has elected to establish a minimum of forty-eight hours advance notification of scheduled polygraph examinations. DOE believes that the forty-eight hours should provide an individual sufficient time to secure any desired legal counsel or another representative. DOE has provided two exceptions to the rule, a good cause exception and an exception when the individual waives the advance notice. Under the good cause exception, DOE may provide an individual less than forty-eight hours advance notification of a polygraph examination when the Secretary of Energy or the Secretary's designee determines that the information to which the individual has access is of such extreme sensitivity that waiting forty eight hours poses an unacceptable risk to national security or defense. The waiver provision would favor an individual who wishes a polygraph examination as quickly as possible either for exculpatory reasons or to expedite his or her access to information or involvement in activities that justify the polygraph examination.

Section 709.22 What Rights to Counsel or Other Representation Does an Individual Have?

An individual has a right to consult with anyone before any polygraph examination. The individual may obtain legal counsel, professional assistance, or union representation. However, these representatives may not be present during any phase of the polygraph examination.

Section 709.25 Are There Limits on Use of Polygraph Examination Results That Reflect "Deception Indicated" or "No Opinion"?

DOE believes that, while polygraph examinations are a useful tool, they should not constitute the sole basis for taking any action against an individual, except when the Secretary or the Secretary's designee determines that permitting the individual continued access to protected information would pose an unacceptable risk to national defense and security. While an individual's access may be suspended pursuant to such a Secretarial determination, DOE will in all such cases investigate further under § 709.15 in order to resolve the issue.

Section 709.26 How Does DOE Protect the Confidentiality of Polygraph Examination Records?

All polygraph examination records will be maintained in systems of records established under the Privacy Act of 1974 with appropriate protections on confidentiality. In accordance with the Privacy Act, the records cannot be disclosed, except in response to a written request by, or with the prior written consent of, the individual to whom the record pertains unless disclosure would be permitted by the Privacy Act.

Parts 710 and 711

DOE proposes conforming changes to regulations established for the Personnel Security Assurance Program (PSAP), 10 CFR part 710, subpart B, and the Personnel Assurance Program (PAP), 10 CFR part 711. All positions subject to these programs would be eligible for the polygraph examination provisions of proposed part 709.

IV. Regulatory Review

A. National Environmental Policy Act

This proposed rule would establish regulations for use of polygraph examinations. DOE has determined that this rule is covered under the Categorical Exclusion found in the Department's National Environmental Policy Act regulations at paragraph A.6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, DOE must prepare an initial regulatory flexibility analysis for a proposed rule unless DOE certifies that the rule would not have a substantial impact on a significant number of small entities. This rulemaking would not directly regulate small businesses or small governmental entities. It would apply principally to individuals who are existing employees of, or applicants for employment by, some of the DOE's prime contractors who are all large businesses. There may be some affected small businesses that are subcontractors, but the rule would not impose unallowable costs. Accordingly, DOE certifies that the rule will not have a substantial impact on a significant number of small entities.

C. Review Under the Paperwork Reduction Act

DOE has determined that this rule, as proposed, does not contain any new or amended record keeping, reporting, or application requirements, or any other type of information collection requirements subject to the Paperwork Reduction Act (Pub. L. 96–511).

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to closely examine the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose an enforceable duty upon State, local, or tribal governments, except, among other things, a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This rule, as proposed, is not likely to result in any Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

E. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

F. Executive Order 12866

Section 6 of Executive Order 12866 provides for a review by the Office of Information and Regulatory Affairs (OIRA) of a significant regulatory action, which is defined to include an action that may have an effect on the economy of $100 million or more, or adversely affect, in a material way, the economy, competition, jobs, productivity, the environment, public health or safety, or State, local, or tribal governments. DOE has concluded that this proposed rule is not a significant regulatory action.

G. Executive Order 12612

Executive Order 12612, 52 FR 41685, requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires a preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing policy action. The rule, as proposed in this notice, will not have a substantial direct effect on the institutional interests or traditional functions of the States. Accordingly, no assessment or analysis is required under Executive Order 12612.

H. Executive Order 12875

Executive Order 12875 (Enhancing Intergovernmental Partnership), provides for reduction or mitigation, to the extent allowed by law, of the burden on State, local and tribal governments of unfunded Federal mandates not required by statute. The analysis under the Unfunded Mandates Reform Act of 1995 above, satisfies the requirements of Executive Order 12875. Accordingly, no further analysis is required under Executive Order 12875.

I. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule, as proposed, meets the relevant standards of Executive Order 12988.

J. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

V. Opportunity for Public Comment

A. Written Comments

Interested individuals are invited to participate in this proceeding by submitting data, views or comments with respect to this proposed rule. To help the Department review the submitted comments, commentors are requested to reference the paragraph(s) (e.g., 850.3(a)) to which they refer when possible.

Ten copies of written comments should be submitted to the address indicated in the ADDRESSES section of this NOPR. Comments should be identified on the outside of the envelope and on the comments themselves with the designation, "Polygraph Rule, Docket No. CN–RM–99–POLY." Should anyone wishing to provide written comments be unable to provide ten copies, alternative arrangements can be made in advance with the Department.

DOE will consider all comments received on or before the date specified at the beginning of this NOPR and other relevant information before final action is taken on the proposed rule.

All submitted comments will be available for public inspection as part of the administrative record on file for this rulemaking, which is in the DOE Freedom of Information Reading Room at the address indicated in the **ADDRESSES** section of this NOPR.

Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The Department will make its own determination as to the confidentiality of the information and treat it accordingly.

B. Public Hearings

Public hearings will be held at the times, dates and locations indicated in the **DATES** and **ADDRESSES** section of this NOPR. Any person who is interested in making an oral presentation should make a phone request to the number in the **DATES** section of this NOPR. The person should provide a daytime phone number where he or she may be reached. Persons requesting an opportunity to speak will be notified of the approximate time they will be speaking. To ensure that as many persons as possible have the opportunity to present comments, a maximum of five minutes may be allotted to each speaker. However, if there is time at the end of the hearing, DOE may allot additional time to the speakers present. Persons making oral statements should bring 6 copies of their statement to the hearing and submit them at the registration desk.

In the event that requests exceed the time allowed, DOE reserves the right to schedule speakers, presentations and to establish the procedures for conducting the hearing. A DOE official will be designated to preside at each hearing, which will not be judicial or evidentiary. Only those persons conducting the hearing may ask questions. Any further procedural rules needed to conduct the hearing properly will be announced by the DOE presiding official.

A transcript of each hearing will be made available to the public. DOE will retain the record of the full hearing, including the transcript, and make it available for inspection and copying in the DOE Freedom of Information Reading Room at the address provided in the **ADDRESSES** section of this NOPR. Transcripts may also be purchased from the court reporter.

If DOE must cancel the hearings, it will make every effort to give advance notice.

List of Subjects

10 CFR Part 709

Polygraph tests.

10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials.

10 CFR Part 711

Administrative practice and procedure, Alcohol abuse, Drug abuse, Government contracts, Government employees, Health, Nuclear safety, and Occupational safety and health.

Issued in Washington, DC, on August 11, 1999.

Edward J. Curran,

Director, Office of Counterintelligence.

For the reasons stated in the preamble, DOE hereby proposes to amend Chapter III of title 10 of the Code of Federal Regulations as set forth below:

1. New Part 709 is added to read as follows:

PART 709—POLYGRAPH EXAMINATION REGULATIONS

Subpart A—General Provisions

709.1 What is the purpose of this part?
709.2 What is the scope of this part?
709.3 What are the definitions of the terms used in this part?
709.4 To whom does the polygraph examination requirement under this part apply?
709.5 How will an individual know if his or her position will be eligible for a polygraph examination?

Subpart B—Polygraph Examination Protocols and Protection of National Security

709.11 What types of topics are within the scope of a polygraph examination?
709.12 How does DOE determine the wording of questions?
709.13 May an individual refuse to take a polygraph examination?
709.14 What are the consequences of a refusal to take a polygraph examination?
709.15 How does DOE use polygraph examination results?

Subpart C—Safeguarding Privacy and Employee Rights

709.21 When is an individual notified that a polygraph examination is scheduled?
709.22 What rights to counsel or other representation does an individual have?
709.23 How does DOE obtain an individual's consent to a polygraph examination?
709.24 What other information is provided to the individual prior to a polygraph examination?
709.25 Are there limits on use of polygraph examination results that reflect "deception indicated" or "no opinion"?
709.26 How does DOE protect the confidentiality of polygraph examination records?

Subpart D—Polygraph Examination and Examiner Standards

709.31 What are the DOE standards for polygraph examinations and polygraph examiners?
709.32 What are the training requirements for polygraph examiners?

Authority: 42 U.S.C. 2011, *et seq.*, 42 U.S.C. 7101, *et seq.*

Subpart A—General Provisions

§ 709.1 What is the purpose of this part?

(a) The purpose of this part is to provide guidelines for:

(1) The use of counterintelligence-scope polygraph examinations in connection with the atomic energy defense activities of the Department;

(2) The use of counterintelligence-scope polygraph examinations for individuals whose duties involve access to top secret classified information or information designated as being within a special access program (SAP); and

(3) The use of exculpatory polygraph examinations, upon the request of an individual, in order to resolve counterintelligence investigations and personnel security issues.

(b) This part also provides guidelines for protecting the rights of individual DOE and DOE contractor employees subject to this rule.

§ 709.2 What is the scope of this part?

This part includes:

(a) A description of the conditions under which DOE may administer and use polygraph examinations;

(b) A description of the positions which DOE may subject to polygraph examination;

(c) Controls on the use of polygraph examinations; and

(d) Safeguards to prevent unwarranted intrusion into the privacy of individuals.

§ 709.3 What are the definitions of the terms used in this part?

For purposes of this part:

Accelerated Access Authorization Program or AAAP means the program for granting interim access to classified matter and special nuclear material based on a drug test, a National Agency Check, a psychological assessment, and a counterintelligence-scope polygraph examination consistent with this part.

Adverse personnel action means:

(1) With regard to a DOE employee, any of the applicable personnel actions described in chapter 75 of title 5, United States Code; or

(2) With regard to a contractor employee, the discharge, discipline, or denial of employment or promotion, or any other discrimination in regard to hire or tenure of employment or any term or condition of employment.

Contractor means DOE contractors and subcontractors at all tiers.

Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

DOE means the Department of Energy.

Intelligence means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons.

Personnel Assurance Program or PAP means the human reliability program set forth under 10 CFR part 711 designed to ensure that individuals assigned to nuclear explosive duties do not have emotional, mental or physical incapacities that could result in a threat to nuclear explosive safety.

Personnel Security Assurance Program or PSAP means the program set forth under subpart B of 10 CFR part 710 for assuring the highest standards of reliability for individuals with access to certain material or facilities.

Polygraph means an instrument that:

(1) Records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electro dermal patterns as minimum instrumentation standards; and

(2) Is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

Polygraph examination means a process that encompasses all activities that take place between a polygraph examiner and examinee during a specific series of interactions. These interactions may include the pretest interview, the use of the polygraph instrument to collect physiological data from the examinee while the polygraph examiner is presenting a series of tests, the test data analysis phase, and the post-test phase.

Polygraph test means that portion of the polygraph examination during which the polygraph instrument collects physiological data based upon the examinee's responses to test questions from the examiner.

Presidential appointee means an individual appointed by the President and confirmed by the Senate.

Special Access Program or SAP means a program established under Executive Order 12958 for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

§ 709.4 To whom does the polygraph examination requirement under this part apply?

(a) Except as provided in paragraph (b) of this section, this part applies to DOE and contractor employees and applicants for employment, and other individuals assigned or detailed to Federal positions at DOE, who are in:

(1) Positions that DOE has determined include counterintelligence activities or access to counterintelligence sources and methods;

(2) Positions that DOE has determined include intelligence activities or access to intelligence sources and methods;

(3) Positions requiring access to information that is protected within a non-intelligence special access program (SAP) designated by the Secretary of Energy;

(4) Positions that are subject to the Personnel Security Assurance Program (PSAP);

(5) Positions that are subject to the Personnel Assurance Program (PAP);

(6) Positions that DOE has determined have a need-to-know or access to information specifically designated by the Secretary or his delegatee regarding the design and operation of nuclear weapons and associated use and control features;

(7) Positions within the Office of Independent Oversight and Performance Assurance, or any successor thereto, involved in inspection and assessment of safeguards and security functions, including cyber security, of the Department;

(8) Positions within the Office of Security and Emergency Operations, or any successor thereto;

(9) The Accelerated Access Authorization Program (AAAP); and

(10) Positions where the applicant or incumbent has requested a polygraph examination in order to respond to questions that have arisen in the context of counterintelligence investigations or personnel security issues. These examinations are referred to in this part as exculpatory polygraph examinations.

(b) This part does not apply to:

(1) A Presidential appointee, if such an appointee has received a favorably adjudicated, full-field Federal Bureau of Investigation background investigation;

(2) A position requiring access to SAP's that are intelligence-related and therefore subject to requirements promulgated by the Director of Central Intelligence;

(3) Any individual for whom the Secretary of Energy gives a written waiver in the interest of national security; or

(4) Any individual for whom the Director, Office of Counterintelligence, gives a waiver, based upon certification from another Federal agency that the individual has successfully completed a full scope or counterintelligence-scope polygraph examination administered within the last five years.

(c) The Director, Office of Counterintelligence, in consultation with the appropriate Program Manager, will establish the criteria for identifying the specific positions described in § 709.4(a)(1)–(8) that warrant polygraph examination and the order of priority for conducting polygraph examinations of the DOE and contractor employees in the eligible positions.

§ 709.5 How will an individual know if his or her position will be eligible for a polygraph examination?

All positions in the programs described in § 709.4(a)(1)–(8) are eligible for polygraph examination. Any job announcement or posting with respect to any position in those programs must indicate that the individual selected for the position is eligible for a polygraph examination.

Subpart B—Polygraph Examination Protocols and Protection of National Security

§ 709.11 What types of topics are within the scope of a polygraph examination?

(a) DOE may ask questions that are appropriate to a counterintelligence-scope examination or that are relevant to the matter at issue in an exculpatory examination.

(b) A counterintelligence-scope polygraph examination is limited to topics concerning the examinee's involvement in espionage, sabotage, terrorism, unauthorized disclosure of classified information, unauthorized foreign contacts, or deliberate damage to or malicious misuse of a U.S.

government information or defense system.

(c) DOE may not ask questions that:

(1) Probe a person's thoughts or beliefs;

(2) Concern conduct that has no security implication; or

(3) Concern conduct that has no direct relevance to an investigation.

§ 709.12 How does DOE determine the wording of questions?

The examiner determines the exact wording of the polygraph questions based on the examiner's pretest interview of the examinee, the examinee's understanding of the questions, and other input from the examinee.

§ 709.13 May an individual refuse to take a polygraph examination?

(a) Yes. An individual may refuse to take a polygraph examination, and an individual being examined may terminate the examination at any time.

(b) If an individual terminates a polygraph examination prior to the completion of the examination, the DOE may treat that termination as a refusal to take a polygraph examination under § 709.14.

§ 709.14 What are the consequences of a refusal to take a polygraph examination?

(a) If the individual is an applicant for employment, assignment, or detail to one of the positions described in § 709.4(a)(1)–(8) and the individual refuses to take a polygraph examination, DOE and its contractors may refuse to employ, assign, or detail the individual to the identified position.

(b) If the individual is a DOE employee whose current position does not require a polygraph examination and is an applicant for employment, assignment, or detail to one of the positions described in § 709.4(a)(1)–(8), the individual's refusal to take a polygraph examination will not affect the individual's current employment status.

(c) If the individual is an incumbent in a position described in § 709.4(a)(1)–(8), and refuses to take a polygraph examination, DOE may deny that individual access to the information or involvement in the activities that justified conducting the examination, consistent with § 709.15. If the individual is a DOE employee, DOE may reassign or realign the individual's duties or take other action, consistent with that denial of access.

(d) If an individual refuses to take a polygraph examination as part of the Accelerated Access Authorization Program, DOE must terminate the accelerated authorization process and the individual may continue to be processed for access authorization under the standard DOE personnel security process.

(e) Since an exculpatory polygraph examination is administered at the request of an individual, DOE and its contractors may not take any adverse personnel action against an individual for refusing to request or take an exculpatory polygraph examination. DOE and its contractors may not record an individual's refusal to take an exculpatory polygraph examination in the individual's personnel security file, or any investigative file. DOE also may not record the fact of that refusal in the employee's personnel file.

(f) If a DOE employee refuses to take a polygraph examination, DOE cannot record the fact of that refusal in the employee's personnel file.

§ 709.15 How does DOE use polygraph examination results?

(a) If following the completion of the polygraph test there are any unresolved issues, the polygraph examiner must conduct an in-depth interview of the individual to address those unresolved issues.

(b) If, after the polygraph examination, there are remaining unresolved issues that raise significant questions relevant to the individual's access to the information or involvement in the activities that justified the polygraph examination, DOE must so advise the individual and provide an opportunity for the individual to undergo an additional polygraph examination. If the additional polygraph examination is not sufficient to resolve the matter, DOE must undertake a comprehensive investigation of the individual, using the polygraph examination as an investigative lead.

(c) DOE will conduct an eligibility evaluation that considers examination results, the individual's personnel security file, and other pertinent information. As part of the eligibility evaluation process, DOE may interview the individual.

(d) Upon completion of the eligibility evaluation, DOE will determine whether the individual may have or continue to have access to the information or involvement in the activities that justified the examination. If DOE decides to discontinue the individual's access to the information or involvement in the activities that justified the examination, the following may occur:

(1) DOE may deny the individual access to the information that justified conducting the examination, and if the individual is a DOE employee, DOE may reassign the individual or realign the individual's duties or take other actions consistent with the denial of access.

(2) For an individual applying for DOE access authorization (including through the AAAP) or already holding DOE access authorization (including PSAP), DOE may initiate an administrative review of the individual's access authorization eligibility under the DOE regulations governing eligibility for access authorization (security clearance) at 10 CFR part 710.

(3) For cases involving a question of loyalty to the United States, DOE may refer the matter to the Federal Bureau of Investigation as required by section 145d of the Atomic Energy Act.

(4) If the individual is an applicant for employment, assignment, or detail to one of the positions described in § 709.4(a)(1)–(8), DOE and its contractors may refuse to employ, assign or detail the individual to the identified position.

(5) For an individual assigned or detailed to DOE, DOE may remove the individual from access to the information that justified the polygraph examination and return the individual to the agency of origin.

Subpart C—Safeguarding Privacy and Employee Rights

§ 709.21 When is an individual notified that a polygraph examination is scheduled?

When a polygraph examination is scheduled, DOE must notify the individual of the date, time, and place of the polygraph examination, and the individual's right to obtain and consult with legal counsel or to secure another representative prior to the examination. DOE must offer to make a copy of these regulations available to the individual. The individual must receive the notification at least forty-eight hours, excluding weekend days and holidays, before the time of the examination except when good cause is shown or when the individual waives the advance notice provision.

§ 709.22 What rights to counsel or other representation does an individual have?

At the individual's own expense, an individual has the right to obtain and consult with legal counsel or another representative prior to the examination. The counsel or representative may not be present during the polygraph examination.

§ 709.23 How does DOE obtain an individual's consent to a polygraph examination?

DOE may not administer a polygraph examination unless DOE has:

(a) Notified the individual of the polygraph examination in writing;

(b) Offered to the individual a copy of these regulations; and

(c) Obtained voluntary written consent from the individual.

§ 709.24 What other information is provided to the individual prior to a polygraph examination?

Before administering the polygraph examination, the examiner must:

(a) Inform the individual of the use of audio and video recording devices;

(b) Explain to the individual the characteristics and nature of the polygraph instrument and examination;

(c) Explain the physical operation of the instrument and the procedures to be followed during the examination;

(d) Review with the individual the questions to be asked during the examination; and

(e) Advise the individual of the individual's privilege against self-incrimination.

§ 709.25 Are there limits on use of polygraph examination results that reflect "deception indicated" or "no opinion"?

DOE or its contractors may not:

(a) Take an adverse personnel action against an individual solely on the basis of a polygraph examination result of "deception indicated" or "no opinion" except when the Secretary or the Secretary's designee makes a written determination that the information to which the individual has access is of such extreme sensitivity that access under the circumstances poses an unacceptable risk to national security or defense; or

(b) Use a polygraph examination that reflects "deception indicated" or "no opinion" as a substitute for any other required investigation.

§ 709.26 How does DOE protect the confidentiality of polygraph examination records?

(a) DOE owns all polygraph examination records and reports.

(b) Except as provided in paragraph (c) of this section, the Office of Counterintelligence maintains all polygraph examination records and reports in a system of records established under the Privacy Act of 1974, 5 U.S.C. 552a.

(c) The Office of Intelligence also may maintain polygraph examination reports generated with respect to individuals identified in § 709.4(a)(2) in a system of records established under the Privacy Act of 1974.

(d) Polygraph examination records and reports used to make AAAP determinations or generated as a result of an exculpatory personnel security polygraph examination will be maintained in a System of Records.

(e) DOE must afford the full privacy protection provided by law to information regarding an employee's refusal to take a polygraph examination.

Subpart D—Polygraph Examination and Examiner Standards

§ 709.31 What are the DOE standards for polygraph examinations and polygraph examiners?

(a) DOE adheres to the procedures and standards established by the Department of Defense Polygraph Institute (DODPI). DOE only administers DODPI approved testing formats. The DOE Test Center has been inspected, approved and/or certified by DODPI, the U.S. Air Force Office of Special Investigations, American Polygraph Association, and the American Association of Police Polygraphers

(b) The polygraph examiner must be certified to conduct polygraph examinations under this part by the DOE Psychophysiological Detection of Deception/Polygraph Program Quality Control Official.

(c) To be certified under paragraph (b) of this section, an examiner must have the following minimum qualifications:

(1) The examiner must be an experienced counterintelligence or criminal investigator with extensive additional training in using computerized instrumentation in Psychophysiological Detection of Deception and in psychology, physiology, interviewing, and interrogation.

(2) The examiner must have a favorably adjudicated Single-scope Background Investigation and complete a counterintelligence-scope polygraph examination.

(3) The examiner must receive basic Forensic Psychophysiological Detection of Deception training from the DODPI.

(4) The examiner must be certified by DOE to conduct the following tests:

(i) Test for Espionage, Sabotage, and Terrorism;

(ii) Counterintelligence-Scope Polygraph Tests;

(iii) Zone Comparison Tests;

(iv) Modified General Question Tests;

(v) Peak of Tension Tests; and,

(vi) Relevant and Irrelevant and Directed Lie Control Tests.

§ 709.32 What are the training requirements for polygraph examiners?

(a) Examiners must undergo a minimum of forty hours training annually within the discipline of Forensic Psychophysiological Detection of Deception.

(b) The following organizations provide acceptable curricula to meet the training requirement of paragraph (a) of this section:

(1) American Polygraph Association,

(2) American Association of Police Polygraphists; and

(3) Department of Defense Polygraph Institute.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

2. The authority citation for part 710 continues to read as follows:

Authority: Sec. 145, 68 Stat. 942 (42 U.S.C. 2165) and sec. 161, 68 Stat. 948 (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended, 3 CFR Chap. IV; sec. 104(c), 38 Stat. 1237 (42 U.S.C. 5814); sec. 105(a), 88 Stat. 1238 (42 U.S.C. 5815); secs. 641, 644, 646, 91 Stat. 598, 599 (42 U.S.C. 7251, 7254, and 7256).

3. In § 710.57 (subpart B), paragraphs (f) through (i) are redesignated as paragraphs (g) through (j) and a new paragraph (f) is added to read as follows:

§ 710.57 Supervisory review.

* * * * *

(f) Applicants tentatively selected for PSAP positions and each individual occupying a PSAP position, but not yet holding a PSAP access authorization, must submit to a polygraph examination under 10 CFR part 709.

* * * * *

PART 711—PERSONNEL ASSURANCE PROGRAM (PAP)

4. The authority citation for Part 711 continues to read as follows:

Authority: 42 U.S.C. 2201(p), 7191.

5. In § 711.5, paragraph (b)(8) is added to read as follows:

§ 711.5 General requirements.

* * * * *

(b) * * *

(8) Be eligible for a polygraph examination under 10 CFR part 709.

* * * * *

[FR Doc. 99–21290 Filed 8–17–99; 8:45 am]
BILLING CODE 6450–01–P

Federal Register

Wednesday
August 18, 1999

Part IV

Environmental Protection Agency

40 CFR Part 441

Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 441

[FRL–6373–5]

RIN 2040–AB97

Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: On December 17, 1997 (62 FR 66182), EPA published proposed pretreatment standards for the control of wastewater pollutants from the industrial laundries industry. After careful consideration of all of the information in the record for this rulemaking, EPA has decided not to promulgate national categorical pretreatment standards for the industrial laundries point source category because industrial laundry discharges to publicly owned treatment works (POTWs) do not present a national problem warranting national regulation. EPA is not issuing effluent limitations guidelines and new source performance standards for direct dischargers since there are no direct dischargers and no means to evaluate performance to determine the appropriate level of control for national rulemaking purposes. For this action, EPA considered many regulatory technology options as well as the no regulation option. EPA has determined that indirect discharges from industrial laundries do not warrant national regulation because of the small amount of pollutants removed by pretreatment options determined to be economically achievable. For existing sources, EPA estimates that a rule for this industry would remove less than 650 pounds of pollutant per facility per year (which, on a toxic-weighted basis, is only 32 pound equivalents). For new sources, EPA estimates that a rule for this industry would remove less than 1,040 pounds of pollutant per facility per year (which, on a toxic-weighted basis, is only 51 pound equivalents). These pollutant reductions represent much smaller removals than any other categorical pretreatment standards promulgated by EPA. EPA's record does not demonstrate that Publicly Owned Treatment Works (POTWs) are generally experiencing problems with discharges from this industry, and EPA believes that such discharges will rarely, if ever, present a problem. To the extent that isolated problem discharges occur, existing pretreatment authority is available to control these isolated discharges. EPA believes that for this industry, the best way to control effluent discharges of certain organic pollutants is to remove the pollutants which are contained on the laundry items before they are washed. EPA's Office of Solid Waste (OSW) plans to address the amount of certain waste solvents being sent to laundries in a future rulemaking (the first quarter of the year 2000) with an aim toward decreasing the amount of solvent based organics on towels.

DATES: In accordance with 40 CFR Part 23, this final action shall be considered issued for the purposes of judicial review at 1 pm Eastern time on September 1, 1999. Under section 509(b)(1) of the CWA, judicial review of the Administrator's final action regarding effluent limitations guidelines and pretreatment standards can only be had by filing a petition for review in the United States Court of Appeals within 120 days after the decision is considered issued for purposes of judicial review.

ADDRESSES: For additional technical information write to Ms. Marta E. Jordan, Engineering and Analysis Division (4303), U.S. EPA, 401 M Street SW, Washington, DC 20460 or send e-mail to: Jordan. Marta@epa.gov or call at (202) 260–0817. For additional economic information contact Mr. George Denning at the address above or by calling (202) 260–7374.

The complete administrative record (excluding confidential business information) for this action is available for review at EPA's Water Docket at EPA Headquarters at Waterside Mall, room EB–57, 401 M Street, SW, Washington, DC 20460. For access to docket materials, call (202) 260–3027 between 9:00 am and 3:30 pm for an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Marta E. Jordan, (202) 260–0817.

SUPPLEMENTARY INFORMATION:

Supporting Documentation

The basis for this final action is detailed in four documents, each of which is supported in turn by additional information and analyses in the rulemaking record. EPA's technical foundation for this final action is presented in the Technical Development Document for the Final Action Regarding Pretreatment Standards for the Industrial Laundries Point Source Category (hereafter, "Technical Development Document"; EPA Report No. 821–R–99–010. EPA's economic analysis is presented in the Economic Assessment for the Final Action Regarding Pretreatment Standards for the Industrial Laundries Point Source Category (hereafter, "Economic Assessment"; EPA Report No. EPA–821–R–99–011.) and in the Cost-Effectiveness Analysis for the Final Action Regarding Pretreatment Standards for the Industrial Laundries Point Source Category (hereafter, "Cost-Effectiveness Analysis"; EPA Report No. EPA–821–R–99–009). EPA's environmental benefits analysis is presented in the Water Quality Benefits Analysis for the Final Action Regarding Pretreatment Standards for the Industrial Laundries Point Source Category (hereinafter, "WQBA"). EPA's responses to comments on the proposal and a Notice of Data Availability (NODA) which are part of this action are presented in the Comment Response Document for the Final Action Regarding Pretreatment Standards for the Industrial Laundries Point Source Category (hereinafter, "Comment Response Document").

Organization of this Document

I. Legal Authority
II. Background
  A. Clean Water Act
  B. Pollution Prevention Act
  C. Profile of the Industry
  D. Proposed Rule
  E. Notice of Data Availability
  1. Towel Only Option
  2. Total Petroleum Hydrocarbons (TPH)
  3. Pollution Prevention Program
  F. Changes Since Proposal
  1. Cost Changes
  2. Pollutant Loading and Reduction Changes
  3. Economic Analysis Changes
III. Decision Not to Regulate Industrial Laundries
  A. Summary of Options Considered
  B. Pretreatment Standards for Existing Sources (PSES)
  1. Selected Option
  2. Rationale for Selected Option
  C. Pretreatment Standards for New Sources (PSNS)
IV. Costs and Economic Impacts for the Regulatory Options
  A. Introduction
  B. Economic Impact Methodology
  1. Introduction
  2. Methodology Overview
  C. Summary of Costs and Economic Impacts
  1. Number of Facilities and Costs of the Regulatory Options
  2. Economic Impacts of the Regulatory Options
  a. Impacts from Regulatory Options for Existing Sources
  b. Impacts from Regulatory Options for New Sources
  3. Small Business Analysis

4. Cost-Benefit Comparison
V. Total Toxic and Nonconventional Pounds Reduced By Options Considered for the Final Action
VI. Pass Through Analysis
VII. Cost-Effectiveness Analysis
VIII. Environmental Benefits Analysis
A. Summary
B. Changes Since the Proposal
C. Benefits of Action
1. Reduced Pollutant Discharges
2. Reduced Human Health Risk
3. Improved Recreational Fishing Opportunities
4. Reduced Impacts on POTWs
a. Modeled POTW Impacts
b. Discussion with POTW Operators and Pretreatment Coordinators
IX. Non-Water Quality Environmental Impacts
A. Air Pollution
B. Solid Waste Generation
C. Energy Requirements
X. Related Acts of Congress and Executive Orders
Appendix A to the Notice—Lists of Abbreviations, Acronyms, Definitions and Other Terms Used in this Notice

I. Legal Authority

This final action withdraws the proposed pretreatment standards for the industrial laundries point source category. EPA takes this action pursuant to sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

II. Background

A. Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act) established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," (section 101 (a)). To implement the Act, EPA is to issue effluent limitations guidelines, pretreatment standards and new source performance standards for industrial dischargers. These types of effluent guidelines and standards are summarized in the proposed regulation at 62 FR 66182 (December 17, 1997).

Section 304(m) of the Clean Water Act (33 U.S.C. 1314(m)), added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards ("effluent guidelines"), and (2) promulgating new effluent guidelines. On January 2, 1990 EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the Industrial Laundries Point Source Category.

Natural Resources Defense Council, Inc. (NRDC) and Public Citizen, Inc., challenged the Effluent Guidelines Plan in a suit filed in U.S. District Court for the District of Columbia (NRDC et al v. Reilly, Civ. No. 89–2980). The plaintiffs charged that EPA's plan did not meet the requirements of section 304(m). A Consent Decree in this litigation was entered by the Court on January 31, 1992. The terms of the Consent Decree are reflected in the Effluent Guidelines Plan most recently published on September 4, 1998 (63 FR 47285). This plan states, among other things, that EPA proposed effluent limitations guidelines and standards for the industrial laundries point source category in November 1997 and that EPA would take final action by June 1999. This notice serves to inform the public of EPA's final action pursuant to the decree.

B. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort (Section 6602; 42 U.S.C. 13101(b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created.

C. Profile of the Industry

An industrial laundry is any facility that launders industrial textile items from off-site as a business activity (i.e., launder industrial textile items for other business entities for a fee or through a cooperative arrangement). Either the industrial laundry or the off-site customer may own the industrial laundered textile items. This definition includes textile rental companies that perform laundering operations. For this action, laundering means washing with water, including water washing following dry cleaning. Laundering does not include laundering exclusively through dry cleaning. Industrial textile items include, but are not limited to, industrial: shop towels, printer towels, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust control items, gloves, buffing pads, absorbents, uniforms and filters.

Industrial laundry facilities are located in all 50 states and all 10 EPA regions. By state, the largest number of industrial laundries are in California. By EPA region, the largest concentration of industrial laundries is in Region V. Most of the industrial laundering facilities are in large urban areas. Industrial laundries vary in size from one-or two-person facilities to large corporations that operate many facilities with hundreds of employees nationwide. Annual laundry production per facility ranges from approximately 44,000 to over 32 million pounds, with a total annual industry production of over 9 billion pounds. At proposal, EPA estimated that the industrial laundry industry consisted of approximately 1,747 facilities nationwide.

In analyzing data submitted as part of the comment period of the proposed rule, EPA decided to eliminate clean room items (i.e., items used in particle- and static-free environments by computer manufacturing, pharmaceutical, biotechnology, aerospace, and other customers to control contamination in production areas) from the industrial textile items list. EPA compared data of pollutant concentrations in clean room items to pollutant concentrations in linens and industrial textile items. EPA found the clean room item pollutant concentrations lower than the linen concentrations and excluded the clean room items from the list. Since EPA excluded clean room items from the definition of industrial laundry textile items the number of facilities affected by this action decreased by five facilities. Thus, EPA's current estimate of industrial laundries consists of 1,742 facilities nationwide.

D. Proposed Rule

On December 17, 1997 (62 FR 66182), EPA published proposed pretreatment standards for the control of wastewater pollutants from the industrial laundries industry. The proposed rule covered facilities that launder industrial textile items from off-site as a business activity (i.e., launders industrial textile items for other business entities for a fee or through a cooperative arrangement). EPA proposed an exclusion for existing facilities processing less than one million pounds of incoming laundry and less than 255,000 pounds of shop and/or printer towels per calendar year to eliminate unacceptable disproportionate adverse economic impacts on the smaller facilities. By excluding these facilities, EPA's

proposed rule would have applied to 1,606 facilities nationwide.

EPA proposed pretreatment standards based on chemical precipitation technology for 11 parameters (3 metals, 7 organics, and one bulk parameter known as silica gel treated-hexane extracted material (SGT-HEM)). SGT-HEM was formerly called total petroleum hydrocarbon (TPH) under a previously used analytical method. The analytical method used for measuring SGT-HEM, EPA's Method 1664, was approved in a final rulemaking in the **Federal Register** on May 14, 1999 (64 FR 26315); the parameter is now called Non-polar material (NPM).

EPA received comments on the proposed exclusion and on the technology basis used in calculating limits. Other comments related to the necessity of a national rule, costs of compliance, benefits, cost-effectiveness, the toxic weighting factor and the POTW percent removal or SGT-HEM (TPH). EPA evaluated all of the issues based on the additional information gathered by EPA or received during the comment period following the proposal. EPA then discussed the results of most of these evaluations in a notice of data availability discussed below.

E. Notice of Data Availability

EPA published a notice of data availability (NODA) on December 23, 1998 (63 FR 71054). The NODA presented a summary of the data gathered or received from commenters since the proposal, an assessment of the usefulness of the data in EPA's analyses; a description and evaluation of a modified technology option suggested by commenters; and a discussion of a voluntary industry program, along with certain other specific issues raised by commenters.

1. Towel Only Option

In response to comments received on the proposal, EPA evaluated an option covering only facilities laundering shop and/or printer towels ("towel only"). EPA provided information on the towel only option in the NODA. This option was a modified version of the "heavy" options presented in the proposal. This towel only alternative would have applied to 1,333 facilities nationwide. Based on comments on the NODA, EPA decided that the towel only options were complicated to implement and enforce and could result in significantly increased monitoring costs for compliance with both the categorical standards for one portion of the facility's discharge, as well as with local limits applied to the remainder of the facility's discharge. In addition, there was limited data identifying performance of the control technologies treating the towel only wastewater. Thus, EPA decided not to pursue the towel only options.

2. Total Petroleum Hydrocarbons (TPH)

In the NODA, EPA also discussed issues related to how TPH was used for two different analyses—the pass through analysis and the cost-effectiveness analysis. As part of the analyses conducted for the NODA, EPA incorporated data submitted on the POTW removal of the bulk parameter SGT–HEM (TPH). The new data showed nondetects for TPH in the POTW effluent. Thus, for the pass through analysis conducted for the NODA, EPA estimated a POTW removal of greater than 74 percent for SGT–HEM (TPH) based on the highest influent measurement of SGT–HEM (see NODA, 63 FR 71054).

In the NODA, EPA also discussed the new data collected related to constituents of TPH and modifications made to improve both the pass through and cost-effectiveness analyses based on this new data. Following the proposal, EPA conducted a study to evaluate the bulk parameter SGT–HEM (TPH) in order to identify more accurately the constituents comprising the SGT–HEM (TPH) measurement. The study was conducted by sampling the influents and effluents of the Dissolved Air Flotation (DAF) and Chemical Precipitation (CP) treatment units at the same facilities EPA sampled prior to and soon after proposal. EPA analyzed these samples for SGT–HEM (TPH) and total oil and grease using Method 1664 and evaluated the sample extracts using gas chromatography and mass spectroscopy (GC/MS) methods. Based on these analyses, EPA was able to identify several constituents measured as part of the SGT–HEM (TPH) parameter. Most of the constituents identified in the influent samples were n-alkanes, as well as naphthalene, bis(2-ethylhexyl) phthalate and 2-methylnaphthalene. The identified constituents, however, represent only a very small portion of the total SGT–HEM (TPH) measurement.

In the NODA, EPA solicited additional information on influent and effluent pollutant concentrations from POTWs operating secondary treatment. EPA did not receive any additional data in response to the NODA that was useful in revising POTW percent removals for individual constituents, including the identified constituents of SGT–HEM (TPH).

As part of EPA's analysis for the rule, EPA also conducted a cost-effectiveness analysis. This analysis, in part, compares for various technology options the cost of removing toxic and nonconventional pollutants that would otherwise pass through the POTW. EPA expresses these pollutant removals as "pound equivalents" which EPA estimates by multiplying pounds of a pollutant removed by an assigned toxic weighting factor. The assigned toxic weighting factor for each pollutant is based on the pollutant's relative toxicity to copper. At proposal, EPA included the bulk parameter TPH in the cost-effectiveness calculations. Following the TPH study, EPA used a revised toxic weighting factor for TPH based on the toxic weighting factors for the individual constituents of SGT–HEM (TPH). Based on the identified constituents of SGT–HEM (TPH), EPA revised its average toxic weighting factor for the bulk parameter TPH from 0.10 (used at proposal) to 0.009. EPA used this value, as discussed in the NODA, to identify the "total toxic pound equivalents" of SGT–HEM (TPH) removed by the rule. EPA also calculated cost-effectiveness based on removals of the individual constituents of SGT–HEM (TPH) rather than on removals of the bulk parameter SGT–HEM (TPH). The results of the analyses using both the individual constituents only and the bulk parameter TPH can be found in the record and supporting documents.

3. Pollution Prevention Program

In comments on the proposal and NODA, the industrial laundries trade associations, Uniform and Textile Service Association and Textile Rental Services Association of America, (UTSA and TRSA) submitted a description of a voluntary multi-media environmental stewardship and pollution prevention program as an alternative approach to a national pretreatment standard. The centerpiece of the voluntary program is a series of initiatives seeking to achieve an annual reduction of pollutants being discharged of 20,000 toxic pound equivalents and an annual reduction of up to 25 percent in industry water, energy, and washroom chemical usage (on a per pound of textiles laundered basis) by the year 2002. The program would be initiated by UTSA and TRSA surveying the industry to develop a 1997 "benchmark" against which progress towards these reduction goals will be measured. EPA supports industry efforts to reduce pollution at the source, and believes that the environment would benefit from this pollution prevention program whether or not categorical pretreatment standards are established.

F. Changes Since Proposal

1. Cost Changes

Engineering cost changes have been made based on supplementary data and comments. These changes, which are reflected in the economic impact analyses, cost-effectiveness analysis, and small business analyses, are discussed more fully in the Technical Development Document (TDD), Economic Assessment (EA), and Cost-Effectiveness documents. The major changes since the proposal resulted from the following:

—EPA removed three model clean room facilities (equivalent to five facilities in the industry) from the scope of the rule, based on the raw wastewater loadings for their items. This change had minor effects on the overall industry costs.

—EPA added a cost for facilities that currently (based on 1993 data) operate dissolved air flotation (DAF) and chemical precipitation in order to upgrade performance to meet the projected standards. This change increased the capital and O & M costs for all options.

—EPA revised the labor costs associated with the operation and maintenance of the option treatment equipment. The labor costs are now calculated as one full-time equivalent operator per treatment system, which generally increased the costs for all options.

—EPA increased the required square footage and the cost per square foot of buildings that were included in the option costs to house the treatment systems, thus increasing the costs for all options.

—EPA changed the sludge generation rates of the treatment technologies based on available treatment system data. This change had a minor effect on the option costs (some model facility costs increased, while others decreased).

2. Pollutant Loading and Reduction Changes

Pollutant loading and reduction changes have been made based on supplementary data and comments. These changes, which are reflected in the pass through and cost-effectiveness analyses, are discussed more fully in the Technical Development Document and Cost-Effectiveness documents. The major changes since the proposal resulted from the following:

—EPA removed three model clean room facilities (equivalent to five facilities in the industry) from the scope of the rule, based on the raw wastewater loadings for their items. This change had minor effects on the overall industry pollutant loadings and removals.

—For the primary assessment, EPA removed the toxic weighting factor (TWF) for total petroleum hydrocarbon (TPH) and included the TWFs for the identified constituents of TPH in the pollutant loadings and removals calculations. EPA also evaluated pollutant loadings and removals using the adjusted TWF for TPH as described in the NODA. Under either analysis, this greatly decreased the pound-equivalent loadings and removals for all options.

—EPA incorporated new sampling data collected since proposal for the chemical precipitation technology option, which modified the long term averages for those options. This change had minimal effects on the loadings calculations for the options.

—For calculating pollutant loadings, EPA used a revised pass through analysis. At proposal, EPA performed the pass through analyses on TPH (and not the individual pollutants that comprise TPH) using the average percent removal of three individual n-alkanes. For this final action, as discussed in the NODA, EPA performed the pass through analysis on the individual pollutants that comprise TPH (i.e., n-alkanes and others).

—Further, for all pollutants EPA looked at Henry's Law Constants to see if the individual pollutants were volatile. If the pollutants were volatile, EPA determined POTW percent removal based on the POTW removal model for the pollutant with the most similar Henry's Law Constant, as presented in the development document for the pharmaceutical manufacturing industry effluent limitations guidelines and standards (63 FR 50388) using a combination of POTW empirical data and the Water 8 biodegradation model.

—Finally, for the n-alkanes that were not volatile, EPA used the average POTW percent removal of two n-alkanes that were used for the proposal to represent the SGT–HEM (TPH) POTW percent removal. EPA did not use the percent removal from a third n-alkane because the percent removal is reported simply as "greater than 9 percent"; and therefore the actual removal based on this data could be anywhere between 9 and 99 percent. However, the two n-alkanes are volatile, under the Henry's Law Constant approach above, and EPA believes their removal by POTWs may overstate the POTW removal of all n-alkanes that are not volatile. To evaluate POTW removal of non-volatile n-alkanes, EPA conducted two analyses. One used the average percent removal of the two n-alkanes, the other used the 74 percent removal identified in NODA as the basis for POTW removal of TPH, of which the non-volatile n-alkanes are constituents. EPA also evaluated pass through of the n-alkanes based on another method which used the POTW removal for the individual n-alkanes based on the 94 percent average of the same two n-alkanes used in the first method, regardless of their volatility. Both changes increased the pollutant removals of n-alkanes by POTWs and decreased the pollutant removals that would occur under the technology options considered.

3. Economic Analysis Changes

Based on comments, EPA made three changes to the economic impact methodology. These are discussed more fully in the EA.

—The main analysis assumes that costs of compliance cannot or will not be passed through to customers, but are absorbed by the affected facilities, as was done in an appendix to the EA for the proposal. EPA is using this assumption in its primary impact analyses because it is possible that some facilities or firms might not be able to pass through as much of their costs as would other facilities. This could happen where there is regional or local competition between industrial laundries and between industrial laundries and disposable product vendors or other providers of substitutes. Given that EPA believes that this is a competitive industry, EPA believed this conservative assumption was appropriate. A cost passthrough approach is discussed as a sensitivity analysis in an appendix in the EA.

—Minor refinements to the cash flow analysis and firm failure analysis addressed several issues. For example, depreciation is no longer annualized in the Altman's Z" analysis. These changes do not affect the economic results in any significant way. See the Comment Response Document for additional detail on these changes.

—Based on public comment describing industry experience with buyouts, EPA now estimates 75 percent of a facility's employees will lose their jobs if that facility's parent company is predicted to be a firm failure. EPA believes this estimate reflects a reasonable upper-bound estimate of

short-term potential employment losses due to firm failure.

III. Decision Not To Regulate Industrial Laundries

A. Summary of Options Considered

EPA considered various options prior to taking this final action. Among the final options EPA considered were "no regulation" and a number of regulatory options.

For the regulatory options, EPA evaluated various options using two major technologies as bases for the standards: chemical precipitation and dissolved air flotation. EPA also evaluated several exclusions within the towel only option discussed in detail in the NODA and mentioned above. In evaluating these options, EPA considered the total pounds and toxic pound equivalents removed by any economically achievable option, the degree to which these pollutants pass through the POTW and the extent to which POTWs can adequately treat these pollutants. To mitigate disproportionately adverse economic impacts of a rule, EPA considered excluding the following facilities from the scope of the regulation:

- Option CP–1: facilities that launder less than one million pounds of incoming laundry (total) and less than 255,000 pounds of shop and/or printer towels per calendar year (i.e., the exclusion in the proposed rule);
- Option CP–2: facilities that launder between one and three million pounds of incoming laundry (total) and less than 120,000 pounds of shop and/or printer towels per calendar year, in addition to those facilities that launder less than one million pounds of incoming laundry (total) and less than 255,000 pounds of shop and/or printer towels per calendar year; or
- Option CP–3: facilities that launder less than five million pounds of incoming laundry (total) and less than 255,000 pounds of shop and/or printer towels per calendar year.

EPA also considered and analyzed additional exclusions; descriptions and results are discussed in further detail in the Economic Assessment.

B. Pretreatment Standards for Existing Sources (PSES)

1. Selected Option

After considering all of the information collected and analyzed, EPA has selected the "no additional regulation" option as its final action. In other words, EPA has decided not to establish categorical pretreatment standards for existing dischargers in this industry.

2. Rationale for Selected Option

After careful consideration of all of the information in the record for this rulemaking, EPA has decided not to promulgate national categorical pretreatment standards for the industrial laundries point source category because industrial laundry discharges to publicly owned treatment works (POTWs) do not present a national problem warranting additional national regulation under the Clean Water Act. In making a final decision, EPA identified various technologies as candidate PSES technologies. EPA determined that some of these technology options are not economically achievable due to the number of plant closures and firm failures estimated. After determining what options would be economically achievable, EPA estimated the total pounds of pollutant discharges that would be removed by the rule. One measure of the toxic and nonconventional pounds of pollutant discharges that would be removed by the rule results from assigning pollutants a "toxic weighting factor" based on the pollutant's relative toxicity to copper. Measured this way, EPA determined that the rule would remove only 32 toxic pound equivalents per facility per year, depending on the option. This is a relatively small total amount of toxic and nonconventional pollutant reductions, as confirmed by comparison with other industries for which effluent limitations guidelines have been promulgated. The details of this assessment are found in the Technical Development Document and EA and are summarized below.

EPA examined the economic achievability of a wide array of options for the rule. This included varying the technology basis for the rule, *i.e.*, chemical precipitation (CP), dissolved air flotation (DAF); requiring treatment of only shop and/or printer towels; and various regulatory exclusions or "cutoffs" based on total production and amount of shop and/or printer towels laundered. For the reasons noted in Section II.E., EPA decided not to pursue the towel only options. In evaluating the options based upon DAF, EPA found that these options removed fewer toxic pound equivalents than the comparable options based upon CP, but at higher cost and comparable impact. For this reason, EPA focuses on the CP options only in this preamble, but makes the same conclusions for the comparable DAF options.

EPA determined that looking at impacts on the industry as a whole, an economically achievable option (referred to as CP–2) is based on CP with production cutoffs that exclude facilities with between one and three million total pounds of incoming laundry and less than 120,000 pounds of shop and/or printer towels and facilities with up to 1 million total pounds of incoming laundry and less than 255,000 pounds of shop and/or printer towels. This option would result in 44 facility closures (2.5 percent of the total industry) and no firm failures, with resulting direct employment losses of 2,261 jobs. The exclusion is justified because the facilities excluded would have suffered a disproportionate closure rate of 12 percent and disproportionate failure rate of 20 percent under the rule.

EPA rejected Option CP–1 (i.e., CP with production cutoffs only to 1 million total pounds of incoming laundry and less than 255,000 pounds of shop and/or printer towels) due not only to the number of facility closures (61) and employment losses (2,684 jobs) that would result, but also due to the number of firm failures (72) and resulting employment losses (1,721 jobs) under this option. The 61 facility closures represent about 3.5 percent of all facilities and the 72 firm failures represent 8 percent of firms. These firm failures are in addition to the facility closures. Firm failures would result in additional employment loss because in the industrial laundry industry, when a facility is bought by a firm already in the industry, it is likely that the facility would no longer be a production facility, but instead be turned into a depot or transfer station which based on examples of recent buyouts, results in an estimated 75 percent loss of employment. Thus, under this option, that EPA rejects as not economically achievable, the closures and firm failures would have resulted in direct employment losses of 4,405 jobs, or 3.4 percent of the industry's employment. While EPA does not have a bright line for determining what level of impact is economically achievable for the industry as a whole, EPA looked for a breakpoint that would mitigate adverse economic impacts without greatly affecting the toxic pound equivalents being removed under a rule. Here, by moving from the first option to the second option, that is, by adding an additional production cut-off of one to three million total pounds of incoming laundry and less than 120,000 pounds of shop and/or printer towels, EPA was able to reduce employment losses by almost half, from 4,405 to 2,261 while only losing about 8.7 percent toxic pound equivalents that would be removed under the first option. Thus, EPA rejected the first option (option

CP–1) that would result in 61 facility closures and 72 additional firm failures as not economically achievable.

If EPA had chosen a greater exclusion (Option CP–3 with production cutoffs of up to five million total pounds of incoming laundry and less than 255,000 pounds of shop and/or printer towels) there would be two closures and no firm failures. Under this option, EPA projected only 235 job losses, but would have lost a greater percentage of toxic pound equivalents. Although EPA identified both option 2 and option 3 as the economically achievable options, EPA rejected option 3 as not the "best" technology since EPA believes that for BAT or PSES the term "economic achievability" contemplates acceptance of some adverse economic impacts.

For Option CP–2, which EPA found to be economically achievable for the industry as a whole, EPA estimates average removals of only 32 toxic pound equivalents per facility per year. These reductions are much lower than any other categorical pretreatment standards promulgated by EPA. For example, for Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF), Electroplating, Battery Manufacturing, and Porcelain Enameling, toxic pound equivalents removed per facility per year range from 6,747 to 14,960. For some of the more recently proposed rules the reductions are lower, but not nearly as low as projected for industrial laundries. For example, for Transportation Equipment Cleaning and Metal Products and Machinery Proposals the toxic pound equivalents removed per facility per year would range from 492 to 693.

POTWs are effective at treating industrial laundry effluent. EPA estimates POTW removal efficiency of SGT–HEM (TPH) to be greater than 74 percent. Because the actual percent removal could not be calculated and could be much higher (i.e., 95–99 percent), EPA believes that SGT–HEM (TPH) does not pass through. Although EPA does not have data showing how much greater than 74 percent is the treatment efficiency, EPA expects that the treatment is significantly more effective because all of the POTW effluent data are below the analytical detection limit. For the individual toxic and nonconventional pollutants, EPA determined that POTW removal efficiencies ranged from 18 to 99 percent. A rule based on the economically achievable option would remove only a total of 39,000 toxic pound equivalents nationwide per year; or 32 toxic pounds per facility per year on average. With respect to conventional pollutants, POTWs are designed to treat and can effectively treat these pollutants. Thus, EPA has determined that there is insignificant pass through of total pounds or toxic pound equivalents of pollutants discharged to POTWs by industrial laundries such that national categorical pretreatment standards are not warranted. EPA also examined the total pounds and total pound equivalents removed under a rule with the first cutoff and determined that the amount of pounds removed is also insignificant and does not warrant national regulation. This analysis is discussed in the Development Document for the final action.

EPA has little, if any, record evidence that POTWs are currently having pass through or interference problems due to industrial laundry effluent. In the event that a particular industrial laundry could create a local problem, EPA believes the existing pretreatment program is fully adequate to control these discharges at the local level.

The small total removals achieved by the rule are reflected in the cost-effectiveness results. Cost-effectiveness is expressed as the ratio of costs to toxic pound equivalent pollutant removals achieved by a regulatory option. While EPA is not required to consider cost-effectiveness in establishing BAT, new source standards or pretreatment standards, EPA typically estimates the cost-effectiveness of its options particularly to determine which option along a spectrum of options is most efficient. For this rule, all of the regulatory options considered have high average cost-effectiveness values ($2,360/toxic pound equivalent for the economically achievable option) resulting from the very small removals that occur under that option.

EPA further believes that the most effective way to address organic wastes from certain solvents in the discharges to POTWs is reduce their use or toxicity in the customer facilities in the first place or to remove them before washing, either at the customer's facility or at the laundry. EPA's Office of Solid Waste (OSW) is planning to conduct rulemaking to address certain organic solvents found mainly in shop and/or printer towels before they are washed. EPA expects to propose this rulemaking in the **Federal Register** in the first quarter of the year 2000.

EPA believes that the decision not to promulgate national categorical pretreatment standards for industrial laundries is the most reasonable decision based on the record. While EPA has broad discretion to promulgate such standards, EPA retains discretion not to do so where the total pounds removed do not warrant national regulation and there is not a significant concern with pass through and interference at the POTW. Further, although not a decision factor for the final action, EPA expects that the industry's commitment to a pollution prevention program will be beneficial. The program projects reductions of 20,000 toxic pound equivalents per year to water, and includes non-water quality benefits, as well. For example, EPA estimates that a 10–25 percent reduction in energy use would save 3.1 trillion to 7.8 trillion BTUs, reducing air emissions of carbon dioxide by up to 900 million pounds per year, if natural gas is the fuel source. Reduced use of other fuels would also result in reduced emissions of sulfur dioxide and particulates. (See Section 16 of the record for EPA's assessment of the environmental benefits of the pollution prevention goals).

EPA recognizes this final decision reflects a significant shift from the preferred option at proposal. As described in the preceding paragraphs, this shift reflects the new information and revised analysis that EPA presented in the notice of data availability, 63 FR 71054, and discussed above. First, POTW removal of SGT–HEM (TPH) is greater than thought at proposal. Second, the constituents of TPH that have been identified are not as toxic as previously believed. Both of these factors have resulted in reduced projections of the toxic pound equivalents annually removed by the rule from about 407,000 down to less than 39,000 toxic pound equivalents. In addition, the projected economic impacts of the proposal option are greater than originally estimated. Finally, EPA's record demonstrates that the occurrence of individual local problems from laundry discharges are not as prevalent as EPA thought at the time of proposal.

C. Pretreatment Standards for New Sources (PSNS)

The options considered for PSNS are similar to those considered for PSES. After considering all of the information in the record, EPA has determined not to require pretreatment standards for new sources because as is the case for existing sources, discharges from new sources do not present a national problem warranting national regulation.

EPA estimates that there will be at most 27 new sources each year. (In fact the number is likely to be lower since it is based on the number of new entities that started in a three year period, some of which likely were existing facilities with new ownership.) Under a rule with

the same small production threshold as would have been chosen for existing sources, EPA estimates that new sources would discharge about 1,040 pounds of pollutants and 51 toxic pound equivalents per facility per year, or a total of about 19,740 total pounds of pollutant and 945 toxic pounds per year. Because the total pounds and pound equivalents per facility that would be removed by PSES are comparable to those for existing sources, the same reasons for not issuing pretreatment standards for existing sources also apply to new sources. This is true not only for the option selected as economically achievable, but also under a rule that would apply the first cutoff. This analysis is discussed in the Development Document for the final action.

In developing estimates of total pounds of pollutants that would be reduced by the rule, EPA determined what option would not present a barrier to entry for new sources. Here, EPA considered whether a small production exclusion should apply for new sources equivalent to the one that would have applied to existing sources. EPA determined that it would be appropriate to apply the same production threshold for PSNS because for this industry, the costs of the rule are similar regardless of whether a facility is a new source or an existing source and thus new smaller facilities would likely suffer the same disproportionate impacts that existing smaller facilities would suffer under a rule. For example, under the costs of a rule, all of the new sources projected to close would have been under the threshold for the exclusion. This represents a disproportionate impact on those smaller facilities. Also, EPA was concerned that it would not provide a level playing field to require a new smaller facility to compete with an existing smaller facility that would be excluded under the production threshold for the rule, and this competitive disadvantage could be a barrier to entry if the production threshold for new and existing sources were not the same.

IV. Costs and Economic Impacts for the Regulatory Options

A. Introduction

This section describes the capital investment and annualized costs of compliance of the three regulatory options outlined in Section III and the potential economic impacts of these compliance costs on current and future facilities and firms in the industry. EPA's economic assessment is presented in detail in the Economic Assessment for the Final Action Regarding Pretreatment Standards for the Industrial Laundries Point Source Category (EA). The EA estimates the economic effect of compliance costs on facilities, firms, employment, domestic and international markets, inflation, distribution, industry consolidation, environmental justice and industrial laundries customers. The EA covers various regulatory options in addition to the three summarized in this notice. EPA also conducted an analysis equivalent to a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Act (SBREFA), which estimates effects on small entities. EPA also prepared an analysis of pollutant removals and average cost-effectiveness of all options.

B. Economic Impact Methodology

1. Introduction

Section IV.B.2 (and, in more detail, the EA and record) summarizes the methodology EPA used to estimate the economic impacts that result from compliance costs associated with the regulatory options. The analysis in the EA consists of eight major components: (1) An assessment of the number of facilities that could have been affected by pretreatment standards; (2) an estimate of the annual aggregate cost for these facilities to comply with pretreatment standards using facility-level capital and operating and maintenance (O&M) costs; (3) an evaluation of potential facility closures, using a financial model that projects impacts on facilities' cash flow (closure analysis); (4) an evaluation of potential firm failures; (5) an evaluation of potential secondary impacts such as those on employment, markets, inflation, distribution, industry consolidation, environmental justice and industrial laundry customers; (6) an assessment of the potential for impact on new sources (barrier to entry); (7) an analysis of the effects of potential compliance costs on small entities; and (8) a cost-benefit analysis.

All costs in today's notice are reported in 1998 dollars, with the exception of average cost-effectiveness results, which, by convention, are reported in 1981 dollars. The EA presents costs in 1993 dollars. The Engineering News Record Construction Cost Index was used to inflate costs to 1998 dollars. The sources of data for the economic analysis are the same as reported in the preamble to the proposed rule (62 FR 66182) with updates to the profile, costs, and removals as reported in the Technical Development Document. The primary source of data for the economic analysis is the 1994 Industrial Laundries Industry Detailed Questionnaire (Section 308 Survey). Other sources include comments to the proposal and NODA, government data from the Bureau of the Census, industry trade journals, and several preliminary surveys of the industry, including the 1989 Preliminary Data Summary for Industrial Laundries, the 1993 Industrial Laundries Industry Screener Questionnaire, and the 1994 Industrial Laundries Supplemental Screener Questionnaire.

2. Methodology Overview

Central to the EA is the cost annualization model, which uses facility-specific cost data and other inputs (discussed in Chapter 11 of the Technical Development Document) to determine the annualized capital and operating and maintenance (O&M) costs of improved wastewater treatment. This model uses these costs along with an annual compliance monitoring cost with the facility-specific real cost of capital (discount rate) over a 16-year analytic time frame to generate the annual cost of compliance for each option. EPA chose the 16-year time frame for analysis based on the depreciable life for equipment of this type, 15 years according to Internal Revenue Service (IRS) rules, plus approximately one year for purchasing and installing the equipment. As an alternative to installing wastewater treatment, the cost model also generates the annualized cost of hauling wastewater offsite. The cost model compares the treatment costs to the hauling costs (where this alternative is available), and selects the lower of the two.

EPA then converts the annual cost for each facility into a present value change in cash flow, which is subtracted from the estimated baseline present value of facility cash flow. EPA estimated baseline present value of facility cash flow based on the average of three years of financial data from each facility in the Section 308 survey under an assumed no-growth scenario (i.e., the annual cash flow, calculated as the 3-year average, is expected to remain the same over the 16-year period of analysis). If the change in present value of cash flow (which is derived from the annualized costs of compliance of a regulatory option) causes a facility's estimated cash flow to change from positive in the baseline to zero or negative, over the 16-year period of analysis, EPA considers the facility likely to close (i.e., liquidate) as a result

of that regulatory option. Salvage value, as at proposal, was not used in the closure analysis, although EPA did perform sensitivity analyses, which are presented in an appendix in the EA. For reasons discussed in the EA and the Comment Response Document, salvage value was either considered inappropriate or did not substantially change the outcome of the analysis.

Note that facilities that reported negative cash flow over the 3-year period of the survey are considered baseline closures and are not considered affected by the regulatory options for several reasons: (1) Many of these facilities are owned by multifacility firms. These facilities may be transferring production (laundering services at or near cost) from other facilities owned by the same parent company, or otherwise not expected to be self-supporting by the parent. EPA analyzes the parent firms of these facilities in the firm-level analysis. (2) OMB guidance suggests that agencies develop a baseline that is "the best assessment of the way the world would look absent the proposed regulation. That assessment may consider a wide range of factors, including the likely evolution of the market * * *." EPA's best assessment is that some facilities currently operating may not remain in business to install and operate the pollution control equipment. EPA cannot say for certain which facilities these may be, but can assert that those facilities that are currently considered not financially viable because their cash flow is zero or negative (among those not owned by multifacility firms) are the likeliest facilities to close without ever installing and operating pollution control equipment. It is possible that a facility estimated to be a baseline closure may remain open, but the converse is also true—a facility projected to remain open until it is subject to a regulatory option may actually close independently of the effects of the regulatory options. Thus, EPA believes it is consistent with OMB guidance to estimate postcompliance closures by counting closures that are projected to close solely due to the effect of compliance costs.

In the firm failure analysis, EPA uses the capital costs, O&M costs, and an early-year depreciation figure to compute a change in earnings, assets, liabilities, and working capital at the firm level (accounting for costs for multiple facilities, where applicable). These postcompliance financial figures are used in a computerized model of financial health on a firm-by-firm basis. The model uses an equation known as Altman's Z", which was developed based on empirical data to characterize the financial health of firms. This equation calculates one number, based on the financial data, that can be compared to index numbers that define "good" financial health, "indeterminate" financial health, and "poor" financial health. All firms whose Altman's Z" number changes such that the firm goes from a "good" or "indeterminate" baseline category to a "poor" postcompliance category are classified as likely to have significant difficulties raising the capital needed to comply with a regulatory option, which can indicate the likelihood of firm bankruptcy, or loss of financial independence.

EPA estimated direct employment impacts associated with both the facility closure and firm failures. In addition, EPA took the extra steps to consider and estimate national and regional level employment impacts. These extra steps provide EPA with additional information and analysis about the potential effects on the national economy. For example, closures and failures of industrial laundry facilities or firms could lead to economic and financial impacts in other sectors of the economy. These economic impacts could potentially affect suppliers or customers that are in other sectors of the economy. Moreover, these impacts could be positive or negative, e.g., jobs could be created for installing pollution control equipment or jobs could be lost with a decrease in business from the industrial laundries industry. This additional comprehensive analysis of impacts at the national level relied upon procedures known as input-output analysis. These analyses are discussed fully in the EA.

Another key analysis EPA performs is an analysis to determine impacts on new sources, which is primarily a "barrier-to-entry analysis" to determine whether the compliance costs would have prevented a new source from entering the market. This analysis also looks at whether new industrial laundries would have been at a competitive disadvantage compared with existing sources. Market effects and barriers to entry associated with the small source exclusion also are qualitatively investigated.

C. Summary of Costs and Economic Impacts

1. Number of Facilities and Costs of the Regulatory Options

This section presents the costs for the three regulatory options outlined in Section III. The costs for other options are presented in the EA. EPA estimates that there are 1,742 industrial laundries facilities. Of these, 136 to 953 facilities would have been excluded from the regulation, depending on the production cutoff. As described in Section III, EPA considered three primary exclusions in addition to analyzing the impacts with no cutoff. To summarize, the exclusions are (1) All facilities laundering less than 1 million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels per calendar year (abbreviated as the 1MM/255K cutoff, which was the cutoff originally proposed by EPA, and which would have excluded 136 facilities or 8 percent of all facilities), (2) all facilities laundering between 1 and 3 million pounds of total laundry per year and less than 120,000 pounds of shop towels, in addition to those excluded above under the 1MM/255K cutoff (abbreviated as the 3MM/120K cutoff, which would exclude 518 facilities or 30 percent of all facilities), and (3) all facilities laundering less than 5 million pounds of total laundry and less than 255,000 pounds of shop towels (abbreviated as the 5MM/255K cutoff, which would have excluded 953 facilities or 55 percent of all facilities). There are 903 firms owning the 1,742 facilities. A total of 837 of the 903 firms (93 percent) are "small businesses" according to SBA definitions (revenues less than $10.5 million per year). The analysis looks separately at single-facility firms (those firms where the firm and the facility are a single entity) and multifacility firms (firms that own more than one facility; generally, these firms are larger than single facility firms). There are a total of 830 single-facility firms in the industry (92 percent), the vast majority of which meet the SBA definition of small.

The total cost of each regulatory option is based on engineering cost estimates. The Technical Development Document describe EPA's development of these cost estimates (EPA 821–R–99–010). Briefly, EPA developed cost equations for capital and O&M costs (including monitoring and recordkeeping) for the wastewater treatment technologies. For the CP options, the components of the cost estimates include screen, stream splitting, equalization, chemical precipitation, pH adjustment, sludge dewatering, building and monitoring.

Table IV.C.2.1. presents a summary of the total annualized costs for the various production cutoffs associated with CP. A parallel set of results for DAF is presented in the EA. The costs of the regulatory options are estimated to range from $61.3 million for the option with the 5MM/255K cutoff to $145.8

million under the option with no cutoff. The 3MM/120K cutoff is estimated to cost $103.2 million per year.

TABLE IV.C.2.1.—COSTS OF REGULATORY OPTIONS CONSIDERED
[$1998]

Option and cutoff considered (Production/Shop Towels)	Total annualized post tax cost ($millions, 1998)
CP Options	
No cutoff	145.8
1MM/255K	137.4
3MM/120K	103.2
5MM/255K	61.3

2. Economic Impacts of the Regulatory Options

a. Impacts From Regulatory Options for Existing Sources

Table IV.D.2.2 summarizes the closure and employment impacts of the CP options. Closure and firm failure impacts from the DAF options are identical and are reported in an Appendix to the EA. EPA estimates that the CP options would have resulted in closures of from 2 facilities under the 5MM/255K cutoff to 106 facilities under no cutoff (0.1 to 6.1 percent of all 1,742 facilities). Under the 3MM/120K cutoff, EPA estimates that 44 facilities would have closed (2.5 percent of all facilities). In addition to these closures, EPA predicts firm failures for 72 firms under no cutoff and under the 1MM/255K cutoff. EPA estimated no firm failures for the 3MM/120K cutoff and the 5MM/255K cutoff .

EPA estimates that a total direct job loss of 235 to 3,318 full-time equivalents (1 FTE=2,080 hours of labor) would have occurred as a result of the facility closures projected under the various CP options, depending on cutoff. The 3MM/120K cutoff is associated with a loss of 2,261 FTEs due to closures. These losses would have contributed to losses elsewhere in the economy, because a closure can affect other parts of the economy as inputs to the closed facility are no longer needed and demand for products by laid off workers is reduced. The sum of the direct losses from closures and these other indirect and induced losses range from 404 to 5,707 FTEs, depending on cutoff. The 3MM/120K cutoff is associated with nationwide losses of 3,889 FTEs due to closures. The employment losses associated with closures overstate actual net losses to the industry and to the economy, because some employment gains in the industry and throughout the economy would have occurred (although the gains might not have occurred in the same geographic location or at the same time as the losses). The gains to the industrial laundries industry would have included operators of pollution control systems that might be hired by facilities and additional workers hired to expand some production at facilities located in market areas with facility closures. In the economy as a whole, gains due to increased production and installation of pollution control devices would have occurred.

Employment losses from closures might not be the only losses that could occur. Employment losses might have occurred as a result of firm failures. When 75 percent of the employment at these failing firms are added to the employment losses that might have occurred under the various cutoffs, EPA estimates that the direct employment losses associated with the CP option would have been 235 FTEs (note that no failures were estimated under the 5MM/255K cutoff) to as high as 5,039 FTEs under no cutoff. The 3MM/120K cutoff is associated with no additional losses of employment due to failures. When direct and indirect employment effects are estimated, total losses associated with both closures and failures are estimated to be as high as 404 to 8,667 FTEs, depending on cutoff. The 3MM/120K cutoff is associated with total nationwide losses of 3,889 FTEs due to both closures and failures.

TABLE IV.D.2.2—SUMMARY OF OPTION IMPACTS

Impact	No cutoff	1MM/255K	3MM/120K	5MM/255K
Facility Closures	106	61	44	2
Direct Employment Losses from Closures	3,318	2,684	2,261	235
Economy-Wide Employment Losses Due To Closures	5,707	4,617	3,889	404
Firm Failures	72	72	0	0
Direct Employment Losses from Closures Plus Failures	5,039	4,405	2,261	235
Economy-Wide Employment Losses from Closures Plus Failures	8,667	7,576	3,889	404

Losses due to closures are not the only losses to the national economy, nor are those losses net losses (after accounting for gains). EPA predicts employment impacts to the national-level economy on the basis of the output losses calculated for the U.S. economy using the input-output analysis described in Section IV.A.2. Based on this analysis, which estimates both national employment losses stemming from decreased output in the industrial laundries industry and offsetting gains stemming from increased output of pollution control equipment, the CP options would have resulted in a net loss of employment at the national level in all industry sectors of 3,389 to 7,900 FTEs, which is less than 0.01 percent of the U.S. labor force in 1998. Net output loss would have been $62.6 million to $149.9 million per year at most, which is about 0.001 percent of Gross Domestic Product in 1998. Thus EPA expects, at the national level, that the CP options would have had negligible impact on U.S. employment and output.

EPA also investigated employment impacts driven by output reductions in the industrial laundries industry alone. Within the industrial laundries industry, nonclosing facilities could have experienced gains in production (and thus gains in output and employment) or losses in production, depending on how many facilities were expected to close and whether the loss of production to the economy represented by closing facilities exceeded or fell short of production losses that would have occurred when market equilibrium was achieved. Although the CP options are estimated to have produced a short-term employment loss to the industrial laundries industry of 235 to 5,039 FTEs based on closures and failures, this is less than the long-term net direct employment losses that would be calculated on the basis of output losses assuming no costs could be passed through to customers. Assuming no cost passthrough, as many as 2,884 to 6,692 FTEs (2.2 percent to 5.2 percent of total employment in the industry) might have been lost over the long term (inclusive of closure- and failure-based losses, but net of gains in employment due to hiring of pollution control system operators) in the industrial laundries

industry under the CP option, depending on cutoff. The 3MM/120k cutoff is associated with a loss of 4,897 FTEs. This worst-case estimate shows greater losses than those estimated using the production losses calculated using EPA's market model (and assuming costs are passed through to customers), which projects that, in fact, very small net gains might have occurred over time (from 30 to 87 FTEs gained, depending on cutoff). Thus, the 3MM/120K cutoff would be expected to result in net employment losses ranging from 2,520 to 4,897 FTEs.

For the community-level analysis, under the conservative approach for estimating community employment impacts described above, EPA determined that closures and failures would have resulted in a maximum change in a community's unemployment rate of less than one percent under all cutoffs considered.

EPA considers the options likely to have had a minimal impact on international markets. Under the higher cutoffs such as the 5MM/255K cutoff (which would have excluded 55 percent of the 1,742 facilities, the options might have had some effect on the ability of larger facilities to compete. These larger facilities generally, however, have a competitive advantage over the smaller excluded facilities. Most are owned by large multifacility firms that benefit from economies of scale not available to the smaller, single-facility firms. For the most part, the nonexcluded facilities have greater financial resources and could have better absorbed the costs of compliance. All analyses have been run under the assumption that no costs are passed through to customers, thus the analysis shows that the vast majority of these larger facilities would have been able to compete on the basis of price. Furthermore, as discussed below in the Small Business Analyses section, EPA believes that any potential adverse impacts to the facilities not excluded under the various options would have been far outweighed by the benefits of reducing adverse economic impacts on the most vulnerable firms in the industry.

EPA also estimates that the options considered would have had minimal impacts on inflation and insignificant distributional effects. The no regulation decision will not change the status quo and this will not affect industrial laundry competitors, such as the disposable industry. The options also would have had minimal impacts on industrial laundries customers. EPA investigated the impact on customers in the unlikely event that most costs of the options considered could have been passed through to customers. A realistic estimate of the cost increase at a typical medium size printer (a key industrial laundry customer industry) would be about $200 per year, or about a 0.6 percent increase in laundry costs. EPA believes this level of impact is representative at most sizes and types of industrial laundry customers. Therefore, EPA does not expect price increases, should they have occurred, to have had a major impact on customers.

EPA also investigated the likelihood that customers might substitute disposable items for laundered items or begin operating on-site laundries under the various regulatory options. Both the substitution of disposable items for laundered items and the installation and operation of on-site laundries are associated with potential negative impacts on customers that might deter them from choosing these potential substitutes. Disposable items can be more expensive to use than laundered items, may not meet quality requirements (e.g., disposable printer towels tend to be linty) and are, in certain circumstances, regulated under other environmental statutes. Lint-free disposable wipers (such as those used in clean rooms) are very expensive, and currently are only used in situations where even reusable wipers provided by industrial laundries are not sufficiently lint-free. Meanwhile because of the high initial costs to install equipment on-site and the likelihood that any price increase associated with industrial laundry service would have been small, on-site laundries could have required years before any cost savings might be realized. Given the disincentives towards those substitutes indicated above, particularly under the higher cutoffs (e.g., the 5MM/255K cutoff), prices would have been unlikely to rise noticeably. EPA does not believe that the options considered would have had a substantial effect on substitution of disposable items for laundered items or caused an increase in industrial laundering on-site for industrial laundries services in any major way as a result of price increases. Furthermore, since EPA has assumed for these analyses that no costs are passed through to customers, under the cutoffs considered, most firms and facilities would have been able to absorb the cost of the options if they felt their customers would have switched to substitutes had price increased.

Any cost of compliance that is not passed through to customers, however, would have resulted in some reduction in production (assuming no other factors in the industrial market changed) as firms attempted to maximize profits, but this reduction must be compared to the approximate 6 percent per year growth in revenues seen in recent years. This growth in revenues appears to be driven by increasing production (to meet new demands for industrial laundry services), while increasing productivity and declining costs of production (in the baseline), combined with revenue growth, have contributed to higher profitability. EPA expects that the options would have had a one-time effect on revenue and profit growth, but in actuality, with a continuing economic boom, the overall effect might have been only a reduction in the increase in production. In a downturn, however, EPA recognizes that output losses due to a downturn might have been greater than they would be without a regulation.

b. Impacts From Regulatory Options for New Sources

EPA's decision not to promulgate pretreatment standards applies to new sources as well. This section presents EPA's assessment of what impacts on new sources might have been had EPA decided to promulgate pretreatment standards for new sources under the same option and exclusion selected for existing sources (CP–IL under the 3MM/120K cutoff). EPA assessed impacts on new sources by determining whether the regulatory options would have resulted in a barrier to entry into the market.

EPA has found that overall impacts from either the CP–IL or DAF–IL options would not have been any more severe on new sources than those on existing sources as long as both are subject to the same cutoff, since the costs faced by new sources generally will be similar to those faced by existing sources. Because most new sources and existing sources would have faced similar costs, EPA has determined that the CP–IL option under the 3MM/120K cutoff for new sources would not have posed a barrier to entry on the basis of competitiveness.

EPA also examined whether there would be a barrier to entry for small new sources based on disproportionate impacts measured as closures or failures. EPA investigated facilities in the Section 308 Survey that indicated they were new or relatively new at the time of the survey. Using the Section 308 Survey data, EPA expects that new sources would generally have exceeded most of the threshold size cutoffs that EPA considered for existing sources. Sixty percent of facilities identified as new exceed the 5MM/255K cutoff. The number of new source facilities coming on line each year is extremely small.

Over a three year period (1991, 1992, and 1993), according to Section 308 Survey data, laundry operations began at about only 80 facilities (and it is not absolutely clear from the data whether these facilities were actually new dischargers or were existing dischargers acquired in that year by a different firm). Over the 3-year period, this amounts to 27 new sources a year at most, or only 1.5 percent of existing facilities. Given the small level of growth in the industrial laundries industry, EPA believes that new sources are primarily replacing production from closing facilities that exit the market.

Of these facilities identified as new or relatively new facilities, EPA determined that the average revenues of this group exceeded $4 million per year, and the amount of laundry processed averaged over 5 million pounds per year. Only 24 to 32 facilities out of 80 total newer facilities (weighted), or 30 to 40 percent, would meet the size threshold for the exclusions EPA investigated for existing sources. On a yearly basis (given that these facilities started up over the 3 years of the survey) EPA estimates that 8 to 11 facilities of the size, on average, that would meet an exclusion similar to those investigated for existing sources might be started up each year. Under the 3MM/120K cutoff, 30 facilities total, or 10 per year, on average, would meet this exclusion. Overall, in the group of 80 facilities, 6 facilities (weighted), or 7.5 percent, were identified as postcompliance closures (based on a closure by one surveyed nonindependent facility). These facilities would have been exempted under all cutoffs considered. Given the above results, EPA finds that had new sources been regulated under the 3MM/120K cutoff, the rule for new sources would have been economically achievable and no barriers to entry would have occurred.

Furthermore, because both new sources and existing sources would have been provided the same exclusion, EPA avoids a situation where a level playing field would not be provided for new sources relative to existing sources. This could occur when a new smaller facility that was not excluded from the rule must compete with an existing smaller facility that was excluded under the production threshold for the rule. This competitive disadvantage could be a barrier to entry if the production threshold for new and existing source were not the same.

3. Small Business Analysis

There are 903 firms owning the 1,742 facilities. A total of 837 out of the 903 firms or 93 percent are "small business" according to SBA Guidelines (revenues less than $10.5 million per year). The analysis looks separately at single-facility firms (those firms where the firm and the facility are a single entity) and multifacility firms (firms that own more than one facility; generally, these firms are larger than single facility firms). There are a total of 830 single-facility firms out of 903 total firms in the industry (92 percent), the vast majority of which (812) meet the SBA definition of small. Only 25 multifacility firms meet this definition. Under the 3MM/120K cutoff, 363 small, single-facility firms (45 percent of small, single facility firms) would have been excluded.

Had EPA promulgated a rule, no small firms would have closed or failed under the 5MM/255K cutoff, but 126 small, single-facility firms would have closed or failed under the 1MM/255K cutoff (54 closures and 72 failures, or 18.4 percent of all small firms in the postcompliance analysis). Under the 3MM/120K cutoff, 39 small, single-facility firms would have closed or failed (39 closures and no failures, or 5.7 percent of the 684 small firms in the postcompliance analyses).

4. Cost-Benefit Comparison

EPA estimates that the pretax costs of compliance, as can be seen in the EA for the proposal, generally make up nearly all of the monetizable social costs of pretreatment standards. Additional very small costs are associated with costs to permitting authorities and the administrative costs of providing unemployment benefits.

EPA thus approximates the social costs of a rule using the pretax compliance costs of the option and cutoff. EPA would have selected had the Agency promulgated a rule. The pretax cost of the CP–IL option under the 3MM/120K cutoff is $149.1 million per year in 1998 dollars. This figure can be compared with the monetized benefits of $0.16 to $0.79 million in 1998 dollars. The components of these benefits and their value are summarized in detail in Section VIII of this final action.

V. Total Toxic and Nonconventional Pounds Reduced by Options Considered for the Final Action

In addition to the foregoing analyses, EPA has estimated toxic and nonconventional pollutant reductions for all options and cutoffs considered for the final action. These results are expressed in terms of the "pound equivalent" (PE) removed. PE is a measure that addresses differences in the toxicity of pollutants removed. Total PEs are derived by taking the number of pounds of a pollutant removed and multiplying this number by a toxic weighting factor (TWF). EPA calculates TWFs for priority pollutants and some additional nonconventional pollutants using ambient water quality criteria and toxicity values. The TWFs are then standardized by relating them to a particular pollutant at a certain point in time, in this case, copper. As of 1985 the water quality criterion for copper was revised, thus the TWF for copper also has been revised. PEs are calculated only for pollutants for which TWFs have been estimated, thus they do not reflect potential toxicity of some nonconventional and, to date, any conventional pollutants. EPA does not include pollutant removals to the extent that those pollutants are reliably removed at the POTW, but only includes the removal of pollutants that would not be removed by the POTW.

As noted earlier, based on new data and as discussed in the NODA, EPA estimated toxic weighting factors for the individual components of SGT–HEM (TPH), such as certain alkanes and naphthalene, bis(2-ethylhexyl) phthalate and 2-methylnaphthalene to estimate toxic pound equivalent removals for the decision.

TABLE IV.E.1.—POLLUTANT REMOVALS OF CP OPTIONS AND CUTOFFS CONSIDERED

Option/ Cutoff	Pounds removed	Toxic pound equivalents removed
CP		
No Cutoff	891,572	43,013
1MM/255K	871,422	42,249
3MM/120K	794,448	38,566
5MM/255K	636,660	31,469

As noted above, EPA also estimated the toxic pound equivalent removed by the rule using a toxic weighting factor for the bulk parameter TPH (SGT–HEM). This analysis was not EPA's primary analysis because EPA historically assigns TWFs to the individual constituents and because EPA only identified a very small percentage (approximately two percent) of the constituents comprising TPH (SGT–HEM). To derive a toxic weighting factor for the bulk parameter TPH (SGT–HEM) in this case, EPA extrapolated the toxic weighting factor from the identified constituents to all of the TPH pounds. While EPA thinks that this approach for estimating the toxic pound equivalents for a bulk parameter may be reasonable where a large percentage of constituents can be identified, EPA was not able to do so here. The uncertainty inherent in

extrapolating the toxicity of so minuscule a fraction of TPH constituents to the entire TPH parameter is too great for EPA to use for its primary analysis. Nevertheless, EPA would not have made a different decision based on this alternative analysis.

VI. Pass Through Analysis

Categorical pretreatment standards are technology-based standards for indirect dischargers in an industrial category. Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS) are analogous to the BAT (Best Available Technology Economically Achievable) and best available demonstrated technology (BADT for NSPS) for existing and new source direct dischargers, respectively. For the development of the national categorical pretreatment standards, EPA determines whether pollutants discharged to POTWs pass through to waters of the U.S. by comparing the percentage of the pollutant removed by well-operated POTWs achieving secondary treatment with the percentage of the pollutant removed by the candidate BAT or pretreatment technologies. For this industry, there is no candidate BAT technology because there are no known direct dischargers in the industry so EPA has based the pass through analysis on a comparison of the candidate pretreatment technologies to POTW removals. EPA believes that the comparison of well-operated POTWs to the candidate pretreatment technologies instead of BAT is appropriate, since there are no direct dischargers in the industry. In addition, EPA looks at the engineering design aspects of the candidate technologies and the ability of the POTW to treat pollutants to determine if certain pollutants pass through (e.g., soluble organic compounds exhibiting some degree of volatility).

By contrast, General Pretreatment Standards authorize POTWs to set local limits for individual indirect dischargers in order to prevent pass through or interference, or what is necessary for the POTW to meet its NPDES permit limit. Under the General Pretreatment Standards, pass through is defined as a discharge that exits the POTW into waters of the U.S. in quantities or concentrations, which alone or in conjunction with a discharge or discharges from other sources, cause a violation of any requirement of the POTW's NPDES permit.

Results of the pass through analysis show that there is not significant pass through, while pretreatment using CP would produce some additional removal of some pollutants, the removals associated with these pollutants are small in absolute pounds and toxic pound equivalents. For the economically achievable option (see sections IV and V) the removals for the pollutants would be 794,448 lbs/yr (38,566 pound equivalents) or 649 pounds (32 pound equivalents) per year per facility. A full description of the pass through analysis results is shown in the Technical Development Document.

Results of alternative methods for conducting the pass through analysis can be found in the record. The results of conducting the pass through analysis using the other methodologies show only minor differences in pollutant removals.

VII. Cost-Effectiveness Analysis

In addition to calculating pound equivalent (PE) removals, the Agency also calculated the average cost-effectiveness of the various options and cutoffs considered. EPA calculates average cost-effectiveness on the basis of cost per toxic pound equivalent removed. For this rule, EPA did not perform an incremental cost-effectiveness analysis, which evaluates cost-effectiveness incrementally between options along the same treatment train. Average cost-effectiveness, which evaluates an option or cutoff relative to a baseline, or no regulation option, was calculated. The average cost-effectiveness ratio is calculated as the costs of an option at that cutoff in 1981 dollars (the standard year for all cost-effectiveness studies) divided by the total removals calculated under that option and cutoff. Costs evaluated include the pretax direct compliance costs, such as capital expenditures and O&M costs, including compliance monitoring. Table IV.E.1 shows the pollutant removals in pound equivalents and average cost-effectiveness of each regulatory option under each cutoff considered. EPA is showing the average cost-effectiveness results for the DAF options as well as the CP options to illustrate that these options removed less pound equivalents at greater cost than the comparable CP options.

TABLE IV.E.1.—POLLUTANT REMOVALS AND AVERAGE COST-EFFECTIVENESS OF OPTIONS AND CUTOFFS CONSIDERED

Option/Cutoff	Total annual		Average C–E (1981$/lb. eq.)
	PE removed	Cost ($mil. 1981)	
CP			
No Cutoff	43,013	121.5	2,824
1MM/255K	42,249	115.7	2,739
3MM/120K	38,566	88.3	2,290
5MM/255K	31,469	52.7	1,674
DAF			
No Cutoff	35,345	132.1	3,885
1MM/255K	34,640	126.5	3,652
3MM/120K	31,665	98.4	3,108
5MM/255K	25,844	60.1	2,327

As the table shows, the difference between the no cutoff scenario and the most inclusive cutoff (5MM/255K) is only 11,844 PEs under the CP option, representing a 27 percent drop in removals (the results for DAF are similar). EPA considers the options and their cutoffs to be generally cost-ineffective. EPA would expect this to be the case given the ability of POTWs to effectively treat industrial laundry effluent and the resulting small total

number of pound equivalents removed by the rule. Thus, while EPA does not base its decision regarding PSES or PSNS on cost-effectiveness, this analysis confirms that EPA's decision not to issue national categorical pretreatment standards is reasonable.

VIII. Environmental Benefits Analysis

A. Summary

Since EPA is not promulgating national categorical standards for the industrial laundries point source category, EPA estimates that there will be no environmental benefits associated with this action. If EPA were to promulgate national standards based upon the economically achievable CP treatment option presented above, the monetized human health benefits would be nominal. Projected cancer cases would be reduced by far less than one cancer case per year. (0.06 cancer cases from a baseline of 0.17 cancer cases.) EPA's use of a hazard ranking score to evaluate non-cancer effects found no non cancer effects would occur. In terms of other benefits, EPA estimates based on computer modeling, that a rule would remove 16 out of 38 exceedences of Ambient Water Quality Criteria (AWQC) for the protection of aquatic life and/or human health at 12 reaches nationwide, and biosolid quality at eight POTWs would be improved.

This section presents the estimated benefits due to implementation of the economically achievable CP and DAF options. For more details, see the Water Quality Benefits Analysis (WQBA). EPA estimates the monetized CP benefits, which consist of reduced cancer cases and improved biosolid quality to be small, from $0.16 million to $0.79 million ($1998). These benefits are de minimis, and therefore, reinforce EPA's decision made above. Taken in context across all stream reaches nationwide, EPA does not believe that the benefits analysis indicates that industrial laundry discharges present a nationwide problem. Further, EPA expects that the benefits realized from the rule could be realized under the existing pretreatment program, where EPA will work with any POTW that is not meeting its water quality-based permit limit to impose controls as necessary to meet that permit limit. EPA also notes that efforts that would prevent pollution at the source, such as the voluntary program or the efforts of OSW could achieve these same benefits.

Thus, while EPA does not base its decision regarding PSES or PSNS on the benefits described above, EPA does not believe that the benefits of national categorical pretreatment standards for this industry would justify their costs.

B. Changes Since the Proposal

In response to numerous comments received pertaining to the benefits analysis conducted for the Proposed Rule, for the NODA, EPA revised its analysis in two ways: (1) The aquatic life chronic toxicity value of TPH (1,145 µg/L), used to develop a recommended AWQC for TPH and also used to develop a toxic weighting factor for TPH, is based on a weighted average of the toxicity of 13 identified constituents of TPH (as compared to the 56 µg/L based on soluble hydrocarbons used for the proposal); (2) the POTW removal percentage of TPH was increased to 74% from 65%; and (3) the POTW removal percentages of other pollutants were updated.

The overall impact of the changes related to TPH is a decrease in the number of reaches with modeled baseline water quality criterion toxicity exceedences in the baseline from 78 at proposal to 12 at final. The water quality exceedences predicted for the final action are for five Pollutants Of Concern (POCs) (mercury, silver, tetrachloroethene, chloroform and bis (2-ethylhexyl) phthalate) rather than for TPH. These pollutants from industrial laundries are modeled to be present in POTW effluent in concentrations above recommended Water Quality Criteria (WQC) for either chronic toxicity to aquatic organisms or human health at baseline conditions for three sample reaches that represents 12 reaches nationwide.

C. Benefits of Action

1. Reduced Pollutant Discharges

EPA considered the benefits that could result from reductions in industrial laundry pollutant discharges to POTWs, including: improved quality of freshwater, estuarine, and marine ecosystems; reduced risks to human health through consumption of fish or water taken from affected waterways; reduced cost of disposal or use of municipal sewage sludge that is affected by industrial laundry pollutant discharges; and reduced occurrence of biological inhibition of activated sludge at POTWs.

For the industrial laundry industry, EPA evaluated the effects of POTW wastewater discharges of 72 pollutants on receiving stream water quality at current levels of treatment and at a number of proposed PSES limits. EPA assessed the benefits from the modeled pollutant reductions in three broad classes: human health, ecological, and economic productivity benefits. However, because of data limitations and the understanding of how society values some of these benefit categories, EPA was not able to analyze all of these categories with the same level of rigor. At the highest level of analysis, EPA was able to quantify the expected effects for some benefit categories and attach monetary values to them, such as a nominal value for reduction in cancer risk from fish consumption and reduced costs of managing and disposing of POTW sewage sludge. For other benefit categories, EPA was able to quantify expected effects but not able to estimate monetary values for them. These benefit categories include reduced exceedences of biological inhibition criteria at POTWs and changes in human health and aquatic life risk indicators. Finally, non-quantified, non-monetized benefit categories include enhanced water-dependent recreation other than fishing.

2. Reduced Human Health Risk

EPA projects that the CP and DAF options would eliminate far less than 1 cancer case per year (0.06 cancer cases from a baseline of 0.17 cancer cases). This translates into $0.15 million to $0.78 million ($1998) in benefits. Further, based on risk reference doses in conjunction with in-stream pollutant concentrations, EPA modeled no non-cancer human health effects. Both of these analyses are based on exposure of recreational and subsistence anglers and their families to fish. With respect to ambient water quality criteria for human health, EPA modeled exceedences for three pollutants at 12 reaches nationwide.

To estimate the reduced risk of non-cancer health effects (e.g., systemic effects, reproductive toxicity, and developmental toxicity) from fish and water consumption for each option, EPA used risk reference doses, in conjunction with in-stream pollutant concentrations, to calculate a hazard score. A value of one or greater for a hazard score indicates the potential for non-cancer hazards to occur. The hazard score, which EPA calculated by summing over all pollutants, was less than one for baseline conditions as well as for all treatment options.

At current discharge levels, in-stream concentrations of bis(2-ethylhexyl)phthalate, chloroform, and tetrachloroethene are projected to exceed human health criteria (developed for consumption of water and organisms) in 12 receiving streams nationwide for a total of 21 exceedences. The CP (and DAF) option(s) would eliminate the occurrence of bis(2-ethylhexyl)

phthalate concentrations in excess of the human health-based AWQC in eight of the 12 affected streams.

3. Improved Recreational Fishing Opportunities

Although the rule would eliminate 16 out of 38 AWQC exceedences for the protection of human health and/or aquatic life, the rule would not eliminate all AWQC at any one reach. Currently EPA has no methodology to monetize the elimination of these AWQC unless they are entirely eliminated for a waterbody and thus EPA was not able to monetize these benefits.

4. Reduced Impacts on POTWs

EPA expects that reduced effluent discharges from the industrial laundries industry would have a minimal impact on POTWs. EPA estimates a $0.006 million to 0.01 million ($1998) annual benefit due to improved biosolids quality. Discussion with POTW operators support EPA's position that industrial laundry discharges usually are not problematic to POTWs.

a. Modeled POTW Impacts

EPA evaluated whether industrial laundry pollutants may interfere with POTWS by impairing their treatment effectiveness or causing them to violate applicable CWA sewage sludge requirements for their chosen sludge disposal method. For the POTW impact analysis, EPA analyzed two benefit categories: (1) Reduced costs to public sewage systems for managing and disposing of the sewage sludge that result from treatment of effluent discharges from industrial laundries; and (2) a reduction in risk of biological inhibition of activated sludge.

EPA has promulgated regulations establishing standards for sewage sludge when it is applied to the land, disposed of at dedicated sites (surface disposal), and incinerated (40 CFR Part 503). For a discussion of these requirements see the final WQBA.

EPA estimated sewage sludge concentrations of ten metals for sample facilities under baseline discharge levels. EPA compared these concentrations with the relevant metal concentration limits for the following sewage sludge management options: Land Application-High (Concentration Limits), Land Application-Low (Ceiling Limits), and Surface Disposal. In the cutoff 2 (3 mm/120K) baseline case, EPA estimated that concentrations of one pollutant (lead) at 10 POTWs would fail the Land Application-High limits while meeting the Land Application-Low limits. EPA estimated that no POTWs would fail any of the Surface Disposal limits.

EPA estimated that both the CP and DAF options would permit 10 POTWs to meet the Land Application-High limits and that an estimated 6,100 dry metric tons (DMT) of annual disposal of sewage sludge would newly qualify for beneficial use under the Land Application-High limits. EPA estimated the reduced time required for record-keeping for sewage sludge meeting the more stringent Land Application-High Criteria, and, on this basis, developed a partial estimate of monetary benefits from reduced metals contamination of sewage sludge. For all options, the regulation is expected to result in benefits from sewage sludge quality improvements of $0.006 to $0.01 million ($1998) annually.

EPA estimated potential inhibition of POTW operations by comparing predicted POTW influent concentrations to available inhibition levels for 45 pollutants. EPA based the POTW inhibition and sludge values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. At current discharge levels, EPA estimates POTW concentrations of lead exceed biological inhibition criteria at two POTWs. Under both treatment options, these potential inhibition problems would not be eliminated. Note, however, that these are modeled potential instances of inhibiting, not actual documented cases. Whether inhibition at either of these facilities would actually occur depends on a variety of site specific factors.

b. Discussions with POTW Operators and Pretreatment Coordinators

To better understand the frequency and characteristics of problems to POTWs resulting from industrial laundry discharges, EPA obtained information from discussions with EPA regional staff and POTW operators. Of 37 operators at POTWs that receive discharges from industrial laundries, 11 POTW operators described their facilities as having encountered some difficulty in the past resulting from industrial laundry discharges, while the remaining 26 reported no problems from industrial laundry discharges. All the POTWs with reported past difficulties have solved their problems by setting local discharge limits.

IX. Non-Water Quality Environmental Impacts

EPA has considered the non-water quality environmental impacts associated with the various technology options considered as well as the environmental improvement that could be realized through the industry voluntary program. Non-water quality environmental impacts are impacts (both good and bad) of the technology options on the environment that are not directly associated with wastewater. Non-water quality environmental impacts include changes in energy consumption, air emissions, and solid waste generation of oil and sludge. Based on these analyses, EPA finds that the non-water quality environmental impacts resulting from the regulatory options are acceptable.

A. Air Pollution

Industrial laundry facilities generate wastewater that contains significant concentrations of organic compounds, some of which are on the list of Hazardous Air Pollutants (HAPs) in Title 3 of the Clean Air Act Amendments (CAAA) of 1990. Atmospheric exposure of the organic-containing wastewater may result in volatilization of both volatile organic compounds (VOCs) and HAPs from the wastewater. VOCs and HAPs are emitted from the wastewater beginning at the point where the wastewater first contacts ambient air. Thus, VOCs and HAPs may be of concern immediately as the wastewater process is discharged from the process unit. Emissions occur from wastewater collection units such as process drains, manholes, trenches, and sumps, and from wastewater treatment units such as screens, equalization basins, DAF and CP units, and any other units where the wastewater is in contact with the air.

EPA believes that air emissions from industrial laundry wastewater would have been similar before and after implementation of a rule based on DAF or chemical precipitation technologies because the wastewater from all industrial laundries currently has contact with ambient air as it flows to the POTW. At facilities that do not currently have treatment on site, the wastewater typically flows from the washers to an open or partially open catch basin, then to the sewer and on to the POTW, where the wastewater is typically treated in open aerated basins or lagoons. Air emissions from the wastewater occur as the wastewater flows from the facility to the POTW. At a facility with treatment, the wastewater would have more contact with air while still at the facility, as it is treated in open units such as equalization basins and DAF or chemical precipitation units prior to flowing through the sewer to the POTW. Air emissions from the treated wastewater occur at the treatment units at the facility, as well as while the

wastewater flows to the POTW. Thus, EPA expects that the location of a portion of air emissions from industrial laundry wastewater would shift from the POTW collection and treatment system to the facility treatment system, but EPA believes that the overall amount of air emissions from industrial laundries wastewater would not change. Air emissions resulting from increased energy use are discussed in the Technical Development Document.

EPA believes that no adverse air impacts would have been expected to occur due to a rule based on CP or DAF. Thus, because EPA would not have expected an overall increase in the amount of air emissions as a result of an implemented rule and based on EPA's determination of the total emissions from one industrial laundry's untreated wastewater, EPA finds that the air emissions impacts of all of the regulatory options under consideration would not have been unacceptable.

B. Solid Waste Generation

EPA considered regulatory options based on DAF and chemical precipitation technologies followed by dewatering of the sludge generated from these technologies. Based on information collected in the industrial laundries detailed questionnaires and from data submitted in comments, most industrial laundry sludge from CP or DAF treatment systems is disposed of in nonhazardous landfills.

EPA estimates that the incremental increase in sludge generation from the CP technology options (not including savings in the volume of sludge generated at POTWs that would have resulted from the implementation of the technology options) would have been a maximum of 173,000 tons per year of wet sludge, or 60,600 tons per year of dry solids. EPA estimates that the incremental increase in sludge generation from the DAF technology option would have been a maximum of 128,000 tons per year of wet sludge, or 70,600 tons per year of dry solids. For more details, see Chapter 10 of the Technical Development Document. Approximately 430 million tons (dry basis) of industrial nonhazardous waste was sent to landfills in the U.S. in 1986 (Subtitle D Study Phase I: Report EPA No. 530SW86–054). Implementation of these technology options would have resulted in at most only a 0.014% increase in sludge generation for CP and 0.016% for DAF. Data from the Waste Treatment Industry Phase II: Landfills effluent guidelines project suggest that current landfill capacity can accept this increase in solid waste generation. Further, the estimates presented here are likely to significantly overstate any net increase in sludge generation since they do not factor in decreases in sludge generation at POTWs. In general, EPA would expect these decreases to partially offset increases at individual pretreatment locations. Therefore, EPA believes the solid waste impacts of all of the regulatory options under consideration would have been acceptable.

C. Energy Requirements

EPA estimates that implementation of a rule would have resulted in a net increase in energy consumption for the industrial laundries industry. The incremental increase is based on electricity used to operate wastewater treatment equipment at facilities that are not currently operating either DAF or chemical precipitation treatment systems.

EPA estimates that the incremental increase in electricity use for the industrial laundries industry as a result of an implemented rule would have been a maximum of 69.5 million kilowatt hours per year for CP and 82.8 million kilowatt hours per year for DAF. Based on a 1996 survey of industrial laundries conducted by industry, industrial laundries use 31.2 trillion BTUs per year, or 9.1 billion kilowatt hours per year. EPA estimates that the incremental energy increase for CP and DAF, respectively, would have been 0.76% and 0.91% of electricity currently used by the industrial laundries industry to operate all washing, drying, and treatment equipment. In addition, Approximately 2,805 billion kilowatt hours of electric power were generated in the U.S. in 1990.

The incremental increase in energy use for the industrial laundries industry for CP and DAF, respectively, would have corresponded to 0.0025% and 0.0030% of the total national energy use. For these reasons, EPA believes that the energy impacts of all of the regulatory options under consideration would have been acceptable.

X. Related Acts of Congress and Executive Orders

EPA's final action not to establish national categorical pretreatment standards does not constitute a rule under section 551 of the Administrative Procedure Act. 5 U.S.C. § 551. Hence, requirements of other regulatory statutes and Executive Orders that generally apply to rulemakings (e.g., the Unfunded Mandate Reform Act) do not apply to this final action.

Dated: June 30, 1999.

Carol M. Browner,

Administrator.

Appendix A to the Notice—Lists of Abbreviations, Acronyms, Definitions and Other Terms Used in This Notice

Administrator—The Administrator of the U.S. Environmental Protection Agency

Agency—The U.S. Environmental Protection Agency

BAT—Best Available Technology Economically Achievable

BMPs—Best Management Practices—As authorized by sections 304 (e) and 402 of the CWA. Gives the Administrator the authority to publish regulations to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

CBI—Confidential Business Information

C–E—Cost-Effectiveness Analysis

Cooperative—An enterprise or organization owned by and operated for the benefit of those using its services. For purposes of this rule, a laundry service like facilities owned by and/or operated for the benefit of those facilities.

CP—Chemical Precipitation.

CWA—Clean Water Act. The Federal Water Pollution Act, 33 U.S.C. 1251 *et seq.*

DAF—Dissolved Air Flotation

Dry Cleaning—The cleaning of fabrics using an organic-based solvent rather than water-based detergent solution.

EA—Economic Assessment.

Effluent—Wastewater discharges.

EPA—The U.S. Environmental Protection Agency.

E.O.—Executive Order.

Facility—A facility is all contiguous property owned, operated, leased or under the control of the same person, or corporate or business entity. The contiguous property may be divided by public or private right-of-way.

FTE—Full-time Equivalent.

HEM—N-Hexane Extractable Material.

Indirect Discharger—A facility that discharges or may discharge pollutants into a publicly owned treatment works.

IL—Industrial Laundry.

Industrial laundry facility—any facility that launders industrial textile items from off-site as a business activity. Either the industrial laundry facility or the off-site customer is may own the industrial laundered textile items. This includes textile rental companies that perform laundering operations.

Industrial textile items—items such as, but are not limited to: shop towels, printer towels, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents. uniforms, and filters.

Laundering—washing items with water, including water washing following dry cleaning.

Linens—items such as sheets, pillow cases, blankets, bath towels and washcloths, hospital gowns and robes, tablecloths, napkins, tableskirts, kitchen textile items, continuous roll towels, laboratory coats, family laundry, executive wear, mattress pads, incontinence pads, and diapers. This list is intended to be an inclusive list.

LTA—Long Term Average. For purposes of the pretreatment standards, average pollutant levels achieved over a period of time by a facility , subcategory, or technology option.

NTTAA—National Technology Transfer and Advancement Act.

New Source—"New source" is defined in section 306 of the CWA and at 40 CFR 122.12 and 122.29(b).

NODA—Notice of Data Availability

Nonconventional pollutants—Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR part 401

Non-detect value—A concentration-based measurement reported below the sample specific detection limit that can reliably be measured by the analytical method for the pollutant.

Non-water quality environmental impact—An environmental impact of a control or treatment technology, other than to surface waters (including energy requirements) or an environment improvement of a decision not to regulate.

NPDES—The National Pollutant Discharge Elimination System authorized under section 402 of the CWA. NPDES requires permits for discharge of pollutants from any point source into waters of the United States.

O&G—Oil and Grease

OMB—Office of Management and Budget.

Off-site—"Off-site" means outside the boundaries of a facility.

On-site—"On-site" means within the boundaries of a facility.

OSW—USEPA Office of Solid Waste.

POTW/POTWs—Publicly owned treatment works, as defined at 40 CFR 403.3(o).

Pretreatment standard—a regulation that establishes industrial wastewater effluent quality required for discharge to a POTW.

Priority pollutants—The toxic pollutants designated by EPA as priority in 40 CFR part 423, Appendix A.

PSES—Pretreatment Standards for Existing Sources on indirect discharges, under section 307(b) of the CWA.

PSNS—Pretreatment Standards for New Sources of indirect discharges, under section 307(b) and (c) of the CWA.

RFA—Regulatory Flexibility Act.

SBA—Small Business Administration.

SBREFA—Small Business Regulatory Enforcement Fairness Act.

SGT–HEM—Silica Gel Treated N-Hexane Extractable Material.

SIC—Standard Industrial Classification.

Small Business—Businesses with annual revenues less than $10.5 million. This is the higher of the two Small Business Administration definition of small business for SIC codes 7218 and 7213.

TPH—Total Petroleum Hydrocarbons.

TRSA—Textile Rental Services Association of America.

TSS—Total suspended solids.

TWF—Toxic weighting factor.

UMRA—Unfunded Mandates Reform Act (PL 104–4), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector.

UTSA—Uniform and Textile Service Association.

[FR Doc. 99–17206 Filed 8–17–99; 8:45 am]

BILLING CODE 6560–50–F

OL

64

SS

1
5
9

AG

18

09

MI

federal register

Wednesday
August 18, 1999

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 119, 121 et al.
Aging Airplane Safety; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 129, 135, and 183

[Docket No. FAA–1999–5401; Notice No. 99–02]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On April 2, 1999, the FAA published a Notice of Proposed Rulemaking (NPRM) regarding aging aircraft safety and invited comments for a 120-day period. The comment period closed on August 2, 1999; however, the FAA is reopening the comment period for an additional 60 days in response to a request from the National Air Transportation Association (NATA). Per NATA, the reopening of the comment period is needed to allow small businesses whose operations are especially busy during the spring and summer additional time to evaluate the extensive proposal.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Comments on the proposed rulemaking should be mailed or delivered, in triplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5401, 400 Seventh St. SW., Room Plaza 401, Washington, DC 20590. Comments also may be submitted electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401, between 10:00 a.m. and 5:00 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, Aircraft Maintenance Division (AFS–300), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this NPRM may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this NPRM must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–5401." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), or the **Federal Register's** electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On March 19, 1999, the FAA issued NPRM 99–02 (63 FR 16298, April 2, 1999). The NPRM proposed to require all airplanes operated under part 121 of Title 14, Code of Federal Regulations (14 CFR), all U.S.-registered multiengine airplanes operated under 14 CFR part 129, and all multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo records reviews and inspections by the Administrator after their 14th year in service to ensure that the maintenance of all these airplanes' age-sensitive parts and components has been adequate and timely. The comment period closed August 2, 1999.

By letter dated July 26, 1999, the NATA requested that the comment period be extended by an additional 60 days in order to give the companies of small businesses whose operations are especially busy during the spring and summer additional time to complete an economic analysis, audit the impact of this proposal on scheduled air carriers, evaluate the economic impact of this proposal on aviation businesses, and to develop meaningful comments to this proposal.

The FAA finds that it is in the public interest to reopen the comment period for sixty (60) days.

Issued in Washington, DC, on August 12, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–21379 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
August 18, 1999

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 27

Normal Category Rotorcraft Maximum Weight and Passenger Seat Limitation; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. 29247; Amendment No. 27–37]

RIN 2120–AF33

Normal Category Rotorcraft Maximum Weight and Passenger Seat Limitation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airworthiness standards for normal category rotorcraft. This rule increases the maximum weight limit from 6,000 to 7,000 pounds, updates the safety standards, and adds a passenger seat limitation of nine. These changes offset the increased weight imposed by additional requirements such as recent requirements to improve occupant survivability in the event of an accident.

EFFECTIVE DATE: October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Lance Gant, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 222–5114, fax 817–222–5959.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: 202–215–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking (NPRMs) and Final Rules should request from ARM–1 a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

If your organization is a small entity and you have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration (FAA), 800 Independence Avenue, SW, Washington, DC 20591, 888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquires to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

This final rule is based on NPRM No. 98–4 published in the **Federal Register** on June 25, 1998 (63 FR 34610). That notice proposed to amend the airworthiness standards for normal category rotorcraft, 14 CFR part 27 (part 27), based on ARAC recommendations.

A previous notice in the **Federal Register** (60 FR 4221, January 20, 1995) established the ARAC Gross Weight and Passenger Issues for Rotorcraft Working Group (GWWG). The notice tasked the GWWG to determine the appropriate course of action for increasing the maximum weight and passenger seat limitations for normal category rotorcraft. The GWWG included representatives from manufacturers, Aerospace Industries Association of America (AIA), the European Association of Aerospace Industries (AECMA), the European Joint Aviation Authorities (JAA), Transport Canada, and the FAA Rotorcraft Directorate.

The GWWG submitted recommendations to increase the maximum gross weight limitation to 7,000 pounds and to add a passenger seat limitation of nine. The changes compensate for the increases in weight resulting from additional part 27 requirements and operational and design trends. An increase in maximum weight to 7,000 pounds will allow the design and production of helicopters to carry nine passengers.

The GWWG recommended additional requirements to part 27 to support a potential increase of passengers if the changes (1) related to safety for additional passengers, (2) related to safety for increased weight, or (3) resulted in little or no increase in cost of weight.

The GWWG made the following the following recommendations regarding previously certificate rotorcraft: (1) Limit certification to seven passengers (regardless of maximum weight), (2) permit an increase in passengers only if the applicant revises the certification basis and complies with part 27 at this amendment level, and (3) permit an applicant to increase the rotorcraft maximum weight above 6,000 pounds if the seating capacity remains as certificated on October 18, 1999.

The GWWG made the preceding recommendations to the ARAC. The ARAC recommended that the FAA revise the normal category rotorcraft airworthiness standards. The JAA will harmonize the Joint Aviation Requirements (JAR) concurrently with this final rule. The FAA evaluated the ARAC recommendations, made its proposals in NPRM 98–4, and invited comments.

Discussion of Comments

The FAA considered comments from all four commenters. Two commenters favored adopting the rule as proposed. Two other commenters agreed that rule changes were needed but offered the following comments:

One commenter asked why part 27 did not allow a weight limit of 12,500 pounds as does part 23. Allowing a weight limit of 12,500 pounds is beyond the scope of the current rulemaking. The FAA has not ruled out future action to further increase the normal category weight limit. However, further increases in weight limit may necessitate additional requirements to part 27 to maintain an acceptable level of safety.

The commenter wanted the rule to require crash resistant fuel cells. The FAA agrees that crash resistant fuel cells enhance safety and currently requires crash resistant fuel systems for rotorcraft certificated to Amendment 27–30 dated October 2, 1994 (59 FR 50386).

The commenter stated that the sentence "This must be shown by test" proposed in § 27.805(b) was open to interpretation. The FAA disagrees. This language mirrors § 29.805(b) in effect since February 25, 1968. To date, there has been no confusion as to its interpretation. Advisory material covering this requirement is readily available. The words "This must be shown by test" mean that emergency evacuations must be physically performed during type certification testing.

The commenter stated, "The inclusion of as many exit routes as possible would be nice, but things such as rotor clearance (in the case of a top hatch) would need addressing." The FAA agrees that a thorough evaluation of any crew emergency exit configuration is needed. An evaluation of the location of the exits in

determining compliance with § 27.805, paragraphs (a) and (b), would include consideration of possible obstructions that may render an exit unusable or hazardous, for example, the proximity of the main rotor in the case of a top hatch.

The commenter further suggested using wording similar to part 23 for pilot compartment emergency exits in § 27.805. The wording proposed by the FAA in § 27.805, paragraphs (a) and (b) is similar to the wording in § 23.805, paragraphs (a) and (b). The remainder of proposed § 27.805 is the same as part 23 and only diverges to address differences in aircraft category. Therefore, § 27.805 is adopted as proposed.

Another commenter suggested adding the word "on" after "of this part in effect" in § 27.2(b)(1) and deleting the word "previously" in § 27.2(b)(2)(i). The FAA agrees and has incorporated the nonsubstantive changes.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this final rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and JAA regulations, where they exist, and has identified no material differences in these amendments and the foreign regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). In conducting these analyses, the FAA has determined that this final rule: (1) generates benefits that justify its costs and is not a "significant regulatory action" as defined in Executive Order 12866 or as defined in DOT's Regulatory Policies and Procedures; (2) does not have a significant economic impact on a substantial number of small entities; (3) has minimal effects on international trade; and (4) does not contain a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized as follows.

Cost-Benefit Analysis

The final rule adds passenger safety related requirements commensurate with allowing some rotorcraft to increase passenger capacity. With one exception, no part 29 rotorcraft currently being manufactured has a maximum gross weight of fewer than 7,000 pounds. As the cost per pound per mile decreases as the load approaches a rotorcraft's maximum carrying capacity, the absence of part 29 rotorcraft in the 6,000 pound to 7,000 pound range indicates that this gap will be filled more efficiently by rotorcraft certificated under part 27. This final rule permits part 27 rotorcraft to fill this gap and to provide cost savings to some manufacturers and operators. It also eliminates an applicant's need to apply for an exemption to the maximum weight requirement for a future part 27 type certificate and thereby saves between $10,000 and $18,000 in paperwork costs per eliminated exemption application. In addition, it eliminates the FAA's time and resources to review and to process the exemption application. Thus, the FAA concludes that this final rule imposes no or negligible compliance costs and will generate some cost savings.

Safety benefits will arise as manufacturers develop new, heavier part 27 rotorcraft (that will be certificated based on the most recent part 27 standards) to replace some older part 27 certificated models. The increased weight also benefits some part 27 Emergency Medical Services (EMS) rotorcraft that now must limit fuel loads and/or their effective ranges in order to carry all of the necessary medical equipment while remaining under the 6,000-pound maximum weight. Finally, the increased allowable payload weight may permit the transport of more than one victim, an important consideration for more rapid transportation when there are multiple victims and only one available EMS rotorcraft.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination finds that it will, the agency must prepare a Regulatory Flexibility Analysis (RFA) as described in the Act.

The FAA conducted the required review of this revised rule and determined that it does not have a significant economic impact on a substantial number of small entities. The revised rule is expected to produce annualized incremental cost savings of $10,000 to $18,000 per applicant. While this would be beneficial to a rotorcraft manufacturer, it does not affect either the competitiveness or solvency of any small business. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to American companies doing business in foreign markets, and foreign companies doing business in the United States.

This final rule is harmonized with the JAR and will thereby reduce differences between U.S., European, and Canadian

airworthiness standards and will reduce barriers to trade.

Federalism Implications

The regulations herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule would not have sufficient federalism implications to warrant the preparation of the Federalism Assessment.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects by any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this rule will not contain a significant intergovernmental or private sector mandate as defined by the Act.

Environmental Analysis

FAA Order 1050.1D defines actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rulemaking action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 27 of Chapter 1, Title 14 of the Code of Federal Regulations as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Revise § 27.1(a) to read as follows:

§ 27.1 Applicability.

(a) This part prescribes airworthiness standards for the issue of type certificates, and changes to those certificates, for normal category rotorcraft with maximum weights of 7,000 pounds or less and nine or less passenger seats.

* * * * *

3. Amend § 27.2 by redesignating the introductory text and paragraphs (a), (b), (c), (d) introductory text, (d)(1), and (d)(2) as paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4) introductory text, and (a)(4)(i) and (a)(4)(ii) respectively and adding a new paragraph (b) to read as follows:

§ 27.2 Special retroactive requirements.

* * * * *

(b) For rotorcraft with a certification basis established prior to October 18, 1999—

(1) The maximum passenger seat capacity may be increased to eight or nine provided the applicant shows compliance with all the airworthiness requirements of this part in effect on October 18, 1999.

(2) The maximum weight may be increased to greater than 6,000 pounds provided—

(i) The number of passenger seats is not increased above the maximum number certificated on October 18, 1999, or

(ii) The applicant shows compliance with all of the airworthiness requirements of this part in effect on October 18, 1999.

4. Amend § 27.610 by revising the section heading and by adding paragraph (d) to read as follows:

§ 27.610 Lightning and static electricity protection.

* * * * *

(d) The electrical bonding and protection against lightning and static electricity must—

(1) Minimize the accumulation of electrostatic charge;

(2) Minimize the risk of electric shock to crew, passengers, and service and maintenance personnel using normal precautions;

(3) Provide an electrical return path, under both normal and fault conditions, on rotorcraft having grounded electrical systems; and

(4) Reduce to an acceptable level the effects of lightning and static electricity on the functioning of essential electrical and electronic equipment.

5. Add § 27.805 to read as follows:

§ 27.805 Flight crew emergency exits.

(a) For rotorcraft with passenger emergency exits that are not convenient to the flight crew, there must be flight crew emergency exits, on both sides of the rotorcraft or as a top hatch in the flight crew area.

(b) Each flight crew emergency exit must be of sufficient size and must be located so as to allow rapid evacuation of the flight crew. This must be shown by test.

(c) Each flight crew emergency exit must not be obstructed by water or flotation devices after an emergency landing on water. This must be shown by test, demonstration, or analysis.

6. Revise § 27.807 to read as follows:

§ 27.807 Emergency exits.

(a) *Number and Location.*

(1) There must be at least one emergency exit on each side of the cabin readily accessible to each passenger. One of these exits must be usable in any probable attitude that may result from a crash;

(2) Doors intended for normal use may also serve as emergency exits, provided that they meet the requirements of this section; and

(3) If emergency flotation devices are installed, there must be an emergency exit accessible to each passenger on each side of the cabin that is shown by test, demonstration, or analysis to;

(i) Be above the waterline; and

(ii) Open without interference from flotation devices, whether stowed or deployed.

(b) *Type and operation.* Each emergency exit prescribed by paragraph (a) of this section must—

(1) Consist of a movable window or panel, or additional external door, providing an unobstructed opening that will admit a 19-by 26-inch ellipse;

(2) Have simple and obvious methods of opening, from the inside and from the outside, which do not require exceptional effort;

(3) Be arranged and marked so as to be readily located and opened even in darkness; and

(4) Be reasonably protected from jamming by fuselage deformation.

(c) *Tests.* The proper functioning of each emergency exit must be shown by test.

(d) *Ditching emergency exits for passengers.* If certification with ditching provisions is requested, the markings required by paragraph (b)(3) of this section must be designed to remain visible if the rotorcraft is capsized and the cabin is submerged.

§ 27.853 [Amended]

7. Amend § 27.853 in paragraph (a) by removing the word "flash" and inserting the word "flame" in its place and by removing and reserving paragraph (b).

8. Section 27.1027 is amended by redesignating paragraphs (a) through (d) as paragraphs (b) through (e); in redesignated paragraph (c)(2), by removing "(b)(3)" and adding "(c)(3)" in its place; in redesignated paragraph (d) by removing "(b)" each place it appears and adding "(c); and by adding a new paragraph (a) to read as follows:

§ 27.1027 Transmissions and gearboxes: General.

(a) The lubrication system for components of the rotor drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure lubrication during autorotation.

* * * * *

9. In § 27.1185, a new paragraph (d) is added to read as follows:

§ 27.1185 Flammable fluids.

* * * * *

(d) Absorbent materials close to flammable fluid system components that might leak must be covered or treated to prevent the absorption of hazardous quantities of fluids.

10. Revise § 27.1187 to read as follows:

§ 27.1187 Ventilation and drainage.

Each compartment containing any part of the powerplant installation must have provision for ventilation and drainage of flammable fluids. The drainage means must be—

(a) Effective under conditions expected to prevail when drainage is needed, and

(b) Arranged so that no discharged fluid will cause an additional fire hazard.

11. In § 27.1305, add a new paragraph (v) to read as follows:

§ 27.1305 Powrplant instruments.

* * * * *

(v) Warning or caution devices to signal to the flight crew when ferromagnetic particles are detected by the chip detector required by § 27.1337(e).

12. Revise § 27.1337(e) to read as follows:

§ 27.1337 Powerplant instruments.

* * * * *

(e) Rotor drive system transmissions and gearboxes utilizing ferromagnetic materials must be equipped with chip detectors designed to indicate the presence of ferromagnetic particles resulting from damage or excessive wear. Chip detectors must—

(1) Be designed to provide a signal to the device required by § 27.1305(v) and be provided with a means to allow crewmembers to check, in flight, the function of each detector electrical circuit and signal.

(2) [Reserved]

Issued in Washington, DC on August 12, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–21378 Filed 8–17–99; 8:45 am]

BILLING CODE 4910–13–M

OL

64

SS

1
5
9

AG

18

99

MI

federal register

Wednesday
August 18, 1999

Part VII

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Nationally Recognized Testing Laboratories; Fees; Reduction of Public Comment Period on Recognition Notices; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. NRTL 95–F–1]

Nationally Recognized Testing Laboratories; Fees; Reduction of Public Comment Period on Recognition Notices

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Under the requirements for nationally recognized testing laboratories (NRTLs), the Occupational Safety and Health Administration (OSHA) recognizes private sector laboratories to test and certify the safety of certain equipment or products that will be used in the workplace. Such testing and certification is required by various OSHA safety standards. These laboratories are referred to as Nationally Recognized Testing Laboratories, or NRTLs. OSHA proposes to establish fees for specific services the Agency provides to these NRTLs. Congress has authorized OSHA to charge fees for these services since 1997 in bill language in its annual appropriations bills, most recently in Public Law 105–277.

These services are: Processing applications for the initial recognition of an organization as an NRTL, or for expansion or renewal of an existing NRTL's recognition, and performing audits (post-recognition reviews) of NRTLs to determine whether they continue to meet the requirements for recognition. Since the inception of the NRTL Program in 1988, OSHA has provided these services at no charge to the NRTLs.

In addition, OSHA proposes to amend provisions of the recognition process to reduce the public comment period on the "preliminary" **Federal Register** notices that OSHA must publish concerning the recognition of an NRTL from 60 days to 30 days for initial recognition and to 15 days for expansions and renewals.

DATES: Written comments must be received on or before October 4, 1999.

ADDRESSES: Submit comments on the proposed rule in duplicate or 1 original (hardcopy) and 1 disk (5¼ or 3½) in WP 5.0, 5.1, 6.0, 6.1, 8.0 or ASCII to: Docket Officer, Docket NRTL–95-F–1, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, N.W.,Washington, D.C. 20210. The phone number for the OSHA Docket Office is (202) 693–2350. You may transmit your written comments of 10 pages or less by facsimile (fax) to the Docket Office at (202) 693–1648, provided you send an original and one (1) copy to the Docket Office thereafter. You may also submit comments electronically using the following web page address: *http://www.osha-slc.gov/e-comments/e-comments-nrtl.html*. If your submission contains attached electronic files, the files must be in WordPerfect 5.0, 5.1, 6.0, 6.1, 8.0 or ASCII. When submitting a comment electronically, please include your name and address.

Submit, in duplicate, any information not contained on disk or not provided electronically (e.g., studies, articles). Written submissions must clearly identify the issues or specific provisions of the proposal which are addressed and the position taken with respect to each issue or provision. The data, views, and arguments that you submit will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Office of Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, D.C., 20210, Telephone: (202) 693–1999, or Mr. Bernard Pasquet, Office of Technical Programs and Coordination Activities, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW, Washington, D.C., 20210, telephone: (202) 693–2110. Our web page includes information about the NRTL Program . (See http://www.osha-slc.gov/dts/otpca/nrtl/index.html or see http://www.osha.gov and select "Programs").

SUPPLEMENTARY INFORMATION:

I. Background

Many of OSHA's safety standards require equipment or products that are going to be used in the workplace to be tested and certified to help ensure they can be used safely. Products or equipment that have been tested and certified must have a certification mark on them. An employer may rely on the certification mark, which shows the equipment or product has been tested and certified in accordance with OSHA requirements. In order to ensure that the testing and certification has been done appropriately, OSHA has implemented the NRTL Program. The NRTL Program establishes the criteria that an organization must meet in order to be recognized as an NRTL.

The NRTL Program requirements are in 29 CFR 1910.7, "Definition and requirements for a nationally recognized testing laboratory." To be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) establish effective reporting and complaint handling procedures.

OSHA requires NRTL applicants (i.e., organizations seeking initial recognition as an NRTL) to provide detailed information about their programs, processes and procedures in writing when they apply for initial recognition. OSHA reviews the written information and conducts on-site assessments to determine whether the organization meets the requirements. OSHA uses a similar process when an NRTL (i.e., an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs.

The NRTL Program is an effective public and private partnership. Rather than performing testing and certification itself, OSHA relies on private sector organizations to accomplish it. This helps to ensure worker safety, allows existing private sector systems to perform the work, and avoids the need for the government to maintain facilities.

Currently, there are 16 NRTLs operating 40 sites in the U.S., Canada, and the Far East. The NRTL Program has grown significantly in the past few years, both in terms of numbers of laboratories and sites, as well as the number of test standards included in their recognition.

OSHA has devoted significant resources in the last two years to improving the management of the NRTL Program, ensuring its viability, and enhancing its credibility with the public. This has included a process improvement project; audits of all the NRTL sites; reduction of the backlog of applications for recognition, expansion, and renewals; and development of application guidelines and information about our procedures to help people understand the process of NRTL recognition. A web page on the NRTL Program is now available to provide

information about the recognized labs and the scope of their recognition, as well as a description of the NRTL Program. (See web page address in above "Contact" information.) We also have prepared a new training program for our compliance staff to increase awareness within the Agency of NRTL requirements.

The size of the NRTL Program, and the amount of work involved in maintaining it, have resulted in large costs for the Agency, both in terms of human resources and in direct costs such as travel. For example, OSHA's goal is to audit every site once a year. This involves about 40 annual visits, given the current number of sites recognized, not only to locations in the U.S. but also to many foreign locations. Time and travel costs are obviously much higher for foreign locations. Because international trade in many of the types of products OSHA requires to be tested and certified is increasing substantially, the Agency anticipates there will be more applications for laboratories or sites in locations outside the U.S. In particular, under the terms of a recent Mutual Recognition Agreement (MRA) with the European Union, a number of European laboratories are expected to submit applications for NRTL recognition.

The number of people who can be assigned to work in a particular area in OSHA, as well as the travel money that can be used, is dependent on the overall funding the Agency receives from Congress in a given year. The potential for reduced funding, leaving OSHA with inadequate money to properly implement the Program, led to discussions about the possibility of assessing fees. Having a consistent funding process related specifically to the time and travel needed to maintain the Program would help OSHA ensure that the NRTL Program can continue to function and can be perceived as a viable and credible part of OSHA's overall approach to workplace safety.

In 1995, OSHA sent a letter to the existing NRTLs regarding its plan to explore the possibility of assessing fees (Ex. 1), and received twelve responses. Nine responses were conditionally in favor of establishing fees (Exs. 2–2, 2–4, 2–5, 2–6, 2–7, 2–8, 2–9, 2–11, 2-12). The favorable responses generally were conditioned on OSHA utilizing the funds generated from the fees for the NRTL Program to improve the services provided to the NRTLs.

At a September 24, 1996, meeting with the NRTLs, OSHA released a draft **Federal Register** notice for a proposed revision of 29 CFR 1910.7 allowing the Agency to collect fees. Comments received on the September 1996 draft indicated that most of the NRTLs supported the concept of a fee schedule, although the specific approach they favored was not necessarily the one included in the notice (see, e.g., Exs. 2–13, 2–17, 2–21, 2–22, 2–24). OSHA considered all of the comments it received in developing this proposed rule. We are not going to address the specific comments received at that time in this preamble because the approach in the draft rule that was distributed is not the approach that is being proposed in this notice. However, we believe that those who commented will find that many of their concerns have been addressed in this revised approach.

OSHA has reviewed a number of legal precedents concerning the assessment of fees by Federal agencies. Based on this review, the Agency believes that it can charge fees for services it provides to users of the NRTL recognition process, i.e., the NRTLs and NRTL applicants, and does not propose, at this time, to assess fees to cover all the costs of the program.

In response to the fee issue, OSHA requested specific authority from Congress to collect and retain fees. In its Fiscal Year 1997 appropriations for OSHA, Congress authorized the Secretary of Labor to collect and retain fees for services provided to NRTLs and to use such fees to administer the NRTL Program. Congress has renewed this authorization annually.

OSHA decided to implement the improvements in the Program described above before undertaking rulemaking to establish fees. The process of implementing these improvements also allowed OSHA to better estimate the time involved in providing certain services to NRTL applicants or existing NRTLs, and the travel costs associated with onsite visits. This information helped to refine the approach being proposed. In addition, the Agency has examined legal authority issues; the practices of other Federal agencies that assess fees; and the fees of other organizations that recognize or accredit laboratories. Our findings in these areas are described below in the description of the proposed requirements and the explanation of the approach.

In addition to addressing the issue of fees, OSHA proposes to reduce the time allowed for public comment on **Federal Register** notices required under the Program. OSHA has considered a number of ways to improve the program's application handling process and believes that a reduction in the comment period is an appropriate way to help make such improvements. This proposed reduction is partly in response to the informal comments from NRTLs regarding the length of time the Agency takes to process applications. We do not believe this reduction will reduce the opportunity for public input; however, we solicit comments on this issue.

II. Discussion of Proposed Fees

A. Statutory Authority

OSHA is basing its proposed fees structure on the Office of Management and Budget's (OMB's) policies for user fees imposed by Federal Agencies. These policies are contained in OMB Circular A–25, "User Fees," dated 7/8/93. Some key portions of Circular A–25 are as follows:

—"General Policy: A user charge. * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public."

—"For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service. * * * enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public," * * * or * * * is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public."

—"* * * user charges will be sufficient to recover the full cost to the Federal Government. * * *"

OMB developed Circular A–25 in accordance with Title V of the Independent Offices Appropriations Act of 1952 (IOAA), codified at 31 U.S.C. § 9701. The criteria established by the IOAA to guide agency heads in the establishment of fees were that the fees be "fair" and be based on:

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

31 U.S.C. § 9701(b)

As discussed below, the U.S. Supreme Court has decided in two key cases that the intent of the IOAA was to require fees to be based on "value to the recipient" and not upon "public policy or interest served [or] other [relevant] * * * facts."

In a rider to OSHA's Fiscal Year 1999 appropriations, Congress specifically authorized the Secretary of Labor to collect and retain the fees proposed under this rule: "* * * the Secretary of Labor is authorized, during the fiscal year ending September 30, 1999, to collect and retain fees for services provided to Nationally Recognized Testing Laboratories, and may utilize such sums, in accordance with the provisions of 29 U.S.C. 9a, to administer national and international laboratory

recognition programs that ensure the safety of equipment and products used by workers in the workplace: * * *" P.L. 105–277 (112 STAT. 2681–343). Through this rider, OSHA has the necessary authority to retain the fees, which otherwise would be credited to the general fund of the Treasury as explained in OMB Circular A–25.

B. Legal Basis for Assessing the Fees

To determine a proper basis for assessing the fees, OSHA has reviewed a number of legal precedents and analyzed the costs and activities for the functions undertaken for the NRTL Program. The legal precedents centered on the application of the IOAA and its interpretation by federal agencies. The most pertinent precedents are two decisions by the U.S. Supreme Court, and four cases of the U.S. Court of Appeals for the D.C. Circuit.

In March 1974, the Supreme Court decided the companion cases of *National Cable Television Ass'n.* v. *United States and FCC*, 415 U.S. 336 (1974) and *Federal Power Commission* v. *New England Power Co.*, 415 U.S. 345 (1974). In *National Cable*, the Court expressed the view that an agency may charge a "fee" for services based on "value to the recipient." The Court essentially ruled out the other bases permitted in the IOAA, which, in the court's opinion, could change an assessed "fee" into the levy of a "tax." In *Federal Power Commission*, the Court held that only specific charges for specific services to specific individuals or companies may be recouped by the fees permitted by the IOAA.

The first of the Court of Appeals decisions was *National Cable Television Ass'n Inc.* v. *Federal Communications Commission* (FCC), 554 F.2d 1094 (1976). The Court of Appeals upheld the charging (by the FCC, in this case) of both an application fee and an annual fee, provided the agency makes clear which activities are covered by each of these fees to prevent charging twice for the same activity. The court acknowledged that fees based on reasonable approximations for costs of services rendered would be acceptable. The court stated the following: "It is sufficient for the Commission to identify the specific items of * * * cost incurred in providing each service or benefit * * *, and then to divide the cost among the * * * [recipients] in such a way as to assess each a fee which is roughly proportional to the "value" which that member has thereby received." Id. at 1105–06.

In *Electronic Industries Ass'n* v. *F.C.C.*, 554 F.2d 1109 (D.C. Cir. 1976), the court indicated that a fee for services may be charged for private benefits "although they may also create incidental public benefits as well." Id. at 1115. In the case of NRTLs, the services that OSHA provides to NRTLs and NRTL applicants result primarily in private benefits to these parties, as described below. In *Capital Cities Communications, Inc.* v. *F.C.C.*, 554 F.2d 1135 (D.C. Cir. 1976), the court held that a fee for services should bear a reasonable relationship to the cost to the government to provide the service.

Finally, in *Miss. Power and Light* v. *U.S. Nuclear Regulatory Comm'n* (NRC), 601 F.2d. 223 (5th Cir. 1979), the court upheld a fee for agency services. The NRC calculated its fees based upon the costs of providing the services to the private parties. OSHA is using a similar method to calculate the NRTL application and administration fees in this proposed rule.

Based in large part on the results of the foregoing six cases and on the guidelines of OMB Circular A–25, OSHA proposes to charge fees to NRTLs for specific benefits that they receive as a result of the specific services that OSHA provides them for initial or continued recognition. The fees will reflect the costs of providing these services, and the costs will be reasonably itemized to the smallest unit practical.

C. Special Benefits and Services Provided, and Fees

OSHA will establish a schedule of fees based on the "full cost" to OSHA of the activities it undertakes for NRTLs. "Full cost" is defined in Section 6d of OMB Circular A–25 [1]. To help clarify the basis for the fees in this proposed rule, the following describes how OSHA handles applications and continuing services under the NRTL Program.

When an organization submits its application, the NRTL Program staff thoroughly review it for completeness and adequacy. Each organization applies for a specific scope of recognition. This scope consists of the specific safety test standards, locations or sites, and programs for which the organization seeks recognition. OSHA has broadly grouped the activities an NRTL may perform in testing and certifying products into nine categories of "programs and procedures," or just "programs." (See 60 FR 12980, March 9, 1995)

When the NRTL Program staff determine that the application is complete and adequate, the staff perform an in-depth on-site review of the applicant's organization, programs, and facilities. Based upon the information obtained primarily through the on-site review, the staff prepare a report and recommendation. The report and the application provide the main basis for a preliminary finding on the application. OSHA publishes a notice of this finding in the **Federal Register** to allow for public comment. Following a 60-day comment period (which OSHA is proposing to modify in this notice), OSHA must publish a final decision and response to comments in the **Federal Register**. Publication makes the recognition official for successful applicants and officially denies the recognition for unsuccessful applicants.

NRTL recognition is valid for five years. During this period, OSHA program staff audit the NRTL to assure that it continues to meet the requirements for recognition. NRTLs may also on occasion request to expand their scope of recognition to include additional test standards, facilities, or programs. At the end of its initial recognition period, the NRTL may apply for renewal of its recognition. OSHA processes requests for expansion and renewal following a process similar to

---

[1] OMB Circular A–25, Section 6. General policy: A user charge, as described below, will be assessed * * *

a. Special benefits

1. * * *

2. Determining the amount of user charges to assess.

(a) Except as provided in Section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in Section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign. * * *

d. Determining full cost and market price

1. "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular No. A–11.

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) an annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

(c) The management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

that used for initial applications for recognition.

Program staff work closely with attorneys of the Department of Labor on a regular basis for both initial recognition and continuing recognition activities. These attorneys review the **Federal Register** notices. They also advise the program staff on issues and other matters that directly relate to the services covered by the fees.

In addition to application processing and audits, NRTL Program staff also perform a number of activities that are essential to the normal operation of the NRTL Program. These activities include administration of program, budgetary, and policy matters; assistance in training OSHA personnel about the program; inter-agency and international coordination; response to requests for information related to the program; and participation in meetings with stakeholders and outside interest groups. Although necessary to the continued functioning of the program, these activities are incidental to the direct services of application processing and the audits of the NRTLs. Accordingly, costs for these activities are not covered by this proposed rule.

NRTLs accrue "special benefits" from the services that OSHA renders to them. These "special benefits" are the product of OSHA's initial and continuing evaluation of their qualifications to test and certify products used in the workplace, e.g., the acknowledgment of their capability as an NRTL. The primary special benefits of NRTL recognition are the resulting business opportunities to test and certify products for manufacturers. A manufacturer then sells these products to employers, enabling them to comply with product approval requirements in OSHA standards. The services rendered by OSHA that confer these "special benefits" to NRTLs are: (1) processing of applications for initial recognition as an NRTL and for expansion and renewal of an existing NRTL's recognition, and (2) audits ("post recognition reviews"), which enable the NRTL to maintain the recognition from OSHA. As a result, OSHA proposes to charge two categories of fees.

First, the Agency will charge fees to cover the full costs of application processing. These costs consist mainly of the salary and benefits of office and field personnel, travel costs, and other direct and indirect costs necessary to the processing and related support activities. The fees will equal the estimated cost of staff time and the actual cost of travel for these activities. These activities mainly include the following: performing the office review of the application, preparing for and performing the on-site review of the organization's testing and administrative facilities, resolving findings of deficiencies in the application, drafting and finalizing the on-site review report, and preparing and publishing the Federal Register documents. OSHA will collect part of this category of fees at the time the application is submitted and the remainder following publication of the initial, i.e., preliminary, notice in the **Federal Register**.

Second, the Agency will charge fees to cover the full costs of performing the audits of the NRTL that ensure its continued compliance with the recognition requirements. These costs consist mainly of the salary and benefits of office and field personnel, travel costs, and other costs necessary to the audit and related support activities. The fees will equal the estimated cost of staff time and the actual cost of travel for those activities. These activities mainly include the following: preparing for and performing the office or on-site audit of the NRTL, drafting and finalizing necessary reports or documentation, resolving findings of deficiencies in the NRTL's operations, and reviewing and processing audit reports. OSHA will impose these fees annually or more frequently if OSHA determines it must perform more than one audit in a given year.

Many other Federal agencies charge fees for services they provide to specific recipients. The following is a list of some of these agencies, along with a citation to the regulations pertaining to the fees they charge:

FEDERAL AGENCIES THAT CHARGE FEES FOR SERVICES

Agency	Regulation
Federal Communications Commission.	47 CFR 1.1151.
Federal Maritime Commission.	46 CFR 514.21.
Environmental Protection Agency.	40 CFR 152.400.
National Voluntary Laboratory Accreditation Program (NVLAP); US Department of Commerce.	15 CFR 285.
Mine Safety and Health Administration; Department of Labor.	30 CFR 5.10.
Bureau of Indian Affairs; Department of the Interior.	25 CFR 143.4.
Food Safety and Health Services; Department of Agriculture.	9 CFR 218.21 and 391.5.
Federal Aviation Administration; Department of Transportation.	14 CFR 187.1.

With the exception of the FCC and NVLAP, the above agencies also derive their authority for charging the fees from the IOAA.

OSHA has also examined the fee schedules for other organizations that accredit or recognize testing laboratories or certification bodies. Although the fees proposed in this notice are specific to the costs to OSHA, the practices of these other organizations may be of interest to rulemaking participants.

FEES CHARGED BY VARIOUS ACCREDITATION ORGANIZATIONS

Organization	Activity	Fee (as of 3/8/99)
Standards Council of Canada—Fees for Certification Organizations.	Application fee	$15,000.
	Fees for assessments and audits	Per person on a per diem basis + travel expenses.
	Annual accreditation fee	$9,000 + a business volume fee (up to $36,000).
ANSI Accreditation for Certification Programs.	Application fee	$2,000.
	Accreditation fees	$1,200/day per professional staff time + travel expenses.
	Continuing accreditation	$1,200/day for professional staff time related to audits + travel expenses; plus, Percent of gross revenues related to the certification program, up to $40,000.
National Voluntary Laboratory Accreditation Program (NVLAP).	Application fee	$500.
	Assessment fee (for accreditation and every two years).	per program/field, $1,600 to $3,000 or variable.

FEES CHARGED BY VARIOUS ACCREDITATION ORGANIZATIONS—Continued

Organization	Activity	Fee (as of 3/8/99)
	Annual support fee	per program/field, $3000 to $3,925 less $2,200 for more than one field.
	Annual proficiency testing fee	per program/field, $0 to $5,405 or variable.
American Association for Laboratory Accreditation (A2LA).	Application fee	$800.
	Assessment fee (for accreditation and every two years).	Deposit of $3,000 + $1,500/extra field/lab, actual costs billed at $750/day + travel expenses (fee also paid for surveillance visit in 2nd year).
	Annual fee	$1,100 for first field/lab, less for two or more fields/labs.
American Industrial Hygiene Association—Laboratory Quality Assurance Programs.	Application fee	$250.
	Site visit fee	$675/day or $2,400 outside North America + expenses.
	Annual fee (also due with application).	$300/program ($150/program with application after June 30)
	Proficiency analytical testing program fee.	program/sample specific, also based on # of samples, $86 to $1,800.

III. Estimated Program Costs

Until now, OSHA has not accounted separately for the costs of the NRTL Program. The personnel and other costs associated with performing activities and functions related to the Program involve a number of different offices throughout the Department of Labor. In preparing the proposed fee schedule presented in this notice, OSHA has evaluated the total resources that it has committed to the NRTL Program overall and has then estimated the costs that are involved solely with the approval and periodic review functions. It is these costs alone that OSHA seeks to recover through its proposed fees. Personnel costs are the wages, salary, and fringe benefit costs of the staff positions involved and the number of full time equivalent (FTE) personnel devoted to the NRTL approval and review activities. These estimates also include travel and other costs of these activities. The Agency believes these estimates are fair and reasonable.

Based on the total estimated costs and the total estimated FTE, OSHA has calculated an estimated equivalent cost per hour (excluding travel). This equivalent cost per hour includes both the direct and indirect costs per hour for "direct staff" members, who are the staff that perform the application, on-site, and legal reviews and the other activities involved in application processing and audits. Direct costs are expenses for direct staff members. Indirect costs are expenses for support and management staff, equipment, and other costs that are involved in the operation of the program. Support and management staff consists of program management and secretarial staff. Equipment and other costs are intended to cover items such as computers, telephones, building space, utilities, and supplies, that are necessary or used in performing the services covered by the proposed fees. Although essential to the services provided, these indirect costs are not readily linked to the specific activities involved in application processing and audits and, as explained later, are therefore allocated to the activities based on direct staff costs.

Figure 1 is an itemization of the estimated costs and the equivalent cost per hour calculated. OSHA believes that the costs shown fairly reflect the full cost of providing the services to NRTLs, but OSHA mainly uses these costs to illustrate how the fees will be calculated.

FIGURE 1.—CURRENT ESTIMATED ANNUAL COSTS OF NRTL PROGRAM

Cost description	Est. FTE	Aver. cost per FTE (including fringe)	Total est. costs
Direct Staff Costs	4.2	$83,860	$352,200
Travel	na	na	40,000
Indirect Staff & Other Costs	na	na	76,300*
Total Est. Program Costs			468,500
Avg. direct staff cost/hr ($352,200 ÷ 4.2 FTE (2,080) hours)			40
Equivalent avg. direct staff cost/hr ($428,500 ÷ 4.2 FTE hours) (includes direct & indirect costs)			49

*This amount consists of $29,800 of indirect staff costs and $46,500 for equipment and other costs.

The use of an "equivalent average direct staff cost per hour" measure is a convenient method of allocating indirect costs to each of the services for which OSHA will charge fees. The same result is obtained if direct staff costs are first calculated and then indirect costs are allocated based on the value, i.e., dollar amount, of the direct staff costs, which is an approach that is consistent with Federal accounting standards. To illustrate, assume a direct staff member spends 10 hours on an activity; the direct staff costs would then be calculated as follows:

Direct staff costs = 10 hours × $40/hour = $400.

The $40/hour is the direct staff cost/hour amount shown in Figure 1. The indirect costs would be allocated by first calculating the ratio of indirect costs to direct staff costs, again using the costs shown in Figure 1. This ratio would be as follows:

Indirect costs/direct staff costs = $76,300/$352,200 = 0.217.

Next, the indirect costs would be calculated based on the $400 estimate of direct staff costs:

Indirect costs = $400 × 0.217 = $87.

Finally, the total costs of the activity are calculated:

Total costs = direct staff costs + indirect costs = $400 + $87 = $487.

Taking into account the rounding shown in Figure 1, the actual amount calculated would be $490.

After estimating program costs, the Agency then estimated the time it spends on specific activities or functions. These estimates were performed, in part, for the information collection package for the NRTL Program submitted to OMB in September 1997 under the Paperwork Reduction Act. OSHA calculated time estimates for each major service category. These categories are: initial applications, expansion and renewal applications, and audits. OSHA further divided each category into the major activities performed and estimated the staff time and travel costs for each of these activities. The Agency then calculated the cost of each major activity using the time estimates, the equivalent costs per hour, and the estimate of travel costs. These costs then serve as the basis for the fees later shown in the proposed fee schedule. Examples of the calculations are shown in Figures 2, 3, and 4.

FIGURE 2.—ESTIMATED COSTS FOR INITIAL APPLICATION

Major activity	Average hours	Average costs*
Initial Application Review		
Staff time: (includes review by office and field staff)	80	$3,924
On-Site Assessment—first day		
Staff time: (includes 16 hours preparation, 4 hours travel, 8 hours at site)	28	1,373
travel:		670
Total (per site, per assessor)		2,043
On-Site Assessment—addnl. day		
Staff time	8	392
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		462
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff)	160	7,848

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION OR RENEWAL APPLICATION

Major Activity	Average Hours	Average Costs*
Initial Application Review (expansion)		
Staff time: (includes review by office and field staff)	32	$1,570
(Note for renewals: 2 hours, i.e. $98, are allotted for processing the NRTL's request)		
On-Site Assessment—first day		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site)	20	981
Travel:		670
Total (per site, per assessor)		1,651
On-Site Assessment—addnl. day		
Staff time	8	392
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		462
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff)	88	4,316

FIGURE 4.—ESTIMATED COSTS FOR ON-SITE AUDIT

Major Activity	Average Hours	Average Costs*
Pre-site Review		
Staff time: (field staff only)	8	$392
On-Site Audit—first day		
Staff time: (includes 4 hours travel)	12	589
Travel:		670
Total (per site, per assessor)		1,259
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff)	16	785
Total costs		**2,436

* Average costs for staff time equal average hours × equivalent average direct staff cost/hr ($49)

** Based on a one day audit. The costs for any additional days are the same as the per-day costs for an assessment.

In deriving the fee amounts shown in the fee schedule, OSHA has generally rounded the costs shown in Figures 2, 3, and 4, up or down, to the nearest $50 or $100 amount.

OSHA believes that its proposed fee schedule, shown in Table A, accurately reflects costs to the Agency for the staff time and travel involved in performing and administering the application processing and auditing activities. The amounts shown in the proposed schedule reflect the Agency's current reasonable estimation of the costs involved for the services rendered. As previously mentioned, OSHA is not attempting to recover the entire costs of the NRTL Program through the proposed fees but only the costs of providing these services. OSHA will publish the fee schedule in the **Federal Register** with the final rule.

IV. Proposed New Paragraph

OSHA proposes a new paragraph "(f) Fees" under 29 CFR 1910.7 to provide for the assessment and payment of fees for certain services rendered to NRTLs and NRTL applicants. This new paragraph consists of five parts, which provide the general framework that OSHA will use to calculate, charge, and collect the fees. OSHA will provide the specific details for calculating, charging, and collecting the fees through appropriate OSHA Program Directives, consistent with the framework laid out in this notice.

A. Obligation to Pay and Fee Assessment

OSHA proposes that the first part of paragraph (f) would read as follows:

(1) Each applicant for NRTL recognition and each existing NRTL must pay fees for services provided by OSHA. OSHA will assess fees for the following activities:

(i) Processing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices; and

(ii) Audits of sites.

The Agency proposes that applicants seeking OSHA recognition (i.e., NRTL applicants) and organizations that OSHA has recognized as NRTLs must pay fees required for the specific services that OSHA provides to them. As previously described, the services for which the Agency would charge fees are: (1) processing of applications for initial recognition, expansion of recognition, or renewal of recognition, and (2) audits, i.e, post-recognition on-site or office reviews. The activities involved in providing these services have already been described in general, and are described in more detail later in this notice.

NRTL applicants would pay fees related only to initial application processing. NRTLs would pay fees for applications for expansions and renewal of recognition and for audits of the sites they use for their NRTL operations. Typically, OSHA audits only the sites it has recognized for an NRTL and contemplates assessing fees mainly for on-site audits of these sites. However, the Agency allows NRTLs that have appropriate controls to use non-recognized sites, such as testing sites of other laboratories or even manufacturers, to conduct testing or other activities necessary in certifying products. OSHA may need, for good cause, to audit such sites to determine whether the NRTL or the site properly controls the NRTL-related activities. For example, OSHA may need to audit a manufacturer to determine how well it controls the NRTL's certification mark or maintains production or quality controls. NRTLs would pay for these "special" audits and would be billed accordingly.

B. Fee Calculation

OSHA proposes that the second part of paragraph (f) would read as follows:

(2) The fee schedule established by OSHA reflects the estimated cost of performing the tasks and functions for each activity. OSHA calculates the fees based on the average time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and an estimate of the average costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = Average Hours to Complete the Activity × Staff Costs per Hour + Travel Costs.

Each activity represents tasks and functions that OSHA performs to accomplish a particular phase of the service the Agency provides to the recipients (i.e., NRTLs or NRTL applicants). OSHA would compute the fees on the basis of the average time spent on each task or function. This will simplify the accounting for the NRTL and for OSHA.

The tasks and functions for which OSHA currently plans to charge a fee are: initial, expansion, and renewal applications; on-site assessment (per person, per site—first day) and on-site assessment (per person, per site—each additional day); review and evaluation (per standard)—initial and expansion applications; final report/**Federal Register** notice—initial and expansion or renewal applications; on-site audit (per site) and office audit (per site); and miscellaneous. The fee for each task or function—which equals the estimated cost of the work involved—would equal the average estimated staff time to perform the work multiplied by an equivalent staff cost per hour, plus an estimate of average travel costs for on-site assessment or audit activities. Figure 1 describes how the equivalent staff cost per hour is derived.

OSHA would include as direct and indirect costs the estimated expenses described in Section III above.

C. Annual Review of Fee Schedule and Issuance

OSHA proposes that the third part of paragraph (f) would read as follows:

(3) OSHA will review costs and estimates annually and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated costs for the NRTL Program. If a change is warranted, OSHA will follow the schedule in paragraph (f)(4) of this section. OSHA will issue all fee schedules in the **Federal Register**. Once issued, a fee schedule remains in effect until it is superseded. Any member of the public may request a change to the fees included in the current fee schedule. Such a request must include appropriate documentation in support of the suggested change.

The first proposed fee schedule is set forth in Table A. Once issued, the fee schedule would remain in effect until it is superseded by another schedule. OSHA would annually review the costs and estimates of the program to determine whether any changes to the fees are warranted. In addition, OSHA would consider requests for changes to the fee schedule that it receives from the public. In performing any review, OSHA will apply the formula established in this regulation to the current estimated costs for the program to determine whether any changes to the fee schedule are warranted. If change is warranted, OSHA would publish a notice to provide the NRTLs and other members of the public an opportunity to comment on such changes. The Agency would follow the implementation schedule shown in paragraph (f)(4) of this proposed rule. OSHA would issue the initial and all subsequent fee schedules in the **Federal Register**. In addition, OSHA would provide more specific details regarding implementation of the fees proposed in this rule through appropriate program directives.

D. Fee Implementation

OSHA proposes that the fourth part of paragraph (f) would read as follows:

(4) OSHA will implement fee assessment, collection, and payment as follows:

Approximate dates	Action required
Application Fees	
Time of application.	Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received.
Publication of preliminary notice.	Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due.s0
Audit Fees	
November 1 ...	OSHA will publish proposed new Fee Schedule in the **Federal Register**, if OSHA determines changes in the schedule are warranted.
November 16	Comments due on the proposed new Fee Schedule.
December 15	OSHA will publish the final Fee Schedule in the **Federal Register**.
January 1	OSHA will bill each existing NRTL for the audit fees shown in the Fee Schedule, including estimated travel costs.
February 1	NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid.
February 15 ...	OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee.
March 1	OSHA will publish a notice in the **Federal Register** to revoke recognition for NRTLs that have not paid audit fees for the year.

We discuss application fees under paragraph E below and under Fee Schedule and Description of Fees, Section V of this notice. OSHA would assess an applicant the fees in effect on the submission date of the application.

Regarding the remainder of the schedule, OSHA needs approximately 30 days after the close of the government fiscal year (GFY), September 30, to obtain the estimates and costs for its annual review of the fee schedule. Therefore, approximately on November 1 of each year, when warranted, OSHA would publish a proposed new Fee Schedule, including a report on the estimated costs that are the basis of the fees. The period for comments would be no less than 15 calendar days. Approximately 30 days thereafter, OSHA would officially issue the Fee Schedule in the **Federal Register**.

In January of each year, OSHA would bill each NRTL for the appropriate audit fee shown in the Fee Schedule in effect at the time the bill is mailed. OSHA anticipates that most of the bills would be for on-site audits. The Agency would include the appropriate supplemental amounts for travel outside the 48 contiguous states, if applicable. The NRTL would be automatically assessed the late fee, shown in the Fee Schedule, if OSHA does not fully receive the amount billed within 30 days. Fifteen days thereafter, OSHA would also issue a letter notifying the NRTL of the failure to pay the fees for the audit and requesting immediate payment, including a late fee. If the NRTL fails to fully pay those fees within 15 days of the issuance of the letter, OSHA would publish a notice in the **Federal Register** announcing its intent to revoke the NRTL's recognition. OSHA would then proceed with permanent revocation of the NRTL's recognition. In revoking recognition due to non-payment of fees, OSHA would follow the procedures described in this paragraph and not those under II.E of Appendix A to 29 CFR 1910.7.

OSHA would bill the NRTL separately for additional audits of a site or for any "special" audits. OSHA would bill the NRTL for these fees prior to the commencement of such an audit and would follow the same collection process here as described above for a regular audit. OSHA would refund the audit fee for any audit, whether or not annual, that it does not perform. OSHA would follow similar collection procedures for any additional or special assessment that it must perform in connection with an application.

E. Details for Payment

OSHA proposes that the fifth and last part of paragraph (f) would read as follows:

(5) OSHA will provide the details regarding how to pay the fees through appropriate OSHA Program Directives.

For application processing, OSHA anticipates that it will bill the NRTL applicant or NRTL for balance of fees due, including actual travel expenses, at the time the preliminary notice is published; the Agency will also refund any balances due at that time. Also, for expansions and renewals, applicants would not pay the assessment fee at time of application, but OSHA would bill an applicant for these fees if it determines an assessment is necessary. In such cases, OSHA will not begin the assessment until fees are received. For audits, additional days of audit time will be billed after an audit. Also, any difference between actual travel expenses and the travel amounts in the fee schedule will be billed or refunded to the NRTL. For applications and audits, any fees that are not paid when due would result in cancellation of application or revocation of recognition, as appropriate. OSHA also anticipates that all fees must be paid in U.S. dollars by certified check or money order drawn on a U.S.-based institution or organization. The fee schedule would include appropriate details about fee payments.

Additionally, the Agency plans to implement the fees 30 calendar days after the effective date of this rule. Any application received by OSHA on or after that date will be subject to the fees. Also, any pending application (i.e., an application that OSHA has not yet completed processing) on this effective date will be subject to the fees for the activities that OSHA has not yet commenced. OSHA would bill applicants, accordingly.

V. Fee Schedule and Description of Fees

OSHA proposes the following fee schedule:

TABLE A.—FEE SCHEDULE; NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTLP)

Fee Schedule (Effective _____*)

Type of Service	Fee Category (per application unless noted otherwise)	Fee Amount
Application Processing	Initial Application Fee [1]	3,900
	Expansion Application Fee [2]	1,550
	Renewal Application Fee [2]	100
	Assessment Fee—Initial Application (per person, per site—first day) [3, 4, 8].	2,050

TABLE A.—FEE SCHEDULE; NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTLP)—Continued

Fee Schedule (Effective _____*)

Type of Service	Fee Category (per application unless noted otherwise)	Fee Amount
	Assessment Fee—Expansion or Renewal Application (per person, per site—first day)[3, 4, 8].	1,650
	Assessment Fee (per person, per site—each addnl. day)[3, 4, 8] ...	450
	Review & Evaluation Fee (per standard)[5] (for initial or expansion applications).	50
	Final Report/Register Notice Fee—Initial Application[5]	7,850
	Final Report/Register Notice Fee—Expansion or Renewal Application[5].	4,300
Audits	On-site Audit Fee (per person, per site—one day)[6, 8] (each additional day is billed at $450 per day).	2,450
	Office Audit Fee[6]	400
Miscellaneous	Staff Costs Fee (per day)[7]	400
	Late Payment Fee	50

Notes:

[1] Only NRTL applicants must pay the Initial Application Fee. These fees must be included with the application.

[2] An NRTL must pay the Expansion Application Fee for each request to expand its recognition. An NRTL must pay the Renewal Application Fee for its initial renewal request or for any notification to certify its continuing compliance. These fees must be included with the application.

[3] An NRTL applicant must pay the first day and the additional day Assessment Fees. These fees must be included with the application. For expansion and renewal applications, OSHA will bill the NRTL for the appropriate Assessment Fees if an assessment is necessary. The NRTL must pay the fee before OSHA commences any assessment activities.

[4] The appropriate supplemental fee must be included for sites located outside the 48 contiguous U.S. states (see Supplemental Travel Costs table). OSHA will assess actual travel costs and actual number of assessment days in the bill mentioned in note 5. See note 8 for possible refund of Assessment Fees.

[5] OSHA will bill NRTL applicants and NRTLs for the Review and Evaluation and the appropriate Final Report/Register Notice Fees at the time it publishes the preliminary FEDERAL REGISTER notice. OSHA will cancel applications if payment is not received when due.

[6] OSHA will bill the NRTL annually for the audit fee (on-site or office, as deemed necessary) and will include the appropriate supplemental fee for sites located outside the 48 contiguous U.S. states (see Supplemental Travel Costs table). OSHA will revoke the NRTL's recognition for failure to pay an audit fee. OSHA will assess actual travel costs after any on-site audit.

[7] Current estimated equivalent staff costs per hour = $49.

[8] Refund of Fees: Except for the Assessment and On-site Audit Fees, OSHA will not refund any fees after it receives payment. Assessment and On-site Audit Fees will be refunded as follows:

Refund = 100% of Assessment Fee paid, for withdrawn applications, if preparation for on-site not started, or OSHA does not perform assessment.

Refund = 100% of Assessment Fee paid less Staff Costs Fee, for withdrawn applications if only preparation for on-site started.

Refund = 0% of Assessment Fee paid, if travel for on-site visit commences

Refund = 100% of On-site Audit Fee paid, if OSHA does not perform audit (even if preparation for on-site started).

Refund = 0% of On-site Audit Fee paid, if travel for on-site visit commences.

* Applicants must pay the application fees in effect on the date it submits the application. NRTLs must pay the audit fee in effect on the date OSHA sends the bill for the audit. [Note: for the initial fee schedule, any pending application (i.e., an application that OSHA has not yet completed processing) on this effective date will be subject to the fees for the activities that OSHA has not yet commenced.]

The fee schedule shows the current activities for which OSHA plans to charge fees. However, the Agency may find, after it has gained experience charging the fees or based upon suggestions it receives, that it may be better to further break down or even combine some fee categories. OSHA would give the public an opportunity to comment on any such changes. However, these changes would merely reapportion costs or further detail the fees; they would not apply to different services than those described in this proposed rule. In evaluating any changes to a fee schedule, OSHA would also consider the following in determining the fees it needs to charge for its services: (1) actual expenditures (direct and indirect) of the most recently completed government fiscal year for rendering the services for which fees will be charged, and (2) estimated costs (direct and indirect) of the upcoming government fiscal year for rendering the services for which fees will be charged.

OSHA proposes that an organization applying for either an initial NRTL recognition or a renewal must include the application fee and on-site review ("assessment") fee with the application. Applications received solely for an expansion of NRTL recognition would include only the application fee. OSHA would bill the NRTL for the assessment fee if it must perform an on-site review for the expansion request. The Agency would not perform the review until it receives the assessment fee. This would ensure that OSHA's costs will be reimbursed, regardless of how the application process turns out. If an applicant withdraws its application prior to commencement of on-site assessment activities, the Agency would refund any on-site assessment fee it has collected. However, if OSHA has commenced preparation for the on-site visits, it would refund only a portion of the assessment fee. The amount refunded would equal the assessment fee collected less the daily assessor rate (currently, 8 hours × $49/hr, rounded to $400 in the fee schedule). The Agency would not refund the assessment fee if the on-site visit had commenced. Also, OSHA would bill the organization for the balance of the fees at the time of publication of the initial **Federal Register** notice.

The following is a description of the tasks and functions currently covered by each type of fee category, e.g., application fees, and the basis used to charge each fee.

Application Fees: This fee would reflect the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. The application review does not include a review of the test standards requested, which is reflected in the review and evaluation fee. Application fees would be based on average costs per type of application. OSHA plans to use average costs since the amount of time spent on the application review does not vary greatly by type of application. This is

based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that most applicants follow the application guide that OSHA provides to them.

Assessment Fees: This fee would be different for initial and for expansion or renewal applications. It is based on the number of days for staff preparatory and on-site work and related travel. Three types of fees are shown, and each one would be charged per site and per person. The two fees for the first day reflect time for office preparation, time at the applicant's facility, and an amount to cover travel in the 48 contiguous states. A supplemental travel amount (to be included with the fee schedule) would be assessed for travel outside this area. These travel amounts are only estimates for purposes of submitting the initial fees. The applicant or NRTL would be billed actual expenses, based on government per diem and travel fares. Any difference between actual travel expenses and the travel amounts in the fee schedule will be reflected in the final bill or refund sent to the applicant or NRTL.

Similar to the application fee, the office preparation time generally involves the same types of activities. Actual time at the facility may vary, but the staff devote at least a full day for traveling and for performing the on-site work. The fee for the additional day reflects time spent at the facility and an amount for one day's room and board.

Review and Evaluation Fee: This fee would be charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent in the office review of an application varies mainly in accordance with the number of test standards requested by the applicant. The fee would be based on the estimated time necessary to review each standard to determine whether it is "appropriate," as defined in 29 CFR 1910.7, and whether it covers equipment for which OSHA mandates certification by an NRTL. The fee also covers time to determine the current designation and status (i.e., active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. Furthermore, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. The current estimated average review time per standard is one hour.

Final Report/Register Notice Fees: Each of these fees would be charged per application. The fee would reflect the staff time to prepare the report of the on-site review (i.e., assessment) of an applicant's or an NRTL's facility. The fee also reflects the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received due to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant.

Audit (Post-Recognition Review) Fees: These fees would reflect the time for office preparation, time at the facility and travel, and time to prepare the audit report of the on-site audit. A separate fee is shown for an office audit conducted in lieu of an actual visit. Each fee is per site and does not generally vary for the same reasons described for the assessment fee and because the audit is generally limited to one day. As previously described, the audit fee would include amounts for travel, and, similar to assessments, OSHA will bill the NRTL for actual travel expenses.

Miscellaneous Fees: The sample fee schedule only shows the average cost for one full day of staff time. OSHA would use this fee primarily in cases of refunding the assessment fee. OSHA will also charge a fee for late payment of the annual audit fee.

The amount for the late fee is based on 1 hour of staff time.

VI. Reduction of Public Comment Period

OSHA proposes to amend provisions in Appendix A to 29 CFR 1910.7 to reduce the 60-day comment period currently required for the "preliminary" **Federal Register** notices. "Preliminary" refers to the first of the two notices that OSHA must publish to initially recognize an organization as an NRTL, or to expand or renew an NRTL's recognition. The notice is termed preliminary since it announces OSHA's "preliminary finding" on an initial, expansion, or renewal application. In recent years, OSHA has received few or no comments on the preliminary notices. The few comments received, even when substantive, could have been prepared and submitted in much less than 60 days.

Regarding expansions, NRTLs must routinely adopt new test standards for the products that are within their testing and certification capability. Many of the new test standards include new or additional tests to meet new or revised national or international safety criteria or requirements, and supersede those for which OSHA has already recognized the NRTL. As a result, the NRTL must often apply to OSHA to "expand" its recognition as an NRTL to enable it to use those new test standards. While the NRTL may "expand" its recognition primarily to attain or maintain an economic benefit, timely recognition of those new test standards for the NRTL could also affect safety in the workplace. The shorter periods would speed up approval of those expansions.

Also in support of the shorter periods, **Federal Register** notices are currently accessible to the public through the Office of the Federal Register web site on the day they are published. Given the rapid telecommunication (e.g., Internet, electronic mail, fax) capabilities that now exist throughout the world, comments or requests for an extension of the comment period can be filed in much less time than 60 days. Therefore, OSHA proposes to amend the provisions in Appendix A to provide a 30-day comment period for applications for initial recognitions as an NRTL. This period is consistent with that provided for the Agency's rulemaking notices.

OSHA also proposes to amend Appendix A to provide a 15-day comment period for requests by an NRTL for expansion or renewal of its recognition. The shorter period reflects the nature and scope of the Agency's evaluation of these requests and the anticipated issues that such requests will present to anyone who believes that the NRTL's request affects them. OSHA does not view either of the shorter periods as a way to limit comments, since reviewers of the notice can always request an extension of the comment period if they need more time for presenting any comments. OSHA will include a statement regarding such extensions in the preliminary notices.

VII. Preliminary Economic Analysis

Executive Order 12866 and the Regulatory Flexibility Act require Federal agencies to analyze the cost, and other consequences and impacts, of proposed and final rules. Consistent with these requirements, OSHA has prepared this preliminary economic analysis to accompany a proposal by OSHA that would allow the Department of Labor to charge and retain fees for services provided to Nationally Recognized Testing Laboratories (NRTLs). The analysis includes a description of the industry, an estimation of the costs of compliance, and an evaluation of the economic and

other impacts of the proposed rule on firms in this sector. The analysis also examines the costs and impacts of the proposal on affected small entities, as defined by the Small Business Administration.

Affected Industry

The standards adopted and mandated in OSHA regulations stipulate that certain equipment and materials used in the workplace meet minimum criteria for performance or safety. In 29 CFR Parts 1910 (governing hazards in general industry) and 1926 (governing hazards in the construction industry), there are more than 160 paragraphs that require certain equipment to be either safety tested, listed, or approved in order for that equipment to be used in the workplace. Table 1 provides a listing of the types of equipment that require testing, listing or approval by NRTLs. The requirements to test, list or approve equipment are necessary to ensure that employees use appropriate safe equipment [2]. Although it is ultimately the employer's responsibility to provide safe equipment, few, if any, have the technical capabilities to test items such as electrical conductors and equipment, the fire resistance properties of materials, the lifting capacity of scaffold hoists, etc., for safety.

Table 1. Categories of Equipment/Materials Required by Various Provisions in OSHA's Standards to Be Certified by an NRTL.

Electrical Conductors or Equipment
- Automatic Sprinkler Systems
- Fixed Extinguishing Systems (Dry chemical, water spray, foam or gaseous agents)
- Fixed Extinguishing Systems Components and Agents
- Portable Fire Extinguishers
- Automatic Fire Detection Devices and Equipment
- Employee Alarm Systems
- Self-Closing Fire Doors
- Fire (B) Doors
- Windows (Frames)
- Heat Actuated (Closing) Devices (Dip Tanks)
- Exit Components
- Spray Booth Overspray Filters
- Flame Arresters, Check Valves, Hoses (Transfer Stations), Portable Tanks, and Safety Cans—Flammable Combustible Liquids)
- Pumps and Self-Closing Faucets (for Dispensing Class I Liquids)
- Flexible Connectors (Piping, Valves, Fittings)
- Service Station Dispensing Units (Automotive, Marine)
- Mechanical or Gravity Ventilation Systems (Automotive Service Station Dispensing Area)
- Automotive Service Station Latch—Open Devices for Dispensing Units
- New Commercial and Industrial LPG Consuming Appliances
- Flexible Connectors (Piping, Valves, Fittings)—LPG
- Powered Industrial Truck LPG Conversion Equipment
- LPG Storage and Handling Systems (DOT Containers, Cylinders)
- Automatic Shut-off Devices (Portable LPG Heaters Including Salamanders)
- LPG container assemblies (non-DOT) for interchangeable installation above or under ground.
- Fixed electrostatic apparatus and devices (coating operations).
- Electrostatic hand spray apparatus and devices.
- Electrostatic fluidized beds and associated equipment.
- Each appurtenance (e.g., pumps, compressors, safety relief devices, liquid-level gauging devices, valves and pressure gauges) in storage and handling of anhydrous ammonia.
- Gasoline, LPG, diesel, or electrically powered industrial trucks used in hazardous atmospheres.
- Acetylene apparatus (torches, regulators or pressure-reducing valves, generators [stationary and portable], manifolds).
- Acetylene generator compressors or booster systems.
- Acetylene piping protective devices.
- Manifolds (fuel gas or oxygen)—separately for each component part or as assembled units.
- Scaffolding and power or manually operated units of single-point adjustable suspension scaffolds.
- Hoisting machine and supports (Stone setters' adjustable multiple-point suspension scaffold).
- Hoisting machines (Two-point suspension; Masons' adjustable multiple-point suspension scaffold).

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 1997.

A product testing lab tests equipment in accordance with test criteria, such as those standards established by Underwriters Laboratories (UL), Factory Mutual Research Corporation (FMRC), the American National Standards Institute (ANSI), or the American Society for Testing and Materials (ASTM). These standards typically contain requirements concerning the design specifications of the equipment, the specific physical tests to be performed, the criteria for passing these tests, etc. The development of a product test standard for a particular type of product is a deliberate, lengthy, and expensive process that involves a team of engineers and scientists. In addition, test standard development is a dynamic process in which test standards are constantly revised. For example, UL generally reviews each of its test standards at least once every 3 years. Further, at any point in time, between 10 and 20 percent of the UL test standards have been changed during the preceding 6 months. In light of this effort and expense, very few organizations develop their own product test standards.

Independent testing labs are entities that are separate from any manufacturer, trade association, or equipment vendor. They typically test a variety of products or substances within one or more general testing disciplines (e.g., electrical, thermal, mechanical) for many clients, such as manufacturers, trade associations, physicians, and state agencies. Most of the smaller labs specialize in testing specific types of products within one or two general testing disciplines. Even the larger testing labs tend to specialize within one or two general testing disciplines and do not test every type of product within a general testing discipline.

According to the 1992 Census, there are approximately 4,704 independent testing labs in the United States, of which 4,540 are profit making and 164 are not-for-profit (see Table 2). Of the 4,704 testing labs, 1,776 perform chemical or biological testing [3] and about 2,928 concentrate on product testing [1]. The second category of testing labs performs such types of tests as electrical resistance or capacity, fire resistance of materials, materials strength, acoustic and vibration testing, etc. Some of these testing labs will be affected by the proposed rule. Total combined receipts for taxable and non-taxable establishments were $5.13 billion in 1992. Not-for-profit establishments represent 3.4 percent of the total number of testing establishments and 7.2 percent of total revenues.

[2] A substantial amount of equipment tested is used in situations other than those in which OSHA has sole interest. As one example, electrical conductors and equipment installed in buildings must conform with the state and local building code, the National Electrical Code, and any requirements established by the property insurer. In addition, manufacturers have products examined by testing laboratories in order to meet the demands of their product liability insurers as well as to improve the product. Thus, OSHA is not the only organization concerned about the safety of many of these products.

[3] Biological and chemical testing labs perform such tests as chemical composition of substances, blood tests, etc., and would not be affected by the proposed rule.

TABLE 2.—CHARACTERISTICS OF TESTING LABORATORIES

	Number of firms	Number of establishments	Number of employees	Total receipts ($ million)	Percent receipts[b] from testing
Taxable Establishments	3,513	4,540	70,462	$4,764	94.47
Non-Taxable Establishments	[a]135	164	6,256	371	90.13

Source: US Department of Commerce. 1992 Census of Service Industries. SC92–S–1. February 1995.
(a) Calculated based on the ratio of non-taxable firms to establishments in SIC 873.
(b) Other sources of receipts for taxable and non-taxable labs include physical or biological research and development, engineering consulting and design, and contributions (tax-exempt labs only).

By 1992, the testing industry increased by 40 percent, from a total of 3,458 testing labs in 1987; there are several reasons for this growth. First, as technology grows more complex, fewer personnel within the equipment manufacturing organization have the technical expertise to certify the quality of the finished product, i.e., fewer people in a given organization have the ability to perform the overall product certification function. Product testing laboratories can help to provide this quality assurance function. Second, the increase in product liability suits has encouraged manufacturers to take additional steps to verify the safety characteristics of their products. Third, more information is now being sought on product toxicity [2].

The testing industry employs 76,718 workers. Small establishments with one to nine employees represent 3,002 establishments (64 percent of all establishments), but collectively employ only 11,095 employees (14 percent of all employees).

The proposed rule contains requirements for the payment of fees for services provided by OSHA to the NRTLs. The two distinct groups of testing labs that will be affected by the proposed rule are: (1) testing labs that will seek acceptance by OSHA as "nationally recognized testing labs" for particular types of equipment testing, listing, and approval required under Part 1910.7, and (2) existing NRTLs wishing to retain their eligibility for testing and certification of workplace equipment and/or to expand their NRTL program. Testing labs that do not seek OSHA acceptance will not be affected by the proposed rule and will, therefore, incur no costs of compliance.

In 1998, there were 17 testing laboratories that had NRTL status and that operated 40 testing facilities (sites). Table 3 lists the laboratories and the number of sites for these labs. Both domestic and foreign testing laboratories may be affected by this proposal. The Canadian Standards Association (CSA) is a product testing lab that is Canadian-owned and operated and is the only foreign testing lab that has, to any significant degree, entered the American product safety testing market. CSA certification is accepted by some state and local building code authorities.

TABLE 3.—NATIONALLY RECOGNIZED TESTING LABORATORIES (NRTLS)

Testing laboratory	Number of sites
1. American Gas Association Laboratories (AGA)	2
2. Applied Research Laboratories (ARL)	1
3. Canadian Standards Assocaition (CSA)	6
4. Communication Certification Laboratory (CCL)	1
5. Detroit Testing Laboratory (DTL)	1
6. Electro-Test, Inc. (ETI)	2
7. Entela, Inc. (ENT)	2
8. Factory Mutual Research Corporation (FM)	2
9. Intertek Testing Services NA, Inc. (ITS)	8
10. MET Laboratories (MET)	1
11. National Technical Systems	1
12. NSF International	1
13. SGS U.S. Testing Co., Inc. (SGS)	2
14. Southwest Research Institute (SwRI)	1
15. TUV Rheinland of North America, Inc. (TUV)	1
16. Underwriters Laboratories (UL)	7
17. Wyle Laboratories, Inc. (WL)	1
TOTAL	40

Source: US Department of Labor, OSHA, Office of Regulatory Analysis, 1998.

Costs

This section presents preliminary estimates of the costs that will be incurred by firms to come into compliance with the proposed rule for NRTL fees. These costs do not represent new costs to the economy; instead, they represent a new method of paying for the costs of the NRTL certification program. Today, these costs are paid by taxpayers as part of OSHA's budget. This proposal would transfer the payment of these costs to the NRTLs themselves and NRTL applicants. OSHA welcomes comments on the preliminary costs presented and assumptions used in this Preliminary Economic Analysis.

Testing laboratories participating in the OSHA program will be subject to costs for two types of services: (1) application processing for the initial recognition of an organization, and for expansion and renewal of an existing NRTL's recognition; and (2) audits (post-recognition reviews), which enable the NRTL to maintain its recognition from OSHA. The fees for these services are based on the actual cost of the service rendered and will thus vary by circumstances. Table A, previously shown in Part III of this notice, shows the elements of the fee structure and a sample fee schedule. The activities covered by each category of fees are explained in detail in that part.

OSHA relied on a review of the NRTL application information from 1988 to 1996 to develop estimates on the annual number of new applicants, and expansion and renewal requests. On average, OSHA receives about 3 initial applications for NRTLs and 3 applications for renewal, and 7 applications for expansions on an annual basis.

OSHA expects to receive several NRTL application requests from foreign-based testing laboratories as a result of a Mutual Recognition Agreement (MRA) between the United States and the European Union (EU). Through the MRA, foreign labs located in the EU that apply for and are recognized as NRTLs can perform the same activities as US based NRTLs. The fees proposed by OSHA will ensure that US taxpayers are not subsidizing foreign businesses. At this time, there is insufficient information to quantify the number of foreign labs that may apply for NRTL status and their future costs of compliance for these labs.

OSHA estimates that labs will require approximately 0.5 hours of an accountant's time to estimate OSHA-related activities and to process payment. Employee wages are based on the Bureau of Labor Statistics estimate of total employee compensation for the professional specialty of $30.17 per

hour [3]. These costs and the estimated fee costs are shown combined in Table 5.

Estimates of the total cost of full compliance with the requirements of the proposed NRTL fee rule are presented in Table 4. This table also shows OSHA's estimates of the average fee for each type of service costs, as well as a current estimate of total annual fee collections. Total estimated costs for the testing laboratory industry would amount to about $240,000 annually. OSHA estimates that initial recognitions will cost an average of $20,423 per establishment, expansions of recognition application will cost an average of $7,820 per establishment, renewals of recognition will cost an average of $8,641 per establishment, and annual audits will cost an average of $2,436 per establishment.

TABLE 4.—SUMMARY OF TOTAL ESTIMATED FEE COLLECTION BY CATEGORY

Category	Average cost per application or audit	Est No. per year	Estimated fee collection
Initial Recognition Applications	$20,423	3	$61,269
Expansion of Recognition Applications	7,820	7	54,739
Renewal of Recognition Applications	8,641	3	25,924
Annual Site Visits (Audits)	2,436	40	97,432
Total			239,364

Source: Office of Technical Programs and Coordination Activities, 1999.

Economic Impacts

OSHA assessed the potential economic impacts of the costs of compliance with the proposed standard for NRTL fees and has preliminarily determined that the standard is economically feasible for firms in this industry. The proposal would have the advantage of encouraging economic efficiency by pricing the service of the NRTL program rather than providing the service for free. As mentioned above, the cost of the NRTL program is currently borne by taxpayers through OSHA's budget. This proposal would transfer the payment of some of these costs to firms receiving the service from OSHA.

To determine whether the proposed rule's projected costs of compliance would raise issues of economic feasibility for the affected industry, i.e., would adversely alter the competitive structure of the industry, OSHA developed quantitative estimates of the economic impact of the proposed rule on establishments in the affected industry, and thus on the 17 firms already recognized as NRTLs. In this analysis, compliance costs are compared with industry revenues and profits.

Estimates of compliance costs are compared with estimates of annual revenues based on data from the U.S. Department of Commerce, Bureau of the Census, "Table 3: United States—The Number and Percent of Firms, Establishments, Employment, Annual Payroll, and Estimated Receipts by Industry and Employment Size for 1993," while estimates of pre-tax profits for most industries are based on data from Robert Morris Associates [3].

OSHA compared the baseline financial data with total annual compliance costs by computing compliance costs as a percentage of revenues. Table 5 shows compliance costs as a percentage of sales and pre-tax profits. This table is titled a screening analysis because it simply measures costs as a percentage of pre-tax profits and sales and does not predict impacts on these sales and pre-tax profits. The screening analysis is used to determine whether the compliance costs potentially associated with the proposed NRTL fee could lead to significant impacts on the affected firms. The actual impact of the proposal on the profits and sales of firms will depend on the price elasticity of demand for the services provided by the affected firms.

TABLE 5.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED NRTL FE

	Annual costs of compliance	Revenues ($1000)	Pre-tax profits ($1000) [1]	Annualized costs of compliance as a percent of	
				Sales	Pre-Tax Profit
Testing Laboratories (SIC 8734)	$239,825	$5,547,796	$316,224	0.004	0.08

Sources: US Department of Labor, OSHA, Office of Regulatory Analysis, 1998; Office of Technical Programs and Coordination Activities, 1999. US Small Business Administration, Office of Advocacy. Table 3: US Establishments, Employment, and Payroll by Industry and Firm Size, 1993.
[1] Revenues do not include foreign laboratories sales.

Price elasticity refers to the relationship between the price charged for a product and demand for that product; that is, the more elastic the relationship, the less able a firm is to pass the costs of compliance through to its customers in the form of a price increase and the more it will have to absorb the costs of compliance from its profit. When demand is inelastic, firms can absorb all the costs of compliance simply by raising the prices they charge for the service; under this scenario, profits are untouched. Where demand is inelastic, the impact of compliance costs that amount to 1 percent of revenues would be a 1 percent increase in the price of the product, with no decline either in demand or in profits. Such a situation would be most likely when there are few, if any, substitutes for the service offered by the affected establishments and where such services account only for a small portion of the income of its consumers. When demand is elastic, firms cannot absorb all of the costs simply by passing the cost

increase through in the form of a price increase; instead, they must absorb some of the increase from their profits. In this case, no increase in price is possible, and before-tax profits would be reduced by an amount equal to the costs of compliance. Under this scenario, if the costs of compliance are a large percentage of the establishment's profits, some establishments might be forced to close. This scenario is highly unlikely to occur, however, because it can only arise when there are other services that are, in the eyes of consumers, perfect substitutes for the services the affected establishments provide. A common intermediate case would be a price elasticity of one. In this situation, if the costs of compliance amount to 1 percent of revenues, then production would decline by 1 percent and prices would rise by 1 percent. In this case, establishments remain in business and maintain the same profit as before but would produce 1 percent less product or service. Consumers would effectively absorb the costs through a combination of increased prices and reduced consumption; this, as the court described in *ADA* v. *Secretary of Labor*, is the more typical case.

As shown in Table 5, the impacts potentially imposed by the proposed rule are not sizeable on the industry. On average, annualized compliance costs would amount to only 0.004 percent of estimated industry revenues and 0.08 percent of estimated profits. Even if no price increase were possible, a 0.08 percent decline in profits would not threaten the viability of the industry. These impacts are overestimated since the revenues do not include foreign organization revenues. Thus, the proposed rule is preliminarily determined to be economically feasible for affected laboratories.

As previously noted, OSHA has received a comment from a "stakeholder" that stated the proposed fees would have a significant impact on the manufacturers who are customers of NRTL services [Ex. 2–19]. However, they did not present any information or evidence of such impacts. Testing fees are minor costs compared with the product's development and manufacturing costs. The price of testing entails not only the charges for the direct testing service, but also the length of time taken by the testing process. In other words, the time spent by the manufacturer waiting for the product to be tested is time during which the product is not being sold and the manufacturer is not receiving the income necessary to offset the expenses of designing the product, establishing a production line, etc. In addition to the time component, the market for testing services is highly competitive and the price inelastic because, in general, the price for testing services is a very small component of the overall costs of the product. OSHA estimated in its Final Regulatory Impact Analysis of the Final Rule for 29 CFR Part 1910, Safety. Testing of Certification of Certain Workplace Equipment and Materials and Programs, that the actual testing, listing and approval expenditures for tested equipment would be between 0.23 percent and 0.50 percent of the value of these products [2]. Thus, on average, product testing fees are a minor component of the cost of manufacturing equipment and will continue to remain so even after the proposed fees have been implemented. OSHA seeks more information on the impacts of the proposed rule on manufacturers. OSHA also seeks information on the impact of the proposed fee schedule on foreign testing laboratories.

Potential Economic Impacts of the Proposed Standard on Small Entities

This section measures the potential economic impacts of the proposed standard on small entities in the affected testing laboratory industry to determine whether the proposed standard has a significant impact on a substantial number of small firms, as required by the Regulatory Flexibility Act (as amended in 1996). For the purposes of this analysis, OSHA defines small entities using the Small Business Administration's (SBA) Table of Size Standards. The SBA size standards for for-profit firms identify firms with less than $5 million in revenues as small in the testing laboratory service sector.

The Regulatory Flexibility Act addresses impacts on "small businesses," and "small not-for-profit organizations," both of which are referred to in this analysis as "small entities." What constitutes a small entity is defined by the SBA in terms of the number of employees or annual receipts (unless otherwise stated) constituting the largest size that a for-profit enterprise (together with its affiliates) may be and still remain eligible as a small business for various SBA and other Federal Government programs. A "small organization" is defined as any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Since this definition would include all of the not-for-profit entities, no separate analysis of small organizations is necessary. OSHA seeks comment on the appropriate definition of a small not-for-profit entity for the purpose of this regulatory flexibility analysis.

The number of establishments operated by small firms and the number of affected workers employed in small firms are based on Bureau of the Census data.[4] The Bureau of the Census data classify firms according to the number of workers employed by the enterprise. The following employment size classifications were used: 1–4, 5–9, 10–19, 20–99, 100–499, 500+. For each firm size classification, data were provided on the total number of firms, establishments, employees and estimated annual receipts.

Based on the SBA size category and the Census data, OSHA has determined that most of the testing labs with NRTL status are of substantial size in terms of both gross revenues and number of employees. The average revenue of these firms, based on the employment size categories provided by the Census data, is estimated to range from $6.9 million to $18.9 million per firm.

The purpose of this analysis is to assess the impacts on business organizations consisting of one or more domestic establishments under common ownership or control, without regard to the number of states in which a business organization may be operating establishments. However, the data provided by the Census do not include the number of enterprises, but rather the number of firms, which, by the Census' definition, is essentially the number of states in which an enterprise operates establishments in a specific industry. Thus, to the extent that enterprises operate establishments in the same industry in multiple states, estimates of the number of entities may be overestimated.

To estimate the number of small entities, average revenues per firm were calculated in each enterprise size category using Census data, and size categories where average revenues per firm were less than the standards set by SBA (i.e., less than $5 million for all other firms), firms in those size categories were assumed to be small entities. Table 6 shows the estimated number of small entities in the industry. Only 9 small businesses and 1 not-for-

[4] The Bureau of the Census defines a "firm" as a "a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control," and an "enterprise" as "a business organization consisting of one or more domestic establishments that were specified under common ownership or control." In other words, if, for example, an enterprise with 100 employees operates nursing homes in four states, the Bureau of Census would count this as four firms in the nursing home industry in the 100 to 499 employment size classification.

profit entity are currently NRTLs and thus certain to be affected. However, the proposed rule could potentially affect any of the 3,170 small independent testing laboratories if such entities wish to become NRTLs. About 87 percent of all independent testing laboratories are estimated to be operated by small entities.

Table 6 presents the results of the regulatory flexibility screening analysis. It shows the estimated annual compliance costs and economic impacts relative to revenues and pre-tax profit for affected small entities. For testing laboratories seeking NRTL status for the first time, the annual compliance cost amounts to only 0.22 percent of revenues and 3.90 percent of profits for small entities. The analysis also shows that for-profit testing labs with current NRTL status have compliance costs that are 0.25 percent of revenues and 4.36 percent of profits. For not-for-profit NRTLs, compliance costs represent 0.10 percent of revenues. Impacts of these magnitudes do not exceed the thresholds OSHA has established for significant impacts.

Thus, because this proposal will not have a significant impact on small entities (as defined by the SBA), OSHA certifies that this proposal will not have a significant impact on a substantial number of small entities.

TABLE 6.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED NRTL FEES RULE ON SMALL ENTITIES

	Definition of small entity	Employment size	Number of small firms	Annualized cost per firm	Average revenues per small firm	Pre-tax profits per small firm	Annualized costs of compliance as a percent of	
							Sales (percent)	Pre-tax profit (percent)
Testing Laboratories (SIC 8734).	<$5 million	<100	NA	$5,359	$2,413,243	$137,555	0.22	3.90
Testing Laboratories with NRTL Status								
For-Profit Firms	<$5 million	<100	9	6,000	2,413,243	137,555	0.25	4.36
Not-For-Profit Firms	Not-for-Profit	500+	1	18,180	18,913,183		0.10	

Source: US Department of labaor, OSHA, Office of Regulatory Analysis, 1998; Office of Technical Programs and Coordination Activities, 1999. US Small Business Administration, Office of advocacy. Table 3: US Establishments, Employment, and Payroll by Industry and Firm Size, 1993.
Note: As defined by the Small Business Administration's Table of Size Standards.

References

1. US Department of Commerce, Bureau of the Census. 1992 Census of Service Industries: Industry Series: SC92–S–1,–4,–5. Washington, D.C., February 1995.
2. US Department of Labor, OSHA. Final Regulatory Impact Analysis of the Final Rule 29 CFR PART 1910 for Safety Testing of Certification of Certain Workplace Equipment and Materials and Programs. March 1988
3. Robert Morris Associates. Annual Statement Studies. September 1995.

VIII. Other Regulatory Matters

A. Environmental Impact Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA regulations (40 CFR Part 1500), and the Department of Labor's NEPA regulations (29 CFR Part 11), the Assistant Secretary has determined that this proposed rule will not have a significant impact on the external environment.

B. Federalism

This proposed rule has been reviewed in accordance with Executive Order12612, regarding Federalism. This proposed rule would only set fees for services provided by the Federal Government to private entities and has no impact on Federalism.

C. Paperwork Reduction Act of 1995

OSHA does not plan to develop or implement a form for NRTLs and NRTL applicants to use to pay the fees but will provide instructions on how to calculate the fees, as previously stated. The Agency does not believe a form is needed since the fee calculations are relatively simple. In addition, OSHA has no reporting requirements related to the fees. As a result, there are no additional burden hours associated with the fees.

D. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Orders 12875 and 13084, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any year.

E. State Plan States

The 25 States and territories with their own OSHA approved occupational safety and health plans are not affected by this proposed rule. These 25 states and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

IX. Public Participation

Comments

OSHA invites interested persons to submit written data, views, and arguments with respect to this proposal. OSHA must receive your comments, whether mailed or e-mailed, by October 4, 1999. Submit your comments in duplicate or 1 original (hardcopy) and 1 disk (5¼ or 3½) in WP 5.0, 5.1, 6.0, 6.1, 8.0 or ASCII to the: Docket Officer, Docket NRTL–95–F–1, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, N.W.,Washington, D.C. 20210. The phone number for the OSHA Docket Office is (202) 693–2350. You may transmit your written comments of 10 pages or less by facsimile (fax) to the Docket Office at (202) 693–1648, provided you send an original and one (1) copy to the Docket Office thereafter. You may also submit comments electronically using the following web page address: *http://www.osha-slc.gov/e-comments/e-comments-nrtl.html*. If your submission contains attached

electronic files, the files must be in WordPerfect 5.0, 5.1, 6.0, 6.1, 8.0 or ASCII. When submitting a comment electronically, please include your name and address.

Submit, in duplicate, any information not contained on disk or not provided electronically (e.g., studies, articles). Written submissions must clearly identify the issues or specific provisions of the proposal which are addressed and the position taken with respect to each issue or provision. The data, views, and arguments that you submit will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding. The preliminary economic analysis and the exhibits cited in this document will be available for public inspection and copying at the above address. OSHA invites comments concerning the preliminary conclusions reached in the economic analysis included in this notice.

X. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. The proposed sections are issued under the authority of section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657); and Secretary of Labor's Order No 6–96 (62 FR 111). The proposed sections are also issued under authority of OMB Circular A–25 (dated 7/8/93); Public Law 105–277; 29 U.S.C. 9a; the Administrative Procedure Act (5 U.S.C. 553); and the Independent Offices Appropriations Act (31 U.S.C. 9701)

List of Subjects in 29 CFR Part 1910

Fees, Laboratories, Occupational safety and health.

Signed at Washington, D.C. this 6 day of August, 1999.

Charles N. Jeffress,

Assistant Secretary.

For the reasons discussed in the preamble, OSHA proposes to amend 29 CFR Part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart A of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701.

2. Add new paragraph (f) to § 1910.7 to read as follows:

§ 1910.7 Definition and requirements for a nationally recognized testing laboratory.

* * * * *

(f) *Fees.* (1) Each applicant for NRTL recognition and each existing NRTL must pay fees for services provided by OSHA. OSHA will assess fees for the following activities:

(i) Processing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and **Federal Register** notices; and

(ii) Audits of sites.

(2) The fee schedule established by OSHA reflects the estimated cost of performing the tasks and functions for each activity. OSHA calculates the fees based on the average time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and an estimate of the average costs for travel when on-site reviews are involved. The formula for the fee calculation is as follows:

Activity Fee = Average Hours to Complete the Activity × Staff Costs per Hour + Travel Costs

(3) OSHA will review costs and estimates annually and will propose a revised fee schedule, if warranted. In its review, OSHA will apply the formula established in paragraph (f)(2) of this section to the current estimated costs for the NRTL Program. If a change is warranted, OSHA will follow the schedule in paragraph (f)(4) of this section. OSHA will issue all fee schedules in the **Federal Register**. Once issued, a fee schedule remains in effect until it is superseded. Any member of the public may request a change to the fees included in the current fee schedule. Such a request must include appropriate documentation in support of the suggested change.

(4) OSHA will implement fee assessment, collection, and payment as follows:

Approximate dates	Action required
I. Application Fees:	
Time of application.	Applicant must pay the applicable fees shown in the Fee Schedule when submitting the application; OSHA will not begin processing until fees are received.
Publication of preliminary notice.	Applicant must pay remainder of fees; OSHA cancels application if fees are not paid when due.
II. Audit Fees:	
November 1 ...	OSHA will publish proposed new Fee Schedule in the FEDERAL REGISTER, if OSHA determines changes in the schedule are warranted.
November 16	Comments due on the proposed new Fee Schedule
December 15	OSHA will publish the final Fee Schedule in the FEDERAL REGISTER.
January 1	OSHA will bill each existing NRTL for the audit fees shown in the Fee Schedule, including estimated travel costs.
February 1	NRTLs must pay audit fees; OSHA will assess late fee if audit fees are not paid.
February 15 ...	OSHA will send a letter to the NRTL requesting immediate payment of the audit fees and late fee.
March 1	OSHA will publish a notice in the FEDERAL REGISTER to revoke recognition for NRTLs that have not paid audit fees for the year.

(5) OSHA will provide the details regarding how to pay the fees through appropriate OSHA Program Directives.

3. Revise paragraphs I.B.5.a, II.B.2.a, and II.C.2.a of Appendix A to § 1910.7, to read as follows:

Appendix A to § 1910.7—OSHA Recognition Process for Nationally Recognized Testing Laboratories

* * * * *

I. Procedures for Initial OSHA Recognition

* * * * *

B. Review and Decision Process; Issuance or Renewal

* * * * *

5. *Public review and comment period.*—a. The **Federal Register** notice of preliminary finding will provide a period of not less than 30 calendar days for written comments on the applicant's fulfillment of the requirements for recognition. The application, supporting documents, staff recommendation, statement of applicant's reasons, and any comments received, will be

available for public inspection in the OSHA Docket Office.

* * * * *

II. Supplementary Procedures

* * * * *

B. Expansion of Current Recognition

* * * * *

2. *Procedure.*—a. OSHA will act upon and process the application for expansion in accordance with subsection I.B. of this appendix, except that the period for written comments, specified in paragraph 5.a of subsection I.B. of this appendix, will be not less than 15 calendar days.

* * * * *

C. Renewal of OSHA Recognition

* * * * *

2. *Procedure.*—a. OSHA will process the renewal request in accordance with subsection I.B. of this appendix, except that the period for written comments, specified in paragraph 5.a of subsection I.B. of this appendix, will be not less than 15 calendar days.

* * * * *

[FR Doc. 99–21216 Filed 8–17–99; 8:45 am]

BILLING CODE 4510–26–P

except that
, specified in
of this.
5 calendar

99; 8:45 am]

federal register

Wednesday
August 18, 1999

Part VIII

Environmental Protection Agency

40 CFR Part 63

Title V Operating Permit Deferrals for Area Sources: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Etc.; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6419–4]

Title V Operating Permit Deferrals for Area Sources: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Ethylene Oxide Commercial Sterilization and Fumigation Operations; Perchloroethylene Dry Cleaning Facilities; Halogenated Solvent Cleaning Machines; and Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: This action proposes to continue to allow permitting authorities the discretion to defer title V operating permitting requirements until December 9, 2004 for area sources of air pollution that are subject to five NESHAP for source categories. These amendments would continue to relieve industrial sources, State and local agencies, and the EPA Regional Offices of an undue regulatory burden during a time when available resources are needed to implement the title V permit program for major sources. Under the proposed amendments, sources must continue to meet all applicable requirements, including all applicable emission control, monitoring, recordkeeping, and reporting requirements established by the respective NESHAP.

DATES: *Comments:* We must receive comments on or before September 17, 1999, unless anyone requests a public hearing by September 8, 1999. If anyone requests a hearing, we must receive written comments by October 18, 1999.

Public Hearing: We will hold a public hearing, if requested, to provide anyone an opportunity to present data, views, or arguments concerning the proposed amendments. If anyone contacts us requesting to speak at a public hearing by September 8, 1999, we will hold a public hearing on September 17, 1999, beginning at 9:30 a.m. If we hold a hearing, we will keep the dockets open for 30 days after the hearing for anyone to submit rebuttal or supplementary information as provided by section 307(d)(5) of the Clean Air Act (Act).

Request To Speak at a Hearing: Anyone requesting to speak at a public hearing must contact EPA by September 8, 1999.

ADDRESSES: *Comments:* Send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket No. A–88–11 (subpart M), or Attention Docket No. A–88–02 (subpart N), or Attention Docket No. A–88–03 (subpart O), or Attention Docket No. A–92–39 (subpart T), or Attention Docket No. A–92–43 (subpart X), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Please send a separate copy to the contact person listed below in the **FOR FURTHER INFORMATION CONTACT** section. For information on submitting comments eletronically see the **SUPPLEMENTARY INFORMATION** section.

Docket: The following dockets, containing supporting information for the original rulemakings, are available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays: Docket No. A–88–11, subpart M NESHAP; Docket No. A–88–02, subpart N NESHAP; Docket No. A–88–03, subpart O NESHAP; Docket No. A–92–39, subpart T NESHAP; Docket No. A–92–43, subpart X NESHAP. These dockets are available for public inspection at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460, telephone (202) 260–7548, Room M–1500, Waterside Mall (ground floor). We may charge a reasonable fee for copying.

Public Hearing: Anyone interested in attending the hearing should contact Dorothy Apple, (919) 541–4487, to verify that a hearing will occur.

Request To Speak at a Hearing: Anyone requesting to speak at a public hearing must contact Dorothy Apple, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–4487.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, telephone number (919) 541–5262, fax number (919) 541–0942, or e-mail: colyer.rick@epa.gov.

SUPPLEMENTARY INFORMATION:

Submitting Electronic Comments

You may also comment on the proposal by electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Send electronic comments as an ASCII file to avoid using special characters and any form of encryption. We will also accept comments and data disks in WordPerfect 5.1 or 6.1 file format. Identify all comments and data in electronic form by the docket number. Don't send confidential business information (CBI) through electronic mail. You may file electronic comments on these proposed amendments online at many Federal Depository Libraries.

Technology Transfer Network

The Technology Transfer Network (TTN) is a network of our electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. You can access the TTN through the Internet at "http://www.epa.gov/ttn/." If you need more information on the TTN, call the HELP line at (919) 541–5384.

The preamble outline follows.

I. What types of facilities are potentially affected by these amendments?
II. What is the purpose of these amendments?
III. Why are we proposing to extend the deferral from permitting for area sources?
IV. What are the administrative requirements for these proposed amendments?
A. Docket
B. Executive Order 12866
C. Executive Order 12875
D. Executive Order 13084
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act
G. Paperwork Reduction Act
H. Executive Order 13045
I. National Technology Transfer and Advancement Act

I. What Types of Facilities Are Potentially Affected by These Amendments?

The regulated categories and entities potentially affected by this action include:

Category	North American Industry Classification System Codes	Examples of potentially regulated entities
Industry	331492	Secondary lead smelters.
	332, 333, 334, 335, 336, 447	Halogenated solvent cleaning machines at fabricated metal product manufacturing facilities, machinery manufacturing facilities, computer and electronic product manufacturing facilities, electrical equipment, appliance, and component manufacturing facilities, transportation equipment manufacturing facilities, and gasoline stations.

Category	North American Industry Classification System Codes	Examples of potentially regulated entities
	332, 333, 334, 335, 336	Chromium electroplating machines at fabricated metal product manufacturing facilities, machinery manufacturing facilities, computer and electronic product manufacturing facilities, electrical equipment, appliance, and component manufacturing facilities, and transportation equipment manufacturing facilities.
	8123	Dry cleaning and laundry facilities.
	3391	Ethylene oxide sterilizers at medical equipment and supplies manufacturing facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers of the entities likely to be regulated by this action. This table lists the types of entities that we are now aware could be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in the following sections of title 40 of the Code of Federal Regulations:

- § 63.320, perchloroethylene dry cleaning.
- § 63.340, chromium electroplating.
- § 63.360, ethylene oxide sterilizers.
- § 63.460, halogenated solvent cleaners.
- § 63.541, secondary lead smelters.

If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "For Further Information" section.

II. What Is the Purpose of These Amendments?

The purpose of these amendments is to extend the deadline for certain area sources to submit applications for title V operating permits. The Act requires sources subject to standards or regulations under section 112 to obtain title V operating permits, but allows us to exempt nonmajor sources from the requirement to obtain operating permits if we determine through rulemaking that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories. See section 502(a) of the Act. Under section 112 of the Act, such nonmajor sources are termed "area sources." See CAA section 112(a)(2).[1]

When we issue standards or other requirements under section 112 of the Act, we determine whether to exempt any or all area sources from the requirement to obtain a title V permit at the time that the new standard is promulgated for a particular source category. See 40 CFR 70.3(b)(2), 40 CFR 71.3(b)(2), and 63.1(c)(2). Our general provisions implementing section 112 provide that unless we explicitly exempt or defer area sources subject to a MACT standard from the permitting requirement, they must obtain operating permits. See 40 CFR 63.1(c)(2)(iii).

Since the Act allows an exemption from the permitting requirements, we interpret it to allow a temporary exemption (i.e., a deferral) of those requirements. We previously allowed permitting authorities to defer permitting for area sources subject to five NESHAP (59 FR 61801, December 2, 1994; 60 FR 29484, June 5, 1995; 61 FR 27785, June 3, 1996, and 64 FR 4570, January 29, 1999).[2] Those provisions will expire December 9, 1999. The source categories for which we deferred title V operating permit requirements for area sources were: hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide commercial sterilization and fumigation operations, perchloroethylene dry cleaning facilities, secondary lead smelting facilities, and halogenated solvent cleaning machines. As we approach this December 9, 1999 expiration date, the conditions prompting the allowance for previous deferrals have not changed. We are, therefore, proposing to extend the deferral provisions for the NESHAP for an additional 5 years.

The proposed amendments have been written in "plain language," as directed in President Clinton's June 1, 1998, Executive Memorandum on Plain Language in Government Writing. While we believe the proposed language improves the understandability of the current language, the intent and meaning of the text is unchanged.

III. Why Are We Proposing To Extend the Deferral From Permitting for Area Sources?

On December 13, 1995 (60 FR 64002), we proposed to allow title V permitting authorities to defer the requirement for obtaining title V operating permits for area sources in several source categories for which standards were promulgated under 40 CFR part 63. We finalized that proposal on June 3, 1996 (61 FR 27785). A deferral from the requirement to obtain a part 70 operating permit for halogenated solvent cleaners at area sources was promulgated on December 2, 1994 (59 FR 61805), and amended June 5, 1995 (60 FR 29484).

At the time we established the June 3, 1996, deferral option, we stated we would decide whether to adopt permanent exemptions by the time the allowed deferrals expired. We also stated that during the deferral period we would continue to evaluate the permitting authorities' implementation and enforcement of the standards for area sources not covered by title V permits, the likely benefit of permitting such sources, and the costs and other burdens on such sources associated with obtaining a title V permit. However, we do not yet have sufficient information to determine whether permit exemptions are warranted for most area sources and are continuing to evaluate the above-noted considerations. Thus, we are not yet prepared to make decisions that either permanently relieve these area sources from title V, or that allow them to become immediately subject to the permitting requirement. In light of this, we believe the most reasonable approach is to extend the status quo (i.e., defer the title V permitting requirements), rather than to "decide" by default through letting the current deferral expire this December.

Many permitting authorities are having difficulty issuing permits even to major sources, and some agencies have initially underestimated the resources

[1] Generally, an area source under section 112 is a source whose potential to emit air pollutants is below the levels that define a major source. A "major source" under section 112 is any source that emits or has the potential to emit at least 10 tons per year of an individual hazardous air pollutant (HAP) or at least 25 tons per year of a combination of HAP (or such lesser quantity, or different criteria in the case of radionuclides, as established by the Administrator). You should consult section 112(a)(1) and (2) of the Act, and 40 CFR 63.2 to determine if you have a area source.

[2] In this rulemaking, we continue to rely upon the rationale provided in the prior rulemakings, in addition to the rationale discussed in today's action, and in the action extending the deferral for halogenated solvent cleaning machines to part 71 (64 FR 37683; July 13, 1999).

necessary to prepare large and complex permits for many major sources. If we discontinue the title V permit deferral for the tens of thousands of area sources subject to the five NESHAP that are the subject of these proposed amendments, owners and operators of such area sources would require assistance from the permitting staff at permitting agencies due to their relative lack of technical and legal expertise, resources, and experience in dealing with environmental regulation. Since many of these owners or operators have little or no permitting expertise, a substantial amount of permitting authority staff time would be needed to provide the administrative and technical support to owners and operators of area sources to prepare and submit permit applications. As noted above, this staff time would scarcely be available, which in turn would cause many area sources to be unable to obtain technical and procedural assistance to help them file timely and complete applications, unless they have paid consultants to prepare applications for them. This scenario would constitute an impracticable, infeasible and unnecessary burden on these area sources, most of which are small businesses, especially considering that by definition they emit less than majors. This would also compound the difficulties permitting authorities are currently having in processing and timely issuing initial title V permits to major sources under their developing title V programs. Similarly, EPA regions are just beginning to permit major sources in Indian country and would find it administratively very difficult to focus on area sources at the same time. The net result is a basic impracticability for these area sources and permitting authorities to develop and process title V operating permits in the near future.

We believe that it is reasonable and fair to allow permitting authorities to defer title V permitting for area sources for an additional five years, since this would allow deferral for one more cycle of permitting. Title V permits have not been issued for many major sources, and permitting resources are currently directed to completing those. We anticipate another 5-year term of permit issuance should fully complete the outstanding initial permitting of major sources and other subject sources such as solid waste incineration units. By that time, we anticipate that permitting authorities' resources may be more available to aid area sources in developing permit applications. But in order to allow permitting authorities to continue to be able to focus on the critical and immediate task of issuing permits to major sources, the most feasible remedy is to allow permitting authorities to defer permitting of these area sources for an additional five-year permit cycle.

In sum, and as described in prior rulemakings granting the deferral option, requiring area sources subject to the NESHAP that are the subject of this rulemaking to obtain title V permits at this time would constitute an impracticable, infeasible and unnecessary burden on these area sources and would be an additional burden on the permitting agencies.

We note that this deferral is an option at the permitting authority's discretion under part 70 permit programs and not an automatic deferral that the source can invoke. Some permitting authorities may decide that area sources in one or more of the above-mentioned source categories warrant permitting, or they have in place a streamlined permitting mechanism for area sources that minimizes the burden both on the authority and the source, e.g., a general permit (see §§ 70.6(d) and 71.6(d)). In areas where no part 70 program has been approved, and part 71 permitting is administered by EPA, we propose deferral for these area sources until December 9, 2004.

IV. What Are the Administrative Requirements for These Proposed Amendments?

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of these proposed amendments. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Act.)

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that these proposed amendments do not qualify as a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, are not subject to review by OMB.

C. Executive Order 12875

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed amendments do not create a mandate on State, local, or tribal governments. These proposed amendments do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to these proposed amendments.

D. Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is

not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

These proposed amendments do not alter the control standards imposed by part 63, subparts M, N, O, T, and X, for any source, including any that may affect communities of the Indian tribal governments. Under the proposed amendments, sources must continue to meet all applicable requirements, including all applicable emission control, monitoring, recordkeeping, and reporting requirements established by the respective NESHAP. Hence, today's proposed amendments do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these proposed amendments.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor do they significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Thus, today's proposed amendments are not subject to the requirements of section 202 and 205 of the UMRA.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and small governmental jurisdictions. These proposed amendments would not have a significant impact on a substantial number of small entities, because they impose no additional regulatory requirements on owners or operators of affected sources and would relieve owners or operators of such sources of regulatory requirements that may otherwise apply if this action is not taken. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

These proposed amendments do not require the collection of any information. Therefore, the requirements of the Paperwork Reduction Act do not apply.

H. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These proposed amendments are not subject to Executive Order 13045 because they do not establish an environmental standard intended to mitigate health or safety risks.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency

decides not to use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 6, 1999.

Carol M. Browner,

Administrator.

For the reasons cited in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 63 as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart M—[Amended]

2. Section 63.320 is amended by revising paragraph (k) to read as follows:

§ 63.320 Applicability.

* * * * *

(k) If you are the owner or operator of a source subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR part 70 or part 71, as applicable. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

Subpart N—[Amended]

3. Section 63.340 is amended by revising paragraph (e)(2) to read as follows:

§ 63.340 Applicability and designation of sources.

* * * * *

(e) * * *

(2) If you are the owner or operator of a source subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR part 70 or part 71, as applicable. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

Subpart O—[Amended]

4. Section 63.360 is amended by revising paragraph (f) to read as follows:

§ 63.360 Applicability.

* * * * *

(f) If you are the owner or operator of a source subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR part 70 or part 71, as applicable. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

* * * * *

Subpart T—[Amended]

5. Section 63.468 is amended by revising paragraph (j) to read as follows:

§ 63.468 Reporting requirements.

* * * * *

(j) The Administrator has determined, pursuant to section 502(a) of the Act, that if you are an owner or operator of any batch cold solvent cleaning machine that is not a major source and is not located at a major source, as defined under 40 CFR 63.2, 70.2, or 71.2, you are exempt from title V permitting requirements under 40 CFR part 70 or part 71, as applicable, for that source, provided you are not otherwise required to obtain a title V permit. If you own or operate any other solvent cleaning machine subject to the provisions of this subpart, you are also subject to title V permitting requirements. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

* * * * *

Subpart X—[Amended]

6. Section 63.541 is amended by revising paragraph (c) to read as follows:

§ 63.541 Applicability.

* * * * *

(c) If you are the owner or operator of a source subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR part 70 or part 71, as applicable. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

[FR Doc. 99–20862 Filed 8–17–99; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday
August 18, 1999

Part IX

Department of Education

Special Education: State Program Improvement Grants Program; Inviting Applications for New Awards for Fiscal Year 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.323A]

Special Education: State Program Improvement Grants Program Notice inviting applications for new awards for fiscal year (FY) 2000

Note to applicants: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of this program, authorized under the Individuals with Disabilities Education Act (IDEA) Amendments of 1997, is to assist State educational agencies to establish a partnership with local educational agencies and other State agencies involved in, or concerned with, reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

Eligible Applicants: A State educational agency of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

General requirements: (a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA); and

(b) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

Deadline for Transmittal of Applications: December 15, 1999.

Deadline for Intergovernmental Review: February 13, 2000.

Available Funds: $7 million.

Estimated range of awards: Awards will be not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and not less than $80,000, in the case of an outlying area. This means that the Department will reject and will not consider any application that proposes a budget that exceeds the maximum award amount or is less than the minimum award amount for any single budget period of 12 months. The Secretary sets the amount of each grant after considering:

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area; and (3) The types of activities proposed by the State or outlying area.

Estimated Average Size of Awards: $1,000,000.

Estimated Number of Awards: 7.

Note: The Department of Education is not bound by the estimated size and number of awards in this notice.

Project Period: Not less than one year and not more than five years.

Page Limits: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit the narrative to the equivalent of no more than 100 double-spaced pages, using the following standards: (1) A "page" is 8½" × 11" (one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than three lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to the cover sheet; the budget section (including the narrative budget justification); the assurances and certifications; or the one-page abstract, appendices, resumes, bibliography, and letters of support. However, all of the application narrative must be included in the narrative section. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria for this program are drawn from EDGAR in 34 CFR 75.210.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Description of Program: The statutory authorization for this program and the application requirements that apply to this competition are set out in sections 651–655 of the IDEA.

Findings and Purposes

(a) States are responding with some success to multiple pressures to improve educational and transitional services and results for children with disabilities in response to growing demands imposed by ever-changing factors, such as demographics, social policies, and labor and economic markets.

(b) In order for States to address those demands and to facilitate lasting systemic change that is of benefit to all students, including children with disabilities, States must involve local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations in carrying out comprehensive strategies to improve educational results for children with disabilities.

(c) Targeted Federal financial resources are needed to assist States, working in partnership with others, to identify and make needed changes to address the needs of children with disabilities into the next century.

(d) State educational agencies, in partnership with local educational agencies and other individuals and organizations, are in the best position to identify and design ways to meet emerging and expanding demands to improve education for children with disabilities and to address their special needs.

(e) Research, demonstration, and practice over the past 20 years in special education and related disciplines have built a foundation of knowledge on which State and local systemic-change activities can now be based.

(f) That research, demonstration, and practice in special education and related disciplines have demonstrated that an effective educational system now and in the future must—

(1) Maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals;

(2) Create a system that fully addresses the needs of all students, including children with disabilities, by addressing the needs of children with

disabilities in carrying out educational reform activities;

(3) Clearly define, in measurable terms, the school and post-school results that children with disabilities are expected to achieve;

(4) Promote service integration, and the coordination of State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who require significant levels of support to maximize their participation and learning in school and the community;

(5) Ensure that children with disabilities are provided assistance and support in making transitions as described in section 674(b)(3)(C) of the Act;

(6) Promote comprehensive programs of professional development to ensure that the persons responsible for the education or a transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children;

(7) Disseminate to teachers and other personnel serving children with disabilities research-based knowledge about successful teaching practices and models and provide technical assistance to local educational agencies and schools on how to improve results for children with disabilities;

(8) Create school-based disciplinary strategies that will be used to reduce or eliminate the need to use suspension and expulsion as disciplinary options for children with disabilities;

(9) Establish placement-neutral funding formulas and cost-effective strategies for meeting the needs of children with disabilities; and (10) Involve individuals with disabilities and parents of children with disabilities in planning, implementing, and evaluating systemic-change activities and educational reforms.

(10) Involve individuals with disabilities and parents of children with disabilities in planning, implementing, and evaluating systemic-change activities and educational reforms.

Absolute Priority: Under section 653 and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority.

This priority supports projects that assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

State Improvement Plan. Applicants must submit a State improvement plan that—

(a) Is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, if appropriate;

(b) Identifies those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16) of the Act. Specifically, applicants must include:

(1) An analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including—

(i) Their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

(ii) Their participation in postsecondary education and employment; and

(iii) How their performance on the assessments and indicators compares to that of non-disabled children;

(2) An analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum:

(i) The number of personnel providing special education and related services; and

(ii) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (b)(2)(i) with temporary certification), and on the extent of certification or retraining necessary to eliminate those shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs;

(3) An analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

(4) An analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities;

(c) Describes a partnership agreement that—

(1) Specifies—

(i) The nature and extent of the partnership among the State educational agency, local educational agencies, and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

(ii) How those agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

(2) Is in effect for the period of the grant;

(d) Describes how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including funds under part B of the Act retained for use at the State level under sections 611(f) and 619(d) of the Act, that will be committed to the systemic-change activities;

Describes the strategies the State will use to address the needs identified under paragraph (b), including how it will—

(1) Change State policies and procedures to address systemic barriers to improving results for children with disabilities;

(2) Hold local educational agencies and schools accountable for educational progress of children with disabilities;

(3) Provide technical assistance to local educational agencies and schools to improve results for children with disabilities;

(4) Address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities, including a description of how it will—

(i) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

(ii) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(iii) Work with institutions of higher education and other entities that (on

both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(iv) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;

(v) Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

(vi) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(vii) Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State, if appropriate, will adopt promising practices, materials, and technology;

(viii) Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;

(ix) Integrate its plan, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(x) Provide for the joint training of parents and special education, related services, and general education personnel;

(5) Address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

(6) Disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4) of the Act;

(7) Address improving results for children with disabilities in the geographic areas of greatest need; and

(8) Assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

(9) Coordinate its improvement strategies with public and private sector resources.

Required partners. Applicants must:

(a) Establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities; and

(b) Work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

(1) The Governor;

(2) Parents of children with disabilities;

(3) Parents of nondisabled children;

(4) Individuals with disabilities;

(5) Organizations representing individuals with disabilities and their parents, such as parent training and information centers;

(6) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(7) The lead State agency for part C of the Act;

(8) General and special education teachers, and early intervention personnel;

(9) The State advisory panel established under part B of the Act;

(10) The State interagency coordinating council established under part C of the Act; and

(11) Institutions of higher education within the State.

Optional partners. A partnership established by applicants may include agencies such as—

(a) Individuals knowledgeable about vocational education;

(b) The State agency for higher education;

(c) The State vocational rehabilitation agency;

(d) Public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

(e) Other individuals.

Reporting procedures. Each State educational agency that receives a grant shall submit performance reports to the Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently than annually. The reports must describe the progress of the State in meeting the performance goals established under Section 612(a)(16) of the Act, analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance. Grantees must also provide information required under EDGAR at 34 CFR 80.40.

Use of funds. Each State educational agency that receives a State Improvement Grant under this program—

(a) May use grant funds to carry out any activities that are described in the State's application and that are consistent with the purpose of this program;

(b) Must, consistent with its partnership agreement established under the grant, award contracts or subgrants to local educational agencies, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan;

(c) May award contracts and subgrants to other public and private entities, including the lead agency under part C of the Act, to carry out that plan;

(d)(1) Must use not less than 75 percent of the funds it receives under the grant for any fiscal year—

(i) To ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

(ii) To work with other States on common certification criteria; or

(2) Must use not less than 50 percent of those funds for these purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (d)(1).

Selection Criteria: (1) The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (19 points).

The Secretary considers the need for the proposed project.

In determining the need for the project the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance.* (19 points).

The Secretary considers the significance of the proposed project.

In determining the significance of the proposed project, the Secretary considers the likelihood that the proposed project will result in system change or improvement.

(c) *Quality of the project design.* (19 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the

Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(vi) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(d) *Quality of project personnel.* (8 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources.* (8 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project.

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(v) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(f) *Quality of the management plan.* (8 points).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(g) *Quality of the project evaluation.* (19 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79.

One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. The addresses of individual State Single Point of Contact are in the Appendix to this notice.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.323A, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Instructions for Transmittal of Applications: If an applicant wants to apply for a grant, the applicant must:

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.323A), Washington, DC 20202–4725.

or

(2) Hand-deliver the original and six copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of

Education, Application Control Center, Attention: (CFDA# 84.323A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

The applicant *must* indicate on the envelope and if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this notice is divided into three parts, plus a statement regarding estimated public reporting burden, additional non-regulatory guidance, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions. The budget section of the application form requires all applicants for multi-year projects to provide detailed budget information for the total grant period requested. The Department will establish, at the time of initial award, the funding levels for each year of the grant award. By requesting detailed budget information in the initial application for the total grant period, the need for a formal noncompeting continuation application in the remaining years has been eliminated. A performance report will be required annually to determine substantial progress, rather than a non-competing continuation application.

Part III: Application Narrative.

Additional Materials

The following forms and other items must be included in the application: a. Estimated Public Reporting Burden.

b. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

c. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

d. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) and instructions. (NOTE: ED Form GCS–0014 is intended for the use of grantees and should not be transmitted to the Department.)

e. Certification of Eligibility for Federal Assistance in Certain Programs (ED 80–0016)

f. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget in the **Federal Register** (61 FR 1413) on (January 19, 1996).

g. Addresses of the individual State Single Point of Contact.

h. Table of Contents.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *ONE* original signed application, including ink signatures on all forms and assurances, and THREE copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application has been received.

For Applications and General Information Contact: Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 400 Maryland Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/intex.html

Dated: August 11, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1820–0620. The time required to complete this information collection is estimated to average between 50–130 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651. If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: Office of

Special Education Programs, U.S. Department of Education, 400 Independence Avenue, SW., Washington, D.C. 20202–2641.

Application Narrative

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of December 15, 1999.

Questions and Answers

Following is a series of questions and answers that will serve as guidance for State Educational Agency in completing the grant application for a State Improvement Grant (SIG) as authorized by the Individuals with Disabilities Education Act (IDEA). The questions were chosen to provide additional insight into the statutory requirements contained in the grant application. The questions were generated from a number of sources including parents of students with disabilities, Regional Resource Centers, the Federal Resource Center, State Directors of Special Education, State Educational Agency staff and staff from the Office of Special Education Programs.

Eligible Applicants

1. Who may apply for a State Improvement Grant?

A State Educational Agency of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).[1] (Sections 602(18), 602(27), 652(a), and 655(a)(1)(2)).

2. Can two or more SEAs apply jointly for a SIG?

No. A State applying for a State Improvement Grant shall submit an individual application. However, included in the application will be a description of how: (1) the State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation; and (2) the State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel (Section 653(c)(3)(D)(iv) and (v)).

Partners

3. With whom is the State supposed to form partnerships and how are such partnerships structured?

Part D Subpart 1—State Program Improvement Grants for Children with Disabilities, Section 652 (b) describes three types of State partners. In order to be considered for a State Improvement Grant, a State educational agency must establish a partnership with individuals and organizations considered "Required Partners." Required partners are made up of two subsets of partners—those called "Contractual partners" and those called "Other partners." The SEA's contractual partners are local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities. These partners are called contractual because they must be parties to a formal "partnership agreement" that is explained further below in question four.

The "other partners" are individuals and organizations involved in, and concerned with, the education of children with disabilities, with whom the SEA must work in partnership to implement the State improvement grant. Other partners may be, but the SEA is not required to make them, parties to the formal partnership agreement. Those "other partners" must include the Governor; parents of children with disabilities; parents of nondisabled children; individuals with disabilities; organizations representing individuals with disabilities and their parents, such as parent training and information centers;[2] community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities; the lead State agency for Part C; general and special education teachers, and early intervention personnel; the State advisory panel established under Part B; the State interagency coordinating council established under Part C; and institutions of higher education (IHEs) within the State. The State is encouraged to only partner with those IHEs that are currently implementing or, based on the partnership Agreement, will develop and implement, training programs that are consistent with the principles of IDEA 97 (e.g., training that facilitates access to the general education curriculum; training that facilitates inclusionary practices; joint training of general educators, special educators and parents, where appropriate; training that targets pedagogical practices that focus on accommodating and modifying instruction to meet State standards). Based on the needs assessment, the State must focus at least 75% of the funds received under the State Improvement Grant on the professional development and training of regular education, special education, or related services personnel (only 50% of the funds must be used on professional development if the State can demonstrate to the Secretary that it has sufficient personnel; see question 13 for additional clarification). In order to ensure that the perspectives of school based staff are represented in the grant activities, the State is encouraged to incorporate into its partnership agreement and partnership activities, professional organizations that negotiate for and may represent school-based staff. In addition to required partners, the SEA, at its option, may include as partners individuals and organizations called Optional Partners. The SEA may include "optional partners" as parties to the formal partnership agreement or work in partnership with them, without them being parties to the partnership agreement. Those optional partners may include individuals knowledgeable about vocational education, the State agency for higher education, the State vocational rehabilitation agency, public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice and other individuals.

4. What is the partnership agreement and what must it include?

Each State Improvement Plan submitted with the State's application shall include a description of the partnership agreement entered into by the SEA with its contractual partners and with any "other" and "optional"

[1] Unless otherwise noted, the term "State" refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the outlying areas (United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands).

[2] States in which Community Parent Resource Centers are located are encouraged to include these organizations as "other partners."

partners who will be parties to the partnership agreement. As specified in the grant application package, the partnership agreement must specify the nature and extent of the partnership among the SEA, the LEAs, and other State agencies involved in, or concerned with, the education of children with disabilities. It must specify the respective roles of each member of the partnership in the implementation of the State improvement plan. The partnership agreement must also specify how the SEA, LEAs, and other State agencies identified above, will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities (these would be the "other partners" and any "optional partners"), and must specify the respective roles of each of these persons and organizations (Section 53(c)(1)(B)). The partnership agreement must indicate that it is in effect for the period of the grant. The terms of the partnership agreement will determine whether the SEA will award subgrants or contracts to any of the partners listed in Section 654(a)(2)(A).

5. What is the connection between the partnership agreement and the SEA's use of funds?

The SEA shall, as appropriate, award contracts or subgrants to LEAs, IHEs, and parent training and information centers identified in the partnership agreement to carry out the State improvement plan. To carry out the State improvement plan, the SEA may also award contracts and subgrants to other public and private entities, including the lead agency under Part C and other agencies that are partners, as well as public and private entities that are not partners. It is anticipated that an SEA will need and desire the resources of other individuals and organizations to develop and implement all of the systemic change, technical assistance, in-service and pre-service training, dissemination and assessment activities designated in the State improvement plan. There is, however, no required amount of funds that must be used for contracts or subgrants (Section 654(a)(2)).

Funding Availability and Levels

6. What are the grant amounts to States?

The Secretary shall make a grant to each State educational agency whose application the Secretary has selected for funding under this subpart in an amount for each fiscal year that is: (1) not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and (2) not less than $80,000, in the case of an outlying area (United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands (Section 655(a)). This means that the Department will reject and will not consider any application that proposes a budget that exceeds the maximum award amount or is less than the minimum award amount for any single budget period of 12 months.

7. How will decisions be made regarding the amount of funds that states will receive if approved for a State Improvement Grant?

The Secretary will set the amount of each grant, within the limits outlined in the response to question 6, after considering: (1) the relative population of the State; (2) the types of activities proposed by the State; and (3) the amount of funds available for making the grants (Section 655(c)). Using the same considerations, the Secretary funded successful applications for fiscal year 1998 at the following levels:

Vermont	$500,000
Utah	$578,551
New Hampshire	$600,000
Hawaii	$600,000
Idaho	$625,000
Iowa	$875,526
Kansas	$900,000
Kentucky	$1,000,000
Massachusetts	$1,009,000
Alabama	$1,025,000
Georgia	$1,060,000
Maryland	$1,095,000
Missouri	$1,145,000
Virginia	$1,240,000
Ohio	$1,320,000
Pennsylvania	$1,320,000
Michigan	$1,320,000
California	$1,840,000

8. How will the connection between grant amounts and "need" be determined?

As previously stated in the response to question 7, the Secretary shall set the amount of each grant after considering: (1) the relative population of the State; (2) the types of activities proposed by the State or outlying area; and (3) the amount of funds available for making the grants. "Need" will be determined through the quality of the needs assessment performed under Section 653(b) including: (i) an analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State; (ii) an analysis of State and local needs for professional development for personnel to serve children with disabilities; (iii) an analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and (iv) an analysis of other information, for example, findings made by the Secretary's Office for Civil Rights, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities.

9. What will the Secretary consider in making an award on a competitive basis?

Using the selection criteria identified elsewhere in this application package, the Secretary expects to select for funding applications from States that demonstrate a need for improvement and effective strategies to meet those State needs. The application should show how the State plans to fulfill the purpose of the State Improvement Grant, which is to assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. The Secretary may give priority to applications on the basis of need, as indicated by such information as the findings of Federal compliance reviews (Section 653(d)).

Improvement Strategies and Use of Funds

10. Can funds from the State Improvement Grants be distributed to LEAs on a competitive basis?

Yes. The statute does not provide a particular method for States to use when distributing State Improvement Grant funds to LEAs or other entities. When awarding and administering subgrants, under 34 CFR § 80.37(a), the State must follow state law and procedures. As long as the SEA's plan to contract or subgrant SIG funds is consistent with the partnership agreement and the funds are used to support the activities specified in the approved grant application, there is no statutory prohibition against the funds being distributed to LEAs on a competitive basis.

11. Can charter schools be involved as partners in the State Improvement Grant?

Yes. Charter schools are schools under contract—or charter—between a public agency and groups of parents, teachers, community leaders or others who want to create alternatives and choice within the public school system.

Charter schools can be involved as partners in the State Improvement Grant, either as an LEA or as part of an

existing LEA, consistent with the State charter schools law.

12. Does the "service obligation" apply to the use of State Improvement Grant funds if they are being used for scholarships?

No. The "service obligation" contained under the Personnel Preparation discretionary grant program provides that a recipient of a scholarship funded by the Personnel Preparation program under Section 673(b), (c), (e), and to the extent appropriate (d), shall subsequently perform work in the field in which they were trained or repay the cost of the financial assistance. The service obligation only applies to scholarships awarded under the Personnel Preparation program.

13. Can funds be used to prepare early intervention personnel?

Yes, but only in limited circumstances. Under Section 654(b)(1) a State educational agency that receives a grant shall use not less than 75 percent of the funds it receives under the grant for any fiscal year to work with other States on common certification criteria or to ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children. This section ensures that based on the needs assessment, the State focuses at least 75% of the funds received under the State Improvement Grant on the professional development and training of regular education, special education, or related services personnel. Only 50% of the funds must be used on professional development if the State can demonstrate to the Secretary that it has sufficient personnel. Training that prepares personnel to deliver early intervention services that could not also be considered regular education, special education, or related services would not be a permissible use of the 75%, or 50% as the case may be, of the funds. However, it would be permissible for early intervention personnel to participate in training in those areas of special education and related services that would be useful to them, even if the training is funded using the 75% of the funds. There is no limitation on the use of the remaining 25% of the funds received under the SIG; it can be used to train personnel to provide early intervention services or for any other activity in an approved SIG.

14. How does a State demonstrate that it meets the requirement to use at least 75% (or 50% if applicable) of the grant funds for professional development?

States should structure the presentation of their budget so that the Department can easily determine that the State has met the 75% or 50% requirement as the case may be.

15. What is the relationship of the SIG to the State set aside under Part B?

In order to carry out the activities proposed in the State's SIG application, a State may choose to supplement the State Improvement Grant award with funds from the IDEA Part B State set aside (i.e., the portion of the IDEA, Part B grant awards retained for use by the SEA under Sections 611(f) and 619(d) of the Act for discretionary purposes).

16. Can funds from sources other than the SIG be used to support the required activities for awards under this program?

Yes. In addition to the SIG award, funds from other sources (e.g., other IDEA discretionary grants, Part B State set aside funds, preschool grants) may be used, so long as those activities are permissible under the funding statute and regulations to carry out any activities described in the State's SIG application. States may also use funds from private sources (e.g., foundations) to carry out activities described in the State's application. In its State Improvement Plan, the State must describe the amount and nature of funds from any other sources, including the Part B funds retained for use under Sections 611(f) and 619(d) of the Act and Part D discretionary funds that will be committed to the SIG program.

17. Can SIG funds be used for direct services to children with disabilities?

Yes. The statute does not forbid the use of SIG funds for direct services to children with disabilities; however, funding for these services must come from the 25% or 50% of the grant award, as the case may be, not obligated by statute to fund professional development activities or to work with other States on common certification criteria. In addition, the need for direct services must be one of the critical aspects of early intervention, general education and special education identified in the State's needs assessment. The direct services improvement strategy must be described in the State's application and be consistent with the purpose of the grant, which is to assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

Strategies Used to Address Identified Needs

18. Is interstate personnel preparation mandatory?

No. The State is required to describe how it will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within the State to justify support or development of such a program of preparation (Section 653(c)(3)(D)(iv)). If the State demonstrates, through its needs assessment, that there is sufficient demand within the State to support its own personnel preparation programs, then interstate collaborative agreements are not required.

19. Is training of general education personnel required?

Yes. In its application, the State is required to include a description of how the State will prepare general as well as special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities (Section 653(c)(3)(D)(i)).

20. Is training of parents required?

Yes. In its application, the State is required to include a description of how the State will provide for the joint training of parents and special education, related services, and general education personnel (Section 653(c)(3)(D)(x)).

Role of Regional Resource Center/ Technical Assistance and Dissemination Projects

21. What role can the Regional Resource Center (RRC) play in the development of the State Improvement Plan and grant application?

The RRC is encouraged to provide general technical assistance to States in the development of their State Improvement Plans. An RRC is funded to provide technical assistance and resources to all states within its region and must do so on an equitable basis across those States. Helping States improve their special education programs is the central mission of the RRCs and many State activities related to the State Improvement Grant program will be crucial in these improvement efforts. It would be inappropriate, however, for an RRC to help a State in drafting its grant application or even to provide technical assistance on strategies to improve the competitiveness of a State's application because it could be viewed as providing a competitive advantage to one potential applicant over another. On the other

hand, helping States, for example, with data analyses, needs assessments, and facilitating meetings concerning planning the States' improvement activities could be, except as noted above, a part of the RRC's technical assistance activities to the States in their region. RRCs can also assist States in their implementation of a State Improvement Grant once those grants are awarded.

22. Can the State use SIG funds to subcontract or contract with the University or entity in which the RRC is located to carry out SIG activities?

Yes. The State can use SIG funds to subgrant or contract with the University or entity in which the RRC is located to carry out SIG activities. However, the University or other entity would need to ensure that personnel time and other resources covered by the RRC's cooperative agreement with the Department are not used to work on SIG activities performed under such a subgrant or contract and that work done under such other subcontract or contract is not represented as being performed as part of the cooperative agreement with the Department of Education.

23. Can Technical Assistance and Dissemination (TA&D) projects funded by OSEP play a role in SIG activities?

Similarly to RRCs, TA&D projects funded by OSEP must ensure that the services they provide are fairly and evenhandedly available to their respective audience (under the terms of their OSEP funding agreement/grant/ contract) in all States, that the proposed SIG activity is permissible under the terms of the particular Project's funding agreement/ grant/contract/ with OSEP and that Projects do not accept SIG funds under contract or grant with an SEA for activities they are currently receiving Federal funds to provide. In addition, TA&D projects, like the RRCs, should not engage in activities that could be seen as providing a competitive advantage to any one State over others in the SIG competition.

Relationship between State Improvement Plan and other Federal Statutes and Requirements

24. What is the link between the Comprehensive System of Personnel Development (CSPD) and the SIG? What are the similarities and differences?

The requirements for a CSPD as amended by IDEA 97 must be implemented by July 1, 1998 regardless of whether or not a State receives a SIG. Under Section 612(a)(14) of IDEA, in order to be eligible for funding under Part B, a State must have in effect a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, related services, and early intervention personnel and that meets the requirements contained in the personnel development sections of the State Improvement Plan addressing needs assessment and improvement strategies. It is intended that the CSPD meet the SIG personnel development requirements so that it may serve as the framework for the State's personnel development part of a SIG grant application.

25. To what extent does this plan have to be linked to the Elementary and Secondary Education Act of 1965 (ESEA) and the Rehabilitation Act of 1973?

To the "maximum extent possible" State Improvement Plans must be linked to State plans under ESEA and the Rehabilitation Act of 1973. The IDEA Amendments of 1997 emphasize that children with disabilities have access to the general curriculum and general educational reforms. Although the legislation does not mention integration with any other state plans under any other Federal statute, because the State Improvement Plan is focused on systems change for students with disabilities, integration with relevant state plans or projects would be beneficial (Section 653(a)(2)(A)).

26. What is the relationship between the performance goals and indicators a State must have to be eligible for Part B and the State Improvement Plan?

Under Part B (612(a)(16)), in order to be eligible to receive financial assistance under Part B, the State must have in place by July 1, 1998 performance goals for children with disabilities that must promote the purposes of the IDEA and be consistent, to the maximum extent appropriate, with other goals and standards developed for children established by the State and performance indicators to assess progress toward achieving those goals. A State must have developed those performance goals and indicators in order to apply for a State Improvement Grant because in conducting the needs assessment required as part of its application, the State shall identify those critical aspects of early intervention, general education, and special education programs that must be improved to enable children with disabilities to meet the performance goals and indicators established by the State for the performance of children with disabilities under Section 612(a)(16). In submitting the required SIG performance reports to the Secretary under Section 653(f), the State shall describe the progress of the State in meeting the performance goals established under section 612(a)(16), analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance.

Monitoring and Corrective Action Plans

27. How is the State Improvement Grant aligned with Federal compliance reviews?

There are three areas in which the State Improvement Grant aligns with Federal compliance reviews. First, the State improvement plan must include an analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities (Section 653(b)(2)(C)). The second is that the State improvement plan must include a description of strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel (Section 653(c)(3)(E). The third area of alignment with monitoring is that in determining competitive awards the Secretary may give priority to applications on the basis of need, as indicated by such information as the findings of Federal compliance reviews (Section 653(d)(2)).

28. Can the State Improvement Grant funds be used to address deficiencies identified in Federal compliance reviews?

Yes, if the activities to address the deficiencies are consistent with the purposes of the grant and described in the State's application. If, for example, a Federal compliance review identified that a personnel shortage impacted on the provision of a free appropriate public education to students with disabilities, then it would be consistent with the purposes of the grant to use grant funds to address the personnel shortage.

Applications, Length of Awards, and Reapplication

29. Can the first grant be written as a planning grant?

No. The purpose of the SIG program is to assist State educational agencies, and their partners referred to in Section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. In order to be funded a State must include in its application improvement strategies that were developed to address State and local needs identified in the State needs

assessment. The purpose of the needs assessment is to provide the necessary information to facilitate the development of a State improvement plan that identifies those critical aspects of early intervention, general education, and special education programs that must be improved to enable children with disabilities to meet the goals established by the State under Section 612(a)(16). In conjunction with the needs assessment, the improvement strategies (Section 653(c)) subsumed in the State Improvement Plan constitute the State's plan for the use of SIG funds.

30. What grant period can a State request in its initial application?

A state may request a grant of from one to five years. However, the Secretary may award a grant that is shorter than the state requests, but not less than one year, if the state's application does not sufficiently justify the full requested duration.

31. If a project is funded for less than five years, can it be extended later?

No, with the exception of relatively short "no-cost" extensions that are sometimes given to allow the completion of project activities. These extensions do not award new funds or approve new activities.

32. After a state completes one State Program Improvement Grant, can it apply for another? If so, will it compete against all applicants or only against other states that have received previous grants?

Yes, a state can apply for another SIG after it completes one. It will be in competition with all applicants, not just those with previous grants. The Secretary may give priority to applications on the basis of need (Section 653(d)(2)).

33. If a state applies unsuccessfully in one year, will it be able to apply again?

Yes.

34. Will a project be approved and funded all at once or a year at a time?

At the time of the initial grant award, the project duration of one to five years will be determined and budgets for all years of the grant will be established. However, funds can only be awarded one year at a time. States receiving multi-year grants will submit annual performance reports to demonstrate that their grants are making "substantial progress." Funding for project years after the first will be based, in part, on these reports. This is not part of the competitive process of awarding funds, and it is expected that funding will be continued each year for the duration of the project, provided that substantial progress is demonstrated and that Congress continues to fund the program.

35. Does funding have to be the same for all years of the project?

No, but cannot exceed $2 million or be less than $500,000.

BILLING CODE 4000-01-P

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____ Organizational Unit

Address: _____

_____

_____ _____ _____ _____ - _____

City State County ZIP Code + 4

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 _____ → Title: _____

4. Project Director: _____

Address: _____

_____ _____ _____ - _____

City State ZIP Code + 4

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ { ☐ Full IRB *or* ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address:

e. Signature of Authorized Representative Date: ___/___/_____

REV. 1/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intldunsbtm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt)**, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt)**, address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. **Provide the six-point narrative and discussion of other performance sites in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant i certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Previous Edition Usable **Authorized for Local Reproduction** **Standard Form 424B (Rev. 7-97) Prescribed by OMB Circular A-102**

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control No. 1880–0538 Expiration Date: 10/31/99
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such

conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.);
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____

(Signature) (Date)

_____

(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 99–21301 Filed 8–17–99; 8:45 am]
BILLING CODE 4000–01–C

Read

CUSTOME

Federal Reg
General Info
aids

Laws

Presidential
Executive or
The United

Other Servi
Electronic a
Privacy Act
Public Laws
TTY for the

ELECTRON

World Wide
Full text of
publications
h

Federal Reg
Inspection I
h

E-mail

PENS (Publ
service for
subscribe, s
h

with the tex
s

Use listserv
PENS. We c

Reference q
Federal Reg
i

The Federal
regulations.

FEDERAL

41765–4199
41999–4226
42265–4257
42579–4282
42823–4304
43043–4325
43255–4359
43599–4389
43897–4410
44101–4439
44397–4464
44643–4481
44817–4514

Reader Aids

Federal Register

Vol. 64, No. 159

Wednesday, August 18, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998	2
41999–42264	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43598	10
43599–43896	11
43897–44100	12
44101–44396	13
44397–44642	16
44643–44816	17
44817–45148	18

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265
Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12924 (See Notice of Aug. 10, 1999) 44101
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895
13134 44639
Administrative Orders:
Notice of Aug. 10, 1999 44101

7 CFR

11 43043
610 41999
989 43897
1230 44643
1728 42005
Proposed Rules:
6 42288
354 43103
505 44634
931 42858
932 42619
981 43298
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043
318 44644
319 44644
390 43902
Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823
76 44645
Proposed Rules:
50 ..... 44137, 44860
709 45062
710 ..... 44433, 45062
711 45062

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
905 44103
Proposed Rules:
202 44582
361 ..... 42861, 42862
702 44663
747 44663
935 44444

13 CFR

120 44109
Proposed Rules:
120 43636

14 CFR

4 43599
25 44817
27 ..... 43016, 45092
29 43016
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905, 44110, 44112, 44650
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907, 44114, 44116, 44117, 44268, 44397, 44398, 44399, 44400, 44578, 44819, 44821, 44823
71 44825
91 44814
97 ..... 44117, 44119

254.....41781
382.....41781
Proposed Rules:
25.....43570, 43943, 43946
39.....41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667
65.....42810
66.....42810
71.....42300, 42301, 44139, 44140, 44141, 44142, 44144, 44865
93.....44145
107.....43321
108.....43322
119.....45090
121.....45090
129.....45090
135.....45090
147.....42810
183.....45090

15 CFR

734.....42009
738.....42009
740.....42009
742.....42009
902.....42826

16 CFR

2.....43599
5.....42594
Proposed Rules:
1212.....42302

17 CFR

9.....43254
10.....43071
12.....43071
200.....42594
240.....42031, 42594
249.....42594
Proposed Rules:
4.....41843
275.....43556

18 CFR

3.....44400
341.....44400
342.....44400
346.....44400
357.....44400
362.....44400
381.....44652
385.....44400
Proposed Rules:
101.....42304
343.....43600
357.....42623
385.....42307, 43600

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
151.....43608
162.....43262
173.....43262
174.....43262, 43608
178.....43608
181.....43262
Proposed Rules:
12.....41851
113.....41851, 42872
141.....41851

20 CFR

Proposed Rules:
375.....44670
404.....42310
416.....42310

21 CFR

101.....42277
172.....43072, 43908, 44121
173.....44122
178.....44406, 44407
310.....44653
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596, 43909
1308.....42432
1312.....42432
Proposed Rules:
101.....42315
207.....43114
310.....44671
314.....42625, 42873
344.....44671
607.....43114
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032
514.....44123

24 CFR

108.....44094
982.....43613
Proposed Rules:
990.....43641

26 CFR

1.....41783, 43072, 43267, 43613, 43910
31.....42831
301.....41783
602.....41783, 43072, 43613
801.....42834
Proposed Rules:
1.....43117, 43323, 43462, 43969
301.....43324
602.....43462

28 CFR

505.....43880

29 CFR

2570.....42246
2575.....42246
4044.....44128
Proposed Rules:
1910.....45098
2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75.....43280, 43286
90.....43283
202.....43506
206.....43288, 43506
250.....42597
914.....43911
943.....43913
Proposed Rules:
913.....44674
914.....44448
935.....42887
936.....43327

31 CFR

538.....41784
550.....41784
560.....41784
590.....43924
Proposed Rules
375.....42626

32 CFR

Proposed Rules:
230.....43856
231.....43858
231a.....43856

33 CFR

100.....42278, 42598, 43289
110.....42279
117.....42033, 42599, 44129, 44131, 44826
160.....41794
165.....43290, 43291, 44658
Proposed Rules:
100.....41853
117.....44145, 44147, 44148, 44149, 44151

34 CFR

611.....42837
Proposed Rules:
668.....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682.....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:
13.....41854
1191.....42056

37 CFR

Proposed Rules:
201.....42316

38 CFR

17.....44659
21.....44660

39 CFR

20.....43292
Proposed Rules:
111.....44681

40 CFR

9.....42432, 43426, 43936
52.....42600, 43083, 44131, 44134, 44408, 44411, 44415, 44417
58.....42530
62.....43091, 44420
63.....42764
86.....43936
122.....42432, 43426
123.....42432, 43426
124.....42432, 43426
180.....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846, 44826, 44829
186.....41818
261.....42033
271.....41823, 42602, 44836
300.....44135
403.....42552
501.....42432, 43426
503.....42552
745.....42849
Proposed Rules:
52.....42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452
62.....43123
63.....45116
97.....43124, 44452
147.....43329
261.....42317, 44866
271.....42630, 43331, 44876
281.....43336
300.....41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458
372.....42222
441.....45072

41 CFR

301.....43254
Proposed Rules:
51-2.....41882
51-5.....41882

42 CFR

413.....42610, 44841
498.....43295
1001.....42174
Proposed Rules:
Ch. IV.....43338

44 CFR

61.....41825
64.....42852, 44421
206.....41827
Proposed Rules:
61.....42632
62.....42633

45 CFR

801.....42039

46 CFR

10.....42812, 44786
12.....42812, 44786
Proposed Rules:
298.....44152

535 42057

47 CFR

0 43618
1 42854
5 43094
43 43618
62 43937
63 ..... 43095, 43618
64 ..... 43618, 44423
73 ..... 41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095, 44856
76 ..... 42617, 42855
90 43094

Proposed Rules:

Ch. 1 ..... 41883, 42635
20 44682
1 ..... 41884, 41887
2 ..... 41891, 43643
15 41897
32 44877
43 44877
51 41897
64 44877
68 41897
73 ..... 41899, 43132
76 41887
78 41899
95 41891

48 CFR

202 43096
204 43098
212 43098
213 43098
217 43096
252 43098
253 43098
601 43618
602 43618
603 43618
604 43618
605 43618
606 43618
608 43618
609 43618
610 43618
611 43618
613 43618
614 43618
615 43618
616 43618
617 43618
619 43618
622 43618
623 43618
625 43618
626 43618
628 43618
629 43618
630 43618
631 43618
632 43618
633 43618
634 43618
636 43618
637 43618
639 43618
641 43618
642 43618
643 43618
644 43618
645 43618
646 43618
647 43618
649 43618
652 43618
653 43618
701 42040
702 42040
703 42040
705 42040
706 42040
709 42040
714 42040
716 42040
719 42040
726 42040
732 42040
733 42040
734 42040
749 42040
750 42040
752 42040
5416 41834

Proposed Rules:

17 44100
536 44683

49 CFR

172 ..... 44426, 44578
173 44426

Proposed Rules:

190 43972
385 44460
390 44460
571 42330
575 44164

50 CFR

17 41835
300 44428
600 42286
622 43941
635 ..... 42855, 43101
648 ..... 42042, 42045, 44661
660 ..... 42286, 42856
679 ..... 41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942, 44431, 44432, 44858, 44859

Proposed Rules:

17 ..... 41903, 42058, 42250, 43132, 44171, 44470, 44883
20 44384
32 43834
36 43834
226 44683
600 ..... 42335, 43137
622 ..... 41905, 42068, 44884
635 44885
648 ..... 42071, 43137, 43138
660 44475
679 42080

REMINDERS
The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 18, 1999

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Administrative regulations:
Policies, policy provisions, and premium rates; published 7-19-99
ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glufosinate ammonium; published 8-18-99
Pyriproxyfen; published 8-18-99
FEDERAL COMMUNICATIONS COMMISSION
Radio and television broadcasting:
Competitive bidding procedures—
Commercial broadcast and instructional television fixed service licensee; published 8-18-99
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Community development block grants:
Expenditure documentation; clarification; published 7-19-99
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; published 8-18-99
VETERANS AFFAIRS DEPARTMENT
Acquisition regulations:
Tax-free tobacco products for gratuitous distribution to present and former members of U.S. Armed Forces; published 7-19-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (sweet) grown in—
Washington; comments due by 8-23-99; published 6-24-99
Potatoes (Irish) grown in—
California and Oregon; comments due by 8-24-99; published 6-25-99
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Recognition of animal disease status of regions in European Union; comments due by 8-24-99; published 6-25-99
Foreign quarantine notices:
Mexican Haas avocados; comments due by 8-24-99; published 6-25-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Essential fish habitats; comments due by 8-23-99; published 7-9-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 8-25-99; published 7-26-99
Western Pacific Coral Reef Ecosystem and bottomfish and seamount groundfish; comments due by 8-26-99; published 8-16-99
COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Contract market designation applications—
Commission review and approval; procedures; comments due by 8-26-99; published 7-27-99
DEFENSE DEPARTMENT
Acquisition regulations:
Cargo preference-subcontracts for commercial items; comments due by 8-23-99; published 6-22-99
Overseas use of purchase card; comments due by 8-25-99; published 7-29-99
EDUCATION DEPARTMENT
Postsecondary education:
Secretary's recognition of accrediting agencies; comments due by 8-24-99; published 6-25-99
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Outer Continental Shelf Lands Act; implementation:
Natural gas transportation through pipeline facilities on Outer Continental Shelf; comments due by 8-27-99; published 7-13-99
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-23-99; published 7-23-99
Indian; comments due by 8-25-99; published 7-26-99
Indiana; comments due by 8-25-99; published 7-26-99
Montana; comments due by 8-27-99; published 7-28-99
Clean Air Act:
Interstate ozone transport reduction—
Nitrogen oxides trading program; Section 126 petitions; findings of significant contribution and rulemaking; comments due by 8-25-99; published 8-16-99
Hazardous waste:
Project XL program; site-specific projects—
University of Massachusetts et al.; university laboratories; comments due by 8-26-99; published 7-27-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 8-25-99; published 7-26-99
Water programs:
Clean Water Act—
State and Tribal water quality standards; review and approval; comments due by 8-23-99; published 7-9-99
FEDERAL COMMUNICATIONS COMMISSION
Common carrier service:
Incumbent local exchange carriers; accounting and reporting requirements; comprehensive review; comments due by 8-23-99; published 8-18-99
Radio services, special:
Maritime services—
Privately owned accounting authorities; accounts settlement; streamlining; biennial regulatory review; comments due by 8-23-99; published 7-28-99
Radio stations; table of assignments:
Arizona; comments due by 8-23-99; published 7-14-99
Arkansas; comments due by 8-23-99; published 7-14-99
Kentucky and Virginia; comments due by 8-23-99; published 7-14-99
New York; comments due by 8-23-99; published 7-14-99
North Carolina; comments due by 8-23-99; published 7-14-99
Texas; comments due by 8-23-99; published 7-14-99
Television stations; table of assignments:
New York; comments due by 8-23-99; published 7-14-99
FEDERAL MARITIME COMMISSION
Shipping Act of 1984; implementation:
Ocean common carriers; definition clarification; comments due by 8-24-99; published 6-25-99
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Admission and occupancy—
Pet ownership in public housing; comments due by 8-23-99; published 6-23-99
Public housing agency organization; required resident membership on board of directors or similar governing body; comments due by 8-23-99; published 6-23-99
Public Housing Assessment System; comments due by 8-23-99; published 6-22-99
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Tidewater goby; northern populations; comments due by 8-23-99; published 6-24-99
Migratory bird hunting:

Federal Indian reservations, off-reservation trust lands and ceded lands; comments due by 8-23-99; published 8-13-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Kansas; comments due by 8-25-99; published 7-26-99
Mississippi; comments due by 8-25-99; published 7-26-99
Ohio; comments due by 8-23-99; published 8-6-99
Oklahoma; comments due by 8-25-99; published 8-10-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Credit union service organizations—
Real estate brokerage services; grandfather exemption; comments due by 8-23-99; published 6-22-99

PERSONNEL MANAGEMENT OFFICE
Retirement:
Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS)—
State income tax withholding and voluntary allotment program; expansion; comments due by 8-23-99; published 6-23-99

SMALL BUSINESS ADMINISTRATION
Business loans:
Loan loss reserve fund; comments due by 8-25-99; published 7-26-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Iowa and Illinois; comments due by 8-23-99; published 7-22-99
Ports and waterways safety:
Lower New York Bay and Raritan Bay, NY; safety zone; comments due by 8-23-99; published 7-7-99
Vessels and marine facilities; Year 2000 (Y2K) reporting requirements; comments due by 8-23-99; published 6-23-99

TRANSPORTATION DEPARTMENT
Economic regulations:
Domestic baggage liability; comments due by 8-27-99; published 6-28-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 8-23-99; published 7-23-99
Avions Mundry et Cie; comments due by 8-27-99; published 7-19-99
Bell; comments due by 8-23-99; published 6-24-99
Boeing; comments due by 8-23-99; published 6-23-99
Dassault; comments due by 8-23-99; published 7-22-99
McDonnell Douglas; comments due by 8-23-99; published 7-23-99
MD Helicopters Inc.; comments due by 8-23-99; published 6-23-99
Rolls-Royce plc; comments due by 8-23-99; published 6-23-99
Saab; comments due by 8-23-99; published 7-22-99
Sikorsky; comments due by 8-23-99; published 6-24-99
Class D airspace; comments due by 8-23-99; published 7-7-99
Class E airspace; comments due by 8-24-99; published 7-19-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Loading, unloading, and storage; regulatory applicability; comments due by 8-25-99; published 7-28-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Simplified production, and resale methods with historic absorption ratio election; special rules; comments due by 8-23-99; published 5-24-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 1543/P.L. 106–47

To amend the Agricultural Adjustment Act of 1938 to release and protect the release of tobacco production and marketing information. (Aug. 13, 1999; 113 Stat. 228)

Last List August 13, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

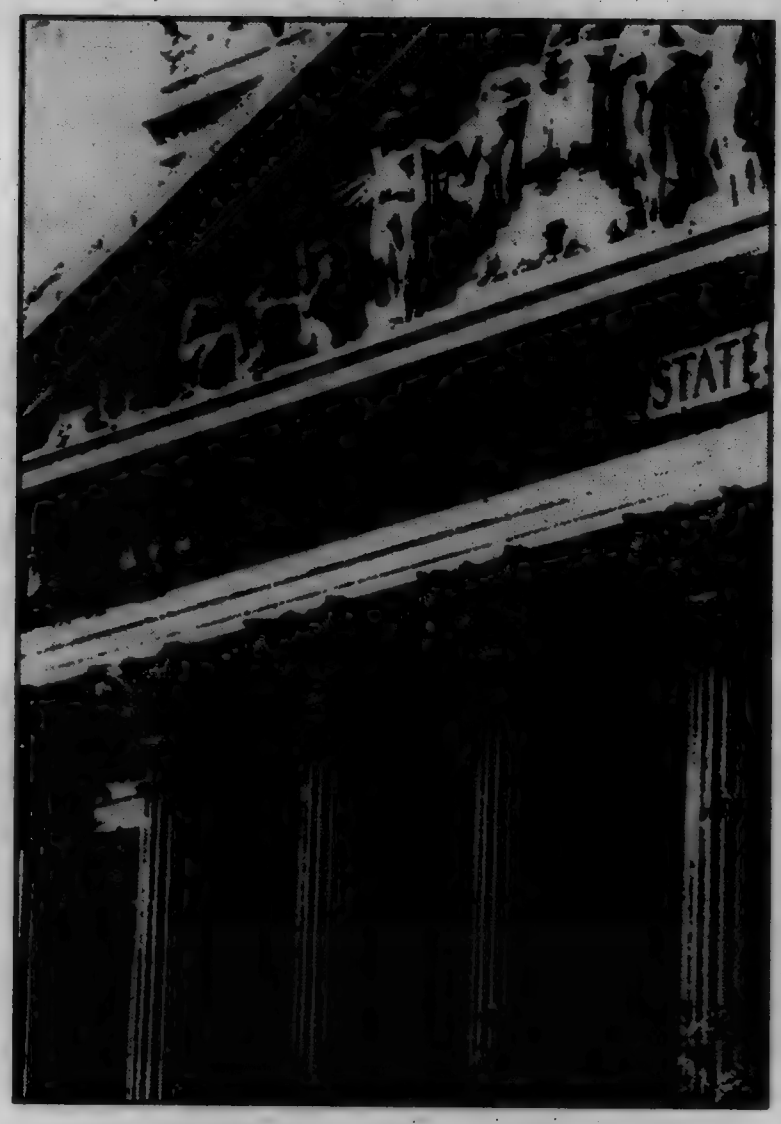

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
* 5421

☐ **YES**, enter the following indicated subscriptions for one year:

——— **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
——— **Federal Register Index** (FRUS) $25 per year.

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFR SMITH212J                      DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFRDO SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

106th Congress, 1st Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 1st Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 1st Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/98

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

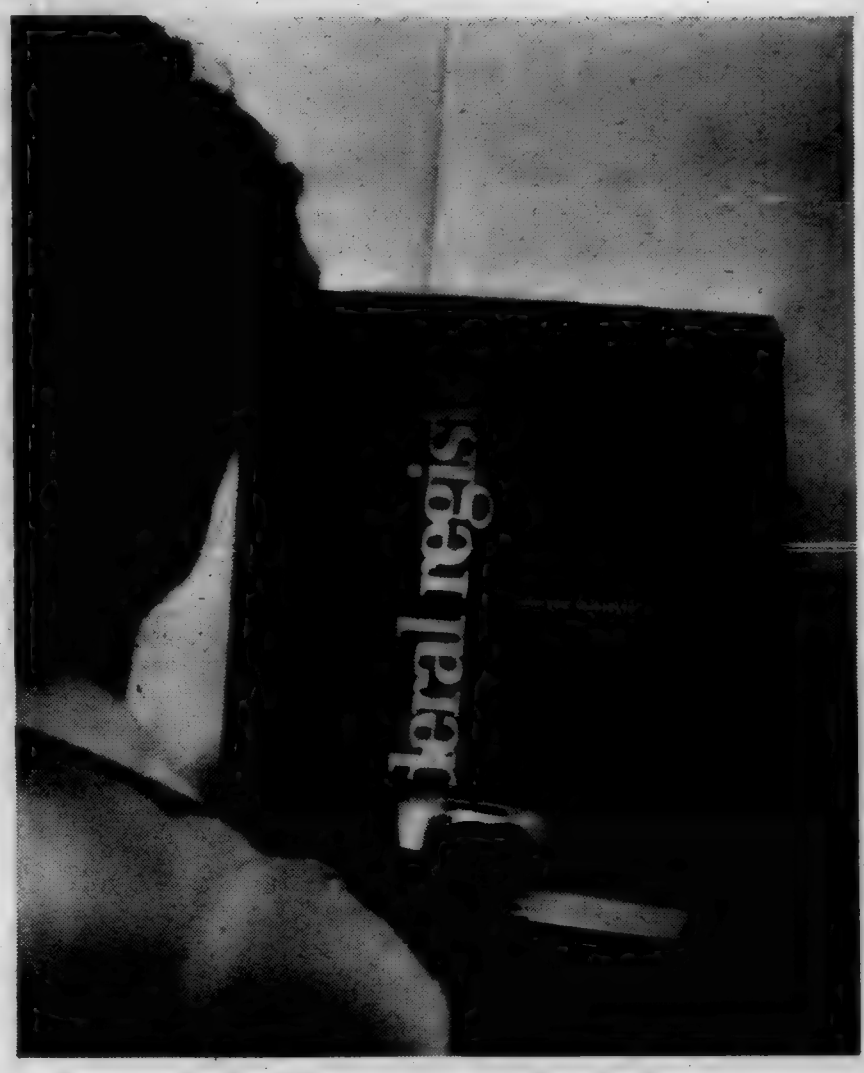

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

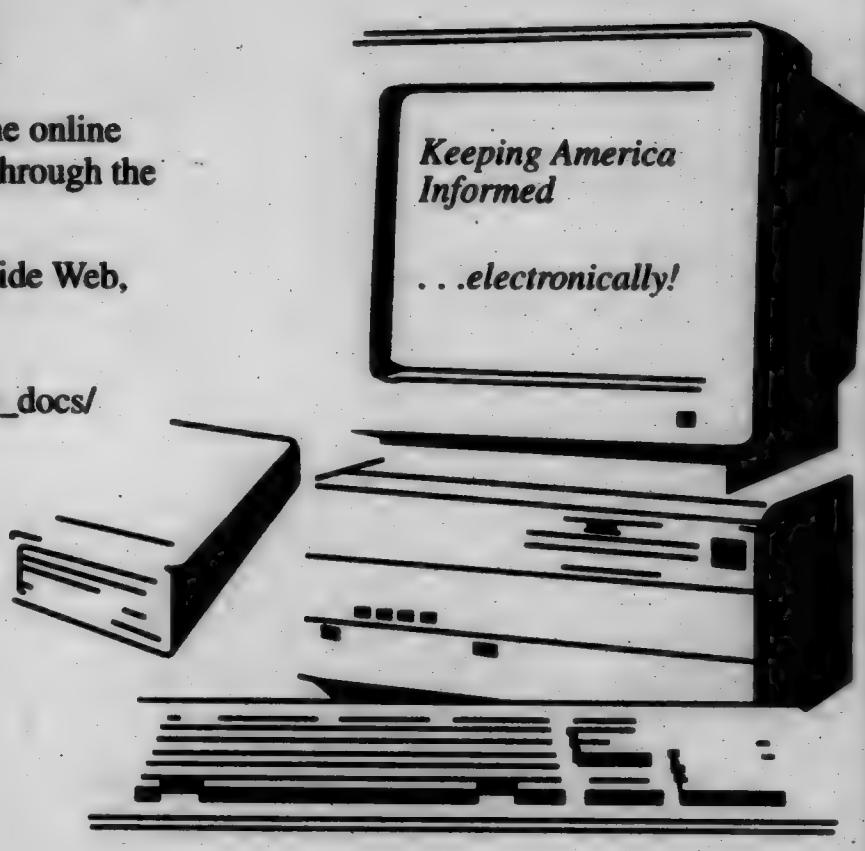

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

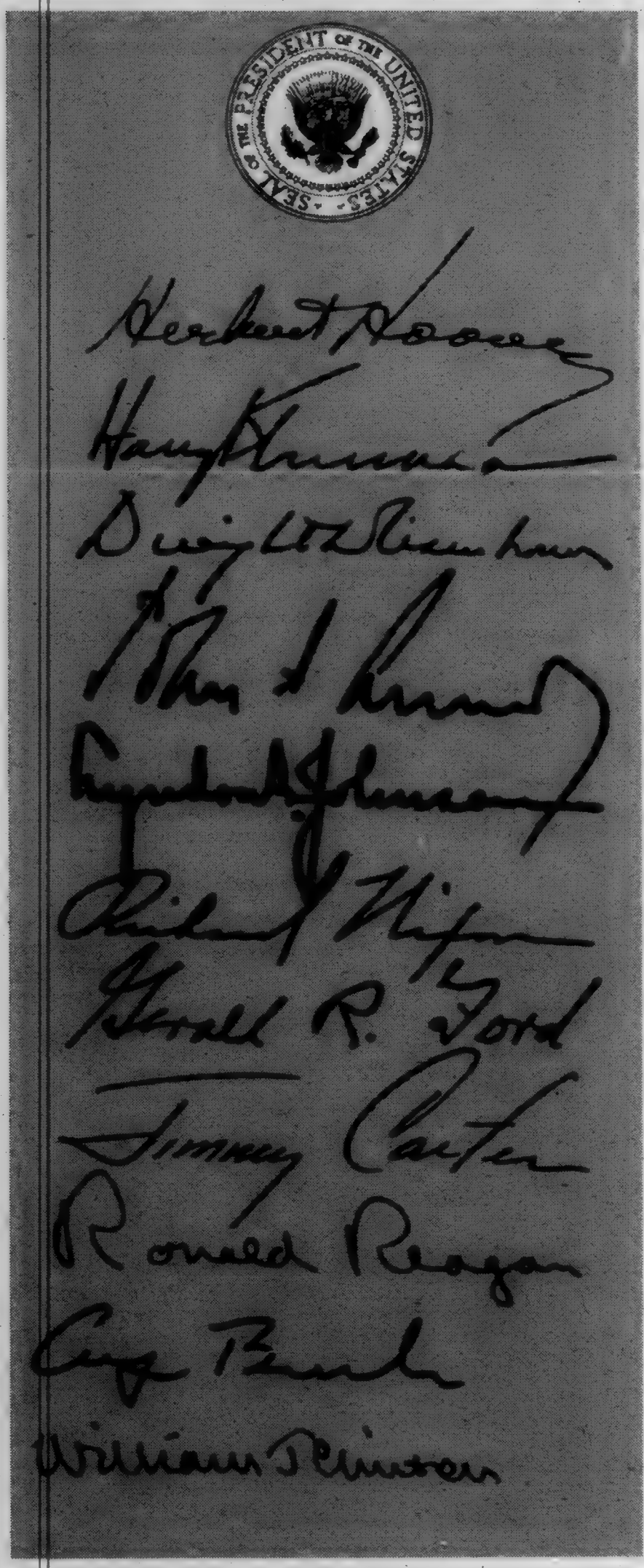

Public Papers of the Presidents of the United States

William J. Clinton

1993
(Book I) $51.00

1993
(Book II) $51.00

1994
(Book I) $56.00

1994
(Book II) $52.00

1995
(Book I) $60.00

1995
(Book II) $65.00

1996
(Book I) $66.00

1996
(Book II) $72.00

1997
(Book I) $69.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

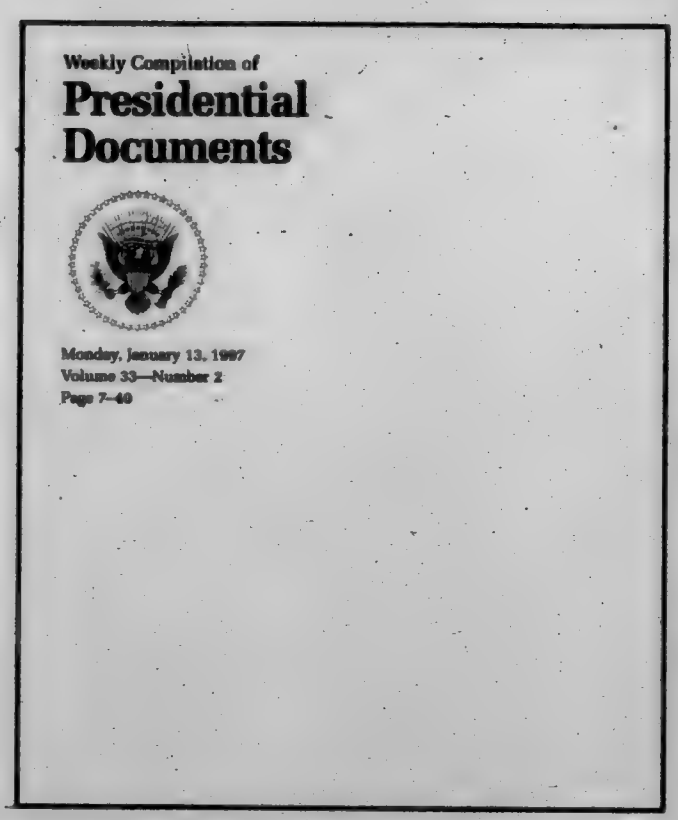

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! VISA

Order Processing Code:
* 5420

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

ntial
use
es are

ce of the
onal
s

VISA

) 512–2250
) 512–1800

PD) so I can

o change.

ocuments

–

nk you for
our order!

11/3

0–7954

Printed on recycled paper

VOL
64
ISS
160
AG
19
999
UMI

8–19–99
Vol. 64

United States
Government
Printing Offic
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 2040

OFFICIAL BUSINESS
Penalty for private us

8–19–99
Vol. 64 No. 160

federal register

Thursday
August 19, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

OL

64

SS

1
6
0

G

19

99

MI

8-19-99
Vol. 64
Pages 4514

8–19–99
Vol. 64 No. 160
Pages 45149–45406

federal register

Thursday
August 19, 1999

ANN ARBOR MI 48106

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Contents

Federal Register

Vol. 64, No. 160

Thursday, August 19, 1999

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Health Conference Support Program, 45261–45265

Agricultural Marketing Service
PROPOSED RULES
Walnuts grown in—
California, 45208–45211

Agriculture Department
See Agricultural Marketing Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Agricultural Biotechnology Advisory Committee, 45227–45228

Antitrust Division
NOTICES
National cooperative research notifications:
Asymmetrical Digital Subscriber Line Forum, 45278
Cargill, Inc. and Osmonics, Inc., 45278
Center for Waste Reduction Technologies, 45278–45279
GE Corporate Research & Development, 45279
Joint Industry Program-Development of Instrument for Corrosion Detection in Insulated Pipes Using Magnetostrictive Sensor, 45279
Wireless Application Protocol Forum, Ltd., 45279–45280

Army Department
See Engineers Corps
NOTICES
Meetings:
Armed Forces Epidemiological Board, 45241
Senior Executive Service:
Performance Review Boards; membership, 45241–45242

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Health Conference Support Program, 45261–45265
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 45265

Children and Families Administration
NOTICES
Grant and cooperative agreement awards:
American Public Human Services Association, 45265–45266
Grants and cooperative agreements; availability, etc.:
Community Services Office—
2000 FY Discretionary Grants Program, 45301–45333

Commerce Department
See International Trade Administration

Committee for the Implementation of Textile Agreements
NOTICES
Coton, wool, and man-made textiles:
Philippines, 45239–45240

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Consolidated Electrical Distributors, Inc.; correction, 45240

Defense Department
See Army Department
See Engineers Corps
See Navy Department
RULES
Acquisition regulations:
Contract action reporting requirements (2000 FY), 45197–45207
Security responsibilities; oral attestation, 45196–45197
NOTICES
Privacy Act:
Systems of records, 45240

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45244
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
National Resource Centers Program and Foreign Language and Area Studies Fellowships Program, 45244–45245
Undergraduate International Studies and Foreign Language Program, 45246

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Domestic aluminum industry; energy consumption and environmental impact reduction and economic competitiveness enhancement, 45246–45247

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Butte County, CA; Rock Creek-Keefer Slough flood control project, 45242–45243

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Halogenated solvent cleaning, 45187–45196
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Missouri, 45184–45187
Air quality implementation plans; approval and promulgation; various States:
California, 45175–45182 , 45170–45175
Maryland, 45182–45184
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Halogenated solvent cleaning, 45221–45222
Air programs:
Outer Continental Shelf regulations—
California; consistency update, 45217–45221

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Missouri, 45221
Air quality implementation plans; approval and promulgation; various States:
California, 45215–45216
Maryland, 45217
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 45223–45226
NOTICES
Meetings:
National Environmental Justice Advisory Council, 45255
Superfund; response and remedial actions, proposed settlements, etc.:
Jack's Creek/Sitkin Smelting Site, PA, 45255–45256
King River Ltd., Inc. Site, OH, 45256

Equal Employment Opportunity Commission
RULES
Freedom of Information Act; implementation, 45164–45165

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Airworthiness directives:
Pilatus Aircraft Ltd., 45149–45150
Airworthiness standards:
Rotorcraft; transport category—
Rotorcraft performance, 45335–45338
PROPOSED RULES
Airworthiness directives:
Boeing, 45211–45213

Federal Communications Commission
RULES
Common carrier services:
Access charges—
Presubscribed interexchange carrier charge; CFR correction, 45196
NOTICES
Number conservation measures; implementation petitions:
Wisconsin, 45256–45257

Federal Deposit Insurance Corporation
NOTICES
Organization, functions, and authority delegations:
Consumer Affairs Specialist; designation as small business liaison under Y2K Act, 45257–45258

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 45258

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Northern Natural Gas Co., 45249
Nowich Public Utilities Department, 45249–45250
Environmental statements; notice of intent:
Koch Gateway Pipeline Co., 45250–45251
Hydroelectric applications, 45251–45254
Applications, hearings, determinations, etc.:
AmerGen Energy Co., L.L.C., 45247
Columbia Gas Transmission Corp., 45247
Public Utility District No. 1 of Chelan County, WA, 45248
South Carolina Public Service Authority, 45248
USGen New England, Inc., 45248–45249

Federal Highway Administration
RULES
Motor carrier safety standards:
Inspection, repair, and maintenance; inspector qualifications; CFR correction, 45207

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Charter Container Line, Inc., et al., 45258

Federal Reserve System
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 45259–45260

Fish and Wildlife Service
RULES
Migratory bird hunting:
Tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shots; final/temporary approval as nontoxic for 1999-2000 season, 45399–45405
NOTICES
Endangered and threatened species permit applications, 45268–45269
Environmental statements; notice of intent:
Migratory bird permits; resident Canada goose management, 45269–45274

Food and Drug Administration
RULES
Biological products:
Blood, blood components, and source plasma requirements; revisions, 45366–45374
Medical devices:
General and plastic surgery devices—
Silicone inflatable breast prosthesis; premarket approval, 45155–45161
PROPOSED RULES
Biological products:
Blood, blood components, and blood derivatives; deferred donors notification requirements, 45355–45365
Blood, blood components, and source plasma requirements; revisions, 45375–45382
Human blood donors; testing for evidence of infection due to communicable disease agents; requirements, 45339–45355
Plasma derivatives and other blood-derived products; tracking and notification requirements, 45383–45386

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 45260
Submission for OMB review; comment request, 45260–45261

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 45266–45267
Submission for OMB review; comment request, 45267

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45280–45288

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
NOTICES
Meetings:
Citizen Advocacy Panels—
Midwest District, 45300

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate from—
Canada, 45228–45236
Solid fertilizer grade ammonium nitrate from—
Russian Federation, 45236–45239
Overseas trade missions:
1999 trade missions (October-December); private sector participants recruitment and selection, 45239

International Trade Commission
NOTICES
Import investigations:
Creatine monohydrate from—
China, 45275–45276
Pipe and tube from—
Various countries, 45276–45277

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Atlanta, GA, 45277
Privacy Act:
Systems of records, 45277

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Closure of public lands:
Montana, 45274

Management and Budget Office
NOTICES
Designated Federal entities and Federal entities; list, 45291–45293

Minerals Management Service
PROPOSED RULES
Royalty management:
Federal geothermal resources valuation, 45213–45215

Mine Safety and Health Administration
RULES
Coal mine safety and health:
Underground mines—
Preshift examinations; safety standards, 45165–45170

National Park Service
NOTICES
Environmental statements; availability, etc.:
Marsh-Billings-Rockefeller National Historical Park, VT, 45274
Environmental statements; notice of intent:
Devils Tower National Monument, WY, 45274–45275
Meetings:
Acadia National Park Advisory Commission, 45275

Navy Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 45243–45244

Nuclear Regulatory Commission
NOTICES
Decommissioning plans; sites:
Fansteel, Inc., facility, Muskogee, OK, 45290–45291
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 45288–45289
General Electric Vallecitos Nuclear Center, CA, 45289
Illinois Power Co., 45290

Office of Management and Budget
See Management and Budget Office

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous materials transportation—
Chemical oxidizers and compressed oxygen aboard aircraft, 45387–45398

Securities and Exchange Commission
RULES
Accounting bulletins, staff:
Financial statements; materiality thresholds; assessment, 45150–45155
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 45294–45295
Options Clearing Corp., 45295–45296
Applications, hearings, determinations, etc.:
Allied Capital Corp., 45293–45294

Social Security Administration
NOTICES
Privacy Act:
Computer matching programs, 45296–45298

State Department
RULES
Visas; nonimmigrant documentation:
Border crossing identification cards, 45162–45164

Substance Abuse and Mental Health Services Administration
NOTICES
Reports and guidance documents; availability, etc.:
Substance Abuse Treatment Center; Changing the Conversation, National Plan to Improve Substance Abuse Treatment; comment request, 45267–45268

Surface Transportation Board
NOTICES
Railroad services abandonment:
Soo Line Railroad Co., 45298

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45298–45300

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Kremlin Gold-1000 Years of Russian Gems and Jewels, 45300

Separate Parts In This Issue

Part II
Department of Health and Human Services, Children and Families Administration, 45301–45333

Part III
Department of Transportation, Federal Aviation Administration, 45335–45338

Part IV
Department of Transportation, Federal Aviation Administration, 45339–45386

Part V
Department of Transportation, Research and Special Programs Administration, 45387–45398

Part VI
Department of Interior, Fish and Wildlife Service, 45399–45405

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
984.....45208

14 CFR
29.....45336
39.....45149
Proposed Rules:
39 (2 documents).....45211

17 CFR
211.....45150

21 CFR
606.....45366
640.....45366
878.....45155
Proposed Rules:
600.....45383
606 (2 documents).....45355, 45375
607.....45340
610.....45340
630.....45355
640(2 documents).....45340, 45375
660.....45340

22 CFR
41.....45162

29 CFR
1610.....45164

30 CFR
75.....45165
Proposed Rules:
206.....45213

40 CFR
52 (4 documents).....45170, 45175, 45178, 45182
62.....45184
63.....45187
Proposed Rules:
52 (4 documents).....45215, 45216, 45217
55.....45217
62.....45221
63.....45221
300 (2 documents).....45222, 45224

47 CFR
69.....45196

48 CFR
204 (2 documents).....45196, 45197
219.....45197
252.....45196
253.....45197

49 CFR
171.....45388
172.....45388
175.....45388
396.....45207

50 CFR
20.....45400

Rules

This section
contains regu
applicability a
are keyed to
Federal Regi
50 titles purs

The Code of
the Superinte
new books a
REGISTER i

DEPARTM

Federal Av

14 CFR Pa

[Docket No.
11256; AD 9

RIN 2120–A

Airworthin
Aircraft Ltd
45 Airplane

AGENCY: Fe
Administra

ACTION: Fin

SUMMARY: T
new airwor
applies to c
(Pilatus) M
airplanes. T
the generat
certain dio
amp circui
filter. This
continuing
(MCAI) issu
authority fo
specified b
prevent da
component
switched o
and it overl
loss of elec
critical airp

DATES: Effe
incorporati
publication
approved b
Register as

ADDRESSES
applies to t
Pilatus Air
Manager, C
telephone:
+41 41 610
also be exa
Aviation A
Region, Off

Rules and Regulations

Federal Register
Vol. 64, No. 160
Thursday, August 19, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–10–AD; Amendment 39–11256; AD 99–17–06]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires modifying the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent damage to electrical components if the generator 2 is not switched off prior to engine shutdown and it overheats, which could result in loss of electrical power to certain critical airplane components.

DATES: Effective October 4, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 14, 1999 (64 FR 31758). The NPRM proposed to require modifying the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Pilatus Service Bulletin No. 24–012, dated February 19, 1999.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 69 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost to the owners/operators of the affected aircraft. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $20,700, or $300 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–17–08 Pilatus Aircraft Ltd.: Amendment 39–11256; Docket No. 99–CE–10–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through 260, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent damage to electrical components if the generator 2 is not switched off prior to engine shutdown and it overheats, which could result in loss of electrical power to certain critical airplane components, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, modify the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter. Perform these actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Service Bulletin No. 24–012, dated February 19, 1999.

Note 2: The affected airplanes incorporate one of the following generators:

—a BOSCH Generator 2, part number (P/N) 524.32.12.158. This generator is installed at the factory on Pilatus Models PC–12 and PC–12/45 airplanes beginning with MSN 231 and could be installed on airplanes with a MSN in the range of 101 through 230 by incorporating Pilatus Service Bulletin No. 24–010, dated September 28, 1998; or

—an ELECTRO SYSTEMS Generator 2, P/N 978.87.24.121, with Pilatus Service Bulletin No. 24–009 (installation of support bracket and cut-out relay) incorporated. This generator is installed at the factory on Pilatus Models PC–12 and PC–12/45 airplanes with a MSN in the range of 101 through 230. AD 99–06–17, Amendment 39–11081 (64 FR 13882, March 23, 1999), requires installing the support bracket and cut-out relay specified in Pilatus Service Bulletin No. 24–009, dated September 23, 1998, on Pilatus Models PC–12 and PC–12/45 airplanes with a MSN in the range of 101 through 180. This service bulletin is incorporated at the factory on airplanes with a MSN in the range of 181 through 230.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a generator 2 that does not have the modification referenced in paragraph (a) of this AD incorporated.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No. 24–012, dated February 19, 1999, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The modification required by this AD shall be done in accordance with Pilatus Service Bulletin No. 24–012, dated February 19, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swiss AD HB 99–143, dated February 19, 1999.

(g) This amendment becomes effective on October 4, 1999.

Issued in Kansas City, Missouri, on August 5, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21016 Filed 8–18–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 99]

Staff Accounting Bulletin No. 99

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the views of the staff that exclusive reliance on certain quantitative benchmarks to assess materiality in preparing financial statements and performing audits of those financial statements is inappropriate; misstatements are not immaterial simply because they fall beneath a numerical threshold.

DATES: Effective August 12, 1999.

FOR FURTHER INFORMATION CONTACT: W. Scott Bayless, Associate Chief Accountant, or Robert E. Burns, Chief Counsel, Office of the Chief Accountant (202–942–4400), or David R. Fredrickson, Office of General Counsel (202–942–0900), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1103; electronic addresses: BaylessWS@sec.gov; BurnsR@sec.gov; FredricksonD@sec.gov.

SUPPLEMENTARY INFORMATION: The statements in the staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: August 12, 1999.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 99 to the table found in Subpart B.

Staff Accounting Bulletin No. 99

The staff hereby adds Section M to Topic 1 of the Staff Accounting Bulletin Series. Section M, entitled "Materiality," provides guidance in applying materiality thresholds to the preparation of financial statements filed with the Commission and the performance of audits of those financial statements.

Staff Accounting Bulletins

Topic 1: Financial Statements

* * * * *

M. Materialit

1. Assessing

Facts: Duri
or auditing y
statements, f
registrant's i
becomes awa
registrant's fi
combined, th
4% overstate
$.02 (4%) ov
share. Becau
registrant's c
statements is
5%, manage
auditor concl
generally acc
principles ("
that the acco

Question:
Accounting S
Financial Ac
("FASB") sta
Statement ne
immaterial it
may a registr
financial stat
immaterialit
percentage th
or the audito
amounts and
financial stat

Interpretiv
aware that ce
have develop
as "rules of t
preparation
statements, a
used these th
evaluation o
considered n
registrant's fi
rule of thumb
the misstater
item that fall
not material

[1] American In
Accountants ("A
on Auditing Sta
and Materiality
the auditor shou
materiality both
scope for the au
financial statem
presented in all
with generally a
purpose of this S
is to provide gui
independent aud
of the materialit
identified in the
financial statem
intended to prov
assessing "mate
evaluations of a
factors may appl
address financia
17 CFR 270.2a–
Act of 1940.

[2] As used in th
"omission" refe
that would not b

M. Materiality

1. Assessing Materiality

Facts: During the course of preparing or auditing year-end financial statements, financial management or the registrant's independent auditor becomes aware of misstatements in a registrant's financial statements. When combined, the misstatements result in a 4% overstatement of net income and a $.02 (4%) overstatement of earnings per share. Because no item in the registrant's consolidated financial statements is misstated by more than 5%, management and the independent auditor conclude that the deviation from generally accepted accounting principles ("GAAP") is immaterial and that the accounting is permissible.[1]

Question: Each Statement of Financial Accounting Standards adopted by the Financial Accounting Standards Board ("FASB") states, "The provisions of this Statement need not be applied to immaterial items." In the staff's view, may a registrant or the auditor of its financial statements assume the immateriality of items that fall below a percentage threshold set by management or the auditor to determine whether amounts and items are material to the financial statements?

Interpretive Response: No. The staff is aware that certain registrants, over time, have developed quantitative thresholds as "rules of thumb" to assist in the preparation of their financial statements, and that auditors also have used these thresholds in their evaluation of whether items might be considered material to users of a registrant's financial statements. One rule of thumb in particular suggests that the misstatement or omission [2] of an item that falls under a 5% threshold is not material in the absence of particularly egregious circumstances, such as self-dealing or misappropriation by senior management. The staff reminds registrants and the auditors of their financial statements that exclusive reliance on this or any percentage or numerical threshold has no basis in the accounting literature or the law.

The use of a percentage as a numerical threshold, such as 5%, may provide the basis for a preliminary assumption that—without considering all relevant circumstances—a deviation of less than the specified percentage with respect to a particular item on the registrant's financial statements is unlikely to be material. The staff has no objection to such a "rule of thumb" as an initial step in assessing materiality. But quantifying, in percentage terms, the magnitude of a misstatement is only the beginning of an analysis of materiality; it cannot appropriately be used as a substitute for a full analysis of all relevant considerations.

Materiality concerns the significance of an item to users of a registrant's financial statements. A matter is "material" if there is a substantial likelihood that a reasonable person would consider it important. In its Statement of Financial Accounting Concepts No. 2, the FASB stated the essence of the concept of materiality as follows:

> The omission or misstatement of an item in a financial report is material if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.[3]

This formulation in the accounting literature is in substance identical to the formulation used by the courts in interpreting the federal securities laws. The Supreme Court has held that a fact is material if there is—

> a substantial likelihood that the . . . fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.[4]

Under the governing principles, an assessment of materiality requires that one views the facts in the context of the "surrounding circumstances," as the accounting literature puts it, or the "total mix" of information, in the words of the Supreme Court. In the context of a misstatement of a financial statement item, while the "total mix" includes the size in numerical or percentage terms of the misstatement, it also includes the factual context in which the user of financial statements would view the financial statement item. The shorthand in the accounting and auditing literature for this analysis is that financial management and the auditor must consider both "quantitative" and "qualitative" factors in assessing an item's materiality.[5] Court decisions, Commission rules and enforcement actions, and accounting and auditing literature[6] have all considered "qualitative" factors in various contexts.

The FASB has long emphasized that materiality cannot be reduced to a numerical formula. In its Concepts Statement No. 2, the FASB noted that some had urged it to promulgate quantitative materiality guides for use in a variety of situations. The FASB rejected such an approach as representing only a "minority view," stating—

> The predominant view is that materiality judgments can properly be made only by those who have all the facts. The Board's present position is that no general standards of materiality could be formulated to take into account all the considerations that enter into an experienced human judgment.[7]

The FASB noted that, in certain limited circumstances, the Commission and other authoritative bodies had issued quantitative materiality guidance, citing as examples guidelines ranging from one to ten percent with

---

[1] American Institute of Certified Public Accountants ("AICPA"), Codification of Statements on Auditing Standards ("AU") § 312, "Audit Risk and Materiality in Conducting an Audit," states that the auditor should consider audit risk and materiality both in (a) planning and setting the scope for the audit and (b) evaluating whether the financial statements taken as a whole are fairly presented in all material respects in conformity with generally accepted accounting principles. The purpose of this Staff Accounting Bulletin ("SAB") is to provide guidance to financial management and independent auditors with respect to the evaluation of the materiality of misstatements that are identified in the audit process or preparation of the financial statements (*i.e.*, (b) above). This SAB is not intended to provide definitive guidance for assessing "materiality" in other contexts, such as evaluations of auditor independence, as other factors may apply. There may be other rules that address financial presentation. *See, e.g.*, Rule 2a–4, 17 CFR 270.2a–4, under the Investment Company Act of 1940.

[2] As used in this SAB, "misstatement" or "omission" refers to a financial statement assertion that would not be in conformity with GAAP.

[3] FASB, Statement of Financial Accounting Concepts No. 2, *Qualitative Characteristics of Accounting Information* ("Concepts Statement No. 2"), ¶ 132 (1980). *See also* Concepts Statement No. 2, Glossary of Terms—Materiality.

[4] *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 449 (1976). *See also Basic, Inc.* v. *Levinson*, 485 U.S. 224 (1988). As the Supreme Court has noted, determinations of materiality require "delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him. . . . ." *TSC Industries*, 426 U.S. at 450.

[5] *See, e.g.*, Concepts Statement No. 2, ¶¶ 123–124; AU § 312.10 (" . . . materiality judgments are made in light of surrounding circumstances and necessarily involve both quantitative and qualitative considerations."); AU § 312.34 ("Qualitative considerations also influence the auditor in reaching a conclusion as to whether misstatements are material."). As used in the accounting literature and in this SAB, "qualitative" materiality refers to the surrounding circumstances that inform an investor's evaluation of financial statement entries. Whether events may be material to investors for non-financial reasons is a matter not addressed by this SAB.

[6] *See, e.g.*, Rule 1–02(o) of Regulation S–X, 17 CFR 210.1–02(o), Rule 405 of Regulation C, 17 CFR 230.405, and Rule 12b–2, 17 CFR 240.12b–2; AU §§ 312.10—.11, 317.13, 411.04 n. 1, and 508.36; *In re Kidder Peabody Securities Litigation*, 10 F. Supp. 2d 398 (S.D.N.Y. 1998); *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539 (8th Cir. 1997); *In re Westinghouse Securities Litigation*, 90 F.3d 696 (3d Cir. 1996); *In the Matter of W.R. Grace & Co.*, Accounting and Auditing Enforcement Release No. ("AAER") 1140 (June 30, 1999); *In the Matter of Eugene Gaughan*, AAER 1141 (June 30, 1999); *In the Matter of Thomas Scanlon*, AAER 1142 (June 30, 1999); and *In re Sensormatic Electronics Corporation*, Sec. Act Rel. No. 7518 (March 25, 1998).

[7] Concepts Statement No. 2, ¶ 131 (1980).

respect to a variety of disclosures.[8] And it took account of contradictory studies, one showing a lack of uniformity among auditors on materiality judgments, and another suggesting widespread use of a "rule of thumb" of five to ten percent of net income.[9] The FASB also considered whether an evaluation of materiality could be based solely on anticipating the market's reaction to accounting information.[10]

The FASB rejected a formulaic approach to discharging "the onerous duty of making materiality decisions" [11] in favor of an approach that takes into account all the relevant considerations. In so doing, it made clear that—

> [M]agnitude by itself, without regard to the nature of the item and the circumstances in which the judgment has to be made, will not generally be a sufficient basis for a materiality judgment.[12]

Evaluation of materiality requires a registrant and its auditor to consider *all* the relevant circumstances, and the staff believes that there are numerous circumstances in which misstatements below 5% could well be material. Qualitative factors may cause misstatements of quantitatively small amounts to be material; as stated in the auditing literature:

> As a result of the interaction of quantitative and qualitative considerations in materiality judgments, misstatements of relatively small amounts that come to the auditor's attention could have a material effect on the financial statements.[13]

Among the considerations that may well render material a quantitatively small misstatement of a financial statement item are—

- Whether the misstatement arises from an item capable of precise measurement or whether it arises from an estimate and, if so, the degree of imprecision inherent in the estimate [14]
- Whether the misstatement masks a change in earnings or other trends.
- Whether the misstatement hides a failure to meet analysts' consensus expectations for the enterprise.
- Whether the misstatement changes a loss into income or vice versa.
- Whether the misstatement concerns a segment or other portion of the registrant's business that has been identified as playing a significant role in the registrant's operations or profitability.
- Whether the misstatement affects the registrant's compliance with regulatory requirements.
- Whether the misstatement affects the registrant's compliance with loan covenants or other contractual requirements.
- Whether the misstatement has the effect of increasing management's compensation—for example, by satisfying requirements for the award of bonuses or other forms of incentive compensation.
- Whether the misstatement involves concealment of an unlawful transaction.

This is not an exhaustive list of the circumstances that may affect the materiality of a quantitatively small misstatement.[15] Among other factors, the demonstrated volatility of the price of a registrant's securities in response to certain types of disclosures may provide guidance as to whether investors regard quantitatively small misstatements as material. Consideration of potential market reaction to disclosure of a misstatement is by itself "too blunt an instrument to be depended on" in considering whether a fact is material.[16] When, however, management or the independent auditor expects (based, for example, on a pattern of market performance) that a known misstatement may result in a significant positive or negative market reaction, that expected reaction should be taken into account when considering whether a misstatement is material.[17]

For the reasons noted above, the staff believes that a registrant and the auditors of its financial statements should not assume that even small intentional misstatements in financial statements, for example those pursuant to actions to "manage" earnings, are immaterial.[18] While the intent of management does not render a misstatement material, it may provide significant evidence of materiality. The evidence may be particularly compelling where management has intentionally misstated items in the financial statements to "manage" reported earnings. In that instance, it presumably has done so believing that the resulting amounts and trends would be significant to users of the registrant's financial statements.[19] The staff believes that investors generally would regard as significant a management practice to over- or under-state earnings up to an amount just short of a percentage threshold in order to "manage" earnings. Investors presumably also would regard as significant an accounting practice that, in essence, rendered all earnings figures subject to a management-directed margin of misstatement.

The materiality of a misstatement may turn on where it appears in the financial statements. For example, a misstatement may involve a segment of the registrant's operations. In that instance, in assessing materiality of a misstatement to the financial statements taken as a whole, registrants and their auditors should consider not only the size of the misstatement but also the significance of the segment information to the financial statements taken as a whole.[20] "A misstatement of the revenue and operating profit of a relatively small segment that is represented by management to be important to the future profitability of the entity" [21] is more likely to be material to investors than a misstatement in a segment that management has not identified as especially important. In assessing the materiality of misstatements in segment information—as with materiality generally—

> situations may arise in practice where the auditor will conclude that a matter relating to segment information is qualitatively material even though, in his or her judgment, it is quantitatively immaterial to the financial statements taken as a whole.[22]

---

[8] Concepts Statement No. 2, ¶¶ 131 and 166.

[9] Concepts Statement No. 2, ¶ 167.

[10] Concepts Statement No. 2, ¶¶ 168–69.

[11] Concepts Statement No. 2, ¶ 170.

[12] Concepts Statement No. 2, ¶¶ 125.

[13] AU § 312.11.

[14] As stated in Concepts Statement No. 2, ¶¶ 130:

> Another factor in materiality judgments is the degree of precision that is attainable in estimating the judgment item. The amount of deviation that is considered immaterial may increase as the attainable degree of precision decreases. For example, accounts payable usually can be estimated more accurately than can contingent liabilities arising from litigation or threats of it, and a deviation considered to be material in the first case may be quite trivial in the second.

This SAB is not intended to change current law or guidance in the accounting literature regarding accounting estimates. *See, e.g.*, Accounting Principles Board Opinion No. 20, *Accounting Changes* ¶¶ 10, 11, 31–33 (July 1971).

[15] The staff understands that the Big Five Audit Materiality Task Force ("Task Force") was convened in March of 1998 and has made recommendations to the Auditing Standards Board including suggestions regarding communications with audit committees about unadjusted misstatements. *See generally* Big Five Audit Materiality Task Force, "Materiality in a Financial Statement Audit—Considering Qualitative Factors When Evaluating Audit Findings" (August 1998). The Task Force memorandum is available at www.aicpa.org.

[16] *See* Concepts Statement No. 2, ¶ 169.

[17] If management does not expect a significant market reaction, a misstatement still may be material and should be evaluated under the criteria discussed in this SAB.

[18] Intentional management of earnings and intentional misstatements, as used in this SAB, do not include insignificant errors and omissions that may occur in systems and recurring processes in the normal course of business. *See* notes 38 and 50 *infra*.

[19] Assessments of materiality should occur not only at year-end, but also during the preparation of each quarterly or interim financial statement. *See, e.g., In the Matter of Venator Group, Inc.*, AAER 1049 (June 29, 1998).

[20] *See, e.g., In the Matter of W.R. Grace & Co.*, AAER 1140 (June 30, 1999).

[21] AUI § 326.33.

[22] *Id.*

Aggregating and Netting Misstatements

In determining whether multiple misstatements cause the financial statements to be materially misstated, registrants and the auditors of their financial statements should consider each misstatement separately and the aggregate effect of all misstatements.[23] A registrant and its auditor should evaluate misstatements in light of quantitative and qualitative factors and "consider whether, in relation to individual line item amounts, subtotals, or totals in the financial statements, they materially misstate the financial statements taken as a whole."[24] This requires consideration of—

> the significance of an item to a particular entity (for example, inventories to a manufacturing company), the pervasiveness of the misstatement (such as whether it affects the presentation of numerous financial statement items), and the effect of the misstatement on the financial statements taken as a whole. . . .[25]

Registrants and their auditors first should consider whether each misstatement is material, irrespective of its effect when combined with other misstatements. The literature notes that the analysis should consider whether the misstatement of "individual amounts" causes a material misstatement of the financial statements taken as a whole. As with materiality generally, this analysis requires consideration of both quantitative and qualitative factors.

If the misstatement of an individual amount causes the financial statements as a whole to be materially misstated, that effect cannot be eliminated by other misstatements whose effect may be to diminish the impact of the misstatement on other financial statement items. To take an obvious example, if a registrant's revenues are a material financial statement item and if they are materially overstated, the financial statements taken as a whole will be materially misleading even if the effect on earnings is completely offset by an equivalent overstatement of expenses.

Even though a misstatement of an individual amount may not cause the financial statements taken as a whole to be materially misstated, it may nonetheless, when aggregated with other misstatements, render the financial statements taken as a whole to be materially misleading. Registrants and the auditors of their financial statements accordingly should consider the effect of the misstatement on subtotals or totals. The auditor should aggregate all misstatements that affect each subtotal or total and consider whether the misstatements in the aggregate affect the subtotal or total in a way that causes the registrant's financial statements taken as a whole to be materially misleading.[26]

The staff believes that, in considering the aggregate effect of multiple misstatements on a subtotal or total, registrants and the auditors of their financial statements should exercise particular care when considering whether to offset (or the appropriateness of offsetting) a misstatement of an estimated amount with a misstatement of an item capable of precise measurement. As noted above, assessments of materiality should never be purely mechanical; given the imprecision inherent in estimates, there is by definition a corresponding imprecision in the aggregation of misstatements involving estimates with those that do not involve an estimate.

Registrants and auditors also should consider the effect of misstatements from prior periods on the current financial statements. For example, the auditing literature states,

> Matters underlying adjustments proposed by the auditor but not recorded by the entity could potentially cause future financial statements to be materially misstated, even though the auditor has concluded that the adjustments are not material to the current financial statements.[27]

This may be particularly the case where immaterial misstatements recur in several years and the cumulative effect becomes material in the current year.

2. Immaterial Misstatements That are Intentional

Facts: A registrant's management intentionally has made adjustments to various financial statement items in a manner inconsistent with GAAP. In each accounting period in which such actions were taken, none of the individual adjustments is by itself material, nor is the aggregate effect on the financial statements taken as a whole material for the period. The registrant's earnings "management" has been effected at the direction or acquiescence of management in the belief that any deviations from GAAP have been immaterial and that accordingly the accounting is permissible.

Question: In the staff's view, may a registrant make intentional immaterial misstatements in its financial statements?

Interpretive Response: No. In certain circumstances, intentional immaterial misstatements are unlawful.

Considerations of the Books and Records Provisions Under the Exchange Act

Even if misstatements are immaterial,[28] registrants must comply with Sections 13(b)(2)–(7) of the Securities Exchange Act of 1934 (the "Exchange Act").[29] Under these provisions, each registrant with securities registered pursuant to Section 12 of the Exchange Act,[30] or required to file reports pursuant to Section 15(d),[31] must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant and must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.[32] In this context, determinations of what constitutes "reasonable assurance" and "reasonable detail" are based not on a "materiality" analysis but on the level

---

[23] The auditing literature notes that the "concept of materiality recognizes that some matters, either individually or in the aggregate, are important for fair presentation of financial statements in conformity with generally accepted accounting principles." AU § 312.03. *See also* AU § 312.04.

[24] AU § 312.34. Quantitative materiality assessments often are made by comparing adjustments to revenues, gross profit, pretax and net income, total assets, stockholders' equity, or individual line items in the financial statements. The particular items in the financial statements to be considered as a basis for the materiality determination depend on the proposed adjustment to be made and other factors, such as those identified in this SAB. For example, an adjustment to inventory that is immaterial to pretax income or net income may be material to the financial statements because it may affect a working capital ratio or cause the registrant to be in default of loan covenants.

[25] AU § 508.36.

[26] AU § 312.34.

[27] AU § 380.09.

[28] FASB Statements of Financial Accounting Standards ("Standards" or "Statements") generally provide that "[t]he provisions of this Statement need not be applied to immaterial items." This SAB is consistent with that provision of the Statements. In theory, this language is subject to the interpretation that the registrant is free intentionally to set forth immaterial items in financial statements in a manner that plainly would be contrary to GAAP if the misstatement were material. The staff believes that the FASB did not intend this result.

[29] 15 U.S.C. § § 78m(b)(2)–(7).

[30] 15 U.S.C. § 78l.

[31] 15 U.S.C. § 78o(d).

[32] Criminal liability may be imposed if a person knowingly circumvents or knowingly fails to implement a system of internal accounting controls or knowingly falsifies books, records or accounts. 15 U.S.C. 78m(4) and (5). See also Rule 13b2–1 under the Exchange Act, 17 CFR 240.13b2–1, which states, "No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Securities Exchange Act."

of detail and degree of assurance that would satisfy prudent officials in the conduct of their own affairs.[33] Accordingly, failure to record accurately immaterial items, in some instances, may result in violations of the securities laws.

The staff recognizes that there is limited authoritative guidance[34] regarding the "reasonableness" standard in Section 13(b)(2) of the Exchange Act. A principal statement of the Commission's policy in this area is set forth in an address given in 1981 by then Chairman Harold M. Williams.[35] In his address, Chairman Williams noted that, like materiality, "reasonableness" is not an "absolute standard of exactitude for corporate records."[36] Unlike materiality, however, "reasonableness" is not solely a measure of the significance of a financial statement item to investors. "Reasonableness," in this context, reflects a judgment as to whether an issuer's failure to correct a known misstatement implicates the purposes underlying the accounting provisions of Sections 13(b)(2)–(7) of the Exchange Act.[37]

In assessing whether a misstatement results in a violation of a registrant's obligation to keep books and records that are accurate "in reasonable detail," registrants and their auditors should consider, in addition to the factors discussed above concerning an evaluation of a misstatement's potential materiality, the factors set forth below.

- *The significance of the misstatement.* Though the staff does not believe that registrants need to make finely calibrated determinations of significance with respect to immaterial items, plainly it is "reasonable" to treat misstatements whose effects are clearly inconsequential differently than more significant ones.
- *How the misstatement arose.* It is unlikely that it is ever "reasonable" for registrants to record misstatements or not to correct known misstatements—even immaterial ones—as part of an ongoing effort directed by or known to senior management for the purposes of "managing" earnings. On the other hand, insignificant misstatements that arise from the operation of systems or recurring processes in the normal course of business generally will not cause a registrant's books to be inaccurate "in reasonable detail."[38]
- *The cost of correcting the misstatement.* The books and records provisions of the Exchange Act do not require registrants to make major expenditures to correct small misstatements.[39] Conversely, where there is little cost or delay involved in correcting a misstatement, failing to do so is unlikely to be "reasonable."
- *The clarity of authoritative accounting guidance with respect to the misstatement.* Where reasonable minds may differ about the appropriate accounting treatment of a financial statement item, a failure to correct it may not render the registrant's financial statements inaccurate "in reasonable detail." Where, however, there is little ground for reasonable disagreement, the case for leaving a misstatement uncorrected is correspondingly weaker.

There may be other indicators of "reasonableness" that registrants and their auditors may ordinarily consider. Because the judgment is not mechanical, the staff will be inclined to continue to defer to judgments that allow a business, acting in good faith, to comply with the Act's accounting provisions in an innovative and cost-effective way."[40]

The Auditor's Response to Intentional Misstatements

Section 10A(b) of the Exchange Act requires auditors to take certain actions upon discovery of an "illegal act."[41] The statute specifies that these obligations are triggered "whether or not [the illegal acts are] perceived to have a material effect on the financial statements of the issuer. . . ." Among other things, Section 10A(b)(1) requires the auditor to inform the appropriate level of management of an illegal act (unless clearly inconsequential) and assure that the registrant's audit committee is "adequately informed" with respect to the illegal act.

As noted, an intentional misstatement of immaterial items in a registrant's financial statements may violate Section 13(b)(2) of the Exchange Act and thus be an illegal act. When such a violation occurs, an auditor must take steps to see that the registrant's audit committee is "adequately informed" about the illegal act. Because Section 10A(b)(1) is triggered regardless of whether an illegal act has a material effect on the registrant's financial statements, where the illegal act consists of a misstatement in the registrant's financial statements, the auditor will be required to report that illegal act to the audit committee irrespective of any "netting" of the misstatements with other financial statement items.

The requirements of Section 10A echo the auditing literature. See, for example, Statement on Auditing Standards No. ("SAS") 54, "Illegal Acts by Clients," and SAS 82, "Consideration of Fraud in a Financial Statement Audit." Pursuant to paragraph 38 of SAS 82, if the auditor determines there is evidence that fraud may exist, the auditor must discuss the matter with the appropriate level of management. The auditor must report directly to the audit committee fraud involving senior management and fraud that causes a material misstatement of the financial statements. Paragraph 4 of SAS 82 states that "misstatements arising from fraudulent financial reporting are intentional misstatements or omissions of amounts or disclosures

---

[33] 15 U.S.C. § 78m(b)(7). The books and records provisions of section 13(b) of the Exchange Act originally were passed as part of the Foreign Corrupt Practices Act ("FCPA"). In the conference committee report regarding the 1988 amendments to the FCPA, the committee stated, "The conference committee adopted the prudent man qualification in order to clarify that the current standard does not connote an unrealistic degree of exactitude or precision. The concept of reasonableness of necessity contemplates the weighing of a number of relevant factors, including the costs of compliance." Cong. Rec. H2116 (daily ed. April 20, 1988).

[34] So far as the staff is aware, there is only one judicial decision that discusses Section 13(b)(2) of the Exchange Act in any detail, *SEC* v. *World-Wide Coin Investments, Ltd.*, 567 F. Supp. 724 (N.D. Ga. 1983), and the courts generally have found that no private right of action exists under the accounting and books and records provisions of the Exchange Act. *See e.g., Lamb* v. *Phillip Morris Inc.*, 915 F.2d 1024 (6th Cir. 1990) and *JS Service Center Corporation* v. *General Electric Technical Services Company*, 937 F. Supp. 216 (S.D.N.Y. 1996).

[35] The Commission adopted the address as a formal statement of policy in Securities Exchange Act Release No. 17500 (January 29, 1981), 46 FR 11544 (February 9, 1981), 21 SEC Docket 1466 (February 10, 1981).

[36] *Id.* at 46 FR 11546.

[37] *Id.*

[38] For example, the conference report regarding the 1988 amendments to the FCPA stated, "The Conferees intend to codify current Securities and Exchange Commission (SEC) enforcement policy that penalties not be imposed for insignificant or technical infractions or inadvertent conduct. The amendment adopted by the Conferees [Section 13(b)(4)] accomplishes this by providing that criminal penalties shall not be imposed for failing to comply with the FCPA's books and records or accounting provisions. This provision [Section 13(b)(5)] is meant to ensure that criminal penalties would be imposed where acts of commission or omission in keeping books or records or administering accounting controls have the purpose of falsifying books, records or accounts, or of circumventing the accounting controls set forth in the Act. This would include the deliberate falsification of books and records and other conduct calculated to evade the internal accounting controls requirement." Cong. Rec. H2115 (daily ed. April 20, 1988).

[39] As Chairman Williams noted with respect to the internal control provisions of the FCPA, "[t]housands of dollars ordinarily should not be spent conserving hundreds." 46 FR 11546.

[40] *Id.*, at 11547.

[41] Section 10A(f) defines, for purposes of Section 10A, an *illegal act* as "an act or omission that violates any law, or any rule or regulation having the force of law." This is broader than the definition of an "illegal act" in AU § 317.02, which states, "Illegal acts" by clients do not include personal misconduct by the entity's personnel unrelated to their business activities."

in financial statements to deceive financial statement users." [42] SAS 82 further states that fraudulent financial reporting may involve falsification or alteration of accounting records; misrepresenting or omitting events, transactions or other information in the financial statements; and the intentional misapplication of accounting principles relating to amounts, classifications, the manner of presentation, or disclosures in the financial statements.[43] The clear implication of SAS 82 is that immaterial misstatements may be fraudulent financial reporting.[44]

Auditors that learn of intentional misstatements may also be required to (1) re-evaluate the degree of audit risk involved in the audit engagement, (2) determine whether to revise the nature, timing, and extent of audit procedures accordingly, and (3) consider whether to resign.[45]

Intentional misstatements also may signal the existence of reportable conditions or material weaknesses in the registrant's system of internal accounting control designed to detect and deter improper accounting and financial reporting.[46] As stated by the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission, in its 1987 report,

> The tone set by top management—the corporate environment or culture within which financial reporting occurs—is the most important factor contributing to the integrity of the financial reporting process. Notwithstanding an impressive set of written rules and procedures, if the tone set by management is lax, fraudulent financial reporting is more likely to occur.[47]

An auditor is required to report to a registrant's audit committee any reportable conditions or material weaknesses in a registrant's system of internal accounting control that the auditor discovers in the course of the examination of the registrant's financial statements.[48]

GAAP Precedence Over Industry Practice

Some have argued to the staff that registrants should be permitted to follow an industry accounting practice even though that practice is inconsistent with authoritative accounting literature. This situation might occur if a practice is developed when there are few transactions and the accounting results are clearly inconsequential, and that practice never changes despite a subsequent growth in the number or materiality of such transactions. The staff disagrees with this argument. Authoritative literature takes precedence over industry practice that is contrary to GAAP.[49]

General Comments

This SAB is not intended to change current law or guidance in the accounting or auditing literature.[50] This SAB and the authoritative accounting literature cannot specifically address all of the novel and complex business transactions and events that may occur. Accordingly, registrants may account for, and make disclosures about, these transactions and events based on analogies to similar situations or other factors. The staff may not, however, always be persuaded that a registrant's determination is the most appropriate under the circumstances. When disagreements occur after a transaction or an event has been reported, the consequences may be severe for registrants, auditors, and, most importantly, the users of financial statements who have a right to expect consistent accounting and reporting for, and disclosure of, similar transactions and events. The staff, therefore, encourages registrants and auditors to discuss on a timely basis with the staff proposed accounting treatments for, or disclosures about, transactions or events that are not specifically covered by the existing accounting literature.

[FR Doc. 99–21484 Filed 8–18–99; 8:45 am]
BILLING CODE 8010–01–P

[42] AU § 316.04. See also AU § 316.03. An unintentional illegal act triggers the same procedures and considerations by the auditor as a fraudulent misstatement if the illegal act has a direct and material effect on the financial statements. See AU § § 110 n. 1, 316 n. 1, 317.05 and 317.07. Although distinguishing between intentional and unintentional misstatements is often difficult, the auditor must plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatements in either case. See AU § 316 note 3.

[43] AU § 316.04. Although the auditor is not required to plan or perform the audit to detect misstatements that are immaterial to the financial statements, SAS 82 requires the auditor to evaluate several fraud "risk factors" that may bring such misstatements to his or her attention. For example, an analysis of fraud risk factors under SAS 82 must include, among other things, consideration of management's interest in maintaining or increasing the registrant's stock price or earnings trend through the use of unusually aggressive accounting practices, whether management has a practice of committing to analysts or others that it will achieve unduly aggressive or clearly unrealistic forecasts, and the existence of assets, liabilities, revenues, or expenses based on significant estimates that involve unusually subjective judgments or uncertainties. See AU § § 316.17*a* and .17*c*.

[44] AU §§ 316.34 and 316.35, in requiring the auditor to consider whether fraudulent misstatements are material, and in requiring differing responses depending on whether the misstatement is material, make clear that fraud can involve immaterial misstatements. Indeed, a misstatement can be "inconsequential" and still involve fraud.

Under SAS 82, assessing whether misstatements due to fraud are material to the financial statements is a "cumulative process" that should occur both during and at the completion of the audit. SAS 82 further states that this accumulation is primarily a "qualitative matter" based on the auditor's judgment. AU § 316.33. The staff believes that in making these assessments, management and auditors should refer to the discussion in Part 1 of this SAB.

[45] AU §§ 316.34 and 316.36. Auditors should document their determinations in accordance with AU § § 316.37, 319.57, 339, and other appropriate sections.

[46] *See, e.g.*, AU § 316.39.

[47] Report of the National Commission on Fraudulent Financial Reporting at 32 (October 1987). *See also* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 8, 1999).

[48] AU § 325.02. *See also* AU § 380.09, which, in discussing matters to be communicated by the auditor to the audit committee, states, "The auditor should inform the audit committee about adjustments arising from the audit that could, in his judgment, either individually or in the aggregate, have a significant effect on the entity's financial reporting process. For purposes of this section, an audit adjustment, whether or not recorded by the entity, is a proposed correction of the financial statements. . . ."

[49] *See* AU § 411.05.

[50] The FASB Discussion Memorandum, *Criteria for Determining Materiality*, states that the financial accounting and reporting process considers that "a great deal of the time might be spent during the accounting process considering insignificant matters . . . . If presentations of financial information are to be prepared economically on a timely basis and presented in a concise intelligible form, the concept of materiality is crucial."

This SAB is not intended to require that misstatements arising from insignificant errors and omissions (individually and in the aggregate) arising from the normal recurring accounting close processes, such as a clerical error or an adjustment for a missed accounts payable invoice, always be corrected, even if the error is identified in the audit process and known to management. Management and the auditor would need to consider the various factors described elsewhere in this SAB in assessing whether such misstatements are material, need to be corrected to comply with the FCPA, or trigger procedures under Section 10A of the Exchange Act. Because this SAB does not change current law or guidance in the accounting or auditing literature, adherence to the principles described in this SAB should not raise the costs associated with recordkeeping or with audits of financial statements.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 91N–0281]

RIN 0910–AZ17

General and Plastic Surgery Devices; Effective Date of Requirement for Premarket Approval of the Silicone Inflatable Breast Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the silicone inflatable breast prosthesis, a generic type of medical device intended to augment or reconstruct the female breast. This device is made of a silicone shell that is inflated with sterile isotonic saline. Commercial distribution of this device must cease unless a manufacturer or importer has filed with FDA a PMA or PDP for its version of the silicone inflatable breast prosthesis within 90 days of the effective date of this regulation. This regulation reflects FDA's exercise of its discretion to require PMA's or PDP's for preamendments devices and is consistent with FDA's stated priorities and Congress' requirement that class III devices are to be regulated by FDA's premarket review. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997.

EFFECTIVE DATE: August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen P. Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of June 24, 1988 (53 FR 23856), FDA published a final rule classifying into class III (premarket approval) the silicone inflatable breast prosthesis, a medical device. Section 878.3530 (21 CFR 878.3530) of FDA's regulations setting forth the classification of the silicone inflatable breast prosthesis applies to: (1) Any silicone inflatable breast prosthesis that was in commercial distribution before May 28, 1976, and (2) any device that FDA has found to be substantially equivalent to a silicone inflatable breast prosthesis in commercial distribution before May 28, 1976.

In an advanced notice of proposed rulemaking published in the **Federal Register** of January 6, 1989 (54 FR 550), the agency identified the silicone inflatable breast prosthesis as one of the high-priority devices that would be subject to PMA or PDP requirements. FDA issued a notice in the **Federal Register** of September 26, 1991 (56 FR 49098), requiring manufacturers to disseminate information on risks associated with the silicone gel-filled breast prosthesis and the silicone inflatable breast prosthesis. FDA stated that either type of breast prosthesis would be misbranded under the act if its labeling did not provide adequate information for patients.

In the **Federal Register** of January 8, 1993 (58 FR 3436), FDA published a proposed rule, under section 515(b) of the act (21 U.S.C. 360e(b)), to require the filing of PMA's or PDP's for the classified silicone inflatable breast prosthesis and all substantially equivalent devices. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble, the agency's proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and (2) the benefits to the public from use of the device.

The preamble also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings. Under section 515(b)(2)(B) of the act, it also provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the silicone inflatable breast prosthesis was required to be submitted by January 25, 1993. The comment period initially closed on March 6, 1993. In the **Federal Register** of March 10, 1993 (58 FR 13230), FDA extended the comment period for 30 days to April 8, 1993, to ensure that there was adequate time for preparation and submission of comments on the proposed rule.

The agency received 134 comments in response to the January 8, 1993, proposed rule. These comments were from individuals, manufacturers, professional societies, and consumer and health groups. Most of the comments supported the proposed rule.

In the **Federal Register** of June 28, 1995 (60 FR 33608), FDA issued a notice announcing the availability of an updated patient risk information booklet, entitled "Information for Women Considering Saline-filled Breast Implants." The information booklet provided prospective patients with information about possible risks involved with silicone inflatable breast prostheses. FDA gave the updated information booklet to the manufacturers of saline-filled breast implants (silicone inflatable breast prostheses) to include with their labeling. FDA intended that physicians who perform breast implant surgery give this information to their patients as they considered implantation of a silicone inflatable breast prosthesis.

FDA is aware that new information on the device has become available since the proposed rule was published in January 1993. On June 2, 1999, the Institute of Medicine (IOM) released a comprehensive review of the published literature and ongoing studies on both saline-filled and silicone gel-filled breast implants entitled "Safety of Silicone Breast Implants." Both of these types of implants have a silicone elastomer shell. The IOM made a clear distinction between local complications and systemic health concerns. The IOM determined that there was insufficient evidence to establish that breast implants cause systemic health effects such as autoimmune disease. The IOM concluded that there is "no definitive evidence linking breast implants to cancer, immunological diseases, neurological problems, or other systemic diseases. On the basis of our committee's review of the data, we concluded that women with breast implants are no more likely than other women to develop these systemic illnesses." However, the IOM also concluded that local complications are "the primary safety issue with silicone breast implants." These local complications include rupture, pain, capsular contracture, disfigurement, and serious infection, which may lead to medical interventions and repeat surgeries. The agency believes that local complications should be addressed in a PMA or PDP submission. Therefore, while it is possible that the level of risk presented by the device may differ somewhat from that described in the proposal, FDA nevertheless believes that the risks to health identified in the proposed rule still exist for the device and consequently, should be addressed in PMA's or PDP's for the device.

This regulation is final upon publication and requires PMA's or notices of completion of a PDP for all silicone inflatable breast prostheses classified under § 878.3530 and all devices that are substantially equivalent to them. PMA's or notices of completion of a PDP for these devices must be filed with FDA within 90 days of the effective date of this regulation. (See section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)).) This regulation does not include the silicone gel-filled breast prosthesis (21 CFR 878.3540).

II. Summary and Analysis of Comments and FDA's Response

A. General Comments

1. FDA received comments from 116 women consumers and six health professionals supporting the proposed call for PMA's or PDP's. Sixty-four of the women consumers were reconstruction or augmentation patients who were dissatisfied with their implants. These women believed that their breast implants have caused them adverse health effects. Fourteen of these breast implant recipients provided medical histories and patient records to support their belief that their illnesses are associated with their breast implants. Seven other comments also expressed the belief that breast prostheses cause adverse health effects. The other 43 women did not indicate whether or not they had been implanted with breast implants. Nineteen of these 43 comments recommended that silicone inflatable breast prostheses be recalled and banned until long-term safety and effectiveness studies are completed. Some comments recommended that silicone gel-filled breast prostheses be recalled and banned. Thirty-one women expressed strong opinions that the risks associated with all breast implants are unacceptable.

FDA does not believe that the available evidence supports a conclusion that either banning or recalling the device would be appropriate. Rather, FDA believes that requiring the submission of PMA's or PDP's for the silicone inflatable breast prosthesis will provide FDA an opportunity to assess more fully the risks and benefits of these devices in order to determine whether there is reasonable assurance of their safety and effectiveness, or absent such an assurance what regulatory course should be taken.

The comments addressing the silicone gel-filled breast implant are not within the scope of this rule. In the **Federal Register** of April 10, 1991 (56 FR 14620), FDA issued a final rule requiring the submission of PMA's or PDP's for the silicone gel-filled breast prosthesis.

2. One comment stated that PMA's or PDP's are not necessary for this device because adequate studies on silicone toxicity already exist establishing the safety and effectiveness of the silicone inflatable breast prosthesis. This comment stated that the extensive published research has not found any causal relationship between silicone-containing breast prostheses and the adverse events observed in some women with these devices. Other comments stated that existing information on the silicone gel-filled breast prosthesis and on other types of silicone-containing prostheses in use (the chin prosthesis (21 CFR 878.3550); the ear prosthesis (21 CFR 878.3590), and the finger joint prosthesis (21 CFR 888.3230)) provide adequate information to support the safety and effectiveness of the silicone inflatable breast prosthesis.

FDA is aware of the existence of information on silicone and silicone-containing prostheses and expects that applicants may include such information in their submissions to establish the safety and effectiveness of the silicone inflatable breast prosthesis. FDA will consider all information contained in PMA's or PDP's in determining whether there is reasonable assurance of the safety and effectiveness of these devices.

3. Four comments suggested that additional guidance on the data requirements for PMA's be made available before publishing the final rule. One of these comments also requested an open dialogue between FDA, the industry, and the scientific and medical communities to develop a consensus on the preclinical and clinical data necessary to establish the safety and effectiveness of the device, and reissuance of the proposed rule with a longer timeframe.

The 1993 proposed rule provided guidance on the appropriate data to be included in the PMA for the silicone inflatable breast prosthesis. Although section 515(b) of the act does not require the agency to provide specific guidance on the contents of specific PMA's, FDA has issued a "Draft Guidance for the Preparation of PMA Application for Silicone Inflatable (Saline) Breast Prostheses" in November 1994 and a revised draft guidance in January 1995 (the 1995 guidance document). The 1995 guidance document is available from the internet at "www.fda.gov/cdrh/ode/odegr532.html". In order to receive the "Draft Guidance for Silicone Inflatable (Saline) Breast Prostheses" via your fax machine, call CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number (223) followed by the pound sign (#). Follow the remaining voice prompts to complete you request.

In June 1996, FDA sent known manufacturers of the silicone inflatable breast prosthesis a letter describing the recommended data for a PMA. The period of time between the classification of the device in 1988 and the date by which PMA's must be filed is more than 10 years. Thus, FDA believes that sufficient time and guidance has been provided to allow sponsors to develop the data for a PMA submission. FDA agrees that dialogue with industry and with the scientific and medical community is important; FDA staff have been and continue to be accessible to discuss PMA and PDP content information with industry and the scientific and medical community.

4. Two comments suggested that postapproval studies could be used to support approval of the silicone inflatable breast prosthesis, and another comment suggested the use of FDA's postmarket surveillance authority.

FDA notes that, by definition, postapproval studies are studies performed after the approval of a PMA and that postmarket surveillance studies are studies used to acquire additional performance information about a device already determined to be reasonably safe and effective. In the 1993 proposed rule, FDA stated that postapproval studies would be required to fully assess the potential carcinogenicity and teratogenicity of any approved silicone inflatable breast prostheses. In the 1995 guidance document, FDA restated this need for postapproval studies and added that postapproval studies would also be needed to assess the potential for causing adverse immunological effects and/or connective tissue disorders.

5. One comment objected that Congress never intended "old" preamendments medical devices to undergo the same scrutiny as "new" postamendments medical devices.

FDA does not believe that Congress intended to differentiate between "old" preamendments devices and "new" postamendments devices with respect to the requirement that valid scientific evidence is needed to support PMA approval. Neither section 513(a)(3) (21 U.S.C. 360c(a)(3)) nor section 515(d) of the act makes any distinction between "old" and "new" devices with regard to any aspect of the requirement for PMA approval. Evidence that constitutes valid scientific evidence within the meaning of § 860.7(c)(2) (21 CFR 860.7(c)(2)) may be submitted in support of a PMA or PDP, but it will remain the agency's judgment whether the submitted evidence provides reasonable assurance of safety and effectiveness.

6. Six comments stated that tissue expanders should be not be included in the call for PMA's or PDP's. Five comments said that tissue expanders intended for short-term use are unclassified devices. One comment

suggested that the tissue expander intended for short-term use should be classified into class II and that the tissue expander intended for long-term use should be classified into class III.

Saline-filled silicone tissue expanders are used for general surgical procedures, as well as for breast implantation surgery. FDA agrees that tissue expanders intended for short-term use or for general surgical purposes are unclassified devices and are not covered in this final rule. FDA plans to initiate classification procedures for that device at a future date. However, saline inflatable tissue expanders that meet the definition of a silicone inflatable breast prosthesis are included in this final rule.

7. One comment said the risk section should be rewritten because it reflects an agency bias against the silicone inflatable breast prosthesis, in that it equates the risks associated with the silicone inflatable breast prosthesis with those of the silicone gel-filled breast prosthesis.

FDA disagrees. The preamble to the proposed rule clearly states that much of the literature cited in the risk section of the proposed rule referred specifically to the silicone inflatable breast prosthesis. The agency cited information about other silicone devices only where there was no documentation specific to the silicone inflatable breast prosthesis. Comparison of risk information between devices should not be confused with an equation of risk.

B. Fibrous Capsular Contraction

8. There were six comments on the risk of fibrous capsular contracture. These comments indicated that fibrous capsule formation occurs around any implanted device and that this is part of the healing process. They stated that, although this risk to health is a frequent outcome, it is not life-threatening, and should be considered a relatively minor risk to health.

FDA agrees that fibrous capsular contracture is usually not life-threatening and that normal fibrous capsule formation is part of the wound healing process after the implantation of any prosthesis. Fibrous capsular contracture, however, is associated with clinical changes ranging from a nearly imperceptible deformation of the implant to marked distortion and firmness, often accompanied by tenderness, pain, and discomfort. Significant fibrous capsular contracture, Baker grades 3 and 4, may require surgical removal of the device, making contracture a serious risk to health. As stated in the 1995 guidance document, FDA is requesting time-course data on the rate and frequency of fibrous capsular contracture.

C. Deflation

9. There were seven comments on the risk of deflation. Two comments said that deflation is not life-threatening, two characterized deflation as being of low or no risk, and three said it is infrequent.

FDA agrees that this risk to health is not life-threatening. However, deflation of the silicone inflatable breast prosthesis eliminates the benefit of the device. In addition, the recipient may then elect to have her implant surgically explanted and have a second breast prosthesis implanted. This additional surgery makes deflation a potentially serious adverse event. As noted in the 1995 guidance document, FDA requested information to address the incidence of deflation and rupture for this device.

D. Infection

10. Four comments stated that the incidence of infection associated with the implantation of silicone inflatable breast prostheses is not any higher than it is for other implantation surgeries. One comment said that FDA needs an accurate determination of the incidence of infection in women implanted with silicone inflatable breast prostheses.

FDA believes that it is important for studies submitted in a PMA or PDP to provide accurate information on the incidence of infection associated with the implantation of the silicone inflatable breast prosthesis.

E. Interference With Early Tumor Detection

11. Several comments stated that mammography may be more difficult to perform and that it may be less effective for the early detection of tumors in women with breast implants. Two other comments disagreed, stating that there are no data showing that the presence of breast implants has hindered or delayed the detection of breast tumors. The same comments stated that implantation of the device under the pectoralis muscles may reduce the interference with mammography, that interference can be overcome with special detection procedures, and that cancer detection does not rely solely on mammography.

FDA agrees that the presence of a silicone inflatable breast prosthesis may interfere with the standard mammography procedures used to screen patients for breast cancer. The device may produce a shadow on the radiograph that obscures visualization of a significant portion of the breast. In addition, the prosthesis compresses overlying breast tissue, reducing contrast and making mammographic assessment more difficult. Mammography of the augmented or reconstructed breast requires special techniques, which may result in increased exposure to radiation. Even under the best of circumstances, silicone inflatable breast prostheses are likely to limit the effectiveness of this examination for breast cancer detection. As stated in the 1995 guidance document, FDA is requesting information on the potential interference of the silicone inflatable breast prosthesis on the ability of mammography to detect tumors in breast tissue.

F. Human Carcinogenicity

12. Nine comments said that there is no established correlation between cancer and women with a silicone inflatable breast prosthesis. They stated that silicone causes solid state tumors in rodents, a phenomenon thought to be restricted to rodents and not applicable to humans. They also stated that epidemiological studies have not found that women with breast implants are at an increased risk for cancer.

FDA believes that the potential carcinogenicity for this device remains unknown. The agency continues to believe that carcinogenicity is a potential risk that must be assessed in a PMA or PDP.

G. Human Teratogenicity

13. There were five comments related to human teratogenicity. Three comments stated that there is no evidence that the silicone inflatable breast prosthesis is teratogenic. Two comments stated that teratogenicity is a remote risk, which could be addressed in postapproval studies. One comment stated that seven studies published between 1975 and 1993 (including the literature FDA cited in the proposed rule), in conjunction with the absence of reports of defects among children born to women who have undergone mammary augmentation/reconstruction with silicone implants, indicates that teratogenicity is not an identified or a potential risk to health.

FDA agrees that there are no published studies showing that silicone inflatable prostheses are associated with toxic reproductive effects or teratogenic effects. However, FDA believes that teratogenicity and/or reproductive effects of silicone elastomers remain potential risks that should be assessed in a PMA or PDP. This information was requested in the proposed rule and in the 1995 guidance document.

H. Adverse Immunological Effects and/or Connective Tissue Disorders

14. Five comments stated that no definitive link between silicone and autoimmune diseases has been established. These comments stated that the incidence of these diseases in women with breast implants is no higher than it is in women without breast implants. Two of these comments suggested that some women may be more genetically susceptible to the immunological effects than others. As stated previously, 71 consumer comments expressed the belief that breast implants cause unacceptable adverse health effects. One physician reported that his patients with breast prostheses had a higher than expected prevalence of positive antinuclear antibody (ANA) test results. Because there was no difference in the ANA test results between patients with gel-filled and saline-filled breast prostheses, this comment attributed the positive ANA results for both patient populations to the silicone shell of the prostheses.

FDA agrees that no definitive causal relationship has been established between immunological effects and/or connective tissue disorders and the silicone inflatable breast prosthesis. FDA is aware of the concerns expressed in the consumer comments. FDA also recognizes that a positive ANA test without clinical symptoms is a nonspecific finding. In the 1995 guidance document, FDA recommended that recipients of silicone inflatable breast prostheses be regularly monitored for the occurrence of such adverse events for a minimum of 10 years postimplantation. FDA continues to believe that adverse immunological effects and/or connective tissue disorders remain potential risks that must be assessed in a PMA or PDP, but FDA does not believe that 10 years of prospective data collection on a specific product will be necessary to do so.

I. Calcification

15. Several comments stated that calcification is not life-threatening and is of unknown clinical significance. Other comments suggest that calcification: (1) May occur in as many as 25 percent of breast implant patients; (2) is rare; (3) is closely associated with capsular contracture; (4) may complicate the interpretation of mammograms; and (5) may cause abrasions of the silicone shell of the device if the calcium salt crystals have sharp edges, making the implant more susceptible to rupture.

FDA believes that there is not much information on the incidence and effects of calcification in women implanted with silicone inflatable breast prostheses. FDA believes that calcification remains an uncharacterized potential risk to health. Consequently, as stated in the proposed rule, FDA believes that PMA's or PDP's for this device should include time-course information on the incidence of calcification.

J. Biological Effects of Silica

16. Several comments stated that fumed amorphous silica is so tightly bound in the silicone elastomer shell of the silicone inflatable breast prosthesis that the fumed amorphous silica is biologically inactive. For that reason, these comments believed that the presence of fumed amorphous silica is not a risk to health of the silicone inflatable breast prosthesis.

FDA does not believe there is sufficient information to eliminate fumed amorphous silica as a potential risk to health associated with the silicone inflatable breast prosthesis, particularly since the amount of fumed amorphous silica is varied in order to achieve the desired physical characteristics of the shell. Consequently, the agency believes that this potential risk to health should be addressed in a PMA or PDP.

K. Interference With Breast Feeding

17. Several comments stated that the presence of the silicone inflatable breast prosthesis could potentially interfere with the breast feeding of infants. The comments objected that claims that breast implants have no effect on the nursing of infants are unsubstantiated.

FDA agrees that interference with breast feeding of infants is a potential risk to health presented by this device because the implants may reduce the ability of breast feeding women to deliver an adequate quantity of milk. Although most augmentation patients are of childbearing age, there are no data on this potential risk. FDA believes that PMA's or PDP's for the silicone inflatable breast prosthesis should contain information on the effect of the device on the breast feeding of infants.

L. Benefits of the Device

18. One comment stated that a positive psychological benefit for the silicone inflatable breast prosthesis should be assumed. Other comments maintained that the published studies have already established that breast prostheses provide a positive psychological benefit.

The agency believes that the potential psychological benefits offered by the device are an important part of the device's efficacy. Consequently, FDA believes the psychological benefit of the silicone inflatable breast prosthesis should be demonstrated in clinical trials and reported in a PMA or PDP application.

19. Seven comments stated that the determination of psychological benefit is problematic for several reasons: (1) There are no validated standardized psychological tests for measuring psychological benefit; (2) existing tests for psychological well-being and self-esteem are confounded by multiple life variables, including the patient's general health, sexual functioning, and understanding of the potential complications when making the decision to have a silicone inflatable breast prosthesis implanted; and (3) there is a lack of suitable controls for both reconstruction and augmentation patients. One comment suggested that benefit be assessed with "quality of life" questionnaires, using patients as their own controls and assessing a wide range of variables. Another comment stated that it would be "unduly burdensome and needlessly distressful" to subject women requesting breast implants to psychological assessment testing.

Among the seven comments there was general agreement that patients should be followed for a long period of time after the surgery, perhaps even 10 to 15 years. This is complicated because, during this period, other issues related to self-esteem and a feeling of well-being may confound the determination of psychological benefit. Some comments stated that the assessment of psychological benefit should be different for reconstruction and augmentation patients.

FDA agrees that designing studies to assess the psychological benefit of implantation with a silicone inflatable breast prosthesis may be difficult. In the 1995 guidance document, FDA suggested that the effectiveness of the device can be measured by assessing: (1) The degree of maintenance (if applicable) or of enhancement of a woman's psychological well-being postimplantation, and (2) the anatomical effect provided by the device. FDA added that both assessments should be balanced against any illness or injury associated with the use of the device. FDA further stated that the level of benefit derived from the device may depend on whether the device is used for augmentation mammoplasty, correction of congenital or traumatic breast anomalies, or reconstruction mammoplasty after tumor removal, and recommended that benefit data be stratified by these categories of use. The agency will accept

a variety of types of scientific evidence in support of a PMA or PDP, as long as the data constitute valid scientific evidence within the meaning of § 860.7(c)(2).

M. Need for Risk Benefit Information

20. Three comments agreed that risk/benefit data should be collected, but questioned the need to include such data in a PMA.

FDA believes that it is appropriate for PMA's or PDP's to contain risk/benefit data to enable the agency to determine whether there is reasonable assurance of the safety and effectiveness of the silicone inflatable breast prosthesis.

N. PMA Contents

21. FDA received two extensive comments on the types of manufacturing information, preclinical testing, and clinical data that should be required in a PMA for a silicone inflatable breast prosthesis, as well as several general comments on the appropriate contents of a PMA.

FDA believes that the points raised in these comments are addressed in great detail in the 1995 draft guidance. The guidance addresses all types of data, including manufacturing, preclinical, and clinical, expected to be submitted. Additionally, manufacturers already have begun submitting manufacturing and preclinical data to the agency in preparation for the call for PMA's or PDP's.

III. Findings With Respect to Risks and Benefits

A. Degree of Risk

1. Fibrous Capsular Contracture

Contracture, the formation of a constricting fibrous layer around the silicone inflatable breast prosthesis, is a risk associated with both augmentation and reconstruction mammoplasty. Contracture may result in excessive breast firmness, discomfort, pain, disfigurement, displacement of the implant, and psychological trauma. Procedures, including corrective surgery or surgical removal of the device and adjacent tissue, may be required to relieve the symptoms associated with contracture. The effects of contracture can vary from a reduced satisfaction with the device to causing a woman to seek explantation of the device. Although severe cases are rare, less severe contracture is the most common adverse event associated with the silicone inflatable breast prosthesis.

2. Deflation

The deflation of a silicone inflatable breast prosthesis is the loss of saline volume from the device as a result of rupture, valve failure, or a defect in the device. Deflation is not life-threatening, but the loss of saline destroys the shape of the implant, and surgery may be required to remove and replace it. Because of the need for an additional surgery, deflation is a serious adverse event. Deflation incidence data, as a function of time after implantation, are not currently available.

3. Infection

Infection is a risk associated with any surgical implant procedure, including implantation of the silicone inflatable breast prosthesis. Compromised device sterility and surgical techniques may be major contributing factors to this risk. Skin and bacteremic flora may also have a role in infection in the periprosthetic area. Infection may increase fibrous capsular contracture and result in a need for removal of the device.

4. Interference With Early Tumor Detection

The presence of a silicone inflatable breast prosthesis may interfere with standard mammography procedures by producing a shadow that obscures visualization, or by reducing contrast by compressing overlying breast tissue. Mammography of the augmented breast requires special techniques and skills and may result in increased exposure to radiation.

5. Human Carcinogenicity

The potential for developing cancer as a result of the long-term implantation of silicone inflatable breast prostheses cannot be eliminated as a potential risk associated with the silicone inflatable breast prosthesis.

6. Human Teratogenicity

Although FDA is not aware of data indicating that the silicone inflatable breast prosthesis is associated with teratogenic and reproductive effects, the potential for teratogenicity and other reproductive adverse effects as a result of long-term implantation of the device cannot be eliminated as a possible risk to health. Reproductive effects are particularly important because many augmentation patients are of childbearing age.

7. Adverse Immunological Effects and/or Connective Tissue Disorders

The potential for developing immunological effects and/or connective tissue disorders as a result of long-term exposure to the silicone inflatable breast prosthesis remains uncertain. Since the publication of the proposed rule 5 years ago, new epidemiological data (Refs. 1 and 2) addressing the relationship between the device and autoimmune diseases or connective tissue diseases indicate that silicone breast prostheses have not caused a large increase in the incidence of connective tissue disease in women with breast implants. However, the possibility of a smaller increased risk of immunological effects, or of an atypical, as yet undefined, syndrome or disease, cannot be eliminated based on these data.

8. Calcification

Calcification of the fibrous capsule surrounding the silicone inflatable breast prosthesis involves the deposition of mineral salts in the capsule. Neither the incidence nor the risk to health of calcification are established.

9. Biological Effects of Silica

Amorphous fumed silica is bound to the silicone in the elastomeric shell of the silicone inflatable breast prosthesis. Silica presents a potential risk which should be addressed in a PMA or PDP.

B. Benefits of the Device

The silicone inflatable breast prosthesis is intended to reconstruct or augment the female breast. Reconstruction or augmentation surgery is elective in nature, although implantation of a silicone inflatable breast prosthesis is often an integral part of the reconstructive patient's total treatment.

Although a definitive psychological study to assess the benefits of the silicone inflatable breast prosthesis may be difficult to conduct, FDA believes data are needed to document whether the device is effective for its intended use.

IV. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and is issuing this final rule to require premarket approval of the generic type of device, the silicone inflatable breast prosthesis, by revising § 878.3530(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before November 17, 1999, for any silicone inflatable breast prosthesis that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before November 17, 1999. An approved PMA or a declared completed PDP is required to be in effect for any such device on or before 180 days after FDA files the application.

Any other silicone inflatable breast prosthesis that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device on or before November 17, 1999, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for a silicone inflatable breast prosthesis is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act , and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (part 812) (21 CFR part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that, on the effective date of this rule, the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of the silicone inflatable breast prosthesis. Further, FDA concludes that investigational silicone inflatable breast prostheses are significant risk devices as defined in § 812.3(m) and advises that, as of the effective date of this rule, the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of a silicone inflatable breast prosthesis. For any silicone inflatable breast prosthesis that is not the subject of a timely filed PMA or PDP, an IDE must be in effect under § 812.20 on or before 90 days after the effective date of this regulation or distribution of the device must cease. FDA advises all persons presently sponsoring a clinical investigation involving the silicone inflatable breast prosthesis to submit an IDE application to FDA no later than 60 days after the effective date of this final rule to avoid the interruption of ongoing investigations.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA expects that up to seven manufacturers will submit a PMA or PDP for the silicone inflatable breast prosthesis. FDA estimates that it costs up to $1 million to submit a PMA or PDP. As noted previously, the silicone inflatable breast prosthesis was classified into class III on June 24, 1988, and FDA published a proposed rule to require a PMA or PDP for this device on January 8, 1993. Thus, manufacturers have long been aware of the need to develop information in support of a PMA or a PDP. Moreover, since the publication of the proposed rule, FDA has been working closely with manufacturers to assist them in preparing for the submission of a PMA or a PDP. FDA, therefore, believes that this final rule will not be an undue burden on these manufacturers. The agency therefore certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3530). The burden hours required for § 878.3530(c) are reported and approved under OMB Control No. 0910–0231.

VIII. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These references may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

1. Hennekens, C. H., I. Lee, N. Cook, P. R. Hebert, E. W. Karlson, F. LaMotte, J. E. Manson, and J. E. Buring, "Self-reported Breast Implants and Connective-Tissue Diseases in Female Health Professionals," *Journal of the American Medical Association*, 275:616–621, 1996.

2. Silverman, B. G., S. L. Brown, R. A. Bright, R. G. Kaczmarek, J. B. Arrowsmith-Lowe, and D. A. Kessler, "Reported Complications of Silicone Gel Breast Implants: An Epidemiologic Review," *Annals of Internal Medicine*, 124:744–756, 1996.

3. Institute of Medicine, "Safety of Silicone Breast Implants," National Academy Press, Washington, DC, 1999.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 878.3530 is amended by revising paragraph (c) to read as follows:

§ 878.3530 Silicone inflatable breast prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before November 17, 1999, for any silicone inflatable breast prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before November 17, 1999, been found to be substantially equivalent to a silicone inflatable breast prosthesis that was in commercial distribution before May 28, 1976. Any other silicone inflatable breast prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: March 29, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–21508 Filed 8–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 2976]

RIN 1400–AA90

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Border Crossing Cards

AGENCY: Department of State, Bureau of Consular Affairs.

ACTION: Final rule.

SUMMARY: This is a final rule adopting and/or amending Department of State regulations pertaining to the nonimmigrant border crossing identification card (BCC) and those pertaining to the requirements for entry of Mexican nationals into the United States. The rule is necessitated, in part, by a change in the law, which now specifies that regulations pertaining to the BCC contain a requirement for the inclusion of a machine-readable biometric identifier in such cards.

The rule provides authority for consular officers to issue to Mexican citizens who are residents of Mexico a combined B–1/B–2 visa and border crossing card (B–1/B–2 Visa/BCC) as a stand-alone card containing a machine-readable biometric identifier; specifies the conditions under which the new stand-alone card will be considered invalidated; waives the requirements for the presentation of a passport for all applicants for the card, provided the applicant presents other acceptable documentation of nationality and identity; includes a waiver of the visa and passport requirement for Mexican nationals entering the United States for the purpose of obtaining official Mexican documents from a Mexican consular office in the United States side of the border; and adopts changes to the regulations pertaining to the issuance and revocation of Canadian border crossing cards made necessary by the same change in the law.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1204, odomhe@state.gov.

SUPPLEMENTARY INFORMATION: The Department published an interim rule with request for comments [63 FR 16895] on April 7, 1998. The Department received one timely comment in response to the interim rule. This final rule adopts without changes the revisions made in the interim rule to sections 41.2(g) and 41.122(a)(4). The rule adopts, with minor word changes, the revisions to sections 41.32 and 41.33.

Analysis of Comment

The comment received expressed a concern that requiring the biometric reader in the card could cause significant time increases for processing the large volume of traffic that crosses the land borders between the United States and Canada and the United States and Mexico. The commentator specifically focused on the negative effect the BCC would have on time-sensitive commercial trade flows between the United States and its two largest trading partners.

The Department's regulations, however, deal with the content and issuance of the BCC, and not the processing of the cards at land borders between the United States, Canada and Mexico. Those procedures are left to the Immigration and Naturalization Service. Further, both the information on the face of the card and the biometric data contained in the card have been designed to ensure rapid processing of traffic on land-borders. The Department believes, therefore, that the design of the card has been tailored in a fashion that meets both the Congressional directive to include a biometric identifier in the BCC/NIV, in an effort to ameliorate the incidence of fraud associated with the card, and the commentator's concern of ensuring ease of commerce between the United States and its neighbors. Finally, the commentator suggested that the BCC/NIV biometric program be delayed pending a study of its potential effect on land border traffic. The Department, however, was constrained by IIRIRA § 104 to begin issuance of biometric inclusive cards as of April 1, 1998. The Department, therefore, does not deem it necessary to comply with the commenter's request.

Passport Requirement

When originally published, the interim rule contained an amendment to 22 CFR 41.2(g)(4) reflecting an agreement pursuant to INA 212(d)(4) between the Department of State and the INS to waive the passport requirement contained in INA 212(a)(7)(B)(i)(I) for certain applicants for the new B–1/B–2 Visa/BCC. This agreement also was reflected in the language of 22 CFR 41.32(a)(2)(iii) in the interim rule. Since that time, however, the Department and INS have agreed to a further change in policy regarding the documentation necessary for the BCC application process.

Recently, the Department gained information that Mexican authorities adjudicate the application for a Certificate of Mexican Nationality (CMN) as rigorously as a Mexican passport application. In addition, if a consular officer has a question regarding the validity of a CMN, the means to investigate the situation has been shown to be similar to that of investigating a questionable passport. The Department has determined, therefore, that the CMN, when used in conjunction with another piece of identification that includes a photo, will be sufficient for consular officers to adjudicate a BCC application. Section 41.32(a)(2), as contained in the interim regulation, has been amended to reflect this concept. The Department believes that this change does not significantly alter the substance or intent of the regulation and that it is, therefore, not necessary to open the change to public comment.

Photo Requirement

The interim rule, at section 41.42(a)(2)(ii), required that all applicants for the BCC provide one photograph of the size specified in the application, Form OF–156. This photo was to be used for record keeping purposes because it was not necessary for the production for the card itself. Because the BCC/NIV uses a digitized image on the card, the Department has decided it is no longer necessary for the applicant to submit a photo. This change has been reflected in the final regulation.

The remaining sections of the regulations were discussed in detail at **Federal Register** Public Notice 2773 and will be adopted as originally published, except for the minor changes indicated below.

The Regulatory Flexibility Act

Pursuant to sec. 605(b) of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule and it has been determined, and the Assistant Secretary for Consular Affairs hereby certifies, that it will not have a significant economic impact on a substantial number of small entities. The rule has no economic effect beyond that of the statutory requirements already in effect, which it implements.

5 U.S.C. Chapter 8

As required by 5 U.S.C. chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

Paperwork Reduction Act

The Department of State, Bureau of Consular Affairs, Visa Services has received OMB emergency clearance for the information collection instrument, Nonimmigrant Visa Application (OF–156), that underlies the nonimmigrant border crossing identification card (BCC) contained in this rule. It is estimated that 1,800,000 OF–156s will be completed annually to support the issuance of BCCs, and that (at 10 minutes per OF–156) this will require 300,000 hours of the time of aliens. Comments regarding OF–156 information collections in support of this rule should be identified as such and should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, D.C. 20520, (202) 647–0596. Such comments should be received within 60 days of publication of this rule.

E.O. 12988 and E.O. 12866

This rule has been reviewed as required by E.O. 12988 and determined to meet the applicable regulatory standards it describes. Although exempted from E.O. 12866, this rule has been reviewed to ensure consistency with it.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas, Temporary visitors.

Accordingly, the interim rule published on April 7, 1998 at 63 FR 16892 is adopted as final with the following changes:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Revise Section 41.32 to read as follows:

§ 41.32 Nonresident alien Mexican border crossing identification cards; combined border crossing identification cards and B–1/B–2 visitor visas.

(a) *Combined B–1/B–2 visitor visa and border crossing identification card (B–1/B–2 Visa/BCC).* (1) *Authorization for issuance.* Consular officers assigned to a consular office in Mexico designated by the Deputy Assistant Secretary for Visa Services for such purpose may issue a border crossing identification card, as that term is defined in INA 101(a)(6), in combination with a B–1/B–2 nonimmigrant visitor visa (B–1/B–2 Visa/BCC), to a nonimmigrant alien who:

(i) Is a citizen and resident of Mexico;

(ii) Seeks to enter the United States as a temporary visitor for business or pleasure as defined in INA 101(a)(15)(B) for periods of stay not exceeding six months;

(iii) Is otherwise eligible for a B–1 or B–2 temporary visitor visa or is the beneficiary of a waiver under INA 212(d)(3)(A) of a ground of ineligibility, which waiver is valid for multiple applications for admission into the United States and for a period of at least ten years and which contains no restrictions as to extensions of temporary stay or itinerary.

(2) *Procedure for application.* Mexican applicants shall apply for a B–1/B–2 Visa/BCC at any U.S. consular office in Mexico designated by the Deputy Assistant Secretary of State for Visa Services pursuant to paragraph (a) of this section to accept such applications. The application shall be submitted on Form OF–156. The application shall be supported by:

(i) Evidence of Mexican citizenship and residence;

(ii) The applicant's digitized photographic image taken at the time of the application; and

(iii) A valid Mexican Federal passport or a Certificate of Mexican Nationality (as long as the Certificate of Mexican Nationality is supported by another form of identification which includes a photograph) unless the applicant is the bearer of a currently valid or expired United States visa or BCC or B–1/B–2 Visa/BCC which has neither been voided by operation of law nor revoked by a consular or immigration officer. BCCs that, after October 1, 2001, or such other date as may be enacted, are no longer useable for entry due only to the absence of a machine readable biometric identifier shall not be considered to have been voided or revoked for the purpose of making an application under this section.

(iv) A digitized impression of the prints of the alien's index fingers taken at the time of the application.

(3) *Personal appearance.* Each applicant shall appear in person before a consular officer to be interviewed regarding eligibility for a visitor visa, unless the consular officer waives personal appearance.

(4) *Issuance and format.* A B–1/B–2 Visa/BCC issued on or after April 1, 1998, shall consist of a card, Form DSP–150, containing a machine-readable biometric identifier. It shall contain the following data:

(i) Post symbol;

(ii) Number of the card;

(iii) Date of issuance;

(iv) Indicia "B–1/B–2 Visa and Border Crossing Card";

(v) Name, date of birth, and sex of the person to whom issued; and

(vi) Date of expiration.

(b) *Validity.* A BCC previously issued by a consular officer in Mexico on Form I–186, Nonresident Alien Mexican Border Crossing Card, or Form I–586, Nonresident Alien Border Crossing Card, is valid until the expiration date on the card (if any) unless previously revoked, but not later than the date, currently October 1, 2001, on which a machine-readable, biometric identifier in the card is required in order for the card to be usable for entry. The BCC portion of a B–1/B–2 Visa/BCC issued to a Mexican national pursuant to provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998 is valid until the date of expiration, unless previously revoked, but not later than the date, currently October 1, 2001, on which a machine-readable, biometric identifier in the card is required in order for the card to be usable for entry.

(c) *Revocation.* A consular or immigration officer may revoke a BCC issued on Form I–186 or Form I–586, or a B–1/B–2 Visa/BCC under the provisions of § 41.122, or if the consular or immigration officer determines that the alien to whom any such document was issued has ceased to be a resident and/or a citizen of Mexico. Upon revocation, the consular or immigration officer shall notify the issuing consular or immigration office. If the revoked document is a card, the consular or immigration officer shall take possession of the card and physically cancel it under standard security conditions. If the revoked document is a stamp in a passport the consular or immigration officer shall write or stamp "canceled" on the face of the document.

(d) *Voidance.* (1) The voiding pursuant to INA 222(g) of the visa portion of a B–1/B–2 Visa/BCC issued at any time by a consular officer in Mexico under provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, also voids the BCC portion of that document.

(2) A BCC issued at any time by a consular officer in Mexico under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is void if a consular or immigration officer determines that the alien has violated the conditions of the alien's admission into the United States, including the period of stay authorized by the Attorney General.

(3) A consular or immigration officer shall immediately take possession of a card determined to be void under paragraphs (d) (1) or (2) of this section

and physically cancel it under standard security conditions. If the document voided in paragraphs (d) (1) or (2) is in the form of a stamp in a passport the officer shall write or stamp "canceled" across the face of the document.

(e) *Replacement.* When a B–1/B–2 Visa/BCC issued under the provisions of this section, or a BCC or B–1/B–2 Visa/BCC issued under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, has been lost, mutilated, destroyed, or expired, the person to whom such card was issued may apply for a new B–1/B–2 Visa/BCC as provided in this section.

3. Revise section 41.33 to read as follows:

§ 41.33 Nonresident alien Canadian border crossing identification card (BCC).

(a) *Validity of Canadian BCC.* A Canadian BCC or the BCC portion of a Canadian B–1/B–2 Visa/BCC issued to a permanent resident of Canada pursuant to provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is valid until the date of expiration, if any, unless previously revoked, but not later than the date, currently October 1, 2001, on which a machine readable biometric identifier is required in order for a BCC to be usable for entry.

(b) *Revocation of Canadian BCC.* A consular or immigration officer may revoke a BCC or a B–1/B–2 Visa/BCC issued in Canada at any time under the provisions of § 41.122, or if the consular or immigration officer determines that the alien to whom any such document was issued has ceased to be a permanent resident of Canada. Upon revocation, the consular or immigration officer shall notify the issuing consular office and if the revoked document is a card, the consular or immigration officer shall take possession of the card and physically cancel it under standard security conditions. If the revoked document is a stamp in a passport the consular or immigration officer shall write or stamp "canceled" on the face of the document.

(c) *Voidance.* (1) The voiding pursuant to INA 222(g) of the visa portion of a B–1/B–2 Visa/BCC issued at any time by a consular officer in Canada under provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, also voids the BCC portion of that document.

(2) A BCC issued at any time by a consular officer in Canada under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is void if a consular or immigration officer finds that the alien has violated the conditions of the alien's admission into the United States, including the period of stay authorized by the Attorney General.

(3) A consular or immigration officer shall immediately take possession of a card determined to be void under paragraphs (c) (1) or (2) of this section and physically cancel it under standard security conditions. If the document voided under paragraphs (c) (1) or (2) is in the form of a stamp in a passport the officer shall write or stamp "canceled" across the face of the document.

Dated: August 10, 1999.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 99–21566 Filed 8–18–99; 8:45 am]

BILLING CODE 4710–06–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1610

RIN 3046–AA67

Availability of Records

AGENCY: Equal Employment Opportunity Commission (EEOC or Commission).

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is adopting as final without change an interim rule revising its Freedom of Information Act (FOIA) regulations to conform to the Electronic Freedom of Information Act Amendments of 1996, and to implement a delegation of the Regional Attorney's FOIA responsibilities, update office addresses and correct typographical errors.

EFFECTIVE DATE: This rule is effective on August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, at (202) 663–4669 or TDD (202) 663–7026. This rule is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this rule in an alternative format should be made to EEOC's Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: On January 9, 1998, at 63 FR 1339–1342, the Equal Employment Opportunity Commission published an interim final rule implementing the Electronic Freedom of Information Act Amendments of 1996 (Public Law 105–231). The interim rule also revised the regulation to reflect a delegation of FOIA responsibilities by the Regional Attorneys, update field office addresses, and correct some typographical errors. Comments on the revisions were invited from the public, to be received by EEOC on or before March 10, 1998. No comments were received and EEOC has determined that no changes are needed to the interim rule. Therefore, EEOC is adopting the interim rule, without change, as final.

Regulatory Procedures

Regulatory Flexibility Act

The Commission, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant impact on a substantial number of small entities.

Executive Order 12866

This regulation has been reviewed in accordance with Executive Order 12866. The Office of Management and Budget has determined that this rule is not a "significant regulatory action" as defined in Executive Order 12866 because the revisions contained in this final rule incorporate only those changes required by the Electronic FOIA Amendments of 1996, a provision allowing regional attorneys to delegate their FOIA responsibilities, updated field office addresses, and corrections of typographical errors.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 1610

Freedom of information.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission is adopting the interim rule amending 29 CFR part 1610, which was published at 63 FR 1339–1342, on January 9, 1998, as a final rule without change.

For the Equal Employment Opportunity Commission.

Dated at Washington, DC, this 10th day of August, 1999.

Ida L. Castro,

Chairwoman.

[FR Doc. 99–21567 Filed 8–18–99; 8:45 am]

BILLING CODE 6570–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB10

Safety Standard for Preshift Examinations in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Final rule.

SUMMARY: We (MSHA) are amending the examination interval for preshift examinations of underground coal mines by requiring that mine operators conduct preshift examinations at 8-hour intervals. The rule clarifies when a preshift examination is required and the length of the shift covered by the preshift examination.

EFFECTIVE DATES: This final rule is effective on October 18, 1999. Submit all written comments on the information collection burden no later than October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances; telephone 703/235–1910; fax 703/235–5551.

SUPPLEMENTARY INFORMATION:

I. Background

The preshift examination is the mine operator's fundamental tool for assessing the overall safety condition of the mine. During the preshift examination, which includes all areas where miners are scheduled to work or travel during the shift, the examiner focuses on discovering both existing and developing hazards, such as methane accumulation, bad roof and water accumulation, and determining the effectiveness of the mine ventilation system. The examination has proven to be particularly effective in the discovery and correction of hazardous conditions and practices before they lead to injuries or fatalities. Because conditions in the underground mining environment can change rapidly, recurring examinations are necessary to assure safety of the miners underground. A timely preshift examination assures the safety of the environment on a routine basis.

The Federal Mine Safety and Health Act of 1977 (Mine Act) contains interim mandatory safety standards that address preshift examinations. The interim standards in the Mine Act that relate to preshift examinations, §§ 303(d)(1) and 303(d)(2), appear as interim mandatory safety standards in the Federal Coal Mine Health and Safety Act of 1969. In 1970, the Bureau of Mines of the United States Department of the Interior, a predecessor of the Mine Safety and Health Administration at that time, adopted these interim standards as safety standards in Title 30 of the Code of Federal Regulations (CFR). Interim standard § 75.303(d)(1) required that preshift examinations be conducted "[w]ithin three hours immediately preceding the beginning of any shift." We adopted this provision as a mandatory safety standard in our regulations for underground coal mines, promulgating it in 1978 as former 30 CFR 75.303(a).

Section 303(d)(2) of the Mine Act, the other interim standard addressing preshift examinations, provided that no person, other than certified persons designated to conduct the examination, is permitted to enter any underground area, except during any shift, unless a preshift examination of such area has been made within 8 hours prior to the person entering the area. Under this provision, miners already working on a shift where a preshift examination has been completed may remain working underground during the subsequent preshift examination being conducted for the oncoming shift. In 1978, MSHA adopted this provision as a mandatory safety standard in its regulations for underground coal mines as former 30 CFR § 75.303(b).

At the time the Mine Act was enacted, coal miners worked in shifts of 8 hours as a general practice. The effect of the preshift examination requirement in this environment was for examiners to conduct preshift examinations every 8 hours. Since the Mine Act was enacted, overlapping work shifts and work shifts of various lengths (novel work shifts) have become common, making it necessary for MSHA to address the frequency of preshift examinations. Currently, a number of mines work shifts of up to 12 hours in length.

In 1992, we revised our preshift examination requirements as part of our final rule for ventilation standards. We retained the requirement that preshift examinations must be conducted "within 3 hours preceding the beginning of any shift." However, in our preamble discussion to the 1992 final ventilation rule, we interpreted this language to mean that if the mine used regular shifts longer than 8 hours, the preshift examination applied to the entire length of the shift (57 FR 20893).

In 1994, we proposed a new preshift examination rule in an attempt to clarify and standardize the application of certain provisions of the 1992 preshift examination rule (59 FR 26356). In the comments submitted to us during the 1994 rulemaking, a segment of the mining community expressed concern that because of novel work schedules, preshift examinations were not being conducted frequently enough to assure safe working conditions. A commenter expressed concern that conducting preshift examinations at intervals longer than 8 hours would reduce the protection afforded miners under the Mine Act. The commenter also stated that MSHA introduced confusion into the preshift examination requirements in interpreting the acceptable intervals for preshift examinations.

Another segment of the public argued that the language of § 303(d)(2) of the Mine Act indicates that Congress tacitly accepted shifts longer than 8 hours with only one preshift examination required. The same segment of the public argued that we allowed a practice to evolve over a period of time which permitted not only longer shifts but also "excursions" over 8 hours under specific conditions. During these so-called excursions, miners would remain underground for short periods to handle unplanned situations that developed during the shift. As an example, an excursion might be used to perform mechanical repairs or install roof support. Finally, commenters representing both labor and industry recommended that we adopt a final rule requiring preshift examinations for each 8-hour period that miners are underground.

When we promulgated the 1994 proposed rule as a final rule in 1996, (61 FR 9764) we addressed the comments and revised the existing standard. We substituted the phrase "8-hour interval" for the phrase "beginning of any shift." The 1996 rule required a preshift examination, "* * * within 3 hours preceding the beginning of any 8-hour interval during which any person is

scheduled to work or travel underground. * * *" We also acknowledged in the preamble to the final rule that, in accordance with longstanding practice, unplanned short excursions past the 8-hour period that occur infrequently are accepted without an additional preshift examination (61 FR 9791).

In the preamble to the 1996 final rule, we discussed our rationale for adopting an 8-hour preshift examination rule. We stated that:

> Underground working schedules of three 8-hour shifts per day were virtually standard when the previous rule was implemented. Currently a substantial number of mining operations have work shifts of more than 8 hours. Other operations stagger or overlap shifts providing for continuous underground mining activities. Some mines that operate around the clock schedule persons to begin shifts at one-or two-hour intervals. In such cases, controversies and misunderstandings have developed regarding application of the current standard. . . . MSHA agrees with commenters that evolution within the industry in shift scheduling has presented a number of questions and controversies regarding the standard which must be resolved to assure that proper preshift examinations are conducted within suitable time frames. Based on comments, the final rule adopts a modification to clarify and standardize the application of the preshift examination in recognition of the use of novel shifts while maintaining the protection of the existing standard. (61 FR 9791).

In adopting an 8-hour preshift examination requirement, we agreed with comments suggesting that the original legislation of the Mine Act envisioned that preshift examinations would be conducted for each 8-hour interval that persons worked underground" (61 FR 9791). We reached this conclusion both from the traditional practice at the time of the legislation and from the language of § 303(d)(2) of the Mine Act.

On June 17, 1997, the United States Court of Appeals for the District of Columbia Circuit, in *National Mining Association* v. *Mine Safety and Health Administration and Secretary of Labor (MSHA)*, 116 F.3d 520 (D.C. Cir. 1997), acknowledged that the approach used by MSHA in adopting the 8-hour interval for the preshift examination was a reasonable one. The Court stated, "At the least, 30 CFR § 75.360(a)(1) is a reasonable interpretation of open-ended statutory language.* * * We see no reason why we should not think of 30 CFR § 75.360(a)(1) as just such an "improved mandatory safety standard" issued in light of changed circumstances in the mining industry." (116 F.3d 520, 530). However, the Court invalidated the provision on the procedural ground that we failed to provide sufficient notice to the parties in the rulemaking that we were contemplating requiring a preshift examination every 8 hours. The effect of the decision was to reinstate the portion of the previous standard that requires a preshift examination to be conducted prior to the beginning of any shift. We published a **Federal Register** notice on June 30, 1997 (62 FR 35085) conforming the language of the existing standard to the Court's order.

On July 14, 1998, in response to the Court's *National Mining Association* decision, we published a proposed rule addressing the existing preshift examination requirements (63 FR 38066). Instead of requiring a preshift examination at the beginning of each shift, the Agency proposed that a preshift examination be conducted at 8-hour intervals. Specifically, we proposed:

> *§ 75.360 Preshift examination at fixed intervals.*
>
> (a)(1) Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator shall make a preshift examination within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work or travel underground. No person other than certified examiners may enter or remain in any underground area unless a preshift examination has been completed for the established 8-hour interval. The operator shall establish 8-hour intervals of time subject to the required preshift examinations. (63 FR 38071).

In the preamble to the proposed rule, we stated, "MSHA continues to believe that it is necessary to address the issues surrounding the preshift examination interval. The standard must provide for sufficient protection, be clear in its recommendations, and be properly implemented to ensure safe working conditions in underground coal mines" (63 FR 38068).

II. Discussion of § 75.360(a)(1)

The final rule modifies existing § 75.360(a)(1) to require preshift examinations at fixed 8-hour intervals. The final rule is substantively identical to the proposed rule. The word "shall" is changed to "must" in the final rule in accordance with the style advocated by the President's Memorandum on Plain Language. Existing § 75.360(a)(1) provides:

> Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator shall make a preshift examination within 3 hours preceding the beginning of any shift during which any person is scheduled to work or travel underground. No person other than certified examiners may enter or remain in any underground area unless a preshift examination has been completed for the shift.

The rule replaces the word "shift" with the phrase "8-hour interval". In addition, the rule adds the sentence, "The operator must establish the 8-hour intervals of time subject to the required preshift examinations." The final rule advances the overall safety at underground coal mines and does not reduce the protection afforded by the existing standard.

Considering the speed at which underground conditions can change, preshift examinations are necessary after a reasonable but defined period of time. As an example, methane, an explosive gas naturally occurring in coal mines, commonly builds up over time, especially in newly mined areas. Methane may also accumulate in other areas, such as where water accumulation interferes with mine ventilation. A preshift examination should result in the detection of this explosive gas, if present, and the timely correction of the condition before it reaches a hazardous level. Also, the roof and ribs tend to deteriorate over time throughout the mine, including outby entries used as travelways and on the sections of a mine where miners are assigned to work. Roof pressures and subsequent falls can damage ventilation controls, resulting in hazardous conditions. Equipment damaged by a roof fall, including belt haulage systems or trolley wire systems, can lead to mine fires or explosions. A preshift examination provides a mechanism to detect these developing hazards.

We have reviewed the history of fatalities that have occurred at underground coal mines since 1990 to determine if any of the fatalities occurred more than 8 hours after the start of the shift and, therefore, may have been prevented had the proposed rule been in place. We placed in the rulemaking record 32 fatal accident reports of MSHA investigations conducted since 1990. In each report the accident was identified as occurring more than 8 hours into the shift. At least 6 of the reports, representing 7 fatalities, address instances where an additional preshift examination might have identified the hazards that resulted in the fatalities and allowed an opportunity for corrective action. The accidents are: Linda Enterprise, Inc., #31–A mine, March 23, 1990, 1 fatality; Miller Branch Enterprises, Inc., No. 1 mine, December 4, 1991, 1 fatality; M.A.G. Incorporated, Alloy Deep Mine #2, October 2, 1993, 1 fatality; Day Branch Coal Co., Inc., No. 9 mine, May 11, 1994, 2 fatalities; Waco Limited

Partnership No. 1, No. 2 mine, December 18, 1995, 1 fatality; and M&D Coal Co., Inc., No. 3 mine, August 15; 1996, 1 fatality. We note that the rule being finalized was in effect between June 1996 and July 1997. However, the rule was not being followed at the M&D No. 3 mine at the time of the August 15, 1996, accident.

The final rule applies to all underground coal mines, including those that operate with only one 8-hour shift per day. If the mine uses regular shifts that are longer than 8 hours in length, the preshift examination would cover an 8-hour interval; an additional examination is required for over 8 hours. The rule requires three preshift examinations where persons are underground for more than 16 hours per day. As an example, at a mine operating two 10-hour shifts per day, the final rule requires three examinations per day. As with the existing standard, the final rule does not require examinations for designated 8-hour periods when no one enters the mine. Also consistent with the existing standard, no one, except other designated preshift examiners, may accompany preshift examiners during an examination before miners reenter the mine.

Once a preshift examination has been conducted, an additional preshift examination is not necessary during the 8-hour interval covered by the preshift examination simply because persons start to work after the beginning of the normal shift start time. Under the final rule persons can enter or leave the mine, regardless of their shift schedule, during any established 8-hour period for which a preshift examination has been conducted. However, another preshift examination must be completed prior to the beginning of the next 8-hour interval if any persons, other than examiners, remain in the mine during the next 8-hour interval or are scheduled to enter the mine during the oncoming interval. As with the existing standard, no person other than examiners may enter any underground area that is subject to a preshift examination prior to the completion of the preshift examination for that area. Also, supplemental examinations continue to be required under § 75.361 before anyone enters areas of the mine that have not had a preshift examination. In accordance with prior practice, miners already working on a shift for which a preshift examination has been completed may remain working underground during the subsequent preshift examination being conducted for the oncoming shift.

We recognize that the final rule may cause some of the mine operators to perform additional examinations that are not currently required. As an example, some small mines operate 1 shift per day. Many of these mines plan to work 8 hours at the face. Allowing for travel time and lunch, the mines may work a single 8½ or 9 hour shift on a regular basis. Under the final rule, 2 preshift examinations are required.

In the preamble to the proposed rule, we encouraged all parties to express their views fully on the proposal and submit comments on the proposed preshift examination rule. Also, we specifically solicited comments in a number of areas, such as whether excursions should be permitted, and the safety benefits gained by requiring a mine that operates a single 8½ or 9 hour shift per day to conduct 2 preshift examinations.

We received comments from a total of 4 commenters: 2 mining associations, 1 mining company, and 1 labor organization. One commenter advocated MSHA's approach of conducting a preshift examination at 8-hour intervals, stating that Congress intended preshift examinations to be conducted at 8-hour intervals, that it is essential that the requirements for preshift examinations be clear and unambiguous, and that the issue of the frequency of preshift examinations is vitally important for safety and health. This commenter opposed any excursions beyond the 8-hour interval except for life threatening situations. The other 3 commenters stated that we must be more flexible in our approach to determining preshift examination intervals. Two commenters stated that mine plans should incorporate preshift examination requirements specific to each mine. Three commenters pointed out that because of State laws, there are instances where additional and unnecessary preshift examinations are required. These commenters favored a preshift examination that covered an entire shift, regardless of its duration. Two of the commenters pointed out that technological advances, such as mine-wide monitoring systems used in some mines, have made mines safer than they were at the time Congress passed the Mine Act. Two commenters stated that many examinations occur during a shift. Consequently, these commenters felt that preshift examinations that lasted the duration of the shift, whether 8, 10, or 12 hours, should be acceptable in mines using technological advances such as mine-wide monitoring systems.

We have carefully considered each of the comments and have determined that, with minor non-substantive changes, it is appropriate to adopt and publish the proposed rule as the final rule. The Agency has concluded that, considering the speed at which the underground conditions can change, there must be a defined, reasonable period after which another examination is necessary. The history of fatalities at underground mines since 1990 demonstrates that as many as 7 lives could have been saved if the 8 hour interval rule had been in place. As one commenter stated, repeating language from the preamble to the proposed rule:

> [t]he preshift examination is a critically important, fundamental safety practice in the mining industry. It has historically been a primary means of determining the effectiveness of an underground coal mining operation, and of detecting hazardous conditions and practices. The preshift examination has proven to be particularly effective because it provides a thorough safety check before work commences underground on the shift for which the examination is conducted. A preshift examination can detect developing hazards as well as existing hazards.

The preshift examination at 8-hour intervals is a clear and easily understood requirement that has an historical basis in legislative history. We are not persuaded by commenters that, due to technological improvements in modern mining as well as the training that modern miners receive, there is a need to deviate from the frequency of preshift examinations envisioned by Congress. The fact that mines may be somewhat safer today than they were in the past does not change the fact that the hazards still exist. Miners and operators must be vigilant in dealing with methane accumulation, roof and rib deterioration and water accumulation, as well as other hazards. Progress in safety due to modern mining and monitoring systems has not lessened the need for preshift examinations at 8-hour intervals, which we believe will result in increased miner safety. As we have noted previously, we have identified 7 fatalities that might have been prevented if preshift examinations had occurred at 8-hour intervals. Technological advances that enhance safety, such as atmospheric monitoring systems, should supplement the proper use of preshift examinations rather than change the frequency of the examination.

Through a longstanding practice, we have permitted excursions beyond the normal scheduled shift for preshift examinations. In this final rule, we will permit miners to stay on the section or in the work area for up to an additional 15 minutes beyond an 8-hour shift to conclude the mining cycle at an appropriate point, perform mechanical repairs, install roof support, or as a

result of a mantrip delay. We will continue to interpret the final rule to allow such excursions. One commenter addressed this issue. The commenter to the proposed rule objected to any excursion except for life-threatening situations. The commenter added that, to prevent abuse, if other excursions are permitted, the rule should be specific in defining the circumstances under which excursions are permitted. We agree with the commenter that an excursion for a life-threatening situation does not require an additional preshift examination. We also believe that there are good reasons for excursions for other circumstances: a machinery breakdown which requires miners to walk from the mine, or a roof control problem requiring immediate attention before the miners leave the mine. Some flexibility is appropriate to account for unanticipated circumstances. We continue to believe that short excursions of up to 15 minutes should be permitted. Also, an infrequent excursion of up to 30 minutes is acceptable under an unanticipated circumstance such as a mechanical breakdown. While, by their nature, these infrequent excursions are unpredictable, we expect that excursions would be necessary on the average of no more than once a week.

Two commenters recommended that the rule should provide enough flexibility to improve safety and provide a better utilization of resources. The commenters gave an example of an operator who has established 3-hour intervals spaced 8 hours apart to preshift examine the face areas of the mine. According to these commenters, the same operator at the same mine should be able to examine belts, travelways, and other areas during another, different series of 3-hour intervals spaced 8 hours apart. We agree that this is an acceptable flexible approach that does not diminish safety. The final rule permits this approach. However, we note that after an idle period, a full preshift examination must be completed before miners reenter the area.

We received 2 comments which suggested that the mine ventilation plan could be used to provide for flexibility in scheduling preshift examinations, particularly in cases where an inconsistency might exist with State requirements for examinations. These commenters favored a preshift examination that covered an entire shift regardless of its duration. We believe that a uniform requirement for an examination every 8 hours best serves the purposes of miner safety and health. Use of the plan approval process to essentially adopt a longer preshift examination interval would not be appropriate.

A commenter pointed out that the Pennsylvania Bituminous Coal Mine Act requires a preshift examination in a gassy mine within the 3 hours immediately preceding the beginning of a coal-producing shift. The commenter stated that there are currently 2 mines in Pennsylvania that work 2 shifts of 12 hours, and these only on weekends. Considering the interaction of the MSHA and the Pennsylvania rules, these mines and possibly several others in Pennsylvania, may be required to conduct 4 preshift examinations instead of the 3 examinations otherwise conducted during a 24 hour period. We believe that the requirement for preshift examinations at 8 hour intervals is appropriate and do not believe that the hazardous environment in underground coal mines allows for an exemption in this case. In addition, the history of fatalities that have occurred since 1990 in shifts longer than 8 hours does not support a preshift examination at 12 hour intervals.

Another commenter stated that the proposed preshift requirement would adversely impact safety by requiring the section foreman, supervising a production crew, to examine outby areas during production shifts in excess of 8 hours. The safety of the production crew at the face would be unmonitored during this time. This situation might arise in a 1-shift mine with a single certified person onsite. We agree that in this circumstance, having the foreman on the section and available to supervise the production crew provides a safety benefit. However, we also believe that an examination of outby areas is necessary to assure that any hazardous conditions are identified and corrected in a timely manner. When an additional preshift examination is necessary, the on-section portion of the examination can be conducted concurrently with the on-shift examination. Any certified person designated by the operator may conduct the examination of the outby areas and a vehicle can be used to expedite the examination and to minimize any absence from the section. Also, in such a circumstance, we will accept an examination of outby areas by the certified person during egress from the mine where the examiner travels ahead of the crew, examining while traveling. If a hazard is encountered, the examiner must be able to stop the crew before they reach the hazard. This approach preserves the certified person's presence on the section during the work period and provides for the outby portion of the examination before miners travel through the area. We note that this is only applicable before an idle period. If a crew is scheduled to enter the area, a preshift examination must be completed before the next 8-hour interval begins.

For accuracy, we are changing the title of § 75.360 from "Preshift examination" to "Preshift examination at fixed intervals." The text of the final rule and the preamble discussion of the standard continue to refer to the examination as the "preshift examination." Because of the history of the term and the widespread understanding in the industry of the safety checks required by a preshift examination, we are continuing to use the term "preshift examination" in the body of the standard and to refer to the examination as the preshift examination.

III. Paperwork Reduction Act

This final rule contains an information collection requirement which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA 95). It is identical to the information collection requirement in our proposed rule. We did not receive any comments on the proposed information collection requirement. OMB has approved the information collection requirement and assigned to it OMB control number 1219–0125. The approval expiration date is October 31, 2001.

IV. Executive Order 12866 Regulatory Planning and Review

Executive Order (EO) 12866 requires that agencies assess both the costs and benefits of intended regulations. We have determined that this rule would not have an annual effect of $100 million or more on the economy and, therefore, that this rulemaking is not a significant regulatory action for purposes of this EO. Although the final rule applies to all underground coal mines, it will cause 127 underground coal mines to incur compliance costs (or approximately 13 percent of all underground coal mines). Of the 127 mines, 75 are small mines (mines with fewer than 20 employees), and 52 are large mines (mines with 20 or more employees). The total estimated annual compliance cost of the final rule is $2,218,731. Small and large underground coal mines will have annual compliance costs of $377,192 and $1,841,539, respectively.

The total 1997 revenues for the underground coal mine industry are estimated to be about $7.6 billion. The final rule's estimated annual cost is less than 0.03 percent of annual estimated

revenues for all mines (all underground coal mines) which are covered by the rule. We do not expect this rule to have a significant economic impact on the underground coal mining industry.

V. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Under SBREFA, in analyzing the impact of a final rule on small entities, MSHA must use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. We have not taken such an action and, therefore, are required to use the SBA definition. MSHA traditionally has considered small mines to be those with fewer than 20 employees. The SBA defines a small mining entity as an establishment with 500 or fewer employees (13 CFR 121.201). Almost all underground coal mines fall into this category. For these small underground coal mines, as defined by SBA, we conducted a screening analysis by comparing their estimated cost of complying with the final rule to their estimated revenues. When estimated compliance costs are less than 1 percent of estimated revenues, we believe it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed 1 percent of estimated revenues, it tends to indicate that further analysis may be warranted. We estimate compliance costs for small underground coal mines covered under this rule (using the SBA definition) to be $2,182,721 and their revenues to be approximately $6.916 billion (as shown on Table 1). Therefore, the costs of complying with the final rule for small underground coal mines are approximately 0.03 percent of their estimated revenues.

With respect to this final rule, 126 of the 127 underground coal mines that will incur compliance costs fall under SBA's definition. When the 126 underground coal mines that are immediately affected by this rule are separately considered, the costs of complying with the final rule for such mines are 0.3 percent of their revenues (as shown on Table 2).

In either case, the rule's costs as a percentage of estimated revenues are well below the 1 percent level. Accordingly, we certify that the final rule will not have a significant impact on a substantial number of small entities (mines with 500 or fewer employees).

TABLE 1.—ESTIMATED REVENUES OF UNDERGROUND COAL MINES COVERED BY THE RULE

Mine size (employees)	Number of mines[a]	Average production per mine (tons)[a]	Total estimated revenues (in millions)[b]
≤ 500	959	398,221	$6,916
> 500	9	4,196,324	684
Total	968		7,600

[a] Sources: Based on MSHA's database and MSHA's CM441 Coal Report 1997 cycle 1997/184.
[b] Total revenues = n x t x p, where n is the number of mines in that size class; t is the average tons of coal produced annually by a mine in that size class; and p is the price per ton of coal. The 1997 price per ton of coal was $18.11 (Source: DOE/EIA *Annual Energy Review*, p. 203).

TABLE 2.—ESTIMATED REVENUES FOR UNDERGROUND COAL MINES AFFECTED BY THE RULE

Mine size (employees)	Number of mines[a]	Average production per mine (tons)[a]	Total estimated revenues (in millions)[b]
< 20	75	33,304	$45
> 20 & < 500	51	689,881	637
Total	126		682

[a] Based on MSHA's CM441 Coal Report 1997 cycle 1997/184.
[b] Total revenues n x t x p, where n is the number of mines in that size class; t is the average tons of coal produced annually by a mine in that size class; and p is the price per ton of coal. The 1997 price per ton of Coal was $18.11 (Source: DOE/EIA *Annual Energy Review*, p. 203).

VI. Executive Order 12875 Enhancing the Intergovernmental Partnership; and the Unfunded Mandates Reform Act of 1975

Executive Order (EO) 12875 requires executive agencies and departments to reduce unfunded mandates on State, local, and tribal governments; to consult with these governments prior to promulgation of any unfunded mandate; and to develop a process that permits meaningful and timely input by State, local, and tribal governments in the development of regulatory proposals containing a significant unfunded mandate. EO 12875 also requires executive agencies and departments to increase flexibility for State, local, and tribal governments to obtain a waiver from Federal statutory or regulatory requirements.

We offered governments an opportunity to provide meaningful and timely input, at the proposed rule stage, through the promulgation of the proposal for notice and comment. No state, local government or tribal government commented or requested a waiver of regulatory requirements.

Much of the Unfunded Mandates Reform Act of 1995 is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments. It also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

We have determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, we have determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect these entities.

We have prepared an estimate of the cost of the rule in our submission to OMB for approval of the information collection requirements in the rule. We will furnish a copy of this estimate to you upon request. A summary of the cost is contained in the preamble to this rule.

VII. Executive Order 13045 Protection of Children from Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health or safety effect of the rule on children. We have determined that the rule will have no effect on children.

VIII. Executive Order 13084 Consultation and Coordination with Indian Tribal Governments

We certify that the final rule does not impose substantial direct compliance costs on Indian tribal governments. Further, we provided the public, including Indian tribal governments which operated mines, the opportunity to comment during the proposed rule's comment period. No Indian tribal government applied for a waiver or commented on the proposal.

IX. Executive Order 12612 Federalism

Executive Order 12612 requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any action which would restrict state policy options, and take such actions only when there is a clear constitutional authority and the presence of a problem of a national scope. Since this rule does not limit state policy options, it complies with the principles of federalism and with Executive Order 12612.

X. Executive Order 12630 Government Actions and Interference with Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with taking implications.

XI. Executive Order 12988 Civil Justice Reform

The Agency has reviewed Executive Order 12988 and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written to so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

List of Subjects

30 CFR Part 75

Mine safety and health, underground coal mining, ventilation.

Dated: August 11, 1999.

Marvin W. Nichols Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, 30 CFR, chapter I, is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

2. In subpart D of Part 75, the section heading of § 75.360 and paragraph (a)(1) are revised to read as follows:

§ 75.360 Preshift examination at fixed intervals.

(a)(1) Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator must make a preshift examination within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work or travel underground. No person other than certified examiners may enter or remain in any underground area unless a preshift examination has been completed for the established 8-hour interval. The operator must establish 8-hour intervals of time subject to the required preshift examinations.

* * * * *

[FR Doc. 99–21448 Filed 8–18–99; 8:45 am]
BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009–0143a; FRL–6420–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revisions for Six California Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM) emissions from open burning, incinerator burning, and orchard heater sources in the Kern County Air Pollution Control District (KCAPCD), Northern Sierra Air Quality Management District (NSAQMD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), Siskiyou County Air Pollution Control District (SCAPCD), Tehama County Air Pollution Control District (THCAPCD), and Tuolumne County Air Pollution Control District (TOCAPCD). This approval action will incorporate these rules into the federally-approved SIP. The intended effect of this action is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA). Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for attainment and nonattainment areas.

DATES: This rule is effective on October 18, 1999 without further notice, unless EPA receives relevant adverse comments by September 20, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 290, Bakersfield, CA 93301.

Northern Sierra Air Quality Management District, 540 Searles Avenue, Nevada City, CA 95959.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, CA 96097.

Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080.

Tuolumne
District,
CA 9537
FOR FURTHE
Petersen, R
Air Divisio
Protection
Hawthorne
94105. Tele
SUPPLEMENT

I. Applicab

The rules
California A
below with
submitted t
Resources
• KCAPC
(submitted
• KCAPC
Burning (su
1996).
• NSAQM
Burning (su
1991).
• SJVUA
Burning (su
• SJVUA
Heaters (su
• SCAPC
Burning (su
• TCAP
Vegetation
(submitted
• TOCAP
Burning (su

II. Backgro

On March
a list of tota
(TSP) nonat
provisions
that include
Basin (43 FI
July 1, 1987
the TSP sta
standards a
microns in

[1] On July 18,
new standards
38651). The U.S
Circuit in Ame
USEPA, No. 97
opinion that, a
standards for P
18, 1997 and be
However, the P
1, 1987 were n
Court's decisio
those standards
standards conti
In the notice pr
standards, the
previous PM–1
on July 1, 1987,
them, would co
the 1987 PM–1
specified in 40
38701. EPA has
50.6(d) for this
relates only to
the PM–10 stan
1987.

Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California Applicable SIP are listed below with the date that they were submitted to EPA by the California Air Resources Board (CARB):

- KCAPCD Rule 416, Open Burning (submitted on October 18, 1996).
- KCAPCD Rule 417, Agricultural Burning (submitted on October 18, 1996).
- NSAQMD Rules 302 to 312, Open Burning (submitted on October 25, 1991).
- SJVUAPCD Rule 4302, Incinerator Burning (submitted on May 24, 1994).
- SJVUAPCD Rule 4303, Orchard Heaters (submitted on May 24, 1994).
- SCAPCD Rule 4.3, Non-Agricultural Burning (submitted on March 26, 1990).
- THCAPCD Rule 3.12, Wildland Vegetation Management Burning (submitted on May 13, 1991).
- TOCAPCD Rules 302 to 310, Open Burning (submitted on March 26, 1990).

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act, that included the San Joaquin Valley Air Basin (43 FR 8964; 40 CFR 81.305). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. *7401–7671q*). On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 188(a). Nevada County, Plumas County, and Sierra County (all of which now comprise NSAQMD), Siskiyou County, Tehama County, and Tuolumne County were designated unclassifiable for PM–10. The present KCAPCD includes a part of Kern County, which was designated unclassifiable for PM–10, and a part of Searles Valley, which was classified and designated moderate nonattainment for PM–10. On February 8, 1993, EPA classified four nonattainment areas as serious, including the San Joaquin Valley Planning Area, which now comprises the SJVUAPCD.

Section 189(a) of the CAA requires PM–10 moderate nonattainment areas to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) of the CAA requires PM–10 serious nonattainment areas to adopt best available control measures (BACM) for significant sources of PM–10, including best available control technology (BACT).

KCAPCD must adopt RACM due to including the Searles Valley Planning Area PM–10 moderate non-attainment area. However, the "PM–10 SIP for the Searles Valley Planning Area", pg III.6, November 1991, shows that the PM–10 Emissions Inventory is zero for waste (open) burning. Therefore, adopting RACM would not decrease emissions, and KCAPCD will not be evaluated by RACM requirements.

SJVUAPCD must at a minimum meet the requirements of RACM; SJVUAPCD must also meet the requirements of BACM. However, EPA is deferring decision on the specific BACM requirements until EPA acts on SJVUAPCD's BACM plan at a later date.

In response to section 110(a) and Part D of the Act, the State of California submitted many PM–10 rules for incorporation into the California SIP, including the rules being acted on in this document. This document addresses EPA's direct-final action for the following:

- KCAPCD Rule 416, Open Burning.

This rule was amended by the KCAPCD on July 11, 1996, submitted by the CARB for incorporation into the California SIP on October 18, 1996, and found to be complete on December 19, 1996, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 appendix V[2] and is being finalized for approval into the SIP.

- KCAPCD Rule 417, Agricultural Burning.

This rule was amended by the KCAPCD on July 11, 1996, submitted by the CARB for incorporation into the California SIP on October 18, 1996, and found to be complete on December 19, 1996.

- NSAQMD Rule 302, Prohibited Open Burning.
- NSAQMD Rule 303, Allowed Open Burning.
- NSAQMD Rule 304, Agricultural Burning.
- NSAQMD Rule 305, Range Improvement Burning.
- NSAQMD Rule 306, Forest Management Burning.
- NSAQMD Rule 307, Wildlands Vegetation Management Burning.
- NSAQMD Rule 308, Land Development Clearing.
- NSAQMD Rule 309, Ditch, Road and Right-of-FyWay Maintenance.
- NSAQMD Rule 310, Hazard Reduction.
- NSAQMD Rule 311, Residential Maintenance.
- NSAQMD Rule 312, Burning Permits.

These rules were adopted by the NSAQMD on November 10, 1988, submitted by the CARB for incorporation into the California SIP on October 25, 1991, and found to be complete on December 18, 1991.

- SJVUAPCD Rule 4302, Incinerator Burning. This rule was initially adopted by the SJVUAPCD on May 21, 1992, amended by the SJVUAPCD on December 16, 1993, submitted by the CARB for incorporation into the California SIP on May 24, 1994, and found to be complete on July 14, 1994.
- SJVUAPCD Rule 4303, Orchard Heaters. This rule was initially adopted by the SJVUAPCD on May 21, 1992, amended by the SJVUAPCD on December 16, 1993, submitted by the CARB for incorporation into the California SIP on May 24, 1994, and found to be complete on July 14, 1994.
- SCAPCD Rule 4.3, Non-Agricultural Burning. This rule was initially adopted by the SCAPCD on October 26, 1971, amended by the SCAPCD on January 24, 1989, submitted by the CARB for incorporation into the California SIP on March 26, 1990, and found to be complete on June 20, 1990.

[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). The U.S. Court of Appeals for the D.C. Circuit in American Trucking Assoc., Inc., *et al.* v. *USEPA*, No. 97–1440 (May 14, 1999) issued an opinion that, among other things, vacated the new standards for PM–10 that were published on July 18, 1997 and became effective September 16, 1997. However, the PM–10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in this area. Codification of those standards continue to be recorded at 40 CFR 50.6. In the notice promulgating the new PM–10 standards, the EPA Administrator decided that the previous PM–10 standards that were promulgated on July 1, 1987, and provisions associated with them, would continue to apply in areas subject to the 1987 PM–10 standards until certain conditions specified in 40 CFR 50.6(d) are met. See 62 FR 38701. EPA has not taken any action under 40 CFR 50.6(d) for this area. Today's proposed action relates only to the CAA requirements concerning the PM–10 standards as originally promulgated in 1987.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

• THCAPCD Rule 3.12, Wildland Vegetation Management Burning. This rule was initially adopted by the THCAPCD on August 4, 1987, amended by the THCAPCD on April 25, 1989, submitted by the CARB for incorporation into the California SIP on May 13, 1991, and found to be complete on July 10, 1991.

• TOCAPCD Rule 302, Burning Requirements.

• TOCAPCD Rule 303, Burn or No-Burn Day.

• TOCAPCD Rule 304, Burning Management Requirements.

• TOCAPCD Rule 305, Minimum Drying Times.

• TOCAPCD Rule 306, Agricultural Burning.

• TOCAPCD Rule 307, Wildland Vegetation Management.

• TOCAPCD Rule 308, Forest Management.

• TOCAPCD Rule 309, Range Improvement.

• TOCAPCD Rule 310, Miscellaneous Burning.

These rules were adopted by the TOCAPCD on November 22, 1988, submitted by the CARB for incorporation into the California SIP on March 26, 1990, and found to be complete on June 20, 1990.

PM emissions can harm human health and the environment. These rules were adopted as part of KCAPCD, NSAQMD, SJVUAPCD, SCAPCD, THCAPCD, and TOCAPCD efforts to maintain the National Ambient Air Quality Standard (NAAQS) for PM–10. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

The statutory provisions relating to RACM/RACT and BACM/BACT are discussed in EPA's "General Preamble", which give the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the CAA. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992) and 59 FR 41998 (August 16, 1994). In this rulemaking action, EPA is applying these policies to this submittal, taking into consideration the specific factual issues presented.

EPA previously reviewed rules from KCAPCD, NSAQMD, SJVUAPCD, SCAPCD, THCAPCD, and TOCAPCD and incorporated them into the federally-approved SIP pursuant to section 110(k)(3) of the CAA.

On September 22, 1972 EPA approved KCAPCD Rule 416, Open Burning, into the SIP, and on September 22, 1972 and on March 22, 1978, EPA approved parts of KCAPCD Rule 417, Exceptions, into the SIP. Submitted KCAPCD Rule 416, Open Burning, combines and replaces these two SIP-approved rules and strengthens the rule by adding requirements for an extensive burn plan and a modeling study to limit health risk for open burning/open detonation activities. Submitted Rule 416 regulates PM–10 emissions from open burning activities other than agricultural burning. An earlier submittal of Rule 417, Exceptions (to Rule 416), on which no action was taken, was amended on August 22, 1989, and submitted to EPA on September 14, 1992. While EPA can only act on the most recently submitted version, EPA reviewed relevant materials associated with this superseded earlier version.

On July 6, 1982, EPA approved KCAPCD Rule 417.1, Agricultural Burning, into the SIP. Submitted KCAPCD Rule 417, Agricultural Burning, replaces the SIP-approved rule. Submitted Rule 417 provides for the burning of Tumbleweeds and Star Thistle according to present policy. A section on rice straw burning, not applicable to the desert region, is deleted. Rule 417 is at least as stringent as the SIP-approved rule. There are no superseded submittals of Rule 417 on which EPA has not acted.

On various dates, EPA approved into the SIP versions of submitted NSAQMD Rules 302 to 312 from the three individual counties comprising the NSAQMD. Nevada County Rules 301 to 303 and 316 to 318 were approved on June 14, 1978 and Rules 320 and 321 were approved on September 14, 1978. Plumas County Rules 301 to 303, 306 to 310, and 312 were approved on April 23, 1982. Sierra County Rules 301 and 302, 306 to 310, and 312 were approved on April 23, 1982. Submitted NSAQMD Rules 302 to 312, replace these previous SIP-approved rules and include the following significant changes:

• Burning activities, that were previously allowed on No-Burn Days, are now prohibited on No-Burn Days and include: Abatement of fire hazards, instruction of employees in fire-fighting, agricultural waste burning above 3,000 feet elevation, and residential maintenance burning.

• Burning activities that are now allowed on No-Burn Days, include: Cooking for humans and burning empty pesticide sacks in the field.

On balance, the rules are at least as stringent with respect to activities allowed on No-Burn Days. There are no superseded submittals of NSAQMD open burning rules on which EPA has not acted.

On October 23, 1989, EPA approved into the SIP a version of Rule 4.3, Non-Agricultural Burning. Submitted SCAPCD Rule 4.3, Non-Agricultural Burning, replaces the SIP-approved version of the rule. The rule is strengthened by requiring that the allowance to burn on a No-Burn Day for cooking of food and for recreational purposes be carried out only with "approved combustibles". There are no superseded submittals of SCAPCD open burning rules on which EPA has not acted.

On various dates, EPA approved into the SIP versions of submitted SJVUAPCD Rule 4302 from the eight individual counties comprising the SJVUAPCD as follows: Fresno County Rule 417, approved on August 22, 1977; Kern County Rule 418, approved on September 22, 1972; Kings County Rule 418, approved on August 4, 1978; Madera County Rule 423, approved on November 18, 1993; Merced County Rule 417, approved on September 22, 1972; San Joaquin County Rule 417, approved on August 22, 1977; Stanislaus County Rule 417, approved on September 22, 1972; and Tulare County Rule 418, approved on September 22, 1972. The submitted SJVUAPCD Rule 4302 replaces all of these previous SIP-approved rules. Rule 4302 is equally as stringent as the rules of the eight counties and equally as stringent as the rules of six other California air pollution control districts. Rule 4302 is determined to meet the requirements of RACM. There are no superseded submittals of SJVUAPCD incinerator burning rules on which EPA has not acted.

On various dates, EPA approved into the SIP versions of submitted SJVUAPCD Rule 4303 from the eight individual counties comprising the SJVUAPCD as follows: Fresno County Rule 420, approved on September 22, 1972; Kern County Rule 421, approved on September 22, 1972; Kings County Rule 421, approved on August 4, 1978; Madera County Rule 425, approved on April 16, 1991; Merced County Rule 420, approved on September 22, 1972; San Joaquin County Rule 420, approved on August 22, 1977; Stanislaus County Rule 420, approved on September 22, 1972; and Tulare County Rule 421, approved on September 21, 1977. The submitted SJVUAPCD Rule 4303

replaces these previous SIP-approved rules. Rule 4303 is equally as stringent as the rules of the eight counties and equally as stringent as the rules of six other California air pollution control districts. Rule 4303 is determined to meet the requirements of RACM. There are no superseded submittals of SJVUAPCD orchard heater rules on which EPA has not acted.

On April 17, 1989, EPA approved into the SIP a version of THCAPCD Rule 3.12, Wildland Vegetation Management Burning. Submitted THCAPCD Rule 3.12, Wildland Vegetation Management Burning, replaces the SIP-approved rule. The rule is strengthened by requiring that vegetation be in a condition to facilitate combustion and minimize smoke emission. There are no superseded submittals of THCAPCD open burning rules on which EPA has not acted.

On May 27, 1982, EPA approved into the SIP Rules 301 to 319. On November 22, 1988, the TOCAPCD replaced or deleted the SIP-approved Rules 301 to 319. Submitted TOCAPCD Rules 301 to 310, replace these rules. The rules are strengthened by the following changes:

- Requirements for providing 48-hour and 72-hour burn advisories are added.
- Requirements for regulating forest management burning, range improvement burning, and wildland vegetation management burning are added.
- The allowance to burn on No-Burn Days for agricultural waste above 3,000 feet elevation and for agricultural burning above 6,000 feet elevation are eliminated.

There are no superseded submittals of TOCAPCD open burning rules on which EPA has not acted. EPA is not acting on TOCAPCD Rule 301, Compliance, submitted on March 26, 1990, because it is not appropriate for the SIP.

EPA has evaluated the submitted rules and has determined that, except for TOCAPCD Rule 301, they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the following rules are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D:

- KCAPCD Rule 416, Open Burning (submitted on October 18, 1996).
- KCAPCD Rule 417, Agricultural Burning (submitted on October 18, 1996).
- NSAQMD Rules 302 to 312 (submitted on October 25, 1991):
- NSAQMD Rule 302, Prohibited Open Burning.
- NSAQMD Rule 303, Allowed Open Burning.
- NSAQMD Rule 304, Agricultural Burning.
- NSAQMD Rule 305, Range Improvement Burning.
- NSAQMD Rule 306, Forest Management Burning.
- NSAQMD Rule 307, Wildlands Vegetation Management Burning.
- NSAQMD Rule 308, Land Development Clearing.
- NSAQMD Rule 309, Ditch, Road and Right-of-Way Maintenance.
- NSAQMD Rule 310, Hazard Reduction.
- NSAQMD Rule 311, Residential Maintenance.
- NSAQMD Rule 312, Burning Permits.
- SJVUAPCD Rule 4302, Incinerator Burning (submitted on May 24, 1994).
- SJVUAPCD Rule 4303, Orchard Heaters (submitted on May 24, 1994).
- SKCAPCD Rule 4.3, Non-Agricultural Burning (submitted on March 26, 1990).
- THCAPCD Rule 3.12, Wildland Vegetation Management Burning (submitted on May 13, 1991).

TOCAPCD Rules 302 to 310 (submitted on March 26, 1990):

- TOCAPCD Rule 302, Burning Requirements.
- TOCAPCD Rule 303, Burn or No-Burn Day.
- TOCAPCD Rule 304, Burning Management Requirements.
- TOCAPCD Rule 305, Minimum Drying Times.
- TOCAPCD Rule 306, Agricultural Burning.
- TOCAPCD Rule 307, Wildland Vegetation Management.
- TOCAPCD Rule 308, Forest Management.
- TOCAPCD Rule 309, Range Improvement.
- TOCAPCD Rule 310, Miscellaneous Burning.

EPA is approving the replacement or deletion of the cited SIP-approved rules. A more detailed evaluation can be found in EPA's evaluation reports for the submitted, deleted, or replaced rules.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective October 18, 1999 without further notice unless the Agency receives relevant adverse comments by September 20, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 18, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 30, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(179)(i)(E)(*3*) and (G)(*2*), (c)(184) introductory text, (i)(D) introductory text and (F)(*2*), (c)(186)(i)(F), (c)(197)(i)(C)(*3*), and (c)(241)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(179) * * *

(i) * * *

(E) * * *

(*3*) Rule 4.3, adopted on January 24, 1989.

(G) * * *

(*2*) Rules 302 to 310, adopted on November 22, 1988.

* * * * *

(184) New and amended regulations for the following APCDs were submitted

on May 13, 1991, by the Governor's designee.

(i) * * *

(D) San Diego County Air Pollution Control District.

* * * * *

(F) * * *

(*2*) Rule 3.12, adopted on April 25, 1989.

* * * * *

(186) * * *

(i) * * *

(F) Northern Sierra Air Pollution Control District.

(*1*) Rules 302 to 312, adopted on November 10, 1988.

* * * * *

(197) * * *

(i) * * *

(C) * * *

(*3*) Rules 4302 and 4303, adopted on May 21, 1992 and amended on December 16, 1993.

* * * * *

(241) * * *

(i) * * *

(D) Kern County Air Pollution Control District.

(*1*) Rules 416 and 417, adopted on April 18, 1972 and amended on July 11, 1996.

* * * * *

[FR Doc. 99–21164 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 126–163a; FRL–6419–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District; Ventura County Air Pollution Control District; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD), Ventura County Air Pollution Control District (VCAPCD), and Mojave Desert Air Quality Management District (MDAQMD). This approval action will incorporate two rules into the federally approved SIP and remove two rules from the SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The two rules control VOC emissions from storage tank cleaning and degassing operations and from components at crude oil and natural gas production and processing facilities. The two rules to be removed control VOC emissions from pumps, compressors, and relief valves. Thus, EPA is finalizing the approval of these revisions of the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on October 18, 1999 without further notice, unless EPA receives adverse comments by September 20, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: SCAQMD's Rule 1149, Storage Tank Cleaning and Degassing and VCAPCD's Rule 74.10, Components at Crude Oil and Natural Gas Production and Processing Facilities. The rules being removed from the SIP are MDAQMD's Rule 466, Pumps and Compressors and Rule 467, Safety Pressure Relief Valves. These rules were submitted by the California Air Resources Board (CARB) to EPA on October 13, 1995 (Rule 1149), June 23, 1998 (Rule 74.10), and November 30, 1994 (Rules 466 and 467).

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Los Angeles-South Coast Air Basin, the Ventura County area, and the South Desert Air Basin managed by MDAQMD. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme; the Ventura County area and the Southeast Desert Air Basin managed by MDAQMD

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

are classified as severe;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many RACT rules for incorporation into its SIP on November 30, 1994, October 13, 1995, and June 23, 1998, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD'S Rule 1149, Storage Tank Cleaning and Degassing, and VCAPCD's Rule 74.10, Components at Crude Oil and Natural Gas Production and Processing Facilities. SCAQMD adopted Rule 1149 on July 14, 1995 and VCAPCD amended Rule 74.10 on March 10, 1998. These submitted rules were found to be complete on November 28, 1995 and August 25, 1998 respectively pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being finalized for approval into the SIP. This document also addresses the State of California's request that MDAQMD's Rule 466, Pumps and Compressors, and Rule 467, Safety Pressure Relief Valves, be removed from the SIP.

Rule 1149 controls VOC emissions from the cleaning and degassing of stationary tanks, reservoirs, or other containers; Rule 74.10 sets requirements for controls fugitive VOC emissions from crude oil and natural gas production and processing facilities; rescinded Rules 466 and 467 control VOC emissions from pumps, compressors, and pressure relief valves used in oil and gas production and processing facilities. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of SCAQMD's, VCAPCD's, and MDAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). There is no CTG document directly applicable to Rule 1149. However, CTG documents used as guidance in evaluating Rule 1149 are entitled, "Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks," EPA–450/2–77–036 and "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA–450/2–78–047. The CTG applicable to Rule 74.10 is entitled, "Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants," EPA–450/3–83–007. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1149 is a new rule which controls VOC emissions from the degassing of petroleum storage tanks, reservoirs, or other containers. Above-ground containers and underground tanks are subject to this rule depending upon their capacity and the vapor pressure of the stored organic liquid. The rule requires degassing emissions to be controlled by at least 90%, using several methods, including, liquid balancing, negative pressure displacement with subsequent incineration, or refrigeration. Monitoring of refrigeration and carbon adsorption is required, along with records of monitoring results, vapor pressures, and degassing operations.

On August 17, 1994, EPA approved into the SIP a version of Rule 74.10, Components at Crude Oil and Natural Gas Production and Processing Facilities, that had been adopted by VCAPCD on June 16, 1992. Revisions to this rule were subsequently adopted on March 10, 1998 and submitted to EPA. VCAPCD's submitted Rule 74.10, Components at Crude Oil and Natural Gas Production and Processing Facilities include the following significant changes from the current SIP:

- Expanded the applicability by including pipeline transfer stations.
- Added new requirements for inspection, inspection frequency, and monitoring, and more stringent retrofit and/or replacement requirements for critical components.
- Added an option to change from quarterly to annual inspection.
- Tightened deadlines for both the initial and final repair of leaks.
- Added exemptions for certain components meeting certain conditions and recordkeeping requirements for leaks.
- Updated the test methods for measurement of ROC concentrations.
- Added violation requirements for liquid leaks.
- Added new definitions and revised others for clarity.

MDAQMD's Rule 466, Pumps and Compressors and Rule 467, Safety Pressure Relief Valves were submitted to be removed from the SIP. These rules were adopted to control volatile organic compounds emissions from pumps, compressors, and pressure relief valves within the Southeast Desert Air Basin managed by MDAQMD. Rule 1102 was adopted to replace Rules 466 and 467. Rule 1102 was approved into the SIP on September 27, 1995 (60 FR 49772). This rule covers the scope and emission limitations that Rules 466 and 467 currently have in the SIP. Consequently, MDAQMD is rescinding Rules 466 and 467 because they no longer apply and are extraneous. Further, no limits are relaxed or emission increase by this action. The removal of Rules 466 and 467 from the SIP are consistent with EPA's policy requirements and remove extraneous rules that serve no purpose.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD's Rule 1149, Storage Tank Cleaning and Degassing, and VCAPCD's Rule 74.10, Components at Crude Oil and Natural Gas Production and Processing Facilities are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Furthermore, EPA is removing MDAQMD's Rules 466 and

[2] The Los Angeles-South Coast Air Basin, Ventura County area, and the Southeast Desert Air Basin managed by MDAQMD retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

467 consistent with the requirements of sections 110(l) and 193.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 18, 1999 without further notice unless the Agency receives adverse comments by September 20, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on October 18, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements

under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 30, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(39)(ii)(G), (c)(225)(i)(A)(4) and (c)(256)(i)(F)(1) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(39) * * *

(ii) * * *

(G) Previously approved on October 8, 1978 and now deleted without replacement Rules 466 and 467.

* * * * *

(225) * * *

(i) * * *

(A) * * *

(4) Rule 1149, adopted on December 4, 1987 and amended on July 14, 1995.

* * * * *

(256) * * *

(i) * * *

(F) Ventura County Air Pollution Control District.

(1) Rule 74.10, adopted on September 29, 1981 and amended on March 10, 1998.

* * * * *

[FR Doc. 99–21162 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 172–0157a; FRL–6420–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision: Bay Area Air Quality Management District, Kern County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: Bay Area Air Quality Management District—Rule 8–26, Magnet Wire Coating Operations; Kern County Air Pollution Control District—Rule 410.4, Surface Coating of Metal Parts and Products; Monterey Bay Unified Air Pollution Control District—Rule 434, Coating of Metal Parts and Products; and, South Coast Air Quality Management District—Rule 1107, Coating of Metal Parts and Products. This approval action will incorporate these rules within the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from the surface coating of magnet wire and miscellaneous metal parts and products. EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on October 18, 1999 without further notice, unless EPA receives adverse comments by September 20, 1999. If EPA receives such comment, it will publish a timely withdrawal notice in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

South Coast Air Quality Management District, 218 East Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

EPA is approving the following rules into the California SIP:

—Bay Area Air Quality Management District (BAAQMD)—Rule 8–26, Magnet Wire Coating Operations;
—Kern County Air Pollution Control District (KCAPCD)—Rule 410.4, Surface Coating of Metal Parts and Products;
—Monterey Bay Unified Air Pollution Control District (MBUAPCD)—Rule 434, Coating of Metal Parts and Products; and,
—South Coast Air Quality Management District (SCAQMD)—Rule 1107, Coating of Metal Parts and Products.

These rules were submitted by the California Air Resources to EPA on July 23, 1996 (BAAQMD Rule 8–26), May 10, 1996 (KCAPCD 410.4), March 3, 1997 (MBUAPCD Rule 434), February 16, 1999 (SCAQMD Rule 1107).

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Francisco Bay, the Southeast Desert Modified Air Quality Management Area, Monterey Bay, and the South Coast ozone nonattainment areas (see 43 FR 8964, 40 CFR 81.305.) On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the portions of the California SIP represented by these areas were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The nonattainment areas subject to this rulemaking were classified as follows: Bay Area—moderate; Monterey Bay—moderate; and South Coast—extreme.[2] Therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The Bay Area ozone nonattainment area was redesignated to attainment on May 22, 1995 (see 60 FR 27028). Subsequently, based on violations of the ozone NAAQS, EPA redesignated the San Francisco Bay Area to nonattainment without classification on July 10, 1998 (see 63 FR 37258). The Monterey Bay Area was redesignated as an attainment area for the ozone standard on January 17, 1997 (see 62 FR 2597).

The Southeast Desert Air Basin portion of Kern County was not a pre-amendment nonattainment area, so it was not designated and classified upon enactment of the amended Act. Consequently, KCAPCD is not subject to the section 182(a)(2)(A) RACT fix-up requirement. The KCAPCD is subject to the requirements of EPA's SIP-Call, because the SIP-Call included all of Kern County.

The State of California submitted many revised RACT rules for incorporation into its SIP. CARB submitted the rules subject to this rulemaking action to EPA on July 23, 1996 (BAAQMD Rule 8–26), May 10, 1996 (KCAPCD Rule 410.4), March 3, 1997 (MBUAPCD Rule 434), February 16, 1999 (SCAQMD Rule 1107). This document addresses EPA's direct-final action for Bay Area Air Quality Management District—Rule 8–26, Magnet Wire Coating Operations adopted and revised December 20, 1995; Kern County Air Pollution Control District—Rule 410.4, Surface Coating of Metal Parts and Products adopted and revised March 7, 1996; Monterey Bay Unified Air Pollution Control District—Rule 434, Coating of Metal Parts and Products adopted and revised December 18, 1996; and, South Coast Air Quality Management District—Rule 1107, Coating of Metal Parts and Products adopted and revised on August 18, 1998.

These submitted rules were found to be complete pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V.[3] EPA found the subject rules complete on the following dates: October 30, 1996 (BAAQMD Rule 8–26), July 19, 1996 (KCAPCD Rule 410.4), August 12, 1997 (MBUAPCD Rule 434), April 23, 1999 (SCAQMD Rule 1107).

EPA is taking direct final action to approve these revisions to the California SIP.

These rules are prohibitory rules governing the use and application of coating compounds containing photochemically reactive volatile organic compounds (VOCs) in their respective industries. VOCs contribute to the production of ground level ozone and smog. These rules were adopted originally as part of each air district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. EPA's evaluation and final action for these rules follows in the next section.

III. EPA Evaluation and Action

When deciding whether or not to approve a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other

---

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Bay Area, Monterey Bay, and South Coast nonattainment areas retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. At the same time the Southeast Desert Air Basin Portion of Kern County was designated nonattainment. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to these rules are entitled as follows:

—"Control of Volatile Organic Emissions from Existing Stationary Sources, Volume IV: Surface Coating for the Insulation of Magnet Wire," USEPA, December 1977, EPA–450/2–77–033; and,

—"Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products," USEPA, June 1978, EPA–450/2–78–015.

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote one. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

In the past, EPA approved into the SIP prior versions of each subject rule. On July 8, 1982, EPA approved into the SIP a prior version of BAAQMD Rule 8–26 (see 47 FR 29668.) This version of Rule 8–26 was adopted by the BAAQMD Governing Board on May 7, 1980. Prior to the December 20, 1995 revisions to Rule 8–26, BAAQMD revised Rule 8–26 on March 17, 1982. Consequently, this review of Rule 8–26 addresses this past, as well as, the recent December 20, 1995 revision of the rule.

The BAAQMD's submitted Rule 8–26, Magnet Wire Coating Operations, included the following significant change from the current SIP rule.

—Rule 8–26's definition of volatile organic compounds was revised.

The March 17, 1982 amendments to Rule 8–26 added two test methods at 8–26–601, Analysis of Samples and 8–26–602, Determination of Emissions.

The definition change and test method additions within submitted Rule 8–26 do not interfere with reasonable further progress or attainment of the NAAQS. These 1982 and 1995 changes to Rule 8–26 either update or improve the clarity of the rule. Consequently, the changes within submitted BAAQMD Rule 8–26 are consistent with the requirements of section 110(l) of the CAA.

EPA has evaluated the BAAQMD's submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Rule 8–26, Magnet Wire Coating Operations is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA approved into the SIP a prior version of KCAPCD's Rule 410.4, Surface Coating of Metal Parts and Products, on July 25, 1996 (see 61 FR 38571). The KCAPCD Governing Board adopted this version of Rule 410.4 on April 6, 1995.

KCAPCD's submitted Rule 410.4, Surface Coating of Metal Parts and Products includes the following significant change from the current SIP rule.

—Rule 410.4's definitions for exempt compounds and volatile organic compounds have been removed and the rule now refers to Rule 102—Definitions for these terms.

The definition change within submitted Rule 410.4 does not interfere with reasonable further progress or attainment of the NAAQS. This change updates the rule. Consequently, the change within submitted KCAPCD Rule 410.4 is consistent with the requirements of section 110(l) of the CAA.

EPA has evaluated the KCAPCD's submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, KCAPCD Rule 410.4—Surface Coating of Metal Parts and Products is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA approved a prior version of MBUAPCD's Rule 434, Coating of Metal Parts and Products on February 12, 1996 (see 61 FR 5288). This version of Rule 434 was adopted by the MBUAPCD Governing Board on June 15, 1994. MBUAPCD's submitted Rule 434—Coating of Metal Parts and Products included these significant changes from the current SIP described below.

—Rule 434's definitions for exempt compounds and volatile organic compounds have been removed and the Rule 434 now refers to Rule 101—Definitions for these terms.

—The VOC emissions limit for pretreatment wash primers were increased from 420 grams/litre (g/l) to 780 g/l.

—Recordkeeping requirements were revised to require daily recordkeeping for the use of non-compliant coatings.

—Lastly, the test method for determining pollution control equipment capture efficiency was updated.

The VOC content limits, recordkeeping, and test method revisions within submitted Rule 434 do not interfere with reasonable further progress or attainment of the NAAQS. MBUAPCD stated there are no permitted sources within the district using pretreatment wash primer. As a result, MBUAPCD did not perform a five percent analysis justifying the de minimis effect of raising this emission limit. However, should sources using pretreatment wash primer begin coating operations within MBUAPCD, EPA will require the MBUAPCD to conduct a five percent analysis to demonstrate the continued de minimis emissions effect of the 780 g/l emissions limit.

EPA has evaluated the MBUAPCD's submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, MBUAPCD Rule 434—Coating of Metal Parts and Products is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

On July 14, 1995, EPA approved into the SIP a prior version of SCAQMD—Rule 1107, Coating of Metal Parts and Products (see 60 FR 36227). The SCAQMD Governing Board adopted this version of Rule 1107 on May 12, 1995. Prior to the August 14, 1998 revisions to Rule 1107, SCAQMD revised a set of rules including Rule 1107. The SCAQMD Governing Board adopted these revisions on March 8, 1996 and the CARB submitted them to EPA on July 23, 1996. EPA has not acted on this set of revisions. However, because the March 8, 1996 revisions to Rule 1107 are incorporated within the later August 14, 1998 revisions and adoption, EPA's review of Rule 1107 addresses both this past as well as the most recent revisions of the rule.

The significant changes from the current SIP within SCAQMD's August 14, 1998 submittal of Rule 1107 are described below.

—The VOC content limit is lowered for general category single-component air-dried coating from 340 gram/liter (gr/l) to 275 gr/l (2.3 lb VOC/gal), less water and exempt compounds beginning March 1, 1999.

—A small use exemption for facilities using less than one gallon of coating per day is removed after March 1, 1999.

—A small use exemption for facilities using less than 55 gallons per rolling 12 month period is removed after March 1, 1999. However, this exemption is retained for sources using essential public service coatings for repair and maintenance procedures.

—An exemption is allowed for electric insulating and thermally conductive coatings.

The March 8, 1996 amendments to Rule 1107 removed the definition of exempt compounds which was placed for ease of revision within Rule 102—Definition of Terms. Also, because

changes to California law prohibited air districts from regulating aerosol applications and placed this authority with the CARB, the SCAQMD exempted aerosol coating products from Rule 1107. Now, CARB regulates aerosol coatings through their consumer products regulations.

The modified VOC content limits and exemption levels within submitted Rule 1107 do not interfere with reasonable further progress or attainment of the NAAQS. The VOC content limits have been strengthened and the exemption criteria are narrowed. The changes to Rule 1107 increase VOC emission reductions compared to the 1995 version of the rule within the SIP. SCAQMD calculated that VOC emissions are reduced by an additional 1.01 tons/per day or 368.7 tons per year. For these reasons, the changes within submitted Rule 1107 are consistent with the requirements of section 110(l) of the CAA.

EPA has evaluated the SCAQMD's submitted rule and has determined it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD—Rule 1107, Coating of Metal Parts and Products, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rulemaking action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 18, 1999 without further notice unless the Agency receives adverse comments by September 20, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on October 18, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this

action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 30, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(231)(i)(B)(*6*), (c)(239)(i)(E)(*5*), (c)(244)(i)(A)(*4*), and (c)(262)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) * * *

(i) * * *

(B) * * *

(*6*) Rule 410.4, adopted on June 26, 1979 and amended on March 7, 1996.

* * * * *

(239) * * *

(i) * * *

(E) * * *

(*5*) Rule 8–26, adopted on May 7, 1980 and amended on December 20, 1995.

* * * * *

(244) * * *

(i) * * *

(A) * * *

(*4*) Rule 434, adopted on December 18, 1996.

* * * * *

(262) * * *

(i) * * *

(C) South Coast Air Quality Management District.

(*1*) Rule 1107, adopted on June 1, 1979 and amended on August 14, 1998.

* * * * *

[FR Doc. 99–21160 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD077a–3034; FRL–6419–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Reinforced Plastics Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). The revision establishes and requires reasonably available control technology (RACT) for volatile organic compound (VOC) emissions from reinforced plastic manufacturing. EPA is approving the addition of a new subsection to COMAR 26.11.19 "Volatile Organic Compounds from Specific Processes Control" as a revision to the Maryland SIP in accordance with the requirements to the Clean Air Act.

DATES: This rule is effective October 18, 1999 without further notice, unless EPA receives adverse written comment by September 20, 1999. If EPA receive such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460; Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Walter Wilkie at (215) 814–2150, or by e-mail at wilkie.walter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28, 1998, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amendments to COMAR 26.11.19, "Volatile Organic Compounds from Specific Processes." The purpose of the amendments to COMAR 26.11.19 is to establish VOC emission control requirements on sources that manufacture reinforced plastics. The revision was submitted to satisfy requirements of section 182 and 184 of the Clean Air Act to implement reasonably available control technology (RACT) on major sources of VOC.

II. Summary of the SIP Revision

This SIP revision includes the addition of new subsection .26 "Control of Volatile Organic Compound Emissions from Reinforced Plastic Manufacturing" to COMAR 26.11.19 "Volatile Organic Compound from Specific Processes." COMAR 26.11.19.26 establishes RACT requirements for VOC emissions from reinforced plastic manufacturing operations. COMAR 26.11.19.26 applies statewide. The regulation applies to reinforced plastic manufacturing operations at premises where the total actual VOC emissions from all reinforced plastics manufacturing including tooling, touch up and repair is 20 or more pounds per day. The regulation requires the use of low styrene resins. A low styrene resin is defined as a polyester resin with a monomer content of 35 percent or less by weight. The regulation provides an exemption for users of specialty resins. The user of a specialty resin is prohibited from using speciality resins with a styrene content exceeding 50 percent by weight. The higher styrene content is allowed for specialty resins used in special applications involving more stringent specifications such as: higher tensile strength, corrosion resistance, gel coats and fire retardation. The regulation also requires that subject sources with emissions of 100 pounds per day or more use an improved application method such as airless or air assisted spray guns, low pressure nozzles, pressure fed rollers or flow coaters, or some other nonatomized resin application technique.

EPA has determined that the control requirements of COMAR 26.11.19.26 constitute an acceptable level of RACT to control VOCs from reinforced plastics manufacturing . EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the Maryland SIP revision should adverse comments be filed. This rule will be effective on October 18, 1999 without further notice unless the Agency receives adverse comments by September 20, 1999. If EPA receives comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

II. Final Action

EPA is approving the SIP revision to add subsection .26 "Control of Volatile Organic Compound Emissions from Reinforced Plastics Manufacturing" to COMAR 26.11.19 submitted by the State of Maryland on August 28, 1998.

III. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines: (1) Is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the

requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving RACT for the control of VOC emissions from reinforced plastics manufacturing under the Maryland SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: August 2, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(139) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(139) Revisions to the Maryland State Implementation Plan, submitted on August 28, 1998, by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of August 28, 1998, from the Maryland Department of the Environment transmitting additions to Code of Maryland Administrative Regulations (COMAR) 26.11.19 Volatile Orgranic Compounds from Specific Processes.

(B) Addition of COMAR 26.11.19.26 Control of Volatile Organic Compounds from Reinforced Plastic Manufacturing, effective August 11, 1997.

(ii) Additional Material: Remainder of August 28, 1998, State submittal pertaining to the addition of COMAR 26.11.19.26 Control of Volatile Organic Compounds from Reinforced Plastic Manufacturing to COMAR 26.11.19 Volatile Organic Compounds from Specific Processes.

[FR Doc. 99–21158 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MO 060–1060a; FRL–6421–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators (HMIWIs); State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the state of Missouri's section 111(d) plan for controlling emissions from existing HMIWIs. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA). The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

DATES: This direct final rule is effective on October 18, 1999, without further notice, unless EPA receives adverse comment by September 20, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the

direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Information regarding this action is presented in the following order:

What are the requirements of section 129 of the CAA?
What is a section 111(d) state plan?
What is Subpart Ce?
What are the requirements for the HMIWI state plan?
What is contained in the Missouri state plan?
What are the approval criteria for the state plan?

What Are the Requirements of Section 129 of the CAA?

Section 129 of the CAA Amendments of 1990 requires EPA to set air emission standards and emission guidelines (EG) under the authority of section 111 of the CAA to reduce pollution from incinerators that burn solid waste. Incinerators that burn medical waste are classified as solid waste incinerators and therefore must be regulated.

What is a Section 111(d) State Plan?

Section 111(d) of the CAA, "Standards of Performance for New Stationary Sources," authorizes EPA to set air emissions standards for certain categories of sources. These standards are called new source performance standards (NSPS). When an NSPS is promulgated for new sources, EPA also publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a state plan to adopt the EG into its body of regulations and submit it to EPA for approval. The state plan is called a 111(d) plan.

What is Subpart Ce?

EPA issued regulations to reduce air pollution from incinerators that are used to burn hospital waste and/or medical/infectious waste. The NSPS at 40 CFR part 60, subpart Ec, and the EG, subpart Ce, were promulgated by EPA on September 15, 1997 (62 FR 48374). These rules apply to new and existing incinerators used by hospitals and health care facilities, as well as to incinerators used by commercial waste disposal companies to burn hospital waste and/or medical/infectious waste. The EG applies to existing HMIWIs that commenced construction on or before June 20, 1996.

The subpart Ce EG is not a direct Federal regulation but is a "guideline" for states to use in regulating existing HMIWIs. The EG requires states to submit for EPA approval a section 111(d) state plan containing air emission regulations and compliance schedules for existing HMIWI.

What Are the Requirements for the HMIWI State Plan?

A section 111(d) state plan submittal must meet the requirements of 40 CFR part 60, subpart B, sections 60.23 through 60.26, and subpart Ce. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements. The technical requirements for existing HMIWI sources are contained in subpart Ce. A state will generally address the HMIWI technical requirements by adopting by reference subpart Ce. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, i.e., by September 15, 1998.

Prior to submittal to EPA, the state must make available to the public the state plan and provide opportunity for public comment. If a state fails to have an approvable plan in place by September 15, 1999, sources will be subject to a Federal plan on that date.

What Is Contained in the Missouri State Plan

The state of Missouri submitted its section 111(d) state plan to EPA for approval on June 15, 1999. The state adopted the EG requirements into state Rule 10 CSR 10–6.200, "Hospital, Medical, Infectious Waste Incinerators," which was effective July 30, 1999. The section 111(d) state plan contains:

1. A demonstration of the state's legal authority to implement the section 111(d) state plan.
2. State Rule 10 CSR 10–6.200, "Hospital, Medical, Infectious Waste Incinerators," as the enforceable mechanism.
3. An inventory of sources on pages 7 and 8.
4. An emissions inventory in Appendix G.
5. Emission limits, as protective as the EG, that are contained in state Rule 10 CSR 10–6.200.
6. A compliance date of September 1, 2000.
7. Testing, monitoring, and inspection requirements that are contained in Rule 10 CSR 10–6.200.
8. Reporting and recordkeeping requirements for the designated facilities that are contained in Rule 10 CSR 10–6.200.
9. Operator training and qualification requirements that are contained in Rule 10 CSR 10–6.200.
10. Requirements for the development of waste management plans that are contained in Rule 10 CSR 10–6.200.
11. A record of the public notice and hearing requirements that is contained in appendix E.
12. Provisions for progress reports to EPA that are contained in section L.
13. Title V permit application due date requirements that are contained in section M.
14. A final compliance date of September 1, 2000.

What Are the Approval Criteria for the State Plan?

The state plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, subpart B, "Adoption and Submittal of State Plans for Designated Facilities," and 40 CFR 60.30e through 60.39e, subpart Ce, "Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators." A detailed discussion of our evaluation of the state plan is included in our technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The state plan meets all of the applicable approval criteria.

Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, we are approving Missouri's June 15, 1999, section 111(d) state plan for the control of HMIWI emissions, except for those facilities located in Indian country. Any facilities located in Indian country will be subject to a Federal plan. In Missouri there are no known HMIWIs in Indian country.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed

rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 18, 1999, without further notice unless the Agency receives adverse comments by September 20, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 18, 1999, and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, a summary of the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

Under the RFA, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State plan approvals under section 111 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal state plan approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 4, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. Subpart AA is amended by adding section 62.6358 and an undesignated center heading to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

§ 62.6358 Identification of plan.

(a) Identification of plan. Missouri plan for the control of air emissions from hospital/medical/infectious waste incinerators submitted by the Missouri Department of Natural Resources on June 15, 1999.

(b) Identification of sources. The plan applies to existing hospital/medical/infectious waste incinerators constructed on or before June 20, 1996.

(c) Effective date. The effective date of the plan is October 18, 1999.

[FR Doc. 99–21309 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6419–5]

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 2, 1994, the EPA issued the "National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning" (59 FR 61801). Today's action offers compliance options for continuous web cleaning machines, as well as amendments to the national emission standards for hazardous air pollutants (NESHAP) that apply to steam-heated vapor cleaning machines and to cleaning machines used to clean transformers. The EPA is approving these amendments to ensure that all owners or operators of solvent cleaning machines have appropriate and attainable requirements for their cleaning machines.

DATES: This direct final rule will be effective on October 18, 1999 without further notice, unless the EPA receives adverse comments by September 20, 1999. If we receive any adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket Number A–92–39, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: For information concerning the standards and the proposed changes, contact Mr. Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0283. For information regarding the applicability of this action to a particular entity, contact Ms. Acquanetta Delaney, Manufacturing Branch, Office of Compliance (2223A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–7061.

SUPPLEMENTARY INFORMATION: The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comment. The changes to the compliance requirements for continuous web cleaning machines provide the only reasonable method available to those cleaning machines to comply with the maximum achievable control technology (MACT) level of control. The EPA considers these revised requirements to be comparable to the requirements previously promulgated for other cleaning machines. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed. This rule will be effective on October 18, 1999 without further notice unless we receive any adverse comment by September 20, 1999. If we receive any adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Regulated Entities

The following entities are potentially regulated by this direct final rule.

Category	SIC codes	Examples of potentially regulated entities
Industry	33, 34, 36, and 37	Facilities engaging in cleaning operations using halogenated solvent cleaning machines.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This list includes the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, or organization is regulated by this direct final rule, you should carefully examine the applicability criteria in § 63.460 of the promulgated rule. If you have any questions regarding the applicability of this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Organization of This Document

The information presented in this preamble is organized as follows:

I. Background
A. Why Is EPA Amending the NESHAP for Halogenated Solvent Cleaning?
B. What Is the Purpose of This Direct Final Rule?
C. Does This Rule Apply to Me?
D. Do the Changes in Today's Direct Final Rule Apply to My Machines?
II. New Requirements for Continuous Web Cleaning Machines
A. How Do I Know if My Machine is a Continuous Web Cleaning Machine?
B. What Changes Impact My Continuous Web Cleaning Machines?
C. How Did EPA Develop These Changes?
D. How Do I Know if My Machine Is "New" or an "Existing" Continuous Web Cleaning Machine?
E. When Must I Comply With These New Requirements?
III. Other Changes
A. What Change Is EPA Making That Applies to My Transformer Cleaning Operations?
B. What Changes Impact My Steam-Heated Vapor Cleaning Machines?
IV. Impacts
V. Administrative Requirements
A. Docket
B. Executive Order 12866: Regulatory Planning and Review
C. Executive Order 12875: Enhancing Intergovernmental Partnerships
D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act
G. Paperwork Reduction Act
H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
I. Submission to Congress and the Comptroller General
J. National Technology Transfer and Advancement Act

I. Background

A. Why Is EPA Amending the NESHAP for Halogenated Solvent Cleaning?

The EPA promulgated the halogenated solvent cleaning (HSC) NESHAP on December 2, 1994. That rule included requirements for batch and in-line cleaning machines and included both control device and work practice requirements. A batch cleaning machine is defined in the HSC NESHAP as "a solvent cleaning machine in which individual parts or sets of parts move through the entire cleaning cycle before new parts are introduced." Inherent in some of the requirements is the understanding that the part or set of parts stops at one or various points in the machine for cleaning and for removal of cleaned parts. In contrast, an in-line cleaning machine (or continuous cleaning machine) is defined in the HSC NESHAP as "a solvent cleaning machine that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of parts to be cleaned."

After promulgation, several industry groups raised concerns about how some cleaning machines would be classified under the rule. These commenters stated that some machines did not clearly and completely fit into any of the categories of cleaning machines included in the HSC NESHAP. The machines in question included movie film cleaning machines and machines used to clean strips, rods, and wire.

After some initial review, the EPA concluded that these issues warranted additional consideration. On May 5, 1998 (63 FR 24768), the EPA issued an immediate stay of compliance for the continuous web cleaning machines until August 3, 1998. In that same action, the EPA proposed to extend the compliance date for these units for an additional year, to August 3, 1999, to allow for an equivalency determination. The EPA received comments on the proposed extension. One commenter expressed concern that the 1-year extension may not be sufficient time to review the data, complete the technical analysis, propose and promulgate an equivalency determination, and allow sufficient time for facilities to comply with the new requirements. The EPA agreed with these comments and on December 11, 1998 (63 FR 68397) extended the compliance date for continuous web cleaning machines to December 2, 1999.

B. What Is the Purpose of This Direct Final Rule?

This direct final rule does two things. First, it promulgates alternative compliance requirements for continuous web cleaning machines. A continuous web cleaning machine is a cleaning machine that cleans a continuous web part at speeds in excess of 11 feet per minute. Changes to the rule impacting continuous web cleaning machines are discussed in section II.A of this direct final rule. Second, this direct final rule makes two minor changes, discussed in section II.B, which are the only changes that impact cleaning machines other than continuous web cleaning machines.

C. Does This Rule Apply to Me?

You are subject to the HSC NESHAP if you are the owner or operator of a halogenated solvent cleaning machine. A halogenated solvent cleaning machine is any piece of equipment used to remove soil if the solvent used in the machine contains more than 5 percent in total of any of the following halogenated solvents: perchloroethylene; methylene chloride; 1,1,1-trichloroethane (also known as methyl chloroform); trichloroethylene; carbon tetrachloride; and chloroform.

D. Do the Changes in Today's Direct Final Rule Apply to My Machines?

The changes contained in today's direct final rule only apply to you if your machines meet any of the following criteria:

1. Halogenated solvent cleaning machines that are classified as continuous web cleaning machines. (Changes impacting these machines are discussed in section II.A.)
2. Halogenated solvent cleaning machines used to clean polychlorinated biphenyl (PCB) laden transformers. (A change impacting these machines is discussed in section II.B.)
3. Halogenated solvent cleaning machines that are steam-heated vapor cleaning machines. (The definition of continuous web cleaning machines and a change impacting these machines is discussed in section II.B.)

II. New Requirements for Continuous Web Cleaning Machines

A. How Do I Know if My Machine Is a Continuous Web Cleaning Machine?

A continuous web cleaning machine is a solvent cleaning machine in which parts such as film, coils, wire, and metal strips are cleaned at speeds in excess of 11 feet per minute. Parts are generally uncoiled, cleaned such that the same part is simultaneously entering and exiting the solvent application area of the solvent cleaning machine, and then recoiled or cut. For the purposes of this subpart, all continuous web cleaning machines are considered to be a subset

of in-line solvent cleaning machines. These units tend to be used in two distinct areas: (1) Movie film cleaning and (2) continuous strip, wire, or rod cleaning.

Movie Film Cleaning

The movie film cleaning industry typically uses a continuous web cleaning machine to clean the surfaces on large reels of film. Typically, a reel is loaded onto the machine and the film threaded through a series of rollers. The film is then either fed into a vat or past a series of spray nozzles that apply the chlorinated solvent onto the film. The film is then dried using air jets, cloth pads, or a combination of both.

Strip, Rod, or Wire Cleaning

This group of continuous web cleaning machines cleans a more diverse product group, including large flat pieces of metal, metal rods, and thin wires. The machines can be dip tanks, spray applications, or a combination. While the EPA has only currently identified continuous web cleaning machines used to clean metal products, these machines may clean nonmetal products which would also be covered by this rule.

The EPA considered both of the above types of continuous web cleaning machines when developing the changes discussed today.

B. What Changes Impact My Continuous Web Cleaning Machines?

The changes will enable you to comply with all of the requirements of the HSC NESHAP. The options are similar to the options for other in-line cleaning machines. The changes are equivalent to those codified at 40 CFR part 63, subpart T, and include new equivalent controls for some existing requirements and clarifications of the EPA's interpretation of existing requirements germane to continuous web cleaning machines. The changes account for the inherent differences between the solvent cleaning machines that were the basis for the HSC NESHAP promulgated in 1994 and continuous web cleaning machines. The changes to the rule that apply only to continuous web cleaning machines are:

1. An Alternative to the Requirement for a Maximum Parts Speed of 11 Feet per Minute and the Requirement for a Dwell Time in Some Options

You are not required to meet the speed and dwell requirements if your continuous web cleaning machine meets other specific requirements. These requirements include a properly designed, operated, and maintained system to eliminate visible carryout of solvent on your continuous web product. In addition, you must comply with the monitoring, recordkeeping, and reporting requirements for the controls that replace the hoist speed and dwell requirements.

2. A Change in the Alternative for Continuous Web Cleaning Machines Venting to a Carbon Adsorber

A properly designed and operated continuous web cleaning machine can comply with the new or existing source requirements by venting the exhaust from the enclosed cleaning chamber through a properly operated and maintained carbon adsorption system instead of one of the equipment combinations listed in the HSC NESHAP. However, the system used must be demonstrated to the Administrator's satisfaction to be equal to the MACT level of control established for the listed control combinations.

3. A Clarification That There is No Freeboard Ratio Requirement if Your Continuous Web Cleaning Machine Does Not Have an Exposed Sump

That is, if your continuous web cleaning machine has a remote reservoir, no freeboard ratio requirement applies.

4. A Clarification That the Ban on the Cleaning of Absorbent Materials Does Not Apply to Cloth Rollers Used in the Cleaning Process Inside Your Machine

However, you do have requirements that apply when you remove these rollers from the machine.

5. A Clarification on the Interpretation of Superheated Vapor Technology for Continuous Web Cleaning Machines

The new interpretation allows for any technology that raises the continuous web part above the boiling point of the solvent. A new term, superheated part technology, has been added to the rule to more clearly address this situation. Therefore, as with the HSC NESHAP promulgated in 1994, your specific compliance options in the amended HSC NESHAP depend on whether your cleaning machines are considered to be new or existing.

C. How Did EPA Develop These Changes?

The EPA evaluated all data received on continuous web cleaning machines from the industry. The EPA contacted some facilities for additional data and identified several facilities for site visits. The EPA conducted several site visits and was able to gather additional data on the unique design and operational requirements of continuous web cleaning machines. Based on these data, EPA evaluated how continuous web cleaning machines best fit into the HSC NESHAP promulgated in 1994 and identified changes to be made. The inability of some continuous web cleaning machines to comply with the rule is a result of differences between those machines and the cleaning machines used as the basis for the HSC NESHAP promulgated in 1994.

The first step in EPA's analysis was to determine whether existing compliance options could be used for continuous web cleaning machines. The only option available that did not include a maximum hoist speed requirement was the alternative standard included in § 63.464.

This option has only an overall solvent emission rate, with no design or work practice requirements. The EPA concluded that the continuous web cleaning machines were not candidates for the alternative standard. In addition, the overall solvent emission rates were established based on an infrequently used solvent cleaning machine, not on a continuous web cleaning machine. As the name suggests, continuous web cleaning machines tend to be operated on a continuous or near-continuous basis. Since compliance with this alternative standard was not viable, EPA then looked at the primary standards.

In general, continuous web cleaning machines could be brought into compliance with the requirements of the HSC NESHAP but for the following two requirements.

- The design requirement of § 63.463(a)(3) that "each cleaning machine shall have an automated parts handling system capable of moving parts or parts baskets at a speed of 11 feet per minute or less from the initial loading of parts through the removal of cleaned parts."
- The requirement for a "dwell" that is included in two of the four compliance options available for existing in-line cleaning machines.

The changes that were needed in the HSC NESHAP were due to potential issues with the following requirements:

- The design requirement of § 63.463(a)(2) that each "cleaning machine shall have a freeboard ratio of 0.75 or greater."
- The work practice requirement of § 63.463(d)(12) that "sponges, fabric, wood, and paper products shall not be cleaned."
- The design requirement for superheated vapor technology in one of the options for existing cleaning machines and two of the options for new cleaning machines.

Each of the changes deemed necessary to address these issues is discussed below.

1. Maximum Hoist Speed and Dwell Requirements

Continuous web cleaning machines are different from other solvent cleaning machines—they are designed to clean parts traveling at a high rate of speed. In addition, the "part" being cleaned, the continuous web part, is a long strip of material that is never totally within the parts cleaning machine. The part moves through the cleaning machine such that one end of the part exits the machine before the other end enters. Therefore, there is no opportunity to meet a dwell requirement.

When evaluating equivalency of alternative controls, it is important to understand the reason for the requirements in the original HSC NESHAP. Limiting part speed was required for two primary reasons:

- To limit liquid carryout on the part being cleaned caused by improper draining and improper cycle time.
- To limit the vapor disturbance or vapor carryout caused by parts moving through the solvent cleaning machine too quickly.

Similarly, a proper dwell time also limits carryout emissions. First, dwell allows the part extra time within the freeboard for liquid or vapor solvent to flash off and/or drain back into the solvent tank. Stopping below the vapor zone of a vapor cleaner, as required by a dwell under this rule, also tends to limit the speed that the part is traveling as it goes through the vapor zone. The dwell is particularly beneficial when the part has large pieces sticking out that can capture solvent liquid or vapor and remove it from the machine as the part is removed.

Based on observations made during the site visits to facilities with continuous web cleaning machines, EPA has concluded that properly operated squeegees and/or air knives are capable of controlling emissions to at least the same degree as a reduced parts speed for continuous web parts. Air knives and squeegee systems on a continuous web part remove essentially all of the solvent that remains on the part. These systems likely exceed the performance of a reduced hoist speed, in and of itself, because the effectiveness of a reduced hoist speed on emissions is dependent on other factors, such as the part shape and orientation. These air knives and squeegees work on continuous web cleaning machines to a higher efficiency than on traditional units because the part being cleaned is flat. Therefore, there is nothing to trap the solvent liquid or vapors.

In order to ensure that all of the emission reductions associated with reduced parts speed and a dwell are realized, however, you will need to minimize the openings for part entrance and exit into the cleaning machine. The EPA observed minimized entry and exit openings in all cases that were evaluated during the development of these alternatives.

As with any other control, improperly operated or maintained squeegees or air knives can quickly eliminate any potential emission reductions. A part exiting a well-maintained squeegee or air knife system will be visibly dry. However, a part exiting an improperly maintained machine would have a thin film of solvent left on the surface. This film evaporates quickly after exiting the machine, which results in a much larger solvent loss rate. The new requirements in this direct final rule include requirements that ensure proper operation of these carryout reducing devices.

2. Carbon Adsorption Units on Continuous Web Cleaning Machines

When the EPA evaluated continuous web cleaning machines, we noticed an inherent benefit of these cleaning machines over typical machine design. This difference was particularly noticeable on film cleaning machines. The portion of film cleaning machines where solvent is applied tends to be enclosed and then vented to prevent solvent contamination of the expensive film. In these machines, the area surrounding the film take-up reel is also within an enclosed area and is often vented as well. When solvent is being used, the doors to the machines are closed. The exhaust from these machines is often vented to a carbon adsorber. The overall effectiveness of the carbon adsorber in these applications far exceeded the overall control efficiency calculated for other solvent cleaning machines during the rule development. A control efficiency of 65 percent was used for carbon adsorbers when a machine was actively cleaning parts. When combined with other controls and accounting for times when the machine was not operating, the overall control efficiencies that were used as the basis for existing and new machines was 60 and 70 percent, respectively.

Based on the information gathered on film cleaning machines, the EPA has concluded that the use of a carbon adsorption system on a properly operated and maintained unit will ensure emission reductions that are at least as effective as the controls established as MACT in the promulgated rule. For example, one continuous web cleaning machine using a carbon adsorption system observed by the EPA cleaned over 3,500 square feet of product per gallon of solvent used. Therefore, the use of a carbon adsorption system demonstrated to provide an overall control effectiveness of 70 percent (*i.e.*, capture efficiency times removal efficiency) is an alternative to the promulgated options for continuous web cleaning machines.

3. Freeboard Ratio Requirements for Remote Reservoir Machines

The HSC NESHAP includes a design requirement for a freeboard ratio of at least 0.75 for all in-line cleaning machines. In two of the compliance options for new in-line cleaning machines, a freeboard ratio of 1.0 is required. However, some continuous web cleaning machines do not have an exposed sump. These remote reservoir continuous web cleaning machines are more similar to the remote reservoir batch cold cleaning machines. In the HSC NESHAP, batch cold cleaning machines that have a remote reservoir are excluded from the freeboard requirement that other batch cold cleaning machines must have.

The EPA has concluded that the same reasons that justify remote batch cold cleaning machines not being required to maintain a minimum freeboard ratio also apply to continuous web cleaning machines. In all of these machines, the primary cleaning mechanism is from solvent sprayed on the parts through nozzles. The solvent then typically drains into a sump that has minimal openings which in many cases are also covered. In all cases, the opportunity for evaporation and for air disturbances is minimized. Therefore, EPA has also concluded that the exclusion from a freeboard requirement should also apply to remote reservoir continuous web cleaning machines. This exclusion has been added to the rule.

4. Cleaning of Absorbent Materials

The prohibition on cleaning absorbent materials in a halogenated solvent cleaning machine may cause problems for some continuous web cleaning machines. This prohibition was included because any absorbent materials that were cleaned in the machine would be solvent laden when removed from the machine. Removal of solvent laden parts would be a large source of emissions. Some continuous web cleaning machines use some absorbent materials, such as cloth rollers, in the cleaning process.

The EPA did not intend to prohibit the use of absorbent materials as part of the cleaning mechanism in a machine. Since these absorbent materials would not be removed from the machine after each cleaning, no emissions from these materials would occur during each cleaning cycle. However, once these materials are removed from the cleaning machine, they would be solvent laden, and emissions would occur if the absorbent cleaning materials were not properly handled.

The ability to use absorbent materials as part of the cleaning machine is clarified in today's direct final rule. However, any rollers or other absorbent materials that are removed from continuous web cleaning machines must be treated as hazardous waste and disposed of as required by applicable hazardous waste rules.

5. Superheated Vapor Technology

The purpose of superheated technology is to heat the part(s) to evaporate even the thin layer of solvent film that can exist after solvent cleaning. This is typically achieved by the introduction of superheated vapor into an enclosed portion of a cleaner. The superheated vapor then heats the part(s) to above the boiling point of the solvent. Any solvent, even the typical solvent film, on the surface of a part is virtually eliminated by this process. The remaining problem for most cleaning machines is the vapor entrainment on the part(s).

This technique and its effective emission reductions are not dependent on external forces providing the heating (*i.e.*, vapors contacting a part to heat it). Therefore, any process that effectively raises the temperature of the part above the boiling point of the solvent should achieve the same effect. This would include any physical process that raises the temperature of the part itself.

For example, some of the continuous materials being cleaned are metal rods or wires. These parts are often sent through processes that reduce their circumference, such as through the use of a die. This process is generally exothermic and the part can become heated to several hundred degrees. If the temperature of the part is heated to above the boiling point of the solvent, the same emission reductions achieved by the superheated vapor technology should be obtained. In fact, by not reintroducing solvent, the emission reductions may actually increase. In today's direct final rule, a new term, superheated part technology, has been added as an alternative to superheated vapor technology in all options that include a superheated vapor requirement.

6. Additional Clarification for Primary Condensers

An additional issue arose during the evaluation of the equivalent control devices. While already included in the promulgated rule, EPA wishes to clarify a point concerning freeboard refrigeration devices on continuous web cleaning machines. The purpose of a primary condenser is to condense vapors that rise out of the boiling sump. On the other hand, a freeboard refrigeration device creates a cool air blanket to limit diffusion. Primary coils can serve as a freeboard refrigeration device under certain conditions for vapor cleaners. However, many continuous web cleaning machines are not vapor cleaning machines; therefore, no requirement for a primary condensing coil applies to these units. Even if the continuous web cleaning machines were vapor cleaning machines, the rule allows for primary coils to be considered a freeboard refrigeration device if the required temperature of the air blanket is created within the freeboard area. Therefore, the ability to use any type of cooling coils as a freeboard refrigeration device is emphasized and clarified for continuous web cleaning machines.

D. How Do I Know if My Machine is "New" or an "Existing" Continuous Web Cleaning Machine?

Machines are classified as either new or existing based on the HSC NESHAP proposed on November 29, 1993. Continuous web cleaning machines on which construction started before November 29, 1993 are existing affected sources. Machines on which construction started on November 29, 1993 or later are new affected sources.

E. When Must I Comply With These New Requirements?

You must comply with these requirements by December 12, 1999 for both your new and existing affected sources. This date was established in a **Federal Register** notice published on December 11, 1998 (63 FR 68397).

III. Other Changes

A. What Change Is EPA Making That Applies to My Transformer Cleaning Operations?

The EPA has recently become aware of a potential conflict between the HSC NESHAP and some specific Toxic Substances Control Act (TSCA) permits. Some facilities clean transformers contaminated with PCBs using batch cold halogenated solvent cleaning machines. The cleaning of these PCB-laden transformers is covered under TSCA permits, which include requirements to ensure proper draining and proper disposal of all materials. These transformers often include absorbent materials (*i.e.*, cardboard). The HSC NESHAP requirements for cold cleaning machines state that "Sponges, fabric, wood, and paper shall not be cleaned." (§ 63.462(c)(8)).

It is not EPA's intent to prohibit the proper decontamination operation for PCB-laden transformers. The intent of this requirement in the HSC NESHAP is to reduce the amount of solvent loss due to improper cleaning of absorbent materials, such as rags and cloths. The EPA has reviewed the requirements in an example permit of a facility conducting decontamination of these transformers and concluded that TSCA permits should adequately ensure that the intent of the HSC NESHAP is met for these operations. For example, these permits have sufficient requirements for proper draining and disposal of the transformers. Therefore, EPA is adding an exclusion for cleaning absorbent materials in PCB-laden transformers, in compliance with a permit issued under TSCA, in this direct final rule.

B. What Changes Impact My Steam-Heated Vapor Cleaning Machines?

Steam-heated vapor cleaning machines will no longer be required to have a device that shuts off the sump heat if the liquid level drops to the sump heater coils (§ 63.463(a)(4)). This requirement was included in the HSC NESHAP for all machines. However, since the promulgation of the HSC NESHAP, EPA has determined that this device is not necessary for steam-heated machines.

The lowest decomposition temperature of the chlorinated solvents subject to this rule is 788 degrees Fahrenheit (420 degrees Celsius). A steam-heated unit will never heat the solvent to 788 degrees Fahrenheit (420 degrees Celsius). Therefore, a switch that turns off the sump heat when the solvent layer reaches the heating coils is an unnecessary expense. Consequently, the requirement for low-level sump turn-off switches has been removed for steam-heated solvent cleaning machines.

IV. Impacts

The changes contained in this direct final rule are corrections, clarifications, and equivalent compliance alternatives and do not change the intended coverage of the HSC NESHAP (subpart T). These changes will not affect the estimated emission reductions or the

control costs for these rules. These clarifications and corrections should make it easier for owners and operators of affected sources, and for local and State authorities, to understand and implement the requirements in subpart T. The equivalent compliance alternatives will make it possible for owners and operators of continuous web cleaning machines to comply with all requirements of subpart T.

V. Administrative Requirements

A. Docket

The docket number for this rulemaking is A–92–39. The docket is an organized and complete file of information compiled by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.)

B. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must submit significant regulatory actions to the Office of Management and Budget (OMB) for review. The Executive Order defines "significant regulatory action" as one that OMB determines is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this direct final rule does not qualify as a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB.

C. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to OMB a description of the extent of the EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's direct final rule does not create a mandate on State, local, or tribal governments. This direct final rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this direct final rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This direct final rule does not impose any duties or compliance costs on Indian tribal governments. Further, the direct final rule provided herein does not significantly alter the control standards imposed by the HSC NESHAP for any source, including any that may affect communities of the Indian tribal governments. Hence, today's direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and

informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this direct final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector in any 1 year, and that this direct final rule does not significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. The EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by this rule, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this direct final rule.

F. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA must prepare a regulatory flexibility analysis unless the EPA certifies that the rule will not have a "significant impact on a substantial number of small entities." Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

This direct final rule would not have a significant impact on a substantial number of small entities because it clarifies and makes corrections to the promulgated HSC NESHAP, but imposes no additional regulatory requirements on owners or operators of affected sources.

G. Paperwork Reduction Act

The information collection request (ICR) was submitted to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) at the time this rule was originally promulgated. The amendments to the HSC NESHAP contained in this direct final rule will have no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, so that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it is not an "economically significant" regulatory action as defined by Executive Order 12866, and it is based on technology performance rather than health or risks that may disproportionately affect children.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this direct final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. The NTTAA requires the EPA to provide Congress, through OMB, with explanations when the EPA decides not to use available and applicable voluntary consensus standards.

This action does not involve the proposal of any new technical standards. The EPA welcomes comments on this aspect of the direct final rule and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

As part of a larger effort, the EPA is undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis with current and future EPA test methods. When completed, this project will assist the EPA in identifying potentially applicable voluntary consensus standards which can then be evaluated for equivalency and applicability in determining compliance with future regulations.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Continuous web cleaning, Film cleaning, Halogenated solvent cleaning machines, Hazardous substances.

Dated: August 6, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart T—National Emission Standards for Halogenated Solvent Cleaning

2. Amend § 63.461 by adding, in alphabetical order, definitions for "air knife system," "remote reservoir continuous web cleaning machine," "squeegee system," and "superheated

part technology," and by revising the definition of "continuous web cleaning machine" to read as follows:

§ 63.461 Definitions.

* * * * *

Air knife system means a device that directs forced air at high pressure, high volume, or a combination of high pressure and high volume, through a small opening directly at the surface of a continuous web part. The purpose of this system is to remove the solvent film from the surfaces of the continuous web part.

* * * * *

Continuous web cleaning machine means a solvent cleaning machine in which parts such as film, coils, wire, and metal strips are cleaned at speeds in excess of 11 feet per minute. Parts are generally uncoiled, cleaned such that the same part is simultaneously entering and exiting the solvent application area of the solvent cleaning machine, and then recoiled or cut. For the purposes of this subpart, all continuous web cleaning machines are considered to be a subset of in-line solvent cleaning machines.

* * * * *

Remote reservoir continuous web cleaning machine means a continuous web cleaning machine in which there is no exposed solvent sump. In these units, the solvent is pumped from an enclosed chamber and is typically applied to the continuous web part through a nozzle or series of nozzles. The solvent then drains from the part and is collected and recycled through the sump, allowing no solvent to pool in the work or cleaning area.

* * * * *

Squeegee system means a system that uses a series of pliable surfaces to remove the solvent film from the surfaces of the continuous web part. These pliable surfaces, called squeegees, are typically made of rubber or plastic media, and need to be periodically replaced to ensure continued proper function.

* * * * *

Superheated part technology means a system that is part of the continuous web cleaning process that heats the continuous web part either directly or indirectly to a temperature above the boiling point of the cleaning solvent. This could include a process step, such as a tooling die that heats the part as it is processed, as long as the part remains superheated through the cleaning machine.

* * * * *

3. Amend § 63.462 by revising paragraphs (c) introductory text and (c)(8) and adding paragraph (c)(9) to read as follows:

§ 63.462 Batch cold cleaning machine standards.

* * * * *

(c) Each owner or operator of a batch cold solvent cleaning machine complying with paragraphs (a)(2) or (b) of this section shall comply with the work and operational practice requirements specified in paragraphs (c)(1) through (c)(9) of this section, as applicable.

* * * * *

(8) Except as provided in paragraph (c)(9) of this section, sponges, fabric, wood, and paper products shall not be cleaned.

(9) The prohibition in paragraph (c)(8) of this section does not apply to the cleaning of porous materials that are part of polychlorinated biphenyl (PCB) laden transformers if those transformers are handled throughout the cleaning process, and disposed of in compliance with an approved PCB disposal permit issued in accordance with the Toxic Substances Control Act (TSCA).

* * * * *

4. Amend § 63.463 by revising paragraphs (a) introductory text, (c) introductory text, (d) introductory text, (e) introductory text and (e)(2) introductory text, and by adding paragraphs (e)(2)(viii) through (e)(2)(x) and paragraph (g) to read as follows:

§ 63.463 Batch vapor and in-line cleaning machine standards.

(a) Except as provided in § 63.464 for all cleaning machines and in paragraph (g)(3) of this section for continuous web cleaning machines, each owner or operator of a solvent cleaning machine subject to the provisions of this subpart shall ensure that each existing or new batch vapor or in-line solvent cleaning machine subject to the provisions of this subpart conforms to the design requirements specified in paragraphs (a)(1) through (a)(7) of this section.

* * * * *

(c) Except as provided in § 63.464 for all cleaning machines and in paragraph (g)(3) of this section for continuous web cleaning machines, each owner or operator of an existing or new in-line solvent cleaning machine shall comply with paragraph (c)(1) or (c)(2) of this section as appropriate. The owner or operator of a continuous web cleaning machine shall comply with the requirements of paragraph (g) in lieu of complying with this paragraph.

* * * * *

(d) Except as provided in § 63.464 for all cleaning machines and in paragraph (g)(3) of this section for continuous web cleaning machines, each owner or operator of an existing or new batch vapor or in-line solvent cleaning machine shall meet all of the following required work and operational practices specified in paragraphs (d)(1) through (d)(12) of this section, as applicable.

* * * * *

(e) Except as provided in paragraph (g)(4) of this section, each owner or operator of a solvent cleaning machine complying with paragraph (b), (c), or (g) of this section shall comply with the requirements specified in paragraphs (e)(1) through (e)(4) of this section.

* * * * *

(2) Determine during each monitoring period whether each control device used to comply with these standards meets the requirements specified in paragraphs (e)(2)(i) through (e)(2)(x) of this section.

* * * * *

(viii) If a superheated part system is used to comply with the standards for continuous web cleaning machines in paragraph (g) of this section, the owner or operator shall ensure that the temperature of the continuous web part is at least 10 degrees Fahrenheit above the solvent boiling point while the part is traveling through the cleaning machine.

(ix) If a squeegee system is used to comply with the continuous web cleaning requirements of paragraph (g)(3)(iii) of this section, the owner or operator shall comply with the following requirements.

(A) Determine the appropriate maximum product throughput for the squeegees used in the squeegee system, as described in § 63.465(f).

(B) Conduct the weekly monitoring required by § 63.466(a)(3). Record both the results of the visual inspection and the length of continuous web product cleaned during the previous week.

(C) Calculate the total amount of continuous web product processed since the squeegees were replaced and compare to the maximum product throughput for the squeegees.

(D) Ensure squeegees are replaced no later than when the maximum product throughput is attained.

(E) Redetermine the maximum product throughput for the squeegees if any solvent film is visible on the continuous web part immediately after it exits the cleaning machine.

(x) If an air knife system is used to comply with the continuous web cleaning requirements of paragraph (g)(3)(iii) of this section, the owner or operator shall comply with the following requirements.

(A) Determine the air knife parameter and parameter value that demonstrates to the Administrator's satisfaction that the air knife is properly operating. An air knife is properly operating if no visible solvent film remains on the continuous web part after it exits the cleaning machine.

(B) Maintain the selected air knife parameter value at the level determined in paragraph (a) of this section.

(C) Conduct the weekly monitoring required by § 63.466(a)(3).

(D) Redetermine the proper (air knife parameter) value if any solvent film is visible on the continuous web part immediately after it exits the cleaning machine.

(f) * * *

(g) Except as provided in § 63.464, each owner or operator of a continuous web cleaning machine shall comply with paragraphs (g)(1) through (g)(4) of this section for each continuous web cleaning machine.

(1) Except as provided in paragraph (g)(2) of this section, install, maintain, and operate one of the following control combinations on each continuous web cleaning machine.

(i) For each existing continuous web cleaning machine, the following control combinations are allowed:

(A) Superheated vapor or superheated part technology; and a freeboard ratio of 1.0 or greater.

(B) Freeboard refrigeration device; and a freeboard ratio of 1.0 or greater.

(C) Carbon adsorption system.

(ii) For each new continuous web cleaning machine, the following control combinations are allowed:

(A) Superheated vapor or superheated part technology; and a freeboard refrigeration device.

(B) A freeboard refrigeration device and a carbon adsorber.

(C) Superheated vapor or superheated part technology; and a carbon adsorber.

(2) If a carbon adsorber system can be demonstrated to the Administrator's satisfaction to have an overall control efficiency (*i.e.*, capture efficiency times removal efficiency) of 70 percent or greater, this system is equivalent to the options in paragraph (g) of this section. A system that is demonstrated to have an overall control efficiency of 70 percent or greater can be used in lieu of the control combinations in paragraph (g)(1) of this section.

(3) In lieu of complying with the provisions of § 63.463(a), the owner or operator of a continuous web cleaning machine shall comply with the following provisions:

(i) Each cleaning machine shall be designed or operated to meet one of the following control equipment or technique requirements:

(A) An idling and downtime mode cover, as described in § 63.463(d)(1)(i), that may be readily opened or closed, that completely covers the cleaning machine openings when in place, and is free of cracks, holes, and other defects.

(B) A reduced room draft as described in § 63.463(e)(2)(ii).

(C) Gasketed or leakproof doors that separate both the continuous web part feed reel and take-up reel from the room atmosphere if the doors are checked according to the requirements of § 63.463(e)(iii).

(ii) Each continuous web cleaning machine shall have a freeboard ratio of 0.75 or greater unless that cleaning machine is a remote reservoir continuous web cleaning machine.

(iii) Each cleaning machine shall have an automated parts handling system capable of moving parts or parts baskets at a speed of 3.4 meters per minute (11 feet per minute) or less from the initial loading of parts through removal of cleaned parts unless the cleaning machine is a continuous web cleaning machine that has a squeegee system or air knife system installed, maintained, and operated on the continuous web cleaning machine meeting the requirements of § 63.463(e).

(iv) Each vapor cleaning machine shall be equipped with a device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils.

(v) Each vapor cleaning machine shall be equipped with a vapor level control device that shuts off sump heat if the vapor level in the vapor cleaning machine rises above the height of the primary condenser.

(vi) Each vapor cleaning machine shall have a primary condenser.

(vii) Each cleaning machine that uses a lip exhaust shall be designed and operated to route all collected solvent vapors through a properly operated and maintained carbon adsorber that meets the requirements of § 63.463(e)(2)(ii).

(4) In lieu of complying with the provisions of § 63.463(d), the owner or operator of a continuous web cleaning machine shall comply with the following provisions:

(i) Control air disturbances across the cleaning machine opening(s) by incorporating one of the following pieces of control equipment or techniques:

(A) Cover(s) to each solvent cleaning machine shall be in place during the idling mode and during the downtime mode unless either the solvent has been removed from the machine or maintenance or monitoring is being performed that requires the cover(s) in place.

(B) A reduced room draft as described in § 63.463(e)(2)(ii).

(C) Gasketed or leakproof doors or covers that separate both the continuous web part feed reel and take-up reel from the room atmosphere if the doors are checked according to the requirements of § 63.463(e)(iii).

(ii) Any spraying operations shall be conducted in a section of the solvent cleaning machine that is not directly exposed to the ambient air (*i.e.*, a baffled or enclosed area of the solvent cleaning machine) or within a machine having a door or cover that meets the requirements of paragraph (g)(4)(i)(C) of this section.

(iii) During start-up of each vapor cleaning machine, the primary condenser shall be turned on before the sump heater.

(iv) During shutdown of each vapor cleaning machine, the sump heater shall be turned off and the solvent vapor layer allowed to collapse before the primary condenser is turned off.

(v) When solvent is added or drained from any solvent cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings and the end of the pipe in the solvent sump shall be located beneath the liquid solvent surface.

(vi) Each solvent cleaning machine and associated controls shall be maintained as recommended by the manufacturers of the equipment or using alternative maintenance practices that have been demonstrated to the Administrator's satisfaction to achieve the same or better results as those recommended by the manufacturer.

(vii) Waste solvent, still bottoms, sump bottoms, and waste absorbent materials used in the cleaning process for continuous web cleaning machines shall be collected and stored in waste containers. The closed containers may contain a device that would allow pressure relief, but would not allow liquid solvent to drain from the container.

(viii) Except as provided in paragraph (g)(4)(ix) of this section, sponges, fabric, wood, and paper products shall not be cleaned.

(ix) The prohibition in paragraph (g)(4)(viii) does not apply to absorbent materials that are used as part of the cleaning process of continuous web cleaning machines, including rollers and roller covers.

5. Amend § 63.465 by adding paragraph (f) to read as follows:

§ 63.465 Test methods.

* * * * *

(f) Each owner or operator of a continuous web cleaning machine using

a squeegee system to comply with § 63.463(g)(3) shall determine the maximum product throughput using the method in this paragraph. The maximum product throughput for each squeegee type used at a facility must be determined prior to December 2, 1999, the compliance date for these units.

(1) Conduct daily visual inspections of the continuous web part. This monitoring shall be conducted at the point where the continuous web part exits the squeegee system. It is not necessary for the squeegees to be new at the time monitoring is begun if the following two conditions are met:

(i) The continuous web part leaving the squeegee system has no visible solvent film.

(ii) The amount of continuous web that has been processed through the squeegees since the last replacement is known.

(2) Continue daily monitoring until a visible solvent film is noted on the continuous web part.

(3) Determine the length of continuous web product that has been cleaned using the squeegee since it was installed.

(4) The maximum product throughput for the purposes of this section is equal to the time it takes to clean 95 percent of the length of product determined in paragraph (f)(3) of this section. This time period, in days, may vary depending on the amount of continuous web product cleaned each day.

* * * * *

6. Amend § 63.466 by revising paragraph (a) introductory text and adding paragraphs (a)(3) through (a)(5) to read as follows:

§ 63.466 Monitoring procedures.

(a) Except as provided in paragraph (g) of this section, each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the equipment standards in § 63.463(b)(1)(i), (b)(2)(i), (c)(1)(i), (c)(2)(i), (g)(1), or (g)(2) shall conduct monitoring and record the results on a weekly basis for the control devices, as appropriate, specified in paragraphs (a)(1) through (a)(5) of this section.

* * * * *

(3) If a squeegee system or air knife system is used to comply with the requirements of § 63.463(g), the owner or operator shall visually inspect the continuous web part exiting the solvent cleaning machine to ensure that no solvent film is visible on the part.

(4) Except as provided in paragraph (a)(5) of this section, if a superheated part system is used to comply with the requirements of § 63.463(g), the owner or operator shall use a thermometer, thermocouple, or other temperature measurement device to measure the temperature of the continuous web part while it is in the solvent cleaning machine. This measurement can also be taken at the exit of the solvent cleaning machine.

(5) As an alternative to complying with paragraph (a)(4) of this section, the owner or operator can provide data, sufficient to satisfy the Administrator, that demonstrate that the part temperature remains above the boiling point of the solvent at all times that the part is within the continuous web solvent cleaning machine. These data could include design and operating conditions such as information supporting any exothermic reaction inherent in the processing.

* * * * *

7. Amend § 63.467 by revising paragraph (a) introductory text and adding paragraphs (a)(6) and (a)(7) to read as follows:

§ 63.467 Recordkeeping requirements.

(a) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of § 63.463 shall maintain records in written or electronic form specified in paragraphs (a)(1) through (a)(7) of this section for the lifetime of the machine.

* * * * *

(6) If a squeegee system is used to comply with these standards, records of the test required by § 63.466(f) to determine the maximum product throughput for the squeegees.

(7) If an air knife system is used to comply with these standards, records of the determination of the proper operating parameter and parameter value for the air knife system.

* * * * *

[FR Doc. 99–20861 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

Access Charges

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of Oct. 1, 1998, on page 434, § 69.153 is corrected by removing the second paragraph (c) in the first column, and the second paragraph (c)(1) in the second column.

[FR Doc. 99–55523 Filed 8–18–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 252

[DFARS Case 99–D006]

Defense Federal Acquisition Regulation Supplement; Oral Attestation of Security Responsibilities

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add a requirement for contractor employees that are cleared for access to certain classified information to attest orally that they will comply with the security requirements associated with the information.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 99–D006.

SUPPLEMENTARY INFORMATION:

A. Background

This rule adds a new clause at DFARS 252.204–7005 for use in contracts requiring access to classified information. The new clause requires contractor employees that are cleared for access to Top Secret, Special Access Program, or Special Compartmented Information to attest orally that they will conform to the conditions and responsibilities imposed by law or regulation on those granted access to such information.

A proposed rule was published in the **Federal Register** on March 25, 1999 (64 FR 14424). Six sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the conditions and responsibilities addressed in the oral attestation are conditions and responsibilities that already are placed

on contractor personnel granted access to classified information. Any contractor costs related to compliance with the rule should be included in the contract price.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.404–70 is amended by adding paragraph (c) to read as follows:

204.404–70 Additional contract clauses.

* * * * *

(c) Use the clause at 252.204–7005, Oral Attestation of Security Responsibilities, in solicitations and contracts that include the clause at FAR 52.204–2, Security Requirements.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.204–7005 is added to read as follow:

252.204–7005 Oral Attestation of Security Responsibilities.

As prescribed in 204.404–70(c), use the following clause: Oral Attestation of Security Responsibilities (Aug 1999)

(a) Contractor employees cleared for access to Top Secret (TS), Special Access Program (SAP), or Special Compartmented Information (SCI) shall attest orally that they will conform to the conditions and responsibilities imposed by law or regulation on those granted access. Reading aloud the first paragraph of Standard Form 312, Classified Information Nondisclosure Agreement, in the presence of a person designated by the Contractor for this purpose, and a witness, will satisfy this requirement. Contractor employees currently cleared for access to TS, SAP, or SCI may attest orally to their security responsibilities when being briefed into a new program or during their annual refresher briefing. There is no requirement to retain a separate record of the oral attestation.

(b) If an employee refuses to attest orally to security responsibilities, the Contractor shall deny the employee access to classified information and shall submit a report to the Contractor's security activity.

(End of clause)

[FR Doc. 99–21417 Filed 8–18–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 219, AND 253

[DFARS Case 99–D011/98–D017]

Defense Federal Acquisition Regulation Supplement; Fiscal Year 2000 Contract Action Reporting Requirements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address contract action reporting requirements for fiscal year 2000. The rule makes changes to the Individual Contracting Action Report and the Monthly Contracting Summary of Actions $25,000 or less.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 99–D011/98–D017.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule contains fiscal year 2000 requirements for completion of DD Form 350, Individual Contracting Action Report, and DD Form 1057, Monthly Contracting Summary of Actions $25,000 or less. DoD uses these forms to collect statistical data on its contracting actions. This rule adds requirements for reporting of contracting actions with HUBZone small business concerns and very small business concerns; actions under Federal Supply Schedule contracts and fixed-price-award-fee contracts; and actions that support contingency, humanitarian, or peacekeeping operations.

DD Forms 350 and 1057, and other forms prescribed by the DFARS, are not included in the Code of Federal Regulations, The forms are available electronically via the World Wide Web at http://web1.whs.osd.mil/icdhome/forms.htm

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D011/98–D017.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204, 219, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204, 219, and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 219, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINSITRATIVE MATTERS

2. Section 204.670–2 is revised to read as follows:

204.670–2 Reportable contracting actions.

(a) Except as provided in paragraph (c) of this subsection, complete a DD Form 350 for the following types of contracting actions in accordance with the instructions in 253.204–70:

(1) Actions that obligate or deobligate more than $25,000, including actions executed by DoD for purchase of land, or rental or lease of real property, and excluding actions summarized on DD Form 1057 in accordance with paragraph (b)(2) of this subsection.

(2) Actions that obligate or deobligate $25,000 or less and are in designated industry group under the Small Business Competitiveness

Demonstration Program (see FAR subpart 19.10) or are under a very small business set-aside (see FAR subpart 19.9), except for—

(i) Actions of $500 or less;

(ii) Foreign military sales;

(iii) Orders or modifications under Federal schedules;

(iv) Actions with government agencies;

(v) Actions with non-U.S. business firms; and

(vi) Actions where the place of performance is other than the United States and its outlying areas.

(b) Except as provided in paragraph (c) of this subsection, summarize the following types of contracting actions on the monthly DD Form 1057 in accordance with the instructions in 253.204–71:

(1) Actions that obligate or deobligate $25,000 or less, except actions reported on DD Form 350 in accordance with paragraph (a)(2) of this subsection.

(2) Actions that obligate or deobligate more than $25,000, but not more than $200,000, and support—

(i) A contingency operation as defined in 10 U.S.C. 101(a)(13); or

(ii) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7).

(c) Do not report the following types of contracting action on either the DD Form 350 or DD Form 1057:

(1) Imprest fund transactions, SF 44 purchases, and micro-purchases obtained through use of the Government-wide commercial purchase card.

(2) Transactions that cite only nonappropriated funds (Treat funds held in trust accounts for foreign governments as appropriated funds).

(3) Transactions for purchase of land, or rental or lease of real property, when the General Services Administration (GSA) executes the contracting action.

(4) Orders from GSA stock and the GSA Consolidated Purchase Program.

(5) Transactions that involve Government bills of lading or transportation requests, except orders placed under Regional Storage Management Office basic ordering agreements.

(6) Requisitions transferring supplies within or among the departments or agencies.

(7) Pursuant to 204.670–6(b), orders placed by other contracting activities against indefinite-delivery contracts awarded by the—

(i) Military Sealift Command;

(ii) Defense Fuel Supply Center for petroleum and petroleum products; or

(iii) Defense Supply Center, Richmond, for petroleum products

204.670–9 [Removed]

3. Section 204.670–9 is removed.

PART 219—SMALL BUSINESS PROGRAMS

219.1006 [Amended]

4. Section 219.1006 is amended in paragraph (d) by removing "204.670–9" and adding in its place "204.670–2".

PART 253—FORMS

5. Section 253.204–70 is revised to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

Policy on use of a DD Form 350 is in 204.670–2. This subsection contains instructions for completion of the DD Form 350.

(a) *Part A of the DD Form 350.* Part A identifies the report and the reporting activity. Complete all four blocks.

(1) Block A1, TYPE OF REPORT. Enter one of the following codes:

(i) *Code 0—Original.* Enter code 0 unless code 1 or code 2 applies.

(ii) *Code 1—Cancelling.* A cancelling action cancels an existing DD Form 350 in accordance with departmental data collection point instructions.

(iii) *Code 2—Correcting.* A correcting action corrects an existing DD Form 350 action in accordance with departmental data collection point instructions.

(2) Block A2, REPORT NO. Enter the six-position local control number (see 204.670–3(a)(4)). If block A1 is coded 1 or 2, use the prior report number rather than a new one.

(3) BLOCK A3, CONTRACTING OFFICE CODE. Enter the code assigned the contracting office by the departmental data collection point shown in 204.670–1(c).

(4) BLOCK A4, NAME OF CONTRACTING OFFICE. Enter sufficient detail to establish the identity of the contracting office.

(b) *Part B of the DD Form 350.* Part B identifies the transaction.

(1) BLOCK B1, CONTRACT IDENTIFICATION INFORMATION. Do not leave any parts of Block B1 blank.

(i) BLOCK B1A, CONTRACT NUMBER.

(A) Enter—

(*1*) The DoD contract number; or

(*2*) For orders under contracts awarded by other Federal agencies, the contract number of that Federal agency as it appears in the contractual instrument.

(B) Do not leave spaces between characters, and do not enter dashes, slants, or any other punctuation marks.

(C) The DoD contract number is the basic (13 alphanumeric character) procurement instruction identification number (PIIN) that was assigned in accordance with 204.7001 or constructed under an exception permitted by 204.7000. Do not enter any supplementary procurement instrument identification numbers as part of the contract number (these go in block B2).

(ii) BLOCK B1B, ORIGIN OF CONTRACT. Enter the code that indicates the agency that originated/assigned the contract number.

(A) *Code A—DoD.*

(B) *Code B—NASA.*

(C) *Code C—Other Non-DoD Agency.*

(2) BLOCK B2, MODIFICATION, ORDER OR OTHER ID NUMBER. Enter the supplementary procurement instrument identification number (if there is one) that was assigned in accordance with 204.7004 or as permitted by 204.7000. It can be up to 19 characters. Usually calls and orders have a four-position number (see 204.7004(d)); modifications to contracts and agreements have a six-position modification number (see 204.7004(c)); and modifications to calls and orders have a two-position modification number (see 204.7004(e)). When reporting modifications to calls and orders, enter both the call/order number and the modification number.

(3) BLOCK B3, ACTION DATE.

(i) Enter the year, month, and day of the effective date for fiscal obligation purposes.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(4) BLOCK B4, COMPLETION DATE.

(i) Enter the year, month, and day of the last contract delivery date or the end of the performance period. If the contract is incrementally funded, report the completion date for the entire contract. Report the completion date associated with an option quantity when the option is exercised.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 20003, as 20030102.

(5) BLOCK B5, CONTRACTOR IDENTIFICATION INFORMATION.

(i) Use data that relates to the contractor whose name and address appear in the contract document (Block 7 of the SF 26, Award/Contract; Block 8 of the SF 30, Amendment of Solicitation/Modification of Contract; Block 15A of the SF 33, Solicitation, Offer and Award; or Block 9 of the DD Form 1155, Order for Supplies or Services), except—

(A) For contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act, use data that relates to the company that will be performing the work;

(B) For Federal schedule orders, use data that applies to the contractor whose name appears on the schedule (not the data for the agent to whom orders may be sent); and

(C) For contracts with the Canadian Commercial Corporation (CCC), use data for the appropriate CCC office.

(ii) Some of the parts of Block B5 may not apply to the action being reported. Follow the instructions for each part.

(A) BLOCK B5A, CONTRACTOR IDENTIFICATION NUMBER.

(1) Enter the contractor's 9-position Data Universal Numbering System (DUNS) number or 13-position DUNS+4 number (see FAR 4.602(d) and 4.603 and DFARS subpart 204.73).

(2) For all actions with UNICOR/Federal Prison Industries, use DUNS number 62–662–7459.

(3) For U.S. Army Contracting Command, Europe, consolidated reporting of vouchers for utilities from municipalities, use DUNS number 15–390–6193 (see 204.670–6(b)(1)).

(B) BLOCK B5B, GOVERNMENT AGENCY. Enter one of the following codes:

(1) Code Y—Yes. Enter code Y when the contractor is a Federal/State/local government agency of the United States and outlying areas (see 204.670–1(d)). Do not use code Y when the government agency is an educational institution.

(2) Code N—No. Enter code N when code Y does not apply.

(C) BLOCK B5C, CAGE, CODE. Enter the 5-position Commercial and Government Entity (CAGE) code that identifies the contractor plant or establishment. If the CAGE code is not already available in the contracting office and the apparent awardee does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the procedures at 204.7202–1 to obtain one.

(D) BLOCK B5D, CONTRACTOR NAME AND DIVISION NAME. Enter the contractor's name as stated in the offer and resultant contract. Include its division name.

(E) BLOCK B5E, CONTRACTOR ADDRESS. Enter the contractor's address as stated in the offer and resultant contract. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable. Do not enter foreign postal codes.

(F) BLOCK B5F, TIN. Enter the contractor's taxpayer identification number (see FAR Subpart 4.9). Leave Block B5F blank if the contractor is)

(1) Registered in the Central Contractor Registration database (see Subpart 204.73);

(2) A nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the trade or business in the United States; and does not have an office or place of business or a fiscal paying agent in the United States;

(3) An agency or instrumentality of a foreign government; or

(4) An agency or instrumentality of the Federal Government.

(G) BLOCK B5G, PARENT TIN. Enter the contractor's parent company (common parent) TIN (see FAR Subpart 4.9 and 52.204–3. If the contractor does not have a parent company or the parent company meets the exemption for Block B5F, leave Block B5G blank.

(H) BLOCK B5H, PARENT NAME. If a parent company TIN is entered in Block B5G, enter in Block B5H the name of the parent company (common parent). Leave Block B5H blank if there is no parent company or the parent company is exempted from the requirement to have a TIN.

(6) BLOCK B6, PRINCIPAL PLACE OF PERFORMANCE.

(i) The place, or places, where the contract will be performed may be specified by the Government or listed by the contractor in response to the solicitation provision at FAR 52.214–14, Place of Performance—Sealed Bidding, or FAR 52.215–6, Place of Performance. Use data for the contractor's principal place of performance, which is generally the—

(A) Final assembly point for items manufactured under supply contracts;

(B) Location from where shipments from stock are made under supply contracts;

(C) Actual construction site for construction contracts;

(D) Planned construction site for architect-engineer contracts;

(E) Place of mining for mined supplies; or

(F) Place (including military installations) where a service is performed for service contracts.

(ii) When there is more than one location for any of paragraphs (b)(6)(i)(A) through (F) of this subsection (e.g., more than one construction site), use the location involving the largest dollar amount of the acquisition. Do not show more than one location in Block B6.

(iii) If places of performance are too varied or not known, or if commercial procedures were used, enter the contractor's home office location.

(iv) Follow the instructions for each part of Block 6 that applies to the action being reported.

(A) BLOCK B6A, CITY OR PLACE CODE.

(1) For places in the United States and outlying areas, enter the numeric place code, which can be found in the Federal Information Processing Standards (FIPS) Publication (PUB) 55, Guideline: Codes for Named Populated Places, Primary Country Divisions, and Other Locational Entities of the United States and Outlying Areas. Leave Block B6A blank for places outside the United States and outlying areas.

(2) If the city or locality is not listed, look in FIPS PUB 55 for the county code of the principal place of performance. Enter that code in Block B6A. Use 50000 for Washington, DC, with a State code of 11.

(3) Paragraph 5.2, Entry Selection With the Aid of the Class Code, of FIPS PUB 55 will help in selecting the correct code. Sometimes, a class code should be used in addition to a place code to accurately identify the place of performance. Do not use place codes when the first position of the class code is X or Z.

(B) BLOCK B6B, STATE OR COUNTRY CODE.

(1) For places in the United States and outlying areas, enter the numeric State code, which can be found in FIPS PUB 55 or FIPS Pub 5, Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas.

(2) For places outside the United States and outlying areas, enter the alpha country code from FIPS PUB 10, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.

(C) BLOCK B6C, CITY OR PLACE AND STATE OR COUNTRY NAME. Enter the name of the principal place of performance. Do not leave block B6C blank.

(7) BLOCK B7, TYPE OBLIGATION. Enter one of the following codes:

(i) *Code 1—Obligation.* Enter code 1 if the contracting action obligates funds.

(ii) *Code 2—Deobligation.* Enter code 2 if the contracting action deobligates funds.

(8) BLOCK B8, TOTAL DOLLARS. Enter the net amount of funds (whole dollars only) obligated or deobligated by the contracting action. Do not leave Block B8 blank.

(9) BLOCK B9, FOREIGN MILITARY SALE. Enter one of the following codes. If only part of the contracting action is a foreign military sale, separately report the parts (see 204.670–6(c)).

(i) *Code Y—Yes.* Enter code Y when the contracting action is under a foreign military sales arrangement, or under any other arrangement when a foreign

country or international organization is bearing the cost of the acquisition.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(10) BLOCK B10, MULTIYEAR CONTRACT. Enter one of the following codes:

(i) *Code Y—Yes.* Enter code Y when the contracting action is a multiyear contract as defined at FAR 17.103. Do not report contracts containing options as multiyear unless the definition at FAR 17.103 applies to the contract.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(11) BLOCK B11, TOTAL MULTIYEAR VALUE. Enter the total estimated multiyear contract value (in whole dollars) only at the time of initial obligation of multiyear funds for a new letter contract or a new definitive contract (Block B13A is coded 1 or 3 and Block B13D is blank). For all other codes in Block B13A, enter a numeric value of zero in Block B11.

(12) BLOCK B12, PRINCIPAL PRODUCT OR SERVICE. B12 contains five parts. Do not leave any parts of Block B12 blank.

(i) BLOCK B12A, FSC or SVC CODE. Enter the 4-character Federal supply classification (FSC) or service code that describes the contract effort. To find the code, look in Section I of the Department of Defense (DoD) Procurement Coding Manual (MN02). There are three categories of codes to choose from. In some cases, use a 4-character code from a list of 4-character codes; in other cases, construct a code using the instructions in the Manual. If more than one category or code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value.

(A) *Supplies.* If the contracting action is for the purchase (not lease or rental) of supplies, enter an FSC code in block B12A. FSC codes are all numeric. Look in Section I, Part C, of the DoD Procurement Coding Manual (MN02). The Department of Defense Federal Supply Classification Cataloging Handbook (H2) may also help with the correct 4-digit code.

(B) *Services.* If the contracting action is for services (except research, development, test, and evaluation), construction, or lease or rental of equipment or facilities, enter a service code in block B12A.

(C) *Research, Development, Test, and Evaluation. (RDT&E).* If the contracting action is for RDT&E (as defined in FAR 35.001 and 235.001), enter an RDT&E code in block B12A. Look in Section I, Part A, of the DoD Procurement Coding Manual (MN02). All RDT&E codes should begin with the letter "A." Do not use an RDT&E code for—

(*1*) Purchase, lease, or rental of equipment, supplies, or services separately purchased in support of RDT&E work, even if RDT&E funds are cited. Instead, use an FSC or Service code under the instructions in paragraph (b)(12)(i)(A) or (B) of this subsection; or

(*2*) Orders under Federal schedule contracts. Instead, uses an FSC or Service code under the instructions in paragraph (b)(12)(i)(a) or (B) of this subsection.

(ii) BLOCK B12B, DOD CLAIMANT PROGRAM CODE. Enter a code that identifies the commodity described in Block B12E. These codes are in Section III of the DoD Procurement Coding Manual (MN02). If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value. If the description in Block B12E is for—

(A) Research and development (R&D), enter the code that best represents the objective of the R&D. For example, if the objective of the R&D is a guided missile, enter code A20. If the R&D cannot be identified to any particular objective, enter code S10;

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair, or modification services, enter the code that best identifies the program;

(C) Equipment rental (including rental of automatic data processing equipment), enter code S10;

(D) Utility services, enter code S10;

(E) Services that cannot be identified to any listed program, enter code S10; or

(F) Supplies or equipment that cannot be identified to any listed program, enter code C9E.

(iii) BLOCK B12C, PROGRAM, SYSTEM OR EQUIPMENT CODE.

(A) Enter a code that describes the program, weapons system, or equipment. These codes are in Section II of the DoD Procurement Coding Manual (MN02). If there is no code that applies to the contracting action, enter three zeros. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value.

(B) If the contracting action is funded by the Ballistic Missile Defense Organization, enter code CAA.

(C) If the contracting action supports environmental cleanup programs, enter one of the codes listed in Section II of the DoD Procurement Coding Manual (MN02) under the heading "Description and Use of Program Codes—Environmental Cleanup Programs."

(D) Defense Logistics Agency activities must use the code assigned by the sponsoring military department.

(iv) BLOCK B12D, SIC CODE. Enter the standard industrial classification (SIC) code for the acquisition (as opposed to the SIC of the contractor). Use the SIC code in effect at the time of award. These codes are in the OMB Standard Industrial Classification Manual. If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value.

(v) BLOCK B12E, NAME/DESCRIPTION. Enter the name or a brief description of the commodity or service. If the description is classified, enter only the word "Classified." Do not, however, use "Classified" when a code name (e.g., Minuteman, Polaris, Trident, Pershing) or an identifying program number (e.g., WS–107A) can be used.

(13) BLOCK B13, KIND OF CONTRACTING ACTION. Some of the parts of Block B13 may not apply to the action being reported. Follow instructions for each part. When the contracting action is a modification, complete Blocks B13A an B13D.

(i) BLOCK B13A, CONTRACT/ORDER. Enter one of the following codes:

(A) *Code 1—Letter Contract.* Enter code 1 when the contracting action is a letter contract or a modification to a letter contract that has not been definitized.

(B) *Code 3—Definitive Contract.*

(1) Enter code 3 when the contracting action is the award or modification of a definitive contract or a modification that definitizes a contract. Code 3 includes the following:

(i) Definitive contract awards under the Small Business Administration 8(a) program.

(ii) Notices of award.

(iii) Lease agreements.

(iv) Indefinite-delivery-definite-quantity contracts (FAR 52.216–20).

(v) Indefinite-delivery-indefinite-quantity contracts (FAR 52.216–22) when funds are obligated by the contract itself.

(2) Code 3 excludes orders from the Procurement List (see codes 6 and 8).

(C) *Code 4—Order under an Agreement.* Enter code 4 when the contracting action is an order or definitization of an order under an agreement other than a blanket purchase agreement. Examples include an order exceeding $25,000 under a basic ordering agreement or a master ship repair agreement and a job order when

the contract is created by issuing the order. A call under a blanket purchase agreement associated with a Federal schedule (see FAR 8.404(b)(4)) is coded 6. A call under other blanket purchase agreements, pursuant to FAR 13.303, is coded 9. When the contracting action is a modification to an order described in code 4 instructions, enter code 4 in B13A.

(D) *Code 5—Order under Indefinite-Delivery Contract (IDC).* Enter code 5 when the contracting action is an order, including a task or delivery order, under an indefinite-delivery contract awarded by a Federal agency. For example, enter code 5 for an order under a GSA indefinite-delivery contract, such as a GSA area-wide contract for utility services, that is not a Federal schedule. When the contracting action is a modification to an order described in code 5 instructions, enter code 5 in B13A.

(E) *Code 6—Order/Call under Federal Schedule.* Enter code 6 if the contracting action is an order under a GSA or VA Federal Supply Schedule, or a call against a blanket purchase agreement established under a GSA or VA Federal Supply Schedule (see FAR 8.404). Code 6 includes orders under Federal Supply Schedules for items on the Procurement List. When the contracting action is a modification to an order or call described in code 6 instructions, enter code 6 in B13A.

(F) *Code 8—Order from Procurement List.* Enter code 8 if the contracting action is an action placed with Federal Prison Industries (UNICOR) or a JWOD Participating Nonprofit Agency in accordance with FAR Subpart 8.6 or 8.7. Use code 6 for orders from the Procurement List under Federal schedules. When the contracting action is a modification to an action described in code 8 instructions, enter code 8 in B13A.

(G) *Code 9—Purchase Order/Call.* Enter code 9 if the contracting action, including an action in a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10), is an award pursuant to FAR Part 13, except when the contracting action is a blanket purchase agreement call pursuant to FAR 8.404(b)(4) (see code 6). When the contracting action is a modification to a purchase order or call described in code 9 instructions, enter code 9 in B13A.

(ii) BLOCK B13B, TYPE OF INDEFINITE-DELIVERY CONTRACT. If Block B13A is coded 3 and the ninth position of B1A is coded D, complete Block B13B. If Block B13A is coded 5, complete Block B13B. Otherwise, leave Block B13B blank.

(A) *Code A—Requirements Contract (FAR 52.216–21).*

(B) *Code B—Indefinite-Quantity Contract (FAR 52.216–22).*

(C) *Code C—Definite—Quantity Contract (FAR 52–216–20).*

(iii) BLOCK B13C, MULTIPLE/SINGLE AWARD IDC(S). If Block B13B is coded A, B, or C, complete Block B13C. Otherwise, leave Block B13C blank.

(A) *Code M—Multiple Award.* Enter code M if the contracting action is a task or delivery order under a multiple award indefinite-delivery contract.

(B) *Code S—Single Award.* Enter code S if the contracting action is a task or delivery order under a single award indefinite-delivery contract.

(iv) BLOCK B13D, MODIFICATION. If the contracting action is a modification, enter one of the following codes. Otherwise, leave Block B13D blank.

(A) *Code A—Additional Work (new agreement).* Enter code A when the contracting action is a bilateral supplemental agreement that obligates funds for additional work requiring a justification and approval (J&A).

(B) *Code B—Additional Work (other).* Enter code B when the contracting action is a modification of an existing contract (including a letter contract) that is not covered by code A or by codes C through H (see Code H for exercise of an option). Code B includes actions that—

(1) Initiate an incremental yearly buy under a multiyear contract;

(2) Amend a letter or other contract to add work that does not require a J&A; or

(3) Order under a priced exhibit or production list.

(C) *Code C—Funding Action.* Enter code C when the contracting action is a modification (to a letter or other contract) for the sole purpose of obligating or deobligating funds. This includes—

(1) Incremental funding (other than incremental yearly buys under multiyear contracts, which are coded B);

(2) Changes to the estimated cost on cost-reimbursement contracts;

(3) Repricing actions covering incentive price revisions;

(4) Economic price adjustments; and

(5) Initial citati9on and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year.

(D) *Code D—Change Order.* Enter code D if the contracting action is a change order issued under the "Changes," "Differing Site Conditions," or similar clauses in existing contracts.

(E) *Code E—Termination for Default.* Enter code E if the contracting action is a modification that terminates all or part of the contract for default.

(F) *Code F—Termination for Convenience.* Enter code F if the contracting action is a modification that terminates all or part of the contract for convenience.

(G) *Code G—Cancellation.* Enter code G if the contracting action is a modification that cancels the contract. Do not use code G to cancel a prior DD Form 350 (see Block A1).

(H) *Code H—Exercise of an Option.* Enter code H if the contracting action is an exercise or an option.

(I) *Code J—Definitization of a Letter Contract.* Enter code J if the contracting action is the definitization of a letter contract, and enter code 3 in Block B13A.

(14) BLOCK B14, CICA APPLICABILITY. Enter one of the following codes:

(i) *Code A—Pre-CICA.* Enter code A if the action resulted from a solicitation issued before April 1, 1985. Modifications within the original scope of work of such awards and orders under pre-CICA indefinite-delivery type contracts also are coded A.

(ii) *Code B—CICA Applicable.* Enter code B if—

(A) The action resulted from a solicitation issued on or after April 1, 1985, or is a modification coded A in Block B13D issued on or after April 1, 1985; and

(B) Neither code C nor code D applies.

(iii) *Code C—Simplified Acquisition Procedures Other than FAR Subpart 13.5.* Enter code C if the action resulted from use of the procedures in FAR Part 13, other than those in Subpart 13.5.

(iv) *Code D—Simplified Procedures Pursuant to FAR Subpart 13.5.* Enter code D if the action resulted from use of the procedures in FAR Subpart 13.5.

(c) *Part C of the DD Form 350.*

(1) Part C gathers data concerning contracting procedures, use of competition, financing, and statutory requirements other than socioeconomic (which are in Part D).

(2) Do not complete part C if the contracting action is an action with a government agency, i.e., Block B5B (Government Agency) is coded Y (Yes). If Block B13A is coded 6, do not complete any blocks in Part C except Block C3, and Blocks C13A and C13B when they apply.

(3) In completing Part C, the codes to be used described either the contracting action being reported or the original contract, depending on the codes reported in Blocks B13A and B13D.

(i) If Block B13A is coded 1, 2, 3, 4, 6, or 9 and Block B13D is coded A or is blank, code the blocks in Part C with

reference to the action being reported. Otherwise, code the blocks with reference to the original contract.

(ii) If there are no codes for the original contact because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, use codes that best describe the original contracting action.

(4) Complete Part C blocks as follows:

(i) BLOCK C1, SYNOPSIS. Enter one of the following codes:

(A) *Code A—Synopsis Only.* Enter code A if only a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR subpart 5.2.

(B) *Code B—Combined Synopsis/Solicitation.* Enter code B if a combined synopsis/solicitation of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR subpart 5.2 and 12.603.

(C) *Code N—No.* Enter code N if a synopsis was not prepared.

(ii) BLOCK C2, REASON NOT SYNOPSIZED. Enter one of the following codes if Block C1 is coded N. Otherwise, leave Block C2 blank.

(A) *Code A—Urgency.* Enter code A if the action was not synopsized due to urgency (see FAR 6.302–2).

(B) *Code B—Use of FACNET.* Enter code B if the action was not synopsized because the acquisition was made through FACNET or another means that provided access to the notice of proposed action through the single, Governmentwide point of entry (see FAR 5.202(a)(13)).

(C) *Code Z—Other Reason.* Enter code Z if the action was not synopsized due to some other reason.

(iii) BLOCK C3, EXTENT COMPETED. Enter one of the following codes:

(A) *Code A—Competed Action.* Enter code A when—

(1) The contracting action is an action under a Federal schedule contract (Block B13A is coded 6);

(2) Competitive procedures were used to fulfill the request for full and open competition (see FAR subpart 6.1);

(3) Full and open competition procedures after exclusion of sources were used in order to establish or maintain alternative sources, to set aside an acquisition for small business or HUBZone small business, or to compete Section 8(a) awards (see FAR subpart 6.2);

(4) Statutory authorities for other than full and open competition were used (see FAR subpart 6.3) and more than one offer was received (if only one offer was received, use code D);

(5) The contracting action resulted from a contract awarded prior to the Competition in Contracting Act that used two-step sealed bidding or other sealed bidding, or that was negotiated competitively; or

(6) Simplified acquisition procedures were used and competition was obtained.

(B) *Code B—Not Available for Competition.* Enter code B for—

(1) Awards for utilities or utility systems, excluding long distance telecommunications services, when only one supplier can furnish the service (see FAR 6.302–1(b)(3);

(2) Brand name commercial products for authorized resale;

(3) Acquisitions authorized or required by statue to be awarded to a specified source pursuant to FAR 6.302–5(b)(2) or (4), e.g., qualified nonprofit agencies employing people who are blind or severely disabled (see FAR subpart 8.7) or 8(a) program (see FAR subpart 19.8);

(4) International agreements and Foreign Military Sales when the acquisition is to be reimbursed by a foreign country that requires that the product or services be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; and

(5) Other contract actions when the Director of Defense Procurement has determined that there is no opportunity for competition.

(Note: Even though Part C is not completed for actions with a government agency, the database will automatically include these actions in the category of not available for competition.)

(C) *Code C—Follow-On to Competed Action.* Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program when such placement was necessitated by prior acquisition decisions.

(D) *Code D—Not Competed.* Enter code D when codes A, B, and C do not apply.

(iv) BLOCK C4, SEA TRANSPORTATION. Enter one of the following codes when Block B1B is coded A, Block B5B is coded N, and block B13A is coded other than 9. Otherwise, leave Block C4 blank.

(A) *Code Y—Yes—Positive Response to DFARS 252.247–7022 or 252.212–7000(c)(2).* Enter code Y when the contractor's response to the provision at 252.247–7022, Representation of Extent of Transportation by Sea, or 252.212–7000(c)(2), Offeror Representations and Certifications—Commercial Items, indicates that the contractor anticipates that some of the supplies being provided may be transported by sea.

(B) *Code N—No—Negative Response to DFARS 252.247–7022 or 252.212–7000(c)(2).* Enter code N when the contractor's response to the provision at 252.247–7022 or 252.212–7000(c)(2) indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) *Code U—Unknown—No Response or Provision Not Included in Solicitation.* Enter code U when the contractor did not complete the representation at 252.247–7022 or 252.212–7000(c)(2) or the solicitation did not include either provision.

(v) BLOCK C5, TYPE OF CONTRACT.

(A) If the action is a letter contract, including modifications and amendments to letter contracts, enter the code that describes the anticipated type of contract the letter contract will become when it is definitized.

(B) If there is more than one type of contract involved in the contracting action, enter the code that matches the type with the most dollars. If the type with the least dollars exceeds $500,000, fill out separate DD Forms 350 (with different report numbers) for each type.

(C) Enter one of the following codes:

(1) Code A—Fixed-Price Redetermination.

(2) Code J—Firm-Fixed-Price.

(3) Code K—Fixed-Price Economic Price Adjustment.

(4) Code L—Fixed-Price Incentive.

(5) Code M—Fixed-Price-Award-Fee.

(6) Code R—Cost-Plus-Award-Fee.

(7) Code S—Cost Contract.

(8) Code T—Cost-Sharing.

(9) Code U—Cost-Plus-Fixed Fee.

(10) Code V—Cost-Plus-Incentive-Fee.

(11) Code Y—Time-and-Materials.

(12) Code Z—Labor-Hour.

(vi) BLOCK C6, NUMBER OF OFFERORS SOLICITED.

(A) Leave Block C6 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act);

(2) Block B1B is coded B or C and Block B13A is coded 5; or

(3) Block B13A is coded 6.

(B) Otherwise, enter—

(1) Code 1—One. Enter code 1 if only one offeror was solicited; or

(2) Code 2—More than One. Enter code 2 if more than one offeror was solicited.

(vii) BLOCK C7, NUMBER OF OFFERS RECEIVED.

(A) Leave Block C7 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985

(i.e., before the effective date of the Competition in Contracting Act); or

(2) Block B13A is coded 6, Order/Call Under Federal Schedule.

(B) Otherwise, enter the specific number of offers received (001–999).

(viii) BLOCK C8, SOLICITATION PROCEDURES.

(A) Leave Block C8 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act);

(2) The action is pursuant to simplified acquisition procedures (Block B13A is coded 9); or

(3) The action is an order or call under a Federal schedule (Block B13A is coded 6).

(B) Otherwise, enter one of the following codes:

(1) Code A—Full and Open Competition—Sealed Bid. Enter code A if the action resulted from an award pursuant to FAR 6.102(a).

(2) Code B—Full and Open Competition—Competitive Proposal. Enter code B if the action resulted from an award pursuant to FAR 6.102(b).

(3) Code C—Full and Open Competition—Combination. Enter code C if the action resulted from an award using a combination of competitive procedures (e.g., two-step sealed bidding) pursuant to FAR 6.102(c).

(4) Code D—Architect-Engineer. Enter code D if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

(5) Code E—Basic Research. Enter code E if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

(6) Code F—Multiple Award Schedule. Enter code F if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

(7) Code G—Alternative Sources. Enter code G if the action resulted from use of competitive procedures but excluded a particular source pursuant to FAR 6.202(a).

(8) Code K—Set-Aside. Enter code K if the action resulted from any—

(i) Set-aside for small business concerns (see FAR Subpart 19.5), including small business innovation research (SBIR) actions;

(ii) Set-aside for small disadvantaged business concerns;

(iii) Set-aside for HUBZone small business concerns (see FAR 19.1305);

(iv) Set-aside for very small business concerns (see FAR 19.904);

(v) Set-aside (including portions of broad agency announcements) for historically black colleges and universities or minority institutions (see 226.7003 and 235.016);

(vi) Competition among Section 8(a) firms under FAR 19.805 (report noncompetitive 8(a) awards as code N).

(9) Code M—Reserved.

(10) Code N—Other Full and Open Competition. Enter code N if the action resulted from use of other than full and open competition pursuant to FAR subpart 6.3. This includes awards to qualified nonprofit agencies employing people who are blind or severely disabled (see FAR subpart 8.7) or noncompetitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (see FAR 6.302–5(b)).

(ix) BLOCK C9, AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION.

(A) Leave Block C9 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act).

(B) Enter one of the following codes if Block C8 is coded N. otherwise, leave Block C9 blank.

(1) Code 1A—Unique Source. Enter code 1A if the action was justified pursuant to FAR 6.302–1(b)(1).

(2) Code 1B—Follow-On Contract. Enter code 1B if the action was justified pursuant to FAR 6.302–1(a)(2)(ii) or (iii).

(3) Code 1C—Unsolicited Research Proposal. Enter code 1C if the action was justified pursuant to FAR 6.302–1(a)(2)(i).

(4) Code 1D—Patent/Data Rights. Enter code 1D if the action was justified pursuant to FAR 6.302–1(b)(2).

(5) Code 1E—Utilities. Enter code 1E if the action was justified pursuant to FAR 6.302–1(b)(3).

(6) Code 1F—Standardization. Enter code 1F if the action was justified pursuant to FAR 6.302–1(b)(4).

(7) Code 1G—Only One Source—Other. Enter code 1G if the action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in codes 1A through 1F.

(8) Code 1A—Urgency. Enter code 2A if the action was justified pursuant to FAR 6.302–2.

(9) Code 3A—Particular Sources. Enter code 3A if the action was justified pursuant to FAR 6.302–3(a)(2).

(10) Code 4A—International Agreement. Enter code 4A if the action was justified pursuant to FAR 6.302–4.

(11) Code 5A—Authorized by Statute. Enter code 5A if the action was justified pursuant to FAR 6.302–5(a)(2)(i).

(12) Code 5B—Authorizeds Resale. Enter code 5B if the action was justified pursuant to FAR 6.302–5(a)(2)(ii).

(13) Code 6A—National Security. Enter code 6A if the action was justified pursuant to FAR 6.302–6.

(14) Code 7A—Public Interest. Enter code 7A if the action was taken pursuant to FAR 6.302–7.

(x) BLOCK C10, SUBJECT TO LABOR STANDARDS STATUTES. Enter one of the following codes. When Block B13A is coded 6, leave Block C10 blank.

(A) Code A—Walsh-Healey Act. Enter code A when the contracting action is subject to the provisions of FAR subpart 22.6.

(B) Code C—Service Contract Act. Enter code C when the contracting action is subject to the provisions of the Service Contract Act (see FAR part 37).

(C) Code D—Davis-Bacon Act. Enter code D when the contracting action is subject to the Davis-Bacon Act (see FAR 22.403–1).

(D) Code Z—Not Applicable. Enter code Z when codes A, C, and D do not apply.

(xi) BLOCK C11, COST OR PRICING DATA. Enter one of the following codes when Block B1B is coded A. Otherwise, leave Block C11 blank.

(A) Code Y—Yes—Obtained. Enter code Y when cost or pricing data were obtained (see FAR 15.403–4) and certified in accordance with FAR 15.406–2.

(B) *Code N—No—Not Obtained.* Enter code N when neither code Y nor code W applies.

(C) *Code W—Not Obtained—Waived.* Enter code W when cost or pricing data were not obtained because the requirement was waived (see FAR 15.403–1(c) (4)).

(xii) BLOCK C12, CONTRACT FINANCING. Enter one of the following codes identifying whether or not progress payments (PP), advance payments (AP), or other financing methods were used.

(A) *Code A—FAR 52.232–16.* Enter code A if the contract contains the clause at FAR 52.232–16, Progress payments.

(B) *Code B—Reserved.*

(C) *Code C—Percentage of Completion PP.* Enter code C if the contract provides for progress payments based on percentage or stage of completion, which is only permitted on contracts for construction, for shipbuilding, or for ship conversion, alteration, or repair (see 232.102(e)(2)).

(D) *Code D—Unusual PP or AP.* Enter code D if the contract provides unusual progress payments or advance payments (see FAR subpart 32.4 and 32.501–2).

(E) *Code E—Commercial Financing.* Enter code E if the contract provides for commercial financing payments (see FAR subpart 32.2)

(F) *Code F—Performance-Based Financing.* Enter code F if the contract provides for performance-based financing payments (see FAR subpart 32.10).

(G) *Code Z—Not Applicable.* Enter code Z when codes A through F do not apply.

(xiii) BLOCK C13, FOREIGN TRADE DATA.

(A) The term "United States (U.S.)," as used in Block C13, excludes the Trust Territory of Palau (see 204. 670–1 for definition of United States and outlying areas).

(B) BLOCK C13A, PLACE OF MANUFACTURE. Complete Block C13A only if the contracting action is for a foreign end product or a service provided by a foreign concern. Otherwise, leave Block C13A blank.

(1) Code A—U.S. Enter code A if the contracting action is for—

(i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or inside qualifying countries; or

(ii) Services performed in the United States by a foreign concern.

(2) Code B—Foreign. Enter code B if the contracting action is for—

(i) Any other foreign end product; or

(ii) Services performed outside the United States by a foreign concern.

(C) BLOCK C13B, COUNTRY OF ORIGIN CODE.

(1) Complete Block C13B only if Block C13A is coded A or B. Otherwise, leave Block C13B blank.

(2) Enter the code from FIPS PUB 10, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions, that identifies the country where the foreign product is coming from or where the foreign company providing the services is located. If more than one foreign country is involved, enter the code of the foreign country with the largest dollar value of work under the contract.

(xiv) BLOCK C14, COMMERCIAL ITEMS. Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y if the contract contains the clause at FAR 52.212–4, Contract Terms and Conditions-Commercial Items.

(B) *Code N—No.* Enter code N if code Y does not apply.

(d) *Part D of the DD Form 350.*

(1) Do NOT complete part D if the contracting action is with a government agency, i.e., Block B5B is coded Y.

(2) If the action is an order or call under a Federal schedule, complete only Blocks D1 and D6.

(3) Use the codes in Blocks B13A and B13D to determine whether the codes in Part D will describe the contracting action being reported or the original contract.

(i) Code Part D to describe the contracting action being reported when—

(A) Block B13A is coded, 1, 3, 4, or 9 and Block B13D is coded A or is blank; or

(B) Block B5B is coded N, Block B13A is coded, 8, and Block B13D is coded A or is blank.

(ii) Otherwise, code Part D to describe the original contract. If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, use codes that best describe the original contracting action.

(4) Determine the status of the concern (e.g., size and ownership) by referring to FAR part 19 and DFARS part 219. For an order or call under a Federal schedule, refer to the schedule or comply with departmental instructions.

(5) Complete Part D blocks as follows:

(i) BLOCK D1, TYPE OF CONTRACTOR.

(A) BLOCK D1A, TYPE OF ENTITY. Enter one of the following codes:

(1) Code A—Small Disadvantaged Business Performing in U.S. Enter code A if the contractor is a small disadvantaged business concern as defined in 219.001 and the place of performance is within the United States and outlying areas.

(2) Code B—Other Small Business Performing in U.S. Enter code B if the contractor is a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and outlying areas.

(3) Code C—Large Business Performing in U.S. Enter code C if the contractor is a domestic large business concern and the place of performance is within the United States and outlying areas.

(4) Code D—JWOD Participating Nonprofit Agency. Enter code D if the contractor is a qualified nonprofit agency employing people who are blind or severely disabled (see FAR 8.701) and the place of performance is within the United States and outlying areas.

(5) Code F—Hospital. Enter code F if the contractor is a hospital and the place of performance is within the United States and outlying areas.

(6) Code L—Foreign Concern/Entity. Enter code L if the contractor is a foreign concern, the Canadian Commercial Corporation, or a non-U.S.-chartered nonprofit institution.

(7) Code M—Domestic Firm Performing Outside U.S. Enter code M if the contractor is a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and outlying areas.

(8) Code U—Historically Black College or University or Minority Institution (HBCU/MI). Enter code U if the contractor is an HBCU/MI as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(9) Code V—Other Educational. Enter code V if the contractor is an educational institution that does not qualify as an HBCU/MI and the place of performance is within the United States and outlying areas.

(10) Code Z—Other Nonprofit. Enter code Z if the contractor is a nonprofit institution (defined in FAR 31.701) that does not meet any of the criteria in codes D, F, U, or V and the place of performance is within the United States and outlying areas.

(B) BLOCK D1B, HUBZONE REPRESENTATION. Enter one of the following codes when Block D1A is coded A or B. Otherwise, leave Block D1B blank.

(1) Code Y—Yes. Enter code Y if the contractor represented that it is a HUBZone small business concern (see FAR 19.1303).

(2) Code N—No. Enter code N if code Y does not apply.

(ii) BLOCK D2, REASON NOT AWARDED TO SMALL DISADVANTAGED BUSINESS (SDB). Enter one of the following codes when Block D1A is coded B or C. Otherwise, leave Block D2 blank.

(A) *Code A—No Known SDB Source.*

(B) *Code B—SDB Not Solicited.* Enter code B when there was a known SDB source, but it was not solicited.

(C) *Code C—SDB Solicited/No Offer.* Enter code C when an SDB was solicited but it did not submit an offer, or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SDB Solicited/Offer Not Low.* Enter code D when an SDB offer was not the low offer or an SDB was not willing to accept award of a partial small business set-aside portion of an action at the price offered.

(E) *Code Z—Other Reason.* Enter code Z when an SDB did not receive the award for any other reason or when Block B1B is coded B or C and Block B13A is coded 5.

(iii) BLOCK D3, REASON NOT AWARDED TO SMALL BUSINESS (SB). Enter one of the following codes when Block D1A is coded C. Otherwise, leave D3 blank. (The term "small business" includes all categories of small businesses.)

(A) *Code A—No Known SB Source.*

(B) *Code B—SB Not Solicited.* Enter code B when there was a known small business source, but it was not solicited.

(C) *Code C—SB Solicited/No Offer.* Enter code C when a small business concern was solicited but it did not submit an offer, or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SB Solicited/Offer Not Low.* Enter code D when a small business offer was not the low or most advantageous offer or a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

(E) *Code Z—Other Reason.* Enter code Z when a small business did not receive the award for any other reason or when Block B1B is coded B or C and Block B13A is coded 5.

(iv) BLOCK D4, PREFERENCE PROGRAM.

(A) BLOCK D4A, TYPE OF SB SET-ASIDE. Enter one of the following codes:

(1) Code A—None. Enter code A if there was no small business set-aside (see FAR 19.502). Note that set-asides for historically black colleges and universities and minority institutions (HBCUs/MIs) are not small business set-asides. Use code A for HBCU/MI set-asides and complete Block D4C.

(2) Code B—Total SB Set-Aside. Enter code B if the action was a total set-aside for small business (see FAR 19.502–2), including actions reserved exclusively for small business concerns pursuant to FAR 13.003(b)(1), or if the action resulted from the Small Business Innovation Research Program.

(3) Code C—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business (see FAR 19.502–3).

(4) Code E—Total SDB Set-Aside. Enter code E if the action was a total set-aside for small disadvantaged businesses.

(5) Code F—Very Small Business Set-Aside. Enter code F if the action was a set-aside for very small businesses (see FAR subpart 19.9).

(6) Code Y—Emerging Small Business Set-Aside. Enter code Y if the action was an emerging small business set-aside within a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10).

(B) BLOCK D4B, TYPE OF SDB SET-ASIDE/SDB PREFERENCE. Enter one of the following codes, even if Block D4A is coded E:

(1) Code A—None. Enter code A if no SDB preference was given or award was not to an SDB.

(2) Code B—Section 8(a). Enter code B if the contract was awarded to—

(i) The Small Business Administration under Section 8(a) of the Small Business Act (see FAR subpart 19.8); or

(ii) An 8(a) contractor under the direct award procedures at 219.811.

(3) Code C—Total SDB Set-Aside. Enter code C if the action was an SDB set-aside and award was to an SDB.

(4) Code D—SDB Price Evaluation Adjustment—Unrestricted. Enter code D if the action was unrestricted but an SDB received an award as a result of a price evaluation adjustment (see FAR subpart 19.11).

(5) Code E—SDB Preferential Consideration—Partial SB Set-Aside. Enter code E if the action was a partial set-aside for small business and preferential consideration resulted in an award to an SDB.

(C) BLOCK D4C, HBCU/MI SET-ASIDE. Enter one of the following codes:

(1) Code A—None. Enter code A if the action was not set aside for HBCUs or MIs.

(2) Code B—HBCU or MI—Total Set-Aside. Enter code B if the action was a total set-aside for HBCUs and MIs (see 226.7003).

(3) Code C—HBCU or MI—Partial Set-Aside. Enter code C if the action was a partial set-aside for HBCUs or MIs under a broad agency announcement (see 235.016).

(D) BLOCK D4D. TYPE OF HUBZONE PREFERENCE. Enter one of the following codes:

(1) Code A—None. Enter code A if no preference was given to HUBZone small business concerns.

(2) Code B—Set-Aside. Enter code B if the contractor received the award as a result of a HUBZone set-aside (see FAR 19.1305).

(3) Code C—Price Evaluation Preference. Enter code C if the contractor received the award as a result of a HUBZone price evaluation preference (see FAR 19.1307).

(4) Code D—Sole Source Award. Enter Code D if the contractor received the award as a result of a HUBZone sole source action (see FAR 19.1306).

(E) BLOCK D4E, PREMIUM PERCENT.

(1) Complete Block D4E if Block B1B is coded A and—

(i) Block D4B is coded C, D, or E;

(ii) Block D4C is coded B or C; or

(iii) Block D4D is coded C.

(2) Otherwise, leave Block D4E blank.

(3) Calculate the premium percentage per 219.202–5 and enter it as a three-digit number rounded to the nearest tenth, e.g., enter 7.55% as 076. If no premium was paid, enter three zeros (000).

(v) BLOCK D5, ETHNIC GROUP.

(A) Complete Block D5 if the action is with an SDB. Otherwise, leave Block D5 blank.

(B) Enter the code from the following list that corresponds to the ethnic group marked by the contractor in the solicitation provision at FAR 52.219–1, Small Business Program Representations, or FAR 52.212–3(c).

(1) Code A—Asian-Indian American.

(2) Code B—Asian-Pacific American.

(3) Code C—Black American.

(4) Code D—Hispanic American.

(5) Code E—Native American.

(6) Code F—Other SDB Certified/ Determined by SBA.

(7) Code Z—No Representation.

(vi) BLOCK D6, WOMEN-OWNED BUSINESS. Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y if—

(1) The contractor's response to FAR 52.204–5, 52.212–3(c), or 52.219–1(b) indicates that it is a women-owned business; or

(2) Block B13A is coded 6 and the Federal schedule indicates that the contractor is a women-owned business.

(B) *Code N—No.* Enter code N if—

(1) The contractor's response to FAR 52.204–5, 52.212–3(c), or 52.219–1(b) indicates that it is not a women-owned business; or

(2) Block B13A is coded 6 and the Federal schedule indicates that the contractor is not a women-owned business.

(C) *Code U—Uncertified.* Enter code U if the information is not available because the contractor did not complete the representation under FAR 52.204–5, 52.212–3(c), or 52.19–1(b).

(vii) BLOCK D7, SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM. Enter one of the following codes. When Block B1B is coded B or C and Block B13A is coded 5, leave Block D7 blank.

(A) *Code A—Not a SBIR Program Phase I/II/III.* Enter code A if the action is not in support of a Phase I, II, or III SBIR Program.

(B) *Code B—SBIR Program Phase I Action.* Enter code B if the action is related to a Phase I contract in support of the SBIR Program.

(C) *Code C—SBIR Program Phase II Action.* Enter code C if the action is

related to a Phase II contract in support of the SBIR Program.

(D) *Code D—SBIR Program Phase III Action.* Enter D if the action is related to a Phase III contract in support of the SBIR Program.

(viii) BLOCK D8, SUBCONTRACTING PLAN—SB, SDB, OR HBCU/MI. Enter one of the following codes:

(A) *Code A—Plan Not Included—No Subcontracting Possibilities.* Enter code A if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (see FAR 19.705–2(c)).

(B) *Code B—Plan Not Required.* Enter code B if no subcontracting plan was required (e.g., because the action did not meet the dollar thresholds in FAR 19.702(a)).

(C) *Code C—Plan Required, Incentive Not Included.* Enter code C if the action includes a subcontracting plan, but does not include additional incentives (see FAR 19.708(c)).

(D) *Code D—Plan Required, Incentive Included.* Enter code D if the action includes a subcontracting plan and also includes additional incentives (see FAR 19.708(c) and 219.708(c)).

(ix) BLOCK D9, SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM. Enter one of the following codes. When Block B13A is coded 5 or Block B13D is coded B, C, D, E, F, or G and the original action was awarded before the program began, enter code N in Block D9. When Block B1B is coded B or C and Block B13A is coded 5, enter code N in Block D9.

(A) *Code Y—Yes.* Enter code Y if this is an action with a U.S. business concern, in either the four designated industry groups or the ten targeted industry categories under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10 and DFARS subpart 219.10), where the principal place of performance is in the United States or outlying areas.

(B) *Code N—No.* Enter code N if code Y does not apply.

(x) BLOCK D10, SIZE OF SMALL BUSINESS.

(A) Complete Block D10 only when Block D9 is coded Y and the contractor is a small business (Block D1 is coded A or B). Otherwise, leave Block D10 blank.

(B) Enter one of the following codes for the size of the business (number of employees or average annual gross revenue) as represented by the contractor in the solicitation provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program:

(1) Code A—50 or fewer employees.
(2) Code B—51–100 employees.
(3) Code C—101–250 employees.
(4) Code D—251–500 employees.
(5) Code E—501–750 employees.
(6) Code F—751–1,000 employees.
(7) Code G—Over 1,000 employees.
(8) Code M—$1,000,000 or less.
(9) Code N—$1,000,001–$2,000,000.
(10) Code P—$2,000,001–$3,500,000.
(11) Code R—$3,500,001–$5,000,000.
(12) Code S—$5,000,001–$10,000,000.
(13) Code T—$10,000,001–$17,000,000.
(14) Code U—Over 17,000,000.

(xi) BLOCK D11, EMERGING SMALL BUSINESS.

(A) Complete this block only if Block D9 is coded Y and the contracting action is in one of the four designated industry groups, not one of the targeted industry categories. Otherwise, leave Block D11 blank.

(B) Enter one of the following codes:

(1) Code Y—Yes. Ener code Y if the contractor represents in the provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, that it is an emerging small business concern.

(2) Code N—No. Enter code N if code Y does not apply.

(e) *Part E of the DD Form 350.* Part E gathers data on specialized items that may not become permanent reporting elements.

(1) BLOCK E1, CONTINGENCY, HUMANITARIAN, OR PEACEKEEPING OPERATION.

(i) Enter code Y in Block E1 if the contracting action exceeds $200,000 and is in support of—

(A) A contingency operation as defined in 10 U.S.C. 101(a)(13); or

(B) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7).

(ii) Otherwise, leave Block E1 blank.

(2) BLOCK E2, COST ACCOUNTING STANDARDS CLAUSE. Enter code Y in Block E2 if the contract includes a Cost Accounting Standards clause (see FAR Part 30). Otherwise, leave Block E2 blank.

(3) BLOCK E3–BLOCK E8. Reserved.

(f) *Part F of the DD Form 350.* Part F identifies the reporting official.

(1) BLOCK F1, NAME OF CONTRACTING OFFICER OR REPRESENTATIVE. Enter the name (Last, First, Middle Initial) of the contracting officer or representative.

(2) BLOCK F2, SIGNATURE. The person identified in Block F1 must sign.

(3) BLOCK F3, TELEPHONE NUMBER. Enter the telephone number (with area code) for the individual in Block F1. Installations with Defense Switched Network (NSN) must enter the DSN number.

(4) BLOCK F4, DATE. Enter the date that the DD Form 350 Report is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

6. Section 253.204–71 is amended by revising paragraph (g) to read as follows:

253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

* * * * *

(g) *Section, E, Selected Socioeconomic Statistics.*

(1) BLOCK E1, SMALL BUSINESS (SB) SET-ASIDE.

(i) Enter the total number and dollar value of contracting actions that were small business set-aside actions, including awards to SDBs reported in Blocks E2c and E2d. Do not include orders under Federal schedules that are reported in Block E3 or E5.

(ii) If the action is an emerging small business set-aside (see FAR 19.1006(c)), use the most appropriate sub-block.

(iii) Enter the subtotals for the number and total dollar value of actions for—

(A) Block E1a, SB Set-Aside Using Simplified Acquisition procedures. Enter actions pursuant to FAR 13.003(b)(1).

(B) Block E1b, SB Set-Aside. Enter actions pursuant to FAR 19.502.

(2) BLOCK 32, SMALL DISADVANTAGED BUSINESS (SDB) ACTIONS.

(i) Enter the total number and dollar value of actions that were SDB actions. Do not include orders under Federal schedules that are reported in Block E3 or E5.

(ii) Enter the subtotals for the number and dollar value for—

(A) Block E2a, Through SBA—Section 8(a). Enter actions with the Small Business Administration pursuant to Section 8(a) of the Small Business Act (see FAR subpart 19.8) or under the 8(a) direct award procedures at 219.811.

(B) Block E2b, SDB Set-Aside/SDB Preference/Evaluation Adjustment. Enter actions resulting from—

(1) A set-aside for SDB concerns;

(2) Application of an SDB price preference or evaluation adjustment (see FAR subpart 19.11); or

(3) SDB preferential consideration.

(C) Block E2c, SB Set-Aside Using Simplified Acquisition Procedures. Enter actions pursuant to FAR 13.003(b)(1) when award is to an SDB, but a preference or evaluation adjustment was not applied.

(D) Block E2d, SB Set-Aside. Enter Actions under FAR 19.502 when award is to an SDB, but a preference or evaluation adjustment was not applied nor was preferential consideration given.

(E) Block E2e, Other. Enter awards to SDB concerns when award is to an SDB not reported in Blocks E2a through E2d.

(3) BLOCK E3, SDB FEDERAL SCHEDULE ORDERS. Enter the total number and dollar value of contracting actions that were orders under Federal schedules with SDBs.

(4) BLOCK E4, WOMEN-OWNED SMALL BUSINESS. Enter the total number and dollar value of contracting actions with women-owned small businesses (see FAR 19.304(a)). Do not include orders under Federal schedules that are reported in Block E5.

(5) BLOCK E5, WOMEN-OWNED SMALL BUSINESS FEDERAL SCHEDULE ORDERS. Enter the total number and dollar value of contracting actions that were orders under Federal schedules with women-owned small businesses.

(6) BLOCK E6, HBCU/MI. Enter the total number and dollar value of contracting actions with HBCU/MIs pursuant to subpart 226.70.

(7) BLOCK E7, JWOD PARTICIPATING NONPROFIT AGENCIES. Enter the total number and dollar value of contracting actions with qualified nonprofit agencies employing people who are blind or severely disabled for supplies or services from the Procurement List pursuant to FAR subpart 8.7.

(8) BLOCK E8, EXEMPT FROM SMALL BUSINESS ACT REQUIREMENTS. Enter the total number and dollar value of contacting actions exempt from the set-aside requirements of the Small Business Act (see FAR 19.502–1).

(9) BLOCK E9, HUBZONE.

(i) Enter the total number and dollar value of contracting actions that were awarded to HUBZone small business concerns in each of the following categories:

(A) Block E9a, HUBZone Set-Aside.

(B) Block E9b, HUBZone Price Evaluation Preference.

(C) Block E9c, HUBZone Sole Source.

(D) Block E9d, HUBZone Concern-Other. Use this category when the award is to a HUBZone small business concern and Blocks E9a, E9b, and E9c do not apply.

(ii) Do not include orders under Federal schedules that are reported in Block E3 or E5. Do not total the values for Block E9.

* * * * *

[FR Doc. 99–21418 Filed 8–18–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 396

Inspection, Repair, and Maintenance

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 200 to 399, revised as of Oct. 1, 1998, on page 900, § 396.19 is corrected by reinstating the correct text of paragraph (b) to read as follows:

§ 396.19 Inspector qualifications.

* * * * *

(b) Evidence of that individual's qualifications under this section shall be retained by the motor carrier for the period during which that individual is performing annual motor vehicle inpspections for the motor carrier, and for one year thereafter. However, motor carriers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

[FR Doc. 99–55525 Filed 8–18–99; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 64, No. 160
Thursday, August 19, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV99–984–2 PR]

Walnuts Grown in California; Reporting Walnuts Grown Outside of the United States and Received by California Handlers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the administrative rules and regulations of the Federal marketing order for California walnuts (order) to require handlers to report receipts of walnuts grown outside of the United States. This proposal also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the order. The order regulates the handling of walnuts grown in California and is administered locally by the Walnut Marketing Board (Board). Requiring handlers to report to the Board receipts of walnuts grown outside of the United States would allow the Board to have better information on the total available supply of walnuts within California, which includes both California and foreign product. This would facilitate program administration.

DATES: Comments must be received by October 18, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket.clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on revising the order's administrative rules and regulations to require handlers to report to the Board receipts of walnuts grown outside of the United States. This would allow the Board to have better information on the total available supply of walnuts within California, which includes both California and foreign product, which would facilitate program administration. This action was unanimously recommended by the Board at a meeting on September 11, 1998.

Section 984.76 of the order provides authority for the Board, with the approval of the Secretary, to require handlers to furnish reports and information to the Board as needed to enable the Board to perform its duties under the order. The Board meets during the season to make decisions on various programs authorized under the order. These programs include quality control (minimum grade and size requirements for both inshell and shelled walnuts placed into channels of commerce), volume regulation, and projects regarding production research, and marketing research and development.

The Board would like to have better information on the total supply of walnuts within California, which includes both California and foreign product. The Board would use this information in its marketing policy deliberations each fall when it reviews the crop estimate, handler carryover, and other factors to determine whether volume regulation would be appropriate. In addition, the Board has some concerns that, particularly in short crop years when handlers may import more walnuts to meet customer demands, imported walnuts could be

included in handler inventory reports of California walnuts. Accurate information regarding the supply of walnuts within California is needed by the Board in its administration of the order.

According to the National Agricultural Statistics Service, the 10-year average annual production of California walnuts is 235,000 inshell tons. Bureau of Census data indicates that the 10-year average annual import figure for walnuts is 1,036.5 shelled tons. However, during short crop years in California such as the 1992–93 (203,000 inshell tons) and 1996–97 (208,000 inshell tons) seasons, imports increased to 8,046 and 5,806 shelled tons, respectively.

Thus, the Board recommended that handlers be required to report to the Board receipts of walnuts grown outside of the United States. This report, WMB Form No. 7, would be submitted to the Board four times per year as follows: On or before November 5 for such walnuts received during the period August 1 to October 31; on or before February 5 for such walnuts received during the period November 1 to January 31; on or before May 5 for such walnuts received during the period February 1 to April 30; and on or before August 5 for such walnuts received during the period May 1 to July 31. The report would include the quantity of such walnuts received, country of origin, and whether such walnuts were inshell or shelled.

The Board also recommended that, with each report, the handler submit a copy of a product tag issued by the Dried Fruit Association of California (DFA) for compliance purposes. The DFA is a private agency designated under the marketing order to provide inspection services for handlers to ensure that California walnuts meet minimum grade and size requirements in effect under the order. The product tag would indicate the name of the person from whom the walnuts were received, the date the walnuts were received by the handler, the number of containers and U.S. Custom's Service entry number, whether the product is inshell or shelled, the quantity of walnuts, country of origin, the name of the DFA inspector who issued the tag, and the date such tag was issued. The Board believes product tags are necessary to verify handler receipt reports for imported walnuts. Accordingly, a new § 984.476 is proposed to be added to the orders' administrative rules and regulations.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and approximately 50 handlers subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of producers of California walnuts may be classified as small entities.

During the 1997–98 season, as a percentage, 33 percent of the handlers shipped over 2.4 million kernelweight pounds of walnuts, and 67 percent of the handlers shipped under 2.4 million kernelweight pounds of walnuts. Based on an average price of $2.10 per kernelweight pound at the point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule would add a new § 984.476 to the order's administrative rules and regulations which would require handlers to report to the Board receipts of walnuts grown outside of the United States. This would allow the Board to have better information on the total available supply of walnuts, including California and foreign product, which would facilitate program administration. Authority for requiring handlers to submit this information to the Board is provided in § 984.76 of the order.

Regarding the impact of the proposed action on affected entities, this rule should impose minimal additional costs. The Board estimates that about six handlers have imported walnuts over the past few years. Such handlers would be required to submit an additional report to the Board four times per year along with tags issued by the DFA verifying receipts of foreign product. The DFA currently provides inspection services for all handlers of California walnuts and would be available at no additional cost to issue product tags to handlers receiving imports. Handlers would then submit these tags to the Board for verification purposes.

An alternative to the proposed action would be to not collect information from handlers on receipts of imported walnuts. However, as previously mentioned, the Board would like to have better information on the total available supply of walnuts within California, which includes both California and foreign product. The only way this information can be obtained by the Board is to collect it from handlers. This information would facilitate program administration by improving the Board's base of information from which to make decisions.

The Board also recommended that a system be established for monitoring walnuts grown outside of the United States that are received by California handlers. Under the proposed monitoring system, DFA inspectors would check whether or not foreign product had been inspected and met the requirements of section 8e of the Act. Under section 8e, whenever certain specified commodities are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestic commodity. Walnuts are included under section 8e, and thus importers of walnuts are required to have such walnuts inspected. However, it is the USDA's responsibility to ensure that imported walnuts meet the requirements of section 8e. Thus, we are not proceeding with this recommendation.

Finally, the Board considered whether it would be useful to collect information on walnuts grown outside of California, but within the United States. However, Board members agreed that the amount of such walnuts was so small, it was not worth requiring handlers to report such information.

This action would impose some additional reporting and recordkeeping burden on handlers that receive walnuts grown outside of the United States. It is estimated that six handlers may import walnuts during the season. Such handlers would be required to submit a receipt report to the Board four times per year. It is estimated that it would take such handlers 5 minutes to complete each report. Thus, the additional annual burden should total no more than 2 hours for the industry. The information would be collected on WMB Form No. 7. That form is being submitted to the Office of Management and Budget (OMB) for approval under OMB Control No. 0581–0178. As with other similar marketing order programs,

reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has identified one relevant Federal rule regarding requirements for walnuts grown outside of the United States. As previously stated, walnuts are included under section 8e. Thus, importers of walnuts are required to have such walnuts inspected by the USDA's inspection service. Importers whose walnuts meet section 8e requirements do not have to submit any paperwork to the USDA. However, importers whose walnuts fail section 8e requirements, or whose walnuts are exempt from section 8e because such walnuts are so immature that they cannot be used for drying and sale as dried walnuts (green walnuts), or are being sent to designated outlets (animal feed, processing, or charity) have to submit paperwork to the USDA. However, only a small amount of information requested by the USDA in these instances or by the Board through this rule, would be duplicative.

In addition, the Board's meeting on September 11, 1998, where this action was deliberated was a public meeting widely publicized throughout the walnut industry. This issue was also deliberated at an earlier Board meeting on February 2, 1998, and at a Grades and Standards Subcommittee meeting on June 5, 1998. All interested persons were invited to attend these meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request a revision to a currently approved information collection for vegetable and specialty crop marketing orders, which includes the Federal marketing order for California walnuts.

Title: Vegetable and Specialty Crop Marketing Orders.

OMB Number: 0581–0178.

Expiration Date of Approval: July 31, 2000.

Type of Request: Intent to revise a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California walnut marketing order program, which has been operating since 1948.

On September 11, 1998, the Board unanimously recommended revising the order's administrative rules and regulations to require handlers to report to the Board receipts of walnuts grown outside of the United States. This information would be reported on WMB Form No. 7. This notice concerns this report, in addition to the accompanying regulation previously discussed regarding requiring this report be submitted by handlers to the Board.

The Board would like to have better information on the total supply of walnuts available within California, which includes both California and foreign product. The Board would use this information in its marketing policy deliberations each fall when it reviews the crop estimate, handler carryover, and other factors to determine whether volume regulation would be appropriate. In addition, the Board has some concerns that, particularly in short crop years when handlers may import more walnuts to meet customer demands, imported walnuts could be included in handler inventory reports of California walnuts. Accurate information regarding the supply of walnuts within California is needed by the Board in its administration of the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: California walnut handlers who receive walnuts grown outside of the United States.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 2 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0178 and the Vegetable and Specialty Crop Marketing Orders, and be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 984.476 is added to read as follows:

§ 984.476 Report of walnut receipts from outside of the United States.

Each handler who receives walnuts from outside of the United States shall file with the Board, on WMB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before November 5 for such walnuts received during the period August 1 to October 31; on or before February 5 for such walnuts received during the period November 1 to January 31; on or before May 5 for such walnuts received during the period February 1 to April 30; and on or before August 5 for such walnuts received during the period May 1 to July 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled. With each report, the handler shall submit a copy of a product tag issued by a DFA of California inspector for each receipt of such walnuts that includes the name of the person from whom such walnuts were received, the date such walnuts were received by the handler, the number of containers and the U.S. Custom's Service entry number,

whether such walnuts are inshell or shelled, the quantity of such walnuts received, the country of origin for such walnuts, the name of the DFA of California inspector who issued the product tag, and the date such tag was issued.

Dated: August 17, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–21666 Filed 8–18–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes. That action would have required replacement of the existing retaining bolt of the attendant seat lap belt with a new bolt and a washer. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data indicating that the proposed action has already been accomplished on all affected airplanes. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2207; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 6, 1997 (62 FR 31020). The proposed rule would have required replacement of the existing retaining bolt of the attendant seat lap belt with a new bolt and a washer. That action was prompted by reports indicating that, due to a missing washer, the belt end fittings of the double flight attendant seats can become loose. The proposed actions were intended to ensure that a washer between the bolt head and bushing is installed. A missing washer could allow movement of the belt end fittings, which can cause the restraint belts to release and, consequently, result in injury to the flight attendants.

Actions Since Issuance of the NPRM

Since the issuance of that NPRM, the FAA has received a comment from the airplane manufacturer indicating that the replacement of the existing retaining bolt of the attendant seat lap belt with a new bolt and a washer, in accordance with Boeing Service Bulletin 767–25–0217, dated January 13, 1994, has been accomplished on all affected airplanes. Though the manufacturer did not provide documentation to support its statement, the FAA also has received substantiating documentation from each affected operator that the service bulletin has been incorporated on its fleet of airplanes. In the case of one operator, the FAA contacted the Principal Maintenance Inspector (PMI) to determine whether the replacement had been accomplished on that operator's affected airplanes. The PMI verified that the service bulletin had been accomplished on all affected airplanes in that operator's fleet.

In addition, the airplane manufacturer has also updated the Illustrated Parts Catalog to include the washer that corrects the unsafe condition in the seat assembly; therefore, the unsafe condition is not likely to be reintroduced in the future.

FAA's Conclusions

Based upon the FAA's review of the data submitted by the affected operators and the airplane manufacturer, the FAA has determined that the previously identified unsafe condition no longer exists. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 96–NM–206–AD, published in the **Federal Register** on June 6, 1997 (62 FR 31020), is withdrawn.

Issued in Renton, Washington, on August 13, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21574 Filed 8–18–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–351–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–300, –400 and –500 series airplanes. This proposal would require replacement, with new parts, of the existing actuators or the rod ends on the existing actuators at wing leading edge slat positions 1, 2, 5, and 6. This proposal is prompted by reports indicating that the rod ends on several leading edge slat actuators have fractured. The actions specified by the proposed AD are intended to prevent fatigue cracking of the rod ends of the leading edge slat actuators, which could result in uncommanded deployment of the wing leading edge slat and consequent reduced controllability of the airplane.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–351–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00

p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–351–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–351–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fractured rod ends on several actuators for the wing leading edge slats on Boeing Model 737–300, –400, and –500 series airplanes. One reported case of an actuator rod end fracture resulted in an air turnback after the airplane experienced uncommanded roll during flight. It has been determined that these fractures are the result of fatigue cracking. Failure of the actuator rod end, under certain flight conditions, could result in an uncommanded deployment of the affected wing leading edge slat and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998, which describes procedures for replacement of the existing wing leading edge slat actuator with a new actuator, or replacement of the rod end on the existing leading edge slat actuator. Accomplishment of either of these actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

There are approximately 1,897 airplanes of the affected design in the worldwide fleet. The FAA estimates that 720 airplanes of U.S. registry would be affected by this proposed AD.

Replacement of the leading edge slat actuator with an actuator that has a new rod end is proposed as one option for compliance with this AD action. Replacement of the actuators on slat positions 1, 2, 5, and 6 would take approximately 3 hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $32,252 per airplane. Based on these figures, the cost impact of the installation of actuators with new rod ends as proposed as an option by this AD on U.S. operators is estimated to be $32,432 per airplane.

In lieu of installation of an actuator with a new rod end, this proposed AD provides an option for replacement of the rod ends on the existing actuators. This action would take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would cost between approximately $5,928 and $21,544 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $6,168 and $21,784 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–351–AD.

Applicability: Model 737–300, –400, and –500 series airplanes; line numbers 1001 through 3063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent fatigue cracking of the rod ends on the leading edge slat actuators, which could result in uncommanded deployment of the wing leading edge slat and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 24 months after the effective date of this AD: Replace the leading edge slat actuator with an actuator that has a new rod end, or replace the rod end on the existing slat actuator with a new rod end, at slat positions 1, 2, 5, and 6; in accordance with the Accomplishment Instructions in Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998.

Spares

(b) As of the effective date of this AD, no person shall install any part having a part number identified in the "Existing Part Number" column of Section 2.E. of Boeing Alert Service Bulletin 737–27A1211, dated November 19, 1998, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 13, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21575 Filed 8–18–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC59

Valuation of Federal Geothermal Resources

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In response to deregulation of the electric power market in California and resulting changes to the geothermal industry, the Minerals Management Service (MMS) is considering amending its regulations regarding the valuation, for royalty purposes, of Federal geothermal resources used to generate electricity. MMS specifically seeks comments on the use of the netback procedure to value geothermal resources that are not sold under arm's-length contracts, whether the existing netback procedure should be modified, and whether there are reasonable alternatives to netback valuation. MMS also seeks comments on any other aspects of the rules including the rules governing valuation of resources used in direct utilization processes, particularly alternatives for valuing those resources that are not subject to a sales transaction.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: The mailing address for written comments regarding geothermal valuation issues is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov. For additional details, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, MMS, Royalty Management Program, at telephone (303) 231–3432, FAX (303) 231–3385, or e-mail david.guzy@mms.gov.

SUPPLEMENTARY INFORMATION:

Public Comment Procedure: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, CO 80225–0165. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. You may also comment via the Internet to RMP.comments@mms.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn.: RIN 1010–AC59" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303)231–3432, FAX (303)231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

I. Background

The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025), requires the lessee to pay royalty to the United States on the amount or value of steam, or any other form of heat or energy derived from production under the lease and sold or used by the lessee or reasonably susceptible to sale or use by the lessee. Federal geothermal leases

reserve to the Secretary considerable discretion to determine value for royalty purposes. As steward of the Nation's public resources, the Secretary is responsible for ensuring that the public receives a fair return—in the form of royalties—in exchange for the lessee's exclusive right and privilege to extract and use geothermal resources produced from Federal leases. The value of geothermal resources for royalty purposes is defined by regulation in 30 CFR part 206. The purpose of this Advance Notice of Proposed Rulemaking is to solicit comments on possible new methods of determining the royalty value of Federal geothermal resources. We also seek comments on other aspects of the geothermal rules. We will consider the comments received in response to this Advance Notice in developing a proposed rulemaking, which MMS would publish in the **Federal Register**.

We are specifically requesting comments on the netback valuation procedure defined in 30 CFR 206.353 and 206.354 (1998) and whether there are reasonable alternatives to that procedure. The netback procedure derives the value of the geothermal resource by subtracting the lessee's costs of generating and transmitting electricity from the lessee's revenue received for the sale of electricity. The amount remaining from this calculation is the value of the geothermal resource upon which royalty is due. (You can find a detailed description of the netback procedure in MMS's "Geothermal Payor Handbook-Product Valuation" at www.rmp.mms.gov/custserv/pubserv/handbook.htm.) Netback is now the most widely used method to value Federal geothermal resources.

Application of the netback method in the deregulated California electric power market has resulted in a dramatic decrease in geothermal royalty payments. When the current geothermal rules were adopted in 1992, electricity generated by geothermal resources was subject to incentive pricing. Because of this incentive and the inherent risk involved in developing geothermal resources, the Department allowed a generous rate of return in the netback calculation. However, this incentive pricing is no longer being paid, and we are concerned about whether twice the Standard and Poor's BBB industrial bond rate is still the appropriate rate of return to use in the netback calculation.

Over the past 2 years, State and county agencies that share in this royalty are seeing losses in royalty revenue from 50 percent to over 95 percent. County officials have told MMS that they do not have a ready source of replacement funds. Members of Congress have also become alarmed at the declining royalties and have asked us to expeditiously reevaluate our geothermal valuation regulations to assure taxpayers a fair return for their resources.

II. Goals of Valuation Alternatives

The goals of any proposed alternative to the current netback procedure, whether a modification to the existing netback procedure or a completely different valuation method, should be twofold. First, the proposed method should derive a value of the resource that reflects its market value. Second, the proposed method should be easy to apply and readily verifiable.

To achieve these goals, we pose the following questions:

1. Should we modify the netback procedure and, if so, how?

2. Should we abandon the netback procedure in favor of an alternative valuation method?

3. What are the alternative methods to value geothermal resources that are not subject to a sales transaction? (Note that reliance on comparable arm's-length sales is not a viable alternative because in most cases there are no arm's-length sales of Federal geothermal resources that could be used to establish value.)

If you propose an alternative valuation method, please describe it in sufficient detail to provide an understanding of its workings and effects. Please use examples where possible.

III. Possible Alternative Valuation Methods

As a starting point for discussion, we request comments on the following possible alternatives:

(a) Modification of the existing netback valuation procedure.

Two areas where the existing netback procedure might be modified are: (1) reducing the rate of return on capital investments; and (2) reducing the limits on deductions. The current rate of return, twice the Standard and Poor's industrial BBB bond rate, yields an annual return on power plant and transmission investments of about 15 percent at current rates. We ask what rationale exists to reduce this rate and, if so, to what standard (for example, 1 × BBB, 1.5 × BBB, another index, etc.).

MMS currently limits the combined generating and transmission deductions to 99 percent of the lessee's monthly gross proceeds for the sale of electricity. Should this limit be reduced and, if so, to what amount?

We are also interested in suggestions for other modifications to the netback procedure.

(b) A "rate-of-return" method.

This method would use discounted cash flow analyses (DCFs) to determine a resource value that yields the same rate of return for both the resource recovery and power plant portions of the geothermal project. This would ensure that, for royalty purposes, an equal portion of the total return from a combined geothermal resource recovery and electricity generating operation would be allocated to the resource recovery activity.

The lessee would prepare separate DCFs for both the resource recovery and power plant portions of the project using its actual costs associated with developing and operating each portion. DCFs for the resource recovery would assume a range of geothermal resource values to represent expected income for the field. DCFs for the power plant would assume a range of geothermal resource values to represent the cost of purchasing the resource, and a range of electricity prices to represent expected income.

Starting with a given electricity price for the power plant, the lessee would repeat the DCFs for each project portion over the range of resource values until the rate of return for the resource recovery operation equals the rate of return for the power plant. The lessee would repeat the DCFs over the range of expected electricity prices to determine the relationship between electricity price and resource value. The value of the geothermal resource equals the cost of purchasing the geothermal resource when the rates of return for both portions are the same.

We request comments and analyses of the feasibility of using the "rate-of-return" method for valuing geothermal resources. We also ask for suggested improvements to this method.

(c) A "percentage-of-revenue" method.

This method would set the value of the geothermal resource as a percentage of the electricity value. In most cases the electricity value would be the lessee's total revenue received for the sale of electricity and other generating services. We ask what percentages are reasonable and how they are determined. We also ask whether the percentages should be fixed or whether they should vary with time or price of electricity, such as a step or sliding scale.

Again, we offer these alternatives as a starting point for discussion. We invite you to suggest other valuation methods not presented here.

IV. Valuation of Resources Used in Direct Utilization Processes

We also solicit comments on the valuation standards for direct utilization at 30 CFR 206.355, particularly options for the "alternative fuel" method used to value geothermal resources that are not subject to a sales transaction. Proposed alternative methods should satisfy the valuation goals discussed above.

V. Other Comments

MMS also seeks comments on any other aspects of the rules.

Dated: August 13, 1999.

Shayla Freeman Simmons,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 99–21506 Filed 8–18–99; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009–0143b; FRL–6420–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revisions for Six California County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM) emissions from open burning, incinerator burning, and orchard heater sources. The intended effect of this action is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this proposed approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by September 20, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Kern County Air Pollution Control District, 2700 "M" Street, Suite 290, Bakersfield, CA 93301

Northern Sierra Air Quality Management District, 540 Searles Avenue, Nevada City, CA 95959

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, CA 96097

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726

Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080

Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

This document concerns the following rules submitted by the California Air Resources Board:

- Kern County Air Pollution Control District Rule 416, Open Burning (submitted on October 18, 1996).
- Kern County Air Pollution Control District Rule 417, Agricultural Burning (submitted on October 18, 1996).
- Northern Sierra Air Quality Management District Rules 302 to 312, Open Burning (submitted on October 25, 1991).
- San Joaquin Valley Unified Air Pollution Control District Rule 4302, Incinerator Burning (submitted on May 24, 1994).
- San Joaquin Valley Unified Air Pollution Control District Rule 4303, Orchard Heaters (submitted on May 24, 1994).
- Siskiyou County Air Pollution Control District Rule 4.3, Non-Agricultural Burning (submitted on March 26, 1990).
- Tehema County Air Pollution Control District Rule 3.12, Wildland Vegetation Management Burning, (submitted on May 13, 1991).
- Tuolumne County Air Pollution Control District Rules 302 to 310, Open Burning (submitted on March 26, 1990).

For further information, please see the information provided in the Direct Final action that is located in the Rules section of this **Federal Register**.

Dated: July 30, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–21165 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 126–163b; FRL–6420–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District; Ventura County Air Pollution Control District; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the California State Implementation Plan (SIP). Two rules to be approved into the SIP control volatile organic compound (VOC) emissions from storage tank cleaning and degassing operations and from components at crude oil and natural gas production and processing facilities. Two rules to be removed from the SIP control VOC emissions from pumps, compressors, and relief valves.

The intended effect of this action is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct

final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by September 20, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District's (SCAQMD) Rule 1149, Storage Tank Cleaning and Degassing and Ventura County Air Pollution Control District's (VCAPCD) Rule 74.10, Components at Crude Oil and Natural Gas Production and Processing Facilities. The rules being removed from the SIP are Mojave Desert Air Quality Management District's (MDAQMD) Rules 466, Pumps and Compressors and 467, Safety Pressure Relief Valves. These rules were submitted by the California Air Resources Board (CARB) to EPA on October 13, 1995 (Rule 1149), June 23, 1998 (Rule 74.10), and November 30, 1994 (Rules 466 and 467). For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: July 30, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–21163 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 172–0157b; FRL–6420–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision: Bay Area Air Quality Management District, Kern County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from the miscellaneous metal part and magnet wire coating industries. The intended effect of this action is to regulate emissions of VOCs according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by September 20, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

South Coast Air Quality Management District, 218 East Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION: This document concerns the following rules:

—Bay Area Air Quality Management District (BAAQMD)—Rule 8–26, Magnet Wire Coating Operations;

—Kern County Air Pollution Control District (KCAPCD)—Rule 410.4, Surface Coating of Metal Parts and Products;

—Monterey Bay Unified Air Pollution Control District (MBUAPCD)—Rule 434, Coating of Metal Parts and Products; and,

—South Coast Air Quality Management District (SCAQMD)—Rule 1107, Coating of Metal Parts and Products.

These rules were submitted by the California Air Resources Board (CARB) to EPA on July 23, 1996 (BAAQMD Rule 8–26), May 10, 1996 (KCAPCD 410.4), March 3, 1997 (MBUAPCD Rule 434), February 16, 1999 (SCAQMD Rule 1107).

For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: July 30, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–21161 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD077–3034b; FRL–6418–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Reinforced Plastics Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing reasonably available control technology (RACT) for Volatile Organic Compound (VOC) emissions from reinforced plastic manufacturing. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A description of the state submittal and EPA's evaluation are in the Technical Support Document (TSD) prepared in support of this rulemaking. A copy is available, upon request, from the Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 20, 1999.

ADDRESSES: Written comments should be addressed to Walter Wilkie, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Walter Wilkie (215) 814–2150 at the EPA Region III address above, or by e-mail at wilkie.walter@.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, please see the information in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 2, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–21159 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–6422–9]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the San Luis Obispo County Air Pollution Control District (San Luis Obispo County APCD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts, contained in the Technical Support Document, is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments must be received on or before September 20, 1999.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air–4), Attn.: Docket No. A–93–16 Section XVIII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

DOCKET: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XVIII. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (Air–4), Attn.: Docket No. A–93–16 Section XVIII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn.: Air Docket No. A–93–16 Section XVIII, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55 [1], which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rule submitted by San Luis Obispo County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the San Luis Obispo County APCD is designated as the COA:

Rule 105 Definitions (Revised 1/24/96)
Rule 201 Equipment Not Requiring a Permit (Revised 4/26/95)
Rule 302 Schedule of Fees (Revised 6/18/97)
Rule 405 Nitrogen Oxides Emission Standard, Limitations, and Prohibitions (Revised 11/16/93)
Rule 407 Organic Material Emission Standards (Revised 5/22/96)
Rule 411 Surface Coating of Metal Parts and Products (Revised 1/28/98)
Rule 419 Petroleum Pits, Ponds, Sumps, Well Cellars, and Wastewater Separators (Revised 7/12/94)
Rule 425 Storage of Volatile Organic Compounds (Adopted 7/12/94)
Rule 427 Marine Tanker Loading (Adopted 4/26/95)
Rule 429 Oxides of Nitrogen and Carbon Monoxide Emissions from Electric Power Generation Boilers, (Revised 11/12/97)
Rule 430 Control of Oxides of Nitrogen from Industrial, Institutional, Commercial Boilers, Steam Generators, and Process Heaters (Adopted 7/26/95)
Rule 431 Stationary Internal Combustion Engines (Adopted 11/13/96)
Rule 601 New Source Performance Standards (Revised 5/28/97)

1. *The following San Luis Obispo County APCD rule will be removed from part 55:*

Rule 104 Action in Areas of High Concentration (Repealed 3/26/97)

B. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the Ventura County APCD is designated as the COA.

1. *The following rules were submitted as revisions to existing requirements:*

Rule 42 Permit Fees (Revised 6/22/99)
Rule 64 Sulfur Content of Fuels (Revised 4/13/99)

2. *The following new rules were submitted:*

Rule 57 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)

3. *The following rule was submitted but will not be incorporated into part 55:*

Rule 221 Transportation Conformity (Adopted 6/8/99)

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 6, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(E) and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(E) *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to CFR Part 55 is proposed to be amended by revising paragraph (b)(5) and (8) under the heading "California" to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources*, July 12, 1999:

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 Action in Areas of High Concentration (Repealed 3/26/97)
Rule 105 Definitions (Adopted 1/24/96)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Revised 4/26/95)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except B. (Adopted 11/5/91)
Rule 204 Requirements, except B.3. and C. (Adopted 8/10/93)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 8/10/93)
Rule 302 Schedule of Fees (Adopted 6/18/97)
Rule 305 Fees for Major Non-Vehicular Sources (title change—Adopted 9/15/92)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emissions (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Revised 12/6/76)

Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/16/93)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 5/22/96)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/28/98)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 2/9/93)
Rule 419 Petroleum Pits, Ponds, Sumps, Well Cellars, and Wastewater Separators (Revised 7/12/94)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 425 Storage of Volatile Organic Compounds (Adopted 7/12/94)
Rule 427 Marine Tanker Loading (Adopted 4/26/95)
Rule 429 Oxides of Nitrogen and Carbon Monoxide Emissions from Electric Power Generation Boilers, (Revised 11/12/97)
Rule 430 Control of Oxides of Nitrogen from Industrial, Institutional, Commercial Boilers, Steam Generators, and Process Heaters (Adopted 7/26/95)
Rule 431 Stationary Internal Combustion Engines (Adopted 11/13/96)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 5/28/97)

* * * * *

(8) The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Appendix II–B.—Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 6/22/99)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter—Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter—Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 6/13/95)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV-A.—Soap Bubble Tests (Adopted 12/86)

Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Source Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)

* * * * *

[FR Doc. 99–21315 Filed 8–18–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MO 066–1080b; FRL–6421–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators (HMIWIs); State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the state of Missouri's section 111(d) plan for controlling emissions from existing HMIWIs. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act. The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to that rule, no further activity is contemplated, and the direct final rule will become effective. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 20, 1999.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: August 4, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–21310 Filed 8–18–99; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6419–6]

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes amendments to the "National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning" promulgated in the **Federal Register** on December 2, 1994 (59 FR 61801). This action proposes revisions concerning additional compliance options for continuous web cleaning machines, as well as clarifications that apply to steam-heated vapor cleaning machines and to cleaning machines used to clean transformers. Because the proposed revisions ensure that all owners or operators of solvent cleaning machines have appropriate and attainable requirements for their cleaning machines, we do not anticipate receiving adverse comments.

Consequently, these proposed revisions are also being issued as a direct final rule in the "Final Rules" section of today's **Federal Register**. If no significant and timely comments are received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: Written comments on these proposed changes must be received by September 20, 1999. Anyone requesting a public hearing must contact the EPA no later than August 30, 1999. If a hearing is held, it will take place on September 2, 1999 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Janet Eck at (919) 541–7946 to verify that a hearing will be held.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket Number A–92–39, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: For information concerning the standards and the proposed changes, contact Mr. Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0283. For information regarding the applicability of this action to a particular entity, contact Ms. Acquanetta Delaney, Manufacturing Branch, Office of Compliance (2223A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–7061.

SUPPLEMENTARY INFORMATION:

Electronic Comment Submission

Comments may be submitted electronically via electronic mail (E-mail) or on diskette. Electronic comments on this proposed rule may be filed via E-mail at most Federal depository libraries. E-mail submittals should be sent to: "A-and-R-docket@epamail.epa.gov." Electronic comments must be submitted as an American Standard Code for Information Interchange (ASCII) file avoiding the use of special characters or any form of encryption. Comments and data will also be accepted on diskette in WordPerfect, Version 5.1 or 6.1 file format, or ASCII file format. All comments and data for this proposal, whether in paper form or electronic form such as through E-mail or on diskette, must be identified by Docket No. A–92–39. No confidential business information should be submitted through E-Mail.

For additio. al information, see the direct final rule published in the Final Rules section of today's **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Continuous web cleaning, Film cleaning, Hazardous substances, Halogenated solvent cleaning machines.

Dated: August 6, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–20860 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6422–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Lackawanna Refuse site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the Lackawanna Refuse Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that all appropriate CERCLA response actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the Commonwealth have determined that remedial activities conducted at the Site have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before September 20, 1999.

ADDRESSES: Comments may be submitted to: Ms. Andrea Lord, (3HS21), Project Manager, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania, 19103 (215) 814–5053.

Comprehensive information on this Site is available for viewing at the Site information repositories at the following locations:

Regional Center for Environmental Information, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103 (215) 814–5364; Old Forge Borough Hall, 312 South Main Street, Old Forge, PA 18518.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Lord (3HS21), U.S. Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, PA 19103, (215) 814–5053.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency, Region III announces its intent to delete the Lackawanna Refuse Superfund Site, Old Forge, Pennsylvania, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), and requests public comments on this proposed action. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the Commonwealth of Pennsylvania have determined that remedial activities conducted at the Site have been successfully executed.

EPA will accept comments on the proposal to delete this Site for thirty calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Lackawanna Refuse Superfund Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA shall consider whether any of the following criteria have been met:

(i) EPA, in consultation with PADEP, has determined that the responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and EPA, in consultation with PADEP, has determined that no further cleanup by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release at the Site poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

In the case of the Lackawanna Refuse Site, EPA has determined that the selected remedy is protective of human health and the environment. Consistent with the State Superfund Contract, between EPA and PADEP, PADEP has agreed to take over operation and maintenance of the Site and conduct an annual inspection. EPA has conducted the first two five-year reviews of the final remedy, and will also perform future five-year reviews.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site:

(i) EPA Region III has recommended deletion and has prepared the relevant documents.

(ii) The Commonwealth of Pennsylvania has concurred with the deletion decision. Concurrent with this National Notice of Intent to Delete, local notice will be published in local newspapers and distributed to appropriate federal, state, and local officials and other interested parties. This local notice presents information on the Site and announces the commencement of the thirty (30) day public comment period on the deletion package.

(iii) The Region has made all relevant documents available for public review in the Regional Office and the local Site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The

NPL is designed primarily for informational purposes and to assist Agency management.

Comments received during this Notice and comment period will be evaluated before the final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion will occur when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region III.

IV. Basis for Intended Site Deletion

The Lackawanna Refuse Site (Site) is located along a section of the north-south border between Old Forge Borough and Ransom Township, in Lackawanna County, PA. The Site consists of five strip mine pits excavated in the nineteenth century and used in the 1970's as a permitted municipal refuse landfill. The Site is closely bordered by several houses to the east and by the Villa Corporation Trailer Park to the south. Austin Heights, a residential section of Old Forge Borough, is northeast of the Site. The area west of the Site is forested steep hills. Approximately 9000 persons live within one mile of the Site. The local residents do not depend on groundwater as a source of drinking water, but obtain water through a public system derived from reservoirs several miles to the north.

The Site is located above the flood plains of St. Johns Creek and the Lackawanna River. St. Johns Creek, flowing along the lower (eastern) edge of the Site, is an intermittent stream that is a tributary of the Lackawanna River, which flows into the Susquehanna River.

In 1973, a permit was issued by PADEP (then known as the Pennsylvania Department of Environmental Resources) to the Lackawanna Refuse landfill property for the disposal of solid wastes with the condition that a leachate collection system be installed within sixty days. In 1978 the permit was modified by PADER to allow disposal of sludges. Pits 2 and 3 were used for the disposal of municipal refuse, until 1976 when they were filled to capacity and disposal began in Pit 5. All three pits were unlined. Boreholes, air shafts, and rock fractures allowed wastes to migrate via seeps and shallow groundwater from the pits. The leachate collection system was never installed.

In March 1979, PADER issued an order to Lackawanna Refuse suspending the solid waste permit and requiring immediate cessation of the landfill after discovering evidence of the dumping of industrial wastes and pollutants into Pit 5. The order also required Lackawanna Refuse to dig up and dispose of buried drums containing hazardous wastes and all contaminated soil. PADER issued a second order in 1979 requiring Lackawanna Refuse to construct and operate a leachate collection system. Lackawanna Refuse failed to comply with these orders, and the owner was brought to trial in 1982 in the Commonwealth court on criminal charges and subsequently found guilty of illegal dumping.

During pre-trial hearings, operators of trucking firms testified that they brought drums of hazardous waste to the Site and dumped them into Pit 5. Estimates ranged between 10,000–20,000 drums. There were also allegations that radioactive waste was disposed of at the Site in heavy drums that were lined with thick material. Other information included allegations that bulk liquid wastes were disposed of in a depression on the hillside known as the "borehole pit," and that some amount of liquids were sprayed on the site access road for dust control.

In 1980, PADER requested EPA assistance to further excavate and analyze the drums in Pit 5. Seven test areas in Pit 5 were excavated, uncovering 200 drums at depths of five to thirty feet below the surface of the pit. Approximately 90% of the drums were found to be broken or crushed when they were excavated.

Samples were taken from drums containing liquids or sludges and the results showed high concentrations of solvents and paint waste material with high metal and solvent contents. Metals found included cadmium, chromium, copper, lead, and mercury. Organics included benzene, toluene, methylene chloride, carbon tetrachloride, and ethylbenzene. No evidence of the disposal of radioactive waste was observed in these or any subsequent investigations at the Site. A Site investigation by EPA's Environmental Response Team (ERT) in 1982 revealed volatile organic vapors being released from Pit 5. These gases included vinyl chloride, a known carcinogen.

The Site was scored using the Hazard Ranking System (HRS), resulting in an overall score of 36.57. The Site was proposed for the NPL on December 12, 1982, with a final listing on September 8, 1983. EPA prepared a Remedial Action Master Plan (RAMP) in June 1983, and subsequently prepared a Remedial Investigation/Feasibility Study (RI/FS) workplan in August 1983. Work on the RI began the same month and was completed in November 1984. Removal activities were conducted at the Site in September, 1983 when EPA installed a chainlink gate at the beginning of the access road to control vehicular traffic, and a chainlink fence around all three pit areas to prevent unauthorized access to the Site. The Record of Decision (ROD) describing the selected remedy for the Site was signed by the EPA Regional Administrator on March 22, 1985.

The ROD selected the following remedy for the Site: Removal of all drums and highly contaminated municipal refuse from Pit 5 for offsite disposal at a qualifying Resource Conservation and Recovery Act (RCRA) facility; Construction of a clay cap over Pits 2, 3, and 5 that meets RCRA subtitle C requirements; Installation of surface water drainage diversion around all three pits and construction of a leachate collection and treatment system for Pits 2, 3 and 5; Construction of a gas venting system through the caps of all three pits; Removal of the top layer of contaminated soil from the borehole pit for offsite disposal at a qualifying RCRA facility and returning to grade with a soil cover; Removal of the top layer of contaminated soil from the access road and reconstruction of the road with appropriate drainage and sedimentation controls; Removal of dried paint and contaminated soil in the paint spill area for offsite disposal at a qualifying RCRA facility; Development of a monitoring program during the remedial action, which would include monitoring of the existing wells onsite, the gas venting system, and the leachate treatment system; and operation and maintenance (O&M) of the cap and the leachate collection and treatment system to be implemented by the State.

EPA entered into an Interagency Agreement with the U.S. Army Corps of Engineers (USACE) to perform the Remedial Action at the Site. All components of the Remedial Action were constructed with the exception of the leachate treatment plant. EPA and PADEP found the levels of contamination in the leachate to be lower than expected, and in September 1993 EPA issued an Explanation of Significant Differences (ESD) Report which set forth EPA and PADEP's decision not to implement the leachate treatment component of the remedy. From 1989 until 1992, EPA and PADEP monitored Site conditions on a regular basis by checking for leachate "break outs'; that is, evidence that the level of leachate was building up within the

landfill and "breaking out" along the cap perimeter. There were no such breakouts during that time period.

EPA developed a monitoring program during the Remedial Action to monitor the existing groundwater wells onsite and the gas venting system. All drums and highly contaminated solid wastes were removed, and approximately 40,000 cubic yards of contaminated soil were excavated and disposed offsite. The leachate collection system and the synthetic cover were installed in 1989. The final grading and seeding of the Site were completed in 1990.

On May 7, 1991, PADEP commenced operation and maintenance of the Remedial Action at the Site. On March 28, 1994, EPA issued a Final Site Close Out Report. Pursuant to section 121 (c) of CERCLA, 42 U.S.C. 9621 (c) EPA conducted the first five-year review of the Site in 1995 and the report was subsequently issued on September 28, 1995. EPA conducted a second five-year review of the Site in February 1999, and subsequently issued a report on March 5, 1999. Both five-year reviews found the site to be protective of human health and the environment.

The remedy selected for this Site has been implemented in accordance with the Record of Decision. The remedy has resulted in the significant reduction of the long-term potential for release of hazardous substances. Human health threats and potential environmental impacts have been minimized. EPA and PADEP have determined that the remedy implemented at the Site continues to provide adequate protection of human health and the environment.

EPA, with concurrence of the PADEP, believes that the criteria for deletion of this Site have been met. Therefore, EPA is proposing deletion of the Lackawanna Refuse Site from the NPL.

Dated: August 9, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–21317 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6422–8]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the release from the Taylor Borough Superfund site from the National Priorities List (NPL) and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the release from the Taylor Borough Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substance Pollution Continency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA). EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before September 20, 1999.

ADDRESSES: Comments may be mailed to Maria de los A. Garcia, (3HS21), Remedial Project Manager, U.S. Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103, 215–814–3199, Fax 215–814–3002, e-mail garcia.maria@epa.gov. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site information repositories at the following locations: U.S. EPA Region III, Administrative Records, 1650 Arch St., Philadelphia, PA 19103, 215–566–3157; and the Taylor Borough Municipal Building, 122 Union Street, Taylor, PA 18517.

FOR FURTHER INFORMATION CONTACT: Maria de los A. Garcia (3HS21), U.S. Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103, 215–814–3199, Fax 215–814–3002, e-mail garcia.maria@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region III announces its intent to delete the release from the Taylor Borough Site, Taylor Borough, Lackawanna County, Pennsylvania, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on the proposed deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the Commonwealth of Pennsylvania have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on the proposal to delete the release from the NPL for thirty days after publication of this document in the **Federal Register.**

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Taylor Borough Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if the release is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this Site, EPA conducted a five year review in March 1993 and a second one in September 1998. Based on these reviews, EPA determined that conditions at the Site remain protective of public health and the environment. As explained below, the Site meets the NCP's deletion criteria listed above. If

new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of the release from the Site:

(1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) The Pennsylvania Department of Environmental Protection (PADEP) concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repositories.

For deletion of the release from the NPL, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. Deletion of the release from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a release from a site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rational for the proposal to delete this release from the NPL.

Site Background and History

The Taylor Borough Site is located in Lackawanna County, Pennsylvania and the entire Site encompasses approximately 125 acres. The Site is a former municipal landfill located in the Lackawanna Valley, which has historically been extensively mined for anthracite coal. A series of underground mines underlie the Taylor Borough Site. Following the mining operations at the Site, the City of Scranton used the unreclaimed strip mine pits as a municipal landfill from approximately 1967 through 1968. Records from PADEP also document the disposal of industrial wastes. After the landfill operations ceased, drummed industrial wastes were found on the surface of the Site. Beginning in 1981, EPA Region III and PADEP conducted field inspections of the Site. The majority of the surface drums were concentrated in six areas of the Site. Most drums were open and the contents may have spilled during the dumping. Many had also been punctured by bullet holes. Air sampling close to the drums identified the presence of volatile organic compounds (VOCs). Drum and drum spill samples were analyzed in 1982 and were found to contain benzene, toluene, and other substituted benzene, phthalate acid esters, polynuclear aromatic hydrocarbons (PAHs), tricholoroethene (TCE), chloroform, and other organic chemicals. In 1983, a fire occurred on the surface of the landfill. It is believed that mine spoil was pushed over burning areas to extinguish the fire. As a result, some drums were partially buried. Because the fire had engulfed several drums, EPA instituted an Emergency Removal Action under Section 104 of CERCLA. From September through November of 1983, 1,141 drums were removed from the Site. In 1983, the Site was placed on the National Priorities List (NPL) and authorization to proceed with a Remedial Investigation/ Feasibility Study (RI/FS) was approved that same year. In 1986 the RI/FS was completed. Records of Decision (RODs) for soil and ground water were signed in 1985 and in 1986, respectively. The selected remedial action in the 1985 ROD included the following activities: removal and off-site disposal at a qualified facility of approximately 125 crushed and intact drums and remnants that remained on the site surface or partially buried; collection and treatment of contaminated surface water in on-site Ponds 1 and 2, located adjacent to Drum Storage Areas 1 and 2; excavation of contaminated soils and waste from former Drum Storage Areas 1 and 2 and sediments in Ponds 1 and 2 for off-site disposal to a qualified RCRA facility; proper backfilling and placement of a 24-inch soil cover over the former Drum Storage Areas 3 and 6, all of the area between them, and the former Drum Storage Area 4; installation of a chain-link fence around the perimeter of both soil-covered areas. The selection of remedial activities for ground water was deferred in the June 1985 ROD until ground water was further assessed. In March 1986, the EPA issued a ROD concerning ground water. It selected no remedial action for ground water, but required ground water monitoring.

Response Actions

In 1987, a Consent Decree was signed between the United States and five potentially responsible parties (PRPs). A Remedial Design for the specific remedial actions, approved by EPA and the Commonwealth of Pennsylvania, was an exhibit to the Consent Decree. Construction activities were initiated in July 1987. Remedial activities included the solidification of sediments from two ponds (Ponds 1 and 2). The sediments from these two ponds were mixed with kiln dust for solidification and the solidified sediments were compacted in place. Final design contours were achieved by the placement of clean fill over this solidified material. Approximately 10 intact drums containing solvents were uncovered during the excavation of contaminated soils and wastes from former Drum Storage Areas 1 and 2. Those 10 drums along with scattered surface drum remnants and approximately 5,000 cubic yards of excavated soil and waste material were removed and disposed of off-site. Also, a minimum two-foot soil cover was placed on the former Drum Storage Areas 3 and 6 and the entire area in between. In addition, a two-foot soil cover was placed on the former Drum Storage Area 4. A six-foot chainlink fence (1 mile in length) was installed with two locking gates prior to the excavation in Drum Storage Areas 1 and 2. The fence completely encompasses the remediated areas. Construction activities were concluded in May 1988.

Operations and Maintenance

The 1985 and 1986 RODs for the Site required that post-remediation operation and maintenance (O&M) activities be conducted by EPA Region III, including ground water and surface water monitoring through a sampling program, and maintenance of the soil cover. Surface and sediments in St. Johns Creek as well as a specific list of monitoring wells, were to be sampled for at least five years. Regular maintenance activities have been conducted at the Site and the sampling required in the RODs was completed in 1996.

Five-Year Review

CERCLA requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. Since hazardous materials remain at the Site,

the five-year review process will be used to insure that the soil cover is still intact. EPA issued a five-year review report in 1993 and another one in 1998, where it evaluated the results of the maintenance and monitoring activities at the Site. These reports concluded that the Taylor Borough Site is protective of human health and the environment. Specifically, the 1998 five-year review recommended to continue operation and maintenance activities at the Site. These activities include: annual vegetative maintenance, drainage control repair, and maintenance of the soil cap drainage structures, monitoring wells, and other Site structures. In addition, this five-year review recommended ground water monitoring activities for 5 years to assess the continued effectiveness of the remedial action.

Applicable Deletion Criteria

The remedy selected for this Site has been implemented in accordance with the Records of Decision. Therefore, no further response action is necessary. The remedy has resulted in the significant reduction of the long-term potential for release of contaminants, therefore, human health and potential environmental impacts have been minimized. EPA and the Commonwealth of Pennsylvania find that the remedies implemented continue to provide adequate protection of human health and the environment.

Dated: August 9, 1999.

W. Michael McCabe,

Regional Administrator, Region 3.

[FR Doc. 99–21316 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

Notic

This section contains doc proposed rul public. Notice committee m rulings, deleg petitions and statements o examples of section.

DEPARTMI

Office of th

Advisory C Biotechnol

AGENCY: Re Economics

ACTION: No request for

SUMMARY: T Agriculture Advisory C Biotechnol Agriculture for qualifie members o

DATES: Writ received on 1999.

ADDRESSES: to Michael Federal Off Secretary; U Federal Bui Independen Washingto

FOR FURTHE Michael Sc Federal Off 3817; fax (2 michael.g.s obtain form contact Dia Managemen 720–4074, *dharmon@*

SUPPLEMENT

Advisory C

The Secr establishing Agricultura advise the S the broad a expanding of agricultu encourages development beneficial

Notices

Federal Register
Vol. 64, No. 160
Thursday, August 19, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Advisory Committee on Agricultural Biotechnology

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of intent to establish; request for nominations and comments.

SUMMARY: The U.S. Department of Agriculture proposes to establish the Advisory Committee on Agricultural Biotechnology (ACAB). The Secretary of Agriculture is requesting nominations for qualified persons to serve as members of the ACAB.

DATES: Written nominations must be received on or before September 3, 1999.

ADDRESSES: Nominations should be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, telephone (202) 720–3817; fax (202) 690–4265; email michael.g.schechtman@usda.gov. To obtain form AD–755 ONLY please contact Dianne Harmon, Office of Pest Management Policy, telephone (202) 720–4074, fax (202) 720–3191; email *dharmon@ars.usda.gov*.

SUPPLEMENTARY INFORMATION:

Advisory Committee Purpose

The Secretary of Agriculture is establishing the Advisory Committee on Agricultural Biotechnology (ACAB) to advise the Secretary of Agriculture on the broad array of issues related to the expanding dimensions and importance of agricultural biotechnology. USDA encourages and supports the responsible development and utilization of beneficial new agricultural products, including those produced through biotechnology, and assures the safety of new products with a science based regulatory approach. USDA has complex and crucial roles in protecting public health and safety, the natural environment, and a competitive, vibrant, and diverse farm economy; ensuring the quality and availability of our food and fiber supply; and maintaining the competitive position of American agricultural products in the international marketplace. These topics are of critical concern in the conduct of agricultural biotechnology research, regulation, and commercialization. Some of the topics that the Secretary of Agriculture has identified for the ACAB's initial consideration include: effects of industry concentration and consolidation on farmers; intellectual property rights and grower autonomy; effects of biotechnology on small farmers; ways to maximize or encourage potential benefits of biotechnology in different agricultural sectors; and USDA's role in assuring that farmers have an array of choices for future agricultural technology and practices. The ACAB will meet in Washington, DC, up to four (4) times per year.

Task Force Membership

The ACAB will be made up of United States citizens. It will consist of 25 members of whom no more than five (5) will be federal employees. Members of ACAB should have recognized expertise in one or more of the following areas: recombinant-DNA (rDNA) research and applications using plants; rDNA research and applications using animals; rDNA research and applications using microbes; food science; silviculture and related forest science; fisheries science; ecology; veterinary medicine; the broad range of farming or agricultural practices; weed science; plant pathology; small farm advocacy; biodiversity issues; applicable laws and regulations relevant to agricultural biotechnology policy; risk assessment; consumer advocacy and public attitudes; public health/epidemiology; occupational health; ethics, including bioethics; human medicine; biotechnology industry activities and structure; intellectual property rights systems; and international trade. Members will be selected by the Secretary of Agriculture in order to achieve a balanced representation of viewpoints to address effectively USDA biotechnology policy issues under consideration.

Nominations for ACAB membership must be in writing and provide the appropriate background documents required by USDA policy, including background disclosure form AD–755. Neither the form nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

No member may serve on the ACAB for more than three (3) consecutive terms. Nominees will initially serve for terms of 1 or 2 years for purposes of continuity.

Members of the ACAB and its subcommittees shall serve without pay, but with reimbursement of travel expenses and per diem for attendance at ACAB and subcommittee functions for those ACAB members who require assistance in order to attend the meetings. While away from home or their regular place of business, those members will be eligible for travel expenses paid by REE, USDA, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service is allowed under Section 5703 of Title 5, United States code.

Submitting Nominations

Nominations should be typed and include the following:

1. A brief summary of no more than two (2) pages explaining the nominees suitability to serve on the ACAB.
2. A resume or curriculum vitae.
3. A completed copy of form AD–755.

Nominations should be sent to Michael Schechtman at the address listed above, and be post marked no later than September 3, 1999.

USDA is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations through outreach to minority-focused media outlets, Historically Black Colleges and Universities, including Clark Atlanta University, the Hispanic Association of Colleges and Universities, the National Congress of Native American Indians, the Intertribal Agriculture Council, Gallaudet and Purdue Universities, and the Rural Coalition. To ensure that recommendations of the ACAB take into account the needs of under-served and

diverse communities served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: August 12, 1999.

I.M. Gonzalez,

Under Secretary for Research, Education, and Economics.

[FR Doc. 99–21477 Filed 8–18–99; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Preliminary Results of Antidumping Duty Administrative Reviews, Intent To Revoke in Part, Intent Not to Revoke in Part, and Rescission of Review in Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of the antidumping duty administrative review, intent to revoke in part, intent not to revoke in part, and rescission of review in part.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover four manufacturers/exporters of corrosion resistant steel and two manufacturers/exporters of cut-to-length steel plate (one respondent manufactured both products), and the period August 1, 1997 through July 31, 1998.

We have preliminarily determined that sales have been made below normal value ("NV") by various companies subject to these reviews. See "Preliminary Results of Reviews" section below for the company-specific rates. If these preliminary results are adopted in our final results of these administrative reviews, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price ("EP") or constructed export price ("CEP") and the NV.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Gideon Katz at (202) 482–4255 (Dofasco Inc. and Sorevco Inc. (collectively, "Dofasco")), Sarah Ellerman at (202) 482–4106 (Continuous Colour Coat ("CCC")), Mark Hoadley at (202) 482–0666 (Gerdau MRM Steel ("MRM"), National Steel Co. ("National"), and Algoma Steel Co. ("Algoma")), Elfi Blum at (202) 482–0197 (Stelco, Inc.("Stelco")), or Maureen Flannery at (202) 482–3020, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 1998).

Background

On August 19, 1993, the Department published in the **Federal Register** (58 FR 44162) the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. On August 21, 1998, MRM requested a review of its exports of cut-to-length steel plate and requested that the Department revoke the order on cut-to-length steel plate as it pertains to MRM. On August 31, 1998, Stelco requested a review of its exports of cut-to-length steel plate and that the Department revoke the order on cut-to-length steel plate as it pertains to Stelco. On August 31, 1998, National, Dofasco, Stelco, and CCC requested a review of their exports of corrosion-resistant steel, and Algoma requested a review of its exports of cut-to-length carbon steel plate.

On August 31, 1998, Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company, petitioners, requested reviews of Algoma and Stelco exports of cut-to-length carbon steel plate.

On August 31, 1998, Bethlehem Steel Corporation, U.S. Steel Group, Inland Steel Industries, Inc., AK Steel Corporation, LTV Steel Co., Inc., and National Steel Corporation, petitioners, requested reviews of CCC, Dofasco, and Stelco exports of corrosion-resistant carbon steel flat products.

On September 29, 1998, in accordance with section 751 of the Act, we published a notice of initiation of administrative reviews of these orders for the period August 1, 1997 through July 31, 1998 (62 FR 50292).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On February 26, 1999, the Department published a notice of extension of the time limit for the preliminary results in the review to July 30, 1999. *See Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review*, 64 FR 9475.

On July 30, 1999, the Department published a second notice of extension of the time limit for the preliminary results in the review from July 30, 1999 to August 6, 1999. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review*, 64 FR 42338.

On August 6, 1999 the Department extended the time limits for the Preliminary Results in the review to August 16, 1999. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review*, 64 FR 43984.

The Department is conducting these reviews in accordance with section 751(a) of the Act.

Scope of Reviews

The products covered by these administrative reviews constitute two separate "classes or kinds" of merchandise: (1) certain corrosion-resistant carbon steel flat products, and (2) certain cut-to-length carbon steel plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths

which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The second class or kind, certain cut-to-length plate, includes hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.03 to 0.08 (maximum).

With respect to both classes or kinds, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of these reviews.

Verification

As provided in section 782(i) of the Act, we verified information provided by MRM (cost and sales), Dofasco (cost and sales), and Stelco (sales for plate, cost for both corrosion-resistant and plate) using standard verification procedures, including on-site inspections of the manufacturers' facilities and the examination of relevant sales and financial records. Our verification results are outlined in public versions of the verification reports on file with the Central Records Unit, in room B–099 of the Herbert C. Hoover Building.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents that are covered by the description in the Scope of Reviews section above and sold in the home market during the period of review (POR) to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's September 19, 1998 antidumping questionnaires.

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP or the CEP to NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Rescission of Review for Algoma

In *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews and Determination to Revoke in Part*, 64 FR 2173 (January 13, 1999) (*"Canadian Steel 4th"*), the Department revoked the order on cut-to-length steel plate as it pertains to Algoma. Before the Department's determination had been finalized, however, we had already initiated our review, at the request of both Algoma and petitioners, of Algoma's exports of cut-to-length plate to the United States for the period August 1, 1997 through July 31, 1998. We now rescind this review insofar as it pertains to Algoma.

Intent To Revoke (MRM) and Intent Not to Revoke (Stelco)

On August 31, 1998, and August 21, 1998, respectively, Stelco and MRM submitted requests, in accordance with 19 CFR 351.222(b), that the Department revoke the order covering cut-to-length carbon steel plate from Canada with respect to their sales of this merchandise.

In accordance with 19 CFR 351.222(b)(2)(iii), these requests were accompanied by certifications from Stelco and MRM that they had not sold the subject merchandise at less than NV for a three-year period, including this

review period, and would not do so in the future. The Department conducted verifications of Stelco's and of MRM's responses for this period of review.

Prior to considering whether it is appropriate to revoke an order pursuant to 19 CFR 351.222(b)(2), the Department "must be satisfied that, *during each of the three (or five) years*, there were exports to the United States *in commercial quantities* of the subject merchandise to which a revocation or termination will apply." 19 CFR 351.222(d)(1) (emphasis added). In other words, the Department must be satisfied that the company participated meaningfully in the U.S. market during each of the three years at issue, and that past margins are reflective of a company's normal commercial activity. *See Canadian Steel 4th; see also Pure Magnesium from Canada: Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part*, 63 FR 26147 (May 12, 1998).

Based on the current record, we preliminarily find that Stelco did not sell merchandise in the United States in commercial quantities during the current administrative review (one of the three consecutive review periods cited by Stelco to support its request for revocation). Stelco made only a few sales totaling 47 tons [1] of subject merchandise in the United States during the POR. By contrast, during the period covered by the antidumping investigation, which was only six months long, Stelco made several thousand sales totaling approximately 30,000 tons.[2] In other words, Stelco's sales for the *entire year* of the current POR amount to only 0.173 percent of its sales volume during the *six months* covered by the investigation. Similarly, during the previous POR Stelco sold approximately 2,000 tons of subject merchandise in the United States. While this amount is small in comparison to the amount sold prior to issuance of the order, it is over 40 times greater than the amount sold during the period covered by the current administrative review.

Because of our preliminary finding that, in the instant period of review, Stelco did not sell subject merchandise in the United States in commercial quantities, we preliminarily determine that Stelco does not qualify for revocation from the order on steel plate under sections 351.222 (b) and (d)(1).

We preliminarily determine that MRM's aggregate sales were made in commercial quantities over the course of its three consecutive review periods of zero margins. *See Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for MRM* (August 12, 1999). Thus, we preliminarily determine that MRM qualifies for a review of whether the order on steel plate should be revoked as to sales of its products.

Pursuant to 19 CFR 351.222(b)(2), in determining whether to revoke an antidumping order in part, (1) we must conclude that the company has sold subject merchandise at not less than normal value to the United States for three consecutive review periods, (2) we must conclude that it is not likely that the companies eligible for revocation will in the future sell the subject merchandise at less than NV, and (3) the company must agree to the immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold the subject merchandise at less than NV.

MRM has satisfied the three prongs of 19 CFR 351.222(b)(2). In the two prior reviews of this order, we determined that MRM sold cut-to-length carbon steel plate from Canada at not less than NV. As discussed in detail below, we preliminarily determine that MRM sold cut-to-length carbon steel plate at not less than NV during this review period.

Moreover, the Department's policy in the past has been that, in the absence of evidence to the contrary, three consecutive review periods with no dumping margins is evidence that it is not likely that a company eligible for revocation will in the future sell the subject merchandise at less than NV. *See Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea, Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part*, 62 FR 39809, 39810 (July 24, 1997). There is no evidence on the record, other than MRM's history of zero margins over the past three review periods, indicating MRM's likelihood to sell at less than NV in the future.

Finally, MRM agreed to the order's immediate reinstatement as it pertains to its sales, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, it has sold the subject merchandise at less than NV. Since we preliminarily conclude that all criteria for revocation have been satisfied, we intend to revoke the order as to MRM.

Duty Absorption

On October 28, 1998, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR for corrosion-resistant steel for Dofasco, CCC, and Stelco, and for cut-to-length plate for MRM and Stelco. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, Dofasco, CCC, MRM, and Stelco sold to the United States through an affiliated importer.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (i.e., orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, we will make a duty absorption determination in this segment of the proceeding.

We have preliminarily determined that there is no dumping margin on any of MRM's and Stelco's U.S. sales of cut-to-length plate during the POR. Therefore, we preliminarily find that antidumping duties have not been absorbed by MRM and Stelco on their U.S. sales of cut-to-length plate.

We have preliminarily determined that there is a *de minimis* margin on Dofasco's U.S. sales of corrosion-resistant steel during the POR. Therefore, we preliminarily find that antidumping duties have not been absorbed by Dofasco on its U.S. sales of corrosion-resistant steel. Also for corrosion-resistant steel, there is no evidence on the record that unaffiliated purchasers of subject merchandise sold by CCC and Stelco will ultimately pay the antidumping duties to be assessed on entries during the review period. Accordingly, based on the record, we cannot conclude that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. Therefore, we preliminarily find that for CCC's and Stelco's sales of corrosion-resistant steel, antidumping duties have been absorbed by the producer or exporter during the POR. We will request that all the above companies place on the record evidence that unaffiliated

[1] Stelco's response (public version) to Section A of the Department's questionnaire in the current administrative review of cut-to-length carbon steel products from Canada (Oct. 26, 1998) at Exhibit A–1.

[2] Stelco's response (public version) to Section A of the Department's questionnaire in the antidumping duty investigations of certain flat carbon steel (cut-to-length plate) products from Canada (Sep. 11, 1992) at Exhibit 1.

purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period for the respective class or kind of merchandise.

United States Price

For United States price, we used EP when the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted by facts on the record.

CCC

The Department calculated EP for CCC based on packed, prepaid or delivered prices to customers in the United States. We made deductions from the starting price, net of discounts and price adjustments, for movement expenses (foreign and U.S. freight, brokerage and handling, and U.S. Customs duties), in accordance with section 772(c)(2) of the Act.

We have determined to treat certain payments, which CCC reported as "credit notes," as price adjustments which should be excluded from the starting price. *See Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for CCC* (August 12, 1999).

It is the Department's standard practice to use the invoice date as the date of sale; we may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i). Our questionnaire instructed CCC to report the date of invoice as the date of sale; it also stated, however, that for EP sales "(t)he date of sale cannot occur after the date of shipment." Therefore, we used date of invoice as date of sale, but, in some instances, when shipment date preceded invoice date, we used the date of shipment.

Dofasco

For purposes of these reviews, we treated Dofasco, Inc. and Sorevco, Inc. as one respondent, as we have done in prior segments of the proceeding. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Determination of Sales at Less than Fair Value*, 58 FR 37099 (1993), and *Canadian Steel 4th*.

The Department calculated EP for Dofasco based on packed, prepaid or delivered prices to customers in the United States. We made deductions from the starting price, net of discounts and rebates, for movement expenses (foreign and U.S. movement, and post-sale warehousing) in accordance with section 772(c)(2) of the Act. As discussed in prior reviews, certain Dofasco sales have undergone minor further processing in the United States as a condition of sale to the customer. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18461 (April 15, 1997). In order to determine the value of subject merchandise at the time of exportation of such merchandise to the United States, the Department has deducted the price charged to Dofasco for this minor further processing from gross unit price to determine U.S. price.

It is the Department's current practice normally to use the invoice date as the date of sale; we may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i) (62 FR at 27411). Our questionnaire instructed Dofasco to report the date of invoice as the date of sale; it also stated, however, for EP sales, that "(t)he date of sale cannot occur after the date of shipment." In this review, Dofasco's date of shipment in many instances preceded the date of invoice, and therefore we cannot use the date of invoice as the regulations prescribe. Accordingly, as provided for in 19 CFR 351.401(i) of the regulations, we used the dates of sale described below. These sale dates reflect the dates on which the exporter or producer established the material terms of sale. We used the date of order acknowledgment as date of sale, as reported by Dofasco for all Dofasco sales in both the U.S. market and the home market, except for sales made pursuant to long-term contracts. For Dofasco's sales made pursuant to long-term contracts, we used date of the contract as date of sale. In the rare instance of a rush order, we used the date of shipment as date of sale if a coil was shipped before it was acknowledged. We also used shipment date for sales of secondary products for which there is no order acknowledgment. If there was a change in price, we used the date of Dofasco's order reacknowledgement as date of sale.

We used the date of order confirmation as the date of sale, as reported by Sorevco Inc. ("Sorevco") for its sales in the home market, except when Sorevco shipped more merchandise than the customer originally ordered, and such overages were in excess of accepted industry tolerances. For those sales we used date of shipment as date of sale.

MRM

The Department calculated EP for MRM based on packed, prepaid or delivered prices to customers in the United States. We made deductions from the starting price for movement expenses (foreign and U.S. movement, brokerage and handling, and U.S. Customs duties) and U.S. selling commissions pursuant to section 772(c)(2) of the Act.

In accordance with standard Department practice, we used date of invoice as date of sale for MRM's U.S. and home market sales. *See* 19 CFR 351.401(i).

National

The Department calculated CEP (there were no EP sales) for National based on packed, prepaid or delivered prices to customers in the United States.[3] We made deductions from the starting price, net of discounts and billing adjustments, for movement expenses (foreign and U.S. freight, warehousing, insurance, brokerage and handling, and U.S. Customs duties), pursuant to section 772(c)(2) of the Act.

National sold goods in the United States with and without U.S. further manufacturing. Where appropriate, the Department reduced CEP by National's costs of further manufacturing its goods in the United States, in accordance with section 772(d)(2).

In accordance with section 772(d)(1) of the Act, we further reduced CEP by direct selling expenses (credit, warranty, and technical service expenses), indirect selling expenses, and inventory carrying costs. Finally, we made an adjustment for an amount of profit allocated to selling expenses incurred in the United States, in accordance with section 772(d)(3) of the Act.

In this review period, National's date of shipment always either was the same as or preceded the date of invoice, and, therefore, we have chosen to use date of shipment as date of sale.

Stelco

Corrosion-resistant steel: We calculated EP based on the packed, prepaid or delivered prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses, including foreign and U.S. freight,

[3] National, a U.S.-based corporation, ships steel flat products to the United States through its partially owned Canadian subsidiary, DNN Galvanizing Corp ("DNN"). DNN, under a tolling agreement, galvanizes National's steel flat products, which leads to their categorization as subject merchandise. National, however, provided U.S. selling functions for these products, and thus, we considered them to be CEP sales.

brokerage and handling, and U.S. Customs duties, and for discounts and rebates, in accordance with section 772(c)(2) of the Act.

Plate: We calculated EP based on the packed, prepaid or delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses, including foreign and U.S. freight, brokerage and handling, and U.S. Customs duties, in accordance with section 772(c)(2) of the Act.

In accordance with standard Department practice, we used date of invoice as date of sale for both corrosion-resistant steel and cut-to-length plate for Stelco's U.S. and home market sales. Only in the event where shipment date was before invoice date did we use the date of shipment.

Normal Value

The Department determines the viability of the home market as the comparison market by comparing the aggregate quantity of home market and U.S. sales. We found that each company's quantity of sales in its home market exceeded five percent of its sales to the United States for the relevant class or kind of merchandise. We, therefore, have determined that each company's home market sales are viable for purposes of comparison with sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(C) of the Act. Moreover, there is no evidence on the record supporting a particular market situation in the exporting companies' country that would not permit a proper comparison of home market and U.S. prices. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP or CEP sale.

In accordance with section 773(a)(4) of the Act, except for National, we used CV as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative expenses (SG&A), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to the prices at which the respondents sold identical merchandise to unaffiliated customers.

For both classes or kinds of merchandise under review and for all respondents (except National), the Department disregarded sales below cost of production ("COP") in the last completed review. *See Canadian Steel 4th*. We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales in the home market by all respondents, except National.

We compared sales of the foreign like product in the home market with model-specific cost of production figures for the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus SG&A expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales-below-cost analysis, we used home market sales and COP information provided by each respondent in its questionnaire responses. We made adjustments where warranted based on our findings at verification.

After calculating COP, we tested whether home market sales of foreign like merchandise were made at prices below COP and, if so, whether the below-cost sales were made within an extended period of time in substantial quantities and at prices that did not permit recovery of all costs within a reasonable period of time. Because each individual price was compared against the POR-long average COP, any sales that were below cost were also not at prices which permitted cost recovery within a reasonable period of time. Model-specific COPs were compared to reported home market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model were at prices less than COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2) (B) and (C) of the Act. Based on this test, we disregarded below-cost sales for both classes or kinds of merchandise under review and for all respondents for which we conducted a cost investigation.

In accordance with section 773(a)(1)(B)(i) of the Act, where possible, we based NV on sales at the same level of trade (LOT) as the U.S. price. *See* the "Level of Trade Section" below.

The Department determined in the final results of a previous administrative review, *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 12725 (Mar. 9, 1998), that it would be inappropriate to resort directly to constructed value (CV), in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be below cost or otherwise outside the "ordinary course of trade." Therefore, we match a given U.S. sale to foreign market sales of the next most similar model when all sales of the most comparable model fail the cost test. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison.

Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Reviews" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Appendix V of our antidumping questionnaire.

Where appropriate, we made adjustments to NV for differences in circumstances of sale (COS), in accordance with sections 773(a)(6) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS

adjustments to NV by deducting home market direct selling expenses and adding U.S. direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions paid on EP sales pursuant to 19 CFR 351.410(b). For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses pursuant to section 772(d) of the Act.

CCC

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated parties. Home market starting prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market, net of discounts and price adjustments, where applicable.

We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit) and adding U.S. direct selling expenses (credit). When comparisons were made to EP sales on which commissions were paid, but where no commissions were paid on the matching foreign market sales, we made adjustments for the respondent's home market indirect selling expenses to offset these U.S. commissions pursuant to 19 CFR 351.410(e).

Dofasco

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated parties. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit, royalties, and warranty expenses) and adding U.S. direct selling expenses (credit, royalties, and warranty expenses). When comparisons were made to EP sales on which commissions were paid, but where no commissions were paid on the matching foreign market sales, we made adjustments for the respondent's home market indirect selling expenses to offset these U.S. commissions pursuant to 19 CFR 351.410(e).

During verification we discovered that Dofasco did not incorporate all sales order numbers in determining the cost for a few of its CONNUMs. We tested three sales order numbers and compared the costs associated with these to the reported costs for the respective product. We found that the cost calculated for two of the missing sales order numbers exceeded the reported costs for their respective products and that the cost calculated for the other sales order number was less than the cost of its respective product. For those CONNUMs whose sales order numbers we tested, we adjusted their cost in accordance with the test results. For the remaining CONNUMs, we determine that the use of facts available is appropriate, in accordance with section 776(a) of the Act, because, as discovered at verification, Dofasco failed to include all sales order numbers in its cost calculation. Where necessary information is missing from the record, the Department may apply facts available under section 776 of the Act. Further, where that information is missing because a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use facts available that are adverse to the interests of that respondent, which may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Dofasco did not act to the best of its ability in the reporting of its costs. Even though its sales order number documentation was readily available and company officials had knowledge of these sales order numbers, Dofasco failed to ensure that all sales order numbers were included in its cost calculations. This indicates that Dofasco did not act to the best of its ability to comply with the Department's request for information. We are therefore using an adverse inference as facts available for this aspect of Dofasco's cost calculation. For those CONNUMs whose sales order numbers we did not test, as facts available we increased their cost by adding the highest differential for the CONNUMs tested. We have also made other adjustments to Dofasco's reported costs. We increased the variable cost of manufacture by disallowing Dofasco's claimed adjustment for byproduct profits and certain sundry expenses. Finally, we have excluded capital gains and foreign exchange gains as offsets to Dofasco's interest expense. We used adjusted COP and CV values to appropriately reflect Dofasco's expenses associated with painting services provided by an affiliate. For a full discussion, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for Dofasco*, August 12, 1999.

MRM

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated purchasers (MRM made no home market sales to affiliated parties). Home market prices were based on the packed, ex-factory or delivered prices to purchasers in the home market.

We made adjustments to the starting price, net of rebates, for movement expenses in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit expense) and adding U.S. direct selling expenses (credit expense). Because comparisons were made to EP sales on which commissions were paid, but no commissions were paid on home market sales, we made adjustments for the respondent's home market indirect selling expenses to offset these U.S. commissions pursuant to 19 CFR 351.410(e).

As a result of our verification of MRM's response, we reclassified as freight expenses data originally reported as billing adjustments. Also as a result of our verification, we made an upwards adjustment to MRM's cost of manufacture before performing our sales-below-cost test. For a full discussion, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for MRM*, August 12, 1999.

National

We based NV on home market prices to unaffiliated purchasers (National made no home market sales to affiliated parties). Home market prices were based on the packed, ex-factory or delivered prices to purchasers in the home market.

We made adjustments to the starting price, net of billing adjustments and discounts, for movement expenses in

accordance with sections 773(a)(6)(B)(ii) of the Act. In accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), for comparison to CEP, we made COS adjustments to NV by deducting home market direct selling expenses (credit, warranty, and technical service expenses). We also made adjustments for differences in the costs of manufacturing subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act. Finally, we deducted home market indirect selling expenses to the extent of U.S. indirect selling expenses because all sales in the home market were made at a different level of trade than sales in the U.S. market. See the National subsection of the "Level of Trade" section below.

Stelco

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to affiliated parties (when made at prices determined to be at arms-length, in accordance with 19 CFR 351.403) or unaffiliated parties. Home market starting prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers in the home market net of discounts and rebates. We made adjustments, where applicable, for packing and movement expenses, in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit, advertising, warranties and technical services) and adding U.S. direct selling expenses (credit, advertising, warranties and technical services). There were no commissions paid during the POR on either home market sales or U.S. sales.

We made adjustments to COP and CV on corrosion-resistant steel to appropriately reflect Stelco's expenses associated with painting services provided by an affiliate.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as U.S. sales. The NV LOT is the level of the starting-price sale in the comparison market or, when NV is based on constructed value, the level of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In the present review, only Dofasco claimed that more than one LOT existed. As discussed below, to evaluate LOTs, we examined information regarding the distribution systems in both the U.S. and Canadian markets, including the selling functions, classes of customer, and selling expenses for each respondent.

CCC

In both the home market and the United States, CCC reported one LOT. CCC reported three customer categories in the home market and two in the U.S. market, but CCC claimed that the selling functions it performed were the same in each market and did not vary according to customer. CCC also reported two channels of distribution, but the Department found no difference in the functions performed through these channels of distribution. CCC did not claim a LOT adjustment.

We analyzed the selling functions performed for various customer categories and channels of distribution in each market. We found that CCC performed substantially similar selling functions regardless of the type of home market customer and, therefore, that one level of trade existed in the home market. We reached the same conclusion regarding the U.S. market.

Finally, we compared the selling functions performed at the home market LOT with those performed at the U.S. LOT and found them substantially similar. Thus, no LOT adjustment was appropriate. For a further discussion of the Department's LOT analysis with respect to CCC, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for CCC*, August 12, 1999.

Dofasco

Dofasco reported three LOTs in the home market. Dofasco defined its LOT categories by customer category: service center, automotive, and construction and converters/manufacturers ("construction"). We examined the selling functions performed at each claimed level and found that there was a significant difference in selling functions offered to these three categories. Of the several reported selling functions, Dofasco performed only two of the same or similar selling functions at both the automotive and service center sales levels. Dofasco reported fourteen selling functions which were different between these two levels. Additionally, sales to automotive customers are sales to end users, while sales to service centers are sales to resellers. Thus, sales to service centers and automotive customers were made at different stages of marketing. Based upon this fact and the different levels of selling functions described above, we preliminarily conclude that sales to the automotive customers and service centers are made at different levels of trade.

Although both automotive and construction customers are OEMs, we note that both quantitatively and qualitatively, the selling functions offered to automotive customers involve significantly greater selling activities and thus represent a distinct stage of marketing. Specifically, of the 16 reported selling functions, Dofasco performed only seven of the same or similar selling functions to both automotive and construction customers. Dofasco's functions for these two customer categories differed with respect to nine other activities. Therefore, given these differences, we preliminarily conclude that automotive and construction constitute separate levels of trade.

There were numerous differences in selling functions between sales to construction and service center customers. Dofasco performed six reported selling functions for sales to service centers and only four selling

functions for sales to construction customers. Of these selling functions, only one was performed for both service centers and construction customers. Additionally, sales to service center customers are sales to resellers, while sales to construction customers are sales to end users. Thus, sales to service centers and construction customers were made at different stages of marketing. Based upon this fact and the different levels of selling functions described above, we preliminarily conclude that sales to service centers and construction customers are made at different levels of trade.

Overall, we determine that the selling functions for the automotive, service center, and construction customer categories are substantially dissimilar to one another and that these sales are made at different stages of marketing. Therefore, we preliminarily determine that the automotive, service center, and construction customer categories should be treated as three LOTs in the comparison market. Dofasco reported the same three LOTs in the U.S. market: automotive, service center, and construction. We preliminarily determine that the results of our analysis of U.S. LOTs are identical to those of the comparison market. In addition, there were only insignificant differences in selling functions at each LOT between the comparison market and the U.S. market. Therefore, we found that the three U.S. LOTs corresponded to the three comparison market LOTs. The Department did not find that there existed a pattern of consistent price differences between the three levels of trade. Therefore, we did not make LOT adjustments when comparing sales at different LOTs. For a further discussion of the Department's LOT analysis with respect to Dofasco, see *Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for Dofasco*, August 12, 1999.

MRM

In both the home market and the United States, MRM reported one LOT and one distribution system with two classes of customers in the home market, distributors and OEMs, and one class of customer, OEMs, in the U.S. market. We analyzed the selling functions and activities performed for customers in each market. We found that MRM performed substantially similar selling functions and activities for both classes of home market customers and, therefore, that one level of trade existed in the home market. Finally, we compared the selling functions performed at the home market LOT with those performed at the U.S. LOT and found them substantially similar. Thus, no LOT adjustment was appropriate.

National

National claimed only one LOT, but reported several different distribution channels in both its home market and the United States based on classes of customers (OEMs and steel service centers) and the existence of warehousing or further manufacturing between National and its customers.

We examined the reported selling functions and found that National provides substantially the same selling functions to its home market customers regardless of distribution channel. We reached the same conclusion regarding the U.S. market.

National does not provide technical services to its service center customers. We did not, however, consider the provision of technical services to constitute a substantial difference between distribution channels. National warehouses some of its products before shipping to customers. Any one sale, however, can contain both warehoused and non-warehoused products and the Department was unable to determine which sales involved more warehoused goods than others.

We compared the channels of distribution and selling functions in the U.S. and home markets. The channels of distribution are similar for both markets with National providing substantially similar selling functions to both its U.S. and home market customers. However, at the level of constructed export sale to the United States, i.e., after eliminating from consideration the selling functions associated with deductions made under section 772 of the Act, we found that National's sales to customers in the United States were made at a different level of trade than its sales to home market customers.

Because there are no sales in the home market made at the same level of trade as sales in the United States, we were not able to determine whether the difference in level of trade affects price comparability. Therefore, we made a constructed export price offset. In accordance with 19 CFR 351.408(f)(2), we deducted indirect selling expenses from NV to the extent of U.S. indirect selling expenses. For a further discussion of the Department's LOT analysis with respect to National, see *Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for National*, August 12, 1999.

Stelco

Stelco identified one level of trade and two channels of distribution (to end-users or to resellers) in the home market for each class or kind of merchandise. We examined the selling functions performed in each channel and found that Stelco provided many of the same or similar selling functions in each, including inventory maintenance, warranty, technical advice, and freight and delivery arrangements. We found few differences between selling functions for transactions made through the two channels of trade. Overall, we determine that the selling functions between the two sales channels are sufficiently similar to consider them one LOT in the home market for sales of both corrosion-resistant products and plate products.

In the United States, Stelco Inc. sold both products through the two channels of distribution listed above. We found that the selling functions performed for sales to the United States are sufficiently similar between the two channels to consider them one LOT for both corrosion-resistant products and plate products. Additionally, we consider this LOT to be the same as that identified in the home market. Therefore, no adjustment is appropriate.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins for the period August 1, 1997 through July 31, 1998 to be as follows:

Manufacturer/Exporter	Margin percentage
Certain Corrosion-Resistant Carbon Steel Flat Products	
CCC	1.08
Dofasco	0.11
National	5.65
Stelco	4.24
Certain Cut-to-Length Carbon Steel Plate	
MRM	0.00
Stelco	0.00

The Department will disclose to the parties to the proceeding calculations performed in connection with these preliminary results of review within ten days after the date of public announcement, or, if there is no public announcement, within five days after the date of publication of these preliminary results of review.

Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication or

the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after publication. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing of case briefs. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we calculated importer-specific ad valorem duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer for that class or kind of merchandise made during the POR.

If the revocation is made final for MRM, it will apply to all unliquidated entries of this merchandise produced by MRM, exported to the United States and entered, or withdrawn from warehouse, for consumption, on or after August 1, 1998, which will be the effective date of the revocation from the order for MRM.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) the cash deposit rate for each reviewed company will be that established in the final results of review (except that no deposit will be required for firms with *de minimis* margins, i.e., margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate established in the LTFV investigation, which was 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (*see Amended Final Determinations of Sales at Less Than Fair Value and Antidumping Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 60 FR 49582 (Sep. 26, 1995)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notices are published in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 777(i)(1) of the Act (19 U.S.C. 1677f(i)(1)).

Dated: August 10, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21568 Filed 8–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Initiation of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Rick Johnson at (202) 482–3818, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

INITIATION OF INVESTIGATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On July 23, 1999, the Department of Commerce ("the Department") received a petition filed in proper form by the Committee for Fair Ammonium Nitrate Trade ("COFANT" or "petitioner"), whose members are domestic producers of solid fertilizer grade ammonium nitrate. The Department received supplemental information to the petition on August 6, 1999.

In accordance with section 732(b) of the Act, petitioner alleges that imports of fertilizer grade ammonium nitrate from the Russian Federation ("Russia") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C) and (F) of the Act and has demonstrated sufficient industry support with respect to the investigation it is requesting the Department to initiate (*see Determination of Industry Support for the Petition below*).

Scope of Investigation

For purposes of this investigation, the products covered are solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate).

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with petitioner to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as we discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. In particular, we seek comments on the

specific densities of fertilizer grade ammonium nitrate set out in the description above. The Department encourages all parties to submit such comments by August 23, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of the Investigation" section, above. The Department has no basis on the record to find the petitioner's definition of domestic like product to be inaccurate. We found that petitioner submitted sufficient reasonably available information that there is a clear dividing line between fertilizer and explosive grade ammonium nitrate based on their physical characteristics and uses. The Department has, therefore, adopted the domestic like product definition set forth in the petition.

The Department has determined that the petition contains accurate and adequate evidence of industry support because petitioner established industry support representing 74 percent of total production of the domestic like product (*see Attachment to the Initiation Checklist, Re: Industry Support*, August 12, 1999).

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

Petitioner identified (1) JSC Angarsk Petrochemical Co., (2) JSC Berezniki Azot, (3) JCS Cherepovets PO Azot, (4) JSC Dorogobuzh, (5) JSC Kemerovo "Azot," (6) JSC Kirovo-Chepetsk, (7) JSC Meleuz Prod. Assoc. Minudobreniya, (8) JSC Nevinnomysskiy Azot, (9) JSC Acron, (10) JSC Novomendeleyevsk Chemical Plant, (11) JSC Novomoskovsk AK "Azot," (12) JSC "Minudobreniya", and (13) JSC "Kuybyshevazot" as possible producers/exporters of solid fertilizer grade ammonium nitrate from Russia. Petitioner further asserted that two of these producers, JSC Acron and JSC Nevinnomysskiy Azot, have exported significant amounts of ammonium nitrate into the United States during the last twelve months.

Petitioner based export price ("EP") on two methods: (1) import values declared to the U.S. Customs Service during the anticipated period of investigation ("POI"); and (2) an actual U.S. selling price known to petitioner based on a quote in the anticipated POI provided by a U.S. importer on an ex-factory basis. Petitioner based its calculation of EP on the average unit value (customs value) of ammonium nitrate from Russia, as provided by the U.S. Bureau of the Census, for the applicable HTSUS category (3102.30) for the period January, 1999 through May, 1999. Petitioner deducted foreign inland freight from the customs value in order to obtain ex-factory prices. In order to calculate foreign inland freight, petitioner used Polish rail and truck rates because the per-capita GNP of Poland is much closer to Russia's GNP than is U.S. GNP, and because petitioner found transport rates on a per ton basis, based on distance traveled. Petitioner also used the Polish transport rates because they were the only published reasonably available to petitioner, and petitioner had no reasonable basis to know whether Russian producers relied on truck or rail transport to move the product from plant to port. Petitioner calculated foreign inland freight for the two significant producers noted above. Using estimated distances for each of these producers, petitioner calculated both a rail freight and truck freight estimate, and calculated normal values ("NV") based on each of these estimates. Based on the information provided by petitioner, we believe that the use of Polish transport rates represents accurate and adequate information reasonably available to petitioner and is acceptable for purposes of initiation of this investigation.

In order to calculate actual U.S. selling prices known to petitioner, petitioner relied on a quote offered to an unaffiliated purchaser. Because the price was based on a ex-factory basis, no adjustments were made for foreign inland freight.

Petitioner asserted that Russia is a non-market economy country ("NME") to the extent that sales or offers for sale of such or similar merchandise in Russia or to third countries do not permit calculation of NV under 19 CFR 351.404. Petitioner, therefore, constructed NV based on the factors of production methodology pursuant to section 773(c) of the Act. In previous investigations, the Department has determined that Russia is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999) ("*Russian HR Steel*"). In accordance with section

771(18)(C)(i) of the Act, a determination of NME status remains in effect until revoked by the Department. The determination of NME status for Russia has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product appropriately is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Russia's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994).

For the calculation of NV, petitioner based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy and capital cost), for ammonium nitrate on the quantities of inputs used by a representative U.S. producer. Petitioner stated that it was unable to furnish information on Russian factors of production. Thus, petitioner has assumed, for purposes of the petition, that producers in Russia use the same inputs in the same quantities as petitioner. Because data regarding the quantities of inputs used by Russian producers was not reasonably available to petitioner, for purposes of this initiation we have accepted petitioner's U.S. quantities.

Petitioner selected Poland as its primary surrogate. Petitioner stated that the per-capita GNP of Poland differs only slightly from that of Russia and, thus, it maintains that Poland is the most suitable surrogate among the potential surrogates, because it is at a comparable level of economic development and is a significant producer of comparable merchandise (in accordance with section 773(c)(4) of the Act). Based on the information provided by petitioner, we believe that the petition contains adequate and accurate information supporting its allegation for using Poland as a surrogate country for purposes of initiation of this investigation.

In accordance with section 773(c)(4) of the Act, petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. Labor was valued using the regression-based wage rate for Russia provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity and natural gas were valued using the rate for Poland published in a quarterly report of the OECD's International Energy Agency for the fourth quarter of 1998. Petitioner attempted to obtain Polish import values for materials used in the production of ammonium nitrate, but stated that it could not reasonably obtain publicly available surrogate information from a comparable economy. Because petitioner could not reasonably identify this information for materials used in the production of ammonium nitrate (chemicals, stabilizers, coating agents and catalysts), petitioner relied on costs incurred by the U.S. producer to value the usage requirements, which represent only a small portion of total production costs. For overhead (exclusive of depreciation), depreciation, general expenses, and profit, petitioner applied rates derived from the 1997 public annual report of a Polish producer of subject merchandise, Zaklady Azotowe Kedzierzyn ("ZAK"). For purposes of initiation, we made two minor revisions to general expenses. For a further discussion of this revision, *see Initiation Checklist*, page 6, and Attachment III, dated August 12, 1999. Based on the information provided by petitioner, we believe that the surrogate values represent information reasonably available to petitioner and are acceptable for purposes of initiation of this investigation. For a more detailed discussion of home market price, U.S. price, factors of production and sources of data, *see Initiation Checklist*, dated August 12, 1999. Should the need arise to use as facts available under section 776 of the Act any of this information in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the calculated dumping margins for ammonium nitrate from Russia range from 112.08 to 357.09 percent.

Fair Value Comparisons

Based on the data provided by petitioner, there is reason to believe that imports of solid fertilizer grade ammonium nitrate from Russia are being, or are likely to be, sold at less than fair value.

Critical Circumstances

Petitioner has alleged that critical circumstances exist with regard to imports of solid fertilizer grade ammonium nitrate from Russia, and has supported its allegations with the following information.

First, petitioner claims that there is a history of injurious dumping of the subject merchandise by Russian producers. Petitioner argues that the Department considers the existence of an antidumping duty order covering the subject merchandise in another country as sufficient evidence of a history of injurious dumping. Petitioner provided a copy of a 1995 antidumping order imposed by the European Union on imports of Russian ammonium nitrate (*see* Exhibit 32, Petition dated July 23, 1999). Since this order is still in effect, petitioner claims that there is a history of injurious dumping by Russian producers of the subject merchandise.

Petitioner also has alleged that imports from Russia have been massive over a relatively short period. Alleging that there was sufficient pre-filing notice of the antidumping duty petition, petitioner contends that the Department should compare imports during September–December 1998 (base period) to imports during January–April 1999 (comparison period) for purposes of this determination, as provided in 19 CFR. 351.206(h)(2)(i). Specifically, petitioner supported this allegation with copies of news articles discussing the likelihood of filing antidumping complaints against Russian ammonium nitrate producers. *See* Petition dated July 23, 1999, Exhibit 37. According to the import statistics contained in the petition, during the time periods petitioner has requested for comparison, imports of ammonium nitrate from Russia increased by 270.35 percent (based on volume) from the period September–December 1998 to the period January–April 1999.

In the instant case, the increase in imports was more than fifteen times the amount considered "massive." Taking into consideration the foregoing, we find that petitioner has alleged the elements of critical circumstances and supported them with information reasonably available for purposes of initiating a critical circumstances inquiry. For these reasons, we will investigate this matter further and will make a preliminary determination at the appropriate time, in accordance with section 735(e)(1) of the Act and Department practice (*see* Policy Bulletin 98/4 (63 FR 55364, October 15, 1998)).

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioner explained that the industry's injured condition is evident in the declining trends in net

operating profits, net sales volumes, as well as domestic prices of ammonium nitrate. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury,* August 12, 1999).

Initiation of Antidumping Investigation

Based upon our examination of the petition on solid fertilizer grade ammonium nitrate and petitioner's responses to our supplemental questionnaire clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of solid fertilizer grade ammonium nitrate from Russia are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of Russia. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, by no later than September 7, 1999, whether there is a reasonable indication that imports of solid fertilizer grade ammonium nitrate from Russia are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: August 12, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–21569 Filed 8–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions: 1999 Trade Missions (October and December); Private Sector Participants Recruitment and Selection

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions to be held between October and December 1999. For a more complete description of the trade mission, obtain a copy of the mission statement from the Project Officer indicated below. The recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

Textile Trade Mission to Mexico, Mexico City and Guadalajara, Mexico, October 24–28, 1999. Recruitment closes September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Dawson, U.S. Department of Commerce, Tel: 202–482–5155 or Rachael Alarid, U.S. Department of Commerce, Tel: 202–482–5154, Fax: 202–482–2859.

Textile Home Furnishing Products Trade Mission, China, Taiwan, and the Philippines, November 29–December 7, 1999. Recruitment closes October 15, 1999.

FOR FURTHER INFORMATION CONTACT: Lawrence Brill, U.S. Department of Commerce, Tel: 202–482–1856, Fax: 202–482–2859; Reginald Beckham, U.S. Department of Commerce, Tel: 202–482–5478, Fax: 202–482–1999.

Dated: August 13, 1999.

Tom Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 99–21533 Filed 8–18–99; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

August 12, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482094212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927095850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482093715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man09made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in

the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 19, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit1A[1]
Levels in Group I	
352/652	2,212,828 dozen.
36909S1A[2]	9,917 kilograms.
611	5,201,529 square meters.
633	56,384 dozen.
636	1,910,481 dozen.
643	606,355 numbers.
645/646	736,831 dozen.
649	5,714,665 dozen.
65909H1A[3]	1,659,613 kilograms.
847	330,211 dozen.
Group II	
20009227, 30009326, 332, 35909O1A[4], 360, 362, 363, 36909O1A[5], 40009414, 43409438, 440, 442, 444, 448, 459pt.1A[6], 464, 469pt.1A[7], 60009607, 61309629, 644, 65909O1A[8], 666, 66909O1A[9], 67009O1A[10], 831, 83309836, 84009846, 85009858 and 859pt.1A[11], as a group.	239,200,611 square meters equivalent.

[1]1AThe limits have not been adjusted to account for any imports exported after December 31, 1998.

[2]1ACategory 36909S: only HTS number 6307.10.2005.

[3]1ACategory 65909H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4]1ACategory 35909O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 35909C); and 6406.99.1550 (Category 359pt.).

[5]1ACategory 36909O: all HTS numbers except 6307.10.2005 (Category 36909S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6]1ACategory 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.8090, 6406.99.1505 and 6406.99.1560.

[7]1ACategory 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8]1ACategory 65909O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 65909C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 65909H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9]1ACategory 66909O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 66909P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10]1ACategory 67009O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 67009L).

[11]1ACategory 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–21478 Filed 8–18–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–C0007]

Consolidated Electrical Distributors, Inc., a Domestic Corporation, Provisional Acceptance of a Settlement Agreement and Order; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; Correction.

SUMMARY: The Consumer Product Safety Commission published a document in the **Federal Register** of August 12, 1999, pages 43990 through 43992, concerning the provisional acceptance of a settlement agreement and order with Consolidated Electrical Distributors, Inc. The Summary section of the document contained an erroneous reference to a civil penalty. Payments under this Agreement are not a civil penalty. See Paragraph 33 of the Agreement.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, x1382.

Correction

In the **Federal Register** issue of August 12, 1999, 64 FR 43990, in the second sentence in the Summary, remove the words, "containing a civil penalty of $1,500,000."

Dated: August 13, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–21474 Filed 8–18–99; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Finance and Accounting Service proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The amendment consists of correcting a Federal statute cite from '14 U.S.C. 1681a(f)' to '15 U.S.C. 1681a(f)' within all of the Defense Finance and Accounting Service systems of records notices.

DATES: This action will be effective August 19, 1999.

ADDRESSES: Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/CEE, Arlington, VA 22240-5291.

FOR FURTHER INFORMATION CONTACT: Mrs. Pauline Korpanty at (703) 607-3832.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and is available from the address above.

The amendment consists of correcting a Federal statute cite from '14 U.S.C. 1681a(f)' to '15 U.S.C. 1681a(f)' within all of the Defense Finance and Accounting Service systems of records notices.

Dated: August 11, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21236 Filed 8–18–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB); Meeting

AGENCY: Office of The Surgeon General, DOD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB subcommittee meeting. This Board will meet from 0730–1600 on Tuesday, September 14, and Wednesday, September 15, 1999. The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session.

The meeting location will be at the Uniformed Services University of Health Sciences (USUHS), Bethesda, Maryland.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Benedict Diniega, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–21541 Filed 8–18–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn D. Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army (Manpower and Reserve Affairs), 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Chief of Staff are:

1. Mr. John W. Matthews, Director, U.S. Army Records Management and Declassification Agency, Office of the Deputy Chief of Staff for Personnel (DCSPER).
2. Dr. Robin Buckelew, Director, Center for Land Warfare, Office of the Assistant Vice Chief of Staff.
3. BG Robert Glacel, Commander, U.S. Army Test and Experimentation Command, U.S. Army Operational Test Evaluation Command (OPTEC).
4. MG Albert Madora, Commander, (OPTEC).
5. Mr. Robert N. Kittel, Special Assistant for Communications & Transportation, U.S. Army Legal Services Agency.
6. BG Michael Marchand, Commander, U.S. Army Legal Services Agency.
7. BG Joseph R. Barnes, Assistant Judge Advocate General for Military Law and Operations.
8. BG Bruce M. Lawlor, Deputy Director, Operations, Readiness and Mobilization, Office of the Deputy Chief of Staff for Operations and Plans (DCSOPS).
9. BG John S. Brown, Chief of Military History, U.S. Army Center of Military History.
10. Dr. Jeffrey J. Clarke, Chief Historian, U.S. Army Center of Military History.
11. MG Mario F. Montero, Jr., Assistant Deputy Chief of Staff for Logistics.
12. Ms. Donna Shands, Acting Director for Maintenance, Office of the Deputy Chief of Staff for Logistics (DCSLOG).
13. Mr. William Neal, Acting Director for Transportation and Troop Support (DCSLOG).
14. Ms. Janet C. Menig, Deputy Assistant Chief of Staff for Installation Management, Office of the Assistant Chief of Staff for Installation Management (ACSIM).
15. Mr. Edgar B. Vandiver, Director, Center for Army Analysis (CAA).
16. Mr. Daniel J. Shedlowski, Technical Director, CAA.
17. Ms. Maureen Lishcke, Program Manager, Reserve Component Automation System, National Guard Bureau (NGB).
18. Mr. Warren Freeman, Director, D.C. National Guard.

The members of the Performance Review Board for the Army Acquisition Executive are:

Army Acquisition Executive Potential Board Members

1. Mr. A.Q. Oldacre, Deputy Program Executive Officer (PEO), Air & Missile Defense.
2. Mr. Edward Bair, Deputy PEO, Intelligence & Electronic Warfare.
3. Mr. Paul Bogosian, Deputy PEO, Aviation.
4. LTG William Campbell, Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army.
5. MG John Mechitsch, PEO, GCSS.
6. Dr. Shelba Proffitt, Program Manager, National Missile Defense.
7. Mr. Stanley H. Levine, Deputy Director, Army Digitization Office.
8. Mr. Robert R. Lehnes, Deputy PEO, Communication Systems.
9. Ms. Vicky Armbruster, Deputy PEO, Tactical Missiles.
10. Mr. Albert P. Puzzuoli, Deputy PEO, Armored Systems Modernization.
11. Mr. James Bacon, Program Manager for Chemical Demilitarization Operations.
12. Mr. T. Kevin Carroll, PEO, Standard Army Management Information Systems.
13. Dr. James Edgar, Director, Procurement Policy & Acquisition Reform, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).

The members of the Performance Review Board for the U.S. Army Consolidated Commands are:

1. Mr. William S. Rich, Director, National Ground Intelligence Center, U.S. Army Intelligence and Security Command (INSCOM).
2. Mr. David E. Wright, Director, Infrastructure, Logistics & Civil Emergency Planning Division (NATO).
3. Mr. Mark J. Lumer, Principal Assistant Responsible for Contracting, U.S. Army Space and Missile Defense Command (SMDC).
4. Mr. Laurence H. Burger, Director, Space and Missile Defense Battle Lab (SMDC).
5. Dr. Darrell Collier, Chief Scientist, (SMDC).
6. Mr. Joseph H. Plunkett, Assistant Deputy Chief of Staff for Personnel & Installation Management, U.S. Army Forces Command (FORSCOM).
7. Mr. Stephen J. Koons, Assistant Deputy Chief of Staff for Logistics and Readiness (FORSCOM).

8. MG Geoffrey D. Miller, Deputy Chief of Staff for Personnel & Installation Management (FORSCOM).
9. Mr. William R. Lucas, Deputy to the Commander, U.S. Army Military Traffic Management Command (MTMC).
10. BG Daniel Doherty, Assistant Deputy Chief of Staff for Base Operations Support, U.S. Army Training and Doctrine Command (TRADOC).
11. Mr. Robert J. Jefferis, Assistant Deputy Chief of Staff for Resource Management (TRADOC).
12. Mr. Philip Sakowitz, Jr., Deputy Chief of Staff for Base Operations Support (TRADOC).
13. Mr. John Kohler, Assistant Deputy Chief of Staff for Resource Management, U.S. Army, Europe (USAREUR).
14. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research).

The members of the Performance Review Board for the U.S. Army Materiel Command are:

1. MG Larry G. Smith, Commander, U.S. Army Security Assistance Command, U.S. Army Materiel Command.
2. MG David Gust, PEO-Intelligence and Electronic Warfare.
3. BG John Geis, Commanding General, U.S. Army Armaments Research, Development and Engineering Center, U.S. Army Materiel Command.
4. Mr. Gary A. Tull, Principal Deputy for Acquisition, U.S. Army Materiel Command.
5. Mr. Douglas R. Newberry, Deputy to Commander, U.S. Army Tank-automotive and Armaments Command, U.S. Army Materiel Command.
6. Mr. Michael A. Parker, Deputy to Commander, U.S. Army Soldier and Biological Chemical Command, U.S. Army Materiel Command.
7. Ms. Kathryn T. Szymanski, Chief Counsel, U.S. Army Communications-Electronics Command, U.S. Army Materiel Command.
8. Dr. Clarence W. Kitchens, Jr., Principal Deputy for Technology, U.S. Army Materiel Command.
9. Ms. Renata F. Price, ADCS for RDA-Science, Technology and Engineering, U.S. Army Materiel Command.
10. Dr. Chine I. Chang, Director, Army Research Office.
11. Mr. Anthony A. LaPlaca, Director, Logistics & Readiness Center, U.S. Army Communications-Electronics Command, U.S. Army Materiel Command.
12. Mr. Robert Doto, Director, Intelligence and Information Warfare Directorate, U.S. Army Communications-Electronics Command, RDE Center, U.S. Army Materiel Command.
13. Mr. Dennis J. Turner, Director, Center for Software Engineering, U.S. Army Communications-Electronics Command RDE Center, U.S. Army Materiel Command.
14. Mr. James J. Barbarello, Director, C2 & Systems Integration Directorate, U.S. Army Communications-Electronics Command RDE Center.
15. Mr. Robert R. Lehnes, Deputy PEO-Communications Systems, Army Acquisition Executive PEO.
16. Mr. James L. Flinn III, Executive Director, Integrated Materiel Management Center, U.S. Army Aviation and Missile Command, U.S. Army Materiel Command.
17. Mr. Paul Bogosian, Deputy PEO-Aviation, Army Acquisition Executive PEO.
18. Mr. Barry J. Baskett, Director of Aviation Engineering, Aviation RDE Center, U.S. Army Materiel Command.
19. Ms. Vicky R. Armbruster, Deputy PEO-Tactical Missiles, Army Acquisition Executive PEO.
20. Dr. Larry O. Daniel, Director for System Engineering and Production, Missile RDE Center, U.S. Army Materiel Command.
21. Mr. Robert J. Spazzarini, Chief Counsel, U.S. Army Aviation and Missile Command, U,S. Army Materiel Command.
22. Mr. A.Q. Oldacre, Deputy PEO-Air and Missile Defense Army Acquisition Executive PEO.
23. Mr. Joseph T. Lehman, Deputy Director, Fire Support Center, U.S. Army Tank-automotive and Armaments Command, U.S. Army Materiel Command.
24. Mr. Jimmy C. Morgan, Director, Armament and Chemical Acquisition & Logistics Agency, U.S. Army Materiel Command.
25. Mr. Vemula P. Rao, Vice President for Customer Engineering, U.S. Army Tank-automotive and Armaments Command, U.S. Army Materiel Command.
26. Mr. Brian M. Simmons, Technical Director, U.S. Army Test and Evaluation Command, U.S. Army Materiel Command.
27. Mr. David J. Shaffer, Director, U.S. Army Materiel Systems Analysis Activity, U.S. Army Materiel Command.
28. Dr. Paul H. Dietz, Chief, Combat Integration Division, U.S. Army Materiel Systems Analysis Activity, U.S. Army Materiel Command.
29. Dr. Robert E. Singleton, Director, Engineering Sciences Directorate, U.S. Army Research Office.
30. Dr. James J. Wade, Director, Survivability, Lethality Analysis Directorate, U.S. Army Research Laboratory.

Gregory D. Showalter,
Army Federal Register Liaison Officer.

[FR Doc. 99–21540 Filed 8–18–99; 8:45 am]
BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of Army, Army Corps of Engineers

Notice of Intent to Prepare a Joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for the Proposed Rock Creek-Keefer Slough Flood Control Project, Butte County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), lead agency under the National Environmental Policy Act, intends to prepare a draft and final EIS/EIR evaluating the environmental effects of flood control and environmental restoration for the Rock Creek-Keefer Slough watershed in Butte County, California. The Corps is working with Butte County and the Rock Creek Reclamation District to provide this protection.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS/EIR can be answered by Steve Tuggle at (916) 557–6638 or by mail at U.S. Army Corps of Engineers, Planning Division, ATTN: Steve Tuggle, 1325 J Street, Sacramento, California 95814–2922.

SUPPLEMENTARY INFORMATION:

1. Project Location

The project area is located in Butte County approximately 90 miles north of Sacramento. The area of primary interest includes portions of the town of Nord and agricultural lands affected by flooding from Rock Creek and Keefer Slough. The streams of interest in this evaluation include portions of Rock Creek, Keefer Slough, Mud Creek, Pine Creek, Kusal Slough, and the Sacramento River. The project area is also interconnected within the Big Chico Creek Ecological Unit of the Butte Basin, a tributary of the Sacramento River. This project covers the area of Rock Creek and Keefer Slough between Highway 32 and ½ mile above the confluence of Rock Creek with the Anderson Branch of Rock Creek, all within Butte County.

2. Proposed Action and Alternatives

The Corps, in cooperation with the State of California (Department of Water Resources) and the local sponsor (Butte County), is conducting a feasibility investigation of the flood control and environmental restoration measures identified during the reconnaissance phase and described in the Rock Creek-Keefer Slough Initial Assessment dated February 1999. This feasibility investigation proposes to develop and evaluate alternative flood control and environmental restoration plans that would alleviate flooding for the 100-year storm event and enhance the existing environment along the Rock Creek-Keefer Slough system.

The feasibility report will address an array of alternatives and resource problems. Alternatives analyzed during the feasibility investigation will be a combination of one or more flood control and ecosystem restoration measures identified during the reconnaissance phase; additional measures maybe considered. These alternative measures include (1) setback levees and stream channel improvements, (2) environmental restoration measures, (3) bypass and diversion structures, and (4) detention storage measures.

The goal of this project is to provide the greatest environmental benefits possible in conjunction with the proposed flood control project. Primary objectives include reducing flood risk and property damages, preserving existing resources, improving water quality, restoring wetlands, increasing riparian and riverine habitat, and reducing cobble and sediment transport. Significant issues to be analyzed in depth in the EIS/EIR include appropriate levels of the flood damage reduction, adverse effects on vegetation and wildlife resources, special-status species, esthetics, cultural resources, recreation, and cumulative effects of related projects in the study area.

3. Scoping Process

"Scoping" is a process to identify the actions, alternative, and effects to be evaluated in an environmental document. The project study plan provides for public scoping meeting and comments.

The Corps has initiated a process of involving Federal, State, and local agencies, and concerned individuals. After the draft EIS/EIR is prepared, a 45-day public review period will be provided for individuals and agencies to review and comment on the EIS/EIR. All interested parties should respond to this notice and provide a current address if they wish to be notified of the EIS/EIR circulation and future scoping meeting dates. Public meetings will be held to receive verbal and written comments. All comments will be considered and responded to in the final EIS/EIR.

4. Public Meetings

A public scoping meeting will be held in January 2000. Individuals are also encouraged to submit written scoping comments by December 31, 1999, to *http://www.buttecounty.net/publicworks/* or by mail to U.S Army Corps of Engineers, Planning Division, ATTN: Steve Tuggle, 1325 J Street, Sacramento, California 95814–2922.

5. Availability

The EIS/EIR is scheduled to be available for public review and comment in the summer of 2000.

Dated: August 9, 1999.

Michael J. Walsh,

COL, EN, Commanding.

[FR Doc. 99–21542 Filed 8–18–99; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Chief of Naval Education and Training

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Chief of Naval Education and Training announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 18, 1999.

ADDRESSES: Send written comments and recommendations on the proposed information collection to LT D. Brown (OTE6/0813), 250 Dallas Street, Pensacola, FL 32508–5220.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact LT D. Brown at (850) 452–4941 (X319).

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Application Forms Booklet, Naval Reserve Officers Training Corps Scholarship Program; OMB Control Number 0703–0026.

Needs and Uses: This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best qualified candidates.

Affected Public: Individuals or households.

Annual Burden Hours: 56,000.

Number of Respondents: 14,000.

Responses per Respondent: 1.

Average Burden per Response: 4 hours.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: August 12, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–21551 Filed 8–18–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; U.S. Marine Corps

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The U.S. Marine Corps announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 18, 1999.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Marine Corps Recruiting Command, (Code MROR), 3280 Russell Road, Quantico, VA 22134–5103.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Gunnery Sergeant Ricardo Hudson at (703) 784–9449.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Personal Information Questionnaire; OMB Control No. 0703–0012.

Needs and Uses: The Personal Information Questionnaire is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for a service as a commissioned officer.

Affected Public: Individuals or households.

Annual Burden Hours: 8,350.

Number of Respondents: 16,700.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: August 12, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–21552 Filed 8–18–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 20, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 13, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Title: Guidance to State Educational Agencies (SEAs) Seeking to Use an Alternative Method to Distribute Title I Funds to Local Education Agencies (LEAs) With Fewer Than 20,000 Total Residents.

Frequency: Guidance issued on as needed basis.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 25.

Burden Hours: 200.

Abstract: Guidance for State educational agencies seeking to use an alternative method to distribute Title I Basic and Concentration Grants to local educational agencies.

Written comments and requests for copies of this information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC. 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Elementary and Secondary Education

Title: Guidance to State Educational Agencies (SEAs) on Procedures for Adjusting ED-determined Title I Allocations to Local Educational Agencies (LEAs).

Frequency: Guidance issued on as needed basis.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 2,080.

Abstract: Guidance for State educational agencies on procedures for adjusting ED-determined Title I Basic and Concentration Grants allocations to local educational agencies to account for newly created LEAs and LEA boundary changes.

Written comments and requests for copies of this information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–21502 Filed 8–18–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.015A and B]

Office of Postsecondary Education, Department of Education; Notice Inviting Applications for National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies and Foreign Language and Area Studies Fellowships Program New Awards for Fiscal Year (FY) 2000

Purpose of Programs: The National Resource Centers (NRC) Program makes

awards to institutions of higher education for general assistance in strengthening nationally recognized centers of excellence in foreign language and area or international studies. NRC awards are used to support undergraduate centers or comprehensive centers, which include undergraduate, graduate, and professional school components.

The Foreign Language and Area Studies Fellowships (FLAS) Program makes awards to institutions of higher education for fellowship assistance to meritorious students undergoing graduate training in modern foreign languages and related areas or international studies. FLAS awards are used to support academic year and summer fellowships.

Eligible Applicants: Institutions of higher education and consortia of institutions of higher education.

Deadline for Transmittal of Applications: October 18, 1999.

Deadline for Intergovernmental Review: December 17, 1999.

Applications Available: September 7, 1999.

Available Funds: $21,230,000 for the NRC Program; and $15,090,000 for the FLAS Program. The estimated amount of funds available for new awards is based on the Administration's request for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

Estimated Range of Awards: $175,000—$225,000 per year for the NRC Program, and $27,000—$172,800 per year for the FLAS Program.

Estimated Average Size of Awards: $193,000 for the NRC Program and $116,000 for the FLAS Program.

Estimated Number of Awards: 110 grants under the NRC Program, and 130 grants under the FLAS Program. It is anticipated that the 130 FLAS program grants will yield 600 academic year fellowships and 415 summer fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months, beginning September 1, 2000.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for these programs as follows: 34 CFR parts 655 and 656 governing the NRC Program; and 34 CFR parts 655 and 657 governing the FLAS Program.

SUPPLEMENTARY INFORMATION:

FLAS Subsistence Allowance Level

The student subsistence allowance levels will be $11,000 for an academic year fellowship and $2,400 for a summer fellowship.

FLAS Institutional Payment

An institutional payment in lieu of tuition will be $10,000 for an academic year fellowship and $3,600 for a summer fellowship.

FLAS Travel Payment

Summer fellowships to be used on campuses other than the student's home institution may also include travel awards of $1,000 or the actual cost of travel, whichever is less.

FLAS budgets, therefore, should reflect $21,000 for each academic year fellowship requested, $6,000 for each summer fellowship requested, and summer travel awards, if requested.

Note: The amount of the award will not include allowances for dependents.

Absolute Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 656.23(a)(1)–(2), and (4), the Secretary gives an absolute preference to applications that meet the following priority:

Projects that include teacher training activities on the language, languages, area studies, or general topic of the center.

Page Limit

The application narrative is where you, the applicant, address the selection criteria reviewers use in evaluating your application. You must limit the narrative to 35 double-spaced pages for a single institution's application or 45 double-spaced pages for a consortium's application using the following standards:

A "page" is 8.5" × 11", on one side only, with 1" margins at the top, bottom, and both sides. You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space charts, tables, figures or graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the cover sheet, the abstract, the budget section, or the appendices.

If, to meet the page limit, you use print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

FOR APPLICATIONS OR INFORMATION CONTACT: Cheryl Gibbs, Ed McDermott, Karla Ver Bryck Block, or Amy Wilson, NRC–FLAS Team, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, S.W., Suite 600 Portals Building, Washington, D.C. 20202–5331. Telephone (202) 401–9798. The e-mail address for the NRC–FLAS Team is OPE__NRC-FLAS@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news/html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC. area, at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 22 U.S.C. 1122.

Dated: August 16, 1999.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–21626 Filed 8–18–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.016A]

Office of Postsecondary Education, Undergraduate, International Studies and Foreign Language Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The Undergraduate International Studies and Foreign Language Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Eligible Applicants: Institutions of higher education; combinations of institutions of higher education; partnerships between nonprofit educational organizations and institutions of higher education; and public and private non-profit agencies and organizations, including professional and scholarly associations.

Deadline for Transmittal of Applications: November 1, 1999.

Deadline for Intergovernmental Review: December 31, 1999.

Applications Available: September 7, 1999.

Available Funds: $1,990,000. The estimated amount of funds available for new awards under this competition is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

Estimated Range of Awards: $40,000–$130,000.

Estimated Average Size of Awards: $71,071 per year.

Estimated Number of Awards: 28.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months for grants to single institutions of higher education, and up to 36 months for grants to combinations of institutions of higher education and partnerships.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations in 34 CFR parts 655 and 658.

SUPPLEMENTARY INFORMATION: Matching requirement: Under Title VI, Part A, section 604(a)(3)of the Higher Education Act of 1965, Undergraduate International Studies and Foreign Language grantees must provide matching funds in either of the following ways: (a) Cash contributions from the private sector equal to one-third of the total project costs; or (b) a combination of institutional and non-institutional cash or in-kind contributions equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of title III or under title V of the Higher Education Act of 1965, as amended.

Priority

Under 34 CFR 75.105 (c)(2)(i), 34 CFR 658.35, and section 604(a)(5) of title VI of the Higher Education Act of 1965, as amended, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards five points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria:

Applications from institutions of higher education or combinations of institutions that: (a) Require entering students to have successfully completed at least two years of secondary school foreign language instruction; (b) require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language; or (c) in the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

FOR APPLICATIONS OR INFORMATION CONTACT: Christine Corey, Undergraduate International Studies and Foreign Language Program, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600 Portals Building, Washington, DC 20202–5331. Telephone: 202–401–9783. The e-mail address for Ms. Corey is christine__corey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news/html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, D.C. area, at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1124

Dated: August 16, 1999.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–21627 Filed 8–18–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Availability of Solicitation Number DE–PS07–99ID13824.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research and development of technologies which will reduce energy consumption, reduce environmental impacts and enhance economic competitiveness of the domestic aluminum industry. The research is to address research priorities identified by the aluminum industry in the Aluminum Industry Technology Roadmap. This Roadmap can be found in the solicitation, which is available in its full text via the Internet at the following URL address: http://www.id.doe.gov/doeid/PSD/procdiv.html.

Potential benefits of the research must be realized in manufacturing processes, not in end-use applications. Approximately $6,500,000 in combined fiscal year 2000 and 2001 federal funds is expected to be available to totally fund the first year of selected research efforts. DOE anticipates making eight to twelve awards each with a duration of four years or less. Note: Additional funds of up to $3,000,000 may be

available specifically for Advanced Cell work (Primary Aluminum Production.) A minimum 50% non-federal cost-share is required for research and development projects. Multi-partner collaborations between industry, university, and National Laboratory participants are encouraged.

DATES: The issuance date of Solicitation Number DE–PS07–99ID13824 is on or about August 13, 1999. The deadline for receipt of full applications is November 4, 1999.

ADDRESSES: Applications should be submitted to: Seb Klein, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist at *kleinsm@id.doe.gov*, or Dallas Hoffer, Contracting Officer at hofferdl@id.doe.gov.

SUPPLEMENTARY INFORMATION: The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on August 12, 1999.

R. J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 99–21526 Filed 8–18–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–754–002]

AmerGen Energy Company, L.L.C.; Notice of Filing

August 13, 1999.

Take notice that on July 23, 1999, AmerGen Energy Company, L.L.C., tendered for filing a change in status with respect to its FERC Electric Tariff, Original Volume No. 1.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 23, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21487 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–84–000]

AmerGen Energy Company, L.L.C.; Notice of Filing

August 13, 1999.

Take notice that on July 23, 1999, AmerGen Energy Company, LLC (AmerGen), tendered for filing an application requesting the Federal Energy Regulatory Commission to waive the open access transmission tariff requirements of Order No. 888 and Section 35.28 of the Commission's Regulations, 18 CFR 35.28, and the OASIS requirements of Order No. 889.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 23, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21488 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–598–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

August 13, 1999.

Take notice that on August 6, 1999, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP99–598–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the National Gas Act (18 CFR 157.205, 157.216) and Columbia's blanket certificate issued in docket No. CP83–76–000 to abandon three points of delivery to Columbia Gas of Ohio, Inc. (COH) and transfer ownership of 0.68 mile of 4-inch plastic piping to COH, all located in Jefferson County, Ohio. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21491 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2145–000 WS]

Public Utility District No. 1 of Chelan County; Notice of Public Utility District No. 1 of Chelan County's Request To Use Alternative Procedures in Filing a License Application

August 13, 1999.

On July 16, 1999, the existing licensee, Public Utility District No. 1 of Chelan County (Chelan PUD), filed a request to use the Commission's alternative procedures in submitting an application for a new license for the existing Rocky Reach Hydroelectric Project No. 2145. The 1,236.6-megawatt project is located on the Columbia River, about 7 miles upstream from the City of Wenatchee, Washington. Chelan PUD has demonstrated that it has made an effort to contact resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus likely exists that the use of the alternative procedures is appropriate in this case. Chelan PUD has also submitted a communications protocol that was developed in consultation with interested entities.

The purpose of this notice is to invite comments on Chelan PUD's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations.[1] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here combines the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to improve the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Alternative Licensing Process and Rocky Reach Schedule

Chelan PUD has submitted a proposed schedule for the process that leads to the filing of a new license application by June, 2004. Study plans would be developed this summer through the end of the year for field work that would start in April, 2000. National Environmental Policy Act scoping would be conducted during early to mid 2000. Field-work would be conducted through summer 2002 (if needed), with a draft application and draft APEA to be issued for comment in the spring of 2003.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Chelan PUD's proposal to use the alternative procedures to file an application for the Rocky Reach Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading "Comments on the Alternative Procedures," and include the project name and number (Rocky Reach Hydroelectric Project No. 2145).

For further information on this process, please contact Vince Yearick of the Federal Energy Regulatory Commission at 202–219–3073 or E-mail vince.yearick@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21494 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ97–8–005]

South Carolina Public Service Authority; Notice of Filing

August 13, 1999.

Take notice that on July 28, 1999, South Carolina Public Service Authority filed revised standards of conduct in response to the Commission's July 1, 1999 Order on Standards of Conduct. 88 FERC ¶ 61,013 (1999).

Any person desiring to be heard or to protest the filings should file, in each particular proceeding and referencing the appropriate docket number, a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 27, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to each proceeding must file a motion to intervene in each proceeding. Copies of these filings are on file with the Commission and are available for public inspection. These filings may also be viewed on the Internet at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–21489 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2077–016]

USGen New England, Inc.; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

August 13, 1999.

The license for the Fifteen Mile Falls Project No. 2077, located on the Connecticut River in Grafton County, New Hampshire, and Caledonia County, Vermont, will expire on July 31, 2001. On July 29, 1999, an application for new license was filed. The following is an approximately schedule and procedures that will be followed in processing the application:

[1] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

Date	Action
September 10, 1999	Commission notifies applicant that its application has been accepted and specifies the need for additional information and due date.
September 15, 1999	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
September 30, 1999	Commission's deadline for applicant for filing a final amendment, if any, to its application.
September 30, 1999	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of any additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to William Guey-Lee at (202) 219–2808, or email at william.gueylee@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21500 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–191–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Elk River Loop '99 Project

August 13, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Northern Natural Gas Company (Northern) in the above-referenced docket. It also addresses alternative routes for the proposed pipeline.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment. The EA concludes there is an environmentally preferable alternative and requests comments about it.

The EA assesses the potential environmental effects of the construction and operation of about 15 miles of 16-inch-diameter pipeline loop and appurtenances in Anoka and Sherburne Counties, Minnesota.

The purpose of the proposed facilities would be to provide about 23,873 million British thermal units per day of natural gas to meet increased market demand served by Northern's Elk River Branchline. Minnegasco, a Division of NorAm Energy Corporation and Northern States Power Company—Minnesota have contracted with Northern for this incremental service.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, landowners crossed by the proposed route or the alternatives, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send *two* copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label *one* copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–112;
- Reference Docket No. CP99–191–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 13, 1999.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21490 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11574–000; Connecticut]

City of Norwich, Department of Public Utilities

Notice of Availability of Final Environmental Assessment

August 13, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original minor license for the Occum Hydroelectric Project, located on the Shetucket River in New Loudon County, Connecticut, and has

prepared a Final Environmental Assessment (FEA) for the project.

Copies of the FEA are available in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. For further information, contact Ed Lee at (202) 219–2809.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21497 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–584–000]

Koch Gateway Pipeline Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Index 301–08L2 Prichard Loop Project and Request For Comments On Environmental Issues

August 13, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction of about 3.9 miles of 24-inch-diameter mainline loop, proposed in the Index 301–08L2 Prichard Loop Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

[1] Koch's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Summary of the Proposed Project

The Prichard Loop Project would be located entirely within the Prichard, Alabama city limits. Koch Gateway Pipeline Company (Koch) seeks authority to:

- Construct about 3.9 miles of 24-inch-diameter pipeline requiring about 31 acres of land;
- Use, as temporary workspace, about 12.4 acres of land;
- Construct a horizontal directional drill crossing of Chickasaw Creek;
- Use about 16 existing access roads; and
- At Whistler's Junction, replace the existing orifice meter with a 20-inch ultrasonic meter and install bypass and pigging facilities.

The location of the project facilities is shown in appendix 2. the proposed loop starts at Whistler's Junction (Station No. 11+95 on the Index 301–08L pipeline) and ties back into the mainline at Station No. 204+53, southwest of the Interstate 65 interchange with State Route 158. If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

About ninety-four percent of the proposed route of the Prichard Loop would occur within or adjacent to existing permanent rights-of-way of either Koch or the Alabama Power Company. Construction of the proposed facilities would require about 43.4 acres of land, including 14.2 acres of new permanent right-of-way. About 3.6 acres of existing pipeline and powerline rights-of-way would be used. The remaining 25.6 acres would be temporary construction areas (e.g., workspaces or construction right-of-way). All temporary construction areas would be allowed to revert to their former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on page 4 of this notice.

Currently Identified Environmental Issues

We have already identified some issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Koch. This preliminary list of issues may be changed based on your comments and our analysis.

- Four residences are located within 50 feet of the proposed construction right-of-way.
- The federally threatened gopher tortoise has been identified in the project area.
- Construction would include clearing 1.6 acres of forested wetlands.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your

concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP99–584–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 13, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21492 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of an Amendment of License And Soliciting Comments, Motions to Intervene, and Protests

August 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 184–060.

c. *Date Filed:* July 19, 1999.

d. *Applicant:* El Dorado Irrigation District (EID) and Pacific Gas & Electric Company (PG&E).

e. *Name of Project:* El Dorado Hydroelectric Project.

f. *Location:* On the South Fork American River and its tributaries, in El Dorado, Alpine, and Amador Counties, California. A large part of the project is located on more than 2,200 acres of federal land within the Eldorado National Forest.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. William T. Hetland, El Dorado Irrigation District, 2890 Mosquito Rd, Placerville, CA 95667, (530) 622–4513, and Annette Fargalia, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, CA 94120, (415) 973–7145.

i. *FERC Contact:* Any questions on this notice should be addressed to Mohamad Fayyad at mohamad.fayyad@ferc.fed.us or 200–219–2665.

j. *Deadline for filing comments and/or motions:* September 20, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (184–060) on any comments or motions filed.

k. *Description of Filing:* EID proposes to reconstruct the El Dorado Diversion Dam and to construct a 1.8-mile-long bypass tunnel to replace a damaged portion of the existing El Dorado Canal. Both the diversion dam and the canal were severely damaged by storm runoff and land slides, which occurred during January 1997. Reconstruction of the dam would involve a headwall, replacement of a fish ladder, and an intake facility with a fish screen that would be reconstructed on the north side instead of the south side of the channel. The 1.8-mile-long bypass tunnel would replace about 2.3 miles of damaged wood and concrete portions of the canal. EID proposes to remove the damaged portions of the canal and to stabilize the portions that would remain unused following construction of the bypass tunnel.

l. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm, (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item "h" above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the fling refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21493 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 13, 1999.

Take notice that the following two hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Application Type:* Non-Project Use of Lands and Waters.

b. *Project No.:* 1494–189, 1494–190, 1494–191, and 1494–193.

c. *Date Filed:* July 16, August 3, 1999 (1494–193).

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The Pensacola Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary E. Von Drehle, Grand River Dam Authority P.O. Box 409, Vinita, OK 74301 (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at Jon.Cofrancesco@ferc.fed.us or telephone 202–219–0079.

j. *Deadline for filing comments and or motions:* September 20, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, NE, Washington, DC 20426.

Please include the project number (1494–189, 1494–190, 1494–191, or 1494–193 on any comments or motions filed.

k. *Description of Project:* 1494–189 Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to issue a permit to Charles King, d/b/a Belle View Resort, to add one dock (32′×90′) containing 6 boat slips to an existing commercial facility, containing two docks with a total of 7 boat slips. The facility is located in Drowning Creek

1494–190 Grand River Dam Authority requests Commission authorization to issue a permit to James Baker, d/b/a Wolf's Landing, to add one dock (36′×191′) containing 13 boat slips to an existing commercial facility containing one dock with 12 boat slips, a swim dock, and two boat ramps. The facility is located in the upper end of Duck Creek.

1494–191 Grand River Dam Authority requests Commission authorization to issue a permit to Mack Magruder, d/b/a Hi-Lift Marina, to enlarge an existing commercial facility currently containing 3 primary docks with a total of 31 boat slips and one boat ramp. Mr. Magruder proposes to add 8 boat slips to an existing 7 boat slips and add one dock (76′×34′) containing 6 boat slips. The proposed additions would bring the total number of boat slips to 45. The facility is located in Drowning Creek.

1494–193 Grand River Dam Authority requests Commission authorization to issue a permit to Grand Lake Towne to add 10 boat slips and 6 personal watercraft slips to an existing commercial facility with two docks. The facility is located in Ketchum Cove.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.219, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the desired application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–21495 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of License and Soliciting Comments, Motions to Intervene, and Protests

August 13, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No.:* 2709–015.

c. *Date Filed:* July 16, 1999.

d. *Applicant:* Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company.

e. *Name of Project:* Davis Pumped Storage Project.

f. *Location:* The project was proposed to be located on the Blackwater River

and Red Creek in Tucker County, West Virginia, and would have occupied federal lands within the Monongahela National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas K. Henderson, Allegheny Energy, Inc., 10435 Downsville Pike, Hagerstown, MD 21740–1766, (301) 665–2703 and Mr. Stanley W. Legro, Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, 901 15th Street, NW., Suite 700, Washington, DC 20005–2301, (202) 371–6000.

i. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

j. *Deadline for filing comments and or motions:* September 20, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code HL–11.1, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–2709–015) on any comments or motions filed.

k. *Description of Project:* The unconstructed project would have consisted of: (1) a 600-acre upper reservoir inundating the headwaters of Red Creek, formed by two rock-filled dams on the crest of Cabin Mountain; (2) an intake channel and a 1,325-foot-long tunnel through Cabin Mountain; (3) a 1,350-foot-long, 27-foot-diameter steel penstock; (4) two 1,670-foot-long, 19-foot-diameter steel penstocks; (5) four 520-foot-long, 13.5-foot-diameter steel penstocks; (6) a powerhouse containing four 250,000-kilowatt pump-turbine generating units; (7) a 500-foot-long tailrace channel; (8) a 7,000-acre lower reservoir formed by a rock-fill dam across the Blackwater River; and (9) appurtenant facilities.

The licensees request to surrender the license because they have not realized any economic benefit from the license.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http// www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Invervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21496 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

August 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2589–024.

c. *Date Filed:* July 29, 1999.

d. *Applicant:* Marquette Board of Light and Power.

e. *Name of Project:* Marquette Hydroelectric Project.

f. *Location:* On the Dead River near the city of Marquette, Marquette County, Michigan. The project does not use federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David E. Hickey, Marquette Board of Light and Power, 2200 Wright Street, Marquette, MI 49855, (906) 228–0322.

i. *FERC Contact:* Any questions on this notice should be addressed to Lee Emery, E-mail address lee.emery@ferc.fed.us, or telephone 202–219–2779.

j. *Deadline for filing additional study requests:* September 27, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following two existing facilities: The Marquette Development No. 2 includes (1) Forestville Reservoir with a surface area of 110 acres and a storage volume of 2,900 acre-feet, impounded by (2) a 202-foot-long, 62-foot high, concrete-capped Cyclopean masonry dam with crest elevation 771.0 feet NGVD, which acts as a spillway under extremely high flows, with (a) a 197-foot-long concrete retaining wall, (b) a 75-foot-long training wall, and (c) a 33-foot-wide intake structure, with inclined trashracks, which discharges into (3) a 90-inch-diameter, wood-stave penstock, about 4,200 feet long, which conveys the water to (4) a concrete surge tank. From the surge tank, the water is carried by (5) two 440-foot-long, 78-inch-diameter steel penstocks to (6) Powerhouse No. 2, which is a 40-foot by 96-foot reinforced

concrete and brick structure containing (7) two, two-phase, 60-cycle horizontal turbine-generator sets with a combined generating capacity of 3,200 kilowatts, which transmit power to the 12,500 kV power distribution system.

The Marquette Development No. 3 includes (8) Tourist Park Reservoir with a surface area of 100 acres and a storage volume of 875 acre-feet, impounded by (9) a dam composed of (a) a 37-foot-long left spillway dike with a crest elevation of 642.84 feet NGVD, (b) an 80-foot long, 21-foot high, uncontrolled concrete ogee-shaped overflow spillway, with a crest elevation of 638.84 feet NGVD, (c) a gated spillway with two electric-hoist-operated, 10-foot-high by 10-foot-wide Taintor gates with a crest elevation of 629.84 feet NGVD, (d) a 758-foot-long right dike, with a reinforced concrete core wall with a crest elevation of 642.84 feet NGVD, and (e) a reinforced concrete intake structure with inclined trash racks, located 123 feet from the right end of the right dike, and having a single 20-foot-wide by 17-foot high bay. This bay controls water flowing into (10) an 8-foot-diameter, 150-foot long steel penstock, supported on nine reinforced-concrete pedestals spaced 16 feet apart, which carries water to (11) Powerhouse No. 3, which is a 28-foot by 40-foot reinforced concrete and brick structure containing (12) one two-phase, 60-cycle vertical turbine-generator set, which transmits power to the 12,500 kV power distribution system.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21498 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

August 13, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2232–394.

c. *Date Filed:* June 10, 1999.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On Lake Hickory in the Mountain Creek Township, in Caldwell County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006 (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and or motions:* September 20, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (2232–394) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to amend an existing lease with the 321 Marina by increasing the parcel size of leased project land from 1.1 to 1.448 acres to accommodate re-construction of existing boat slips and the construction of some additional boat slips. The 321 marina proposes to remove and rebuild six existing cluster piers now containing 36 slips and extend five of the piers to accommodate 38 additional slips, totaling 74 slips. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21499 Filed 8–18–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6424–9]

National Environmental Justice Advisory Council Subcommittee on Health and Research Notification of Meeting and Public Comment Period; Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC) Subcommittee on Health and Research will meet on the dates and times described below. All times noted are Central Standard Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The NEJAC Subcommittee meetings will take place at the Hyatt on Printer's Row, 500 S. Dearborn St. (312) 986–1234, Chicago, IL. The meeting dates are as follows: September 13, 1999 through September 15, 1999.

Registration for the meeting will begin on Monday, September 13, 1999 at 5 p.m. A public comment period to address community environmental health and health assessments is scheduled for Monday, September 13, 1999 from 6 p.m. to 9 p.m. The Subcommittee will convene Tuesday, September 14, 1999 from 9 a.m. to 5 p.m., and on Wednesday, September 15, 1999 from 8:30 a.m. to 4 p.m. Business will include discussion of community assessment protocols, the Community Environmental Assessment Decision Tree project, and the agenda for the May 2000 NEJAC meeting.

Any member of the public wishing additional information on the subcommittee meetings should contact the Designated Federal Official at the telephone number listed below.

Mr. Chen Wen—202/260–4109
Mr. Lawrence Martin—202/564–6497

Members of the public who wish to participate in the public comment period should register to do so by September 10, 1999. Individuals or groups making oral presentations during the public comment period should address their remarks to community environmental health and health assessments, and will be limited to a total time of five minutes. If you wish to submit written comments of any length (at least 15 copies), they should also be received by September 10, 1999. Comments received after that date will be provided to the Subcommittee as logistics allow. Correspondence concerning registration and written comments should be sent to Chen Wen at EPA/OPPTS, 401 M St. SW (7409), Washington, DC 20460.

Dated: August 14, 1999.

Lawrence Martin,

Designated Federal Official, National Environmental Justice Advisory Council Subcommittee on Health and Research.

[FR Doc. 99–21545 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6425–8]

Jack's Creek/Sitkin Smelting Superfund Site De Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of Robert J. Clark, d/b/a Clark Trucking, for response costs incurred by the United States Environmental Protection Agency at the Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania.

DATES: Comments must be provided on or before September 20, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should refer to: In Re: Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania, U.S. EPA Docket No. III–98–094–DC.

FOR ADDITIONAL INFORMATION CONTACT: Daniel Isales (215) 814–2647, U.S. Environmental Protection Agency, Office of Regional Counsel, (3RC42), 1650 Arch Street, Philadelphia, Pennsylvania, 19103.

SUPPLEMENTARY INFORMATION:

Notice of De Minimis Settlement

In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), and section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), notice is hereby given of a proposed administrative settlement concerning the Jack's Creek/Sitkin Smelting Superfund Site in Maitland County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency and is subject to review by the public pursuant to this Notice. The agreement has been approved by the Attorney General, United States Department of Justice, or her designee, pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4). The Attorney General, or her designee, has also approved the agreement for the purpose of granting the covenant not to sue for damages to natural resources on behalf of the Department of the Interior ("DOI").

The settling party has agreed to pay $2,000.00 to United States Environmental Protection Agency toward EPA response costs and $500.00 to DOI for damages to natural resources, subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. The grant of a covenant not to sue for damages to natural resources by DOI to those parties paying their share of such allocated costs is subject to agreement in writing by DOI pursuant to section 122(j) of CERCLA, 42 U.S.C. 9622(j).

The Environmental Protection Agency will receive written comments upon this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. Moreover, pursuant to section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), the public may request a meeting in the affected area. A copy of the proposed Administrative Order on Consent can be obtained by contacting Daniel Isales,

Office of Regional Counsel, at the address and phone number listed above.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–21544 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6425–7]

Proposed Administrative Agreement for Collection of CERCLA Response and Oversight Costs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; proposed CERCLA 122(h) administrative agreement.

SUMMARY: EPA is proposing to execute an Administrative Agreement (Agreement) under section 122 of CERCLA for collection of a percentage of response and oversight costs at the King River Limited, Incorporated Superfund Site. The Respondent has agreed to pay $75,000 out of total unrecovered response and oversight costs of approximately $154,089.43, and in return will receive a covenant not to sue and contribution protection from EPA. EPA today is proposing to execute this Agreement because it achieves collection of a high percentage of total Site costs. The Respondent at the Site previously performed a Superfund removal under a CERCLA section 106 Unilateral Order, at a cost of approximately $7,000,000. Other responsible parties conducted removal activities at a cost of approximately $1,000,000. Thus, the overall value of the clean up and settlement to EPA is $8,075,000 out of an approximate total of $8,540,089.43. This is 99% of total Site costs.

DATES: Comments on this proposed settlement must be received on or before September 20, 1999.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Sue Pastor at (312) 353–1325 before visiting the Region V Office). Sue Pastor, OPA (PI9–J), Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 353–1325.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Sue Pastor, OPA (P19–J), Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 353–1325.

FOR FURTHER INFORMATION CONTACT: Sue Pastor, Office of Public Affairs, at (312 353–1325.

SUPPLEMENTARY INFORMATION: The King River Limited Superfund Site is located at 202 Vine Street, New Boston, Ohio (Scioto County). In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to section 104 of CERCLA, 42 U.S.C. 9604. The Site is a portion of a former steel mill approximately 6.74 acres in size which was contaminated in 1987 with polychlorinated biphenyls (PCBs) as a result of demolition activities conducted by Spar Construction. At the time of the demolition, Cyclops Corporation owned the Site and leased it to King River Limited. As a result of its 1992 merger with Cyclops Corporation, Armco Incorporated is a responsible party under section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Pursuant to a December 29, 1993, Administrative Order on Consent, New Boston Industrial Corporation ("NBIC"), formerly known as King River Limited, conducted a site investigation at the Site, which included the sampling, excavation, and stockpiling of polychlorinated biphenyl ("PCB")-contaminated soil. NBIC performed the cleanup work as agreed under the AOC until its available fund were exhausted.

Pursuant to a September 26, 1994, Unilateral Administrative Order, Armco maintained site security, transported and disposed of the stockpiled soils, and confirmed the removal of all PCB-contaminated soils containing PCBs over 25 ppm from the Site. In all, 388 rail cars carried approximately 35,000 tons of PCB-contaminated soils to a Toxic Substances Control Act ("TSCA")-regulated landfill.

Costs associated with the cleanup of this Site, which were paid by responsible parties, were estimated to be over $8,000,000. EPA's total unrecovered oversight costs for this site are approximately $154,089.43.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(I) of CERCLA for comments on the proposed Administrative Agreement. Comments should be sent to Sue Pastor of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

William E. Muno,

Director, Superfund Division.

[FR Doc. 99–21543 Filed 8–18–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–98; DA 99–1606]

Public Service Commission of Wisconsin's Petition Requesting Additional Authority To Implement Number Conservation Measures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 12, 1999, the Commission released a public notice requesting public comment on a petition from the Public Service Commission of Wisconsin ("Petition") requesting additional authority to implement number conservation measures. The intended effect of this action is to make the public aware of, and to seek public comment on, this request.

DATES: Comments are due by September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Jared Carlson at (202) 418–2320 or jcarlson@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW, Suite 6–A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

On September 28, 1998, the Federal Communications Commission ("Commission") released an order in the matter of a Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Memorandum Opinion and Order and Order on Reconsideration*, FCC 98–224, CC Docket No. 96–98, 63 FR 63613, NSD File No. L–97–42 (rel. September 28, 1998) ("Pennsylvania Numbering Order"). The Pennsylvania Numbering Order delegated additional authority to state public utility commissions to order NXX code rationing, under certain circumstances, in jeopardy situations and encouraged state commissions to seek further limited delegations of

authority to implement other innovative number conservation methods.

The Public Service Commission of Wisconsin ("PSCW") has filed a request for additional delegation of authority to implement number conservation methods in their state. *See* Common Carrier Bureau Seeks Comment on the Public Service Commission of Wisconsin's Petition for Delegation of Additional Authority to Implement Number Conservation Measures, *Public Notice*, NSD File No. L–99–64, DA 99–1555 (rel. August 12, 1999).

The additional authority measures sought by the PSCW relate to issues under consideration in the *Numbering Resource Optimization Notice*. Numbering Resource Optimization, *Notice of Proposed Rulemaking*, CC Docket No. 99–200, FCC 99–122 (rel. June 2, 1999), 64 FR 32471. Because the PSCW faces immediate concerns regarding the administration of number resources in Wisconsin, we find it to be in the public interest to address this petition as expeditiously as possible, prior to completing the rulemaking proceeding.

We hereby seek comment on the issues raised in the PSCW's petition for delegated authority to implement various area code conservation measures. A copy of this petition will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW, Suite CY–A257, Washington, DC 20554, (202) 418–0267.

Interested parties may file comments concerning these matters on or before September 13, 1999. All filings must reference NSD File Number L–99–64 and CC Docket 96–98. Send an original and four copies to the Commission Secretary, Magalie Roman Salas, Portals II, 445 12th Street, SW, Suite TW–A325, Washington, DC 20554 and two copies to Al McCloud, Network Services Division, Portals II, 445 12th Street, SW, Suite 6A–320, Washington, DC 20554.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, including "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

This is a "permit but disclose" proceeding for purposes of the Commission's *ex parte* rules. *See generally* 47 CFR 1.1200–1.1216. As a "permit but disclose" proceeding, *ex parte* presentations will be governed by the procedures set forth in 1.1206 of the Commission's rules applicable to non-restricted proceedings. 47 CFR 1.1206.

Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in 1.1206(b) as well. For further information contact Jared Carlson of the Common Carrier Bureau, Network Services Division, at (202) 418–2320 or jcarlson@fcc.gov. The TTY number is (202) 418–0484.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–21576 Filed 8–18–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice Required by the Y2K Act to Establish a Small Business Liaison

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Pursuant to section 18(b) of the Y2K Act, Public Law 106–37, 113 Stat. 185 (1999), the Federal Deposit Insurance Corporation is hereby designating Edward Silberhorn, Consumer Affairs Specialist, Division of Compliance and Consumer Affairs, as the point of contact to act as a liaison between the agency and insured state nonmember banks, as well as foreign banks having an insured branch, which qualify as small business concerns under the Act, with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations. Mr. Silberhorn can be reached at (202) 942–3425.

FOR FURTHER INFORMATION CONTACT: Edward Silberhorn, Division of Compliance and Consumer Affairs, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429; telephone number: (202) 942–3425.

SUPPLEMENTARY INFORMATION: The Y2K Act defines "small business concern" as an unincorporated business, a partnership, corporation, association, or organization, with fewer than 50 full-time employees. In addition, the Y2K Act defines "Y2K failure" as failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, calculate, compare, sequence, display, store, transmit, or receive Year-2000 date-related data. This definition specifically includes failures to: (1) deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately; (2) recognize or process accurately any specific date in 1999, 2000, or 2001; or (3) account accurately for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

Small business concerns may contact the FDIC's small business liaison, as set forth above, effective August 19, 1999, through December 31, 2000.

In addition, as an alternative to contacting the FDIC's small business liaison in Washington, D.C., small business concerns may contact the following individuals in the Division of Compliance and Consumer Affairs in the FDIC's Regional Offices with their questions:

Atlanta, GA—James F. Pilkington, Community Affairs Officer, at 404–817–2515.

Boston, MA—Shirley P. Parish, Community Affairs Officer, at 781–794–5632.

Chicago, IL—Michael A. Frias, Community Affairs Officer, at 312–382–7506.

Dallas, TX—Eloy A. Villafranca, Community Affairs Officer, at 972–761–8010.

Kansas City, MO—Deanna S. Caldwell, Community Affairs Officer, at 816–234–8151.

Memphis, TN—David E. Wright, Community Affairs Officer, at 901–821–5295.

New York, NY—Valerie J. Williams, Community Affairs Officer, at 212–704–1245.

San Francisco, CA—Linda D. Ortega, Community Affairs Officer, at 415–978–0486.

Dated at Washington, D.C., this 13th day of August, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–21507 Filed 8–18–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 26, 1999, 10:00 a.m., Meeting Open to the Public.

THE OPEN MEETING HAS BEEN CHANGED TO: Wednesday, August 25, 1999, 10:00 a.m.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99–21711 Filed 8–17–99; 2:57 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Charter Container Line, Inc., 842 Clifton Avenue, Suite 1, Clifton, NJ 07013, Officers: Joseph R. Cuccurullo, President (Qualifying Individual), Patrick Costin, Vice President

Continental Container Line, Inc., 182–16 147th Avenue, Jamaica, NY 11413, Officers: Sai K. Ng, Vice President (Qualifying Individual), Nick Lin, Vice President

Global Cargo U.S.A., Inc., 9111 NW 105th Way, Medley, FL 33178, Officers: Jose Cordo, Secretary (Qualifying Individual), Geoffredo Holbik, President

Gramter International (U.S.A.) Co., Ltd., 11222 La Cienega Blvd., Suite 358, Inglewood, CA 90304, Officers: Johnny Liu, President (Qualifying Individual), Jenny Chen, Secretary

Korea Express Atlanta, Inc., 5559 New Peachtree Road, Chamblee, GA 30341, Officer: Un Kil An, President (Qualifying Individual)

Lafawa Inc., 358 Victoria Street, San Francisco, CA 94132, Officers: Charlie Shi, Director (Qualifying Individual), Xiao Yan Gu, Chief Executive Officer

S. R. International, Inc., 289 E. Redondo Beach Blvd., Gardena, CA 90248, Officers: Soon Yeon Lim, Chief Financial Officer (Qualifying Individual), Han K. Kim, President

Sunlight Transport, Inc., 139 Mitchell Avenue, Suite 229, South San Francisco, CA 94080, Officer: Young Suk S. Waller, President (Qualifying Individual)

Valley Freight Consolidators, Inc., 2025 N.W. 102nd Avenue, Unit 109, Miami, FL 33172, Officer: Jose Rodrico Rincon, President (Qualifying Individual)

Trans-Jam Express Shipping Co., 479 Rogers Avenue, Brooklyn, NY 11225, Dwight Wisdom, Sole Proprietor

Global Shipping, Inc., Parkway One, Suite 201, 2697 International Parkway, Virginia Beach, VA 23452, Officer: R. Timothy Jones, Vice President (Qualifying Individual)

Pacific & Atlantic Ocean Container Line Inc., 45 Rockefeller Plaza, Suite 3162, New York, NY 10020, Officer: Oscar Anthony Poli, Exec. Vice President (Qualifying Individual)

Pan Star Express (Chicago) Corp., 228 Howard Street, Des Plaines, IL 60018, Officer: Ivy S. Wang, Chief Financial Officer (Qualifying Individual)

Pan-World Express, Inc., 5359 W. Valley Boulevard, Los Angeles, CA 90032, Officer: Adam D. Lam, President (Qualifying Individual)

Dit (USA), Inc., 1805 W. Hovey, Suite B, Normal, IL 61761, Officer: Mark Boulware, Assistant Secretary (Qualifying Individual)

Trans Service Line (USA), Inc., 50 Broadway, Suite 1603, New York, NY 10004, Officer: Jean-Francois Pinson, President (Qualifying Individual)

China United Transport, Inc., 2063 South Atlantic Blvd., Suite 2–B, Monterey Park, CA 91754, Officer: Xuexiang Li, President (Qualifying Individual)

Delta Line International, Inc., 9164 NW 150 Terrace, Miami, FL 33018, Officer: Ana M. Vega, President (Qualifying Individual)

Amos Cargo Service, Inc., 901 W. Victoria Street, Unit B–2, Compton, CA 90220, Officer: Chong W. Kim, President (Qualifying Individual)

Oconca Shipping (LAX) Inc., 229 S. Glasgow Avenue, Inglewood, CA 90301, Officer: Mimi Mak, President (Qualifying Individual)

TDC International Express, Inc., 2118 Sunny Ridge Place, Fullerton, CA 92833, Officer: Susan Cha, President (Qualifying Individual)

Caretrans Freight Service, Inc., 500–A North Nash Street, El Segundo, CA 90245, Officers: Basal K. Lau, Secretary (Qualifying Individual), William Chiao, President

Global Consolidation Services, LLC, 200 Middlesex Avenue, Carteret, NJ 07008, Officer: Charles Centorrino, President (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

U.S. Intermodal Maritime, Inc., 12610 Interurban Ave., So., Bldg. #D, Tukwila, WA 98168, Officer: Ian Seok Moon, President (Qualifying Individual)

Servi-Fast International Corp., 10400 N.W. 33rd Street, Suite #120, Miami, FL 33172, Officers: Cesar A. Baez, Vice President (Qualifying Individual), Carlos M. Alvarez, President

EMO Trans Georgia, Inc., 20 Southwoods Pkwy., Suite 500, Atlanta, GA 30354, Officer: Olen Wood, Vice President (Qualifying Individual)

Transportation Bureau of Baltimore, Inc., d/b/a TBB Global Logistics, 11350 McCormick Road, Executive Plaza I, Suite 305, Hunt Valley, MD 21031, Officers: Shiron Kessler Paul, Int'l. Operations Officer (Qualifying Individual), Jay M. Polakoff, Chairman of the Board

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

International Warehouse Services, Inc., 3400 McIntosh Road, P.O. Box 21031, Ft. Lauderdale, FL 33335, Officers: Bettina Hoyer, Secretary (Qualifying Individual), Fred C. Roqacki, President

Dated: August 13, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–21480 Filed 8–18–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY:

Background. Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section--Mary M. West--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829); OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final approval under OMB delegated authority of the extension for three years, without revision of the following report:

1. Report title: Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment).

Agency form number: unnum Reg BB.

OMB Control number: 7100-0197.

Frequency: Annual.

Reporters: State Member Banks.

Annual reporting hours: 151,680 hours.

Estimated average hours per response: Small business and small farm loan register: 219 hours; Consumer loan data: 326 hours; Other loan data: 25 hours; Assessment area delineation: 2 hours; Small business and small farm loan data: 8 hours; Community development loan data: 13 hours; HMDA out of MSA loan data: 253 hours; Data on lending by a consortium or third party: 17 hours; Affiliate lending data: 38 hours; Strategic plan: 275 hours; Request for designation as a wholesale or limited purpose bank: 4 hours; and Public file: 10 hours.

Number of respondents: Public file: 989; Small business and small farm loan register, Assessment area delineation, Small business and small farm loan data, Community development loan data, and HMDA out of MSA loan data: 227; Consumer loan data: 77; Other loan data: 50; Data on lending by a consortium or third party: 11; Affiliate lending data: 32; Strategic plan: 6; and Request for designation as a wholesale or limited purpose bank: 5.
Small businesses are affected.

General description of report: The recordkeeping, reporting, and disclosure requirements associated with Regulation BB are authorized by the Federal Reserve Act (12 U.S.C. § 248) and the Community Reinvestment Act (12 U.S.C. § 2901 *et seq.*) and are mandatory to evidence compliance. Generally, the data that are reported to the Federal Reserve are not considered confidential.

Abstract: The Community Reinvestment Act (CRA) and Regulation BB encourage financial institutions to help meet the credit needs of their entire communities, consistent with safe and sound banking practices. The information collection associated with CRA and Regulation BB applies to state member banks, although not all are required to submit data to the Federal Reserve. The requirements imposed on the institutions are based primarily on the asset size of the institutions and whether an institution elects to comply with the optional reporting and recordkeeping requirements.

State member banks (SMBs) must delineate an assessment area(s) and larger banks (as defined in Regulation BB) must provide a list of the geographies within this area(s) to the Federal Reserve. State member banks must keep a public file of required information. The public file requirements are slightly different for small banks (as defined in Regulation BB) or banks that were small banks during the prior calendar year than for banks other than small banks. SMBs must display a public notice in the lobby of the main office and each branch informing consumers about the availability of certain CRA information. Banks other than small banks (large banks) must maintain data on small business and small farm loans; small banks may elect to maintain information on those loans. Large banks must report aggregated data on small business and small farm loans and on community development loans. While Regulation C requires certain institutions to report Home Mortgage Disclosure Act loan data and maintain information on those loans, CRA additionally requires large banks that are HMDA reporters to identify the location of each home mortgage loan application, origination, or purchase outside the MSAs where the institution has offices or outside any MSA. Any bank may elect to collect and maintain records on consumer loans and other loan data for consideration under the lending test. Also, any bank may collect, maintain, and report data on lending by affiliates or a consortium/third party with which it is involved. A bank that wishes to be evaluated under its own strategic plan must submit that plan to the Federal Reserve and must operate under it for at least one year before being evaluated under it. A bank that wishes to be designated as a wholesale or limited purpose bank must make that request in writing.

Current Actions: In May 1999 the Federal Reserve along with the Office of Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) published a joint notice in the *Federal Register*, requesting comment on their intent to extend the information collections for their CRA regulations. Pursuant to 5 CFR 1320.16, this was an initial notice and request for comment for the Federal Reserve; it was a final notice for the other agencies. The agencies' request for OMB review involved a reestimate of burden but no change in the underlying information collections.

All four agencies received four public comment letters from banking trade associations and one from a community interest group. The FDIC and the OCC each received two letters from financial institutions. This final notice addresses all the comment letters received by the four agencies.

The community interest group commented that the benefits of increased lending to underserved populations outweigh the costs and that the burden estimates for large banks are overstated. The four financial institutions commented that the burden estimates were low and three provided estimates of their own burden for CRA. All four banking trade associations commented that the new burden estimates are still too low, although two acknowledged that the they are improved. The four agencies recognize that their CRA regulations impose significant regulatory burden on depository institutions, and they appreciate the commenters' efforts to provide additional input. Although the estimates may not necessarily represent

the time spent by any particular institution, the agencies believe that the burden estimates fairly represent the total burden on the industry as a whole.

Three of the trade associations and two of the financial institutions commented on the specific requirements that are included in the burden estimates. The Federal Reserve's OMB supporting statement provides a detailed list of the elements included in the burden estimate. Two trade associations and one bank questioned whether the collection of information is necessary for the proper performance of the functions of the agency and is the least burdensome alternative. The community interest group expressed the opposite view, that the agencies cannot assess CRA performance without these data collection requirements. The justification for this information collection and its use by the Federal Reserve are also addressed in the OMB supporting statement. Some commenters questioned the methodology used for estimating the burden. As mentioned in the May 1999 *Federal Register* notice, the agencies combined the information from several sources, including public comments, contacts with CRA respondents, and knowledgeable agency staff, to derive the burden estimates.

In addition to addressing the paperwork requirements of CRA, several commenters discussed broader issues, including regulatory and examination burden. One banking trade association also included recommendations addressed to OMB. These issues are not addressed here as they are not appropriate for this notice.

Board of Governors of the Federal Reserve System, August 13, 1999.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 99–21481 Filed 8–18–99; 8:45am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the projects or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1

Research on Employment Supports for People with Disabilities—NEW—The Office of the Assistant Secretary for Planning and Evaluation has embarked on a project to collect extensive information on the experiences of people with disabilities in competitive employment. As part of this effort they intend to conduct a series of discussions with working people with disabilities across three locations in the United States and Canada for the purpose of gaining detailed information on their employment experiences. *Respondents:* Individuals or households—Reporting Burden Information for Screener—*Number of Respondents:* 750; *Burden per Response:* 7 minutes; *Total Burden for Screener:* 88 hours—Burden Information for Focus Group Registration—*Number of Respondents:* 375; *Burden per Response:* 10 minutes; *Total Burden of Registration:* 63 hours—Burden Information for Focus Group—*Number of Respondents:* 375; *Burden per Response:* 150 minutes; *Total Burden for Focus Group:* 938—Burden Information for Post-Focus Group Evaluation—*Number of Respondents:* 375; *Burden per Response:* 7 minutes; *Total Burden for Evaluation:* 44 hours—*Total Burden:* 1,133 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: August 12, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–21483 Filed 8–18–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

Proposed Projects 1. Cash and Counseling Demonstration—Additional Survey Instruments—New—

Cash and Counseling is a consumer directed care model for individuals with physical or developmental disabilities. A demonstration project implementing this model is being evaluated by the Office of the Assistant Secretary for Planning and Evaluation. This portion of the evaluation consists of four information collection instruments. Respondents: Individuals or Households, For-profit, Non-profit Institutions; Burden Information for Informal Caregiver Survey—Number of Respondents: 8,000; Burden per Response: .38 hours; Total Burden for Informal Caregiver Survey: 3,040 hours—Burden Information for Paid Worker Survey—*Number of Respondents:* 800; *Burden per Response:* .5 hours; *Total Burden for Paid Worker Survey:* 400 hours—Burden Information for Consultant Survey—*Number of Respondents:* 400; *Burden per Response:* .58 hours; *Total Burden for Consultant Survey:* 200 hours—Burden Information for Ethnographic Discussion Guide—*Number of Respondents:* 300; *Burden per Response:* 1 hours; *Total Burden for Ethnographic Discussion Guide:* 300 hours—*Total Burden:* 3,940 hours. *OMB Desk Officer:* Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: August 11, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–21482 Filed 8–18–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry

[Program Announcement 00017]

Public Health Conference Support Grant Program (Includes HIV Prevention); Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of fiscal year (FY) 2000 funds for a grant program for Public Health Conference Support (Includes HIV Prevention). This program addresses the following "Healthy People 2000" priority area(s) for CDC and ATSDR, with the exceptions of Mental Health, and Substance Abuse.

CDC priority areas are; Physical Activity and Fitness; Nutrition; Tobacco; Violent and Abusive Behavior; Unintentional Injuries; Occupational Safety and Health; Environmental Health; Oral Health; Maternal and Infant Health; Heart Disease and Stroke; Cancer; Diabetes and Chronic Disabling Conditions; Sexually Transmitted Diseases; Human Immunodeficiency Virus (HIV), and Immunization and Infectious Disease. Conferences on Mental Health and Substance Abuse should be directed to other Federal Agencies.

The purpose of conference support funding is to provide PARTIAL support for specific non-federal conferences in the areas of health promotion and disease prevention information and education programs, and applied research.

Because conference support by CDC/ATSDR creates the appearance of CDC/ATSDR co-sponsorship, there will be active participation by CDC/ATSDR in the development and approval of the conference agenda. CDC/ATSDR funds will be expended only for approved portions of the conference.

The mission of CDC is to promote health and quality of life by preventing and controlling disease, injury, and disability.

CDC supports local, State, academic, national, and international health efforts to prevent unnecessary disease, disability, and premature death, and to improve the quality of life. This support often takes the form of education, and the transfer of high quality research findings and public health strategies and practices through symposia, seminars, and workshops. Through the support of conferences and meetings in the areas of public health research, education, prevention research in program and policy development in managed care and prevention application, CDC is meeting its overall goal of dissemination and implementation of new cost-effective intervention strategies.

ATSDR priority areas are: (1) health effects of hazardous substances in the environment; (2) disease and toxic substance exposure registries; (3) hazardous substance removal and remediation; (4) emergency response to toxic and environmental disasters; (5) risk communication; (6) environmental disease surveillance; and (7) investigation and research on hazardous substances in the environment.

The mission of ATSDR is to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR's systematic approaches are needed for linking applicable resources in public health with individuals and organizations involved in the practice of applying such research. Mechanisms are also needed to shorten the time frame between the development of disease prevention and health promotion techniques and their practical application. ATSDR believes that conferences and similar meetings that permit individuals to engage in hazardous substances and environmental health research, education, and application (related to actual and/or potential human exposure to toxic substances) to interact, are critical for the development and implementation of effective programs to prevent adverse health effects from hazardous substances.

B. Eligible Applicants

Applications for CDC support may be submitted by public and private non-profit organizations. Public and private non-profit entities include but are not limited to State and local governments or their bona fide agents, voluntary associations, foundations, civic groups, scientific or professional associations, universities, and Federally-recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

ONLY Conferences planned for May 01, 2000 through April 30, 2001 are eligible to apply under this announcement.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

Applications for ATSDR support may be submitted by the official public health agencies of the States, or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Island, the Republic of Palau, and Federally-recognized Indian Tribal governments. State organizations, including State universities, State colleges, and State research institutions must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant. Also eligible are nationally recognized associations of health professionals and other chartered organizations generally recognized as demonstrating a need for information to protect the public from the health effects of exposure to hazardous substances.

C. Availability of Funds

Approximately $900,000 is available from CDC in FY 2000 to fund approximately 35 to 45 awards. It is expected that the average award will be $20,000. Funding estimates may change. For FY 2000 awards will be made for three cycles A, B & C each for a 12-month budget period within a 12-month project period. See (Appendix 3) for suggested dates of when to apply for funds. No awards will be made during a cycle between the LOI due date and the Award Date unless approved by the awarding office.

State and local health departments applying for HIV prevention conference support funds may only apply under Category 2 (See Appendix 4 Applications Content for HIV Applicants).

Approximately $50,000 is available from ATSDR in FY 2000 to fund approximately six awards. It is expected

that the average award will be $8,000, ranging from $5,000 to $10,000. It is expected that the awards will begin on or about thirty days before the date of the conference and will be made for a 12-month budget period within a 12-month project period. Funding estimates may change.

Use of Funds

a. CDC and ATSDR funds may be used for direct cost expenditures: Salaries; speaker fees (for services rendered); rental of necessary conference related equipment; registration fees; and transportation costs (not to exceed economy class fare) for non-Federal individuals.

b. CDC and ATSDR funds may be used for only those parts of the conference specifically supported by CDC or ATSDR as documented in the grant award.

c. CDC and ATSDR funds may NOT be used for the purchase of equipment; payments of honoraria (for conferring distinction); alterations or renovations; organizational dues; support entertainment or personal expenses; food or snack breaks; cost of travel and payment of a Federal employee; per diem or expenses other than local mileage for local participants. Travel for CDC/ATSDR employees will be supported by CDC/ATSDR. Travel for other Federal employees will be supported by their respective agencies. When certain meals are an integral and necessary part of a conference (i.e., working meal where business is transacted and/or a bonafide business product is produced), grant funds may be used for such meals (Where meals and/or lodgings are furnished without charge or at a nominal cost, e.g., as part of the registration fee, the proposed per diem or subsistence allowance will take this into consideration.).

d. CDC and ATSDR funds may NOT be used for reimbursement of indirect costs.

e. CDC and ATSDR will NOT fund 100 percent of any conference proposed under this announcement. Part of the cost of the proposed conference must be supported with other than Federal funds.

f. CDC and ATSDR will NOT fund a conference after it has taken place.

g. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

Funding Preference

For HIV Applicants Only

Preference may be given to:

a. Conferences sponsored by organizations that serve high-risk populations especially populations and geographic areas that are under-served.

b. Applications consistent with the CDC national goal of assisting in building and maintaining State, local, and community infrastructure and technical capacity to carry out necessary HIV and STD prevention programs.

No preference will be given to organizations that have received funding in past years.

D. Program Requirements

CDC and ATSDR grantees must meet the following requirements:

1. The conference organizer(s) may use CDC's/ATSDR's name only in factual publicity for the conference and should understand that CDC/ATSDR involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, or products or the content of speakers' presentations.

2. Any conference sponsored by CDC shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations. The Director, or his/her designee, of the CIO(s) providing funds or approving CDC sponsorship of a conference must assure that the proposed meeting facilities comply with ADAAG.

3. Manage all activities related to program content (e.g., objectives, topics, attendees, session design, workshops, special exhibits, speaker's fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC or ATSDR project personnel.

4. Provide draft copies of the agenda and proposed ancillary activities to CDC or ATSDR for approval. All but 10% of the total funds awarded for the proposed conference will be restricted pending approval of a full final agenda by CDC or ATSDR. The remaining 90% of funds will be released by letter to the grantee upon that approval. CDC and ATSDR reserve the right to terminate co-sponsorship at any time.

5. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press, etc.). CDC or ATSDR must review and approve any materials with reference to CDC or ATSDR involvement or support.

6. Manage all registration processes with participants, invitee, and registrants (e.g., travel, reservations, correspondence, conference materials and handouts, badges, registration procedures, etc.).

7. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

8. If the proposed conference is or includes a satellite broadcast:

(i) Provide individual, on-camera rehearsals for all presenters,

(ii) Provide at least one full dress rehearsal involving the moderator, all presenters, equipment, visuals, and practice telephone calls at least one day before the actual broadcast and as close to the actual broadcast time as possible,

(iii) Provide full scripting and Teleprompter use for the moderator and all presenters,

(iv) Select a professional moderator. Analyze data from conference activities that pertain to the impact on prevention. Adequately assess increased knowledge, attitudes, and behaviors of the target audience.

9. Analyze data from conference activities that pertain to the impact of prevention. Adequately assess increased knowledge, attitudes, and behaviors of the target audience.

10. ATSDR grantees must collaborate with ATSDR staff in reporting and disseminating results and relevant prevention education and training information to appropriate Federal, State, and local agencies, and the general public.

E. Application Content

Note: HIV applicants go to Appendix 4.

Letter of Intent (LOI)

Interested applicants are required to submit an original and two copies of a two to three-page in-depth typewritten Letter of Intent (LOI). Upon review of the LOI's, CDC or ATSDR will extend written invitations to perspective applicants to submit applications. CDC or ATSDR will accept applications by invitation only. Availability of funds may limit the number of applicants, regardless of merit, that receive an invitation to submit applications. The LOI should specifically describe the following required information:

1. Title of the proposed conference—include the term "conference," "symposium," "workshop," or similar designation;

2. Location of conference—city, state, and physical facilities required for the conduct of the meeting;

3. Expected registration—the intended audience, approximate number and profession of persons expected to attend;

4. Date(s) of conference—inclusive dates of conference (LOIs without date

of conference will be considered non-responsive to this program announcement and returned to the applicant without review);

5. Summary of conference format, projected agenda (including list of principal areas or topics to be addressed), including speakers or facilitator. In addition, information should be provided about all other national, regional, and local conferences held on the same or similar subject during the last three years; and

6. Justification of the conference, including the problems it intends to clarify and the developments it may stimulate.

Also include the name of the organization, primary contact person's name, mailing address, telephone number, and if available, fax number and e-mail address. The LOI must include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100%) being requested from CDC or ATSDR. Requests for 100 percent funding will be considered non-responsive to this program announcement and will be returned to the applicant without review. Current recipients of CDC and ATSDR funding must provide the award number and title of their funded programs. No Appendixes, booklets, or other documents accompanying the LOI will be considered. An invitation to submit an application will be made on the basis of the proposed conference's relationship, as outlined in the LOI, to the CDC or ATSDR funding priorities and availability of funds. LOIs should be provided by over night mail service, or U.S. postal service.

THE THREE PAGE LIMITATION (INCLUSIVE OF LETTERHEAD AND SIGNATURES) MUST BE OBSERVED OR THE LETTER OF INTENT WILL BE RETURNED WITHOUT REVIEW.

Application

(HIV applicants go to Appendix 4 for HIV application content.)

A letter of intent (LOI) is required for this Program Announcement. Applicants may apply to CDC or ATSDR for conference support only after their LOI has been reviewed by CDC and ATSDR and a written invitation, including an application form, has been received by the prospective applicant. An invitation to submit an application does not constitute a commitment on the part of CDC or ATSDR to fund the application.

In addition to the following required information, use the information in the Program Requirements and Evaluation Criteria sections to develop the application content.

1. A project summary cover sheet that includes:
   (a) Name of organization.
   (b) Name of conference.
   (c) Location of conference.
   (d) Date(s) of conference.
   (e) Intended audience and number.
   (f) Dollar amount requested.
   (g) Total conference budget amount.

2. A brief background of the organization—include the organizational history, purpose, and previous experience related to the proposed conference topic.

3. A clear statement of the need for and purpose of the conference. This statement should also describe any problems the conference will address or seek to solve, and the action items or resolutions it may stimulate.

4. An elaboration on the conference objectives and target audience. A list should be included of the principal areas or topics to be addressed. A proposed or final agenda must be included.

5. A clear description of the evaluation plan and how it will assess the accomplishments of the conference objectives. A sample of the evaluation instrument that will be used must be included.

6. A step-by-step schedule and detailed operation plan of major conference planning activities necessary to attain specified objectives.

7. Biographical sketches are required for the individuals responsible for planning and implementing the conference. Experience and training related to conference planning and implementation as it relates to the proposed topic should be noted.

8. Letters of endorsement or support—Letters of endorsement or support for the sponsoring organization and its capability to perform the proposed conference activity.

9. Budget plan and justification—A clearly justified budget narrative that is consistent with the purpose, objectives, and operation plan of the conference. This will consist of a budget that includes the share requested from CDC or ATSDR as well as those funds from other sources, including organizations, institutions, conference income and/or registration fees.

The narrative should be no more than 12 double-spaced pages, printed on one side, with one-inch margins, and 12-point font. Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two required copies of the application must be submitted UNSTAPLED AND UNBOUND. Materials which should be part of the basic plan should not be in the appendices.

F. Submission and Deadline

Letter of Intent (LOI), Letter of Intent Due Dates: Cycle A: October 1, 1999 For conferences May 1, 2000–April 30,2001

Cycle B: January 3, 2000, For Conferences August 1, 2000–July 31, 2001

Cycle C: April 3, 2000, For Conferences November 1, 2000–September 30, 2001

On or before October 1, 1999, January 3, 2000, or April 3, 2000, applicant must submit an original and two (2) copies of the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Applicant invited to apply should submit the original and two copies of PHS application form 5161–1, revised 7/92 (OMB Number 0937–0189). Forms are in the application kit with the letter inviting submission for one of these three dates.

Application due dates	Earliest possible award dates
CYCLE A: December 13, 1999.	April 1, 2000
CYCLE B: March 13, 2000.	July 1, 2000
CYCLE C: June 16, 2000.	September 30, 2000

Applications with a conference date that occurs within sixty days of date of submission of application will be considered non-responsive.

Submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Letters of Intent and Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the date, or

(2) Postmarked on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

(3) Late Applications: Applications, which do not meet the criteria in (1) or (2) above, are considered late

applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

(HIV applicants go to Appendix 5 for Evaluation criteria)

Letter of Intent

A conference is a symposium, seminar, workshop, or any other organized and formal meeting lasting portions of 1 or more days, where persons assemble to exchange information and views or explore or clarify a defined subject, problem, or area of knowledge, whether or not a published report results from such meeting. The conference should support CDC or ATSDR's public health principles in furtherance of CDC's mission or ATSDR's mission.

Application

CDC and ATSDR Public Health Conference Support Grant Program applications are each objectively reviewed utilizing the following evaluation criteria:

Section 1.a., is ATSDR specific

Section 1.b., is CDC specific

Section 1.c., and all other sections in these criteria are applicable to both CDC and ATSDR,

except for HIV Prevention (see Appendix 5)

1. PROPOSED PROGRAM AND TECHNICAL APPROACH (25 points)

a. The public health significance of the proposed conference including the degree to which the conference can be expected to influence the prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases and other sources of pollution present in the environment. (Applicable to ATSDR applications only).

b. The applicant's description of the proposed conference as it relates to specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs (except mental health, and substance abuse), including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. Evaluation will be based also on the extent of the applicant's collaboration with other organizations serving the intended audience. (Applicable to all CDC applications except ATSDR and HIV.)

c. The applicant's description of conference objectives in terms of quality, specificity, and the feasibility of the conference based on the operational plan.

2. APPLICANT'S CAPABILITY (10 points)

Adequacy of applicants' resources (additional sources of funding, organization's strengths, staff time, proposed physical facilities, etc.) available for conducting conference activities.

3. THE QUALIFICATION OF PROGRAM PERSONNEL (20 points)

Evaluation will be based on the extent to which the application has described:

a. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

b. The competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish conference objectives.

c. The degree to which the applicant demonstrates the knowledge of nationwide and educational efforts currently underway which may affect, and be affected by, the proposed conference.

4. CONFERENCE OBJECTIVES (25 points)

a. The overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall work plan and timetable for accomplishment.

b. The likelihood of accomplishing conference objectives as they relate to disease prevention and health promotion goals, and the feasibility of the project in terms of the operational plan.

5. EVALUATION METHODS (20 points)

Evaluation instrument(s) for the conference should adequately assess increased knowledge, attitudes, and behaviors of the target audience.

6. BUDGET JUSTIFICATION AND ADEQUACY OF FACILITIES (not scored)

The proposed budget will be evaluated on the basis of its reasonableness; concise and clear justification; and consistency with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing or proposed facilities and resources for conducting conference activities.

H. Other Requirements

Technical Reporting Requirements

Provide the Grants Management Office with original plus two copies of:

1. A Performance Report, or in lieu of a performance report, proceedings of the conference, no more than 90 days after the end of the budget/project period.

2. A Financial Status Report, no more than 90 days after the end of the budget/project period.

Send all reports to:

Julia L. Valentine, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Koger Center, Colgate Bldg., 2920 Brandywine Road, MS E–15, Atlanta, Georgia 30341–3724.

The following additional requirements are applicable to this program. For a complete description of each, see Appendix I.

AR–5 HIV Program Review Panel Requirements.

AR–7 Executive Order 12372 Review.

AR–8 Public Health System Reporting Requirements.

AR–9 Paperwork Reduction Act Requirements.

AR–10 Smoke-Free Workplace Requirements.

AR–11 Healthy People 2000.

AR–12 Lobbying Restrictions.

AR–15 Proof of Non-Profit Status.

AR–20 Conference Support.

I. Authority and Catalog of Federal Domestic Assistance Number

The CDC program is authorized under the Public Health Service Act, section 301 (42 U.S.C. 241, as amended). The Catalog of Federal Domestic Assistance number is 93.283.

The HIV Prevention program is authorized under the Public Health Service Act (42 U.S.C. 317 (k) (2) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.941.

The ATSDR program is authorized under sections 104(i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), (42 U.S.C. 9604(i) (14) and (15)). The Catalog of Federal Domestic Assistance number is 93.161.

J. Where To Obtain Additional Information

To receive additional written information, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. See also the CDC home page on the Internet: http://www.cdc.gov/od/pgo/forminfo.htm.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Julia L. Valentine, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease

Control and Prevention (CDC), Koger Center, Colgate Bldg., 2920 Brandywine Road, MS E–15, Atlanta, Georgia 30341–3724, Telephone (770) 488–6871, Email address: jxvl@cdc.gov.

For program technical assistance, contact: C.E. Criss Crissman, Resource Analysis Specialist, Office of the Director/Extramural Services Activity, Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, MS K–38, Atlanta, Georgia 30341–3714, Telephone (770) 488–2513, Email address cec1@cdc.gov.

Dated: August 13, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21505 Filed 8–18–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Research Studies to Characterize the Clinical Relevance of HIV Superinfection

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Research Studies to Characterize the Clinical Relevance of HIV Superinfection, Program Announcement #99105.

Times and Dates: 9 a.m.–9:30 a.m., August 27, 1999 (Open) 9:30 a.m.–4:30 p.m., August 27, 1999 (Closed).

Place: Professional and Scientific Associates, 2635 Century Parkway, Suite 990, Atlanta, GA. 30345. Telephone 404/633–6477.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99105. Due to administrative delays this notice is published less than 15 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Nancy Pearcey, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail nxp1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 12, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21503 Filed 8–16–99; 12:19 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Social and Environmental Interventions to Reduce HIV Incidence

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Social and Environmental Interventions to Reduce HIV Incidence, Program Announcement #99106.

Times and Dates: 8:30 a.m.–9 a.m., August 27, 1999 (Open) 9 a.m.–4:30 p.m., August 27, 1999 (Closed).

Place: CDC, Executive Park Building 16, Conference Room B, Executive Park Drive, Atlanta, GA. 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99106. Due to administrative delays this notice is published less than 15 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Nancy Pearcey, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail nxp1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 12, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21504 Filed 8–16–99; 12:19 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant To American Public Human Services Association

AGENCY: Office of Family Assistance, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that an award is being made to the American Public Human Services Association (APHSA) of Washington, DC in the amount of $15,000 for support to their Executive Leadership Institute. After the appropriate reviews, it has been determined that this proposal qualifies as a sole source award. The Executive Leadership Institute of APHSA is designed by and for State Human Service Administrators and offers various educational activities that will enhance the skills and leadership capacity of State Human Service Administrators and other high-level policy makers involved in implementation of State TANF Programs.

The American Public Human Services Association is a very unique organization in the Welfare Reform community. The mission of APHSA is to develop, promote, and implement pubic human service policies that improve the health and well being of families, children, and adults. APHSA educates members of Congress, the media, and the broader public on what is happening in the States concerning

welfare, child welfare, healthcare reform, and other issues that directly impact the TANF program. The Executive Leadership Institute focuses its efforts on the top State Human Service Executive and Senior Managers and other high level policy makers. By partnering with APHSA on this project, the Administration for Children and Families will further its goal in Welfare Reform by enhancing the skills and leadership capacity of the Human Service Administrators and other high level policy makers involved in implementing TANF programs. The period of this funding will extend through May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Maiers, Office of Family Assistance, Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington, DC 20447, Telephone: 202–401–5438.

Dated: August 10, 1999.

Alvin C. Collins,

Director, Office of Family Assistance.

[FR Doc. 99–21476 Filed 8–18–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–72]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Information Collection Requirements in 42 CFR 473.18, 473.34, 473.36, and 473.42, PRO Reconsiderations and Appeals.

Form No.: HCFA–R–72 (OMB# 0938–0443).

Use: These requirements contain procedures for PROs to use in reconsideration of initial determinations. The information requirements contained in these regulations are on PROs to provide information to parties requesting a reconsideration. These parties will use the information as guidelines for appeal rights in instances where issues are still in dispute.

Frequency: On occasion.

Affected Public: Individuals or Households, Business or other for-profit.

Number of Respondents: 53.

Total Annual Responses: 15,670.

Total Annual Hours: 3,578.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 10, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–21554 Filed 8–18–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–718–721]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: Business Proposal Formats for Utilization and Quality Control Peer Review Organizations (PROs).

Form No.: HCFA–718–721 (OMB# 0938–0579).

Use: The information collected on these forms by current Peer Review Organizations (PROs) and other bidders will provide HCFA with the necessary information to evaluate their contract proposals. This information will satisfy the need for meaningful, consistent, and verifiable data. With this data, HCFA will be able to compare the costs reported by the PROs on the cost reports to the proposed costs noted on the business proposal forms.

Frequency: Other: Tri-Annually.

Affected Public: Business or other for-profit, and Not-for-profit institutions.

Number of Respondents: 20.

Total Annual Responses: 20.

Total Annual Hours: 535.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your

request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 10, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–21556 Filed 8–19–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–838]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Medicare Credit Balance Reporting Requirements and Supporting Regulations in 42 CFR 413.20, 405.371 and 405.378.

Form No.: HCFA–838 (OMB# 0938–0600).

Use: Section 1866(a)(1)(C) of the Social Security Act requires health care providers participating in the Medicare program, to make adequate provisions to refund any monies incorrectly paid by Medicare. This collection of credit balance information is needed to ensure that the millions of dollars in improper program payments are collected. Approximately 47,600 health care providers will be required to submit a quarterly credit balance report that identifies the amount of improper payments they receive that are due to Medicare. The intermediaries will monitor the reports to ensure these funds are collected.

Frequency: Quarterly.

Affected Public: Not-for-profit institutions, and Business or other for-profit.

Number of Respondents: 47,600.

Total Annual Responses: 190,400.

Total Annual Hours: 1,142,400.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 5, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–21555 Filed 8–18–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Call for Public Comment: Changing the Conversation—A National Plan to Improve Substance Abuse Treatment

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Request for public comment on five issues (domains) of concern to the substance abuse treatment field when assessing substance abuse treatment.

SUMMARY: This notice announces that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) is formally inviting public comment on five issues (domains) that are of concern to the substance abuse treatment field and require development and exploration. Via several mechanisms, including public hearings, CSAT intends that findings from the exploration of individual domains will ultimately be synthesized into a coherent national strategy to guide substance abuse treatment program and policy development for the future. Individuals and organizations are encouraged to comment in one of several ways: (1) in writing, by submission through the U.S. Mail or courier service; (2) via the National Treatment Plan web site (http://www.NaTxPlan.org); or (3) in person at one of the remaining four public hearings scheduled at locations across the country. The final cutoff date for comments is December 1, 1999. This notice discusses the public hearings at which interested individuals/organizations may testify regarding the five substance abuse treatment domains discussed below.

DATES/LOCATIONS: In addition to the public hearing held on July 8 in Hartford, Connecticut, CSAT plans to conduct four more public hearings in 1999—September 16 in Chicago, Illinois; October in Portland, Oregon, and Washington, DC; and November in Tampa/St. Petersburg, Florida. The next hearing will be held at Loyola University, Water Tower Campus, Marquette Center (2nd Floor), Georgetown Room, Corner of Rush and Pearson Streets, Chicago, Illinois 60611, on September 16, 1999, between the hours of 8:30 a.m. and 5:00 p.m. Specific details regarding subsequent hearings will be published in the **Federal Register** approximately one month prior to each hearing.

Requests to testify at the Chicago, Illinois, public hearing must be submitted to the addressee indicated below by September 9, 1999. Seating is limited. In the event that interpretive services for the hearing-impaired are required, please indicate these special needs to the addressee.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the hearing and/or testimonies, as well as requests to testify must be addressed to: Peggy Cockrill,

[Tele: (301) 443–7024; e-mail: pcockril@samhsa.gov; Fax: (301) 480–6077], Center for Substance Abuse Treatment, SAMHSA, Rockwall II Building, Suite 618, 5600 Fishers Lane, Rockville, Maryland 20857.

Written comments (without a request to personally testify) will also be accepted by the above addressee. Written testimonies are limited to five (5) typed pages using 1.5 line spacing and 12 point font.

SUPPLEMENTARY INFORMATION:

Background

Building on recent advances and studies, CSAT has initiated plans to focus on how to apply its extensive knowledge to the practical objective of improving treatment outcomes. The plans include synthesizing current knowledge and recommendations about treatment, service systems, application of best practices, diffusion methods, and organization and financing of substance abuse treatment services. Federal Government and outside experts, as well as the interested public, will explore the current state of the knowledge, resources, needs, and service and organizational capacity. The objective is the culling of priorities for action by the government and by others in the substance abuse treatment field. As noted above, CSAT is inviting the public to comment on five domains as part of the initial step of the plan. The domains, as well as some initial questions for exploration, include:

(1) Closing the Treatment Gap: Where are the gaps? How big are they for different populations? For different types of settings and treatment modalities? How big are gaps in other related systems of care, e.g., welfare, child welfare, housing? What are the policy, organization, and financing issues that must be addressed in the private and public systems, including Medicaid and Medicare, to close the treatment gap?

(2) Reducing Stigma and Changing Attitudes: What are the nature, causes and consequences of addiction stigma? What can CSAT, the treatment field, consumers and families do to address stigma related to addiction, substance abuse treatment and individuals with substance abuse disorders? How do other stigmas impact/compound the stigma of addiction?

(3) Improving and Strengthening Treatment Systems: What are the clinical and organizational challenges facing treatment organizations in the public and private sectors? What can CSAT, the treatment field, consumers and families do to improve and strengthen treatment organizations so that they can adapt to the new imperatives of the changing treatment system, and to improve the relationship between the general health care system and the specialty substance abuse treatment system? What should be done at the State, county and/or local levels to improve and strengthen substance abuse treatment?

(4) Connecting Services and Research: What are the best methods by which CSAT, the treatment field, consumers and families can foster and support evaluation of proven research findings in community-based settings and identification and adoption of best practices?

(5) Addressing Workforce Issues: What are the issues facing clinicians treating addictions? What can CSAT, the treatment field, consumers and families, and professional associations do to foster training, appropriate credentialing, and licensure in all settings in which treatment occurs, and to support treatment organizations in developing appropriate policies for clinical training?

Hearing Format

The hearings will be divided into five segments (i.e., the five domains described above) of approximately 45–60 minutes each. Each individual/organization participant will be limited to three (3) minutes of oral testimony and five (5) pages of typed testimony per domain. All oral testimonies must be accompanied by a written testimony of no more than five (5) typed pages using 1.5 line spacing and 12 point font. Five copies of written testimonies may either be submitted before the hearing to the addressee listed above or to the registrar at the hearing. As the hearing schedule allows, unscheduled testimonies will be accommodated. All testimonies (recorded and written) will become a part of the public domain.

Dated: August 12, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–21475 Filed 8–18–99; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–016026

Applicant: John T. Hughes, Muskegon, MI

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–016089

Applicant: Morgan Wynne, Anchorage, AK

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–016149

Applicant: Wilson Seay Stout, Dallas, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–016158

Applicant: International Animal Exchange, Ferndale, MI

The applicant requests a permit to export 1.0 captive born black leopard (*Panthera pardus*) to Baijing Badaling Wild Animal World, Beijing, China, for the purposes of public display, education and captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR 18).

PRT–016090

Applicant: Harry Koch, Heath, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are

available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 13, 1999.

Pam Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–21473 Filed 8–18–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Notice of Intent To Prepare an Environmental Impact Statement on Resident Canada Goose Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is issuing this notice to advise the public that we are initiating efforts to prepare an Environmental Impact Statement (EIS) for resident Canada goose management under the authority of the Migratory Bird Treaty Act. The EIS will consider a range of management alternatives for addressing expanding populations of locally-breeding Canada geese that are increasingly posing threats to health and human safety and injuring personal and public property. This notice describes possible alternatives, invites public participation in the scoping process for preparing the EIS, and identifies the Service official to whom you may direct questions and comments. While we have yet to determine potential sites of public scoping meetings, we will publish a notice of any such public meetings with the locations, dates, and times in the **Federal Register**.

DATES: You must submit written comments regarding EIS scoping by October 18, 1999, to the address below.

ADDRESSES: You should send written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Numbers of Canada geese that nest and reside predominantly within the conterminous United States have increased exponentially in recent years. These geese are usually referred to as "resident" Canada geese. Recent surveys in the Atlantic, Mississippi, and Central Flyways suggest that the resident breeding population now exceeds 1 million individuals in both the Atlantic and Mississippi Flyways is increasing dramatically. Because resident Canada geese live in temperate climates with relatively stable breeding habitat conditions and low numbers of predators, tolerate human and other disturbances, have a relative abundance of preferred habitat provided by current urban/suburban landscaping techniques, and fly relatively short distances to winter compared with other Canada goose populations, they exhibit a consistently high annual production and survival. Given these characteristics, the absence of waterfowl hunting in many of these areas, and free food handouts by some people, these urban/suburban resident Canada goose populations are increasingly coming into conflict with human activities in many parts of the country.

Conflicts between geese and people affect or damage several types of resources, including property, human health and safety, agriculture, and natural resources. Common problem areas include public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, amusement parks, cemeteries, hospitals, residential subdivisions, and along or between highways.

Property damage usually involves landscaping and walkways, most commonly on golf courses and waterfront property. In parks and other open areas near water, large goose flocks create local problems with their abundant droppings and feather litter (Conover and Chasko, 1985). Surveys have found that while most landowners like seeing some geese on their property, eventually, increasing numbers of geese and the associated accumulation of goose droppings on lawns cause many landowners to view geese as a nuisance and thus reduce both the aesthetic value and recreational use of these areas (Conover and Chasko, 1985).

Negative impacts on human health and safety occur in several ways. At airports, large numbers of geese can create a very serious threat to aviation. Resident Canada geese have been involved in a large number of aircraft strikes resulting in dangerous landing/take-off conditions and costly repairs. As a result, many airports have active goose control programs. Excessive goose droppings are a disease concern for many people. Public beaches in several States have been closed due to excessive fecal coliform levels that in some cases have been traced back to geese and other waterfowl. Additionally, during nesting and brood rearing, aggressive geese have bitten and chased people.

Agricultural and natural resource impacts include losses to grain crops, overgrazing of pastures, and degrading water quality. Goose droppings in heavy concentrations can overfertilize lawns and degrade water quality resulting in eutrophication of lakes with excessive algae growth (Manny *et al.*, 1994). Overall, complaints related to personal and public property damage, agricultural damage and other public conflicts are increasing as resident Canada goose populations increase.

Until recently, we attempted to address this growing problem through existing annual hunting season frameworks and the issuance of control permits on a case-by-case basis. While this approach provided relief in some areas, it did not completely address the problem. On June 17, we published a final rule in the **Federal Register** (64 FR 32766) establishing a new special Canada goose permit. The new permits are specifically for the management and control of resident Canada geese. We will issue permits to State conservation or wildlife management agencies on a State-specific basis, so States and their designated agents can initiate resident goose damage management and control injury problems within the conditions and restrictions of the permit program. The permits, while restricted to the period between March 11 and August 31, increase the use and availability of control measures, decrease the number of injurious resident Canada geese in localized areas, have little impact on hunting or other recreation dependent on the availability of resident Canada geese, and allow injury/damage problems to be dealt with on the State and local level, thereby resulting in more responsive and timely control activities. The new special permits

further result in biologically sound and more cost-effective and efficient resident Canada goose damage management. Overall, the new permit will provide some additional management flexibility needed to address this serious problem and at the same time simplify the procedures needed to administer this program. In the short term, we believe this permit will satisfy the need for an efficient/cost-effective program while allowing us to maintain management control.

In the long-term, however, we realize that more management flexibility will likely be necessary. Because of the unique locations where large numbers of these geese nest, feed, and reside, we continue to believe that new and innovative approaches and strategies for dealing with bird/human conflicts will be needed. We have recently begun the initial work, with the full assistance and cooperation of the Flyway Councils and the Wildlife Services program of the Animal and Plant Health Inspection Service (APHIS/WS), to develop a long-term strategy to integrate our management of these birds into a larger Flyway management plan system. In order to properly examine alternative strategies to control and manage resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property, the preparation of an EIS is necessary.

Resident Canada Goose Populations

Canada geese, like other geese, are long-lived birds with relatively low reproduction rates and high survival rates. However, of all the Canada goose subspecies, the subspecies comprising most resident geese have a higher reproductive and adult survival rate. While arctic and subarctic Canada goose survival and reproduction are greatly influenced by weather conditions, resident geese live in more temperate climates with relatively stable breeding habitat conditions and low numbers of predators. Additionally, nesting resident geese are very tolerant of human disturbance and willing to nest in close proximity to other geese (Gosser and Conover, 1999; Zenner and LaGrange, 1998). Urban and suburban landscaping in the conterminous United States offers resident geese a relative abundance of preferred habitat (park-like open areas with short grass adjacent to small bodies of water). Also, resident geese fly relatively short distances to winter compared with other Canada goose populations. All of these factors result in consistently high annual reproduction and survival for the resident Canada goose population.

In recent years, the numbers of Canada geese that nest predominantly within the conterminous United States have increased tremendously. Recent surveys in the Atlantic, Mississippi, and Central Flyways (Wood *et al.*, 1994; Kelley *et al.*, 1998; Nelson and Oetting, 1998; Sheaffer and Malecki, 1998; Wilkins and Cooch, 1999) suggest that the resident breeding population now exceeds 1 million individuals in both the Atlantic (17 States) and Mississippi (14 States) Flyways. Available information shows that in the Atlantic Flyway, the resident population has increased an average of 14 percent per year since 1989. In the Mississippi Flyway, the resident population of Canada geese has increased at a rate of about 6 percent per year during the last 10 years. In the Central and Pacific Flyways, populations of resident Canada geese have similarly increased over the last few years. For example, in the Puget Sound area of Washington, a 10-year trend shows an increase from 3,110 geese in 1988 to 13,512 geese in 1997, an increase of 434%. We remain concerned about the rapid growth rate exhibited by these already large populations.

Current Management Actions

To date, we have tried to address injurious resident Canada goose problems through existing hunting seasons, the creation of new special Canada goose seasons designed to target resident populations, the issuance of depredation permits allowing specific control activities, and the creation of a new special Canada goose permit.

(1) Special Hunting Seasons

Special Canada goose seasons are hunting seasons specifically designed to target resident populations through either time or area restrictions. We first initiated special seasons targeting resident Canada geese in 1977 in the Mississippi Flyway with an experimental late season in Michigan. The original intent of these special seasons was to provide additional harvest opportunities on resident Canada geese while minimizing impacts to migrant geese. Initially, we considered all such seasons experimental, pending a thorough review of the data gathered by the participating State. We presently offer special seasons targeting resident Canada geese in all four Flyways, with 31 States participating. They are most popular among States when regular Canada goose seasons are restricted to protect migrant populations of Canada geese.

Harvest of Canada geese during these special seasons has increased substantially over the last 10 years. In the Atlantic Flyway, 16 of 17 States hold special Canada goose seasons, with harvest rising from about 2,300 in 1988 to over 272,000 in 1998. In the Mississippi Flyway, 11 of 14 States hold special Canada goose seasons, and harvest has increased from slightly more than 1,000 in 1981 to over 275,000 in 1998. Both Minnesota and Michigan currently harvest in excess of 70,000 locally-breeding Canada geese per year. While the harvest opportunities are not as significant in the Central and Pacific Flyways, as areas and seasons have expanded, harvest has increased from approximately 1,300 in 1989 to almost 40,000 in 1998. Putting these harvest numbers in perspective, Martin and Padding (1999) estimated that hunters harvested a total of 2,038,700 Canada geese last year in the U.S. Thus, conservatively, resident Canada geese now comprise roughly 30% of the total Canada goose harvest in the U.S. (587,000 of 2,038,700). However, despite these dramatic increases in harvest over the last 10 years, from less than 24,000 in 1988 to over 587,000 last year (a 24-fold increase), populations continue to increase in all Flyways.

Creation of these special harvest opportunities has helped to limit the problems and conflicts between geese and people in some areas. However, many resident Canada geese remain in urban and suburban areas throughout the fall and winter where these areas afford them almost complete protection from sport harvest. Thus, while the creation of these special hunting seasons is our first management tool of choice for dealing with most resident Canada goose conflicts, we realized that harvest management will never completely address this growing problem and permits to conduct otherwise prohibited control activities will continue to be necessary to balance human needs with expanding resident Canada goose populations.

(2) Depredation Permits

Complex Federal and State responsibilities are involved with all migratory bird control activities, including the control of resident Canada geese. All State and private control activities require a Federal migratory bird permit. These permits are issued in coordination with APHIS/WS. APHIS/WS is the Federal Agency with lead responsibility for dealing with wildlife damage complaints. In some instances, APHIS/WS may do the goose damage management work directly or they may

serve as agents working under authority of private and/or State permits.

However, APHIS/WS has limited personnel and resources to respond to requests for assistance. Likewise, as the number of complaints and conflicts continue to increase, the public will place greater demand on us and the States to assist in goose public-health and damage-management programs. This increased need for assistance places greater demand on the current permit-issuance system. Unfortunately, administrative procedures involved in the issuance of permits many times cause a lag time of several weeks between our receipt of a permit request, our evaluation and decision on issuing the permit, and the ultimate issuance of a site-specific permit authorizing a control action. In the interim, even small numbers of geese can cause significant damage to personal property and result in economic, recreational, and aesthetic losses. Thus, with the increase in complaints, the case-by-case permit issuance system can be time-consuming, cumbersome and inefficient for us and the States.

A brief summary of the complaints/requests for control permits placed with APHIS/WS indicates the increasing number of public conflicts. In 1997, APHIS/WS received 3,295 complaints of injurious Canada goose activity (APHIS/WS, 1998). In response to those complaints, APHIS/WS recommended we issue 354 permits. The vast majority of these complaints concerned agricultural, human health and safety, and property issues and came primarily from the Northeastern/New England area (50%) and the Upper Midwest/Great Lakes area (29%). Comparing these figures with previous years' data shows a steady increase in complaints since 1991. In 1991 APHIS/WS received 1,698 complaints of injurious Canada goose activity (APHIS/WS, 1992). In response to those complaints, APHIS/WS recommended we issue 92 permits.

Thus, our permit issuance has increased tremendously in recent years. For example, Region 5 (the Northeastern/New England area) issued 26 site-specific permits to kill resident Canada geese and 54 permits to addle eggs in 1994. Two years later in 1996, Region 5 issued 70 site-specific permits to kill resident Canada geese, 1 permit to relocate geese, and 151 permits to addle eggs. In addition, the Region issued Statewide permits to relocate birds and addle eggs to agencies in certain States. Over 3 years, these permits resulted in the relocation of over 2,600 geese, the addling of eggs in over 2,300 nests, and the take of over 1,000 birds.

In Region 3, the Upper Midwest/Great Lakes area, in 1994, the Region issued 149 permits authorizing resident Canada goose control activities, including trapping and relocation, destruction of nests/eggs, and take of adults. In 1998, Region 3 issued 225 permits authorizing resident Canada goose control activities. In total over the last 5 years, Region 3 permit holders, including APHIS/WS, airports, and state wildlife agencies, reported taking in excess of 27,000 eggs and 6,800 geese, and trapped and relocated over 70,000 resident Canada geese (complete reports through 1997, partial reports for 1998). States in which control activities were conducted included Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Since 1995, Region 3 has also issued permits to the Michigan Department of Natural Resources and the Minnesota Department of Natural Resources authorizing the capture and processing of resident Canada geese as food for local food-shelf programs. Minnesota's permit was a part of the their Urban Goose Management Program for the Minneapolis-St. Paul Metropolitan Area (initiated in 1982). In 1995, the first year under these permits, Michigan and Minnesota were authorized to take up to 2,000 and 325 geese, respectively. Michigan reported taking 24 birds with Minnesota taking its full allotment of 325 birds. Since then, Minnesota has been authorized to annually take up to 2,500 resident Canada geese for its food-shelf program. In the three years under the program since 1995, Minnesota has reported taking 5,399 birds. Likewise, Michigan was also issued permits for 1996–1998 authorizing the take up to 1,000 resident Canada geese for its food-shelf programs. Michigan subsequently reported taking 490 birds in 1996 and 952 birds in 1997, before vacating their 1998 permit.

In Region 1, the Pacific Northwest/West Coast area, we have primarily limited permits for the control of resident Canada geese to the addling of eggs. In 1995, the Region issued permits authorizing the take of 900 eggs in the Puget Sound Area of Washington. In 1996, this number was increased to 2,000 eggs and 200 adult birds. APHIS/WS subsequently reported taking 911 and 1,570 eggs in 1995 and 1996, respectively, and 6 geese in 1996.

(3) Special Canada goose permits

On June 17, we published in the **Federal Register** (64 FR 32766) a final rule establishing a new special Canada goose permit. Designed specifically for the management and control of resident Canada geese, the new permits are only available to State conservation or wildlife management agencies on a State-specific basis. Under the permits, States and their designated agents can initiate resident goose damage management and control injury problems within the conditions and restrictions of the permit program. The permits, while restricted to the period between March 11 and August 31, increase the use and availability of control measures, decrease the number of injurious resident Canada geese in localized areas, have little impact on hunting or other recreation dependent on the availability of resident Canada geese, and allow injury/damage problems to be dealt with on the State and local level, thereby resulting in more responsive and timely control activities. State applications for the special permits require several detailed statements regarding the size of the resident Canada goose breeding population in the State and the number of resident Canada geese, including eggs and nests, to be taken. In addition, the State must show that such damage-control actions will either provide for human health and safety or protect personal property, or compelling justification that the permit is needed to allow resolution of other conflicts between people and resident Canada geese. Briefly, some of the more pertinent restrictions in the new permits are:

1. State wildlife agencies (States) may take injurious resident Canada geese as a management tool but should utilize non-lethal management tools to the extent they consider appropriate in an effort to minimize lethal take.
2. Control activities should not adversely affect other migratory birds or any species designated under the Endangered Species Act as threatened or endangered.
3. States may conduct control activities March 11 through August 31 and should make a concerted effort to limit the take of adult birds to June, July, and August in order to minimize the potential impact on other migrant populations.
4. States must conduct control activities clearly as such (*e.g.*, they cannot be set up to provide a hunting opportunity).
5. States must properly dispose of or utilize Canada geese killed in control programs. States may donate Canada geese killed under these permits to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes, or charities for human consumption. States may also bury or incinerate geese. States may not allow for Canada geese taken under these permits, nor their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.
6. States may use their own discretion for methods of take but utilized methods should

be consistent with accepted wildlife-damage management programs.

7. States may designate agents who must operate under the conditions of the State's permit.

8. States must keep records of all activities, including those of designated agents, carried out under the special permits. We will require an annual report detailing activities conducted under a permit.

9. We will annually review States' reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of this resource.

10. We reserve the authority to immediately suspend or revoke any permit if we find that the State has not adhered to the terms and conditions specified in 50 CFR 13.27 and 13.28 or if we determine that the State's population of resident Canada geese no longer poses a threat to human health or safety, to personal property, or of injury to other interests.

Before establishing the special Canada goose permit, we conducted an analysis of the environmental effects and a lengthy public involvement process. The process began with a September 3, 1996, notice of availability of a "Draft Environmental Assessment (DEA) on Permits for Control of Injurious Canada Geese and Request for Comments on Potential Regulations", we published in the **Federal Register** (61 FR 46431). The notice advised the public that we had prepared a DEA and announced our intent to consider regulatory changes to the process for issuance of permits to control injurious resident Canada geese. We subsequently extended the public comment period on November 12, 1996 (61 FR 58084). As a result of this invitation for public comment, we received 101 comments including two from Federal agencies, 28 from State wildlife agencies, 24 from private organizations and 47 from private citizens. After consideration of the comments, we revised our DEA.

On March 31, 1998, we published in the **Federal Register** (63 FR 15698) a proposal to establish a Canada goose damage management program (*i.e.*, Special Canada Goose Permit). In response to our proposed rule, we received 465 comments from Federal, State and local agencies, non-governmental organizations, and individuals. In addition, we received several petitions containing 1,674 signatures. Based on review and evaluation of comments by the public and information contained in the Environmental Assessment, we revised the final rule and determined that the action to establish a special Canada goose permit program for the control and management of resident Canada geese would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, we made a Finding of No Significant Impact on this action and determined that preparation of an Environmental Impact Statement was not required. The EA and Finding of No Significant Impact are available to the public at the location indicated under the **ADDRESSES** caption.

We believe the new special permits established by the June 17 rule further results in biologically sound and more cost-effective and efficient resident Canada goose damage management. Overall, the new permit will provide some additional management flexibility needed to address this serious problem and at the same time simplify the procedures needed to administer this program. In the short term, we believe this permit will satisfy the need for an efficient/cost-effective program while allowing us to maintain management control. To date, several States have applied for the new permits.

Alternatives

We are considering the following alternatives. After the scoping process, we will develop the alternatives to be included in the EIS and base them on the mission of the Service and comments received during scoping. We are soliciting your comments on issues, alternatives, and impacts to be addressed in the EIS.

A. No Action Alternative

Under the No Action Alternative, no additional regulatory methods or strategies would be authorized. We would continue the use of special hunting seasons, the issuance of depredation permits, and the issuance of special Canada goose permits. These permits would continue to be issued under existing regulations.

For each of the next 5 alternatives, as a baseline for comparison, we would continue the use of special hunting seasons, the issuance of depredation permits, and the issuance of special Canada goose permits. All of these permits would continue to be issued under existing regulations.

B. Increased Promotion of Non-Lethal Control and Management

Under this alternative, we would actively promote the increased use of non-lethal management tools, such as habitat manipulation and management, harassment techniques, and trapping and relocation. While permits would continue to be issued under existing regulations, no additional regulatory methods or strategies would be introduced.

C. Nest and Egg Depredation Order

This alternative would provide a direct population control strategy for resident Canada goose breeding areas in the U.S. This alternative would establish a depredation order authorizing States to implement a program allowing the take of nests and eggs to stabilize resident Canada goose populations without threatening their long-term health. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. Since the goal of this alternative would be to stabilize breeding populations, not direct reduction, no appreciable reduction in the numbers of adult Canada geese would likely occur.

D. Depredation Order for Health and Human Safety

This alternative would establish a depredation order authorizing States to establish and implement a program allowing the take of resident Canada goose adults, goslings, nests and eggs from populations posing threats to health and human safety. The intent of this alternative is to significantly reduce or stabilize resident Canada goose populations at areas such as airports, water supply reservoirs, and other such areas, where there is a demonstrated threat to health and human safety, without threatening the population's long-term health. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. Under this alternative, some appreciable localized reductions in the numbers of adult geese could occur.

E. Conservation Order

This alternative would authorize direct population control strategies such as nest and egg destruction, gosling and adult trapping and culling programs, or other general population reduction strategies on resident Canada goose populations in the U.S. This alternative would establish a conservation order authorizing States to develop and implement a program allowing the take of geese posing threats to health and human safety and damaging personal and public property. The intent of this

alternative is to significantly reduce or stabilize resident Canada goose populations at areas where conflicts are occurring without threatening the long-term health of the overall population. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. State breeding populations would be monitored annually each spring to determine the maximum allowable take under the conservation order. Under this alternative, some appreciable localized reductions in the numbers of adult geese would likely occur and lesser overall population reductions could occur.

F. General Depredation Order

This alternative would authorize direct population control strategies such as nest and egg destruction, gosling and adult trapping and culling programs, or other general population reduction strategies on resident Canada goose populations in the U.S. This alternative would establish a depredation order allowing any authorized person to take geese posing threats to health and human safety and damaging personal and public property. The intent of this alternative is to significantly reduce resident Canada goose populations at areas where conflicts are occurring. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. Under this alternative, some appreciable localized reductions in the numbers of adult geese would likely occur and lesser overall population reductions could occur.

	No action	Increased promotion of non-lethal control	Nest and egg depredation order	Health and human safety depredation order	Conservation order	General depredation order
Continued use of Special seasons.	Yes	Yes	Yes	Yes	Yes	Yes.
Continued use of Depredation permits.	Yes	Yes	Yes	Yes	Yes	Yes.
Continued use of Special Canada goose permits.	Yes	Yes	Yes	Yes	Yes	Yes.
Promotion of non-lethal control and management.	Yes	Yes	Yes	Yes	Yes	Yes.
Goal: Reduction or stabilization of population.	Stabilization	Stabilization	Stabilization	Both	Both	Both.
Additional take of nests and eggs.	No	No	Yes	Yes	Yes	Yes.
Additional take of adults and goslings.	No	No	No	Yes	Yes	Yes.
Additional population monitoring.	No	No	Yes	Yes	Yes	Yes.
Implementation authority given to.	n/a	n/a	States	States	States	Affected parties.

Issue Resolution and Environmental Review

The primary issue to be addressed during the scoping and planning process for the EIS is to determine which management alternatives for the control of resident Canada goose populations will be analyzed. We will prepare a discussion of the potential effect, by alternative, which will include the following areas:

(1) Resident Canada goose populations and their habitats.

(2) Human health and safety.

(3) Public and private property damage and conflicts.

(4) Sport hunting opportunities.

(5) Socioeconomic effects.

We will conduct the environmental review of the management action in accordance with the requirements of the National Environmental Policy Act, as appropriate. We are furnishing this Notice in accordance with 40 CFR 1501.7, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS. A draft EIS should be available to the public in the spring of 2000.

Public Scoping Meetings

A schedule of public scoping meeting dates, locations, and times is not available at this time. We will publish a notice of any such meetings in the **Federal Register**.

References Cited

Animal Plant Health Inspection Service/Wildlife Services (formerly Animal Damage Control). 1992. 1991 Annual Tables. APHIS/WS, Washington, D.C.

———. 1998. 1997 Annual Tables. APHIS/WS, Washington, D.C.

Conover, M. R., and G. G. Chasko. 1985. Nuisance Canada goose problems in the eastern United States. Wildl. Soc. Bull. 13(3):228–233.

Gosser, A. L., and M. R. Conover. 1999. Will the availability of insular nesting sites limit reproduction in urban Canada goose populations? J. Wildl. Manage. 63(1):369–373.

Manny, B. A., W. C. Johnson, and R. G. Wetzel. 1994. Nutrient additives by waterfowl to lakes and reservoirs: predicting their effects on productivity and water quality. Hydrobiologia 279:121–132.

Nelson, H. K. and R. B. Oetting. 1998. Giant Canada goose flocks in the United States. Pages 483–495 in D. H. Rusch, M. D. Samuel, D. D. Humburg, and B. D. Sullivan, eds. Biology and management of Canada geese. Proceedings of the International Canada Goose Symposium, Milwaukee, WI.

Martin, E. M., and P. I. Padding. 1999. Preliminary estimates of waterfowl harvest and hunter activity in the United States during the 1998 hunting season. Administrative report, July 1999. U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 34 pp.

Sheaffer, S. E. and R. A. Malecki. 1998. Status of Atlantic Flyway resident nesting Canada geese. Pages 29–34 in D. H. Rusch, M. D. Samuel, D. D. Humburg, and B. D. Sullivan, eds. Biology and management of Canada geese. Proceedings of the International Canada Goose Symposium, Milwaukee, WI.

Wilkins, K. A., and E. G. Cooch. 1999. Waterfowl population status, 1999. U.S. Fish and Wildlife Service, Department of

the Interior, Washington, D.C. 33 pp. + appendices.
Wood, J. C., D. H. Rusch, and M. Samuel. 1994. Results of the 1994 spring survey of giant Canada goose survey in the Mississippi Flyway. U.W. Co-op Unit. 9 pp. (mimeo).
Zenner, G. G., and T. G. LaGrange. 1998. Densities and fates of Canada goose nests on islands in north-central Iowa. Pages 53–60 in D. H. Rusch, M. D. Samuel, D. D. Humburg, and B. D. Sullivan, eds. Biology and management of Canada geese. Proceedings of the International Canada Goose Symposium, Milwaukee, WI.

Dated: August 11, 1999.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–21472 Filed 8–18–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–010–1430–01; MTM 84985]

Notice of Closure of Public Land to the Use of Motorized Vehicles and the Discharge of Firearms

AGENCY: Bureau of Land Management, Interior

ACTION: Closure of 379.9 acres of public land to the use of motorized vehicles and the discharge of firearms.

SUMMARY: Notice is served that public land south of Laurel, Montana known as the Sundance Lodge Recreation Area (formerly the Altman Ranch), is closed to the use of motorized, off-highway vehicles (OHVs), and the discharge of any firearm including pellet guns, unless permitted by the authorized officer, Billings Field Office. This closure will remain in effect until public consultation is complete and an activity plan for the area is approved. OHV use includes all types of motor vehicles except for those authorized for administrative operations for farming and property maintenance or other BLM management programs. The area will remain open as a walk-in area for archery hunting, hiking, picnicking, cross-country skiing, bicycling, horseback riding, and wildlife watching. This closure is necessary to protect the public land, adjoining private property, and for public safety. The public land protected by this closure is located at:

Sundance Lodge Recreation Area

Principal Meridian, Montana

T. 2 S., R. 24 E.,
Sec. 22: Lots 5, and 6;
Sec. 23: Lots 3, and 4 excluding Tract 1 as described in Certificate of Survey #1750,
Lots 2, 5, 7, 8, 10, and N2SW;
Sec. 24: Lot 2 excluding Tract 1 as described in Certificate of Survey #1750.

Containing 379.9 acres.

FOR FURTHER INFORMATION CONTACT: Sandra S. Brooks, Field Manager, BLM, Billings Field Office, PO Box 36800, Billings, Montana 59107–6800 or call 406–896–5013.

SUPPLEMENTARY INFORMATION: Authority for this action is outlined in sections 302, 303, and 310 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716) and Title 43 Code of Federal Regulations Part 8341 (43 CFR 8341.2) and 8364 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to arrest and a fine up to $1,000 or imprisonment not to exceed 12 months, or both. This closure applies to all persons except persons authorized by the Bureau of Land Management.

Dated: August 12, 1999.

Sandra S. Brooks,

Field Manager.

[FR Doc. 99–21570 Filed 8–18–99; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability; Record of Decision, Marsh-Billings-Rockefeller National Historical Park

AGENCY: National Park Service, Interior.

ACTION: The National Park Service announces the availability of the Record of Decision of the Final Impact Statement for the Marsh-Billings-Rockefeller National Historical Park General Management Plan.

SUMMARY: The National Park Service has prepared the Record of Decision of the Final Environmental Impact Statement for the Marsh-Billings-Rockefeller National Historical Park General Management Plan pursuant to the National Environmental Policy Act of 1969 and the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2. A Record of Decision is a concise statement of the decision made, the basis for the decision, and the background of the project, including the decision making process, other alternatives considered, and public involvement. Concurrent with adopting this Record of Decision on the Final Environmental Impact Statement, Marsh-Billings-Rockefeller National Historical Park General Management Plan is approved.

The National Park Service began planning for the management of Marsh-Billings-Rockefeller National Historical Park in 1993. The National Park Service presented and evaluated two management scenarios (the Proposal and the Alternative) in a Draft General Management Plan/Draft Environmental Impact Statement. The draft plan underwent sixty days of public and interagency review. After considering public and agency comment, the National Park Service produced the Final Environmental Impact Statement, which was available to the public for thirty days beginning on June 23, 1999. The National Park Service took no action for the thirty-day period of public availability, after which time the Park Service prepared the Record of Decision, selecting the Proposal as the final plan. The Record of Decision is now approved and available to the public.

Availability: Copies of the Record of Decision are available at Marsh-Billings-Rockefeller National Historical Park, 54 Elm Street, Woodstock, Vermont. For further information, please contact the Superintendent, Marsh-Billings-Rockefeller National Historical Park, PO Box 178, Woodstock, Vermont 05091; voice at (802) 457–3368; fax at (802) 457–3405.

Dated: August 6, 1999.

Marie Rust,

Director, Northeast Region.

[FR Doc. 99–21509 Filed 8–18–99; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Devils Tower National Monument, Wyoming

AGENCY: National Park Service, DOI.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Devils Tower National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Devils Tower National Monument.

The effort will result in a comprehensive general management plan that prescribes the resource conditions and visitor experiences that are to be achieved and maintained in the park over time. The clarification of what must be achieved according to law and policy will be based on review of the park's purpose, significance, special mandates, and the body of laws and

policies directing park management. Management decisions to be made where law, policy, or regulations do not provide clear guidance or limits will be based on the purposes of the monument, the range of public expectations and concerns, resource analysis, an evaluation of the natural, cultural, and social impacts of alternative courses of action, and consideration of long-term economic costs. Based on determinations of desired conditions, the plan will outline the kinds of resource management activities, visitor activities, and development that would be appropriate in the monument in the future. Alternatives will be developed through this planning process and will include, at a minimum, no-action and the preferred alternative.

Major issues include health and vitality of natural and cultural resources, adequacy of interpretive programs, park aesthetics, overall visitor and traffic congestion, and boundary concerns.

A scoping newsletter has been prepared that details the issues identified to date. Copies of that information can be obtained from the Planning Team, Devils Tower NM, P.O. Box 10, Devils Tower, Wyoming 82714–0010, 307–467–5283, extension 12.

FOR FURTHER INFORMATION CONTACT: Contact the Planning Team, Devils Tower NM at the above address and telephone number.

Dated: July 30, 1999.

R. Everhart,

Director, Intermountain Region.

[FR Doc. 99–21220 Filed 8–18–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, September 13, 1999.

The Commission was established pursuant to Public Law 99–420, section 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1:30 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held July 12, 1999
2. Committee reports
   Land Conservation
   Education
   Part Use
   Science
   Nomination—nomination of officers
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda and date of next Commission meeting

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: August 12, 1999.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 99–21510 Filed 8–18–99; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–814 (Final)]

Creatine Monohydrate From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–814 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of creatine monohydrate,[1] provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of creatine monohydrate from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 12, 1999, by Pfanstiehl Laboratories, Inc., Waukegan, IL.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] Creatine monohydrate, with the chemical name of N-(aminoiminomethyl)-N-methylglycine, is commonly referred to as "creatine." In its pure form creatine is a white, tasteless, odorless powder that is a naturally occurring metabolite found in muscle tissue. The Chemical Abstracts Service registry number for creatine monohydrate is 6020–87–7.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on December 2, 1999, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on December 16, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 1, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 6, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 9, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 23, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 23, 1999. On January 11, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 13, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 13, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21535 Filed 8–18–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–253 and 731–TA–132, 252, 271, 273, 276–277, 296, 409–410, 532–534, and 536–537 (Review)]

Certain Pipe and Tube From Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on certain pipe and tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on certain pipe and tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On August 5, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to all subject pipe and tube from Canada, Korea, Mexico, Turkey, and Venezuela, the Commission found that both the domestic and respondent interested party group responses to its notice of institution [1] were adequate and voted to conduct full reviews.

With regard to all subject pipe and tube from Argentina, Brazil, India, Singapore, Taiwan, and Thailand, the Commission found that the domestic interested party groups were adequate [2] and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews. [3]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 13, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21534 Filed 8–18–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The notice of institution for all of the subject reviews was published in the **Federal Register** on May 3, 1999 (64 FR 23679).

[2] Commissioner Crawford dissenting with respect to small diameter rectangular pipe and tube from Singapore and light-walled rectangular tube from Argentina and Taiwan.

[3] Chairman Bragg and Commissioner Crawford dissenting with respect to small diameter rectangular pipe and tube from Singapore and light-walled rectangular tube from Argentina and Taiwan. Commissioner Crawford also dissented with respect to oil country tubular goods from Taiwan.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that on July 29, 1999, a proposed First Amended Consent Decree ("Decree") in *United States of America and the State of Georgia* v. *The City of Atlanta, Georgia,* Civil Action No. 1:98–CV–1956–TWT was lodged with the United States District Court for the Northern District of Georgia. This Decree represents a settlement of claims against the City of Atlanta, Georgia under Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d).

The settlement is entitled First Amended Consent Decree. However, while it imposes additional burdens on the parties, it does not change any of the obligations set forth in the Consent Decree entered by the Court on September 24, 1998.

Under this settlement between United States, the State and the City, the City will be required to undertake extensive rehabilitation to its sewer collection system and its wastewater treatment facilities. The consent decree also provides for the recovery of civil penalties of $700,000 to be paid by the City. The penalty shall be paid as follows: within sixty (60) days after the Decree is entered by the Court, the City shall pay $125,000 to the United States, and $125,000 to the State of Georgia, on or before the one (1) year anniversary of the Date of Entry of the Decree, the City shall pay $125,000 to the United States and $125,000 to the State of Georgia. The City shall also pay the State $100,000 within sixty (60) days of the date of entry, along with $100,000 on or before the one (1) year anniversary of the Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed First Amended Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America and State of Georgia* v. *City of Atlanta, Georgia,* Civil Action No. 1:98–CV–1956–TWT, D.J. Ref. 90–5–1–1–4430.

The proposed Decree may be examined at the Office of the United States Attorney, Northern District of Georgia, 1800 United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30335 and at Region 4, Office of the Environmental Protection Agency, Water Programs Enforcement Branch, Water Management Division, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104, and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclosed a check in the amount of $37.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–21557 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 171–99]

Privacy Act of 1974; Notice of Cancellation of Two FBI Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Federal Bureau of Investigation (FBI), is canceling the following systems of records:

Routine Correspondence Handled By Predesigned Form, JUSTICE/FBI–004 (last published in the **Federal Register** on October 5, 1993, at 58 FR 51873); and

Routine Correspondence Prepared Without File Copy, JUSTICE/FBI–005 (last published in the **Federal Register** on October 5, 1993, at 58 FR 51873).

The FBI has determined that these systems are no longer being used and that the records that formerly constituted the system no longer exist. The records have been disposed of in due course under FBI Records management authority. Therefore, the FBI has decided to cancel these two systems of records.

This deletion of the affected record system notices is not with the purview of subsection (r) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report to the Office of Management and Budget and congressional committees.

Dated: August 6, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 99–21558 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Asymmetrical Digital Subscriber Line Forum

Notice is hereby given that on June 10, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Asymmetrical Digital Subscriber Line Forum ("ADSL") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plantiffs to actual damages under specified circumstances. Specifically, Amphenol Canada, Scarborough, Ontario, CANADA; Centillium Technology, Fremont, CA; Concentric Network, Cupertino, CA: DS2 (Design of Systems on Silicon), Valencia, SPAIN; Digi International, Minnetonka, MN; Flowpoint, Los Gastos, CA; GenRad, Westford, MA; ITRI, Taiwan, REPUBLIC OF CHINA; Integrated Telecom Express, Santa Clara, CA; Intrakom S.A., Peania, Attika, GREECE; Iterated Systems, Atlanta, GA; LSI Logic, Milpitas, CA; Next Level Communications, Parsippany, NJ; Matsushita Electric Industrial, Osaka, JAPAN; Helsinki Telephone, Helsinki, FINLAND; Objective Systems, Red Bank, NJ; NTT, Chiba, JAPAN; Madge Networks, Wexham, ENGLAND; Rockwell Semiconductor, Pacific Palisades, CA; SAT (Sagem Group), Paris, FRANCE; Sonera Corporation, Helinski, FINLAND; Tektronic, Chelmsford, MA; Teledata Systems, Herzlia, Pituach, ISRAEL, Telrad, LOD, ISRAEL, Toshiba, Tokyo, JAPAN; Transcend Access, Fremont, CA; UUNET, Fairfax, VA; ViaGate Technologies, Bridgewater, NJ; Web Silicon, Los Gatos, CA; and Virata Ltd., Santa Clara, CA have been added as parties to this venture. Also, ATM Ltd., Santa Clara, CA has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ADSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, ADSL filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on March 20, 1998. A notice of this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc 99–21561 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cargill, Inc. and Osmonics, Inc

Notice is hereby given that, on February 2, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cargill, Inc. and Osmonics, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Cargill, Inc., Wayzata, MN; and Osmonics, Inc., Minnetonka, MN. The nature and objectives of the venture are to develop solvent compatible membrane systems for liquid separations.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–21564 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Center for Waste Reduction Technologies ("CWRT"): Total Cost Accounting Project

Notice is hereby given that, on June 3, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Center for Waste Reduction Technologies ("CWRT"): Total Cost Accounting Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, General Electric Corporation, Schenectady, NY; ICI Americas, Inc., Wilmington, DE; Minnesota Mining and Manufacturing Company, St. Paul, MN; Rhone Poulenc North America, Monmouth Junction, NJ; and Union Carbide Corporation, Danbury, CT have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remain open, and Center for Waste Reduction Technologies ("CWRT"): Total Cost Accounting Project intends to file additional written notification disclosing all changes in membership.

On April 23, 1997, Center for Waste Reduction Technologies ("CWRT"): Total Cost Accounting Project filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 28, 1997 (62 FR 63386).

The last notification was filed with the Department on June 11, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 2, 1998 (63 FR 58787).

Information regarding participation in this joint venture may be obtained from: Center for Waste Reduction Technologies, American Institute of Chemical Engineers, 3 Park Avenue, New York, NY 10016.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–21559 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Center for Waste Reduction Technologies ("CWRT"): Novel Reactor Design Project

Notice is hereby given that, on June 3, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Center for Waste Reduction Technologies ("CWRT"): Novel Reactor Design Project has filed written notifications simultaneously with the Attorney General and the

Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ARCO Chemical Company, Newton Square, PA; Monsanto Company, St. Louis, MO; and Proctor & Gamble Co., Cincinnati, OH have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Center for Waste Reduction Technologies ("CWRT"): Novel Reactor Design Project intends to file additional written notification disclosing all changes in membership.

On December 19, 1995, Center for Waste Reduction Technologies ("CWRT"): Novel Reactor Design Project filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 1996 (61 FR 5409).

The last notification was filed with the Department on June 11, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 2, 1998 (63 FR 58786).

Information regarding participation in this joint venture may be obtained from: Center for Waste Reduction Technologies, American Institute of Chemical Engineers, 3 Park Avenue, New York, NY 10016.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–21565 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—GE Corporation Research and Development

Notice is hereby given that, on November 5, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), GE Corporate Research & Development has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are GE Corporate Research and Development, Niskayuna, NY; NBC4 WRC–TV, Washington, DC; Comark Communications, Inc., Southwick, MA; and Thomson Consumer Electronics, Indianapolis, IN. The nature and objectives of the venture are to develop and demonstrate improved HDTV/DTV receivers, receiver antennas, and broadcast transmitters, while staying within the limits of the ATSC standard.

The activities of this venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–21562 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor

Notice is hereby given that, on January 27, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hanil General Corporation, Kwanak-Ku, KOREA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor intends to file additional written notification disclosing all changes in membership.

On October 19, 1995, Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of February 23, 1996 961 FR 7020).

The last notification was filed with the Department on March 23, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 30, 1998 (63 FR 71955–71956).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–21560 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Application Protocol Forum, Ltd.

Notice is hereby given that, on May 13, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Wireless Application Protocol Forum, Ltd. ("WAP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Apion Ltd Interpoint, Belfast, NORTHERN IRELAND; Certicom Corp., San Mateo, CA; DeLaRue Card Systems, Basingstoke, UNITED KINGDOM; Deutsche Telekom Mobilnet GmbH, Bonn, GERMANY; Fujitsu Software Corporation, San Jose, CA; Geoworks Corporation, Alameda, CA; Hongkong Telecom CSL, Hong Kong, HONG KONG; IBM Corporation, Yorktown Heights, NY; Matsushita Communication Industrial Co., Ltd., Yokohama, JAPAN; MD-Co, Kontich, BELGIUM; NTT Mobile Communications Network Inc., Kangawa, JAPAN; Psion Software plc, London, ENGLAND; Samsung Electronics Co., Ltd., Suwon City, KOREA; Scandinavian Softline Technology Oy, Espoo, FINLAND;

Schlumberger Industries S.A., Montrouge, FRANCE; Sema Group Limited, North York, Ontario, CANADA; Sendit AB (publ), Stockholm, SWEDEN; Societe Francaise du Radio Telephone, Paris, FRANCE; Spyglass, Inc., Naperville, IL; Starfish Software, Inc., Scotts Valley, CA; Telecom Finland Ltd., Tele, FINLAND; Telecom Italia Mobile S.p.A., Torino, ITALY; Uniden San Diego Research & Development Center, Inc., San Diego, CA; Vodafone Limited, Newbury, Berkshire, UNITED KINGDOM; and VTT Information Technology, Helsinki, FINLAND have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and WAP intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, WAP filed its original notification pursuant to Section 6(a) of the Act. A notice for this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–21563 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Sworn statement of refugee applying for admission to the United States.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 5, 1999 at 64 FR 24187, allowing for emergency OMB review and approval and a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhances the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Sworn Statement of Refugee Applying for Admission to the United States.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–646. Office of International Affairs, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or households. This form provides the grounds of admissibility to the United States as they apply to refugees. The information collected allows INS to make admissibility determinations for refugees.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 75,000 responses at 30 minutes (.50 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 37,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21511 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for replacement naturalization/citizenship document.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 19, 1999 at 64 FR 8405, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this

notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

Overview of this information collection:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Application for Replacement Naturalization/Citizenship Document.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–565. Office of Naturalization Operations, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form is used by the INS to determine the applicant's eligibility for a replacement of a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship or Repatriation Certificate that was lost, mutilated or destroyed, or if the applicant's name was changed by marriage or by court order after issuance of original document. This form may also be used to apply for special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 22,567 responses at 55 minutes (0.916) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection:

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21512 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Guarantee of payment.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 23, 1999 at 64 FR 8860, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of previously approved collection.

(2) Title of the Form/Collection: Guarantee of Payment.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–510. Detention and Deportation Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Section 253 of the Immigration and Nationality Act (INA) provides that the master or agent of a vessel or aircraft shall guarantee payment for expenses incurred for an alien crewman who arrived in the United States and is afflicted with any disease or illness mentioned in Section 255 of the Act.

(5) An estimate of the total number of respondents and the amount of time

estimated for an average respondent to respond: 100 responses at 5 minutes (.083) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 8 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21513 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Affidavit of financial support and intent to petition for legal custody for Public Law 97–359 Amerasian.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 25, 1999 at 64 FR 9350, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–361. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form will be used in support of Form I–360 to assure financial support for Public Law 97–359 Amerasian.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses at 30 minutes (0.5) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 25 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21514 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Petition for approval of school for attendance by nonimmigrant students.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 25, 1999 at 64 FR 9349, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged

and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collection; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Petition for Approval of School for Attendance by Nonimmigrant Students.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–17. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. The information is used by learning institutions to determine acceptance of nonimmigrant students, as well as INS to establish a list of names and locations of schools or campuses within school systems or districts with multiple locations, which schools are bona fide institutions of learning.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 322 responses at one (1) hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 322 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21515 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application to adjust status from temporary to permanent resident.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 12, 1999 at 64 FR 17681, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burdens and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of Form/Collection: Application to Adjust Status from Temporary to Permanent Resident.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–698. Adjudication Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. In compliance with Pub. L. 99–604 and Pub. L. 100–204, Section 902, the Service will accept and review applications from temporary resident aliens to adjust their status to permanent residence. This form will collect the necessary information to

adjudicate the application and issue an Alien Registration Card (I–551).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,179 responses at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,179 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21516 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Memorandum of understanding to participate in Employment Eligibility Confirmation Pilot Program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 18, 1999 at 64 FR 13448. The notice requested emergency OMB review and approval with a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a previously approved collection.

(2) Title of the Form/Collection: Memorandum of Understanding to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No Agency Form Number (File No. OMB–18). SAVE Program, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Businesses or other for-profit. The employer data collected from the Memorandum of Understanding (MOU) enables the INS to collect employer information for each site that will be performing verification queries. The MOU also provides the terms and conditions governing the pilots.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 4,000 responses at 1.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 22,161 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 11, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21517 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for permission to reapply for admission into the United States after deportation or removal.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in

accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 1, 1999 at 64 FR 15816, allowing for a 60–day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–212. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form provides information to be used by the Immigration and Naturalization Service to determine eligibility for a waiver for an inadmissible alien who is applying for a visa to enter the United States after deportation, removal or departure, as provided for under section 212 of the Immigration and Naturalization Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,250 responses at 20 minutes (.333) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,414 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21518 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Health and Human Services statistical data for refugee/asylee adjusting status.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 1, 1999 at 64 FR 15816, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the*

collection: Form I–643. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The primary purpose of the data collection on this form is for use in the Office of Refugee Resettlement Report to Congress (8 U.S.C. 1523). The Service is required to report on the status of refugees at the time of adjustment to lawful permanent resident.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 32,370 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21519 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Petition by entrepreneur to remove conditions.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 1, 1999 at 64 FR 29361. The notice allowed for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement of a previously approved collection.

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–829. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove the conditions on his or her conditional resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 responses at 65 minutes (1.08 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 216 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21520 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Alien address report card.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the

Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** April 15, 1999 at 64 FR 18636, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(2) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Alien Address Report Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–104, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The form is used by aliens to report their current address, upon a ten-day notice, only when required by the Attorney General under section 265 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21521 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Certificate of satisfactory pursuit.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 15, 1999 at 64 FR 18636, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Certificate of Satisfactory Pursuit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–699. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The Service will use this

form to verify that a certified course provider has supplied the required instructions to temporary resident aliens, in compliance with Public Law 99–603 and Public Law 100–204, section 902.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 10 minutes (0.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–21522 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Notice of information collection under review: Registration for classification as refugee.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 2, 1999 at 64 FR 29671, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 20, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection*: Extension of a currently approved collection.

(2) *Title of the Form/Collection*: Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection*: Form I–590. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Individuals or Households. This information collection provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: 140,000 responses at 35 minutes (.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 81,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 10, 1999.

Ricard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service

[FR Doc. 99–21523 Filed 8–18–99; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 and STN 50–455]

Commonwealth Edison Company; Notice of Partial Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Commonwealth Edison Company (ComEd, the licensee) for amendments to Facility Operating License Nos. NPF–37 and NPF–66, issued to ComEd for operation of Byron Station, Unit Nos. 1 and 2, located in Ogle County, Illinois. Notice of Consideration of Issuance of these amendments was published in the **Federal Register** on April 22, 1998 (63 FR 19966).

The purpose of the licensee's amendment request was to delete license conditions which have been satisfied, revise others to delete parts which are no longer applicable or to revise references, and make editorial changes.

The NRC staff has concluded that a portion of the request, related to the proposed deletion of dates for approved security plans, can not be granted. The basis for the denial is detailed in the Safety Evaluation related to Amendment Nos. 110 and 110 dated August 10, 1999.

By September 20, 1999, the licensee may demand a hearing with respect to the partial denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated March 14, 1997, (2) Amendment Nos. 110 and 110 to Facility Operating License Nos. NPR–37 and NPR–66, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Dated at Rockville, Maryland, this 10th day of August 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Acting Director, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21529 Filed 8–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–754]

Consideration of License Renewal Request for the General Electric Vallecitos Nuclear Center and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission is considering renewal of Materials License SNM–960 which was issued to the General Electric Vallecitos Nuclear Center on February 8, 1994. The Materials License is for the operation of their Laboratory and General Services Operations facility in Sunol, California. The renewal application requests authorization to receive and possess special nuclear material and to use special nuclear material in research and development activities involving chemical and physical analysis. The license renewal application is dated January 21, 1999, and is available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC 20555.

Prior to approving the renewal application, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report. The renewal of the licensee will be documented in the issuance of a renewed SNM–960 license.

The NRC hereby provides notice that this is a proceeding on an application for renewal of a license falling within the scope of Subpart L, "Informal Hearing Procedure for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing processing in 10 CFR Part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** notice.

The request for a hearing must be filed with the Office of Secretary either:

1. By delivery to the Rulemakings and Adjudications Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Branch.

In addition to meeting other applicable requirements to 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Section 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with Section 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, General Electric Company, Vallecitos Nuclear Center, 6705 Vallecitos Road, (State Route 84) Sunol, California 94586; Attention Mr. Ben Murray; and

2. The NRC staff, by delivering to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's Informal Hearing Procedures for Adjustications in Material Licensing Proceedings in 10 CFR Part 2, Subpart L.

For further details with respect to this action see the application for renewal dated January 21, 1999. This document is available for public inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, DC 20555. Questions should be referred to the NRC's project manager for the General Electric Vallecitos Nuclear Center, Andrew D. Rayland, at (301) 415–8102.

Dated at Rockville, Maryland, this 12th day of August 1999.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–21530 Filed 8–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Company; Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. NPF–62 for the Clinton Power Station (CPS) currently held by Illinois Power Company (IP, or the licensee). The transfer would be to AmerGen Energy Company, LLC (AmerGen). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

Under the proposed transfer, AmerGen would be authorized to possess, use, and operate CPS under essentially the same conditions and authorizations included in the existing license. In addition, no physical changes will be made to CPS as a result of the proposed transfer, and there will be no significant changes in the day-to-day operations of CPS. Antitrust conditions of the CPS license are proposed to be deleted because, among other things, they apply to IP which will no longer be the licensee.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By September 8, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing procedure on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1306(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1306(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon John Lamberski, counsel for IP, at Troutman Sanders LLP, 600 Peachtree Street, N.E., suite 5200, NationsBank Plaza, Atlanta, Georgia 30308–2216 (tel: 404–885–3360; fax: 404–962–6610; e-mail: *john.lamberski@troutmansanders.com*) and Kevin P. Gallen, counsel for AmerGen, at Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869 (tel: 202–467–7462; fax: 202–467–7176; e-mail: *kpgallen@mlb.com*); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, D.C., 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by September 20, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute partof the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated July 23, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Maryland, this 12th day of August 1999.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Projects Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21532 Filed 8–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Finding of No Significant Impact for Proposed Decommissioning Activity at the Fansteel Facility in Muskogee, OK

The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment to Source Material License No. SMB–911 for approval of a decommissioning plan to remediate for unrestricted use under the Site Decommissioning Management Plan (SDMP) Action Plan (57 FR 13389) of the Eastern Property Area of the Fansteel, Inc., (Fansteel) facility in Muskogee, Oklahoma. This area covers approximately 56.6 acres of the site and is defined in Revised Figure 3 of Fansteel's submittal dated July 16, 1999.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is approval of a decommissioning plan to remediate the Eastern Property Area, approximately 56.6 acres, of the Fansteel site for unrestricted use under the SDMP Action Plan. Currently, Fansteel is in active operation to reprocess onsite waste residues from previous metal extraction operations to recover tantalum, niobium, scandium, and other rare earth elements for commercial use. These residues contain natural uranium and thorium in sufficient quantities to be classified as a source material by the NRC. Reprocessing operations take place on the Eastern Property Area of the site and are expected to continue for approximately 11 years. Initial decommissioning activities involving waste reduction, soil remediation, and groundwater treatment are scheduled to take place concurrently with operations. Final decommissioning activities are proposed to take place after 11 years, or after reprocessing operations have ceased. The entire decommissioning process is estimated to be a 13 year project.

Need for the Proposed Action

Fansteel requests the proposed action to remove radioactive contamination from areas of land, groundwater, buildings, and equipment located on the Eastern Property Area of Fansteel's facility in Muskogee, Oklahoma.

Environmental Impacts of the Proposed Action

The radiological impacts resulting from the proposed action involve the release of air and water effluents, which may contain low levels of residual radioactive contamination, to the environment. These effluents will occur during the various decommissioning activities such as excavation of soils, dismantlement of buildings, waste management, and transportation of wastes. The release of radioactive materials in air and water effluents will be within the regulatory limits set forth in 10 CFR Part 20, Appendix B.

The non-radiological impacts resulting from the proposed action are not expected to be significant. Land use, air quality, surface water quality, and groundwater quality are expected to be improved. Industrial safety will be maintained under the existing safety program for operations. Ambient noise and traffic around the site will not increase substantially over that present for operations. No known threatened or endangered plants or animals are known to occur at the Fansteel site. There will be no disproportionally high or adverse effects or impacts on minority or low-income populations.

Alternatives to the Proposed Action

There are two alternatives to the proposed Action:

1. No action and continued surveillance and maintenance of the contaminated soil, groundwater, and facilities; and

2. Decommissioning under the radiological dose criteria of the new License Termination Rule (Subpart E to 10 CFR Part 20).

The first alternative is inconsistent with NRC's requirements for timely decommissioning as described in 10 CFR 40.42(h)(1). Fansteel has requested an exemption from the second alternative as is permitted by the general provisions of 10 CFR 20.1401(b)(3).

Agencies and Persons Consulted

The Oklahoma Department of Environmental Quality (OKDEQ) and the Office of the Attorney General (OAG) of the State of Oklahoma were consulted concerning this proposed action.

Conclusion

The NRC has determined that the proposed decommissioning plan will not result in significant impact to human health or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment (EA) related to the amendment of Source Material License SMB–911. On the basis of the EA, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The EA and other documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC 20555. Questions should be referred to the NRC's Project Manager for Fansteel, Michael E. Adjodha, at 301–415–8147 or by electronic mail at mea1@nrc.gov.

Dated at Rockville, Maryland, this 12th day of August 1999.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–21531 Filed 8–18–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

1999 List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget

ACTION: Notice.

SUMMARY: This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act of 1978 (IG Act), as amended.

FOR FURTHER INFORMATION CONTACT: Sheila Conley or Tawana Webb at 202–395-6911, Office of Federal Financial Management, Office of Management and Budget.

SUPPLEMENTARY INFORMATION: This notice provides a copy of the 1999 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget (OMB) is required to publish annually under the IG Act. This list is also posted on the Inspector General community's website, IGNET, at http://www.ignet.gov.

The List is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The Designated Federal Entities are listed in the IG Act, except that those agencies which have ceased to exist have been deleted from the list.

Federal Entities are required to report annually to each House of Congress and OMB on audit and investigative activities in their organizations. Federal Entities are defined as "any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive Branch of government, or any independent regulatory agency" other than the Executive Office of the President and agencies with statutory Inspectors General. There are 3 deletions and 2 additions in the 1999 list of Designated Federal Entities and Federal Entities from the 1998 list published in the July 10, 1998, **Federal Register** (63 FR 37421).

The 1999 List of Designated Federal Entities and Federal Entities was prepared in consultation with the U.S. General Accounting Office.

Norwood J. Jackson, Jr.,

Acting Controller, Office of Federal Financial Management.

Herein follows the text of the 1999 List of Designated Federal Entities and Federal Entities:

1999 List of Designated Federal Entities and Federal Entities

The Inspector General Act of 1978, as amended, requires Office of Management Budget (OMB) to publish a list of "Designated Federal Entities" and "Federal Entities" and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General before April 17, 1989. Federal Entities are required to report annually to each House of Congress and the OMB on audit and investigative activities in their organizations.

Designated Federal Entities and Entity Heads

1. Amtrak—President
2. Appalachian Regional Commission—Federal Co-Chairperson
3. The Board of Governors, Federal Reserve System—Chairperson
4. Commodity Futures Trading Commission—Chairperson
5. Consumer Product Safety Commission—Chairperson
6. Corporation for Public Broadcasting—Board of Directors
7. Equal Employment Opportunity Commission—Chairperson
8. Farm Credit Administration—Chairperson
9. Federal Communications Commission—Chairperson
10. Federal Election Commission—Chairperson
11. Federal Housing Finance Board—Chairperson
12. Federal Labor Relations Authority—Chairperson
13. Federal Maritime Commission—Chairperson
14. Federal Trade Commission—Chairperson
15. Legal Services Corporation—Board of Directors
16. National Archives and Records Administration—Archivist of the United States
17. National Credit Union Administration—Chairperson
18. National Endowment for the Arts—Chairperson
19. National Endowment for the Humanities—Chairperson
20. National Labor Relations Board—Chairperson
21. National Science Foundation—National Science Board
22. Panama Canal Commission—Chairperson
23. Peace Corps—Director
24. Pension Benefit Guaranty Corporation—Chairperson
25. Securities and Exchange Commission—Chairperson
26. Smithsonian Institution—Secretary
27. Tennessee Valley Authority—Board of Directors
28. United States International Trade Commission—Chairperson
29. United States Postal Service—Governors of the Postal Service

Federal Entities and Entity Heads

1. Advisory Council on Historic Preservation—Chairperson
2. African Development Foundation—Chairperson
3. American Battle Monuments Commission—Chairperson
4. Architectural and Transportation Barriers Compliance Board—Chairperson
5. Armed Forces Retirement Home—Board of Directors
6. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
7. Chemical Safety and Hazard Investigation Board—Chairperson
8. Christopher Columbus Fellowship Foundation—Chairperson
9. Commission for the Preservation of America's Heritage Abroad—Chairperson
10. Commission of Fine Arts—Chairperson
11. Commission on Civil Rights—Chairperson
12. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
13. Court of Veterans Appeal—Chief Judge
14. Defense Nuclear Facilities Safety Board—Chairperson
15. Denali Commission—Chairperson
16. Export-Import Bank—President and Chairperson
17. Farm Credit System Financial Assistance Corporation—Chairperson
18. Farm Credit System Insurance Corporation—Chairperson
19. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
20. Federal Mediation and Conciliation Service—Director
21. Federal Mine Safety and Health Review Commission—Chairperson
22. Federal Retirement Thrift Investment Board—Executive Director
23. Harry S Truman Scholarship Foundation—Chairperson
24. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
25. Institute of Museum and Library Services—Director
26. Intelligence Community Management Account—Deputy Director of Central Intelligence for Community Management
27. Inter-American Foundation—Chairperson
28. James Madison Memorial Fellowship Foundation—Chairperson
29. Japan-U.S. Friendship Commission—Chairperson
30. Marine Mammal Commission—Chairperson
31. Merit Systems Protection Board—Chairperson
32. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson
33. National Capital Planning Commission—Chairperson
34. National Commission on Libraries and Information Science—Chairperson
35. National Council on Disability—Chairperson
36. National Education Goals Panel—Chairperson
37. National Mediation Board—Chairperson
38. National Transportation Safety Board—Chairperson
39. Neighborhood Reinvestment Corporation—Chairperson
40. Nuclear Waste Technical Review Board—Chairperson
41. Occupational Safety and Health Review Commission—Chairperson
42. Office of Government Ethics—Director
43. Office of Navajo and Hopi Indian Relocation—Chairperson
44. Office of Special Counsel—Special Counsel
45. Offices of Independent Counsel—Independent Counsels
46. Overseas Private Investment Corporation—Board of Directors
47. Postal Rate Commission—Chairperson
48. Presidio Trust—Chairperson
49. Selective Service System—Director
50. Smithsonian Institution/John F. Kennedy Center for the Performing Arts—Chairperson
51. Smithsonian Institution/National Gallery of Art—President
52. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Director
53. State Justice Institute—Director
54. Trade and Development Agency—Director
55. U.S. Holocaust Memorial Council—Chairperson

56. U.S. Institute of Peace—Chairperson

[FR Doc. 99–21486 Filed 8–18–99; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23946; 812–11368]

Allied Capital Corporation; Notice of Application

August 12, 1999.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

Summary of Application: Applicant, Allied Capital Corporation, requests an order approving its stock option plan (the "Plan") to grant options to directors who are neither employees nor officers of applicant (the "Eligible Directors").

Filing Dates: The application was filed on October 20, 1998, and amended on April 28, 1999. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 on September 7, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Applicant, 1919 Pennsylvania Avenue, NW, Washington, DC 20006–3434.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.[1] Applicant's primary business is making loans and investments in small and medium-sized companies. Applicant's investment decisions are made by its management in accordance with policies approved by applicant's board of directors (the "Board"). Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the Plan for Eligible Directors, including each new Eligible Director who may be appointed in the future to the Board. Applicant has a twelve member Board, ten of whom are Eligible Directors.[2] None of the Eligible Directors is an "interested person," as defined in section 2(a)(19) of the Act, of applicant.

3. The Plan was approved by the Board on September 29, 1997, and approved by applicant's shareholders on November 26, 1997. The Board has implemented part of the Plan with respect to applicant's officers and employee directors. The portion of the Plan applicable to Eligible Directors will not be implemented until an order is received from the Commission approving that portion of the Plan.

4. The Plan provides that each Eligible Director serving at the time the requested order is issued, and each new Eligible Director at the time he or she joins the Board, will be entitled to receive options to purchase 10,000 shares. Thereafter, incumbent Eligible Directors will be awarded options to purchase 5,000 shares each year. Options may be granted under the Plan for a maximum of 6,250,000 shares, which is approximately 12% of applicant's current outstanding shares. Applicant has no warrants, options, or rights to purchase its voting stock outstanding other than those issued pursuant to the Plan.

5. The exercise price of the options will be the closing price of applicant's common stock on the Nasdaq National Market, or on the exchange where applicant's shares are traded, on the date the option is granted. Each option states the period or periods of time within which the option may be exercised by the optionee, which may not exceed ten years from the date the option is granted. All rights to exercise options will terminate 60 days after an Eligible Director ceases to be a director for any reason other than death or permanent disability. If an Eligible Director dies or becomes permanently disabled, the Eligible Directors estate may exercise his or her options during the one-year period following the date of death or permanent disability. Options will not be transferable other than by will or the laws of descent and distribution. In the future, the Plan may be amended to permit options to be transferable pursuant to a qualified domestic relations order ("QDRO") as defined by section 414(p) of the Internal Revenue Code of 1986, as amended (the "Code").[3]

6. Applicant's compensation committee (the "Committee") will administer the Plan. The Committee, which currently has four members, is and will be comprised of members of the Board who (a) are non-employee directors; (b) have no financial interest in grants of stock options to applicant's officers under the Plan; and (c) are not "interested persons," as defined in section 2(a)(19) of the Act, of applicant. Decisions by the Committee are subject to review and approval by the full Board. The Plan may be modified, revised, or terminated by the Board at any time. The Board is permitted to make any modifications or revisions to any provision of the Plan without shareholder approval except with respect to the number of shares underlying options authorized for issuance under the Plan. The Plan as it relates to grants of options to Eligible Directors will not be modified materially from the description in the application without obtaining an order of the Commission or approval of the Commission staff.

---

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of the securities.

[2] Each of applicant's Eligible Directors receives $1,000 for each meeting of the Board attended. In addition, members of the executive committee of the Board receive annual compensation of $10,000. Eligible Directors receive no other compensation for their services to applicant.

[3] Applicant states that a QDRO is made pursuant to a court order or decree under state domestic relations law (*e.g.*, involving divorce, child support, alimony, or marital property rights). Under section 414(p) of the Code, a QDRO permits as state domestic relations court to issue orders that will allow for employee plan benefits to be paid to an alternate payee.

Applicant's Legal Analysis

1. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its Eligible Directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within 10 years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC on the basis that the terms of the proposal are fair and reasonable and does not involve overreaching of the BDC or its shareholders; (d) the options are not transferable except for disposition by gift, will, or intestacy; (e) no investment adviser of the BDC receives any compensation described in paragraph (1) of section 205 of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant states that the terms of the Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states that the number of voting securities that would result from the exercise of all options issued or issuable to officers and non-officer directors under the Plan is 6,250,000 shares, or 12% of the company's outstanding stock. The total number of shares of applicant's common stock issuable under the Plan that may be granted in any one year to current Eligible Directors represents about .08% of applicant's outstanding common stock. Applicant states that given the small number of shares of common stock issuable upon exercise of the options, the exercise of the options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of applicant's common stock.

4. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant states that the Eligible Directors are actively involved in the management and oversight of applicant's business and operations and are likely to have specific experience with respect to industries in which applicant makes a significant number of investments. Applicant asserts that the options will have value only to the extent that applicant's market value increases above the exercise price of the options, which will encourage the Eligible Directors to remain on the Board and to devote their best efforts to the success of applicant's business. In addition, applicant states that the Plan will assist it in attracting qualified persons to serve as Eligible Directors in future. Applicant further states that the options will provide a means for the Eligible Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with the interests of applicant and its shareholders.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21485 Filed 8–18–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41735; File No. SR–Amex–99–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Amendment of Commentary .01 to Exchange Rule 340 and Amendment of Exchange Rule 590

August 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on July 9, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1993, the New York Stock Exchange ("NYSE") amended its rules to require all clerks to submit their fingerprints and Forms U–4 as a prerequisite to admission to the trading floor.[3] The intent of the rule was to prevent an individual subject to a statutory disqualification from being employed on the exchange. At the same time, the NYSE required employers to report the termination of a clerk on Form U–5. The NYSE also amended its rules to provide for the imposition of a $1,000 fine on members and member organizations that failed to comply with the NYSE's floor clerical personnel procedures.[4] The Amex currently requires candidates for membership to be fingerprinted and complete Form U–4, but does not impose a similar requirement on clerks. The Amex also does not require members and member

---

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4

[3] NYSE Rule 35, Supplementary Material .50 and .60. *See* Securities Exchange Act Release No. 33045 (October 14, 1993), 58 FR 54179 (October 20, 1993) (File No. SR–NYSE–93–28).

[4] *See* Securities Exchange Act Release No. 32422 (June 7, 1993), 58 FR 32972 (June 14, 1993) (File No. SR–NYSE–93–14).

organizations to report terminations of clerks.

The Exchange now proposes to amend Commentary .01 to Amex Rule 340 to require all current and prospective clerks to be fingerprinted and submit Form U–4.[5] Fingerprints will be submitted to the Department of Justice for a fingerprint report. All existing clerks will have eight weeks from the date the proposed rule change becomes operative to supply their fingerprints to the Exchange and submit a completed Form U–4. After the proposed rule changes become operative, new clerks and temporary clerks will not be permitted on the trading floor until they have been fingerprinted and submitted a Form U–4. A charge for the fingerprinting will be assessed against the clerk's employer.[6] The Exchange also proposes that members and member organizations must report the discharge or termination of any clerk to the Exchange on Form U–5. Members and member organizations will be responsible for obtaining and submitting a terminated clerk's Amex identification badge with the Form U–5 to the Exchange's Membership Services Department.

Members and member organizations that fail, or whose employees fail, to submit the required fingerprints, Form U–4s and Form U–5s within the stipulated times face disciplinary action by the Exchange. In this regard, the Exchange proposes to amend the Minor Fine Plan (Amex Rule 590) to add failure to timely submit Form U–5s to the list of infractions that may be disciplined under part 3 of the Rule. This provides that members and member organizations may be fined $50 per day for the late filing of required reports. Part 1 of the Minor Fine Plan also will be amended to provide fines for the employers of clerks that do not submit fingerprints and Form U–4s within the required time frame after the Rule becomes operative. The minimum fines under Part 1 of Rule 590 is $500 for individuals and $1,000 for member organizations.

The purpose of the proposed rule change is to establish better control over admission to the trading and to ensure that only qualified persons have floor access.

[5] In the event that a clerk has already been fingerprinted and filed a U–4, the Exchange will accept in lieu of a new U–4 and fingerprints, a copy of the most recent fingerprint report and a written statement from his or her firm's compliance officer or employer/member that the U–4 is current and no reportable events have occurred.

[6] The current charges are $9.60 to have fingerprints taken and $25.50 for processing by the Department of Justice.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[7] in general and further the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Chance and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b-4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–24 and should be submitted by September 9, 1999.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21539 Filed 8–18–99; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41736; File No. SR–OCC–99–8]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Charges

August 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 27, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change reduces OCC clearing fees for established products in the second half of 1999.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce the clearing fees charged for established products in the second half of 1999. OCC experienced a record volume of options cleared during the first two quarters of 1999. As a result, OCC proposes to reduce its level of clearing fees, effective July 1, 1999, as follows:

Contract trade level	Current clearing fee	Proposed clearing fee
1–500	$0.09	$0.075
501–1000	0.07	0.06
1001–2000	0.06	0.0525
>2000	*110.00	*100.00

*Flat fee.

OCC believes that the foregoing fee change will assure each clearing member a discount on clearing fees. The proposed fee schedule change will also allow clearing members to immediately realize the benefits of reduced fees (rather than waiting for OCC's rebate of clearing fees) without adversely affecting OCC's ability to maintain an acceptable level of retained earnings. The clearing fees will revert to their current levels on the first trading day of year 2000.

OCC believes that the proposed rule change is consistent with Section 17A of the Act[3] and the rules and regulations thereunder because it benefits OCC's clearing members by reducing fees and allocating fees among clearing members in an equitable manner.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[4] of the Act and pursuant to Rule 19b–4(f)(2)[5] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–8 and should be submitted by September 9, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21538 Filed 8–18–99; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act 1974; Computer Matching Program (Agreement for SSA/Federal Bureau of Prisons (BOP) Match of Prisoner Data, Match #1041)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either facsimile to (410) 597–0841 or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support at the above address.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protection for individuals applying for or receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protection for such individuals.

The Privacy Act, as amended, regulates the use of computer matching

by Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the match agreements by any appropriate Federal agency Data Integrity Boards;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: July 29, 1999.

Susan M. Daniels, Ph.D.,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Federal Bureau of Prisons (BOP) With SSA.

A. Participating Agencies

SSA and BOP.

B. Purpose of the Matching Program

Sections 202(x)(1) and 202(x)(3) of the Social Security Act (the Act), codified at 42 U.S.C. 402(x)(1) and 402(x)(3) prohibit SSA from paying old-age, survivors, and disability insurance benefits to incarcerated individuals under title II of the Act. Section 1611(e)(1)(A) of the Act, codified at 42 U.S.C. 1382(e)(1)(A), provides, with some exceptions, that inmates in public institutions are not eligible for payments in the Supplemental Security Income (SSI) program under title XVI of the Act. Sections 205(j)(1)(A), 205(j)(5), 1631(a)(2)(A)(iii) and 1631 (a)(2)(E), codified at 42 U.S.C., 405(j)(1)(A), 405(j)(5), 1383(g)(2)(A)(iii) and 1383(a)(2)(E) require SSA to revoke certification for payment of benefits to representative payees under certain circumstances and to investigate and monitor the performance of representative payees. The incarceration or confinement of a representative payee is a circumstance highly relevant to SSA's consideration of an individual's representative payee status under these provisions. The purpose of this matching program is to assist SSA in enforcing all of the above-referenced provisions of the Act.

C. Authority for Conducting the Matching Program

This matching program is carried out under the authority of sections 202(x)(1), 202(x)(3), 205(j)(1)(A), 205(j)(5), 1611(e)(1)(A), 1631(a)(2)(A)(iii) and 1631 (a)(2)(E) of the Social Security Act.

D. Categories of Records and Individuals Covered by the Match

The Federal Bureau of Prisons will submit names and other identifying information of prisoners from its prisoner data systems. The SSA Master Files of Social Security number (SSN) holders and SSN applications contain the SSNs and identifying information for all SSN holders and applicants. The SSA Master Beneficiary Record and Supplemental Security Income contain title II and title XVI beneficiary and payment information. The Master Representative Payee File contains representative payee information. SSA will match data from these record systems with BOP data as a first step in detecting certain individuals who should not be receiving Social Security or SSI benefits, either for themselves, or on behalf of others.

E. Inclusive Dates of the Match

This matching program shall become effective no sooner than 40 days after notice of the program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 99–21524 Filed 8–18–99; 8:45 am]
BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as amended; Computer Matching Program (SSA/Railroad Retirement Board (RRB)—SSA Match Number 1006)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, this notice announces a computer matching program that SSA plans to conduct with RRB.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 597–0841, or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) amended the Privacy Act (5 U.S.C. 552a) by establishing conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain Data Integrity Board approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: August 12, 1999.

Susan M. Daniels, Ph.D.,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Railroad Retirement Board (RRB) With Social Security Administration (SSA)

A. Participating Agencies

SSA and RRB.

B. Purpose of the Matching Program

To identify supplemental security income recipients and applicants who receive annuities payable by the RRB. For such individuals, the income received due to benefits payable by the RRB may affect eligibility for or the amount of SSI benefits.

C. Authority for Conducting the Matching Program

Sections 1631(e)(1)(B) and 1631(f) of the Social Security Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)).

D. Categories of Records and Individuals Covered by the Match

The RRB will provide SSA with an electronic data file containing annuity payment information from its system of records entitled Checkwriting Integrated Computer Operation Benefits Payment Master. SSA will then match the RRB data with information maintained in its Supplemental Security Income Record.

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB), or 30 days after publication of this notice in the Federal Register, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 99–21653 Filed 8–18–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub-No. 48X)]

Soo Line Railroad Company—Abandonment Exemption—in Marshall and Roberts Counties, SD

On July 30, 1999, Soo Line Railroad Company, doing business as Canadian Pacific Railway (Soo), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 208.8± near Rosholt to the end of the line at milepost 236.3± near Veblen, a distance of approximately 27.5 miles in Marshall and Roberts Counties, SD. The line traverses U.S. Postal Service Zip Codes 57224, 57255, 57260, and 57270 and includes the stations of Veblen (milepost 236.3), Claire City (milepost 227.3), Hammer (milepost 223.4), New Effington (milepost 218.3), and Victor (milepost 213.8).

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 17, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 8, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–57 (Sub-No. 48X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Diane P. Gerth, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402. Replies to the Soo petition are due on or before September 8, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 11, 1999.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–21445 Filed 8–18–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 13, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 20, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0158.
Form Number: IRS Form 3206.
Type of Review: Extension.
Title: Information Statement by United Kingdom Withholding Agents Paying Dividends From U.S. Corporations to Resident of the United States and Certain Treaty Countries.

Description: Form 3206 is used to report dividends paid by U.S. corporations through United Kingdom nominees to beneficial owners who are residents of countries other than the United Kingdom with which the U.S.

has a tax treaty providing for reduced withholding rates on dividends. The data is used by IRS to determine whether the proper amount of income tax was withheld.

Respondents: Business or other for-profit, Individuals and households.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 4 hr., 6 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 15,620 hours.

OMB Number: 1545–0941.

Form Number: IRS Form 8308.

Type of Review: Extension.

Title: Report of a Sale or Exchange of Certain Partnership Interests.

Description: Form 8308 is an information return that gives the IRS the names of the parties involved in a section 751(a) exchange of a partnership interest. It is also used by the partnership as a statement to the transferor or transferee. It alerts the transferor that a portion of the gain on the sale of a partnership interest may be ordinary income.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 23 min.
Learning about the law or the form—2 hr., 23 min.
Preparing and sending the form to the IRS—2 hr., 32 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,460,000 hours.

OMB Number: 1545–1004.

Form Number: IRS Form 1120–REIT.

Type of Review: Extension.

Title: U.S. Income Tax Return for Real Estate Investment Trusts (REIT)

Description: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income, and deductions, and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the REIT has correctly reported its income, deductions, and tax liability.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 363.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—60 hr., 2 min.
Learning about the law or the form—21 hr., 36 min.
Preparing the form—41 hr., 12 min.
Copying, assembling, and sending the form to the IRS—5 hr., 5 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 46,435 hours.

OMB Number: 1545–1012.

Form Number: IRS Form 5305A–SEP.

Type of Review: Extension.

Title: Salary Reduction and Other Elective Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

Description: Form 5305A–SEP is used by an employer to make an agreement to provide benefits to all employees under a salary reduction Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with IRS, but is to be retained in the employers' records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SEP. The data is used to verify the deduction.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 29 min.
Learning about the law or the form—5 hr., 1 min.
Preparing the form—58 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,046,000 hours.

OMB Number: 1545–1411.

Form Number: IRS Forms 8843.

Type of Review: Extension.

Title: Statement for Exempt Individuals and Individuals With a Medical Condition.

Description: Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the U.S. because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.

Respondents: Individuals and households.

Estimated Number of Respondents/Recordkeepers: 150,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8843, parts I and II	Form 8843, parts I and III	Form 8843, parts I and IV	Form 8843, parts I and V
Recordkeeping	13 min	13 min	13 min	13 min.
Learning about the law or the form	7 min	7 min	6 min	7 min
Preparing the form	31 min	34 min	25 min	29 min.
Copying, assembling, and sending the form to the IRS.	17 min	17 min	17 min	17 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 177,120 hours.

OMB Number: 1545–1424.

Form Number: IRS Form 1099–C.

Type of Review: Extension.

Title: Cancellation of Debt.

Description: Form 1099–C is used for reporting canceled debt, as required by section 6050P of the Internal Revenue Code. It is used to verify that debtors are correctly reporting their income.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government.

Estimated Number of Respondents: 647,993.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 110,159 hours.

OMB Number: 1545–1498.

Regulation Project Number: REG–209826–96 NPRM.

Type of Review: Extension.

Title: Application of the Grantor Trust Rules to Nonexempt Employees' Trust.

Description: The regulations provide rules for the application of the grantor trust rules to certain nonexempt employees' trusts. Taxpayers must indicate on a return that they are relying on a special rule to reduce the overfunded amount of the trust.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1653.

Revenue Procedure Number: Revenue Procedure 99–26.

Type of Review: Extension.

Title: Secured Employee Benefits Settlement Initiative.

Description: This revenue procedure provides taxpayers options to settle cases in which they accelerated deductions for accrued employee benefits secured by a letter of credit, bond, or other similar financial instrument.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper: 20 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting/Recordkeeping Burden: 2,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–21550 Filed 8–18–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Midwest Citizen Advocacy Panel will be held in Omaha, Nebraska.

DATES: The meeting will be held Thursday, September 16, 1999 and Friday, September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, September 16, 1999, from 1:00 to 5:00 p.m. at the Ramada Inn Central, 7007 Grover Street, Omaha, NE 68106 and 7:00 p.m. to 9:00 p.m. at the Best Western Central Executive Center, 3650 S. 72nd Street, Omaha, NE 68124 and Friday, September 17, 1999, from 9:00 a.m. to 3:00 p.m. at the Ramada Inn Central, 7007 Grover Street, Omaha, NE 68106. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. The public is invited to make oral comments on Thursday September 16, 1999, 7:00 p.m. to 9:00 p.m.; written comments will be read into the record. Individual comments will be limited to five minutes and an additional five minutes allotted for questions and answers. If you would like to have the CAP consider a written statement or pre-register to make an oral comment, please call the CAP office at 1–888–912–1227 or 414–297–1604, FAX (414) 297–1623, or mail to Citizen Advocacy Panel, Mail Stop 1006–MIL, 310 W. Wisconsin Ave, Milwaukee, Wisconsin 53203–2221. If you would like to pre-register for the meeting, the only information needed by the CAP office is number of attendees and zip code. The Agenda will include the following: Reports by the CAP sub-groups, presentation of taxpayer issues by individual members, CAP office report, and discussion of issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 13, 1999.

Wendy S. Handin,

CAP Project Manager, Acting.

[FR Doc. 99–21501 Filed 8–18–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination: "Kremlin Gold—1000 Years of Russian Gems & Jewels"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Kremlin Gold—1000 Years of Russian Gems & Jewels" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed objects at the Houston Museum of Natural Science, Houston, TX, from on or about April 15, 2000, to on or about September 4, 2000, and the Field Museum of Natural History in Chicago, Chicago, IL, from on or about October 4, 2000, to on or about January 15, 2001, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects and for further information, contact Ms. Neila Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: August 11, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–21536 Filed 8–18–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
August 19, 1999

Part II

Department of Health and Human Services

Administration for Children and Families

Request for Applications for the Office of Community Services' Fiscal Year 2000 Discretionary Grants Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–2000–01]

Program Announcement; Request for Applications for the Office of Community Services' Fiscal Year 2000 Discretionary Grants Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for applications for the Office of Community Services' Fiscal Year 2000 Discretionary Grants Program.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under sections 681(a) and (b) of the Community Services Block Grant Act of 1981, as amended.

CLOSING DATE: The closing date for submission of applications is November 15, 1999. Mailed applications postmarked after the closing date will be classified as late.

APPLICATION SUBMISSION:

Mailing Address: Discretionary applications must be mailed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor West, Aerospace Center, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447; Attention: Discretionary Grants Program.

Submission Instructions: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the closing date or postmarked on or before the closing date and received by ACF in time for the independent review.

Applications mailed must bear a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service affixed to the envelope/package containing the application(s). To be deemed acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the closing date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note Attention: Discretionary Grants Program. (Applicants are again cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Number of Copies Required: One signed original application and four copies must be submitted at the time of the initial submission. (OMB–0970–0062, expires 10/31/2001)

The first page of the SF–424 must contain in the lower right-hand corner, a designation indicating under which sub-priority area funds are being requested (for example UR for 1.1, HB for 1.2, PD for 1.3, DD for 1.4, AM for 1.5, UT for 1.6, or RF for 2.0). See Part G, section 1, item 11 for details.

For General Questions on the Announcement, Contact:

Veronica Terrell—(202) 401–5295
David Matthews—(202) 401–5271
Walter Thaxton—(202) 401–5269
Bobby Malone—(202) 401–5270
Calvin Brockington—(202) 401–5273
Debra Brown—(202) 401–3446
Thelma Woodland—(202) 401–5294
Ruth Walston—(202) 401–9340

For a Copy of the Announcement, Contact: Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, S.W., 5th Floor West, Washington, DC 20447, (202) 401–9345, (202) 401–9354, (202) 401–4687 (fax).

In addition, the announcement will be accessible on the OCS website for reading or downloading at: http://www.acf.dhhs.gov/programs/ocs/kits1.htm.

The Catalog of Federal Domestic Assistance number for this program is 93.570. The title is Community Services Block Grant—Discretionary Awards.

Table of Contents

Part A—PREAMBLE
1. Legislative Authority
2. Departmental Goals
3. Definitions of Terms
Part B—APPLICATION PREREQUISITES
1. Eligible Applicants
2. Availability of Funds
3. Project and Budget Periods
4. Mobilization of Resources
5. Program Beneficiaries
6. Number of Projects in Application
7. Multiple Submittals
8. Subawarding Projects
9. Third Party Agreements
10. Funding Considerations
11. Prohibited Activities
Part C—PROGRAM PRIORITY AREAS
Part D—CRITERIA FOR REVIEW AND EVALUATION OF ALL APPLICATIONS
1. Criteria for Review and Evaluation of All Applications Submitted Under Sub-Priority Areas 1.1, 1.2, and 1.4
2. Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.3
3. Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.5
4. Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.6
5. Criteria for Review and Evaluation of All Applications Under Priority Area 2.0
Part E—APPLICATION PROCEDURES
1. Availability of Forms
2. Intergovernmental Review
3. Application Consideration
4. Criteria for Screening Applicants
Part F—CONTENTS OF APPLICATION AND RECEIPT PROCESS
1. Contents of Application
2. Acknowledgment of Receipt
Part G—INSTRUCTIONS FOR COMPLETING APPLICATION PACKAGE
1. SF–424 Application for Federal Assistance
2. SF–424A Budget Information—Non-Construction Programs
Part H—POST AWARD INFORMATION AND REPORTING REQUIREMENTS
1. Notification of Grant Award
2. Attendance at OCS Training Conference
3. Reporting Requirements

4. Audit Requirements
5. Applicable Federal Regulations
Attachments
A—Poverty Income Guidelines
B—Standard Form 424, Application for Federal Assistance
C—Standard Form 424A, Budget Information—Non-Construction Programs
D—Standard Form 424B, Assurances—Non-Construction Programs
E—Certification Regarding Drug-Free Workplace Requirements
F—Certification Regarding Debarment, Suspension and Other Responsibility Matters
G—State Single Point of Contact List
H—Certification Regarding Lobbying; Disclosure of Lobbying Activities, SF-LLL
I—DHHS Regulations Applying to All Applicants/Grantees Under the Fiscal Year 2000 Discretionary Grants Program
J—Certification Regarding Environmental Tobacco Smoke
K—Guidelines for a Business Plan
L—Table of Standard Industrial Codes and Occupational Classifications
M—Applicant's Checklist

Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act of 1981, as amended, (Section 680 of the Coats Human Services Reauthorization Act of 1998), authorizes the Secretary to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities with special emphasis on community and economic development activities.

2. Departmental Goals

This announcement is particularly relevant to the Departmental goal of strengthening the American family and promoting self-sufficiency. These programs have objectives of increasing the access of low-income people to employment and business development opportunities, and improving the integration, coordination, and continuity of the various HHS (and other federal Departments') funded services potentially available to families living in poverty.

3. Definitions of Terms

For purposes of this Program Announcement, the following definitions apply:

—*Budget period:* The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.

—*Cash contributions:* The cash outlay that includes the money contributed to the project or program by the recipient and third parties.

—*Community development corporation (CDC):* A private, nonprofit entity, governed by a board of directors consisting of low-income residents of the community and business and civic leaders, that has as a principal purpose planning, developing, or managing low-income housing or community development projects.

—*Community economic development (CED):* A process by which a community uses resources to attract capital and increase physical, commercial, and business development and job opportunities for its residents.

—*Construction projects:* For the purpose of this announcement, construction projects involve land improvements and development or major renovation of (new or existing) facilities and buildings, including their improvements, fixtures and permanent attachments.

—*Displaced worker:* An individual who is in the labor market but has been unemployed for six months or longer.

—*Distressed community:* A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—*Eligible applicant:* (See appropriate Program Priority Area under Part C.)

—*Employment education and training program:* A program that provides education and/or training to welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals and that has demonstrated organizational experience in education and training for these populations.

—*Empowerment Zones and Enterprise Communities (EZ/EC):* Those communities designated as such by the Secretaries of Agriculture or Housing and Urban Development.

—*Equity investment:* The provision of capital to a business entity for some specified purpose in return for a portion of ownership using a third party agreement as the contractual instrument.

—*Indian tribe:* A tribe, band, or other organized group of Indians recognized in the State in which it resides or which is considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose. For the purpose of Priority Area 1.0 (Urban and Rural Community Economic Development), an Indian tribe or Indian organization is ineligible unless the applicant organization is a private non-profit community economic development corporation.

—*Job creation:* New jobs, *i.e.* jobs not in existence prior to the start of the project, that result from new business startups, business expansion, development of new services industries, and/or other newly-undertaken physical or commercial activities.

—*Job placement:* Placing a person in an existing vacant job of a business, service, or commercial activity not related to new development or expansion activity.

—*Letter of commitment:* A signed letter or agreement from a third party to the applicant that pledges financial or other support for the grant activities only subject to receiving an award of OCS grant funds.

—*Loan:* Money lent to a borrower under a binding pledge for a given purpose to be repaid, usually at a stated rate of interest and within a specified period of time.

—*Poverty Income Guidelines:* Guidelines published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families.

—*Program income:* Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

—*Project period:* The total time for which a project is approved for OCS support, including any approved extensions.

—*Revolving loan fund:* A capital fund established to make loans whereby repayments are re-lent to other borrowers.

—*Self-employment:* The state of an individual or individuals who engage in self-directed economic activities.

—*Self-sufficiency:* The economic state not requiring public assistance for an individual and his (her) immediate family.

—*Subaward:* An award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in 45 CFR 74.2. (Note: Subawards do not include equity investments or loan transactions since they are promulgated under third party agreements.)

—*Technical assistance:* A problem-solving event generally utilizing the services of an expert. Such services may be provided on-site, by telephone, or by other communications. These services address specific problems and are intended to assist with the immediate resolution of a given problem or set of problems.
—*Temporary Assistance to Needy Families (TANF):* Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193) creates the TANF program that transforms welfare into a system that requires work in exchange for time-limited assistance. The law specifically eliminates any individual entitlement to or guarantee of assistance, repeals the Aid to Families with Dependent Children (AFDC) program, Emergency Assistance (EA) and Job Opportunities and Basic Skills Training (JOBS) programs, and replaces them with a Block grant entitlement to States under Title IV of the Social Security Act.
—*Third party:* Any individual, organization, or business entity that is not the direct recipient of grant funds.
—*Third party agreement:* A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly-owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.
—*Third party in-kind contributions:* The value of non-cash contributions provided by non-federal third parties which may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefitting and specifically identifiable to the project or program.

Part B—Application Prerequisites

1. Eligible Applicants

Priority areas included in this Program Announcement have differing eligibility requirements. Therefore, eligible applicants are identified in the individual priority area descriptions found in Part C.

2. Availability of Funds

a. Appropriation Amounts

All grant awards are subject to the availability of appropriated funds. Approximately $26,560,000 is expected to be available for FY 2000. The approximate amount of funds anticipated to be available for each priority area is summarized below:

Sub-priority areas	FY 2000 funds
PRIORITY AREA 1.0: URBAN AND RURAL COMMUNITY ECONOMIC DEVELOPMENT	
1.1 Urban and Rural Community Economic Development (Operational)	17,000,000
1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)	2,100,000
1.3 Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)	750,000
1.4 Urban and Rural Community Economic Development (Developmental Set-Aside)	2,500,000
1.5 Administrative and Management Expertise (Set Aside)	500,000
1.6 Training and Technical Assistance (Set Aside)	210,000
PRIORITY AREA 2.0: RURAL COMMUNITY DEVELOPMENT ACTIVITIES	
2.0 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)	3,500,000

b. Grant Amounts

The approximate amounts to be granted for projects under the sub-priority areas are indicated below:

Sub-priority area	Funding limit
1.1	Approximately 13 at $350,000 but not more than $500,000
	Approximately 30 at $349,999 or less
1.2	Approximately 6 at $350,000
1.3	Approximately 10 at $75,000
1.4	Approximately 10 at $250,000
1.5	Approximately 1 at $500,000
1.6	Approximately 1 at $210,000
2.0	Approximately 8 from $300,000–$533,000

3. Project and Budget Periods

For Sub-Priority Areas 1.1, 1.2, and 1.4, applicants with projects involving construction only, may request a project period of up to 60 months and a budget period of up to 36 months. Applicants for non-construction projects under these priority areas may request project periods of up to 36 months and budget periods of up to 17 months. Applicants for Sub-Priority Areas 1.5 and 1.6 may request project and budget periods of up to 17 months. For Sub-Priority Area 1.3, applicants may request project and budget periods of up to 12 months.

For Priority Area 2.0, grantees will be funded for 24 month project periods and 12 month budget periods.

4. Mobilization of Resources

OCS encourages and strongly supports leveraging of resources through public/private partnerships which can mobilize cash and/or third-party in-kind contributions.

5. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits to low-income people as defined in the most recent annual revision of the Poverty Income Guidelines published by DHHS.

Attachment A of the appendices to this Announcement is an excerpt from the Poverty Income Guidelines currently in effect. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402. Also, see "For General Questions On the Announcement Contact" at the beginning of this Announcement.

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

Note, however, that low-income individuals granted lawful temporary resident status under Sections 245A or 210A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (Public law 99–603), may not be eligible for direct or indirect assistance based on financial need under this program for a period of five years from the date such status was granted.

6. Number of Projects in Application

All Priority Area 1.0 applications may contain only one project except for Sub-Priority Areas 1.3, 1.5, and 1.6 where applicants are researching various opportunities, are sharing administrative and management expertise with current OCS grantees, or are providing training and/or technical assistance for current OCS grantees, including the organization of seminars and other activities in assisting community development corporations. Applications that are not in compliance with this requirement may be disqualified.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as long as each application contains a proposal for a different project. However, an applicant can receive only one grant in each priority area. Also, applicants who receive more than one grant for a common budget/project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100% of total annual salary.

8. Subawarding Projects

OCS does not fund projects where the role of the applicant is *primarily* to serve as a conduit for funds through the use of subawards to other organizations. In cases where the applicant proposes to make one or more subawards, it must retain a substantive role in the implementation and operation of the project for which funding is requested.

9. Third Party Agreements

Any applicant submitting a proposal for funding under Sub-Priority Areas 1.1, 1.2, or 1.4 who proposes to use some or all of the requested OCS funds to enter into a third party agreement in order to make an equity investment (such as the purchase of stock) or a loan to an organization, or business entity (including a wholly-owned subsidiary), must include in the application, along with the business plan, a copy of the signed third party agreement for approval by OCS.

A third party agreement covering an equity investment must contain, at a minimum, the following:

1. The type of equity transaction (*e.g.* stock purchase).
2. Purpose(s) for which the equity investment is being made.
3. Cost per share.
4. Number of shares being purchased.
5. Percentage of ownership of the business.
6. Number of seats on the board, if applicable.

A third party agreement covering a loan transaction must contain, at a minimum, the following information:

1. Purpose(s) for which the loan is being made.
2. Rates of interest and other fees.
3. Terms of loan.
4. Repayment schedules.
5. Collateral security.
6. Default and collection procedures.

All third party agreements must include written commitments as follows:

From the third party (as appropriate):

1. A minimum of 75% of the jobs to be created as a result of the injection of grant funds will be filled by low-income individuals.
2. The grantee will have the right to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility.
3. If the grantee's equity investment equals 25% or more of the business's assets, the grantee will have representation on the board of directors.
4. Reports will be made to the grantee regarding the use of grant funds no less than on a quarterly basis.
5. A procedure will be developed to assure that there are no duplicate counts of jobs created.
6. Detailed information will be provided on how the grant funds will be used by the third party by submitting a Source and Use of Funds Statement. In addition, the agreement must provide details on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

From the grantee:

Detailed information on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

All third party agreements should be accompanied by:

1. A signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system in accordance with 45 CFR 74, to protect adequately any federal funds awarded under the application.
2. Financial statements for the third-party organization for the prior three years. (If not available because the organization is a newly-formed entity, include a statement to this effect.)
3. The third party agreement will specify how the grantee will provide oversight of the third party for the life of the agreement. Also, the agreement will specify that the third party will maintain documentation related to the grant objectives as specified in the agreement and will provide the grantee and HHS access to that documentation.

If a signed third party agreement is not available when the application is submitted, the applicant must submit as part of the narrative as much of the above-mentioned information as possible in order to enable reviewers to evaluate the proposal. It should be noted that portion of a grant which will be used to fund a third party agreement will not be released until the agreement has been approved by OCS.

10. Funding Considerations

In cases where an application ranks highly and is competitive, the following may apply:

1. When the applicant is proposing to enter into a third party agreement for all of the grant's operational funds, OCS will send a time-limited letter of intent to fund pending receipt of a signed third party agreement. Once OCS has determined that the agreement is acceptable, an award will be forwarded to the applicant.
2. Previous performance of applicants will be considered an important determining factor in the grant award decisions.
3. Any applicant that has three or more active OCS grants may only be funded under exceptional circumstances.
4. Pre-award site visits may be performed for the purpose of undertaking assessments of many of these applications prior to OCS making final determinations on grant awards.
5. OCS will consider applications that include revolving loan funds as a grant activity.

11. Prohibited Activities

OCS will not consider applications that propose the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

Part C—Program Priority Areas

The program priority areas of the Office of Community Services' Discretionary Grants Program are as follows:

Priority Area 1.0 Urban and Rural Community Economic Development

Sub-Priority Areas Under 1.0

1.1 Urban and Rural Community Economic Development (Operational)
1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)
1.3 Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)

1.4 Urban and Rural Community Economic Development (Developmental Set-Aside)
1.5 Administrative and Management Expertise (Set-Aside)
1.6 Training and Technical Assistance (Set-Aside)

Priority Area 2.0 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Priority Area 1.0 Urban and Rural Community Economic Development

Eligible applicants are private, non-profit community development corporations (CDCs) governed by a board consisting of residents of the community and business and civic leaders that has as a principal purpose planning, developing, or managing low-income housing or community development projects.

The purpose of this priority area is to encourage the creation of projects intended to provide employment and business development opportunities for low-income people through business, physical or commercial development. Generally the opportunities must aim to improve the quality of the economic and social environment of TANF recipients; low-income residents including displaced workers; at-risk teenagers; non-custodial parents, particularly those of children receiving TANF assistance; individuals residing in public housing; individuals who are homeless; and those with developmental disabilities. Grant funds under this sub-priority area are intended to provide resources to eligible applicants (CDCs) but also have the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas.

Sub-Priority Area 1.5 is intended to provide administrative and management expertise to current Office of Community Services' grantees who are experiencing problems in the implementation of urban and rural community economic development projects.

Sub-Priority Area 1.6 provides funds for providing training and technical assistance to groups of community development corporations in developing or implementing projects funded under this section and its aim is to generally enhance the viability and competence of community development corporations.

This Priority Area also seeks to attract additional private capital into distressed communities, including empowerment zones and enterprise communities, and to build and/or expand the ability of local institutions to better serve the economic needs of local residents.

Applicant must submit proof of non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicants listing in the Internal Revenue's Service's (IRS) most recent list of tax-exempt organizations described in Section 501 (C)(3) of the IRS tax code. Applications that do not include proof of this status will be disqualified.

Sub-Priority Area 1.1 Urban and Rural Community Economic Development (Operational)

Funds will be provided to a limited number of private non-profit community development corporations for business development activities at the local level. Funding will be provided for specific projects and will require the submission of business plans or work plans, where applicable, that meet the test of economic feasibility. Attachment K should be used as a guideline for the business plan.

The applicant should select a project in an industry in its region that promotes economic sustainability and self-sufficiency for families in the low-income community. OCS encourages each applicant to describe the project scope that includes the low-income community served, the business activities undertaken, and types of jobs to be created. The business activities should be described by Standard Industrial Codes (SIC) and jobs by occupational classifications. This information is published by the U.S. Department of Commerce in the Statistical Abstract of the United States, 1998, Tables No. 679 and 680. Also, applicants may use the material included in Attachment L to identify industrial areas and occupational classifications.

For Fiscal Year 2000, it is anticipated that approximately 30 grants up to a maximum of $349,999 will be awarded and approximately 13 grants of $350,000 but not more than $500,000 will be made. Competition for these funds will be restricted to either the $349,999 and under category or the $350,000 up to $500,000 category. Applications will compete within the category in which they fall.

Projects must further the Departmental goals of strengthening American families and promoting their self-sufficiency. OCS is particularly interested in receiving applications that involve public-private partnerships that are directed toward the development of economic self-sufficiency in distressed communities through projects that focus on providing employment and business development opportunities for low-income people through business startups, business expansions, development of new services industries, and/or other newly-undertaken physical and commercial activities.

Eligible organizations located in Empowerment Zones and Enterprise Communities are urged to submit applications. Likewise, applicants are encouraged to foster partnerships with child support enforcement agencies to increase the capability of low-income non-custodial parents, particularly those of children receiving TANF assistance, to fulfill their parental responsibilities. Such applicants may request funds for a business development project or a project that demonstrates innovative ways to create jobs for low-income persons in the targeted group or community.

Applicants must show that the proposed project:

(1) Creates full-time permanent jobs except where an applicant demonstrates that a permanent part-time job produces actual wages that exceed the HHS poverty guidelines. Seventy-five percent (75%) of the jobs created must be filled by low-income residents of the community and must also provide for career development opportunities. Project emphasis should be on employment of individuals who are unemployed or on public assistance, with particular emphasis on those that are at-risk teenagers, TANF recipients, low-income noncustodial parents (particularly those of children receiving TANF assistance), individuals residing in public housing, and individuals who are homeless. While projected employment in future years may be included in the application, it is essential that the focus of employment projects concentrates on those permanent jobs created during the duration of the OCS project period; and/or

(2) Creates a significant number of business development opportunities for low-income residents of the community or significantly aids such residents in maintaining economically viable businesses; and

(3) Assists low-income participants to become self-sufficient.

In the evaluation process, favorable consideration will be given to applicants under this priority area who show the lowest cost-per-job created. Unless there are extenuating circumstances, OCS will not fund projects where the cost-per-job in OCS funds exceeds $15,000.

In addition, favorable consideration in the evaluation process will be given to applicants who demonstrate their intention to coordinate services with the

local TANF offices and/or other employment education and training offices and child support enforcement agencies that serve the proposed area. The offices and agencies should serve welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals (as defined by the annual revision to the Poverty Income Guidelines published by DHHS) including non-custodial parents. Applicants should submit a written agreement from the applicable office or agency that indicates what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested. The agreement should include the goals and objectives (including target groups) that the applicant and the employment education and training office and child support enforcement agencies expect to reach through their collaboration. It should describe the cooperative relationship, including specific activities and/or actions each of these entities proposes to carry out in support of the project, and the mechanism(s) to be used in coordinating those activities if the project is funded by OCS. Documentation that illustrates the organizational experience of the employment education and training office should also be included.

OCS encourages applications that will develop linkages or agreements with local agencies responsible for administering TANF programs and child support enforcement agreements. OCS would expect these programs to create new jobs for TANF recipients and low-income non-custodial parents, particularly those of children receiving TANF assistance. These initiatives can be accomplished through a variety of business development projects funded under this priority area, *i.e.*, business expansions, new business development and self-employment activities, etc.

OCS does not fund education and training programs. In projects where participants must be trained, any funds that are proposed to be used for training purposes must be limited to providing specific job-related training to those individuals who have been selected for employment in the grant supported project which includes new business startups, business expansions, development of new service industries, and/or other newly-undertaken physical and commercial activities.

Projects involving training and placement for existing vacant positions will be disqualified.

Projects that would result in the relocation of a business from one geographic area to another with the possible displacement of employees are discouraged.

Applicants must be aware that projects funded under this priority area must be operational by the end of the project period, *i.e.*, businesses must be in place, and low-income individuals actually employed in those businesses.

Sub-Priority Area 1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)

For Fiscal Year 2000, it is anticipated that a set-aside fund of $2,100,000 will be included under this sub-priority area for eligible applicants who submit proposals for projects that will be carried out in conjunction with Historically Black Colleges and Universities (HBCUs), as defined in Executive Order Number 12876, dated Nov. 1, 1993, through contract or sub-grant. Such projects must conform to the purposes, requirements, and prohibitions applicable to those submitted under Sub-Priority Area 1.1.

These projects should reflect a significant partnership role for the college or university, and the applicant in doing so will be considered to have fulfilled the goals of the evaluation criterion for Public-Private Partnerships and will be granted the maximum number of points in that category. Applications for these set-aside funds that are not funded due to the limited amount of funds available may also be considered competitively within the larger pool of eligible applicants under Sub-Priority Area 1.1. Any funds that are not used under this sub-priority area due to the limited number of highly scored applications will be rolled over into Sub-Priority Area 1.1.

Any funds that are proposed to be used for training purposes must be limited to providing specific job related training to those individuals who have been selected for employment in the grant supported project which includes new business startups, business expansions, development of new service industries, and/or other newly-undertaken physical or commercial activities.

Sub-Priority Area 1.3 Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)

OCS intends in this sub-priority area to provide funds to recently-established private, non-profit community development corporations that propose to undertake economic development activities in distressed communities.

OCS recognizes that there are a number of newly-organized non-profit community development corporations that have identified needs in their communities but have not had the staff or other resources to develop projects to address those needs. This lack of resources also might be affecting their ability to compete for funds, such as those provided under Sub-Priority Area 1.1 (operational grants), since their limited resources would preclude them from developing a comprehensive business plan and/or mobilizing resources.

OCS has an interest in providing support to these new entities in order to enable them to become more firmly established in their communities, thereby bringing technical expertise and new resources to previously unserved or underserved communities. Therefore, OCS is setting aside funds in Fiscal Year 2000 for grants to private, non-profit community development corporations that have never received OCS funding and have been in existence for no more than three years, or have been in existence longer than three years but have no record of participation in economic development type projects. For the latter, a CDC must state that it has not been active. Also, for this sub-priority area only, the phrase "no participation in economic development-type projects" means an eligible applicant has not sponsored nor had any significant participation in projects that have provided employment or business development opportunities through business startups, business expansions, development of new service industries, and/or newly-undertaken physical or commercial activities.

In addition, applicants with housing experience must not have had primary responsibility in planning, developing, and managing housing. OCS anticipates that grants of up to $75,000 each will be made to eligible applicants. These grants will be made for a period of one year and will not require leveraged or mobilized funds.

With funding received under this sub-priority area, CDCs may incur costs to: (1) Evaluate the feasibility of potential projects that address identified needs in the low-income community and that conform to those projects and activities allowable under Sub-Priority Areas 1.1, 1.2, and 1.4; (2) develop a business plan related to one of those projects; and (3) mobilize resources to be contributed to one of those projects, including the utilization of HBCUs.

Based on the availability of funds in Fiscal Year 2001, OCS will consider establishing a set-aside in Priority Area 1.4 to provide operational funds to those organizations which received pre-developmental grants. Grants might be for a maximum of $250,000 and competition for those funds would be

restricted to those organizations that received Fiscal Years 1999 and 2000 pre-developmental grants. The business plan developed as a result of the pre-developmental grant would be submitted as part of the competitive application.

Specifically, each application for Fiscal Year 2000 funds under this sub-priority area must include the following as part of the project narrative:

1. Description of the impact area, *i.e.*, a description of the low-income area it proposes to address;
2. Analysis of need in the distressed community;
3. How the potential projects relate to applicant's organizational goals and previous experience (if any);
4. Project design and implementation factors including a discussion of potential projects that might be implemented to address identified needs, a strategy for conduct of feasibility studies on potential projects and quarterly work plans with specific task timelines and a self-evaluation component; and
5. Project objectives and measurable impact, *i.e.*, a discussion of preparing a business plan on only one selected project based on results of the feasibility studies and plan for mobilization of nondiscretionary dollars to implement it.

Applications that are not funded within this set-aside due to the limited amount of funds available may also be considered competitively within the larger pool of eligible applicants. Any funds that are not used under this sub-priority area due to the limited number of highly scored applications will be rolled over into another priority area.

Sub-Priority Area 1.4 Urban and Rural Community Economic Development (Developmental Set-Aside)

OCS intends in this sub-priority area to provide funds to organizations that received grants from OCS in Fiscal Years 1998 and 1999 under Priority Area 1.3, the pre-developmental grant program. These organizations will compete only among themselves. Such projects must conform to the purposes, requirements and prohibitions applicable to those submitted under Sub-Priority Area 1.1. Applications that are not funded within this set-aside due to the limited amount of funds available may also be considered competitively within the larger pool of eligible applicants under Sub-Priority Area 1.1. Any funds that are not used under this sub-priority area due to the limited number of highly scored applications will be rolled over into Sub-Priority Area 1.1.

Sub-Priority Area 1.5 Administrative and Management Expertise (Set-Aside)

OCS believes that one of the most effective means of assuring the successful operation of a project under the Discretionary Grants Program area is through the sharing amongst CDCs of their experiences in dealing with the day-to-day issues and challenges presented in promoting community economic development. Accordingly, OCS strongly encourages more experienced CDCs to share their administrative and management expertise with less experienced CDCs or with those who have encountered difficulties in operationalizing their work programs. In order to facilitate this, OCS will provide funds to one or more community development corporations to assist with their efforts to enhance the management and operational capacities of the less experienced CDCs or those having difficulties.

OCS anticipates that the grant(s) would be for a maximum of $500,000 with project and budget periods not to exceed 17 months.

OCS will share with the grantee(s) information on other grantees seeking to benefit from such assistance. Such formal requests could also be initiated by a grantee with the concurrence of OCS. These contacts may occur on-site, by telephone, or by other methods of communication. Costs incurred in connection with participating in such activities will be borne by the recipient(s) of the OCS grant under this sub-priority area.

Applicants in this sub-priority area are expected to disseminate results of the project via a handbook, a progress paper, evaluation reports, general manual, or seminars/workshops.

Sub-Priority Area 1.6 Training and Technical Assistance (Set-Aside)

Funds will be awarded to one organization under this priority area for the purpose of providing training and technical assistance to strengthen the network of CDCs.

OCS anticipates that the grant will be for $210,000 with a grant period not to exceed 17 months. Applicant must have the ability to collect and analyze data nationally that may benefit CDCs and be able to disseminate information to all OCS-funded grantees; publish a national directory of funding sources for CDCs (public, corporate, foundation, religious); publish research papers on specific aspects of job creation by CDCs; design and provide information on successful projects and economic niches that CDCs can target. The applicant also will be responsible for the development of instructional programs, national conferences, seminars, and other activities to assist community development corporations.

Eligible applicants are private non-profit organizations. Applicants must operate on a national basis and have significant and relevant experience in working with community development corporations.

Priority Area 2.0 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Funds will be provided under this priority area to help low-income rural communities develop the capability and expertise to establish and/or maintain affordable, adequate, and safe water and waste water treatment facilities.

Funds provided under this priority area may not be used for construction of water and waste water treatment systems or for operating subsidies for such systems, but other mobilized funds may be used for these activities. Therefore, it is suggested that applicants coordinate projects with the Farmers Home Administration (FmHA) and other Federal and state agencies to ensure that funds for hardware for local community projects are available.

Eligible applicants are multi-state, regional private non-profit organizations that can provide training and technical assistance to small, rural communities in meeting their community facility needs.

Part D—Criteria for Review and Evaluation of All Applications

1. Criteria for Review and Evaluation of All Applications Submitted Under Sub-Priority Areas 1.1, 1.2, and 1.4

a. Criterion I: Analysis of Need (Maximum: 5 points)

The application documents that the project addresses a vital need in a distressed community. (0–3 points)

Most recent available statistics and other information are provided in support of its contention. (0–2 points)

b. Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 25 points)

(1) *Organizational experience in program area (sub-rating: 0–15 points)*

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. (0–5 points)

The applicant has demonstrated the ability to implement major activities in such areas as business development,

commercial development, physical development, or financial services; the ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector (including state and local governments) or individuals; that it has a sound organizational structure and proven organizational capability; and an ability to develop and maintain a stable program in terms of business, physical, or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents. (0–10 points)

(2) *Staff skills, resources and responsibilities (sub-rating 0–10 points)*

The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but whose professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description that indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. (0–5 points)

The applicant has adequate facilities and resources (*i.e.* space and equipment) to successfully carry out the work plan. (0–2 points)

The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project. (0–3 points)

c. Criterion III: Project Implementation (Maximum: 25 points)

The business plan or work plan, where applicable, is both sound and feasible. Briefly the plan should describe the key work tasks and show how the project objectives will be accomplished including the development of business and creation of jobs for low-income persons during the allowable OCS project period. The project is responsive to the needs identified in the Analysis of Need. (0–5 points)

It sets forth realistic quarterly time targets by which the various work tasks would be completed. (0–5 points)

Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems. (0–5 points)

The application contains a full and accurate description of the proposed use of the requested financial assistance.

If the applicant proposes to make an equity investment or a loan to an individual, organization, or business entity (including a wholly-owned subsidiary), the application includes a signed third party agreement; a signed statement by a Certified or Licensed Public Accountant, as to the sufficiency of the third party's financial management system; and financial statements for the third party's prior three years of operation. (If newly formed and unable to provide the information regarding the prior three years of operation, a statement to that effect should be included.) If the applicant states that an agreement is not currently in place, the application must contain in the narrative as much information required for third party agreements as is available. (See Part B, item 9.)

Also, if the project proposes the development of a new or expanding business, service, physical or commercial activity, the application must address applicable elements of a business plan. Guidelines for a Business Plan are included in Attachment K.

Special attention should be given to assure that the financial plan element, which indicates the project's potential and timetable for financial self-sufficiency, is included. It must include for the applicant and the third party, if appropriate, the following exhibits for the first three years (on a quarterly basis) of the business' operations: Profit and Loss Forecasts, Cash Flow Projections, and Proforma Balance Sheets. Based on these documents, the application must also contain an analysis of the financial feasibility of the project. Also, a Source and Use of Funds statement for all project funding must be included. (0–10 points)

d. Criterion IV: Significant and Beneficial Impact (Maximum: 20 points)

(1) *Significant and beneficial impact (sub-rating: 0–5 points)*

The proposed project will produce permanent and measurable results that will reduce the incidence of poverty and TANF assistance in the community. (0–3 points)

The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income communities, distressed communities, and/or designated Empowerment Zones and Enterprise Communities. (0–2 points)

(2) *Community empowerment consideration and partnership with child support enforcement agency (sub-rating: 0–5 points)*

Special consideration will be given to applicants who are located in areas that are characterized by poverty and other indicators of socio-economic distress such as a poverty or TANF assistance rate of at least 20%, designation as an Empowerment Zone or Enterprise Community (EZ/EC), high levels of unemployment, high levels of incidences of violence, gang activity, crime, drug use, and low-income non-custodial parents of children receiving TANF. (0–3 points)

Applicants should document that they were involved in the preparation and implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner; and how the proposed project will support the goals of that plan. Also, applicants should document that they have entered into partnership agreements with local Child Support Enforcement agencies to increase capability of low-income parents and families to fulfill their parental responsibilities. (0–2 points)

Note: Applicants who have projects located in EZ/EC target areas or those who have included signed current agreements with child support enforcement agencies will automatically receive the maximum 2 points.

(3) *Cost-per-job (sub-rating: 0–5 points)*

During the project period, the proposed project will create new, permanent jobs or maintain permanent jobs for low-income residents at a cost-per-job below $15,000 in OCS funds *unless* there are extenuating circumstances, *e.g.*, Alaska where the cost of living is much higher.

Note: The maximum number of points will be given to those applicants proposing estimated cost-per-job for low-income residents of $10,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points unless adequately justified by extenuating circumstances.

(4) *Career development opportunities (sub-rating: 0–5 points)*

The application documents that the jobs to be created for low-income people have career development opportunities which will promote self-sufficiency.

e. Criterion V: Public-Private Partnerships (Maximum: 20 Points)

(1) *Mobilization of resources: (sub-rating: 15 points)*

The application documents that the applicant will mobilize from public and/or private sources cash and/or in-kind contributions valued at an amount equal to the OCS funds requested.

Applicants documenting that the value of such contributions will be at least equal to the OCS funds requested will receive the maximum number of points for this sub-criterion. Lesser contributions will be given consideration based upon the value documented.

Note 1: Cash resources such as cash or loans contributed from all project sources (except for those contributed directly by the applicant) must be documented by letters of commitment from third parties making the contribution. Third party in-kind contributions such as equipment or real property contributed by the applicant or third parties must be documented by an inventory for equipment and a copy of deed or other legal document for real property. In addition, future or projected program income such as gross or net profits from the project or business operations will not be recognized as mobilized or contributed resources.

Note 2: Applicants under Sub-Priority Area 1.2 who have a signed, written agreement for a significant partnership role with Historically Black Colleges and Universities are deemed to have fully met this criterion and will receive the maximum number of points if they include the agreement with the HBCU.

(2) *Integration/coordination of services: (sub-rating: 5 points)*

The applicant demonstrates a commitment to or agreements with local agencies responsible for administering child support enforcement, employment, education, and training programs to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-income individuals, and low-income non-custodial parents will be trained and placed in the newly created jobs. The applicant provides written agreements from the local TANF or other employment, education and training office, and child support enforcement agency indicating what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested. (0–2 points)

Specifically, the agreements should include: (1) the goals and objectives that the applicant and the TANF or other employment, education and training office and/or child support enforcement agency expect to achieve through their collaboration; (2) the specific activities/actions that will be taken to integrate/coordinate services on an on-going basis; (3) the target population that this collaboration will serve; (4) the mechanism(s) to be used in integrating/coordinating activities; (5) how those activities will be significant in relation to their impact on the success of the OCS-funded project. (0–2 points)

The applicant should also provide documentation that illustrates the organizational experience related to the employment education and training program. (Refer to Criterion II for guidelines.) (0–1 point)

f. Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. (0–2 points)

The application includes a detailed budget breakdown for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost. (0–2 points)

The estimated cost to the government of the project also is reasonable in relation to the anticipated results. (0–1 point)

2. Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.3

a. Criterion I: Analysis of Need (Maximum: 15 points)

The application documents that there are clearly identified needs in a low-income community not being effectively addressed. (0–10 points)

Most recent available statistics and other information are provided in support of its contention. (0–5 points)

b. Criterion II: Organizational Capability and Capacity (Maximum: 20 points)

(1) *Organizational experience in program area (sub-rating: 5 points)*

Each applicant must briefly show why its organization can successfully implement the project for which it is requesting funds. (0–5 points)

(2) *Management capacity (sub-rating: 5 points)*

Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. (0–3 points)

Applicants should submit any available documentation on their management practices and progress reporting procedures along with a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted. (0–2 points)

Note: The documentation of the applicant's management practices, etc., and statement from the accountant on the financial management system must address the applicant organization's own internal system rather than an external system of an affiliate, partner, management support organization, etc.

(3) *Staffing (sub-rating: 5 points)*

The application must fully describe (*e.g.*, resumes) the experience and skills of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project.

(4) *Staffing responsibilities (sub-rating: 5 points)*

The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

c. Criterion III: Project Design, Implementation and Evaluation (Maximum: 30 Points)

(1) *Project implementation component (sub-rating: 25 points)*

The work plan must address a clearly identified need in the low-income community as described in Criterion I. The plan must include a methodology to evaluate the feasibility of potential projects that conform to the type of projects and activities allowable under Sub-Priority Areas 1.1, 1.2, and 1.4. (0–10 points)

It must set forth realistic quarterly time schedules of work tasks by which the objectives (including the development of a business plan and mobilization of resources) will be accomplished. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets will seriously reduce an applicant's point score in this criterion. (0–10 points)

It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems. (0–5 points)

(2) *Evaluation component (sub-rating: 5 points)*

All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. (0–3 points)

Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This

component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all organizations receiving pre-developmental grants. (0–2 points)

d. Criterion IV: Significant and Beneficial Impact (Maximum: 25 Points)

Funding under this sub-priority area is targeted to result in a business plan for a proposed project. The proposed project around which the business plan is to be developed with the use of OCS grant funds must be targeted into low-income communities, and/or designated Empowerment Zones or Enterprise Communities with the goals of increasing the economic conditions and social self-sufficiency of residents. Also, the project proposes to produce permanent and measurable results that will reduce the incidence of poverty and number of TANF recipients in the low-income area targeted. (0–20 points)

Note: This sub-priority area permits applicants to conduct several feasibility studies related to various potential projects. However, on completion of the studies, one proposed project must be selected and a business plan prepared for the selected project.

The activity targets mobilization of non-discretionary program dollars from private sector individuals, public resources, corporations, and foundations including the utilization of Historically Black Colleges and Universities, if the proposed project is implemented. (0–5 points)

e. Criterion V: Budget Appropriateness and Reasonableness (Maximum: 10 points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The estimated cost to the government of the project also is reasonable in relation to the anticipated results. (0–5 points)

The application includes a narrative detailed budget breakdown for each of the budget categories in the SF 424–A. The applicant presents a reasonable administrative cost. (0–5 points)

3. Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.5

a. Criterion I: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 20 points)

(1) *Organizational experience in program area (sub-rating: 0–10 points)*

Applicant has documented the capability to provide leadership in solving long-term and immediate problems locally and/or nationally in such areas as business development, commercial development, organizational and staff development, board training, and micro-entrepreneurship development. (0–2 points)

Applicant must document a capability (including access to a network of skilled individuals and/or organizations) in two or more of the following areas: Business management, including strategic planning and fiscal management; finance, including development of financial packages and provision of financial/accounting services; and regulatory compliance, including assistance with zoning and permit compliance. (0–2 points)

Further, the applicant has the demonstrated ability to mobilize dollars from sources such as the private sector (corporations, banks, foundations, etc.) and the public sector, including state and local governments. (0–2 points)

Applicant also demonstrates that it has a sound organizational structure and proven organizational capability as well as an ability to develop and maintain a stable program in terms of business, physical or community development activities that have provided permanent jobs, services, business development opportunities, and other benefits to poverty community residents. (0–2 points)

Applicants must indicate why they feel that their successful experiences would be of assistance to existing grantees that are experiencing difficulties in implementing their projects. (0–2 points)

(2) *Staff skills, resources and responsibilities (sub-rating 0–10 points)*

The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but who has professional capabilities relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description that indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. (0–5 points)

The applicant has adequate facilities and resources (*i.e.* space and equipment) to successfully carry out the work plan. (0–3 points)

The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project. (0–2 points)

b. Criterion II: Work Program (Maximum: 30 points)

Based upon the applicant's knowledge and experience related to OCS' Discretionary Grants Program (particularly community economic development), the application should demonstrate in some specificity a thorough understanding of the problems a grantee may encounter in implementing a successful project. (0–15 points)

The application should include a strategy for assessing the specific nature of the problems, outlining a course of action and identifying the resources required to resolve the problems. (0–15 points)

c. Criterion III: Significant and Beneficial Impact (Maximum: 30 points)

Project funds under this sub-priority area must be used for the purposes of transferring expertise directly, or by a contract with a third party, to other OCS funded grantees. Applicants must document how the success or failure of collaboration with these grantees will be documented. (0–15 points)

Applicants must demonstrate an ability to disseminate results on the kinds of programmatic and administrative expertise transfer efforts in which they participated and successful strategies that they may have developed to share expertise with grantees during the grant period. (0–10 points)

Applicants must also state whether the results of the project will be included in a handbook, a progress paper, an evaluation report, a general manual, or seminars/workshops, and why the particular methodology chosen would be most effective. (0–5 points)

d. Criterion IV: Public-Private Partnerships (Maximum: 15 points)

The applicant demonstrates that it has worked with local, regional, state or national offices to ensure that TANF recipients, at-risk youth, displaced workers, public housing tenants, low-income noncustodial parents, homeless and otherwise low-income individuals have been trained and placed in newly created jobs. (0–10 points)

Applicant should demonstrate how it will design a comprehensive strategy which makes use of other available resources to resolve typical and recurrent grantee problems. (0–5 points)

e. Criterion V: Budget Appropriateness and Reasonableness (Maximum: 5 points)

Applicant documents that the funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget breakdown for each of the appropriate budget categories in the SF–424A. (0–3 points)

The estimated cost to the government of the project also is reasonable in relation to the anticipated results. (0–2 points)

4. Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.6

a. Criterion I: Need for Assistance (Maximum: 10 points)

The application documents that the project addresses a vital, nationwide need related to the purposes of Priority Area 1.0 and provides data and information in support of its contention.

b. Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 20 points)

(1) *Organizational experience*

Applicant has documented the capability to provide leadership in solving long-term and immediate problems locally and/or nationally in such areas as business development, commercial development, organizational and staff development, board training, and micro-entrepreneurship development. Applicant must document a capability (including access to a network of skilled individuals and/or organizations) in two or more of the following areas: Business management, including strategic planning and fiscal management; finance, including development of financial packages and provision of financial/accounting services; and regulatory compliance, including assistance with zoning and permit compliance. (0–10 points)

(2) *Staff skills*

The applicant's proposed project director and primary staff are well qualified and their professional experiences are relevant to the successful implementation of the proposed project. (0–10 points)

c. Criterion III: Work Plan (Maximum: 35 points)

Based upon the applicant's knowledge and experience related to OCS' Discretionary Grants Program (particularly community economic development), the applicant must develop and submit a detailed and specific work plan that is both sound and feasible. Specifically, the work plan should:

(1) Demonstrate that all activities are comprehensive and nationwide in scope, adequately described, and appropriately related to the goals of the program. (0–10 points)

(2) Demonstrate in some specificity a thorough understanding of the kinds of training and technical assistance that can be provided to the network of community development corporations. (0–10 points)

(3) Delineate the tasks and sub-tasks involved in the areas necessary to carry out the responsibilities, i.e. training, technical assistance, research, outreach, seminars, etc. (0–5 points)

(4) State the intermediate and end products to be developed by task and sub-task. (0–5 points)

(5) Provide realistic time frames and a chronology of key activities for the goals and objectives. (0–5 points)

d. Criterion IV: Significant and Beneficial Impact (Maximum: 25 points)

Project funds under this sub-priority area must be used for the purpose of providing training and technical assistance on a national basis to the network of community development corporations.

The applicant should describe how:

(1) The project will assure long-term program and management improvements for community development corporations. (0–10 points)

(2) The project will impact on a significant number of community development corporations. (0–10 points)

(3) The project will leverage or mobilize significant other non-federal resources for the direct benefit of the project. (0–5 points)

e. Criterion V: Budget Reasonableness (Maximum: 10 points)

(1) *The resources requested are reasonable and adequate to accomplish the project. (0–5 points)*

(2) *Total costs are reasonable and consistent with anticipated results. (0–5 points)*

5. Criteria for Review and Evaluation of All Applications Under Priority Area 2.0

a. Criterion I: Analysis of Need (Maximum: 5 points)

The application documents that the project addresses a vital need in a distressed community and provides statistics and other data and information in support of its contention.

b. Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 15 points)

(1) *Organizational Experience in Program Area (sub-rating: 0–5 points)*

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population.

Organizations that propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

(2) *Staff Skills, Resources and Responsibilities (sub-rating 0–10 points)*

The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but whose professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description that indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

c. Criterion III: Project Implementation (Maximum: 25 points)

The work plan is both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets by which the various tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems.

d. Criterion IV: Significant and Beneficial Impact (Maximum: 30 points)

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in

the areas targeted and significantly enhance the self-sufficiency of program participants. Results are quantifiable in terms of program area expectations, e.g., number of units of housing rehabilitated, agricultural and non-agricultural job placements, etc. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income and/or distressed communities and/or designated Empowerment Zones and Enterprise Communities.

e. Criterion V: Public-Private Partnerships (Maximum: 20 points)

The application documents that the applicant will mobilize from public and/or private sources cash and/or in-kind contributions valued at an amount equal to the OCS funds requested. Applicants documenting that the value of such contributions will be at least equal to the OCS funds requested will receive the maximum number of points for this Criterion. Lesser contributions will be given consideration based upon the value documented.

f. Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a narrative detailed budget break-down for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost. The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

Part E—Application Procedures

1. Availability of Forms

For purposes of this announcement, all applicants will use the following forms: SF 424; SF 424A; SF 424B.

Applications proposing construction projects will present all required financial data using SF–424A. Instructions for completing the SF–424, SF–424A, and SF–424B are found in Attachments B, C, and D. These forms may be photocopied for this application.

Part F contains instructions for the project abstract and project narrative. They will be submitted on plain bond paper along with the SF–424 and related forms.

Attachment M, Applicant's Checklist, provides a checklist to aid applicants in preparing a complete application package for OCS.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the following regulations: Drug-Free Workplace, Attachment E; Debarment, Attachment F; and Environmental Tobacco Smoke, Attachment J.

2. Intergovernmental Review

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, states may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of March 5, 1999 the following jurisdictions have elected NOT to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau.

Applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a, and submit a copy of the letter along with its application to OCS.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official state process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor West, Aerospace Center, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

A list of the Single Points of Contact for each state and territory is included as Attachment G of this announcement.

3. Application Consideration

Applications that meet the screening requirements in sections 4.a and b. below may be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and evaluation criteria published in this announcement.

Applications submitted under all priority areas (with the exception of Sub-Priority Area 1.6) will be reviewed by persons outside of the Office of Community Services. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants. Applicants with three or more active OCS grants at the time of review may be denied funding. In addition, for applications received under 1.0, OCS will consider the geographic distribution of funds among states and the relative proportion of funding among rural and urban areas in accordance with Section 681(b)(1)(D) of the Act.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

4. Criteria for Screening Applicants

a. Initial screening

All applications that meet the published deadline for submission will be screened to determine completeness

and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain an Application for Federal Assistance (SF–424), a budget (SF–424A), and signed Assurances (SF 424B) completed according to instructions published in Parts F and G and Attachments B, C, and D of this Program Announcement.

(2) A project abstract must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(4) The application must be submitted for consideration under one priority area only.

b. Pre-review

Applications that pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements for the priority area under which funds are being requested. Proof of non-profit status, *i.e.* the IRS determination letter of tax exemption, must be included in the appendices of the project narrative where applicable. Applicants that do not submit proof of non-profit status will be disqualified. Applicants must also be aware that the applicant's legal name as required in SF–424 (Item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Number of Projects:* An application may contain only one project under Sub-Priority Areas 1.1, 1.2 and 1.4. However, an application may contain more than one project under Sub-Priority Areas 1.3, 1.5, and 1.6 where applicants are researching various opportunities, sharing administrative and management expertise with current OCS grantees, providing assistance to current OCS grantees, providing training and/or technical assistance current OCS grantees, including the organization of seminars and other activities to assist community development corporations and this project must be identified as responding to one of the program priority areas stated in this Announcement.

(3) *Grant amount:* The amount of funds requested does not exceed the limits indicated in Part B, 2, b or the appropriate priority area.

(4) *Written Agreement When Applicant Proposes to Make Equity Investment or Loan:* (Sub-Priority Areas 1.1, 1.2 and 1.4); The application contains a written third party agreement, or a discussion of a proposed agreement, signed by the applicant and the third party that includes all of the elements required in Part B, item 9.

An application will be disqualified if it does not conform to one or more of the above requirements.

c. Panel Reviews

Applications that pass the pre-rating review will be assessed and scored by panels of reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The panelists will use the following criteria coupled with the specific requirements contained under each program priority area as described in Part C.

Part F—Contents of Application and Receipt Process

1. Contents of Application

Each submission should include one signed original and four additional copies of the application. The application package including the narrative should not exceed 65 pages for the applications submitted under Sub-Priority Areas 1.1, 1.2 and 1.4 and 30 pages under the other sub-priority areas. This does not include appendices listed below. Application pages should be numbered sequentially throughout the application package, beginning with an abstract of the proposed project as page number one. Each application must include all of the following, in the order listed below:

a. Table of Contents;

b. A Project Abstract—A paragraph that succinctly describes the project in 500 characters or less.

c. Completed Standard Form 424 (Attachment B) that has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

d. A Standard Form 424A—Budget Information—Non-construction Programs (Attachment C).

e. A narrative budget justification for each object class category required under Section B, SF–424A.

f. A Project Narrative. The project narrative must address the specific concerns mentioned under the relevant priority area description in Part C. The narrative should also provide information on how the application meets the evaluation criteria in Part D and Guidelines for a Business Plan (Attachment K) of the Program Announcement.

g. A Standard Form 424B Assurances—Non-Construction (Attachment D)—All applicants, whether or not their project involves construction, must file the Standard Form 424B. Applicants must sign and return this form with their applications.

h. Certification Regarding Lobbying—(Attachment H)—Prior to receiving an award in excess of $100,000, applicants must sign and return an executed copy of the lobbying certification.

i. Disclosure of Lobbying Activities, SF–LLL (Attachment H)—Fill out, sign and date the form.

j. DHHS Regulations Applying to All Applicants/Grantees Under the Fiscal Year 2000 Discretionary Grants Program (Attachment I)—By signing and submitting the application, applicant is certifying that it will comply with these regulations.

k. Certification Regarding Environmental Tobacco Smoke (Attachment J)—Applicants must make the appropriate certification of their compliance with the Pro-Children Act of 1994. By signing and submitting the applications, applicants are providing the certification regarding environmental tobacco smoke and need not mail back the certification with their applications.

l. Certification Regarding Drug-Free Workplace Requirement: By signing and submitting the application, applicant is certifying that it will comply with this regulation.

m. Certification Regarding Debarment, Suspension, and Other Responsibility Matters: By signing and submitting the application, applicant is certifying that it will comply with this regulation.

n. Appendices should include: Proof of non-profit status (a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(C)(3) of the IRS Code *or* a copy of the currently valid IRS tax exemption certificate); a copy of the Articles of Incorporation bearing the seal of the State in which the corporation or association is domiciled; a listing of the current Board of Directors' names, titles and addresses (Note: If the applicant is proposing an equity transaction, this is also needed for the third party organization); résumés of the project director and other key management team members; written

agreements, *i.e.*, third party agreements, coordination with TANF, etc.; a copy of the submission to the State Single Point of Contact, if applicable; Single Point of Contact comments, where applicable; certification regarding anti-lobbying activities; and a disclosure of lobbying activities.

2. Acknowledgment of Receipt

All applicants will receive an acknowledgment notice with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application that can be attached to this acknowledgment notice. The identification number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202)401–5103.

(**Note:** To facilitate receipt of this acknowledgment from ACF, applicant should include a cover letter with the application containing an E-mail address and facsimile (FAX) number if these items are available to applicant.)

Part G—Instructions for Completing Application Package

It is suggested that the applicant reproduce the SF–424 and SF–424A, and type its organization's legal name on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write NA for Not Applicable.

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF–424 Application for Federal Assistance

Item 1. For the purposes of this announcement, all proposals are considered Applications; there are no Pre-Applications. For the purpose of this announcement, construction projects involve land improvements and development or major renovation of (new or existing) facilities and buildings, including their improvements, fixtures and permanent attachments. All others are considered non-construction. Check the appropriate box under Application. Whether applications involve construction or non-construction projects, all applicants are required to complete the Budget Information—Non-construction Programs sections of SF–424A.

Items 5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (EIN) and the Payment Identifying Number (PIN), if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form.

Item 7. If the applicant is a non-profit corporation, enter N in the box and specify non-profit corporation in the space marked Other. Any non-profit organization submitting an application must submit proof of its non-profit status in its applications at time of submission.

Item 9. Enter DHHS—ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this Announcement is 93.570. The title is CSBG Discretionary Awards.

Item 11. In addition to a brief descriptive title of the project, indicate one of the following program priority areas for which funds are being requested.

UR—Sub-Priority Area 1.1. Urban and Rural Community Economic Development (Operational)
HB—Sub-Priority Area 1.2. Urban and Rural Community Economic Development (HBCU Set-Aside)
PD Sub-Priority Area 1.3. Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)
DD—Sub-Priority Area 1.4. Urban and Rural Community Economic Development (Developmental Set-Aside)
AM—Sub-Priority Area 1.5. Administrative and Management (Set-Aside)
UT—Sub-Priority Area 1.6. Training and Technical Assistance (Set-Aside)
RF—Priority Area 2.0. Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

2. SF–424A—Budget Information—Non-Construction Programs

See Instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS discretionary funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS Discretionary funding should be included in Non-Federal entries.

The budget forms in SF–424A are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Clearly identified continuation sheets in SF–424A format should be used as necessary.

Section A—Budget Summary

Lines 1–4

—Column (a): Line 1 Enter CSBG Discretionary;
—Column (b): Line 1 Enter 93.570
—Columns (c) and (d): Leave Blank
—Columns (e) thru (g):Enter the appropriate amounts needed to support the project for the budget period.

Line 5 Enter the figures from Line 1 for all columns completed as required, (c), (d), (3), (f), and (g).

Section B—Budget Categories

Allowability of costs are governed by applicable cost principles set forth in 45 CFR Parts 74 and 92. A budget narrative must be submitted that includes the appropriate justifications as stated.

This section should contain entries for OCS funds only. For all projects, this first budget period will be entered in Column (1).

Budget estimates for administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class *other*, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; and major equipment purchases.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a

Personnel—Enter the total costs of salaries and wages.

Justification—Identify the project director and staff. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b

Fringe Benefits—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j.

Justification—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Line 6c

Travel—Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances. Traveler must be a person listed under the personnel line or employee being paid under non-federal share. (Note: Local transportation and Consultant travel costs are entered on Line 6h.)

Line 6d

Equipment—Enter the total estimated costs for all non-expendable personal property to be acquired by the project. *Equipment* means tangible nonexpendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Justification—Provide breakdown of cost per item. Items that cost less than $5,000 should be included under Supplies.

Line 6e

Supplies—Enter the total estimated costs of all tangible personal property (supplies) other than that included on line 6d.

Justification—Provide a general description as to what is being purchased such as type of supplies, office, classroom, medical, etc. Also property that is not equipment and costs less than $5,000 per item.

Line 6f

Contractual—Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific projects(s) or businesses to be financed by the applicant.

Justification—Contractual cannot be a person—it must be the name of an organization, firm, etc. Consultant cost goes in—other.

Line 6g

Construction—Enter the estimated costs of renovation, repair, or new construction. Identify the type of construction activity and costs associated, i.e., concrete, HVAC, electrical, etc. Provide narrative justification and breakdown of costs.

Line 6h

Other—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to insurance, fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Justification—Provide as much detail as you can. Some items may have to be defined more than others.

Line 6j

Indirect Charges—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should, immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates* and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be also budgeted or charged as direct costs to the grant. Indirect costs consistent with approved Indirect Cost Rate Agreements are allowable.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the Public-Private Partnerships Criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/ individuals from which funds will be received.

(Note: Even though there is no matching requirements for the Discretionary Grants Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application.)

Part II—Post Award Information and Reporting Requirements

1. Notification of Grant Award

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award that provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total financial participation from the award recipient.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, are subject to the provisions of 45 CFR Parts 74 and 92.

2. Attendance at OCS Training Conference

The Executive Director and/or Project Director will be required to attend a two-day national workshop in Washington, DC. The project budget must include funds for travel to and attendance at this conference.

3. Reporting Requirements

Grantees will be required to submit semi-annual progress and financial

reports (SF–269) as well as a final progress and financial report.

Under the Paperwork Reduction Act of 1995, Public Law 104–13, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0970–0062.

4. Audit Requirements

Grantees are subject to the audit requirements in 45 CFR Parts 74 and 92 and OMB Circular A–133. If an applicant will not be requesting indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of nonappropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the *nonappropriated* funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

5. Applicable Federal Regulations

Attachment I provides a list of the regulations that apply to all applicants/grantees under the FY 2000 Discretionary Grants Program.

Dated: August 11, 1999.

Donald Sykes,

Director, Office of Community Services.

Attachments

A—1999 Poverty Income Guidelines
B—Standard Form 424
C—Standard Form 424A
D—Standard Form 424B
E—Certification Regarding Drug-Free Workplace
F—Certification of Debarment
G—List of Single Points of Contact
H—Certification Regarding Lobbying and Disclosure of Lobbying Activities
I—DHHS Regulations Which Apply to all Applicants/Grantees Under The Fiscal Year 2000 Discretionary Grants Program
J—Certification of Environmental Tobacco Smoke
K—Business Plan
L—Table of Standard Industrial Codes and Occupational Classification
M—Applicant's Checklist

Attachment A

1999 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$8,240
2	11,060
3	13,880
4	16,700
5	19,520
6	22,340
7	25,160
8	27,980

For family units with more than 8 members, add $2,820 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

1999 POVERTY GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$10,320
2	13,840
3	17,360
4	20,880
5	24,440
6	27,920
7	31,440
8	34,960

For family units with more than 8 members, add $3,520 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

1999 POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$9,490
2	12,730
3	15,970
4	19,210
5	22,450
6	25,690
7	28,930
8	32,170

For family units with more than 8 members, add $3,240 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

BILLING CODE 4184–01–P

Attachment B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$
b. Applicant	$
c. State	$
d. Local	$
e. Other	$
f. Program Income	$
g. TOTAL	$

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01C

Attachment B (Page 2)

Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–M

Attachment C

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Previous Edition Usable

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Attachment C (Page 2)

SECTION C - NON-FEDERAL RESOURCES

BILLING CODE 4

7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Previous Edition Usable

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Attachment C (Page 2)

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount on the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Shown under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules ad necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment D

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15

minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regrading the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOU COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900. Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentially of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statue(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.)

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TITLE

APPLICANT ORGANIZATION

DATE SUBMITTED

Attachment E

HHS CFR Title 45

PART 76, Appendix C: Drug-free Certification

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements For Drug-Free Workplace (Grants)

Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the

grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplace).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about—
   1. The dangers of drug abuse in the workplace;
   2. The grantee's policy of maintaining a drug-free workplace;
   3. Any available drug counseling, rehabilitation, and employee assistance programs; and
   4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph(a);
4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
   1. Abide by the terms of the statement; and
   2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later that five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—
   1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
   2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraph (a), (b), (c), (d), (e) and (f).

2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant: Place of Performance (Street address, city, county, state, zip code) Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

1. The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

2. If convicted of a criminal drug offense from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

(55 FR 21690, 21702, May 25, 1990)

Attachment F

HHS CFR Title 45

PART 76, Appendix A: Debarment Certification (Primary)

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is the later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted

or has become erroneous by reason of changed circumstances.

5. The terms covered transacted, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntary excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is begin submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. 1B).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by an Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment G

State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12374, "Intergovernmental Review of Federal Programs," Section 4, "the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the State to review and coordinate proposed Federal financial assistance and direct Federal development." This attached listing is the OFFICIAL OMB LISTING. This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

March 5, 1999.

OMB State Single Point of Contact Listing*

ARIZONA

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315; FAX: (602) 280–8144.

ARKANSAS

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, 515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074; FAX: (501) 682–5206

CALIFORNIA

Grants Coordination, State Clearinghouse, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 445–0613; FAX: (916) 323–3018

DELAWARE

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. Dupont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326; FAX: (302) 739–5661

DISTRICT OF COLUMBIA

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W. Suite 1200, Washington, D.C. 20005, Telephone: (202) 727–1700 (direct), (202) 727–6537 (secretary); FAX: (202) 727–1617

FLORIDA

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd, Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, FAX: (850) 414–0479; Contact: Cherie Trainor, (850) 414–5495

GEORGIA

Deborah Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855; FAX: (404) 656–7901

ILLINOIS

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

INDIANA

Renee Miller, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–2971 (directline); FAX: (317) 233–3323

IOWA

Steven R. McCann, Division of Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719; FAX: (515) 242–4809

KENTUCKY

Kevin J. Goldsmith, Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611; FAX: (502) 564–0437

MAINE

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261; FAX: (207) 287–6489

MARYLAND

Linda Janey, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 767–4490; FAX: (410) 767–4480

MICHIGAN

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (303) 961–4266; FAX: (313) 961–4869

MISSISSIPPI

Cathy Mallette, Clearinghouse Officer, Department of Finance and

Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201–3087, Telephone: (601) 359–6762; FAX: (601) 359–6758

MISSOURI

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, 9th Floor, Jefferson City, Missouri 65102, Telephone: (314) 751–4834; FAX: (314) 751–7819

NEVADA

Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 220, Carson City, Nevada 89710, Telephone: (702) 687–4065; FAX: (702) 687–3983; Contact: Heather Elliot, (702) 687–6367

NEW HAMPSHIRE

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155; FAX: (603) 271–1728

NEW MEXICO

Nick Mandell, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640; FAX: (505) 827–4984

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605; FAX: (518) 486–5617

NORTH CAROLINA

Jeanette Furney, North Caroline Department of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232; FAX: (919) 733–9571

NORTH DAKOTA

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094; FAX: (701) 224–2308

RHODE ISLAND

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656; FAX: (401) 277–2083

SOUTH CAROLINA

Omeagia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201; Telephone: (803) 734–0494; FAX: (803) 734–0645

TEXAS

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771; FAX: (512) 463–2681

UTAH

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114; Telephone: (801) 538–1027; FAX: (801) 538–1547

WEST VIRGINIA

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010; FAX: (304) 558–3248

WISCONSIN

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267; FAX: (608) 267–6931

WYOMING

Sandy Ross, State Single Point of Contact, Department of Administration and Information, 2001 Capitol Avenue, Room 214, Cheyenne, Wyoming 82002, Telephone: (307) 777–5492; FAX: (307) 777–3696

TERRITORIES

GUAM

Joseph Rivera, Acting Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96932, Telephone: (617) 475–9411 or 9412; FAX: (671) 472–2825

PUERTO RICO

Jose Caballero-Mercado, Chairman, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (787) 727–4444, (787) 723–6190; FAX: (787) 724–3270

NORTH MARIANA ISLANDS

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256; FAX: (670) 664–2272; Contact person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289; FAX: (670) 664–2272

VIRGIN ISLANDS

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station; Second Floor; Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750; FAX: (809) 776–0069

If you would like a copy of this list faxed to your office, please call our publications office at (202) 395–9068

* In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process, BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC., DOES NOT HAVE A "STATE SINGLE POINT OF CONTACT." STATES WITHOUT "STATE SINGLE POINTS OF CONTACT" INCLUDE: Alabama; Alaska; American Samoa; Colorado; Connecticut; Hawaii; Idaho; Kansas; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

Attachment H

Developing ACF Program Announcements

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States of insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *If known*: Congressional District, *If known*:	Congressional District, *If known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *If applicable*: _____
8. Federal Action Number, *If known*:	9. Award Amount, *If known*: $
10. a. Name and Address of Lobbying Registrant (*If individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

BILLING CODE 4184-01-C

Attachment
INSTRUCTIO
LLL, DISCLO
ACTIVITIES

This disclo
the reporting
prime Federa
receipt of a co
material chan
to title 31 U.S
a form is requ
agreement to
entity for infl
influence an
agency, a Mem
employee of
Member of Co
covered Feder
that apply for
material chan
implementing
Office of Man
additional inf

1. Identify t
action for whi
has been secu
a covered Fed

2. Identify t
action.

3. Identify t
this report. If
by a material
previously rep
quarter in whi
the date of the
report by this
covered Feder

4. Enter the
and zip code
Congressional
appropriate cl
entity that des
a prime or sub
tier of the sub
subawardee o
Subawards in
subcontracts,
under grants.

5. If the orga
item 4 checks
full name, add
of the prime F
Congressional

6. Enter the
making the aw
Include at leas
below agency
Department of
Coast Guard.

7. Enter the
description fo
(item 1). If kno
Federal Domes
for grants, coo
loan commitm

8. Enter the
identifying nu
action identifi
Proposal (RFP
(IFB) number;
the contract, g
the application
assigned by th
prefixes, e.g.,

9. For a cove
has been an av

Attachment H (Page 3)

INSTRUCTIONS FOR COMPLETION OF SF–LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless if displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Attachment I

Department of Health and Human Services (DHHS) Regulations Applying to All Applicants/Grantees Under The Fiscal Year 2000 Discretionary Grants Program

Title 45 of the Code of Federal Regulations

Part 16—DHHS Grant Appeals Process
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections
74.26 Non-Federal Audits
74.27 Allowable cost for hospitals and non-profit organizations among other things
74.32 Real Property
74.34 Equipment
74.35 Supplies
74.24 Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility For Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through DHHS Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by DHHS
Part 86—Non-discrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (Federal Register, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of DHHS Programs and Activities

Attachment J

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment K

Guidelines for a Business Plan

The application must contain a detailed and specific workplan or business plan that is both sound and feasible. Generally, a business plan is required for applications submitted under sub-priority areas 1.1, 1.2 and 1.4. For all business ventures (except for business development opportunities for self-employed program participants) a complete business plan will be required using guidelines discussed in the next several paragraphs. For the remaining sub-priority areas, a workplan is acceptable in lieu of a business plan.

Please note that OCS does not require the application to contain business plans for each self-employed program participant. However, a project that proposes to provide self-employed and other business opportunities for program participants must

include a development plan that shows how participants will become self-sufficient and how their technical assistance needs will be met.

Guidelines of a Business Plan

The business plan is one of the major components that will be evaluated by the OCS to determine the feasibility of a business venture or an economic development project. It must be well prepared and address all the relevant elements as follows:

(a) EXECUTIVE SUMMARY (limit summary to 3 pages)

(b) *The business and its industry.* This section should describe the nature and history of the business and provide some background on its industry.

(i) *The Business*: as a legal entity; the general business category;

(ii) *Description and Discussion of Industry*: current status and prospects for the industry;

(c) *Products and Services*: This section deals with the following:

(i) *Description*: Describe in detail the products or services to be sold;

(ii) *Proprietary Position*: Describe proprietary features if any of the product, e.g., patients, trade secrets;

(iii) *Potential*: Features of the product or service that may give it an advantage over the competition;

(d) *Market Research and Evaluation*: The applicant should consider businesses in growth industries and occupations with skill levels accessible to low income persons. Businesses should be identified by Standard Industrial Codes (SIC) and jobs by occupational classifications. This information is published by the U.S. Department of Commerce in the "Statistical Abstract of the United States, 1998", Table No. 646 and 647. Also, you may use the table included as "Attachment L" to identify industrial areas and occupational classifications. This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition;

(i) *Customers*: Describe the actual and potential purchasers for the product or service by market segment.

(ii) *Market Size and Trends*: State the site of the current total market for the product or service offered;

(iii) *Competition*: An assessment of the strengths and weaknesses of competition in the current market;

(iv) *Estimated Market Share and Sales*: Describe the characteristics of the product or service that will make it competitive in the current market;

(e) *Marketing Plan*: The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

(f) *Design and Development Plans*: If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

(g) *Manufacturing and Operations Plan*: A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

(h) *Management Team:* The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in doing what is proposed. This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services.

(i) *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish each activity.

(j) *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the products market appeal, and the timing and financing of the venture.

Also, if a "construction project" is involved, the Business Plan should identify and address briefly the project's timeframes and critical assumptions for conduct of predevelopment, architectural/engineering and environmental studies, etc., and acquisition of permits for building, use and occupancy that are required for the project.

(k) *Community Benefits:* The proposed project must contribute to economic, human and community development within the projects targets area. A section that describes and discusses the potential economic and non-economic benefits to low income members of the community must be included as well as a description of the strategy that will be used to identify and hire individuals being served by public assistance programs and how linkages with community agencies/organizations administering the AFDC/TANF program will be developed. The following project benefits must be described:

Economic Development and Job Creation

Number of permanent jobs (with particular emphasis on jobs for low-income people) that will be created during the project period. Also, for low-income people, provide the following information:

—Number of jobs that will have career development opportunities and a description of those jobs;
—Number of jobs that will be filled by individuals lifted from AFDC/TANF assistance;
—Number of Self-employed and other ownership opportunities created for low-income residents;
—Annual salary expected for each person employed (net profit after deductions of business expenses for self-employed persons);
—Specific steps to be taken including on-going management support and technical assistance provided by the grantee or a third party to develop and sustain self-employed program participants after their businesses are in place.

Note: OCS will not recognize job equivalents nor job counts based on economic multiplier functions; jobs must be specifically identified.

Other benefits, which might be discussed, are:

Human Development

—New technical skills development and associated career opportunities for community residents;
—Management development and training;
—Benefits of self-sufficient for persons lifted from AFDC/TANF assistance.

Community Development

—Development of community's physical assets;
—Provision of needed, but currently unsupplied, services or products to community;
—Improvement in the living environment.

(l) *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation:

(i) Profit and Loss Forecasts—quarterly for each year.

(ii) Cash Flow Projections—quarterly for each year.

(iii) Pro forma balance sheets—quarterly for each year.

Also, additional financial information for the business operation that must be included are an initial Source and Use of Funds Statement for project funds and a brief summary paragraph discussing any further capital requirements and their sources.

If an applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to

whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the Senate Historic Preservation Officer. (See Attachment D: SF–42B, Item 13 for additional guidance.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for funding consideration.

Applicable to Sub-Priority Areas 1.1, 1.2, and 1.4

Applications submitted under Sub-Priority Areas 1.1, 1.2 and 1.4 which propose to use the requested OCS funds to make an equity investment or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of OCS funds, must include a written agreement between the community development corporation and the recipient of the grant funds which contains all of the elements listed in Part C under the appropriate Priority Area.

Applicable to Sub-Priority Area 1.5 Only

An applicant in this priority area must document its experience and capability in several of the following areas:

—Business/Development;
—Micro-Entrepreneurship Development;
—Commercial Development;
—Organizational and Staff Development;
—Board Training;
—Business Management, including Strategic Planning and Fiscal Management;
—Finance, including Business Packaging and Financial/Accounting Services, and/or;
—Regulatory compliance including Zoning and permit Compliance;
—Incubator Development;
—Tax Credits and Bond Financing;
—Marketing.

The applicant must document staff competence or the accessibility of third party resources with proven competence. If the work program requires the significant use of third party (consultant/contractor) resources, those resources should be identified and resumes of the individuals or key organizational staff provided.

Résumés of the applicant's staff, who are to be directly involved in programmatic and administrative expertise sharing, should also be included. The applicant must document successful experience in the mobilization of resources (both cash and in-kind) from private and public sources. The applicant must also clearly state how the information learned from this project may be disseminated to other interested grantees.

Applicable to Sub-Priority Area 1.6 Only

An applicant in this priority area must document its experience and capability in implementing projects national in scope and have significant and relative experiences in working with community development corporations.

The applicant must have the ability to collect and analyze data nationally that may benefit CDCs and be able to disseminate information to all of OCS funding grantees; publish a national directory of funding sources for CDCs (public, corporate, foundation, religious); publish research papers on specific aspects of job creation by CDCs; design and provide information on successful projects and economic niches that CDCs can target. The applicant will also be responsible for the development of instructional programs, national conferences, seminars, and other activities to assist community development corporations; and provide peer-to-peer technical assistance to OCS funded CDCs.

Applicable to Sub-Priority Area 2.1

Each applicant must include a full discussion of how the proposed use of funds will enable low-income rural communities to develop the capability and expertise to establish and maintain affordable, adequate and safe water and waste water systems. Applicants must also discuss how they will disseminate information about water and waste water programs serving rural communities, and how they will better coordinate Federal, State, and local water and waste water program financing and development to assure improved service to rural communities.

Among the benefits that merit discussion under this sub-priority area are: The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant-supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant-supported treatment systems (all of the above may be expressed in terms of equivalent connection units); the increase in local capacity in engineering and other areas of expertise; and the amount of non-discretionary program dollars expected to be mobilized.

e. Significant and Beneficial Impact and Other Criteria

The project narrative must address the remaining aspects of the project noted in the outline of Part F, "Contents of Application and Receipt Process", Items V and VI. These include private partnerships and Budget Appropriateness and Reasonableness" areas as well as information to be included in the appendices.

Attachment L

TABLE OF STANDARD INDUSTRIAL CODES AND OCCUPATIONAL CLASSIFICATIONS

Standard industrial (sic) codes	Occupational classifications
Agriculture Mining Construction Manufacturing Transportation, and Public Utilities Wholesale and Retail Trade Finance, Insurance and Real Estate Services Government	Managerial and Professional Specialty Technical sales, and Administrative support (includes technicians and related support, technicians, sales occupations, including clerical). Precision Production, Craft, and Repair (includes mechanics, repairers, construction trades, crafters). Operators, fabricators, and laborers (includes machine operators, assemblers, inspectors, transportation and material moving occupations, handlers, equip cleaners, Helpers, laborers including construction laborers). Farming, Forestry and Fishing.

Source: U.S. Department of Commerce, "Statistical Abstract of the United States, 1996", Table No. 646 and 647. Updated 1998. Table No. 679 and 680.

BILLING CODE 4184–01–M

Attachment M

APPLICANT'S CHECKLIST

This checklist will assist you with preparing and assembling your application. Completing the checklist can help ensure that you do not omit key information. Because this checklist is used by many ACF programs, some of the information might not apply to your application. This checklist DOES NOT have to be completed and returned with your application.

	Yes	Included	N/A
Authorizing official read and understood Certification Regarding Debarment, Suspension, and Other Responsibility Matters?			
Authorizing official read and understood Certification Regarding Drug-Free Workplace Requirements--Grantees Other Than Individuals?			
Authorizing official read and understood Certification Regarding Environmental Tobacco Smoke?			
Application for Federal Assistance (SF 424) was completed? Proper Signature and Date for Line 18?			
Budget Information--Non-Construction Programs (SF 424A) or Budget Information--Construction Programs (SF 424C) was completed?			
Assurances-- Non-Construction Programs (SF 424B) or Assurances--Construction Programs (SF 424D) was completed? (Proper Signature and Date?)			
Certification Regarding Lobbying was completed? (Proper Signature and Date?)			
Disclosure of Lobbying Activities was completed? (Proper Signature and Date?)			
Other special certifications, assurances, and/or disclosures required under the program were completed (e.g., maintenance of effort certification)?			
Proof of nonprofit status was provided?			
Has additional information such as biographical sketch(es) with job description(s) and other additional information been attached, when required?			
For a Supplemental application, does the detailed budget only address the additional funds requested?			
Checked all budget computations for accuracy?			

FOLLOW-UP QUESTIONS

	YES	N/A
On the Application for Federal Assistance (SF 424),		
⇒ did you enter the application number issued by the sponsoring ACF office in the "Federal Identifier" block?		
⇒ did you type the 12 digit Payee EIN or PIN previously assigned to your organization by DHHS in the "Federal Identifier" block?		
⇒ is the EIN in Item #6 assigned to the organization and organizational unit named in Item #5?		
⇒ did you include city, county, state and zip code of the applicant did organization in Item #5?		
⇒ has the appropriate box been checked in Item #16?		
⇒ has the entire proposed project period been identified in Item #13?		
On the Budget Information form (SF 424A or SF 424C),		
⇒ do the totals in Section B match the totals provided in the budget and budget narrative?		

SUGGESTED ORDERING OF APPLICATION MATERIALS

STANDARD		PROJECT		DISCLOSURES		END
COVER LETTER	SF 424	SF 424A or SF 424C	SF 424B or SF 424D	Certification regarding lobbying	Disclosure of lobbying activities	

Attachment M (Page 2)

FRONT MATTER		APPLICATION FORMS	DESCRIPTION	CERTIFICATIONS	MATTER	
Table of Contents	Project Abstract (executive summary)		Project Description		other Assurances and Certs	appendix resumes, letters of support, maps, etc

[FR Doc. 99–21355 Filed 8–18–99; 8:45 am]
BILLING CODE 4184–01–C

OL

64

SS

1
6
0

G

19

99

MI

federal register

Thursday
August 19, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 29

Airworthiness Standards; Transport Category Rotorcraft Performance; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 24802; Amendment No. 29–44]

RIN 2120–AG86

Airworthiness Standards; Transport Category Rotorcraft Performance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule amends the airworthiness standards for Transport Category rotorcraft by making several nonsubstantive clarification changes to the wording and by correcting various nonsubstantive errors in the performance requirements section. This rule is needed to correct errors in a final rule published on May 10, 1996.

DATES: This final rule is effective November 17, 1999. Comments must be submitted on or before September 20, 1999.

ADDRESSES: Submit comments in duplicate to the Federal Aviation Administration, Office of the Chief Counsel (AGC–200), Attention: Rules Docket No. 24802, 800 Independence Ave., SW, Washington, DC 20591.

Comments may also be submitted electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments submitted must be marked: Docket No. 24802.

Comments may be examined in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lance T. Gant, Rotorcraft Standards Staff, Aircraft Certification Service, Federal Aviation Administration, Fort Worth, Texas 76193–0110, telephone (817) 222–5114, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action will be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24802." The postcard will be date stamped and returned to the commenter.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to: FAA, Office of Rulemaking, Attention: ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by telephoning (202) 267–9680. Individuals requesting a copy of this final rule should identify their request with the amendment number or docket number.

An electronic copy of this final rule may be downloaded, by using a modern and suitable communications software, from: the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339); the Government Printing Office's electronic bulletin board service (telephone (202) 512–1661); or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov, or the Government Printing Office's webpage at http://www.access.gpo.gov/nara, for access to recently published rulemaking documents.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBEFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section under "Rulemaking" of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following internet address: 9–AWA–SBREFA@faa.gov.

Background

After publication of the Transport Category Rotocraft Notice of Proposed Rulemaking (NPRM), Notice 90–1 (55 FR 698, January 8, 1990), the Joint Harmonization Working Group (JHWG) proposed some nonsubstantive changes to be included in the final rule. The FAA reviewed the JHWG proposal and concurred with the changes. However, the changes were inadvertently omitted in the final rule published May 10, 1996 (61 FR 21894), and two correction documents published July 1, 1996 (61 FR 33963), and July 15, 1996 (61 FR 36965), following Notice 90–1.

This final rule will make the nonsubstantive changes to some paragraphs of part 29. The changes will clarify the language to avoid confusion and diverse interpretations of these standards.

Discussion

The following is a discussion of the changes of part 29:

14 CFR 29.59 Takeoff Path: Category A

Section 29.59 is revised for clarification. The revision is an editorial reordering of paragraphs.

14 CFR 29.62 Rejected Takeoff: Category A

Section 29.62(a) is revised for clarification. The current wording of § 29.62(a) may be interpreted to imply that the procedures of §§ 29.59 and 29.60 are to be followed only to the engine failure point and that the takeoff and rejected takeoff paths may diverge from that point. However, in calculating the rejected takeoff path distances of § 29.62(a), the requirements of §§ 29.59 and 29.60 are to be followed up to the takeoff decision point (TDP). Therefore, the section is revised by removing references to the engine failure point to preclude misinterpretation of the requirement.

14 CFR 29.67 Climb: One-Engine-Inoperative (OEI)

In § 29.67, the introductory text of paragraph (a)(2), paragraphs (a)(2)(i) and (a)(3)(i), and the introductory text of paragraph (b) are revised to specify that the engine power ratings are for one-engine inoperative to be consistent with § 29.1521. Paragraph (a)(2)(ii) is deleted because the requirement is previously stated in § 29.64. The deletion of paragraph (a)(2)(ii) resulted in an editorial renumbering of paragraphs (iii) and (iv) as (ii) and (iii) respectively.

14 CFR 29.77 Landing Decision Point (LDP): Category A

The requirements of § 29.77 are clarified by dividing this section into paragraphs (a) and (b) and clearly identifying the inclusion of the pilot recognition time interval in the definition of the LDP.

14 CFR 29.81 Landing Distance: Category A

In § 29.81, the requirement to determine landing distance from a height of 25 feet for elevated landing operations is deleted. The requirement to determine landing distance from 25 feet has no operational significance and represents an unnecessary consideration for elevated heliports.

14 CFR 29.85 Balked Landing: Category A

Editorial changes in § 29.85 insert the phrase "with the critical engine inoperative" in the introductory text and delete that phrase from paragraph (a) and a similar phrase from paragraph (b). In paragraph (c), the word "distance" is replaced with the more descriptive term "(loss of height)".

14 CFR 29.1323 Airspeed Indicating System

In § 29.1323(c)(1), an editorial correction changes "critical" decision point to read "takeoff" decision point. This term parallels the term used in other sections of part 29.

14 CFR 29.1587 Performance Information

In § 29.1587(a)(4) and (5), references to §§ 29.63 and 29.83 are deleted because those sections are applicable to Category B performance, and § 29.1587(a) contains only Category A requirements. Additionally, reference to § 29.85, omitted in error, is added to paragraph (a)(5).

Paperwork Reduction Act

In accordance with the paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no reporting or recordkeeping requirements associated with this final rule.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation. Therefore, it can be issued immediately since it only involves minor correction, clarification, and editorial changes. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Traded Impact Statement

The rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. §§ 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year.

This rule does not meet the thresholds of the Act. Therefore, the requirements of Title II of the Act do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rulemaking has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 29 of the Federal Aviation Regulation as follows:

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

1. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. In § 29.59, paragraph (e) is redesignated as paragraph (c), and paragraphs (c) and (d) are redesignated as (d) and (e) respectively.

3. Section 29.62(a) is revised to read as follows:

§ 29.62 Rejected takeoff: Category A

* * * * *

(a) The takeoff path requirements of §§ 29.59 and 29.60 being used up to the TDP where the critical engine failure is recognized and the rotorcraft is landed and brought to a complete stop on the takeoff surface;

* * * * *

4. Secti8on 29.67 is amended by revising the introductory text of paragraph (a)(2), paragraphs (a)(2)(i) and (a)(3)(i), and paragraph (b); by removing paragraph (a)(2)(ii); and by redesignating (a)(2)(iii) and (a)(2)(iv) as (a)(2)(ii) and (a)(2)(iii) respectively.

§ 29.67 Climb: One-engine-inoperative (OEI)

(a) * * *

(2) The steady rate of climb without ground effect, 1000 feet above the

takeoff surface, must be at least 150 feet per minute, for each weight, altitude, and temperature for which takeoff data are to be scheduled with—

(i) The critical engine inoperative and the remaining engines at maximum continuous power including continuous OEI power, if approved, or at 30-minute OEI power for rotorcraft for which certification for use of 30-minute OEI power is requested;

* * * * *

(3) * * *

(i) The critical engine operative and the remaining engines at maximum continuous power including continuous OEI power, if approved, and at 30-minute OEI power for rotorcraft for which certification for the use of 30-minute OEI power is requested;

* * * * *

(b) For multiengine Category B rotorcraft meeting the Category A engine isolation requirements, the steady rate of climb (or descent) must be determined at the speed for best rate of climb (or minimum rate of descent) at each altitude, temperature, and weight at which the rotorcraft is expected to operate, with the critical engine inoperative and the remaining engines at maximum continuous power including continuous OEI power, if approved, and at 30-minute OEI power for rotorcraft for which certification for the use of 30-minute OEI power is requested.

5. Section 29.77 is revised to read as follows:

§ 29.77 Landing decision Point (LDP): Category A

(a) The LDP is the last point in the approach and landing path from which a balked landing can be accomplished in accordance with § 29.85.

(b) Determination of the LDP must include the pilot recognition time interval following failure of the critical engine.

6. Section 29.81 is revised to read as follows:

§ 29.81 Landing distance: Category A.

The horizontal distance required to land and come to a complete stop (or to a speed of approximately 3 knots for water landings) from a point 50 ft above the landing surface must be determined from the approach and landing paths established in accordance with § 29.79.

7. Section 29.85 is revised to read as follows:

§ 29.85 Balked landing: Category A.

For Category A rotorcraft, the balked landing path with the critical engine inoperative must be established so that—

(a) The transition from each stage of the maneuver to the next stage can be made smoothly and safely;

(b) From the LDP on the approach path selected by the applicant, a safe climbout can be made at speeds allowing compliance with the climb requirements of § 29.67(a)(1) and (2); and

(c) The rotorcraft does not descend below 15 feet above the landing surface. For elevated heliport operations, descent may be below the level of the landing surface provided the deck edge clearance of § 29.60 is maintained and the descent (loss of height) below the landing surface is determined.

§ 29.1323 [Amended]

8. In Section 29.1323(c)(1), the word "critical" is removed and add the word "takeoff" in its place.

§ 29.1587 [Amended]

9. In § 29.1587(a)(4), remove the words "or § 29.63",

10. In § 29.1587(a)(5), remove the words "or § 29.83" and add the words "and § 29.85" in their place.

Issued in Washington, DC, on August 12, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–21380 Filed 8–18–99; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
August 19, 1999

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 600 et al.

Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents and Requirements for Blood, Blood Components, and Blood Derivatives; Rules and Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 607, 610, 640, and 660

[Docket No. 98N–0581]

Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the general biological product standards by updating the hepatitis B virus (HBV) and human immunodeficiency virus (HIV) testing requirements, by adding testing requirements for hepatitis C virus (HCV), human T-lymphotropic virus (HTLV), and by adding requirements for licensed supplemental (i.e., additional, more specific) testing when a donation is found to be repeatedly reactive for any of the required screening tests for evidence of infection due to communicable disease agents. The agency is also proposing to require manufacturers of test kits approved for use in testing donations of human blood and blood components for evidence of infection due to communicable disease agents to use reference panels, when available, to verify the acceptable sensitivity and specificity of each lot. FDA is taking this action as part of the agency's "Blood Initiative" in which FDA is reviewing and revising, when appropriate, its regulations, policies, guidance, and procedures related to blood and blood products, including plasma derivatives. This proposed rule is intended to help protect the safety and ensure the quality of the nation's blood supply and to promote consistency in the industry.

DATES: Submit written comments on the proposed rule by November 17, 1999. Submit written comments on the information collection provisions by September 20, 1999. The agency is proposing that any final rule that may issue based upon this proposed rule become effective 180 days after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Blood Initiative

For a variety of reasons, discussed as follows, FDA has decided to comprehensively review and, as necessary, revise its regulations, policies, guidance, and procedures related to the licensing and regulation of blood products. In the **Federal Register** of June 3, 1994 (59 FR 28821 and 59 FR 28822, respectively), FDA issued two documents entitled "Review of General Biologics and Licensing Regulations" (Docket No. 94N–0066) and "Review of Regulations for Blood Establishments and Blood Products" (Docket No. 94N–0080). The documents announced the agency's intent to review biologics regulations in parts 600, 601, 606, 607, 610, 640, and 660 (21 CFR parts 600, 601, 606, 607, 610, 640, and 660) and requested written comments from the public. Interested persons were given until August 17, 1994, to respond to the documents. In response to requests for additional time, FDA twice extended the comment period, as announced in the **Federal Register** of August 17, 1994 (59 FR 42193), and November 14, 1994 (59 FR 56448). In addition, FDA responded to requests for a public meeting to allow for the presentation of comments regarding the agency's intent to review the biologics regulations. On January 26, 1995, FDA held a public meeting to provide an opportunity for all interested individuals to present their comments and to assist the agency in determining whether the regulations should be revised, rescinded, or continued without change. Since the time of the regulation review, FDA has implemented a number of changes to its regulations and policies applicable to the general biologics and licensing regulations, some of which applied to blood products as well as other biological products. (See, e.g., the final rules issued on May 14, 1996 (61 FR 24313); August 1, 1996 (61 FR 40153); November 6, 1996 (61 FR 57328); July 24, 1997 (62 FR 39890); and October 15, 1997 (62 FR 53536).)

Because of the importance of a safe national blood supply, the U.S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on Human Resources and Intergovernmental Relations (the Subcommittee) and other groups such as the General Accounting Office (GAO), and the Institute of Medicine (IOM) have reviewed the agency's policies, practices, and regulations. Reports issued following the respective reviews made a number of recommendations as to how FDA might improve the biologics regulations, particularly as they apply to the continued safety of blood products. The relevant reports are: (1) "Protecting the Nation's Blood Supply From Infectious Agents: The Need for New Standards to Meet New Threats" by the Subcommittee (August 2, 1996); (2) "Blood Supply: FDA Oversight and Remaining Issues of Safety" by GAO (February 25, 1997); (3) "Blood Supply: Transfusion-Associated Risks" by GAO (February 25, 1997); and (4) "HIV and the Blood Supply: An Analysis of Crisis Decisionmaking" by IOM (July 13, 1995). These reports are on file with the Dockets Management Branch (address above) under the docket number given in the heading of this document.

FDA has reviewed these reports and agrees with the majority of the recommendations contained within them. However, rather than to only respond specifically to the recommendations from the Subcommittee, GAO, IOM, and the public, FDA has convened a number of internal task forces to review a variety of issues related to the regulation of blood and blood products, including how to most appropriately update the existing regulations applicable to blood and blood products. In the future, FDA intends to issue a number of blood-related rulemakings that various FDA task groups are currently preparing. FDA is not describing the specific recommendations it has received and the numerous objectives of the Blood Initiative in this document. Future rulemaking and other notices will describe and discuss specific recommendations and regulatory objectives.

B. Requirements and Recommendations for Testing Donors of Blood and Blood Components

Requirements for testing blood donors for hepatitis B surface antigen and antibody to HIV are currently codified in part 610. The agency has issued various guidance documents to registered blood and plasma establishments providing recommendations for testing for antibody to hepatitis B core antigen, antibody to human T-lymphotropic virus types I and II, antibody to hepatitis

C virus, and HIV–1 p24 antigen. The purposes of the guidance documents are to assist blood establishments in protecting the safety of the blood supply and to establish policies with the intent of promoting consistency in the industry. These guidance documents represent the agency's current thinking on the appropriate testing of human blood donors for evidence of infection due to various communicable disease agents. Through inspection, FDA has determined that blood establishments generally have been following these recommendations. However, there have been instances where there have been variations in testing and in the determination of suitability of the blood based on the testing results. Accordingly, FDA is proposing to require testing consistent with its current recommendations and industry practice. This will help ensure consistency in the blood industry's testing practices, and provide FDA with clear enforcement authority if compliance problems should occur.

The guidance documents referenced in this document or otherwise applicable to the testing of blood donors may be obtained from the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance documents may also be obtained by mail by calling the CBER Voice Information system at 1–800–835–4709 or 301–827–1800, or by FAX by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Persons with access to the Internet may obtain the documents by using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/publications.htm".

As part of the Blood Initiative, the agency is proposing to revise part 610 subpart E. Currently, subpart E requires testing for HBV and HIV and the development and administration of a product quarantine and recipient notification ("Lookback") program when donors test repeatedly reactive for antibody to HIV, or otherwise are determined to be unsuitable when tested in accordance with § 610.45. In response to the recommendations made in various reports addressing the safety of the nation's blood supply mentioned previously, FDA is proposing to: (1) Require screening tests for evidence of infection due to communicable disease agents for autologous donations (blood donations intended to be later reinfused into the donor) in order to reduce the risk of transmission of communicable disease by untested units inadvertently entering the blood supply; (2) require supplemental (additional, more specific) testing of all donations that are repeatedly reactive by screening tests for which there are supplemental (additional, more specific) tests; and (3) codify as requirements those recommendations that FDA has issued that are necessary to ensure blood safety, including testing for evidence of infection due to HIV, HBV, HCV, and HTLV. FDA is considering proposing a general testing regulation for blood and blood components in the future that would require blood establishments to test for additional relevant communicable diseases. Such a rule could impose testing obligations as additional relevant communicable disease agents are identified and FDA approves tests for such agents.

II. Legal Authority

FDA is proposing to issue this new rule under the authority of sections 351 and 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 262 and 264 *et seq.*), and the provisions of the Federal Food, Drug, and Cosmetic Act (the act) that apply to drugs (21 U.S.C. 201 *et seq.*). Under section 361 of the PHS Act, FDA may make and enforce regulations necessary to prevent the introduction, transmission, and spread of communicable disease between the States or from foreign countries into the States (see Sec. I, 1966 Reorg. Plan No. 3 at 42 U.S.C. 202 for delegation of section 361 authority from the Surgeon General to the Secretary of the Department of Health and Human Services (Secretary); see 21 CFR 5.10(a)(4) for delegation from the Secretary to the Food and Drug Administration). Intrastate transactions may also be regulated under section 361 of the PHS Act (see *Louisiana* v. *Mathew*, 427 F. Supp. 174, 176 (E.D.La. 1977)). Testing each donation for evidence of infection due to communicable disease agents would help prevent unsafe units of blood or blood components from entering the blood supply. The focus of the proposed rule is preventing the introduction and spread of communicable disease through transfusion.

All blood and blood components introduced or delivered for introduction into interstate commerce also are subject to section 351 of the PHS Act (42 U.S.C. 262). Section 351(a) of the PHS Act requires that manufacturers must have a license which has been issued upon showing that the manufacturing establishment meets all applicable standards, prescribed in the biologics regulations, designed to insure the continued safety, purity, and potency of the blood and blood components, and that the product is safe, pure, and potent. FDA's license revocation regulations provide for the initiation of revocation proceedings, if, among other reasons, the establishment or the product fails to conform to the standards in the license application or in the regulations designed to ensure the continued safety, purity, or potency of the product (§ 601.5). Section 351 of the PHS Act provides for criminal penalties for violation of the laws governing biologics. Violations can be punishable by fines or imprisonment, or both.

The act also applies to biological products (42 U.S.C. 262(d), as amended). Blood and blood components are considered drugs, as that term is defined in section 201(g)(1) of the act (21 U.S.C. 321(g)(1)) (see *United States* v. *Calise*, 217 F. Supp. 705 (S.D.N.Y. 1962)). Because blood and blood components are drugs under the act, blood establishments must comply with the substantive provisions and related regulatory scheme. Under section 501 of the act (21 U.S.C. 351), drugs are deemed "adulterated" if the methods used in their manufacturing, processing, packing, or holding do not conform with current good manufacturing practices (21 U.S.C. 351(a)(2)(B)). Under the proposed rule, blood establishments would be required to test each donation of blood and blood components for evidence of infection due to communicable disease agents. Blood and blood components manufactured from donations that are not tested in accordance with this proposed rule would be considered adulterated under 21 U.S.C. 351(a)(2)(B), and blood establishments, and blood and blood components would be subject to the act's enforcement provisions for violations of the act.

III. Description of the Proposed Rule

This rule is proposed in order to reduce the risk of infection due to communicable disease agents to blood product recipients and to individuals handling blood or blood products including components of a medical device. FDA proposes to require that each donation of human blood or blood component, including those intended for autologous use or as a component of a medical device, be tested for evidence of infection due to HIV, types 1 and 2; HBV; HCV; and HTLV, types I and II. Each donation that tests repeatedly reactive when screened for evidence of infection due to any of the

communicable disease agents would be required to be further tested whenever a supplemental (additional, more specific) test has been approved for such use by FDA. Testing would be required to be performed by a laboratory certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and registered with FDA in accordance with part 607. When donors test repeatedly reactive, the agency would require deferral of such donors from future donations. Criteria are proposed for release or shipment of human blood or blood components prior to completion of testing, and restrictions on shipment or use of human blood or blood components that test repeatedly reactive when screened for evidence of infection. The proposed rule would also require manufacturers of approved test kits to test human blood donors for evidence of infection due to communicable disease agents to verify an acceptable sensitivity and specificity of each lot of test kit using a reference panel obtained from CBER, when available.

A. Required Testing for Communicable Disease Agents

Proposed § 610.40(a) would require testing for evidence of infection due to the communicable disease agents HIV, types 1 and 2; HBV; HCV; and HTLV, types I and II using screening tests approved for such use by FDA in accordance with the manufacturers' instructions. The agency is not proposing to specify the marker(s) to be tested for, such as a specific antigen or antibody. The purpose of testing is to adequately and appropriately reduce the risk of transmission of communicable disease agents. Thus, one or more tests that would fulfill proposed § 610.40 should be chosen for this purpose.

Historically, tests for new or different markers of infection due to a communicable disease agent have changed as they become more appropriate or the technology in testing has become more sensitive or specific. Therefore, FDA is structuring the proposed regulations so that manufacturers may adopt adequate and appropriate methodologies to protect the safety of the nation's blood supply, without necessitating rulemaking by the agency with the development or advancement of each test method, e.g., FDA recognizes the possibility that nucleic-acid-based screening could replace some current methods of testing. FDA believes that such nucleic-acid-based screening, including "in-house" or "home brew" screening of blood or blood components for communicable disease agents required under this regulation should be regulated under section 351 of the PHS Act when the blood or blood components are intended for use in preparing a product, including donations for autologous use or as a component of a medical device. Several manufacturers have begun to conduct nucleic-acid-based screening of plasma pools for HIV and HCV under investigational new drugs (IND). FDA considers such nucleic acid testing of plasma pools used to manufacture blood products to be donor screening. FDA intends to issue draft guidance and request public comment on nucleic acid testing in the near future.

As technology advances, FDA intends to regularly issue guidance describing those tests that it believes are adequate and appropriate in reducing the risk of transmission of communicable disease agents. The agency would issue such guidance in draft, giving the opportunity for public comment and for manufacturers to prepare to use any appropriate new testing technologies. In some circumstances, when it is necessary to protect the public health, the agency may, as described under its current Good Guidance Practices (62 FR 8961, February 27, 1997), recommend immediate implementation of the guidance. Consistent with FDA guidance, as discussed in section I.B of this document, it is current practice by the blood industry to test blood donations intended for transfusion or for further manufacture for antibody to HIV, types 1 and 2; HIV–1 p24 antigen; hepatitis B surface antigen (HBsAg); antibody to hepatitis C; and by a serologic test for syphilis. Blood donations intended for transfusion routinely are additionally tested for antibody to HTLV, types I and II, and antibody to hepatitis B core antigen (anti-HBc).

Although blood that is repeatedly reactive for anti-HBc would not be suitable for transfusion even when negative for HBsAg, the plasma from such blood (viz., recovered plasma) would be suitable for manufacture into plasma derivatives. In most cases, blood that is negative for HBsAg but is reactive for anti-HBc would be from a donor who has cleared a hepatitis B infection. Such a donor would still have circulating anti-HBc and presumably would also have circulating anti-HBs, which is hepatitis B neutralizing antibody.

In a small percentage of "window-period" cases, the blood could be from a donor who only recently became infected with hepatitis B virus such that the number of viruses in the blood are below detectable limits via antigen testing. While a unit of blood from a donor in window period could be infectious, use of plasma from such a donor, after pooling with plasma from many donors and manufacturing into plasma derivatives, does not present a risk of transmitting hepatitis B to recipients of the plasma derivatives. On the basis of our present knowledge, this safety results from several factors. First, plasma that is negative for HBsAg, even if it is reactive for anti-HBc, would have only a low titer of hepatitis B virus. This titer is further lowered by pooling with many "true-negative" units of plasma. Second, virtually all plasma derivatives undergo validated virus removal and/or inactivation procedures in the course of manufacture. Third, there is a high probability that some units of plasma in the pool will be reactive for anti-HBs. This can have the added benefit both of neutralizing any hepatitis B virus present and potentially aiding in its removal during the process of purifying plasma derivatives. For this last reason, present knowledge suggests that excluding plasma that is negative for HBsAg but reactive for anti-HBc could reduce the safety of plasma derivatives because it would reduce the level of anti-HBs in pooled plasma and thereby reduce protection against any contaminating hepatitis B virus present in the pooled plasma.

For the same reasons, FDA does not currently believe that Source Plasma (which is not obtained from Whole Blood donations and is used only for further manufacture) that is negative for HBsAg needs to be tested for anti-HBc.

In January 1995, as part of a National Institutes of Health Consensus Development Conference, a panel of non-federal, nonadvocate experts met to provide physicians and other transfusion medicine professionals with a consensus on infectious disease testing for blood transfusions. One of the issues reviewed was the value of testing for syphilis in protecting the safety of the blood supply. The serologic test for syphilis was introduced in 1938 to prevent the transmission of syphilis through blood transfusions. In the early AIDS era it was thought to have additional value as a marker of high risk behavior, although this benefit has been challenged. The serologic test for syphilis has a high rate of false positives, leading to further supplemental (additional, more specific) testing using specific treponemal confirmatory tests. After discussion, the panel agreed "Because the contribution of serologic tests for syphilis in preventing transfusion-transmitted syphilis is not understood, the panel concludes that testing of donors for syphilis should continue." FDA regulations continue to require the

serologic test for syphilis (see §§ 640.5(a) and 640.65(b)). However, the agency recognizes that many scientists, including some members of the blood banking community, continue to advocate the elimination of the serologic test for syphilis as a testing requirement. The agency is soliciting comments, with supporting data, from the public in regard to the value of donor testing for syphilis as a marker of high risk behavior, as a surrogate test for other infectious diseases, and in preventing the transmission of syphilis through blood transfusion. If the agency receives comments with adequate data supporting the removal of the requirement for a serologic test for syphilis, FDA may proceed with rulemaking to remove the requirements for a serologic test for syphilis, including treponemal and nontreponemal based tests, from part 640.

B. Affected Products

Each donation of human blood or blood components, i.e., whole blood, red blood cells, plasma, sera, platelets, and leukocytes, intended for transfusion or for further manufacturing, would be required to be tested for evidence of infection due to communicable disease agents. For the purpose of this proposed rule, any reference to "blood or blood components" will include Source Leukocytes and Source Plasma unless specifically addressed. This proposal includes testing requirements for donations intended for autologous use or as a source material or component of a medical device. Inclusion of testing requirements for donations intended solely for use in a medical device is a safeguard for persons who may be exposed to infectious blood products used in such devices.

Despite the reduced risk of infection when using autologous blood, FDA is concerned that the increased demand to use autologous donations may compromise transfusion safety for both autologous and allogeneic recipients. Recent data from an industry conducted survey show that errors and accidents involving autologous blood occur with sufficient frequency to compromise the safety of both autologous and allogeneic transfusions. Examples of these errors and accidents include the erroneous transfusion of an autologous unit to an unintended recipient; the inappropriate salvage of plasma for further manufacture from untested or infectious disease marker positive autologous units; the breakage of autologous units during laboratory processing or product transport; and clerical errors in inventory management, including inadvertent crossover of autologous units to the allogeneic inventory. Proposed § 610.40 would require uniform testing for both autologous and allogeneic donations, thus significantly reducing any risk to the public health posed by the inadvertent improper use of potentially infectious products.

Unlicensed blood and blood components are often used as components or source material in the manufacture of certain medical devices, including in vitro diagnostic test kits. To apply the current good manufacturing practice (CGMP) for blood and blood components to such products used in the manufacture of unlicensed blood products that are device components or device raw materials, FDA issued a final rule on June 9, 1989 (54 FR 24706), requiring manufacturers of such products to follow the blood CGMP's in 21 CFR part 606. The preamble to that final rule stated that blood products that are device components or device raw materials excluded from the scope of the device CGMP's under § 820.1 (the quality system regulation) are subject to the blood CGMP's in part 606. Violations of part 606 involving such device components or raw materials are subject to enforcement action under section 501(h) of the act.

Accordingly, FDA is proposing in this rule to clarify the applicability of testing for evidence of infection due to communicable disease agents to human blood or blood components used in the manufacture of a medical device.

C. Exceptions

Proposed § 610.40(b)(1) and (b)(2) would exempt Source Plasma, and donations of human blood and blood components intended solely as a component of an in vitro medical device unless they contain viable leukocytes, from being tested for evidence of infection with HTLV, types I and II. Donations of Source Plasma, i.e., the fluid portion of human blood collected by plasmapheresis and intended as source material for further manufacturing use, would not be required to be tested for evidence of infection with HTLV, types I and II because HTLV is highly cell-associated in humans and HTLV transmission has not been demonstrated by the transfusion of plasma or by the use of products made from Source Plasma. Currently, in FDA's existing guidance, testing for antibodies to HTLV, types I and II is recommended for donors only if blood components, including plasma, are intended for transfusion.

Under proposed § 610.40(b)(3), FDA would not apply the requirements under § 610.40(a) to certain cases when the human blood or blood components are not intended for commercial distribution or for use in preparing a product. This proposal would be consistent with the current requirements in § 610.45 *Human Immunodeficiency Virus (HIV) requirements*. Such cases include the in-house use (i.e., use within the same establishment) or distribution of samples of blood, blood components, plasma, or sera for: (1) Clinical laboratory testing ; and (2) research purposes, provided that it is not intended for administration to humans or use in manufacturing a product. FDA believes that the proposed exceptions would help ensure the continued public health while not impeding continuing research efforts and the ability to ship blood samples for purposes of clinical laboratory testing.

FDA is requesting comment on whether to exempt from testing for evidence of infection due to communicable disease agents listed in proposed § 610.40(a) each donation of dedicated apheresis donors. Specifically, FDA seeks comments on whether the proposed rule, when finalized, should be revised to permit testing proposed in § 610.40(a) to be completed only once at the beginning of a 30-day period of donation by a dedicated apheresis donor for a single recipient. This procedure is currently practiced in specific clinical situations such as a human leukocyte antigen (HLA) matched or family donor donating as a dedicated donor for a patient being treated for diseases such as aplastic anemia, bone marrow, transplant candidate, or leukemia. The agency is requesting comments on the testing of dedicated apheresis platelet donors, at a minimum, at the beginning of a 30-day period during which other donations may continue without further testing. The agency is also requesting comments on alternatives (including the rationale) to testing each donation that may be applied to autologous donations as well as dedicated apheresis donors for a single recipient. For example, could the added safety resulting from mandatory testing of autologous donations be similarly achieved by both improving procedures or requirements for clearly and permanently marking autologous units to distinguish them from allogeneic units and requiring that they be labeled as untested for infectious disease agents, and if so, what additional factors would favor the choice of one approach over the other.

D. Further Testing

Under § 610.40(a), each donor blood sample would be tested by a screening test approved for such use by FDA, according to the directions supplied by the manufacturer of the test kit. As described in the directions, each tested sample would be determined to be reactive or nonreactive. A reactive result on initial testing (initial reactivity) indicates the possible presence of a marker in the sample. According to the manufacturers' instructions, initially reactive samples are to be tested again, generally in duplicate, and a sample that is found to be reactive on any single retest (i.e., on one or more of the duplicate retests), is considered to be repeatedly reactive. Screening tests are designed to be highly sensitive for the marker specific to the test kit. Because of this sensitivity, the possibility of false positives due to sample contamination, cross reactivity or nonspecific binding exists. In § 610.40(c), the agency proposes to require that repeatedly reactive samples be further tested by a supplemental (additional, more specific) test, when available, that has been approved for such use by FDA. In the past, FDA has issued guidances, discussed previously, that recommend the supplemental testing of repeatedly reactive samples. Although a donor may be deferred from donating based on a repeatedly reactive screening test alone, the supplemental testing would be required so that the following information could be ascertained: (1) Medical information useful in notification and counseling as soon as possible for the donor; and (2) Additional information to be used in evaluating the donor for possible reentry into the donor pool at a future time.

E. Testing Responsibility

Under the regulations, testing of donor blood samples is considered a step in the manufacture of blood products (see § 607.3(d)). Appropriate testing is critical to the continued safety of the nation's blood supply. FDA believes that it is important that FDA know which laboratories are performing such testing and that such laboratories can perform testing adequately. Accordingly, FDA is proposing in § 610.40(d) to require that testing for evidence of infection due to the communicable disease agents designated in § 610.40(a) be performed by a laboratory registered with FDA in accordance with part 607, and certified to perform testing on human specimens under the CLIA (see 42 CFR part 493). In addition, FDA is proposing to remove § 607.65(g), which exempts from registration clinical laboratories that are approved for Medicare reimbursement and which are engaged in the testing of blood products in support of other registered establishments. As a result, such laboratories would need to register with FDA.

F. Release or Shipment Prior to Testing

Under § 610.40(e), FDA proposes to permit, in specified situations, the release or shipment of human blood or blood components before the completion of testing required under § 610.40(a). Section 640.2(f) would be removed. The agency recognizes that there are rare medical emergencies, e. g., where a patient's need for blood is so acute that transfusion is necessary before knowing the results of any communicable disease testing of the blood. FDA believes that the use of untested or incompletely tested blood in such medical emergencies should not be prohibited. Because products other than Whole Blood may need to be released in medical emergency situations, FDA is proposing to place the provision for medical emergency situations in § 610.40(e), which is applicable to all blood products, and to remove § 640.2(f), which is applicable to Whole Blood only.

FDA is proposing in § 610.40(e) to permit, with FDA approval, routine shipment of certain blood components for further manufacturing before testing is completed and the tests results are received by the collection facility. To obtain approval from FDA, the agency would expect the collection facility and the manufacturing facility to whom the blood product is being shipped, to submit with their request specific procedures for collection, shipment, and quarantine of a product before testing is completed. Once the procedures have been approved, manufacturers may then begin to ship products prior to the completion of testing. This proposal is intended to ensure the continued availability of biological products, such as interferon, that are important to the medical community and which require rapid preparation from blood.

The provisions for emergency release and shipment prior to completion of testing would require appropriate documentation, that testing would be performed as soon as possible, and that the results would be provided promptly to the consignee.

G. Restrictions on Shipment or Use

In § 610.40(f)(1), FDA is proposing to require that blood and blood components testing repeatedly reactive when screened for evidence of infection due to a communicable disease agent designated in proposed § 610.40(a), or collected from a donor with a record of a repeatedly reactive test result, shall not be shipped or used to prepare any product, including products not subject to licensure, except as described in section III of this document. FDA believes that inappropriate handling, labeling, or use of such blood could be hazardous to the public health. Therefore, FDA is proposing to restrict the shipment or use of such blood and blood components.

Under proposed § 610.40(f)(2)(i), the restriction on shipment or use of blood or a blood component that tests repeatedly reactive when screened for evidence of infection due to a communicable disease agent listed in proposed § 610.40(a) would not apply to units intended for autologous use. Autologous blood or blood components would be required to be appropriately labeled in accordance with § 606.121(i) and with the Biohazard legend demonstrated in the codified section. Under proposed § 610.40(f)(2)(ii), blood establishments intending to ship or use human blood or blood components for further manufacture that test repeatedly reactive when screened for evidence of infection due to a communicable disease agent listed in proposed § 610.40(a) would apply for approval by FDA. Application for approval would be submitted as part of the license application or a supplement to the approved license. For unlicensed products, application for approval would be submitted in accordance with § 640.120 as discussed in section K of this document. The written application would describe the intended use of the blood or blood component, and the procedures for collecting, handling, labeling, and shipping the blood. Blood and blood components are required to be labeled in accordance with §§ 606.121 and 640.70, as appropriate. Repeatedly reactive blood or blood components would be required to be labeled as repeatedly reactive for the applicable marker for the identified communicable disease agent and display the Biohazard legend. If repeatedly reactive blood or blood components are to be used for further manufacturing into injectable products, the blood or blood component would be required to be labeled with the exempted use specifically approved by FDA. For manufacturing into noninjectable products, such as in vitro diagnostic products when there is no alternative source such as monoclonal antibody, repeatedly reactive blood or blood components would be required to be labeled with the statement "Caution:

For Further Manufacturing Into Non-Injectable Products For Which There Are No Alternative Sources". Distribution may not commence until approval is granted.

Under proposed § 610.40(f)(3), FDA would permit the use of blood or blood components from a donor who was deferred as a result of testing repeatedly reactive on a screening test(s) for specified communicable disease agent(s) if the blood or blood components test negative for those same disease agent(s) and the donor has been shown to be suitable to donate blood by a method or process described in a supplement to the establishment's license and approved for that purpose by FDA. (Such methods are called "donor reentry" algorithms.) FDA has identified such methods or processes in the agency's guidance documents, discussed previously, in the format of algorithms, or step-by-step procedures designed to reenter the donor into the donor pool, when appropriate.

There are occasions when human blood or blood components that test repeatedly reactive when screened for evidence of infection due to a communicable disease agent listed in proposed § 610.40(a) are needed for further manufacture, e.g., when used in the manufacture of certain in vitro diagnostic products. The agency proposes in § 610.42 to require that a repeatedly reactive unit used for further manufacturing into an in vitro diagnostic product be labeled as repeatedly reactive for the applicable marker of infection due to the identified communicable disease agent. For an in vitro diagnostic product manufactured from a repeatedly reactive unit, the agency would require in § 610.42 that the manufacturer label the product in accordance with 21 CFR 809.10 and that a warning be included stating that the product was manufactured from a donation that tested repeatedly reactive for the appropriate marker of infection for the identified communicable disease agent. This would be required to help prevent the spread of communicable disease in those handling the product, (i.e., such labeling should result in handlers taking appropriate precautions for their and other's safety).

H. Compliance with §§ 610.46 and 610.47 ("Lookback" requirements for HIV)

Current § 610.45(d) requires the blood establishment to comply with §§ 610.46 and 610.47 and perform testing, quarantine, consignee notification and recipient notification when a blood donor tests repeatedly reactive for HIV or when the blood establishment has been made aware of other test results indicating HIV infection. The agency is not proposing to include this requirement in this proposed rule. However, in future rulemaking, the agency will propose new regulations for "Lookback" when donors test repeatedly reactive for HCV, comparable to those requirements currently applicable for donors testing repeatedly reactive for HIV. The new "Lookback" proposed regulations will consolidate in one section the current requirements for HIV "Lookback" and the proposed HCV "Lookback" requirements. In the event that finalization of the new proposed "Lookback" rule is delayed, the agency intends to issue the current language in § 610.45(d) as § 610.40(g) with specific paragraph and section cites revised.

I. Donor Deferral

Once the donor (except for autologous donors or other donors as discussed in section III.I of this document), at the time of donation, tests repeatedly reactive by a screening test(s) performed in accordance with proposed § 610.40(a), the blood or blood components from that donation are to be quarantined and either destroyed or excluded from use in transfusion; and, based on the particular marker that tests repeatedly reactive, the donor will then be either deferred from donating in the future or deferred if a similar result is obtained on any subsequent donation. Similar provisions under §§ 640.5 and 640.65 apply to donations reactive for syphilis, however, some additional exceptions apply. Blood establishments are currently required under § 606.160 to maintain records of results and interpretation of all tests and retests, and a record from which unsuitable donors may be identified so that products from such individuals will not be distributed. Proposed § 610.41 explicitly would require the deferral of donors based on testing. FDA is issuing elsewhere in this issue of the **Federal Register**, notice and comment rulemaking proposing to require the notification of donors of their deferral from donating in the future and the reason for the deferral (such as health history or test results). FDA also intends to issue notice and comment rulemaking in the near future proposing donor suitability criteria.

In proposed § 610.41(a), donors who test repeatedly reactive for HTLV, types I and II, or anti-HBc only once, would be permitted to donate again without being deferred from further donation unless there is further testing using an approved supplemental (additional, more specific) test. This proposal is consistent with FDA's guidance to all registered blood establishments dated August 19, 1997, entitled "Donor Screening for Antibodies to HTLV–II." Once supplemental tests for HTLV, types I and II are approved, donors would be deferred after only a single repeatedly reactive donation similar to most other screening tests. It is FDA's expectation that donor reentry algorithms would become feasible at that time. However, until such time, upon testing repeatedly reactive a second time for HTLV, types I and II or anti-HBc, the donor would be deferred.

FDA is proposing in § 610.41(b) to permit donors testing repeatedly reactive for HTLV, types I and II or anti-HBc to serve as donors of Source Plasma (See section III.C of this document for discussion on the risk of transmitting HTLV, types I and II through Source Plasma; see section III.A of this document for discussion on the use of plasma from donors who test repeatedly reactive for anti-HBc). However, the agency is requesting comments on this proposal that permits such donors to donate Source Plasma to be used in the manufacture of plasma derivatives as it relates to exposure to other possible risks, such as the association of HTLV infection with abuse of intravenous drugs.

Proposed § 610.41(c)(1) permits deferred donors to donate blood and blood components when used in accordance with § 610.40(f). In proposed § 610.40(f), the agency proposes that blood and blood components that test repeatedly reactive when screened for evidence of infection due to communicable disease agents listed in proposed § 610.40(a) would not be shipped or used except for autologous use or for purposes or under conditions approved in writing by FDA. Such approval may also be obtained under current § 640.120.

The agency is proposing in § 610.41(c)(2) to restrict the use of blood or blood components from donors showing evidence of infection due to hepatitis B virus when tested in accordance with § 610.40(a) and (c). Such blood and blood components may be approved for use only as a source of antibody to hepatitis B surface antigen (anti-HBS, Hepatitis B neutralizing antibody) for the preparation of Hepatitis B Immune Globulin (Human) or as a component of a medical device. Use of such blood or blood components would be prohibited in the manufacture of other biological products. The agency requests comments on the use of vaccinated donors for HBV as an alternative to using donors previously showing evidence of infection due to

hepatitis B virus in the preparation of Hepatitis B Immune Globulin (Human).

In proposed § 610.41(d), the agency would not defer donors of blood and blood components from further donations, if the donor was found negative by an approved specific treponemal test (confirmatory test for syphilis) despite a reactive screening test. Accordingly, if the donor tests positive by the more specific test, then the donor would be deferred and reentered into the donor pool only in accordance with proposed § 610.41(e). Donors of Source Plasma testing reactive for the serologic test for syphilis, shall follow the procedure provided in § 640.65(b)(2)(ii), (b)(2)(iii), and (b)(2)(iv).

J. Use of Reference Panels by Manufacturers of Test Kits

For a number of years, FDA has made available reference panels (also known as lot release panels) of known reactivity to a marker of infection due to a communicable disease agent. These reference panels are used by manufacturers in the qualitative and semi-quantitative evaluations of their in vitro tests to detect a defined marker of infection due to the identified communicable disease agent. FDA is proposing to move the requirements for reference panels for hepatitis B test kits to proposed § 610.44 and add that reference panels be used when available for all the test kits for communicable disease agents identified in proposed § 610.40(a) and for all approved HIV tests. The agency would require the use of these regulatory reference panels obtained from the Center for Biologics Evaluation and Research (CBER) or from an FDA designated source, when available, to provide a verification by the manufacturer of the sensitivity and specificity of each lot of test kit approved for use in testing donations of human blood and blood components. This release criterion would be applied to lots of test kits produced by licensed manufacturers or lots produced by manufacturers pursuing licensure of such tests. Once a reference panel is assembled and available for use in lot release testing, the Director, CBER, would send a letter informing all licensed manufacturers of the appropriate test kit of the availability of the reference panel and of the date the agency believes the new reference panel should be put into use for lot release testing. This will usually be followed by a notice in the **Federal Register**. Lots of test kits found to be not acceptable for sensitivity and specificity would be prohibited from release. By inserting the requirement in this section, FDA is attempting to emphasize the need for reference panels to manufacturers of blood and blood components so that they may use the appropriately released lot of test kits. Accordingly, the agency is proposing to remove § 660.42, a requirement for a reference panel for hepatitis B surface antigen, and include the use of reference panels by manufacturers of test kits in proposed § 610.44 for better consolidation.

K. Use of § 640.120–Alternative Procedures

FDA recognizes that as technology and scientific knowledge advance, there will continue to be instances when a regulation will become outdated or where unanticipated circumstances may warrant a departure from an approach detailed in the regulations. In order to be more responsive to improved technologies, increased scientific knowledge, and concerns about the continued availability of blood and blood products, the agency has issued a regulation at § 640.120, which allows the Director, CBER, to approve an exception or alternative to any requirement in subchapter F of chapter I of title 21 of the Code of Federal Regulations regarding blood, blood components, or blood products. The Director, CBER, would approve such an exception or alternative only if, in the judgment of the Director, CBER, the safety, purity, potency, and effectiveness of the final product is adequately ensured. The Director, CBER, may request additional data or information from the person who has requested permission for an exception or alternative before granting the request. Any exception or alternative to the proposed rule, once finalized, would proceed under § 640.120.

L. Removal of § 610.45

With the reconstruction and streamlining of the regulations in regard to testing requirements for communicable disease agents, the agency is proposing to remove § 610.45, human immunodeficiency virus (HIV) requirements, because it has been incorporated into the revision of proposed§ 610.40.

IV. Analysis of Impacts and Initial Regulatory Flexibility Analysis

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant impact on a substantial number of small entities and, if it does, to analyze regulatory options that would minimize the impact. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

OMB has determined that the proposed rule is a significant regulatory action as defined by the Executive Order and so is subject to review. Because the rule does not impose any mandates on State, local, or tribal governments, or the private sector, that will result in any one year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandate Reform Act.

The Regulatory Flexibility Act requires agencies to prepare a Regulatory Flexibility Analysis for each rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Although the proposed rule is not expected to have a significant economic impact on a substantial number of small business entities, a precise impact is uncertain. Therefore, the agency has prepared an Initial Regulatory Flexibility Analysis.

A. Objectives and Basis of the Proposed Action

FDA is taking this action as part of the agency's "Blood Initiative" in which FDA is reviewing and revising, when appropriate, its regulations, policies, guidance, and procedures related to blood and blood products, including plasma derivatives. The basis for this proposed rule is to help protect the safety and ensure the quality of the nation's blood supply, and to promote consistency in the industry. Under the biologics licensing and quarantine provisions of the PHS Act (42 U.S.C. 262–264) and the drug, device, and the general administrative provisions of the act (21 U.S.C. 351–353, 355–360, and 371–374), FDA has the authority to issue regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the

transmission of communicable diseases into the United States or from one State to another. Under these statutory authorities, the agency is proposing to: (1) Require screening tests for evidence of infection due to communicable disease agents for autologous donations in order to reduce the risk of transmission of communicable disease by untested units entering the blood supply inadvertently; (2) require supplemental (additional, more specific) testing of all donations that are repeatedly reactive by screening tests for which there are supplemental tests; and (3) codify as requirements those recommendations that FDA has issued that are necessary to ensure blood safety, including testing for evidence of infection due to HIV, HBV, HCV, and HTLV.

B. Nature of the Impact

The proposed rule requires that each donation of human blood or blood component, including those intended for autologous use or as a component of a medical device, be tested for evidence of infection due to HIV, types 1 and 2; HBV; HCV; and HTLV, types I and II. Each donation that tests repeatedly reactive when tested for evidence of infection due to any of the disease agents would be required to be further tested whenever a supplemental, more specific test has been approved for such use by FDA. FDA is proposing to require that the testing be done by a laboratory that is registered with FDA and CLIA-certified. The proposed rule also contains provisions for appropriate deferral of donors based on test results, and exemptions for Source Plasma from being tested for evidence of infection from HTLV, types I and II. FDA is proposing to permit shipping of units prior to testing if appropriate procedures are developed for collection, shipment and quarantine to protect against unnecessary communicable disease risks from use of shipped units later found to test repeatedly reactive. Under the proposed rule, allogeneic donations that test repeatedly reactive shall not be shipped except in situations specifically approved by FDA; however, repeatedly reactive autologous units may be shipped with labeling to indicate biohazard.

The rule would also require manufacturers of test kits, approved for use in testing donations of human blood and blood components for these disease agents, to verify an acceptable sensitivity and specificity of each lot of test kit, using a reference panel obtained from CBER or an FDA designated source, when available.

1. The Type and Number of Entities Affected

The proposed testing of donations from allogeneic and autologous donors of blood and blood components will affect all blood and plasma establishments that collect blood and blood components from such donors. FDA's Office of Blood Research and Review (OBRR) has record of 2,801 registered blood and plasma establishments, including 487 plasma centers and 2,314 blood centers. Most Source Plasma centers are commercial establishments with paid plasma donors. By contrast, whole blood donors in the United States are volunteers. The most recently published survey of the blood industry was conducted in 1992 (Ref. 1), and the aggregate figures for blood collection reported in the 1992 survey are generally consistent with the aggregate numbers (i.e., 14 million blood donations) currently provided by the American Association of Blood Banks (AABB) (Ref. 2), although the number of registered facilities is now somewhat higher. The 1992 survey of U.S. blood establishments reported on 2,093 entities, including 157 distinct regional and community blood centers. Data on activities of the regional and community blood centers were obtained as responses to the AABB's 1993 Institutional Membership Questionnaire, directly from the American Red Cross, or in the case of non-AABB centers, from responses to questionnaires mailed from the Center for Blood Research. According to the 1992 survey, 1,936 hospitals listed as members of the AABB, are involved in blood collection. These hospitals are a subset of the American Hospital Association (AHA) list of 5,288 hospitals presumed to transfuse blood.

According to the 1992 survey, all U.S. blood establishments were estimated to collect a total of 13,794,000 units of blood. Allogeneic donations accounted for 87.2 percent (12,035,000 units), directed donations accounted for 3.2 percent (436,000 units) and autologous donations comprised 8.1 percent (1,117,000 units) of the total. Regional and community blood centers report receiving 702,000 of the total autologous units, and hospital blood centers collected an estimated 415,000 units. Based on information published by the AABB and the American Red Cross regarding allogeneic donations, and communications with experts in the blood banking industry regarding the testing of autologous donations, FDA believes that all blood donations currently collected by the regional and community blood centers, and all of the allogeneic donations collected by hospitals are already being tested for the specified disease agents. FDA also estimates that approximately one-third to one-half of the autologous donations currently collected by hospitals are already being tested for HIV, types 1 and 2, HBV, HCV, and HTLV, types I and II. In the following analysis, an approximate midpoint of 40 percent is used as the assumed percentage of hospital-collected autologous donations already being tested for the specified disease agents.

In 1997, the Government Accounting Office (GAO) estimated that approximately 12 million donations of Source Plasma were collected by plasma centers (Ref. 3). Although the precise number of those donations currently tested for HIV, types 1 and 2, HBV, and HCV is not reported, FDA assumes that virtually all donations are currently being initially screened for the communicable disease agents specified for plasma donations in the proposed rule. However, based on GAO reported variations in the plasma industry's confirmatory testing of repeat reactive donations, it is also assumed that supplemental confirmatory testing for HCV is not widely practiced at present.

The proposed requirements for manufacturer testing of approved test kits will entail manufacturers' use of CBER regulatory reference panels to provide verification of the specificity and sensitivity of each lot of test kit approved for use in testing donations of human blood. This release criterion would be applied to lots of test kits produced by licensed manufacturers or lots produced by manufacturers pursuing licensure of such tests. FDA estimates that the number of manufacturers of kits for the four disease agents specified in the rule currently ranges from six to seven establishments per disease agent. It is also possible that some additional number of manufacturers may pursue licensure of such kits in future years, although the total number is likely to remain small because of the expected limits of demand for such tests.

FDA currently has reference panels available for all of the disease agents specified in the proposed rule, and has made the panels available to all currently licensed manufacturers of test kits. To the agency's knowledge, all currently licensed manufacturers covered by the proposed rule are already performing the proposed tests to comply with their own quality assurance standards. The proposed rule is therefore expected to introduce no substantial impact on these establishments.

2. Estimated Impact of Proposed Requirements for Donor Testing

The proposed rule provisions for donation testing, appropriate handling, labeling, and distribution will involve a one-time effort by all blood establishments to review and modify current blood donor testing, handling, and recordkeeping protocols to comply with the proposed rule. The rule will also involve a yearly increase in donor testing for establishments that currently do not test both allogeneic and autologous blood and blood component donations.

The one-time effort to review and modify current standard operating procedures (SOP's) is expected to vary among establishments, depending on whether the establishment already engages in testing and labeling both autologous and allogeneic blood donations for the specified set of disease agents. For establishments that already perform testing and labeling of both autologous and allogeneic donations (i.e., all plasma centers collecting only for allogeneic use, regional and community blood centers, and 40 percent of hospital collection sites), FDA estimates that it would take approximately 8 hours of staff time to reconcile the proposed regulations against the facility's current standards. This process could be performed by a technical specialist who acts as a regulatory reviewer or manager of quality assurance. Based on the total average hourly compensation of $25.67 for professional specialty and technical occupations in the health services industry, as reported by Bureau of Labor Statistics for March 1997, the cost would be approximately $205, for each of the blood centers and an estimated 40 percent of the hospital blood centers. For establishments that already perform the proposed testing on allogeneic, but do not test autologous donations, FDA assumes that approximately 16 hours of staff time would be required to reconcile and expand the current facility standards to comply with the requirements of the proposed regulation. The cost in this case would be $411 per facility. It is also assumed that all facilities perform careful labeling and recordkeeping on autologous units donations, and that recordkeeping will include more infectious disease information but will not require substantially more time than is already allocated. Thus, the total one-time cost for the industry is estimated to be $813,554 (2,800 establishments - 1,936 hospital blood centers) x $205 + (1,936 x 0.40 x $205) + (1,936 x 0.60 x $411).

The yearly increase in cost of testing for the 1,162 hospitals assumed not to currently test all donations is based on a proportional extrapolation (60 percent of donors) from the estimated number of autologous donations collected in hospital blood centers, as reported in the 1992 blood collection survey (415 units); the estimated cost per required test; and an estimated rate of 0.19 percent HCV repeat-reactive donations reported by the American Red Cross, based on donations received between January 1996 and June 1997. The cost for HIV, types 1 and 2 is estimated to be approximately $5 per test (Ref. 4); the cost per test for HBV, i.e., HBsAg and anti-HBc, are respectively estimated to be $39.20 (Ref. 5) and $38.59; the cost of HCV–EIA and supplemental assay are respectively estimated to be $49.90 and $114.50 (Ref. 6) per test; and the cost of HTLV, types I and II is estimated to be $5.00 per test (Ref. 7). The total yearly increase in cost for the industry, based on these factors, is estimated to be $34,316,570 (415,000 x .60 x [($5.00 + $39.20 + $38.59 + $49.90 + $5.00) + 0.0019 x $114.50)].

The yearly increase in cost for the plasma industry is based on the assumption that potentially all plasma centers will need to begin routine followup testing on donations that test repeatedly reactive for hepatitis C. Assuming an average 0.18 percent (0.0018) rate of HCV repeatedly reactive donations, an annual volume of 12 million donations and the cost of $114.50 per supplemental HCV test, the annual cost is estimated to be no greater than $2,514,420. FDA recognizes that the cost may actually be less if a substantial fraction of HCV repeatedly reactive donations collected by the plasma centers already undergo confirmatory testing.

In summary, the proposed rule would result in an estimated one-time cost of $813,554, and a total annual cost of $36,830,990 ($34,316,570 + $2,514,420) to the blood and plasma industries.

3. Expected Benefits of the Proposed Rule

The proposed rule is intended to increase the safety of all blood and blood component products by providing recipients with increased protection against communicable disease transmission. The rule addresses exposures that may occur through accidents and errors in administration of autologous as well as allogeneic blood units. For example, AABB Anonymous Survey Report included reports of erroneous transfusions (1.2 percent of respondents), untested recovered plasma salvaged (3.7 percent), units lost in transit (12.3 percent), units broken in the lab (33.6 percent), and units broken outside the lab (32.2 percent), as well as other errors (9.8 percent) (Ref. 17). The reduction in communicable disease risk already achieved among allogeneic blood transfusions as a result of infectious disease testing of donors has been quite dramatic. For example, as a result of expansion of blood donor screening and improved laboratory tests, it is now estimated that the chances of transfusion-related HIV infection have decreased to between 1 in 450,000 to 660,000 per unit of blood (Ref. 8). HCV and HBV transfusion risks have also declined. In 1994, 4.3 percent of all HCV infections were transfusion-related, compared to the current rate of 0.02 percent to 0.05 percent. Similarly, although 5.7 percent of the general population is estimated to be seropositive for HBV, the risk of HBV transfusion transmission is currently estimated to be 1 in 200,000 transfused units.

Although the impetus for autologous donation is often the donor's desire to avoid risk of infection from other donors' blood, studies comparing the prevalence of disease markers in autologous donations compared to allogeneic donations have found the incidence of positive disease markers for first time donations among autologous donors to be similar to that among first-time allogeneic donors. Moreover, the rate among first-time autologous donors was generally higher than that found among repeat allogeneic donors (Ref. 9). The finding of positive markers for an allogeneic donation, however, would result in a blood bank's rejection of the donor unit. By contrast, the disease-positive autologous unit would be retained and potentially stored in the same freezer as the screened allogeneic units. Without the proposed requirement for infectious disease testing and labeling, the label of a disease-positive autologous unit may not indicate that the unit presents a potentially infectious disease risk. The accidental and inadvertent use of such units may expose unwitting recipients to a higher than acceptable risk.

The gravity of the disease risks addressed by the proposed rule are widely recognized. Transfusion of HIV, the virus that causes AIDS, continues to cause great concern. Human T cell leukemia/lymphoma viruses types I and II were identified in the early 1980's. Infection with the virus is associated with tropical spastic paraparesis, adult T-cell leukemia/lymphoma, and some inflammatory disorders (Lapane et al.). Although the virus is primarily sexually

transmitted, it can also be transmitted through blood transfusion.

HBV is a major cause of acute and chronic hepatitis, cirrhosis and primary hepatocellular carcinoma worldwide. The Centers for Disease Control and Prevention (CDC) estimated that in 1985 approximately 300,000 persons became infected with HBV. Prior to the development of hepatitis B screening tests, transfusion-related risks were significant. A retrospective testing of blood donors using first generation tests for the presence of HBsAg found that over half of recipients of HBsAg-positive blood developed hepatitis (Ref. 10). Of the current pool of 1 to 1.25 million HBV carriers, approximately 25 percent will develop chronic hepatitis which will progress to cirrhosis and carriers have a risk of liver cancer that is 12 to 300 times higher than noncarriers. An estimated 4,000 persons die each year from hepatitis B-related cirrhosis, and more than 800 die from primary hepatocellular carcinoma (PHC). The lifetime medical cost per case of PHC and cirrhosis is estimated to be $96,500 (Ref. 11).

Epidemiologic and experimental studies indicate that HCV is primarily transmitted by the parenteral route. Persons at increased risk of acquiring hepatitis C include parenteral drug users; health-care workers with occupational exposure to blood; hemodialysis patients; and recipients of whole blood, blood cellular components or plasma. Transfusion of blood or blood products, which accounted for a substantial proportion of HCV infections acquired more than 10 years ago, is now an uncommon means of transmission. CDC estimates that 150,000 to 170,000 new HCV infections occur annually in the United States (Ref. 12). Of patients with transfusion-associated chronic non-A, non-B hepatitis who undergo biopsy within 5 years after onset, at least 40 percent have histologic evidence of chronic active hepatitis and 10 to 20 percent have evidence of cirrhosis (Ref. 13). An estimated 30 percent of those infected will eventually die of liver-related causes, an estimated 8,000 patients per year. Although some HCV patients have been found to respond to interferon therapy, the average cost of care per year for persons with liver disease from chronic hepatitis C is estimated to range from $24,600 for patients without interferon-alpha therapy to $26,500 per year for those receiving a 12-month course of therapy. The latter has been estimated to provide patients with an additional 0.37 quality-adjusted life years (Ref. 14). As described previously, the requirement of HIV, types 1 and 2; HBV; HCV; and HTLV, types I and II testing for all blood and blood component donations, including those for autologous donations, significantly reduces the U.S. population's exposure to the morbidity and mortality risks associated with these diseases, and their attendant costs.

4. Small Entity Impact

The information available to characterize the relevant volumes of affected blood and plasma products is limited. Although the proposed rule is not expected to have a significant impact on a substantial number of small entities, the impact on blood and plasma establishments that might qualify as small entities is uncertain. The FDA has therefore prepared an Initial Regulatory Flexibility Analysis. The blood and plasma establishments affected by the proposed rule are included under the major Standard Industrial Code (SIC) group 80 for providers of health services. According to section 601 of the Regulatory Flexibility Act of 1980, the term "small entity" encompasses the terms "small business," "small organization," and "small governmental jurisdiction." According to the Small Business Administration (SBA), a small business within the blood industry is an enterprise with less than $5 million in annual receipts. A small organization is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field. A "small governmental jurisdiction" generally means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand.

As described in the foregoing analysis, hospitals that do not currently test autologous donations for HIV types 1 and 2, HBV, HCV, and HTLV types I and II are expected to be the primary entity affected by the proposed rule. However, the extent of the small business impact is uncertain. Although the details of blood collection at hospitals are not available, FDA examined other data to develop a preliminary assessment of small business impact. The size of U.S. hospitals varies substantially. The 1998 American Hospital Association (AHA) survey data (Ref. 15) indicate a total of 5,134 U.S. registered community hospitals grouped into 8 bedsize categories. The average annual revenues for facilities in these bedsize categories range from approximately $5.5 million to $513 million. However, since many hospitals are not-for-profit or are operated by State and local governments, the SBA annual receipts criteria for small businesses would not apply to these facilities. Of the 5,134 U.S. community hospitals included in the AHA report 1,330 are under the control of State and local government, 3,045 are nonprofit institutions, and the remaining 759 are reported to be investor-owned.

The number of hospitals that would meet at least one of the various SBA definitions for small entities is uncertain. According to the AHA statistics for 1998, the smallest reported hospital size category includes 262 hospitals with 6 to 24 beds, and total gross revenues of $1.43 billion, yielding average revenues of $5.46 million. FDA assumes that the 11 facilities reported to be investor-owned within this bedsize category could qualify as small entities. Although it is possible that all nonprofit hospitals may qualify as small entities, it appears that a number of facilities might be excluded from that definition because they are reported to be hospitals in a system. According to the AHA survey definition, "hospitals in a system" refer to those "hospitals belonging to a corporate body that owns and/or manages health provider facilities or health-related subsidiaries; the system may also own non-health-related facilities." The AHA currently has record of 1,592 hospitals that are non-federal and nonprofit (including State and local government controlled) that are hospitals in a system. If these facilities were excluded, FDA estimates that 2,783 [1,330 State and local + 3,045 nonprofit - 1,592 in-a-system] non-federal, nonprofit hospitals may qualify as small entities. Thus, a total of 2,794 [2,783 + 11] hospitals might qualify as small entities.

The agency does not know how many of the estimated total of 415,000 autologous units would be collected at hospitals qualifying as a "small entity," nor how many of those establishments are already performing the proposed testing for autologous donors (as noted in the earlier cost analysis, an estimated 40 percent of all hospital-based autologous collections already include blood testing). Some of the hospitals that would be classified as small entities will already be testing autologous donors as required by the proposed rule, and are therefore expected to incur an estimated one-time cost of $205, as described earlier. Other small establishments, that begin autologous donor testing in compliance with the proposed rule, will incur an estimated $411 one-time cost, and yearly costs of new testing based on the number of autologous donors at their facility. The following analysis of potential impact focuses on the annual blood testing costs, which represent the largest

component of cost impact. The analysis assumes that the collections of autologous units may be distributed across hospitals of different size in proportion to the hospitals' share of all reported inpatient surgeries. Table 1 estimates the percentage of all inpatient hospital surgeries, based on the number of inpatient surgeries reported to AHA as performed by hospitals in different bedsize categories. This percentage is used to estimate a share of the total of 415,000 autologous units collected by hospitals in each bedsize category, for which testing would be newly required under the proposed rule. The number of autologous units per hospital within a bedsize category is based on the total estimated autologous units per bedsize category divided by the total number of hospitals reported for that size category. These estimates (rounded to the nearest whole unit) are presented in the rightmost column of the Table 1.

TABLE 1.—ESTIMATED AUTOLOGOUS BLOOD UNITS PER HOSPITAL BASED ON ESTIMATED SHARE OF INPATIENT. SURGERIES BY BEDSIZE CATEGORY AND TOTAL HOSPITAL COLLECTIONS OF AUTOLOGOUS UNITS

Bedsize Category	Non-federal Hospitals	Estimated percent inpatient surgeries	Estimated share of 415,000 collected autologous units	Estimated autologous units per hospital
6 to 24	262	0.21	857	3
25 to 49	906	2.02	8,364	9
50 to 99	1,128	6.03	25,029	22
100 to 199	1,338	19.38	80,407	60
200 to 299	692	20.99	87,095	126
300 to 399	361	16.24	67,396	187
400 to 499	196	12.17	50,506	258
500 +	251	22.97	95,343	380

The cost impact of testing autologous blood collections is based on the above estimates of autologous units per hospital, and the earlier estimated average HIV, HCV, HTLV, and HBV testing cost per donation of $137.82 [$5.00 + $49.90+ $5.00 $38.50 + $39.20] + [0.0019 x $114.50]. The estimated annual cost impact per hospital, by bedsize category, is shown in the Table 2. To provide some perspective on relative impact, the newly-incurred cost for autologous unit testing is also shown as a percentage of average annual gross revenues per hospital. The notification cost is estimated to be approximately 0.01 percent of the average annual gross revenues for every size category.

TABLE 2.— ESTIMATED DOLLAR COST PER HOSPITAL FOR AUTOLOGOUS BLOOD TESTING AND ESTIMATED COST AS A PERCENTAGE OF AVERAGE ANNUAL REVENUES

Bedsize Category	Estimated Cost per Hospital at $138 per Newly Tested Unit	Gross Annual Revenue per Hospital (Millions)	Autologous Blood Testing Cost as Percent of Gross Annual Revenue
6 to 24	$451	$5.459	0.01
25 to 49	$1,272	$12.606	0.01
50 to 99	$3,058	$27.711	0.01
100 to 199	$8,282	$74.803	0.01
200 to 299	$17,346	$153.988	0.01
300 to 399	$25,731	$236.917	0.01
400 to 499	$35,514	$329.161	0.01
500 +	$52,351	$513.066	0.01

These findings of this analysis suggest that the relative cost impact may be fairly consistent across hospitals of different sizes, if the number of affected autologous units per bedsize category is proportionate to the number of inpatient surgeries performed by hospitals in different size categories. However, the distribution of affected autologous units across hospitals of different size and types of ownership is currently unknown. Because this information is essential for the estimation of the economic impact on small entities, FDA requests industry comment on the anticipated numbers of affected units of autologous blood and their distribution across hospitals in the industry, particularly those units collected by hospitals that can be classified as small entities.

Regardless of size, the net cost impact for hospitals that must begin testing autologous units may be limited because the cost of the require testing may generally be shifted to patients or to third-party payers, including Medicare. For example, the cost of units or packed red blood cells or blood components, including costs of processing and administration, are covered under both Medicare Part A and Part B (Ref. 16). Currently, Medicare pays for all but the first 3 pints of blood per calendar year. A Medicare beneficiary may choose to pay for or replace the first three units of blood, the annual blood deductible.

The specific requirements and anticipated costs for changes in SOP's for donation collection, testing, labeling, quarantine, and distribution are described previously. All blood establishments are already engaged in a substantial amount of donation testing, recordkeeping, unit labeling, and control. For some hospital blood centers, these activities may be expanded. However, as indicated previously, it is not clear whether the establishments most affected could be characterized as small business entities.

The number of plasma facilities that would qualify as small entities is also uncertain. According to the General Accounting Office (Ref. 16) approximately 370 paid plasma

collection centers annually collect about 11 million liters of plasma, the vast majority of which is processed by four companies: Alpha Therapeutic Corp., Baxter Healthcare Corp., Bayer Corp., and Centeon LLC. FDA estimates that approximately 90 percent of these plasma collection centers are owned by companies that operate a number of centers. Although the agency is uncertain about the level of revenues for these companies, it is considered likely that most would have annual receipts of $5 million or more per year. The remaining 10 percent of paid plasma collection centers may qualify as small business establishments. The potential impact on these facilities will be a function of the number of donors and the HCV repeatedly reactive findings among donors at their facility. If the estimated 12 million plasma donations were evenly distributed over the 487 registered facilities, each facility would average 25,000 donations. Assuming approximately 8 units per plasma donor per year (Ref. 16) each facility would average 3,125 donors, approximately 6 [0.0018 x 3,125] of whom might test repeatedly reactive for HCV and require supplemental testing. The expected cost of the additional testing would then be $687 [$114.50 x 6] per facility per year.

In addition to these for-profit entities, the remaining 100 or so plasma collection facilities, of the total of 487 registered facilities, function within blood collection centers that are operated by the American Red Cross, or are independently operated. The independently operated, not-for-profit blood collection centers would likely qualify as small entities. The added impact of the proposed rule on plasma collection performed at blood collection facilities is expected to be small, however, because the required testing would already be performed for whole blood donation.

FDA has considered several alternatives for lessening burden on small entities. The first alternative would be to not issue additional requirements for testing of allogeneic or autologous donations for evidence of infection due to communicable disease agents and continue with the recommendations for testing in addition to the required tests for HIV and HBV. FDA considers this alternative to be ineffective because it does not promote consistency in testing and related procedures among entities, does not provide FDA with clear enforcement authority, and is converse to the agency's and industry's mission, i.e., the safety of the blood supply. A second alternative would be to continue to specify in the regulations the marker to be tested for, such as a specific antigen or antibody. Tests for new or different markers of infection due to a communicable disease agent have changed as they become more appropriate or the technology in testing has become more sensitive or specific. FDA believes this alternative would not provide for the continued improvement in the testing regimen and would limit flexibility not only in testing, but in controlling cost to the different entities performing testing. Finally, FDA has requested industry comment and suggestions for alternatives to autologous unit testing, as discussed earlier under section " C . Exceptions."

V. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in this estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Requirements for Testing Human Blood Donors for Evidence of Infection due to Communicable Disease Agents.

Description: FDA is proposing to revise the testing requirements in part 610 subpart E issued under the authorities of the act and the PHS Act. Currently, subpart E in part 610 requires testing for HBV and HIV and the development and administration of product quarantine and recipient notification ("Lookback") program when donors test repeatedly reactive for antibody to HIV, or otherwise are determined to be unsuitable when tested in accordance with § 610.45. FDA is proposing to: (1) Require screening tests for evidence of infection due to communicable disease agents for autologous donations; (2) require supplemental (additional, more specific) testing of all repeatedly reactive screening test results for which there is a supplemental test; and (3) codify as requirements those recommendations that FDA has issued that are necessary to ensure blood safety, including testing for evidence of infection due to HIV, HBV, HCV, and HTLV.

FDA proposes to require that each donation of human blood or blood component, including those intended for autologous use or as a component of a medical device, be tested for evidence of infection due to HIV, types 1 and 2; HBV; HCV; and HTLV, types I and II. Each donation that tests repeatedly reactive when screened for evidence of infection due to any of the communicable disease agents would be required to be further tested whenever a supplemental (additional, more specific) test has been approved for such use by FDA. Testing would be required to be performed by a laboratory certified under CLIA and registered with FDA in accordance with part 607. Deferral of donors testing repeatedly reactive from future donations would be required. Criteria are proposed for release or shipment of human blood or blood components prior to completion of testing, and restrictions on use of human blood or blood components that test repeatedly reactive when screened for evidence of infection. The proposed rule would also require manufacturers of test kits approved to test human blood donors for evidence of infection due to communicable disease agents to verify an acceptable sensitivity and specificity of each lot of test kit using a reference panel obtained from CBER of other FDA designated source, when available.

Description of Respondents: Manufacturers of blood and blood components and clinical testing laboratories.

Based on June 1998 registration records, there are approximately 2,801 FDA registered blood collection facilities in the United States that collect approximately 27,000,000 units of Whole Blood and Source Plasma annually. To ensure consistency in the blood industry's testing practices, FDA is proposing to require testing consistent with its current recommendations and industry practice. Laboratories that perform testing of donor blood samples must be registered with FDA in accordance with part 607. Currently,

§ 607.65(g) provides an exemption from FDA registration to clinical laboratories that are approved for Medicare reimbursement and which are engaged in the testing of blood products in support of other registered establishments. FDA is proposing to remove this exemption and require such clinical labs to register. Because laboratories that currently perform testing of donor blood samples are already registered, FDA anticipates that the number of new registrants from clinical labs that will no longer be exempt from registration will be one or less per year. Under part 607 the burden for registrants not previously exempt is approved under OMB 0910–0052. Under that OMB package, FDA estimated the time required to prepare and send in the information for a new registration is approximately 1 hour.

FDA proposes to permit the emergency release or shipment of human blood or blood components prior to the completion of testing for evidence of infection due to communicable disease agents. The agency recognizes that there are rare medical emergencies, e.g., where a patient's need for blood is so acute as to preclude any communicable disease testing of the blood. FDA believes that the use of untested or incompletely tested blood in such medical emergencies should not be prohibited. FDA is proposing to remove § 640.2(f), which provides for emergency release of Whole Blood prior to completion of required testing and to place the provision for medical emergency situations in § 610.40(e), which will be applicable to all blood products, including Whole Blood. Release of blood or blood components due to a medical emergency prior to completion of required testing must be appropriately documented and the results of required testing provided to the consignees as soon as possible. Because such a medical emergency is a rare occurrence, FDA expects the recordkeeping and reporting burden to be very minimal with one or less occurrence per year. Documentation of the medical emergency should take a half hour or less and the reporting of test results to consignees is considered under section 1320.3(b)(2) of the PRA to be part of usual and customary practice or procedures to finish the testing and provide the results.

FDA is proposing in § 610.40(e) to permit, with FDA approval, shipment of certain blood components for further manufacturing before testing is completed and the test results are received by the collection facility. The only product currently shipped prior to completion of hepatitis B testing is a licensed product, Source Leukocytes, used in the manufacture of interferon, which requires rapid preparation from blood. Shipment of Source Leukocytes are preapproved under a product license application (and the shipment does not have to be reported to the agency). To obtain approval from FDA, the agency would expect the manufacturer(s) to submit specific procedures for collection, shipment, and quarantine of a product before testing is completed, completion of testing as soon as possible after shipping, and prompt communication of test results to the consignee. Based on the number of applications for the manufacture of Source Leukocytes received during fiscal year (FY) 95, FY 96, and FY 97, the agency anticipates two applications may be received annually. According to information from industry, a license application of this type would contain safety and effectiveness information and would take approximately 1,600 hours to prepare. FDA estimates that approximately 1 hour of the estimated 1,600 hours would be used in preparing the request for FDA's approval to ship a product prior to completion of testing.

According to information retrieved from FDA's database on licensed establishments, there are approximately 145 manufacturers producing licensed Source Leukocytes. Under § 610.40(e)(2), the agency estimates, based on information provided by industry, that each manufacturer would ship approximately three units of blood or blood components prior to testing the donor and that it would take an estimated 15 minutes to provide the completed test results to the consignee.

Under § 610.40(f)(2)(ii), according to FDA's database, there are approximately 343 licensed manufacturers that would ship known repeatedly reactive units. Industry estimates that each manufacturer would ship an estimated 10 units per month that would require two labels; one as repeatedly reactive for the appropriate screening test, and the other stating the exempted use specifically approved by FDA. Industry also estimates that it would take approximately 10 minutes per unit to affix the labels.

FDA estimates the burden for this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
607.20	1	1	1	1	1
610.40(e)(2)	145	36	5,220	0.25	1,305
610.40(f)(2)(ii)	343	120	41,160	0.2	8,232
Total					9,538

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
610.40	1	1	1	1	1

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Under section 1320.3(c)(2) of the PRA, the labeling requirements in 21 CFR 610.40(f)(2) and 610.42 do not constitute collection of information because information required to be on the labeling is originally supplied by the Federal Government to the manufacturers for the purpose of disclosure to the public in order to keep

the blood supply safe and protect public health.

The reporting of test results to the consignee in § 610.40(e) does not constitute collection of information burden because it is the customary and usual practice or procedure to finish the testing and provide the results to the manufacturer responsible for labeling the blood products.

In compliance with section 3507(d) of the PRA of 1995 (44 U.S.C. 3507(d)), the agency has submitted a copy of this proposed rule to OMB for review of the information collection provisions. Interested persons are requested to submit written comments regarding information collection by September 20, 1999 to the Office of Information and Regulatory Affairs, OMB (address above).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(j) that this action is of a type that does not individual or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Request for Comments

Interested persons may, on or before November 17, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal, except that comments regarding information collection provisions should be submitted in accordance with the instructions in section V. of this document. Two copies of any comments on issues other than information collection are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Wallace, E. L., W. H. Churchill, D. M. Surgenor, J. An, G. Cho, S. McGurk, and L. Murphy, "Collection and Transfusion of Blood and Blood Components in the United States, 1992," *Transfusion*, 35, 802–812, 1995.

2. American Association of Blood Banks, *Facts About Blood and Blood Banking*, "http://www.aabb.org/docs/facts.html".

3. General Accounting Office, "Blood Safety: Enhancing Safeguards Would Strengthen the Nation's Blood Supply," GAO–HEHS–97–143, June 1997.

4. AuBuchon, J. P., J. D. Birkmeyer, and M. P. Busch, "Cost-effectiveness of Expanded Human Immunodeficiency Virus Testing Protocols for Donated Blood," *Transfusion*, 37:45–51, 1997.

5. Kaur, S., L. Rybicki, B. R. Bacon, J. L. Gollan, V. K. Rustgi, W. D. Carey, and the National Hepatitis Surveillance Group, "Performance Characteristics and Results of a Large-scale Screening program for Viral Hepatitis and Risk Factors Associated with Exposure to Viral Hepatitis B and C: Results of the National Hepatitis Screening Survey," *Hepatology*, vol. 24, 5:979–986, 1996.

6. Lapane, K. L., A. F. Jakiche, D. Sugano, C. S. Wayne Weng, and W. D. Carey, "Hepatitis C Infection Risk Analysis: Who Should Be Screened? Comparison of Multiple Screening Strategies Based on the National Hepatitis Surveillance Program," *The American Journal of Gastroenterology*, vol. 93, 4:591–596, 1998.

7. Tynell, E., S. Andersson, E. Lithander, M. Arneborn, J. Blomberg, H. Bertil Hansson, A. Krook, M. Nomberg, K. Ramstedt, A. Shanwell, and A. Bjorkman, "Screening for Human T-Cell Leukaemia/Lymphoma Virus Among Blood Donors in Sweden: Cost Effectiveness Analysis," *British Medical Journal*, vol. 316, 1417–1422, May 1998.

8. Podnos, Y. D., and R. A. Williams, Current Risks for Blood Borne Viral Illness in Blood Transfusions, *Western Journal of Medicine*, vol. 168, 1:36–37, January 1998.

9. Myhre, B. A., and P. I. Figueroa, "Infectious Disease Markers in Various Groups of Donors," *Annals of Clinical and Laboratory Science*, vol. 25, 1:39–43, 1995.

10. Public Health Service Inter-Agency Guidelines for Screening Donors of Blood, Plasma, Organs, Tissues, and Semen for Evidence of Hepatitis B and Hepatitis C, *Morbidity and Mortality Weekly Report* 40 (RR–4) April 19, 1991.

11. Margolis, H. S., P. J. Coleman, R. E. Brown, E. E. Mast, S. H. Sheingold, and J. A. Arevalo, "Prevention of Hepatitis B Virus Transmission by Immunization: An Economic Analysis of Current Recommendations," *Journal of the American Medical Association*, vol. 274, No. 15, October 1995.

12. U.S. Centers for Disease Control and Prevention, 1997, "www.cdc.gov/ncidod/diseases/hepatitis".

13. *Morbidity and Mortality Weekly Report*, 40 (RR–4) April 19, 1991.

14. Kim, W. R., J. J. Poterucha, J. E. Hermans, T. M. Therneau, E. R. Dickson, R. W. Evans, and J. B. Gross, "Cost-Effectiveness of 6 and 12 Months of Interferon Therapy for Chronic Hepatitis C," *Annals of Internal Medicine*, vol. 127, No. 10, November 1997.

15. Healthcare InfoSource, Inc., a subsidiary of the American Hospital Association, *Hospital Statistics*, 1998 Edition, Chicago, IL.

16. General Accounting Office, "Blood Plasma Safety: Plasma Product Risks Are Low if Good Manufacturing Practices Are Followed," GAO–HEHS–98–205, September 1998.

17. American Association of Blood Banks (AABB) Association Bulletin No. 95–4: *AABB Position on Testing of Autologous Units. Attachment 1: AABA Anonymous Autologous Survey Request*, May 9, 1999.

List of Subjects

21 CFR Part 607

Blood.

21 CFR Parts 610 and 660

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 607, 610, 640, and 660 be amended as follows:

PART 607—ESTABLISHMENT REGISTRATION AND PRODUCT LISTING FOR MANUFACTURERS OF HUMAN BLOOD AND BLOOD PRODUCTS

1. The authority citation for 21 CFR part 607 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 371, 374; 42 U.S.C. 216, 262.

§ 607.65 [Amended]

2. Section 607.65 *Exemption for blood product establishments* is amended by removing paragraph (g).

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

3. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

4. The Table of Contents for subpart E of part 610 is revised to read as follows:

Subpart E—Testing Requirements for Communicable Disease Agents

Sec.
610.40 Test requirements.
610.41 Donor deferral.
610.42 Restrictions on use for further manufacture of in vitro diagnostic products.
610.44 Use of reference panels by manufacturers of test kits.
610.46 "Lookback" requirements.
610.47 "Lookback" notification requirements for transfusion services.

5. The heading of subpart E is revised to read as follows:

Subpart E—Testing Requirements for Communicable Disease Agents

6. Section 610.40 is revised to read as follows:

§ 610.40 Test requirements.

(a) *Human blood and blood components.* Except as specified in paragraph (b) of this section, each donation of human blood or blood components intended for use in preparing a product, including donations intended for autologous use or as a component of a medical device, shall be tested for evidence of infection due to the following communicable disease agents by using screening tests approved for such use by the Food and Drug Administration (FDA) in accordance with the manufacturer's instructions. One or more such tests shall be performed as necessary to adequately and appropriately reduce the risk of transmission of communicable disease.

(1) Human immunodeficiency virus, type 1;

(2) Human immunodeficiency virus, type 2;

(3) Hepatitis B virus;

(4) Hepatitis C virus;

(5) Human T-lymphotropic virus, type I;

(6) Human T-lymphotropic virus, type II.

(b) *Exceptions.* (1) Donations of Source Plasma are not required to be tested for evidence of infection due to the communicable disease agents listed in paragraphs (a)(5) and (a)(6) of this section.

(2) Donations of human blood or blood components intended solely as a component of an in vitro medical device are not required to be tested for evidence of infection due to the communicable disease agents listed in paragraphs (a)(5) and (a)(6) of this section unless they contain viable leukocytes.

(3) Requirements in this subpart shall not apply to the in-house use or distribution of samples of blood, blood components, plasma, or sera if intended for clinical laboratory testing or research purposes, and not for administration to humans or use in the manufacture of a product.

(c) *Further testing.* Each donation found to be repeatedly reactive by a screening test performed in accordance with paragraph (a) of this section shall be further tested whenever a supplemental (additional, more specific) test has been approved for such use by FDA.

(d) *Testing responsibility.* Testing for evidence of infection due to the communicable disease agents designated in paragraph (a) of this section shall be performed by a laboratory registered in accordance with part 607 of this chapter and certified to perform testing on human specimens under the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. 263a) in accordance with 42 CFR part 493.

(e) *Release or shipment prior to testing.* Human blood or blood components that are required to be tested for evidence of infection due to the communicable disease agents designated in paragraph (a) of this section may be:

(1) Released for shipment or use before test results are available only in appropriately documented medical emergency situations; or

(2) Shipped for further manufacturing as approved in writing by FDA, provided the tests for evidence of infection due to communicable disease agents are performed as soon as possible after release or shipment and the results provided promptly to the consignee.

(f) *Restrictions on shipment or use.* (1) Human blood or blood components that have a repeatedly reactive screening test for evidence of infection due to a communicable disease agent(s) designated in paragraph (a) of this section or that are collected from a donor with a record of a repeatedly reactive screening test for evidence of infection due to a communicable disease agent designated in paragraph (a) of this section shall not be shipped or used, except as provided in paragraph (f)(2) or (f)(3) of this section.

(2) The restrictions shall not apply to:

(i) Blood or blood components intended for autologous use, provided that such units shall be appropriately labeled in accordance with § 606.121(i) of this chapter and with the following Biohazard legend:

(ii) Blood or blood components may be shipped or used under conditions specifically approved in writing by FDA, provided that such blood or blood components are appropriately labeled in accordance with § 606.121 or § 640.70 of this chapter and display the Biohazard legend. Such blood or blood components shall be labeled as repeatedly reactive for the appropriate screening test for evidence of infection due to the identified communicable disease agent. For blood or blood components intended for further manufacturing into injectable products, labeling shall include a statement indicating the exempted use specifically approved by FDA. For blood or blood components intended for in vitro use, labeling shall include the statement "Caution: For Further Manufacturing Into Non-Injectable Products For Which There Are No Alternative Sources".

(iii) Samples for in-house use or distribution if intended for clinical laboratory testing or research purposes, and not intended for administration in humans or use in the manufacture of a product.

(3) Human blood or blood components testing negative for evidence of infection due to a communicable disease agent(s) designated in paragraph (a) of this section from a donor with a record of a repeatedly reactive result for the same screening test for evidence of infection due to a communicable disease agent(s) designated in paragraph (a) of this section may be used if the donor has been subsequently shown to be suitable by a requalification method or process found acceptable for such purposes by FDA.

7. Section 610.41 is revised to read as follows:

§ 610.41 Donor deferral.

Except for autologous donors and as provided in § 640.65(b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) of this chapter, donors testing repeatedly reactive for evidence of infection due to a communicable disease agent(s) listed in § 610.40(a) or reactive for a serologic test for syphilis shall be deferred from future donations of blood and blood components except:

(a) Donors who test repeatedly reactive for HTLV, types I or II, or anti-HBc on only one occasion, unless further tested under § 610.40(c).

(b) Donors testing repeatedly reactive for HTLV, types I and II or anti-HBc may serve as donors of Source Plasma.

(c)(1) Deferred donors testing repeatedly reactive for evidence of infection due to a communicable disease agent listed in § 610.40(a) may serve as donors for blood or blood components when used in accordance with § 610.40(f).

(2) Deferred donors previously showing evidence of infection due to hepatitis B virus when tested in accordance with § 610.40(a) and (c) may

donate blood or blood components for use as a component of a medical device or may donate blood or blood components in the preparation of Hepatitis B Immune Globulin (Human) provided their current donations test nonreactive when tested in accordance with § 610.40(a) and the donor is otherwise determined to be suitable.

(d) Donors with a reactive serologic test for syphilis need not be deferred if found negative by an approved specific treponemal test (confirmatory test for syphilis).

(e) Deferred donors may be found to be suitable as donors of blood or blood components by a method or process found acceptable for such purposes by the Food and Drug Administration.

8. Section 610.42 is added to subpart E to read as follows:

§ 610.42 Restrictions on use for further manufacture of in vitro diagnostic products.

In vitro diagnostic products manufactured from human blood or blood components found to be repeatedly reactive by a screening test performed in accordance with § 610.40(a) shall be labeled in accordance with § 809.10 of this chapter, and shall include a statement of warnings in the label indicating that the product was manufactured from a donation found to be repeatedly reactive by a screening test for evidence of infection due to the identified communicable disease agent.

9. Section 610.44 is added to subpart E to read as follows:

§ 610.44 Use of reference panels by manufacturers of test kits.

When available, a reference panel shall be obtained from the Center for Biologics Evaluation and Research or from a Food and Drug Administration designated source, and shall be used by the manufacturer to verify acceptable sensitivity and specificity of:

(a) Each lot of a test kit approved for use in testing donations of human blood and blood components for evidence of infection due to communicable disease agents listed in § 610.40(a); and

(b) Each lot of a human immunodeficiency virus (HIV) test approved for use in the diagnosis or monitoring of this communicable disease agent. A lot that is found to be not acceptable for sensitivity and specificity under § 610.44(a) and (b) shall not be released.

§ 610.45 [Removed]

10. Section 610.45 *Human Immunodeficiency Virus (HIV) requirements* is removed.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

11. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 640.2 [Amended]

12. Section 640.2 *General requirements* is amended by removing paragraph (f).

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

13. The authority citation for 21 CFR part 660 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 660.42 [Removed]

14. Section 660.42 *Reference panel* is removed.

Dated: April 20, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–21296 Filed 8–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 630

[Docket No. 98N–0607]

General Requirements for Blood, Blood Components, and Blood Derivatives; Notification of Deferred Donors

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require blood and plasma establishments to notify donors of their deferral due to test results for communicable disease agents or failure to satisfy suitability criteria with the intent of reducing the risk of transmission of communicable disease through the use of blood, blood components, and blood derivatives. Under the proposed rule, blood and plasma establishments would notify the donors that they have been deferred and the reason for the deferral; provide information concerning appropriate medical followup and counseling; describe the types of donations the donors should not make in the future; and discuss the possibility that the donor may be found suitable in the future, where appropriate. FDA is issuing this rule as part of the agency's "Blood Initiative" in which FDA is reviewing and, when appropriate, revising its regulations, policies, guidance, and procedures related to blood and blood products, including blood derivatives.

DATES: Submit written comments by November 17, 1999. Submit written comments on the information collection provisions by September 20, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs (OMB), New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attention: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Introduction

For a variety of reasons discussed as follows, FDA has decided to comprehensively review and, as necessary, revise its regulations, policies, guidance, and procedures related to the licensing and regulation of blood products. In the **Federal Register** of June 3, 1994 (59 FR 28821 and 59 FR 28822, respectively), FDA issued two documents entitled "Review of General Biologics and Licensing Regulations" (Docket No. 94N–0066) and "Review of Regulations for Blood Establishments and Blood Products" (Docket No. 94N–0080). The documents announced the agency's intent to review biologics regulations (parts 600, 601, 606, 607, 610, 640 and 660 (21 CFR 600, 601, 606, 607, 610, 640 and 660)), and requested written comments from the public. Interested persons were given until August 17, 1994, to respond to the documents. In response to requests for additional time, FDA twice extended the comment period, as announced in the **Federal Register** of August 17, 1994

(59 FR 42193), and November 14, 1994 (59 FR 56448). In addition, FDA responded to requests for a public meeting to allow for the presentation of comments regarding the agency's intent to review the biologics regulations. On January 26, 1995, FDA held a public meeting to provide an opportunity for all interested individuals to present their comments and to assist the agency in determining whether the regulations should be revised, rescinded, or continued without change. Since the time of the regulation review, FDA has implemented a number of changes to its regulations and policies applicable to the general biologics and licensing regulations, some of which have applied to blood products as well as other biological products. (See, e.g., the final rules issued May 14, 1996 (61 FR 24313); August 1, 1996 (61 FR 40153); November 6, 1996 (61 FR 57328); July 24, 1997 (62 FR 39890); and October 15, 1997 (62 FR 53536)).

Because of the importance of a safe national blood supply, the U. S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on Human Resources and Intergovernmental Relations (the Subcommittee) and other groups such as the General Accounting Office (GAO), and the Institute of Medicine (IOM) have reviewed the agency's policies, practices, and regulations. Reports issued following the respective reviews made a number of recommendations as to how FDA might improve the biologics regulations, particularly as they apply to the continued safety of blood products. The relevant reports are: (1) "Protecting the Nation's Blood Supply From Infectious Agents: The Need for New Standards to Meet New Threats," by the Subcommittee (August 2, 1996); (2) "Blood Supply: FDA Oversight and Remaining Issues of Safety," by GAO (February 25, 1997); (3) "Blood Supply: Transfusion-Associated Risk," by GAO (February 25, 1997); and (4) "HIV and the Blood Supply: An Analysis of Crisis Decisionmaking," by IOM (July 13, 1995). These reports are on file with the Dockets Management Branch (address above) under the docket number given in the heading of this document.

FDA has reviewed these reports and agrees with the majority of the recommendations contained within them. However, rather than to only respond specifically to the recommendations from the Subcommittee, GAO, IOM, and the public, FDA has convened a number of internal task forces to review a variety of issues related to the regulation of blood and blood products, including how to most appropriately update the existing regulations applicable to blood and blood products. In the future, FDA intends to issue a number of blood-related rulemakings that various FDA task groups are currently preparing. FDA is not describing the specific recommendations it has received and the numerous objectives of the Blood Initiative in this document. Future rulemaking and other notices will describe and discuss specific recommendations and regulatory objectives.

II. Background on Notification of Deferred Donors

This rule is proposed in order to reduce the risk of infection due to communicable disease agents to blood product recipients and to individuals handling blood or blood products. The safety of the blood supply is enhanced when donors who may present significant risks of transmitting infectious disease, because of testing results indicating evidence of infection due to communicable disease agents or failure to satisfy suitability criteria associated with the prevention of certain communicable disease agents, are excluded from donating blood and blood components. FDA has issued regulations at parts 610 and 640 on donor testing and suitability in order to help assure the safety of blood products. The Public Health Service (PHS) and FDA, as part of PHS, also have periodically issued guidance on donor testing, suitability, deferral, and notification when new scientific developments warranted. This rule is also being proposed so that donors may be informed of their deferral and seek medical counseling or treatment, if appropriate. Additionally, such notification is expected to improve blood safety by preventing re-donation by individuals at risk for transmitting infectious disease. Also, precautions taken to minimize the risk of transmission by informed donors may reduce the spread of communicable diseases in the population.

FDA has taken a number of actions to provide for the notification of certain deferred donors. Described in the following paragraphs are some of the more significant actions and their impact on donor notification.

In 1983, PHS issued guidelines recommending that individuals at increased risk for Acquired Immune Deficiency Syndrome (AIDS) refrain from donating (Ref. 1).

In 1985, PHS issued guidelines concurrent with the approval of human immunodeficiency virus (HIV) antibody tests that donors testing repeatedly reactive in screening tests for human immunodeficiency virus, type 1 (HIV–1) be notified. In addition, PHS recommended that the donor be notified if other tests such as the Western blot were positive (Ref. 2).

In 1987, PHS recommended that a person be considered to have serologic evidence of HIV infection only after an enzyme immunoassay screening test was repeatedly reactive and another test such as Western blot had been performed to validate the results (Ref. 3). These recommendations have been updated periodically (Refs. 4 and 5) and extended to include notification of donors testing positive for antibody to human immunodeficiency virus, type 2 (HIV–2) (Ref. 6).

In its 1990 recommendations, FDA recommended to blood establishments that supplemental testing be performed prior to donor notification in its Memorandum to Blood Establishments: Recommendations for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products.

In 1988, PHS recommended notification of donors who were confirmed positive for human T-lymphotropic virus, type I (HTLV–I) of their test results and that they had been deferred as a donor in Licensure of Screening Tests for Antibody to T-Lymphotropic Virus, Type I (Ref. 7).

In 1991, the Department of Health and Human Services (DHHS), in a PHS Inter-Agency Guideline, recommended notifying donors of the results of tests for hepatitis B surface antigen (HBsAg), antibody to hepatitis C virus (anti-HCV), alanine aminotransferase (ALT) and antibody to hepatitis B core (anti-HBc) in the Public Health Service Interagency Guideline for Screening Donors of Blood, Plasma, Organs, Tissue and Semen for Evidence of Hepatitis B and Hepatitis C (Ref. 8).

In the 1995 Guideline for Quality Assurance in Blood Establishments (60 FR 36290, July 14, 1995), FDA further identified donor notification and counseling as two of the five key elements of donor deferral.

The blood industry has adopted these recommendations as well as developed their own guidance on donor notification. Industry practice includes notifying donors who are permanently deferred due to positive test results for viral markers of their deferred status and providing recommendations for followup testing, counseling, and appropriate medical referral. In the past, however, FDA has not issued regulations on when a deferred donor should be notified. To further enhance the safety of the blood supply, FDA

believes that donors should be notified when they are deferred due to test results or donor suitability criteria. Accordingly, FDA is proposing to require notification of donors who are deferred for evidence of infection due to communicable disease agents as required under proposed § 610.41 and for failure to satisfy suitability criteria associated with the prevention of communicable diseases. The proposed rule would help assure consistency in the blood industry's notification practices, and would provide FDA with clear enforcement authority if compliance problems occur.

GAO, at the request of Congressman John Dingell, Ranking Minority Member, Committee on Commerce, House of Representatives, recently reviewed the FDA's "layers of safety" intended to help ensure the safety of blood products in order "to identify issues that might threaten the nation's blood supply." In its report of February 1997 entitled "Blood Supply: Transfusion Associated Risks," GAO concluded that "the blood supply is safer today than at any time in recent history." Nevertheless, in an accompanying report ("Blood Supply: FDA Oversight and Remaining Issues of Safety"), GAO made several recommendations on improving the safety of our nation's blood supply. GAO recommended that "(FDA) require blood facilities to notify all donors who are permanently deferred that they have been deferred and the medical reason they are deferred." Citing public health concerns, GAO further recommended that:

> * * * (N)otification be based on positive confirmatory tests for viral markers (for the viruses that have licensed confirmatory tests) and all other medical reasons that result in permanent deferral (for example, the intake of pituitary growth hormone). Notification should include the reason for the permanent deferral, possibilities for re-entry as a donor, and counseling or referral to the donor's physician (including, when pertinent, actions to be taken to minimize transmission of viruses to others).

In its response, DHHS generally agreed with the GAO recommendations. FDA believes the proposed donor notification rule would enhance blood safety by promoting self-exclusion of donors who may present significant risks to the blood supply. FDA believes that donors who are informed of and understand the significance of their deferred status are less likely to attempt to donate again, thus helping to assure a safer blood supply. Donor notification also would enhance the public health by informing donors, as appropriate, of the need to seek treatment and additional medical counseling. Such measures could benefit the health of the donor and also provide information needed to prevent further spread of infection.

III. The Impact of Other Proposed Rules

FDA intends to issue other proposed rules in conjunction with the proposed donor notification rule. FDA is proposing to revise the donor testing and deferral regulations in part 610, which apply to blood and blood components. The related proposed testing and deferral document is found elsewhere in this issue of the **Federal Register**. FDA also intends to issue in the near future a proposed rule to revise donor suitability requirements.

The related proposed testing and deferral rule would, among other things, add requirements to test blood and blood components for evidence of infection due to hepatitis C virus (HCV), HTLV–I, and HTLV–II, while retaining testing requirements for hepatitis B virus (HBV), HIV–1, and HIV–2. FDA intends that the proposed testing rule would replace the requirements currently found in §§ 610.40 through 610.45. The testing and deferral requirements for a serologic test for syphilis (i.e., evidence of infection due to *Treponema pallidum*) found in §§ 640.5 and 640.65 would remain in part 640. The related proposed testing and deferral rule also would add a requirement in proposed § 610.41 that, except in certain specified circumstances, donors testing repeatedly reactive for evidence of infection due to a communicable disease agent(s) listed in proposed § 610.40(a) be deferred from future donations of blood or blood components. In addition, donors testing reactive for a serologic test for syphilis would also be deferred except as provided in current § 640.65 or proposed § 610.41. Under the proposed donor notification rule, blood and plasma establishments would be required to notify donors who have been deferred under proposed § 610.41.

As mentioned previously, FDA also intends to propose to revise the donor suitability requirements for donors of blood and blood components. FDA intends to identify donor suitability criteria that would cause a donor to be deferred and thus trigger notification under the proposed donor notification document. Among those donor suitability criteria being considered are high risk behavior associated with the transmission of HIV, HBV, and HCV, such as past or present abuse of injectable drugs. A new section identifying donor suitability criteria will be designated in the final rule for donor notification.

IV. Legal Authority

FDA is proposing to issue this new rule under the authority of sections 351 and 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 262 and 264 *et seq.*) and the provisions of the Federal Food, Drug, and Cosmetic Act (the act) that apply to drugs (21 U.S.C. 201 *et seq.*). Under section 361 of the PHS Act, FDA may make and enforce regulations necessary to prevent the introduction, transmission, and spread of communicable disease between the States or from foreign countries into the States (see Sec. I, 1966 Reorg. Plan No. 3 at 42 U.S.C. 202 for delegation of section 361 authority from the Surgeon General to the Secretary of the Department of Health and Human Services (Secretary); see 21 CFR 510.(a)(4) for delegation from the Secretary to the Food and Drug Administration). Intrastate transactions may also be regulated under section 361 of the PHS Act (see *Louisiana* v. *Mathew*, 427 F. Supp. 174, 176 (E.D.La. 1977)).

Notification of donors that they have been deferred and consequently should not attempt subsequent donations would help prevent unsafe units of blood or blood products from entering the blood supply. The proposed rule targets those donors who may present significant risks of infectious agents; thus, it works directly to prevent the introduction and spread of communicable disease. Moreover, the proposed rule is designed to help ensure that risks of transmitting infectious disease are excluded from the pool of eligible donors. FDA relies on a system of overlapping layers of safety to ensure the safety of the nation's blood products. One of the important layers of safety is the self-exclusion of donors because of high-risk behaviors associated with the risk of HIV, or hepatitis B and C, or signs and symptoms of AIDS and hepatitis. A second crucial layer of safety is the system of donor deferral registries designed to eliminate unsuitable donors from the donor population. Notification of donors who are deferred adds to the protection provided by donor deferral registries by making deferred donors aware that they should not attempt to donate again. Consequently, the screening of unsuitable donors provided by the registries is enhanced by the self-exclusion of donors who have been made aware of their status and the risks their donation may present to the blood supply.

The proposed notification rule also would protect the health of the deferred donor by assuring that the individual is

aware he or she may need further medical evaluation including testing, treatment, and counseling. As FDA has previously made clear "(i)n an indirect but no less important manner, the requirements of donor protection assure * * * that there will be a continuous and healthy donor population" (Additional Standards for Human Blood and Blood Products (41 FR 10762, March 12, 1976)).

FDA's license revocation regulations provide for the initiation of revocation proceedings, among other reasons, if the establishment or the product fails to conform to the standards in the license application or in the regulations designed to ensure the continued safety, purity, or potency of the product (§ 601.5). Section 351 of the PHS Act also provides for criminal penalties for violation of the laws governing biologics. Violations can be punishable by fines or imprisonment, or both.

The act also applies to biological products (42 U.S.C. 262(d)), as amended. Blood and blood components are considered drugs, as that term is defined in section 201(g)(1) of the act (21 U.S.C. 321(g)(1)) (see *United States* v. *Calise*, 217 F. Supp. 705 (S.D.N.Y. 1962)). Because blood and blood components are drugs under the act, blood and plasma establishments must comply with the substantive provisions and related regulatory scheme of the act. Under section 501(a)(2)(B) of the act, drugs are deemed "adulterated" if the methods used in their manufacturing, processing, packing, or holding do not conform with current good manufacturing practices (CGMP's) (21 U.S.C. 351(a)(2)(B)). Under the proposed donor notification rule, blood and plasma establishments would be required to develop standard operating procedures (SOP's) for notifying deferred donors. A blood or plasma establishment that failed to comply with donor notification procedures would violate CGMP's and, therefore, would be subject to the act's enforcement provisions.

V. Description of the Proposed Rule

FDA is proposing to create a new part 630, General Requirements for Blood, Blood Components, and Blood Derivatives. This part would include the following: (1) Consolidation of the criteria to be used when determining suitability of donors of human blood and blood components; (2) requirements for donor deferral from future donation when a donor fails to satisfy the suitability criteria; and (3) requirements for donor notification and the reason for their deferral due to donor test results or failure to satisfy suitability criteria. Donor suitability criteria and donor deferral are not the subject of this proposed rule. These proposed requirements will be addressed in a rulemaking to be published in the near future. As necessary, FDA may add other requirements applicable to blood products in the future. The focus of this proposed rulemaking would be to require donor notification when the donor is deferred due to testing results or failure to meet donor suitability criteria and to provide the reason for the deferral.

The proposed rule would require blood and plasma establishments to notify donors who are deferred in accordance with proposed § 610.41 or for failure to satisfy donor suitability criteria that they have been deferred as donors and the reason for their deferral. Deferred donors would be informed, as appropriate, that they should not donate blood or blood components in the future. Donors would also be informed about the need for additional counseling and medical evaluation, as appropriate. Under the proposed rule, blood and plasma establishments would be required to develop SOP's for deferring donors and notifying deferred donors. FDA is not proposing to require blood and plasma establishments to notify donors who the blood or plasma establishments may defer voluntarily for a variety of medical reasons beyond the requirements in proposed § 610.41 and donor suitability criteria associated with the prevention of communicable diseases. FDA recognizes that blood and plasma establishments would need to exercise medical judgment in determining which donors to defer voluntarily and whether to notify such donors. PHS and FDA may periodically issue recommendations on testing, deferral, and notification of donors who may be at risk of infectious disease.

Donors whose blood or blood components test repeatedly reactive for evidence of infection due to a communicable disease agent for which testing would be required by FDA under proposed § 610.40, or as specified for syphilis in current §§ 640.5 or 640.65, would be deferred in accordance with proposed § 610.41. Blood and plasma establishments would notify such deferred donors under the proposed notification rule that they have been deferred, and the reason for their deferral including their screening test results and the results of any approved supplemental (i.e., additional, more specific) tests that were performed. FDA currently requires that supplemental testing for both HIV–1 and HIV–2 antibodies be performed under § 610.46. PHS and FDA have recommended that HIV notification should occur after the results of the approved supplemental testing are available. Results of supplemental tests are useful in providing additional information for purposes of medical followup and counseling. Therefore, FDA is proposing that blood establishments attempt to obtain the results of supplemental testing proposed under § 610.40(c) prior to notifying donors of their deferral. FDA has included a maximum time period of 8 weeks to notify the donor. If notification occurs prior to receipt of the supplemental test results, blood establishments would be required to renotify the donors with the results of the supplemental testing.

Blood and plasma establishments would be required to notify deferred donors where appropriate, of the possibility for re-entry as donors of blood and blood components if they are found to be suitable using methods or processes approved by FDA in accordance with proposed § 610.41 or current § 640.65, provided that the donor meets all other requirements.

Under § 610.40 of the proposed testing rule, blood and plasma establishments would be required to test blood and blood components, including autologous donations, for evidence of infection due to HIV–1, HIV–2, HBV, HCV, HTLV–I, and HTLV–II using FDA approved tests. Donors whose donations test repeatedly reactive for evidence of those agents required under proposed § 610.40(a) or for syphilis under current §§ 640.5 and 640.65 would be deferred in accordance with proposed § 610.41. This proposed donor notification rule would require that blood and plasma establishments notify the deferred donor of their deferral and of their test results.

In the related proposed § 610.41, FDA is proposing several exceptions to donor deferral that also have an impact on donor notification. Autologous donors testing repeatedly reactive for communicable disease agents would not be deferred. Blood establishments would not be required under this proposed rule to notify autologous donors who test repeatedly reactive for communicable disease agents under proposed § 610.40(a). Nevertheless, FDA recommends that blood establishments notify autologous donors of repeatedly reactive test results and supplemental test results, when applicable, for the purpose of medical followup and counseling. FDA specifically is requesting comments on whether to require notification of autologous donors of repeatedly reactive and supplemental test results even though such donors would not be deferred.

In the related proposed § 610.41(a), donors who test repeatedly reactive for HTLV, types I and II, or anti-HBc on only one occasion, would be permitted to donate again without being deferred from further donation unless there is further testing using an approved supplemental (additional, more specific) test. Should licensed supplemental tests for HTLV, types I and II be approved, donors would be required to be deferred after only a single repeatedly reactive donation similar to most other screening tests. It is FDA's expectation that donor re-entry algorithms would become feasible at that time. However, until such time, upon testing repeatedly reactive a second time for HTLV, types I and II or anti-HBc, the donor would be deferred. Blood establishments would be required to notify donors that they have been deferred from donations of Whole Blood, and transfusable components (including Plasma) only after they had tested repeatedly reactive a second time for HTLV, types I and II or anti-HBc. FDA specifically requests comments on whether to notify donors who test repeatedly reactive for HTLV, types I and II or anti-HBc on only one occasion or to wait to notify donors upon testing repeatedly reactive the second time. Upon the availability of an approved supplemental (additional, more specific) test, a repeatedly reactive donor would be deferred after a single repeatedly reactive donation. At such time, blood establishments would notify donors of the test results of both the approved screening and supplemental tests. As appropriate, blood establishments would notify such deferred donors that they may be eligible for re-entry if determined to be suitable by a method or process approved by FDA in accordance with proposed § 610.41.

In related § 610.41(b), FDA is proposing to except from deferral donors testing repeatedly reactive for HTLV, types I and II, or anti-HBc as donors of Source Plasma. However, the agency is requesting comments in the proposed rule "Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents" (hereinafter the "proposed rule on donor testing") on permitting such donors to donate Source Plasma to be used in the manufacture of plasma derivatives as it relates to the exposure to other possible risks, such as through the association of HTLV infection with abuse of intravenous drugs. The agency also includes in the proposed rule on donor testing a discussion on the risk of transmitting HTLV, types I and II.

Related proposed § 610.41(c)(1) would permit deferred donors to donate blood and blood components used in accordance with proposed § 610.40(f). In related proposed § 610.40(f), the agency would require that blood and blood components that test repeatedly reactive when screened for evidence of infection due to communicable disease agents listed in proposed § 610.40(a) would not be shipped or used except for autologous use or for purposes or under conditions approved in writing by FDA. Blood and plasma establishments that collect blood or blood components under conditions approved under proposed § 610.40(f)(2)(ii) or current § 640.65 could notify donors deferred under proposed § 610.41 or current § 640.65 that they would be eligible to donate blood or blood components, as appropriate, for use as a component of an in vitro device or for other approved uses.

In related § 610.41(c)(2), the agency is proposing to restrict the use of blood or blood components from donors showing previous evidence of infection due to hepatitis B virus when tested in accordance with proposed § 610.40(a) and (c). Such blood and blood components may be approved for use only as a source of antibody to hepatitis B surface antigen for the preparation of Hepatitis B Immune Globulin (Human) or as a component of a medical device. Donors with previous evidence of infection with hepatitis B when tested in accordance with proposed § 610.40(a) and (c) may serve as donors of a component of a medical device or as donors of Source Plasma for use as a source of antibody to hepatitis B surface antigen for the preparation of Hepatitis B Immune Globulin (Human). In the proposed rule on donor testing, the agency has requested comments on the use of vaccinated donors for HBV as an alternative to using donors previously showing evidence of infection due to hepatitis B virus in the preparation of Hepatitis B Immune Globulin (Human) provided their current donations test nonreactive when tested in accordance with proposed § 610.40(a) and the donor is otherwise determined to be suitable. Blood and plasma establishments that are approved to collect Source Plasma from such donors under proposed § 610.40(f) could notify deferred donors that they may donate for such purposes.

In related proposed § 610.41, the agency is proposing to defer donors who test reactive for a serologic test for syphilis except as provided under current § 640.65. In related proposed § 610.41(d), the agency would exempt from deferral donors who test reactive on a serologic test for syphilis provided the donor is found negative by an approved specific treponemal test (confirmatory test for syphilis). Blood and plasma establishments would notify all other donors who test reactive for evidence of syphilis that they have been deferred and of the results of tests including the result of the approved specific treponemal tests. However, as FDA has noted in the preamble to the related proposed rule on donor testing, there is ongoing debate in the scientific community as to the continuing need for a testing requirement for the serological test for syphilis. Therefore, the proposal to defer donors who test reactive for syphilis is subject to change pending the outcome of the request for comments on the value of donor testing for syphilis in the proposed rule on donor testing.

The proposed rule also would require blood and plasma establishments to notify donors who have been deferred because of donor suitability criteria. FDA intends to create in future rulemaking a new section identifying certain donor suitability criteria which are intended to reduce the risk of communicable disease agents that would result in deferral of the donor and require donor notification. Among those donor suitability criteria being considered are high risk behavior associated with the transmission of HIV, HBV, and HCV, such as past or present abuse of injectable drugs. Blood and plasma establishments would notify deferred donors of their deferral and advise them to seek further testing or medical counseling, as appropriate.

Under the proposed rule, blood and plasma establishments would be required to provide information to deferred donors concerning appropriate medical followup and counseling. FDA currently recommends that this information include disease associations and possible modes of transmission as well as actions to be taken to minimize the risk of transmission. FDA believes that such information also would include referral to their own physician, or, where appropriate, the location of public health clinics as well as alternative testing and counseling centers. Blood and plasma establishments should consult current PHS Guidelines and FDA recommendations for more detailed recommendations on the content of donor notification.

A. Timeframe for Notification.

Under § 630.6(c) of the proposed rule, blood and plasma establishments would be required to notify donors within 8 weeks after determining that the donor should be deferred. In many instances

arising under the proposed rule, blood and plasma establishments would be able to fulfill the notification requirements onsite. For example, a donor who is deferred because of donor suitability criteria can be notified at the time of the donor interview or at the first return visit after the information is available, if within 8 weeks. Blood and plasma establishments would be required to have SOP's addressing donor deferral and notification and keep documentation on all deferrals as well as any resulting notification. Some blood and plasma establishments may notify deferred donors by registered mail, return receipt; or may choose to request that the donor return for direct donor notification, so long as notification of deferral occurred within the 8-week period. FDA requests comments on (1) methods of notification that would help assure adequate donor confidentiality and (2) the current application and sufficiency of Federal, State, and local laws that protect the privacy of the individual being notified. FDA believes that at least three attempts should be made within an 8-week period. In all cases, blood and plasma establishments should document their attempts to notify donors and maintain a record of these attempts or of the basis for discontinuing the effort to notify deferred donors.

B. Other Requirements.

Donor notification should be conducted by trained personnel in accordance with the requirements in § 606.20. Blood and plasma establishments would be required to revise their SOP's to include procedures for notification of deferred donors. For the purposes of notification under the proposed rule, blood and plasma establishments would be required to maintain records of the donor's permanent address. Donors should provide proof of a permanent, fixed address. Individuals who do not have evidence of a current address or who merely provide an address of a known or obviously transient nature should not be accepted as donors.

VI. Analysis of Impacts and Initial Regulatory Flexibility Analysis

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant impact on a substantial number of small entities and, if it does, to analyze regulatory options that would minimize the impact. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

OMB has determined that the proposed rule is is a significant regulatory action as defined by the Executive Order and so is subject to review. Because the rule does not impose any mandates on State, local, or tribal governments, or the private sector, that will result in any 1 year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandate Reform Act.

The Regulatory Flexibility Act requires agencies to prepare a Regulatory Flexibility Analysis for each rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As explained in the following sections of this document, the proposed rule is not expected to have a significant economic impact on a substantial number of small business entities because donor deferral and notification are considered usual and customary business for the affected entities.

A. Objectives and Basis of the Proposed Action

As discussed previously, FDA is considering the proposed action for the purpose of reducing the risk of infection due to communicable disease agents to blood recipients and to individuals handling blood or blood products. The safety of the nation's blood supply is enhanced when donors whose test results indicate evidence of infection due to communicable disease agents or fail to satisfy suitability criteria associated with the prevention of certain communicable disease agents are excluded from donating blood and blood components. Once donors are deferred from donation, such donors would be informed of their deferral and the reason, and advised to seek medical counseling or treatment, as appropriate. Public health would be protected not only by deferring the donor from future donations and preventing the transmission of communicable disease agents through transfusion, but also by counseling the donor in precautions to minimize the risk of transmitting the disease to others in daily life.

This action is taken under the authority of sections 351 and 361 of the PHS Act and section 501 of the act to prevent the introduction, transmission, and spread of communicable disease, and to ensure that methods used in manufacturing conform with CGMP's. Failure to comply with donor notification procedures would violate CGMP's and, therefore, would be subject to the act's enforcement provisions. FDA has reviewed related Federal rules and has not identified any rules that duplicate, overlap, or conflict with the proposed rule.

B. Nature of the Impact

The proposed rule requires that blood establishments notify deferred donors of their deferral based on either suitability criteria included in the donor screening interview or because of the results of testing for evidence of infection due to disease agents including HIV, HTLV, hepatitis B, or hepatitis C. Under the proposed rule, the donor must be notified that he or she has been deferred, and the reason for deferral. The deferred donor must also be notified of the types of blood or blood components that should not be donated in the future. The notification must also include the results of tests for evidence of infection due to communicable disease including supplemental test results, information concerning appropriate medical followup and counseling, and when applicable, the possibility that the donor may be found suitable for future donations. The donor notification process must include three attempts of notification, completed within 8 weeks of the determination of the donor deferral. In order to implement this notification process, the proposed rule also requires that blood establishments obtain a permanent address for each prospective donor. The establishment must also maintain records of its attempts to notify a deferred donor within the prescribed timeframe.

C. Type and Number of Entities Affected

The proposed deferred donor notification requirements will affect all blood and plasma establishments that collect blood and blood components from allogeneic donors. FDA's Office of Blood Research and Review (OBRR) has record of 2,801 registered blood and plasma establishments, including 487

plasma centers and 2,314 blood centers. The American Association of Blood Banks (AABB) estimates that approximately 14 million blood donations are collected annually. Allogeneic blood donations have recently accounted for an estimated 87.2 percent of that total (Ref. 9). In 1997, GAO estimated that approximately 12 million donations of source plasma were collected by plasma centers (Ref. 10).

D. Estimated Impact of Proposed Requirements for Deferred Donor Notification

The proposed rule is expected to have a minor net impact on blood establishments because the blood industry has already generally implemented deferred donor notification; virtually all establishments include this process within current operational guidelines. FDA expects that the primary impacts of the proposed rule will include a one-time review effort at each facility and a more extensive notification process at those facilities that currently perform deferred donor notification over a longer timeframe or with fewer followup attempts than specified in the rule.

The one-time effort to review and modify current SOP's is expected to vary among establishments depending on the extensiveness of a facility's current protocols for deferred donor notification. For establishments that already keep required donor information and perform the level of notification effort specified by the rule, FDA estimates that it would take approximately 4 hours of staff time to reconcile the proposed regulations against the facility's current standards. This process could be performed by a technical specialist who acts as a regulatory reviewer or manager of quality assurance. Based on the total average hourly compensation of $25.67 for professional specialty and technical occupations in the health services industry, as reported by the Bureau of Labor Statistics for March 1997, the cost would be approximately $103 per facility. For establishments that already perform donor deferral notification but information provided to deferred donors or other aspects of the notification process are not the same as specified in the proposed rule, FDA assumes that approximately 24 hours of staff time would be required to align current SOP's and donor recordkeeping with the provisions of the rule. The cost in this case would be approximately $616 per facility. FDA does not have the data to estimate the percentage of facilities that will require a minimal effort versus a more involved review of SOP's; however, it is expected that many facilities have SOP's and recordkeeping standards that are consistent with the rule. Assuming a minimal review is needed at two-thirds of the currently operating establishments, and a more extensive review is conducted by the others, the total one-time cost for the blood and plasma industries is estimated to be $762,158.

The yearly increase in cost is based on the ongoing notification of deferred donors. FDA assumes that all donors deferred based on the screening interview can be notified onsite at the time of deferral, and provided with the proposed information. FDA assumes that this will introduce no new costs for the blood and plasma establishments. The cost of notifying donors deferred on the basis of blood test findings is based on a proportional extrapolation of the number of donors who would test repeatedly reactive for evidence of infection in tests for HIV, HTLV, HBV, or HCV, and have positive findings in supplemental testing. Assuming a prevalence rate of 121.9 per 100,000 for viral markers for HIV, HTLV, HBV, or HCV among prospective donors (Ref. 11), that approximately 80 percent of donations are made by repeat donors [1], that repeat donors average two donated units per year [2], and that first time donors contribute one unit, an estimated 8,887 deferred blood donors and 8,861 plasma donors (including first time and repeat donors) would be identified each year.

FDA assumes that all facilities currently make at least one notification attempt for all deferred donors. However, the percentage of facilities that currently make up to three documented attempts within an 8-week period is not known. FDA has therefore estimated the economic impact for two scenarios in which the cost of compliance is based on the assumption that two additional notification attempts are needed, and these notifications are made via registered mail with a return receipt requested, at a cost of $12.54 [3] per notified donor. Under the first scenario, FDA assumes half of deferred donors are currently notified through a process like the one specified in the proposed rule. In this case, the cost of compliance, based on the cost of up to two additional notifications to the remaining half of the estimated deferred donors totals $55,719 for the blood industry, and an estimated $55,557 for the plasma industry. Under the second scenario, FDA considers that only one-quarter of deferred donors are currently receiving up to three notification attempts. Under this scenario, the cost of up to two additional notifications to the remaining three-quarters of the estimated deferred donors totals $83,578 for the blood industry, and an estimated $83,335 for the plasma industry. Thus, the ongoing notification costs for the blood and plasma industries combined are estimated to range from $111,276 to $166,913 per year.

E. Expected Benefits of the Proposed Rule

As described in the preamble to this rule, notification of donors that they have been deferred and consequently should not attempt subsequent donations will help prevent unsafe units of blood or blood products from entering the blood supply. Notification of donors who are deferred and can self-defer in the future thus adds to the protection provided by donor deferral registries. In FDA's proposed rule on donor testing found elsewhere in this issue of the **Federal Register**, the agency provides an extensive discussion of the benefits of reducing public exposure to the risks of these infectious diseases. FDA refers the reader to this discussion of the significant public health benefits of minimizing patients' risk of being unwittingly exposed to infection with HIV, HTLV, hepatitis B, and hepatitis C.

F. Small Entity Impact

The proposed rule is not expected to have a significant impact on a substantial number of small entities, however, the impact on blood and plasma establishments that qualify as small entities is uncertain. FDA has therefore prepared an initial regulatory flexibility analysis. The blood and plasma establishments affected by the proposed rule are included under the major standard industrial code (SIC) group 80 for providers of health services. According to section 601 of the Regulatory Flexibility Act of 1980, the term "small entity" encompasses the terms "small business," "small organization," and "small governmental jurisdiction." According to the Small Business Administration (SBA), a small business within the blood industry is an

[1] This percentage is based on American Red Cross estimates based on donations between January 1996 and June 1997.

[2] The estimate of an average of two donations per year for repeat blood donors is based on the Center for Disease Control's (CDC's) analysis of blood donations prepared for HCV lookback.

[3] This estimate is based on two mailings, at a cost of $6.27 each. This cost includes $.32 first class postage plus $4.85 fee for registered mail without insurance, plus $1.10 fee for return receipt requested at the time of mailing showing whom, signature, date and addressee's address (if different) source: USPS 1997 Postal Rates @ "www.usps.gov/consumer".

enterprise with less than $5 million in annual receipts. A small organization is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field. A "small governmental jurisdiction" generally means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

As noted in the foregoing analysis, the proposed rule is expected to have some cost impact on both plasma and blood collection centers. FDA has registered a total of 487 plasma collection facilities. Of that total, the General Accounting Office (GAO) (Ref. 12) has identified approximately 370 for-profit plasma collection centers that primarily collect paid plasma donations. The remaining 100 or so plasma collection facilities function within blood collection centers with volunteer donors, that are either operated by the American Red Cross, or are independently operated. The vast majority of collected source plasma is processed by four companies: Alpha Therapeutic Corp., Baxter Healthcare Corp., Bayer Corp., and Centeon LLC.

FDA estimates that approximately 90 percent of these 370 paid plasma collection centers are owned by companies that operate a number of centers and have annual receipts in excess of $5 million per year. The remaining 10 percent, or about 37 paid plasma collection centers, may qualify as small business establishments. Of the 100 or so volunteer plasma collection facilities within blood collection centers, the independently operated, not-for-profit blood collection centers would likely qualify as small entities. The potential impact on plasma collection facilities will be a function of the number of donors and the viral marker rates among donors at their facility. The net impact on these facilities, however, is expected to be minor. For example, under cost scenario 1, if the additional yearly cost of $55,557 were evenly distributed across all 487 registered facilities, this would translate to an added cost of $114 per facility per year. Under scenario 2, the added cost per facility would be approximately $171 per year.

The impact on blood collection facilities that qualify as small entities is also uncertain, although it is not expected to be significant. The blood collection facilities that are independent and not-for-profit organizations may qualify as small entities regardless of the size of their operations. The analysis that follows, however, considers the smaller blood collection facilities, because they are expected to experience the greater cost impact. According to the 1996 directory of the AABB, 34 regional and community blood centers have annual revenues of less than $5 million; and each collect no more than 30,000 donations per year. Because of the pre-existing practice of deferred donor notification at these facilities, and the relatively small number of donors that FDA estimates will be deferred based on blood test findings, the impact on these small facilities is expected to be minor. Based on FDA's calculations, facilities with 30,000 donations or less per year would identify about 22 deferred donors per year through blood testing. At a cost of $6.27 per notification via registered mail with a return receipt, if all facilities currently need to make two additional notification attempts under this rule, there would be an average small facility notification cost of $278 (22 x $12.54) per year. Because the estimated one-time cost for the review and revision of current deferral notification SOP's equaled $271 (2/3 x $103 + 1/3 x $616), or about $39 when annualized over a 10-year payment period at a 7-percent interest rate, the average annualized cost impact for the smaller collection centers would be about $317 ($278 + $39), or roughly $0.01 per donation, assuming approximately 30,000 donations per year. It should be noted that blood collection centers that collect both blood and source plasma will not experience a "double" impact, because the same donor pool and donations are used for production of the center's blood and plasma products.

The types of professional staff and skills required to perform the required tasks were described in section VI.D of this document. FDA is confident that the tasks specified in the proposed rule can be readily performed by the type of staff already employed at affected blood and plasma establishments.

To alleviate the impact on small entities while continuing to protect public health, the agency is proposing to recommend, but not require, that autologous donors be notified, if they test repeatedly reactive for evidence of infection; FDA also does not require that these donors be deferred. To minimize facility notification efforts while achieving the public health objectives, FDA proposes that notification should not occur until after the results of the approved supplemental testing are available. The proposed regulations are thus expected to help enhance both public health and public confidence in the safety of the blood and plasma supply, while imposing minimum burden on manufacturers.

As an alternative to this proposal, FDA has considered not requiring donor notification of deferral from future donation due to communicable disease testing or failure to satisfy suitability criteria associated with the prevention of communicable disease because it is viewed by many as medical practice. However, the agency has rejected this alternative for the following reason. After a lengthy period of time during which the agency published recommendations to establishments on notifying donors of deferral, inconsistency pertaining to information and counseling provided to the deferred donor has been demonstrated among the establishments. Notification of donor deferral has become a public health issue because donors who are not fully informed of their deferral status due to communicable disease testing or failure to meet suitability criteria associated with the prevention of communicable disease may not take precautions to minimize the transmission of communicable disease to others and may not recognize the importance of not attempting to donate blood or blood components in the future.

VII. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in this section of this document with an estimate of the annual burden. Included in this estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: General Requirements for Blood, Blood Components, and Blood Derivatives; Notification of Deferred Donors.

Description: FDA is proposing requirements for the donor notification process which are intended to prevent further donations from donors who have been deferred for positive test results for evidence of communicable disease agent(s) or for failing to meet the donor suitability criteria intended to reduce the risk of communicable disease agents prior to collection. When a donor is deferred for failing to meet suitability criteria associated with communicable disease agents prior to collection, he or she would be advised not to donate now or in the future and would be provided with information regarding the need for medical followup and counseling. When test results for communicable disease agents are finished, establishment personnel would be required to make at least three attempts to notify donors with positive supplemental (additional, more specific) test results that they are deferred and should have medical followup and counseling. The revisions would require blood and plasma establishments to develop SOP's for deferring donors and for notifying deferred donors and to maintain their permanent address, outline the information that is to be provided to a deferred donor, and to notify deferred donors of positive test results for evidence of infection by communicable disease agent(s) within 8 weeks of the donation initiating deferral, or at their first return visit, whichever is earlier. FDA is proposing these new requirements to help ensure the nation's blood supply is safe by excluding donors who may present significant risks from donating in the future as well as enhancing the public health by assuring that those donors who have been deferred are advised to seek treatment and counseling.

Description of Respondents: Manufacturers of blood, blood components, and blood derivatives.

There are an estimated 2,800 FDA registered blood and Source Plasma collection facilities in the United States that collect approximately 27,000,000 units of Whole Blood and Source Plasma annually. There are approximately 8 million donors of Whole Blood and 1.5 million donors of plasma for a total of 9.5 million donors per year. From such information as is available to FDA, the agency estimates that approximately 1.2 percent of persons who come to donate annually are deferred prior to donating because of disqualifying answers to the medical history and behavior questionnaire. In addition to the 9.5 million donors per year there would be approximately 115,385 potential donors deferred from donating. It is the customary and usual practice of virtually all registered establishments to explain to a donor why he or she is deferred and excluded from donating. Based on such information as is available to FDA, the agency estimates that currently two-thirds of registered establishments voluntarily provide additional information and counseling to a deferred donor. Consequently, only one-third or 933 collection facilities would have additional burden related to this proposed rule. Some industry contacts estimated that it takes on average approximately 5 minutes to provide the deferred donor with the appropriate medical health information. FDA estimates that currently 95 percent of the industry that collects 98 percent of the blood and blood components have voluntarily established SOP's for notifying donors who have repeatedly reactive test results that also are positive by supplemental tests for HIV, HBV, or HCV (the number of donors who test and confirm positive for HTLV is so small that this was not included in the estimate). FDA estimates based on 9.5 million donors annually and the viral marker incidence rates for HIV, HBV, and HCV, that 49,591 donors would be deferred annually due to test results. Consequently, 5 percent (140) of the industry collecting 2 percent (992) of the deferred donors would experience new burden related to this proposed rule. FDA estimates on the average it may take 15 minutes to allow for up to three attempts to contact a donor and request that they return for counseling which may take another 15 minutes for a total of 0.5 hours.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
630.6(a) and (b)[2]	933	41	38,462	.08	3,077
630.6(a), (b), and (c)[3]	140	7	992	0.5	496
TOTAL					4,069

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Potential donors deferred prior to donation. The number of potential donors deferred annually prior to donation based on failure to meet suitability criteria associated with communicable disease agents is 115,385. Providing information on medical followup and counseling to these deferred donors is estimated to be new burden for approximately one-third of the registered blood and plasma collection facilities.

[3] Donors deferred post donation due to test results. Providing information on medical followup and counseling to donors deferred due to test results may be new burden for approximately 5 percent of the industry collecting from 2 percent of such deferred donors. One hundred and forty represents 5 percent of the 2,800 registered establishments and 992 represents 2 percent of the estimated 49,591 donors deferred annually due to test results.

TABLE 2.— ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
606.100(b)(20)	2,800	1	2,800	2	5,600
606.160(b)(1)(ix)[2]	2,800	59	164,976	3	8,400
606.160(b)(1)(x)[3]	2,800	9,643	27,000,000	0	0
TOTAL					14,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] FDA estimates that annually 115,385 potential donors are deferred prior to donation and 49,591 donors are deferred due to test results. Recording the notification of each deferred donor is estimated to require between 2 and 5 minutes (3 minutes on average).

[3] Recording the donor's permanent address is customary and usual practice in the industry and is not new or additional burden.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted a copy of this proposed rule to OMB for review of the information collection provisions. Interested persons are requested to submit written comments regarding information collection by September 20, 1999, to the Office of Information and Regulatory Affairs, OMB (address above), Attention: Desk Officer for FDA.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.31(j) that this action is of a type that not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Request for Comments and Effective Date

Interested persons may, on or before November 17, 1999, submit to the Docket Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA is proposing that any final rule that may issue based upon this proposed rule become effective 180 days after its date of publication in the **Federal Register**.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. *Morbidity and Mortality Weekly Report*, vol. 32, pp. 101–103, March 4, 1983.
2. *Morbidity and Mortality Weekly Report*, vol. 34, pp. 1–5, January 11, 1985.
3. *Morbidity and Mortality Weekly Report*, vol. 36, pp. 509–515, August 14, 1987.
4. *Morbidity and Mortality Weekly Report*, vol. 36, pp. 833–840, January 8, 1988.
5. *Morbidity and Mortality Weekly Report*, vol. 38 (No. S–7), July 21, 1989.
6. *Morbidity and Mortality Weekly Report*, vol. 41 (No. RR–2), pp. 1–9, February 28, 1992.
7. *Morbidity and Mortality Weekly Report*, vol. 37, pp. 736–747, December 9, 1988.
8. *Morbidity and Mortality Weekly Report*, vol. 40 (No. RR–4), pp. 1–17, April 19, 1991.
9. Wallace, E. L., W. H. Churchill, D. M. Surgenor, J. An, G. Cho, S. McGurk, and L. Murphy, "Collection and Transfusion of Blood and Blood Components in the United States, 1992," *Transfusion*, 1995; vol. 35, No. 10, pp. 802–812.
10. General Accounting Office, "Blood Safety: Enhancing Safeguards Would Strengthen the Nation's Blood Supply," GAO–HEHS–97–143, June 1997.
11. Glynn, S. A., G. B. Schreiber, M. P. Busch, S. H. Kleinman, A. E. Williams, C. C. Nass, H. E. Ownby, and J. W. Smith, for the Retrovirus Epidemiology Donor Study, "Demographic Characteristics, Unreported Risk Behaviors, and the Prevalence and Incidence of Viral Infections: A Comparison of Apheresis and Whole-Blood Donors," *Transfusion*, April 1998, vol. 38, pp. 350–358.
12. General Accounting Office, "Blood Plasma Safety: Plasma Product Risks Are Low if Good Manufacturing Practices Are Followed," GAO–HEHS–98–205, September 1998.

Lists of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 630

Biologics, Blood, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Chapter I be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371,374; 42 U.S.C. 216, 262, 263a, 264.

2. Section 606.100 is amended by adding paragraph (b)(20) to read as follows:

§ 606.100 Standard operating procedures.

* * * * *

(b) * * *

(20) Procedures for donor deferral as prescribed in § 610.41 of this chapter and donor notification, including procedures for the appropriate followup if the initial attempt at notification fails, as prescribed in § 630.6 of this chapter.

* * * * *

3. Section 606.160 is amended by adding paragraphs (b)(1)(ix) and (b)(1)(x) to read as follows:

§ 606.160 Records.

* * * * *

(b) * * *

(1) * * *

(ix) Notification of deferred donors, including appropriate followup if the initial attempt at notification fails.

(x) To facilitate the notification of deferred donor, the donor's permanent address.

* * * * *

4. Part 630 is added to read as follows:

PART 630—GENERAL REQUIREMENTS FOR BLOOD, BLOOD COMPONENTS, AND BLOOD DERIVATIVES

Sec.

630.6 Donor notification.

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 371; 42 U.S.C. 216, 262, 263.

§ 630.6 Donor notification.

(a) An establishment that collects blood or blood components shall notify donors who have been deferred based on results of tests for evidence of infection with a communicable disease agent as required by § 610.41 of this chapter or based on deferral for suitability criteria. Blood establishments shall attempt to obtain the results of supplemental testing required under § 610.40(c) of this chapter prior to notifying donors of their deferral. If notification occurs prior to receipt of such results, blood establishments shall renotify donors of the results of the supplemental testing. Blood establishments shall notify donors as described in paragraph (b) of this section.

(b) The notification shall provide the following information to a donor who has been deferred from donating as described in paragraph (a) of this section:

(1) That the donor has been deferred and the reason for deferral;

(2) The types of donations of blood or blood components which the donor should not donate in the future;

(3) Where applicable, the results of tests for evidence of infection due to communicable disease agent(s), that were a basis for deferral under § 610.41 of this chapter, including results of supplemental (i.e. additional, more specific) tests as required in § 610.40(c) of this chapter;

(4) Information concerning appropriate medical followup and counseling; and

(5) Where applicable, the possibility that the donor may be found suitable for future donations.

(c) The notification process shall include a minimum of three attempts to

notify the donor and be completed within 8 weeks after the determination that the donor should be deferred or at the first return visit of the deferred donor after the determination is made, whichever is earlier.

Dated: April 20, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–21295 Filed 8–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 640

[Docket No. 98N–0673]

Revisions to the Requirements Applicable to Blood, Blood Components, and Source Plasma

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma to be more consistent with current practices in the blood industry and to remove unnecessary or outdated requirements. FDA is issuing these amendments directly as a final rule because they are noncontroversial and there is little likelihood that FDA will receive any significant comments opposing the rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule under FDA's usual procedures for notice and comment in the event the agency receives any significant adverse comments. If FDA receives any significant adverse comment sufficient to terminate the direct final rule, FDA will consider such comments on the proposed rule in developing the final rule. FDA is issuing this rule as part of the agency's "Blood Initiative" in which FDA is reviewing and revising, when appropriate, its regulations, policies, guidance, and procedures related to blood, blood components, and Source Plasma.

DATES: This rule is effective February 11, 2000. Submit written comments on or before December 3, 1999. If no timely significant comments are received, the agency will publish a document in the **Federal Register** within 30 days after the comment period on this direct final rule ends, confirming the effective date of the final rule. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing the direct final rule before its effective date.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Blood Initiative

For a variety of reasons, FDA has decided to comprehensively review and, as necessary, revise its regulations, policies, guidance and procedures related to the licensing and regulation of blood products. In the **Federal Register** of June 3, 1994 (59 FR 28821 and 59 FR 28822, respectively), FDA issued two documents entitled "Review of General Biologics and Licensing Regulations" (Docket No. 94N–0066) and "Review of Regulations for Blood Establishments and Blood Products" (Docket No. 94N–0080). The documents announced the agency's intent to review biologics regulations, 21 CFR parts 600, 601, 606, 607, 640, and 660 and requested written comments from the public. Interested persons were given until August 17, 1994, to respond to the documents. In response to requests for additional time, FDA twice extended the comment period, as announced in the **Federal Register** of August 17, 1994 (59 FR 42193), and November 14, 1995 (59 FR 56448). In addition, FDA responded to requests for a public meeting to allow for the presentation of comments regarding the agency's intent to review the biologics regulations. On January 26, 1995, FDA held a public meeting to provide an opportunity for all interested individuals to present their comments and to assist the agency in determining whether the regulations should be revised, rescinded, or continued without change. Since the time of the regulation review, FDA has implemented a number of changes to its regulations and policies applicable to the general biologics and licensing regulations, some of which applied to blood products as well as other biological products. (See, e.g., the final rules issued on May 14, 1996 (61 FR 24313); August 1, 1996 (61 FR 40153); November 6, 1996 (61 FR 57328); July 24, 1997 (62 FR 39890); and October 15, 1997 (62 FR 53536).)

Because of the importance of a safe national blood supply, the U.S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on Human Resources and Intergovernmental Relations (the Subcommittee) and other groups such as the General Accounting Office (GAO), and the Institute of Medicine (IOM) have reviewed the agency's polices, practices, and regulations. Reports issued following the respective reviews contained a number of recommendations as to how FDA might improve the biologics regulations, particularly as they apply to the continued safety of blood products. The relevant reports are: (1) "Protecting the Nation's Blood Supply From Infectious Agents: The Need for New Standards to Meet New Threats," by the Subcommittee (August 2, 1996); (2) "Blood Supply: FDA Oversight and Remaining Issues of Safety," by GAO (February 25, 1997); (3) "Blood Supply: Transfusion-Associated Risks," by GAO (February 25, 1997); and (4) "HIV and the Blood Supply: An Analysis of Crisis Decisionmaking," by IOM (July 13, 1995). These reports are on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

FDA has reviewed these reports and agrees with the majority of the recommendations contained within them. However, rather than to only respond specifically to the recommendations from the Subcommittee, GAO, IOM, and the public, FDA has convened a number of internal task forces to review a variety of issues related to the regulation of blood and blood products, including how to most appropriately update the existing regulations applicable to blood and blood products. In the future, FDA intends to issue a number of blood-related regulations that various FDA task groups are preparing. FDA emphasizes that for many of the changes discussed in section III of this document, additional issues related to the regulations now being amended continue to be under consideration by the agency. Further, more substantive changes may be proposed at a later date. Accordingly, any comment recommending an additional change to these regulations will not be considered to be an "adverse comment" unless the comment demonstrates that the change being made in the direct final rule represents a major departure from current regulations or accepted industry standards, or cannot be implemented without additional amendments to the regulations.

FDA is not describing the specific recommendations it received and the numerous objectives of the Blood Initiative in this document. Future rulemaking and other notices will describe and discuss specific recommendations and regulatory objectives as they apply to each rulemaking.

II. Legal Authority

FDA is issuing this new rule under the biologics products and

communicable disease provisions of the Public Health Service Act (the PHS Act) (42 U.S.C. 262–264) and the drug, device, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 351–353, 355, 360, 360j, 371, and 374). Under these provisions of the PHS Act and the act, FDA has the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, potent, and properly labeled and to prevent the introduction, transmission, and spread of communicable disease.

III. Highlights of the Direct Final Rule

FDA is amending the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma to be more consistent with current practices and to remove unnecessary or outdated requirements. FDA is issuing these amendments as a direct final rule because the agency has concluded they are noncontroversial and that there is little likelihood that there will be comments opposing the rule. FDA emphasizes that for many of the following changes, additional issues related to the regulations now being amended continue to be under consideration by the agency. Further, more substantive changes may be proposed at a later date. Accordingly, any comment recommending additional changes to these regulations will not be considered to be an "adverse comment" unless the comment demonstrates that the change being made in the direct final rule represents a major departure from current regulations or accepted industry standards, or cannot be implemented without additional amendments to the regulation. In the following paragraphs, FDA discusses each of the rule changes in the direct final rule.

Part 606 (21 CFR part 606) is amended as follows:

Section 606.3, Definitions, is amended so that the definitions provided in the section are consistent with current meanings and usages.

The definition of "Component" in § 606.3(c) is amended to apply to blood obtained from a single donor and no longer includes the wording "single-donor unit." This change is to clarify that blood components may be collected by means other than separation from a unit of whole blood, such as by automated plasmapheresis.

The definition of "Plasmapheresis" in § 606.3(e) is amended by removing the restriction that plasmapheresis may be "immediately repeated, once" because current automated plasmapheresis collection practices often use more than two cycles for collection.

The definition of "Plateletpheresis" in § 606.3(f) is amended to provide for the common practice of collecting plasma as a by-product of a plateletpheresis procedure in lieu of returning all of the residual plasma to the donor.

The definition of "Compatibility testing" in § 606.3(j) is amended by removing the reference to serological tests and making the definition more general to apply to all tests performed to establish the matching of a donor's blood or blood components with that of a potential recipient. This change will provide for current practices used in compatibility testing, such as the electronic crossmatch and the immediate spin crossmatch.

Section 606.100(b) and (d) are amended to reflect changes in terminology, requirements for testing, and availability of standard operating procedures (SOP's) to be consistent with current practices. Section 606.100(b) is also amended by removing the references to homologous and autologous transfusion because subpart F of part 606, applies to all blood products intended for transfusion. In addition, the phrase "unless this is impractical" is removed because it is current good manufacturing practice (CGMP) to make the applicable SOP's available in all areas where procedures are performed. Section 606.100(b)(7) is amended by removing "including testing for hepatitis B surface antigen as prescribed in § 610.40 of this chapter" because other tests, in addition to tests for hepatitis B surface antigen, are now required and specific reference to this test is unnecessary. Section 606.100(b)(18) is amended by removing the bracketed term "salvaged" because its use in § 606.100 is inconsistent with the use of "salvaged plasma" in § 640.76. Section 606.100(d) is amended by removing references to specific organizations because any SOP's meeting FDA requirements would be acceptable, regardless of their source, and because FDA cannot assure that SOP's adopted by particular organizations remain in compliance with FDA's regulatory requirements.

Section 606.121(a) is amended by removing the reference that the "Guideline for the Uniform Labeling of Blood and Blood Components" is available from Dockets Management Branch as this is no longer the appropriate office from which to request this document and by removing the reference to the American Blood Commission because the organization no longer exists.

Section 606.121(d)(2) specifies the color requirements for printing the container label and is amended by adding "or in solid black" because some blood centers use on-demand printers for printing labels, that do not have the capability to print in multiple colors.

Section 606.121(e)(1)(ii) prescribes the specific anticoagulants that shall be identified on the container label. Section 606.121(e)(1)(ii) is amended by deleting the references to the names of specific anticoagulants. This change will allow for more flexibility for the acceptance and use of new anticoagulants or changes in nomenclature of existing anticoagulants without requiring amendments to the regulations.

Section 606.122(f) specifies the warning statement required in the instruction circular and is amended by removing the reference to "hepatitis" and adding "infectious agents" to include a reference to the additional infectious disease marker tests routinely performed on blood and blood components because the product intended for transfusion carries the risk of transmitting other infectious agents.

Section 606.122(n)(4) specifies that the instruction circular for cryoprecipitated AHF shall contain instructions to thaw the product at a temperature of 37 °C and is amended to allow instructions for thawing between 30 and 37 °C, permitting more flexibility in the preparation of the component.

Section 606.151(b) is amended, consistent with current accepted practices, to permit SOP's to include use of recipient serum samples less than 3-days old for compatibility testing if the recipient has been pregnant or transfused within the preceding 3 months.

Section 606.151(c) describes compatibility testing and is amended by changing "the testing of the donor's cells with the recipient's serum" to "the testing of the donor's cell type with the recipient's serum type" and by replacing "agglutinating, coating, and hemolytic antibodies, which shall include the antiglobulin method" with "incompatibility." This change is intended to accommodate the use of such procedures as an immediate spin crossmatch and an electronic crossmatch.

Section 606.151(e) is amended by changing "by the physician requesting the procedure." to "by a physician." to take into account that a patient may have more than one physician in attendance at any time.

Section 606.160(b)(2)(v) is amended by changing "person(s) responsible" to "the person(s) performing the

procedure" to clarify that the person(s) performing the labeling procedure is responsible for documenting the performance of that procedure.

Section 606.170(b) is amended by deleting "telegraph" and adding "facsimile, express mail, or electronically transmitted mail" to the possible methods by which the Director, Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, shall be notified of a complication of blood collection or transfusion resulting in a fatality.

Part 640 (21 CFR part 640) is amended as follows:

Section 640.2(b) is removed because Whole Blood collection in open systems is no longer acceptable nor has it been performed for many years. Section 640.2(d) is revised. In § 640.2 paragraphs (c), (e), and (f) are redesignated as paragraphs (b), (c), and (d), respectively. Redesignated § 640.2(b) and (c)(2) are revised by removing references to the original blood container because, consistent with current accepted practices such as washing, freezing, deglycerolization, and division of units using sterile connecting devices, the original blood container may, in many cases, no longer be the final container.

Section 640.3(b) is amended by adding a reference to autologous donations to permit the collection of autologous Whole Blood at intervals of less than 8 weeks, consistent with the current practice of shorter time intervals between collections of blood and blood components from donors participating in autologous collection programs. Section 640.3(b)(3) is amended to provide hematocrit and hemoglobin values to be used when determining whether a potential donor can donate Whole Blood, by adding to the end of the current paragraph "or a hematocrit value of 38 percent, and for autologous donations, a blood hemoglobin level which shall be demonstrated to be no less than 11.0 g of hemoglobin per 100 mL of blood or a hematocrit value of 33 percent." The acceptable hemoglobin and hematocrit values for autologous donors are consistent with current industry practice and the American Association of Blood Banks technical manual, 12th edition.

Sections 640.3(c)(1) and 640.63(c)(11) are amended by inserting "after the age of eleven" after the term "hepatitis" because establishments may collect Whole Blood from donors who have a history of hepatitis prior to age eleven to be consistent with recommendations in the FDA memorandum dated April 23, 1992, entitled "Exemptions to Permit Persons with a History of Viral Hepatitis Before the Age of Eleven to serve as Donors of Whole Blood and Plasma: Alternative Procedure"(21 CFR 640.120). Additional issues concerning donors who have a history of viral hepatitis continued to be reviewed by the agency and may be addressed in future rulemaking objectives.

Sections 640.3(c)(2) and 640.63(c)(12) are amended by changing the deferral period for donors of Whole Blood who have had close contact with an individual having viral hepatitis from "six months" to "12 months." Similarly, §§ 640.3(c)(3) and 640.63(c)(13) are amended by changing the deferral period from "six months" to "12 months" for donors of Whole Blood who received human blood, or any derivative of human blood which FDA has identified as a possible source of viral hepatitis. These changes are consistent with recommendations made in the FDA memoranda dated April 23, 1992, entitled "Revised Recommendations for the Prevention of Human Immunodeficiency Virus Transmission by Blood and Blood Products and Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)." In addition, §§ 640.3(c)(3) and 640.63(c)(13) have been amended by changing the reference from a "licensed establishment" to a "blood establishment" to clarify that the regulation applies to all establishments engaged in the collection of blood and blood products.

Sections 640.3(e), 640.31(c), and 640.51(c) are removed because FDA has concluded that it is no longer necessary to defer donors participating in red blood cell immunization programs. Previously, donors participating in red blood cell immunization programs were deferred for 12 months because fresh red blood cells were used to immunize donors. Red blood cells now used in immunization programs are carefully screened and quarantined thereby minimizing the risk of transmitting infectious agents. See FDA memorandum dated March 14, 1995, entitled "Revised Recommendations for Red Blood Cell Immunization Programs for Source Plasma Donors" for additional information about current red blood cell immunization practices.

Section 640.4(b) is amended by removing the word "clinic" and replacing it with the word "center" to reflect current terminology and by changing the word "licensed" to "blood" to clarify that the regulation applies to all blood establishments engaged in the collection of blood and blood products. Section 640.4(d) is amended by removing the reference to the specific anticoagulant formulae. Section 640.4(d)(1) through (d)(4) is removed because FDA has determined it is unnecessary to provide specific formulae for anticoagulant solutions in the regulations and that manufacturers should be able to use any anticoagulant approved by FDA for such use. Sections 640.13(a), 640.22(a), 640.32(a), and 640.52(a) are amended to remove references to § 640.4(d)(2) and (h), which are being removed.

Section 640.4(g)(5) has been changed to include the use of different anticoagulants in segments for compatibility testing to be consistent with the use of different approved anticoagulants in the manufacture of blood and blood products. Section 640.4(h) is removed because heparin anticoagulant solutions are no longer used for the routine collection of blood.

Section 640.5(c) is amended to be consistent with current Rh factor testing practices by removing "and for other Rh-Hr factors," because these tests are not routinely performed. The section is also changed to specify that blood testing negative using Anti-D Blood Grouping Reagents may only be labeled "Rh Negative" if the confirmatory testing includes tests for weak expressions of D. These changes have been made to be consistent with current accepted practices which designate that tests for weak expressions of D be performed and the product labeled consistent with the results of those tests.

Sections 640.6(c) and 640.15(c) are removed because the use of more modern methods of manufacturing and equipment have eliminated the use of pilot tubes attached to blood units. In § 640.15 paragraph (d) is redesignated as paragraph (c).

Section 640.16(a) is amended by inserting "or additive solution" after "cryoprotective substance" to reflect an additional procedure for prolonging shelf life now in use in which all the plasma is removed from a unit of blood.

Section 640.16(b) is amended by removing all but the first sentence. The removed text describes blood collection procedures to be followed when using open vented systems. Use of open vented systems is no longer consistent with CGMP and has not been used for many years.

All references to "pilot tubes" and "pilot samples" have been replaced with the words "sample(s)" or "segment(s)" to reflect current terminology for various testing specimens. The following sections are amended by replacing "pilot tubes,"

"pilot samples," or "pilot sample tubes" with "segments" or "samples" as appropriate: §§ 640.2(e)(2), 640.4(g) introductory text, and paragraphs (g)(1), (g)(2), (g)(4), and (g)(5), 640.5, 640.15(a) through (c), and 640.69(d) introductory text, and paragraphs (d)(1) through (d)(4).

Section 640.23(a) is amended to include the preparation of Platelets prepared by automated collection procedures and to allow the group and typing tests performed on Platelets prepared by apheresis to be valid for a period not to exceed 3 months, thereby, eliminating the necessity of repeat testing of blood samples from donors participating in frequent plateletpheresis collection procedures.

Section 640.24(b) is amended by changing the time period for separation of the platelet concentrate from "4 hours" to "within the time period specified in the directions for use for the specific device." Similar changes are made to the timeframe for the storage of plasma that is set forth in § 640.34(a) through (d) and (e)(1) and the freezing of plasma set forth in § 640.54(a)(2). These changes, consistent with current accepted practices, permit more flexibility by permitting different timeframes depending on the particular blood collection device being used.

Sections 640.25(b) and 640.56(a) are amended to require testing only in those months in which blood products are prepared for use. This eliminates the need for performing quality control procedures during those months when product is not being manufactured.

Sections 640.25(c), 640.56(c), and 640.71(a) are amended to update references to cite the "Clinical Laboratories Improvement Amendments of 1988 (CLIA)" consistent with nomenclature in the regulations implementing CLIA in 42 CFR part 493.

Section 640.34(d) is amended by deleting the reference to storing platelet rich plasma at temperatures between 1 and 6 °C because storage at such temperatures adversely affects platelet function.

Section 640.34(e)(2) and (e)(3) are amended to include the proper name of the product "Plasma, Cryoprecipitate Reduced" as per recommendations of the Blood Products Advisory Committee at its September 18 and 19, 1997 meeting. Section 640.34(g)(2) is amended to permit proof of continuous monitoring of the temperature to be within acceptable ranges for the product as an alternative to requiring the storing of the product in a manner to show evidence of thawing. FDA believes that, with current technology, monitoring systems of freezers used for storage are adequately sensitive and reliable to detect any significant rise in storage temperature.

Section 640.62 requiring that a qualified licensed physician be on the premises when donor suitability is being determined is amended to require a qualified licensed physician to be physically available on the premises, or be available to attend to the donor within 15 minutes, when a pheresis procedure is being performed, for consultation and management of donor adverse reactions, except that the qualified licensed physician shall be physically available on the premises when red blood cell immunizations are being performed. FDA has determined that a qualified licensed physician must always be readily available, if needed, and shall be on the premises for red blood cell immunizations.

Section 640.63(c)(3) is amended by adding at the end of the sentence "or a hematocrit level of 38 percent," which is equivalent to a hemoglobin level of 12.5 g per 100 mL of blood, to be consistent with current accepted practices.

Section 640.63(c)(5) is amended by adding "or total plasma" after "A total serum" to be consistent with current accepted practice of using a capillary tube coated with anticoagulant for fingerstick sample collection.

Section 640.65(b)(4) is amended by changing "in any 48-hour period" to "2-day" to permit more flexibility in scheduling donor appointments and by adding the word "manual" to the phrases "during a plasmapheresis procedure" to clarify that the regulation applies to a manual plasmapheresis collection procedure, but does not apply to automated apheresis.

Section 640.65(b)(5) is amended by adding "during a manual plasmapheresis procedure" after the phrases "removed from the donor" to clarify that the regulation applies to a manual plasmapheresis collection procedure, but does not apply to automated apheresis..

Section 640.65(b)(8) is added to address the collection of Source Plasma using automated collection devices. The regulation delineates the frequency of collection consistent with § 640.65(b)(4) and (b)(5) and the volume of plasma to be collected during such procedures consistent with the plasma collection volumes approved for each device and with recommendations included in the FDA memorandum to all plasma establishments dated November 4, 1992, entitled "Volume Limits for Automated Collection of Source Plasma."

Section 640.72(a)(1) is amended by replacing "compiled every 3 months" with "shall be available" to eliminate the necessity of compiling documents at specified time intervals.

IV. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how FDA will employ direct final rulemaking. FDA has determined that this rule is appropriate for direct final rulemaking because FDA views this rule as including only noncontroversial amendments and anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register**, a companion proposed rule to amend the biologics regulations by removing, revising, and updating existing regulations to be more consistent with current accepted practices. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comment received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA has provided a comment period on the direct final rule of 75 days after August 19, 1999. If the agency receives any significant adverse comment, FDA intends to withdraw this direct final rule action by publication of a document in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and

that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of a significant adverse comment.

If any significant adverse comment is received during the comment period, FDA will publish, within 30 days after the comment period ends, a document withdrawing the direct final rule. If FDA withdraws the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual Administrative Procedure Act notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a confirmation document within 30 days after the comment period ends confirming the effective date.

V. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act and Unfunded Mandates Reform Act of 1995

FDA has examined the impact of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U. S. C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impact; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This direct final rule is not a significant regulatory action as defined by the Executive Order and therefore is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact of a rule on small business entities. Because the direct final rule amendments have no compliance costs and do not result in any new requirements, the agency certifies that the direct final rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This direct final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any 1 year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. The Paperwork Reduction Act of 1995

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Request for Comments

Interested persons may, on or before December 3, 1999, submit to the Docket Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and authority delegated by the Commissioner of Food and Drugs, 21 CFR parts 606 and 640 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

2. Section 606.3 is amended by revising paragraphs (c), (e), (f), and (j) to read as follows:

§ 606.3 Definitions.

* * * * *

(c) *Component* means that part of a single-donor's blood separated by physical or mechanical means.

* * * * *

(e) *Plasmapheresis* means the procedure in which blood is removed from the donor, the plasma is separated from the formed elements and at least the red blood cells are returned to the donor.

(f) *Plateletpheresis* means the procedure in which blood is removed from a donor, a platelet concentrate is separated, and the remaining formed elements are returned to the donor along with a portion of the residual plasma.

* * * * *

(j) *Compatibility testing* means the tests performed to establish the matching of a donor's blood or blood components with that of a potential recipient.

3. Section 606.100 is amended by revising the introductory text of paragraphs (b) and (d), and by revising paragraphs (b)(7) and (b)(18) to read as follows:

§ 606.100 Standard operating procedures.

* * * * *

(b) Written standard operating procedures shall be maintained and shall include all steps to be followed in the collection, processing, compatibility testing, storage, and distribution of blood and blood components for transfusion and further manufacturing purposes. Such procedures shall be available to the personnel for use in the areas where the procedures are performed. The written standard operating procedures shall include, but are not limited to, descriptions of the following, when applicable:

* * * * *

(7) All tests and repeat tests performed on blood and blood components during manufacturing.

* * * * *

(18) Procedures for preparing recovered plasma, if performed, including details of separation, pooling, labeling, storage, and distribution.

* * * * *

(d) In addition to the requirements of this subpart and in conformity with this section, any facility may utilize current standard operating procedures such as the manuals of the organizations, as long as such specific procedures are consistent with, and at least as stringent as, the requirements contained in this part.

* * * * *

4. Section 606.121 is amended by revising paragraphs (a), (d)(2), and (e)(1)(ii) to read as follows:

§ 606.121 Container label.

(a) The container label requirements are designed to facilitate the use of a uniform container label for blood and blood components (except Source Plasma) by all blood establishments.

* * * * *

(d) * * *

(2) The proper name of the product, any appropriate modifier(s), the donor classification statement, and the statement "properly identify intended recipient" shall be printed in solid red or in solid black.

* * * * *

(e) * * *

(1) * * *

(ii) The name of the applicable anticoagulant immediately preceding and of no less prominence than the proper name approved for use by the Director, Center for Biologics Evaluation and Research.

* * * * *

5. Section 606.122 is amended by revising paragraphs (f) and (n)(4) to read as follows:

§ 606.122 Instruction circular.

* * * * *

(f) The statements: "Warning. The risk of transmitting infectious agents is present. Careful donor selection and available laboratory tests do not eliminate the hazard."

* * * * *

(n) * * *

(4) Instructions to thaw the product for no more than 15 minutes at a temperature between 30 and 37 °C.

* * * * *

6. Section 606.151 is amended by revising paragraphs (b), (c), and (e) to read as follows:

§ 606.151 Compatibility testing.

* * * * *

(b) The use of fresh recipient serum samples less than 3-days old for all pretransfusion testing if the recipient has been pregnant or transfused within the previous 3 months.

(c) The testing of the donor's cell type with the recipient's serum type by a method that will demonstrate incompatibility.

* * * * *

(e) Procedures to expedite transfusion in life-threatening emergencies. Records of all such incidents shall be maintained, including complete documentation justifying the emergency action, which shall be signed by a physician.

7. Section 606.160 is amended by revising paragraph (b)(2)(v) to read as follows:

§ 606.160 Records.

* * * * *

(b) * * *

(2) * * *

(v) Labeling, including initials of the person(s) performing the procedure.

* * * * *

8. Section 606.170 is amended by revising paragraph (b) to read as follows:

§ 606.170 Adverse reaction file.

* * * * *

(b) When a complication of blood collection or transfusion is confirmed to be fatal, the Director, Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, shall be notified by telephone, facsimile, express mail, or electronically transmitted mail as soon as possible; a written report of the investigation shall be submitted to the Director, Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, within 7 days after the fatality by the collecting facility in the event of a donor reaction, or by the facility that performed the compatibility tests in the event of a transfusion reaction.

(Information collection requirements approved by the Office of Management and Budget under control number 0910–0116)

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

9. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

10. Section 640.2 is amended by removing paragraphs (b) and (d), by redesignating paragraphs (c), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising newly redesignated paragraphs (b) and (c)(2) to read as follows:

§ 640.2 General requirements.

* * * * *

(b) *Blood container.* The blood container shall not be entered prior to issue for any purpose except for blood collection. Such container shall be uncolored and transparent to permit visual inspection of the contents and any closure shall be such as will maintain an hermetic seal and prevent contamination of the contents. The container material shall not interact with the contents under the customary conditions of storage and use, in such a manner as to have an adverse effect upon the safety, purity, or potency of the blood.

(c) * * *

(2) A segment is properly attached and has not been removed, except that blood lacking a properly attached segment may be reissued in an emergency provided it is accompanied by instructions for sampling and for use within 6 hours after entering the container for sampling;

* * * * *

11. Section 640.3 is amended by revising the introductory text of paragraph (b), by revising paragraphs (b)(3), (c)(1), (c)(2), and (c)(3) and by removing and reserving paragraph (e) to read as follows:

§ 640.3 Suitability of donor.

* * * * *

(b) *Qualifications of donor; general.* Except as provided in paragraph (f) of this section and for autologous donations, a person may not serve as a source of Whole Blood more than once in 8 weeks. In addition, donors shall be in good health, as indicated in part by:

* * * * *

(3) For allogeneic donors, a blood hemoglobin level which shall be demonstrated to be no less than 12.5 grams (g) of hemoglobin per 100 milliliters (mL) of blood; or a hematocrit value of 38 percent, and for autologous donors, a blood hemoglobin level which shall be demonstrated to be no less than 11.0 g of hemoglobin per 100 mL of blood or a hematocrit value of 33 percent.

* * * * *

(c) * * *

(1) A history of viral hepatitis after the age of eleven;

(2) A history of close contact within 12 months of donation with an individual having viral hepatitis;

(3) A history of having received within 12 months of donation, human blood or any derivative of human blood which the Food and Drug Administration has advised the blood establishment is a possible source of viral hepatitis.

* * * * *

12. Section 640.4 is amended by removing paragraphs (d)(1) through (d)(4) and (h), by redesignating paragraph (i) as paragraph (h), and revising paragraphs (b) and (d), the introductory text of paragraph (g), and paragraphs (g)(1), (g)(2), (g)(4), and (g)(5) to read as follows:

§ 640.4 Collection of the blood.

* * * * *

(b) *The donor center.* The pertinent requirements of §§ 600.10 and 600.11 of this chapter shall apply at both the

blood establishment and at any other place where the bleeding is performed.

* * * * *

(d) *The anticoagulant solution.* The anticoagulant solution shall be sterile and pyrogen-free. Anticoagulant solutions shall be compounded and used according to a formula approved by the Director, Center for Biologics Evaluation and Research.

* * * * *

(g) *Samples for laboratory tests.* Samples for laboratory tests shall meet the following standards:

(1) One or more segments shall be provided with each unit of blood when issued or reissued except as provided in § 640.2(e)(2) and all segments shall be from the donor who is the source of the unit of blood.

(2) All samples for laboratory tests performed by the manufacturer and all segments accompanying a unit of blood shall be collected at the time of filling the original blood container.

* * * * *

(4) All segments accompanying a unit of blood shall be attached to the whole blood container before blood collection, in a tamper proof manner that will conspicuously indicate removal and reattachment.

(5) Segments for compatibility testing shall contain blood mixed with the appropriate anticoagulant.

* * * * *

13. Section 640.5 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 640.5 Testing the blood.

All laboratory tests shall be made on a specimen of blood taken from the donor at the time of collecting the unit of blood, and these tests shall include the following:

* * * * *

(c) *Determination of the Rh factors.* Each container of Whole Blood shall be classified as to Rh type on the basis of tests done on the sample. The label shall indicate the extent of typing and the results of all tests performed. If the test, using Anti-D Blood Grouping Reagent, is positive, the container may be labeled "Rh Positive". If this test is negative, the results shall be confirmed by further testing which shall include tests for the Rh_o variant (D^u). Blood may be labeled "Rh Negative" if further testing is negative. Units testing positive after additional more specific testing shall be labeled as "Rh Positive." Only Anti-Rh Blood Grouping Reagents licensed under, or that otherwise meet the requirements of, the regulations of this subchapter shall be used, and the technique used shall be that for which the reagent is specifically designed to be effective.

* * * * *

§ 640.6 [Amended]

14. Section 640.6 *Modifications of Whole Blood* is amended by removing paragraph (c).

15. Section 640.13 is amended by revising paragraph (a) to read as follows:

§ 640.13 Collection of the blood.

(a) The source blood shall be collected as prescribed in § 640.4.

* * * * *

16. Section 640.15 is revised to read as follows:

§ 640.15 Samples for testing.

Samples collected in integral tubing shall meet the following standards:

(a) One or more segments of either the original blood or of the Red Blood Cells being processed shall be provided with each unit of Red Blood Cells when issued or reissued.

(b) Before they are filled, all segments shall be marked or identified so as to relate them to the donor of that unit of red cells.

(c) All segments accompanying a unit of Red Blood Cells shall be filled at the time the blood is collected or at the time the final product is prepared.

17. Section 640.16 is amended by revising paragraphs (a) and (b) to read as follows:

§ 640.16 Processing.

(a) *Separation.* Within the timeframe specified in the directions for the use of the specific devices, Red Blood Cells may be prepared either by centrifugation, done in a manner that will not tend to increase the temperature of the blood, or by normal undisturbed sedimentation. A portion of the plasma sufficient to insure optimal cell preservation shall be left with the red cells except when a cryoprotective substance or additive solution is added for prolonged storage.

(b) *Sterile system.* All surfaces that come in contact with the red cells shall be sterile and pyrogen-free.

* * * * *

18. Section 640.22 is amended by revising paragraph (a) to read as follows:

§ 640.22 Collection of source material.

(a) Whole blood used as the source of Platelets shall be collected as prescribed in § 640.4.

* * * * *

19. Section 640.23 is amended by revising paragraph (a) to read as follows:

§ 640.23 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Platelets or Platelets, Pheresis shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5(a), (b), and (c). Results of tests performed in accordance with § 640.5(b) and (c) for Platelets, Pheresis products shall be valid for a period not to exceed 3 months.

* * * * *

20. Section 640.24 is amended by revising paragraph (b) to read as follows:

§ 640.24 Processing.

* * * * *

(b) Immediately after collection, the whole blood or plasma shall be held in storage between 20 and 24 °C, unless it must be transported from the collection center to the processing laboratory. During such transport, all reasonable methods shall be used to maintain the temperature as close as possible to a range between 20 and 24 °C until it arrives at the processing laboratory where it shall be held between 20 and 24 °C until the platelets are separated. The platelet concentrate shall be separated within the timeframe specified in the directions for use for the specific device used for the collection of the unit of whole blood or plasma.

* * * * *

§ 640.31 [Amended]

21. Section 640.31 *Suitability of donors* is amended by removing paragraph (c).

22. Section 640.32 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 640.32 Collection of source material.

(a) Whole blood shall be collected, transported, and stored as prescribed in § 640.4. * * *

* * * * *

23. Section 640.34 is amended by revising paragraphs (a) through (d), (e)(1) through (e)(3), and (g)(2) to read as follows:

§ 640.34 Processing.

(a) *Plasma.* Plasma shall be separated from the red blood cells and shall be stored at –18 °C or colder within the timeframe specified in the directions for use for the specific device after transfer to the final container, unless the product is to be stored as Liquid Plasma.

(b) *Fresh Frozen Plasma.* Fresh Frozen Plasma shall be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to and minimal manipulation of the donor's tissue. The plasma shall be

separated from the red blood cells, frozen solid within the timeframe specified in the directions for use for the specific device, and stored at –18 °C or colder.

(c) *Liquid Plasma.* Liquid Plasma shall be separated from the red blood cells and shall be stored at a temperature of 1 to 6 °C within the timeframe specified in the directions for use for the specific device after filling the final container.

(d) *Platelet Rich Plasma.* Platelet Rich Plasma shall be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to and manipulation of the donor's tissue. The plasma shall be separated from the red blood cells by centrifugation within the timeframe specified in the directions for use for the specific device after completion of the phlebotomy. The time and speed of centrifugation shall have been shown to produce a product with at least 250,000 platelets per microliter. The plasma shall be stored at a temperature between 20 and 24 °C, immediately after filling the final container. A gentle and continuous agitation of the product shall be maintained throughout the storage period, if stored at a temperature of 20 to 24 °C.

(e) * * *

(1) Platelets shall be separated as prescribed in subpart C of part 640, prior to freezing the plasma. The remaining plasma may be labeled as "Fresh Frozen Plasma," if frozen within the timeframe specified in the directions for use for the specific device after filling the final container.

(2) Cryoprecipitated AHF shall be removed as prescribed in subpart F of part 640. The remaining plasma shall be labeled "Plasma, Cryoprecipitate Reduced."

(3) Plasma remaining after both Platelets and Cryoprecipitated AHF have been removed may be labeled "Plasma, Cryoprecipitate Reduced."

* * * * *

(g) * * *

(2) With the exception of Platelet Rich Plasma and Liquid Plasma the final product shall be inspected for evidence of thawing or breakage at the time of issuance, however, the containers need not be stored in a manner that shows evidence of thawing if records of continuous monitoring of the storage temperature establish that the temperature remained at –18 °C or colder. If continuous monitoring of the product is not available, the final product shall be stored in a manner that will show evidence of thawing and shall not be issued if there is any evidence of thawing.

* * * * *

§ 640.51 [Amended]

24. Section 640.51 *Suitability of donors* is amended by removing paragraph (c).

25. Section 640.52 is amended by revising paragraph (a) to read as follows:

§ 640.52 Collection of source material.

(a) Whole blood used as a source of Cryoprecipitated AHF shall be collected as prescribed in § 640.4. Whole blood from which both Platelets and Cryoprecipitated AHF is derived shall be maintained as required under § 640.24 until the platelets are removed.

* * * * *

26. Section 640.54 is amended by revising paragraph (a)(2) to read as follows:

§ 640.54 Processing.

(a) * * *

(2) The plasma shall be frozen solid after blood collection within the timeframe specified in the directions for use for the specific device. A combination of dry ice and organic solvent may be used for freezing: *Provided*, That the procedure has been shown not to cause the solvent to penetrate the container or leach plasticizer from the container into the plasma.

* * * * *

27. Section 640.56 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 640.56 Quality control test for potency.

* * * * *

(c) The quality control test for potency may be performed by a clinical laboratory which meets the standards of the Clinical Laboratories Improvement Act of 1988 (CLIA) (42 U.S.C. 263a) and is qualified to perform potency tests for antihemophilic factor. Such arrangements must be approved by the Director, Center for Biologics Evaluation and Research, Food and Drug Administration. Such testing shall not be considered as divided manufacturing, as described in § 610.63 of this chapter, provided the following conditions are met:

* * * * *

28. Section 640.62 is revised to read as follows:

§ 640.62 Medical supervision.

A qualified licensed physician shall be available to attend to the donor within 15 minutes when donor suitability is being determined, immunizations are being made, whole blood is being collected, and red blood cells are being returned to the donor, except that during the administration of immunization red blood cells a qualified licensed physician shall be on the premises.

29. Section 640.63 is amended by revising paragraphs (c)(3), (c)(5), (c)(11), (c)(12), and (c)(13) to read as follows:

§ 640.63 Suitability of donor.

* * * * *

(c) * * *

(3) A blood hemoglobin level of no less than 12.5 grams of hemoglobin per 100 milliliters of blood or a hematocrit level of 38 percent;

* * * * *

(5) A total serum or total plasma protein of no less than 6.0 grams per 100 milliliters of blood;

* * * * *

(11) A history of viral hepatitis after the age of eleven;

(12) Freedom from a history of close contact within 12 months of donation with an individual having viral hepatitis;

(13) Freedom from a history of having received, within 12 months, human blood or any derivative of human blood which the Food and Drug Administration has advised the blood establishment is a possible source of viral hepatitis, except for specific immunization performed in accordance with § 640.66.

* * * * *

30. Section 640.65 is amended by revising paragraphs (b)(4) and (b)(5) and by adding paragraph (b)(8) to read as follows:

§ 640.65 Plasmapheresis.

* * * * *

(b) * * *

(4) The amount of whole blood, not including anticoagulant, removed from a donor during a manual plasmapheresis procedure or in any 2-day period shall not exceed 1,000 milliliters unless the donor's weight is 175 pounds or greater, in which case the amount of whole blood, not including anticoagulant, removed from the donor during a manual plasmapheresis procedure or in any 2-day period shall not exceed 1,200 milliliters.

(5) The amount of whole blood, not including anticoagulant, removed from a donor during a manual plasmapheresis procedure within a 7-day period shall not exceed 2,000 milliliters unless the donor's weight is 175 pounds or greater, in which case the amount of whole blood, not including

anticoagulant, removed from a donor during a manual plasmapheresis procedure within a 7-day period shall not exceed 2,400 milliliters.

* * * * *

(8) The volume of plasma collected during an automated plasmapheresis collection procedure shall be consistent with the volumes specifically approved by the Director, Center for Biologics Evaluation and Research, and collection shall not occur less than 2 days apart or more frequently than twice in a 7-day period.

31. Section 640.69 is amended by revising paragraph (d) to read as follows:

§ 640.69 General requirements.

* * * * *

(d) *Samples.* If samples are provided, they shall meet the following standards:

(1) Prior to filling, all samples shall be marked or identified so as to relate them directly to the donor of that unit of plasma.

(2) All samples shall be filled at the time the final product is prepared by the person who prepares the final product.

(3) All samples shall be representative of the contents of the final product or be collected from the donor at the time of filling the collection container.

(4) All samples shall be collected in a manner that does not contaminate the contents of the final container.

32. Section 640.71 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 640.71 Manufacturing responsibility.

(a) All steps in the manufacturing of Source Plasma, including donor examination, blood collection, plasmapheresis, laboratory testing, labeling, storage, and issuing shall be performed by personnel of the establishment licensed to manufacture Source Plasma, except that the following tests may be performed by personnel of an establishment licensed for blood and blood derivatives under section 351(a) of the Public Health Service Act, or by a clinical laboratory that meets the standards of the Clinical Laboratories Improvement Act of 1988 (CLIA) (42 U.S.C. 263a): *Provided*, The establishment or clinical laboratory is qualified to perform the assigned test(s).

* * * * *

33. Section 640.72 is amended by revising paragraph (a)(1) to read as follows:

§ 640.72 Records.

(a) * * *

(1) Documentation shall be available to ensure that the shipping temperature requirements of § 600.15 of this title and of § 640.74(b)(2) are being met for Source Plasma intended for manufacture into injectable products.

* * * * *

Dated: April 20, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–21292 Filed 8–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 640

[Docket No. 98N–0673]

Revisions to the Requirements Applicable to Blood, Blood Components, and Source Plasma; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma to be more consistent with current practices in the blood industry and to remove unnecessary or outdated requirements. FDA is taking this action as part of the agency's "Blood Initiative" in which FDA is reviewing and revising, when appropriate, its regulations, policies, guidance, and procedures related to blood, blood components, and Source Plasma. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. FDA is publishing this companion proposed rule under FDA's usual procedure for notice and comment to provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and withdraws the direct final rule.

DATES: Submit written comments on or before December 3, 1999. If FDA receives any significant adverse comment regarding this rule, FDA will publish a document withdrawing the direct final rule within 30 days after the comment period ends. FDA then will proceed to respond to the comments under this proposed rule using the usual notice and comment procedures. Any parties interested in commenting on this document should do so at this time.

If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on the direct final rule ends. The direct final rule will be effective February 11, 2000.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule will provide the procedural framework to finalize the rule in the event that the direct final rule receives any adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion rule will also be considered as comments regarding the direct final rule. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comment.

A significant comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of a significant adverse comment.

If no significant adverse comment is received within the specified comment period, FDA will publish a document within 30 days after the comment period ends confirming that the direct final rule will be effective February 11, 2000. Additional information about FDA's direct rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

For a variety of reasons, FDA has decided to comprehensively review and, as necessary, revise its regulations, policies, guidance, and procedures related to the licensing and regulation of blood products. FDA is issuing this companion proposed rule and the direct final rule, published elsewhere in this issue of the **Federal Register**, as part of the agency's "Blood Initiative" in which FDA is reviewing and revising, when appropriate, its regulations, policies, guidance, and procedures related to blood, blood components, and Source Plasma. The "Blood Initiative" is discussed in detail in the preamble to the direct final rule. FDA emphasizes that for many of the changes discussed below, additional issues related to the regulations now being amended continue to be under consideration by the agency. Further, more substantive changes may be proposed at a later date. Accordingly, any comment recommending an additional change to these regulations will not be considered to be an "adverse comment" unless the comment demonstrates that the change being made in the direct final rule represents a major departure from current regulations or accepted industry standards, or cannot be implemented without additional amendments to the regulations.

II. Legal Authority

FDA is proposing to issue this new rule under the biological product and communicable disease provisions of the Public Health Service Act (the PHS Act) (42 U.S.C. 262–264) and the drug, device, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 351–353, 355, 360, 360j, 371, and 374). Under these provisions of the PHS Act and the act, FDA has the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, potent, and properly labeled and to prevent the introduction, transmission, and spread of communicable disease.

III. Highlights of the Proposed Rule

FDA is proposing to amend the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma to be more consistent with current practices and to remove unnecessary or outdated requirements. As, previously discussed, FDA is also issuing these amendments as a direct final rule because the agency

has concluded they are noncontroversial and that there is little likelihood that there will be comments opposing the rule. FDA emphasizes that for many of the changes discussed in this document, additional issues related to the regulations now being amended continue to be under consideration by the agency. Further, more substantive changes may be proposed at a later date. Accordingly, any comment recommending additional changes to these regulations will not be considered to be an "adverse comment" unless the comment demonstrates that the change being made in the direct final rule represents a major departure from current regulations or accepted industry standards, or cannot be implemented without additional amendments to the regulation. Below FDA is identifying each of the changes included in the proposed rule.

Part 606 (21 CFR part 606) would be amended as follows:

Section 606.3, Definitions, would be amended to update the definitions provided in the section for consistency with current practice and usages.

The definition of "Component" in proposed § 606.3(c), would be amended to clarify that blood is obtained from a single donor and would no longer include the wording "single-donor unit." This change is to clarify that blood components may be collected by means other than separation from a unit of whole blood, such as by automated plasmapheresis.

The definition of "Plasmapheresis" in proposed § 606.3(e), would be amended by removing the restriction that plasmapheresis may be "immediately repeated, once" because current automated plasmapheresis collection practices often use more than two cycles of collection.

The definition of "Plateletpheresis" in proposed § 606.3(f) would be amended to provide for the common practice of collecting plasma as a by-product of a plateletpheresis procedure in lieu of returning all of the residual plasma to the donor.

The definition of "Compatibility testing" in proposed § 606.3(j) would be amended by removing the reference to serological tests and making the definition more general to apply to all tests performed to establish the matching of a donor's blood or blood components with that of a recipient. This change will provide for current practices used in compatibility testing, such as the electronic crossmatch and the immediate spin crossmatch.

Section 606.100(b) and (d) would be amended to reflect changes in terminology, requirements for testing, and availability of standard operating procedures (SOP's) to be consistent with current practices. Section 606.100(b) would also be amended by removing the references to homologous and autologous transfusion because subpart F of part 606 applies to all blood products intended for transfusion. In addition, the phrase "unless this is impractical" would be removed because it is current good manufacturing practice (CGMP) to make the applicable SOP's available in all areas where procedures are performed. Section 606.100(b)(7) would be amended by removing "including testing for hepatitis B surface antigen as prescribed in § 610.40 of this chapter" because other tests, in addition to tests for hepatitis B surface antigen, are now required and specific reference to this test is unnecessary. Section 606.100(b)(18) would be amended by removing the bracketed term "salvaged" because its use in § 606.100 is inconsistent with the use of "salvaged plasma" in § 640.76 (21 CFR 640.76). Section 606.100(d) would be amended by removing references to specific organizations because any SOP's meeting FDA requirements would be acceptable, regardless of their source, and because FDA cannot assure that SOP's adopted by particular organizations remain in compliance with FDA regulatory requirements.

Section 606.121(a) would be amended by removing the reference that the "Guideline for Uniform Labeling of Blood and Blood Components" is available from the Docket Management Branch as this is no longer the appropriate office from which to request this document and by removing the reference to the American Blood Commission because the organization no longer exists.

Section 606.121(d)(2) specifies the color requirements for printing the container label and would be amended by adding "or in solid black" because some blood centers use on-demand printers for printing labels that do not have the capability to print in multiple colors.

Section 606.121(e)(1)(ii) prescribes the specific anticoagulants that shall be identified on the container label. Section 606.121(e)(1)(ii) would be amended by removing the references to the names of specific anticoagulants. This change will allow for more flexibility for the acceptance and use of new anticoagulants or changes in nomenclature of existing anticoagulants without requiring amendments to the regulations.

Section 606.122(f) specifies the warning statement required in the instruction circular and would be amended by removing the reference to "hepatitis" and adding "infectious agents" to include a reference to the additional infectious disease marker tests routinely performed on blood and blood components because the product intended for transfusion carries the risk of transmitting other infectious agents.

Section 606.122(n)(4) specifies that the instruction circular for cryoprecipitated AHF shall contain instructions to thaw the product at a temperature of 37 °C and would be changed to allow instructions for thawing between 30 and 37 °C, permitting more flexibility in the preparation of the component.

Section 606.151(b) would be amended, consistent with current accepted practices, to permit SOP's to include use of recipient serum samples less than 3-days old for compatibility testing if the recipient has been pregnant or transfused within the proceeding 3 months.

Section 606.151(c) describes compatibility testing and would be amended by changing "the testing of the donor's cells with the recipient's serum" to "the testing of the donor's cell type with the recipient's serum type" and by replacing "agglutinating, coating, and hemolytic antibodies, which shall include the antiglobulin method" with "incompatibility." This change is intended to accommodate the use of such procedures as an immediate spin crossmatch and an electronic crossmatch.

Section 606.151(e) would be amended by changing "by the physician requesting the procedure" to "by a physician" to take into account that a patient may have more than one physician in attendance at any time.

Section 606.160(b)(2)(v) would be amended by changing "person(s) responsible" to "the person(s) performing the procedure" to clarify that the person(s) performing the labeling procedure is responsible for documenting the performance of that procedure.

Section 606.170(b) would be amended by removing "telegraph" and adding "facsimile, express mail, or electronically transmitted mail" to the possible methods by which the Director, Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, shall be notified of a complication of blood collection or transfusion resulting in a fatality.

Part 640 (21 CFR part 640) would be amended as follows:

Section 640.2(b) would be removed because Whole Blood collection in open systems is no longer acceptable or has

it being performed for many years. Section 640.2(d) is removed. In § 640.2 paragraphs (c), (e), and (f) would be redesignated as paragraphs (b), (c), and (d), respectively. Redesignated paragraphs (b) and (c)(2) would be revised by removing references to the original blood container because, to be consistent with current accepted practices such as washing, freezing, deglycerolization, and division of units using sterile connecting devices, the original blood container may, in many cases, no longer be the final container.

Section 640.3(b) would be amended by adding a reference to autologous donations to permit the collection of autologous Whole Blood at intervals of less than 8 weeks, consistent with the current practice of shorter time intervals between collections of blood and blood components from donors participating in autologous collection programs. Section 640.3(b)(3) would be amended to provide hematocrit and hemoglobin values to be used when determining whether a potential donor can donate Whole Blood, by adding to the end of the current paragraph "or a hematocrit value of 38 percent, and for autologous donations, a blood hemoglobin level which shall be demonstrated to be no less than 11.0 g of hemoglobin per 100 mL of blood or a hematocrit value of 33 percent." The acceptable hemoglobin and hematocrit values for autologous donors are consistent with current industry practice and the American Association of Blood Banks technical manual, 12th edition.

Sections 640.3(c)(1) and 640.63(c)(11) would be amended by inserting "after the age of eleven" after the term "hepatitis" because establishments may collect Whole Blood from donors who have a history of hepatitis prior to age eleven to be consistent with recommendations in the FDA memorandum dated April 23, 1992, entitled " Exemptions to Permit Persons with a History of Viral Hepatitis Before the Age of Eleven to Serve as Donors of Whole Blood and Plasma: Alternative Procedure" (21 CFR 640.120). Additional issues concerning donors who have a history of viral hepatitis continued to be reviewed by the agency and may be addressed in future rulemaking objectives.

Sections 640.3(c)(2) and 640.63(c)(12) would be amended by changing the deferral period for donors of Whole Blood who have had close contact with an individual having viral hepatitis from "six months" to "12 months." Similarly, §§ 640.3(c)(3) and 640.63(c)(13) would be amended by changing the deferral period from "six months" to "12 months" for donors of Whole Blood who received human blood, or any derivative of human blood which the Food and Drug Administration has identified as a possible source of viral hepatitis. These changes are consistent with recommendation made in the FDA memoranda dated April 23, 1992, entitled "Revised Recommendations for the Prevention of Human Immunodeficiency Virus Transmission by Blood and Blood Products and Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)." In addition, §§ 640.3(c)(3) and 640.63(c)(13) would be amended by changing the reference from a "licensed establishment" to a "blood establishment" to clarify that the regulation applies to all establishments engaged in the collection of blood and blood products.

Sections 640.3(e), 640.31(c), and 640.51(c) would be removed because FDA has concluded that it is no longer necessary to defer donors participating in red blood cell immunization programs. Previously, donors participating in red blood cell immunization programs were deferred for 12 months because fresh red blood cells were used to immunize donors. Red blood cells now used in immunization programs are carefully screened and quarantined thereby minimizing the risk of transmitting known infectious agents. See FDA memorandum dated March 14, 1995, entitled "Revised Recommendations for Red Blood Cell Immunization Programs for Source Plasma Donors" for additional information about current red blood cell immunization practices.

Section 640.4(b) would be amended by removing the word "clinic" and replacing it with the word "center" to reflect current terminology and by changing the word "licensed" to "blood" to clarify that the regulation applies to all blood establishments engaged in the collection of blood and blood products. Section 640.4(d) would be amended by removing the reference to the specific anticoagulant formulae. Section 640.4(d)(1) through (d)(4) would be removed because FDA has determined it is unnecessary to provide specific formulae for anticoagulant solutions in the regulations and that manufacturers should be able to use any anticoagulant approved by FDA for such use.

Sections 640.13(a), 640.22(a), 640.32(a), and 640.52(a) would be amended to delete references to § 640.4(d)(2) and (h), which would be being removed. Section 640.4(g)(5) would be changed to include the use of different anticoagulants in segments for compatibility testing to be consistent with the use of different approved anticoagulants in the manufacture of blood and blood products. Section 640.4(h) would be removed because heparin anticoagulant solutions are no longer used for the routine collection of blood.

Section 640.5(c) would be amended to be consistent with current Rh factor testing practices by removing "and for other Rh-Hr factors," because these tests are not routinely performed. The section would also be changed to specify that blood testing negative using Anti-D Blood Grouping Reagents may only be labeled "Rh Negative" if the confirmatory testing includes tests for weak expressions of D. These changes would be made to be consistent with current accepted practices which designate that tests for weak expressions of D be performed and the product labeled consistent with the results of those tests.

Sections 640.6(c) and 640.15(c) would be removed because the use of more modern methods of manufacturing and equipment have eliminated the use of pilot tubes attached to the blood units. In § 640.15 paragraph (d) is redesignated as paragraph (c).

Section 640.16(a) would be amended by inserting "or additive solution" after "cryoprotective substance" to reflect an additional procedure for prolonging shelf life now in use in which all the plasma is removed from a unit of blood.

Section 640.16(b) would be amended by removing all but the first sentence. The removed text describes blood collection procedures to be followed when using open vented systems. Use of open vented systems is no longer consistent with CGMP and has not been used for many years.

All references to "pilot tubes" and "pilot samples" would be replaced with the words "sample(s)" or "segment(s)" to reflect current terminology for various testing specimens. The following sections would be amended by replacing "pilot tubes," "pilot samples," or "pilot sample tubes" with "segments" or "samples" as appropriate in §§ 640.2(e)(1), 640.4(g) introductory text, and paragraphs (g)(1), (g)(2), (g)(4), and (g)(5), 640.5, 640.15(a) through (c), and 640.69(d) introductory text, and paragraphs (d)(1) through (d)(4).

Section 640.23(a) would be amended to include the preparation of Platelets prepared by automated collection procedures and to allow the group and typing tests performed on Platelets prepared by apheresis to be valid for a

period not to exceed 3 months, thereby, eliminating the necessity of repeat testing of blood samples from donors participating in frequent plasmapheresis collection procedures.

Section 640.24(b) would be amended by changing the time period for separation of the platelet concentrate from "4 hours" to "within the time period specified in the directions for use for the specific device." Similar changes would be made to the timeframe for the storage of plasma that is set forth in § 640.34(a) through (d) and (e)(1) and the freezing of plasma set forth in § 640.54(a)(2). These changes, consistent with current accepted practices, permit more flexibility by permitting different timeframes depending on the particular blood collection device being used.

Sections 640.25(b) and 640.56(a) would be amended to require testing only in those months in which blood products would be prepared for use. This eliminates the need for performing quality control procedures during those months when product is not being manufactured.

Sections 640.25(c), 640.56(c), and 640.71(a) would be amended to update references to cite the "Clinical Laboratories Improvement Amendments of 1988 (CLIA)" consistent with nomenclature in the regulations implementing CLIA in 42 CFR part 493.

Section 640.34(d) would be amended by removing the reference to storing platelet rich plasma at temperatures between 1 and 6 °C because storage at such temperatures adversely affects platelet function.

Section 640.34(e)(2) and (e)(3) would be amended to include the proper name of the product "Plasma, Cryoprecipitate Reduced" as per recommendations of the Blood Products Advisory Committee at the meeting of September 18 and 19, 1997. Section 640.34(g)(2) would be amended to permit for proof of continuous monitoring of the temperature to be within acceptable ranges for the product as an alternative to requiring the storing of the product in a manner to show evidence of thawing. FDA believes that, with current technology, monitoring systems of freezers used for storage are adequately sensitive and reliable to detect any significant rise in storage temperature.

Section 640.62 requiring that a qualified licensed physician be on the premises when donor suitability is being determined would be amended to require a qualified licensed physician to be physically available on the premises, or be available to attend to the donor within 15 minutes, when a pheresis procedure is being performed, for consultation and management of donor adverse reactions, except that the qualified licensed physician shall be physically available on the premises when red blood cell immunizations are being performed. FDA has determined that a qualified licensed physician must always be readily available, if needed, and shall be on the premises for red blood cell immunizations.

Section 640.63(c)(3) would be amended by adding at the end of the sentence "or a hematocrit level of 38 percent," which is equivalent to a hemoglobin level of 12.5 grams per 100 milliliters of blood, to be consistent with current accepted practices.

Section 640.63(c)(5) would be amended by adding "or total plasma" after "A total serum" to be consistent with current accepted practice of using a capillary tube coated with anticoagulant for fingerstick sample collection.

Section 640.65(b)(4) would be amended by changing "in any 48-hour period" to "2-day" to permit more flexibility in scheduling donor appointments and by adding the word "manual" to the phrases "during a plasmapheresis procedure" to clarify that the regulation applies to a manual plasmapheresis collection procedure, but does not apply to automated apheresis.

Section 640.65(b)(5) would be amended by adding "during a manual plasmapheresis procedure" after the phrases "removed from the donor" to clarify that the regulation applies to a manual plasmapheresis collection procedure, but does not apply to automated apheresis.

Section 640.65(b)(8) would be added to address the collection of Source Plasma using automated collection devices. The regulation describes the frequency of collection consistent with § 640.65(b)(4) and (b)(5) and the volume of plasma to be collected during such procedures consistent with the plasma collection volumes approved for each device and with recommendations included in the FDA memorandum to all plasma establishments dated November 4, 1992, entitled "Volume Limits for Automated Collection of Source Plasma."

Section 640.72(a)(1) would be amended by replacing "compiled every 3 months" with "shall be available" to eliminate the necessity of compiling documents for review at specified periods of time.

IV. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act and the Unfunded Mandates Reform Act of 1995

FDA has examined the impact of the companion proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U. S. C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impact; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This proposed rule is not a significant regulatory action as defined by the Executive Order and therefore is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact of a rule on small business entities. Because the proposed rule amendments have no compliance costs and do not result in any new requirements, the agency certifies that the proposed rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This proposed rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any 1 year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Request for Comments

Interested persons may, on or before December 3, 1999, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and authority delegated by the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 606 and 640 be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

2. Section 606.3 is amended by revising paragraphs (c), (e), (f), and (j) to read as follows:

§ 606.3 Definitions.

* * * * *

(c) *Component* means that part of a single-donor's blood separated by physical or mechanical means.

* * * * *

(e) *Plasmapheresis* means the procedure in which blood is removed from the donor, the plasma is separated from the formed elements and at least the red blood cells are returned to the donor.

(f) *Plateletpheresis* means the procedure in which blood is removed from a donor, a platelet concentrate is separated, and the remaining formed elements are returned to the donor along with a portion of the residual plasma.

* * * * *

(j) *Compatibility testing* means the tests performed to establish the matching of a donor's blood or blood components with that of a potential recipient.

3. Section 606.100 is amended by revising the introductory text of paragraphs (b) and (d), and by revising paragraphs (b)(7) and (b)(18) to read as follows:

§ 606.100 Standard operating procedures.

* * * * *

(b) Written standard operating procedures shall be maintained and shall include all steps to be followed in the collection, processing, compatibility testing, storage, and distribution of blood and blood components for transfusion and further manufacturing purposes. Such procedures shall be available to the personnel for use in the areas where the procedures are performed. The written standard operating procedures shall include, but are not limited to, descriptions of the following, when applicable:

* * * * *

(7) All tests and repeat tests performed on blood and blood components during manufacturing.

* * * * *

(18) Procedures for preparing recovered plasma, if performed, including details of separation, pooling, labeling, storage, and distribution.

* * * * *

(d) In addition to the requirements of this subpart and in conformity with this section, any facility may utilize current standard operating procedures such as the manuals of the organizations, as long as such specific procedures are consistent with, and at least as stringent as, the requirements contained in this part.

* * * * *

4. Section 606.121 is amended by revising paragraphs (a), (d)(2), and (e)(1)(ii) to read as follows:

§ 606.121 Container label.

(a) The container label requirements are designed to facilitate the use of a uniform container label for blood and blood components (except Source Plasma) by all blood establishments.

* * * * *

(d) * * *

(2) The proper name of the product, any appropriate modifier(s), the donor classification statement, and the statement "properly identify intended recipient" shall be printed in solid red or in solid black.

* * * * *

(e) * * *

(1) * * *

(ii) The name of the applicable anticoagulant immediately preceding and of no less prominence than the proper name approved for use by the Director, Center for Biologics Evaluation and Research.

* * * * *

5. Section 606.122 is amended by revising paragraphs (f) and (n)(4) to read as follows:

§ 606.122 Instruction circular.

* * * * *

(f) The statements: "Warning. The risk of transmitting infectious agents is present. Careful donor selection and available laboratory tests do not eliminate the hazard."

* * * * *

(n) * * *

(4) Instructions to thaw the product for no more than 15 minutes at a temperature between 30 and 37 °C.

* * * * *

6. Section 606.151 is amended by revising paragraphs (b), (c), and (e) to read as follows:

§ 606.151 Compatibility testing.

* * * * *

(b) The use of fresh recipient serum samples less than 3-days old for all pretransfusion testing if the recipient has been pregnant or transfused within the previous 3 months.

(c) The testing of the donor's cell type with the recipient's serum type by a method that will demonstrate incompatibility.

* * * * *

(e) Procedures to expedite transfusion in life-threatening emergencies. Records of all such incidents shall be maintained, including complete documentation justifying the emergency action, which shall be signed by a physician.

7. Section 606.160 is amended by revising paragraph (b)(2)(v) to read as follows:

§ 606.160 Records.

* * * * *

(b) * * *

(2) * * *

(v) Labeling, including initials of the person(s) performing the procedure.

* * * * *

8. Section 606.170 is amended by revising paragraph (b) to read as follows:

§ 606.170 Adverse reaction file.

* * * * *

(b) When a complication of blood collection or transfusion is confirmed to be fatal, the Director, Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, shall be notified by telephone,

facsimile, express mail, or electronically transmitted mail as soon as possible; a written report of the investigation shall be submitted to the Director, Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, within 7 days after the fatality by the collecting facility in the event of a donor reaction, or by the facility that performed the compatibility tests in the event of a transfusion reaction.

(Information collection requirements approved by the Office of Management and Budget under control number 0910–0116)

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

9. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

10. Section 640.2 is amended by removing paragraphs (b) and (d), by redesignating paragraphs (c), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising newly redesignated paragraphs (b) and (c)(2) to read as follows:

§ 640.2 General requirements.

* * * * *

(b) *Blood container.* The blood container shall not be entered prior to issue for any purpose except for blood collection. Such container shall be uncolored and transparent to permit visual inspection of the contents and any closure shall be such as will maintain an hermetic seal and prevent contamination of the contents. The container material shall not interact with the contents under the customary conditions of storage and use, in such a manner as to have an adverse effect upon the safety, purity, or potency of the blood.

(c) * * *

(2) A segment is properly attached and has not been removed, except that blood lacking a properly attached segment may be reissued in an emergency provided it is accompanied by instructions for sampling and for use within 6 hours after entering the container for sampling;

* * * * *

11. Section 640.3 is amended by revising the introductory text of paragraph (b), by revising paragraphs (b)(3), (c)(1), (c)(2), and (c)(3) and by removing and reserving paragraph (e) to read as follows:

§ 640.3 Suitability of donor.

* * * * *

(b) *Qualifications of donor; general.* Except as provided in paragraph (f) of this section and for autologous donations, a person may not serve as a source of Whole Blood more than once in 8 weeks. In addition, donors shall be in good health, as indicated in part by:

* * * * *

(3) For allogeneic donors, a blood hemoglobin level which shall be demonstrated to be no less than 12.5 grams (g) of hemoglobin per 100 milliliters (mL) of blood; or a hematocrit value of 38 percent, and for autologous donors, a blood hemoglobin level which shall be demonstrated to be no less than 11.0 g of hemoglobin per 100 mL of blood or a hematocrit value of 33 percent.

* * * * *

(c) * * *

(1) A history of viral hepatitis after the age of eleven;

(2) A history of close contact within 12 months of donation with an individual having viral hepatitis;

(3) A history of having received within 12 months of donation, human blood or any derivative of human blood which the Food and Drug Administration has advised the blood establishment is a possible source of viral hepatitis.

* * * * *

12. Section 640.4 is amended by removing paragraphs (d)(1) through (d)(4) and (h), by redesignating paragraph (i) as paragraph (h), and revising paragraphs (b) and (d), the introductory text of paragraph (g), and paragraphs (g)(1), (g)(2), (g)(4), and (g)(5) to read as follows:

§ 640.4 Collection of the blood.

* * * * *

(b) *The donor center.* The pertinent requirements of §§ 600.10 and 600.11 of this chapter shall apply at both the blood establishment and at any other place where the bleeding is performed.

* * * * *

(d) *The anticoagulant solution.* The anticoagulant solution shall be sterile and pyrogen-free. Anticoagulant solutions shall be compounded and used according to a formula approved by the Director, Center for Biologics Evaluation and Research.

* * * * *

(g) *Samples for laboratory tests.* Samples for laboratory tests shall meet the following standards:

(1) One or more segments shall be provided with each unit of blood when issued or reissued except as provided in § 640.2(e)(2) and all segments shall be from the donor who is the source of the unit of blood.

(2) All samples for laboratory tests performed by the manufacturer and all segments accompanying a unit of blood shall be collected at the time of filling the original blood container.

* * * * *

(4) All segments accompanying a unit of blood shall be attached to the whole blood container before blood collection, in a tamper proof manner that will conspicuously indicate removal and reattachment.

(5) Segments for compatibility testing shall contain blood mixed with the appropriate anticoagulant.

* * * * *

13. Section 640.5 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 640.5 Testing the blood.

All laboratory tests shall be made on a specimen of blood taken from the donor at the time of collecting the unit of blood, and these tests shall include the following:

* * * * *

(c) *Determination of the Rh factors.* Each container of Whole Blood shall be classified as to Rh type on the basis of tests done on the sample. The label shall indicate the extent of typing and the results of all tests performed. If the test, using Anti-D Blood Grouping Reagent, is positive, the container may be labeled "Rh Positive". If this test is negative, the results shall be confirmed by further testing which shall include tests for the Rh_o variant (D^u). Blood may be labeled "Rh Negative" if further testing is negative. Units testing positive after additional more specific testing shall be labeled as "Rh Positive." Only Anti-Rh Blood Grouping Reagents licensed under, or that otherwise meet the requirements of, the regulations of this subchapter shall be used, and the technique used shall be that for which the reagent is specifically designed to be effective.

* * * * *

§ 640.6 [Amended]

14. Section 640.6 *Modifications of Whole Blood* is amended by removing paragraph (c).

15. Section 640.13 is amended by revising paragraph (a) to read as follows:

§ 640.13 Collection of the blood.

(a) The source blood shall be collected as prescribed in § 640.4.

* * * * *

16. Section 640.15 is revised to read as follows:

§ 640.15 Samples for testing.

Samples collected in integral tubing shall meet the following standards:

(a) One or more segments of either the original blood or of the Red Blood Cells being processed shall be provided with each unit of Red Blood Cells when issued or reissued.

(b) Before they are filled, all segments shall be marked or identified so as to relate them to the donor of that unit of red cells.

(c) All segments accompanying a unit of Red Blood Cells shall be filled at the time the blood is collected or at the time the final product is prepared.

17. Section 640.16 is amended by revising paragraphs (a) and (b) to read as follows:

§ 640.16 Processing.

(a) *Separation.* Within the timeframe specified in the directions for the use of the specific devices, Red Blood Cells may be prepared either by centrifugation, done in a manner that will not tend to increase the temperature of the blood, or by normal undisturbed sedimentation. A portion of the plasma sufficient to insure optimal cell preservation shall be left with the red cells except when a cryoprotective substance or additive solution is added for prolonged storage.

(b) *Sterile system.* All surfaces that come in contact with the red cells shall be sterile and pyrogen-free.

* * * * *

18. Section 640.22 is amended by revising paragraph (a) to read as follows:

§ 640.22 Collection of source material.

(a) Whole blood used as the source of Platelets shall be collected as prescribed in § 640.4.

* * * * *

19. Section 640.23 is amended by revising paragraph (a) to read as follows:

§ 640.23 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Platelets or Platelets, Pheresis shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5(a), (b), and (c). Results of tests performed in accordance with § 640.5(b) and (c) for Platelets, Pheresis products shall be valid for a period not to exceed 3 months.

* * * * *

20. Section 640.24 is amended by revising paragraph (b) to read as follows:

§ 640.24 Processing.

* * * * *

(b) Immediately after collection, the whole blood or plasma shall be held in storage between 20 and 24 °C, unless it must be transported from the collection center to the processing laboratory. During such transport, all reasonable methods shall be used to maintain the temperature as close as possible to a range between 20 and 24 °C until it arrives at the processing laboratory where it shall be held between 20 and 24 °C until the platelets are separated. The platelet concentrate shall be separated within the timeframe specified in the directions for use for the specific device used for the collection of the unit of whole blood or plasma.

* * * * *

§ 640.31 [Amended]

21. Section 640.31 *Suitability of donors* is amended by removing paragraph (c).

22. Section 640.32 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 640.32 Collection of source material.

(a) Whole blood shall be collected, transported, and stored as prescribed in § 640.4. * * *

* * * * *

23. Section 640.34 is amended by revising paragraphs (a) through (d), (e)(1) through (e)(3), and (g)(2) to read as follows:

§ 640.34 Processing.

(a) *Plasma.* Plasma shall be separated from the red blood cells and shall be stored at −18 °C or colder within the timeframe specified in the directions for use for the specific device after transfer to the final container, unless the product is to be stored as Liquid Plasma.

(b) *Fresh Frozen Plasma.* Fresh Frozen Plasma shall be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to and minimal manipulation of the donor's tissue. The plasma shall be separated from the red blood cells, frozen solid within the timeframe specified in the directions for use for the specific device, and stored at −18 °C or colder.

(c) *Liquid Plasma.* Liquid Plasma shall be separated from the red blood cells and shall be stored at a temperature of 1 to 6 °C within the timeframe specified in the directions for use for the specific device after filling the final container.

(d) *Platelet Rich Plasma.* Platelet Rich Plasma shall be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to and manipulation of the donor's tissue. The plasma shall be separated from the red blood cells by centrifugation within the timeframe specified in the directions for use for the specific device after completion of the phlebotomy. The time and speed of centrifugation shall have been shown to produce a product with at least 250,000 platelets per microliter. The plasma shall be stored at a temperature between 20 and 24 °C, immediately after filling the final container. A gentle and continuous agitation of the product shall be maintained throughout the storage period, if stored at a temperature of 20 to 24 °C.

(e) * * *

(1) Platelets shall be separated as prescribed in subpart C of part 640, prior to freezing the plasma. The remaining plasma may be labeled as "Fresh Frozen Plasma," if frozen within the timeframe specified in the directions for use for the specific device after filling the final container.

(2) Cryoprecipitated AHF shall be removed as prescribed in subpart F of part 640. The remaining plasma shall be labeled "Plasma, Cryoprecipitate Reduced."

(3) Plasma remaining after both Platelets and Cryoprecipitated AHF have been removed may be labeled "Plasma, Cryoprecipitate Reduced."

* * * * *

(g) * * *

(2) With the exception of Platelet Rich Plasma and Liquid Plasma the final product shall be inspected for evidence of thawing or breakage at the time of issuance, however, the containers need not be stored in a manner that shows evidence of thawing if records of continuous monitoring of the storage temperature establish that the temperature remained at −18 °C or colder. If continuous monitoring of the product is not available, the final product shall be stored in a manner that will show evidence of thawing and shall not be issued if there is any evidence of thawing.

* * * * *

§ 640.51 [Amended]

24. Section 640.51 *Suitability of donors* is amended by removing paragraph (c).

25. Section 640.52 is amended by revising paragraph (a) to read as follows:

§ 640.52 Collection of source material.

(a) Whole blood used as a source of Cryoprecipitated AHF shall be collected as prescribed in § 640.4. Whole blood from which both Platelets and Cryoprecipitated AHF is derived shall be maintained as required under § 640.24 until the platelets are removed.

* * * * *

26. Section 640.54 is amended by revising paragraph (a)(2) to read as follows:

§ 640.54 Processing.

(a) * * *

(2) The plasma shall be frozen solid after blood collection within the timeframe specified in the directions for use for the specific device. A combination of dry ice and organic solvent may be used for freezing: *Provided*, That the procedure has been shown not to cause the solvent to penetrate the container or leach plasticizer from the container into the plasma.

* * * * *

27. Section 640.56 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 640.56 Quality control test for potency.

* * * * *

(c) The quality control test for potency may be performed by a clinical laboratory which meets the standards of the Clinical Laboratories Improvement Act of 1988 (CLIA) (42 U.S.C. 263a) and is qualified to perform potency tests for antihemophilic factor. Such arrangements must be approved by the Director, Center for Biologics Evaluation and Research, Food and Drug Administration. Such testing shall not be considered as divided manufacturing, as described in § 610.63 of this chapter, provided the following conditions are met:

* * * * *

28. Section 640.62 is revised to read as follows:

§ 640.62 Medical supervision.

A qualified licensed physician shall be available to attend to the donor within 15 minutes when donor suitability is being determined, immunizations are being made, whole blood is being collected, and red blood cells are being returned to the donor, except that during the administration of immunization red blood cells a qualified licensed physician shall be on the premises.

29. Section 640.63 is amended by revising paragraphs (c)(3), (c)(5), (c)(11), (c)(12), and (c)(13) to read as follows:

§ 640.63 Suitability of donor.

* * * * *

(c) * * *

(3) A blood hemoglobin level of no less than 12.5 grams of hemoglobin per 100 milliliters of blood or a hematocrit level of 38 percent;

* * * * *

(5) A total serum or total plasma protein of no less than 6.0 grams per 100 milliliters of blood;

* * * * *

(11) A history of viral hepatitis after the age of eleven;

(12) Freedom from a history of close contact within 12 months of donation with an individual having viral hepatitis;

(13) Freedom from a history of having received, within 12 months, human blood or any derivative of human blood which the Food and Drug Administration has advised the blood establishment is a possible source of viral hepatitis, except for specific immunization performed in accordance with § 640.66.

* * * * *

30. Section 640.65 is amended by revising paragraphs (b)(4) and (b)(5) and by adding paragraph (b)(8) to read as follows:

§ 640.65 Plasmapheresis.

* * * * *

(b) * * *

(4) The amount of whole blood, not including anticoagulant, removed from a donor during a manual plasmapheresis procedure or in any 2-day period shall not exceed 1,000 milliliters unless the donor's weight is 175 pounds or greater, in which case the amount of whole blood, not including anticoagulant, removed from the donor during a manual plasmapheresis procedure or in any 2-day period shall not exceed 1,200 milliliters.

(5) The amount of whole blood, not including anticoagulant, removed from a donor during a manual plasmapheresis procedure within a 7-day period shall not exceed 2,000 milliliters unless the donor's weight is 175 pounds or greater, in which case the amount of whole blood, not including anticoagulant, removed from a donor during a manual plasmapheresis procedure within a 7-day period shall not exceed 2,400 milliliters.

* * * * *

(8) The volume of plasma collected during an automated plasmapheresis collection procedure shall be consistent with the volumes specifically approved by the Director, Center for Biologics Evaluation and Research, and collection shall not occur less than 2 days apart or more frequently than twice in a 7-day period.

31. Section 640.69 is amended by revising paragraph (d) to read as follows:

§ 640.69 General requirements.

* * * * *

(d) *Samples.* If samples are provided, they shall meet the following standards:

(1) Prior to filling, all samples shall be marked or identified so as to relate them directly to the donor of that unit of plasma.

(2) All samples shall be filled at the time the final product is prepared by the person who prepares the final product.

(3) All samples shall be representative of the contents of the final product or be collected from the donor at the time of filling the collection container.

(4) All samples shall be collected in a manner that does not contaminate the contents of the final container.

32. Section 640.71 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 640.71 Manufacturing responsibility.

(a) All steps in the manufacturing of Source Plasma, including donor examination, blood collection, plasmapheresis, laboratory testing, labeling, storage, and issuing shall be performed by personnel of the establishment licensed to manufacture Source Plasma, except that the following tests may be performed by personnel of an establishment licensed for blood and blood derivatives under section 351(a) of the Public Health Service Act, or by a clinical laboratory that meets the standards of the Clinical Laboratories Improvement Act of 1988 (CLIA) (42 U.S.C. 263a): *Provided*, The establishment or clinical laboratory is qualified to perform the assigned test(s).

* * * * *

33. Section 640.72 is amended by revising paragraph (a)(1) to read as follows:

§ 640.72 Records.

(a) * * *

(1) Documentation shall be available to ensure that the shipping temperature requirements of § 600.15 of this title and of § 640.74(b)(2) are being met for Source Plasma intended for manufacture into injectable products.

* * * * *

Dated: April 20, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–21293 Filed 8–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 600

[Docket No. 98N–0615]

Plasma Derivatives and Other Blood-Derived Products; Requirements for Tracking and Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to propose regulations requiring that certain blood-derived products, including certain plasma derivatives, be tracked from a U.S. licensed manufacturer, through the distribution network, to any patient having custody of the product. Additionally, FDA intends to require notification of consignees and patients having custody of a blood-derived product or an analogous recombinant product in the event the product is associated with a potential increased risk of transmitting a communicable disease, as determined by FDA or by a U.S. licensed manufacturer. The regulations would also apply to any blood-derived product which, in the future, may be routinely dispensed to the patient and held by the patient prior to administration. FDA intends to take this action to help ensure notification of patients having custody of blood-derived products when such products may be associated with a potential increased risk of transmitting a communicable disease so that patients may make informed, appropriate decisions. FDA is soliciting comments and information from interested persons concerning the subject matter of the proposed regulations.

DATES: Submit written comments by November 17, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 208520–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In a July 25, 1996, report entitled "Protecting the Nation's Blood Supply from Infectious Agents: the Need for New Standards to Meet New Threats," the United States House of Representatives Committee on Government Reform and Oversight provided recommendations to FDA on improvement of the biologics regulations. One of the recommendations concerned the need for the development of a more effective system to notify patients when there are adverse events associated with blood products.

In response to this recommendation, FDA, industry, and patient groups have already taken a number of actions to improve the agency's and industry's response to situations related to concerns about the safety of blood products. FDA has improved its procedures for planning, monitoring, coordinating, and directing FDA investigations for a range of situations including error and accident reports, recalls, and reports of injury or illness, including those related to plasma derivatives. Although primary responsibility for notification of recalls falls to the manufacturer of the product being recalled, FDA uses a variety of electronic communications to make information on recalls and withdrawals available to the public. These include information on the Center for Biologics Evaluation and Research World Wide Web home page, a Fax-on-Demand system, press releases, talk papers (FDA briefing documents), and a "Blood and Plasma Products" hotline. Interested persons may subscribe electronically to the notification system to receive new information automatically. FDA routinely communicates information regarding recalls and withdrawals of plasma derivatives to consumer groups such as the National Hemophilia Foundation and the Committee of Ten Thousand. FDA continues to work with regulated industry to improve the safety of the blood supply, including the development of new, safer products.

FDA has had extensive dialogue with a variety of interested persons in evaluating the current procedures for identifying and notifying recipients in case of safety issues related to blood products. FDA, along with other Government organizations, held a public workshop on November 19, 1996, to obtain public input on notification of the public on recalls and ongoing investigations (see the notice of meeting in the **Federal Register** of November 1, 1996 (61 FR 56549)). Subsequently, FDA has met with numerous consumer groups and industry organizations to discuss notification issues. After extensive discussions with patient communities and within the Department of Health and Human Services, FDA believes that there is a consensus that persons in custody of a product that may be associated with a potential increased risk of transmitting disease should be so notified; however, it remains unclear as to what specifically would be the most efficient, least burdensome, process that would ensure appropriate notification of all affected persons.

The voluntary programs for notifying recipients in cases of issues related to the quality of blood products are fairly new and efforts continue to recruit participation by patients who are blood product recipients. Thus the success of the voluntary programs cannot yet be fully assessed. However, the success of such voluntary programs will always depend on the continued voluntary support by manufacturers of blood products and the continued vigorous recruitment of patient/recipients to encourage full participation. FDA is concerned that the continued success of patient notification cannot be assured without regulatory standards for the performance of such notification programs and without a clear mechanism of enforcement in the event a notification program is found deficient. FDA intends to continue to monitor progress in the implementation of the voluntary systems and will consider elements of the voluntary systems when developing any regulations resulting from this notice. FDA believes there should be a standardized notification system, clearly understood by industry and by users of blood products, and over which FDA has clear enforcement authority to help ensure that notification consistently and comprehensively takes place.

Accordingly, FDA is considering rulemaking to provide for the prompt notification of patients who may possess certain plasma derivative products for their own use when information indicates a potential for the product to transmit a communicable disease. FDA recognizes that there are several alternatives as to how this notification could best be accomplished. Any such rule would involve the cooperation of a number of entities who must provide information to help ensure that appropriate notification takes place, including the manufacturers of such products, consignees who hold the product for further sale (wholesale distributors), consignees, such as hospitals and pharmacies, who provide the product directly to the patient, and patients. Accordingly, in sections II. and III. of this document FDA outlines the concepts and alternatives it is considering in the development of these

regulations and invites information and comments on the various concepts and alternatives from all interested persons.

II. General Overview of the Regulatory Plan

Under the biologics licensing and quarantine provisions of the Public Health Service Act (42 U.S.C. 262–264) and the drug, device, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351–353, 355–360, and 371–374)), FDA has the authority to issue regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the transmission of communicable diseases. Biological products derived from human plasma have an inherent, potential risk to transmit communicable diseases. Donors of the plasma source material are screened and tested for the potential to transmit a communicable disease. Products made from plasma may be further tested and treated by a process intended to remove or destroy infectious disease agents. However, despite these multiple precautions, there are occasions when problems are identified which may increase the potential risk that the plasma derivative may transmit a communicable disease. Depending on the particular facts, the manufacturer may initiate a recall or market withdrawal of the product so that consignees of the plasma derivative may take appropriate action to prevent the further marketing of the product (see Title 21 of the Code of Federal Regulations (CFR), part 7 (21 CFR part 7) for additional information on the recall and market withdrawal processes).

For some plasma products, generally those that may be chronically administered through the lifetime of the patient, the plasma derivative may be prescribed to the patient and held at the patient's residence until the product is administered. (Note that although FDA is aware only of certain plasma derivative products being routinely held in the patient's custody, FDA intends that any regulations concerning notification would apply to any blood-derived product which may, now or in the future, be released into the custody of a patient.) FDA believes that patients having custody of plasma derivatives are not consistently notified of lot-specific product recalls or withdrawals associated with a potential increased risk of a communicable disease or such notification has not been timely to ensure that appropriate action may be taken by the patient.

There are voluntary tracking and notification systems in place for specific plasma derivatives, but these systems require patients to register with the data base administrator in order for the patients to be notified. In order to protect patients and to better prevent the transmission of communicable diseases through plasma derivatives, FDA is considering the issuance of a proposed rulemaking that would require that patients having custody of plasma derivatives be promptly notified of specific lots associated with a potential increased risk of a communicable disease. Because of the importance of such a notification, FDA is considering defining when notification should take place and setting timeframes during which notification must be performed. The proposed rulemaking would also include requirements for tracking of plasma derivatives to patients who have custody of these products for the purpose of permitting identification of such patients for notifying them of recalls and market withdrawals.

III. Concepts of the Proposed Rulemaking

The following discussion is not intended to indicate the specific content of the proposed rulemaking. It is meant only to describe concepts to be covered by the proposed regulations. The discussion identifies a number of specific topics on which the agency is seeking additional information. However, FDA welcomes comments on any aspect regarding the notification of patients relating to the safety of plasma derivative products. Comments received in response to this advance notice of proposed rulemaking (ANPRM) will be used to develop the proposed rule. FDA specifically requests comments on the concepts that follow.

A. Scope of the Regulations—Types of Blood-Derived Products

The intent of the regulations would be to help ensure that patients possessing plasma derivative products are notified of a potential increased risk of communicable disease so that they may take appropriate action, such as returning the product to the distributing establishment. Therefore, FDA intends to limit the scope of the regulations to those plasma derivatives that may be distributed directly to a patient. Such products include Antihemophilic Factor (AHF or Factor VIII) for the treatment of hemophilia A, Factor IX, used for the treatment of hemophilia B, Alpha-1-Proteinase Inhibitor (Human), used for the treatment of alpha-1 antitrypsin deficiency and products analogous to those listed previously, such as porcine AHF and products made using recombinant technology. The proposed rulemaking would not apply to plasma derivative products, such as albumin, that are not routinely prescribed for home use.

FDA notes that occasionally patients may take custody of Immune Globulin Intravenous (Human) (also known as IGIV) for administration at home. FDA estimates that approximately 5 percent of the IGIV prescribed is taken into the custody of the patient. FDA believes that such patients should be notified in cases when the IGIV is associated with a potential increased risk of transmitting a communicable disease. The agency also recognizes the complexity, expense, and inefficiency of a system which would be needed to track large volumes of product, for the purpose of potentially notifying a small proportion of patients. It may be more efficient to provide specific arrangements for notification at the time the product is prescribed to the limited number of patients who are taking custody of the product for home use. FDA invites comments and recommendations on how appropriate information regarding product safety can be provided to such patients and whether alternative procedures for such a system should be codified as part of the notification rulemaking. FDA also invites comments as to whether other blood products should be included under the regulations, including a discussion of the extent of the increased burdens and public health advantages associated with such an expansion.

Currently, FDA is aware only of plasma derivative products being released into the custody of patients. It is possible that in the future other products, derived from other blood components, such as red blood cells or white blood cells, may be routinely dispensed into the custody of patients. In such a case, FDA intends that the requirements for tracking and notification would also apply to the blood-derived product. Because the information that FDA has so far gathered and the information being sought by FDA pertains primarily to plasma derivative products, this ANPRM will continue to focus upon plasma derivative products. However, FDA invites comments on what additional blood-derived products may be dispensed into the custody of a patient in the future.

As discussed earlier in this document, a number of voluntary efforts are under way to assist in the notification of persons in custody of a plasma derivative product associated with a potential increased risk of transmitting

a communicable disease. Although FDA believes that there may be innate limitations to any voluntary system, little information is available to the agency regarding the effectiveness of the voluntary systems in place. FDA requests data on the effectiveness of such systems in identifying all persons who may have custody of a plasma derivative product and notifying them in case the product is associated with a potential increased risk of transmitting a communicable disease. FDA also requests comments on whether such systems may be improved and, if so, whether regulations establishing a mandatory notification process would remain appropriate.

B. Scope of the Regulations—Reasons for Notification

At this time, FDA intends that the proposed regulations would require notification only for those plasma derivative lots which, within the dating period of the product, may be associated with a potential increased risk of transmitting a communicable disease. In general, FDA believes that notification of end-users should take place in the same instances for which manufacturers are now either recalling or withdrawing plasma derivative products because of a potential increased risk of transmitting disease. A biological product may be unacceptable for human use due to a wide range of reasons, many not related to communicable disease. FDA is inviting comments on how the basis for notification should be defined in the regulations so as to appropriately establish the criteria for determining when notification should be required. FDA is also inviting comments and information on whether the scope should be expanded to cover other instances, which may affect the safety of the product but which may not be associated with a potential increased risk of communicable disease. An established tracking and notification system could be used in the notification of patients having custody of plasma derivatives for all recalls and market withdrawals. FDA invites comments on the adequacy of the current recall process in situations, other than those related to the risk of communicable disease, and the additional benefits that would be provided by requiring patient notification when compared with the additional burdens associated with the notification process.

C. Who Should Be Responsible for Notification and Related Tracking Responsibilities?

In a recall, the manufacturer has primary responsibility for ensuring that the recall is undertaken promptly and that, based on an assessment of the risk, it extends to an appropriate level, such as to the end-user of the product. However, other persons, such as the consignees in receipt of the product, play an integral part in the recall process.

FDA is aware of consumer concerns that manufacturers should not know the identity of a patient using its product. Because of concerns about maintaining confidentiality of patients, FDA believes that the manufacturer should not be required to directly contact patients for notification purposes. Such notification could either be accomplished by those consignees who provided the product to the patient or by an independent third party contracted by the manufacturer to notify patients in the case of a notification or withdrawal related to the potential transmission of a communicable disease, while not divulging patient information to the manufacturer. FDA invites comments as to whether the consignees should be held responsible for notification, whether a manufacturer should be required to contract with a third party to perform notification, or whether either option should be permitted under the regulations.

D. Tracking of the Consignment of Applicable Plasma Derivatives

FDA intends that the proposed rule would require that plasma derivatives prescribed to patients for home use be tracked from the manufacturer, to any consignees, and ultimately to such patients for the purpose of permitting identification of such patients when they need to be notified about a product associated with the potential increased risk of transmitting a communicable disease. The tracking of product to intermediate consignees would be necessary for notifying them about the product risk and thus preventing further distribution of the implicated product lot to patients for home use. Depending on the mechanism of notification (see section III.G of this document), required tracking information could be specific for each lot or could simply be the ability to identify all consignees and patients who have received that specific plasma derivative product, regardless of what product lots they may have received. FDA invites comments, data, and other information on the potential recordkeeping burdens that would be associated with tracking such plasma derivative products, including any estimates of the time it would take to prepare such records and of the number of recordkeeping entries that would be necessary each year to maintain these tracking records. Data are requested both for keeping lot specific tracking information and for product specific information.

E. Initiation of Notification

In most cases the manufacturer would be the first to determine that a plasma derivative may be associated with a potential increased risk of transmitting a communicable disease. However, based, for example, on consumer complaints, laboratory evidence, or information obtained during inspection by FDA or from other public health agencies, FDA anticipates there would be occasions when it is FDA that makes the initial determination that notification is required. In such cases, FDA believes the most efficient means of initiating notification would be for FDA to inform the manufacturer by an appropriate means of rapid communication, such as fax, electronic mail, or telephone, to initiate notification, immediately followed by written information further documenting why the agency deems notification necessary. The previous description is a simplification of the process which would generally take place when problems are perceived with a product. In most cases, there would be considerable discussion among experts, at FDA and at the manufacturer, to evaluate the available information and assess its implications for the safety of the affected products before a decision to notify would be made. Thus, the process described previously would only be the final step in the determination that notification is required.

FDA requests comments on what should be the required elements of the determination that mandatory notification is to take place and what information regarding that determination should be shared between FDA and the manufacturer.

F. Timing for Notification

Because the plasma derivatives held by a patient may be administered at any time, FDA believes that notification of the patient should take place as rapidly as possible after the determination that a notification is necessary. In some cases the first attempt at notifying a patient may not be fruitful; the patient may be away from his or her home or otherwise unavailable. Accordingly, FDA is also considering a regulatory standard for the time by which full notification of patients should be completed (or by when it is determined that the patient cannot be notified with the currently available information). From the time that either the

manufacturer determines notification is appropriate or FDA informs the manufacturer that notification is required, FDA is considering a standard that the initial attempt to notify all persons with custody of the product must take place within 2 days. For those cases when the initial notification attempt fails, FDA is considering requirements that procedures must be in place for two additional attempts for notification; with the final attempt in written form taking place within 1 week from the beginning of the notification process. FDA invites comments and information on how rapidly it is feasible to attempt to contact patients who may possess the product subject to notification and how much time should be allotted to complete the notification process. If possible, the comments should describe in detail the steps which should take place in the notification process and the time which should be allotted for each step. FDA also invites comments on how much time should be permitted to contact consignees, other than the patients with custody of the product, who also may be in possession of the product.

G. Who Should Be Notified

FDA's public health objectives would be met if only those patients are notified who possess the product lot(s) with an increased potential for transmitting a communicable disease. However, a possible alternative would be to notify all patients who have been dispensed the brand of plasma derivative in question during the time period that the product lot subject to the notification has been in distribution. This method would negate the need to track plasma derivative products to the end-user by lot number. FDA invites comments on the comparative advantages and disadvantages of notifying only those patients who may possess the product lot in question versus notifying all patients who may possess the indicated brand of the plasma derivative. Under any system, the information provided to patients would be lot specific.

H. Information Included in a Notification of Patients

Required information to include in a notification of patients could include specific lot information, a statement to describe the risk potentially affecting the product lot, and instructions for further action to be taken by the patients who have custody of the product lot in question. FDA invites comments on whether the previous information is appropriate and adequately comprehensive for notification.

I. Adequacy of the Notification Process; Quality Assurance

FDA recognizes that, even with a standard mandatory process, notification of every patient may not be successful. For example, the patient may have moved or may be away from his or her home for an extended period of time. FDA is considering a requirement that the manufacturer have a process in place to evaluate, in cooperation with its consignees or any third party involved in notification, the effectiveness of its notification process, such as through the selected sampling of patients who should have been notified, and, with such information, determine how its notification process could be improved. FDA invites comments on the most appropriate means for evaluating the effectiveness of the notification process and who (the manufacturer, consignees, a third party) should be involved in such an evaluation.

J. Relationship of Notification With Product Recalls and Withdrawals

In most, if not all, situations for which FDA is considering requiring notification, manufacturers, under current procedures, would subject the product to recall or market withdrawal. Procedures for product recalls are presented as guidance in 21 CFR part 7. "Market withdrawal" is defined in § 7.3. Product recalls and market withdrawals are similar functions for the removal or correction of a marketed product. In the case of recalls the product is considered to be in violation of the law and may be subject to a regulatory action by FDA, such as seizure of the product. A market withdrawal may be performed for a distributed product associated with a minor violation or for products that are not in violation of the law. Many of the procedures described in this ANPRM as potentially appropriate for the notification process are identical or similar to procedures generally performed in a product recall or market withdrawal (see, for example, the procedures for development of a recall strategy (§ 7.42(a)(1)), conducting effectiveness checks (§ 7.42(b)(3)), and recall communications (§ 7.49)). FDA invites comments on the interrelationship among product recalls, withdrawals, and the notification process described in this ANPRM. What recall/withdrawal procedures would continue to be appropriate in the event FDA requires patient notification? How may the process best be integrated to ensure effective notification and product removal?

K. Informing Patients of the Notification Process

FDA believes that a patient taking custody of a plasma derivative should be informed that she or he will be notified in the event the plasma derivative is associated with a potential increased risk of transmitting a communicable disease. This information should be provided, in writing, when receiving delivery of the plasma product or before, such as at the time the product is prescribed. FDA invites comments on whether such information can best be provided in the form of patient labeling accompanying the product or should be delivered by other means. FDA also invites comments on whether such information can be standardized for all plasma derivative products and, if so, who should be responsible for preparing such information.

IV. Request for Comments

Interested persons may, on or before November 17, 1999, submit to the Dockets Management Branch (address above) written comments regarding the general and specific issues presented in this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This ANPRM is issued under section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*) and under authority of the Commissioner of Food and Drugs.

Dated: June 15, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–21294 Filed 8–18–99; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
August 19, 1999

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172 and 175

Hazardous Materials: Chemical Oxidizers and Compressed Oxygen Aboard Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, and 175

[Docket No. HM–224A]

RIN 2137–AC92

Hazardous Materials: Chemical Oxidizers and Compressed Oxygen Aboard Aircraft

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations to: Prohibit the carriage of chemical oxidizers in inaccessible aircraft cargo compartments that do not have a fire or smoke detection and fire suppression system; require oxygen cylinders to be placed in an outer packaging when transported aboard aircraft; limit the number of oxygen cylinders that may be stowed on an aircraft in inaccessible cargo compartments that do not have a fire or smoke detection system and a fire suppression system (e.g., a Class D cargo compartment); limit the number of oxygen cylinders that may be stowed in a Class B cargo compartment or its equivalent (i.e., an accessible cargo compartment equipped with a fire or smoke detection system but not a fire suppression system); authorize transportation of a limited number of oxygen cylinders in the passenger cabin of passenger-carrying aircraft; and prohibit the carriage of personal-use chemical oxygen generators on passenger-carrying aircraft and the carriage of spent chemical oxygen generators on both passenger-carrying and cargo aircraft.

This final rule is being issued in consultation with the Federal Aviation Administration (FAA) to enhance air transportation safety.

DATES: *Effective Date:* The effective date of these amendments is March 1, 2000.

Permissive Compliance Date: Compliance with the requirements adopted herein is authorized as of October 22, 1999.

Incorporation by Reference Date: The incorporation by reference of a publication listed in this final rule is approved by the Director of the Federal Register as of March 1, 2000.

FOR FURTHER INFORMATION CONTACT: Diane LaValle or John Gale, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street S.W., Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On May 11, 1996, ValuJet Airlines flight No. 596 crashed in the Florida Everglades resulting in 110 fatalities. The National Transportation Safety Board (NTSB) found that chemical oxygen generators initiated and then intensified a fire in a Class D cargo compartment, which caused the crash. Shortly after the crash, NTSB recommended that RSPA, together with FAA, "prohibit the transportation of oxidizers and oxidizing materials (e.g., nitric acid) in cargo compartments that do not have fire or smoke detection systems."

In subsequent rulemaking actions, RSPA has prohibited the transportation of chemical oxygen generators as cargo on board passenger-carrying airlines, and issued standards governing the transportation of chemical oxygen generators on cargo-only aircraft. 61 FR 26418 (May 24, 1996); 61 FR 68952 (Dec. 30, 1996); 62 FR 30767 (June 5, 1997); 62 FR 34667 (June 27, 1997). On February 17, 1998, FAA published a final rule that upgraded the fire safety standards for Class D compartments for certain transport-category airplanes. 63 FR 8033. FAA's rulemaking has a compliance date of March 19, 2001.

On December 30, 1996, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 68955) proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to prohibit the carriage of oxidizers, including compressed oxygen, in passenger-carrying aircraft. That proposal also would have had the effect of limiting packages of oxidizers that are allowed on cargo aircraft to locations accessible to crew members (see 49 CFR 175.85(b)). In the December 30, 1996 NPRM, RSPA analyzed the possible prohibition of oxidizers in Class D cargo compartments only, and proposed a new § 175.85(d) to prohibit loading or transporting in a Class D compartment any package containing a hazardous material for which an OXIDIZER or OXYGEN label is required. On August 20, 1997, RSPA published a supplemental notice of proposed rulemaking (SNPRM) (62 FR 44374) further analyzing the possible prohibition of oxidizers aboard passenger-carrying aircraft in Class B and C cargo compartments.

The classification of cargo compartments aboard transport-category aircraft is specified in 14 CFR 25.857 and discussed in RSPA's NPRM and SNPRM. In general, a Class B compartment is one which is accessible to a crew member with a hand-held fire extinguisher and has an approved smoke or fire detection system. Class C and D compartments are not accessible during flight and have means to control ventilation and exclude hazardous quantities of smoke or flames from the passenger compartment and cockpit. A Class C compartment also has an approved smoke or fire detection system and a built-in fire suppression system. In this final rule, when reference is made to Class B, Class C or Class D aircraft cargo compartments, we are also including cargo compartments on non-transport category airplanes that have similar characteristics. The limitations and prohibitions for Class D compartments also apply to non-transport category airplanes that do not have detection and suppression equipment, similar to Class D compartments in transport-category airplanes.

In the NPRM and SNPRM, RSPA also proposed to completely prohibit the transportation of chemical oxygen generators that have been discharged ("spent") and to prohibit the transportation of personal-use chemical oxygen generators on passenger-carrying aircraft. On August 27, 1998, FAA published an NPRM proposing to ban, in certain domestic operations, the transportation of devices designed to chemically generate oxygen, including devices that have not yet been charged for the generation of oxygen. 63 FR 45913. In response to a request from nine industry associations, on January 14, 1998, RSPA and FAA held a public meeting to more fully explore all the issues relating to the proposals in the NPRM and SNPRM.

The amendments adopted in this final rule respond to the NTSB recommendation and are based on the merits of comments and the assessment of RSPA and the FAA of the hazards posed by oxidizers. In its recommendation, NTSB cited three previous incidents in which oxidizers caused fires aboard aircraft. In each of these incidents, there were apparent or known serious violations of the HMR. RSPA and FAA are not aware of any fire aboard an aircraft having been caused directly by transport of oxidizers in conformance with the HMR. However, RSPA and FAA agree with the NTSB that, in certain circumstances, oxidizers can contribute to the severity of a fire and pose an unreasonable risk when transported in an inaccessible cargo compartment which does not have a fire or smoke detection system and a fire suppression system.

II. Comments and Regulatory Changes

A. General

RSPA received more than 55 written comments, and 14 persons made oral presentations at the public meeting, in response to the NPRM and SNPRM. The commenters included shippers and carriers of oxidizers by air, related trade associations, the NTSB, and persons who need supplemental oxygen during flight for medical reasons. In general, the persons that submitted comments:

(1) Supported the prohibition of oxidizers, other than oxygen, in those cargo compartments that do not have fire or smoke detection and fire suppression systems;

(2) Disagreed with the proposed total prohibition of oxidizers carried in cargo compartments aboard passenger-carrying aircraft and in inaccessible cargo compartments aboard cargo aircraft, including those compartments with detection and suppression systems;

(3) Disagreed with the proposed prohibition of the carriage of compressed oxygen in cargo compartments aboard passenger-carrying aircraft; and

(4) Supported the proposals to prohibit the transportation of spent oxygen generators aboard aircraft and to eliminate the exception provided in 49 CFR 175.10(a)(24) for personal oxygen generators.

B. Oxidizers

1. Summary of Comments on Chemical Oxidizers

RSPA proposed to prohibit the transportation of chemical oxidizers aboard passenger-carrying aircraft and in inaccessible cargo compartments of cargo aircraft. Most of the commenters agreed with the proposal to prohibit chemical oxidizers in cargo compartments that are not equipped with fire or smoke detection systems and fire suppression systems, but disagreed with the proposal to ban oxidizers from cargo compartments with fire or smoke detection and fire suppression systems.

Air Products and Chemicals, Inc. supported the rule as proposed. It stated that "the prohibition of oxidizers and similar materials aboard passenger-carrying aircraft is a sensible approach to improving the safety of passenger flights." NTSB stated that it "supports prohibiting the carriage of oxidizers, including compressed oxygen, in Class D compartments because these compartments do not have smoke and fire detection systems * * *" In its comments to the SNPRM, NTSB referred to an earlier recommendation that FAA "consider the effects of authorized hazardous materials cargo in fires for all types of cargo compartments." It urged RSPA and FAA to complete a study of the risks associated with the transportation of hazardous materials on aircraft and "to ban any hazardous materials, including oxidizers, that cannot be safely transported in aircraft cargo compartments."

Several commenters specifically stated that they did not support the ban of an entire division of hazardous materials aboard passenger-carrying aircraft and that a complete ban of oxidizers would increase the number of undeclared hazardous materials. The Airline Pilots Association (ALPA) stated "prohibiting the carriage of *all* oxidizers may introduce additional hazards. This may inadvertently force shippers into illegally shipping materials as undeclared * * *" ALPA went on to say that "the complete banning of all oxidizers * * * goes beyond the seemingly obvious safety implication and does not appear to be reasonable."

Many other commenters noted that, to date, incidents involving hazardous materials have been due to lack of compliance with the HMR. They stated that the better course of action would be to increase education and enforcement, rather than ban an entire category of hazardous materials. The Conference on Safe Transportation of Hazardous Articles stated:

> People who ship undeclared hazardous materials do not read the CFRs. You can give all the instructions you like in the regulations, and the people who ignored the instructions in the past will ignore them in the future. Now, in fact, the prohibition will give them greater incentive to embrace ignorance.

The Hazardous Materials Advisory Council (HMAC) stated its belief that:

> * * * the rule's provisions will do nothing to address the known problem of undeclared or misdeclared shipments of hazardous materials and may be counterproductive by increasing such shipments by unscrupulous persons. In our opinion this could present a more dangerous situation to passengers and airline employees than at present.

Several commenters stated that a ban of certain materials on aircraft is no guarantee that those who are unaware of the regulations will not continue to ship undeclared hazardous materials. They suggested that public education and aggressive enforcement (including appropriate penalties for violation of the HMR) would better promote safe transportation. Mallinckrodt, a shipper of oxidizers, stated, "We ship oxidizers, paying particular attention to complying with these methods and have had no incidents of which we are aware. We do not feel that we should be penalized for incidents as outlined in the Docket, which were clear violations of the law."

Hach Company manufactures and distributes several hundred products that are or contain oxidizing materials, including laboratory instruments, process analyzers, test kits and analytical reagents some of which are used to analyze the quality and safety of water. It ships the majority of its international orders by air, primarily on passenger-carrying aircraft. Hach stated that it would prefer to ship by cargo aircraft but that cargo aircraft are not available to a large percentage of the end-user locations. It also stated that ocean transportation is not a viable alternative because of location, time and cost constraints. Hach stated that the proposed rule, if promulgated could put it at a significant commercial disadvantage with its foreign competitors. Hach supported a prohibition on transportation of oxidizers in Class D cargo compartments, but opposed a prohibition that would apply to other cargo compartments.

The International Air Transport Association (IATA) stated that cargo aircraft are not a substitute for passenger-carrying aircraft because cargo operations serve only a fraction of airports, international and domestic, and do not have the frequency of service required by shippers. IATA stated "Typically, a dangerous goods shipment by air is time critical and the facility provided by passenger aircraft service is essential to shipper's requirements." Another commenter stated that the safety need for the proposed general prohibition on the transport of all oxidizers aboard passenger-carrying aircraft has not been technically or rationally proven by FAA and RSPA.

Some commenters expressed concern that RSPA and FAA would ban all materials within Division 5.1 from passenger-carrying aircraft without regard to the lesser hazards posed by materials in lower packing groups, or shipped in limited quantities. ATA stated that the proposed rules:

> * * * offer no analysis or rationale to explain how a properly packaged, low-oxidizing potential material would pose such risks. In this regard, the transport, for example, of properly packaged and identified low-oxidizing potential (i.e., Packing Group III) solid oxidizers, is not considered to pose a significant risk to safety in air transport. Such a material would be incapable of spontaneously initiating a fire (even when in contact with organic material) under conditions normally incident to transport.

ATA also stated that "normal" oxidizers can only reasonably be

envisioned contributing to a fire originating in adjacent cargo when the fire has progressed to the extent that a packaging containing "normal" oxidizers has been substantially degraded. In such a case, ATA stated the fire may be uncontrollable in any event or the contribution to the intensity of the fire of a low-oxidizing potential solid oxidizer may be insignificant. ALPA suggested that RSPA further examine those oxidizing substances presently authorized by the HMR to be carried aboard passenger-carrying aircraft which pose the greatest potential risk to safety and those oxidizers that have caused problems when transported by air. ALPA suggested that, following this re-examination, RSPA should determine whether changes to the current HMR might be necessary concerning these materials, such as decreasing net quantity limitations, increasing the packaging requirements, or prohibiting their carriage by aircraft.

2. Summary of Comments on Compressed Oxygen

RSPA proposed to prohibit the transportation of compressed oxygen as cargo aboard passenger-carrying aircraft, and in inaccessible locations aboard cargo aircraft. RSPA also proposed, based on the provision of an existing exemption, to allow a limited number of airline-owned and passenger-owned oxygen cylinders to be stowed in the cabin of a passenger-carrying aircraft when placed in an overpack. RSPA also proposed to require that the overpack be labeled CARGO AIRCRAFT ONLY but marked with the statement "Passenger cabin acceptable per 49 CFR 175.10."

As already mentioned NTSB supported the proposal to prohibit the carriage of compressed oxygen in Class D compartments. Air Products and Chemicals, Inc. also supported the proposal and stated, "the result of the proposal should improve overall aircraft safety, but, there should also be an effort to improve enforcement of all rules pertaining to hazardous and forbidden materials in airplanes."

The majority of the commenters opposed the proposal. Most commenters stated that transporting oxygen cylinders in the cargo hold does not present a significant risk. For example, the Regional Airline Association (RAA) stated "RSPA has failed to show that the transportation of pressurized oxygen is sufficiently hazardous to deny shipment within Class C and Class D compartments." RAA went on to say that airlines that operate in remote locations where ground transportation is not available, such as Alaska, will have to either withdraw from operations or fly to their destination knowing that their destination is not equipped to return them to service if they deplete an oxygen bottle during the flight.

The Alaska Air Carriers Association (AACA) and Peninsula Airways also opposed the proposed rule, particularly regarding oxygen, due to the adverse consequence on transportation in and through Alaska. Peninsula Airways stated "implementation of the NPRM's provisions that affect this issue will make it virtually impossible to legally provide medical oxygen for passengers/patients in remote areas of Alaska." Peninsula Airways and AACA both pointed out that Section 1205 of Public Law 104–264, Regulations Affecting Intrastate Aviation in Alaska, give FAA the authority to consider Alaska's unique transportation circumstances when conducting rulemaking. Peninsula Airways stated that "this is clearly a situation where RSPA must reconsider the NPRM's impact on Alaska and modify the proposed rule * * * to make it workable, safe to use and safe to transport medical oxygen cylinders in Alaska."

Commenters also contended that prohibiting transportation of compressed oxygen on board passenger-carrying aircraft would have significant cost impacts on the airline industry and severely hamper the ability of disabled persons to travel by the air mode. ATA stated that a fire capable of generating enough heat to potentially affect an oxygen cylinder would cause severe structural damage to the aircraft before the cylinder would ever be dangerously involved.

Caledonia Airways disagreed with the proposed exception for transporting compressed oxygen in the passenger cabin. It stated that such transportation is contrary to any training that airline personnel have received and also conflicts with the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transportation of Dangerous Goods. Other commenters noted that adoption of the proposed ban on compressed oxygen, in conjunction with the general ban on carriage of dangerous goods in the passenger cabin set forth in the ICAO Technical Instructions, could effectively prohibit any transportation of oxygen cylinders as COMAT (airline company material) on international flights. Commenters also stated that limiting a carrier to six COMAT cylinders per flight would unnecessarily restrict its ability to pre-position cylinders and to transport cylinders to locations where they are needed to replace used cylinders.

RAA stated that the proposed exception for oxygen cylinders in the cabin is a suitable alternative for transportation of medical oxygen cylinders, but it does not address the needs of regional operators to ship spare oxygen cylinders used in support of aircraft pressurized oxygen systems. ALPA stated that many airplanes do not have available storage locations of adequate size and strength to hold oxygen cylinders contained within their strong outer packagings. ALPA went on to say that for such aircraft, creation of such areas or compartments would require significant investment in engineering development and aircraft retrofitting. Qantas Airlines pointed out that an oxygen cylinder is often an unwieldy and heavy piece of equipment which represents a serious hazard to passengers in the cabin not only in regular handling, but especially during turbulence and other in-flight emergencies.

ALPA specifically disagreed with the statement in the NPRM that it would be safer to carry personal medical oxygen cylinders in the passenger cabin because the crew could quickly remove the cylinders from any fire area of the cabin. It stated that the aircraft crew should not be considered a fire suppression resource. In its view, a member of flight deck crew on a two-person crew would not leave his or her station and enter a compartment that is on fire to attempt to fight the fire, nor move a package containing an oxidizer away from the fire.

Many commenters noted that there has not been any incident involving the transport of compressed oxygen in cylinders designed for and used aboard aircraft in any compartment, including an inaccessible cargo compartment. IATA pointed out that there is no record of any lives having been lost due to properly packaged oxidizers, including oxygen, in the 76 years of commercial aviation history and, in particular, since the implementation of the first air-mode Dangerous Goods Code in 1956. ATA stated that the industry system of COMAT distribution of oxygen cylinders has been safely in place since supplemental oxygen was needed on commercial aircraft between 1946–1948 when the Lockheed Constellation, Douglas DC–6 and Convair aircraft entered service. Air New Zealand, pointing out that there are large quantities of oxygen stored in cylinders behind the sidewalls of cargo compartments, stated that the only protection these cylinders have from a cargo compartment fire is the compartment wall lining which meets the flame penetration requirements of

14 CFR 25.855. Air New Zealand went on to say that "it would be logical to ship cylinders in the cargo compartment in overpacks meeting the same flame penetration standards."

Most of the comments opposing the proposals related to the transportation of compressed oxygen aboard passenger-carrying aircraft were from airlines who need to resupply (or deploy) charged oxygen cylinders for compliance with FAA airworthiness requirements and for use by passengers who require supplemental oxygen during flight. Several airlines stated that they store the oxygen cylinders at their hub facilities where they can safeguard their storage and maintenance and then deploy them as needed aboard their aircraft to other operating locations. ALPA pointed out that without the required oxygen for crew and passengers, an aircraft is not considered airworthy and is not authorized to be flown. It stated that one way to restore the aircraft to a flyable status is to remove and replace oxygen cylinders, and the potential for an aircraft being grounded at a non-maintenance station is great if these fully charged cylinders may not be moved by an airline around its system.

Carnival Air Lines stated that it would be forced to rely on other carriers to resupply its cylinders and position its maintenance and replacement parts. Carnival also stated that this forced reliance upon other carriers would inevitably lead to at least occasional cancellations or lengthy flight delays resulting from an aircraft being forced out of service awaiting required oxygen. It stated that the costs associated with these delays would be "very substantial."

Several airline commenters stated that if the amendments were adopted as proposed they will be unable to provide the current level of service without incurring significant costs. For example, Continental Airlines stated that it transports approximately 300 oxygen cylinders per month and if the proposal is adopted it would not be able to effectively and efficiently distribute medical oxygen to the places where and when it is needed in order to accommodate passenger needs.

Numerous commenters were concerned about the proposed placement of the Cargo Aircraft Only (CAO) (49 CFR 172.448) label on cylinders of oxygen that would be transported in the cabin of a passenger-carrying aircraft. Some stated that adoption of this proposal would cause unacceptable confusion and would be detrimental to safety. Others stated that allowing one material labeled CAO to be loaded in a passenger-carrying aircraft would dilute the meaning of the label and cause confusion. ALPA stated that placing packages of hazardous materials that are labeled CAO in passenger-carrying aircraft is "totally unacceptable and will not be tolerated." ALPA also stated that if a label must be used, then development of a separate "accessible while inflight" label may be warranted. ATA stated that "misuse" of the hazard communication system would cause confusion about the true meaning of the Cargo Aircraft Only label, which may well increase the potential for a serious incident involving a passenger-carrying aircraft.

The National Association for Medical Direction of Respiratory Care (NAMDRC) and the American Lung Association (ALA) supported the proposal to allow the carriage of passenger-owned cylinders of compressed oxygen in the cabin of the aircraft. NAMDRC and ALA also stated that this exception would provide patients timely access to their personal oxygen containers upon landing at a layover site or at their final destination. These commenters, however, were under the mistaken impression that this exception would allow passengers to transport their cylinders in the aircraft by relinquishing the cylinders to the flight crew. These commenters also asked: (1) Will the airlines have an option or will they be required to transport the oxygen cylinders? (2) Will the airlines be able to charge for the service? (3) What documentation or security measures will be required for transport of the oxygen cylinders? and (4) What types of oxygen cylinders will be allowed to be stowed in the cabin and what type of testing will be required before a cylinder is allowed on the aircraft?

3. RSPA Response to Comments

i. Chemical Oxidizers. Oxidizers currently authorized for carriage aboard passenger aircraft in inaccessible cargo compartments will not spontaneously initiate a fire. The potential hazard posed by these oxidizers is that, if a fire were to occur elsewhere in the compartment, such as in luggage or other cargo, and if there were no means to suppress or extinguish the fire, the fire might burn long enough to involve the oxidizer. The oxidizer, even in Packing Group III, could potentially provide an oxygen source which could intensify the fire to an extent that the limited safety features of the compartment would be ineffective. For these reasons, and based on its review of comments received to the NPRM, SNPRM and at the public hearing, RSPA believes that there is a need to prohibit the transportation of chemical oxidizers (i.e., oxidizers other than compressed oxygen) in inaccessible cargo compartments that do not have fire or smoke detection and fire suppression systems. Therefore, consistent with the NTSB recommendation, RSPA is prohibiting the transportation of chemical oxidizers in inaccessible cargo compartments that do not have fire or smoke detection and fire suppression systems.

Based on evaluation of comments and the hazards posed by chemical oxidizers, RSPA does not believe that chemical oxidizers should be completely forbidden aboard passenger-carrying aircraft. RSPA is confident that chemical oxidizers can be safely transported in Class B, and Class C compartments when transported in accordance with the HMR. RSPA is also confident that the safety features of a Class B compartment (i.e., an accessible compartment with fire or smoke detection equipment) and those of a Class C compartment (i.e., an inaccessible cargo compartment that has both a fire or smoke detection system and a fire suppression system) counter the risk posed to an aircraft from the carriage of chemical oxidizers that are transported in accordance with the HMR. Therefore, RSPA is not adopting the proposal to prohibit the carriage of chemical oxidizers aboard passenger-carrying aircraft in Class B or Class C aircraft cargo compartments.

ii. Compressed Oxygen. The potential hazard posed by compressed oxygen is that it will intensify a fire. Thus, if a fire, from any source, were to occur in an aircraft cargo compartment containing an oxygen cylinder, the fire might burn long enough to heat the cylinder sufficiently to cause the pressure relief mechanism on the cylinder to open. The released oxygen could then intensify the fire to an extent that the safety features of the compartment would be ineffective, potentially resulting in the loss of the aircraft.

Under the HMR, compressed oxygen must be packaged in a DOT-specification cylinder, constructed of steel or aluminum. The cylinder is required to incorporate a pressure relief device that will release its contents if the internal pressure in the cylinder approaches the test pressure of the cylinder. If the cylinder incorporates a valve, sufficient protection must be provided to prevent operation of, and damage to the valve during transportation, such as by boxing or crating the cylinder or by equipping it with protective caps or head rings (see 49 CFR 173.27(g)). Some types of

cylinders may only be shipped in strong outside packagings, regardless of whether or not the cylinder incorporates a valve (see 49 CFR 173.301(k)). An overpack or outer packaging commonly used by the airlines to transport their oxygen cylinders is the ATA Specification No. 300, Packaging of Airline Supplies, Category I. An ATA Specification No. 300 Category I (ATA 300) overpack or outer packaging is a resilient, durable overpack intended to be reused for a minimum of 100 round trips which meets specified performance standards, as demonstrated by design tests (e.g., drop test and puncture resistance). The overpack or outer packaging must also provide protection from shock and vibration.

Numerous commenters pointed out the long safety record that oxygen cylinders have had in commercial aviation and expressed the view that RSPA and FAA had no basis for proposing to prohibit the transportation of oxygen cylinders aboard passenger-carrying aircraft. Commenters requested that RSPA and FAA reevaluate the proposal regarding oxygen cylinders. After the ValuJet accident, RSPA and FAA began evaluating the risks associated with the transport of hazardous materials by aircraft. This rule reflects the agency's decisions regarding oxidizers and compressed oxygen cylinders and is based on written comments, information from the public hearing and FAA testing.

At the public hearing, the FAA asked whether any of the attendees were aware of any testing results that would support assertions by some commenters that a fire capable of generating enough heat to potentially affect an oxygen cylinder would cause severe structural damage to the aircraft before the cylinder would ever be dangerously involved. No one cited any tests. In an effort to establish whether these assertions were valid, the FAA conducted oven, fire, and overpack tests on compressed oxygen cylinders. These tests were conducted at the FAA Technical Center. A copy of the test report is available for review in the public docket. As discussed below, the FAA found that oxygen cylinders release their contents at temperatures well-below those that would be needed to damage aircraft cargo compartment liners and structures. However, an outer packaging or overpack will lengthen the time for a cylinder to release its contents at these temperatures.

Oven Test

The purpose of the first test series was to determine the approximate time and rate of release when an unprotected cylinder is exposed to high temperatures, as might be experienced in a cargo compartment fire. For this test, cylinders normally used for compressed oxygen were filled with nitrogen to 1,800 p.s.i. This test was performed on three cylinders of different capacity (i.e., 11, 76.5 and 115 cubic foot capacity). Each cylinder was placed in an industrial-type electric conduction oven and the temperature of the oven was increased to 400°F. On average, the cylinders released their contents within 14 minutes, when the temperature inside the oven was approximately 370°F. The average external temperature of the cylinder at the time of release was 300°F.

Fire Tests

During the second test series, FAA attempted to determine the effect of releasing oxygen during a fire. For this test, an empty cylinder was placed in a steel frame receptacle constructed in the shape of a LD–3 container which is typically used in the lower deck of a wide-body aircraft. Cardboard boxes filled with shredded paper were loaded into the LD–3 container and a small fire initiated. When the temperature of the cylinder reached the temperature obtained during the first (oven) test, the oxygen was vented into the container through piping. This test was performed three times using the contents of an 11 cubic foot cylinder and once using about 22 cubic feet of oxygen. The first time a slight increase in temperature in the LD–3 container was observed, but the oxygen release had little overall impact on the fire. The second time the smoldering fire erupted violently with visible flames appearing at one edge of the container. Although violent, the eruption was short in duration and the fire was contained. The third time the release of oxygen again caused a violent reaction inside the container, which produced enough pressure to force open taped seams on the container. However, it was again very short in duration much like the previous test. The fourth time, the temperature in the LD–3 container increased dramatically immediately following the oxygen release and the fire completely burned through the ceiling and part of the front side of the container, totally destroying it.

Overpack Tests

During the third test series the level of thermal protection provided by a variety of overpack or outer packagings was examined. First, currently available overpack or outer packagings meeting ATA 300, Category I and containing a 76.5 cubic foot cylinder filled with nitrogen were placed in an oven and the temperature was increased to 400 °F. This test was repeated numerous times. The first time, after sixty minutes, the cylinder's surface temperature ranged from 230 °F to 280 °F, below the temperature at which the pressure relief mechanism usually actuates to relieve the pressure within the cylinder. The test was terminated after 69 minutes with the maximum surface temperature of the cylinder reaching 300 °F. The second time, after 60 minutes the surface temperature of the cylinder reached 300 °F (the temperature at which the pressure relief mechanism usually actuates). The third time the surface temperature of the cylinder reached 300 °F after 90 minutes, at which time the test was terminated.

Then, in an effort to evaluate the increase in thermal protection offered by a modified overpack case, additional tests were performed on overpacks specifically designed for this purpose and having an exterior made of a flame retardant thermoplastic known as Kydex. In addition, a one inch thick fiberglass insulation was sandwiched between the exterior layer of Kydex and an inner layer of foamed plastic. The test was allowed to progress for approximately 60 minutes without the cylinder surface temperature exceeding 100 °F.

As demonstrated by these tests, when the surface temperature of a cylinder of compressed oxygen reaches approximately 300 °F, the increase in pressure causes the cylinder's pressure relief mechanism to open and release oxygen. If oxygen vents directly into the fire it could cause a potentially catastrophic event. However, these tests also show that an outer packaging that provides greater flame penetration resistance and thermal protection can increase the level of safety in the transportation of compressed oxygen aboard aircraft. Some thermal protection, up to 60 minutes or more, is provided by overpacks or outer packagings meeting the ATA 300 specification. Even more protection would be provided by an improved overpack that provides thermal protection and satisfies flame protection criteria.

The tests performed by FAA demonstrate that there is an increased risk posed by the presence of compressed oxygen in the event of a fire in a cargo compartment. This risk is due to the fact that, if the temperature of an oxygen cylinder reaches approximately 300 °F, the cylinder will vent oxygen into the cargo compartment and intensify the fire. Consequently, action can and should be taken to reduce or eliminate this risk. At this time, RSPA

does not believe that a complete prohibition on the transportation of oxygen cylinders aboard passenger-carrying aircraft will be necessary. Thus, RSPA is permitting oxygen cylinders to be loaded into and transported on passenger-carrying aircraft and in inaccessible locations on cargo-only aircraft subject to restrictions. Furthermore, RSPA and FAA are developing additional standards for protection of oxygen cylinders to be proposed in a separate future rulemaking. RSPA is not adopting the proposal to require the "Cargo Aircraft Only" label on cylinders of compressed oxygen because it is continuing to allow compressed oxygen to be carried in cargo compartments of passenger aircraft.

Based on the merits of comments, past shipping experience, FAA testing and its own evaluation, in this final rule, RSPA is amending requirements for the packaging, stowage and transport of oxygen cylinders on aircraft, summarized as follows:

- For transportation aboard a passenger-carrying aircraft or in an inaccessible cargo location on a cargo-only aircraft, each cylinder must be placed in an overpack or an outer packaging that satisfies the performance criteria in ATA Specification 300.
- Each cylinder must be stowed horizontally on or as close as practicable to the floor of the cargo compartment or unit load device.
- No more than a total of six cylinders may be stowed on an aircraft in inaccessible cargo compartments that do not have a fire or smoke detection system and a fire suppression system (e.g., a Class D cargo compartment).
- No more than six cylinders may be stowed in a Class B cargo compartment or its equivalent (i.e., an accessible cargo compartment equipped with a fire or smoke detection system but not a fire suppression system), except that one additional cylinder containing medical-use oxygen may be carried per passenger needing the oxygen at destination.
- A limited number of oxygen cylinders, each with a capacity no greater than 850 liters (30 cubic feet), may be carried in the passenger cabin of a passenger-carrying aircraft. This authorization is limited to no more than six airline-owned cylinders and one additional cylinder containing medical-use oxygen per passenger needing the oxygen at destination.

For transportation aboard a passenger-carrying aircraft or in an inaccessible cargo location on a cargo-only aircraft, RSPA is requiring that each cylinder of compressed oxygen be placed in an overpack or outer packaging meeting the performance criteria in ATA Specification 300. (See Special Provision A52 in the amendment to Section 172.102 of this final rule.) RSPA believes requiring cylinders of compressed oxygen to be placed in these overpacks or outer packagings provides an incremental level of safety in the interim until new overpack standards are developed and are in production.

Based on the FAA testing, RSPA believes that any increase in risk posed by the presence of a compressed oxygen cylinder in a cargo compartment can be significantly reduced, or even eliminated, if the oxygen cylinder is placed in an outer packaging or overpack that provides more thermal protection and flame resistence than the ATA 300 overpacks currently in use. To this end, RSPA is developing proposed enhanced standards for outer packagings or overpacks to further protect cylinders from heat and fire. RSPA anticipates publishing an NPRM later this year to invite comments on enhanced standards for these outer packagings or overpacks, including a proposed date for their implementation. At present, RSPA is considering a requirement that an oxygen cylinder may be carried in an inaccessible cargo compartment on an aircraft only when the cylinder is placed in an outer packaging or overpack meeting certain flame penetration resistance, thermal protection, and integrity standards. The flame penetration standards would likely be similar to those specified for Class C cargo compartment liners in 14 CFR part 25, appendix F, part III.

If RSPA adopts enhanced standards for outer packagings or overpacks, we would require use of an enhanced outer packaging or overpack as soon as practicable. On the other hand, if RSPA ultimately concludes that enhanced standards will not provide significantly more thermal protection and heat penetration resistence than the ATA 300 overpacks currently in use, RSPA may prohibit the carriage of oxygen cylinders in inaccessible cargo compartments that do not have appropriate fire or smoke detection systems and fire suppression systems.

RSPA is also adopting stowage requirements and numerical limitations with regard to oxygen cylinders in aircraft cargo compartments—rather than completely prohibiting the transportation of oxygen cylinders in cargo compartments of passenger aircraft and in inaccessible cargo compartments on all-cargo aircraft. The temperatures of a fire in a cargo compartment are, for the most part, much higher at the top of the compartment than at the bottom. RSPA believes that stowing the cylinders horizontally on the floor of the compartment may decrease the likelihood that a cylinder exposed to a cargo compartment fire will vent. Therefore, RSPA is requiring that cylinders of compressed oxygen be placed horizontally on or as close as practicable to the floor of the cargo compartment or unit load device. RSPA also believes that only a limited number of cylinders should be transported in Class B and D cargo compartments in order to decrease the aggregate risk to the aircraft. Therefore, RSPA is limiting to six the number of cylinders that can be stowed in an aircraft in Class B compartments (accessible, no fire suppression systems) and Class D compartments (no fire or smoke detection or fire suppression systems). RSPA believes that the concerns expressed by foreign aircraft operators and aircraft operators in remote locations (e.g., Alaska) are addressed by continuing to allow oxygen cylinders to be transported aboard passenger-carrying aircraft.

As proposed in the SNPRM, this final rule will allow for the carriage of a limited number of oxygen cylinders, as cargo, in the passenger cabin of an aircraft, under certain conditions. This authorization is limited to no more than six airline-owned cylinders and one additional cylinder containing medical-use oxygen per passenger needing the oxygen at destination. However, consistent with the exemption on which the proposal was based (see SNPRM; 62 FR 44377), RSPA is limiting this allowance to small "medical-use" oxygen cylinders with capacities no greater than 850 liters (30 cubic feet). Consistent with the outer packaging requirements for other cargo compartments, RSPA is requiring that these cylinders be placed in an overpack or outer packaging that meets the requirements of ATA 300. This exception is provided to ensure that cylinders of medical oxygen owned by an airline or a passenger—requiring oxygen at destination—can continue to be transported aboard passenger-carrying aircraft.

The exception does not eliminate or waive any of the current packaging, maintenance, or use requirements of the HMR related to cylinders of compressed oxygen, or any of the FAA or airline security requirements. If an airline elects to accept for transportation passenger-owned oxygen cylinders in accordance with 175.10(b), the passenger will have to offer the cylinder to the airline in accordance with the

established procedures of the airline. These procedures may require passengers to tender their cylinders at airline cargo facilities or at passenger check-in counters. In addition, the passengers will not have access to their cylinders until they are returned to them by the airlines. Again, these procedures will be established by the airlines. RSPA notes that none of DOT's requirements require airlines to accept passengers' cylinders of compressed oxygen, nor do they require or preclude airlines from charging fees for this service. In addition, RSPA also notes that nothing in this rulemaking mandates that an airline supply the ATA 300 overpack. If an airline elects not to supply the ATA 300 overpack or outer packaging, its passengers will be responsible for obtaining the overpack or outer packaging.

New paragraph § 175.10(b) allows six oxygen cylinders owned or leased by the aircraft operator or a passenger to be transported as cargo in the cabin of the aircraft. These oxygen cylinders are hazardous materials, subject to all applicable HMR requirements. See the RSPA's "Advisory Notice: Transportation of Air Carrier Company Materials (COMAT) by Aircraft," 61 FR 65479 (December 13, 1996). Air carriers who do not elect to accept or transport hazardous materials (and have not developed the manuals and trained their employees as required by 14 CFR) must offer their company-owned oxygen cylinders to a carrier of another mode (e.g., highway) or to another air carrier that has an established program for transportation of hazardous materials.

C. Spent Chemical Oxygen Generators

In the SNPRM, RSPA proposed to prohibit the transportation of spent chemical oxygen generators (i.e., generators in which the means of initiation and the chemical core have been expended) and to regulate them as Class 9 materials when transported by other means of transportation. All commenters supported this proposal. The NTSB stated that "it is difficult to determine whether all of the oxidizing material in a spent generator has been depleted, since a generator is a closed container, and both the oxidizer within the generator before the reaction and the materials remaining in the generator after the reaction are solids with similar weights."

RSPA believes that lessening the possibility that this type of human error may occur outweighs any interest in, or need for, transporting spent chemical oxygen generators by aircraft. Accordingly, RSPA is prohibiting the transportation by aircraft of spent chemical oxygen generators and to regulate them as Class 9 materials when transported by other than aircraft.

Based on the foregoing, RSPA is adding to the Hazardous Materials Table (HMT) the new shipping description, "Oxygen generator, chemical, spent, 9, NA3356, III." The entry is preceded by a plus sign ("+") in Column 1 to fix the proper shipping name, hazard class and packing group for the entry without regard to whether the material meets the definition of a Class 9 hazardous material. Special provision 61 is added in Column 7 to specify the conditions under which an oxygen generator is considered "spent." In addition, "None" is added to Column 8A of the HMT because RSPA believes that spent oxygen generators should not be eligible for limited quantity exceptions or to be reclassified as a consumer commodity. RSPA is also amending §§ 171.11, 171.12 and 171.12a, consistent with the proposals, to indicate that there are no exceptions from HMR requirements for classification, description, and packaging of spent chemical oxygen generators when shipping to, from or within the U.S. under the provisions of international or Canadian regulations.

D. Personal Oxygen Generators

RSPA proposed to eliminate the exception in 49 CFR 175.10(a)(24) that allows the transportation of small personal oxygen generators in checked baggage. There was no opposition and a number of commenters, including the NTSB, expressed support for this proposal. The NTSB stated that this exception currently permits the placement of oxidizers in cargo compartments that do not have fire or smoke detection systems and that are designed to suppress a fire by limiting the oxygen available to support combustion and, therefore, it supports the proposal.

As proposed in the December 30, 1996 NPRM, RSPA is removing the exception provided in § 175.10(a)(24) for small personal chemical oxygen generators in checked baggage.

E. Other Materials

The NPRM and the SNPRM proposed to prohibit the transportation of packages required to be labeled OXIDIZER or OXYGEN on passenger aircraft and in inaccessible cargo compartments aboard cargo aircraft. Therefore, the proposed prohibition did not apply to an oxidizer classed as a consumer commodity, ORM–D, under the provisions of 49 CFR 173.152. The ICAO Technical Instructions do not allow Division 5.1 materials (oxidizers) to be reclassified as a consumer commodity. RSPA specifically requested comments regarding whether it would be appropriate to extend the prohibition to consumer commodities that are oxidizers or whether quantity limits should be imposed on these materials in 49 CFR 175.75.

In its comments, NTSB stated that it was concerned that the proposals did not include a prohibition on those oxidizers that are shipped as consumer commodities. It also stated that the exception in 49 CFR 173.152 allows the placement of oxidizers in cargo compartments that do not have fire or smoke detection/suppression systems and, therefore, urged that the consumer commodity exception for oxidizers be eliminated. NTSB also requested that RSPA include organic peroxides in its study of the effects of hazardous materials in cargo compartments fires and to ban them from transportation by air if they cannot be transported safely.

Other commenters stated that they opposed extending the prohibition to consumer commodity oxidizers. These commenters stated that these materials are adequately regulated under ICAO and 49 CFR 173.152. HMAC stated that penalizing those who comply with the regulations does not address the issues of untrained and undertrained personnel and undeclared and misdeclared hazardous materials nor does it improve safety for the general public. HMAC urged RSPA to focus on aggressively enforcing current regulations, educating the regulated community, and taking appropriate penalty actions against those that do not comply.

RSPA believes that those oxidizers authorized to be reclassed as ORM–D (i.e., consumer commodities) are of a form and quantity that would not pose an unacceptable risk to the safety of an aircraft, even in cargo compartments that lack a fire and smoke detection system. Therefore, RSPA is not prohibiting oxidizers that have been reclassed as an ORM–D from being transported in Class D cargo compartments. RSPA also believes that NTSB's request to include organic peroxides in the prohibition is outside the scope of this rulemaking and, therefore, has not been adopted. However, as noted in the December 30, 1996 NPRM, RSPA has initiated a study to assess the risks associated with the transportation of hazardous materials in aircraft cargo compartments that may result in RSPA publishing another rulemaking to ban additional hazardous materials. As part of that study, RSPA is reviewing the hazards posed by materials similar to oxidizers, such as organic peroxides.

IV. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the public docket.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Title 49 U.S.C. 5125(b)(2) provides that DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This rule requires oxidizers to be transported in certain types of cargo compartments aboard aircraft and specifies overpacking requirements for cylinder of compressed oxygen. RSPA determined that the effective date of Federal preemption for the requirements in this rule concerning covered subjects is March 1, 2000.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (the Act) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule will prohibit the carriage of oxidizers onboard aircraft in inaccessible cargo compartments that do not have a fire or smoke detection system and a fire suppression system. This rule will affect persons who ship oxidizers by air and the airline operators that transport oxidizers as cargo. However, it is assumed that shippers will not have to pay more to ship oxidizers by alternative means: on all-cargo aircraft that have accessible cargo compartments or cargo compartments with a fire or smoke detection system and a fire suppression system, on passenger-carrying aircraft that have cargo compartments with a fire or smoke detection system and a fire suppression system, or by other modes of transportation. It is also assumed that there will be no loss of revenue for all-cargo operators because they can transport oxidizers in class E cargo compartments or (if the aircraft is so equipped) in class C cargo compartments.

Accordingly, this rule will only reduce the freight revenues of an operator of passenger-carrying aircraft that also carry oxidizers as cargo in compartments that do not have a fire or smoke detection system and a fire suppression system. The effect of this rule on an operator certificated under 14 CFR part 121 will only last until March 19, 2001, because the class D compartments on their aircraft (i.e., those compartments without a fire or smoke detection system and a fire suppression system) must meet the standards for a class C or class E compartment by that date.

In the SNPRM, RSPA evaluated the effect of its proposed rule on part 121 operators under FAA Order 2100.A and stated that it lacked sufficient data to determine the proposed rule's economic impact on entities other than those operating under 14 CFR part 121 (e.g., part 135 operators). Although RSPA requested comments "on the economic impact, if any, of this proposed rule on other entities," no comments were submitted that would assist RSPA's evaluation of the impact of this rule on small entities.

Because the FAA no longer uses the criteria in its Order 2100.A to determine who are small entities, RSPA considers that an airline operator with fewer than 1,500 employees is a small entity, under the Small Business Administration's criteria in 13 CFR part 121. RSPA reviewed air carrier traffic and revenue statistics complied by DOT's Office of Airline Information and information provided by FAA as to the air carriers approved to transport hazardous materials. These sources indicate that there is only one part 121 air carrier with fewer than 1,500 employees that carries passengers and accepts oxidizers for transportation as cargo.

There are many air carriers certificated under 14 CFR part 135 that are approved by FAA to carry hazardous materials. Many of these carriers transport only cargo. In general, they provide on-demand, rather than schedule service, and the inaccessible cargo compartment on these aircraft are small. (Most of the cargo is carried in the main compartment when there are no passengers.) RSPA does not have information on which part 135 carriers carry passengers or, more importantly, whether any of them carry passengers and hazardous materials on the same flight. Because of their limited cargo capacity and lack of schedule service, however, RSPA assumes that the passenger-carrying aircraft operated by part 135 carriers are not utilized for the transportation of oxidizers.

Accordingly, RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13084

RSPA believes that this final rule will have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

Impact on Business Processes and Computer Systems (Year 2000)

Many computers that use two digits to keep track of dates may, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This Year 2000 problem could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This final rule does not impose business process changes or require modification to computer systems. Because the final rule does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the requirements in the final rule.

Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Parts 171, 172, and 175 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In 171.7, in the Table of material incorporated by reference in paragraph (a)(3), a new entry is added in appropriate alphabetical order to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) * * *

Source and name of material	49 CFR reference
Air Transport Association of America, 1301 Pennsylvania Avenue, N.W., Washington, DC 20004–1707	.....
ATA Specification No. 300 Packaging of Airline Supplies, Revision 19, July 31, 1996	172.102
* * * * *	

* * * * *

3. In § 171.11, paragraph (d)(15) is revised and paragraph (d)(16) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(15) A chemical oxygen generator is forbidden for transportation aboard a passenger-carrying aircraft and must be approved, classed, described and packaged in accordance with the requirements of this subchapter for transportation on cargo-only aircraft. A chemical oxygen generator (spent) is forbidden for transportation on aircraft.

(16) A cylinder containing Oxygen, compressed, may not be transported on a passenger-carrying aircraft or in an inaccessible cargo location aboard a cargo-only aircraft unless it is packaged as required by Part 173 and Part 178 of this subchapter and is placed in an overpack or outer packaging that satisfies the requirements of Special Provision A52 in § 172.102.

4. In § 171.12, paragraph (b)(18) is revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(18) A chemical oxygen generator must be approved in accordance with the requirements of this subchapter. A chemical oxygen generator and a chemical oxygen generator (spent) must be classed, described and packaged in accordance with the requirements of this subchapter.

* * * * *

5. In § 171.12a, paragraph (b)(17) is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(17) A chemical oxygen generator must be approved in accordance with the requirements of this subchapter. A chemical oxygen generator and a chemical oxygen generator (spent) must be classed, described and packaged in accordance with the requirements of this subchapter.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

6. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

7. In the § 172.101 Hazardous Materials Table, one entry is added in appropriate alphabetical order and one entry is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[Revised]												
	Oxygen, compressed.	2.2	UN1072		2.2, 5.1 ..	A52	306 ...	302	314, 315.	75 kg	150 kg	A	
	[Added]												
+	Oxygen generator, chemical, spent.	9	NA3356	III	9	61	None	213	None	Forbidden	Forbidden	A	

8. In § 172.102, special provision "61" is added in appropriate numerical sequence to paragraph (c)(1) and special provision "A52" is added in alphanumeric sequence to paragraph (c)(2), to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

61 A chemical oxygen generator is spent if its means of ignition and all or a part of its chemical contents have been expended.

* * * * *

(2) * * *

Code/Special Provisions

* * * * *

A52 A cylinder containing Oxygen, compressed, may not be loaded into a passenger-carrying aircraft or in an inaccessible cargo location on a cargo-only aircraft unless it is placed in an overpack or outer packaging that conforms to the performance criteria of Air Transport Association (ATA) Specification 300 for Type I shipping containers.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

9. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

10. In § 175.10, paragraph (b) is added to read as follows:

§ 175.10 Exceptions.

* * * * *

(b) A cylinder containing medical-use compressed oxygen, owned or leased by an aircraft operator or offered for transportation by a passenger needing it for personal medical use at destination, may be carried in the cabin of a passenger-carrying aircraft in accordance with the following provisions:

(1) No more than six cylinders belonging to the aircraft operator and, in addition, no more than one cylinder per passenger needing the oxygen at destination, may be transported in the cabin of the aircraft under the provisions of this paragraph (b);

(2) The rated capacity of each cylinder may not exceed 850 liters (30 cubic feet);

(3) Each cylinder and its overpack or outer packaging (see Special Provision A52 in § 172.102 of this subchapter) must conform to the provisions of this subchapter;

(4) The aircraft operator shall securely stow the cylinder in its overpack or outer packaging in the cabin of the aircraft and shall notify the pilot-in-command as specified in § 175.33 of this part; and

(5) Shipments under this paragraph (b) are not subject to—

(i) Subpart C and, for passengers only, subpart H of part 172 of this subchapter;

(ii) Section 173.25(a)(4) of this subchapter.

(iii) Section 175.85(i).

§ 175.10 [Amended]

11. In addition, in § 175.10 paragraph (a)(24) is removed and reserved.

12. In § 175.85, paragraphs (h) and (i) are added to read as follows:

§ 175.85 Cargo location.

* * * * *

(h) Compressed oxygen, when properly labeled Oxidizer or Oxygen, may be loaded and transported as provided in paragraph (i) of this section. No person may load or transport any other package containing a hazardous material for which an OXIDIZER label is required under this subchapter in an inaccessible cargo compartment that does not have a fire or smoke detection system and a fire suppression system.

(i) In addition to the quantity limitations prescribed in § 175.75, cylinders of compressed oxygen must be stowed in accordance with the following:

(1) No more than a combined total of six cylinders of compressed oxygen may be stowed on an aircraft in the inaccessible aircraft cargo compartment(s) that do not have fire or smoke detection systems and fire suppression systems.

(2) When loaded into a passenger-carrying aircraft or in an inaccessible cargo location on a cargo-only aircraft, cylinders of compressed oxygen must be stowed horizontally on the floor or as close as practicable to the floor of the cargo compartment or unit load device. This provision does not apply to cylinders stowed in the cabin of the aircraft in accordance with § 175.10(b).

(3) When transported in a Class B aircraft cargo compartment (see 14 CFR 25.857(b)) or its equivalent (i.e., an accessible cargo compartment equipped with a fire or smoke detection system but not a fire suppression system), cylinders of compressed oxygen must be loaded in a manner that a crew member can see, handle and, when size and weight permit, separate the cylinders from other cargo during flight. No more than six cylinders of compressed oxygen

and, in addition, one cylinder of medical-use compressed oxygen per passenger needing oxygen at destination—with a rated capacity of 850 liters (30 cubic feet) or less of oxygen—may be carried in a Class B aircraft cargo compartment or its equivalent.

Issued in Washington, DC on August 11, 1999 under the authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–21187 Filed 8–18–99; 8:45 am]

BILLING CODE 4910–60–P

federal register

Thursday
August 19, 1999

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Approval of Tungsten-Iron and Tungsten-Polymer Shots and Temporary Approval of Tungsten-Matrix and Tin Shots as Nontoxic for Hunting Waterfowl and Coots; Final Rule

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF65

Migratory Bird Hunting; Final Approval of Tungsten-Iron and Tungsten-Polymer Shots and Temporary Approval of Tungsten-Matrix and Tin Shots as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) amends Section 20.21(j) to grant final approval of tungsten-iron and tungsten-polymer shots as nontoxic for hunting waterfowl and coots. We also grant temporary approval of tungsten-matrix and tin shots as nontoxic for hunting waterfowl and coots during the 1999–2000 hunting season only. Acute toxicity studies reveal no adverse effects over a 30-day period on mallards (*Anas platyrhynchos*) dosed with either tungsten-iron, tungsten-polymer, tungsten-matrix, or tin shot. Reproductive/chronic toxicity testing over a 150-day period indicated that tungsten-iron and tungsten-polymer administered to adult mallards did not adversely affect them or the offspring they produced. We will not consider final approval of tungsten-matrix and tin shots until all required reproductive/chronic toxicity tests are successfully completed and the results are received and approved by the Director. Tungsten-iron and tungsten-polymer shots are produced by Federal Cartridge Company (Federal) of Anoka, Minnesota. Tungsten-matrix shot is produced by Kent Cartridge Company (Kent) of Kearneysville, West Virginia. Tin shot is produced by the International Tin Research Institute (ITRI) of Uxbridge, Middlesex, Great Britain.

DATES: This rule takes effect immediately upon publication on August 19, 1999.

ADDRESSES: Copies of the Environmental Assessments are available by writing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Suite 634, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, we have sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel and bismuth-tin shot are approved as nontoxic. We previously granted temporary approval for tungsten-iron shot during the 1997–98 (August 13, 1997; 62 FR 43444) and 1998–99 (October 7, 1998; 63 FR 54016) migratory bird hunting seasons. We also granted temporary approval for tungsten-polymer (October 7, 1998; 63 FR 54022) and tungsten-matrix (December 8, 1998; 63 FR 67619) shots during the 1998–99 migratory bird hunting season. Compliance with the use of nontoxic shot has increased over the last few years. We believe that compliance will continue to increase with the approval and availability of other nontoxic shot types.

Federal Cartridge Company's (Federal) tungsten-iron shot is an alloy of approximately 40 percent tungsten and 60 percent iron, by weight, and has a density of approximately 10.3 g/cm^3. Tungsten-polymer shot is a matrix of Nylon 6 or 11 polymer surrounding particles of elemental tungsten. Shot made from this material has a density of approximately 11.2 g/cm^3 or approximately the density of lead. The shot will contain approximately 95.5 percent tungsten and 4.5 percent Nylon 6 or 11 by weight).

Kent's original candidate shot was fabricated from what is described in their application as a mixture of powdered metals in a plastic matrix whose density is comparable to that of lead. All component metals are present as elements, not compounds. The tungsten-matrix material from which pellets are formulated has a specific gravity of 9.8 g/cm^3 and is composed of 88 percent tungsten, 4 percent nickel, 2 percent iron, 1 percent copper, and 5 percent polymers by mass. After consultation with us, Kent has subsequently changed the composition of their shot and removed nickel and copper. The new shot material being considered has a density of 10.7 g/cm^3 and is composed of approximately 95.9 percent tungsten and 4.1 percent polymers.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. This shot material has a density of approximately 7.29 g/cm^3, and is 99.9 percent tin, with a low level of iron pickup due to the steel production equipment.

Each of Federal's applications for tungsten-iron and tungsten-polymer include a description of the shot, a toxicological report (Barr 1996), results of a 30-day dosing study of the toxicity of the shot in game-farm mallards (Bursian et al. 1996a, Bursian et al. 1996b), and results of a 150-day reproductive/chronic toxicity study (Bursian et al. 1999). Kent's application for tungsten-matrix includes a description of the shot, a toxicological report (Thomas 1997a), and results of a 30-day toxicity study (Wildlife International, Ltd. 1998a). The tin shot application from ITRI contains a description of the shot, a toxicological report (Thomas 1997b), and results of a 30-day toxicity study (Wildlife International, Ltd. 1998b). Toxicological reports for each shot type incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles) and information on environmental fate and transport (shot alteration, environmental half-life, and environmental concentration).

Toxicity Information

There is considerable difference in the toxicity of soluble and insoluble compounds of tungsten and iron. Elemental tungsten and iron are virtually insoluble and are therefore expected to be relatively nontoxic. Even though most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten, there appears to be no basis for concern of toxicity to wildlife for either candidate shot via ingestion by fish or mammals (Bursian et al. 1996b, Gigiena 1983, Karantassis 1924, Patty 1982, Industrial Medicine 1946). Detailed reviews of the toxicological impacts of different tin compounds have been conducted by Eisler (1989) and Cooney (1988). Both reviews indicate that elemental tin is non-toxic to animals. Tin shot designed for waterfowl hunting is utilized in several European countries and no reports exist that suggest that tin shot is causing toxicity problems for wildlife in those countries.

The potential toxicity of nylon compounds due to degradation is primarily associated with the stabilizers, antioxidants, plasticizers, and unreacted prepolymers. Residual caprolactum has been found in some commercial Nylon 6 products, but little concern regarding this compound has been developed (Patty, 1982). The toxicity of Nylon 6 and 11 are negligible due to their insolubilities.

Environmental Fate and Transport

Tungsten is insoluble in water and therefore not mobile in hypergenic

environments. Tungsten is very stable with acids and does not easily complex. Preferential uptake by plants in acid soil suggests uptake of tungsten in the anionic form associated with tungsten minerals rather than elemental tungsten (Kabata and Pendias 1984). Tin pellets will undergo slow surface oxidation to form hydrated tin oxide, which is extremely insoluble in water (Lide 1990). Therefore dissolution will be slow, and highly localized aqueous concentrations will not arise. This means that elemental tin will over time remain largely in the same inorganic form as when it is discharged. Tin pellets discharged into wetlands where sulphur ions are released during organic decomposition would become coated with tin sulphide, which is highly insoluble in water and resistant to aquatic hydrolysis (Hoiland 1995).

Environmental Concentration

The effective environmental concentration (EEC) for a terrestrial ecosystem was calculated based on 69,000 shot per hectare (Pain 1990), assuming complete erosion of material in 5 cm of soil. For tungsten-iron shot, the EEC for tungsten in soil was calculated at 32.9 mg/kg. For tungsten-polymer shot, the EECs for tungsten and Nylon (6 and 11) in soil are 58.3 mg/kg and 2.7 mg/kg, respectively. The EECs for tungsten and the 2 polymers found in tungsten-matrix are 25.7 mg/kg, 4.2 mg/kg, and 0.14 mg/kg, respectively. The EEC for tin in soil is 19.3 g/m^3.

The environmental concentration (EEC) for an aquatic ecosystem was calculated assuming complete erosion of the shot in one cubic foot of water. For tungsten-iron shot, the EEC in water for tungsten was 10.5 mg/L. For tungsten-polymer shot, the EECs in water for tungsten and Nylon (6 and 11) are 18.7 mg/L and 0.9 mg/L, respectively. The EECs in water for tungsten and the 2 polymers found in tungsten-matrix are 4.2 mg/L, 0.2 mg/L, and 0.02 mg/L, respectively. The EEC in water for tin is 19.3 mg/L.

Effects on Birds

An extensive literature review in each application provided information on the toxicity of elemental tungsten and tin to waterfowl and other birds. Ringelman et al. (1993) orally dosed 20 8-week-old game-farm mallards with 12–17 (1.03 g average weight) tungsten-bismuth-tin (TBT) pellets and monitored them for 32 days for evidence of intoxication. No birds died during the trial, gross lesions were not observed during the postmortem examinations, histopathological examinations did not reveal any evidence of toxicity or tissue damage, and tungsten was not detectable in kidney or liver samples. The authors concluded that TBT shot presented virtually no potential for acute intoxication in mallards.

Kraabel et al. (1996) assessed the effects of embedded TBT shot on mallards and concluded that TBT was not acutely toxic when implanted in muscle tissue. Inflammatory reactions to TBT shot were localized and had no detectable systemic effects on mallard health.

Nell (1981) fed laying hens (*Gallus domesticus*) 0.4 or 1.0 g/kg tungsten in a commercial mash for five months to assess reproductive performance. Weekly egg production was normal and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell 1981). The loss of tungsten from the liver occurred in an exponential manner with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 mg/g liver. At that concentration, xanthine dehydrogenase activity was zero.

Ringelman et al. (1992) conducted a 32-day acute toxicity study which involved dosing game-farm mallards with a shot alloy of tungsten-bismuth-tin (TBT), which was 39, 44.5 and 16.5 percent by weight, respectively. No dosed birds died during the trial, and behavior was normal. Examination of tissues post-euthanization revealed no toxicity or damage related to shot exposure. This study concluded that ". . . TBT shot presents virtually no potential for acute intoxication in mallards under the conditions of this study."

Several studies have been conducted in which pellets made of tin or tin alloys have been placed inside the digestive tract or tissues of ducks to determine if toxic effects occur. Grandy et al. (1968) and the Huntingdon Research Centre (1987) conducted 30- and 28-day, respectively, acute toxicity tests on mallard ducks and reported that all treatment ducks survived with insignificant weight loss or development of pathological lesions. The potential for bismuth-tin (BT) shot to produce toxicological effects in ducks during reproduction has been investigated under both acute and chronic testing conditions. Tin as a 2% component of the tested shot, did not pose a toxic risk to ducks when fed a nutritionally-imbalanced, corn-based diet. Neither has BT shot been shown to pose an adverse risk to the health of ducks, the reproduction by male and female birds, nor the survival of ducklings over the long term (Sanderson et al. 1997a,b).

Nylon 6 is the commercially important homopolymer of caprolactum. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson 1977). Few data exist on the toxicity of Nylon 6 in animals. Most toxicity studies are related to thermal degradation products and so are not relevant to the exposure of wildlife to shot containing nylon. Montgomery (1982) reported that feeding Nylon 6 to rats at a level of 25 percent of the diet for 2 weeks caused a slower rate of weight gain, presumably due to a decrease in food consumption and feed efficiency. However, the rats suffered no anatomic injuries due to the consumption of nylon.

The two plastic polymers used in tungsten-matrix shot act as a physical matrix in which the tungsten is distributed as ionically-bound fine particles. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson 1977). A literature review did not reveal studies in which either of the two polymers were evaluated for toxicity in birds.

Acute Toxicity Studies

Federal contracted with Michigan State University—Department of Animal Science, to conduct an acute toxicity study of tungsten-iron and tungsten-polymer. Both Kent and ITRI contracted with Wildlife International Ltd. to conduct an acute toxicity study of tungsten-matrix and tin shots, respectively. The acute toxicity test is a short-term (30-day) study where ducks are dosed with shot and fed commercially available duck food. Survival, body weight, blood hematocrit, and organ analysis are recorded.

Tungsten-iron and tungsten-polymer

The 30-day dosing study revealed no adverse effects when mallards were dosed with either 8 BB size tungsten-iron shot or 8 BB size tungsten-polymer shot and monitored over a 30-day period (Bursian et al. 1996a, Bursian et al. 1996b). Eight male and 8 female adult mallards were dosed with either 8 No.4 steel shot, 8 No.4 lead shot, 8 BB size tungsten-iron shot, or 8 BB size tungsten-polyer shot and observed over

a 30-day period. An additional 8 males and 8 females received no shot. Fifty percent of the lead-dosed birds (5 males and 3 females) died during the 30-day test while there were no mortalities in the other groups. Lead-dosed birds were the only ones to display green excreta, lethargy, and ataxia. Body weights were not significantly altered by any of the treatments, although lead-dosed birds which died during the trial lost an average of 30 percent of their body weight. Hematocrit, hemoglobin concentrations, and ALAD activity were significantly depressed at day 15 in the lead-dosed females, while lead-dosed males had significantly depressed hematocrit and hemoglobin concentration compared with the other four groups. There were no significant differences in these whole-blood parameters at day 30. Three tungsten-polymer-dosed males developed mild biliary stasis. The authors attributed this to the intubating of mallards with 8 BBs of tungsen-polymer shot inducing a pathological condition—however slight—that was not found in the control birds. No other histopathological lesions were found. Tungsten was detected in the femur of two tungsten-polymer-dosed females and the kidneys of two tungsten-polymer-dosed birds; in both tissues, concentrations were only slightly above detection limits. In general, no adverse effects were seen in mallards given 8 BB-size tungsten-polymer shot and monitored over a 30-day period.

Tungsten-matrix

Kent's 30-day dosing study (Wildlife International Ltd. 1998a) included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 tungsten-matrix; whereas the control group received no shot. The 2 tungsten-matrix treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tungsten-matrix-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tungsten-matrix treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size tungsten-matrix shot and monitored over a 30-day period. Tungsten was found to be below the limit of detection in all samples of femur, gonad, liver, and kidney from treatment groups.

Tin

ITRI's 30-day dosing study (Wildlife International Ltd. 1998b) included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 tin shot; whereas the control group received no shot. The 2 tin treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tin-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tin treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size tin shot and monitored over a 30-day period. No levels of tin above the limit of detection were observed in any tissues collected from either tin treatment group.

Reproductive/Chronic Toxicity Study

Federal contracted with Michigan State University—Department of Animal Science, to conduct an a reproductive/chronic toxicity studies for both tungsten-iron and tungsten-polymer shot types. The reproductive/chronic toxicity study is a long-term (150-day) study where ducks are dosed with shot and fed commercially available duck food. Survival, body weight, blood hematocrit, organ analysis, and reproductive performance are recorded.

Tungsten-Iron and Tungsten-Polymer

The reproductive/chronic toxicity study revealed no adverse effects when mallards were dosed with either 8 No. 4 size tungsten-iron shot, or 8 No. 4 size tungsten-polymer shot, and monitored over a 150-day period (Bursian et al. 1999). Sixteen male and 16 female adult mallards were orally dosed with either 8 No.4 steel shot, 8 No.4 tungsten-iron shot, or 8 No. 4 tungsten-polymer shot. An additional 6 male and 6 female mallards were dosed with 8 No. 4 lead shot. All lead-dosed birds died by day 25 of the study, whereas no mortalities occurred in the other test groups. Lead-dosed birds had significantly decreased hematocrit, hemoglobin concentration and whole-blood delta aminolevulinic dehydratase activity on day 7 of the study. Mallards dosed with tungsten-iron or tungsten-polymer shot had occasional significant differences in hematocrit and plasma chemistry values when compared to steel-dosed mallards over the 150-day period, but these changes were within the normal range reported for mallards and were not considered to be deleterious. Relative kidney, heart, brain and gizzard weights of lead-dosed birds were significantly greater in comparison to relative weights of those organs in the other 3 treatment groups. Marked liver hemosiderosis was present in all steel and tungsten-dosed males, in 5 of 8 steel-and 3 of 8 tungsten-iron-dosed females, and in 1 tungsten-polymer-dosed male examined. Small amounts of tungsten were detected in gonad and kidney samples from males and females, in femur samples of males, and in liver samples from females dosed with tungsten-polymer shot. Higher concentrations of tungsten were detected in femur, gonad, kidney, and liver samples from tungsten-iron-dosed ducks. The rate of shot erosion was 99% for tungsten-polymer, 72% for tungsten-iron, 55% for steel, and 37% for lead. There were no significant differences in percent egg production, and percent fertility and hatchability of eggs from tungsten-iron- and tungsten-polymer-dosed ducks when compared to steel-dosed ducks. There were no biological differences in percent survivability and body weight of ducklings from tungsten-iron-or tungsten-polymer-dosed ducks when compared to ducklings from steel-dosed ducks. The hematocrit of ducklings from tungsten-iron-dosed ducks was slightly but significantly lower when compared to ducklings from steel-dosed ducks. Histological examination of duckling kidneys and liver indicated no abnormalities. Tungsten was detected in 25%, 9%, and 13% of the femur, kidneys, and liver samples, respectively, from ducklings of the tungsten-iron and tungsten-polymer groups. Overall, results of this study indicated that tungsten-iron and tungsten-polymer shot repeatedly administered to adult mallards did not adversely affect them or the offspring they produced during the 150-day trial.

Nontoxic Shot Approval

The first condition of nontoxic shot approval is toxicity testing. Based on the results of the toxicological report and the toxicity tests (Tiers 1, 2, and 3) discussed above, we conclude that tungsten-iron and tungsten-polymer shot does not pose a significant danger to migratory birds or other wildlife and their habitats. Based on the results of toxicological reports and acute toxicity tests (Tier 1 and 2), we conclude that tungsten-matrix and tin shots do not

appear to pose a significant danger to migratory birds or other wildlife and their habitats. However, final approval of either shot type will not be considered until all required reproductive/chronic toxicity tests have been successfully completed and our Director has reviewed and approved the results.

The second condition of approval is testing for residual lead levels. Any shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. We have determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and incorporated this requirement in the nontoxic shot approval process that was published on December 1, 1997 (62 FR 63608). Federal has documented that tungsten-iron and tungsten-polymer shots meet this requirement. Kent and ITRI have documented that tungsten-matrix and tin shot, respectively, meet this requirement.

The third condition of approval involves enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), we indicated that approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. This requirement was incorporated in the nontoxic shot approval process that was published on December 1, 1997 (62 FR 63608). Tungsten-iron shotshells can be drawn to a magnet as a simple field detection method. Electronic field testing devices can distinguish shells containing tungsten-polymer and tungsten-matrix from shells containing lead. At the present time, we are not aware of any noninvasive field testing devices for distinguishing shells containing tin shot from those containing lead. We will not consider final approval of tin shot until such a device, or other noninvasive field testing method, has been developed for identifying tin shot.

In summary, this rule amends 50 CFR 20.21(j) by approving tungsten-iron and tungsten-polymer shots as nontoxic for migratory bird hunting. It is based on the toxicological reports, acute toxicity studies, and reproductive/chronic toxicity studies submitted by Federal. Results of these studies indicate the absence of any deleterious effects of tungsten-iron or tungsten-polymer shot when ingested by captive-reared mallards or to the ecosystem. This rule also grants temporary approval to tungsten-matrix and tin shots for the 1999–2000 hunting season only. Temporary approval is based on the toxicological reports and acute toxicity studies submitted by Kent and ITRI.

During the 1998–99 hunting season, we granted temporary approval of several shot types that contained tungsten (October 7, 1998, 63 FR 54016–54026; December 8, 1998, 63 FR 67619). We gave these approvals with the restriction that the shot types could not be used in the Yukon-Kuskokwim (Y–K) Delta, Alaska. This restriction was implemented out of concern for potential effects of tungsten on the spectacled eider (Somateria fischeri); a species subject to adverse weather, predation, and lead poisoning on the Y–K Delta. Based on the results of reproductive/chronic toxicity studies of tungsten-iron and tungsten-polymer, we see no need for the Y–K Delta restriction on any tungsten-based shot types.

Public Comments and Responses

We invited public comments from interested parties in the June 17, 1999, proposed rule published in the **Federal Register** (64 FR 32752). During the 30-day comment period, we received 4 comments.

The Wildlife Legislative Fund of America strongly supported the temporary approval of tungsten-matrix and tin shots for hunting migratory birds in order to provide additional nontoxic shot alternatives to hunters.

Senator John D. Rockefeller IV also supported the temporary approval of tungsten-matrix shot.

Kent acknowledged the conditions for nontoxic approval and indicated that chronic toxicity/reproductive test results for tungsten-matrix shot are proceeding satisfactorily.

ITRI indicated that chronic toxicity/reproductive tests are being completed for tin shot and a noninvasive field testing device will be available.

Service Response: We are encouraged that chronic toxicity/reproductive testing is being completed for tungsten-matrix and tin shots, and look forward to reviewing results of such tests when they become available. It is our hope that providing additional nontoxic shot alternatives will improve hunter compliance and reduce the amount of lead shot in the environment.

Effective Date

Under the APA (5 U.S.C. 553 (d)) we waive the 30-day period before this rule becomes effective and find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the APA, and this rule will, therefore, take effect immediately upon publication. This rule relieves a restriction and, in addition, it is not in the public interest to delay the effective date of this rule. It is in the best interest of migratory birds and their habitats to grant approval to tungsten-iron and tungsten-polymer shot as nontoxic for hunting migratory birds, and to grant temporary approval to tungsten-matrix and tin shot for the 1998–99 migratory bird hunting season only. It is in the best interest of the hunting public to provide them an additional legal option for hunting waterfowl and coots for the 1999–2000 season, which begins on September 1, 1999. It is in the best interest of small retailers who have stocked the above shot types for the current season. We believe that availability of additional nontoxic shot options likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

References

Barr Engineering Company. 1996. Toxicology Report on New Shot.

Bursian, S. J., M. E. Kelly, R. J. Aulerich, D. C. Powell, and S. Fitzgerald. 1996a. Thirty-day dosing test to assess the toxicity of tungsten-iron shot in game-farm mallards. Report to Federal Cartridge Co. 77 pp.

Bursian, S. J., M. E. Kelly, R. J. Aulerich, D. C. Powell, and S. Fitzgerald. 1996b. Thirty-day dosing test to assess the toxicity of tungsten-polymer shot in game-farm mallards. Report to Federal Cartridge Co. 71 pp.

Bursian, S. J., R. M. Mitchell, R. J. Tempelman, R. J. Aulerich, and S. D. Fitzgerald. 1999. Chronic dosing study to assess the health and reproductive effects of tungsten-iron and tungsten-polymer shot on game-farm mallards. Report to Federal Cartridge Co. 115 pp.

Cooney, J.J. 1988. Microbial transformations of tin and tin compounds. J. Industr. Microbiol. 3:195–204.

Eisler, R. 1989. Tin hazards to fish, wildlife, and invertebrates: a synoptic review. Biological Rep. 85 (1.15). Contaminant Hazard Reviews Report No. 15. Fish and Wildlife Service, U.S. Dept. Interior. Washington, D.C. 85 pp.

Gigiema I. Sanitariya. 1977. Mezhdunarodnaya Kniga. Moscow, USSR. 42(8):30.

Gigiema I. Sanitariya. 1983. Mezhdunarodnaya Kniga. Moscow, USSR. 48(7):71.

Grandy, J. W., L. N. Locke, and G. E. Bagley. 1968. Relative toxicity of lead and five proposed substitute shot types to pen-reared mallards. J. Wildl. Manage. 32(3):483–488.

Hoiland, K. 1995. Reaction of some decomposer basidiomycetes to toxic elements. Nordic J. Bot. 15:305–318.

Huntingdon Research Centre Ltd. 1987. The effects of dosing mallard ducks with Safe Shot. Huntingdon, Cambridge, U.K. Report dated Dec. 19, 1987. 15pp.

Industrial Medicine. 1946. 15:482.

Interagency Ecosystem Management Task Force. 1995. The Ecosystem Approach: Healthy Ecosystems and Sustainable Ecohomics. Volume II—Implementation Issues.

Kabata-Pendias, A. and H. Pendias. 1984. Trace elements in soil and plants. CRC Press, Inc. Boca Raton, FL.
Karantassis, T. 1924. On the toxicity of compounds of tungsten and molybdenum. Ann. Med. 28:1541–1543.
Kraabel, F. W., M. W. Miller, D. M. Getzy, and J. K. Ringleman. 1996. Effects of embedded tungsten-bismuth-tin shot and steel shot on mallards. J. Wildl. Dis. 38(1):1–8.
Lide, D.R. 1990. CRC—Handbook of Chemistry and Physics. 71st Edition, 1990–1991. CRC Press, Boca Raton, Florida.
Montgomery, R.R. 1982. Polymers. In Patty's Industrial Hygiene and Toxicology, Vol. IIIA (G.D. Clayton and F.E. Clayton, Eds.) pp. 4209–4526. John Wiley and Sons, NY.
Nell, J.A., E.F. Annison, and D. Balnave. 1981. The influence of tungsten on the molybdenum status of poultry. Br. Poult. Sci. 21:193–202.
Pain, D.J. 1990. Lead shot ingestion by waterbirds in the Carmarque, France: an investigation of levels and interspecific difference. Environ. Pollut. 66:273–285.
Patty's Industrial Hygiene and Toxicology. 1982. Wiley Interscience. Wiley & Sons, Inc. NY, NY. Third Ed.
Peterson, J.E. 1977. Industrial Health. Prentice-Hall, Englewood Cliffs, NJ.
Ringelman, J.K., M.W. Miller, and W.F. Andelt. 1992. Effects of ingested tungsten-bismuth-tin shot on mallards. CO Div. Wildl., Fort Collins, 24 pp.
Ringelman, J.K., M.W. Miller, and W.F. Andelt. 1993. Effects of ingested tungsten-bismuth-tin shot on captive mallards. J. Wildl. Manage. 57:725–732.
Sanderson, G.C., W.L. Anderson, G.L. Foley, L.M. Skowron, J.D. Brawn, and J.W. Seets. 1997a. Acute toxicity of ingested bismuth alloy shot in game farm mallards. Illinois Nat. History Survey Bull. 35:185–216.
Sanderson, G.C., W.L. Anderson, G.L. Foley, K.L. Duncan, L.M. Skowron, J.D. Brawn, and J.W. Seets. 1997b. Toxicity of ingested bismuth alloy shot in game farm mallards: chronic health effects and effects on reproduction. Illinois Nat. History Survey Bull. 35:217–252.
Thomas, V.G. 1997a. Application for approval of tungsten-matrix shot as non-toxic for the hunting of migratory birds. 39 pp.
Thomas, V.G. 1997b. Application for approval of tin shot as non-toxic for the hunting of migratory birds. 26 pp.
Wildlife International, Ltd. 1998a. Tungsten-matrix shot: An oral toxicity study with the mallard. Project No. 475–101. 162 pp.
Wildlife International, Ltd. 1998b. Tin shot: An oral toxicity study with the mallard. Project No. 476–101. 158 pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared Environmental Assessments (EA) in July, 1999. The EAs are available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the information in the EAs, we have determined that amending 50 CFR 20.21(j) to provide final approval of tungsten-iron and tungsten-polymer shots, and temporary approval of tungsten-matrix and tin shots for the 1999–2000 season, as nontoxic for migratory bird hunting would not be a major Federal action that would significantly affect the quality of the human environment.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" We have completed a Section 7 consultation under the ESA for this rule, which stated the use of tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shots is not likely to adversely affect listed species. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act; Small Business Regulatory Enforcement and Fairness Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. This rule approves additional types of nontoxic shot that may be sold and used to hunt migratory birds; this rule provides 4 types of shot in addition to the existing 2 that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shots merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others. Similarly, this is not a major rule under 5 U.S.C. 804(2).

Executive Order 12866

This rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no information collection requirements. However, we do have OMB approval (1018–0067; expires 06/30/2000) for information collection relating to what manufacturers of shot are required to provide to us for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We, in promulgating this rule, have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Authorship. The primary author of this rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we are amending part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising paragraph (j) introductory text, revising paragraphs (j)(2) and (j)(3), and removing paragraph (j)(4) as follows:

20.21 What hunting methods are illegal?

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tin (99.9 percent tin with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in 20.134, provided that:

* * * * *

(2) Tungsten-matrix shot (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1999–2000 hunting season only, and

(3) Tin shot (99.9 percent tin with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1999–2000 hunting season only.

Dated: August 12, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–21525 Filed 8–18–99; 8:45 am]

BILLING CODE 4310–55–P

OL

64

SS

1
6
0

AG

19

99

MI

Read

CUSTOME

Federal Reg
General Info
aids

Laws

Presidentia
Executive o
The United

Other Servi
Electronic a
Privacy Act
Public Laws
TTY for the

ELECTRON

World Wide

Full text of
publication

Federal Reg
Inspection

E-mail

PENS (Publ
service for
subscribe, s

with the te

Use listserv
PENS. We

Reference
Federal Reg

The Federa
regulations

FEDERAL

41765–419
41999–422
42265–425
42579–428
42823–430
43043–432
43255–435
43599–438
43897–441
44101–443
44397–446
44643–448
44817–451
45149–454

Reader Aids

Federal Register

Vol. 64, No. 160

Thursday, August 19, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998	2
41999–42264	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43598	10
43599–43896	11
43897–44100	12
44101–44396	13
44397–44642	16
44643–44816	17
44817–45148	18
45149–45406	19

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265
Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12924 (See Notice of Aug. 10, 1999) 44101
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895
13134 44639
Administrative Orders:
Notice of Aug. 10, 1999 44101

7 CFR

11 43043
610 41999
989 43897
1230 44643
1728 42005
Proposed Rules:
6 42288
354 43103
505 44634
931 42858
932 42619
981 43298
984 45208
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 43043
116 43043
124 43043
318 44644
319 44644
390 43902
Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823
76 44645
Proposed Rules:
50 ..... 44137, 44860
709 45062
710 ..... 44433, 45062
711 45062

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 41770
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
905 44103
Proposed Rules:
202 44582
361 ..... 42861, 42862
702 44663
747 44663
935 44444

13 CFR

120 44109
Proposed Rules:
120 43636

14 CFR

4 43599
25 44817
27 ..... 43016, 45092
29 ..... 43016, 45336
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905, 44110, 44112, 44650
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907, 44114, 44116, 44117, 44268, 44397, 44398, 44399, 44400, 44578, 44819, 44821, 44823, 45149
71 44825
91 44814

97.....44117, 44119
254.....41781
382.....41781

Proposed Rules:
25.....43570, 43943, 43946
39.....41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667, 45211
65.....42810
66.....42810
71.....42300, 42301, 44139, 44140, 44141, 44142, 44144, 44865
93.....44145
107.....43321
108.....43322
119.....45090
121.....45090
129.....45090
135.....45090
147.....42810
183.....45090

15 CFR

734.....42009
738.....42009
740.....42009
742.....42009
902.....42826

16 CFR

2.....43599
5.....42594

Proposed Rules:
1212.....42302

17 CFR

9.....43254
10.....43071
211.....45150
12.....43071
200.....42594
240.....42031, 42594
249.....42594

Proposed Rules:
4.....41843
275.....43556

18 CFR

3.....44400
341.....44400
342.....44400
346.....44400
357.....44400
362.....44400
381.....44652
385.....44400

Proposed Rules:
101.....42304
343.....43600
357.....42623
385.....42307, 43600

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
151.....43608
162.....43262
173.....43262
174.....43262, 43608
178.....43608
181.....43262

Proposed Rules:
12.....41851
113.....41851, 42872
141.....41851

20 CFR

Proposed Rules:
375.....44670
404.....42310
416.....42310

21 CFR

101.....42277
172.....43072, 43908, 44121
173.....44122
178.....44406, 44407
310.....44653
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596, 43909
606.....45366
640.....45366
878.....45155
1308.....42432
1312.....42432

Proposed Rules:
101.....42315
207.....43114
310.....44671
314.....42625, 42873
344.....44671
600.....45383
606.....45355, 45375
607.....43114, 45340
610.....45340
630.....45355
640.....45340, 45375
660.....45340
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032, 45162
514.....44123

24 CFR

108.....44094
982.....43613

Proposed Rules:
990.....43641

26 CFR

1.....41783, 43072, 43267, 43613, 43910
31.....42831
301.....41783
602.....41783, 43072, 43613
801.....42834

Proposed Rules:
1.....43117, 43323, 43462, 43969
301.....43324
602.....43462

28 CFR

505.....43880

29 CFR

1610.....45164
2570.....42246
2575.....42246
4044.....44128

Proposed Rules:
1910.....45098
2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75.....43280, 43286, 45165
90.....43283
202.....43506
206.....43288, 43506
250.....42597
914.....43911
943.....43913

Proposed Rules:
206.....45213
913.....44674
914.....44448
935.....42687
936.....43327

31 CFR

538.....41784
550.....41784
560.....41784
590.....43924

Proposed Rules
375.....42626

32 CFR

Proposed Rules:
230.....43856
231.....43858
231a.....43856

33 CFR

100.....42278, 42598, 43289
110.....42279
117.....42033, 42599, 44129, 44131, 44826
160.....41794
165.....43290, 43291, 44658

Proposed Rules:
100.....41853
117.....44145, 44147, 44148, 44149, 44151

34 CFR

611.....42837

Proposed Rules:
668.....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682.....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:
13.....41854
1191.....42056

37 CFR

Proposed Rules:
201.....42316

38 CFR

17.....44659
21.....44660

39 CFR

20.....43292

Proposed Rules:
111.....44681

40 CFR

9.....42432, 43426, 43936
52.....42600, 43083, 44131, 44134, 44408, 44411, 44415, 44417, 45170, 45175, 45178, 45182
58.....42530
62.....43091, 44420, 45184
63.....42764, 45187
86.....43936
122.....42432, 43426
123.....42432, 43426
124.....42432, 43426
180.....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846, 44826, 44829
186.....41818
261.....42033
271.....41823, 42602, 44836
300.....44135
403.....42552
501.....42432, 43426
503.....42552
745.....42849

Proposed Rules:
52.....42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452, 45215, 45216, 45217
55.....45217
62.....43123, 45222
63.....45116, 45221
97.....43124, 44452
147.....43329
261.....42317, 44866
271.....42630, 43331, 44876
281.....43336
300.....41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458, 45222, 45224
372.....42222
441.....45072

41 CFR

301.....43254

Proposed Rules:
51-2.....41882
51-5.....41882

42 CFR

413.....42610, 44841
498.....43295

1001 42174

Proposed Rules:

Ch. IV 43338

44 CFR

61 41825
64 ..... 42852, 44421
206 41827

Proposed Rules:

61 42632
62 42633

45 CFR

801 42039

46 CFR

10 ..... 42812, 44786
12 ..... 42812, 44786

Proposed Rules:

298 44152
535 42057

47 CFR

0 43618
1 42854
5 43094
43 43618
62 43937
63 ..... 43095, 43618
64 ..... 43618, 44423
69 45196
73 ..... 41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095, 44856
76 ..... 42617, 42855
90 43094

Proposed Rules:

Ch. 1 ..... 41883, 42635
20 44682

1 ..... 41884, 41887
2 ..... 41891, 43643
15 41897
32 44877
43 44877
51 41897
64 44877
68 41897
73 ..... 41899, 43132
76 41887
78 41899
95 41891

48 CFR

202 43096
204 ..... 43098, 45196, 45197
212 43098
213 43098
217 43096
219 45197
252 ..... 43098, 45196
253 ..... 43098, 45197
601 43618
602 43618
603 43618
604 43618
605 43618
606 43618
608 43618
609 43618
610 43618
611 43618
613 43618
614 43618
615 43618
616 43618
617 43618
619 43618
622 43618
623 43618
625 43618
626 43618
628 43618
629 43618
630 43618
631 43618
632 43618
633 43618
634 43618
636 43618
637 43618
639 43618
641 43618
642 43618
643 43618
644 43618
645 43618
646 43618
647 43618
649 43618
652 43618
653 43618
701 42040
702 42040
703 42040
705 42040
706 42040
709 42040
714 42040
716 42040
719 42040
726 42040
732 42040
733 42040
734 42040
749 42040
750 42040
752 42040
5416 41834

Proposed Rules:

17 44100
536 44683

49 CFR

171 45388
172 ..... 44426, 44578, 45388
173 44426
175 45388
396 45207

Proposed Rules:

190 43972
385 44460
390 44460
571 42330
575 44164

50 CFR

17 41835
20 45400
300 44428
600 42286
622 43941
635 ..... 42855, 43101
648 ..... 42042, 42045, 44661
660 ..... 42286, 42856
679 ..... 41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942, 44431, 44432, 44858, 44859

Proposed Rules:

17 ..... 41903, 42058, 42250, 43132, 44171, 44470, 44883
20 44384
32 43834
36 43834
226 44683
600 ..... 42335, 43137
622 ..... 41905, 42068, 44884
635 44885
648 ..... 42071, 43137, 43138
660 44475
679 42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 19, 1999

DEFENSE DEPARTMENT
Acquisition regulations:
Security responsibilities; oral attestation; published 8-19-99

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Freedom of Information Act; implementation; published 8-19-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
General and plastic surgery devices—
Silicone inflatable breast prosthesis; premarket approval; published 8-19-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
Tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shots; final/temporary approval as nontoxic for 1999-2000 season; published 8-19-99

STATE DEPARTMENT
Visas; nonimmigrant documentation:
Border crossing identification cards; published 8-19-99

TRANSPORTATION DEPARTMENT
Coast Guard
Anchorage regulations:
New York; published 7-20-99
Drawbridge operations:
New Jersey; published 7-20-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (sweet) grown in—
Washington; comments due by 8-23-99; published 6-24-99
Potatoes (Irish) grown in—
California and Oregon; comments due by 8-24-99; published 6-25-99

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Recognition of animal disease status of regions in European Union; comments due by 8-24-99; published 6-25-99
Foreign quarantine notices:
Mexican Haas avocados; comments due by 8-24-99; published 6-25-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Essential fish habitats; comments due by 8-23-99; published 7-9-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 8-25-99; published 7-26-99
Western Pacific Coral Reef Ecosystem and bottomfish and seamount groundfish; comments due by 8-26-99; published 8-16-99

COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Contract market designation applications—
Commission review and approval; procedures; comments due by 8-26-99; published 7-27-99

DEFENSE DEPARTMENT
Acquisition regulations:
Cargo preference-subcontracts for commercial items; comments due by 8-23-99; published 6-22-99
Overseas use of purchase card; comments due by 8-25-99; published 7-29-99

EDUCATION DEPARTMENT
Postsecondary education:
Secretary's recognition of accrediting agencies; comments due by 8-24-99; published 6-25-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Outer Continental Shelf Lands Act; implementation:
Natural gas transportation through pipeline facilities on Outer Continental Shelf; comments due by 8-27-99; published 7-13-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-23-99; published 7-23-99
Indian; comments due by 8-25-99; published 7-26-99
Indiana; comments due by 8-25-99; published 7-26-99
Montana; comments due by 8-27-99; published 7-28-99
Clean Air Act:
Interstate ozone transport reduction—
Nitrogen oxides trading program; Section 126 petitions; findings of significant contribution and rulemaking; comments due by 8-25-99; published 8-16-99
Hazardous waste:
Project XL program; site-specific projects—
University of Massachusetts et al.; university laboratories; comments due by 8-26-99; published 7-27-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 8-25-99; published 7-26-99
Water programs:
Clean Water Act—
State and Tribal water quality standards; review and approval; comments due by 8-23-99; published 7-9-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier service:
Incumbent local exchange carriers; accounting and reporting requirements; comprehensive review; comments due by 8-23-99; published 8-18-99
Radio services, special:
Maritime services—
Privately owned accounting authorities; accounts settlement; streamlining; biennial regulatory review; comments due by 8-23-99; published 7-28-99
Radio stations; table of assignments:
Arizona; comments due by 8-23-99; published 7-14-99
Arkansas; comments due by 8-23-99; published 7-14-99
Kentucky and Virginia; comments due by 8-23-99; published 7-14-99
New York; comments due by 8-23-99; published 7-14-99
North Carolina; comments due by 8-23-99; published 7-14-99
Texas; comments due by 8-23-99; published 7-14-99
Television stations; table of assignments:
New York; comments due by 8-23-99; published 7-14-99

FEDERAL MARITIME COMMISSION
Shipping Act of 1984; implementation:
Ocean common carriers; definition clarification; comments due by 8-24-99; published 6-25-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Admission and occupancy—
Pet ownership in public housing; comments due by 8-23-99; published 6-23-99
Public housing agency organization; required resident membership on board of directors or similar governing body; comments due by 8-23-99; published 6-23-99
Public Housing Assessment System; comments due by 8-23-99; published 6-22-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Tidewater goby; northern populations; comments due by 8-23-99; published 6-24-99
Migratory bird hunting:
Federal Indian reservations, off-reservation trust lands and ceded lands; comments due by 8-23-99; published 8-13-99

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land

reclamation plan submissions:
Kansas; comments due by 8-25-99; published 7-26-99
Mississippi; comments due by 8-25-99; published 7-26-99
Ohio; comments due by 8-23-99; published 8-6-99
Oklahoma; comments due by 8-25-99; published 8-10-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Credit union service organizations—
Real estate brokerage services; grandfather exemption; comments due by 8-23-99; published 6-22-99

PERSONNEL MANAGEMENT OFFICE
Retirement:
Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS)—
State income tax withholding and voluntary allotment program; expansion; comments due by 8-23-99; published 6-23-99

SMALL BUSINESS ADMINISTRATION
Business loans:
Loan loss reserve fund; comments due by 8-25-99; published 7-26-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Iowa and Illinois; comments due by 8-23-99; published 7-22-99
Ports and waterways safety:
Lower New York Bay and Raritan Bay, NY; safety zone; comments due by 8-23-99; published 7-7-99
Vessels and marine facilities; Year 2000 (Y2K) reporting requirements; comments due by 8-23-99; published 6-23-99

TRANSPORTATION DEPARTMENT
Economic regulations:
Domestic baggage liability; comments due by 8-27-99; published 6-28-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 8-23-99; published 7-23-99
Avions Mundry et Cie; comments due by 8-27-99; published 7-19-99
Bell; comments due by 8-23-99; published 6-24-99
Boeing; comments due by 8-23-99; published 6-23-99
Dassault; comments due by 8-23-99; published 7-22-99
McDonnell Douglas; comments due by 8-23-99; published 7-23-99
MD Helicopters Inc.; comments due by 8-23-99; published 6-23-99
Rolls-Royce plc; comments due by 8-23-99; published 6-23-99
Saab; comments due by 8-23-99; published 7-22-99
Sikorsky; comments due by 8-23-99; published 6-24-99
Class D airspace; comments due by 8-23-99; published 7-7-99
Class E airspace; comments due by 8-24-99; published 7-19-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Loading, unloading, and storage; regulatory applicability; comments due by 8-25-99; published 7-28-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Simplified production, and resale methods with historic absorption ratio election; special rules; comments due by 8-23-99; published 5-24-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L
Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

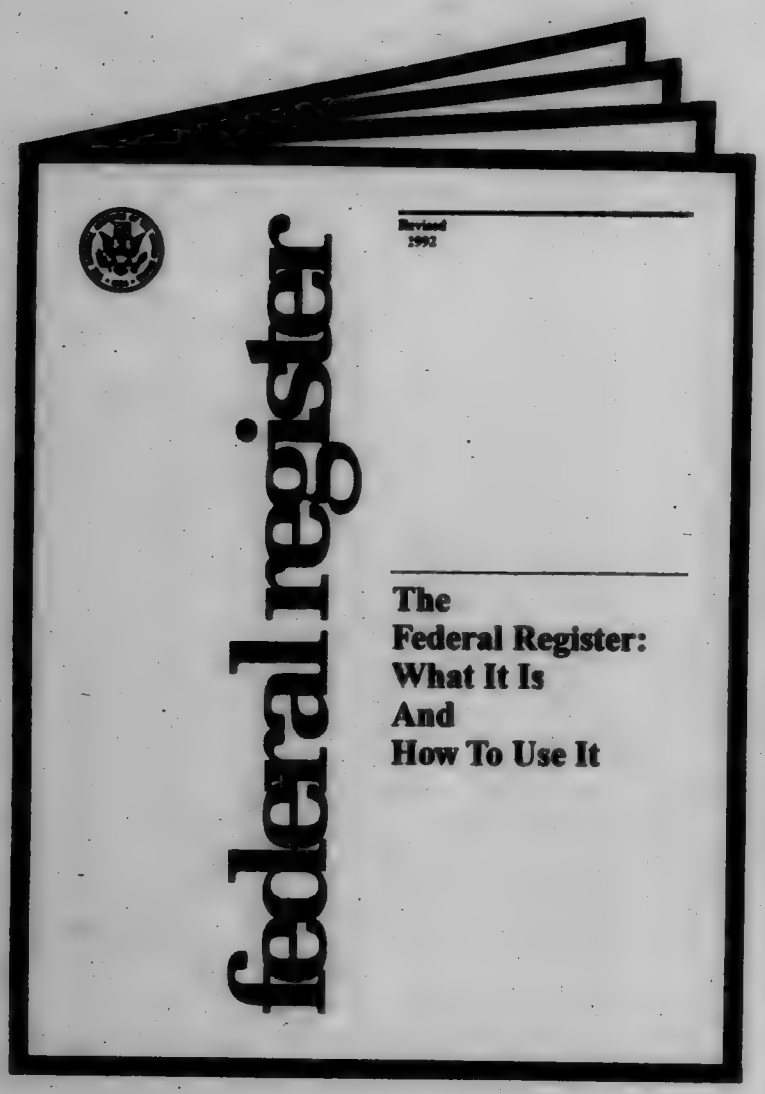

Announcing the Latest Edition

The Federal Register: What It Is And How To Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a simple research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*** 6173**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ copies of **The Federal Register: What It Is And How To Use It,** at $7.00 per copy. Stock No. 069–000–00044–4.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature (Rev.6/99)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

tion

r—

al
e
le to
ovide
and
ation
n.

VISA

202) 512–2250
202) 512–1800

0–00044–4.

to change.

Documents

– ☐

hank you for your order!

(Rev.6/99)

250–7954

Printed on recycled paper

VOL
64
ISS
1
6
1
AG
20
999
UMI

-20-99
Vol. 64 No.

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $3

-20-99
Vol. 64 No. 161

federal register

Friday
August 20, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

8-20-99
Vol. 64 No
Pages 45407-

8–20–99
Vol. 64 No. 161
Pages 45407–45858

federal register

Friday
August 20, 1999

ANN ARBOR MI 48106

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Contents

Federal Register
Vol. 64, No. 161
Friday, August 20, 1999

Agency for International Development
NOTICES
Meetings:
Voluntary Foreign Aid Advisory Committee, 45502

Agricultural Marketing Service
RULES
Oranges and grapefruit grown in—
Texas, 45407–45409
Soybean promotion and research program; referendum, 45413–45419
Tomatoes grown in—
Florida, 45409–45413
PROPOSED RULES
Avocados grown in Florida and imported, 45461–45466

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Viruses, serums, toxins, etc.:
Rabies vaccine, killed virus; standard requirements; incorporation by reference update, 45419–45421

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45549–45551
Committees; establishment, renewal, termination, etc.:
Agency for Toxic Substances and Disease, Scientific Counselors Board, 45551
Imports:
Used tire casings from Asia; certification requirement cancellation, 45551–45552
Meetings:
Advisory Committee to Director, 45552

Children and Families Administration
NOTICES
State child welfare programs; outcomes and performance; lists, 45552–45554

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 45506–45508

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
New York Cotton Exchange—
Frozen concentrated orange juice; contract terms and conditions, 45515–45517

Comptroller of the Currency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45587–45588

Defense Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Prosthetic devices, 45453–45454

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedule II—
1999 aggregate, 45566
Schedules I and II—
1999 proposed aggregate, 45566–45569
Applications, hearings, determinations, etc.:
Guilford Pharmaceuticals, Inc., 45564
ISP Freetown Acquisition, Corp., 45564–45565
Medeva Pharmaceuticals CA, Inc., 45565
Morton Grove Pharmaceuticals, Inc., 45565
Research Biochemicals, L.P., 45565–45566

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Long-range plan (1999-2004 FYs), 45743–45784
Postsecondary education—
American Overseas Research Centers Program, 45518–45519
Business and International Education Program, 45517–45518
Jacob K. Javits Fellowship Program, 45517

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 45573–45574

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Outstanding Junior Investigator Program, 45519

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Louisiana, 45454–45457

PROPOSED RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Motor vehicle inspection/maintenance program requirements, 45491–45500
Hazardous waste:
Cement kiln dust; management standards, 45631–45697
NOTICES
Environmental statements; availability, etc.:
Weekly receipts, 45541–45542
Reports and guidance documents; availability, etc.:
Environmentally preferable purchasing for Executive agencies, 45809–45858
Toxic and hazardous substances control:
New chemicals; receipt and status information, 45542–45548

Executive Office of the President
See Trade Representative, Office of United States

Farm Credit Administration
RULES
Freedom of Information Act; implementation
Correction, 45589

Federal Aviation Administration
RULES
Airworthiness directives:
Allison Engine Company, Inc., 45421–45423
Bell, 45433–45435
Boeing, 45436–45438
Bombardier, 45425–45426
Lockheed, 45423–45425
MD Helicopters, Inc., 45435–45436
Pratt & Whitney, 45426–45433
PROPOSED RULES
Airworthiness directives:
Airbus, 45487–45488
Boeing, 45466–45485
Bombardier, 45474–45476
Dornier, 45468–45470
Raytheon, 45485–45487
Airworthiness standards:
Transport category airplanes—
Braking systems; harmonization with European standards; correction, 45589
NOTICES
Passenger facility charges; applications, etc.:
Aberdeen Regional Airport, SD, 45583

Federal Communications Commission
PROPOSED RULES
Digital television stations; table of assignments:
California, 45500
Tennessee, 45500

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 45519–45523
Electric rate and corporate regulation filings:
Allegheny Power Service Corp. et al., 45525–45527
Illinois Power Co. et al., 45527–45529
PanEnergy Lake Charles Generation, Inc., et al., 45530–45532
Environmental statements; availability, etc.:
PacifiCorp Power Co., 45532–45533
Hydroelectric applications, 45533–45541
Applications, hearings, determinations, etc.:
ANR Storage Co., 45523
Blue Lake Gas Storage Co., 45523
Caprock Pipeline Co., 45523
Cove Point LNG L.P., 45524
Dauphin Island Gathering Partners, 45524
East Tennessee Natural Gas Co., 45524
Gulf States Transmission Corp., 45524–45525
Sea Robin Pipeline Co., 45525
Tennessee Gas Pipeline Co., 45525

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
Denver, Arapahoe, and Douglas Counties, CO, 45584–45585
Environmental statements; notice of intent:
Clark County, IN and Jefferson County, KY, 45583–45584

Federal Procurement Policy Office
PROPOSED RULES
Acquisition regulations:
Cost Accounting Standards Board—
Cost accounting practices; changes, 45730–45742

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 45548
Permissible nonbanking activities, 45548–45549

Federal Transit Administration
NOTICES
Environmental statements; availability, etc.:
Denver, Arapahoe, and Douglas Counties, CO, 45584–45585

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Senior Executive Service:
Performance Review Board; membership, 45588

Food and Drug Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45554–45555

Forest Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Lake Tahoe Basin Federal Advisory Committee, 45502
Environmental statements; notice of intent:
Okanogan National Forest, WA, 45502–45504
Winema National Forest, OR, 45504–45505
Meetings:
Lake Tahoe Basin Federal Advisory Committee, 45505–45506

General Services Administration
NOTICES
Meetings:
President's Commission on Celebration of Women in American History, 45549

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
RULES
Group and individual health insurance markets; Federal enforcement, 45785–45807

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 45560
Proposed collection; comment request; correction, 45560
Submission for OMB review; comment request, 45560–45561
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 45591–45629

Interior Department
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Aspirin from—
Turkey, 45508
Fresh kiwifruit from—
New Zealand, 45508–45510
Porcelain-on-steel cookware from—
Mexico, 45510
Synthetic methionine from—
Japan, 45510–45511
Tapered roller bearings and parts, finished and unfinished, from—
China, 45511–45514

International Trade Commission
NOTICES
Import investigations:
Carbon steel butt-weld pipe fittings from—
Various countries; correction, 45589

Justice Department
See Drug Enforcement Administration
See National Institute of Justice

Labor Department
See Employment Standards Administration
See Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45571–45573

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 45561–45562
Oregon, 45562
Meetings:
Resource Advisory Councils—
Northwest California, 45562
Oil and gas leases:
Wyoming, 45562
Realty actions; sales, leases, etc.:
Nevada, 45562–45563
Oregon, 45563–45564

Management and Budget Office
See Federal Procurement Policy Office

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 45574–45575

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 45575–45576

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Vectrix Corp., 45585–45587

National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
Forensic DNA research and development, 45569–45570
Municipalities; Arrestee Drug Abuse Monitoring Program, 45570
Science and technology projects, 45570–45571

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 45555–45556
Meetings:
National Institute of Allergy and Infectious Diseases, 45556
National Institute of Dental and Craniofacial Research, 45556–45557
National Institute of Neurological Disorders and Stroke, 45556
Scientific Review Center, 45557–45558
Warren Grant Magnuson Clinical Center Board of Governors, 45558
National Environmental Policy Act; categorical exclusions, 45558–45560

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut, 45460
Pacific ocean perch, 45459–45460
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 45457–45459
PROPOSED RULES
Fishery conservation and management:
Magnuson-Stevens Act provisions—
American lobster; exempted fishing permits, 45501
NOTICES
Environmental statements; notice of intent:
West Coast States and Western Pacific fisheries—
Western Pacific coral reef ecosystem and bottomfish and seamount groundfish, 45514–45515

National Science Foundation
NOTICES
Meetings:
Earth Sciences Proposal Review Panel, 45576–45577
Physics Special Emphasis Panel, 45577
Physiology and Ethology Advisory Panel, 45577
Polar Programs Special Emphasis Panel, 45577

Northeast Dairy Compact Commission
NOTICES
Meetings, 45577–45578

Office of United States Trade Representative
See Trade Representative, Office of United States

Public Debt Bureau
See Fiscal Service

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Research and Special Programs Administration
RULES
Hazardous materials:
Import and export shipments; poison inhalation hazard; CFR correction, 45457

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 45578–45579
Philadelphia Stock Exchange, Inc., 45579–45580

Social Security Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45580–45581

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Virginia, 45489–45491

Surface Transportation Board
NOTICES
Y2K (Year 2000) readiness, 45587

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Dispute settlement panel establishment requests—
Argentina; footwear imports, 45581–45582

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Hearings, etc.—
JetBlue Airways Corp., 45582
Organization, functions, and authority delegations:
Point of contact with small business concerns regarding problems arising out of Y2K failures and compliance with Federal regulations, 45582–45583

Treasury Department
See Comptroller of the Currency
See Fiscal Service
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Money services businesses; definitions and registration, 45438–45453

Separate Parts in This Issue

Part II
Department of Housing and Urban Development, 45591–45629

Part III
Environmental Protection Agency, 45631–45697

Part IV
Office of Management and Budget, Federal Procurement Policy Office, 45699–45742

Part V
Department of Education, 45743–45784

Part VI
Department of Health and Human Services, Health Care Financing Administration, 45785–45807

Part VII
Environmental Protection Agency, 45809–45858

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
906.....45407
966.....45409
1220.....45413
Proposed Rules:
915.....45461
944.....45461

9 CFR
113.....45419

12 CFR
602.....45589

14 CFR
39 (7 documents) 45421, 45423, 45425, 45426, 45433, 45435, 45436
Proposed Rules:
25.....45589
39 (11 documents) 45466, 45468, 45470, 45472, 45474, 45476, 45477, 45481, 45483, 45485, 45487

30 CFR
Proposed Rules:
946.....45489

31 CFR
103.....45438

32 CFR
199.....45453

40 CFR
52.....45454
Proposed Rules:
51.....45491
259.....45632
261.....45632
266.....45632
270.....45632

45 CFR
144.....45786
146.....45786
148.....45786
150.....45786

47 CFR
Proposed Rules:
73 (2 documents) 45500

48 CFR
Proposed Rules:
9903.....45700

49 CFR
171.....45457

50 CFR
622.....45457
679 (2 documents) 45459, 45460
Proposed Rules:
600.....45501
649.....45501

Rules

This section o
contains regul
applicability a
are keyed to s
Federal Regul
50 titles pursu

The Code of F
the Superinten
new books are
REGISTER is

DEPARTME

Agricultural

7 CFR Part 9

[Docket No. F

Oranges and
Lower Rio G
Increased A

AGENCY: Agr
USDA.

ACTION: Fina

SUMMARY: Th
assessment r
7/10 bushel ca
grapefruit es
Valley Citrus
under Marke
1999–2000 a
periods. The
for local adm
order which
oranges and
Lower Rio G
Authorizatio
grapefruit ha
Committee te
reasonable a
the program.
August 1 and
assessment r
indefinitely
suspended, c

EFFECTIVE DA

FOR FURTHER
Cynthia Cava
McAllen Mar
and Vegetabl
1313 E. Hack
telephone: (9
682–5942; or
Advisor, Mar
Administrati
Vegetable Pro
2525–S, P.O.
DC 20090–64
2491, Fax: (2

Rules and Regulations

Federal Register
Vol. 64, No. 161
Friday, August 20, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV99–906–2 FR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit established for the Texas Valley Citrus Committee (Committee) under Marketing Order No. 906 for the 1999–2000 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 21, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Cavazos, Marketing Assistant, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.11 per 7/10 bushel carton that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 8, 1999, and unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton of oranges and grapefruit handled. In comparison, last year's budgeted expenditures were $1,181,950. The assessment rate of $0.12 is $0.01 higher than the rate previously in effect. The Committee has operated under a lower assessment rate in recent years and used available reserve funds to make up most of the difference between assessment income and expenses. Since 1994, the Committee's reserve has decreased from almost $400,000 to

slightly under $120,000. Thus, the Committee recommended increasing the assessment rate because the previous rate would not have generated enough income to cover 1999–2000 expenses, and the Committee only wanted to use a limited amount of reserve funds to meet expenses. The Committee wanted to ensure that adequate reserve funds were available to meet unexpected expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising and promotion, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the program, and $73,369 for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 9.5 million 7/10 bushel cartons, which should provide $1,140,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $119,402) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

The assessment rate established by this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 315 producers of oranges and grapefruit in the production area and 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Texas orange and grapefruit producers and handlers may be classified as small entities.

Last year, 5 of the 16 handlers (31 percent) each shipped over 625,000 7/10 bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $8.00 per carton, these handlers could be considered large businesses by the SBA, and the remaining 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit. The Committee unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton. The assessment rate of $0.12 is $0.01 higher than the 1998–99 rate. The Committee recommended increasing the assessment rate because the previous rate would not have generated enough income to cover 1999–2000 expenses, and the Committee only wanted to use a limited amount of reserve funds to meet expenses. The Committee wanted to ensure that adequate reserve funds were available to meet unexpected expenses. As mentioned earlier, the quantity of assessable oranges and grapefruit for the 1999–2000 season is estimated at 9.5 million 7/10 bushel cartons. Assessment income, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising and promotion, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the marketing order program, and $73,369, for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

Many producers are still recovering from the devastating freezes of 1983 and 1989 that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and profit to the producers is marginal. Also, a general oversupply of citrus from other domestic sources and foreign countries depressed prices. The Committee recommended increasing the assessment rate to $0.12 per 7/10 bushel carton because the previous rate would not have generated enough income to cover 1999–2000 expenses, and the Committee only wanted to use a limited amount of reserve funds ($5,850) to meet expenses. Interest income totaling $3,000 will also be used to cover program expenses in 1999–2000. At the end of the 1999–2000 fiscal period the reserve is expected to be $113,552.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $1,148,850, which included a decrease in the advertising and promotion program. Budgeted expenses for the Mexican Fruit Fly program were left the same as last year. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. The Committee considered leaving the established lower assessment rate unchanged. The Committee, however, concluded that retaining the previous rate of assessment for the 1999–2000 fiscal period would have reduced the Committee's reserve to an unacceptable level. Alternative expenditure levels were discussed based upon the relative value of the advertising and promotion program to the Texas citrus industry. The assessment rate of $0.12 per 7/10 bushel carton of assessable oranges and

grapefruit was determined by dividing the total recommended budget by the quantity of assessable oranges and grapefruit estimated at 9.5 million 7/10 bushel cartons for the 1999–2000 fiscal period. The $0.12 rate should provide $1,140,000 in assessment income. The additional $8,850 will come from the Committee's reserve and interest income.

A review of historical information and preliminary information pertaining to the 1999–2000 fiscal period indicates that the f.o.b. price for the 1999–2000 season could range from $4.75 and $12.50 per 7/10 bushel carton of oranges and grapefruit depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total pack-out revenue could range between .96 and 2.5 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 8, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 19, 1999 (64 FR 38597). Copies of the proposed rule were also mailed or sent via facsimile to all Texas orange and grapefruit handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 20-day comment period ending August 9, 1999, was provided for interested persons to respond to the proposal. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 1999–2000 fiscal period began on August 1, 1999, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period, and handlers will begin harvesting their fruit in early September. The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting. Also, a 20-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 1999, an assessment rate of $0.12 per 7/10 bushel carton is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: August 17, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–21673 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV98–966–2 IFR]

Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Producer Field-Packed Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends a prior interim final rule that changed the handling requirements prescribed under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (committee). The prior interim final rule exempted shipments of producer field-packed tomatoes from container net weight requirements and the requirement that all tomatoes must be packed at registered handler facilities. This rule exempts shipments of certain-sized producer field-packed tomatoes from a maximum size requirement specified in the handling regulation. These changes allow the industry to pack a higher colored, riper tomato to meet the demand of the expanding market for vine-ripe tomatoes. This facilitates the movement of Florida tomatoes and should ultimately improve returns to producers.

DATES: Effective October 10, 1999; comments received by October 19, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration

Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This rule is issued under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements apply during the period October 10 through June 15 each year. Current requirements include a minimum grade of U.S. No. 2 and a minimum size of 2$^{2}/_{32}$ inches in diameter. Current pack and container requirements outline the types of information that needs to appear on a container, weight restrictions the packed containers must meet, and that the containers must be packed at registered handler facilities.

Section 966.52 of the order provides authority for the modification, suspension, and termination of regulations. It includes the authority to establish and modify pack and container requirements for tomatoes grown in the defined production area and handled under the order. Section 966.323 of the order's rules and regulations specifies the handling regulation for Florida tomatoes.

This rule amends an interim final rule published in the **Federal Register** on October 13, 1998 (63 FR 54556). That rule, which was based on a unanimous recommendation from the committee made at a meeting on September 11, 1998, changed the handling regulation under the order by defining producer field-packed tomatoes and allowing handlers to ship field-packed tomatoes exempt from net weight requirements. That rule also exempted producer field-packed tomatoes from the requirement that all tomatoes be packed at registered handler facilities. Currently, those tomatoes are subject to all other provisions of the handling regulation, including established grade, size, pack, and inspection requirements. Those tomatoes are also subject to assessments.

This amended interim final rule, which is based on a unanimous recommendation from the committee made at a meeting on May 26, 1999, exempts shipments of certain-sized producer field-packed tomatoes from a maximum diameter requirement specified in the handling regulation. Specifically, field-packed tomatoes designated as size "6 × 6" may be larger than 2$^{27}/_{32}$ inches in diameter. This rule makes a related change to the labeling requirement for 6 × 6-sized field-packed tomatoes. The field-packed tomato exemption is also revised for clarity.

Producer field-packed tomatoes are tomatoes which at the time of inspection are No. 3 color or higher (according to color classification requirements in the U.S. tomato standards), that are picked and place-packed in new containers in the field by a producer as defined in § 966.150 of the rules and regulations. The tomatoes are then transferred to a registered handler's facility for final preparation for market and for inspection.

Most tomatoes from Florida are packed and shipped at the mature green stage. Shipments of mature green tomatoes represented approximately 88 percent of total fresh shipments during the 1997–98 season. Tomatoes are picked and packed at the mature green stage to facilitate handling. The vast majority of mature green tomatoes are packed using a mechanized process. The tomatoes are brought to the packing house where they are run across sizing equipment, and then are packed in volume fill containers. At the mature green stage, the tomatoes are firm and are able to tolerate the packing process. This process is efficient and facilitates packing in volume.

However, when trying to pack a tomato that is more ripe and mature, the process used to pack mature greens is not as effective. This is because as the tomato begins to ripen it begins to soften. Tomatoes of No. 3 color and above cannot tolerate the rigors of the mechanized handling process. This packing process bruises and damages riper tomatoes, increasing the volume of culls and those that fail inspection for grade.

Under this exemption, producer field-packed tomatoes are only handled once, when such tomatoes are picked and packed in the field. Field-packed tomatoes are not subject to the rigors of a mechanical process. Under this process, the tomatoes are still sized, cleaned, and packed by hand. This process of picking and packing in the field makes it substantially easier to pack a tomato of higher color and ripeness. As per the requirement for all packed tomatoes for shipment outside the regulated area, new boxes must be used. The tomatoes are delivered to a registered handler for final preparation for market. The tomatoes are inspected for grade, size, and proper pack after delivery to the registered handler's facility.

However, since this exemption has been available and growers and handlers have been utilizing it, a problem has emerged. Because the tomatoes are packed in the field, the tomatoes are sized by hand, not using the precision of sizing belts. While field packed tomatoes are successfully meeting minimum size requirements, some lots are having difficulty meeting the maximum size requirements as specified for the 6 × 6 size designation.

Currently, § 966.323(a)(2)(i) specifies that all tomatoes packed by a registered handler must meet a minimum size requirement of 2$^{2}/_{32}$ inches in diameter. That section also requires that all such

tomatoes must be sized with proper equipment in one of three specified ranges of diameter. For example, tomatoes designated as "6 × 7" must be a minimum of $2^{9}/_{32}$ inches in diameter and a maximum of $2^{19}/_{32}$ inches in diameter. Tomatoes designated as "6 × 6" must be a minimum of $2^{17}/_{32}$ inches in diameter and a maximum of $2^{27}/_{32}$ inches in diameter. Tomatoes designated as "5 × 6" must be a minimum of $2^{25}/_{32}$ inches in diameter with no maximum size requirement. Finally, to allow for variations incident to proper sizing, not more than a total of 10 percent, by count, of the tomatoes in the lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

Since the handling regulation was changed in October 1998 to exempt field-packed tomatoes from certain handling requirements, some 6 × 6-sized lots have failed inspection due to oversized tomatoes in the pack. As stated above, 6 × 6-sized lots of tomatoes must meet both minimum and maximum size requirements, within specified tolerances. Tomatoes that are run over a sizing belt in a packing house have little difficulty in meeting these requirements. However, producers packing tomatoes in the field must use hand-sizers. It is relatively easy to pick to a minimum size. However, it is much more difficult to pick tomatoes within a range of fractions of an inch.

Presenting a packed lot of tomatoes for inspection, and having it fail is costly. The handler can either find an outlet other than the fresh market for the tomatoes or rework the lot so it passes inspection. In the case of field packed tomatoes, reworking a lot is substantially more difficult. The tomatoes cannot be dumped then run across the machinery again to ensure that they meet inspection, but must be sorted through by hand. This is extremely time-consuming, and because the fruit is ripe, can cause additional bruising. In most cases, it is one or two tomatoes in a box that cause it to fail for size. Thus, the committee met in May 1999 and recommended this change for producer field-packed tomatoes.

The committee recommended that 6 × 6-sized producer field-packed tomatoes be exempt from the $2^{27}/_{32}$ inch maximum diameter requirement specified in § 966.323(a)(2)(i) of the handling regulation. This change will allow for additional oversized tomatoes, without the lot failing for size. While this change does allow for additional larger tomatoes to be included in the 6 × 6 pack, there is still a distinction between it and the 5 × 6. The 6 × 6 pack is an opportunity to sell a smaller tomato. This change provides some additional flexibility to address sizing problems relating to packing in the field. The 5 × 6 tomato is still the premium size, demanding the higher price. For this reason, the vast majority of tomatoes that meet the size requirements for 5 × 6 will continue to be packed in a 5 × 6 container. Also, according to the committee, buyers should not object to oversized fruit in the 6 × 6 pack because they have the option of grading it out for a premium product or passing it on to their customers as a larger tomato at a less expensive price.

The committee also recommended a related change in the labeling requirement specified in § 966.323(a)(2)(iii) of the handling regulation. Currently, that section requires that only "6 × 7," "6 × 6," or "5 × 6" be used to indicate the respective size designation on containers of tomatoes. The committee recommended that shipments of 6 × 6-sized producer field-packed tomatoes be marked as "6 × 6 and larger" to more accurately reflect the contents of the container which could include 5 × 6-sized tomatoes. The words "and larger" will not be required on 5 × 6-sized field-packed tomatoes because that is the largest designated size defined by a minimum diameter and includes all sizes above that minimum.

In evaluating alternatives to this change, such as increasing the percentage tolerance for oversize, it was concluded that the changes provided in this amended interim final rule are the better and more effective way to accomplish the committee's goal. Containers will be marked "6 × 6 and larger" which will separate them from the standard 6 × 6 and will tell buyers that the package includes some larger tomatoes. And, as stated earlier, while this does provide for additional larger tomatoes to be packed in a 6 × 6 pack, it should not blur the distinction between a 6 × 6 and 5 × 6.

The committee continues to focus on ways to be competitive, develop new markets, and increase producer returns. The October 1998 changes which added a definition of field-packed tomatoes to the handling regulation, along with certain exemptions for such tomatoes, have provided the industry with more flexibility and additional marketing opportunities. The committee believes that the availability of producer field-packed tomatoes will increase the volume of vine-ripe tomatoes available from Florida. This has been a market that has been expanding and not traditionally served by much volume from the Florida tomato industry. The October 1998 changes have allowed producers to harvest tomatoes that might otherwise have been left in the field. Handlers may be willing to pay a higher price for producer field-packed tomatoes which, when combined with additional tomato sales, should increase returns to producers. The additional exemptions for field-packed tomatoes designated as size 6 × 6 recommended by the committee in May 1999 will provide even more opportunities for the Florida tomato industry to market such tomatoes.

Section 8e of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. However, the Act does not authorize the imposition of pack and container requirements on imports, when such requirements are in effect under a domestic marketing order. Therefore, no change is necessary in the tomato import regulation as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of Florida tomatoes who are subject to regulation under the order and approximately 75 tomato producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on available industry and committee data, the average annual f.o.b. price for fresh Florida tomatoes during the 1997–98 season was around $9.11 per 25 pound equivalent, and total fresh shipments for the 1997–98 season are estimated at 47.6 million 25 pound equivalent cartons of tomatoes.

Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1997–98 season, and the 1997–98 season average price, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities.

This rule amends a prior interim final rule that changed the handling regulation specified in § 966.323 under the order. The prior interim final rule was published in the **Federal Register** on October 13, 1998 (63 FR 54556). That rule modified § 966.323 by adding a definition for producer field-packed tomatoes, and exempting such tomatoes from container net weight requirements and the requirement that all tomatoes must be packed at registered handler facilities.

In addition, this amended interim final rule exempts shipments of field-packed tomatoes designated as size 6 × 6 from a maximum diameter requirement of $2^{27}/_{32}$ inches specified in § 966.323(a)(2)(i). This rule makes a related change in the labeling requirement specified in § 966.323(a)(2)(iii) whereby shipments of 6 × 6-sized producer field-packed tomatoes must be marked as "6 × 6 and larger" to more accurately reflect the contents of the container. Authority for these changes is provided in § 966.52 of the order.

This amendment with its additional flexibility is expected to have a positive impact on affected entities. The committee believes that allowing ripe tomatoes to be place packed in the field has enabled the Florida tomato industry to meet a strong and growing consumer demand for red, mature tomatoes. This has facilitated the movement of Florida tomatoes and helped to improve producer returns.

This rule will provide additional handling flexibility and cost savings. While field packed tomatoes are successfully meeting minimum size requirements, some lots are having difficulty meeting the maximum size requirements as specified for the 6 × 6 size designation. Tomatoes designated as "6 × 6" must be a minimum of $2^{17}/_{32}$ inches in diameter and a maximum of $2^{27}/_{32}$ inches in diameter. Tomatoes that are run over a sizing belt in a packing house have little difficulty in meeting these requirements. However, producers packing tomatoes in the field must use hand-sizers. It is relatively easy to pick to a minimum size. However, it is much more difficult to pick tomatoes within a range of fractions of an inch. Presenting a packed lot of tomatoes for inspection, and having it fail is costly. The handler can either find an outlet other than the fresh market for the tomatoes or rework the lot so it passes inspection. In the case of field packed tomatoes, reworking a lot is substantially more difficult. The tomatoes cannot be dumped then run across the machinery again to ensure that they meet inspection, but must be sorted through by hand. This is costly and time-consuming, and because the fruit is ripe, can cause additional bruising. This change will allow for additional oversized tomatoes, without the lot failing for size, providing additional flexibility and reducing reworking costs.

These changes are intended to provide additional flexibility for all those covered under the order. The opportunities and benefits of this rule are expected to be equally available to all tomato handlers and producers regardless of their size of operation. These changes have a beneficial impact on producers and handlers since tomato handlers can make additional supplies of tomatoes available to meet consumer needs consistent with crop and market conditions.

Regarding alternatives to the recommended action, the committee concluded that providing certain exemptions for field-packed tomatoes would allow the Florida tomato industry to meet a growing consumer demand for vine-ripe tomatoes. In addition, continuing to require 6 × 6-sized field-packed tomatoes to meet a maximum size requirement would discourage producers from packing such fruit because some of the packs would fail inspection. In evaluating alternatives to this change, such as increasing the percentage tolerance for oversize, it was concluded that the changes provided in this amended interim final rule are the better and more effective way to accomplish the committee's goal. Containers will be marked "6 × 6 and larger" which will separate them from the standard 6 × 6 and will tell buyers that the package includes some larger tomatoes. And, as stated earlier, while this does provide for additional larger tomatoes to be packed in a 6 × 6 pack, it does not blur the distinction between a 6 × 6 and 5 × 6. Thus, the recommended change was determined to be the most viable course of action.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meetings on September 11, 1998, and May 23, 1999, were widely publicized throughout the tomato industry and all interested persons were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the September 1998 and May 1999 meetings were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

As previously stated, an interim final rule regarding field-packed tomatoes was published in the **Federal Register** on October 13, 1998 (63 FR 54556). A 60-day comment period was provided to allow interested persons to respond to the rule. Copies of the rule were mailed by committee staff to all committee members and tomato handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. Four comments were received regarding the rule. These comments and any submitted regarding this amendment will be addressed in the rule finalizing this action. This interim final rule is effective October 10, 1999. This date is the beginning of the new Florida tomato shipping season.

After consideration of all relevant material presented, including the committee's recommendations and other information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the handling requirements currently prescribed under the Florida tomato marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) These changes relax current requirements; (2) the 1999–2000 Florida tomato season begins October 10; (3) the committee unanimously recommended these changes at public meetings and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising the last sentence of paragraph (d)(1) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(d) *Exemption.* (1) * * * Producer field-packed tomatoes must meet all of the requirements of this section except for the following: the container net weight requirements specified in paragraph (a)(3)(i) of this section; the requirement that each container or lid shall be marked to indicate the designated net weight specified in paragraph (a)(3)(ii) of this section; the requirement that all containers must be packed at registered handler facilities as specified in paragraph (a)(3)(ii) of this section; the requirement that such tomatoes designated as size 6 × 6 must meet the maximum diameter requirement specified in paragraph (a)(2)(i) of this section and the labeling requirement specified in paragraph (a)(2)(iii) of this section: *Provided*, That "6 × 6 and larger" is used to indicate the listed size designation on containers.

* * * * *

Dated: August 17, 1999.

Eric M. Forman,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–21674 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–98–001]

Soybean Promotion and Research Program; Procedures to Request a Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for soybean producers to request a referendum on the Soybean Promotion and Research Order (Order) as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act). The Act provides that the Secretary, 5 years after the conduct of the initial referendum, shall give soybean producers the opportunity to request an additional referendum on the Order. Individual producers and other producer entities will be provided the opportunity to request a referendum during a specified period announced by the Secretary of Agriculture (Secretary), at the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum will be provided at the county FSA office serving the county where the producer owns or rents land. Participation in the Request for Referendum is not mandatory. This final rule establishes the procedures for conducting the required Request for Referendum.

EFFECTIVE DATES: August 21, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP–0251; 14th and Independence Avenue, SW.; Washington, D.C. 20250–0251. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Proposed Rule—Soybean Promotion and Research Program: Procedures to Request a Referendum published September 4, 1998 (63 FR 47200); Proposed Rule—Soybean Promotion and Research Program: Request for Referendum published April 16, 1999 (64 FR 18831).

Executive Order 12866 and 12988 and the Regulatory Flexibility Act and the Paperwork Reduction Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The statute provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision if a complaint for that purpose is filed not later than 20 days after the date of the entry of the Secretary's decision.

Further, § 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by the Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referendums conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*), the Administrator of AMS has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small business entities.

According to the statistical survey initiated by the Department of Agriculture (Department), there are 600,813 soybean producers who will be eligible to participate in the Request for Referendum. The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration.

The requirements set forth in this rule are substantially similar to the rules that established the eligibility and participation requirements for a July 26, 1995, soybean producer poll published as a final rule on March 22, 1995 (60 FR 15027), in the **Federal Register**.

The procedures to request a referendum will not impose a substantial burden or have a significant

impact on persons subject to the Order. Further, participation is not mandatory. Not all persons subject to the Order are expected to participate. The Department will determine producer eligibility.

In compliance with OMB regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this final rule have been previously approved by OMB and were assigned OMB control number 0581–0093. The information collection requirements in this final rule include the following:

(1) Any eligible person who requests a referendum must legibly print his/her name, or if applicable, the producer entity represented, address, telephone number, and county on the "Request for a Soybean Referendum" form (Form LS–51–1). Each person must read the certification statement on the form and sign it certifying that he/she or the producer entity represented meets the eligibility requirements. Form LS–51–1 shall be obtained in person, by mail, or by facsimile from the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. Form LS–51–1 may be returned in person, by mail, or by facsimile to the same county FSA office where the form was obtained. A producer or producer entity representative who obtains Form LS–51–1 in person during the Request for Referendum period from the appropriate county FSA office may complete Form LS–51–1 at that time. The estimated average time burden for completing the procedure is 5 minutes per person.

(2) Using information from each returned Form LS–51–1, county FSA personnel shall enter the producer's name, and if applicable, producer entity representative and the date received (and the postmarked date for mailed requests), and the method the form was received on the "List of Soybean Producers Requesting a Referendum" (Form LS–51–2). This information may be used for the purpose of challenging the eligibility of producers. Many county FSA offices will use more than one Form LS–51–2 depending on the number of producers requesting a referendum. Because only county FSA office personnel would be required to complete Form LS–51–2, the time required to complete this form is not included in the estimated average reporting burden for a producer.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of one percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and no later than 36 months after the issuance of the Order to determine whether the Order should be continued.

The initial referendum was conducted on February 9, 1994. On April 1, 1994, the Secretary announced that of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The Act also required that within 18 months after the Secretary announced the results of the initial referendum, the Secretary would conduct a poll among producers to determine if producers favored a referendum on the continuance of the payment of refunds under the Order.

A July 25, 1995, nationwide poll of soybean producers did not generate sufficient support for a refund referendum to be held. A refund referendum would have been held if at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers (76,200) nationwide requested it. Only 48,782 soybean producers participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act also specifies that the Secretary shall, 5 years after the conduct of the initial referendum and every 5 years thereafter, provide soybean producers an opportunity to request a referendum on the Order.

For all such referendums, if the Secretary determines that at least 10 percent of U.S. producers engaged in growing soybeans (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, the Secretary must conduct a referendum within 1 year of that determination. If these requirements are not met, no referendum would be conducted.

For the purposes of the Request for Referendum, the Secretary will use the results of the recent AMS statistical survey of soybean producers obtained from an FSA soybean producer list. The survey showed that there are 600,813 soybean producers in the United States.

The Act provides that producers shall have an opportunity to request a referendum by mail or in person during a period established by the Secretary. Eligible persons must certify on an official form that they were engaged in the growing of soybeans during a representative period specified by the Secretary, and indicate that they favor the conduct of a referendum. The Request for Referendum period will be a 4-week period as determined by the Secretary and announced at a later date. The representative period for which a producer was engaged in the growing of soybeans and subject to the assessment will be January 1, 1997, through the last day of the Request for Referendum period. The date of the Request for Referendum period will be announced in a Notice published in the **Federal Register** and as specified in § 1220.20. The Act also provides that a Request for Referendum may be made at county Cooperative State Research, Education, and Extension Service offices or county FSA offices. The regulations provide that soybean producers will request a referendum at county FSA offices. Providing producers an opportunity to Request a Referendum at FSA offices will give producers the greatest opportunity to request a referendum.

On September 4, 1998, the Department published in the **Federal Register** (63 FR 47200) a proposed rule that set forth procedures to be followed in conducting the Request for Referendum with comments due in the Department by October 5, 1998. The proposed rule included provisions concerning definitions, supervision of the process for requesting a referendum, eligibility, certification and request procedures, counting and reporting results and disposition of the forms and records. It also proposed that the Request for Referendum be conducted at the county FSA offices so FSA employees could assist AMS by determining eligibility, counting ballots, and reporting results.

The Department received 12 comments in response to the September 4, 1998, proposed rule. All comments received were from State and national soybean organizations. Ten comments were filed on time and two comments were filed after the comment period ended. The late comments generally expressed the same views as the timely comments. Of the 12 comments received, 6 comments expressed the belief that the 381,000 soybean farms reported by the 1992 Census of Agriculture (Census) and initially

proposed by the Department as the total number of soybean producers grossly understates the true number of soybean producers. Furthermore, the commenters believed that the 1992 Census data (1) Was outdated, (2) did not provide a proper basis for determining the number of soybean producers, and (3) did not reflect the current number of producers which they believed had increased since the enactment of the 1996 Farm Bill. Two commenters recommended that the Department utilize the results of the United Soybean Board's (Board) recent survey of soybean producers, which was based on FSA's data, or use other relevant information to determine the number of soybean farmers eligible to request a referendum. The Board's survey suggested that there could be as many as 649,000 soybean producers in the United States which is significantly more soybean producers than reflected in the 1992 Census data. Accordingly, the Department contracted with an independent surveyor to conduct a survey of soybean producers. The Department used an FSA list of approximately 970,000 producers who produced soybeans, or who produced forage or hay which may have included soybeans during crop years 1995–97. The Department developed a survey and the surveyor contacted a statistically sample of 2,401 producers selected from the list of 970,000 producers to determine the number of individuals and firms which meet the definition of a soybean producer contained in the Act. Those persons interviewed by the surveyor were asked to indicate whether they were a soybean producer only after listening to the definition of a soybean producer as set forth in § 1967 of the Act which was read by the surveyor. The definition of producer is "any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans." On March 5, 1999, the Department received the results of the soybean producer survey. Based on the results of the survey, the sample of soybean producers indicated 600,813 United States soybean producers would be eligible to participate in the Request for Referendum. On April 16, 1999, the Department published in the **Federal Register** (64 FR 18831) a proposal to change the number of eligible soybean producers from the 381,000 soybean producers published in the September 4, 1998, proposed rule (63 FR 47200) to 600,813 soybean producers based on the results of the Department's statistical survey. Comments were due in the Department by May 17, 1999.

The Department received nine written comments on the amended proposed rule primarily from State and national soybean organizations. Seven comments were filed on time and two comments were filed after the comment period closed. The late comments generally expressed the same view as the timely comments.

Of the seven comments filed on time, six comments supported the Department's revised estimate of the number of soybean producers eligible to participate in the Request for Referendum as published in the April 16, 1999, proposed rule. The commenters generally expressed the view that basing the number of U.S. soybean producers on the number of "soybean farms" as reported in the Census understated the number of "soybean producers" eligible to participate in the request for referendum. They believed that the revised number based on the survey was much more consistent with the Act's definition of a soybean producer which is "any person engaged in growing soybeans in the U.S. who owns or who shares the ownership and risk of loss of such soybeans." They pointed out that given the structure of many farming operations, more than one producer could be connected to a single farm. One comment did not support the change in the number of eligible producers. The commenter believed the difference between the Census number for 1997 of 354,692 and the statistically derived number of 600,813 was too large. The commenter also believed that an exact number could be obtained from the various State checkoff offices. However, the types of records maintained would not provide appropriate information.

Based on the comments received and all available information including the Department's soybean producer survey, 600,813 soybean producers will be used as the number of producers eligible to participate in the Request for Referendum. A soybean referendum will be conducted if requested by 10 percent of the total number of eligible U.S. soybean producers (not in excess of one-fifth of which may be producers in any one State) engaged in the growing of soybeans.

The other substantive changes suggested by commenters on the September 4, 1998, proposed rule and not addressed in the April 16, 1999, proposed rule are discussed below. For the reader's convenience, the discussion is organized by the same topic headings and in the same order that the topics appear in the proposed rule.

Section 1220.33 Time and Place for Requesting a Referendum

Two commenters suggested that the 4 week Request for Referendum was too long. One of the commenters believed that the in person Request for Referendum period as proposed by the Department should be reduced to a 2-week period and that a 2-week period would provide farmers with an adequate opportunity to request a referendum while reducing the potential for confusion during the administration of the request process. The other commenter suggested that the Request for Referendum period should be conducted in two stages. In the first stage, FSA should have the ability to respond to requests for a form either by facsimile and/or mail 2 weeks prior to the beginning of the in person request period. This would allow farmers the opportunity to submit by mail or by facsimile a form in a timely fashion and would give FSA plenty of opportunity to provide the forms through the mail to the person requesting the form. The person requesting the form would have a sufficient amount of time to drop off the form during a visit to the FSA office or mail the form back to the FSA office. Secondly, the commenter believed the in person request period should be no longer than 2 weeks. The Department has determined that the Request for Referendum period will be 4 weeks to ensure that those producers who wish to participate in the Request for Referendum will have ample opportunity to do so. Furthermore, the Department believes a 2-week Request for Referendum period is too short to ensure that all eligible producers have sufficient time to request a referendum, particularly if Form LS–51–1 is requested by mail. Finally, the Department believes that the two-stage Request for Referendum would unnecessarily complicate the process which could lead to confusion. Accordingly these suggestions are not adopted.

Section 1220.36 Certification and Request Procedure.

Two commenters suggested that obtaining Form LS–51–1—Producer Request for Referendum—by telephone be eliminated because they believed permitting participation by telephone would pose significant administrative problems d uring the Request for Referendum. The commenters also believe that mistakes would be made in obtaining information by telephone and that in person or written requests (including request by fax), assures greater accuracy. The commenters

further believed that having a written record of request form solicitations would enable county FSA offices to better address complaints from producers claiming that they did not receive Form LS–51–1 as requested. The Department believes this suggestion has merit. Since there will be a 4-week Request for Referendum period, producers will have ample time to request and receive Form LS–51–1 in person, by mail, or by facsimile. Accordingly, Form LS–51–1 will not be available by telephone request.

Section 1220.42 FSA County Office Report; Section 1220.43 FSA State Office; Report; and Section 1220.44 Reporting Results.

One commenter suggested that the county FSA offices be required to submit reports to State FSA offices no later than 10 business days following the counting of the requests; State FSA offices be required to submit reports to the Administrator, FSA, no later than 5 business days following their receipt of FSA county office reports; and the Administrator, FSA, be required to submit State reports to the Administrator, AMS, no later than 5 business days following receipt of the State reports. The Department concurs that both county and State FSA reports should be submitted to the Administrator, FSA, and subsequently to the Administrator, AMS, in a timely manner. However, the Department does not believe that such timeframes for submitting reports on the results of the Request for Referendum should be included in the rule, because it would not allow the necessary flexibility to adjust reporting time for events beyond the control of the reporting office. Timely submissions will be stressed in the instructions provided to county and State FSA offices by FSA and AMS headquarters. Accordingly, this suggestion is not adopted.

Additional Comments

One commenter recommended that the Request for Referendum period begin on Monday, March 1, 1999, and continue through March 29, 1999. At the time comments were received and reviewed, the Department concurred that the Request for Referendum be conducted on or about the dates suggested. However, because of the delay in establishing the number of producers eligible to participate in the Request for Referendum, a later period must be established. The Department will conduct the Request for Referendum at the earliest practicable date following the effective date of this final rule.

The final rule sets forth procedures for producers to request a referendum as authorized under the Act, including definitions, eligibility, certification and request procedures, reporting results, and disposition of the forms and records. FSA will coordinate State and county FSA roles in conducting the Request for Referendum by (1) Determining producer eligibility, (2) canvassing and counting requests, and (3) reporting the results.

Effective Date

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date of the action until 30 days after publication of this rule in the **Federal Register**. Such action will assist in timely implementation of this rule consistent with the provisions of the Act. This rule establishes the procedures for conducting a request for referendum required by the Act and should become effective as soon as possible in order to begin preparations for the Request for Referendum.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, title 7 of the CFR part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION:

1. The authority citation for part 1220, continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. In part 1220, subpart F is added to read as follows:

Subpart F—Procedures to Request a Referendum

Definitions

Sec.

1220.10 Act.
1220.11 Administrator, AMS.
1220.12 Administrator, FSA.
1220.13 Department.
1220.14 Farm Service Agency.
1220.15 Farm Service Agency County Committee.
1220.16 Farm Service Agency County Executive Director.
1220.17 Order.
1220.18 Person.
1220.19 Producer.
1220.20 Public notice.
1220.21 Representative period.
1220.22 Secretary.
1220.23 Soybeans.
1220.24 State and United States.

Procedures

1220.30 General.
1220.31 Supervision of the process for requesting a referendum.
1220.32 Eligibility.
1220.33 Time and place for requesting a referendum.
1220.34 Facilities.
1220.35 Certification and request form.
1220.36 Certification and request procedure.
1220.37 List of producers requesting a referendum.
1220.38 Challenge of eligibility.
1220.39 Canvassing.
1220.40 Counting requests.
1220.41 Public review.
1220.42 FSA county office report.
1220.43 FSA State office report.
1220.44 Reporting results.
1220.45 Disposition of records.
1220.46 Instructions and forms.

Subpart F—Procedures to Request a Referendum

Definitions

§ 1220.10 Act.

The term *Act* means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), and any amendments thereto.

§ 1220.11 Administrator, AMS.

The term *Administrator, AMS,* means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.12 Administrator, FSA.

The term *Administrator, FSA,* means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.13 Department.

The term *Department* means the United States Department of Agriculture.

§ 1220.14 Farm Service Agency.

The term *Farm Service Agency,* also referred to as "FSA," means the Farm Service Agency of the Department.

§ 1220.15 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee,* also referred to as "FSA County Committee or COC," means the group of persons within a county who are elected to act as the

Farm Service Agency County Committee.

§ 1220.16 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director,* also referred to as "CED," means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1220.17 Order.

The term *Order* means the Soybean Promotion and Research Order.

§ 1220.18 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.19 Producer.

The term *Producer* means any person engaged in the growing of soybeans in the United States, who owns or shares the ownership and risk of loss of such soybeans.

§ 1220.20 Public notice.

The term *Public Notice* means a notice published in the **Federal Register**, not later than 60 days prior to the last day of the Request for Referendum period that provides information regarding the Request for Referendum period. Such notification shall include, but not be limited to, explanation of producers' rights; procedures to request a referendum, the purpose, dates of the Request for Referendum period, location for conducting the Request for Referendum, and eligibility requirements. Additionally, the Board is required to provide producers, in writing, this same information during that same time period. Other pertinent information shall also be provided, without advertising expense, through press releases by State and county FSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletter, and the like.

§ 1220.21 Representative period.

The term *Representative period* means the period designated by the Secretary pursuant to Section 1970 of the Act.

§ 1220.22 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States Department of Agriculture or any other officer or employee of the Department to whom there has been delegated or to whom there may be delegated the authority to act in the Secretary's stead.

§ 1220.23 Soybeans.

The term *Soybeans* means all varieties of glycine max or glycine soja.

§ 1220.24 State and United States.

The terms *State* and *United States* include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Procedures

§ 1220.30 General.

An opportunity to request a referendum shall be provided to U.S. soybean producers to determine whether eligible producers favor the conduct of a referendum and the Request for Referendum shall be carried out in accordance with this subpart.

(a) The opportunity to request a referendum shall be provided at the county FSA offices.

(b) If the Secretary determines, based on results of the Request for Referendum, that no less than 10 percent (not in excess of one-fifth of which may be producers in any one State) of all producers have requested a referendum on the Order, a referendum would be held within 1 year of that determination.

(c) If the Secretary determines, based on the results of the Request for Referendum, that the requirements in paragraph (b) of this section were not met, a referendum would not be conducted.

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States is determined to be 600,813.

§ 1220.31 Supervision of the process for requesting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting producers to request a referendum in accordance with this subpart.

§ 1220.32 Eligibility.

(a) *Eligible producers.* Each person who was a producer during the representative period is provided the opportunity to request a referendum. Each producer entity is entitled to only one request.

(b) *Proxy registration.* Proxy registration is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may request a referendum on behalf of that entity. Any individual who requests a referendum on behalf of any producer entity, shall certify that he/she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to make only one request for a referendum; provided, however, that any individual member of a group who is an eligible producer separate from the group may request a referendum separately.

§ 1220.33 Time and place for requesting a referendum.

The opportunity to request a referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to request a referendum by following the procedures in § 1220.36 during the normal business hours of each county FSA office.

§ 1220.34 Facilities

Each county FSA office shall provide adequate facilities and space to permit producers to complete Form LS–51–1.

§ 1220.35 Certification and request form.

Form LS–51–1 shall be used to request a referendum and certify producer eligibility. The form does not require a "yes" or "no." Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously registers, certifies eligibility and requests that a referendum be conducted.

§ 1220.36 Certification and request procedure.

(a) To request that a referendum be conducted, each eligible producer shall, during the Request for Referendum period, be provided the opportunity to request a referendum during a specified period announced by the Secretary, at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Each eligible producer shall be required to complete Form LS–51–1 in its

entirety and sign it. The producer must legibly print his/her name and, if applicable, the producer entity represented, address, county, and telephone number. The producer must read the certification statement on Form LS–51–1 and sign it certifying that he/she or the producer entity represented was a producer of soybeans during the representative period and is requesting a referendum. Only a completed and signed Form LS–51–1 shall be considered a valid request for a referendum.

(b) To request a referendum eligible producers may obtain Form LS–51–1 in person, by mail, or by facsimile during the Request for Referendum period from the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Producers or producer entities may return Form LS–51–1 in person, by mail, or facsimile. Form's LS–51–1 returned in person or by facsimile, must be received in the appropriate county FSA office no later than the last business day of the Request for Referendum period to be considered a valid request. However, Form's LS–51–1 mailed to the county FSA office must be postmarked no later than the last business day of the Request for Referendum period and be received in the county FSA office no later than 10 business days after the last business day of the Request for Referendum period to be considered a valid request for a referendum.

(c) Eligible participants who obtain form LS–51–1 in person at the appropriate county office may complete, and return by hand the form the same day.

§ 1220.37 List of producers requesting a referendum.

(a) The county FSA personnel shall enter on the "List of Soybean Producers Requesting a Referendum" form (Form LS–51–2), the following information for each returned Form LS–51–1: name of individual soybean producer or other producer entity, name of producer entity representative, if applicable, postmarked date of a mailed Form LS–51–1 and the date it was received in the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land, the date Form LS–51–1 was received by facsimile or in person in the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. For any challenges of a producer's or producer entities' eligibility, the county FSA personnel would make a "check mark" in the space provided on Form LS–51–2 indicating a producer's or producer entities' eligibility has been challenged. After the challenge is resolved "eligible" or "ineligible" would be entered in the space provided on Form LS–51–2.

(b) County FSA offices shall, at all times, maintain control of the master (original) copy of Forms LS–51–1 and LS–51–2. A copy of each Form LS–51–2 shall be posted and made available for public inspection each day beginning on the first business day of the Request for Referendum period through the 11th business day following the last business day of the Request for Referendum period. An updated copy of Form LS–51–2 shall be posted in the county FSA office during normal business office hours in a conspicuous location.

§ 1220.38 Challenge of eligibility.

(a) *Who may challenge.* Any person may challenge a producer's or producer entity's eligibility to request a referendum. Each challenge must be in writing include the full name of the individual or other producer entity being challenged; be made on a separate piece of paper; and be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(b) *Challenge period.* A challenge of a person's eligibility to request a referendum may be made on any business day during the 4-week Request for Referendum period through the 11th business day after the Request for Referendum period.

(c) *Challenged names.* Producers whose eligibility is challenged shall be so noted with a "checkmark" in the space provided on Form LS–51–2.

(d) *Determination of challenges.* The FSA County Committee (COC) or designee, acting on behalf of the Administrator, AMS, shall make a determination concerning the challenge and shall notify challenged producers as soon as practicable, but no later than the 14th business day after the end of the request for referendum period. If the COC or designee is unable to determine whether a person was a producer during the representative period, the COC or designee may require the person challenged to submit records such as sales documents or similar documents to verify producer status during the representative period.

(e) *Appeal.* A person declared to be ineligible by the COC or designee, acting on behalf of the Administrator, AMS, may file an appeal at the county FSA office within 3 business days after notification by the county FSA office of its decision. Such person may be required to provide documentation such as sales documents or similar documents in order to demonstrate eligibility. An appeal shall be determined by the COC or designee as soon as practicable, but in all cases not later than the 18th business day after the last day of the Request for Referendum period. The determination of the COC or designee on an appeal shall be final.

(f) *Resolved challenges.* A challenge shall be determined to have been resolved if the determination of the COC or designee, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the COC or designee after an appeal. After the challenge has been resolved, the county FSA office shall write either "eligible" or "ineligible" in the space provided on Form LS–51–2.

§ 1220.39 Canvassing

Canvassing of Forms LS–51–1 and LS–51–2 shall take place as soon as possible after the opening of county FSA offices on the 19th business day following the Request for Referendum period. Such canvassing shall be under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, who shall make a determination as to the number of valid or invalid requests for a referendum.

(a) Invalid requests for a referendum. An invalid request for a referendum may include the following:

(1) Form LS–51–1 is not signed and/or all required information has not been provided;

(2) Form LS–51–1 returned in person or by facsimile was not received by the last business day of the Request for Referendum period;

(3) Form LS–51–1 returned by mail was not postmarked by the last business day of the Request for Referendum period;

(4) Form LS–51–1 returned by mail was not received in the county FSA office by the 10th business day after the Request for Referendum period;

(5) Form LS–51–1 is mutilated or marked in such a way that any required information on the form is illegible; and/or

(6) Form LS–51–1 not returned to the appropriate county FSA office.

(b) Any Form LS–51–1 determined invalid shall not be considered as a request for a referendum.

§ 1220.40 Counting requests.

The requests for a referendum shall be counted by the COC or designee on the 19th business day after the last business day of the Request for Referendum period. Requests for a referendum shall be counted as follows:

(a) Total number of producers registering to request a referendum;

(b) Number of eligible producers requesting a referendum;

(c) Number of challenged producers deemed ineligible;

(d) Number of challenged producers; and

(e) Number of invalid requests for a referendum.

§ 1220.41 Public review.

The public may witness the counting from an area designated by the FSA County Executive Director (CED) or designee, acting on behalf of the Administrator, AMS, but may not interfere with the process.

§ 1220.42 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS. Such report shall include, the information listed in §§ 1220.39 and 1220.40. The county FSA office shall notify the FSA State office of the results of the Request for Referendum on a form provided by the Administrator, FSA. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

§ 1220.43 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, a report summarizing the data contained in each of the reports from the county FSA office on a State report form provided by the Administrator, FSA. The State FSA office shall maintain one copy of the summary where it shall be available for public inspection upon request for a period of not less that 12 months after the results have been released.

§ 1220.44 Reporting results.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the Request for Referendum. The Department will issue an official press release announcing the results of the Request for Referendum and publish the same results in the **Federal Register**. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2627 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

§ 1220.45 Disposition of records.

Forms LS–51–1 and LS–51–2 and county reports shall be placed in sealed containers under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, and such container shall be marked with "Request for Soybean Referendum." Such records shall remain in the secured custody of the CED or designee for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period, the CED or designee shall destroy the records.

§ 1220.46 Instructions and forms.

The Administrator, AMS, is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

Dated: August 17, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–21672 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 97–103–2]

Viruses, Serums, Toxins, and Analogous Products; Update of Incorporation by Reference for Rabies Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to the standard requirements for rabies vaccine, killed virus, so that they incorporate the latest edition of a guide to laboratory techniques. The regulations currently refer to the previous edition of that guide, which was published in 1973. This action will ensure that the latest edition of the guide is incorporated by reference and used in conducting potency tests during the production of inactivated (killed) veterinary rabies vaccines.

EFFECTIVE DATES: September 20, 1999. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of September 20, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Special Assistant to the Deputy Administrator, Veterinary Services, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 pertain to standard requirements for the preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service (APHIS) to determine that a veterinary biological product is pure, safe, potent, and efficacious and not worthless, dangerous, contaminated, or harmful.

"Laboratory Techniques in Rabies," which is a guide to laboratory

techniques for rabies research and diagnosis and for the production of vaccine and immunoglobulin and which is published by the World Health Organization (WHO), is incorporated by reference into the Code of Federal Regulations at 9 CFR 113.209(b)(1). In 1996, the WHO published a fourth edition of "Laboratory Techniques in Rabies" (edited by F.X. Meslin, M.M. Kaplan, and H. Koprowski), but the incorporation by reference in § 113.209(b)(1) still refers to the 1973 third edition of that guide.

On March 4, 1999, we published in the **Federal Register** (64 FR 10400–10402, Docket No. 97–103–1) a proposed rule to amend the regulations in § 113.209(b)(1) so that they refer to the fourth edition of "Laboratory Techniques in Rabies" in order for the latest version to be incorporated by reference and used. In that document, we also proposed to update several provisions of the regulations to make them consistent with the guidelines contained in the fourth edition and to ensure that the regulations met the requirements of the Office of the Federal Register regarding the proper language of incorporation.

We solicited comments concerning our proposal for 60 days ending May 3, 1999. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have considered the potential effects of this action on small entities. We have identified four producers of rabies vaccine as the entities potentially affected by this rule. Those producers fall into one of two standard industrial classification (SIC) categories, either SIC 2836 (Biological Products, Except Diagnostic Substances) or SIC 2834 (Pharmaceutical Preparations). According to Small Business Administration (SBA) criteria, a business in SIC 2836 is considered to be a small entity if it has 500 or fewer employees, and a business in SIC 2834 is considered to be a small entity if it has 750 or fewer employees. Under those criteria, none of the four producers identified are small entities.

"Laboratory Techniques in Rabies" is a guide to laboratory techniques for rabies research and diagnosis and for the production of vaccine and immunoglobulin that is incorporated by reference into the standard requirements regulations in 9 CFR 113.209(b)(1). This rule amends those regulations so that the language used in the guide's incorporation by reference is correct and ensures that the current edition of the guide is incorporated by reference and used.

The testing required under § 113.209(b)(1) will remain the same. However, some retesting may be required due to change in the international standard for the LD_{50} of the challenge dose. We expect that the cost of a retest, which is estimated to be approximately $2,400 for the mice and animal care, will have minimal economic effect on the producers of rabies vaccines, none of which are small entities under SBA criteria.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 113.209, paragraphs (b)(1) and (d)(3) are revised to read as follows:

§ 113.209 Rabies Vaccine, Killed Virus.

* * * * *

(b) * * *

(1) The preinactivation virus titer must be established as soon as possible after harvest by at least five separate virus titrations. A mean relative potency value of the vaccine to be used in the host animal potency test must be established by at least five replicate potency tests conducted in accordance with the standard NIH test for potency in chapter 37 of "Laboratory Techniques in Rabies," Fourth Edition (1996), edited by F.X. Meslin, M.M. Kaplan, and H. Koprowski, World Health Organization, Geneva, Switzerland (ISBN 92 4 154479 1). The provisions of chapter 37 of "Laboratory Techniques in Rabies," Fourth Edition (1996), are the minimum standards for achieving compliance with this section and are incorporated by reference. These provisions state that the challenge virus standard to be used as the challenge in the NIH test and the reference vaccine for the test are available from the national control authority. In the United States, that authority is the Animal and Plant Health Inspection Service's Center for Veterinary Biologics Laboratory, located at 1800 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 239–8331; fax (515) 239–8673. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the World Health Organization Publications Center USA, 49 Sheridan Avenue, Albany, NY 12210. Copies may be inspected at the Animal and Plant Health Inspection Service, Center for Veterinary Biologics, Licensing and Policy Development, 4700 River Road, Riverdale, MD, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

(d) * * *

(3) *Potency test.* Bulk or final container samples of completed product from each serial must be tested for potency by tests conducted in accordance with the standard NIH test for potency in Chapter 37 of "Laboratory Techniques in Rabies," Fourth Edition

(1996), which is incorporated by reference at paragraph (b)(1) of this section. The relative potency of each serial must be at least equal to that used in an approved host animal immunogenicity test.

Done in Washington, DC, this 13th day of August, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–21595 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–14–AD; Amendment 39–11257; AD 99–17–09]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company, Inc AE 2100A and AE 2100C Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allison Engine Company, Inc AE 2100A and AE 2100C series turboprop engines. This action requires initial and repetitive visual inspections of the propeller gearbox (PGB) and power section (P/S) strut fittings for notches and cracks, and, if necessary, replacement with serviceable parts. In addition, this action requires removing and replacing strut fittings as well as reworking them to the latest configuration identified by a new part number (P/N). This amendment is prompted by reports of P/S strut fitting notches and cracks. The actions specified in this AD are intended to prevent PGB and P/S strut fitting cracks, which could result in PGB misalignment, in-flight engine shutdown, and possible loss of the propeller.

DATES: Effective September 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 7, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–14AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Allison, P.O. Box 420, Speed Code R–01B, Indianapolis, IN 46202–0420; telephone (317) 230–2720, fax (317) 230–3381. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chung-Der Young, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7309, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of propeller gearbox (PGB) and power section (P/S) strut fitting failures on Allison Engine Company AE 2100A and AE 2100C series turboprop engine. The investigation revealed small radius notched strut fittings on 90% of the engines inspected. Four of the P/S strut fittings were cracked, and one of the PGB strut fittings was cracked. The notched fittings cause a concentrated stress region that can lead to cracks in the notched strut fitting areas. This condition, if not corrected, could result in PGB and P/S strut fitting cracks, which could result in propeller gearbox misalignment, inflight engine shutdown, and possible loss of the propeller.

The FAA has reviewed and approved the technical contents of Rolls-Royce Alert Service Bulletin (ASB) AE 2100A–A–72–193, also designated AE 2100C–A–72–143, Revision 1, dated October 20, 1998, that describes procedures for visual inspections of PGB and P/S strut fittings for notches and cracks; and ASB AE 2100A–A–72–197, also designated AE 2100C–A–72–149, dated May 19, 1999, describes the procedures to remove and replace strut fittings as well as rework them to the latest configuration identified by a new part number (P/N). Rolls-Royce has acquired the Allison Engine Company and now publishes the service documents (including manuals and bulletins) for Allison engines.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent PGB and P/S strut fitting failures. This AD requires visual inspections of PGB and P/S strut fittings for notches and cracks. If the affected parts are found cracked, this AD requires, prior to further flight, replacement with serviceable parts. If notched fittings are found on both struts, this AD requires repetitive inspections at intervals not to exceed 100 hours time-in-service (TIS). If notched fittings are found on only one strut, the repetitive inspection intervals is 400 hours TIS. In addition, this AD requires removing and replacing strut fittings as well as reworking them to the latest configuration identified by a new P/N. The actions are required to be accomplished in accordance with the ASBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenters' ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–14–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–17–09 Allison Engine Company, Inc: Amendment 39–11257. Docket 99–NE–14–AD.

Applicability: Allison Engine Company, Inc. AE 2100A and AE 2100C series turboprop engines, installed on but not limited to SAAB 2000 series and Industri Pesawat Terbang Nusantara (IPTN) N–250 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller gearbox (PGB) and power section (P/S) strut fitting cracks, which could result in PGB misalignment, in-flight engine shutdown, and possible loss of the propeller, accomplish the following:

(a) Perform initial and repetitive visual inspections of the PGB and P/S strut fittings for notches and cracks, and, if necessary, replace with serviceable parts, in accordance with Rolls-Royce Alert Service Bulletin (ASB) AE 2100A–A–72–193, also designated AE 2100C–A–72–143, Revision 1, dated October 20, 1998, as follows:

(1) Perform the initial inspection within 100 hours time-in-service (TIS) after the effective date of this AD. Record findings in Table 1 at the end of the ASB to determine the inspection interval.

(2) If parts are found cracked, prior to further flight, remove from service cracked propeller gearboxes or power section strut fittings and replace with serviceable parts.

(3) If both strut fittings are found notched, thereafter inspect at intervals not to exceed 100 hours timein-service (TIS) since last inspection.

(4) If one strut fitting is found notched, thereafter inspect at intervals not to exceed 400 hours TIS since last inspection.

(5) If no parts are found cracked and neither strut fitting is found notched, no repetitive inspections are required, and rework the strut fittings in accordance with paragraph(b) of this AD.

(b) Perform one of the following in accordance with Rolls-Royce ASB AE 2100A–A–72–197, also designated AE 2100CA–72–149, dated May 19, 1999:

(1) Remove the old PGB and P/S strut fittings and install the new serviceable strut fittings in accordance with the strut fittings part number charts in paragraph (4) of the ASB.

(2) Rework the existing parts within the schedule determined by the inspection results of paragraph (a) of this AD in accordance with the Rolls-Royce ASB AE 2100A–A–72–193, or AE 2100C–A–72–143, Revision 1, dated October 20, 1998, page 12, Table 1, entries in the "Answer" column, as follows:

(i) If two "Yes" entries are contained in the "Answer Column", rework within the next 100 hour TIS after the inspection performed in accordance with paragraph (a) of this AD.

(ii) If one "Yes" entry is contained in the "Answer Column", or there are no "Yes" entries in the "Answer Column" refer to Section 2 in Rolls-Royce ASB AE 2100A–A–72197, also designated AE 2100C–A–72–149, dated May 19, 1999, for the affected PGB and P/S strut fittings rework or replace instructions.

(iii) Following completion of the rework, mark affected parts in accordance with the following configuration chart:

New P/N	Name	Old P/N	QTY/ENG
23071762	Fitting, Strut (RH), Propeller Gearbox	23055218	1
23071763	Fitting, Strut (LH), Propeller Gearbox	23055217	1
23071764	Fitting, Strut (RH), Power Section	23055228, 23057098	1
23071765	Fitting, Strut (LH), Power Section	23055229, 23057099	1

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a

location where the inspection requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following Rolls-Royce ASBs:

Document No.	Pages	Revision	Date
AE 2100A–A–72–193/AE 2100C–A–72–143 ..... Total pages: 12.	1–12	1	October 20, 1998.
ASB AE 2100A–A–72–197/AE 2100C–A–72–149 ..... Total pages: 25	1–25	Original	May 19, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Allison, P.O. Box 420, Speed Code R–01B, Indianapolis, IN 46202–0420; telephone (317) 230–2720, fax (317) 230–3381. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on September 7, 1999.

Issued in Burlington, Massachusetts, on August 11, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–21330 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–315–AD; Amendment 39–11281; AD 99–17–13]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, that requires repetitive inspections to detect discrepancies of the lower actuator pins and/or bushings of the horizontal stabilizer, and replacement of any discrepant component with a new component. Replacement of all four actuator pins and bushings terminates the repetitive inspections. This amendment is prompted by a report indicating that a fractured lower actuator pin of the horizontal stabilizer was detected. The actions specified by this AD are intended to detect and correct discrepancies of the lower actuator pins and bushings of the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer control system, and consequent reduced controllability of the airplane.

DATES: Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 24, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Program Manager, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed Model L–1011–385 series airplanes was published in the **Federal Register** on April 16, 1999 (64 FR 18842). That action proposed to require repetitive inspections to detect discrepancies of the lower actuator pins and/or bushings of the horizontal stabilizer, and replacement of any discrepant component with a new component. Replacement of all four actuator pins and bushings terminates the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Explanation of Change Made to Proposal

The FAA has added "Note 2" to the final rule to clarify that the 12,000 flight cycle life limit imposed on the lower actuator pins of the stabilizer by AD 92–16–19, amendment 39–8329 (57 FR 36892, August 17, 1992), is not affected by this rulemaking.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $28,080, or $240 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it would take approximately 2 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,550 per set of four pins and bushings, per airplane. Based

on these figures, the cost impact of the accomplishment of the optional terminating action would be $4,670 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–17–13 Lockheed: Amendment 39–11261. Docket 98–NM–315–AD.

Applicability: Model L–1011–385–1, –1–14, –1–15, and –3 series airplanes, as listed in Lockheed Service Bulletin 093–27–306, dated January 14, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct discrepancies of the lower actuator pins and bushings of the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer control system, and consequent reduced controllability of the airplane, accomplish the following:

Initial Inspection

(a) Except as provided by paragraph (a)(3) of this AD: Perform an inspection to detect discrepancies (e.g., damage, cracking), of the lower actuator pins and/or bushings of the horizontal stabilizer using one of the three inspection methods (borescope, eddy current, or magnetic particle) listed in Lockheed Service Bulletin 093–27–306, dated January 14, 1998, in accordance with that service bulletin, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes that have accumulated fewer than 3,500 flight cycles since replacement of the actuator pins or bushings as of the effective date of this AD: Inspect within 3,500 flight cycles since replacement, or within 6 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 3,500 or more flight cycles, but fewer than 5,000 flight cycles, since replacement of the actuator pins or bushings as of the effective date of this AD: Inspect within 60 days after the accumulation of 5,000 flight cycles since replacement, or within 6 months after the effective date of this AD, whichever occurs first.

(3) For airplanes that have accumulated 5,000 or more flight cycles since replacement of the actuator pins or bushings as of the effective date of this AD: Perform a magnetic particle inspection within 60 days after the effective date of this AD.

Note 2: The 12,000 flight cycle life limit imposed on the lower actuator pins of the stabilizer by AD 92–16–19, amendment 39–8329 (57 FR 36892, August 17, 1992), is not affected by this rulemaking.

Repetitive Inspections

(b) Thereafter, repeat the inspection required by paragraph (a) of this AD in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998, at the interval specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD; as applicable; until the actions specified in paragraph (d) of this AD have been accomplished.

(1) If the immediately preceding inspection was performed using borescope or eddy current procedures, and fewer than 5,000 flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Within 350 flight cycles after accomplishment of the initial inspection, perform a borescope, eddy current, or magnetic particle inspection. Repeat the inspection using a borescope or eddy current technique, as applicable, thereafter at intervals not to exceed 350 flight cycles.

(2) If the immediately preceding inspection was performed using borescope or eddy current procedures, and 5,000 or more flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Within 350 flight cycles after accomplishment of the initial inspection, perform a magnetic particle inspection. Repeat the magnetic particle inspection thereafter at intervals not to exceed 1,000 flight cycles.

(3) If the immediately preceding inspection was performed using magnetic particle procedures, and fewer than 5,000 flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Perform a borescope, eddy current, or magnetic particle inspection within 1,000 flight cycles.

(4) If the immediately preceding inspection was performed using magnetic particle procedures, and 5,000 or more flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Perform a magnetic particle inspection with 1,000 flight cycles. Repeat the magnetic particle inspection thereafter at intervals not to exceed 1,000 flight cycles.

Corrective Action

(c) If any discrepancy (e.g., damage, cracking) is detected during any inspection required by this AD, prior to further flight, accomplish paragraph (c)(1) or (c)(2) of this AD, as applicable, in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998.

(1) If any discrepancy is detected after performing a borescope or eddy current inspection, perform a magnetic particle inspection.

(2) If any discrepancy is detected after performing a magnetic particle inspection, replace the discrepant component with a new component. Accomplishment of this replacement terminates the repetitive inspections for that component.

Terminating Action

(d) Replacement of all four actuator pins and bushings with new actuator pins and bushings, in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998, constitutes terminating action for the repetitive inspections required by this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who

may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 24, 1999.

Issued in Renton, Washington, on August 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21363 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–55–AD; Amendment 39–11262; AD 99–17–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8 series airplanes, that requires a one-time inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed; and revising the Airplane Flight Manual to prohibit airplane operation from runways less than 75 feet wide, if necessary. This amendment also requires eventual replacement of any single rate configuration springs with dual rate configuration springs, which terminates the requirement for the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent an asymmetric rudder force condition, which could result in reduced controllability of the airplane and consequent potential for center line deviation.

DATES: Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8 series airplanes was published in the **Federal Register** on June 22, 1999 (64 FR 33232). That action proposed to require a one-time inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed; and revising the Airplane Flight Manual to prohibit airplane operation from runways less than 75 feet wide, if necessary. That proposal also would require eventual replacement of any single rate configuration springs with dual rate configuration springs, which would terminate the requirement for the AFM revision.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made to Proposal

The FAA has added a note to the final rule to clarify the definition of a general visual inspection.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 235 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $14,100, or $60 per airplane.

It will take approximately 10 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $141,000, or $600 per airplane.

If accomplished, it will take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators, if accomplished, is estimated to be $14,100, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–17–14 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–11262. Docket 99–NM–55–AD.

Applicability: Model DHC–8 series airplanes, as listed in Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an asymmetric rudder force condition, which could result in reduced controllability of the airplane and consequent potential for center line deviation, accomplish the following:

General Visual Inspection

(a) Within 100 flight hours or 14 days after the effective date of this AD, whichever occurs later: Perform a one-time visual inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed, in accordance with Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998.

(1) If dual rate configuration springs are installed, no further action is required by this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

AFM Revision

(2) If any single rate configuration springs are installed, prior to further flight:

Revise the Limitations Section of the de Havilland Dash 8 Airplane Flight Manual (AFM) to include the following statement. This action may be accomplished by inserting a copy of this AD into the AFM.

"OPERATION FROM RUNWAYS LESS THAN 75 FEET WIDE IS PROHIBITED."

Terminating Action

(b) At the next scheduled maintenance visit, but no later than 36 months after the effective date of this AD: Replace any single rate configuration springs located in the rudder control feel unit with dual rate configuration springs, in accordance with Part C through Part H inclusive, of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998. Such replacement constitutes terminating action for the requirements of this AD. After the replacement has been accomplished, the AFM limitation required by paragraph (a)(2) of this AD may be removed from the AFM.

Spares Paragraph

(c) As of the effective date of this AD, no person shall install any spring assembly having part number 82760050–003 on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a)(2), the actions shall be done in accordance with Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directives CF–98–39, dated October 23, 1998, and CF–98–39R1, dated December 31, 1998.

(g) This amendment becomes effective on September 24, 1999.

Issued in Renton, Washington, on August 10, 1999.

D. L. Riggin, Acting

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21362 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–22–AD; Amendment 39–11263; AD 99–17–16]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) PW4000 series turbofan engines, that requires short term criteria for limiting

the number of engines with potentially reduced stability on each airplane to no more than one engine, would require initial and repetitive on-wing or test cell cold-engine high pressure compressor (HPC) stability tests, would require removal of engines from service that fail on-wing test acceptance criteria, and would allow a follow-on test cell stability test. The AD also establishes required intervals for stability testing of the remaining engine with potentially reduced stability on the airplane and requirements for reporting test data. This amendment is prompted by a report of a dual-engine HPC surge event and reports of single-engine HPC surge events during the takeoff and climb phases of flight. The actions specified by this AD are intended to prevent an HPC surge event, which could result in engine power loss at a critical phase of flight such as takeoff or climb.

DATES: Effective date September 24, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney PW4000 series turbofan engines was published in the **Federal Register** on April 22, 1999 (64 FR 19726). That action proposed to require short term criteria for limiting the number of engines with potentially reduced stability on each airplane to no more than one engine, would require initial and repetitive on-wing or test cell cold-engine high pressure compressor (HPC) stability tests for all affected PW4000 series engines, would require removal from service of engines that fail on-wing test criteria, and would allow a follow-on test-cell stability test. Initial on-wing or test cell stability testing is required to limit the number of engines on the airplane to no more than one engine that has exceeded the initial threshold. The AD also establishes requirements to perform a stability test of the remaining engine with potentially reduced stability on the airplane. These tests are performed in accordance with Pratt & Whitney (PW) Special Instructions (SI) 49F–96, dated August 9, 1996; PW SI 7F–96, dated January 10, 1996; PW PW4000 Engine Manual (EM) Temporary Revisions (TR) 71–0016, 71–0025, and 71–0030, all dated April 13, 1999; PW EM 50A605 Section 71–00–00, Testing-20, PW EM 50A443 Section 71–00–00, Testing -20, and PW EM 50A822, Section 71–00–00, Testing -20, all dated June 15, 1999; PW SI 32F–99, dated April 13, 1999; and PW Cactus Wire C042 G 930902, dated September 2, 1993, which describe procedures for assessing the stability of PW4000 engines.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Questions About Table Formats

One commenter notes that the formatting of Tables 1 and 2 as published in the **Federal Register** is somewhat unusual and not to standard guidelines. The FAA disagrees. The tables appeared as intended when published in the Federal Register. When obtaining the document from the Internet, however, if not downloaded in a specific file format, the formatting of the document may be lost and the document may appear quite different. The problems described are functions of the method in which the document is accessed, not in how it was published.

Request to Change Reference to McDonnell Douglas MD–11 to Boeing MD–11

One commenter believes that the reference to the MD–11 airplane is incorrect. The NPRM refers to it as the McDonnell Douglas MD–11. The commenter notes that the McDonnell Douglas company was bought by the Boeing Co., and should therefore be the Boeing MD–11. The FAA does not agree. The FAA refers to the product by the name that currently appears on the Type Certificate Data Sheet, which is still McDonnell Douglas MD–11.

Questions about Applicability of PW4000 Phase 3 Configuration Engines

Several commenters question whether or not PW4000 Phase 3 engines are affected by this AD, and request that the proposed rule be modified to more clearly identify Phase 3 engines in the applicability section. The FAA does not agree. The applicability section of the AD lists those model PW4000 engines to which the AD applies. Note 1 reminds operators that this AD applies to all products mentioned in the applicability section, no matter how modified, altered, or repaired. The AD therefore applies to Phase 3 configuration engines of any listed model.

One commenter noted that the new production PW4056 engines they are receiving do not list three of the SB's listed in the definition of "first run, full up engines" in their SB incorporation summaries. The FAA agrees. Paragraph (a)(1)(iii) of the AD has been changed to include as "first run, full up engines" those PW4056, PW4156, and PW4156A original manufacture engines that incorporate a (-3) suffix, denoting the Phase 3 configuration that incorporates the intent of these SB's.

One commenter notes that AD 98–23–08 does not affect Phase 3 engines, and recommends a similar approach for this AD, with a more liberal retest interval for the Phase 3 engines. The FAA disagrees. The fleet has been thoroughly evaluated to search for any subpopulations that exhibit a different wear-out threshold, and to select the most appropriate initial threshold for each apparent population. The evaluation of the Phase 3 engine population does not justify a distinct initial threshold, except in the case of first run, full up PW4056, PW4156, and PW4156A engines, which receive unique initial thresholds.

One commenter suggests that PW SB 72–514 be modified to read "PW 72–514 (or 72–504)", in the definition of first run, full up engines. The FAA disagrees. SB 72–514 incorporates the larger HPT nozzle, which lowers compressor op-line, increasing surge margin. SB 72–504 references several SB's, and is the engine manufacturer's documentation detailing conversion of a standard PW4052/4056 engine to a Phase 3. As they involve the extensive modification of "used" engines, converted engines do not meet the requirements of a "first run" engine. In addition, the larger area HPT nozzle is a critical part of the first run, full up engine definition, as it offers a significant benefit to operability. To include recent shipment engines where these SB's are not listed in the SB incorporation paperwork, paragraph (a)(1)(iii) of the AD has been changed to include those PW4056, 4156, and 4156A original manufacture, first run engines that incorporate a (-3) suffix after the data plate engine model designation as

first run, full up engines for purposes of using that initial threshold in Table 1.

Question About Higher Initial Threshold for PW4158 Engines

One commenter notes that PW4056 engines receive a lower initial threshold than did the PW4158 engines, and questions whether or not this is in error. The FAA concludes that the PW4158 population demonstrates a relatively high cyclic threshold for surge occurrence for its thrust rating level. This fleet operates with a high average take-off derate level, and based on its demonstrated surge rate, this subfleet receives a higher initial threshold.

Requests for Credit for Previously Accomplished Tests

Several commenters state that the proposed rule is not clear as to whether or not credit is allowed for previously accomplished tests, and requested that the AD be more specific. The FAA agrees in part. The AD states that compliance is "required as indicated, unless accomplished previously." Any previously accomplished testing performed in accordance with the requirements of this AD is acceptable, and tests performed to other than the procedures specified in the AD are not acceptable as having previously accomplished the requirements of the AD. However, paragraphs (b) and (g) have been changed based on comments received. Changes were made to the cold-engine fuel spike test definition to cover additional tests performed under the instructions supplied in PW Cactus Wire ID C042 G 930902 ZRH, issued September 2, 1993. This instruction was omitted from the NPRM, and its inclusion in this AD will allow acceptance of additional testing performed in the past.

One commenter questions if operators can define engines as either tested or untested on the effective date of the AD if previously accomplished testing is acceptable. The FAA determines that this approach is acceptable. Operators who have done prior acceptable testing on engines may take credit for that testing and proceed with repetitive testing based on the test schedule defined by the AD, or they may ignore the previously accomplished testing and comply with the requirements of the AD for initial and repetitive testing as if the engines had not been previously tested. The FAA strongly encourages operators with previously tested engines that have failed those previous stability tests to remove those engines from service immediately. The FAA, however, has determined that it is not necessary to include a requirement in this AD to remove previously tested engines from service based on a failure of the previous test. Surveys indicate that few, if any, such engines remain in service, and to include such a requirement in the final rule would necessitate a delay in this rulemaking.

In addition, one commenter notes that operators who test more frequently than required by the AD will be penalized, as they will, in some cases, be forced to remove an engine before the 800 cycle repetitive interval, if the engine fails a stability test. The commenter requests a time after test failure before which engines tested more frequently than the 800-cycle interval must be removed. The FAA disagrees. It is not consistent with safe practices to allow an engine with known reduced stability to remain in service.

Requests To Exempt Pilot Training Cycles From "Cycles in Service"

Two commenters note confusion regarding the term "Cycles in Service." They feel that this term should be more clearly defined. One requests that pilot training cycles, performed at a reduced thrust rating, should not be counted for the purposes of the AD. The FAA disagrees. The term "Cycles in Service" refers to the standard cycles counted for life tracking, and is generally viewed as any flight consisting of one takeoff and landing. The FAA has determined not to create a separate cycle counting procedure for this AD.

Request for Definition of "HPC Overhaul"

Several commenters note that the term "HPC Overhaul" needs to be defined. The FAA agrees. Paragraph (g) of the AD has been changed to use the term "overhaul" and a new paragraph has been added to define an HPC overhaul as a stage 12 through stage 15 HPC tip clearance restoration.

Several commenters also pointed out that this definition should include HPC stages 12 through 15, not 12 through 14. The FAA agrees. This final rule has been changed accordingly.

One commenter requests that the term overhaul be avoided, and that repair be substituted in its place. The FAA disagrees. The level of work required to perform a stage 12 through stage 15 HPC tip clearance restoration is better viewed as an overhaul than a repair. In addition, the use of overhaul is consistent with the manufacturer's service documentation.

Request To Eliminate the Term "On-Wing"

One commenter notes that the words "on-wing" should be eliminated from paragraph (a)(1), as these tests do not need to be performed on-wing, as the cold-engine fuel spike test is also acceptable. The FAA agrees. The words "on-wing" have been removed from paragraph (a)(1).

Request To Add Initial Threshold to Untested Engines Limits

Several commenters note that certain AD references appear to limit the airplane more strictly than intended in that compliance statements refer to limiting the airplane to no more than one, or no untested engines, without referencing the initial threshold exceedance. The FAA agrees. Paragraph (e) has been changed to include reference to the initial threshold.

Request To Allow Airplanes To Remain in Revenue Service After Test Failure or Exceeding Initial Threshold

One commenter requests that engines be allowed to remain in revenue service for a certain time after a threshold exceedance or test failure. The FAA disagrees. This AD is intended to remove from service engines identified to have low stability, or potentially reduced stability, from service immediately. It would not be consistent to allow further usage of engines known to be at a higher potential to surge during the takeoff phase of flight in-revenue service.

Request To Allow A Nonrevenue Flight

Several commenters object to the proposal that requires removing engines that fail a stability test or exceed a threshold prior to further flight. These commenters note that the stability tests, which require running an engine on the ground at high power for extended lengths of time, may not be performed at all locations due to noise concerns. These commenters request that a nonrevenue flight provision be added so that they can return airplanes to a maintenance facility where engine removal may be performed after the engine has failed a stability test. The FAA agrees in part. As proposed, the provision in the AD allowing special flight permits was intended to cover only the situation where an engine stability test was overdue and the aircraft needed to be moved to a location where that test could be performed. The FAA has determined that allowing ferry flights, after an engine fails a stability test to move the aircraft to a location where engine removal can be performed, is acceptable if the flight is made under specified conditions to minimize the risk of engine surge during that flight. The special flight provision in the final rule

has therefore been changed to allow nonrevenue flights after an engine fails a stability test. The FAA has determined, however, that ferry flights should continue to be handled under the provisions of the special flight permit authority contained in part 21. Operators can coordinate with the FAA office that oversees their operation to minimize the time required to issue a special flight permit.

Request for Clarification of Reporting Requirements

Several commenters note confusion regarding the reporting requirements. The FAA agrees. Paragraph (k) of the final rule, which contains the reporting requirement, has been changed to include a time limit within which reports must be made and to include an email address.

Several commenters requested that the reporting requirements be changed to allow submittal of the data directly to PW. The FAA disagrees. The current Office of Management and Budget (OMB) approval for reporting requirements in AD's does not cover the submission of reports directly to manufacturers. The FAA is working to broaden the OMB's approval to cover that situation, but until that new approval is in place, reporting must be directly to the FAA. In addition, reporting to the FAA will allow the FAA to monitor the consistency of the collected test results to past history, verify the assumptions in the risk assessment, monitor fleet impact, monitor trends in the surge rate, and ensure that the desired level of safety is maintained.

Request for Clarification of How To Select Initial Threshold When the Electronic Engine Control (EEC) Programming Plug Is Used

One commenter notes that engine thrust rating changes can be accomplished in accordance with the manufacturer's instructions via the EEC programming plug, and requests clarification regarding how to select the initial threshold in these cases. The FAA agrees that clarification is needed, and has added a new paragraph (a)(3) that provides that in those cases where a thrust rating change has been made the highest thrust rating selected in the affected HPC overhaul period is to be used for determining the initial threshold.

Request To Redefine the Unsafe Condition

Several commenters feel that the unsafe condition should be defined as a dual-engine surge event, and that the AD goes too far in mandating safety by requiring that all engines be evaluated, rather than all but one engine, as in the airplane manufacturer's service documentation. The FAA disagrees. The FAA has concluded that the present single-engine surge rate and the increased likelihood of a dual-engine surge event, constitute an unsafe condition. Since these surges occur during a critical phase of flight (take-off or early climb), they place an extra demand on the flight crew during a high-workload period. While an airplane may be designed to be able to take-off with one engine inoperative, and procedures are in place for engine failures in flight, accident history indicates that a high percentage of single-engine failures result in accident or incidents due to combination with another failure or malfunction. For this reason, this rule addresses not only the dual-engine surge, but also the rate of single-engine surge.

Request To Allow Boeing Service Bulletin as an Alternate Method of Compliance

One commenter requests that compliance with Boeing service bulletins 767–72A0034, dated April 16, 1999, and SB 747–72A2038, dated April 16, 1999, be allowed as an alternate method of compliance. The FAA does not agree. The Boeing service bulletins allow one engine on an airplane to remain untested. Because the FAA has determined that the rate of single-engine surge events must also be addressed, allowing one engine on an airplane to remain untested would conflict with the goal of reducing the rate of single-engine surge events. Therefore, the Boeing service bulletins addressing this problem are only for reference, and are not approved as an alternate method of compliance.

Request To Tighten the Testing Intervals

One commenter feels that the proposed rule is not aggressive enough in evaluating the PW4000 fleet for low-stability engines, and that more aggressive initial and repetitive testing intervals and deadlines need to be established. The FAA disagrees. The compliance cyclic thresholds and calendar end dates were selected based on a detailed risk analysis to evaluate the effectiveness of the fleet management plan. Compliance thresholds were established at levels predicted to establish a very low rate of surge. The compliance deadlines were selected to minimize risk balanced with the logistical complications of achieving fleet-wide compliance considering the number of affected engines. This plan was carefully evaluated to provide the intended level of safety without unnecessarily requiring the grounding of aircraft.

Request To Allow In-situ Borescope Blending of HPC Airfoils for Minor Damage

One commenter notes that the definition of first run, full up engines does not allow in-situ borescope blending of the HPC airfoils for minor foreign object damage (FOD), and requests that the Final Rule be modified to allow this operation. The FAA agrees. Paragraphs (a)(iii) and (g)(3) and (g)(4) have been changed to replace "no work performed on the HPC or HPT gaspaths", to read "have not had a separation of a major engine flange since new, with the exception of the 'A' or 'T' flanges." These changes will allow operators to consider engines that have undergone only in-situ borescope blending of the HPC airfoils for FOD to be a first run, full-up engines, and will also allow removal of the inlet and tailpipe.

Request for Definition of Actions To Return an Engine to Service

One commenter feels that the proposed rule must state required action to return a failed engine to service after stability test failure. The commenter feels it would be appropriate to require that HPC tip clearances on S12 through S15 blades be restored to manual limits. The FAA disagrees. The FAA has determined that it is not necessary to require blade tip restoration in all cases. The stability tests required prior to returning an engine to service will ensure that engines that do not receive stage 12 through stage 15 tip clearance restoration are adequately assessed before leaving the shop. In addition, tip clearance restoration is encouraged by resetting the initial threshold interval for those engines having undergone an HPC overhaul. HPC tip clearance restoration provides an increase in surge margin; however, other actions may also adequately restore surge margin, such as installation of the cutback HPT guide vane to lower compressor operating line.

Concern About Engine Manual Temporary Revisions

Two commenters note that the proposed rule references Engine Manual Temporary Revisions, and are concerned that once these changes are incorporated permanently into the manuals, a noncompliance issue will arise. The FAA does not agree. References to Temporary Manual

Revisions are included in the final rule primarily to allow credit for tests conducted previously in accordance with the instructions included in those documents. Since the issuance of the NPRM, those Temporary Manual Revisions have been incorporated into the Engine Manual, and this final rule includes the Engine Manual references as well. Copies of the Temporary Manual Revisions should always be available, however, through the manufacturer as stated in the AD under ADDRESSES.

Request To Change the Definition of a Shop Visit

One commenter was concerned that the text omitting the Cold-Engine Fuel Spike test requirement in certain cases was too restrictive, and that the phrase "The shop visit was only for replacement of a line replaceable unit, with no other work done" should be expanded to include a broader population. The FAA agrees. Paragraph (g)(3) of the proposed rule, which appears as paragraph (g)(4) in this final rule, has been changed to reference engines that have not had a major flange separation.

Request To Include an Engine With an Overhauled HPC as a Replacement for an Engine That Has Failed Stability Testing

Two commenters request that paragraph (d) be modified to include engines which have received HPC overhaul as acceptable replacements for an engine which has failed a stability assessment test. The FAA agrees. The final rule includes a definition of a serviceable engine in paragraph (j) to define more clearly return to service requirements and the text in paragraphs (a) and (d) has been modified.

Request To Eliminate the Cyclic Limits and Use Only Calendar Dates

One commenter requests that the final rule be modified to reference only calendar end dates, and to omit the cyclic accumulation caps. The FAA disagrees. The wearout of the compressor is tied directly to cyclic usage and not dates on the calendar. In addition, use of calendar dates only to determine initial and repetitive inspection thresholds may allow high-usage engines to accumulate excessive wear before being evaluated. The FAA will maintain the cyclic limits to ensure that engines do not accumulate excessive wear prior to a stability assessment.

Request To Eliminate the Calendar End Dates and Use Only the Cyclic Limits

One commenter requests that the final rule be modified to reference only the cyclic limits, and to omit the calendar end dates. The FAA disagrees. Omission of the calendar end date would allow low usage engines to remain in service for an extended period without being evaluated. Based on the risk analysis, the FAA has determined that calendar end dates are necessary to ensure that all engines are evaluated for reduced stability margin by the specified dates, and to hasten compliance of low usage engines.

Request To Include Statement About Engines That Are Not Installed on Airplanes

One commenter notes that the AD applies to engines that are both on and off the airplane, so the applicability statement should be changed to specify "engines installed on, or intended to be installed on." The FAA does not agree. The accomplishment instructions of the AD address engines in the shop and detail actions that must be taken "prior to return to service." The phrase "installed on but not limited to" that appears in the applicability statement of AD's that apply to aircraft engines is intended only to provide some information as to the types of aircraft on which operators might find the affected engines. The phrase does not affect the applicability of the AD and does not limit the AD to only those engines installed on the listed airplanes. Therefore, it is unnecessary to add the requested phrase to the applicability statement.

Concern About the Financial Impact of This AD Upon the Worldwide Fleet

One commenter notes that financial impact quadruples if the worldwide fleet, and not just the domestic fleet, is considered. The commenter also notes that due to the large number of affected engines, and a large time requirement to incorporate corrective action, the potential exists for an adverse effect on the airline industry. The FAA agrees in part, and has considered the affects on the worldwide fleet in determining the necessary required actions to maintain an acceptable level of safety. The economic analysis required by Executive Order, however, considers only the affects on domestic operators.

Changes to the Economic Analysis

One commenter questioned the fleet size used for the financial impact analysis, and provided a different fleet size for use in the calculations. The FAA agrees, and has modified the economic analysis to reflect the fleet size provided.

Request for Incorporation of HPC Cutback Stators and HPC Overhaul as Terminating Action for This AD

One commenter requests that the FAA reference incorporation of the HPC Cutback Stators and HPC overhaul as terminating action to the repetitive testing requirements of this AD. The FAA disagrees. At this time, the Cutback HPC Stator configuration has not been certified, and therefore cannot be referenced as terminating action. The FAA will continue to monitor the fleet-wide trend analysis as inspection results are reported and will incorporate terminating action into this AD by further rulemaking once that terminating action becomes available.

Question About the Timeliness of This AD

One commenter notes that this problem has existed since 1992, when the first surge event occurred, and that the rate has been steadily decreasing to a much lower rate today. The commenter feels that the FAA should have issued this kind of AD years ago when the rate was much higher. The FAA does not agree. While the FAA does not dispute that single engine surge rates may have been higher in the past, until recently, surge events were considered independent events, and the primary concern was with the dual-engine surge possibility. Because statistically, the probability of a dual-engine occurrence for the same cause as two single independent events is the square of the single engine probability, the probability of a dual-engine occurrence was calculated as being extremely remote. However, recent events have highlighted the need to re-examine that calculation and it underlying assumptions. The FAA now believes that unidentified common causes exist that can push reduced surge margin engines into a surge. If multiple reduced-surge margin engines are operating on an airplane when these yet unidentified influences exist, a multiple engine event is a stronger possibility. The FAA views single-engine events as a leading contributing factor in accidents when combined with other complicating factors such as crew response, other failures, etc. The FAA has focussed more strongly on defects that affect the critical phases of flight where crew workload is high and which have a high rate of occurrence. For this reason, and due to an event which occurred last year involving a single engine PW4000 surge and crew response, the FAA issued AD 98–23–08

to address that issue, and is now issuing this AD to address the overall single-engine surge rate, as well as the dual-engine event concern.

Concern About the Reliability of the E1E Test

One commenter expresses concern regarding the implementation of the E1E test, believing it to be an unreliable tool in determining whether or not an engine is prone to a Group 3 surge. The FAA does not agree. The E1E test, the Cool Bodie test, and the Cold-Engine Fuel Spike tests have statistically proven themselves strong indicators of the likelihood of an engine to surge in subsequent service. While individual engines may provide different test results, the PW4000 fleet as a whole shows a strong correlation between these evaluations and the likelihood of a subsequent Group 3 surge event.

Request To Allow a Retest After Water Washing an Engine That Failed the Initial Tests

One commenter requests that engines which fail an E1E test be allowed a second test opportunity after a water wash is performed. The FAA does not agree. The database upon which the correlations were based comes from a sampling of status engines in the fleet. Those engines were not typically water washed prior to accomplishing the test. It is unknown whether allowing such a retest would invalidate the assumptions upon which the management plan was based. It is also unknown how long any benefit derived from the water-washing might be expected to last before returning to the prior unwashed level.

Editorial Changes for Clarity

One commenter requests that the word "untested" be replaced with "not previously tested" in the Final Rule. The FAA agrees. The word "untested" has been changed to "has not been previously tested" in paragraph (a) of this AD.

Administrative Changes and Corrections

Several minor format, typographical and administrative corrections were incorporated as appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,975 engines of the affected design in the worldwide fleet. The FAA estimates that 495 engines installed on airplane of U.S. registry would be affected by this proposed AD. The FAA also estimates that, on average, approximately 130 on-wing tests, 74 test cell stability tests, 16 engine removals, and 22 HPC overhauls will be required annually. It is estimated that the cost to industry of an on-wing stability test will average $2,000, a test cell stability test will average $12,000, an engine removal is approximately $5,000, and an HPC overhaul will cost approximately $400,000. Based on these figures, the total average annual cost impact of the proposed AD to U.S. operators is estimated to be $10,148,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–17–16 Pratt & Whitney: Amendment 39–11263. Docket 99–NE–22–AD.

Applicability: Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462 and PW4650 turbofan engines installed on, but not limited to certain models of Boeing 747, Boeing 767, Airbus Industrie A300, Airbus Industrie A310, and McDonnell Douglas MD–11 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a high pressure compressor (HPC) surge event, which could result in engine power loss at a critical phase of flight such as takeoff or climb, accomplish the following:

(a) Limit the number of engines on each airplane to no more than one engine that has not been previously tested and has exceeded the initial threshold specified in Table 1 of this AD, within 1,000 HPC cycles in service (CIS) from the effective date of this AD or by December 31, 1999, whichever comes first, by one of the following methods:

(1) Conduct an initial stability test on engines listed in Table 1 of this AD, which have accumulated cycles equal to or greater than the associated initial threshold listed in Table 1 of this AD, as follows:

(i) Perform either a Cool Bodie stability test in accordance with PW Special Instruction 7F–96, dated January 10, 1996. Refer to Table 2 of this AD for disposition instructions. Or;

(ii) Perform an E1E stability test in accordance with paragraphs A through D and F through H of the Run On-Wing E1E Testing section of PW Special Instructions 49F–96, dated August 9, 1996. Refer to Table 2 of this AD for disposition instructions.

(iii) For purposes of this AD, the initial threshold for PW4056, PW4156, and PW4156A, first run, full-up engines, applies only to engines that have incorporated service bulletins PW4ENG 72–474, 72–477, 72–484, 72–575, 72–485, 72-486, and 72–514 at original manufacture, and have not had a separation of a major engine flange, with the exception of the "A" flange or the "T" flange, since new. PW4056, PW4156, and PW4156A original manufacture engines that have a (-3) suffix after the data plate engine model

designation, denoting the "Phase 3" configuration, are allowed to use the PW4056, PW4156, and PW4156A first run, full up engine initial threshold in Table 1 if, since new, they have not had a separation of a major engine flange, with the exception of the "A" flange or "T" flange.

(2) Remove from service those engines listed in Table 1 of this AD with HPC's that have accumulated cycles equal to or greater than the initial threshold listed in Table 1 of this AD, and replace with a serviceable engine.

(3) When a thrust rating change has been made in accordance with the manufacturer's instructions utilizing the Electronic Engine Control (EEC) programming plug in the affected HPC overhaul period, the initial threshold associated with the highest thrust rating must be utilized.

TABLE 1.—INITIAL HPC AND ENGINES CYCLES THRESHOLDS

Models	Initial threshold
PW4052, PW4152, PW4158, PW4050, PW4650.	2400 HPC cycles since new or since HPC overhaul.
PW4056*, PW4156*, PW4156A*.	1700 engine cycles since new.
PW4056, PW4156, PW4156A.	1200 HPC cycles since new or HPC overhaul.
PW4060, PW4060A, PW4060C, PW4062, PW4160, PW4460, PW4462.	1200 HPC cycles since new or since HPC overhaul.

* First Run, Full Up Engines

TABLE 2.—ON-WING ACCEPTANCE CRITERIA

Test type	Test result	Disposition
Cool Bodie ..... In accordance with SI 7F–96, dated January 10, 1996.	Pass	Continue in service.
	Failure	Remove from service or conduct E1E. If <0.020 continue in service. If E1E is ≥0.020 remove from service, prior to further flight.
E1E ..... In accordance with SI 49F–96, dated August 9, 1996.	<0.020	Continue in Service.
	≥0.020 but ≤0.032	Conduct Cool Bodie, if pass continue in service. If fail remove engine from service, prior to further flight.
	>0.032	Remove from service, prior to further flight.

(b) For engines removed from service in accordance with paragraph (a) of this AD, a cold-engine fuel spike stability test (Testing–20) may be done in accordance with the associated PW4000 Engine Manual (EM) Temporary Revisions (TR's) 71–0016, 71–0025, and 71–0030, all dated March 15, 1999, or PW4000 EM 50A443, 50A822, or 50A605, Section 71–00–00, Testing–20, pages 1301–1316, dated June 15, 1999, or PW SI 32F–99, dated April 13, 1999. Cold-Engine fuel spike testing using a surge margin analysis control (SMAC) full authority digital electronic control (FADEC) P/N 50D341–SKX13041, P/N 50D341–SKX02, or P/N 53D063–SK07, and performed in conjunction with PW Cactus Wire C042 G 930902 ZRH, dated September 02, 1993,will also be acceptable for meeting the testing requirements of this AD. Engines must pass this test cell stability test to be returned to service.

(c) Repeat stability tests in accordance with paragraph (a)(1)(i) or (a)(1)(ii) on engines that meet the acceptance criteria of Table 2 of this AD or pass a test cell stability test in accordance with paragraph (b) before accumulating 800 CIS since last stability test.

(d) Remove from service engines that do not meet the acceptance criteria of Table 2, prior to further flight and replace with a serviceable engine.

(e) Conduct stability tests on the remaining engines on each airplane that exceed the initial threshold defined in Table 1 of this AD before accumulating 1800 engine CIS after the effective date of this AD or by December 31, 2000, whichever comes first, in accordance with paragraph (a) or (b) of this AD.

(f) Engines that have not reached the initial threshold specified in Table 1 of this AD by 1000 engine CIS after the effective date of this AD, or by December 31, 1999, whichever comes first, must be tested before the engine reaches the initial threshold so that no more than one engine per airplane that has exceeded its initial threshold has not been tested. After accumulating 1800 CIS or December 31, 2000,whichever comes first, the engines must be managed so that all engines have been tested in accordance with the initial thresholds specified in Table 1 of this AD or the repetitive 800 CIS threshold requirement of this AD.

(g) After the effective date of this AD, a cold-engine fuel spike stability test (Testing–20) must be performed in accordance with PW Temporary Revision 71–0016, 71–0025, or 71–0030, all dated March 15, 1999; PW EM 50A605 Section 71–00–00, Testing–20, PW EM 50A443 Section 71–00–00, Testing–20, and PW EM 50A822, Section 71–00–00, Testing 20, all dated June 15, 1999; or PW SI 32F–99, dated April 13, 1999; or PW Cactus Wire C042 G 930902 ZRH, dated September 02, 1993 before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) The HPC was overhauled, or replaced with an overhauled HPC, or

(2) The HPC was replaced with an HPC that is new from production with no time in service, or

(3) Less than 800 CIS have passed since the last accomplishment of Testing–20, unless a major engine flange, except the "A" flange or the "T" flange, was separated during the shop visit, or

(4) The shop visit was only for replacement of a line replaceable unit, with no other work done, unless a major engine flange, except the "A" flange or the "T" flange, was separated during the shop visit.

Note 2: Boeing SB 767–72A0034, dated April 16, 1999, and SB 747–72A2038, dated April 16, 1999, include instructions similar to those contained in this AD, however, these SB's are not approved as alternate methods of compliance with this AD.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that in the case where an aircraft has an engine that has failed a stability assessment the following conditions are made part of the special flight permit:

(1) The engine must be operated for at least 20 minutes at Ground Idle prior to initiating the takeoff, or for 5 minutes at 1.2 Engine Pressure Ratio (EPR);

(2) If applicable, the Environmental Control System (ECS) bleed must be shut off prior to setting takeoff power, and left off until 5 minutes after power set;

(3) The affected engine must be operated at the appropriate minimum approved derated thrust for safe takeoff and climb in order to minimize the risk of a takeoff surge; and

(4) Only one engine per airplane may have failed a stability assessment to perform this flight.

(j) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as whenever the HPC stage 12 through 15 blade tip clearances are restored to the clearances specified in the applicable fits and clearances section of the engine manual during the shop visit.

(2) A serviceable engine is defined as an engine that either:

(i) Has not exceeded the initial threshold specified in Table 1 of this AD, or

(ii) Has passed a stability test performed in accordance with paragraphs (a)(1)(i) or (a)(1)(ii) or (b) or (g) of this AD within the last 800 CIS.

(k) Report the results of the stability assessment tests to the Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to "Robert.Guyotte@faa.gov." Data to be reported includes:

(1) Engine serial number;

(2) Type and date of the test;

(3) Results of the test (include E1E value if applicable);

(4) Position of engine on the airplane;

(5) Disposition of the engine after the test; and

(6) Time and cycles since compressor overhaul, total time on engine, and total cycles at the time of the test.

Results are due to the FAA New England Office within 60 days of test date, or for previously accomplished tests for which retroactive credit is taken, within 60 days of the effective date of this AD.

Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.

(l) The stability assessment tests shall be done in accordance with the following Pratt & Whitney service documentation:

Document No.	Pages	Revision	Date
SI 7F–96	All	Original	January 10, 1996.
SI 32F–99	All	Original	April 13, 1999.
SI 49F–96	All	Original	August 9, 1996.
TR 71–0016	All	Original	March 15, 1999.
TR 71–0025	All	Original	March 15, 1999.
TR 71–0030	All	Original	March 15, 1999.
EM 50A443, Section 71–00–00	All	Original	June 15, 1999.
EM 50A605, Section 71–00–00	All	Original	June 15, 1999.
EM 50A822, Section 71–00–00	All	Original	June 15, 1999.
PW Cactus Wire: C042 G 930902 ZRH	All	Original	September 2, 1993.
Total pages: 108			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(m) This amendment becomes effective on September 24, 1999.

Issued in Burlington, Massachusetts, on August 12, 1999.

Kirk E. Gustafson,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–21450 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–30–AD; Amendment 39–11265; AD 99–17–19]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada, Model 206L, L–1, L–3, and L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, A Division of Textron Canada (BHTC), Model 206L, L–1, L–3, and L–4 helicopters, that currently requires the creation of a component history card or equivalent record using the Retirement Index Number (RIN) system for certain mast and trunnions and a system for tracking increases to the accumulated RIN. That AD also establishes retirement lives for the mast and trunnion. This amendment requires the same actions required by the existing AD but increases the RIN multiplier for the mast and corrects a helicopter model number. This amendment is prompted by further tests and analyses that indicate the RIN multiplier for the Model 206L–4 helicopters needs to be increased and the discovery of an error in a model designation in the existing AD. The actions specified by this AD are intended to prevent fatigue failure of the mast or trunnion, which could result in loss of the main rotor system and subsequent loss of control of the helicopter.

DATES: Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 9, 1997 (62 FR 16073, April 4, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, a Division of Textron Canada, 12,800 Rue de L-Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jurgen Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5159, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–07–07, Amendment 39–9981 (62 FR 16073), applicable to BHTC Model 206L, L–1, L–3, and L–4 helicopters, was published in the **Federal Register** on May 26, 1999 (64 FR 28418). That action proposed requiring creation of a component history card or equivalent record using a RIN system, establishing a system for tracking increases to the accumulated RIN and establishing a maximum accumulated RIN for certain masts and trunnions. That action also proposed correcting an error in the increase in the RIN count for the Model 206L–4 in paragraph (c)(2), correcting a model number in paragraph (c)(1)(i), and

making other nonsubstantive changes to the text.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 711 helicopters of U.S. registry will be affected by this AD, that it will take approximately (1) 8 work hours per helicopter to replace the mast and 10 work hours per helicopter to replace the trunnion due to the new method of determining the retirement life required by this AD; (2) 2 work hours per helicopter to create the component history card of equivalent record (record); (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts will cost approximately $9,538 per mast and $2,083 per trunnion. Based on these figures, the cost impact of the AD on U.S. operators for the first year is estimated to be $2,016,989, and each subsequent year to be $1,945,889. These costs assume replacement of the mast and trunnion in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year. The estimated cost impact amounts are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9981 (62 FR 16073, April 4, 1997), and by adding a new airworthiness directive (AD), Amendment 39–11265, to read as follows:

AD 99–17–10 Bell Helicopter Textron, A Division of Textron Canada: Amendment 39–11265. Docket No. 99–SW–30–AD. Supersedes AD 97–07–07, Amendment 39–9981, Docket No. 95–SW–36–AD.

Applicability: Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, with main rotor mast (mast), part number (P/N) 206–040–535–001, –005, –101, or –105, installed, or main rotor trunnion (trunnion), P/N 206–011–120–103, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service, unless accomplished previously.

To prevent fatigue failure of the mast or trunnion, which could result in loss of the main rotor system and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or an equivalent record for the affected mast and trunnion.

(b) Determine the accumulated Retirement Index Number (RIN) to date based on the number of takeoffs and external load lifts (torque events) for parts in service in accordance with paragraphs 1 and 2 of the Accomplishment Instructions of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 206L–94–99, Revision A, dated May 1, 1995 (ASB). Record this accumulated RIN on the component history card or equivalent record.

(c) After complying with paragraphs (a) and (b) of this AD, during each operation thereafter, maintain a count of the number of external load lifts and the number of takeoffs performed and at the end of each day's operations, increase the accumulated RIN on the component history card or equivalent record as follows:

(1) For the trunnion,

(i) Increase the RIN for the Model 206L, 206L–1, and 206L–3 helicopters by 1 for each torque event.

(ii) Increase the RIN for the Model 206L–4 helicopters by 2 for each torque event.

(2) For the mast,

(i) Increase the RIN for the Model 206L, 206L–1, 206L–3 helicopters by 1 for each torque event.

(ii) Increase the RIN for the Model 206L–4 helicopters by 2 for each torque event.

Note 2: Previous Model 206L–4 mast RIN calculations may have increased the RIN by only 1 for each torque event. This AD increases the Model 206L–4 mast RIN by 2 for each torque event.

(d) Remove the trunnion from service on or before attaining the maximum accumulated RIN (24,000) in accordance with Table 1 of the Accomplishment Instructions of the ASB. This AD revises the Limitations section of the maintenance manual by establishing a retirement life of 24,000 RIN for the trunnion.

(e) Remove the mast from service on or before attaining the maximum accumulated RIN (44,000) or the flight hour service life limit, whichever occurs first, in accordance with Table 2 of the Accomplishment Instructions of the ASB. This AD revises the Limitations section of the maintenance manual by establishing a retirement life of 44,000 RIN for the mast.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) The determination of the RIN count on the trunnion and mast shall be made in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin No. 206L–94–99, Revision A, dated May 1, 1995. The incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of May 9, 1997 (62 FR 16073, April 4, 1997). Copies may be obtained from Bell Helicopter Textron, a Division of Textron Canada, 12,800 Rue de L-Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 24, 1999.

Issued in Fort Worth, Texas, on August 12, 1999.

Eric Bries,

Acting Managaer, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–21573 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–16–AD; Amendment 39–11264; AD 99–17–18]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to MD Helicopters, Inc. (MDHI) Model 600N helicopters, that requires applying serial numbers to several life-limited components related to pitch control and removing and replacing the components according to new life-limits. This amendment is prompted by fatigue tests that indicate a need for shorter service lives for these components. The actions specified by this AD are intended to prevent failure of the collective pitch control tubes, collective stick housings, and collective pitch tube assemblies, which can cause loss of collective pitch control, and subsequent loss of control of the helicopter.

DATES: Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, datafax 480–891–6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frederick A. Guerin, Aerospace Engineer, Airframe Branch, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to MDHI Model 600N helicopters was published in the **Federal Register** on March 23, 1999 (64 FR 13936). That action proposed to require applying serial numbers to several life-limited components related to pitch control and removing and replacing the components according to new life-limits.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the following exceptions. Since the publication of the Notice of Proposed Rulemaking (NPRM), the name of the type certificate holder has changed from "McDonnell Douglas Helicopter Systems" to "MD Helicopters, Inc." Also, the NPRM contained an error in the part number for the "Housing, collective stick." The part number should have been "369A7347" but was incorrectly listed as "1369A7347." A part number "1369A7347" does not exist for the affected model helicopter. Both the name and the part number have been changed in this final rule AD; the FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 16 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–17–18 MD Helicopters Inc.: Amendment 39–11264. Docket No. 98–SW–16–AD.

Applicability: Model 600N helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified,

altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the collective pitch control tubes, collective stick housings, and collective pitch tube assemblies, loss of collective pitch control, and subsequent loss of control of the helicopter, accomplish the following:

(a) On or before reaching 400 hours time-in-service (TIS), apply the serial number (S/N) listed in McDonnell Douglas Helicopter Systems Mandatory Service Bulletin No. 600N–009, dated February 24, 1998 (SB), to the two collective stick housings, P/N's 369A7347 and 369A7820; the pilot collective pitch control tube, P/N 369A7348; and the co-pilot collective pitch control tube, P/N 369A7809, in the most visible spot for the specified aircraft S/N.

(b) Remove and replace the following flight control components according to the stated life-limits:

P/N	Component	Life-Limit (Hours TIS)
369A7347	Housing, collective stick	450
369A7348	Tube, collective pitch control (pilot)	400
369H7354–3	Tube assembly, collective pitch (pilot)	600
369A7809	Tube, collective pitch control (co-pilot)	1,800
369A7820	Housing, collective stick	450
369H7837	Housing, collective stick	450
369H7838–3	Tube assembly, collective pitch (co-pilot)	1,000

(c) Create a component history card or equivalent record in the helicopter log and record the helicopter TIS at installation for each of the components listed in paragraph (b) of this AD.

(d) This AD revises the Airworthiness Limitations Section of the maintenance manual by reducing the life-limits of the pilot collective pitch control tube, the collective stick housings, and the collective pitch tube assemblies, and adding the co-pilot collective pitch control tube to the Airworthiness Limitations section, Component Mandatory Replacement Schedule.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The application of serial numbers shall be done in accordance with the Accomplishment Instructions of McDonnell Douglas Helicopter Systems Mandatory Service Bulletin No. 600N–009, dated February 24, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, datafax 480–891–6782. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 24, 1999.

Issued in Fort Worth, Texas, on August 12, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–21572 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–06–AD; Amendment 39–11266; AD 99–17–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 and –300 series airplanes, that requires modification of the off-wing emergency evacuation slide system. This amendment is prompted by reports that a certain type of off-wing escape slide aboard several airplanes separated from the airplane during flight. The actions specified by this AD are intended to prevent separation of the emergency evacuation slide from the airplane, which could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation.

DATES: Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 and –300 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the Federal Register on June 11, 1999 (64 FR 31523). That action proposed to require modification of the off-wing emergency evacuation slide system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

Support for the Proposal

Three commenters support the proposed rule, and one commenter states that the rule does not affect it.

Request To Delay Effective Date

One commenter supports the proposed rule, but requests that the effective date of the AD be set after July 31, 1999, to allow the scheduled modification to be accomplished during the operator's scheduled "4C" check. The FAA notes that the effective date of the AD will be after July 31, 1999. No change to the final rule is necessary.

Request To Require New Repetitive Inspections

One commenter to the NPRM that preceded the supplemental NPRM favors adding a requirement for a functional test to the proposed AD. The commenter requests that the FAA consider rulemaking to require repetitive tests of the emergency evacuation slides on each airplane to ensure that they work properly.

The FAA does not concur with the commenter's request. Adding a requirement to this final rule would require the issuance of a new supplemental notice of proposed rulemaking to reopen the public comment period. To delay this final rule in this way would be inappropriate, because the FAA has determined that an unsafe condition exists and the required actions must be accomplished to ensure continued safety. The FAA notes, however, that operators are required, per their maintenance procedures, to periodically deploy one escape slide on one airplane in its fleet to ensure proper function. No change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 503 Model 757–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 441 airplanes of U.S. registry will be affected by this AD.

For airplanes identified in Boeing Service Bulletin 757–25–0182, Revision 1 (301 U.S.-registered airplanes), it will take approximately 40 work hours per airplane to accomplish the required modification of the door latch system, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,450 per airplane. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be $1,158,850, or $3,850 per airplane.

For airplanes identified in Boeing Service Bulletin 757–25–0200 (441 U.S.-registered airplanes), it will take approximately 4 work hours to accomplish the required installation of the bumper assembly and placards, at an average labor rate of $60 per work hour. Required parts will cost approximately $457 per airplane. Based on these figures, the cost impact of the required installation on U.S. operators is estimated to be $307,377, or $697 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–17–20 Boeing: Amendment 39–11266. Docket 99–NM–06–AD.

Applicability: Model 757–200 and –300 series airplanes equipped with off-wing emergency evacuation slides, as listed in Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997, or Boeing Service Bulletin 757–25–0200, dated January 21, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the emergency evacuation slide from the airplane, which could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Modify the left and right off-wing emergency evacuation slide systems by accomplishment of paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes listed in Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997: Modify the door latch system of the left and right off-wing emergency evacuation slide systems in accordance with the service bulletin.

Note 2: Modification of the door latch system of the off-wing emergency evacuation slide system, prior to the effective date of this AD, in accordance with Boeing Service Bulletin 757–25–0182, dated October 10, 1996, is considered acceptable for compliance with paragraph (a)(1) of this AD.

(2) For airplanes listed in Boeing Service Bulletin 757–25–0200, dated January 21, 1999: Install a bumper assembly on the bottom of the left and right off-wing escape slide carriers, and install new placards in the area of the maintenance access door, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997, or Boeing Service Bulletin 757–25–0200, dated January 21, 1999; as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 24, 1999.

Issued in Renton, Washington, on August 13, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21571 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

RIN 1506–AA09

Amendment to the Bank Secrecy Act Regulations—Definitions Relating to, and Registration of, Money Services Businesses

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Final rule.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments revise the definitions of certain non-bank financial institutions for purposes of the Bank Secrecy Act and group the revised definitions together in a separate category called "money services businesses." The amendments also require certain money services businesses to register with the Department of the Treasury and to maintain a current list of their agents for examination, on request, by any appropriate law enforcement agency. The amendments regarding registration and maintenance of agent lists by money services businesses reflect changes to the law made by the Money Laundering Suppression Act of 1994.

DATES: *Effective Date:* September 20, 1999.

Applicability Date: Registration of money services businesses will not be required prior to December 31, 2001, and maintenance of the agent list will not be required prior to January 1, 2002. See § 103.41(f) of the final rule contained in this document.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905–3930; Charles Klingman, Financial Institutions Policy Specialist, FinCEN, (703) 905–3802; Stephen R. Kroll, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Albert R. Zarate and Christine L. Schuetz, Attorney-Advisors, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions—General

The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

31 U.S.C. 5312. The Bank Secrecy Act generally applies to financial institutions, a term broadly defined in 31 U.S.C. 5312(a)(2)(A–Z). The statutory definition includes, *inter alia:*

* * * * *

(J) a currency exchange;

(K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;

* * * * *

(R) a licensed sender of money;

* * * * *

(Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

31 U.S.C. 5330. 31 U.S.C. 5330 was added to the Bank Secrecy Act by section 408 of the Money Laundering Suppression Act of 1994 (the "Money Laundering Suppression Act"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (September 23, 1994). Under that section, any person who owns or controls a money services business (which the statute refers to as a "money transmitting business" [1]), whether or not the business is licensed as a money services business in any State, must register the business with the Secretary of the Treasury. 31 U.S.C. 5330(a). (A money services business required to be registered under 31 U.S.C. 5330 remains subject to any State law requirements relating to the operation of the business in the State. 31 U.S.C. 5330(a)(3).) The form and manner of registration must be prescribed by regulations.

The purpose of the registration requirement is to assist supervisory and law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from engaging in illegal activities. See, section 408(a), of the Money Laundering Suppression Act. 31 U.S.C. 5311 (Note). In requiring the registration of money services businesses, Congress found that such businesses are largely unregulated and are frequently used in sophisticated schemes to transfer large amounts of money that are the proceeds of unlawful enterprises and to evade the

---

[1] The statute uses the term "money transmitting business" to name those businesses subject to registration. *See* 31 U.S.C. 5330(a)(1) and (d)(1). However, FinCEN believes that the statute's use of this term to refer to all the types of businesses subject to registration and its later use of the nearly identical term "money transmitting service" to refer to a particular type of business subject to registration, *compare* 31 U.S.C. 5330(d)(1)(A) *with* 31 U.S.C. 5330(d)(2), may lead to confusion. Therefore, FinCEN has adopted the term "money services business" in place of the term "money transmitting business" throughout this document and under the final rule.

requirements of Title II of the Bank Secrecy Act, the Internal Revenue Code of 1986, and other laws of the United States. Congress also found that information on the identity of each money services business and the names of the persons who own or control, or are officers or employees of, a money services business would have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings. *Id.*

The statute defines a "money transmitting business"[2] as any business, other than the United States Postal Service, that is required to file reports under 31 U.S.C. 5313 and that provides check cashing, currency exchange, or money transmitting or remittance services,[3], or issues or redeems money orders, traveler's checks or other similar instruments. 31 U.S.C. 5330(d)(1). Depository institutions (as defined in 31 U.S.C. 5313(g)), however, are not within the classes of institutions required to register under the statute. 31 U.S.C. 5330(d)(1)(C).

Section 5330 specifies the information that must be included as part of the registration. 31 U.S.C. 5330(b). The required information is—

(1) The name and location of the business;

(2) The name and address of each person who owns or controls the business, is a director or officer of the business, or otherwise participates in the conduct of the affairs of the business;

(3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act);

(4) An estimate of the volume of business in the coming year, which shall be reported annually to the Secretary; and

(5) Such other information as the Secretary of the Treasury may require.

Section 5330 contains two provisions directed explicitly at agents of money services businesses. First, a money services business must maintain a list containing the names and addresses of its agents and such other information about the agents as the Secretary may require, and the list must be made available on request to any appropriate law enforcement agency. See 31 U.S.C. 5330(c)(1). Second, the Secretary is to establish by regulation, on the basis of such criteria as the Secretary deems appropriate, a threshold point for treating an agent of a money services business as itself a money services business for purposes of section 5330.

Section 5330 prescribes a civil penalty for any person who fails to comply with any requirement of 31 U.S.C. 5330 or the regulations thereunder. The penalty is $5,000 for each violation; each day a violation of 31 U.S.C. 5330 or the regulations thereunder continues constitutes a separate violation. 31 U.S.C. 5330(e). A failure to comply with 31 U.S.C. 5330 or the regulations under section 5330 may also result in a criminal penalty under 18 U.S.C. 1960.

Under section 5330, a money services business must be registered not later than the end of the 180-day period beginning on the later of the date of enactment of the Money Laundering Suppression Act of 1994 (September 23, 1994), and the date on which the business is established. 31 U.S.C. 5330(a). On May 18, 1995, FinCEN issued a notice explaining that regulations prescribing the form and manner of registration would not require initial registration of money services businesses before the 90th day following the effective date of the implementing regulations. FinCEN Notice 95–1. The notice further explained that no penalty or other compliance sanction would be imposed under the provisions of the Bank Secrecy Act on account of the failure of any money services business to register before the last date for initial registration specified by the implementing regulation.

II. Money Services Businesses—General

The rulemaking of which this final rule is a part deals with a number of aspects of the application of the Bank Secrecy Act to money services businesses. In conducting the rulemaking, FinCEN and the Department of the Treasury are not only following the mandate of Congress in the Money Laundering Suppression Act and the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550, but are more generally responding to the need to update and more carefully tailor the application of the Bank Secrecy Act to a major, if little understood, part of the financial sector in the United States.[4]

The term "money services business" refers to five distinctive types of financial services providers: currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or stored value; and money transmitters. (The five types of financial services are complementary and are often provided together at a common location.) These businesses are quite numerous; based on a study performed for FinCEN by Coopers & Lybrand LLP (now a part of PriceWaterhouse Coopers LLP), they comprise approximately 158,000[5] outlets or selling locations, and provide financial services involving approximately $200 billion annually. To some significant extent, the customer base for such businesses lies in that part of the population that does not use traditional financial institutions, primarily banks.

Money services businesses, like banks, can be large or small. It is estimated that approximately eight business enterprises account for the bulk of money services business financial products (that is, money transmissions, money orders, traveler's checks, and check cashing and currency exchange availability) sold within the United States, and also account, through systems of agents, for the bulk of locations at which these financial products are sold. Members of this first group include large firms, with significant capitalization, that are publicly traded on major securities exchanges.

A far larger group of (on average) far smaller enterprises competes with the eight largest firms in a highly bifurcated market for money services. In some cases, these small enterprises are based in one location with two to four employees. Moreover, the members of this second group may provide both financial services and unrelated products or services to the same sets of customers.[6] Far less is known about this

---

[2] Although the statutory term is "money transmitting business," FinCEN has decided to use the term "money services business" in this rule. *See* footnote 1, *supra*.

[3] The term "money transmitting service" includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network. 31 U.S.C. 5330(d)(2).

[4] The Congress has long-recognized the need generally to address problems of abuse by money launderers of "non-bank" financial institutions. *See, e.g.*, Permanent Subcommittee on Investigations, Senate Comm. on Governmental Affairs, Current Trends in Money Laundering, S. Rep. No. 123, 102d Cong., 2d Sess. (1992).

[5] The number does not include Post Offices (which sell money orders and other money services business financial products), participants in stored value product trials, or sellers of various stored value or smart cards in use in, *e.g.*, public transportation systems.

[6] Members of the second group may include, for example, a travel agency, courier service, convenience store, grocery or liquor store.

second tier of firms than about the major providers of money service products.[7]

Because money services businesses primarily serve individuals, they have grown to provide a set of financial products, albeit in large part for non-depository customers, that others look to banks to provide. For example, a money services business customer who receives a paycheck can take his or her check to a check casher to have it converted to cash. He or she can then purchase money orders to pay his or her bills. Finally, he or she may choose to send funds to relatives abroad, using the services of a money transmitter.

III. Notice of Proposed Rulemaking

On May 21, 1997, FinCEN published a notice of proposed rulemaking, 62 FR 27890—27900 (the "Notice"), that described several proposed changes to the Bank Secrecy Act rules of the Department of the Treasury. First, the Notice proposed amendment of 31 CFR 103.11 to revise definitions of certain non-bank financial services businesses that had been treated as financial institutions for purposes of the Bank Secrecy Act (or in the case of stored value, to add a definition of a product whose issuers, sellers, and redeemers would be so treated) and to group the revised and new definitions together under the heading money services business; the businesses involved generally provide check cashing, currency exchange, or money transmitting services, or issue, sell, or redeem money orders, traveler's checks, or other similar instruments. Second, the Notice proposed the addition to 31 CFR part 103 of a set of new rules to require certain money services businesses to register with the Department of the Treasury and, as part of the registration requirement, to maintain a current list of their agents in a central location for examination by appropriate law enforcement agencies.[8]

The rules proposed in this portion of the Notice were designed to implement the terms of 31 U.S.C. 5330.

The Notice was one of three notices of proposed rulemaking dealing with money services businesses issued on May 21, 1997. The second notice, 62 FR 27900—27909, proposed to amend the Bank Secrecy Act rules to require money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks, to report suspicious transactions to the Department of the Treasury. The third notice, 62 FR 27909–27917, proposed to add a special currency transaction reporting requirement—and related customer verification requirements—for money transmitters involved in the transmission or other transfer of funds to persons outside of the United States.

The proposed rules were designed as part of a coordinated approach to dealing with abuse of money services businesses by criminals and to strengthening the application of general Bank Secrecy Act concepts to this part of the nation's payment system. The decision to deal with each rule separately, rather than finalizing the rules as a group, reflects a number of practical and policy considerations, most importantly the desire to allow time for the construction of the necessary administrative and compliance structures by both the Department of the Treasury and the money services businesses subject to the rules. As indicated in greater detail below, following the Section-by-Section Analysis, the Department of the Treasury is planning next to issue the rule relating to the reporting of suspicious transactions, and will be working with interested parties, independently of the rulemaking itself, to advance the preparation of guidance about particular patterns of suspicious activity of which money services businesses must be aware.

FinCEN held five public meetings during the summer of 1997, in order to provide interested parties with the opportunity to present their views about the potential effects of the three proposed regulations, as well as to provide FinCEN with additional information useful in preparing the final rule.[9] Transcripts of these meetings were then made available by FinCEN to requesting parties.

The first of the five meetings, which was held in Vienna, Virginia, dealt particularly with issues raised by the Notice, and the San Jose, California, meeting dealt with the Notice's treatment of stored value. The final meeting, also held in Vienna, Virginia, dealt with the details of the various prototype compliance forms designed in connection with the issuance of both the Notice and the two related notices of proposed rulemaking and produced further discussion of the money services business registration requirements.

The comment period for the three notices of proposed rulemaking originally ended on August 19, 1997, but it was extended to September 30, 1997, by a notice published on July 30, 1997 (62 FR 40779). FinCEN received a total of 82 comment letters on the three notices of proposed rulemaking; 60 comment letters dealt in whole or in part with issues raised by the Notice. Of these, 17 were submitted by money services businesses and their affiliates, 11 by banks or bank holding companies, 17 by financial institution trade associations, 5 by law firms, 5 by agencies of the United States government, 2 by credit unions, and 3 by private individuals.

IV. Summary of Comments and Revisions

A. Introduction

The format of the final rule is generally consistent with the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

Definitions

- The definition of money services business has been revised to exclude from treatment as money services businesses for any purpose banks and persons registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.
- The definition of money transmitter has been revised to make plain that the activity that makes one a money transmitter must be carried on as a business and to provide a general limitation to the definition.
- The dollar thresholds for treatment of persons as money services businesses on account of activities related to check cashing, currency exchange, and money order, traveler's checks, and stored value transactions has been raised from $500 to $1,000.

---

[7] For example, according to the Coopers & Lybrand study, at the time of that study, two money transmitters and two traveler's check issuers made up approximately 97 per cent of their respective known markets for non-bank money services. Three enterprises made up approximately 88 per cent of the $100 billion in money orders sold annually (through approximately 146,000 locations). The retail foreign currency exchange sector was found by Coopers & Lybrand to be somewhat less concentrated, with the top two non-bank market participants accounting for 40 per cent of a known market that accounts for $10 billion. Check cashing is the least concentrated of the business sectors; the two largest non-bank check cashing businesses make up approximately 20 per cent of the market, with a large number of competitors.

[8] The Notice proposed to place section 103.41 in a new subpart D, Special Rules for Money Services Businesses, of Part 103, and to redesignate existing subparts D through F as subparts E through G of Part 103. The sections in redesignated subparts E through G were to be redesignated to reflect the addition of new subpart D, and corresponding changes were to be made to the references to such redesignated sections in other portions of part 103.

[9] These public meetings were held in Vienna, Virginia, on July 22, 1997; New York, New York, on July 28, 1997; San Jose, California, on August 1, 1997; Chicago, Illinois, on August 15, 1997; and Vienna, Virginia, on September 3, 1997.

Registration

- Registration will not be required prior to December 31, 2001.
- Persons are excluded from the registration requirements to the extent that they are issuers, sellers, or redeemers of stored value products.[10]
- The requirement that agents whose gross transaction amount exceeds $50,000 for any month must register has been eliminated; registration by a person that is a money services business solely because that person serves as an agent of another money services business is indefinitely deferred.
- The agent list maintained by each money services business that offers its products of services through agents must include an indication of each month in the preceding 12 months in which the gross transaction amount of an agent exceeded $100,000.
- A money services business is not required to keep records required by section 103.41 in a centralized location so long as the records are maintained in the United States and are readily available at the request of FinCEN or any appropriate law enforcement agency; the agent list, however, must be maintained in a central location in the United States.
- Certain publicly traded businesses are not required to re-register before the end of their renewal period when there is a 10-per cent or more change in the ownership of such businesses.
- Agent lists must be updated annually, as of January 1 of each year, rather than quarterly.
- For any agent that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000, the agent list need not include information about the year in which the agent first became an agent and the agent's branches or subagents, but such information must be readily available at the request of FinCEN or any appropriate law enforcement agency.
- The effective date of the registration rule is September 20, 1999; the initial registration must be filed, by December 31, 2001, and the initial agent list must be prepared by January 1, 2002.

B. Comments on the Notice—Overview and General Issues

Definitions

Comments on the proposed changes to the Bank Secrecy Act definitions relating to money services businesses concentrated on five matters: (i) The relationship between the general Bank Secrecy Act definitions and the language of 31 U.S.C. 5330(d)(1) and (2), defining the businesses required to register as money services businesses; (ii) whether the Notice properly invoked the authority required for a change in the general Bank Secrecy Act definitions; (iii) the proposed inclusion of businesses issuing, selling, or redeeming stored value within the definition of "financial institution" for Bank Secrecy Act purposes; (iv) the treatment under the Notice of financial businesses subject to other federal regulatory systems; and (v) the application of the money services business definition to various kinds of businesses whose activities include the transmission of funds.[11]

1. *Relationship between 31 U.S.C. 5312 and 31 U.S.C. 5330.* Several commenters argued that the Department of the Treasury mistakenly relied upon the terms of 31 U.S.C. 5330, in seeking to revise the definition of financial institution, as part of proposed 31 CFR 103.11(uu). These commenters asserted that the Notice reflected a misunderstanding of the relationship of the general Bank Secrecy Act definitional provision, 31 U.S.C. 5312, and the registration provisions. In their view, the definition of the sorts of businesses required to be registered under 31 U.S.C. 5330 bore no relationship to the definition of the "financial institutions" covered by the remainder of the Bank Secrecy Act, and the designation of registrable businesses in 31 U.S.C. 5330 provides no independent authority for making such businesses otherwise subject to the Bank Secrecy Act. In support of this argument, the commenters cited the language at the beginning of 31 U.S.C. 5330(d) that the definitions of a money transmitting business and money transmitting service apply "[f]or purposes of this section." In addition, they cited the requirement that the definition be limited only to a business that "is required to file reports under [31 U.S.C.] section 5313." Thus, according to the commenters, the broad definitional language in section 5330 cannot be used to define a financial institution for a Bank Secrecy Act purpose other than registration. This language further suggests, according to the commenters, that the class of registrable money services businesses is necessarily larger than the class of money services businesses that were both registrable and otherwise subject to the Bank Secrecy Act's reporting and recordkeeping rules.

FinCEN believes that this argument misperceives both the relationship of the registration provisions to the remainder of the Bank Secrecy Act and the basis for the redefinition of money services business proposed in the Notice. In enacting 31 U.S.C. 5330, Congress made a direct finding that:

> Money transmitting businesses are subject to the recordkeeping and reporting requirements of subchapter II of chapter 53 of title 31. * * * Section 408(a)(1)(A) of the Money Laundering Suppression Act, 31 U.S.C. 5330 (Note).

Thus, Congress assumed that the sorts of businesses for which it was requiring registration were precisely the sorts that would be (and indeed that were already) subject to the Bank Secrecy Act's rules. FinCEN therefore believes that Congress intended the definition of money transmitting business to describe that class of enterprises that were both financial institutions and required to register as money transmitting services (or money services businesses) and that the harmonized definitions could not be read to include any businesses that were not otherwise eligible for treatment as financial institutions under 31 U.S.C. 5311. The purpose of the changes to the definitions of financial institution was, in accordance with this understanding of Congress' intent and as stated in the Notice (62 FR 27890 and 27891), to harmonize the two sets of rules by modernizing the definitions of money transmitter and the other terms included as components in the new money services business subcategory of the general definition of "financial institution."

While the final definition of money transmitter tracks to some extent the language used in 31 U.S.C. 5330, this in no way indicates a reliance upon that section for authority, but instead indicates the Department of the Treasury's desire to follow Congress' lead in construing the term "money transmitter" in a way that reflects technological advances, and the need to adapt the application of the Bank Secrecy Act to the continually evolving nature of the industry that comprehends "financial institutions."

31 U.S.C. 5312 does provide such authority, there is every reason for the definitions to be the same, and the language of the preamble to the Notice, although not perhaps ideal, was sufficient to put the public on notice

[10] Although the final rule expressly excludes redeemers of stored value products, it should be noted that as with redeemers of traveler's checks and money orders, FinCEN did not intend that the Notice would apply to redeemers of stored value products to the extent the products are taken in exchange for goods or general services.

[11] A related issue, whether and the extent to which it was necessary to define the term "agent" as used both in the definition of money services business and the registration provisions, is discussed below.

that both matters were at issue in the rulemaking.

2. *Authority for Revisions to the Definition of Financial Institution.* Commenters argued that the Notice gave insufficient indication that a general exercise of Treasury's authority to define financial institution for purposes of the Bank Secrecy Act in proposing 31 CFR 103.11(uu) was a subject of the rulemaking. They also argued that no findings had been made, or suggested by the Notice, that the changes were required to fight money laundering, and that there was no basis in the record in any event for such findings.

Combining the new registration requirements with the rewriting of provisions of the financial institution definition in a single document may have led to a misunderstanding of the reasons or basis for the definitional changes. However, as indicated above, FinCEN believes that the Notice made it clear that the revision of existing Bank Secrecy Act definitions involved in the components of money services business was proposed under the authority of 31 U.S.C. 5312 and for all purposes of the Bank Secrecy Act. See 62 FR 27890, 27893, and 27897.

In addition, the changes made to the definitions, with the exception of the addition of "stored value," discussed separately below, merely clarified the scope of the coverage already inherent in the existing language of the Bank Secrecy Act definitions. For example, the definition of money transmitter contained in 31 CFR 103.11(n)(5) (revised as of July 1, 1999), which section 103.11(uu)(5) of the final rule will replace, stated that the term financial institution included:

> (5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds.

In adopting the revised definition, FinCEN is clarifying the meaning of the term "person engaged in the business of transmitting funds" within the scope of the interpretive range of the existing language of the rule; in that context, adoption of the language provided by the Congress in the registration provisions is appropriate—if not mandated—in light of the Congress' view that it was itself simply explicating the scope of the existing regulatory language in requiring registration of certain types of financial institutions. Treasury, indeed, explicitly sought (and received) comments on whether "it is necessary or appropriate specifically to exclude certain activities from the scope of registration of money services businesses (and perhaps as well from the definition of money transmitter for purposes of the Bank Secrecy Act regulations generally)." 62 FR 27893.

Other commenters argued that the definitional changes could not be made in any event without specific findings showing that the changes were required to fight money laundering. The purposes of the Bank Secrecy Act are not so narrowly set. The statute is aimed at assuring the maintenance of records constituting a financial trail, and the reporting of certain transactions, in each case because the records and reports "have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings." The Congressional findings underlying the money services business registration rules adopt the same objective.[12]

3. *Stored Value.* The final rule continues to treat "stored value" as a financial instrument whose issuers and sellers are financial institutions for purposes of the Bank Secrecy Act. However, the final rule revises the Notice to exempt stored value issuers and sellers from any money services business registration obligation. Under the circumstances, the only immediate consequence of the rule will be to make clear that currency transactions in excess of $10,000 by stored value issuers and sellers require reporting under the Bank Secrecy Act (rather than under section 6050I of the Internal Revenue Code) and that businesses that participate as financial intermediaries in transactions in which stored value is transferred electronically may, if otherwise covered, be subject to the rules requiring the maintenance of records for funds transfers of $3,000 or more.

This limited treatment of stored value—which frees the industry from registration requirements to which issuers and sellers of money orders and traveler's checks will be subject—eliminates the "chilling effect" on the technology industry to which commenters objected. The limited step that is being taken should create certainty as to the outlines of the Bank Secrecy Act's application to electronic funds equivalents, while allowing further development prior to any rulemaking that deals with more specific issues such as, for example, exemptions for "closed system" or small denomination stored value devices or the terms for possible tailored application of the registration or other Bank Secrecy Act requirements to aspects of these emerging payment products.

4. *Other Regulated Financial Businesses.* A number of commenters argued that the final rule should eliminate any possible application to other classes of financial institutions, of rules aimed at money services businesses; the argument was made by banks, securities businesses subject to the jurisdiction of the Securities and Exchange Commission, and futures commission merchants and other businesses regulated by the Commodity Futures Trading Commission. (Banks and brokers and dealers in securities are, of course, already subject to the Bank Secrecy Act.)

Congress characterized money services businesses as "largely unregulated," and FinCEN believes that Congress generally did not find a need for the money services business regime under the Bank Secrecy Act to extend to other federally regulated financial services providers. Accordingly, under the final rule, depository institutions, or securities brokers and dealer, futures commission merchants, or other persons registered with and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission are explicitly excluded from the money services business definition. (For further discussion, see "Section-by-Section Analysis," below.)

5. *Application of Money Transmitter Definition to Other Businesses Whose Activities Include Transmission of Funds.* A number of commenters sought clarification of the definition of money transmitter and objected to any interpretation of the definition that would cause to be classed as money transmitters particular businesses that simply transmit funds as part of their other business activities. Commenters raising such issues included, for example, operators of hedge funds and public and private investment companies, representatives of financial professionals, persons involved in real estate closing activities, bank credit card systems, clearing corporations and associations, insurance companies, and bank holding companies and subsidiaries. All of these commenters sought assurance that their businesses could not fall within the definition of money transmitter in the Notice.

FinCEN agrees that the breadth of the definition of money transmitter proposed in the Notice requires limitation to avoid both unnecessary

[12] Information about the identity and ownership of money services businesses "would have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings"; the registration requirement will assist federal and other law enforcement and supervisory authorities "to effectively enforce the criminal tax, [sic] and regulatory laws and prevent such money services businesses from engaging in illegal activities." *See* section 408(a)(1)(C) and (a)(2) of the Money Laundering Suppression Act, 31 U.S.C. 5330 (Note).

burden and the extension of the Bank Secrecy Act to businesses whose money transmission activities either do not involve significant intermediation or are ancillary to the completion of other transactions. But the varieties of methods by which funds are transmitted and remitted by persons performing the function of financial intermediary for that purpose, as well as the pace of financial change, make any rigid definition both impossible and inadvisable. Ultimately, the question of whether a particular person is in the "business" of transmitting funds is a question of facts and circumstances. The final rule attempts to respond to the comments, as described in more detail below, by providing a limitation on the scope of the definition to make clear that the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission or transfer, for example, a bona fide sale of securities or other property, will not cause a person to be a money transmitter for purposes of the Bank Secrecy Act.

Registration

Comments on the proposed registration requirements concentrated on four matters: (i) exclusions from those requirements, (ii) agent registration, (iii) registration procedures, and (iv) the content and terms of the agent list.

1. *Exclusions from the Registration Requirements.* The Notice excluded the following persons from the registration requirements: the United States Postal Service, depository institutions (as defined in 31 U.S.C. 5313(g)), the United States, a State or political subdivision of a State, or a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission. In response to a specific request for comment in the preamble to the Notice, FinCEN received comments suggesting that other persons should be excluded from the registration requirements.

A number of commenters asked that issuers, sellers, or redeemers of stored value products be so excluded. Those commenters were concerned that the application of the registration requirements to issuers of stored value products would cause the issuers to defer the development of such products, or limit their design in commercially undesirable ways simply in order to avoid the registration requirements. They were also concerned that businesses that might otherwise wish to sell or redeem stored value products would not do so if they might be required to comply with the registration requirements, and that the manner in which the new products would be marketed was not sufficiently settled to permit the design of a reasonable registration system.

Some commenters, however, agreed with the inclusion of businesses engaged in issuing or selling stored value products within the scope of the registration requirements. In general, these commenters believed it was appropriate to subject non-bank providers of electronic payment systems to Bank Secrecy Act requirements in order to treat purveyors of competing financial services in the same manner.

The final rule excludes issuers, sellers, or redeemers of stored value products from the registration requirements. Although the final rule expressly excludes redeemers of stored value products, it should be noted that as with redeemers of traveler's checks and money orders, FinCEN did not intend that the Notice would apply to redeemers of stored value products to the extent the products are taken in exchange for goods or general services.

One commenter recommended that a money services business should not be required to register if it would qualify as an exempt person under the currency transaction reporting rules (31 CFR 103.22(d)). The final rule does not adopt this suggestion. The suggestion would exclude from registration, and consequently the agent list requirement, publicly traded money services businesses that could qualify as exempt persons under 31 CFR 103.22(d). Because these publicly traded money services businesses operate through extensive networks of agents, which may not be exempt from currency transaction reporting, the suggestion would seriously limit information about agents of money services businesses.

Several commenters were concerned that because some credit unions provide money transmitting services to their customers, and some banks might be acting as agents of a money services business, these depository institutions could be subject to the registration rules in § 103.41. The commenters asked for clarification that banks and credit unions are not required to be registered. Paragraph (a)(1) of § 103.41 of the Notice provided that the section did not apply to depository institutions. The final rule goes further and expressly excepts banks from the definition of money services business so that the sentence in proposed paragraph (a)(1) relating to depository institutions is no longer necessary. Under the final rule, all of section 103.41 is inapplicable to depository institutions such as banks and credit unions.

Several commenters asked that non-bank affiliates and subsidiaries of banks be excluded from the registration requirements.[13] One commenter argued that because these companies are subject to regulation by the Federal Reserve Board under the Bank Holding Company Act, they should be excluded. Another commenter recommended excluding a bank's non-bank affiliates and subsidiaries if they can demonstrate that they have some type of Bank Secrecy Act compliance program in place.

The Bank Secrecy Act rules, in general, do not adopt a consolidated group approach to determining whether a company is or is not subject to particular Bank Secrecy Act provisions. That is, the Bank Secrecy Act rules do not look to the status of a parent company in a bank holding company group for the purpose of determining what rules a company owned by the parent must apply. For example, the Bank Secrecy Act regulations do not generally treat non-bank subsidiaries as falling within the definition of bank for purposes of the Bank Secrecy Act regulations. Thus, the final rule continues to require non-bank affiliates and subsidiaries to register and maintain a list of their agents.

One commenter suggested that issuers of monetary instruments that are sold only through banks should be excluded from the registration requirements. In light of 31 CFR 103.29, which requires banks to keep records of certain transactions, the commenter believed there would be little informational value gained by requiring such issuers to register. The final rule does not adopt this suggestion. The registration requirements are designed to create a comprehensive picture of money services businesses, which will provide law enforcement agencies with information either currently not available or not available in an accessible format. Excluding an issuer whose products are sold exclusively through banks would eliminate information about a segment of this industry.

One commenter questioned the sufficiency of the rulemaking record

[13] The preamble to the Notice clarified that if a bank has a non-bank subsidiary or affiliate (e.g. a brother-sister subsidiary owned by the bank's holding company) that itself engages in a money services business (or a broker-dealer has a non-broker-dealer affiliate that engages in a money services business), the affiliate must register even though the bank (or broker-dealer) is not required to register.

with respect to the registration of check cashers. According to the commenter, nothing in the record, including the New York enforcement operations and geographic targeting orders discussed in the May 21, 1997 notices of proposed rulemaking, supports the proposition that the check cashing function has been or is being abused by the illicit drug industry and criminal money laundering. The comment fails to take into account the fact that Congress specifically included check cashers among those businesses that are required to register with the Department of the Treasury when it enacted 31 U.S.C. 5330.

A commenter also recommended that check cashers should not be required to register if they engage in other money services business activities, for example, money transmitting, as an agent for others. The commenter indicated that approximately 90 per cent of check cashers are also agents for money transmitters and would be included on the agent lists of the transmitters. The final rule does not adopt this recommendation. Section 5330 does not contemplate that businesses that conduct money services activities on their own behalf will be excluded from registration simply because they also act as agents for other money services businesses.

One commenter suggested that, in the future, "wire transmitters" should be exempt from state registration requirements if the transmitters comply with federal registration requirements. FinCEN is interested in sharing information, and otherwise coordinating with, state regulators to reduce administrative burden, but 31 U.S.C. 5330(a)(3) states that the federal registration requirements "shall not be construed as superseding any requirement of State law relating to money [services] businesses operating in such State."

2. *Agent Registration.* Commenters raised a number of issues about agent registration. Most of the comments sought a clarification of the meaning of the term "agent," sought an increase in the dollar amount of the registration threshold, and questioned the need for agent registration.

The Notice did not contain a specific definition of the term "agent" for purposes of the money services business registration rules, including the requirement that a list of agents be maintained by each money services business as part of its registration requirement. Instead the Notice spoke simply of "agents." Commenters recommended that the term "agent" be defined or that the term be replaced with a more neutral term such as selling outlet. A number of commenters argued that they did not believe that the terms of the contracts under which they authorize persons to sell their money services products should be read to treat those persons as agents.

FinCEN believes that the relationship between issuers or service providers and persons at the point of sale for particular products is governed by the law of agency, and that in most (if not all) cases the businesses at which these products or services are sold to the public are non-servant agents of the issuers or service providers [14]; thus, such businesses must be included on the agent lists required to be maintained with respect to "agents" by 31 U.S.C. 5330(c)(1)(A). As indicated elsewhere in this preamble, Congress's use of the term "agent" in 31 U.S.C. 5330 indicates a similar understanding. Thus, it is expected that a money services business will include on the agent list any businesses it authorizes to sell its money services or money products.

The bulk of the comments on the registration requirement concerned the registration of businesses whose status as money services businesses derived solely from the fact that they sold products or services issued or performed by others. The Notice had required independent registration of such agent businesses if the volume of money services products or services sold or performed through such businesses was $50,000 in any month.

Commenters questioned the level of the proposed registration threshold. Most of these commenters believed that the threshold was too low and recommended increasing the threshold to at least $100,000 a month or preferably $500,000 a month (or $500,000 a month, annualized). One commenter, however, recommended lowering the threshold to $25,000 a month or even zero. Another commenter suggested that a threshold based on an annual rather than a monthly amount would be less likely to cause agents to meet the threshold because of seasonal or holiday sales. As explained below, the final rule defers agent registration and thus eliminates the registration threshold.

[14] Of course, in cases in which the products or services are offered at branches of the issuers or providers, the individuals involved are likely servants of the issuers or providers. (It has long been clear that an "agent" of a financial institution is itself a financial institution. *See*, 31 CFR 103.11(n).) FinCEN is aware of few, if any, claims prior to the issuance of the Notice, that the language in section 103.11(n) does not fully comprehend businesses at which money services products were sold to the public.

Commenters argued that because a money services business includes information about its agents on its agent list, no agent should be required to register independently with Treasury. Instead, several of these commenters argued, a money services business should register its agents with Treasury, or as one commenter suggested, should simply submit its agent lists to the Treasury Department.

This registration requirement for agents reflected the terms of 31 U.S.C. 5330(c)(2). That paragraph states that:

> The Secretary of the Treasury shall prescribe regulations establishing, on the basis of such criteria as the Secretary determines to be appropriate, a threshold point for treating an agent of a money transmitting business as a money transmitting business for purposes of [section 5330].

The mandate to require registration of "large agents" was tempered both by the grant to the Secretary of discretion to fix the criteria defining registrable agents, and by a Congressional statement, in the Conference Report accompanying the bill, that:

> The intent of the Conferees is to eliminate the need for all agents of money transmitting businesses to register with the Secretary. Such massive registration of thousands of agents would only create another needless and costly administrative burden. This legislation is designed to reduce unnecessary paperwork, not create additional administrative burdens for law enforcement.

The statute's agent registration requirement permits the identification of significant points for the movement of funds into the financial system, especially points at which one or more money services business products or services are grouped together (as, for example, in so-called "giro houses"). But selecting criteria that will further that objective in a cost efficient manner is difficult at best. Money services business volume levels are unlikely to be uniform throughout the nation, and even within particular areas variations can reflect the size of an agent's other business rather than any absolute variation from a theoretical norm.

Rather than attempting to set criteria on the basis of imperfect knowledge, the Department of the Treasury has decided to defer any implementation of the agent registration provisions. Instead, money services businesses are asked simply to note on the agent lists they are required to maintain the months in the preceding twelve month period in which every agent generated a volume of money services business products of more than $100,000.

Thus, under the final rule, a firm that is a money services business solely

because it offers products or services on behalf of another money services business need not now register with the Department of the Treasury. It should be noted that a firm that both offers products or services on behalf of another money services business and in addition offers its own money services products or services (that is, exchanges currency, cashes checks, or transmits funds for customers through channels or mechanisms of its own) is required independently to register under this rule (and, to the extent that it is an agent, must be carried on the agent list of another money services business as well).

3. *Registration Procedures.* The Notice set forth the general requirement to register a money services business and to report on the registration form the information required by section 5330(b) and any other information required by the form. In the preamble to the Notice, FinCEN noted its understanding that information required to be included on the registration form (and on the agent list) might include privileged and confidential trade secrets, commercial, and financial information. FinCEN also explained that while Congress affirmed in the legislative history that confidential proprietary or trade secret information provided by registrants may be disclosed only subject to applicable law, Congress anticipated that certain information derived from the registration material would be made available to the public, but in a manner that balances the need to protect confidential business information and the need for the public to have access to information about businesses on which the public relies. H.R. Conf. Rep. No. 652, 103 Cong., 2d Sess. 192–93 (1994). FinCEN specifically invited comment on how to make certain information provided by registrants available to the public without revealing confidential business information.

Several commenters expressed concerns about the need, for competitive reasons, to avoid disclosure to the public of confidential information on the registration form or agent list, particularly information about business volume and the dollar size of transactions. FinCEN will not release confidential information on the registration form or agent list except as required or permitted by law. Moreover, before FinCEN releases any other information that may be included on the registration form or agent list, FinCEN will work with money services businesses to establish specific procedures for release of such information to the public. FinCEN anticipates that such procedures would exclude the release of information (other than perhaps limited statistical information) about agents of money services businesses.

4. *Agent List.* Most of the commenters addressing the agent list requirement recommended that a money services business be permitted to provide less information than the Notice required. The commenters argued that information not now on agent lists prepared for state licensing purposes—especially information about the year in which an agent first became an agent and about the agent's transaction accounts—would be difficult to provide. The commenters indicated they would either have to compile the rest of the information from other records (which might not be in electronic format, or in a format, electronic or otherwise, that was easily retrievable) or request the necessary information from their agents. Some commenters suggested that money services businesses be permitted to provide all the requested information prospectively rather than trying to gather the information for existing agents. Alternatively, commenters suggested that the information required to be included on the agent list should be limited to the same information that a money services business must provide about its agents for state licensing purposes. Generally this information includes only the name of the agent, the agent's locations, and the services the agent provides.[15]

The final rule continues generally to require that the information requested by the Notice must be included on the agent list. In response to the comments, however, the final rule provides that with respect to any agent that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000, the list need not include information about the year in which the agent first became an agent and the agent's branches or subagents. Such information must be made available, however, upon the request of FinCEN or any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). With respect to any agent that becomes an agent on or after the first day of the month beginning after February 16, 2000, the list must include all of the requested information, including the date the agent first becomes an agent and the agent's branches or subagents.

As indicated above, one additional element is added to the information required to be included in the agent list. That element is the notation of each month in the 12-month period immediately preceding January 1, 2002, and each January 1 thereafter, in which the gross transaction amount of the agent's sale of products or services offered by the money services business maintaining the list exceeded $100,000. Setting the requirement at $100,000 generally limits it to agents doing more than $1 million of money services business transactions annually, is an amount suggested in the comments as a threshold for agent registration, and gives knowledge about agent volume which can be evaluated to determine whether the implementation of agent registration should continue to be deferred. That requirement is prospective, does not take effect for at least 18 months, and involves a single recordkeeping threshold. Moreover, the requirement involves only information that must flow to each money services business in the performance of its normal business functions, and the addition of this element to the agent list derives from the elimination from the rule of the most heavily criticized element of the original proposal, the agent registration requirement.

V. Section-by-Section Analysis

A. 103.11—Meaning of Terms

1. 31 CFR 103.11(c)(7)—Definition of "Bank"

One component of the definition of "bank" in 31 CFR 103.11(c) speaks of "[a]ny other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State." In many states, various money services businesses are licensed or examined by state banking departments. In order to avoid any confusion about the interaction of the "bank" and "money services business" definitions, the phrase "(except a money services business)" has been added to 31 CFR 103.11(c)(7).

2. 31 CFR 103.11(n)(3)—Definition of Financial Institution to Include "Money Services Business"

The final rule retains the addition of a new category called "money services

[15] More than one commenter argued that requiring the information requested on the agent list exceeds FinCEN's authority under 31 U.S.C. 5330. According to the commenters, FinCEN may ask for the agent's name and address only. Although section 5330 specifically requires the agent's name and address, the section does not constrain FinCEN's authority in the manner suggested by the commenters. Section 5330 authorizes FinCEN to request, in addition to the name and address, "such other information about such agents as the Secretary may require." 31 U.S.C. 5330(c)(1)(A).

business" to the definition of financial institution. The new category includes the financial institutions previously defined at 31 CFR 103.11(n)(3), (4), (5), and (10), and will permit these institutions to be referred to, when necessary, by one convenient term. FinCEN believes this restructuring of the definition of financial institution will clarify, and facilitate flexibility in the administration of, the Bank Secrecy Act regulations. (As a result of this restructuring, 31 CFR 103.11(n)(4), (5), and (10) will be deleted, and 31 CFR 103.11(n)(6), (7), (8) and (9) will be redesignated as 31 CFR 103.11(n)(4), (5), (6) and (7)).

3. 31 CFR 103.11(uu)—Definition of Money Services Business

This section defines money services business. The term includes each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in (1)–(6) below. (It should be noted that only one registration form per money services business is required.)

Regulated Businesses. The definition of "money services business" excludes persons registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission. This provision excludes from the new regulatory structure for money services businesses the financial services businesses regulated by those agencies. The exclusion from the definition does not apply to issuers whose securities offerings are registered with the SEC under the Securities Act of 1933 or companies whose securities are registered with the Commission under the Securities Exchange Act of 1934. The companies themselves are not registered with the SEC, and these entities are not intended to be excluded from the rule's definition of money services businesses because the Commission neither regulates nor examines the business activities of those companies. Instead, it establishes, by regulation, disclosure, accounting, and other related standards for them. Accordingly, businesses that engage in the activities described in 31 CFR 103.11(uu) are not excluded from the definition merely because their shares are publicly held and registered with the SEC.

Several commenters asked that any exemption for depository institutions or other regulated businesses be extended to holding companies or subsidiaries of those businesses—for example to bank holding companies or bank operating subsidiaries. As explained in greater detail at "Exclusion from the Registration Requirement" above, the Bank Secrecy Act rules at present operate on an individual entity rather than a consolidated group basis; so long as that is so, each corporation in a controlled group must be analyzed separately to determine its characterization under the Bank Secrecy Act and its rules.

Thresholds. The Notice contained a threshold of $500 for any person any day at or below which a business otherwise included within the definition of a currency dealer or exchanger, a check casher, or an issuer, seller, or redeemer of money orders, traveler's checks or stored value would not be a money services business. In the final rule that threshold has been raised in each case to $1,000 for any person any day in one or more transactions.

The addition of explicit floors in the definitions relating to currency exchange and check cashing businesses is an attempt to eliminate from Bank Secrecy Act treatment those businesses, such as grocery stores and hotels, that cash checks or exchange currency as an accommodation to customers who are otherwise purchasing goods, services, or lodging from the businesses involved. (Of course, currency exchange and check cashing businesses that exceed the threshold become subject to the general Bank Secrecy Act reporting and recordkeeping requirements if the amounts involved are sufficiently high to implicate particular reporting or recordkeeping thresholds, for example, the $10,000 threshold for currency transaction reporting.)

In determining whether the $1,000 definitional floor is met in the case of a particular definition, different money services provided by the same business are not aggregated. Thus, for example, a hotel that in fact limits its check cashing services to $650 for a customer on any day and in fact limits its currency exchange services to $600 for a customer on any day does not meet the $1,000 definitional floor for check cashers or for currency exchangers.

(1) *Currency dealer or exchanger.* The definition of currency dealer or exchanger is unchanged, other than for the increase of the $500 threshold to $1,000. The Notice invited comment on whether the old definition of currency dealer or exchanger appearing at 31 CFR 103.11(i) was still necessary in light of the carve out of banks from the recordkeeping requirements of 31 CFR 103.37. In response to comments, that definition is removed from 31 CFR 103.11(i), but the language of the recordkeeping rules of 31 CFR 103.37 is being amended specifically to exclude banks that offer services in dealing or exchanging currency to their customers as an adjunct to their regular services.

(2) *Check casher.* The definition of check casher is also unchanged, other than for the increase of the $500 threshold to $1,000. Several commenters suggested that the threshold should be lowered rather than raised; however, the registration of businesses that only cash checks, especially those that do so as an accommodation for customers and then in an amount of $1,000 or less per day, is not necessary at this time to accomplish the Congressional intent behind section 5330.

(3) *Issuer of traveler's checks, money orders, or stored value.* The definition of issuer of traveler's checks or money orders or stored value is also unchanged other than for the increase of the $500 threshold to $1,000.[16]

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* The definition of seller or redeemer of traveler's checks or money orders or stored value is also unchanged other than for the increase of the $500 threshold to $1,000.

The $1,000 floor in 31 CFR 103.11(uu)(4) replaces the definitional floor (of $150,000 sold in instruments per 30-day period) for selling agents in 31 CFR 103.11(n)(4). The $150,000 limitation produces a great deal of unnecessary complexity (dealing with the movement of particular businesses into or out of the scope of the Bank Secrecy Act) and does not, in FinCEN's view, any longer provide a meaningful threshold for distinguishing between businesses that ought to, or that need not, incorporate appropriate Bank Secrecy Act rules into their operations (or the operations they undertake on behalf of their principals). Moreover, the operation of the $150,000 limitation would exclude from Bank Secrecy Act treatment particular transactions (for example purchases of money orders of more than $3,000 under the customer verification and recordkeeping rules of 31 CFR 103.29, or transactions in excess of $10,000 under the currency transaction reporting rules of 31 CFR 103.22) that ought not be so excluded, regardless of the overall volume of sales of a particular business.

The definition in 31 CFR 103.11(uu)(4) extends to "redeemers" of money orders and traveler's checks only insofar as the instruments involved are

[16] The definition eliminates the phrase "similar instruments" in response to comments that said the phrase was too vague. The phrase has also been eliminated from the definition of seller or redeemers.

redeemed for monetary value—that is, for currency or monetary or other negotiable or other instruments. The taking of the instruments in exchange for goods or general services is not a redemption for purposes of these rules. (See, however, 26 CFR 1.6050I–1(c)(1)(ii)(B) for situations in which certain traveler's checks or money orders (among other instruments) may be treated as currency, if taken in exchange for certain goods or services, for purposes of the requirement that businesses not subject to the rules in 31 CFR part 103 report transactions in currency in excess of $10,000.)

(5) *Money transmitter.* The definition of money transmitter continues to reflect the determination that the definitions of that term for purposes of the general Bank Secrecy Act rules and the registration rules should be the same. As noted above, a limitation on the definition has been added to clarify insofar as possible the reach of the definition, when it is combined with the general limitation on the scope of money services business.[17] Particular classes or subclasses of money transmitters can be excluded from the operation of the definition for particular substantive rules (as for example the proposed rule relating to the reporting of suspicious activities by money transmitters excluded from its coverage sellers or transmitters of stored value or other advanced electronic payment system products).

(6) *United States Postal Service.* The definition of United States Postal Service has not been changed. Thus, unlike the prior regulation, which treated the United States Postal Service as a financial institution only with respect to the sale of money orders, the final rule treats the Postal Service as a financial institution with respect to its provision of any money services products. The Postal Service, in its comments, requested clarification of the status of an "international postal money order" under the rules. FinCEN believes that that topic is not appropriate for treatment in a general rule.[18]

[17] The term "money transmitter" in 31 CFR 103.11(uu)(5) is not necessarily synonymous with the term "transmittor's financial institution" in existing 31 CFR 103.11(mm). The term "transmittor's financial institution" in existing 31 CFR 103.11(mm) was designed with a narrower purpose in mind—"to preserve as much uniformity as possible" between the special rules for recordkeeping for wire transfers and the language of Article 4A of the Uniform Commercial Code. *See* 60 FR 220 (January 3, 1995).

[18] This comment, like a number of other comments, concerns the application of these rules in specific situations, for example, armored car companies. FinCEN does not believe it is appropriate to resolve those fact specific situations in the context of a general rulemaking, but is willing to consider them in the context of specific, fact based inquiries.

4. 31 CFR 103.11(vv)—Definition of Stored Value

The definition of stored value is unchanged. Given the determination to exclude stored value from the registration requirements, FinCEN does not believe that it is necessary now to exclude particular "closed systems" from the limited application of the Bank Secrecy Act to such instruments, or to issue a threshold exclusion based upon the maximum value capable of storage on particular media. It agrees that consideration of both such steps would be appropriate if the treatment of stored value under the Bank Secrecy Act were to be expanded at a future date.

B. 103.41—Registration of Money Services Businesses

1. 31 CFR 103.41(a)(1)—Registration Requirement; In General

The final rule continues to provide that a money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, must maintain a list of its agents. The final rule expressly excludes from the registration and list requirements the following persons: the United States Postal Service, an agency of the United States, of any State, or of any political subdivision of a State, and any person to the extent that the person is an issuer, seller, or redeemer of stored value. Unlike the Notice, the final rule does not expressly exclude from the registration and list requirements a depository institution (as defined in 31 U.S.C. 5313(g)) or a person registered with, and regulated or examined by, the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC). Such an express exclusion in paragraph (a)(1) of section 103.41 is unnecessary because the final rule revises the definition of money services businesses to exclude those persons.

2. 103.41(a)(2)—Agent Registration

As noted above, the final rule defers indefinitely implementation of a requirement that a money services business that offers products or services as an agent on behalf of another money services business register with the Department of the Treasury if the former firm exceeds a "threshold point" set by the Secretary. If, however, a firm in addition to offering products or services on behalf of another money services business, offers its own money services products or services (that is, exchanges currency, cashes checks, or transmits funds for customers through channels or mechanisms of its own), the firm must register independently.

3. 31 CFR 103.41(a)(3)—Agent Status.

The final rule provides that the determination of whether a person is an agent depends on all the facts and circumstances.

4. 31 CFR 103.41(b)(1)—Registration Procedures; In General

The Notice set forth the general requirement to register a money services business and to report on the registration form the information required by 31 U.S.C. 5330 and any other information required by the form. A draft of the registration form was discussed at a public meeting in September 1997. Although this section of the preamble discusses comments on the draft form, money services businesses should bear in mind that FinCEN expects to continue to work with the money services business industry to develop the registration form. As part of that process, FinCEN will publish in the **Federal Register** a separate notice regarding the form.

A commenter pointed out that for certain items, for example, the name and address of directors, the instructions to the draft form discussed at the September 1997 public meeting request a more limited set of information than could be required under section 5330(b). The commenter asked that the information requested by the final rule be limited in the same manner as in the instructions to the form. Accordingly, the final rule continues to set forth the general requirement to register and report the information required by 31 U.S.C. 5330, but the words "to the extent required by the form" have been added after the words "the information required by 31 U.S.C. 5330." A similar change has been made regarding the identity of the person who is responsible for filing the registration form.

Section 5330(b) provides that the registration shall include an "estimate of the volume of business in the coming year (which shall be reported annually to the Secretary)." The instructions to the draft form thus require an estimate of business volume. Several comments objected to the business volume requirement, and one commenter asked for clarification of how an annual estimate would be made when the form is filed only every other year.

Because section 5330 specifically requires, as part of the registration information, that a money services

business make an estimate of its business volume, FinCEN anticipates that the form will continue to require the estimate. Although a money services business is required to make an annual estimate of its business volume, FinCEN anticipates that the registration form will not require the estimate to be reported on the form itself but will permit the business to retain the estimate in its records and make it available upon request. Thus, the annual estimate requirement may be satisfied even though the registration form is required to be filed only every other year.

One commenter urged that money services businesses be permitted to file the registration form electronically. FinCEN will consider this recommendation as it works to finalize the form and the filing procedures for the form.

The Notice required a money services business to retain, at a central location in the United States, a copy of any registration form the business files and to report that location on the form. One commenter recommended that as an alternative to the requirement to keep information in a centralized file, a money services business be required only to have access to information within a reasonable period of time. One commenter requested that money services businesses be permitted to keep records concerning registration outside the United States, provided that the information was readily available at the request of FinCEN or any appropriate law enforcement agency.

The final rule continues to require records concerning registration to be maintained in the United States. The final rule does not require a money services business to keep records in a central location so long as information is readily available at the request of FinCEN or any appropriate law enforcement agency; however, the agent list must be maintained in a central location in the United States.

5. 31 CFR 103.41(b)(2)—Registration Period

Paragraph (b)(2) of the final rule continues to provide that after an initial registration period of two calendar years, the registration must be renewed every two years. One commenter asked that the registration and renewal periods be increased to five years. Given the frequency of change in this segment of the financial industry and law enforcement's need for relatively current information about these businesses, FinCEN does not believe the registration and renewal periods should be increased from two years to five years.

6. 31 CFR 103.41(b)(3)—Due Date

Paragraph (b)(3) of the final rule sets forth the due date for filing the registration form for the initial registration period and each renewal period. The Notice would have required the registration form for the initial registration period to be filed by the end of the 180-day period beginning on the later of (i) the date on which the final rules are published in the **Federal Register**, and (ii) the date the business is established. Commenters asked for more time to file the initial registration form. The final rule does not require the initial registration form to be filed until December 31, 2001.

7. 31 CFR 103.41(b)(4)—Events Requiring Reregistration

Paragraph (b)(4) of the final rule continues to provide that a money services business must be re-registered before the end of a renewal period upon the occurrence of certain events. That paragraph requires re-registration if the money services business experiences a change in ownership or control that requires re-registration under a State law registration program for money services businesses, more than 10 per cent of its voting power or equity interests is transferred (except in the case of certain publicly-traded businesses, as explained below), or the number of its agents increases by more than 50 per cent during any registration period.

One commenter argued that publicly-traded companies should not be required to re-register when required by state law or when there is a more than 50 per cent increase in the their agents. The final rule continues to require publicly-traded companies to register in these situations.

Several commenters suggested that re-registration was unnecessary in the case of a 10 per cent change in ownership of publicly-traded companies. One of the commenters suggested that because a 10 per cent change in ownership of a publicly-traded company would require a filing with the Securities and Exchange Commission, law enforcement agencies could get information about the ownership change from the filing. The final rule provides that a money services business is not required to re-register before the end of its regular registration or renewal period on account of a 10 per cent ownership change if that change must be reported to the Securities and Exchange Commission.

One commenter suggested that for smaller businesses, a 50 per cent change in ownership (rather than 10 per cent) would be a more appropriate standard for requiring re-registration. The final rule does not adopt this suggestion because it would permit significant changes in the ownership of smaller money services businesses, which are generally subject to little federal oversight, to take place between renewal periods without Treasury's knowledge.

One commenter recommended that "wire transmitters" be exempted from the re-registration requirements if the transmitters are required to re-register by state law. The final rule does not adopt this recommendation. FinCEN believes that it is important to establish uniform, national registration requirements for money services businesses.

8. 31 CFR 103.41(c)—Persons Required to File Registration Form

The Notice provided that, as required by 31 U.S.C. 5330(a), any person who owns or controls a money services business shares the responsibility for seeing that the business is registered. (Only one registration form, however, is required to be filed for each registration period.) Commenters pointed out that the instructions to the draft form take a more limited approach, requiring only certain owners or controlling persons to register. Paragraph (c) of the final rule addresses this difference by adding the language "to the extent provided by the form" after the language "any person who owns or controls."

9. 31 CFR 103.41(d)(1)—List of Agents; In General

Paragraph (d)(1) of the final rule provides that a money services business must prepare and maintain a list of its agents, and must revise the agent list to contain current information. The Notice required the agent list to be revised each quarter. Several commenters objected to the requirement to make quarterly updates of the agent list, arguing that annual updates are more reasonable. One commenter, however, stated that quarterly updates of internal records of seller information could be required without any additional burden. The final rule requires annual updates of the agent list.

The Notice provided that the list of agents is not filed with the registration form but is maintained at the location in the United States reported on the registration form. Several commenters asked that the final rule clarify that an agent list need not be kept in the United States so long as the list is readily available. As indicated above, the agent list must be maintained in the United States.

Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). One commenter stated that the requirement to make the agent list available to law enforcement is vague and potentially burdensome. This commenter suggested that it would be preferable to route all law enforcement requests for the lists through FinCEN, which would then evaluate both the appropriateness of the requests and the bona fides of the law enforcement agency.

The maintenance and ready availability of "agent lists and other information" is a crucial part of the scheme of 31 U.S.C. 5330. But it is equally true that a system in which money services businesses are overrun by duplicative or otherwise burdensome requests is in no one's interest. In response to the comment, and in light of the fact that 31 U.S.C. 5330(c)(1)(B) authorizes the Secretary of the Treasury to issue rules defining the terms of law enforcement access to agent list information, the final rule states that requests for agent list information shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. Such coordination will (i) avoid the imposition of unnecessary burden on money services businesses, (ii) ensure the confidentiality of sensitive business information, and (iii) facilitate the orderly administration of the agent list requirement.

The same commenter also suggested that agent lists could voluntarily be filed by money services businesses with the Department of the Treasury, under a system in which law enforcement agencies obtain access through Treasury, rather than by seeking information from the money services businesses that chose to file such lists. FinCEN believes that such a system has merit, and it intends to work with the affected businesses to develop such a system, during the period provided for implementation of this rule prior to January 1, 2002.

The Notice provided that the original list of agents and any revised list must be retained for five years, as specified in 31 CFR 103.38(d). Commenters objected to the requirement to retain lists of agents for five years. As indicated above, the requirement to update agent lists has been relaxed from quarterly updates to annual updates. Further, the Bank Secrecy Act rules generally require Bank Secrecy Act information to be retained for five years. Thus, the final rule continues to require agent lists to be maintained for five years.

One commenter recommended that FinCEN allow past lists to be substituted, in the discretion of the money services business, with any "readily accessible" records of the information no longer on the current list. The final rule does not adopt this recommendation. The revisions the final rule makes regarding the information on the agent list and the decrease from quarterly to annual revisions to the agent list will reduce the amount of information that has to be retained.

10. 31 CFR 103.41(d)(2)—Information Included on the List of Agents

The final rule provides that the following information must be included on the agent list—

(i) The name of the agent, including any trade names or doing-business-as names,

(ii) The address of the agent, including street address, city, state, and ZIP code,

(iii) The telephone number of the agent,

(iv) The type of service or services (sale or redemption of money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides,

(v) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded $100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commission) received from transaction of one or more businesses described in § 103.11(uu),

(vi) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for its money services business whether in the name of the agent or of the money services business for which the agent acts or whose products it sells,

(vii) The year in which the agent first became an agent of the money services business, and

(viii) The number of branches or subagents the agent has.

As noted above, the final rule requires a money services business to include information about the months in the preceding 12-month period in which its agent's gross transaction amount exceeded $100,000. Again, the $100,000 need reflect only business done for the particular "prinicipal". Thus, money services business are not expected to obtain information about the gross transaction amount for business their agents may conduct for other principals or to disaggregate information about the gross transaction amount of any agent that conducts business for more than one principal and provides a principal with an aggregate figure reflecting business conducted for both principals. To allow time to intregrate information, the final rule provides that information about agent volume must be current within 45 days of the due date of the list.

For any agent that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000, the final rule does not require the following information to be included on the list: the year in which the agent first became an agent and the agent's branches or subagents. Such information must be made available upon the request of FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority).

Several commenters asked that the final rule clarify that a money services business is not required to include on its agent list any agent that is a depository institution. The final rule expressly excepts banks from the definition of money services business. Thus, a money services business is not required to include on its agent list any agent that is a depository institution.

Another commenter suggested that only agents in the United States should be included on the agent list. FinCEN agrees that only agents doing business in the United States should be included on the agent list.

Commenters indicated that because of the way they currently maintain information about their agents and the need to devote computer programming resources to the Year 2000 problem in general, they would need more time than allowed by the Notice to prepare the initial list of their agents. The final rule does not require the preparation of the initial agent list to be completed until January 1, 2002. This change should provide sufficient time for money services businesses to prepare their agent lists.

VI. Other Pending Notices of Proposed Rulemaking Concerning Money Services Businesses

The second rule proposed on May 21, 1997 (the "Proposed SAR Rule"), would require money transmitters, and issuers,

sellers, and redeemers of money orders and traveler's checks to report suspicious transactions to the Department of the Treasury. See 62 FR 27900–27909. Suspicious activity reporting by all classes of financial institutions covered by the Bank Secrecy Act is an essential part of the government's counter-money laundering efforts generally and its efforts to strengthen counter-money laundering controls at money services businesses in particular. The Department of the Treasury is committed to producing the most cost-effective reporting regime, for both law enforcement and the industries involved. To permit effective implementation, suspicious activity reporting by the relevant classes of money services businesses will not begin until the initial registration process is complete.

The Department also believes that it is critical to provide written guidance about what must be reported, at the time the final rule is issued. It intends to work with the money transmission, money order, and traveler's check industries to shape that guidance, independent of the rulemaking itself. That work should be assisted by the information gathered during initial stages of implementation of the registration rule.

The third rule proposed on May 21, 1997 (the "Proposed Special CTR Rule"), would add a special currency transaction reporting requirement—and related customer verification requirements—for money transmitters involved in the transmission or other transfer of funds to persons outside the United States. See 62 FR 27909–27917. Action on the Proposed Special CTR Rule is being deferred, but it is not being withdrawn at this time.

VII. Executive Order 12866

The Department of the Treasury has determined that this final rule is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this final rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

IX. Regulatory Flexibility Act

FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities. FinCEN anticipates that the provisions of the rule generally excluding agents of money services businesses from registration will limit the impact of the rule on small businesses. Further, most of the recordkeeping and reporting requirements that would be imposed by the rule concern information already found in routine business records. For example, as part of their business records, money services businesses (to the extent such businesses are small entities) will generally have information needed for the required agent list, such as the name and addresses of their agents and agent transaction account information, because such information is necessary to establish and maintain the relationship between the businesses and their agents. In addition to recordkeeping and reporting requirements, other requirements of the rule may also be satisfied with information that is currently available. For example, many businesses currently have policies in place regarding the maximum dollar amount of a money service transaction they will perform for a customer, such as the maximum amount for which a business will cash a check, which may help (assuming the policy is observed) them determine whether they have exceeded the $1,000 floor in several of the definitions in the rule.

X. Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1506–0013. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.41(d). This information is required to be provided pursuant to 31 U.S.C. 5330. This information will be used to locate agents of money services businesses to ensure that they are complying with the provisions of the Bank Secrecy Act. The information will also be used by law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from engaging in illegal activities. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average burden associated with the collection of information in this final rule is 130 hours per recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22187, and to OMB, Attention: Desk Officer for the Department of Treasury, FinCEN, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Amendment

For the reasons set forth above in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11 is amended by—

a. Revising paragraph (c)(7),

b. Removing and reserving paragraph (i),

c. Revising paragraph (n)(3),

d. Removing paragraphs (n)(4), (n)(5), and (n)(10),

e. Redesignating paragraphs (n)(6), (n)(7), (n)(8), and (n)(9) as paragraphs (n)(4), (n)(5), (n)(6), and (n)(7) respectively,

f. In newly redesignated paragraphs (n)(5) and (n)(6), removing the period at the end of the paragraph and adding a semicolon in its place,

g. In newly redesignated paragraph (n)(7), removing ";" and adding a period in its place, and

h. Adding new paragraphs (uu) and (vv).

The revised and added paragraphs read as follows:

§ 103.11 Meaning of terms.

* * * * *

(c) Bank. * * *

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

* * * * *

(n) Financial institution. * * *

(3) A money services business as defined in paragraph (uu) of this section;

* * * * *

(uu) *Money services business.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (uu)(1) through (uu)(6) of this section. Notwithstanding the preceding sentence, the term "money services business" shall not include a bank, nor shall it include a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(1) *Currency dealer or exchanger.* A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(2) *Check casher.* A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(3) *Issuer of traveler's checks, money orders, or stored value.* An issuer of traveler's checks, money orders, or, stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* A seller or redeemer of traveler's checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than $1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

(5) *Money transmitter*—(i) *In general.* Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) *Facts and circumstances; Limitation.* Whether a person "engages as a business" in the activities described in paragraph (uu)(5)(i) of this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be a money transmitter within the meaning of paragraph (uu)(5)(i) of this section.

(6) *United States Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

(vv) *Stored value.* Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

3. Part 103 is further amended by redesignating the following subparts and sections as follows:

Old subparts and sections subpart D	New subparts and sections subpart E
103.41	103.51
103.42	103.52
103.43	103.53
103.44	103.54
103.45	103.55
103.46	103.56
103.47	103.57
103.48	103.58
103.49	103.59
103.50	103.60
103.51	103.61
103.52	103.62
103.53	103.63
103.54	103.64
Subpart E	Subpart F
103.61	103.71
103.62	103.72
103.63	103.73
103.64	103.74
103.65	103.75
103.66	103.76
103.67	103.77
Subpart F	Subpart G
103.70	103.80
103.71	103.81
103.72	103.82
103.73	103.83
103.74	103.84
103.75	103.85
103.76	103.86
103.77	103.87

4. Add a new subpart D to part 103 to read as follows:

Subpart D—Special Rules for Money Services Businesses

Sec.

103.41 Registration of money services businesses.

Subpart D—Special Rules for Money Services Businesses

§ 103.41 Registration of money services businesses.

(a) *Registration requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of its agents as required by 31 U.S.C. 5330 and this section. This section does not apply to the United States Postal Service, to agencies of the United States, of any State, or of any political subdivision of a State, or to a person to the extent that the person is an issuer, seller, or redeemer of stored value.

(2) *Agents.* A person that is a money services business solely because that person serves as an agent of another money services business, see § 103.11(uu), is not required to register under this section, but a money services business that engages in activities described in § 103.11(uu) both on its own behalf and as an agent for others must register under this section. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be a money services business, is not required to register; the answer would be the same if the supermarket corporation served as an agent both of a money order issuer and of a money transmitter. However, registration would be required if the

supermarket corporation, in addition to acting as an agent of an issuer of money orders, cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

(3) *Agency status.* The determination whether a person is an agent depends on all the facts and circumstances.

(b) *Registration procedures*—(1) *In general.* (i) A money services business must be registered by filing such form as FinCEN may specify with the Detroit Computing Center of the Internal Revenue Service (or such other location as the form may specify). The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its own registration form. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that may be assigned to the business at a location in the United States and for the period specified in § 103.38(d).

(2) *Registration period.* A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. However, the initial registration period for a money services business required to register by December 31, 2001 (see paragraph (b)(3) of this section) is the two-calendar year period beginning 2002. Each two-calendar-year period following the initial registration period is a renewal period.

(3) *Due date.* The registration form for the initial registration period must be filed on or before the later of December 31, 2001, and the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) *Events requiring re-registration.* If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if there is a transfer of more than 10 percent of the voting power or equity interests of a money services business (other than a money services business that must report such transfer to the Securities and Exchange Commission), the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50-per cent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) *Persons required to file the registration form.* Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. A person is treated as owning or controlling a money services business for purposes of filing the registration form only to the extent provided by the form. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) *List of agents*—(1) *In general.* A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. The original list of agents and any revised list must be retained for the period specified in § 103.38(d).

(2) *Information included on the list of agents*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(A) The name of the agent, including any trade names or doing-business-as names;

(B) The address of the agent, including street address, city, state, and ZIP code;

(C) The telephone number of the agent;

(D) The type of service or services (money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(E) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded $100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions of one or more businesses described in § 103.11(uu);

(F) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for the financial products or services issued by the money services business maintaining the list, whether in the agent's or the business principal's name;

(G) The year in which the agent first became an agent of the money services business; and

(H) The number of branches or subagents the agent has.

(ii) *Special rules.* Information about agent volume must be current within 45 days of the due date of the agent list. The information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is not required to be included in an agent list with respect to

any person that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000 so long as the information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is made available upon the request of FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority).

(e) *Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of $5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

(f) *Effective date.* This section is effective September 20, 1999. Registration of money services businesses under this section will not be required prior to December 31, 2001.

§ 103.36 [Amended]

5. Paragraph (b)(10) of § 103.36 is amended by removing the language "§ 103.54(a)" and adding the language "§ 103.64(a)" in its place.

6. Section 103.37 is amended by adding a new paragraph (c) to read as follows:

§ 103.37 Additional records to be made and retained by currency dealers or exchangers.

* * * * *

(c) This section does not apply to banks that offer services in dealing or changing currency to their customers as an adjunct to their regular service.

§ 103.56 [Amended]

7. Paragraph (b)(7) of newly redesignated § 103.56 is amended by removing the language "§ 103.48" and adding the language "§ 103.58" in its place.

§ 103.57 [Amended]

8. Newly redesignated § 103.57 is amended by:

a. In paragraph (d) removing the language "§ 103.48" and adding the language "§ 103.58" in its place.

b. In the first sentence of paragraph (e) removing the language "§ 103.53" and adding the language "§ 103.63" in its place.

§ 103.72 [Amended]

9. Newly redesignated § 103.72 is amended by removing the language "§ 103.61" from the introductory text and adding the language "§ 103.71" in its place.

§ 103.73 [Amended]

10. Newly redesignated § 103.73 is amended by:

a. In paragraph (a) introductory text removing the language "§ 103.61" and adding the language "§ 103.71" in its place.

b. In paragraph (a)(1) removing the language "§ 103.62" and adding the language "§ 103.72" in its place.

c. In paragraph (b) introductory text removing the language "§ 103.61" and adding the language "§ 103.71" in its place.

d. In paragraph (b)(1) removing the language "§ 103.62" and adding the language "§ 103.72" in its place.

§ 103.74 [Amended]

11. Newly redesignated § 103.74 is amended by removing the language "§ 103.62" from paragraph (a) and adding the language "§ 103.72" in its place.

§ 103.75 [Amended]

12. Newly redesignated § 103.75 is amended by:

a. In the first sentence of paragraph (a) removing the language "§ 103.62" and adding the language "§ 103.72" in its place.

b. In paragraph (c) introductory text removing the language "103.62(a)" and adding the language "103.72(a)" in its place and removing the language "§ 103.62 (b) or (c)" and adding the language "§ 103.72 (b) or (c)" in its place.

§ 103.76 [Amended]

13. Newly redesignated § 103.76 is amended by:

a. In the first sentence removing the language "§ 103.62" and adding the language "§ 103.72" in its place.

b. In the second sentence removing the language "§ 103.62(a)" and adding the language "§ 103.72(a)" in its place.

§ 103.82 [Amended]

14. Newly redesignated § 103.82 is amended by removing the language "§ 103.71" from the first sentence and adding the language "§ 103.81" in its place.

§ 103.83 [Amended]

15. Paragraph (b) of newly redesignated § 103.83 is amended by:

a. In the first sentence removing the language "§ 103.71" and adding the language "§ 103.81" in its place.

b. In the last sentence removing the language "§ 103.71" and adding the language "§ 103.81" in its place.

§ 103.85 [Amended]

16. Newly redesignated § 103.85 is amended by removing the language "§ 103.71" from the first sentence and adding the language "§ 103.81" in its place.

§ 103.86 [Amended]

17. Newly redesignated § 103.86 is amended by:

a. In paragraph (a) introductory text removing the language "§ 103.75" and adding the language "§ 103.85" in its place.

b. In the second sentence of paragraph (b) removing the language "§ 103.71" and adding the language "§ 103.81" in its place.

Dated: August 17, 1999.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 99–21667 Filed 8–18–99; 8:45 am]

BILLING CODE 4820–03–P.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN–0720–AA49

Civilian Health and Medical Program of the Uniformed Service (CHAMPUS); Prosthetic Devices

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements section 702 of the National Defense Authorization Act for fiscal Year 1998 (Pub. L. 105–85), which authorizes purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The act changes the existing limited provisions for prosthetic devices, expands coverage to include cost sharing of other prostheses, e.g.,

noses, ears and fingers. This is being issued as an interim final rule in order to comply with the statutory mandate. Public comments, however, are invited and will be considered in connection with possible revisions to this rule.

DATES: This rule is effective May 20, 1999. Written comments will be accepted until October 19, 1999.

ADDRESSES: Forward comments to the Office of TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO, 80011–9043.

FOR FURTHER INFORMATION CONTACT: Margaret Brown, Office of Medical Benefits and Reimbursement Systems, telephone (303) 676–3581.

SUPPLEMENTARY INFORMATION: This interim final rule implements section 702 of the national Defense authorization Act for fiscal Year 1998 (Pub. L. 105–85) to provide purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The current policy is restrictive as it limits purchase of prosthetic devices to artificial limbs, eyes, and voice prostheses. This interim final rule expands provisions for prosthetic devices to include ears, noses and fingers.

Regulatory Procedure

Executive order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This Interim Final Rule is not a significant regulatory action under E.O. 12886, nor would it have a significant impact on small entities. The changes set forth in the interim final rule are minor revisions to the existing regulation.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This determination is based on several factors. First, this change directly implements a statutory amendment enacted by Congress expressively for this purpose. (See House Conference Report 105–340, p. 300). Second, this rule implements the statutory policy without embellishment. All public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; and 10 U.S.C. Chapter 55.

2. Section 199.4 is amended by revising paragraph (d)(3)(vii) and (g)(48) and removing paragraph (d)(3)(vii) NOTE.

§ 199.4 Basic program benefits

* * * * * * *

(d) * * *

(3) * * *

(vii) *Prosthetic devices.* The purchase of prosthetic devices is limited to those determined by the Director, OCHAMPUS to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease.

* * * * *

(g) * * *

(48) *Prosthetic devices.* Prostheses other than those determined by the Director, OCHAMPUS to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. All dental prostheses are excluded, except for those specifically required in connection with otherwise covered orthodontia directly related to the surgical correction of a cleft palate anomaly.

* * * * *

Dated: August 12, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21348 Filed 8–19–99; 8:45 am]

BILLING CODE 5001–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–49–1–7411; FRL–6422–3]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Interim Final Determination That Louisiana Continues To Correct the Deficiencies of Its Enhanced Inspection and Maintenance (I/M) SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Previously EPA published a proposed rulemaking (December 30, 1998, 63 FR 71807) to conditionally approve the State of Louisiana's State Implementation Plan (SIP) revision concerning a low-enhanced motor vehicle inspection and maintenance (I/M) program under section 110 of the Clean Air Act (the Act) as amended in 1990. Based on the proposed approval, EPA is making an interim final determination by this action, that the State has more likely than not cured the deficiencies prompting the original disapproval (November 19, 1997, 62 FR 61633) of the Louisiana enhanced I/M SIP revision. This action will defer the future application of the offset sanction and the highway sanction. Although this action is effective upon signature, EPA will take comment on this interim final determination. The EPA will publish a final action taking into consideration any comments received on this interim final action.

EFFECTIVE DATE: August 10, 1999.

Comments: Comments must be received on or before September 20, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana.

Louisiana Department of Environmental Quality Capital Regional

Office, 11720 Airline Highway, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

I. Background

Louisiana's May 1996 I/M SIP Revision Approval Status

In a December 2, 1997, letter to the Governor, EPA notified Louisiana that the conditional approval of the State's enhanced I/M SIP revision, conditionally approved on June 9, 1997, (62 FR 31388) had converted to a disapproval because Louisiana failed to meet the conditions specified for approval. A later correction notice dated February 13, 1998, changed the effective date of the disapproval to the February 13, 1998, date of publication (63 FR 7289). A letter dated March 4, 1998, informed the State of this change. The disapproval triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the Act. The 18-month clock expires on August 13, 1999.

On August 20, 1998, the Governor of the State requested parallel processing of its I/M program SIP revision. We acknowledged the State's request in a September 3, 1998, letter. On October 20, 1998, the State made available a proposed I/M SIP revision for public comment and parallel processing by EPA. We proposed conditional approval on December 30, 1998, in 63 FR 71807. The State submitted the adopted I/M SIP on February 12, 1999, under the Governor's signature. Because the State has now submitted a SIP that EPA believes is approvable for its enhanced I/M program, we believe this interim final determination is justified. We conclude that Louisiana has more likely than not corrected the deficiency that initiated the sanctions clock, and therefore do not believe that sanctions are warranted simply because a State approved I/M SIP revision has not been finally approved by EPA.

We are making this interim final determination now because a final conditional approval requires amendments to the Federal I/M regulation that will allow the State to operate the I/M program as described in the SIP. The Administrator signed a notice of proposed rulemaking on August 6, 1999, proposing amendments to the Federal I/M regulation that will accommodate Louisiana's I/M program. Because we believe these amendments are justified, we are making this interim final determination to defer sanctions.

EPA's Current Rulemaking Actions

We believe that the submission of the I/M SIP revision that we proposed to approve more likely than not cures the SIP deficiency that triggered the sanctions clock. Therefore, with this finding the imposition of sanctions for that deficiency is stayed for the duration of EPA's rulemaking process on this I/M SIP revision. This interim determination will not halt or reset the sanctions deadline, but will defer implementation of sanctions until either: the proposed conditional approval converts to a disapproval, or the State's enhanced I/M SIP is fully approved or disapproved.

Today EPA is also providing the public with an opportunity to comment on this interim final determination. If, based on any relevant comments we receive on this interim final determination action or the proposed conditional approval, we determine that the SIP revision is not finally approvable, we will take further action to disapprove the State's I/M SIP revision. If EPA does disapprove the I/M revision, or if EPA's conditional approval of the Louisiana I/M SIP revision is not finalized, then sanctions would be applied as required under 179(a) of the Act and 40 CFR 52.31.

II. EPA Action

What Action Is EPA Taking?

Based on the proposed conditional approval previously published in the **Federal Register**, we believe that the State has more likely than not corrected the deficiency that prompted the original disapproval of the Louisiana enhanced I/M SIP. Therefore, we conclude that sanctions should be stayed for the duration of Louisiana's proposed conditional SIP approval.

What Is the Effective Date for This Rule?

The effective date for this rule is August 10, 1999, the date this action was signed.

Because we have preliminarily determined that the February 12, 1999, I/M SIP revision is conditionally approvable, we believe that relief from future sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] *See* 5 U.S.C. 553(b)(B). We believe that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. We have reviewed the State's October 1998, proposed SIP revision and the February 1999, adopted SIP revision. Through this interim final determination action, the Agency finds the State has more likely than not corrected the deficiency for which the sanctions clock was started (i.e., failure of the State to provide legislative authority to implement and continuously operate an I/M program under sections 182 and 184 of the Act).

Therefore, it is not in the public interest to initially apply sanctions when the State has most likely corrected the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking fully approving the State's I/M SIP revision. Therefore, we believe that it is necessary to use the interim final rulemaking process to defer sanctions while we complete our rulemaking process on the approvability of the State's I/M SIP revision. In addition, we are invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local,

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

and tribal governments, the nature of their concern, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal government "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's interim final determination does not create a mandate on State, local, or tribal governments. The determination does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The interim final determination is not subject to E.O. 13045 because it is not economically significant under E.O. 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's interim final determination does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because conditional approval of SIP submittals under section 110 and subchapter I, part D of the Act does not create any new requirements but simply approves requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the interim final determination does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This determination is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 10, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region VI.

[FR Doc. 99–21660 Filed 8–19–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

General Information, Regulations, and Definitions

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 100 to 185, revised as of Oct. 1, 1998, on pages 88, 89, and 91, §§ 171.11 (d)(9)(iii), 171.12 (b)(8)(iii), and 171.12a (b)(5)(iii) are corrected by removing the word "POISON" the first time it appears and adding in its place the words "POISON INHALATION HAZARD".

[FR Doc. 99–55524 Filed 8–19–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506120–9220–02; I.D. 032499E]

RIN 0648–AL80

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS implements several management changes. For Atlantic group king mackerel, total allowable catch (TAC) is increased. For Atlantic group Spanish mackerel, TAC is decreased; the allocation of TAC between the commercial and recreational sectors is revised; and an incidental catch allowance for vessels using gillnets with a mesh size less than 3.5 inches (8.9 cm) is established. For Gulf group king mackerel, a commercial trip limit is established in the western zone, and a 0–fish bag limit is established for captain and crew on for-hire vessels. For both Gulf and Atlantic group king mackerel, the minimum size limit is increased. The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by commercial and recreational fisheries.

DATES: This rule is effective September 20, 1999.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Councils recommended, and NMFS published, a proposed rule (64 FR 29622, June 2, 1999) to implement the following measures: (1) For Atlantic group king mackerel, increase the commercial quota and the recreational allocation and revise the commercial trip limits off North Carolina and the Mid-Atlantic states; (2) for Atlantic group Spanish mackerel, decrease the commercial quota and recreational allocation; change the commercial/recreational allocation from 50/50 to 55/45; and establish an incidental catch allowance for vessels using gillnets with a mesh size less than 3.5 inches (8.9 cm); (3) for Gulf group king mackerel, establish a commercial trip limit in the western zone and establish a 0–fish bag limit for captain and crew on for-hire vessels; and (4) for both Gulf and Atlantic group king mackerel, increase the minimum size limit. That proposed rule described the need and rationale for these revisions. Those descriptions are not repeated here.

Comments and Responses

NMFS received five comments.

Comment 1: After reviewing the 1999 Mackerel Stock Assessment Report (MSAP), the South Atlantic Council requested that NMFS not implement the proposed trip limit decrease from 3,500 to 2,000 lb (1588 to 907 kg) for Atlantic group king mackerel for commercial vessels operating north of the North Carolina/South Carolina border and south of the New York/Connecticut border, nor the proposed trip limit increase from 50 to 75 fish for Gulf group king mackerel in the Florida east coast subzone. The 1999 MSAP indicated that the TAC for Atlantic group king mackerel could be increased. Thus the trip limit reduction for the king mackerel fishery north of the North Carolina/South Carolina border was unnecessary. The Council anticipates that the fishery should be able to continue year-round without a closure with the existing 3,500 lb (1,588 kg) trip limit, thereby increasing the economic benefits of the fishery. The fishery for Gulf group king mackerel in the Florida east coast subzone closed on March 13, 1999, under a 50–fish trip limit. Thus the Council believed that increasing the bag limit would shorten the season further, and lessen the social and economic benefits to the fishery.

Response: NMFS considers the Council's comment as a request to withdraw the proposed reduction in the commercial trip limit for Atlantic group king mackerel north of the North Carolina/South Carolina border and the proposed increase in the commercial trip limit for Gulf group king mackerel in the Florida east coast subzone as was described in the proposed rule. NMFS agrees with the Council's rationale for not implementing the subject proposed trip limit changes and has withdrawn them from the final rule. The Atlantic group king mackerel stock is not overfished, and the 1999 MSAP indicates that an increase in TAC for this stock is appropriate; a reduced trip limit for fisheries on Atlantic group king mackerel is no longer necessary to slow the rate of harvest in regard to the annual commercial quota. Furthermore, given that the fishery for the Gulf group king mackerel in the Florida east coast subzone closed during the 1998/1999 fishing year under a 50-fish trip limit, NMFS agrees that increasing the trip limit to 75 fish would result in an even earlier closure thus reducing the social and economic benefits of the fishery. Not implementing these proposed trip limit changes also should avoid confusion in the fishery by maintaining long-standing trip limits, to which the fishermen are accustomed and should not have any adverse biological consequences regarding the conservation of the affected stocks.

Comment 2: The South Atlantic Council requested that NMFS promulgate the catch specifications for Atlantic group king and Spanish mackerel that the Council recommended at its June 1999 meeting rather than the specifications that were previously recommended and that were included in the proposed rule. These

recommendations included: Increasing TAC to 10.0 million lb (4.5 million kg) for Atlantic group king mackerel; increasing the commercial trip limit for southeast Florida from 50 to 75 fish per day; increasing TAC for Atlantic group Spanish mackerel to 7.1 million lb (3.2 million kg); and increasing the recreational bag limit for Atlantic group Spanish mackerel from 10 to 15 fish per day.

Response: NMFS is not promulgating the specifications recommended by the Council at its June 1999 meeting because the public has not had an adequate opportunity to review and comment on them. Additionally, the impacts of those specifications need to be evaluated by preparing a regulatory impact review/environmental assessment, and the affected states have not had an opportunity to evaluate the new recommended specifications in relation to their states' coastal zone management plans.

Comment 3: The Gulf Council and the fishing association requested that NMFS disapprove the proposal to reduce the bag limit of Gulf group king mackerel to zero for captain and crew on for-hire vessels. Based on the report of the 1999 MSAP, the Council decided that the 0–fish bag limit is neither needed nor justified, and that a mid-season implementation would cause unnecessary disruption and confusion within the for-hire fishery. The fishing association questioned the accuracy of the Marine Recreational Fishery Statistical Survey (MRFSS) database which indicated the need for this proposed measure to reduce recreational harvest.

Response: NMFS disagrees that the 0–fish bag limit for the captain and crew of for-hire vessels fishing for Gulf group king mackerel is unnecessary. NMFS has approved this measure and is implementing it by this rule. The per-angler overages calculated by the MRFSS were substantiated by data collected through the NMFS Panama City, FL charterboat survey and the ongoing pilot charterboat survey co-managed by NMFS and the Gulf States Marine Fisheries Commission. These latter two data sources consist of reports of entire trip/boat activity as provided by the captains themselves, and include harvest by all anglers/passengers (excepting captain and crew) onboard the vessel, as opposed to the MRFSS approach of individual angler interviews. Nevertheless, considering the differences in methodologies used by these independent sampling programs, the compatibility and consistency of the results among the three surveys strengthen the conclusions regarding the effect of allowing a bag limit for captain and crew. MRFSS data indicate that the for-hire sector accounts for 50 to 65 percent of the recreational harvest, and per-angler and per-trip average catches are in excess of the allowable bag limits unless captain and crew are included. The catch attributable to the captain and crew contributes to the persistent overruns in the recreational allocation. Additionally, enforcement of a daily bag limit for captain and crew of for-hire vessels is difficult where those vessels and crews make multiple trips within a day. NMFS also believes that a 0–fish bag limit for Gulf group king mackerel for captain and crew on for-hire vessels will reduce in-season recreational sales, which are then counted against the commercial quota. This leads to situations where the fish are counted twice: once as a recreational catch, and once as a commercial sale. This double counting of fish can contribute to an "artificial" overrun of the commercial quotas. Elimination of this double counting should foster a more accurate depiction of fishing mortality, thus providing more accurate stock assessments. Therefore, NMFS believes that a 0–fish bag limit for the captain and crew of for- hire vessels is necessary for the adequate conservation and management of this overfished resource.

Comment 4: One commenter opposed the increase in the minimum size limit from 20 to 24 inches (51 to 61 cm) fork length (FL) proposed for king mackerel. The commenter believes that this measure is unnecessary in light of the lower and more stable recreational landings information provided in the 1999 reports of the MSAP and the Social and Economic Panel (SEP), and the recommendations developed by the Gulf Council at its May 1999 meeting.

Response: NMFS disagrees and has approved the size limit increase and is implementing it by this rule. The SEP report, which indicated stable recreational landings, considered catches in the Gulf of Mexico, but this does not include all fishing mortality on the Gulf group king mackerel stock. During a part of the year, a percentage of the mortality on the Gulf group king mackerel stock occurs from catches on the Atlantic coast of Florida. The MSAP report does take this additional catch and mortality into consideration. That report illustrated that, with the exception of the 1998/1999 season, the recreational harvest of Gulf group king mackerel exceeded the recreational allocation by 15 to 50 percent each year since 1986. In addition to reducing the overall harvest by the recreational sector, the proposed 24–inch (61–cm) size limit is intended to reduce the harvest of immature fish. Approximately 50 per cent of the females are mature at sizes of 22 to 24 inches (56 to 61 cm) FL.

Comment 5: One commenter stated that NMFS was negligent in its late publication and announcement of proposals, and did not adequately advise the public that the Councils had developed the proposals last year for the 1998/99 fishing year.

Response: Catch specifications are associated with the most recent stock assessment, not a fishing year. The Councils consider the most recent assessment and make any proposed catch specification changes. Additionally, the regulations are not annual; they remain in effect until changes are proposed by the Councils. NMFS recognizes that the implementation of these particular catch specifications has been delayed. In part, these delays stemmed from combining the proposed catch specifications as proposed by the Gulf of Mexico and South Atlantic Councils. To ensure more timely implementation of catch specifications, NMFS has restructured its process for the review of mackerel proposals submitted by the Councils under the FMP framework provisions. For the 1999/2000 proposed catch specifications, the proposals by each Council will be processed separately.

Comment 6: Two commenters supported the implementation of the 3,000–lb (1361–kg) trip limit for Gulf group king mackerel in the western zone. One commented that it would help to eliminate derby fishing and extend the season.

Response: NMFS agrees that the implementation of the 3,000– lb (1361–kg) trip limit in the western zone will benefit the fisheries of that region and has approved it and implemented it through this rule.

Changes From the Proposed Rule

As requested by the South Atlantic Council (see Comments and Responses), NMFS has withdrawn the proposed reduction in the commercial trip limit for Atlantic group king mackerel north of the North Carolina/South Carolina state boundary and the proposed increase in the commercial trip limit for Gulf group king mackerel in the Florida east coast subzone. Accordingly, the respective changes in the proposed rule to § 622.44(a)(1)(i) and § 622.44(a)(2)(i) are not included in this final rule. As a result, the proposed redesignations within § 622.44(a)(1) are no longer necessary and have been removed from the final rule.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 16, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.37, paragraph (c)(2) is revised to read as follows:

§ 622.37 Minimum sizes.

* * * * * *

(c) * * *

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—24 inches (61.0 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

* * * * *

3. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2, except that for an operator or crew member of a charter vessel or headboat, the bag limit is 0.

* * * * *

4. In § 622.41, paragraph (c)(3)(ii)(A) is revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(3) * * *

(ii) * * * (A) The minimum allowable mesh size for a gillnet used to fish for Spanish mackerel in the Gulf, Mid-Atlantic, or South Atlantic EEZ is 3.5 inches (8.9 cm), stretched mesh.

(*1*) A vessel in the Gulf EEZ, or having fished on a trip in the Gulf EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(*2*) A vessel in the South Atlantic or Mid-Atlantic EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may possess or land on the day of that trip no more than 500 lb (227 kg) of incidentally caught Spanish mackerel.

* * * * *

5. In § 622.42, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 3.12 million lb (1.42 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

* * * * *

(2) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.63 million lb (1.65 million kg).

* * * * *

6. In § 622.44, paragraph (a)(2)(iv) is added, and paragraph (a)(2) introductory text, the headings of paragraphs (a)(2)(i) and (a)(2)(ii), and the first sentence of paragraph (b)(2) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) *Gulf group.* Commercial trip limits are established in the eastern and western zones as follows. (See § 622.42(c)(1)(i) for specification of the eastern and western zones and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(i) *Eastern zone—Florida east coast subzone.* * * *

(ii) *Eastern zone—Florida west coast subzone*—* * *

* * * * *

(iv) *Western zone.* In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the western zone's fishery has been effected under § 622.43(a)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.38 million lb (1.53 million kg). * * *

* * * * *

[FR Doc. 99–21696 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 081399B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 16, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of Pacific ocean perch in the West Yakutat District of the GOA was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 820 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii). The

directed fishery for Pacific ocean perch in the West Yakutat District was closed under § 679.20(d)(1)(iii) on July 19, 1999 (64 FR 39090, July 21, 1999), and reopened on August 15, 1999 (notification of reopening filed with the Office of the Federal Register August 13, 1999).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for Pacific ocean perch will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 670 mt, and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the West Yakutat District of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 16, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21578 Filed 8–16–99; 4:19 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9060–01; I.D. 081699B]

Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified to the deep-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 17, 1999, until 1200 hrs, A.l.t., October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) for the third season, the period July 4, 1999, through September 30, 1999, as 400 metric tons. The GOA trawl deep-water species fishery was closed under § 679.20(d)(iii) on July 21, 1999 (64 FR 40293, July 26, 1999), and reopened on August 6, 1999 (64 FR 43296, August 10, 1999).

In accordance with § 679.21(d)(97)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: rockfish as defined at § 679.2, deep water flatfish (Dover sole, Greenland turbot, and deepsea sole), rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl-deepwater species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The third seasonal apportionment of the Pacific halibut bycatch allowance has been caught. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21668 Filed 8–17–99; 4:09 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 161
Friday, August 20, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

[Docket No. FV99–915–2 PR]

Avocados Grown in South Florida and Imported Avocados; Revision of the Maturity Requirements for Fresh Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the maturity requirements currently prescribed under the marketing order for avocados grown in south Florida, and those specified in the avocado import maturity regulation. The marketing order regulates the handling of avocados grown in south Florida, and is administered locally by the Avocado Administrative Committee (Committee). This rule would change maturity requirements by adding additional shipping dates, weights and/or diameters to the shipping schedule for several avocado varieties, and would add three new varieties of avocados to the shipping schedule. This rule would facilitate the shipment of avocados as they mature, and would ensure that only mature fruit is shipped to the fresh market. This would help improve grower returns and promote orderly marketing. Application of the maturity requirements to imported avocados is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by September 20, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including avocados, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the terms of the marketing order, fresh market shipments of Florida avocados are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. The maturity requirements for Florida avocados are intended to prevent the shipment of immature avocados. This helps to improve buyer confidence in the marketplace, and foster increased consumption. Current maturity requirements for the varieties of avocados grown in Florida are expressed in terms of minimum weights and diameters for specific dates during the shipping period (hereinafter referred to as the avocado maturity shipping schedule, maturity schedule, or shipping schedule), and color specifications for those varieties of avocados that turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has

different growing and maturation characteristics. The maturity requirements for each variety are based on test results. A minimum grade requirement of U.S. No. 2 is also in effect for Florida avocados.

This rule invites comments on changes to the avocado maturity shipping schedule for various varieties currently prescribed in paragraph (a)(2) of § 915.332 under the order. The shipping schedule for each variety is divided into A, B, C, and D dates which reflect different ripening times associated with the individual variety. The dates for a particular variety are established to regulate the shipment of smaller-sized avocados, which tend to take longer to mature. Consequently, A dates are associated with larger diameter, heavier fruit, and are established for early season shipments. D dates are established for the end of a variety's marketing season and allow the remaining smaller-sized mature fruit to be shipped. For a majority of the avocado varieties, the maturity schedule includes B and C dates that fall somewhere between the A and D dates for the particular variety. This proposal would add B or C shipping dates, with specific minimum weight, and/or minimum diameter measurements to the shipping schedule for the Arue, Beta, Donnie, Leona, Loretta, and Tower II varieties. It would also add three new varieties of avocados, the Semil 34, Semil 43, and the Melendez, to the maturity schedule, including specific shipping requirements for each. This rule would facilitate the shipment of these varieties of avocados as they mature, and would ensure that only mature fruit is shipped to the fresh market. This is expected to help improve grower returns and promote orderly marketing. The Committee met and unanimously recommended these changes late last year.

Section 915.51 of the order provides the authority to issue regulations establishing specific maturity requirements for avocados. The maturity requirements for avocados grown in Florida, based on minimum weights, diameters, and skin color in § 915.332 (7 CFR 915.332) of the order, are in effect on a continuous basis. The maturity requirements specify minimum weights and diameters for specific shipping periods for approximately 60 varieties of avocados, and color specifications for those varieties which turn red or purple when mature. The maturity requirements and dates for the various varieties of avocados are different because each variety has different characteristics and maturity times.

This rule makes several changes to the maturity provisions under the order. The first change would add B or C shipping dates, with specific minimum weight, and/or minimum diameter measurements to the shipping schedule for the Arue, Beta, Donnie, Leona, Loretta, and Tower II varieties. Section 915.332 of the order rules and regulations outline the maturity requirements for avocados using a maturity schedule. Over the years, the maturity schedule has been determined to be the best indicator of maturity for the different varieties of avocados grown in Florida, and growers and handlers rely on the schedule in making harvesting, packing, and shipping decisions. The maturity requirements are designed to make sure that all shipments of Florida avocados are mature, so as to provide consumer satisfaction essential for the successful marketing of the crop, and to provide the trade and consumers with an adequate supply of mature avocados in the interest of producers and consumers.

The maturity requirements for specified periods are based on the growing, harvesting, and maturity periods for the various varieties of Florida avocados. Such requirements prescribe minimum weights and/or diameters for specified periods as the maturity requirements for different varieties of avocados. These requirements are used as indicators during harvest to determine which avocados are sufficiently mature to complete the ripening process.

The maturity requirements pertain to certain dates. These dates are established based on years of testing. Each covered variety has its own set of dates on the maturity schedule. The maturity requirements and dates for the various varieties of avocados are different because individual varieties have different characteristics and growing seasons. As previously mentioned, the schedule is broken up into A, B, C, and D dates, though not all varieties have dates and requirements for each.

The different dates are used to reflect the ripening time associated with the individual varieties. Larger fruit within a variety matures earlier, while smaller-sized fruit takes longer to mature. Consequently, A dates are associated with larger sizes and weights, and are established for shipments early in a variety's season. D dates are established for the end of a variety's season when all fruit should be mature, and releases all remaining sizes and weights.

For a majority of varieties, the schedule also includes B and C shipping dates that fall somewhere in between the A and D dates for the particular variety. These dates provide for a gradual shift in the maturity standards from the beginning of the season to its end, allowing for the shipment of smaller sizes and weights as a variety matures. However, not all varieties have established dates and requirements for B and C dates. Because of the nature and volume of the varieties when they were added to the schedule, the Committee, in the past, did not believe that establishing B and C dates for some varieties was necessary.

This rule would permit varieties of avocados of certain minimum weights and diameters to be shipped by handlers earlier than currently required. This rule would add a C date for Arue variety avocados so those with a minimum weight of 12 ounces could be shipped by June 20, or the nearest Monday to that date each year. Currently, Arue variety avocados of this weight cannot be shipped until July 4. This rule would add a C date for Beta variety avocados so those with a minimum weight of 14 ounces or a minimum diameter of $3^{3}/_{16}$ inches could be shipped by August 29, or the nearest Monday to that date each year. Currently, Betas of this weight or size cannot be shipped until September 5. This rule would also add a C date for Donnie avocados so that those with a minimum weight of 12 ounces could be shipped by June 20, or the nearest Monday to that date each year. Currently, Donnies of this weight cannot be shipped until July 4. This rule would also add a B date for Leona avocados so that those with a minimum weight of 16 ounces could be shipped by October 3, or the nearest Monday to that date each year. Currently, Leonas of this weight cannot be shipped until October 10. This rule would add a C date for Loretta avocados so that those with a minimum weight of 22 ounces or a minimum diameter of $3^{13}/_{16}$ inches could be shipped by September 19, or the nearest Monday to that date each year. Currently, Lorettas of this weight or size cannot be shipped until September 26. This rule would also add a C date for Tower II avocados so that those with a minimum weight of 10 ounces or a minimum diameter of $3^{3}/_{16}$ inches could be shipped by August 29, or the nearest Monday to that date each year. Currently, Tower II variety avocados of this weight or size cannot be shipped until September 5. This action was recommended by the Committee because it believes that for the varieties listed above, the absence of B or C dates left too much of a gap between the A and D dates.

Because smaller sizes were maturing before the next available shipping date, quantities of small mature fruit could be lost to fruit drop during the time gap before it could be harvested and shipped. With tree crops, incidents of fruit dropping from the limbs occurs due to weather, disease, or other reasons depending on the particular crop. Fruit drop can increase as the fruit begins to mature. It is usually best to harvest the crop as close to maturity as possible to minimize fruit drop. In the case of avocados, when fruit drops from the tree it can experience bruising, insect damage, or reach a stage of ripeness where it cannot successfully be packed without being bruised. This results in an economic loss for growers and handlers. The Committee agreed that this has become more of a problem during the past few years as the production of avocados has increased following the devastation caused by Hurricane Andrew in 1992.

As an example of the problem, consider the Arue variety. This variety currently has scheduled A, B, and D dates. However, the absence of a C date leaves a five-week gap between the B and D dates. This means that the minimum weight for the Arue variety remains at 14 ounces for this five-week period until the D date is reached releasing all weights. By filling the gap with a C date falling between the B and D dates, and a minimum weight of 12 ounces based on the Committee's maturity testing procedures explained below, smaller sizes of this variety could be shipped as they mature. Similar situations exist for the Beta, Donnie, Leona, Loretta, and Tower II varieties, and the relaxed maturity requirements would permit handlers to ship the fruit as it reaches satisfactory maturity, and avoid losses caused by fruit drop.

The above avocado varieties were tested by the Committee to better identify the maturity of avocados grown in South Florida. The Committee based its recommendations on the testing data.

This rule would also add three new varieties of avocados to the avocado maturity shipping schedule. A few years ago, budwood for the Semil 34, Semil 43, and Melendez varieties was obtained and evenly distributed among those growers interested in the new varieties. Growers who planted these varieties have been pleased with the production and quality of the fruit. The new varieties have also been well received in the market place. These varieties currently make up less than 1 percent of domestic shipments.

Committee members believe that the production of the Semil 43, Semil 34, and Melendez varieties will continue to increase. Therefore, maturity dates and requirements are needed to ensure that only mature fruit is shipped to the fresh market. Growers have indicated they would be replacing other varieties with these varieties or planting more acres of these new varieties. In the past, the Committee has used the 100 bushel mark in its considerations of whether to add or delete varieties from the shipping schedule. In the case of these three varieties, production has exceeded the 100 bushel mark and the Committee projects that production will continue to increase because they show so much promise.

As with all varieties currently listed on the maturity schedule, the fruit was tested using the Committee's established procedures for testing maturity of avocados grown in south Florida to determine dates when different sizes and/or weights become mature. This information is then used to recommend the dates and requirements for addition to the schedule. The Committee has tested the new varieties for the past few seasons. Adding them as regulated varieties would place them under the maturity requirements as are other covered avocado varieties. This would prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each of these varieties. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers.

Florida avocado handlers may ship, exempt from the minimum grade and maturity requirements effective under the order, up to 55 pounds of avocados during any one day under a minimum quantity provision, and up to 20 pounds of avocados as gift packs in individually addressed containers. Also, avocados grown in Florida utilized in commercial processing are not subject to the grade and maturity requirements under the order.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would revise the maturity requirements under the domestic handling regulations, a corresponding change to the avocado import maturity regulations must also be made.

Maturity requirements for avocados imported into the United States are currently in effect under § 944.31 (7 CFR 944.31). The Hass, Fuerte, Zutano, and Edranol varieties of avocados currently are exempt from the maturity schedule, and would continue to be exempt under this proposed rule. However, these varieties are not exempt from the grade import regulation, which is not proposed to be changed.

This rule would add B or C shipping dates, with specific minimum weight, and/or minimum diameter measurements to the avocado maturity shipping schedule for the Arue, Beta, Donnie, Leona, Loretta, and Tower II varieties offered for importation into the United States. It would also add three new varieties of avocados, the Semil 34, Semil 43, and the Melendez, to the maturity schedule, including specific shipping requirements for each. The domestic maturity requirements for specified periods are based on the growing, maturation, and harvesting characteristics of the various varieties of South Florida avocados.

Import data for calendar years 1995 through April 1999 reveals that the major exporters of avocados to the United States are Chile, Mexico, Dominican Republic, and the Bahamas. Imports from these countries totaled 18,577 metric tons in 1995, 25,405 in 1996, 26,562 in 1997, 60,611 metric tons in 1998, and 9,261 through April of 1999. Other exporting countries include New Zealand, Belize, Israel, and Ecuador. Imports from the latter group of countries are small and sporadic.

Chile is the predominant exporting country. Imports from Chile are growing and reached 44,757 metric tons in calendar year 1998. Chile exports avocados into the United States predominately during the months of August through December. However, exports have occurred during the period from January through May, and in 1999, Chile exported some avocados during the period January through April. The major varieties imported from Chile are Hass, Fuerte, Zutano, and Edranol, all of which are exempt from the avocado maturity shipping schedule, and would continue to be exempt under this proposal for domestic and imported avocados. These varieties, however, are subject to grade requirements.

During calendar year 1998, Mexico was the second largest exporter of avocados into the United States. In 1998, exports from Mexico totaled 9,295 metric tons. Mexican shipments of fresh avocados to the United States are limited to November through February. The only variety of avocado imported from Mexico is the Hass, and the Hass variety is exempt from the maturity regulation as mentioned earlier.

The third major importing country is the Dominican Republic. During 1998, a total of 6,029 metric tons were imported during all 12 months of the year. Imports from the Bahamas during this period were small and appear to be declining.

Non-exempt varieties of avocados from the foreign countries in close proximity to Florida (Mexico, the Dominican Republic, and Bahamas) have similar growing, harvesting, and maturity periods, and have met the minimum weight and diameter maturity requirements without any apparent problems, and this is expected to continue. The import maturity requirements based on skin color apply to avocados which turn red or purple when mature.

A survey of Fresh Products Branch inspection offices checking imported avocados in 1998 revealed that most of the imported avocados were of the Hass variety.

This rule would facilitate shipments of avocados as they mature, and would ensure that only mature fruit is shipped to the fresh market. Thus, importers would benefit from the proposed changes in maturity requirements, just like Florida growers and handlers.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 141 avocado producers in the production area and approximately 49 handlers subject to regulation under the marketing order. There are approximately 35 importers of avocados. Small agricultural producers have been defined by the Small Business Administration (SBA) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000 (13 CFR 121.601).

The average price for fresh avocados during the 1997–98 season was $14.60 per 55 pound bushel box equivalent for all domestic shipments and the total shipments were 937,568 bushels. Approximately 10 percent of all handlers handled 90 percent of Florida avocado shipments. Many avocado handlers ship other tropical fruit and vegetable products which are not included in the Committees' data but would contribute further to handler receipts.

Using these prices, about 90 percent of avocado handlers could be considered small businesses under the SBA definition and about 10 percent of the handlers could be considered large businesses. Although specific data is unavailable, the Department believes that the majority of avocado producers and importers may be classified as small entities.

Section 915.51 of the order provides the authority to issue regulations establishing specific maturity requirements for avocados. Maturity requirements for avocados grown in Florida, based on minimum weights, diameters, and skin color, are specified in § 915.332 [7 CFR 915.332] of the order, and are in effect on a continuous basis. These maturity requirements specify minimum weights and diameters for specific shipping periods for approximately 60 varieties of avocados, and color specifications for those varieties which turn red or purple when mature. The maturity requirements and dates for the various varieties of avocados are different because each variety has different varietal characteristics and maturity times.

This rule would make several changes to the order's maturity rules and regulations. This rule would revise maturity requirements by adding shipping dates, weights, and/or diameters to the shipping schedule for several avocado varieties where no dates currently exist. Specifically, this rule would add B or C shipping dates, with specific minimum weight, and/or minimum diameter measurements to the shipping schedule for the Arue, Beta, Donnie, Leona, Loretta, and Tower II varieties. It would also add three new varieties of avocados, the Semil 34, Semil 43, and the Melendez, to the shipping schedule, including specific shipping requirements for each. This rule would facilitate the shipment of these varieties of avocados as they mature, and would ensure that only mature fruit is shipped to the fresh market. This would help improve grower returns and promote orderly marketing.

This rule will have a positive impact on affected entities. The changes were recommended to provide additional flexibility in packing avocados and to ensure that only mature fruit is shipped to the fresh market.

The impact of the change in these maturity regulations would not be adverse to growers, handlers, and importers. The application of maturity requirements to both Florida and imported avocados over the past several years has helped to assure that only mature avocados were shipped to fresh markets. The Committee continues to believe that the maturity requirements for Florida avocados are needed to improve grower returns. Preventing the shipment of immature avocados improves buyer confidence in the marketplace, and fosters increased consumption. Florida avocado producers and handlers have found such maturity requirements beneficial in the successful marketing of their avocado crop.

The change that would add B or C dates to six varieties under the order would not create any additional costs. This change would relax requirements and facilitate the shipment of smaller-sized fruit as it matures. Growers have noticed that smaller-sized fruit of these varieties have been maturing prior to the currently specified shipping dates. This has caused an increased incidence of fruit drop, resulting in an economic loss to both growers and handlers. The additional minimum weights and/or diameters for the six varieties would allow growers to pick the fruit as it matures, and reduce fruit loss while still supplying the market with mature fruit.

The change that would add three additional varieties to the schedule would also be beneficial in that regard. During the 1997–98 season, the three additional varieties comprised less than 1 percent of total shipments from south Florida. While this rule may result in some additional costs by requiring fruit to meet minimum weight and/or diameter maturity standards, the benefits are expected to outweigh costs. Inspection costs for Florida avocados are 14 cents for a 40 pound package, or equivalent thereof. Import inspection costs could range from 2.2 cents per package for a dockside inspection up to $86 for an individual trailer load. Adding these varieties to the domestic and import maturity schedules would help keep immature fruit from reaching the market. Preventing the shipment of immature avocados improves buyer confidence in the marketplace, and fosters increased consumption, thus, improving grower returns.

These changes are intended to provide some additional flexibility for all handlers covered under the order,

while helping to ensure that only mature fruit reaches the market. The opportunities and benefits of this rule are expected to be equally available to all avocado handlers and growers regardless of their size of operation. In addition, importers are expected to benefit similarly.

The change in the avocado maturity shipping schedule is expected to benefit the marketers of both Florida and imported avocados by assuring that the avocados marketed are of satisfactory maturity. Experience has shown that when immature avocados are found in market channels they tend to weaken the market for the mature fruit. Fresh Products Branch inspection officials indicated that the fruit offered for importation has generally met maturity requirements. Thus, the Department believes that the proposed changes would not limit the quantity of imported avocados or place an undue burden on exporters, or importers of avocados. The changes are expected to continue to foster customer satisfaction and benefit all affected entities regardless of size.

This rule would not impose any additional reporting or record keeping requirements on either small or large avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the December 8, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule needs to be in place as soon as possible. Handlers are already shipping avocados from the 1999–2000 crop, and growers and handlers rely heavily on the avocado maturity shipping schedule in making harvesting and marketing decisions. Further, growers and handlers of avocados do not need to make any operational changes to comply with the maturity schedule changes, and the impact of the changes on importers of foreign grown avocados is expected to be minimal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 915 and 944 are proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR parts 915 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 915.332, Table I, the entry for "Tower" is removed and an entry for "Tower II" is inserted in its place, the entries for "Beta, Donnie, Loretta, Arue," and "Leona" are revised, and a new term "Melendez" is added immediately following the term "Leona" and new terms "Semil 34" and "Semil 43" are added immediately following the "Booth 3" to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Variety	A date	Min. wt.	Min. diam.	B date	Min. wt.	Min. diam.	C date	Min. wt.	Min. diam.	D date
* * *										
Tower II	8–01	14	3 9/16	8–15	12	3 1/16	8–29	10	3 2/16	9–05
Beta	8–08	18	3 9/16	8–15	16	3 5/16	8–29	14	3 3/16	9–05
* * *										
Loretta	8–22	30	4 3/16	9–05	26	3 15/16	9–19	22	3 12/16	9–26
* * *										
Arue	5–16	16	.....	5–30	14	3 3/16	6–20	12	.....	7–04
Donnie	5–23	16	3 5/16	6–06	14	3 4/16	6–20	12	.....	7–04
* * *										
Leona	9–26	18	3 10/16	10–03	16	.....	.....	.....	.....	10–10
Melendez	9–26	26	3 14/16	10–10	22	3 11/16	10–24	18	3 7/16	11–07
* * *										
Semil 34	10–17	18	3 10/16	10–31	16	3 8/16	11–14	14	3 5/16	11–28
Semil 43	10–24	18	3 10/16	11–7	16	3 8/16	11–21	14	3 5/16	12–05
* * *										

* * * * *

3. In § 944.31, Table 1, the entry for "Tower" is removed and an entry for "Tower II" is inserted in its place, the entries for "Beta, Loretta, Arue, Donnie," and "Leona" are revised and a new term "Melendez" is added immediately following the term "Leona" and new terms "Semil 34" and "Semil 43" are added immediately following the term "Booth 3" to read as follows:

§ 944.31 Avocado import maturity regulation.

(a) * * *

(2) * * *

TABLE I

Variety	A date	Min. wt.	Min. diam.	B date	Min. wt.	Min. diam.	C date	Min. wt.	Min. diam.	D date
* *		*		*		*		*		*
Tower II	8–01	14	3 9/16	8–15	12	3 4/16	8–29	10	3 2/16	9–05
Beta	8–08	18	3 9/16	8–15	16	3 5/16	8–29	14	3 3/16	9–05
* *		*		*		*		*		*
Loretta	8–22	30	4 3/16	9–05	26	3 15/16	9–19	22	3 13/16	9–26
* *		*		*		*		*		*
Arue	5–16	16	.....	5–30	14	3 3/16	6–20	12	.....	7–04
Donnie	5–23	16	3 5/16	6–06	14	3 4/16	6–20	12	.....	7–04
* *		*		*		*		*		*
Leona	9–26	18	3 10/16	10–03	16	.....	.....	.....	.....	10–10
Melendez	9–26	26	3 14/16	10–10	22	3 11/16	10–24	18	3 7/16	11–07
* *		*		*		*		*		*
Semil 34	10–17	18	3 10/16	10–31	16	3 9/16	11–14	14	3 5/16	11–28
Semil 43	10–24	18	3 10/16	11–7	16	3 9/16	11–21	14	3 5/16	12–05
* *		*		*		*		*		*

* * * * *

Dated: August 17, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–21665 Filed 8–18–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–282–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive. (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections to detect broken fasteners and cracking of the forward edge frame for main entry door number 3, and repair, if necessary. This proposal is prompted by reports of fatigue cracks at the inner chord and web of the body station 1265 edge frame between stringers 23 and 27. The actions specified by the proposed AD are intended to detect and correct such cracking, which could result in rapid depressurization of the airplane.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–282–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–282–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–282–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fatigue cracking has been detected in the frame web and frame inner chord at stringer 26 at body station 1265. In addition, one report indicates that, on one airplane, the fuselage frame web and frame inner chord had severed above stringer 24 near the top of a frame inner chord reinforcement strap. This frame is the forward edge frame for main entry door number 3. Such fatigue cracking, if not detected and corrected in a timely manner, could result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999, which describes procedures for repetitive inspections to detect broken fasteners and cracking of the forward edge frame for main entry door number 3, and repair, if necessary. The inspection of the frames at the floor intercostal includes a detailed visual inspection for broken fasteners, an open hole high frequency eddy current (HFEC) inspection of certain fasteners in the frame inner chord to detect cracking, and a surface HFEC inspection of the frame web to detect cracking. For certain airplanes, the service bulletin recommends a surface HFEC inspection and an open hole HFEC inspection of the frames at the top of the inner chord reinforcement strap to detect cracking. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This AD

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for repair data for cracking conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

The alert service bulletin also indicates that a modification to the frame and lateral intercostal can be made that will increase the interval between frame inspections, and that the procedures for such a modification will be included in a subsequent revision to the alert service bulletin. Any modification incorporated to increase the interval between inspections or as terminating action for the inspections must be approved as an alternative method of compliance in accordance with paragraph (d) of this AD.

Cost Impact

There are approximately 1,182 airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection of the frames at the floor intercostal, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $15,060, or $60 per airplane, per inspection cycle.

The FAA estimates that the proposed inspection of the frames at the top of the inner chord reinforcement strap would be required to be accomplished on 103 U.S.-registered airplanes. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $6,180, or $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–282–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999; certificated in any category.

Note 1: This AD applies to airplanes that have been converted from a passenger configuration to a special freighter configuration.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the inner chord and web of the body station 1265 edge frame between stringers 23 and 27, which could result in rapid depressurization of the airplane, accomplish the following:

Inspections

(a) Accomplish the flight safety inspections of the frames at the floor intercostal to detect broken fasteners and cracking, in accordance with Figure 5 of Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999, at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

Note 3: Figure 5 of the alert service bulletin includes a detailed visual inspection for broken fasteners, an open hole high frequency eddy current (HFEC) inspection of certain fasteners in the frame inner chord to detect cracking, and a surface HFEC inspection of the frame web to detect cracking.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 5: The alert service bulletin gives instructions to perform an open hole inspection, but does not give instructions to oversize the fastener hole after the inspection. This will keep sufficient material to oversize the hole at a later date when the modification work is accomplished.

(1) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated between 10,000 and 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 11,000 total flight cycles, or within 750 flight cycles after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated more than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 20,750 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(b) For Group 1 airplanes, as identified in Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999, on which the extended chord reinforcement strap modification specified in Boeing Service Bulletin 747–53–2066, dated June 28, 1972, has not been accomplished or on which the extended chord reinforcement strap modification was accomplished after the accumulation of 10,000 total flight cycles: Accomplish the surface HFEC inspection and the open hole HFEC inspection, as applicable, of the frames at the top of the inner chord reinforcement strap to detect cracking, in accordance with Figure 6 of the alert service bulletin at the applicable time specified in either paragraph (b)(1) or (b)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 800 flight cycles.

(1) For airplanes that have accumulated 20,000 total flight cycles or fewer as of the effective date of this AD: Inspect prior to the accumulation of 16,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated more than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 20,500 total flight cycles, or within 250 flight cycles after the effective date of this AD, whichever occurs later.

Repair

(c) If any broken fastener or cracking is detected during the inspections required by paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21693 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–01–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive.

(AD) that is applicable to all Dornier Model 328–100 series airplanes. This proposal would require repetitive inspections of the left and right roll spoiler actuators to check for signs of leakage and deformation of the housing, repetitive inspections of the gap between the left roll spoiler actuator housing cap and the actuator housing, repetitive torque checks of the left roll spoiler actuator housing cap attachment screws, and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent oil leakage from the roll spoiler actuators, which could result in incorrect roll spoiler operation and reduced controllability of the airplane.

DATES: Comments must be received by September 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information

may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–01–AD."

The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that a fluid leakage from the roll spoiler actuator housing was found. Investigation showed that the existing design allowed the piston of the double shuttle valve to temporarily remain in the middle position, allowing high pressure to reach the low pressure side of the actuator. This resulted in deformation of the actuator housing cap and subsequent oil loss. This condition, if not corrected, could result in incorrect roll spoiler operation and reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB–328–27–025, dated October 16, 1998, which describes procedures for repetitive detailed inspections of the left and right roll spoiler actuators for signs of leakage and deformation of the housing, repetitive inspections to detect a gap between the left roll spoiler actuator housing cap and the actuator housing, and repetitive torque checks of the left roll spoiler actuator housing cap attachment screws. The alert service bulletin also describes procedures for the replacement of the actuators and the double shuttle valves, if a gap or oil leakage is detected, if the cap surface is not flat, or if the torque of the attachment screws is less than 1 newton meter (8.85 lb-in).

Both the left and right roll spoiler actuators are connected to the same double shuttle valve and experience the same hydraulic pressure. The left roll spoiler actuator is inspected more thoroughly, with the gap inspection and torque check, because it is more accessible than the right roll spoiler actuator. Removal of the right roll spoiler actuator from the airplane would be necessary to accomplish all inspection actions. In the event any discrepancy is noted on the left roll spoiler actuator requiring its replacement, the removal and complete inspection of the right roll spoiler actuator becomes necessary.

Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this alert service bulletin as mandatory and issued LBA airworthiness directive 1998–479, dated December 17, 1998, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,000, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GMBH: Docket 99–NM–01–AD.

Applicability: All Dornier Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent oil leakage from the roll spoiler actuators, which could result in incorrect roll spoiler operation and reduced controllability of the airplane, accomplish the following:

(a) Within 14 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD on the left and right roll spoiler actuators, in accordance with Dornier Alert Service Bulletin ASB–328–27–025, dated October 16, 1998. Thereafter, repeat the inspections required by paragraphs (a)(1) and (a)(2) of this AD at intervals not to exceed 330 flight hours.

(1) Perform a detailed inspection to detect leakage of the area around the actuator cap and housing of the roll spoiler actuators. If leakage is found, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

(2) Perform a detailed inspection to detect flatness of the surface of the cap of the roll spoiler actuators. If the cap surface is not flat, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(b) Within 14 days after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD on the left roll spoiler actuator, in accordance with Dornier Alert Service Bulletin ASB–328–27–025, dated October 16, 1998. Thereafter, repeat the inspections required by paragraphs (b)(1) and (b)(2) of this AD at intervals not to exceed 330 flight hours.

(1) Perform a detailed inspection to detect a gap between the cap of the roll spoiler actuator and the actuator housing. If any gap exists, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

(2) Perform a torque check of the housing cap attachment screws. If the torque is within the limits specified by the service bulletin, prior to further flight, torque the screws to 17.7 lb-in, in accordance with the alert service bulletin. If the torque is outside the limits specified by the service bulletin, prior to further flight, replace the left roll spoiler actuator and double shuttle valve with new or serviceable parts, in accordance with the alert service bulletin.

(c) If any left roll spoiler actuator is replaced during any inspection required by paragraph (b)(1) or (b)(2) of this AD, prior to further flight, accomplish the requirements of (b)(1) and (b)(2) for the right roll spoiler actuator.

Alternate Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in LBA airworthiness directive 1998–479, dated December 17, 1998.

Issued in Renton, Washington, on August 16, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21692 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–02–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This proposal would require a one-time detailed visual inspection of the upper decompression panel on the flight deck door to verify that a minimum overlap dimension exists, and corrective action, if necessary. This proposal is prompted by reports indicating that, during production, some upper decompression panels were installed incorrectly on the flight deck door. The actions specified by the proposed AD are intended to detect an incorrectly installed upper decompression panel, which could cause the emergency exit panel on the flight deck door to become inoperable, thereby preventing crewmembers from performing essential duties during an emergency evacuation.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mike Thompson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1157; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

During a pre-delivery interior compliance inspection, the FAA discovered that the emergency exit panel installed on the flight deck door of a Boeing Model 737 series airplane did not open properly. The emergency exit panel contains an upper decompression panel that allows pressure to equalize in the event of a rapid decompression. This panel also serves as an alternate escape path from the crew cabin if the flight deck door is damaged during an emergency landing. Subsequent investigation revealed that if the upper decompression panel is installed incorrectly, an interference between this panel and a decorative channel could cause the emergency exit panel to bind. Such binding could cause the panel to become inoperable as an emergency exit; however, the panel would still function properly in the event of a rapid decompression. The FAA found this problem on two airplanes prior to delivery, and has determined that it could also exist on certain Model 737–300/–400/–500 series airplanes, as well as on certain Model 737–600/–700/–800 series airplanes, that have already been delivered. The actions specified by the proposed AD are intended to detect an incorrectly installed upper decompression panel, which could cause the emergency exit panel on the flight deck door to become inoperable, thereby preventing crewmembers from performing essential duties during an emergency evacuation.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–52–1128, dated April 22, 1999, which describes procedures to inspect the upper decompression panel on the flight deck door of certain Model 737–300/–400/–500 series airplanes to verify that a minimum overlap dimension of 0.05 inch exists. If the minimum overlap does not exist, the service bulletin provides instructions to adjust the upper decompression panel and, if necessary, an adjacent decorative channel, to establish the correct overlap dimension.

The FAA has also reviewed and approved Boeing Service Bulletin 737–52–1137, dated May 13, 1999, which describes procedures to inspect the upper decompression panel on the flight deck door of certain Model 737–600/–700/–800 series airplanes to verify that a minimum overlap dimension of 0.05 inch exists. If the minimum overlap does not exist, the service bulletin provides instructions to adjust the upper decompression panel and, if necessary, an adjacent decorative channel, to establish the correct overlap dimension.

Accomplishment of the actions specified in the two service bulletins discussed above, as applicable, is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and the Service Bulletins

Operators should note that, although the service bulletins recommend that the inspection be performed at the next convenient maintenance opportunity, the FAA has determined that an unspecified maintenance interval would not address the unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (1 hour). In light of all of these factors, the FAA finds an 18-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletins specify accomplishment of an inspection of the upper decompression panel on the flight deck door to verify that a minimum overlap dimension of 0.05 inch exists, this proposed AD refers to that inspection as a detailed visual inspection. The FAA finds that "detailed visual inspection" is the appropriate terminology for the inspection described in the service bulletins. Additionally, a definition of a detailed visual inspection is included in **Note 2** of this proposed AD.

Cost Impact

There are approximately 1299 airplanes of the affected design in the worldwide fleet. The FAA estimates that 901 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $54,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–02–AD.

Applicability: Model 737 series airplanes, as listed in Boeing Service Bulletin 737–52–1128, dated April 22, 1999, or in Boeing Service Bulletin 737–52–1137, dated May 13, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect an incorrectly installed upper decompression panel, which could cause the emergency exit panel on the flight deck door to become inoperable, thereby preventing crewmembers from performing essential duties during an emergency evacuation, accomplish the following:

One-Time Inspection

(a) Within 18 months after the effective date of this AD, perform a one-time detailed visual inspection of the upper decompression panel on the flight deck door to verify that a minimum overlap dimension of 0.05 inch exists, as specified in Boeing Service Bulletin 737–52–1128, dated April 22, 1999 (for Model 737–300/–400/–500 series airplanes); or Boeing Service Bulletin 737–52–1137, dated May 13, 1999 (for Model 737–600/–700/–800 series airplanes); as applicable.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If a minimum overlap dimension of 0.05 inch is not found during the inspection required by paragraph (a) of this AD, prior to further flight, adjust the decompression panel and, as applicable, the adjacent decorative channel, in accordance with Boeing Service Bulletin 737–52–1128, dated April 22, 1999 (for Model 737–300/–400/–500 series airplanes); or Boeing Service Bulletin 737–52–1137, dated May 13, 1999 (for Model 737–600/–700/–800 series airplanes); as applicable.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21691 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–03–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing 777–200 series airplanes, that currently requires repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG); and corrective action, if necessary. That AD was prompted by reports of missing or damaged components on the lock link mechanism. The actions specified by that AD are intended to prevent failure of the lock link mechanism to lock the MLG in the down position, and consequent collapse of the MLG during ground operation. This action would provide for an optional terminating action for the repetitive inspections.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00

p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–03–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 15, 1998, the FAA issued AD 98–02–06, amendment 39–10288 (63 FR 3458, January 23, 1998), applicable to certain Boeing 777–200 series airplanes, to require repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG); and corrective action, if necessary. That action was prompted by reports of missing or damaged components on the lock link mechanism. The requirements of that AD are intended to prevent failure of the lock link mechanism to lock the MLG in the down position, and consequent collapse of the MLG during ground operation.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved Boeing Service Bulletin 777–32–0016, dated January 14, 1999. The service bulletin describes procedures for replacement of the existing retention bolt, end caps, washer, and nut of the lock link mechanism on the side struts and drag struts on the MLG with a new lock link assembly that incorporates a new bolt, washer, nut, and end-caps. Accomplishment of this action would eliminate the need for the repetitive inspections required by AD 98–02–06 and would positively address the unsafe condition addressed by that AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 98–02–06 to continue to require repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the MLG; and corrective action, if necessary. This proposed AD also would provide for an optional terminating action for the repetitive inspections. The optional terminating action, if accomplished, would be required to be accomplished in accordance with the service bulletin described previously.

The FAA is not proposing to mandate the replacement of the existing retention bolt of the lock link mechanism on the side struts and drag struts on the MLG for several reasons:

1. Accessing the lock link mechanism area on the MLG for inspection is easily accomplished.

2. The failed retention system of the bolt is easily detectable by means of a visual inspection.

3. The loss of a bolt may adversely affect the MLG during ground operations; however, the visual inspections will preclude the failure of the bolt retention system, which could result in collapse of the MLG during ground operations.

Cost Impact

There are approximately 40 Model 777–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 98–02–06, and retained in this AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,040, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 1 work hour per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,094 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $5,154 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10288 (63 FR 3458, January 23, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–03–AD. Revises AD 98–02–06, amendment 39–10288.

Applicability: Model 777–200 series airplanes, line positions 1 through 40 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the lock link mechanism to lock the main landing gear (MLG) in the down position, and consequent collapse of the MLG during ground operation, accomplish the following:

Restatement of the Requirements of AD 98–02–06

Repetitive Inspections and Corrective Actions

(a) Within 30 days after February 9, 1998 (the effective date of AD 98–02–06, amendment 39–10288), perform a visual inspection to determine the presence and condition of the cotter pin and nut of the lock link mechanism on the side struts and drag struts on the left- and right-hand MLG, in accordance with Boeing Alert Service Bulletin 777–32A0015, dated September 4, 1997. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 75 days or 400 flight cycles, whichever occurs first.

New Actions Proposed by This AD

Optional Terminating Action

(b) Replacement of the existing retention bolt, end caps, washer, and nut of the lock link mechanism on the side struts and drag struts on the MLG with a new lock link assembly that incorporates a new bolt, washer, nut, and end-caps, in accordance with Boeing Service Bulletin 777–32–0016, dated January 14, 1999, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on August 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21690 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–32–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. This proposed AD would require modification of the wiring of the emergency lighting system. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The action specified by the proposed AD is intended to prevent the pilots from having full authority over the cabin emergency lights, which could result in delayed egress of the passengers and crew from the cabin during emergency evacuation.

DATES: Comments must be received by September 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Airplane Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Airplane Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Luciano L. Castracane, Aerospace Engineer, Systems and Flight Branch, ANE–172, Engine and Propeller Directorate, New York Airplane Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581, telephone (516) 256–7535; fax (516) 256–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–32–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. TCCA advises that installation of Bombardier Modification 8/2407 on these airplanes gave the pilots full authority over the emergency lights. If the cockpit switch for the emergency lights is in the OFF position, the flight attendant cannot turn the lights on from the cabin location because the pilot switch overrides the flight attendant's switch. This condition, if not corrected, could result in delayed egress of the passengers and crew members from the cabin during an emergency evacuation.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 8–33–40, Revision 'B,' dated October 21, 1998, which describes procedures for modification of the wiring of the emergency lighting system to allow selection of the emergency lights to ON from the flight attendant switch in the cabin, even when the emergency light switch in the cockpit is OFF. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–98–33, dated September 8, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the action specified in the service bulletin described previously.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Canadian airworthiness directive affects Bombardier Model DHC–8–314 series airplanes, Bombardier Model DHC–8–314 series airplanes are not type certificated in the United States. Therefore, the proposed AD does not affect those airplanes.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $595 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $17,950, or $1,795 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Airplane, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 99–NM–32–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 459 through 501, excluding serial numbers 462, 464, 467, 469, 478, 479, 481, 482, 487, 489, 490, 491, 493, 495, 498, 499, and 500; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the pilots from having full authority over the cabin emergency lights, which could result in delayed egress of the passengers and crew from the cabin during an emergency evacuation, accomplish the following:

Modification

(a) For airplanes on which Bombardier Modification 8/2407 has been installed during production: Within 12 months after the effective date of this AD, modify the wiring of the emergency lighting system in accordance with Bombardier Service Bulletin S.B. 8–33–40, Revision 'B,' dated October 21, 1998.

Note 2: Modification of the wiring of the emergency lighting system accomplished prior to the effective date of this AD in accordance with Bombardier Service Bulletin S.B. 8–33–40, dated May 8, 1998, or Revision 'A,' dated July 28, 1998, is considered acceptable for compliance with the modification required by paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–98–33, dated September 8, 1998.

Issued in Renton, Washington, on August 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Airplane Certification Service.

[FR Doc. 99–21689 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–58–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require the replacement of fuse pins in the attachment fittings and support fittings of the main landing gear with new, improved fuse pins. This proposal is prompted by a report of corrosion of a fuse pin of a similar design on the main landing gear of a Boeing Model 767 series airplane. The actions specified by the proposed AD are intended to prevent corrosion and subsequent fracture of the fuse pins, which could result in collapse of the main landing gear and the loss of the inboard flap and outboard spoilers.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–58–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of corrosion of a fuse pin on the main landing gear of a Boeing Model 767 series airplane. Such corrosion could lead to fracture of the fuse pins. Fracture of the fuse pins for the outboard end of the main landing gear beam and upper stabilizer braces for the main landing gear could result in the separation of the main landing gear beam. This condition, if not corrected, could result in collapse of the main landing gear and the loss of the inboard flap and outboard spoilers.

The design of the fuse pins on the Boeing Model 767 series airplane and those on the Model 777 series airplane is very similar. Therefore, the Model 777 series may be subject to the same unsafe condition revealed on the Model 767 series airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–57A0029, dated December 22, 1998, which describes procedures for the replacement of fuse pins in the attachment fittings and support fittings of the main landing gear with new, improved fuse pins made of a more corrosion resistant material. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

There are approximately 163 airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD, that it would take between 5 and 39 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost between $3,090 and $8,710 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $3,390 and $11,050 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–58–AD.

Applicability: Model 777 series airplanes, as listed in Boeing Alert Service Bulletin 777–57A0029, dated December 22, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion and subsequent fracture of the fuse pins in the main landing gear attachment and support fittings, which could result in collapse of the main landing gear and the loss of the inboard flap and outboard spoilers, accomplish the following:

Replacement

(a) Within 48 months since date of manufacture, or 18 months after the effective date of this AD, whichever occurs later, replace the main landing gear fuse pins with new, improved fuse pins in accordance with Boeing Alert Service Bulletin 777–57A0029, dated December 22, 1998.

Spares

(b) As of the effective date of this AD, no person shall install a main landing gear fuse pin having part number 112W1728–1, 112W1728–3, or 115W1670–1 on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21688 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–81–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposal would require repetitive inspections to detect cracking of the lower corners of the door frame and cross beam of the forward cargo door, and corrective actions, if necessary. This proposal also would require eventual modification of the outboard radius of

the lower corners of the door frame and reinforcement of the cross beam of the forward cargo door, which would constitute terminating action for the repetitive inspections. This proposal is prompted by reports indicating that fatigue cracks have been detected in the lower corners of the door frame and cross beam of the forward cargo door. The actions specified by the proposed AD are intended to prevent fatigue cracking of the lower corners of the door frame and cross beam of the forward cargo door, which could result in rapid depressurization of the airplane.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98134–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–81–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating that fatigue cracks have been detected in the lower corners of the door frame and cross beam of the forward cargo door on Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. Such fatigue cracking results from cabin pressurization cycles. The sizes of the cracks ranged from 3/8 inch to 17.5 inches in length, and were found on airplanes that had accumulated between 13,500 and 53,100 total flight hours and between 15,700 and 49,800 total flight cycles.

The manufacturer subsequently redesigned the door frame of the forward cargo door to be less susceptible to fatigue cracking. However, investigation has revealed that such cracking has been detected on airplanes equipped with the redesigned door frame of the forward cargo door. Recently, two operators reported finding cracks on the lower corner radius of the aft door frame of the forward cargo door. The first operator reported finding a 10-inch crack on the aft door frame and an undisclosed sized crack on the cross beam on an airplane that had accumulated 23,000 total flight cycles. The second operator reported finding a 14.5-inch crack on the aft door frame and an undisclosed sized crack on the cross beam on an airplane that had accumulated 29,000 total flight cycles. Such cracking, if not detected and corrected, could result in rapid depressurization of the airplane.

Other Relevant Rulemaking

The FAA previously has issued AD 90–06–02, amendment 39–6489 (55 FR 8372, March 7, 1990), applicable to certain Boeing Model 737 series airplanes. AD 90–06–02 requires accomplishment of certain structural modifications. That amendment was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. For airplanes that have those modifications installed, this proposed AD would require additional modifications of the aft lower corner of the door frame of the forward cargo door.

Additionally, the FAA has issued AD 98–25–06, amendment 39–10931 (55 FR 67769, December 9, 1998), applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes. AD 98–25–06 requires repetitive inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. This proposed AD would not affect the requirements of that AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing 737 Nondestructive Test Manual, Part 6, Section 51–00–00, Figure 4 and Figure 23, which describes procedures for performing high frequency eddy current inspections.

The FAA has also reviewed and approved Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994, which describes procedures for, among other things, repetitive close visual inspections to detect cracking of the lower corners (forward and aft) of the door frame and cross beam (i.e., upper and lower chord and web sections) of the forward cargo door, and corrective actions, if necessary. The corrective actions involve replacement of the damaged door frame of the forward cargo door with a new door frame and reinforcement modification of the upper chord and web sections of the cross beam of the forward cargo door. The corrective actions also involve installation of a cross beam repair (if necessary), and preventative modification of the outboard radius of the lower corners of the door frame. This modification involves installing a reinforcement angle along the full length of the lower corners (forward and aft) over the outboard radius of the lower end of the door frame. For certain airplanes, installation of the preventative modification of the outboard radius of the lower corner of the door frame and reinforcement of the cross beam of the forward cargo door will eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in the service documents is

intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service documents described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

• Operators should note that, whereas the Boeing service bulletin specifies close visual inspections only, this proposed AD would require a high frequency eddy current inspection to detect cracking of the door frame and a detailed visual inspection to detect cracking of the cross beam of the forward cargo door. The FAA has determined that, because of the safety implications and consequences associated with such fatigue cracking, close visual inspection methods alone may be inadequate in detecting cracks.

• While the Boeing service bulletin does not provide corrective actions for cracking detected on the lower chord of the cross beam, this proposed AD would require that the repair of the lower chord of the cross beam be accomplished in accordance with a method approved by the FAA.

• Operators should further note that, unlike the procedures described in the Boeing service bulletin, this proposed AD would not permit the alternative of replacing the door frame of the forward cargo door in the event that cracks are detected on the cross beam. This proposed AD would require installation of a cross beam repair (if necessary) and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame, and installation of a reinforcement modification of the cross beam of the forward cargo door. Additionally, this proposed AD would require additional actions in the event that cracks are detected in the door frame of the forward cargo door. This proposed AD would require replacement of the door frame with a new door frame, reinforcement of the cross beam, and installation of the preventative modification of the outboard radius of the lower corners of the door frame. The FAA finds that, in view of the reports that cracking has occurred on the redesigned door frames, and because of the safety implications and consequences associated with such cracking, replacing the door frame without further modification will not safely address the unsafe condition.

• This AD also proposes to mandate, within 4 years, the preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame and the reinforcement modification of the cross beam of the forward cargo door as described in the Boeing service bulletin (previously described). The modification would be accomplished, for certain airplanes, in accordance with the Boeing service bulletin and for certain other airplanes, in accordance with a method approved by the FAA, and would eliminate the need for the repetitive inspections.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirements are in consonance with these conditions.

• The effectivity of the Boeing service bulletin includes Boeing Model 737 series airplanes having line numbers 0001 through 1231 inclusive. This proposed AD would be applicable to Boeing Model 737 series airplanes having line numbers 0001 through 1231 inclusive, and also would include Boeing Model 737 series airplanes having line numbers 1232 and on. The FAA is aware that a design change to the door frame of the forward cargo door was implemented on the production line at line number 1232. The FAA finds that, in view of the reports indicating that cracking has occurred on airplanes having later line numbers (1251 and 1790) with the change incorporated, the applicability specified in this proposed AD is appropriate.

• Further, operators should note that, although the Boeing service bulletin recommends that the initial inspection be performed within 4,500 flight cycles after an airplane has accumulated 12,000 total flight cycles, this proposed AD would require that the initial inspection be performed within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later. The FAA has determined that the number of total flight cycles for an airplane may not be a good indicator of the total cycle count for the subject forward cargo door, because a door may have been removed from an airplane that had accumulated many total flight cycles and reinstalled on an airplane that had accumulated relatively fewer total flight cycles. Due to the limited ability to accurately track the total flight cycles of the subject forward cargo door, the initial compliance time specified by this proposed AD is appropriate.

Cost Impact

There are approximately 3,100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,400 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $84,000, or $60 per airplane, per inspection cycle.

It would take approximately 38 work hours per airplane to accomplish the proposed terminating modifications at an average labor rate of $60 per work hour. Required parts would cost $1,865 per airplane. Based on these figures, the cost impact of the terminating modifications proposed by this AD on U.S. operators is estimated to be $5,803,000, or $4,145 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by

contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–81–AD.

Applicability: All Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower corners of the door frame and cross beam of the forward cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

High Frequency Eddy Current Initial/ Repetitive Inspections

(a) Within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracking of the lower corners (forward and aft) of the door frame of the forward cargo door in accordance with Boeing 737 Nondestructive Test Manual, Part 6, Section 51–00–00, Figure 4 or Figure 23.

(1) If no cracking is detected, repeat the HFEC inspection thereafter at intervals not to exceed 4,500 flight cycles, until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD, which constitute terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

(i) Replace the door frame of the forward cargo door with a new door frame; install a cross beam repair and reinforcement modification of the cross beam in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994; and

(ii) Modify the replacement door frame of the forward cargo door in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair or modification method to be approved by the Manager, Seattle ACO, as required by this paragraph and paragraphs (b)(2), (b)(3)(ii), and (c)(2), the Manager's approval letter must specifically reference this AD.

Detailed Visual Initial/Repetitive Inspections

(b) Within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking of the cross beam (i.e., upper and lower chord and web sections) of the forward cargo door in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is detected on the lower chord section of the cross beam during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(3) If any cracking is detected on any area excluding the lower chord section of the cross beam (i.e., upper chord and web section) during any inspection required by paragraph (b) of this AD, prior to further flight, accomplish the requirements of paragraph (b)(3)(i) or (b)(3)(ii), as applicable, of this AD, which constitute terminating action for the repetitive inspections required by paragraph (b)(1) of this AD.

(i) For airplanes with line numbers 1 through 1231: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

Note 3: Due to implications and consequences associated with cracking, this AD does not allow the option of replacing the door frame as an alternative method of compliance to installing the preventative modification.

(ii) For airplanes with line numbers 1232 and subsequent: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame in accordance with a method approved by the Manager, Seattle ACO or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Terminating Action

(c) Within 4 years after the effective date of this AD: Install the preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame and the reinforcement modification of the cross beam of the forward cargo door in accordance with paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of paragraph (c)(1) or (c)(2) of this AD, as applicable, constitutes terminating action for the repetitive inspections required by paragraphs (a)(1) and (b)(1) of this AD.

(1) For airplanes with line numbers 1 through 1231: Accomplish the preventative modification and the reinforcement modification in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(2) For airplanes with line numbers 1232 and subsequent: Accomplish the preventative modification and the reinforcement modification in accordance with a method approved by the Manager, Seattle ACO or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Modifications Previously Accomplished

(d) For all airplanes on which modifications of the forward lower corner of the door frame and the cross beam of the forward cargo door were accomplished in accordance with Boeing Service Bulletin 737–52–1100, dated August 25, 1988, or Revision 1, dated July 20, 1989, or in accordance with the requirements of AD 90–06–02, amendment 39–6489: Within 4 years after the effective date of this AD, install the reinforcement modification of the aft corner of the door frame of the forward cargo door in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994. Accomplishment of such modification constitutes terminating action for the repetitive inspections required by this AD.

Note 4: Accomplishment of Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994, does not supersede the requirements of AD 90–06–02, amendment 39–6489.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21687 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–88–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100 and –200 series airplanes. This proposal would require repetitive inspections of the upper and lower chords of the wing front spar for cracks, and corrective action, if necessary. For airplanes on which no cracking is detected, this proposal would also provide optional terminating action in lieu of repetitive inspections. This proposal is prompted by reports of cracks in the upper chord of the wing front spar. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–88–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of cracks in the upper chord of the wing front spar at the fastener holes in the area of the number 2 and number 3 strut outboard upper link fitting. The cracks are believed to initiate by fatigue on the forward surface of the chord and propagate into the thickness of the part. The lower chord of the wing front spar is similar in design to the upper chord; therefore, the lower chord may be subject to the same unsafe condition. This condition, if not corrected, could result in reduced structural capability and possible fuel leakage onto an engine and resultant fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, which describes procedures for repetitive ultrasonic inspections of the upper and lower chords of the wing front spar for cracks, and corrective action, if necessary. The corrective action involves accomplishment of a terminating action that includes a high frequency eddy current inspection of the upper and lower chords of the spar, repair of cracks, and installation of oversized fasteners. For airplanes on which cracking is not detected, accomplishment of the terminating action is optional, and eliminates the need for the repetitive inspections.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. This proposed AD also would provide optional terminating action for the repetitive inspections for airplanes on which no cracking is detected.

Operators should note that the FAA has determined that the repetitive inspections proposed by this AD can be

allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect fatigue cracking of the upper and lower chords of the wing front spar before it represents a hazard to the airplane.

Differences Between the Proposed Rule and Service Bulletin

Boeing Service Bulletin 747–57–2305, Revision 1, specifies accomplishment of the actions that would be required by paragraphs (a) and (b) of this AD in accordance with either the Boeing-specified manuals or "operator's equivalent procedure." However, this proposed AD would require that the ultrasonic inspection and high frequency eddy current inspection actions required by those paragraphs be accomplished in accordance with the procedures specified in the Boeing 747 NDT Manual D6–7170. "Operator's equivalent procedures" may be used for Boeing-specified manuals with the exception of the Boeing 747 NDT Manual D6–7170. "Operator's equivalent procedures" to the Boeing 747 NDT Manual D6–7170 may be used only if approved as an alternative method of compliance in accordance with paragraph (c) of this AD.

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, as specified by paragraph (a)(3) of this proposed AD, the Manager's approval letter must specifically reference this AD.

Cost Impact

There are approximately 332 airplanes of the affected design in the worldwide fleet. The FAA estimates that 137 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,440, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 37 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,000 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $7,220 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–88–AD.

Applicability: Model 747–100 and –200 series airplanes, listed in Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire, accomplish the following:

Inspections and Corrective Action

(a) Prior to the accumulation of 12,000 total flight cycles, or within 24 months after the effective date of this AD, whichever occurs later, accomplish an ultrasonic inspection for cracking of the upper and lower chord of the wing front spar, in accordance with Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999.

(1) If no cracking is found, repeat this inspection thereafter at intervals not to exceed 6,000 flight cycles, until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is found, prior to further flight, accomplish "Part 2—Terminating Action" of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of this action constitutes terminating action for the requirements of this AD.

(b) During accomplishment of the terminating action required by paragraph (a)(2) of this AD, if any crack is found in the upper chord that is outside the limits specified in Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999; or if any crack is found in the lower chord; prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in

accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this AD, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(c) Accomplishment of "Part 2—Terminating Action" of the Accomplishment Instructions of Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21686 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require modification of the nacelle strut and wing structure of certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines. This proposal is prompted by reports indicating that the actual operational loads applied to the nacelle are higher than the analytical loads that were used during the initial design. Such an increase in loading can lead to fatigue cracking in primary strut structure prior to an airplane's reaching its design service objective. The actions specified by the proposed AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–125–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–125–D, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the manufacturer has accomplished a structural reassessment of the damage tolerance capabilities of the Boeing Model 757 series airplane, equipped with Rolls Royce engines. This reassessment indicates that the actual operational loads applied to the nacelle strut and wing structure are higher than the analytical loads that were used during the initial design. Subsequent analysis and service history, which includes numerous reports of fatigue cracking on certain strut and wing structure, indicate that fatigue. cracking can occur on the primary strut structure before an airplane reaches its design service objective of 20 years or 50,000 flight cycles. Analysis also indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. Fatigue cracking in primary strut structure would result in reduced structural integrity of the strut.

Explanation of Relevant Service Information

Boeing recently has developed a modification of the strut-to-wing attachment structure installed on Model 757 series airplanes equipped with Rolls Royce Model RB211 series engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvement also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachment assembly.

The FAA has reviewed and approved Boeing Service Bulletin 757–54–0035, dated July 17, 1997, which describes procedures to modify the nacelle strut

and wing structure of certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines. The modification consists of replacing many of the significant load-bearing components of the strut (e.g., the side link fittings assemblies, the upper link assembly, certain fuse bolt assemblies, etc.) with improved components. In addition, Table I of the service bulletin also identifies numerous related service bulletin modifications that must be accomplished before or at the same time as the service bulletin is accomplished. These modifications also entail the replacement of many of the significant load-bearing components of the strut with improved components.

In addition, the service bulletin contains a formula for calculating an optional compliance threshold for the specified modification. This formula is intended to be used as an alternative to the 20-year calendar threshold specified in the service bulletin.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the modifications specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that this proposed AD would provide a grace period of 3,000 flight cycles for airplanes that have already passed the initial compliance threshold specified in the service bulletin. The service bulletin was issued at a time when none of the affected airplanes had reached that initial compliance threshold.

Cost Impact

There are approximately 394 airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1,049 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. This work hour figure includes the time it would take to remove and reinstall the struts from the airplane as well as the time to gain and close access to the adjacent wing structure. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $11,077,440, or $62,940 per airplane.

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table I, "Strut Improvement Bulletins," on page 6 of Boeing Service Bulletin 757–54–0035, that are proposed to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table I of the service bulletin. As indicated earlier in this preamble, the FAA invites comments specifically on the overall economic aspects of this proposed rule. Any data received via public comments to this notice will aid the FAA in developing an accurate accounting of the cost impact of the rule.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for part costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–125–AD.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines, line numbers 1 through 735 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

(a) Modify the nacelle strut and wing structure in accordance with Boeing Service Bulletin 757–54–0035, dated July 17, 1997, at the later of the times specified in paragraph (a)(1) or (a)(2). All of the terminating actions described in the service bulletins listed in paragraph I.C., Table I, "Strut Improvement Bulletins," on page 6 of Boeing Service Bulletin 757–54–0035, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the

accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(1) Prior to the accumulation of 37,500 total flight cycles, or prior to 20 years since the date of manufacture of the airplane, whichever occurs first.

(2) Within 3,000 flight cycles after the effective date of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21685 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–156–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 1000 series airplanes. This proposal would require a visual inspection of the PS wire bundle, shielded wires going to fuel probe "G," and any other wire or wire bundle for chafing in the forward wing spar and forward ventral tank area; and corrective actions, if necessary. This proposal is prompted by reports indicating that, due to improper routing of a wire bundle, the wire bundle chafed against the forward ventral tank transfer/crossfeed valve, which caused an electrical short and resulted in failure of the landing light. The actions specified by the proposed AD are intended to prevent a short circuit due to wire chafing, which can cause a fire in the ventral fuel tank area.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer,Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–156–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of a wire bundle chafing against the forward ventral tank transfer/crossfeed valve on Raytheon Model Hawker 1000 series airplanes. The wire insulation had worn through and caused an electrical short, which resulted in failure of the landing light. The cause of such chafing has been attributed to improper routing of the PS wire bundle at fuselage station 293.47 during production, which may allow the wire bundle to contact the forward ventral tank transfer/crossfeed valve. This condition, if not corrected, could result in an electrical short, which could cause a fire in the ventral fuel tank area.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998. The service bulletin describes procedures for a detailed visual inspection of the PS wire bundle, shielded wires going to fuel probe "G," and any other wire or wire bundle for chafing in the forward wing spar and forward ventral tank area; and corrective action, if necessary. The corrective actions involve ensuring adequate clearance between the PS wire bundle and the front ventral tank transfer/crossfeed valve actuator, and between the shielded wires going to fuel probe "G" and the wing transfer valve actuator; installing spiral wrap; repairing chafed wire; and replacing chafed wire with new wire. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 91 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,340, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Beech): Docket 99–NM–156–AD.

Applicability: Model Hawker 1000 series airplanes, serial numbers 258151, 258159, and 259003 through 259052 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit due to wire chafing, which can cause a fire in the ventral fuel tank area, accomplish the following:

Inspection and Modification

(a) Within 50 flight hours after the effective date of this AD, perform a detailed visual inspection of the PS wire bundle coming from the bung 'DF' for chafing against the front ventral tank transfer/crossfeed actuator, in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no chafing is found, prior to further flight, ensure a minimum 0.25-inch clearance exists between the PS wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(2) If any chafing is found on a 22, 20, 16, or 14 gauge (non-shielded) wire, prior to further flight, repair chafed wire by splicing the damaged section using MIL–S–81824/1 splices; ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(3) If any chafing is found on a 10 gauge wire, replace the entire wire with a new 10 gauge wire; ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(b) Within 50 flight hours after the effective date of this AD, perform a detailed visual inspection of the shielded wires going to the fuel probe "G" for chafing against the wing transfer valve actuator and mounting screws, in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998.

(1) If no chafing is found, prior to further flight, ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(2) If any chafing is found, prior to further flight, replace the entire shielded wire with a new shielded wire; ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(c) Within 50 flight hours after the effective date of this AD, perform a borescope inspection of the entire forward wing spar/forward ventral tank area for chafing of any other wire or wire bundle; and install spiral wrap, as necessary; in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998.

(1) If no chafing is found, no further action is required by this AD.

(2) If any chafed wire or wire bundle is found, prior to further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. For a repair method to be approved by the Manager, Wichita ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add

comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21684 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–181–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require a one-time inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly for correct installation, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation.

DATES: Comments must be received by September 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–181–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that cases of improper escape slide/raft deployment have been reported. One operator reported the escape slide/raft failed to deploy and the passenger/crew door was blocked part way open. Subsequent investigation revealed that the cause of this deployment failure and door blockage was incorrect installation of the rail release pins of the escape slide/raft pack assembly. Another operator reported that, after deployment of the escape slide/raft, the packboard of the escape slide/raft caught on the aft edge of the door, obstructing the escape path, instead of falling out of the airplane in a normal deployment. Investigation revealed that the obstruction of the escape path by the packboard of the escape slide/raft occurred because the parachute pin of the escape slide/raft assembly was already pulled out before the door was open. These conditions, if not corrected, could result in improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletins A330–25–3086 (for Model A330 series airplanes) and A340–25–4115 (for Model A340 series airplanes), both Revision 01, dated June 11, 1999; which describe procedures for a one-time inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly for correct installation, and corrective actions, if necessary. Corrective actions include re-installation of the rail release pin into the release rail; or, if either the rail release pin cannot be re-installed or the parachute pin is found incorrectly installed, corrective actions include removal of the discrepant escape slide/raft pack assembly and replacement with a new pack assembly of the same part number. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 1999–178–086(B) (for Model A330 series airplanes) and 1999–179–107(B) (for Model A340 series airplanes), both dated May 5, 1999; in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement,

the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 7 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $420 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–181–AD.

Applicability: Model A330 series airplanes, certificated in any category, serial numbers 12 through 223 inclusive, except serial numbers 181, 195, 209, and 222; and Model A340 series airplanes, certificated in any category, serial numbers 2 through 233 inclusive, except serial number 204.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation, accomplish the following:

Inspection

(a) Within 2,000 flight hours or 6 months after the effective date of this AD, whichever occurs later: Perform a one-time detailed visual inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly installed on all passenger/crew doors (type A) and emergency exit doors (type A or type 1) for correct installation, in accordance with Airbus Industrie Service Bulletin A330–25–3086 (for Model A330 series airplanes) or A340–25–4115 (for Model A340 series airplanes), both Revision 01, both dated June 11, 1999.

(1) During the inspection performed in accordance with paragraph (a) of this AD, if a rail release pin of the escape slide/raft pack assembly is found to be missing or incorrectly installed: Prior to further flight, re-install the rail release pin into the release rail, or, if re-installation is not possible, remove the discrepant escape slide/raft pack assembly and replace with a new pack assembly of the same part number; in accordance with the applicable service bulletin.

(2) During the inspection performed in accordance with paragraph (a) of this AD, if a parachute pin of the escape slide/raft pack assembly is found to be missing or incorrectly installed: Prior to further flight, remove the discrepant escape slide/raft pack assembly and replace with a new pack assembly of the same part number; in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An extensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 1999–178–086(B) (for Model A330 series airplanes) and 1999–179–107(B) (for Model A340 series airplanes), both dated May 5, 1999.

Issued in Renton, Washington, on August 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21683 Filed 8–19–99; 8:45 am]

BILLING CODE [4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–116–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing it received a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the following: a statutory change to the Virginia Act at section 45.1–235 C as enacted in the 1999 session of the Virginia General Assembly; proposed regulation changes at section 4 VAC 25–130–700.5 to the definitions of "government financed construction" and "qualified laboratory;" and proposed regulation changes to section 4 VAC 25–130 Part 795 concerning the small operator assistance program (SOAP). The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal provisions.

DATES: Your written comments must be received by 4:00 p.m., on September 20, 1999. If you request a public hearing on the proposed amendment, it will be held on September 14, 1999. If you request to speak at the hearing, your request must be received by 4:00 p.m., on September 7, 1999.

ADDRESSES: Your written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments that we receive in response to this document will be available for your review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each person may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement:

Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. VA–978), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. This amendment is the State's response to changes made to the Federal SOAP regulations at 30 CFR Part 795, and to the Federal definition of "government-financed construction" at 30 CFR 707.5.

The proposed amendment consists of the following: a statutory change to the Virginia Act at section 45.1–235 C as enacted in the 1999 session of the Virginia General Assembly; proposed regulation changes at section 4 VAC 25–130–700.5 concerning the definitions of "government financed construction" and "qualified laboratory;" and proposed regulation changes to section 4 VAC 25–130 Part 795 concerning the SOAP program. The amendments are described below.

Statute

Section 45.1–235 of the Code of Virginia. Subsection 45.1–235 C, concerning SOAP, is amended by deleting the existing language and adding in its place the following language.

To the extent that funds are available from the federal Office of Surface Mining, the Director shall provide for permit application assistance to small operators as provided in Section 507 (c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

Regulations

1. 4 VAC 25–130–700.5 Definitions

The definition of "government-financed construction" is amended to provide for less than 50 percent government funding. As amended, "government financed construction" means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Federal Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

The definition of "qualified laboratory" is amended to add the phrase "or other services as specified at 4 VAC 25–130–795.9." With this addition, "qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at 4 VAC 25–130-795.9 under the SOAP program and which meets the standards of 4 VAC 25–130–795.10.

2. 4 VAC 25–130–795.1 Scope and Purpose

This provision is amended by deleting the words "program administrator" and replacing those words with the word "Division."

3. 4 VAC 25–130–795.6 Eligibility for Assistance

This provision is amended at subdivision 795.6(a)(2) by changing the qualifying annual tonnage limit from 100,000 tons to 300,000 tons. In addition, at subdivisions 795.6(a)(2)(i) and (ii), the pro rata share is increased from 5 percent to 10 percent.

4. 4 VAC 25–130–795.7 Filing for Assistance

This provision is amended at subdivision 795.7(e) by deleting subdivisions 795.7(e)(2) and (5), and renumbering the remaining provisions. Deleted subdivision 795.7(e)(2) required the names of property owners in the affected and adjacent areas. Deleted subdivision 795.7(e)(5) required the location of existing structures and developed water resources within the affected and adjacent areas.

5. 4 VAC 25–130–795.8 Application Approval and Notice

The sole sentence of this provision is deleted and replaced with the following. New subdivision 795.8(a) provides that if the Division finds the applicant eligible, the Division shall inform the applicant in writing that the application is approved. New subdivision 795.8(b) provides that if the Division finds the applicant ineligible, the Division shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

6. 4 VAC 25–130–795.9 Program Services and Data Requirements.

In addition to non-substantive changes, the following changes are made to this provision. At subdivision 795.9(a), the phrase "and provide other services" is added. With this change, a "qualified laboratory" may be paid for other services in addition to the determination and statement referenced in subdivision 795.9(b).

At subdivision 795.9(b)(1), the phrase "including the engineering analysis and designs necessary for the determination" is added. Also, the citation "4 VAC 25–130–784.14(g)" is changed to ". . . 784.14(e)."

At subdivision 795.9(b)(2), the words "drilling and" are added immediately following the first word of the sentence.

New subdivisions 795.9(b)(3), (4), (5), and (6) are added. New 795.9(b)(3), provides for the development of cross-section maps and plans required by 4 VAC 25–130–779.25 and 783.25. New 795.9(b)(4) provides for the collection of archaeological and historic information and related plans required by 4 VAC 25–130–779.12(b), 783.12(b), 780.31, 784.17, and any other archaeological and historic information required by the Director. New 795.9(b)(5) provides for pre blast surveys required by 4 VAC 25–130–780.13. New 795.9(b)(6) provides for the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 4 VAC 25–130–780.16 and 784.21, and information and plans for any other environmental values required by the Division under the Act.

7. 4 VAC 25–130–795.10 Qualified Laboratories

Subdivision 4 VAC 25–130–795.10(a)(5) is amended by adding language which provides that other appropriate methods or guidelines for data acquisition may be approved by the Division. Subdivision 795.10(b) is amended to provide that subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the Division. Prior to this amendment, subdivision 795.10(b) provided that subcontractors had to meet all applicable requirements for area of specialization pursuant to the program and this section. Subdivisions 795.10(c) and (d) are deleted. Subdivision 795.10(c) concerned the qualification of out-of-state firms. Subdivision 795.10(d) provided that review and approval of all laboratory qualifications would be made every 12 months.

8. 4 VAC 25–130–795.12 Applicant Liability

In subdivision 4 VAC 25–130–795.12(a), the term "applicant" is deleted and replaced by the phrase "coal operator who has received assistance pursuant to 4 VAC 25–130–795.9." Also, the phrase "laboratory services performed pursuant to this Part" is changed to read "services rendered."

Subdivision 795.12(a)(2) is amended to change the 100,000 ton limit to 300,000 tons. This provision is also amended to provide that the tonnage will be determined during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit. Prior to this change, the tonnage was determined during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter.

Subdivision 795.12(a)(3) is amended to change the 100,000 ton limit to 300,000 tons. This provision is also amended to provide that if the mining rights granted under the permit are sold, transferred or assigned to another person, the tonnage will be determined during the 12 months immediately following the date on which the permit was originally issued. Prior to this change, the tonnage was determined during any 12-month period of the remaining term of the permit.

Subdivisions 4 VAC 25–130–795.12(b) and (c) are deleted. Subdivision 795.12(b) concerned the submission of notarized production reports. Subdivision 795.12(c) defined the term "attributed production."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), we are now seeking your comments on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If we determine that the amendments are adequate, they will become part of the Virginia program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. If your comments are received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office, we will not necessarily consider them in the final rulemaking or include them in the Administrative Record.

Public Hearing

If you wish to comment at the public hearing, you should contact the person listed above under **FOR FURTHER INFORMATION CONTACT** by close of business on September 7, 1999. If no one requests an opportunity to comment at a public hearing, we will not hold a hearing.

We request that you file a written statement at the time of the hearing, because it will greatly assist the transcriber. If you submit a written statement to OSM before the hearing, it will allow us to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendments, you may request a meeting at the Big Stone Gap Field Office by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

If you are a disabled individual who has need for a special accommodation to attend a public hearing, please contact the person listed above under **FOR FURTHER INFORMATION CONTACT**.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–21643 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6421–1]

Additional Flexibility Amendments to Vehicle Inspection Maintenance Program Requirements; Proposed Amendment to the Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes several substantive and minor revisions to the Motor Vehicle Inspection/Maintenance (I/M) requirements to provide additional flexibility to state I/M programs, both in response to the I/M provisions of the National Highway System Designation Act of 1995 (NHSDA), and in compliance with the Clean Air Act requirement that EPA's guidance for such programs be "from time to time revised." The proposed amendments would: modify the current I/M performance standard modeling requirements to reflect delays caused by the NHSDA, and to provide states greater flexibility in how they meet the performance standard; also in response to the NHSDA, remove the I/M rule provision establishing the decentralized, test-and-repair credit discount; revise certain test procedure, standard, and equipment requirements to better accommodate alternative test types and program designs. This revision also entails changing the data collection, analysis, and reporting requirements to make them consistent with various alternative test and program types; as well as minor revisions to the inspector training requirements; revise the requirements for consumer protection and improving repair effectiveness to limit the current requirement to provide diagnostic information to those programs and test types capable of producing such information, reliably and practically; expand the options for complying with the on-road testing requirement to accommodate more recent variations, such as clean screening and non-tailpipe based, roadside tests.

DATES: Written comments on this proposal must be received no later than September 20, 1999. No public hearing will be held unless a request is received in writing by September 7, 1999.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–99–19. It is requested that a duplicate copy be submitted to David Sosnowski at the address in the **FOR FURTHER INFORMATION CONTACT** section below. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: David Sosnowski, Office of Mobile Sources, Regional and State Programs Division, 2000 Traverwood, Ann Arbor, Michigan, 48105. Telephone (734) 214–4823.

SUPPLEMENTARY INFORMATION:

I. Table of Contents

II. Summary of Proposal
III. Authority
IV. Background of the Proposed Amendments
  A. Performance Standard Amendments
  B. Network Requirement Amendments
  C. Test Procedure and Related Amendments
  D. Consumer Protection and Repair Effectiveness Amendments
  E. On-Road Testing Amendments
V. Discussion of Major Issues
  A. Emission Impact of the Proposed Amendments
  B. Impact on Existing and Future I/M Programs
VI. Economic Costs and Benefits
VII. Public Participation
VIII. Administrative Requirements
  A. Administrative Designation
  B. Reporting and Recordkeeping Requirement
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Act
  E. Executive Order 12875: Enhancing the Intergovernmental Partnership

F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer and Advancement Act

II. Summary of Proposal

Under the Clean Air Act as amended in 1990 (CAA), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992, (40 CFR part 51, subpart S) a rule related to state air quality implementation plans for Motor Vehicle Inspection and Maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). EPA is proposing today to further amend this rule to provide greater flexibility to states to tailor their I/M programs to better meet local needs, both now and in the future. With today's notice EPA proposes to: (1) Amend the enhanced I/M performance standard requirements at 40 CFR 51.351 to change the performance standard modeling requirement from demonstrating that the performance standard is met on 2000 and each subsequent milestone (through to and including the attainment deadline) to a requirement that the performance standard be met (within +/− 0.02 grams-per-mile) on 2002, and that the same or better level of emission reduction be demonstrated for the attainment deadline, rounded to the nearest year; (2) in response to the National Highway System Designation Act of 1995 (NHSDA) and to provide greater flexibility to the states with regard to network design options: (a) Delete 40 CFR 51.353(b) which previously established the decentralized, test-and-repair credit discount, and (b) revise the definition of test-only at 40 CFR 51.353(a) to allow test-only stations to sell self-serve gasoline, pre-packaged oil, and any other items that are not directly related to automotive parts sales and/or service; (3) to better accommodate alternative test types and program designs: (a) Revise the test procedures and standards requirements at 40 CFR 51.357 to clarify that tailpipe exhaust testing is not a universal requirement for all I/M programs, that alternatives to the IM240 drive cycle are allowed under the requirements for transient testing, and that the standard for an acceptable alternative test is comparability, not necessarily equivalence, (b) revise the test equipment requirements at 40 CFR 51.358 to make the definition of "computerized analyzer" less prescriptive and to relax the requirement for a real-time data link for those areas required to do I/M, but which do not need to claim I/M emission reductions to meet their other, non-I/M CAA requirements, and (c) revise the data collection, analysis, and reporting requirements at 40 CFR 51.365 and 40 CFR 51.366 to clarify that the specific elements to be collected and reported are only required where applicable to the test type employed, and to make the requirements less prescriptive with regard to the test types assumed; (4) revise the requirements for consumer protection at 40 CFR 51.368 and improving repair effectiveness at 40 CFR 51.369 to limit the current requirement to provide diagnostic information to those programs and test types capable of producing such information, reliably and practically, and; (5) expand the options for complying with the on-road testing requirement at 40 CFR 51.371 by: (a) Removing language suggesting that such testing must be tailpipe-based, and (b) inserting language making the out-of-cycle repair requirement optional where on-road testing is used as a clean-screen approach.

The goal of these proposed amendments is to bring the rule up-to-date with current policy decisions and statutory requirements, while also providing states the additional flexibility they need to tailor their I/M programs now to better meet their future needs. Among these future needs are: (1) The need to maximize program efficiency and customer convenience by capitalizing on newer vehicle testing options, such as on-board diagnostic (OBD) system testing; (2) the need to accommodate an in-use fleet turning over to newer, cleaner, and more durable vehicle technologies over time; and (3) the need to assess the role I/M should play in areas once they have attained the National Ambient Air Quality Standards (NAAQS).

III. Authority

Authority for the rule change proposed in this notice is granted to EPA by section 182 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*) and by section 348 of the National Highway System Designation Act of 1995 (23 U.S.C. 101).

IV. Background of the Proposed Amendments

A. Performance Standard Amendments

Section 182(c)(3)(B)(i) of the Clean Air Act as amended in 1990 requires EPA to develop a performance standard for enhanced I/M areas to meet. EPA's I/M rule currently requires I/M programs to produce the same or better emission reductions as would be achieved by one of three possible enhanced I/M performance standards [1]—the high enhanced, low enhanced, and OTR low enhanced I/M performance standards. Currently, states demonstrate meeting the relevant performance standard by modeling their desired program along side the performance standard program, and comparing both to a no-I/M-program scenario, using the most current version of EPA's mobile source emission factor model, MOBILE, and assuming local conditions for fuel type, average temperature, fleet age distribution, vehicle miles traveled (VMT) accumulation, etc. The 1992 I/M rule required that enhanced I/M programs show they could meet the relevant performance standard beginning with a 2000 evaluation date (which was considered the closest modeling equivalent to the CAA's November 15, 1999 milestone date for Reasonable Further Progress) and for each CAA milestone thereafter (also rounded to the nearest evaluation year) through, to and including the relevant attainment date. EPA's policy for milestones beginning with 2003 and later was to consider the standard met if the projected emission reductions for the state's program came within ±0.02 grams-per-mile (gpm) of the performance standard's projected reductions, due to the uncertainty of modeled benefits for evaluation years after 2001.

Today's proposal would change the current enhanced I/M performance standard requirements in three ways:

First, today's proposal would change the requirement that enhanced I/M programs demonstrate meeting the performance standard beginning with 2000 and on each subsequent milestone through to and including attainment. Due to delays in program implementation arising from EPA's own 1995 and 1996 I/M flexibility amendments and the I/M provisions of the NHSDA, EPA proposes to push back the first required evaluation date by two years, to 2002. This proposed revision recognizes that as a result many programs delayed full implementation beyond a date that would allow for

[1] The current I/M rule actually contains four enhanced I/M performance standards as a result of a typographical oversight when EPA introduced its original flexibility amendments in 1995. EPA intended to delete the standard described in 40 CFR 51.351(a) and replace it with the standard described in paragraph (f) of that section. Unfortunately, both standards were retained. Along with the other actions proposed today, EPA proposes to correct this oversight.

meeting the performance standard before 2002.

Second, EPA proposes to reduce the modeling burden on states by limiting the number of milestones modeled to a maximum of two: 2002 and, for those areas with post-2002 attainment deadlines, the relevant CAA attainment deadline, rounded up to the nearest year. In the latter case—the attainment deadline milestone—the grams-per-mile (gpm) or percent reduction target for comparison would be the same as that modeled for the 2002 milestone; states would not be required to model the performance standard scenario for more than one evaluation date to establish the relevant gpm or percent reduction target. Rather, states must show that in the attainment year the area continues to show compliance with the performance standard as originally modeled for the 2002 compliance date. The purpose of this proposal is to streamline the I/M rule's modeling requirements and provide additional flexibility to the states, while still insuring that state I/M programs demonstrate compliance with the relevant performance standard.

Third, today's proposal would apply the current 2003 ±0.02 gpm rounding policy one year earlier—to the 2002 milestone. The original 2003 rounding policy was developed when it was discovered that, due to uncertainties related to long-term projections, even areas adopting EPA's recommended program appeared to be having trouble demonstrating compliance with the performance standard for post-2001 milestones, once local parameters such as vehicle age distribution were taken into consideration. Under the original I/M rule, there was no 2002 milestone. Instead, the ozone-based milestones began with 2000, followed by 2003; in between these was the carbon monoxide (CO) milestone of 2001, for those enhanced I/M areas in nonattainment for CO. The original 0.02 gpm rounding policy was actually a post-2001 policy, and was applied to what was then the first post-2001 milestone (i.e., 2003). With the delays caused by the I/M flexibility amendments and the NHSDA (discussed above), a new post-2001 milestone became necessary. EPA believes it is therefore appropriate to apply the 0.02 gpm rounding policy to this new milestone, and proposes to formalize that change as part of today's proposed amendments.

B. Network Requirement Amendments

Regarding I/M program network design requirements, the Clean Air Act as amended in 1990 does not prescribe a network for basic I/M programs while, at the same time, section 182(c)(3)(C)(vi) of the Act requires that enhanced I/M programs shall be operated "on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective." In response to this provision, the 1992 I/M rule defined a decentralized network design that EPA deemed presumptively equivalent to a centralized program. The core difference between traditional centralized versus decentralized I/M programs—EPA then maintained—was the conflict-of-interest the latter were assumed to suffer from, because most such programs allowed the same individuals who tested the vehicle to also perform repairs and then retest the vehicle to determine the effectiveness of those repairs. It was therefore concluded that a decentralized program that separated these functions (i.e., a so-called "test-only" program) would be presumptively equivalent to a centralized program. In May 1994, EPA issued a policy document entitled, "EPA Policy on Decentralized, Test-Only Stations," which interpreted the 1992 I/M rule as further barring decentralized, test-only stations from engaging in virtually all other for-profit activities other than testing, prohibiting (for example) the sale of convenience store type items. This prohibition was based upon the further assumption that decentralized stations would otherwise use the guarantee of a passing test as a way to attract customers to their other sales and services.

In 1995, the substance of the Clean Air Act's enhanced I/M network requirement was amended by implication by Section 348(b) of the National Highway System Designation Act which specified that "[t]he Administrator shall not disapprove or apply an automatic discount to a State implementation plan revision under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a) on the basis of a policy, regulation, or guidance providing for a discount of emissions credits because the inspection and maintenance program in such plan revision is decentralized or a test-and-repair program." States opting for the NHSDA's flexibility were allowed to claim prospective emission reduction credit for their I/M SIPs based upon a "good faith estimate," and were to be granted an interim approval which would lapse after 18 months if the credit claims were not substantiated by way of a program effectiveness demonstration. While states were given a limited time during which they could apply for interim approval under the NHSDA (i.e., by March 28, 1996), the Highway Act's prohibition against automatic, decentralized or test-and-repair discounts has no such expiration date and therefore remains in effect permanently.

Today's proposal would amend the program network requirements at 40 CFR 51.353 in two ways:

First, the proposal would delete 40 CFR 51.353(b) which first established the automatic credit discount for decentralized, test-and-repair I/M programs. This amendment is proposed in recognition of and compliance with the requirements of the National Highway System Designation Act of 1995.

Second, the proposal would explicitly extend the definition of decentralized test-only to allow such stations to engage in the full range of sales not directly related to automotive parts sales or service, including but not limited to the sale of self-serve gasoline, pre-packaged oil, and other, non-automotive, convenience store items. This proposal is based upon EPA's determination that a literal reading of the 1992 I/M rule's definition does not support the broader prohibitions set by the subsequent, 1994 policy. Such prohibitions have been deemed irrelevant, post-NHSDA.

C. Test Procedure and Related Amendments

Section 182(c)(3)(C)(i) of the 1990 Clean Air Act established the minimum requirements for enhanced I/M programs regarding test equipment by stating that such programs must include "(c)omputerized emission analyzers, including on-road testing devices." The 1992 I/M rule, in interpreting this requirement, was driven by the assumption that all enhanced I/M programs would include IM240 tailpipe emission testing and most (i.e., those required for ozone nonattainment or transport areas) would also include evaporative system purge and pressure testing. As a result, the 1992 I/M rule's requirements for test procedures and standards at 40 CFR 51.357 and test equipment at 40 CFR 51.358 (as well as other, related requirements throughout the 1992 I/M rule) tend to be prescriptive to the point of excluding valid, alternative, non-IM240 test methodologies. This is especially the case since EPA promulgated the I/M flexibility amendments in 1995 and 1996, and since passage of the National Highway System Designation Act of 1995, which, taken together, provided states the opportunity to explore a wide range of alternative test type and network design combinations not

anticipated under the 1992 I/M rule. For example, it is currently possible for some areas to design programs that meet the required enhanced I/M performance standard without any tailpipe testing at all, using, instead, a combination of alternative evaporative system pressure testing methods, onboard diagnostic system checks, and visual antitampering inspections. The problem is that the I/M rule, as currently written, includes several provisions effecting test procedures which assume tailpipe testing as a given, thus unnecessarily discouraging areas from pursuing a design option which otherwise meets the areas' needs and local conditions.

In response to the above dilemma, today's proposal would revise the I/M rule in three areas:

First, the proposal would revise the test procedure and standard requirements at 40 CFR 51.357 to clarify that tailpipe exhaust testing is not a universal requirement for all I/M programs and that alternatives to the IM240 drive cycle are allowed under the requirements for transient testing. These revisions would be achieved largely by deleting the words "tailpipe" and "IM240," and inserting the caveat "where applicable," as needed. Similar amendments would be made elsewhere in the regulatory text, to the extent that the existing text creates the impression that IM240 or tailpipe testing are absolute requirements, or that alternative test methods are otherwise barred.

The proposal would also clarify that the standard for an acceptable alternative test is comparability, not necessarily equivalence. Establishing "equivalence" as the standard for acceptability has the effect of requiring that alternative tests individually get the same level of reductions as the test being replaced. EPA believes that this is an unnecessarily strict standard, and somewhat arbitrary if other program parameters can be adjusted so the overall performance standard is still met. That is, a slightly less effective test could still be acceptable if performed more frequently or on a larger number of vehicles to offset potential emission reduction losses due to the alternative test's being comparable, but not strictly equivalent.

Second, the proposal would revise the test equipment requirements at 40 CFR 51.358 to make the regulatory definition of "computerized analyzer" less prescriptive to allow evaporative emission testing devices and onboard diagnostic computer (OBD) scanners to qualify as "computerized analyzers" under the Act. The current regulatory definition of "computerized analyzers" focuses on a system centered on a traditional, personal computer, with keyboard input, etc. EPA believes this is no longer appropriate under the Clean Air Act, given the recent changes under the NHSDA discussed above. Under the broader definition proposed, the focus would concentrate on the existence of a central processing unit, and whether or not the criteria for making pass/fail decisions are automated. EPA also proposes to relax the requirement for a real-time data link for those areas required to do I/M, but which do not need to claim I/M emission reductions to meet their other, non-I/M CAA requirements. This is proposed to provide flexibility to those areas which are not relying on I/M to meet their CAA goals and that have opted to employ stand-alone test equipment that is not readily connected to a centralized, real-time database. EPA believes a real-time data link is not necessary for these types of programs.

Third, the proposal would revise the data collection, analysis, and reporting requirements at 40 CFR 51.365 and 40 CFR 51.366 to clarify that the elements to be collected and reported are only required where applicable to the program type in use in the area, and to make the requirements less prescriptive with regard to the test types assumed. These proposed revisions would also have the effect of streamlining this portion of the rule and would likely reduce the paperwork burden these reporting requirements place on states without compromising overall program effectiveness.

D. Consumer Protection and Repair Effectiveness Amendments

Section 51.368(a) of the I/M rule currently requires that enhanced I/M programs provide motorists that fail the inspection with "software-generated, interpretive diagnostic information based on the particular portions of the test that were failed." Section 51.369(c) of the I/M rule requires that repair technicians receive training in diagnostic theory related to transient and evaporative emission test failures. In both cases, these requirements were developed based upon the assumption that enhanced I/M programs would be built around the IM240 test and would produce second-by-second emissions data that could be used as an important diagnostic tool, with certain component failures producing characteristic speed versus emission traces. Since the 1992 rule was promulgated, however, a wide-range of non-transient, alternative I/M tests have been approved for use in enhanced I/M programs. These tests do not produce the detailed kind of diagnostic information that is possible with a transient test like the IM240, though they are certainly capable of producing generic diagnostic information, based upon which tests and/or standards are failed. Therefore, today's proposal would revise the diagnostic information provisions at 40 CFR 51.368 and 40 CFR 51.369 to make the requirement to provide diagnostic information more generic and only required where applicable to the test type employed.

E. On-Road Testing Amendments

Section 182(c)(3)(C)(i) of the 1990 Clean Air Act requires that enhanced I/M programs include "on-road testing devices." In its 1992 I/M rule, EPA indicated that this requirement could be met by either using remote sensing devices (RSD) or by conducting road-side pull-over, tailpipe testing. In either case, vehicles which failed the test were required to get out-of-cycle repairs, the presumption being that the purpose of such testing was to identify dirty vehicles in need of such repairs.

Today's proposal would revise the on-road testing requirements at 40 CFR 51.371 in two ways:

First, the proposal would remove language suggesting that the road-side pull-over test must be a tailpipe test. The purpose of this change is to open up this requirement so that it can be met using alternative evaporative system pressure testing and/or OBD conducted at the roadside, consistent with changes in I/M program design discussed above.

Second, the proposal would remove the requirement for out-of-cycle repairs where on-road testing is used as a pre-test clean screen method. The purpose of this change is to allow states to use alternative applications for RSD that have been developed since the 1992 I/M rule was promulgated. These alternatives include an approach known as "clean screening," where the goal is not to identify high polluting vehicles for out-of-cycle repairs, but rather to identify especially clean vehicles which can be exempted from the routine test. Since such clean screening programs do not generate emission reductions so much as run the risk of losing those reductions by falsely identifying (and therefore exempting) vehicles needing repairs as "clean," the proposal would also clarify that only on-road programs requiring out-of-cycle repairs are eligible to claim additional emission reduction credit for such pre-screening on-road testing.

V. Discussion of Major Issues

A. Emission Impact of the Proposed Amendments

Today's proposal introduces additional flexibilities which EPA believes are needed to allow states to adopt and/or revise their I/M programs in a way which helps them to meet local needs as smoothly as possible. Today's proposal is also aimed at removing certain restrictions in the 1992 I/M rule that would impede transition to the I/M of the future, which EPA believes will focus largely on OBD-based testing technologies available on 1996 and later model-year vehicles, as opposed to today's traditional tailpipe tests. Although today's proposal does have the potential for allowing some states to implement more modest I/M programs than would otherwise be the case, nothing in this notice should be construed as requiring or compelling states to downsize their programs. Furthermore, nothing in this notice changes the Clean Air Act's other requirements with regard to 15%, Reasonable Further Progress, or Attainment plans. Instead, this proposal is aimed at allowing states greater flexibility in deciding how to apportion the emission reductions they need, reflecting local needs and conditions to the best extent possible. In that regard, the intention of this proposal is to take the focus off "I/M for the sake of I/M" and return it where it belongs—on cleaning the air by whatever method makes the most sense.

B. Impact on Existing and Future I/M Programs

Only states that choose to utilize the additional flexibilities discussed in this notice will be affected by today's proposal to change the I/M rule. Modifications to a state's I/M program as a result of this rule change may require a SIP revision, if a plan has already been submitted and approved. Each case is likely to be different, depending upon the magnitude and direction of the change. It is important to note that today's proposal in no way increases the existing burden on states. States that currently comply, or are in the process of complying, with the existing I/M rule would only be affected by today's rule revisions if they so choose. Today's proposed amendments represent options (not obligations or requirements) for those states that choose to take advantage of the flexibilities proposed in today's notice.

Should a state with an approved I/M program for which credit is being claimed as part of an approved Reasonable Further Progress (RFP) and/or Attainment SIP choose to revise its I/M program in such a way as to lower the emission reductions attributable to the I/M program, then such state will need to not only revise its I/M SIP but also its affected RFP and Attainment SIPs to address this shortfall. Specifically, the emission reduction losses due to the state's changes to its I/M program will have to be made up through the adoption and implementation of additional measures which will need to be incorporated as revisions to the affected RFP and Attainment SIPs. Such revisions will be subject to notice-and-comment rulemaking, and must be approved by the Administrator.

VI. Economic Costs and Benefits

Today's proposed revisions provide states additional flexibility that lessens rather than increases the potential economic burden on states. Furthermore, states are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's proposal.

VII. Public Participation

EPA desires full public participation in arriving at final decisions in this rulemaking action. EPA solicits comments on all aspects of this proposal from all parties. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the Air Docket, Docket No. A–99–19.

VIII. Administrative Requirements

A. Administrative Designation

It has been determined that these proposed amendments to the I/M rule do not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to OMB review. Any impacts associated with these revisions do not constitute additional burdens when compared to the existing I/M requirements published in the **Federal Register** on November 5, 1992 (57 FR 52950) as amended. Nor does the proposed amendment create an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or the environment. It is not inconsistent with nor does it interfere with actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues.

B. Reporting and Recordkeeping Requirement

There are no additional information requirements in this supplemental proposed rule which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposal will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. This certification is based on the fact that the I/M areas impacted by the proposed rulemaking do not meet the definition of a small government jurisdiction, that is, "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." The basic and enhanced I/M requirements only apply to urbanized areas with population in excess of either 100,000 or 200,000 depending on location. Furthermore, the impact created by the proposed action does not increase the preexisting burden of the existing rules which this proposal seeks to amend.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under § 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the rules being proposed by this action would impose any mandate at all as defined in § 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this proposed rule is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens

from those resulting from the currently existing I/M rule.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates. Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's rule does not create a mandate on tribal governments or create any additional burden or requirements for tribal government. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it is not economically significant under E.O. 12866 and because it is based on technology performance and not on health or safety risks.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Transportation.

Dated: August 6, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 51 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 is revised to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

2. Section 51.350 is amended by revising paragraph (c) to read as follows:

§ 51.350 Applicability.

* * * * *

(c) *Requirements after attainment.* All I/M programs shall provide that the program will remain effective, even if the area is redesignated to attainment status or the standard is otherwise rendered no longer applicable, until the State submits and EPA approves a SIP revision which convincingly demonstrates that the area can maintain the relevant standard(s) without benefit of the emission reductions attributable to the I/M program. The State shall commit to fully implement and enforce the program until such a demonstration can be made and approved by EPA. At a minimum, for the purposes of SIP approval, legislation authorizing the program shall not sunset prior to the attainment deadline for the applicable National Ambient Air Quality Standards (NAAQS).

* * * * *

3. Section 51.351 is amended by removing and reserving paragraphs (a), revising (b), (f) introductory text, (f)(13), (g)(13) and (h)(11) to read as follows:

§ 51.351 Enhanced I/M performance standard.

(a) [Reserved]

(b) *On-road testing.* The performance standard shall include on-road testing (including out-of-cycle repairs in the case of confirmed failures) of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraphs (f), (g), and (h) of this section. Specific requirements are listed in § 51.371 of this subpart.

* * * * *

(f) *High Enhanced Performance Standard.* Enhanced I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the program. The emission levels achieved by the State's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model or an alternative model approved by the Administrator, and shall meet the minimum performance standard both in operation and for SIP approval. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas subject to enhanced I/M and subject areas in the Ozone Transport Region, the performance standard must be met for both oxides of nitrogen (NOx) and volatile organic compounds (VOCs), except as provided in paragraph (d) of this section. Except as provided in paragraphs (g) and (h) of this section, the model program elements for the enhanced I/M performance standard shall be as follows:

* * * * *

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by January 1, 2002 to within +/−0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s).

(g) * * *

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by January 1, 2002 to within +/−0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s).

(h) * * *

(11) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower VOC and NOx emission levels as the model program described in this paragraph by January 1, 2002 to within +/-0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s). Equality of substituted emission reductions to the benefits of the low enhanced performance standard must be demonstrated for the same evaluation date.

4. Section 51.353 is amended by revising the introductory text and paragraph (a) and by removing and reserving (b) to read as follows:

§ 51.353 Network type and program evaluation.

Basic and enhanced I/M programs can be centralized, decentralized, or a hybrid of the two at the State's discretion, but shall be demonstrated to achieve the same (or better) level of emission reduction as the applicable performance standard described in either § 51.351 or § 51.352 of this subpart. For decentralized programs other than those meeting the design characteristics described in paragraph (a) of this section, the State must demonstrate that the program is achieving the level of effectiveness claimed in the plan within 12 months of the plan's approval. The adequacy of these demonstrations will be judged by the Administrator on a case-by-case basis through notice-and-comment rulemaking.

(a) *Presumptive equivalency.* A decentralized network consisting of stations that only perform official I/M testing (which may include safety-related inspections) and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services (except as provided in § 51.369(b)(1) of this subpart) shall be considered presumptively equivalent to a centralized, test-only system including comparable test elements. States may allow such stations to engage in the full range of sales not covered by the above prohibition, including self-serve gasoline, pre-packaged oil, or other, non-automotive, convenience store items. At the State's discretion, such stations may also fulfill other functions typically carried out by the State such as renewal of vehicle registration and driver's licenses, or tax and fee collections. Decentralized networks designed around these restrictions need not provide any additional demonstration to substantiate their I/M SIP emission reduction credit claims, with the exception of the biennial program evaluation required of all enhanced I/M programs and described in paragraph (c) of this section.

(b) [Reserved]

* * * * *

5. Section 51.357 is amended by revising paragraphs (a)(3), (a)(4), (a)(6), (a)(11), and (a)(13) to read as follows:

§ 51.357 Test procedures and standards.

* * * * *

(a) * * *

(3) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition, unsafe conditions, fast pass/fail algorithms, or, in the case of the on-board diagnostic (OBD) system check, unset readiness codes.

(4) Tests involving measurement shall be performed with program-approved equipment that has been calibrated according to the quality procedures contained in appendix A to this subpart.

* * * * *

(6) Vehicles shall be retested after repair for any portion of the inspection that is failed on the previous test to determine if repairs were effective. To the extent that repair to correct a previous failure could lead to failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest (in programs which conduct an exhaust emission test as part of the initial inspection).

* * * * *

(11) Transient emission test. The transient emission test shall consist of mass emission measurement using a constant volume sampler (or an Administrator-approved alternative methodology for accounting for exhaust volume) while the vehicle is driven through a computer-monitored driving cycle on a dynamometer. The driving cycle shall include acceleration, deceleration, and idle operating modes as specified in appendix E to this subpart (or an approved alternative).

The driving cycle may be ended earlier using approved fast pass or fast fail algorithms and multiple pass/fail algorithms may be used during the test cycle to eliminate false failures. The transient test procedure, including algorithms and other procedural details, shall be approved by the Administrator prior to use in an I/M program.

* * * * *

(13) Approval of alternative tests. Alternative test procedures may be approved if the Administrator finds that such procedures would produce comparable emission reductions from the I/M program as a whole, in combination with other program elements.

* * * * *

6. Section 51.358 is amended by revising the introductory text, paragraphs (a) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(iv), (a)(3) introductory text, (a)(3)(iv), (a)(3)(vi), (a)(3)(ix), (b) introductory text, (b)(2) and (c) and by removing and reserving (b)(1) and (3) to read as follows:

§ 51.358 Test equipment.

Computerized test systems are required for performing an official emissions test on subject vehicles.

(a) Performance features of computerized test systems. With the exception of test procedures relying upon a vehicle's onboard diagnostic (OBD) system (which is certified as part of the overall vehicle certification process), the test equipment shall be certified by the program, and newly acquired systems shall be subjected to acceptance test procedures to ensure compliance with program specifications.

(2) * * *

(i) Shall be automated;

(ii) Shall be secured from tampering and/or abuse;

(iii) * * *

(iv) Shall be capable of simultaneously sampling dual exhaust vehicles in the case of tailpipe-based emission test equipment.

(3) The vehicle owner or driver shall be provided with a record of test results, including all of the items listed in 40 CFR part 85, subpart W as being required on the test record (as applicable). The test report shall include:

* * * * *

(iv) The type(s) of test(s) performed;

* * * * *

(vi) The test results, by test, and, where applicable, by pollutant;

* * * * *

(ix) For vehicles that fail the emission test, information on the possible cause(s) of the failure.

(b) Functional characteristics of computerized test systems. The test system is composed of motor vehicle test equipment controlled by a computerized processor and shall make automatic pass/fail decisions.

(1) [Reserved]

(2) Test systems in enhanced I/M programs shall include a real-time data link to a host computer that prevents unauthorized multiple initial tests on the same vehicle in a test cycle and to insure test record accuracy. For areas which have demonstrated the ability to meet their other, non-I/M Clean Air Act requirements without relying on emission reductions from the I/M program (and which have also elected to employ stand-alone test equipment as part of the I/M program), such areas may adopt alternative methods for preventing multiple initial tests, subject to approval by the Administrator.

(3) [Reserved]

* * * * *

(c) *SIP requirements.* The SIP shall include written technical specifications for all test equipment used in the program and shall address each of the above requirements (as applicable). The specifications shall describe the testing process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

7. Section 51.359 is amended by revising the introductory text, and paragraph (a)(1), removing and reserving (a)(3) and revising (c) and (d) to read as follows:

§ 51.359 Quality control.

Quality control measures shall insure that emission testing equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained (where applicable).

(a) * * * (1) The practices described in this section and in appendix A to this subpart shall be followed for those tests (or portions of tests) which fall into the testing categories identified. Alternatives or exceptions to these procedures or frequencies may be approved by the Administrator based on a demonstration of comparable performance.

(2) * * *

(3) [Reserved]

* * * * *

(c) Requirements for transient exhaust emission test equipment. Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the checks described in appendix A of this subpart may be approved by the Administrator based on a demonstration of comparable performance.

(d) Requirements for evaporative system functional test equipment. Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the checks described in appendix A of this subpart may be approved by the Administrator based on a demonstration of comparable performance.

* * * * *

8. Section 51.362 is amended by revising paragraphs (a)(2) and (b)(4) to read as follows:

§ 51.362 Motorist compliance enforcement program oversight.

* * * * *

(a) * * *

(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical character readers, or through redundant data entry (where applicable);

* * * * *

(b) * * *

(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party review;

* * * * *

9. Section 51.363 is amended by revising paragraphs (a)(4)(vii), (b)(1), (c)(10), (d)(1)(i) to read as follows:

§ 51.363 Quality assurance.

* * * * *

(a) * * *

(4) * * *

(vii) Where applicable, access to on-line inspection databases by State personnel to permit the creation and maintenance of covert vehicle records.

(b) * * *

(1) Automated record analysis to identify statistical inconsistencies, unusual patterns, and other discrepancies;

* * * * *

(c) * * *

(10) A check of the pressure monitoring devices used to perform the evaporative canister pressure test(s); and

* * * * *

(d) * * *

(1) * * *

(i) The use of test equipment and/or procedures;

* * * * *

10. Section 51.365 is amended by revising the introductory text, paragraphs (a)(3), (a)(23), (a)(24), (a)(25), and (b) to read as follows:

§ 51.365 Data collection.

Accurate data collection is essential to the management, evaluation, and enforcement of an I/M program. The program shall gather test data on individual vehicles, as well as quality control data on test equipment (with the exception of test procedures for which either no testing equipment is required or those test procedures relying upon a vehicle's OBD system).

(a) * * *

(3) Test system number (where applicable);

* * * * *

(23) Results of the evaporative system pressure test(s) expressed as a pass or fail;

(24) Results of the evaporative system purge test expressed as a pass or fail along with the total purge flow in liters achieved during the test (where applicable); and

(25) Results of the on-board diagnostic check expressed as a pass or fail along with the diagnostic trouble codes revealed (where applicable).

(b) Quality control data. At a minimum, the program shall gather and report the results of the quality control checks required under § 51.359 of this subpart, identifying each check by station number, system number, date, and start time. The data report shall also contain the concentration values of the calibration gases used to perform the gas characterization portion of the quality control checks (where applicable).

11. Section 51.366 is amended by revising paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi), (b)(3)(i), (b)(3)(ii), (b)(3)(iii) and (b)(3)(iv) to read as follows:

§ 51.366 Data analysis and reporting.

* * * * *

(a) * * *

(2) * * *

(i) Failing initially, per test type;

(ii) Failing the first retest per test type;

(iii) Passing the first retest per test type;

(iv) Initially failed vehicles passing the second or subsequent retest per test type;

(v) Initially failed vehicles receiving a waiver; and

(vi) Vehicles with no known final outcome (regardless of reason).

* * * * *

(b) * * *

(3) * * *

(i) Conducted with the vehicle set to fail per test type;

(ii) Conducted with the vehicle set to fail any combination of two or more test types;

(iii) Resulting in a false pass per test type;

(iv) Resulting in a false pass for any combination of two or more test types;

* * * * *

12. Section 51.367 is amended by revising paragraphs (a)(1)(vi) and (a)(3) to read as follows:

§ 51.367 Inspector training and licensing or certification.

* * * * *

(a) * * * (1) * * *

(vi) Test equipment operation, calibration, and maintenance (with the exception of test procedures which either do not require the use of special equipment or which rely upon a vehicle's OBD system);

* * * * *

(3) In order to complete the training requirement, a trainee shall pass (i.e., a minimum of 80% of correct responses or lower if an occupational analysis justifies it) a written test covering all aspects of the training. In addition, a hands-on test shall be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection and to follow other required procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The program shall take appropriate steps to insure the security and integrity of the testing process.

* * * * *

13. Section 51.368 is amended by revising paragraph (a) to read as follows:

§ 51.368 Public information and consumer protection.

(a) *Public awareness.* The SIP shall include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of Federal and State law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Motorists that fail the I/M test in enhanced I/M areas shall be offered a list of repair facilities in the area and information on the results of repairs performed by repair facilities in the area, as described in § 51.369(b)(1) of this subpart. Motorists that fail the I/M test shall also be provided with information concerning the possible cause(s) for failing the particular portions of the test that were failed.

* * * * *

14. Section 51.369 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 51.369 Improving repair effectiveness.

* * * * *

(c) * * *

(2) The application of emission control theory and diagnostic data to the diagnosis and repair of failures on the transient emission test and the evaporative system functional checks (where applicable);

(3) Utilization of diagnostic information on systematic or repeated failures observed in the transient emission test and the evaporative system functional checks (where applicable); and

* * * * *

15. Section 51.371 is amended by revising the introductory text, paragraphs (a)(2), (a)(3), (b)(2) and (b)(3) to read as follows:

§ 51.371 On-road testing.

On-road testing is defined as testing of vehicles for conditions directly impacting the emission of HC, CO, NO_x and/or CO_2 emissions on any road or roadside in the nonattainment area or the I/M program area. On-road testing is required in enhanced I/M areas and is an option for basic I/M areas.

(a) * * *

(2) On-road testing is not required in every season or on every vehicle but shall evaluate the emission performance of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less, per inspection cycle.

(3) The on-road testing program shall provide information about the performance of in-use vehicles, by measuring on-road emissions through the use of remote sensing devices or by assessing vehicle emission performance through roadside pullovers including onboard diagnostic (OBD) system testing or other emission testing. The program shall collect, analyze and report on-road testing data.

* * * * *

(b) * * *

(2) The SIP shall include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements (where applicable).

(3) Emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and

above those already predicted to be achieved by other aspects of the I/M program. Emission reduction credit will only be granted to those programs which require out-of-cycle repairs for confirmed high-emitting vehicles identified under the on-road testing program. The SIP shall include technical support for the claimed additional emission reductions.

[FR Doc. 99–21661 Filed 8–19–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–269, RM–9696]

Digital Television Broadcast Service; Salinas, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Hearst-Argyle Stations, Inc., licensee of station KSBW (TV), NTSC Channel 8, Salinas, California, requesting the substitution of DTV Channel 10 for station KSBW (TV)'s assigned DTV Channel 43. DTV Channel 10 can be allotted to Salinas, California, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 36–45–23 N and 121–30–05 W. As requested, we propose to modify station KSBW (TV)'s authorization to specify operation on DTV Channel 10 at Salinas, California, with a power of 24.2 (kW) and a height above average terrain (HAAT) of 692 meters.

DATES: Comments must be filed on or before September 27, 1999, and reply comments on or before October 12, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 1800, Raleigh, North Carolina 27602 (Counsel for Hearst-Argyle Stations, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–269, adopted August 10, 1999, and released August 13, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–21723 Filed 8–19–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–268, RM–9691]

Digital Television Broadcast Service; Chattanooga, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sarkes Tarzian, Inc., licensee of station WRCB–TV, NTSC Channel 3, Chattanooga, Tennessee, proposing the substitution of DTV Channel 13 for station WRCB–TV's assigned DTV Channel 55. DTV Channel 3 can be allotted to Chattanooga, Tennessee, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 35–09–40 N and 85–18–52 W. As requested, we propose to modify station WRCB–TV's authorization to specify operation on DTV Channel 13 at Chattanooga, Tennessee, with a power of 37 (kW) and a height above average terrain (HAAT) of 325 meters.

DATES: Comments must be filed on or before September 27, 1999, and reply comments on or before October 12, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian M Madden, Esq., Leventhal, Senter & Lerman, 2000 K Street, NW, Suite 600 Washington, DC 20006–1809 (Counsel for Sarkes Tarzian, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–268, adopted August 10, 1999, and released August 13, 1999. The full text of this Commission's decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–21722 Filed 8–19–99; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 649

[I.D. 080999H]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS issues this document to announce that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of 21 EFPs to conduct exempted experimental fishing activities otherwise restricted by regulations governing the Fisheries of the Northeastern United States. These EFPs would allow the fieldwork for a study that proposes to ascertain the overfished status of American lobster (*Homarus americanus*) through the collection of stock assessment information. These EFPS would allow for the temporary possession of sublegal and egg-bearing female lobsters (berried female lobsters) in industry-standard lobster traps during normal fishing operations for tag, v-notch, and release purposes only. The tagging/v-notch program will be conducted by participating commercial fishermen in designated American lobster Management Areas 2 and 3 and the Area 2/3 overlap area from mid-September 1999 through mid-September 2000. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication of this notification to provide interested parties the opportunity to comment on the proposed EFPs.

DATES: Comments on this document must be received by September 7, 1999.

ADDRESSES: Comments should be sent to the Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Proposed Experimental Fisheries."

FOR FURTHER INFORMATION CONTACT: Bonnie VanPelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Rhode Island Lobsterman's Association (RILA), University of Rhode Island (URI), and the Rhode Island Division of Environmental Management (RIDEM) have submitted a joint proposal to conduct a lobster tag and release program in inshore/nearshore and offshore waters within two of the seven numeric lobster management areas; specifically, from the Upper Narragansett Bay, East and West Passage, Rhode Island Sound, Block Island Sound to the Offshore Canyons (Block and Hudson).

A lobster tagging program has been conducted in Rhode Island state waters under the joint management of the URI and Rhode Island Sea Grant for the past 5 years. This cooperative effort was developed to help shift the responsibility of the lobster tagging and release program from its current joint management to the RILA.

The project is funded through a Saltonstall-Kennedy grant and would commence in mid-September 1999 and continue over the course of 1 year. Approximately 60,000 American lobsters will be tagged and released; 40,000 sub-legal lobsters and 20,000 berried female lobsters. There are three main objectives of the experimental fishery: (1) To collect information for use in models that currently assess overfished status (e.g., NMFS' Eggs Per Recruit Model) and to provide updated information for inclusion to the Atlantic States Marine Fisheries Commission's stock assessment for lobsters; (2) to educate and provide training to fishermen about the v-notch program and to recognize v-notched lobsters; and (3) to share the responsibility in data collection for the co-management of the American lobster resource.

URI and RIDEM will provide sea sampling coverage on a combined total of 70 inshore and nearshore trips throughout the course of the experiment. Due to time and money constraints the offshore areas in the Canyons (Block and Hudson) will not be monitored by sea samplers. However, the two vessels that will be involved in tagging activities offshore will also conduct trips inshore that are being monitored.

The study involves the tag, v-notch, and release of American lobsters only; no other species will be retained. It is anticipated that the lobsters will be held for no longer than 3–4 hours before they are released. All program participants will receive training on tagging and v-notching protocols prior to the start of operations.

The participating vessel owners have obtained collectors permits from the RIDEM that will enable them to catch, tag, and release juvenile lobsters as well as egg-bearing female lobsters in state waters.

EFPs would be issued to 21 participating federally permitted lobster vessels to exempt them from the size and possession restrictions of the American Lobster Fishery Management Plan. Exemption to the regulations specified at 50 CFR 649.20(b) and (d) will remain in effect until Federal authority to manage the American lobster fishery is transferred from the Magnuson-Stevens Act to the Atlantic Coastal Cooperative Management Act, at which time the authority for this exemption will transfer to the regulations specified at 50 CFR 697.20(b) and (d).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 16, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21592 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 161
Friday, August 20, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA).

DATE: September 8, 1999 (8:30 a.m. to 5:00 p.m.).

LOCATION: U.S. Navy Memorial Foundation, Naval Heritage Center, "Arleigh and Roberta Burke Theater", 701 Pennsylvania Avenue, N.W., Washington, DC 20004–2608.

This meeting will feature updates on important items of interest to the community of private voluntary organizations working in international development. Agenda items include discussion of proposed revisions to USAID's Strategic Plan; an assessment of the effectiveness of changes made to streamline USAID's results reporting process; and a status report on the relationship between USAID and the Department of State. There will also be updates on Balkan reconstruction and Hurricane Mitch rehabilitation in Central America, as well as on ACVFA's assessment of USAID's Gender Plan of Action. USAID's new administrator, J. Brady Anderson, has been invited to give the keynote address.

The meeting is free and open to the public. However, Notification by September 6, 1999 Through the Advisory Committee Headquarters is Required. Persons wishing to attend the meeting must fax their name, organization and phone number to Lisa J. Harrison (703) 741–0567.

Dated: August 11, 1999.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 99–21681 Filed 8–19–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice and request for nominations.

SUMMARY: The Secretary of Agriculture has established an advisory committee, chartered under the Federal Advisory Committee Act, to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership for the Lake Tahoe Region. Nominations of persons to serve as the 20th member, member-at-large, of the Committee are invited.

DATES: Nominations for membership on the Committee must be received in writing by September 7, 1999.

ADDRESSES: Send nominations with telephone numbers for membership on the Committee to: FACA Nominations, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION CONTACT: Jeannie Stafford, Lake Tahoe Basin Management Unit, (530) 573–2641.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has established the Lake Tahoe Federal Advisory Committee on July 13, 1998 and will be selecting nominations for a 20th member. The purpose of the Committee is to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Basin and other matters raised by the Secretary.

The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conducting public meetings to discuss management strategies, gather information and review federal agency accomplishments, and prepare a progress report every six months for submission to regional federal executives.

The Committee will consist of no more than 20 members representing a broad array of interests in the Lake Tahoe Region. Representatives have been selected from the following sectors: (1) Gaming; (2) environmental; (3) natural resources; (4) ski resorts; (5) North Shore economic and recreation interests; (6) South Shore economic and recreation interests; (7) resort associations; (8) education; (9) property rights advocates; (10) member-at-large; (11) member-at-large; (12) science and research; (13) local government; (14) Washoe Tribe; (15) State of California; (16) State of Nevada; (17) Tahoe Regional Planning Agency; (18) Union/labor interests; (19) transportation; and (20) member-at-large (vacant).

Nominations for the 20th member representing member-at-large should describe and document the proposed member's qualifications for membership on the Lake Tahoe Basin Advisory Committee.

Vacancies on the Committee will be filled in the manner in which the original appointment was made.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: August 11, 1999.

Juan Palma,

Forest Supervisor, Lake Tahoe Basin Management Unit.

[FR Doc. 99–21597 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wolf Creek Ditch Special Use Permit, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposal to issue an easements and special use permits to the Wolf Creek Reclamation District to

operate and maintain the Wolf Creek and Little Wolf Creek irrigation ditches and access the ditches over Forest Service roads. In addition to issuing easements and special use permits, the proposed action includes replacing the existing log diversion structure with a concrete structure, which will allow for fish passage, and realigning the existing culvert at the beginning of the ditch. The EIS will develop a range of alternatives for operation and maintenance of the ditch. The alternatives will include the No Action alternative, whereby no easements or special use permits would be issued to the Wolf Creek Reclamation District, and no water would be allowed to flow down the ditch, and alternatives that respond to issues identified during the scoping process. The proposed action is consistent with the direction in the 1989 Okanogan National Forest Land and Resource Management Plan (Forest Plan), as amended by the 1994 Northwest Forest Plan, which provide overall guidance for management of the area. Implementation of this proposal is scheduled to begin in summer 2000. The Forest Service invites written comments on this project. In addition, the agency gives notice of this environmental analysis so that interested and affected people are aware of how they may participate and contribute to the decision making process.

DATES: Comments concerning the scope and implementation of the proposal should be received in writing by September 10, 1999.

ADDRESSES: Send written comments and suggestions concerning this project to Sonny J. O'Neal, Forest Supervisor, Okanogan National Forest, 1240 S. Second Ave., Okanogan, Washington, 98840.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the scope of analysis to Jan Flatten, Project Team Leader at 1240 South Second Avenue, Okanogan, WA, (509) 826–3277.

SUPPLEMENTARY INFORMATION: The Wolf Creek Reclamation District has held a special use permit to operate and maintain the Wolf Creek irrigation ditch since 1921. The Reclamation District provides both domestic and agricultural water to residents, businesses and public agencies along the ditch. The portion of the ditch on National Forest System lands (NFS) is located in Sections 1 and 2 of Township 34 North, Range 20 East, Willamette Merdian. The ditch on NFS lands spans approximately one mile, from the headgate on Wolf Creek just below the boundary of the Lake Chelan-Sawtooth Wilderness, across Little Wolf Creek to private land. The ditch eventually empties into Patterson Lake, where it is then channeled around Patterson Mountain to service private lands and the Methow Valley School District. The ditch currently has a log diversion dam and a temporary flat fish screen installed in the summer of 1999 at the headgate on Wolf Creek. The headgate is currently inaccessible by road and is located at the edge of the Sawtooth inventoried Roadless Area. The Reclamation District currently holds a temporary special use permit for operation and maintenance of the ditch. In 1997, steelhead were listed as an endangered species under the Endangered Species Act. Bull trout were listed as a threatened species in 1998, and Upper Columbia River Spring Chinook Salmon were listed as an endangered species in 1999. All three species are found in Wolf Creek. The Wolf Creek Reclamation District does not hold a special use permit for the little Wolf Creek ditch.

The analysis area is located entirely in matrix lands under the Northwest Forest Plan, and is managed for wildlife (MA–5; 30%) under the Okanogan National Forest Land and Resource Management Plan (Forest Plan). This EIS will tier to the Forest Plan, as amended by the Northwest Forest Plan. The amended Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, management area standards and guidelines, and desired future conditions for the various lands on the Forest. This direction is provided for management practices that will be utilized during the implementation of the amended Forest Plan.

In the early 1990s, the Wolf Creek Reclamation District applied for an easement for the ditch under Public Law 99–545 (Colorado Ditch Bill), which makes issuance of the easement to qualifying irrigation ditches non-discretionary.

The proposed action for the Wolf Creek Ditch easements and special use permits would permit the Wolf Creek Reclamation District to continue to operate and maintain the Wolf Creek and Little Wolf Creek irrigation ditches. Not allowing continued operation and maintenance of the ditches might have adverse social and economic impacts. Access to the Wolf Creek headgate would be via helicopter, all terrain vehicles and a ¼ to ½ mile long tractor trail to allow for replacement of the headgate and diversion structure and realignment of the culvert. The proposed action would be adjusted between draft and final EIS to comply with any terms and conditions identified by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) as a result of a Biological Opinion on the listed species.

The following preliminary issues have been identified for this project: (1) Species listed under the Endangered Species Act (steelhead, bull trout and spring Chinook salmon) reside in Wolf Creek and may be adversely affected; (2) The headgate for the ditch is located near the boundary of an inventoried roadless area and building an access trail could potentially substantially alter the unroaded and undeveloped character of that portion of the roadless area; (3) The Lake-Chelan Sawtooth Wilderness boundary is approximately 500 feet upstream from the existing headgate and reconstruction activities may have short term impacts on wilderness users; and (4) Trail construction and stream crossings of heavy equipment, headgate replacement, culvert re-alignment, and diversion dam construction may increase sedimentation in Wolf Creek.

The Forest Service will be seeking information, comments and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested or affected by the proposed project. This information will be used to determine the issues significant to the development and analysis of alternatives, to determine the appropriate range of alternative ways of implementing the proposed action, and to guide the analysis of effects.

The scoping process will include the following:

- Identification of potential issues;
- Identification of issues to be analyzed in depth;
- Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
- Exploration of alternative ways to implement the proposed actions based on the issues identified during the scoping process; and
- Determination of environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will develop a range of alternatives from No Action to alternatives allowing for operation and maintenance of the irrigation that respond to the significant issues.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for

public review by January 2000. The comment period on the draft EIS will be 45 days from the date EPA publishes the notice of availability of the draft EIS in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

Individuals and organizations who write to comment on projects may have their letters released in their entirety, if requested under the Freedom of Information Act.

The final EIS is scheduled to be completed in March 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Sonny O'Neal, Forest Supervisor, is the responsible official. As responsible official, he will document the project decision and rationale in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215 and 36 CFR 251).

Dated: August 13, 1999.

Stuart Woolley,

Acting Deputy Forest Supervisor, Okanogan National Forest.

[FR Doc. 99–21635 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Goose Restoration Projects, Winema National Forest, Klamath County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) for restoration projects on the Klamath Ranger District of the Winema National Forest. The planning area is located in T32S, R6E, T32S, R7 1/2E, T33S, R6E, and T33S, R7 1/2E, Willamette Meridian. Projects included under this analysis include commercial timber harvest, precommercial thinning, underburning, post and pole harvest, reforestation, evaluation of access and travel opportunities, road closures and obliterations, correction of sediment problems at the Annie Creek dispersed site, and elk forage enhancement. The Forest Service is initiating the process of preparing an EIS to analyze and disclose the effects of the proposed action and alternatives.

DATES: Comments concerning the scope of the analysis should be received in writing by September 20, 1999.

ADDRESSES: Submit written comments to Goose Project, Klamath Ranger District, 1936 California Ave., Klamath Falls, Oregon, 97601.

FOR FURTHER INFORMATION CONTACT: Phil Jahns, Klamath Ranger District, Winema National Forest, 1936 California Avenue, Klamath Falls, Oregon 97601, phone 541–885–3400 or e-mail at: pjahns/r6pnw__,winema@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Goose Planning Area is located on the east side of the southern Cascades immediately south of Crater Lake National Park. The elevation ranges from 4000 to 6000 feet and encompasses forest types ranging from lodgepole pine and white fir in the lower elevations to Shasta red fir and Mountain hemlock in the higher reaches. The planning area contains one of the largest root disease pockets in western North America.

This project-level EIS will tier to the 1990 Winema National Forest Land and Resource Management Plan, as amended by the 1994 Record of Decision for "Amendments to Forest Service and Bureau of Land Management Planning Document Within the Range of the Northern spotted Owl" (Forest Plan). The Forest Plan provides guidance for management activities within the potentially affected area through its goals objectives, management area direction, and standards and guidelines. The project would occur primarily within Scenic Management Area (MA3) and to a lesser extent within Late Successional Reserve (MA16) and Timber Management Area (MA12).

Purpose and Need

The purpose of the project is to (1) develop implementable treatments that will reduce the risk of large scale disturbances and/or encourage development of old growth characteristics within the planning area, (2) review the adequacy of the transportation system for the future and recommend deletion of those segments that are surplus to the needs or that are contributing to water quality problems, and (3) produce a timber product from matrix lands.

Proposed Action

The proposal contains a series of projects which reduce forest mortality to root disease while improving watershed condition. Up to 1930 acres of commercial harvest with thinning prescriptions will be proposed. Up to 2320 acres may be treated with prescribed underburning, possibly in conjunction with thinning. Up to 335 acres will be precommercially thinned and up to 100 acres will have opportunities to harvest posts and poles. Other proposed activities are 150 acres of seeding to improve elk foraging habitat, evaluation of access and travel opportunities and up to 40 miles of road may be closed or obliterated. In addition, the recreation site by Annie Creek will be reconstructed to minimize sediment.

Alternatives

The No Action alternative will serve as a baseline for comparison of alternatives and will be fully developed and analyzed. With the No Action alternative, there would be no activities implemented based on the Goose analysis. Previously approved activities, and routine protection and maintenance activities will continue. The proposed action, as described above, will be considered and other alternatives will be developed around the proposed

action to address issues identified in the scoping and public involvement process.

Issues

The preliminary issues that have been identified include the importance of the area for elk calving, the need to improve connectivity of late seral habitat between blocks of Late Successional Reserve and Crater Lake National Park, and the potential impact of the project on roadless values.

Public Involvement

Public participation will be important at several points during the EIS preparation. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information and comments from Federal, State, and local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS.

Public scoping will be achieved through mailings, notification in the Klamath Falls Herald & News, and if interest dictates, public meetings will be held within the Klamath Basin.

A range of alternatives will be considered including the No Action alternative. As issues are identified, other potential alternatives will be developed.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Estimated Dates For Draft and Final EIS

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in January 2000. The comment period on the draft EIS will be 45 days from the date EPA's Notice of Availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoom* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can be meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45 day comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by April 2000. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). Forest Supervisor, Winema National Forest, is the responsible official and will consider comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: August 12, 1999.

Mary C. Erickson,

Acting Deputy Forest Supervisor, Winema National Forest.

[FR Doc. 99–21634 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on September 28, 1999, at the Granlibakken Conference Center, 725 Granlibakken Road, Tahoe City, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held September 28, beginning at 9:00 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the City of South Lake Tahoe Chamber Office, 1900 Lake Tahoe Blvd., South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Ed Gee or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: (1) Recommendations to the Federal Partners on the Watershed Assessment; (2) Recommendations to the Federal Partners regarding federal budget priorities; (3) discussion of the USDA Forest Supervisor Replacement; (4) Open Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the

meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: August 11, 1999.

Juan Palma,

Forest Supervisor.

[FR Doc. 99–21596 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 20, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center and Operation of Individual Equipment Element Store

Barksdale Air Force Base, Louisiana
NPA: Louisiana Association for the Blind, Shreveport, Louisiana

Laundry Service

Naval Air Station, Brunswick, Maine and Portsmouth, New Hampshire
NPA: Newport County Chapter of Retarded Citizens, Inc., Middletown, Rhode Island

Janitorial/Custodial

Gerow USARC, Fort Lee, Virginia
NPA: Goodwill Services, Inc., Richmond, Virginia

Janitorial/Custodial

New River Valley Memorial USARC, Dublin, Virginia
NPA: New River Valley Workshop, Inc., Radford, Virginia

Janitorial/Custodial

PFC Cloyse E. Hall USARC, Salem, Virginia
NPA: Goodwill Industries of Tinker Mountain, Inc., Salem, Virginia

Janitorial/Custodial

Various USARCs, Fort Pickett, Virginia
NPA: Goodwill Services, Inc., Richmond, Virginia

Grounds Maintenance

Naval Air Station, Joint Reserve Base, Fort Worth, Texas
NPA: Goodwill Industries of Fort Worth, Fort Worth, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and services have been proposed for deletion from the Procurement List:

Commodities

Ladder, Extension (Wood)
5440–00–242–1000
Ladder, Straight (Wood)
5440–00–242–7151
Stepladder
5440–00–531–2589
Ammonia Inhalant Solution, Aromatic
6505–00–106–0875
Brush, Floor Sweeping
7920–00–292–2363
7920–00–292–2365
7920–00–292–2362
Brush, Scrub
7920–00–951–8795
Brush, Wire, Scratch
7920–00–269–0933
Brush, Wire, Stainless Steel
7920–00–958–1157

Services

Commissary Shelf Stocking and Custodial
Fort Devens, Massachusetts

Janitorial/Custodial

Fort Ritchie, Maryland

Janitorial/Custodial

U.S. Federal Building and Courthouse, 301 South Park Avenue, Helena, Montana

Janitorial/Custodial

U.S. Army Reserve Center, Allison Park, Reserve Center #2, Buildings 1 and 5, Allison Park, Pennsylvania

Janitorial/Custodial

Federal Center, Buildings 603, 604, 605, 606, 607, 608, 608A, 609, 610, 611, 612, 613, 613A, 615, 616, 617, 618, 619, 620, 621 and 624, Walla Walla, Washington

Rita L. Wells,

Deputy Director (Policy and Program Coordination).

[FR Doc. 99–21669 Filed 8–19–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be

furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 20, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: On September 11, and December 11, 1998, January 29, May 28, June 18 and 25, and July 2, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 48696 and 68427, and 64 FR 4638, 28972, 32844, 34187, 35987 and 35988) of proposed additions to the Procurement List.

Additions

The Following Comments Pertain to Food Service, Fort Lee, Virginia

Comments were received from a contractor under the 8(a) Program which is not the current contractor for this service. The commenting contractor objected to removal of this service from competitive procurement. The Committee does not consider loss of the opportunity to bid on a contract, without a showing of further economic impact or a demonstrated history of dependency on the contract, to be a severe adverse impact on a contractor.

The Following Comments Pertain to Mailroom and Warehouse Operation, U.S. Army Corps of Engineers, Construction Engineering Research Laboratory, Champaign, Illinois

Comments were received from the current contractor for these services. The commenter claimed to be a struggling small disadvantaged business. Loss of its contracts for these services, it claimed, would halt its expansion and could result in the end of the company. The commenter also questioned whether blind people would be able to safely perform the mailroom and warehouse operations involved in providing the services to the Government.

The percentage of the commenter's total sales which its contracts for these services represent is slightly higher than the percentage range which the Committee has historically considered not to constitute severe adverse impact on a current contractor. However, the Government contracting activity for these services has informed the Committee that the commenter's numerous failures to pay its employees performing the services properly has raised concerns that performance could be impaired if some or all of the employees walk off the job. The Department of Labor is currently investigating the commenter for possible violations of the Service Contract Act related to these payment problems, and debarment of the commenter from Federal contracting is a possible result of the investigation. Because current Federal acquisition regulations permit contracting activities to place considerable weight on past performance as a factor in assessing the risk of poor performance on future contracts, the contracting activity believes that it would be unlikely to award future contracts for these services to the commenter if the payment problems are not corrected. In addition, these payment problems could lead to disqualification of the commenter for future contract awards on the grounds of financial nonresponsibility.

Under these circumstances, the Committee believes the commenter would likely not receive future contracts for these services whether or not the Committee added them to the Procurement List.

Any financial impact the commenter would experience would thus not necessarily be a direct result of the Committee's addition decision. Accordingly, the Committee has concluded that addition of these services to the Procurement List is not likely, in itself, to have a severe adverse impact on the commenter.

The Committee's determination that the nonprofit agency for the blind which will be performing these services is capable of doing so is based on an evaluation of the nonprofit agency's capability which took into account the ability of blind workers to perform the tasks involved in a safe manner. Accordingly, the Committee does not agree with the commenter's contention that blind people cannot safely perform these tasks.

The Following Material Pertains to All of the Services Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center and Operation of Individual Equipment Element Store

Vandenberg Air Force Base, California

Commissary Shelf Stocking, Custodial and Warehousing

Kaneohe Bay, Hawaii

Food Service

Fort Lee, Virginia

Janitorial/Custodial

Agriculture Cotton Annex, 14th and Independence Avenue, Washington, DC

Janitorial/Custodial

Herbert Hoover Building and White House Visitor's Center, 14th & Constitution Avenue, N.W., Washington, DC

Janitorial/Custodial

Naval War College, Newport, Rhode Island

Mailroom and Warehouse Operation

U.S. Army Corps of Engineers, Construction Engineering Research Laboratory, Champaign, Illinois

Mailroom Operation

Internal Revenue Service, University Plaza Building, 949 East 36th Avenue, Room 112, Anchorage, Alaska

Internal Revenue Service and U.S. Coast Guard

Prince Jonah Kuhio Kalanianaole (PJKK) Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii

Internal Revenue Service

Edith Green/Wendell Wyatt Federal Building, 1220 SW Third Avenue, Portland, Oregon

Internal Revenue Service

Jackson Federal Building, 915 Second Avenue, Room 2450, Seattle, Washington

Recycling Service

March Air Reserve Base, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Rita L. Wells,

Deputy Director (Policy and Program Coordination).

[FR Doc. 99–21670 Filed 8–19–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–802]

Continuation of Antidumping Duty Order: Aspirin From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Order: Aspirin from Turkey.

SUMMARY: On July 6, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of dumping (64 FR 36328 (July 6, 1999)). On August 4, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on aspirin from Turkey would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 42414 (August 4, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on aspirin from Turkey.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 20, 1999.

Background

On March 1, 1999, the Department initiated, and the Commission instituted, a sunset review (64 FR 9970 and 64 FR 10012, respectively) of the antidumping duty order on aspirin from Turkey pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked. (*See Final Results of Expedited Sunset Review: Aspirin from Turkey*, 64 FR 36328 (July 6, 1999)).

On August 4, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on aspirin from Turkey would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (*See Aspirin from Turkey*, 64 FR 42414 (August 4, 1999), and USITC Pub. 3215, Inv. No. 731–TA–364 (Review) (July 1999)).

Scope

The merchandise covered by this antidumping duty order is acetylsalicylic acid (aspirin) from Turkey containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring materials), and/or active substances in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the Handbook of Nonprescription Drugs, eighth edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is classified under the Harmonized Tariff Schedule (HTS) subheading 2918.22.10. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on aspirin from Turkey. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

The effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. As a result, pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than thirty (30) days before the fifth anniversary of the effective date of this notice.

Dated: August 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21714 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–614–801]

Fresh Kiwifruit From New Zealand: Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order, and Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances review and intent to revoke order, and rescission of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the California Kiwifruit Commission, the Department of Commerce (the Department) is initiating a changed circumstances review and is issuing this notice of intent to revoke the antidumping duty order on fresh kiwifruit from New Zealand. The petitioner requested that the Department revoke the order on fresh kiwifruit from New Zealand retroactive to June 1, 1997, because it no longer has an interest in maintaining the order. The California Kiwifruit Commission is a domestic interested party and was the petitioner in the less-than-fair-value (LTFV)

investigation. We are initiating this changed circumstances review and issuing this notice of our preliminary determination to revoke the order retroactive to June 1, 1997. In addition, in response to the respondent's withdrawal of its request for the present (sixth) administrative review, the Department is rescinding the sixth administrative review of the order.

EFFECTIVE DATE: August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John P. Maloney, Jr., Office 2, AD/CVD Enforcement Group I, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2613 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 1998).

Background

On July 30, 1999, the petitioner, the California Kiwifruit Commission, requested that the Department conduct a changed circumstances review to revoke the antidumping duty order on fresh kiwifruit from New Zealand retroactive to June 1, 1997. The petitioner stated that circumstances have changed such that the petitioner no longer has an interest in maintaining the antidumping duty order. On August 5, 1999, the petitioner submitted a supplement to its request indicating that it represents all kiwifruit growers in California and virtually all commercial growers of kiwifruit in the United States.

The petitioner also requested that, due to the pendency of the ongoing administrative review of the order, the Department initiate and complete the changed circumstances review on an expedited basis.

On July 14, 1999, the New Zealand Kiwifruit Marketing Board (NZKMB), the sole respondent in this proceeding, filed a withdrawal of its request for an administrative review of the June 1, 1997, through May 31, 1998, review period (the sixth review), and requested that the Department rescind the sixth review. Given that the respondent's withdrawal and rescission request was filed after the 90-day period for withdrawing a request for a review, the respondent asked the Department to exercise its regulatory discretion to rescind the sixth review.

Scope of Review

The product covered by this review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit are not covered under the scope of this review. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 0810.90.20.60. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h) of the Act and 19 CFR 351.222(g)(1)(i) provide further that the Department may revoke an order, in whole or in part, if it concludes that the order under review is no longer of interest to producers accounting for substantially all of the production of the domestic like product. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

The California Kiwifruit Commission is a domestic interested party as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and was the petitioner in the LTFV investigation of this proceeding. We preliminarily determine that the California Kiwifruit Commission represents producers accounting for substantially all of the production of the domestic like product. Therefore, based on the affirmative statement by the California Kiwifruit Commission of no interest in the continued application of the antidumping duty order on fresh kiwifruit from New Zealand, we are initiating this changed circumstances review. Further, based on the request by the petitioner and its affirmative statement of no interest dating back to June 1, 1997, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant revocation of the order in whole. We are hereby notifying the public of our intent to revoke in whole the antidumping duty order on fresh kiwifruit from New Zealand retroactive to June 1, 1997.

If final revocation of the order occurs, we intend to instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of fresh kiwifruit from New Zealand on or after June 1, 1997, in accordance with 19 CFR 351.222(g)(4). We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Rescission of Administrative Review

On July 14, 1999, NZKMB withdrew its request for review in the sixth review period (June 1, 1997, through May 31, 1998). In accordance with 19 CFR 351.213(d)(1), we are rescinding this review because NZKMB withdrew its request for a review and no other interested party requested that NZKMB be reviewed. Although NZKMB did not file its withdrawal request within 90 days of the publication of initiation of the requested review, we are exercising the discretion to extend that time limit afforded by 19 CFR 351.213(d)(1). That section allows the Department to rescind a review after 90 days when it is reasonable to do so. In this case, the petitioner concomitantly has filed a request for a changed circumstances review and revocation of the order based on a lack of domestic interest dating back to June 1, 1997, the month the request was filed for the sixth review. Given the lack of domestic interest prior to the date of initiation of the sixth review, we have determined that it is reasonable to rescind the sixth review based on NZKMB's filing of a withdrawal of its request for a review on July 14, 1999.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice. Written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal comments to written comments, limited to issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: August 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21715 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929, or Rebecca Trainor at (202) 482–4007, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the twelfth administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico, which covers the period December 1, 1997, through November 30, 1998.

Postponement

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Act), the Department of Commerce (the Department) shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in this twelfth administrative review of certain porcelain-on-steel cookware from Mexico within this time limit due to a number of complex issues, including reimbursement.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of this review until November 1, 1999.

Dated: August 16, 1999.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–21717 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–041]

Revocation of Antidumping Finding: Synthetic Methionine From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping finding: Synthetic methionine from Japan.

SUMMARY: Pursuant to section 751(c) of the Tariff Act from 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the antidumping finding on synthetic methionine from Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 38693 (July 19, 1999)). Therefore, pursuant to section 19 CFR 351.222(i)(1), the Department of Commerce ("the Department") is revoking the antidumping finding on synthetic methionine from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act, the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: January 1, 2000.

Background

On August 3, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 41227 and 63 FR 41290, respectively) of the antidumping finding on synthetic methionine from Japan pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked (*see Final Results of Expedited Sunset Review: Synthetic Methionine from Japan*, 63 FR 67665 (December 8, 1998), as amended 64 FR 30488 (June 8, 1999)).

On July 19, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on synthetic methionine would not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Synthetic Methionine from Japan*, 64 FR 38693 (July 19, 1999), and USITC Pub. 3205, Inv. No. AA1921–115 (Review) (July 1999)).

Scope

The merchandise covered by this finding is shipments of synthetic methionine other than synthetic L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and L methionine feed grade (used as a food additive). Both grades of synthetic methionine are currently classifiable under item 425.0420 of the Tariff Schedules of the United States Annotated and Harmonized System item number 2930.40.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of this antidumping finding is not likely to lead

to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, will revoke the antidumping finding on synthetic methionine from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act, this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: August 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21713 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of new shipper review of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: In response to requests from Zhejiang Changshan Changhe Bearing Company and Weihai Machinery Holding (Group) Corporation Limited, the Department of Commerce is conducting a new shipper review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. This review covers these companies' entries of tapered roller bearings and parts thereof, finished and unfinished, to the United States during the period June 1, 1998, through November 30, 1998.

We have preliminarily found that, during the period of review, Zhejiang Changshan Changhe Bearing Company and Weihai Machinery Holding (Group) Corporation Limited have not made sales of subject merchandise below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 20, 1999.

FOR FURTHER INFORMATION CONTACT: James Breeden or Zak Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1174 and (202) 482-0189, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's ("Department's") regulations are to 19 CFR 351 (April 1998).

Background

On November 30, 1998, Zhejiang Changshan Changhe Bearing Company ("ZCCBC"), a producer and exporter, requested that we conduct a new shipper review. ZCCBC's request was followed by a similar request on December 30, 1998, by Weihai Machinery Holding (Group) Corporation Limited ("Weihai"), an exporter. We published the notice of initiation for this new shipper review on February 19, 1999 (64 FR 8312).

Scope of Review

Merchandise covered by this review includes tapered roller bearings ("TRBs") and parts thereof, finished and unfinished, from the People's Republic of China ("PRC"); flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under this policy, exporters in nonmarket economies ("NMEs") are entitled to separate, company-specific margins if they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589).

With respect to Weihai, information submitted during this review indicates that Weihai is owned by its shareholders. These shareholders consist of the companies Weihai Machinery Industries Co. Ltd. ("MIC") and United Collective Enterprises of Weihai ("UCE"). Record evidence indicates that MIC is owned "by all the people of the People's Republic of China" and that UCE is collectively owned by its employees.

An analysis performed by the CIA, which has been put on the record of this proceeding, states that although collectively owned enterprises ("collectives") are theoretically owned by the company's workers rather than

"all the people," the Chinese consider collectives to be another form of public ownership. *See 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt. 2* (102 Cong., 2d Sess.). Thus, similar to companies that are owned "by all the people," UCE belongs to the community of its employees who are "entrusted with the management of the company." (*See Silicon Carbide*, 59 FR at 22586–7.) Based on these facts, the Department preliminary determines that Weihai is eligible to be considered for a separate rate.

As discussed below, Weihai and ZCCBC meet both the *de jure* and *de facto* criteria. Accordingly, we preliminarily determine to apply separate rates to Weihai and ZCCBC.

De Jure Analysis: Weihai and ZCCBC

The following laws indicate a lack of *de jure* government control over these companies, and establish that the responsibility for managing companies owned by "all of the people" and collectives has been transferred from the government to the enterprises themselves. These laws include: "Law of the PRC on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("1988 Law"); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 ("1992 Regulations"); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 ("Export Provisions"). The 1988 Law states that enterprises have the right to set their own prices (*see* Article 26). This principle was restated in the 1992 Regulations (*see* Article IX). Finally, the 1992 "Temporary Provisions for Administration of Export Commodities" list those products subject to direct government control. TRBs do not appear on this list and are not subject, therefore, to the constraints of these provisions.

With respect to ZCCBC, information submitted during this review indicates that it is a joint venture company formed under the laws of the PRC. The Chinese company participating in this joint venture is controlled by private shareholders and independent from national, provincial and local Chinese government entities (*see* ZCCBC questionnaire response dated June 22, 1999). Furthermore, the following laws, which have been placed on the record in this case, indicate a lack of *de jure* government control over joint venture companies, and establish that these companies are responsible for managing themselves. These laws include the "Law of the PRC on Chinese-Foreign Cooperative Joint Ventures," adopted on April 13, 1988 ("Joint Venture Law") and the "Foreign Trade Law of the PRC," approved on May 12, 1994 ("Foreign Trade Law"). The Joint Venture Law states that a cooperative venture is to conduct its operations and management in accordance with its approved articles of association and that no interference with regard to the management autonomy of these enterprises is allowed (*see* Article 11). In addition, the Foreign Trade Law states that enterprises engaged in international trade shall enjoy full autonomy in their business operation and be responsible for their own profits and losses (*see* Article 11).

Therefore, consistent with Silicon Carbide, we preliminarily determine that the existence of these laws demonstrates that Weihai and ZCCBC are not subject to *de jure* government control with respect to export activities.

In light of reports indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly,[1] an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to government control with respect to export activities.

De facto Analysis: Weihai and ZCCBC

The following record evidence, which is contained in Weihai's and ZCCBC's questionnaire responses, indicates a lack of *de facto* government control over the export activities of these companies.

Weihai's chairman and sales representatives authorized by the chairman, and ZCCBC's general manager have the right to contractually bind their respective companies concerning the sale of TRBs. Both Weihai and ZCCBC have stated that export decisions are not subject to any government review or approval and there are no government policy directives that affect these decisions.

Weihai's senior management is selected by the company's board of directors. The remaining managers are appointed by the general manager. The results of Weihai's senior management selections are recorded with the State Administration for Industry and Commerce. There is no evidence that this government authority controls the selection process or that it has rejected senior managers selected through the election process. The general manager of ZCCBC is appointed by the company's stockholders and ZCCBC does not notify the government of its management selections. Accordingly, there is no evidence that the government controls the selection process or that it has rejected a general manager selected.

Weihai's and ZCCBC's sources of funds are their own respective revenues or bank loans. They have sole control over, and access to, their bank accounts, which are held in Weihai's and ZCCBC's own names, respectively.

Furthermore, there are no restrictions on the use of the respondents' revenues or profits, including export earnings.

Based on the foregoing analysis of the evidence on the record, we find neither *de jure* nor *de facto* government control over the export activities of Weihai or ZCCBC. Accordingly, we preliminarily determine that Weihai and ZCCBC are not part of any "PRC enterprise" and are entitled to separate rates.

United States Sales

For sales made by Weihai and ZCCBC, we based the U.S. sales on export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the constructed export price methodology was not indicated by other circumstances.

We calculated EP based on, as appropriate, the FOB or CIF port price to unaffiliated purchasers. From this amount we deducted amounts, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We valued the deduction for foreign inland freight using Indian freight costs (*see* the *Normal Value* section of this notice for a discussion of our surrogate selection). Marine insurance and ocean freight were provided by PRC-owned companies. Therefore, we valued the deductions using amounts charged by international providers.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production ("FOP") methodology if: (1) The merchandise is exported from an NME, and (2) the information does not permit the calculation of NV under section 773(a) of the Act. The Department has treated the PRC as an NME in all previous antidumping cases. In accordance with section 771(18)(C)(i)

[1] "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service—China—93–133 (July 14, 1993), and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt. 2 (102 Cong., 2d Sess.).

of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC tapered roller bearing industry is a market-oriented industry. Consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, except as noted below, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and section 351.408(c) of our regulations.

Under the FOP methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We have relied on India as the primary surrogate for valuing the PRC producers' inputs. We have used Indonesia as a secondary source of values (*see* Memorandum to Susan Kuhbach from Jeff May: "Tapered Roller Bearings ("TRBs") from the People's Republic of China ("PRC"): Nonmarket Economy Status and Surrogate Country Selection," dated June 4, 1999, and Memorandum to Susan Kuhbach: "Selection of a Surrogate Country and Steel Value Sources," dated August 10, 1999 ("Steel Values Memorandum"), for a further discussion of our surrogate selection). We note that, in past reviews of this order, we have found that both India and Indonesia are economically comparable to the PRC and are significant producers of TRBs (*see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1997–1998 Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 36853 (July 8, 1999) ("*Preliminary TRBs XI*")).

We used Indian data to value the various factors of production with the exception of the following: hot-rolled alloy steel bars for the production of cups and cones, cold-rolled steel rods used in the production of rollers, and steel scrap from the production of cups, cones, and rollers. To value hot-rolled alloy steel bars for the production of cups and cones, we used data on imports into Indonesia. Specifically, we used Japanese export prices of cup and cone quality steel to Indonesia. Use of Japanese export data allowed us to identify bearing quality steel. To value cold-rolled steel rods used in the production of rollers, we used Indonesian import data. We valued scrap using information from the same country we used to value steel. In these instances where we used Indonesian data, we did so because we found the Indian data for those inputs to be unreliable. (*See* Steel Values Memorandum.)

All valuations were made using publicly available information, as described below. For a complete description of the factor values used, see the "Memorandum to Susan Kuhbach: Factors of Production Values Used for the Preliminary Results," dated August 10, 1999.

1. Steel Inputs. For hot-rolled alloy steel bars used in the production of cups and cones, we used a weighted average of Japanese export values to Indonesia from the Harmonized Tariff Schedule ("HTS") category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. This is consistent with the approach followed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part*, 63 FR 63842, 63845 (November 17, 1998) ("*TRBs X*"). For cold-rolled steel rods used in the production of rollers, we used Indonesian import data for Indonesian tariff subheading 7228.50000, as reported in *Biro Pusat Statistik, Republik Indonesia*. For cold-rolled steel sheet for the production of cages, we used Indian import data for Indian tariff subheading 7209.4200, as reported in the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports*. (For further discussion of selection of steel value sources, *see* Steel Values Memorandum).

As in previous administrative reviews, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, and rollers, we also excluded imports from countries that do not produce bearing-quality steel (*see, e.g., TRBs X*).

We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory (*see Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997), and *Sigma Corporation* versus *United States*, 117 F. 3d 1401 (Fed. Cir. 1997)). We also made adjustments to include freight costs incurred between primary producers and their subcontractors.

One producer in this review purchased steel sheet from a market economy supplier and paid for the steel with market economy currency. Thus, in accordance with section 351.408(c)(1) of our regulations, we valued this steel input using the actual price reported for directly imported inputs from a market economy.

To be consistent with the valuation of steel for cups, cones, and rollers, we valued scrap recovered from the production of cups, cones, and rollers using official Japanese government statistics on Japanese scrap exports to Indonesia from HTS category 7204.29.000. Similarly, scrap recovered from the production of cages was valued using import data from the Indian tariff subheading 7204.4100.

2. Labor. Section 351.408(c)(3) of our regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate on Import Administration's internet website at www.ita.doc.gov/import_admin/records/wages.

3. Overhead, SG&A Expenses, and Profit. For factory overhead, we used information obtained from the fiscal year 1997–98 annual reports of six Indian bearing producers. We calculated factory overhead and selling, general and administrative ("SG&A") expenses (exclusive of labor and electricity) as percentages of direct inputs (also exclusive of labor) and applied these ratios to each producer's direct input costs (exclusive of labor). For profit, we totaled the reported profit before taxes for the six Indian bearing producers and divided it by the total calculated cost of production ("COP") of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. Packing. We used surrogate values for each packing material reported using values obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports by Commodity* (April 1997 through December 1997). We adjusted the values to reflect inflation using the Indian wholesale price index ("Indian WPI").

5. Electricity. We used a simple average of 1995 regional electricity prices in India for large industries as reported in *India's Energy Sector*, published by the Centre for Monitoring Indian Economy Pvt. Ltd. (September 1996). We adjusted the value to reflect inflation using the Indian WPI.

6. Inland Freight. We valued truck freight using a rate derived from the April 20, 1994 issue of *The Times of*

India. We adjusted the rate to reflect inflation through the POR using the Indian WPI. We valued rail freight using rates published by the Indian Railway Conference Association in 1995. We calculated an average rate per kilometer and adjusted the rate to reflect inflation through the POR using the Indian WPI.

7. Ocean Freight. We calculated a value for ocean freight based on 1996 rate quotes from Maersk Inc. We adjusted the rate to the POR using the United States producer price index.

8. Marine Insurance. We calculated a value for marine insurance based on the CIF value of the TRBs shipped. We obtained the rate used through queries we made directly to an international marine insurance provider. Because the information obtained was from a period contemporaneous with the POR, no further adjustments were necessary.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 1998, through November 30, 1998:

Manufacturer/exporter	Margin (percent)
Weihai	0.00
ZCCBC	0.00

Any interested party may request a hearing within 30 days of publication. A hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter.

Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results within 90 days after the date on which these results were issued. The final results will include our analysis of issues raised in the briefs or hearing.

If these preliminary results are adopted in the final results, we will instruct the Customs Service to liquidate the entries of the subject merchandise entered, or withdrawn from warehouse, for consumption during the POR, without regard to antidumping duties. The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates, *i.e.*, less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.12 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of our regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 10, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21716 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081699A]

Environmental Impact Statement (EIS) for the Proposed Fishery Management Plan (FMP) for the Coral Reef Ecosystem Fishery Management Plan of the Western Pacific Region (Coral Reef Ecosystem FMP); EIS for the FMP for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region; (Bottomfish and Seamount Groundfish Fisheries FMP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare EISs; request for comments; notice of scoping meeting.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed Coral Reef Ecosystem FMP, and an EIS for the Bottomfish and Seamount Groundfish Fisheries FMP. The Western Pacific Fishery Management Council (Council) will hold a public scoping hearing in Kona, Hawaii, on management alternatives to be analyzed under both EISs.

DATES: Written comments on the intent to prepare the EISs will be accepted on or before September 10, 1999. A public scoping meeting is scheduled for August 31, 1999.

ADDRESSES: Written comments on the intent to prepare the EISs or other aspects of the scoping documents, which contain suggested alternatives and potential impacts, should be sent to, and copies of the scoping documents are available from, Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, and to Charles Karnella, Administrator, National Marine Fisheries Service, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814.

The following location and time have been set for the scoping meeting: King Kamehameha's Kona Beach Hotel (phone 808–329–2911), 2–Elua Room, August 31, 1999, 6–8 p.m. Phone contact 808–522–8220 for information.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, at 808–522–8220.

SUPPLEMENTARY INFORMATION: A summary of the Coral Reef Ecosystem FMP will be presented including initial

recommendations for management action, as described here. Comments will be solicited from the public on these and any other management alternatives the public cares to offer.

Management measures that might be adopted in the Coral Reef Ecosystem FMP include permit and reporting requirements for non-subsistence harvest of coral reef resources, marine protected areas to ensure greater conservation and management to special locations (e.g., Penguin Bank, Northwestern Hawaiian Islands), allowable gear types to harvest coral reef resources in the U.S. exclusive economic zone (EEZ, 3–200 miles (5.56 to 370.4 km) from shore in Hawaii and from most other U.S. Pacific Islands), prohibition on use of gear in ways destructive to habitat, and a framework management process to add future new measures. The FMP would also include essential fish habitat and habitat areas of particular concern, including fishing and non-fishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). An additional measure, still under consideration for possible inclusion, is a ban on the possession or collection, for commercial purposes, of wild live rock and coral (other than coral covered by the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region). The collection of live rock or coral for scientific and research purposes and the collection of small amounts of live coral as brood-stock for captive breeding/aquaculture would be allowed by permit.

The Coral Reef Ecosystem FMP, and its associated EIS, would be the Council's fifth FMP for the EEZ for all U.S. Pacific Islands. This area includes nearly 11,000 km^2 (4,000 square miles) of coral reefs. Development of the Coral Reef Ecosystem FMP is timely, considering such new mandates and initiatives as the April 1999 report to Congress by the Ecosystem Principles Advisory Panel on Ecosystem-Based Fishery Management, the President's 1998 Executive Order on Coral Reefs (E.O. 13089), and priorities of the U.S. Coral Reef Task Force and the U.S. Coral Reef Initiative, as well as the provisions of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act. The draft Coral Reef Ecosystem FMP would describe the importance of coral reef resources to Hawaii and the region and current and potential threats that warrant an FMP at this time. Information regarding the harvest of these resources in the EEZ is largely unknown. Potential for unregulated harvest and bio-prospecting for reef fish, live grouper, live rock and coral exists throughout the region.

The public is also invited to assist the Council in developing the scope of alternatives and impacts that should be analyzed in an EIS for the Bottomfish and Seamount Groundfish Fisheries FMP. An EIS has not been prepared for the FMP. Since the FMP was implemented in 1986, many changes have occurred in this fishery, and with the stocks and management regimes. As part of the scoping process for the EIS for this FMP, the public is also invited to comment on an alternative being considered for the addition of bottomfish species in the EEZ around the U.S. Pacific Island possessions (and the Commonwealth of the Northern Mariana Islands (CNMI)), to the management unit of the Bottomfish and Seamount Groundfish FMP. Federal regulations for the EEZ off the U.S. Pacific Island possessions (and the CNMI) that would provide basic protection and conservation measures are already established in the EEZs for other parts of the Western Pacific Region, and include no taking with explosives, poisons, trawl nets or bottom-set gillnets. A definition of overfishing for a list of identified FMP management unit species would be established and evaluated annually, with required action in the event of overfishing.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (see **ADDRESSES**), 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 et seq.

Dated: August 16, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21594 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Citrus Associates of the New York Cotton Exchange: Proposed Amendments to the Frozen Concentrated Orange Juice–2 (FCOJ–2) Futures Contract Providing for Delivery of FCOJ Originating in Florida and Brazil Only, Changing the Contract's Quality Specifications and Providing for Trading of the FCOJ–2 Futures Contract at a Price Differential to the Existing FCOJ–1 Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Citrus Associates of the New York Cotton Exchange (CANYCE or Exchange) has proposed amendments to the Exchange's dormant frozen concentrated orange juice–2 (FCOJ–2) futures contract. The proposed amendments would provide for the delivery of FCOJ originating in Florida and Brazil only, make the contract's quality specifications conform to the quality specifications of the FCOJ–1 futures contract, amend the contract's speculative position limits, and provide for the trading of the FCOJ–2 futures contract as a differential price spread to the FCOJ–1 futures contract. The Exchange also proposes to recommence trading in this dormant contract pursuant to the provisions for Commission Regulation 5.2. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on September 27, 1999—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that the proposed amendments are of major economic significance, within the meaning of section 5a(a)(12) of the Commodity Exchange Act (Act), and that their publication is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three

Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CANYCE FCOJ–2 futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

SUPPLEMENTARY INFORMATION: The Exchange currently is designated to trade two FCOJ futures contracts, the actively traded FCOJ–1 futures contract and dormant FCOJ–2 futures contract. The terms and conditions of the FCOJ–1 and FCOJ–2 futures contracts are identical, except with respect to the contracts' quality specifications. In this regard, the FCOJ–1 futures contract provides for the delivery of FCOJ having a Brix value of acid ratio of not less than 14.0 to 1 and not more than 18.0 to 1 and a minimum score of 94, with minimum component quality factors of 37 for color, 37 for flavor, and 19 for defects. In contract, the FCOJ–2 futures contract provides for the delivery of FCOJ having a Brix value to acid ratio of not less than 13.0 to 1 and not more than 19.0 to 1 and a minimum score of 92, with minimum component quality factors of 36 for color, 36 for flavor, and 19 for defects.

The existing terms of the FCOJ–1 and FCOJ–2 futures contracts permit delivery of FCOJ of all origins, imported or domestic. In addition, both futures contracts provide for the delivery of shipping certificates, which require the certificate issuers to load FCOJ into transportation equipment provided by the certificate holder. The contracts' delivery points consist of approved delivery facilities located at Wilmington, Delaware; Newark and Port Elizabeth, New Jersey, in 11 specified counties in California; and in 16 specified counties in central Florida. FCOJ is deliverable at par at delivery facilities located in Florida, Wilmington, Newark and Port Elizabeth. FCOJ in delivery facilities in California is deliverable at a discount of 10 cents per pound. Currently, a trader's combined position in the FCOJ–1 and FCOJ–2 futures contracts is subject to speculative position limits of 3,000 contracts in all contract months combined, 1,800 contracts in individual non-spot contract months, and 300 contracts in the spot month.

The proposed amendments to the FCOJ–2 futures contract would limit the origins of deliverable FCOJ to FCOJ produced in Florida and Brazil. In addition, the proposed amendments would make the FCOJ–2 futures contract's quality specifications identical to the quality specifications of the FCOJ–1 futures contract, as noted above.

The proposed amendments also would provide for the trading of the FCOJ–2 futures contract as a component of a differential price spread between the FCOJ–2 and FCOJ–1 futures contracts ("FCOJ Differential Contracts") during most of the trading life of an FCOJ–2 contract month. In this respect, the proposed amendments define a long FCOJ Differential Contract as consisting of a long FCOJ–2 futures contract and a short FCOJ–1 futures contract. A short FCOJ Differential Contract is defined as a short FCOJ–2 futures contract and a long FCOJ–1 futures contract. The FCOJ Differential Contract will be traded as a single contract until the second business day preceding the first delivery notice day for the expiring contract month. The proposed amendments would provide that, on the second business day preceding the first delivery notice day for a contract month, each FCOJ Differential Contract position in the expiring contract month will be divided into its component FCOJ–1 and FCOJ–2 positions, i.e., a trader will receive by book entry a long (short) position in the FCOJ–2 futures contract and an opposite short (long) position in the FCOJ–1 futures contract. Trading in the FCOJ–2 futures contract will then continue until the first delivery notice day, with the quoted prices reflecting the value of FCOJ originating in Florida and Brazil (not the price spread differential between the FCOJ–2 and FCOJ–1 futures contracts). Trading in the FCOJ–2 futures contract would end on the first delivery notice day for a contract month and all positions remaining open after the close of trading on that day would be settled by delivery. The proposed amendments would not change the existing trading and delivery notice periods for expiring FCOJ–1 futures contract months.

In addition, the proposed amendments will provide for speculative position limits of 3,000 contracts for each of the FCOJ–1 and FCOJ–2 futures contracts in all contract months combined and 1,800 contracts for each of the FCOJ–1 and FCOJ–2 futures contracts in individual non-spot contract months. The spot month speculative position limit would continue to be applicable to a trader's combined gross position in the FCOJ–1 and FCOJ–2 futures contracts.

The CANYCE intends to make the proposed amendments effective in October 1, 1999 with the commencement of trading in the revised FCOJ–2 futures contract.

In support of the proposed amendments, the CANYCE indicated that the proposal to trade the FCOJ–2 futures contract as a component of a differential price spread between the FCOJ–2 and FCOJ–1 futures contract is intended to avoid diluting the open interest and trading activity in the FCOJ–1 futures contract. The Exchange also indicated that proposal to divide each FCOJ Differential Contract position into its FCOJ–2 futures contract and FCOJ–1 futures contract components two business days before the first notice day of expiring contract months is intended to allow traders sufficient time to adjust their futures positions as necessary. In addition, the CANYCE indicated that, because FCOJ that meets the proposed delivery requirements of the FCOJ–2 futures contract constitutes approximately 90% of all FCOJ currently deliverable on the FCOJ–1 futures contract, there will be an adequate deliverable supply of FCOJ available for the amended FCOJ–2 futures contract.

The Division is requesting comments on the proposed amendments to the FCOJ–2 futures contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the CANYCE in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CANYCE, should send such comments to Jean A. Webb, Secretary, Commodity

Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 16, 1999.

John E. Mielke,

Acting Director.

[FR Doc. 99–21671 Filed 8–19–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.170]

Office of Postsecondary Education, Department of Education; Notice Inviting Applications for Jacob K. Javits Fellowship Program New Awards for Fiscal Year (FY) 2000

Purpose of Program: The purpose of the Jacob K. Javits Fellowship (JKJ) Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise to undertake graduate study leading to a doctoral degree or a Master of Fine Arts (MFA) at accredited institutions of higher education in selected fields of the arts, humanities, or social sciences.

Eligible Applicants: Individuals who at the time of application have not yet completed their first year of graduate study or will be entering graduate school in academic year 2000–2001, and who are eligible to receive any grant, loan, or work assistance and intend to pursue a doctoral degree or MFA in fields selected by the JKJ Board at accredited U.S. institutions of higher education. Individuals must be U.S. citizens or nationals, permanent residents of the U.S., or citizens of any one of the Freely Associated States.

Deadline for Transmittal of Applications: November 29, 1999.

Applications Available: September 27, 1999.

Available Funds: $1,973,400. The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

Estimated Range of Awards: $11,000—$25,500.

Estimated Average Size of the Awards: $25,300.

Estimated Number of Awards: 78 individual fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85 and 86; and (b) The regulations in 34 CFR part 650.

SUPPLEMENTARY INFORMATION:

Stipend Level

The Secretary will determine the maximum allowable fellowship stipend for academic year 2000–2001, based on the level of support that the National Science Foundation will provide for its graduate fellowships. We anticipate that the fellowship stipend will be $15,000 or the individual fellow's financial need, as determined by part F of title IV of the Higher Education Act of 1965, as amended, whichever is less.

Institutional Payment

The Secretary will determine the institutional payment for academic year 2000–2001 by adjusting the academic year 1999–2000 institutional payment, which was $10,375 per fellow, by the Department of Labor's December 1999 projection of the Consumer Price Index for the year 2000.

FOR FURTHER INFORMATION CONTACT: Melissa Burton, Jacob K. Javits Fellowship Program, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600-B, Portals Building, Washington, DC 20202–5247. Telephone: (202) 260–3574. The e-mail address for Ms. Burton is melissa__burton@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site at: http://www.ed.gov/pubs/edpubs.html or at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.170.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1134–1134d.

Dated: August 16, 1999.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–21628 Filed 8–19–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.153A]

Office of Postsecondary Education, Business and International; Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The Business and International Education Program provides grants to institutions of higher education to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Eligible Applicants: Institutions of higher education that enter into agreements with trade associations, business enterprises or trade organizations that are engaged in international economic activity.

Deadline for Transmittal of Applications: November 1, 1999.

Deadline for Intergovernmental Review: December 31, 1999.

Applications Available: September 7, 1999.

Available Funds: $1,900,000. The estimated amount of funds available for new awards under this competition is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

Estimated Range of Awards: $50,000–$90,000.

Estimated Average Size of Awards: $82,609 per year.

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for these programs as follows: 34 CFR parts 655 and 661.

SUPPLEMENTARY INFORMATION: Matching requirement: Under Part B, section 613(d) Higher Education Act of 1965 (HEA), Business and International Education Program grantees must provide no less than 50 percent of the total cost of projects in each fiscal year. Example: The institution's total costs of the proposed project will be $140,000 per year. The institution may request a grant in the amount of $70,000 or less. The institution must provide the remaining $70,000 in cash or in-kind contributions.

FOR APPLICATIONS OR INFORMATION CONTACT: Tanyelle Richardson, Business and International Education Program, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600 Portals Building, Washington, DC 20202–5331. Telephone: 202–260–3383. The e-mail address for Ms. Richardson is tanyelle_richardson@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news/html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, D.C. area, at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1130a–1130b.

Dated: August 16, 1999.

Claudio R. Prieto,

Acting Assistant Secretary Office of Postsecondary Education.

[FR Doc. 99–21629 Filed 8–19–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No 84.274A]

Office of Postsecondary Education, Department of Education; Notice Inviting Applications for American Overseas Research Centers Program New Awards for Fiscal Year (FY) 2000

Purpose of Program: The American Overseas Research Centers (AORC) Program supports American overseas research centers that are consortia of institutions of higher education, to enable these centers to promote postgraduate research, exchanges, and area studies.

Support includes funds to pay all or a portion of the costs of establishing or operating centers or programs of activities, including: faculty and staff stipends and salaries; faculty, staff, and student travel; operation and maintenance of overseas facilities; teaching and research materials; acquisition, maintenance, and preservation of library collections; bringing visiting scholars and faculty to a center to teach or to conduct research; organizing and managing conferences; and the publication and dissemination of material for the scholarly and general public.

Eligible Applicants: Centers that: (1) Receive more than 50 percent of their funding from public or private United States sources; (2) have a permanent presence in the country in which the overseas center is located; and, (3) are organizations described in section 501(c)(3) of the Internal Revenue Code of 1986, which are exempt from taxation under section 501(a) of the Code.

Deadline for Transmittal of Applications: November 4, 1999.

Deadline for Intergovernmental Review: January 3, 2000.

Applications Available: September 2, 1999.

Available Funds: $700,000. The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, is contingent upon final congressional action.

Estimated Range of Awards: $55,000—$95,000.

Estimated Average Size of Awards: $64,000 per year.

Estimated Number of Awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: There are no program specific regulations. Applicants are directed to section 609 of part A, title VI, of the Higher Education Act of 1965, as amended, the authorizing statute governing the AORC Program; and, the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

FOR APPLICATIONS OR INFORMATION CONTACT: Cheryl E. Gibbs, American Overseas Research Centers Program, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW, Suite 600, Portals Building, Washington, DC 20202–5331. Telephone: (202) 401–9785. The e-mail address for Ms. Gibbs is *cheryl—gibbs@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person specified in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education

documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news/html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1128a.

Dated: August 16, 1999.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–21630 Filed 8–19–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 99–23: Outstanding Junior Investigator Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Division of High Energy Physics of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Outstanding Junior Investigator (OJI) Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical high energy physics or accelerator physics research, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of individual research programs of outstanding scientists early in their careers. Awards made under this program will help to maintain the vitality of university research and assure continued excellence in the teaching of physics.

DATES: To permit timely consideration for award in fiscal year 2000, formal applications submitted in response to this notice should be received before November 2, 1999.

ADDRESSES: Completed formal applications referencing Program Notice 99–23 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 99–23. The above address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional four copies of the application.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Mandula, Division of High Energy Physics, SC–221 (GTN), U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–4829. E-Mail: jeffrey.mandula@science.doe.gov

SUPPLEMENTARY INFORMATION: The Outstanding Junior Investigator program was started in 1978 by the Department of Energy's Office of Energy Research. A principal goal of this program is to identify exceptionally talented new high energy physicists early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is therefore restricted to non-tenured investigators who are conducting experimental or theoretical high energy physics or accelerator physics research. Since its debut, the program has initiated support for between five and ten new Outstanding Junior Investigators each year. The program has been very successful and contributes importantly to the vigor of the U.S. High Energy Physics program. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities. The full range of activities currently supported by the Division of High Energy Physics is eligible for support under this program.

The DOE expects to make five to ten grant awards in fiscal year 2000 to meet the objectives of this program. It is anticipated that approximately $400,000 will be available in fiscal year 2000, subject to availability of appropriated funds. In the past, awards have averaged $50,000 per year, with the number of awards determined by the number of excellent applications and the total funds available for this program. Multiple year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. Renewal beyond the initial project period is normal so long as the recipient's tenure status is unchanged.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR 605.10 (d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html

The Catalog Of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on August 13, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management, Office of Science.

[FR Doc. 99–21651 Filed 8–19–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–423–000, FERC Form No. 423]

Proposed Information Collection and Request for Comments

August 16, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the

specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before October 19, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from, and written comments may be submitted to, the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425 and by E-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants" (OMB No. 1902–0024) is used by the Commission to implement the statutory provisions of Section 205, of the Federal Power Act, as amended by Section 208 of the Public Utility Regulatory Policies Act (49 Stat. 851; 16 U.S.C. 824d). The Commission describes Form 423 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 141.61.

FERC Form No. 423 gathers basic cost and quality of fuels for electric plants. The Commission staff uses the Form 423 information to conduct fuel reviews under Section 205(a) and (e) of the FPA, rate investigations, and to track wholesale market changes and trends under emerging competitive forces. Other government agencies use Form 423 to track the supply, disposition and prices of fuel on national and regional levels and for environmental assessments. Electric utilities and other wholesale electric participants use the Form 423 data to assess the competitive marketplace.

Action

The Commission is requesting a three-year extension of the current expiration date. The Commission staff is currently exploring the filing of Form 423 information electronically (using a web-based application) in lieu of the present system of mailing paper filings to the Commission. If the Commission proposes to convert to electronic filing of Form 423 data, a Notice of Proposed Rulemaking will be issued proposing to amend the Commission's regulations to provide for the electronic filing of FERC 423. Such a proposal may also seek to eliminate the current signature requirement and simply require the identification of a representative at each utility responsible for submitting the data electronically. The representative will be given a password and identification code to ensure system integrity.

Burden Statement

Public reporting burden for this collection is estimated as:

Number of respondents	Annual responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
702	12	1.5	12,636

The reduction in the number of annual respondents (plants) from 735 to 702 is due to mergers and dispositions of various utilities generating assets and plants that have retired in the last three years. Estimated cost burden to respondents: 12,636 hours/2080 hours per year × $109,889=$667,576; (*i.e.*, 12,636 hours divided by 2,080 hours per full time emloyee per year multiplied by $109,889 per year equals $667,576). Reporting burden includes the total time, effort and financial resources expended to generate, maintain, retain, disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information. The estimate of respondent cost is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indrect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical applications; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utilization and clarity of the information to be collected; (4) ways to minimize the burden of the collection on respondents, including the proposed electronic submission of responses; (5) the magnitude of the impact of the conversion to electronic filing on respondents; (6) the proposed elimination of signature requirement; (7) any existence of a competitive disadvantage caused by publicly providing information in Form 423 to which competitors would have access (without a corresponding obligation on its competitors not subject to the Commission's reporting requirements); and (8) the relevancy of the information currently collected given the current transition from cost-based to a fully competitive wholesale electric market.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21599 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–714–000, FERC Form No. 714]

Proposed Information Collection and Request for Comments

August 16, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy

Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before October 19, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from, and written comments may be submitted to, the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street, NE, Washington, DC, 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by E-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements for FERC Form No. 714, "Annual electric Control and Planning Area Report" (OMB No. 1902–0140), is used by the Commission to implement the statutory provisions of Sections 202, 207, 210, 211–213 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r), and particularly Sections 304, 309, and 311. The Commission describes the Form 714 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 141.51.

FERC Form No. 714 gathers basic utility operating and planning information, primarily on a control area basis. The Commission staff uses the Form 714 data for the purpose of evaluating utility operations related to proposed mergers, interconnections, wholesale rate investigations, and wholesale market changes and trends under emerging competitive forces. Such evaluations are made to assess system reliability, costs and other operating attributes. Other government agencies use the Form 714 data to monitor power plant emissions. Electric utilities and other wholesale electric participants use the Form 714 data to identify and monitor economic and capacity constraints in the transmission system.

Action

The Commission is requesting a three-year extension of the current expiration date.

The United States Environmental Protection Agency (EPA) filed comments during the last OMB recertification process for the FERC Form 714 recommending the following three modifications:

- Development of an electronic filing procedure;
- Submission of monthly data along with the annual reporting of Part II, Schedule 5 information (interchange with neighboring control areas); and
- Change the filing date of Form 714 from June 1, to March 1, in order to provide for a timely analysis of the structural changes in the industry.

Unfortunately, there was not enough time available during the last clearance cycle to address EPA's request. During this cycle, the Commission staff intends to address EPA's suggestions, and invites comments on them. Specifically, the Commission staff is currently exploring the filing of Form 714 information electronically (using a web-based application) in lieu of the present combined system of mailing paper filings and electronic media (diskettes) to the Commission. If the Commission decides to propose to convert to electronic filing of Form 714, a Notice of Proposed Rulemaking will be issued proposing to amend the Commission's regulations to provide for the electronic filing of Form 714. Such a proposal may also seek to eliminate the current signature requirement and simply require the identification of a representative at each utility responsible for submitting the data electronically. The representative will be given a password and identification code to ensure system integrity.

The Commission staff is also considering the adoption of the other suggestions made by EPA: requiring the submission of monthly scheduled and actual Interchange energy data in addition to the annual data reported in Part II, Schedule 5; and moving the filing date to March 1.

Burden Statement

Public reporting burden for this collection is estimated as:

Number of respondents (1)	Annual responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
237	1	45	10,665

The reduction of annual respondents from 250 to 237 is due to an increase in the number of mergers and a corresponding reduction in the number of Form 714 respondents. In addition, the conversion to electronic filing is estimated to reduce average burden hours per respondent (from 50 hours presently, to 45). The estimated cost burden to respondents: 10,665 hours/2080 hours per year × $109,889 per year = $563,445. Reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information. The estimate of respondent cost is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed information collection, including the EPA proposed modifications, is necessary for the proper performance of the functions of the Commission, including whether the information will have practical applications; (2) the accuracy of the Commission's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utilization and clarity of the collected information; (4) ways to minimize the burden of the information collection on respondents, including the proposed electronic submission of responses; (5) the magnitude of the impact of the

conversion to electronic filing on respondents; (6) the proposed elimination of the signature requirement; (7) any existence of a competitive disadvantage caused by publicly providing information in Form 714 to which competitors would have access (without a corresponding obligation on its competitors not subject to the Commission's reporting requirements); (8) the relevancy of the information currently collected given the current transition from cost-based to a fully competitive wholesale electric market; (9) whether the proposed filing date change from June 1 to March 1 is unduly burdensome; and (10) the burden of requiring monthly control area scheduled and actual interchange data.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21600 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–715–000, FERC Form No. 715]

Proposed Information Collection and Request for Comments

August 16, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before October 19, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from, and written comments may be submitted to, the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by E-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements for FERC Form No. 715, "Annual Transmission Planning and Evaluation Report" (OMB No. 1902–0171), is used by the Commission to implement the statutory provisions of Sections 202, 207, 210, 211–213 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r) and particularly Sections 213(b), 304, 309, and 311. The Commission describes the Form 715 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 141.300.

FERC Form No. 715 gathers basic electric transmission systems information. The Commission staff uses the Form 715 information to evaluate available transmission capacity and transmission constraints on electric transmission systems. Electrical transmission system customers use the information to determine transmission availability. Transmission dependent utilities use the information to determine transmission availability from alternative wholesale suppliers. Federal, military and private agencies use the information to simulate various scenarios and test theories in order to improve the current transmission system.

Action

The Commission is requesting a three-year extension of the current expiration date. The Commission staff is currently exploring the filing of Form 715 information electronically (using a web-based application) in lieu of the present combined system of mailing paper filings and electronic media (diskettes) to the Commission. If the Commission proposes to convert to electronic filing of Form 715 data, a Notice of Proposed Rulemaking will be issued proposing to amend the Commission's regulations to provide for the electronic filing of Form 715. Such a proposal may also seek to eliminate the current signature requirement and simply require the identification of a representative at each utility responsible for submitting the data electronically. The representative will be given a password and identification code to ensure system integrity.

Burden Statement

Public reporting burden for this collection is estimated as:

Number of respondents	Annual responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
117	1	95	11,115

The reduction of annual respondents from 200 to 117 is due to two factors. The first factor is an increase in the number of mergers. The second factor is the increase in the use of a secondary entity to file the Form 715. For example, the data is compiled by individual utilities and submitted to the NERC region. The NERC region consolidates the information of its members into a single response and submits it to the Commission. These two factors resulted in a reduction in the number of Form 715 respondents. In addition, the conversion to electronic filing (if implemented) is estimated to reduce average burden hours per respondent (from 100 hours presently, to 95). The estimated cost burden to respondents: 11,115/2080 hours per year × $109,889 per year = $587,219. Reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information. The estimate of respondent cost is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an

organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed information collection is necessary for the proper performance of the functions of the Commission, including whether the information will have practical applications; (2) the accuracy of the Commission's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utilization and clarity of the collected information; (4) ways to minimize the burden of the information collection on respondents, including the proposed electronic submission of responses; (5) the magnitude of the impact of the conversion to electronic filing on respondents; (6) the proposed elimination of the signature requirement; (7) any existence of a competitive disadvantage caused by publicly providing information in Form 715 to which competitors would have access (without corresponding obligation on its competitors not subject to the Commission's reporting requirements); and (8) the relevancy of the information currently collected given the current transition from cost-based to a fully competitive wholesale electric market.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21601 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–384–001]

ANR Storage Company; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 10, 1999, ANR Storage Company (ANRS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheet listed below, to be effective August 1, 1999.

Substitute Second Revised Sheet No. 132B

ANRS states the attached sheet is being filed in compliance with the Commission's Order issued on July 27, 1999, at Docket No. RP99–384–000.

ANRS states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21606 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–372–001]

Blue Lake Gas Storage Company; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 10, 1999, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheet listed below, to be effective August 1, 1999.

Substitute Third Revised Sheet No. 133A

Blue Lake states the attached tariff sheet is being filed in compliance with the Commission's Order issued on July 27, 1999, at Docket No. RP99–372–000.

Blue Lake states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21605 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–452–001]

Caprock Pipeline Co.; Notice of Tariff Filing

August 16, 1999.

Take notice that on August 12, 1999, Caprock Pipeline Co. (CAPROCK) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff Sheet, with an effective date of September 1, 1999:

Substitute Original Sheet No. 24J

CAPROCK is submitting this filing to correct the duplication of below listed tariff sheet that occurred when the original filing to incorporate new interactive computer system was made on July 30, 1999.

CAPROCK states that copies of this filing have been served upon all affected firm customers of CAPROCK and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21611 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–423–001]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

August 16, 1999.

Take notice that on August 11, 1999, Cove Point LNG Limited Partnership (Cove Point) tendered for filing to become part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective August 1, 1999:

Substitute Sixth Revised Sheet No. 136

Cove Point states that this tariff sheet is being filed to comply with the Commission's Office of Pipeline Regulation letter order of July 27, 1999, requiring Cove Point to incorporate GISB standard 2.3.20 by reference or verbatim.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissioners.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21607 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–437–001]

Dauphin Island Gathering Partners; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 10, 1999, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Substitute First Revised Sheet No. 255
Substitute Original Sheet No. 255A

DIGP states that the filing is being made in compliance with the Commission's order issued on July 27, 1999 in Docket No. RP99–437–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21610 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–428–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 11, 1999, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 101, Substitute Sixth Revised Sheet No. 176 and Second Revised Sheet No. 177, with an effective date of August 1, 1999.

East Tennessee states the attached tariff sheets are submitted in compliance with the Commission's July 27, 1999 Letter Order (July 27 Order) in Docket No. RP99–428. East Tennessee states that in the July 23 Order, the Commission required East Tennessee to file revised tariff sheets which (1) separately identifies as Version 1.2 the existing data sets for which an extension of time was granted and (2) incorporates as Version 1.3 Data Set 3.4.4, which East Tennessee excluded from its extension as related to a service which it did not provide. East Tennessee further states that the attached revised tariff sheets reflect the required changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21608 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–434–001]

Gulf States Transmission Corporation; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 10, 1999, Gulf States Transmission Corporation (Gulf States) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, certain revised tariff sheets, with an effective date of August 1, 1999.

Gulf States states that it is filing these tariff sheets to comply with the Commission's July 27, 1999 Letter Order in the above-referenced docket (July 27 Letter Order).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21609 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–238–001]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

August 16, 1999.

Take notice that on August 12, 1999, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 95, to become effective September 1, 1999.

Sea Robin states that the purpose of this filing is to comply with the Commission's order dated July 28, 1999 in the above-referenced docket. Sea Robin states that consistent with the July 28 order, it has removed the reference to markets or other geographic areas in category five of its new section 29 to the General Terms and Conditions. Such new Section 29 specifies the types of rate discounts Sea Robin may grant to its shippers without filing a nonconforming service agreement.

Sea Robin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21604 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–64–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

August 16, 1999

Take notice that on August 11, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and Commission approval: (1) a Gas Transportation Agreement between Tennessee and Pemex Gas y Petroquímica Básica (PGPB Service Agreement), and (2) Fifth Revised Sheet No. 413 of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee requests an effective date of September 1, 1999.

Tennessee states the PGPB Service Agreement is being filed as a non-conforming service agreement. In addition, Tennessee states the tariff sheet references the PGPB Service Agreement as a non-conforming service agreement.

On October 20, 1998, in Docket No. CP99–28–000, Tennessee filed pursuant to Section 3 of the NGA and Subparts B and C of Part 153 of the Commission's Regulations for: (i) an order authorizing the siting, construction, operation, and maintenance of pipeline facilities and the place of entry and exit for import and export of natural gas at the International boundary between the United States and Mexico in Hidalgo County, Texas; and (ii) a Presidential Permit for the construction, operation, maintenance, and connection of such facilities. In addition, on October 20, 1998 in Docket No. CP99–29–000, Tennessee filed a request under the Commission's blanket authorization prior notice procedures in order to obtain Commission authorization to construct and operate a new delivery point and related facilities to permit delivery of up to 185,000 Dth per day of natural gas to PGPB near the International boundary between the United States and Mexico. In connection with this project, on September 30, 1998, Tennessee and PGPB executed the PGPB Service Agreement for use under Tennessee's Rate Schedule FT–A for transportation of up to 185,000 Dth per day for PGPB upon completion and in-service of the facilities.

Tennessee states that it is filing the PGPB Service Agreement for Commission approval as a non-conforming service agreement pursuant to Section 154.1(d) of the Commission's regulations because the PGPB Service Agreement contains provisions which may "deviate in [a] material aspect" from Tennessee's pro forma FT–A Agreement.

Tennessee states that copies of the filing have been mailed to all of Tennessee's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21603 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3475–000, et al.]

Allegheny Power Service Corporation, et al., Electric Rate and Corporate Regulation Filings

August 13, 1999.

Take notice that the following filings have been made with the Commission:

1. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3475–000]

Take notice that on August 6, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Amendment No. 1 to Supplement No. 24 to complete filing requirements for two (2) new Customers of the Market Rate Tariff under which

Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of June 7, 1999, to Entergy Power Marketing Corporation and Williams Energy Marketing & Trading Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company Kentucky Utilities Company

[Docket No. ER99–4009–000]

Take notice that on August 6, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing an unexecuted Service Agreement between LG&E/KU and LG&E Energy Marketing, Inc., under LG&E/KU's MBSS Rate Schedule.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. The Dayton Power and Light Company

[Docket No. ER99–4010–000]

Take notice that on August 6, 1999, The Dayton Power and Light Company (DP&L), tendered for filing an Amendment to DP&L's Interconnection Agreement with the City of Piqua, designated as DP&L's FERC Electric Rate Schedule No. 41, and an Amendment to the Power Services Agreements between DP&L and each of the following customers: Village of Arcanum (DP&L's FERC Electric Rate Schedule No. 42), Village of Eldorado (DP&L's FERC Electric Rate Schedule No. 49), Village of Jackson Center (DP&L's FERC Electric Rate Schedule No. 43), Village of Lakeview (DP&L's FERC Electric Rate Schedule No. 44), Village of Mendon (DP&L's FERC Electric Rate Schedule No. 45), Village of Minster (DP&L's FERC Electric Rate Schedule No. 50), Village of New Bremen (DP&L's FERC Electric Rate Schedule No. 46), City of Tipp City (DP&L's FERC Electric Rate Schedule No. 51), Village of Versailles (DP&L's FERC Electric Rate Schedule No. 52), Village of Waynesfield (DP&L's FERC Electric Rate Schedule No. 47), and Village of Yellow Spring (DP&L's FERC Electric Rate Schedule No. 53).

DP&L states that the Amendments are intended to clarify certain of the agreements' terms and conditions, such as those pertaining to Firm Power Reservation, Firm Power Load Factor, scheduling procedures and other matters.

DP&L states that it has served a copy of the filing upon each of the affected customers and the Public Utilities Commission of Ohio.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER99–4011–000]

Take notice that on August 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and The Regents of the University of California on behalf of its Davis Campus Medical Center for acceptance by the Commission.

The ISO states that this filing has been served on The Regents of the University of California on behalf of its Davis Campus Medical Center and the California Public Utilities Commission.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER99–4012–000]

Take notice that on August 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and The Regents of the University of California on behalf of its Davis Campus Medical Center for acceptance by the Commission.

The ISO states that this filing has been served on The Regents of the University of California on behalf of its Davis Campus Medical Center and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of July 26, 1999.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER99–4013–000]

Take notice that on August 26, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Notice of Cancellation of a Service Agreement filed under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Cinergy Capital and Trading, Inc., (Cinergy).

PSE states that a copy of the filing was served upon Cinergy.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER99–4014–000]

Take notice that on August 6, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Cinergy Services, Inc. (as agent for and on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc.) (Cinergy).

A copy of the filing was served upon Cinergy.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER99–4015–000]

Take notice that on August 6, 1999, Florida Power & Light Company (FPL), tendered for filing a Service Agreement with Cargill-Alliant, LLC for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on July 12, 1999.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER99–4016–000]

Take notice that on August 6, 1999, Ameren Services Company (ASC), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between ASC and the City of Newton, Illinois (the City). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to the City pursuant to Ameren's Open Access Tariff.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER99–4017–000]

Take notice that on August 6, 1999, Ameren Services Company (ASC) as Agent for Union Electric Company (UE) and Central Illinois Public Service Company (CIPS) tendered for filing a Service Agreement for Market Based Rate Power Sales between CIPS and the

City of Newton (the City), Illinois. ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to the City pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Harbor Cogeneration Company

[Docket No. ER99–4018–000]

Take notice that on August 6, 1999, Harbor Cogeneration Company (Harbor Cogeneration), tendered for filing an Energy Sales and Fuel Sales Agreement for wholesale power sales transactions under Harbor Cogeneration's market-based wholesale power sales tariff, FERC Electric Tariff Original Volume No. 1, between Harbor Cogeneration and Edison Mission Marketing and Trading Co. (EMMT), dated as of June 14, 1999.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. ISO New England Inc.

[Docket No. ER99–4019–000]

Take notice that on August 6, 1999 ISO New England Inc. (the ISO), tendered for filing, pursuant to Section 205 of the Federal Power Act, a request for expedited acceptance of an Emergency Rule implementing a Load Response Program.

Copies of said filing have been served upon the Participants in the New England Power Pool, non-Participant transmission customers and to the New England State Governors and Regulatory Commissions.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Supply Company

[Docket No. ER99–4020–000]

Take notice that on August 6, 1999, Allegheny Energy Supply Company tendered for filing a market rate tariff of general applicability under which it proposes to sell capacity and energy at market-based rates, including sales to its franchised utility affiliates under an index-based cap.

Allegheny Energy Supply Company requests an August 15, 1999, effective date.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (Allegheny Power)

[Docket No. ER99–4021–000]

Take notice that on August 6, 1999, Allegheny Power, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, tendered for filing Supplement No. 30 to its market-based rate schedule on file with the Commission in Docket No. ER98–1466–000. Supplement No. 30 would permit the Allegheny Power companies to make power sales among the franchised affiliates capped at a regional index price all as more fully described in the application.

Allegheny Power requests an August 15, 1999 effective date.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4022–000]

Take notice that on August 6, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 29 to add two (2) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of August 5, 1999, to PP&L, Inc., and Cleco Marketing & Trading LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21598 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3992–000, et al.]

Illinois Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 12, 1999.

Take notice that the following filings have been made with the Commission:

1. Illinois Power Company

[Docket No. ER99–3992–000]

Take notice that on August 5, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which American Municipal Power—Ohio, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 7, 1999.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Duquesne Light Company

[Docket No. ER99–4006–000]

Take notice that on August 5, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated August 4, 1999 with Florida Power & Light Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Florida Power & Light Company as a customer under the Tariff.

DLC requests an effective date of August 4, 1999, for the Service Agreement.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Duquesne Light Company

[Docket No. ER99–4007–000]

Take notice that on August 5, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated August 4, 1999 with DTE Energy Trading, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds DTE Energy Trading, Inc. as a customer under the Tariff.

DLC requests an effective date of August 4, 1999 for the Service Agreement.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER99–3995–000]

Take notice that on August 5, 1999, Public Service Company of New Mexico (PNM), tendered for filing Amendment Two to the Palo Verde to Westwing Firm Point-to-Point Transmission Service Agreement (PNM Service Agreement No. 69); Amendment Two to the San Juan to Greenlee Firm Point-to-Point Transmission Service Agreement (PNM Service Agreement No.70); and Amendment Two to the San Juan to Coronado Firm Point-to-Point Transmission Service Agreement (PNM Service Agreement No. 71); all dated July 5, 1999. The Service Agreements are between PNM Transmission Development and Contracts (Transmission Provider) and PNM Wholesale Power Marketing (Transmission Customer), and the purpose of the Amendments is to conform the Service Agreements with PNM's Settlement Rates for mandatory ancillary services accepted for filing by the Commission by Letter Order dated April 6, 1999.

PNM requests waiver of the Commissions notice requirements in order that the three Amendments are effective retroactive to August 1, 1998.

Copies of this filing have been provided to PNM Transmission Development and Contracts, PNM Wholesale Power Marketing, and the New Mexico Public Regulation Commission. PNM's filing is available for inspection at its offices in Albuquerque, New Mexico.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Energy Services, Inc., American Energy Trading, Inc., H.Q. Energy Services (U.S.) Inc., EnerZ Corporation, Sempra Energy Trading Corp., Conoco Power Marketing Inc., LG&E Energy Marketing Inc., Enron Power Marketing, Inc., and Tenaska Power Services Co.

[Docket No. ER95–1021–016, ER97–360–011, ER97–851–009, ER96–3064–013, ER94–1691–025, ER95–1441–016, ER95–1441–018, ER94–1188–029, ER94–24–031, and ER94–389–020]

Take notice that on August 2, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. Columbia Power Marketing, Commonwealth Energy Corporation, Astra Power, LLC, Astra Power, LLC, Enerserve, L.C., Enron Energy Services, Inc., Reliant Energy Services, Inc., Energy Resource Marketing Inc., People's Electric Corporation, Clinton Energy Management Services, In., and Calpine Power Services Company

[Docket No. ER97–3667–007, ER97–4253–000, ER98–3378–004, ER98–3378–005, ER96–182–015, ER98–13–011, ER94–1247–022, ER94–1580–019, ER98–3719–004, ER98–3934–004, and ER94–1545–018]

Take notice that on August 4, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. Reliant Energy Ormond Beach, LLC, Reliant Energy Coolwater, LLC, Reliant Energy Mandalay, LLC, Dighton Power Associates Limited Partnership, UAE Lowell Power LLC, Reliant Energy Etiwanda, LLC, StratErgy, Inc., South Carolina Electric & Gas Company, Cabrillo Power II LLC, El Dorado Energy, LLC, and Reliant Energy Ellwood, LLC,

[Docket No. ER99–3990–000, ER99–3989–000, ER99–3988–000, ER99–4025–000, ER99–3993–000, ER99–3991–000, ER99–1410–002, ER99–3984–000, ER99–3986–000, ER99–3985–000, and ER99–3987–000]

Take notice that on August 4, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER91–150–013, and ER91–326–005]

Take notice that on August 5, 1999, Southern Company Services, Inc. (SCS), as agent for Alabama Power Company, Georgia Power Company (GPC), Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), tendered for filing a refund report.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER99–4008–000]

Take notice that on August 5, 1999, Duquesne Light Company (DLC) tendered for filing a Service Agreement dated August 4, 1999 with Florida Power & Light Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Florida Power & Light Company as a customer under the Tariff.

DLC requests an effective date of August 4, 1999, for the Service Agreement.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER99–3994–000]

Take notice that on August 5, 1999, Ameren Services Company (Ameren),

tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and ProLiance Energy, LLC, Public Service Electric & Gas Company and Southwestern Electric Cooperative, Inc. (the parties). Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. AES Eastern Energy, L.P.

[Docket No. ER99–3280–000]

Take notice that on August 5, 1999, AES Eastern Energy, L.P., 1001 North 19th Street, Suite 2000, Arlington, VA 22209 (AES Eastern), tendered for filing an Amendment to Notice of Succession in Ownership and Operation to certain contracts, rate schedules, and supplements heretofore filed with the Commission by New York State Electric & Gas Corporation, NGE Generation, Inc., and AES Eastern's affiliate, AES NY, L.L.C.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Western Systems Power Pool

[Docket No. ER99–2763–001]

Take notice that on August 5, 1999, the Western Systems Power Pool (WSPP), tendered for filing certain changes to its Open Access Transmission Tariff in compliance with the Federal Energy Regulatory Commission's June 21, 1999, order in the proceeding captioned above.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER99–4000–000]

Take notice that on August 5, 1999, New England Power Company (NEP), tendered for filing a service agreements under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 9 between NEP and (i) New Hampshire Electric Cooperative, Inc. (NHEC); and (ii) Paxton Municipal Light Department (Paxton). Under the service agreements, NEP will provide "Network Integration Transmission Service" to NHEC and Paxton.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER99–4001–000]

Take notice that on August 5, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated July 20, 1999 with TransAlta Energy Marketing (U.S.) Inc. (TEMUS), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds TEMUS as a customer under the Tariff.

PECO requests an effective date of July 20, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to TEMUS and to the Pennsylvania Public Utility Commission.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. ISO New England Inc.

[Docket No. ER99–4002–000]

Take notice that on August 5, 1999, ISO New England Inc. (the ISO), tendered for filing pursuant to Section 205 of the Federal Power Act, a Request for Expedited Approval of Revisions to NEPOOL Market Rules 1 and 10.

Copies of said filing have been served upon the Participants in the New England Power Pool, non-Participant transmission customers and to the New England State Governors and Regulatory Commissions.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Company

[Docket No. ER99–4003–000]

Take notice that on August 5, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with The Energy Authority, Inc. (TEA), under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on July 26, 1999.

Copies of the filing have been served on TEA and the Florida Public Service Commission.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Central Vermont Public Service Corporation

[Docket No. ER99–4004–000]

Take notice that on August 5, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a service agreement with Reliant Energy Services, Inc., under its market based rates sales tariff.

Central Vermont requests waiver of the notice requirement to allow the service agreement to become effective July 31, 1999. If waiver is denied, Central Vermont requests an effective date of October 4, 1999.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Duquesne Light Company

[Docket No. ER99–4005–000]

Take notice that on August 5, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated August 4, 1999 with Merrill Lynch Capital Services, Inc. under DLC's Open Access Transmission Tariff (Tariff).

The Service Agreement adds Merrill Lynch Capital Services, Inc. as a customer under the Tariff. DLC requests an effective date of August 4, 1999, for the Service Agreement.

Comment date: August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21645 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–181–000, et al.]

PanEnergy Lake Charles Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 11, 1999.

Take notice that the following filings have been made with the Commission:

1. PanEnergy Lake Charles Generation, Inc.

[Docket No. EG99–181–000]

Take notice that on August 4, 1999, PanEnergy Lake Charles Generation, Inc. (PanEnergy Lake Charles Generation), of 5444 Westheimer Road, Houston, Texas 77056, tendered for filing with the Federal Energy Regulatory Commission an amendment to its application for determination of Exempt Wholesale Generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

The amendment includes the verification in accordance with 18 CFR 365.3 and 18 CFR 385.2005(b)(2).

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Aquila Energy Marketing Corporation v. Niagara Mohawk Power Corporation, Niagara Mohawk Energy Marketing Corporation

[Docket No. EL99–62–003]

Take notice that on August 4, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing its Third Compliance Report in the above-referenced docket. Niagara Mohawk states that this filing was submitted to comply with the Commission's June 18, 1999 Order, 87 FERC ¶ 61,328 (1999), in the above-referenced docket.

Niagara Mohawk states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Sithe Power Marketing, Inc., Howell Power Systems, Inc., NUI Corp.-NUI Energy Brokers Inc., SCANA Energy Marketing, Inc., Philadelphia Gas Works, Alpena Power Marketing, L.L.C., Entergy Power Marketing Corp., OGE Energy Resources, Inc., El Paso Energy Marketing, and Exact Power Co.

[Docket Nos. ER98–107–008, ER94–178–018, ER96–2580–012, ER96–1086–013, ER98–124–002, ER97–4745–007, ER95–1615–019, ER97–4345–010, ER95–428–021, and ER97–382–010]

Take notice that on August 2, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. Business Discount Plan, Inc., USGen New England, Inc., Consolidated Water Power Company, Pittsfield Generating Company, L.P., SCC–L1, L.L.C., SCC–L2, L.L.C., SCC–L3, L.L.C., Fibertek Energy, LLC, Canadian Niagara Power Company, Foote Creek III, Ltd., Tenaska Gateway Partners, Ltd., Pacific Northwest Generating Cooperative, GEN'SYS Energy, and Cadillac Renewable Energy LLC

[Docket Nos. ER99–581–001, ER99–3934–000, ER99–3933–000, ER99–3948–000, ER99–3936–000, ER99–3937–000, ER99–3938–000, ER99–3949–000, ER99–3940–000, ER99–3939–000, ER99–2992–000, ER99–3943–000, ER99–3945–000, and ER99–3944–000]

Take notice that on August 2, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Company

[Docket No. ER99–3040–000 and ER99–3958–000]

Take notice that on August 3, 1999, American Electric Power Company (AEP), tendered for filing an amended notice of termination of wholesale electric service under the Municipal Resale service agreement and also filed a new service agreement for electric service to the City of Sturgis, Michigan dated July 14, 1999.

Comment date: August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Astoria Generating Company, L.P.

[Docket No. ER99–3168–001]

Take notice that on August 4, 1999, Astoria Generating Company, L.P. (Applicant), with its principal office at c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, Maryland 21202, tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in the referenced docket.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–3969–000]

Take notice that on August 4, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Los Angeles Department of Water & Power Wholesale Marketing.

NSP requests that the Commission accept both the agreements effective July 9, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–3970–000]

Take notice that on August 4, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Omaha Public Power District.

NSP requests that the Commission accept both the agreements effective July 9, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–3971–000]

Take notice that on August 4, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and New Energy Ventures, Inc.

NSP requests that the Commission accept both the agreements effective July 6, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER99–3972–000]

Take notice that on August 4, 1999, Ameren Services Company (AMS), tendered for filing an Interconnection Agreement between AMS and Union Electric Development Corporation (UEDC). AMS asserts that the purpose of the Agreement is to, among other things, establish the rights and obligations of UEDC, the point of interconnection and Corporate Guaranty.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER99–3973–000]

Take notice that on August 4, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Cleco Corporation. Under the Service Agreement, Virginia Power will provide services to Cleco Corporation under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of August 4, 1999.

Copies of the filing were served upon Cleco Corporation, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Minnesota Power, Inc.

[Docket No. ER99–3974–000]

Take notice that on August 4, 1999, Minnesota Power, Inc. and Superior Water, Light and Power tendered for filing signed Service Agreements for Non-Firm and Short-Term Point-to-Point Transmission Service with Consumers Energy Company under its Transmission Service Agreement to satisfy its filing requirements under this tariff.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. ISO New England Inc.

[Docket No. ER99–3975–000]

Take notice that on August 4, 1999, ISO New England Inc. (the ISO), tendered for filing revisions and corrections to the ISO Tariff previously filed with the Commission.

Copies of said filing have been served upon the Participants in the New England Power Pool, non-Participant transmission customers and to the New England State Governors and Regulatory Commissions.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Deseret Generation & Transmission Co-operative

[Docket No. ER99–3976–000]

Take notice that Deseret Generation & Transmission Co-operative on August 4, 1999, tendered for filing an executed umbrella non-firm point-to-point service agreement with The Montana Power Trading and Marketing Company under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999.

The Montana Power Trading and Marketing Company has been provided a copy of this filing.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Deseret Generation & Transmission Co-operative

[Docket No. ER99–3977–000]

Take notice that Deseret Generation & Transmission Co-operative on August 4, 1999, tendered for filing an executed umbrella short-term firm point-to-point service agreement with British Columbia Power Exchange Corporation under its open access transmission tariff. Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. British Columbia Power Exchange Corporation has been provided a copy of this filing.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Deseret Generation & Transmission Co-operative

[Docket No. ER99–3978–000]

Take notice that Deseret Generation & Transmission Co-operative on August 4, 1999, tendered for filing an executed umbrella short-term firm point-to-point service agreement with The Montana Power Trading and Marketing Company under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999.

The Montana Power Trading and Marketing Company has been provided a copy of this filing.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Central Illinois Public Service Company

[Docket No. ER99–3979–000]

Take notice that on August 4, 1999, Central Illinois Public Service Company (CIPS), tendered for filing the First Amendment to the Transmission Services Agreement, dated February 11, 1986, with Soyland Power Cooperative, Inc., (Soyland).

CIPS seeks an effective date of January 1, 1999, for the First Amendment and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Soyland and the Illinois Commerce Commission.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER99–3980–000]

Take notice that on August 4, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing a notice of cancellation for UPPCO's service agreement under WPSC's cost-based coordination sales tariff, FERC Electric Tariff, Original Volume No. 5.

WPSC requests an effective date for the notice of cancellation of August 4, 1999, the date of this filing.

WPSC has served this filing on the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation and Upper Peninsula Power Company

[Docket No. ER99–3981–000]

Take notice that on August 4, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing a Power Sales Agreement (PSA) between WPSC and Upper Peninsula Power Company (UPPCO) that enables WPSC and UPPCO to sell energy to one another at cost-based rates as system conditions warrant.

WPSC requests waiver of the Commission's notice of filing requirements so that the PSA may become effective on June 10, 1999.

WPSC has served this filing on the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Deseret Generation & Transmission Co-operative

[Docket No. ER99–3982–000]

Take notice that on August 4, 1999, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella non-firm point-to-point service agreement with Cargill-Alliant, LLC, under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999.

Cargill-Alliant, LLC has been provided a copy of this filing.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Deseret Generation & Transmission Co-operative

[Docket No. ER99–3983–000]

Take notice that on August 4, 1999, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella short-term firm point-to-point service agreement with Cargill-Alliant, LLC under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999.

Cargill-Alliant, LLC has been provided a copy of this filing.

Comment date: August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Gregory L. Nesbitt, David M. Eppler, Thomas J. Howlin, and Darrell J. Dubroc

[Docket Nos. ID–3150–002, ID–3151–002, ID–3152–002, and ID–3397–001]

Take notice that on August 4, 1999, Cleco Marketing & Trading LLC, tendered for filing abbreviated applications for Mr. Gregory L. Nesbitt, Mr. David M. Eppler, Mr. Thomas J. Howlin and Mr. Darrell Dubroc now holding or may hold interlocking positions involving Cleco Marketing & Trading LLC.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Bubolo, George V., Caliendo, G.D., Del Giudice, Michael J., Finnegan, John T., Haney, R. Lee, Hanson, Jon F., Jacobs, Nancy M., Lois, Carla Meyer, McBennett, Robert J., Mckenna, Edward M., McPherson, Kenneth D., Peoples, D. Louis, and Taliaferro, Linda T.

[Docket Nos. ID–3244–001, ID–2871–001, ID–3241–001, ID–2870–001, ID–2853–001, ID–2917–001, ID–2908–001, ID–2905–000, ID–1774–003, ID–2965–000, ID–2951–001, ID–2846–001, and ID–2952–001]

Take notice that on August 2, 1999, Orange and Rockland Utilities, Inc., tendered for filing notification that the above referenced officers and directors no longer serve in their interlocking positions with Orange and Rockland Utilities, Inc., Pike County Light & Power Company and Rockland Electric Company.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ES99–57–000]

Take notice that on August 3, 1999, Illinois Power Company submitted an application under Section 204 of the Federal Power Act seeking authorization to issue not more than $500 million of short-term notes on or before December 31, 2000.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21646 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 597–003–Utah]

PacifiCorp Power Company; Notice of Availability of Draft Environmental Assessment

August 16, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Stairs Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project is located on the Big Cottonwood Creek in Big Cottonwood Canyon, Salt Lake County, near the town of Sandy, about 15 miles southeast of Salt Lake City, Utah. The project occupies about 8.7 acres of land within the Wasatch-Cache National Forest, administered by the U.S. Forest Service. The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at

888 First Street, NE, Washington, DC 20426.

Any comments should be filed on or before August 31, 1999, and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, contact Gaylord Hoisington, Project Coordinator, at (202) 219–2756.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21602 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2566–010.

c. *Date filed:* March 30, 1999.

d. *Applicant:* Consumers Energy Company.

e. *Name of Project:* Webber Hydroelectric Project.

f. *Location:* On the Grand River, in Lyons and Portland Townships, near the City of Portland, Ionia County, Michigan. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Battige, Consumers Energy Company, Hydro Operations, 330 Chestnut Street, Cadillac, MI 49601, (616) 779–5506.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us,* (202) 219–2778.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 32-foot-high, 1,200-foot-long dam comprising: (a) A 157-foot-long concrete powerhouse section, (b) a 313-foot-high concrete spillway with 10 Taintor gates and one hydraulic flap gate, and (c) two earth embankment sections having a combined total length of 730 feet; (2) a 7-mile-long reservoir having a 660-acre surface area at a normal pool elevation of 684.4 feet USGS; (3) a powerhouse containing two generating units with a total installed capacity of 3,250 kW; and (4) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call(202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21612 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11758–000.

c. *Date Filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D #25.

f. *Location:* On the Mississippi River, in Lincoln County, Missouri, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi L&D #25 and would consist of: (1) 18 new 80-foot-long, 114-inch-diameter steel penstocks; (2) a new 604-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 9 generating units having a total installed capacity of 50,000-kW; (3) a new exhaust apron; (4) a new 500-foot-long 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 307 GWh and that the cost of the studies to be performed under the terms of the permit would be $5,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a purposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file a competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21613 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11791–000.

c. *Date Filed:* July 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Kentucky L&D #12.

f. *Location:* On the Kentucky River, near the town of Ravenna, Estill County, Kentucky, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Kentucky River L&D #12 and would consist of: (1) 4 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 80-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 4 generating units having a total installed capacity of 5,500-kW; (3), a new exhaust apron; (4) a new 400-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 33 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,300,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21614 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11793–000.

c. *Date Filed:* July 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Kentucky L&D #11.

f. *Location:* On the Kentucky River, near the town of Ford, Estill County, Kentucky, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Kentucky River L&D #11 and would consist of: (1) 6 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 120-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 6 generating units having a total installed capacity of 8,000-kW; (3) a new exhaust apron; (4) a new 300-foot-long, 14.7–kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 49 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,800,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21615 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11798–000.

c. *Date Filed:* August 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Kentucky River L&D #1.

f. *Location:* On the Kentucky River, near the town of Carrollton, Carroll County, Kentucky, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boegers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Kentucky River L&D #1 and would consist of: (1) 3 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 60-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 3 generating units having a total installed capacity of 3,000-kw; (3) a new exhaust apron; (4) a new 200-foot-long, 14.7kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 18 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21616 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11799–000.

c. *Date Filed:* August 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Barren River L&D #1.

f. *Location:* On the Barren River, near the town of Woodbury, Barren County, Kentucky, utilizing federal lands administered by the U.S. Army Corp of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Barren River L&D #1 and would consist of: (1) 5 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 100-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 5 generating units having a total installed capacity of 5,000-kW; (3) a new exhaust apron; (4) a new ½-mile-long, 14.7kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 31 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,250,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21617 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11800–000.

c. *Date filed:* August 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Francis E. Walter Dam.

f. *Location:* On the Lehigh River, near the town of White Haven, Luzerne County, Pennsylvania, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Francis E. Walter Dam and would consist of: (1) 5 new 50-foot-long, 108-inch-diameter steel penstocks; (2) a new 100-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 5 generating units having a total installed capacity of 10,300–kW; (3) a new exhaust apron; (4) a new 300-foot-long, 14.7–kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 63 GWh and that the cost of the studies to be performed under the terms of the permit would be $2,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21618 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11801–000.

c. *Date Filed:* August 2, 1999.

d. *Applicant:* Universal Electronic Power Corporation.

e. *Name of Project:* Kentucky River L&D #3.

f. *Location:* On the Kentucky River, near the town of Gest, Henry County, Kentucky, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles t. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Kentucky River L&D #3 and would consist of: (1) 6 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 120-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 6 generating units having a total installed capacity of 6,000-kW; (3) a new exhaust apron; (4) a new 15-mile-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 37 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does to authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21619 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11802–000.

c. *Date Filed:* August 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Coralville Dam.

f. *Location:* On the Iowa River, near the town of Iowa City, Johnson County, Iowa, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Coralville Dam and would consist of: (1) 2 new 80-foot-long, 108-inch-diameter steel penstocks; (2) a new 50-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 2 generating units having a total installed capacity of 1,500-kW; (3) a new exhaust apron; (4) a new 400-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 9.3 GWh and that the cost of the studies to be performed under the terms of the permit would be $750,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21620 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed August 09, 1999 Through August 13, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990283, DRAFT EIS, NPS, PA, NJ, Delaware Water Gap National Recreational Area (DWGNRA) Trail Plan, General Management Plan, Implementation, Delaware River, PA and NJ, Due: October 04, 1999, Contact: J. Robert Kirby (570) 588–2418.

EIS No. 990284, DRAFT EIS, BLM, NV, Red Rock Canyon National Conservation Area (RRCNCA), General Management Plan (GMP), Amendment to the Las Vegas Resource Managment Plan, Las Vegas, NV, Due: October 04, 1999, Contact: Gene Arnesen (702) 647–5068.

EIS No. 990285, DRAFT SUPPLEMENT, NPS, FL, Big Cypress National Preserve, General Management Plan, Implementation, New Information on

the Special Alternative for the Off-Road Vehicle Management Plan, Collier, Dade and Monroe Counties, FL, Due: November 13, 1999, Contact: Wally Hibbard (941) 695–2000.

EIS No. 990286, DRAFT EIS, DOE, CA, MT, UT, WY, ID, OR, WA, Transmission System Vegetation Management Program, Implementation, Managing Vegetation, Site Specific, Right-of-Way Grant, CA, ID, MT, OR, UT, WA and WY, Due: October 09, 1999, Contact: Stacey Mason (503) 230–5455.

EIS No. 990287, DRAFT EIS, NPS, NJ, Great Egg Harbor National Scenic and Recreation River, Comprehensive Management Plan, Implementation, Atlantic Gloucester, Camden and Cape May Counties, NJ, Due: October 04, 1999, Contact: Mary Vavra (215) 597–9175.

EIS No. 990288, DRAFT EIS, FTA, NY, Manhattan East Side Transit Alternatives Study, (MESA), Improved Transit Access Lower Manhattan, Lower East Side, East Midtown, Upper East Side and East Harlem, Major Investment Study, New York, NY, Due: October 08, 1999, Contact: Steven F. Faust (212) 668–2170.

EIS No. 990289, DRAFT EIS, FHW, HI, Kihei-Upcounty Maui Highway, Transportation Improvements, Funding and COE Section 404 Permit, County of Maui, HI, Due: October 04, 1999, Contact: Abraham Wong (808) 541–2700.

EIS No. 990290, DRAFT EIS, FHW, CO, Southeast Corridor Multi-Modal Project, To Improve Travel between Central and Southeast Corridors, Light Rail Transit (LRT), Colorado Metropolitan Area, Denver, CO, Due: October 04, 1999, Contact: Vincent P. Barone (303) 969–6730.

EIS No. 990291, FINAL EIS, NOA, FL, Spiny Dogfish (Squalus Acanthras) Fishery Management Plan, Implementation, Northwest Atlantic Ocean, Labrador to Florida, Due: September 10, 1999, Contact: Hannah Goodale (978) 281–9315.

EIS No. 990292, DRAFT EIS, BIA, AZ, NM, Programmatic EIS–Navajo Ten Year Forest Managment Plan Alternatives, Implementation, AZ and NM, Due: October 04, 1999, Contact: Harold d. Russell (520) 729–7228.

EIS No. 990293, DRAFT EIS, AFS, MT, Flathead National Forest, Swan Lake Ranger District, Meadow Smith Project, Vegetative Treatments and Other Activities to Maintain and Restore Large-Tree Old Grow Forest Characteristics, Lake and Missoula Counties, MT, Due: Octber 08, 1999, Contact: Keith Soderstrom (406) 837–7510.

Dated: August 17, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–21719 Filed 8–19–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51932; FRL–6090–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 5, 1999, to July 30, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/homepage/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51932. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

C. *By phone.* If you need additional information about this action, you may also contact the person identified in the "FOR FURTHER INFORMATION CONTACT " section.

III. Why is EPA taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME, and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those

chemicals. This status report, which covers the period from July 5, 1999, to July 30, 1999, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 144.—PREMANUFACTURE NOTICES RECEIVED FROM: 07/05/99 TO 07/30/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0994	07/06/99	10/04/99	Condea Servo LLC	(G) Reactive monomer	(G) Dimerdiol diacrylate
P–99–1009	07/06/99	10/04/99	CBI	(G) Thermoplastic elastomer for industrial use	(G) Crosslinked polyolefin elastomer
P–99–1021	07/06/99	10/04/99	CBI	(G) Emulsifier	(G) Polyamide
P–99–1022	07/06/99	10/04/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Triazolo thiadiazinyl substituted acetamide
P–99–1023	07/06/99	10/04/99	CBI	(G) Destructive use	(G) Calcium salts of alkyl salicylate and alkyl phenate sulfide
P–99–1024	07/06/99	10/04/99	Ashland Inc.	(G) Open, dispersive-used in molding operations	(G) Unsaturated polyester
P–99–1025	07/06/99	10/04/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted butanoic acid, heterocyclic hydrazide
P–99–1026	07/06/99	10/04/99	CBI	(G) Destructive use	(G) Calcium salts of alkyl salicylate and alkyl phenate
P–99–1027	07/08/99	10/06/99	CBI	(G) Open, non-dispersive: dispersant for inorganic materials	(G) Sodium salt of methacrylic acid copolymer
P–99–1028	07/06/99	10/04/99	CBI	(G) Component of coating with open use	(G) Acid functional polyester
P–99–1029	07/06/99	10/04/99	CBI	(G) Component of coating with open use	(G) Acid functional polyester
P–99–1030	07/06/99	10/04/99	CBI	(G) Component of coating with open use	(G) Acid functional polyester
P–99–1031	07/06/99	10/04/99	CBI	(G) Component of coating with open use	(G) Acid functional polyester
P–99–1032	07/06/99	10/04/99	CBI	(G) Household cleaning products	(G) Aloe
P–99–1033	07/08/99	10/06/99	3M Company	(G) Adhesive	(G) Acrylate copolymer with 2-ethylhexylacrylate
P–99–1034	07/12/99	10/10/99	CBI	(S) Resin for printing ink	(G) Hydrocarbon modified rosin resin
P–99–1035	07/06/99	10/04/99	Tcusa Inc.	(S) Raw material for organic synthesis; flotation aid for mineral processing	(S) Carbonodithioic acid 0-(2 methyl propyl) ester potassium salt*
P–99–1036	07/09/99	10/07/99	CBI	(G) Component of adhesives, inks, and clear varnishes	(G) Epoxy acrylate
P–99–1037	07/09/99	10/07/99	CBI	(G) Destructive	(G) Alkylphenol mannich
P–99–1038	07/09/99	10/07/99	CBI	(G) Additive for coatings	(G) Acrylate ester
P–99–1039	07/09/99	10/07/99	CBI	(G) Additive for coatings and inks formulations	(G) Silicone bifunctional acrylate
P–99–1040	07/08/99	10/06/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Triazolo thiadiazinyl substituted acetamide
P–99–1041	07/08/99	10/06/99	Eastman Kodak Company	(G) Contained use in imaging products	(G) Pyrazolotriazolyl substituted acetamide
P–99–1042	07/12/99	10/10/99	Callaway Chemical Company	(S) Defoaming agent in paper; emulsifier	(G) Alkoxylated dimer fatty acid, tall oil fatty acid ester
P–99–1043	07/12/99	10/10/99	Ciba Specialty Chemicals Corp.	(S) Light stabilizer for polyolefins	(G) Triazine derivative
P–99–1044	07/09/99	10/07/99	CBI	(G) Open, non-dispersive (resin)	(G) Urethane bisoxazolidine
P–99–1045	07/09/99	10/07/99	Finetex, Inc.	(S) Textile fiber lubricant with high thermal stability; dispersant for titanium dioxide, zinc oxide, pigments, etc; plasticizer for selected polymer systems requiring high thermal stability	(S) Castor oil, benzoate*

I. 144 Premanufacture Notices Received From: 07/05/99 to 07/30/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1046	07/09/99	10/07/99	Finetex, Inc.	(S) Textile fiber lubricant with high thermal stability; dispersant for titanium dioxide, zinc oxide, pigments etc.; plasticizer for select polymer systems requiring high thermal stability	(S) Octadecanoic acid, 12-(benzoyloxy)-, 2-ethylhexyl ester (9ci)*
P–99–1047	07/12/99	10/10/99	CBI	(G) Industrial catalyst	(G) Chlorinated phosphine
P–99–1048	07/13/99	10/11/99	CBI	(G) Uv curable polyurethane acrylate resin for coating	(G) Polycarbonate polyol
P–99–1049	07/14/99	10/12/99	CBI	(G) Chemical intermediate	(G) Alkyl amine
P–99–1050	07/14/99	10/12/99	Dystar L. P.	(S) Dyestuff for the coloration of cellulose	(G) 1,7-naphthalenedisulfonic acid, 2-[[substituted-1,3,5-triazin-2-yl]amino]-5-hydroxy-6-substituted-, salt
P–99–1051	07/14/99	10/12/99	CBI	(G) Open, non dispersive (resin)	(G) Blocked polyurethane dispersion
P–99–1052	07/13/99	10/11/99	Eastman Chemical Company	(S) Rheology modifier for water-borne coatings (additive); rheology modifier for solvent-borne coatings; pigment dispersant for coatings	(S) Cellulose, acetate butanoate, carboxymethyl ether*
P–99–1053	07/14/99	10/12/99	CBI	(G) Resin coating	(G) Polyester methacrylate
P–99–1054	07/15/99	10/13/99	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–99–1055	07/15/99	10/13/99	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–99–1056	07/15/99	10/13/99	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–99–1057	07/15/99	10/13/99	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–99–1058	07/15/99	10/13/99	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–99–1059	07/15/99	10/13/99	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–99–1060	07/15/99	10/13/99	CBI	(G) Intermediate	(G) Polyoxyalkylene ether
P–99–1061	07/13/99	10/11/99	Eastman Chemical Company	(S) Chemical intermediate for herbicide	(S) Ethanone, 1-cyclopropyl*
P–99–1062	07/16/99	10/14/99	Autoliv ASP	(G) Open destructive use as a gas generant for automotive inflator	(G) Metal ethylene diammine nitrate complex
P–99–1063	07/16/99	10/14/99	CBI	(G) Polymer additives and coatings	(G) Aliphatic acrylic urethane oligomer
P–99–1064	07/16/99	10/14/99	Eastman Chemical Company	(S) Film former for coating applications	(S) Cellulose, acetate hydrogen (2*z*)-2-butenedioate propanoate*
P–99–1065	07/16/99	10/14/99	CBI	(G) Structural material	(G) Organic silicon polymer
P–99–1066	07/16/99	10/14/99	CBI	(G) Structural material	(G) Organic silicon polymer
P–99–1067	07/19/99	10/17/99	CBI	(S) Spin-on dielectric film; spin-on passivation layer; characterization of thin films; matrix material	(G) Poly (arylene ether)
P–99–1068	07/19/99	10/17/99	CBI	(G) Open, non-dispersive use	(G) Phosphated acrylic polymer
P–99–1069	07/19/99	10/17/99	CBI	(G) Colorant for water-based formulations	(G) Polyalkoxylated aromatic amine tint
P–99–1070	07/19/99	10/17/99	Rohm America Inc.	(G) Raw material for inks and varnishes	(G) Acrylic polymer on the basis of methyl methacrylate and *n*-butyl methacrylate
P–99–1071	07/19/99	10/17/99	CBI	(G) Interior wall paint	(G) Styrenated alkyd
P–99–1072	07/19/99	10/17/99	CBI	(G) Interior wall paint	(G) Styrenated alkyd
P–99–1073	07/19/99	10/17/99	CBI	(G) Interior wall paint	(G) Styrenated alkyd
P–99–1074	07/19/99	10/17/99	CBI	(G) Destructive use	(G) Condensation product of an alkyl phenol, an alkylamine and formaldehyde, calcium salt
P–99–1075	07/19/99	10/17/99	CBI	(G) Coating agent	(G) Cyclodecane ester
P–99–1076	07/19/99	10/17/99	CBI	(G) Destructive use	(G) Mixed calcuim salts of a mannich base and a longchain alkaryl calcium phenate sulfide
P–99–1077	07/19/99	10/17/99	Dystar L. P.	(S) Dyestuff for the coloration of cellulose	(G) [1,1′ biphenyl]-2,2′ disulfonic acid, 4,4′-bis[[substituted[-4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]-substituted]azo]-salt
P–99–1078	07/19/99	10/17/99	CBI	(G) Destructive use	(G) Condensation product of an alkyl phenol, an alkylamine and formaldehyde

I. 144 Premanufacture Notices Received From: 07/05/99 to 07/30/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1079	07/20/99	10/18/99	CBI	(G) Colorant for thermoplastic resins and solvent-based inks	(G) Phenylmethyl-bis(arylazo pyrazolone)
P–99–1080	07/20/99	10/18/99	CBI	(S) Raw material used in the manufacture of photoresist	(G) Naphthaquinone diazide sulfonyl ester mixture of a polynuclear polyhydroxy phenol
P–99–1081	07/20/99	10/18/99	CBI	(S) An auxiliary finishing aid for leather	(G) Saturated dicarboxylic acid, polymer with polyester, polyamide and substituted carboxylic acids
P–99–1082	07/20/99	10/18/99	CBI	(G) Component of coating with open use	(G) Inorganic salt
P–99–1083	07/20/99	10/18/99	CBI	(G) Component of coating with open use	(G) Inorganic salt
P–99–1084	07/20/99	10/18/99	CBI	(G) Component of coating with open use	(G) Inorganic salt
P–99–1085	07/20/99	10/18/99	CBI	(G) Component of coating with open use	(G) Inorganic salt
P–99–1086	07/20/99	10/18/99	CBI	(G) Component of coating with open use	(G) Inorganic salt
P–99–1087	07/20/99	10/18/99	Lyondell Chemical Worldwide, Inc.	(S) Chemical intermediate for dispersant polymers	(G) Polyether acrylate
P–99–1088	07/20/99	10/18/99	Lyondell Chemical Worldwide, Inc.	(S) Chemical intermediate for dispersant polymers	(G) Polyether acrylate
P–99–1089	07/21/99	10/19/99	Lyondell Chemical Worldwide, Inc.	(G) Dispersant	(G) Polyether carboxylate
P–99–1090	07/21/99	10/19/99	Lyondell Chemical Worldwide, Inc.	(G) Dispersant	(G) Polyether carboxylate
P–99–1091	07/21/99	10/19/99	Lyondell Chemical Worldwide, Inc.	(G) Dispersant	(G) Polyether carboxylate
P–99–1092	07/21/99	10/19/99	Lyondell Chemical Worldwide, Inc.	(G) Dispersant	(G) Polyether carboxylate
P–99–1093	07/21/99	10/19/99	Lyondell Chemical Worldwide, Inc.	(G) Dispersant	(G) Polyether carboxylate
P–99–1094	07/21/99	10/19/99	Lyondell Chemical Worldwide, Inc.	(G) Dispersant	(G) Polyether carboxylate
P–99–1095	07/21/99	10/19/99	CBI	(G) Emulsifying agent, surface active agent, chemical substance precursor	(G) Perfluoropolyether derivative
P–99–1096	07/22/99	10/20/99	Gem Urethane Corp.	(S) Finishing of leather; textile treatment; paper treatment	(G) Aqueous polyurethane dispersion
P–99–1097	07/22/99	10/20/99	Bedoukian Research, Inc.	(S) Floral blends & fruits flavors (ffdca); fragrance use: (soaps, detergents, air fresheners, scented papers)	(S) Benzoic acid, 2-amino-, cyclohexyl ester*
P–99–1098	07/23/99	10/21/99	Vianova Resins Incorporated	(S) Additive for industrial coatings	(G) Hydroxyfunctional acrylic copolymer with ethanol, 2-(dimethylamino)-
P–99–1099	07/23/99	10/21/99	CBI	(G) Coatings appications	(G) Silicone epoxy copolymer
P–99–1100	07/23/99	10/21/99	Vianova Resins Incorporated	(G) Resin for coatings	(G) *N,N*-dimethylethanolamine salt of an oilfree, saturated polyester containing urethane groups
P–99–1101	07/23/99	10/21/99	CBI	(S) Pre-polymer endcapper	(G) Organo silane ester
P–99–1102	07/22/99	10/20/99	Cook Composites & Polymers Co.	(S) Polymer base for metal finish topcoat	(G) Acrylic copolymer resin
P–99–1103	07/22/99	10/20/99	Cook Composites & Polymers Co.	(S) Polymer base for metal finish topcoat	(G) Acrylic copolymer resin
P–99–1104	07/22/99	10/20/99	Cook Composites & Polymers Co.	(S) Polymer base for metal finish topcoat	(G) Acrylic copolymer resin
P–99–1105	07/23/99	10/21/99	CBI	(G) Coating binder component	(G) Blocked isocyanate polymer
P–99–1106	07/26/99	10/24/99	CBI	(S) Reductive afterclear agent for polyester fiber and blends	(G) Sulfinic acid derivative
P–99–1107	07/22/99	10/20/99	3M Company	(S) Coating component for release liner	(S) 3,8,13-trioxa-4,7,9,12-tetrasilapentdecane, 4,12-diethoxy-4,7,7,9,9,12-hexamethyl-*
P–99–1108	07/22/99	10/20/99	3M Company	(S) Coating component for release liner	(G) Fluorosilicone polymer
P–99–1109	07/27/99	10/25/99	Henkel Corp., Chemicals group	(G) Industrial surfactant	(S) Alcohols, C_{12-18}, ethers with polyethylene glycol mono-bu ether*
P–99–1110	07/27/99	10/25/99	Henkel Corp., Chemicals group	(G) Industrial surfactant	(S) Alcohols, C_{12-14}, ethers with polyethylene glycol mono-bu ether*

I. 144 Premanufacture Notices Received From: 07/05/99 to 07/30/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1111	07/27/99	10/25/99	Henkel Corp., Chemicals group	(G) Industrial surfactant	(S) Alcohols, C_{12-14}, ethers with polyethylene-polypropylene glycol mono-me ether*
P–99–1112	07/27/99	10/25/99	Henkel Corp., Chemicals group	(G) Industrial surfactant	(S) Alcohols, C_{8-10} dimers, ethers with polyethylene glycol mono-bu ether*
P–99–1113	07/27/99	10/25/99	Henkel Corp., Chemicals group	(G) Industrial surfactant	(S) Poly(oxy-1,2-ethanediyl), α-butyl-omega-(octyloxy)-*
P–99–1114	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Polyester resin
P–99–1115	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Polyester resin
P–99–1116	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Polyester resin
P–99–1117	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Polyester resin
P–99–1118	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Polyester resin
P–99–1119	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Polyester resin
P–99–1120	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Amide resin
P–99–1121	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Amide resin
P–99–1122	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Amide resin
P–99–1123	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Amide resin
P–99–1124	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Amide resin
P–99–1125	07/27/99	10/25/99	CBI	(G) Rheological component	(G) Amide resin
P–99–1126	07/27/99	10/25/99	CBI	(G) Monomer	(G) Modified vegetable fatty acid
P–99–1127	07/27/99	10/25/99	CBI	(G) Monomer	(G) Modified vegetable oil
P–99–1128	07/27/99	10/25/99	CBI	(G) Polymeric binder	(G) Styrene-methacrylate copolymer
P–99–1129	07/27/99	10/25/99	CBI	(S) Prepolymer; elastomer	(G) Alkoxylated polyol
P–99–1130	07/27/99	10/25/99	CBI	(G) Destructive	(G) Alkylphenolic resin
P–99–1131	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactat for formulators	(S) Glycine, *n*-(carboxymethyl)-*n*-[3-(1-methylethoxy)propyl]-, monosodium salt*
P–99–1132	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) *B*-alanine, *n*-(2-carboxyethyl)-*n*-[3-(hexyloxy)propyl]-, disodium salt, branched*
P–99–1133	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) *B*-alanine, *n*-(2-carboxyethyl)-*n*-[3-(hexyloxy)propyl]-, monosodium salt, branched*
P–99–1134	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *n*-(carboxymethyl)-*n*-[3-(dimethylamino)propyl]-, monosodium salt*
P–99–1135	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) *B*-alanine, *n*-(2-carboxyethyl)-*n*-[3-(dimethylamino)propyl]-, disodium salt*
P–99–1136	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *n*-(carboxymethyl)-*n*-[3-[(carboxymethyl)amino]propyl]-, *n*-coco alkyl derivs., monosodium salts*
P–99–1137	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *n*-(carboxymethyl)-*n*-[3-[(carboxymethyl)amino]propyl]-, *n*-coco alkyl derivs., disodium salts*
P–99–1138	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *n*-(carboxymethyl)-*n*-[3-(hexyloxy)propyl]-, branched*
P–99–1139	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *n*-(carboxymethyl)-*n*-[3-(octyloxy)propyl]-, monosodium salt*
P–99–1140	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *n*-(carboxymethyl)-*n*-[3-(decyloxy)propyl]-, monosodium salt*
P–99–1141	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *n*-(carboxymethyl)-*n*-[3-(octyloxy)propyl]-*
P–99–1142	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *n*-(carboxymethyl)-*n*-[3-(decyloxy)propyl]-*
P–99–1143	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) *B*-alanine, *n*-(2-carboxyethyl)-*n*-[3-(octyloxy)propyl]-, disodium salt*
P–99–1144	07/27/99	10/25/99	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) *B*-alanine, *n*-(2-carboxyethyl)-4-[3-(decyloxy)propyl]-, disodium salt*
P–99–1145	07/28/99	10/26/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted benzenesulfinic acid salt
P–99–1146	07/28/99	10/26/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted benzoic acid ester
P–99–1147	07/28/99	10/26/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted butanoic acid

I. 144.—PREMANUFACTURE NOTICES RECEIVED FROM: 07/05/99 TO 07/30/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1148	07/28/99	10/26/99	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted alkanoyl chloride
P–99–1149	07/27/99	10/25/99	CBI	(G) Destructive use	(G) Calcium long chain alkyl phenate sulfide
P–99–1150	07/29/99	10/27/99	CBI	(G) Component of manufactured consumer article	(G) Cuprate (3)[3-hydroxy xo)4-[[2-(hydroxy-xo) carbomonocycle azo xn'] carbopolycycle
P–99–1151	07/29/99	10/27/99	Dainippon Ink and Chemicals, Inc.	(S) Uv curable resin for uv inks	(G) Polyurethane resin
P–99–1152	07/29/99	10/27/99	Eastman Chemical Company	(S) Chemical intermediate	(G) Sustituted aminophenol
P–99–1153	07/29/99	10/27/99	Eastman Chemical Company	(S) Chemical intermediate	(G) Sustituted aminophenol
P–99–1154	07/29/99	10/27/99	Eastman Chemical Company	(S) Chemical intermediate	(G) Sustituted hexanoic acids esters
P–99–1155	07/29/99	10/27/99	CBI	(G) Industrial leather softener	(G) Fatty-sulfosuccinate
P–99–1156	07/29/99	10/27/99	Eastman Chemical Company	(S) Chemical intermediate	(G) Substituted oxazolidinedione
P–99–1157	07/29/99	10/27/99	Eastman Chemical Company	(G) Photographic chemical	(G) Substituted alkene anilide
P–99–1158	07/29/99	10/27/99	H. B. Fuller Company	(S) Shoe adhesives; volumes provided are maximum value for each chemical	(G) Polyamide polymer
P–99–1159	07/29/99	10/27/99	H. B. Fuller Company	(S) Shoe adhesives; volumes provided are maximum value for each chemical	(G) Polyamide polymer
P–99–1160	07/29/99	10/27/99	H. B. Fuller Company	(S) Shoe adhesives; volumes provided are maximum value for each chemical	(G) Polyamide polymer
P–99–1161	07/29/99	10/27/99	H. B. Fuller Company	(S) Shoe adhesives; volumes provided are maximum value for each chemical	(G) Polyamide polymer
P–99–1162	07/29/99	10/27/99	H. B. Fuller Company	(S) Shoe adhesives; volumes provided are maximum value for each chemical	(G) Polyamide polymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 39.—NOTICE OF COMMENCEMENT FROM: 07/05/99 TO 07/30/99

Case No.	Received Date	Commencement/ Import Date	Chemical
P–92–0364	07/26/99	08/25/95	(G) Caprolactone dipentaerythritol polyurethane
P–92–1246	07/26/99	02/05/93	(S) Polymer of neopentyl glycol; diphenylmethane diisocyanate; polycaprolactone diol; polycaprolactone triol; mercapto succinic acid
P–93–0513	07/15/99	06/16/99	(G) Propietary modified carboxylated styrene butadiene polymer
P–95–1390	07/09/99	11/09/98	(G) 9*h*-carbazole-9-ethanol, 3-(substituted)azo-
P–96–0953	07/27/99	11/28/98	(G) Alkyl phenol
P–96–0954	07/27/99	11/28/98	(G) Alkyl phenol
P–96–0955	07/27/99	11/28/98	(G) Alkyl phenol
P–96–0956	07/27/99	11/28/98	(G) Alkyl phenol
P–96–0957	07/27/99	11/28/98	(G) Alkyl phenol
P–96–0958	07/27/99	11/28/98	(G) Alkyl phenol
P–97–0102	07/26/99	07/16/99	(G) Salt of mixed alkyl phosphate
P–97–0445	07/29/99	02/19/99	(G) Pentaerythritol ester of tall oil fractions
P–97–0718	07/09/99	12/18/98	(S) 2-butanone, o,o′,o″-(phenylsilylidyne) trioxime*
P–97–0839	07/13/99	07/06/99	(G) Organic peroxide, perester
P–98–0046	07/06/99	06/24/99	(G) Non-volatile emulsion acrylic polymer
P–98–0148	07/14/99	06/17/99	(G) Hexanoic acid, trisubstituted methylphenyl ester
P–98–0193	07/29/99	02/02/99	(G) Tall oil fractions, unsaturated hydrocarbons resins, dieneophile modified polymer with pentaerythritol and polyalkyiene oxide.
P–98–0625	07/13/99	06/17/99	(G) Metal derivatized tetrasubstituted alkane compound

II. 39 Notice of Commencement From: 07/05/99 to 07/30/99—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–98–0640	07/15/99	12/23/98	(S) Fatty acids, soya, polymers with benzoic acid, 12-hydroxyoctadecanoic acid, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, pentaerythritol, phthalic anhydride, polyethylene glycol mono-me ether and trimethylolpropane*
P–98–0754	07/27/99	12/11/98	(S) Benzenepentanenitrile, *b*-methyl-*
P–99–0022	07/29/99	01/11/99	(S) Fatty acids, tall-oil, polymers with benzoic acid, pentaerythritol, phthalic anyhdride, soybean oil and trimethylolpropane
P–99–0131	07/23/99	07/06/99	(G) Benzenamine, 4,4′-[[4-(alkylimino)-3-alkyl-2,5-cyclohexandien-1-ylidene]methylene]bis[*n*,*n*-dialkyl-, monoacetate
P–99–0132	07/23/99	07/06/99	(G) Benzenamine, *n*,*n*-dialkyl-4-[[4-(alkylamino)-3-alkylphenyl][4-(alkylimino)-3-alkyl-2,5-cyclohexandien-1-ylidene]alkyl]-, monoacetate
P–99–0182	07/29/99	06/18/99	(G) Polyol ester
P–99–0246	07/26/99	04/14/99	(G) Carboxylic acid functional polyester
P–99–0250	07/09/99	04/01/99	(S) Benzene, mono-C_{20-24} - alkyl derives*
P–99–0263	07/27/99	06/30/99	(G) Poly (aryl ketone) modified acrylate
P–99–0302	07/21/99	06/28/99	(G) Substituted phenoxy alcohol
P–99–0385	07/13/99	06/18/99	(G) Fatty alkyl phosphate, alkali metal salt
P–99–0404	07/06/99	06/14/99	(G) Diadduct(monomaleate/polyoxyethylene (*n*) stearic acid (monoester)/diethyl amine)bishpenol a diglycidylether- bisphenol a, copolymer, acetate, salt)
P–99–0450	07/09/99	07/01/99	(G) Alkyl glucoside
P–99–0458	07/09/99	06/29/99	(G) Hydrocarbon resin
P–99–0474	07/14/99	07/06/99	(G) Styrene-acrylic polymer
P–99–0475	07/06/99	06/29/99	(G) Substituted alkenoic ester
P–99–0525	07/27/99	07/01/99	(G) Blocked isocyanate
P–99–0617	07/27/99	07/14/99	(G) Substituted cyano acrylate
P–99–0619	07/09/99	07/01/99	(G) Water-reducible methacryl-styrene copolymer
P–99–0620	07/09/99	07/01/99	(G) Water-reducible acrylic-styrene copolymer
P–99–0717	07/26/99	07/22/99	(G) Polyester modified polydimethylsiloxane, hydroxy functional

List of Subjects

Environmental protection, Premanufacture notices.

Dated: August 12, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–21663 Filed 8–19–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Popular Inc., and Popular International Bank, Inc., both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mt. Laurel, New Jersey have applied to acquire 100 percent of the voting shares of Banco Popular, National Association, Orlando, Florida.

In connection with this application, Banco Popular, National Association, Orlando, Florida; has applied to establish Popular Insurance, Inc., Culebra, Puerto Rico, as an agreement Corporation, pursuant to § 25A of the Federal Reserve Act, and a wholly owned subsidiary of Banco Popular, National Association, Orlando, Florida.

Board of Governors of the Federal Reserve System, August 16, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21590 Filed 8–19–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless

otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of America Corporation, Charlotte, North Carolina; to acquire up to 11.67 percent of the voting shares of 724 Solutions, Inc., Toronto, Canada, and thereby engage in the development, manufacture, and distribution of software designed to provide electronic banking, brokerage, and other services to consumers, pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 16, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21589 Filed 8–19–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History

AGENCY: General Services Administration.

ACTION: Meeting Notice.

SUMMARY: Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold an open meeting from 9:00 a.m. to 12:30 p.m. on Wednesday, September 8, 1999, at the Portland Marriott-Downtown, 1401 South West Naito Parkway, Portland, OR 97201.

PURPOSE: To introduce the "How to Guide" to Women's Groups and to discuss Y2000 Women's History Month Celebrations.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. In addition, inquiries may be sent to *martha.davis@gsa.gov.*

Dated: August 13, 1999.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 99–21695 Filed 8–19–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–21–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). The purpose of this request is to obtain OMB clearance to conduct the main data collection studies and the validity/reliability studies. The pilot portion of the data collection was approved in April. Upon the completion of the pilot this package will be submitted for OMB review for the remainder of the survey. The studies involve school health policies and programs in elementary, middle/junior, and senior high schools nationwide. A similar study was conducted in 1994 (OMB No. 0920–0340). SHPPS 2000 will assess the characteristics of eight components of school health programs at the elementary, middle/junior, and senior high school levels: health education, physical education and activity, health services, food service, school policy and environment, mental health and social services, faculty and staff health promotion, and family and community involvement. SHPPS 2000 data will be used to provide end-of-decade measures for 18 national health objectives for 2000 and as a baseline measure for at least 17 draft objectives for 2010. No other national source of data exists for these 2000 and draft 2010 objectives. The data also will have significant implications for policy and program development for school health programs nationwide. The total annual burden hours are 14,551.

ANNUAL BURDEN HOURS FOR SHPPS 2000 MAIN DATA COLLECTION, SPRING 2000

Questionnaire/Activity	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
State Health Education	State officials	51	1.00	51.0
State Physical Education and Activity	State officials	51	1.00	51.0
State Health Services	State officials	51	1.00	51.0
State Food Service	State officials	51	1.00	51.0
State Questionnaire on School Policy and Environment	State officials	51	1.25	63.8
State Mental Health and Social Services	State officials	51	1.00	51.0
State Faculty and Staff Health Promotion	State officials	51	0.50	25.5
Assist with identifying state level respondents and with recruiting districts and schools.	State officials	51	1.00	51.0
District Health Education	District officials	1148	1.00	1148.0
District Physical Education and Activity	District officials	1148	1.00	1148.0
District Health Services	District officials	1148	1.00	1148.0
District Food Service	District officials	1148	1.00	1148.0
District Questionnaire on School Policy and Environment	District officials	1148	1.25	1435.0
District Mental Health and Social Services	District officials	1148	1.00	1148.0
District Faculty and Staff Health Promotion	District officials	1148	0.50	574.0

ANNUAL BURDEN HOURS FOR SHPPS 2000 MAIN DATA COLLECTION, SPRING 2000—Continued

Questionnaire/Activity	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
Assist with identifying district and school level respondents and with recruiting schools.	District officials	350	1.00	350.0
Assist with identifying and scheduling school level respondents	School officials	1539	1.00	1539.0
School Health Education	Health education lead teachers, principals, or designees.	1539	1.00	1539.0
School Physical Education and Activity	Physical education lead teachers, principals, or designees.	1539	1.00	1539.0
School Health Services	School nurses, principals, or designees.	1539	1.00	1539.0
School Food Service	Food service managers, principals, or designees.	1539	1.00	1539.0
School Questionnaire on School Policy and Environment	Principals or designees	1539	1.50	2308.5
School Mental Health and Social Services	Counselors, principals, or designees.	1539	1.00	1539.0
School Faculty and Staff Health Promotion	Principals or designees	1539	0.50	769.5
Health Education Classroom Teacher	Health education teachers (Average 1.5 per school).	2309	0.80	1847.2
Physical Education and Activity Classroom Teacher	Physical education teachers (Average 2 per school).	3078	0.80	2462.4
Total		26,493		25,115.9

ANNUAL BURDEN HOURS FOR VALIDITY/RELIABILITY STUDY, SPRING 2000

Questionnaire	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
State Health Education	State officials	32	0.25	8.0
State Physical Education and Activity	State officials	32	0.25	8.0
State Health Services	State officials	32	0.20	6.4
State Food Service	State officials	32	0.20	6.4
State Questionnaire on School Policy and Environment	State officials	32	0.40	12.8
State Mental Health and Social Services	State officials	32	0.25	8.0
State Faculty and Staff Health Promotion	State officials	32	0.20	6.4
District Health Education	District officials	82	0.25	20.5
District Physical Education and Activity	District officials	82	0.25	20.5
District Health Services	District officials	82	0.20	16.4
District Food Service	District officials	82	0.20	16.4
District Questionnaire on School Policy and Environment	District officials	82	0.40	32.8
District Mental Health and Social Services	District officials	82	0.25	20.5
District Faculty and Staff Health Promotion	District officials	82	0.40	32.8
School Health Education	Health education lead teachers, principals, or designees.	82	0.80	65.6
School Physical Education and Activity	Physical education lead teachers, principals, or designees.	82	0.80	65.6
School Health Services	School nurses, principals, or designees.	82	0.80	65.6
School Food Service	Food service managers, principals, or designees.	82	0.80	65.6
School Questionnaire on School Policy and Environment	Principals or designees	82	1.25	102.5
School Mental Health and Social Services	Counselors, principals, or designees.	82	0.80	65.6
School Faculty and Staff Health	Principals or designees	82	0.40	32.8
Promotion Health Education Classroom Teacher	Health education teachers (Average 1.5 per school).	82	0.80	65.6
Physical Education and Activity Classroom Teacher	Physical education teachers (Average 2 per school).	82	0.80	65.6
Total		1,536		810.4

ANNUAL BURDEN HOURS ACROSS ALL SHPPS 2000 STUDY COMPONENTS

Study component	Number of respondents	Total burden hours
Main Study Data Collection, Spring 2000	26,493	13,913.0
Validity/Reliability Study, Spring 2000	1,536	638.0
Total	28,029	14,551.0

Nancy Cheal,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 99–21638 Filed 8–19–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Agency for Toxic Substances and Disease: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, Agency for Toxic Substances and Disease, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through July 28, 2001.

For further information, contact Robert Spengler, Sc.D., Executive Secretary, Board of Scientific Counselors, Agency for Toxic Substances and Disease, 1600 Clifton Road, NE, M/S D–23, Atlanta, Georgia 30333, telephone 404/639–7080 or fax 404/639–7181.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–21637 Filed 8–19–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Cancellation of Requirement for Certification of Used Tire Casings from Asia Prior to Entry into the United States

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of cancellation.

SUMMARY: This notice announces cancellation of the requirement that all used tire casings imported from Asia must be certified as dry, clean, and free of insects.

DATES: August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Barrow (404) 639–8107; E-mail jeb1@cdc.gov), Centers for Disease Control and Prevention, 1600 Clifton Rd., NE, National Center for Infectious Diseases, Division of Quarantine, Mail Stop E–03, Atlanta, Georgia, 30333.

SUPPLEMENTARY INFORMATION:

Background

Investigations conducted by CDC in 1986 established that Aedes albopictus and other mosquito species were being imported into the United States from Asia in used tire casings. Since these mosquitoes have the potential to transmit certain viral diseases to humans, such as dengue and other arboviruses including several that are native to the Americas, their presence was considered a potential public health threat. As of October 1, 1987, 15 states were known to be infested with Aedes albopictus. Interstate trade in used tires was believed to be a major factor in disseminating the species within the United States. Consequently, effective January 1, 1988, under the authority of section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 71.32(c), CDC imposed a requirement that all used tire casings originating from Asia must be certified as being dry, clean, and disinsected. Specific measures for disinsection and certification were defined in a **Federal Register** notice dated November 20, 1987 (52 FR 44836). In order to monitor compliance with the requirements, the CDC Division of Quarantine conducted an energetic program of random inspections, which showed large-scale noncompliance, even though penalties were imposed. Despite these enforcement efforts, Aedes albopictus has spread to 28 states, the approximate geographic limits of its potential distribution in the United States. A recent CDC study concluded that further colonization within those limits is inevitable. The study, published in the Journal of the American Mosquito Control Association in March 1998 (14:83–94), found that, because of the vast size and distribution of the existing population, the number of mosquitoes that could be introduced from overseas is insignificant. Because of its exploitation of natural and artificial habitats, Aedes albopictus is extremely difficult to control and should be considered a permanently established species in the United States. In addition, although it is capable of transmitting numerous viruses, there is to date no evidence of any transmission to humans in the United States. The effect of the present requirement is therefore negligible, and the cost of the requirement, both to industry and government, can no longer be justified. A proposal to rescind the requirement for certification of used tire casings from Asia prior to entry into the United States was published on April 12, 1999 (64 FR 17671–17672), and public comments were sought for a thirty-(30) day period. While there is a large number of potential responders who are engaged in public health and mosquito abatement at the State and local level, only seven comments were received. All expressed opposition to canceling the certification requirement.

One commenter expressed a belief that the certification requirement should be continued because it has contributed to success in managing Asian mosquito populations in his location. In considering this comment, we note that there is a large interstate traffic in tires from infested sites that are not directly associated with imported shipments, as well as the potential for interstate movement in any type of conveyance or shipping container. Wherever Aedes

albopictus is present, there is potential for their movement into other areas having a climate that can support them.

Other commenters asked for continuance of the certification requirement while observing that certification efforts came too late to be effective. While Aedes albopictus was well established in many areas long before it was first detected, control efforts were rapidly initiated and energetically pursued once the presence of the species was recognized. Since these measures were not effective in slowing Aedes albopictus' establishment, it is not logical to argue for them to be continued.

Other commenters suggested that continued certification could prevent future importation of other species. We find no evidence in support of this position.

Determination: The requirement for certification of used tire casings from Asia prior to entry into the United States is canceled.

Dated: August 16, 1999.

Joseph R. Carter,

Associate Director for Management and Operation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21636 Filed 8–19–99; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee of the Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: Ethics Subcommittee of the Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–5:00 p.m., September 23, 1999.

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Building 16, Room 5126, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Purpose: This subcommittee will anticipate, identify, and propose solutions to strategic and broad ethical issues facing CDC.

Matters to be Discussed: Agenda items will include updates from the Associate Director for Science, Dixie E. Snider, M.D., M.P.H.; a discussion on recommendations for preventing transmission of Hepatitis B virus, Hepatitis C virus, and Human Immunodeficiency Virus to patients in healthcare settings; and anticipating issues involved in future decisions regarding the rotavirus vaccine.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333. Telephone 404/639–7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 12, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–21639 Filed 8–19–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Final List of Child Welfare Outcomes and Measures

SUMMARY: Section 203 of the Adoption and Safe Families Act (ASFA), signed into law in November 1997, requires that the Secretary of the Department of Health and Human Services (DHHS), in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs. In addition, the law requires that to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System (AFCARS). Section 203 of ASFA also directs the Secretary to prepare and submit to the Congress an Annual Report on the performance of each State on each outcome measure.

To meet these requirements, the Children's Bureau, the Federal agency charged with the task of implementing ASFA, engaged in a consultation process with State officials, advocates and other experts in the field. As a result of this process, the Children's Bureau published a preliminary list of child welfare outcomes and measures in the **Federal Register** for public comment on February 2, 1999. Comments were received from 31 State child welfare agencies including the District of Columbia, 14 representatives of national organizations, nine members of a congressional coalition, one local child and family services agency, one tribal organization, four child welfare researchers, four Federal staff and one unaffiliated individual. Based on an analysis of the comments, numerous changes were made to the preliminary list of outcomes and measures.

This notice announces the final list of child welfare outcomes and measures and the data elements that will be used to compute each State's performance on each measure. The notice also describes additional data about each State system's characteristics that will be used in the Annual Report to provide context for interpreting State performance on the outcome measures. Finally, the notice provides general information about the steps that will lead to publication of the first Annual Report to the Congress on the performance of each State on each outcome measure.

FOR FURTHER INFORMATION CONTACT: Marianne Rufty, Children's Bureau, 330 C Street, SW, Washington, DC 20447.

SUPPLEMENTARY INFORMATION: The Nation's child welfare systems are designed to protect children who have suffered maltreatment, who are at risk for maltreatment, or who are under the care and placement responsibility of the State because their families are unable to care for them. These systems also focus on securing permanent living arrangements for children who are unable to return home. The Children's Bureau is the agency within the Federal Government that is responsible for assisting State child welfare systems by promoting continuous improvement in the delivery of child welfare services.

The Adoption and Safe Families Act (ASFA) unequivocally established that our national goals for children in the child welfare system are safety, permanency, and well-being. To help achieve these goals, the ASFA requires the Department of Health and Human Services (DHHS), in consultation with States and experts in the field, to identify outcome measures to gauge State and national progress in reaching these goals, and to report on these outcomes in an annual report to the Congress.

The Children's Bureau formed a consultation group comprised of representatives from State, Tribal and county child welfare agencies; State

Governor's offices; State legislatures; family and juvenile courts; local advocacy organizations; the research community; private nonprofit child and family services agencies; and a public employee organization. Representatives of national organizations such as the American Public Human Services Association, the Child Welfare League of America, and the National Council of Juvenile and Family Court Judges also were asked to participate in the consultation process.

The Children's Bureau wishes to thank these individuals for sharing their time and expertise in the development of the preliminary set of child welfare outcomes and measures, which were published in the **Federal Register** for comment on February 2, 1999. We also would like to thank the many individuals who responded to that notice. Based on the comments received, the Children's Bureau has made a number of changes to the list of outcome measures, as detailed below.

What Data Sources Will Be Used To Measure State Performance

To avoid additional reporting by the States, the first Annual Report to the Congress will include outcome measures that are based on data already available through the National Child Abuse and Neglect Data System (NCANDS), and the Adoption and Foster Care Analysis and Reporting System (AFCARS). For the first Annual Report to the Congress, the Children's Bureau will use calendar year 1997 data for NCANDS, and fiscal year 1998 data for AFCARS. The specific data elements that will be used from these databases are listed below under each outcome measure. Please note that one of the consequences of focusing on outcomes that can be measured through AFCARS and NCANDS is that the outcomes to be included in the first Annual Report do not address child-well being measures and procedures for collecting data pertaining to those outcomes in the future.

In addition to displaying data on State performance on the outcome measures, the Annual Report will provide additional data about each State and its child welfare system in order to provide context for interpreting performance on the outcome measures. For the most part, these data also will be derived from the calendar year 1997 NCANDS and fiscal year 1998 AFCARS databases. Some examples include: the number of children under age 18; the number of children found to be victims of child maltreatment; the number of child fatalities due to maltreatment; the number of children entering foster care at the beginning of the reporting year, the number exiting at the end of the same year and their median length of stay in care; the number of children waiting to be adopted; and the number of children adopted. It also will include age and race/ethnicity data for children in these categories.

Steps Leading to Publication of the Annual Report

The Children's Bureau will mail a letter to each State Child Welfare Director that will transmit the State's own data pages for review and comment prior to their being published and submitted to the Congress. State agencies will have the opportunity to provide comments that clarify their data or identify factors that may have affected their performance on the outcome measures. Since States' comments will be included in the Annual Report to the Congress, the Children's Bureau will need to require that the comments be limited due to space restrictions. In addition, State Child Welfare Directors will be asked to return their comments to the children's bureau by a specified date. No response by the due date will indicate that the State chooses not to submit comments. The transmittal letter will provide detailed information about the procedures for reviewing and submitting comments on the data.

Final List of Child Welfare Outcomes and Measures

The following outcome measures will be used as the basis for the first and subsequent Annual Reports to the Congress on the performance of each State in meeting the goals and objectives of the child welfare system. The data elements that will be used to compute the measures are also listed. Additional outcomes and measures may be added in future years as reporting capacities develop. This is particularly true for outcomes addressing child safety and well-being.

Child Welfare Outcome 1: Reduce Recurrence of Child Abuse and/or Neglect

Measure 1.1: Of all children who were victims of substantiated or indicated child abuse and/or neglect during the reporting period, what percentage had another substantiated or indicated report within a 12-month period?

Data Elements: NCANDS, DCDC record
Element 3: Report ID
Element 4: Child ID
Element 8: Report disposition
Element 9: Report disposition date

Child Welfare Outcome 2: Reduce the Incidence of Child Abuse and/or Neglect in Foster Care

Measure 2.1: Of all children who were in foster care during the reporting period, what percentage was the subject of substantiated or indicated maltreatment by a foster parent or facility staff?

Data Elements: NCANDS, DCDC record
Element 80: Perpetrator-1 Relationship
Element 93: Perpetrator-2 Relationship
Element 106: Perpetrator-3 Relationship
AFCARS
Element 21: Date of latest removal
Element 41: Current placement setting

Child Welfare Outcome 3: Increase Permanency for Children in Foster Care

Measure 3.1: For all children who exited the child welfare system, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.2: For children who exited the system and were identified as having a diagnosed disability, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.3: For children who exited the system and were age 12 or older at the time of their most recent entry into care, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.4: For all children who exited the system, what percentage by racial/ethnic category left either to reunification, adoption, or legal guardianship?

Measure 3.5: Of all children exiting the system to emancipation, what percentage was age 12 or younger at the time of entry into care?

Data Elements: AFCARS
Element 6: Date of birth
Element 8: Race
Element 9: Hispanic origin
Element 10: Child diagnosed with disabilities
Element 21: Date of latest removal
Element 56: Date of discharge from foster care
Element 58: Reasons for discharge

Child Welfare Outcome 4: Reduce Time in Foster Care to Reunification Without Increasing Re-entry

Measure 4.1: Of all children who were reunified with their parents or caretakers at the time of discharge from foster care, what percentage was reunified in the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months
(4) At least 36 months, but less than 48 months
(5) 48 or more months

Measure 4.2: Of all children who entered foster care during the reporting period, what percentage re-entered care within 12 months of a prior foster care episode?

Data Elements: AFCARS
Element 19: Total number of removals
Element 20: Date of discharge from last episode
Element 21: Date of latest removal
Element 56: Date of discharge from foster care
Element 58: Reason for discharge

Child Welfare Outcome 5: Reduce Time in Foster Care to Adoption

Measure 5.1: Of all children who exited care to a finalized adoption, what percentage exited care in the following time periods?

(1) Less than 12 months from the time of latest removal from home
(2) At least 12 months, but less than 24 months
(3) At least 24 months, but less than 36 months
(4) At least 36 months, but less than 48 months
(5) 48 or more months

Measure 5.2: Of all children who exited care to a finalized adoption and who were age 3 or older at the time of entry into care, what percentage exited care during the following time periods?

(1) Less than 12 months from the time of latest removal from home
(2) At least 12 months, but less than 24 months
(3) At least 24 months, but less than 36 months
(4) At least 36 months, but less than 48 months
(5) 48 or more months

Data Elements: AFCARS
Element 6: Date of birth
Element 21: Date of latest removal
Element 56: Date of discharge from foster care
Element 58: Reasons for discharge

Child Welfare Outcome 6: Increase Placement Stability

Measure 6.1: Of all children served who had been in care for the time periods listed below, what percentage had no more than two placement settings during that time period?

(1) Less than 12 months from the time of latest removal from home
(2) At least 12 months, but less than 24 months
(3) At least 24 months, but less than 36 months
(4) At least 36 months, but less than 48 months
(5) 48 or more months

Data Elements: AFCARS
Element 21: Date of latest removal
Element 24: Number of previous settings in episode
Element 56: Date of discharge from foster care (needed only if child exited during the year.)

Child Welfare Outcome 7: Reduce Placements of Young Children in Group Homes or Institutions

Measure 7.1: For all children who entered care during the reporting period and were age 12 or younger at the time of their most recent placement, what percentage was placed in a group home or an institution?

Data Elements: AFCARS
Element 6: Date of birth
Element 21: Date of latest removal
Element 23: Placement date in current setting
Element 41: Current placement setting

Dated: August 13, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–21657 Filed 8–19–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1393]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Petitions for Exemption from Preemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 20, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

State Petitions for Exemption From Preemption (21 CFR 100.1(d)) (OMB Control Number 0910–0277—Extension)

Under section 403A(b) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard of identity requirements. Section 100.1(d) (21 CFR 100.1(d)) sets forth the information a State is required to submit in such a petition. The information required under § 100.1(d) enables FDA to determine whether the State food labeling or standard of identity requirement comports with the statutory criteria for exemption from Federal preemption.

In the **Federal Register** of June 4, 1999 (64 FR 30037), the agency requested comments on the proposed collections of information. One comment was received that was supportive of the proposal and encouraged FDA to continue this information collection request.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.1(d)	1	1	1	40	40

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.1(d) is insignificant because petitions for exemption from preemption are seldom submitted by States requesting the agency grant an exemption from preemption by labeling requirements based upon certain sections of the act. Over the last 3 years, FDA has not received any preemption petitions. Since the enactment of section 403A(b) of the act as part of the Nutrition Labeling and Education Act of 1990, FDA has received only eight petitions for seeking exemption from preemption. Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future need of a State or local government to petition for an exemption from preemption under the provisions of section 403A(b) of the act.

Dated: August 16, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–21581 Filed 8–19–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Surface Coating for Hot-Melt Adhesive Films

John I. Peterson, Tristan Gorrindo (ORS), DHHS Reference No. E–015–99/0 filed 10 May 1999.

Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; e-mail: jf36z@nih.gov.

The present application describes a method and apparatus for applying thin-film coatings to poly(ethylene/vinyl acetate, CAS24937–78–8) (EVA) hot-melt layers used in Laser Capture Microdissection (LCM). These methods result in the placement of a hard, non-adhering surface on the EVA layer. The placement of this layer overcomes the problems associated with nonspecific pickup of tissue. Analysis errors in tissue samples captured by laser melting are easily prevented, and using various brush-off or wash-off techniques the removal of undesired tissue material from EVA with thin-film coatings is easily accomplished. Additional advantages include the protection of the hard surface against ambient humidity and temperature variations that adversely affect performance. A desirable coating is one that is a water or water-ethanol solution since it does not deform the EVA surface. Three materials have been tested and are acceptable for this application.

A Method of Preventing Tumor Metastasis

S Rong, G Vande Woude, DL Faletto, I Tsarfaty, M Oskarsson (NCI),

Serial No. 09/248,901 filed 12 Feb 1999.

Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: sr156v@nih.gov

This application generally relates to signal transduction involving hepatocyte growth factor/scatter factor (HGF/SF) and its receptor the *met* proto-oncogene. *In vitro* experiments have indicated that some tumors, such as sarcomas, exhibit metastatic behavior due to inappropriate HGF/SF signaling. The application describes a method whereby this signaling can be inhibited by a substance such as an HGF/SF variant, an HGF/SF mimetic or an antibody or antibody fragment that prevents HGF/SF from binding to *met*.

Several related cases are also available for licensing: U.S. Patent 5,871,959 issued 2/16/1999 entitled "A Method of Producing HGF/SF and Related Cell Lines" and U.S. Patent 5,648,273 issued 7/15/1997 entitled "Hepatic growth factor receptor is the MET proto-oncogene".

Expressed Sequence Tags of Genes Expressed in Drosophila Testes

Brian Oliver, Justen Andrews, Jining Lu (NIDDK)

DHHS Reference No. E–023–99/0.

Licensing Contact: Peter Soukas, 301/496–7056 ext. 268; e-mail: ps193c@nih.gov.

This unpatented invention describes the generation of high quality Expressed Sequence Tags (ESTs) of genes expressed in Drosophila testes obtained through ongoing sequencing. Approximately sixty percent (60%) of the generated ESTs have no significant homology to existing Drosophila EST sets. Thus, this invention represents a valuable addition to the Drosophila unigene set. Additionally, approximately forty-three percent (43%) of these ESTs have no significant similarity to sequences to any other organism in public databases, representing possibly previously unidentified genes.

Approximately 3000 sequence reads have been submitted to dbEST at the present time. The ESTs were prepared from a library derived from poly-A^+ RNA isolated from 700 $y^* w^{67c1}$ 1–5 day post-eclosion testis. cDNA was cloned in the Stratagene Uni-Zap XR vector according to the manufacturer's instructions. The primary unamplified library contained 8×10^6 plaque forming units (pfu). The library was amplified once (1×10^6 pfu yielded 1.75×10^{12} pfu). There are no NIH patent rights associated with this invention; it is available for commercialization through a Biological Materials License Agreement.

Fibroblast Growth Factor Receptor Activating Gene 1 (FRAG1), Related Proteins and Methods

MV Lorenzi (NCI), T Miki (NCI)

Serial No. 09/202,548 filed 15 Dec 98 claiming priority to PCT/US97/10660 filed 18 Jun 97 and 60/020,009 filed 18 Jun 96

Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: sr156v@nih.gov

These applications describe the identification, isolation and cloning of the human gene named *F*ibroblast Growth Factor *R*eceptor *A*ctivating *G*ene I (FRAG1) as well as its rat homolog. A full length clone of the human FRAG1 was deposited and the partial sequence (about 90%) is disclosed. The complete sequence of the rat homolog is disclosed.

The gene for FRAG1 encodes a protein which activates the known growth factor receptor, Fibroblast Growth Factor Receptor 2 (FGFR2).

FRAG1, when fused to FGFR2, leads to a transformed phenotype when transfected into cells and enhanced levels of phosphorylation/activation of FGFR2. The FGFR2–FRAG1 fusion protein was isolated from an osteosarcoma. Products derived from the FRAG1 cDNA, protein or antibodies which recognize the FRAG1 antigen are likely to be useful as diagnostics, therapeutics and research reagents.

This work has appeared, in part, in Lorenzi, MV, et al. "FRAG1, a gene that potently activates fibroblast growth factor receptor by C-terminal fusion through chromosomal rearrangement" PNAS, USA 93(17): 8956–61 (Aug. 20, 1996).

Spontaneous Breathing Apparatus and Method

Theodor Kolobow (NHLBI)
Serial No. 08/933,003 filed 18 Sep 1997.
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

A novel assisted breathing system and method has been developed to greatly decrease/eliminate work of breathing, and is under the total control of a patient.

The system includes a minitracheostomy tube, a reverse thrust gas insufflation catheter introduced through a special minitracheostomy tube to deliver well humidified air/oxygen to near the carina, and a threshold valve to limit airway plateau pressure. Inspiration is effected through spontaneous closing of the glottic opening, while expiration follows opening of the glottis. Such breathing is under the exclusive, spontaneous control of a patient to determine respiratory rate and tidal volumes. Lung inflation is hence passive, and accounts for the greatly decreased (even zero) work of breathing. Speech, cough and swallowing remain unimpeded.

Dated: August 16, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–21706 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 23–24, 1999.

Open: September 23, 1999, 8:30 AM to 3 PM.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; and other administrative and program developments.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: September 23, 1999, 3 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: September 24, 1999, 8:30 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21701 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel—Vancomycin Resistant S. aureus in Dialysis Patients.

Date: August 30, 1999.

Time: 9:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 2148), 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610 (Telephone Conference Call).

Contact Person: Dianne E. Tingley, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–21702 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–80, Review of R13 grant.

Date: August 13, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 10892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–21703 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 13, 1999.

Time: 12:00 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–6081.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 25, 1999.

Time: 10:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–BCE–02.

Date: August 25, 1999.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Knecht, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MCB–2 (02).

Date: August 25, 1999.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rona L. Hirschberg, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 25, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel F. McDonald, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PBC (01).

Date: August 25, 1999.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zakir Bengali, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 25, 1999.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sherry L. Dupere, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 26, 1999.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Leonard Jakubczack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 30, 1999.

Time: 1:00 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anthony C. Chung, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

Name of Committee: Center or Scientific Review Special Emphasis Panel, MDCN–5.
Date: August 30, 1999.
Time: 1:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed Husain, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 31, 1999.
Time: 2:00 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21705 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: September 17, 1999.
Time: 9:00 am to 12:00 pm.
Agenda: Financial and Planning Updates, Clinical Research—Presentation, Construction Update, and In-Patient Survey Results.
Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.
Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: August 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21704 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Establishment by the National Institutes of Health of Categorical Exclusions Under the National Environmental Policy Act

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice of establishment by the NIH of categorical exclusions under the National Environmental Policy Act.

SUMMARY: This notice lists the categories of actions by the NIH that normally do not require the preparation of either an environmental impact statement or an environmental assessment under the National Environmental Policy Act. This list has been prepared in accordance with the Council On Environmental Quality's (CEQ) regulations and with Chapter 30 of the DHHS General Administration Manual. These exclusions apply to all NIH organizations and activities.

DATES: Written comments must be received on or before October 19, 1999.

ADDRESSES: Address all comments concerning this notice to Joseph G. Hugo, P.E., Chief, Pollution Control Section, Division of Safety, Office of Research Services, National Institutes of Health, Building 13, Room 2W64, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Joseph G. Hugo, P.E., Chief, Pollution Control Section, Division of Safety, Office of Research Services, National Institutes of Health, Building 13, Room 2W64, Bethesda, Maryland 20892; telephone 301–496–7775; FAX 301–480–8056; E-mail Address: jhg@helix.nih.gov.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, mandates that agencies perform environmental reviews of their actions. NEPA specifically requires that agencies prepare detailed environmental statements for major Federal actions that have a significant effect on the quality of the human environment, 42 U.S.C. 4332(2)(C). CEQ's regulations implementing NEPA require that Federal agencies revise their policies, procedures, and regulations to ensure full compliance with NEPA's purposes and provisions, 40 CFR 1500.6, 1507.3. CEQ's regulations also require agencies to establish procedures governing categories of actions normally excluded from NEPA review because they do not individually or cumulatively have a significant effect on the human environment, 40 CFR 1508.4.

DHHS adopted such procedures after giving notice in the **Federal Register** (45 FR 76519). These procedures were approved by CEQ on October 2, 1980, and they have been included in DHHS General Administration Manual (GAM) Chapter 30. These procedures require DHHS agencies to evaluate their actions in order to determine the potential environmental effects of the actions. DHHS agencies can exclude from further NEPA review the categories of actions they take that normally do not have a significant effect on the quality of the human environment. Under these procedures, the categories of an agency's actions excluded from NEPA environmental review must be approved by the head of the DHHS agency and receive the concurrence of the DHHS Assistant Secretary for Management and Budget. On January 11, 1999, DHHS published notice of proposed revisions to DHHS GAM Chapter 30 (64 FR 1656).

The NIH's statutory mission is to conduct and support biomedical and behavioral research, training, the preparation and dissemination of health information, and related programs. In order to fulfill this mission, the NIH both performs research in its own facilities and supports research by other institutions through the awarding of grants and contracts.

The NIH has reviewed the types of actions taken by the agency that could have a foreseeable effect on the quality of the human environment. The NIH is providing notice of the actions taken by the agency that will normally be categorically excluded from further environmental review because individually and cumulatively they will not have a significant effect on the human environment. The categorical exclusions listed below are in addition to those listed in DHHS GAM Chapter 30. Additional, if a proposed action is

included in one of the categories but extraordinary circumstances as described in section D of this notice apply, an environmental review will be performed.

Contents

A. General exclusions.
B. Functional exclusions.
C. Program exclusions.
D. Extraordinary circumstances.

A. General exclusions

Subject to a review for extraordinary circumstances, NIH will not perform an environmental review of actions excluded by regulation from NEPA review.

B. Functional Exclusions

The following actions are normally excluded from NEPA review, subject to a review for extraordinary circumstances.

1. Routine administrative and management support, including budget and finance, planning, procurement of supplies and services, management and oversight of grants and other funding instruments, legal counsel, public affairs, program evaluation, travel, and human resources management.

2. Maintenance, including repairs necessary to ensure the operation of existing facilities, grounds maintenance, and the decontamination of laboratory or other space and equipment.

3. Acquisition of space by lease and modifications of leases, when the use of the space will comply with all applicable Federal, State, and local laws, including all environmental protection and zoning laws, and lease extensions and terminations.

4. Relocation of employees into existing Government-owned or Government-leased space.

5. Facility planning and design.

6. Construction, or construction pursuant to a lease, of 12,000 square feet or less of occupiable space.

7. Interior construction and renovation of NIH facilities.

8. The acquisition, sale, release, disposal, abandonment, closure, or transfer of real or personal property, provided that the action does not violate applicable Federal, State, or local laws, including historical preservation laws.

9. Acquisition of equipment and the repair or replacement of NIH-owned equipment.

10. Acquisition, installation, maintenance, and operation of utility and communications systems, data processing cables, and similar electronic equipment.

11. Packaging, storage, and disposal of hazardous substances, including low-level radioactive, medical, and chemical waste materials generated by intramural research activities, provided that the waste is packed, stored, and disposed of in compliance with all applicable Federal, State, and local laws.

12. The identification, collection, testing, and distribution of substances and living organisms for research purposes.

13. Research and training activities that are conducted in DHHS facilities by or under the supervision of DHHS employees, conducted under the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. 3701 *et seq.*, conducted in accordance with 45 CFR part 9.

14. The issuance of revocable licenses, use permits, and easements allowing outside parties to use NIH facilities.

15. Filing for, obtaining, licensing, enforcing, and protecting intellectual property rights arising from NIH-conducted or NIH-supported research or other activities.

16. Actions taken to comply with requirements of applicable legislation or regulations (e.g., meet emissions requirements established pursuant to Clean Air Act).

17. The preparation and submission of proposals for legislation, or major recommendations or reports to Congress on proposals for legislation, that, based on reasonable judgment, will not establish or modify programs that will have a significant effect on the quality of the human environment.

18. The awarding, renewal, suspension, termination, or discontinuance of collaborative research agreements, including Cooperative Research and Development Agreements (CRADA) established under the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. 3701 *et.seq.*, contracts, cooperative agreements, grants, and interagency agreements entered into by the NIH pursuant to the Economy Act, 31 U.S.C. 1535. For those contracts, cooperative agreements, grants, and interagency agreements that involve construction of more than 12,000 square feet of occupiable space, recipients of NIH funds must certify that they are in compliance with all Federal, State, and local environmental laws and must, as prescribed by NIH, perform all environmental reviews required by NEPA, including preparing environmental assessments and, if necessary, environmental impact statements, and submit these documents to the NIH for review, approval and adoption.

19. All actions undertaken in preparing for and conducting litigation.

20. The collection, processing, retention, evaluation and dissemination, including publication, of data and other information, including the acquisition and management of resources necessary to carry out those functions.

21. Proposing and adopting guidelines.

22. Traffic management measures, including the installation and operation of traffic control and safety devices and actions designed to control or reduce the number of motor vehicles coming onto the NIH Bethesda campus.

23. Actions taken to respond to public health emergencies.

C. Program Exclusions

The DHHS procedures on environmental review of agency actions authorize the establishment of a categorical exclusion for programs within an agency that will not have a significant effect on the human environment. Actions taken by the following NIH organizations and their components are normally excluded from NEPA review, subject to a review for extraordinary circumstances. Actions taken by any successor organizations to those listed will also be categorically excluded. Actions taken by organizations of NIH not listed in this category may be included in other categories of excluded actions.

1. Center for Information Technology
2. Center for Scientific Review
3. Fogarty International Center
4. Office of Administration
5. Office of Communications
6. Office of Equal Opportunity
7. Office of Education
8. Office of Community Liaison
9. Office of Loan Repayment and Scholarship
10. Office of Human Resources Management
11. Office of Financial Management
12. Office of Technology Transfer
13. Office of Program Coordination
14. National Library of Medicine

D. Extraordinary Circumstances

Consistent with CEQ's regulations, environmental review is required for all NIH actions involving extraordinary circumstances. Following are examples of extraordinary circumstances that may apply to specific NIH actions.

1. Greater scope of size than other actions included within a category.

2. A threatened violation of a Federal, State, or local law established for protection of the environment or for public health and safety.

3. Potential effects of the action are unique or highly uncertain.

4. Potential effect on a protected or ecologically sensitive area of land, like a wetland or floodplain.

5. Possible impact on property that is listed or eligible for listing on the National Register of Historic Places or that is otherwise of scientific, cultural, or historic importance or interest.

6. Possible impact on an endangered or threatened species.

7. Use of especially hazardous substances or processes for which adequate and accepted controls and safeguards and unknown or not available.

8. Substantial and reasonable controversy exists about the environmental effects of the action.

Dated: August 11, 1999.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 99–21700 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4446–C–05]

Notice of Proposed Information Collection: Comment Request Welfare to Work: A Comprehensive Guide of Welfare to Work Resources and Services; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice; correction.

SUMMARY: On August 12, 1999, HUD published a paperwork notice requiring employers in "eight cities" to provide helpful information on securing and training welfare recipients as workers instead of "six cities". This notice corrects the error.

FOR FURTHER INFORMATION CONTACT: Maxine Wallace, Department of Housing and Urban Development, 451 7th St., Washington DC 20410, telephone (202) 708–2186, ext. 4385. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 98–20800, Notice of Proposed Information Collection: Comment Request; Welfare to Work: A Comprehensive Guide of Welfare to Work Resources and Services (FR–4446–N–04), published in the **Federal Register** on August 12, 1999 (64 FR 44038), is corrected as follows:

On page 44039, first column, under the heading "*Description of the need for the information and proposed use:*" the sentence is revised to read as follows: Information collection is required to provide employers in six (6) cities (Baltimore, Miami, Cleveland, East Texas, Philadelphia, and San Francisco) with helpful information on securing and training welfare recipients as workers.

Dated: August 16, 1999.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 99–21579 Filed 8–19–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4298–N–06]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of Multifamily Housing Assistance Restructuring, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: October 19, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ira G. Peppercorn, Director, Office of Multifamily Housing Assistance and Restructuring, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market) Interim Program Regulations.

OMB Control Number, if applicable: 2502–0533.

Description of the need for the information and proposed use: Permanent program to analyze and reduce rents and mortgages on multifamily properties with FHA insurance and Section 8 project-based assistance, whose Section 8 rents exceed market rents. The program reduces Section 8 rents to market and restructures debt as necessary.

Agency form numbers, if applicable: N/A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 1595, frequency of responses is 1, and the hours of response is 420.25 hours per response.

Status of the proposed information collection: Ongoing for the next 3 years.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 8, 1999.

Ira G. Peppercorn,

Director, Office of Multifamily Housing Assistance and Restructuring.

[FR Doc. 99–21654 Filed 8–19–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–46]

Submission for OMB Review: Hispanic-serving Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: Provides for competitive grants to Hispanic-serving colleges and universities to undertake CDBG-eligible activities to expand their role and effectiveness in helping their communities with neighborhood

revitalization, housing, and economic development.

DATES: Comments Due Date: September 20, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0198) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 12, 1999.

Debra Stouffer,

Acting Director, Investment Strategies, Policy and Management.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Hispanic-serving Institutions Assisting Communities Program.

Office: Policy Development and Research.

OMB Approval Number: 2528–0198.

Description of the Need for the Information and its Proposed Use: The data are essential to select grantees for this statutorily-created competitive program. The data are also needed to monitor grantees to ensure that they are spending their funds in accordance with program goals and statutory requirements.

Form Number: HUD–424, SF–424, SF–424B, SF–LLL, HUD–50070, HUD–50071, HUD–2880, and HUD–30004.

Respondents: Not-for-profit institutions.

Frequency of Submission: Semi-annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	60		2		49		5,824

Total Estimated Burden Hours: 5,824.

Status: Reinstatement with change.

Contact: Jane Karadbil, HUD, (202) 708–1537. Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–21580 Filed 8–19–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1220–00; Special Recreation Permit #NV–020–99–06]

Nevada: Closure of Certain Public Land in the Winnemucca District for the Management of Lands Located in and Around the Burning Man Event Site

AGENCY: Bureau of Land Management (Interior).

ACTION: Closure and restriction of public lands in Washoe and Pershing Counties.

SUPPLEMENTARY INFORMATION: Certain lands in the Winnemucca District, Pershing and Washoe Counties, Nevada would be temporarily closed or restricted to camping, vehicle use, fire use, fireworks use, firearms use and aircraft landing from 6 a.m. August 30 to 12:00 pm September 6, 1999. This closure is being made in the interest of public safety at the location of an event known as the Burning Man Festival. This event is expected to attract at least 20,000 visitors this year.

The following areas in and around the Burning Man event site are *Temporarily Closed to Discharge or Display of Firearms, Use or Possession of Fireworks,* with the exception of those fireworks that have been approved by the Burning Man or Black Rock City, LLC as part of an official art burn event:

T33N, R23E, Sec. 23; Sec. 24; Sec. 25; Sec. 26; Sec. 35; Sec. 36.
T33N, R24E, Sec. 17; Sec. 18 Sec 19; Sec. 20; Sec. 29; Sec. 30; Sec. 31; Sec. 32.
T32N, R23E, Sec. 1; Sec. 2; Sec. 11; Sec. 12.
T32N, R23E, Sec. 5; Sec. 6.

With the exception of defined camping areas designated and provided by the Burning Man Organization, the following public lands on the open playa, northwest of the Union Pacific Railroad and southeast of County Road 34, are *Temporarily Closed to Camping:*

T33N, R23E, Sec. 23; Sec. 24; Sec. 25; Sec. 26; Sec. 35; Sec. 36.
T33N, R24E, Sec. 17; Sec. 18 Sec 19; Sec. 20; Sec. 29; Sec. 30; Sec. 31; Sec. 32.
T32N, R23E, Sec. 1; Sec. 2; Sec. 11; Sec. 12.
T32N, R23E, Sec. 5; Sec. 6.

With the exception of the authorized Burning Man Airstrip at the Burning Man event site, the following public lands are *Temporarily Closed to Aircraft Landing, Taking Off, and Taxiing, Except for Authorized (by Burning Man/Black Rock City LLC) and Emergency Aircraft:*

T34N, R25E, Sec. 25; Sec. 26; Sec. 27; Sec 28; Sec. 33; Sec. 34; Sec. 35; Sec. 36.
T33N, R23E, Sec. 23; Sec. 24; Sec. 25; Sec. 26; Sec. 35; Sec. 36.
T33N, R24E, Sec. 1; Sec. 2; Sec. 3; Sec. 4; Sec. 5; Sec. 8; Sec. 9; Sec. 10; Sec. 11; Sec.12; Sec. 14; Sec. 15; Sec. 16; Sec. 17; Sec. 18; Sec 19; Sec. 20; Sec. 21; Sec. 22; Sec. 29; Sec. 30; Sec. 31; Sec. 32.
T33N, R25E, Sec. 1; Sec. 2; Sec. 3; Sec. 4 Sec. 11; Sec. 12;.
T33½N, R24E, Sec. 25; Sec. 26; Sec. 27; Sec. 28; Sec. 33; Sec. 34; Sec. 35; Sec. 36.
T32N, R23E, Sec. 1; Sec. 2; Sec. 5; Sec. 6; Sec. 11; Sec. 12.

With the exception the authorized vehicles, emergency vehicles and "Art Cars" the following public lands are *Temporarily Closed to Vehicle Travel:*

T33N, R23E, Sec. 36, E½ E½.

T33N, R24E, Sec. 19, S½; Sec. 30; Sec. 31 N½.
T32N, R23E, Sec. 1, NE¼.

The lands involved are located in the Mount Diablo Meridian and located north of Gerlach, Nevada. A map showing the temporary closure area is available from the following BLM office: Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445, (775) 623–1500. BLM contact person is Michael Bilbo at above address and phone. Any person who fails to comply with this closure notice issued under 43 CFR, Part 8364, may be subject to the penalties provided for in 43 CFR 8360.0–7.

Dated: August 13, 1999.

Don Tiedhaara,

Acting Field Office Manager, Winnemucca.

[FR Doc. 99–21676 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 125–6334 08; GP 9–0293; OR 1170 and 6840]

Revised Closure Notice for Public Lands on the North Spit of Coos Bay

AGENCY: Bureau of Land Management, U.S. Department of Interior.

ACTION: Notice.

SUMMARY: Pursuant to 43 CFR 3864.1, the emergency closure of access to public lands and roads administered by the Bureau of Land Management on North Spit is being rescinded for all of the area except the following snowy plover habitat areas: the inland snowy plover habitat areas (approx. 70 acres) in T. 25 S., R. 14 W. Sections 23, 24 and 26 and the habitat areas on the ocean beach (approx. 78 acres) in T. 25 S., R. 14 W. Sections 12, 13, 23, 24 and 26 and T. 25 S., R. 13 W. Sections 6 and 7.

Penalties: Under 43 CFR 8360.0–7 any person who fails to comply with the provisions of this order may be subject to a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

SUPPLEMENTAL INFORMATION: The lands reopened by this notice are open to access by foot, horse and licensed street legal vehicles only. Access to the lands that remain closed is restricted to authorized personnel only. Some personnel authorized by the Bureau of Land Management, Coos Bay District are exempt from the restrictions.

This restriction is needed for protection of western Snowy Plover nesting habitat for the duration of the nesting season.

This closure order is in accordance with provisions of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579, 90 stat. 2743, 43 U.S.C. 1701) and 43 CFR, Subpart 8364. Because of immediate potential dangers to the western Snowy Plover, a 30 day comment period is inappropriate and the closure is in effect as of the published date.

EFFECTIVE DATE: August 12, 1999. The closure remains in effect until September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Alan Hoffmeister, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, Oregon 97459. Telephone: (541) 756–0100.

Gary Johnson,

Umpqua Field Manager.

[FR Doc. 99–21678 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1150–00; 9–00160–FILM]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council Arcata, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U. S. Bureau of Land Management's Northwest California Resource Advisory Council will hold a field tour and business meeting Thursday and Friday, Sept. 23 and 24, 1999, at the Bureau of Land Management's Arcata Field Office, 1695 Heindon Rd., Arcata, CA. The meeting and tour are open to the public.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Thursday, Sept. 23, in the Arcata Field Office. Discussion items include a status report on recovery from the Lowden Fire, a planning status report on the Payne Ranch acquisition, a status report on a Lake Berryessa management, and reports from the managers of the Ukiah, Redding and Arcata field offices. Time will be set aside at 11 a.m. for public comments. On Friday, Sept. 24, council members will convene at 8 a.m. in the Arcata Field Office and depart for an overview tour at the northern portion of the Headwaters Forest Reserve. Members of the public are welcome on the tour, but they must provide their own transportation. The tour and meeting will conclude at about noon.

FOR ADDITIONAL INFORMATION CONTACT: BLM Ukiah Field Manager Richard Burns at (707) 468–4000.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 99–21694 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW138643]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

August 12, 1999.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW138643 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Registration** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW138643 effective April 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–21677 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–57230]

Notice of Realty Action: Segregation Terminated, Lease for Public Airport

AGENCY: Bureau of Land Management.

ACTION: Segregation terminated, public airport lease.

SUMMARY: The following described public land in Las Vegas, Clark County,

Nevada was segregated on July 23, 1997 for exchange purposes under serial number N–61855. The exchange segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for public airport lease purposes under the provisions of the Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211–213). The lands have been segregated from mineral entry under the Southern Nevada Public Lands Management Act of 1998 (P.L. 105–263). Clark County proposes to use the lands for a public airport.

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E.,
Sec. 10, N½SE¼NE¼SE¼, N½NE¼NE¼SE¼, SE¼SE¼NE¼, S½NE¼SE¼NE¼, S½SE¼NE¼NE¼,
Sec. 11, W½NW¼, NW¼NW¼SW¼, NE¼NW¼SW¼, N½SW¼NW¼SW¼, N½SE¼NW¼SW¼.

Containing approximately 140 acres.

The land is not required for any federal purpose. The lease is consistent with applicable Federal and county land use plans and will help meet the needs of Clark County residents for air transportation. The lease, when issued, will be subject to the provisions of the Airport Lease Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for road purposes which have been granted to Del Webb Corporation by serial number N–62099 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for a placer claim granted to Del Webb Conservation Corp., Brandon C. Prychodnik, Brent S. Tolman, Jason D. Tolman, Ronald L. Tolman by serial number NMC–680996 under the Act of October 21, 1976 (43 U.S.C. 1744).

4. Those rights for a placer claim granted to William R. Butler, Bonnie G. Canter, Eddie G. Lindsey, Shirley B. Lindsey, Jessica D. Miller, Jason S. Smith, Debbie White, Eileen D. Zillman by serial number NMC–705885 under the Act of October 21, 1976 (43 U.S.C. 1744).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a public airport. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public airport.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease until after the classification becomes effective. A public informational meeting will be held on September 9, 1999 between 4 p.m. and 8 p.m. at the Silverton Hotel, Chaparral Room; 3333 Blue Diamond Road, Las Vegas, NV.

Dated: August 16, 1999.

Cheryl A. Ruffridge,

Acting Assistant Field Manager, Las Vegas, NV.

[FR Doc. 99–21640 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–125–06–1430–00; GP9.–0283; OR 53838]

Coos Bay District; Notice of Realty Action: Direct Sale of Public Land in Coos County, OR

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The following land is suitable for direct sales under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 27 S., R. 12 W.,
Sec. 13 Lot 2, containing 0.97 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or a state instrumentally authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered in Coos County, Oregon using the direct sale procedures authorized under 43 CFR 2711.3–3. The parcel will be offered to Enos A. Ralph, who holds a lease on the subject parcel.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. Patents will be issued subject to all valid existing rights and reservations of record.

3. The mineral interests being offered for conveyance have no known mineral values and may be conveyed simultaneously, in accordance with Section 209 of the Federal Land Policy and Management Act. Acceptance of the

direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests. Purchasers must submit a non refundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Linda Petterson, Realty Specialist, Umpqua Field Office, at 1300 Airport Lane, North Bend, Oregon 97459, (Telephone 541 756–0100).

Dated: August 12, 1999.

Neal Middlebrook,

Associate District Manager.

[FR Doc. 99–21679 Filed 8–19–99; 8:45 am]

BILLING CODE 4710–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–125–09–1430–00; GP9.–0284; OR 53839]

Coos Bay District; Notice of Realty Action: Direct Sale of Public Land in Coos County, OR

AGENCY: Bureau of Land Management.

SUMMARY: The following land is suitable for direct sales under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 27 S., R. 11 W.,
Sec. 5 Lot 6 containing 1.82 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or a state instrumentally authorized to Purchasers must be U.S. citizens, 18 years of age or older, a state or a state instrumentally authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered in Coos County, Oregon using the direct sale procedures authorized under 43 CFR 2713.3–3. The parcel will be offered to Leslie N. Crum, who holds a homesite lease on the subject parcel.

The terms, conditions and reservations applicable to the sale are as follows;

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. Patents will be issued subject to all valid existing rights and reservations of record.

3. The mineral interest being offered for conveyance have no known mineral values and may be conveyed simultaneously, in accordance with Section 209 of the Federal Land Policy and Management Act. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests. Purchasers must submit a non refundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Linda Petterson, Realty Specialist, Umpqua Field Office, at 1300 Airport Lane, North Bend, Oregon 97459, (Telephone 541 756–0100).

Dated: August 12, 1999.

Neal Middlebrook,

Associate District Manager.

[FR Doc. 99–21680 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 4, 1999, Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of cocaine (9014), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methyl-3-beta-(4-trimethylstannylphenyl)-tropane-2-carboxylate as a final intermediate for the production of dopascan injection.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 19, 1999.

Dated: August 6, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–21586 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 17,

1999, ISP Freetown Acquisition, Corp., 238 South Main Street, Freetown, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk 2,5-Dimethoxyamphetamine for conversion into a noncontrolled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 19, 1999.

Dated: August 5, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–21587 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 5, 1999, and published in the **Federal Register** on February 26, 1999, (64 FR 9541), Medeva Pharmaceuticals CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

The firm plans to manufacture the listed controlled substances to make finished dosage forms for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Medeva Pharmaceuticals CA, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Medeva Pharmaceuticals CA, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 5, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–21584 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 5, 1999, Morton Grove Pharmaceuticals, Inc., 6451 W. Main Street, Morton Grove, Illinois 60053, made application to the Drug Enforcement Administration to be registered as an importer of codeine (9050), a basic class of controlled substance listed in Schedule II.

The firm plans to import the codeine to produce controlled substances in Schedule III through V.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 20, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 5, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–21588 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Registration

By Notice dated May 14, 1999, and published in the **Federal Register** on May 25, 1999 (64 FR 28214), Research Biochemicals, Limited Partnership, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Ibogaine (7260)	I

Drug	Schedule
Lysergic acid diethylamide (7315).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
Bufotenine (7433)	I
Etonitazene (9624)	I
Methylphenidate (1724)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Thebaine (9333)	II
Levo-alphacetylmethadol (LAAM) (9648).	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances to manufacture laboratory reference standards and neurochemicals.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, Section 823(a) and determined that the registration of Research Biochemicals to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Biochemicals on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 5, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–21585 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #179S2]

Controlled Substances: 1999 Aggregate Production Quota

AGENCY: Drug Enforcement Administration, (DEA), Justice.

ACTION: Final interim notice establishing a revised 1999 aggregate production quota.

SUMMARY: The interim notice 64 FR 29358, June 1, 1999, which revised the 1999 aggregate production quota for secobarbital, a Schedule II controlled substance in the Controlled Substances Act (CSA), is adopted without change.

DATES: This is effective on August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelagated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On June 1, 1999, an interim notice establishing a revised 1999 aggregate production quota for secobarbital was published in the **Federal Register** (64 FR 29358). All interested persons were invited to comment on or before July 1, 1999. No comments or objections were received and the interim notice is adopted without change.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administration hereby establishes the following revised 1999 aggregate production quota for the listed controlled substances, expressed in grams of anhydrous acid:

Basic class	Revised 1999 quota
Secobarbital	1,011,000

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primarily importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Further, this action involves only one basic class of controlled substance. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: August 11, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–21582 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #179R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 1999

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 1999 aggregate production quotas.

SUMMARY: This notice proposes revised 1999 aggregate production quotas for controlled substances in Schedule I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before September 20, 1999.

ADDRESSES: Send comments or objections to the Deputy Administrator,

Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedule I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On December 23, 1998 DEA published a notice of established initial 1999 aggregate production quotas for certain controlled substances in Schedules I and II (63 FR 71160). This notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 1999 as provided for in Section 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 1999 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 1999 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 1998 year-end inventories, 1998 disposition data submitted by quota applicants, estimates of the medical needs of the United States, and other information available to the DEA. In light of potential Y2K concerns, the DEA has included 50 percent inventories for each basic class of controlled substance manufactured for legitimate medical use. Therefore, the aggregate production quotas proposed in this notice may be significantly higher than usual.

Proposed Aggregate Production Quotas

Under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes the following revised 1999 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic class	Previously established initial 1999 quotas	Proposed revised 1999 quotas
SCHEDULE I		
2,5-Dimethoxyamphetamine	10,501,000	10,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
3-Methylfentanyl	14	14
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	20	20
3,4-Methylenedioxy-N-ethylamphetamine (MDEA	30	30
3,4-Methylenedioxymethamphetamine (MDMA)	20	20
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2	2
4-Methoxyamphetamine	101,000	101,000
4-Methylaminorex	3	3
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	7	7
Allylprodine	2	2
Alpha-acetylmethadol	7	7
Alpha-ethyltryptamine	2	2
Alphameprodine	2	2
Alpha-methadol	2	2
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Alphaprodine	2	2
Aminorex	7	8
Benzylmorphine	2	2
Beta-acetylmethadol	2	2
Beta-hydroxy-3-methylfentanyl	2	2
Beta-hydroxyfentanyl	2	2
Betameprodine	2	2
Beta-methadol	2	2
Betaprodine	2	2
Bufotenine	2	2
Cathinone	9	9
Codeine-N-oxide	2	2
Diethyltryptamine	3	3
Difenoxin	9,000	9,000
Dihydromorphine	7	8

Basic class	Previously established initial 1999 quotas	Proposed revised 1999 quotas
Dimethyltryptamine	3	4
Heroin	2	2
Hydroxypethidine	2	2
Lysergic acid diethylamide (LSD)	57	57
Mescaline	8	8
Methaqualone	17	17
Methcathinone	11	11
Morphine-N-oxide	2	2
N,N-Dimethylamphetamine	7	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5	5
N-Ethylamphetamine	7	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	4	4
Noracymethadol	2	2
Norlevorphanol	2	2
Normethadone	7	7
Normorphine	7	7
Para-fluorofentanyl	2	2
Pholcodine	2	2
Propiram	415,000	415,000
Psilocin	2	2
Psilocybin	2	2
Tetrahydrocannabinols	52,000	76,000
Thiofentanyl	2	2
Trimeperidine	2	2
SCHEDULE II		
1-Phenylcyclohexylamine	12	12
1-Piperidinocyclohexanecarbonitrile (PCC)	12	12
Alfentanil	3,800	3,800
Amobarbital	12	12
Amphetamine	5,740,000	9,007,000
Cocaine	251,000	251,000
Codeine (for sale)	67,332,000	58,248,000
Codeine (for conversion)	22,950,000	45,780,000
Desoxyephedrine—942,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product and 113,000 grams for methamphetamine	697,000	1,055,000
Dextropropoxyphene	109,500,000	112,985,000
Dihydrocodeine	121,000	268,000
Diphenoxylate	846,000	846,000
Ecgonine	151,000	151,000
Ethylmorphine	13	13
Fentanyl	234,000	269,000
Glutethimide	2	2
Hydrocodone (for sale)	16,314,000	20,208,000
Hydrocodone (for conversion)	6,000,000	12,100,000
Hydromorphone	856,000	856,000
Isomethadone	12	12
Levo-alphacetylmethadol (LAAM)	201,000	201,000
Levomethorphan	2	2
Levorphanol	15,000	15,000
Meperidine	10,294,000	11,207,000
Metazocine	0	1
Methadone (for sale)	4,992,000	8,347,000
Methadone (for conversion)	267,000	267,000
Methadone Intermediate	7,223,000	9,503,000
Methamphetamine (for conversion)	723,000	1,522,000
Methylphenidate	14,442,000	14,957,000
Morphine (for sale)	12,445,000	12,445,000
Morphine (for conversion)	82,300,000	94,900,000
Nabilone	2	2
Noroxymorphone (for sale)	25,000	25,000
Noroxymorphone (for conversion)	2,067,000	2,067,000
Opium	640,000	640,000
Oxycodone (for sale)	15,120,000	18,517,000
Oxycodone (for conversion)	106,000	106,000
Oxymorphone	166,000	166,000
Pentobarbital	18,039,000	22,037,000
Phencyclidine	40	40
Phenmetrazine	2	2
Phenylacetone	10	10

Basic class	Previously established initial 1999 quotas	Proposed revised 1999 quotas
Secobarbital	*1,011,000	1,155,000
Sufentanil	852	952
Thebaine	22,880,000	31,117,000

*The aggregate production quota for secobarbital was revised from 25 grams to 1,011,000 grams in an interim notice 64 FR 29358 (June 1, 1999).

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

Comments and Y2K Issues

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

The DEA is aware of concerns regarding a potential increase in sales due to customer stockpiling for Y2K. In response to this issue, the DEA has adjusted the aggregate production quotas to include the allowable maximum of 50 percent inventory for those controlled substances manufactured for medical use. Additional Y2K concerns should be included when commenting or objecting to this proposal.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that the notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must by considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: August 11, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–21583 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1241]

RIN 1121–ZB75

Deadline Extension for the National Institute of Justice Solicitation for Forensic DNA Research and Development

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of deadline extension.

SUMMARY: Announcement of the extension of the deadline for the National Institute of Justice Solicitation for Forensic DNA Research and Development.

DATES: The revised due date for receipt of proposals is 4 p.m. (EST), September 15, 1999. (The previous deadline was August 30, 1999 as noted in the **Federal Register** announcement at 64 FR 41138.) NIJ has extended the deadline to allow additional time for proposals to be developed.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

Background

The intent of this solicitation is to stimulate all areas of research or development that can enhance or increase the capacity, capability, applicability, and/or reliability of DNA for forensic uses. Proposals that build or improve upon existing technologies, methods, or approaches as well as proposals based on new or novel technologies, methods, or approaches are encouraged to meet the goal of maximizing the value of DNA evidence to the criminal justice system.

In order to most effectively and efficiently use DNA to its maximum value for the criminal justice system, the forensic DNA community, now comprised of more than 150 public and private crime laboratories, will need faster, less costly, and fundamentally reliable technical tools and innovations that can be appropriately validated, quality-controlled, and quality-assured for forensic use. Research demonstrating the reliability of existing or future methods is also encouraged. Emphasis is placed on developing methods or technologies that address the needs of databasing for CODIS application and/or methods that can be used for the analysis of crime scene samples, which are often limited in quality and quantity.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of the Solicitation for Forensic DNA Research & Development

(refer to document no. SL000369). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Dated: August 16, 1999.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–21631 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1244]

RIN 1121–ZB78

Announcement of the Availability of the National Institute of Justice Solicitation to Municipalities to Become an Arrestee Drug Abuse Monitoring (ADAM) Site

AGENCY: Office of Justice Programs, National Institute of Justice (NIJ), Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Solicitation to Municipalities to Become an Arrestee Drug Abuse Monitoring (ADAM) Site."

DATES: Proposals must be received by close of business September 29, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is expanding its Arrestee Drug Abuse Monitoring (ADAM) program by enrolling 15 new sites in Fiscal Year 2000. The ADAM system consists of 35 sites with an expected total of 75 sites by FY 2001. Under this solicitation municipalities can apply to be added to the ADAM network. Eligible municipalities have been determined based on population size, or include the largest city in States with smaller populations. NIJ will select 15 new sites with an expectation that these municipalities will begin operating as ADAM sites during FY 2000, subject to the upcoming Congressional budget appropriations. Sites not selected in FY 2000 will continue to be eligible for enrollment in the subsequent year until the anticipated total of 75 ADAM sites has been reached. This solicitation is applicable only to the eligible municipalities who wish to apply for one of the 15 new ADAM sites to be added during FY 2000.

After new sites have been selected, NIJ will issue a separate solicitation for parties interested in receiving funds to manage and operate ADAM in the selected municipalities. Through this to-be-released solicitation, local data collection teams will compete against each other for the funding to manage data collection in the 15 new ADAM sites.

Eligible sites include Mobile, Mobile County, AL; Little Rock, Grant County, AK; Anaheim, Orange County, CA; Bakersfield, Kern County, CA; Fremont, Alameda County, CA; Fresno, Fresno County, CA; Oakland, Alameda County, CA; Riverside, Riverside County, CA; San Francisco, San Francisco County (S. San Fran in San Mateo Co.), CA; Santa Ana, Orange County, CA; Stockton, San Joaquin County, CA; Aurora, Arapahoe County, CO; Colorado Springs, El Paso County, CO; Bridgeport, Fairfield County, CT; Wilmington, New Castle County, DE; Jacksonville, Clay County (Jacksonville Beach in Duval Co.), FL; St Petersburg, Pinellas County, FL; Tampa, Hillsborough County, FL; Boise, Ada County, ID; Wichita, Sedgwick County, KS; Lexington-Fayette, Fayette County, KY; Louisville, Jefferson County, KY; Baton Rouge, Baton Rouge County (Parish), LA; Portland, Cumberland County (North Portland in Penobscot Co.), ME; Baltimore City, Baltimore County, MD; Boston, Suffolk County, MS; St Paul, Ramsey County (South & West St. Paul in Dakota Co.), MN; Jackson, Hinds County, MS; Kansas City, Jackson County, MO; Billings, Yellowstone County, MT; Lincoln, Lancaster County, NE; Manchester, Hillsborough County, NH; Jersey City, Hudson County, NJ; Newark, Wayne County (East Newark in Hudson Co.), NJ; Albany, Albany County, NY; Buffalo, Erie County, NY; Rochester, Monroe County, NY; Charlotte, Mecklenburg County, NC; Raleigh, Durham County, NC; Fargo, Cass County, ND; Akron, Summit County, OH; Cincinnati, Hamilton County, OH; Columbus, Franklin County, OH; Toledo, Lucas County, OH; Tulsa, Creek County, OK; Pittsburgh, Allegheny County, PA; San Juan, municipality also includes Santurce, Hato Rey, and Río Piedras; Puerto Rico ; Providence, Providence County, RI; Columbia, Richland County (West Columbia in Lexington Co.), SC; Sioux Falls, Minnehaha; Memphis, Shelby County, TN; Nashville-Davidson, Davidson County, TN; Arlington, Tarrant County, TX; Austin, Travis County, TX; Corpus Christi, Nueces County, TX; El Paso, El Paso County, TX; Fort Worth, Tarrant County, TX; Plano, Collin County, TX; Burlington, Chittenden County, VT; Norfolk, Norfolk County, VA; Virginia Beach, Virginia Beach County, VA ; Charleston, Kanawha County, WV; Madison, Dane County, WI; Milwaukee, Milwaukee County, WI; Cheyenne, Laramie County, WY;

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation to Municipalities to Become an Arrestee Drug Abuse Monitoring (ADAM) Site" (refer to document no. SL000375). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

To learn more about the ADAM program, visit the website at http://www.adam-nij.net or contact Nora Fitzgerald at 202–305–1547 or Christine Crossland at 202–616–5166.

Dated: August 16, 1999.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–21632 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1245]

RIN 1121–ZB79

Announcement of the Availability of the National Institute of Justice "NIJ Science and Technology Solicitation"

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of NIJ Science and Technology Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "NIJ Science and Technology Solicitation."

DATES: Proposals must be received by 4:00 p.m. EST on October 7, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

Background

For fiscal year 2000, NIJ will accept proposals for technology-related awards under this solicitation, and several months later it will accept behavioral and social science-related awards under a separate solicitation. Therefore, it is important that you should determine whether your proposals should be reviewed by a peer review panel composed of technologists and criminal justice practitioners under this solicitation or by a peer review panel composed of social scientists and criminal justice practitioners under the social science open solicitation.

This solicitation is open to a wide variety of proposals in order to achieve a balanced portfolio of product development, implementation, and evaluation projects. This solicitation focuses on near-term (one to three years) development and implementation projects.

To assist in obtaining information that may be helpful in submitting a proposal, you are encouraged to use the resources and expertise of the NIJ National Law Enforcement and Corrections Technology Center (NLECTC) located in Rockville, Maryland; and the regional NLECTCs located in Rome, New York; Charleston, South Carolina; Denver, Colorado; El Segundo, California; and the Border Research and Technology Center (BRTC) located in San Diego, California. More information about the NLECTC system is available on the Internet at <http://www.nlectc.org>.

Keep in mind that cost considerations of resulting technology development products are a major concern. Most law enforcement and corrections agencies have limited financial resources to apply to the evaluation, development, implementation, or purchase of technology. This is especially true for State and local agencies. These and related factors all influence the timeliness and the degree to which new technologies are accepted by administrators. Please consider the questions below when determining the usefulness of your proposal. In your proposal, you should incorporate information that addresses the general themes posed by these questions; however, it is not necessary to answer explicitly each question. How important is the new technology to law enforcement and corrections officers? What will be its impact on policing or correctional organizational structure and personnel requirements? How many units will be needed? What are the hidden costs (for example, new computers may require additional data input personnel, or highly specialized and complex equipment may incur expensive maintenance costs)? What, if any, are the net savings in labor or other costs? How much training is required to use and maintain the technology? How will the courts view the technology—in terms of liability or interference with personal freedom? What constitutional or other legal issues may arise from utilization of the technology? What is the breakdown of tasks with resource expenditures for each task?

To learn more about projects currently funded by NIJ, on the Internet go to http://www.nlectc.org/techproj/ or call NIJ's Office of Science and Technology at 202–307–0645.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "NIJ Science and Technology Solicitation" (refer to document no. SL000374). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Dated: August 16, 1999.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–21633 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 16, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202–219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Representative Payee Report (CM–623); Representative Payee Report (CM–623S); Physician's/Medical Officer's Report (CM–787).

OMB Number: 1215–0173.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Number of Respondents: 3,098.

Form	Respondents	Frequency	Per response (minutes)	Burden hours
CM–623	2,275	Annually	90 min.	3,413
CM–623S	600	Annually	10 min.	100
CM–787	223	Once	15 min.	56

Total Burden Hours: 3,569.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Representative Payee Report (CM–623) and the Representative Payee Report, Short Form (CM–623S) are used to ensure that benefits paid to a representative are being used for the beneficiary's well-being. The Physician's/Medical Officer's Report (CM–787) is used to determine the beneficiary's capability to manage monthly Black Lung benefits.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–21697 Filed 8–19–99; 8:45 am]

BILLING CODE 4510–22–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 16, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., Chapter 35). A copy of each individual ICR, with applicable supporting documentations, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219–5096, ext. 143), or by e-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: FECA Medical Report Forms.

OMB Number: 1215–0103.

Frequency: As needed.

Affected Public: Federal Government; Individuals or households; business or other for-profit.

Number of Respondents: 302,628.

Forms	Respondents	Per response	Burden hours
CA–7	400	13	87
CA–16b	130,000	5	10,833
CA–17b	60,000	5	5,000
CA–20	80,000	5	6,667
CA–1090	325	5	27
CA–1303	3,000	20	1,000
CA–1305	10	20	3
CA–1306	3	10	.5
CA–1314	125	20	42
CA–1316	15	10	2.5
CA–1331	250	5	21
CA–1332	500	30	250
CA–1336	1,000	5	83
OWCP–5a	7,000	15	1,750
OWCP–5b	5,000	15	1,250
OWCP–5c	15,000	15	3,750

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $109.

Description: These forms are used filing claims for wage loss or permanent impairment due to a Federal employment related injury, and to obtain necessary medical documentation to determine whether a claimant is entitled to benefits under the Federal Employees Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–21698 Filed 8–19–99; 8:45 am]

BILLING CODE 4510–22–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276(a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determinations Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

NJ990006—See NJ990001
NJ990010—See NJ990001
NJ990011—See NJ990005
NJ990012—See NJ990005
NJ990013—See NJ990005
NJ990014—See NJ990001
NJ990015—See NJ990005
NJ990016—See NJ990005

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented time notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled " General Wage Determinations Issued Under the Davis—Bacon and Related Acts" modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine:
ME990022 (Mar. 12, 1999)
ME990037 (Mar. 12, 1999)
New Jersey:
NJ990001 (Mar. 12, 1999)
NJ990002 (Mar. 12, 1999)
NJ990003 (Mar. 12, 1999)
NJ990004 (Mar. 12, 1999)
NJ990005 (Mar. 12, 1999)
NJ990007 (Mar. 12, 1999)
New York:
NY990002 (Mar. 12, 1999)
NY990003 (Mar. 12, 1999)
NY990004 (Mar. 12, 1999)
NY990005 (Mar. 12, 1999)
NY990008 (Mar. 12, 1999)
NY990010 (Mar. 12, 1999)
NY990013 (Mar. 12, 1999)
NY990014 (Mar. 12, 1999)
NY990015 (Mar. 12, 1999)
NY990016 (Mar. 12, 1999)
NY990018 (Mar. 12, 1999)
NY990033 (Mar. 12, 1999)
NY990038 (Mar. 12, 1999)
NY990040 (Mar. 12, 1999)
NY990041 (Mar. 12, 1999)
NY990045 (Mar. 12, 1999)
NY990048 (Mar. 12, 1999)
NY990049 (Mar. 12, 1999)
NY990072 (Mar. 12, 1999)
NY990074 (Mar. 12, 1999)

Volume II

Maryland:
MD990002 (Mar. 12, 1999)
Pennsylvania:
PA990005 (Mar. 12, 1999)
PA990014 (Mar. 12, 1999)
PA990025 (Mar. 12, 1999)
PA990026 (Mar. 12, 1999)
PA990030 (Mar. 12, 1999)
PA990031 (Mar. 12, 1999)
West Virginia:
WV990002 (Mar. 12, 1999)
WV990003 (Mar. 12, 1999)
WV990006 (Mar. 12, 1999)

Volume III

Florida:
FL990015 (Mar. 12, 1999)
FL990017 (Mar. 12, 1999)

Volume IV

Illinois:
IL990001 (Mar. 12, 1999)
IL990002 (Mar. 12, 1999)
IL990003 (Mar. 12, 1999)
IL990006 (Mar. 12, 1999)
IL990007 (Mar. 12, 1999)
IL990008 (Mar. 12, 1999)
IL990009 (Mar. 12, 1999)
IL990011 (Mar. 12, 1999)
IL990013 (Mar. 12, 1999)
IL990016 (Mar. 12, 1999)
IL990017 (Mar. 12, 1999)
IL990023 (Mar. 12, 1999)
IL990025 (Mar. 12, 1999)
IL990040 (Mar. 12, 1999)
IL990048 (Mar. 12, 1999)
IL990049 (Mar. 12, 1999)
Wisconsin:
WI990014 (Mar. 12, 1999)
WI990018 (Mar. 12, 1999)
WI990032 (Mar. 12, 1999)

Volume V

Arkansas:
AR990008 (Mar. 12, 1999)
Missouri:
MO990001 (Mar. 12, 1999)
MO990002 (Mar. 12, 1999)
MO990003 (Mar. 12, 1999)
MO990005 (Mar. 12, 1999)
MO990006 (Mar. 12, 1999)
MO990007 (Mar. 12, 1999)
MO990008 (Mar. 12, 1999)
MO990009 (Mar. 12, 1999)
MO990010 (Mar. 12, 1999)
MO990011 (Mar. 12, 1999)
MO990012 (Mar. 12, 1999)
MO990013 (Mar. 12, 1999)
MO990041 (Mar. 12, 1999)
MO990043 (Mar. 12, 1999)
MO990047 (Mar. 12, 1999)
MO990048 (Mar. 12, 1999)
MO990049 (Mar. 12, 1999)
MO990050 (Mar. 12, 1999)
MO990051 (Mar. 12, 1999)
MO990052 (Mar. 12, 1999)
MO990056 (Mar. 12, 1999)
MO990057 (Mar. 12, 1999)
MO990058 (Mar. 12, 1999)
MO990060 (Mar. 12, 1999)
MO990064 (Mar. 12, 1999)
MO990065 (Mar. 12, 1999)
MO990067 (Mar. 12, 1999)
MO990068 (Mar. 12, 1999)
MO990069 (Mar. 12, 1999)
MO990070 (Mar. 12, 1999)
MO990071 (Mar. 12, 1999)
MO990072 (Mar. 12, 1999)
Texas:
TX990007 (Mar. 12, 1999)
TX990033 (Mar. 12, 1999)
TX990034 (Mar. 12, 1999)
TX990037 (Mar. 12, 1999)
TX990060 (Mar. 12, 1999)

Volume VI

Alaska:
AK990001 (Mar. 12, 1999)
AK990002 (Mar. 12, 1999)
AK990006 (Mar. 12, 1999)
Colorado:
CO990001 (Mar. 12, 1999)
CO990004 (Mar. 12, 1999)
CO990005 (Mar. 12, 1999)
CO990006 (Mar. 12, 1999)
CO990007 (Mar. 12, 1999)
CO990008 (Mar. 12, 1999)
CO990009 (Mar. 12, 1999)
CO990010 (Mar. 12, 1999)
CO990011 (Mar. 12, 1999)
CO990016 (Mar. 12, 1999)
CO990018 (Mar. 12, 1999)
CO990020 (Mar. 12, 1999)
CO990021 (Mar. 12, 1999)
CO990023 (Mar. 12, 1999)
CO990024 (Mar. 12, 1999)
CO990025 (Mar. 12, 1999)
Idaho:
ID990003 (Mar. 12, 1999)
ID990004 (Mar. 12, 1999)
Oregon:
OR990001 (Mar. 12, 1999)
OR990004 (Mar. 12, 1999)
OR990017 (Mar. 12, 1999)

Volume VII:

California:
CA990001 (Mar. 12, 1999)
CA990002 (Mar. 12, 1999)
CA990005 (Mar. 12, 1999)
CA990007 (Mar. 12, 1999)
CA990009 (Mar. 12, 1999)
CA990027 (Mar. 12, 1999)
CA990028 (Mar. 12, 1999)
CA990029 (Mar. 12, 1999)
CA990030 (Mar. 12, 1999)
CA990031 (Mar. 12, 1999)
CA990032 (Mar. 12, 1999)
CA990033 (Mar. 12, 1999)
CA990034 (Mar. 12, 1999)
CA990035 (Mar. 12, 1999)
CA990036 (Mar. 12, 1999)
CA990037 (Mar. 12, 1999)
CA990038 (Mar. 12, 1999)
CA990039 (Mar. 12, 1999)
CA990040 (Mar. 12, 1999)
CA990041 (Mar. 12, 1999)
Hawaii:
HI990001 (Mar. 12, 1999)
Nevada:
NV990001 (Mar. 12, 1999)
NV990003 (Mar. 12, 1999)
NV990004 (Mar. 12, 1999)
NV990005 (Mar. 12, 1999)
NV990007 (Mar. 12, 1999)
NV990009 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 13th day of August, 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–21403 Filed 8–19–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Operator Dust Data Cards

ACTION: Notice.

SUMMARY: The Department of labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Mine Operator Dust Data Cards. MSHA is particularly interested in comments which:

• evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before October 19, 1999.

ADDRESSES: Send comments to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy.

Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at TOMalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 202(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 842, and at 30 CFR Parts 70 and 71, and 90 require coal mine operators to continuously maintain an average concentration of respirable coal mine dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air on each shift to prevent overexposure by miners. Regulations promulgated under the Mine Act further require the mine operator during each bimonthly period to collect and submit dust samples to MSHA for analysis to determine compliance with the standards, along with reporting certain information to MSHA on a dust data card that accompanies the dust samples. See 30 CFR 70.209, 71.209, and 90.209.

Specific occupations/work positions, areas of the mine, and miners are designated by regulation or by the mine operator's approved ventilation. These sites are designated for sampling because there is a past history of high respirable dust levels or because a miner has already demonstrated evidence of the early stages of coal workers' pneumoconiosis.

II. Current Actions

This request for a collection of information contains provisions whereby mine operators can continue to verify their compliance with mandatory regulations.

Type of Review: Revision.

Agency: Mine Safety and Health Administration.

Title: Mine Operator Dust Data Card.

OMB Number: 1219–0011.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden hours
70/.209, 71.209, 90.209, Dust Sampling and Monitoring .... hours	1,281	Bi-monthly ...	54,000	.7135	38,532
70.201(c), 71.201(c), 90.201(c) MSHA monitored samples	1,281	On occasion	630	1.0	630
70.202(b), 71.202(b), 90.202(b), Certification	1,281	Annually	230	6.6	1,528
70.220(a), 71.220(a), 90.220(a), Status Change Reports ...	1,281	Annually	3,200	.50	1,600
71,300	1,281	Annually	45	2.98	134
71.301(d) Posting of Plan	1,281	Annually	6	.24	11
90.300	1,281	Annually	6	2.67	16
90.301(d)	1,281	Annually	6	.50	3
Total	.....	.....	58,162	.7299	42,454

Total Burden Cost (capital/startup): $990,887.

Total Burden Cost (operating/maintaining): $2,136,598.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 16, 1999.

Theresa M. O'Malley,

Program Analysis Officer.

[FR Doc. 99–21699 Filed 8–19–99; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public

comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 4, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–98–6, 5 items, 5 temporary items). Civilian personnel records relating to placement considerations, referrals and selections, physically handicapped appointment applications, announcements of positions, and certification of eligibles. This schedule reduces the retention periods for these records, which were previously approved for disposal.

2. Department of Defense, Defense Contract Audit Agency (N1–372–99–1, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing associated with outgoing correspondence signed by the Director or Deputy Director or signed at lower levels and designated as significant. Recordkeeping copies of these files are proposed for permanent retention.

3. Department of Justice, Federal Bureau of Prisons (N1–129–99–16, 3 items, 3 temporary items). Files relating to internal audits of programs, operations, and procedures. Included are correspondence, reports, memoranda, and supporting working papers. Also included are electronic copies of documents created using electronic mail and word processing.

4. Federal Emergency Management Agency, Agency-wide (N1–311–99–5, 2 items, 2 temporary items). Weekly activity reports maintained in offices other than those of the Director and Regional Directors. Also included are electronic copies of documents created using electronic mail and word processing..

5. Federal Emergency Management Agency, Office of the Inspector General (N1–311–99–6, 9 items, 7 temporary items). Files relating to investigations and audits. Included are correspondence, reports, notes, attachments, drafts, and background papers. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant investigative files and final audit reports are proposed for permanent retention.

6. National Imagery and Mapping Agency, Agency-wide (N1–537–98–2), 32 items, 32 temporary items). Paper and electronic records relating to the planning and administration of training programs provided by the agency. Included are records relating to such matters as curriculum development, student selection, class schedules, course evaluations, and student performance. Also included are electronic copies of documents created using electronic mail and word processing.

7. Securities and Exchange Commission, Office of International Affairs (N1–266–99–3, 3 items, 3 temporary items). Financial Issuer Notification System Files documenting notification of the Commission of trading halts or suspensions of certain stocks by both Federal and foreign regulators. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also reduces the retention period for notices in electronic and paper formats issued pursuant to the Securities Act of 1933—Exemption Rule 144, which were previously approved for disposal.

Dated: August 11, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–21644 Filed 8–19–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date: September 15–17, 1999

Time: 8 a.m. to 6 p.m. each day

Place: Room 110, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230

Type of Meeting: Closed.

Contact Person: Dr. Herman B. Zimmerman, Acting Division Director, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1550.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–21708 Filed 8–19–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel; Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208)

Date and Time: September 22–24, 1999 from 8 AM to 5 PM

Place: Laboratori Nazionali del Gran Sasso (LNGS) I–67010 Assergi (L'Aquila) Italy

Type of Meeting: Closed

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1891

Purpose of Meeting: To provide advice and recommendations concerning the development and construction of the Borexino Solar neutrino detector.

Agenda: To hear presentations and write recommendations concerning the development and construction of the Borexino Solar neutrino detector.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–21710 Filed 8–19–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (1160).

Date and Time: October 18, 19, 20, 1999, 8:30 a.m.–5 p.m.

Place: NSF, Room 380, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Contact Persons: Dr. Zoe Eppley or Dr. Kim Williams, Program Directors, Ecological & Evolutionary Physiology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda:

Open Session: October 20th, 1999, 10 a.m. to 11 a.m.—discussion on research trends, opportunities and assessment procedures in Physiology and Ethology.

Closed Session: October 18th, 1999, 8:30 a.m.–5 p.m., October 19th, 1999, 8:30 a.m.–6 p.m., October 20th, 1999, 8:30 a.m. to 10 a.m. and 11 a.m. to 5 p.m. To review and evaluate the Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–21709 Filed 8–19–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (1209)

Date and Time: September 22–24, 8 am–5 pm

Place: National Science Foundation, 4201 Wilson Boulevard Arlington, VA 22230, Room 330

Type of Meeting: Closed

Contact Person: Dr. Scott Borg, Program Manager, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 telephone 703–306–1033

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Geology and Geophysics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–21712 Filed 8–19–99; 8:45 am]

BILLING CODE 7555–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees. The Commission will also hold its deliberative meeting to consider whether to implement a supply management program.

DATES: The meeting is scheduled for 10:00 a.m. on Wednesday, September 1, 1999.

ADDRESSES: The meeting will be held at the Holiday Inn, Capitol Room, 172 North Main Street, Concord, New Hampshire (Exit 14 off I–93).

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: August 16, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–21642 Filed 8–19–99; 8:45 am]

BILLING CODE 1600–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41742; File No. SR–CBOE–99–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Crossing Index Options Orders

August 13, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rule governing the crossing of index option orders of 500 contracts or more by brokers, to give the firm from which an order originates a participation right in trades that are proposed to be crossed in certain circumstances. The text of the proposed rule change is set forth below. Additions are italicized.

* * * * *

Chicago Board Options Exchange, Inc.

Rules

* * * * *

Chapter VI—Doing Business on the Exchange Floor

Section D: Floor Brokers

* * * * *

"Crossing" Orders

RULE 6.74.

(a)–(c)[3] No change.

(e)(i) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, when a Floor Broker holds an index option order for 500 or more contracts ("original order"), the Floor Broker is entitled to cross 20% of the order with a facilitation order of the originating firm (as defined in paragraph (d)) after requesting bids and offers for such option series, if the order is traded between the best bid and offer given by the crowd in response to the broker's initial request for a market.

(ii) In determining whether an order satisfies the 500 contract requirement, any multi-part or spread order must contain one leg alone which is for 500 contracts or more.

(iii) If the originating firm is also the Designated Primary Market-Maker ("DPM") for the particular class of options to which the order relates, then the DPM is not entitled to the DPM guaranteed participation rate.

(iv) The appropriate Floor Procedure Committee may exempt a particular option class from the application of this paragraph.

* * * Interpretations and Policies

No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to add a new paragraph (e) to CBOE Rule 6.74, *"Crossing" Orders*, to give a firm that is holding an index option order for a public customer the right to participate on the order through a facilitation order in certain circumstances.[4] To take advantage of the new provision, the particular index option order must be for 500 or more contracts. For a multi-part or spread order, at least one leg of the order alone must be for 500 contracts or more.

Paragraph (a) of CBOE Rule 6.74 sets forth the procedures to be followed currently by a floor broker to cross customer orders. Paragraph (b) of CBOE Rule 6.74 sets forth the procedures to be followed by a floor broker to facilitate a customer order. In both cases, market-makers in the trading crowd currently are given the opportunity to accept a floor broker's better bid or offer for orders that he intends to cross or facilitate before the floor broker can cross or facilitate the orders himself. Under current rules, therefore, if the market-makers are willing to take the entire order the floor broker will not be able to cross or facilitate any part of the order.

Generally, new paragraph (e) will provide that, in those circumstances where a floor broker has an index option order for a public customer for 500 contracts or more that he is holding to execute ("original order"), that floor broker will have priority to cross 20% of that original order against a firm proprietary order of the originating firm (*i.e.*, faciliation order), if the cross is done at a price between the best bid and offer quoted by the crowd (*i.e.*, at a price that improves the market provided by the market-makers) in response to the broker's initial request for a market. This is comparable to the 25% participation right given under certain circumstances to a firm bringing a FLEX option order to the floor pursuant to CBOE Rule 24A.5(e)(iii).

In the event that the originating firm is also the Designated Primary Market-Maker ("DPM") for that option class and the floor broker takes advantage of the participation right provided by proposed new paragraph (e) of CBOE Rule 6.74, then the DPM shall not also be entitled to the guaranteed participation rate provided by paragraph (c)(7) of CBOE Rule 8.80 for that particular trade.

The Rule will also provide that the appropriate Floor Procedure Committee may exempt a particular option class from the application of this paragraph. The Exchange believes that the effect of this liberalization of its crossing rule will be to provide market-makers with an additional incentive to quote tighter markets in response to a request for quotes, and, at the same time, it will encourage member firms to bring their

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Paragraph (d) of Rule 6.74 was proposed to be added in SR–CBOE–99–10, which is currently pending before the Commission. *See* Securities Exchange Act Release No. 41609 (July 8, 1999), 64 FR 38494 (July 16, 1999).

[4] The Exchange has proposed to add a paragraph (d) to Rule 6.74, to provide for a participation right for crossing equity option orders, in SR–CBOE–99–10. That filing is pending before the Commission. *See* Securities Exchange Act Release No. 41609 (July 8, 1999), 64 FR 38494 (July 16, 1999). *See also* Securities Exchange Act Release No. 41610 (July 8, 1999), 64 FR 38495 (July 16, 1999) (SR–CBOR–99–07) (a proposed rule change to permit "cross-only" contingency orders).

order flow to the CBOE. The Rule will also provide floor brokers with an incentive to trade at a price between the quoted bid and ask. The benefits of the tighter markets will inure to the customers. In addition, by establishing a minimum participation right, the CBOE expects that the Rule will provide firms with the ability to participate on these trades in a more efficient manner than is available today.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[5] of the Act in that it is designed to remove impediments to a free and open market and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the Provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the CBOE. All submissions should refer to File No. SR–CBOE–99–35 and should be submitted by September 10, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21656 Filed 8–19–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41737; File No. SR–Phlx–99–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Allow the Options Committee to Adopt Policies Affecting Location of Members in the Trading Crowd on a Crowd-by-Crowd Basis

August 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Commentary .17 to Phlx Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, allowing the Options Committee to adopt policies affecting the location of members in the trading crowd on a crowd-by-crowd basis in order to ensure fair and orderly markets. The text of the proposed Rule is provided below. The new language is italicized.

Obligations and Restrictions Applicable to Specialists and Registered Options Traders Rule 1014

Commentary .01–.16. No change.

Commentary .17.

In the interest of fair and orderly markets, the Options Committee may adopt policies affecting the location of members in the trading crowd on a crowd-by-crowd basis.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange's By-laws, the Options Committee has the authority to make or recommend the adoption of, and administer such rules as it may deem necessary for the convenient and orderly transaction of business upon the equity and index options trading floor.[3] The proposal will give the Options Committee express authority to adopt policies and implement those policies on an expedient basis to ensure convenient and orderly transaction of business upon the equity and index options trading floor. The Exchange also believes that this proposal provides the Options Committee and the trading crowd with flexibility to change member location policies in trading crowds to adapt to changing technological advances, which may call for locating members in specific areas or rethinking traditional arrangements.

The proposed rule will allow the Options Committee to adopt policies

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx By-law Article 10–19.

regarding member location on a crowd-by-crowd basis, specific to the trading crowd in question. For example, the Options Committee may adopt a policy requiring floor brokers, for a specific series, to stand in the area where the AUTO–X[4] screens for that series are located. Thus, under the proposed rule, the Options Committee may tailor a policy to specific market conditions and readdress the situation, periodically updating the policy where appropriate. The Exchange will give the members of the trading crowd and the options floor one day's notice of the Options Committee's decision prior to implementation of the policy in that particular trading crowd.[5] The decision may be appealed to the Board of Governors pursuant to By-law Section 11–1.

The Exchange believes that such a rule is necessary because changes in technology and space reconfigurations will continue to affect how business is conducted and where members in the trading crowds are situated. The Exchange also believes that adopting policies concerning members' personnel and the area accessing a trading crowd would be covered under the proposed rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act and, in particular, with Section 6(b)(5) of the Act[6] in that it promotes just and equitable principles of trade, facilitates transactions in securities, and removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by granting express authority to the Options Committee to adopt policies to regulate the location of members in the trading crowd to facilitate changes in technology and space reconfigurations occurring on the Options floor.

B. Self-Regulatory Organization's Statement on Burden of Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–99–25, and should be submitted by September 10, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21655 Filed 8–19–99; 8:45 am]

BILLING CODE 8010–01–M

[4] AUTO–X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. *See* Phlx Rule 1080.

[5] The Exchange will provide notice in the form of a memorandum to the trading floor, as well as by posting of a memorandum on an electronic bulletin board. Telephone conversation between Nandita Yagnik, Attorney, Phlx, and Joseph Morra, Attorney, Division of Market Regulation ("Division"), SEC, August 6, 1999. The Exchange notes that a specific policy adopted pursuant to this proposed provision would be reasonably and fairly implied by an existing rule, *i.e.*, new Commentary .17 and therefore, would not be deemed to be a proposed rule change pursuant to Securities Exchange Act Rule 19b–4(d).

[6] 15 U.S.C. 78f(b).

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Request for Emergency Review by the Office of Management and Budget

The Social Security Administration publishes a list of information collection packages that will require clearance by OMB in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection listed below has been submitted to OMB for emergency consideration. OMB approval has been requested by August 31, 1999.

0960–0601. Public Law 105–277 authorizes SSA to conduct a Medicare buy-in demonstration project to evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act. A lack of awareness about the Medicare buy-in programs appears to be one of the major obstacles to enrollments.' Other obstacles to enrollment include the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local Medicaid offices.

SSA began screening respondents voluntarily on March 1, 1999 for potential Medicare Part B buy-in eligibility using a screening guide developed for this purpose. The screening guide will collect information from SSA beneficiaries regarding income, resources, marital status, and living arrangements and also ask questions about their awareness of Medicare Part B buy-in programs. SSA will gather this information to identify and overcome obstacles to Medicare Part B buy-in enrollments and to determine potential eligibility for Medicare Part B benefits.

In addition, SSA will interview a small, random sample of individuals who did not respond to the buy-in outreach publicity in order to understand the impediments to the buy-in enrollment process. These interviews will attempt to ascertain if beneficiaries chose not to participate in the program and, if so, why.

Also, peer assistance screening will be conducted in States that volunteer to participate in this variant screening model. Using a variant screening model will allow SSA to test a buy-in outreach model in which non-governmental peers of the target group provide assistance. In this model, AARP will provide volunteers to, gather data from beneficiaries to determine potential eligibility for buy-in programs and assist them through the screening and application processes. AARP will share results of its efforts with SSA for use in SSA's report on the demonstration program. This effort will provide a comparison to other SSA and Health Care Finance Administration (HCFA) buy-in outreach efforts and provide information for a cost comparison.

	SSA screener	SSA non-responders' survey	AARP's peer assistance screening & summary form
Number of Respondents	24,000	500	20,000
Number of Responses	1	1	1
Frequency of Response	1	1	1
Average Burden Per Response (minutes)	20	20	20
Estimated Annual Burden (hours)	8,000	167	6,667

To receive a copy of the screening guides or the clearance packages, call the SSA Reports Clearance Officer on 410) 965–4145 or write to him at the address listed below. Written comments and recommendations regarding the information collection(s) should be directed to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: August 16, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–21652 Filed 8–19–99; 8:45 am]

BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–164]

WTO Dispute Settlement Proceeding Regarding Argentina—Measures Affecting Imports of Footwear

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of a request by the United States for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO") to examine Argentina's modification of its safeguard measure affecting imports of footwear. In this dispute, the United States alleges that modification of the safeguard measure is inconsistent with Argentina's obligations under the WTO Agreement on Safeguards. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by September 30, 1999, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Argentina Footwear Imports, Dispute, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Marjorie Florestal, Assistant General Counsel at (202) 395–3581 or Kellie Meiman, Director for Mercosur and the Southern Cone at (202) 395–5190.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on May 20, 1999, the United States submitted a request for the establishment of a WTO dispute settlement panel to examine Argentina's modification of its safeguard measure on imports of footwear. The WTO Dispute Settlement Body established a panel for this purpose on July 26, 1999.

Major Issues Raised and Legal Basis of the Complaint

In November 1998, Argentina adopted Resolution 1506, followed by the issuance of Decision 837/98, dated December 4, 1998, which modified Resolution 987/97 and imposed a tariff-rate quota (TRQ) on footwear imports in addition to the high duty rates previously imposed. Moreover, Resolution 1506 postpones any liberalization of the original safeguard duty until February 25, 2000, and liberalizes the TRQ only once during the life of the measure. Argentina has not notified this measure to the Committee on Safeguards.

On March 1, 1999, the United States requested consultations with Argentina with a view to reaching a mutually satisfactory resolution of the matter. Consultations were held on March 24, 1999, in Geneva, but did not lead to a satisfactory resolution.

Based upon information received to date, the United States considers that Resolution 1506 and Decision 837/98 may be inconsistent with the obligations of Argentina under the WTO Agreement on Safeguards, in particular:

(1) Article 7.4, which mandates that safeguard measures over one year in duration be progressively liberalized at regular intervals; and

(2) Article 12, which directs Members immediately to notify the Committee on Safeguards of all safeguard actions and to provide adequate opportunity for prior consultations with Members having substantial export interest in the product concerned.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning

the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; U.S. submissions to the panel in the proceeding; submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute; as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–164 "Argentina—Measures Affecting Imports of Footwear" may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Kenneth P. Freiberg,

Deputy General Counsel.

[FR Doc. 99–21720 Filed 8–19–99; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 99–8–12; Docket OST–1999–5616]

Application of Jetblue Airways Corporation for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding JetBlue Airways Corporation fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 30, 1999.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–1999–5616 and addressed to Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, SW., Rm. PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: August 16, 1999.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–21650 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Establishment of Point of Contact between DOT and Small Business Concerns With Respect to Problems Arising out of Y2K Failures and Compliance With Federal Rules or Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: DOT is establishing a point of contact with small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations. This action is required by the Y2K Act.

DATES: Effective August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Gerardo Franco, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–1902.

SUPPLEMENTARY INFORMATION: On July 20, 1999, the President signed H.R. 775, the "Y2K Act." The Act provides temporary relief for small business concerns that cannot comply with Federal rules and regulations because of Y2K problems. Among other things, it requires agencies to waive civil penalties for a first time violation of any federally enforceable rule by a small business (defined as 50 employees or less) that was due to a Y2K failure when the small business meets the standards for a waiver. An agency shall provide a waiver of civil penalties for a first-time violation, if the small business concern demonstrates, and the agency determines that:

(1) The small business concern previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

(2) A first-time violation occurred as a result of the Y2K failure of the small business concern or other entity, which significantly affected the small business concern's ability to comply with a Federal rule or regulation;

(3) The first-time violation was unavoidable in the face of a Y2K failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property;

(4) Upon identification of a first-time violation, the small business concern initiated reasonable and prompt measures to correct the violation; and

(5) The small business concern submitted notice to the appropriate agency of the first-time violation within a reasonable time not to exceed 5 business days from the time that the small business concern became aware that the first-time violation had occurred.

An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if:

(1) The small business concern's failure to comply with Federal rules or regulations resulted in actual harm, or constitutes or creates an imminent threat to public health, safety, or the environment; or

(2) The small business concern fails to correct the violation not later than 1 month after initial notification to the agency.

This relief does not apply to first-time violations caused by a Y2K failure occurring after December 31, 1999.

The Act requires that by August 19, 1999, each agency must establish a point of contact for small businesses "with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations."

The Department's point of contact for this purpose is Gerardo Franco, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–1902.

Small businesses may also directly contact the Department's constituent agencies about these problems. More information about Y2K and a list of the DOT agencies' small business liaison officers may be obtained through our Office of Small and Disadvantaged Business Utilization's Internet website at: http://osdbuweb.dot.gov.

Rosalind A. Knapp,

Deputy General Counsel.

[FR Doc. 99–21773 Filed 8–18–99; 11:46 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Aberdeen Regional Airport, Aberdeen, SD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Aberdeen Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comment must be received on or before September 20, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Rebecca L. Hupp, Airport Manager, of the Aberdeen Regional Airport at the following address: City of Aberdeen, 123 South Lincoln Street, Aberdeen, SD 57401.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Aberdeen under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Aberdeen Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On August 5, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Aberdeen was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 9, 1999.

The following is a brief overview of the application.

PFC application number: 99–01–C–00–ABR.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: April 30, 2007.

Brief description of proposed project(s): (1) Acquire Snow Removal Equipment (plow truck and sander); (2) Acquire Snow Removal Equipment (snow blower and broom); (3) Rehabilitate Taxiway "D"; (4) Reconstruct Taxiway "B"; (5) Reconstruct and Narrow Runway 13/31; (6) Construct Taxiway "C"; (7) Reconstruct Runway 17/35; (8) Extend Runway 17/35; (9) Acquire Airport Rescue and Fire Fighting Vehicle; (10) Prepare Passenger Facility Charge Application. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Aberdeen Regional Airport.

Issued in Des Plaines, Illinois on August 12, 1999.

Henry Lamberts,

Acting Manager, Planning and Programming Branch Airports Division, Great Lakes Region.

[FR Doc 99–21649 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Clark County, Indiana and Jefferson County, Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of intent.

SUMMARY: The FHWA is issuing this supplemental notice to advise the public of the ongoing scoping process for an environmental impact statement (EIS) for the proposed construction of two new Ohio River crossings, including approaches and connections to existing roadway systems, between Clark County, Indiana, and Jefferson County, Kentucky. The FHWA previously published a notice of intent on March 27, 1998, for the preparation of an EIS for the proposed project. This supplemental notice of intent describes in greater detail the scoping process that FHWA, in cooperation with the Indiana Department of Transportation (INDOT) and the Kentucky Transportation Cabinet (KYTC), is utilizing to identify the significant issues to be addressed in the EIS. The purpose of the scoping process is to obtain the views of other Federal, State, and local agencies and the public regarding the scope of the EIS.

FOR FURTHER INFORMATION CONTACT: Contact: Jesse A. Story, Division Administrator, Federal Highway Administration, John C. Watts Federal Building and U.S. Courthouse, 330 W. Broadway, Frankfort, Kentucky 40601; Telephone: (502) 223–6720; Fax: (502) 223–6735; Pete Wolff, Kentucky Transportation Cabinet, Telephone: (502) 564–4780; Steve Cecil, Indiana Department of Transportation, Telephone: (317) 232–5468; or the project consultant, Community Transportation Solutions, Inc., 10000 Shelbyville Road, Louisville, Kentucky 40223; Telephone: (502) 253–9221 or (800) 513–6691; Fax: (502) 253–9520.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable

communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.nara.*

Background

As stated in FHWA's March 27, 1998 notice of intent (63 FR 14989), the EIS will build upon the work performed previously for the Ohio River Major Investment Study (ORMIS), and will discuss the environmental, social and economic impacts associated with the development of the proposed action and a range of alternatives.

The scoping process for the EIS builds on the extensive public and agency involvement that occurred during ORMIS and the public involvement activities that have occurred since the publication of the March 27, 1998 notice of intent. As part of those activities, a Federal agency finding was held on October 6, 1998, to introduce interested Federal agencies to the proposed project. Two public information meetings were held on December 1–2, 1998, in Jeffersonville, Indiana, and Louisville, Kentucky, respectively, to introduce the public to the proposed project and to answer questions about the EIS process. Briefings for Indiana and Kentucky State agencies were held on February 10 and February 16, 1999, respectively. Two additional public information meetings were held on April 14–15, 1999, in Jeffersonville, Indiana, and Louisville, Kentucky, to allow members of the public to provide comments concerning the scope of, and significant issues to be addressed in, the EIS.

A project web site has been established at *www.kyinbridges.com* and a quarterly newsletter entitled "Riverlink" began publication in November 1998. A mailing list is being maintained of all those members of the public who have requested notice of meetings, hearings, and/or the availability of information and documents concerning the proposed action. Public comments on the project may be submitted in writing, care of Community Transportation Solutions, Inc., 10000 Shelbyville Road, Louisville, KY 40223; via electronic mail at the project web site; by facsimile at 502–253–8520; or by calling the project's toll-free number at 800–513–6691.

In addition to the foregoing opportunities for public participation, scoping meetings will be held in September 1999. A Federal and State agency scoping meeting will occur on September 8, 1999, at 9 a.m., in Room 105, South Wing, Kentucky Fair and Exposition Center, Louisville, Kentucky, to solicit agency input concerning the scope of the EIS. The public is invited to two public meetings, to be held as follows: September 1, 1999, at 6 p.m., at the Jeffersonville High School cafeteria, Clark County, Indiana; and September 2, 1999, at 6 p.m., at the Ballard High School cafeteria, Jefferson County, Kentucky. A scoping document that describes current alternatives under consideration and identifies currently known relevant issues can be obtained from the project web site (*www.kyinbridges.com*) or the project consultant's office.

Additional public and agency meetings are anticipated during the preparation of the EIS to allow the public and agencies to remain informed and provide input into the preparation of the EIS. A Regional Advisory Council and four Area Work Groups have been formed to provide a more formal method of input from affected constituencies within the project area. The Regional Advisory Council will address regional goals relating to transportation, economic development, and quality of life. The Area Work Groups will address issues of concern to specific geographic areas potentially affected by the proposed action and alternatives. All meetings of these groups are open to the public. Information on the membership of these groups and their meeting dates can be obtained from project web site or by contacting Community Transportation Solutions, Inc., at 800–513–6691. Finally, the release of the draft EIS for public comment and the date of the formal public hearing will be announced to the public as such dates are established.

Comments on the scope and significant issues to be addressed in the EIS, or questions concerning this proposed action and the EIS process, may be submitted to the FHWA at the address provided above, or to the project consultant through one of the methods identified above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(23 U.S.C. 315; 49 CFR 1.48)

Issued on August 12, 1999.

Dennis Luhrs,

Assistant Division Administrator, Frankfort, Kentucky.

[FR Doc. 99–21451 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Draft Environmental Impact Statement; Denver, Arapahoe, and Douglas Counties

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, the FHWA and FTA, in cooperation with the Colorado Department of Transportation (CDOT) and the Regional Transportation District (RTD), have jointly prepared a Draft environmental impact statement (EIS) for proposed transportation improvements in the Southeast Corridor of the Denver, Colorado metropolitan area. The project is within the municipalities of Denver, Arapahoe and Douglas Counties. The Draft EIS identifies a preferred alternative and the associated environmental impacts of the proposed preferred alternative. Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing the contact person listed below under Addresses. Public reading copies of the Draft EIS are available at the locations listed under Supplementary Information.

DATES: A 45-day public review period will begin on August 20, 1999 and conclude on October 5, 1999. Written comments on the scope of the alternatives and impacts to be considered must be received by CDOT by October 4, 1999. Public hearings to receive oral comments on the Draft EIS will be held in two locations in Denver. See Supplementary Information section for hearing dates and locations.

ADDRESSES: Written comments on the Draft EIS should be addressed to Jim Bumanglag, Project Manager, Colorado Department of Transportation, Southeast Corridor, 4201 East Arkansas, Denver, CO 80222. Requests for a copy of the Draft EIS may be addressed to Mr. Bumanglag at the address above. Please see Supplementary Information section for a listing of the available documents and formats in which they may be

obtained. Copies of the Draft EIS are also available for public inspection and review. See Supplementary Information section for locations.

FOR FURTHER INFORMATION CONTACT: To request copies of the Draft EIS or for additional information, contact: Mr. Vincent P. Barone, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, CO 80228, Telephone (303) 969–6730, extension 369; or Mr. David L. Beckhouse, FTA Region VIII, 216 16th Street Mall, Suite 650, Denver, CO 80202, Telephone (303) 844–3242

SUPPLEMENTARY INFORMATION:

Hearing Dates and Locations:

- Thursday, September 9, 1999, Most Precious Blood Catholic School, 2250 South Harrison Street, Denver, CO 80237, 4:00 p.m. to 7:00 p.m.
- Thursday, September 16, 1999, Calvary Baptist Church, 6500 East Girard Avenue, Denver, CO 80224, 4:00 p.m. to 7:00 p.m.

Copies of the Draft EIS, supporting technical reports and engineering plan sheets are available in hard copy format for public inspection at:

- CDOT Region 6 Office, 2000 South Holly Street, Denver, CO 80222, 303–757–9372
- CDOT Environmental Services, 1325 S. Colorado Boulevard, Denver, CO 80222, 303–757–9259
- RTD Administrative Services, 1600 Blake Street, Denver, CO 80202, 303–299–2484
- Denver Public Library, 10 West 14th Avenue, Denver, CO 80203, 303–640–6220
- Castlewood Public Library, 6739 South Uinta Street, Denver, CO 80237, 303–771–3197
- Southeast Corridor Project Office (Carter & Burgess), 216 16th Street Mall, Suite 1700, Denver CO 80202, 303–820–5278

The Draft EIS evaluated a No-Action, and a Preliminary Preferred Alternative (including transportation management solutions) in the I–25 Southeast Corridor study limits from Broadway to Lincoln Avenue, which includes I–225 from I–25 to Parker Road, and determined the estimated costs and potential impacts associated with each. CDOT was the local lead agency for the preparation of the Draft EIS. The Draft EIS satisfies the requirements of the 1999 Clean Air Act Amendments.

The FHWA, the FTA, the CDOT, the RTD and other local agencies invite interested individuals, organizations, and Federal, State and local agencies to comment on the identified preferred alternative and associated social, economic, or environmental impacts related to the alternatives.

The preferred alternative is consistent with the Southeast Corridor Major Investment Study completed in July, 1997. It begins at approximately I–25 and Broadway and proceeds south and southeast to Lincoln Avenue following the general alignment of I–25. Also included is a segment along I–225 from I–25 to Parker Road. The preferred alternative excludes any proposed roadway improvements near I–25 from 6th Avenue to approximately the Logan Street crossing including the I–25 interchanges at Alameda, Santa Fe, and Broadway. The primary purpose of the Southeast Corridor Multi-Modal Project is to improve travel time and enhance safety along these two transportation corridors, while causing the least disruption to neighboring residents and businesses. The Southeast Corridor is the most heavily congested corridor on a daily basis, in the State of Colorado. It has been the focus of study for twenty years. These studies have consistently recommended that improvements be made to the highway system and to the provision of public transit.

The alternatives evaluated in the Draft EIS include the following:

1. The No-Action alternative served as the baseline for environmental analysis and consists of the existing transit and highway systems and all projects contained in the federally approved Transportation Improvement Program (TIP) for the Denver metropolitan area.
2. The Preliminary Preferred Alternative generally used the I–25 right-of-way between Broadway and Lincoln Avenue, and the I–225 right-of-way between I–25 and Parker. There are 17.9 miles of double tracked light rail transit beginning at the existing Broadway Station and ending at Lincoln Avenue on the west side of I–25. Light rail will also be added to the median of I–225, from I–25 to the existing Nine Mile Park-n-Ride. There will be thirteen stations. Improvements to I–25 and I–225 consist of one additional lane in each direction on I–25 from Logan Avenue to I–225, two additional lanes in each direction on I–25 from I–225 to C–470/E–470 and one additional lane in each direction on I–225 from I–25 to Yosemite. This alternative is designed to accommodate future transportation needs and includes improvements to the highway, transportation systems management, and pedestrian and bicycle facilities in the study area.

The FHWA, the FTA, the CDOT and the RTD evaluated all significant social, economic, and environmental impacts of the alternatives. The primary areas of examination included transit ridership, the capital outlays needed to construct the recommended alternative, the cost of operating and maintaining facilities created by the project, and the financial requirements on the funding agencies. Environmental and social impacts evaluated in the analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, hazardous material impacts, impacts on cultural and paleontological resources, and noise and vibration impacts. Impacts on natural areas, threatened and endangered species, air and water quality, and groundwater are also covered. Right-of-way impacts are also identified. Impacts were also evaluated both for the construction period and for the long-term period of operation. Measures to mitigate adverse impacts were developed.

In accordance with the Federal Transit Act, as amended, and FHWA and FTA policy, the Draft EIS was prepared with required engineering design studies necessary to complete the document. On the basis of the Draft EIS and the comments received, a preferred alternative will be selected and preparation of the Final EIS and Record of Decision will proceed.

(23 U.S.C. 315; 49 U.S.C. 107, 5301 *et seq.*; 49 CFR 1.48 and 1.51)

Issued on August 12, 1999.

James Daves,

Division Administrator, Federal Highway Administration, Lakewood, Colorado.

Louis F. Mraz, Jr.,

Regional Administrator, Federal Transit Administration, Region VIII, Denver, Colorado.

[FR Doc. 99–21395 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5541; Notice 2]

Vectrix Corporation; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

For the reasons expressed below, we are granting the petition by Vectrix Corporation of New Bedford, Massachusetts, for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The basis of the grant is our finding that "the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably

lower the safety level of that vehicle," 49 U.S.C. Sec. 30113(b)(3)(B)(iii).

We published notice of receipt of the application on April 26, 1999, affording an opportunity for comment (64 FR 20353). No comments were received on this notice.

The following discussion is based on information in Vectrix's application.

Argument Why an Exemption Would Make the Development or Field Evaluation of a Low-Emission Vehicle Easier and Would Not Unreasonably Lower the Safety Level of That Vehicle

The Vectrix Electric Scooter is "powered exclusively by an electric motor which draws current from ten 12-volt lead-acid batteries wired in series," and is a "low-emission vehicle" within the meaning of the statute.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, though the left handlebar is permissible for motor driven cycles (Item 11, Table 1). Vectrix would like to use the left handlebar as the control for the rear brakes of its Electric Scooter whose "peak motor output of 26 horsepower" produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. The Electric Scooter can attain speeds up to 60 mph. The gear ratio of the vehicle is fixed, and "there is no need for the rider to shift gears, as on a standard motorcycle." Because of this, the Electric Scooter "is equipped with neither a clutch nor a clutch lever, and the left hand of the rider is free to operate a brake lever." Vectrix states that it prefers this design, given its focus on European and Asian markets "where rear brake controls for scooters of all horsepower ratings are typically mounted on the left handlebar."

Vectrix argues that a left handlebar rear-brake control "will not 'unreasonably degrade the safety of the vehicle,' compared to a fully compliant vehicle equipped with a right foot, rear brake pedal." It believes that "vehicle safety might be somewhat enhanced with the left hand brake lever, as the hand (bare or gloved) is generally more capable of sensitive modulation of the braking force than the foot." It also argues that the prevalence of this design in other countries attests to the fact that this type of vehicle "can be operated safely."

Vectrix intends to field test "a small fleet" of Electric Scooters, to assess "any weaknesses in the design before production begins in summer, 1999." Requiring it to redesign the Electric Scooter to incorporate a rear brake foot pedal would delay the road test program by six months. While an exemption is in effect, Vectrix would consider whether the U.S. scooter market offered sufficient sales potential to justify creation of a U.S.-specific design incorporating a right foot brake pedal. Alternatively, it might petition NHTSA for rulemaking to "allow the rear brake to be operated by a lever mounted on the left handlebar for all motorcycles designed without a clutch."

The applicant anticipates sales of 600 Electric Scooters while an exemption is in effect.

Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Vectrix believes that an exemption would be in the public interest and consistent with the objectives of traffic safety "because it would maintain an acceptable level of safety while accelerating the advancement of an important new class of vehicles for use by consumers and businesses."

Our Finding That an Exemption Would Make the Development or Field Evaluation of a Low-Emission Vehicle Easier and Would Not Unreasonably Lower the Safety Level of That Vehicle

In adopting Standard No. 123 in April 1972, effective September 1, 1974, we justified standardization of the location and operation of motorcycle controls as a means of minimizing operator error in responding to the motoring environment, saying that "a cyclist, especially the novice and the cyclist who has changed from one make of machine to another, must not hesitate when confronted with an emergency" (37 FR 7207). Therefore, we have traditionally regarded with concern any deviation from standardization.

Recently, we granted a petition similar to that of Vectrix, a request by Aprilia, S.p.A., for a temporary exemption of its Leonardo 150 that would allow the left hand control to serve as the control for the rear brake (64 FR 44264). We had asked Aprilia to comment on our concern that a left hand lever-operated rear brake may contribute to unfamiliarity and thus degrade a rider's overall braking reaction beyond what would exist on a motorcycle with conventionally configured controls. At the request of Aprilia's U.S. sales subsidiary, Aprilia U.S.A. Inc. of Woodstock, Georgia, Carter Engineering of Franklin, Tennessee, prepared a report on "Motorscooter Braking Control Study" (Report No. CE–99-APR–05, May 1999) comparing braking response times of riders using the left hand control of the Leonardo 150 and the right foot control of the Yamaha XC–125 Riva. We placed a copy of this report in Docket No. NHTSA–98–4357. Aprilia U.S.A. observed that "[o]verall, the test subjects' reaction times on the Leonardo were approximately 20% quicker than their reaction times on the conventional motorcycle." Aprilia believed that "a less complex braking arrangement like that of the Leonardo will improve rider reaction in an emergency situation."

We interpreted the report as indicating that a Leonardo rider's braking response is not likely to be degraded by the different placement of the brake controls, thus directly addressing and meeting our safety concern. We believe it is also germane to consider that it applies to Vectrix's Electric Scooter as well. The maximum speed of the Vectrix, 60 mph, is slightly less than that of the Leonardo 150's 65.7 mph. The principal difference between the two vehicles appears to be in the method of propulsion, which we do not deem relevant to the issue of rear brake control location and operation. An exemption would permit Vectrix to test market the 600 vehicles intended.

Accordingly, we find that a temporary exemption would make the development and field evaluation of a low-emission motor vehicle easier, and that such an exemption would not unreasonably lower the safety level of the vehicle.

Our Finding That an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

We find that the entry into the nation's motor vehicle fleet of 600 low-emission motor vehicles is in the public interest. We also find that allowing this limited number of motor vehicles whose rear brake controls allows braking performance at least equivalent to that of a conforming vehicle is consistent with the objectives of motor vehicle safety.

Therefore, Vectrix Corporation is hereby granted NHTSA Temporary Exemption No. 99–10 from the requirement of Item 11, Column 2, Table 1 of 49 CFR 571.123 Standard No. 123, *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control. This exemption applies only to the Electric Scooter and will expire on July 1, 2001.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.)

Issued on: August 12, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–21338 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 633]

Y2K Readiness

AGENCY: Surface Transportation Board.

ACTION: Y2K Notice.

SUMMARY: The Surface Transportation Board (Board) is opening this docket for railroads and other interested parties to inform the Board of any anticipated Y2K problems within the railroad transportation industries.

DATES: Comments should be filed as soon as possible after any Y2K problems are discovered that will not be corrected by December 31, 1999.

ADDRESSES: Send an original plus 10 copies of any comments, referring to STB Ex Parte No. 633, to the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr., (202) 565–1573. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 11101(a), railroads must provide transportation or rail services upon reasonable request. Given the complex nature of railroad operations, switching and interchange, some potential Y2K problems appear capable of disrupting railroad operations and the smooth flow of traffic between rail carriers. In such an event, the Board is prepared to assume an active role in the interest of the public, both to maintain rail operations while any computer problems are repaired and to take steps to return rail service to normal levels. If rail service is disrupted, the Board can issue temporary emergency service orders and can direct a carrier to operate the lines of another carrier that has ceased operations. Such orders can be effective for a period of up to 270 days. Emergency orders may direct the handling, routing, or distribution of traffic; require joint or common use of railroad facilities; or prescribe temporary through routes. Additionally, the Board may prioritize traffic, such as the movements of coal to electric generating plants, and require traffic to move only under special permits.

The Board also may issue emergency orders to enable Amtrak to reroute passenger trains when its normal routes are temporarily unavailable. Through the Board's Agent, Melvin F. Clemens, Jr., Director, Office of Compliance and Enforcement, such emergency orders may be issued at any time, day or night.

In order to assist the Board in preparing for any possible disruptions of railroad operations that may result from Y2K problems, the Board is requesting railroads and other interested parties to inform the Board of any such anticipated problems before they occur. Such information to the Board should be based on specific Y2K problems that are considered unresolvable by December 31, 1999.

Additionally, under section 18 of the Y2K Act, Pub. L. 106–37, 113 Stat. 185, civil penalties are suspended for a small business concern, as defined in section 105 of Title 5, United States Code, for a first time violation of a Federally enforceable rule or regulation caused by a Y2K failure, if that Federal rule or regulation has not been violated within the preceding 3 years by that small business concern. Under 49 U.S.C. Chapter 119, the Board has the authority to impose civil penalties for violations of statutes and regulations within its jurisdiction. Under section 18 of the Y2K Act, each agency of the United States Government with such authority must establish a point of contact within the agency to act as a liaison between the agency and small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations. The Board is complying with this statutory requirement by designating its Office of Compliance and Enforcement as its point of contact for small business concerns that experience a Y2K failure.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV." This notice will also be specifically served on the Association of American Railroads, The American Short Line and Regional Railroad Association, the Federal Railroad Administration, and Amtrak.

Decided: August 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–21820 Filed 8–18–99; 2:52 pm]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning extension, without change, of an information collection titled Fiduciary Activities of National Banks (12 CFR 9). The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: You should submit your written comments to both OCC and the OMB Reviewer by September 20, 1999.

ADDRESSES: You should send your written comments to the Communications Division, Attention: 1557–0140, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to OMB by contacting Jessie Gates or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0140), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Fiduciary Activities of National Banks (12 CFR 9).

OMB Number: 1557–0140.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the

information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

Under 12 U.S.C. 92a, the OCC regulates the fiduciary activities of national banks, including the administration of collective investment funds. The requirements in 12 CFR part 9 enable the OCC to perform its responsibilities relating to the fiduciary activities of national banks and collective investment funds. Part 9 requires national banks to retain fiduciary records, note annually in the minutes of the board of directors the results of fiduciary audits, to operate a collective investment fund pursuant to a written plan, to submit written plans to the OCC for approval, and to prepare an annual financial report on each fund and notify participants of its availability.

The collections of information in part 9 are found in: 12 CFR 9.8(b), 9.9(a) and (b), 9.17(a), 9.18(b)(1), 9.18(b)(6)(ii), 9.18(b)(6)(iv), and 9.18(c)(5).

The following is a brief discussion of the elements of the information collection in each section of regulations:

Section 9.8(b) requires a national bank to maintain fiduciary records;

Section 9.9 (a) and (b) require a national bank to note the results of its fiduciary audit in the board of directors minutes;

Section 9.17(a) requires a national bank that wants to surrender its fiduciary powers to file a certified board of directors resolution with the OCC;

Section 9.18(b)(1) requires a national bank to file new and amended collective fund plans with the OCC;

Section 9.18(b)(1) also requires a national bank to disclose their collective fund plans to investors and other interested persons;

Section 9.18(b)(6)(ii) requires a national bank to prepare financial reports regarding each collective investment fund;

Section 9.18(b)(6)(iv) requires a national bank to disclose their collective investment fund financial reports to investors and other interested persons; and

Section 9.18(c)(5) requires a national bank to request OCC approval to establish a special exemption fund.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 1,000.

Total Annual Responses: 1,000.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 15,010 hours.

OCC Contact: Jessie Gates or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, OMB No. 1557–0140, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0140, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Comments: Your comment will become a matter of public record. You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) Whether the OCC's burden estimate is accurate;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Whether the OCC's estimates of the capital or startup costs and costs of operation, maintenance, and purchase of services to provide information are accurate.

Additionally, the OCC requests comments on the impact of this information collection on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this information collection on community banks' current resources and available personnel with the requisite expertise, and whether the goals of part 9 could be achieved, for community banks, through an alternative approach.

Dated: August 16, 1999.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 99–21718 Filed 8–19–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service

Senior Executive Service; Financial Management Service Performance Review Board (PRB)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB).

DATES: This notice is effective on August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, 401 14th St., SW, Washington, DC; telephone (202) 874–7000.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice is given of the appointment of individuals to serve as members of the Financial Management Service (FMS) Performance Review Board (PRB). This Board reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Three voting members constitute a quorum. The names and titles of the FMS PRB members are as follows:

Primary Members: Kenneth R. Papaj, Deputy Commissioner; Constance E. Craig, Assistant Commissioner, Information Resources; John D. Newell, Assistant Commissioner, Regional Operations; Larry D. Stout, Assistant Commissioner, Government-Wide Accounting

Alternate Members: Nancy C. Fleetwood, Assistant Commissioner, Debt Management Services; Bettsy H. Lane, Assistant Commissioner, Federal Finance

Dated: August 16, 1999.

Kenneth R. Papaj,

Acting Commissioner.

[FR Doc. 99–21707 Filed 8–19–99; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 64, No. 161
Friday, August 20, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FARM CREDIT ADMINISTRATION

12 CFR Part 602

RIN 3052-AB84

Releasing Information

Correction

In rule document 99–19584, beginning on page 41770, in the issue of Monday, August 2, 1999, make the following correction(s):

§ 602.11 [Corrected]

1. On page 41773, in § 602.11 (e), in the table, in the first column titled "Type of requester", in the first line, the "*" should read "1".

2. On page 41773, § 602.11 (e), in the table, in the first column, in the footnote, "*" should read "1"

[FR Doc. C9–19584 Filed 8-19-99; 8:45 am]

BILLING CODE 1505–01–D

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–308–310 and 520–521 (Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

Correction

In notice document 99–21171 beginning on page 44536 in the issue of Monday, August 16, 1999, the subject heading is corrected to read as set forth above.

[FR Doc. C9–21171 Filed 8–19–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–1999–6063; Notice No. 99–16]

RIN 2120–AG80

Revision of Braking Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes

Correction

In proposed rule document 99–20518 beginning on page 43570 in the issue of Tuesday, August 10, 1999, make the following corrections:

1. On page 43573, in the first column, in the 12th line, "§ 25.735(e9" should read "§ 25.735(e)".

2. On the same page, in the same column, in the 20th line from the bottom, "satisfactory" should read "satisfactorily".

3. On the same page, in the third column, in the first full paragraph, in the 14th line from the end, remove "ensures the paragraph,"".

4. On page 43574, in the second column, in the 17th line, after "services," remove "for" and add "five".

§ 25.731 [Corrected]

5. On page 43577, in the third column, in § 25.731(e), in the third line, "§ 24.735" should read "§ 25.735".

§ 25.735 [Corrected]

6. On page 43578, in the first column, in § 25.735(e)(1), in the first line, "satisfactory" should read "satisfactorily".

[FR Doc. C9–20518 Filed 8–19–99; 8:45 am]

BILLING CODE 1505–01–D

OL

64

SS

1
6
1

G

20

99

MI

federal register

Friday
August 20, 1999

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–33]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.C.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, U.S. Army Center for Public Works, Installation Support Center, Facilities Management, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; (These are not toll-free numbers).

Dated: August 12, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 8/20/99

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 60101
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520152
Status: Unutilized
Comment: 6082 sq. ft., 1-story, most recent use—airfield fire station, off-site use only

Bldg. 60103
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520154
Status: Unutilized
Comment: 12516 sq. ft., 2-story, most recent use—admin., off-site use only

Bldg. 60110
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520155
Status: Unutilized
Comment: 8319 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. 60113
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520156
Status: Unutilized
Comment: 4000 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. 172
Anniston Army Depot
Annison AL 36201–
Landholding Agency: Army
Property Number: 21199840125
Status: Unutilized
Comment: 5895 sq. ft., needs rehab, most recent use—demolition shop, off-site use only

Bldg. 88
Anniston Army Depot
Annison AL 36201–
Landholding Agency: Army
Property Number: 21199840126
Status: Unutilized
Comment: 5360 sq. ft., needs rehab, most recent use—renovation shop, off-site use only

Alaska

Bldgs. 420, 422, 426, 430
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 21199740276
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldg. 789

Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 21199910084
Status: Excess
Comment: 19,001 sq. ft., concrete block, most recent use—vehicle maint., off-site use only

Arizona

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, scheduled to be vacated on or about 2/95

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos

5 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 44101, 44102, 44124, 44125, 44201
Landholding Agency: Army
Property Number: 21199840129
Status: Excess
Comment: Various sq. ft. & bdrm units, presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldgs. 87821, 90420
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199910087
Status: Excess
Comment: 377 and 5,662 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 90201
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199920182
Status: Unutilized
Comment: 25,503 sq.ft., presence of asbestos/lead paint, most recent use—laundry, off-site use only

Bldgs. 12521, 13572
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199920183
Status: Unutilized
Comment: 448 sq.ft., & 54 sq. ft., off-site use only

California

Bldg. 4282
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 21199810378
Status: Unutilized
Comment: 2283 sq.ft., presence of asbestos/lead paint, most recent use—office

Bldg. 4461
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 21199810379
Status: Unutilized
Comment: 992 sq.ft., presence of asbestos/lead paint, most recent use—storage

Bldg. 104
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910088
Status: Unutilized
Comment: 8039 sq.ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 106
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910089
Status: Unutilized
Comment: 1950 sq. ft., presence of asbestos/lead paint, most recent use—office/storage, off-site use only

Bldg. 125
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910090
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 339
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910092
Status: Unutilized
Comment: 5654 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 340
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910093
Status: Unutilized
Comment: 6500 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 341
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910094
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 4214
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910094
Status: Unutilized
Comment: 3168 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Colorado

Bldg. P–1008
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 21199630127
Status: Unutilized
Comment: 3362 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—service outlet, off-site use only

Bldg. P–1007
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21199730210
Status: Unutilized
Comment: 3818 sq. ft., needs repair, possible asbestos/lead paint, most recent use—health clinic, off-site use only

Bldg. T–1342
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21199730211
Status: Unutilized
Comment: 13,364 sq. ft., possible asbestos/lead paint, most recent use—instruction bldg.

Bldg. T–6005
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21199730213
Status: Unutilized
Comment: 19,015 sq. ft., possible asbestos/lead paint, most recent use—warehouse

Georgia

Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor

Bldg. 1252, Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 2396, Fort Benning

Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, need major rehab, off-site removal only

Bldg. 4882, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220727
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4977, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220736
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only

Bldg. 4944, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only

Bldg. 4960, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4969, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4884, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220762
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4966, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220764
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4965, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only

Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only

Bldg. 4979, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only

Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310461
Status: Unutilized
Comment: 2269 sq. ft., 1 story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310462
Status: Unutilized
Comment: 3281 sq. ft., 1 story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4067, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310465
Status: Unutilized
Comment: 4406 sq. ft., 1 story, needs rehab, most recent use—admin., off-site use only

Bldg. 354, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330259
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only

Bldg. 355, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330260
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only

Bldg. 356, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330261
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, most recent use—offices, off-site use only

Bldg. 332, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330289
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only

Bldg. 333, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330290
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only

Bldg. 10501, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410264
Status: Unutilized
Comment: 2516 sq. ft., 1-story wood, needs rehab.; most recent use office; off-site use only

Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Bldg. 4051, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 2141
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army

Property Number: 21199610655
Status: Unutilized
Comment: 2283 sq. ft., needs repair, most recent use—office, off-site use only

Bldg. T–293
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199710230
Status: Excess
Comment: 5220 sq. ft., most recent use—admin., needs major repairs, off-site use only

Bldg. 239
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720155
Status: Unutilized
Comment: 2817 sq. ft., needs rehab, most recent use—exchange service outlet, off-site use only

Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 1737
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720161
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2592
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720166
Status: Unutilized
Comment: 11674 sq. ft., needs rehab, most recent use—gym, off-site use only

Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only.

Bldgs. 2865, 2869, 2872
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720169
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only.

Bldg. 4476
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720184
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only

8 Bldgs.
Fort Benning
4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720189
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only

Bldg. 4714
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720191
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only

Bldg. 4702
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720192
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only

Bldgs. 4712–4713
Fort Benning
Ft. Benning Co: Muscogee 31905–
Landholding Agency: Army
Property Number: 21199720193
Status: Unutilized
Comment: 1983 sq. ft., and 10,270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only

Bldg. T–930
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199730218
Status: Unutilized
Comment: 34,098 sq. ft., poor condition, most recent use—laundry, off-site use only

Bldg. T–931
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199730219
Status: Unutilized
Comment: 2232 sq. ft., poor condition, most recent use—gas gen. plant, off-site use only

Bldg. T–949
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199730220
Status: Unutilized
Comment: 240 sq. ft., poor condition, most recent use—plant bldg., off-site use only

Bldg. T–286
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199810261
Status: Excess
Comment: 5310 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. 123
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810265
Status: Unutilized
Comment: 3590 sq. ft., most recent use—admin., off-site use only

Bldg. 124, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810266
Status: Unutilized
Comment: 227 sq. ft., most recent use—access control, off-site use only

Bldg. 214, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810267
Status: Unutilized
Comment: 26,266 sq. ft., most recent use—confinement facility, off-site use only

Bldg. 305, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810268
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only

Bldg. 318, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810269
Status: Unutilized
Comment: 374 sq. ft., poor condition most recent use—maint. shop, off-site use only

Bldg. 1792, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810274
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only

Bldg. 1796, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810275
Status: Unutilized
Comment: 5071 sq. ft., most recent use—recreation, off-site use only

Bldg. 1836
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810276
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only

Bldg. 4373
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810286
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg., off-site use only

Bldg. 4628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810287
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only

Bldg. 92
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830278
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2445
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830279
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldg. 4232
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldg. 9103
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21199830301
Status: Unutilized
Comment: 3378 sq. ft., needs rehab, most recent use—veh. maint. shop, off-site use only

Bldg. T–288
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199840130
Status: Excess
Comment: 2500 sq. ft., poor condition, most recent use—MP station, off-site use only

Bldg. T–291
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199840131
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—MP station, off-site use only

Bldg. 294
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199840133
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—admin., off-site use only

Hawaii

P–88
Aliamanu Military
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Comment: 45,216 sq. ft., underground tunnel complex, pres. of asbestos, clean-up required of contamination, use of respirator required by those entering property, use limitations

Bldg. T–675A
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 21199640202
Status: Unutilized
Comment: 4365 sq. ft., most recent use—office, off-site use only

Bldg. T–337
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 21199640203
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

Bldgs. HP 113, 114
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920186
Status: Unutilized
Comment: 2864 sq. ft., and 3458 sq. ft., most recent use—admin., off-site use only

Bldgs. HP 432–439
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920189
Status: Unutilized
Comment: 4845 sq. ft. each, presence of asbestos, most recent use—admin/storage, off-site use only

Bldgs. HP 459, 460
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920191
Status: Unutilized
Comment: 4848 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Iowa

Bldg. 46
Des Moines Reserve Complex
Des Moines Co: Polk IA 50315–5899
Landholding Agency: Army
Property Number: 21199840135
Status: Unutilized
Comment: 20,944 sq. ft., presence of asbestos/lead paint, most recent use—officer quarters/admin., historical/National Register

Bldg. 49
Des Moines Reserve Complex
Des Moines Co: Polk IA 50315–5899
Landholding Agency: Army
Property Number: 21199840136
Status: Unutilized
Comment: 2100 sq. ft., most recent use—chapel, historical/National Register

Kansas

Bldg. 166, Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21199410325
Status: Unutilized
Comment: 3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District

Bldg. 184, Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21199430146
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district

Bldg. P–313, Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21199620668
Status: Unutilized
Comment: 6222 sq. ft., most recent use—admin. bldg., needs repair, possible asbestos

Bldg. S–404
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199730235
Status: Unutilized
Comment: 4795 sq. ft., possible asbestos/lead paint, most recent use—hospital clinic, off-site use only

Bldg. P–390
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199740295
Status: Unutilized
Comment: 4713 sq. ft., presence of lead paint, most recent use—swine house, off-site use only

Bldg. T–323
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810297
Status: Unutilized
Comment: 720 sq. ft., most recent use—Boy Scout bldg., off-site use only

Bldg. T–688
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810298
Status: Unutilized
Comment: 832 sq. ft., possible lead paint, most recent use—Girl Scout bldg., off-site use only

Bldg. T–895
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810299
Status: Unutilized
Comment: 228 sq. ft., possible lead paint, most recent use—storage, off-site use only

Bldg. P–68
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820153
Status: Unutilized
Comment: 2236 sq. ft., most recent use—vehicle storage, off-site use only

Bldg. P–69
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820154

Status: Unutilized
Comment: 224 sq. ft., most recent use—storage, off-site use only

Bldg. P–93
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820155
Status: Unutilized
Comment: 63 sq. ft., concrete, most recent use—storage, off-site use only

Bldg. P–128
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820156
Status: Unutilized
Comment: 79 sq. ft., concrete, most recent use—storage, off-site use only

Bldg. P–321
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820157
Status: Unutilized
Comment: 600 sq. ft., most recent use—picnic shelter, off-site use only

Bldg. P–347
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820158
Status: Unutilized
Comment: 2135 sq. ft., most recent use—bath house, off-site use only

Bldg. P–397
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820159
Status: Unutilized
Comment: 80 sq. ft., most recent use—storage, off-site use only

Bldg. S–809
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820160
Status: Unutilized
Comment: 39 sq. ft., most recent use—access control, off-site use only

Bldg. S–830
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820161
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only

Bldg. S–831
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820162
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only

Bldg. T–2360
Fort Riley
Ft. Riley KS
Landholding Agency: Army
Property Number: 21199830310
Status: Unutilized
Comment: 4534 sq. ft., needs major rehab, most recent use—aces. fac.

Bldgs. P–104, P–105, P–106
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830313
Status: Unutilized
Comment: 81 sq. ft., most recent use—storage, off-site use only

Bldg. P–108
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830314
Status: Unutilized
Comment: 138 sq. ft., most recent use—storage, off-site use only

Bldg. P–147
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830315
Status: Unutilized
Comment: 378 sq. ft., most recent use—storage, off-site use only

Bldgs. P–163, P–169
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830316
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only

Bldg. P–164
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830317
Status: Unutilized
Comment: 145 sq. ft., most recent use—storage, off-site use only

Bldg. P–171
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830318
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only

Bldg. P–172
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830319
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only

Bldgs. P–173, P–174
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830320
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only

Bldg. P–243
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830321
Status: Unutilized
Comment: 242 sq. ft., most recent use—industrial, off-site use only

Bldg. P–218
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21199920196
Status: Unutilized
Comment: 1992 sq. ft., most recent use—gas station

Bldg. P–220
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21199920197
Status: Unutilized
Comment: 774 sq. ft., most recent use—warehouse

Bldg. P–146
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920198
Status: Unutilized
Comment: 196 sq. ft., most recent use—utility, off-site use only

Bldg. P–149
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920199
Status: Unutilized
Comment: 76 sq. ft., most recent use—utility, off-site use only

Bldg. P–150
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920200
Status: Unutilized
Comment: 96 sq. ft., most recent use—utility, off-site use only

Bldg. P–162
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920201
Status: Unutilized
Comment: 81 sq. ft., most recent use—utility, off-site use only

Bldg. P–242
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920202
Status: Unutilized
Comment: 4580 sq. ft., most recent use—storage, off-site use only

Louisiana

Bldg. 8405, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640524
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office

Bldg. 8407, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640525
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.

Bldg. 8408, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640526
Status: Underutilized

Comment: 2055 sq. ft., most recent use—admin.
Bldg. 8414, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640527
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8424, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640529
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8426, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640530
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8427, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640531
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8428, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640532
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8429, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640533
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8430, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640534
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8431, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640535
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8432, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640536
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8433, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640537
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8446, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640538
Status: Underutilized
Comment: 4172 sq. ft., most recent use—admin.
Bldg. 8449, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640539
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office
Bldg. 8450, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640540
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.
Bldg. 8458, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640542
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8459, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640543
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks
Bldg. 8460, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640544
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks
Bldg. 8461, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640545
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks
Bldg. 8462, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640546
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks
Bldg. 8463, Eork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640547
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks
Bldg. 8501, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640548
Status: Underutilized
Comment: 1687 sq. ft. most recent use—office
Bldg. 8502, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640549
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office
Bldg. 8541, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640551
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8542, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640552
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8543, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640553
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8544, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640554
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8545, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640555
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8546, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640556
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8547, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640557
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8548, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640558
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks
Bldg. 8549, Fort Polk
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640559
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Maryland

Bldg. 370
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115

Landholding Agency: Army
Property Number: 21199730256
Status: Unutilized
Comment: 19,583 sq. ft., most recent use—NCO club, possible asbestos/lead paint.

Bldg. 4039
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199740304
Status: Unutilized
Comment: 249 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage

Bldg. 2446
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740305
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2472
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740306
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 3179
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740308
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 4700
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740309
Status: Unutilized
Comment: 36,619 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 6284
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199810302
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—custodial, off-site use only

Bldg. 3178
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199810303
Status: Unutilized
Comment: 7670 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. E5813
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199830326
Status: Unutilized
Comment: 69 sq. ft., presence of asbestos/lead paint, most recent use—storage

Bldg. 39
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199840137
Status: Unutilized
Comment: 2791 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 0459E
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199840138
Status: Unutilized
Comment: 320 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1102B
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199840139
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. E1455
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199840140
Status: Unutilized
Comment: 36 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—guard shack, off-site use only

Bldg. 32
Fort George G. Meade
Anne Arundel Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21199910098
Status: Unutilized
Comment: 100 sq. ft., concrete block, off-site use only

Bldg. 2232
Fort George G. Meade
Anne Arundel Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21199910099
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—supply-storage, off-site use only

Bldg. 2233
Fort George G. Meade
Anne Arundel Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21199910100
Status: Unutilized
Comment: 1297 sq. ft., presence of asbestos/lead paint, most recent use—supply-storage, off-site use only

Missouri

Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199230260
Status: Unutilized
Comment: 18270 sq. ft., concrete, most recent use—storehouse, off-site use only

Bldg. T427
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199330299
Status: Underutilized
Comment: 10245 sq. ft., 1-story, presence of asbestos, most recent use—post office, off-site use only

Bldg. T2171
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340212
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only

Bldg. T6822
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340219
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only

Bldg. T429
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420439
Status: Underutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T1497
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T–2191
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T–2197
Ft. Leonard Wood

Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T590
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510110
Status: Excess
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T2385
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldgs. T–2340 thru T2343
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199710138
Status: Underutilized
Comment: 9267 sq. ft. each, most recent use—storage/general purpose, off-site use only

Bldg. 1226
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730275
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730276
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1280
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730277
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1281
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730278
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1282
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730279
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1283
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730280
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1284
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730281
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730282
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1286
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730283
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1287
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730284
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1288
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730285
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—dining facility, off-site use only

Bldg. 1289
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730286
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 430
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810305
Status: Unutilized
Comment: 4100 sq. ft., presence of asbestos/lead paint, most recent use—Red Cross facility, off-site use only

Bldg. 758
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810306
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 759
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810307
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810308
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, off-site use only

Bldgs. 761–766
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810309
Status: Unutilized
Comment: 2400 sq. ft. each, presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1650
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810311
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only

Bldg. 2111
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810312
Status: Unutilized

Comment: 1600 sq. ft., presence of asbestos/ lead paint, most recent use—union hall, off-site use only
Bldg. 2170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810313
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/ lead paint, most recent use—admin., off-site use only
Bldg. 2204
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810315
Status: Unutilized
Comment: 3525 sq. ft., presence of asbestos/ lead paint, most recent use—admin., off-site use only
Bldg. 2225
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810316
Status: Unutilized
Comment: 820 sq. ft., presence of lead paint, most recent use—storage, off-site use only
Bldg. 2271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810317
Status: Unutilized
Comment: 256 sq. ft., presence of lead paint, most recent use—storage, off-site use only
Bldg. 2275
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810318
Status: Unutilized
Comment: 225 sq. ft., presence of lead paint, most recent use—storage, off-site use only
Bldg. 2291
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810319
Status: Unutilized
Comment: 510 sq. ft., presence of lead paint, most recent use—storage, off-site use only
Bldg. 2318
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810322
Status: Unutilized
Comment: 9267 sq. ft., presence of asbestos/ lead paint, most recent use—storage, off-site use only
Bldg. 2579
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810325
Status: Unutilized
Comment: 176 sq. ft., presence of asbestos/ lead paint, most recent use—storage, off-site use only
Bldg. 2580
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810326
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/ lead paint, most recent use—generator plant, off-site use only
Bldg. 4199
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810327
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/ lead paint, most recent use—storage, off-site use only
Bldg. 386
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820163
Status: Unutilized
Comment: 4902 sq. ft., presence of asbestos/ lead paint, most recent use—fire station, off-site use only
Bldg. 401
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820164
Status: Unutilized
Comment: 9567 sq. ft., presence of asbestos/ lead paint, most recent use—admin., off-site use only
Bldg. 801
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820165
Status: Unutilized
Comment: 17012 sq. ft., presence of asbestos/ lead paint, most recent use—classroom, off-site use only
Bldg. 856
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820166
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/ lead paint, most recent use—storage, off-site use only
Bldg. 859
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820167
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/ lead paint, most recent use—storage, off-site use only
Bldg. 1242
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820168
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/ lead paint, most recent use—storage, off-site use only
Bldg. 1265
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820169
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/ lead paint, most recent use—storage, off-site use only
Bldg. 1267
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820170
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/ lead paint, most recent use—admin., off-site use only
Bldg. 1272
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820171
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/ lead paint, most recent use—admin., off-site use only
Bldg. 1277
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820172
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/ lead paint, most recent use—admin., off-site use only
Bldgs. 2142, 2145, 2151–2153
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820174
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/ lead paint, most recent use—barracks, off-site use only
Bldg. 2150
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820175
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/ lead paint, most recent use—dayroom, off-site use only
Bldg. 2155
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army

Property Number: 21199820176
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2156, 2157, 2163, 2164
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820177
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2165
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820178
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2169, 2181, 2182, 2183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820180
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820181
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2187
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820182
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2304, 2306
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820184
Status: Unutilized
Comment: 1625 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 12651
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820186
Status: Unutilized
Comment: 240 sq. ft., presence of lead paint, off-site use only

Bldg. 1448
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830327
Status: Unutilized
Comment: 8450 sq. ft., presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 2210
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830328
Status: Unutilized
Comment: 808 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storate, off-site use only

Bldg. 2270
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830329
Status: Unutilized
Comment: 256 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 6036
Fort Leonard Wood
Co: Pulaski MO 65473–8994
Landholding Agency: Army
Property Number: 21199910101
Status: Unutilized
Comment: 240 sq. ft., off-site use only

Bldgs. 9017, 9019
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910102
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9021, 9023, 9025
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910103
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9027, 9031
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910104
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9033, 9049
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910105
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9051, 9100
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910106
Status: Underutilized
Comment: 8664 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9053, 9103
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910107
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldg. 9110
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910108
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9113, 9115, 9117
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910109
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

New Jersey

Bldg. 22
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740311
Status: Unutilized
Comment: 4220 sq. ft., needs rehab, most recent use—machine shop, off-site use only.

Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only

Bldg. 642
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740314

Status: Unutilized
Comment: 280 sq. ft., most recent use—explosives testing, off-site use only
Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only
Bldg. 1604
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740321
Status: Unutilized
Comment: 8519 sq. ft., most recent use—loading facility, off-site use only
Bldg. 3117
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740322
Status: Unutilized
Comment: 100 sq. ft., most recent use—sentry station, off-site use only
Bldg. 3201
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740324
Status: Unutilized
Comment: 1360 sq. ft., most recent use—water treatment plant, off-site use only
Bldg. 3202
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740325
Status: Unutilized
Comment: 96 sq. ft., most recent use—snack bar, off-site use only
Bldg. 3219
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740326
Status: Unutilized
Comment: 288 sq. ft., most recent use—snack bar, off-site use only
Bldg. 117
Armament Research, Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910110
Status: Excess
Comment: 17,458 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 119
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910111
Status: Excess
Comment: 8596 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1109
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910112
Status: Excess
Comment: 1140 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1111
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910113
Status: Excess
Comment: 1581 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1123
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910114
Status: Excess
Comment: 2465 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1125
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910115
Status: Excess
Comment: 2513 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1127
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910116
Status: Excess
Comment: 2098 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1130
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910117
Status: Excess
Comment: 1977 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1132
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910118
Status: Excess
Comment: 2307 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1138
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910119
Status: Excess
Comment: 1893 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1140
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910120
Status: Excess
Comment: 1323 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1142
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910121
Status: Excess
Comment: 2018 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1144
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910122
Status: Excess
Comment: 1394 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1146
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910123
Status: Excess
Comment: 1365 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1147
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910124
Status: Excess
Comment: 1177 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1149
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910125
Status: Excess
Comment: 1421 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1393
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910126
Status: Excess
Comment: 1413 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 1398
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910127
Status: Excess
Comment: 1929 sq. ft., possible lead paint, most recent use—housing, off-site use only
Bldg. 3327
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910128
Status: Excess
Comment: 1512 sq. ft., possible lead paint, most recent use—housing, off-site use only

17 Bldgs.
Armament Research,
Development and Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: 1112, 1114, 1116, 1120, 1124, 1126, 1139, 1141, 1145, 1148, 1104A, 1109A, 1140A, 1392A, 1398A, 3326
Landholding Agency: Army
Property Number: 21199910129
Status: Excess
Comment: 210–1100 sq. ft., possible lead paint, most recent use—garages, off-site use only

New York

Bldg. T–35
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840143
Status: Unutilized
Comment: 1296 sq. ft., most recent use—admin., off-site use only

Bldg. S–149
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840144
Status: Unutilized
Comment: 2488 sq. ft., most recent use—admin., off-site use only

Bldg. T–250
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840145
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only

T–254
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840146
Status: Unutilized
Comment: 4720 sq. ft., most recent use—barracks, off-site use only

Bldg. T–260
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840147
Status: Unutilized
Comment: 2371 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–261
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840148
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–262
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840149
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–340
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840150
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only

Bldg. T–392
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840151
Status: Unutilized
Comment: 2740 sq. ft., most recent use—storage, off-site use only

Bldg. T–413
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840152
Status: Unutilized
Comment: 3663 sq. ft., most recent use—admin., off-site use only

Bldg. T–415
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840153
Status: Unutilized
Comment: 1676 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–530
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840154
Status: Unutilized
Comment: 2588 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–840
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840155
Status: Unutilized
Comment: 2803 sq. ft., most recent use—dining, off-site use only

Bldg. T–892
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840156
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–991
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840157
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. P–996
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840158
Status: Unutilized
Comment: 9602 sq. ft., most recent use—storage, off-site use only

Bldg. S–998
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840159
Status: Unutilized
Comment: 1432 sq. ft., most recent use—storage, off-site use only

Bldg. T–2159
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840160
Status: Unutilized
Comment: 1948 sq. ft., off-site use only

Bldg. T–2339
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840163
Status: Unutilized
Comment: 2027 sq. ft., most recent use—museum, off-site use only

Bldg. P–2415
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840164
Status: Unutilized
Comment: 214 sq. ft., most recent use—incinerator, off-site use only

Bldg. P–21572
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840167
Status: Unutilized
Comment: 240 sq. ft., most recent use—bunker, off-site use only

Bldg. P–87
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199920203
Status: Unutilized
Comment: 360 sq. ft., needs rehab, most recent use—admin., off-site use only

North Dakota

Bldg. 1101
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Ramsey ND 58355–
Landholding Agency: Army
Property Number: 21199640213
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only

Bldg. 1110
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Ramsey ND 58355–
Landholding Agency: Army
Property Number: 21199640214
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only

Bldg. 2101
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199640215
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only

Bldg. 2110
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army

Property Number: 21199640216
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only

Bldg. 4101
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Walsh ND 58355–
Landholding Agency: Army
Property Number: 21199640217
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only

Bldg. 4110
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Walsh ND 58355–
Landholding Agency: Army
Property Number: 21199640218
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only

Bldg. 405
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199840168
Status: Unutilized
Comment: 520 sq. ft., concrete block, most recent use—fuel oil pumping facility, off-site use only

Ohio

15 Units
Military Family Housing
Ravenna Army Ammunition
Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199230354
Status: Excess
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom (8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only

7 Units
Military Family Housing
Garages
Ravenna Army Ammunition
Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199230355
Status: Excess
Comment: 1–4 stall garage and 6–3 stall garages, presence of asbestos, off-site use only

Oklahoma

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199011273
Status: Unutilized
Comment: 2722 sq. ft., possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Comment: 151 sq. ft., wood frame; 1 story, off-site removal only, most recent use—vet facility (quarantine stable)

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame; needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–4050 Fort Sill
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240676
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, need rehab. off-site use only. most recent use—storage

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse

Bldg. P–2610, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330372
Status: Unutilized
Comment: 512 sq. ft., 1-story possible asbestos, most recent use—classroom, off-site use only

Bldg. T1652, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood possible asbestos, most recent use—storage, off-site use only

Bldg. T2705, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330384
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T3026, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330392
Status: Unutilized
Comment: 2454 sq. ft., 1-story possible asbestos, most recent use—storage, off-site use only

Bldg. T5637 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330419
Status: Unutilized
Comment: 1606 sq. ft., 1 story possible asbestos, most recent use—storage, off-site use only

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. T–2648, Fort Sill
2648 Tacy Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199540022
Status: Excess
Comment: 9407 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general purpose warehouse

Bldg. T–2649, Fort Sill
2649 Tacy Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199540024
Status: Excess
Comment: 9374 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general storehouse

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building T–598
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710029
Status: Unutilized
Comment: 744 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–1601
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710032
Status: Unutilized
Comment: 5,258 sq. ft., possible asbestos and leadpaint, most recent use—chapel, off-site use only

Building P–1800
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710033
Status: Unutilized
Comment: 2,545 sq. ft., possible asbestos and leadpaint, most recent use—military equipment, off-site use only

Building T–2035
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710039
Status: Unutilized

Comment: 18,157 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
Building T–2451
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710043
Status: Unutilized
Comment: 9,470 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
Building T–2608
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710045
Status: Unutilized
Comment: 6,737 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only
Building T–2952
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710047
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only
Building T–2953
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710048
Status: Unutilized
Comment: 114 sq. ft., possible asbestos and leadpaint, most recent use—storehouse, off-site use only
Building T–3152
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710051
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
Building T–3153
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710052
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
Building T–3154
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710053
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
Building T–3155
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710054
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
Building T–4009
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710056
Status: Unutilized
Comment: 2,817 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only
Building T–4010
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710057
Status: Unutilized
Comment: 2,815 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only
Building T–4011
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710058
Status: Unutilized
Comment: 9,456 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
Building T–4026
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710059
Status: Unutilized
Comment: 9,597 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
Building T–4030
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710060
Status: Unutilized
Comment: 9,618 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
Building T–4068
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710061
Status: Unutilized
Comment: 2,750 sq. ft. possible asbestos and leadpaint, most recent use—office, off-site use only
Building T–4069
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710062
Status: Unutilized
Comment: 2,750 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only
Building T–4070
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710063
Status: Unutilized
Comment: 2,750 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only
Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only
Building T–5093
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710067
Status: Unutilized
Comment: 9,361 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only
6 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: P–6449, S–6451, T–6452, P–6460, P–6463, S–6450
Landholding Agency: Army
Property Number: 21199710085
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only
4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only
Building P–6539
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710087
Status: Unutilized
Comment: 1,483 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only
Bldg. T–205
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730343
Status: Unutilized
Comment: 95 sq. ft., possible asbestos/lead paint, most recent use—waiting shelter, off-site use only
Bldg. T–208
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730344
Status: Unutilized
Comment: 20525 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only
Bldg. T–210
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730345
Status: Unutilized
Comment: 19,049 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only
Bldg. T–214

Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730346
Status: Unutilized
Comment: 6332 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only

Bldg. T–2215, T–216
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730347
Status: Unutilized
Comment: 6300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–217
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730348
Status: Unutilized
Comment: 6394 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only

Bldg. T–219, T–220
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730349
Status: Unutilized
Comment: 152 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldg. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comment: approx. 100 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–936
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730354
Status: Unutilized
Comment: 342 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–956
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730355
Status: Unutilized
Comment: 1602 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1177
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730356
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only

Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1508
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730359
Status: Unutilized
Comment: 3176 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1940
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730360
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730361
Status: Unutilized
Comment: 449 sq. ft., possible asbestos/lead paint, off-site use only

Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2180
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730363
Status: Unutilized
Comment: possible asbestos/lead paint, most recent use—vehicle maint. facility, off-site use only

Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comment: approx. 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2185
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730365
Status: Unutilized
Comment: 151 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Comment: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2209
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730368
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2240, T–2241
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730369
Status: Unutilized
Comment: approx. 9500 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2262, T–2263
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730370
Status: Unutilized
Comment: approx. 3100 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldgs. T–2271, T–2272
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730371
Status: Unutilized
Comment: 232 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thur T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comment: 400 sq. ft., each, possible asbestos/lead paint, most recent use—storage, off-site use only

5 Bldgs.
Fort Sill
T–2300, T–2301, T–2303, T–2306, T–2307,
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730373
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2406
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730374
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

3 Bldgs.
Fort Sill
#T–2430, T–2432, T–2435
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730376
Status: Unutilized
Comment: approx. 8900 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–2434
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730377
Status: Unutilized
Comment: 8997 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldgs. T–2800, T–2809, T–2810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730380
Status: Unutilized
Comment: approx. 19,000 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2963, T–2964, T–2965
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730382
Status: Unutilized
Comment: approx. 3000 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3025
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730384
Status: Unutilized
Comment: 5259 sq. ft., possible asbestos/lead paint, most recent use—museum, off-site use only

Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. T–3318, T–3324, T–3327
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730386
Status: Unutilized
Comment: 8832—9048 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3323
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730387
Status: Unutilized
Comment: 8832 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–3328
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730388
Status: Unutilized
Comment: 9030 sq. ft., possible asbestos/lead paint, most recent use—refuse, off-site use only

Bldg. T–4021, T–4022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730389
Status: Unutilized
Comment: 442—869 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–4065
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730390
Status: Unutilized
Comment: 3145 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–4067
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730391
Status: Unutilized
Comment: 1032 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–4281
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730392
Status: Unutilized
Comment: 9405 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–4401, T–4402
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730393
Status: Unutilized
Comment: 2260 sq. ft., possible of asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–4407
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730395
Status: Unutilized
Comment: 3070 sq. ft., possible of asbestos/lead paint, most recent use—dining facility, off-site use only

4 Bldgs.
Fort Sill
#T–4410, T–4414, T–4415, T–4418
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730396
Status: Unutilized
Comment: 1311 sq. ft., possible of asbestos/lead paint, most recent use—office, off-site use only

5 Bldgs.
Fort Sill
#T–4411 thru T–4413, T–4416 thru T–4417
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730397
Status: Unutilized
Comment: 1244 sq. ft., possible of asbestos/lead paint, most recent use—showers, off-site use only

Bldg. T–4421
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730398
Status: Unutilized
Comment: 3070 sq. ft., possible of asbestos/lead paint, most recent use—dining, off-site use only

10 Bldgs.
Fort Sill
#T–4422 thru T–44427, T–4431 thru T–4434
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730399
Status: Unutilized
Comment: 2263 sq. ft., possible of asbestos/lead paint, most recent use—barracks, off-site use only

6 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4436, T–4440, T–4444, T–4448, T–4449
Landholding Agency: Army
Property Number: 21199730400
Status: Unutilized
Comment: 1311—2263 sq. ft., possible of asbestos/lead paint, most recent use—office, off-site use only

5 Bldgs.

Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4441, T–4442, T–4443, T–4446, T–4447
Landholding Agency: Army
Property Number: 21199730401
Status: Unutilized
Comment: 1244 sq. ft., possible of asbestos/lead paint, most recent use—showers, off-site use only

4 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4471, T–4472, T–4473, T–4477
Landholding Agency: Army
Property Number: 21199730406
Status: Unutilized
Comment: 1244 sq. ft., possible of asbestos/lead paint, most recent use—showers, off-site use only

Bldg. T–4707
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730407
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—waiting shelter, off-site use only

Bldg. T–5005
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730408
Status: Unutilized
Comment: 3206 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5044, T–5045
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730410
Status: Unutilized
Comment: 1798/1806 sq. ft., possible asbestos/lead paint, most recent use—class rooms, off-site use only

4 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–5046, T–5047, T–5048, T–5049
Landholding Agency: Army
Property Number: 21199730411
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5094
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730412
Status: Unutilized
Comment: 3204 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–5095
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730413
Status: Unutilized
Comment: 3223 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–5595
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730415
Status: Unutilized
Comment: 695 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5639
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730416
Status: Unutilized
Comment: 10,720 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–7290, T–7291
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730417
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-site use only

Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

Bldg. S955
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199810354
Status: Unutilized
Comment: 854 sq. ft., possible asbestos/lead paint, most recent use—training, off-site use only

Bldg. T–207
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910130
Status: Unutilized
Comment: 19,531 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–364, P–584, P–588
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910131
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–599
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910132
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–703, P–1816, T–1930
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910134
Status: Unutilized
Comment: 661 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–1908, P–2078
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910136
Status: Unutilized
Comment: 106 & 131 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldgs. T–1938, S–2101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910137
Status: Unutilized
Comment: 964 & 1640 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1941
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910138
Status: Unutilized
Comment: 1242 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. T–2183
Fort Sill
Lawton Co: Comanche OK 73503–5100

Landholding Agency: Army
Property Number: 21199910139
Status: Unutilized
Comment: 14,530 sq. ft., possible asbestos/lead paint, most recent use—repair shop, off-site use only

Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910140
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. S–2790, P–2906
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910142
Status: Unutilized
Comment: 1602 and 1390 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–2909
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910143
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only

Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. S–3169
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910145
Status: Unutilized
Comment: 6437 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–3469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910147
Status: Unutilized
Comment: 3930 sq. ft., possible asbestos/lead paint, most recent use—car wash, off-site use only

Bldg. S–3559
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910148
Status: Unutilized
Comment: 9462 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. S–4064
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910149
Status: Unutilized
Comment: 1389 sq. ft., possible asbestos/lead paint, off-site use only

Bldg. S–4610
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910150
Status: Unutilized
Comment: 3095 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–4748
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910151
Status: Unutilized
Comment: 1896 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. S–5086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910152
Status: Unutilized
Comment: 6453 sq. ft., possible asbestos/lead paint, most recent use—maintenance shop, off-site use only

Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–5401
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910154
Status: Unutilized
Comment: 3200 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only

Bldg. P–5638
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910155
Status: Unutilized
Comment: 300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910156
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910158
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Pennsylvania

Bldg. T–3–87
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholder Agency: Army
Property Number: 21199740337
Status: Unutilized
Comment: 1144 sq. ft., most recent use—classroom, off-site use only

South Carolina

Bldg. 5412
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholder Agency: Army
Property Number: 21199510139
Status: Excess
Comment: 3900 sq. ft., 1–story, wood frame, needs rehab, recent use—admin., off-site use only

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. 2441
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820187
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.

Bldg. 3605
Fort Jackson

Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820188
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage

Texas

Bldg. P–377, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199330444
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199330486
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only

Bldg. 4480, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199410322
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–6615
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199440454
Status: Unutilized
Comment: 400 sq. ft., 1-story concrete frame, off-site removal only, most recent use—detached garage

Bldg. 4201, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199520201
Status: Unutilized
Comment: 9000 sq. ft., 1-story, off-site use only

Bldg. 4202, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199520202
Status: Unutilized
Comment: 5400 sq. ft., 1 story, most recent use—storage, off-site use only

Bldg. P–197
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640220
Status: Unutilized
Comment: 13819 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. T–230
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640221
Status: Unutilized
Comment: 18102 sq. ft., presence of asbestos/lead paint, most recent use—printing plant and shop, off-site use only

Bldg. S–3898
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640235
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. P–3899
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640236
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. P–5126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640240
Status: Unutilized
Comment: 189 sq. ft., off-site use only

Bldg. P–6201
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640241
Status: Unutilized
Comment: 3003 sq. ft., presence of asbestos/lead paint, most recent use—officers family quarters, off-site use only

Bldg. P–6202
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640242
Status: Unutilized
Comment: 1479 sq. ft., presence of lead paint, most recent use—officers family quarters, off-site use only

Bldg. P–6203
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640243
Status: Unutilized
Comment: 1381 sq. ft., presence of lead paint, most recent use—military family quarters, off-site use only

Bldg. P–6204
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640244
Status: Unutilized
Comment: 1454 sq. ft., presence of asbestos/lead paint, most recent use—military family quarters, off-site use only

Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Building. 4630
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199710088
Status: Unutilized
Comment: 21,833 sq. ft., most recent use—Admin., off-site use only

Bldg. T–330
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730315
Status: Unutilized
Comment: 59,149 sq. ft., presence of asbestos/lead paint, historical category, most recent use—laundry, off-site use only

Bldgs. P–605A & P–606A
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730316
Status: Unutilized
Comment: 2418 sq. ft., poor condition, presence of asbestos/lead paint, historical category, most recent use—indoor firing range, off-site use only

Bldg. S–1150
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730317
Status: Unutilized
Comment: 8629 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldg., off-site use only

Bldgs. S–1140—S–1446, S–1452
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730318
Status: Unutilized
Comment: 4200 sq. ft., presence of lead, most recent use—instruction bldgs., off-site use only

4 Bldgs.
Fort Sam Houston
#S–1447, S–1449, S–1450, S–1451
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730319
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldgs., off-site use only

Bldg. P–4115
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730327
Status: Unutilized
Comment: 529 sq. ft., presence of asbestos/lead paint, historical bldg., most recent use—admin., off-site use only

Bldg. 4205
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730328
Status: Unutilized
Comment: 24,573 sq. ft., presence of asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. T–5113
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730330
Status: Unutilized
Comment: 2550 sq. ft., presence of asbestos/lead paint, historical bldg., most recent use—medical clinic, off-site use only

Bldg. T–5122

Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730331
Status: Unutilized
Comment: 3602 sq. ft., presence of asbestos/lead paint, historical category, most recent use—instruction bldg., off-site use only

Bldg. T–5903
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730332
Status: Unutilized
Comment: 5200 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only

Bldg. T–5907
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730333
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only

Bldg. T–6284
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730335
Status: Unutilized
Comment: 120 sq. ft., presence of asbestos/lead paint, most recent use—pump station, off-site use only

Bldg. T–5906
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730420
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–1382
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199810365
Status: Unutilized
Comment: 30,082 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. P–2014
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199810367
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—instruction, off-site use only

Bldg. P–2015
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199810368
Status: Unutilized
Comment: 11,333 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2016
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199810369
Status: Unutilized
Comment: 11,517 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2017
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199810370
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. S–3897
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199810371
Status: Unutilized
Comment: 4,200 sq. ft., presence of asbestos/lead paint, most recent use—instruction, off-site use only

Bldg. S–1155
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830347
Status: Unutilized
Comment: 2100 sq. ft., good, hazard abatement required, most recent use—instruction bldg., off-site use only

Bldg. S–3896
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830349
Status: Unutilized
Comment: 4200 sq. ft., fair, hazard abatement required, most recent use—training, off-site use only

Bldg. T–5123
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830350
Status: Unutilized
Comment: 2596 sq. ft., fair, hazard abatement required, most recent use—instruction, off-site use only, historical significance

Bldg. P–6150
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830351
Status: Unutilized
Comment: 48 sq. ft., fair, hazard abatement required, most recent use—pumphouse, off-site use only

Bldgs. P–6331, P–6335, P–6495
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830353
Status: Unutilized
Comment: 36 sq. ft., fair, hazard abatement required, most recent use—pumping station, off-site use only

Bldg. P–8000
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830354
Status: Unutilized
Comment: 1766 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

9 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8001, P8008, 8014, 8027, 8033, 8035, 8127, 8229, 8265
Landholding Agency: Army
Property Number: 21199830355
Status: Unutilized
Comment: 2456 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

11 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8003, P8011, 8012, 8019, 8043, 8202, 8216, 8235, 8241 8261
Landholding Agency: Army
Property Number: 21199830356
Status: Unutilized
Comment: 2358 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P–8003C, P–8220C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830357
Status: Unutilized
Comment: 1174 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P–8004
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830358
Status: Unutilized
Comment: 2243 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

7 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8005, 8101, 8107, 8141, 8143, 8146, 8150
Landholding Agency: Army
Property Number: 21199830359
Status: Unutilized
Comment: 1804 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

15 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8006, 8007, 8010, 8013, 8015, 8017, 8020, 8029, 8103, 8105, 8201, 8208, 8218, 8225, 8234
Landholding Agency: Army
Property Number: 21199830360
Status: Unutilized
Comment: 1703 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

7 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009, 8024, 8207, 8214, 8217, 8226, 8256
Landholding Agency: Army
Property Number: 21199830361
Status: Unutilized

Comment: 2253 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

4 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009C, 8027C, 8248C, 8256C
Landholding Agency: Army
Property Number: 21199830362
Status: Unutilized
Comment: 681 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8012C, 8039C, 8224C
Landholding Agency: Army
Property Number: 21199830363
Status: Unutilized
Comment: 1185 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P8016
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830364
Status: Unutilized
Comment: 2347 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8021, 8211, 8244, 8270, 8213, 8228, 8243, 8266
Landholding Agency: Army
Property Number: 21199830365
Status: Unutilized
Comment: 249 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P–8022
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830366
Status: Unutilized
Comment: 1849 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

5 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8022C, 8023C, 8106C, 8127C, 8206C
Landholding Agency: Army
Property Number: 21199830367
Status: Unutilized
Comment: 513 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldgs. P8026, P8028
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830369
Status: Unutilized
Comment: approx. 1850 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8028C, P8143C, P8150C
Landholding Agency: Army
Property Number: 21199830370
Status: Unutilized
Comment: 838 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8035C, P8104C, 8236C
Landholding Agency: Army
Property Number: 21199830372
Status: Unutilized
Comment: 1017 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8102, 8106, 8108
Landholding Agency: Army
Property Number: 21199830375
Status: Unutilized
Comment: approx. 2700 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8109, P8137
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830376
Status: Unutilized
Comment: 1540 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8112, P8228
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830378
Status: Unutilized
Comment: 1807 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8116, 8151, 8158
Landholder Agency: Army
Property Number: 21199830380
Status: Unutilized
Comment: 1691 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8117
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830381
Status: Unutilized
Comment: 1581 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8118, 8121, 8125, 8153, 8119, 8120, 8124, 8168
Landholder Agency: Army
Property Number: 21199830382
Status: Unutilized
Comment: various sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8122, P8123
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830383
Status: Unutilized
Comment: approx. 1400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830384
Status: Unutilized
Comment: 1331 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8131C, 8139C, 8211C, 8231C, 8243C, 8249C, 8261C
Landholder Agency: Army
Property Number: 21199830386
Status: Unutilized
Comment: 849 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldgs. P8133, P8134
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830387
Status: Unutilized
Comment: approx. 2000 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8135, P8136
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830388
Status: Unutilized
Comment: approx. 1500 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

4 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P–8144, 8267, 8148, 8149
Landholding Agency: Army
Property Number: 21199830389
Status: Unutilized
Comment: Approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8171
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830392
Status: Unutilized
Comment: 1289 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8172
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830393

Status: Unutilized
Comment: 1597 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only
Bldgs. P8173, P8174
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830394
Status: Unutilized
Comment: Approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only
Bldg. P8174C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830395
Status: Unutilized
Comment: 670 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only
Bldg. P8175
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830396
Status: Unutilized
Comment: 2220 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only
Bldg. P8200
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830397
Status: Unutilized
Comment: 892 sq. ft., fair, hazard abatement required, most recent use—officers quarters, off-site use only
Bldg. P8200C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830398
Status: Unutilized
Comment: 924 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only
Bldg. P8205
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830399
Status: Unutilized
Comment: 1745 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only
3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8206, 8232, 8233
Landholding Agency: Army
Property Number: 21199830400
Status: Unutilized
Comment: approx. 2400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only
Bldg. P8245
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830401
Status: Unutilized
Comment: 2876 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only
Bldgs. P8262C, 8271C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830403
Status: Unutilized
Comment: 1006 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only
Bldg. P8269
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830404
Status: Unutilized
Comment: 2396 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only
20 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8271, 8002, 8018, 8025, 8037, 8100, 8130, 8132, 8138, 8140, 8142, 8145, 8147, 8210, 8212, 8221, 8242, 8247, 8264, 8257
Landholding Agency: Army
Property Number: 21199830405
Status: Unutilized
Comment: 2777 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only
Bldg. P–1374
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840169
Status: Unutilized
Comment: 111,448 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—barracks, off-site use only
Bldg. P–1980
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840170
Status: Unutilized
Comment: 2989 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—radio system station, off-site use only
Bldg. P–1981
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840171
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—generator plant, off-site use only
Bldg. P–2396
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840172
Status: Unutilized
Comment: 1080 sq. ft., presence of asbestos, hazard abatement responsibility, most recent use—generator plant, off-site use only
Bldg. P–4226
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840173
Status: Unutilized
Comment: 1809 sq. ft., presence of lead paint, hazard abatement responsiblity, most recent use—storage, off-site use only
Bldg. 2840
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840175
Status: Unutilized
Comment: 2250 sq. ft., most recent use—admin., off-site use only
Bldg. 2841
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840176
Status: Unutilized
Comment: 2220 sq. ft., most recent use—storage, off-site use only
Bldg. 2842
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840177
Status: Unutilized
Comment: 2650 sq. ft., most recent use—admin., off-site use only
Bldg. 2843
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840178
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only
Bldg. 2844
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840179
Status: Unutilized
Comment: 8043 Sq. st., most recent use—only
Bldg. 2845
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840180
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only
Bldg. 2846
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199840181
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only
Bldg. 36
Fort Hood
Ft. Hood Co. Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920204
Status: Unutilized
Comment: 2250 sq. ft., needs repair, most recent use—ACS center, off-site use only
Bldg. 37
Fort Hood

Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920205
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only

Bldg. 38
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920206
Status: Unutilized
Comment: 2070 sq. ft., needs repair, most recent use—gen. inst., off-site use only

Bldg. 39
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920207
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only

Bldg. 41
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920208
Status: Unutilized
Comment: 1750 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 43–44
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920209
Status: Unutilized
Comment: 2750 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 209–212
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920210
Status: Unutilized
Comment: 8043 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 213
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920211
Status: Unutilized
Comment: 7670 sq. ft., needs repair, most recent use—operations, off-site use only

Bldg. 919
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920212
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only

Bldg. 923
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920213
Status: Unutilized
Comment: 4440 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 924
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920214
Status: Unutilized
Comment: 3500 sq. ft., need repair, most recent use—admin., off-site use only

Bldg. 2304
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920215
Status: Unutilized
Comment: 8043 sq. ft., need repair, most recent use—Avn. Unit Ops., off-site use only

Bldgs. 2306–2307
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920216
Status: Unutilized
Comment: 8043 sq. ft., need repair, most recent use—health clinic, off-site use only

Bldg. 3203
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920217
Status: Unutilized
Comment: 1680 sq. ft., need repair, most recent use—car wash, off-site use only

Bldgs. 3204–3205
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920218
Status: Unutilized
Comment: 64 sq. ft., need repair, most recent use—storage, off-site use only

Bldgs. 3949–3950
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920219
Status: Unutilized
Comment: 5310 sq. ft., need repair, most recent use—Bn. Hq. Bldg., off-site use only

Bldg. 3951
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920220
Status: Unutilized
Comment: 2500 sq. ft., need repair, most recent use—admin., off-site use only

Bldgs. 3952–3953
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920221
Status: Unutilized
Comment: 3100 sq. ft., need repair, most recent use—admin, off-site use only

Bldgs. 3954–3957
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920222
Status: Unutilized
Comment: 5310 sq. ft., need repair, most recent use—admin., off-site use only

Bldg. 3958
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920223
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 3959
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920224
Status: Unutilized
Comment: 3373 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3960–3962
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920225
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3964–3965
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920226
Status: Unutilized
Comment: 3100 sq. ft., needs repair, most recent use—Bn. Hq. Bldg., off-site use only

Bldg. 3966
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920227
Status: Unutilized
Comment: 2741 sq. ft., needs repair, most recent use—Co. Hq. Bldg., off-site use only

Bldgs. 3967–3969
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920228
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3970–3971
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920229
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only

Virginia

Bldg. T–192
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Propety Number: 21199830416
Status: Unutilized
Comment: 2804 sq. ft., presence of asbestos/lead paint, most recent use—hobby shop, off-site use only

Washington

13 Bldgs., Fort Lewis
A0402, CO723, CO726, CO727, CO90, CO907, CO922, CO923, CO926, CO92
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Propety Number: 21199630199
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

7 Bldgs., Fort Lewis
AO438, AO439, CO901, CO910, CO91
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630200
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only

6 Bldgs., Fort Lewis
CO908, CO728, CO921, CO928, C100
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630204
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only

Bldg., CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg., CO920, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630206
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. C1249, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630207
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldgs. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. A1419, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640571
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only

11 Buildings
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: #EO103–EO106, EO306, EO315–EO316, EO343–EO344, EO353—EO354
Landholding Agency: Army
Property Number: 21199710143
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

Bldgs. EO109, EO350
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710144
Status: Unutilized
Comment: 1165 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only

Bldgs. EO120, EO321, EO338
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710145
Status: Unutilized
Comment: 3810 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

5 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: #EO127, EO136, EO302, EO204, EO330
Landholding Agency: Army
Property Number: 21199710146
Status: Unutilized
Comment: 2284 sq. ft., possible asbestos/lead paint, most recent use—offices, off-site use only

Bldg. EO136
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710147
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

Bldgs. EO158, EO303
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710148
Status: Unutilized
Comment: 1675 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. EO202
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710149
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. EO312
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710150
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

Bldg. EO322
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710151
Status: Unutilized
Comment: 2250 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. EO325
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710152
Status: Unutilized
Comment: 3336 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

Bldg. EO329
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710153
Status: Unutilized
Comment: 1843 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. EO334
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710154
Status: Unutilized
Comment: 3779 sq. ft., possible asbestos/lead paint, most recent use—recreation, off-site use only

Bldg. EO335
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710155
Status: Unutilized

Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only

Bldg. EO347
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. EO349, EO110
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710157
Status: Unutilized
Comment: 1296 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: #EO351, EO308, EO207, EO108
Landholding Agency: Army
Property Number: 21199710158
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only

Bldgs. EO352, EO307
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710159
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. EO355
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710160
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—training facility, off-site use only

Bldg. B1008, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. B1011–B1012, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720217
Status: Unutilized
Comment: 992 sq. ft., and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

4 Bldgs.
Fort Lewis
CO511, CO710, CO711, CO719
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810373
Status: Unutilized
Comment: 1,144 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dayrooms, off-site use only

11 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: CO528, CO701, CO708, CO721, CO526, CO527, CO702, CO703, CO706, CO707, CO722
Landholding Agency: Army
Property Number: 21199810374
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dining, off-site use only

Bldg. 1021
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830418
Status: Unutilized
Comment: 3724 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—carport, off-site use only

Bldg. 5162
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. A0631
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830422
Status: Unutilized
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. C1246
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830426
Status: Unutilized
Comment: 7670 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. B0813
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830427
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. B0812
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830428
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. B0228
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830429
Status: Unutilized
Comment: 2739 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. C0409
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830431
Status: Unutilized
Comment: 1948 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9575
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830432
Status: Unutilized
Comment: 17,217 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. maint., off-site use only

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. 9794
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830435
Status: Unutilized
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—vet. fac., off-site use only

Bldg. 4540
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199840183
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 4541
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199840184
Status: Unutilized
Comment: 880 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 4542
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199840185
Status: Unutilized
Comment: 112 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. 4549
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199840186
Status: Unutilized
Comment: 26220 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—green house heat plant, off-site use only

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comment: 54 sq. ft.,needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Landholding Agency: Army
Property Number: 2119920239
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldgs. U006A, U024A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920243
Status: Excess
Comment: 1440 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldgs. U007A, U021A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920244
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920249
Status: Unutilized
Comment: 168 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920251
Status: Unutilized
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldgs. U028A–U032A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920252
Status: Unutilized
Comment: 72 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Location: U058A, U103A, U018A
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U102B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920270
Status: Excess
Comment: 1058 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U108A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920271
Status: Excess
Comment: 31,320 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U516B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920277
Status: Excess
Comment: 5000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: F0002, F0004, F0003, F0005, F0006, F0008, F0009
Landholding Agency: Army
Property Number: 21199920278
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. F0022A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920279
Status: Excess
Comment: 4373 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gen. inst., off-site use only

Bldg. F0022B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920280
Status: Excess
Comment: 3100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. A0220
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920282
Status: Excess
Comment: 2284 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—club facility, off-site use only

18 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0337, A0617, B0820, B0821, C0319, C0833, C0310, C0311, C0318, C1019, D0712, D0713, D0720, D0721, D1108, D1153, C1011, C1018
Landholding Agency: Army
Property Number: 21199920283
Status: Excess

Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only

Bldg. A0334
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920284
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C0302, C0303, C0306, C0322, C0323, C0326, C0327
Landholding Agency: Army
Property Number: 21199920285
Status: Excess
Comment: 2340 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C1002, C1003, C1006, C1007, C1022, C1023, C1026, C1027, C1207, C1301, C13333, C1334
Landholding Agency: Army
Property Number: 21199920287
Status: Excess
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldgs. E1010
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920288
Status: Excess
Comment: 148 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Bldgs. D1154
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920289
Status: Excess
Comment: 1165 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 0126
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. B1410
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920293
Status: Excess
Comment: 3108 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—motor repair, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldg. 02082
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920295
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldgs. 03100, 3101
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920297
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 5170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920301
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comment: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldg. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920309
Status: Excess

Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. 9639
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920313
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—recreation, off-site use only

Bldg. E0324
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920314
Status: Excess
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Land (by State)

Georgia

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 21199120269
Status: Unutilized
Comment: Approx. 49 acres, possible contamination, secured area with alternate access

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 21199012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 21199012056
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 21199012057
Status: Unutilized
Comment: 85 acres; road and utility easements; no utility hookup

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Landholding Agency: Army
Property Number: 21199012058
Status: Unutilized
Comment: 955 acres; road and utility easements; no utility hookup

New York

Land—6.965 Acres
Dix Avenue
Queensbury Co: Warren NY 12801–
Landholding Agency: Army
Property Number: 21199540018
Status: Unutilized
Comment: 6.96 acres of vacant land, located in industrial area, potential, utilities

Texas

Old Camp Bullis Road
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199420461
Status: Unutilized
Comment: 7.6 acres, rural gravel road

Castner Range
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199610788
Status: Unutilized
Comment: approx. 56.81 acres, portion in floodway, most recent use—recreation picnic park

Suitable/Unavailable Properties

Buildings (by State)

Georgia

Bldg. 4090
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199630007
Status: Underutilized
Comment: 3530 sq. ft., most recent use—chapel, off-site use only

Kansas

Bldg. P–295
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810296
Status: Unutilized
Comment: 3480 sq. ft. concrete, most recent use—storage underground, off-site use only

Missouri

Bldgs. 1367, 1368, 1371, 1372
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820173
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 4970
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820185
Status: Unutilized
Comment: 5000 sq. ft., presence of lead paint, most recent use—storage, off-site use only

New York

Bldg. T–2215
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840162
Status: Unutilized
Comment: 7670 sq. ft., most recent use—quarters, off-site use only

Bldg. T–2216
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840162
Status: Underutilized
Comment: 7670 sq. ft., most recent use—quarters, off-site use only

Texas

Bldg. P–2000, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199220389
Status: Underutilized
Comment: 49,542 sq. ft., 3-story brick structure, within National Landmark Historic District

Bldg. P–2001, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199220390
Status: Underutilized
Comment: 16,539 sq. ft., 4-story brick structure, within National Landmak Historic District

Land (by State)

North Carolina

.92 Acre—Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610728
Status: Underutilized

Comment: municipal drinking waterwell, restricted by explosive safety regs., New Hanover County Buffer Zone

10 Acre—Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610729
Status: Underutilized
Comment: municipal park, restricted by explosive safety regs., New Hanover County Buffer Zone

257 Acre—Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610730
Status: Underutilized
Comment: state park, restricted by explosive safety regs., New Hanover County Buffer Zone

24.83 acres—Tract of Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199620685
Status: Underutilized
Comment: 24.83 acres, municipal park, most recent use—New Hanover County explosive buffer zone

Texas

Vacant Land, Fort Sam Houston
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199220438
Status: Unutilized
Comment: 210.83 acres, 85% located in floodplain, presence of unexploded ordnance, 2 land fill areas

Suitable/To Be Excessed

Buildings (by State)

Idaho

Moore Hall U.S. Army Rsve Ctr
1575 N. Skyline Dr.
Idaho Falls Co: Bonneville ID 83401–
Landholding Agency: Army
Property Number: 21199720207
Status: Unutilized
Comment: 12582 sq. ft., dental clinic in mobile home, 1138 sq. ft., maint. shop, good condition, possible asbestos

Illinois

WARD Army Reserve Center
1429 Northmoor Road
Peoria Co: Peoria IL 61614–3496
Landholding Agency: Army
Property Number: 21199430254
Status: Unutilized
Comment: 2 bldgs. on 3.15 acres, 36451 sq. ft., reserve center & warehouse, presence of asbestos, most recent use—office/shortage/training

Stenafich Army Reserve Center
1600 E. Willow Road
Kankakee Co: Kankakee IL 60901–2631
Landholding Agency: Army
Property Number: 21199430255
Status: Unutilized
Comment: 2 bldgs.—reserve center & vehicle maint. shop on 3.68 acres, 5641 sq. ft., most recent use—office/storage/training, presence of asbestos

Indiana

Bldg. 27, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 21199610669
Status: Unutilized
Comment: 10379 sq. ft., presence of asbestos, most recent use—office/storage/training

Bldg. 36, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 21199610670
Status: Unutilized
Comment: 1802 sq. ft., presence of asbestos, most recent use—vehicle maintenance

Kansas

U.S. Army Reserve Center Annex
800 South 29th St.
Parsons KS
Landholding Agency: Army
Property Number: 21199720208
Status: Unutilized
Comment: 3157 sq. ft., 1-story, reserve center annex and storage

New York

Bldgs. P–1 and P–2
Olean Reserve Center
423 Riverside Drive
Olean Co: Cattaraugus NY 14760–
Landholding Agency: Army
Property Number: 21199540017
Status: Unutilized
Comment: 4464 sq. ft. reserve center/1325 sq. ft. motor repair shop, 1 story each, concrete block/brick frame, on 3.9 acres

Reserve Center
PFC. Robert J. Manville
USARC
1205 Lafayette Street
Ogdensburg Co: St. Lawrence NY 13669–
Landholding Agency: Army
Property Number: 21199710241
Status: Unutilized
Comment: 11,540 sq. ft., good condition.

Motor Repair Shop
PFC. Robert J. Manville
USARC
1205 Lafayette Street
Ogdensburg Co: St. Lawrence NY 13669–
Landholding Agency: Army
Property Number: 21199710242
Status: Unutilized
Comment: 2524 sq. ft., good condition

Wisconsin

U.S. Army Reserve Center
2310 Center Street
Racine Co: Racine WI 53403–3330
Landholding Agency: Army
Property Number: 21199620740
Status: Unutilized
Comment: 3 bldgs. (14,137 sq. ft.) on 3 acres, needs repair, most recent use—office/storage/training

Land

California

U.S. Army Reserve Center
Mountain Lakes Industrial Park
Redding Co: Shasta CA
Landholding Agency: Army
Property Number: 21199610645
Status: Unutilized
Comment: 5.13 acres within a light industrial park

Tennessee

Railroad Bed
Fort Campbell
Jack Miller Blvd.
Clarksville TN
Landholding Agency: Army
Property Number: 21199840189
Status: Unutilized
Comment: Approx. 6.06 acres

Unsuitable Properties

Buildings (by State)

Alabama

200 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014015, 219430286, 219530034, 219530045, 219630015–219630017, 219710163–219710170, 219720005–2196720006, 219720015, 2197420003, 219810011–219810023, 2198200011, 219820015, 21199840008–21199840012, 21199910003–21199910006, 21199920010–21199920028, 21199930010–21199930018, 21199930110
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

105 Bldgs.
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219310016, 219330003, 219340116, 219340124, 219410022, 219440094, 219520057–219520058, 2196300011, 219640440, 219710091, 219730008–219730011, 219740004, 219740006, 219810010, 219830001–219830007, 21199840006, 21199910001, 21199930019
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 25203, 25205–252307, 25209, 25501, 25503, 25505, 25507, 25510
Fort Rucker
Stagefield Areas
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219410020–219410021
Status: Unutilized
Reason: Secured area

7 Bldgs.
Anniston Army Depot
Anniston AL 36201
Landholding Agency: Army
Property Number: 219740001–219740002, 21199840001–2119840005
Status: Unutilized
Reason: Extensive deterioration

Alaska

17 Bldgs.
Fort Greely
Ft. Greeley AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220320–219220332, 219520064
Status: Unutilized

Reason: Extensive deterioration

18 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 219710090, 219710195–219710198, 219810002–219810007, 21199920001, 21199930001–21199930003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured area, Floodway (Some are extensively deteriorated)

Bldg. 1501, Fort Greely
Ft. Greely AK 99505
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured Area

Sullivan Roadhouse, Fort Greely
Ft. Greely AK
Landholding Agency: Army
Property Number: 219430291
Status: Unutilized
Reason: Extensive deterioration

28 Bldgs., Fort Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 219710199–219710220, 21199930005–21199930009
Status: Unutilized
Reason: Extensive deterioration

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured Area

3 Bldgs.
Yuma Proving Ground
Yuma Co: AZ 85365
Landholding Agency: Army
Property Number: 21199920030–21199920032
Status: Unutilized
Reason: Extensive deterioration

Bldg. 47017
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 21199930020
Status: Excess
Reason: Extensive deterioration

Arkansas

7 Bldgs.
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420138–219420142, 219440077, 21199910007
Status: Unutilized
Reason: Secured Area; Extensive deterioration

177 Bldgs., Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019–219630029, 219640462–219640477
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120051, 219340008–219340011
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

14 Bldgs.
DDDRW Shape Facility
Tracy Co: San Jaoquin CA 95331
Landholding Agency: Army
Property Number: 219430025–219430026, 219430032–219430033, 219610289–219610296, 219740008, 21199930021
Status: Unutilized
Reason: Secured Area

6 Buildings .
Oakland Army Base
Oakland Co: Alameda CA 94626
Location: Include: 90, 790, 792, 807, 829, 916
Landholding Agency: Army
Property Number: 219510097
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 29, 39, 73, 154, 155, 193, 204, 257
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1103, 1131, 1120
Park Reserve Forces Training Area
Dublin Co: Alameda CA 94568–5201
Landholding Agency: Army
Property Number: 219520056, 219830010
Status: Unutilized
Reason: Extension deterioration

12 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015–21199840022, 21199920033–21199920036
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

448 Bldgs.
Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820192–219820235
Status: Excess
Reason: Secured Area; Extension deterioration

5 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 219810380–219810381, 21199930106–21199930108
Status: Unutilized
Reason: Extensive deterioration

21 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–2119920038
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

46 Bldgs. Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219610317, 219620400, 219710093, 219710173, 219730015, 219730017, 219830020–219830032, 21199910008–2199910010, 21199930022–21199930025
Status: Unutilized
Reason: Extension deterioration

15 Storage Sheds
Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 219830011
Status: Unutilized
Reason: Extension deterioration

Connecticut

Bldgs. DK001, DKL05, DKL10
USARC Middleton
Middletown Co: Middlesex CT 06457–1809

Landholding Agency: Army
Property Number: 219610024–219810026
Status: Unutilized
Reason: Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack

231 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219220269, 219320026, 219410050–219410061, 219410071–219410072, 219410100–219410115, 219520067, 219610330–219610331, 219610336, 219630044–219630067, 219640011–219640037, 219710094, 219730019–219730020, 219810027, 219830034–219830067, 21199910011–21199910012
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220335–219220337
Status: Unutilized
Reason: Detached lavatory

35 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219520150, 219610320–219610321, 219640046, 219720017–219720022, 219810028–219810031, 219810035, 219830073–219830083, 21199930030–21199930037, 21199930109
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920051, 21199930026–21199930029
Status: Unutilized
Reason: Extensive deterioration; Secured Area

2 Bldgs., Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219740012–21970013
Status: Unutilized
Reason: Extensive Deterioration

5 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219610326, 219620413, 219630034, 219740010, 219830068
Status: Unutilized
Reason: Extensive deterioration

14 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21199920040–21199920043
Status: Unutilized
Reason: Secured Area

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekole Pass Road
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area

P–3384, T–1089, T–1093
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219030361, 21199930039
Status: Unutilized
Reason: Secured Area

Bldgs. T–1305, S–1320
Wheeler Army Airfield
Wahiawa HI 96857
Landholding Agency: Army
Property Number: 219610348, 21199930038
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T–226 T–224
Dillingham Military
Reservation
Wahiawa Co: HI 96857
Landholding Agency: Army
Property Number: 21199930040
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldgs. 58, 59 and 72, 69, 64, 105, 135
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108, 219620427
Status: Unutilized
Reason: Secured Area

Bldgs. 133, 141 Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219210100, 219620428
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs. Savanna Army Depot Activity
Savanna Co: Carroll IL 61074
Landholding Agency: Army
Property Number: 219230126–219230127, 219430326–219430335, 219430397
Status: Unutilized
Reason: Extensive deterioration

18 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219710096, 219820027–219820028, 21199930042–21199930053
Status: Unutilized
Reason: Secured Area; Extensive deterioration; Floodway

Indiana

181 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149–219210151, 219220220, 219230032–219230033, 219430336–219430338, 219520033, 219520042, 219530075–219530097, 219740021–219740026, 219820031–219820032, 21199920063
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.)

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs., Camp Atterbury
Edinburgh IN 46124
Landholding Agency: Army
Property Number: 219610352, 219620429–219620434
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Iowa

97 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219510089, 219520002, 219520070, 219610414, 219740027
Status: Unutilized
Reason: (Many are in a Secured Area); (Most are within 2000 ft. of flammable or explosive material.)

30 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219330061, 219340091, 219520053, 219520151
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material)

12 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219430040, 219610623–219610626, 219620825–219620826, 219630085, 21199910013
Status: Unutilized
Reason: Extensive deterioration

121 Bldgs.

Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area

Bldgs. P–417, T–994
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 219740029, 21199920064
Status: Unutilized
Reason: Extensive deterioration; Sewage pump station

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area, Sewage treatment facility

Bldg. 12
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant

Bldg. 1395, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219820033
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219730038, 219740031–219740036, 21199920065–2119992066, 21199930041
Status: Unutilized
Reason: Extensive deterioration

Louisiana

533 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011668, 219011670, 219011714–21911716, 219011735–219011737, 219012112, 219013572, 219013863–219013869, 219110127, 2191100131, 219110136, 219240138–219240148, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820044–219820078
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

65 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219430339, 219520059, 219810039–219810061, 219820035–219820043, 219830105–219830108, 21199840033–21199840047, 21199920067–21199920080
Status: Unutilized
Reason: Extensive deterioration (Some are in Floodway.)

Maryland

148 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Hartford MD 21005–5001
Landholding Agency: Army
Property Number: 219011406–219011417–219012610, 219012612, 219012614, 219012616–219012617, 219012625–219012628, 219012634, 219012637–219012642, 219012645–219012650, 219012657–219012664, 219013773, 219014711–219014712, 219610480, 219610489–219610490, 219730077–219730084, 219810070–219810127, 219820081–219820096, 219830114, 21199840057, 21199840059, 21199920081
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway) (Some are extensively deteriorated)

82 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219130059, 219140460–219140461, 219310031, 219710185–219710192, 219740068–219740089, 219810063–219810069, 21199910018, 2199910019, 21199930054–21199930058
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 132 Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Number: 2199330109
Status: Underutilized
Reason: Secured Area

Bldg. P–1001 Fort Detrick
Frederick Co: Frederick MD 21762–5000
Landholding Agency: Army
Property Number: 219830110
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Massachusetts

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MD 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldgs. 3596, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020
Status: Unutilized
Reason: Secured Area

Bldg. 101
Hudson Family Housing
U.S. Army Soldier Systems Command
Hudson Co: Middlesex MA 01749
Landholding Agency: Army
Property Number: 219730037
Status: Unutilized
Reason: Extensive deterioration

Facility No. 0G001
LTA Granby
Granby Co: Hampshire MA
Landholding Agency: Army
Property Number: 219810062
Status: Unutilized
Reason: Extensive deterioration

Michigan

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized
Reason: Secured Area

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area; Extensive deterioration

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219140447–219140454
Status: Unutilized
Reason: Secured Area

Bldg. 910
Selfridge ANG Base
Selfridge Co: MI 48045
Landholding Agency: Army
Property Number: 21199930059
Status: Unutilized
Reason: Secured Area

Minnesota

170 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310055–219310056, 219320145–219320156, 219330096–219330106, 219340015, 219410159–219410189, 219420195–219420284, 219430059–219430064, 21199840060
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated)

Missouri

82 Bldgs.
Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134–219530138, 21199910023–21199910035, 21199920082
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized

Reason: Secured Area (Some are extensively deteriorated.)

14 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430070–219430078, 219830115–219830116, 21199910020–21199910022, 21199930060
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are extensively deteriorated.)

Montana

19 Bldgs.
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 219620473–219620475, 219740093–219740101
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Extensive deterioration

Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East Side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone Secured Area

41 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219012021, 219012044, 219013615–219013643,
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant
Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

New Jersey

218 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010665, 219010671–219010721, 219012424, 219012427–219012428, 219012430, 219012433–219012466, 219012469–219012472, 219012475, 219012760, 219012763–219012767, 219014306–219014307, 219014311, 219014313–219014321, 219140617, 219230121–219230125, 219420001–219420002, 219420006–219420008, 219530144–219530150, 219540002–219540007, 219740110–219740127
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated) (Some are in a floodway)

13 Bldgs., Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Landholding Agency: Army
Property Number: 219013890–219013896, 219330141–219330143, 219430001, 219440200, 219520149
Status: Unutilized
Reason: Floodway, Secured Area

Structure 403B
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219510001
Status: Unutilized
Reason: Drop Tower

New York

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Parcel 19
Stewart Army Subpost, U.S. Military Academy
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 219730098
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 12
Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099
Status: Unutilized
Reason: Extensive deterioration

Bldg. 134
Watervliet Arsenal
CO: Albany NY 12189–4050
Landholding Agency: Army
Property Number: 21199840068
Status: Unutilized
Reason: Secured Area

Bldg. T–2222
Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 21199920083
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 4056, 4275
Stewart Army Subpost
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 21199930061
Status: Unutilized
Reason: Sewage pump station

North Carolina

26 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219620478, 219620480, 219640064, 219640074, 219710102–219710111, 219710224, 219810167, 219830117, 219830120, 21199930062–21199930067
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 16, 139, 261, 273
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219530155, 219810158–219810160
Status: Unutilized
Reason: Secured Area

Ohio

219 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148, 21199840069–21199840104, 21199930070–21199930072
Status: Unutilized
Reason: Secured Area

7 Bldgs.
Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area

3 Bldgs.
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219830134, 21199910037, 21199930068
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

548 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013981–21913991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004, 21199910039–21199910040
Status: Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

17 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219140548, 219140550, 219440309, 219510023, 219730342, 21199910038
Status: Unutilized

Reason: Extensive deterioration

33 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 219310050–219310053, 219320170–219320171, 219330149–219330160, 219430122–219430125, 219620485–219620490, 219630110–219630111, 219810174–219810176
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 2190122217, 219012229
Status: Underutilized
Reason: Secured Area

34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219011195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840107–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area

Pennsylvania

Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604–1528
Landholding Agency: Army
Property Number: 219320173
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–685, Carlisle Barracks
Carlisle Co: Cumberland PA 17013
Landholding Agency: Army
Property Number: 219610530
Status: Unutilized
Reason: Extensive deterioration

74 Bldgs.
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219640337, 219720093, 219730116–219730128, 219740129–219740132, 219740134, 219740137, 219810177–219810194
Status: Unutilized
Reason: Extensive deterioration

Bldg. 21
Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 219830135
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 209
Tobyhanna Army Depot
Tobyhanna PA 18466
Landholding Agency: Army
Property Number: 21199930069
Status: Unutilized
Reason: Extensive deterioration

South Carolina

55 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219510017, 219620306, 219620312, 219621317, 219620348–219620351, 219620368, 19640138, 21199640148–21199640149, 219640167, 219720095–219720097, 219730130–219730157, 219740138, 219820102–219820111, 219830139–219830157
Status: Unutilized
Reason: Extensive deterioration

Tennessee

32 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613, 219330178, 219440212–219440216, 219510025–219510028
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

10 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184 219330176–219330177, 219520034, 219740139
Status: Unutilized
Reason: Secured Area

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

95 Bldgs.
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219042546, 219012548, 219610553–219610584, 219610635, 219620243–219620291, 219620827–219620837
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

20 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420314–219420327, 219430094–219530097, 219440217
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

34 Bldgs. Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330473, 219610549, 219640172, 219640177, 219640182, 219810197–219810201, 219830201–219830205
Status: Unutilized
Reason: Extensive Deterioration

Bldgs. T–2916, T–3180, T–3192, T–3398, T–2915
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330476–219330479, 219640181
Status: Unutilized
Reason: Detached latrines

97 Bldgs. Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219640490–219640491, 219730160–219730186, 219740146, 219830161–219830197
Status: Unutilized
Reason: Extensive deterioration

Starr Branch, Bldg. 703B
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661
Landholding Agency: Army
Property Number: 219640186, 219640494
Status: Unutilized
Reason: Floodway

Bldg. 53
Laredo USARC
Laredo Co: Webb TX 78040
Landholding Agency: Army
Property Number: 21199930073
Status: Unutilized
Reason: Extensive deterioration

Utah

3 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012153, 219012166, 219030366
Status: Unutilized
Reason: Secured Area

8 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012751, 219240267
Status: Underutilized
Reason: Secured Area

3 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997, 219130012, 219130015

Status: Underutilized
Reason: Secured Area

59 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219330181–219330182, 219330185, 219420328–219420329, 21199920091–21199920101
Status: Unutilized
Reason: Secured Area

Bldgs. 3102, 5145, 8030
Deseret Chemical Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 219820119–219820121
Status: Unutilized
Reason: Secured Area Extensive deterioration

Virginia

320 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219440219–219440225, 219510031–219510033, 219610607–219610608, 219830223–219830267
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Secured Area Latrine, detached structure

80 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240107, 219330210–219330211, 2129330219–219330220, 219330225–219330228, 219520062, 219610595, 219610597, 219620497, 219620505, 219620863–219620876, 219630115, 219640497, 219740155–219740156, 219830206–219830210, 21199910041–21199910043, 21199920117–21199920118
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

16 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103, 219520037
Status: Unutilized
Reason: Secured Area

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material
Extensive deterioration

Bldg. 171 Fort Monroe
Ft. Monroe VA 23651
Landholding Agency: Army
Property Number: 219520051
Status: Unutilized
Reason: Extensive deterioration

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Secured Area

25 Bldgs.
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219510030, 219610588, 21199920113–21199920116, 21199930077–21199930079
Status: Underutilized
Reason: Secured Area Extensive deterioration

Bldgs. 2013–00, B2013–00, A1601–00
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219520052, 219530194
Status: Unutilized
Reason: Extensive deterioration

16 Bldgs.
Fort Belvior
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21199910050–21199910057, 21199920107–21199920112
Status: Unutilized
Reason: Extensive deterioration

18 Bldgs.
Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219640506, 219710193
Status: Unutilized
Reason: Extensive deterioration

15 Bldgs., Fort Eustis
#219, 220, 229, 231, 232, 651, 654, 1400, 1404 1408, 1416, 1419, 1505, 1547, 1743
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21199930074–21199930076
Status: Unutilized
Reason: Extensive deterioration

Washington

664 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610001, 219610006–219610007, 219610009–219610010, 219610012, 219610042–219610046, 219620509–21920517, 219640193, 219710194, 219720142–219720151, 219810205–219810243, 219820130–219820132, 21199840118–21199840123, 21199910063–21199910080, 21199920125–21199920181, 21199930080–21199930105
Status: Unutilized
Reason: Secured Area; Extensive deterioration

11 Bldgs, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740162–219740172
Status: Unutilized
Reason: Extensive deterioration

Bldg. 575
Fort Lawton
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 21199920119
Status: Unutilized
Reason: Secured Area

Bldg. 415, Fort Worden
Port Angeles Co: Clallam Wa 98362
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration

Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: gas chamber

Wisconsin

6 Bldgs
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

4 Bldgs.
Badger Army Ammunition Plant

Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilzied
Reason: Secured Area

31 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219220295–219220311, 219510058–219510068
Status: Unutilized
Reason: Secured Area

316 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099, 219740184–219740271
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 6513–3
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219510057
Status: Unutilized
Reason: Detached Latrine

124 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219510069–219510077
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Land (by State)

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

1505 acres
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111
Landholding Agency: Army
Property Number: 21199930166
Status: Excess
Reason: Contaminants; Secured Area

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway; Secured Area

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: Landlocked

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Ohio

0.4051 Acres, Lot 40 & 41
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219630109
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Oklahoma

McAlester Army Ammo. Plant
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

Land—Harrison Bayou
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 219640187
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Land—.036 acres
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730202
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area

[FR Doc. 99–21325 Filed 8–19–99; 8:45 am]
BILLING CODE 4210–29–M

OL

64

SS

1
6
1

AG

20

99

MI

federal register

Friday
August 20, 1999

Part III

Environmental Protection Agency

40 CFR Parts 259, 261, 266, and 270
Standards for the Management of Cement Kiln Dust; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 259, 261, 266, and 270

[FRL–6413–6 RIN 2050–AE34]

Standards for the Management of Cement Kiln Dust

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("we" or EPA) is today proposing a creative, affordable, and common sense approach for the management of cement kiln dust (CKD) waste under the Resource Conservation and Recovery Act (RCRA). CKD would remain a non-hazardous waste provided the following management standards are met. First, for ground-water protection, the Agency is proposing management standards which require a landfill to be designed to control releases of toxic metals to ground water at the point of compliance. Second, to control releases of fugitive dust, the proposed management standards would require persons managing CKD waste to cover or otherwise manage the landfill, CKD handling areas, and CKD storage areas to control wind dispersal of fugitive CKD. Finally, this rule also proposes concentration limitations on various pollutants in CKD used for agricultural purposes. This rule also proposes RCRA Subtitle C regulatory standards for CKD that is not managed according to the management standards described above.

DATES: EPA will accept public comment on this proposed rule until November 18, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–99–CKDP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below.

Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number F–99–CKDP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the "Supplementary Information" section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this proposed rulemaking and regulatory decision, contact Bill Schoenborn, U.S. EPA (5306W), 401 M Street, SW., Washington, DC 20460, (703) 308–8483, or e-mail: schoenborn.william@epa.gov.

SUPPLEMENTARY INFORMATION: The index and the following supporting materials are available from the RCRA Information Center:

1. Report to Congress on Cement Kiln Dust (59 FR 709, January 6, 1994).
2. Regulatory Determination on Cement Kiln Dust (60 FR 7366, February 7, 1995).
3. Notice of Data Availability: Additional Data Available on Wastes Studied for the Report to Congress on Cement Kiln Dust; Request for Comments. (59 FR 47133, September 14, 1994).
4. Correction to Notice of Data Availability (59 FR 51440, October 11, 1994).

The index and some of the supporting materials are available on the Internet. Follow these instructions to access the information electronically:

WWW: *http://www.epa.gov/epaoswer/other/ckd/index.htm*
FTP: *ftp.epa.gov*
Login: anonymous
Password: Your internet address

Files are located in /pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be published in a notice in the **Federal Register** or in a response to comments document placed in the official record for this proposed rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

The contents of today's document are listed in the following outline:

I. Statutory Authority
II. Background
A. Bevill Amendment
B. Report to Congress and Notice of Data Availability
C. Regulatory Determination and Subsequent Studies
1. Summary of Agency's Determination
2. Proposed Enforceable Agreement
3. The Need for CKD Management Standards
4. New Analyses
D. Beneficial Use of Cement Kiln Dust
III. Discussion of Options to Address Risks From Mismanaged CKD
A. State-Based Approach
B. Memorandum of Understanding
C. Two-Dust Approach
D. Develop Regulations Under Authority of Subtitle D
E. Subtitle C Enforcement Without Listing CKD
F. Tailored Standards Under Subtitle C
G. States Adopt Appropriate Programs
H. Today's Approach—Exclude Properly Managed CKD From Hazardous Waste Listing
1. Develop Management Standards and Exempt Properly Managed CKD From Classification as a Hazardous Waste (Management-based Listing)
2. Alternative Management-based Listing
3. Characteristic CKD
4. Apply Tailored RCRA Subtitle C Standards to Improperly Managed CKD
IV. Proposed Management Standards
A. Protection of Ground-water Resources
1. The Need for Ground-water Protection Standards
2. Applicability
3. Location Standards
4. Performance-Based Standard for the Protection of Ground Water
5. Technology-Based Standards for the Protection of Ground Water
6. Requirements for Ground-water Monitoring
7. Corrective Action
B. Standards for Fugitive CKD Emissions
1. The Need to Limit Fugitive CKD Emissions
2. Applicability

3. Performance Standard for the Protection of Air
4. Technology-Based Standards for Fugitive Dust Control
C. Closure
D. Post-Closure Care
E. Closure/Post-Closure Planning Requirements
F. Financial Assurance
G. Implementation
1. Notification, Recordkeeping, and Reporting
2. Permitting Requirements
H. Applicability of the Boilers and Industrial Furnaces Rule
I. Exemption from the Definition of Hazardous Waste
1. Waste-Derived Clinker
2. Light-Weight Aggregate Kiln Dust
3. Use of CKD in Removal and Remediation Actions
J. Final Rule Effective Date
V. Subtitle C Backup Standards
A. Subtitle C Requirements for Hazardous CKD Waste
1. 3004(x)—Special Characteristics
2. Facility-wide Corrective Action Requirement
3. Manifest, Recordkeeping, and Reporting Requirements
B. Implementation of Part 259 and RCRA Subtitle C Backup Standards
1. Enforcement
2. Removal of a Hazardous Waste Designation
3. Alternative Approach to Structuring the Performance Standards
VI. Standards for CKD Used as a Lime Substitute
A. Summary
B. CKD Agricultural Use Risk Assessment
1. Risk Assessment Methodology
2. Human Health Criteria and Effects
3. Agricultural Use Practice Assumptions
4. Fate and Transport of Chemical Constituents in the Environment
5. Uptake of Contaminants in Plant and Animals
6. Receptor Scenarios and Exposure Pathways
7. Lead Risk Assessment
8. Ecological Risk and Phytotoxicity
9. Risk Assessment Results
C. Approach to Establishing Limiting Concentrations
1. Risk-based Approach—Proposed Limiting Concentrations for Cadmium, Lead, and Thallium
2. Risk-Based Approach—Proposed Limiting Concentration for Chlorinated Dioxins and Furans
3. Comparison to Agricultural Lime—Proposed Limiting Concentration for Arsenic
4. Peer Review of the Risk Assessment
D. Implementation of Controls for the Agricultural Use of CKD
E. Alternative Standard to Limit Chlorinated Dioxins and Furans in CKD
VII. Relationships Between this Action and Other Regulatory Programs
A. Stormwater Regulations
B. Clean Air Act
VIII. State Authority
A. Statutory Authority
B. Effect of Today's Proposed Rule
IX. Regulatory Requirements
A. Regulatory Impact Analysis Pursuant to Executive Order 12866
1. Scope and Approach for Estimating Economic Costs and Impacts
2. Summary of Cost and Impact Results
3. Benefits of the Rulemaking
B. Regulatory Flexibility Analysis
1. Identification of Small Cement Companies
2. Outreach
3. The Agency's RFA Screening Analysis
4. Agency Findings and Conclusions Regarding SBREFA Impacts
C. Environmental Justice—Applicability of Executive Order 12898
D. Protection of Children—Applicability of Executive Order 13045
E. National Technology Transfer and Advancement Act
F. Unfunded Mandates Reform Act
G. Paperwork Reduction Act
H. Executive Order 12875: Enhancing the Intergovernmental Partnership
I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
Appendix I to the Preamble—Justification for CKD Listing
Appendix II to the Preamble—Reportable Quantities

I. Statutory Authority

Section 3001(b)(3)(C) of RCRA, as amended, required that, after completing a Report to Congress (RTC) mandated by section 8002(o) of RCRA, the EPA Administrator must determine whether Subtitle C regulation of cement kiln dust (CKD) waste is warranted. The RTC documenting EPA's study of CKD was signed by the Administrator on December 30, 1993. EPA's regulatory determination was published in the **Federal Register** on February 7, 1995 (60 FR 7366). To implement that determination, EPA is today proposing rules using its authorities under sections 2002(a), 3001(b)(3)(C) and 3004(x) of RCRA.

II. Background

On October 21, 1976, Congress enacted RCRA (Pub. L. 94–580). Section 3001 of RCRA mandated that the EPA Administrator "promulgate regulations identifying characteristics of hazardous waste, and listing particular hazardous wastes which shall be subject to the provisions of this subtitle." Section 3004 required the Administrator to promulgate standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.

In response to these requirements, EPA proposed regulations for managing hazardous wastes under Subtitle C of RCRA on December 18, 1978 (43 FR 58946). In this regulatory proposal, EPA proposed to defer most of the RCRA Subtitle C requirements for six categories of wastes, which it termed "special wastes," until information could be gathered and assessed and the most appropriate regulatory approach determined. The special wastes were wastes typically generated in large volumes, and, at the time were thought to possibly pose less risk to human health and the environment than wastes being regulated as hazardous wastes. EPA identified CKD waste as one of these "special wastes." [1]

A. Bevill Amendment

On October 12, 1980, Congress enacted the Solid Waste Disposal Act Amendments of 1980 (Pub. L. 96–482), which added section 3001(b)(3)(A)(iii) (now frequently referred to as the Bevill Amendment) to RCRA which, among other things, temporarily exempted "cement kiln dust waste" (along with two other categories of waste) from Subtitle C regulation, pending completion of certain studies. These amendments also added section 8002(o), which required the Administrator to study the adverse effects on human health and the environment, if any, from the disposal of "cement kiln dust waste," and submit a Report to Congress on its findings. The 1980 amendments also added section 3001(b)(3)(C), which required the Administrator to make a regulatory determination, within six months of the completion of the section 8002(o) study, whether or not to regulate CKD waste under Subtitle C of RCRA.

In response to the 1980 RCRA amendments, on November 19, 1980, EPA published an interim final amendment to its hazardous waste regulations to reflect the provisions of the Bevill Amendment (45 FR 76618), which is codified at 40 CFR 261.4(b)(8). Since that time, CKD has been exempt from Subtitle C of RCRA—that is, this material has never been regulated as a hazardous waste under Federal law. [2]

B. Report to Congress and Notice of Data Availability

To comply with the Congressional mandate and to establish the factual

[1] The other five proposed "special wastes" specifically identified in the 1978 proposed rule were mining waste; utility waste; phosphate rock mining, beneficiation, and processing waste; uranium waste; and oil and gas drilling muds and oil production brines.

[2] It should be noted here that under the RCRA Subtitle C Boilers and Industrial Furnaces (BIF) Rule, CKD generated by kilns that burn hazardous waste as fuel may be ineligible for Bevill Exclusion under certain conditions (see 40 CFR 266.112).

basis for EPA decision making regarding the appropriate regulatory status of CKD waste under RCRA, EPA published in December 1993 its "Report to Congress on Cement Kiln Dust" (RTC). In keeping with the statutory requirements, the report addressed the following eight study factors, as articulated at section 8002(o) of RCRA:

(1) The source and volumes of [CKD] generated per year;

(2) Present disposal practices;

(3) Potential danger, if any, to human health and the environment from the disposal of (CKD);

(4) Documented cases in which danger to human health or the environment has been proved;

(5) Alternatives to current disposal methods;

(6) The costs of such alternatives;

(7) The impact of those alternatives on the use of natural resources; and

(8) The current and potential utilization of (CKD).

The RTC also included a review of applicable State and Federal regulations, so regulatory decisions derived from the report would avoid duplication of existing requirements.

In preparing the RTC, EPA developed industry-wide and, in some cases, facility-specific data and analytical methods that reflect the complexity of the issues addressed in the RTC. Facilities that generate CKD waste vary considerably in size, location, operational aspects, and waste management techniques. Moreover, to examine in detail the broad array of study factors mandated by RCRA section 8002(o), EPA developed approaches and methods that were sufficiently sophisticated to take into account the special nature of CKD. The specific methods that EPA used to address each of the study factors are described in detail in Chapters 3 through 9 of the RTC. Additional information on the methods used and supporting data are contained in the Background Documents to the RTC available from the RIC as discussed above under the **ADDRESSES** section.

In 1992 and 1993, the Agency visited 20 cement manufacturing facilities in the U.S. and obtained samples of cement kiln dust generated by each operation.[3] The Agency conducted chemical analyses on all of the samples for a number of constituents. The analytical results were used in the development of the RTC, and they were included in the Agency's RCRA docket that supports the report. Late in the study, one final set of metals analyses were conducted on the cement kiln dust samples as managed (e.g., stored, disposed) by six of the 20 facilities sampled. The Agency obtained the raw analytical data too late for use in developing the RTC, but did include the data in the RCRA docket for public inspection and comment.[4]

After issuance of the RTC, the raw data were subjected to data validation and the analytical results were finalized. Although not used in the development of the RTC, the Agency did consider these data in the process of formulating the CKD regulatory determination. Accordingly, on September 30, 1994, EPA published a Notice of Data Availability (NODA) (see 59 FR 47133) announcing the availability of the additional analytical data. On October 11, 1994 (59 FR 51440), the Agency published a Correction Notice which identified certain errors and corrected certain portions of the new data pertinent to additional assessments of potential risk from CKD waste.[5]

C. Regulatory Determination and Subsequent Studies

1. Summary of Agency's Determination

On February 7, 1995, EPA issued the determination required by section 3001(b)(3)(C) of RCRA, finding that additional control of CKD was warranted (60 FR 7366). The Agency stated that its concerns about the potential harm to human health and the environment posed by some CKD suggest the need for some level of regulation under RCRA Subtitle C authority. The Agency also recognized that certain of these areas of concern (those related to releases to surface waters) are more appropriately controlled under other EPA-administered statutes. In order to avoid unnecessary duplication among regulatory programs, EPA stated it would rather use the other existing regulatory programs to control risks where appropriate, and develop a more creative, affordable, and common sense approach that would control the adverse effects of CKD.

The Agency decided to develop, promulgate, and implement regulations for CKD as necessary to protect human health and the environment by using a variety of statutes. For surface waters, the Agency believes that existing regulations and the planned general permit under the National Pollutant Discharge Elimination System (NPDES) permitting program provide an adequate mechanism for controlling point source discharges and for managing storm water that contains CKD. With respect to ground water, the Agency decided to use its authority under RCRA Subtitle C provided by sections 2002(a), 3001(b)(3)(C), and 3004(x) to develop a program tailored to local cement plant conditions to control specific risks. In the regulatory determination, EPA also stated that it would develop and implement additional controls under the Clean Air Act (CAA), as necessary to address concerns relating to air emissions of CKD. Subsequently, however, EPA has concluded that RCRA authorities will better serve that purpose. EPA's reasons for changing its approach are discussed in detail in Section VII. B. (Clean Air Act) below.

For most off-site beneficial uses of CKD (e.g., in waste stabilization or certain construction uses), EPA's current record indicates there are no significant risks. However, the Agency also decided to evaluate the need for additional controls for a limited number of off-site uses of CKD (such as use as a substitute for lime fertilizer on agricultural fields) in its regulatory proposal. The Agency stated that its focus would be restricted to those off-site uses for which there may be significant risks.

EPA also stated in the regulatory determination that specific RCRA Subtitle C components deserve particular scrutiny in developing a tailored approach, including the following: facility-wide corrective action under section 3004(u); land disposal restrictions requirements (LDRs) under sections 3004(c),(d),(e),(f) and (g); minimum technology standards under section 3004(o); and permit requirements under section 3005. EPA stated that most of the concerns traditionally addressed by the land disposal restrictions program, permit requirements, and the minimum technology standards would be best addressed through management standards developed specifically for CKD.

2. Proposed Enforceable Agreement

On March 22, 1995, the U.S. cement industry, through the American Portland Cement Alliance (APCA), submitted to the Agency a voluntary management program for CKD. This program was based on earlier work APCA submitted to EPA in 1993. Under this voluntary program, cement

[3] The CKD sampling trip reports can be found in the RIC under the following numbers: Phase I sampling trip reports (Nos. F–94–RCKA–S0001 to S0066); Phase II CKD sampling trip reports (Nos. F–94–RCKA–S0067 to S0073).

[4] All of the analytical data on CKD can be found in the Technical Background Document: Analysis of CKD Generation and Characteristics Data, RIC docket Nos. F–94–RC2A–S0017 to S0017.G.

[5] Additional data on CKD waste studied in the Report to Congress, including supplemental errata, is available in the RIC docket under the general identification number F–94–RC2A–FFFFF.

manufacturing facilities would manage their CKD according to industry-developed management standards, and EPA would enforce those standards through a contract rather than through regulation. The proposed agreement included provisions for compliance standards, facility waste management plans, a public participation process, enforcement, and penalties. The industry indicated that its intent was to provide the Agency with a constructive alternative to Subtitle C regulation that would not stigmatize CKD as hazardous waste.

The proposed enforceable contract represented a new approach and raised a number of legal and technical issues which EPA evaluated. The Agency also contacted various State agencies, industry groups, and public citizen groups to assess their positions on the proposal. Although EPA in the past has entered into unenforceable "voluntary" agreements with other industries, the Agency has determined that it does not have inherent contract authority to enter into enforceable agreements, although it has authority to enter into enforceable consent orders under the imminent hazard provisions of RCRA section 7003, or section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The cement industry chose not to pursue enforceable agreements under these authorities because of concern that it would be inappropriate to characterize CKD as posing an imminent and substantial danger to human health and the environment.

3. The Need for CKD Management Standards

In the RTC, the Agency described the decision rationale used to make its regulatory determination. The Agency applied a step-wise approach that it considered to be consistent with Congressional intent that EPA consider all of the study factors listed in RCRA section 8002(o). The methodology used by EPA examined the need for CKD management standards and the economic consequences of imposing full Subtitle C requirements on the industry. (See 60 FR 7366 for a discussion of the steps EPA considered in determining the need for CKD management standards.)

a. Documented Evidence of Damage

The Agency determined that the potential exists for hazardous constituents, including metals, to migrate from CKD waste sites and that CKD has caused documented impacts (and may continue to cause impacts) at levels of concern. Information is available to indicate that ground water has been affected by CKD management units. During the development of the RTC, the Agency identified five cases of damage to ground water, 10 cases of damage to surface water and 21 cases of damage to air from CKD waste management units.[6] Two additional cases of ground water damage, two additional cases of surface water damage, and 16 additional cases of air damage were subsequently identified in the 1994 NODA and placed in the RCRA docket in a technical background document entitled Additional Documented and Potential Damages From the Management of Cement Kiln Dust (See 59 FR 47133, September 14, 1994).[7] In its Regulatory Determination, EPA stated these cases suggest that despite State regulations damages continued to occur with current (i.e., as of 1994) CKD management practices.

Typically, ground-water damages were the result of metals constituents leaching into ground water from unlined CKD landfills and waste piles. Ground-water damages were of concern to the Agency because relatively few (17% in 1991) of all CKD management units had ground-water monitoring systems, while 25 of 91 cement manufacturing facilities were reported in 1991 to be located within one mile of a public drinking water well. Additionally, ground-water damage was a major factor cited for including two CKD disposal units on the CERCLA (Superfund) National Priorities List (NPL).

Damages to air were also identified due to particulate emissions of CKD from quarries, haul roads, and CKD handling equipment. Most of these cases involved visible emissions violations (opacity) related to equipment malfunctions associated with CKD handling equipment (kilns, baghouses, and screw conveyors). In the regulatory determination, EPA characterized the air releases as persistent, with many facilities having more than one violation. Also, significant releases of airborne particulates were frequently observed first-hand by Agency staff during the course of the RTC study.[8]

[6] Based on subsequent review of the damage cases, except for two reassessments (one air damage case and one surface water damage case), the Agency believes the information received in comment does not contradict the Agency's basic conclusions regarding any of the damage cases identified in the RTC and subsequent NODA. A detailed description of these damage cases is available in Chapter 5 of the RTC.

[7] RIC Docket Nos. F–94–RC2A–S0003 to S0015.

[8] A general description of these emissions can be found in the EPA CKD sampling trip reports which are located in the support section of the RIC docket on the Report to Congress.

b. Potential Risks to Human Health and the Environment

The Agency conducted a series of risk screening and site-specific risk modeling studies to evaluate potential risks from on-site management and off-site uses of CKD. Methodologies and results of these studies were documented in Chapter 6 of the RTC and its related technical background documents and in two subsequent EPA technical background documents entitled Human Health and Environmental Risk Assessment in Support of the Regulatory Determination on Cement Kiln Dust (August 31, 1994) and Supplemental Errata Document for the Technical Background Document for the Notice of Data Availability on Cement Kiln Dust (September 30, 1994).[9]

EPA assessed the risks of potential releases of CKD contaminants to the environment, both during the routine management of the dust at cement plants and during beneficial use of the dust at other locations. The risk assessment was intended to complement the damage case study, which provided actual instances of environmental contamination, sometimes attributable to management practices and facility settings not considered in the risk assessment. The risk assessment was also intended to cover the potential for certain more subtle or long-term risks that might not be evidenced in the damage case files.

One of the primary objectives of the risk assessment was to evaluate, as realistically as possible, the baseline risks of CKD management practices at actual sites. This was accomplished by focusing initially on a sample of case-study cement plants and off-site beneficial use scenarios that appeared to provide a reasonable representation of the universe of sites where CKD is disposed and used. For each sample site, EPA evaluated the potential for CKD contaminants to be released into the environment, migrate to possible human and ecological receptors through a number of media and pathways (e.g., ground water contamination, surface water runoff to streams or lakes, windblown dust) and result in exposures and adverse effects. This evaluation included a combination of qualitative analyses designed to document and describe major factors contributing to (or limiting) risks, and quantitative modeling designed to

[9] These documents are available in the RIC docket (Nos. F–94–RCKA–FFFFF, F–94–RC2A–S0019 and –S0019.A).

estimate the magnitude of risks. The analysis conducted for the RTC was then expanded to incorporate significant new information collected after the RTC was published. This expanded analysis, which is documented in EPA's technical background document supporting the Agency's 1995 Regulatory Determination enabled EPA to characterize risk levels for each pathway at each plant for the facilities evaluated.

The Agency's analysis indicates that there are potential risks warranting concern, from both current on-site waste management practices and certain off-site beneficial uses. Based on these analyses, EPA predicted only low or negligible risk potential from on-site management of CKD via direct exposure pathways (e.g., ingestion of drinking water) . The Agency did find potential risk to human health via indirect (i.e., foodchain) exposure pathways, however. Potential risks from exposure to particulate matter were also indicated.

The Agency modeled health risks via indirect food-chain pathways (i.e., risks from ingestion of contaminated crops, livestock, or fish). These contaminants reach food products via movement of stormwater run-off and/or windblown dust from uncontrolled CKD storage or disposal areas to nearby water bodies and farm fields. EPA's foodchain pathway analysis estimated potential individual cancer risks from 1×10^{-5} (1 in 100,000) to 1×10^{-3} (1 in 1,000) for highly exposed subsistence fishers and farmers. Cancer risks of concern were due primarily to exposure to arsenic in CKD. Similar cancer risk levels due to dioxins are also possible at some additional sites. However, the Agency's data base on dioxin levels in CKD was not extensive enough to conduct a large scale study. EPA's risk modeling also estimated potential exceedances of non-cancer hazard thresholds via indirect exposure to the toxic metals cadmium, chromium, thallium and lead, which are present in CKD.

Finally, EPA's CKD analysis indicated potential human health risks due to exposure to the fine particulate matter (PM) which characterizes CKD. Based on the Agency's analysis, windblown dust (PM less than 10 microns in size) from uncontrolled CKD waste management units could exceed EPA's health-based fine particulate National Ambient Air Quality Standard (NAAQS) at plant boundaries and potentially at nearby residences. Further analysis of potential exposure to airborne PM from cement kiln dust waste management units was conducted as part of EPA's population risk assessment. This analysis also indicates that persons living around cement plants may be exposed to airborne PM concentrations in excess of the NAAQS. An overview of the population risk assessment is provided in Section II.C.4.a. of this preamble. A detailed description of that analysis is provided in the technical background document on population risk assessment.

As previously noted, the Agency predicted a negligible impact to ground water and consequently low or negligible risk to human health via ingestion of contaminated drinking water. However, a large percentage of cement plants (and CKD management units at those cement plants) are located in areas of karst terrain, [10] many of which may be underlain by bedrock with hydrological characteristics conducive to leachate transport to off-site locations with limited filtration, adsorption, and dilution. For reasons discussed in the regulatory determination, the Agency determined that its ground-water model is not suitable for modeling in karst terrain. The Agency has evidence of ground-water contamination at each facility where ground-water data were available, and thus conducted additional analyses of ground-water transport.

The Agency conducted two additional ground-water analyses to evaluate the potential for ground water transport at CKD management facilities. In the first analysis, the Agency evaluated whether the choice of ground water models significantly influenced the results. In this analysis, the Agency used EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) with the same parameters used in the modeling to support the Report to Congress. The Agency concluded that the choice of models did not significantly influence the conclusions on ground water transport. In the second analysis, the Agency parameterized the thermodynamic isotherms to reflect the major ions likely to be present in CKD and the typical pHs found in CKD. Based on this analysis, the Agency concluded that the composition of CKD leachate may make metals more mobile. These analyses are discussed in Section II.C.4.b, Additional Ground Water Modeling.

The Agency's initial risk assessment for off-site beneficial uses of CKD indicated that most off-site uses do not pose significant risks. Direct cropland application, however, occurs at a number of locations in the country. Screening level analyses of agricultural use described in the RTC and NODA suggest that some CKD, at plausible application rates, contains sufficiently high concentrations of metals and dioxins to cause food chain risks. Based on these initial findings, EPA conducted a more detailed analysis of potential risks from use of CKD as an agricultural liming agent. A summary description of the agricultural use analysis and results of that analysis are presented in Section VI.—Standards for CKD Used as a Lime Substitute.

c. Waste Characteristics

While CKD itself does not exhibit the RCRA Subtitle C hazardous waste characteristic of corrosivity (40 CFR 261.22), EPA's data show that mixtures of CKD and water often exhibit the characteristic of corrosivity. [11] In particular, EPA data show that the pH level in run-off from precipitation that contacts CKD storage and waste piles typically exceeds 12.5 standard units, the standard for the corrosivity characteristic for hazardous wastes (40 CFR 261.22). In addition, EPA's analyses of CKD show that CKD does contain certain metals listed in Appendix VIII ("Hazardous Constituents") Part 261 of RCRA. For many of the toxic metals, the total concentrations in kiln dust were not significantly different whether the dust was generated in kilns that burn or do not burn hazardous waste. Likewise, in terms of potential constituent solubility and release, leach test results show that no significant distinction can be made between CKD generated from kilns that burn hazardous waste and those that do not burn hazardous waste.

With respect to organics, volatile and semi-volatile compounds were generally not found in CKD. However, levels of 2,3,7,8-substituted dioxin, and 2,3,7,8-substituted dibenzofuran were detected, although the concentrations were generally low. The calculated 2,3,7,8-tetrachlorinated dibenzo-p-dioxins toxicity equivalence (TEQ) values for the facilities sampled by EPA ranged from non-detected to 9 ppt.

d. Adequacy of Existing Regulations

In making its regulatory determination, EPA evaluated State and Federal regulations pertaining to CKD waste and concluded that more stringent regulation of CKD is necessary based on current regulatory schemes. [12]

[10] Karst terrains are defined in this proposal at 40 CFR 259.16(b)(1) as areas where karst landscape, with its characteristic hydrogeology and/or landforms are developed.

[11] EPA hazardous waste identification rules do not include a characteristic or definition for solid corrosives.

[12] Supporting documentation for this analysis can be found in Chapter 7 of the RTC—*Existing Regulatory Controls on CKD Management.*

The Agency also determined that current practices are inadequate to limit contaminant releases and associated risks. CKD is now managed primarily on-site in non-engineered landfills, piles, and ponds. Many piles and landfills lack liners, leachate controls, or run-on/run-off collection systems. In addition, while dust suppression measures exist at many facilities, it appears that they are generally ineffective at controlling airborne releases of CKD. The Agency believes the following factors warrant additional environmental controls for CKD: (1) the general lack of current regulations applicable to contaminant discharges to ground water for protection of human health and the environment; (2) the general lack of ground-water monitoring systems at CKD disposal units; and (3) the existence of damages to ground water and air that are persistent and continuous, and for which no requirements exist to address the risks posed via these pathways.

4. New Analyses

a. Population Risk

Subsequent to the Regulatory Determination, the Agency calculated population risks for individuals living in the vicinity of cement manufacturing plants that manage CKD onsite. The assessment included population risks from indirect, or foodchain, exposure pathways and population effects from exposure to airborne particles, but not potential population risks from beneficial use of CKD. This work builds on earlier CKD analyses focusing on the health risks to maximally exposed individuals, presented in the RTC on CKD and supporting documentation, the 1994 NODA on CKD, and a background document supporting the 1995 CKD Regulatory Determination. A detailed description of the population risk assessment is provided in the *Technical Background Document: Population Risks from Indirect Exposure Pathways, and Population Effects from Exposure to Airborne Particles from Cement Kiln Dust Waste* in the docket for this rule.

The assessment of population risks from indirect exposure estimates the number of cancer cases and the number of people living near cement plants that are potentially exposed above noncancer effect thresholds through the ingestion of vegetables, beef and milk, and fish. For this analysis, existing facility-specific individual risk estimates were combined with facility-specific data on populations potentially exposed via indirect pathways to derive facility-specific population risk estimates. As a first step, information on individual risk generated from a sample of 82 facilities was used to identify and eliminate from concern those facilities that have negligible potential for significant population risk. For remaining facilities, population risk for the vegetable ingestion pathway was calculated by combining prior estimates of individual risk with estimates of nearby farmers and backyard gardeners based on census data. For the final step, results from the 82 facilities for which facility-specific information was available were extrapolated to the total universe of 108 cement facilities. Population risk for the fish ingestion pathway was estimated using existing facility-specific individual risk estimates along with numbers of recreational fishers that could be exposed, calculated based on fish yield data from local streams. Facility-specific results were then extrapolated to the full universe of cement plants to obtain total population risk for this pathway.

The Agency estimates that exposures via indirect pathways occurring in populations within five miles of all cement plants nationwide potentially result in a total of 0.04 excess cancer cases over a 70-year period. That is, exposures would potentially lead to about 0.009 excess cancer cases in the subsistence farmer population, and about 0.03 excess cancer cases in the "homegrown" population. Cancer cases predicted for the recreational fisher population are negligible. The total population within five miles of all cement facilities nationwide is approximately 3.4 million.[13] Thus, the overall population cancer risk can be characterized as follows: a total of 0.0006 excess cancer cases per year could potentially occur within this population of 3.4 million due to indirect exposures.

For population noncancer effects, EPA predicts that, across all populations within five miles of all cement facilities nationwide, a total of about 1,040 people are potentially exposed via indirect exposure pathways to contaminant levels above the hazard index. That is, about 6 individuals from the population exposed to contamination from homegrown vegetables are exposed to contamination exceeding noncancer effects thresholds (i.e., hazard index greater than 1). About 37 individuals from the subsistence farmer population and about 1,000 individuals from the recreational fisher population are estimated to be exposed to contamination exceeding noncancer effects thresholds. The overall population noncancer effects can be characterized as follows: a total of about 1,040 people, or less than one-tenth of one percent, from among the population of 3.4 million within five miles of all cement plants nationwide is likely to be exposed via indirect exposure pathways to contamination exceeding noncancer effects thresholds.

The assessment of population effects from exposure to airborne particles estimates the number of people potentially exposed to fugitive CKD at levels above the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). Both the existing NAAQS for coarse particles and a new NAAQS proposed for fine particles were considered. New modeling of CKD emissions and downwind dispersion was performed for selected "high risk" cement plants, substantially improving on the previous work by using advanced modeling techniques, estimating emissions from all CKD handling stages rather than just final disposal as modeled previously, and considering the effect of terrain, among other refinements. The concentrations of airborne particles were then overlaid on census block grids to estimate populations potentially exposed above the PM_{10} NAAQS. The Agency estimates that about 18 people may be exposed to airborne PM_{10} concentrations in excess of the NAAQS around the 82 facilities for which facility-specific information is available.[14] As with the indirect exposures analysis, EPA derived a more complete picture of potential population effects due to PM exposures by extrapolating from results within the known universe to determine the potential population effects for the full universe of cement facilities. In sum, EPA estimated that, across all 108 facilities, a total of between 18 and 4,118 people living within 500 meters of the facility boundary may be exposed to airborne PM concentrations in excess of the NAAQS. It is not known what percentage of the population exposed above the NAAQS is likely to develop any morbid effects because the dose-response relationship for PM exposures is not well defined.

[13] This is an estimate based on site-specific data for 61 facilities and extrapolated data for the remaining 47 facilities.

[14] The estimate of 393 people is based on an evaluation of 52 of the 82 cement facilities; based on analyses conducted previously the remaining 30 facilities were determined to have zero or negligible effects in terms of PM exposures because they do not manage CKD on-site (see methodology and results presented in *Technical Background Document on Potential Risks of Cement Kiln Dust in Support of the Cement Kiln Dust Regulatory Determination*, January 31, 1995).

b. Additional Ground-Water Modeling

Because the available damage cases indicate the potential for impacts to ground water in areas of non-karst terrain (four of the 13 damage cases are located in areas of non-karst terrain), the Agency conducted additional ground-water modeling to evaluate the potential subsurface transport of metals in non-karst terrain. The additional modeling occurred in two phases. In Phase I, the Agency tested the sensitivity of the modeling by incorporating the same assumptions used in the modeling to support the Report to Congress in EPACMTP, a ground-water model used by EPA to conduct national assessments. The intent of this exercise was to determine whether model selection significantly influenced the conclusions regarding the subsurface transport of constituents to receptor locations. In Phase II, the Agency evaluated the sensitivity of EPACMTP to assumptions regarding the speciation and adsorption of metals. In this analysis, the Agency revised the isotherms generated by MINTEQA2, a geochemical speciation model,[15] to reflect higher pHs (as found in CKD leachate), more appropriate ions in the leachate, and a lower dissolved organic carbon concentration in the leachate.

In Phase I of the additional ground-water modeling, EPA evaluated the sensitivity of its previous model selection by estimating constituent concentrations at well locations with EPA's regional ground-water model, EPACMTP. The results from this analysis were then compared with the results generated by the previous modeling, which used MMSOILS. EPACMTP combines a finite source methodology with a metal-specific procedure (using MINTEQA2) for handling geochemical interactions that affect the subsurface fate and transport of metals. A complete description of this methodology is available in *EPA Composite Model for Leachate Migration with Transformation Products: Background Document for Metals*, which has been placed in the RCRA docket in support of this proposed rule.[16] The analysis incorporated the same data and assumptions used to support the ground-water modeling for the EPA's 1993 Report to Congress.

In general, the revised modeling using EPACMTP predicted lower concentrations of metals in ground water for antimony, arsenic, chromium, cadmium, and thallium and higher concentrations for barium and beryllium. At all facilities, the risk from contaminated ground water predicted by EPACMTP was negligible. Leaching of lead was negligible in both modeling exercises (the MMSOILS model predicted that lead would reach the water table at only one modeled facility). From this analysis, the Agency concluded that the selection of ground-water models was not the most significant reason for the inability of the modeling to predict elevated metal concentrations in ground water.

In Phase II of the additional ground-water modeling, EPA evaluated the sensitivity of the ground-water modeling results to changes in assumptions regarding the speciation and adsorption of metals in CKD leachate. Specifically, EPA revised the assumptions about pH, presence of leachate organic acids, and ions present in CKD leachate to generate new partitioning coefficients (K_ds) for five metals: barium, beryllium, cadmium, chromium, and lead. The Agency then used the same modeling protocol for EPACMTP described above to evaluate the effects on ground-water fate and transport of these five metals. A more detailed description of the revisions to the MINTEQA2 isotherms and the caveats associated with these analyses are available in the technical support document *Examination of Metals Transport under Highly Alkaline Conditions*, which has been submitted to the docket in support of this proposed rule.

This additional analysis indicates that migration of the metals may be sensitive to the pH of the leachate and the buffering capacity of the unsaturated and saturated zones. Under highly alkaline conditions with little or no buffering, cadmium, chromium, lead, barium, and beryllium are predicted to be more mobile. In general, these metals displayed a greater tendency to move through the unsaturated zone and reach the ground water. For example, the analysis indicated that at four of the five modeled facilities, elevated levels of barium, beryllium, cadmium, chromium, and lead were found in the ground water within 10 meters of the disposal unit. At four of the modeled facilities, concentrations of lead exceeded EPA's action level for lead of 0.015 mg/L within 10 meters and at one facility, chromium exceeded its maximum concentration limit (MCL) of 0.1 mg/L by less than a factor of 10. In addition, modeling indicated that beryllium, cadmium, and chromium would have concentrations within a factor of 10 of their respective MCLs at four facilities, one facility, and two facilities, respectively.

c. New CKD Waste Characteristics Data

In an effort to further understand the influence of hazardous waste burning on CKD composition, EPA has undertaken analyses of two new sources of data on toxic metals in CKD. In June 1996, as part of a RCRA § 3007 data request, EPA collected information on constituent concentrations in CKD from seven cement plants within Region VII that burn hazardous waste, to the extent available for each of the five years 1991 through 1995. In October 1996, new CKD constituent data from 15 cement plants that do not burn hazardous waste, collected during July and August 1996, were submitted to the Agency by the Non-Hazwaste Burner CKD Coalition (NHBCC).

The EPA Region VII data set consists of analytical results from a substantial number of CKD samples, varying by plant, by constituent, and by year from a few dozen to a few hundred per year. All of these data reflect CKD generated by the seven plants while burning hazardous waste. The NHBCC data set consists of analytical results from six to 32 CKD samples from each non-burning plant. Although both data sets have their individual nuances, the Agency believes these data sets together accurately reflect constituent values in CKD for both types of kilns, and tend to complement one another. Both data sets are available in the RCRA docket for this rule.

The NHBCC, Environmental Technology Council (ETC), and local citizen groups have asserted to EPA staff that these new data demonstrate statistically significant differences in the concentrations of total metals between CKD from kilns that burn conventional fossil fuels ("non-hazardous waste burner CKD") and CKD from kilns that burn RCRA hazardous waste ("hazardous waste burner CKD"). The NHBCC argues that these differences affect the potential risk associated with the disposal of CKD and that non-hazardous waste burner CKD exhibits only isolated elevated concentrations of toxic constituents, hence relatively low risk compared to hazardous waste burner CKD. As explained in Section III.C. below, the NHBCC believes these differences justify EPA imposing a regulatory distinction between hazardous waste burner CKD and non-

[15] U.S. EPA, 1996a. Background Document for Metals. EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). Volume 1: Methodology. U.S. EPA, Office of Solid Waste, Washington, DC 20460.

[16] U.S. EPA, 1996b. EPA Composit Model for Leachate Migration with Transformation Products (EPACMTP) Background Document. U.S. EPA, Office of Solid Waste, Washington, DC 20460.

hazardous waste burner CKD, a so-called "two-dust approach."

EPA has considered the NHBCC's assertion of statistical differences between hazardous waste burner and non-hazardous waste burner CKD, but at this point based on available data does not accept their assertion of lower risk for non-hazardous waste burner CKD relative to hazardous waste burner CKD for the following reasons. First, when hazardous waste burner and non-hazardous waste burner CKD data sets are compared, for some toxic metals the statistical distribution of concentrations in each group significantly overlap. For example, for the constituent arsenic, CKD from ten out of 15 non-hazardous waste burner plants have mean total concentrations in excess of the mean concentration of arsenic in hazardous waste burner CKD averaged from the seven hazardous waste burning plants in EPA Region VII (1995 data); and CKD from seven out of 15 non-hazardous waste burner plants have mean arsenic concentrations higher than the mean concentration reported for hazardous waste burner plants in the EPA NODA. Similarly, for chromium, CKD from four out of 15 non-hazardous waste burner plants have mean total concentrations in excess of the mean concentration for chromium in hazardous waste burner CKD averaged from the seven hazardous waste burning plants in EPA Region VII (1995 data). Because of this overlap, EPA does not believe that all non-hazardous waste burner CKD poses less potential hazard than hazardous waste burner CKD. Furthermore, a comparison of means suggests constituent concentrations for all toxic metals are within the range of data reported in the EPA NODA. EPA believes that the new information supports the Agency's previous conclusion that metals levels in CKD are not substantially different, whether generated by kilns that burn hazardous waste or kilns that do not burn hazardous waste.

Second, concentrations of the toxic constituent thallium in non-hazardous waste burner CKD are consistently higher than in hazardous waste burner CKD. The mean concentration for thallium in non-hazardous waste burner CKD from the 15 NHBCC plants (180.5 mg/kg)[17] is over three times higher than the mean concentration for 31 non-burning plants reported in the EPA NODA (52.3 mg/kg), and 47 times higher than the mean concentration in hazardous waste burner CKD from the seven EPA Region VII plants (3.8 mg/kg). The NHBCC has argued that relatively higher concentrations of thallium in non-hazardous waste burner CKD are not caused by fuels but by CKD recirculation and, therefore, non-hazardous waste burner CKD should not be regulated because this material is never disposed. The Agency believes recirculation of CKD back into the cement manufacturing process is beneficial because recirculated CKD would never be disposed. Forty-seven out of 88 non-hazardous waste burner plants, however, reported wasting CKD in 1995, so the Agency remains concerned that disposal of CKD with elevated levels of thallium could still pose a potential hazard to human health and the environment.

Third, the NHBCC data have not addressed the cases of environmental damage or PM_{10} risks that form the basis of the EPA's Regulatory Determination. The Agency finds no basis for changing the Regulatory Determination to regulate only CKD from hazardous waste burning kilns. The damage cases resulted from on-site management of CKD in non-engineered landfills, piles and ponds, at plants that largely do not or did not burn RCRA hazardous wastes. In addition, CKD, regardless of fuels burned, contains particles 10 microns in size and smaller, and could potentially pose risks to human health if released through fugitive emissions.

EPA requests additional data on hazardous waste burner and non-hazardous waste burner CKD. If new information warrants such action, the Agency would re-evaluate its current position on the appropriate levels of control for hazardous waste burner and non-hazardous waste burner CKD.

D. Beneficial Use of Cement Kiln Dust

It is likely that even with advances in recycling technologies, some CKD will need to be removed from kiln systems. Because resources are lost when CKD is permanently disposed, and because disposal practices can be burdensome, finding alternative uses for waste CKD can help facilities avoid disposal costs and generate additional revenue, while at the same time reduce the amount disposed of in landfills. Currently, CKD is used beneficially for sludge-, waste-, and soil-stabilization, land reclamation, waste remediation, acid neutralization, agricultural applications, such as a fertilizer or lime substitute, and construction applications.[18] According to responses from the 1991 Portland Cement Association (PCA) Survey and RCRA section 3007 requests, about 780,000 metric tons (860,000 tons) of CKD were used beneficially in 1990, or 5.4 percent of the gross CKD generated in 1990, and about 19 percent of the net CKD generated for that year. This total represents 9.5 percent of the 8.2 million metric tons of CKD recycled directly back into the kiln or raw feed system in 1990. Of the 780,000 metric tons, about 71 percent (670,000 metric tons) was used for waste stabilization, 12 percent (111,000 metric tons) for soil amendment, 5.6 percent (53,000 metric tons) as liming agent, nearly three percent (25,000 metric tons) as materials additives, about one percent (11,000 metric tons) as road base, and eight percent (76,000 metric tons) for other uses.

The American Society for Testing and Materials (ASTM) standards advise that use of CKD should be undertaken only after the material's characteristics have been properly evaluated with respect to the intended application. ASTM also recommends frequent performance testing until the degree of variability has been established.[19] The manner and extent of CKD adaptation for beneficial applications is in constant flux as research and development of CKD use continue to grow.

Most current off-site uses, such as for waste stabilization or land application as fill material, are either currently regulated (under RCRA for hazardous waste stabilization, or under the Clean Water Act in the case of municipal sewage sludge) or appear to present low risk due to low exposure potential. As explained in the Regulatory Determination, in light of the low exposure potential, EPA believes that these uses constitute environmentally sound recycling and beneficial use. Therefore, the Agency is not proposing management standards for these beneficial uses of CKD or to list as a hazardous waste CKD used for such practices. We are proposing that beneficially used CKD is non-hazardous waste. Thus, with the exception of CKD used for agricultural purposes, EPA solicits comments on these and other potential uses that might constitute environmentally sound recycling or beneficial use.

As explained previously, the Agency's risk assessment data on the use of CKD as a lime substitute on agricultural fields indicates that some small percentage of CKD (roughly 5%) may

[17] The highest thallium values in CKD reported from the 15 NHBCC plants are associated with cement kilns that recycle over 90% of their CKD back into the manufacturing process.

[18] Bhatty, J.I., 1995, Alternative uses of Cement Kiln Dust. Portland Cement Association Publication RP327, 18p.

[19] ASTM, 1991. Standard Guide for Commercial Use of Lime Kiln Dusts and Portland CKDs. 1990 Annual Book of American Society for Testing and Materials Standards. Volume 11.04. Method Number D5050–90. pp. 172–174.

present risk to human health and the environment and, therefore, the agricultural use of CKD warrants controls. Accordingly, in today's rule, EPA proposes to limit concentrations for arsenic, cadmium, lead, thallium and chlorinated dibenzodioxins and dibenzofurans in CKD used for agricultural purposes. If used for agricultural purposes, CKD with concentrations of these substances in excess of today's proposed limiting concentrations would be considered a listed hazardous waste.

III. Discussion of Options To Address Risks From Mismanaged CKD

Today's proposal presents several possible approaches, including the Agency's preferred approach for addressing the hazards presented by CKD. EPA invites commenters to address these approeches, so that EPA can evaluate the Agency's preferred approach not only on its own merits but also in comparison to these alternatives. If, when issuing the final regulation for CKD, EPA were to rely on a Memorandum of Understanding, regulation exclusively under Subtitle D of RCRA, the State-based approach, and the Two-Dust approach presented below, the Agency would have to revisit the Regulatory Determination.

The Agency would more favorably consider the State-based regulatory approach or MOU if: (1) there were more evidence that cement manufacturing facilities have made improvements to their CKD management practices; (2) there was greater agreement among all stakeholders regarding appropriate CKD management standards; (3) there was a strong level of support from industry, States, and other stakeholders for movement toward an MOU or State-based approach; and (4) the alternative adequately considered the interests of other parties with a stake in the Agency's CKD rulemaking. In making a final rule determination, EPA may consider some combination of the alternative approeches discussed.

A. State-Based Approach

The American Portland Cement Alliance (APCA) has submitted a proposal to EPA for a State-based approach to cement kiln dust (CKD) management. The main components of APCA's proposed approach are listed below, in chronological order:

(a) EPA Would Complete Work on CKD Management Standards. EPA would complete internal work, already begun during discussions regarding APCA's proposed enforceable agreement, which is discussed above in Section III.A.—State-Based Approach, to refine the CKD management standards for issuance as guidance as provided below.

(b) EPA Would Publish Proposed Guidance and "Backstop" Regulatory Regime For Public Comment. APCA proposes that EPA would publish a Notice of Data Availability in the **Federal Register** which would have two separate components. The first component would describe and summarize the key components of the CKD management standards, and announce the public availability of a complete copy of the CKD management standards. APCA proposes that in the Notice, the Agency would announce its willingness to withdraw its earlier Regulatory Determination if all of the States in which CKD is land disposed developed an adequate CKD management program within two years. The second component would be a "backstop" proposed rule based on a "conditional exclusion" or "contingent management" approach in which RCRA Subtitle C authority would not be triggered unless the conditions of the exclusion were violated. APCA proposes that EPA would finalize the proposal only if one or more States in which CKD is land disposed do not have an adequate CKD management program within two years. EPA would solicit public comment on all aspects of the Notice.

(c) EPA Would Publish Final Guidance In Response To Public Comment. APCA proposes that one year after publishing the initial guidance and backstop proposal, EPA would publish its "final" guidance in a subsequent **Federal Register** notice in response to public comments. In this notice, EPA would also include an explicit time line for the remaining steps in the State-based approach.

(d) EPA Would Take Final Action Regarding Inadequate State Programs. Two years after publishing the initial proposed guidance and backstop proposal, APCA proposes that EPA would publish another **Federal Register** notice announcing its assessment of the adequacy of State CKD management programs. APCA proposes that if EPA finds that such State programs are adequate, the Agency would announce withdrawal of its 1995 Regulatory Determination. Conversely, if the Agency finds one or more States with inadequate CKD programs, APCA proposes that EPA issue a final rule that will be effective in those States. These regulations would be based on a conditional exemption approach in which RCRA Subtitle C authorities would not be invoked unless terms of the exemption were violated. For those States with adequate programs, EPA would withdraw its 1995 Regulatory Determination.

The technical standards in today's proposed rule reflect completed internal work on appropriate CKD management standards and could serve as the Notice that APCA suggests in (b) above. In our view, the Part 259 standards represent proposed final management standards for CKD management, and the standards proposed today under Part 261 could form a "backstop rule." The Agency solicits comments on APCA's proposed State-based regulatory approach for CKD management and on the details of State programs affecting the management and beneficial use of CKD. Both APCA's proposed CKD management standards that were submitted to the Agency as part of the proposed enforceable agreement, and a full description of APCA's State-based approach are available in the RIC in support of this rule.[20]

B. Memorandum of Understanding

Another option considered by the Agency, in lieu of a detailed regulatory scheme, would be to enter into a memorandum of understanding (MOU) with the cement industry. As with enforceable agreements, a MOU would include specific standards for the management of CKD. This approach is not unprecedented.

In January 1994, EPA and the American Forest and Paper Association (AF&PA) negotiated a MOU regarding the implementation of land application agreements among AF&PA member pulp and paper mills and the EPA.[21] The purpose of the MOU was to develop a stewardship program for the practice of land application of pulp and paper mill sludges. Each paper mill participating in the program signed a "Land Application Agreement" which established standards and land management practices for the mill's land application of sludge. The MOU also provided for annual materials monitoring reports to be submitted to EPA, AF&PA member outreach programs, and annual AF&PA member surveys. The individual "Land Application Agreements" specify, among other things, dioxin/furan concentration limits for land applied sludge and receiving soils, application rates, waste testing requirements, and recordkeeping and reporting requirements. MOU and "Land Application Agreements" do not

[20] The cement industry's proposed management practices (version 6/1/5), see RIC docket No. F–99–CKDP–S0031.

[21] For a copy of the MOU, see RIC docket No. F–99–CKDP–S0107.

provide for enforcement, including citizen suits. Moreover, EPA, to date, has not formally assessed the success of the Agreements.

The Agency could consider a similar approach to tailored management standards and for monitoring the management of CKD. The Agency solicits comments on the advantages and disadvantages of a program utilizing either an enforceable agreement, which is discussed above in Section III.A.—State-Based Approach, or memorandum of understanding to encourage environmentally-sound CKD management practices.

C. Two-Dust Approach

In meetings with EPA staff, the Non-Hazwaste Burner CKD Coalition (NHBCC) has argued that any proposed regulatory mechanism for CKD, should distinguish between CKD from kilns that burn conventional fossil fuels (non-hazardous waste burner CKD) and CKD from kilns that burn RCRA hazardous waste, both in oversight mechanisms and in the contents of any minimum management practices. The NHBCC has argued that EPA should reimpose the Bevill exclusion for non-hazardous waste burner CKD, supplemented where necessary and justified by an appropriate voluntary program or discretionary steps by the States. According to the NHBCC, EPA should regulate hazardous waste burner CKD in the least burdensome manner consistent with any relevant risks that the dust may present.

The NHBCC has cited several points in support of a two-dust approach. First, the NHBCC has argued that less stringent treatment for non-hazardous waste burner CKD is justified on the basis of new CKD waste characteristics data which shows low risk (see Section II.C.4.c.—New Waste Characteristics Data, above). Second, the NHBCC states that unit costs of managing stockpiled CKD would increase to prohibitive levels for some member companies which are small businesses as defined by the Small Business Administration. According to the NHBCC, these small businesses do not have any additional revenue streams, unlike cement facilities that burn RCRA hazardous wastes, to offset the additional costs of CKD management. Third, the NHBCC has expressed concern that Federal regulation of CKD under RCRA Subtitle C will discourage beneficial re-use by stigmatizing CKD as a hazardous waste. The NHBCC claims that such regulation would undermine public confidence in CKD as a material suitable for reuse, discourage the development of new markets for CKD waste, and force up compliance costs by compelling facilities which currently sell CKD to stockpile it instead. EPA solicits comment on the NHBCC's proposed two-dust approach and requests additional data on hazardous waste burner and non-hazardous waste burner CKD. If new information warrants such action, the Agency would re-evaluate its current position on the appropriate levels of control for hazardous waste burner and non-hazardous waste burner CKD.

D. Develop Regulations Under Authority of Subtitle D

Another option would be to issue standards such as those described in today's Notice solely as RCRA Subtitle D requirements, relying on authority in RCRA section 4004(a). Under this approach the standards would be enforceable by the public through citizen suits. EPA would additionally encourage States to adopt standards developed under Subtitle D as enforceable standards under State law, but the Agency could not compel them to do so. Such standards would not be directly enforceable by EPA under the enforcement authorities of sections 3007 and 3008. EPA could take enforcement action under section 7003, if there is a finding of substantial endangerment. In contrast, the Agency is today proposing a regulatory structure that would provide the opportunity for Federal enforcement against major violations of the proposed standards, where warranted (see § 261.4(b)(8)(ii)(A)). The Agency solicits comment on issuing today's proposed standards solely as RCRA Subtitle D requirements and views on the need for Federal enforcement of major violations of the proposed standards.

E. Subtitle C Enforcement Without Listing CKD

APCA has suggested that EPA could adequately regulate CKD not managed in accordance with today's proposed Part 259 standards using RCRA enforcement authorities without having to identify the mismanaged CKD as a RCRA hazardous waste. APCA asserts that as long as EPA specified that a violation of the Subtitle C backup standards in Part 266 constitutes a "violation of the requirements of RCRA Subtitle C," then EPA and citizens could enforce against those violations under RCRA sections 3008(a) and 7002(a) respectively. Similarly, APCA asserts that EPA could enforce against violations under RCRA section 3008(d)(3) criminal enforcement authority. APCA's approach is more specifically set forth in a letter to EPA dated August 24, 1998, and is available in the RIC docket for this rule. EPA invites comment on APCA's approach.

F. Tailored Standards Under Subtitle C

Another option available to the Agency is to regulate all CKD under authority of Subtitle C, using the tailored standards proposed today (i.e., the standards that would apply to CKD which, under today's proposal, would become hazardous waste because it is being improperly managed). Under this approach, all CKD would be listed hazardous waste and would be regulated under the tailored standards proposed today in Part 266 which incorporates the standards proposed today in Part 259.

The Agency solicits comment on the option of regulating all CKD under authority of RCRA Subtitle C and whether certain provisions could be eliminated or whether additional provisions are needed.

G. States Adopt Appropriate Programs

Alternatively, States may come forth with appropriate programs for managing CKD. Such programs would have requirements similar to those listed in Sections IV., V., and VI. of today's proposal, and include standards for addressing risks posed by fugitive CKD, standards for addressing risks to ground water, standards for agricultural use of CKD, and requirements for monitoring, reporting, and corrective action. The Agency believes there may be no need to finalize a Federal program if States with cement facilities that dispose CKD adopt appropriate programs and standards for managing CKD. The Agency solicits comment on the option presented in this paragraph of States adopting appropriate programs.

H. Today's Approach—Exclude Properly Managed CKD From Hazardous Waste Listing

1. Develop Management Standards and Exempt Properly Managed CKD From Classification as a Hazardous Waste (Management-based Listing)

Today's proposed rule would regulate CKD under RCRA to address the concerns identified in the RTC while avoiding unnecessary requirements. The approach taken is to establish management standards for CKD and make it clear that all CKD managed in accordance with those standards is not classified as a hazardous waste. CKD not managed in accordance with the standards, on the other hand, is proposed to be listed as a hazardous waste under 40 CFR 261.11.

The concept of regulating a waste if it fails to meet certain standards forms the

basis of many RCRA regulations. To provide added flexibility for implementation, EPA has previously proposed options for conditional exemptions from Subtitle C regulation for certain refining wastes,[22] and promulgated conditional exemptions for non-chemical military munitions.[23] Today's proposed rule would limit regulation of CKD under Subtitle C to that CKD which is mismanaged.

The DC Circuit Court of Appeals has expressly upheld EPA's authority under RCRA to establish a conditional exemption from Subtitle C regulation for wastes that, absent the exemption, would be hazardous (see *Military Toxics Project* v. *EPA, 146 F. 3rd. 948, D.C. Cir. 1998).* For a more detailed discussion of EPA's authority to establish a conditional exemption from Subtitle C regulation, see the discussion at 62 FR 6636–6637 of the Military Munitions Rule preamble.

Accordingly, EPA is today proposing to: (1) establish standards that define proper management of CKD waste; (2) exempt from classification as hazardous waste all CKD managed in accordance with specific standards proposed today; (3) list mismanaged CKD as a hazardous waste based on the criteria defined at 40 CFR 261.11(a)(3)(i–xi); and (4) provide tailored standards under Subtitle C for the proper management of CKD that has been mismanaged. The Agency's evaluation of mismanaged CKD against the listing criteria in § 261.11(a)(3) can be found in Appendix I of this preamble, while the associated evaluation of reportable quantities for releases of CKD can be found in Appendix II of this preamble. Under the proposed approach, CKD would only become hazardous waste subject to RCRA Subtitle C regulation when persons managing the waste commit egregious or repeated violations, such as failing to install controls designed to meet the performance standards, or failing to manage CKD in units that conform to specific default technology-based standards. CKD managed in accordance with today's proposed standards would be outside the scope of Subtitle C, and would not be considered hazardous waste. The Agency believes the CKD management standards proposed today will protect the public from human health risks and prevent environmental damage resulting from current CKD disposal practices. The standards are designed to prevent contamination of ground water and potable water supplies, and prevent human health risks from inhalation of airborne CKD and ingestion via food chain pathways.

In developing the proposed management standards for cement kiln dust, EPA considered several factors. First, and primarily, the Agency believes that subjecting waste CKD to the full RCRA Subtitle C program, while protective, would be prohibitively burdensome on the cement industry, and is not a feasible regulatory option under the factors cited in RCRA section 8002(o). The full Subtitle C regulatory program would be highly prescriptive and provides little tailoring for site specific conditions. Second, the CKD management standards proposed today are based on EPA's current knowledge of the cement industry and the human health and environmental risks posed by CKD. The Agency considers these technical standards to be sufficient to control the specific risks identified while eliminating unnecessary compliance costs. EPA believes that for CKD, imposing the additional requirements of full Subtitle C would add significantly to compliance costs without a reduction in risks (see the Regulatory Determination for CKD: Potential Costs and Impacts of Subtitle C Regulation, 60 FR 7371, February 7, 1995).[24] Third, the Agency desires to encourage the common industry practice of recycling of CKD waste back into the industrial process, and promote environmentally sound off-site beneficial use of this material. Most current off-site uses, such as for waste stabilization or general construction, are either currently regulated (under RCRA for hazardous waste stabilization, or under the Clean Water Act in the case of municipal sewage sludge) or appear to present low risk due to low exposure potential. Classifying all CKD as hazardous could prevent such uses because of the expense resulting from hazardous waste management requirements.

EPA emphasizes, however, that if persons mismanage CKD waste, depending on the nature in which it is mismanaged, the non-compliant waste may become subject to Subtitle C requirements which would include enforcement action for violations of the proposed management standards (see Section V. B.—Implementation of Part 259 and RCRA Subtitle C Backup Standards). The Subtitle C requirements applicable to such CKD would to some extent be tailored as appropriate to ensure proper management of CKD. For example, the proposed Subtitle C design requirements for CKD landfills are different from those under the generally-applicable Subtitle C regulations. However, other generally-applicable RCRA requirements would apply to persons managing listed CKD as hazardous waste. In particular, persons managing listed CKD would be required to obtain permits if they treat, store or dispose of hazardous CKD, and to manifest shipments of hazardous CKD. Certain generally applicable RCRA requirements would not be applied to hazardous CKD, under the authority of section 3004(x) of RCRA. These include land disposal restrictions, minimum technology requirements, and facility-wide corrective action requirements.

2. Alternative Management-Based Listing

Another approach EPA considered would be to list as a hazardous waste only CKD that is managed according to specific practices that are known to pose significant risks to human health and the environment. For example, the management of CKD in unlined landfills, under water or in direct contact with the ground-water table, without fugitive dust controls, or when used for agricultural purposes without proper controls, is likely to pose significant risks to human health and the environment. Under this approach, CKD mismanaged in these specified ways would be listed as hazardous waste. One disadvantage to this approach is that while it may prevent those poor management practices identified by the Agency at this time, such a listing would require the Agency to anticipate and identify all possible ways that CKD could be mismanaged. The Agency requests comments on the advantages or disadvantages of this approach over the approach proposed today, including comment on additional mismanagement practices that should be identified and considered if such an approach were adopted.

3. Characteristic CKD

CKD rarely exhibits a hazardous characteristic. Under the rule proposed today, characteristic CKD would, in most cases, be regulated in the same manner as other CKD. That is, it would be exempt from the definition of

---

[22] See 60 FR 57747, November 20, 1995, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities.

[23] See 62 FR 6621, February 12, 1997, Military Munitions Rule; Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways and Contiguous Properties; Final Rule.

[24] Supporting documentation for these cost analyses can be found in the Technical Background Document: Data and Analyses Addressing the Costs of CKD Management Alternatives, RIC Docket Nos. F–94–RC2A–S0018 and S0018.A),

"hazardous waste" so long as it is managed in accordance with the specified standards; if not so managed, as described above, it would be subject to tailored Subtitle C requirements. The sole exception to this approach would be for CKD from kilns that burn hazardous waste as fuel, which would be subject to full (not tailored) Subtitle C requirements if it fails the two-part test in the Boiler and Industrial Furnace Rule (a prime component being a comparison to hazardous characteristic criteria for metals). This approach maintains in place the rules for CKD from hazardous waste burners that exist currently under 40 CFR 266.112.

4. Apply Tailored RCRA Subtitle C Standards to Improperly Managed CKD

As described previously, CKD that has been determined to be improperly managed and no longer a non-hazardous waste would be subject to Subtitle C standards that are tailored to address the risks presented by CKD. The management standards applicable to such CKD would be promulgated under EPA's general authority for setting management requirements for hazardous waste under sections 2002(a)(1), 3002, 3003, and 3004 of RCRA.

Subtitle C requirements that apply to hazardous waste generally, and are not expressly modified in these tailored standards, would apply to CKD or facilities managing CKD. For example, if a person managing CKD waste disposes of non-exempt CKD onsite, she or he would be required to obtain a RCRA permit. However, EPA has authority under section 3004(x) of RCRA to alter certain statutory requirements that would otherwise apply to all hazardous waste facilities, for wastes previously subject to the Bevill exclusion and newly being brought under Subtitle C regulation. In particular, EPA has authority to modify requirements relating to land disposal restrictions, minimum technology for landfill design, and facility-wide corrective action. EPA would rely on this authority to exempt CKD from land disposal restrictions, minimum technology requirements, and facility-wide corrective action requirements as we are proposing today. A more detailed discussion of the reasons for this approach under section section 3004(x) can be found in Section V.A.1.–3004(x)—Special Characteristics.

IV. Proposed Management Standards

A key element of the regulatory system for CKD described above is the standards to be established for CKD management. As discussed above, as long as CKD is managed according to these standards, it would remain a non-hazardous waste. Furthermore, compliance with these standards would be required under the tailored RCRA Subtitle C requirements applicable to any CKD that is mismanaged.

Because these standards are a condition for maintaining non-hazardous status, EPA proposes to promulgate them at 40 CFR Part 259, separate from the regulations governing hazardous waste. The tailored RCRA Subtitle C regulations for hazardous CKD waste are proposed to be promulgated in 40 CFR Part 266; those regulations will incorporate the Part 259 proposed standards by reference, in addition to identifying the other Subtitle C requirements applicable to hazardous CKD.

A. Protection of Ground-Water Resources

1. The Need for Ground-Water Protection Standards

As tabulated in the background document for today's proposed rule titled Technical Background Document on Ground Water Controls at CKD Landfills, EPA has identified 13 cases of ground water damage resulting from the migration of potentially hazardous constituents, including metals, from waste CKD.[25] These damages reflect CKD management practices from 1980 to 1995 at cement facilities across the United States. While the Agency acknowledges that CKD management practices may have changed at individual cement manufacturing sites, EPA believes certain practices which have led to damages to ground and surface waters have not stopped and occur today at other cement manufacturing facilities nation-wide.

The Agency considers damage to mean that metal constituents have contaminated ground water and/or surface water above a Federal or State standard (e.g., a maximum concentration limit). Constituents of concern from CKD that have been released to ground and surface waters include arsenic, chromium, and lead, among others. When ground-water exceedances do occur, the magnitude of the exceedance is usually within two orders of magnitude of the standard. Environmental damage generally affects the area in the immediate vicinity of the waste disposal site. Environmental damage has been identified both at facilities that burn and those that do not burn RCRA hazardous wastes.

As documented in Table 2–1 of the technical background document on ground water controls, the Agency finds that many factors have contributed to causing the release of CKD constituents to ground water or the subsurface environment at these damage case sites. Factors which are noted to have contributed to the release of CKD constituents into the sub-surface environment include: (1) CKD disposal below the natural water table or ground-water infiltration into the waste unit; (2) the lack of a bottom liner or leachate collection system, or both, to control leakage from the waste unit; (3) surface run-off or erosion transporting CKD constituents to surface water bodies and/or wetlands which can serve as a source of ground-water recharge; (4) the lack of an impermeable cover to control percolation of rain water and/or surface water run-off into the waste unit; and (5) the presence of a shallow ground-water flow system with conduit flow characteristics (e.g., karst aquifer or fractured bedrock aquifer). Notably, all of the damage cases are associated with CKD waste disposal units which did not have bottom liners, leachate collection systems, or impermeable covers in place during the active disposal period.

The cement industry, because it uses limestone, has a relatively high percentage of CKD disposal sites located in potential karst areas that is unique compared to other industries the EPA regulates. The Agency estimates that 78 out of 110 plants are underlain by limestone formations in areas of potential karst terrain. Based on additional analysis performed in support of today's proposed rule which is documented in the technical background document on ground water controls, the Agency has increased the estimate of the percentage of cement plant sites located in potential karst areas from about half to 71%.

The Agency believes these limestone formations may have conduits with hydraulic characteristics that potentially allow leachate to rapidly enter ground-water aquifers directly without substantial dilution or attenuation. As documented in the technical report supporting this rule titled Cement Kiln Dust Migration Pathway, modeling results for one CKD disposal site (Facility A) did not predict breakthrough of contaminants into the ground-water table within 130 years, even under highly alkaline conditions. Ground-water and surface water

[25] Detailed writeups for each of the 13 ground-water damage cases can be found in Chapter 5 of the RTC, the Technical Background Document:Additional Documented and Potential Damages from the Management of Cement Kiln Dust (F–94–RC1A–S0003 to S0015); and the Technical Background Document. Additional Documented Damages to Ground Water From the Management of cement Kiln Dust, which has been placed in the RIC docket in support of this proposed rule.

releases, however, which are described in the technical background document for this proposed rule titled Additional Documented Damages to Ground Water From the Management of Cement Kiln Dust, occurred at the same site in 1995, within 30 years of first receipt of waste. The faster ground-water migration time can be attributed to fractures in the limestone and an upper perched water table. These factors were not accounted for in the Agency's model, which assumed laminar ground-water flow in a homogenous granular bedrock. Nor did the Agency's model account for placement of CKD in direct contact with ground water.

Nine of the 13 cases of groundwater damage identified occurred at facilities located in karst terrain. The Agency believes the identification of additional documented damage cases further supports the qualification, noted in the 1995 Regulatory Determination, that available ground-water pathway modeling techniques are not applicable in areas of karst terrain. For example, in two documented damage cases, excessive discharges of CKD-contaminated waters can be attributed to ground-water flow through fractured bedrock. In another case, CKD disposal in caverns has resulted in the discharge of contaminated ground water into a nearby surface stream. This does not necessarily mean that ground-water contamination will occur at all such cement plants; however, it should be regarded as a significant qualification to the general findings in the RTC of low or negligible risk from the ground-water pathway risk modeling results. Also, as noted in Section II.C.4.b—Additional Ground-water Modeling, the conclusions on ground water modeling should be qualified by the additional analysis conducted by the Agency. In this analysis, the Agency concluded that the typical ions in CKD and the highly alkaline nature of the leachate are likely to mobilize metals, including lead, chromium, and beryllium, at levels greater than previously predicted. In addition to ground-water contamination, contamination of surface water and/or wetlands was also identified as being a concern at twelve of these damage case sites.

At many of these sites, environmental damages are persistent and continuing. The identification by the Agency of six additional cases of damage since the 1995 Regulatory Determination indicates that damage to ground-water resources near CKD disposal sites may be more common than originally thought in 1995. EPA's latest information indicates that remedial measures have been initiated at only seven of the ground-water damage case sites, such as removal of contaminated materials, installation of an impermeable cap, and/or construction of a seep/ground-water extraction and treatment system. In two cases, ground-water contamination has been found that corroborates the surface water damage cases which were reported in the 1993 RTC and associated NODA. This suggests that, at these CKD disposal sites, releases of contaminated water are pervasive. Many of these sites have been slow to implement remedial measures to control off-site migration of contaminants.

The Agency further believes ground-water controls are warranted because of the matrix in which constituents of concern are bound. As mentioned in Section II.C.4.b. (Additional Ground-water Modeling) of this proposal, more recent modeling of the highly alkaline conditions shows that, in general, these conditions increase the likelihood that some constituents of concern, including lead, chromium, and cadmium, may be more mobile than previously demonstrated. Specifically, the Agency has noticed enhanced transport and breakthrough to the water table for these metals. These new ground-water modeling results support the findings of increased leachability of toxic metals, as observed in the damage cases. As reported in the RTC, the highly alkaline nature of CKD-water mixtures is evident in TCLP results, which commonly show a resultant pH greater than 10 standard units, even after adding acid.

Current waste management practices appear to be inadequate to limit releases of at least some metal contaminants. According to a survey by APCA of 1995 CKD waste management practices, 65% of all respondents indicated that their landfills had liners, but only one respondent (1.5%) used a synthetic liner. Over 60% of respondents considered bedrock or native clay or shale materials to be liners. In 1990, only 17% of all CKD management units nation-wide had ground-water monitoring systems. The American Portland Cement Alliance reports that in 1995, 33 out of 94 cement manufacturing facilities had "ground-water monitoring systems." EPA, however, could not verify whether the monitoring systems were capable of characterizing ground water beneath the active CKD management unit(s). EPA believes that a substantial portion of the cement industry relies on inadequate measures to control the release of contaminants to ground water, and that these practices have not changed substantially or have only marginally improved over the past several years.

Finally, as stated in the 1995 Regulatory Determination, the Agency believes there are no current Federal ground-water protection standards that are adequate to address the risks posed by CKD via the ground-water pathway. The Safe Drinking Water Act (42 U.S.C. 300 f–j) protects drinking water by setting maximum concentration limits (MCLs) for toxic contaminants, including metals. However, drinking water standards are only protective at the point of consumption. Public water supply wells, however, are protected through the wellhead protection program under the SDWA (41 U.S.C. 300h–7(e)).

2. Applicability

EPA is concerned that today's proposal might create an incentive for persons managing CKD waste to create unneeded "units" or unnecessarily large units prior to the effective date of the final rule so that such units would be deemed "existing units" and not be subject to certain requirements of today's proposed rule. To address this concern, today's proposed definition of "existing unit" specifies that expansions would have to be consistent with past operating practices, or operating practices modified to ensure good management. The Agency believes this added provision ensures that persons managing CKD waste will not create new units or unnecessarily enlarge their existing units to avoid compliance with portions of today's proposed rule, but at the same time, accounts for legitimate landfill enlargements or changes in facility operations resulting from additional waste volumes. EPA solicits comment on whether today's proposed regulatory distinction between lateral and vertical expansions would encourage owners and operators to expand existing landfills laterally prior to the effective date of the final rule to avoid meeting the requirements applicable to new units. EPA is proposing ground-water protection standards for all new and existing CKD waste landfill units, except units closed prior to the effective date of the rule. Today's proposed performance and technology-based standards would apply to new units, and any expansion of an existing CKD landfill unit, defined as any lateral expansion of the waste boundary of an existing landfill unit. Any lateral expansion would be considered a new unit and must meet the requirements applicable to new units. In contrast, any vertical expansion of an existing unit would be considered part of the existing unit and subject only to those requirements applicable to existing units. Under this

proposed definition, any new area of any existing unit that receives waste after the effective date of this rule is an expansion. All new and existing CKD landfill units (i.e., the existing landfill plus any expansion) must comply with ground-water monitoring and corrective action requirements proposed in today's rule.

With regard to surface impoundments, the Agency has found few facilities that engage in this CKD management practice. EPA solicits comment on whether wet handling of CKD in surface impoundments can be conducted in a manner that meets the performance standards contained in today's proposed rule. EPA continues to take the position that placement of CKD in a surface impoundment that is in direct contact with the ground-water table would not be protective of human health and the environment.

3. Location Standards

One set of standards for ground-water protection relates to facility location. EPA has identified locations that require special restrictions and may influence the location of landfills: sites below the natural water table, floodplains, wetlands, fault areas, seismic impact zones and unstable areas, particularly unstable areas in karst terrain. For other wastes, such as municipal solid wastes, the Agency has viewed these locations as needing special protection (see 53 *FR* 33314, August 30, 1988). Accordingly, EPA is proposing to impose location standards for CKD disposal sites to ensure protectiveness in the areas described above. With one exception which prohibits CKD disposal below the natural water table, the Agency is not proposing an absolute prohibition against siting CKD landfills at these locations; however, persons managing CKD waste would have to make a showing to the EPA Regional Administrator (or the State, in authorized States), on a case-by-case basis that their design is protective in these environments.

a. Disposal Below the Natural Water Table

Today's proposed rule includes a ban on management of CKD in new units located below the natural water table. The natural water table is defined as the natural level at which water stands in a shallow ground-water well open along its length and penetrating the surficial deposits just deeply enough to encounter standing water at the bottom. This level is uninfluenced by ground-water pumping or other engineered activities.

EPA believes that this stringent restriction is necessary to protect human health and the environment because of the potential damage caused by management of CKD at sites located below the natural water table. The Report to Congress, subsequent Regulatory Determination, and background documents to this proposed rule all describe damages to ground water and surface water resulting from management of CKD at sites (e.g., quarries) that subsequently filled with water after abandonment. As mentioned above, two of these sites were once listed on the NPL. In the Regulatory Determination, the Agency also identified surface water damages resulting from problems with run-on and run-off, but deferred to its authorities under the Clean Water Act to control surface water problems.

b. Floodplains

EPA is proposing that new and existing CKD landfill units may not be located in a 100-year floodplain unless a demonstration is made to the EPA Regional Administrator (or the State, in authorized States), that the landfill has been designed so that it does not restrict flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in the washout of solid waste so as to pose a hazard to human health and the environment. The Agency's rationale today is consistent with the similar rule regarding municipal solid waste landfill units (MSWLFs) (see 53 *FR* 33314, August 30, 1988). Specifically, floodplains may be adversely impacted by the disposal of solid waste through potential flooding damages including: (1) Rapid transport of hazardous constituents by flood water resulting in degradation of water quality downstream; (2) restriction of flood water flow, causing greater flooding upstream; and (3) reduction of the storage capacity of the floodplain, which may cause more rapid movement of flood water downstream, resulting in higher flood levels and greater flood damages downstream.

Today's proposal would require that new and existing CKD landfill units located in a 100-year floodplain be designed and operated to prevent the adverse effects described above. The intent of today's proposed rule is to require that CKD landfill units not cause significant impacts on the flow and water storage capacity of a floodplain experiencing a 100-year flood. Site-specific information should be used to evaluate whether a facility has met this standard.

Today's proposal defines the floodplain using the 100-year flood level.[26] This criterion would limit the chance for site inundation and resulting damages. The intent of this criterion is: (1) To require an assessment of any new or existing CKD disposal site or expansion of any existing site in a floodplain to determine the potential impact of the disposal site on downstream and upstream waters and land; (2) to prohibit such disposal activities if the site, as designed, may cause increased flooding during the 100-year flood; and (3) to require, if the disposal site is located in a floodplain, the use of available technologies and methods to protect against inundation by the base flood, and minimize the potential for adverse effects on water quality and on the flood-flow capacity of the floodplain.

c. Wetlands

Today's proposal provides that no new CKD landfill unit may be placed in wetlands,[27] unless the person managing CKD waste makes a specific demonstration to the EPA Regional Administrator (or the State, in authorized States), that the new unit: (1) will not result in "significant degradation" of the wetland as defined in the Clean Water Act section 404(b)(1) guidelines, published at 40 CFR Part 230; and (2) will meet other requirements derived from the section 404(b)(1) guidelines. Existing disposal units, including vertical expansions that are located in wetlands would continue to operate.

EPA believes that these restrictions are necessary to protect human health and the environment because of the special environmental significance of wetlands and the potential damage caused from siting CKD landfill units in wetlands. The 1993 Report to Congress and associated background documents describe the environmental damage that results by siting CKD landfill units adjacent to wetlands. One case study describes releases of toxic metals in excess of State standards for warmwater wildlife habitats, which potentially could damage the ecological integrity of wetlands adjacent to the CKD disposal site. Another case study describes

[26] To determine whether a CKD landfill unit is in the 100-year floodplain persons managing CKD waste should use flood insurance rate maps (FIRMS) developed by the Federal Emergency Management Agency.

[27] For purposes of this section, wetlands means those areas defined by 40 CFR 232.2(r): "* * * areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas."

environmental releases of toxic metals into the nearshore waters of Lake Huron, which have filled in emergent wetlands and damaged sensitive aquatic habitats. Today's proposed rule would minimize wetland degradation by new CKD landfill units and expansions by allowing siting in wetlands only in cases where protective unit design has been demonstrated.

Today's proposed rule adopts four major requirements: (1) A practical alternatives test (§ 230.10(a)); (2) the assessment of compliance with other applicable laws (§ 230.10(b)); (3) the assessment of aquatic degradation (§ 230.10(c)); and (4) the assessment of steps taken to minimize the adverse effects of discharge (§ 230.10(d)). These requirements parallel those in the guidelines for wetlands protection under section 404(b)(1) of the Clean Water Act. The guiding principle is that discharges should not be allowed unless the persons managing CKD waste can demonstrate that such discharges are unavoidable and will not cause or contribute to significant degradation of wetlands.

Accordingly, to satisfy the four requirements mentioned above, before a CKD landfill unit may be sited in a wetland the persons managing CKD waste must make the following five demonstrations to the Regional Administrator (or the State in authorized States). First, alternative sites for the proposed landfill which are located outside of wetlands must be considered. An alternative site is defined as one which does not involve wetlands. For a person managing CKD waste to site a CKD landfill in a wetland, he must clearly rebut the presumption that a practical alternative is available. Second, a demonstration must be made that siting in a wetland does not violate any of the provisions of the following applicable laws: (1) Any applicable State water quality standard; (2) any applicable toxic effluent standard under section 307 of the Clean Water Act; (3) the Endangered Species Act of 1973; and (4) the Marine Protection, Research, and Sanctuaries Act of 1972. Third, a demonstration must be made that siting the landfill in a wetland will not cause or contribute to significant degradation of wetlands. Fourth, if siting in a wetland is still considered after the first three demonstrations discussed above, then an additional demonstration must be made that appropriate and practical steps have been taken to minimize the potential for adverse effects of the landfill on wetlands. Finally, it must be shown that sufficient information is available for making reasonable determinations with respect to these demonstrations; otherwise, the person managing CKD waste cannot make the demonstrations necessary to qualify for the waiver to the ban. In today's proposed rule, EPA has not set a structure or time frame for approval by the EPA Regional Administrator (or the State in authorized States), in order to give the regulatory authority maximum flexibility in setting schedules.

Today's proposed rule addresses only RCRA requirements. Nothing in today's proposed rule affects any requirements that facilities may have to comply with under other programs, such as section 404 of the Clean Water Act which affects disposal in wetlands.

d. Fault Areas

EPA proposes today that no new CKD landfill units may be sited within 60 meters (200 feet) of a fault that has had displacement in Holocene time, unless a demonstration is made to the EPA Regional Administrator (or the State, in authorized States), that an alternative setback distance of less than 60 meters will prevent damage to the structural integrity of the CKD landfill unit, and will be protective of human health and the environment. The Holocene is the most recent epoch of the Quaternary Period, a period of geologic time that extends from the end of the Pleistocene Epoch to the present and includes approximately the last 10,000 years. Regional geologic maps of Holocene age faults are published by the U.S. Geological Survey. EPA believes that motion along faults may adversely affect the structural integrity of CKD landfill units, and that a 60-meter buffer zone is necessary to protect engineered structures from seismic damages.[28]

Earthquakes present a threat to public safety and welfare in a significant portion of the United States. Damage and loss of life in earthquakes occur as a result of surface displacement along faults and ground motion, as well as secondary effects of the shaking such as ground or soil failure. Faults also present concerns relating to failure of containment structures for CKD landfills. Today's proposed standard is designed to protect CKD landfill units from deformation (i.e., bending and warping of the earth's surface) and displacement (i.e., the relative movement of any two sides of a fault measured in any direction) of the earth's surface that occur when a fault moves.

[28] A fault is defined as a fracture or a zone of fractures in any material along which strata on one side has been displaced relative to strata on the other side. See United States Geological Survey, 1978, Preliminary Young Fault Maps, Miscellaneous Field Investigation (MF) 916.

Available information collected in support of the MSWLF rule suggests that structural damage resulting from earthquakes is most severe for structures located within 60 meters of the fault trace, and decreases with increasing distance away from the fault. However, EPA believes that for some geologic formations the 60 meter setback distance may be overprotective. Therefore, the Agency has allowed in today's proposed rule the opportunity for demonstrations to be made to the EPA Regional Administrator (or the State, in authorized States), that an alternative setback distance of less than 60 meters will prevent damage to the structural integrity of the CKD landfill unit. The Agency requests comment on both the general concept of a location restriction based on fault areas and the specific 60-meter setback requirement.

e. Seismic Impact Zones

Today's proposal would require that any new CKD landfill unit located in a seismic impact zone be designed to resist the maximum horizontal acceleration in lithified material for the site. The design features affected include all containment structures (i.e., liners, leachate collection systems, and surface water control systems). Seismic impact zones are defined as areas having a ten percent or greater probability that the maximum expected horizontal acceleration in lithified material for the site, expressed as a percentage of the Earth's gravitational pull (g), will exceed 0.10g (i.e., 98.0 centimeters per second per second) in 250 years. The term "lithified material" refers to any consolidated or coherent, relatively hard, naturally occurring aggregate composed of one or more minerals (e.g., granite, shale, marble, sandstone, limestone, etc.). This definition explicitly excludes loose, incoherent masses such as soils or regolith, and man-made materials such as fill, concrete or asphalt. EPA's rationale today is consistent with the similar rule regulating MSWLFs, and the Agency solicits comment regarding whether it is appropriate to use the same approach for CKDLFs.

EPA believes that the adverse impact of siting CKD landfill units in seismic areas justifies the need for a comprehensive standard to prevent releases from these facilities. Types of failure that may result from ground motion are: (1) Failure of structures from ground shaking; (2) failure of containment structures due to soil liquefaction, liquefaction-induced settlement and landsliding, and soil slope failure in foundations and embankments; and (3) landsliding and

collapse of surrounding structures.[29] The background document supporting this section of the rule provides examples of the potential adverse effects on CKD landfill units that may occur in seismic impact zones. The Agency believes that these failures may result in contamination of air, ground water, surface water and soil. Therefore, in order to protect human health and the environment, all containment structures must be designed to withstand the stresses created by peak ground acceleration at the site from the maximum earthquake based on regional studies and site-specific analyses.[30]

The process designing earthquake-resistant components may be divided into three steps: (1) Determining expected peak ground acceleration at the site due to a maximum quake, based on regional studies and site-specific seismic risk analysis; (2) determining site-specific seismic hazards (e.g., soil liquefaction); and (3) designing the facility to withstand peak ground accelerations. Various methods for accomplishing the above tasks appropriate to individual CKD landfill units should be selected by the person managing CKD waste, subject to regulatory agency approval.

f. Unstable Areas

EPA is also proposing that persons managing CKD waste in new and existing CKD landfill units located in unstable areas must demonstrate the structural integrity of the unit to the EPA Regional Administrator (or the State, in authorized States). This demonstration must show that engineering measures have been incorporated into the unit's design to mitigate the potential adverse structural impacts on the structural components of the unit that may result from subsidence, slope failure, or other mass movements in unstable areas. For purposes of this section, structural components include liners, leachate collection systems, and final covers.

EPA is particularly concerned with CKD landfill units located in areas of karst terrain. For purposes of this section, karst terrain means an area where karst landscape, with its characteristic hydrogeology and/or landforms is developed. In karst terrain, ground-water flow generally occurs through an open system with both diffuse and conduit flow end member components, and typically has rapid ground-water flow velocities which exceed Darcian flow velocities.[31] Composed of limestone, dolomite, gypsum and other soluble rock, karst terrain typically has well developed secondary porosity enhanced by dissolution. Landforms found in karst terrain include, but are not limited to, sinkholes, sinking streams, caves, springs and blind valleys. Karst terrains always include one or more springs for each ground-water basin, and underground streams except where ground-water flow is diffuse or the host rock has megaporosity.

The regulatory definition of karst terrain in today's proposal expands beyond the obvious landform features typically associated with mature karst topography (e.g., sinkholes and caves). Not all waste disposal sites overlying carbonate aquifers exhibit mature features of well-developed karst, but, nevertheless, may overlie karst aquifers with well developed conduit systems in which turbulent flow regimes dominate. Karst systems are commonly mantled by thick regolith, or partially covered by caprock which may exhibit a topography that is not characteristic of a traditional karst setting. If the regulatory definition of karst relies solely on apparent karst landform features, persons managing CKD waste at facilities situated in karst settings with no apparent on-site karst features could claim that their facilities are not in karst terrain and, therefore, do not overlie a karst aquifer. EPA solicits comment on today's proposed definition of karst terrain and the proposed approach for identifying karst hydrology within and around facility property.

The fundamental hydrologic difference between karst and non-karst terrain is ground-water flow velocity in excess of velocities that are typical of porous media (i.e., Darcian flow velocities). A well developed karst aquifer usually has a ground-water flow velocity orders of magnitude greater than a porous media aquifer. The most important aspect of open karst systems is that the dominant basin-wide component is rapid turbulent ground-water movement, that is non-Darcian flow, through conduits to one or more springs that can vary in magnitude based on the size of the basin and seasonable ground-water conditions. The magnitude of the springs are largely a function of the size of the ground-water basin and aquifer recharge.

Accordingly, before a CKD landfill unit can be sited in a potential karst terrain, a person managing CKD waste must first verify and certify that the facility is situated in a karst terrain based on the revised definition of karst terrain pursuant to § 259.16(b)(1). Today's rule proposes that prior to construction of a CKD landfill in carbonate terrain, a karst ground-water investigation must be conducted to define the direction of ground-water flow, and points of discharge for the karst ground-water basin(s) the facility may affect. The karst ground-water investigation shall include a dye tracer study to identify springs which are hydrologically related to the karst ground-water basin potentially affected by the unit. The verification of a karst terrain may include, but not necessarily be limited to, a review of the available literature. If the literature fails to provide conclusive evidence that the facility does not overlie a karst terrain, a basin-wide field study should be implemented, even if the discharge points of the basin exist beyond the facility boundary, to identify all potential springs from which ground water passing beneath the CKD landfill unit may discharge. Certification may be obtained from an independent professional ground-water scientist, from the EPA Regional Administrator, or from the State, in authorized States.

After verification, the person managing CKD waste must locate background and intermediate sampling locations, and downgradient springs or ground-water monitoring wells for detection monitoring pursuant to § 259.44(a) and § 259.45(b) for assessment monitoring. The person managing CKD waste must establish a ground-water monitoring system pursuant to § 259.41(a) that incorporates spring monitoring. The Agency believes that this will generally necessitate: (1) a field study to conduct an inventory of karst features and locate springs; (2) quantitative tracer studies to verify flow path, time-of-travel, and duration of the dye plume; (3) the regular monitoring of chemographs and hydrographs of springs and monitoring wells; and (4) the development of a sampling strategy based on the unique fate and transport characteristics of the toxic constituents in CKD and hydrology of the karst aquifer, that is capable of detecting releases from the CKD landfill unit.

EPA believes it is important to include quantitative dye tracer studies in any analysis of karst in order to

[29] See Livermore Associated Research Group, Inc. 1982. Seismic Location Standards. Prepared for U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C.

[30] To determine whether a CKD landfill unit is in a seismic zone, persons managing CKD waste should look at maps depiciting the potential seismic activity across the United States that have been prepared by the United States Geological Survey (Open File Report 82–1033).

[31] Darcian flow means ground-water flow which follows Darcy's law, where the specific discharge is proportional to the hydraulic gradient. Darcian ground-water flow is typically linear and laminar, travels from 1×10^{-11} to 1×10^{2} centimeters per second, and is characteristic of ground-water flow through granular porous media.

determine the time of travel and duration of the dye plume. Such data are essential inputs to construction of a model of contaminant migration through the aquifer. The contaminant model is predicated on the dye behaving similarly to a contaminant in its dissolved phase or in suspension adsorbed to colloids. Information on the time of travel and duration of the dye plume would be compared to data from the storm hydrograph and chemograph to identify optimum sampling intervals. The Agency solicits comments on practical difficulties with dye studies and characterizing karst terrain, and whether there are other alternative approaches to ensure protection of human health and the environment.

Some areas of karst terrain may be prone to subsidence because of natural subsurface conditions. Limestone and dolomite are slightly soluble in water, and the solution process can enlarge existing fractures, joints and other voids creating sinkholes and caves. Potential caverns and karst pinnacles in the soil and bedrock may eventually lead to collapse or puncture of the landfill liner due to excessive overburden or settling. Accordingly, today's rule proposes that the ground-water investigation shall also include an inventory of karst features within and around facility property to identify areas prone to surface subsidence or mass movement.

4. Performance-Based Standard for the Protection of Ground Water

a. Overview

To provide maximum flexibility while ensuring protectiveness, EPA is proposing two types of standards relating to groundwater protection: a traditional technology standard, specifying landfill design and other technical requirements, and a more flexible performance-based standard for facilities that wish to utilize a design or technology that they believe will meet the performance standard. To ensure that it is complying with the standards, a person managing CKD waste may choose either to propose an alternative approach to the EPA Regional Administrator (or the State, in authorized States), or may implement the technology standards. EPA may approve the alternative if the Agency concludes the alternative will meet a more general performance standard described below.

With respect to ground water protection, EPA is proposing that the unit design must ensure that exceedances of a ground-water protection standard not occur at the relevant point of compliance. This standard would apply to the metal constituents listed in Appendix VIII of Part 261 (antimony, arsenic, barium, beryllium, cadmium, chromium (total), lead, mercury, selenium, silver, and thallium). For each constituent, the standard would be as follows: (1) if available, the maximum contaminant level (MCL) established under section 1412 of the Safe Drinking Water Act (see 40 CFR Part 141); (2) for constituents with concentration levels lower than background, the background level; and (3) for constituents with no MCLs, an alternative risk-based number or, (in an unauthorized State) other appropriate level established by the EPA Regional Administrator. The Agency solicits comment on the adequacy of using MCLs to define limits for metals in ground water at the point of compliance, and whether or not health-based numbers (HBNs) rather than MCLs should be used as a primary groundwater protection standard. While, EPA's Subtitle D groundwater protection standards are based on MCLs, the Agency's hazardous waste listing determinations are traditionally based on HBNs. The primary difference between MCLs and HBNs is that HBNs are derived based solely on health effects whereas several factors in addition to health effects are considered in the development of MCLs. Development of MCLs requires an evaluation of: (1) The availability and cost of analytical methods; (2) the availability and performance of technologies and other factors relative to feasibility and identifying those that are "best"; and, (3) an assessment of the costs of the application of technologies to achieve various concentrations. Therefore, MCLs may be more or less conservative than HBNs corresponding to the Agency's hazardous waste listing risk range of 10E–4 to 10E–6 for carcinogens and an HQ of 1 for non-carcinogens.

EPA is proposing today that facilities that wish to propose a design to comply with the performance standard must submit a proposed plan to implement the performance standard for approval by a regulatory agency. EPA will provide such oversight in unauthorized States. Authorized States, on the other hand, may be more stringent and are not required to adopt today's proposed performance standard approach. If a State chooses not to provide such review, compliance with the technology standards would be required (since there is no mechanism for approving an alternative approach). EPA strongly urges States to provide the option of a performance standard. Such a standard would protect human health and the environment and minimize the cost of compliance by allowing facilities to tailor ground-water controls to site-specific conditions.

b. Performance Standard and the Point of Compliance

The MCL is the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, and is a standard for evaluating the potability of water. It is the traditional measure used by the Agency to protect the nation's public drinking water supplies (see 40 CFR Parts 141–143 National Drinking Water Regulations). MCLs would be measured at the point of compliance (POC), defined as the closest practical distance from the unit boundary, or at an alternative point chosen by the EPA Regional Administrator (or the State, in authorized States). The alternative POC must be on facility property and be no more than 150 meters from the unit boundary. In allowing for an alternative POC, the Agency's rationale is to allow greater flexibility for a State to set design requirements based on the site-specific factors (for example, see § 257.3–4(b)(1)(i) through (vii)).

5. Technology-Based Standards for the Protection of Ground Water

EPA is proposing that design criteria similar to those for MSWLFs under the Subtitle D program (Solid Waste Disposal Facility Criteria, 56 FR 50978, October 9, 1991) be adopted with certain modifications for ground-water monitoring (see § 259.40) and remediation. For facilities complying with the technology-based standards for the protection of ground water, any new CKD waste management unit or lateral expansion of an existing unit must be constructed with a composite liner and a leachate collection and removal system (LCS) that is designed and constructed to maintain less than a 30 cm depth of leachate over the liner. The composite liner must consist of two components: an upper flexible membrane liner (FML) with a minimum thickness of 30-mil, and a lower component consisting of at least two feet of compacted clay with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. In selecting this uniform design, EPA's goal was to identify one that would provide adequate protection in all locations.

The Agency believes the technology-based standards proposed in today's rule will be protective of ground-water resources. Liners will prevent leachate from seeping from the landfill and entering the aquifer. The FML must

have a minimum thickness of 30-mils and be installed in direct and uniform contact with the lower clay component to ensure adequate liner performance, including being able to withstand the stress of construction (see U.S. EPA - RREL, Lining of Waste Containment and Other Impoundment Facilities EPA/600/2–88/052. September 1988). Compacted clay liners must be at least two feet thick to ensure a high probability of having a hydraulic conductivity of 1 x 10^{-7} cm/sec. Functionally, both the FML and lower clay component are necessary to retard the migration of contaminants into the subsoil. The FML component would provide a highly impermeable layer to maximize leachate collection and removal. The compacted clay liner would adsorb and attenuate pollutants in the event of FML liner failure.

A LCS is necessary to relieve the hydraulic pressure within the landfill which could drive leachate migration through the base of the landfill. LCS design normally consists of a permeable material placed on a sloping surface so as to allow leachate to be removed and collected. Large units may also have a pipe drainage system. Sloping the LCS towards a sump minimizes any downward flow, and reduces the amount of leachate leaving the LCS.

The Agency seeks comments on the effectiveness of various liner thicknesses and materials in preventing the migration of the hazardous constituents of CKD to groundwater. Of particular interest to the Agency is the effectiveness of use of CKD as a liner or cap material. CKD may be a suitable material for use as a liner or cap material because of its cementitious properties. Studies on CKD obtained by the Agency suggests that very low hydraulic conductivities (less than 1×10^{-7} cm/sec) are readily achievable in the laboratory, and in field trials using heavy equipment to compress CKD to high densities.[32] However, the Agency also has contravening information from one site visit and two case studies where CKD has been used as a cap material[33] which suggests that compaction control is difficult to maintain over an area that is acres in size. Nevertheless, EPA is not proposing today that CKD be banned from use as a liner or cap material. Rather, it can be used as part of a unit design if the person managing CKD waste can demonstrate that the design meets the performance standard for ground water, including establishing that the material will maintain integrity over long periods of time and, therefore, has a low potential for release of contaminants.

6. Requirements for Ground-water Monitoring

EPA is proposing that ground-water monitoring be required for all new and existing CKD management units, to detect the presence of regulated constituents in the ground water. The ground-water monitoring and corrective action requirements proposed today are based on requirements promulgated under Part 258 for MSWLFs and hazardous waste regulations under Part 264—Subpart F for Solid Waste Management Units. The ground-water monitoring system must include at a minimum one up gradient and three down gradient wells. The down gradient wells must be located not farther than 150 meters from the unit boundary at the relevant POC specified by the EPA Regional Administrator (or the State, in authorized States). The ground-water monitoring system must be capable of ascertaining the quality of background ground water that has not been affected by releases from the unit, and assessing the quality of ground water passing the relevant POC, as certified by a qualified ground-water scientist. The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and down gradient wells.

For facilities located in karst terrain, EPA is also proposing that the ground-water monitoring strategy include, where necessary, springs which are the ultimate discharge points of the karst ground-water basin in which the facility is situated. In karst terrain, point-of-compliance ground-water monitoring wells may not detect a point source release from a CKD management unit based on failure of the monitoring wells to intersect the conduit through which the contaminant plume passes. While monitoring wells are appropriate, they are not fail-safe. Consequently, discharge points of the karst ground-water basin should be incorporated into the overall monitoring strategy to detect a release. In today's rule, EPA is proposing that the EPA Regional Administrator (or the State, in authorized States), in addition to specifying the relevant POC, may also specify ground-water monitoring at discharge points of the karst ground-water basin potentially affected by releases from the CKD waste management unit.

EPA is proposing two types of monitoring: detection monitoring and assessment monitoring. Under proposed § 259.44, persons managing CKD waste in a CKD waste management unit will be required to undertake a ground-water detection monitoring program, similar to that described under § 258.54 of the MSWLF rule. In a departure from the MSWLF rule, EPA is proposing to require detection monitoring only for the following parameters: pH, conductivity, total dissolved solids, potassium, chloride, sodium, and sulfate. These detection parameters are easily measured and should provide a reliable indication of inorganic releases from the CKD waste management unit to ground water. The Agency solicits comment on the adequacy of these detection parameters for monitoring releases and whether metal constituents are necessary.

If detection monitoring indicates a statistically significant increase over background for one or more of the detection parameters listed above, under proposed § 259.45, a person managing CKD waste is required to implement an assessment monitoring program, similar to that described in § 258.55 of the MSWLF rule. In another proposed departure from the MSWLF rule, today's proposed rule does not require a scan for the hazardous constituents listed under part 258, Appendix II. Instead persons managing CKD under today's proposed rule would be required to sample and analyze the ground water for only the inorganic constituents listed in Appendix VIII of Part 261 (antimony, arsenic, barium, beryllium, cadmium, chromium (total), lead, mercury, nickel, selenium, silver, and thallium).

Because this proposal requires ground-water monitoring at new and existing CKD landfill units, today's action effectively prohibits the location of such units in areas where subsurface conditions prevent monitoring of subsurface contaminant migration from the landfill unit. EPA anticipates that the Regional Administrators (or authorized States) will not issue an operating permit for CKD landfill units located in areas where subsurface monitoring is impossible. Geologic

[32] See Todres, H.A., 1992. Cement Kiln Dust: Field Compaction and Resulting Permeability. Research and Development Bulletin RD106T, Portland Cement Association, Skokie, Illinois. 47p; and, Todres, H.A., Mishulovich, A., and Ahmed, J. 1992. Cement Kiln Dust Management: Permeability. Research and Development Bulletin RD103T, Portland Cement Association, Skokie, Illinois. 9p.

[33] See Spectra Engineering, P.C., 1995. Lehigh Portland Cement Company, Alsen Dust Disposal Facility, Closure Certification Report. Prepared for Lehigh Portland Cement Company, Cementon Plant, Cementon, New York. See also letter from Thomas M. Polasek, P.E., Michigan Department of Environmental Quality, to Frank Davis, Lafarge Corporation, re: Consent Judgment Compliance, October 10, 1996.

settings that could preclude effective ground-water monitoring include areas of limestone bedrock in mature karst settings, with complex networks of conduits, fractures, and joints which impede accurate prediction of ground-water flow. The Agency considers it the responsibility of the persons managing CKD waste to prove that a landfill can be effectively monitored.

7. Corrective Action

Today's proposal establishes corrective action steps similar to § 258.56 of the MSWLF rule. Within 90 days of finding that any of the part 261 inorganic constituents (see previous section) have been detected at a statistically significant level exceeding the ground-water protection standards as defined under § 259.45(h), the persons managing CKD waste must initiate an assessment of corrective measures. Such an assessment must be completed within 90 days, or within an alternative period of time decided by the EPA Regional Administrator, in accordance with § 259.46. Today's proposal allows for swift remediation of a ground-water problem, yet provides flexibility for selecting and implementing the corrective remedy.

Under proposed § 259.47 and § 259.48, the selection of a remedy and implementation of the corrective action program must be completed in accordance with those procedures which are similar to those enumerated in 40 CFR 258.57 and 258.58 for MSWLFs. These requirements only apply to those hazardous constituents that are likely to be present in CKD as previously described. An exceedance of today's proposed ground-water protection standards would not immediately result in classification of such CKD as mismanaged. If a person managing CKD waste, however, failed to take the necessary corrective action after detecting an exceedance, CKD would be considered mismanaged and, therefore, hazardous waste. The Agency solicits comment regarding the time periods in which remedial activities must be initiated, and whether or not today's proposed minimum time periods are appropriate given the widely varying circumstances likely to be encountered at facilities requiring corrective action.

In today's rule the Agency is not proposing facility-wide corrective action standards for the management of CKD. Instead, EPA proposes to require corrective action at units which are actively managing CKD. EPA believes that the costs associated with requiring corrective action at all solid waste management units that may happen to be located at a CKD facility make it inappropriate to impose such a requirement. Where releases from such units have occurred, other state law authorities and the Federal imminent hazard authorities under section 7003 of RCRA or section 106 of CERCLA, will be adequate to address any threats to human health and the environment. (The handling of corrective action at facilities that become subject to today's proposed Subtitle C standards is discussed in Section V.B.—Implementation of part 259 and RCRA Subtitle C Backup Standards.)

B. Standards for Fugitive CKD Emissions

1. The Need to Limit Fugitive CKD Emissions

In the Agency's follow-up work leading to the September 1994 NODA (see 59 FR 47133, September 14, 1994), EPA found evidence of possible risk to human health due to the fine particulate nature of inhaled dust. Particulate matter is of health concern because fine particles such as CKD can penetrate into the sensitive regions of the respiratory tract and cause respiratory illness. Negative effects associated with exposure to particulate matter include premature death, hospital admissions from respiratory ailments, and increased respiratory symptoms such as persistent coughs, phlegm, wheezing, and physical discomfort. Long-term exposure to particulate matter may increase the rate of respiratory and cardiovascular illness and reduce life span. Although the Agency's direct inhalation exposure modeling studies described in the RTC did not indicate significant risk from inhaled chemical constituents in CKD, subsequent screening-level modeling on five case study plants indicated that windblown dust from uncontrolled CKD waste management units (uncovered and dry CKD piles) could exceed EPA's health-based PM_{10} fine particulate (10 microns or less) National Ambient Air Quality Standard(NAAQS) [34] at plant boundaries, and potentially at nearby residences.

Results from a subsequent extension of this work to a larger sample of 52 cement plants suggest that 28 of the plants could exceed NAAQS PM_{10} standards at plant boundaries, if the plants do not have effective dust control mechanisms in place. The Agency recognizes that dust from mining and quarry operations could contribute to the particulate emissions from a cement plant; however, other evidence (i.e., damage cases) indicates that fugitive CKD emissions are a substantial contributor to environmental damages in the form of air quality degradation.

Additionally, particulate emissions of fugitive dust are the major contributor of CKD to EPA's indirect foodchain pathway model. The Agency's quantitative modeling of "indirect" food chain pathways, both aquatic and agricultural, indicates potential human health effects, both cancer and non-cancer. A wide range of chemical constituents, including arsenic, cadmium, chromium, barium, thallium, lead, and dioxins, were indicated as constituents of concern at various plants. Because some CKD disposal units are located near, and in some instances immediately adjacent to, farm fields, rural residences with gardens, or surface waters containing fish, there is potential for indirect risk from the consumption of CKD-contaminated beef, vegetables and fish, as well as ingestion of CKD-contaminated water during recreational swimming.

Although quantitative risks presently can not be estimated, these initial modeling results relating to fine particulates suggest cause for concern and argue for further attention to this source of fugitive dust. Consequently, the Agency believes it is necessary to impose additional controls on fugitive emissions under authority provided by RCRA section 3004(n).

2. Applicability

EPA is proposing air protection standards to limit fugitive CKD emissions for all new and existing CKD waste landfill units, except units closed prior to the effective date of the final rule. Any expansion of an existing CKD landfill unit, defined as any lateral or vertical expansion of the waste boundary of an existing landfill unit, must meet today's proposed requirements. Under this proposed definition, any area of any existing unit that receives waste after the effective date of this rule is an expansion. EPA is also proposing that interim storage units, such as containers or buildings which contain CKD destined for recycling or sale, must comply with the air performance standards.

[34] The level of the national primary and secondary 24-hour ambient air quality standards for PM_{10} is 150 micrograms per cubic meter ($\mu g/m^3$), and 65 $\mu g/m^3$ for PM_{25}, 24-hour average concentration. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ for PM_{10}, and above 65 $\mu g/m^3$ for PM_{25}, as determined in accordance with Appendix K to 40 CFR part 50, is equal to or less than one. The level of the national primary and secondary annual standards for PM_{10} is 50 micrograms per cubic meter ($\mu g/m^3$), and 15 $\mu g/m^3$ for PM_{25}, annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with Appendix K to part 50, is less than or equal to 50 $\mu g/m^3$ for PM_{10} and 15 $\mu g/m^3$ for PM_{25}.

Consistent with controls proposed today for ground water, the Agency is not proposing to require fugitive dust controls for the old, inactive portions of existing CKD landfills. However, EPA solicits comment on applying air controls to the entire active unit, including any inactive area of a CKD landfill with an expansion.

These proposed standards could be met in one of two ways. First, a person managing CKD waste could obtain a determination from the EPA Regional Administrator (or from the State, in authorized States), that a management practice or design meets the performance standard, providing adequate assurance that the unit is managed to control wind dispersal of particulate matter. Second, the person managing CKD waste could design units according to technology-based standards outlined below, so as to obviate the need for such a demonstration.

3. Performance Standard for the Protection of Air

Under today's proposal, unit design must ensure that wind dispersal of particulate material (PM) is controlled. The specific performance standard for air is that the persons managing CKD must cover or otherwise manage the unit to control wind dispersal of CKD waste. This standard would apply to solid PM that becomes airborne directly or indirectly as a result of CKD handling procedures. The most common sources of PM at cement manufacturing facilities to which this standard applies includes vehicular traffic on unpaved roads or on CKD waste management units, and wind erosion from waste management units. This standard would not apply to CKD emitted from an exhaust stack.

The Agency understands that methods for controlling fugitive dust will vary depending on factors such as geographic location, climate, facility design, and CKD management method. While the technology-based standards of conditioning CKD, using covers, watering, and use of tanks, containers, or buildings for temporary storage, meets the performance standard, other techniques and technologies may be as or more effective. Therefore, today's proposal provides persons managing CKD waste, working with regulatory agencies, with substantial flexibility to determine the appropriate method to control fugitive emissions based on facility-specific conditions.

To demonstrate compliance with the performance standard for the protection of air, EPA is proposing that persons managing CKD waste in new and existing CKD landfills, temporary storage areas, and trucks provide cover or otherwise manage the CKD such that equivalent control exists to that provided by daily cover of the landfill unit. Additionally, if landfill units, roads, temporary storage areas, and trucks are managed with no visible fugitive emissions of CKD, the Agency would view that the performance standard is met. The Agency solicits comment regarding the effectiveness of various fugitive dust control methods in demonstrating compliance with the performance standard for air so that EPA can provide comprehensive guidance to persons managing CKD and to staff at regulatory agencies who would implement today's proposed rule.

4. Technology-Based Standards for Fugitive Dust Control

a. Conditioning

For facilities complying with the technology-based standards, EPA is proposing that CKD managed in landfills must be emplaced as conditioned CKD. For purposes of this section, conditioned CKD means cement kiln dust that has been compacted in the field at appropriate moisture content using moderate to heavy equipment to attain 95% of the standard Proctor maximum dry density value according to ASTM D 698 or D 1557 test methods. Such conditioning can be achieved by mixing the CKD with water on a continuous or batch basis, such as pug-milling, followed by compaction. The material should be spread in lifts of uniform thickness and compacted to the required density with appropriate equipment (e.g., a heavy sheep-foot roller). The compaction of moist CKD, coupled with the waste's natural cementitious properties, enables individual waste particles to bond together, thus greatly reducing the availability of particulate material for air dispersal, and, therefore, this standard is protective for fugitive dust from landfills. In addition, the bonding can serve to decrease the leaching of contaminants from CKD.

b. Covers

The Agency is also proposing that disposed CKD be covered with material at the end of each operating day sufficient to prevent blowing dust. EPA believes that cover material applied at the end of each operating day over the active face of the CKD landfill will prevent the entrainment of fugitive dust, and is a more effective practice for dust suppression than frequent wetting and watering.[35] The cover must be constructed of materials that have appropriate physical and chemical properties, and sufficient strength and thickness to prevent failure due to physical contact with CKD, climatic conditions, the stress of installation, and the stress of daily operation. Similarly, EPA is proposing that CKD transported in trucks on or off the facility be covered to minimize fugitive emissions of CKD. Alternative materials or actions may be approved by the EPA Regional Administrator (or the State, in authorized States), as long as the person managing CKD waste makes a demonstration that the alternative meets the performance standard.

c. Wetting

Wetting of CKD on roads is not required in today's proposed performance-based standards. EPA believes, however, that consistent wetting and watering of unpaved roads, when used in conjunction with other air control technologies, can reduce releases of fugitive emissions from facilities that manage CKD. Data from an EPA study of fugitive dust emissions from cement plants and potential control measures indicates that fugitive dust emissions from unpaved roads can be significantly reduced by increasing the moisture content of the dust. However, the wetting of roads by itself will not meet today's proposed performance standard for air.

The Agency solicits comments on the effectiveness of these and other methods for controlling fugitive emissions of CKD.

d. Temporary Storage

The Agency today is proposing that CKD destined for temporary storage prior to recycling, sale, or disposal not be placed in land-based units, but in tanks, containers, or buildings. CKD would not be considered a hazardous waste provided the storage that precedes sale or recycling provides adequate control of fugitive dust. An acceptable containment unit must be a man-made structure with a foundation constructed of non-earthen materials, have walls (which may be removable), and have a roof suitable for diverting rainwater away from the foundation. In considering these criteria for containers and buildings, EPA is placing special emphasis upon practical considerations, such as the need to transport materials in and out of the unit in a reasonable fashion. The Agency would not require that these units meet full Subtitle C

[35] Although wetting and watering is a common fugitive dust suppression practice at CKD landfills, the persistent releases of fugitive CKD reported in the RTC suggest that frequent wetting alone is not sufficient to prevent blowing dust.

requirements for storage of hazardous wastes as outlined in parts 264 and 265 subparts I and J.

C. Closure

In today's proposed rule, EPA is requiring that new and existing CKD landfill units, including expansions be closed in accordance with specified standards, and that units be monitored and maintained after closure. Closure and post-closure plans describing these activities are to be prepared to comply with a minimum set of procedural requirements. As described in the damage cases supporting this rule, improperly closed CKD landfills have the potential for contaminating the environment due to inadequate controls to contain the waste. For example, in one damage case, CKD wastes remained exposed due, in part, to failure to install a proper cap or insulate the waste from the erosive wave action of Lake Huron.

EPA proposes that all persons managing CKD waste in CKD landfill units must install a final cover designed to minimize infiltration and promote drainage from its surface while minimizing erosion. It must also be designed so that settling and subsidence are accommodated to minimize the potential for disruption of continuity and function of the final cover. The Agency believes that placement of a final cover over closed portions of a CKD landfill is necessary to minimize the infiltration of rainwater, minimize the dispersal of CKD waste through physical interaction, and minimize the need for further maintenance at the facility through the post-closure period and beyond. The infiltration layer must be a minimum of 18 inches of earthen material that has a hydraulic conductivity of less than or equal to the bottom liner system, or no greater than 1×10^{-5} cm/sec, whichever is less. The erosion layer must have a sufficient thickness to sustain native plant growth. Alternative final cover designs may be approved by the EPA Regional Administrator (or the State, in authorized States), if the cover layers achieve the same objectives as the specified design in this proposed rule.

D. Post-Closure Care

Today's proposed rule also requires that post-closure care be conducted for a period of 30 years after the closure of each CKD landfill unit. Post-closure care consists of maintaining the effectiveness of the final cover and continuing ground-water monitoring and leachate management to control the formation and release of leachate into the environment. Routine maintenance of the integrity and effectiveness of the final cover is necessary to prevent liquids from penetrating into the closed landfill and creating the potential for leachate migration.

EPA is proposing in today's rule to give the EPA Regional Administrator (or the State, in authorized States), discretion to reduce or extend the length of the post-closure period based on site-specific demonstrations. The Agency is concerned that 30 years may be excessive or insufficient to detect releases at some landfills. Therefore, the Agency wants to ensure that any potential release will be detected regardless of when it occurs.

Required activities in today's proposed rule include repairs to the final cover to correct the effects of settling, subsidence, and erosion, and preventing run-on and run-off from damaging the cover. Cover maintenance also includes periodic cap replacement, which is necessary to remediate the effects of routine deterioration. The Agency believes that these activities will minimize liquids in CKD landfills and are the minimum steps necessary to protect human health and the environment in the long term.

Today's proposal under § 259.50 also requires ground-water monitoring and maintenance of the ground-water monitoring system during the post-closure care period. The fundamental purpose of monitoring during the post-closure care period is to detect ground-water contamination in a timely fashion should the CKD waste containment structure fail, and to trigger corrective action activities as soon as contamination occurs. Long-term monitoring is essential to detect releases due to catastrophic failure or design and installation errors (e.g., tearing of liners due to ground movement).

E. Closure/Post—Closure Planning Requirements

Today's proposed rule also requires preparation of closure and post-closure plans describing activities that will be undertaken to close each CKD landfill unit properly and maintain them after closure. These plans must be prepared and placed in the facility operating record no later than the effective date of this rule, or the date of initial receipt of the waste, whichever is later.

The closure and post-closure care standards also include certain procedural requirements. First, prior to closing of each landfill unit, the EPA Regional Administrator (or the State, in authorized States) must be notified and the notification must be placed in the facility operating record. Second, closure of the landfill unit must begin within 30 days after the date of final receipt of CKD waste and closure complete within 180 days of receipt of the last shipment of waste. Extensions to these deadlines may be approved for good cause by the EPA Regional Administrator (or the State, in authorized States). Third, following closure of the facility, a notation in the deed to the property must be recorded that indicates the property has been used for CKD disposal. Finally, the EPA Regional Administrator (or the State, in authorized States) must be notified and a certification must be placed in the facility operating record that verifies that closure and post-closure activities have been conducted in accordance with closure and post-closure plans. The certification must be signed by an independent registered professional engineer, or approved by the EPA Regional Administrator (or the State, in authorized States).

F. Financial Assurance

In today's proposed rule, a demonstration of financial assurance is required for the costs of conducting closure, post-closure care, and, if applicable, corrective action for known releases. The proposed financial assurance requirements are patterned after the financial assurance provisions for municipal solid waste landfill facilities (MSWLFs) under Subtitle D. (see §§ 258.71 to 258.75).

The purposes of financial assurance are to ensure that the owner or operator of a CKD landfill unit adequately plans for the future costs of closure, post-closure care, and corrective action for known releases, and to ensure that adequate funds will be available when needed to cover the costs if the owner or operator is unwilling or unable to do so. To demonstrate to the EPA Regional Administrator (or the State, in authorized States) that it has planned for future costs, written cost estimates must be prepared. These cost estimates would serve as the basis for determining the amount of financial assurance that must be demonstrated.

EPA is proposing that persons managing CKD waste in new and existing CKD landfill units, including expansions, be required to demonstrate financial responsibility for closure, post-closure care, and corrective action for known releases in an amount equal to the cost of a third party conducting these activities. The "third party" provision ensures that adequate funds will be available for the regulatory agency to hire a third party to conduct closure, post-closure care, and corrective action in the event that the person managing CKD waste fails to fulfill these obligations.

The cost estimates must be based on the cost of closing the CKD landfill unit at the point of the landfill's active life when the extent and manner of its operation would make closure the most expensive. Similarly, cost estimates for post-closure care must include estimates for both annual and periodic activities, and account for the most expensive costs of routine post-closure care. EPA is proposing that the cost estimates be updated annually for inflation and whenever design changes cause changes in the costs at the CKD landfill unit. Cost estimates may be reduced provided a justification for the reduction is placed in the operating record and the EPA Regional Administrator (or the State, in authorized States) is notified. The Agency solicits comment on whether cost estimates need prior approval by the EPA Administrator.

In today's proposal, any person managing CKD waste who is required to undertake a corrective action program would be required to prepare an estimate of the cost of an appropriate corrective action program (for example, by multiplying the total annual costs of remedial actions by the number of years required to complete the corrective action program).

Today's proposed rule includes a list of specific financial mechanisms that may be used to demonstrate financial responsibility, as well as criteria for judging whether other mechanisms are acceptable. The rule permits the use of a trust fund with a pay-in period, surety bond, letter of credit, insurance, State-approved mechanism, and State assumption of responsibility.

Today's proposed rule would also allow private owners or operators of cement kiln dust landfills (CKDLFs) that meet certain financial and recordkeeping and reporting requirements to use a financial test to demonstrate financial assurance for CKDLF closure, post-closure care and corrective action costs up to a calculated limit. (Costs over the limit must still be assured through a third-party mechanism such as a surety bond or trust fund, or, in authorized States, through other appropriate mechanisms the State determines to meet the performance standard proposed at § 259.64(l)). The financial test allows a company to avoid incurring the expenses associated with the existing financial assurance requirements which provide for demonstrating financial assurance through the use of third-party financial instruments, such as a trust fund, letter of credit, surety bond, or insurance policy. With the financial test, private persons managing CKD waste may demonstrate that they are capable of meeting their financial obligations at their CKDLFs through "self insurance."

In addition, today's proposed rule allows persons managing CKD waste to comply with financial responsibility requirements for CKDLFs using a guarantee provided by another private firm (the guarantor). Under such a guarantee, the guarantor promises to pay for or carry out closure, post-closure care, or corrective action activities on behalf of the person managing CKD waste in a CKDLF if the person fails to do so. Guarantees, like other third-party mechanisms, such as letters of credit or surety bonds, ensure that a third party is obligated to cover the costs of closure, post-closure care, or corrective action in the event that the person managing CKD waste goes bankrupt or fails to conduct the required activities. At the same time, a guarantee is an attractive compliance option for persons managing CKD waste because guarantees are generally less expensive than other third-party mechanisms.

Today's proposed rule releases persons managing CKD waste from financial responsibility for closure, post-closure care, or corrective action when the EPA Regional Administrator (or the State, in authorized States), is notified that a certification has been placed in the facility operating record that the specific activities (i.e., closure, post-closure care for a period, corrective action) have been completed in accordance with the appropriate plan. The certification must be signed by a professional engineer, approved by the EPA Regional Administrator (or the State, in authorized States).

EPA is also considering requiring persons managing CKD waste in CKD landfill units to demonstrate financial assurance for third party liability to compensate injured third parties. Such liability requirements are currently required under RCRA Subtitle C for hazardous waste management facilities (see 40 CFR 264.147). Financial assurance for third-party liability potentially benefits the public health by providing the incentive of lower insurance premiums resulting from improved facility design and operation.

Under § 264.147, an operating land disposal facility must have both coverage for sudden accidental releases in the amount of $1 million per occurrence and $2 million annual aggregate plus nonsudden coverage. This nonsudden accidental coverage is for an additional $3 million per occurrence and $6 million annual aggregate. Thus, were the Agency to require the same level of liability coverage for CKD landfills as for hazardous waste land disposal owners and operators, they would need at least $4 million and $8 million in total.

For municipal solid waste landfill facilities, EPA has deferred the development of third party liability requirements under part 258. EPA's decision to defer these requirements was based upon two issues. The first was that the Agency had insufficient data to set appropriate levels for third party liability coverage. Second, the Agency was concerned that owners and operators of MSWLFs would encounter difficulty in obtaining financial assurance mechanisms to fulfill this requirement. (For more information on these points please see the Appendix to the final regulation establishing the Solid Waste Disposal Criteria at 56 FR 51108.)

The Agency, however, believes that the risks from CKD landfill are closer to those for from MSWLFs than from hazardous waste treatment, storage, and disposal facilities (TSDFs). Therefore, the types of liability requirements for hazardous waste TSDFs may be inappropriate for CKD landfills. Further, the amounts of coverage that EPA should require may also differ. EPA has limited data at this time to specify the amount of liability coverage that would be appropriate for a CKD landfill unit. Another consideration is the cost of implementing such a requirement. EPA is reluctant to directly adopt the levels of coverage required for Subtitle C facilities without further analysis comparing the risks and resultant third party claims from CKD landfill units and other Subtitle C hazardous waste facilities. The Agency, therefore, requests comment on whether or not to require financial assurance for third-party liability for CKD landfill units. In particular, EPA requests information on the risks to third parties from these facilities, the amount of claims, and the availability of liability coverage to assist it in setting appropriate levels of liability coverage.

G. Implementation

Except as provided in proposed § 259.40, existing CKD management units, including vertical expansions would be required to be in compliance with the groundwater monitoring requirements proposed under § 259.40 within two years after the effective date of the final rule. New CKD management units, including lateral expansions must be in compliance with the ground-water monitoring requirements proposed under § 259.41 before CKD can be placed in the unit. Ground-water monitoring shall be conducted throughout the active life and post-

closure care period of the CKD management unit as proposed under § 259.51.

A unit design which causes an exceedance of the groundwater protection standard will be considered as being in compliance with today's proposed rule if appropriate corrective action is taken. As explained below, if a person managing CKD waste does not initiate corrective action to correct the source of contamination within 270 days (unless an alternative schedule for compliance is set by the EPA Regional Administrator under § 259.47(e)), the CKD managed in such a unit will be considered a Subtitle C waste, and subject to standards under 40 CFR part 266.

1. Notification, Recordkeeping, and Reporting

Record reviews are one of the ways EPA can ascertain whether a facility is in compliance with today's proposed standards. Accordingly, in § 259.23 of today's proposal, EPA has included a recordkeeping requirement to ensure that a historical record of CKD landfill performance is maintained. The person managing CKD waste would be required to maintain the following records: (1) Any required demonstration, certification, finding, monitoring, notification, testing, or analytical data proposed today under Subpart E of part 259; (2) required inspection records, training procedures, and regulatory agency notification procedures as proposed under § 259.20; (3) required closure and post-closure care plans and any monitoring or analytical data proposed under §§ 259.50 and 259.51; and (4) any required cost estimates and financial assurance documentation proposed under subpart G of today's proposal. The required information would be recorded as it becomes available, and maintained by the persons managing CKD waste in new and existing CKD landfill units. EPA requests comment on the timing of regulatory agency notification and whether specific time requirements (e.g., 14 days from a finding) should be specified for placement of documents in the operating record.

In today's rule, EPA is proposing that information would be retained in an operating record near the facility, or in an alternative location approved by the State (or in unauthorized States, by the EPA Regional Administrator). In addition, today's rule proposes that all information contained in the operating record must be publicly available. EPA believes that these requirements would ensure the availability of basic types of information that demonstrate compliance with the requirements of today's proposal, but requests comment on the operating record being kept near the facility or in an approved alternative location and whether limitations should be placed on this requirement (i.e., distance the record can be kept from the facility, access to the record or public availability issues with the record being off-site.).

2. Permitting Requirements

EPA is proposing to modify the requirements in 40 CFR part 270 by adding § 270.68 specific to the permitting of cement manufacturing facilities which manage CKD. Part 270 of the hazardous waste regulations contains specific requirements for permit applications, permit conditions, changes to permits, expiration and continuation of permits, interim status and special forms of permits. Facilities that choose not to follow, or fail to maintain the management standards for cement kiln dust waste proposed today in part 259 may be required to obtain a permit under rules proposed today under 40 CFR 270.68. This Subtitle C permit would provide for the operation of the facility in accordance with 40 CFR part 259, and may include such additional requirements as the EPA Regional Administrator deems necessary to protect human health and the environment, including, but not limited to requirements regarding monitoring, operation, financial responsibility, closure and remedial action. In States with an authorized RCRA program, all references to the EPA Regional Administrator should be read as referring to the State Director, or other State official responsible for implementing the State Subtitle C solid waste permit program. Today's proposed rule would also allow for Federal oversight and enforcement of requirements under Subtitle C.

The Subtitle C permit proposed today under § 270.68 is different from other part 270 permits. Generally applicable standards under 40 CFR part 270 and part 124 for permit application, issuance and modification, apply to facilities that are fully subject to the Subtitle C regulations, including requirements for facility-wide corrective action. Under today's proposal, however, CKD facilities subject to a permit to allow operation in accordance with part 259 regulations are not subject to certain regulations applicable to most Subtitle C facilities. For example, these facilities would not be subject to facility-wide corrective action and would not be required to submit information to support a facility wide corrective action program (see existing § 270.14(d)). The Agency, therefore, solicits comment on today's proposed approach, and whether the full range of requirements normally imposed under part 270 should be required for cement manufacturing facilities which manage CKD. To address portions of part 270 and 124 that would not apply for these CKD facilities, proposed § 270.68 allows the EPA Regional Administrator (or the State, in authorized States), consistent with the protection of human health and the environment, to modify or waive permit application and permit issuance requirements in parts 124 and 270, except for procedures regarding public participation.

EPA anticipates that few facilities will be required to seek permits to operate in lieu of the terms of today's proposed part 259 standards and is proposing today's standards under § 270.68 rather than detailed procedures or modifications of existing part 270 for the establishment of these permits. This approach is consistent with that taken for the Research, Development and Demonstration permits found in § 270.65. In today's rule, only those facilities that fail to comply with either the performance standards or the technology-based standards under 40 CFR part 259 will be subject to RCRA Subtitle C regulations, and thus will require permits proposed under § 270.68.

H. Applicability of the Boilers and Industrial Furnaces Rule

On February 21, 1991, the Agency promulgated a final rule for burning of hazardous waste in boilers and industrial furnaces (BIF rule) (see 56 FR 7134). The BIF rule expanded controls on hazardous waste combustion to regulate air emissions from burning hazardous waste in boilers and industrial furnaces. The rule also subjected owners and operators of these facilities to the general facility standards applicable to hazardous waste treatment, storage and disposal facilities (40 CFR part 264) and subjected hazardous waste storage units at regulated burner facilities to part 264 permit standards.

Three types of facilities that burn or co-combust hazardous waste that are affected by the BIF rule are: (1) Boilers burning primarily coal or other fossil fuels, (2) industrial furnaces processing primarily ores and minerals, and (3) cement kilns processing primarily raw materials. Because residues from these processes were covered by the Bevill exclusion until special studies were completed to determine whether they should be regulated under Subtitle C (see section 3001(b)(3)(A)(i-iii)), the BIF

rule requires owners and operators to apply a two-part test to determine whether the Bevill exclusion continues to apply. Using the test, owners and operators are required to determine on a site specific basis whether co-combustion of hazardous waste has significantly affected the character of the residue. The residue is considered to be significantly affected if both: (1) Concentrations of toxic (Appendix VIII) compounds in the waste-derived residue are significantly higher than in normal residue (i.e., without burning/processing hazardous waste); and (2) toxic compounds are present in the waste-derived residue at levels that could pose significant risks to human health. [For metals, these are set at the RCRA toxicity characteristic level defined in Appendix VII to part 266.) If the test demonstrates that the waste-derived residue is significantly affected, or the persons managing CKD waste fail to obtain data adequate to demonstrate that the residue has not been significantly affected, then the derived-from residues are subject to RCRA Subtitle C hazardous waste regulations. Such residues are deemed to be from treating hazardous waste rather than from burning fossil fuels, processing ores or minerals, or manufacturing cement (see 56 FR 7196, February 21, 1991, Section XIII for a discussion of the basis for the two-part test).

One of the effects of today's proposal is to replace the exemption of CKD from hazardous waste regulation under the Bevill exemption with specific management standards applicable to CKD. As a result, the two-part test would be meaningless since, in the absence of the Bevill exemption, all waste-derived CKD would be hazardous under the derived-from rule (see 40 CFR 261.3(c)(2)(i)), whether or not it exhibits a hazardous characteristic. However, the Agency believes subjecting waste-derived CKD that does not exhibit a hazardous characteristic to full Subtitle C requirements would create excessive burdens and be unnecessary. EPA believes that applying the regulations proposed today under § 261.4(b)(8) to such waste will be protective. It should be noted that characteristically hazardous waste-derived CKD is already subject to Subtitle C regulation under 40 CFR 266.112 and is not within the scope of this rulemaking.

The Agency, therefore, still believes it is necessary for persons managing CKD waste at facilities burning hazardous waste as fuel to test whether their CKD exhibits a hazardous characteristic under 40 CFR 266.112, and when the CKD tests hazardous, to manage the CKD as a hazardous waste under full Subtitle C requirements. EPA believes that subjecting characteristically hazardous CKD from hazardous waste burning kilns to RCRA Subtitle C regulations will provide an incentive for cement kiln owners and operators to reduce metals levels in their CKD to remain eligible for the tailored standards. EPA notes that cement manufacturing facilities that burn hazardous waste and generate waste-derived CKD are subject to RCRA permitting regardless of the content of the CKD they generated, including the requirement to conduct facility-wide corrective action under 40 CFR 264.90, 264.101, and part 264, subpart S. To the extent that CKD has higher levels of toxic metals due to the combustion of hazardous wastes, facilities may need to do more to achieve today's proposed performance standards.

EPA is proposing that the two-part test for waste-derived CKD and Subtitle C requirements for characteristically hazardous residues should continue to apply to waste-derived CKD as described in the BIF rule, but with a revision. EPA is proposing elimination of part one of the two-part test, as set forth in 40 CFR 266.112(a)(1) because the Agency knows of no case where CKD has passed the second test, but failed the first. The Agency today solicits comments on the need for part one of the two-part test, and solicits information on whether there is any CKD that passed part one, but failed to pass part two, the comparison with health-based limits. Additionally, the Agency proposes that waste-derived CKD that does not test hazardous will be subject to today's proposed performance standards and management standards.

I. Exemption From the Definition of Hazardous Waste

1. Waste-Derived Clinker

As discussed in the RTC, CKD is often re-introduced into the kiln as a substitute for raw material in clinker production. In the absence of the Bevill exemption, under certain regulatory scenarios clinker produced from re-introduced CKD could be considered a hazardous waste under the derived-from rule (40 CFR 261.3(c)(2)(i)). As part of the regulations proposed today, EPA is also proposing to exclude clinker from regulation as a derived-from hazardous waste when CKD is reintroduced to the cement manufacturing process. When reintroduced, CKD does not contribute any constituents to clinker production that are not already present in the production process. Furthermore, at this time, EPA has no indication that such clinker poses unacceptable threats to human health or the environment.

2. Light-Weight Aggregate Kiln Dust

As mentioned in the Phase IV Land Disposal Restrictions Final Rule on Mining and Mineral Processing Wastes (see Land Disposal Restrictions—Final Rule to Phase IV: Clarification of Bevill Exclusion for Mining Wastes, Changes to the Definition of Solid Waste for Mineral Processing Wastes, Treatment Standards for Characteristic Mineral Processing Wastes, and Associated Issues, 63 FR 28556, May 26, 1998), EPA has decided to defer any decision on the Bevill status of air pollution control dusts and sludges generated from light-weight aggregate kilns (LWAKs) pending completion of an evaluation of issues related to CKD and light-weight aggregate dust handling and use. Light-weight aggregate pollution control dust and sludge, like CKD, are produced as the result of combustion of raw materials within a kiln. Like CKD, light-weight aggregate dust is usually not characteristically hazardous because it seldom fails the Toxicity Characteristic Leaching Procedure (TCLP). In addition, if a LWAK burns RCRA hazardous waste during light-weight aggregate production, it is subject to the BIF rule, and the aggregate and associated products could be considered hazardous wastes under the derived-from rule (40 CFR 261.3(c)(2)(i)).

The Agency is considering providing tailored standards for LWAK dust that are equivalent to those being proposed for CKD. Under that scenario, LWAK dust would not be a hazardous waste when it is reintroduced to the production process, recycled, or used for beneficial purposes other than agricultural use. With little or no LWAK dust disposed, it may be unnecessary to apply the disposal conditions for CKD to LWAK dust. The Agency, however, solicits comment on the appropriateness of applying all proposed provisions for CKD to LWAK dust. Accordingly, EPA solicits information on: (1) The chemistry of aggregate dust and sludges from LWAKs that burn and do not burn RCRA hazardous waste (both total and leachable concentrations of toxic metals); (2) potential danger to human health and the environment posed by the management of LWAK dust and sludges; and (3) the current and potential utilization of LWAK dust and sludges.

3. Use of CKD in Removal and Remediation Actions

In some situations CKD has been used safely and beneficially to absorb and stabilize hazardous wastes, oily wastes,

and sludges. When used to stabilize or solidify wet wastes, CKD reacts very much like Portland cement, especially when silica (sand) is present. This reaction serves to chemically immobilize any toxic metals present in both the CKD and the waste. Depending on the nature of the waste and how much CKD is used, the appearance of the final product can be anything from a monolithic slab to a dried sludge.

Federal On-Scene Coordinators (OSC's—see 40 CFR part 300) have used CKD on a variety of emergency response sites since the inception of the Superfund removal program. After the CKD is thoroughly mixed with waste, the mixture is usually transported to an off-site disposal facility. However, significant amounts of CKD/waste mixture may be left on site after a removal action is complete. This can occur when CKD is used to treat large amounts of low hazard sludge in open lagoons, large amounts of waste-water, or large amounts of minimally-contaminated soil.

In all cases, the OSC ensures that the immediate threat has been abated. If an OSC must leave CKD on-site after the completion of the removal action, he or she will conduct post-treatment sampling and analysis to ensure that the constituents of concern have been immobilized and the mixed material will not pose a threat to human health or the environment.

CKD is also used to solidify Sewage Treatment Plant (STP) sludge and to stabilize oily sludges and other non-hazardous wastes. Treatment of sewage sludge is currently regulated under the provisions of 40 CFR part 503. In most cases, the volumes involved are small and the CKD is thoroughly mixed with the waste to ensure effective treatment. Accordingly, EPA is proposing that nothing in today's rulemaking would prevent, restrict, or regulate the beneficial use of CKD as a stabilizer or solidifier during RCRA cleanups under sections 3004(u), 3004(v) and 3008(h), Superfund response actions that are carried out in accordance with the requirements of 40 CFR part 300—the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), or when the EPA Region or, in an authorized State, the State agency, finds that the use of CKD in remediation is protective of human health and the environment. By statute or regulation, CERCLA and RCRA cleanups must be protective of human health and the environment. Therefore, use of CKD in these situations would satisfy the protectiveness requirements of RCRA Subtitle C. Such use would fall within the general exemption for beneficial uses, but to avoid any uncertainty with regard to remedial uses, a specific exemption is also being proposed.

J. Final Rule Effective Date

EPA is today proposing that the record-keeping, closure and post-closure planning, CKD listing, agricultural application standards, and fugitive dust emission standards become effective 90 days after publication of the final rule in the **Federal Register**. The remaining criteria, including landfill design, ground-water monitoring, corrective action, and financial assurance requirements would become effective 24 months after their promulgation.

EPA is proposing to make the record-keeping, closure and post-closure planning, CKD listing, agricultural application standards, and fugitive dust emission standards effective 90 days after publication because these requirements can be implemented within this time frame and an early effective date would be more protective of human health and the environment. First, the planning and record-keeping requirements are self-implementing and, thus, lend themselves to a more immediate effective date. Second, 90 days is the standard amount of time provided by EPA to implement hazardous waste listings under RCRA Subtitle C. Third, laboratories capable of testing CKD are readily accessible, so significant additional capital would likely not be required to test CKD or implement today's proposed agricultural application standards. Moreover, EPA believes that significant additional capital is not required to fund facility changes needed to implement today's proposed fugitive dust controls, such as the compaction and daily cover requirements for CKD landfills. The Agency, however, solicits comment on whether there are technical factors which make the 90 day period for implementation of today's proposed fugitive dust emission standards difficult to comply with.

The 24 month effective date would be limited to those requirements that include interactions with or determinations by the EPA Regional Administrator (or the State, in authorized States), including landfill design, ground-water monitoring, corrective action, and financial assurance requirements. EPA believes the proposed 24 month period would provide persons managing CKD waste sufficient time to perform the studies and other actions (e.g., conduct a karst inventory, install ground-water monitoring wells, implement corrective action measures) necessary to bring their facilities into compliance.

- EPA today is also distinguishing between those CKD landfill (CKDLF) units that stop receiving CKD waste prior to the date of today's proposed rule and those that stop receiving CKD waste in the window between the date of today's proposed rule and the effective date of the final rule. CKDLFs in the former category will remain outside the scope of today's proposed rule. EPA, however, is today proposing that CKDLFs in the latter category have a final cover installed according to provisions specified today under § 259.50. The Agency is proposing that the final cover must be installed within six months of the last receipt of CKD waste or the unit will be subject to all of the requirements of part 259—Management Standards for Cement Kiln Dust Waste.

EPA has decided to distinguish between the two categories of closed CKDLFs for several reasons. First, the Agency does not intend to include within the scope of today's rulemaking inactive CKDLFs that stopped receiving waste prior to the date of today's proposed rule. Second, the Agency believes that some regulatory requirements for CKDLFs that stop receiving waste between the date of today's proposed rule and the effective date of the final rule would help prevent releases of CKD waste. Today's proposed cover requirement would restrict the introduction of rainwater and surface water into the CKDLF unit, thereby limiting the production of leachate. If closed without the benefit of a cover, the CKDLFs would continue to be exposed to precipitation and wind, which could result in the increased production of leachate and fugitive dust.

V. Subtitle C Backup Standards

In developing the Subtitle C standards that would apply to CKD that is mismanaged (or "backup standards"), EPA, consistent with the CKD regulatory determination, scrutinized specific RCRA Subtitle C components to develop a tailored approach for CKD generated from non-hazardous waste burning kilns, and non-characteristically hazardous CKD from kilns that burn RCRA hazardous wastes.

A. Subtitle C Requirements for Hazardous CKD Waste

EPA is proposing that persons managing CKD that fail to comply with the performance standards or the technical standards proposed today under 40 CFR part 259 shall be subject to: (1) The provisions applicable to generators of hazardous waste (40 CFR part 262); (2) the EPA administered waste permit program proposed today in

§ 270.68; (3) RCRA Subtitle C imminent hazard Sections of Subpart A (§§ 264.4 and 265.4); (4) the following Sections of subpart B (General Facility Standards): §§ 264.11 and 265.11 (Identification number), §§ 264.12 and 265.12 (Required notices), §§ 264.14 and 265.14 (Security), §§ 264.15 and 265.15 (General inspection requirements), §§ 264.16 and 265.16 (Personnel training), and §§ 264.19 and 265.19 (Construction quality assurance program); (5) RCRA Subtitle C manifest, recordkeeping and reporting requirements (subpart E—40 CFR parts 264 and 265); and (6) all applicable provisions for the management of CKD proposed in today's rule under 40 CFR part 259. EPA believes the provisions of parts 264 and 265 that are not included in today's proposed rule (e.g., subpart W—Drip Pads) appear to be either not relevant to CKD management or are already covered by standards proposed today under part 259. These requirements operate in lieu of requirements in 40 CFR parts 263–265, and 268 except where portions of those subparts are specifically cross-referenced.

1. 3004(x)—Special Characteristics

Section 3004(x) of RCRA authorizes EPA to modify certain Subtitle C requirements "to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics * * * so long as such modified requirements assure protection of human health and the environment." Accordingly, the Agency is today proposing to suspend land disposal restriction requirements (LDRs) under RCRA sections 3004(c), (d), (e), (f), and (g); minimum technology standards under RCRA section 3004(o); and facility-wide corrective action requirements under section 3004(u) for the following reasons. First, as long as CKD is disposed according to the technology-based standards EPA proposes today, the Agency considers such controls protective of human health and the environment. Therefore, requiring treatment in accordance with land disposal restrictions would not be necessary. Second, as explained in the background documents to today's rule, the minimum technological requirements under section 3004(o) for Subtitle C landfills (e.g., double liners; two leak detection systems) would not provide significant incremental benefits over the technology-based landfill design standards proposed in today's rule, and would add to the practical difficulties associated with implementation of such requirements. The technology-based standards proposed in today's rule for CKD landfills include a composite liner, leachate collection system, and daily cover. A second liner and leachate collection system, which are required for hazardous waste landfills under subpart N of 40 CFR part 264, are unnecessary. EPA believes the technical record supporting today's proposed standards demonstrates that today's proposed technology-based standards are sufficient to protect human health and the environment. The technology-based standards proposed today can be waived, but compliance with today's proposed performance standards means the alternative CKD landfill design is protective of human health and the environment. Third, as explained above, EPA believes that it is inappropriate to impose a requirement for facility-wide corrective action for old CKD disposal units, and that reliance on RCRA section 7003 or CERCLA sections 104 and 106 should be adequate to address any substantial threats to human health and the environment (see Section IV.A.7.—Corrective Action).

2. Facility-Wide Corrective Action Requirement

EPA invites comment on the option of requiring facility-wide corrective action at facilities that fail to maintain the terms of today's proposed rule. Under this option, these facilities would be required to address past and potential releases of hazardous waste and hazardous constituents at their facilities, including from solid waste management units not covered by today's proposed rule. Old cement kiln dust piles at CKD facilities are solid waste management units. Based on the 113 cement manufacturing facilities that were active in 1990, EPA estimates that there were 740 inactive CKD disposal piles nationwide and that approximately 90 million metric tons of CKD were stored in these piles. A complete description of this study is available from the docket in Chapter 7 of the Technical Background Document on Groundwater Controls at CKD Landfills. In addition, 11 out of 13 ground-water damage cases, which form the basis of the CKD regulatory determination and today's rulemaking, involve releases of toxic constituents from old inactive CKD disposal piles. Given the number of CKD disposal units and volume of associated CKD waste nationwide, the potential facility-wide corrective action responsibilities are substantial. Under this option, cement kilns that do not operate under the terms of today's proposed rule would fall into the universe of approximately 3500 facilities that are obligated to undergo RCRA facility-wide corrective action if necessary to protect human health and the environment. This universe presently includes approximately 18 cement manufacturing facilities that burn hazardous waste.

The 3500 facilities currently required to undergo facility-wide corrective action differ greatly in the amount and complexity of environmental contamination and site conditions. To accommodate this diversity, the corrective action program advocates flexible, site-specific approaches to corrective action. For example, although all facilities are ultimately held to final facility cleanup, EPA's current program management emphasis is on source control and protection of human and environmental receptors. If facility-wide corrective action were required, CKD facilities subject to corrective action would not necessarily be required to remove old piles. At many facilities, this type of activity would be prohibitively expensive and technically impracticable, and other remedies, such as emplacement of wind and water erosion controls, installation of ground-water removal and containment systems and supply of alternate drinking water supplies if necessary, would be more appropriate. The corrective action program can also accommodate technical and cost limitations by phasing in remedies. For more information on the flexibility inherent to the corrective action program, (see 61 FR 19432, May 1, 1996—Corrective Action for Releases From Solid Waste Management Units at Hazardous Waste Management Facilities).

EPA remains concerned about the cost implications if the flexibility provided by RCRA section 3004(x) is not fully exercised. Imposing additional LDRs or the landfill design requirements specified in RCRA section 3004(o) would create substantive compliance burdens on the regulated community. Corrective action requirements would also increase costs, although as discussed above, that program allows the use of cost-saving measures. The Agency's regulatory determination under RCRA section 3001(b)(3)(c) that additional control of CKD is warranted was based on a balancing of the factors specified under RCRA section 8002(o), including cost. That determination assumed that any regulation imposed under RCRA could be designed so as to limit the cost burden while regulating the risks of concern. While the determination under RCRA section 3004(x) is separate from that under RCRA section 3001(b)(3)(c), and is based

on somewhat different factors, EPA would likely re-evaluate the underlying regulatory determination if RCRA section 3004(x) were not interpreted to allow the degree of modification proposed today. The Agency, however, interprets RCRA to provide the degree of flexibility proposed today and views the resulting regulatory system as fully consistent with its regulatory determination. EPA seeks comment on this option in general and on the use of facility-wide corrective action authority for CKD that is mismanaged. EPA seeks comment in particular on likely cost, incurred as a result of facility-wide corrective action, taking into account the flexibility that the corrective action program allows.

3. Manifest, Recordkeeping, and Reporting Requirements

EPA is proposing in today's rule that manifest, recordkeeping, and reporting requirements established in parts 262, 264, and 265 apply to hazardous cement kiln dust that is subject to provisions proposed under part 266-subpart I. The principal purpose of the manifest system is to track hazardous waste from its point of generation, through its trip with the transporter, to final disposition off-site at a treatment, storage, and disposal facility. Part 262 also contains general requirements for facilities that manage hazardous waste on-site. Subpart E of parts 264 and 265 specifies requirements concerning the return of the manifest to the facility which generated the waste. These requirements form the information loop designed to assist the CKD waste generator, who is responsible for ensuring that hazardous CKD waste actually arrives at the intended facility for disposal.

Subpart E of parts 264 and 265 also includes requirements for recordkeeping and reporting. The purpose of these requirements is to ensure that the regulated community complies with hazardous waste regulations by providing the enforcement agency with sufficient information to monitor facility operations. Together with the manifest system, these requirements are designed to minimize the likelihood of damage case incidents resulting from improper tracking and waste disposal. In addition, the Agency believes that the various records, reports, and signatures of transporters, treaters, and disposers are necessary to allow enforcement officials to assign responsibility and, ultimately, liability in cases where problems arise.

B. Implementation of Part 259 and RCRA Subtitle C Backup Standards

Today's proposed standards for the proper management of CKD are contained in part 259 of the RCRA Subtitle D regulations. Subtitle D of RCRA establishes a framework for Federal and State cooperation in controlling nonhazardous solid wastes. As discussed above, so long as CKD is managed according to the standards of part 259, CKD would be managed in a way that is protective of human health and the environment and would not be considered hazardous waste. In proposing standards under part 259, EPA is providing minimum standards for protecting human health and the environment from the hazards of CKD. The actual planning and direct implementation of the standards under part 259, however, remain outside the RCRA Subtitle C framework, so long as a facility remains in compliance with the standards and thereby maintains compliance with today's proposed rule.

As discussed earlier, EPA is today proposing that the EPA Regional Administrator (or the State, in authorized States) be allowed to review and consider alternative CKD landfill designs and make determinations whether or not they meet today's proposed performance standards. The performance standards in today's proposed rule are structured to allow flexibility to consider numerous location specific factors in tailoring facility requirements.

Similarly, EPA is also proposing that facility plans for ground-water monitoring, corrective action, closure and post-closure care, and financial assurance be reviewed and approved by the EPA Regional Administrator (or the State, in authorized States). Because EPA does not directly regulate non-hazardous solid waste under RCRA, today's proposed rule would not create enforceable requirements for CKD management, but only conditions for avoiding Subtitle C regulation. However, EPA expects that when States adopt the part 259 standards they will likely adopt them, not only as conditions, but also as directly enforceable requirements in Subtitle D programs. In that case, the Subtitle D program would be the primary means for regulating CKD.

In authorized States, EPA anticipates that there will be a high degree of cooperation between State RCRA Subtitle D programs (which will most likely implement the part 259 standards) and State RCRA Subtitle C programs. For example, because failure to comply or take appropriate corrective action within the time frames proposed today under §§ 259.41, 259.44, 259.45, 259.46, and 259.47 to ensure compliance with any of the standards proposed today under part 259 would mean that the CKD is mismanaged, and considered a hazardous waste. If a State uses its RCRA Subtitle D program to conduct inspections or oversight of cement kilns, violations of the standards and/or failure to take appropriate corrective action within the specified time frames should be reported to the RCRA Subtitle C program, as well.

1. Enforcement

Although the Part 259 standards proposed today would likely be adopted as a matter of State law, Federal inspection authority would still be available for facilities regulated under those standards. Because significant violations of the standards would constitute mismanagement of CKD and would result in designation of such CKD as hazardous waste, EPA (as well as State RCRA Subtitle C programs) would have authority to inspect such facilities to determine whether they were handling hazardous waste (i.e., mismanaged CKD waste). In today's proposed regulatory structure EPA has included the list of violations that would cause CKD to be designated as hazardous waste in § 261.4 (Exclusions). In this section the Agency has clarified that all CKD managed in compliance with today's proposed Part 259 standards remains a non-hazardous waste. CKD becomes a listed hazardous waste if it fails to comply with the provisions of § 261.4(b)(8)(ii)(A) and (B) which are described below. Thus, if the person CKD waste is managing CKD inconsistently or in a manner that does not comply with the Part 259 standards, it would be subject to Federal enforcement under regulations proposed today in § 261.4(b)(8)(ii), to compel compliance with RCRA Subtitle C requirements proposed today in Part 266. EPA solicits comment on whether it would be more appropriate to list the provisions in another section of the Code of Federal Regulations such as § 261.3 (Definition of Hazardous Waste).

In general, EPA believes that facilities should not necessarily be fully subjected to RCRA Subtitle C for every violation of today's proposed management standards. Therefore, EPA distinguishes between significant violations which should cause the facility to be regulated under RCRA Subtitle C, and other violations which should not have that result if they are promptly corrected. Proposed § 261.4(b)(8)(ii)(A) enumerates the "egregious" violations that would trigger RCRA Subtitle C regulation immediately which would include: (1) Failure to make any applicable demonstration requirements for new CKD landfills as specified under

§§ 259.11(a), 259.12(a), 259.13(a), 259.14(a), 259.15(a) and 259.16(a); (2) failure to manage CKD destined for sale or beneficial use in a suitable containment structure, as specified under § 259.20, within two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator (or the State, in authorized States) under § 259.20(c) to implement alternative measures for fugitive dust control; (3) failure to cover or dispose of CKD in a conditioned state by 90 days after the effective date of the final rule, as specified under § 259.22, unless granted approval by the EPA Regional Administrator (or the State, in authorized States) under § 259.22(d) to implement alternative measures for fugitive dust control; and (4) failure to install a composite landfill liner or ground-water monitoring system, as specified by §§ 259.30 and 259.41, by two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator (or the State, in authorized States) for a unit design under the provisions of § 259.30(h), or a finding is made of no potential for migration under § 259.40(b); (5) failure to undertake appropriate corrective action within the time frames specified under §§ 259.41, 259.44, 259.45, 259.46, and 259.47; and (6) failure to comply with any requirement identified in a notice received from the Regional Administrator (or State) because of repeated violations of Part 259, other than those specified in subparagraphs (1) through (5) of this paragraph.

Under proposed § 261.4(b)(8)(ii)(A)(7), EPA will also consider repeated violations of Part 259's lesser requirements as a significant violation. Under this provision, if EPA determines that a person managing CKD waste repeatedly violates one or more lesser requirements under Part 259, the Agency can send notice to that person informing him or her that the next violation of such lesser requirements will constitute a violation of § 261.4(b)(8)(ii)(A), thereby causing any managed CKD to be considered mismanaged and a hazardous waste. EPA believes this provision is warranted because it provides the appropriate incentive for facilities to comply with all of Part 259 requirements, including notice and recordkeeping requirements.

In proposed § 261.4(b)(8)(ii)(B), violations of any standards of Part 259 other than those listed in § 261.4(b)(8)(ii)(A), will only trigger Subtitle C regulation if the person managing CKD waste fails to comply with those standards within 30 days of receiving a written notice of non-compliance from the Regional Administrator (or State). This provision gives the regulatory agency an intermediate enforcement response mechanism for violations of lesser Part 259 requirements that have not risen to a level that would trigger notice under § 261.4(b)(8)(ii)(A)(7).

As an alternative to allowing 30 days after receiving a written notice, EPA solicits comments on adopting a minimum period (for example, 90 days) to correct violations as a matter of enforcement policy. Under the enforcement policy approach, EPA would generally not commit to take any enforcement action that would result in RCRA Subtitle C regulation for a period of 90 days after the date of violation, unless there were unusual or aggravating circumstances. If the violation is corrected in that period of time (or, in the case of a violation that cannot be corrected, if steps are taken to prevent recurrence), EPA would not take enforcement action.

Under the regulatory approach, if a State adopted today's proposed approach, EPA would not have jurisdiction to bring an enforcement action for a lesser violation (that is, a violation not listed in § 261.4(b)(8)(ii)(A)) until 90 days had passed from the date of violation. Under the enforcement policy approach, EPA would have jurisdiction to bring an enforcement action, but would commit not to do so. EPA's enforcement policy would not bind the State, but EPA would encourage States to adopt a similar approach. (In this respect, the two approaches are similar: if EPA adopted today's proposed approach, it could not preclude a State from adopting regulations that did not allow the 90-day window to correct lesser violations. [36]

EPA seeks comment on these two approaches as well as on the general approach of distinguishing between lesser and egregious violations. In particular, EPA asks commenters to address the issues of regulatory jurisdiction, appropriate incentives to discover and correct violations, what constitutes egregious and lesser violations (e.g., whether certain paperwork violations, such as the failure to notify the regulatory authority of a violation, should be considered egregious), and the handling of cases where violations are discovered well after they occurred. The Agency also seeks comment on the question of whether or not the proposed enforcement structure, with the two regulatory categories of egregious and lesser violations, provides an incentive for persons managing CAD waste to inform the Regional Administrator of violations. If not, the Agency seeks comment on alternative structures; for example, on whether there is a category of violations intermediate between egregious and lesser. Additionally, the Agency also seeks comment on the proposed 90 day time frame to correct lesser violations before CKD is considered mismanaged.

As with all environmental issues, citizens are encouraged to be involved. Where citizen's bring a concern to EPA's attention, the Agency will respond on a case-by-case basis. In addition, RCRA authorizes citizens to enforce requirements pursuant to section 7002(a)(1)(A): "any person. * * * to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this Act". This provision allows citizens to enforce both Subtitle C and Subtitle D requirements. Therefore, citizens could commence a civil action to enforce the Subtitle C requirements applicable to CKD that is not managed in compliance with today's proposed Part 259 standards.

Where a violation occurs that can be corrected, the Agency believes a person managing CKD waste who promptly corrects the problem should not necessarily be subjected to hazardous waste requirements on a permanent basis. In some cases, the nature of the violation may be such that it only affects a distinct batch of waste. For example, if a person managing CKD waste failed to manage a particular truckload of CKD according to the transportation requirements proposed today in Part 259, that truckload would become non-exempt and would have to be managed as a hazardous waste (e.g., manifested and sent to a landfill meeting the tailored Subtitle C requirements of Part 266 for final disposal). However, if the practice did not continue, the person managing CKD waste would not have to manifest other shipments or have the facility become permitted under Subtitle C. Other types of violations could result in the CKD becoming subject to Subtitle C generally.

2. Removal of a Hazardous Waste Designation

EPA believes that in some cases it may be appropriate for CKD that has been mismanaged to be again

[36] Under either version, today's proposed rule would provide the opportunity to implement corrective action for releases to ground water. An exceedance of ground-water standards by itself would not cause be considered mismanaged; only if a person managing CKD waste failed to meet the corrective action requirements in the rule would it become subject to Subtitle C regulation.

considered non-hazardous waste. For example, if a person managed CKD waste in a landfill that released metals enough to raise levels in ground water above appropriate MCLs, but later repaired the landfill and did not have other violations of the standards, requiring a RCRA Subtitle C permit might not be warranted. For these cases, EPA today proposes a procedure in § 266.121 under which the designation as hazardous waste would be removed. Under this process, if any CKD waste becomes mismanaged (i.e., loses the exclusion under § 261.4(b)(8)) and becomes subject to § 266.120, the person managing such waste may apply to the Regional Administrator (or the State, in authorized States) for removal of the hazardous waste designation for such CKD. The application must include: (1) A statement that the CKD waste is now being managed in accordance with § 259; (2) a statement explaining the circumstances of the non-compliance; and, (3) a demonstration that the non-compliance is not likely to recur and that removal of the hazardous designation would not pose a threat to human health and the environment. The Regional Administrator may reinstate the § 261.4(b)(8) exclusion if the Regional Administrator finds that the person managing CKD waste has satisfactorily explained the circumstances of the non-compliance, has demonstrated that the non-compliance is not likely to recur and that removal of the hazardous waste designation will not pose a threat to human health or the environment. The Regional Administrator may reinstate the § 261.4(b)(8) exclusion with additional conditions if the Regional Administrator finds that such additional conditions are necessary to ensure protection of human health and the environment.

Removal of the hazardous designation is not automatic, but the Agency is today proposing that if the Regional Administrator does not take action on the application within 60 days, then the application for removal of the hazardous waste designation is deemed granted, retroactive to the date of the application. However, the Regional Administrator may terminate a removal (i.e., a reinstatement of the § 261.4(b)(8) exclusion) by default under this subsection if the Regional Administrator finds that the removal of the hazardous waste designation is not appropriate based on analysis of the factors included in the application.[37] Today's proposed approach is patterned on that adopted in the conditional exemption for military munitions, promulgated February 12, 1997 (see 62 *FR* 6637–38, February 12, 1997, Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties; Final Rule). EPA solicits comment on whether this procedure should be provided for CKD, and under what circumstances (and for what violations) it should or should not be available. For example, EPA would want to assure that the procedure could not be used repeatedly by a person managing CKD waste who was making no serious effort to comply until violations were called to its attention by inspectors.

EPA notes that releases from a CKD disposal unit do not, under today's proposed rule, automatically constitute a violation of the Part 259 standards. If the unit was designed and constructed in accordance with the design requirements, but a release nevertheless occurs, the CKD remains exempt so long as it complies with the corrective action requirements in the Part 259 standards. In implementing today's proposed rule in authorized States, EPA anticipates there will be a high level of cooperation between State Subtitle D and State Subtitle C programs. Based on conversations with State environmental representatives, the Agency anticipates that State D programs will generally take the lead in assuring compliance with today's proposed standards by conducting inspections of CKD landfills and their associated facility operating records. If a violation of today's proposed standards is documented as a result of a State inspection, or a facility reports to the State that a release of contaminants to the environment has occurred, under provisions of § 259.46, today's rule would allow persons managing CKD waste 90 days to assess corrective measures. Under § 259.47, the person managing CKD waste must select a remedy within 90 days of completing the assessment, and specify a schedule for initiating and completing remedial activities. Under regulations proposed today in § 259.47(e), the State would have flexibility to set an alternative schedule for compliance.

Once a State program makes a final determination of non-compliance, (that is, after allowing a minimum of 270 days from the date of violation or notification of the State for the person managing CKD waste to begin implementation of corrective measures, the State program director makes a determination that a person managing CKD waste has mismanaged CKD), the CKD managed at such a facility would be hazardous waste, and subject to the proposed provisions of Part 266. Accordingly, responsibility for implementation and enforcement of the provisions of today's rule shifts to the hazardous waste program authority (either the EPA Regional Administrator or, in an authorized State, the State Subtitle C program). The EPA Regional Administrator (or the State, in authorized States) would review and approve Subtitle C permits under 40 CFR 270.68, assure compliance with the hazardous waste generator requirements of 40 CFR Part 262, and assure compliance with the hazardous waste manifest, recordkeeping, and reporting requirements of 40 CFR Parts 264 and 265.

3. Alternative Approach to Structuring the Performance Standards

Today's proposed standards are generally written in the form of performance standards. In complying with the performance standards, a person managing CKD waste would have to develop an approach, make a demonstration to the Regional Administrator (or the State in authorized States) that the intended approach will achieve today's proposed performance standards, and receive approval by the regulatory authority prior to implementing the approach. Representatives from the cement industry have suggested an alternative regulatory structure in which the Agency would establish a general performance standard to be achieved by the person managing CKD waste without a requirement that the approach receive prior approval by the Regional Administrator. The Agency seeks comment on the appropriateness and specifics of such an approach.

Stakeholders have expressed concerns about the industry's suggested alternative structure regarding the uncertainty of the public participation process, specifically about whether and how the affected public would be able to participate in decisions made by persons managing CKD waste regarding compliance with today's proposed performance standards. EPA believes that the public has a vital role to play in decisions that affect their health and the environment. Additionally, when appropriate, the Agency has been supportive of self-implementation because such an approach can lead to regulatory compliance within a shorter time frame than might otherwise be

[37] If a person managing CKD waste submits a petition for reinstatement that is subsequently revoked, it would be Agency policy to consider such a default reinstatement to be prospective; that is, beginning at the point the decision is made.

possible. Thus, EPA is soliciting comments on alternative regulatory structures that would allow persons managing CKD waste to implement pollution controls designed to meet the performance standards without the procedural burden of seeking approval from the regulatory authority. The Agency is interested in information on how such an alternative structure would allow persons managing CKD waste to demonstrate their design is adequate to meet today's proposed performance standards, while ensuring opportunities for the public to participate in the deliberations and decision making undertaken by the persons managing CKD. EPA believes that a process which expeditiously identifies and resolves compliance issues prior to construction is in the best interest of all parties.

The Agency is aware of one such approach. In 1995, as part of its proposed approach to establishing an enforceable agreement (see Section II.C.2—Proposed Enforceable Agreement), the cement industry submitted to EPA a draft plan for site-specific public participation. Their plan was designed to allow self-implementation of the provisions of the enforceable agreement with citizen input, but without the time-consuming process of permitting (or seeking approval by the Regional Administrator or the State). The industry's comment and appeal process included the following elements: (1) Notification of citizens when a person managing CKD has prepared a design plan and intends to submit a certification to the regulatory authority that their proposed design plan will meet a specific performance standard; (2) a 45 day comment period in which the public could submit relevant comments to the facility (for example, comments germane to the performance of the proposed design); (3) preparation by facility representatives of a document responding to the substance of all relevant comments; (4) announcement by facility representatives of the availability of the final design plan and comment response document; (5) opportunity for appeal to the appropriate regulatory authority within 30 days after the date of announcement of the final design plan; (6) arbitration by the regulatory authority affording both the commenter and facility representatives an opportunity to present their positions, and a final determination by the regulatory authority, no more than 60 days after facility representatives have filed a response to the commenter's appeal on whether the commenter has demonstrated that the proposed design plan would fail to provide for compliance with the performance standard; and (7) opportunity for judicial review of the regulatory authority's decision in federal district court.

Representatives of local citizen groups criticized this public participation process as being inadequate, both structurally and substantively. Their comments on the public participation process include the following: (1) All significant decisions regarding design, monitoring, and cleanup are left to facility owners and operators; (2) public comments and appeal rights are limited in both time and scope; (3) access to documents is limited only to the design plan and not to other important information such as data used to support the design plan, monitoring data, and inspection reports; and (4) involvement by the regulatory authority's staff is limited to a 60 day time period and consideration of comments specific to the design plan.

A second alternative regulatory structure would be similar to EPA's approach proposed in today's rule, but would establish a time frame for design approvals within which the regulatory authority must make a determination of the appropriateness of the technical approach proposed by the person managing CKD waste. A time frame of six months might be sufficient, and would add a degree of certainty to the process of prior approval. If the regulatory authority failed to take action within the specified time frame, the proposed approach for controlling CKD waste would be presumed adequate to ensure compliance with the performance standard. The Agency is seeking general comment on these two alternative regulatory structures and on other potential approaches to protecting human health and the environment while minimizing procedural burdens that could delay implementation of appropriate means of controlling risks posed by CKD.

VI. Standards for CKD Used as a Lime Substitute

A. Summary

EPA is proposing to exclude from regulation under RCRA CKD that is used as a liming agent on agricultural fields provided that such CKD meet specified levels for concentrations of certain hazardous constituents. As explained in Section II.D. (Beneficial Use of Cement Kiln Dust) in this preamble, CKD is currently being used as a substitute for agricultural liming agents. Liming materials are added to agricultural soils to maintain optimum pH for crop production and offset the effects of fertilizers that lower soil pH. EPA encourages environmentally sound beneficial use of production process waste streams, including CKD. However, the benefits associated with the recycling of CKD must be balanced against the potential hazards which the use of CKD in this manner may also present. CKD contains toxic metals and chlorinated dioxins and furans which can, at high exposure levels, present adverse human health effects. In an effort to determine whether use of CKD for pH adjustment on agricultural soil presents a potential threat to human health and the environment, the Agency conducted an assessment of the risk to individuals from the use of CKD as a liming agent. A summary of the risk analysis and results is provided below. Further description of the risk assessment is presented in the technical background document titled Risk Assessment for Cement Kiln Dust Used as an Agricultural Soil Amendment in the docket for this rule.

Based on the risk analysis, EPA calculated concentration limits that are protective of human health for hazardous constituents in CKD that is used as an liming agent on agricultural fields and home gardens. The numerical limits derived from the exposure assessment models are designed to protect human health and the environment from reasonably anticipated adverse effects. The Agency calculated risk-based protective limits for all hazardous metals and dioxins present in CKD. By comparing the risk-based concentrations derived for each constituent with data on the composition of CKD, EPA identified constituents that may be present in CKD above levels that may pose risk to human health. Those constituents are arsenic, thallium, lead, cadmium and chlorinated dioxins and furans. EPA's analysis showed that all other toxic constituents in CKD are present at concentrations that are well below protective levels. Based on these findings, EPA is today proposing to limit the concentrations of arsenic, thallium, lead, cadmium and chlorinated dioxins and furans that can be present in CKD that is used agriculturally for pH adjustment. In other words, EPA is proposing standards to limit the concentrations of arsenic, thallium, lead, cadmium, and dioxins that can be contained in CKD that is used as a substitute for agricultural lime because the Agency's risk analysis indicates that these compounds are present in CKD in

excess of levels that may pose risk to human health when CKD is applied at rates necessary to attain the desired increase in pH. The Agency is concerned that unregulated use of CKD as an agricultural liming agent may cause adverse effects on human health.

B. CKD Agricultural Use Risk Assessment

1. Risk Assessment Methodology

This section describes the methodology used to evaluate human health risk to individuals from use of CKD as an agricultural liming agent. EPA's risk analysis evaluated exposures to metals and dioxin congeners in CKD for the following receptor scenarios; farmer, fisher, home gardener, and child of farmer. The assessment includes a preliminary sensitivity analysis to identify risk-driving parameters, a deterministic analysis to estimate central tendency and high end risk, and a quantitative uncertainty analysis. Initial estimates of potential risk from agricultural use of CKD were estimated using the deterministic method, which produces point estimates of risk to individuals based upon single values for input parameters (e.g., waste stream characteristics, environmental fate and transport properties, exposure assumptions, etc). The deterministic risk estimates for this analysis were derived using a double high-end risk assessment methodology. In this method, the input parameters are varied between the central tendency (50th percentile) value and the high end (90–95th percentile) value both individually and in combination of any two independent variables to produce a series of point risk estimates. The point estimate in which all variables are set at central tendency is assumed to be the central tendency risk estimate and the highest risk estimate for any combination of double-high-end variables is assumed to be the high end estimate (approximately 95th percentile) of risk. High-end risk descriptors are plausible estimates of the individual risks for those exposed persons at the 90th percentile or greater end of the risk distribution. High-end risk is intended to depict the risks that are expected to occur in 10 percent or less of the exposed population.

The Agency also conducted a probabilistic analysis of uncertainty/variability in support of the deterministic analysis. The Agency has long acknowledged the importance of adequately characterizing variability and uncertainty in fate, transport, exposure and dose-response assessments for human health risk assessment as indicated in EPA's May 15, 1997 policy memorandum on Use of Probabilistic Techniques in Risk Assessment. The probabilistic analysis undertaken for this analysis has been conducted in accordance with the guidance set forth in the May 15, 1997 memorandum. The first step of the probabilistic analysis is a sensitivity analysis using the deterministic methodology to determine the risk-driving parameters. Results of the sensitivity analysis are provided in the technical background document for this assessment. After the risk-drivers are determined, the quantitative uncertainty/variability analysis is conducted by performing a Monte Carlo simulation by randomly varying the risk-driving parameters. A more detailed discussion of parameters that were included in the Monte Carlo analysis and selection of data distributions for each parameter is provided in the technical background document describing the risk assessment supporting this rule.

2. Human Health Criteria and Effects

The risk analysis uses chemical composition data collected and used for the 1993 Report to Congress on CKD, the 1994 NODA on CKD and background document supporting the 1995 CKD Regulatory Determination. Individual constituents of concern evaluated in the assessment included dioxins and the following metals: antimony, arsenic, barium, beryllium, cadmium, chromium, lead, nickel, mercury, selenium, silver and thallium. These constituents were evaluated based on chemical specific health based levels established and/or verified by EPA using prescribed methodologies for evaluating human effects data. The human health toxicity benchmarks used in this analysis include Agency-verified oral reference doses (RfDs) and reference concentrations (RfCs) for noncancer effects and oral cancer slope factors (CSFs) and inhalation unit risk factors (URFs) for carcinogenic effects. Agency-verified RfDs, RfCs, CSFs, and the bases for these values are presented in the EPA's Integrated Risk Information System (IRIS). The benchmarks for the dioxin and furan congeners are based on the Toxicity Equivalent Factor (TEF) for 2,3,7,8-tetrachlorodibenzo dioxin (TCDD2). The methodology for calculating TEFs for dioxin and furan congeners is presented in the 1994 EPA publication entitled Estimating Exposures to Dioxin-Like Compounds. (EPA publication number EPA/600/6–88/005Ca)

3. Agricultural Use Practice Assumptions

Agricultural use practices (i.e., application rate and frequency) used in the analysis are determined based on chemical and physical properties of soil and CKD that influence use of CKD agriculturally as well as economic considerations that affect CKD use. The quantity of liming material required per acre to raise the pH to an acceptable level is determined by several factors including desired change in pH, buffering capacity of the soil, chemical composition of the liming agent and particle size of the liming material. When these factors are considered, the rate of application is usually 2 to 5 tons per acre and the application frequency is once every 2 to 5 years for all liming agents, including CKD. EPA solicits comment on the appropriateness of using this rate and frequency of application as assumptions in its analyses.

4. Fate and Transport of Chemical Constituents in the Environment

The application of CKD as a liming agent is assumed to occur only in areas with initial soil pH of less than 6 and areas that are near active cement kilns generating large quantities of CKD. Based on these criteria, three sites, Holly Hills, South Carolina, Alpena, Michigan, and Ravena, New York were selected for modeling. Site specific meteorologic and soil properties data from these locations were used in both the deterministic and uncertainty analysis. While meteorologic conditions were evaluated in the sensitivity analysis and were not shown to be a primary risk driver, the three locations modeled represent a range of meteorologic conditions.

The Agency relied on the following models to simulate movement of pollutants into and through the environment. Speciation of metals in CKD applied agriculturally was determined through MINTEQ modeling using available site specific soil and meteorologic data identified for each geographic setting. Equations developed by Jury, *et al.*, were used in a spreadsheet calculation model to determine contaminant loss from CKD due to degradation, volatilization, leaching, and rainwater runoff of dioxins and metals. The model tracks the average annual soil concentration and the annual mass of contaminant volatilized for a period of 100 years followed by 40 years of inactive use. While the Agency assumed that CKD can be applied to a field over a period of 100 years, modeling indicates that the system will reach steady state concentrations over a period of 40 to 50 years for persistent chemicals such as

most metals and dioxins. The Universal Soil Loss Equation (USLE) as modified by EPA's Offices of Solid Waste and Research and Development was used to estimate soil erosion and overland transport of sediment from agricultural fields amended with CKD across intervening areas to nearby water bodies. Air emissions from CKD due to wind erosion were estimated using methods and equations from EPA's Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area sources, Fifth Editions (commonly referred to as AP–42). Air dispersion of particulates was modeled using the EPA's Industrial Source Complex Short Term, version 3 (ISCST3).

5. Uptake of Contaminants in Plants and Animals

Plants may absorb contaminants through air-to-plant biotransfer and through soil-to-plant uptake through the roots. Air-to-plant movement of dioxins was estimated using constituent-specific biotransfer factors specifically developed for dioxin congeners by EPA's Office of Research and Development (ORD). Plant-to-soil bioconcentration factors were used to account for root uptake of constituents from the soil. The bioconcentration factors for metals were obtained from the assessment conducted for EPA's Standards for the Use or Disposal of Sewage Sludge. EPA recognizes that these biouptake factors were developed based on field studies of sewage sludge application and pertain specifically to sewage sludge. Uptake of metals is particularly sensitive to soil pH and the degree of binding to the sludge matrix. The sewage sludge values may not, therefore, be appropriate for evaluating plant uptake of metals from CKD. The Agency requests comment on whether the use of these biotransfer values is appropriate for assessing risks from agricultural use of CKD. Biotransfer factors not available from the sewage sludge assessment were obtained from the published literature. Empirical correlations were used to estimate transfer of dioxins from the soil to plant tissue using the methodology developed for dioxins by ORD. Metals, dioxin, and furan concentrations in beef and dairy fed on vegetation amended with CKD were estimated using constituent specific beef and milk biotransfer factors available in the literature.

6. Receptor Scenarios and Exposure Pathways

Receptor scenarios evaluated for this assessment include farmer, fisher, home gardener, and child of farmer. Exposure pathways evaluated for each receptor scenario are as follows. For the child of farmer, pathways evaluated include incidental ingestion of contaminated soil, ingestion of plants grown on amended soil and ingestion of products from animals raised on feed from CKD amended fields. Pathways evaluated for the farmer include those evaluated for the child of farmer and, in addition, direct inhalation of vapors and particulates during application of CKD to the field. For the home gardener, pathways include incidental ingestion of contaminated soil and ingestion of plants grown on amended soil. Exposure from ingestion of contaminated fish is evaluated for the fisher receptor scenario. The groundwater exposure pathway (i.e., ingestion of contaminated groundwater) was not evaluated for this analysis based on the results of the previously conducted analyses of risk from storage and disposal of CKD waste. Previous ground-water modeling results indicated limited potential for the transport of constituents bound in a CKD matrix. Although new ground-water modeling indicates that metals, including lead, barium, beryllium, chromium, and cadmium, may be more mobile under highly alkaline conditions, the Agency does not believe these conditions will occur in CKD-amended soils. CKD is added to raise the pH of acidic soils to neutral pHs. A pH range of 6.0–7.2 is optimal for most crops. Highly acidic or highly alkaline soils, on the other hand, have been associated with phytotoxicity and/or nutrient imbalance. Consequently, highly alkaline conditions are unlikely to occur in CKD-amended agricultural soils. Furthermore, the ground-water analyses conducted in support of the Report to Congress and the Regulatory Determination analyzed risks from the storage, management and disposal of CKD. Under neutral pHs, the groundwater risks associated with the management of large volumes of CKD in non-karst areas was estimated to be low. The volume of CKD applied in agricultural soils is far less than the volume typically managed in a disposal unit. Therefore, EPA believes that the risks from the ground-water pathway will be negligible based on the typical pH of CKD-amended soils and the limited volume of CKD applied to soils.

The exposure factors used in this risk analysis are from the Draft 1996 Exposure Factors Handbook. This is one of the first EPA risk assessments to use these factors in either a deterministic or probabilistic analysis. Therefore, the Agency used conservative consumption and exposure distributions in instances where there was uncertainty regarding how the data presented in this document should be used. The Agency specifically requests comment on the exposure factors used in this analysis.

7. Lead Risk Assessment

The human health risk assessment conducted for lead is unique. The primary indicator of exposures to lead is elevated blood lead levels. Therefore, exposure to lead is estimated based on comparison of predicted blood lead level in exposed individuals to a target blood lead level. In addition, evaluation of lead exposure focuses specifically on young children (birth to 7 years of age) because this age group is known to be highly sensitive to lead exposure. Given the unique nature of lead, EPA developed the Integrated Exposure Uptake Biokinetic Model (IEUBK) to evaluate child lead exposure from birth to age 7. EPA used the IEUBK model to assess lead risks from agriculturally applied CKD. This model integrates lead exposures from diet, soil, dust, drinking water, and air and considers elimination of lead from the body to predict blood lead levels. For the CKD agricultural use analysis for lead, estimates of risk to children are determined by comparing total blood lead level estimated by the IEUBK model with a threshold value of 10 µg Pb/dL. Adverse health effects from lead exposure have been observed to occur at or above this level.

For this analysis, blood lead levels were estimated using the default soil intake rates provided in the IEUBK model. Default IEUBK soil ingestion rates differ from those used elsewhere in this analysis to estimate risk from other hazardous constituents in CKD. Soil ingestion rates used for lead are presented in Section 6.0 of the technical background document. Soil ingestion rates used for other constituents are presented in Section 5.0 of the background document. With the exception of soil ingestion rates, EPA used the same model inputs (e.g., constituent concentrations, dietary ingestion rates, application rates) to estimate risks from exposures to both lead and other hazardous constituents in CKD.

8. Ecological Risk and Phytotoxicity

The Agency did not conduct a separate assessment of potential ecological risks or phytotoxic effects posed by use of CKD as a liming agent on agricultural fields. Rather, EPA relied on the assessment conducted by EPA's Office of Water for the Standards for the Use or Disposal of Sewage Sludge (40 CFR Part 503 et al.) as a basis for evaluating potential risks to ecological

receptors and/or toxic effects on plants resulting from land application of CKD. For this analysis, the range of soil concentrations for metals in soil estimated in the CKD risk analysis is compared to the phytotoxicity and soil organism benchmarks reported in the Technical Support Document for Land Application of Sewage Sludge—Volume I (NTIS publication number PB93–110575). Values for ecological benchmarks are only available for 4 constituents in CKD, lead, nickel, chromium, and cadmium. Results of this analysis are provided in the Risk Assessment for Cement Kiln Dust Used as an Agricultural Soil Amendment in the docket for this rule. In summary, a comparison of these ecological benchmarks to the constituent concentrations in CKD amended soil estimated by the CKD risk analysis shows that the CKD soil concentrations are well below these benchmarks in all cases. The Agency requests comment on whether phytotoxicity and ecological risk are adequately addressed by this analysis.

9. Risk Assessment Results

The results of the risk assessment show an estimated high-end individual lifetime cancer risk of 3×10^{-5} due to arsenic and an exceedance of the non-cancer effect threshold or hazard quotient for thallium for a farmer and child of farmer consuming products from animals raised on feed grown on CKD-amended fields. Based on these findings, EPA believes there is a need to establish standards to protect public health and the environment from adverse effects of certain constituents that may be present in CKD used agriculturally.

C. Approach to Establishing Limiting Concentrations

1. Risk-based Approach—Proposed Limiting Concentrations for Cadmium, Lead, and Thallium

The Agency used the exposure assessment modeling methodology described above to establish constituent-specific numerical limits for hazardous constituents (metals and chlorinated dioxins and furans) in CKD that is used in lieu of agricultural lime. As a first step, potential human health risks from exposure to hazardous constituents were evaluated for specified exposure scenarios using the constituent concentrations, toxicity data, exposure assumptions, soil property data and fate and transport models outlined in the previous section. The limiting concentrations for individual constituents were then derived using a point estimate approach as follows. All application parameters (rate, frequency, depth of incorporation) were set at constant at high end values (i.e., values that are at the upper end of the distribution of application practices). CKD was assumed to be applied over a period of up to 100 years. The Agency believes this to be a reasonably conservative assumption based on consultation with agricultural experts knowledgeable in the use of soil amendments. All other variables (e.g., exposure parameters) were varied between central tendency and high end values one or two at a time in order to obtain the highest risk value for each hazardous constituent. The highest risk value was then used to back calculate maximum constituent concentrations at which adverse health effects from any single constituent do not exceed a 1×10^{-5} individual lifetime cancer risk or a non-cancer hazard quotient of 1 for any potential human exposure route (e.g., air, food chain, etc.). For lead the maximum constituent concentration was back-calculated based on a target blood lead level of 10 µg Pb/dL.

EPA conservatively assumed a high rate and frequency of CKD application (within the range of application rates and frequencies that are considered to be agronomically viable) to set regulatory limits for hazardous constituents in CKD. The Agency assumed that CKD application will not exceed a high-end rate of 5 tons per acre every 2 years, and that CKD may be applied continually over a period of 100 years. EPA believes these assumptions ensure that limiting concentrations are protective given standard agricultural practices used for application and reasonably expected long term repeated applications of CKD.

Additionally, the Agency believes that establishing concentration limits that are protective at plausible high end application practices will make implementation of regulatory limits less burdensome on both the regulated community and EPA. Use of high end application assumptions allows the Agency to establish a single concentration that is considered to be protective for all reasonably expected application parameters.

As an alternative approach, the Agency could have established limiting concentrations that would vary based on the rate and frequency of CKD application. This approach would have resulted in higher (i.e.,less stringent) cut-off concentrations in some cases, depending on application practices employed. However, under this approach, the Agency would have to impose tracking and recordkeeping requirements as a means of ensuring compliance with limits that would vary based on varying application rates. Such additional requirements would significantly increase the complexity of the proposed regulations and the implementation burden on the regulated community. By using conservative assumptions regarding application practices, the Agency will substantially reduce the recordkeeping burden associated with the implementation of today's proposal. Furthermore, the Agency believes that the constituent concentration limits so established will not unduly restrict the beneficial use of CKD for agricultural purposes (i.e., based on EPA's data, most CKD meets the proposed regulatory cut-off levels). In selecting this approach, the Agency also considered the fact that use of a less conservative methodology (in which application parameters were set at central tendency values) would still result in limits that, while higher or less restrictive, are still exceeded in some CKD for these five constituents. In essence, use of the conservative risk assessment methodology described above to establish maximum regulatory constituent concentrations enables EPA to reduce the recordkeeping and economic burden associated with regulation of agricultural use of CKD but does not result in levels that are so stringent that they prohibit substantial beneficial use of CKD as a substitute for agricultural lime. For these reasons, EPA chose to develop a single set of constituent concentrations that are protective at high-end application rates. The Agency recognizes that this approach represents a trade-off that favors reduction of recordkeeping and reporting burden over establishment of less restrictive standards. The Agency requests comment on the proposed approach.

Today's proposed rule assumes that CKD will be applied at rates needed to attain the required pH adjustment and will not be applied in excess of such rates. Based on consultation with agricultural experts, review of the literature, and considering physical and chemical properties of soil and CKD, EPA believes that application of 5 tons of CKD per acre every 2 years constitutes the maximum rate of agronomically viable application necessary to properly control pH in agricultural soils. Therefore, EPA's analysis assumes that CKD use will not exceed 5 tons per acre every two years. Given the inherent limitations on the amount of CKD that can be applied beneficially for the purpose of pH control, EPA is not proposing to impose

regulatory controls on the agronomically viable application of CKD. However, agronomic use of CKD to control pH in excess of 5 tons of CKD per acre every 2 years will be considered a form of waste disposal subject to RCRA regulation, rather than a legitimate beneficial use exempted under today's proposal.

As previously noted, a comparison between the risk-based limits established by the Agency using the above methodology and the concentrations of hazardous constituents known to be present in CKD indicates that four metals, arsenic, thallium, lead and cadmium, may be present in CKD at levels that pose unacceptable human health risk (adverse health effects in excess of a 1×10^{-5} individual lifetime cancer risk or non-cancer hazard quotient of 1 in certain instances). Therefore, EPA is proposing to establish regulatory limits for cadmium, lead, thallium, and arsenic in CKD that is applied to agricultural soil for purposes of pH adjustment. EPA is proposing to use the methodology described above to set protective limiting concentrations for cadmium, lead, and thallium. EPA is proposing to use a different methodology to establish a limit for arsenic, as explained later in this section. The Agency is not proposing limits for those constituents for which maximum concentrations in CKD are below concentrations determined by EPA to be protective of human health.

The proposed risk-based concentration limits for cadmium, lead, and thallium are: 22 mg/kg for cadmium, 1500 mg/kg for lead, and 15 mg/kg for thallium. Under today's proposal, CKD that exceeds the proposed concentration limits for these constituents cannot be used as a liming agent on agricultural soils. Based on EPA's data on the composition of CKD, most CKD meets the risk-based protective levels being proposed for these metals and would therefore not be prohibited from agricultural use based on the proposed limits.

2. Risk-Based Approach—Proposed Limiting Concentration for Chlorinated Dioxins and Furans

The process used for setting risk-based limiting concentrations for chlorinated dioxins and furans (hereafter referred to as dioxins) is similar to that used for metals. However, unlike metals, dioxins are comprised of multiple individual dioxin and furan congeners. Therefore, in order to derive a single limiting concentration for purposes of this regulation, the risks from individual dioxin and furan congeners were estimated using the TEF methodology referenced above (see Section VI.B.2—Human Health Criteria and Effects) and the risks from specific dioxin and furan congeners were summed to produce a single concentration in terms of 2,3,7,8-TCDD toxicity equivalents (TEQ). Based on EPA's risk modeling using the methodology described above, the estimated total indirect cancer risks for the farmer scenario from the average North American soil background concentrations of dioxins in the environment is approximately 1×10^{-5}. The average TEQ background concentration of dioxin and furan congeners in soil is 8 parts per trillion (ppt).

Therefore, to ensure that agricultural use of CKD does not pose risks from dioxins in excess of a 1×10^{-5} individual lifetime cancer risk, EPA used a target soil concentration of 8 ppt TEQ to derive risk-based limiting concentrations of dioxins in CKD. The Agency back-calculated maximum TEQ levels for dioxins in CKD used as a lime substitute that, when mixed with soil, would result in dioxin levels in soil levels at or below 8 ppt TEQ. For this analysis, the distribution of congeners in CKD was assumed to be the same as the congener composition or congener profile of background soil. This is essentially a default assumption because, based on available data on levels and distributions of dioxin congeners in CKD, there is no "typical" distribution of dioxin and furan congeners in CKD. Additionally, consistent with the methodology used to develop limiting concentrations for metals, EPA fixed all application parameters at high-end values in setting limiting concentrations for dioxins. In this manner, a limiting TEQ concentration for dioxins in CKD was established so that when CKD is applied at high application rates and frequency, soil concentrations do not exceed 8 ppt TEQ. Assuming high-end application parameters, the maximum TEQ concentration of dioxins in CKD that will result in soil concentrations at or below 8 ppt TEQ was determined to be 0.04 parts per billion (ppb). Based on this analysis, EPA is proposing to set protective limiting concentrations for dioxins in CKD that is used as a liming agent at 0.04 ppb TEQ. Under today's proposal, CKD that exceeds the proposed concentration limit for dioxins cannot be used as a liming agent on agricultural soils. Based on available data on dioxins in CKD, the Agency does not believe that the proposed limiting concentrations will significantly restrict use of CKD as a liming agent. EPA requests comment on the methodology and assumptions used to develop the risk-based limiting concentration for dioxins in CKD that is used as a substitute for agricultural lime.

3. Comparison to Agricultural Lime—Proposed Limiting Concentration for Arsenic

The Agency is not proposing to use the limit derived for arsenic using the risk-based methodology outlined above. Instead, EPA is proposing an alternative limit for arsenic based on arsenic concentrations found in commercially available agricultural liming materials. Total arsenic concentrations in agricultural lime range from < 1 to 13 mg/kg.[38] Based on this information, EPA is proposing a limiting concentration of 13 mg/kg for arsenic in CKD that is applied agriculturally to adjust soil pH.

Use of the risk-based approach results in a cut-off level for arsenic that is below concentrations typically found in agricultural lime and is in fact at or below background concentrations for arsenic in soils in many parts of the country. EPA believes that it is impractical and illogical to prohibit the use of a CKD as a liming agent if it contains levels of arsenic at lower concentrations than agricultural lime because such use would not increase any risks faced by anyone who uses CKD as a substitute for agricultural lime.

Agricultural limestone (aglime) is finely pulverized, naturally occurring, relatively pure limestone or dolomitic limestone. Aglime is added to agricultural soils to maintain optimum pH for crop production and is needed to offset the effects of fertilizers that lower soil pH. Aglimes are produced and sold throughout the United States. States typically regulate aglime by setting standards for minimum calcium carbonate equivalent and particle size but not for other properties such as metal concentrations. Since CKD is used as a substitute for aglime (i.e., it is used to control pH for production of crops), EPA is proposing to use arsenic levels typically found in agricultural lime as a basis for setting a regulatory limit for arsenic in CKD that is used in lieu of agricultural lime. The Agency believes that this approach provides a practical, common sense means of minimizing the risk from arsenic used as an agricultural liming agent. The alternative would be

[38] Kanare, H.M., 1997 Comparison of Trace Metal Concentrations in Cement Kiln Dust, Agricultural Limestone, Sewage Sludge, and Soil. Report to the American Portland Cement Alliance by Construction Technology Laboratories, Inc., Skokie, Illinois. 15p.

to effectively preclude the use of CKD as a liming agent without any reduction in environmental risk. The Agency requests comment on its proposed approach for setting regulatory limits for arsenic in CKD that is used as a substitute for agricultural lime. EPA also requests comment on whether it should consider setting limits for arsenic that are based on existing background concentrations of arsenic in areas where the CKD is applied.

4. Peer Review of the Risk Assessment

An external peer review of the agricultural use risk analysis and the methodology used to establish protective constituent concentration was conducted prior to publication of today's rule. The peer review was conducted by the United States Department of Agriculture's W–170 Committee, which is comprised of nationally known experts on agricultural use of soil amendments. Unfortunately, the Agency did not have time to revise the assessment based on peer review comments prior to publication of the CKD proposal. The committee's review is available in the docket for this rule for public review and comment. The Agency also requests public comments on all aspects of the risk assessment including the pathways evaluated, exposure assumptions, assumptions used regarding agricultural practices, etc.; and on all aspects of the methodology used to establish protective levels for hazardous constituents in CKD used agriculturally. EPA anticipates undertaking revisions to the risk assessment based on recommendations received through the peer review process as well as comments received from the public. The Agency also requests information on other existing and/or potential agricultural uses of CKD that may need to be evaluated. EPA requests comment on whether CKD used for other agricultural purposes should be subject to the same standards as those proposed for CKD used as an agricultural liming agent.

D. Implementation of Controls for the Agricultural Use of CKD

In today's proposed rule, § 259.17 defines agricultural use of cement kiln dust as use of CKD as an agricultural lime substitute for the purpose of amending the soil to optimize pH or to promote the growth of crops or other foodstuffs. The Agency restricts this definition of use to CKD produced for use by the general public and not for the exclusive use of the owner or operator of the facility which generates the CKD waste. EPA believes that when an owner or operator applies CKD solely to his own land, the practice is actually disposal.

The Agency intends to ensure there is a high degree of confidence that any CKD sold for purposes as an agricultural lime substitute complies with today's proposed standards. Therefore, today's rule also proposes that for CKD sold for agricultural use, the persons managing CKD waste (e.g., the owner or operator of the facility which generated the waste) shall place in the operating record a notation listing the amount of CKD shipped as an agricultural lime substitute and a letter of certification signed by a company representative verifying compliance with the limiting concentrations specified under §§ 259.17(a) and (b). In today's rule, EPA is not proposing to impose regulatory limits or recordkeeping requirements on the rate and frequency of application of CKD used as an agricultural lime substitute because the Agency believes that today's proposed standards are protective across the range of anticipated, agronomically viable application parameters.

Today's rule also proposes that CKD destined for agricultural use be sampled and analyzed by the person managing the CKD waste whenever such CKD waste is destined for shipment. Such CKD waste must be tested prior to shipment to determine whether it has concentrations of toxic constituents in excess of the limiting concentrations proposed in § 259.17(a). EPA believes that CKD waste destined for agricultural use must be analyzed prior to shipment for the person managing the CKD waste to determine whether or not such waste can be used for pH adjustment. The Agency is not specifying a sampling frequency in today's proposed rule. If the sampling frequency is less often than on a daily basis, however, and subsequent analysis determines that the CKD fails the test, then the Agency considers that all CKD transported for agricultural use since the previous successful analysis to have been mismanaged, and, therefore, would be hazardous waste absent documentation otherwise.

E. Alternative Standard to Limit Chlorinated Dioxins and Furans in CKD

As part of EPA's development of air emission standards for the Portland cement industry, the Agency has proposed operational and monitoring methods for cement kilns that burn hazardous waste (see 61 FR 17358, Hazardous Waste Combustors; Revised Standards; Proposed Rule, April 19, 1996 and 62 FR 24226, Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, May 2, 1997) and standards for hazardous air pollutants for cement kilns that do not burn hazardous waste (see 63 FR 14182, March 24, 1998, National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutants Emissions for the Portland Cement Manufacturing Industry). These standards for air emissions include uniform technology-based standards for chlorinated dioxins and furans, and reflect the performance of Maximum Achievable Control Technologies (MACT) as specified under the Clean Air Act.

To limit the emission of these compounds, EPA has proposed in both rules a baseline air emission level for all cement kilns of 0.20 ng TEQ/dscm of chlorinated dioxins and furans, or 0.4 ng TEQ/dscm, and temperature at the inlet to the air pollution control device of less than or equal to 400°F. The Agency believes temperature control to 400°F or lower is an appropriate baseline control at the air pollution control device because: (1) The optimum temperature window for surface-catalyzed formation of chlorinated dioxins and furans is 450–750°F; and (2) Below 350°F, kiln gas can fall below the dew point which can increase corrosion in ESPs and fabric filters and reduce performance of the air pollution control devices. Available air emissions data from cement kilns show all but one data point of dioxins and furans at or below 0.2 ng TEQ/dscm at the air pollution control device when operating the device at temperatures less than or equal to 400°F. Thus, EPA believes a standard of 0.20 ng TEQ/dscm, or 0.4 ng TEQ/dscm and temperature at the inlet to the air pollution control device of less than or equal to 400°F is both reasonable and readily achievable.

The Agency solicits comment regarding whether the emission standards for dioxins and furans proposed for the cement industry are adequate to control the formation of dioxins and furans on CKD destined for agricultural use, and consequently whether dioxin and furan standards for CKD used for agricultural purposes are necessary.

VII. Relationships Between This Action and Other Regulatory Programs

A. Stormwater Regulations

As stated in its Regulatory Determination, the Clean Water Act, through existing effluent limitations guidelines, NPDES permits, water quality standards, and existing storm

water permits, provides considerable authority to control risks associated with the contamination of surface waters by the management of CKD. EPA's multisector stormwater general permit under the National Pollutant Discharge Elimination System (NPDES) program (see 60 FR 50804, September 29, 1995) contains limits to control effluent discharges specific to the cement industry (among other industries) and requires each plant to develop facility-specific pollution prevention plans and demonstrate best management practices (BMPs) to minimize the contact between storm water runoff and CKD or other pollutant sources, or else remove CKD (or other constituents) before the stormwater is discharged. These permits will be in addition to previously issued and effective storm water baseline general permits that were issued in 1992 by EPA and between 1991 and 1993 by the 40 States with authorized NPDES programs. The Agency believes that once the storm water permits are fully implemented, no further water permits or regulations will be needed to address CKD releases to surface water.

B. Clean Air Act

On the Federal level, air quality has been improved through implementation of controls on releases of CKD through kiln stacks and via fugitive dust emissions. Under the New Source Performance Standards (NSPS) for cement plants, a facility must comply with specific emission limitations for particulate matter. Prevention of Significant Deterioration (PSD) review also is required before a cement plant can be built in a geographic area that is classified as an attainment area. In addition, cement plants are subject to Nonattainment Review if they are located in an air quality control area that is not in compliance with the National Ambient Air Quality Standards (NAAQS) for a given pollutant (e.g., particulate matter or sulfur dioxide). Today's proposed rule augments regulations applicable to cement manufacturing facilities that have been issued under Clean Air Act mandates by addressing fugitive emissions from CKD storage areas, transportation, and disposal sites.

The NSPS for Portland cement plants in 40 CFR part 60, subpart F apply to plants that were constructed or modified after August 17, 1971.[39] Components of cement plants (referred to as "facilities") specifically affected are kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage facilities, clinker storage facilities, finished product storage facilities, conveyor transfer points, and bagging and bulk-loading and unloading systems. For these plants, EPA has established performance standards that reflect the degree of emission limitation achievable through application of the best available control technology.[40]

In accordance with the NSPS, no Portland cement plant owner or operator may cause an affected facility to exceed the particulate matter emission limits. Owners or operators must monitor each kiln and clinker cooler stack using a continuous opacity monitoring (COM) system (or a certified visible emissions observer when a COM is not technically feasible). In all cases, each owner or operator must submit semi-annual reports of excess emissions, defined as all 6-minute periods during which the average opacity exceeds the standard, and of equipment malfunctions. The emission standards for these facilities are listed in of 40 CFR part 60, subpart F (Standards of Performance for Portland Cement Plants). In addition, owners or operators must record daily production rates and kiln feed rates and monitor the opacity of emissions.

The 1990 Clean Air Act Amendments established a program to regulate emissions of 189 toxic air pollutants through technology-based standards (the National Emission Standards for Hazardous Air Pollutants (NESHAPs)).[41] EPA is currently developing NESHAPs for Portland cement plants that will address stack emissions and fugitive emissions for the same facilities as listed under the NSPS. The NESHAPs, however, will not apply to transportation, storage, or disposal of CKD. Fugitive emissions from CKD landfills, trucks and storage piles are subject to today's proposed rule.

In its 1995 Regulatory Determination, EPA stated that it would use as appropriate the various authorities under the Clean Air Act to improve regulations for CKD to limit releases to the air (61 FR 7375, February 7, 1995). EPA did consider the use of its authorities under the Clean Air Act in its rulemaking approach to address the air pathway of potential contaminant release. However, existing Clean Air Act regulations do not fully address emissions from CKD piles. Accordingly, EPA is proposing to establish RCRA requirements to address emissions from transportation, storage, and disposal of CKD. To this extent, EPA is proposing to modify the conclusions of the 1995 Regulatory Determination, and solicits comment on that change. However, the Agency is not reversing the 1995 CKD Regulatory Determination entirely. EPA will continue to rely on its authorities under the Clean Air Act to control CKD emissions from stacks and pollution control devices (e.g., electrostatic precipitators and baghouses). Subsequent examination, however, revealed that current implementation of these authorities, do not specifically address CKD waste management.

Particulate emissions from cement manufacturing facilities are potentially subject to requirements adopted as part of a State Implementation Plan (SIP), adopted by States in order to achieve or maintain attainment of the NAAQS for PM, which are national standards applicable on a regional area basis.[42] However, SIPs do not routinely address emissions from landfills and storage piles and, thus, would likely not prevent local PM_{10} exceedances such as could result from fugitive CKD emissions. EPA believes that the risks from fugitive CKD from landfills, piles, and transportation, warrants control. Accordingly, EPA is today proposing to establish air emission requirements for CKD under its RCRA authorities.

As mentioned earlier, cement kilns that burn hazardous waste currently are regulated under RCRA, and implementing regulations found at 40 CFR Part 266, Subpart H. The Clean Air Act Amendments of 1990 require EPA to develop technology-based emission standards for sources listed by the Agency, including cement manufacturing plants. In April 1996, the Agency proposed revised stack emission standards and controls for cement kilns that burn hazardous waste. This proposal, which the Agency anticipates finalizing in late 1998, will require cement kilns to control stack emissions of mercury and dioxins and furans, as well as other hazardous air pollutants. The new emission standards, however, will not apply to transportation, storage, or disposal of CKD.

EPA believes that today's proposed rule will improve air quality and reduce health risks at and near CKD

[39] A "modification" is any physical or operational change to an existing facility that results in an increase in the emission rate of any air pollutant to which the standard applies.

[40] "Best Available Control Technology" (BACT) is defined as the best system of emission reduction determined by EPA to have been adequately demonstrated.

[41] 42 U.S.C. 7412(b)(1); The Act lists 189 pollutants, but the Agency has since delisted one.

[42] Under the revised NAAQS for particulate matter, States which currently are in attainment regarding existing PM standards must submit to EPA for approval a new SIP which meets newly adopted standards for PM (See 62 FR 38651, July 18, 1997).

management units by reducing fugitive emissions of CKD from these facilities.

VIII. State Authority

A. Statutory Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) After receiving authorization, the State has primary enforcement responsibility, although EPA retains enforcement authority under RCRA sections 3007, 3008(a)(2), 3013, and 7003.

As mentioned above, although the Part 259 standards proposed today would likely be adopted as a matter of State law, Federal inspection authority would still be available for facilities regulated under those standards. Because significant violations of the standards would result in CKD being considered mismanaged and, therefore, hazardous waste, EPA (as well as State RCRA Subtitle C programs) would have authority to inspect such facilities to determine whether they were handling hazardous waste (i.e., mismanaged CKD waste). If the person managing CKD waste is managing CKD inconsistently or in a manner that does not comply with the Part 259 standards, it would be subject to Federal enforcement under regulations proposed today in § 261.4(8)(ii), to compel compliance with RCRA Subtitle C requirements proposed today in Part 266.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in a State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent and no less stringent authority within specified time frames. These new Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law and received authorization to implement the new requirements.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time as they do in unauthorized States, if the new requirements are more stringent than the previous requirements. EPA implements these new requirements until the State is authorized for them.

Authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program (see 40 CFR 271.1(I)). Federal (both HSWA and pre-HSWA) regulations that are considered less stringent are optional for the authorized States to adopt, and do not go into effect in authorized States until those States adopt them and are authorized to implement them.

B. Effect of Today's Proposed Rule

The RCRA sections of today's proposal are promulgated in part pursuant to pre-HSWA, and in part pursuant to HSWA. Pursuant to pre-HSWA authority, the proposal modifies the rule exempting CKD from hazardous waste regulation under § 261.4(b)(8), exempts from Subtitle C CKD that is either (a) managed in accordance with certain standards, or recycled or used for certain other beneficial purposes (§ 261.4(b)(8)), and lists as hazardous waste CKD that is not managed in compliance with the proposed standards. The proposal also includes tailored Subtitle C regulations for nonexempt CKD (noncharacteristic CKD and characteristic CKD from kilns burning non-hazardous waste which do not meet the proposed management standards) under Subpart I of 40 CFR Part 266. Characteristic CKD from kilns burning hazardous waste is not affected by this proposed rule and still is subject to full RCRA Subtitle C requirements as set forth in 40 CFR 266.112. The tailored Subtitle C standards are promulgated in part based on EPA's general pre-HSWA authority to set management standards for facilities that manage hazardous waste, and in part on the authority in section 3004(x), a HSWA provision, to modify certain requirements that would otherwise apply to any hazardous waste.

The portion of this proposal that lists nonexempt CKD as hazardous waste is more stringent than the current Federal requirements. Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR Part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The States must modify their programs and obtain authorization to include CKD requirements that are equivalent and not less stringent than the EPA's requirements for CKD. The procedures and time frames for State program modifications are described in 40 CFR 271.21. The deadline by which the States must modify their programs to adopt this proposed regulation, if it is adopted as a final rule, will be determined by the date of promulgation of the final rule in accordance with § 271.21(e)(2). Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

Because the tailored regulations promulgated under both pre-HSWA and HSWA authorities are less stringent than full RCRA Subtitle C, States are not required to adopt the tailored regulations. While HSWA aspects of a rule usually become effective immediately, the only effect of the tailored regulations here is to relax full RCRA Subtitle C requirements for CKD failing to meet management standards in States authorized to regulate CKD. The flexibility provided by these tailored regulations is irrelevant until the States revise their programs and become authorized to regulate CKD.

Although the States do not have to adopt the tailored regulations proposed today under Part 259, EPA strongly encourages States to do so. The tailored regulations would contribute to more efficient State programs because they minimize the cost of compliance while providing sufficient protection of human health and the environment.

States seeking authorization under Subtitle C do not have to adopt new laws and regulations before submitting their authorization package to EPA for approval. States may use their existing laws and regulations, such as their solid waste laws,[43] as long as those laws and regulations cover all of the required elements for regulating CKD as part of the RCRA Subtitle C program.

IX. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order No. 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is "significant." The Order defines a "significant" regulatory action as one that "* * * is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition; jobs, the

[43] Because the listing of mismanaged CKD is more stringent than the current Federal hazardous waste regulations, States with base authorization must revise their Subtitle C program and seek authorization for the CKD listing. However, although the States can use their existing solid waste laws to comply with the requirements for the regulation of CKD, States are not required to seek plan approval for a CKD program under Subtitle D.

environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, the Agency has determined that this rule is a significant regulatory action because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations are documented in the public record and are available in the docket for this rule. Although today's rule is expected to affect the economy by substantially less than $100 million per year, the Agency conducted a relatively detailed cost and impact study to evaluate the effects of the rule on the U.S. Portland cement industry and the economy.

1. Scope and Approach for Estimating Economic Costs and Impacts

As described in Section III.G. (Today's Approach—Exclude Properly Managed CKD From Hazardous Waste Listing) of this preamble, today's proposed rule calls for a flexible approach to managing land-disposed CKD, a policy tailored to site-specific cement plant, climate, and geophysical conditions. In this context, the Agency has attempted to estimate, individually for each plant, the changes in management practices that might be required to meet the performance-based objectives of the proposed policy, and then to estimate the costs for carrying out these changes. This requires: first, a reasonably detailed understanding of current "baseline" CKD waste generation and management practices; second, a means of simulating likely plant-specific practice changes; and third, an approach to estimate the costs of the projected changes.

a. The Regulatory Baseline

There are currently 110 Portland cement plants in the United States and Puerto Rico. Based on previous work for the Report to Congress and Regulatory Determination, the Agency had acquired an extensive data base on general cement plant characteristics, CKD generation and management practices, and locational circumstances. General plant-specific data on the types, location, and capacity of cement plants is cataloged and updated annually by the American Portland Cement Association (APCA). In addition, the APCA conducted a detailed industry survey of plant CKD generation and management practices for the year 1995, and information from this survey, together with follow-up information from member companies of the Non-Hazardous Burner CKD Coalition, was used to update and expand the Agency's facility-specific data base on waste generation. Thus, the combined 1990 and 1995 survey data on CKD generation and disposition was available for 108 of the 110 cement plants in the cost study.

The 1995 baseline survey results indicated that 24 of the 110 plants (22%) recycle all collected dust back to the kiln, and an additional 12 plants (11%) reported shipping all generated dust off-site for beneficial use. For the present impact analysis, the Agency thus defined the potentially affected cement plant universe to include the remaining two-thirds of the plants, i.e., the 74 facilities currently disposing of CKD on-site, with a combined annual CKD land-disposal requirement of 3.3 million metric tons in 1995.[44] These facilities employ on-site disposal for CKD quantities ranging from less than 1,000 metric tons per year up to more than 200,000 tons per year. It is also possible that some off-site CKD market changes could result from the proposed policy, thus altering CKD disposal requirements for individual plants. This possibility is discussed further below.

With respect to baseline management practices at individual plants, the Agency had to rely primarily on the earlier 1990 survey information where available, or to assume typical baseline practices for many plants based on APCA-provided summaries of industry-wide 1995 survey information which characterized the general distribution of typical current practices but not plant-specific information. Based on available information, EPA then categorized each of the 74 potentially affected plants into one of nine prototype baseline groups for purposes of estimating baseline CKD management costs. The nine baseline groups differed according to three generic types of disposal configuration (placement in a quarry, land pile, or combination in-ground and land pile) and three degrees of engineering and operational complexity ("low," "medium," or "high"), depending on the types and degrees of release-prevention practices employed.

b. Projecting Plant-Level Compliance Responses

Under a tailored management policy, the new compliance requirements for individual cement plants could vary substantially from State to State, depending on current baseline regulations, or from plant to plant even within a given State, depending on plant-specific waste quantities and management practices and local geological conditions. Thus, some plants will require little or no change in present practices while others may require an extreme change from essentially simple open dumping of their CKD up to and including an engineered land disposal design equivalent to the Federal municipal solid waste landfill technical standards. In rare situations, plants with no available on-site landfill space or plants located in areas of highly adverse geological conditions may be required to dispose of CKD in off-site municipal or approved industrial landfills.

For purposes of simulating plant-specific compliance responses under these highly variable and in many cases uncertain conditions, the Agency made the simplifying assumption that the final compliance outcome for each plant would fall into one of four compliance groups or scenarios. Three compliance designs varied primarily by degree of control measure required to meet the regulatory performance criteria. A "CKD Low" design requiring relatively simple but comprehensive measures for controlling releases to the air, ground water and surface water, could be satisfactory, for example, under local conditions with high depth to ground water and low rainfall. A "CKD High" design, employing a more extensive liner and closure-cover configuration, was assumed as an intermediate design to limit or prevent infiltration of leachate. The most extensive design is the "Subtitle D Default," equivalent to the municipal landfill default requirement defined by today's rule. All three of these designs were costed in a mono-pile configuration as the least-costly available option. As a fourth generic option for cost-estimating purposes, the Agency estimated off-site disposal in a commercial landfill certified for contaminated media to accommodate facilities with inadequate landfill space or extremely adverse environmental locations that might preclude continued on-site disposal.

In assigning each of the 74 plants to one of these four compliance options, the Agency applied judgements based

[44] A small number of additional facilities could be affected if they were to loose off-site markets for CKD due to the Agency's proposed standards for use as an agricultural lime substitute.

on general knowledge and primarily public information regarding local geological conditions that would affect the need for groundwater protection. In addition, two specifically conservative assumptions affecting compliance costs were employed. The first assumed that disposal in quarries would not be allowed; the second assumed that in situations where karst terrain underlies a potential on-site land disposal location, the most extensive Subtitle D default design would be required for compliance. Since most baseline disposal is in quarries and a majority of cement plants are located over karst conditions, these assumptions will tend to overstate the degree of change required and the Agency's estimated cost of compliance for some fraction of the plants.

c. The Cost and Impacts Models

To estimate individual plant CKD disposal costs for both baseline and compliance scenarios, EPA adapted and updated the engineering costing model originally developed for the municipal landfill regulatory impact assessment. Essentially, the revised model sizes, designs, and calculates the capital and operating costs for specified land disposal options, including quarries, monopiles, and combination landfill/pile alternatives, and a wide variety of possible leachate and air emission release/control technologies, during the active-life, closure, and post-closure project phases. To estimate the costs of complying with today's rule, CKD management costs were estimated twice for each plant, first for the chosen baseline practice and then for the projected compliance design. The difference in cost between the two estimates is the Agency's incremental compliance cost estimate for each plant, the results of which are summarized below.

Additional details regarding the study design, baseline data, and engineering and costing assumptions for the study, as well as the estimated baseline costs and compliance costs for each of the 110 Portland cement plants, are presented in the technical background document titled Compliance Cost Estimates for the Proposed Land Management Regulation of Cement Kiln Dust (April 10, 1998) located in the RIC docket for today's rule.

In a second phase of the economic impact assessment, the Agency employed a Portland cement industry market impacts model designed to project regional cement price changes, plant capacity use changes, kiln closures, and shifts in international shipments. This industry or market-level impacts model was originally developed by the Agency's Office of Air Quality Planning and Standards for use in assessing cement industry impacts of proposed national emission standards for hazardous air pollutants. The methodology for estimating cement industry impacts, together with the results for 20 cement marketing regions and the United States as a whole, is contained in the document titled Regulatory Impact Analysis of the Cement Kiln Dust Rulemaking (June 1998) located in the RIC docket for this rule.

2. Summary of Cost and Impact Results

a. Nationwide Compliance Costs

Using the methods and data described above, the Agency estimates that today's rule would require incremental compliance costs for the Portland cement industry of about $44 million per year. These cost increases would initially fall on 68 of the 110 U.S. and Puerto Rican plants that currently manage CKD on site. Thirty-six of the remaining 42 plants would not have to undergo changes in management practices, either because they can recycle all collected dust back to the kiln or because they have off-site markets for all generated dust. In the case of the six remaining plants—all with small CKD quantities—the Agency estimates that off-site Subtitle D landfill disposal could be obtained at costs approximately at or below their current baseline costs. For the 68 negatively-affected plants, the average added cost per plant would be approximately $646,000 per year, or just over $13 per metric ton of CKD. For these 68 plants, estimated annual compliance costs ranged from under $100 thousand to over $3.5 million per year. Relative to its annual value of cement sales, the average affected plant would face additional costs of just under two percent of sales revenues.

Due to the wide variability in plant capacities, net CKD-to-clinker ratios, and required management practice changes, these costs would fall very unevenly among plants in the industry. The following table summarizes the distribution of costs across all plants in the industry, expressed as the percentage ratio of incremental compliance cost to annual Portland cement sales revenues at 1995 prices and capacity utilization levels.

TABLE 3.—INDUSTRY DISTRIBUTION OF COST AS A PERCENT OF SALES

$Cost/$sales	Number of plants	Percent of plants	Cumulative percent
Zero Cost or Cost reduction	42	38	38
>0 to 1%	29	26	64
>1 to 2%	19	17	82
>2 to 3%	9	8	89
>3 to 4%	4	4	94
>4 to 7%	7	6	100
Total	110	100%	

Although costs for individual plants may be either over-or understated, for various reasons the Agency believes that the pattern of compliance costs estimated here represents a "high end" projection for the industry as a whole. First, due to a lack of detailed site-specific geophysical data, the default assumption was made that any plant currently disposing of dust in a quarry would no longer be able to continue managing in the quarry. In reality, the proposed rule would only apply, on a site-specific basis, to management in a quarry where the natural (unpumped) ground-water level would lie above the base of the disposal area. Similarly, for plants located in areas of karst terrain (based on generally available regional geological mapping), the default assumption was made that all such plants would need to utilize a full municipal solid waste landfill default design, the most costly compliance option. In practice, many such plants may face less expensive compliance designs based on more detailed local

knowledge of the existence and hydrology of the underlying karst topography. Since a substantial majority of potentially affected cement plants fall into one or both of these categories, the assumed compliance option for purposes of the costing study was biased towards the high-end engineering design. In a few instances, it appeared from available information that no on-site option might be viable. In another respect, the Agency's costs are also biased upwards due the fact that plant-specific data on current management practices was lacking for most plants and, as noted above, reliance was placed primarily on information from a 1990 survey. Some States have been actively regulating CKD placement in the interim, or are in the process of actively upgrading disposal regulations. Thus, EPA's outdated information on baseline practices for those plants means that, for an unknown but not insignificant number of plants, the incremental compliance costs will have been overstated in this analysis because several of these plants would already have become partially or substantially in compliance with the performance standards being proposed today.

b. Economic Impacts

The second phase of industry cost and impact assessment employed a Portland cement industry impacts model to project regional cement market shifts and impacts that could be expected to result from the estimated pattern of individual plant-level compliance cost increases. In general, a major part of the compliance cost burden will be shifted to cement consumers (in both the private and public sectors) in the form of higher prices for construction goods and to government in the form of somewhat reduced corporate taxes. The remaining burden will be born by that segment of the industry most directly affected by the highest compliance costs. On average, cement industry profits will be reduced, at least for some period of time, but several plants and firms—those with little or no compliance cost burden—will see higher capacity utilization and profits due to the upward shift in regional prices brought about by the shifting of costs by affected plants.

Based on this model, which projects intermediate term effects but does not account for longer term technology innovation or new capacity expansions at lower cost units, the Agency estimated the following cement market effects from the proposed rule.

Cement Prices. Nationally, cement prices are projected to increase over their 1995 baseline by less than one dollar per metric ton, or about 1.3 percent. Regionally, price increases would range from about 1.1 to 3.8 percent across the twenty cement market regions of the country.

Cement Capacity and Production Changes. Five to seven kiln closures, including one possible plant closure, could result from today's rule. All told, these capacity reductions together with net capacity utilization changes in each region, associated with or in response to the market price increases noted above, could result in domestic output reductions of about 2.6 percent of the 1995 baseline production on a national basis.

Cement Imports. Price increases by affected domestic cement producers will be tempered by increased foreign imports, which are projected to increase by over 800 thousand metric tons (6.2 percent).

Employment Effects. Nationally, employment reductions in the primary cement industry equivalent to about 500 full-time jobs would be associated with the production changes noted above.

Again, it bears emphasis that the Agency believes these impact estimates to be high end estimates, both because of the default assumptions employed in the plant-level engineering cost estimates themselves and because the market impacts model does not account for longer-term industry responses to the initial compliance cost effects.

3. Benefits of the Rulemaking

The Agency has undertaken several efforts to estimate the impacts from the baseline management of CKD and, thus, identify the benefits from today's rule. In support of the Report to Congress on Cement Kiln Dust and the Regulatory Determination, the Agency performed an individual risk analysis to determine whether current CKD management practices may impact nearby individuals, including highly exposed individuals (e.g., subsistence farming). For today's proposed rulemaking, the Agency built upon the previous individual risk analysis to estimate population-level impacts associated with current management practices (see Section II.C.4.a.—Population Risks). The Agency also conducted a screening level analysis to determine whether current management practices may result in effects to ecological receptors. The Agency, however, has not quantitatively assessed how the proposed standards will reduce the human health, ecological, and other damages associated with current CKD management. For the purposes of this analysis, an upper-bound estimate of the benefits provided by this rule is to assume that all of the impacts described below are avoided.

For the 1993 Report to Congress and 1995 Regulatory Determination, the Agency modeled individual risks from direct and indirect pathways for 83 plants. The Agency concluded that the risks from direct pathways (i.e., drinking water ingestion, incidental ingestion, and chemical inhalation) were low or negligible. The Agency caveated these conclusions by noting that (1) about half of the plants are underlain by limestone formations in areas of karst landscape and may be susceptible to fissures and hydraulic characteristics that allow leachate to directly enter groundwater without dilution or attenuation and cannot be modeled with current techniques; (2) empirical evidence indicated groundwater contamination in areas of both karst and non-karst terrain; and (3) modeling results for fine particulate emissions for 28 cement plants out of 52 modeled may have exceedances of NAAQS at plant boundaries and may result in risks from fine particulate inhalation at nearby residences. Today's proposed rule addresses each of these areas and should result in the avoidance of these individual-level impacts. For the indirect pathways, the Agency concluded that releases from about 12 percent of the 83 plants studied may result in cancer risks greater than 1×10^{-5} for highly exposed individuals (i.e., subsistence fishers and subsistence farmers). Similarly, the Agency concluded that releases from about 12 percent of the 83 plants may result in noncancer hazard ratios greater than 1.0 for highly exposed individuals. Today's proposed action should help prevent these risks to highly exposed individuals.

As described in Section II.C.4.a.—Population Risks, the Agency expanded the individual risk assessment conducted for the 1993 Report to Congress and 1995 Regulatory Determination to evaluate population-level risks. Based on this expanded analysis, the proposed rule may result in a reduced risk of 0.0004 to 0.003 cancer cases per year (best estimate—0.0006) and 29 to 315 fewer persons (best estimate—43) exposed to potential non-cancer health effects due to food chain exposures (i.e., vegetables, beef, and/or milk) to "backyard" gardeners and subsistence farmers. In addition, the population analysis indicated that between 669 and 5,895 recreational fishers (best estimate—999) would avoid exposure to contaminant levels that may result in noncancer health effects. The population analysis indicated that 18 to 4,118 individuals (best estimate—2,378)

would avoid exposure to particulate matter in excess of the NAAQS.

As described in Section II.C.4.b.—Additional Ground-water Modeling, the Agency conducted additional groundwater analyses to determine whether the high alkalinity leachate associated with CKD may result in elevated groundwater concentrations of constituents of concern. The analysis indicated that the highly alkaline nature of CKD leachate resulted in elevated levels of lead, chromium, and cadmium in the groundwater and suggested that beryllium and barium also may be more mobile in CKD leachate. The analysis also indicated that all of these metals were more likely to be transported to the groundwater. Thus, today's action should help prevent contaminated CKD leachate from impacting groundwater resources.

The proposed rule will provide other benefits that have not been estimated quantitatively, but can be qualitatively described. These include protecting groundwater resources near cement plants, including resources located in areas of karst terrain; preventing the corrosion of water distribution pipes by source waters with pHs elevated by CKD leachate; and protecting ecological receptors from adverse effects resulting from the atmospheric deposition and groundwater discharge of CKD.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

1. Identification of Small Cement Companies

The Small Business Administration (SBA) has defined small companies in the Portland cement industry to include independent companies with less than 750 employees. At the time of the CKD Regulatory Determination, the Agency had identified and published a list of possible small cement companies based on initial research in Dun and Bradstreet and similar corporate business publications. Subsequently, both the APCA and the Non-Hazwaste Burner CKD Coalition reviewed this initial list and provided changes based on their own research and consultations with member companies. This resulted in a mutually agreed-upon list of eight small U.S. cement companies, each operating a single plant, in an industry comprised of 42 companies operating 110 plants in the U.S. and Puerto Rico.

2. Outreach

In addition to working with industry groups to identify small cement companies, in July 1997 the Agency sent a letter to the president of each of the eight small companies explaining the SBREFA process, outlining several possible CKD regulatory approaches, and requesting comments and suggestions regarding these options. In addition, those small companies that had not previously responded to the 1995 APCA CKD generation and management practices survey were urged to return a completed APCA questionnaire to EPA to facilitate a more realistic cost and impact assessment. In response, all eight companies either returned their comments and questionnaires directly or provided their input indirectly through the Non-Hazwaste Burner CKD Coalition. In addition, six of the companies presented their own estimates of compliance costs for the most stringent of the EPA regulatory options. The Coalition subsequently presented SBREFA policy arguments and recommendations to the OSWER Deputy Assistant Administrator.

3. The Agency's RFA Screening Analysis

Based on the APCA Survey responses and the cost analysis described previously, the Agency completed plant-specific compliance cost estimates for each of the eight small companies. Where relevant for individual plants, major compliance costs included engineered land disposal units with ground water monitoring, pelletizing and compaction of the CKD, closure and post-closure management for disposal units, and covers on trucks and the watering of plant roads to control airborne dust. The Agency did not include costs for storage sheds and silos that might be required at some plants for controlling dust that could be blown from CKD stored prior to shipment for off-site use. If needed, the cost of such temporary storage units should be relatively modest, under $10,000 per year on an annualized basis. In summary, for the eight small companies:

- Four would not be negatively affected (unless they were to lose off-site CKD markets).
- Three would have incremental compliance costs as a percent of baseline sales between 0.3% and 1.0%.
- One small-company would have costs greater than 1.0%, but still less than 2% of baseline sales.

As noted, six of the eight small companies also compiled and presented independent cost estimates in response to EPA's letter requesting comments on alternative regulatory approaches. The companies' worst case incremental compliance cost projections were somewhat higher than EPA's estimates, with one company under one percent of sales, four in the one-to-two percent range, and one between three and four percent. The greatest part of the difference between these and the EPA's estimates stems from the companies' assumption that all of the five small companies that presently market CKD for off-site uses would lose their entire off-site CKD markets as a result of the rule. This assumption is particularly critical for three of the six plants that currently ship all of their CKD to off-site uses. In addition, the companies' projections also assumed the worst-case: that full municipal solid waste landfill design standards would be required, rather than the site specific control measures, tailored to local conditions, which are proposed in today's rule. On this basis, the companies' estimates projected an implicit compliance cost distribution in which at least four of the six companies would have costs between one and two percent of sales revenue, and one would see costs in excess of three percent.

While this double worst-case combination can not unequivocally be ruled out for each and every small plant individually, the Agency believes that it represents an extremely unlikely scenario for projecting impacts of the rule on the small companies as a group. In particular, there is little reason to assume a total loss of off-site markets due to the Subtitle C "stigma." The Agency is not proposing to list or otherwise regulate off-site beneficial uses generally. The only off-site use proposed for regulation is that of an agricultural lime substitute, and the Agency does not have information indicating that any of the small companies currently ship off-site for this use. Furthermore, current levels of

off-site CKD uses are continuing under the specter of EPA's Regulatory Determination decision to regulate CKD, and thus one might argue that any stigma associated with Federal regulation of CKD could already be in effect. For these and other reasons previously discussed, the Agency believes that its approach, based on continuance of off-site use markets and assuming location-specific flexibility in State program implementation, provides for a more realistic high end projection of initial compliance cost effects. Although the Agency believes that the stigma of Subtitle C will not result in the loss of off-site markets, EPA requests comment specifically on whether this rule will affect the availability of markets for beneficial use of CKD, and if so, to what extent and for which particular uses.

4. Agency Findings and Conclusions Regarding SBREFA Impacts

The Agency's RFA screening study does not indicate a significant negative impact on a substantial number of small companies as a likely outcome of the proposed rule. With respect to the percent-of-sales cost criterion, EPA's high end engineering cost estimates project that not more than one or two small companies will experience initial compliance costs greater than one percent of baseline sales. In addition, the economic impact analysis projects that regional cement price increases due to shifting of initial compliance costs to cement consumers will partially, if not totally, offset higher costs for small companies that might be required to alter their CKD management practices. In fact, several of the small companies—articularly those that do not land-dispose any wasted dust—ould thus realize higher net annual profits as a result of these market impacts.

For the reasons discussed above, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Environmental Justice—Applicability of Executive Order 12898

As part of its analysis of risks to human health posed by CKD, the Agency investigated whether there are environmental justice issues associated with the management of CKD. Executive Order 12898, dated February 11, 1994, and titled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," provides for Federal agencies to consider environmental justice issues. As explained in its Regulatory Determination (60 FR 7371, February 7, 1995), EPA announced the availability of a report titled Race, Ethnicity, and Poverty Status of Populations Living Near Cement Kilns in the United States.[45] In the report, the Agency examined the demographics around cement plants in order to determine if there exist any trends at the national level which indicate there might be environmental justice considerations with respect to cement kiln dust. EPA's study includes numerous analyses and summaries of demographic data, and is available in the RCRA docket. The results of the demographic studies of populations surrounding cement kilns indicate that cement plants are for the most part located in rural areas populated by varied types of communities. While the data do indicate that there are individual communities with high percentages of minority or low income populations surrounding specific cement kilns, they do not suggest that specific minorities or poverty-level populations are overly represented at the national level.

Today's rule is intended to reduce risks from the management of CKD and to benefit all populations. It is not expected to cause any disproportionately high and adverse human health and environmental effects on minority or low income communities versus affluent or non-minority communities. The Agency solicits comment and input on the implications of this rule for environmental justice, from all interested persons, including members of the environmental justice community and members of the regulated community. The Agency encourages all interested parties to provide comments or further information that might assist the Agency in further assessing impacts on minority or low-income populations.

D. Protection of Children—Applicability of Executive Order 13045

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866.

However, the Agency has reason to believe that the environmental health risk addressed by this action may have an effect on children. The Agency has evaluated the environmental health effects of CKD on children. These documents are are summarized and discussed below and copies have been placed in the RCRA docket for this action.

Children's Health Protection. In accordance with § 5(501), the Agency has evaluated the environmental health effects for CKD on children, and found that generally the risks to children are similar to risks estimated to adults. However, the Agency noted that exposure to CKD may result in elevated blood-lead levels in children that live near cement plants that manage CKD. The Agency evaluated children's health through three mechanisms: the risk assessment to support the Report to Congress, the examination of health effects associated with lead, and the assessment to set risk-based concentration limits for hazardous constituents in CKD used as an agricultural liming agent.

In the risk assessment to support the Report to Congress, the Agency evaluated the risks from exposure to CKD through incidental ingestion of soil and dermal absorption of contaminants in CKD. For these exposure pathways, the Agency adjusted exposure parameters (e.g., ingestion rate, body weight) to reflect a five-year childhood exposure. Based on this analysis, the Agency concluded that health effects to children through these exposure routes were negligible. The analysis is described in detail in the Technical Background Document for the Human Health and Environmental Risk Assessment in Support of the Report to Congress on Cement Kiln Dust Waste—December 1993.

The Agency also evaluated effects of exposure to CKD on blood-lead levels. For this analysis, the Agency estimated concentrations in air, soil, ground water, surface water, and diet using a fate and transport model and then input these concentrations in the Integrated Exposure Uptake Biokinetic Model (IEUBK) to estimate potential blood-lead levels for children near a cement plant. The analysis indicated that two of the five modeled plants may result in blood-levels above 10 ug of lead/dL of blood,

[45] This report is available in the RIC docket (No. F–4–C2A–0016).

a level at which adverse effects to children may occur. Based on this analysis, the Agency noted that CKD may contribute to elevated blood-lead levels in children living near uncontrolled CKD piles. This analysis is described in detail in Technical Background Document for the Notice of Data Availability to Support the Regulatory Determination on Cement Kiln Dust—August 31, 1994.[46]

For the agricultural use risk assessment, EPA conducted a separate assessment of risk from hazardous constituents (metals and dioxins) in CKD for the child of farmer receptor scenario. A detailed description of this analysis is provided in the Risk Assessment for Cement Kiln Dust Used as an Agricultural Soil Amendment. Pathways evaluated for the child of farmer scenario include incidental ingestion of contaminated soil, ingestion of plants grown on amended soil, and products from animals raised on feed from CKD amended fields. For these exposure pathways, the Agency adjusted exposure parameters (e.g., ingestion rate, body weight) to reflect an 18-year childhood exposure. Exposures to lead were evaluated separately for this analysis. The IEUBK model was used to evaluate lead exposure in young children (birth to 7 years of age). The constituent concentration limit proposed for lead in todays rulemaking is based on EPA's analysis of predicted blood lead levels in children due to ingestion of CKD amended soil. Risks from other hazard constituents in agriculturally applied CKD did not differ significantly between children and adult exposure scenarios.

Although the Agency has noted the potential for adverse effects to children based on the current management of CKD, today's proposed rule will provide measures to ensure the protection of children's health. In particular, the proposed management standards will limit exposures via the ground water route and air pathway. In addition, the Agency believes that the storm-water run-off regulations will be adequate to protect from exposures via the overland runoff routes. These measures will limit uncontrolled releases from CKD piles, preventing children's exposures, and thus, protecting children's health. Finally, the development of risk-based concentration limits for hazardous constituents in CKD used agriculturally will ensure that children are adequately protected against potential environmental health risks from CKD used in this manner.

[46] Errata for this document are identified in the Supplemental Errata for this document are identified in the Supplemental Errata Document for the Technical Background Document for the Notice of Data Avialability on Cement Kiln Dust—September 30, 1994.

E. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. The Agency is not aware of any available or potentially applicable voluntary consensus standards that would be applicable to the CKD issues addressed in this proposed rule.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA's analysis of compliance with UMRA found that the proposed action imposes no enforceable duty on any State, local, or tribal governments and therefore does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1870.01) and a copy may be obtained from Sandy Farmer by mail at: OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street S.W., Washington D.C. 20460, or by calling the Agency directly at (202) 260–2740. A copy may also be obtained by email at *farmer.sandy@epamail.epa.gov*, or downloaded off of the internet at *http://www.epa.gov/icr*.

The bottom line annual burden[47] to respondents over three years is about 4,000 hours with a cost of approximately $21 million.

[47] Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to of for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Approximately 88%, or $18.5 million of the total cost is attributable to O&M costs (consultant fees, sampling fees, and mailing costs). The capital costs incurred by facilities for the installation of ground-water monitoring systems, and the acquisition of new filing cabinets are approximately $206 thousand and $69 thousand per year, respectively. The bottom line annual burden to the Agency is about 1000 hours, with a cost of approximately $43 thousand, of which capital costs are insignificant.

EPA estimates that for each cement kiln dust landfill unit, there will be an average reporting burden of about 30 hours annually, which includes time for preparing and submitting demonstrations, notifications, and certifications to the EPA Regional Administrator. EPA estimates that each CKD landfill unit will incur an average annual recordkeeping burden of about 150 hours. This estimate includes time for reading regulations, and preparing demonstrations, notifications, and certifications to be placed in the operating record.

EPA estimates that cement manufacturing facilities that do not operate CKD landfills will incur an average reporting burden of less than one hour annually, and a recordkeeping burden of about three hours annually. The recordkeeping burden estimate includes time for reading the regulations, sampling and analyzing dust, and placing notations, certifications, and demonstrations in the operating record.

EPA may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the Agency's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M Street S.W., Washington, D.C. 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street N.W., Washington D.C. 20503 marked "Attention: Desk Officer for EPA." Please include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 20, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by September 20, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule implements requirements specifically set forth by the Congress in RCRA without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule implements requirements specifically set forth by the Congress in RCRA without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects

40 CFR Part 259

Environmental protection, Administrative practice and procedures, Air pollution control, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Parts 261 and 266

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Hazardous waste.

Dated: July 30, 1999.

Carol M. Browner,

Administrator.

Appendix I to the Preamble—Justification for CKD Listing

Subtitle C of RCRA, as amended, establishes a Federal program for the comprehensive regulation of hazardous wastes. Hazardous waste is defined at section 1004(5) of RCRA, 42 U.S.C. 6903(5) as: (1) those solid wastes which may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness; and (2) those solid wastes which may pose a substantial present or potential hazard to human health or the environment when improperly managed.

Section 3001 of RCRA requires that EPA define which solid wastes are hazardous by either identifying the hazardous characteristics of hazardous wastes or listing particular hazardous wastes. Section 3001(a) of RCRA provides the Agency with flexibility in deciding whether to list or identify a waste as hazardous and to consider the need for regulation. Specifically, RCRA section 3001 requires that EPA, in determining whether to list a waste as hazardous waste, or to otherwise identify a waste as hazardous waste, decide whether a waste "should be subject to the requirements of Subtitle C." Hence, RCRA section 3001 authorizes EPA to determine when Subtitle C regulation is appropriate. The Agency may evaluate

wastes from either specific or nonspecific sources and decide to list a waste as hazardous if it meets one of the three criteria codified at 40 CFR 261.11. The criteria for identifying characteristics and for listing wastes as hazardous are: (1) wastes may be classified as "characteristic" wastes if they have the properties described at 40 CFR 261.21–261.24 which would cause them to be classified as having the characteristics of ignitability, corrosivity, reactivity or toxicity; (2) wastes may be classified as acutely hazardous if they are fatal to humans at low doses, lethal in animal studies at particular doses designated in the regulation, or otherwise capable of causing or significantly contributing to an increase in serious illness; and (3) wastes may be listed as hazardous if they contain hazardous constituents identified in Appendix VIII of 40 CFR Part 261 and the Agency concludes, after considering eleven factors enumerated in 40 CFR 261.11(a)(3), that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. A substance is listed in Appendix VIII if it has been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. One of the factors the Administrator is to consider is the potential of the constituent (from Appendix VIII to 40 CFR Part 261) or any toxic degradation product of the constituent to migrate from the waste into the environment under the plausible types of improper management to which the waste could be subjected (see 40 CFR 261.11(a)(3)(iii)).

EPA has evaluated CKD against the listing criteria and determined that CKD meets the criteria at § 261.11(a)(3), as summarized in Table 1 follows:

TABLE 1.—CKD LISTING DETERMINATION RATIONALE

Criteria at § 261.11(a)(3)	Rationale
Nature of the Toxicity Presented by the Constituents (§ 261.11(a)(3)(i))	CKD contains toxic metals and organics listed in Appendix VIII to Part 261 for which non-cancer and cancer RfDs have been established.
Concentration of the Constituent in the Waste (§ 261.11(a)(3)(ii))	Amount of Appendix VIII constituents in CKD are high due to mass loadings into the cement manufacturing process.
Potential of the Constituent or Any Toxic Degradation Product of the Constituent to Migrate From the Waste Into the Environment Under Specified Types of Improper Management (§ 261.11(a)(3)(iii)).	The 13 cases of documented damage to ground water which are discussed in today's proposal, the Technical Background Document on Ground Water Controls at CKD Landfills, the 1993 Report to Congress, and subsequent NODA, demonstrate a high potential for Appendix VIII constituents to migrate from CKD into ground water. As discussed in the EPA's 1995 Regulatory Determination (60 FR 7370), Agency modeling of risks to human health due to fine particulate dust (10 microns or less) and 36 cases of documented damage to air demonstrate a high potential for contaminants to migrate into the environment via fugitive dust emissions. Modeling results discussed in the NODA on human health and environmental risk assessment (59 FR 47133) indicate human health risks of concern from CKD-derived chemical contaminants via indirect food chain pathways.
The Persistence of the Constituent or Any Toxic Degradation Product of the Constituent (§ 261.11(a)(3)(iv)).	Metals found in CKD are highly persistent in the environment.
The Potential for the Constituent or Any Toxic Degradation Product of the Constituent to Degrade Into Non-Harmful Constituents and the Rate of Degradation (§ 261.11(a)(3)(v)).	Constituents of concern in CKD are primarily metals which, unlike organics, do not have the potential to degrade into non-harmful constituents.
Degree to Which the Constituent or Any Degradation Product of the Constituent Bioaccumulates in Ecosystems (§ 261.11(a)(3)(vi)).	Where CKD is used in agricultural applications, there is a potential for 2,3,7,8-substituted dioxin and 2,3,7,8-substituted dibenzofuran, which are found in CKD, to bioaccumulate in living tissue.
Plausible Types of Improper Management to Which the Waste Could Be Subjected (§ 261.11(a)(3)(vii)).	As discussed in the Report to Congress and subsequent Regulatory Determination (60 FR 7368), CKD is typically managed on-site in unlined and uncovered landfills and piles located in abandoned quarries, retired portions of operating quarries or nearby ravines. Some active piles are also managed underwater or adjacent to surface water and/or agricultural lands. A review of 1995 CKD management practices suggested that, overall, management practices had not substantially changed from those reported in the 1993 Report to Congress. Current management practices are similar to past management scenarios, which are inadequate to limit contaminant releases from CKD management units. Moreover, additional damage cases have been identified which suggest current management practices are inadequate.
Quantities of the Waste Generated at Individual Generation Sites or on a Regional or National Basis (§ 261.11(a)(3)(viii)).	Cement plants average 47,000 metric tons CKD generated per year (1995 average). In 1995, the cement industry generated an estimated 4.1 million metric tons of CKD.
Nature and Severity of the Human Health and Environmental Damage That Has Occurred as a Result of the Improper Management of Wastes Containing the Constituent (§ 261.11(a)(3)(ix)).	As of 1997, EPA has documented evidence of damage to ground water and surface water at 16 sites, three of which have been listed on the Superfund NPL under CERCLA, and one of which remains on the NPL. 36 cases of damage to air have been documented at different sites.
Action Taken By Other Governmental Agencies or Regulatory Programs Based on the Health or Environmental Hazard Posed by the Waste or Waste Constituents (§ 261.11(a)(3)(x)).	Some States have recognized that mismanagement of CKD can cause substantial environmental problems, including Michigan, Pennsylvania, Texas, and Washington; however, the Agency believes State regulatory controls need to be improved as existing requirements vary substantially from State to State. Problems with repeated releases of CKD to the environment suggest that the implementation of existing regulations is uneven.

TABLE 1.—CKD LISTING DETERMINATION RATIONALE—Continued

Criteria at § 261.11(a)(3)	Rationale
Such Other Factors As May Be Appropriate (§ 261.11(a)(3)(xi))	When mixed with water, CKD often exhibits the characteristic of corrosivity (40 CFR 261.22).

Based on the § 261.11(a)(3) criteria, the Agency believes that additional control of improperly managed CKD is warranted to protect the public from human health risks and to prevent environmental damage resulting from current management practices for this waste. The primary concerns to be addressed through the additional controls are documented damages to ground water and potable water supplies, and potential human health risks from inhalation of airborne CKD and ingestion via food chain pathways. There is the potential for ground-water contamination in both karst and non-karst areas, however, and EPA is particularly concerned about areas underlain by limestone with karst features. The Agency believes these potential risks can be eliminated through the implementation of more comprehensive management standards.

Although improperly managed CKD can create significant risks, the Agency believes that these risks can effectively be addressed by adopting certain basic management techniques. CKD poses risks to human health and the environment only in specific circumstances under particular conditions (e.g., disposal of uncompacted CKD in unlined, uncovered landfills exposed to winds and the influx of ground water and rain water). Therefore, EPA is proposing to exclude from listing as hazardous waste CKD that is properly managed according to standards specified in today's proposal (e.g., disposal of wet, compacted CKD, otherwise known as "conditioned" CKD, in covered, lined landfills located above the natural water table), or in a landfill with an alternative design that meets the performance standard and has been approved by the EPA Regional Administrator (or the State Director, in authorized States).

Appendix II to the Preamble—Reportable Quantities

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) and that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in §§ 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (see CERCLA section 101(14)(C)). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). If a hazardous substance is released in an amount that equals or exceeds its RQ, the release must be reported immediately to the National Response Center (NRC) pursuant to CERCLA section 103.

A. Reporting Requirements

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ must immediately notify the NRC as soon as that person has knowledge of the release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, D.C., metropolitan area, the number is (202) 267–2675. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report releases of extremely hazardous substances and CERCLA hazardous substances to State and local authorities. EPCRA section 304 notification must be given immediately after the release of an RQ or more to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release.

Under section 102(b) of CERCLA, all hazardous substances (as defined by CERCLA section 101(14)) have a statutory RQ of one pound, unless and until the RQ is adjusted by regulation. In today's rule, EPA is proposing to list cement kiln dust waste that is not beneficially used and not managed in accordance with 40 CFR Part 259, or cement kiln dust waste that is beneficially used for agricultural purposes and does not meet the requirements in 40 CFR 259.17. Such CKD would be added to the CERCLA list of hazardous substances and would have an unadjusted statutory RQ of one-pound. The Agency is also proposing today to adjust the one-pound statutory RQ for CKD hazardous waste.

B. Basis for Proposed RQ Adjustment

EPA's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined, called "primary criteria", are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.

Generally, for each intrinsic property, EPA ranks the hazardous substance on a five-tier scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. Based on the various primary criteria, the hazardous substance may receive several tentative RQ values. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQ is assigned, the substance is evaluated further for its susceptibility to certain degradative processes, which are used as secondary RQ adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its primary criteria RQ is generally raised one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance.

The standard methodology used to adjust the RQs for RCRA hazardous waste streams differs from the methodology applied to individual hazardous substances. The procedure for assigning RQs to RCRA waste streams is based on an analysis of the hazardous constituents of the waste streams. The constituents of each RCRA hazardous waste stream are identified in 40 CFR part 261, Appendix VII. EPA determines an RQ for each constituent within the waste stream and establishes the lowest RQ value of these constituents as the adjusted RQ for the waste stream. Therefore, in today's rule, the Agency is proposing a one-pound RQ for listed hazardous CKD waste based on the one-pound RQs for arsenic and mercury (i.e., the two constituents within this waste with the lowest RQ).

C. Application of the CERCLA Mixture Rule to Listed Hazardous CKD Waste.

Although in today's rule EPA is proposing a one-pound RQ for listed hazardous CKD waste, EPA is also proposing to modify its interpretation of the mixture rule, as described below, to allow facilities to use the maximum observed concentrations of the constituents within listed hazardous CKD waste in determining when to report releases of this waste.

For listed hazardous CKD waste, where the actual concentrations of the hazardous constituents are not known, EPA is today proposing that persons managing CKD waste have the option of reporting on the basis of the maximum observed concentrations that have been identified by EPA (see Table 2 below). Thus, although actual knowledge of constituent concentrations may not be known, constructive knowledge of the EPA-identified maximum concentrations has been assumed. This assumption is based on actual sampling data, specifically the maximum observed concentrations of hazardous constituents in Listed hazardous CKD waste.[48] Table 2 below identifies the

[48] To review these sampling data, see Appendix E of the Technical Background Document—Analysis of CKD Characteristics and Generation Data, Office of Solid Waste, U.S. EPA, August 1994;

Continued

hazardous constituents for Listed hazardous CKD waste, their maximum observed concentrations in parts per million (ppm), the constituents' RQs, and the number of pounds of the waste needed to contain an RQ of each constituent.

TABLE 2.—POUNDS REQUIRED TO CONTAIN RQ FOR EACH CONSTITUENT OF LISTED HAZARDOUS CKD WASTE

Waste stream constituent	Maximum ppm	RQ (lb)	Pounds required to contain RQ
CKD	.....	1	.....
antimony	360	5,000	13,888,889
arsenic	518	1	1,931
barium	1,402	1,000	713,267
beryllium	12	10	817,661
cadmium	1,540	10	6,494
chromium	450	5,000	11,111,111
lead	7,390	10	1,353
mercury	60	1	16,667
nickel	110	100	909,091
selenium	307	100	325,733
silver	58	1,000	17,271,157
thallium	776	1,000	1,288,660

For example, if Listed hazardous CKD waste is released from a facility, and the actual concentrations of the waste's constituents are not known, it may be assumed that the concentrations will not exceed those listed above in Table 2. Thus, applying the mixture rule, the RQ threshold for lead in this waste is 1,353 pounds, assuming the maximum concentration listed in Table 2. Reporting would be required only when an RQ or more of any hazardous constituent is released.

Where the concentration levels of all hazardous constituents are known, the traditional mixture rule would apply. Under this scenario, if the actual concentration of lead is 100 ppm, 100,000 pounds of the Listed hazardous CKD waste would need to be released to reach the RQ for lead. As applied to Listed hazardous CKD waste, EPA's proposed approach reduces the burden of notification requirements for the regulated community and adequately protects human health and the environment.

The modified interpretation of the mixture rule as it applies to Listed hazardous CKD waste in today's proposal is consistent with EPA's approach in a recent final rule listing four petroleum refining wastes (K169, K170, K171, and K172) as RCRA hazardous wastes and CERCLA hazardous substances (See 63 FR 42110, August 6, 1998). In that rule, the Agency promulgated a change in its interpretation of the mixture rule to allow facilities to consider the maximum observed concentrations for the constituents of the petroleum refining wastes in determining when to report releases of the four wastes. EPA codified this change to its mixture rule interpretation in 40 CFR 302.6(b)(1) as a new subparagraph (iii). If the Agency should take the rule final, EPA will revise this same subparagraph to extend the modified interpretation of the mixture rule to include Listed hazardous CKD waste.

D. Unlisted RCRA Characteristic Waste

Kiln dust waste that is beneficially used (other than for agricultural purposes) or managed in accordance with 40 CFR Part 259, would not be listed as a RCRA hazardous waste or CERCLA hazardous substance by this rulemaking. Nevertheless, such wastes may be a listed hazardous waste if there is a significant violation of the 40 CFR Part 259 standards, or considered unlisted CERCLA hazardous substances (as described in 40 CFR 302.4(b)) when all of the following conditions are met:

(1) the waste is a solid waste, as defined by 40 CFR 261.2;

(2) the waste is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b); and,

(3) the waste exhibits any of the characteristics (i.e., ignitability, corrosivity, reactivity, or toxicity) of a RCRA hazardous waste (defined in 40 CFR 261.20 through 261.24).

Under proposed revisions to 40 CFR 261.4(b) included in today's rule, most CKD wastes have been excluded from regulation as a hazardous waste. Of the CKD wastes that are not excluded, few are expected to exhibit RCRA characteristics. As stated elsewhere in this preamble, cement kiln dust itself does not exhibit the RCRA hazardous waste characteristic of corrosivity, and the waste exhibits the toxicity characteristic infrequently, and only for certain metals. Therefore, CKD waste only rarely is expected to qualify as a RCRA characteristic waste and, thus, an unlisted CERCLA hazardous substance.

For the reasons set out in this preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 259 is added to read as follows:

PART 259—MANAGEMENT STANDARDS FOR CEMENT KILN DUST WASTE

Subpart A—General Provisions

Sec.
259.1 Purpose, scope, and applicability.
259.2 Definitions.
259.3–259.9 [Reserved]

Subpart B—Location Restrictions

259.10 Placement above the natural water table.
259.11 Floodplains.
259.12 Wetlands.
259.13 Fault areas.
259.14 Seismic impact zones.
259.15 Unstable areas.
259.16 Karst terrains.
259.17 Regulation of agricultural use.
259.18–259.19 [Reserved]

Subpart C—Air Criteria

259.20 Air criteria for tanks, containers, or buildings.
259.21 Air criteria for trucks transporting cement kiln dust.
259.22 Air criteria for landfills.
259.23 Recordkeeping requirements.
259.24–259.29 [Reserved]

Subpart D—Design Criteria

259.30 Design criteria.
259.31–259.39 [Reserved]

Subpart E—Ground-Water Monitoring and Corrective Action

259.40 Applicability.
259.41 Ground-water monitoring systems.
259.42 [Reserved]
259.43 Ground-water sampling and analysis requirements.
259.44 Detection monitoring program.
259.45 Assessment monitoring program.
259.46 Assessment of corrective measures.
259.47 Selection of remedy.
259.48 Implementation of the corrective action program.
259.49 [Reserved]

Subpart F—Closure and Post-Closure Care

259.50 Closure criteria.
259.51 Post-closure care requirements.
259.52–259.59 [Reserved]

Subpart G—Financial Assurance Criteria

259.60 Applicability.
259.61 Financial assurance for closure.
259.62 Financial assurance for post-closure care.

The document is located in the EPA RIC docket No F–94–RCKA–FFFFF.

259.63 Financial assurance for corrective action.
259.64 Allowable mechanisms.
259.65 Discounting.

Appendix I to Part 259—Constituents for Detection Monitoring

Authority: 42 U.S.C. 6912(a), 6912(b)(3)(C) and 6924(x).

Subpart A—General Provisions

§ 259.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish minimum national criteria for all cement kiln dust waste landfill (CKDLF) units. These minimum national criteria ensure the protection of human health and the environment.

(b) Regulations in this part apply to any cement kiln dust (CKD) waste actively managed [90 days after the effective date of the final rule], except as otherwise specifically provided in paragraph (d) of this section, including CKD managed in new CKDLF units, existing CKDLF units, and expansions.

(c) These criteria do not apply to CKD managed prior to 90 days after the date of publication of the final rule, except as otherwise specifically provided in paragraph (d) of this section.

(d) CKDLF units that receive waste after the date of publication of this proposal, but stop receiving waste before [the effective date of the final rule], are exempt from all the requirements of this part 259, except the final cover requirement specified in § 259.50. The final cover must be installed within six months of last receipt of CKD waste. Units described in this paragraph that do not have a complete cover installation within this six month period will be subject to all of the requirements of this part 259, unless otherwise specified.

(e) The compliance date for all requirements of this part 259, unless otherwise specified, is [two years after the effective date of the final rule], for all CKDLF units that receive waste after [the effective date of the final rule].

(f) Nothing in this part prevents, restricts, or regulates the beneficial use of CKD as a stabilizer or solidifier during RCRA cleanups under sections 3004(u), 3004(v) and 3008(h), CERCLA response actions that are carried out in accordance with the requirements of 40 CFR Part 300—the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), or when the EPA Regional Administrator (or the State, in authorized States) finds that the beneficial use of CKD in other cases for remedial purposes is protective of human health and the environment.

§ 259.2 Definitions.

This section contains definitions for terms that appear throughout this part; additional definitions appear in the specific sections to which they apply.

Active life means the period of operation beginning with the initial receipt of CKD waste and ending at completion of closure activities in accordance with § 259.50.

Active management means a facility or unit that receives CKD waste and that has not been closed in accordance with § 259.50.

Aquifer means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs.

Beneficial Use of CKD means the substitution of CKD for another product based on similar properties. For purposes of today's proposed rule, beneficial use of CKD includes, but is not restricted to, waste stabilization and general construction (e.g., off-site management of CKD as surface material in unpaved roads and parking lots).

Carbonate terrain means terrain composed of carbonate bedrock (e.g., limestone or dolomite) that consists chiefly of carbonate minerals such as calcite and dolomite. In addition to limestone and dolomite, carbonate terrains may also contain variable amounts of aluminous shale, calcareous muds, and sands.

Cement kiln dust waste (CKD) means the fine particulate solids, associated with the production of Portland cement, which are collected by air pollution control devices used to clean the kiln exhaust.

Cement kiln dust waste landfill (CKDLF) unit means a discrete area of land or an excavation that receives CKD waste, and that is not a land application unit, surface impoundment, waste pile, as those terms are defined under § 257.2 of this chapter, or injection well as defined by 40 CFR Parts 144 and 146. A CKDLF unit may receive other types of non-hazardous industrial wastes, such as kiln brick, construction debris, mining overburden and other commercial solid waste (as defined in § 258.2 of this chapter). A CKDLF unit may be a new CKDLF unit, an existing CKDLF unit, or an expansion of an existing CKDLF unit.

EPA Regional Administrator means the chief administrative officer of the EPA Region responsible for implementing the Subtitle C solid waste permit program. This reference only applies to a State that has not chosen to create a CKD regulatory program under State law. In States with an authorized RCRA program, all references to the EPA Regional Administrator should be read as referring to the State Director, or other State official responsible for implementing the CKD regulatory program.

Existing CKDLF unit means any cement kiln dust waste landfill unit that is receiving CKD as of 90 days after the effective date of the final rule. Waste placement must be consistent with past operating practices or operating practices modified to ensure good management.

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of CKD.

Ground water means water below the land surface in a zone of saturation.

Expansion means a lateral or vertical expansion of the waste boundaries of an existing CKDLF unit.

Leachate means a liquid that has passed through or emerged from CKD and contains soluble, suspended, or miscible materials removed from such waste.

New CKDLF unit means any cement kiln dust landfill unit or lateral expansion of an existing CKDLF unit, that has not received waste prior to 90 days after the effective date of the final rule.

Person(s) managing CKD waste means any person responsible for transport, disposal or sale of any CKD waste, including owners and operators of CKD waste landfills.

Run-off means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Run-on means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

Saturated zone means that part of the earth's crust in which all voids are filled with water.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. This definition specifically includes discontinuous aquifers which are perched.

Waste management unit boundary means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

§§ 259.3–259.9 [Reserved]

Subpart B—Location Restrictions

§ 259.10 Placement above the natural water table.

(a) CKD must be managed in a CKDLF unit with a base that is located above

the upper limit of the natural water table.

(b) For purposes of this section *natural water table* means the natural level at which water stands in a shallow well open along its length and penetrating the surficial deposits just deeply enough to encounter standing water at the bottom. This level is uninfluenced by ground-water pumping or other engineered activities.

§ 259.11 Floodplains.

(a) CKD shall not be managed in a CKDLF unit located in a 100-year floodplain unless a demonstration is made to the EPA Regional Administrator that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The person managing CKD waste must place a demonstration in the operating record and notify the EPA Regional Administrator that the demonstration has been placed in the operating record.

(b) For purposes of this Section:

(1) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) *100-year flood* means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

§ 259.12 Wetlands.

(a) CKD shall not be managed in CKDLF units located in wetlands, unless the following demonstrations are made to the EPA Regional Administrator:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the CKDLF unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard,

(ii) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act,

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973, and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The CKDLF unit will not cause or contribute to significant degradation of wetlands. The integrity of the CKDLF unit and its ability to protect ecological resources must be demonstrated by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the CKDLF unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the CKDLF unit;

(iii) The volume and chemical nature of the waste managed in the CKDLF unit;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a)(1) of this Section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and (5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, wetlands means those areas that are defined in 40 CFR 232.2(r).

(c) Nothing in this section affects the applicability of any other statute or regulation affecting management of CKD in wetlands, including the permitting requirements under section 404 of the Clean Water Act.

§ 259.13 Fault areas.

(a) CKD shall not be managed in a CKDLF unit located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless a demonstration is made to the EPA Regional Administrator that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the CKDLF unit and will be protective of human health and the environment.

(b) For the purposes of this section:

(1) *Fault* means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(2) *Displacement* means the relative movement of any two sides of a fault measured in any direction.

(3) *Holocene* means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

§ 259.14 Seismic impact zones.

(a) CKD shall not be managed in CKDLF units located in seismic impact zones, unless a demonstration is made to the EPA Regional Administrator that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record.

(b) For the purposes of this Section:

(1) *Seismic impact zone* means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g (i.e., 98.0 centimeters per second per second) in 250 years.

(2) *Maximum horizontal acceleration in lithified earth material* means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(3) *Lithified earth material* means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

§ 259.15 Unstable areas.

(a) CKD shall not be managed in CKDLF units located in an unstable area unless a demonstration is made to the EPA Regional Administrator that engineering measures have been incorporated into the CKDLF unit's design to ensure that the integrity of the structural components of the CKDLF unit will not be disrupted. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record. The following factors, at a minimum, must be considered when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this Section:

(1) *Unstable area* means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(2) *Structural components* means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the CKDLF that is necessary for protection of human health and the environment.

(3) *Poor foundation conditions* means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a CKDLF unit.

(4) *Areas susceptible to mass movement* means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the CKDLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

§ 259.16 Karst terrains.

(a) CKD shall not be managed in CKDLF units located in karst terrain unless a demonstration is made to the EPA Regional Administrator that engineering measures have been incorporated into the CKDLF unit's design to ensure that the integrity of the structural components of the CKDLF unit will not be disrupted. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record. The following factors, at a minimum, must be considered when determining whether a terrain is karstic:

(1) On-site or local geologic or geomorphologic features;

(2) On-site or local soil conditions that may result in significant differential settling, collapse, or puncture of a landfill liner;

(3) On-site hydrology, including the character and direction of ground-water flow and points of discharge for the karst ground-water basin the facility may affect; and

(4) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this Section:

(1) *Karst terrains* means areas where karst landscape, with its characteristic hydrogeology and/or landforms are developed. In karst terrain, ground-water flow generally occurs through an open system with both diffuse and conduit flow end member components, and typically has rapid ground-water flow velocities which exceed Darcian flow velocities. Composed of limestone, dolomite, gypsum and other soluble rock, karst terrain typically has well developed secondary porosity enhanced by dissolution. Landforms found in karst terrain include, but are not limited to, sinkholes, sinking streams, caves, springs and blind valleys. Karst terrains always include one or more springs for each ground-water basin, and underground streams except where ground-water flow is diffuse or the host rock has megaporosity.

(2) *Structural components* means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the CKDLF that is necessary for protection of human health and the environment.

(3) *Conduit flow* means nonlinear to turbulent ground-water flow through an integrated system of conduits which behave hydraulically as a system of pipes. Conduit flow is typical of ground-water flow through thick, massive soluble rock such as limestone, where ground water is concentrated, flow is rapid and specific discharges are high. Turbulent conduit flow can be initiated in fractures as thin as 5 to 10 millimeters.

(4) *Darcian flow* means ground-water flow which follows Darcy's law, where the specific discharge is proportional to the hydraulic gradient. Darcian ground-water flow is typically linear and laminar, travels from 1×10^{-11} to 1×10^{2} centimeters per second, and is characteristic of ground-water flow through granular porous media.

(5) *Diffuse flow* means ground-water flow which is laminar and slow (within the range of Darcian flow velocities) through a system of joints and bedding planes that have had minimal solution enlargement.

§ 259.17 Regulation of agricultural use.

CKD shall not be used for agricultural purposes unless the CKD is mixed with sewage sludge and subject to 40 CFR Part 503 standards, or the waste meets the following requirements:

(a) CKD must not contain the toxic constituents arsenic, cadmium, lead, and thallium in excess of the following limits: arsenic—13 mg/kg, cadmium—22 mg/kg, lead—1500 mg/kg, and thallium—15 mg/kg.

(b) CKD must not contain chlorinated dioxins and furans in excess of 40 parts per trillion toxicity equivalent (TEQ).

(c) CKD destined for agricultural use must be sampled and analyzed by the generator prior to shipment for agricultural use to determine whether the waste has concentrations of toxic constituents in excess of those established in paragraphs (a) and (b) of this section.

(d) For all CKD shipped for beneficial agricultural use, the person generating CKD waste shall place in the operating record a notation listing the amount of CKD shipped and a letter of certification signed by a company representative verifying compliance with the provisions specified under paragraphs (a) and (b) of this section.

(e) For purposes of this section, *agricultural use* is defined as use of CKD as an agricultural lime substitute for the purpose of amending the soil to optimize pH or to promote the growth of crops or other foodstuffs. The Agency restricts this definition of use to CKD produced for use by the general public and not for the exclusive use of the owner or operator of the facility which generates the CKD waste.

§§ 259.18–259.19 [Reserved]

Subpart C—Air Criteria

§ 259.20 Air criteria for tanks, containers, or buildings.

(a) This section applies to cement kiln dust waste placed in temporary storage.

Such CKD must be covered or otherwise managed to control wind dispersal of dusts, or stored in tanks, containers or buildings that meet the following minimum standards:

(1) The tank, container, or building should be an engineered structure with a human-made floor, walls, and a roof all of which prevent water from reaching the stored CKD and are made of non-earthen materials providing structural support.

(2) The tank, container, or building must be free standing and not a surface impoundment (as defined in 40 CFR 257.2), be manufactured of a material suitable for storage of its contents, and meet appropriate specifications such as those established by either ASTM, API, or UL standards.

(b) For purposes of this section, *temporary storage* means interim storage of CKD designated for recycling, sale or final disposal.

(c) Alternative measures for fugitive dust control may be approved by the EPA Regional Administrator if a demonstration is made to the EPA Regional Administrator that the alternative measures are at least as effective in controlling wind dispersal of CKD as the minimum standards defined in paragraph (a) of this section. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record.

§ 259.21 Air criteria for trucks transporting cement kiln dust.

(a) CKD waste transported in trucks or other vehicles must be covered or otherwise managed to control wind dispersal of dust.

(b) Alternative measures for fugitive dust control may be approved by the EPA Regional Administrator if a demonstration is made to the EPA Regional Administrator that the alternative measures are at least as effective in controlling wind dispersal of CKD as the standards defined in paragraph (a) of this section. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record.

§ 259.22 Air criteria for landfills.

(a) CKD disposed in all CKDLF units must be managed in a manner that does not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act, as amended.

(b) CKD must be disposed in CKDLF units and expansions constructed so that such CKD is:

(1) Covered or otherwise managed to control wind dispersal of dust, or

(2) Emplaced as conditioned CKD to control wind dispersal, and

(3) Covered with a sufficient thickness of earthen material at the end of each operating day, or at more frequent intervals if necessary, except as provided in paragraph (d) of this section, to control blowing dust.

(c) For purposes of this section *conditioned CKD* means cement kiln dust that has been compacted in the field at appropriate moisture content using moderate to heavy equipment to attain 95% of the standard Proctor maximum dry density value according to ASTM D 698 or D 1557 test methods.

(d) Alternative measures for fugitive dust control may be approved by the EPA Regional Administrator if a demonstration is made to the EPA Regional Administrator that the alternative measures are at least as effective in controlling wind dispersal of CKD as the minimum standards defined in paragraphs (a), (b), and (c) of this section. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record.

§ 259.23 Recordkeeping requirements.

(a) An operating record of a CKDLF unit must be retained at the facility and/or in an alternative location approved by the EPA Regional Administrator. The following information must be recorded in the operating record as it becomes available:

(1) Any notification of violation required under paragraph (c) of this section;

(2) Any certification of compliance required under paragraph (d) of this section;

(3) Any location restriction demonstration required under Subpart B;

(4) Any CKDLF unit design documentation;

(5) Any demonstration, certification, finding, monitoring, testing, or analytical data required by Subpart E;

(6) Any demonstration, certification, testing, or analytical data required by § 259.17(d);

(7) Any plans for selected remedies as required by § 259.47;

(8) Closure and post-closure care plans and any monitoring, testing, or analytical data as required by §§ 259.50 and 259.51; and

(9) Any cost estimates and financial assurance documentation required by Subpart G of this part G.

(b) The person managing CKD waste must notify the EPA Regional Administrator when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be made available for inspection by the public at all reasonable times, and furnished upon request to the EPA Regional Administrator.

(c) The person managing CKD waste must notify the EPA Regional Administrator, in a letter signed by company management, whenever any standard of this rule is violated.

(d) The person managing CKD waste must submit a certification to the EPA Regional Administrator, signed by company management, once each year: throughout the active life and post-closure care period that a new or existing CKDLF unit is in compliance with the air criteria, ground-water monitoring, and corrective action provisions of subparts C and E of this part; and throughout the active life of the facility that all CKD managed on-site or sent off-site for beneficial use is disposed in compliance with all applicable provisions of this part. The certification must also certify that all records from paragraph (a) of this section are properly maintained and available to the public in accordance with the provisions of paragraph (b) of this section.

(e) The EPA Regional Administrator can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a), (b), (c), (d) and (e) of this section.

§§ 259.24–259.29 [Reserved]

Subpart D—Design Criteria

§ 259.30 Design criteria.

(a) Prior to construction of a CKDLF unit in carbonate terrain, a karst ground-water investigation must be conducted to define the direction of ground-water flow and points of discharge for the karst ground-water basin(s) the facility may affect. The karst ground-water investigation shall include, but not be limited to, a karst inventory and a dye tracer study to identify springs which are hydrologically related to the CKDLF unit. The investigation must be certified by a qualified ground-water scientist and approved by the EPA Regional Administrator.

(b) The requirement for a karst ground-water investigation under this part may be suspended by the EPA Regional Administrator for a CKDLF unit if a demonstration is made that there is no potential for migration of

hazardous constituents from that CKDLF unit to the uppermost aquifer (as defined in § 259.2) during the active life of the unit and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the EPA Regional Administrator, and must be based upon:

(1) Site-specific field collected measurements, sampling and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(c) CKD must be managed in CKDLF units and lateral expansions constructed:

(1) In accordance with a design which ensures that the concentration values listed in Table 1 of this section shall not be exceeded in the uppermost aquifer at the relevant point of compliance (POC), as specified under paragraph (d) of this section, or

(2) With a composite liner, as defined in paragraph (d) of this section and a leachate collection system that is designed and constructed to maintain less than a 30 cm depth of leachate over the liner.

(d) For purposes of this Section, *composite liner* means a system consisting of two components; the upper component must consist of a minimum 30 mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10E^{-7}$ cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

(e) When designing a CKDLF unit that complies with paragraph (c)(1) of this section, the following factors, at a minimum, must be considered:

(1) The hydrologic characteristics of the facility and surrounding land, especially the presence of karst terrain;

(2) The climatic factors of the area; and

(3) The volume and physical and chemical characteristics of the leachate.

(f) The relevant POC shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the CKDLF unit. In determining the relevant POC, the following factors shall be considered:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The volume and physical and chemical characteristics of the leachate;

(3) The quantity, quality, and direction of flow of ground water;

(4) The proximity and withdrawal rate of the ground-water users;

(5) The availability of alternative drinking water supplies;

(6) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water; and

(7) Public health, safety, and welfare effects.

Table 1.—Concentration Limits for Metals in the Uppermost Aquifer

Chemical	MCL (mg/l)
Antimony	0.006
Arsenic	0.05
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium (total)	0.1
Lead	0.015[a]
Mercury	0.002
Selenium	0.05
Silver	0.01[b]
Thallium	0.002

[a] EPA Action level.
[b] Federal Secondary Drinking Water MCL.

(g) The person managing CKD waste must notify the EPA Regional Administrator when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be made available for inspection by the public at all reasonable times, and furnished upon request to the EPA Regional Administrator.

(h) Alternative CKDLF unit designs may be approved by the EPA Regional Administrator if a demonstration is made that the alternative unit designs protect ground water without presenting a threat to human health and the environment.

§§ 259.31-259.39 [Reserved]

Subpart E—Ground-Water Monitoring and Corrective Action

§ 259.40 Applicability.

(a) The requirements in this part apply to all new and existing CKDLF units, except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under §§ 259.41 through 259.45 may be suspended by the EPA Regional Administrator for a CKDLF unit if a demonstration is made that there is no potential for migration of hazardous constituents from that CKDLF unit to the uppermost aquifer (as defined in § 259.2) during the active life of the unit and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the EPA Regional Administrator, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(c) Persons managing CKD waste in CKDLF units must comply with the ground-water monitoring requirements of this part according to the following schedule:

(1) Existing CKDLF units must be in compliance with the ground-water monitoring requirements specified in §§ 259.41 through 259.45 by two years after the effective date of the rule;

(2) New CKDLF units and expansions of existing CKDLF units must be in compliance with the ground-water monitoring requirements specified in §§ 259.41 through 259.45 before cement kiln dust waste can be placed in the unit.

(d) The person managing CKD waste must notify the EPA Regional Administrator once each year throughout the active life and post-closure care period that a new or existing CKDLF unit is in compliance with the ground-water monitoring and corrective action provisions of this Subpart.

(e) Once established at a CKDLF unit, ground-water monitoring shall be conducted throughout the active life and post-closure care period of that CKDLF unit as specified in § 259.51.

(f) For the purposes of this subpart, a *qualified ground-water scientist* is a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground-water monitoring, contaminant fate and transport, and corrective action, particularly as they relate to karst terrain.

§ 259.41 Ground-water monitoring systems.

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells and/or springs, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 259.2). The ground-water monitoring system must include at a minimum one up-gradient and three down-gradient wells. Ground-water samples must:

(1) Represent the quality of background ground water that has not been affected by leakage from the unit being monitored. A determination of background quality may include sampling of wells and/or springs that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the person managing CKD waste to determine what wells and springs are hydraulically upgradient; or

(ii) Sampling at other wells and springs will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells and springs; and

(2) Represent the quality of ground water passing the relevant POC. The downgradient monitoring system must be installed at the relevant POC (or at the waste management unit boundary) that ensures detection of ground-water contamination in the uppermost aquifer. When physical obstacles preclude installation of ground-water monitoring wells at the relevant POC at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant POC that ensures detection of ground-water contamination in the uppermost aquifer.

(b) A multi-unit ground-water monitoring system may be installed instead of separate ground-water monitoring systems for each CKDLF unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of paragraph (a) of this section and will be as protective of human health and the environment as individual monitoring systems for each CKDLF unit, based on the following factors:

(1) Number, spacing, and orientation of the CKDLF units;

(2) Hydrogeologic setting;

(3) Site history; and

(4) Engineering design of the CKDLF units.

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The person managing CKD waste must notify the EPA Regional Administrator that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(2) The monitoring wells, springs, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(d) The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that must include thorough characterization of:

(i) Aquifer thickness, ground-water flow rate, ground-water flow direction including seasonal and temporal fluctuations in ground-water flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(2) Certified by a qualified ground-water scientist or approved by the EPA Regional Administrator. Within 14 days of this certification, the person managing CKD waste must notify the EPA Regional Administrator that the certification has been placed in the operating record.

§ 259.42 [Reserved]

§ 259.43 Ground-water sampling and analysis requirements.

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells (and at springs respective to site hydrogeology) installed in compliance with § 259.41(a). The person managing CKD waste must notify the EPA Regional Administrator that the sampling and analysis program documentation has been placed in the operating record and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. Ground-water samples shall not be field-filtered prior to laboratory analysis.

(c) The sampling procedures and frequency must ensure protection of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The rate and direction of ground-water flow must be determined each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(e) The background ground-water quality must be established in a hydraulically upgradient or background well(s) (and spring(s) if appropriate) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the CKDLF unit, as determined under § 259.44(a) or § 259.45(a). Background ground-water quality may be established at wells (and springs if appropriate) that are not located hydraulically upgradient from the CKDLF unit if it meets the requirements of § 259.41(a)(1).

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph (g) of this section. The sampling procedures shall be those specified under § 259.44(b) for detection monitoring, § 259.45(b) and (d) for assessment monitoring, and § 259.46(b) for corrective action.

(g) One of the following statistical methods to be used in evaluating ground-water monitoring data must be specified in the operating record for each hazardous constituent. The statistical test chosen shall be

conducted separately for each hazardous constituent in each well (and spring if appropriate).

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph (h) of this section. The person managing CKD waste must place a justification for this alternative in the operating record and notify the EPA Regional Administrator of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of paragraph (h) of this section.

(h) Any statistical method chosen under paragraph (g) of this section shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the person managing CKD waste to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimental error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The person managing CKD waste must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the CKDLF unit, as determined under § 259.44(a) or § 259.45(a).

(1) In determining whether a statistically significant increase has occurred, the person managing CKD waste must compare the ground-water quality of each parameter or constituent at each monitoring well (and spring if appropriate) designated pursuant to § 259.41(a)(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (g) and (h) of this section.

(2) Within 14 days after completing sampling and analysis, the person managing CKD waste must determine whether there has been a statistically significant increase over background at each monitoring well and spring.

§ 259.44 Detection monitoring program.

(a) Detection monitoring is required at CKDLF units at all ground-water monitoring wells (and springs if appropriate) defined under §§ 259.41 (a)(1) and (a)(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in Appendix I to this part.

(1) The EPA Regional Administrator may delete any of the Appendix I of this part monitoring parameters for a CKDLF unit if it can be shown that the removed constituents are not reasonably expected to be in, mobilized by, or derived from the CKD contained in the unit.

(2) The EPA Regional Administrator may establish an alternative list of inorganic indicator parameters for a CKDLF unit, in lieu of some or all of the heavy metals, if the alternative parameters provide a reliable indication of inorganic releases from the CKDLF unit to the ground water. In determining alternative parameters, the EPA Regional Administrator shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in wastes managed at the CKDLF unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the CKDLF unit;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the ground-water background.

(b) The monitoring frequency for all constituents listed in Appendix I to this part, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each background and downgradient well (and spring if appropriate) must be collected and analyzed for the constituents listed in Appendix I of this part, or the alternative list approved in accordance with paragraph (a)(2) of this section,

during the first semiannual sampling event.

(c) At least one sample from each background and downgradient well (and spring if appropriate) must be collected and analyzed during subsequent semiannual sampling events. The EPA Regional Administrator may specify an appropriate alternative frequency for repeated sampling and analysis for constituents listed in Appendix I of this part, or the alternative list approved in accordance with paragraph (a)(2) of this Section, during the active life (including closure) and the post-closure care period. The alternative frequency during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;
(2) Hydraulic conductivity of the aquifer and unsaturated zone;
(3) Ground-water flow rates;
(4) Minimum distance between upgradient edge of the CKDLF unit and downgradient monitoring well screen (minimum distance of travel);
(5) Storm hydrograph of springs, if appropriate; and
(6) Resource value of the aquifer.

(d) If the person managing CKD waste determines, pursuant to § 259.43(g), that there is a statistically significant increase over background for one or more of the constituents listed in Appendix I to this part at any monitoring well (or spring if appropriate) at the boundary specified under § 259.41(a)(2), the person managing CKD waste:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the EPA Regional Administrator of this finding that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 259.45 within 90 days, except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than a CKDLF unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and be placed in the operating record. If a successful demonstration is made and documented, the person managing CKD waste may continue detection monitoring as specified in this Section. If, after 90 days, a successful demonstration is not made, the person managing CKD waste must initiate an assessment monitoring program as required in § 259.45.

§ 259.45 Assessment monitoring program.

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in the Appendix I of this part.

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the person managing CKD waste must sample and analyze the ground water for the following hazardous metal constituents identified in Appendix VIII of Part 261 of this chapter: antimony, arsenic, barium, beryllium, cadmium, chromium (total), lead, mercury, nickel, selenium, silver, and thallium. A minimum of one sample from each downgradient well (and spring if appropriate) must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells (and springs if appropriate) as a result of the metal constituent analysis of Appendix VIII of Part 261 of this chapter, a minimum of four independent samples from each background and downgradient well (and spring if appropriate) must be collected and analyzed to establish background for the constituents. The EPA Regional Administrator may specify an appropriate subset of wells (and springs if appropriate) to be sampled and analyzed for metal constituents (as listed in Appendix VIII of Part 261 of this chapter) during assessment monitoring. The EPA Regional Administrator may delete any of the metal constituent monitoring parameters required by paragraph (b) of this section for a CKDLF unit if it can be shown that the removed constituents are not reasonably expected to be in, mobilized by, or derived from the waste contained in the unit.

(c) The EPA Regional Administrator may specify an appropriate alternate frequency for repeated sampling and analysis for the set of metal constituents (as listed in Appendix VIII of Part 261 of this chapter) required by paragraph (b) of this Section, during the active life (including closure) and post-closure care of the unit considering the following factors:

(1) Lithology of the aquifer and unsaturated zone;
(2) Hydraulic conductivity of the aquifer and unsaturated zone;
(3) Ground-water flow rates;
(4) Minimum distance between upgradient edge of the CKDLF unit and downgradient monitoring well screen (minimum distance of travel);
(5) Storm hydrograph of springs if appropriate: and
(6) Resource value of the aquifer; and
(7) Nature (fate and transport) of any constituents detected in response to this Section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this Section, the person managing CKD waste must:

(1) Within 14 days, place a notice in the operating record identifying the metal constituents (as listed in Appendix VIII of Part 261 of this chapter) that have been detected and notify the EPA Regional Administrator of the identified constituents and that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells (and springs if appropriate) specified by § 259.41(a), conduct analyses for all constituents in Appendix I of this part, and for those metal constituents in Appendix VIII of Part 261 of this chapter that are detected in response to paragraph (b) of this Section, and record their concentrations in the facility operating record. At least one sample from each background and downgradient well (and spring if appropriate) must be collected and analyzed during these sampling events.

(3) Establish background concentrations for any constituents detected pursuant to paragraph (b) or (d)(2) of this Section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this Section. The ground-water protection standards shall be established in accordance with paragraph (h) of this Section.

(e) If the concentrations of all metal constituents (as listed in Appendix VIII of Part 261 of this chapter) are shown to be at or below background values, using the statistical procedures in § 259.43(g), for two consecutive sampling events, the person managing CKD waste must notify the EPA Regional Administrator of this finding prior to returning to detection monitoring.

(f) If the concentrations of any metal constituents (as listed in Appendix VIII of Part 261 of this chapter) are above background values, but all concentrations are below the ground-water protection standard established under paragraph (h) of this Section,

using the statistical procedures in § 259.43(g), the person managing CKD waste must continue assessment monitoring in accordance with this Section.

(g) If one or more metal constituents (as listed in Appendix VIII of Part 261 of this chapter) are detected at statistically significant levels above the ground-water protection standard established under paragraph (h) of this section in any sampling event, the person managing CKD waste must, within 14 days of this finding, place a notice in the operating record identifying the metal constituents that have exceeded the ground-water protection standard and notify the EPA Regional Administrator and all appropriate local government officials that the notice has been placed in the operating record. The person managing CKD waste must also:

(1)(i) Characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(2) of this Section;

(iii) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells (and springs if appropriate) in accordance with paragraph (g)(1) of this section; and

(iv) Initiate an assessment of corrective measures as required by § 259.46 within 90 days; or

(2) May demonstrate that a source other than a CKDLF unit caused the contamination, or that the SSI increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and placed in the operating record. If a successful demonstration is made, the person managing CKD waste must continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the metal constituents (as listed in Appendix VIII of part 261 of this chapter) are at or below background as specified in paragraph (e) of this section. Until a successful demonstration is made, the person managing CKD waste must comply with paragraph (g) of this section including initiating an assessment of corrective measures.

(h) The person managing CKD waste must establish a ground-water protection standard for each metal constituent (as listed in Appendix VIII of Part 261 of this chapter) detected in the ground water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 CFR Part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 259.41(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under paragraph (h)(1) of this section or health based levels identified under paragraph (i)(1) of this section, the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants;

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the $1x10^{-4}$ to $1x10^{-6}$ range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutations.

(j) In establishing ground-water protection standards under paragraph (i) of this section, the Director of an approved State may consider the following:

(1) Multiple contaminants in the ground water;

(2) Exposure threats to sensitive environmental receptors; and

(3) Other site-specific exposure or potential exposure to ground water.

§ 259.46 Assessment of corrective measures.

(a) Within 90 days of finding that any of the metal constituents listed in Appendix VIII of Part 261 of this chapter have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 259.45(h), the person managing CKD waste must initiate an assessment of corrective measures. Such an assessment must be completed within 90 days, or within an alternative period of time decided by the EPA Regional Administrator.

(b) The person managing CKD waste must continue to monitor in accordance with the assessment monitoring program as specified in § 259.45.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 259.47, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedies.

(d) The person managing CKD waste must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

§ 259.47 Selection of remedy.

(a) Within 90 days of completing an assessment of corrective measures conducted under § 259.46, the person managing CKD waste must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. Within 14 days of selecting a remedy, the person managing CKD waste must submit to the EPA Regional Administrator a report describing the selected remedy which demonstrates how the remedy meets the standards in paragraph (b) of this section. The report must include a notification that the owner and operator has placed a copy of the report in the operating record.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to § 259.45(h);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of metal constituents (as listed in Appendix VIII of Part 261 of this chapter) into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in § 259.48(d).

(c) In selecting a remedy that meets the standards of paragraph (b) of this section, the person managing CKD waste shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedies, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal of containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases; and

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the person managing CKD waste, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s).

(d) The person managing CKD waste shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within 90 days taking into consideration the factors set forth in paragraphs (d) (1) through (8) of this section. The person managing CKD waste must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under § 259.45 (g) or (h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(v) The hydrogeologic characteristics of the facility and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Other relevant factors.

(e) The EPA Regional Administrator may determine an alternative period of time for the person managing CKD waste to initiate or complete remedial activities pursuant to paragraph (d) of this section.

(f) The EPA Regional Administrator may determine that remediation of a release of a constituent (as listed in Appendix VIII of Part 261 of this chapter) from a CKDLF unit is not necessary if the person managing CKD waste demonstrates to the satisfaction of the EPA Regional Administrator that:

(1) The ground water is additionally contaminated by substances that have originated from a source other than a CKDLF unit and those substances are present in concentrations such that cleanup of the release from the CKDLF unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 259.45(h); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(g) This section shall not affect the authority of the EPA Regional Administrator to require the person managing CKD waste to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water, or to remediate the ground water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

§ 259.48 Implementation of the corrective action program.

(a) Based on the schedule established under § 259.47(d) for initiation and completion of remedial activities, the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under § 259.45;

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with ground-water protection standards pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 259.47; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 259.47. The following factors must be considered by a person managing CKD waste in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) A person managing CKD waste may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 259.47(b) are not being achieved through the remedy selected. In such cases, the person managing CKD waste must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the person managing CKD waste makes the determination under paragraph (c) of this section.

(c) If the person managing CKD waste determines that compliance with requirements under § 259.47(b) cannot be practically achieved with any currently available methods, the person managing CKD waste must:

(1) Obtain certification of a qualified ground-water scientist or approval by the EPA Regional Administrator that compliance with requirements under § 259.47(b) cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(4) Notify the EPA Regional Administrator within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 259.47, or an interim measure required under paragraph (a)(3) of this section, shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 259.47 shall be considered complete when:

(1) The person managing CKD waste complies with the ground-water protection standards established under §§ 259.45(h) at all points within the plume of contamination that lie beyond the ground-water monitoring well (and spring system if appropriate) established under § 259.41(a).

(2) Compliance with the ground-water protection standards established under § 259.45(h) has been achieved by demonstrating that concentrations of metal constituents (as listed in Appendix VIII of Part 261 of this chapter) have not exceeded the ground-water protection standards for a period of three consecutive years using the statistical procedures and performance standards in § 259.43 (g) and (h). The EPA Regional Administrator may specify an alternative length of time during which the person managing CKD waste must demonstrate that concentrations of metal constituents (as listed in Appendix VIII of Part 261 of this chapter) have not exceeded the ground-water protection standards taking into consideration:

(i) Extent and concentration of the release;

(ii) Behavior characteristics of the hazardous constituents in the ground water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the person managing CKD waste must notify the EPA Regional Administrator within 14 days that a certification that the remedy has been completed in compliance with the requirements of paragraph (e) of this section has been placed in the operating record. The certification must be signed by the person managing CKD waste and by a qualified ground-water scientist or approved by the EPA Regional Administrator.

(g) When, upon completion of the certification, the person managing CKD waste determines that the corrective action remedy has been completed in accordance with the requirements under paragraph (e) of this section, the person managing CKD waste shall be released from the requirements for financial assurance for corrective action under § 259.63.

§ 259.49 [Reserved]

Subpart F—Closure And Post-Closure Care

§ 259.50 Closure criteria.

(a) A final cover system must be installed at all CKDLF units that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

(1) Have a saturated hydraulic conductivity less than or equal to the saturated hydraulic conductivity of any bottom liner system or natural subsoils present, or a saturated hydraulic conductivity no greater than $1x10^{-5}$ cm/sec, whichever is less, and

(2) Minimize infiltration through the closed CKDLF by the use of an infiltration layer that contains a minimum 18-inches of earthen material, and

(3) Minimize erosion of the final cover by the use of an erosion layer that contains a sufficient thickness of earthen material that is capable of sustaining native plant growth, and

(4) Minimize the disruption of the final cover through a design that accommodates settling and subsidence.

(b) The EPA Regional Administrator may approve an alternative final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (a)(1) and (a)(2) of this section, and

(2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of this section.

(c) The person managing CKD waste must prepare a written closure plan that describes the steps necessary to close all CKDLF units at any point during their active life in accordance with the cover design requirements in paragraphs (a) or (b) of this section, as applicable. The closure plan, at a minimum, must include the following information:

(1) A description of the final cover, designed in accordance with paragraph (a) of this section and the methods and procedures to be used to install the cover;

(2) An estimate of the largest area of the CKDLF unit ever requiring a final cover as required under paragraph (a) of this section at any time during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for completing all activities necessary to satisfy the closure criteria in this section.

(d) The person managing CKD waste must notify the EPA Regional Administrator that a closure plan has been prepared and placed in the operating record no later than the effective date of this rule, or by the date of initial receipt of waste, whichever is later.

(e) Prior to beginning closure of each CKDLF unit as specified in paragraph (f) of this section, the person managing CKD waste must notify the EPA Regional Administrator that a notice of the intent to close the unit has been placed in the operating record.

(f) The closure activities of each CKDLF unit must begin no later than 30 days after the date on which the CKDLF unit receives the known final receipt of wastes or, if the CKDLF unit has remaining capacity and there is a reasonable likelihood that the CKDLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the EPA Regional Administrator if the person managing CKD waste demonstrates that the CKDLF unit has the capacity to receive additional wastes and the person managing CKD waste has taken and will continue to take all steps necessary to prevent threats to human health and the environmental from the unclosed CKDLF unit.

(g) The closure activities of all CKDLF units must be completed in accordance with the closure plan within 180 days following the beginning of closure as specified in paragraph (f) of this Section. Extensions of the closure period may be granted by the EPA Regional Administrator if the person managing CKD waste demonstrates that closure will, of necessity, take longer than 180 days and he or she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed CKDLF unit.

(h) Within 14 days following closure of each CKDLF unit, the person managing CKD waste must notify the EPA Regional Administrator that a certification, signed by an independent registered professional engineer, facility management, or approved by the EPA Regional Administrator, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

(i)(1) Within 14 days following closure of all CKDLF units, the person managing CKD waste must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search, and notify the EPA Regional Administrator that the notation has been recorded and a copy has been placed in the operating record.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that the land has been used for disposal of CKD waste.

(j) The person managing CKD waste may request permission from the EPA Regional Administrator to remove the notation from the deed if all CKD waste has been removed from the facility.

§ 259.51 Post-closure care requirements.

(a) Following closure of each CKDLF unit, the person managing CKD waste must conduct post-closure care. Post-closure care must be conducted for 30 years, except as provided under paragraph (b) of this Section, and consist of at least the following:

(1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) Maintaining and operating the leachate collection system in accordance with the requirements in § 259.30, if applicable. The EPA Regional Administrator may allow the person managing CKD waste to stop managing leachate if the person managing CKD waste demonstrates that leachate no longer poses a threat to human health and the environment; and

(3) Monitoring the ground water in accordance with the requirements of Subpart E of this part and maintaining the ground-water monitoring system, if applicable.

(b) The length of the post-closure care period may be:

(1) Decreased by the EPA Regional Administrator if the person managing CKD waste demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the EPA Regional Administrator; or

(2) Increased by the EPA Regional Administrator if the EPA Regional Administrator determines that the lengthened period is necessary to protect human health and the environment.

(c) For all CKDLF units the person managing CKD waste must prepare a written post-closure care plan that includes, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in paragraph (a) of this Section for each CKDLF unit, and the frequency at which these activities will be performed;

(2) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this part. The EPA Regional Administrator may approve any other disturbance if the person managing CKD waste demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(d) The person managing CKD waste must notify the EPA Regional Administrator that a post-closure care plan has been prepared and placed in the operating record no later than the effective date of this rule, or by the date of initial receipt of waste, whichever is later.

(e) Within 14 days following completion of the post-closure care period for each CKDLF unit, the person managing CKD waste must notify the EPA Regional Administrator that a certification, signed by an independent, registered professional engineer or approved by the EPA Regional Administrator, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record.

§§ 259.52–259.59 [Reserved]

Subpart G—Financial Assurance Criteria

§ 259.60 Applicability.

(a) The requirements of this section apply to owners and operators of all CKDLF units, except owners or operators who are State or Federal Government entities whose debts and liabilities are the debts and liabilities of a State or the United States.

(b) In this part, Owner means the person(s) who owns a CKDLF unit or part of a CKDLF unit.

Operator means the person(s) responsible for the overall operation of a CKDLF unit or part of a CKDLF unit.

§ 259.61 Financial assurance for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all CKDLF units ever requiring a final cover as required under § 259.50 at any time during the active life in accordance with the closure plan. The owner or operator must notify the EPA Regional Administrator that the estimate has been placed in the operating record.

(1) The cost estimate must equal the cost of closing the largest area of all CKDLF unit ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 259.50(c)(2)).

(2) During the active life of the CKDLF unit, the owner or operator must annually adjust the closure cost estimate for inflation.

(3) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this Section if changes to the closure plan or CKDLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(4) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this Section if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the CKDLF unit. Within 14 days of this finding, the person managing CKD waste must notify the EPA Regional Administrator that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(b) For each CKDLF unit receiving CKD waste after the effective date of the rule, the owner or operator must establish financial assurance for closure in compliance with § 259.64. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with § 259.50 (h) and (i).

§ 259.62 Financial assurance for post-closure care.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the CKDLF unit in compliance with the post-closure care plan developed under § 259.51. The post-closure care cost estimate used to demonstrate financial assurance in paragraph (b) of this Section must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. The owner or operator must notify the EPA Regional Administrator that the estimate has been placed in the operating record.

(1) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the entire post-closure care period.

(2) During the active life of the CKDLF unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(3) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the post-closure plan or CKDLF unit conditions increase the maximum costs of post-closure care.

(4) The owner or operator may reduce the post-closure care cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. Within 14 days of this finding, the owner or operator must notify the EPA Regional Administrator that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.

(b) The owner or operator of each CKDLF unit must establish, in a manner in accordance with § 259.64, financial assurance for the costs of post-closure care as required under § 259.51. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with § 259.51(e).

§ 259.63 Financial assurance for corrective action.

(a) An owner or operator in a CKDLF unit required to undertake a corrective action program under § 259.48 must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under § 259.48. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. Prior to undertaking corrective action under § 259.48, the owner or operator must notify the EPA Regional Administrator that the estimate has been placed in the operating record.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with § 259.48(f).

(2) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the corrective action program or CKDLF unit conditions increase the maximum costs of corrective action.

(3) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum remaining costs of corrective action. Within 14 days of making an annual adjustment under paragraph (a)(1) of this section, the owner or operator must notify the EPA Regional Administrator that the justification for the reduction or increase of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

(b) An owner or operator in a CKDLF unit, if required to undertake a corrective action program under § 259.48 must establish financial assurance using the allowable mechanisms defined under § 259.64. An owner or operator in a CKDLF unit must establish financial assurance for all corrective action programs initiated during the active life of the unit, closure, and post-closure care periods. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with §§ 259.48 (f) and (g).

§ 259.64 Allowable mechanisms.

The mechanisms used to demonstrate financial assurance under this Section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Persons managing CKD waste must choose from the options specified in paragraphs (a) through (j) of this section.

(a) *Trust Fund.* (1) The owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. A copy of the trust agreement must be placed in the facility's operating record.

(2) Payments into the trust fund must be made annually by the owner or operator over the term of the initial control mechanism or over the remaining life of the CKDLF unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (k) of this section, divided by the number of years in the pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

Next Payment = [CE − CV]/Y

Where:

CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (k) of this section, divided by the number of years in the corrective action pay-in period as defined in paragraph (a)(2) of this Section. The amount of subsequent payments must be determined by the followingformula:

Next Payment = [RB − CV]/Y

Where:

RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before two years elapse after the effective date of this rule, whichever is later; in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48.

(6) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this Section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph and paragraph (a) of this section, as applicable.

(7) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. Prior to reimbursement, the owner or operator must notify the EPA Regional Administrator that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(8) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this Section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of § 259.61(b), § 259.62(b), or § 259.63(b).

(b) *Surety Bond Guaranteeing Payment or Performance.* (1) The owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. The owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before two years elapse after [the effective date of this rule], whichever is later; in the case of closure and post-closure care, the bond must be effective no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48. Within 14 days after demonstrating financial assurance according to this section, the owner or operator must notify the EPA Regional Administrator that a copy of the bond has been placed in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in paragraph (k) of this section.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph (a) of this Section except the requirements for initial payment and subsequent annual payments specified in paragraphs (a)(2), (3), (4) and (5) of this section.

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the EPA Regional Administrator 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this Section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with § 259.61(b), § 259.62(b) or § 259.63(b).

(c) *Letter of Credit.* (1) The owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before two years elapse after the effective date of this rule, whichever is later; in the case of closure and post-

closure care, the letter of credit must be effective no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48. Within 14 days after obtaining a letter of credit, the owner or operator must notify the EPA Regional Administrator that a copy of the letter of credit has been placed in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: Name, and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in paragraph (k) of this Section. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the EPA Regional Administrator 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.

(4) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this Section or if the owner or operator is released from the requirements of this Section in accordance with § 259.61(b), § 259.62(b) or § 259.63(b).

(d) *Insurance.* (1) The owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or before two years elapse after the effective date of the requirements of this rule, whichever is later; in the case of closure and post-closure care, the insurance must be effective no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. Within 14 days after obtaining insurance, the owner or operator must notify the EPA Regional Administrator that a copy of the insurance policy has been placed in the operating record.

(2) The closure or post-closure care insurance policy must guarantee that funds will be available to close the CKDLF unit whenever final closure occurs and/or to provide post-closure care for the CKDLF unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) A owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. Within 14 days after reimbursement, the owner or operator must notify the EPA Regional Administrator that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure of payment of premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the EPA Regional Administrator 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(8) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this Section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of § 259.61(b), § 259.62(b) or § 259.63(b).

(e) *Corporate Financial Test.* The owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified herein:

(1) Financial Component.

(i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) The sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus $10 million except as provided in paragraph (e)(1)(ii)(B) of this section.

(B) $10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and

subject to the approval of the EPA Regional Administrator.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test as described in paragraph (e)(3) of this Section.

(2) Recordkeeping and reporting requirements.

(i) As they become available, the owner or operator must place the following items into the facility's operating record:

(A) A letter signed by the owner's or operator's chief financial officer that:

(*1*) Lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under 40 CFR Part 258, cost estimates required for UIC facilities under 40 CFR Part 144, if applicable, cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable, cost estimates required for PCB storage facilities under 40 CFR Part 261, if applicable, and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

(*2*) Provides evidence demonstrating that the firm meets the conditions of either paragraph (e)(1)(i)(A) or (e)(1)(i)(B) or (e)(1)(i)(C) and paragraphs (e)(1)(ii) and (e)(1)(iii) of this Section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The EPA Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the EPA Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the EPA Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this Section.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies paragraphs (e)(1)(i)(B) or (e)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (e)(2)(i)(B) of this Section or any other audited financial statement or data filed with the Securities and Exchange Commission (SEC) then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (e)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least $10 million plus the amount of any guarantees provided.

(ii) The owner or operator must place the items specified in paragraph (e)(2)(i) of this section in the operating record and notify the EPA Regional Administrator that these items have been placed in the operating record before the initial receipt of waste or before two years elapse after the effective date of this rule, whichever is later; in the case of closure, and post-closure care, items specified in paragraph (e)(2)(i) of this section must have been placed in the operating record no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48.

(iii) After the initial placement of items specified in paragraph (e)(2)(i) of this section in the operating record, the owner or operator must annually update the information and place updated information in the operating record within 90 days following the close of the owner or operator's fiscal year. The EPA Regional Administrator may provide up to an additional 45 days for a owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (e)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in paragraph (e)(2) of this section or comply with the requirements of this paragraph when:

(A) The person substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The person is released from the requirements of this section in accordance with § 259.61(b), § 259.62(b), or § 259.63(b).

(v) If the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must, within 120 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the EPA Regional Administrator that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(vi) The EPA Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (e)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (e)(2) of this section. If the EPA Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, within 120 days of this finding the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(3) *Calculation of costs to be assured.* When calculating the current cost estimates for closure, post-closure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph (e) of this section, the owner or operator must include cost estimates required for cement kiln dust solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if the person assures them through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part

280, PCB storage facilities under 40 CFR Part 261, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

(f) *Corporate Guarantee.* (1) The owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph (e) of this section and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions placed in the operating record before the initial receipt of waste or before the effective date of the requirements of this section, whichever is later, in the case of closure and post-closure care, or in the case of corrective action no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this Subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the EPA Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the EPA Regional Administrator, as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the EPA Regional Administrator, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the EPA Regional Administrator. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days of the cancellation notice, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the EPA Regional Administrator.

(4) If a corporate guarantor no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the EPA Regional Administrator. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph (g) of this section when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with § 259.61(b), § 259.62(b), or § 259.63(b).

(g) *State-Approved Mechanism.* In an authorized State, the owner or operator may satisfy the requirements of this section by obtaining any other mechanism that meets the criteria specified in paragraph (j)(1) Of this section, and that is approved by the State Director.

(h) *State Assumption of Responsibility.* If the State Director either assumes legal responsibility for the person's compliance with the closure, post-closure care and/or corrective action requirements of this part, or assures that the funds will be available from State sources to cover the requirements, the owner or operator will be in compliance with the requirements of this section. Any State assumption of responsibility must meet the criteria specified in paragraph (j)(1) of this section.

(i) *Use of multiple mechanisms.* The owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by § 259.61, § 259.62, and § 259.63 by establishing more than one mechanism per facility, except that mechanisms guaranteeing performance rather than payment, may not be combined with other instruments. The mechanisms must be as specified in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i) of this section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms rather than a single mechanism.

(j) The language of the mechanisms listed in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i) of this section must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48, until the owner or operator is released from the financial assurance requirements under §§ 259.61, 259.62 and 259.63.

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under State and Federal law.

§ 259.65 Discounting.

The EPA Regional Administrator may allow discounting of closure cost estimates in § 259.61(a), post-closure cost estimates in § 259.62(a), and/or corrective action costs in § 259.63(a) up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

(a) The EPA Regional Administrator determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a Registered Professional Engineer stating;

(b) The EPA Regional Administrator finds the facility in compliance with applicable and appropriate permit conditions;

(c) The EPA Regional Administrator determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

(d) Discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

APPENDIX I TO PART 259—CONSTITUENTS FOR DETECTION MONITORING

Common name [1]
pH
Conductivity
Total Dissolved Solids
Potassium
Chloride
Sodium
Sulfate

[1] Common names are those used widely in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by revising paragraph (b)(8) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(8)(i) Except as provided in § 266.112 of this chapter for facilities that burn or process hazardous waste, CKD waste, so long as it is managed in accordance with Part 259 of this chapter.

(ii) CKD waste is not managed in accordance with Part 259 of this chapter when a facility:

(A) Fails to comply with:

(*1*) air requirements for landfills, as specified § 259.22 of this chapter, by 90 days after the effective date of the final rule, unless granted approval by the EPA Regional Administrator (or the State, in authorized States) under § 259.22(d) of this chapter to implement alternative measures for fugitive dust control;

(*2*) the containment standards, as specified under § 259.20 of this chapter, for CKD destined for sale or beneficial use within two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator under § 259.20(c) of this chapter to implement alternative measures for fugitive dust control;

(*3*) design requirements for CKD landfills, as specified under § 259.30(c) of this chapter by two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator under the provisions of § 259.30(h) of this chapter for a unit design, or a finding is made of no potential for migration under § 259.40(b) of this chapter;

(*4*) ground-water monitoring systems requirements, as specified under § 259.41 of this chapter, by two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator under the provisions of § 259.30(h) of this chapter for a unit design, or a finding is made of no potential for migration under § 259.40(b) of this chapter;

(*5*) the time frames for appropriate corrective action proposed today under §§ 259.41, 259.44, 259.45, 259.46, and 259.47 of this chapter;

(*6*) any applicable demonstration requirements for new CKD landfills as specified under §§ 259.11(a), 259.12(a), 259.13(a), 259.14(a), 259.15(a) and 259.16(a) of this chapter;

(*7*) any requirement identified in a notice received from the Regional Administrator because of repeated violations the requirements of Part 259 of this chapter, other than those specified in paragraphs (b)(8)(ii)(A)(*1*) through (b)(8)(ii)(A)(*6*) of this section; or,

(B) Fails to comply with any section of Part 259 of this chapter, other than those specified in paragraphs (b)(8)(ii)(A) of this section, within 30 days of receiving a written notice of non-compliance with any of those sections from the Regional Administrator

(iii) Clinker manufactured with CKD waste that has been listed in Subpart D of this part and has been reintroduced to the cement manufacturing process.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for Part 266 continues to read as follows:

Authority: 42 USC 1006, 2002(a), 3004, 3014, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

2. Subpart I is added to Part 266 to read as follows:

Subpart I—Management Standards For Hazardous Cement Kiln Dust Waste

Sec.

266.120 Applicability and requirements.
266.121 Removal of the hazardous waste designation.

§ 266.120 Applicability and requirements.

(a) The purpose of this part is to establish national criteria under the Resource Conservation and Recovery Act (RCRA or the Act), as amended, for cement kiln dust waste that is not characteristically hazardous waste under the provisions of 40 CFR 266.112 and is not managed in accordance with the provisions of Part 259 of this chapter.

(b) Persons who generate, transport or store CKD that is regulated under this Subpart are subject to the requirements in paragraphs (b)(1) through (7) of this section. These requirements operate in lieu of requirements in 40 CFR Parts 262–265, and 40 CFR Part 268 except where portions of those Parts are specifically cross-referenced.

(1) All applicable provisions of Part 262 (Standards Applicable to Generators of Hazardous Waste) of this chapter;

(2) Sections 264.4 and 265.4 of Subpart A (Imminent hazard action) of this chapter;

(3) Sections 264.11 and 265.11 (Identification number), 264.12 and 265.12 (Required notices), 264.14 and 265.14 (Security), 264.15 and 265.15 (General inspection requirements), 264.16 and 265.16 (Personnel training), and 264.19 and 265.19 (Construction quality assurance program) of Subpart B (General Facility Standards) of this chapter.

(4) Subparts C, D, and E of both Parts 264 and 265 (Preparedness and Prevention, Contingency Plan and Emergency Procedures, and Manifest System, Recordkeeping, and Reporting) of this chapter;

(5) All provisions of 40 CFR Part 259 of this chapter.

§ 266.121 Removal of the hazardous waste designation.

(a) If any CKD waste loses the exemption under § 261.4(b)(8) of this chapter and becomes subject to § 266.120, the owner or operator of the facility managing such waste may apply to the Regional Administrator for removal of the hazardous designation for such CKD waste. The application must include:

(1) A statement that the CKD waste is now being managed in accordance with Part 259;

(2) A statement explaining the circumstances of the non-compliance; and,

(3) A demonstration that the non-compliance is not likely to recur.

(b) The Regional Administrator may remove the hazardous waste designation by reinstating the exclusion, as listed under § 261.4(b)(8) of this chapter, if the Regional Administrator finds that the owner or operator of the facility has satisfactorily explained the circumstances of the non-compliance, has demonstrated that the non-compliance is not likely to recur and that removal of the hazardous waste designation will not pose a threat to human health or the environment. The Regional Administrator may remove the hazardous waste designation by reinstating the exclusion (as listed under § 261.4(b)(8) of this chapter) with additional conditions if the Regional Administrator finds that such additional conditions are necessary to ensure protection of human health and the environment.

(c) The Regional Administrator should take action on an application for removal of a hazardous waste designation within 60 days after receipt of the application. If the Regional Administrator does not take action on the application within that time period, then the application for removal of the hazardous waste designation (i.e., reinstatement of the exclusion under § 261.4(b)(8) of this chapter) is deemed granted, retroactive to the date of the application. However, the Regional Administrator may terminate a removal (i.e., reinstatement of the exclusion under § 261.4(b)(8) of this chapter) by default under this subsection if the Regional Administrator finds that the removal of the hazardous waste designation is not appropriate based on the factors specified in paragraph (b) of this Section.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: 42 USC 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.10 is amended by adding a sentence to the end of paragraph (a) to read as follows:

Subpart B—Permit Application

§ 270.10 General application Requirements.

(a) *Permit application.* * * * Procedures for application, issuance and administration of permits for cement kiln facilities that do not comply with the provisions of Part 259 are found exclusively in 40 CFR 270.69.

* * * * *

Subpart F—Special Forms of Permits

2. Subpart F is amended to add a new § 270.69 to read as follows:

§ 270.69 Permits for the Management of Cement Kiln Dust

(a) The EPA Regional Administrator may issue a permit for continued operation of cement manufacturing facilities that do not comply with the provisions of 40 CFR Part 259. Any such permit shall contain such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the operation of the facility in accordance 40 CFR Part 259, and

(2) May include such additional requirements as the EPA Regional Administrator deems necessary to protect human health and the environment, including, but not limited to requirements regarding monitoring, operation, financial responsibility, closure and remedial action.

(b) In issuing such permits, the EPA Regional Administrator may modify or waive permit application and permit issuance requirements in 40 CFR Parts 124 and 270, except procedures regarding public participation, provided the modifications or waivers protect human health and the environment.

[FR Doc. 99–20546 Filed 8–19–99; 8:45 am]
BILLING CODE 6560–50–P

OL

64

SS

1
6
1

AG

20

99

MI

federal register

Friday
August 20, 1999

Part IV

Office of Management and Budget

48 CFR Part 9903
Cost Accounting Standards Board; Changes in Cost Accounting Practices
Proposed Rule

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Changes in Cost Accounting Practices

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Cost Accounting Standards Board (CASB) invites a third round of comments on proposed amendments to the regulatory provisions contained in chapter 99 of title 48. The CASB's objective in issuing this document is to utilize the proposed amendments as a basis for holding an open public meeting, conducting a benchmarking survey, and soliciting public comments.

The proposed amendments, when issued as a final rule, would revise the current definitions, exceptions and illustrations governing changes in cost accounting practices; exempt certain changes in compliant cost accounting practices from the CASB's contract price and cost adjustment requirements, and establish new coverage for "desirable changes." A new subpart 9903.4, Contractor Cost Accounting Practice Changes and Noncompliances, is also proposed. The new subpart would establish contractor notification requirements for circumstances when contractors make changes to their compliant cost accounting practices. The new subpart would also delineate the process for determining and resolving the cost impact of a compliant change in cost accounting practice or a noncompliant practice on existing covered contract and subcontract prices and/or costs.

Educational Institutions: For covered contracts and subcontracts awarded to an educational institution, the proposed subpart also provides that certain subpart requirements may be waived, on a case-by-case basis, if the cognizant Federal agency official concurrently establishes with the educational institution an "advance agreement" that details the specific procedures to be followed for the notification and resolution of compliant changes to established cost accounting practices and/or the correction of noncompliant practices when the educational institution is performing covered contracts, covered subcontracts and other Federally sponsored agreements.

DATES: Comments must be submitted in writing, by letter, and should be received by October 19, 1999.

ADDRESSES: Comments should be addressed to Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9013, Washington, DC 20503. Attn: CASB Docket No. 93–01N(3). To facilitate the CASB's review of your submitted comments, please include with your written comments a three point five inch (3.5") computer diskette copy of your comments and denote the format used. A format that is compatible with Corel WordPerfect 8 is preferred. The submission of public comments via the internet by "E-mail" will not satisfy the specified requirement that public comments must be submitted in writing, by letter, as receipt of a readable data file is not assured.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION: In response to the second of comments requested on this topic in the Supplemental Notice of Proposed Rulemaking, promulgated on July 14, 1997 (hereinafter referred to as "SNPRM–I"), a number of commenters expressed their concerns regarding the purpose and scope of the Board's proposed amendments. In consideration of those concerns, the Board has decided to request a third round of public comments via this Supplemental Notice of Proposed Rulemaking (hereinafter referred to as "SNPRM–II") To ensure the views and concerns of interested parties are fully surfaced, the Board will also conduct an open public meeting and initiate a "benchmarking" survey.

Open Public Meeting

In addition to the submission of public comments, the Board will schedule an open public meeting to discuss this proposed rule. The date, time and location details of that meeting will be the subject of a separate **Federal Register** notice.

Benchmarking Survey

In response to the Board's prior proposal, some commenters generally recommended that the Board field test and/or further study the impact its proposal will have on contractors and the Government and then to reconsider the need for the proposed amendments. For a more detailed discussion of the commenters' concerns, see "Cost Benefit Issues" contained in Section B below. To better understand such concerns, the Board will invite a small number of major defense contractors to participate in a coordinated "benchmarking" survey. The objective of the survey will be to specifically identify the additional number of contract price and cost adjustment cases that would result if the Board's current proposal were applied to actual contractor changes that occurred in a recently completed cost accounting period. Participation by contractors will be on a voluntary basis. Collection and identification of the survey data is expected to be coordinated with the contractor's cognizant Federal audit organization prior to its submission. These "benchmarking" surveys will be formally initiated by the Board through coordination with interested industry associations. For those contractors that wish to participate in the survey but are not included in the resultant contractor groupings established through coordination with the industry associations, the survey questionnaire may be obtained by faxing a request to the CASB staff at 202–395–5105. In such cases, the survey data should be submitted by the due date specified below. Timely submitted contractor surveys will be examined, on a sampling basis, by the cognizant Federal audit organization after they are received by the CASB.

A. Regulatory Process

The CASB's rules, regulations and Cost Accounting Standards (CAS) are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Standard, complete a prescribed rulemaking process. The process generally consists of the following four steps:

(1) Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard (e.g., promulgation of a Staff Discussion Paper (SDP)).

(2) Issue an Advance Notice of Proposed Rulemaking (ANPRM).

(3) Issue a Notice of Proposed Rulemaking (NPRM).

(4) Promulgate a Final Rule.

This Notice is a continuation of the third step of the four-step process.

B. Background

Prior Promulgations

Many commenters have identified the Board's regulatory coverage on "changes in cost accounting practice" as a matter requiring clarification and/or further coverage. The CASB requested public comments from interested parties on this topic in an SDP published in the **Federal Register** on April 9, 1993 (58 FR 18428) and in an ANPRM published on April 25, 1995 (60 FR 20252). On September 18, 1996, the CASB, in an NPRM published in the **Federal Register** (61 FR 49196), proposed to amend the Board's current coverage governing changes in cost accounting practices. That NPRM also included proposed amendments to conform the language contained in the contract clauses for "Full" and "Modified" coverage, specify certain Federal agency responsibilities, and expand the criteria for desirable change determinations. A new subpart was also proposed to delineate the actions to be taken by the contracting parties when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. On July 14, 1997, the CASB published the SNPRM–I in the **Federal Register** (62 FR 37654), to solicit additional comments concerning certain proposed revisions to the previously proposed NPRM coverage and to solicit comments to determine to what extent, if any, there may be support for the establishment of new provisions that would exempt certain voluntary changes in a contractor's cost accounting practices from the Board's contract price and cost adjustment requirements.

Public Comments

Of the sixty-nine sets of public comments received in response to the SNPRM–I, fifty-nine were provided in a timely manner. The public comments were received from contractors, educational institutions, professional associations, Federal agencies, accounting organizations, and other individuals. A number of commenters supported the establishment of new provisions that would exempt from the Board's contract price and cost adjustment requirements those voluntary changes in compliant cost accounting practices that directly result from changes made by a contractor to improve the economy and efficiency of its operations. Some commenters supported the proposed amendments contained in the SNPRM–I. Some did not. Others offered suggestions on how the proposed coverage might be clarified or otherwise improved. The responses received in a timely manner are addressed in Section E, Public Comments.

Certain other inquiries and concerns, of a more general nature, that were expressed by several commenters with respect to the Board's overall objectives and rationale for the proposed amendments are addressed immediately below.

Board Objectives and Rationale

A number of contractors and professional associations questioned the purpose of the Board's proposed amendments and asked if other more simplified approaches would not better serve the Government and contractors. Some commenters felt that the Board had never supplied a clear rationale for the proposed definition of the term "cost accounting practice." One commenter stated that because "cost accounting practice" is not so much an accounting concept as it is a key to the administration of CAS, a statement of purpose or rationale would help to understand the CAS Board's goal.

The Board's objectives are discussed below.

Continuing Board Objective: To support the Government's procurement process for negotiated cost-based contracts.

The Board's continuing objective is to promote an acquisition environment wherein Government contracting officials can, with a high degree of confidence, rely upon the estimated and actual cost information provided by contractors relative to (1) the costs contained in and/or submitted in support of proposed contract prices, (2) the overall costs of operations and/or (3) the costs of prior contract performance. Because the Board's CAS and Interpretations often limit or narrow the range of alternative cost accounting practices that might otherwise be used by a contractor, or by competing contractors, in calculating submitted cost information, Government procurement officials can with a greater degree of reliance make meaningful analyses and comparisons when contractor submitted cost information is derived through a contractor's consistent application of CAS compliant cost accounting practices.

Pursuant to its enabling statue, the Board promulgates CAS and Interpretations that are designed to achieve uniformity and consistency in the cost accounting practices used by contractors to estimate, accumulate and report costs. The concepts of "uniformity" and "consistency" are set forth in the Board's "Statement of Objectives, Policies and Concepts" (57 FR 31036, 7/13/92). The Board's rules also require the larger CAS-covered contractors to formally disclose to the Government their established cost accounting practices, via submission of a disclosure statement. Disclosure reduces the potential for Government misunderstandings concerning contractor cost information submissions. Consequently, the submission of estimated or actual cost information developed by contractors based on the consistent application of CAS compliant cost accounting practices enables the Government to make more meaningful cost comparisons between competing contractors, facilitates the negotiation of fair and reasonable contract prices, and permits the Government to make more reliable comparisons of a particular contractor's estimated and actual contract costs.

Immediate Board Objective: To bridge the gap between contractor cost accounting matters and the Government's procurement process for negotiating and administering negotiated cost-based contracts, particularly when contractors fail to apply their established cost accounting practices in a consistent manner, fail to comply with applicable CAS or make compliant changes to their established cost accounting practices.

Statutory Requirement. Under its enabling statute, the Board is required to promulgate regulations that require contractors and subcontractors to "* * * agree to a contract price adjustment * * * for any increased costs paid to such contractor or subcontractor by reason of a change in the contractor's or subcontractor's cost accounting practices or by reason of a failure by the contractor or subcontractor to comply with applicable cost accounting standards." Accordingly, the Board's implementing regulations include provisions that are designed to establish what constitutes a "change to a cost accounting practice" and "increased cost" to the Government. The Board's regulations also provide for contract price and cost adjustments if a contractor changes its established cost accounting practice or applied a noncompliant practice. The Board's current proposal is designed to facilitate the implementation of the Board's statutory requirements.

Cost Accounting Practice Definition: Consistent with the Board's statutory requirements, the purpose of the Board's proposed amendments to the definitions of the terms "cost accounting practice" and "change to a cost accounting practice" is to direct the contracting parties to focus on the cost accounting

practices actually used by contractors to accumulate cost in cost pools for subsequent allocation to intermediate and final cost objectives when determining if a voluntary change in cost accounting practice has occurred. Specifically, the proposed amendments make clear that changes in the selection and/or composition of cost pools are changes in the methods and techniques used to allocate cost to cost objectives, i.e., a change to a cost accounting practice.

Based on the commenters' stated perceptions, some contractors apparently believe that the term "cost accounting practice" as defined in the Board's existing rules is merely a contractual term of art that is used to identify a finite or limited number of circumstances which trigger contract price or cost adjustments under the terms and conditions of CAS-covered contracts. In their view, a change in cost accounting practice only occurs if the change is specifically cited or illustrated in the Board's rules. That line of reasoning would inappropriately preclude from consideration the complete spectrum of cost accounting practices actually used by each contractor to accumulate costs in cost pools for subsequent allocation to intermediate and final cost objectives. The commenters' inferences are that the Board has the ability to promulgate a rule that describes or illustrates every conceivable circumstance that the Board considers to be a change to a cost accounting practice for each contractor performing CAS-covered contracts. That, however, is not feasible or desirable. Instead, the Board's objective is to maintain cost accounting practice definitions that can be related to each contractor's established cost accounting practices.

The Board's proposed definitions are, therefore, from a broader perspective. The Board's objective is to permit the application of the Board's rules to all contractors and subcontractors, regardless of their specific individual cost accounting practices applied to accumulate costs. The Board's expectations are that the contracting parties will be able to determine, on a case-by-case basis, whether a change in a particular contractor's established cost accounting practice has occurred based on the revised language contained in the Board's proposed definitions. Under the definition being proposed today, if a contractor makes changes that alter the flow of pooled costs to intermediate and final cost objectives, for ongoing functions, such changes would generally be considered a change in cost accounting practice. Thus, it is the substance of the actual change made that is to be evaluated by the contracting parties. A cost accounting practice change may occur even if it is not specifically depicted in the Board's rules.

The accompanying illustrations are a secondary source of guidance regarding the application of the primary policy reflected in the definitional language. A determination that a change in practice has occurred should normally result whenever there is a change in how pooled costs are accumulated for allocation to intermediate and final cost objectives. The determination is, therefore, not limited to only those circumstances that replicate the conditions associated with the changes in cost accounting practices illustrated in the Board's amended rule or by any previously proposed coverage (proposed definitional language or illustrations) associated with this rulemaking that is not eventually incorporated in the final rule.

Contract Price and Cost Adjustments. In proposing a new subpart 9903.4, the Board's objective is to establish a definitive cost impact process that fully considers and reflects how contractor submitted cost information is used by the Government (i) to negotiate contract prices at the time of award, (ii) to convert cost ceilings or target costs into final contract prices for flexibly priced contracts after award, and (iii) to pay contract costs under the terms and conditions of the different types of negotiated cost based contracts (FFP, CPFF, etc.) that are utilized by the Government to obtain products, supplies and services, research, etc.

Contractor cost estimates submitted to support proposed contract prices for the performance of specific tasks generally reflect the amount of direct and indirect costs that contractors expect they will actually accumulate in accordance with their established cost accounting practices after receipt of a contract award, if they were selected to perform the specific tasks. The Government's negotiators rely upon such cost estimates when they establish the negotiated contract price at the time of contract negotiations, prior to contract award. If a contractor changes a compliant cost accounting practice after contract award, the amount of costs accumulated for existing CAS-covered contracts may increase or decrease in comparison to the amounts that would have been accumulated had no practice change been made. Such post award changes made by a contractor could result in the payment of increased costs by the Government. If a contractor applied a noncompliant cost accounting practice, the amount of estimated costs based on the noncompliant practice may result in overstated or understated negotiated contract prices and/or the amount of actual costs accumulated for resultant CAS-covered contracts may be higher or lower than the amounts that would have resulted if a compliant practice had been used to accumulate costs. In such circumstances, contract price or cost adjustments may be required to preclude the payment of increased cost, to correct overstated contract prices and to deobligate overstated funding obligations that resulted from an estimating noncompliance, or to address individual contract cost overrun or underrun conditions that may result. Adjustments may also be required so that Government cost comparisons between estimated and actual costs of contract performance contained in contract cost status reports result in valid comparisons.

By proposing a definitive cost impact process, the Board is taking action to establish how the contracting parties are henceforth to:

- Estimate the amounts by which the amount of costs accumulated under existing CAS-covered contracts will increase or decrease after a compliant cost accounting practice change is made.
- Convert the estimated changes in cost accumulation (increases or decreases) for individual contracts to equitable contract price adjustments for "required" and "desirable" practice changes.
- Determine if "voluntary" cost accounting practice changes made unilaterally by a contractor after contract award will result in the payment of increased costs, in the aggregate, by the Government and to prescribe the actions to be taken to preclude the payment of the aggregate increased costs. At the time of contract award, a contractor agrees to consistently apply its established cost accounting practices when accumulating and reporting the costs of contract performance. A voluntary change in cost accounting practice negates that agreement and triggers the CAS contract clause price and cost adjustment provisions which preclude the Government from paying aggregate increased costs (as defined by the Board) that may result from a voluntary change in cost accounting practice. When a contractor makes a voluntary change to its established cost accounting practices, the amount of contract costs accumulated by the contractor for individual contracts may increase or decrease as compared to the amounts

that would have been accumulated for the individual contracts had the practice change not occurred. The cost impact process being proposed prescribes how to determine if the Government would pay "increased costs," in the aggregate, as the result of a voluntary change in practice for the different types of contracts that may be involved (FFP or flexibly priced contracts). The increased cost determination is predicated upon an analysis of the changes in individual contract cost accumulations that are expected to result after the practice change and a determination on whether or not contract price adjustments or other actions are required to preclude the payment of aggregate increased costs, e.g., require adjustment of the Government's contractual obligations to pay the negotiated cost-based contract prices (FFP or cost ceilings for flexibly priced contracts) which were determined at the time of award based on proposed contract costs that were estimated in conformity with the contractor's then established cost accounting practices and the contractor's agreement to consistently apply such established practices when accumulating and reporting the actual costs of contract performance.

- Convert the estimated changes in cost accumulations (increases or decreases) for individual contracts to contract price adjustments and/or other actions that may be required to preclude the payment of increased costs or to otherwise reflect the cost impact of "voluntary" cost accounting practice changes.
- Determine if increased cost to the Government, in the aggregate, occurred in the event a noncompliant cost accounting practice was used to estimate contract costs and/or to accumulate contract costs.
- Correct noncompliant conditions.

The purpose of the foregoing discussion is intended to guide interested parties in commenting on the Board's proposal.

Alternative Procedures

Some commenters advocated that the use of other approaches might better serve the Government and its contractors. The thrust of their arguments was that other measurement criteria for evaluating the reliability of contractor cost submissions and remedies for "unreliable" cost submissions might be developed with the result that the contracting parties would incur less administrative costs. General references were made to recent regulatory changes established by the procurement community in response to acquisition reform legislation that produced "streamlined" acquisition regulations for contract awards where contract prices are generally based on "adequate price competition," e.g., the use of "past performance" evaluations for determining responsible sources and "Process Oriented Contract Administration Services (PROCAS)," a "team approach" review program developed by the Defense Logistics Agency that establishes increased reliance on contractor internal control procedures so that Government surveillance can be lessened. How such alternative processes might be related to the implementation of the Board's statutory requirements for negotiated cost-based contracts was not, however, detailed. Any alternative system, if designed to provide the basis for making meaningful evaluations regarding compliance with the Board's CAS and the resulting submission and use of contractor prepared cost information, would require a baseline or benchmark against which submitted cost information could be measured, verified and equitably adjusted if unreliable cost information had been submitted. Additional contractor reporting systems and new measurement criteria relative to the Board's statutory requirements would need to be developed and implemented. Team reviews also consume considerable resources, pose scheduling delays, and are generally invoked only at the largest contractor locations.

In a cost-based contracting environment, the use of such alternative processes may not be as effective or less costly than the Board's administrative requirements. The Board has carefully considered the commenters' views and believes that its regulatory requirements (once amended as proposed in this SNPRM–II) and Standards result in a reasonably efficient and effective process for administering contractor cost accounting matters that affect the pricing of negotiated cost-based Government contracts and subcontracts.

Cost Benefit Issues

Cost Accounting Practice Definition

A number of commenters opined that the costs of implementation of the Board's proposed amendments would exceed any cost savings the Board might expect from the potential recovery of increased costs paid by the Government. The commenters premised their concerns on the notion that the proposed amendments to the Board's definitions of a "cost accounting practice" and "change to a cost accounting practice" will increase the number of cases (cost accounting practice changes) that will need to be reported to the Government and subjected to the Board's cost impact process. They reasoned that the increased number of cases will, in turn, increase the Government's and contractors' administrative costs over the levels currently being experienced. Consequently, they generally recommended that the Board field test and/or further study the impact its proposal will have on contractors and the Government and then reconsider the need for the proposed amendments. It is their belief that the Board will find that the Government's and contractors' administrative cost levels would increase substantially while any increase in the levels of "increased costs" to be recovered by the Government would not justify the higher administrative cost levels.

The Board acknowledges that for some contractors the *reported* number of cost accounting practice changes that would become subject to the Board's contract price or cost adjustment process may increase when compared to the number currently being reported. The possible increase would not be due to the actual number of "changes" made each year, but rather due to those changes that have been made routinely in the past but were not treated by the contractor as a "change to a cost accounting practice" (e.g., pool combinations, pool split-outs, and transfers of ongoing functions from one pool to another pool). Some contractors do not believe such changes are currently subject to the Board's consistency requirements and CAS contract price and cost adjustment provisions due to their interpretations of the Board's existing definitions, illustrations and rulemaking history regarding the definition of a change to a cost accounting practice.

Such cost pool changes normally impose additional non-CAS driven administrative burdens on both the Government and contractors because they generally require the negotiation of revised sets of forecasted indirect cost rates for contract cost estimating purposes and the establishment of revised sets of provisional and actual indirect cost rates for the payment of accumulated actual contract costs. These revisions are required whenever changes in the accumulation of pooled costs significantly affect estimated and/or actual contract cost accumulations. However, this additional administrative cost burden does not appear to be a contractor concern since these corollary administrative actions were not mentioned. Also not considered was the impact of the alternative outcomes and

alternative administrative actions that would result if the CAS cost impact process were not applied to uniformly resolve individual contract cost overruns or under-runs that may result from such changes.

A study of Government cost recoveries is not needed since the Board does not expect that only contract price reductions will occur due to the promulgation of this proposed rule. The contract price and cost adjustments made under the CAS cost impact process generally increase and decrease individual contract prices and costs in synchronization with the increase or decrease in actual cost accumulations expected to result from the practice change. If the Government determines a practice change to be a "desirable change", then the Government may increase, not decrease, contract prices in the aggregate. The objective is to track the expected changes in cost accumulation for the individual covered contracts and to adjust individual contract prices, if necessary. It is not to gain an advantage for the Government. The "savings" will accrue through the Government's continued reliance on contractor cost submissions, the Government's ability to adjust contract prices and costs to preclude the payment of increased costs (as defined by the Board), and the implementation of a less burdensome cost impact system.

The commenters' "cost savings" rationale avoided the basic issues under consideration by the Board, i.e., what constitutes a change in a contractor's established cost accounting practices used to estimate, accumulate and report costs for covered contracts, and, has the Board's statutory requirement to preclude the payment of "increased costs" been implemented in an effective manner? Their arguments were limited to the premise that if the proposed amendments increase existing administrative cost levels to the contractor and/or there is no significant increase in the level of amounts recovered by the Government, promulgation of the proposed amendments is not justified.

Throughout this rulemaking process, contractors continued to advocate that, from a technical prospective, the definition of a change to a cost accounting practice should not be amended, i.e., the Board's contract price and cost adjustment provisions should not be triggered if a contractor's estimated cost proposal was predicated on the accumulation of estimated pooled costs in a particular manner and, after contract award, the contractor elected to accumulate actual pooled costs differently and thereby altered the amount of actual contract costs accumulated for individual contracts. This administrative cost burden argument is really an extension of those technical arguments which are addressed elsewhere in this Preamble. However, as presented, the burden argument ignores the potential direct "cost" risk to the Government in terms of increased contract prices or costs that may result and be billed to the Government due to such post-award changes. By objecting on the basis that the Board's proposed amendments will increase the administrative cost burden, some contractors are really arguing that the CASB's requirements for adjusting contract prices to reflect the changes in the accumulation of pooled costs allocated to individual contracts, should not be applied. If such "burden" arguments were accepted, the CASB's cost impact process would not be used to uniformly resolve individual contract cost shifts resulting from such changes. The Board does not agree with such views. The Board does not believe that the commenter's arguments have technical merit or that the Board's proposal will materially increase the overall administrative cost burden level currently imposed by the Government on cost-based contractors.

The Board's objective is to consistently treat unilateral changes made by contractors that alter the manner by which the costs of ongoing functions are accumulated in cost pools for subsequent allocation to intermediate and final cost objectives as a change in cost accounting practice. Such contractor changes are viewed as a constant. They occur irrespective of the Board's rules, regulations and Standards. Therefore, the issue is simply whether changes in the accumulation of pooled costs that alter the flow of costs to intermediate and final cost objectives are also to be recognized as changes in a contractor's cost accounting practices for contract pricing purposes.

To ensure that equity results from the Government's cost-based contract pricing process, the Board is of the opinion that a change made by a contractor which alters the flow of costs to cost objectives, for ongoing functions, constitutes a change in cost accounting practice for contract cost or pricing purposes. In the final analysis, an approach that protects the Government's interests in an equitable manner, consistent with the Board's enabling statute, is needed in a cost-based contracting environment. The benefits of commonly understood definitions that result in implementation of the Board's statutory requirements will tend to negate the administrative costs of implementation even if some administrative cost levels were to increase for a short time. This is because the Board's existing rules have not resulted in an effective, easily understood and agreed to regulation. The contracting parties have experienced contentious disagreements and legal disputes concerning amounts paid under covered contracts after contractors made "changes" that altered the flow of costs to intermediate and final cost objectives which in turn altered the aggregate amount of accumulated contract costs. Settlement of these disagreements and adjudication of the resulting legal cases, particularly when extended over long periods of time, have produced significant "administrative costs" to both the Government and contractors. It is the Board's expectation that finalization of this proposal to more precisely define what constitutes a "change to a cost accounting practice" will reduce the potential for such disagreements and therefore will obviate the cost of protracted legal proceedings for many such changes in the future.

Cost Impact Process

The Board found that the administrative process for making the contract price and cost adjustments has not always been implemented in a uniform manner, and that the "undocumented" procedures and processes for making such adjustments is not widely understood by the Government or its contractors. The proposed cost impact process delineates the entire process to be followed when a contractor changes a compliant cost accounting practice, or is required to correct a non-compliant practice. It addresses when notification of a practice change is required and specifies a flexible process for determining and resolving the cost impact of a cost accounting practice change or noncompliance. The Board believes that the proposed process, when promulgated as a final rule, will prove to be more flexible and less burdensome than current practices. It will also facilitate user comprehension of the process and thereby tend to reduce the overall amount of administrative effort currently being expended to resolve individual cases.

In Summary

The Board's continuing objectives are to maintain its existing rules and Standards in a manner that is consistent with its enabling statute. The purpose of the Board's current proposal is to focus

on the two basic issues that are an essential part of the Board's overall contract price and cost adjustment process, i.e., what constitutes a "cost accounting practice" and how to administer CAS-covered contracts in the event a contractor or subcontractor makes a change to its otherwise compliant cost accounting practices or a contractor or subcontractor does not comply with an applicable CAS when estimating, accumulating or reporting costs. Based on the public comments received throughout this proposed rulemaking, it is clearly evident that disagreements still exist over what should constitute a change in a contractor's established cost accounting practices for purposes of triggering the CAS contract price and cost adjustment process. Accordingly, the Board believes that the amendments being proposed today are needed to facilitate implementation of the Board's statutory mandate concerning the payment of increased costs attributable to contractor cost accounting practice changes, and that the contracting community will benefit from the promulgation of a flexible cost impact process that is designed to achieve a more flexible and less burdensome administrative process.

The Board does not believe that its proposed amendments, when promulgated as a final rule, will increase the level of administrative costs currently being experienced by contractors and Government agencies by any appreciable margin. In the long run, the benefits accruing from a more precise definition of a "change to a cost accounting practice" and a more flexible cost impact process should reduce, not increase, the overall administrative burden currently being experienced by contractors and agencies.

Proposed Amendments

A brief description of the proposed amendments follows:

Part 9903, Contract Coverage—Proposed Amendments

In subpart 9903.2, CAS Program Requirements, subsection 9903.201–4 is amended to conform certain language in the "Full" and "Modified" contract clauses and to clarify the provisions governing changes made to a contractor's established cost accounting practices and changes made to correct noncompliant practices. Subsection 9903.201–6 is amended to provide exemption criteria for determining if a voluntary change in cost accounting practice associated with certain restructuring activities can be exempted from the contract price or cost adjustment requirements prescribed in part 9903. Subsection 9903.201–7 is amended to establish criteria for determining when a voluntary change in cost accounting practice is desirable and not detrimental to the Government's interests and to establish alternate processes for resolving desirable changes. Subsection 9903.201–8 is added to specify certain cognizant Federal agency responsibilities for administering CAS-covered contracts and subcontracts.

In subpart 9903.3, CAS Rules and Regulations, section 9903.301 is amended to incorporate definitions for the terms "Function" and "Intermediate cost objective." In subsection 9903.302–1, Cost Accounting Practice, the definition is amended to incorporate language changes and to add clarifying guidance. Subsection 9903.302–2, Change to a cost accounting practice, is revised to make explicit the types of changes that are to be regarded as a change in cost accounting practice.

The illustration of a change in cost accounting practice at 9903.302–3(c)(3) is replaced by a new illustration. In 9903.302–3(c) and in 9903.302–4, several illustrations have been included to provide additional guidance regarding the revised definitions of the terms "cost accounting practice" and "change to a cost accounting practice."

A new subpart 9903.4 is added to establish the notification and cost impact resolution process to be followed by a contractor and the cognizant Federal negotiator when a CAS-covered contractor or subcontractor changes a compliant cost accounting practice, fails to comply with an applicable Standard or fails to consistently follow its established cost accounting practices.

Summary Description of Proposed CAS Coverage

In subpart 9903.2, the proposed amendments:

Conform the contract clause language for "Full" and "Modified" coverage. The contract clause provisions are also revised to clarify the actions required when a contractor or a subcontractor is required to change a cost accounting practice or elects to replace an established practice with another compliant cost accounting practice. Also specified are the corrective actions required when a contractor's estimated cost proposal was based on a noncompliant practice and/or actual contract cost accumulations were based on a noncompliant practice.

Provide criteria for determining when a voluntary change in cost accounting practice associated with restructuring activities can be exempted from contract price or cost adjustment.

Provide criteria for determining when a non-exempted voluntary change in cost accounting practice can be determined to be a desirable change that is not detrimental to the Government's interests.

Provide a more flexible process for resolving the cost impact of certain desirable changes.

Require Federal agencies, in accordance with agency procedures, to:

—Establish internal policies and procedures for administering CAS-covered contracts when the agency is and is not the cognizant Federal agency for contractors performing agency contracts.

—Designate the agency office or official responsible for administering the agency's CAS-covered contracts and subcontracts.

—Delegate contracting authority to designated agency officials, as required, for the negotiation of cost impact settlements and associated contract price or cost accumulation adjustments.

—Concurrently settle, on a Government-wide basis, the cost impacts on all CAS-covered contracts and subcontracts affected by a contractor's or subcontractor's change in cost accounting practice or noncompliant practice.

In subpart 9903.3, 9903.301 is amended to incorporate two definitions to clarify the terms "Function" and "Intermediate cost objective." The amendments made to 9903.302–1(c), *Allocation of cost to cost objectives*, make explicit the methods and techniques that are considered to be a cost accounting practice, including the methods and techniques used to accumulate the cost of specific activities in cost pools. Additional subparagraphs are added to clarify the concepts associated with the selection and composition of cost pools and their allocation bases.

The proposed amendments to 9903.302–2 expand the existing coverage by specifying that, as used in part 9903 and the applicable contract clauses, changes in cost accounting practices include pool combinations, pool split-outs and transfers of existing ongoing functions. The existing cost accounting practice exceptions cited in 9903.302–2(a) and (b) are restated and modified in new subparagraphs.

Within 9903.302–3, a new introductory paragraph is added regarding the use of the illustrations that follow. Introductory paragraphs (a), (b) and (c) are revised to clarify that the illustrations involve "cost accounting practices" that have changed. The

illustration at 9903.302–3(c)(3) is replaced by new illustrations depicting changes in cost accounting practices that are consistent with the revised definitions. The new illustration at 9903.302–3(c)(3) illustrates that the use of a different base for the allocation of indirect costs to final cost objectives is a change in cost accounting practice. Additional illustrations are added to 9903.302–3(c) and 9903.302–4 to depict various changes which do and do not result in changes in cost accounting practices when a contractor combines, eliminates or splits-out pools, transfers functions or when business combinations due to mergers and acquisitions occur.

A new subpart 9903.4, Contractor Cost Accounting Practice Changes and Noncompliances, is proposed. It details the methodology for determining required contract price or cost accumulation adjustments due to changes in a contractor's cost accounting practices and specifies the actions to be taken by a contractor and the cognizant Federal official (e.g., the contracting officer, administrative contracting officer (ACO) or other agency official authorized to act in that capacity), including the negotiation of cost impact settlements on behalf of the Government. The new subpart provides coverage on the applicability and purpose of the subpart, materiality considerations, definitions of terms related to the subpart, procedures for changes in compliant cost accounting practices, and procedures for noncompliance actions. An additional section is also included to illustrate the application of the proposed coverage. The proposed coverage is briefly described below.

Section 9903.405, Changes in Cost Accounting Practices, includes subsections on the following areas: contractor notification of changes in cost accounting practices; Government determinations, approvals and initiating the cost impact process; contractor cost impact submissions; and negotiation and resolution of the cost impact action.

Section 9903.405 provides a streamlined process which does not require submissions of cost impact estimates or contract price adjustments for every CAS-covered contract affected by a change in accounting practice. It provides for the submission of "cost savings" data that will enable the cognizant Federal agency official to promptly determine if a voluntary change can be exempted from contract price or cost adjustment. For changes in cost accounting practices that can not be exempted, it provides flexibility to the cognizant Federal agency official in determining the level of detail required for a cost impact submission and materiality thresholds for required contract price and cost adjustments. To this end, it creates a three-step sequential process which includes (1) an initial evaluation to determine if the cost impact of the accounting change is obviously immaterial, (2) the use of a general dollar magnitude (GDM) settlement proposal, and if ultimately determined necessary, (3) the submission of a detailed cost impact proposal for contracts exceeding Government determined materiality thresholds. The proposed procedure encourages settlement of material cost impacts based on the contractor's GDM settlement proposal to the maximum extent possible, without having to resort to a detailed cost impact proposal. It also provides for contract price adjustment on individual contracts only when the cost impact amount is material.

Section 9903.405 addresses the use of the offset process. It allows for the use of the offset process to reduce the number of contract price and cost adjustments required as a result of a change in cost accounting practice, while still providing for adjustments of individual contracts when the cost impact amount on individual contracts is material. The rules provide that offsets of increased costs against decreased costs shall only be made within the same contract type.

Section 9903.405 also explains when and what action needs to be taken to preclude increased costs paid by the Government as a result of a voluntary change in cost accounting practice. It clarifies how increased costs to the Government are measured on firm-fixed-price contracts as a result of a change in accounting practice. It also makes clear that action must be taken to preclude increased costs from being paid when the estimated aggregate higher allocation of costs on flexibly-priced contracts subject to adjustment exceeds the estimated aggregate lower allocation of costs on firm-fixed-price contracts subject to adjustment as a result of a voluntary change in accounting practice.

Section 9903.406, Noncompliances, details the processes for handling noncompliant actions. It outlines the procedures to be followed when the parties agree or disagree on whether a noncompliant condition exists. An example of an acceptable GDM Settlement Proposal format that the contracting parties may use to resolve a noncompliance is included. The proposed section contains separate coverage on estimating practice noncompliances and cost accumulation practice noncompliances to clarify the different actions, particularly to recover increased costs and/or applicable interest on increased costs paid, that need to be taken under these different noncompliant conditions. It also provides procedures to be followed when a noncompliant condition does not result in material increased costs paid by the Government.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposal, because this proposal imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this proposal on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this proposal will not result in the promulgation of a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposal will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This proposed rule was developed after consideration of the public comments received in response to the Board's NPRM (61 FR 49196, 9/18/96) and the SNPRM–I (62 FR 37654, 7/14/97) that were published in the **Federal Register**, wherein public comments were invited. The NPRM comments received and the Board's actions taken in response thereto were reflected in the SNPRM–I. The supplemental comments received in response to the SNPRM–I and the Board's actions taken in response thereto are summarized in the paragraphs that follow:

Contract Price and Cost Adjustment Exemption

Comment: Although commenters remained concerned regarding the level of detail that would be needed to obtain an exemption, they expressed strong support for the creation of a provision that would exempt from the Board's contract price and cost adjustment requirements those voluntary changes in

cost accounting practices that are associated with management changes made to improve the efficiency and effectiveness of a contractor's operations.

Response: The Board's deliberations focused on how a voluntary change to a contractor's established cost accounting practices should be treated under the Board's rules when the practice change is directly associated with management actions undertaken to improve the economy and efficiency of the contractor's operations. It is the Board's continuing belief that the Government should be informed of any changes made to the contractor's established cost accounting practices that are being used to accumulate and report the costs of performing existing CAS-covered contracts. Such notification facilitates the contract administration process and beneficially reduces the potential for disputes, particularly if a disclosure statement is required. However, in cases where a change in cost accounting practice is made in conjunction with contractor restructuring activities that are undertaken to reduce personnel or facilities in order to significantly lower the contractor's overall costs of operations, the contract price and cost adjustment process contractually required for changes in cost accounting practices under existing CAS-covered contracts may not be necessary or appropriate.

For example, assume that after contractor restructuring activities and associated practice change(s) are implemented concurrently, a reduction in the contractor's future overall operating costs is expected and the aggregate costs accumulated for existing covered contracts are also expected to be less than the aggregate costs that would have been accumulated if the restructuring activities had not been made by management. In such cases, it would generally be inappropriate to separately adjust existing contract prices or costs *only* for the cost impact of the change in cost accounting practice. That is because the aggregate CAS cost impact calculation for a practice change is based on the application of the original and changed cost accounting practices to the contractor's lower level of costs expected to result after restructuring changes are implemented. It does not give consideration to the impact that the lower overall operating cost levels (cost savings) expected to result from the restructuring activities will have, in the aggregate, on accumulated contract costs for existing covered contracts. Nor would the CAS cost impact adjustments give consideration to the effects of any resulting contract ceiling or target price adjustments or decisions that may otherwise be made by the Government based on the expected aggregate reductions in accumulated costs for the existing contracts as reported in the contractor's restructuring cost savings submissions or contract cost performance status reports. For such actions, the Government's decision(s) would be based on reported cost information that already reflects the application of the new changed cost accounting practices to the lower level of costs expected to occur after the restructuring changes are made by management. Consequently, an independent CAS contract price or cost adjustment made for the shift in costs attributable only to the cost accounting practice change(s) might alter, in part, the contractor's reported cost savings estimates and/or any resultant actions otherwise taken by the Government.

After considering this matter at length, the Board proposes to establish contractor notification requirements for any changes made to the contractor's established cost accounting practices (at 9903.405–2). The Board also proposes to establish an exemption from its contract price and cost adjustment requirements for certain voluntary changes made to a contractor's cost accounting practices (at 9903.201–6). The proposed exemption would become applicable when the cognizant Federal agency official determines that the Board's promulgated criteria for granting the exemption has been met: i.e., when a contractor adequately demonstrates that a planned restructuring activity is expected to result in cost savings to the Government; the practice change would not occur but for the planned restructuring activity; reductions in contractor personnel or facilities will occur; and reduced contract cost accumulations are expected to occur, in the aggregate, for existing flexibly priced contracts, and all expected future CAS-covered contracts and subcontracts.

If a change in cost accounting practice directly associated with planned restructuring activities were exempted, existing flexibly priced contracts would, however, remain subject to applicable contract terms and conditions prescribed in agency procurement regulations. Accordingly, the Contracting Officer may still make individual contract cost ceiling and/or target cost adjustments or otherwise take action to address any potential contract cost overrun and/or underrun conditions that are expected to result due to the restructuring activities.

The administrative process for requesting the exemption and granting an exemption is also proposed at 9903.405–2 and 9903.405–3. When a contractor requests an exemption, the submission of some contractor information is necessary concerning the contract cost accumulation changes and cost savings that are expected to result from the planned restructuring activities. Otherwise, the cognizant Federal agency official would not have a reasonable basis for determining, in a meaningful manner, if a planned cost accounting practice change meets the Board's specified exception criteria, and should be exempted, or if the practice change should be subjected to the Board's standard contract price and cost adjustment process.

Comment: A Federal agency supported the establishment of an exemption for improved management efficiency and effectiveness. It recommended, however, that the exemption only be granted when the contractor meets the Board's stated requirements *and* the cognizant Federal agency official makes a determination, based on the facts and circumstances of the situation, to grant the exemption. A related concern was that flexible contract adjustment provisions were needed so that adjustments can be made for shifts in contract costs resulting from changes made in cost accounting practices to ensure that contractor completion of flexibly priced contracts would not be jeopardized.

Response: In considering the establishment of an exemption, the Board did not expect to establish a mandatory exemption provision that would obviate the need for determinations, on a case-by-case basis, by the cognizant Federal agency official on whether a cost accounting practice change should be exempted. A unilateral exemption decision by the contractor was not envisioned, e.g., the draft "Option B" language included in the SNPRM–I provided that the contractor would request an exemption and the cognizant Federal agency official would notify the contractor if the Board's exemption criteria had been met and that the voluntary change would be exempt.

The Board's objective is to not discourage restructuring activities. Consequently, the Board is proposing an exemption provision so that cognizant Federal agency officials will not be required to apply the Board's contract price and cost adjustment process for certain changes in cost accounting practice that are directly associated with certain restructuring activities. The exemption would only apply when a

cognizant Federal agency official finds that contract price and cost adjustments otherwise required under the Board's regulations for existing contracts are not considered necessary to protect the Government's interest. This would occur where the cognizant Federal agency official determines that a contractor has met the Board's proposed exemption criteria which includes a demonstration that aggregate reductions in contract cost accumulations for existing flexibly priced CAS-covered contracts and future CAS-covered contracts are expected to result from the planned restructuring activity. However, when such "cost savings" to the Government are expected to occur in the aggregate due to restructuring and a voluntary cost accounting practice change is made concurrently with the restructuring change, then the two changes made in unison may produce cost underrun and/or overrun conditions for some individual flexibly priced type contracts. In such cases, the Board would expect that, as a normal contract administration matter, the contracting parties would mutually agree to concurrently decrease or increase the affected contract ceiling or target prices, and revise funding obligations, as necessary, to reflect the lower cost accumulations (cost savings), expected in the aggregate, for all affected flexibly priced contracts. The overall objective of such actions would be to recognize the aggregate "cost savings" and to address (correct) any individual contract cost overrun conditions that might result under existing CAS-covered contracts and subcontracts.

When the aggregate cost accumulations for existing flexibly priced contracts are expected to increase due to planned restructuring activities, then the cognizant Federal agency official may grant the exemption if a determination is made that the "cost savings" expected to result under future covered contract awards exceed the aggregate increase for such existing contracts. However, the resulting cost overrun conditions for such exempted CAS-covered contracts would remain subject to the same Contracting Officer actions that are normally taken to address cost overruns in accordance with the existing contracts' other terms and conditions that are prescribed in applicable agency procurement regulations.

The Board's intent is to provide flexibility to cognizant Federal agency officials administering CAS-covered contracts and subcontracts while also providing assurance to contractors that requests for the proposed exemption will generally be granted when the Board's specified criteria are applied. The granting or use of the Board's proposed exemption should not otherwise disrupt the Government's ongoing administration of CAS-covered contracts.

In response to the commenter's concerns, the Board proposes to establish a "finding" requirement at 9903.201–6 to clarify that a cognizant Federal agency determination is needed before a voluntary change in cost accounting practice can be considered exempt from a CAS-covered contract's contract price and cost adjustment provisions. The establishment of an adjustment provision for flexibly priced contracts to address the potential cost overrun conditions attributable to a change in cost accounting practice associated with a planned restructuring activity was not considered necessary.

Comment: A number of commenters advocated that if an exemption provision is promulgated, the coverage should not be limited to "transfers of functions" or "merger of cost pools." Several commenters recommended that the exemption language not be limited to cost accounting practice changes resulting from "organizational changes." Conversely, some commenters objected to the promulgation of an exemption based on their belief that an exemption for economy and efficiency changes would be abused. They opined that virtually every change in cost accounting practice could be covered as a change made for "improved management efficiency and effectiveness."

Response: The exemption criteria being proposed today has been expanded to include any changes in the "allocation of cost to cost objectives" (9903.201–6(c)) that occur within a cost accounting period, i.e., "intra-period" cost shifts. Changes involving the "measurement of cost" or the "assignment of cost to cost accounting periods" are not subject to exemption.

The Board also shares the concerns expressed by those commenters advocating that no exemption be provided in order to avoid the potential for abuse. In that regard, the SNPRM–I "Option B" exemption criteria has been modified to require an adequate contractor demonstration that the planned restructuring activities, when implemented, are expected to result in cost savings to the Government, in the aggregate. With regard to the latter, this proposed rule also requires a demonstration of the expected impact on projected cost accumulations for existing CAS-covered FFP contracts. Contract price adjustments normally required to resolve the cost impact resulting solely from a voluntary change in cost accounting practice would not, however, be required for existing CAS-covered FFP contracts, if the practice change is exempted. But the data submission in a FFP environment would provide support for the determination that similar offsetting "cost savings" can be reasonably expected to occur in future CAS-covered contracts.

The Board will revisit this matter if subsequent events reveal that the proposed exemption is "abused" after promulgation as a final rule.

Comment: A commenter opined that the proposed language would limit the exemption only to organizational changes that involve "physical" actions. The commenter recommended that a clarifying revision be made to permit changes that make more efficient use of existing facilities and personnel or increase productivity of those facilities and personnel.

Response: The proposed requirement for physical actions to evidence that a significant nonrecurring management change was being made to improve the economy and efficiency of operations has been retained in the exception being proposed today. The Board's intent is to provide a clear distinction between management actions taken to lower overall operating cost levels through reductions in personnel or facilities (physical changes) where any associated voluntary change to a cost accounting practice should be exempted, and other management actions taken to otherwise improve the economy and efficiency of operations where any associated voluntary change in cost accounting practice would remain subject to the cost impact process required for existing CAS-covered contracts. The proposed provisions are intended to facilitate overall contract administration activities, protect the Government's interests and reduce the potential for disagreements over whether a particular management change resulting in a voluntary change to an established cost accounting practice is an "exempt" or a "desirable" change under the Board's rules.

Comment: The draft Option B exemption should be applicable to all organizational changes (both internal and external) that meet the benefit test.

Response: The exemption criteria being proposed today applies to all restructuring activities as defined by the Board at 9904.406–61(b). It is not limited to "external restructuring activities" as currently defined in the Defense Federal Acquisition Regulation

Supplement (DFARS) at DFARS 231.205–70(b)(2).

Contract Price and Cost Adjustment Exemption for Changes in the Composition of Overhead and General an Administrative Expense Pools

Comment: A number of commenters felt the CASB staff's draft "Option C" presented for the Board's consideration was not useful. A few commenters believed that the draft "Option C" exemption concept was feasible and that it provided adequate protection to the Government.

Response: The Board has not incorporated this concept in this proposed rule.

Desirable Changes

Comment: Several commenters who supported the draft "Option B" exemption provision also advocated that the Board retain the proposed SNPRM–I mandatory "desirable change" provisions requiring the cognizant Federal agency official to find as "desirable" all voluntary cost accounting practice changes made to improve the efficiency and effectiveness of a contractor's operations.

A Federal agency recommended that the proposed mandatory desirable change criteria for changes in cost accounting practice that result in "cost savings" be deleted because the proposed criteria precludes consideration of other relevant facts and circumstances. In addition, if "cost savings" form the basis for granting a requested exemption, as advocated by the commenter, then contractors should not have the ability to choose between an exemption or a desirable change provision.

A Federal agency, with oversight responsibilities, recommended deletion of the SNPRM–I proposed amendment mandating desirable change findings for contractor changes made to improve the economy and efficiency of operations, and strongly supported the draft exemption provisions included as "Option B" because it offered "* * * controls to protect the Government * * *" The commenter felt that the proposed SNPRM–I amendments for desirable changes, at 9903.201–6(c)(2), did not offer adequate protection to the Government.

Response: A desirable change determination permits the contracting parties to increase existing CAS-covered contract prices, in the aggregate, to reflect the aggregate increased costs to the Government (as defined by the Board) that are expected to result from a contractor's voluntary change in cost accounting practice. In such cases, equitable contract price adjustments are negotiated to resolve the cost impact of the changes in contract cost accumulations that are estimated to result for the existing CAS-covered contracts due to the practice change. Where the cost impact of a practice change on existing CAS-covered contracts does not result in increased costs to the Government, in the aggregate, a desirable change determination is not needed to effect the required contract price and/or cost adjustments, in the aggregate. Only if the cost impact of a practice change on existing contracts results in aggregate "increased costs" after the change is made, would a desirable change determination serve a useful purpose.

In the SNPRM–I, the proposed mandatory desirable change determination criteria included changes in cost accounting practices attributable to organizational changes where "cost savings" were expected to occur under existing and/or future CAS-covered contracts. That provision was proposed as a stand alone amendment in the SNPRM–I, on the premise that the proposed mandatory provision would not be accompanied by an exemption provision for changes in cost accounting practices associated with management changes that are expected to result in more economical and efficient operations or cost savings (see the introduction to item 2 of the draft "Option B" provisions, in the SNPRM–I, which indicated that the desirable change criteria proposed at 9903.201–6(c)(2) for economy and efficiency improvements would be deleted or modified if the "Option B" draft exemption were established (62 FR 37671, 7–14–97)).

The Board believes the underlying merits of cost accounting practice changes that result in aggregate "increased costs" to the Government, as defined by the Board, need to be evaluated on a case-by-case basis. It would be inappropriate to mandate that "all" voluntary practice changes made ostensibly for improved economy and effectiveness reasons be deemed desirable changes that are not detrimental to the Government if expected cost savings to the Government cannot be demonstrated for existing and/or future contracts.

As specified under *"Contract Price and Cost Adjustment Exemption,"* the Board concluded that contract prices and costs should not be separately adjusted to only reflect the cost impact of a change in cost accounting practice when that practice change is associated with planned restructuring activities that are expected to produce cost savings to the Government. Furthermore, it would be inappropriate to establish two provisions, an exemption provision and a desirable change provision to cover cost accounting practice changes made for the same reason, i.e., restructuring changes that produce cost savings. The contracting parties would undoubtedly experience endless debate over which one of the two provisions should be applied in a particular circumstance.

The Board has therefore concluded that one consistent approach is needed for cost aceounting practice changes that are associated with management actions which are expected to produce costs savings. In consideration of the comments received, the Board's current proposal is to require the following:

Where the cognizant Federal agency official finds that cost savings to the Government are expected to result from planned restructuring activities in accordance with the Board's prescribed criteria, the changes in cost accounting practice directly associated with such restructuring activities will be exempted from the CAS contract price and cost adjustment requirements, unless a determination is made that the exemption would otherwise be detrimental to the Government's interests.

—Where the cognizant Federal agency official finds that cost savings to the Government are expected to result from planned management changes, including planned restructuring activities that do not result in an exemption determination in accordance with the Board's proposed exemption criteria at 9903.201–6, the changes in cost accounting practice directly associated with such management changes will generally be treated as a "desirable change." In such cases, the CAS contract price and cost adjustments normally required to resolve the resulting cost impact of the practice change may be otherwise resolved, without requiring the submission of additional data in the form of a cost impact proposal, provided a determination is made that an alternative resolution (based on the contractor's previously submitted expected "cost savings" and contract cost accumulation changes data (see 9903.405–2(e)) is not detrimental to the Government's interests. The Board believes that the proposed "cost savings" demonstration and alternative resolution determination requirements should provide adequate controls to protect the Government's interests.

—All other voluntary changes in cost accounting practices made for any other reason will remain subject to the Board's voluntary change "no increased cost" prohibition and other related desirable change provisions (see proposed 9903.201–7(c)(3)).

In conjunction with the exemption being proposed today, the Board has modified the mandatory desirable change amendment that was proposed in the SNPRM–I at 9903.201–6(c)(2). Essentially, the Board's current proposal is to amend its existing desirable change criteria to provide that a voluntary change to a cost accounting practice, including those associated with restructuring activities but not exempted under 9903.201–6(a), shall be deemed to be desirable change if the contractor can demonstrate cost savings to the Government, in the aggregate, for existing flexibly priced and all future CAS-covered contracts or otherwise demonstrate desirability of the practice change (see 9903.201–7(c) (2) and (3)).

Comment: A Federal agency responded that contract disputes have arisen as to when a voluntary change in cost accounting practice can be considered to be a desirable change. The agency recommended that the rule state a voluntary change is not to be considered desirable until the cognizant Federal agency official notifies the contractor the change has been determined to be a desirable change.

Response: Proposed provisions have been added, at 9903.201–7(b), to clarify the purpose of a desirable change determination and that until the cognizant Federal agency official determines that a change is desirable and not detrimental to the Government, the change shall be considered to be a voluntary change for which the Government will pay no increased costs.

Comment: A Federal agency recommended that more flexibility would be provided for making desirable change determinations if the phrase "provided there is a reasonable expectation that benefits will accrue to the Government in future awards" were deleted from the last sentence proposed in the SNPRM–I at 9903.201–6(d).

However, many industry commenters argued that the cost impact on future CAS-covered contracts should be considered by the cognizant Federal agency official in determining how to resolve the cost impact of a voluntary change in cost accounting practice that results in "increased" cost to the Government. The commenters opined that inequitable results that penalize a contractor may occur if decreased cost accumulations expected to result for future CAS-covered contracts, after the voluntary change is made, are not considered.

Response: One of the Board's statutory mandates is to preclude the payment of increased costs, as defined by the Board, under CAS-covered contracts due to voluntary changes in cost accounting practices made by contractors after contract award. Under the terms and conditions of the Board's implementing contract clauses, a contractor agrees to consistently follow its established cost accounting practices when accumulating and reporting the costs of contract performance after contract award. A contractor also agrees that if a voluntary change is made, the Government will not pay any aggregate increased cost for existing covered contracts whose negotiated prices were predicated on cost estimates that were premised on the consistent application of the contractor's previously established cost accounting practices.

The Board's voluntary change—no increased cost prohibition, limits potential contract price and/or cost adjustments, so that any resultant increased costs to the Government under existing contracts are not paid, i.e., after the change, the amounts paid by the Government in the form of adjusted contract prices and/or increased contract cost accumulations, in the aggregate, can not be more than the aggregate amount the Government would have paid under the terms of the existing CAS-covered contracts if the contractor had continued to consistently apply its established cost accounting practices for the accumulation and reporting of contract costs. In essence, the Board's no increased cost prohibition provides that the Government's liability to pay contractually specified sums, in the aggregate, can not be increased unilaterally by a contractor that makes a voluntary change to its established cost accounting practices after contract award. The objective is to encourage the consistent application of a contractor's established cost accounting practices and to discourage voluntary changes that would otherwise result in the payment of increased costs by the Government under existing covered contracts. It would therefore be inappropriate for the Board to mandate that the cost impact expected to occur on potential future covered contracts, which may or may not be awarded, be considered when determining the cost impact that a voluntary change will have on existing contracts for purposes of mitigating the application of the prescribed no increased cost prohibition provisions to existing contracts.

Since future contract prices will reflect estimated costs that are already based on the application of the new cost accounting practice, they require no adjustments and there is no cost impact calculation required for such contracts. The cost impact calculation due to changes in cost accounting practices is limited to existing covered contracts. The calculation is based on the differences in accumulated contract costs that are expected to result for the existing covered contracts based on the application of the old and new cost accounting practices to the projected ongoing level of costs expected to occur after the practice change is made. For voluntary changes, the no increased cost prohibition is then used to limit any upward contract price or cost adjustments, in the aggregate, to the aggregate amount of downward adjustments being made for the existing CAS-covered contracts.

The Board believes, however, that equitable solutions can be achieved under the rules being proposed today. In cases where a continuing long term relationship between the Government and a contractor is evident and when a voluntary change in cost accounting practice is not otherwise determined to be exempt from contract price or cost adjustment (9903.201–6), a contractor may request the cognizant Federal agency official to determine that the voluntary change is not detrimental to the Government (9903.201–7) so that the affected existing covered contracts and subcontracts desirable change provisions can be applied (9903.405–2(e) and 9903.405–2(f)(3)). To support the request, a contractor should demonstrate to what extent cost accumulations for projected new CAS-covered contract work included in the contractor's forecasted business base are expected to decrease as a result of the voluntary change. The calculations should also be based on the differences in accumulated contract costs that are expected to result for the anticipated future CAS-covered contracts based on the application of the old and new cost accounting practices to the same projected ongoing level of costs expected to occur after the practice change is made that is used to determine the cost impact on existing contracts.

The cognizant Federal agency official may consider such data, from an equity standpoint, when determining if the existing contract prices should be increased, in the aggregate, under a contract's desirable change provisions.

In consideration of the commenters' expressed concerns, the proposed proviso of concern to the Federal

commenter has been deleted. In addition, paragraph 9903.201–7(d) has been expanded to clarify that a desirable change determination may be appropriate to the extent there is a reasonable expectation that the costs of anticipated future CAS-covered contract awards will decrease after a voluntary change is made by a contractor.

Cognizant Federal Agency Responsibilities

Comment: A Federal agency recommended that the SNPRM–I proposed responsibilities at 9903.201–7(d)(1) and (2) for the cognizant Federal agency official involving the processing of contract price modifications be deleted because it duplicates and conflicts with existing coverage currently included in FAR Part 30, at FAR 30.601(a) and 30.602–1(c).

Response: A change in cost accounting practice made by a contractor may affect some or all existing CAS-covered contracts awarded by one or more agencies, e.g., agencies within the Department of Defense or other defense or civilian agencies. The proposed responsibilities in question are premised on the concept that a cognizant Federal agency approach shall be followed to resolve the cost impact that a particular change in cost accounting may have on all affected CAS-covered contracts regardless of the number of awarding agencies involved. The proposed requirements recommended for deletion would, if finalized, require the cognizant Federal agency official to coordinate all actions needed to implement the negotiated cost impact settlement on behalf of the Government with the contractor.

When the cognizant Federal agency official negotiates contract price adjustments to resolve a cost impact, the current FAR provisions cited by the commenter do not establish a coordinated systematic approach to effect the necessary contract price adjustments. The cognizant Federal official is excused from any further actions after the negotiation memorandum is distributed to affected agencies. No follow up action by the cognizant Federal official is required if all the contract prices that the contractor and cognizant Federal agency official have agreed to modify are not so modified. The contractor would have to follow up with the other agencies on an individual basis in order to obtain the necessary contract price adjustments. This could prove to be a difficult task, particularly in cases where the other agencies are expected to increase the price of their CAS-covered contracts. Additionally, the FAR does not require the other agencies to support the cognizant Federal agency official. The proposed provisions are considered appropriate in the circumstances and have been retained at 9903.201–8.

Contract Clauses

Comment: Federal agencies suggested that the proposed provisions on interest should be conformed throughout the rule to cite Section 6621(a)(2) of the Internal Revenue Code and that the contract clause interest provisions through out the proposed rule be conformed.

Response: The suggestions were adopted. The proposed contract clause provisions were conformed for consistency with the interest provisions specified in proposed 9903.4 for estimating noncompliances and cost accumulation noncompliances.

Comment: Why was the provision in the contract clause paragraph (a)(4) at 9903.201–4(a) that reads "* * * agree to an equitable adjustment as provided in the Changes clause * * *" deleted?

Response: The CAS contract clauses' equitable adjustment provisions are not dependent upon another contract clause. The Board's proposed amendments provide for equitable adjustments in accordance with the contract clause and part 9903.

Comment: A Federal agency recommended that the contract clauses for educational institutions and United Kingdom contracts be updated and conformed with the amended Full and Modified contract clauses.

Response: The Clause for United Kingdom contractors is quite different from the other referenced provisions. In addition, it is both brief and simple. In the absence of any identified implementation problems, that clause does not appear to be in need of modification. The clause for educational institutions was promulgated on November 8, 1994. In response to one related ANPRM comment, the Board asked in the prior NPRM (61 FR 49206) for further comments on the desirability and support for making such revisions. Only one commenter responded to the NPRM and the SNPRM-I on this matter. Accordingly, the Board believes that such amendments are not currently warranted.

Intermediate Cost Objective Definition

Comment: Commenters suggested that the definition of the term "intermediate cost objective" would be easier to implement and understand if the phrase "* * * included in specific indirect cost pools * * *" were deleted from the proposed definition.

Response: The concept of an intermediate cost objective evolved from the Board's promulgation of CAS 9903.402, in 1972, when a definition of the term "indirect cost" was promulgated. That definition introduced the concept that a cost was not direct if it was identified with two or more final cost objectives or with at least one "intermediate cost objective." The latter term, however, remained undefined. How costs are grouped for cost accumulation purposes and their subsequent allocation to intermediate and final cost objectives constitutes a cost accounting practice, i.e., the "accounting methods or techniques used to accumulate costs" (9903.302–1(c)). Also, it is recognized that at times, for reasons of economy and efficiency, certain costs of a direct nature may be accumulated in cost pools that are subsequently allocated to final cost objectives as direct cost.

In view of the commenters' concerns, the proposed definition was revised to clarify that different cost elements and the costs of various functions can be accumulated in a varying number of intermediate cost objectives that are included in specific cost pools, e.g., overhead cost pools, G&A expense pools, service center expense pools and other expense pools, and/or cost pools that are allocated as direct costs. All such pooled costs are subsequently allocated to other intermediate and/or final cost objectives in accordance with applicable CAS and/or the contractor's established, and, if required, disclosed cost accounting practices.

Cost Accounting Practice Change Definitions and Illustrations

Comment: A number of commenters stated that the proposed amendments have improperly expanded the meaning of the term "cost accumulation" and that such expansion is unfortunate since almost any change in the flow of cost to contracts will be treated as a cost accounting practice change.

Response: The Board does not agree with the commenters' rationale. To accumulate cost, a contractor must apply its established, and, if required, disclosed cost accounting practices, i.e., the accounting methods or techniques used to accumulate cost for CAS-covered contracts. The Board's definition at 9903.302–1(c) presently states that one of the examples of a cost accounting practice involving the allocation of cost to cost objectives are "the accounting methods or techniques used to accumulate cost . . ." The Board has not expanded the definition or proposed a new requirement. The reason for the Board's proposed

amendments is that under the present definition, some contractors have concluded that the methods or techniques used to accumulate costs in cost pools are not a cost accounting practice and that changes made to the methods or techniques used to accumulate costs in cost pools are not a change in cost accounting practice. Some contractors, in their responses to the SNPRM–I, specified that they do not believe that a change in cost accounting practice occurs when cost pools are combined or split-out, or when ongoing functions are transferred from one cost pool to another cost pool; based, presumably, on their interpretation of the Board's existing definition. With regard to changes which alter the flow of costs to contracts, the commenters' inferences appear contrary to the basic consistency requirements of CAS 9904.401 or 9905.501, as applicable, which require that a contractor's established cost accounting practices be applied consistently when estimating, accumulating and reporting costs.

The Board's proposed amendments would make it explicit that the methods or techniques used to accumulate costs in cost pools are to be considered a cost accounting practice when a contractor estimates, accumulates and reports costs, and that a change made to the methods or techniques used to accumulate cost in cost pools is a change in cost accounting practice under the Board's rules. In response to the commenters' expressed concerns, some editorial changes were made to clarify the Board's stated concepts regarding use of the phrase "accumulate cost."

Comment: A Federal agency recommended that the words "item of cost or a group of items of cost" proposed for inclusion at 9903.302–1(c) be replaced with the words "accumulate and distribute." They believe that the proposed wording might be interpreted, by some, to mean that the transfer of one direct labor employee from one plant to another plant could be viewed as a change in cost accounting practice. Some contractor representatives also expressed concern that the SNPRM–I proposal introduced uncertainty with regard to the transfer of personnel from one functional activity to another.

Response: The agency's suggestion was adopted. The words "accumulate and distribute" were previously proposed in the NPRM and appear to more clearly convey the primary cost accounting concept being addressed in this rulemaking, i.e., that the methods and techniques used for the allocation of cost to cost objectives include the selection and use of specific cost pools to accumulate costs for subsequent distribution to other intermediate and final cost objectives.

Comment: A Federal agency agreed with the proposed provision at 9903.302–1(c)(2), but recommended that the words "elements of cost" be deleted since the composition of cost pools does not include specific elements of cost. This comment also relates to the concern that an individual employee could be an "element of cost" and if transferred to another segment might be construed to be a change in cost accounting practice, which would conflict with the proposed illustration at 9903.302–(4)(h). The word "specific" in the phrase "the accumulation of specific costs" was also recommended for deletion.

Response: Cost pools accumulate costs by elements of cost and if required to disclose their cost accounting practices in a disclosure statement, a contractor performing a CAS-covered contract is required to disclose if an element of cost is to be treated as a direct cost or an indirect cost and which elements of cost are included in each indirect cost pool.

With the revised language change, made in response to the preceding comment made by the same agency, and the retention of the cited illustration, it should be clear that the Board does not expect the contracting parties to treat employee transfers as a change in cost accounting practice. This matter was also addressed in the SNPRM–I preamble comments (62 FR 37660, 7/14/97). Accordingly, the words of concern to the commenter were retained.

Comment: A Federal agency recommended deletion of the word "measure" from the proposed provision used to describe the "allocation measurement activity" at 9903.302–1(c)(3) to avoid potential conflict with the cost "measurement" term found at 9903.302–1(a). Some contractor representatives recommended similar changes.

Response: The words "measurement," "measure" and "activity" were deleted as suggested in 9903.302–1(c)(3) and where they were used in a similar manner in the illustrations proposed under 9903.302–3(c).

Comment: At 9903.302–2(a)(3), the proposed coverage on functional transfers should not be limited to costs in indirect cost pools, and intra-segment transfers.

Response: The proposed coverage was revised to address the commenter's concerns.

Comment: A Federal agency recommended that the words "home office" be added to the exception provision in the last sentence proposed at 9903.302–2(b)(1), because functional transfers to or from intermediate home offices were excluded from the proposed coverage.

Response: The recommended change was adopted.

Comment: Some commenters objected to the proposed reference to each contract at 9903.302–2(c)(1) and recommended deletion of the proposed coverage.

Response: The reference to each CAS-covered contract refers to the terms and conditions contained in each contract. The proposed coverage was retained.

Comment: A Federal agency and some contractors commented that the proposed language at 9903.302–2(c)(2) referencing a noncompliant practice change was not clear.

Response: The proposed coverage was revised to separately address compliant and noncompliant actions.

Comment: Several commenters recommended a number of clarifying edits to the proposed language included at 9903.302–3(c)(4), (6), (7), (8), and (9).

Response: Where deemed appropriate, the referenced illustrations were revised for clarity, and to reflect the use of consistent language in similar circumstances.

Comment: Delete or revise the illustrations that mention "intermediate cost objectives" as the intent of the purpose of the illustration may not be clearly understood.

Response: The primary purpose of the illustrated changes was to clarify that a cost accounting practice change results if the costs of an ongoing function (which were accumulated in an intermediate cost objective established for that function) that are originally included in one cost pool are subsequently transferred to and included in a different cost pool. That concept can also be illustrated by stating if the costs of an ongoing function are or are not included in the same cost pool before and after a change is made. The illustrations at 9903.302–3(c)(7) and (9), and at 9903.302–4(h) were therefore so revised. The references to intermediate cost objectives were deleted.

Comment: A Federal agency suggested deletion of the comment that the change in cost accounting practice depicted in the proposed illustrations at 9903.302–3(c)(8)(i) and (9)(v) are subject to the acquired CAS-covered contract's contract price and cost adjustment provisions. They opined that incorporation in the proposed illustrations may cause potential confusion and disputes since similar statements were not included in all of

the proposed illustrations of changes in cost accounting practices.

Response: All changes in cost accounting practice are subject to the applicable contract clause provisions governing changes in cost accounting practices. In the case of an acquired contract, the additional comment was incorporated to emphasize that an acquiring contractor must abide with the acquired CAS-covered contract's terms and conditions governing changes in cost accounting practices in the event any changes in cost accounting practices are made after the effective date of the acquisition. If the commenter's suggestion were adopted, an acquiring contractor might argue that the referenced contract price and cost adjustment provisions do not apply since they were subsequently deleted from the Board's proposed amendments. The proposed provisions were retained.

Comment: A commenter recommended a number of clarifying edits to the proposed language included at 9903.302–4(h), (i), and (j).

Response: Where deemed appropriate, the referenced illustrations were revised for clarity.

Comment: Some commenters inquired if the use of a "special allocation" method (e.g., 9904.410–50(j)) is an initial adoption of a cost accounting practice or a change in cost accounting practice.

Response: If a contractor's established cost accounting practices do not include the use of a special allocation methodology when estimating and accumulating costs for CAS-covered contracts, and subsequently the contractor decides to apply a special allocation methodology while performing ongoing CAS-covered contracts, the contractor would no longer be in compliance with the consistency requirements of CAS 9904.401 and 9905.501. However, under the contract clause terms of CAS-covered contracts, the contractor can make a voluntary change to its established cost accounting practices. If material, the resultant cost impact due to the change in cost accounting practice could result in contract price or cost adjustments, at no aggregate increased cost to the Government.

The Cost Impact Process

Comment: One commenter suggested changes to the definition for "Increased cost to the Government due to a change in compliant cost accounting practices' included at 9903.403 on the basis that, as proposed, the definition incorrectly implies that increased costs exist only when no action is taken to preclude payment of increased costs.

Response: The Board has revised the proposed language to clarify that increased costs resulting from a voluntary change in cost accounting practice represent the increase in cost to the Government that occurs after a change is made, before any actions are taken to preclude the payment of the resultant increased cost by the Government. After a voluntary change in cost accounting practice is made, increased cost to the Government occurs only when a greater amount of costs are accumulated and claimed as contract costs under existing flexibly priced contracts. For existing firm-fixed-price contracts, increased costs to the Government only occur if a lesser amount of cost is accumulated after the practice change is made, before the negotiated contract prices are adjusted downward to reflect the aggregate reduction in accumulated costs. If a downward adjustment is not made, the Government will be charged the resultant increased cost in the form of a higher fixed contract price that provided for the higher allocation of cost to the contract that would have resulted had there not been a change in cost accounting practice.

Comment: A Federal agency requested that the Board clearly state in both the preamble and the rule which provisions represent mandates and which provisions are intended to be applied at the discretion of the cognizant Federal agency official.

Response: The Board has used the word "shall" when referring to an action that is mandatory, and the terms "may" and "should" when referring to an action that is discretionary.

Comment: A Federal agency requested that the Board provide more flexibility with regard to the adjustment of individual contract prices that exceed established materiality thresholds.

Response: The Board has eliminated use of words that suggest absolute mandates such as "required", "requirements" and "necessary." These words have been replaced with terms that make it clear that the provisions included in the rule for adjusting individual contract prices should be followed only when the cognizant Federal agency official decides to resolve a cost impact action by modifying contract prices.

Comment: A Federal agency requested that the Board add a provision at 9903.405–2 covering "Notification of changes in cost accounting practices" which would require that contractors notify the Government of the proposed effective and applicability dates of a change in cost accounting practice.

Response: The Board adopted the suggested change. The addition of the "effective date" notification requirement will help clarify which contracts were proposed and/or negotiated after the effective date of the change in cost accounting practice and should therefore not be subject to contract price and/or cost adjustment.

Comment: Many industry commenters requested that the Board eliminate the proposed requirement, at 9903.405–4(a), that some individual contract data be included in the General Dollar Magnitude (GDM) settlement proposal. They suggested that the contracting parties attempt to resolve the cost impact action based on the GDM aggregate estimate before requiring the submission of any individual contract data.

Response: The Board rejects this suggestion.

Under current Government procurement regulations governing the cost impact process, the required GDM estimate is used solely to determine whether or not the cost impact of a change in cost accounting practice is not material and, therefore, no detailed cost impact proposal will be required. If such an immateriality determination cannot be made, then the contractor must submit a detailed cost impact proposal for all existing covered contracts and subcontracts affected by the change in cost accounting practice or the estimating noncompliance. Originally, the procurement regulations required the submission of a GDM estimate by contract type and Federal agency, with no instruction as to what action the agencies should take based on the contractor's GDM estimate data. Furthermore, the GDM estimate is currently required to be submitted at the same time as the notification of the change in cost accounting practices, with a cost impact proposal to be submitted at a later date. Thus, it appears that the GDM estimate was never intended to serve as the basis for making contract price or cost adjustments to resolve a material cost impact action.

Under the Board's proposal, the contracting parties can resolve a cost impact action based on a three step process. The cost impact resulting from a change in cost accounting practice can be resolved without the submission of any contract cost data if the change is obviously immaterial (9903.405–3(d) in the SNPRM–I), or if not obviously immaterial by the submission of a GDM Settlement Proposal or a detailed cost impact proposal.

When not obviously immaterial, the cost impact of a practice change can be

resolved by the submission of a GDM estimate and some individual contract data, without having to resort to a detailed cost impact proposal. The GDM estimate and Contractor Settlement Proposal were previously proposed as two separate submission requirements in the ANPRM. Based on a public commenter's suggestions, the two submission requirements were proposed in the SNPRM–I as a combined "GDM Settlement Proposal." The Board continues to believe that when material changes result in the amounts of accumulated contract costs, either in the aggregate or for individual contracts, due to a change in cost accounting practice, then the aggregate cost data included in the GDM estimate is insufficient for the cognizant Federal agency official to make an informed judgment on how to best resolve the cost impact. If no individual contract data were required at the time of the GDM estimate submission, the cognizant Federal agency official would need to obtain individual contract data in order to protect the interests of the Government, e.g., in order to: (1) evaluate the accuracy of the GDM estimate amounts by contract type; (2) determine what adjustments may be needed to resolve any resultant contract cost overrun and/or underrun conditions, and/or (3) ascertain if a detailed cost impact proposal should be requested.

The Board believes that the proposed three step process included in this proposed rule provides the contracting parties with the best opportunity to resolve the cost impact action with a minimum of contract data. Under the GDM Settlement Proposal concept, a contractor is expected to make the initial decision as to the number of individual contracts, within each contract type, for which contract data is needed to settle the cost impact action. If the cognizant Federal agency official accepts the contractor's settlement proposal, no further contract data need be submitted. Of course, if agreement to resolve the cost impact action does not occur based on a contractor's proposed settlement approach, then the cognizant Federal agency official may still request data for some additional contracts or a detailed cost impact statement, if deemed necessary. The Board's objective is to permit the contracting parties to resolve the cost impact action without having to resort to the current process which requires the submission of detailed cost impact data for all contracts.

The Board believes that the commenter's suggested approach would only serve to delay the proper resolution of the cost impact for CAS-covered contracts. The suggestions were not adopted. However, the provision at 9903.405–3(f) was revised to emphasize that a GDM Settlement Proposal is not required if the cost impact of a change in cost accounting practice is determined to be obviously immaterial.

Comment: One Federal agency recommended revising the provisions for the offset process included at 9903.405–5(b) to be "general guidelines" rather than "rules." They stated that general guidelines should normally be followed, but the cognizant Federal agency official should be permitted to deviate from the guidelines, provided the application of the offset process results in adjustments that approximate, in the aggregate, the cost impact that would have resulted had individual contracts been adjusted.

Response: Since all of the provisions promulgated by the CASB are in essence and in fact "rules," the Board has deleted the reference to "rules of offset" from 9903.405–5(b). The Board believes that this proposal when considered in its totality, including the offset provisions, provides the cognizant Federal agency official with sufficient flexibility to resolve a cost impact action in a manner deemed most appropriate considering both individual circumstances and protection of the Government's interests. The provisions which the Board has included for use of the offset process are designed to insure that the process, whenever used, is applied consistently and in such a way that material cost impact amounts, both in the aggregate and for individual contracts, are appropriately calculated in the prescribed manner.

Comment: One commenter suggested that the Board sanction the use of the final indirect expense rate settlement process rather than contract price adjustments as a method to resolve the cost impact action. The commenter expressed the opinion that contract adjustments should only be used as a final resort.

Response: The Board's proposed rules provide significant flexibility with regard to the method used by the cognizant Federal agency official to resolve a cost impact action by inclusion of the phrase "other suitable technique." However, the Board would caution the contracting parties with regard to use of any method which results in further inconsistency between the contract price amounts and accumulated contract costs due to the cost accounting practices used to estimate proposed costs and to accumulate costs during contract performance.

Adjustment of indirect expense rates to settle a cost impact action can result in the adjustment of the wrong contracts for the impact of the change in cost accounting practices. This method also results in the establishment of final indirect expense rates that are not consistent with a contractor's established and disclosed cost accounting practices for allocating indirect costs to final cost objectives. Adjusting indirect expense rates to resolve the cost impact would in most cases require an adjustment to the indirect expense pool that exceeds the amount of the actual cost impact adjustment amount in order to ensure that the aggregate cost impact amount calculated for all affected CAS-covered contracts is recovered on the open flexibly-priced contracts being performed during the particular cost accounting period to which the "adjusted" rates apply. Use of this approach distorts the accumulation of costs used for contract cost and pricing purposes, in that the resultant accumulated costs recognized for CAS-covered contracts will be greater or less than the costs that would have been accumulated as actual "booked" costs in accordance with a contractor's established cost accounting practices had the indirect cost pools, and the indirect cost rates used to allocate such costs to final cost objectives, not been adjusted to reflect the cost impact of a change in cost accounting practice. Such pool adjustments may further distort the difference between the costs that would have originally been allocated to the affected CAS-covered contracts as actual "booked" costs and the costs that will be allocated to those contracts for contract costing purposes based on the adjusted final rates if multiple cost accounting periods are involved and/or if the Government's percent of participation in the allocation base is not consistent. The Board therefore disagrees with the position presented by the commenter. Adjustment of contract prices is the method which most consistently reflects the requirements of both the applicable contract clause and CAS 9904.401 or 9905.501, as applicable, regarding consistency in the cost accounting practices used to both estimate and accumulate costs on CAS-covered contracts. The Board finds inappropriate the commenter's suggestion that the Board endorse a position which holds that such adjustments should only be used as a last resort. To the contrary, the Board believes that any method that further distorts the Board's consistency requirements, such as the adjustment of

indirect expense rates, should be a method that is only used as a last resort. If the cognizant Federal agency official determines that adjustment of contract prices is not warranted to resolve the cost impact action, the Board is of the view that a transfer of funds between the Government and a contractor is the most appropriate "other suitable technique" that can be used to settle the action.

Comment: Federal agency and industry commenters expressed concerns regarding the SNPRM–I prefatory comments stating that:

> The Board is of the opinion that modification of contract and subcontract prices * * * represents the preferred method to be used to resolve material cost impacts due to a change in cost accounting practice. Modification of contract prices enable the contracting parties to establish contract prices for covered contracts that correlate with the increased or decreased cost allocations to such contracts that result due to practice changes * * *

The Federal agency advocated that maximum flexibility be provided for the resolution of the cost impact resulting from a change in cost accounting practice. The contractor commenters recommended that no "preference" be stated in the final rule.

Response: The Board's contract clauses included in individual CAS-covered contracts require contractors to consistently apply their established cost accounting practices when accumulating and reporting the costs of performing CAS-covered contracts. However, the CAS contract clause provisions also permit a contractor to make a voluntary change to its established cost accounting practices, provided the cost impact resulting from the change is addressed. For voluntary changes, the contractor agrees to contract price and/or cost adjustments which are limited to a no increased cost to the Government provision. If the cognizant Federal agency official determines that the practice change is desirable and not detrimental to the Government, the contract prices can be adjusted to reflect the aggregate change in the amount of accumulated contract costs that is expected to result due to the practice change.

After contract price adjustment and/or actions taken to preclude the payment of increased costs, the cost-based contract prices (FFP or cost ceiling) are once again comparable with the increased or decreased contract costs that will be accumulated consistently in accordance with the changed cost accounting practices, after a voluntary practice change is made. Such actions taken to resolve the cost impact of a practice change also resolve any resultant potential contract cost overrun or cost underrun conditions that are attributable to the practice change. Thus, contract price and cost adjustments are generally the required, not preferred, method for resolving the cost impact resulting from a change in cost accounting practice.

In the SNPRM–I, the Board concluded that "* * * the decision on how to best achieve an equitable solution, in the aggregate, remains a cognizant Federal agency official responsibility." The Board's comments were intended to acknowledge that there may be circumstances where the required contract price and/or cost adjustments need not be made. For example, this might be the case where the cost impact, in the aggregate, is considered material in and of itself, but the cognizant Federal agency determines contract price and/or cost adjustments are not warranted because contract performance would not be jeopardized (no significant cost overrun condition resulted) and the increase or decrease in expected cost accumulations would not distort or adversely impair the usefulness of the contractor's reported contract cost information (actual costs and estimated costs to complete) that is included in contract status reports. However, to achieve equity, some consideration for the cost impact should be obtained or granted. In such cases, another suitable technique may be used to resolve the cost impact, e.g., a monetary exchange between the contracting parties. This alternate approach would also produce administrative cost savings since the contracting parties would not have to process contract modifications or take further actions to preclude the payment of increased costs on individual contracts.

On the other hand, in a case where the cost impact, is considered material and, by not processing contract price and/or cost adjustments, the Government would pay increased costs (as defined by the Board), the contractor's ability to perform the contract is adversely affected, and/or the cost data included in the contractor's status reports would not be meaningful, then the required contract price and/or cost adjustments should be processed.

To address the commenters' expressed concerns, the Board is proposing additional provisions at 9903.405–5(e) to emphasize that the cognizant Federal agency official does have the flexibility to resolve a cost impact due to a change made to a compliant cost accounting practice by use of alternative actions, i.e., other than contract price adjustment or actions taken to preclude the payment of increased costs. Cautionary provisions pertaining to the use of such alternative actions were also included.

Comment: A Federal agency recommended deleting the phrase "and negotiate" from the description of a cost estimating noncompliance at 9903.406–1(a). They explained that an estimating noncompliance results when the contractor estimates costs using a noncompliant accounting practice. They further stated that under the proposed provision, an estimating noncompliance would exist only if the noncompliance was used for both estimating and negotiating the contract. Such a definition, they believe, will result in significant disputes as to whether a contractor's final price negotiation included or excluded the impact of the change in cost accounting practice.

Response: Only those contracts that had their contract price based on a noncompliant practice can be included in the universe of contracts subject to adjustment as a result of an estimating noncompliance. Therefore, it must be demonstrated that not only did the contractor estimate costs using a noncompliant practice for a potential CAS-covered contract, but also that the contract price was established using data that was based on the use of a noncompliant practice. There may be situations in which a contractor estimates costs using a noncompliant practice, but either the Government rejects the use of that practice to negotiate the contract amount or the contractor voluntarily changes to a compliant practice prior to the negotiation of the contract price. In such situations, the negotiated contract price or cost ceiling would not have been based on the use of a noncompliant cost accounting practice. Hence, it would not be appropriate to include these contracts in a cost impact proposal for an estimating noncompliance. For those contracts that were estimated using a noncompliant practice and that noncompliant practice was used to determine the contract price, the contracting parties must determine the impact on those contracts as a result of the noncompliant practice. In order to clarify the Board's position on this matter, the Board has revised the proposed language at 9903.406–1(a).

Comment: One commenter recommended that, in order to avoid duplication, the provision regarding situations where a noncompliant practice is used for both cost estimating and cost accumulation purposes be moved to 9903.406–1 rather than including this provision at both 9903.406–3(g) and 9903.406–4(b).

Response: The Board agrees and has adopted this recommendation (9903.406–1(b)).

Comment: One Federal agency recommended that the proposed table at 9903.406–3(d) address a cost impact due to a noncompliance in terms of the change in allocation that resulted from using a noncompliant cost accounting practice rather than in terms of the change in allocation that would have resulted had a compliant accounting practice been used. Through discussions with contracting officers, they determined that most contracting officers address the cost impact in terms of the change in allocation that resulted from using a noncompliant practice.

Response: The Board adopted this recommendation and has revised the table at 9903.406–3(d) accordingly.

Comment: One commenter recommended adding the concept of computing interest based on the midpoint of the period for a cost accumulation noncompliance described at 9903.406–4(e) to cost estimating noncompliances at 9903.406–3.

Response: Upon further review of this provision, the Board has concluded that inclusion of a method to be used to calculate the amount of interest due to increased costs paid as a result of a noncompliant practice is overly instructional and prescriptive in nature and therefore should not be included in this rule. The Board therefore has deleted the prescribed method of computing interest from the rule. Federal agencies should establish reasonable methods for determining the amount of interest to be recovered based on increased costs paid due to a noncompliant practice.

Comment: Several commenters recommended the deletion of the term "technical" from the provision at 9903.406–5 describing immaterial noncompliances. A Federal agency recommended deletion of the proposed provision at 9903.406–5(a)(2) which provides that a contractor is not excused from the obligation to comply with the applicable Standards or rules and regulations involved when an immaterial noncompliance exists. An industry commenter further requested deletion of the proposed requirement at 9903.406–5 which requires a contractor to notify the cognizant Federal agency official within 60 days of when the technical noncompliance becomes material.

Response: The Board has adopted all of the suggested revisions. The Board agrees that a cost accounting practice is either compliant with applicable Cost Accounting Standards or it is not. The term "technical noncompliance" has acquired an accepted usage by various groups that deal with CAS administration matters in referring to noncompliant practices that do not result in material increased costs. However, in order to avoid any confusion by parties not familiar with this terminology, the Board has replaced the term "technical" with the term "immaterial" in this proposed rule.

Since it should be apparent that, absent the granting of a waiver or exemption, contractors are never "excused" from the obligation to comply with applicable CAS Board rules and regulations, the Board proposes to delete the SNPRM–I provision at 9903.406–5(a)(2). The provision retained within 9903.406–5, which allows the cognizant Federal agency official to recover any subsequent increased costs plus applicable interest that may result from the currently immaterial noncompliance, provides adequate protection to the Government in these situations.

Comment: A Federal agency recommended deleting the specific reason used by the contractor in the illustration at 9903.407–1(a)(1) as justification for requesting a retroactive applicability date for the change. They explained that inclusion of a specific reason could be interpreted to mean that this specific reason should be determined appropriate justification for approval of a retroactive applicability date in all cases.

Response: The Board has deleted the specific reason included in the illustration.

Educational Institutions

Comment: A Federal agency recommended that the last sentence proposed at 9903.401–2(e) be revised to reflect a one time notification requirement.

Response: The suggested language was adopted.

F. Additional Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed amendments contained in this document. All comments must be in writing and submitted timely to the address indicated in the **ADDRESSES** section of this document.

The Board is considering the establishment of certain new "exemption" and "desirable changes" provisions that it believes would facilitate the overall process governing compliant changes in cost accounting practices. Therefore, the Board invites interested parties to specifically comment on the following amendments being proposed today:

—Proposed 9903.201–6, Findings—Voluntary changes exempt from contract price and cost adjustment, which proposes to exempt certain voluntary changes to a cost accounting practice from contract price and cost adjustment when specified criteria are met. The submission of specific alternative criteria and/or procedural requirements that commenters believe could result in the establishment of workable regulatory exemption coverage are also welcome.

—Proposed 9903.201–7, Findings—Desirable changes, which proposes to establish criteria for determining when a voluntary change to a cost accounting practice, not otherwise exempt from contract price and cost adjustment under 9903.201–6, can be deemed to be desirable and not detrimental to the Government. Such determinations would permit the equitable adjustment of existing CAS-covered contracts that are materially affected by aggregate "increased costs" resulting from a voluntary change made to a cost accounting practice.

—Proposed 9903.201–7(c)(2) which includes a proposal to establish alternative processes for resolving the cost impact associated with a "desirable" change.

List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for part 9903 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.2—CAS Program Requirements

2. Section 9903.201–4 is proposed to be amended by revising paragraphs (a)(1) and (c) and the contract clauses immediately following paragraphs (a) and (c), to read as follows:

9903.201–4 Contract clauses.

(a) *Cost Accounting Standards—Full Coverage.* (1) The contracting officer shall insert the following clause, Cost Accounting Standards—Full Coverage,

in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraphs (d) or (e) of this subsection is used.

(2) * * *

Cost Accounting Standards—Full Coverage (August 1999)

(a) The provisions of part 9903 of 48 CFR chapter 99, including the definitions and requirements contained therein, are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) Disclosure. Disclose in writing the Contractor's cost accounting practices by submission of a Disclosure Statement as required by 9903.202. The cost accounting practices disclosed for this contract shall be the same cost accounting practices currently disclosed and applied to all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) contract clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Changes in Cost Accounting Practices. Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any CAS-covered contract or subcontract, the change must be applied prospectively from the date of applicability to this contract and the Contractor's Disclosure Statement must be amended accordingly. If the contract price or cost of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Compliance with Standards. Comply with all CAS contained in part 9904, including any modifications and interpretations thereto, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed Certificate Of Current Cost Or Pricing Data. The Contractor shall also comply with any CAS, including any modifications or interpretations thereto, which become applicable because of a subsequent award of a CAS-covered contract or subcontract to the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) Compliant changes in cost accounting practices. As required by subpart 9903.4, provide timely notification of changes in disclosed or established cost accounting practices, provide data concerning the cost impact of such changes and:

(i) Required change. Agree to an equitable adjustment of the price of this contract as provided under this provision if the contract cost is affected by a change to a disclosed or established cost accounting practice which, pursuant to subparagraph (a)(3) of this clause, the Contractor or a subcontractor is required to make.

(ii) Voluntary change. Agree to an adjustment in the price or cost of this contract as provided under this provision if contract cost is affected by a voluntary change made by the contractor or a subcontractor; provided that no agreement may be made under this provision that will result in the payment of any increased costs by the United States in the aggregate for all of the contractor's or a subcontractor's CAS-covered contracts and subcontracts affected by the change.

(iii) Desirable change. Agree to an equitable adjustment of the price of this contract as provided in this provision if contract cost is affected by a change in cost accounting practice made by the contractor or a subcontractor that the cognizant Federal agency official finds to be a desirable change.

(5) Noncompliance. As required by subpart 9903.4, initiate action to correct any noncompliance, provide data concerning the cost impact of the noncompliance and agree to an adjustment of the contract price or cost if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, including any modifications or interpretations thereto, or to follow any cost accounting practice consistently and such failure results or will result in any increased costs paid by the United States. Also, agree to the recovery of any increased costs paid by the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the increased cost payment is recovered by the United States. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to price or cost adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) Disputes. If the cognizant Federal agency official and the Contractor disagree as to whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904, including any modifications or interpretations thereto, an applicable provision or requirement in part 9903 or as to any resulting price or cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) Access to records. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form, relating to compliance with the requirements of this clause.

(d) Flowdown to Subcontracts. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to an entity which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

* * * * *

(c) *Cost Accounting Standards—Modified Coverage.* (1) The contracting officer shall insert the following clause, Cost Accounting Standards—Modified Coverage, in negotiated contracts when the contract amount is over $500,000, but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2), unless the clause prescribed in paragraphs (d) or (e) of this subsection is used.

(2) The following clause requires the contractor to comply with 9904.401, 9904.402, 9904.405 and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow disclosed and established cost accounting practices consistently.

Cost Accounting Standards—Modified Coverage (August 1999)

(a) The provisions of part 9903 of 48 CFR chapter 99, including the definitions and requirements contained therein, are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) Disclosure. Disclose in writing the Contractor's cost accounting practices by submission of a Disclosure Statement, if it is a business unit of a company required to submit a Disclosure Statement, pursuant to 9903.202. The cost accounting practices disclosed for this contract shall be the same cost accounting practices currently disclosed and applied to all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) contract clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Changes in Cost Accounting Practices. Follow consistently the Contractor's cost accounting practices in accumulating and

reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any CAS-covered contract or subcontract, the change must be applied prospectively from the date of applicability to this contract and the Contractor's Disclosure Statement must be amended accordingly. If the contract price or cost of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Compliance with Standards. Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting For Unallowable Costs; and 9904.406, Cost Accounting Period; including any modifications or interpretations thereto, in effect on the date of award of this contract, or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed Certificate Of Current Cost Or Pricing Data. The Contractor shall also comply with any modifications or interpretations to such CAS which become applicable because of a subsequent award of a CAS-covered contract or subcontract to the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) Compliant changes in cost accounting practices. As required by subpart 9903.4, provide timely notification of changes in disclosed or established cost accounting practices, provide data concerning the cost impact of such changes and:

(i) Required change. Agree to an equitable adjustment of the price of this contract as provided under this provision if the contract cost is affected by a change to a disclosed or established cost accounting practice which, pursuant to subparagraph (a)(3) of this clause, the Contractor or a subcontractor is required to make.

(ii) Voluntary change. Agree to an adjustment in the price or cost of this contract as provided under this provision if contract cost is affected by a voluntary change made by the contractor or a subcontractor; provided that no agreement may be made under this provision that will result in the payment of any increased costs by the United States in the aggregate for all of the contractor's or a subcontractor's CAS-covered contracts and subcontracts affected by the change.

(iii) Desirable change. Agree to an equitable adjustment of the price of this contract as provided in this provision if contract cost is affected by a change in cost accounting practice made by the contractor or a subcontractor that the cognizant Federal agency official finds to be a desirable change.

(5) Noncompliance. As required by subpart 9903.4, initiate action to correct any noncompliance, provide data concerning the cost impact of the noncompliance and agree to an adjustment of the contract price or cost if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, including any modifications or interpretations thereto, or to follow any cost accounting practice consistently and such failure results or will result in any increased costs paid by the United States. Also, agree to the recovery of any increased costs paid by the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the increased cost payment is recovered by the United States. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to price or cost adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) Disputes. If the cognizant Federal agency official and the Contractor disagree as to whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904, including any modifications or interpretations thereto, an applicable provision or requirement in part 9903 or as to any resulting price or cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) Access to records. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form, relating to compliance with the requirements of this clause.

(d) Flowdown to Subcontracts. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to an entity which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

* * * * *

3. Section 9903.201–6 is proposed to be revised to read as follows:

9903.201–6 Findings—Voluntary changes exempt from contract price and cost adjustment.

(a) Prior to making any contract price or cost adjustment under the provisions of paragraph (a)(4)(ii) of the contract clauses set forth in 9903.201–4(a), 9903.201–4(c) or 9903.201–4(e), the cognizant Federal agency official shall make a finding that the voluntary change in cost accounting practice can or can not be exempted from contract price and cost adjustment under the exemption criteria specified in this subsection. The cognizant Federal agency official may, however, make a finding that the voluntary change in cost accounting should not be exempted from contract price and cost adjustment under the exemption criteria specified in this subsection when such action would otherwise be detrimental to the Government's interests.

(b) The determination as to whether or not a voluntary change in cost accounting practice should be exempted from contract price and cost adjustment requirements specified in CAS-covered contracts and subcontracts shall be made on a case-by-case basis in accordance with the exemption criteria specified in paragraph (c) or (d) of this subsection.

(c) *Exemption For Voluntary Cost Accounting Practice Changes Associated With Contractor Restructuring Activities That Are Made By Management To Reduce Personnel or Facilities.* Changes in the methods and techniques used for the "allocation of cost to cost objectives," including the transfer of functions from an existing cost pool, cost pool split-outs or cost pool combinations, that are associated with restructuring activities (see 9904.406–61(b)) which are undertaken to improve future operations and reduce overall cost levels in future periods through work force reductions and/or physical realignment or reduction of facilities, including plant relocations, shall not be subject to the contract price or cost adjustment requirements of part 9903, the cognizant Federal agency official determines, in writing, that:

(1) The voluntary change in cost accounting practice is being made concurrently with planned restructuring activities and would not be made but for the restructuring actions being taken.

(2) Future "cost savings" to the Government (i.e., the accumulation of less contract costs), in the aggregate, for existing flexibly priced CAS-covered contracts and anticipated and reasonably predictable future CAS-covered contracts, are expected to result from the planned restructuring activities.

(3) The "cost savings" calculation(s) represented the difference between:

(i) The total amount of costs that would be accumulated for existing flexibly priced CAS-covered contracts

and reasonably predictable future CAS-covered contracts, in accordance with the contractor's established cost accounting practices, at the estimated operating cost levels that would continue if the planned restructuring activities were not made, and

(ii) The total amount of costs that would be accumulated for such CAS-covered contracts, in accordance with the contractor's new changed cost accounting practices, at the estimated new cost levels that would result if the planned restructuring activities were made.

(d) An agency "cost savings" determination, made in accordance with the agency's promulgated regulations, resulting in the approval of proposed contractor restructuring activities may be used in lieu of the cost savings determinations required under paragraph (c) of this subsection.

(e) When a determination is made to grant an exemption, the cognizant Federal agency official shall notify the contractor that the voluntary change(s) to established cost accounting practices required to implement the planned restructuring activities will be exempt from the contract price and cost adjustment provisions contained in existing CAS-covered contracts that are affected by the changes.

(f) When the cognizant Federal agency official determines that a voluntary change to the contractor's cost accounting practices does not meet the exemption criteria specified in this subsection or is otherwise determined detrimental to the Government's interests, the cognizant Federal agency official shall inform the contractor of the determination and initiate the cost impact process in accordance with 9903.405–3 or otherwise proceed to resolve the cost impact pursuant to 9903.201–7(c)(2), if applicable. The contractor may request a desirable change determination in accordance with 9903.201–7 and subpart 9903.4 prior to the submission of a requested cost impact submission.

(g) If a voluntary change in cost accounting practice is made for any reason, even if the voluntary change is exempted from contract price and cost adjustment, the resultant changed cost accounting practices must comply with all applicable Cost Accounting Standards and notification of the change in cost accounting practice must be provided as required by 9903.405–2.

4. Section 9903.201–7 is proposed to be revised to read as follows:

9903.201–7 Findings—Desirable changes.

(a) Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clauses set forth in 9903.201–4(a), 9903.201–4(c) or 9903.201–4(e), the cognizant Federal agency official shall make a finding that the voluntary change in cost accounting practice is desirable, as defined at 9903.403, i.e., desirable and not detrimental to the interests of the Government, and, if the voluntary change in cost accounting practice is associated with contractor restructuring activities, a finding that the change in cost accounting practice should not be exempted from contract price or cost adjustment process under the provisions of 9903.201–6(a).

(b) The determination as to whether or not a voluntary change in cost accounting practice is desirable should be made on a case-by-case basis in accordance with, but not limited to, one or more of the criteria specified in paragraph (c) of this subsection. The cognizant Federal agency official may, however, determine that a change in cost accounting practice is not desirable under the criteria specified in this subsection when such action would otherwise be detrimental to the Government's interests. Normally, a desirable change determination is only necessary if a voluntary change results in aggregate increased costs to the Government, for existing CAS-covered contracts, and the cognizant Federal agency official contemplates making potential contract price adjustments that would increase, in the aggregate, the existing contract prices that the Government would be obligated to pay. Pending receipt of a written notification that the cognizant Federal agency official has determined that a voluntary change in cost accounting practice will or will not be treated as desirable and not detrimental to the Government, the change shall be considered to be a voluntary change for which the Government will pay no increased costs, in the aggregate.

(c) A voluntary change in cost accounting practice shall be deemed to be desirable and not detrimental to the interests of the Government if the cognizant Federal agency official determines that:

(1) For a Cost Accounting Standard with which the contractor has complied, the change is necessary in order for the contractor to remain in compliance with that Standard.

(2) Cost savings to the Government, in the aggregate, will occur under existing flexibly priced and reasonably predictable future CAS-covered contracts and subcontracts as a result of management changes, and associated cost accounting practice changes where there is a reasonable expectation that more efficient and economical operations will result. In such cases, the contracting officer may proceed to equitably resolve the cost impact of the practice change on all existing individual CAS-covered contracts (i.e., shifts in accumulated contract costs attributable to the practice change) by obtaining a contractor cost impact proposal and negotiating equitable contract price and/or cost adjustments pursuant to 9903.4. Alternatively, the contracting officer may otherwise resolve the matter based on the contractor's previously submitted contract cost accumulation data that was included in the contractor's written request for a desirable change determination (see 9903.405–2(e)). In that case, the contracting officer may forgo the submission of a cost impact proposal and related adjustments of individual contract prices and/or cost allowances, provided a determination is made that an alternate resolution adequately protects the Government's interests.

(3) Circumstances, other than those listed in paragraph (c)(1) and (c)(2) of this subsection, included as justification in the contractor's written request for a desirable change determination, which clearly demonstrate that the change in cost accounting practice is otherwise desirable and not detrimental to the interests of the Government.

(d) The cognizant Federal agency official's finding should not be made solely because of the cost impact that a proposed practice change will have on a contractor's or subcontractor's current CAS-covered contracts. A voluntary change in cost accounting practice may be determined to be desirable and not detrimental to the Government's interest even though existing contract prices and/or cost allowances may increase. However, the amount of increased costs recognized by the Government when making equitable adjustments under paragraph (c)(2) of this subsection will be limited to the estimated amount of cost accumulation reductions that are expected to occur under reasonably predictable future CAS-covered contracts because of the practice change (See illustration at 9903.407–1(h)). To what degree such expected cost accumulation reductions for forecasted CAS-covered contracts may be considered requires case-by-case determinations. Such consideration should be based on data that fully supports such a condition and discussions held with the contractor, the cognizant auditor and affected Federal agency officials. Cognizant Federal agency official determinations of expected future contract cost

reductions shall not be subject to the disputes provisions of CAS-covered contracts.

5. Section 9903.201–8 and is proposed to be added to read as follows:

9903.201–8 Cognizant Federal agency responsibilities.

(a) The requirements of 48 CFR chapter 99, shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of chapter 99 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts and/or subcontracts or more than one Federal agency are involved, the cognizant Federal agency official and affected agencies shall coordinate their activities in accordance with applicable agency regulations. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that aggregate contract price and cost adjustments required under CAS-covered contracts for changes in cost accounting practices or CAS noncompliance issues are determined and resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Agencies are urged to coordinate on the development of such regulations.

(c) Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts and subcontracts at each contractor and subcontractor business unit and the delegation of necessary contracting authority to agency individuals authorized to negotiate cost impact settlements under CAS-covered contracts, e.g., Contracting Officers, Administrative Contracting Officers (ACO's) or other agency officials authorized to perform in that capacity.

(d) *Processing changes in cost accounting practices.* (1) The cognizant Federal agency official shall, in accordance with applicable agency regulations:

(i) Make all required determinations for all CAS-covered contracts and subcontracts affected by a change in cost accounting practice, including cost impact materiality determinations, in the aggregate.

(ii) Coordinate with affected agencies on the potential modification of CAS-covered awards, prior to actual negotiations.

(iii) Negotiate the cost impact settlement, in the aggregate, for all CAS-covered contracts and subcontracts materially affected by the change in cost accounting practice.

(iv) Inform the affected agencies of the negotiation results, by distribution of the negotiation memorandum.

(v) When contract and/or subcontract price adjustments are negotiated:

(A) Request affected agencies to prepare implementing contract modifications and to obtain implementing subcontract modifications from the next higher-tier contractor, as appropriate. The modifications shall be predicated on the negotiated cost impact settlement reflected in the negotiation memorandum and are to be forwarded for signature by the contractor through the cognizant Federal agency official.

(B) Concurrently, obtain contractor signatures for all contracts and subcontracts to be modified and distribute the executed modifications to the awarding agencies.

(2) Awarding agencies shall, in accordance with applicable agency regulations:

(i) Coordinate with and support the cognizant Federal agency official.

(ii) Prepare and/or obtain contract modifications needed to implement negotiated cost impact settlements, as requested by the cognizant Federal agency official.

(iii) When the cognizant Federal agency official has properly determined a cost impact settlement on behalf of the Government, make every effort to provide funds required for increased contract price modifications to affected Contracting Officers for obligation so that the cognizant Federal agency official can concurrently execute all the requested contract modification(s) needed to settle the cost impact action in a timely manner.

(3) If the cognizant Federal agency official makes a written determination that funding needed to execute required modifications is not expected to be available, an equitable solution by use of any other suitable technique which resolves the negotiated cost impact settlement may be used (see 9903.405–5(c)(3)).

Subpart 9903.3—CAS Rules and Regulations

6. Section 9903.301 is proposed to be amended by adding two definitions in alphabetical order to read as follows:

9903.301 Definitions.

(a) * * *

* * * * *

Function, as used in this part, means an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished. Examples of functions include activities such as accounting, marketing, research, product support, drafting, assembly, inspection and field services.

* * * * *

Intermediate cost objective means a cost objective that is not a final cost objective. Intermediate cost objectives are used to accumulate the costs of specific functions or groups of functions. Costs allocated to specific intermediate cost objectives are accumulated in specific cost pools that include overhead pools, general and administrative expense (G&A) pools, and service center or other expense pools. These accumulated costs are then allocated as pooled cost to other intermediate and/or to final cost objectives. Intermediate cost objectives may also be used to accumulate direct costs that are included in a cost pool and allocated to final cost objectives as a direct charge.

* * * * *

7. Section 9903.302–1 is proposed to be amended by revising paragraph (c) to read as follows:

9903.302–1 Cost accounting practice.

* * * * *

(c) *Allocation of cost to cost objectives* as used in this part, refers to the cost accounting methods or techniques used to accumulate and distribute costs to intermediate and final cost objectives. The allocation of cost to cost objectives includes both the direct and indirect allocation of costs.

(1) Examples of cost accounting practices involving the allocation of cost to cost objectives are the accounting methods and techniques used to:

(i) Accumulate cost for cost objectives and cost pools,

(ii) Determine whether a cost is to be directly or indirectly allocated to intermediate or final cost objectives,

(iii) Determine the selection and composition of cost pools, and

(iv) Determine the selection and composition of the appropriate allocation bases.

(2) The selection of cost pools involves the determination to establish one or more cost pools for the accumulation of specific costs to be allocated to other intermediate and/or to final cost objectives for a particular segment, home office, or business unit. The composition of cost pools involves the determinations to accumulate, by elements of cost, the costs of the specific functions or groups of functions to be included within each established cost pool.

(3) The selection of an allocation base involves the determination on what type of allocation base for a cost pool (e.g., labor hours, square footage, labor dollars, total cost input) will be used as the basis for the allocation of the total costs accumulated in each selected pool to intermediate and/or final cost objectives for a particular segment, home office, or business unit. The composition of an allocation base involves the determination to accumulate the selected allocation base data associated with each selected pool that was established. The composition of an allocation base includes the specific functional groupings within the base. The composition of a home office allocation base includes the grouping of segments within the applicable base. Examples of allocation bases include direct engineering labor hours for a specific direct engineering function performed at a specified location, total cost input of a particular segment, total payroll costs for specific segments reporting to the same group or home office.

8. Section 9903.302–2 is proposed to be revised to read as follows:

9903.302–2 Change to a cost accounting practice.

(a) *Change to a cost accounting practice*, as used in this part, including the contract clauses prescribed at 9903.201–4, means any alteration in a cost accounting practice, as defined in 9903.302–1, whether or not such practices are covered by a Disclosure Statement, including the following changes in cost accumulation:

(1) *Pool combinations.* The merging of existing indirect cost pools.

(2) *Pool split-outs.* The expansion or breakdown of an existing indirect cost pool into two or more pools.

(3) *Functional transfers.* The transfer of an existing ongoing function in its entirety from an existing cost pool to another cost pool, segment or home office.

(b) *Exceptions.* (1) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. This exception shall be applied at the segment or home office level, depending upon the nature of the cost or the function involved. At the segment level, different segments can establish different cost accounting practices for the same type of cost when the cost is incurred for the first time or a function is created by each segment. This exception does not apply to transfers of ongoing functions, e.g., from one pool, segment, or home office to another pool, segment or home office.

(2) The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice.

(3) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

(c) *Mergers and acquisitions.* (1) Each CAS-covered contract requires that the performing contractor consistently follow its established or disclosed cost accounting practices over the contract's entire period of performance.

(2) When a business unit or a segment performing a CAS-covered contract is acquired by a different contractor through a merger or acquisition, the acquired business unit or segment shall accumulate and report costs incurred from the effective date of acquisition or merger through completion of the acquired contract consistently in accordance with the cost accounting practices established by the acquired business unit or segment. Compliant changes made to such established and/or disclosed cost accounting practices after the effective date of the merger or acquisition by the acquiring contractor shall be processed as changes in cost accounting practice in accordance with the requirements of part 9903. If a cost accounting practice previously used to estimate, accumulate or report costs of the acquired covered contract(s) before or after the effective date of the merger or acquisition is found to be noncompliant, the cost impact of the noncompliance shall be resolved in accordance with the requirements of part 9903.

(3) This paragraph (c) applies equally to CAS-covered subcontracts acquired by a contractor or subcontractor.

9. Section 9903.302–3 is proposed to be amended by adding a new introductory paragraph, revising introductory paragraphs (a), (b) and (c), revising the illustration at (c)(3) and by adding new illustrations (c)(4) through (c)(9) to read as follows:

9903.302–3 Illustrations of changes which meet the definition of "change to a cost accounting practice."

The following illustrations are not intended to cover all possible changes in cost accounting practices nor are the illustrations to be used as limitations for determining if an accounting change has occurred. Further, each illustration is not intended to be all-inclusive. Accordingly, the lack of a mentioned change in cost accounting practice does not mean that there is not a change in cost accounting practice. The decision as to whether a change in cost accounting practice has or has not occurred, requires a thorough analysis of the circumstances of each individual situation based on the definitions and exceptions specified in 9903.302–1 and 9903.302–2.

(a) The cost accounting practice used for the measurement of cost has been changed.

* * * * *

(b) The cost accounting practice used for the assignment of cost to cost accounting periods has been changed.

* * * * *

(c) The cost accounting practice used for the allocation of cost to cost objectives has been changed.

* * * * *

Description	Accounting treatment
* * * * * * *	
(3) The contractor changes to a different allocation base	(3)(i) Before change: The contractor used a direct manufacturing labor hours base to allocate costs accumulated in the manufacturing overhead pool to final cost objectives. (ii) After change: The contractor uses a direct manufacturing labor dollars base to allocate costs accumulated in the manufacturing overhead pool to final cost objectives.

Description	Accounting treatment
	(iii) The described change from a direct labor hours base to a direct labor dollars base represents a change in the selection of the allocation base .
(4) A Segment combines the cost pools of two similar ongoing functions. (i) The ongoing assembly operations at Plants A and B are merged.	(4)(i) Before change: The Segment established separate assembly overhead pools to accumulate the indirect costs applicable to Plant A's and Plant B's respective assembly functions. Pooled costs were allocated to individual final cost objectives based on Plant A's and Plant B's respective assembly direct labor dollars allocation bases. (ii) After change: The indirect costs of the two ongoing assembly functions are combined and accumulated in one indirect assembly cost pool. Pooled costs are allocated to individual final cost objectives based on a single assembly direct labor dollars allocation base that is generated by the two plant locations. (iii) The methods and techniques used to accumulate cost changed because the indirect cost pools selected by the segment to accumulate the cost of specific activities changed from two pools to one pool. The composition of the pools changed because the specific activities originally included in the two indirect cost pools are now included in one pool. The composition of the allocation base changed because the selected allocation base originally accumulated separately for Plants A and B is now accumulated in one combined base .
(5) Assume the same circumstances as in (c)(4) of this illustration, except that Plants A and B are separate Segments A and B that are combined as Segment C.	(5)(i) Before change: Segments A and B each established an assembly overhead pool to accumulate the indirect costs applicable to their respective assembly functions. Pooled costs were allocated to final cost objectives based on Segment A's and B's respective assembly direct labor dollars. (ii) After change: Segment C establishes a single assembly overhead pool to identify and accumulate the costs of Segment A's and Segment B's ongoing indirect assembly functions. Pooled costs are allocated to final cost objectives based on Segment C's total assembly direct labor dollars generated by the two ongoing but separate assembly operations. (iii) For the same reasons cited in (c)(4) (iii) of this illustration, a cost accounting practice change has occurred.
(6) The contractor changes how the ongoing indirect costs of the manufacturing and assembly operations are accumulated and allocated to final cost objectives by a segment.	(6)(i) Before change: The indirect costs applicable to the manufacturing and assembly functions were accumulated in a plant-wide indirect cost pool and allocated to final cost objectives by use of a direct labor dollars base comprised of manufacturing and assembly direct labor dollars. During each cost accounting period, a single plant-wide indirect cost rate was used to allocate the accumulated indirect costs to individual final cost objectives. (ii) After change: The ongoing indirect costs of the manufacturing and assembly functions are split-out and accumulated separately in a manufacturing cost pool and an assembly cost pool. The costs accumulated in each pool are allocated to final cost objectives by use of a manufacturing direct labor dollars base and an assembly direct labor dollars base, respectively. Two indirect cost rates are now used to allocate the ongoing indirect costs to individual final cost objectives. (iii) The methods and techniques used to accumulate costs have changed because the indirect cost pools selected to accumulate the costs of specific functions have changed from one pool to two pools. The composition of the pools changed because the two specific functions originally included in one pool are now split-out and included in two pools. The composition of the allocation base changed because the selected allocation base previously accumulated in one plant-wide base is now accumulated separately, in two allocation bases, for the manufacturing and assembly operations.
(7) The contractor transfers the incoming materials inspection function (i) Incoming materials are inspected in the same manner before and after the change.	(7)(i) Before change: The cost of performing the incoming inspection function was accumulated in the Segment's manufacturing overhead expense pool. Accumulated pool costs were allocated to final cost objectives based on manufacturing direct labor dollars. (ii) After change: The accumulated cost of the incoming inspection function is included in the Segment's materials handling overhead pool. These pooled costs are allocated to final cost objectives based on direct material costs.

Description	Accounting treatment
	(iii) The decision to include the accumulated cost of the ongoing inspection function in a different cost pool represents a change in the methods and techniques used to accumulate indirect cost because the incoming inspection function is now included in a different pool, i.e., the composition of each pool has changed. The decision to allocate incoming inspection costs to final cost objectives by use of a material cost base rather than a labor dollars base represents a change in the selection of the allocation base for the incoming inspection function.
(8) A contractor establishes a new product line by acquiring another company. Both entities are performing CAS-covered contracts. (i) The acquired company will be treated as a new segment. The acquired segment will complete the CAS-covered contracts that were novated from the prior company to the contractor. It will not perform any work associated with the contractor's existing lines of business.	(8) As of the effective date of acquisition, the contractor requires the new segment to accumulate and report the continuing costs of the acquired ongoing functions differently, e.g., the acquired company's single overhead pool is split into two new pools. The pool split-out resulted in changes to the acquired segment's previously established cost accounting practices. (i) The cost accounting practice changes are subject to the contract price and cost adjustment provisions of the acquired CAS-covered contracts. (ii) The initial adoption exception provided by 9903.302–2(b)(1) would not apply because this is not a first time incurrence of cost or creation of a function, with regard to the ongoing acquired CAS-covered contracts.
(9) A contractor expands the existing product line of Segment A by acquiring another company. Both entities are performing CAS-covered contracts. (i) Segment A will operate and manage the acquired company's ongoing operations (ii) Segment A will complete the acquired CAS-covered contracts that were novated from the prior company to the contractor.	(9)(i) As of the effective date of acquisition, Segment A merges the continuing functions of the acquired company with Segment A's similar functions and merges the indirect costs of the acquired company's ongoing functions into Segment A's indirect cost pools, in accordance with Segment A's established cost accounting practices. The acquired company's allocation base is similarly merged into Segment A's allocation base. (ii) The cost accounting practices that will be used to accumulate and report costs of Segment A's existing and acquired contracts will be different than the practices that were previously used to estimate, accumulate and report contract costs. (iii) The methods and techniques used to accumulate costs changed because the indirect cost pools selected for the accumulation of costs has changed from two pools to one pool. The composition of Segment A's pool changed because the specific functions originally included in the two indirect cost pools are now included in the one pool. The composition of the allocation base changed because the selected allocation base originally accumulated separately for Segment A and the acquired company is now accumulated in one combined allocation base. (iv) The cost accounting practice changes are subject to the contract price and cost adjustment provisions of the existing and acquired CAS-covered contracts.

10. Section 9903.302–4 is proposed to be amended by adding an introductory paragraph, and illustrations (h) through (j) to read as follows:

9903.302–4 Illustrations of changes which do not meet the definition of "Change to a cost accounting practice."

The following illustrations are not intended to cover all possible events that are not changes in cost accounting practice nor are the illustrations to be used as limitations for determining that an accounting change has not occurred. The decision as to whether a change in cost accounting practice has or has not occurred, requires a thorough analysis of the circumstances of each individual situation based on the definitions and exceptions specified in 9903.302–1 and 9903.302–2.

* * * * * * *

Description	Accounting treatment
* * * * * * *	
(h) The contractor transfers an inspection department employee from Plant A to Plant B.	(h)(1) Before the transfer, the employee's salary was accumulated as indirect inspection labor and was included in Plant A's overhead pool. (2) After the transfer, the employee's salary is similarly accumulated in Plant B's overhead pool. The salaries of all employees performing the inspection function at Plants A and B continue to be accumulated in their respective overhead pools. (3) Since the cost of the ongoing inspection functions at Plants A and B continue to be accumulated within the same indirect cost pools and the selection and composition of the pools has not changed, before and after the employee transfer, no change in cost accounting practice has occurred.

Description	Accounting treatment
(i) A contractor with a corporate home office creates a new segment for the purpose of entering a new line of business. The new segment will not perform any work associated with the contractor's existing CAS-covered contracts.	(i)(1) After change: The costs of the contractor's home office continue to be accumulated and allocated to segments in accordance with the contractor's established cost accounting practices. The new segment is added to the applicable home office allocation base or bases used to allocate home office costs to segments. (2) The addition of the new segment to the applicable home office allocation base represents an initial adoption of a cost accounting practice for the segment when it was created (see exception at 9903.302–2(b)(1)). Since the selection and composition of the home office pool and applicable allocation bases were not otherwise changed, the described increase in the base for the allocation of home office costs represents an initial adoption of a cost accounting practice that is not subject to the contract price or cost adjustment process.
(j) Assume the same circumstances as in (i) of this illustration, except that: (1) The contractor acquired a new segment from another company that is performing CAS-covered contracts.. (2) The acquired segment will continue to estimate, accumulate and report costs in accordance with the original company's compliant and previously disclosed cost accounting practices for that segment. A new Disclosure Statement is filed to that effect. Also disclosed is the contractor's home office cost allocation to the segment.	(j)(1) For the reasons stated in (i) of this illustration, the described home office change is not a cost accounting practice change. (2) At the segment level, the first time incurrence of the acquiring contractor's home office cost allocation is an initial adoption of a cost accounting practice (see exception at 9903.302–2(b)(1). Since the contractor adopted the acquired segment's previously established cost accounting practices, no change in established cost accounting practices occurred for the acquired CAS-covered contracts.

11. Section 9903.306 is proposed to be revised to read as follows:

9903.306 Applicable interest rate

The interest rate applicable to any contract price or cost adjustment shall be the annual rate of interest established under section 6621(a)(2) of Title 26 (26 U.S.C. 6621(a)(2)) for such period. Such interest shall accrue from the time the payment by the United States was made to the time the increased cost payment is recovered by the United States.

12. A new subpart 9903.4 is proposed to be added to read as follows:

Subpart 9903.4—Contractor Cost Accounting Practice Changes and Noncompliances

9903.401 Applicability of subpart.
9903.401–1 CAS-covered contracts and subcontracts.
9903.401–2 Educational institutions.
9903.402 Purpose.
9903.402–1 Changes in cost accounting practice.
9903.402–2 Failure to comply (noncompliances) with an applicable cost accounting standard or to follow any cost accounting practice consistently.
9903.403 Definitions.
9903.404 Materiality determination for making adjustment.
9903.405 Changes in cost accounting practice.
9903.405–1 General.
9903.405–2 Notification of changes in cost accounting practices.
9903.405–3 Determinations, approvals and initiating the cost impact process.
9903.405–4 Contractor cost impact submissions.
9903.405–5 Negotiation and resolution of the cost impact.
9903.406 Noncompliances.
9903.406–1 General types of noncompliances.
9903.406–2 Noncompliance determinations and initiating the cost impact process.
9903.406–3 Cost estimating noncompliance.
9903.406–4 Cost accumulation noncompliance.
9903.406–5 Immaterial noncompliances.
9903.407 Illustrations.
9903.407–1 Changes in cost accounting practice—illustrations.
9903.407–2 Noncompliance illustrations.

Subpart 9903.4—Contractor Cost Accounting Practice Changes and Noncompliances

9903.401 Applicability of subpart.

9903.401–1 CAS-covered contracts and subcontracts.

(a) This subpart 9903.4 applies uniformly to all CAS-covered contracts and subcontracts affected by a compliant change in cost accounting practice and/or a noncompliant cost accounting practice. By accepting the first CAS-covered contract or subcontract that incorporates part 9903, which includes this subpart 9903.4, the contractor agrees to process cost accounting practice changes and noncompliance actions occurring after the award of that contract or subcontract in accordance with this subpart for all existing CAS-covered contracts and subcontracts affected by the change or noncompliance.

(b) To aid in meeting the requirements set forth in this subpart 9903.4 for processing cost accounting practice changes and noncompliance actions, the contractor shall maintain a system for identifying all existing CAS-covered contracts and subcontracts, and their periods of performance.

9903.401–2 Educational institutions.

(a) This subpart 9903.4 applies to all CAS-covered contracts and subcontracts awarded to educational institutions. Such CAS-covered contracts and subcontracts incorporate part 9903 by reference and contain specific terms and conditions that require the educational institution to disclose its cost accounting practices (if specified criteria are met), provide notification if a change to a cost accounting practice is made and to agree to contract price or cost adjustments for material cost impacts attributable to compliant changes in cost accounting practices and/or to noncompliant practices. This subpart 9903.4 establishes procedures for providing such notifications, the submission of requested cost impact data, and determining the required adjustments.

(b) On April 26, 1996, the Office of Management and Budget (OMB) incorporated in OMB Circular A–21, Cost Principles for Educational Institutions (61 FR 20880, May 8, 1996), the Disclosure Statement (Form CASB DS–2) and the CAS applicable to educational institutions that were promulgated by the Board at 48 CFR chapter 99 (59 FR 55746, November 8, 1994). As amended, Circular A–21 also contains certain requirements and guidance regarding the notification to be provided when an educational institution changes a cost accounting practice and the cost adjustments that may be required or other actions to be taken by the cognizant Federal agency

when Federally sponsored agreements (contracts, grants and cooperative agreements) are affected by compliant practice changes or noncompliant practices.

(c) The amended CASB and OMB requirements were intended to be compatible and are to be administered by the cognizant Federal agency official in a uniform and cost effective manner. To the maximum extent feasible, the cognizant Federal agency official should apply a single set of procedures when obtaining notifications, cost impact data and when determining the adjustments that may be required for individual CAS-covered contracts and other Federally sponsored agreements subject to amended OMB Circular A–21 that are affected by the same practice change or noncompliance. The procedures applied to all Federally sponsored agreements, including CAS-covered contracts and subcontracts, should be consistent with this subpart 9903.4 requirements and objectives. The cognizant Federal agency official may use applicable portions of this subpart 9903.4 as guidance and, if mutually agreed to by the educational institution, the contracting parties may elect to apply the 9903.4 provisions as deemed appropriate in the circumstances.

(d) *Waiver Authority.* When an educational institution changes a compliant cost accounting practice or fails to comply with an applicable Cost Accounting Standard that affects CAS-covered contracts and other Federally sponsored agreements, the cognizant Federal agency official may waive or modify, on a case-by-case basis, applicable subpart 9903.4 requirements for affected CAS-covered contracts and subcontracts as deemed necessary in order to establish appropriate alternative procedures or methods for obtaining notifications of practice changes, the submission of cost impact data or determining contract price or cost adjustments in a uniform manner for all Federally sponsored agreements. The basis for the waiver and the alternate procedures utilized shall be documented in a written determination. This waiver authority does not apply to the adequacy and compliance determinations required by 9903.405–3(a).

(e) A written determination to apply the provisions of this subpart 9903.4, OMB Circular A–21, or other appropriate procedural guidance to educational institutions shall be made by the cognizant Federal agency official. Educational institutions should contact their cognizant Federal agency for specific instructions within 60 days after receipt of the first CAS-covered contract that is subject to this subpart.

9903.402 Purpose.

9903.402–1 Changes in cost accounting practice.

The contract clauses prescribed in 9903.201–4, Contract clauses, set forth the requirements for changes in cost accounting practices that a contractor may be required to make in order to comply with a standard, modification or interpretation thereof that becomes applicable to existing covered contracts for the first time due to the subsequent award of a covered contract or may otherwise decide to make, e.g., a voluntary change from an established or disclosed compliant cost accounting practice to another compliant cost accounting practice. Section 9903.405 establishes the specific actions to be taken by the contracting parties for such compliant cost accounting practice changes. Section 9903.405 also establishes procedures for adjusting contract amounts that are materially affected by compliant changes in cost accounting practices, while not requiring adjustment of all contracts that are affected by such changes.

9903.402–2 Failure to comply (Noncompliances) with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently.

The contract clauses prescribed in 9903.201–4, Contract clauses, require the contractor or subcontractor to agree to an adjustment of the contract price or cost if the contractor or subcontractor fails to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or to follow any cost accounting practice consistently, and such failure results or will result in any increased cost paid, in the aggregate, by the United States, under CAS-covered contracts and subcontracts. Section 9903.406 establishes the actions to be taken by the contracting parties in order to resolve the noncompliant condition and/or effect recovery of any increased costs paid as a result of the noncompliance.

9903.403 Definitions.

This section 9903.403 defines terms as used in this part 9903, including the contract clauses prescribed at 9903.201–4. Where the defined terms refer to a "contractor" or "contract" the definition is intended to apply equally, as applicable, to a "subcontractor" or "subcontract."

Applicability date means—

(1) For required cost accounting practice changes, the date on which a contractor is first required to accumulate and report costs in accordance with an applicable Standard, modification or interpretation thereto; or

(2) For voluntary cost accounting practice changes, the date on which a contractor begins to use a new cost accounting practice for cost accumulation and reporting purposes.

Contracts subject to adjustment means CAS-covered contracts and subcontracts, including definitized contract options, that:

(1) Have contract performance beyond the applicability date of a change in cost accounting practice, and have their current contract prices based on a previous cost accounting practice; or

(2) Are affected by the application of a noncompliant practice that was used to estimate or accumulate costs.

Cost impact means the increase or decrease in estimated or actual costs allocable to a CAS-covered contract or subcontract due to a compliant change in cost accounting practices, a noncompliance with a Cost Accounting Standard, or a failure to follow cost accounting practices consistently.

Desirable change means a voluntary change to a contractor's established or disclosed cost accounting practices that the cognizant Federal agency official finds is desirable and not detrimental to the Government pursuant to 9903.201–7 and is therefore not subject to the voluntary change—no increased cost prohibition provisions of CAS-covered contracts affected by the change.

Detailed cost impact proposal means a proposal that shows the cost impact of a change in cost accounting practice for contracts subject to adjustment that have an estimate-to-complete which exceeds a threshold amount specified by the cognizant Federal agency official.

Effective date means:

(1) For compliance with Standards, modifications and interpretations thereto, the date on which a contractor is first required to estimate proposed contract costs in accordance with an applicable standard, modification or interpretation, as specified by the CAS Board; or

(2) For voluntary cost accounting practice changes, the date on which a contractor begins using a new cost accounting practice for cost estimating purposes.

General dollar magnitude estimate means an estimate of the aggregate cost impact, by contract type, of a change in cost accounting practice, or a noncompliant practice on contracts subject to adjustment.

Immaterial noncompliance means a noncompliant cost accounting practice

that does not currently result in material increased costs to the Government.

Increased costs due to a cost accumulation noncompliance means the increase in cost to the Government that results from a contractor's failure to comply with applicable Cost Accounting Standards, modifications or interpretations thereto, or to follow its disclosed or established cost accounting practices consistently when accumulating costs under CAS-covered contracts, and such failure results in a higher amount of costs allocated to these CAS-covered contracts than would have been allocated to the contracts had the contractor complied with applicable Standards, modifications or interpretations thereto, or followed its cost accounting practices consistently.

Increased costs due to a cost estimating noncompliance means the increased costs to the Government resulting from a contractor's failure to comply with applicable standards, modifications or interpretations thereto, or to follow its disclosed or established cost accounting practices consistently when estimating proposal costs for a contemplated CAS-covered contract, and such failure results in a higher contract price than would have been negotiated had the contractor complied with applicable Standards, modifications or interpretations thereto, or followed its cost accounting practices consistently.

Increased costs due to a voluntary change in cost accounting practice means the increase in cost to the Government that occurs:

(1) For flexibly priced CAS-covered contracts, when a greater amount of cost will be allocated to the contract than would have been allocated to it had the contractor not changed its cost accounting practice, before any actions are taken to preclude the payment of the increased costs; or

(2) For firm-fixed-price CAS-covered contracts, when the costs to be allocated to the contract are less than the amount of costs that would have been allocated to it had the contractor not changed its cost accounting practice, before any contract price adjustment is made to reflect the contractor's lesser allocation of cost to the contract.

Increased costs paid means the amount the Government actually pays, in the aggregate, for increased costs resulting from compliant cost accounting practice changes or noncompliant cost accounting practices used to estimate or accumulate costs.

Notification date means the date on which the contractor formally notifies the cognizant Federal agency official of a planned change in cost accounting practices.

Offset process means the combining of cost increases to one or more affected contracts of a given type with cost decreases to one or more affected contracts of the same type, for the purpose of mitigating action that needs to be taken due to changes in cost accounting practices.

Required change means a change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract.

Voluntary change means a change in cost accounting practice from one compliant practice to another that a contractor with CAS-covered contracts elects to make that has not been deemed desirable by the cognizant Federal agency official and for which the Government will pay no increased costs.

9903.404 Materiality determination for making adjustment.

Contract price adjustments or actions to preclude or recover the payment of increased costs resulting from compliant changes in cost accounting practice, or failure to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or to follow any cost accounting practice consistently, shall only be required if the amounts are material. In determining materiality, the cognizant Federal agency official shall use the criteria specified in 9903.305. The cognizant Federal agency official should forego contractor cost impact submissions (9903.405–4), and not adjust contracts, if the cognizant Federal agency official determines that the amounts involved are immaterial.

9903.405 Changes in cost accounting practice.

9903.405–1 General.

A CAS-covered contractor shall make changes to its established or disclosed cost accounting practices when required in order to comply with applicable Cost Accounting Standards, including any modification and interpretations promulgated thereto. A contractor may change its established cost accounting practices voluntarily, provided the cognizant Federal agency official is notified of the change and the new practice complies with applicable Cost Accounting Standards. CAS-covered contracts and subcontracts affected by changes in cost accounting practices that are either required to comply with Cost Accounting Standards, modifications or interpretations thereto, or are made voluntarily for which the cognizant Federal agency official has made a finding that the change is desirable in accordance with 9903.201–7 are subject to equitable contract price adjustments. For all other voluntary accounting changes, disclosed in accordance with 9903.405–2, the cognizant Federal agency official shall take action to preclude the payment of increased costs by the United States as a result of the change, as prescribed in 9903.405–5(d). With the exception of such action to preclude the payment of increased costs for voluntary changes, the administrative procedures for handling potential contract price or cost adjustments will be consistent for all compliant accounting changes, as set forth in subsections 9903.405–2 through 9903.405–5. Implementation of any change in cost accounting practice without submission of the notification required under 9903.405–2 shall be considered a failure to follow a cost accounting practice consistently, and shall be processed as a noncompliance condition in accordance with 9903.406.

9903.405–2 Notification of changes in cost accounting practices.

(a) The contractor shall submit to the cognizant Federal agency official a description of any planned change in cost accounting practices. Such notification shall include the proposed effective and applicability dates. The date of submission is hereafter referred to as the notification date.

(b) The contractor shall notify the cognizant Federal agency official in accordance with the following:

(1) Required changes shall be disclosed as soon as it becomes known that a required change must be made, but no later than the date of submission of the price proposal in which the contractor must first use the required change to estimate costs for a potential CAS-covered contract.

(2) Voluntary changes (including those ultimately deemed desirable) shall be disclosed as soon as the contractor decides to change an established or disclosed cost accounting practice. Notification shall be provided no later than 60 days before the applicability date or on the date of submission of the price proposal in which the contractor first uses the changed practice to estimate costs for a potential CAS-covered contract.

(c) If a contractor proposes to make the applicability date of a voluntary change (including those ultimately deemed desirable) retroactive to the beginning of the current fiscal year in

which the notification is made, the contractor must submit rationale for such action and obtain the cognizant Federal agency official's approval. The rationale must state the reasons for making a retroactive change.

(d) When providing notification of a voluntary change, the contractor shall provide sufficient information to support the cognizant Federal agency official's determination that the planned voluntary change should or should not be exempted from contract price and cost adjustment (9903.201–6). The contractor shall state if the cost accounting practice change is or is not associated with restructuring activities; and if it is, the contractor shall:

(1) Submit a comprehensive description of the planned restructuring activities.

(2) Demonstrate, in summary fashion, to what extent the contractor's total operating cost levels are expected to decrease (or increase) as a result of the planned restructuring activities.

(3) Demonstrate that changes to the contractor's established cost accounting practices are associated with the planned restructuring activities and the resultant practice changes would not be made but for the management actions being taken.

(4) Demonstrate that aggregate cost accumulations for existing CAS-covered contracts and reasonably predictable future CAS-covered contracts, by contract types, will decrease, increase or remain the same after the planned restructuring activities are implemented. The required cost comparison calculation methodology is summarized as follows:

	Fixed-price contracts	Flexibly priced contracts, by contract type
1. Total amount of costs that would be accumulated for existing and future CAS-covered contracts, in accordance with established cost accounting practices, at the estimated operating cost levels that would continue if the contemplated restructuring activities were not made.		
2. Total amount of costs that would be accumulated for existing and future CAS-covered contracts, in accordance with the new changed cost accounting practices, at the estimated new cost levels that would result if the planned restructuring activities were made.		
3. Difference (1. minus 2.).		

(5) In lieu of the methodology in paragraph (d)(4) of this section, the contractor may refer the cognizant Federal agency official to its "cost savings" proposal otherwise submitted in accordance with applicable agency regulations governing restructuring activities.

(e) When requesting that a voluntary change be deemed desirable, the contractor shall provide rationale and data demonstrating that the accounting change is desirable and not detrimental to the Government's interests or that the change in cost accounting practice was necessary to remain in compliance with an applicable Cost Accounting Standard (9903.201–7). The contractor shall state if the cost accounting practice change is or is not associated with planned management changes; and if it is, the contractor shall:

(1) Submit a comprehensive description of the planned management changes.

(2) Demonstrate, in summary fashion, to what extent the contractor's total operating cost levels are expected to decrease (or increase) as a result of the planned management changes.

(3) Demonstrate that changes to the contractor's established cost accounting practices are associated with the planned management changes and the resultant practice changes would not be made but for the management actions being taken.

(4) Demonstrate that aggregate cost accumulations for existing CAS-covered contracts and reasonably predictable future CAS-covered contracts, by contract type, will decrease, increase or remain the same after the planned management changes are implemented. The required cost comparison calculation methodology is summarized as fellows:

	Fixed-price contracts	Flexibly priced contracts, by contract type
1. Total amount of costs that would be accumulated for existing and future CAS-covered contracts, in accordance with established cost accounting practices, at the estimated operating cost levels that would continue if the contemplated management changes were not made.		
2. Total amount of costs that would be accumulated for existing and future CAS-covered contracts, in accordance with the new changed cost accounting practices, at the estimated new cost levels that would result if the planned management changes were made.		
3. Difference (1. minus 2.).		

(f) *Data submission requirements:* The contractor shall submit a complete description of any change in cost accounting practice, including the relevant Disclosure Statement page revisions and amendments required to disclose the new practice (9903.202–3); any additional information which will help the cognizant Federal agency official make a determination of adequacy and compliance; and if applicable, data demonstrating that the change is:

(1) Obviously immaterial because the change in practice will not result in a greater or lesser allocation of cost to individual CAS-covered contracts affected by the change, i.e., after the change, the amounts of cost allocated to individual covered contracts will approximate the amounts that would have been allocated if the change were not made,

(2) A voluntary change that is or is not exempt from contract price and cost adjustment,

(3) Desirable and not detrimental to the interests of the Government, and/or

(4) One that warrants retroactive implementation.

9903.405–3 Determinations, approvals and initiating the cost impact process.

(a) *Adequacy and compliance determination.* Upon receipt of the

contractor's notification, the cognizant Federal agency official, with the assistance of the auditor, shall review the planned cost accounting practice change concurrently for adequacy and compliance. If the cognizant Federal agency official identifies any area of inadequacy, a revised description of the new accounting practice shall be requested. Problems of adequacy should be resolved between the parties as soon as possible after the initial notification of the accounting change. If the cognizant Federal agency official determines that the disclosed practice is noncompliant with any Cost Accounting Standards, modifications or interpretations thereto, and the contractor implements the practice, the accounting change will be handled as a noncompliance under the provisions of 9903.406. Once the cognizant Federal agency official has determined that the accounting change is both adequate and compliant, the cognizant Federal agency official shall immediately notify the contractor.

(b) *Voluntary change exemption determinations.* When a contractor provides notification of a planned voluntary change and submits the data required by 9903.405–2, the cognizant Federal agency official should, in accordance with 9903.201–6, determine if the voluntary change can be exempted from contract price and cost adjustment, and notify the contractor of the determination made. Notification should be made promptly after the change is determined to be adequate and compliant.

(c) *Desirable change determinations.* When the contractor's notification includes a request that a planned voluntary change be deemed desirable and not detrimental, the cognizant Federal agency official should, in accordance with 9903.201–7, make a decision with regard to this finding promptly after the change is determined to be adequate and compliant. The cognizant Federal agency official shall notify the contractor in writing regarding the decision of desirability, and concurrently request the contractor to submit a GDM Settlement Proposal, or initiate actions required to otherwise resolve the matter (see 9903.201–7(c)(2)). The notification shall also include a statement indicating that the potential modification of CAS-covered contracts are subject to the availability of funds.

(d) *Approval of retroactive application date.* When a contractor notification pertains to a planned voluntary change with a retroactive applicability date, the cognizant Federal agency official should review the contractor's submitted rationale and promptly determine if the requested retroactive application date should be approved or rejected. The cognizant Federal agency official shall notify the contractor in writing regarding the decision made.

(e) *Obviously immaterial changes.* If the cognizant Federal agency official determines that the cost impact of a change in cost accounting practice is obviously immaterial based on data submitted by the contractor pursuant to 9903.405–2(f)(1), or otherwise decides that the cost impact is immaterial, the decision will be documented, the contractor will be so notified, and the cost impact process will be concluded.

(f) *Request for GDM Settlement Proposal.* When the cost impact of a change in cost accounting practice is not determined to be obviously immaterial, the cognizant Federal agency official will request a GDM Settlement Proposal, as described in 9904.405–4(a), after the determination of adequacy and compliance has been made. The request should specify a date for submission of the GDM Settlement Proposal. The contractor shall submit the GDM Settlement Proposal on or before the date specified or other mutually agreeable date. The cognizant Federal agency official will use the contractor's GDM Settlement Proposal to resolve the cost impact of a change in cost accounting practice on existing CAS-covered contracts and subcontracts, without requiring a detailed cost impact proposal, provided the official determines that the GDM Settlement Proposal is adequately supported and contains sufficient data.

9903.405–4 Contractor cost impact submissions.

(a) General Dollar Magnitude (GDM) Settlement Proposal. (1) The purpose of the GDM Settlement Proposal is to provide information to the cognizant Federal agency official on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous accounting practice. It provides the contractor an opportunity to propose specific adjustments to settle the cost impact of changes in cost accounting practices. It also provides a sufficient number of individual contract and/or subcontract cost impact estimates to support the general dollar magnitude aggregate estimate by contract type and to assist the cognizant Federal agency official in determining whether any individual contract or subcontract price adjustments will be required. The GDM Settlement Proposal is used to determine if the change in cost accounting practice has resulted in material increased or decreased costs to existing contracts, and to attempt to resolve the cost impact of the change in cost accounting practice without requiring a detailed cost impact settlement proposal as described in paragraph (b) of this subsection.

(2) The contractor, in the GDM Settlement Proposal, shall show a reasonable estimate of the aggregate impact of the change on CAS-covered contracts and subcontracts subject to adjustment, by contract type, from the applicability date of the change to completion of the contracts subject to adjustment. The individual contracts selected by the contractor for inclusion in the GDM Settlement Proposal shall be those contracts with the largest dollar impact. The contractor should submit specific adjustments to settle the cost impact of the cost accounting practice change(s). The proposed adjustment amounts shall be determined in accordance with the requirements of this subpart and may include proposed revisions to the profit, fee or incentive provisions of affected contracts.

(3) In computing the cost impact, the contractor shall use a consistent cost data baseline for the before and after change amounts. The cost impact data should generally be based on the latest forecasted direct and indirect cost data used for forward pricing purposes unless other data is considered preferable and agreed to by both the contractor and cognizant Federal agency official. In most cases, the after change cost data baseline should be used because this is the same cost data baseline that will be used to determine the revised forward pricing rates and current contract estimates-to-complete based on the new cost accounting practice.

(4) Any format which reasonably shows the aggregate impact by contract type and provides sufficient contract data to settle the cost impact is acceptable. In most situations, the grouping of the CAS covered contracts by contract type within the GDM Settlement Proposal may be limited to the following contract types: firm-fixed-price (FFP); time-and-material (T&M); incentive-type (FPI/CPIF); and other cost-reimbursement contracts (CPFF, CPAF, CR, etc). One acceptable GDM Settlement Proposal format is illustrated as follows:

BILLING CODE 3110–01–U

SUMMARY - GDM SETTLEMENT PROPOSAL
OF TOTAL COST IMPACT ON ALL COVERED CONTRACTS
AWARDED PRIOR TO APPLICABILITY DATE

REQUIRED CHANGES, VOLUNTARY CHANGES (1), DESIRABLE CHANGES (1)

	ESTIMATE TO COMPLETE (2)		DIFFERENCE	PROPOSED
	OLD PRACTICE (3) (A)	NEW PRACTICE (4) (B)	COST IMPACT (A-B)	ADJUSTMENT AMOUNTS (5)
AGGREGATE				
FFP				
T&M				
FPI/CPIF				
OTHER COST TYPE				
TOTAL				
CONTRACTS (6)				
FFP				
1.				
2.				
"ALL OTHER"				
TOTAL				
T&M				
1.				
2.				
"ALL OTHER"				
TOTAL				
FPI/CPIF				
1.				
2.				
"ALL OTHER"				
TOTAL				
OTHER COST TYPE				
1.				
2				
"ALL OTHER"				
TOTAL				

Instructions:

1. Indicate whether the cognizant Federal agency official has made a finding that the change is desirable, and, if not, attach an explanation detailing the proposed actions(s) that will be taken to preclude the payment of aggregate increased costs, if any, pursuant to 9903.405-5(d).

2. The estimates to complete must be based on the same contract scope of effort, to be performed from the applicability date of the change until contract completion.

3. Enter the total estimated cost to complete all of the CAS-covered contract backlog based on the existing cost accounting practice. This estimate should be based on the CAS-covered contracts' allocable share of the total direct and indirect costs forecasted for all cost accounting periods during which the backlog of CAS-covered contracts estimated under the old practice will be performed.

4. Enter the total estimated cost to complete the CAS-covered contract backlog based on the new cost accounting practice. This estimate should also be based on the backlog contracts' allocable share of the total direct and indirect costs forecasted for all cost accounting periods during which the backlog of CAS-covered contracts estimated under the old practice will be performed. However, that forecasted data must first be recast to reflect application of the new cost accounting practice, e.g., determine the effect on indirect cost pools and allocation bases, recalculate rate(s) and apply the new rate(s) to the recast allocation base(s), as appropriate.

5. The amounts in this column indicate the contractor's proposal to settle the cost impact. Enter the proposed adjustment amounts in the aggregate by contract type and for individual contracts listed, as well as for the "All Other" contract category. Proposed revisions to profit, fee, or incentive provisions may also be included. (Attach explanatory schedule.)

6. List each contract needed to resolve "material" amounts identified in the GDM estimate and, based on the individual contract cost impact computations, enter the indicated data and proposed adjustment amount.

BILLING CODE 3110-01-C

(5) The illustrated GDM Settlement Proposal format is an example of one method and does not preclude the use of any other format or method that displays a reasonable estimate of the cost impact by contract type and provides sufficient contract data to settle the cost impact. The GDM Settlement Proposal shall be adequately supported. If a GDM Settlement Proposal is not adequately supported, or cannot be adequately supported by the contractor, the cognizant Federal agency official shall request a detailed cost impact proposal in accordance with paragraph (b) of this subsection.

(6) The cognizant Federal agency official should attempt to use the contractor's GDM Settlement Proposal to resolve the cost impact to the maximum extent possible. If additional individual contract data is determined necessary to resolve the cost impact, the cognizant Federal agency official should request the contractor to submit a revised GDM Settlement Proposal that includes the specific additional data needed, e.g., contracts with a dollar impact exceeding a specific dollar amount. The contractor should then submit the revised GDM Settlement Proposal on or before the date specified by the cognizant Federal agency official or other mutually agreeable date.

(7) If the cognizant Federal agency official determines that the cost impact is immaterial in both the aggregate by contract type and for the individual contracts included in the GDM Settlement Proposal, the cost impact process may be concluded without any adjustments. If the cost impact either in the aggregate by contract type or on individual contracts is determined to be material, the procedures in 9903.405–5, Negotiation and Resolution of the Cost Impact, should be followed.

(8) Upon receipt, the cognizant Federal agency official should promptly evaluate the contractor's GDM Settlement Proposal and, if the cost impact is determined to be material, proceed to either negotiate and resolve the cost impact, request additional data or request a detailed cost impact proposal in a timely manner.

(b) Detailed cost impact proposal. (1) A detailed cost impact proposal will be requested by the cognizant Federal agency official when the GDM Settlement Proposal cannot be adequately supported or does not contain sufficient data to resolve a cost impact due to a change in cost accounting practice. It will be used by the cognizant Federal agency official in lieu of the GDM Settlement Proposal to determine the magnitude of the impact of the change on existing CAS-covered contracts and subcontracts subject to adjustment and to determine which, if

any, should be adjusted for the impact of the change. The determination by the cognizant Federal agency official of the need for a detailed cost impact proposal is final and binding, and not subject to the Disputes clause of the contracts affected by the practice changes.

(2) The detailed cost impact proposal need not include every contract and subcontract subject to adjustment as a result of the change in cost accounting practices. It typically will include all contracts and subcontracts having an estimate-to-complete, based on the old accounting practice, exceeding a specified amount established by the cognizant Federal agency official. The specified individual contract impact amount should be high enough so that the detailed cost impact proposal does not contain an excessive number of contracts and subcontracts. However, it should contain a sufficient number so that it includes a reasonably high percentage of both the backlog of these contracts and the aggregate impact amount by contract type. The established individual contract estimate-to-complete amount should be specified in the formal written request for a detailed cost impact proposal.

(3) A detailed cost impact proposal will normally include the following:

(i) Cost estimates-to-complete based on the old (established) and new (changed) cost accounting practice and the resultant cost impact, grouped by contract type, for each CAS-covered contract and subcontract exceeding the specified amount.

(ii) Aggregate cost estimates to complete based on the old and new cost accounting practice and the aggregate cost impacts, by contract type, for "all other" CAS-covered contracts and subcontracts that are below the specified amount. The "all other contract" amounts are the difference between the aggregate amounts by contract type and the net sum totals of the impact of the submitted individual contracts by contract type.

(iii) Aggregate cost estimates to complete based on the old and new cost accounting practice and the aggregate cost impacts, by contract type, for all CAS-covered contracts and subcontracts that are affected by the change in cost accounting practice.

(4) The contractor shall submit the detailed cost impact proposal on or before the date specified by the cognizant Federal agency official or other mutually agreeable date.

(5) After analysis of the cost impact proposal, with the assistance of the auditor, the cognizant Federal agency official shall promptly negotiate and resolve the cost impact.

9903.405–5 Negotiation and resolution of the cost impact.

(a) *General.* (1) The cognizant Federal agency official shall negotiate any required contract price or cost adjustments due to changes in cost accounting practices or noncompliances on behalf of all Government agencies. Negotiation of price and cost adjustments may be based on a GDM Settlement Proposal or a detailed cost impact proposal.

(2) The Cost Accounting Standards Board's rules, regulations and Standards do not in any way restrict the capacity of the contracting parties to select the method by which the cost impact attributable to a change in cost accounting practice is resolved. A cost impact may be resolved by modifying a single contract, several but not all contracts, or all contracts subject to adjustment, or any other suitable technique which resolves the cost impact in a way that approximates the amounts that would have resulted if individual contracts had been adjusted.

(b) *Offset process.* The offset process of combining cost impact increases with cost impact decreases may be used to reduce the number of individual contract price or cost adjustments or preclusion of increased cost actions required as a result of a change in cost accounting practice. In applying this process, the following provisions apply:

(1) Use of the offset process shall not result in aggregate cost to the Government which is materially different from that which would result if individual contract prices had actually been adjusted to reflect the aggregate impact of the practice change.

(2) The offset process shall only be applied to contracts that are of the same contract type, e.g., FFP, T&M, incentive (FPI/CPIF) or other cost-reimbursement contracts.

(3) The offset process should not be used to materially reduce the amount of the price adjustment to any one contract that exceeds the individual contract cost impact materiality threshold established for individual contract price adjustments (9903.405–5(c)(1)). It also should not be used to reduce the adjustment for these contracts to an amount below the established threshold. The offset process is used to determine the action required for contract adjustment purposes for the "all other contract" category.

(4) Within a segment, the effect of several changes may be combined in the offset consideration if the changes all take place at the same time. Such offsets may be used to determine:

(i) If the aggregate impact within the same contract exceeds the individual contract's materiality threshold;

(ii) On an overall basis, the aggregate "all other contract" amounts by contract type for all changes; or

(iii) If any action is required to preclude increased costs for concurrent voluntary changes.

(5) Offsets affecting incentive contracts may be applied, provided that the incentive provisions of these contracts are retained or not materially altered.

(6) To minimize action required to resolve cost impacts, cost increases at one segment of a company may be offset by decreases at another segment within the same contract types if the change causes costs to flow between segments either directly or via a higher organizational level such as a home office, or is made simultaneously at the direction of a higher organizational level such as a home office. For such changes, the cost impact proposal should generally be submitted at the home office level so that the cognizant Federal agency official may determine the appropriate course of action.

(c) *Contract price and cost adjustments.* (1) Once the GDM Settlement Proposal or detailed cost impact proposal has been analyzed, the cognizant Federal agency official shall determine, with the auditor's assistance, whether contract price or cost adjustments are warranted. Any adjustments should be limited to amounts that are material. The determination to require or not to require adjustments should be based on separate materiality thresholds for: individual contracts; the "all other contracts" amounts; and the aggregate by contract type. The threshold for individual contract price adjustments may be based on cost impact dollar thresholds, a percentage of the contract price, or a combination of the two criteria, e.g., contracts with cost impacts exceeding a certain dollar amount provided that the impact exceeds a certain percentage of the contract price. The materiality thresholds, as used in this paragraph, are the amounts below which no adjustments are required.

(2) If the accounting change produces a material cost increase or decrease in the aggregate by contract type, it may be necessary to adjust the prices of one or more contracts of each contract type affected by the change. The required adjustments to contract prices (including fixed-price contracts) may increase or decrease contract prices depending on whether estimated contract costs increase or decrease. For voluntary changes, the sum of the

adjustments of all contract prices shall not result in net increased costs paid, in the aggregate, by the Government or net upward adjustments to contracts. Even if a change produces a zero aggregate impact on the costs of all affected contracts, it still may be necessary to adjust the prices of one or more contracts of each contract type. Such adjustments may be made to:

(i) Maintain consistency between the negotiated contract costs and the costs to be allocated to the contract using the new practice, while at the same time reducing potential contract cost overrun and underrun conditions resulting from the change in cost accounting practices;

(ii) Preclude increased cost payments under affected flexibly priced contracts;

(iii) Preclude an enlargement of profit on affected firm-fixed-price contracts beyond the level negotiated; or

(iv) Avoid distortions of incentive provisions and relationships between target costs, ceiling costs and actual costs on incentive type contracts.

(3) Whether the cognizant Federal agency official decides to resolve the cost impact by adjusting the price of one or more contracts of each contract type, or selects some other method for settlement in accordance with paragraph (a)(2) of this subsection, the negotiated net adjustment for each contract type should approximate the amounts that would result if the individual contract prices were adjusted to reflect the cost impact of the change in cost accounting practice.

(4) If the resolution of the cost impact action will be accomplished by means of contract price adjustments, the cognizant Federal agency official should analyze the contractor's cost impact submission to determine if the proposed adjustment amounts exceed the materiality thresholds established in accordance with paragraph (c)(1) of this subsection, and adjust individual contract prices accordingly.

(5) The cognizant Federal agency official, with the assistance of the auditor, should evaluate the aggregate amount by contract type, as well as the "all other contracts" amount, to determine if these amounts exceed the aggregate or "all other contracts" materiality thresholds established. If these amounts exceed the threshold, adjustments may be made by either adjusting contract prices or use of an alternate technique which accomplishes the same approximate result as if all individual contracts were adjusted. If these amounts do not exceed the established aggregate or "all other contracts" threshold, no adjustments are required, unless individual contracts exceed the established individual contract cost impact threshold or adjustments are otherwise considered necessary to achieve equity.

(6) Whenever contract price adjustments are anticipated, the cognizant Federal agency official should coordinate the Government cost impact resolution plan with affected Procuring Contracting Officers, Contracting Officers or other authorized officials performing in that capacity within each affected Federal agency.

(7) At the discretion of the cognizant Federal agency official, contract fee or profit may be adjusted when resolving the cost impact through contract price adjustments. Whether fee or profit is or is not considered, in addition to the cost impact, in making contract price adjustments, is a matter to be determined by the cognizant Federal agency official based on the circumstances surrounding the particular change in accounting practices, terms of the contract, and requirements of law.

(d) *Action to preclude increased costs paid for voluntary changes.* (1) In the absence of a finding pursuant to 9903.201–7 that a voluntary change is desirable, no agreement may be made with regard to a voluntary change in cost accounting practice that will result in the payment of increased costs by the United States. For these changes, the cognizant Federal agency official shall, in addition to the procedures specified in 9903.405–2 through 9903.405–5(c) which apply to all compliant accounting changes, take action to ensure that increased costs are not paid as a result of a change.

(2) For individual CAS-covered firm-fixed-price contracts, increased costs are precluded by adjusting the contract price downward by the amount of the estimated lower allocation of costs to the contracts as a result of a voluntary change in cost accounting practice.

(3) To decide if action is required to preclude the payment of increased costs, the cognizant Federal agency official shall determine, with the assistance of the auditor, to what extent the United States would pay a higher level of costs, in the aggregate, once all potential contract price adjustments are considered. This occurs when the estimated aggregate higher allocation of costs to contracts subject to adjustment exceeds the estimated aggregate lower allocation of costs to other contracts subject to adjustment.

(4) The cognizant Federal agency official may preclude the payment of increased costs resulting from voluntary changes by limiting any upward contract price adjustments to affected contracts to the amount of any downward contract price adjustments to other affected contracts, i.e., no net upward contract price adjustments. The Government may also preclude increased costs by not paying the estimated amount of increased costs to be allocated to affected flexibly-priced contracts that exceeds the estimated reduction of costs to be allocated to affected firm-fixed-price contracts. The following illustrates the actions required so that increased costs are not paid by the Government.

BILLING CODE 3110–01–U

Voluntary Change In Cost Accounting Practice

Cost Shift By Contract Type		Actions To Be Taken To Preclude The Payment of Increased Costs
Flexibly-Priced	Firm-Fixed-Price	
Higher (1)	Higher (1)	No upward price adjustments. Preclude payment of the higher level of costs on flexibly-priced contracts.
Lower (2)	Higher (1)	Limit FFP upward price adjustments to amount of downward adjustments made to flexibly-priced contract cost ceilings and/or target costs.
Lower (2)	Lower (2)	Adjust FFP and flexibly-priced contract cost ceilings and/or target costs downward by the amount of the net downward price adjustment.
Higher (1)	Lower (2)	Limit upward adjustments on flexibly-priced contracts to amount of downward adjustments on FFP contracts. Preclude payment of any excess increased costs on flexibly-priced contracts.

Notes:

(1) "Higher" indicates that a greater amount of cost will be allocated to the contracts than would have been allocated to them had the contractor not changed its cost accounting practices. This represents increased costs to flexibly priced contracts.

(2) "Lower" indicates that the costs to be allocated to the contracts are less than the amount that would have been allocated had the contractor not changed its cost accounting practices. This represents increased costs to firm-fixed-price contracts.

BILLING CODE 3110-01-C

(5) As stated in 9903.404, action to preclude or recover increased costs due to changes in cost accounting practices are required only if the amounts are material. If materiality dictates that action needs to be taken to preclude increased costs paid, in the aggregate, adjustments of contract prices or any other suitable technique which precludes payment of the increased costs may be used.

(6) For required or desirable changes, the sum of all adjustments to prices of affected contracts may result in an aggregate increase or decrease in CAS-covered contract prices because such changes are subject to equitable adjustments.

(e) *Use of another suitable technique.* The cognizant Federal agency official may otherwise resolve the cost impact of a change in cost accounting practice (e.g., by a monetary exchange between the contracting parties), when the cognizant Federal agency official determines, in writing, that contract price and/or cost adjustments or actions to preclude the payment of increased costs are not warranted because:

(1) Contract performance would not be jeopardized (the contractor agrees to absorb any resultant contract cost overrun conditions),

(2) Cost ceilings or target price reductions for flexibly priced contracts are not desired by the Government,

(3) The impact on incentive fee or profit that results from failure to adjust the target cost on incentive contracts is not material, or is otherwise considered in the cost impact settlement, and

(4) The increase or decrease in expected contract cost accumulations would not distort or adversely impair the usefulness of the contractor's reported contract cost information (actual costs and estimated costs to complete) that is included in contract status reports.

(f) *Failure to agree.* If the parties fail to agree on the price or cost adjustments, the cognizant Federal agency official may make unilateral adjustments, subject to appeal as provided in the Disputes provision of each affected contract's CAS contract clause.

9903.406 Noncompliances.

9903.406–1 General types of noncompliances.

(a) A contractor's cost accounting practices may be in noncompliance with applicable Cost Accounting Standards, modifications or interpretations thereto, as a result of using a noncompliant cost accounting practice to estimate

proposed costs on CAS-covered contracts and the noncompliant practice was used to determine the contract prices, i.e., a cost estimating noncompliance; or by using a noncompliant cost accounting practice to accumulate and report costs on CAS-covered contracts, i.e., a cost accumulation noncompliance.

(b) Noncompliant cost accounting practices that result in material increased costs to the Government require correction and may result in contract price and/or cost adjustments as specified in 9903.406–3 for a cost estimating noncompliance or 9903.406–4 for a cost accumulation noncompliance. If the noncompliance requires a change in a disclosed or established cost accounting practice that was used for estimating and cost accumulation, two distinct actions are required, one to resolve the cost estimating noncompliance in accordance with 9903.406–3 and one to resolve the cost accumulation noncompliance in accordance with 9903.406–4.

(c) Noncompliant cost accounting practices that do not result in material increased cost to the Government should be processed as an immaterial noncompliance in accordance with 9903.406–5.

9903.406–2 Noncompliance determinations and initiating the cost impact process.

(a) When a Government representative encounters a potential noncompliance, the representative should, after sufficient discussion with the contractor to ensure all relevant facts are known, immediately issue a report to the cognizant Federal agency official describing the cost accounting practice and the basis for the opinion of noncompliance. The representative's opinion on whether correction of the potential noncompliant practice would or would not have a material cost impact on existing or future CAS-covered contract costs, if known, should also be expressed in the report.

(b) The cognizant Federal agency official should make an initial finding of compliance or noncompliance and advise the cognizant auditor and contractor in a timely manner after the receipt of the audit report of potential noncompliance.

(c) If the cognizant Federal agency official makes a determination of compliance, no further action is necessary other than to notify the contractor and the cognizant auditor of the determination.

(d) If an initial finding of noncompliance is made, the cognizant Federal agency official should immediately notify the contractor in writing of the exact nature of the noncompliance. The contractor will either agree to the noncompliance determination, or disagree and submit reasons why the existing practices are considered to be compliant. The contractor shall respond by a date specified by the cognizant Federal agency official or other mutually agreeable date.

(e) If the contractor agrees with the initial finding of noncompliance, the contractor shall correct the noncompliance and submit a noncompliance cost impact submission as requested by the cognizant Federal agency official.

(f) If the contractor disagrees with the initial noncompliance finding, the contractor shall provide the cognizant Federal agency official with reasons why it disagrees with the initial finding. The cognizant Federal agency official shall evaluate the reasons why the contractor considers the existing practice to be compliant and again make a determination of compliance or noncompliance, and notify the contractor and auditor in writing. If the cognizant Federal agency official makes a determination of compliance, no further action is necessary other than to notify the contractor and auditor.

(g) Once the cognizant Federal agency official reaches a final position that a noncompliance exists, the official shall issue a final determination to inform the contractor of the Government's position and that failure to agree will constitute a dispute under the Disputes provision included in each affected contract's CAS contract clause. A final determination of noncompliance should also include a request for corrective action and a noncompliance cost impact submission showing the impact of the noncompliance on CAS-covered contracts and subcontracts. If the contractor agrees with the noncompliance determination, the procedures in paragraph (e) of this subsection shall be followed.

(h) If the cognizant Federal agency official issues an initial determination of noncompliance on a revised accounting practice, and ultimately determines that the practice is compliant, the revised cost accounting practice should be handled in accordance with the procedures established in 9903.405.

(i) *Contractor cost impact submissions.* The cognizant Federal agency official shall normally request a GDM Settlement Proposal and attempt to resolve the noncompliance without requiring a detailed cost impact proposal. If a GDM Settlement Proposal is not adequately supported, or cannot be adequately supported by the contractor, the cognizant Federal agency official shall request a detailed cost impact proposal for the CAS-covered contracts materially affected by the noncompliance. The contractor's cost impact submission shall show the impact of the noncompliance on the affected CAS-covered contracts. It may be in a format that is similar to the GDM Settlement Proposal shown at 9903.405–4(a)(4), the detailed cost impact proposal specified at 9903.405–4(b) or it may be in another mutually agreeable format. The chosen format must result in the submission of cost impact data that will enable the cognizant Federal agency official to accomplish the objectives of 9903.406–3(c) and (d) for a cost estimating noncompliance or of 9903.406–4(c) and (d) for a cost accumulation noncompliance. The following illustration is one acceptable GDM Settlement Proposal format that may be used for a noncompliant action. The illustrated format is only one example of a noncompliance cost impact submission and does not preclude the use of any other mutually agreeable cost impact submission format.

BILLING CODE 3110–01–U

SUMMARY - GDM SETTLEMENT PROPOSAL
OF TOTAL COST IMPACT ON ALL COVERED CONTRACTS
AFFECTED BY A COST ESTIMATING NONCOMPLIANCE

	CONTRACT COST AMOUNT		DIFFERENCE	PROPOSED
	NONCOMPLIANT PRACTICE	COMPLIANT PRACTICE	COST IMPACT	ADJUSTMENT AMOUNTS
	(1)	(2)		(3)
	(A)	(B)	(A-B)	
AGGREGATE				
FFP				
T&M				
FPI/CPIF				
OTHER				
COST TYPE				
CONTRACT (4)				
FFP				
1.				
2.				
"ALL OTHER"				
TOTAL				
T&M				
1.				
2.				
"ALL OTHER"				
TOTAL				
FPI/CPIF				
1.				
2.				
"ALL OTHER"				
TOTAL				
ALL OTHER COST				
1.				
2.				
"ALL OTHER"				
TOTAL				

Instructions for an estimating noncompliance:

1. **Insert the estimated cost amounts that resulted from the application of the noncompliant cost accounting practice and were included in the cost proposal(s) used to negotiate the contract price of affected contracts. If the proposed cost and negotiated contract cost were materially different, insert the negotiated contract cost amount that resulted from the application of the noncompliant cost accounting practice(s). Include the estimated cost amounts both in the aggregate and for individual contracts listed.**

2. **Insert the estimated cost amounts (reconstructed based on the same estimated cost levels to which the noncompliant practice was applied) to reflect the estimated costs that would have been proposed (or negotiated, if the estimated costs based on the noncompliant practice in 1 above are based on negotiated costs) if a compliant practice had been used.**

3. **Show amounts proposed for adjustment in order to settle the cost estimating noncompliance. The proposed adjustment amounts should include both adjusted costs and appropriate adjustments for profit, fee, or the contracts' incentive provisions.**

4. **List all contracts that were materially overstated or understated as a result of using the cost estimating noncompliant practice based on the use of a materiality threshold, i.e. all contracts that have contract prices overstated or understated by an amount in excess of a specified threshold.**

5. **Submit a separate schedule that shows the amount of aggregate increased cost actually paid by the United States due to the contract prices that were established based on the noncompliant practice; and, the contractor's proposed amounts, including applicable interest, to be paid or otherwise credited to the United States in settlement of the increased cost payments received by the contractor.**

BILLING CODE 3110-01-C

9903.406–3 Cost estimating noncompliance.

(a) After a final determination of a cost estimating noncompliance is issued by the cognizant Federal agency official, the contractor shall correct the practice by changing to a compliant cost accounting practice. If the contractor believes the cost impact of the noncompliance is obviously immaterial, the contractor shall submit data demonstrating the immateriality. If the cognizant Federal agency official agrees that the noncompliance does not result in a material impact on CAS-covered contracts, the procedures in 9903.406–5 shall be followed. Otherwise, paragraphs (b) through (f) of this subsection shall be followed.

(b) If the noncompliance occurs because the cost accounting practice used for estimating purposes is different than the disclosed and established cost accounting practice used for cost accumulation purposes, and the cognizant Federal agency official has found the cost accumulation practice to be compliant, the contractor shall first correct the noncompliance by replacing the noncompliant practice used to estimate costs with the compliant cost accounting practice used to accumulate and report actual contract costs. Where a previously submitted contract cost proposal based on the noncompliant cost estimating practice has not yet been negotiated, the contractor shall also take action to ensure that any subsequent contract cost negotiations of such proposals will be based on cost estimates that reflect the corrected and compliant cost accounting practice.

(c) Once the cognizant Federal agency official determines that the contractor's cost accounting practices used to estimate and accumulate costs will henceforth be consistent and compliant, the cognizant Federal agency official shall request the contractor to submit a noncompliance cost impact submission (9903.406–2(i)), for CAS-covered contracts that were negotiated based on the noncompliant practice. The cost impact submission will show the estimated contract cost amounts that were predicated upon the application of the noncompliant cost accounting practice, by contract type, and the estimated contract cost amounts that would have resulted had the compliant practice been used. The cognizant Federal agency official may establish contract thresholds so that any contracts with an immaterial cost impact may be omitted from the cost impact submission. The cost impact submission shall be in sufficient detail for the cognizant Federal agency official to determine whether:

(1) Any individual contracts are significantly overstated or understated as a result of the estimating noncompliance;

(2) The affected CAS-covered contract prices, by contract type, are, in the aggregate materially overstated; and

(3) Any net increased costs were paid under CAS-covered contracts as a result of the noncompliant practice, and if so, the period of overpayment.

(d) The cognizant Federal agency official should use the materiality guidelines established in 9903.305 and

9903.404 to determine whether any individual contract price adjustments, or adjustments for the net overstatement or understatement of contract amounts by contract type, due to use of the noncompliant practice are warranted. Adjustments should be limited to amounts that are material. In no case shall the Government recover costs greater than the increased costs, in the aggregate, on the relevant contracts. While individual contract prices, including cost ceilings or target costs, as applicable, may be increased as well as decreased to resolve an estimating noncompliance, the aggregate value of all contracts affected by the estimating noncompliance shall not be increased. The following schedule illustrates how to determine the contract price adjustments to be required.

BILLING CODE 3110-01-U

Requiring Contract Price Adjustments For An Estimating Noncompliance

Change In Contract Cost Estimate By Contract Type Due To The Noncompliance		Actions To Be Taken
Flexibly-Priced	Firm-Fixed-Price	
Lower (2)	Lower (2)	No contract price adjustments are required since there are no increased costs to the Government and upward price adjustments, in the aggregate, are not permitted.
Higher (1)	Lower (2)	Adjust flexibly priced contract cost ceilings or target costs down to recover increased cost to Government. Limit FFP upward price adjustments to amount of flexibly-priced downward price adjustments.
Higher (1)	Higher (1)	Adjust FFP and flexibly-priced contract ceiling or target prices downward by the amount of the increased cost to the Government.
Lower (2)	Higher (1)	Adjust FFP prices downward to recover the increased cost to the Government. Limit upward adjustments on flexibly-priced contracts to amount of downward adjustments on FFP contracts.

Notes:

(1) "Higher" indicates the estimated costs submitted in the contract cost proposal were higher, due to the contractor's use of a noncompliant cost accounting practice to estimate the proposed contract costs. This represents increased cost to the Government.

(2) "Lower" indicates that the estimated costs submitted in the contract cost proposal were lower, due to the contractor's use of a noncompliant practice to estimate the proposed contract costs.

BILLING CODE 3110-01-C

9903.406–4 Cost accumulation noncompliance.

(a) After a final determination of a cost accumulation noncompliance is issued by the cognizant Federal agency official, the contractor shall correct the practice by changing to a compliant cost accounting practice. If the contractor believes the cost impact of the noncompliance is obviously immaterial, the contractor shall submit data demonstrating the immateriality. If the cognizant Federal agency official agrees the noncompliance does not result in a material impact on Government contracts, the procedures in 9903.406–5 shall be followed. Otherwise, paragraphs (b) through (e) of this subsection shall be followed.

(b) Once the corrective action has been implemented, and the cognizant Federal agency official has determined that the accounting change, if any, meets the test of adequacy and compliance, the cognizant Federal agency official will request the contractor to submit a noncompliance cost impact submission (9903.406–2(i)). The submission shall identify the cost

impact on CAS-covered contracts and any increased costs paid as a result of the cost accumulation noncompliance. Although overpayments due to cost accumulation noncompliances are generally recovered when the actual costs are adjusted to reflect a compliant practice (except for closed contracts), the cost impact submission must show the total overpayments made by the United States during the period of noncompliance, so that the proper interest amount can be calculated and recovered as required by paragraph (d) of this subsection.

(c) The level of detail to be submitted with a cost impact submission for a cost accumulation noncompliance will vary with the circumstances. Normally, the cost impact submission will identify the aggregate costs by contract type that were accumulated under the noncompliant cost accounting practice and the costs that would have been accumulated if the compliant cost accounting practice had been applied from the time the noncompliant practice was first applied until the date the noncompliant practice was replaced with a compliant practice. The cost impact submission for a cost accumulation noncompliance is primarily used by the cognizant Federal agency official to determine if, and to what extent, increased costs were paid in the aggregate on covered contracts during the period of noncompliance. The level of detail required to adequately support this determination should be based on discussions between the contractor and the cognizant Federal agency official, with assistance from the auditor, and included in the cognizant Federal agency's official request for the cost impact submission.

(d) Interest applicable to the increased costs paid to the contractor as a result of the noncompliance shall be computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payments by the United States were made to the time the increased cost payments are recovered.

(e) Negotiation and resolution of the cost impact should be accomplished in accordance with 9903.405–5(a).

9903.406–5 Immaterial noncompliances.

If a noncompliance cost impact is not material in the aggregate, the cognizant Federal agency official shall notify the contractor in writing that:

(a) The practice is noncompliant via a final determination of noncompliance;

(b) Corrective action should be taken; and

(c) If the noncompliant practice subsequently results in materially increased costs to the Government, action will be taken to recover the increased costs plus applicable interest.

9903.407 Illustrations.

The following illustrations are not intended to cover all possible situations, but rather to provide some guidelines in applying the procedures specified in 9903.405 and 9903.406. The illustrations are intended to be considered only as examples. In actual cases, the individual circumstances need to be reviewed and considered to ensure equity for both parties.

9903.407–1 Change in cost accounting practice—illustrations.

(a) *Notification.* (1) The contractor provides notification of a change in cost accounting practice in April with a proposed retroactive applicability date of the beginning of the current year. In accordance with 9903.405–2(c), the contractor provides rationale for the beginning of the current year applicability date. The cognizant Federal agency official approves of the proposed applicability date (9903.405–3(d)). After determination of adequacy and compliance, the cognizant Federal agency official requests a GDM Settlement Proposal for contracts negotiated based on the previous accounting practice, including those negotiated after the applicability date of the change.

(2) The contractor provides notification of a voluntary change in cost accounting practice in June with a planned retroactive applicability date of the beginning of the current year. The cognizant Federal agency official finds that the rationale for the retroactive applicability date does not justify retroactive implementation (9903.405–3(d)). The contractor is informed that for cost accumulation purposes the new practice can be applied no earlier than 60 days after the contractor's notification of the accounting change, and that a retroactive applicability date will result in a noncompliance with disclosed practices and disallowance of any resulting increased costs. The contractor notifies the cognizant Federal agency official that, to avoid a noncompliance condition, it will change the applicability date to the beginning of its next cost accounting period.

(b) *GDM Settlement Proposal.* (1) In accordance with 9903.405–3(f), the cognizant Federal agency official requests a GDM Settlement Proposal by contract type, which would include the impact on a sufficient number of contracts of each contract type to negotiate the impact of a change in cost accounting practice. The contractor supports the GDM Settlement Proposal by using a contract cost profile which shows the percentage of the three year forward pricing rate base data which consists of existing CAS-covered contracts subject to adjustment, and the percentage of the CAS-covered contracts subject to adjustment for each contract type. No contracts other than some of the individual contracts submitted with the GDM Settlement Proposal extend out beyond the three year period. The cognizant Federal agency official, with the assistance of the auditor and using the GDM Settlement Proposal individual contract data, determines that the general dollar magnitude estimate developed by the contractor reasonably approximates the aggregate impact, by contract type, of the accounting change on contracts subject to adjustment, i.e., contracts negotiated based on the previous practice. Pursuant to 9903.405–4(a)(6), the Government and contractor resolve the impact without a detailed cost impact proposal.

(2) The contractor reports a change in accounting practice which changes a direct cost element to an indirect expense. The cognizant Federal agency official, with the assistance of the auditor, determines that the GDM Settlement Proposal data submitted by the contractor does not adequately support the aggregate cost impact, by contract type, of the change in accounting practice. Therefore, in accordance with 9903.405–4(b)(1) and (2), the cognizant Federal agency official requests a detailed cost impact proposal to include a sufficient number of contracts, by contract type, to resolve the cost impact.

(3) The contractor submits a GDM Settlement Proposal which includes several contracts of each contract type showing the cost impact of the change in accounting practice. The impact is developed by computing the difference in the estimate-to-complete on these contracts using the old and new accounting practices. The cost impact settlement proposal includes all contracts that have a cost impact in excess of $1,000,000. The cognizant Federal agency official determines that the cost impact on each submitted contract was accurately computed. In accordance with 9903.405–4(a)(6), the cognizant Federal agency official decides that, based on the circumstances, contracts having an impact in excess of $500,000 are significant enough to require adjustment. The cognizant Federal agency official requests the contractor to submit a revised GDM Settlement

Proposal that includes contracts having an impact in excess of $500,000 so that the cost impact can be resolved without a detailed cost impact proposal. The cost impact is ultimately negotiated based on the contractor's revised GDM Settlement Proposal.

(4) The same situation described in paragraph (b)(3) of this subsection occurs except that the aggregate impact by contract type in the GDM Settlement Proposal can not be reconciled with the aggregate net impact of the individual contracts by contract type submitted with the proposal. In accordance with 9903.405–4(a)(5), the cognizant Federal agency official requests a detailed cost impact proposal to include a sufficient number of contracts by contract type to resolve the cost impact.

(5) After reviewing the GDM Settlement Proposal for a change in a cost allocation practice, the cognizant Federal agency official decides in accordance with 9903.405–4(a)(7) that, due to materiality, no additional data is needed and no contract price or cost adjustments are warranted.

(c) Detailed cost impact proposal. (1) In accordance with 9903.405–4(b)(2), the cognizant Federal agency official submits a written request for a detailed cost impact proposal to include all contracts with an estimate-to-complete based on the old practice in excess of $5,000,000 summarized by contract type. After evaluation of the detailed cost impact proposal, the cognizant Federal agency official determines whether contract price and/or cost adjustments are required in accordance with 9903.405–5(c).

(2) [Reserved]

(d) *Offset Process.* (1) In analyzing the contractor's cost impact proposal, the cognizant Federal agency official determines that one firm-fixed-price contract is the only contract that exceeds the threshold established for contract price adjustment purposes. The impact on that contract is a reduced allocation of $1,000,000, requiring a downward adjustment to the contract price. When the cognizant Federal agency official applies the offset process to all other firm-fixed-price contracts subject to adjustment by combining the increases and decreases, the result is a higher allocation in the aggregate amount of $400,000 on all other firm-fixed-price contracts. Although no individual contracts making up this aggregate amount exceed the established threshold, the cognizant Federal agency official decides, in accordance with 9903.405–5(c)(5), that to achieve equity, an upward adjustment in the amount of $400,000 is warranted. Rather than offset this amount against the one contract exceeding the individual contract cost impact threshold, the cognizant Federal agency official, in accordance with 9903.405–5(b)(3), selects two firm-fixed-price contracts for upward adjustment, in addition to the $1,000,000 downward adjustment to the contract exceeding the threshold.

(2) The same situation exists as described in paragraph (d)(1) of this subsection except that the cost impact on the one individual firm-fixed-price contract has a cost impact showing a reduced allocation of $10,000,000 which significantly exceeds the individual contract threshold established. The cognizant Federal agency official decides to offset the $400,000 impact on the "all other" contracts against the impact on the contract exceeding the threshold and makes a downward adjustment of $9,600,000 thereby reducing the number of contracts requiring adjustment, while still following the provisions of 9903.405–5(b)(3).

(3) The contractor makes simultaneous accounting practice changes at three of its business units at the direction of the next higher tier home office. The cognizant Federal agency official at the home office segment decides to handle this change as a voluntary change which cannot result in increased costs paid by the United States. Business Unit A has a cost impact on contracts subject to adjustment which results in a higher level of costs on flexibly-priced contracts of $1,000,000 in excess of the lower level of costs on firm-fixed-price contracts. The impact on flexibly-priced contracts at Business Unit B and Business Unit C is a combined lesser allocation of costs of $1,200,000 in excess of the higher level of costs on firm-fixed-price contracts, resulting in net decreased costs on Government flexibly-priced contracts at the three business units. To demonstrate that the accounting change did not result in aggregate increased costs to the Government, the contractor submits a consolidated GDM Settlement Proposal for the three business units at the home office level. As a result of considering the aggregate impact at the three business units at the home office level, the cognizant Federal agency official, in accordance with 9903.405–5(b)(6), takes no action to preclude the increased costs on flexibly-priced contracts at Business Unit A. Individual contracts at each business unit that had cost impacts exceeding established thresholds were adjusted upward or downward, as appropriate, for the amount of the cost impact in accordance with 9903.405–5(c)(2)(i).

(4) After determining the individual contracts subject to adjustment where the cost impact exceeded the established threshold for a change in an actuarial cost method for computing pension costs, the contractor computes an aggregate impact for "all other contracts" amounting to $1,000,000 of lesser allocation of costs for flexibly-priced contracts and $1,200,000 of lesser allocation of costs on firm-fixed-price contracts. The cognizant Federal agency official considers these amounts significant enough to warrant an adjustment. Since the impact on the flexibly-priced contracts represents decreased costs to the Government and the impact on the firm-fixed-price contract represents increased costs to the Government, the contractor asks the cognizant Federal agency official to offset the increases and decreases and make a downward adjustment on the fixed-price contracts for only $200,000. The cognizant Federal agency official determines that by doing this, the cost to the Government of a lesser pension cost paid of $1,200,000 would be materially different than if the individual contracts making up these aggregate amounts had been individually adjusted downward resulting in a lesser cost paid of $2,200,000 (the sum of the $1,000,000 cost impact on the flexibly-priced contract and the $1,200,000 cost impact on the fixed-priced contract). Therefore the contractor's proposed resolution would not result in the same aggregate cost impact as the amount that would result from adjustment of individual contracts. To achieve the desired result, the cognizant Federal agency official, in accordance with 9903.405–5(b) (1) and (2), selects a number of high dollar contracts and adjusts flexibly-priced contracts downward by $1,000,000 and firm-fixed-price contracts downward by $1,200,000. In accordance with 9903.405–5(a)(2), an alternative technique, in lieu of adjusting contract prices, which achieves the same result of lesser cost paid of $2,200,000 could also have been used for the aggregate "all other contract" cost impact adjustment.

(e) *Contract price and cost adjustments.* (1) After considering the materiality criteria in 9903.305, the cognizant Federal agency official decides that only contracts that have an impact that exceeds both $500,000 and .5% of the contract value will be subject to adjustment based on the impact of the accounting change. Of the individual contracts submitted with the GDM Settlement Proposal, only nine contracts exceed this threshold. The aggregate

impact of all other contracts by contract type is considered insignificant. In accordance with 9903.405–5(c)(4), the cognizant Federal agency official resolves the cost impact by adjusting only those contracts that exceed the individual contract cost impact threshold, and making no other adjustments, without the need for a detailed cost impact proposal.

(2) The same situation described in paragraph (e)(1) of this subsection occurs except that the aggregate amount for all other contracts not exceeding the established individual contract cost impact threshold is considered significant enough by the Government to warrant adjustment. The Government had established $500,000 as the "all other contract" threshold. The cognizant Federal agency official selects two of the largest contracts that do not exceed the threshold, for each contract type, for adjustment in the amount of the aggregate "all other contract" impact. In order to avoid additional contract price adjustment action, the contractor, in accordance with 9903.405–5(a)(2), proposes an alternative adjustment technique to resolve the aggregate "all other contract" impact amount. The cognizant Federal agency official determines that the proposed alternative adjustment technique accomplishes the same approximate result as adjusting the two selected contracts. The cognizant Federal agency official, in accordance with 9903.405–5(c)(3), agrees to use the alternative technique, in addition to adjusting the individual contracts that exceed the threshold, to resolve the impact of the change in cost accounting practice.

(f) *Increased cost.* (1) In analyzing the contractor's cost impact proposal, the cognizant Federal agency official determines that only two firm-fixed-price contracts exceed the threshold for contract price adjustment purposes. All other amounts related to the cost impact are considered immaterial. The change is a voluntary change, i.e., the no increased cost limitation applies. The impact on the two contracts are a lower allocation of costs in the amount of $1,000,000 for contract A and a higher allocation of costs of $2,000,000 for contract B. In order to preclude increased costs paid by the United States as a result of the change, the cognizant Federal agency official, in accordance with 9903.405–5(d)(4), adjusts Contract A downward by $1,000,000, and limits the upward adjustment on Contract B to $1,000,000. This action adjusts the contracts to reflect the impact of the change to the maximum extent possible, while precluding a higher level of costs being paid by the United States.

(2) The same situation described in paragraph (f)(1) of this subsection occurs except that contract B is a CPFF contract. In accordance with 9903.405–5(d)(4), the cognizant Federal agency official adjusts the firm-fixed-price contract downward by $1,000,000, and the estimated contract cost ceiling on the CPFF contract upward by $1,000,000. In accordance with 9903.405–5(d)(1), action must be taken to preclude the additional $1,000,000 of increased cost on the CPFF contract. An appropriate adjustment technique is used to preclude the payment of the additional $1,000,000 of increased costs in accordance with 9903.405–5(d)(4).

(3) After analyzing the contractor's GDM Settlement Proposal for a voluntary change, the cognizant Federal agency official determines that five contracts exceed the threshold established for contract price adjustment purposes. The cost impact on all other contracts, both individually and in the aggregate, is considered insignificant. The five contracts requiring adjustment are 3 firm-fixed-price contracts and 2 CPFF contracts. The total impact on the 3 firm-fixed-price contracts is a lower allocation of costs amounting to $3,000,000. The total impact on the 2 CPFF contracts is a higher allocation of costs of $2,000,000. The cognizant Federal agency official adjusts the contracts upward and downward for the amount of the impact. In accordance with 9903.405–5(d)(1) and (3), no further action is needed to preclude increased costs paid, since the impact to the Government after contract price adjustments are made is a lesser cost paid in the amount of $1,000,000.

(g) *GDM Settlement Proposal based on contractor cost model and profile.* (1) The contractor has developed a cost model and profile which is used for the GDM Settlement Proposal. The cost model and profile data are updated whenever circumstances change and dictate revision to the data.

(2) For a voluntary accounting change, the contractor's cost model and profile is based on same three year forecast of direct and indirect cost data that supports the contractor's forward pricing rates used to estimate indirect costs in price proposals. The profile shows that 80% of the forecasted allocation base amounts in year 1 are comprised of existing covered contracts subject to adjustment, 50% of the amounts in year 2 are comprised of existing covered contracts subject to adjustment, and 20% of the amounts in year 3 are comprised of existing covered contracts subject to adjustment. Of the amounts applicable to CAS-covered contracts subject to adjustment, the contractor's cost model and profile shows the following breakdown by contract type:

	In percent		
	Year 1	Year 2	Year 3
Direct Labor Base:			
CPFF	30	25	20
CPIF/FPI	20	21	22
FFP	50	54	58
Total Cost Input Base:			
CPFF	25	22	21
CPIF/FPI	15	16	17
FFP	60	62	62

(3) The voluntary accounting change, which the cognizant Federal agency official has determined to be adequate and compliant, results in a transfer of a $5 million activity from the G&A pool to the overhead pool. The cognizant Federal agency official has determined that only individual contracts that have a cost impact in excess of $100,000 will be considered for adjustment, provided that the impact exceeds .5% of the contract value. The cognizant Federal agency official has also determined that $500,000 will be the adjustment threshold for the "all other contracts" amounts by contract type. To support the GDM Settlement Proposal, the contractor includes three (3) contracts having the largest estimate-to-complete, by contract type. Based on the cost model and profile the contractor computes the following general dollar magnitude impact by contract type:

	Year 1	Year 2	Year 3	Aggregate Impact *
CPFF	$ 242	$ 77	$ (4)	$ 315
CPIF/FPI	225	110	43	378
FFP	(310)	(189)	(18)	(517)

* Dollars in thousands.
( ) Denotes lesser allocation of costs.

(4) The aggregate impact amounts show a higher allocation of $693,000 on flexibly-priced contracts and a lesser allocation of $517,000 on firm-fixed-price contracts. Only one contract of each contract type submitted with the GDM Settlement Proposal exceeds the threshold established. K1 is a CPFF contract with an impact of a higher allocation of $200,000. K2 is a CPIF contract having an impact of a higher allocation of $300,000. And, K3 is an FFP contract having an impact of a lesser allocation of $400,000. After deducting the impact of the three contracts exceeding the threshold, the "all other contracts" amounts are a higher allocation of $115,000 for CPFF contracts, a higher allocation of $78,000 for incentive type contracts, and a lesser allocation of $117,000 for FFP contracts.

(5) Since the "all other contracts" amounts are less than the threshold for each contract type, the cognizant Federal agency official requires no adjustments for these amounts. The cognizant Federal agency official adjusts the FFP contract downward by $400,000 to preclude the increased costs on this contract. Because this is a voluntary change with no increased costs to be paid by the Government, the upward adjustments to the flexibly-priced contracts must be limited to $400,000. The cognizant Federal official decides to adjust the target cost on the CPIF contract upward by $300,000, with an appropriate upward adjustment of the target fee, in order to avoid distortions of contract incentive provisions based on the estimated higher allocation of costs (9903.405–5(b)(5)). The cognizant Federal agency official then limits the upward adjustment to the CPFF contract to $100,000. Action must also be taken to preclude payment of the additional $100,000 of costs on the CPFF contract in accordance with 9903.405–5(d)(4).

(h) *Desirable change determination.* A contractor provides notification of a proposed voluntary change in cost accounting practice and requests a cognizant Federal agency official determination that the change is desirable and not detrimental to the Government. The request is supported with data that demonstrates that aggregate cost accumulations for existing flexibly priced CAS-covered contracts and reasonably predictable future CAS-covered contracts will decrease after the planned management changes are implemented. The cost impact of the practice change on all existing individual CAS-covered contracts (i.e., shifts in accumulated contract costs attributable to the practice change) results in $500,000 of increased cost to the Government. There are expected cost reductions of $200,000 on future CAS-covered contracts. The cognizant Federal agency official determines that there is a continuing long-term relationship with the contractor and that, after the change is made, there is a reasonably predictable expectation that the estimated costs of anticipated future CAS-covered contracts, as reflected in the contractor's forecasted business base used to develop the projected indirect cost rates applied in contract cost proposals, will be lower than the estimated future contract costs that would result if the voluntary change were not made. In accordance with 9903.201–7(d), the cognizant Federal agency official determines the voluntary change is desirable and not detrimental to the Government and provides equitable adjustments in the aggregate amount of $200,000 to resolve the increased costs on existing CAS-covered contracts caused by the voluntary change.

9903.407–2 Noncompliance illustrations.

(a) *Estimating noncompliance.* (1) The cognizant Federal agency official determines that a cost accounting practice that the contractor has used for estimating and negotiating costs on CAS-covered contracts is noncompliant with an applicable Cost Accounting Standard. The practice is also different than the compliant, disclosed and established practice used for cost accumulation purposes. Therefore, the impact of the noncompliance only affects negotiated contract amounts under which the contractor used the noncompliant practice to estimate contract costs and any outstanding cost proposals not yet negotiated. The cognizant Federal agency official directs the contractor to change its estimating practices so that costs will be estimated, accumulated and reported consistently based on the contractor's established cost accounting practices, and not use as a basis for the negotiation of contract prices any previously submitted contract cost estimates which were predicated on the noncompliant cost accounting practice. The cognizant Federal agency official then proceeds to request a cost impact submission for the impact of the noncompliant practice on covered contracts, as well as the amount of the increased costs paid as a result of the noncompliance. In accordance with 9903.406–3(d), the cognizant Federal agency official determines that the impact on contracts valued at less than $10,000,000 would be immaterial, and limits the cost impact submission to contracts of $10,000,000 or more in amount. The contractor's cost impact submission shows that the contract amounts are overstated (in the

aggregate) by a significant amount due to use of the noncompliant practice. The contracts are adjusted downward in the aggregate to reflect use of the compliant practice. Of the total amount of the overstatement in contract prices, the cognizant Federal agency official determines that 50 percent had been paid as of the date of the adjustment of the contract values. The cognizant Federal agency official, with the assistance of the auditor, computes and recovers interest applicable to the increased costs paid, for the period from date of payment to date of recovery of the increased costs paid.

(2) The cognizant Federal agency official determines that the cost accounting practice used by the contractor to estimate costs is noncompliant and different than the contractor's compliant, disclosed and established cost accounting practice. An analysis of the noncompliance cost impact submission developed by the contractor shows that, except for two large fixed-price contracts, the effect on negotiated contract values is immaterial. The cognizant Federal agency official determines that the impact on the two large fixed-price contracts is material enough to warrant an adjustment to reflect the application of the compliant disclosed practice. Since the amount of the understatement of the one contract exceeds the amount of the overstatement of the other contract, the cognizant Federal agency official, in accordance with 9903.406–3(d), limits the upward adjustment of the understated contract to the amount of the downward adjustment of the overstated contract. The cognizant Federal agency official further determines that the noncompliant practice did not result in increased cost paid by the United States. Therefore, no action was required to recover increased cost paid and applicable interest.

(b) *Cost accumulation noncompliance.* (1) The cognizant Federal agency official makes a final determination that the contractor is using an accounting practice for cost accumulation purposes that is noncompliant with an applicable Cost Accounting Standard. The cognizant Federal agency official further determines that the cost accounting practices used for cost estimating purposes are compliant. The noncompliant practice relates to the accumulation of actual indirect expenses. The contractor implements the same compliant practice used to estimate costs for cost accumulation and reporting purposes. The change to the compliant method for cost accumulation and reporting purposes results in automatic adjustment of actual costs and recovery of all increased cost paid due to the noncompliance. The contractor submits a noncompliance cost impact submission showing the amount of the increased cost paid during the period of noncompliance by using a method that does not require submission of individual contract data. The cognizant Federal agency official, with the assistance of the auditor, determines that the cost impact submission reasonably reflects the extent of the increased costs paid. It is also determined that the increased costs were paid evenly over the period of the noncompliance and the interest on the increased costs paid is computed using the midpoint of the noncompliance as a baseline. Since the increased costs have already been recovered through the adjustment of actual costs, the Government takes action only to recover the applicable interest by requesting a payment for the amount of the interest from the contractor.

(2) The cognizant Federal agency official determines that the contractor has accumulated costs based on a cost accounting practice that is not compliant with CAS 9904.402 and is not consistent with its disclosed and established practice for its CAS-covered contracts. Since the noncompliance involves accounting for direct costs as indirect costs on some but not all of its CAS-covered contracts, the cognizant Federal agency official determines that individual contract data is required in order to compute the extent of increased costs paid, if any, as a result of the noncompliance. In accordance with 9903.406–4(c), the cognizant Federal agency official, with the assistance of the auditor, determines and discusses with the contractor the level of detail needed to compute the impact on costs paid as a result of the noncompliance. The cognizant Federal agency official submits a written request to the contractor for a noncompliance cost impact submission that specifies the level of detail required. After analyzing the cost impact submission, the cognizant Federal agency official determines that the amount of the increased costs paid is immaterial and does not warrant action to recover the increased costs, plus applicable interest. The cognizant Federal agency official takes action in accordance with 9903.406–5, Immaterial noncompliances.

(3) The cognizant Federal agency official determines that the contractor is using a practice for cost accumulation purposes that is noncompliant with an applicable Cost Accounting Standard. The cognizant Federal agency official further determines that the noncompliant practice was also used for estimating purposes. In order to determine the extent of increased costs, if any, due to both overstated contract prices and billings of costs accumulated on CAS-covered contracts, the official, in accordance with 9903.406–1(b), requests two separate contractor cost impact submissions (9903.406–2(i)). The cost impact submission for the overstated contract prices will be as described in 9903.406–3(c), and the cost impact proposal for the overbilled accumulated costs will be as described in 9903.406–4(c).

[FR Doc. 99–21334 Filed 8–19–99; 8:45 am]
BILLING CODE 3110–01–U

federal register

Friday
August 20, 1999

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notices of Final Long-Range Plan for Fiscal Years 1999–2004

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Final Long-Range Plan for Fiscal Years 1999–2004

SUMMARY: The Secretary presents a Final Long-Range Plan (the Plan) for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FY) 1999–2004. As required by the Rehabilitation Act of 1973, as amended, the Secretary takes this action to outline priorities for rehabilitation research, demonstration projects, training, and related activities, and to explain the basis for these priorities.

DATES: This Long-Range Plan is effective September 20, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue SW, Room 3423 Switzer Building, Washington, DC 20202. Telephone: (202) 205–4880. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475. Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The final Pland presents a five-year agenda anchored in consumer goals and scientific initiatives. The Plan has several distinct purposes:

(1) To set broad general directions that will guide NIDRR's policies and use of resources as the field of disability enters the 21st century;

(2) To establish objectives for research and dissemination that will improve the lives of individuals with disabilities and from which annual research priorities can be formulated;

(3) To describe a system for operationalizing the Plan in terms of annual priorities, evaluation of the implementation of the Plan, and updates of the Plan as necessary; and

(4) To direct new emphasis to the management and administration of the research endeavor.

The Plan was developed with the guidance of a distinguished group of NIDRR constituents—individuals with disabilities and their family members and advocates, service providers, researchers, educators, administrators, and policymakers.

The authority for the Secretary to establish a 5-year Plan is contained in sections 202(h) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(h).

On October 26, 1998 we published a notice of proposed Long-Range Plan for fiscal years 1999–2004 (63 FR 57190).

Summary of Comments and Responses

In response to our invitation in the notice of proposed Long-Range Plan, we received 78 letters commenting on the Plan. Most of these comments stated support for the Plan, particularly in its conceptual approach to disablement and enablement. Some comments requested the addition of specific research topics or strategies, while others urged NIDRR to elaborate on or further emphasize some research areas. In responding to these suggestions, NIDRR has attempted to incorporate many of the compelling ideas, while at the same time not adding significantly to the length of the Plan or diverting from the concept of a 5-year research agenda. NIDRR appreciates the thoughtful nature of many of the comments and believes that will be useful in future planning efforts.

An analysis of the comments and of the changes in the Plan since publication of the proposed Plan follows.

General Comments

Comment: Several commenters requested that NIDRR either repeat certain concepts, such as self-direction, in all segments of the Plan or add detailed elaboration to some concepts.

Discussion: The Secretary believes that such an approach would unduly lengthen the Plan. Since it is clear that the commenters identified and understood that those concepts are included in the Plan, these additions were not made.

Changes: None.

Comment: One commenter emphasized the need for controlled experimental studies to evaluate rehabilitation interventions at both the individual and environmental levels. This commenter noted that the proposed plan appears to reject those studies in favor of descriptive and qualitative studies that would not suffice to determine causality or efficacy.

Discussion: NIDRR agrees that the rehabilitation field would benefit from increased use of controlled experiments. At the same time, NIDRR acknowledges the concerns of the Long-Range Plan Steering Committee about the increasing difficulty of conducting those studies in the disability field. These concerns include ethical considerations in withholding or delaying promising interventions; difficulties in obtaining samples of sufficient size; abbreviated access to sample populations; and the cost of this type of research. NIDRR also recognizes the important role of other Federal agencies in supporting controlled studies, particularly in medical rehabilitation research. NIDRR is committed to improving the value of disability research by strengthening the methodological tools in use. This includes controlled experiments, if appropriate and possible, and also more rigorous descriptive and qualitative research, appropriately used to suggest hypotheses, build theory, and reflect consumer concerns.

It should also be noted that the Secretary generally does not prescribe methodologies, but rather presents rehabilitation issues and leaves decisions about methods to the applicants for research support and to the peer reviewers. NIDRR also supports the development of improved methodological tools for the disability research field and training new researchers in the use of those tools.

Changes: The Plan has been modified to indicate the importance of controlled experiments, particularly to evaluate efficacy and outcomes of rehabilitative interventions.

Comment: Two commenters noted that the aging of the population has significant implications for disability and that the issues of aging should be emphasized more in the Plan, perhaps through a separate chapter.

Discussion: The importance of an aging population is noted throughout the Plan. For example, aging of the population contributes to the emerging universe of disability and will affect not only the prevalence of disability but also the frequency of certain conditions and the consequences of those conditions for independence and participation. The aging of the population, in conjunction with changes in certain social policies, is resulting in greater demand for continued employment among older age groups. The focus on a continuum of care and long-term care acknowledges the aging population, as does specific reference to the technology needs and preferences of older persons and their ability to benefit from universal design.

There is also clear reference to the study of aging in special populations, such as individuals with mental retardation. Participants in the development of this Plan elected to focus on outcomes desired by all population groups of disabled persons, rather than the population groups themselves. NIDRR will consider more intensive and extensive focus on aging and disability for a future Plan.

Changes: None.

Comment: On commenter noted that some parts of the NIDRR plan are

disability-specific, while other sections or topics are cross-disability or address multiple disabilities. The commenter asked for a rationale for this variation.

Discussion: NIDRR believes that, in some cases, research is best organized around a single disability. Examples include research on interventions specific to certain conditions or their complications. Medical research or the development of technologies to replace functions such as mobility or vision, for example, may require equipment or expertise that is organized around certain body systems or types of functional loss. Other research may require access to substantial populations of individuals with similar impairments. However, research on general issues of participation, service delivery, and employment opportunities may consider individuals from many disability populations. NIDRR approaches these topics as comprehensively as possible to avoid fragmenting beneficiary populations. In some cases, specific disabilities are referenced as examples only.

Changes: None.

Comment: One commenter suggested that NIDRR should define parents of children with disabilities as consumers and ensure that research will be conducted on the population over a longer time period. A second commenter urged that research on families be specified in all areas of the Plan, particularly employment, transition, and access to services.

Discussion: the Secretary agrees that research on families of disabled children that provides useful knowledge to support these families. In fiscal year 1998, NIDRR funded a Rehabilitation Research and Training Center (RRTC) on families of children with disabilities, with a funding period of 60 months. In 1999, NIDRR will fund an RRTC to continue research and training on families of children with serious behavior disorders. Many other centers and projects also address in part issues related to families of disabled children. One center provides support for disabled adults in their family role. The role of families in rehabilitation is widely acknowledged. NIDRR believes this is clear indication of its commitment to research on families throughout the period of this Plan.

Changes: None.

Comment: Several commenters noted that the Plan did not address certain areas of NIDRR activity, including international activities, interagency collaboration, peer review, and evaluation activities.

Discussion: NIDRR regards these activities as integral parts of its Plan for the next five years.

Changes: A final chapter entitled Enhancing NIDRR's Management of Research has been added to the Plan. This chapter includes international research, the Interagency Committee on Disability Research (ICDR), improvements to peer review, and NIDRR's program evaluation and continuous participatory planning activities.

Comment: Two commenters suggested that it would be important to estimate the costs of implementing the Plan.

Discussion: NIDRR believes this would be a useful but complex activity. NIDRR recognizes not only the difficulty of estimating future costs, but also that other research entities will play a role in accomplishing some of the objectives outlined in the Plan. NIDRR also is mindful of the nature of the annual federal budget setting process and believes it would be inappropriate for NIDRR to preempt that process.

Changes: None.

Introduction and Background

Comment: Several commenters suggested that the proposed Plan does not stress sufficiently the significance of NIDRR research to persons with cognitive disabilities, particularly those with mental retardation, and specifically recommended that examples of improvements through research for this population be included.

Discussion: NIDRR agrees that important improvements in the quality of life and integration into the community for individuals experiencing cognitive impairment have been achieved through research, including research sponsored by NIDRR.

Changes: The Plan has been amended to reference research-based improvements for this population.

Comment: One commenter stated that the description of Rehabilitation Research and Training Centers (RRTCs) appeared to emphasize characteristics typical of academic institutions that might indicate a bias in favor of funding RRTCs at academic institutions.

Discussion: The statute clearly spells out the qualifications and eligibility criteria for an RRTC. In funding RRTCs, NIDRR implements the statute by funding RRTCs at organizations that meet the statutory criteria and whose applications are highly rated by independent peer review panels.

Changes: None.

Dimensions of Disability

Comment: Several commenters discussed the inadequacy of demographic data related to individuals with disabilities, including deficiencies in estimating the prevalence of low-incidence disabilities, or the prevalence of disability in discrete ethnic sub-populations such as Pacific Islanders or individual American Indian or Alaskan native tribes. Two commenters suggested that NIDRR work toward the creation and adoption of a minimum data set about disability that could be included in all Federal surveys and data collection efforts. One urged that NIDRR undertake surveys to create demographic databases on certain minority populations.

Discussion: The Plan recognizes the inadequacy of existing national databases about disability. NIDRR does not have a mission or resources to undertake national or regional surveys to generate comprehensive primary demographic data files. However, NIDRR believes that smaller scale, intensive studies of the distribution of disability in discrete populations such as racial or ethnic sub-populations is an appropriate topic for exploration under field initiated projects. In addition, NIDRR is aware of the need to incorporate appropriate questions about disability into all relevant Federal data collection efforts and is working with other Federal agencies to achieve this objective.

Changes: The new final chapter on NIDRR management initiatives discusses the Interagency Committee on Disability Research (ICDR) as a mechanism for working to improve Federal data collection efforts regarding disability.

Comment: Several commenters noted that women with disabilities constitute a population whose circumstances and needs are substantially different from those of men with disabilities, and request that disabled women be identified as a population for targeted study, perhaps under the category of emergent disability populations.

Discussion: NIDRR supports research on problems that are unique to, or more significant for, women with disabilities,including areas as diverse as reproduction and sexuality, fibromyalgia, multiple sclerosis, violence and abuse, and childcare. NIDRR will continue to support research on specific conditions affecting women and girls with disabilities.

Changes: The Plan has been amended to include specific reference to women with disabilities under appropriate topics.

Comment: Two commenters urged that NIDRR specifically include chronic fatigue syndrome and multiple chemical sensitivies in its description of emerging disabilities.

Discussion: The discussion of emergent disabilities in the Plan was intended to be illustrative of the concept of a changing disability population, with new conditions or impairments emerging to create a new or greater need for rehabilitation. The selection of specific conditions to be addressed in this context will be made either, in the case of field initiated projects, by applicants setting forth the need for study and peer reviewers evaluating the proposals or, in the case of directed research, through NIDRR's participatory priority development process.

Changes: The discussion of emergent disabilities has been amended to suggest that chronic fatigue as well as multiple chemical sensitivity may be investigated as emergent disabilities.

Comment: One commenter stated that the Plan should include specific references to the involvement of State Vocational Rehabilitation (VR) agencies in setting annual research priorities.

Discussion: It is NIDRR's practice to involve a full spectrum of relevant stakeholders in the formulation of the annual priorities. This certainly includes State Vocational rehabilitation agencies as relevant stakeholders.

Changes: The final section of the chapter on enhancing NIDRR management, which has been added to the Plan, specifies a broad range of constitutents to be involved in continuous participatory planning, including State Vocational Rehabilitation Agencies.

Comment: Several commenters remarked on data excerpted from the National Health Interview Survey, questioning whether the delineation of only two ethnic groups indicated that only white and African-American individuals were expected to benefit from the Plan.

Discussion: Within this chapter of the Plan, NIDRR has commented on the inadequacy of national data sets to elucidate disability conditions among a full range of ethnic groups. Table Three in the Plan was intended merely to illustrate that there are differences along ethnic lines, and at the same time it illustrates that the national data sets are inadequate. NIDRR is committed, as is emphasized in the Plan, to the exploration of the impact of ethnic background and associated characteristics on disability.

Changes: None.

Comment: Several commenters remarked on the need for demographic data useful to industry in estimating and identifying markets for assistive technology and other products.

Discussion: NIDRR agrees that there is a dearth of reliable data on disability for market research purposes. NIDRR's data centers are frequently queried by private industry sources seeking to estimate markets.

Changes: NIDRR has added a reference to the need for market related data in this chapter.

Employment Outcomes

Comment: One letter of comment recommended that personal assistance services be cited in all areas of the Plan in which they could be relevant, such as the sections on employment, health, and technology.

Discussion: NIDRR recognizes the potential significance of personal assistance services in employment and health maintenance, as well as in independent living and community integration. However in the interest of brevity, NIDRR has elected to discuss personal assistance services in only one chapter, referring therein to the role of PAS in employment, health maintenance and independent living.

Changes: None.

Comment: One commenter recommended that the improvement of the State and Federal vocational rehabilitation program be an integral part of NIDRR's research in employment trends and a target for the dissemination of that research.

Discussion: The chapter on Employment Outcomes includes enhancement of the State and Federal vocational rehabilitation program as a key research objective. The chapter on knowledge dissemination refers to the importance of developing partnerships with state vocational rehabilitation agencies in order to tailor dissemination activities to their specific needs.

Changes: None.

Comment: Several commenters suggested an emphasis on assistive technology and telecommunications technology as job accommodations to improve employment outcomes.

Discussion: Development of work-related technological devices and work site modifications have been key elements of NIDRR's engineering research program for many years. NIDRR has also supported specialized dissemination efforts to make employers and vocational rehabilitation counselors aware of technology appropriate for the workplace.

Changes: The Plan now includes references to technological supports in the employment outcomes chapter and to employment as an intended outcome in the chapter on technology for access and function.

Comment: One commenter urged a more explicit and extensive reference to research on the role of self-employment and small business ownership in improving long-term employment outcomes for individuals with disabilities.

Discussion: In Chapter 3, Employment Outcomes, NIDRR notes the alterations in the labor market that have resulted in a larger contingent workforce; more contract work, temporary or part-time positions and consultancies, and the decline in the percentage of stable jobs with full benefits. Self-employment, entrepreneurship, telecommuting, and home-based employment are all options to be evaluated for various segments of the disability population. At present, not enough is known about the characteristics of individuals or occupations that lend themselves to these solutions, nor is there definitive evaluation of these options in terms of financial stability and security, long-term outcomes, and consumer satisfaction.

Changes: The plan, in Chapter 3, now includes the evaluation of these options as a priority under "Employer and Workplace Issues" and a reference to the role of the State and Federal VR system in using these approaches with individual consumers.

Health and Function

Comment: Several commenters emphasized the significance of pain and fatigue, including Chronic Fatigue Syndrome or Chronic Fatigue Immune Deficiency Syndrome (CFIDS), in the rehabilitation and quality of life of persons with disabilities. They pointed out that many disabled individuals have chronic or deteriorating conditions.

Discussion: NIDRR agrees that chronic pain, chronic fatigue, and impaired stamina are common secondary complications of disability and should be addressed.

Change: The Plan has been amended to include references to pain and fatigue in this chapter, and reference to chronic fatigue syndrome as a potential emerging disability in the Dimensions of Disability chapter.

Comment: One commenter discussed the significance of obesity to health and disability, and urged that NIDRR direct research to this topic.

Discussion: NIDRR agrees that obesity is a significant risk factor for both primary disability and secondary conditions, and may complicate efforts at rehabilitation. As NIDRR does not have a mission in the primary prevention of disability or in the

maintenance of health in non-disabled populations, NIDRR will address the issue of obesity in terms of its impact on secondary conditions and health maintenance.

Changes: The Plan has been amended to include obesity in the list of secondary conditions.

Comment: One commenter noted that the Plan does not address dental and oral health interventions or services delivery, and recommends that research in these areas be added to the Plan.

Discussion: NIDRR acknowledges that the presence of disability may confound the delivery of oral health care, and that the presence of dental problems may contribute to secondary conditions and may, in itself, interfere with successful employment and participation in the community. In addition, certain craniofacial or maxillofacial conditions may themselves constitute disability.

Changes: The Plan has been amended to recognize the importance of research on dental and oral health interventions and service delivery.

Comment: Several commenters noted that the chapter on health and function appears to emphasize physical disabilities, with few references to cognitive, behavioral, or sensory impairments.

Discussion: It is NIDRR's intent to exclude research on the full range of disabilities from its agenda. Much of the research that NIDRR supports relative to these cited disability populations is in the Plan's chapters on Community Integration and Independent Living, Technology for Access and Function and Employment. However, within the scope of the health and function chapter, health case service delivery and rehabilitation interventions are also important to these populations.

Changes: NIDRR has added references to individuals with sensory, behavioral or cognitive impairments, or a combination of those impairments in the chapter on Health and Function.

Comment: Several commenters made suggestions about the importance of outcome measures in medical rehabilitation, including the recommendation that priority should be given to the refinement of existing measures of medical rehabilitation effectiveness to make them more applicable across the wide range of disability populations.

Discussion: NIDRR agrees with the need for improved measures of the effectiveness of rehabilitation interventions across disabilities and in a variety of settings.

Changes: An additional priority has been inserted under the heading "Research on Rehabilitation Outcomes" to focus on measures of effectiveness.

Technology for Access and Function

Comment: Several commenters noted their agreement with the concept of universal design. Some of these commenters suggested that the Plan did not sufficiently recognize the importance of accessible housing through universal design. A number of these commenters also discussed the difficulties of infusing universal design concepts into private industry and suggested a variety of strategies.

Discussion: The Plan indicates a commitment to research on universal design in accessible buildings, including housing, over the next five years. The Plan also includes a recognition of the barriers to general acceptance of universal design and proposes to support activities to reduce the barriers. NIDRR acknowledges that marketing of universal design concepts is different from technology transfer of devices and techniques, and believes the Plan indicates that this is a component of work to be supported by NIDRR.

Changes: None.

Comment: Several commenters noted the rapid developments in information technology and the World Wide Web, and the emergence of convergent media combing aspects of computers and televisions. These commenters also emphasized the role of universal design in information technologies.

Discussion: NIDRR is currently providing support to the World Wide Web Consortium (W3C) and also maintains a major commitment to the infusion of universal design principles into information technology and the telecommunications infrastructure. NIDRR believes this commitment has already been expressed in the Plan.

Changes: None.

Comment: Two commenters stressed the need to develop technologies to assist in the performance of cognitive functions, for individuals with impairments resulting from stroke, mental retardation, and traumatic brain injury, for example, and observed that this research direction was absent from the Plan.

Discussion: NIDRR agrees that there are important opportunities to enhance cognitive functioning through neural prostheses and assistive technology to perform cognitive functions. This area represents a very significant scientific challenge and opportunity.

Changes: Research on technology to improve cognitive performance for individuals with mental retardation as well as cognitive deficits from other causes has been added to the Plan.

Comment: Two commenters recommended that NIDRR consider appointing various types of advisory councils, including an industry advisory council to assist in the formulation of NIDRR's plans and priorities in the area of assistive technology and universal design.

Discussion: NIDRR continuously seeks input from a broad constituency, including industry. NIDRR recognizes the need to have industry more closely involved with the research activities of its grantees. However, because advisory councils are governed by the Federal Advisory Council Act (FACA), this Plan cannot commit NIDRR to establish an advisory council.

Changes: None.

Comment: One commenter suggested that NIDRR monitor the activities of Federal agencies in the implementation of section 508 of the Rehabilitation Act.

Discussion: The Office of Special Education and Rehabilitative Services has placed a high priority on strategies to ensure full implementation of section 508. The Access Board and the General Services Administration have responsibility for providing technical assistance on Section 508. NIDRR will cooperate with those agencies in the provision of technical assistance as needed. NIDRR has no authority to monitor other Federal agencies in their implementation of Section 508.

Changes: None.

Comment: One commenter stated support for the development of appropriate quality assurance mechanisms for assistive technology, and asked for further elaboration addressing the new provisions of Section 204 of the Rehabilitation Act, as amended.

Discussion: Section 204(17)(A) provides that research grants may be used to conduct a research program related to quality assurance in the area of rehabilitation technology. NIDRR is very concerned with this issue, and has added language to the Plan to implement suggested activities under this section of the statute.

Changes: References to the development of evaluation methodologies and identification of outcome measurement models have been added in Chapter 7; reference to models for service provider training has been added to Chapter 9, and reference to tools to enhance consumer decision-making about technology has been added to Chapter 6.

Comment: Two commenters stated that it was inappropriate to couple the terms "information technology" and

"telecommunications" throughout this Chapter. The commenters argued that while it is true that, in the future, society will be using the same appliances for both, the core issues to be addressed are quite different.

Discussion: NIDRR recognizes that while these areas are related, the research issues are different.

Changes: The Plan has been modified to indicate that these two areas, while converging, have some significantly different research issues. Some of these research issues are listed in the Plan to illustrate these differences.

Comment: One commenter suggested that the priorities related to information technology should include some reference to research on new types of computers and display technologies.

Discussion: NIDRR agrees that the rapid pace of developments in this area generates many more priorities for research, and that the relative emphasis on various priority topics may change more than once over the course of this Plan. Therefore, NIDRR refrained from detailing a large number of priorities in this area. However, it may be helpful to specify that there will be some priority placed on ensuring accessibility of new computer technologies emerging onto the market.

Changes: New priorities in information technology now include references to research on the accessibility of wearable and implantable computers and personal systems, 3–D display technologies, and cognitive factors such as language and comprehension levels.

Comment: One commenter reminded NIDRR that it is important to ensure that assistive technology is culturally responsive and appropriate for use in rural and isolated areas. The commenter urged the creation of an explicit project to develop technology to address the needs of specific cultural groups.

Discussion: NIDRR agrees that there is a danger that assistive technology will not be acquired or used if it is not sensitive to cultural and life-style concerns. However, NIDRR believes that it is important to infuse those considerations into all of its technology research and development. No one project could develop all types of technology for all cultural minorities. Furthermore, NIDRR's statute requires that each applicant for funding specify how its proposed activities will address the needs of disabled individuals from diverse minority backgrounds.

Changes: NIDRR has inserted a general admonition in this chapter concerning the need to consider variations in culture and life-style in the design and development of assistive technology, and in universal design of public technological systems as well.

Independent Living and Community Integration

Comment: A number of commenters discussed the issue of home ownership and affordable housing. Many of these comments focused on assisting persons with mental retardation or other developmental disabilities to achieve home ownership. Many of the comments urged NIDRR to replace an institute for this purpose that was formerly supported by another Federal agency, or to create a Rehabilitation Research and Training Center for this purpose.

Discussion: NIDRR recognizes the importance of accessible housing in the community in its discussion of universal design and accessible housing and also in its focus on self-determination and research on physical inclusion. The Plan discusses the identification and evaluation of models that facilitate physical inclusion, including housing models that are consistent with consumer choice. As NIDRR is a research Institute, it is not in a position to implement service and advocacy demonstrations that were funded elsewhere. NIDRR does believe that research questions related to housing are potential areas for research investigation under its program of Field Initiated Projects.

Changes: None.

Comment: Two commenters remarked that independent living services for older individuals who are blind were not specified as subjects of research priorities. One commenter noted commonality of objectives between these programs and other independent living services programs.

Discussion: NIDRR prefers to address research on community integration and independent living globally and, whenever possible, across disabilities. Because, as the commenter noted, the objectives of the independent living services for older blind persons are similar to the objectives of independent living programs generally, no priority restricted to those programs has been predetermined. Research on this topic is appropriate for conduct under the Field-Initiated Projects program.

Changes: None.

Comment: One commenter observed that institutions and nursing homes are used frequently and inappropriately for placements of individuals with traumatic brain injury, and urged that NIDRR support investigations of the scope of this problem and develop other options for community integration.

Discussion: NIDRR supports research on community integration for individuals with traumatic brain injury, as well as for those with other disabilities. This topic is one that can be investigated within the scope of NIDRR's research agenda on community integration, and further specification is not necessary.

Changes: None.

Knowledge Dissemination and Utilization

Comment: One commenter stated that the Plan's emphasis on accessible media, which is lauded, points up the need for research on Braille literacy and requests that the Plan include a specific priority in that area.

Discussion: NIDRR has established key objectives in such areas as employment, function, access, and integration. NIDRR's agenda responds to the Department of Education goals supporting lifelong learning and preparation for employment in a competitive world economy. NIDRR finds it impossible to detail every specific tactic to reach those objectives for every individual disability population. Furthermore, in line with key recommendations of the Long-Range Plan Steering Committee, NIDRR plans to increase its emphasis on Field-Initiated projects, meaning that there will be fewer resources for discrete prioritized research projects. Thus, there are many important topics such as Braille literacy that may be addressed under the Field-Initiated program. In addition, in the continuous participatory planning process, there will be an opportunity to consider these recommendations in planning future center or project priorities.

Changes: None.

Capacity Building

Comment: One commenter recommended that funds earmarked under Section 21 of the Rehabilitation Act for minority institutions should also be directed to other institutions that are serving some minority students.

Discussion: The statute is specific about the uses of these funds and the eligibility criteria. The commenter appears to be requesting a legislative change that is beyond the scope of this Plan.

Changes: None.

Comment: Two commenters discuss the need to use distance learning strategies in training and in the dissemination of information and recommended that this approach be specified in the plan.

Discussion: NIDRR is currently supporting pioneering research into

telerehabilitation and supports distance learning approaches to training in its ADA program and several of its RRTCs. While the commenter correctly noted that NIDRR's primary mission is not training, NIDRR does agree that innovative approaches to capacity building are necessary.

Changes: Evaluation of the appropriateness and effectiveness of web-based training and distance learning models to increase capacity for rehabilitation research has been added as a priority in this chapter.

Comment: One commenter noted that there was no reference to Rehabilitation Engineering Research Centers (RERCs) as mechanisms for advanced training of researchers, and recommended that RERCs be included in this activity.

Discussion: Historically, RERCs have not had the explicit statutory mission for training that was part of other NIDRR funded centers. However, it is certainly true that the need for individuals trained in technological and engineering research is greater than ever, and NIDRR agrees that the RERCs must be involved increasingly in researcher, consumer, and provider training.

Changes: Reference to the RERCs as a mechanism for advanced research training has been added.

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office, toll free, at 1–888–293–6498; or in the Washington, DC., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

Applicable Program Regulations

34 CFR Parts 350, 356, and 359.

Program Authority: 29 U.S.C. 760–764.

Dated: August 13, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitation Services.

NIDRR Long-Range Plan

Long Range Plan Table of Contents

Section One: Background

Chapter 1: Introduction and Background
Chapter 2: Dimensions of Disability

Section Two: NIDRR Research Agenda

Chapter 3: Employment Outcomes
Chapter 4: Health and Function
Chapter 5: Technology for Access and Function
Chapter 6: Independent Living and Community integration
Chapter 7: Associated Disability Research Areas

Section Three: Priorities For Related Activities

Chapter 8: Knowledge Dissemination and Utilization
Chapter 9: Capacity Building For Rehabilitation Research
Chapter 10: Strategies For Research Management

References

Section One

Chapter 1: Introduction and Background

"Research has the potential to reinvent the future for millions of people with disabilities and their families" (Richard W. Riley, U.S. Secretary of Education).

Two developments have converged to enhance the significance of disability research. First, breakthroughs in biomedical and technological sciences have changed the nature of work and community life. As these breakthroughs provide the potential for longer and more fulfilling lives for individuals with disabilities, they reinforce the second major development—successful independent living and civil rights advocacy by disabled persons. this intersection of scientific progress and empowerment of disabled persons has generated momentum for disability research. These developments highlight the importance of more fully integrating disability research into the mainstream of U.S. science and technology policy, and into the Nation's economic and health care policies.

An estimated 43 million Americans are significantly limited in their capacity to participate fully in work, education, family, or community life because they have a physical, cognitive, or emotional condition that requires societal accommodation. Public Law 101–336, the Americans with Disabilities Act (ADA) of 1990, declares that individuals with disabilities have fundamental rights of equal access to public accommodations, employment, transportation, and telecommunications. The recognition of these rights, and of society's obligation to facilitate their attainment, provides the opportunity for major improvements in the daily lives of individuals with disabilities.

It is the mission of the National Institute on Disability and Rehabilitation Research (NIDRR) to generate, disseminate, and promote the full use of new knowledge that will improve substantially the options for disabled individuals to perform regular activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled citizens.

NIDRR's Statutory Purpose

The inception of a Federal rehabilitation research program was part of the legacy of the late Mary E. Switzer, pioneering director of the Federal-State vocational rehabilitation program.

By establishing NIDRR [1] in 1978, through Amendments to the Rehabilitation Act of 1973 (Public Law 93–112), Congress realized Switzer's vision and created a research institute in the public interest. As such, NIDRR must generate scientifically based knowledge that furthers the values and goals of the disability community, the knowledge needs of service providers, and the creation of rational public policy.

In confounding NIDRR, Congress recognized both the opportunities for technological and scientific advances to improve the lives of individuals with disabilities and the need for a comprehensive and coordinated approach to research, development, demonstration, information dissemination, and training. The Rehabilitation Act of 1973, as amended (with significant changes in 1992 and 1998), charged this Institute with the responsibility to provide a comprehensive and coordinated program of research and related activities to maximize the full inclusion and social integration, employment, and independent living of individuals of all ages with disabilities, with particular emphasis on improving the coordination and effectiveness of services authorized under the Act. Related activities were mandated to include the widespread dissemination of research-generated knowledge and practical information to rehabilitation

[1] Established as the National Institute of Handicapped Research, the Institute's name was changed to NIDRR by the 1986 Amendments to the Rehabilitation Act.

professionals, individuals with disabilities, researchers, and others; the promotion of the transfer of rehabilitation technology; and an increase in opportunities for researchers who are individuals with disabilities or members of minority groups.

NIDRR is ideally positioned to facilitate the transfer of new knowledge into practice given its administrative co-location with two major service programs—the Rehabilitation Services Administration (RSA) and the Office of Special Education Programs (OSEP)—in the Office of Special Education and Rehabilitative Services (OSERS). NIDRR's linkage to the greater science community through its leadership of the Interagency Committee on Disability Research (ICDR) affords an opportunity to facilitate the transfer of advances in basic research into the agenda for applied research and knowledge diffusion.

To further advance work in the field of applied research, the legislation requires a Plan,[2] updated every five years, describing NIDRR's future research agenda. This Long-Range Plan presents a five-year agenda anchored in consumer goals and scientific initiatives. The plan has several distinct purposes:

(1) To set broad general directions that will guide NIDRR's policies and use of resources as the field of disability enters the 21st century;

(2) To establish objectives for research and dissemination that will improve the lives of individuals with disabilities and from which annual research priorities can be formulated;

(3) To describe a system for operationalizing the Plan in terms of annual priorities, evaluation of the implementation of the Plan, and updates of the Plan as necessary; and

(4) To direct new emphasis to the management and administration of the research endeavor.

This Plan was developed with the guidance of a distinguished group of NIDRR constituents—individuals with disabilities and their family members and advocates, service providers, researchers, educators, administrators, and policymakers, including the Commissioner of the Rehabilitation Services Administration, members of the National Council on Disability, and representatives from DHHS. It draws upon public hearings and planning activities conducted under the prior NIDRR administration (Dr. William H. Graves, Director) and on papers prepared for the Plan by more than a dozen authors. The Plan addresses a range of diverse objectives, including:

(1) The needs of individuals with disabilities for knowledge and information that will enable them to achieve their aspirations for self-direction, independence, inclusion, and functional competence;

(2) The needs of rehabilitation service providers for information on new techniques and technologies that will enable them to assist in the rehabilitation of individuals with disabilities;

(3) The needs of researchers to advance the capabilities of science as well as the body of scientific knowledge;

(4) The needs of society, and its leadership, for strategies that will enable it to facilitate the potential contributions of all citizens; and

(5) The need to transfer findings from basic to applied research.

Accomplishments of the Past

In creating NIDRR, Congress recognized that research has contributed substantially to improvements in the lives of individuals with disabilities and their families. Individuals with disabilities live longer, have a better quality of life, enjoy better health, and look forward to more opportunities than they did 30 years ago, and more advances occur every day. Today it is commonplace to find people in wheelchairs traveling in airplanes and private vehicles, people who are blind using computers, and people who are deaf attending the theater, while individuals who have significant disabilities are being recognized as world leaders in the arts and sciences. These developments owe much to research advances at both the individual and societal levels.

Advances at the Individual Level

Research, and its use to improve practice, inform policy, and raise awareness, has changed the lives and the outlook for individuals with disabilities and their families. For example, the life expectancy of individuals who paralysis from spinal cord injury has risen continuously in the past 25 years (DeVivo & Stover, 1995). The concerted efforts of U.S. researchers, most of whom received NIDRR support, have succeeded in greatly reducing the number of severe urinary tract infections and other urinary tract complications in this population, thereby reducing renal failure as a cause of death for these individuals from 1st to 12th place over the past two decades. Decubitus ulcers also have been a serious problem for persons with spinal cord injury, as well as for those with stroke, multiple sclerosis, and other immobilizing conditions. Decubitus ulcers are destructive and costly to treat, resulting in lost workdays, high medical expenses, hospitalizations, and further secondary complications. Through the efforts of medical researchers and rehabilitation engineers, preventive measures have been developed including seating, cushioning, and positioning devices; behavioral protocols; and improved treatment methods. These efforts have greatly reduced the length of time needed for medical treatment of decubiti, and the cost of this treatment.

Rehabilitation engineering research has been responsible for the application of new materials in the design of wheelchairs and orthotic and prosthetic devices that render these technologies comfortable and serviceable, and allow their users to accomplish many important personal goals. For example, wheelchairs racers using the newest sports wheelchairs can complete races longer than 800 meters at speeds faster than those of Olympic runners. In the Paralympics, runners using prosthetic legs repeatedly have demonstrated impressive speeds. In everyday life, people who use wheelchairs have benefited from lightweight, transportable chairs as well as powered chairs that greatly increase the independence of some users.

Advances at the Environmental-Societal Level

In the last two decades, NIDRR has participated in an unprecedented expansion of opportunities and possibilities for persons with disabilities. During this period, technology has greatly enhanced the accommodation of disability, self-awareness has raised the expectation of and for persons with disabilities, and advocacy has resulted in recognition of the rights of persons with disabilities to societal access and reasonable accommodations.

NIDRR has supported research that has facilitated the inclusion of persons with mental retardation and those with emotional disabilities in communities, workplaces, and lifelong learning. In

[2] As a component of the Department of Education within OSERS, NIDRR is guided by the Department's Strategic Plan, the OSER's Strategic Plan, and NIDRR's own strategic goals and objectives as laid out in its performance plan for the Government Performance and Results Act (GPRA). The Rehabilitation Act, however, calls for a plan from NIDRR—one that identifies research needs and sets forth priorities. This Long-Range Plan describes the issues related to the content and management of NIDRR's research and other activities that will constitute the substantive portion of NIDRR's strategies to achieve its GPRA performance objectives.

doing so, NIDRR researchers have documented patterns of deinstitutionalization; developed techniques for behavior management that have enabled individuals to leave institutions and live and work in the community; strengthened self-advocacy and peer-support programs; developed technological solutions to improve access to housing, communications, and work; and developed strategies to increase employment and to support families in their important roles.

Today's research on the application of the principles of universal design to the built environment, information technology and telecommunications, transportation, and consumer products is based on the concept of an environment that is usable by persons with a very broad range of function. For example, after years of research, all television sets are not equipped with decoders that allow people with hearing loss to access most programs. In addition, ergonomic research undergirds the development of workplace designs and the standards for building codes, consumer products, and the telecommunications infrastructure. These advances have been instrumental in leading to a change in the disability paradigm, expanding the focus of disability to include environmental factors, as well as individual factors.

NIDRR's research activities also have led to the development of small businesses in hearing aids, prosthetics, communication devices, and instructional software. NIDRR research provides an important stimulus in a field of orphan products with small markets.

Expectations for the Future: A New Paradigm of Disability

The identification of trends in the distribution of disabilities, the emergence of new disabilities, and the prevalence of disability in the nation's aging population further challenge the disability research field. Additionally, the research field must develop ways to measure and address the impact of environmental factors on the phenomenon of disability.

NIDRR has provided leadership in research leading to a new conceptual foundation for organizing and interpreting the phenomenon of disability—a "New Paradigm" of disability. This paradigm is a construction of the disability and scientific communities alike and provides a mechanism for the application of scientific research to the goals and concerns of individuals with disabilities. The new paradigm of disability is neither entirely new nor entirely static. Thomas Kuhn defines paradigm as "universal achievements that for a time provide model problems and solutions to a community of practioners" (Kuhn, 1962). The term paradigm is used here in the quasi-popular sense it has acquired over the last 40 years to indicate a basic concensus among investigators of a phenomenon that defines the legitimate problems and methods of a research field. NIDRR posits that the paradigm in this case applies not to a single field, but to a single phenomenon—"disability"—as it is investigated by multiple disciplinary fields. The disability paradigm that undergirds NIDRR's research strategy for the future maintains that disability is a product of an interaction between characteristics (e.g., conditions or impairments, functional status, or personal and social qualities) of the individual and characteristics of the natural, built, cultural, and social environments. The construct of disability is located on a continuum from enablement to disablement. Personal characteristics, as well as environmental ones, may be enabling or disabling, and the relative degree fluctuates, depending on condition, time, and setting. Disability is a contextual variable, dynamic over time and circumstance. Environments may be physically (in)accessible, culturally (ex) (in)clusive, (un)accommodating and (un)supportive. For example, on a societal level, institutions and the built environment were designed for a limited segment of the population. Researchers should explore new ways of measuring and assessing disability in context, taking into account the effect of physical, policy, and social environments, and the dynamic nature of disability over the lifespan and across environments.

Perhaps the new paradigm can be understood best in contrast to the paradigm it replaces and through a clarification of the importance the paradigm has for all aspects of research and policy (see Table 1). The "old" paradigm, which was reductive to medical condition, and is reflected in many aspects of the Nation's policy and service delivery arenas, has presented disability as the result of a deficit in an individual that prevented the individual from performing certain functions or activities. This underlying assumption about disability affected many aspects of research, rehabilitation, and services.

The new paradigm of disability is integrative and holistic, and focuses on the whole person functioning in an environmental context. This new paradigm of disability is reflected in the ADA and sets a goals framework for research, policy, and delivery of services and supports relative to disability. The new paradigm with its recognition of the contextual aspect of disability—the dynamic interaction between individual and environment over the lifespan that constitutes disability—has significant consequences for NIDRR's research agenda over the next decade. These consequences include: Changes in the ways disability is defined and conceptualized; new approaches for measuring and counting disability; a focus on new research issues; and changes in the way research is managed and conducted.

Definitional Issues

One of the fundamental consequences of the new paradigm is the need for the reformulation of definitions. The definition of disability is critical to building a conceptual model that identifies relevant components of disablement and their relationships to each other, and the dynamic mechanisms by which they change. Typically, definitions of disability have varied depending on their intended use. From a research perspective, definitions used for counting and describing disabled people have been important, while definitions establishing eligibility for benefits and services have been critical from the policy perspective.

The majority of Federal definitions of disability, including those in the Rehabilitation Act, the ADA, and the National Health Interview Survey (NHIS), derive from the old paradigm. These definitions all attribute the cause of limitations in daily activities or social roles to characteristics of the individual, that is, "conditions" or "impairments." Even the ADA, which promotes accessibility and accommodations, locates the disability with the individual. This is understandable not only because of the time involved in changing a paradigm, but because of the lack of a system to define, classify, and measure the environmental components of disability and the absence of a model to describe and quantify the interaction of environmental and individual variables. This need for a change in definitions must be addressed by activities such as the attempt to revise the International Classification of Impairments, Disabilities, and Handicaps (ICIDH) (1980), to better define and measure the factors external to the individual that contribute to disability.

TABLE 1.—CONTRAST OF PARADIGMS

	'Old' paradigm	'New' paradigm
Definition of Disability	An individual is limited by his/her impairment or condition.	An individual with an impairment requires an accommodation to perform functions required to carry out life activities.
Strategy to Address Disability	Fix the individual, correct the deficit	Remove barriers, create access through accommodation and universal design, promote wellness and health.
Method to Address Disability	Provision of medical, vocational, or psychological rehabilitation services.	Provision of supports, e.g., assistive technology, personal assistance services, job coach.
Source of Intervention	Professionals, clinicians, and other rehabilitation service providers.	Peers, mainstream service providers, consumer information services.
Entitlements	Eligibility for benefits based on severity of impairment.	Eligibility for accommodations seen as a civil right.
Role of Disabled Individual	Object of intervention, patient, beneficiary, research subject.	Consumer or customer, empowered peer, research participant, decision-maker.
Domain of Disability	A medical "problem"	A socio-environmental issue involving accessibility, accommodations, and equity.

Note: Adapted from materials prepared for this Long-Range Plan by Gerben DeJong and Bonnie O'Day.

Measurement Issues

Sources of data, including demographic studies and national surveys, should be adjusted to reflect new definitions or concepts, and to take into account contextual variables in survey sampling techniques. Survey questions must reflect environmental factors as well as individual factors such as socioeconomic characteristics or impairments. Under the new paradigm, questions about employment status, for example, should focus on the need for accommodations as well as on the existence of an impairment. Measures must enable researchers to predict and understand changes in the prevalence and distribution of disabilities—the emerging universe of disability—which illustrates the link between underlying social and environmental conditions such as poverty, race, culture, isolation, the age continuum, and the emergence of new causes of disability, new disability syndromes, and the differential distribution of disability among various population groups in our society.

Concern increasingly is focused on vulnerable populations as researchers find more evidence that disability, and risk thereof, are disproportionately concentrated in populations in poverty, populations that lack access to state-of-the-art preventions or interventions, and populations that are exposed to additional external or lifestyle risk factors. There are new impairments, exacerbated impairments, or new etiologies that are associated with socioeconomic status, education levels, access to health care, nutrition, living conditions, and personal safety. Individuals from racial, linguistic, or cultural minority backgrounds are more likely to live in poverty and to lack adequate nutrition, pre-natal and other health care, access to preventive care, and health information. These individuals also have more exposure to interpersonal violence and intentional injury. The new paradigm's recognition of environmental factors leads to a focus on underserved minority populations—part of the emerging universe of disability discussed in Chapter Two.

New Focus of Research Inquiries

The new paradigm adds, or increases the relative emphases on, certain areas of inquiry. Research must develop new methods to focus on the interface between person and society. It is not enough simply to shift the focus of concern from the individual to the environment. What is needed are studies of the dynamic interplay between person and environment; of the adapting process, by the society as well as by the individual; and of the adaptive changes that occur during a person's lifespan. The aging of the disabled population in conjunction with quality of life issues dictates a particular focus on prevention and alleviation of secondary disabilities and co-existing conditions and on health maintenance over the lifespan. Research must focus on the development and evaluation of environmental options in the built environment and the communications environment, including such approaches as universal design, modular design, and assistive technology that enable individuals with disabilities and society to select the most appropriate means to accommodate or alleviate limitations. Research must lead to a better understanding of the context and trends in our society that affect the total environment in which people with disabilities will live and in which disability will be manifested. These include: economy and labor market trends; social, cultural, and attitudinal developments; and new technological developments. Research must develop ways to enable individuals with disabilities to compete in the global economy, including education and training methods, job accommodations, and assistive technology.

Research must develop an understanding of the public policy context in which disability is addressed, ignored, or exacerbated. General fiscal and economic policies, as well as more specific policies on employment, delivery and financing of health care, income support, transportation, social services, telecommunications, institutionalization, education, and long-term care are critical factors influencing disability and disabled persons. Their frequent inconsistencies, contradictions, and oversights can inhibit the attainment of personal and social goals for persons with disabilities.

Research Management

The new paradigm requires new models for the management of the research enterprise that include stakeholder participation, interdisciplinary and collaborative efforts, more large-scale and longitudinal research, and new research methodologies to conduct meaningful studies in the emerging policy environments. Training in disability and rehabilitation research must be expanded to include disciplines such as architecture and business. There will be new venues for the conduct of research, and a need for validated methodologies to conduct research on dynamic person-environment interactions and under

constricted circumstances. Through training programs, the disability and rehabilitation research field also should work to increase the number of disabled and minority researchers.

The role of disabled consumers in research under the new paradigm, as well as in policy and services, is proactive and participative. Consumers have a role in shaping their environments and in managing the supports and services they require. Research must be more inclusive and participatory, involving not only consumers but also other stakeholders in understanding and interpreting research, in disseminating and applying research findings, and in planning, conducting, and evaluating research. Consumer satisfaction with research as well as services will be subject to assessment.

Moreover, interdisciplinary and collaborative research are important for explicating the multidimensional qualities of disability. It is only through research coordination and collaboration that the findings of basic research can be translated into the knowledge base of disability research.

Regardless of its auspices, research is a cumulative and integrative process; new knowledge comes from many sources, often in response to concerted pursuit, but also sometimes serendipitously. Research is often slow-moving and always painstaking; one of the ironies of the research effort is that a disproved hypothesis may constitute a successful project, particularly if it diverts the time and resources of others from an unfruitful direction. As one participant in the planning process put it, "sometimes the new questions you stimulate are more important than the ones you answer in your research project." NIDRR is pleased to have collaborated with many other Federal and private agencies that sponsor various aspects of disability and rehabilitation research, and is committed to making research an inclusive, collaborative, and coordinated undertaking.

Organization of the Plan

This introductory chapter has set the framework for understanding NIDRR's mission and approach. After the next chapter, "Dimensions of Disability," the Plan will discuss, in Section Two, an agenda for research that provides opportunities for leadership and innovation. NIDRR will implement this research agenda in conjunction with excellent management strategies, a dynamic program of knowledge dissemination, and a vigorous effort to build capacity of the field through training researchers and users of research. Section Three will focus on these activities.

NIDRR intends this five-year research Plan to balance the competing demands of consumer relevance and scientific rigor, and to present an agenda for research that is responsive, scientifically sound, and accountable, and which makes a contribution to the refinement of the Nation's science and technology policy.

Chapter 2: Dimensions of Disability

"Policy issues at the forefront of the disability agenda require accurate data, routinely repeated measures, sophisticated analysis, and broad dissemination" (National Council on Disability, Action Steps for Changes to Federal Disability Data Collection Activities, draft report, Sept. 19, 1997).

This chapter of the Plan presents NIDRR's operative definitions of disability, discusses several analytical frameworks for the categorization of disability, and highlights deficits in current definitions and data collection. The chapter then presents data about the prevalence and distribution of disability in the nation and includes selected demographic data related to the major NIDRR goals of independence, inclusion, and employment.

Definitions and Concepts of Disability and Disablement

The definition of an individual with a disability under which NIDRR operates is contained in the Rehabilitation Act of 1973, (Public Law 93–112) as amended, and is as follows: any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment (29 U.S.C. 706(8)(B)). This definition is similar to those contained in the ADA and the Technology-Related Assistance for Individuals with Disabilities Act (Tech Act).

The impairments that lead to limitations in activities may be related to genetic conditions or to acquired diseases or traumas that may occur throughout the lifespan. The extent of disability, and the conditions associated with disability, are significant to individuals and their families, and to the Nation.

Prevailing definitions, based in statute and supporting program authorities, clearly do not reflect new paradigm concepts of disability. Nearly all definitions identify an individual as disabled based on a physical or mental impairment that limits the person's ability to perform an important activity. Note that the complementary possibility—that the individual is limited by a barrier in society or the environment—is never considered. This Plan suggests that it is useful to regard an individual with a disability as a person with an impairment who requires an accommodation or intervention rather than as a person limited solely by a condition. This new approach derives from the interaction between personal variables and environmental conditions. Because accommodations can address person-centered factors as well as socio-environmental factors, a "need for accommodation" is a more adaptable concept for the new paradigm.

The various definitions of disability that have formed the basis for both program eligibility and survey data collection do not have explanatory power for research purposes. The field of disability research lacks a widely accepted conceptual foundation for the measurement of disability as well as consistent definitions for data collection. In recent years, however, a number of efforts to develop conceptual frameworks to organize information about disability have been initiated (see Table 2). Among these efforts are:

(1) The ICIDH, which was developed in 1980 by the WHO. The ICIDH was designed to provide a framework to organize information about the consequences of disease. An ongoing revision process is considering social, behavioral, and environmental factors to refine the concept of "handicap;"

TABLE 2.—CONCEPTS IN MODELS OF DISABILITY

ICIDH	Nagi/1991 IOM	NCMRR
Disease—Something abnormal within the individual; etiology gives rise to change in structure and functioning of the body.	Active pathology—Interruption or interference of normal bodily processes or structures.	Pathophysiology—Interruption or interference with normal physiological and developmental processes or structure.

TABLE 2.—CONCEPTS IN MODELS OF DISABILITY—Continued

ICIDH	Nagi/1991 IOM	NCMRR
Impairment—Any loss or abnormality of psychological, physiological, or anatomical structure or function at the organ level.	Impairment—Anatomical, physiological, mental or emotional abnormalities or loss.	Impairment—Loss or abnormalities of cognitive, emotional, physiological, or anatomical structure or function, including losses or abnormalities, not those attributable to the initial pathophysiology.
Disability—Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or range considered normal for a human being.	Functional limitation—Restriction or lack of ability to perform an action or activity in the manner or within the range considered normal that results from impairment.	Functional limitation—Restriction or lack of ability to perform an action in the manner or within the range consistent with the parts of an organ or organ system.
Handicap—A disadvantage resulting from an impairment or disability that limits or prevents fulfillment of a normal role depending on age, sex, and sociocultural factors.	Disability—Inability or limitation in performing socially defined activities and roles expected of individuals within a social and physical environment.	Disability—Inability or limitation in performing tasks, activities, and roles to levels expected within the physical and social context.
		Societal limitation—Restrictions attributable to social policy and barriers (structural or attitudinal) which limits fulfillment of roles and denies access opportunities that are associated with full participation in society.

Note: Information in column 1 is from International Classification of Impairments, Disabilities, and Handicaps, by the World Health Organization, 1980, Geneva, Switzerland: Author.

Information in column 2 is from Disability Concepts Revisited: Implications for Prevention, by S.Z. Nagi, 1991, (p. 7) in Disability in America: Toward A National Agenda for Prevention by A.M. Pope and A.R. Tarlov (Eds.), 1991, Washington, DC: National Academy Press.

Information in column 3 is from Research Plan for the National Center for Medical Rehabilitation Research, (p. 33), by the National Institute of Child Health and Human Development (1993) (NIH Publication No. 93–3509), Washington, DC: U.S. Government Printing Office.

(2) The "Nagi model" (Nagi, 1991), which was presented by the Institute of Medicine (IOM) in its 1991 Disability in America report (Pope & Tarlov, 1991). The model was revised in the 1997 report entitled Enabling America (Brandt & Pope, 1997). The IOM (1997) also posits that disability is a function of the interaction of individuals with the social and physical environments. The revised Nagi model describes the environment as including the natural environment, the built environment, culture, the economic system, the political system, and psychological factors. The new model includes a state of "no disabling condition." The state of disability is not included in this model because disability is not viewed as inherent in the person, but rather as a function of the interaction of the individual and the environment; and

(3) The schematic adopted by the National Center for Medical Rehabilitation research (NCMRR) in its Research Plan (1993, p.33), which added the concept of societal limitation.

Continuum of Enablement-Disablement

The most widely used conceptual frameworks applied to disability and rehabilitation research have in common a continuum that progresses from some underlying etiology or disease to limitations in physical or mental function. These functional limitations, when combined with external or environmental conditions, may lead to some deficit in the performance of daily activities or expected social roles. In "Enabling America," the IOM has urged the adoption of a new conceptual framework as a model for the enablement-disablement process (Brandt & Pope, 1997). This model has the advantage of identifying components of person-centered and environment-centered variables. The IOM framework identifies four categories of individual factors (person, biology, behavior, and resources) and nine categories of external environment factors (natural, culture, engineered environments, therapeutic modalities, health care delivery system, social institutions, macro-economy, policy and law, and resources and opportunities).

NIDRR research focuses on crucial areas of functional loss, disability, and socio-environmental aspects of the continuum. In keeping with the new paradigm, NIDRR emphasizes the importance of explicating the connection between the person and the environment, and interface that determines the disabling consequences of impairments and conditions. This study of the dynamic interaction among various individual and environmental variables requires NIDRR's continued and increased attention to shaping the structure, management, and capacity for research. methodologies are needed, often in an interdisciplinary context, that can illuminate multiple facets of disablement and enablement from numerous perspectives.

Limitations in Federal Data Sources

The various Federal data collection efforts that assess the extent and distribution of disability in society are less than ideal for measuring the population that meets the NIDRR definition of an individual with a disability. These efforts generally can be categorized as either program data, which focus on the recipients of Federal benefit or service programs, or national surveys that focus on perceived limitations in activities caused by health conditions. Both program and survey data focus on the "physical or mental impairment" as the cause of the limitation. This is a reductionist approach that discounts social and environmental factors or assumes that these factors are subsumed within individual attributes.

The National Health Interview Survey (NHIS), are the two most widely used sources of survey data to describe the population of individuals with disabilities. The data from the Disability Supplement to the NHIS currently is being analyzed by a number of researchers and will yield much-needed information on persons with disabilities. The Disability Supplement is the product of a 1994 to 1996 data collection effort that was the result of years of cooperative development by Federal agencies concerned with disability issues. While the Disability Supplement will have enormous value to its users, the Supplement, like other data sources, lacks any measures of the environmental factors (social or physical) that contribute to disablement, as well as any measures of interaction between person and environment.

Federal data collection efforts, including the Census, the NHIS, the

SIPP, the Current Population Survey (CPS), and many other program-specific or topical data collections, not only fail to address important new concepts of disability, but also are limited in other respects. Sampling procedures may result in the exclusion of low-incidence disabilities and insufficient information about minority populations; self-reporting leads to underreporting many conditions; and survey formats frequently are inaccessible to persons with cognitive, sensory, or language limitations. Many Federal data collection efforts, as well as most private ones, do not routinely include information about persons with disability in their collection and reporting. Improvements in data quality and availability will be a key goal of NIDRR in this five-year Plan.

Particular problems exist in defining and quantifying disability in children. Many service programs rely on diagnostic categories for eligibility, and even those that have attempted a functional approach have had difficulty assessing the effect of context, expectations, transactions with adults, chronicity and duration, in determining the extent of disability among children.

The Office of Special Education Programs (OSEP)—administers the Individuals with Disabilities Education Act (IDEA), which mandates that schools have a full range of services necessary to provide a free and appropriate public education for children with disabilities. According to OSEP's 1995–1996 IDEA annual report to Congress, 5.6 million disabled children (ages 3 to 21) received educational services. Approximately, one-half of these children were identified as having specific learning disabilities, Other high incidence disabilities included speech and language impairments, mental retardation, and serious emotional disturbances.

Because OSEP and other Department of Education offices focus their research on activities based in the educational system, including the development of curriculum and teaching methods and the training of teachers, NIDRR has directed its research on disabled children to aspects of life outside that arena. These issues include family-child relations; social relationships; community integration; medical technologies for replacing, or substituting for, function; accommodations; and supports to families. NIDRR research also has a role in addressing the critical problems of succeeding in the transitions from school to adult life in the community, and in the work and adult service systems. In a broader context, it is important to note that 5.5 percent of all American families contain one or more children with a disability (LaPlante, Carlson, Kaye, & Wenger, 1996). Children with disabilities are more likely to be found in low-income families and families headed by single mothers.

Prevalence of Disability

The importance of disability research is underscored by the frequency and widespread dispersion of disabilities in the U.S. population. The following data about disability were selected because of their relevance to NIDRR's specific priorities and to the overall objectives of this plan.

The 1994 NHIS estimated that 15 percent of the noninstitutionalized civilian population—some 38 million people—were limited in activity due to chronic conditions (Adams & Marano, 1995). The Institute of Medicine interpolated the NHIS data to indicate that 38 percent of disabilities were associated with mobility limitations, followed by chronic disease (32 percent); sensory limitations (8 percent); intellectual limitations (7 percent); and all other conditions (15 percent) (Pope & Tarlov, 1991). The SIPP identified 48.9 million persons who reported themselves as limited in performing functional activities or in fulfilling a socially defined role or task. Of these, 24.1 million persons were identified as having a "severe disability" (Kraus, Stoddard, & Gilmartin, 1996). Both surveys excluded persons in nursing homes or institutions, who would be expected to have a high rate of disability. Including that population through extrapolation has led to the commonly cited figures of 43 to 48 million Americans with disabilities.

Both the NHIS and SIPP focus on limitations in major life activities, due to a physical or mental condition, but also provide data on persons who are limited in or unable to perform activities of daily living (ADLs)—such as eating, bathing, dressing, toileting, or transferring—without assistance or devices, or to perform instrumental activities of daily living (IADLs)—such as basic home care, shopping, meal preparation, telephoning, and managing money. Approximately eight million people reported difficulty with ADLs, and approximately four million with one or more ADLs needed the assistance of another person (McNeil, 1993).

The range of these estimates—from approximately 4 million people who need help simply to sustain their lives to the 40 million who report any kind of activity limitation—illustrates the danger in discussing the disabled population or its needs as a homogeneous group. More refined data are needed to assess the needs for medical and health care, vocational rehabilitation and employment assistance, supports for living in the community, and assistive technology.

Demographics of Disability: Age, Gender, Race, Education, Income, and Geography

Disability is distributed differently in the population according to characteristics of age, gender, race, and ethnicity, and both region and size of locality in which a person resides. Educational level is inversely correlated with the prevalence of disability. Poverty is a key factor both as a contributing cause and a result of disability. Table 3 presents NHIS data on sociodemographic correlates of activity limitations. This table indicates that disability is very likely linked to other social factors and reinforces the need to address disability in a broad context.

Emerging Universe of Disability

NIDRR has begun to focus on an "emerging universe" of disability, in which either the conditions associated with disability, their distribution in the population, or their causes and consequences, are substantially different from those in the traditional disability population.

This emerging universe is identified with new disabling conditions; new causes for impairments; differential distributions within the population; increased frequency of some impairments, including those associated with the aging of the population; and different consequences of disability, particularly as related to social-environmental factors, lifespan issues, and projected demands for services and supports.

Researchers have identified a "new morbidity" (Baumeister, Kupstas, & Woodley-Zanthos, 1993) in which the cluster of factors associated with poverty—such as poor education, poor medical care, low birthweight babies, lack of prenatal care, substance abuse, interpersonal violence, isolation, occupational risks, and exposure to environmental hazards—have a high correlation with the existence of impairments, disabilities, and exacerbated consequences of disabilities. For example, the leading cause of mental retardation is no longer RH-factor incompatibility, but may be related to any factor associated with high-risk births, which are more common among low-income mothers.

Interpersonal violence accounts for the rising incidence of certain conditions, especially spinal cord injury and traumatic brain injury, among inner-city minority populations. These developments have enormous implications for research problems to be addressed and future demands for various types of services.

TABLE 3.—DEGREE OF ACTIVITY LIMITATION DUE TO CHRONIC CONDITIONS, BY DEMOGRAPHIC CHARACTERISTICS: 1994

Characteristic	All persons (in thousands)	With activity limitation	Unable to carry on major activity (percent)	Limited in amount or kind of major activity (percent)	Limited, but not in major activity (percent)
All persons	259,634	15	4.6	5.7	4.7
Age:					
Under 18 years	70,025	6.7	0.7	4.2	1.8
18–44 years	108,178	10.3	3.2	3.9	3.1
45–64 years	50,405	22.6	9.2	7.9	5.5
65–69 years	9,685	36.7	16.7	11.9	7.3
70 years and older	21,340	38.9	8.1	12.6	19.3
Sex:					
Male	126,494	14.4	4.8	5.3	4.3
Female	133,139	15.7	4.4	6.1	5.2
Race:					
White	214.496	15.1	4.4	5.8	4.9
African American	33,035	16.3	6.3	6.2	3.8
Family Income:					
Under $10,000	23,363	28	11.2	9.9	6.9
$10,000–$19,999	37,271	21.1	7.3	7.7	6.2
$20,000–$34,999	54,171	14.8	4.1†	6.0	4.7
$35,000 or more	100,302	9.4	1.9	3.9	3.6
Geographic Region:					
Northwest	50,610	14.3	4.3	5.6	4.3
Midwest	63,238	14.6	3.9	6.0	4.6
South	88,088	16.1	5.3	6.0	4.8
West	57,697	14.7	4.6	5.0	5.0
Place of Residence:					
Metropolitan statistical area (MSA)	203,079	14.3	4.4	5.5	4.5
Central city	79,510	15.8	5.4	5.9	4.5
Not central city	123,570	13.4	3.8	5.2	4.5
Not MSA	56,554	17.6	5.4	6.6	5.6

Note: From Tables 67–68 in Current Estimates from the National Health Interview Survey, 1994, Series 10, No. 193, by P.F. Adams and M.A. Marano, Hyattsville, MD: National Center for Health Statistics.

New illnesses or conditions have emerged in recent years; some, but by no means all, are poverty-related. AIDS, Attention Deficit Hyperactivity Disorder (ADHD), violence-induced neurological damage, repetitive motion syndrome, chronic fatigue syndromes, childhood asthma, drug addiction, and environmental illnesses are all either relatively new conditions or ones of increasing prevalence and severity in society. Additionally, the aging of the population, given the higher rates of many disabilities among older persons, is another demographic factor that will influence issues to be addressed by applied research. Many emergent disabilities, including those attributed to violence, abuse, and poverty, have a higher incidence among women and are particularly likely to reflect women with already existing disabilities.

As new causes of disabilities emerge, the new paradigm of disability clearly provides a progressive approach to successful addressing environmental and social barriers for people with disabilities. These new issues have implications not only for disability research and services, but also for public health and prevention activities.

Disability, Employment, and Independent Living

Because of NIDRR's statutory concern with improving employment outcomes for persons with disabilities, it is valuable to present a brief overview of the employment status of persons with disabilities.

LaPlante & Carlson (1996) report that 19 million Americans with an impairment or health problem (ages 18–69) were unable to work or limited in the amount or type of work they could perform. According to the CPS, about 10 percent of the population between 16 and 64 had work limitations (different age ranges reflect changing concepts of "working age") (LaPlante, Kennedy, Kay, & Wenzer, 1996). Back disorders, heart disease, and arthritis were frequently reported as major causes of work disability (LaPlante & Carlson, 1996). However, mental illnesses is one of the most work-disabling conditions; data showed that among adults with serious mental illness (an estimated 3.3 million persons), 29 percent were reported to be unable to work and 18 percent were limited in their ability to work because of their mental disorder (Barker, Manderscheid, Hendershot, Jack, Schoenborn, & Goldstrom, 1992).

While the presence of any disability reduces the likelihood of employment, the effect is closely tied to the severity of the disability. The SIPP estimates that among persons 21 to 64 years old, the employment rate was 81 percent for persons with no disability, 67 percent for persons with a disability that was not severe, and 23 percent for persons with a severe disability (McNeil, 1993). Only 21 percent of persons needing personal assistance with ADLs or IADLs were employed (U.S. Bureau of the Census, 1998). The unemployment rate for persons with disabilities, which counts only those persons in the labor force, was 12.6 percent, more than twice the unemployment rate of nondisabled Americans (Stoddard, Jans, Ripple, & Kraus, 1998).

Disabled persons who work full time typically earn less than nondisabled workers with the earnings gap widening with age and severity of disability. Persons with disabilities who do not work may qualify for income support payments under Social Security Disability Insurance (SSDI) (if they have a work history) or Supplementary Security Income (SSI). As of January 1996, 5 million persons received SSDI benefits, including 4.2 million disabled workers, 686,300 disabled adult children, and 173,800 disabled widows and widowers (Social Security Administration, 1996). A 1993 report cited mental disorders as the most frequent cause of disability (35 percent), followed by musculoskeletal, circulatory, and nervous system disorders (Social Security Administration, 1993).

At the end of 1993, about 3.8 million persons under age 65 received SSI benefits due to disability and poverty (Kochhar & Scott, 1995). More than one-half of these persons had either mental retardation or mental illness. The Social Security Administration (SSA) has noted a sharp increase in the number of disabled SSI recipients, an increasing proportion with mental illness, and a growing number who enter the rolls as children and remain for long periods (Kochhar & Scott, 1995).

Many of these increases in both SSDI and SSI programs can be attributed to program changes (such as different eligibility requirements and outreach), to a shifting from other income support categories, to changes in stability of employment and private health insurance, and to the bundling of health insurance coverage with income supports. Eligibility for public health insurance is generally tied to the receipt of income transfer payments from a public income support program.

Data elements about residential status, family composition, and need for personal assistance services illuminate some of the characteristics of the disabled population. Of the estimated 48.9 million persons with disabilities from the SIPP data, 32.5 million own their own homes and 16.4 million rent (McNeil, 1993). An estimated 9.8 million live alone and over 27 million persons with disabilities are married. An estimated 8.3 million individuals with disabilities live in a household with their spouse and children under 18 years of age, while an estimated 1.9 million are single parents with disabilities.

An estimated 20.3 million families, or 29.2 percent of all 69.6 million families in the United States have at least one member with a disability (as measured by having an activity limitation). This rate for families is much higher than the rate of individuals having a disability. Further, there appears to be a clustering of people with disabilities in families and households, with a much higher than expected likelihood of both adult partners having disabilities and a greater than average chance that children with disabilities will live with one or more parents with disabilities. Families headed by adults with disabilities are more likely to live in poverty or to be dependent on public income support programs.

Conclusion

This chapter of the Plan highlighted some important disability statistics that illustrate the scope of disability in the United States. Throughout the Plan, significant data also are interspersed about the use of assistive technology, access to health care, labor force participation, and community living. In addition, Chapter Seven addresses the need for future research in disability data collection.

Overall, current data on disabilities provide both a picture for concern and a cause for optimism. People with disabilities tend to have lower than average educational levels, low income levels, and high unemployment rates, especially for people with severe disabilities. Moreover, the relationship between disability and poverty tends to be bi-directional, with the conditions of poverty creating a high risk for disability and disability itself leading to poverty. At the same time, it is clear that more individuals with disabilities are completing high school and college, an education is closely correlated with employment and independence. Increasingly, individuals with disabilities are living in the community, marrying, and raising families. These individuals may receive increased attention from businesses as they constitute a market for accessible housing and adaptive devices, recreation, adult education, accommodated travel, health care, and other services.

Potential providers of goods and services in the marketplace—whether purveyors of travel and recreation, assistive devices, clothing, or any other commodities—want estimates of the size and characteristics of the potential market for their products. It is becoming increasingly important to provide these market estimates and to package data to meet the needs of manufacturers and distributors.

It is also true that, while the presence of a disability may present significant challenges to individuals and families, society demonstrates a growing capacity to assist persons with disabilities to meet their needs for equity and access through new discoveries in research, improved service methods, and informed policy decisions.

Section Two: NIDRR Research Agenda

Chapter 3: Employment Outcomes

"With the ADA, we began a transformation of the proverbial ladder of success for some Americans into a ramp of opportunity for all Americans. Yet, * * * (so many) Americans with severe disabilities are still unemployed. * * * (making it) clear we still have many steps to take before people with disabilities have full access to the American dream" (Tony Coelho, Chairman, President's Committee on Employment of People with Disabilities) 1999.

Overview

Unemployment and under-employment among working-age Americans with disabilities are ongoing, and seemingly intractable, problems. Data from the Census Bureau on the labor force status of persons ages 16 to 64 in fiscal year 1996 highlight the magnitude of this problem. While four-fifths of working-age Americans are in the labor force and more than three-fourths are working full time, less than one-third of persons with disabilities are in the labor force, and fewer than one-quarter are working full time. Fully two-thirds of working-age persons with disabilities are not in the labor force; other research suggests that a substantial portion of this staggering figure can be attributed to disincentive inherent in social and health insurance policies, to discouragement, and to lack of physical access to jobs. Finally, among those in the labor force, the unemployment rate for disabled persons is more than double that of persons without disabilities (12.6 percent versus 5.7 percent).

While the comparative rates of labor force participation and full-time employment are two indicators of the workforce status of individuals with disabilities, a comparison of earnings is even more striking. In Figure 1, SIPP data illustrate the discrepancies in earnings for disabled and nondisabled workers.

Even when persons with disabilities are employed full-time, their earnings are substantially lower than those of persons without disability. Severity of disability is also correlated inversely with the level of earnings. Disparities in employment rates and earnings are even greater for disabled individuals from minority backgrounds and those with

the most significant disabilities (Stoddard, Jans, Ripple, & Kraus, 1998).

Economy and Labor Force Issues

Several emerging characteristics of the nation's labor market exacerbate the difficulties experienced by persons with disabilities in their attempts to gain employment and even in their motivation to seek employment. Downsizing, for example, has lead to a reduction in the percentage of the labor force with stable, long-term, benefits-carrying jobs; much of business and industry is moving to other configurations that fill their labor needs without requiring a long-term commitment on the part of the employer. The "contingent" workforce takes many forms, including on-call workers and those in temporary help agencies, workers provided by contract firms, and independent contractors paid wages or salaries directly from the company. Many of these jobs lack security and benefits, particularly health insurance, that most persons with disabilities require for participation in the labor force.

BILLING CODE 4000-01-M

BILLING CODE

Figure 1: Labor Force Participation of persons ages 16 to 64 in fiscal year 1996

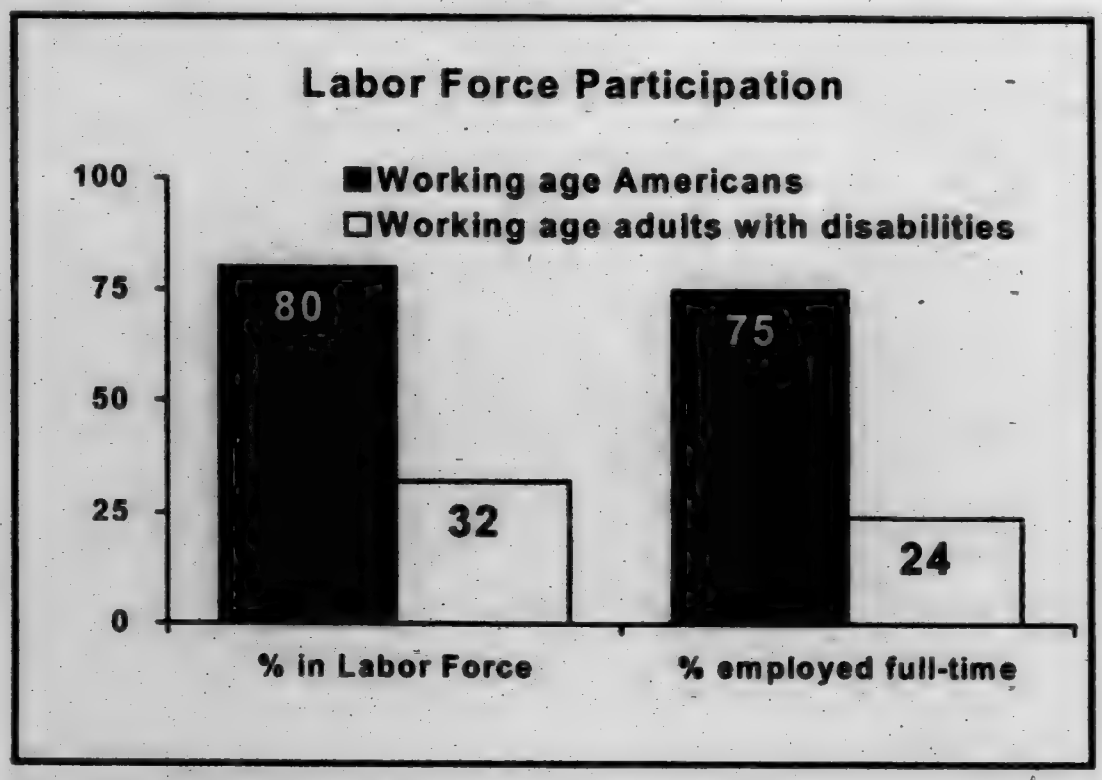

Data from the Census Bureau

Figure 2: Monthly Earnings of Working People By Disability Status

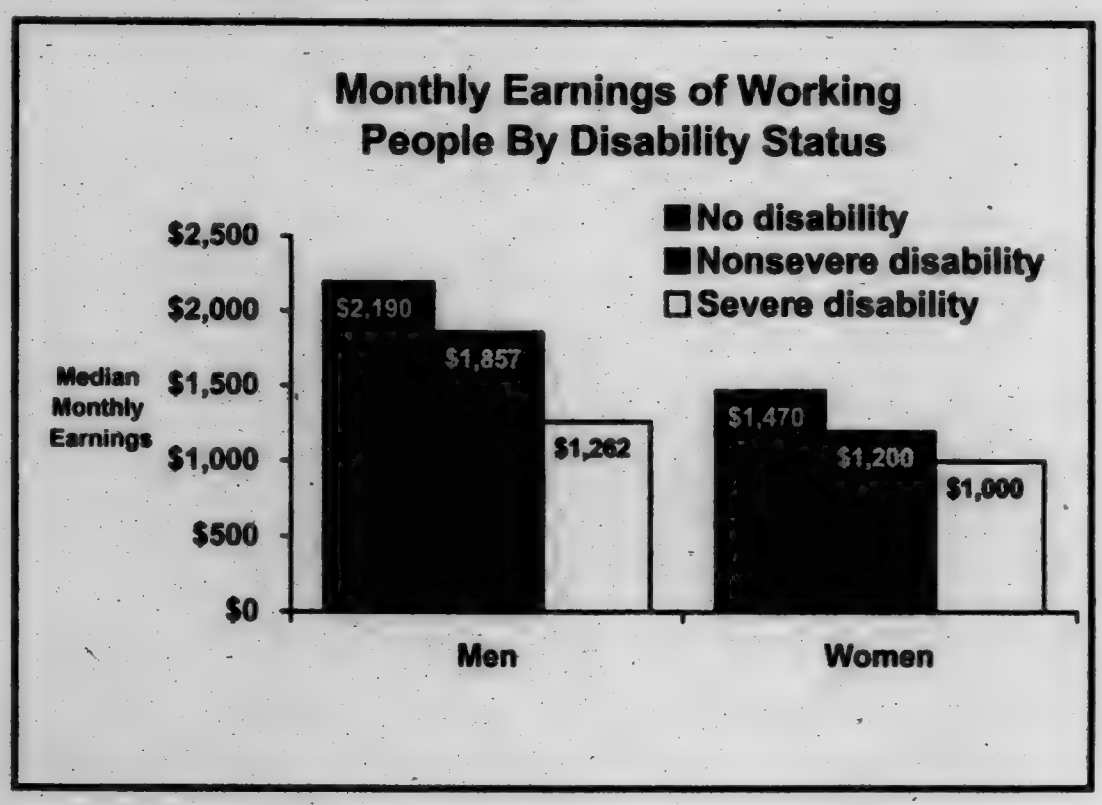

Source: McNeil (1997), Americans with Disabilities: 1994-1995;Survey; SIPP, 1994-1995.

BILLING CODE 4000-01-C

Figure 1: Labor Force Participation of persons ages 16 to 64 in fiscal year 1996

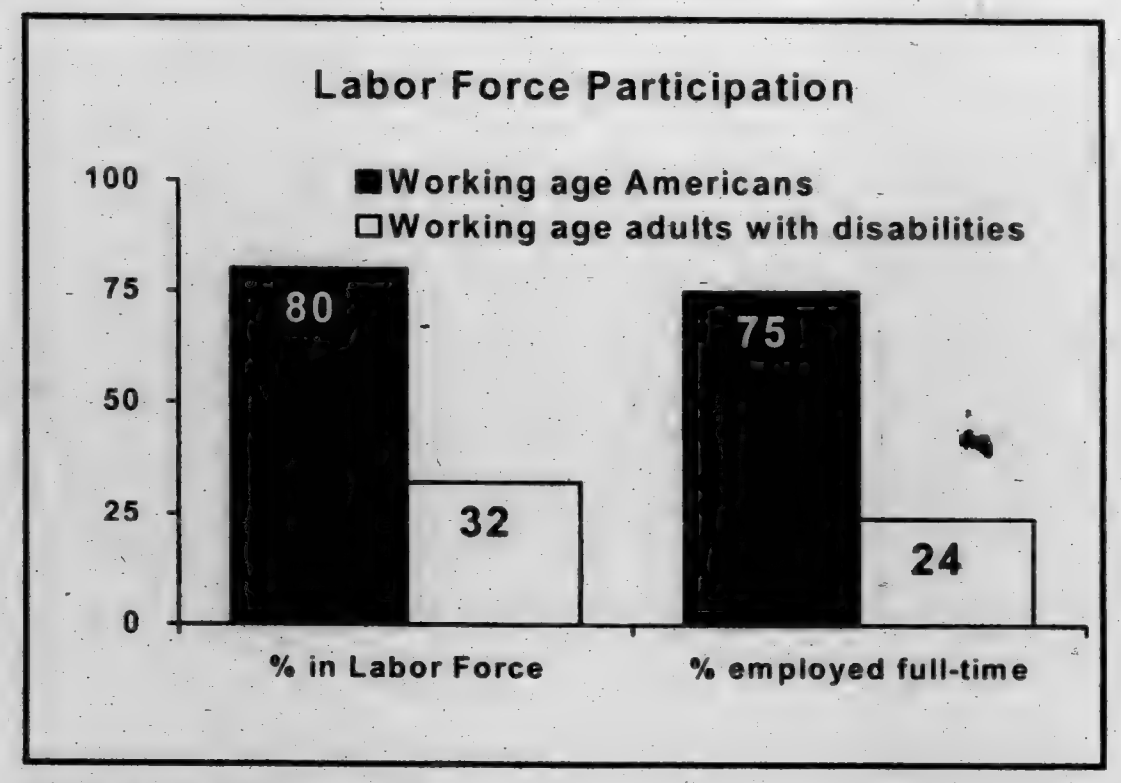

Data from the Census Bureau

Figure 2: Monthly Earnings of Working People By Disability Status

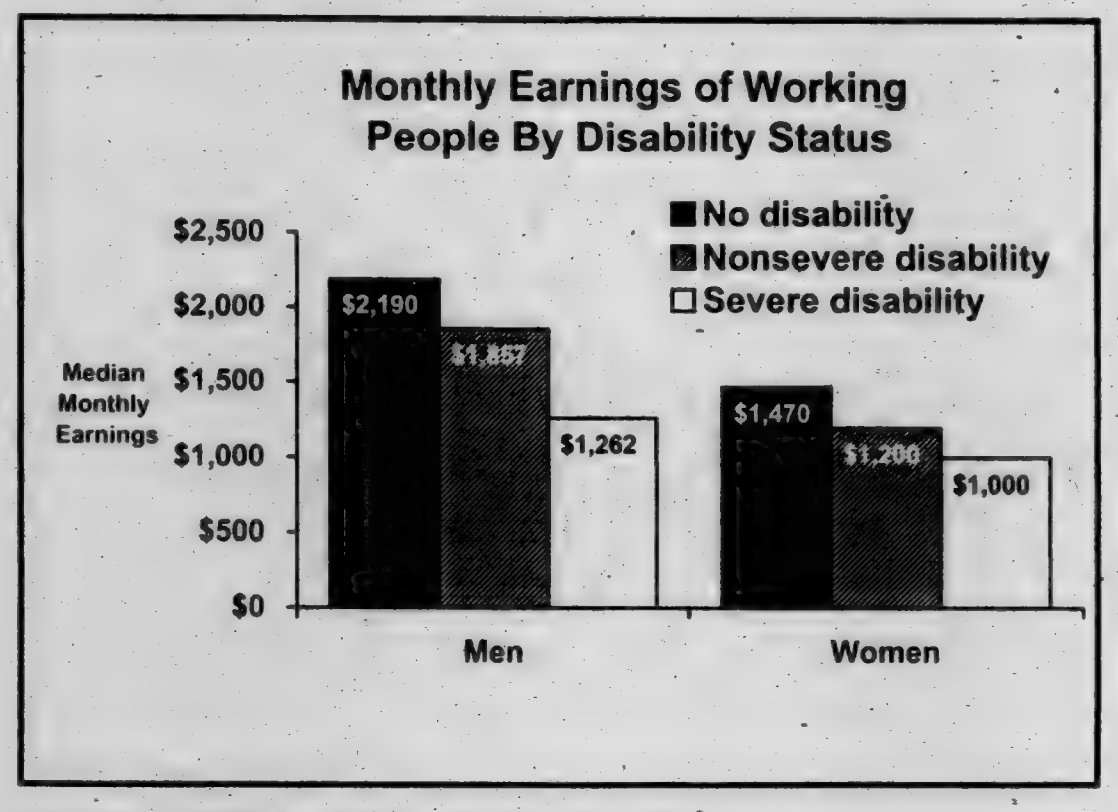

Source: McNeil (1997), Americans with Disabilities: 1994-1995;Survey; SIPP, 1994-1995.

BILLING CODE 4000-01-C

In addition, while many business spokespersons and educators point to the need for highly educated, highly skilled workers if the nation is to succeed in the increasingly competitive global economy, the reality is more complex. On the one hand, availability jobs requiring specialized skills combined with rapid advances in technology may improve the employment prospects of persons with disabilities as well as other workers, through such work arrangements as telecommuting, and an expanding market for self-employment or small businesses. On the other hand, the labor market appears to be moving toward increasing bifurcation, with top-tier technocracy jobs for persons with sophisticated work skills, and lower-tiered unskilled service and maintenance jobs for the less prepared.

Assisting individuals with significant disabilities in moving from dependency on public benefits or family support, or from episodic, poor-paying jobs, into stable jobs that will allow them to become self-supporting, is a complex challenge. This challenge involves a number of economic sectors, and service and support systems, and must include an examination of social policies. Providing appropriate assistance requires an extensive knowledge base encompassing economic trends, education and job training strategies, job development and placement techniques, workplace supports and accommodations, and empirical knowledge of the impact of social and health insurance policies on job-seeking behaviors.

State-Federal Vocational Rehabilitation Program

For the past 75 years, the primary source of publicly funded employment-related services to improve the employment status of disabled persons, especially those with significant disabilities, has been the State-Federal Vocational Rehabilitation (VR) service program, currently authorized under the Rehabilitation Act of 1973, as amended, most recently in 1998. Funded at $2.2 billion in Fiscal Year 1998 in Federal funds and a 22 percent State match for a total of about $2.7 billion annually, the program is implemented primarily as a case management system at the State and local levels. The rehabilitation counselors negotiate, on behalf of and in consultation with the consumer, the purchase of a package of services, such as medical interventions, and supports (e.g., assistive technology and licensure) that will facilitate achievement of employment outcomes.

As noted by OSERS Assistant Secretary Judith Heumann in recent testimony to Congress, "As a group, persons who achieve an employment outcome as a result of vocational rehabilitation services each year show notable gains in their economic status," (Barriers Preventing Social Security Recipients from Returning to Work, 1997). The percentage of persons with disabilities reporting their income as their primary source of support increased from 18 percent, at the time of application to the VR program, to 82 percent at the time of exit from the program (Barriers Preventing Social Security Recipients from Returning to Work, 1997). The percentage with earned income of any kind increased from 22 percent at entry to 92 percent at exit. The percentage working at or above minimum wage rose from 15 to 80 percent.

Nevertheless, Federal policymakers, consumers, advocates, and rehabilitation professionals remain concerned that persons with disabilities often are excluded from full participation in the Nation's labor force. In the past several years, for example, SSA has experienced a very large increase in the number of persons qualifying for SSI and SSDI, and the public costs of these cash benefits are substantially increased by the addition of public support for associated Medicare/Medicaid programs, Further, neither SSA nor the VR system has experienced notable success in returning beneficiaries to the labor force. The VR system, while accepting SSI/SSDI beneficiaries for services at a proportionally higher rate than nonbeneficiaries, typically has less success with this group, that is, relatively fewer SSI/SSDI beneficiaries than nonbeneficiaries achieve an employment outcome as a result of VR services.

One of the major changes in the employment sector over the past three decades is the diversification of the laborforce. Workers with disabilities are among the previously underrepresented groups entering the labor market in increasing numbers with raised expectations and legal protections for equal opportunity in employment. Even within the disability community, there is great diversity in the subgroups who have obtained or desire employment. It is very important that future research and service programs demonstrate, in their design and implementation, appropriate sensitivity to and adequate representation of the range of cultural and disability subgroups. This issue should be examined not merely as a response to the current consciousness about multiculturalism but because the basic, implicit foundations of vocational rehabilitation counseling were developed for a clientele that, in terms of demographic characteristics, work-related experience, and service needs, was quite different from today's rehabilitation customers. Specifically, vocational rehabilitation techniques were originally imported from the earlier established disciplines of secondary vocational education and college counseling psychology. Recipients of services from these disciplines tended to have mainstream acculturation and tolerance for the competitive standards, verbal testing, and guidance common in academic environments. Given the cognitively compromised or socially disadvantaged status of many of today's clients, additional scrutiny of the appropriateness and adequacy of the strategies and tools for vocational rehabilitation assessment, counseling, and training is imperative. Rehabilitation counselors need new marketing strategies to reach out to prospective employers to develop job opportunities for this diverse population of persons with disabilities.

Community-Based Employment Services

NIDRR's research agenda concerning employment addresses, but is not limited to, the State-Federal VR program administered by NIDRR's sister agency, the Rehabilitation Services Administration (RSA). While the VR program plays an important role, there is wide range of other Federal, State, and local funding sources for, and providers of, employment programs. These include approximately 7,000 community-based rehabilitation programs (CRPs), which serve about 800,000 persons daily, and are funded by VR and/or such diverse sources as the Job Training Partnership Act (JTPA), Worker's Compensation, or private insurance. Legislation such as the Workforce Investment Act and the Workforce Consolidation Act further diversifies the sources of support.

The role of community rehabilitation programs in the overall service delivery system may be enhanced even further if Federal employment programs devolve to States and communities and if the intent to increase consumer choice in the selection of service providers becomes more widely implemented. To respond to these developments, community rehabilitation programs must be prepared to offer a full range of vocational services to an increasingly heterogenerous consumer population. Moreover, as return-to-work programs that base provider payments on

successful consumer outcomes are implemented, new relationships between service providers and funding sources may emerge over the next few years. These new relationships will require that community rehabilitation programs adapt their current structure and operations in significant ways.

A number of questions about how these changes may potentially influence and impact the service delivery of community rehabilitation programs are yet unanswered. For instance, the efficacy of different models designed to maximize competitive employment outcomes for persons with significant disabilities or with specific types of disabilities is unknown. In addition, the impact of consumer choice on service delivery models is unknown. Finally, whether new funding mechanisms will promote increased competition and innovation in service delivery by community rehabilitation programs is a major question. Gaining knowledge in these important areas will allow validation of the assumptions upon which pending reforms are predicated, and the shaping of the future direction of initiatives to increase the numbers of persons with significant disabilities who obtain and retain meaningful employment.

Employer Roles and Workplace Supports

Employers play a key role in deciding employment outcomes for disabled persons through establishment of policies for recruitment, screening, hiring, training, promoting, accommodating, and retaining disabled individuals in the workforce. The provisions of Title I of the ADA prohibit discrimination against qualified job applicants with disabilities. Applicants are considered qualified if they can perform the essential functions of a job with or without reasonable accommodations. This statute creates duties for employers by requiring them to make the employment process accessible, provide reasonable accommodations, and focus on essential functions of jobs. These employer responsibilities cover all aspects of the pre-employment and post-employment phases. Through the requirements of Workers' Compensation laws, bargaining unit agreements, and insurance provisions, employers have additional obligations to employees who become disabled.

Strategies to assist employers in meeting workplace obligations include disability management and workplace supports. Disability management is a term used to describe an array of support mechanisms and benefits that employers use to maintain employment for disabled workers. Workplace supports are programs or interventions provided in the workplace to enable persons with disabilities to be successful in securing and maintaining employment. Technology can play a major role in making workplaces accessible and in enabling individuals with disabilities to complete work tasks by adapting tools and processes. Ergonomics, universal design, and assistive technology devices are all strategies to enhance workplace performance. Typical supports include accommodations such as job restructuring, worksite adaptations, and improved accessibility. Supported employment is a specific approach to improve employment outcomes for some persons with disabilities, usually involving a job coach employed by a rehabilitation service provider to provide on-the-job assistance.

Transition From School to Work

NIDRR, along with RSA, OSEP, and the Department of Education as a whole, has a particular interest in the process by which disabled students transition into a world of productive work, as opposed to settling into a lifetime of dependency. This is a critical concern because the transition period presents a distinct opportunity to help students embark on a career, thus enhancing their community integration, independence, and quality of life. The transition into work occurs at many points: prevocational experiences, on-the-job training, secondary vocational education or other secondary education programs, and postsecondary education at technical institutions, community colleges, or universities. These various transition points present opportunities for research on strategies for success in transferring from a learning environment to a work environment.

Research is ongoing regarding issues of postsecondary education for persons with disabilities. This research shows that youth with disabilities face tremendous difficulties in accessing postsecondary education and making the transition from school to work. Most of the Nation's institutions of higher education offer support services to students with disabilities; however, this is less certain for other types of postsecondary schools. When offered, services vary widely and may include customized academic accommodation, adaptive equipment, case management and coordination, advocacy, and counseling. A number of issues have been raised in relation to delivery of these services. Among these are issues of disclosure, accessibility of a range of services, and extent and type of transition services needed to move from school to work.

Directions of Future Employment-Related Research

Given the magnitude of changes in the nature and structure of the world of work and possible changes in the characteristics of the disabled population, NIDRR's employment-related research agenda for the next five years must extend beyond prior research efforts to discover mechanisms that will make the labor market more amenable to full employment for persons with disabilities. That research agenda must incorporate economic research, service delivery research, and policy research, and most importantly, must relate to the context in which employment outcomes are determined. Among the key policy issues that will affect the evolution of this agenda are SSA reform; restructured funding and payment mechanisms, including the use of vouchers; the impact of workforce consolidation; radical restructuring of employment training services at State and local levels; employment-related needs of unserved and underserved groups; linkage of health insurance benefits to either jobs or benefit programs; and transition from school to work among youth with disabilities.

An important focus for research will be changes in the environment (e.g., in the workplace, information technology, and telecommunications and transportation systems) that will make work more accessible, along with strategies for assisting individuals to achieve both the skill levels and the flexibility required for full labor force participation in the 21st century. Finally, as a departure from NIDRR's historical emphasis on the service system and the quality of services, the agenda calls for examination of economic issues (including benefits and costs of various incentive plans) associated with employment of persons with disabilities, labor force projections and analyses, and an increased understanding of employer roles, perspectives, and motivational systems.

The purpose of NIDRR's research in the area of employment is to:

(1) Assess the impact of economic policy and labor market trends on the employment outcomes of persons with disabilities;

(2) Improve the effectiveness of community-based employment service programs;

(3) Improve the effectiveness of State employment service systems;

(4) Evaluate the contribution of employer practices and workplace

supports to the employment outcomes of persons with disabilities; and

(5) Improve school-to-work transition outcomes.

Research Priorities for Employment Economic Policy and Labor Market Trends

As noted earlier in this chapter, NIDRR recognizes that the impact of macroeconomics trends on employment of persons with disabilities, and public policy responses to these trends is a large and complex topic, one that will require increased policy research attention in the next 5 to 10 years. A coordinated research effort must examine such labor market demand issues as the changing structure of the workforce, skill requirements, and recruitment channels, in addition to issues on the supply side such as job preparation and skills, competencies, demographics, and incentives and disincentives to work. Specific research priorities include:

(1) Analysis of the implications for employment outcomes of cross-agency and multiagency developments and initiatives, including welfare reform, workforce consolidation, SSA reform, Medicare/Medicaid changes, The Department of Education-Department of Labor school-to-work program, and Executive Order No. 13078 (1998);

(2) Analysis of the dissonance between the ADA concept of "essential elements" of a job and the new employer emphasis on core competencies, flexibility, and work teams and the impact on job acquisition and retention; and

(3) Analysis of the impact of labor market changes on employment of persons with disabilities, including alternative employment arrangements such as small business entrepreneurship, self-employment, telecommuting, part-time work, and contractual work.

Community-Based Employment Service Programs

Proposed restructuring of the financing of employment-related services for individuals with disabilities posits a major role for new or different service delivery arrangements. The capacity of the existing provider system, represented in part by the 7,000 community-based rehabilitation programs (CRPs) in the nation, to assume this role requires thorough investigation. Specific research priorities include:

(1) Evaluation of provisions for accountability and control and protections for difficult-to-serve individuals; analysis of the cost and benefit of services, and measurement of the quality of employment outcomes for consumers with disabilities;

(2) Analysis of the extent to which services that CRPs deliver to VR consumers (about one-third of services received by VR consumers come from CRPs) differ in quality, quantity, costs, or outcomes from those provided to consumers of other financing systems (e.g., Workers' Compensation or private insurance); and

(3) Evaluation of the potential of this community-based employment system to assume greater responsibility for service delivery under block grants, in consolidation into umbrella agencies, and in "one-stop shop" service configurations.

State Service Systems

Amendments to the Rehabilitation Act in 1992 and 1998 called for a number of management and service delivery changes in the State-Federal VR program. These include expanded consumer choice regarding vocational goals, services, and service providers; implementation of performance standards and indicators to ensure accountability and improvement in the system; a greater role for consumer direction through the vehicle of State Rehabilitation Advisory Councils; and changes in the eligibility determination process that include presumptive eligibility and order of selection procedures, among others. Order of selection requires that individuals with the most significant disabilities receive priority for services, significantly altering the characteristics of VR clientele. Specific research priorities include:

(1) Analysis of the impact of management and service delivery changes in the State-Federal VR program on the quality and outcomes of VR services;

(2) Evaluation of the impact of professionalization of the rehabilitation counselor workforce;

(3) Assessment of the efficacy of various methods of case management;

(4) Development and evaluation of outcome measures for VR consumers under one-stop configurations;

(5) Identification and evaluation of marketing strategies to assist VR counselors in helping persons with disabilities obtain jobs in a variety of employer settings;

(6) Assessment of interagency coordination in delivery of services to multiagency consumers;

(7) Assessment of the outcomes of small business entrepreneurship and self-employment as strategies to improve outcomes for vocational rehabilitation clients; and

(8) Assessment of the applicability of traditional VR approaches for minority and new universe populations.

Employer and Workplace Issues

One area that has received insufficient attention in past research is the workplace, including both the physical environment (as represented by job site accommodations, technological aids, and the like) and the "social environment" comprising roles of co-workers, supervisors, and employers. Specific research priorities include:

(1) Investigation of employer hiring and promotion practices;

(2) Evaluation of models of collaboration between rehabilitation professionals and employers;

(3) Development and evaluation of cost-effective strategies for improving the receptivity of the workplace environment to workers with disabilities;

(4) Development and evaluation of strategies for encouraging employers to hire disabled workers (e.g., tax credits, arrangements regarding partial support for medical benefits);

(5) Evaluation of the impact of new structures of work, including telecommuting, flexible hours, and self-employment on employment outcomes;

(6) Identification and evaluation of disability management practices by which employers can assist workers who acquire, or aggravate disabilities to remain employed, transfer employment, or remain in the workforce and out of public benefit programs; and

(7) Analysis of the role and potential of the ADA in increasing job opportunities.

School-to-Work Transition

Moving into employment from educational institutionals is one of the most important transitions that people make during their lifetimes. The academic levels at which transitions to the labor market occur include secondary school, secondary school completion, and completion of some level of post-secondary education. In recent years, the U.S. Departments of Education and Labor have collaborated to support the development of state and local systems whose broad mission is to prepare youth for success in the global marketplace. Specific research priorities include:

(1) Determination of the impact of these state and local educational system initiatives on work opportunities for the Nation's youth with disabilities;

(2) Evaluation of the extent to which school reform initiatives, such as

academic-vocational integration, Tech Prep, career academies, work-based learning, and rigorous preparation in terms of critical thinking and communication skills, and accessible to and effective with youth who have disabilities;

(3) Identification of systemic and environmental barriers to full labor force participation;

(4) Assessment of whether innovations in school-to-work practices are accessible to youth with disabilities, and determination of the impact of these practices on employment outcomes; and

(5) Assessment of the efficacy of employment and transition services for youth from diverse backgrounds and new disability groups.

Future employment research will provide information to develop new VR approaches for helping disabled individuals become competitive in the changing, global labor market. These new methods will focus on provision of culturally relevant services for clients, and the application of accommodation in the workplace.

Chapter 4: Health and Function

"To be healthy does not mean to be free of disease; it means that you can function, do what you want to do, and become what you want to become" (Rene Jules Dubos, 1901–1982).

Overview

Maximizing health and function is critical to maintaining independence for persons with disabilities. Health care for persons with disabilities encompasses access to care for routine health problems, participation in health promotion and wellness activities, and access to appropriate specialty care, including medical rehabilitation. Medical rehabilitation is the systematic application of modalities, therapies, and techniques to restore, improve, or replace impaired human functioning. It also encompasses biomedical engineering, that is, the use of engineering principles and techniques and biological knowledge to advance the functional ability of persons with disabilities.

Health care and medical rehabilitation services operate largely within the constraints imposed by market forces and government regulations. In recent years, significant changes have occurred in health care delivery and reimbursement. Various forms of managed care have become the predominant mode of organizing and delivering health care in much of the private sector. Medicaid and Medicare also have adopted managed care strategies for providing health care to many recipients. In theory, managed care uses case coordination to contain costs by limiting access to "unnecessary" health care, particularly specialty services and hospitalization. Individuals with disabilities have expressed concern that managed care approaches may limit their access to medical rehabilitation specialists, goods, and services. In addition to a market-driven shift to managed care, other related changes have occurred, including shortened periods of stay in inpatient rehabilitation facilities and the emergence of subacute rehabilitation providers. Considerable consolidation also has occurred within the medical rehabilitation industry and has further affected the availability and delivery of services. There also has been a new emphasis on developing performance measures that incorporate concepts of quality, functional outcomes, and consumer satisfaction. These measures are being used to guide purchasing and accrediting decisions within the health care system.

During the next five years, NIDRR plans to fund research in a number of broad areas that link health status and functional outcomes to health care and medical rehabilitation. In addition, NIDRR will support research to continue development of new treatments and delivery mechanisms to meet the rehabilitation, functional restoration, and health maintenance needs of individuals with disabilities. This research will occur at the individual and the delivery system levels. In this section, the discussion of general health care and medical rehabilitation will address issues at both levels.

Health Care

The goal of health care for individuals with disabilities is attaining and maintaining health and decreasing rates of occurrence of secondary conditions of disability. Individuals with disabilities use more health care services, accumulate more hospital days, and incur higher per capita medical expenditures than do nondisabled persons. Persons with no activity limitations reported approximately four physician contacts per year; this figure was doubled for those who had some activity limitation, was five times as high for those unable to perform major life activities, and was seven times as great for those needing help with instrumental activities of daily living (IADLs) (LaPlante, 1993). Understanding the relationship between disability and health has implications for the public health agenda and the application of primary disease prevention strategies to the health of persons with disabilities.

In the past, the health needs of persons with disabilities often have been conflated with medical rehabilitation needs. The recognition that persons with disabilities require routine health care or access to health maintenance and wellness services is relatively new. How best to meet these needs requires substantial new research. At the individual level, persons with disabilities need providers and interventions that focus on their overall health, taking disability and environmental factors into consideration. Concern about the health of the whole person is the focus at this level, in recognition that an individual is more than a disability and deserves access to the health services generally available to the nondisabled population. At the system level, study of the organization and financing of health services must include analysis of impacts on persons with disabilities. Ameliorating the primary condition, preventing secondary conditions and co-morbidities, maximizing independence and community integration, and examining the impact of physical barriers and societal attitudes on access to health and medical rehabilitation services are critical issues at each level of focus.

Health Care at the Individual Level

Although persons with disabilities have higher health care utilization rates than the general population, having a disability does not mean that a person is ill. People with disabilities increasingly are demanding information about and access to programs and services aimed at promoting their overall health, including access to routine health care, preventive care, and wellness activities. This includes primary care and, for women, access to gynecological care. For children, this means access to appropriate pediatric care. In clinical settings, these demands require development of disability-sensitive protocols for proper nutrition, exercise, health screening, and treatment of nondisability-related illnesses and conditions. NIDRR is committed to supporting research to improve the overall health of persons with disabilities.

Health Care at the Systems Level

Persons with disabilities must have access to, and satisfaction with, an integrated continuum of health care services, including primary care and health maintenance services, specialty care, medical rehabilitation, long-term care, and health promotion programs.

Models for organizing, delivering, and financing these services must accommodate an overall health care system that is undergoing tremendous change. Issues of gatekeeper roles, carve-outs, risk-adjusted rate-setting, and service mix are factors for assessment in a context of managed care approaches that balance care coordination with cost control strategies. At issue for all people is whether cost control strategies result in barriers to needed care; and, for persons with disabilities, whether access to specialty care, particularly medical rehabilitation services, is limited. In the current cost-cutting and restrictive climate, it is important to assure that new service configurations preserve equity for persons with disabilities by providing for their unique needs.

Medical Rehabilitation

Medical rehabilitation addresses both the primary disability and secondary conditions evolving from the initial impairment or disability. Medical rehabilitation also teaches the individual to overcome the barriers in the environment. Medical rehabilitation includes medical and bioengineering interventions, therapeutic modalities, and community and family interventions.

Medical rehabilitation frequently is associated with physical disabilities such a musculoskeletal or neuromuscular impairments or limitations in mobility or manipulation. However, medical rehabilitation provides interventions to improve or manage sensory, cognitive, or mental health functioning, pain, or fatigue, and includes rehabilitation dentistry and maxillofacial prosthodontics. Specialist and allied health personnel from a broad range of disciplines may be involved in the provision of medical rehabilitation services.

Medical Rehabilitation at the Individual Level

NIDRR-funded research has improved medical rehabilitation treatment in areas such as spinal cord injury, traumatic brain injury, stroke, and other leading causes of disability. This research must be expanded to include emerging disabilities. Of special concern are new causes of disability such as violence, which has emerged in recent years as a significant precipitator for new disability conditions. In addition, future medical rehabilitation research must be sensitive to cultural difference and must recognize the impact of an individual's environment on functional outcomes. Another important research focus will be examining how technological improvements enhance the ability of biomedical engineering to help people with disabilities regain, maintain, or replace functional ability.

Additionally, an urgent need exists for the development of more effective outcomes measurement tools to test the usefulness of new medical rehabilitation interventions and products. These measurement tools must assess the individual's response to medical rehabilitation interventions and account for technology that enhances mobility, independence, and quality of life. Outcomes must be measured not just for the duration of treatment but also over the long term.

A major medical rehabilitation issue is the prevention and treatment of secondary conditions. Secondary conditions result directly from the primary disabling conditions and may have significant effects on the health and function of persons with disabilities. Examples of secondary conditions may include depression, bladder and skin problems, respiratory problems, chronic pain, contractures or spasticity, fatigue, join deterioration, or memory loss. Other health conditions such as cardiac problems, autoimmune diseases, obesity, or cancer may not always derive directly from the original disability, but may require special preventive efforts or care interventions because of a preexisting disability.

Medical Rehabilitation at the Systems Level

Cost containment strategies inherent in managed care may constrain access to medical rehabilitation. Thus, it is more important than ever to demonstrate the cost effectiveness of treatments. Research on medical rehabilitation outcomes is critical to establishing the need for, and assuring access to, medical rehabilitation within the health care delivery system. Previously, NIDRR has initiated research activities to develop methods for measuring function and assessing rehabilitation outcomes, and for measuring the cost and effectiveness of various rehabilitation modalities and delivery mechanisms. These areas will continue to be important foci to NIDRR's future medical research program. Research must continue to assess the impact of changes at the system level on the rehabilitation outcomes of individuals. In addition, providing care in nonacute settings requires development of additional capacity that includes training practitioners for more independent work in community. NIDRR research must contribute to building this new capacity.

The purpose of NIDRR's research in the area of health care and medical rehabilitation is to:

(1) Identify and evaluate effective models of health care for persons with disabilities;

(2) Develop models to promote health and wellness for persons with disabilities;

(3) Examine the impact of changes in the health care delivery system on access to care;

(4) Evaluate medical rehabilitation interventions that maximize physical, cognitive, sensory, and emotional function for individuals with disabilities, taking into account aging, environment, emerging disabilities, and changes in the health services delivery system;

(5) Identify an evaluate medical rehabilitation interventions that will help disabled individuals maintain health, through prevention and amelioration of secondary conditions and co-morbidities, and through education;

(6) Improve delivery of medical rehabilitation services to persons with disabilities; and

(7) Evaluate the health and medical rehabilitation needs of persons whose impairments are attributed to newly recognized causes or whose conditions are becoming recognized as disabilities, for example, disability resulting from interpersonal violence or "emergent" chronic diseases such as childhood asthma or chronic fatigue immune deficiency syndrome.

Future Research Priorities for Health Care and Medical Rehabilitation Research on Effective Methods of Providing a Continuum of Care, Including Primary Care and Long-Term Care, to Persons With Disabilities

In recent years, a number of different models of providing routine health care for persons with disabilities have emerged. For example, there are medical rehabilitation programs that have developed primary care clinics; and there are other programs where primary care providers have added medical rehabilitation consultants to advise them on care of persons with disabilities. The efficacy of these models is not yet known, especially their impact on the overall well-being of their consumers. There has been some research on long-term care models, especially those that provide community-based services, including personal assistance; however, research questions remain regarding optimal models of long-term care. Specific priorities include:

(1) Identification of effective models of primary and long-term care across disability populations including emerging disability groups;

(2) Evaluation of the impact of primary and long-term care service delivery models on independence, community integration, and overall health outcomes, including occurrence of secondary conditions and co-morbidities; and

(3) Collection and analysis of longitudinal data on health care utilization by persons with disabilities, to identify trends, outcomes, and consumer satisfaction.

Research on Application of Wellness and Health Promotion Strategies

NIDRR will support research to develop wellness and health promotion strategies, incorporating all disability types and all age groups. Specific research priorities include:

(1) Identification and evaluation of models to promote health and wellness for persons with disabilities in mainstream settings where possible. These will include nutrition, exercise, disease prevention, and other health promotion strategies. A particular focus will be placed on prevention and treatment of secondary conditions and on the needs of emerging disability populations, including persons aging with a disability;

(2) Evaluation of the impact of health status on independence, community integration, quality of life, and health care expenditures; and

(3) Development of guidelines that establish protocols for reaching or maintaining appropriate levels of fitness for persons with varying functional abilities.

Research on the Impact of the Evolving Health Service Delivery System on Access to Health and Medical Rehabilitation Services

NIDRR anticipates that the health service delivery system will continue to evolve as the marketplace responds to rising costs and as policymakers respond to public concerns about access to care. Specific research priorities include:

(1) Evaluation of the impact of changes at the health system level, for example, financing and regulatory changes, on access to the continuum of health care services, including medical rehabilitation; and

(2) Evaluation of the impact of triage and case management strategies on health status and rehabilitation outcomes.

Research on Trauma Rehabilitation

Research to improve the restoration and successful community living of individuals with burns and neurotrauma such as spinal cord injury, brain injury, and stroke, has long been an important component of NIDRR's program. Specific research priorities include:

(1) Identification of methods to minimize neurological damage, improve behavioral outcomes, and enhance cognitive abilities; and

(2) Identification of effective collaborative research opportunities, including those using data generated by the model systems.

Research on Progressive and Degenerative Disease Rehabilitation

Research to maintain and restore function and independent lifestyles for individuals with multiple sclerosis, arthritis, and neuromuscular diseases is a key element of medical rehabilitation research. Specific research priorities include:

(1) Identification and evaluation of methods to maintain function for persons with these conditions;

(2) Identification of effective health promotion strategies;

(3) Evaluation of strategies to minimize the impact of secondary conditions; and

(4) Development and evaluation of health care and rehabilitation medicine supports to facilitate community integration and independent living outcomes.

Research on Birth Anomalies and Sequelae of Diseases and Injuries

Medical and technological interventions to maintain and restore function in persons with cerebral palsy, spina bifida, post-polio syndrome, and other long-standing conditions are an important part of rehabilitation. Specific research priorities include:

(1) Development and evaluation of physical therapy techniques, respiratory management techniques, exercise regimens, and other rehabilitative interventions aimed at maximizing functional independence

(2) Development and evaluation of supports to facilitate community integration and independent living outcomes, and;

(3) Investigation of factors that lead to disability and loss of full participation in society following disease or injury.

Research on Secondary Conditions

Prevention and treatment of secondary conditions are critical to preserving health and containing health care costs of persons with disabilities. Specific research priorities include:

(1) Development of clinical guidelines to identify at-risk individuals and to involve consumers in regimens to prevent secondary conditions;

(2) Identification and evaluation of methods of preventing and treating secondary conditions across impairment categories; and

(3) Investigation of the interaction among secondary conditions, impairments, and aging.

Research on Emergent Disabilities

Explorations of the impact of disabilities resulting from new causes or expanding disability definitions will be of increasing significance to rehabilitation medicine. Emergent conditions may include such things as environmental illnesses, repetitive motion syndromes, autoimmune deficiencies, and psychosocial and behavioral conditions related to poverty and violence. Specific research priorities include:

(1) Identification and evaluation of the need for health and medical rehabilitation services to address emerging disability conditions;

(2) Identification and evaluation of effective models by which health and medical rehabilitation providers can meet the needs of persons with emerging disabilities; and

(3) Development of models to predict future emerging disability populations.

Research on aging with a Disability

Advances in acute medical care for persons with disabilities means that, as the population ages, many disabled persons will live longer and may develop the serious, chronic conditions common to many aging populations. Examples of these chronic conditions include heart disease, diabetes, cancer, pulmonary diseases, arthritis, and sensory losses. Specific research priorities include:

(1) Determination of the implications of aging with a disability on access to routine health care, medical rehabilitation services, and services that support community integration;

(2) Investigation of the impact of aging on disabilities and the impact of various disabilities on the aging process;

(3) Investigation of the relationship between age related disability and employment; and

(4) Analysis of the effect of longer lifespan on the durability and effectiveness of previously demonstrated interventions and technologies.

Research on Rehabilitation Outcomes

NIDRR's prior research efforts have developed new rehabilitation techniques for a number of disability groupings and also have developed and tested comprehensive model systems, home and community-based services, and peer services to improve rehabilitation outcomes. With the renewed emphasis on performance and outcomes and with increasing economic constraints generated by changes in the health services delivery system, rehabilitation medicine needs to document the impact of its services. Specific research priorities include:

(1) Expansion of outcomes evaluation approaches, beyond short-term rehabilitation studies, to include outpatient and long-term follow-up information;

(2) Development of outcomes measures that include measures of environmental barriers;

(3) Evaluation of methods that translate outcomes findings into quality improvement strategies;

(4) Analysis of barriers and incentives to consistent use of health and medical rehabilitation outcomes measures in payer and consumer choice models; and

(5) Refinement of measures of rehabilitation effectiveness.

Research on Changes in the Medical Rehabilitation Industry

The medical rehabilitation industry is undergoing an unprecedented level of consolidation, with unknown consequences for access and flexibility. The industry has undergone significant changes in service sites with the move from inpatient to post-acute, outpatient, and community-based services. Outcomes measurement and quality assurance initiatives are increasingly used in evaluating medical rehabilitation services. Specific research priorities include:

(1) Investigation of the impact of financing and other market forces on the medical rehabilitation industry, including service delivery patterns and treatment modalities; and

(2) Identification and evaluation of the impact of changes at the medical rehabilitation industry level on access and outcomes for persons with disabilities.

A major research challenge will be to integrate research on the efficacy of interventions to improve outcomes with research on the impact of changes in the health care delivery system. A second overarching objective will be to relate medical rehabilitation and health care research to other changes, including the new paradigm of disability, the emerging universe of disability, and participatory research by persons with disabilities.

Chapter 5: Technology for Access and Function

"For Americans without disabilities, technology makes things easier. For Americans with disabilities, technology makes things possible" (Mary Pat Radabaugh, 1988).

Overview

Technology has been defined as the system by which a society provides its members with developments from science that have practical use in everyday life. Today, technology plays a vital role in the lives of millions of disabled and older Americans. Each day, people with significant disabilities use the products of two generations of research in rehabilitation and biomedical engineering to achieve and maintain maximum physical function, to live in their own homes, to study and learn, to attain gainful employment, and to participate in and contribute to society in meaningful and resourceful ways. It is more than coincidence that these remarkable advances have occurred during the period in which Federal funds have supported research, development, and training in rehabilitation engineering.

In planning the future of rehabilitation engineering research, NIDRR and its constituents in the consumer, service, research, and business communities will continue to identify flexible strategies to address emerging issues and technologies, to promote widespread use of research findings, and to maximize the impact of NIDRR programs on the lives of persons with disabilities. NIDRR is particularly well positioned to continue its leadership in rehabilitation engineering research, since NIDRR locates rehabilitation engineering research on a continuum that includes related medical, clinical, and public policy research; vocational rehabilitation and independent living research; research training programs; service delivery infrastructure projects; and extensive consumer participation.

The Institute supports engineering research on technology for individuals and on systems technology. For example, NIDRR has supported hearing aid and wheelchair research on the individual level, and telecommunications, transportation, and built environment research at the systems or public technology level. NIDRR also supports research on ergonomics and other interface problems related to the compatibility of various technologies, such as hearing aids and cellular telephones.

Technological innovations benefit the individual at the individual level and at the systems level. At the individual level, assistive technology enhances functions and at the systems, or public technology level, technology provides access that enhances community integration and equal opportunity. Much of the assistive technology for disabled individuals falls into the category of "orphan" technology because of limited markets; frequently this technology is developed, produced, and distributed by small businesses. Often, technology on the systems level involves large markets and large businesses. Access to technology can be increased by incorporating principles of universal design into the built environment, information technology and telecommunications, consumer products, and transportation.

Assistive Technology for Individuals

In 1990, more than 13.1 million Americans, about 5 percent of the population, were using assistive technology devices to accommodate physical impairments, and 7.1 million persons, nearly 3 percent of the population, were living in homes specially adapted to accommodate impairments. While the majority of persons who use assistive technology are elderly, children and young adults use a significant proportion of the devices, such as foot braces, artificial arms or hands, adapted typewriters or computers, and leg braces (LaPlante, Hendershot, & Moss, 1992)

Assistive technology includes devices that are technologically complex, involving sophisticated materials and requiring precise operations—often referred to as "high tech"—and those that are simple, inexpensive, and made from easily available materials—commonly referred to as "low tech." Scientific research in both high tech and low tech areas will serve the consumer need for practical items that are readily available and easily used. Low-tech devices, for example, are widely used by older persons with disabilities to compensate for age-related functional losses. The importance of the development of both types of assistive technologies is found in the words of one engineer who stated, "it is not high tech or low tech that is the issue; it is the right tech." NIDRR research must be able to identify the most appropriate technological approach for a given application, and continue to develop low tech as well as high tech solutions.

Given the current trend toward more restrictive utilization of health care

funds in both public and private sectors, rehabilitation engineering research must justify consumer or third party costs in relation to the benefits generated for consumers. These benefits may be in the form of long-term cost savings and consumer satisfaction. Equally important, rehabilitation engineers must develop products that are, in addition to being safe and durable, marketable and affordable. End-product affordability is important not only in meeting consumer needs but also in creating the market demand that will encourage manufacturers to enter production.

Systems Technology: Universal Design and Accessibility

As disabled persons enter the mainstream of society, the range of engineering research has broadened to encompass medical technology, technology for increased function, technology that interfaces between the individual and mainstream technology, and finally, public and systems technology. Key concepts of universal design are interchangeability, compatibility of components, modularity, simplification, and accommodations of a broad range of human performance capabilities. Universal design principles can be applied to the built environment, information technology and telecommunications, transportation, and consumer products. These technological systems are basic to community integration, education, employment, health, and economic development. The application of universal design principles during the research and development stage would incorporate the widest range of human performance into technological systems. Universal design applications may result in the avoidance of costly retrofitting of systems in use and possible reduction in need for orphan products.

Technology Transfer

The Institute's emphasis on applied research challenges NIDRR and its researchers to find effective ways of ensuring technology transfer—transfer of ideas, designs, prototypes, or products, from the basic to the applied research environment, to the market, and to other research endeavors. Market size, the potential for manufacturability, intellectual property rights, patents, and regulatory approval are considerations in the conceptualization and design phase of research efforts. NIDRR-funded Rehabilitation Engineering Research Centers (RERCs) consider potential industry partners in selecting research projects that will result in marketable products.

Issues of orphan technology are key to the process of technology transfer, with small markets that have limited capital occasioning the need for subsidies, guaranteed financing for purchases, or other incentives for producers. Future technology transfer efforts at NIDRR will explore better linkages to the Small Business Innovative Research (SBIR) program, a government-wide program intended to support small business innovative research that results in commercial products or services that benefit the public. Innovativeness and probability of commercial success are both important factors in SBIR funding decisions.

Building a Research Agenda

Future rehabilitation engineering research agendas must incorporate several cross-cutting issues, including small markets, and outcomes measures. In addition, research must continue to result in improvements in the functional capacities of individuals with sensory, mobility, and manipulation impairments. Telecommunications and computer access offer significant potential to improve participation of persons with disabilities in all facets of life. Continuous innovations in these areas require that the needs of persons with various disabilities be recognized and accommodated. Finally, access to the built-environment remains a critical need for persons with disabilities, and thus requires ongoing research.

The purpose of NIDRR's research in the area of technology is to:

(1) Develop assistive technology that supports persons with disabilities to function and live independently and obtain better employment outcomes;

(2) Develop biomedical engineering innovations to improve function of persons with disabilities;

(3) Promote the concept and application of universal design;

(4) Remove barriers and improve access in the built environment;

(5) Ensure access of disabled persons to telecommunications and information technology, including through the application of universal design principles;

(6) Ensure the transfer of technological developments to other research sectors, to production, and to the marketplace;

(7) Identify business incentives for manufacturers and distributors;

(8) Identify the best methods of making technology available to persons with disabilities;

(9) Ensure that research and development at both the personal and systems levels takes into account cultural relevance for diverse ethnic and geographic populations;

(10) Develop rehabilitation engineering science, including a theoretical framework to advance empirical research; and

(11) Raise the visibility of engineering and technological research for persons with disabilities as a consideration in national science and technology policy.

Future Research Priorities for Technology

NIDRR's research priorities in engineering and technology will help improve functional outcomes and access to systems technology in the areas of sensory function, mobility, manipulation, information communication, and the built environment, and promote business involvement and collaboration.

Research to Improve or Substitute for Sensory Functioning

Sensory research is directed toward the problems faced by individuals who have significant visual, hearing, or communication impairments. These major conditions have been the focus of a long tradition of engineering research emphasizing both expressive communication and the receipt of information. Research priorities in the area of sensory functioning will focus on enhancing hearing, addressing visual impairments, and accommodating communication disorders. In the area of hearing impairments, specific research priorities include:

(1) Development and evaluation of hearing aids that exploit the potential of digital technology, use advanced signal processing techniques to enhance speech intelligibility, attain a better fit, and ensure compatibility with telecommunications systems and information technology;

(2) Evaluation of the application of digital processing techniques to assistive listening systems;

(3) Evaluation of modern methods of sound recognition in alerting devices; and

(4) Development of interfaces for assessment of automatic speech recognition systems.

In the area of vision impairments, specific research priorities include:

(1) Identification and evaluation of methods to enhance accessibility of visual displays;

(2) Development and evaluation of graphical user interface technologies for various document and graphic processing systems; and

(3) Improvement of signage in public facilities.

In the area of communication impairments, specific research priorities include:

(1) Identification and evaluation of technologies to enhance the communication abilities of persons who are deaf-blind; and

(2) Assessment of the capacity of research in cognitive science, artificial intelligence, biomechanics, and human/computer interaction to improve the rate, fluency, and use of communication aids.

Research To Enhance Mobility

Mobility research is directed toward the problems associated with moving from place to place. Mobility can be enhanced by accessible public transportation; modified privately owned vehicles; wheeled mobility devices such as wheelchairs; orthoses, and prostheses; and barrier removal. In the area of enhancing mobility, specific research priorities include:

(1) Development, evaluation, and commercialization of wheelchair designs that reduce user stress, repetitive motion injury, and other secondary disabilities, while improving safety, ease of maintenance, and affordability;

(2) Revision and dissemination of wheelchair standards;

(3) Development and evaluation of techniques to assist consumers and providers in selecting and fitting wheelchairs and wheelchair seating systems;

(4) Identification of a theoretical framework of gait and other aspects of ambulation;

(5) Development and evaluation of advanced prosthetic and orthotic devices, as well as footwear and other ambulation devices;

(6) Development and evaluation of methods to improve person-device interfaces, post-surgical management and fitting, and materials used in bio-engineering applications; and

(7) Development of devices to assist with ADLs for persons with disabilities and their caregivers.

Research To Improve Manipulation Ability

The manipulation area includes research directed toward restoring functional independence for persons with limited or no use of their hands. This encompasses upper extremity prosthetic and orthotic devices, and novel methods of upper extremity rehabilitation. Issues of weight, durability, and reliability remain challenges in this field.

Repetitive motion injury is emerging as one of the most serious problems among workers. While there have been a number of ergonomic devices introduced to address this problem, the incidence of this condition continues to increase. In the area of improvement of manipulation, specific research priorities include:

(1) Identification of methods to improve the design of and achieve multi-functional control for hand/arm prosthetic technology;

(2) Development and evaluation of surgical approaches that increase functionality;

(3) Development of assistive devices to address manipulation issues for individuals who experience serious weakness, fatigue, or pain, including that attributable to progressive deterioration of function; and

(4) Development and evaluation of devices and techniques to minimize the onset of repetitive motion injuries and to rehabilitate those with the condition.

Technology To Enhance Cognitive Function

Limitations in perception, processing information, organizing thoughts, concentration, memory, and decision-making may result from a range of etiologies—including mental retardation, traumatic brain injury, stroke, mental illness, dementia, and others—and may constitute substantial barriers to function and social integration. These barriers can be exacerbated by sophisticated technology interfaces that require memorizing sequences, reading or interpreting information, or responding to complex auditory or visual cues. Conversely, technology has the theoretical potential to simplify many daily activities and contribute to self-management and independence.

There are three distinct levels of objectives in developing technology to meet needs of persons with limitations in cognitive functioning. The first of these is to assure that new technologies for communication, environmental control, and health maintenance, for example, are accessible to those with cognitive limitations and do not exacerbate their exclusion from mainstream activities.

A second objective is to develop technologies that will assist persons with cognitive limitations in the performance of daily activities. Reminders and cueing devices, trackers and wandering devices, and portable instructional technologies are among the approaches to enabling people with cognitive limitations to remember appointments and medications, locate themselves positionally, follow common instructions, or obtain assistance.

A third objective that challenges researchers is the potential to develop technologies that can enhance or restore some cognitive functions. Automated systems to improve memory have been developed and tested, for example. As the fields of cognitive science and neurosciences, create a better understanding of the biology of cognitive functioning, and as there are concomitant advances in artificial intelligence and expert systems and in the flexibility of microprocessors, a new research frontier may emerge.

Specific priorities in the area of technology to address cognitive limitations include:

(1) Assessment of the state-of-the art in technology and its applications to address cognitive functioning;

(2) Assessment of consumer needs and competencies to use various device features;

(3) Development of technologies to improve job skills and improve employment opportunities;

(4) Development of technologies to maximize independence and ability to perform ADLs and IADLs; and

(5) Development of strategies to ensure that new technologies for the general population are accessible to persons with cognitive limitations.

Research To Improve Accessibility of Telecommunications and Information Technology

Computerized information kiosks, public web sites, electronic building directories, transportation fare machines, ATMs, and electronic stores are just some current examples of rapidly proliferating systems that face people living in the modern world. Research priorities will include development and evaluation of techniques to make such computerized information systems accessible to persons with a range of disabilities.

The information technology and telecommunications industry trend away from standardized operating systems and monolithic applications and toward net-based systems, applets, and object-oriented structures has significant implications for accessibility for some persons with disabilities. Maintaining accessibility to the Internet and World Wide Web is also a formidable challenge facing individuals with disability.

Another concern in telecommunications is electromagnetic interference from the rapidly proliferating wireless communications systems, (e.g., beepers, cellular telephones) and other electronic devices using digital circuitry (e.g., computers, fluorescent light controllers). This

interference is complicating the use of assistive listening devices. Moreover, interference caused by over-use of spectrum is presenting problems in the use of FM Assistive Listening systems.

During the past decade, virtual reality techniques, originally developed by NASA and the military for simulation activities, have been applied in a number of other fields, including architecture and health. Applications can be found in telerobotic systems, sign language recognition devices, intelligent home systems, and aids for persons with visual impairments. There has been some beginning research on the use of virtual reality as an evaluation and therapy tool.

Telecommunications also emerges in other important areas of the lives of persons with disabilities. In a managed care approach to health care, individuals are discharged from acute rehabilitation hospitals earlier than in the past. Because of the decreased length of stay, there is less time for consumers to learn how to manage their conditions. One promising option for ameliorating these effects is telemedicine or "telerehabilitation." Telerehabilitation may allow for distance monitoring of chronic conditions and for monitoring consumer compliance and progress.

In the area of telecommunications and information technology, specific research priorities include:

(1) Development and evaluation of fine motor skill manipulation interfaces, telecommunication interfaces, and analog to digital communication technologies;

(2) Identification of methods to address issues of accessibility through Internet communications;

(3) Development and evaluation of methods for reducing merging forms of interference that affect hearing aids, telephones, and other communication devices;

(4) Determination of the efficacy of virtual reality techniques in both rehabilitation medicine and in applications that affect the daily lives of persons with disabilities; and

(5) Identification of appropriate telecommunications strategies for use in distance follow-up to rehabilitation treatment.

Research To Improve Access to the Built Environment

The built environment includes public and private buildings, tools and objects of daily use, and roads and vehicles, any of which can be accessible or disabling. Architects, industrial designers, planners, builders, and engineers are among the professionals that create this environment. In the area of access to the built environment, specific research priorities include:

(1) Analysis of human factors;

(2) Development and evaluation of modular design;

(3) Determination of best methods of disseminating information on universal design;

(4) Development and evaluation of compatible interfaces; and

(5) Development and promulgation of design standards.

Future engineering research also must recognize the changing roles of consumers, whose participation in research is vital, and the role of assistive technology industries, whose technical capabilities and needs for product development and research are changing. Small businesses, the engine of the orphan technology industry, often cannot support sophisticated research and development efforts necessary to bring quality products to market. NIDRR's research can identify public policy issues, such as orphan technology and tax credits, to foster small business investment in assistive technology innovation. Similarly, NIDRR research can identify public policy and business issues related to mainstream systems and public technology. NIDRR will maintain a research capacity that provides a continuing stream of new ideas, and evidence to validate those ideas, to stimulate the industry.

Chapter 6: Independent Living and Community Integration

"Whether we have disabilities or not, we will never fully achieve our goals until we establish a culture that focuses the full force of science and democracy on the systematic empowerment of every person to live to his or her full potential" (Justin Dart, February 1998 (edited) ON A ROLL RADIO, http://www.onarollradio.com).

Overview

Independent living and community integration concepts and outcomes are key foci of NIDRR research. Central to independent living is the recognition that each individual has a right to independence that comes from exercising maximal control over his or her life, on an ability and opportunity to make choices in performing everyday activities. These activities include managing one's own life; participating in community life; fulfilling social roles, such as marriage, parenthood, employment, and citizenship; sustaining self-determination; and minimizing physical or psychological dependence on others. While independent living emphasizes maximal independence, whatever the setting, it is, by its vary nature, a concept that also emphasizes participation, especially participation in community settings. For this reason, NIDRR is proposing to integrate its research agenda in independent living and community integration to encourage interdisciplinary thinking about the interrelationship, to achieve more successful outcomes for persons with disabilities, and to foster the development of innovative methods to achieve these outcomes and to measure the achievements.

Independent Living and Community Integration Concepts

One framework for formulating this research agenda recognizes that independent living has been used to describe a philosophy, a movement, and a service program. At a philosophical level, independent living addresses the question of equity in the right to participate in society and share in the opportunities, risks, and rewards available to all citizens. It provides a belief system to a generation of people with disabilities. The new paradigm of disability is an outgrowth of this philosophical concept of equity, bringing social and environmental elements to the meaning of disability.

At a movement level, independent living has been integral to the development of the disability rights movement. This movement primarily has used a civil rights approach to demand equal access for persons with disabilities, leading most notably to the passage of the Americans with Disabilities Act (ADA) in 1990. These movement activities have had a significant impact on disability policy and will continue to be examined as part of NIDRR's Disability Studies funding.

At the service system level, more than 300 centers for independent living receive funding under the Rehabilitation Act and these centers foster and enhance independent living for persons with disabilities. In addition, both Federal and State funds support community-based residences for members of the developmentally disabled community as well as members of other disability groups. In the past NIDRR has supported research to develop management strategies for these centers.

Community integration also has conceptual, movement, and service delivery components. As a concept, it incorporates ideas of both place and participation, in that community integration means not only that a person

is physically located in a community as opposed to an institutional setting, but that the individual participates in community activities. Issues of consumer direction and control also are integral to concepts of community integration.

As a movement, community integration had a primary goal of deinstitutionalization of persons with mental retardation or mental illness and has succeeded in moving many individuals from large institutional settings back into the community. The deinstitutionalization movement arose from a confluence of consumer advocacy, judicial decisions, research efforts, and public policy reforms. During the last 30 years, deinstitutionalization decreased the number of individuals with mental retardation and mental illness residing in state institutions by more than 75 percent. In addition, advocacy organizations for people with physical disabilities have implemented the movement aspects of community integration in their demand for community-based supports and services.

At the service system level, community integration has resulted in development or expansion of a range of services and programs designed to support individuals with disabilities to live in their communities. For instance, individuals who need assistance with ADLs, such as bathing, dressing, or ambulation, often need personal assistance services (PAS) to live independently in the community. In the traditional service delivery model, long-term care agencies supply PAS by providing home health care aides to individuals. These aides tend to work under the direction of professional health care providers and perform a restricted set of tasks in time frames determined by the agency. A support model, however, shifts the locus of control to the consumer, who is responsible for recruiting, hiring, training, supervising, and firing assistants.

Expanding the Theoretical Framework

NIDDR proposes the continued development of a knowledge base about the meaning and application of independent living and community integration concepts. This theoretical approach will address issues of inclusion, bases for participation, and ways in which persons identify their communities. This effort will be interdisciplinary in nature and will draw from disciplines such as anthropology, sociology, social psychology, history, Disability Studies, engineering, and medicine. Each of these disciplines have offered various interpretations of the issues at the core of the concept of community. Anthropologists have defined community to emphasize a shared culture or a way of organizing and giving meaning to life events. Sociologists have discussed community as an organized group dealing with common issues in relation to other organized groups within an environment. Historians have defined community as a web of relationships creating a social order within a political and spatial context that often focuses on issues of who is legitimately a community member. In the world of disability and rehabilitation, community also has had multiple meanings. In medical rehabilitation, return to community usually refers to life outside a medical facility, typically the community in which an individual resided before an injury or illness. In the disability world, community sometimes means the community of those living with a disability, those who share experiences or identity.

To go from theory to practice involves identifying the necessary factors for achieving independence within a community setting. In recent years, there has been a shift from a traditional service delivery model to a model that emphasizes consumer direction and support. As a consequence, individuals with disabilities of all types have shifted from a dependence on agency service providers to an active use of community-based supports. In the support model, consumer choice, customization of needed services, and consumer empowerment are of increased importance compared to the traditional model in which service agencies emphasized professional competence, accountability, and quality control by service providers, and the safety of clients. Also, in the support model, persons with disabilities are perceived as self-directed, able, and mainstreamed as opposed to being helpless and objects of care in the traditional model. Implications for research focus on investigation of major physical and societal environmental factors, including physical accessibility; societal attitudes and policies; and availability of services, supports, and assistive technology that facilitate full participation.

The emphasis on social and policy barriers inherent in the new disability paradigm provides an incentive to examine the extent to which the ADA has contributed to independent living and community integration. The ADA applies a civil rights model in addressing societal policies and practices that create barriers to full participation in society. If, however, the ADA is to have a truly transformative impact on American society, there must be a vision of a non-discriminatory society against which progress can be measured. At present, there are no real benchmarks by which to assess the ADA's impact. Evaluations tend to be in terms of "cases" handled, complaints resolved, lawsuits won, physical barriers removed, or volumes of information assembled rather than the extent to which the ADA has resulted in greater participation in society by persons with disabilities.

The growing realization of the importance of environmental barriers in disability focuses concern on environmental changes that have the potential to impede or facilitate independent living and community integration. Perhaps most striking are the continuous developments in telecommunications and information technology. Accessible computers and Internet infrastructure as well as universal or specialized communication devices afford access to information and interactions among persons with disabilities, their families, advocates, service providers, employers, and others. Careful planning, based on research, will be a requirement for ensuring that new technologies increase participation rather than isolation for persons with disabilities.

Directions of Future Research on Independent Living and Community Integration

The purpose of NIDRR's research in the area of independent living and community integration is to facilitate participation of persons with disabilities in society by:

(1) Identifying and evaluating factors or domains of community integration and independent living, especially those aspects that lead to full participation in society;

(2) Identifying and evaluating community support models that promote community integration and independent living outcomes for individuals with all types of disabilities and from a full range of cultural backgrounds;

(3) Providing empirical evidence of the impact of consumer control on outcomes associated with community integration and independent living;

(4) Assessing the impact of environmental factors on individual achievement of community integration and independent living;

(5) Developing and disseminating training on independent living and

community integration concepts and methods for consumers, families, service providers, and advocates; and

(6) Developing and evaluating management tools to enable centers for independent living and other community programs to support independent living and community integration.

Future Research Priorities in Independent Living and Community Integration

Research will analyze the implications of shifting from services to supports for the individual and must develop an in-depth understanding of the role of supports in facilitating community integration and independent living.

Research on Community Integration/ Independent Living Concepts

Both personal experience and certain academic disciplines provide guidance for understanding community integration and independent living. Development of an integrated conceptual framework will facilitate rigorous research on how to use community integration and independent living concepts to improve the lives of persons with disabilities. Additionally, research must find ways to measure these outcomes in order to evaluate services provided to persons with disabilities. Specific research priorities include:

(1) Review of relevant scholarship and creation of a theoretical framework for the study of community integration and independent living that incorporates the real world experiences of persons with disabilities, and includes knowledge gained from Disability Studies;

(2) Development of measures that build upon the conceptual framework, and that can be applied to evaluation or rehabilitation intervention intended to increase independence and integration; and

(3) Analysis of cultural perspectives as facilitators-obstacles to independent living and community integration.

Research on Implementation of Community Integration/Independent Living Concepts

The independent living and community integration movements have contributed conceptual standards for evaluating disability and medical rehabilitation services and programs. Further research is needed on how to apply these concepts in different real-world settings. currently, many programs and services do not reflect these concepts and, consequently, often provide services that do not incorporate consumer direction or allow consumer choice. Specific research priorities include:

(1) Identification and assessment of models of service delivery that incorporate concepts of independent living and community integration and reflect understanding of the importance of environmental barriers; and

(2) Development and dissemination of training materials on independent living and community integration concepts for consumers, families, service providers, and advocates.

Research on Measures of Independence and Community Integration

To evaluate how programs and services contribute to the outcomes of independence and community integration, researchers, policymakers, and consumers must have adequate measures of these outcomes. As discussed elsewhere in this plan, NIDRR is placing special emphasis on development of measures of the interrelationship between the individual and the environment. Concepts of independent living and community integration are integral to that process. Specific research priorities include:

(1) Development of measures of independence and community integration that are consumer sensitive and that measure the impact of the environment and accommodation on these outcomes; and

(2) Evaluation of strategies to promote independence, inclusion, and participation.

Research on Physical Inclusion

Housing, transportation, communication, and architectural barriers limit the physical inclusion of persons with disabilities. Lack of funding also affects access to these necessary community supports and funding constantly changes because of policy decisions at the Federal and State levels. Specific research priorities include:

(1) Identification and evaluation of models that facilitate physical inclusion, including the development and evaluation of supported housing and transportation models that are consistent with consumer choice; and

(2) Investigation of the impact of managed care on access to services and equipment that provide support for physical inclusion.

Research on the Impact of the ADA

The impact that the ADA has had or will have on participation in society currently is unknown. It is important to identify the obstacles to optimal achievement of the goals of the ADA. Specific research priorities include:

(1) Evaluation of the impact of the ADA on community participation of persons with disabilities and on the achievement of independent living and community integration outcomes;

(2) Examination of questions of accessible infrastructure, employment patterns, civic participation, recreational activities, societal attitudes, and policies to determine what post-ADA policy initiatives may be required to attain full participation by persons with disabilities; and

(3) Analysis of the extent to which the ADA has affected other public policy initiatives.

Research on the Impact of Technological Innovation

While the potential benefits of technological innovations are often assumed, there also are potential issues about accessibility, equity, and application of communications technology and how these issues affect independent living and community integration. Specific research priorities include:

(1) Assessment of the impact of applications of telecommunications innovations on independent living and community integration outcomes;

(2) Identification of barriers to participation in the community, including those resulting from inequitable distribution of technology or reduction of interpersonal contact; and

(3) Exploration of potential innovative applications of telecommunications and information technologies to expand opportunities for informed choice, independence, communication, and participation.

Research on Increasing Personal Development and Adaptation

NIDRR previously has funded personal skills development training to assist people with disabilities to live in the community. This training includes skills related to behavior management, communication, and productive work. In the area of behavior management for people with mental retardation and mental illness, strategies have focused on minimizing "challenging behaviors." Specific research priorities include:

(1) Identification of strategies that promote development of self advocacy skills, including social and communication tools to assist people with disabilities to live in community settings;

(2) Analysis of the influences of environmental factors in developing positive behavioral support models;

(3) Development of cost-effective techniques to foster the capacity of providers; educators, and families to prevent or respond to challenging behavior;

(4) Assessment of the potential role of technology in promoting personal development and adapation in community settings; and

(5) Development of strategies and tools to improve consumer choice and decisionmaking about assistive technology and to assess its performance.

Research on Personal Assistance Services

It is important to test hypotheses about the role of personal assistance services (PAS) in promoting community integration, return to work, and health maintenance, and the impact on the use of health care and institutionalization dollars. The relative value of different PAS systems for disabled individuals of varying ages, disability types, ethnic groups, and personal independence goals is unknown. Although research has demonstrated the impact of consumer-directed PAS models on consumer satisfaction, the relationship of satisfaction to quality of life and other outcomes measures needs further explication. Specific research priorities include:

(1) Evaluation of the quality-of-life and cost-effectiveness outcomes of consumer-directed services;

(2) Analysis of the impact of PAS on participation in employment; and

(3) Evaluation of the impact of assistive technology on need for and use of personal assistance services.

Research of Social Roles

Public policy research is needed to examine how rules and regulations of public programs affect achievement of desired roles by people with disabilities. Marriage, parenthood, and employment are among the social roles that are often discouraged by legislation, regulations, policies, and practices. Specific research priorities include:

(1) Investigation and documentation of the ways in which Federal, State, and local legislation, regulations, policies, and practices impact on social role performance of persons with disabilities; and

(2) Identification and evaluation of tools to assist persons with disabilities in fulfilling their social roles. Research on Social Integration and Self-Determination.

The abilities to form mutually rewarding and non-exploitative friendships, to recognize and express personal preferences, to evaluate options and make decisions, to advocate for oneself, and to adapt to changes in circumstances are attributes that contribute significantly to independent living and community integration. Specific research priorities include:

(1) Identification and evaluation of service delivery models that incorporate individual choice and consumer control into strategies for achieving social integration and self-determination;

(2) Development of measures to evaluate independent living and community integration in terms of inclusion, social integration, and self-determination; and

(3) Assessment of the prevalence of abuse and violence in community settings and development of strategies to minimize their occurrence.

Research on Management Tools for Centers for Independent Living and Community-Based Residential Programs

NIDRR has previously funded research on effective management strategies for centers for independent living, as well as research on community residential living for individuals with mental retardation and long-term mental illness. Continued research in these areas will evaluate the effectiveness of current systems and address the challenges to these programs in their expanding roles. Specific research priorities include:

(1) Development of strategies for centers for independent living to succeed in their roles with State rehabilitation agencies, and other agencies and groups concerned with independent living;

(2) Development and evaluation of strategies for centers for independent living and community based residential programs to design and adapt programs that address the changing nature of the disability population; and

(3) Development and evaluation of strategies for centers for independent living to respond to increased emphasis on ADA issues, such as accommodation, accessibility, and universal design; and

(4) Investigation of applications of new information technologies in management of centers for independent living and community based residential programs. Research to facilitate community integration and independent living will focus on strategies to make communities, social systems, public policies, and the built environment more accessible to persons with disabilities and more supportive of their independence and participation. In the new paradigm scenario, the emphasis will be on supports rather than services, the managers of support systems will increasingly be persons with disabilities themselves, and services originally designed for application in institutions will be adapted for use in the general community.

Chapter 7: Associated Disability Research Areas

"I make no claim, as other people with a disability might, that the essence of what I experience is inherently uncommunicable to the able-bodied world. I do not believe that there is anything in the nature of having a disease or disability that makes it unsharable or even untellable" (Irving Zola, 1935–1994).

Several important issue areas cut across the four research areas—Employment, Health and Function, Technology for Access and Function, and Independent Living and Community Integration—described in the earlier part of this section. Disability statistics, disability outcomes measures, Disability Studies, rehabilitation science, and disability policy research are all integral to successful completion of a comprehensive agenda in disability and rehabilitation research. NIDRR will fund research efforts in each of these areas during the next five years to enhance NIDRR's overall research program and contribute to NIDRR's achieving its goals of helping people with disabilities attain maximal independence. Priorities for each research area are discussed below.

Disability Statistics

NIDRR has several purposes in advancing work in disability statistics. First, it is important to maximize the usefulness of data currently collected in reliable national data sets. Second, it is important to encourage the creation and analysis of research databases, including meta-analyses focused on problems such as employment rates or utilization of health care or social services. Third, NIDRR seeks to understand the composition of a possible emerging universe of disability created by new disabilities or socioeconomic variations in the distribution of existing disabilities. These changing areas have implications for both public health and rehabilitation. Fourth, NIDRR wants to assist in providing input to the formulation of national disability statistics policy, including the incorporation of measures relevant to the new paradigm of disability. Finally, NIDRR recognizes the need for surveys to be conducted in accessible formats, and for disability demographic and statistical data to be readily available to a wide range of audiences.

Data about the incidence, prevalence, and distribution of disability and the characteristics and experiences of disabled persons, are critical to

planning research and services, evaluating programs, and formulating public policy. These data may be generated by diverse sources such as national population surveys, program data collection on participants, and researcher-compiled data sets relevant to specific research areas. Other, less prominent sources include State and local surveys, advocacy organization data, and market research data.

Existing data resources are of varying degrees of completeness and quality, and are not sufficiently comprehensive in scope or perspective. None takes into account the new paradigm of disability that examines the interaction between the individual and the environment, and requires measures of environmental as well as individual factors that continue to disability. NIDRR has taken a lead role in elucidating the connection between impairment and the supports or limitations imposed by the built and social environments, and will initiate the process of developing new survey measures to define disability accurately and reliably in the context of both individual and environmental factors.

Research Priorities for Disability Statistics

NIDRR will continue to support the secondary analysis of major national data sets, especially the Disability Supplement to the National Health Interview Survey, identifying information and connections not considered by the survey sponsors. NIDRR's other focus will be the refinement of the disability data effort to reflect new paradigm concepts. Specific research priorities include:

(1) The elucidation of salient issues or the stimulation of further research questions through meta-analyses;

(2) Development and evaluation of state-of-the-art measurement tools that will assess the complex interactions between impairment and environment;

(3) Development and evaluation of strategies to ensure that disability statistics accurately capture information on underrepresented minorities and emergent disabilities;

(4) Development and evaluation of methods for ensuring the dissemination of disability statistical data to diverse audiences; and

(5) Development and testing of accessible survey instruments and protocols.

Rehabilitation Outcomes Measures

The important of demonstrating outcomes across service settings, programs, and research efforts cannot be overemphasized, given resource allocation issues and concerns about value that operate at every level of our society. Demonstrating outcomes is an integral part of NIDRR's research agenda now and in the future. For purposes of discussion, several categories of outcome measures are presented. In practice, however, these measures may not be mutually exclusive.

One area in which significant prior work on outcomes measures has occurred is medical rehabilitation. A number of measures have been developed and integrated into service delivery and research settings. Examples of these measures include impairment specific measures such as the NIH Stroke Scale, disability measures like the Functional Independence Measure (FIM), and measures of handicap such as the Craig Hospital Assessment and Reporting Technique (CHART). Many of these measures, however, have been validated narrowly and are not applicable across disability groups. Some were developed for hospital settings and require revision for use in post-acute programs or in community settings. The new focus on long-term outcomes requires measures that can document changes over time. Use of an outcomes-based approach also has ramifications for sample design, in terms of identifying homogeneous groups of consumers for comparison and using effective risk-adjustment methodologies. New managed care approaches have resulted in demands by people with disabilities for outcomes monitoring to ensure that quality care standards are met. This concern for measurable outcomes, based on quality standards, also is evident in the payer community, which has raised questions about evidence of the efficacy of treatments.

Consumers have expressed particular concern about quality assurance in the area of assistive technology. NIDRR will support investigations to identify and develop evaluation methodologies and outcome measurement models for consumer assessments of assistive devices.

Expanding the focus of outcomes research to incorporate measures of environment and accommodation is critical to continued implementation of a new paradigm of disability. At the present time, our ability to describe the interaction of individual and environment is limited by a lack of validated measures. A number of conceptual and methodological concerns must be addressed in developing such measures. Of particular relevance is how best to account for the impact of numerous variables, including environmental factors, that impinge on long-term outcomes.

Independence and community integration have been identified as overarching NIDRR goals, and NIDRR's research initiatives relate directly to supporting achievement of these goals. As indicated earlier, some measures of community integration are already in use, including CHART and the Community Integration Questionnaire (CIQ). These measures, developed for specific populations, are examples of tools that might be refined to monitor and compare progress toward goals of independence and community integration.

Distinctly related to functionally oriented medical outcomes measures are measures of quality of life. These measures are conceptually linked to individual values about living with disability and include the impact of rehabilitation and environmental barriers. A particular challenge in developing these measures is the qualitative nature of individual valuation of life quality and the difficulty of constructing ways of comparing individual perceptions.

Research Priorities for Rehabilitation Outcomes Measures

NIDRR will support research and development activities that increase the availability of measures across the areas discussed in this section. Specific research priorities include:

(1) Refinement of exiting measures of medical rehabilitation effectiveness to improve assessment of functional ability by incorporating environmental factors, and to increase applicability to all disability populations and rehabilitation settings;

(2) Development and evaluation of measures of independence, community integration, and quality of life, especially measures that incorporate the perspectives of persons with disability; and

(3) Development of measures for use in outpatient and community-based settings.

Disability Studies

The field of disability and rehabilitation research has not reached a general consensus on the meaning of the term "Disability Studies." NIDRR uses the term generally to refer to the holistic study of the phenomenon of disability through a multidisciplinary approach that emphasizes the perspectives of persons with disabilities and regards personal experience as valuable data. The IOM, in Enabling America, describes Disability Studies as "the examination of people with disabling conditions and cultural response to them through a variety of

lenses, including . . . economics, political science, religion, law, history, architecture, urban planning, literature. . . ." (1997, p. 289). NIDRR believes that Disability Studies is a natural complement to the new paradigm, emphasizing study of the complex relationship between various aspects of disability and society, and will enhance the methodologies and knowledge base of each involved scientific discipline.

In this respect, the content of Disability Studies is not unlike that of other area studies, such as Women's Studies, African-American Studies, or geographic, regional or ethnic studies (e.g., Middle Eastern Studies or Islamic Studies). All of these areas of study require the convergence of theory, technique, and methodology from a range of disciplines to develop an enhanced understanding of a complex phenomenon.

Another purpose for the development of any area of studies is to assure that the perspective of the group under study is reflected in the methodology and body of core knowledge, and that individuals from the group have the opportunity to participate in the development and promulgation of the methodologies and the curricula. This also can be expected to lead to an impact on core disciplines, specifically an impact that requires development of theories and hypotheses that do not ignore the subject population. For example, Women's Studies have influenced the development and legitimation of studies of the sociology of gender within a discipline that 30 years ago relegated the study of women, when they were studied at all, to home economics or family relations. Economists analyzing poverty now must consider the particular causes and effects of poverty among women and in ethnic groups, largely due to the attention and legitimation of these subjects by the "area studies" efforts.

NIDRR has three basic purposes for supporting a program of Disability Studies. First, disability and rehabilitation research needs a body of knowledge that is comprehensive and holistic, reflecting a range of disability perspectives, and it needs a larger cadre of researchers and policymakers familiar with that knowledge base. Second, the field of disability and rehabilitation research needs to develop methodologies and influence the theories and practices of a range of disciplines in order to ensure their constructive attention to the issues related to disability, thereby enhancing the scientific endeavor. Third, consistent with the goals of the Rehabilitation Act, as amended in 1992, especially its principles of inclusion, integration, and independence, NIDRR believes it is important to reflect the perspectives of individuals with disabilities in studies of disability and to afford increased opportunity for individuals with disabilities to participate in the development of curricula and methodologies to study the phenomenon of disability.

Research Priorities for Disability Studies

Specific research priorities for Disability Studies include:

(1) Development of a theoretical framework for conducting Disability Studies and strategies for teaching Disability Studies at various academic and non-academic levels;

(2) Compilation of information about the many forms of extant Disability Studies, including academic levels, disciplines involved, course content, resources, and students; and

(3) Exploration of the feasibility of developing non-academic courses in Disability Studies that will facilitate the study of the experience, history, and culture of disability in community-based settings.

Rehabilitation Science

Permeating NIDRR's research agenda will be an awareness of opportunities to construct and test a theoretical framework for rehabilitation science. As defined in the 1997 IOM report, Enabling America, rehabilitation science is a study of function, focusing on the processes by which disability develops, and the factors influencing these processes. Its goals are to contribute to better treatment and technology for persons with disabilities. Rehabilitation science focuses on factors that lead to transitions along a continuum from underlying pathology to functional independence, including impairment, functional limitation, and disability. In addition, it analyzes physical, behavioral, environmental, and societal factors that affect movement along the continuum (Brandt & Pope, 1997). The field of rehabilitation has produced a body of empirical evidence regarding function and interventions to improve function. The next challenge is to use this evidence to produce a body of scientific and engineering theory that can be applied to the development of breakthroughs in functional restoration techniques.

Research Priorities for Rehabilitation Science

Specific research priorities for rehabilitation science include:

(1) Further elucidation of the enabling-disabling process; and

(2) Exploration of the development and application of a theoretical framework for rehabilitation science.

Disability Policy

Public disability policy broadly defines the participation of disabled persons in the general benefits society provides to all citizens, as well as the parameters of disability-specific benefits. Public policy has more significance for people with disabilities and their families than for many segments of the population. This differential impact stems, in part, from the fact that people with disabilities must interface with so many different components of public policy systems, many of which are conflicting or inconsistent, such as employment goals and requirements for income assistance programs. The larger public policy content for disability and rehabilitation research reflects interlinking service delivery systems in which changes in one system often have substantial impact on others. The dilemma for disability and rehabilitation policy is that the various systems are not mutually reinforcing.

The lack of mutual reinforcement stems from four factors. First, policy goals may be, to some degree, mutually exclusive; that is, policies designed to emphasize one goal may be implemented only at the expense of other goals. Second, different policies are governed by different and conflicting assumptions about disability and the role of people with disabilities in American society. Third, some service systems lack integration with other systems and programs needed to promote continuity between different parts of people's lives. Fourth, disability has been largely ignored in national science and technology policy. Thus, underlying conflicts may exist and result in unintended disincentives to work and independence.

At the systems and societal levels, the potential impact of policy initiatives on persons with disabilities may be even more significant, although more likely to go unrecognized. The impact of telecommunications, the built environment, health care, and labor market policies have been discussed in this Plan.

Research Priorities for Disability Policy

Disability policy research should examine issues that are national in scope and that represent intersections of public interest. Such research should use national data sets, where possible, to determine the impacts of policy

decisions on persons with disabilities. Specific research priorities include but are not limited to:

(1) Analysis of how the bundling of income supports with other benefits, including health insurance and other in-kind assistance such as housing subsidies or food stamps, affects individual decisions to seek or continue employment;

(2) Evaluation of the impact of changing social policies toward parenting, personal assistance services, tax deductions, or education, among other factors;

(3) Analysis of the impact of welfare-to-work initiatives on the well-being of persons with disabilities or their families;

(4) Evaluation of the impact of macroeconomic issues, such as changing labor force requirements, on employment opportunities of persons with disabilities;

(5) Evaluation of the impact of legislation and policy on employers, professional service providers, social service agencies, and direct support workers in terms of their participation in employing, serving, or working for disabled persons;

(6) Investigation and evaluation of the relevance of frameworks for disability research, including but not limited to research on the role of market forces (balancing supply and demand) on disability policy;

(7) Investigation of the impact of national telecommunications and information technology policy on the access of persons with disabilities to related education, work, and other opportunities; and

(8) Examination of the impact of national housing policy and building codes on the living environments and housing choices of persons with disabilities and their families.

Related disability research emphasizes knowledge areas that are cross-cutting and essential to the support and refinement of disability research generally. The common theme linking disability statistics, outcomes measures, Disability Studies, rehabilitation science, and disability policy is that they all provide essential frameworks building blocks that enable the disability research and enterprise to thrive and to address important issues in meaningful ways.

Chapter 8: Knowledge Dissemination and Utilization

"Our mission at the Office of Special Education and Rehabilitative Services is to ensure that people with disabilities become fully integrated and participating members of society. Dissemination and utilization are the tools through which we do this" (Judith E. Heumann, OSERS Assistant Secretary).

Overview

Effective dissemination and use of disability and rehabilitation research are critical to NIDRR's mission. Research findings can only improve the quality of life of people with disabilities and further their full inclusion into society if they are available to, known by, and accessible to all potential users. NIDRR supports a strong dissemination and utilization program that reaches its many constituencies: Research scientists, people with disabilities, their families, service providers, policymakers, educators, human resource developers, advocates, entities covered by the ADA, and others. In carrying out this mission, NIDRR's challenge is to reach diverse and changing populations; to present research results in many different and accessible formats; and to use technology appropriately.

The Rehabilitation Act's 1992 amendments included language requiring NIDRR to ensure the widespread distribution, in usable formats, of practical scientific and technological information generated by research, demonstration projects, training, and related activities. In addition, NIDRR's responsibilities were amended to emphasize wide dissemination of educational materials and research results to individuals with disabilities, especially those who are members of minority groups or of unserved or underserved groups. In addition, the statute requires Rehabilitation Research and Training Centers (RRTCs) to serve as information and technical assistance resources to providers, individuals with disabilities, and others through workshops, conferences, and public education programs. Rehabilitation Engineering Research Centers (RERCs) are required to disseminate innovative ways of applying advanced technology and to cooperate with Tech Act projects to provide information to individuals with disabilities to increase their awareness of options and benefits from assistive technology.

Effective dissemination employs multiple channels and techniques of communication to reach intended users. This chapter addresses strategies and techniques to disseminate information to a wide range of target audiences and to promote the utilization of this information. These strategies take into account a range of uses—conceptual or practical, total or partial, converted or reinvented. The strategies also incorporate innovative technologies to enhance direct access by diverse groups. Additionally, this chapter outlines NIDRR's proposed research agenda for dissemination and utilization activities.

The Knowledge Cycle—The Role of Dissemination and Utilization

The components of the knowledge cycle are knowledge creation, knowledge dissemination, and knowledge utilization. The concept of the cycle implies continuous interaction among its parts. At NIDRR, knowledge creation results from funded research and training programs, and staff activities. The challenge of NIDRR's dissemination and utilization activities involves transferring this knowledge, targeted to specific user populations, to improve the lives of persons with disabilities.

Effective dissemination requires understanding that communication channels are continually expanding and range from personal communications to mass media (e.g., print, radio, television, the emerging information superhighway, and the merging of these and other communications technologies). To choose the most effective communication strategy, it is helpful to identify clearly the intended audience (e.g., scientists, service providers, persons with disabilities), the context for use (e.g., home, work, community), and the characteristics of the information to be disseminated (e.g., type, use, relative advantage, compatibility, complexity).

Knowledge utilization activities focus on ways to facilitate use of research results, new technologies, and effective practices or programs. To be used, knowledge must relate to a perceived need, must be understandable, and must be timely. Thus, awareness of potential uses for the information should influence research design and materials development, keeping in mind that flexibility is important because there may be unanticipated audiences for the material. Selecting dissemination strategies that relay information quickly is equally important.

The Changing Environment for Dissemination

The environment in which dissemination and utilization strategies operate is being affected by a number of changes, including technological innovation, changing etiology of disability, and an increased emphasis on the individual's interaction with the physical and social universe. These changes must be factored into future

dissemination and utilization approaches.

As Paisley notes, "Many of the problems that challenge knowledge utilization have changed little since the 1960s and 1970s; however, the communications environment of knowledge utilization has changed dramatically (as cited in Southwest Educational Development Laboratory, 1996)." Consumer demand for direct and rapid access to information, and the technological capacity to disseminate information simultaneously and inexpensively to mass audiences through electronic media, such as the World Wide Web, are changing dissemination and utilization strategies. The Internet, a beginning step in the creation of the global information superhighway, is open to anyone with a computer, modem, and telephone. The number, sophistication, and accessibility of Internet sites serving the information needs of people with disabilities are increasing rapidly. These innovations permit NIDRR projects and centers to communicate more easily with larger numbers of targeted users at all phases of the research process; however, this proliferation raises difficult questions about equity, access, and effectiveness (Southwest Educational Development Laboratory, 1996, p. 8).

Changes in the prevalence and distribution of disabilities are influencing NIDRR's research. An emerging universe of disability, incorporating disability related to underlying social and environmental conditions such as poverty, isolation, and aging, has created new disabilities and new targets for dissemination of research findings.

Finally, the importance of an ecological science model that focuses on relationships and interactions that influence, and are influenced by, the environment of an individual, organization, or community is receiving increased recognition. Research affects society; society, in turn, affects what is studied and how it is studied. NIDRR supports research that is issued-based and flexible to facilitate timely responses to environmental changes and timely contributions to society.

Dissemination/Utilization Strategies for the Future

In response to the needs of constituencies and to the changing physical and social environment, future dissemination and utilization strategies must build upon successful past strategies, while capitalizing on the potential of electronic media and other telecommunications innovations. These strategies must provide accessible formats for new population groups and for individuals with cognitive or sensory disabilities. To be successful, NIDRR grantees need assistance with early integration of dissemination and utilization features into research projects. Efforts will continue to increase the capacity of consumers to access and use research-based information. Finally, NIDRR will support research that will determine effective dissemination methods and evaluation techniques.

In the section that follows, a number of dissemination and utilization activities are proposed. These proposed activities reflect NIDRR's concerns about the importance of dissemination in making research usable to its constituencies.

Dissemination of Research Findings

NIDRR, in order to enhance dissemination of research, will undertake a number of activities, including a national information center, creating databases, developing consumer partners, providing specialized assistance to grantees, using electronic media, targeting new audiences, and evaluating dissemination methods.

Establishing a National Information Center

NIDRR will establish a national dissemination center to address long-term dissemination and utilization objectives for individuals, groups, and communities representing diverse geographic, multicultural, and socio-economic populations. This center will provide technical assistance to grantees in improving their dissemination activities; conduct selected national dissemination projects; and serve as a resource on dissemination theory, new techniques, and evaluations of dissemination strategies. The center will maintain a web site and will work with groups of NIDRR grantees—for example, the Model Projects for Spinal Cord Injury—to develop accessible, special-focus web sites. In addition, the center will:

(1) Publish research findings in refereed journals for the academic community;

(2) Translate complex research findings into accessible language and format, in consumer-oriented publications;

(3) Maintain a library and information center, such as the National Rehabilitation Information Center (NARIC), with archival and bibliographic retrieval capacity; and

(4) Determine markets for NIDRR-funded research products and appropriate strategies for reaching these markets.

Using Databases and Key Publications. To support knowledge dissemination and extend the availability of research products, NIDRR will:

(1) Maintain a database of assistive technology products, such as ABLEDATA, that is accessible to consumers and service providers, and is available on the Internet;

(2) Make key publications, such as NIDRR's Program Directory and Compendia of Research products, available on the Internet; and

(3) Establish a management database to track dissemination activities and to identify research results suitable for further dissemination.

Developing Consumer Partnerships

To enlist the target populations in ensuring that disseminated research findings are relevant, accessible, and useful, NIDRR will:

(1) Explore the potential for developing partnerships with independent living centers and State Vocational Rehabilitation agencies to identify, repackage, and market information specific to their needs;

(2) Provide technical assistance to community organizations or public agencies to facilitate the adaptation of research findings into practical use; and

(3) Provide technical assistance and training to consumers and consumer organizations on accessing, interpreting, and using new information, including training on use of electronic information sites and on providing feedback to the research process.

Providing Specialized Assistance to Grantees in Their Dissemination Roles

NIDRR Centers and other grantees are important information resources; and, to enhance their productivity in dissemination the results of their research, NIDRR will:

(1) Promote the publication of research findings in scientific journals and in consumer-oriented publications;

(2) Provide technical assistance for "translation" and marketing;

(3) Develop inter-center and inter-project linkages for routine communication and sharing of information;

(4) Assure timely availability of research findings and products in usable form for targeted user groups; and

(5) Provide technical assistance on dissemination and utilization processes to constituency groups.

Using Electronic Media and Telecommunications

Exciting developments in information technology greatly enhance the possibility of reaching more research information users in efficient and effective ways, and to capitalize on this potential, NIDRR will:

(1) Explore the feasibility of an Online Disability New Service, focusing on government-funded research data; funding opportunities; updates from the legislative, judicial, and executive branches of government; awards; achievements; current issues; and problem solving attempts;

(2) Initiate activities to improve the portrayal of individuals with disabilities in the media, including specialized media efforts directed toward the Nation's youth or diverse cultural groups;

(3) Examine the role of distance learning approaches in dissemination;

(4) Explore communications strategies for effective Internet searches for disability-related information, including directories of sites and a thesaurus of key words; and

(5) Provide technical assistance and training to consumers and consumer organizations on accessing, interpreting, and using new information, including training on use of electronic information sites. Emphasize ways to increase the skills and access of elderly and minority consumers to the Internet and other electronic media.

Reaching Out to New Audiences

The changing nature of disability and of the disabled population require thoughtful efforts to reach new audiences. To facilitate these efforts, NIDRR will:

(1) Ensure the accessibility—both in format and content—of all products disseminated by NIDRR and its grantees. This may include the use of alternate formats (e.g., Braille, large print, audiotape, captioned videos) or the use of language appropriate for persons with cognitive impairments or who are non-English speaking;

(2) Improve dissemination of information from NIDRR-funded projects to consumer audiences of culturally diverse backgrounds as well as elderly people, newly disabled individuals, and other people with disabilities who may not be reached by traditional dissemination methods;

(3) Target general audiences that influence the opportunities available to persons with disabilities. These general audiences include employers, manufacturers, educators at all levels, economic development and planning personnel, service establishments, the media, and policymakers at local, State, and national levels; and

(4) Explore ways to involve people with disabilities in all aspects of the research cycle.

Evaluation of Dissemination Methods

Finally, while commercial media efforts are regularly evaluated, little has been done to assess the effectiveness of research dissemination strategies in the disability field. Given the central importance of dissemination to its broad constituency, NIDRR will:

(1) Conduct projects to advance theories in dissemination and utilization and to evaluate the application of the various dissemination and utilization approaches;

(2) Test methods for measuring the utilization and impact of research results for different target audiences; and

(3) Evaluate the appropriateness and effectiveness of web-based dissemination and distance education models for conveying information to the range of target audiences.

Chapter 9: Capacity Building for Rehabilitation Research and Training

Overview

To ensure that research improves the lives of individuals with disabilities, NIDRR will support efforts to enhance the capacity of the field to conduct research that is scientifically excellent and relevant to the concerns of disabled individuals, service providers and the science community. This research will be based in the contextual paradigm of disability, emphasizing cross-disciplinary efforts and participatory research that take into account trends in science and society, and that are reflective of disability culture. Capacity building involves training those who participate in all aspects of the disability research field, including scientists, service providers, and consumers. While NIDRR's programs have made significant contributions to creating the disability and rehabilitation research capability that exists in our Nation today, it will be necessary to refocus the content, and, to some extent, the structure of those programs to meet the emerging needs of science and consumers. NIDRR will make creative use of funding mechanisms to meet these challenges.

Priorities in Capacity Building

NIDRR interprets its capacity-building responsibilities as multifaceted. NIDRR's principal statutory mandate for training is to support advanced instruction for researchers and service providers. NIDRR also has an implied mandate, strengthened in the 1992 Amendments, to train consumers in the applications of new research knowledge and in the uses of assistive technology. To advance the disability and rehabilitation field, NIDRR will expand the scope of its capacity-building activities to:

(1) Raise the level of rigorous qualitative and quantitative research and increase the use of state-of-the-art methodologies by providing advanced training in disability-related research for scientists, including those with disabilities and those from minority backgrounds;

(2) Train rehabilitation practitioners in the application of research-generated knowledge and new techniques;

(3) Develop the capacity of researchers to conduct research that explicates disability as a contextual phenomenon;

(4) Prepare researchers to conduct Disability Studies that are holistic, interdisciplinary, and cognizant of the cultural context of disability;

(5) Develop the capacity of researchers to conduct studies in new settings, (e.g., homes, work places, schools, recreational facilities, community-based organizations); and

(6) Train consumers, family members, and advocates in the use of research findings, in part to facilitate participatory research efforts.

Additional information on each of these priority areas is provided in the following sections.

Training for Advanced Research Studies

It is crucial to NIDRR's mission that research in disability and rehabilitation reflect sound science practices, using rigorous qualitative and quantitative methods. Adherence to sound methodology and research design strengthens the credibility of NIDRR's research and, consequently, the ability of NIDRR's constituencies to use the research findings in advocacy, service deliver, and policymaking. To this end, NIDRR will increase its emphasis on scientific rigor in generating research agendas and in reviewing research applications. Scientific rigor may encompass methodological approaches such as controlled studies, longitudinal studies, or increased sample size. Constructing carefully defined hypotheses tied to theory is an important element in improving research methods. For qualitative research efforts, rigor includes strict adherence to analytical frameworks, improved data collection methods, and careful selection of subjects.

The capability to conduct first-rate research depends on several factors: a commitment to learning the multiple skills required for designing scientific studies, selecting appropriate research methods, analyzing data, and interpreting findings. NIDRR will continue its support of research training initiatives, including those that target research training opportunities for minorities and persons with disabilities. This training focus reflects NIDRR's commitment to participatory research methods that enhance the relevance of research findings.

Training in Application of Research Findings

NIDRR Rehabilitation Research and Training Centers (RRTCs) will advance further the statutory requirement to train service providers in application of research findings to real-world needs of persons with disabilities. Training can occur at many levels, including pre-service, graduate, and in-service. NIDRR will support training aimed at transferring research findings into practical use. Such training must be sensitive to the rapidly changing service delivery environment, which is de-emphasizing inpatient care and experiencing growth in post-acute and community settings.

Training in New Paradigm Research

As discussed throughout this Plan, the new paradigm conceives of disability as a function of the interaction between impairments and other personal characteristics and the larger physical, social, and policy environments. Unidimensional and static measures of function, improvement, outcomes, and other aspects of disability and the rehabilitation process will not be sufficient.

Any paradigm of science that limits research to modification of the disabled person's functions without including an equal emphasis on changing the person's environment is not an approach that can capture the important phenomena associated with living as a disabled individual. Nor will it accommodate scientific and social advances in the multiple, interactive sectors of society that will characterize life in the next century. Although developments in both the biological and biomechanical sciences will bring new treatments and devices that will improve personal functions, these advances must be adjusted to meet the demands of the person living in his or her environment of choice doing activities that are of significance to that individual.

A framework for asking new questions for NIDRR-funded research has been provided by the major provisions of the ADA. Researchers must develop measures that capture the contributions of the social and physical environments to the disability. The need for researchers capable of investigating and explicating disability in context, and explaining the adapting process, has several implications for the research training endeavor. The training must:

(1) Emphasize interdisciplinary research and design of methodologies that can test complex hypotheses;

(2) Attract researchers from disciplines not usually involved with disability and rehabilitation research. These include law, economics, architecture, business, marketing, demographics, public policy, and administrative sciences, among others;

(3) Incorporate an understanding of disability policy and Disability Studies among researchers in all disciplines;

(4) Apply the principles of the ADA—universal access and accommodations—in all research areas;

(5) Include consumers in the research endeavor; and

(6) Focus on the "adapting process," which comprises changes in individual performance in response to a physical limitation, and changes in the environment to better accommodate individual needs.

The interaction of these changes provides the basis for understanding how best to proceed in improving participation for people with disabilities.

Supporting Disability Studies

The cultural context of disability is a key element in the emerging field of Disability Studies. Major societal changes have influenced how disability is perceived by those with disabilities and by those who study persons with disabilities. Persons with disabilities are now viewed as individuals who are adapting to challenges (e.g., personal assistance services, assistive technology use, access, accommodation, civil rights) in their response to society (e.g., sociopolitical analysis of activism, disability culture, independent living), and in society's response to them (e.g., stigma, policy, economics, transportation, housing). The merging of these issues into an encompassing academic area is the genesis of Disability Studies.

In Disability Studies, there is a convergence of theory, technique, and methodology from a range of disciplines to develop an enhanced understanding of a complex phenomenon. The perspective of the subject group in Disability Studies is reflected in the methodology and body of core knowledge. Individuals from the subject group must have the opportunity to participate in the development and promulgation of the methodologies and the curricula. NIDRR has four long-term objectives for providing priority support to this area:

(1) Creation of a body of knowledge that is comprehensive and holistic;

(2) Training of a cadre of researchers and policymakers familiar with that knowledge base;

(3) Inclusion of the perspectives of individuals with disabilities in designing curriculum and research to reflect the experiences of persons with disabilities; and

(4) Creation of opportunities for individuals with disabilities to study, in a variety of settings, the history, politics, economics, sociology, literature, culture, psychology, and other aspects of disability.

Increasing Capacity for Research Under New Conditions

The research questions and the types of training needed for rehabilitation professionals will change as the paradigms of science change and economic realities force reductions in the duration of rehabilitation service programs. Many rehabilitation researchers today are accustomed to conducting research in hospital-based or other clinical sites, applying methodologies and protocols developed in these traditional settings. In the future, sites for conducting research and for training new rehabilitation scientists will be homes, work places, schools, recreational facilities, and community-based support programs. This change involves adapting to reduced access to subject and control groups, working with paraprofessionals and disabled peers in the data collection effort, and working with shared or preexisting databases. Future research on the effectiveness of interventions will be conceptualized, developed, tested, implemented, validated, and evaluated at venues other than hospitals, rehabilitation facilities, clinics, and other traditional service delivery sites.

Increasing Consumer Capacity and Participatory Research

Consumers and consumer organizations have important roles in the research endeavor, including planning research priorities, assessing real-world relevance, and educating researchers in the realities of their aspirations, needs, obstacles, and daily living conditions. Consumers must also review and evaluate research findings

and reinterpret them for application to their lives. Finally, consumers can disseminate and advocate for research. The disabled individual as a whole person operating in a given environment is the focus of NIDRR's research, and it is important that individuals with disabilities willingly provide data about themselves in the role of research subjects.

Consumers are more likely to trust the research endeavor if they believe it is relevant to their needs or if they believe it is conducted with appropriate sensitivity to their concerns. NIDRR will continue to take an active role in forging cooperative partnerships between researchers and the disability community. These endeavors must feature an honest and respectful exchange of knowledge and seek cooperative endeavors around common ground. Study of the social, contextual, and environmental aspects of disability provides a promising impetus for the new, strengthened partnership. NIDRR will support participatory research and Disability Studies as strategies to achieve the goals of an informed and active consumer community. Education, training, awareness, and partnerships are among the techniques that will be used to address this goal.

NIDRR has supported the principle of appropriate and effective participatory research, that is, research that incorporates the perspectives and efforts of persons with disabilities. Participatory research is evaluated by standards of scientific excellence and real-world relevance. NIDRR grantees have developed a number of innovative approaches to implement this principle of participatory research. Additional study of participatory research concepts, fundamental principles, operating guidelines, and most appropriate applications, will enhance its future use. NIDRR will sponsor research on the conditions under which participatory research enhances the process and improves the products of research. NIDRR will sponsor research, development, demonstration, and dissemination efforts to enhance the understanding of participatory research applications and techniques.

Funding Mechanisms To Enhance Capacity Building

Clearly, there has been a shift in the social and scientific paradigms used to define, study, and explain disability. Consequently, the training models, research methods, and issues studied also must change. Funding excellent research projects depends, to a large extent, on the quality of grant applications. In turn, the subject matter and quality of research reflect the competencies the investigators acquired in their training. The context for training is nested in the types of programs funded by NIDRR. NIDRR will expand these existing mechanisms—Rehabilitation Research and Training Centers (RRTCs) and Rehabilitation Engineering Centers (RERCs), Advanced Rehabilitation Research Training Grants (ARRTs), Switzer Enhancement Programs—to help meet future challenges.

Rehabilitation Research Training Centers and Rehabilitation Engineering Research Centers

NIDRR has a long tradition of funding RRTCs at universities, medical rehabilitation facilities, and vocational and social service agencies. Recently, training has been given increased importance in the mission of the RERCs as well. Enhancing the capacity to conduct disability and rehabilitation research requires planning and coordination of three key components of research training: mentors and trainers, relevant topics, and appropriate sites. NIDRR Centers have the critical mass of expertise and knowledge to provide:

(1) Advanced, experiential training for researchers;

(2) Classroom training for researchers and clinicians, at undergraduate and graduate levels;

(3) Short-term training to teach scientists new methodologies;

(4) In-service training for rehabilitation practitioners;

(5) Training for consumers, their families, and representatives in implications and applications of new research-based knowledge;

(6) Community-based training in Disability Studies and related areas, particularly in those centers with a strong focus on independent living, community integration, and policy issues;

(7) Education and training in disability professions and in disability research for individuals with disabilities and for minority individuals; and

(8) Training of rehabilitation educators and educators in a range of related disciplines.

Advanced Rehabilitation Research Training Grants

ARRTs will provide advanced research training that integrates disciplines; teaches research methodology in the environmental, or new paradigm, context; and promotes capacity for Disability Studies. These training programs must operate in interdisciplinary environments and provide training in rigorous scientific methods.

Mary Switzer Fellowships

These fellowships will augment scholarly knowledge in the field and function in an integrative capacity to define new frontiers of disability and rehabilitation research. NIDRR plans to provide more opportunities for interaction among the fellow and for exposure to established researchers and policymakers.

New Scholars Program

This program will recruit undergraduates with disabilities to work in NIDRR-funded centers and projects to expose them to disability and rehabilitation research issues, while at the same time providing work experience and income. This program, operated in affiliation with the Dole Foundation, is an innovative private/public partnership aimed at generating interest in research careers for persons with disabilities.

Minority Development Program

This program has focused on Historically Black Colleges and Universities and institutions serving primarily Hispanic, Asian, and American Indian students. NIDRR will evaluate this program to determine the extent to which it is achieving the objectives of Section 21 of the Rehabilitation Act, and to implement necessary strategies to enhance outcomes. Meanwhile, NIDRR is implementing new strategies on capacity-building among minority researchers focusing on collaboration, exchange of expertise, and advanced training.

New Technologies for Training

Educators, students, clinicians, scholars, and consumers are turning more frequently to the use of new media and telecommunications technology for conveying information and imparting skills. NIDRR respects the efficiencies and impacts that can be achieved through distance learning and web-based education. As a research institute, NIDRR also will undertake evaluations of the effectiveness of these techniques for various types of trainee populations, subject matter, and objectives.

Chapter 10. Enhancing NIDRR's Management of Research

Overview

The research endeavor benefits from thoughtful management practices, specifically tailored to enhance relevance, importance, scientific quality, coordination, participation,

flexibility, productivity, and communication. This Plan already has addressed such elements of management improvement as using appropriate modes of participatory research, expanding dissemination and utilization of research, and enhancing capacity-building, all of which are part of NIDRR's programmatic efforts. This section of the Plan focuses on several additional management strategies that NIDRR will use to enhance its programs.

Management Strategies

NIDRR will employ a number of management strategies in support of its five-year agenda. Among these are emphasis on Centers of Excellence; enhanced coordination of Federal disability research; improved program evaluation and performance review; enhanced peer review process; increased collaboration, including interdisciplinary and cross-disciplinary research; creative funding mechanisms; international research; innovative strategies to manage intellectual property; expanded use of information technology; the reallocation of resources; and continuous participatory planning.

Centers of Excellence

NIDRR is committed to regenerating a network of Centers of Excellence in disability and rehabilitation research. The term "Center of Excellence" is used widely in research and medical fields, and may indicate either a judgment or an aspiration. NIDRR believes the disability constituency deserves Centers of Excellence and is applying standards and procedures to ensure that all research, dissemination, technical assistance, and model service centers will develop and adhere to standards for Centers of Excellence. In 1988, an independent evaluation of the RRTCs developed a set of standards for an RRTC Center of Excellence. These standards included items of research administration, balance of activities, synergy, accountability, coordinated programs, and capacity to improve rehabilitation.

Recognizing that Centers of Excellence result from a partnership between NIDRR and its grantees, NIDRR has revisited the concept of Center of Excellence in its new Program Review Process, described later in this section. The Program Review Process has been invaluable as it led to the further identification and development of the criteria needed to set up and operate Centers of Excellence. Essential criteria for excellence are described below.

Excellence in Administration

- Support from an appropriate host institution.
- Appropriate process for research management and quality control.
- Ability to leverage resources and attract funding from other sources.
- Involvement of multiple disciplines.
- Outcomes-oriented evaluation.
- Protection of human subjects practices.

Excellence in Scientific Research

- Expertise in and contribution to state-of-the-art research.
- Application of appropriate and rigorous scientific methods, whether quantitative or qualitative.
- Advancement of theory and knowledge base in the field.
- Expansion of research tools and methods.
- Professional recognition and publication.
- Outstanding investigators.

Excellence in Relevance and Productivity

- Responsiveness to priority.
- Utility to consumers.
- Development of knowledge to improve rehabilitation.
- Systematic dissemination of knowledge in relevant and accessible formats.
- Involvement of individuals with disabilities in all phases of research process.

Excellence in Capacity-Building

- Provisions of advanced research training for staff, including persons with disabilities and minorities.
- Provision of training to service providers on using results of research efforts.
- Provision of training to consumers in the uses of research.
- Infusion of disability knowledge into other research areas.

NIDRR will continue to refine the concept of Centers of Excellence through ongoing dialogue with its Centers and other science organizations, and will adapt the concept for RERCs, model systems, and other major NIDRR programs.

Enhancing Coordination of Federal Disability Research

Congress recognized the importance of coordination among the range of agencies in the area of disability research by establishing, in Sec. 203 of the Rehabilitation Act of 1973, an Interagency Committee on Disability Research (ICDR), to be chaired by the Director of NIDRR. The statute lists the required membership in the ICDR—the 11 Federal agency senior officers—and charges the Committee to identify and seek to coordinate all Federal plans and projects in disability research, after receiving input from disabled individuals. The ICDR, which has 35 agencies as invited participants, has adopted by consensus a set of objectives and some specific operating procedures. The ICDR objectives are:

- To avoid duplication of efforts in disability research.
- To identify gaps in research.
- To identify opportunities for research collaboration.
- To develop mechanisms for and facilitation of disability research collaboration.
- To promote synergy through combined resources.
- To share information and research findings in order to build a more systematic and cohesive Federal effort;
- To comprise an identifiable entity that can disperse information to consumers, the private sector, policymakers, and the public about government-wide activities; and
- To assist in developing a responsive and relevant Federal infrastructure for disability research, by reporting to the Congress and the President, other agencies, and the public.

Coordination of related activities in disparate public programs is an ongoing challenge. The scope of disability suggests that many diverse agencies will be involved in providing services and conducting research on issues of relevance. This is both inevitable and desirable. Disability is at least a peripheral concern for many agencies whose central missions lie elsewhere—for example, the Departments of the Interior, Justice, and Transportation; the Federal Communications Commission (FCC); and the Federal Aviation Administration (FAA). Disability is closer to the core, but still not the primary mission of agencies such as SSA, Health Care Financing Administration (HCFA), and Administration on Aging (AoA). This dispersion of resources and authorities may benefit disabled persons by ensuring that their concerns are recognized and dealt with by a wide array of "mainstream" agencies. It is also beneficial to diverse constituencies to have multiple avenues of access to research funding, policymaking, and services.

Potential benefits of effective coordination of these diverse agencies include the opportunities to address a common problem with a critical mass of resources; avoid unintended and wasteful duplication; exchange

information in a system that increases all parties' awareness of issues; support complementary and synergistic research; leverage resources or provide joint funding of research; and develop a level of informed policymaking and leadership for the field.

The ICDR can play several roles in its work of coordinating activities in disability research. The ICDR can educate Federal agencies and others about disability issues; take the lead in modeling accessibility; advance important concepts such as universal design or the new paradigm of disability; and promote achievement of the goals of the ADA. The ICDR focuses efforts on gathering information about disability research and making it available to a wide range of interested agencies.

Issues that concern the missions of many agencies are the prime targets for the ICDR to address in building collaborations and cooperation. Disability statistics and building capacity in disability research are examples of two issues to be addressed by the ICDR in the next five years. All ICDR agencies and other constituents need disability statistics in their planning, policymaking, resource allocation, and progress evaluations. Most of these agencies also are charged with the collection of statistics about disability or, at least, the collection of program data about disabled participants. The ICDR will focus on improving the relevance of data collection efforts to the new paradigm of disability, the emerging universe of disability, the goals of the ADA, and NIDRR's goals of increased independence, productivity, and inclusion.

Similarly, each agency that supports disability research has a stake in ensuring the existence of a cadre of highly qualified researchers to investigate issues related to medical and vocational rehabilitation interventions, health care, societal supports, employment, accessible environments and technology, and civil rights. The investment of Federal dollars in training at all levels can be leveraged through cooperative strategic planning and coordinated program implementation, such as shared funding support of various project components.

The ICDR has adopted strategies that will support individual agencies in achieving their goals. The first major strategy is to maintain effective subcommittees in critical areas. The second strategy is to increase the flow of information to all participating agencies. The third strategy is to develop collaborative research and training agendas.

The ICDR has three subcommittees—Medical Rehabilitation [co-chaired with the Centers for Disease Control and Prevention (CDC) and NCMRR], Assistive Technology [co-chaired with the National Science Foundation (NSF)], and the long-standing Interagency Committee on Disability Statistics [co-chaired with the National Center on Health Statistics (NCHS)]. Each ICDR subcommittee plans and directs the development of an informational database of Federal (and other) research in the pertinent area. This may take the form of a compendium of projects or products or an electronic database that can be updated and accessed. For example, the Subcommittee on Rehabilitation Engineering and Assistive Technology sponsored the preparation of the Compendium of Federal Technology that Benefits Persons with Disabilities (1998). This compendium contains abstracts of research projects, other technology activities, and technology transfer activities of member agencies, and is available on the World Wide Web.

Participation by ICDR Committee and subcommittee members in critical activities of other agencies is a major step in increasing awareness and cross-fertilizing work in the field. NIDRR has invited many representatives of the other agencies to participate in peer review panels, long-range planning, priority development, and its new process of program reviews that assess the work of NIDRR Centers. Jointly developed priorities and shared funding of projects have resulted from these processes. For the future, the ICDR will continue to meet quarterly, hold annual public hearings, provide administrative support for the three subcommittees, and provide an annual report to the President and the Congress.

Program Evaluation and Performance Review

In the past year, NIDRR has begun a process of intensive review for all RRTCs and RERCs during their funding cycles, and has developed a set of measures in accordance with the Government Performance and Review Act (GPRA) that it will implement to link program outcomes to agency performance standards. The program reviews take the form of reverse site visits in which Center personnel present research and training outcomes in sessions attended by NIDRR senior staff, staff of related Federal agencies, other researchers, consumers with disabilities, service providers, private sector representatives such as employers or manufacturers, and information brokers. These sessions allow for intensive examination, discussion, feedback, and assessment of each center using the Center of Excellence framework. In the future, program reviews will be expanded to other NIDRR programs (Model Systems, Disability Business and Technical Assistance Centers (DBTACs), and other dissemination centers) and will occur at least twice in a Center's performance period. There will be a Formative Review, early in the funding cycle, to examine methodology, create linkages to other entities, and develop specific performance measures and outcomes data requirements. A Summative Review session will be completed near the end of the grant cycle to assess outcomes and implications for future research. Program Review reports will provide input into assessing how well NIDRR is meeting the objectives and indicators set forth in its GPRA plan. NIDRR, like other Federal research agencies, will measure research performance and outcomes in the GPRA context. NIDRR has participated in the Research Roundtable, a cooperative effort of many federal research agencies to develop a coherent strategy for GPRA in research. NIDRR has developed a two-part performance measurement strategy, based on approaches discussed at the Roundtable, that includes both metric measures of productivity (e.g., number of refereed publications, citations in the literature, persons trained) and qualitative narratives that evaluate the scientific excellence, relevance, and dissemination of project or center activities. Research is a lengthy and sometimes serendipitous process; it is impossible to predict what even the most productive research will achieve by any given time.

Furthermore, a failed hypothesis can be a project success. At the same time, NIDRR and other Federal research agencies share the concerns of Congress and the Administration that high standards of program performance and accountability for outcomes must be applied to agency-sponsored activities.

Enhancing Peer Review

NIDRR is implementing a project to redesign and improve important features of its peer review to provide more continuity of evaluation and improved feedback to applicants. These improvements will include standing panels for some competitions, more useful feedback to applicants, more training for members of peer review panels, a process to identify and handle repeat applications, clarifications of funding criteria and processes, and

regularized annual competition schedules.

Creative Funding Mechanisms

Four goals of NIDRR's management reform are to stimulate more collaborative research, to support some significant longitudinal research without diminishing competition in the program, to increase the frequency of multidisciplinary research, and to provide grantees with the flexibility to make rapid responses to new scientific and technological developments while maintaining program accountability. Periodic competition ensures the vitality of the program and its openness to new ideas. NIDRR will develop marketing strategies and capacity-building that will expand participation in disability research by leading scientists and innovators, individuals with disabilities, and those from diverse backgrounds. At present, collaborative research is implemented in the form of shared protocols and common databases, or in the more diffuse form of subcontracting for discrete parts of a whole. While subcontracting for outside expertise is often convenient, closer working partnerships are to be encouraged. Grantees find current mechanisms for participating in the collection of common data to be administratively and fiscally cumbersome. NIDRR will explore other strategies to promote collaboration, including earmarking funds specifically for collaborative research projects, authorizing grantees to reserve a portion of their centers' funds to support collaborative efforts, and creating coordinating centers in some subject areas.

Disability is a complex, dynamic, and long-term phenomenon. Understanding the course of disablement, rehabilitation, and adaptation frequently requires collection of data over extended time periods. Within the general 60-month limit on grant periods, NIDRR will look for ways to support longitudinal studies in those instances of critical importance, either by creating administrative exceptions or by creating managerial consortia that can transfer the research effort; this latter effort might be achieved through the contract mechanism in which the Government has clear ownership of all products.

While single discipline research is important, implementing the new paradigm of disability in research will demand the simultaneous and synergistic attention of many disciplines. In most fields, there is little academic or practical incentive for interdisciplinary research. Indeed, interdisciplinary research tends to become "non-disciplinary" (i.e., non-scientific) research if the underlying theories, assumptions, techniques, and analytical methods are not clearly specified and if the relation to the theoretical and methodological base of each involved discipline is not clearly stated. NIDRR will promote interdisciplinary research, if appropriate, through program requirements, selection criteria, and new training approaches.

Knowledge develops rapidly in some fields and certain breakthroughs in medicine or technology, or major shifts in public policy, present opportunities for improvements for persons with disabilities if they are addressed immediately. Conversely, some emerging technologies may present barriers to persons with disabilities if they are not addressed rapidly. Thus, NIDRR is developing a systematic process for grantees to direct resources to capitalize on these unforeseen opportunities while maintaining accountability and productivity.

International Research

The Rehabilitation Act of 1973, as amended, (Sec 204 (b)(5)), states that the Director of NIDRR is authorized to: "Conduct * * * a program for international rehabilitation research, demonstration, and training for the purpose of developing new knowledge and methods in the rehabilitation of individuals with disabilities in the United States, cooperating with and assisting in developing and sharing information found useful in other nations in the rehabilitation of the individuals with disabilities and initiating a program to exchange experts and technical assistance in the field of rehabilitation of individuals with disbilities with other nations as a means of increasing the level of skill of rehabilitation personnel." NIDRR's international activities are linked to: (1) improving the skills of rehabilitation personnel in America through international data, (2) Generating international research, which provides needed data, (3) Seeking international collaborations for the development of assistive technology, and (4) strengthening disability leadership globally. NIDRR has carried out its international authority through a variety of activities including research projects; exchanges and training of scientists, engineers, and other appropriate personnel; exchanges of scientific and technological information; conferences; support of databases; and other avenues. Examples of these activities include the following: (a) Collaborative research centers in India through the United States-India Fund, (b) information exchange through support for the World Wide Web Initiative with the National Science Foundation, (c) exchange of disability and rehabilitation experts in issues affecting women with disabilities, and (d) Policy studies and forums in areas such as international standards, technology, and special education for the United Nations, European Union, and Organization for Economic and Cooperative Development.

The emergence of a true global economy dictates a new role in international activities to promote the well-being of persons with disabilities through access to jobs, better technology, and social supports. In addition, the U.S. disability research community desires to share the new disability paradigm internationally. To meet these concerns, NIDRR adopts the following priorities:

International Standards. NIDRR will participate in the development of international standards in assistive technology that will be recognized and debated by regulatory agencies or consortia in all parts of the world. The adoption of those standards will greatly facilitate research exchange and assist consumers in finding appropriate, high quality products.

Joint Research. There are many instances in which great benefits of synergy and complementarity between United States researchers and researchers in other nations could be generated by collaborative research and development efforts particularly in assistive technology, universal design, employment, independent living, wellness, and Participatory

Action Research (PAR). NIDRR will seek international research partners to share expenses and expertise in research projects of mutual benefit.

Conferencing/Exchange. Effective exchange of information and expertise is one of the greatest benefits of an international effort. NIDRR will undertake an integrated spectrum of activities to promote the new paradigm in concept and in methodology. International conferences, exchange scholars, and capacity building will emphasize personal contact, hands-on participation in data and research methodology, and practical applications of research results.

Database Expansion. Contemporary technology permits more effective use of the many databases in the international arena that can provide help and resources to both researchers and consumers in the United States. NIDRR desires to be a catalyst in the linking of relevant databases globally so that the universe of information is available to

any researcher or consumer anywhere on the planet. NIDRR-sponsored information systems will be the "gateway" to international information gathering. Access to Information Technology and Telecommunications. The growing significance of telecommunications and information technology on a global basis has the potential to assist individuals with disabilities in interacting with their environments through employment, communications, and participation in the community. NIDRR will continue efforts to ensure the availability and accessibility of worldwide information technology to persons with disabilities.

Mangaement of Intellectual Property

New technologies, especially electronic information media, are giving rise to even more disputes about the ownership of knowledge complicated by Government financing of the development of instruments, databases, or devices. The general principle of grantee right to patent or copyright products, with Government right of free use, can be complex to administer. NIDRR will work cooperatively with other Federal agencies and grantees to discuss intellectual property guidelines that protect taxpayers' interests in having broad access to knowledge developed with public funds, and yet protect the intellectual property rights of scientists and inventors.

Enhanced Use of Information Technology

NIDRR plans to continue aggressive use of information technology to facilitate many aspects of its future activities, including increased sharing of research results and data, and encouraging more collaborative projects, greater use of common protocols and databases, and more efficient use of research resources. To increase communication with and among grantees, NIDRR will use a variety of communication strategies, including website information on NIDRR and its grantees. NIDRR's accessible website, with hypertext links to grantee websites, already provides considerable information about NIDRR grantees. In addition, NIDRR is developing a Program Database that will provide NIDRR and others with up-to-date information about NIDRR grantees and research findings. This program database will allow analyses of program characteristics and more efficient management and evaluation of individual projects and the total NIDRR program. NIDRR also will create linkages for sharing information among centers and projects. These will include bulletin boards, list-servs, and written newsletters. Additionally, NIDRR will continue to sponsor effective use of teleconferencing, video-conferencing, and emerging telecommunications methods.

Allocation of Resources

Effective allocation of resources is required to realize NIDRR goals in all areas. In particular, NIDRR intends to allocate increased resources in four areas related to the objectives of the five-year Plan, including:

1. Support of Centers of Excellence concentrating on large-scale problems;
2. Support of investigator-initiated research projects that use the best ideas emerging from the field;
3. Expansion of capacity-building activities, including training researchers with disabilities; and
4. Development of funding opportunities for collaborative projects.

Realigning NIDRR's RRTC program away from many small centers with limited scope of work and toward more substantial centers that are increasingly cross-disability, cross-disciplinary, interdisciplinary, and have the capacity and flexibility to address emerging problems is a complex process that will be accomplished over time. The changes inherent in this process will be made by redirecting some existing resources while protecting valuable research capacity. To continue the success of NIDRR's field initiated research project program; NIDRR is increasing the number and size of the awards to ensure that excellent researchers continue to pursue this funding opportunity.

NIDRR also plans to review and expand its training activities to foster the continued development of excellent researchers, especially individuals with disabilities, for the disability research endeavor. In addition, NIDRR plans to develop a Training Database to identify and track persons trained in NIDRR's programs and to track their participation in the disability and rehabilitation fields. The Training Database will help facilitate development of a Trainee Network that will include a website; a list-serv for persons who participate in NIDRR training programs; and a directory of current and past Trainees, Scholars, and Fellows. This network will contribute to more opportunities for in-person presentations and interactions among NIDRR training recipients.

Continuous Participatory Planning

NIDRR will formalize an ongoing process for reviewing and revising the Long-Range Plan on a periodic basis, and for ensuring that meaningful annual priorities are crafted based on the Plan. This process will involve:

- Establishing agenda-setting work groups in each of the outcome areas designated in the Plan. These work groups will meet periodically and will be responsible for substantive recommendations, in their respective areas, for both annual priorities and new five-year goals.
- Holding at least one public hearing each year. This hearing will focus on one substantive area and will evaluate current work and identify future needs in that area. These hearings will be held in different parts of the country, and will take advantage, where possible, of video conferencing or satellite broadcasting techniques to allow the hearings to be more geographically inclusive. NIDRR will seek cosponsors for these hearings from organizations active in the particular substantive areas;
- Convening ad hoc focus groups in subject areas that need further exploration prior to implementation in annual priorities or other activities;
- Using a combination of internal and external participants to develop a combined Strategic/Program Plan, and beginning that process two years in advance of the expected products; and
- Evaluating NIDRR performance under GPRA, in part on the extent to which annual priorities are derived from and coherent with the Plan.

The progress of NIDRR's continuous planning effort and the results of implementation of the Plan will be assessed and reported in an annual report to the Congress.

References

Adams, P.F. & Marano, M.A. (1995). National Center for Health Statistics, Current Estimates from the National Health Interview Survey, United States, 1994 Vital and Health Statistics: Series 10, No. 193. DHHS Pub. No. (PHS) 96–1521. Hyattsville, MD: National Center for Health Statistics.

Barker, P.R., Manderscheid, R.W., Hendershot, G.E., Jack, S.S., Schoenborn, C.A., & Goldstrom, I. (1992). Serious mental illness and disability in the adult household population: United States 1989. Advance data from vital and health statistics: No. 28. Hyattsville, MD: National Center for Health Statistics.

Barriers Preventing Social Security Disability Recipients from Returning to Work: Hearing before the Subcommittee on Social Security of the Committee on Ways and Means, House of Representatives, 105th Congress, 1st Sess. (1997). (testimony of Judith Heumann).

Baumeister, A.A., Kupstas, F.D. & Woodley-Zanthos, P. (1993). The new morbidity: Recommendations for action and an updated guide to state planning for the

prevention of mental retardation and related disabilities associated with socioeconomic conditions. Washington, DC: President's Committee on Mental Retardation.

Brandt, E.N. & Pope, A.M. (Eds). (1997). Enabling America: Assessing the role of rehabilitation science and engineering. Washington, DC: National Academy Press.

Devivo, M.J. & Stover, S.L. (1995). Long-term survival and causes of death. In S.L. Stover, J.A. DeLisa, & G.G. Whiteneck (Eds.), Spinal cord injury: Clinical outcomes from the model systems. (pp. 289–316). Gaithersburg, MD: Aspen Publishers.

Domzal, C. (1998). Compendium of federal technology research that benefits persons with disabilities. Washington, DC: National Institute on Disability and Rehabilitation Research, U.S. Department of Education.

Dubos, Rene Jules, from Moberg, C. & Cohn, Z.A. (1991, May). Scientific American, 66–77. Exec. Order No. 13078, 63 Fed. Reg. 13111 (1998).

Kochhar, S. & Scott, C.G. (1995, Spring). Disability patterns among SSI recipients. Social Security Bulletin.

Kraus, L.E., Stoddard, S. & Gilmartin, D. (1996). Chartbook on disability in the United States, 1996. An InfoUse Report. Washington, DC: National Institute on Disability and Rehabilitation Research.

Kuhn, T. (1962). The structure of scientific revolution. Chicago: University of Chicago Press.

LaPlante, M.P. (1993). Disability, health insurance coverage, and utilization of acute health services in the United States. Washington, DC: U.S. Department of Health and Human Services.

LaPlante, M.P. & Carlson, D. (1996). Disability in the United States: Prevalence and causes, 1992 Disability Statistics Rehabilitation Research and Training Center. Institute for Health and Aging, University of California, San Francisco, CA. Washington, DC: National Institute on Disability and Rehabilitation Research.

LaPlante, M.P., Hendershot, G.E., & Moss, A.J. (September 1992). Assistive technology devices and home accessibility features: Prevalence, payment, need, and trends. Advance data from vital and health statistics: No. 21. Hyattsville, MD: National Center for Health Statistics.

LaPlante, M.P., Kennedy, J., Kaye, H.S., & Wenger, B.L. (1996). Disability and employment. (Disability Statistics Abstract #11). Disability Statistics Rehabilitation Research and Training Center, Washington, DC: National Institute on Disability and Rehabilitation Research.

McNeil, J.M. (1993). Americans with disabilities: 1991–92. U.S. Bureau of the Census. Current Population Reports (P70–33). Washington, DC: U.S. Government Printing Office.

Nagi, S.Z. (1991). Disability concepts revisited: Implicatins for prevention. In A.M. Pope & A.R. Tarlov (Eds.), Disability in America: Toward a national agenda for prevention (Appendix A, pp. 309–327). Washington, DC: National Academy Press.

National Institute of Child Health and Human Development. (1993). Research plan for the National Center for Medical Rehabilitation Research (NIH Publication No. 93–3509). Washington, DC: U.S. Government Printing Office.

Pope, A.M. & Tarlov, A.R. (Eds.). (1991). Disability in America: Toward a national agenda for prevention. Washington, DC: National Academy Press.

Radabaugh, M.P. (1988). in National Council on Disability. (March 4, 1993). Study on the financing of assistive technology devices and services for individuals with disabilities: A report to the President and the Congress of the United States, (p. 1). Washington, DC: Author Rehabilitation Act of 1973, as amended, 29 U.S.C. 706(8)(B).

Social Security Administration. (1993). Annual statistical supplement, 1993, to the Social Security Bulletin. Washington, DC: U.S. Department of Health and Human Services.

Social Security Administration. (1996). Highlights of Social Security data, January 1996. Baltimore, MD: Author.

Southwest Educational Development Laboratory. (1996, July). A review of the literature on dissemination and knowledge utilization. The National Center for the Dissemination of Disability Research. Austin, TX: Author.

Stoddard, S., Jans, L., Ripple, J. & Kraus, L. (1998, June). Chartbook on work and disability in the United States. An InfoUse Report. [On-line]. Available: http://www.infouse.com/disabilitydata/

U.S. Bureau of the Census. (1998, June). Survey of Income and Program Participation, 1991. [On-line]. Available: http://www.census.gov/hhes/www/disable/sipp

World Health Organization. (1980/1994). International Classification of impairments, disabilities, and handicaps: A manual of classification relating to the consequences of disease. Geneva, Switzerland: Author.

[FR Doc. 99–21537 Filed 8–19–99; 8:45 am]

BILLING CODE 4000–01–M

shington, DC:

National Council
93). Study on
echnology
dividuals with
President and
States, (p. 1).
ehabilitation Act
.S.C. 706(8)(B).
on. (1993).
ent, 1993, to the
Vashington, DC:
and Human

on. (1996).
ty data, January
or.
lopment
review of the
and knowledge
enter for the
Research.

J. & Kraus, L.
work and
tes. An InfoUse
e: http://
tydata/
998, June).
ram
e]. Available:
es/www/

1980/1994).
of impairments,
: A manual of
e consequences
land: Author.

9–99; 8:45 am]

federal register

Friday
August 20, 1999

Part VI

Department of Health and Human Services

Health Care Financing Administration

45 CFR Parts 144, 146, 148, and 150
Federal Enforcement in Group and Individual Health Insurance Markets; Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

45 CFR Parts 144, 146, 148, and 150

[HCFA–2019–IFC]

RIN 0938–AJ49

Federal Enforcement in Group and Individual Health Insurance Markets

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period details procedures for enforcing title XXVII of the Public Health Service Act as added by the Health Insurance Portability and Accountability Act of 1996, and as amended by the Mental Health Parity Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996, and the Women's Health and Cancer Rights Act of 1998, in States that do not enact the legislation necessary to enforce or otherwise do not substantially enforce the requirements of these acts. This regulation also delineates the process for taking enforcement actions against non-Federal governmental plans and, in those States in which HCFA is directly enforcing the requirements of these acts, health insurance issuers that are not complying with those requirements.

DATES: Effective date: September 20, 1999. Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 19, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2019–IFC, P.O. Box 9016, Baltimore, MD 21244–9016.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC,

or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD

FOR FURTHER INFORMATION CONTACT: Rochelle Shevitz, (410) 786–1565.

SUPPLEMENTARY INFORMATION:

Comments, Procedures, and Availability of Copies

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2019–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

I. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) created a new title XXVII of the Public Health Service (PHS) Act (42 U.S.C. 300gg, *et seq.*) that requires group health plans and health insurance issuers to provide certain guarantees for availability and renewability of health coverage in the group and individual health insurance markets. [1]

The Newborns' and Mothers' Health Protection Act of 1996 amended the PHS Act to provide protections for mothers and their newborn children with regard to the length of hospital stay following childbirth. The Mental Health Parity Act of 1996 further amended title XXVII of the PHS Act to provide for parity in the application of certain annual and lifetime dollar limits on mental health benefits with annual and lifetime dollar limits on medical/surgical benefits. The Women's Health and Cancer Rights Act of 1998 amended the PHS Act to provide certain protections for patients who elect breast reconstruction in connection with a mastectomy (As used hereafter in this preamble, HIPAA refers to title XXVII of the PHS Act, as added by the Health Insurance Portability and Accountability Act of 1996, and later amended by the Mental Health Parity Act of 1996, the Newborns' and Mothers' Health Protection Act, and the Women's Health and Cancer Rights Act of 1998.)

HIPAA added two preemption provisions to the PHS Act. With respect to HIPAA's preexisting condition exclusions rules and special enrollment rights contained in section 2701 of the PHS Act, State law cannot differ in any way from the Federal requirements, except to expand the protections in one of several ways specifically permitted by the statute (See section 2723(b). With respect to HIPAA's other requirements, for example, HIPAA's non-discrimination provisions, State laws are preempted only to the extent they prevent the application of any requirement of HIPAA. (See section 2723(a)).

[1] HIPAA created a series of parallel provisions that were placed in the Employee Retirement Security Act (ERISA), which is within the jurisdiction of the Department of Labor; the Public Health Service Act (PHS), which is within the jurisdiction of the Department of Health and Human Services; and the Internal Revenue Code, which is within the jurisdiction of the Department of the Treasury. These "shared provisions" set forth Federal requirements relating to portability, access, and renewability of group health plans and group health insurance coverage provided by issuers. Specifically, the shared provisions contain rules limiting the use of preexisting condition exclusion periods, and prohibiting discrimination against participants and beneficiaries based on health status.

Section 104 of Title I of HIPAA requires that the three departments ensure through an interagency memorandum of understanding (MOU) that regulations, rulings and interpretations issued by each of the departments relating to the same matter over which two or more departments have jurisdiction, are administered so as to have the same effect at all times. Section 104 also requires the departments, through the MOU, to provide for coordination of policies relating to enforcement of the same requirements in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. The three departments recently signed the MOU.

HIPAA also added certain provisions governing insurance in the group and individual markets, and with respect to non-Federal government plans which are contained only in the Public Health Service Act and thus are not within the regulatory jurisdiction of the Department of Labor or the Department of the Treasury. Section 101(b) of HIPAA provides that the Department of Labor is not authorized to enforce any of the portability requirements of part 7 of ERISA (the "shared" provisions) against a health insurance issuer offering health insurance coverage in connection with a group health plan, although individuals covered under ERISA can bring suit. Also, governmental plans, as defined in section 3(32) are exempt from ERISA, under section 4(1) of ERISA. Thus the scope of the MOU is limited, with respect to coordination of enforcement activities, to enforcement of shared provisions. Enforcement of these provisions constitutes only a relatively small portion of HCFA's responsibilities.

HIPAA affirms that the States are the primary regulators of health insurance coverage in each State. However, in the event that a State either does not enact legislation that meets or exceeds the Federal health insurance requirements, if it or otherwise fails to substantially enforce the HIPAA standards, the Health Care Financing Administration (HCFA) enforces the HIPAA requirements that apply to health insurance issuers offering coverage within that State.

HCFA is also responsible for enforcing the HIPAA requirements with respect to non-Federal governmental plans. Non-Federal governmental plans that are not provided through health insurance coverage may elect exemption from one or more requirements of HIPAA, but must comply with requirements regarding certification and disclosure of creditable coverage.

II. Provisions of the Proposed Regulations

Subpart A—General Provisions

Section 150.101 Basis and Scope

On April 8, 1997, we published regulations to implement HIPAA by adding 45 CFR parts 144, 146, and 148. The enforcement provisions of that rule are contained in §§ 146.184, 148.200, and 148.202. Now that HCFA has had experience with direct Federal enforcement in some States, we have determined that it is necessary to provide more detail on the procedures that will be used to enforce HIPAA when a State does not do so. We are adding a new part that will revise and expand the provisions contained in §§ 146.184, 148.200, and 148.202. Those sections are deleted.

This new part, 45 CFR part 150, consists of four subparts. Subpart A explains the scope and basis of this regulation and presents definitions that supplement definitions located in 45 CFR 144.103 and 148.103. Subpart B describes how HCFA determines whether to assume enforcement authority in a State and explains the process for transferring such authority back to the State. Subpart C describes procedures for assessing civil money penalties. Examples of specific situations that may trigger the assessment are listed in Appendix A to Subpart C. Subpart D describes the administrative appeals process.

Section 150.103 Definitions

In order to convey the requirements of 45 CFR part 150, we are defining a number of terms that will be found at 45 CFR 150.103. Terms found at 45 CFR part 150 have the same meaning given to them in 45 CFR 144.103 and 148.103, unless otherwise indicated. Section 150.103 will include definitions of the following terms: amendment, endorsement or rider; application; certificate of insurance; complaint; group health insurance policy or group policy; individual health insurance policy or individual policy; plan document; and State law.

Subpart B—HCFA Enforcement Processes for Determining Whether States Are Failing To Substantially Enforce HIPAA Requirements

This subpart describes the steps we will take to determine whether a State is failing to substantially enforce HIPAA requirements and the notification procedures we will follow prior to beginning direct enforcement.

Section 150.201 State Enforcement

HIPAA affirmed the States' role as the primary regulator of health insurance in each State. Consistent with HIPAA, § 150.201 will state that, except as provided in subpart B, each State enforces HIPAA requirements with respect to health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State.

Section 150.203 Circumstances Requiring HCFA Enforcement

Federal enforcement is triggered in two instances: (1) A State notifies us that it has not enacted the necessary legislation to bring its laws into compliance with HIPAA requirements or that it is otherwise not substantially enforcing those requirements; or (2) a State does not notify us of its failure to substantially enforce HIPAA requirements, but we receive or obtain information that forms the basis for HCFA's determination that such a failure is occurring. When we receive such notification or make such a determination, we will discuss with State officials the requirements that are not substantially enforced and begin Federal enforcement of those requirements.

With regard to the group health insurance market, section 2722(a)(2) of the PHS Act requires Federal enforcement of any "provision (or provisions)" that a State fails to substantially enforce. Therefore, it is possible that a State could enforce some group market provisions while HCFA enforces others.

With regard to the individual market, section 2761(a)(2) of the PHS Act calls for Federal enforcement of the "requirements of this part" whenever a State fails to substantially enforce them. However, HCFA does not enforce those State laws that constitute an "acceptable alternative mechanism" (as defined in § 148.128) for enforcing guaranteed availability regulations. In addition, HIPAA does not preempt State laws that afford greater protections to HIPAA-eligible individuals than HIPAA without preventing the application of a HIPAA requirement. Thus, in the individual market, it is also possible that HCFA will enforce some requirements while the State enforces others. The complexity of the situation varies from one State to another and requires careful consideration on a case-by-case basis.

Section 150.205 Sources of Information Triggering an Investigation of State Enforcement

The interim final regulations provide more specific guidance on situations in which there is no formal complaint, but other information indicates that a State's failure to substantially enforce may exist. Information regarding an alleged failure to enforce may come from a variety of sources, including, but not limited to—

- A complaint;
- Informal contacts with State officials;
- Communication with other individuals, such as brokers and agents, or consumers themselves; and
- Reports in the news media.

When we receive information indicating that a failure to substantially enforce might exist in a particular State, we will write to the governor and the commissioner of insurance or chief insurance regulatory official of that State (and/or the official responsible for regulating HMOs if the alleged failure involves HMOs) to inquire about the status of HIPAA enforcement in the State. Further action on our part will be dictated by the nature of the State's answer. If a State informs us that it is enforcing all of the requirements of HIPAA and provides a satisfactory explanation of why there is no failure, we will take no further action unless there are further indications to contradict the State's assertion.

Sections 150.207–150.219 Procedure for Determining That a State Fails to Substantially Enforce HIPAA Requirements

If we receive a complaint indicating that a State is failing to substantially enforce the law, we will first make a preliminary assessment of whether the complainant who is adversely affected has made a reasonable effort to resolve the issue through any remedies available under State law (§ 150.209). We will contact the complainant to

determine actions already taken, including whether State officials have been notified and what action, if any, those officials have taken. We may also contact State officials informally to discuss the situation. If we receive information other than an individual complaint, we will initiate similar contact with State officials.

In accordance with § 150.211, we will send a written notice to the State if we find that there is a reasonable question as to whether the State is failing to substantially enforce HIPAA requirements. The notice will be addressed to—

(1) The governor or chief executive officer of the State;

(2) The insurance commissioner or chief insurance regulatory official; and

(3) If the alleged failure involves HMOs, the official responsible for regulating HMOs if different from the individual identified in (2).

Under § 150.213, the notice to the State will identify the requirement or requirements of HIPAA for which there is evidence of a potential failure to enforce and will describe the facts of any alleged violation by an issuer or the ways in which the State law fails to acceptably implement HIPAA. The letter will further explain that the consequence of a State's failure to substantially enforce those requirements is that HCFA will do so. The notice will give the State 30 days to respond unless an extension is granted.

In the interim final regulations published on April 8, 1997, a response time of 45 days was allowed. This regulation shortens the response time to 30 days to lessen any adverse impact on consumers. This shorter response time appears to balance the States' prerogative to enact and enforce their own insurance laws with the consumer rights and protections that the Congress intended to guarantee when it enacted HIPAA. We invite comment on this change.

We may extend the 30-day response period for good cause at a State's request (see § 150.215). The length of the extension period granted may vary depending upon the specific circumstances of the situation; thus, the regulation does not set forth a prescribed extension period. Extensions will be granted based upon the circumstances, and at our discretion.

Example: The State replies to our notice by stating that some State regulators had been unclear on the scope of their new responsibilities. Having recognized the problem, the State plans to train all affected regulatory staff as quickly as possible. However, it is unlikely that the State will be able to assure us within 30 days that full HIPAA enforcement is taking place. Therefore, the State requests an extension until staff training is completed.

If, at the end of 30 days (and any extension), the State does not establish to our satisfaction that it is substantially enforcing the requirements described in the notice, we may, after further consultation with the appropriate State officials or their designees, send the State a notice of preliminary determination (see § 150.217). The notice of preliminary determination will specify the HIPAA requirements that the State has failed to substantially enforce. The notice will afford the State a reasonable opportunity to present evidence of substantial enforcement.

We will allow the State a reasonable opportunity—normally, 30 days—to correct its failure to substantially enforce the requirements identified in the preliminary determination. However, in accordance with § 150.219, if we find that the State has not taken the necessary corrective action, we will issue a final written determination. The final determination will identify the HIPAA requirements that HCFA is enforcing. The notice will also specify the effective date of HCFA's enforcement. This date may be retroactive to apply so that civil monetary penalties, that HCFA later assesses, may take into account violations that occurred after the effective dates specified in HIPAA or a date that HCFA identifies as the point at which the State's failure to substantially enforce the specified requirements commenced. HCFA does not enforce a State law that was enacted as an alternative mechanism. However, in the case of a State that is found not to be implementing its acceptable alternative mechanism, and also is found not to be substantially enforcing the Federal fallback regulations on guaranteed availability, HCFA will enforce the HIPAA requirements as of the date that HCFA determines that the State has failed to enforce. HCFA does not enforce a State law that was enacted as an alternative mechanism.

In cases where HCFA assumes enforcement responsibility in a State, the transition to Federal enforcement should be as smooth as possible in order to protect consumers and create as little disruption as possible for health insurance issuers.

Section 150.221 Transition to State Enforcement

When the State demonstrates that it is prepared to undertake substantial enforcement and if and when we determine that responsibility for enforcement should be returned to the State, we will enter into discussions with State officials to ensure that a smooth transition back to State enforcement is effected, especially with respect to the handling of consumer inquiries and complaints. To the extent practicable and legally permissible, we will make available to the State our records documenting issuer compliance, as well as other relevant areas of our enforcement operations, for incorporation into the records of the regulatory authority assuming jurisdiction. We invite comments on the transition procedures described in this subsection.

Subpart C—HCFA Enforcement With Respect to Issuers and Non-Federal Governmental Plans—Civil Money Penalties

This subpart describes the bases for imposing civil money penalties against non-Federal governmental plans, and, in those States in which we are enforcing the HIPAA requirements, against health insurance issuers that are not complying with the requirements of HIPAA.

The basis for our enforcement actions are the requirements of 45 CFR parts 146 and 148 as set forth in the interim final rules published on April 8, 1997 in the **Federal Register**, as well as the rules published on December 22, 1997 (implementing the Mental Health Parity Act of 1996) and October 27, 1998 (implementing the Newborns' and Mothers' Health Protection Act of 1996), and the requirements in sections 2706 and 2752 of the PHS Act (relating to the Women's Health and Cancer Rights Act of 1998). Those rules explain practices to which issuers and non-Federal governmental plans are required to adhere. However, since publication of the April 8, 1997 rules, we have become aware of actions taken by issuers and other responsible entities that are inconsistent with several requirements of HIPAA but are not specifically addressed in the rules. We addressed some of these actions in Bulletin 98–01, discussed below. In an appendix to Subpart C we provide a list of business practices or situations, including those listed in the bulletin, that violate HIPAA and may trigger enforcement action. This list is not all-inclusive. Rather, it highlights the compliance problems that we have encountered most frequently.

This subpart establishes an enforcement process that ensures the rights of individuals protected by HIPAA and provides for due consideration toward health insurance issuers and non-Federal governmental plans. This subpart explains the process

for investigating complaints to determine whether a violation has occurred, and, when necessary, the process for assessing a civil money penalty. In addition, this subpart provides suggestions to issuers and other responsible entities of possible ways to avoid civil money penalties through early identification of compliance problems.

Section 150.301 General Rule Regarding the Imposition of Civil Money Penalties

Section 150.301 states that any health insurance issuer or non-Federal governmental plan, or employer that sponsors a non-federal government plan, subject to our enforcement authority that fails to comply with HIPAA may be subject to a civil money penalty as described in this subpart.

Section 150.303 Information Initiating Administrative Action or Investigation

In accordance with § 150.303, any individual or any entity acting on his or her behalf may request that we investigate the possible denial or abridgement of a HIPAA right. Complaints may be directed to any of our regional offices where the complaint will be either investigated or forwarded to the appropriate office for investigation. Information about all complaints received will be accessible to all HCFA staff involved in HIPAA enforcement in both the central and regional offices.

Since many individuals protected by HIPAA will not initiate complaints because they are unaware of their rights under the law and therefore do not realize when their rights are being denied or abridged, HCFA will consider other information when determining whether a State is substantially enforcing HIPAA or when determining the compliance of an issuer or other responsible entity as defined in § 150.305 (Determination of entity liable for civil money penalty). Essentially, "other information" means any information HCFA receives from any source that indicates that a potential violation of HIPAA has been committed by a health insurance issuer or other responsible entity. Other information includes any other indication that an issuer or non-Federal governmental plan fails to meet any requirement of HIPAA. Sources of information that we may rely upon include, but are not limited to:

- Reports and information collected from State insurance departments, the National Association of Insurance Commissioners, and other State, local, and Federal entities;
- Information received through HCFA's enforcement activities and from other sources that may include policy form review and market conduct examinations.

Section 150.305 Determination of Entity Liable for Civil Money Penalty

Health insurance issuers that issue, sell, renew, or offer coverage to either private employers that sponsor group health plans or to non-Federal governmental plan sponsors are responsible for compliance with HIPAA and applicable implementing regulations at 45 CFR part 146.

Under § 150.305, we consider a health insurance issuer to be subject to a civil money penalty if a group health insurance policy it sells is written, serviced, or administered in a manner that fails to comply with, or conflicts with, an applicable requirement of HIPAA. To the extent that a group health plan is subject to HIPAA, a health insurance issuer may be liable for the penalty even if a group health plan sponsor had expressly requested that the issuer provide a policy that does not comply with one or more requirements of HIPAA. In that situation, the issuer should inform the plan sponsor that it would be illegal to sell such a policy and refuse to structure the policy as requested. With regard to health insurance sold in the individual market, the issuer is the responsible entity and therefore liable for any assessed civil money penalty. To the extent that policies sold in the individual market are subject to the requirements of HIPAA, issuers are responsible for ensuring that their policies comply and are marketed and administered in accordance with those requirements and applicable implementing regulations at 45 CFR Part 148. In addition, when a policy does not comply with applicable HIPAA requirements, the issuer may be subject to a civil money penalty irrespective of whether the issuer sold the policy directly, or a broker or agent sold the policy on the issuer's behalf.

Under section 2722(b)(1)(B) of the PHS Act, we have direct enforcement authority with respect to group health plans that are non-Federal governmental plans. A non-Federal governmental plan sponsored by one or multiple non-Federal governmental entities is subject to HIPAA to the same extent as any other group health plan, unless, in the case of a non-Federal governmental plan that is not provided through health insurance coverage, the plan sponsor(s) has (have) elected to exempt the plan from one or more HIPAA provisions (as permitted under 45 CFR 146.180, and section 2721(b)(2) of the PHS Act).

When the sponsor of a non-Federal governmental plan does not elect to have its plan exempted from one or more HIPAA requirements and the plan fails to comply with one or more applicable provisions of HIPAA, we enforce the law, and either the plan or the non-Federal governmental employer sponsoring the plan is subject to a civil money penalty. In accordance with section 2722(b)(2)(B) of the PHS Act, if the plan is sponsored by a single non-Federal governmental employer, the non-Federal governmental employer is subject to the penalty; if the plan is sponsored by two or more non-Federal governmental employers, the plan is subject to the penalty.

Separate civil money penalties may be assessed against an issuer *and* a non-Federal governmental plan or employer, depending upon the circumstances of the compliance failure(s). A civil money penalty, or penalties, will be determined in accordance with sections 150.317 through 150.325.

Section 150.307 Notice to Responsible Entities

Under § 150.307, when we receive a complaint or other information indicating a possible violation of HIPAA, we will provide written notice to the responsible entity(ies) that describes the substance of the complaint or other information and any identifiable actions that need to be taken to come into compliance. The notice will also provide the responsible entities 30 days from the date of the notice in which to respond. Furthermore, the notice will state that a civil money penalty may be imposed if the entity fails to comply.

Section 150.309 Request for Extension

Section 150.309 will allow issuers and other responsible entities to request an extension of time to respond to the notice. We will consider granting the request provided:

(1) The request for the extension is made in writing;

(2) The issuer or other responsible entity can show good cause; and

(3) A complete response can be provided within the additional time granted by HCFA.

This section, which allows for additional time, will benefit both issuers and other responsible entities that are unable to respond to an inquiry from us within 30 days regarding a potential HIPAA violation. Failure to respond to a notice from HCFA within 30 days, or any extended time frame, may result in the assessment of a civil money penalty based upon the complaint or other information. This section reflects HCFA's interest in ensuring complete responses. However, in deciding

whether to grant the extension, HCFA will also consider the facts and circumstances of the situation to assure that individuals are not adversely affected.

Section 150.311 Responses to Allegations of Noncompliance

Section 150.311 will state that in determining whether to assess a civil money penalty and the amount of any such penalty, HCFA will consider documentation provided by an issuer or other responsible entity. If documentation substantiates that the violation was corrected within 30 days of the first day that the responsible entity knew, or exercising reasonable diligence, could have known of the violation, then no civil money penalty may be imposed (see § 150.341). However, if the correction is made beyond the 30 days, we will review all documentation supporting a responsible entity's efforts to comply with HIPAA and, under appropriate circumstances, take such efforts into account in our calculation of the amount of the penalty. In general, we view more favorably responses where the rights and protections afforded consumers are quickly and completely restored, and where the issuer or other responsible entity can demonstrate that adequate changes have been made to ensure future compliance.

Examples of documentation that may be included in a response include:

- Relevant policy forms, advertising material, and other documents
- Other evidence refuting the alleged noncompliance
- Evidence showing the approximate cost to the affected individual(s)
- Evidence showing the number of individuals affected
- Evidence that the entity did not know, or exercising due diligence would not have known, of the violation
- Documentation proving that issued policies and/or certificates of coverage and plan documents were amended to comply with HIPAA and showing the date of such amendment
- Documentation of the issuance of forms that comply with HIPAA (with respect to any forms that were submitted and reviewed by us, such documentation may also include any final letter from us that closed the review)
- Evidence documenting the development and implementation of internal policies and procedures to ensure HIPAA compliance (including corporate compliance programs)
- Other evidence showing the entity's prior record of HIPAA compliance

Section 150.313 Market Conduct Examinations

In 1974 the National Association of Insurance Commissioners recommended the establishment of a "separate and distinct" program of surveillance to ensure fair treatment of insurance policyholders. Since then, these surveillance programs, known as "market conduct examinations," have been an essential tool used by State insurance departments to confirm the compliance of issuers with various State insurance laws and regulations.

Market conduct examinations differ from traditional financial audits performed on issuers by either regulators or the companies themselves. While financial audits are primarily concerned with the financial solvency of a company, market conduct examinations are primarily concerned with the issuer's compliance with legal requirements because the issuer's business practices impact consumers directly. For example, while an issuer may be judged financially strong through a financial audit, if this financial strength is obtained through non-compliant claim denials, the issuer could "pass" a financial audit, while "failing" a market conduct examination.

Pursuant to guidelines of the National Association of Insurance Commissioners and State insurance laws, State insurance departments charge the expenses of a market conduct examination directly to the issuer. In contrast, HCFA will not require an issuer or other responsible entity to bear the expense of a market conduct examination. During a HCFA market conduct examination, HCFA will sample and, in some cases, review in their entirety specific records, information, and other documentation maintained by the issuer or other responsible entity to determine compliance with the specific requirements of HIPAA. HCFA market conduct examinations will differ from traditional State insurance department examinations in that the scope of HCFA's reviews will be much narrower, focusing on the provisions and requirements of HIPAA.

For example, areas of HCFA examinations may include, but are not limited to:

- The issuer's, or non-Federal governmental plan's certificate of creditable coverage issuance procedures and practices;
- Claim denials based on pre-existing condition exclusion provisions of the issuer's, or the non-Federal governmental plans;
- The issuance of guaranteed available individual and small employer group products; or
- The guaranteed renewability of health insurance policies.

A market conduct examination may be performed at HCFA's initiation, or upon request of a potential responsible entity. During the course of a complaint investigation, HCFA may determine that a pattern of noncompliance exists to warrant a market conduct examination. An issuer, or a non-Federal governmental plan, may request a market conduct examination to confirm compliance or to identify potential violations and initiate corrective action that may enable it to completely avoid imposition of a civil money penalty under § 150.315 of this subpart. If we identify potential violations, we will provide notice to the issuer or other responsible entity of such defects and may present a proposed plan of correction.

A market conduct examination may be performed through either on-site examinations, when appropriate; or "in-house" examinations or "desk audits" at a HCFA location. In general, on-site examinations are appropriate when we have reason to believe that, in order to obtain and have ready access to all of the information necessary to identify existing failures to comply with HIPAA or confirm the compliance of an issuer, or a non-Federal governmental plan, it is necessary for our examiners to be at a responsible entity's site. On-site examinations may also be appropriate when the market share of an issuer represents a significant portion of the marketplace in a State or when an issuer's entire program for HIPAA compliance is the subject of the examination. In general, a "desk audit" is sufficient to confirm a responsible entity's compliance with regard to a specific area(s) of compliance or when circumstances make an on-site examination impracticable.

When HCFA identifies an issue that warrants investigation, HCFA will appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. HCFA will observe the guidelines adopted by the NAIC and may employ additional guidelines as deemed appropriate. Upon completion of the market conduct examination, HCFA will develop a report that will address the results of the examination. Responsible entities will be advised of HCFA's position on each issue contained in the report. The purpose of the report is to identify areas of the business or operational affairs of the responsible entity that may need to be corrected.

Sections 150.315 Through 150.323 Provisions Relating to the Amount of Penalty

These sections of the regulation establish the process for determining the amount of any penalty that is imposed on a responsible entity for a violation of a provision or requirement of HIPAA. The statute allows for a penalty that does not exceed $100 for each day for each individual with respect to each violation. The statute further requires at section 2722 that, in determining the amount of the penalty, the responsible entity's previous record of compliance as well as the gravity of the violation be taken into consideration. Therefore, in determining the amount of the penalty, we intend to use a process that takes into account both mitigating and aggravating circumstances. We will take into account evidence of the entity's efforts to comply with HIPAA in assessing the entity's previous record of compliance. This will be determined largely through documentation submitted by the responsible entity during the course of the investigation of the complaint or other information. We will consider the gravity of the violation by reviewing the frequency of the violation as well as the level of the financial impact on any affected individuals.

Responsible entities that discover violations are encouraged to take all necessary steps to correct the violations and identify the individuals adversely affected and restore their rights. Under § 150.319, those actions taken by responsible entities to correct the violations and restore individuals' rights will be considered mitigating circumstances and will be taken into account to reduce the penalty or assessment.

Conversely, under § 150.321, we will consider as aggravating circumstances instances in which violations that appear to be frequent have resulted in an obvious or significant financial and other impacts on affected individuals or cannot be adequately corrected. These parameters will be considered in determining the gravity of the violation. In determining the appropriate amount of the penalty and assessment to be imposed, we will take into account all mitigating and aggravating circumstances outlined by these sections.

Section 150.325 Settlement Authority

This section will state that nothing in §§ 150.315 through 150.323 limits our authority to settle any issue or case or to reduce any penalty or assessment.

Section 150.341 Limitations on Penalties

This section explains that HCFA will not impose any civil money penalty on any failure if the failure was due to reasonable cause and not due to willful neglect and the failure was corrected within 30 days of the first day that any of the entities against whom the penalty would be imposed knew, or exercising reasonable diligence would have known, that the failure existed. The burden of establishing that the responsible entity did not know, and exercising reasonable diligence, could not have known that a failure existed, is on the responsible entity.

Section 150.343 Notice of Proposed Penalty

This section of the regulation further describes the information to be disclosed in the written notice of the proposed penalty to the responsible entity, including instructions to the responsible entity for responding and an explanation of the entity's right to a hearing if the responsible entity is appealing the proposed penalty.

Section 150.345 Appeal of Proposed Penalty

We include this section to direct the reader to our appeal procedures.

Section 150.347 Failure to Request a Hearing

This section of the regulation describes our responsibility to notify the entity in writing of the assessed penalty and the means by which to satisfy the judgment following the entity's failure to request a hearing within the specified period of time.

Appendix A to Subpart C of Part 150—Examples of Violations

This Appendix A includes examples of practices which, if undertaken by issuers, or non-federal governmental plans, may warrant the imposition of a civil money penalty. For convenience, the Appendix is divided into the group and individual markets and the types of violations are listed in numerical order by regulatory citation number in each of the two markets.

Subpart D—Administrative Hearings

This subpart describes the processes for administrative hearings and appeals of civil money penalties.

Sections 150.401 Through 150.463

Sections 150.401 through 150.463 set forth the procedures for appeal of HCFA's assessment of a civil money penalty. The PHS Act provides that if a responsible entity appeals HCFA's assessment of a civil money penalty, the administrative law judge hearing the appeal makes the initial agency decision.

Although the administrative law judge makes the initial agency decision, the considerations and factors set forth in this part are binding on the administrative law judge's decision. The administrative law judge may not add or disregard such considerations and factors in deciding whether assessment of a civil money penalty is appropriate, and the amount of such penalty.

Section 150.457 sets forth the process through which the HCFA Administrator may vacate or modify the administrative law judge's decision. Section 150.459 provides that any responsible entity against whom a final assessment of a civil money penalty is made may appeal that assessment to the appropriate United States District Court.

Section 150.465 Collection and Use of Penalty Funds

This section describes to whom (HCFA) penalty funds are paid and how they may be used.

Sections 144.101, 144.102, and 144.103

We are adding provisions to include the new part 150. We are also revising the definition of "non-Federal governmental plan" under § 144.103 because the existing definition reiterates the definition in section 2791(d)(8)(C) of the PHS Act. This definition simply states that the term "non-Federal governmental plan" means "a governmental plan that is not a Federal governmental plan." Section 2791(d)(8)(A) defines the term "governmental plan" as that term is defined under section 3(32) of ERISA. (Determining whether an entity is a "governmental plan" for purposes of section 3(32) of ERISA is within the jurisdiction of the Department of Labor.) Subparagraphs (B) and (C) of section 2791(d)(8), respectively, define "Federal governmental plan" and "non-Federal governmental plan". ERISA does not separately define these terms. Section 3(32) of ERISA, in pertinent part, defines the term "governmental plan" as "a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." We have revised the definition of the term "non-Federal governmental plan" by adopting that portion of the ERISA definition of "governmental plan" that defines a non-Federal governmental plan.

Parts 146 and 148

We are deleting §§ 146.184, 148.200, and 148.202, as these provisions are now in part 150.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information is submitted to the Office of Management and Budget (OMB) for review and approval. This document does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We believe that dispensing with proposed rulemaking is in the public interest. Proposed rulemaking is also unnecessary. Accordingly, we are proceeding here directly with an interim final rule.

The basic requirements of this interim final rule already exist in 45 CFR parts 146 and 148. Therefore, we are not adding anything that will impose new requirements. We do include provisions that will assist health insurance issuers, and non-Federal governmental plans/employers, by letting them know what they can do if we impose a civil money penalty; for example, refute our findings or request a hearing. This rule will also help individuals whose health insurance coverage is subject to part 146 or 148 in that we will be better able to enforce our rules and provide protections to individuals.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this rule as an interim final rule with comment period. We are, however, providing a 60-day comment period and will respond to comments we receive in any subsequent **Federal Register** document.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). A discussion regarding the expected economic effects of this interim final rule is presented below.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses and nonprofit organizations. Entities are considered small either because of nonprofit status or because of having revenues of $5 million or less annually. For purposes of the RFA, we consider it unlikely that many health insurance issuers will meet this definition of small entity. This interim final rule will also affect non-Federal governmental plans, but these plans do not meet the definition of a small entity.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. Although this interim final rule will affect State and local governments and health insurance issuers in the private sector, such impact is expected to be minimal and less than $100 million in the aggregate. Set forth below is a discussion regarding the expected impact of this interim final rule.

B. Anticipated Effects

The Congress intended that the protections provided in HIPAA be afforded to all Americans, regardless of whether such protections are guaranteed by States or the Federal government. These regulations are intended to expand upon the basic process for Federal enforcement of HIPAA. Federal enforcement presently exists in California, Missouri and Rhode Island. We estimate that approximately 325 health insurance issuers offer health insurance coverage in these States and would therefore be affected by these regulations. While we recognize that direct Federal enforcement may become necessary in additional States, we are unable to predict the number of States or issuers affected in the future. We expect these regulations to impose a minimal burden on States, health insurance issuers, and non-Federal governmental plans/employers but we invite comments from affected parties regarding the potential or real impact of these regulations.

1. Effects on State and Local Governments

The primary impact of these regulations on States is to clarify the process by which we determine that Federal enforcement is necessary. As described in the regulations, which closely follow the statutory language, we determine that Federal enforcement is necessary when either a State notifies us of its failure to enact and/or enforce the necessary legislation; or we receive information or otherwise discover that a State is not substantially enforcing HIPAA. We are exercising our regulatory discretion where necessary to ensure that consumers are protected to the full extent of the law. The impact of our regulatory discretion with respect to States is discussed below.

These regulations will also affect State and local governments to the extent that these governments provide health plans to their employees. These plans, designated as non-Federal governmental plans under HIPAA, are subject to our direct enforcement, but those that are self-funded are permitted to elect to be exempt from one or more HIPAA provisions, with the exception of the requirement that the plan issue certificates of creditable coverage. The impact of these regulations on non-Federal governmental plans is discussed below under subsection 2. These regulations, however, will not affect health plans provided by tribal governments because such entities are not covered by the PHS Act and are

therefore not subject to our direct enforcement.

The interim final regulations published on April 8, 1997 (42 CFR Parts 144, 146, and 148) address the situation in which we learn of a State's failure to substantially enforce the HIPAA provisions by a "complaint or other means." These interim final regulations clarify the scope of the term "other means" to include informal contact between us and State officials, a report in the news media, periodic communication by us with the States, periodic review of State health care legislation, or any other information that indicates a substantial failure to enforce. Since many individuals protected by HIPAA will not initiate complaints because they are unaware of their rights under the law and therefore do not realize when their rights are being denied or abridged, we cannot limit the basis of our investigation solely to complaints received from individuals. Therefore, we have clarified the definition of "other information" to include other forms of information so that we will learn about potential HIPAA violations and if necessary, initiate enforcement action as soon as possible.

If we initiate an inquiry in a particular State, we may begin our inquiry by informally contacting appropriate State officials. If a State informs us that it is enforcing all of the HIPAA provisions and requirements, we will take no further action unless there are further indications to contradict the State's assertion. If we find that a State has failed to substantially enforce HIPAA, we will allow the State a reasonable opportunity to correct such a failure. It is only when other efforts have failed that we will initiate the formal determination process in a particular State. Thus, as permitted by current regulations, while we may initiate an inquiry in a State on information other than a complaint, these regulations that we are publishing today will provide flexibility for the State to respond to the inquiry and will allow the State a reasonable opportunity to enforce HIPAA.

In the event that we determine that there is a reasonable basis for finding a State's failure to substantially enforce HIPAA, we will provide written notice to the chief executive officer of the State and other appropriate State officials. In the interim final regulations published on April 8, 1997 a response time of 45 days was allowed. This regulation shortens the response time to 30 days in order to lessen any adverse effect on individuals in that particular State. Individuals may not incur a break in coverage of more than 63 days without losing their right to HIPAA protections. Our primary concern is that individuals receive rights to which they are entitled under HIPAA. This shorter response time appears to strike a balance between the States' prerogative to regulate health insurance issuers and the rights of individuals that Congress intended to protect by enacting HIPAA. We have invited comments on this change.

However, if a State is unable to respond to our inquiry within the 30-day response period, these regulations will allow us to extend the 30-day response period for good cause. We estimate that those States responding to an inquiry will incur some costs in providing information, whether orally or in writing, to demonstrate their enforcement of HIPAA.

These regulations also provide a transition process from Federal enforcement back to State enforcement if and when HCFA determines that Federal enforcement is no longer necessary. The impact of these transitional processes is difficult to estimate at this time. We invite comments on this process and the possible impacts associated with it.

2. Effects of These Regulations on Non-Federal Governmental Plans

State and local governmental plans may offer health insurance coverage to their members through an issuer or may self-insure their members. For those non-Federal governmental plans that offer health insurance coverage through an issuer, violations by the non-Federal governmental plan are subject to our enforcement. Violations by the issuer are subject to enforcement by the State unless HCFA is directly enforcing HIPAA requirements in that State. Those plans that self-insure their members (*i.e.*, do not purchase insurance from an insurance issuer) are subject to our enforcement but are also permitted to elect exemptions from one or more HIPAA requirements. To date, approximately 615 self-insured non-Federal governmental plans have notified us of their intent to opt out of one or more HIPAA provisions. Since self-insured non-Federal governmental plans are permitted to elect exemption from one or more HIPAA provisions, we expect to find relatively few of these plans out of compliance with HIPAA. While the exact number of non-Federal governmental plans is not known at this time, we do not expect many more plans to exercise their right to opt out. In general, the effects of the regulations on health insurance issues as discussed below under subsection 3, also apply to non-Federal governmental plans/employers that are subject to HIPAA requirements.

3. Effects of the Regulations on Health Insurance Issuers Offering Individual or Group Health Insurance Coverage

In those instances in which HCFA enforces HIPAA, we are responsible for enforcing HIPAA with respect to health insurance issuers. As stated above, we estimate that 325 health insurance issuers issue policies in those three States currently subject to Federal enforcement in the individual market, group market, or both (California, Missouri, and Rhode Island). These issuers will be primarily affected to the extent that they fail to comply with the HIPAA provisions and requirements. Issuers will be required to establish new relationships and communicate directly with Federal officials. Thus, issuers may incur some costs as they develop and maintain new processes for dealing with Federal regulators. However, in those States in which we have begun directly enforcing HIPAA, we have already held meetings with health insurance issuers and provided information about appropriate Federal officials and general enforcement processes. Thus, to some extent, new relationships between health insurance issuers and Federal officials have already been established in those States. Issuers in those States will therefore incur only minimal costs in maintaining these relationships.

As part of our direct enforcement responsibilities, we may request additional information from issuers pursuant to a complaint or other information. This may impose a burden on issuers to the extent that they must submit additional information to us in response to a complaint. These interim final regulations will provide a process for doing so that is similar to the complaint resolution process currently in practice in many States. If a complaint or other information we receive indicates a potential violation, we will provide written notice to the issuer and provide 30 days from the date of the notice for the issuer to respond with additional information. This time frame may be more lenient than similar State requirements, which provide as few as 15 working days or 20 calendar days for the issuer's response. If the 30-day period is not sufficient, the issuer may request an extension for good cause. We will consider the potential impact of granting an extension on those individuals who may incur a significant break in coverage as a result of the extension.

During an investigation of any potential violation, we will review and consider documentation provided that

demonstrates the issuers compliance with HIPAA. These interim final regulations will not require, but will suggest, documentation that an issuer may submit in response to the complaint allegation. If, in the course of an investigation of a potential violation, we discover a pattern of noncompliance or any other issue that warrants further investigation, we may initiate a market conduct examination of the issuer. If, during the course of our examination, we identify a potential violation(s), we will provide notice to the issuer of the violation and a proposed plan of correction. While the issuer that undergoes a market conduct examination may incur some costs in providing the documentation requested pursuant to that examination, the issuer may avoid the imposition of a civil money penalty or may be subject to a civil money penalty of a lesser amount.

Although those health insurance issuers given notice of a potential violation may incur additional costs in responding to our inquiry, these costs are expected to be minimal and incurred only by a small number of issuers. Generally, consumers will first seek redress by the health insurance issuer and second by the State insurance department. Complaints are then forwarded to one of our regional offices and possibly our central office after the first two steps have been taken. Therefore, the number of complaints that will be brought to our attention will be relatively small given the universe of health insurance issuers.

In those instances in which documents (e.g, new policy forms or marketing materials) must be modified to meet the HIPAA standards, issuers may have to resubmit these documents to the appropriate State officials to be reviewed for compliance with other applicable State laws. Thus, issuers may spend more time bringing new materials and products to the market. However, in the absence of Federal enforcement, these documents would have had to have been reviewed by State officials for compliance with applicable HIPAA standards, as well as those of other State laws. Under Federal enforcement, issuers are therefore required to submit to a separate regulatory body—the Federal government—only information they are already required to submit to the State, and are expected to incur minimal costs in doing so.

In the event that an issuer is found to be in violation of HIPAA, the Secretary of the Department of Health and Human Services is authorized to impose civil money penalties of no more than $100 for each day for each violation for each affected individual. These regulations will provide further details regarding possible alternatives to the imposition of a civil money penalty, including returning adversely affected individuals to the same position in which they would have been had the violation not occurred.

However, in the event that an issuer refuses to respond to or resolve a complaint or other inquiry in a satisfactory manner, we will assess the penalty and provide notice of this penalty to the health insurance issuer. In assessing the penalty, we will consider several mitigating factors, also enumerated in the current interim final regulations, which include the issuer's record of prior compliance and the gravity of the violation. We will also consider aggravating circumstances, including the frequency of the violation, the financial and other impacts of the violation on the average affected individual, or the issuer's inability to show that substantially all of the violations were corrected. Issuers will be permitted to request a hearing and may also request a settlement or alternative dispute resolution.

4. Effects on the Medicare and Medicaid Programs

We do not expect that this rule will have any impact on Medicare expenditures or the solvency of the trust fund or on Medicaid program expenditures.

5. Federalism

Under Executive Order 12612, this regulation will not significantly affect the States beyond what is required by HIPAA. It follows the intent and letter of the law and does not usurp State authority beyond what the HIPAA requires. This regulation describes only processes that must be undertaken to fulfill our obligation to conduct enforcement as required by the April 8, 1997 regulation. In addition, HIPAA follows a narrow preemption of State laws and does not preempt State laws that afford greater protections to HIPAA-eligible individuals.

We have included various provisions throughout this regulation that demonstrate cooperation with the States. For example, States are afforded the opportunity to enforce HIPAA requirements, which is the preferred avenue of HIPPA implementation. If we receive information that a State is not substantially enforcing, we first ask whether State officials have been notified. We may also contact State officials informally to discuss the requirements that are allegedly not being enforced. If the State provides a satisfactory explanation that indicates it is enforcing the HIPAA requirements, we will take no further action unless we receive further information to validate the assertion that the State is failing to enforce the requirements.

If there is a reasonable question regarding whether a State is failing to substantially enforce HIPAA requirements, we will send our preliminary determination to the chief executive officer of the State, as well as to other appropriate regulatory officials of the State. This preliminary determination will provide the State with a reasonable opportunity to present evidence of substantial enforcement, to take corrective action, and under certain specific circumstances, with an opportunity to request an extension.

If we subsequently find that a State is not enforcing the HIPAA requirements, we will issue a final written determination that will identify the requirements that we will enforce and the effective date of our enforcement. Under certain circumstances it is even possible that States may enforce certain requirements while we enforce others.

After we have assumed enforcement responsibility in a State, should the State demonstrate that it is prepared to begin its own enforcement we may, at our discretion, enter into discussions with State officials regarding the possibility of a transition back to State enforcement. In this case, to the extent permissible, we will make our records documenting compliance and enforcement available for incorporation into State records.

C. Alternatives Considered

Throughout the process of developing these regulations, we attempted to balance States' interest in regulating health insurance issuers and the rights of those individuals that the Congress intended to protect in enacting HIPAA. In those cases where we are exercising regulatory discretion (described above), we are allowing States the maximum amount of flexibility without jeopardizing the individual's rights to the HIPAA protections. Likewise, we are attempting to establish a process for investigating complaints and other information regarding potential HIPAA violations that serves as an effective deterrent to HIPAA violations. This process will provide ample notice to the issuer and other responsible entities under investigation and will provide guidance to issuers and other responsible entities that wish to comply with the HIPAA provisions. We expect these regulations to impose a minimal burden on States, health insurance issuers, and non-Federal governmental plans/employers but we invite

comments from affected parties regarding the potential or real impact of these regulations.

D. Conclusion

In accordance with the requirements of the RFA, we have performed the above analysis, and we believe that there will be minimal impact on small entities. We request comments on our findings. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects Affected

45 CFR Parts 144 and 146

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 148

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 150

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 45 CFR subtitle A, subchapter B, is amended as set forth below:

A. Part 144 is amended as follows:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

1. The authority citation for part 144 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92).

2. Section 144.101 is revised to read as follows:

§ 144.101 Basis and purpose.

(a) Part 146 of this subchapter implements sections 2701 through 2723 of the Public Health Service Act (PHS Act, 42 U.S.C. 300gg, *et seq.*). Its purpose is to improve access to group health insurance coverage, guarantee the renewability of all coverage in the group market, provide certain protections for mothers and newborns with respect to coverage for hospital stays in connection with childbirth, and provide parity between the application of annual and lifetime dollar limits to mental health benefits and those limits for other health benefits and to provide certain protections for patients who elect breast reconstruction in connection with a mastectomy.

(b) Part 148 of this subchapter implements sections 2741 through 2763 of the PHS Act. Its purpose is to improve access to individual health insurance coverage for certain individuals who previously had group coverage, guarantee the renewability of all health insurance coverage in the individual market, and provide certain protections for mothers and newborns with respect to coverage for hospital stays in connection with childbirth, and to provide certain protections for patients who elect breast reconstruction in connection with a mastectomy.

(c) Part 150 of this subchapter implements the enforcement provisions of sections 2722 and 2761 of the PHS Act with respect to the following:

(1) States that fail to substantially enforce one or more provisions of part 146 concerning group health insurance or the requirements of part 148 of this subchapter concerning individual health insurance.

(2) Insurance issuers in States described in paragraph (c)(1) of this section.

(3) Group health plans that are non-Federal governmental plans.

(d) Sections 2791 and 2792 of the PHS Act define terms used in the regulations in this subchapter and provide the basis for issuing these regulations.

3. In § 144.102, paragraph (d) is added to read as follows:

§ 144.102 Scope and applicability.

* * * * *

(d) Provisions relating to HCFA enforcement of one or more provisions of part 146 or the requirements of part 148, or both, are contained in part 150 of this subchapter.

4. In § 144.103, the title, the introductory text, and the definition of non-Federal governmental plan are revised and a definition of "HCFA" is added to read as follows:

§ 144.103 Definitions.

For purposes of parts 146 (group market), 148 (individual market), and 150 (enforcement) of this subchapter, the following definitions apply unless otherwise provided:

* * * * *

HCFA means the Health Care Financing Administration.

* * * * *

Non-Federal governmental plan means a governmental plan established or maintained for its employees by the government of any State or political subdivision thereof, or by any agency or instrumentality of either.

* * * * *

PART 146—[AMENDED]

B. Part 146 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Secs. 2701 through 2723, 2791, and 2792 of the PHS Act, 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92.

§ 146.180 [Amended]

2. The cross-reference in § 146.180(i)(2) to "§ 146.184(d)(7)(iii)(B)" is revised to read "§ 150.341(a)(2)."

3. The cross-reference in § 146.180(i)(3) to "§ 146.184" is revised to read "part 150 of this subchapter."

§ 146.184 [Removed]

4. Section 146.184 is removed.

PART 148—[AMENDED]

C. Part 148 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Secs. 2741 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg–41 through 300gg–63, 300gg–91, and 300gg–92).

§§ 148.200 and 148.202 [Removed]

2. Sections 148.200 and 148.202 are removed.

D. Part 150 is added to read as follows:

PART 150—HCFA ENFORCEMENT IN GROUP AND INDIVIDUAL INSURANCE MARKETS

Subpart A—General Provisions

Sec.

150.101 Basis and scope.
150.103 Definitions.

Subpart B—HCFA Enforcement Processes For Determining Whether States Are Failing to Substantially Enforce HIPAA Requirements

Sec.

150.201 State enforcement.
150.203 Circumstances requiring HCFA enforcement.
150.205 Sources of information triggering an investigation of State enforcement.
150.207 Procedure for determining that a State fails to substantially enforce HIPAA requirements.
150.209 Verification of exhaustion of remedies and contact with State officials.
150.211 Notice to the State.
150.213 Form and content of notice.
150.215 Extension for good cause.
150.217 Preliminary determination.
150.219 Final determination.
150.221 Transition to State enforcement.

Subpart C—HCFA Enforcement With Respect to Issuers and Non-Federal Governmental Plans—Civil Money Penalties

150.301 General rule regarding the imposition of civil money penalties.
150.303 Basis for initiating an investigation of a potential violation.
150.305 Determination of entity liable for civil money penalty.
150.307 Notice to responsible entities.
150.309 Request for extension.
150.311 Responses to allegations of noncompliance.
150.313 Market conduct examinations.
150.315 Amount of penalty—General.
150.317 Factors HCFA uses to determine the amount of penalty.
150.319 Determining the amount of the penalty—mitigating circumstances.
150.321 Determining the amount of penalty—aggravating circumstances.
150.323 Determining the amount of penalty—other matters as justice may require.
150.325 Settlement authority.
150.341 Limitations on penalties.
150.343 Notice of proposed penalty.
150.345 Appeal of proposed penalty.
150.347 Failure to request a hearing.
Appendix A to Subpart C of Part 150—Examples of Violations

Subpart D—Administrative Hearings

150.401 Definitions.
150.403 Scope of ALJ's authority.
150.405 Filing of request for hearing.
150.407 Form and content of request for hearing.
150.409 Amendment of notice of assessment or request for hearing.
150.411 Dismissal of request for hearing.
150.413 Settlement.
150.415 Intervention.
150.417 Issues to be heard and decided by ALJ.
150.419 Forms of hearing.
150.421 Appearance of counsel.
150.423 Communications with the ALJ.
150.425 Motions.
150.427 Form and service of submissions.
150.429 Computation of time and extensions of time.
150.431 Acknowledgment of request for hearing.
150.435 Discovery.
150.437 Submission of briefs and proposed hearing exhibits.
150.439 Effect of submission of proposed hearing exhibits.
150.441 Prehearing conferences.
150.443 Standard of proof.
150.445 Evidence.
150.447 The record.
150.449 Cost of transcripts.
150.451 Posthearing briefs.
150.453 ALJ decision.
150.455 Sanctions.
150.457 Review by Administrator.
150.459 Judicial review.
150.461 Failure to pay assessment.
150.463 Final order not subject to review.
150.465 Collection and use of penalty funds.

Authority: Secs. 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92).

Subpart A—General Provisions

§ 150.101 Basis and scope.

(a) *Basis.* HCFA's enforcement authority under sections 2722 and 2761 of the PHS Act and its rulemaking authority under section 2792 of the PHS Act provide the basis for issuing regulations under this part 150.

(b) *Scope*—(1) *Enforcement with respect to group heath plans. The provisions of title XXVII of the PHS Act that apply to group health plans that are non-Federal governmental plans are enforced by HCFA using the procedures described in § 150.301 et seq.*

(2) *Enforcement with respect to health insurance issuers.* The States have primary enforcement authority with respect to the requirements of title XXVII of the PHS Act that apply to health insurance issuers offering coverage in the group or individual health insurance market. If HCFA determines under subpart B of this part that a State is not substantially enforcing title XXVII of the PHS Act, including the implementing regulations in part 146 and part 148 of this subchapter, HCFA enforces them under subpart C of this part.

§ 150.103 Definitions.

The definitions that appear in part 144 of this subchapter apply to this part 150, unless stated otherwise. As used in this part:

Amendment, endorsement, or *rider* means a document that modifies or changes the terms or benefits of an individual policy, group policy, or certificate of insurance.

Application means a signed statement of facts by a potential insured that an issuer uses as a basis for its decision whether, and on what basis to insure an individual, or to issue a certificate of insurance, or that a non-Federal governmental health plan uses as a basis for a decision whether to enroll an individual under the plan.

Certificate of insurance means the document issued to a person or entity covered under an insurance policy issued to a group health plan or an association or trust that summarizes the benefits and principal provisions of the policy.

Complaint means any expression, written or oral, indicating a potential denial of any right or protection contained in HIPAA requirements (whether ultimately justified or not) by an individual, a personal representative or other entity acting on behalf of an individual, or any entity that believes such a right is being or has been denied an individual.

Group health insurance policy or group policy means the legal document or contract issued by an issuer to a plan sponsor with respect to a group health plan (including a plan that is a non-Federal governmental plan) that contains the conditions and terms of the insurance that covers the group.

HIPAA requirements means the requirements of title XXVII of the PHS Act and its implementing regulations in parts 146 and 148 of this subchapter.

Individual health insurance policy or individual policy means the legal document or contract issued by the issuer to an individual that contains the conditions and terms of the insurance. Any association or trust arrangement that is not a group health plan as defined in § 144.103 of this subchapter or does not provide coverage in connection with one or more group health plans is individual coverage subject to the requirements of part 148 of this subchapter. The term "individual health insurance policy" includes a policy that is——

(1) Issued to an association that makes coverage available to individuals other than in connection with one or more group health plans; or

(2) Administered, or placed in a trust, and is not sold in connection with a group health plan subject to the provisions of part 146 of this subchapter.

Plan document means the legal document that provides the terms of the plan to individuals covered under a group health plan, such as a non-Federal governmental health plan.

State law means all laws, decisions, rules, regulations, or other State action having the effect of law, of any State as defined in § 144.103 of this subchapter. A law of the United States applicable to the District of Columbia is treated as a State law rather than a law of the United States.

Subpart B—HCFA Enforcement Processes for Determining Whether States Are Failing to Substantially Enforce HIPAA Requirements

§ 150.201 State enforcement.

Except as provided in subpart C of this part, each State enforces HIPAA requirements with respect to health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State.

§ 150.203 Circumstances requiring HCFA enforcement.

HCFA enforces HIPAA requirements to the extent warranted (as determined by HCFA) in any of the following circumstances:

(a) *Notification by State.* A State notifies HCFA that it has not enacted legislation to enforce or that it is not otherwise enforcing HIPAA requirements.

(b) *Determination by HCFA.* If HCFA receives or obtains information that a State may not be substantially enforcing HIPAA requirements, it may initiate the process described in this subchapter to determine whether the State is failing to substantially enforce these requirements.

(c) *Special rule for guaranteed availability in the individual market.* If a State has notified HCFA that it is implementing an acceptable alternative mechanism in accordance with § 148.128 of this subchapter instead of complying with the guaranteed availability requirements of § 148.120, HCFA's determination focuses on the following:

(1) Whether the State's mechanism meets the requirements for an acceptable alternative mechanism.

(2) Whether the State is implementing the acceptable alternative mechanism.

(d) *Consequence of a State not implementing an alternative mechanism.* If a State is not implementing an acceptable alternative mechanism, HCFA determines whether the State is substantially enforcing the requirements of §§ 148.101 through 148.126 and § 148.170 of this subchapter.

§ 150.205 Sources of information triggering an investigation of State enforcement.

Information that may trigger an investigation of State enforcement includes, but is not limited to, any of the following:

(a) A complaint received by HCFA.

(b) Information learned during informal contact between HCFA and State officials.

(c) A report in the news media.

(d) Information from the governors and commissioners of insurance of the various States regarding the status of their enforcement of HIPAA requirements.

(e) Information obtained during periodic review of State health care legislation. HCFA may review State health care and insurance legislation and regulations to determine whether they are:

(1) Consistent with HIPAA requirements.

(2) Not pre-empted as provided in § 146.143 (relating to group market provisions) and § 148.120 (relating to individual market requirements) on the basis that they prevent the application of a HIPAA requirement.

(f) Any other information that indicates a possible failure to substantially enforce.

§ 150.207 Procedure for determining that a State fails to substantially enforce HIPAA requirements.

Sections 150.209 through 150.219 describe the procedures HCFA follows to determine whether a State is substantially enforcing HIPAA requirements.

§ 150.209 Verification of exhaustion of remedies and contact with State officials.

If HCFA receives a complaint or other information indicating that a State is failing to enforce HIPAA requirements, HCFA assesses whether the affected individual or entity has made reasonable efforts to exhaust available State remedies. As part of its assessment, HCFA may contact State officials regarding the questions raised.

§ 150.211 Notice to the State.

If HCFA is satisfied that there is a reasonable question whether there has been a failure to substantially enforce HIPAA requirements, HCFA sends, in writing, the notice described in § 150.213 of this part, to the following State officials:

(a) The governor or chief executive officer of the State.

(b) The insurance commissioner or chief insurance regulatory official.

(c) If the alleged failure involves HMOs, the official responsible for regulating HMOs if different from the official listed in paragraph (b) of this section.

§ 150.213 Form and content of notice.

The notice provided to the State is in writing and does the following:

(a) Identifies the HIPAA requirement or requirements that have allegedly not been substantially enforced.

(b) Describes the factual basis for the allegation of a failure or failures to enforce HIPAA requirements.

(c) Explains that the consequence of a State's failure to substantially enforce HIPAA requirements is that HCFA enforces them.

(d) Advises the State that it has 30 days from the date of the notice to respond, unless the time for response is extended as described in § 150.215 of this subpart. The State's response should include any information that the State wishes HCFA to consider in making the preliminary determination described in § 150.217.

§ 150.215 Extension for good cause.

HCFA may extend, for good cause, the time the State has for responding to the notice described in § 150.213 of this subpart. Examples of good cause include an agreement between HCFA and the State that there should be a public hearing on the State's enforcement, or evidence that the State is undertaking expedited enforcement activities.

§ 150.217 Preliminary determination.

If, at the end of the 30-day period (and any extension), the State has not established to HCFA's satisfaction that it is substantially enforcing the HIPAA requirements described in the notice, HCFA takes the following actions:

(a) Consults with the appropriate State officials identified in § 150.211 (or their designees).

(b) Notifies the State of HCFA's preliminary determination that the State has failed to substantially enforce the requirements and that the failure is continuing.

(c) Permits the State a reasonable opportunity to show evidence of substantial enforcement.

§ 150.219 Final determination.

If, after providing notice and a reasonable opportunity for the State to show that it has corrected any failure to substantially enforce, HCFA finds that the failure to substantially enforce has not been corrected, it will send the State a written notice of its final determination. The notice includes the following:

(a) Identification of the HIPAA requirements that HCFA is enforcing.

(b) The effective date of HCFA's enforcement.

§ 150.221 Transition to State enforcement.

(a) If HCFA determines that a State for which it has assumed enforcement authority has enacted and implemented legislation to enforce HIPAA requirements and also determines that it is appropriate to return enforcement authority to the State, HCFA will enter into discussions with State officials to ensure that a transition is effected with respect to the following:

(1) Consumer complaints and inquiries.

(2) Instructions to issuers.

(3) Any other pertinent aspect of operations.

(b) HCFA may also negotiate a process to ensure that, to the extent practicable, and as permitted by law, its records documenting issuer compliance and other relevant areas of HCFA's enforcement operations are made available for incorporation into the records of the State regulatory authority that will assume enforcement responsibility.

Subpart C—HCFA Enforcement With Respect to Issuers and Non-Federal Governmental Plans—Civil Money Penalties

§ 150.301 General rule regarding the imposition of civil money penalties.

If any health insurance issuer that is subject to HCFA's enforcement authority under § 150.101(b)(2), or any non-Federal governmental plan (or employer that sponsors a non-Federal governmental plan) that is subject to HCFA's enforcement authority under § 150.101(b)(1), fails to comply with HIPAA requirements, it may be subject to a civil money penalty as described in this subpart.

§ 150.303 Basis for initiating an investigation of a potential violation.

(a) *Information.* Any information that indicates that any issuer may be failing to meet the HIPAA requirements or that any non-Federal governmental plan that is a group health plan as defined in section 2791(a)(1) of the PHS Act and 45 CFR § 144.103 may be failing to meet an applicable HIPAA requirement, may warrant an investigation. HCFA may consider, but is not limited to, the following sources or types of information:

(1) Complaints.

(2) Reports from State insurance departments, the National Association of Insurance Commissioners, and other Federal and State agencies.

(3) Any other information that indicates potential noncompliance with HIPAA requirements.

(b) *Who may file a complaint.* Any entity or individual, or any entity or personal representative acting on that individual's behalf, may file a complaint with HCFA if he or she believes that a right to which the aggrieved person is entitled under HIPAA requirements is being, or has been, denied or abridged as a result of any action or failure to act on the part of an issuer or other responsible entity as defined in § 150.305.

(c) *Where a complaint should be directed.* A complaint may be directed to any HCFA regional office.

§ 150.305 Determination of entity liable for civil money penalty.

If a failure to comply is established under this Part, the responsible entity, as determined under this section, is liable for any civil money penalty imposed.

(a) *Health insurance issuer is responsible entity—(1) Group health insurance policy.* To the extent a group health insurance policy issued, sold, renewed, or offered to a private plan sponsor or a non-Federal governmental plan sponsor is subject to applicable HIPAA requirements, a health insurance issuer is subject to a civil money penalty, irrespective of whether a civil money penalty is imposed under paragraphs (b) or (c) of this section, if the policy itself or the manner in which the policy is marketed or administered fails to comply with an applicable HIPAA requirement.

(2) *Individual health insurance policy.* To the extent an individual health insurance policy is subject to an applicable HIPAA requirement, a health insurance issuer is subject to a civil money penalty if the policy itself, or the manner in which the policy is marketed or administered, violates any applicable HIPAA requirement.

(b) *Non-Federal governmental plan is responsible entity.* (1) *Basic rule.* If a non-Federal governmental plan is sponsored by two or more employers and fails to comply with an applicable HIPAA requirement, the plan is subject to a civil money penalty, irrespective of whether a civil money penalty is imposed under paragraph (a) of this section. The plan is the responsible entity irrespective of whether the plan is administered by a health insurance issuer, an employer sponsoring the plan, or a third-party administrator.

(2) *Exception.* In the case of a non-Federal governmental plan that is not provided through health insurance coverage, this paragraph (b) does not apply to the extent that the non-Federal governmental employers have elected under § 146.180 to exempt the plan from applicable HIPAA requirements.

(c) *Employer is responsible entity.* (1) *Basic rule.* If a non-Federal governmental plan is sponsored by a single employer and fails to comply with an applicable HIPAA requirement, the employer is subject to a civil money penalty, irrespective of whether a civil money penalty is imposed under paragraph (a) of this section. The employer is the responsible entity irrespective of whether the plan is administered by a health insurance issuer, the employer, or a third-party administrator.

(2) *Exception.* In the case of a non-Federal governmental plan that is not provided through health insurance coverage, this paragraph (c) does not apply to the extent the non-Federal governmental employer has elected under § 146.180 to exempt the plan from applicable HIPAA requirements.

(d) *Actions or inactions of agent.* A principal is liable for penalties assessed for the actions or inactions of its agent.

§ 150.307 Notice to responsible entities.

If an investigation under § 150.303 indicates a potential violation, HCFA provides written notice to the responsible entity or entities identified under § 150.305. The notice does the following:

(a) Describes the substance of any complaint or other information. (See Appendix A to this subpart for examples of violations.)

(b) Provides 30 days from the date of the notice for the responsible entity or entities to respond with additional information, including documentation of compliance as described in § 150.311.

(c) States that a civil money penalty may be assessed.

§ 150.309 Request for extension.

In circumstances in which an entity cannot prepare a response to HCFA within the 30 days provided in the notice, the entity may make a written request for an extension from HCFA detailing the reason for the extension request and showing good cause. If HCFA grants the extension, the responsible entity must respond to the notice within the time frame specified in HCFA's letter granting the extension of time. Failure to respond within 30 days, or within the extended time frame, may result in HCFA's imposition of a civil money penalty based upon the complaint or other information alleging or indicating a violation of HIPAA requirements.

§ 150.311 Responses to allegations of noncompliance.

In determining whether to impose a civil money penalty, HCFA reviews and considers documentation provided in any complaint or other information, as well as any additional information provided by the responsible entity to demonstrate that it has complied with HIPAA requirements. The following are examples of documentation that a potential responsible entity may submit for HCFA's consideration in determining whether a civil money penalty should be assessed and the amount of any civil money penalty:

(a) Any individual policy, group policy, certificate of insurance, application, rider, amendment, endorsement, certificate of creditable coverage, advertising material, or any other documents if those documents form the basis of a complaint or allegation of noncompliance, or the basis for the responsible entity to refute the complaint or allegation.

(b) Any other evidence that refutes an alleged noncompliance.

(c) Evidence that the entity did not know, and exercising due diligence could not have known, of the violation.

(d) Documentation that the policies, certificates of insurance, or non-Federal governmental plan documents have been amended to comply with HIPAA requirements either by revision of the contracts or by the development of riders, amendments, or endorsements.

(e) Documentation of the entity's issuance of conforming policies, certificates of insurance, plan documents, or amendments to policyholders or certificate holders before the issuance of the notice of intent to assess a penalty described in § 150.307.

(f) Evidence documenting the development and implementation of internal policies and procedures by an issuer, or non-Federal governmental health plan or employer, to ensure compliance with HIPAA requirements. Those policies and procedures may include or consist of a voluntary compliance program. Any such program should do the following:

(1) Effectively articulate and demonstrate the fundamental mission of compliance and the issuer's, or non-Federal governmental health plan's or employer's, commitment to the compliance process.

(2) Include the name of the individual in the organization responsible for compliance.

(3) Include an effective monitoring system to identify practices that do not comply with HIPAA requirements and to provide reasonable assurance that fraud, abuse, and systemic errors are detected in a timely manner.

(4) Address procedures to improve internal policies when noncompliant practices are identified.

(g) Evidence documenting the entity's record of previous compliance with HIPAA requirements.

§ 150.313 Market conduct examinations.

(a) *Definition.* A market conduct examination means the examination of health insurance operations of an issuer, or the operation of a non-Federal governmental plan, involving the review of one or more (or a combination) of a responsible entity's business or operational affairs, or both, to verify compliance with HIPAA requirements.

(b) *General.* If, based on the information described in § 150.303, HCFA finds evidence that a specific entity may be in violation of a HIPAA requirement, HCFA may initiate a market conduct examination to determine whether the entity is out of compliance. HCFA may conduct the examinations either at the site of the issuer or other responsible entity or a site HCFA selects. When HCFA selects a site, it may direct the issuer or other responsible entity to forward any documentation HCFA considers relevant for purposes of the examination to that site.

(c) *Appointment of examiners.* When HCFA identifies an issue that warrants investigation, HCFA will appoint one or more examiners to perform the examination and instruct them as to the scope of the examination.

(d) *Appointment of professionals and specialists.* When conducting an examination under this part, HCFA may retain attorneys, independent actuaries, independent market conduct examiners, or other professionals and specialists as examiners.

(e) *Report of market conduct examination.* (1) *HCFA review.* When HCFA receives a report, it will review the report, together with the examination work papers and any other relevant information, and prepare a final report. The final examination report will be provided to the issuer or other responsible entity.

(2) *Response from issuer or other responsible entity.* With respect to each examination issue identified in the report, the issuer or other responsible entity may:

(i) Concur with HCFA's position(s) as outlined in the report, explaining the plan of correction to be implemented.

(ii) Dispute HCFA's position(s), clearly outlining the basis for its dispute and submitting illustrative examples where appropriate.

(3) *HCFA's reply to a response from an issuer or other responsible entity.* Upon receipt of a response from the issuer or other responsible entity, HCFA will provide a letter containing its reply to each examination issue. HCFA's reply will consist of one of the following:

(i) Concurrence with the issuer's or non-Federal governmental plan's position.

(ii) Approval of the issuer's or non-Federal governmental plan's proposed plan of correction.

(iii) Conditional approval of the issuer's or non-Federal governmental plan's proposed plan of correction, which will include any modifications HCFA requires.

(iv) Notice to the issuer or non-Federal governmental plan that there exists a potential violation of HIPAA requirements.

§ 150.315 Amount of penalty—General.

A civil money penalty for each violation of 42 U.S.C. 300gg *et seq.* may not exceed $100 for each day, for each responsible entity, for each individual affected by the violation. Penalties imposed under this part are in addition to any other penalties prescribed or allowed by law.

§ 150.317 Factors HCFA uses to determine the amount of penalty.

In determining the amount of any penalty, HCFA takes into account the following:

(a) *The entity's previous record of compliance.* This may include any of the following:

(1) Any history of prior violations by the responsible entity, including whether, at any time before determination of the current violation or violations, HCFA or any State found the responsible entity liable for civil or administrative sanctions in connection with a violation of HIPAA requirements.

(2) Documentation that the responsible entity has submitted its policy forms to HCFA for compliance review.

(3) Evidence that the responsible entity has never had a complaint for noncompliance with HIPAA requirements filed with a State or HCFA.

(4) Such other factors as justice may require.

(b) *The gravity of the violation.* This may include any of the following:

(1) The frequency of the violation, taking into consideration whether any violation is an isolated occurrence, represents a pattern, or is widespread.

(2) The level of financial and other impacts on affected individuals.

(3) Other factors as justice may require.

§ 150. 319 Determining the amount of the penalty—mitigating circumstances.

For every violation subject to a civil money penalty, if there are substantial or several mitigating circumstances, the aggregate amount of the penalty is set at an amount sufficiently below the maximum permitted by § 150.315 to reflect that fact. As guidelines for taking into account the factors listed in § 150.317, HCFA considers the following:

(a) *Record of prior compliance.* It should be considered a mitigating circumstance if the responsible entity has done any of the following:

(1) Before receipt of the notice issued under § 150.307, implemented and followed a compliance plan as described in § 150.311(f).

(2) Had no previous complaints against it for noncompliance.

(b) *Gravity of the violation(s).* It should be considered a mitigating circumstance if the responsible entity has done any of the following:

(1) Made adjustments to its business practices to come into compliance with HIPAA requirements so that the following occur:

(i) All employers, employees, individuals and non-Federal governmental entities are identified that are or were issued any policy, certificate of insurance or plan document, or any form used in connection therewith that failed to comply.

(ii) All employers, employees, individuals, and non-Federal governmental plans are identified that were denied coverage or were denied a right provided under HIPAA requirements.

(iii) Each employer, employee, individual, or non-Federal governmental plan adversely affected by the violation has been, for example, offered coverage or provided a certificate of creditable coverage in a manner that complies with HIPAA requirements that were violated so that, to the extent practicable, that employer, employee, individual, or non-Federal governmental entity is in the same position that he, she, or it would have been in had the violation not occurred.

(iv) The adjustments are completed in a timely manner.

(2) Discovered areas of noncompliance without notice from HCFA and voluntarily reported that noncompliance, provided that the responsible entity submits the following:

(i) Documentation verifying that the rights and protections of all individuals adversely affected by the noncompliance have been restored; and

(ii) A plan of correction to prevent future similar violations.

(3) Demonstrated that the violation is an isolated occurrence.

(4) Demonstrated that the financial and other impacts on affected individuals is negligible or nonexistent.

(5) Demonstrated that the noncompliance is correctable and that a high percentage of the violations were corrected.

§ 150.321 Determining the amount of penalty—aggravating circumstances.

For every violation subject to a civil money penalty, if there are substantial or several aggravating circumstances, HCFA sets the aggregate amount of the penalty at an amount sufficiently close to or at the maximum permitted by § 150.315 to reflect that fact. HCFA considers the following circumstances to be aggravating circumstances:

(a) The frequency of violation indicates a pattern of widespread occurrence.

(b) The violation(s) resulted in significant financial and other impacts on the average affected individual.

(c) The entity does not provide documentation showing that substantially all of the violations were corrected.

§ 150.323 Determining the amount of penalty—other matters as justice may require.

HCFA may take into account other circumstances of an aggravating or mitigating nature if, in the interests of justice, they require either a reduction or an increase of the penalty in order to assure the achievement of the purposes of this part, and if those circumstances relate to the entity's previous record of compliance or the gravity of the violation.

§ 150.325 Settlement authority.

Nothing in §§ 150.315 through 150.323 limits the authority of HCFA to settle any issue or case described in the notice furnished in accordance with § 150.307 or to compromise on any penalty provided for in §§ 150.315 through 150.323.

§ 150.341 Limitations on penalties.

(a) *Circumstances under which a civil money penalty is not imposed.* HCFA does not impose any civil money penalty on any failure for the period of time during which none of the responsible entities knew, or exercising reasonable diligence would have known, of the failure. HCFA also does not impose a civil money penalty for the period of time after any of the responsible entities knew, or exercising reasonable diligence would have known of the failure, if the failure was due to reasonable cause and not due to willful neglect and the failure was corrected within 30 days of the first day that any of the entities against whom the penalty would be imposed knew, or exercising reasonable diligence would have known, that the failure existed.

(b) *Burden of establishing knowledge.* The burden is on the responsible entity or entities to establish to HCFA's satisfaction that no responsible entity knew, or exercising reasonable diligence would have known, that the failure existed.

§ 150.343 Notice of proposed penalty.

If HCFA proposes to assess a penalty in accordance with this part, it delivers to the responsible entity, or sends to that entity by certified mail, return receipt requested, written notice of its intent to assess a penalty. The notice includes the following:

(a) A description of the HIPAA requirements that HCFA has determined that the responsible entity violated.

(b) A description of any complaint or other information upon which HCFA based its determination, including the basis for determining the number of affected individuals and the number of days for which the violations occurred.

(c) The amount of the proposed penalty as of the date of the notice.

(d) Any circumstances described in §§ 150.317 through 150.323 that were considered when determining the amount of the proposed penalty.

(e) A specific statement of the responsible entity's right to a hearing.

(f) A statement that failure to request a hearing within 30 days permits the assessment of the proposed penalty without right of appeal in accordance with § 150.347.

§ 150.345 Appeal of proposed penalty.

Any entity against which HCFA has assessed a penalty may appeal that penalty in accordance with § 150.401 *et seq.*

§ 150.347 Failure to request a hearing.

If the responsible entity does not request a hearing within 30 days of the issuance of the notice described in § 150.343, HCFA may assess the proposed civil money penalty, a less severe penalty, or a more severe penalty. HCFA notifies the responsible entity in writing of any penalty that has been assessed and of the means by which the responsible entity may satisfy the judgment. The responsible entity has no right to appeal a penalty with respect to which it has not requested a hearing in accordance with § 150.405 unless the responsible entity can show good cause, as determined under § 150.405(b), for failing to timely exercise its right to a hearing.

Appendix A to Subpart C of Part 150—Examples of Violations

This appendix lists actions in the group and individual markets for which HCFA may impose civil money penalties. This list is not all-inclusive.

Note 1: All cross-references to sections of the Code of Federal Regulations are cross-references to sections in parts 144, 146, or 148 of this subchapter.

Note 2: Except as otherwise expressly noted, all references to non-Federal governmental plans refer to non-Federal governmental plans that are *not* exempt from HIPAA requirements (as defined in § 150.103) under section 2721(b)(2) of the PHS Act and § 146.180.

I. Basis for Imposition of Civil Money Penalties—Actions in the Group Market

a. Failure to comply with the limitations on pre-existing condition exclusions (§ 146.111).

Violations of the limitations on preexisting condition exclusions, set forth in § 146.111, includes those circumstances in which a non-Federal governmental plan or health insurance issuer offering group health insurance coverage does the following:

(1) Imposes a preexisting condition exclusion period that exceeds 12 months or, in the case of a late enrollee, 18 months, from the enrollment date (the first day of coverage or the first day of the waiting period, if any).

(2) Fails to reduce a pre-existing condition exclusion period by creditable coverage as provided in §§ 146.111(a)(1)(iii) and 146.113.

(3) Imposes a pre-existing condition exclusion period without first giving the two written notices required in §§ 146.111(c) and 146.115(d). The first notice is a general notice to all plan participants of the existence and terms of any pre-existing condition exclusion under the plan, and the rights of individuals to demonstrate creditable coverage. The notice should explain the right of an individual to request a certificate from a previous plan or issuer, if necessary, and include a statement that the current plan or issuer will assist in obtaining a certificate from a previous plan or issuer, if necessary. The second notice is required to be sent to any individual who has presented evidence of creditable coverage, and to whom a pre-existing condition exclusion period will be applied. This second notice informs the individual of the plan's determination of any pre-existing condition exclusion period, the basis for such determination, a written explanation of any appeals procedures established by the plan or issuer, and a reasonable opportunity to submit additional evidence of creditable coverage.

(4) Treats pregnancy as a pre-existing condition, as prohibited by § 146.111(b)(4). For example, an issuer may not refuse to pay for prenatal care and delivery effective with the date maternity coverage began because the individual did not have maternity coverage at the time the pregnancy began.

(5) Imposes a pre-existing condition exclusion with regard to a child who enrolls in a group health plan within 30 days of birth, adoption, or placement for adoption.

(6) Imposes a pre-existing condition exclusion with regard to a child who was enrolled in another group health plan within 30 days of birth, adoption, or placement for adoption and who does not experience significant break in coverage.

(7) Uses a pre-existing condition look-back period that exceeds the six-month period ending on the enrollment date in violation of § 146.111(a)(1) of this chapter.

(8) Determines whether a pre-existing condition exclusion applies by using a standard other than whether medical advice, diagnosis, care, or treatment was actually recommended or received during the look-back period. A determination that a reasonably prudent person would or should have sought medical care for the condition is an unacceptable standard by which to determine whether a pre-existing condition exclusion applies.

(9) Uses genetic information as part of the definition of pre-existing condition in the absence of a diagnosis of the condition related to the genetic information.

(10) Otherwise fails to comply with § 146.111.

b. Failure to comply with the provisions relating to creditable coverage (§ 146.113).

Failure to comply with the § 146.113 rules relating to creditable coverage includes those circumstances in which a non-Federal governmental plan or issuer offering group health insurance coverage does the following:

(1) Fails to treat all forms of coverage listed in § 146.113(a) as creditable coverage.

(2) Counts creditable coverage in a manner inconsistent with the standard method described in § 146.113(b) or the alternative method described in § 146.113(c), if it elects to use the alternative method.

(3) Treats an individual with fewer than 63 consecutive days without creditable coverage as having a significant break in coverage in violation of § 146.113(b)(2)(iii).

(4) Takes either a waiting period or an affiliation period into account when calculating a significant break in coverage, as prohibited by § 146.113(b)(2)(iii).

(5) Otherwise fails to comply with § 146.113.

c. Failure to comply with the provisions regarding certification and disclosure of previous coverage (§ 146.115).

Except as provided in paragraph (c)(b), the plan sponsor of a self-funded non-Federal governmental plan may not elect to exempt its plan from the requirements of this paragraph.

Failure to comply with the requirements in § 146.115 regarding certification and disclosure of previous coverage includes those circumstances in which a non-Federal governmental plan or issuer offering group health insurance coverage does the following:

(1) Fails to ensure that individuals who request certification receive it.

(2) Fails to automatically provide certificates of creditable coverage promptly, either—

(i) When the individual ceases to be covered under the plan (whether or not COBRA continuation coverage is offered or elected); or

(ii) When the COBRA continuation coverage is exhausted or is terminated by the individual, if COBRA continuation coverage was offered and was elected.

(3) Fails to provide certificates of creditable coverage promptly upon request.

(4) Fails to provide the required information in certificates of creditable coverage.

(5) Fails to provide certificates of creditable coverage to dependents.

(6) Fails to accept other evidence of creditable coverage as provided in § 146.115(c). (The plan sponsor of a self-funded non-Federal governmental plan may elect to exempt its plan from the requirements of this paragraph (6)).

(7) Otherwise fails to comply with § 146.115.

d. Failure to comply with the provisions regarding special enrollment periods (§ 146.117).

Failure to comply with the § 146.117 requirements regarding special enrollment periods includes those circumstances in which an issuer or a non-Federal governmental plan does the following:

(1) Fails to permit employees and dependents to enroll for coverage if they satisfy the conditions of § 146.117(a) or (b).

(2) Fails to provide coverage on a timely basis to individuals protected by a special enrollment period as provided in § 146.117.

(3) Fails to provide the employee with a description of the plan's or issuer's special enrollment rules on or before the time the employee is offered the opportunity to enroll as provided in § 146.117(c).

(4) Otherwise fails to comply with § 146.117.

e. Failure to comply with the HMO affiliation period provisions (§ 146.119).

Failure to comply with the § 146.119 affiliation period requirements includes those circumstances in which an HMO that offers group health insurance coverage does the following:

(1) Imposes a pre-existing condition exclusion period.

(2) Charges a premium for months in an affiliation period.

(3) Fails to impose an affiliation period uniformly without regard to any health status-related factor.

(4) Imposes an affiliation period that is longer than 2 months (or 3 months for late enrollees), or one that begins later than the enrollment date or does not run concurrently with any waiting period.

(5) Otherwise fails to comply with § 146.119.

f. Failure to comply with the provisions regarding nondiscrimination (§ 146.121).

Failure to comply with the § 146.121 prohibitions regarding nondiscrimination includes those circumstances in which an issuer or a non-Federal governmental plan does the following:

(1) Applies rules of eligibility (including continued eligibility) to enroll under the terms of the plan based any of the health-status related factors described in § 146.121(a).

(2) Requires an individual as a condition of enrollment or re-enrollment to pay a higher premium than others similarly situated by reason of a health-status related factor of the individual or the individual's dependent.

(3) Otherwise fails to comply with § 146.121.

g. Failure to comply with the provisions relating to benefits for mothers and newborns (§ 146.130) in States where the § 146.130 standards are applicable.

Failure of an issuer or a non-Federal governmental plan to comply with the standards in § 146.130 relating to benefits for mothers and newborns includes the following:

(1) Restricts benefits for a mother or her newborn to less than 48 hours following a vaginal delivery or less than 96 hours following a delivery by cesarean section, unless the attending provider decides, in consultation with the mother, to discharge the mother or newborn earlier.

(2) Fails to calculate the length of stay from the time of delivery when delivery occurs in a hospital, or from the time of admission when delivery occurs outside the hospital.

(3) Penalizes an attending provider for complying with the law.

(4) Offers incentives to an attending provider to provide care in a manner inconsistent with the provisions of § 146.130.

(5) Denies the mother or newborn eligibility or continued eligibility to enroll under the plan to avoid complying with § 146.130.

(6) Provides payments or rebates to mothers to encourage them to accept less than the minimum stay required.

(7) Requires an attending provider to obtain authorization to prescribe a hospital length of stay of up to 48 hours (or 96 hours) after delivery.

(8) Imposes deductibles, coinsurance, or other cost-sharing measures for any portion of a 48-hour (or 96-hour) hospital stay that are less favorable than those imposed on any preceding portion of the stay.

(9) In the case of a non-Federal governmental plan, fails to provide participants and beneficiaries with a statement describing the requirements of the Newborns' and Mothers' Health Protection Act of 1996, using the language provided at § 146.130(d)(2), not later than 60 days after the first day of the first plan year beginning on or after January 1, 1999.

(10) Otherwise fails to comply with § 146.130.

h. Failure to comply with the provisions pertaining to parity in the application of certain limits to mental health benefits in the large group market (§ 146.136).

Failure of a non-Federal governmental plan offered by a large employer or health insurance issuer offering health insurance coverage to large employers to comply with the § 146.136 provisions pertaining to parity in the application of certain limits to mental health benefits (with respect to a plan that must comply with such provisions) includes the following:

(1) Sale of a product by a health insurance issuer that fails to comply with the mental health parity provisions of § 146.136.

(2) Failure of a non-Federal governmental plan to comply with the annual and lifetime dollar limits provisions concerning mental health parity.

i. Failure to comply with the Women's Health and Cancer Rights Act of 1998 (section 2706 of the PHS Act, 42 U.S.C. 300gg–06).

j. Failure to comply with the provisions regarding guaranteed availability of coverage in the small group market (§ 146.150).

Failure to provide guaranteed availability in the small group market as provided in § 146.150 includes those circumstances in which a health insurance issuer offering any health insurance coverage to group health plans in the small group market does the following:

(1) Fails to offer all products on a guaranteed availability basis to all small employers.

(2) Fails to define a small employer using the definition at § 144.103, unless otherwise provided under State law; that is, generally an employer with between 2 and 50 employees.

(3) Fails to count as employees all individual employees that an employer wants to include in the group by applying a more restrictive definition of "employee" than is permitted by § 144.103.

(4) Fails to accept all employee dependents who are qualified under the terms of the employer's group health plan.

(5) Sets agent commissions for sales to small employers so low as to discourage agents from marketing policies to, or enrolling, these groups so that a failure to offer coverage results.

(6) Unreasonably delays the processing of applications submitted by small employers, so that a break in coverage of more than 63 days results.

(7) Fails to offer to any small employer on a guaranteed availability basis any product that the issuer sells to small employers through one or more associations that are not bona fide associations, as defined in § 144.103. The requirement to guarantee availability of such products to all small employers applies whether or not the small employer is a member of, or could qualify for membership in, that association.

(8) Otherwise fails to comply with § 146.150.

k. Failure to comply with the requirements regarding guaranteed renewability in either the large or small group market (§ 146.152).

Failure to provide guaranteed renewability of coverage as provided in § 146.152 includes those circumstances in which a health insurance issuer offering health insurance coverage to a group health plan in the small or large group market does the following:

(1) Fails to renew or continue in force coverage at the option of the plan sponsor unless one of the specific exceptions in § 146.152(b) is met.

(2) Fails to follow the requirements as described in § 146.152(c)–(e) relating to the discontinuance of a particular product or withdrawal from the market of a particular product.

(3) Fails to renew coverage of an individual employer who has been a member of an association when the individual employer ceases to be a member of the association, unless it is a bona fide association as defined in § 144.103, and the issuer terminates coverage for all former members on a uniform basis.

(4) Fails to act uniformly if the issuer cancels coverage.

(5) Otherwise fails to comply with § 146.152.

l. Failure to comply with the requirements relating to disclosure of information (§ 146.160).

Failure to make reasonable disclosure as provided in § 146.160 includes those circumstances in which an issuer offering group health insurance coverage to a small employer, as defined in § 144.103, does the following:

(1) Fails to disclose all information concerning all products available from the issuer in the small group market as defined in § 144.103.

(2) Otherwise fails to comply with § 146.160.

II. Basis for Imposition of Civil Money Penalties—Actions in the Individual Market

a. Failure to comply with the requirements regarding guaranteed availability of coverage (§ 148.120).

In States that are not implementing an acceptable alternative mechanism described in § 148.128, failure to provide guaranteed availability with no preexisting condition exclusion period as provided in § 148.120 includes those circumstances in which an issuer does the following:

(1) Fails to provide to eligible individuals, on a guaranteed availability basis, at least one of the following:

(i) Enrollment in all individual market policies it actually markets.

(ii) The two most popular policies described in § 148.120(c)(2).

(iii) Two representative policy forms as described in § 148.120(c)(3).

(2) Imposes any preexisting condition exclusion or affiliation period on eligible individuals under any policy that it sells on a guaranteed availability basis.

(3) Sets agent commissions for sales to eligible individuals so low as to discourage agents from marketing policies to, or enrolling, these individuals so that a failure to offer coverage results.

(4) Unreasonably delays the processing of applications submitted by eligible individuals.

(5) Fails to offer to any eligible individual as defined in § 148.103 (on a guaranteed availability basis with no preexisting condition exclusions) any product the issuer sells to individuals through one or more associations that are not bona fide associations, as defined in § 144.103, unless the issuer has designated at least two other products (as its two most popular or its two representative policies) that it will sell to eligible individuals.

(6) Denies an eligible individual a policy on the basis that the individual has had a significant break in coverage even though a substantially complete application was filed on or before the 63rd day after the prior group coverage ended.

(7) Otherwise fails to comply with § 148.120.

b. Failure to comply with the requirements regarding guaranteed renewability of coverage (§ 148.122).

Failure to provide guaranteed renewability as provided in § 148.122 includes those circumstances in which an issuer does the following:

(1) Fails to renew or continue in force coverage at the option of the individual, unless one of the specific exceptions in § 148.122 is met.

(2) Fails to follow the requirements relating to the discontinuance of a particular product or withdrawal from the market of a particular product as described in § 148.122(d).

(3) Fails to continue coverage at the option of the individual after the individual becomes eligible for Medicare.

(4) Fails to renew coverage for an individual who has been a member of an association when the individual ceases to be a member of the association, unless the association is a bona fide association as defined in § 144.103 and the issuer uniformly terminates coverage for all former members.

(5) Otherwise fails to comply with § 148.122.

c. Failure to comply with the requirements regarding certification and disclosure of coverage (§ 148.124).

Failure to comply with the requirements of § 148.124 regarding certification and

disclosure of previous coverage includes those circumstances in which an issuer does any of the following:

(1) Fails to provide automatic certificates of creditable coverage promptly.

(2) Fails to disclose the required information in certificates of creditable coverage as provided in § 148.124(b).

(3) Fails to provide certificates of creditable coverage to dependents who are insured in the individual market and whose coverage ceases under an individual policy.

(4) Fails to credit coverage or establish eligibility as provided in § 148.124 solely because the individual is unable to obtain a certificate. This includes failing to accept, acknowledge, consider, or otherwise use other evidence of creditable coverage described in § 146.115(c) submitted by, or on behalf of, an individual to establish that person is an eligible individual.

(5) Otherwise fails to comply with § 148.124.

d. Failure to comply with the requirements regarding determination of an eligible individual (§ 148.126).

Failure to determine, as provided in § 148.126, that an applicant for health insurance is an eligible individual includes those circumstances in which an issuer does the following:

(1) Fails to identify eligible individuals, to provide information regarding all coverage options, and to issue policies promptly.

(2) Requires eligible individuals to specify their desire to invoke the requirements of part 148 or to explicitly request their rights under the law in order to obtain information about products available to them.

(3) Otherwise fails to comply with § 148.126.

e. Failure to comply with the standards relating to benefits for mothers and newborns (§ 148.170).

In States where the § 148.170 standards are applicable (see § 148.170(e)), failure to comply with the § 148.170 standards relating to benefits for mothers and newborns includes those circumstances in which a health insurance issuer does the following:

(1) Restricts benefits for a mother or her newborn to fewer than 48 hours following a vaginal delivery or fewer than 96 hours following a delivery by cesarean section, unless the attending provider decides, in consultation with the mother, to discharge the mother or newborn earlier.

(2) Fails to calculate the length of stay from the time of delivery when delivery occurs in a hospital, or from the time of admission when delivery occurs outside the hospital.

(3) Requires an attending provider to obtain authorization to prescribe a hospital length of stay of up to 48 hours (or 96 hours, if applicable) after delivery.

(4) Imposes deductibles, coinsurance, or other cost-sharing measures for any portion of a 48-hour (or 96-hour, if applicable) hospital stay that are less favorable than those imposed on any preceding portion of the stay.

(6) Penalizes a provider for complying with the law.

(7) Offers incentives to a provider to provide care in a manner inconsistent with the provisions of § 148.170 to avoid complying with § 148.170.

(8) Denies the mother or newborn eligibility or continued eligibility solely to avoid the requirements of § 148.170.

(9) Provides incentives to mothers to encourage them to accept less than the minimum stay requirement.

(10) Fails to provide participants and beneficiaries with a statement describing the requirements of the Newborns' and Mothers' Health Protection Act of 1996, using the language provided at § 148.170 (d)(2), not later than March 1, 1999.

(11) Otherwise fails to comply with § 148.170.

f. Failure to comply with the Women's Health and Cancer Rights Act of 1998 (section 2752 of the PHS Act, 42 U.S.C. 300gg–52) and any additional implementing regulations.

Subpart D—Administrative Hearings

§ 150.401 Definitions.

In this subpart, unless the context indicates otherwise:

ALJ means administrative law judge of the Departmental Appeals Board of the Department of Health and Human Services.

Filing date means the date postmarked by the U.S. Postal Service, deposited with a carrier for commercial delivery, or hand delivered.

Hearing includes a hearing on a written record as well as an in-person or telephone hearing.

Party means HCFA or the respondent.

Receipt date means five days after the date of a document, unless there is a showing that it was in fact received later.

Respondent means an entity that received a notice of proposed assessment of a civil money penalty issued pursuant to § 150.343.

§ 150.403 Scope of ALJ's authority.

(a) The ALJ has the authority, including all of the authority conferred by the Administrative Procedure Act, to adopt whatever procedures may be necessary or proper to carry out in an efficient and effective manner the ALJ's duty to provide a fair and impartial hearing on the record and to issue an initial decision concerning the imposition of a civil money penalty.

(b) The ALJ's authority includes the authority to modify, consistent with the Administrative Procedure Act (5 U.S.C. 552a), any hearing procedures set out in this subpart.

(c) The ALJ does not have the authority to find invalid or refuse to follow Federal statutes or regulations.

§ 150.405 Filing of request for hearing.

(a) A respondent has a right to a hearing before an ALJ if it files a request for hearing that complies with § 150.407(a), within 30 days after the date of issuance of either HCFA's notice of proposed assessment under § 150.343 or notice that an alternative dispute resolution process has terminated. The request for hearing should be addressed as instructed in the notice of proposed determination. "Date of issuance" is five (5) days after the filing date, unless there is a showing that the document was received earlier.

(b) The ALJ may extend the time for filing a request for hearing only if the ALJ finds that the respondent was prevented by events or circumstances beyond its control from filing its request within the time specified above. Any request for an extension of time must be made promptly by written motion.

§ 150.407 Form and content of request for hearing.

(a) The request for hearing must do the following:

(1) Identify any factual or legal bases for the assessment with which the respondent disagrees.

(2) Describe with reasonable specificity the basis for the disagreement, including any affirmative facts or legal arguments on which the respondent is relying.

(b) The request for hearing must identify the relevant notice of assessment by date and attach a copy of the notice.

§ 150.409 Amendment of notice of assessment or request for hearing.

The ALJ may permit HCFA to amend its notice of assessment, or permit the respondent to amend a request for hearing that complies with § 150.407(a), if the ALJ finds that no undue prejudice to either party will result.

§ 150.411 Dismissal of request for hearing.

An ALJ will order a request for hearing dismissed if the ALJ determines that:

(a) The request for hearing was not filed within 30 days as specified by § 150.405(a) or any extension of time granted by the ALJ pursuant to § 150.405(b).

(b) The request for hearing fails to meet the requirements of § 150.407.

(c) The entity that filed the request for hearing is not a respondent under § 150.401.

(d) The respondent has abandoned its request.

(e) The respondent withdraws its request for hearing.

§ 150.413 Settlement.

HCFA has exclusive authority to settle any issue or any case, without the consent of the administrative law judge at any time before or after the administrative law judge's decision.

§ 150.415 Intervention.

(a) The ALJ may grant the request of an entity, other than the respondent, to intervene if all of the following occur:

(1) The entity has a significant interest relating to the subject matter of the case.

(2) Disposition of the case will, as a practical matter, likely impair or impede the entity's ability to protect that interest.

(3) The entity's interest is not adequately represented by the existing parties.

(4) The intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties.

(b) A request for intervention must specify the grounds for intervention and the manner in which the entity seeks to participate in the proceedings. Any participation by an intervenor must be in the manner and by any deadline set by the ALJ.

(c) The Department of Labor or the IRS may intervene without regard to paragraphs (a)(1) through (a)(3) of this section.

§ 150.417 Issues to be heard and decided by ALJ.

(a) The ALJ has the authority to hear and decide the following issues:

(1) Whether a basis exists to assess a civil money penalty against the respondent.

(2) Whether the amount of the assessed civil money penalty is reasonable.

(b) In deciding whether the amount of a civil money penalty is reasonable, the ALJ—

(1) Applies the factors that are identified in § 150.317.

(2) May consider evidence of record relating to any factor that HCFA did not apply in making its initial determination, so long as that factor is identified in this subpart.

(c) If the ALJ finds that a basis exists to assess a civil money penalty, the ALJ may sustain, reduce, or increase the penalty that HCFA assessed.

§ 150.419 Forms of hearing.

(a) All hearings before an ALJ are on the record. The ALJ may receive argument or testimony in writing, in person, or by telephone. The ALJ may receive testimony by telephone only if the ALJ determines that doing so is in the interest of justice and economy and that no party will be unduly prejudiced. The ALJ may require submission of a witness' direct testimony in writing only if the witness is available for cross-examination.

(b) The ALJ may decide a case based solely on the written record where there is no disputed issue of material fact the resolution of which requires the receipt of oral testimony.

§ 150.421 Appearance of counsel.

Any attorney who is to appear on behalf of a party must promptly file, with the ALJ, a notice of appearance.

§ 150.423 Communications with the ALJ.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for both parties to participate. This provision does not prohibit a party or person from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 150.425 Motions.

(a) Any request to the ALJ for an order or ruling must be by motion, stating the relief sought, the authority relied upon, and the facts alleged. All motions must be in writing, with a copy served on the opposing party, except in either of the following situations:

(1) The motion is presented during an oral proceeding before an ALJ at which both parties have the opportunity to be present.

(2) An extension of time is being requested by agreement of the parties or with waiver of objections by the opposing party.

(b) Unless otherwise specified in this subpart, any response or opposition to a motion must be filed within 20 days of the party's receipt of the motion. The ALJ does not rule on a motion before the time for filing a response to the motion has expired except where the response is filed at an earlier date, where the opposing party consents to the motion being granted, or where the ALJ determines that the motion should be denied.

§ 150.427 Form and service of submissions.

(a) Every submission filed with the ALJ must be filed in triplicate, including one original of any signed documents, and include:

(1) A caption on the first page, setting forth the title of the case, the docket number (if known), and a description of the submission (such as "Motion for Discovery").

(2) The signatory's name, address, and telephone number.

(3) A signed certificate of service, specifying each address to which a copy of the submission is sent, the date on which it is sent, and the method of service.

(b) A party filing a submission with the ALJ must, at the time of filing, serve a copy of such submission on the opposing party. An intervenor filing a submission with the ALJ must, at the time of filing, serve a copy of the submission on all parties. Service must be made by mailing or hand delivering a copy of the submission to the opposing party. If a party is represented by an attorney, service must be made on the attorney.

§ 150.429 Computation of time and extensions of time.

(a) For purposes of this subpart, in computing any period of time, the time begins with the day following the act, event, or default and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government are excluded from the computation.

(b) The period of time for filing any responsive pleading or papers is determined by the date of receipt (as defined in § 150.401) of the submission to which a response is being made.

(c) The ALJ may grant extensions of the filing deadlines specified in these regulations or set by the ALJ for good cause shown (except that requests for extensions of time to file a request for hearing may be granted only on the grounds specified in section § 150.405(b)).

§ 150.431 Acknowledgment of request for hearing.

After receipt of the request for hearing, the ALJ assigned to the case or someone acting on behalf of the ALJ will send a letter to the parties that acknowledges receipt of the request for hearing, identifies the docket number assigned to the case, provides instructions for filing submissions and other general information concerning procedures, and sets out the next steps in the case.

§ 150.435 Discovery.

(a) The parties must identify any need for discovery from the opposing party as soon as possible, but no later than the time for the reply specified in § 150.437(c). Upon request of a party, the ALJ may stay proceedings for a reasonable period pending completion of discovery if the ALJ determines that a party would not be able to make the submissions required by § 150.437 without discovery. The parties should attempt to resolve any discovery issues informally before seeking an order from the ALJ.

(b) Discovery devices may include requests for production of documents,

requests for admission, interrogatories, depositions, and stipulations. The ALJ orders interrogatories or depositions only if these are the only means to develop the record adequately on an issue that the ALJ must resolve to decide the case.

(c) Each discovery request must be responded to within 30 days of receipt, unless that period of time is extended for good cause by the ALJ.

(d) A party to whom a discovery request is directed may object in writing for any of the following reasons:

(1) Compliance with the request is unduly burdensome or expensive.

(2) Compliance with the request will unduly delay the proceedings.

(3) The request seeks information that is wholly outside of any matter in dispute.

(4) The request seeks privileged information. Any party asserting a claim of privilege must sufficiently describe the information or document being withheld to show that the privilege applies. If an asserted privilege applies to only part of a document, a party withholding the entire document must state why the nonprivileged part is not segregable.

(e) Any motion to compel discovery must be filed within 10 days after receipt of objections to the party's discovery request, within 10 days after the time for response to the discovery request has elapsed if no response is received, or within 10 days after receipt of an incomplete response to the discovery request. The motion must be reasonably specific as to the information or document sought and must state its relevance to the issues in the case.

§ 150.437 Submission of briefs and proposed hearing exhibits.

(a) Within 60 days of its receipt of the acknowledgment provided for in § 150.431, the respondent must file the following with the ALJ:

(1) A statement of its arguments concerning HCFA's notice of assessment (respondent's brief), including citations to the respondent's hearing exhibits provided in accordance with paragraph (a)(2) of this section. The brief may not address factual or legal bases for the assessment that the respondent did not identify as disputed in its request for hearing or in an amendment to that request permitted by the ALJ.

(2) All documents (including any affidavits) supporting its arguments, tabbed and organized chronologically and accompanied by an indexed list identifying each document (respondent's proposed hearing exhibits).

(3) A statement regarding whether there is a need for an in-person hearing and, if so, a list of proposed witnesses and a summary of their expected testimony that refers to any factual dispute to which the testimony will relate.

(4) Any stipulations or admissions.

(b) Within 30 days of its receipt of the respondent's submission required by paragraph (a) of this section, HCFA will file the following with the ALJ:

(1) A statement responding to the respondent's brief, including the respondent's proposed hearing exhibits, if appropriate. The statement may include citations to HCFA's proposed hearing exhibits submitted in accordance with paragraph (b)(2) of this section.

(2) Any documents supporting HCFA's response not already submitted as part of the respondent's proposed hearing exhibits, organized and indexed as indicated in paragraph (a)(2) of this section (HCFA's proposed hearing exhibits).

(3) A statement regarding whether there is a need for an in-person hearing and, if so, a list of proposed witnesses and a summary of their expected testimony that refers to any factual dispute to which the testimony will relate.

(4) Any admissions or stipulations.

(c) Within 15 days of its receipt of HCFA's submission required by paragraph (b) of this section, the respondent may file with the ALJ a reply to HCFA's submission.

§ 150.439 Effect of submission of proposed hearing exhibits.

(a) Any proposed hearing exhibit submitted by a party in accordance with § 150.437 is deemed part of the record unless the opposing party raises an objection to that exhibit and the ALJ rules to exclude it from the record. An objection must be raised either in writing prior to the prehearing conference provided for in § 150.441 or at the prehearing conference. The ALJ may require a party to submit the original hearing exhibit on his or her own motion or in response to a challenge to the authenticity of a proposed hearing exhibit.

(b) A party may introduce a proposed hearing exhibit following the times for submission specified in § 150.437 only if the party establishes to the satisfaction of the ALJ that it could not have produced the exhibit earlier and that the opposing party will not be prejudiced.

§ 150.441 Prehearing conferences.

An ALJ may schedule one or more prehearing conferences (generally conducted by telephone) on the ALJ's own motion or at the request of either party for the purpose of any of the following:

(a) Hearing argument on any outstanding discovery request.

(b) Establishing a schedule for any supplements to the submissions required by § 150.437 because of information obtained through discovery.

(c) Hearing argument on a motion.

(d) Discussing whether the parties can agree to submission of the case on a stipulated record.

(e) Establishing a schedule for an in-person hearing, including setting deadlines for the submission of written direct testimony or for the written reports of experts.

(f) Discussing whether the issues for a hearing can be simplified or narrowed.

(g) Discussing potential settlement of the case.

(h) Discussing any other procedural or substantive issues.

§ 150.443 Standard of proof.

(a) In all cases before an ALJ—

(1) HCFA has the burden of coming forward with evidence sufficient to establish a prima facie case;

(2) The respondent has the burden of coming forward with evidence in response, once HCFA has established a prima facie case; and

(3) HCFA has the burden of persuasion regarding facts material to the assessment; and

(4) The respondent has the burden of persuasion regarding facts relating to an affirmative defense.

(b) The preponderance of the evidence standard applies to all cases before the ALJ.

§ 150.445 Evidence.

(a) The ALJ will determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ will not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate; for example, to exclude unreliable evidence.

(c) The ALJ excludes irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence is excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement made in this

action will be inadmissible to the extent provided in the Federal Rules of Evidence.

(g) Evidence of acts other than those at issue in the instant case is admissible in determining the amount of any civil money penalty if those acts are used under §§ 150.317 and 150.323 of this part to consider the entity's prior record of compliance, or to show motive, opportunity, intent, knowledge, preparation, identity, or lack of mistake. This evidence is admissible regardless of whether the acts occurred during the statute of limitations period applicable to the acts that constitute the basis for liability in the case and regardless of whether HCFA's notice sent in accordance with §§ 150.307 and 150.343 referred to them.

(h) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless the ALJ orders otherwise for good cause shown.

(j) The ALJ may not consider evidence regarding the willingness and ability to enter into and successfully complete a corrective action plan when that evidence pertains to matters occurring after HCFA's notice under § 150.307.

§ 150.447 The record.

(a) Any testimony that is taken in-person or by telephone is recorded and transcribed. The ALJ may order that other proceedings in a case, such as a prehearing conference or oral argument of a motion, be recorded and transcribed.

(b) The transcript of any testimony, exhibits and other evidence that is admitted, and all pleadings and other documents that are filed in the case constitute the record for purposes of an ALJ decision.

(c) For good cause, the ALJ may order appropriate redactions made to the record.

§ 150.449 Cost of transcripts.

Generally, each party is responsible for 50 percent of the transcript cost. Where there is an intervenor, the ALJ determines what percentage of the transcript cost is to be paid for by the intervenor.

§ 150.451 Posthearing briefs.

Each party is entitled to file proposed findings and conclusions, and supporting reasons, in a posthearing brief. The ALJ will establish the schedule by which such briefs must be filed. The ALJ may direct the parties to brief specific questions in a case and may impose page limits on posthearing briefs. Additionally, the ALJ may allow the parties to file posthearing reply briefs.

§ 150.453 ALJ decision.

The ALJ will issue an initial agency decision based only on the record and on applicable law; the decision will contain findings of fact and conclusions of law. The ALJ's decision is final and appealable after 30 days unless it is modified or vacated under § 150.457.

§ 150.455 Sanctions.

(a) The ALJ may sanction a party or an attorney for failing to comply with an order or other directive or with a requirement of a regulation, for abandonment of a case, or for other actions that interfere with the speedy, orderly or fair conduct of the hearing. Any sanction that is imposed will relate reasonably to the severity and nature of the failure or action.

(b) A sanction may include any of the following actions:

(1) In the case of failure or refusal to provide or permit discovery, drawing negative fact inferences or treating such failure or refusal as an admission by deeming the matter, or certain facts, to be established.

(2) Prohibiting a party from introducing certain evidence or otherwise advocating a particular claim or defense.

(3) Striking pleadings, in whole or in part.

(4) Staying the case.

(5) Dismissing the case.

(6) Entering a decision by default.

(7) Refusing to consider any motion or other document that is not filed in a timely manner.

(8) Taking other appropriate action.

§ 150.457 Review by Administrator.

(a) The Administrator of HCFA (which for purposes of this subsection may include his or her delegate), at his or her discretion, may review in whole or in part any initial agency decision issued under § 150.453.

(b) The Administrator may decide to review an initial agency decision if it appears from a preliminary review of the decision (or from a preliminary review of the record on which the initial agency decision was based, if available at the time) that:

(1) The ALJ made an erroneous interpretation of law or regulation.

(2) The initial agency decision is not supported by substantial evidence.

(3) The ALJ has incorrectly assumed or denied jurisdiction or extended his or her authority to a degree not provided for by statute or regulation.

(4) The ALJ decision requires clarification, amplification, or an alternative legal basis for the decision.

(5) The ALJ decision otherwise requires modification, reversal, or remand.

(c) Within 30 days of the date of the initial agency decision, the Administrator will mail a notice advising the respondent of any intent to review the decision in whole or in part.

(d) Within 30 days of receipt of a notice that the Administrator intends to review an initial agency decision, the respondent may submit, in writing, to the Administrator any arguments in support of, or exceptions to, the initial agency decision.

(e) This submission of the information indicated in paragraph (d) of this section must be limited to issues the Administrator has identified in his or her notice of intent to review, if the Administrator has given notice of an intent to review the initial agency decision only in part. A copy of this submission must be sent to the other party.

(f) After receipt of any submissions made pursuant to paragraph (d) of this section and any additional submissions for which the Administrator may provide, the Administrator will affirm, reverse, modify, or remand the initial agency decision. The Administrator will mail a copy of his or her decision to the respondent.

(g) The Administrator's decision will be based on the record on which the initial agency decision was based (as forwarded by the ALJ to the Administrator) and any materials submitted pursuant to paragraphs (b), (d), and (f) of this section.

(h) The Administrator's decision may rely on decisions of any courts and other applicable law, whether or not cited in the initial agency decision.

§ 150.459 Judicial review.

(a) *Filing of an action for review.* Any responsible entity against whom a final order imposing a civil money penalty is entered may obtain review in the United States District Court for any district in which the entity is located or in the United States District Court for the District of Columbia by doing the following:

(1) Filing a notice of appeal in that court within 30 days from the date of a final order.

(2) Simultaneously sending a copy of the notice of appeal by registered mail to HCFA.

(b) *Certification of administrative record.* HCFA promptly certifies and files with the court the record upon which the penalty was assessed.

(c) *Standard of review.* The findings of HCFA and the ALJ may not be set aside unless they are found to be unsupported by substantial evidence, as provided by 5 U.S.C. 706(2)(E).

§ 150.461 Failure to pay assessment.

If any entity fails to pay an assessment after it becomes a final order, or after the court has entered final judgment in favor of HCFA, HCFA refers the matter to the Attorney General, who brings an action against the entity in the appropriate United States district court to recover the amount assessed.

§ 150.463 Final order not subject to review.

In an action brought under § 150.461, the validity and appropriateness of the final order described in § 150.459 is not subject to review.

§ 150.465 Collection and use of penalty funds.

(a) Any funds collected under § 150.461 are paid to HCFA.

(b) The funds are available without appropriation until expended.

(c) The funds may be used only for the purpose of enforcing the HIPAA requirements for which the penalty was assessed.

Dated: April 16, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated May 25, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–21662 Filed 8–19–99; 8:45 am]

BILLING CODE 4120–01–P

MI

OL

64

SS

1
6
1

AG

20

99

MI

federal register

Friday
August 20, 1999

Part VII

Environmental Protection Agency

Final Guidance on Environmentally Preferable Purchasing for Executive Agencies; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00149A; FRL–6095–4]

RIN 2070–AC78

Final Guidance on Environmentally Preferable Purchasing for Executive Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the availability of a general guidance designed to assist Executive agencies in identification and acquisition of environmentally preferable products and services. The final guidance is in response to section 503 of Executive Order 13101, entitled "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition" (63 FR 49641, September 16, 1998), which requires EPA to issue guidance to address environmentally preferable purchasing by the Federal government. The guidance is designed to assist Executive agencies with the implementation of the environmentally preferable purchasing provisions of Executive Order 13101 and Section 23.704 of the Federal Acquisition Regulations. The implementation of this guidance will result in increased purchases by the Federal government of products and services which minimize harmful effects on human health and the environment.

FOR FURTHER INFORMATION CONTACT: For information contact: Eun-Sook Goidel, Office of Pollution Prevention and Toxics, Pollution Prevention Division, 7409, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–3296, fax: (202) 260–0178, e-mail: goidel.eunsook@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Apply to Me?

You may be potentially affected by this notice if you are an Executive agency employee responsible for the acquisition and use of products and services. Those who produce and sell products and services for use by the Federal government may also find the information in this notice to be of interest. If you have any questions regarding the applicability of this notice to a particular organization, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of this Document or Other Documents?

For the convenience of the reader, the final guidance is published below in its entirety in Unit VII.

1. *Electronically.* You may also obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register–Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/. Alternatively, you can go to the Environmentally Preferable Purchasing program's website: http://www.epa.gov/opptintr/epp.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00149A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. Introduction

On September 14, 1998, President Clinton signed Executive Order 13101, entitled "Greening the Government through Waste Prevention, Recycling and Federal Acquisition." Section 503 of this Executive Order requires EPA to establish guidance to "address environmentally preferable purchasing."

The guidance that is being made available today is designed to help Executive agencies meet their obligations under Executive Order 13101 to identify and purchase environmentally preferable products and services. "Environmentally preferable" is defined in section 201 of the Executive Order to mean products or services that have a "lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose." The guidance is intended to draw on the extensive procurement experience of the Executive agencies and on the environmental expertise of EPA and others both within and outside of the government. It provides a broad decision-making framework for environmentally preferable purchasing and is a first step to help Executive agencies systematically integrate environmental preferability into the Federal government's buying decisions.

IV. Background

This Final Guidance on Environmentally Preferable Purchasing is based on EPA's September 1995 Proposed Guidance on the Acquisition of Environmentally Preferable Products and Service and the comments received on that proposal. EPA announced the availability of and sought comment on the Proposed Guidance on the Acquisition of Environmentally Preferable Products and Service on September 29, 1995 (60 FR 50721) (FRL–4760–5). The process EPA used to develop the proposed guidance is described in that **Federal Register** notice. In addition, lessons and insights from early pilot projects have guided the development of the Final Guidance.

Since 1995, a variety of things have occurred that will directly affect the Federal government's environmentally preferable purchasing practices. Foremost are the 1997 revisions to the Federal Acquisition Regulations that incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. These changes require the consideration of environmental factors in all aspects of Federal acquisition, including acquisition planning (part 7), conducting market surveys (part 10), describing an agency's needs (part 11), evaluating and selecting a vendor (parts 14 and 15), and contract administration (part 42), as well as other provisions.

Another milestone is the 1996 enactment of the National Technology Transfer and Advancement Act of 1995 (NTTAA) which requires the Federal government to use consensus-based industry standards when available rather than creating a government-unique standard.

The acquisition streamlining reform initiatives have also brought many changes to the way the Federal government purchases products and

services. One example is increased decentralization of the purchasing decision, best exemplified by the meteoric increase in credit card use by Federal agency personnel. The number of card holders increased from 10,000 in 1989 to 250,000 in 1996 with the dollar volume increasing from $460,000 to close to $3 billion during the same time period. This trend highlights the importance of reaching out to those beyond the acquisition community with the environmentally preferable purchasing message.

Another trend is the increased interest at all levels of government--local, state and foreign--in using the government's purchasing power as a policy tool to drive environmental improvement. This trend will likely accelerate the anticipated spill-over effect of environmentally preferable purchasing practices. Beyond the governments' interest, other large institutional purchasers--non-profits and individual companies--are also beginning to include environmental factors in their buying decisions.

V. Lessions Learned

In the years since the Proposed Guidance was first issued, a number of pilot projects were initiated to demonstrate how EPA's Proposed Guidance could be applied to specific product categories. Though limited in number, these projects have provided important insights into the development of the Final Guidance as well as the direction of EPA's Environmentally Preferable Purchasing program.

First, it is important to have the participation of both the environmental and the acquisition/procurement personnel. The acquisition of environmentally preferable products and services in the Federal government context involves both defining what is environmentally preferable for a given product or service and ensuring that the procurement process encourages the purchases of these products. Innovative approaches that leverage the expertise of the environmental and procurement experts is essential to accomplishing these tasks and institutionalizing environmentally preferable purchasing practices.

Second, on a very positive note, early pilots have shown that vendors understand that providing a broad range of environmental information is an important part of doing business with the government and that it can serve as a competitive advantage. Generally speaking, however, information about environmental performance of products and services, particularly along the various life cycle stages, and easy-to-use tools to assess environmental performance remain scarce, limiting the wide-spread adoption of environmentally preferable purchasing. This is likely to change as Executive agencies begin to implement the changes to the Federal Acquisition Regulations and as agencies begin to use information and technical expertise of non-governmental entities.

Lastly, early pilots indicate that there is not a single, "one size fits all," approach to incorporate environmental preferability into Federal acquisition. Using common sense, we need to tailor our approach and level of analysis to fit the complexity of the product and service categories being purchased.

Much progress has been made since Executive Order 12873 was issued in October 1993. A number of pilot projects have been implemented by key purchasing agencies that have provided valuable insights and lessons on ways to integrate environmental considerations into the Federal procurement process. These pilots have helped to identify gaps in information and tools. Future pilots will be instrumental in guiding both EPA's and other Executive agencies' efforts in environmentally preferable purchasing. As EPA and the other agencies move forward, the debate about the appropriate approaches and goals will likely continue. This is desirable given the dynamic nature of the issue. Based on feedback from all stakeholders, EPA will continue to test a variety of approaches and develop and refine tools to allow agencies to more readily apply the concepts of environmental preferability in government purchasing decisions.

VI. Major Changes to the Guidance

This section describes some of the key changes made to the 1995 Proposed Guidance. EPA has also prepared a more detailed Response to Comment document, which has been included in the public record for this guidance.

A. Guidance Framework

The Guidance framework remains largely unchanged and includes an introduction (Section I), intended audience (Section II), approach (Section III), a set of guiding principles (Section IV), suggested steps for Executive agency implementation (Section V), and appendices (Section VII). A new section, Section VI, lists available resources and tools related to environmentally preferable purchasing.

B. Guiding Principles

A number of changes have been made to the guiding principles, including the addition of a new principle and the merging of a number of principles. As a result, the Final Guidance now has five, rather than seven, guiding principles. Taken together, the principles are intended to provide a broad guide to help Executive agency purchasers address environmental preferability in acquisition of products and services. Specifically, the following changes have been made:

1. A new principle on product safety, price, environmental considerations, performance and availability has been added as Principle #1 and reads:

> Environmental considerations should become part of normal purchasing practice consistent with such traditional factors as product safety, price, performance, and availability.

This was in response to a number of comments requesting more emphasis be placed on the point that the addition of environment is not in lieu of traditional purchasing factors. Although the original proposal noted this, the addition of this new principle should send a clearer message on the importance of putting environmental considerations in the context of other purchasing factors.

2. The guiding principles on life cycle and multiple attributes have been collapsed into one principle (Principle #3) and reads:

> A product's or service's environmental preferability is a function of multiple attributes from a life cycle perspective.

This change is based on comments and also EPA's strong belief that the two concepts are integral in determining environmental preferability. The discussion that follows the guiding principle has also been modified to reflect that although the determination of environmental preferability should be based on multiple attributes, the purchasing decision may at times be based on a single attribute.

3. The guiding principles on impacts and local conditions have been modified and collapsed into one principle (Principle #4) and reads:

> Determining environmental preferability may involve comparing environmental impacts. In comparing environmental impacts, Federal agencies should consider: the reversibility and geographic scale of the environmental impacts, the degree of difference among competing products or services, and the overriding importance of protecting human health.

This change was made to remove the perceived conflict between the two original principles and to provide purchasers with more guidance on how to assess relative impacts. The original principles were intended to convey that, in general, global and irreversible

environmental impacts should be given greater weight in determining preferability than local and rapidly reversible environmental impacts. However, we also recognize that there may be situations in which there are unique mitigating circumstances locally, and in those cases, the purchaser can make the judgement that the local conditions and impacts should be given priority.

4. The principles on competition and product attribute have been revised and a new principle (Principle #5) on environmental information has been added. It reads:

> Comprehensive, accurate and meaningful information about the environmental performance of products or services is necessary in order to determine environmental preferability.

This revision was based on lessons from the pilots and reflects the importance of having relevant environmental information for determining environmental preferability. The discussion related to competition which originally appeared under guiding Principle #6 is now captured under guiding Principle #1.

C. Federal Agency Implementation

A number of changes have been made to facilitate Executive agency implementation of environmentally preferable purchasing, including:

1. EPA recommends that Executive agencies look to EPA's list of the top 20 prioritized product categories to focus their pilot projects. The description of this list is included in Section VI of the Final Guidance and the complete list is available on EPA's Environmentally Preferable Purchasing Program's website: www.epa.gov/opptintr. The prioritized list was developed pursuant to Section 503(a) of Executive Order 13101 which states that EPA's guidance "should be. . .targeted towards products and services that have the most effect."

2. In implementing pilot projects, EPA recommends, pursuant to section 503(b)(2) of Executive Order 13101, that agencies use all of the options available to determine environmentally preferable attributes of products and services in pilot projects, including the use of technical expertise of non-governmental entities such as labeling, certification, or standards developing organizations. Additional guidance on the use of these organizations is elaborated in the Office of Federal Environmental Executive and EPA's April 1998 policy letter. The full text of this policy letter has been added as Appendix E.

3. EPA recommends that agencies document their pilot efforts. In order to facilitate this, the Final Guidance includes a sample case study template (Appendix E).

D. Appendices

A number of changes have been made to this section, including:

1. The addition of three new items:

i. Sample Policy Directive (Appendix C).

ii. Full Text of April 1998 Policy Letter on Non-governmental Entities (Appendix D).

iii. Sample Case Study Template (Appendix E).

2. The deletion of the original Appendix D, "A Summary of the Federal Trade Commission's Guides to the Use of Environmental Marketing Claims." The Guides were updated in May 1998 and the information on how to access the most recent Guides is now included in Section VI--Resources.

VII. Final Guidance on Environmentally Preferable Purchasing for Executive Agencies

For the convenience of the reader, the final guidance is published below in its entirety.

BILLING CODE 6560-50-F

Final Guidance on Environmentally Preferable Purchasing

Table of Contents

I. Introduction

II. Intended Audience of This Guidance

III. Overall Approach for Implementing Executive Order 13101

IV. Guiding Principles

V. Executive Agency Implementation

VI. List of Resources

A. EPP Web Site
B. Federal Case Studies of Environmentally Preferable Purchasing
C. Life Cycle-Based Resources
D. Agency Environmental Catalogs
E. Federal Trade Commission's Guides on the Use of Environmental Marketing Claims
F. Office of Federal Environmental Executive Web site
G. Other Resources and Tools

VII. Appendices

Appendix A Glossary of Terms
Appendix B Environmental Attributes
(1) Menu of Environmental Attributes
(2) Definitions for Environmental Attributes
Appendix C Sample EPP Policy Directive
Appendix D Text of Policy Letter on Use of Non-Governmental Entities Issued By the Office of Federal Environmental Executive and U.S. Environmental Protection Agency, April 1998
Appendix E Pilot Project Case Study Template

Guidance on Environmentally Preferable Purchasing

I. Introduction

On September 14, 1998, President Clinton signed Executive Order (EO)13101, entitled "Greening the Government through Waste Prevention, Recycling and Federal Acquisition." Executive Order 13101 (EO 13101) supersedes EO 12873, Federal Acquisition, Recycling and Waste Prevention, issued on October 20, 1993, but retains a similar requirement for the U.S. Environmental Protection Agency (EPA) to develop guidance to "address environmentally preferable purchasing." (Section 503, EO 13101) The Final Guidance that follows is based on EPA's September 1995 *Proposed Guidance on the Acquisition of Environmentally Preferable Products and Services* (60 FR 50721, September 29, 1995) and comments received on that Proposed Guidance as well as lessons learned from pilot projects conducted to date.

The Final Guidance below is designed to help Executive agencies meet their obligations under EO 13101 to identify and purchase environmentally preferable products and services. Section 503 (c) of EO 13101 directs Executive agencies to "use the principles and concepts in the EPA Guidance on Acquisition of Environmentally Preferable Products and Services, in addition to the lessons from the pilot and demonstration projects to the maximum extent practicable, in identifying and purchasing environmentally preferable products and services" and "modify their procurement programs as appropriate." Furthermore, Section 23.704 of the Federal Acquisition Regulation requires agencies to "affirmatively implement" the objective of "obtaining products and services considered to be environmentally preferable (based on EPA-issued guidance)."

"Environmentally preferable" is defined in Section 201 of EO 13101 to mean products or services that "have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product or service."

Implementation of the Final Guidance will draw on the procurement experience of the Executive agencies and on the environmental expertise of EPA and other organizations both within and outside of the Federal government. This guidance provides a broad framework of issues to consider in environmentally preferable purchasing and will help Executive agencies systematically integrate environmental preferability principles into their buying decisions.

The guidance is not, however, a step-by-step, "how to" guide and it is not intended to answer many of the specific questions that might arise in the acquisition of a particular product category or service. The list of resources in Section VI provides more specific guidance and information about various product and service categories, environmental attributes that have been identified for them, and the approaches used to consider those attributes in acquisition decisions. For the latest information on other resources and tools under development, Executive agency personnel and others are directed to EPA's Environmentally Preferable Purchasing Program Web site at:<www.epa.gov/opptintr/epp>

The Final Guidance strives to meet the National Performance Review and procurement reform goals of simplifying and streamlining Federal purchasing while recognizing that the definition of "environmentally preferable" will likely require the consideration of different environmental factors as appropriate for different situations. In sum, the guidance:

- Applies to all acquisition types, from supplies and services to buildings and systems.
- Provides a set of guiding principles.
- Requests Executive agencies to select and implement pilot acquisitions or demonstration projects.
- Provides a framework for Executive agencies to implement the environmentally preferable purchasing provisions of EO13101.

II. Intended Audience for the Guidance

The target audience of this guidance includes all Executive agency employees involved in the acquisition of supplies, services, systems, and/or facilities. The general guidance and the information generated by the pilot projects also will be useful to Executive agency employees who request, maintain, or use the supplies, services, systems and facilities. In addition, both the general guidance and the pilot project information should provide pragmatic direction for private sector businesses who wish to manufacture, market, or provide environmentally preferable products and services for use by the Federal government.

III. Overall Approach for Implementing Executive Order 13101

Section 503 of EO 13101 has two key components: (1) development of this guidance; and (2) implementation of the guidance through pilot and demonstration projects. This guidance sets a broad policy framework for implementing environmentally preferable purchasing within the context of Federal government. For the second component, Section 503 (b) of the EO states "[A]gencies are encouraged to immediately test and evaluate the principles and concepts contained in the EPA's Guidance...through pilot projects...". These pilots may be undertaken using the in-house expertise of EPA and other Executive agencies, as well as the technical expertise of nongovernmental entities, including, but not limited to, voluntary consensus standards bodies (see§ 12(d) of the National Technology Transfer and Advancement Act (Pub. L. 104-113, §12(d), 15 U.S.C. 272 note), environmental standard setting organizations, third party certification programs, environmental labeling or environmental "report card" programs, and other environmental consulting organizations. Section V of this Final Guidance provides more detail about how these pilot projects might work. These pilots are expected to yield more specific and practical information about applying this Final Guidance to purchases of particular products and services.

In addition to promoting environmentally preferable purchasing, EO 13101 encourages Executive agencies to purchase bio-based products. (Section 504 (b)). Under the EO, "biobased product" means "a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal and marine) or forestry materials."

Bio-based products may also be environmentally preferable. Made from renewable resources by definition, these products have many positive environmental aspects and should be considered by agencies looking to make environmentally preferable purchases. However, Federal purchasers should not assume all bio-based products are automatically environmentally preferable. As with other products, Executive agencies should consider a range of environmental impacts associated with bio-based products when making purchasing decisions. In some cases, factors such as pesticide use or high water consumption might make a bio-based product less environmentally preferable. The list of bio-based products which the U.S. Department of Agriculture will issue under Section 504 of EO 13101 will be a good starting point for Executive agencies looking to identify environmentally preferable purchasing. During the development of pilots under Section 503 (b) of the EO, EPA will look for opportunities involving bio-based products.

IV. Guiding Principles

EPA has developed five guiding principles to provide broad guidance for applying environmentally preferable purchasing in the Federal government setting. Applicability of these principles in specific acquisitions will vary depending on a variety of factors, such as: the type and complexity of the product or service being purchased; whether or not the product or service is commercially-available; the type of procurement method used (e.g., negotiated contract, sealed bid, etc.); the time frame for the requirement; and the dollar amount of the requirement.

In all acquisitions, Executive agency personnel use their professional judgement and common sense, whether assessing a product or service's performance, cost, or availability. Similarly, in applying these environmentally preferable principles Executive agency personnel should use reasonable discretion about the level of analysis needed to determine environmental preferability. For example, an extensive life cycle assessment might not be conducted to purchase rubber bands. On the other hand, for large-volume or systems acquisitions, or for complex products, such assessments may be appropriate, and might already be required. Or, in some cases, much of the information upon which to build such an analysis might have already been collected.

Guiding Principle 1: Environment + Price + Performance = Environmentally Preferable Purchasing

Environmental considerations should become part of normal purchasing practice, consistent with such traditional factors as product safety, price, performance, and availability.

The manufacture, use, and disposal of certain products might have adverse impacts on human health and the environment. These impacts impose costs that the purchasing entity, and ultimately, society as a whole, end up paying for in one way or another. For the Federal government, the hazardous or toxic nature of a product or service can result in significant cleanup or liability costs, as well as in less directly quantifiable, but cumulative and persistent environmental damage. Even non-hazardous waste is associated with ever-increasing disposal costs that can be avoided or reduced. Responsible management, beginning with the initial purchase of products and services that minimize environmental burdens, can diminish the Federal government's raw material, operating, maintenance, and disposal costs. In addition, a product or service's environmental preferability can often have positive impacts on its overall performance.

For these reasons, the Federal government's purchasing decisions are no longer confined to considerations of price and functional performance but should include considerations of environmental performance as well. Today agencies can obtain improved environmental attributes not at the expense of, but instead may operate in concert with, other traditional factors like price and functional performance. Those product or service providers who can optimize all these factors will capture and maintain the largest market-share of government customers.

Just like price, performance, and health and safety, environmental factors should be a subject of competition among vendors seeking government contracts. In turn, this increased competition among vendors should stimulate continuous environmental improvement and increase the availability of environmentally preferable products and services. The purpose of this guidance is to encourage Executive agencies to award contracts to companies that take environmental concerns into account. This process, consequently, will lead to the development of environmentally preferable products and services that perform better and cost less because they reduce waste and negative environmental impacts. As stated, this principle reflects the spirit of a number of reinvention initiatives at EPA and across the Federal government aimed at testing cleaner, cheaper, and smarter approaches to environmental protection.

Agencies have considerable discretion in incorporating environmental preferability into procurement decisions, especially within the context of "best value" contracting. For example, environmental considerations that result in payment of a price premium for goods or services may be reasonably related to an agency's definition of its "minimum needs" and, therefore, may be permissible. This is not much different than paying a higher price for better performance or quality. Federal personnel may consider paying a reasonable premium for environmentally preferable products on a number of grounds. For example, a reasonable price premium may be justified because the environmental attributes of a product or service provide offsetting reductions in operating and disposal costs.

Guiding Principle 2: Pollution Prevention

Consideration of environmental preferability should begin early in the acquisition process and be rooted in the ethic of pollution prevention, which strives to eliminate or reduce, up-front, potential risks to human health and the environment.

It is never too early in the acquisition process to begin considering environmental preferability. Pollution prevention, the reduction or elimination of waste at the source, can not only reduce pollution, but it can save money for agencies as well. Defense and civilian Federal agencies have ongoing programs for pollution prevention under EO 12856 and other authorities that can result in cost savings throughout the product or service life cycle. Furthermore, pollution prevention measures can lead to a higher degree of environmental protection by reducing subsequent costs for disposal or cleanup of hazardous wastes and materials. A key reason for environmentally preferable purchasing is to protect the environment by reducing waste and pollution at the source with the resulting benefit of reduced overall cost to the government and the public (taxpayers and society as a whole).

Under this guiding principle, pollution prevention should be the primary motivation and strategy for the Federal government's implementation of environmentally preferable purchasing. There are many ways to apply pollution prevention to the acquisition process:

a) Customized purchases or projects in which program managers, architects, engineers, systems designers, or others have input into the design phase afford agencies an early opportunity to apply environmentally preferable concepts. In addition, early involvement offers agencies a unique point of leverage from which to address environmental impacts. Although these types of purchases are not the bulk of Federal acquisition requirements, the early stage of customized product or project design is the time when decisions about different approaches, materials, and manufacturing processes are made. Estimates show that 70 percent or more of the costs associated with product development, manufacture, and use are determined during the initial design stages.[1] By incorporating environmental factors during product or service design, Federal agencies can minimize environmental problems and their associated costs. For example, early environmental consideration helps agencies avoid potential liabilities due to fines as well as the costs of record keeping and reporting.

b) During the early stages of acquisition, Executive agency personnel can also apply a systems analysis approach for certain products or services (such as computers, buildings, and transportation systems) in which a number of components have interdependent functions. A systems analysis approach takes into consideration the full set of product

---

[1]U.S. Congress, Office of Technology Assessment, Green products by Design: Choices for a Cleaner Environment, OTA-E-541 (Washington, D.C.:U.S. Government Printing Office, October, 1992)

elements, focusing on how they interact from a life cycle perspective and helping to identify the most efficient options for meeting the government's needs.

c) Executive agency personnel might also appropriately ask whether a product or a service is even necessary or can be replaced by a less damaging process. For instance, in degreasing operations, questions arise as to whether an efficient cleaner using halogenated solvents is better or worse for the environment than an aqueous-based cleaner. A more appropriate question may be whether the cleaning/degreasing step can be eliminated without affecting the overall performance of the product or system. This might be accomplished, for example, by consolidating cleaning and degreasing in a later stage of the manufacturing process or changing the process itself. As this example illustrates, environmental preferability does not just involve substituting a "green" product for another. It also involves questioning whether a function needs to be performed and how it can best be performed to minimize negative environmental impacts.

The Department of Defense integrates pollution prevention into all of its major weapons system acquisition programs. For example, the New Attack Submarine (NSSN) Program has worked to include environmental considerations in all phases of the submarine's life cycle, from initial design to eventual disposal some 30 or more years later.

By considering all viable environmental alternatives during the design phase, the NSSN Program identified a number of options that will result in benefits. Just a few examples are listed below:

- A redesigned nuclear reactor core will eliminate the need for refueling and disposal of spent nuclear fuel, while achieving a multi-million dollar cost avoidance.
- 31 percent reduction in the number of paints and coatings used in manufacturing the NSSN while ensuring that all of the selected paints satisfy applicable performance and environmental requirements.
- 61 percent reduction in the number of adhesive products to be used on the NSSN compared to the number required for previous submarine classes.
- 80 percent reduction in the number of solvents and cleaners.
- Research and development effort to identify and test a biodegradable hydraulic fluid for submarines to replace the current toxic mineral oil-based fluid.

By recognizing early on that the key to reducing environmental impact throughout the ship's life cycle is pollution prevention and hazardous material control and management, the NSSN Program was able to design a submarine that meets strict safety and performance requirements, achieves significant cost savings, and minimizes risk to the environment.

Guiding Principle 3: Life Cycle Perspective/Multiple Attributes

A product or service's environmental preferability is a function of multiple attributes from a life cycle perspective.

Federal agencies should consider the following concepts in applying this principle :

a) Life cycle perspective—A product or service has environmental impacts long before and after the Federal government purchases and uses it. The manufacture, use,

distribution, and disposal of products create a variety of burdens on the environment. Federal agencies should strive to purchase products or services with as few negative environmental impacts in as many life cycle stages as possible. In other words, Federal agencies should determine the "environmental preferability" of a product or service by comparing the severity of environmental damage it causes throughout its life cycle with that caused by competing products—from the point of raw materials acquisition, product manufacturing, packaging, and transportation to its use and ultimate disposal. By doing so, the Federal government can minimize the overall environmental impacts of products and services. In addition, by actively seeking and considering life cycle information to inform buying decisions, Executive agency personnel can send a clear signal that government business will go to those who consider the effect of their product's life cycle on the environment.

Life Cycle Stages of a Typical Product

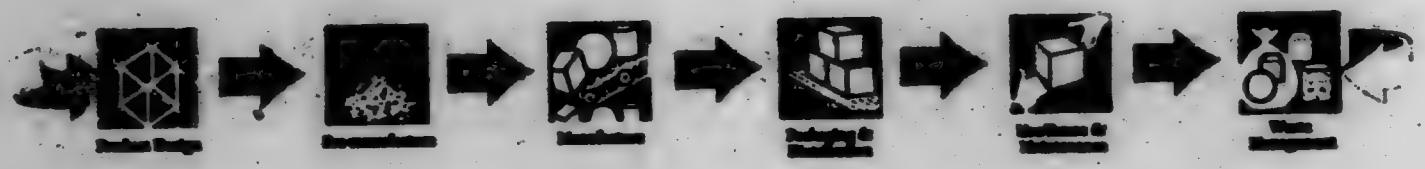

Although most people would agree that considering life cycle impacts in purchasing decisions is desirable, there are disagreements on how to make purchasing decisions that best reflect a life cycle perspective. Even the term "life cycle" is interpreted differently by different people. To some, it connotes an exhaustive, extremely time-consuming, and very expensive analysis. To others, a life cycle perspective is possible in an abbreviated process, in which a long list of potential environmental attributes and/or impacts is narrowed to a few, allowing for comparison across a particular product category. In addition, the ability of Federal purchasers to make buying decisions from a life cycle perspective depends on a variety of factors including: the type of product or service being purchased; the availability of life cycle information and/or willingness by the provider to give the information; and the availability of easy-to-use tools that can translate this information to support purchasing decisions by the Federal government. EPA recognizes that agencies may find it easier to apply a life cycle perspective when the result will be internal agency environmental benefits and/or cost savings rather than external benefits. Nevertheless, EPA encourages agencies to consider reducing impacts along all stages of the product or service life cycle.

This guidance promotes the use of a range of practices, from life cycle considerations to a more rigorous, scientifically defensible life cycle assessment methodology. EPA encourages Executive agencies to use currently available tools as well as help refine and address the needs of Federal purchasers. Examples of available tools and references are

listed in Section VI. For the most current list of available tools, Executive agency personnel are referred to EPA's EPP Program Web site: <www.epa.gov/opptintr/epp>. EPA also encourages experts both within and outside of the Federal community to develop additional life cycle tools to support environmental preferability decisions.

b) Multiple environmental attributes — Environmental preferability should reflect the consideration of multiple environmental attributes such as increased energy efficiency, reduced toxicity, or reduced impacts on fragile ecosystems. In addition, these attributes should be considered from a life cycle perspective. Focusing on one environmental attribute of a product or a service, without considering others, might inadvertently exclude important impacts on the determination of environmental preferability. For example, improving one attribute (e.g., increased energy efficiency or reduced toxicity) may result in other unintended environmental life cycle impacts. It is also possible that focusing on a single aspect of the product or service will cause Executive agency personnel to overlook improvements that the vendor has or can make in other aspects of the product or service. In short, it is difficult to be confident that an alternative product is environmentally preferable without some consideration of multiple attributes from a life cycle perspective. Analytical tools such as life cycle assessment can help Federal agencies ensure the product or service they purchase does not create new problems for some other aspect of the environment by identifying other potential negative impacts that should be alleviated.

Although the determination of environmental preferability should be based on multiple environmental attributes, Federal agencies may at times make purchasing decisions based on a single attribute when that attribute distinguishes the product or service in a category. In its environmentally preferable purchasing effort, EPA aims to build upon those attributes that are well-defined, measurable and familiar to Federal purchasers (e.g., recycled content and energy efficiency). EPA also seeks to support the development of similar definitions and measures for other attributes that are less understood and to advance consideration of multiple environmental attributes in purchasing decisions.

The menu of environmental attributes described in Appendix B offers a preliminary look at what should be considered in environmentally preferable purchasing decisions. Many of the attributes are relevant to a number of different product life cycle stages, while others are more pertinent to one particular stage. The menu should serve as a means to inform Executive agency personnel about the different types of attributes that can make a product or service environmentally preferable. Each and every element in the menu is not meant to be applicable to all products and services nor is the menu all-inclusive

Guiding Principle 4: Comparison of Environmental Impacts

Determining environmental preferability might involve comparing environmental impacts. In comparing environmental impacts, Federal agencies should consider: the reversibility and geographic scale of the environmental impacts, the degree of difference

among competing products or services, and the overriding importance of protecting human health.

In determining environmental preferability, Executive agency personnel might need to compare the various environmental impacts among competing products or services. For example, would the reduced energy requirements of one product be more important than the water pollution reductions associated with the use of a competing product? The ideal option would be a product that optimized energy efficiency and minimized water pollution. When this is not possible, however, Executive agency personnel will have to choose between the two attributes. It is important to consider both the nature of the environmental impact and the degree of difference among competing products.

There is no widely accepted hierarchy that ranks the attributes or environmental impacts that are most important. The following three factors are intended to help Executive agency personnel analyze the environmental impacts of competing products and services and make decisions about environmental preferability when faced with trade-offs among environmental attributes. These factors are not listed in order of importance.

a) Recovery time and geographic scale—Federal agencies should consider recovery time and geographic scale in comparing environmental impacts. To what extent is an environmental impact reversible? An impact is less acceptable if the recovery time is longer.[2] The geographic scale of the problem and the importance of the affected ecosystems are also significant. Global environmental impacts are more significant, therefore, than ecological stressors that have a local or regional ecosystem impact.[3]

The table shown below provides a basic framework for considering the reversibility and geographical scale of environmental impacts and includes some examples of how certain impacts might fit into the matrix.

While some environmental standards or other sources of comparative information on products are national or international in scope, Federal agencies should also be prepared to consider unique local impacts and site-specific uses. Information based on an assessment of national or global needs, by its nature, rarely allows for the consideration of local impacts associated with how products are used,

---

[2]This is based on the findings of the Science Advisory Board, published in its 1990 report entitled "Reducing Risk: Setting Priorities and Strategies for Environmental Protection," a statement of policy on priority pollutants affecting environmental and public health. In this report, environmental stressors were judged to be significant based on two primary criteria—the geographic scale and degree of reversibility of the impact.

The Science Advisory Board is a public advisory group providing extramural scientific information and advice to the Administrator and other officials of the Environmental Protection Agency. The Board is structured to provide balanced, expert assessment of scientific matters related to problems facing the Agency.

[3]Refer to above footnote.

recycled, and/or discarded. Executive agency personnel are encouraged to consider local factors, where they are relevant, and not rely exclusively on national or global information. For example, although it may be generally accepted that an aqueous-based degreaser is preferred over a halogenated solvent degreaser, the environmentally preferable purchasing decision may depend on whether there is sufficient local wastewater treatment capacity to deal with the aqueous waste.

There may be rare occasions where the goal of minimizing a local impact, such as smog, is in conflict with the goal of minimizing a global impact, such as ozone depletion and global climate change. In these instances, EPA encourages purchasers to engage as much as possible in applying Principle #2 and aiming to prevent pollution, thereby avoiding such trade-offs. Where there are unique local circumstances, the purchaser can make the judgment that the local conditions and impacts should be given priority.

ECOLOGICAL PRIORITY IMPACTS MATRIX

		Reversibility		
		Years	*Decades*	*Centuries/ Indefinite*
Geographic Scale	*Local/Regional*	• Erosion • Conventional Pollutants		
	National	•Hazardous Air Pollutants • Chemical Releases	• Bioaccumulative Pollutants	
	Global			• Loss of biodiversity • Ozone Depleting Chemicals • Global Warming Gases

++ This matrix provides a few examples of how certain environmental stressors and impacts might fall into the different categories of reversibility and geographic scale considerations and is not meant to be comprehensive.

b) Differences among competing products—In some situations, a purchaser may determine preferability by looking at the differences of environmental performance among competing products, rather than by comparing environmental problems. Guiding Principle 3 addresses the importance of identifying relevant attributes for a product. There might be significant differences among competing products for some of these attributes, while for others, the differences could be minimal. In purchase comparisons, Executive agencies might prefer the product or service that provides a significant improvement over competing products, without making a determination that one environmental problem is more significant than another. For example, a product that significantly reduces

toxicity might be preferable to one that makes a minimal reduction in waste reduction.

c) Human health -A product or a service should be at least equivalent to comparable products/services in protecting human health to be considered environmentally preferable. EPA's Science Advisory Board listed the environmental factors listed to the right as significant contributors to human health risks.

List of High Priority Human Health Stressors
(not in any order of importance):

- Ambient air pollutants
- Hazardous air pollutants
- Indoor air pollution
- Occupational exposure to chemicals
- Bioaccumulative pollutants

EPA recognizes that Executive agencies considering these three factors (recovery time and geographic scale; differences among products; and human health) must rely on providers of products and services to supply practical environmental information on products. EPA encourages organizations that provide environmental standards or other types of comparative product information to consider these factors in evaluating and reporting environmental information for purchasers.

Guiding Principle 5: Environmental Performance Information

Comprehensive, accurate, and meaningful information about the environmental performance of products or services is necessary in order to determine environmental preferability.

a) Importance of Environmental Information — Executive agency personnel will need comprehensive, accurate and meaningful life cycle-based information about the environmental characteristics of products and services in order to evaluate whether one product or service is more or less damaging than another. Even with this thorough information, however, making these evaluations can be difficult. Yet, without such information, determinations of environmental preferability are even more challenging. Executive agency personnel are encouraged to seek, and product and service providers are encouraged to provide, life cycle-based information about the environmental performance of products and services. This information should be sought and provided in all appropriate stages of the acquisition process including, but not limited to market surveys, request for proposals, etc. (See Federal Acquisition Regulation, (FAR) 48 C.F.R. Subpart 23.7, which includes a mandate for the acquisition of environmentally preferable and energy-efficient products and services.

Executive agency purchasers may encourage product and service providers to describe their product or service's performance according to the menu of environmental attributes included in Appendix B (1).

Product and service providers' disclosure of environmental information about their products and services will also foster competition and encourage a market-driven approach to environmental improvement. The accessibility of the information to the public (both Executive agency personnel and the general public) will help ensure its accuracy and credibility.

b) What/How Information is Conveyed - A number of resources about the environmental performance of products or services are currently available. Two general categories of information sources can be distinguished: (1) manufacturers who provide environmental information (e.g., environmental claims, product profiles, etc.) about their products either on the label or through product literature, including advertisements; and (2) environmental information compiled, evaluated, and reported by non-governmental entities. Included in this second category are third-party certification programs that evaluate the environmental aspects of products and award symbols (e.g., "seals-of-approval") or compile "report cards" of environmental information. Non-governmental entities may also verify specific claims made by manufacturers (e.g., paper contains 30 percent recycled content).

Information conveyed through claims and seals can help Executive agency personnel identify environmentally preferable products, depending on the types of products being purchased and the legal acquisition requirements involved. A more detailed discussion of how Executive agencies can use technical expertise and research of non-governmental entities in their environmentally preferable purchasing practices is included in Section V and Appendix D. In evaluating the environmental attribute claims made by anyone, whether they are manufacturers, vendors, or other non-governmental entities, Executive agency personnel should refer to the Federal Trade Commission's (FTC's) *"Guides for the Use of Environmental Marketing Terms." (Green Guides.)*

V. Executive Agency Implementation

This section recommends steps that each agency can take to implement the environmentally preferable purchasing provisions of EO 13101.

A. Policy directive and affirmative procurement plans

Recognizing that effective implementation of environmentally preferable purchasing will require clear direction and support from the top levels of each agency, this Final Guidance recommends that each Executive agency issue a Policy Directive promoting the practice. A sample is included in Appendix C. The policy directive should include the elements listed below:

An overall statement of policy:

- Agency personnel should seek to reduce the environmental damages associated with their purchases by increasing their acquisition of environmentally preferable products and services to the extent feasible, consistent with price, performance, availability, and safety considerations.

- Environmental factors should be taken into account as early as possible in the acquisition planning and decision-making process. (See EO 13101, Section 401.)

- Responsibility for environmentally preferable purchasing should be shared among the program, acquisition, and procurement personnel.

A commitment to the following:

- Increasing the acquisition of environmentally preferable products and services. (See EO 13101, Sections 102, 503 (.c), and 602.)

  Under section 6002 of the Resource Conservation and Recovery Act of 1976 and FAR Subpart 23.4, procuring agencies are required to establish affirmative procurement programs for purchasing EPA-designated recycled products. EPA recommends that agencies expand the scope of their affirmative procurement programs to include environmentally preferable products and services. EO 13101, Section 302, (a)(1)(a) calls for a Strategic Plan to include the "direction and initiatives for acquisition of recycled and recyclable products and environmentally preferable products and services." Furthermore, Section 302 (b)(1) requires Agency Environmental Executives to "translate [this] Government-wide Strategic Plan into specific agency and service plans."

- Identifying and implementing pilot projects (See Section V (B) below).

- Establishing internal agency incentive and award programs to recognize those people, teams, and interagency work groups who are most successful at promoting the purchase of environmentally preferable purchasing (see Executive Order 13101, Section 802). Collaboration among agencies to provide education and training is highly encouraged.

In order to minimize the burden on Executive agencies, EPA recommends that each agency incorporate in its Policy Directive to promote environmentally preferable purchasing into its Affirmative Procurement and Strategic Plans. This incorporation can transpire as agencies revise their plans. Agencies should ensure that their Policy Directive is made available to the field-level procurement and environmental personnel.

B. Pilot Projects

Section 503 (b) of EO 13101 states "[A]gencies are encouraged to immediately test and evaluate the principles and concepts contained in the EPA's Guidance on the Acquisition of Environmentally Preferable Products and Services through pilot projects to provide practical information to the EPA for further updating of the guidance." Furthermore, Section 704 states "Each executive agency shall establish a model demonstration program. . . to demonstrate and test new and innovative approaches such as incorporating environmentally preferable...products...." into model facility programs. To help Executive agencies implement these provisions of the EO, this Final Guidance includes some suggested steps for initiating and implementing pilot acquisitions.

The suggestions that follow are based on lessons from early pilots undertaken by the General Services Administration and the Department of Defense in partnership with EPA. Case studies from these and other pilot projects are available from the Pollution Prevention Information Clearinghouse (202 260-1023) or they can be accessed through EPA's EPP Program Web site <www.epa.gov/opptintr/epp>.

Additional pilot acquisitions will be important testing grounds for applying the guiding principles and testing their applicability. The pilots will also provide valuable information for the development of tools and resources to facilitate widespread adoption of environmentally preferable purchasing practices.

EPA will track pilots that are planned or already underway on the EPP Web site, providing a clearinghouse for information on government-wide activities related to environmentally preferable purchasing. (See EO 13101, Section 503 (b)(4).) EPA will disseminate information about different pilots among the agencies through the EPP Web site, updates, and fact sheets to ensure that lessons learned are shared and used to inform other pilot projects.

The discussion below further describes how these pilots and demonstration projects might proceed. EPA encourages Executive agencies to undertake pilots and use all existing sources of information and technical expertise to carry them out. EPA is committed to supporting these pilots and providing overall coordination and technical assistance, as resources allow.

1. Selection of pilots. Selection of pilot acquisitions is at the discretion of the individual Executive agencies. There are at least two options for how agencies can approach this selection process. First, an agency may want to identify an environmental problem that it wants or needs to address. Once the problem has been identified, the agency can develop a list of products and services that contribute to that specific environmental problem. Alternatively, an agency may start out with a product or service category for which it wants to find alternatives. In either case, criteria that agencies might wish to consider in selecting pilot acquisitions include:

- Potential for a reduction in risk to human health and the environment.

- Status on EPA's prioritized list. Pursuant to EO 13101, Section 503 (a), and in order to assist Executive agencies focus their efforts on minimizing serious environmental impacts, EPA has developed a prioritized list of the top 20 product categories. The complete list, along with a discussion of the methodology used in its development can be found in EPA's EPP Web site at <www.epa.gov/opptintr/epp>.

- Existence of less harmful product or service alternatives. Alternatives could vary anywhere along the product or services' life cycle, for example, different ways of manufacturing or disposing. Alternatives might also include different ways of getting the same result, even if it means acquiring a completely different type of product or service.

- Feasibility/degree of flexibility in the acquisition.

- Products or services that are widely used within the Federal government and are representative or typical of the procurement system. This maximizes the pilot's potential value to others by providing lessons about the effectiveness of the guidance and increasing the likelihood that the pilot could be replicated. (See EO 13101, Section 503 (b) (1).)

2. Implementation of pilot projects. In implementing the pilot projects, Executive agencies can look to the process and results of projects others have completed or develop a different approach for environmentally preferable purchasing. In undertaking the pilots, agencies are encouraged to:

- Ensure the participation of environmental and procurement experts.

- Use all of the options available to them to determine the environmentally preferable attributes of products and services in their pilot projects, including the technical expertise of non-governmental entities. This is pursuant to EO 13101, Section 503 (b) (2). More specific guidance on the use of non-governmental entities is included in Appendix D.

Once a product or service has been chosen, pilots typically involve:

a) Determining environmentally preferable products and services. This can be accomplished by Executive agencies:

- Identifying product attributes that can serve as indicators of environmental preferability. Agencies can look to Appendix B for a menu of attributes. Selection of attributes should be tied to the most significant environmental problems or impacts.

- Collecting information from product and service providers. This may require the development of contract language to ensure that vendors provide environmental information.

  With the recent changes to the FAR and the trend toward best value contracting, agencies can now more easily consider environmental factors when making purchasing decisions. However, environmental information is often not provided by vendors. Thus, it may be necessary for Executive agency personnel to clearly request or require relevant environmental information from vendors in market surveys and proposals whenever appropriate.

- Evaluating the environmental information.

b) Incorporating results of the environmental information research into the acquisition process to purchase environmentally preferable products and services. While the acquisition strategy and method are determined by the purchasing agency, EPA asks that agencies select a strategy that:

- Maximizes the number of environmentally preferable product or service choices available to the purchasing agency.

- Promotes competition across products and services in terms of environmental performance.

- Stimulates product and service process innovation and continuous improvement.

- Allows for the consideration of local environmental conditions.

- Promotes a definition of environmentally preferable products and services that can improve over time.

c) Documenting the pilot effort, including a description of how the project was initiated and implemented and the lessons learned. A sample case study template is attached in Appendix E and is also available on EPA's EPP Web site. The results of pilot projects will be shared among Executive agencies through EPA's EPP Web site.

More specific information about pilot implementation will be made available through a variety of tools that EPA currently is developing including: an interactive training module; a "best practices guide" with examples of specific contract language that have been used by purchasing agencies; and a database of existing environmental standards that have been developed by governmental and non-governmental entities.

Section 12(d) of The National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113, §12(d), 15 U.S.C. 272 note) and OMB Circular A-119 (63 FR 8546, February 19, 1998) direct Federal agencies to use both domestic and international voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where it would be inconsistent with applicable law or otherwise impractical. The Act's purpose is to reduce the cost of procurement and regulation by requiring a Federal agency to draw upon any suitable technical standard already used in commerce or industry rather than inventing a new standard. Some of those standards might relate to evaluating environmental performance and measuring the environmental attributes of products or services. In establishing Environmental Preferable Purchasing pilot projects or planning other environmentally-sensitive activities, agencies should first determine whether there is an applicable voluntary consensus standard that would meet its needs.

The NTTAA also requires a Federal agency, when it is consistent with the agency's mission, authorities, priorities, and budget resources, to participate in the standards-setting activities of voluntary consensus standards bodies. Such participation helps ensure the development of standards that meet the agency's needs, including those related to Environmental Preferable Purchasing concerns. This collaboration can also promote national goals and objectives. OMB Circular A-119 specifically mentions the need to promote the use of environmentally sound and energy-efficient materials, products, systems, services, or practices as well as the improvement of public health and safety. (See OMB A-119, Section 7a.)

In the long run, institutionalizing the purchase of environmentally preferable products and services requires that Executive agencies continue their efforts after the pilot's are completed. Given that environmental information about products and services is still scarce, agencies should rely on all sources of information and technical expertise in making determinations about environmental preferability. To foster agencies continue acquisition of "green" products, EPA will coordinate the development and standardization of environmental information about potential product and service categories for future pilots. This effort will consist of identifying environmental performance characteristics and measurement methods and will involve technical experts both inside and outside the Federal government. Executive agencies should examine all information generated through these types of efforts. The agencies, and not the nongovernmental entities, must make all final determinations regarding environmental preferability.

The experience gained from Executive agency pilots will be key in determining the scope and nature of EPA's long-term activities to advance Federal environmentally preferable purchasing. The lessons learned and partnerships formed from these pilots will help establish a broader infrastructure to support this initiative. EPA might use existing mechanisms or help develop new resources such as guidance, networks, and databases in support of the Federal purchasing community— to build this infrastructure. The infrastructure will help bridge the gap between the environmental and procurement expertise within the Executive agencies.

All Executive agency personnel will have a role in creating a demand for environmentally preferable products and services. Thus, the infrastructure will also have to support the development of tools that are easy and convenient for general and diverse use.

In light of the evolving acquisition landscape and the dynamic nature of the marketplace, the infrastructure will have to be flexible. In the increased globalization of the economy and trends toward commercialization of the Federal marketplace, will also require agencies to coordinate this initiative with new international trade and standardization developments. Ultimately, the measure of this initiative's success will be in the increased availability and purchase of products and services that pose fewer adverse impacts on human health and the environment.

VI. List of Resources

This section includes a partial list of current resources that Executive agency personnel may find useful in implementing environmentally preferable purchasing. For a more complete and updated list, please refer to EPA's EPP Web site, described below.

A. EPA's EPP Program Web site: <www.epa.gov/opptintr/epp>

This comprehensive Web site serves as the main repository of information and resources related to environmentally preferable purchasing, including:

- Publications such as case studies, program updates and fact sheets.
- Interactive features designed to elicit information exchange such as topical discussion forums, a listing of upcoming events, a bulletin board for posting questions and comments and sharing users' experiences, as well as tools that have been helpful in implementing EPP.
- A list of top twenty prioritized product and service categories selected because they represent large volume federal procurements with environmental impacts, along with a description of the methodology used. The list is provided to assist Executive agencies in selecting pilots that will have the most effect.

The site will also include training modules, a collection of promising green contracting practices, and a database of existing environmental standards, specifications and contract language.

B. Federal Case Studies of Environmentally Preferable Purchasing

EPA has developed a number of documents that describe the results of EPP pilot projects, including:

- *"Cleaners Pilot Project Case Study"* documents a collaboration between the General Services Administration and the Environmental Protection Agency.

- *"Paving the Road to Success"* describes Department of Defense's efforts to "green" a parking lot repair and maintenance contract.

- *"Leading by Example"* documents how EPA incorporated environmental features into two new buildings, the Ronald Reagan Building and the Research Triangle Park office complex.

- *"Defending the Environment at the Department of Defense"* describes the addition of environmental factors in the maintenance of the Pentagon and other DOD facilities.

In addition, Executive agencies have either initiated or are contemplating a number of other pilot projects involving products such as degreasing agents, paints, adhesives and copier paper[4], and services such as conferencing. Examples of where environmental preferability was factored into purchasing decisions can be found under "How to Do EPP" as well as "EPP Resources" on EPA's EPP Web site.

C. Life Cycle-Based Resources

- *Building for Environmental and Economic Sustainability*

  A life cycle-based, decision-support software tool to assist users in balancing environmental and economic concerns among products. The tool generates relative scores for alternative products based on environmental and economic performance weights that individual users can set. Although originally designed for building materials and product comparisons, the tool will be expanded to include other materials. The disks can be obtained by contacting the Pollution Prevention Information Clearinghouse at 202 260–1023.

- *Federal Facility Pollution Prevention Project Analysis: A Primer for Applying Life Cycle and Total Cost Assessment Concepts*

---

[4] Under the Pulp and Paper Cluster Rule published in 1998, EPA's Air and Water Offices have created the Voluntary Advanced Technology Incentives Program in order to move the industry toward the minimum environmental impact "mill of the future." EPA also has proposed to add a procurement incentive in line with this goal in the near future. The purchase of recycled content, chlorine-free paper would be a way to advance several Administration initiatives, including the Technology Incentives Program, President Clinton's directive to purchase paper containing 30 percent post-consumer fiber and the President's directive to agencies to purchase environmentally preferable products and services. For those interested in EPA's views on recycling and chlorine content in copier paper, please see EPA's *Effluent Guidelines and Standards for Pulp, Paper, and Paperboard Category, Phase I*, promulgated on April 15, 1998. (See 40 CFR Parts 63, 261 & 430)

D. Agency Environmental Catalogs

The General Services Administration (GSA) and the Defense Logistics Agency (DLA) in the Department of Defense, the two major suppliers for the rest of the Federal government, publish product catalogs that highlight some environmental attributes. These catalogs are listed below:

- *Environmental Products Guide*
  Published by the GSA, this guide contains a list of over 3,000 products and services with environmental attributes, such as low volatile organic compound content, recycled content, energy-efficiency, etc. All products featured in the guide are available through the supply system of GSA's Federal Supply Service. The guide is available on MUFFIN (Multi-Use File for Interagency News).

- *Environmental Products Catalog*
  Published by the DLA, this catalog includes products that meet the requirements of EPA's Comprehensive Procurement Guidelines as well as products that help reduce hazardous waste or eliminate the use of ozone-depleting chemicals. Currently, the catalog does not have a systematic way of screening products for their environmental characteristics, so inclusion in the catalog does not necessarily connote an environmentally preferable product. A DLA pilot is underway to develop environmental standards for a category of products in the catalog. For more information, contact the Defense General Supply Center at 1 800 352-2852.

E. Federal Trade Commission's *Guides to the Use of Environmental Marketing Claims (Green Guides)*, 16 C.F.R. Part 260

The *Green Guides*, recently revised in May 1998, are intended to reduce consumer confusion and prevent false or misleading use of environmental terms in product advertising and labeling. The *Green Guides* indicate how the Federal Trade Commission will apply Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices, in environmental marketing claims. The Green Guides apply to all forms of product and service marketing to the public, including advertisements, labels, package inserts, promotional materials, and electronic media. The *Green Guides* can be accessed via FTC's Web site: <www.ftc.gov> (Select "Consumer Protection", then select "Environment", and then select "Guides"). For hard copies, contact FTC at 202 FTC-HELP (382-4357). For questions, contact Janice Podoll Frankle at 202 326-3022.

F. Office of Federal Environmental Executive's Web Site —<www.ofee.gov>

The Office of the Federal Environmental Executive (OFEE) maintains a comprehensive Web site. Updated frequently, it includes background information on OFEE's mission, history, and staff; resources for implementing EO 13101; best practices and success stories for environmental procurement, recycling, and waste prevention; federal agency compliance guidance; and posts information on current and upcoming conferences, activities, publications, and other relevant news. The site also showcases the *Closing the Circle Awards* recognizing outstanding performance towards "greening" the government. OFEE also manages an interactive forum (list serve) for the exchange of information on environmental purchasing, recycling, and waste prevention.

G. Other Resources and Tools

- "Greening" of the Federal Logistics Information System (FLIS)
  The Defense Logistics Agency is working through a multi-agency group to incorporate positive environmental attributes (such as recycled content, energy efficiency and water efficiency) into FLIS, is a database of more than 7 million supply items purchased by the Federal government. With the supply items tagged with environmental attributes, FLIS will provide Federal consumers with specific environmental information about the products they buy.

- There are a variety of other resources and tools that are currently available or under development to assist Executive agency personnel implement environmentally preferable purchasing practices. For the latest list of resources and tools, please check the EPP Web site <www.epa.gov/opptintr/epp>.

VII. Appendices

Appendix A	Glossary of Terms
Appendix B	Environmental Attributes (1) Menu of Environmental Attributes (2) Definitions for Terms on the Menu of Environmental Attributes
Appendix C	Sample EPP Policy Directive
Appendix D	Text of Office of Federal Environmental Executive and U.S. Environmental Protection Agency's April 1998 Policy Letter on Use of Non-Governmental Entities
Appendix E	Pilot Project Case Study Template

Appendix A—Glossary of Terms

Acquisition - means the acquiring of products and services (including construction) by contract with appropriated funds by and for the use of the Federal government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to meet those needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. (EO 13101, Section 201)

Bio-based products - are defined as commercial or industrial products (other than food or feed) that utilize biological products or renewable, domestic, agricultural (e.g., plant, animal and marine), or forestry materials. (EO 13101, Section 201)

Environmentally preferable - products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. The product or service comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal. (EO 13101, Section 201)

Life cycle assessment - means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal. (EO 13101, Section 201)

The International Standards Organization, through ISO 14040, has defined life cycle assessment slightly differently as follows: Compilation and evaluation of the inputs, outputs, and the potential environmental impacts of a product system throughout its life cycle.

Life cycle cost - means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs and disposal costs discounted over the lifetime of the product, according to OMB Circular A-94 and Executive Order 13101, Section 201. However, this definition does not include external costs (i.e., those not borne directly by the entity that owns and operates a product/service, such as environmental costs to society at large). For the purposes of this guidance, EPA encourages agencies to consider all internal and external costs associated with a product, process, or activity throughout its entire life cycle—from raw materials acquisition to manufacture, recycling and final disposal.

Non-governmental entities - within the context of this guidance, non-governmental entities include, but are not limited to, voluntary consensus standards bodies (see§ 12(d) of the National Technology Transfer and Advancement Act (Pub. L. 104-113, §12(d), 15 U.S.C. 272 note), environmental standard setting organizations, third party certification programs, environmental labeling or environmental "report card" programs and other environmental consulting organizations.

Pollution prevention - "source reduction," as defined under the Pollution Prevention Act of 1990 (42 U.S.C. § 13102), and other practices that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water, or other resources; or protection of natural resources by conservation..

The Pollution Prevention Act defines **source reduction** to mean any practice that:

- Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal

- Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

Appendix B—Lists of Environmental Attributes

Below is a list of environmental attributes that can help Executive agencies assess the environmental performance of products and services. This list, viewed from a life cycle perspective can enable Executive agency purchasers to select the product or service that minimizes adverse environmental impact. Although, it is a preliminary list of the major sources of potential human health and environmental risk, this source should not be considered definitive. Definitions for each of the attributes follow the list. Agency personnel can use this list in two ways:

(1) To provide a framework for identifying the most important environmental attributes of products and services, and using that information in product or service comparisons.

(2) As a check list of environmental issues to consider when designing and acquiring systems or buildings.

Not all of the environmental attributes will apply to each product or service; indeed, in some cases, information on just a few key environmental attributes will enable Executive agency personnel to determine environmental preferability.

The list of environmental attributes suggests that Federal agency personnel can use two different approaches to soliciting information from providers of products and services. The first includes consideration of releases of pollutants that occur during the life-cycle of the product. In the research on product life-cycle assessments that have been conducted over the past several years, these releases are known as ``inventory'' items. Alternatively, the risks (or risk surrogates) associated with various life-cycle stages of a product can be identified. This approach seeks to identify actual environmental impacts rather than solely environmental releases. When calculating risks, general population (both environmental and human) exposures and occupational exposures need to be considered. Executive agencies may consider using both risk and release data in their decisions to purchase environmentally preferable products and services.

If product and service providers use this list as a basis for making environmental marketing claims, the claims should conform to the FTC's *Guides for the Use of Environmental Marketing Claims (Green Guides)*, 16 C.F.R. Part 260). A copy of the *Green Guides* can be obtained through FTC's Web site <www.ftc.gov>. Any party making a claim (or an independent third party that is certifying a claim) concerning a product's environment attribute must, at the time the claim is made, possess and rely upon a reasonable basis for substantiating the claim (16 C.F.R.§ 260.5). A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

The *Green Guides* state that either an unqualified or inadequately qualified claim that a product is "environmentally preferable" implies to consumers that a product is generally environmentally superior to others. "Environmentally preferable" claims should be accompanied by language limiting the superiority claim to the particular attributes that can be substantiated. For example, *Green Guides* state that environmental seals-of-approval should be accompanied by information on product labels explaining the basis for the award.

Appendix B(1) — Menu of Environmental Attributes

Executive agency personnel are reminded that the attributes listed and defined below are not comprehensive. In addition, Executive agency personnel should note that not all of these attributes will be applicable to every product or service. Furthermore, different attributes may be applicable to each product or service life cycle stage being considered.

A. Natural Resources Use

- **Ecosystem impacts**, such as endangered species, wetlands loss, fragile ecosystems, erosion, animal welfare, etc.
- **Energy consumption**, which can serve as an indicator of acid rain, climate change potential, air pollution, and associated human health risks.
- **Water consumption** which can serve as an indicator of water quality impacts, risks to aquatic ecosystems, and degradation of drinking water resources.
- **Non-renewable resource consumption**, which can serve as an indicator of acid rain, climate change potential, air pollution, and associated human health risks and risks to endangered species and fragile ecosystems.
- **Renewable resource consumption**, which can serve as an indicator of loss of biodiversity and increased erosion. Although in many cases the use of renewable resources is considered environmentally preferable to use of nonrenewable resources, products made from renewable resources may also have negative environmental impacts (e.g., ethanol is derived from a renewable resource, yet its manufacture can lead to releases of VOCs).

B. Human Health and Ecological Stressors

- **Bioaccumulative pollutants.**
- **Ozone depleting chemical global warming gases.**
- **Chemical releases** (Toxics Release Inventory (TRI) list chemicals or others.)
- **Ambient air releases** (other than TRI, including volatile organic compounds and particular matter).
- **Indoor environmental releases** (consumer and occupational).
- **Conventional pollutants released to water.**
- **Hazardous waste.**

- **Non-hazardous solid waste** (e.g., municipal solid waste, large volume waste, surface impoundments).
- **Other stressors.**

C. Hazard Factors Associated With Materials

- **Human Health Hazards**:
  - — acute toxicity
  - — carcinogenicity
  - — developmental/reproductive toxicity
  - — immunotoxicity
  - — irritancy
  - — neurotoxicity
  - — sensitization
  - — corrosivity
  - — flammability
  - — reactivity
  - — other chronic toxicity

- **Ecological Hazards**:
  - — aquatic toxicity
  - — avian toxicity
  - — terrestrial species toxicity

D. Positive Attributes

The attributes listed below are viewed as positive because they either serve as proxies for minimizing natural resource use or avoiding waste and the associated environmental impacts identified in A, B, and C. These attributes also are linked to authorities and requirements in statutes or executive orders that encourage the Federal government to promote their use. "Recyclability" and "recycled content" are attributes encouraged under RCRA. There are executive orders that encourage Federal agencies acquire bio-based products, and to promote energy efficiency and water conservation. "Durability", "reusability", "take-back", and "reconditioned or remanufactured" are positive attributes that encourage source reduction. "Product disassembly potential" increases the potential for source reduction and recycling of product components. Agencies should note that the presence of these attributes alone does not automatically make a product or service environmentally preferable. When making purchasing

decisions, executive agencies should consider a range of environmental impacts associated with products from a life cycle perspective when making purchasing decisions.

- **Recycled content**
- **Recyclability**
- **Product disassembly potential**
- **Durability**
- **Reusability**
- **Reconditioned or remanufactured**
- **Take-back**
- **Bio-based**
- **Energy efficiency**
- **Water efficiency**
- **Other attributes with positive environmental effects**

Appendix B(2)—Definitions for Terms on the List of Environmental Attributes

A. Natural Resource Use

(1) **Ecosystem impacts**- adverse impacts on the ecosystem, for example, endangered species, wetlands loss, fragile ecosystems, erosion.

(2) **Energy consumption**- the total amount of energy consumed for product or service manufacture, use, and disposal. Different sources of energy are associated with different environmental impacts.

(3) **Water consumption**- refers to the water resources that are consumed or used, which can serve as an indicator of water quality impacts, risks to aquatic ecosystems, and degradation of drinking water resources.

(4) **Non-renewable resource consumption**- those resources consumed that are not renewable in 200 years (e.g., fossil fuels, minerals). This can serve as an indicator of acid rain, climate change potential, air pollution, and associated human health risks and risks to endangered species and fragile ecosystems.

(5) **Renewable resource consumption**: refers to a continuum of resources, from those that are renewable in under 200 years, such as timber-based products, which can serve as an indicator of biodiversity loss and increased erosion, to those which are renewable in less than 2 years, such as grain-based feed stocks.

B. Human Health and Ecological Stressors

(1) **Bioaccumulative pollutants**- those chemicals that bioconcentrate in the environment as described in the *Significant New Use Rule* for new chemicals. (40 CFR 721.3.)

(2) **Ozone depleting chemicals**- defined in the Protection of Stratospheric Ozone Final Rule. (58 FR 65018, December 10, 1993.)

(3) **Global warming gases**- listed in *Climate Change 1992, The Scientific Report on the IPCC Scientific Assessment.* (Table A 2.1.)

(4) **Chemical releases**- ambient releases of chemicals of concern such as those reported in the TRI of the Emergency Planning and Community Right-to-Know Act. The current list is reported in 40 CFR 372.65.

(5) **Ambient air pollutants**-.pollutants for which ambient air quality standards have been developed. (40 CFR 50.4- 50.12.) These pollutants include nitrogen dioxide, sulfur dioxide, ozone precursors, particulate matter, carbon monoxide, and lead.

(6) **Indoor environmental releases**- releases to an indoor environment of potentially hazardous chemicals such as those reported in the TRI in both occupational and consumer settings.

(7) **Conventional pollutants**- defined in 40 CFR 401.16. These pollutants include biochemical oxygen demand, total suspended solids, fecal coliform, pH, and oil and grease.

(8) Hazardous waste- Quantity of Resource Conservation and Recovery Act (RCRA) hazardous waste as defined in 40 CFR 261.3.

(9) **Non-hazardous waste**- solid waste as defined in 40 CFR 261.3. Includes municipal solid waste, large volume waste (e.g., oil and gas, mining, etc.) and solids disposed of in surface impoundments.

(10) Other stressors- any other stressors associated with the product or service but not captured elsewhere.

C. Factors Associated With Materials

Human Health Hazards

(1) **Acute toxicity**- the potential of a chemical substance to cause adverse health effects from short-term exposure.

(2) **Carcinogenicity**- defined by EPA through a weight-of-evidence approach. (51 FR 33992, September 24, 1986 and 61 FR 17960, April 23, 1996.) When quantification is possible, slope factors or other measures such as LED10 can also be used to express carcinogenic potency.

(3) **Development/reproductive toxicity**- adverse effects on the developing organism that result from chemical exposure prior to conception (i.e., either parent), during prenatal development, or, postnatally, to the time of sexual maturation. (56 FR 63798, December 5, 1991.) Reproductive toxicity is any adverse effect on an organism's ability to reproduce. (61 FR 56274, October 31, 1996.)

(4) **Immunotoxicity**- any adverse effect on an organism's immune system that results from exposure to a chemical substance.

(5) **Irritancy**- defined according to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR part 1910.1200) or other standard scales such as EPA or Organization for Economic Cooperation and Development (OECD) Guidelines (EPA 712-C-98-196, August, 1998.)

(6) **Neurotoxicity**- any adverse change in the development, structure, or function of the central and peripheral nervous system following exposure to a chemical agent (59 FR 42272, August 17, 1994.)

(7) **Sensitization**- an immunologically mediated cutaneous reaction to a substance. EPA test methods for evaluating sensitization potential are found in 40 CFR part 798.4100.

(8) **Other chronic toxicity**- the potential of a chemical substance to cause an adverse effect on any organ or system following absorption and distribution to a site distant from the toxicant's entry point.

(9) **Corrosivity**- dermal corrosion is defined by EPA as the production of irreversible tissue damage in the skin following application of a test substance. Test methods for evaluating dermal corrosion can be found in the harmonized Office of Prevention, Pesticide and Toxic Substances (OPPTS) guidelines for acute dermal irritation. (OPPTS 870.2500.) These guidelines harmonize the TSCA, FIFRA and OECD requirements in this area. The OSHA HazCom Standard listed above for irritancy also explicitly or implicitly covers corrosivity, sensitization, neurotoxicity, and all other toxic endpoints.

(10) **Flammability**- defined by the OSHA HazCom Standard (29 CFR 1910.1200) and ignitability is defined in 40 CFR part 261.21.

(11) **Reactivity**- defined in 40 CFR 261.23.

Ecological Hazards

(1) **Aquatic toxicity**- the potential of a substance to have an adverse effect on aquatic species. Measurement methods for aquatic toxicity can be found in 40 CFR part 797, subpart B.

(2) **Avian toxicity**- the potential of a substance to have an adverse effect on avian species.

(3) **Terrestrial species toxicity**- the potential of a substance to have an adverse effect on terrestrial species, other than man.

D. Positive Attributes

The following attributes are generally viewed as positive because they either serve as proxies for minimizing natural resource use or avoiding waste and the associated environmental impacts identified in A, B and C. Agencies should note that the presence of these attributes alone do not automatically make a product or service environmentally preferable. Executive agencies should consider a range of environmental impacts associated with products from a life cycle perspective when making purchasing decisions.

(1) **Recycled content**: Materials that have been recovered from the solid waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer) (see Federal Trade Commission Environmental Marketing Guides mentioned above for more detail). Executive agencies are required to purchase EPA-designated items with recycled content (40 C.F.R. Part 247). Purchasers may want to consider whether the material contains pre-consumer or post-consumer recycled content. Recycled content, under the Federal Trade Commission guides, includes recycled raw material, that would have otherwise been incinerated or land filled, as well as used, reconditioned and remanufactured components. For products that are only partially made of recycled material, a recycled claim should indicate the percentage, by weight, of recycled content in the finished product. Unless it is otherwise clear from the context of the sale, for products that contain used, reconditioned or remanufactured components, a recycled claim should make clear that such components are used, reconditioned or remanufactured. Manufacturer's scrap material that would have, in any case, been incorporated into the product does not qualify as recycled under the Federal Trade Commission's guides. Refer to 16 C.F.R. § 260.7(e).

(2) **Recyclability**: Refers to products or materials that can be collected, separated or otherwise recovered from the solid waste stream for reuse, or in the manufacture or assembly of another package or product, through an established recycling program. For products that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components are recyclable. In addition, unless recycling collection programs for the product are available to a substantial majority of communities or consumers where the product is sold, claims of recyclability need to be qualified to indicate the limited of availability of recycling collection sites. A product that is made from recyclable material, but, due to its shape, size or some other attribute, is not accepted in recycling programs for such material, should not be marketed as recyclable. Refer to the FTC Environmental Marketing Guides, 16 C.F.R. § 260.7(d).

(3) **Product disassembly potential**: Refers to the ease with which a product can be disassembled for maintenance, parts replacement, or recycling.

(4) **Durability**: Refers to the expected lifetime of the product.

(5) **Reusability**: Refers to how many times a product may be reused. Since reusable products generally require more up-front costs than disposable products, they are often subjected to a cost/benefit analysis in order to determine the life cycle cost.

(6) **Reconditioned/Remanufactured**: Refers to the process of restoring used, durable products to meet original performance standards. Remanufacturing has many other names, including: rebuilding (automotive sector); retreading (tire remanufacturing); reconditioning; and refurbishing. Remanufacturing results in less waste and raw material and energy use.

(7) **Take-back**: Refers to the manufacturer or designee accepting a return of end-of-life product; who pays for the transportation of the product may be situation-specific.

(8) **Bio-based**: Refers to a commercial or industrial product (other than food or feed) that utilizes biological products or renewable, domestic, agricultural (plant, animal and marine), or forestry materials.

(9) **Energy efficiency**: Refers to products that meet or exceed the Department of Energy (DOE)/Federal Energy Management Program's product energy efficiency recommendations which identify the top 25 percent of energy efficiency for all similar products or that meet the energy efficiency criteria of the Environmental Protection Agency (EPA)/DOE Energy Star program.

(10) **Water efficiency**: Refers to any plumbing fixtures that meet or exceed the Department of Energy's Federal Energy Management Program recommended performance standards for flow rates.

(11) Other attributes: Refers to any other positive attributes that are associated with the product but are not listed here.

Appendix C—Sample Environmentally Preferable Purchasing Policy Directive

Environmentally Preferable Purchasing Policy

The purchase and use of products and services can have a profound impact on the environment. [NAME OF DEPARTMENT OR AGENCY] recognizes the positive impact that it can make on the environment through the purchasing decisions that its employees make. It is the intent of [NAME OF DEPARTMENT OR AGENCY] to integrate environmental considerations into every aspect of acquisition. Although the environment may not be the core of our professional mission, the integration of these factors will result in economic, health, and environmental gains that will further our goals.

Overall Statement of Policy

- Agency personnel should seek to reduce the environmental damages associated with their purchases by increasing their acquisition of environmentallypreferable products and services to the extent feasible, consistent with price, performance, availability, and safety considerations.
- Environmental factors should be taken into account as early as possible in the acquisition planning and decision-making process.
- Responsibility for environmentally preferable purchasing should be shared among the program, acquisition, and procurement personnel.
- Environmentally preferable purchasing represents one important component of this agency's commitment to pollution prevention.

[NAME OF DEPARTMENT OR AGENCY] is committed to the following:

- Increasing the acquisition of environmentally preferable products and services.
- Identifying and implementing pilot projects to test the best ways to incorporate environmental preferability into acquisition.
- Establishing incentive and award programs to recognize those people, teams, and interagency work groups who are most successful at promoting the purchase of environmentally preferable products.

Appendix D—Text of Office of Federal Environmental Executive and U.S. Environmental Protection Agency's April 1998 Policy Letter on Use of Non-Governmental Entities

Pilot Project Approach on Use of Non-Governmental Entities to Implement Section 503 of Executive Order 12873 on Federal Acquisition, Recycling, and Waste Prevention

Background:

Section 503(a) of Executive Order 12873 directs EPA to "issue guidance that recommends principles that Executive agencies should use in making determinations for the preference and purchase of environmentally preferable products." Section 503 (b) states that Executive agencies shall use EPA's guidance to "identify and purchase environmentally preferable products" and to "modify their procurement programs by reviewing and revising specifications, solicitation procedures, and policies as appropriate."

On September 28, 1995, EPA issued a proposed *Guidance on the Acquisition of Environmentally Preferable Products and Services* which includes a series of principles that are intended to guide Federal purchasers as they consider environmental preferability in their acquisition decisions. This proposed *Guidance* was the culmination of numerous discussions EPA had with staff from key purchasing agencies and departments as well as representatives from industry and environmental and other interested organizations.

In EPA's proposed *Guidance* (Supplementary Information - Section III (E)), EPA acknowledged the existence of non-governmental entities -- including, but not limited to, environmental standard setting organizations, third party certification programs, environmental labeling or environmental "report card" programs and other environmental consulting organizations -- to which Executive agencies, in appropriate circumstances, may refer for technical assistance[1] in meeting the Executive Order goals.

---

[1] For example, Executive agencies might seek technical assistance from non-governmental entities to help Executive agencies:

(a) analyze life cycle and multiple environmental attributes;
(b) analyze basic environmental performance characteristics for specific categories of products/services;
(c) identify environmentally preferable product/service criteria for a given product category based on agencies' core environmental values; and
(d) identify products/services in a given category which meet agencies' predetermined set of environmental performance criteria.

Executive agencies are reminded that they must critically examine all information from non-governmental entities. The Executive agencies involved, and not the non-governmental entities, must make all final determinations regarding environmental preferability.

In this paper, EPA suggests a pilot project approach to test the utility of various means of using non-governmental entities to achieve environmentally preferable purchasing goals. This pilot project approach will be publicized through a *Notice of Availability* in the *Federal Register*. Ultimately the findings from the pilot project approach will provide practical information to EPA in the development of its final *Guidance*.

Spectrum of Approaches

First, it must be emphasized that Executive agencies may choose to implement EPA's proposed *Guidance* without technical assistance from non-governmental entities. A number of on-going environmentally preferable purchasing (EPP) pilot projects are relying successfully on the in-house environmental and procurement expertise of EPA and the partnering Executive agency (e.g., General Services Administration and the Department of Defense). Therefore, this **paper should in no way be interpreted as an EPA endorsement of a specific non-governmental entity, organization or program, nor should agencies feel obligated in any way to utilize the technical assistance of such entities.**

However, to the extent that the Agencies are interested in tapping the expertise that resides outside the Government, EPA concludes that Agencies, in carrying out existing mandates for environmentally preferable purchasing may use non-governmental entities in accordance with appropriate operating guidelines. Executive agencies should note that they must avoid favoring, without reasonable justification, one non-governmental entity over another. Executive agencies should also inform their personnel about the Federal Trade Commission's *Guides for the Use of Environmental Marketing Claims* which govern environmental claims made by anyone, including manufacturers or environmental labeling or "report card" programs.

Thus far, EPA has identified a number of different potential approaches for how Executive agencies could use the technical expertise of non-governmental entities in furthering their environmentally preferable purchasing goals. All of the potential approaches described below require that the Executive agencies involved critically examine all information from non-governmental entities. The Executive agencies involved, and not the non-governmental entities, must make all final determinations regarding environmental preferability.

This list of approaches is not comprehensive. Agencies are encouraged to bring to EPA's attention other potential approaches for using non-governmental entities. In utilizing an approach, agencies have considerable discretion in incorporating environmental preferability into procurement decisions. For example, environmental considerations that result in limiting competition or in the payment of a price premium for goods or services may be reasonably related to an agency's definition of its "minimum needs" and therefore permissible.

Approach 1: Use of Existing Information Developed by Non-governmental Entities

Executive agencies' personnel could use existing information developed by non-governmental entities regarding environmental preferability of products and services, along with other available information (such as product performance and price) in defining the requirements for procurements and making more informed procurement and acquisition decisions. For example, Agencies might consider undertaking pilot projects to test the utility of non-governmental entities in the following instances:

a) Executive agencies could examine and evaluate already existing environmental criteria or standards developed by non-governmental entities for products or product categories (as well as for services or service categories), along with other available information, to identify a range of environmental attributes which can inform the agencies' own determinations of environmental preferability. Those determinations of environmental preferability could then translate into agency requirements, or at the very least, important criteria in the evaluation and selection of competing vendors or manufacturers.

b) In buying commercial items off-the-shelf, Executive agencies could inform their personnel to take into consideration environmental information (e.g., environmental claims, product profiles, "report cards", or environmental seals along with accompanying explanation, etc.,) either displayed on the products or provided through product literature or other materials (e.g., newsletters) in making purchasing decisions. This environmental information could be provided by vendors or manufacturers or by non-governmental entities. Executive agency personnel should be cautioned to avoid making their purchasing decisions on broad claims of environmental superiority.[2]

c) At the request of vendors or manufacturers, an Executive agency could include in its catalogs or schedules symbols from non-governmental entities denoting certain environmental characteristics, provided that (1) these symbols are accompanied by additional information that specify the reasons why a product has been "tagged" with a

---

[2]The following excerpt from FTC's *Guides for the Use of Environmental Marketing Claims* illustrates this point:

A product is advertised as "environmentally preferable." This claim is likely to convey to consumers that this product is environmentally superior to other products. If the manufacturer cannot substantiate this broad claim, the claim would be deceptive. The claim would not be deceptive if it were accompanied by clear and prominent qualifying language limiting the environmental superiority representation to the particular product attribute or attributes for which it could be substantiated, provided that no other deceptive implications were created by the context. (From FTC's *Guides*, (a) General Environmental Benefit Claims, Example 6)

symbol; (2) the catalogs or schedules clearly emphasize that Executive agency personnel are not required to purchase products or services that are tagged; and (3) procurement officials should not rely on the symbols to make purchasing decisions, but instead, are required to take into account the environmental information underlying the symbol for relevance to the procurement.[3] Agencies including such symbols in their schedules or catalogs should ensure that their employees receive appropriate guidance in utilizing this approach. Vendors or manufacturers who choose not to obtain a seal or other symbols denoting certain environmental characteristics from non-governmental entities may nevertheless also request that environmental information about their products be included in the agency's catalogs or schedules.

This option will be piloted on a limited basis so that it can be closely monitored to determine its effectiveness.

d) On its own initiative, an Executive agency could tag products or services in its catalogs or schedules with its own symbol which denotes environmental characteristics that the Executive agency, through its own determination, deems preferable. This symbol could be based on existing information (e.g., environmental claims, product profiles, "report cards", or environmental seals along with accompanying explanation, etc.) available from non-governmental entities or from vendors or manufacturers themselves. This symbol should be accompanied by specific information explaining the basis for "tagging" a product as well as the source of the information. Catalogs or schedules should emphasize that Executive agency personnel would not be required to purchase products or services which are tagged, but are requested to take into account the environmental information underlying the symbol for relevance to the procurement.

Approach 2: Use of Non-governmental Entities as Certifiers of Specific Claims

Executive agencies could require vendors or manufacturers to have specific, measurable and verifiable claims certified by qualified non-governmental entities. A product's percentage content of volatile organic compounds (VOCs), for example, would be considered measurable

---

[3]The following excerpt from FTC's ***Guides for the Use of Environmental Marketing Claims*** provides an example of this point:

> *A product label contains an environmental seal, either in the form of a globe icon, or a globe icon with only the text "Earth Smart" around it. Either label is likely to convey to consumers that the product is environmentally superior to other products. If the manufacturer cannot substantiate this broad claim, the claim would be deceptive. The claims would not be deceptive if they were accompanied by clear and prominent qualifying language limiting the environmental superiority representation to the particular product attribute or attributes for which they could be substantiated, provided that no other deceptive implications were created by the context.* (From FTC's *Guides*, (a) General Environmental Benefit Claims, Example 5)

and verifiable. The rationale behind this approach is that credible certification by non-governmental entities (or actual evidence from vendors or manufacturers themselves) could increase the credibility of claims that may be displayed on products. Such certification, or a vendor's or a manufacturer's ability otherwise to prove particular claims of environmental preferability, could be a prerequisite for competitive consideration.

This approach assumes that (1) no particular non-governmental entity is favored (without reasonable justification) over any other non-governmental entity; and (2) vendors or manufacturers who choose not to be certified by non-governmental entities are provided the opportunity to present credible evidence that their products or services conform to established standards.

Approach 3: Use of Non-government Entities as "Consultants" under Advisory and Assistance Contracts

Pursuant to the competitive contracting process as set forth in the Federal Acquisition Regulation (FAR), non-governmental entities could provide consulting services to Executive agencies. Non-governmental entities may provide advice and recommendations about environmentally preferable purchasing, for example, through the identification of key environmental characteristics of product categories. Under this approach, Executive agencies would define environmental preferability with the assistance of a non-governmental entity on a procurement-by-procurement basis. As per FAR Subpart 9.5, Executive agencies must fully consider the potential for conflict of interest concerns where a non-governmental entity may be unable to render impartial advice or assistance because of private business or financial interests. Also, Executive agencies should make every effort to maximize competition in awarding these advisory and assistance contracts to avoid any exclusive or preferential relationship with any particular non-governmental entity. Finally, the environmental preferability standards developed under this approach could be used as a basis for defining the agency's "minimum needs" in particular procurements and for developing criteria for evaluating competing vendors.

EPA's Suggested Next Steps

One of the key tenets of EPA's proposed *Guidance* is to have Executive agencies undertake a series of pilot projects that can demonstrate the applicability and workability of the guiding principles as contained in EPA's proposed *Guidance*. The success of our efforts depends on learning from these pilot projects and sharing the results widely among the different Executive agencies. It is in this spirit that EPA strongly encourages Executive agencies to enter into pilot projects that test the potential approaches for using non-governmental entities as described above.

Moving forward with this non-governmental entities pilot approach is desirable for a number of reasons: 1) EPA can capture the lessons from the pilots and share them among the Executive agencies so that there is no duplication of effort; 2) we can determine where the use of expertise outside of the government is appropriate and useful and where it is not; and 3) the net effect of creating a market for such EPP services may encourage increased competition among existing and new organizations or programs that can support Federal procurement of environmentally preferable products and services. Ultimately, the results from this and other pilot project approaches will help Executive agencies identify the most effective and practical ways to achieve the goals of environmentally preferable purchasing.

EPA recognizes that any pilot project involving a non-governmental entity will initially raise practical questions such as which non-governmental entities are legitimate and are credible and which are not; is there a need to certify a certifier? While EPA is not currently able to offer an "approved" list of non-governmental programs best suited to assist the agencies, it is prepared to provide assistance to Executive agencies on an individual procurement-by-procurement basis. As an initial step, Agencies are directed to the list of questions for evaluating non-governmental entities contained in Section III, [E] Third Party Certification Programs of EPA's proposed *Guidance on the Acquisition of Environmentally Preferable Products and Services*. The list of questions is included as Appendix 1 of this letter.

Specifically, within the context of this non-governmental entity pilot project approach, EPA's Environmentally Preferable Purchasing Program in the Office of Pollution Prevention and Toxics, is prepared to:

1) assist Executive agencies in structuring a pilot project involving non-governmental entities, including providing support to assess the utility of non-governmental entities on an individual procurement-by-procurement basis;

2) seek out and identify non-governmental entities who have expertise in the area of environmentally preferable purchasing through a variety of means, such as, but not limited to, Federal Register notices or announcements in the Commerce Business Daily (CBD). To make such a task manageable, EPA will identify, with help and guidance from the agencies, a few product or service categories upon which to focus at first. If successful, further federal register notices or CBD announcements could be issued focusing on additional product or service categories;

3) assemble a list of product categories for which eco-labeling criteria and standards have been established, both domestically and internationally for agencies to consider in developing their own criteria for environmental preferability. If appropriate, EPA will assist in such evaluations; and

4) assist Executive agencies in structuring an environmentally preferable purchasing pilot project that does not involve non-governmental entities.

In turn, Executive agencies should consult with EPA when undertaking pilots which may raise environmental issues beyond their expertise (e.g., where a pilot involves consideration of the way a product is made).

Furthermore, Executive agencies who choose to undertake pilots under option 1(c) should consult with EPA in developing a written process or procedure for the role seals or symbols and the associated information would play in their pilots. For example, agencies should provide clear guidance which specifies the importance of considering the underlying criteria, not the seal or the symbol.

As EPA and Executive agencies embark on these activities, EPA will continue to explore a number of different ways that it can address issues which are raised within the pilot project context more definitively. Executive agencies will be kept informed of developments on these issues. Agencies should inform EPA of their efforts in environmentally preferable purchasing, whether such efforts involve non-governmental entities or not in order to share lessons learned among other agencies and to aid in the evaluation of the pilot projects. In this way, EPA can make EPP concepts more practical for use within the Federal acquisition context. To facilitate this, Agencies are requested to send the attached FAX BACK form. Pilot projects involving non-governmental entities will be evaluated over a period of the next three years. EPA will use the findings from that evaluation to inform the development of its final *Guidance*.

For further information and to inform EPA of pilot project efforts, please contact:

Eun-Sook Goidel, Program Manager, Environmentally Preferable Purchasing Program, Pollution Prevention Division, Office of Pollution Prevention and Toxics (202)260-3296; (202)260-0178 FAX; e-mail: goidel.eunsook@epamail.epa.gov

For legal issues associated with use of non-governmental entities in environmentally preferable purchasing, please contact:

Tali Zemel, Esq., Office of General Counsel (202)564-4708; e-mail: Zemel.Avital@epamail.epa.gov

Attachment 1. List of Questions for Evaluating Non-Governmental Entities[4]

Executive agencies should consider the following list of questions in evaluating non-governmental entities before using their expertise to further internal environmental preferable purchasing goals. Does the program have:

- an open, public process that involves key stakeholders (businesses, environmental, consumer groups, and states, etc.) in developing its criteria or standards?
- award criteria, assumptions, methods, and data used to evaluate the product or product categories that are transparent (i.e., they are publicly available, easily accessed, and understandable to the lay person)?
- a system of data verification and data quality?
- a peer review process (with representation of all stakeholders) for developing the standards or criteria?
- criteria that are developed based on a "systems" or life cycle approach (i.e., "cradle to grave")?
- an outreach program to educate the consumer, which includes clear communications to consumers that provide key information concerning environmental impacts associated with the product?
- an established goal of updating standards or criteria as technology and scientific knowledge advance?
- authority to inspect the certified product's facility to ensure compliance with the standards or criteria?
- testing protocols for the certified products that ensure testing is conducted by a credible institution?
- access to obtaining the seal by small-and medium-sized companies (e.g., the cost of the seal is not so high as to prevent access by smaller companies)?
- compliance with the Federal Trade Commission's (FTC) *Guides for the Use of Environmental Marketing Claims*?

---

[4]Excerpted from EPA's proposed *Guidance on the Acquisition of Environmentally Preferable Products and Services.*

FAX BACK FORM

PLEASE INFORM EPA ABOUT YOUR PILOT PROJECT INVOLVING THE USE OF NON-GOVERNMENTAL ENTITIES IN ENVIRONMENTALLY PREFERABLE PURCHASING!

Name:

Department/Agency:

Address:

Address:

Phone:

FAX

E-mail:

Type of Acquisition/Procurement:
(e.g., small purchase, credit card purchase, competitive bid, etc.)

Product/Service Category:

Name of Non-Governmental Entity:

Type of Non-Governmental Entity (check all that apply):

___ environmental standard setting organizations
___ third-party environmental certification programs
___ environmental labeling organizations
___ environmental report card organization
___ environmental consultants
___ other (please specify: _____)

Type of Information/Assistance Sought from Non-Governmental Entity:

___ general environmental information about a product/service category;
___ analyze life cycle and multiple environmental attributes
___ analyze basic environmental performance characteristics for specific categories of products/services
___ identify environmentally preferable product/service criteria for a given product category based on agencies' core environmental values
___ identify products/services in a given category that meet agencies' predetermined set of environmental performance criteria; and
___ other (please specify:_____)

Please FAX BACK to: Eun-Sook Goidel at U.S. EPA 202 260-0178.

Appendix E — EPP Case Study Template

Project Basics

- What does your agency/department/office do? Where is it based?
- What, if anything, is unique about your efforts to purchase environmentally preferable products and services?
- What were the motivating factors behind the project?
- What kinds of products and services are you purchasing with environmental attributes in mind? Do you focus on a particular group of products or services? If so, why?

Implementation

- How have you incorporated environmental attributes into the purchasing process? Did you alter the established procurement process in any way to accommodate environmentally preferable products?
- What obstacles did you encounter (if any) in incorporating environmental attributes into the purchasing process? How were these obstacles dealt with?
- Did you incorporate environmental attributes into procurement specifications, standards, or policies; requests for proposals; bid announcements; manufacturer certifications; etc.? (If so, please provide examples.)

Product and Service Evaluation

- How do you evaluate the products or services you purchase that have environmental attributes? Do you rely solely on information provided by vendors, or have you developed your own criteria or your own evaluation system?
- Do you consider more than one attribute when evaluating a certain product (e.g., considering both recycled-content and bleaching when purchasing paper products)? If so, how do you go about taking multiple attributes into consideration?
- Are products or services that meet your environmental attributes priced competitively with other comparable products or services? Do you have a price preference for products or services meeting your environmental criteria?

Vendor Reactions

- How do you inform vendors about your preference for products with environmental attributes?
- Were vendors already providing environmental information before you requested it?
- How did vendors react to your request for environmental attributes of their products?

Customer (End-User) Reactions

- Who has been most affected by the changes brought about by your efforts to purchase environmentally preferable products (i.e., procurement staff, other employees, contractors, citizens, end-users)? How have they been affected?
- Have you attempted to inform or educate your customers about products' environmental attributes? How?
- How have customers responded to the environmental information you provided? Are you keeping track of their responses?
- Have customers been pleased with the performance of environmentally preferable products (especially when compared to products that are not considered environmentally preferable)?

Project Results

- How are you tracking/measuring the success of your Environmental Preferable Purchasing efforts? Have you been able to quantify your success in terms of positive effects on the environment?
- Have any cost savings resulted from the purchase of environmentally preferable products? How were these calculated?
- Do you think your experience with purchasing environmentally preferable products could be valuable to others who purchase different products?
- What are your future plans regarding the purchase of environmentally preferable products? Do you expect to incorporate additional attributes or examine other product categories? What are some of the opportunities and challenges you foresee in expanding your Environmental Preferable Purchasing efforts?

List of Subjects

Environmental protection.

Dated: August 13, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–21664 Filed 8–19–99; 8:45 am]

BILLING CODE 6560–60–C

Reader Aids

Federal Register

Vol. 64, No. 161

Friday, August 20, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998	2
41999–42264	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43598	10
43599–43896	11
43897–44100	12
44101–44396	13
44397–44642	16
44643–44816	17
44817–45148	18
45149–45406	19
45407–45858	20

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12924 (See Notice of Aug. 10, 1999) 44101
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895
13134 44639

Administrative Orders:
Notice of Aug. 10, 1999 44101

7 CFR

11 43043
610 41999
906 45407
966 45409
989 43897
1220 45413
1230 44643
1728 42005

Proposed Rules:
6 42288
354 43103
505 44634
915 45461
931 42858
932 42619
944 45461
981 43298
984 45208
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 ..... 43043, 45419
116 43043
124 43043
318 44644
319 44644
390 43902

Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823
76 44645

Proposed Rules:
50 ..... 44137, 44860
709 45062
710 ..... 44433, 45062
711 45062

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 ..... 41770, 45589
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
905 44103

Proposed Rules:
202 44582
361 ..... 42861, 42862
702 44663
747 44663
935 44444

13 CFR

120 44109

Proposed Rules:
120 43636

14 CFR

4 43599
25 44817
27 ..... 43016, 45092
29 ..... 43016, 45336
39 ..... 41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905, 44110, 44112, 44650
71 ..... 41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907, 44114,

44116, 44117, 44268, 44397, 44398, 44399, 44400, 44578, 44819, 44821, 44823, 45149, 45421, 45423, 45425, 45426, 45433, 45435, 45436
71 44825
91 44814
97 ..... 44117, 44119
254 41781
382 41781

Proposed Rules:
25 ..... 43570, 43943, 43946, 45589
39 ..... 41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667, 45211, 45466, 45468, 45470, 45472, 45474, 45476, 45477, 45481, 45483, 45485, 45487
65 42810
66 42810
71 ..... 42300, 42301, 44139, 44140, 44141, 44142, 44144, 44865
93 44145
107 43321
108 43322
119 45090
121 45090
129 45090
135 45090
147 42810
183 45090

15 CFR
734 42009
738 42009
740 42009
742 42009
902 42826

16 CFR
2 43599
5 42594

Proposed Rules:
1212 42302

17 CFR
9 43254
10 43071
211 45150
12 43071
200 42594
240 ..... 42031, 42594
249 42594

Proposed Rules:
4 41843
275 43556

18 CFR
3 44400
341 44400
342 44400
346 44400
357 44400
362 44400
381 44652
385 44400

Proposed Rules:
101 42304
343 43600
357 42623
385 ..... 42307, 43600

19 CFR
4 43262
10 43262
12 43262
24 ..... 42031, 43262
102 43262
112 43262
113 43262
118 43262
122 43262
133 43262
141 43262
143 43262
144 43262
148 43262
151 43606
162 43262
173 43262
174 ..... 43262, 43608
178 43608
181 43262

Proposed Rules:
12 41851
113 ..... 41851, 42872
141 41851

20 CFR
Proposed Rules:
375 44670
404 42310
416 42310

21 CFR
101 42277
172 ..... 43072, 43908, 44121
173 44122
178 ..... 44406, 44407
310 44653
510 42596
520 42596
522 ..... 42596, 42830
524 42831
558 ..... 42596, 43909
606 45366
640 45366
878 45155
1308 42432
1312 42432

Proposed Rules:
101 42315
207 43114
310 44671
314 ..... 42625, 42873
344 44671
600 45383
606 ..... 45355, 45375
607 ..... 43114, 45340
610 45340
630 45355
640 ..... 45340, 45375
660 45340
807 43114
870 43114
888 43114
890 43114

22 CFR
41 ..... 42032, 45162
514 44123

24 CFR
108 44094
982 43613

Proposed Rules:
990 43641

26 CFR
1 ..... 41783, 43072, 43267, 43613, 43910
31 42831
301 41783
602 ..... 41783, 43072, 43613
801 42834

Proposed Rules:
1 ..... 43117, 43323, 43462, 43969
301 43324
602 43462

28 CFR
505 43880

29 CFR
1610 45164
2570 42246
2575 42246
4044 44128

Proposed Rules:
1910 45098
2520 ..... 42792, 42797
2560 ..... 42792, 42797
2570 42797

30 CFR
26 43280
29 43280
57 43280
70 43283
71 43283
75 ..... 43280, 43286, 45165
90 43283
202 43506
206 ..... 43288, 43506
250 42597
914 43911
943 43913

Proposed Rules:
206 45213
913 44674
914 44448
935 42887
936 43327
946 45489

31 CFR
103 45438
538 41784
550 41784
560 41784
590 43924

Proposed Rules
375 42626

32 CFR
199 45453

Proposed Rules:
230 43856
231 43858
231a 43856

33 CFR
100 ..... 42278, 42598, 43289
110 42279
117 ..... 42033, 42599, 44129, 44131, 44826
160 41794
165 ..... 43290, 43291, 44658

Proposed Rules:
100 41853
117 ..... 44145, 44147, 44148, 44149, 44151

34 CFR
611 42837

Proposed Rules:
668 ..... 42206, 43024, 43582
673 42206
674 42206
675 42206
676 42206
682 ..... 42176, 43024, 43428
685 43428
690 42206

36 CFR
Proposed Rules:
13 41854
1191 42056

37 CFR
Proposed Rules:
201 42316

38 CFR
17 44659
21 44660

39 CFR
20 43292

Proposed Rules:
111 44681

40 CFR
9 ..... 42432, 43426, 43936
52 ..... 42600, 43083, 44131, 44134, 44408, 44411, 44415, 44417, 45170, 45175, 45178, 45182, 45454
58 42530
62 ..... 43091, 44420, 45184
63 ..... 42764, 45187
86 43936
122 ..... 42432, 43426
123 ..... 42432, 43426
124 ..... 42432, 43426
180 ..... 41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846, 44826, 44829
186 41818
261 42033
271 ..... 41823, 42602, 44836
300 44135
403 42552
501 ..... 42432, 43426
503 42552
745 42849

Proposed Rules:
51 45491
52 ..... 42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452, 45215, 45216, 45217
55 45217
62 ..... 43123, 45222
63 ..... 45116, 45221
97 ..... 43124, 44452
147 43329
259 45632
261 ..... 42317, 44866, 45632
266 45632
270 45632
271 ..... 42630, 43331, 44876
281 43336

300 ..... 41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458, 45222, 45224
372 42222
441 45072

41 CFR

301 43254

Proposed Rules:

51-2 41882
51-5 41882

42 CFR

413 ..... 42610, 44841
498 43295
1001 42174

Proposed Rules:

Ch. IV 43338

44 CFR

61 41825
64 ..... 42852, 44421
206 41827

Proposed Rules:

61 42632
62 42633

45 CFR

144 45786
146 45786
148 45786
150 45786
801 42039

46 CFR

10 ..... 42812, 44786
12 ..... 42812, 44786

Proposed Rules:

298 44152
535 42057

47 CFR

0 43618
1 42854
5 43094
43 43618
62 43937
63 ..... 43095, 43618
64 ..... 43618, 44423
69 45196
73 ..... 41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095, 44856
76 ..... 42617, 42855
90 43094

Proposed Rules:

Ch. 1 ..... 41888, 42635
20 44682
1 ..... 41884, 41887
2 ..... 41891, 43643
15 41897
32 44877
43 44877
51 41897
64 44877
68 41897
73 ..... 41899, 43132, 45500
76 41887
78 41899
95 41891

48 CFR

202 43096
204 ..... 43098, 45196, 45197
212 43098
213 43098
217 43096
219 45197
252 ..... 43098, 45196
253 ..... 43098, 45197
601 43618
602 43618
603 43618
604 43618
605 43618
606 43618
608 43618
609 43618
610 43618
611 43618
613 43618
614 43618
615 43618
616 43618
617 43618
619 43618
622 43618
623 43618
625 43618
626 43618
628 43618
629 43618
630 43618
631 43618
632 43618
633 43618
634 43618
636 43618
637 43618
639 43618
641 43618
642 43618
643 43618
644 43618
645 43618
646 43618
647 43618
649 43618
652 43618
653 43618
701 42040
702 42040
703 42040
705 42040
706 42040
709 42040
714 42040
716 42040
719 42040
726 42040
732 42040
733 42040
734 42040
749 42040
750 42040
752 42040
5416 41834

Proposed Rules:

17 44100
536 44683
9903 45700

49 CFR

171 ..... 45388, 45457
172 ..... 44426, 44578, 45388
173 44426
175 45388
396 45207

Proposed Rules:

190 43972
385 44460
390 44460
571 42330
575 44164

50 CFR

17 41835
20 45400
300 44428
600 42286
622 ..... 43941, 45457
635 ..... 42855, 43101
648 ..... 42042, 42045, 44661
660 ..... 42286, 42856
679 ..... 41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942, 44431, 44432, 44858, 44859, 45459, 45460

Proposed Rules:

17 ..... 41903, 42058, 42250, 43132, 44171, 44470, 44883
20 44384
32 43834
36 43834
226 44683
600 ..... 42335, 43137, 45501
622 ..... 41905, 42068, 44884
635 44885
648 ..... 42071, 43137, 43138
649 45501
660 44475
679 42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 20, 1999

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Foreign fishing; transhipment permits; published 7-21-99¶

RULES GOING INTO EFFECT AUGUST 21, 1999

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Oranges and grapefruit grown in—
Texas; published 8-20-99
Soybean promotion and research program; referendum; published 8-20-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (sweet) grown in—
Washington; comments due by 8-23-99; published 6-24-99
Potatoes (Irish) grown in—
California and Oregon; comments due by 8-24-99; published 6-25-99
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Recognition of animal disease status of regions in European Union; comments due by 8-24-99; published 6-25-99
Foreign quarantine notices:
Mexican Hass avocados; comments due by 8-24-99; published 6-25-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Essential fish habitats; comments due by 8-23-99; published 7-9-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 8-25-99; published 7-26-99
Western Pacific Coral Reef Ecosystem and bottomfish and seamount groundfish; comments due by 8-26-99; published 8-16-99
COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Contract market designation applications—
Commission review and approval; procedures; comments due by 8-26-99; published 7-27-99
DEFENSE DEPARTMENT
Acquisition regulations:
Cargo preference-subcontracts for commercial items; comments due by 8-23-99; published 6-22-99
Overseas use of purchase card; comments due by 8-25-99; published 7-29-99
EDUCATION DEPARTMENT
Postsecondary education:
Secretary's recognition of accrediting agencies; comments due by 8-24-99; published 6-25-99
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Outer Continental Shelf Lands Act; implementation:
Natural gas transportation through pipeline facilities on Outer Continental Shelf; comments due by 8-27-99; published 7-13-99
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-23-99; published 7-23-99
Indiana; comments due by 8-25-99; published 7-26-99
Indiana; comments due by 8-25-99; published 7-26-99
Montana; comments due by 8-27-99; published 7-28-99
Clean Air Act:
Interstate ozone transport reduction—
Nitrogen oxides trading program; Section 126 petitions; findings of significant contribution and rulemaking; comments due by 8-25-99; published 8-16-99
Hazardous waste:
Project XL program; site-specific projects—
University of Massachusetts et al.; university laboratories; comments due by 8-26-99; published 7-27-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 8-25-99; published 7-26-99
Water programs:
Clean Water Act—
State and Tribal water quality standards; review and approval; comments due by 8-23-99; published 7-9-99
FEDERAL COMMUNICATIONS COMMISSION
Common carrier service:
Incumbent local exchange carriers; accounting and reporting requirements; comprehensive review; comments due by 8-23-99; published 8-18-99
Radio services, special:
Maritime services—
Privately owned accounting authorities; accounts settlement; streamlining; biennial regulatory review; comments due by 8-23-99; published 7-28-99
Radio stations; table of assignments:
Arizona; comments due by 8-23-99; published 7-14-99
Arkansas; comments due by 8-23-99; published 7-14-99
Kentucky and Virginia; comments due by 8-23-99; published 7-14-99
New York; comments due by 8-23-99; published 7-14-99
North Carolina; comments due by 8-23-99; published 7-14-99
Texas; comments due by 8-23-99; published 7-14-99
Television stations; table of assignments:
New York; comments due by 8-23-99; published 7-14-99
FEDERAL MARITIME COMMISSION
Shipping Act of 1984; implementation:
Ocean common carriers; definition clarification; comments due by 8-24-99; published 6-25-99
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Admission and occupancy—
Pet ownership in public housing; comments due by 8-23-99; published 6-23-99
Public housing agency organization; required resident membership on board of directors or similar governing body; comments due by 8-23-99; published 6-23-99
Public Housing Assessment System; comments due by 8-23-99; published 6-22-99
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Tidewater goby; northern populations; comments due by 8-23-99; published 6-24-99
Migratory bird hunting:
Federal Indian reservations, off-reservation trust lands and ceded lands; comments due by 8-23-99; published 8-13-99
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Kansas; comments due by 8-25-99; published 7-26-99
Mississippi; comments due by 8-25-99; published 7-26-99
Ohio; comments due by 8-23-99; published 8-6-99
Oklahoma; comments due by 8-25-99; published 8-10-99
NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:

Credit union service organizations—
Real estate brokerage services; grandfather exemption; comments due by 8-23-99; published 6-22-99

PERSONNEL MANAGEMENT OFFICE

Retirement:
Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS)—
State income tax withholding and voluntary allotment program; expansion; comments due by 8-23-99; published 6-23-99

SMALL BUSINESS ADMINISTRATION

Business loans:
Loan loss reserve fund; comments due by 8-25-99; published 7-26-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
Iowa and Illinois; comments due by 8-23-99; published 7-22-99

Ports and waterways safety:
Lower New York Bay and Raritan Bay, NY; safety zone; comments due by 8-23-99; published 7-7-99
Vessels and marine facilities; Year 2000 (Y2K) reporting requirements; comments due by 8-23-99; published 6-23-99

TRANSPORTATION DEPARTMENT

Economic regulations:
Domestic baggage liability; comments due by 8-27-99; published 6-28-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 8-23-99; published 7-23-99
Avions Mundry et Cie; comments due by 8-27-99; published 7-19-99
Bell; comments due by 8-23-99; published 6-24-99
Boeing; comments due by 8-23-99; published 6-23-99
Dassault; comments due by 8-23-99; published 7-22-99
McDonnell Douglas; comments due by 8-23-99; published 7-23-99
MD Helicopters Inc.; comments due by 8-23-99; published 6-23-99
Rolls-Royce plc; comments due by 8-23-99; published 6-23-99
Saab; comments due by 8-23-99; published 7-22-99
Sikorsky; comments due by 8-23-99; published 6-24-99
Class D airspace; comments due by 8-23-99; published 7-7-99
Class E airspace; comments due by 8-24-99; published 7-19-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Hazardous materials transportation—
Loading, unloading, and storage; regulatory applicability; comments due by 8-25-99; published 7-28-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Simplified production, and resale methods with historic absorption ratio election; special rules; comments due by 8-23-99; published 5-24-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Public Laws

106th Congress, 1st Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 1st Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 1st Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/98

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

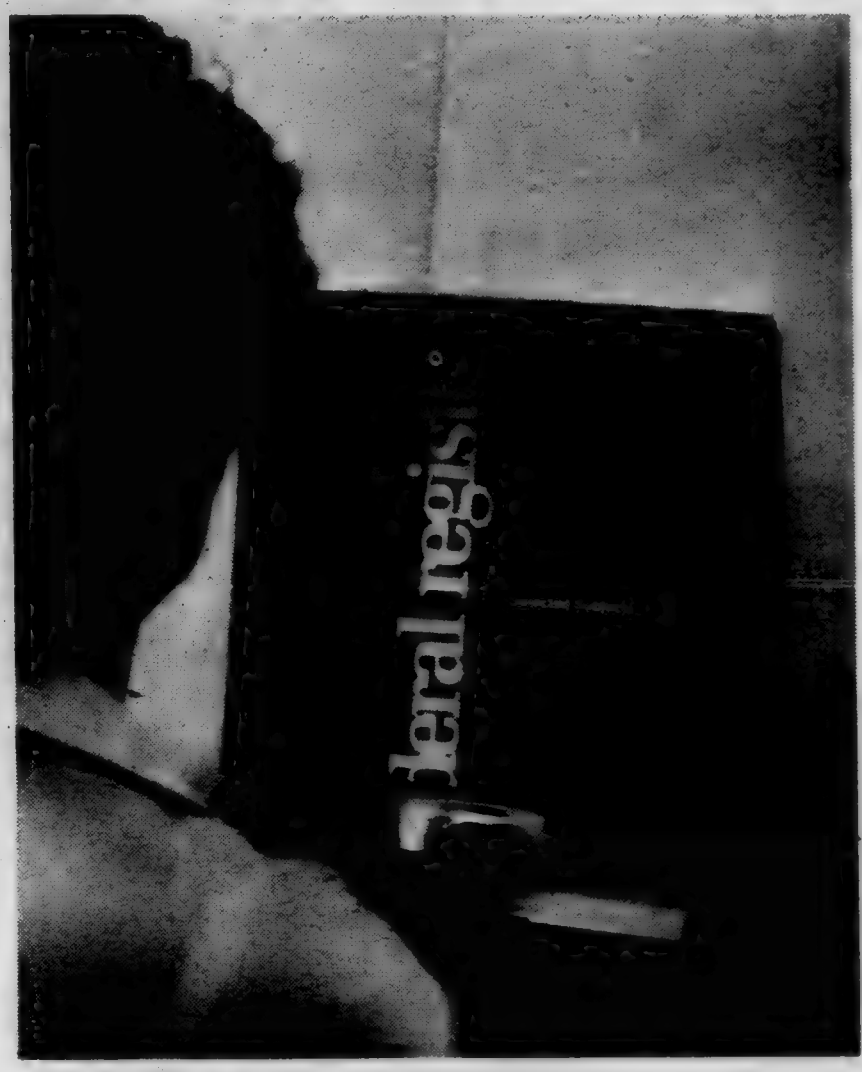

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

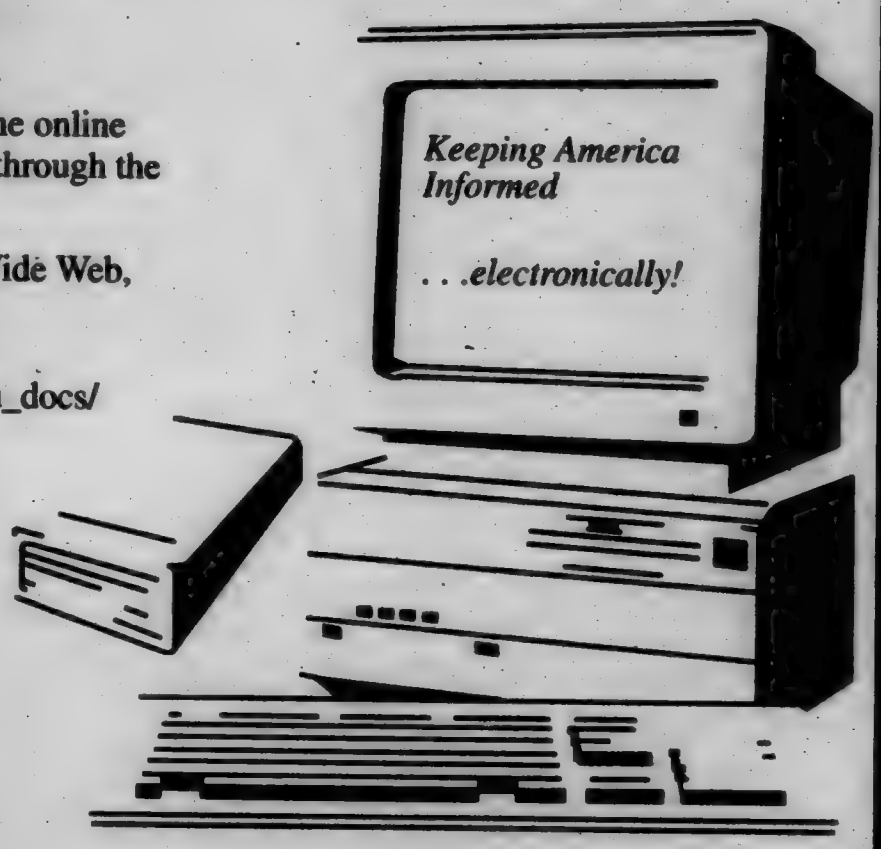

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

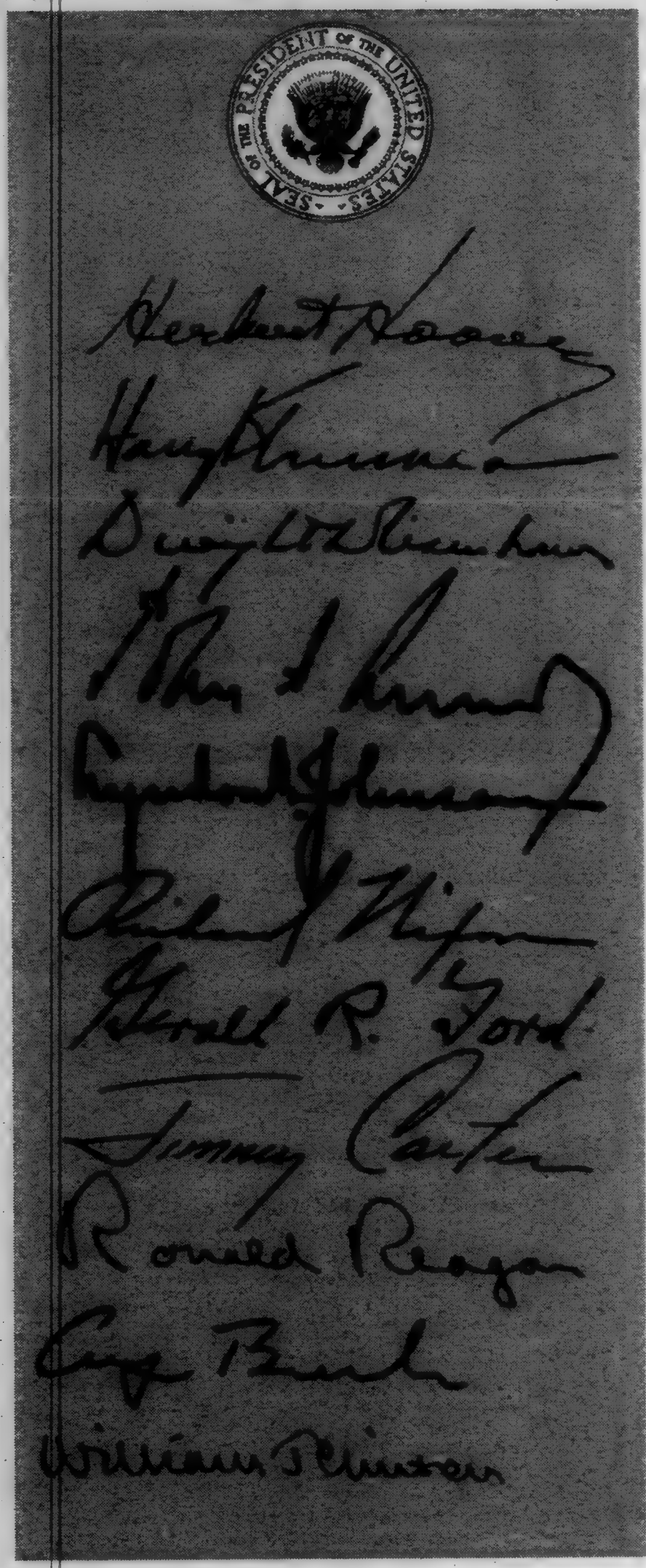

Public Papers of the Presidents of the United States

William J. Clinton

1993
(Book I) $51.00

1993
(Book II) $51.00

1994
(Book I) $56.00

1994
(Book II) $52.00

1995
(Book I) $60.00

1995
(Book II) $65.00

1996
(Book I) $66.00

1996
(Book II) $72.00

1997
(Book I) $69.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

Order Now!

The United States Government Manual 1998/1999

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

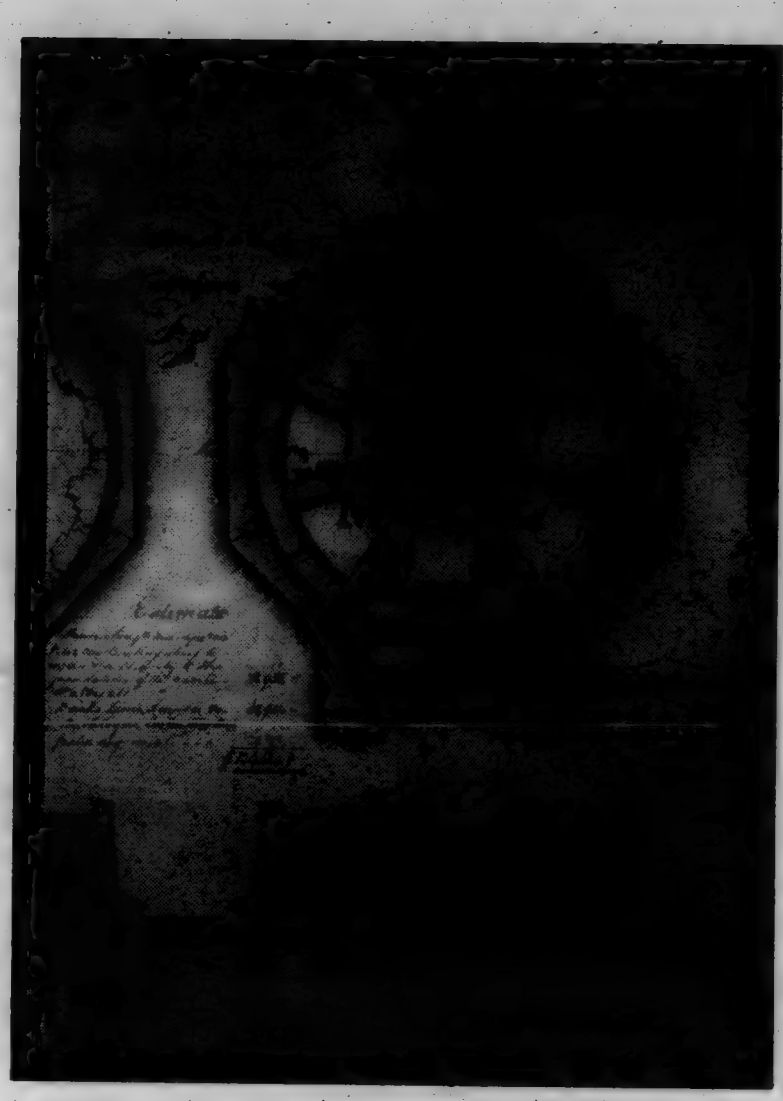

$41 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
*** 7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 1998/99, S/N 069–000–00076–2 at $41 ($50 foreign) each.

Total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐☐☐☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know...

If any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

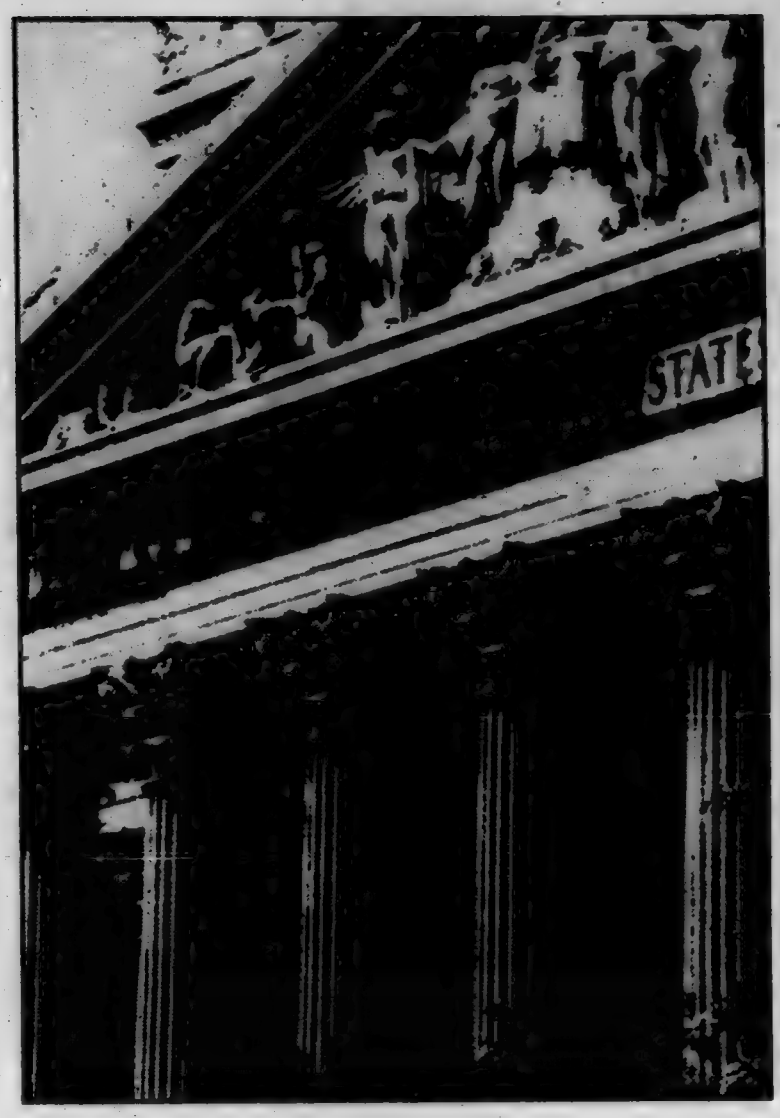

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
_____ **Federal Register Index** (FRUS) $25 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐☐☐☐
☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

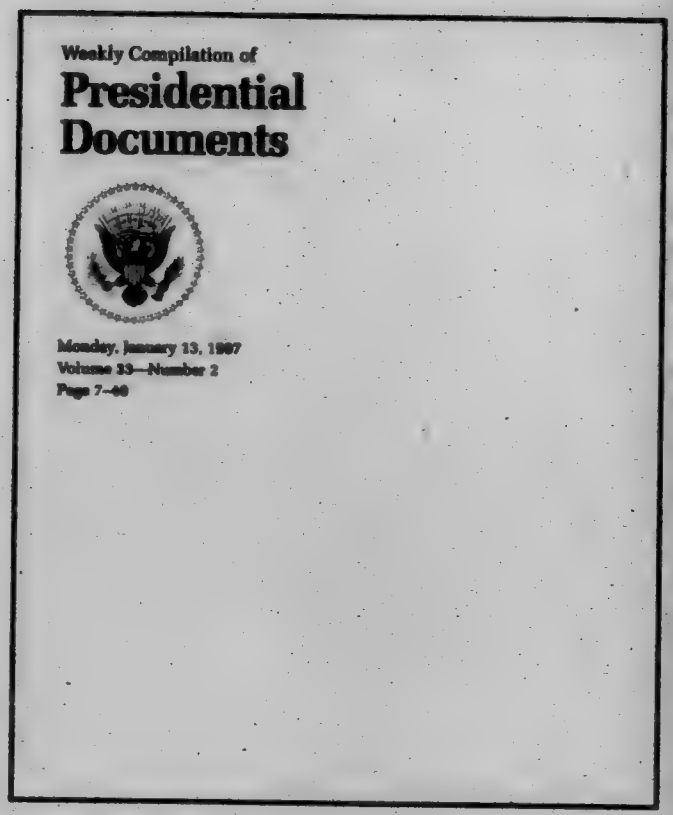

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

ential
louse
xes are

fice of the
tional
de

VISA

02) 512–2250
02) 512–1800

(PD) so I can

to change.

Documents

hank you for
your order!

11/3

50–7954

Printed on recycled paper

VOL
64

ISS
1
6
2

AG
23

1999

UMI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

8–23–99
Vol. 64

United State
Governmen
Printing Offi
SUPERINTENDEN
OF DOCUMENTS
Washington, DC 20

OFFICIAL BUSINE
Penalty for private

8–23–99
Vol. 64 No. 162

federal register

Monday
August 23, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

8-23-99
Vol. 64
Pages 458

8-23-99
Vol. 64 No. 162
Pages 45859–46110

federal register

Monday
August 23, 1999

ANN ARBOR MI
48106

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Contents

Federal Register
Vol. 64, No. 162
Monday, August 23, 1999

Agricultural Research Service
NOTICES
Inventions, Government-owned; availability for licensing, 45947

Agriculture Department
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service
RULES
Acquisition regulations:
Simplified acquisition procedures, 45894–45895

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Mediterranean fruit fly, 45859–45860
Plant-related quarantine, foreign:
Gypsy moth, 45860–45868

Army Department
RULES
Privacy Act; implementation, 45877–45878
NOTICES
Privacy Act:
Systems of records, 45957–45959

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45970–45971
Meetings:
Clinical Laboratory Improvement Advisory Committee, 45971
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 45971–45972

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 45972–45973

Coast Guard
RULES
Ports and waterways safety:
Chelsea River, MA; safety zone, 45879–45880
Virginia Beach, VA; safety zone, 45878–45879
NOTICES
Agency information collection activities:
Proposed collection; comment request, 45993–45995

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 45953
India, 45954
Korea, 45954
Mauritius, 45954–45955

Defense Department
See Army Department
NOTICES
Meetings:
Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction Advisory Panel, 45955
Defense Intelligence Agency Science and Technology Advisory Board, 45955
Electron Devices Advisory Group, 45955–45957
Vieques, PR; special panel on military operations, 45957

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Placement of students, graduates, and faculty members in research and development areas, 45959
Meetings:
Environmental Management Site-Specific Advisory Board—
Fernald Site, OH, 45959–45960
Kirtland Area Office (Sandia), NM, 45961
Nevada Test Site, NV, 45960–45961
Rocky Flats, CO, 45960

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania, 45880–45885
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Buprofezin, 45885–45888
Carfentrazone-ethyl, 45888–45890
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania, 45937–45938
Water programs:
Clean Water Act—
Water quality planning and management, 46011–46055
Water quality planning and management; National Pollutant Discharge Elimination System program and Federal antidegradation policy, 46057–46089
NOTICES
Meetings:
Acute Exposure Guideline Levels for Hazardous Substances National Advisory Committee, 45964–45965
U.S. Government Representative to Commission for Environmental Cooperation—
Governmental Advisory Committee, 45965
National Advisory Committee, 45965
Superfund; response and remedial actions, proposed settlements, etc.:
Superior Polishing Site, MI, 45965–45966

Farm Service Agency
NOTICES
Tobacco production and marketing information; release of records and opportunity to opt out of release, 45947–45948

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 45868–45870
British Aerospace, 45870–45872
PROPOSED RULES
Airworthiness directives:
Boeing, 45927–45929
British Aerospace, 45925–45927
Eurocopter France, 45929–45931
NOTICES
Exemption petitions; summary and disposition, 45995–45996
Meetings:
Research, Engineering, and Development Advisory Committee, 45996

Federal Communications Commission
RULES
Digital television stations; table of assignments:
New York, 45893–45894
Radio services, special:
Fixed microwave services—
37.0-38.6 and 38.6-40.0 bands; licensing by Economic Areas, 45891–45893
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 45966–45968

Federal Energy Regulatory Commission
PROPOSED RULES
Oil pipelines:
Annual report; technical conference, 45931–45932
NOTICES
Environmental statements; availability, etc.:
East Bay Municipal Utility District, 45963
Hydroelectric applications, 45963–45964
Applications, hearings, determinations, etc.:
Great Lakes Gas Transmission L.P., 45961–45962
Tennessee Gas Pipeline Co., 45962
Tucson Electric Power Co., 45962
Williams Gas Pipelines Central, Inc., 45962–45963

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
New Jersey Transit Corp., 45996–46006

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 45969
Formations, acquisitions, and mergers, 45969
Edge corporations; proposals to organize:
CLS Services, Ltd.; correction, 45969
Organization, functions, and authority delegations:
Small business liaison designation under Y2K Act, 45970

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 45975
Meetings:
Aquatic Nuisance Species Task Force, 45975

Food and Drug Administration
RULES
Food additives:
Adhesive coatings and components—
Fatty acids, C10-13 branched, vinyl esters, 45872–45873
Adjuvants, production aids, and sanitizers—
Naphthalene sulfonic acid-formaldehyde condensate, sodium salt, 45873–45874
Medical devices:
General and plastic surgery devices—
Silicone inflatable breast prosthesis; premarket approval; correction, 46010
PROPOSED RULES
Food for human consumption:
Food labeling—
Soy protein and coronary heart disease; health claims, 45932–45937
NOTICES
Human drugs:
Drug products withdrawn from sale for safety reasons—
Astemizole 10-milligram tablets, 45973
Meetings:
Antiviral Drugs Advisory Committee, 45973–45974
Oncologic Drugs Advisory Committee, 45974–45975

General Services Administration
RULES
Federal travel:
Payment of expenses in connection with death of employees or immediate family members, 45890–45891

Government Printing Office
NOTICES
Meetings:
GPO Access; online service demonstration, 45970

Grain Inspection, Packers and Stockyards Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Grain Inspection Advisory Committee, 45948

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration

Housing and Urban Development Department
RULES
Acquisition regulations:
Miscellaneous amendments, 46091–46101
PROPOSED RULES
Acquisition regulations:
Miscellaneous amendments, 46103–46107
NOTICES
Organization, functions, and authority delegations:
Senior Advisor to Chief Procurement Officer; designation as Competition Advocate, 46109–46110

Immigration and Naturalization Service
NOTICES
Meetings:
Immigration and Naturalization Service User Fee Advisory Committee, 45980
Immigration Matters District Advisory Council, 45980

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Capital gains; installment sales of depreciable real property; unrecaptured section 1250 gain, 45874–45877

International Trade Administration
NOTICES
Antidumping:
Anhydrous sodium metasilicate from—France, 45949–45950
Applications, hearings, determinations, etc.:
University of—
Southern California, 45951
Wisconsin-Madison, 45950–45951

Justice Department
See Immigration and Naturalization Service

Land Management Bureau
NOTICES
Closure of public lands:
Idaho, 45975
Nevada, 45976
Opening of public lands:
Nevada, 45976
Realty actions; sales, leases, etc.:
Oregon, 45976–45977
Survey plat filings:
Illinois, 45977–45978
Missouri, 45978
Oregon, 45978

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—Headlamp concealment devices, 45895–45899

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—Atlantic bluefish, 45938–45946
NOTICES
Environmental statements; availability, etc.:
Monterey Bay National Marine Sanctuary, CA; MFS Globenet, Inc. fiber optic cable installation project, 45951–45952

National Park Service
NOTICES
Environmental statements; availability, etc.:
Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails; comprehensive management and use plan, 45978
Environmental statements; notice of intent:
Yosemite National Park, CA; Merced Wild and Scenic River, 45979
Meetings:
Mojave National Preserve Advisory Commission, 45979–45980

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Oklahoma, 45948–45949

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Angel, Jeffery C., 45907–45908
Nuclear Information and Resource Service, 45900–45918
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list additions, 45918–45925
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45981
Environmental statements; availability, etc.:
Commonwealth Edison Co., 45981–45982
Kerr-McGee Corp., 45982–45984
PECO Energy Co., 45984–45985
Generic letters:
Laboratory testing of nuclear-grade activated charcoal, 45985
Regulatory guides; issuance, availability, and withdrawal, 45985–45986
Applications, hearings, determinations, etc.:
Boston Edison Co., 45981

Postal Service
NOTICES
Meetings; Sunshine Act, 45986

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 46006–46008

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 45986–45988
Meetings; Sunshine Act, 45988

Small Business Administration
NOTICES
Disaster loan areas:
Georgia and South Carolina, 45988
Iowa, 45988–45989
Minnesota, 45989
New Hampshire, Massachusetts, and Maine, 45989

State Department
NOTICES
Arms Export Control Act:
Export licenses; Congressional notifications, 45989–45992

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
IGA Federal Savings, 46009

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 45992–45993
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 45993

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46008–46009

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Adriaen de Vries, Imperial Sculptor, 46009

Separate Parts in This Issue

Part II
Environmental Protection Agency, 46011–46055

Part III
Environmental Protection Agency, 46057–46089

Part IV
Department of Housing and Urban Development, 46091–46101

Part V
Department of Housing and Urban Development, 46103–46107

Part VI
Department of Housing and Urban Development, 46109–46110

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
301.....45859
319.....45860

10 CFR
Proposed Rules:
30.....45900
35.....45907
40.....45900
50 (3 documents).....45900, 45908, 45911
70 (2 documents).....45900, 45911
72 (3 documents).....45918, 45920, 45923

14 CFR
39 (2 documents).....45868, 45870

Proposed Rules:
39 (3 documents).....45925, 45927, 45929

18 CFR
Proposed Rules:
357.....45931

21 CFR
175.....45872
178.....45873
878.....46010

Proposed Rules:
101.....45932

26 CFR
1.....45874

32 CFR
505.....45877

33 CFR
165 (2 documents).....45878, 45879

40 CFR
62.....45880
180 (2 documents).....45885, 45888

Proposed Rules:
62.....45937
122.....46958
123.....46058
124.....46058
130.....46012
131.....46058

41 CFR
303-70.....45890

47 CFR
1.....45891
73.....45893
101.....45891

48 CFR
413.....45894
453.....45894
2401.....46092
2402.....46092
2403.....46092
2409.....46092
2413.....46092
2414.....46092
2415.....46092
2416.....46092
2419.....46092
2424.....46092
2425.....46092
2426.....46092
2428.....46092
2432.....46092
2433.....46092
2436.....46092
2437.....46092
2439.....46092
2442.....46092
2446.....46092
2451.....46092
2452.....46092
2453.....46092

Proposed Rules:
2403.....46104
2409.....46104
2436.....46104
2439.....46104
2442.....46104
2452.....46104
2453.....46104

49 CFR
571.....45895

50 CFR
Proposed Rules:
648.....45938

Rules

This section o
contains regul
applicability ar
are keyed to a
Federal Regul
50 titles pursu

The Code of F
the Superinten
new books are
REGISTER iss

DEPARTME

Animal and
Service

7 CFR Part 3

[Docket No. 9

Mediterrane
Quarantined

AGENCY: Ani
Inspection S
ACTION: Inter
comments.

SUMMARY: W
Mediterranes
removing the
Riverside an
from the list
quarantine w
spread of the
noninfested
We have det
Mediterranes
eradicated fr
restrictions o
of regulated
no longer ne
unnecessary
interstate mo
articles from

DATES: This
of August 16
comment on
consider all
by October 2

ADDRESSES:
and three co
5, Regulatory
Developmen
4700 River R
MD 20737–1
Please state t
Docket No. 9

You may r
receive on th
room. The re
room 1141 o
14th Street a

Rules and Regulations

Federal Register
Vol. 64, No. 162
Monday, August 23, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–083–5]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Riverside and Orange Counties, CA, from the list of quarantined areas. The quarantine was necessary to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: This interim rule is effective as of August 16, 1999. We invite you to comment on this docket. We will consider all comments that we receive by October 22, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–083–5, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–083–5.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly in a portion of San Diego County, CA, in August 1998, the quarantined areas in California have included portions or Orange, Riverside, and San Diego Counties.

In an interim rule effective August 13, 1998, and published in the **Federal Register** on August 20, 1998 (63 FR 44539–44541, Docket No. 98–083–1), we added a portion of San Diego County, CA, to the list of quarantined areas. In a second interim rule effective August 14, 1998, and published in the **Federal Register** on August 21, 1998 (63 FR 44774–44776, Docket No. 98–083–2), we added a portion of Orange County, CA, to the list of quarantined areas. In a third interim rule effective November 24, 1998, and published in the **Federal Register** on December 1, 1998 (63 FR 65999–66001, Docket No. 98–083–3), we added an area in Riverside and Orange Counties, CA, to the list of quarantined areas. In a fourth interim rule effective June 1, 1999, and published in the **Federal Register** on June 7, 1999 (64 FR 30213–30214, Docket No. 98–083–4), we removed a portion of San Diego County, CA, from the list of quarantined areas.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and California State and county inspectors, that the Medfly has been eradicated from the quarantined area in Riverside and Orange Counties, CA. The last finding of Medfly thought to be associated with the infestation in that portion of Riverside and Orange Counties, CA, was November 16, 1998. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing that portion of Riverside and Orange Counties, CA, quarantined because of the Medfly from the list of areas in § 301.78–3(c). Portions of Orange County remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The portion of Riverside and Orange Counties, CA, affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from this area, and because the continued quarantined status of that portion of Riverside and Orange Counties, CA, would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any

amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by removing a portion of Riverside and Orange Counties, CA, from quarantine for Medfly. This action affects the interstate movement of regulated articles from this area. We estimate that there are 75 entities in the quarantined area of Riverside and Orange Counties, CA, that sell, process, handle, or move regulated articles; this estimate includes 26 fruit sellers, 16 nurseries, 26 growers, 4 packing houses, 2 certified farmer's markets, and 1 swapmeet. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determined (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 75 entities are small in size, since the overwhelming majority of businesses in California, as well as the rest of the United States, are small entities by SBA standards.

The effect of this action on small entities should be minimally positive, as they will no longer be required to treat articles to be moved interstate for Medfly.

Therefore, termination of the quarantine of that portion of Riverside and Orange Counties, CA, should have a minimal economic effect on the small entities operating in this area. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for California is amended by removing the entry for Riverside and Orange Counties.

Done in Washington, DC, this 16th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–21753 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–110–1]

RIN 0579–AB11

Importation of Gypsy Moth Host Material From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are establishing regulations for the importation into the United States of gypsy moth host materials from Canada due to infestations of gypsy moth in the Provinces of British Columbia, New Brunswick, Nova Scotia, Ontario, and Quebec. These regulations require trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment to meet specified certification or destination requirements if they are intended to be moved into or through areas of the United States that are not infested with gypsy moth. This action is necessary on an emergency basis to prevent the introduction of gypsy moth into noninfested areas of the United States.

DATES: Interim rule effective August 23, 1999. Consideration will be given only to comments received on or before October 22, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–110–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–110–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: Coanne.E.O'Hern@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The Animal and Plant Health Inspection Service (APHIS) has regulated the interstate movement of gypsy moth host materials from areas of the United States that are generally infested with gypsy moth through its domestic quarantine notices (see 7 CFR 301.45 through 301.45–12), but had not, until now, established specific regulations in our foreign quarantine notices regarding the importation into the United States of gypsy moth host materials from foreign countries.

In each of the last 4 years, Vancouver Island in the Canadian Province of British Columbia has experienced an increase in the number of gypsy moths

trapped. In 1998, the Environmental Appeals Board of British Columbia prevented the Canadian Food Inspection Agency (CFIA) from conducting its aerial spraying program to eradicate gypsy moth. That aerial spraying program was replaced by ground treatments limited to certain areas. However, the results of the CFIA's 1998 gypsy moth trapping survey show that the ground treatments were not effective in eradicating gypsy moth from Vancouver Island. We believe that it is necessary to establish regulations regarding the importation of gypsy moth host materials from Canada because the established populations of gypsy moth on Vancouver Island pose a risk of introducing gypsy moth into the noninfested areas of the western United States.

Further, gypsy moth has been established for many years in certain areas of the Canadian Provinces of New Brunswick, Nova Scotia, Ontario, and Quebec. Until this time, however, we have not established specific regulations in our foreign quarantine notices regarding the importation of gypsy moth host materials from those provinces. Rather, we have used our authority under the emergency provisions of the Federal Plant Pest Act (7 U.S.C. 150dd) as the basis for the actions we have taken to prevent the introduction of gypsy moth from those areas into noninfested areas of the United States. The import conditions to which gypsy moth host materials from these infested areas have been subjected are the same as the importation requirements we believe are necessary for gypsy moth host materials from infested areas of Vancouver Island, British Columbia. This interim rule addresses the importation of gypsy moth host materials from the infested areas of Ontario, New Brunswick, Nova Scotia, and Quebec, as well as Vancouver Island.

Therefore, we are establishing a new "Subpart—Gypsy Moth Host Material from Canada" (§§ 319.77–1 through 319.77–5), which is described below, in our foreign quarantine notices in 7 CFR part 319 to provide regulations for the importation of gypsy moth host materials from Canada.

Definitions

In § 319.77–1, we define the terms used in the subpart. Five of the terms defined—*Animal and Plant Health Inspection Service (APHIS), gypsy moth, mobile home, outdoor household articles,* and *recreational vehicles*—are also defined in our domestic gypsy moth regulations and are used for the same purposes in the new subpart. Three other terms—*import (imported, importation), phytosanitary certificate,* and *United States*—are not applicable to the domestic gypsy moth regulations and have, therefore, been drawn from other foreign quarantine regulations in part 319.

We are defining *certificate of origin* as: "A document issued by an official authorized by the national government of Canada that states the area in which a regulated article was produced or grown and includes any other required additional declarations." This type of document is already issued in Canada for the movement of gypsy moth host materials (i.e., regulated articles) between infested and noninfested areas, and will, as explained below, be required for regulated articles being imported into the United States when those articles will be moved into or through noninfested areas of the United States.

Finally, we are defining four terms that are used in § 319.77–4, "Conditions for the importation of regulated articles," to make the requirements of that section clearer and thus easier to read and follow. The requirements in § 319.77–4 for importing regulated articles from Canada will differ based on whether the regulated articles originated in an infested or noninfested area of Canada and whether the regulated articles are being moved into or through an infested or noninfested area of the United States. To preclude the need for repeated references to, for example, "an area of the United States known to be infested with gypsy moth, as listed in § 301.45–3 of this chapter," we use the term "U.S. infested area" to simplify the reference. The other terms serve a similar purpose. Specifically, these four definitions are:

- *Canadian noninfested area.* Any area of Canada that is not listed as a gypsy moth infested area in § 319.77–3 of this subpart.
- *Canadian infested area.* Any area of Canada listed as a gypsy moth infested area in § 319.77–3 of this subpart.
- *U.S. noninfested area.* Any area of the United States that is not listed as a gypsy moth generally infested area in § 301.45–3 of this chapter.
- *U.S. infested area.* Any area of the United States listed as a gypsy moth generally infested area in § 301.45–3 of this chapter.

Regulated Articles

Section 319.77–2 lists the gypsy moth host materials that are designated as regulated articles in order to prevent the spread of gypsy moth from Canada into noninfested areas of the United States. Those regulated articles may be imported into the United States from Canada only under the conditions described in § 319.77–4, "Conditions for the importation of regulated articles."

The regulated articles listed in § 319.77–2, with one exception, are the same as the ones listed in the domestic gypsy moth regulations. The regulated articles under our domestic gypsy moth regulations are: Trees without roots (e.g., Christmas trees), unless greenhouse-grown throughout the year; trees with roots, unless greenhouse-grown throughout the year; shrubs with roots and persistent woody stems, unless greenhouse-grown throughout the year; logs; pulpwood; wood chips; outdoor household articles; mobile homes and their associated equipment; and other articles determined to present a high risk of spreading gypsy moth. The exception to this list that appears in § 319.77–2 is a specification that logs and pulpwood must have bark attached to be considered regulated articles. We added the specification "with bark attached" because gypsy moths lay their eggs on the bark of trees. Therefore, we believe that removal of the bark from logs and pulpwood greatly reduces the risk of introducing gypsy moth. In the near future, we intend to propose a similar exception for logs and pulpwood without bark for the domestic gypsy moth regulations.

These regulated articles have been identified as presenting a risk of introducing gypsy moth into noninfested areas when they are moved from infested areas without inspection or treatment.

Gypsy Moth Infested Areas in Canada

Section 319.77–3 lists those areas of Canada known to be infested with gypsy moth. The descriptions of those infested areas, which are in the Provinces of British Columbia, New Brunswick, Nova Scotia, Ontario, and Quebec, were provided to APHIS by CFIA and are set out fully in § 319.77–3 in the rule portion of this document.

Conditions for the Importation of Regulated Articles

Section 319.77–4 sets out the conditions for the importation of regulated articles into the United States from Canada. These conditions focus on regulated articles from Canada that are destined for a noninfested area of the United States or that will be moved through a noninfested area of the United States en route to their destination. When the articles are from a Canadian infested area, we require that they be thoroughly inspected and found free of gypsy moth or treated for gypsy moth, and that the action taken be

documented on a Canadian phytosanitary certificate. Inspection or treatment is also required under our domestic gypsy moth regulations; both have proven to be effective methods of preventing the spread of gypsy moth. When the articles are from a Canadian noninfested area, we require that they be accompanied by a Canadian certificate of origin to confirm that they did not originate in a gypsy moth infested area. As noted previously, this type of document is already issued in Canada for the movement of gypsy moth host material between infested and noninfested areas in that country. When certain regulated articles have been greenhouse-grown throughout the year or when regulated articles are destined for an area of the United States that is infested with gypsy moth and will not be moved through any noninfested areas, then the articles may be imported into the United States without restriction under this subpart. (We will be able to determine whether an article has been greenhouse-grown because greenhouse-grown products from Canada are subject to the labeling requirements in 7 CFR 319.37–4(c).) The requirements described in this paragraph are discussed below in more detail.

Trees and Shrubs

Paragraph (a) of § 319.77–4 addresses the importation of trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems. Trees or shrubs that have been greenhouse-grown throughout the year, and thus protected from gypsy moth infestation, or that are destined for a U.S. infested area and will not be moved through any U.S. noninfested areas, may be imported from any area in Canada without restriction under the subpart.

Trees or shrubs originating in a Canadian infested area that are to be moved into or through a U.S. noninfested area may be imported if they are accompanied by an officially endorsed Canadian phytosanitary certificate. The phytosanitary certificate must include an additional declaration confirming that the trees or shrubs have been inspected and found free of gypsy moth or that they have been treated for gypsy moth.

Trees or shrubs originating in a Canadian noninfested area that are to be moved into or through a U.S. noninfested area may be imported if they are accompanied by a certificate of origin stating that they were produced in an area of Canada where gypsy moth is not known to occur.

Finally, because trees and shrubs from Canada that are capable of propagation may also be subject to restrictions under our regulations in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (7 CFR 319.37 through 319.37–14), § 319.77–4(a) includes a footnote informing the reader of those other requirements.

Logs and Pulpwood

Paragraph (b) of § 319.77–4 addresses logs and pulpwood with bark attached. Logs and pulpwood that are destined for a U.S. infested area and will not be moved through any U.S. noninfested areas may be imported from any area in Canada without restriction under the subpart.

Logs or pulpwood originating in a Canadian infested area that are to be moved into or through a U.S. noninfested area must meet one of two requirements for importation: (1) They must be accompanied by an officially endorsed Canadian phytosanitary certificate that includes an additional declaration confirming that they have been inspected and found free of, or treated for, gypsy moth; or (2) they must be moved to a specified U.S. processing plant or mill under compliance agreement with APHIS for specified handling or processing that will mitigate the risk of gypsy moth.

Logs or pulpwood originating in a Canadian noninfested area that are to be moved into or through a U.S. noninfested area must be accompanied by a certificate of origin stating that they were produced in an area of Canada where gypsy moth is not known to occur.

Finally, because logs from Canada are also subject to restrictions under our regulations in "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (7 CFR 319.40 through 319.40–11), § 319.77–4(b) includes a footnote informing the reader of those other requirements.

Outdoor Household Articles and Mobile Homes

Paragraph (c) of § 319.77–4 addresses the importation of outdoor household articles and mobile homes and their associated equipment. Those regulated articles may be imported without restriction under the subpart if they are being moved from a Canadian noninfested area. They may also be imported without restriction under the subpart if they are being moved from a Canadian infested area, are destined for a U.S. infested area, and will not be moved through any U.S. noninfested areas.

Outdoor household articles and mobile homes and their associated equipment that are being moved from a Canadian infested area into or through a U.S. noninfested area must be accompanied by a statement, signed by their owner, that they have been inspected by the owner and found free of gypsy moth. This signed statement will act as a signal to U.S. authorities at the United States/Canada border that the owner is aware of the requirements, has inspected the outdoor household articles or mobile home and its associated equipment, and has not found gypsy moth. U.S. authorities at the border will collect these signed statements. However, if the item being imported is determined to be high risk (e.g., an older mobile home that has been sitting in one place for a number of years), then the outdoor household articles or mobile home and its associated equipment may be re-inspected by U.S. authorities at the border. Requiring pre-inspection by the owner should minimize cases where such outdoor household articles or mobile homes and their associated equipment brought to the border are not allowed entry into the United States because of the presence of gypsy moth. The domestic gypsy moth regulations do not provide for owner inspection of mobile homes; however, this rule does allow for owner inspection of mobile homes entering the United States from Canada. The questions asked at the border, along with the provision for secondary inspections at the border, are added safeguards used to complement the self-inspection.

Disposition of Regulated Articles Denied Entry

Under § 319.77–5, any article that is refused importation for noncompliance with the regulations must be promptly safeguarded or removed from the United States to prevent the article from introducing gypsy moth into noninfested areas of the United States. This section explains that when such articles are not promptly safeguarded or removed from the United States, they may be seized, destroyed, or otherwise disposed of by APHIS as authorized by section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd and 150ff).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is

necessary because of gypsy moth outbreaks in western Canada. Further, gypsy moths will soon start depositing their egg masses on articles routinely moved into the United States. Thus, there is an increased possibility that the gypsy moth could be introduced into noninfested areas of the United States, where it could cause economic losses due to defoliation of susceptible forest and shade trees. Although we could use our authority under the Federal Plant Pest Act to impose import conditions at the U.S./Canadian border for regulated articles from western Canada as we have been doing for such articles from eastern Canada, we believe that promulgating regulations at this time will provide a much more effective means of preventing the introduction of gypsy moth into noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have prepared an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. The discussion also serves as our cost-benefit analysis under Executive Order 12866. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the economic impacts of this rule on small entities. Therefore, we are inviting comments on potential economic impacts. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this rule.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165 and 167), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

This rule establishes regulations for the importation into the United States of gypsy moth host materials from Canada due to infestations of gypsy moth in the Provinces of British Columbia, New Brunswick, Nova Scotia, Ontario, and Quebec. These regulations require regulated articles—trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment—to meet certain certification or destination requirements if they are to be moved from Canada into or through areas of the United States that are not infested with gypsy moth.

The United States engages in a great deal of trade in live trees, live plants, and rough wood. In 1998, the United States imported approximately $231 million worth of the type of nursery products covered by this rule and exported approximately $160 million worth of those products. In that same year, U.S. imports of rough wood, including logs, pulpwood, and wood chips, were worth approximately $141 million, while exports were worth approximately $1.8 billion.

Canada is the major source for U.S. imports of live trees, live plants, and rough wood covered by this rule. In 1998, Canada accounted for more than 80 percent of U.S. imports of these live trees and plants and for nearly 90 percent of U.S. imports of this rough wood. The Canadian provinces affected by this rule change account for the vast majority of Canadian exports of live trees, live plants, and rough wood to the United States, as shown in the table below. All figures in the table are rounded to the first decimal place. Therefore, "0.0" represents imports valued at $50,000 or less. Also, for certain commodities, slight discrepancies exist between the sum of the individual province columns and the "Total for Canada" column because of differences in the data published by Statistics Canada and the U.S. Department of Commerce. It is also important to note that these values represent imports from each province, whereas the infested areas are smaller areas contained within the provinces. Thus, the values listed are conservatively high estimates provided to put into perspective the volume of potential host materials moving across the border.

1998 U.S. Imports of Live Trees, Live Plants, and Rough Wood
[in millions of U.S. dollars]

Export good	Canadian provinces with invested areas					Canadian noninfested areas							Total U.S. imports	
	British Columbia	New Brunswick	Nova Scotia	Ontario	Quebec	Alberta	Manitoba	Newfoundland	North-West Territories	Prince Edward Island	Saskatchewan	Yukon	Total for Canada	Total for World
60220	0.3	.....	2.3	7.1	1.7	0.0	.....	.....	.....	0.3	.....	.....	11.5	12.2
60230	0.2	0.0	.....	2.2	.....	.....	.....	.....	.....	.....	.....	.....	2.4	2.4
60290	22.5	10.4	0.8	97.4	4.7	0.2	0.4	.....	.....	0.3	0.0	.....	132.9	162.2
60491	2.5	14.0	7.6	1.4	16.8	0.8	.....	0.0	.....	0.0	0.0	.....	40.6	54.6
440110	1.4	.....	.....	1.9	0.3	0.0	.....	.....	.....	.....	.....	.....	3.5	3.9
440121	20.6	0.0	.....	0.8	0.4	.....	0.0	.....	.....	.....	.....	.....	21.8	24.2
440122	3.0	.....	.....	2.0	0.1	.....	.....	.....	.....	.....	.....	.....	5.0	5.5
440320	44.7	8.9	1.7	5.6	1.6	5.5	0.0	.....	0.1	0.1	0.6	.....	66.8	73.9
440341	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.0
440349	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.6
440391	.....	0.0	.....	0.7	0.0	.....	.....	.....	.....	.....	.....	.....	0.7	1.6
440392	.....	.....	.....	0.0	.....	.....	.....	.....	.....	.....	.....	.....	0.0	0.2
440399	1.0	3.2	0.7	23.3	1.6	0.0	0.4	.....	.....	.....	0.1	.....	29.0	31.0

Notes: The six digit numbers in the "Export Good" column denote the harmonized system for classifying commodities in trade. These digits represent classes of live trees, live plants, and rough wood. The commodities included under each number are as follows:
60220, edible fruit or nut trees, shrubs, and bushes
60230, rhododendrons and azaleas, grafted or not
60290, live plants, cuttings, and slips that are not elsewhere specified

60491, foliage, branches, etc., and Christmas trees
440110, fuel wood (in logs, billets, twigs, etc.)
440121, wood in chips or particles, coniferous
440122, wood in chips, or particles, nonconiferous
440320, coniferous wood in the rough, not treated
440341, light/dark meranti and meranti bekau in the rough
440349, other tropical wood in the rough, with or without bark (or roughly squared) and not treated
440391, oak wood in the rough, not treated
440392, beech wood in the rough, not treated
440399, nonconiferous wood in the rough, not treated, that is not elsewhere specified
The symbol "— —" means that no imports occurred.

Given the destructive potential of gypsy moth, as well as the vast forest resources in the United States, it is likely that the further spread of that pest in the United States as a result of the unrestricted movement of gypsy moth host material from infested areas in Canada would have a negative impact on the noninfested areas of the United States. The impacts that are likely as gypsy moth spreads into new areas include growth loss in timber; fewer visitors and loss of revenues in recreation areas; costs of increased Federal, State, and local government control activities against gypsy moth; and costs to landowners.

Over the last 5 years, APHIS alone has spent more than $30 million on gypsy moth control, eradication, regulatory, and survey activities. In fiscal year 1998, State and local government agencies in Oregon, Utah, and Washington, which are noninfested States, spent more than $1 million to eradicate gypsy moth infestations to prevent this pest from becoming established in those States.

Entities Affected

As a result of this rule, trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems (unless greenhouse-grown throughout the year) that are being moved from a Canadian infested area into or through a U.S. noninfested area will have to be accompanied by a Canadian phytosanitary certificate that includes an additional declaration confirming that the trees or shrubs have been inspected and found free of gypsy moth or treated in accordance with the regulations. If the trees or shrubs are being moved from a Canadian noninfested area into or through a U.S. noninfested area, they must be accompanied by a Canadian certificate of origin stating where the trees were produced in Canada. The rule also requires that logs and pulpwood with bark attached that are being moved from a Canadian infested area into or through a U.S. noninfested area must be: (1) Accompanied by a Canadian phytosanitary certificate that includes an additional declaration confirming that the logs and pulpwood have been inspected and found free of gypsy moth or have been treated, or (2) destined for a specified U.S. processing plant or mill that is under a compliance agreement with APHIS for specified handling or processing.

Therefore, this rule will affect entities engaged in the international movement of regulated articles from Canada into the United States. The restrictions will primarily affect those entities that move trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment from Canadian infested areas into or through U.S. noninfested areas. However, because of this rule's certificate of origin requirement, entities moving regulated articles into or through U.S. noninfested areas from noninfested areas of Canada will also be affected to a limited extent.

This rule will require the issuance of some new phytosanitary certificates, but we expect that it will be a relatively small number. This is because all trees with roots and shrubs with roots and persistent woody stems imported from Canada into the United States are already required to obtain a Canadian phytosanitary certificate under the regulations at 7 CFR 319.37. This rule would simply require an additional declaration to that certificate, not a new certificate, for those products moving from a Canadian infested area to a U.S. noninfested area. Likewise, trees without roots (e.g., Christmas trees), logs with bark attached, and pulpwood with bark attached that are imported from Canadian infested areas would not need a phytosanitary certificate if they are either: (1) imported from a Canadian noninfested area to a U.S. noninfested area; (2) imported from a Canadian noninfested area to a U.S. infested area; (3) imported from a Canadian infested area to a U.S. infested area; or (4) imported from any area of Canada to a specified U.S. processing plant or mill under compliance agreement with APHIS for specified handling or processing. The only commodities that would need a new Canadian phytosanitary certificate under the provisions of this rule are trees without roots, logs with bark attached, and pulpwood with bark attached from a Canadian infested area to a U.S. noninfested area that are not destined for a specified U.S. processing plant or mill under compliance agreement with APHIS for specified handling or processing.

This rule will also require the issuance of certificates of origin. The certificate of origin is a new requirement for regulated articles moving from Canadian noninfested areas to U.S. noninfested areas. The certificate of origin will state where the articles were produced.

The information we have concerning the costs of Canadian phytosanitary certificates is for greenhouse products. Canadian phytosanitary certificates for greenhouse products require processing time, in addition to an inspection cost of $15 to $30, and a $5 fee per shipment (shown in Canadian dollars; these amounts are equivalent to $10, $20, and $3.26, respectively, in U.S. dollars). We expect phytosanitary certificates issued for the products affected by this rule to have similar costs and certificates of origin to cost less. We estimate that, as a result of this rule, 100 shipments per year will require Canadian phytosanitary certificates, and 100 shipments per year will require certificates of origin. That would result in total inspection costs averaging approximately $2,326 (U.S. dollars) per year for phytosanitary certificates, and, as stated above, certificates of origin would likely cost less than that amount. Therefore, we expect that a total of less than $4,650 (U.S. dollars) would be spent in inspection costs as a result of obtaining new Canadian phytosanitary certificates and certificates of origin for the products affected by this rule. However, we do not have information on the number and size of entities in Canada and the United States that will be affected by this rule.

This rule also requires individual and commercial movers of outdoor household articles, including recreational vehicles, and mobile homes and their associated equipment moving from infested areas of Canada into noninfested areas of the United States to provide a statement signed by the owner that the articles have been inspected and found free of gypsy moth. The use of self-inspections should minimize the costs associated with the importation of these items. Most individual homeowners who reside in areas of the United States quarantined because of

gypsy moth and who move their own articles currently choose to self-inspect and issue the signed statement for the movement of their outdoor household articles. This process takes a few minutes for each item and involves no monetary cost unless treatment is necessary. For commercial movers, self-issuing documents could help avoid the costs of delays, but could still result in costs associated with time, salary, and recordkeeping for the self-inspections.

When inspection reveals the presence of gypsy moth, the individual in possession of the infested articles must either return the articles to their place of origin, treat them, or destroy them. Loads of trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, or logs would be an expensive loss if destroyed, which would occur if the shipper decided against the alternatives (i.e., return to Canada or treatment). Fumigation is one treatment alternative, but another—manually spraying caterpillars and scraping egg masses—is a less costly treatment alternative. Either treatment is usually done by qualified, certified applicators. In applications in the United States, fumigation costs average between $100 to $150 per shipment. Manual treatment would be considerably less expensive. We do not know at the current time how many entities will be affected by these treatment requirements.

Other costs of implementing this rule involve border crossings. This rule will add time to border crossings because it will be necessary to ascertain whether a recreational vehicle or mobile home is coming from an area of Canada known to be infested with gypsy moth or an area free of gypsy moth. There is no data on the number of recreational vehicles and mobile homes crossing the border from Victoria, British Columbia, or from other infested areas of Canada. When primary Customs Service and Immigration and Naturalization Service inspectors question the origin of all recreational vehicles and mobile homes crossing into the United States and distribute information on gypsy moth to their owners, only a few seconds will be added to each border crossing. However, with potentially several thousand daily crossings of recreational vehicles from all areas of Canada at peak times, this added time could result in some delays. Some of the recreational vehicles and mobile homes originating in Canadian infested areas, as well as those owners who are unsure of origin and others at the discretion of the primary inspectors, will be sent to secondary inspection, where APHIS inspectors will ensure that owners understand the need to inspect their recreational vehicles and mobile homes for the presence of gypsy moth. Depending on the number of recreational vehicles and mobile homes sent to secondary inspections, there may be a need for additional staff at border crossings.

The inspection and certification requirements of this rule are expected to cause a slight increase in the costs of business for a limited number of affected entities, but the overall impact on price and competitiveness is expected to be relatively insignificant. Additionally, we believe that any increase in costs experienced by entities under this rule change will be very small when compared to the benefits. The benefits of this rule include avoided Federal, State, and local government costs and avoided damages to forest resources resulting from a widespread gypsy moth outbreak in noninfested areas of the United States.

Alternatives Considered

The alternative to this rule that we considered was to make no changes in the regulations, instead relying on border inspections and the Canadian gypsy moth program to prevent the entry of gypsy moth into noninfested areas of the United States from infested areas of Canada. We rejected this alternative after determining that these measures would likely prove to be an inadequate response to the risk posed by gypsy moth host material entering the United States from Canada.

The changes to the regulations will result in new information collection or recordkeeping requirements, as described below under the heading "Paperwork Reduction Act."

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been approved by the Office of Management and Budget (OMB). OMB has assigned control number 0579–0142 to the information collection and recordkeeping requirements. However, a request for a 3-year approval of the information collection and recordkeeping requirements has been submitted to OMB.

Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 98–110–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. Please state that your comments refer to Docket No. 98–110–1 and send them within 60 days of publication of this rule.

This interim rule establishes regulations for the importation into the United States of gypsy moth host materials from Canada due to infestations of gypsy moth in the Provinces of British Columbia, New Brunswick, Nova Scotia, Ontario, and Quebec. These regulations require trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment to meet specified certification or destination requirements if they are intended to be moved into or through areas of the United States that are not infested with gypsy moth.

This interim rule is designed to prevent the introduction of gypsy moth into the United States from Canada by placing certain inspection and documentation requirements on gypsy moth host materials (i.e., regulated articles) from Canada. These regulated articles are: Trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment. Under this interim rule, phytosanitary certificates, certificates of origin, or signed homeowner statements will be required for some of these regulated articles, depending on their place of origin in Canada and their destination in the United States. We are asking OMB to approve these information collections in connection with our efforts to ensure that regulated articles imported from Canada do not introduce gypsy moth into noninfested areas of the United States.

We are soliciting comments from the public (as well as affected agencies) concerning this information collection activity. We need this outside input to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions,

including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .03469 hours per response.

Respondents: Canadian plant health authorities; growers, exporters, shippers of Christmas trees, shrubs, logs, pulpwood, and other articles from Canada; and private individuals entering the United States with mobile homes or outdoor household articles.

Estimated annual number of respondents: 2,120.

Estimated annual number of responses per respondent: 1.047.

Estimated annual number of responses: 2,220.

Estimated total annual burden on respondents: 77 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products, § 319.37–5 is amended by adding a new paragraph (p) to read as follows:

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(p) In addition to meeting the requirements of this subpart, any trees with roots and any shrubs with roots and persistent woody stems, unless greenhouse-grown throughout the year, that are imported from Canada will be subject to the inspection and certification requirements for gypsy moth in § 319.77–4 of this part.

3. In Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles, § 319.40–2 is amended by adding a new paragraph (f) to read as follows:

§ 319.40–2 General prohibitions and restrictions; relation to other regulations.

* * * * *

(f) In addition to meeting the requirements of this subpart, logs and pulpwood with bark attached imported from Canada are subject to the inspection and certification requirements for gypsy moth in § 319.77–4 of this part.

4. Subpart—Gypsy Moth Host Material from Canada is added to read as follows:

Subpart—Gypsy Moth Host Material from Canada

Sec.

319.77–1 Definitions.
319.77–2 Regulated articles.
319.77–3 Gypsy moth infested areas in Canada.
319.77–4 Conditions for the importation of regulated articles.
319.77–5 Disposition of regulated articles denied entry.

Subpart—Gypsy Moth Host Material from Canada

§ 319.77–1 Definitions.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Canadian infested area. Any area of Canada listed as a gypsy moth infested area in § 319.77–3 of this subpart.

Canadian noninfested area. Any area of Canada that is not listed as a gypsy moth infested area in § 319.77–3 of this subpart.

Certificate of origin. A document issued by an official authorized by the national government of Canada that states the area in which a regulated article was produced or grown and includes any other required additional declarations.

Gypsy moth. The insect known as the gypsy moth, Lymantria dispar (Linnaeus), in any stage of development.

Import (imported, importation). To bring or move into the territorial limits of the United States.

Mobile home. Any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

Outdoor household articles. Articles associated with a household that are generally kept or used outside the home. Examples of outdoor household articles are awnings, barbeque grills, bicycles, boats, dog houses, firewood, garden tools, hauling trailers, outdoor furniture and toys, recreational vehicles and their associated equipment, and tents.

Phytosanitary certificate. A document issued by an official authorized by the national government of Canada that contains a description of the regulated article intended for importation into the United States and that certifies that the article has been thoroughly inspected or treated, is believed to be free from plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States. A phytosanitary certificate must be addressed to the Animal and Plant Health Inspection Service and may be issued no more than 14 days prior to the shipment of the regulated article.

Recreational vehicles. Vehicles, including pickup truck campers, one-piece motor homes, and travel trailers, designed to serve as temporary places of dwelling.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

U.S. infested area. Any area of the United States listed as a gypsy moth generally infested area in § 301.45–3 of this chapter.

U.S. noninfested area. Any area of the United States that is not listed as a gypsy moth generally infested area in § 301.45–3 of this chapter.

§ 319.77–2 Regulated articles.

In order to prevent the spread of gypsy moth from Canada into noninfested areas of the United States, the gypsy moth host materials listed in paragraphs (a) through (g) of this section are designated as regulated articles. Regulated articles may be imported into the United States from Canada only under the conditions described in § 319.77–4 of this subpart.

(a) Trees without roots (e.g., Christmas trees), unless they were greenhouse-grown throughout the year;

(b) Trees with roots, unless they were greenhouse-grown throughout the year;

(c) Shrubs with roots and persistent woody stems, unless they were greenhouse-grown throughout the year;

(d) Logs with bark attached;

(e) Pulpwood with bark attached;

(f) Outdoor household articles; and
(g) Mobile homes and their associated equipment.

§ 319.77–3 Gypsy moth infested areas in Canada.

The following areas in Canada are known to be infested with gypsy moth:

(a) *Province of British Columbia.* That portion of Vancouver Island, in the areas of Victoria and Nanaimo, that includes the following Land Districts: Comiaken, Cowichan, Esquimalt, Goldstream, Helmecken, Highlands, Lake, Malahat, Metchosin, North Saanich, Otter, Quamichaan, Sahatlam, Seymour,Shawnigan, Somenos, Sooke, South Saanich, and Victoria.

(b) *Province of New Brunswick.* That portion of the Province of New Brunswick that includes the following counties: Charlotte, Kings, Queens, Sunbury, and York.

(c) *Province of Nova Scotia.* That portion of the Province of Nova Scotia that includes the following counties: Annapolis, Digby, Halifax, Hants, Kings, Lunenberg, Queens, Shelburne, and Yarmouth.

(d) *Province of Ontario.* That portion of the Province of Ontario that includes the Districts of Algoma, Maritoulin, Nipissing, and Sudbury and the following counties and regional municipalities: Brant, Bruce, Dufferin,Durham, Elgin, Essex, Frontenac, Grey, Haldimand-Norfolk, Haliburton, Halton,Hamilton-Wentworth, Hastings, Huron, Kent, Lambton, Lanark, Leeds-Granville,Lennox-Addington, Middlesex, Muskoka, Niagara, Northumberland, Ottawa-Carleton, Oxford, Parry Sound, Peel, Perth, Peterborough, Prescott-Russell,Prince Edward, Renfrew, Simcoe, Stormont-Dundas-Glengarry, Victoria, Waterloo,Wellington, and York.

(e) *Province of Quebec.* That portion of the Province of Quebec that includes the following regional municipalities: Acton, Antoine-Labelle,Argenteuil, Arthabaska, Asbestos, Beauce-Sartigan, Beauharnois-Salaberry,Becancour, Bellechasse, Brome-Missisquoi, Champlain, Coaticook, CommunauteUrbaine de Montreale, Communaute Urbaine de L'Outaouais, Communaute Urbaine deQuebec, D'Autray, Desjardins, Deux-Montages, Drummond, Francheville, Joliette,L'Amiante, L'Assomption, L'Erable, L'Ile-D'Orleans, Lajemmerais, Laval, LaNouvelle-Beauce, La Riviere-Du-Nord, La Vallee-De-La-Gatineau, La Vallee-Du-Richelieu, Le Bas-Richelieu, Le Centre-De-La-Mauricie, Le Granit, Le Haut-Richelieu, Le Haut-Saint-Francois, Le Haut-Saint-Laurent, Le Haute-Yamaska, LeVal-Saint-Francois, Les Chutes-De-La-Chaudire, Les Collines-De-L'Outaouais,Les Etchemins, Les Jardins-De-Napierville, Les Laurentides, Les Maskoutains,Les Moulins, Les Pays-D'En-Haut, Lotbinere, Maskinonge, Matawinie,Mamphremagog, Mirabel, Montcalm, Montmagny, Nicolet-Yamaska, Papineau,Pontiac, Portneuf, Robert-Cliche, Roussillon, Rouville, Sherbrooke,Therese-De-Blainville, and Vaudreuil-Soulanges.

§ 319.77–4 Conditions for the importation of regulated articles.

(a) *Trees and shrubs.*[1] Trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems may be imported into the United States from any area of Canada without restriction under this subpart if they:

(i) Were greenhouse-grown throughout the year; or

(ii) Are destined for a U.S. infested area and will not be moved through any U.S. noninfested areas.

(2) Trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems that are destined for a U.S. noninfested area or will be moved through a U.S. noninfested area may be imported into the United States from Canada only under the following conditions:

(i) If the trees or shrubs originated in a Canadian infested area, they must be accompanied by an officially endorsed Canadian phytosanitary certificate that includes an additional declaration confirming that the trees or shrubs have been inspected and found free of gypsy moth or that the trees or shrubs have been treated for gypsy moth in accordance with the PlantProtection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(ii) If the trees or shrubs originated in a Canadian noninfested area, they must be accompanied by a certificate of origin stating that they were produced in an area of Canada where gypsy moth is not known to occur.

(b) *Logs and pulpwood with bark attached.*[2] (1) Logs or pulpwood with bark attached that are destined for a U.S. infested area and that will not be moved through any U.S. noninfested area may be imported from any area of Canada without restriction under this subpart.

(2) Logs or pulpwood with bark attached that are destined for a U.S. noninfested area or will be moved through a U.S. noninfested area may be imported into the United States from Canada only under the following conditions:

(i) If the logs or pulpwood originated in a Canadian infested area, they must be either:

(A) Accompanied by an officially endorsed Canadian phytosanitary certificate that includes an additional declaration confirming that they have been inspected and found free of gypsy moth or that they have been treated for gypsy moth in accordance with the Plant Protection and Quarantine TreatmentManual, which is incorporated by reference at § 300.1 of this chapter; or

(B) Destined for a specified U.S. processing plant or mill under compliance agreement with the Animal and Plant Health Inspection Service for specified handling or processing.

(ii) If the logs or pulpwood originated in a Canadian noninfested area, they must be accompanied by a certificate of origin stating that they were produced in an area of Canada where gypsy moth is not known to occur.

(c) *Outdoor household articles and mobile homes and their associated equipment.* (1) Outdoor household articles and mobile homes and their associated equipment that are destined for a U.S. infested area and will not be moved through any U.S. noninfested areas may be imported from any area in Canada without restriction under this subpart.

(2) Outdoor household articles and mobile homes and their associated equipment that are being moved from a Canadian noninfested area may be imported into any area of the United States without restriction under this subpart.

(3) Outdoor household articles and mobile homes and their associated equipment that are being moved from a Canadian infested area into a U.S. noninfested area, or that will be moved through a U.S. noninfested area, may be imported into the United States only if they are accompanied by a statement, signed by their owner, stating that they have been inspected and found free of gypsy moth.

(Approved by the Office of Management and Budget under control number 0579–0142)

§ 319.77–5 Disposition of regulated articles denied entry.

Any regulated article that is denied entry into the United States because it

[1] Trees and shrubs from Canada that are capable of propagation may be subject to additional restrictions under "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (§§ 319.37 through 319.37–14 of this part).

[2] Logs from Canada are also subject to restrictins under "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (§§ 319.40 through 319.40–11 of this part).

does not meet the requirements of this subpart must be promptly safeguarded or removed from the United States. If the article is not promptly safeguarded or removed from the United States, it may be seized, destroyed, or otherwise disposed of in accordance with section 10 of the Plant QuarantineAct (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act(7 U.S.C. 150dd and 150ff).

Done in Washington, DC, this 16th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–21754 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–29–AD; Amendment 39–11259; AD 99–17–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires repetitive inspections to detect wear of the inboard flap trunnions, and to detect wear or debonding of the protective half-shells; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct chafing and resultant wear damage on the inboard flap drive trunnions or on the protective half-shells, which could result in failure of the trunnion primary load path; this would adversely affect the fatigue life of the secondary load path and could lead to loss of the flap.

DATES: Effective September 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 27, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 15, 1998 (63 FR 49309). That action proposed to require repetitive inspections to detect wear of the inboard flap trunnions; and replacement, if necessary. That action also proposed to require repetitive inspections to detect wear or debonding of the protective half-shells, and corrective actions, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Approve Terminating Modification

Two commenters request that the modification described in Airbus Service Bulletin A320–27–1117, dated July 31, 1997, be considered as terminating action for the repetitive inspections required by the proposed AD. One commenter states that the manufacturer has completed its in-service evaluation of this service bulletin and has determined that the modification is an appropriate terminating action. Another commenter, the manufacturer, notes that this modification solution, Airbus Modification 26495, has been installed on airplanes in production beginning with manufacturer's serial number (MSN) 789.

The FAA concurs with the commenter's request. Since issuance of the supplemental NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that accomplishment of the modification described in A320–27–1117 would effectively eliminate the need to perform the repetitive inspections, and has issued French airworthiness directive 1996–271–092(B) R2, dated February 24, 1999, to reflect this finding. The FAA has determined that such a modification constitutes appropriate terminating action for the repetitive inspections required by this AD, and has revised the applicability of the final rule and added a new paragraph (e) to the final rule to provide for accomplishment of Airbus Modification 26495 in production, or Airbus Service Bulletin A320–27–1117, dated July 31, 1997, or Revision 01, dated June 25, 1999, as an optional terminating action for the requirements of this AD.

Service Bulletin Revisions

Airbus has issued the following Service Bulletin revisions: A320–27–1108, Revision 02, dated April 17, 1998, and Revision 03, dated June 25, 1999; and A320–27–1097, Revision 02, dated June 25, 1999. These later revisions of the service bulletins describe certain administrative changes, and delete the repair previously recommended if wear marks are found on the flap trunnions. In lieu of the repair, the service bulletin revisions specify accomplishment of the modification described in A320–27–1117. The FAA has determined that the actions required by this AD may be accomplished in accordance with these later revisions of the service bulletins, and has revised the final rule to include them as appropriate sources of service information.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 132 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,920, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of

the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–17–11 Airbus Industrie: Amendment 39–11259. Docket 96–NM–29–AD.

Applicability: Model A319, A320, and A321 series airplanes; except airplanes on which Airbus Modification 26495 has been installed in production, or on which Airbus Service Bulletin A320–27–1117, dated July 31, 1997, or Revision 01, dated June 25, 1999, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing and resultant wear damage on the inboard flap drive trunnions or on the protective half-shells, which could result in failure of the trunnion primary load path, adversely affect the fatigue life of the secondary load path, and lead to loss of the flap; accomplish the following:

Inspections/Corrective Actions

(a) For airplanes on which a protective half-shell has been installed over area 1 of the left or right inboard flap trunnion: Perform a detailed visual inspection of the protective half-shell (area 1) to detect wear or debonding, and perform a detailed visual inspection of the trunnion (area 2) to detect wear at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable; in accordance with Airbus Service Bulletin A320–27–1108, Revision 01, dated July 15, 1997, Revision 02, April 17, 1998, or Revision 03, June 25, 1999.

(1) For Model A319 and Model A320 series airplanes on which Airbus Modification 22841 has been installed: Inspect prior to the accumulation of 2,500 flight hours after the incorporation of the modification, or within 500 flight hours after the effective date of this AD, whichever occurs later.

(2) For Model A321 series airplanes on which Airbus Modification 23926 has been installed, or on which the repair specified in Airbus Service Bulletin A320–27–1097, dated October 5, 1996, or Revision 01, dated July 15, 1997, has been accomplished; and for Model A320 series airplanes on which the repair specified in Airbus Service Bulletin A320–27–1066, Revision 3, dated October 30, 1996, or Revision 4, dated July 15, 1997, has been accomplished: Inspect prior to the accumulation of 5,000 flight hours after incorporation of the repair or modification, or within 500 flight hours after the effective date of this AD, whichever occurs later.

(3) For Airbus Model A320 series airplanes on which Airbus Modification 22881 has been accomplished, and on which Airbus Modification 22841 or the modification specified in Airbus Service Bulletin A320–27–1050 has not been accomplished: Inspect within 500 flight hours after the effective date of this AD.

(b) For airplanes on which no protective half-shell is installed over area 1 of the left or right inboard flap trunnion: Within 500 flight hours after the effective date of this AD, perform a detailed visual inspection of areas 1 and 2 of the inboard flap trunnion to detect wear on the trunnion, in accordance with Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997 (for Model A320 series airplanes); or A320–27–1097, Revision 01, dated July 15, 1997, or Revision 02, dated June 25, 1999 (for Model A321 series airplanes).

(c) Except as provided by paragraph (d) of this AD: Following the accomplishment of any inspection required by either paragraph (a) or (b) of this AD, perform the follow-on repetitive inspections and/or corrective actions, as applicable, in accordance with Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997 (for Model A320 series airplanes); A320–27–1097, Revision 01, dated July 15, 1997, or Revision 02, dated June 25, 1999 (for Model A321 series airplanes); or A320–27–1108, Revision 01, dated July 15, 1997, Revision 02, dated April 17, 1998, or Revision 03, dated June 25, 1999 (for Model A319, A320, and A321 series airplanes); as applicable; at the compliance times specified in the applicable service bulletin.

(d) If the applicable service bulletin specifies to contact Airbus for an appropriate action, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale del'Aviation Civile (or its delegated agent).

Optional Terminating Action

(e) Accomplishment of the modification described in Airbus Service Bulletin A320–27–1117, dated July 31, 1997, or Revision 01, dated June 25, 1999, constitutes terminating actions for the requirements of this AD. Following accomplishment of the modification, no further action is required by this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–27–1108, Revision 01, dated July 15,

1997; Airbus Service Bulletin A320–27–1108, Revision 02, dated April 17, 1998; Airbus Service Bulletin A320–27–1108, Revision 0303, dated June 25, 1999; Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997; Airbus Service Bulletin A320–27–1097, Revision 01, dated July 15, 1997; and/or Airbus Service Bulletin A320–27–1097, Revision 0202, dated June 25, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 96–271–092(B) R1, dated October 8, 1997, and 1996–271–092(B) R2, dated February 24, 1999.

(i) This amendment becomes effective on September 27, 1999.

Issued in Renton, Washington, on August 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21365 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–129–AD; Amendment 39–11260; AD 99–17–12]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 and Model Avro 146–RJ series airplanes, that requires a one-time measurement to determine the thickness of the outer links of the side stays of the main landing gear (MLG), and corrective actions, if necessary. This amendment also provides for replacement of a thin outer link with a new or serviceable part in lieu of certain follow-on inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent cracking of the outer links of the side stays of the MLG, which could result in failure of a side stay, and consequent collapse of the landing gear.

DATES: Effective September 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 27, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 and Model Avro 146–RG series airplanes was published in the **Federal Register** on September 8, 1998 (63 FR 47445). That action proposed to require a one-time measurement to determine the thickness of the outer links of the side stays of the main landing gear (MLG), and corrective actions, if necessary. That action also proposed to provide for replacement of a thin outer link with a new or serviceable part in lieu of certain follow-on inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Allow Flight With Cracks

One commenter, the manufacturer, requests that the proposal be revised to allow flight with certain specified cracking limits. The commenter points out that, although the inspection for cracking is easily accomplished, the replacement of a cracked part is difficult (necessitates acquisition of the replacement part and takes about 12 hours of elapsed time for the installation). The commenter states that a side stay with a 1 millimeter (mm) crack in the outer links of the side stays of the MLG was returned to the commenter, and was then subjected to fatigue testing by applying 20,000 cycles of the test spectra, where 1 cycle of test spectra was equivalent to 1 flight. The crack grew to 30 mm in length. The side stay was then tested to 130 percent and finally to 165 percent of limit load without failure (i.e., in excess of ultimate load). The commenter notes that, based on those fatigue testing results, the United Kingdom Civil Aviation Authority (CAA) granted approval for continued revenue service with cracking detected up to 19.05 mm, and required inspections to detect cracking at intervals of 70 landings, up to a maximum of 500 landings.

The FAA concurs with the commenter's request in this case. Since the outer link of the main landing gear side stay is readily inspectable for cracking during the normal operation of the airplane, the FAA has determined that cracking could be discovered at a remote site, but that acquiring parts and accomplishing the repair would be difficult. In addition, the FAA has determined that the commenter has provided a conservative demonstration that the airplane can retain FAA-certificated strength requirements for a limited period of time until the cracked part is replaced. Therefore, continued flight of the airplane may be permitted when cracking exists that is within the limits described in the service bulletin, provided that visual inspections for cracking and eventual replacement of the cracked part are performed at the times specified in the final rule. The FAA has revised paragraph (a)(2)(ii)(B) of the final rule and added a new paragraph (a)(2)(ii)(C) to the final rule that reflect these changes.

Request to Revise the Unsafe Condition

This same commenter notes that while the proposal states that cracking of the outer links of the side stays of the MLG could "result in increased braking distance during landing and consequent runway overrun," the actual unsafe condition is that the cracking could result in failure of the side stay, which would result in collapse of the main landing gear.

The FAA infers that the commenter is requesting that the unsafe condition be revised. The FAA acknowledges that, although the proposal describes one possible unsafe outcome of a main landing gear collapse, other unsafe outcomes are possible. The FAA concurs that, in this case, the commenter's suggested revision is preferable to the proposal's description in that it is a more precise statement of the actual consequence of cracking of the outer links of the side stays of the

MLG. The FAA has revised the final rule to reflect the commenter's suggestion.

In addition, the FAA has added a new "Note 4" to the final rule to add a definition of the term "detailed visual inspection."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 37 Model BAe 146 and Model Avro 146–RJ series airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required measurement, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on this figure, the cost impact of the measurement required by this AD on U.S. operators is estimated to be $2,220, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–17–12 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–11260. Docket 97–NM–129–AD.

Applicability: Model BAe 146 and Model Avro 146–RJ series airplanes, equipped with side stays of the main landing gear (MLG) having part numbers (P/N) listed in Messier-Dowty Service Bulletin 146–32–128, dated December 6, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the outer links of the side stays of the main landing gear (MLG), which could result in failure of a side stay, and consequent collapse of the landing gear; accomplish the following:

(a) Within 500 landings or 60 days after the effective date of this AD, whichever occurs later, perform a one-time measurement to determine the thickness of the outer links of the side stays of the MLG, in accordance with British Aerospace Service Bulletin SB.32–144, dated December 11, 1996.

Note 2: The British Aerospace service bulletin references Messier-Dowty Service Bulletin 146–32–128, dated December 6, 1996, as an additional source of service information for accomplishment of the measurement.

(1) If the profile gauge does not slip over the top edge of the outer link profile, no further action is required by this AD.

(2) If the profile gauge slips over the top edge of the outer link profile, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the outer link with a new or serviceable part in accordance with the service bulletin. After replacement of the outer link, no further action is required by this AD.

Note 3: For purposes of this AD, a "serviceable" outer link is defined as an outer link that is not cracked and on which a profile gauge does not slip over the top edge of the profile, as described in the service bulletin.

(ii) Perform a detailed visual inspection to detect cracking of the outer links of the side stays of the MLG, in accordance with the service bulletin.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "As intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(A) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 4,000 landings.

(B) If any cracking of only one flange of an outer link is detected, and the cracking is within the limits specified by the service bulletin: Repeat the detailed visual inspection at intervals not to exceed 70 landings, and replace the cracked outer link with a new or serviceable part in accordance with the service bulletin within 500 landings after the cracking is detected. After replacement of the outer link, no further action is required by this AD.

(C) If any cracking of more than one flange of an outer link is detected, or if any cracking is detected that is outside the limits specified by the service bulletin: Prior to further flight, replace the cracked outer link with a new or serviceable part in accordance with the service bulletin. After replacement of the outer link, no further action is required by this AD.

(b) As of the effective date of this AD, no person shall install on any airplane a side stay of the MLG having a part number listed in paragraph 1.A. of Messier-Dowty Service Bulletin 146–32–128, dated December 6, 1996; unless the profile gauge does not slip over the profile of the outer links of the side stay, as described in British Aerospace Service Bulletin SB.32–144, dated December 11, 1996.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with British Aerospace Service Bulletin SB.32–144, dated December 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support , Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in British airworthiness directive 005–12–96.

(f) This amendment becomes effective on September 27, 1999.

Issued in Renton, Washington, on August 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21364 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 99F–0487]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of fatty acids, C_{10-13}-branched, vinyl esters as a comonomer in polymers used as components of adhesive formulations intended for use in contact with food. This action responds to a petition filed by Exxon Chemical Co.

DATES: This regulation is effective August 23, 1999. Submit written objections and requests for a hearing by September 22, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 25, 1999 (64 FR 14451), FDA announced that a food additive petition (FAP 9B4650) had been filed by Exxon Chemical Co., P.O. Box 3272, Houston, TX 77253–3272. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of fatty acids, C_{10-13}-branched, vinyl esters as a comonomer in polymers used as components of adhesives intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this final rule as announced in the notice of filing for FAP 9B4650. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 22, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding an entry under the category "Polymers: Homopolymers and copolymers of the following monomers" under the heading "Substances" to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * *	* * *
Polymers: Homopolymers and copolymers of the following monomers:	
* * *	
Fatty acids, C_{10-13}-branched, vinyl esters (CAS Reg. No. 184785–38–4).	
* * * *	* * *

Dated: August 5, 1999.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21727 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–1034]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of naphthalene sulfonic acid-formaldehyde condensate, sodium salt as an emulsifier in vinylidene chloride copolymer or homopolymer coatings applied to polypropylene films and polyethylene phthalate films intended for use in contact with food. This action is in response to a petition filed by Solvay S.A.

DATES: This regulation is effective August 23, 1999. Submit written objections and requests for a hearing by September 22, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 2, 1998 (63 FR 66549), as corrected (64 FR 1023, January 7, 1999), FDA announced that a food additive petition (FAP 9B4634) had been filed by Solvay S.A., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3400 *Emulsifiers and/or surface active agents* (21 CFR 178.3400) to provide for the expanded safe use of naphthalene sulfonic acid-formaldehyde condensate, sodium salt as an emulsifier in vinylidene chloride copolymer or homopolymer coatings applied to polypropylene films and polyethylene phthalate films intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.3400 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4634 (63 FR 66549). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 22, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3400 is amended in the table in paragraph (c) by alphabetically adding an entry under the headings "List of substances" and "Limitations" to read as follows:

§ 178.3400 Emulsifiers and/or surface active agents.

* * * * *

(c) * * *

List of substances	Limitations
* * *	* * * *
Naphthalene sulfonic acid-formaldehyde condensate, sodium salt (CAS Reg. No. 9084–06–4).	For use only: 1. At levels not to exceed 10 micrograms/in² (0.16 mg/dm²) in vinylidene chloride copolymer or homopolymer coatings applied to films of propylene polymers complying with § 177.1520 of this chapter. 2. At levels not to exceed 14 micrograms/in² (0.21 mg/dm²) in vinylidene chloride copolymer or homopolymer coatings applied to films of polyethylene phthalate polymers complying with § 177.1630 of this chapter.
* * *	* * * *

* * * * *

Dated: August 10, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21728 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8836]

RIN 1545–AW95

Capital Gains, Installment Sales, Unrecaptured Section 1250 Gain

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the taxation of capital gains on installment sales of depreciable real property. The regulations interpret changes made by the Taxpayer Relief Act of 1997, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999. The regulations affect persons required to report capital gain from an installment sale where a portion of the capital gain is unrecaptured section 1250 gain and a portion is adjusted net capital gain.

DATES: *Effective Date:* These regulations are effective August 23, 1999.

Applicability Date: These regulations apply to installment payments properly taken into account after August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Kassell, (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1). On January 22, 1999, a notice of proposed rulemaking relating to the taxation of capital gains on installment sales of depreciable real property was published in the **Federal Register** (64 FR 3457). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted without substantive change by this Treasury decision.

Explanation of Provisions

In 1997 Congress amended section 1(h) generally to reduce the maximum capital gain tax rates for individuals. As amended, section 1(h) generally divides a taxpayer's net capital gain into several rate groups. A maximum marginal rate of 28 percent applies to 28-percent rate gain, which is not pertinent to these final regulations. A maximum marginal rate of 25 percent applies to unrecaptured section 1250 gain (25-percent gain), which is defined in section 1(h)(7)(A) as the amount of long-term capital gain (not otherwise treated as ordinary income) that would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, reduced by any net loss in the 28-percent rate category. A maximum marginal rate of 20 percent applies to adjusted net capital gain (20/10-percent gain), defined in section 1(h)(4) as the portion of net capital gain that is not taxed at the 28-percent or 25-percent rates. A reduced rate of 10 percent is applied to the portion of the taxpayer's adjusted net capital gain that would otherwise be taxed at a 15-percent rate.

Under the final regulations, if a portion of the capital gain from an installment sale of real depreciable property consists of 25-percent gain, and a portion consists of 20/10-percent gain, the taxpayer is required to take the 25-percent gain into account before the 20/10-percent gain, as payments are received. In addition, an example in the regulations illustrates that section 1231 gain from an installment sale that is recharacterized as ordinary gain under section 1231(c) is deemed to consist first of 25-percent gain, and then 20/10-percent gain. Consistent with this treatment and with the general rule that 25-percent gain is taken into account first, another example in the regulations illustrates that, where there is installment gain that is characterized as ordinary gain under section 1231(a) because there is a net section 1231 loss for the year, the gain is treated as consisting of 25-percent gain first, before 20/10-percent gain, for purposes of determining how much 25-percent gain remains to be taken into account in later payments.

The final regulations also provide that the capital gain rates applicable to installment payments that are received on or after the effective date of the 1997 Act from sales prior to the effective date are determined as if, for all payments received after the date of sale but before the effective date, 25-percent gain had been taken into account before 20/10-percent gain. The regulations further

provide that, in the event the cumulative amount of 25-percent gain actually reported in installment payments received during the period between the effective date of section 1(h) and the effective date of these regulations was less than the amount that would have been reported using the front-loaded allocation method of the regulations, the amount of 25-percent gain actually reported, rather than an amount determined under a front-loaded allocation method, must be used in determining the amount of 25-percent gain that remains to be reported.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Susan Kassell and Rob Laudeman, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.453–12 is added to read as follows:

§ 1.453–12 Allocation of unrecaptured section 1250 gain reported on the installment method.

(a) *General rule.* Unrecaptured section 1250 gain, as defined in section 1(h)(7), is reported on the installment method if that method otherwise applies under section 453 or 453A and the corresponding regulations. If gain from an installment sale includes unrecaptured section 1250 gain and adjusted net capital gain (as defined in section 1(h)(4)), the unrecaptured section 1250 gain is taken into account before the adjusted net capital gain.

(b) *Installment payments from sales before May 7, 1997.* The amount of unrecaptured section 1250 gain in an installment payment that is properly taken into account after May 6, 1997, from a sale before May 7, 1997, is determined as if, for all payments properly taken into account after the date of sale but before May 7, 1997, unrecaptured section 1250 gain had been taken into account before adjusted net capital gain.

(c) *Installment payments received after May 6, 1997, and on or before August 23, 1999.* If the amount of unrecaptured section 1250 gain in an installment payment that is properly taken into account after May 6, 1997, and on or before August 23, 1999, is less than the amount that would have been taken into account under this section, the lesser amount is used to determine the amount of unrecaptured section 1250 gain that remains to be taken into account.

(d) *Examples.* In each example, the taxpayer, an individual whose taxable year is the calendar year, does not elect out of the installment method. The installment obligation bears adequate stated interest, and the property sold is real property held in a trade or business that qualifies as both section 1231 property and section 1250 property. In all taxable years, the taxpayer's marginal tax rate on ordinary income is 28 percent. The following examples illustrate the rules of this section:

Example 1. General rule. This example illustrates the rule of paragraph (a) of this section as follows:

(i) In 1999, A sells property for $10,000, to be paid in ten equal annual installments beginning on December 1, 1999. A originally purchased the property for $5000, held the property for several years, and took straight-line depreciation deductions in the amount of $3000. In each of the years 1999–2008, A has no other capital or section 1231 gains or losses.

(ii) A's adjusted basis at the time of the sale is $2000. Of A's $8000 of section 1231 gain on the sale of the property, $3000 is attributable to prior straight-line depreciation deductions and is unrecaptured section 1250 gain. The gain on each installment payment is $800.

(iii) As illustrated in the table in this paragraph (iii) of this *Example 1.*, A takes into account the unrecaptured section 1250 gain first. Therefore, the gain on A's first three payments, received in 1999, 2000, and 2001, is taxed at 25 percent. Of the $800 of gain on the fourth payment, received in 2002, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1999	2000	2001	2002	2003	2004–2008	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 25%	800	800	800	600	.....	.....	3000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 2. Installment payments from sales prior to May 7, 1997. This example illustrates the rule of paragraph (b) of this section as follows:

(i) The facts are the same as in *Example 1* except that A sold the property in 1994, received the first of the ten annual installment payments on December 1, 1994, and had no other capital or section 1231 gains or losses in the years 1994–2003.

(ii) As in *Example 1*, of A's $8000 of gain on the sale of the property, $3000 was attributable to prior straight-line depreciation deductions and is unrecaptured section 1250 gain.

(iii) As illustrated in the following table, A's first three payments, in 1994, 1995, and 1996, were received before May 7, 1997, and taxed at 28 percent. Under the rule described in paragraph (b) of this section, A determines the allocation of unrecaptured section 1250 gain for each installment payment after May 6, 1997, by taking unrecaptured section 1250 gain into account first, treating the general rule of paragraph (a) of this section as having applied since the time the property was sold, in 1994. Consequently, of the $800 of gain on the fourth payment, received in 1997, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1994	1995	1996	1997	1998	1999–2003	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 28%	800	800	800	.....	.....	.....	2400
Taxed at 25%	.....	.....	.....	600	.....	.....	600
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 3. Effect of section 1231(c) recapture. This example illustrates the rule of paragraph (a) of this section when there are non-recaptured net section 1231 losses, as defined in section 1231(c)(2), from prior years as follows:

(i) The facts are the same as in *Example 1*, except that in 1999 A has non-recaptured net section 1231 losses from the previous four years of $1000.

(ii) As illustrated in the table in paragraph (iv) of this *Example 3*, in 1999, all of A's $800 installment gain is recaptured as ordinary income under section 1231(c). Under the rule described in paragraph (a) of this section, for purposes of determining the amount of unrecaptured section 1250 gain remaining to be taken into account, the $800 recaptured as ordinary income under section 1231(c) is treated as reducing unrecaptured section 1250 gain, rather than adjusted net capital gain. Therefore, A has $2200 of unrecaptured section 1250 gain remaining to be taken into account.

(iii) In the year 2000, A's installment gain is taxed at two rates. First, $200 is recaptured as ordinary income under section 1231(c). Second, the remaining $600 of gain on A's year 2000 installment payment is taxed at 25 percent. Because the full $800 of gain reduces unrecaptured section 1250 gain, A has $1400 of unrecaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2001 is taxed at 25 percent. Of the $800 of gain on the fourth payment, received in 2002, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1999	2000	2001	2002	2003	2004–2008	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at ordinary rates under section 1231(c)	800	200	.....	.....	.....	.....	1000
Taxed at 25%	.....	600	800	600	.....	.....	2000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining non-recaptured net section 1231 losses	200	.....	.....	.....	.....	.....	.....
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 4. Effect of a net section 1231 loss. This example illustrates the application of paragraph (a) of this section when there is a net section 1231 loss as follows:

(i) The facts are the same as in *Example 1* except that A has section 1231 losses of $1000 in 1999.

(ii) In 1999, A's section 1231 installment gain of $800 does not exceed A's section 1231 losses of $1000. Therefore, A has a net section 1231 loss of $200. As a result, under section 1231(a) all of A's section 1231 gains and losses are treated as ordinary gains and losses. As illustrated in the following table, A's entire $800 of installment gain is ordinary gain. Under the rule described in paragraph (a) of this section, for purposes of determining the amount of unrecaptured section 1250 gain remaining to be taken into account, A's $800 of ordinary section 1231 installment gain in 1999 is treated as reducing unrecaptured section 1250 gain. Therefore, A has $2200 of unrecaptured section 1250 gain remaining to be taken into account.

(iii) In the year 2000, A has $800 of section 1231 installment gain, resulting in a net section 1231 gain of $800. A also has $200 of non-recaptured net section 1231 losses. The $800 gain is taxed at two rates. First, $200 is taxed at ordinary rates under section 1231(c), recapturing the $200 net section 1231 loss sustained in 1999. Second, the remaining $600 of gain on A's year 2000 installment payment is taxed at 25 percent. As in *Example 3*, the $200 of section 1231(c) gain is treated as reducing unrecaptured section 1250 gain, rather than adjusted net capital gain. Therefore, A has $1400 of unrecaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2001 is taxed at 25 percent, reducing the remaining unrecaptured section 1250 gain to $600. Of the $800 of gain on the fourth payment, received in 2002, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1999	2000	2001	2002	2003	2004–2008	Total gain
Installment gain	800	800	800	800	800	4000	8000
Ordinary gain under section 1231(a)	800	.....	.....	.....	.....	.....	800
Taxed at ordinary rates under section 1231(c)	.....	200	.....	.....	.....	.....	200
Taxed at 25%	.....	600	800	600	.....	.....	2000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Net section 1231 loss	200	.....	.....	.....	.....	.....	.....
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

(e) *Effective date.* This section applies to installment payments properly taken into account after August 23, 1999.

John M. Dorymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: August 9, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–21755 Filed 8–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340–21]

Privacy Act; Implementation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending an existing exemption rule for a Privacy Act system of records. The Army is providing reasons from which information maintained within this system of records may be exempt. These reasons were administratively omitted last publication.

EFFECTIVE DATE: August 23, 1999.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 220605576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 8064390 or DSN 6564390.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 505

Privacy.

1.The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93579, 88 Stat. 1896 (5 U.S.C. 552a).

2.Section 505.5, is amended by revising paragraph (e)(13) as follows:

§505.5Exemptions.

* * * * *

(e) * * *

(13)*System identifier:* A0190-47 DAMO.

(i)*System name:* Correctional Reporting System (CRS).

(ii)*Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. All portions of this system of records which fall within the scope of 5 U.S.C. 552a(j)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army'sPrivacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis necessary for effective law enforcement.

(iii) *Authority:* 5 U.S.C. 552a(j)(2).

(iv) *Reasons:* (A) From subsection (c)(3) because the release of the disclosure accounting, or disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(E) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j)(2) of the Privacy Act of 1974.

(F) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e) (5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(H) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(I) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(J) From subsection (g) because this system of records compiled for lawenforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

* * * * *

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21739 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–99–041]

RIN 2115–AA97

Safety Zone: Virginia Beach Weekly Fireworks Display, Rudee Inlet, Virginia Beach, Virginia, and Atlantic Ocean, Coastal Waters, Between 17th and 20th Street, Virginia Beach, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around a fireworks-laden vessel being used for the Virginia Beach Weekly Fireworks Display, to be held on the waters of the Atlantic Ocean, approximately 1,000 yards off Virginia Beach, Virginia, between 17th and 20th Streets. This zone is intended to restrict vessel traffic around the fireworks-laden vessel during its transit to the launch site and during the fireworks display. It is necessary to protect mariners and spectators from the hazards associated with both transporting fireworks and the fireworks display.

EFFECTIVE DATE: This regulation is effective 8 p.m. on June 1, 1999, until 11 p.m. on September 5, 1999.

FOR FURTHER INFORMATION CONTACT: Lieutenant Karrie Trebbe, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

SUPPLEMENTARY INFORMATION: Notice of Proposed Rule Making (NPRM) was published for this temporary final rule. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 533(d)(3), the Coast Guard also finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received this request for a temporary safety zone on May 21, 1999. Delaying the effective date of the rule would be contrary to the public interest, as immediate action is necessary to protect the vessels and spectators from the hazards associated with both transporting fireworks and the fireworks display.

Discussion of the Temporary Final Rule

The Coast Guard is establishing a temporary safety zone around a fireworks-laden vessel being used for the Virginia Beach Weekly Fireworks Display, to be held on the waters of the Atlantic Ocean, approximately 1,000 yards off Virginia Beach, Virginia, between 17th and 20th Streets. This action is intended to restrict vessel traffic around the fireworks-laden vessel during its transit through Rudee Inlet, Virginia Beach, Virginia; during its transit from Rudee Inlet to the fireworks launch site; and during the fireworks display. The safety zone is necessary to protect mariners and spectators from the hazards associated with both transporting fireworks and the fireworks display.

The Virginia Beach Weekly Fireworks Display will be held each Sunday evening starting on May 30, 1999, and ending on September 5, 1999. The safety zone will be enforced only on those Sundays, between 8 p.m. and 11 p.m. Entry into this safety zone is prohibited unless authorized by the Captain of the Port Hampton Roads or his designated representative. Public notifications will be made before the event by local notices to mariners and marine-information broadcasts.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This rule affects only a limited area for 3 hours, once a week, and affects only the waters within a 150-foot radius of the fireworks-laden vessel as it transits to the launch site and the waters within a 1,000-foot radius of the launch site. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule affects only a limited area for 3 hours, once a week, and affects only the waters within a 150-foot radius of the fireworks-laden vessel as it transits to the launch site and the waters within a 1,000-foot radius of the launch site. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has analyzed this temporary final rule and concluded that, under figure 2–1, paragraph (34)(g) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Rules establishing safety zones are excluded under that authority.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T05–041 is added to read as follows:

§ 165.T05–041 Safety Zone: Virginia Beach Weekly Fireworks Display, Rudee Inlet, Virginia Beach, Virginia, and Atlantic Ocean, Coastal Waters, between 17th and 20th Street Virginia Beach, Virginia.

(a) *Location.* The following area is a safety zone: All waters within a 150-foot radius of a fireworks-laden vessel as it transits through Rudee Inlet and from Rudee Inlet to the fireworks launch site about 1,000 yards off the coast of Virginia Beach, Virginia, between 17th and 20th streets, and all waters within a 1,000-foot radius of the fireworks launch site.

(b) *Effective date.* This section is effective from 8 p.m. on June 1, 1999 until 11 p.m. on September 5, 1999. It will be enforced only on Sunday starting on June 1, 1999, and ending on September 5, 1999, between 8 p.m. and 11 p.m.

(c) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA, or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.501, entry into this safety zone is prohibited unless authorized by the Captain of the Port of his designated representative.

(2) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port or his designated representative. The vessels enforcing the safety zone are available on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port or his representative is available at (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: June 1, 1999.

J.E. Schrinner,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 99–21767 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–99–141]

RIN 2115–AA97

Safety Zone: Chelsea Street Bridge Fender System Repair, Chelsea River, Chelsea, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Chelsea Street Bridge fender system repairs on the Chelsea River. The safety zone temporarily closes all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge. The safety zone is needed to protect vessels from the hazards posed during repairs to the bridge fender system.

DATES: This rule is effective between the hours of 9:00 p.m. and 5:00 a.m., Monday through Friday, from August 4, 1999 through August 31, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Marine Safety Office, Boston, 455 Commercial Street, Boston, Massachusetts, 02109, between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–3000.

FOR FURTHER INFORMATION CONTACT: ENS Rebecca Montleon, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Details of the repairs to the bridge fender system were not provided to the Coast Guard until July 22, 1999, making it impossible to publish a NPRM or a final rule 30 days in advance with sufficient time for public comment. Any delay encountered in this regulation's effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with bridge construction activities upon a navigable waterway.

Background and Purpose

The Chelsea Street Bridge over the Chelsea River, Chelseas, MA, fender system is in need of repairs. During the repairs, barges will be moored in the center of the channel under the bridge, and pilings will be removed and/or replaced. The placement of the barge will require the closure of the waterway for the safety of vessels during the repairs to the bridge fender system. Therefore, a safety zone is necessary to allow the safe removal of pilings, repairs to the fender system, and to protect vessel traffic.

This regulation establishes a safety zone in all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge. This safety zone prevents entry into or movement within this portion of the Chelsea River. The expected duration of the safety zone will be between the hours of 9:00 p.m. and 5:00 a.m., Monday through Friday from August 4, 1999 until August 31, 1999. The Coast Guard will make Marine Safety Information Broadcasts informing mariners of this safety zone.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited recreational and commercial traffic expected in the area, and the fact that commercial operators have received advance notification of the project and can make alternate arrangements.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit

organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–141 to read as follows:

§ 165.T01–141 Safety Zone: Chelsea Street Bridge fender system repair, Chelsea River, Chelsea, MA.

(a) *Location.* The following area is a safety zone: All waters of the Chelsea River 100 yards upstream and 100 yards downstream for the centerline of the Chelsea Street Bridge.

(b) *Effective date.* This section is effective between the hours of 9:00 p.m. and 5:00 a.m., Monday through Friday, from August 4, 1999 through August 31, 1999.

(c) *Regulations.* (1) Entry into or movement within this zone is prohibited unless authorized by the COTP Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 apply.

Dated: August 4, 1999.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–21789 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA118–4080a; FRL–6428–1]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Pennsylvania; Large Municipal Waste Combustors (MWCs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is granting conditional approval of the Commonwealth of Pennsylvania's municipal waste combustor (MWC) 111(d)/129 plan submitted by the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, on April 27, 1998, and as amended on September 8, 1998. This action is a conditional approval because the submitted plan does not contain an expeditious compliance schedule for the supplemental MWC emissions guidelines (EG) limits promulgated on August 25, 1997. The plan was submitted to fulfill requirements of the Clean Air Act (CAA), and the EG that are applicable to existing MWC facilities with an individual unit combustor capacity greater than 250 tons per day (TPD) of municipal solid waste. An existing MWC unit is one for which construction commenced on or before September 20, 1994.

DATES: This final rule is effective October 22, 1999 unless, on or before September 22, 1999, adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above EPA address and by contacting Krishnan Ramamurthy at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania 17105–8468.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov. While information may be obtained via e-mail, any comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111(d) of the CAA requires that "designated" pollutants controlled under standards of performance for new stationary sources by Section 111(b) of the CAA must also be controlled at existing sources in the same source category. Also, Section 129 of the CAA specifically addresses solid waste combustion. It requires EPA to establish emission guidelines (EG) for MWC units and requires states to develop state plans for implementing the promulgated EG. The Part 60, Subpart Cb, EG for MWC units differ from other EG adopted in the past because the rule addresses both Sections 111(d) and 129 CAA requirements. Section 129 requirements override certain related aspects of Section 111(d).

On December 19, 1995, pursuant to Sections 111 and 129 of the CAA, EPA promulgated new source performance standards (NSPS) applicable to new MWCs (i.e., those for which construction was commenced after September 20, 1994) and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR Part 60, Subparts Eb and Cb, respectively. *See* 60 FR 65387 and 65415. Subparts Eb and Cb regulate MWC emissions. Emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases,

(hydrogen chloride, sulphur dioxide, and nitrogen oxides).

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated Subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day (TPD) of municipal solid waste (MSW), consistent with their opinion in *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, Subparts Cb and Eb were amended to apply only to MWC units with the capacity to combust more than 250 TPD of MSW per unit (i.e., large MWC units). Also, the amended EG made minor revisions to the emissions limitations for four pollutants—hydrogen chloride, sulfur dioxide, oxides of nitrogen, and lead. The amended requirements of the NSPS and EG were published in the **Federal Register** on August 25, 1997. *See* 62 FR 45119 and 45124 for the EG amendments.

Section 129(b)(2) of the CAA requires States to submit to EPA for approval state plans that implement and enforce the EG. State Plans must be "at least as protective" as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR Part 60, Subpart B. EPA originally promulgated the Subpart B provisions on November 17, 1975. However, EPA amended Subpart B on December 19, 1995, to allow the source specific subparts developed under Section 129 to include requirements that supersede the general provisions in Subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

As required by Section 129(b)(3) of the CAA, on November 12, 1998 EPA promulgated a Federal Implementation Plan (FIP) for large MWCs that commenced construction on or before September 20, 1994. The FIP is a set of emissions limits, compliance schedules, and other requirements that implement the MWC EG, as amended. The FIP is applicable to those large existing MWCs not specifically covered by an approved State plan under Sections 111(d) and 129 of the CAA. Also, it fills a Federal enforceability gap until State plans are approved and ensures that the MWC units stay on track to complete pollution control equipment retrofit schedules to meet the final statutory compliance date of December 19, 2000. However, the FIP no longer applies once a State plan is approved. Unlike a FIP for sources regulated under Sections 110 or 172, the Section 111(d)/129 FIP imposes no statutory or other sanctions because of deficient or unapproved state plans. An approved State plan is a State plan that EPA has reviewed and approved based on the requirements of 40 CFR Part 60, Subpart B to implement and enforce 40 CFR Part 60, Subpart Cb. *See* 63 FR 63192.

As noted above, emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases, (hydrogen chloride, sulphur dioxide, and nitrogen oxides). These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead and mercury can bioaccumulate in the environment. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings. In addition, nitrogen oxides emissions can contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

II. Review of the Commonwealth of Pennsylvania's MWC 111(d)/129 Plan

EPA has reviewed the Commonwealth of Pennsylvania's (the "Commonwealth") 111(d)/129 plan for existing large MWC units in the context of the requirements of 40 CFR Part 60, and Subparts B and Cb, as amended. A summary of that review is provided below.

A. Identification of Enforceable State Mechanism for Implementing the EG

The regulation at 40 CFR 60.24(a) requires that the Section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as "a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions." EPA interprets the term "regulation" in 60.21(f) to include, in addition to a uniform state requirement or state rule, other mechanisms that are legally enforceable under state law. These other mechanisms could include, for example, an administrative order, a compliance order, or a state operating permit. A state may select these other enforceable mechanisms provided that the state demonstrates that it has the underlying authority and demonstrates that the selected mechanism is state enforceable. Additional guidance on this matter is found in EPA's "Municipal Waste Combustion: Summary of the Requirements for Section 111(d)/129 Plans for Implementing the Municipal Waste Combustor Emission Guidelines (EPA–456R–96–003, July 1996). On December 27, 1997, the Pennsylvania Department of Enyironmental Protection (PADEP) adopted and incorporated by reference (27 Pa. B. 6809) the federal EG for MWCs. Subsequently, on April 27, 1998 the PADEP submitted to EPA its MWC 111(d)/129 plan. At the time of submittal, the PADEP recognized that the plan did not contain the required legally enforceable mechanism and compliance dates to implement the adopted EG and related plan. On September 8, 1998, the PADEP submitted five (5) MWC federally enforceable state operating permits (FESOPs) and one (1) MWC plan approval (i.e., construction permit) to serve as the legally enforceable mechanisms for implementating its 111(d)/129 plan. Under the terms and conditions of the submitted permits, the applicable EG requirements (Subpart Cb) are nonexpiring and continue in full force and effect until modified by the PADEP as a 111(d)/129 plan revision. The PADEP has met the requirements of 40 CFR 60.24(a) to have legally enforceable emission standards.

B. Demonstration of Legal Authority

Title CFR 60.26 requires the 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. As noted above, a state may select the use of an enforceable mechanism, other than a regulation, to implement the plan, providing the state demonstrates its legal authority to enforce the mechanism. The 111(d)/129 plan submitted by PADEP includes a legal opinion that the PADEP has sufficient statutory and regulatory authority under its plan approval (under Pennsylvania regulations a plan approval is a permit to construct) and state operating permit programs to implement applicable requirements adopted under Sections 111(d) and 129 of the CAA. A copy of the Commonwealth's Air Pollution Control Act (35 P.S. 4001 et. seq.) and the applicable regulations in 25 Pa. Code Article III (relating to air resources) for the issuance of plan approvals, State operating permits, and Title V permits were also submitted with the 111(d)/129 plan. The PADEP has demonstrated that it has the legal authority to adopt and implement the emission standards and compliance schedules governing MWC emissions. This meets the requirements of 40 CFR 60.26.

C. Inventory of MWCs in Pennsylvania Affected by the EG

Title 40 CFR 60.25(a) requires the 111(d) plan to include a complete source inventory of all existing large

MWCs (i.e., unit capacity greater than 250 TPD). The PADEP has identified six (6) facilities with individual MWC units having combustion capacities greater than 250 TPD. The Commonwealth of Pennsylvania inventory of existing large MWC units identifies the following MWC plants: (1) American Ref-Fuel of Delaware Valley, LP (formerly Delaware County Resource Recovery Facility); (2) the Harrisburg Materials, Energy, Recycling and Recovery Facility; (3) Lancaster County Solid Waste Management Authority; (4) Montenay Montgomery Limited Partnership; (5) Wheelabrator Falls, Inc., Bucks County; and (6) York County Resource Recovery Center.

D. Inventory of Emissions From MWCs in Pennsylvania

Title 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG. Emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). For each MWC plant, the PADEP plan contains information on estimated MWC emission rates in terms of concentrations and mass emissions rates. The emissions rates data were obtained from source stack tests, continuous emission monitors, and utilization of EPA estimating procedures (AP–42). This meets the emission inventory requirements of 40 CFR 60.25(a).

E. Emission Limitations for MWCs

Title 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG, except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met. However, this exception clause is superseded by Section 129(b)(2) of the CAA which requires that state plans be "at least as protective" as the EG. Title 40 CFR 60.33b of the EG contain the emissions limitation applicable to existing large MWCs. The FESOPs and plan approval submitted by PADEP reference applicable emissions limitations that are consistent and "at least as protective" as those in the EG, as amended.

F. Compliance Schedules

A state Section 111(d) plan must include a compliance schedule that owners and operators of affected MWCs must meet in complying with the requirements of the plan. Any proposed revision to a compliance schedule is subject to the requirements of Subpart B, 60.28, Plan revisions by the State. Title 40 CFR 60.39b of the EG provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG requirements must be accomplished within 3 years of EPA plan approval, but in no case later than December 19, 2000. As a result of the *Davis County* litigation, noted above, compliance with supplemental EG emissions limits for lead, sulfur dioxide, hydrogen chloride, and nitrogen oxides could extend until August 26, 2002, or 3 years after EPA approval of the 111(d)/129 plan, whichever is earlier. However, Section 129(f)(2) of the CAA states that requirements promulgated pursuant to Sections 111 and 129 must be effective "as expeditiously as practicable after approval of a State plan."

The PADEP submittal requires compliance with the original 1995 EG emissions limits no later than December 19, 2000. However, PADEP's submittal requires compliance with the 1997 EG supplemental emissions limits later than August 26, 2002, or 3 years after EPA approval of the 111(d)/129 plan, whichever is earlier. In accordance with Section 129(f)(2) and the FIP promulgated for MWCs and its background information document, EPA has determined that the final compliance dates for the supplemental emissions limits, stipulated in the 111(d)/129 plan FESOPs and plan approval submitted by PADEP are not expeditious. *See* 63 FR 63196. The exception is the Harrisburg MWC facility permit which requires the permittee to cease operation no later than December 19, 2000. The same types of air pollution control technology serve as the basis for both the 1995 EG limits and the 1997 EG amended (supplemental) limits. That technology consists of spray dryer/fabric filter or electrostatic precipitator (ESP), carbon injection, and selective non-catalytic reduction (SNCR) for non-refractory combustor types. The plan submitted by PADEP contains no economic, technical, or other rationale to justify a compliance date extension until August 26, 2002 for the supplemental emissions limits.

Title 40 CFR 60.24(e)(1) provides that any compliance schedule, extending more than 12 months from the date required for plan submittal, shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/ installation of emission control equipment, and final compliance. In addition, 40 CFR 60.39b requires that all large MWCs for which construction was commenced after June 26, 1987 must meet the mercury and dioxins/furans emissions limitations within one year following issuance of a revised construction or operating permit, if a permit modification is required, or within one year following EPA approval of the State plan, whichever is later. The MWC FESOPs and plan approval establish interim and final compliance schedules, as required by 40 CFR 60.24(e)(1), and 60.39b. However, as noted above, Section 129(f)(2) of the CAA stipulates that requirements promulgated pursuant to Sections 111 and 129 must be effective "as expeditiously as practicable after approval of a State plan."

Therefore, EPA is approving the FESOPs and plan approval interim and final compliance schedules submitted by PADEP for the original 1995 EG emissions limits, but is not approving PADEP's final compliance schedule (August 26, 2002, or 3 years after EPA approval of the state plan, whichever is earlier) for the 1997 supplemental emissions limits submitted by PADEP. *See* 62 FR 45116. EPA is granting conditional approval of the 111(d)/129 plan submitted on August 27, 1998 and as amended September 8, 1998 for MWCs. EPA will fully approve the final compliance schedule for the supplemental emissions limits after the PADEP submits amended FESOPs, or some other appropriate State enforceable mechanism, to require final compliance of the 1997 supplemental emission limits by no later than December 19, 2000. In the interim, the December 19, 2000 compliance date provisions for meeting the 1997 supplemental emission limits, imposed in the FIP promulgated on November 12, 1998, shall continue to apply to the sources in Pennsylvania.

H. Testing, Monitoring, Record Keeping, and Reporting Requirements

The EG at 40 CFR 60.38b and 60.39b cross reference applicable NSPS requirements (Subpart Eb) for MWCs relating to performance testing, monitoring, reporting and recordkeeping requirements that state plans must include. The FESOPs and plan approval submitted by PADEP meet the requirements of 40 CFR 60.38b and 60.39b.

I. A Record of Public Hearing on the State Plan

Public hearings were held in Conshohocken and Harrisburg, PA on January 7 and 8, 1998, respectively. Notices for both hearings were published in the *PA Register* and two newspapers on December 6, 1997, and one newspaper on December 7, 1997, more than 30 days prior to the respective public hearing dates. The State plan includes the records from both of the noted public hearings. The PADEP certified on April 27, 1998 that the 40 CFR 60.23 public hearing requirements were met. The state provided evidence of complying with EPA public notice and other hearing requirements, including a record of public comments received. The 40 CFR 60.23 requirement for a public hearing on the 111(d)/129 plan has been met by the PADEP.

J. Provision for Annual State Progress Reports to EPA

The PADEP will submit to EPA on an annual basis a report which details the progress in the enforcement of the MWC 111(d)/129 plan in accordance with 40 CFR 60.25. The first progress report will be submitted to EPA one year after the approval of Commonwealth's MWC 111(d)/129 plan by EPA.

III. Final Action

Based upon the rationale discussed above and in further detail in the technical support document (TSD) associated with this action, EPA is conditionally approving the Commonwealth of Pennsylvania's MWC 111(d)/129 plan for the control of MWC emissions from affected facilities. With the explicit exception of the compliance schedule and date for meeting the 1997 supplemental emissions limits, the provisions of the FIP promulgated on November 12, 1998 no longer apply to affected facilities in the Commonwealth. The provisions of the November 12, 1998 FIP for MWCs promulgated on November 12, 1998 regarding the compliance schedule and date for meeting the 1997 supplemental emissions limits continue to apply to affected facilities in the Commonwealth. EPA's approval of the Commonwealth's 111(d)/129 plan is conditioned upon the submittal of a 111(d)/129 plan revision that contains an enforceable mechanism(s) that requires affected facilities to be in full compliance with all supplemental emissions limits (lead, sulfur dioxide, hydrogen chloride, and nitrogen oxides) no later than December 19, 2000. That submittal must be made by the Commonwealth to EPA by no later than August 22, 2000. If Pennsylvania fails to meet the condition by the due date indicated above, EPA will notify the PADEP by letter that the condition of this plan approval has not been met, that the conditional approval of its 111(d)/129 plan for MWCs has converted to a disapproval, and that the entire FIP for MWCs promulgated on November 12, 1998 (63 FR 63191) has been reinstated in the Commonwealth. Subsequently, a notice will be published in the **Federal Register** announcing that the Commonwealth's MWC 111(d)/129 whole plan has been disapproved and the entire FIP promulgated on November 12, 1998 will be reinstated. Upon fulfillment of the condition by the due date specified, EPA's conditional approval shall be converted to a full approval and the provisions of the FIP for MWCs promulgated on November 12, 1998 (63 FR 63191) relating to the compliance schedule for supplemental emissions limits shall no longer apply in the Commonwealth.

The 1995 original and 1997 supplemental emissions limitations and compliance schedule requirements are not applicable to the Harrisburg MWC facility provided it ceases operation no later than December 19, 2000, as stipulated under the terms and conditions of its FESOP, and remains shut down.

The submitted FESOPs and plan approval include PADEP new source review and other requirements that are outside the scope of the 111(d)/129 plan requirements. EPA is taking no action on those PADEP requirements that are outside the scope of the EG and 111(d)/129 plan requirements. As provided by 40 CFR 60.28(c), any revisions to the Commonwealth's MWC 111(d)/129 plan or associated regulations, FESOPs, and plan approval will not be considered part of the applicable plan until submitted by the PADEP in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR Part 60, Subpart B, requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective October 22, 1999 without further notice unless the Agency receives relevant adverse comments by September 22, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect, and that the MWC FIP requirements remain in effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 22, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health

or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Pursuant to Section 605(b) of the RFA, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under Federal, State, or Local law and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirement.

Dated: August 11, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR Part 62, Subpart NN, is amended as follows:

Part 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart NN—Pennsylvania

2. A new center heading and §§ 62.9640, 62.9641, and 62.9642 are added to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With a Unit Capacity Greater Than 250 Tons per Day

§ 62.9640 Identification of plan.

The 111(d)/129 plan for municipal waste combustors (MWC) with a unit capacity greater than 250 tons per day (TPD) and the associated Pennsylvania Department of Environmental Protection five (5) MWC federally enforceable state operating permits (FESOPs) and one (1) MWC plan approval (i.e., construction permit) that were submitted to EPA on April 27, 1998 and as amended on September 8, 1998. The 111(d)/129 plan is conditionally approved pending receipt, within one year of EPA plan approval, of an enforceable mechanism that requires affected facilities to be in compliance no later than December 19, 2000, with the 1997 MWC emissions

guidelines' supplemental emissions limits.

§ 62.9641 Identification of sources.

The plan applies to all existing MWC facilities with a MWC unit capacity greater than 250 TPD of municipal solid waste.

§ 62.9642 Effective date.

The effective date of the 111(d)/129 plan is October 22, 1999.

[FR Doc. 99–21658 Filed 8–20–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300907; FRL–6096–3]

RIN 2070–AB78

Buprofezin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the insecticide buprofezin and its metabolites in or on tomatoes at 0.7 part per million (ppm) and tomato paste at 1.0 ppm for an additional 2-year period, and citrus fruit at 2.0 ppm; dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm; and cattle, sheep, hogs, goats, and horse meat and fat at 0.02 ppm; and meat byproducts at 0.5 ppm for an additional 29-month period. These tolerances will expire and are revoked on December 31, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on tomatoes, citrus, and cotton. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective August 23, 1999. Objections and requests for hearings must be received by EPA, on or before October 22, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300907], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300907], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300907]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of August 5, 1998 (63 FR 41720)(FRL–6018–5), which announced that on its own initiative under section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of buprofezin and its metabolites in or on tomatoes at 0.7 ppm and tomato paste at 1.0 ppm, with an expiration date of December 31, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA issued a final rule, published in the **Federal Register** of July 30, 1997 (63 FR 40735)(FRL–5732–1), which announced that on its own initiative under section 408(1)(6), as amended by FQPA (Public Law 104–170) it established time-limited tolerances for the residues of buprofezin and its metabolites in or on citrus fruit at 2.0 ppm; dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm; and cattle, sheep, hogs, goats, and horse meat and fat at 0.02 ppm; and meat byproducts at 0.5 ppm; with an expiration date of July 31, 1998. EPA subsequently published a final rule in the **Federal Register** of June 19, 1998 (63 FR 33583) (FRL–5794–7), extending these tolerances to expire on July 31, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use o. buprofezin on tomatoes for this year's growing season due to the continuation of the emergency condition with silverleaf whiteflies. Silverleaf whitefly is a key pest on tomatoes from the seedling stage through harvest in Florida year-round in all production regions. High populations feeding on plants cause irregular ripening, reducing fruit value. Whiteflies may also transmit tomato mottle geminivirus (TMV) and tomato yellow leaf curl virus (TYLCV) during feeding. TYLCV was discovered in tomatoes in Florida in the summer of 1997 and is, therefore, a new pest-related problem. Because whitefly is such a good vector of the virus and the virus is so prevalent, only minimal infestations of whitefly are required to transmit TYLCV to tomato plants. After having reviewed the submission, EPA concurs that emergency conditions

exist. EPA has authorized under FIFRA section 18 the use of buprofezin on tomatoes for control of silverleaf whiteflies in Florida.

EPA received a request to extend the use of buprofezin on citrus for this year's growing season to control red scale, which has developed resistance to available controls in some areas of California, and has caused significant losses for affected growers; this situation remains unchanged from that of last year. EPA also received requests from California and Arizona to extend the use of buprofezin on cotton for this year's growing season since the situation has remained the same as last year; a recently-introduced new strain or species of whitefly has caused significant losses to cotton growers and has demonstrated resistance to available controls. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of buprofezin on citrus for control of red scale and on cotton for control of whiteflies.

EPA assessed the potential risks presented by residues of buprofezin in or on tomatoes, citrus and cotton. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rules of July 30, 1997 (62 FR 40735) and August 5, 1998 (63 FR 41720). Based on the data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances on tomatoes and tomato paste are extended for an additional 2-year period and the tolerances for citrus fruit, dried citrus pulp, cotton seed, cotton gin byproducts, milk, and cattle, sheep, hogs, goats, and horse meat, fat, and meat byproducts are extended for an additional 29-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on tomatoes, tomato paste, citrus fruit, dried citrus pulp, cotton seed, cotton gin byproducts, milk, and cattle, sheep, hogs, goats, and horse meat, fat, and meat byproducts after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 22, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300907] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov .

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically

into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321q, 346a and 371.

2. In § 180.511, by revising the table in paragraph (b) to read as follows:

§ 180.511 Buprofezin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.02	12/31/01
Cattle, MBYP	0.5	12/31/01
Cattle, meat	0.02	12/31/01
Citrus fruit	2.0	12/31/01
Citrus, pulp, dried	10	12/31/01
Cotton seed	1.0	12/31/01
Cotton, gin byproducts	20	12/31/01
Curcurbits	0.5	12/31/99
Goats, fat	0.02	12/31/01
Goats, MBYP	0.5	12/31/01
Goats, meat	0.02	12/31/01
Hogs, fat	0.02	12/31/01
Hogs, MBYP	0.5	12/31/01

Commodity	Parts per million	Expiration/ Revocation Date
Hogs, meat	0.02	12/31/01
Horses, fat	0.02	12/31/01
Horses, MBYP	0.5	12/31/01
Horses, meat	0.02	12/31/01
Milk	0.03	12/31/01
Sheep, fat	0.02	12/31/01
Sheep, MBYP	0.5	12/31/01
Sheep, meat	0.02	12/31/01
Tomatoes	0.7	12/31/01
Tomato paste	1.0	12/31/01

* * * * *

[FR Doc. 99–21830 Filed 8–20–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300912; FRL–6097–6]

RIN 2070–AB78

Carfentrazone-ethyl; Extension of Tolerances for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for combined residues of the herbicide carfentrazone-ethyl and its metabolites in or on rice, grain at 0.1 part per million (ppm) and rice, straw at 1.0 ppm for an additional 14–month period. These tolerances will expire and are revoked on December 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on rice. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective August 23, 1999. Objections and requests for hearings must be received by EPA, on or before October 22, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300912], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300912], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300912]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of November 25, 1998 (63 FR 65073) (FRL–6040–7), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) established time-limited tolerances for the combined residues of carfentrazone-ethyl and its metabolites in or on rice, grain at 0.1 ppm and rice, straw at 1.0 ppm, with an expiration date of December 31, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of carfentrazone-ethyl on rice for this year's growing season due to the continued non-routine situation facing California rice growers; the ineffectiveness of registered alternatives at controlling California arrowhead and ricefield bulrush, combined with observed resistance in the weed population to the preferred registered herbicide, bensulfuron-methyl, has created a situation in which growers are likely to suffer significant economic losses without the requested use of carfentrazone-ethyl. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of carfentrazone-ethyl on rice for control of California arrowhead and ricefield bulrush in rice.

EPA assessed the potential risks presented by residues of carfentrazone-ethyl in or on rice. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of November 25, 1998 (63 FR 65073). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 14–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on rice grain and rice straw after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 22, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300912] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of

affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.515 [Amended]

2. In § 180.515, by amending the table in paragraph (b) by revising the date "10/31/99" to read "12/31/00".

[FR Doc. 99–21833 Filed 8–20–99; 8:45 am]
BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 303–70

[FTR Amendment 86]

RIN 3090–AH04

Federal Travel Regulation; Agency Requirements for Payment of Expenses Connected With the Death of Certain Employees

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) provisions pertaining to payment by the Government of expenses connected with the death of certain employees while performing official Government travel, and for transportation of the remains of a member of the employee's immediate family who dies while residing with the employee outside the continental United States (CONUS) or in transit thereto or therefrom. This amendment implements the authority provided in 5 U.S.C. 5742 to pay certain expenses in connection with escort of remains of certain employees. It also amends a CFR section heading to clarify that the regulation applies when a member of an employee's immediate family is in transit from as well as to the employee's duty station outside CONUS.

DATES: This final rule is effective August 23, 1999, and applies to payment of expenses in connection with the escort of remains of certain employees on or after August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra Batton, Travel and Transportation Management Policy Division, at (202) 501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

Public Law 105–277, October 21, 1998, amended 5 U.S.C. 5742 to allow for payment of travel expenses as follows:

> the travel expenses of not more than 2 persons to escort the remains of a deceased employee, if death occurred while the employee was in travel status away from his official station in the United States or while performing official duties outside the United States or in transit thereto or therefrom, from the place of death to the home or official station of such person, or such other place appropriate for interment as is determined by the head of the agency concerned.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 303–70

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 303–70 is amended as follows:

PART 303–70—AGENCY REQUIREMENTS FOR PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES

1. The authority citation for part 303–70 continues to read as follows:

Authority: 5 U.S.C. 5721–5738; 5741–5742; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

2. Section 303–70.100 is revised to read as follows:

§ 303–70.100 May we pay the travel expenses for an escort for the remains of a deceased employee?

Yes, in accordance with §§ 303–70.600 through 303–70.602.

3. Section 303–70.403 is amended by revising the section heading to read as follows:

§ 303–70.403 When a family member, residing with the employee, dies while in transit to or from the employee's duty station outside CONUS, must we furnish mortuary services and/or transportation of the remains?

* * * * *

4. Part 303–70 is amended by adding Subpart G to read as follows:

Subpart G—Escort of Remains

Sec.

303–70.600 How many persons may we authorize travel expenses for to escort the remains of a deceased employee?
303–70.601 Under what circumstances may we authorize the escort of remains?
303–70.602 What travel expenses may we authorize for the escort of remains?

Subpart G—Escort of Remains

§ 303–70.600 How many persons may we authorize travel expenses for to escort the remains of a deceased employee?

Travel expenses may be authorized for no more than two persons.

§ 303–70.601 Under what circumstances may we authorize the escort of remains?

Escort of remains may be authorized when the employee's death occurs:

(a) While in a travel status away from his/her official station in the United States; or

(b) While performing official duties outside the United States or in transit thereto or therefrom.

§ 303–70.602 What travel expenses may we authorize for the escort of remains?

You may authorize any travel expenses in accordance with chapter 301 of this title that are necessary for the escort of remains to:

(a) The home or official station of the deceased; or

(b) Any other place appropriate for interment as determined by the head of your agency.

Dated: July 8, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–21811 Filed 8–20–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 101

[FCC 99–179—ET Docket No. 95–183]

37.0–38.6 GHz and 38.6–40.0 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Commission concludes that licensing the 39 GHz band by Economic Areas (EAs), rather than Basic Trading Areas (BTAs), will provide ample population coverage and allow licensees the flexibility to provide many different types of services. This action was taken upon the Commission's own motion after consideration of Rand McNally's copyright interest in BTAs and the possible delays that this might cause to the 39 GHz licensing process. The Commission also concludes that it is in the public interest to allow licensees to partition along any licensee-defined service area. This action was taken in response to a petition for reconsideration of the Commission's earlier action in this proceeding allowing partitioning according to county boundaries or geo-political subdivisions. Finally, the Commission decides to exempt 39 GHz licensees from a build-out requirement of mandatory operation with 18 months from the initial date of grant. This action was taken because there is a new performance requirement of a substantial service showing for 39 GHz licensees. These amended rules will provide 39 GHz licensees with more flexibility in the use of their licenses.

DATES: Effective October 22, 1999. Written comments by the public on the proposed information collection are due October 22, 1999. Written comments must be submitted to the Office of Management and Budget on the proposed information collection on or before October 22, 1999.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Room 4–C207, Washington, DC 20554. A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1–C804, Washington, DC 20554 or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 Seventeenth Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Burton, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, (202) 418–0680. *TTY:* (202) 418–7233. For further information concerning the information collection contained in the *Memorandum Opinion and Order,* contact Judy Boley at (202) 418–0215 or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order (MO&O),* ET Docket No. 95–183, FCC 99–179, adopted July 14, 1999, and released on July 29, 1999. This *Memorandum Opinion and Order* reaffirms the Commission's decision to dismiss, without prejudice, the following applications: (1) all pending mutually exclusive 39 GHz applications where mutual exclusivity was not resolved by December 15, 1995; (2) all major modification applications and amendments filed on or after November 13, 1995; and (3) all amendments to resolve mutual exclusivity filed on or after December 15, 1995. It also states that the Commission will process all 39 GHz applications that were not mutually exclusive with previously filed applications as of December 15, 1995, that conform in all aspects to our rules and all associated amendments of right filed before December 15, 1995, where such applications have satisfied the 30-day public notice requirement, even if they have not been subject to the full 60-day window during which competing mutually exclusive applications may be filed. The Commission will dismiss, without prejudice, all 39 GHz applications that did not meet the 30-day public notice requirement as of November 13, 1995. This conforms with section 101.37(c) of the Commission's Rules, which states

that the Commission may process an application no earlier than 30 days after it has been placed on public notice. In this *Memorandum Opinion and Order*, the Commission reconsiders the service area definitions for the 39 GHz band and decides to license all channel blocks in the 39 GHz band using Economic Areas (EAs). The use of EAs will provide ample population coverage and allow licensees the flexibility to provide many different types of services. The Commission states that it will retain the channelization plan set forth earlier in this proceeding. The current allocation for the 39 GHz segment of the band contains both fixed and satellite services. The Commission also states that consistent with the new Part 1 rules governing applications for license renewal provided in section 1.949 of the Commission's Rules, 39 GHz licensees seeking renewal of station authorizations must file applications no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to the date of license expiration. The Commission reiterates that various types of antennas may be used in the 39 GHz band because Category A directional antenna may be too restrictive to fulfill the requirements of diverse system configurations in the 39 GHz band. It clarifies that Category A and B radiation pattern requirements do not apply to wide-beam antennas, such as omni-directional and sectored antennas. The Commission decides that it is in the public interest to retain the interim rule that (1) neighboring co-channel and adjacent channel licensees must coordinate within 16 kilometers of an adjacent service area boundary, and (2) licensees that receive coordination notifications must respond within ten days. It will amend section 101.56(a)(1) of the Commission's Rules to allow licensees to partition along any licensee defined service area. The Commission decided that allowing partitioning according to county boundaries or geo-political subdivisions was too restrictive. In this *Memorandum Opinion and Order*, the Commission also states that consistent with the Part 1 competitive bidding provision contained in section 1.2111(e) of the Commission's Rules, unjust enrichment payments for 39 GHz licensees that obtain a bidding credit at auction, and subsequently partition or disaggregate to an entity that would not have qualified for such a credit, will be calculated on a *pro rata* basis, using population to determine the relative value of the partitioned area, the amount of spectrum disaggregated to determine the relative value of the disaggregated spectrum, and some combination thereof for combined partitioning and disaggregation. Finally, the Commission dismisses as moot the Emergency Request for Stay that was filed in connection with one of the petitions for reconsideration. The complete text of this *Memorandum Opinion and Order* may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, N.W., Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov. The full text of the *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Room CY-A257, Washington, D.C. 20554. The full text of the *Memorandum Opinion and Order* can also be downloaded at: http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99138.txt or http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99138.wp.

Paperwork Reduction Act Analysis

This *Memorandum Opinion and Order* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this *Memorandum Opinion and Order* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due 60 days from date of publication of this *Memorandum Opinion and Order* in the **Federal Register**. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0690.
Title: Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands.
Form No.: Forms 415/415T.
Type of Review: Revision of currently approved collection.
Respondents: Businesses.
Number of Respondents: 5000.
Estimated time per response: 15.125.
Total annual burden: 75,625.
Total annual cost: 5,000,000.
Needs and Uses: The collection of information is necessary because of the amendments of the Commission's Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz bands in ET Dck No. 95–183. The rules implement use of a channeling plan, and licensing and technical rules for fixed point-to-point microwave operations in these bands, while also modifying the rules to make the technical rules consistent in both bands. The information is used by the Commission staff to provide adequate point-to-point microwave spectrum, which will facilitate provision of communications infrastructure for commercial and private mobile radio operation and competitive wireless local telephone service. Without this information, the Commission would not be able to carry out its statutory responsibilities.

List of Subjects in 47 CFR Parts 1 and 101

Radio, communications equipment.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 1 and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended: 47 U.S.C. Sections 154, 303: Implement, 5 U.S.C. Sections 552 and 21 U.S.C. 853a, unless otherwise noted.

PART 101—FIXED MICROWAVE SERVICES

2. The authority citation for Part 101 continues to read as follows:

Authority: Sec. 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, unless otherwise noted.

3. § 101.17 is amended by revising paragraph (a) to read as follows:

§ 101.17 Performance requirements for the 38.6–40.0 GHz frequency band.

(a) All 38.6–40.0 GHz band licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should

includes, but not be limited to, the following information for each channel for which they hold a license, in each EA or portion of an EA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of "substantial."

* * * * *

4. § 101.56 is amended by revising paragraphs (a)(1), (b), (d), (f), (g), (h), and (i) to read as follows:

§ 101.56 Partitioned Services Areas (PSAs) and Disaggregated Spectrum

(a)(1) The holder of an EA authorization to provide service pursuant to the competitive bidding process and any incumbent licensee of rectangular service areas in the 38.6–40.0 GHz band may enter into agreements with eligible parties to partition any portion of its service area as defined by the partitioner and partitionee. Alternatively, licensees may enter into agreements or contracts to disaggregate any portion of spectrum, provided acquired spectrum is disaggregated according to frequency pairs.

* * * * *

(b) The eligibility requirements applicable to EA authorization holders also apply to those individuals and entities seeking partitioned or disaggregated spectrum authorizations.

* * * * *

(d)(1) When any area within an EA becomes a partitioned service area, the remaining counties and geopolitical subdivision within that EA will be subsequently treated and classified as a partitioned service area.

(2) At the time an EA is partitioned, the Commission shall cancel the EA authorization initially issued and issue a partitioned service area authorization to the former EA authorization holder.

* * * * *

(f) The duties and responsibilities imposed upon EA authorization holders in this part, apply to those licensees obtaining authorizations by partitioning or spectrum disaggregation.

(g) The build-out requirements for the partitioned service area or disaggregated spectrum shall be the same as applied to the EA authorization holder.

(h) The license term for the partitioned service area or disaggregated spectrum shall be the remainder of the period that would apply to the EA authorization holder.

(i) Licensees, except those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum.

5. § 101.63 is amended by revising paragraph (a) to read as follows:

§ 101.63 Period of construction; certification of completion of construction

(a) Each Station, except in Local Multipoint Distribution Services and the 38.6–40.0 GHz band, authorized under this part must be in operation within 18 months from the initial date of grant.

* * * * *

6. § 101.64 is revised to read as follows:

§ 101.64 Service areas.

Service areas for 38.6–40.0 GHz service are Economic Areas (EAs) as defined below. EAs are delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce. The Commerce Department organizes the 50 States and the District of Columbia into 172 EAs. Additionally, there are four EA-like areas: Guam and Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; American Samoa and the Gulf of Mexico. A total of 175 authorizations (excluding the Gulf of Mexico EA-like area) will be issued for each channel block in the 39 GHz band.

* * * * *

7. § 101.103 is amended by revising paragraph (i)(1) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(i)(1) When the licensed facilities are to be operated in the band 38,600 MHz to 40,000 MHz and the facilities are located within 16 kilometers of the boundaries of an Economic Area, each licensee must complete the frequency coordination process of subsection 101.103(d) with respect to neighboring EA licensees and existing licensees within its EA service area that may be affected by its operation prior to initiating service. In addition to the technical parameters listed in subsection 101.103(d), the coordinating licensee must also provide potentially affected parties technical information related to its subchannelization plan and system geometry.

* * * * *

8. § 101.147 is amended by revising paragraph (u)(2) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(u)(2) Applications filed pursuant to Section 101.1206 shall identify any pre-existing rectangular service area authorizations that are located within, or are overlapping with, the EA for which the license is sought, and the provisions of Section 101.103 shall apply for purposes of frequency coordination between any authorized rectangular service area(s) and EA service area(s) that are geographically adjoining and overlapping.

* * * * *

[FR Doc. 99–21765 Filed 8–20–99; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–175]

Television Broadcasting Services, Digital Television Broadcasting Services; Buffalo, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by Western New York Public Broadcasting Association, licensee of Stations WNED–TV, Channel 17, and WNEQ–TV, Channel *23, Buffalo, New York, and amends the Table of Allotments of Television Broadcast Stations, to reflect Channel *17 as reserved for non-commercial educational use, and Channel 23 as nonreserved. *See* 63 FR 53009 (October 2, 1998). Comments in opposition filed by Grant Television, Inc, WKBW–TV Licensee, Inc., Kevin Smardz, and Coalition for Noncommercial Media are denied. The Table of Allotments of Digital Broadcast Stations for Buffalo is also amended to delete the asterisk for Digital TV Channel *32.

DATES: Effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No.98–175, adopted July 19, 1999, and released on July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments, Television Broadcast Stations, under Buffalo, New York, is amended by placing an asterisk on Channel 17 and removing an asterisk from Channel *23.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Allotments, Digital Broadcast Television Stations, under Buffalo, New York, is amended by removing the asterisk from Channel *32.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–21766 Filed 8–20–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Parts 413 and 453

[AGAR Case 96–05]

RIN 0599–AA04

Agriculture Acquisition Regulation; Simplified Acquisition Procedures

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Direct final rule.

SUMMARY: The Department of Agriculture (USDA) is amending the Agriculture Acquisition Regulation (AGAR) to reorganize part 413, Simplified Acquisition Procedures. USDA is reorganizing part 413 to reflect the reorganization of part 13, Simplified Acquisition Procedures, of the Federal Acquisition Regulation (FAR). This amendment changes the structure, but not the substance, of AGAR part 413.

DATES: This rule is effective October 22, 1999 without further action, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before September 22, 1999. If we receive adverse comments, the Office of Procurement and Property Management will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Please submit any adverse comments, or a notice of intent to submit adverse comments, in writing to U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy Division, Stop 9303, 1400 Independence Avenue SW, Washington, DC 20250–9303.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, (202) 720–5729.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order Nos. 12866 and 12988
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Small Business Regulatory Enforcement Fairness Act
III. Electronic Access Addresses

I. Background

The AGAR implements the FAR (48 CFR chapter 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. USDA is amending the AGAR to reflect the reorganization of FAR Part 13, Simplified Acquisition Procedures (62 FR 64916, December 9, 1997). In this rulemaking document, USDA is amending the AGAR as a direct final rule, since the changes are non-controversial and unlikely to generate adverse comment. The changes are clerical in nature, and do not affect the public.

Rules that an agency believes are noncontroversial and unlikely to result in adverse comment may be published in the **Federal Register** as direct final rules. The Office of Procurement and Property Management published a policy statement in the **Federal Register** (63 FR 9158, February 24, 1998) to notify the public of its intent to use direct final rulemaking in appropriate circumstances.

This rule makes the following changes to the AGAR:

(a) We are revising part 413 to match the numbering structure of FAR part 13 following its revision. We are moving all material in subparts 413.1, 413.4, and 413.5 to a new subpart 413.3, Simplified Acquisition Methods.

(b) We are moving section 413.103, Policy, to section 413.301, Governmentwide commercial purchase card. We are not changing the substance of section 413.103. The new section corresponds to revised FAR section 13.301, Governmentwide commercial purchase card.

(c) We are removing the material in subpart 413.4, Imprest Fund. This subpart referred users to USDA's Departmental Regulations for additional guidance on the use of imprest funds and third party drafts. USDA is minimizing the use of imprest funds, and no longer uses third party drafts for acquisition or payment. We determined that the material in subpart 413.4 was no longer necessary.

(d) We are moving the material in section 413.505, Purchase Order and related forms, to section 413.306, SF 44, Purchase Order-Invoice-Voucher, and section 413.307, Forms. We are not changing the substance of section 413.505. The new sections correspond to revised FAR sections 13.306, Purchase Order-Invoice-Voucher, and 13.307, Forms.

(e) We are amending section 453.213 to update a reference in that section. We are changing the reference to section 413.505–1 to read 413.307.

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

USDA prepared a work plan for this regulation and submitted it to the Office of Management and Budget (OMB) pursuant to Executive Order No. 12866. OMB determined that the rule was not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by OMB. USDA has reviewed this rule in accordance with Executive Order No. 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

USDA reviewed this rule under the Regulatory Flexibility Act, 5 U.S.C. 601–611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. The reorganization of AGAR part 413 does not affect the way in which USDA conducts its acquisitions or otherwise interacts with the public. USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR Part 1320.

D. Small Business Regulatory Enforcement Fairness Act

This rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*

III. Electronic Access Addresses

You may send electronic mail (E-mail) to JDARAGAN@USDA.GOV, or contact us via fax at (202) 720–8972, if you would like additional information about this rule, or if you wish to submit comments.

List of Subjects in 48 CFR Parts 413 and 453

Government contracts, Government procurement.

For the reasons set out in the preamble, the Office of Procurement and Property Management amends 48 CFR Chapter 4 as set forth below:

1. Revise Part 413 to read as follows:

PART 413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 413.3—Simplified Acquisition Methods

Sec.
413.301 Governmentwide commercial purchase card.
413.306 SF 44, Purchase Order-Invoice-Voucher.
413.307 Forms.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 413.3—Simplified Acquisition Methods

413.301 Governmentwide commercial purchase card.

USDA policy and procedures on use of the Governmentwide commercial purchase card are established in Departmental Regulation Series 5000.

413.306 SF 44, Purchase Order-Invoice-Voucher.

The Standard Form 44 (and the previously prescribed USDA Form AD–744) is not authorized for use within USDA.

413.307 Forms.

Form AD–838, Purchase Order, is prescribed for use by USDA in lieu of Optional Forms 347 and 348.

2. The authority citation for part 453 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

453.213 [Amended]

3. In section 453.213, remove "413.505–1" and add, in its place,"413.307".

Done at Washington, DC, this 12th day of August, 1999.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 99–21743 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–XE–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–99–6010]

RIN 2127–AH18

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Vehicle Safety Standard on lamps, reflective devices, and associated equipment includes a provision regulating headlamp concealment devices. In this document, NHTSA amends that Standard so that manufacturers of motor vehicles with headlamp concealment devices may choose between complying with that existing provision, or with a new provision incorporating by reference the United Nations Economic Commission for Europe's standard (ECE standard) on those devices.

This rulemaking was initiated in response to a petition from the domestic and foreign motor vehicle industry. Our notice of proposed rulemaking was based on our tentative conclusion, after reviewing the U.S. and UN/ECE requirements, that the UN/ECE requirements were essentially identical to the U.S. requirements and thus would yield at least as much safety benefit as the U.S. requirements. Since NHTSA did not receive any response to its request for public comments, the agency reaffirms that conclusion and adopts the proposed amendment as final.

DATES: Effective date. This rule is effective October 22, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 22, 1999.

Early compliance date. You have the option of early compliance with the changes made in this final rule beginning August 23, 1999.

Petitions for reconsideration deadline. If you wish to petition for reconsideration of this final rule, you must submit it so that we (NHTSA) receive your petition not later than October 7, 1999.

ADDRESSES: In your petition for reconsideration, you should refer to the docket number for this action (cited in the heading of this final rule) and submit the petition to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: You may contact the following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

For technical issues: Mr. Patrick Boyd, Office of Crash Avoidance. Mr. Boyd's telephone number is: (202) 366–6346, and his FAX number is (202) 493–2739.

For legal issues: Ms. Dorothy Nakama, Office of the Chief Counsel. Ms. Nakama's telephone number is (202) 366–2992, and her FAX number is (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

The United States is a party to several international agreements, including the General Agreement on Tariffs and Trade. That agreement was most recently amended by the Uruguay Round Agreements. One of those agreements is the Agreement on Technical Barriers to Trade (TBT). The TBT Agreement seeks to avoid the creation of unnecessary obstacles to trade, while recognizing the right of signatory countries to establish and maintain technical regulations for the protection of human, animal and plant life and health and the environment.

Among other things, the TBT Agreement also provides that a party to the Agreement will consider accepting as equivalent the technical regulations of other party nations, provided they adequately fulfill the objectives of the party's existing domestic standards. On May 13, 1998, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR part 553, *Rulemaking Procedures*, by adding a new appendix B setting forth a statement of policy about an agency process for making tentative findings that the vehicle safety standards of other countries are functionally equivalent to the corresponding Federal Motor Vehicle Safety Standards (FMVSSs) (63 FR 26508).

In a submission dated August 13, 1997, the American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers, Inc. (AIAM), petitioned the agency to amend several FMVSSs to permit vehicle manufacturers to choose to comply with either the existing provisions of those FMVSSs or new provisions incorporating by reference the requirements of counterpart vehicle safety standards recognized in most European countries. These European standards take the form of European Union directives and are usually taken from a body of standards developed by the United Nations Economic Commission for Europe (UN/ECE).

The first test used by NHTSA under appendix B of part 553 to determine functional equivalence is whether the foreign requirements, test conditions, and test procedures appear to be the same or similar to the U.S. ones, with any differences being minor and lacking in safety consequences. In its review, NHTSA tentatively concluded that the European requirements for headlamp concealment devices passed this test. The fundamental performance requirements of the U.S. and European standards are the same. Further, NHTSA tentatively concluded that the differences between the standards are minor and inconsequential to safety except for vehicles equipped with headlamps for which external aimers must be used to aim them properly. These issues are further discussed below.

Fundamental Performance Requirements and Inconsequential Differences

Standard No. 108, *Lamps, reflective devices, and associated equipment,* and ECE R.48.01 are alike in all important respects. Standard No. 108, at S12., Headlamp Concealment Devices, specifies requirements for vehicles equipped with headlamp concealment devices. It requires that there be a single switch whose operation, in normal circumstances, causes both the headlamps to illuminate and the headlamp concealment device to fully open in not more than 3 seconds, at any temperature within a range of −30 to +50 degrees Celsius. In ECE R.48.01, Paragraphs 5.14.3 and 5.14.5 set forth the same requirements.

Standard No. 108 also requires certain failsafe performance of headlamp concealment devices. In the event of a loss of power to a headlamp concealment device while the headlamp is illuminated, the headlamp must stay in the fully open position. Also, in the event of a malfunction of a component that controls or conducts power for the actuation of the concealment device, it must be possible to open the concealment device without the use of tools and have it stay fully open until intentionally closed. Paragraph 5.14.2 of ECE R.48.01 requires the same fail-safe performance.

In its review of Standard No. 108 and the ECE Standard, the agency noted several differences between the two standards. First, Standard No. 108 requires that a headlamp concealment device be installed so that the headlamp may be mounted, aimed and adjusted without removing any component of the device, other than components of the headlamp assembly. There is no comparable provision in the ECE standard. This requirement in Standard No. 108 addresses a potential aiming problem that could affect safety. Unless properly designed, a headlamp concealment device could potentially interfere with the use of external aimers. These devices, which are used to aim some kinds of U.S. headlamps, attach to the outside of the headlamp lens. If such interference occurred and if the component were removed to allow aiming, and then were replaced, the accuracy of the aim could be adversely affected. Alternatively, efforts to aim the headlamps without removing the interfering components could result in improper shortcuts in aiming. To address this difference between the two standards, NHTSA is limiting the applicability of its finding of functional equivalence to headlamps that do not use external aimers.

Second, NHTSA noted that the ECE standard does not have a phrase analogous to Standard No. 108's S12.3 and S12.5 "except for malfunctions covered by S12.2," that make it expressly clear S12.3 and S12.5 apply only to functioning systems. NHTSA concluded that the ECE standard was intended to apply to functioning systems only and that the ECE standard alternative should be so interpreted. The alternative would not require systems with a failure mode to comply with performance requirements in addition to the failsafe performance requirements.

Third, NHTSA noted several ECE standard provisions that have no parallel in S12 of Standard No. 108. However, compliance with those provisions does not affect compliance with S12. Consequently, there is no impediment to a finding of functional equivalence.

Notice of Proposed Rulemaking

In a notice of proposed rulemaking published on October 28, 1998 (63 FR 57638), NHTSA proposed to amend Standard No. 108 so that manufacturers of motor vehicles with headlamp concealment devices would have a choice between complying with existing provisions in Standard No. 108 or meeting a new provision incorporating by reference the United Nations Economic Commission for Europe's standard (ECE standard) on headlamp concealment devices. In the NPRM, NHTSA discussed its review of the ECE standard under appendix B of 49 CFR part 553, and addressed the following issues:

ECE Standard Meets Part 553, Appendix B Test

NHTSA tentatively concluded that paragraph 5.14 of ECE R.48.01 meets the test in 49 CFR Part 553 Appendix B and accordingly proposed to amend Standard No. 108 to permit manufacturers of motor vehicles with headlamp concealment devices to choose between complying with S12.1 through S12.5 of Standard No. 108, or with a new provision (S12.6 of Standard No. 108) incorporating by reference paragraph 5.14 of ECE R. 48.01. NHTSA proposed to limit optional compliance with the ECE standard to vehicles using either a new U.S. alternative beam pattern which allows European-style visual/optical aim or a headlamp with a built-in aimer (VHAD) that eliminates the need for external aimers. NHTSA stated its belief that there is no safety consequence to the lack of a provision in paragraph 5.14 addressing the interference problem that may be associated with the use of external aimers.

Vehicle Manufacturer's Certification

NHTSA noted that, when a safety standard provides manufacturers with more than one compliance option, the agency needs to know which option has been selected in order to conduct a compliance test. Moreover, based on previous experience with enforcing standards that include compliance options, the agency stated it was aware that a manufacturer confronted with an apparent noncompliance for the option it has selected (based on a compliance test) may respond by arguing that its vehicles comply with a different option for which the agency has not conducted a compliance test. This shift in a manufacturer's stance creates obvious difficulties for the agency in managing its available resources for carrying out its enforcement responsibilities, e.g., the possible need to conduct multiple compliance tests, first for one compliance option, then for another, to

determine whether there is a noncompliance.

Accordingly, NHTSA proposed that prior to or at the time a manufacturer certifies that a vehicle with headlamp concealment devices meets all applicable FMVSSs (pursuant to 49 CFR part 567, *Certification*), the manufacturer must decide whether it is certifying that vehicle as meeting S12.1 through S12.5 or the ECE standard (that would be established in S12.6). NHTSA further proposed that the selected alternative need not be stated on the certification label. However, the manufacturer must advise the agency of its selection when asked by the agency to do so. The manufacturer's decision would be irrevocable.

NHTSA's Choice of European Standard to Reference

Most of the harmonized standards among the countries of the European Union (EU) were developed as ECE regulations and later adopted as EU directives. Consequently, the same standards are known under both ECE regulation numbers and EU directive numbers. The petitioner asked that both the ECE and EU numbers for the identical technical requirements be cited as alternatives to the requirements of Standard No. 108. However, NHTSA proposed that only one reference to the European standard be cited to avoid confusion and to reduce the potential need for amendments to updated versions of European standards. NHTSA must reference only one European standard (and make that standard publicly available) to meet the **Federal Register's** procedures for incorporating documents by reference.

NHTSA stated its intent to cite the ECE regulation when possible because the ECE is a body in which the U.S. participates, and also its regulations may be adopted by countries outside of the European Union as well. The agency understands that it will not always be possible to cite an ECE standard because some EU directives with possible potential for being treated as functionally equivalent alternatives to Federal motor vehicle safety standards have no ECE counterpart.

Proposed Leadtime

NHTSA proposed that, if made final, the changes would take effect 60 days after the publication of the final rule, with manufacturers given the option to comply with (and certify to) the ECE standard for headlamp concealment devices, immediately.

Final Rule

NHTSA did not receive any comments on its proposal. Accordingly, the agency adopts its proposal as set forth in the NPRM. NHTSA concludes that paragraph 5.14 of ECE R.48.01 meets the test established in 49 CFR part 553 appendix B for determining functional equivalence; i.e., that the agency's analysis of paragraph 5.14 indicates that its requirements are the same or similar to the requirements of S12.1 through S12.5 of Standard No. 108. The differences are minor and lacking in safety consequences for vehicles equipped with headlamps for which external aimers must be used to aim them properly. Accordingly, NHTSA restricts the option of complying with the ECE regulation to manufacturers of vehicles using either a new U.S. alternative beam pattern which allows European-style visual/optical aim or a headlamp with a built-in aimer (VHAD) that eliminates the need for external aimers.

The final rule requires that, not later than the time when a manufacturer certifies that a vehicle with headlamp concealment devices meets all applicable FMVSSs (pursuant to 49 CFR part 567, *Certification*), the manufacturer must decide whether the basis for its certification is that the vehicle meets S12.1 through S12.5 of Standard No. 108 or S12.6 (incorporating the ECE regulation). Although the selected alternative need not be stated on the certification label, the manufacturer must advise the agency of its selection when asked by the agency to do so. The manufacturer's decision is irrevocable.

Before issuing this final rule, NHTSA obtained the latest version of the ECE regulation directly from the ECE rather than relying on the petitioners' version (the version proposed in the NPRM). The version provided by the ECE is identical to the petitioner's version except that a typographical error in Paragraph 5.15.5 (found in the petitioner's version) does not appear in the version NHTSA received from the ECE. Accordingly, in the final rule, the citation of ECE R48 proposed for S12.6 (of Standard No. 108) is updated to E/ECE/324—E/ECE/TRAN/505, Rev. 1/Add.47/Rev.1/Corr.2, 26 February 1996.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E. O. 12866, "Regulatory Planning and Review." We have determined that this action is not "significant" under DOT's regulatory policies and procedures. This final rule has no substantive effect on manufacturers of motor vehicles that have headlamp concealment devices. The ECE standard on headlamp concealment devices that is included in the Federal motor vehicle safety standards does not differ substantively from existing requirements. Vehicle manufacturers will not incur additional costs as a result of meeting any new requirements. The impacts of this action are so minor that a full regulatory evaluation for this final rule has not been prepared.

B. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–112, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

NHTSA is not aware of a standard established by the SAE or other private organization that would apply to the same aspect of performance as the headlamp concealment lamp provisions of Standard No. 108. ECE Regulation 48 is not a voluntary consensus standard.

C. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification. (5 U.S.C. 605(b)).

The final rule affects passenger car, light truck, and multipurpose passenger vehicle manufacturers that have headlamp concealment devices on the vehicles they manufacture. The Small Business Administration's size standards (13 CFR part 121) are organized according to Standard

Industrial Classification Codes (SIC). SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer.

The final rule applies to the previously described vehicle manufacturers, regardless of their volume of production. There is no significant economic impact on any vehicle manufacturer because no manufacturer is required to provide headlamp concealment devices. There is no economic impact on manufacturers that already provide the devices because the devices meet the existing headlamp concealment device requirements in Standard No. 108, and NHTSA concludes that the ECE standard does not differ substantively from that Standard. The final rule permits vehicle manufacturers to choose between certifying that the vehicle with a headlamp concealment device meets the previously existing requirements in the Standard or the ECE standard now incorporated in the Standard. NHTSA does not believe there will be a cost advantage to certifying to one set of requirements over the other.

D. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this final rule and determined that the rule does not have a significant impact on the quality of the human environment.

E. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This final rule does not have a retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 301651 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

H. Economically Significant Effects on Children

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. Further, nothing in the final rule establishes an environmental, health, or safety risk that NHTSA believes may have a disproportionate effect on children.

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not establish any collection of information requirements.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR part 571), are amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.5 is amended by adding paragraph (b)(9) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(9) *Regulations of the United Nations Economic Commission for Europe (ECE).* They are published by the United Nations. Information and copies may be obtained by writing to: United Nations, Conference Services Division, Distribution and Sales Section, Office C.115–1, Palais des Nations, CH–1211, Geneva 10, Switzerland. Copies of Regulations also are available on the ECE internet web site: *www.unece.org/trans/main/wp29/wp29regs.html.*

* * * * *

3. Section 571.108 is amended by adding S12.6 and S12.7 to read as follows:

§ 571.108 Standard No. 108, Lamps, reflective devices, and associated equipment.

* * * * *

S12.6 As an alternative to complying with the requirements of S12.1 through S12.5, a vehicle with headlamps incorporating VHAD or visual/optical aiming in accordance with paragraph S7 may meet the requirements for *Concealable lamps* in paragraph 5.14 of the following version of the Economic Commission for Europe Regulation 48 "Uniform Provisions Concerning the Approval of Vehicles With Regard to the Installation of Lighting and Light-Signalling Devices": E/ECE/324–E/ECE/TRANS/505, Rev.1/Add.47/Rev.1/Corr.2, 26 February 1996 (page 17), in the English language version. A copy of paragraph 5.14 may be reviewed at the DOT Docket Management Facility, U.S. Department of Transportation, Room PL–01, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Copies of E/ECE/324–E/ECE/TRANS/505, Rev.1/Add.47/Rev.1/Corr.2, 26 February 1996 may be obtained from the ECE internet site:

www.unece.org/trans/main/wp29/wp29regs.html or by writing to:

United Nations, Conference Services Division, Distribution and Sales Section, Office C.115–1, Palais des Nations, CH–1211, Geneva 10, Switzerland.

S12.7 Manufacturers of vehicles with headlamps incorporating VHAD or visual/optical aiming shall elect to certify to S12.1 through S12.5 or to S12.6 prior to, or at the time of certification of the vehicle, pursuant to 49 CFR part 567. The selection is irrevocable.

Issued on: July 21, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–21682 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 64, No. 162
Monday, August 23, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, and 70

[Docket No. PRM–50–65]

Nuclear Information and Resource Service; Petition for Rulemaking Denial

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–50–65) from the Nuclear Information and Resource Service (NIRS). The petitioner requested that NRC amend its regulations to require the shutdown of nuclear facilities that are not compliant with date-sensitive, computer-related issues regarding the Year 2000 (Y2K) issue. The petitioner requested that NRC take this action to ensure that Y2K issues will not cause the failure of nuclear safety systems and thereby pose a threat to public health and safety. NRC is denying the petition because the Commission has determined that the actions taken by licensees to implement a systematic and structured facility-specific Y2K readiness program and NRC's oversight of the licensees' implementation of these Y2K readiness programs provide reasonable assurance of adequate protection to public health and safety.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letters to the petitioners are available for public inspection or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, as well as on NRC's rulemaking website at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Matthew Chiramal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2845, E-mail address <mxc@nrc.gov>, or Gary W. Purdy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7897, E-mail address <gwp1@nrc.gov>.

SUPPLEMENTARY INFORMATION:

Background

NRC received three related petitions for rulemaking (PRM–50–65, PRM–50–66, and PRM–50–67), each dated December 10, 1998, submitted by NIRS concerning various aspects of Y2K issues and nuclear safety. This petition (PRM–50–65) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Parts 30, 40, 50, and 70 to be Y2K compliant. The second petition (PRM–50–66) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Part 50 to develop and implement adequate contingency and emergency plans to address potential system failures. The third petition (PRM–50–67) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Parts 50 and 70 to provide reliable sources of back-up power. Because of the nature of these petitions and the date-specific issues they address, the petitioner requested that the petitions be addressed on an expedited schedule.

On January 25, 1999, NRC published a notice of receipt of a petition for rulemaking in the **Federal Register** (64 FR 3789). It was available on NRC's rulemaking website and in the NRC Public Document Room. The notice of receipt of a petition for rulemaking invited interested persons to submit comments by February 24, 1999.

The Petition

The petitioner requested that NRC adopt the following text as a rule:

> Any and all facilities licensed by the Nuclear Regulatory Commission under 10 CFR Parts 30, 40, 50, and 70 shall be closed by 12 pm Eastern Standard Time, December 1, 1999, unless and until each facility has: (a) fully and comprehensively examined all computer systems, embedded chips, and other electronic equipment that may be date-sensitive to ensure that all such systems that may be relevant to safety are Y2K compliant; (b) repaired, modified, and/or replaced all such systems that are not found to be Y2K compliant; (c) made available to the public all information related to the examination and repair, modification and/or replacement of all such systems; (d) determined, through full-scale testing, that all repairs, modifications, and/or replacements of all such systems are, in fact, Y2K compliant.

The petitioner noted that in NRC Generic Letter (GL) 98–01, "Year 2000 Readiness of Computer Systems at Nuclear Power Plants," dated May 11, 1998, the NRC has recognized the potential for date-related problems that may affect a system or application (the Y2K problem). These potential problems include not representing the year properly, not recognizing leap years, and improper date calculations. These problems could result in the inability of computer systems to operate or to function properly. The petitioner stated that the Y2K problem could potentially interfere with the proper operation of computer systems, microprocessor-based hardware, and software or databases relied on at nuclear power plants. Further, the petitioner asserted that the Y2K problem could result in a plant trip and subsequent complications in tracking post-shutdown plant status and recovery as a result of a loss of emergency data collection. Additionally, the petitioner is also concerned that power grids providing offsite power to nuclear stations could be affected to the extent that localized and widespread grid failures could occur.

The petitioner acknowledged that NRC has recognized the potential safety and environmental problems that could result if date-sensitive electronic systems fail to operate or provide false information. The petitioner asserted that NRC has required its licensees of reactor and major fuel cycle facilities to report by July 1, 1999, on their programs to ensure compliance with Y2K issues. In addition, the petitioner asserted that NRC has not made explicit how it will define compliance nor what it plans to do for licensees of facilities that cannot prove compliance. In the petitioner's suggested regulatory text, NIRS defined compliance with Y2K issues as evaluation of all potential problems that may be safety-related, repair of all such problems, and full-scale testing of all solutions. The petitioner's proposed regulation would also require full public disclosure of all evaluation, repair, and testing data so that the information may be examined by independent experts and the public. Finally, the petitioner's proposed regulation would make it clear that nuclear facilities will be closed

until they can demonstrate full compliance with Y2K issues.

The petitioner concluded by stating that NRC is obligated to act decisively to protect public health and safety and the environment. NIRS stated that anything short of the suggested approach in the petition is insufficient to fulfill this obligation and that NRC should adopt the suggested regulation as soon as possible.

Public Comments on the Petition

In response to the petition, NRC received 70 comment letters, including 1 letter signed by 25 individuals from the State of Michigan, 3 letters from industry groups, 10 letters from utilities, 13 letters from private organizations, and 43 letters from private citizens.

Fifty-four letters supported the petition, 40 of which were from private citizens, 13 were from private organizations, and 1 that was signed by 25 individuals. The comments supporting the petition addressed concerns related to avoiding the occurrence of a catastrophic nuclear accident, the reasonableness of the petitioner's request, and opined that any uncertainty is too great for the nuclear industry.

Sixteen letters opposed the petition, of which 3 were from private citizens, 3 were from associated industries, and 10 were from utilities. The comments opposing the petition stated that the nuclear power industry has taken a coordinated approach to Y2K readiness, nuclear power plant licensees are implementing a structured Y2K program, NRC Y2K initiatives are underway, NRC staff is monitoring licensee activities, and current regulations and license conditions are adequate to address potential Y2K computer issues.

In some of the letters supporting the petition, the authors included the following additional comments that provide information or request action that was not contained in the petition. These comments noted:

1. The date proposed in the petition, December 1, 1999, to shut down all non-Y2K compliant nuclear power plants should be moved up 1 to 6 months before the year 2000. The reasons given were to allow sufficient time to shut down and to provide additional safety.

2. Power grid failure would not allow controlled shutdown of the plant and plants could experience problems like the Russians. The Y2K problem could increase the chance of a core melt.

3. The problem of "embedded systems," microchips, microprocessors, and such systems-within-systems are difficult to identify and the effects of their multiple failures are poorly understood, especially in the U.S. power grid.

4. The audits conducted by NRC staff are too few.

These comments are addressed specifically in the discussion of "Reasons for Denial."

Reasons for Denial

The NRC is denying the NIRS petition because the NRC has determined that: (1) the actions taken by licensees to implement a systematic and structured facility-specific Y2K readiness program; and (2) NRC's oversight of licensees' implementation of these Y2K readiness programs together constitute an effective process for addressing Y2K issues such that there will continue to be reasonable assurance of adequate protection of public health and safety. NIRS has not presented any information (and no public comments have been received) that demonstrates that: (1) the licensees' activities are fundamentally incapable of effectively addressing Y2K issues in a timely fashion; (2) licensees are not adequately implementing the Y2K readiness programs; (3) NRC's inspection, audit, and oversight activities are fundamentally incapable of providing adequate regulatory control with respect to licensee implementation of Y2K readiness programs; and (4) the NRC is not effectively implementing its inspection, audit, and oversight activities with respect to Y2K issues. Finally, NIRS has not provided any basis why the NRC's current regulatory approach, which retains the regulatory authority to order licensees to discontinue or modify their licensed activities if the NRC finds that reasonable assurance of adequate protection to public health and safety will not be provided because of Y2K issues, will be inadequate in view of the 6-month time period between July 1, 1999, when licensees are required to inform the NRC of the status of their Y2K remediation activities and the December 31, 1999, date, when Y2K-induced problems are most likely to begin occurring.

Parts (a), (b), and (d) of the NIRS proposed rule are addressed below in Sections I, II, III, IV, and V for Part 50 operating nuclear power plants, Part 50 non-power reactors, Part 50 decommissioning nuclear power plants, major licensees under Parts 40 and 70, and Part 30 and minor Parts 40 and 70 licensees, respectively. Part (c) of NIRS' proposed rule, concerning public access to Y2K information, is addressed for all types of licensees in Section VI.

I. Part 50 Operating Nuclear Power Plant Licensees

A. Industry and NRC Activities Addressing Y2K

To alert nuclear facility licensees to the Y2K problem, NRC issued Information Notice (IN) 96–70, "Year 2000 Effect on Computer System Software," on December 24, 1996. IN 96–70 described the potential problems that nuclear power plant computer systems and software may encounter as a result of the change to the new century and how the Y2K issue may affect NRC licensees. IN 96–70 encouraged licensees to examine their uses of computer systems and software well before the year 2000 and suggested that licensees consider appropriate actions for examining and evaluating their computer systems for Y2K vulnerabilities.

In 1997, the nuclear industry began to assess the Y2K challenge and work with key Federal agencies to help nuclear power plant operators prepare for continued safe operations at the start of the year 2000. In July 1997, the Nuclear Utilities Software Management Group (NUSMG), a nuclear industry working group, conducted the first industry-wide workshop on Y2K readiness.

In October 1997, the Nuclear Energy Institute (NEI) and NUSMG issued a Y2K program plan guidance document, NEI/NUSMG 97–07, "Nuclear Utility Year 2000 Readiness," to all U.S. nuclear power plant licensees. This document provides a step-by-step method to identify, test, and repair potential Y2K computer problems and contains detailed procedures and checklists for resolving Y2K issues, based on the best utility practices.

NEI/NUSMG 97–07 presented a strategy for developing and implementing a nuclear utility Y2K program. The strategy recognizes management, implementation, quality assurance (QA) measures, regulatory considerations, and documentation as the fundamental elements of a successful Y2K project. The document contains examples currently in use by licensees and also recommends that the Y2K program be administered using standard project management techniques. The recommended components for management planning are management awareness, sponsorship, project leadership, project objectives, the project management team, the management plan, project reports, interfaces, resources, oversight, and QA. The suggested phases of implementation are awareness, initial assessment (which includes inventory, categorization, classification,

prioritization, and analysis of initial assessment), detailed assessment (including vendor evaluation, utility-owned or utility-supported software evaluation, interface evaluation, and remedial planning), remediation, Y2K testing and validation, and notification.

Y2K testing is used both as an investigative tool to examine systems and components to identify Y2K problems and as a validation tool to confirm that the corrective actions have eliminated the Y2K problem. Y2K testing in support of evaluation efforts to determine whether a Y2K problem is present is performed during detailed assessments. Systems and components will then be repaired or replaced in a process known as "remediation." Y2K testing subsequent to remediation is performed to determine whether the remediation efforts have eliminated the Y2K problem and no unintended functions are introduced. Y2K testing may be performed at several levels:

- Unit testing, which focuses on functional and compliance testing of a single application or software module;
- Integration testing, which tests the integration of related software modules and applications; and
- System testing, which tests the hardware and software components of a system.

For systems, components, and equipment classified as safety-related or critical to operations, the Y2K remediation activities include Y2K testing. On one end of the spectrum, there are the stand-alone, date-aware, microprocessor-based components that do not communicate digital information to any other devices. Properly performed bench testing of these devices, by the licensee or the vendor, coupled with software/firmware revision-level verification of the field devices as required, is adequate to establish their Y2K status. Repeating this test in the field as part of a plant-wide integrated test will not add any additional benefits related to system Y2K readiness. On the other end of the spectrum, the most highly complex systems, such as distributed control systems, may require in-plant testing of the remediated system. This testing may include a large portion of the plant equipment. However, even in this case, the maximum bounds of the test would involve the individual system being tested and the other devices and systems with which it communicates digital/date-related information.

NEI/NUSMG 97–07 specifies the QA measures that will apply to the activities in NEI/NUSMG 97–07 that apply primarily to project management and implementation. Documentation of Y2K program activities and results includes documentation requirements, project management documentation, vendor documentation, inventory lists, checklists for initial and detailed assessments, and record retention. NEI/NUSMG 97–07 also contains examples of various plans and checklists as appendices that may be used or modified to meet the licensee's specific needs and/or requirements.

After issuing NEI/NUSMG 97–07, NEI conducted workshops and other means of sharing the experiences on the use of the document. In November 1997, NEI and NUSMG conducted the first in a series of industry-wide workshops on Y2K issues for project managers in charge of ensuring Y2K readiness at all operating nuclear power plants. In December 1997, NEI created an on-line bulletin board to share technical information and experiences related to testing and repairing computers and equipment.

In January 1998, the NRC issued a draft generic letter for public comment which proposed: (1) that licensees of operating nuclear power plants be required to provide certain information regarding their programs that address the Y2K problem in computer systems at their facilities; and (2) to endorse the guidance in NEI/NUSMG 97–07 as one possible approach in implementing a plant-specific Y2K readiness program, if augmented in the area of risk management, contingency planning, and remediation of embedded systems [**Federal Register** (63 FR 4498)]. In the absence of adverse comment on the adequacy of the guidance in NEI/NUSMG 97–07, the NRC issued GL 98–01 on May 11, 1998 [**Federal Register** (63 FR 27607)]. In August 1998, NEI issued an industry document, NEI/NUSMG 98–07, "Nuclear Utility Year 2000 Readiness Contingency Planning," that provided additional guidance for establishing a plant-specific contingency planning process. NEI/NUSMG 98–07 addressed management controls, preparation of individual contingency plans, and development of an integrated contingency plan that allows the licensee to manage internal and external risks associated with Y2K-induced events. External events that should be considered for facility-specific contingency planning include electric grid/transmission/distribution system events, such as loss of off-site power, grid instability and voltage fluctuations, load fluctuations and loss of grid control systems; loss of emergency plan equipment and services; loss of essential services; and depletion of consumables. NRC considers the guidance in NEI/NUSMG 98–07, when properly implemented, as an acceptable approach for licensees to mitigate and manage Y2K-induced events that could occur on Y2K-critical dates. In GL 98–01, NRC required all operating nuclear power plant licensees to submit written responses regarding their facility-specific Y2K readiness program in order to confirm that they are addressing the Y2K problem effectively. All licensees have responded to GL 98–01, stating that they have adopted a plant-specific Y2K readiness program based on the guidance of NEI/NUSMG 97–07, and the scope of the program includes identifying and, where appropriate, remediating, embedded systems, and provides for risk management and the development of contingency plans.

GL 98–01 [1] also requests a written response, no later than July 1, 1999, confirming that these facilities are Y2K ready with regard to compliance with the terms and conditions of their license and NRC regulations. Licensees that are not Y2K ready by July 1, 1999, must provide a status report and schedule for the remaining work to ensure timely Y2K readiness. By July 1, 1999, all licensees responded to GL 98–01, Supplement 1. The responses indicated that 68 plants are Y2K ready and 35 plants need to complete work on a few non-safety computer systems or devices after July 1, 1999 to be Y2K ready.

As part of its oversight of licensee Y2K activities, NRC staff conducted sample audits of 12 plant-specific Y2K readiness programs. The objectives of the audits were to—

- Assess the effectiveness of licensees' programs for achieving Y2K readiness and in addressing compliance with the terms and conditions of their license and NRC regulations and continued safe operation.
- Evaluate program implementation activities to ensure that licensees are on schedule to achieve Y2K readiness in accordance with GL 98–01 guidelines.
- Assess licensees' contingency planning for addressing risks associated with events resulting from Y2K problems.

The NRC determined that this approach was an appropriate means of oversight of licensee Y2K readiness efforts because: (1) all licensees had committed to the nuclear power

[1] On January 14, 1999, NRC issued GL 98–01, Supplement 1, "Year 2000 Readiness of Computer Systems at Nuclear Power Plants," which provided licensees with a voluntary alternate response to that required by GL 98–01. The alternate response, also due by July 1, 1999, should provide information on the overall Y2K readiness of the plant, including those systems necessary for continued plant operation that are not covered by the terms and conditions of the license and NRC regulations.

industry Y2K readiness guidance (NEI/NUSMG 97–07) in their first response to NRC GL 98–01; and (2) the audit would verify that licensees were effectively implementing the guidelines. The audit sample of 12 licensees included large utilities such as Commonwealth Edison and Tennessee Valley Authority as well as small single-unit licensees such as North Atlantic Energy (Seabrook) and Wolf Creek Nuclear Operating Corporation. The NRC staff selected a variety of types of plants of different ages and locations in this sample in order to obtain the necessary assurance that nuclear power industry Y2K readiness programs are being effectively implemented and that licensees are on schedule to meet the readiness target date of July 1, 1999, established in GL 98–01. Also, NRC staff had not identified any Y2K problems in safety-related actuation systems as part of its audit activities.

In late January 1999, the NRC staff completed the 12 audits. At the conclusion of the audits, the NRC staff had the following observations:

- Plant-specific Y2K projects based on NEI/NUSMG 97–07 began in mid to late 1997. Use of NEI/NUSMG 97–07 guidance results in an effective, structured program. The programs are generally on schedule for plants to be Y2K ready by July 1, 1999. However, at some plants the licensees have scheduled some remediation, testing, and final certification for the fall 1999 outage.
- Management oversight is vital for program effectiveness.
- Sharing information through owners groups, utility alliances, the Electric Power Research Institute, and NEI is aiding the overall nuclear industry effort.
- Independent audits and peer reviews of programs are very useful.
- Safety system functions are usually not affected. There is limited computer use in safety-related systems and components.
- Failures identified in embedded devices have generally not affected the functions performed but have led to errors such as incorrect dates in printouts, logs, or displays.
- Central control of Y2K program activities, effective QA (including the use of existing plant procedures and controls), and independent peer reviews promote consistency across activities and improve the program.

On the basis of these audit observations, the NRC staff concluded that the audited licensees are effectively addressing Y2K issues and are undertaking the actions necessary to achieve Y2K readiness in accordance with the GL 98–01 target date, although some plants will have some remediation, testing, and final certification scheduled for the fall 1999 outage. The NRC staff did not identify any issues that would prevent these licensees from achieving Y2K readiness.

Licensee Y2K contingency planning efforts had not progressed far enough during the original 12 audits for a complete NRC staff review of the adequacy of implementation of the Y2K activities. Therefore, the NRC staff audited the contingency planning efforts of six licensees different from the 12 included in the initial sample Y2K readiness audits. These audits focused on the licensee's approach to addressing both internal and external Y2K risks to safe plant operations based on the guidance in NEI/NUSMG 98–07. These audits were completed in June 1999.

In addition to NRC staff activities addressed above, NRC regional staff reviewed plant-specific Y2K program implementation activities at all operating nuclear power plants. The regional staff used guidance prepared by NRC Headquarters staff, which conducted the 12 sample audits. These reviews were completed by July 1999. One of the public comments received by NRC in response to the petition indicated that the audits conducted by NRC staff are too few. On the basis of the information above, the NRC staff has reviewed the Y2K programs at all operating nuclear power plants, thereby addressing this comment.

NRC staff will continue its oversight of Y2K issues at nuclear power plants through the remainder of 1999. On the basis of the reviews of the licensee responses to GL 98–01, Supplement 1, findings of the additional audits and reviews, and any additional information, NRC will, by September 1999, determine the need for issuing orders to address Y2K readiness issues, including, if warranted, shutdown of a plant. At this time, NRC believes that all licensees will be able to operate their plants safely during the transition from 1999 to 2000 and does not believe that significant plant-specific action directed by NRC is likely to be needed.

As discussed above, GL 98–01 set a date of July 1, 1999, for licensees to submit information on their efforts to complete their plant-specific Y2K program. The July 1, 1999, date was selected to ensure that there would be adequate time for the Commission to determine what additional regulatory action, if any, would be necessary to ensure that Y2K problems will not threaten adequate protection to public health and safety. Licensees of plants with a projected completion date by September 30, 1999, will be monitored to ensure that the schedules are maintained. Completion of plant-specific items identified by licensees in the generic letter responses will be documented in routine NRC inspection reports. The licensees of the plants that are scheduled to be Y2K ready after September 30 will receive additional scrutiny on a case-by-case basis to ensure that no Y2K deficiencies remain. If, by September 30, 1999, it appears that Y2K readiness activities will not be completed by December 31, 1999 transition such that there is sufficient assurance that all license conditions and relevant NRC regulations[2] are met, the NRC will take appropriate regulatory action, including the issuance of orders requiring specific actions, if warranted. NIRS presents no information or argument why these above actions by the licensees and the inspection, auditing, and oversight activities of the NRC are insufficient to address Y2K problems, such that actions required in NIRS' proposed rule are necessary.

B. The Need for Y2K "Compliance," as Opposed to "Readiness"

NIRS' proposed rule would require that nuclear power plants be shut down by December 1, 1999, unless licensees demonstrate that Y2K compliance has been achieved. However, NIRS has not explained why "Y2K compliance," as opposed to "Y2K readiness," is necessary. "Y2K compliant" is generally understood as referring to computer systems or applications that accurately process date/time data (including but not limited to calculating, comparing, and sequencing) from, into, and between the 20th and 21st centuries, the years 1999 and 2000, and leap-year calculations. "Y2K ready" is generally understood as referring to a computer system or application that has been determined to be suitable for continued use into the year 2000 even though the computer system or application is not fully Y2K compliant. For "Y2K ready" systems, licensees may have to rely upon work arounds and other activities to ensure that the systems, components,

[2] These regulations are—

- 10 CFR 50.36, "Technical Specifications," paragraph (c)(3), "Surveillance requirements," and paragraph (c)(5), "Administrative controls."
- 10 CFR 50.47, "Emergency Plans," paragraph (b)(8).
- Appendix B to 10 CFR Part 50, Criterion III, "Design Control," and Criterion XVII, "Quality Assurance Records."
- Appendix E to 10 CFR Part 50, Section VI, "Emergency Response Data System."
- Appendix A to 10 CFR Part 50, General Design Criterion (GDC) 13, "Instrumentation and Control"; GDC 19, "Control Room"; and GDC 23, "Protection System Failure Modes."

and equipment function as intended. Prudence might lead to Y2K compliance as an objective for remedial activities in order to reduce licensee costs of implementing workarounds and other activities in the interim until full Y2K compliance is achieved. However, protection of public health and safety does not necessitate establishment of Y2K compliance as a regulatory requirement, and failure to achieve compliance should not require plant shutdown, so long as Y2K readiness is achieved. Accordingly, the NRC does not believe that a rule that requires Y2K compliance, or Y2K readiness, is appropriate or necessary for ensuring reasonable assurance of adequate protection at nuclear power plants after December 1, 1999.

C. Limited Susceptibility of Nuclear Power Plant Systems to Y2K Problems

NRC audits and reviews indicate that most nuclear power plant systems necessary for shutting down the reactor and maintaining it in a safe shutdown condition are not susceptible to Y2K problems. The majority of commercial nuclear power plants have protection systems that are analog rather than digital. Because Y2K concerns are associated with digital systems, analog reactor protection system functions are not affected by the Y2K issue. Errors such as incorrect dates in printouts, logs, or displays have been identified by licensees in safety-related devices, but the errors do not affect the functions performed by the devices or systems. Most Y2K issues are in balance-of-plant and other systems that have no direct functions necessary for safe operation of the reactor.

With respect to safety systems using digital electronics that are necessary for performing safe-shutdown and maintaining the reactor in a safe shutdown condition, licensees are undertaking the NEI/NUSMG 97–07 and NEI/NUSMG 98–07 processes described above for addressing Y2K problems. With respect to balance-of-plant systems, licensees implementing their plant-specific Y2K program are classifying important balance-of-plant and other non-safety-related systems (such as those that support continued plant operations, provide information and aid to the plant operators like sequence-of-events monitoring for tracking post-shutdown status of plants, and whose failure could lead to a plant transient or trip) as "mission-critical" or "high." Systems and equipment classified as mission-critical or high, when found to be Y2K susceptible during the assessment stage of the Y2K program, are also scheduled to be remediated similar to safety-related systems.

In sum, the NRC believes that the actual scope of plant systems necessary to provide reasonable assurance of adequate protection to public health and safety, which are potentially susceptible to Y2K problems, is relatively limited and that the licensees' current activities are sufficient to ensure that Y2K problems will not adversely affect safety-related or balance-of-plant systems.

D. Public Comments

One public comment in support of the NIRS petition stated that embedded chips are difficult to identify and the effects of their failures are poorly understood, especially in the U.S. power grid. When the NRC staff was developing GL 98–01, it recognized that embedded systems pose a potential Y2K problem that must be recognized and addressed in any successful Y2K effort. Accordingly, GL 98–01 informed licensees that Y2K programs should be augmented to address remediation of embedded systems. Licensees have stated in their responses to the generic letter that embedded systems are being addressed in their Y2K programs, and these statements have been confirmed by NRC audits to date. NRC understands that the electric utilities providing power to the grid have similar efforts underway that are being monitored by the North American Electric Reliability Council.

One public comment in support of the petition indicated that the rule should require nuclear power plants to shut down 6 months before the end of 1999 to allow a safe period of time to shut down the plant. The NRC does not agree that it takes 6 months to safely shut down a plant. Under normal conditions, it takes several hours to safely shut down a nuclear power plant by reducing reactor power gradually. However, in an emergency, the reactor can be shut down safely within seconds, either automatically or manually. The reactor will be shut down automatically by the reactor protection system upon the sensing of an unusual condition. Moreover, the operator always has the capability to manually shut down the reactor using the reactor protection system. Accordingly, the NRC does not agree that it is necessary to shut down nuclear power plants 6 months before the end of 1999 in order to ensure a safe shutdown of the plants.

A commenter in favor of the petition stated that the Y2K problem could increase the chance of a meltdown. However, the commenter did not provide any basis for this assertion. The NRC disagrees with the commenter. Safety functions performed by the reactor protection system for shutting down the reactor and by the engineered safety features actuation for mitigating accidents, cooling down the reactor, and providing emergency power to safety systems upon a loss of offsite power are not affected by the Y2K problem. Although there is some concern that the reliability of the offsite power sources may be lower during the Y2K transition, if a loss of offsite power were to occur because of Y2K, the plant would trip automatically because all nuclear plants are designed for such an event. The emergency onsite power supply system would provide power to the safety system equipment automatically. This sequence of events is not affected by the Y2K problem because all these safety systems do not rely upon computer-operated systems or components that are date-sensitive. For these reasons, the NRC disagrees that a Y2K problem could increase the probability of a core melt accident at a nuclear power plant.

One public comment in support of the petition indicated that the audits conducted by NRC staff are too few. The NRC has responded to this comment in section I.A.

E. Summary

The NRC believes that licensees' Y2K activities and programs, considered together with NRC oversight activities, provide a reasonable approach for ensuring that Y2K problems will not pose an unreasonable threat to public health and safety. NIRS has not explained why this regulatory approach will not provide reasonable assurance of adequate protection from any potential Y2K-initiated problems at operating nuclear power plants, such that the rule proposed by NIRS is necessary.

II. Part 50 Non-Power Reactor Licensees

NRC used several methods to inform all non-power reactor (NPR) licensees of the need to ensure that their facilities are ready for the year 2000. In 1996, NRC staff contacted all NPR licensees informing them of a potential for problems in systems either controlling or supporting the reactor because of Y2K issues. In December 1996, NRC issued IN 96–70 to alert nuclear facility licensees to the Y2K problem. IN 96–70 described the potential problems that nuclear power plant computer systems and software may encounter as a result of the change to the new century and how the Y2K issue may affect NRC licensees. IN 96–70 encouraged all licensees to examine their uses of computer systems and software well

before the year 2000. IN 96–70 also suggested that licensees consider appropriate actions for examining and evaluating their computer systems for Y2K vulnerabilities.

NRC also coordinated with the Organization of Test, Research and Training Reactors (TRTR) to distribute information about the Y2K problem through TRTR newsletters. These newsletters were distributed to all members of the organization to focus attention on the Y2K problem and related ongoing activities. The staff at all 37 licensees with operating reactors receive copies of the TRTR newsletter. The TRTR newsletters articles included "Concerns about the Millennium," February 1997; "Year 2000 Concerns," February 1998; "NRC Response on Year 2000," May 1998; "More on the Y2K Issue," August 1998; and "Another Y2000 Notice," November 1998. NRC staff has confirmed through several telephone conversations and discussions during inspections that all licensees of operating reactors are aware of the Y2K concerns and have ongoing actions to be Y2K ready by the end of the year or sooner.

Since 1998, while conducting inspections of NPR facilities, the NRC staff is also verifying that licensees are addressing the Y2K problem with regard to reactor safety. NRC staff has inspected about 50 percent of the operating reactors and intends to complete the inspections of all operating NPRs by October 1999. These inspections will verify that the licensees have programs to deal with Y2K and that all digital safety equipment at these facilities are considered in the program. Moreover, most institutions that operate the NPRs have their own Y2K programs that include the NPRs.

The safety systems at most operating reactors are analog systems that are not affected by the Y2K problem. Several operating reactors have digital safety equipment that provides instrument indication to the facility operator that is part of the licensee's Y2K program. Also, seven of these reactors have digital reactor protection system functions also considered in the licensee's Y2K program. These systems operate in parallel with the analog reactor protection systems, which are not affected by Y2K. Also, the digital systems initiate reactor scrams in case of a malfunction in the digital equipment. The analog systems generally provide the required reactor safety functions. The analog systems are independent of the digital equipment and have built-in redundancy to ensure that the reactor scrams. The power levels of these reactors are low (up to a maximum of 2 MWt) and many of them operate at low temperatures in relatively large pools of water. The only safety function that is generally required is for the reactor to scram. Thus, the Y2K concern poses very low risk. NIRS does not explain why the licensees' Y2K program activities and NRC's oversight of the licensees' implementation of the programs are inadequate such that the rule proposed by NIRS is necessary to provide reasonable assurance of adequate protection.

III. Part 50 Decommissioning Nuclear Power Plant Licensees

The suggested rule language in the petition would require that all facilities not compliant with Y2K issues be shut down by December 1, 1999. Nuclear power plants that are permanently shutdown with fuel removed from the reactor core would, therefore, not be subject to the rule as proposed by NIRS. However, since the purpose of the proposed rule appears to be directed to ensuring that Y2K problems at all nuclear power plants—both operating and decommissioning—will not pose a threat to public health and safety, the following discussion on the activities for addressing the Y2K problem at decommissioning nuclear power plants is provided.

There are two potential radiological health and safety concerns with respect to Y2K problems at decommissioning plants: (1) spent fuel storage, including site security; and (2) the actual conduct of dismantlement and decommissioning activities. Of greater concern is the spent fuel storage. The concerns in this area relate to providing sufficient cooling to the spent fuel and providing sufficient security against diversion and sabotage of the spent fuel. There are 21 decommissioning nuclear power plants that have been shut down more than a year, 6 of which have had spent fuel removed from the site. Accordingly, there are only 15 decommissioning nuclear power plants where spent fuel storage is of concern. Although licensees for all of these facilities are implementing Y2K programs, it is unlikely that Y2K problems would pose a significant problem to providing sufficient spent fuel cooling. First, electrical and makeup water systems for spent fuel pools are not computer-controlled. Moreover, even if there was an interruption in electrical power, there is a long time period for the licensee to respond to the problem before integrity of the spent fuel rods becomes an issue because sufficient time is available to take compensatory action before boiling starts. The spent fuel pool is conservatively estimated (based on the Zion units) to begin boiling 68 hours after loss of the spent fuel pool cooling system. Boiling does not become a concern until the fuel rods begin to be uncovered by boil-off of cooling water. Since fuel rods are normally covered by 23 feet of water (for purposes of shielding), and it would take approximately two weeks or more to begin uncovering the spent fuel rods (assuming that no make-up water is added to the pool), the NRC believes that there is sufficient time to recover electrical power and/or provide makeup water to prevent the fuel rods from uncovering.

The other threat to spent fuel is diversion and sabotage. Licensees of decommissioning reactors are taking steps to ensure that Y2K problems will not disable necessary security and safeguards systems and controls. Licensees with computer-based site security systems that have been identified as potentially Y2K vulnerable have tested the system for Y2K, upgraded the system to be Y2K compliant, or will make the system Y2K compliant before the end of 1999.

With respect to the safety of conducting dismantlement and decommissioning activities, the NRC does not believe that these activities are subject to Y2K problems that would pose a threat to public health and safety because the conduct of these activities in the field do not rely upon computer-controlled devices to ensure protection against radiological dangers.

In sum, licensees of decommissioning nuclear power plants are implementing Y2K activities that address equipment and systems important to safety, such that there is reasonable assurance of adequate protection to public health and safety.

IV. Major Parts 40 and 70 Licensees

To alert major Parts 40 and 70 licensees of the potential Y2K problem, NRC issued Information Notice (IN) 96–70, "Year 2000 Effect on Computer System Software," dated December 24, 1996. IN 96–70 described the potential Y2K problems, encouraged licensees to examine their uses of computer systems and software well before the year 2000, and suggested that licensees consider appropriate actions to examine and evaluate their computer systems for Y2K vulnerabilities.

In order to gather Y2K information regarding materials and major fuel cycle facilities, NRC formed a Y2K Team within the Office of Nuclear Material Safety and Safeguards (NMSS) in 1997. From September 1997 through December 1997, this NMSS Y2K Team visited a cross-section of materials

licensees and fuel cycle facilities and conducted Y2K interviews. Each licensee or facility visited by the team indicated that they were aware of the Y2K issue and were in various stages of implementing their Y2K readiness program.

On June 22, 1998, the NRC staff issued Generic Letter (GL) 98–03, "NMSS Licensees' and Certificate Holders' Year 2000 Readiness Programs." This GL requested major Parts 40 and 70 licensees to submit by September 20, 1998, written responses regarding their facility-specific Y2K readiness program in order to confirm that they were addressing the Y2K problem effectively. All licensees responded to GL 98–03 by stating that they have adopted a facility-specific Y2K readiness program and that the scope of the program included identifying and, where appropriate, remediating, hardware, software, and embedded systems, and provided for risk management and the development of contingency plans.

GL 98–03 also requested a written response, no later than December 31, 1998, which confirmed that these facilities were Y2K ready or provided a status report of work remaining to be done to become Y2K ready, including completion schedules. All licensees provided a second response to GL 98–03, which identified work remaining to be done, including completion schedules. Furthermore, following the second response, NRC requested a third written response, no later than July 1, 1999, which would confirm that these facilities are Y2K ready or would provide an updated status report.

On August 12, 1998, IN 98–30, "Effect of the Year 2000 Computer Problem on NRC Licensees and Certificate Holders," provided licensees additional information on the Y2K issue. IN 98–30 provided definitions of "Y2K ready" and "Y2K compliant," encouraged licensees to contact vendors and test their systems for Y2K problems, and described elements of a Y2K readiness program.

Between September 1997 and October 1998, the major Parts 40 & 70 licensees were also asked Y2K questions during other inspections. Based on these Y2K inspections, the licensees were aware of the Y2K problem and were adequately addressing Y2K issues. There have been no identified risk-significant Y2K concerns for major Parts 40 and 70 licensees.

NIRS' proposed rule would require that licensees be shutdown by December 1, 1999, unless licensees demonstrate that "Y2K compliance" has been achieved. However, NIRS has not explained why "Y2K compliance" as opposed to "Y2K readiness" is necessary. NIRS asserted that NRC has not made explicit how it will define "Y2K compliance." However, NRC explicitly defined the terms "Y2K ready" and "Y2K compliant" in GL 98–03. "Y2K ready" was defined as a computer system or application that has been determined to be suitable for continued use into the year 2000, even though the computer system or application is not Y2K compliant. "Y2K compliant" was defined as a computer system or application that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the years 1999 and 2000, and beyond, including leap-year calculations. Thus, by definition, systems that are "Y2K ready" are able to perform their functions properly. There is no discernable safety reason why achieving Y2K readiness rather than Y2K compliance should result in facility shutdown. Accordingly, there is no basis for requiring facility shutdown if a licensee cannot demonstrate Y2K compliance.

NIRS presents no information or argument why those actions by the licensees and NRC described above are insufficient to address Y2K problems and to demonstrate that reasonable assurance of adequate protection will not be provided after December 1, 1999, so that facility shutdown is necessary.

V. Part 30 and Minor Parts 40 and 70 Licensees

To alert Part 30 and minor Parts 40 and 70 licensees, the NRC issued INs 96–70 and 98–30, which have been discussed in Section IV, "Major Parts 40 and 70 Licensees."

In addition to the efforts by the NMSS Y2K Team to gather information regarding materials licensees and major fuel facilities from September through December 1997, discussed under Section IV, NMSS staff also conducted telephone interviews with device manufacturers and distributors. Further, NRC determined that few of approximately 5,800 materials licensees use processes or have safety systems that are computer-controlled, thus minimizing potential Y2K impacts. The interviews and site visits confirmed that licensees were identifying and addressing potential Y2K problems.

From the interviews conducted by the NMSS Y2K Team, NRC learned that early versions of some treatment planning systems (computer systems for calculating dose to medical patients being treated with radiation or radioactive material) have Y2K problems and that upgrades for treatment planning systems were available. However, treatment planning systems are regulated by the U.S. Food and Drug Administration (FDA) and not by NRC because the systems do not contain licensed material. NRC has shared information on non-Y2K-compliant treatment planning systems with the FDA. For materials licensees, the NMSS Y2K Team did not identify any Y2K issues for NRC-regulated material. As a result of the interviews and site visits, NRC's focus has been to determine if any commercially available devices (medical and industrial) have potential Y2K vulnerabilities and to ensure that licensees evaluate self-developed systems, commercial off-the shelf software and hardware, and safety systems.

In addition to Y2K interviews, materials inspectors have been instructed to confirm receipt of NRC's information notices, determine whether the licensees have identified any potential problems associated with the Y2K issue, and note any corrective actions taken by the licensees. Through the routine inspection process, NRC has made assessments of the Y2K status of its materials licensees and continues to do so. To date, only the treatment planning systems described above, dose calibrators, and a tote position display for an irradiator have been identified through the inspection process as having Y2K problems. NRC materials inspectors have indicated that licensees are aware of available upgrades for treatment planning systems and dose calibrators. The irradiator tote position display is not a safety system. Further, the irradiator tote position display system that had the Y2K problem was a one-of-a-kind modification made by the licensee (the licensee was authorized by NRC to make the modification). The irradiator licensee is updating the tote position display system to eliminate the Y2K problem. No generic Y2K issues for NRC-regulated material used by materials licensees have been identified.

NIRS asserted that NRC has not made explicit what it plans to do about those facilities that cannot prove compliance. As discussed in Section IV, "Major Parts 40 and 70 Licensees" above, NIRS has not explained why "Y2K compliance" as opposed to "Y2K readiness" is necessary. Furthermore, Y2K readiness is not required for protection of public health and safety for Part 30 and minor Parts 40 and 70 licensees due to the amount and type of licensed material used by them. The risks to the public from these facilities are low. In addition, NRC has determined that few of the

approximately 5,800 materials licensees use processes or have safety systems that are computer-controlled, thus minimizing potential Y2K impacts. Accordingly, there is no basis for requiring facility shutdown if a licensee cannot demonstrate "Y2K compliance."

NIRS presents no information or argument why those actions by the licensees and NRC described above are insufficient to address Y2K problems and to demonstrate that reasonable assurance of adequate protection will not be provided after December 1, 1999, so that facility shutdown is necessary.

VI. Public Information

NIRS requested in item (c) of its petition that NRC adopt regulations that would require that licensees make available to the public by December 1, 1999, all information related to the examination and repair, modification, and/or replacement of all computer systems, embedded chips, and other electronic equipment that may be date-sensitive. NIRS indicated that this rule provision is necessary in order to allow "independent experts" and the public to examine this information.

The NRC has already made available to the public substantial information on Y2K and the status of licensees' activities to address potential Y2K problems and will continue to make this information public. The audit reports of the NRC staff reviews of the 12 nuclear power plant-specific Y2K readiness project activities and documentation are publicly available both in the Public Document Rooms and the NRC Year 2000 Web site. The Y2K readiness information submitted in July 1999 by nuclear power plant licensees under GL 98–01, Supplement 1, is available to the public, as with any other correspondence that is received from licensees. The reports documenting the NRC staff audits of the six nuclear power plant-specific contingency planning activities and the results of the facility-specific Y2K program reviews of all operating nuclear power plants are also available to the public. The NRC inspection reports with Y2K information from Parts 30, 40, and 70 licensees and the licensees' responses to GL 98–03 have been placed in the PDR. Summaries of (1) inspection reports with Y2K information, (2) GL 98–03 responses, and (3) interviews with a cross-section of materials and fuel cycle licensees on Y2K issues are available on the NRC Year 2000 Web site.

In view of the information that has been made available and will be made available to the public, NIRS has not provided any basis for requiring licensees, by rule, to provide public access to Y2K information beyond that which the NRC has determined must be submitted to the NRC in furtherance of the NRC's regulatory oversight.

Conclusion

The rule proposed by NIRS is not needed because the Commission has determined that the activities taken by licensees to implement a systematic and structured facility-specific Y2K readiness program, together with the NRC's oversight of the licensees' implementation of these Y2K readiness programs, provide reasonable assurance of adequate protection to public health and safety.

For these reasons, the Commission denies the petition.

Dated at Rockville, Maryland, this 17th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 99–21750 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM–35–15]

Jeffery C. Angel; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Jeffery C. Angel. The petition has been docketed by the Commission and has been assigned Docket No. PRM–35–15. The petitioner requests that the NRC amend its regulations concerning the medical use of byproduct material to prohibit the hand-held administration of radiopharmaceuticals by injection and to require the use of the Angel Shield, a device to administer radioactive substances. The petitioner requests that the NRC take this action to make the administration of radiopharmaceuticals by injection safer.

DATES: Submit comments by November 8, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll-free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1999, the Nuclear Regulatory Commission (NRC) received a petition for rulemaking submitted by Jeffery C. Angel. The petitioner requests that the NRC amend its regulations concerning the medical use of byproduct material to prohibit the hand-held administration of radiopharmaceuticals by injection and require the use of the Angel Shield, a device to administer radioactive substances. The petitioner requests that the NRC take this action to make the administration of radiopharmaceuticals by injection safer. The petition has been docketed as PRM–35–15. The NRC is soliciting public comment on the petition for rulemaking.

The NRC's regulations governing the medical use of byproduct material appear in 10 CFR Part 35. Paragraph (c) of § 35.60 requires that an individual use a syringe radiation shield when administering a radiopharmaceutical by injection unless the use of the shield is contraindicated for that patient or human research subject.

Discussion

The petitioner states that the current practice of placing the radiopharmaceutical into a syringe radiation shield and delivering a hand-held injection places the person administering the substance in direct

and immediate contact with the radiopharmaceutical. The petitioner contends that this practice results in the unnecessary exposure of this individual to radiation. The petitioner asserts that the design and engineering of syringe radiation shields is not based on sound radiation protection principles. The petitioner further states that current syringe designs violate the fundamental radiation principles of time, shielding, and distance. The petitioner states that syringe radiation shields provide inadequate radiation protection because—

1. They are hand held, thereby placing an administrator in direct and immediate contact with the radioactive substance;

2. They must be light enough so that they are not cumbersome to work with and consequently, they do not incorporate enough shielding to protect administrators adequately; and

3. There is no shielding at the distal or proximal portions of the shield, which results in direct and unnecessary radiation exposure.

The petitioner refers to the provisions of 10 CFR 20.1101(b) that require licensees to use procedures and engineering controls based on sound radiation protection principles to achieve occupational dose rates that are as low as is reasonably achievable (ALARA).

The Petitioner's Request

The petitioner requests that the NRC amend its regulations concerning the medical use of byproduct material to prohibit the hand-held administration of radiopharmaceuticals by injection. As an alternative, the petitioner suggests that the NRC require the use of the Angel Shield, a radioactive substance administrator that eliminates the hand-held administration of radiopharmaceuticals by injection. The petitioner believes that radiation exposure rates would be immediately and substantially reduced through the use of the Angel Shield. The petitioner asserts that the Angel Shield reduces radiation exposure by—

1. Eliminating the hand-held injection of radiopharmaceuticals;

2. Encapsulating the syringe within the administrator completely thereby providing 360 degrees of protection;

3. Shielding 100 percent of low-energy emissions (140 kev) and 88 percent of high-energy emissions (511 kev);

4. Allowing for the remote administration of the radiopharmaceutical; and

5. Reducing the number of missed injections and subsequent multiple exposures.

The petitioner explains that the Angel Shield uses ½-inch lead walls that completely encapsulate the radiopharmaceutical. The petitioner further explains that the entire administration process is mechanized. This removes the occupational worker from direct and immediate contact with the radioactive substance. As a result, radiation exposure rates are substantially and immediately reduced.

The petitioner contends that the reduction of unnecessary radiation exposure when administering radiopharmaceuticals by injection is of critical importance as the practice of nuclear medicine evolves toward therapeutic applications and the administration of medium and high-energy radiopharmaceuticals. The petitioner states that the one of the NRC's primary duties is to establish regulations on the safe use of nuclear materials. The petitioner contends that prohibiting the hand-held administration of radiopharmaceuticals by injection and requiring the use of the Angel Shield makes the administration of radiopharmaceuticals safer and furthers the goals of ALARA by reducing occupational dose rates.

The Petitioner

The petitioner has been a nuclear medicine technologist for over twenty years and has been exposed to radiation on a recurrent daily basis. He invented a radioactive substance administrator, the Angel Shield, to protect himself and others from unnecessary radiation exposure when administering radiopharmaceuticals by injection.

Dated at Rockville, Maryland, this 17th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 99–21792 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–66]

Nuclear Information and Resource Service; Petition for Rulemaking Denial

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–50–66) from the Nuclear Information and Resource Service (NIRS). The petitioner requested that NRC amend its regulations to require licensees of operating nuclear power plant facilities to conduct a full-scale emergency planning exercise that involves coping with a date-sensitive, computer-related failure resulting from a Year 2000 (Y2K) issue. The petitioner requested that NRC take this action to ensure that licensees of nuclear facilities have developed and can implement adequate contingency and emergency plans to address potential major system failures that may be caused by a Y2K computer problem. NRC is denying the petition because the Commission has determined that the actions taken by the licensees to implement systematic and structured Y2K readiness contingency plans for critical Y2K dates in concert with existing required emergency response plans and procedures, and NRC's oversight of the licensees' implementation of these Y2K readiness contingency plans provide reasonable assurance of adequate protection to public health and safety.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letters to the petitioners are available for public inspection or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, as well as NRC's rulemaking web site at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Matthew Chiramal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2845, E-mail address mxc@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

NRC received three related petitions for rulemaking (PRM–50–65, PRM–50–66, and PRM–50–67), each dated December 10, 1998, submitted by the NIRS concerning various aspects of Y2K issues and nuclear safety. This petition (PRM–50–66) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Part 50 to develop and implement adequate contingency and emergency plans to address potential system failures. The first petition (PRM–50–65) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Parts 30, 40, 50, and 70 to be Y2K compliant. The third petition (PRM–50–67) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Parts 50

and 70 to provide reliable sources of backup power.

Because of the nature of these petitions and the date-specific issues they address, the petitioner requested that the petitions be addressed on an expedited schedule.

On January 25, 1999, NRC published a notice of receipt of this petition for rulemaking in the **Federal Register** (64 FR 3791). It was available on the NRC's rulemaking website and NRC Public Document Room. The notice of receipt of petition for rulemaking invited interested persons to submit comments by February 24, 1999.

The Petition

The petitioner requested that NRC adopt the following text as a rule: [1]

All licensees subject to 10 CFR Part 50 and Appendix E will conduct a full-scale emergency planning exercise (as normally required under 10 CFR 50.47) during 1999. This exercise shall include a component that includes failure of one or more computer or other digital systems (this is popularly known as the "Y2K bug") on January 1, 2000, or other relevant date. Licensees that do not conduct, or that fail, this exercise shall close their facilities licensed under this Part by December 1, 1999, until such time as the licensees have conducted a successful exercise.

NRC shall publish and provide to each licensee, within 30 days of the date of this rule, a Regulatory Guide that outlines potential emergency exercise scenarios. NRC shall publish and provide to each licensee, by December 1, 1999, a Regulatory Guide that describes the various scenarios that have been undertaken and the successful (and unsuccessful) responses to the problems posed.

The petitioner stated that although the probability of the occurrence of Y2K-related events that would require emergency response and the implementation of contingency plans is unknown, it would fall within the range of safety matters for which NRC requires emergency planning exercises. Furthermore, the petitioner asserts that addressing Y2K-related problems will require the use of potentially unfamiliar contingency plans, relying on ingenuity to circumvent failure of essential communications systems or failure of offsite emergency responders to perform their tasks effectively and coping with issues not normally tested during emergency exercises.

The petitioner considers it prudent to require each licensee to conduct an exercise and that each exercise address a different aspect of the Y2K problem. The petitioner suggested that some exercises should test problems initiated by Y2K-related failures and that others should test problems exacerbated by Y2K-related failures. The petitioner believes that this approach would provide some familiarity with the possible range of issues that could develop and create an overall industry capability to effectively address potential Y2K problems.

Under the petitioner's suggested regulation, the licensees would develop exercise scenarios that would be approved by NRC in an expedited fashion, and NRC would publish and distribute regulatory guides that would outline potential emergency response scenarios and describe the scenarios that were tested and the successful responses to the problem posed.

The petitioner stated that these actions would provide reasonable assurance that nuclear power plant licensees have developed and can implement adequate contingency and emergency plans to address major system failures that may be caused by the Y2K problem.

Public Comments on the Petition

In response to this petition, NRC received 64 comment letters, including 1 letter signed by 25 citizens from the State of Michigan, 3 from nuclear associated industries, 11 from utilities, 13 from private organizations, 1 from the State of Illinois Department of Nuclear Safety, and 35 from private citizens.

Forty-six letters supported the petition, of which 13 were from private organizations, 32 were from private citizens, and one which was signed by 25 citizens of the State of Michigan. Thirty-nine of these 46 letters communicated a brief statement in support of the petition. Seven of the 46 letters, of which 3 were from private individuals and 4 were from private organizations, discussed reasons for supporting the petition.

In some letters, support of the petition was based on belief that actual emergency response exercises will provide invaluable information in addressing Y2K issues because of the complexity of Y2K issues and the lack of experience of licensees of nuclear facilities in responding to such an event.

Others letters stated that all emergency plans rely heavily on offsite sources of help, such as police, fire, and other essential services, but that these services, as well as critical communications entities, may also be vulnerable to the Y2K problem if they are not properly assessed, remedied, and tested. Some letters cited numerous problems that have occurred in previous emergency planning exercises, irrespective of the Y2K problem. An example stated was the Pilgrim exercise of December 13, 1995, in which the Boston Edison Company was unable to communicate to the proper authorities. Other examples cited the occurrence of lost electrical buses. Some letters communicated the importance of testing and retesting for every conceivable contingency.

Eighteen letters opposed the petition, of which 3 were from private citizens, 3 were from nuclear associated industries, one was from the State of Illinois Department of Nuclear Safety, and 11 were from utilities. The letters opposing the petition stated that the additional emergency planning exercise suggested by the petition is not needed to ensure public health and safety. These letters indicated that NRC analysis and industry testing have confirmed that safety systems will function to shut down a reactor if required, that licensees and NRC are developing contingency plans for key Y2K rollover dates, and that these contingency plans will evaluate specific risk factors and, where appropriate, provide mitigation strategies to allow continued safe operation. These letters stated that this effort provides a rational review and systematic approach to issues that could affect the continued safe operation of a plant within the conditions of its license, which the commenters believe is a more effective approach for ensuring that plants continue to operate and meet commitments.

Reasons for Denial

Pursuant to 10 CFR 50.47, "Emergency Plans"; 10 CFR 50.54, "Conditions of Licenses," paragraphs (q), (s), and (t); and Appendix E to 10 CFR Part 50, nuclear facilities are required to provide emergency response capabilities that take into account a variety of circumstances and challenges, to exercise their plans periodically to develop and maintain key skills of involved personal, and to identify deficiencies in the emergency plan and personnel and take appropriate actions to correct identified deficiencies. In accordance with 10 CFR 50.54(q), nuclear power reactor licensees are required to follow and maintain in effect emergency plans that meet the planning standards in 10 CFR 50.47(b) and the requirements of Appendix E to Part 50. In part, licensees are required to train

[1] In preliminary discussion, the petitioner stated, "We also believe that other major fuel cycle facilities should be subject to a similar rule." However, the petitioner provided no supporting reasoning, no regulatory text, and no specific request that NRC adopt such a rule. Therefore, NRC has considered only the specifically requested rule language.

and test their organization and associated equipment to ensure that under all conditions and contingencies, such as power outages and computer and communication failures, appropriate emergency response is available and effective in an emergency.

To accomplish these requirements, licensees conduct numerous exercises and drills throughout the year. Inherent in the nature of emergency response is the realization that in an emergency, equipment may fail, loss of power may occur, personnel may not be available, and weather conditions may cause the emergency or escalate it. It is typical that, in the development of scenarios for exercises and drills, as well as in employee training programs, communication links, plant computers, and display and monitoring equipment are "out of service" or "fail" at inappropriate times. The NRC staff commonly oversees exercises that include these types of problems and the licensee's staff benefits from having to work around this training obstacle when a particular approach has been blocked. The NRC staff has observed licensees resorting to manual and backup systems to respond effectively and overcome these obstacles.

In terms of the effects of the Y2K problem, the NRC staff believes that the Y2K problem is not unique—it is a software error. Although the cause of computer and equipment failure may be different under Y2K, the result and the expected response are the same as situations encountered during many previous emergency exercises and drills. Therefore, there is no need to require licensees to conduct additional exercises to test specifically for potential Y2K failures.

In addition to existing emergency response plans, licensees of operating nuclear power plants and decommissioning power plants where spent fuel is stored at the plant site are preparing and implementing Y2K contingency plans as part of the plant-specific Y2K program. Operating nuclear power plant-specific Y2K contingency plans are based on the guidance in Nuclear Energy Institute/ Nuclear Utilities Software Management Group NEI/NUSMG 98–07,[2] "Nuclear Utility Year 2000 Readiness Contingency Planning," dated August 1998, which provides a process and a method for preparing and implementing a facility-specific integrated contingency plan that considers specific risks from internal and external sources. The Y2K contingency plans are generally built upon existing contingency activities (such as emergency preparedness, disaster recovery, storm damage restoration, grid restoration, and station blackout) and plant emergency procedures, coupled with the consideration that potential Y2K-related failures could affect many systems and components. Among the external events that are considered for contingency planning are—

- the loss of emergency plan equipment and services: pagers, radios, sirens and meteorology information, and
- the loss of essential services: telephone, microwave, water, satellites, networks, security, police, and fire-fighting capability.

The need for simulated exercises, development of special procedures, and Y2K contingency plan specific training is considered in the Y2K contingency planning process. Contingency plan verification is included in NEI/NUSMG 98–07 guidelines to provide confidence that the plans can be executed as intended. The contingency planning efforts, as outlined in NEI/NUSMG 98–07, provide additional training, staffing, and material procurement for occurrences that could happen at any time but that have a higher probability of occurring during the critical Y2K-related dates. Licensees and NRC are currently developing contingency plans for critical Y2K rollover dates. These contingency plans evaluate specific risk factors and, where appropriate, provide mitigation strategies to cope with plant-specific effects of the most probable and serious failures that might be initiated or exacerbated by the Y2K problem.

On May 11, 1998, NRC issued Generic Letter (GL) 98–01, "Year 2000 Readiness of Computer Systems at Nuclear Power Plants." In GL 98–01, NRC requested that all operating nuclear power plant licensees submit written responses regarding their facility-specific Y2K readiness programs in order to obtain confirmation that licensees are addressing the Y2K problem effectively. All licensees have responded to GL 98–01, stating that they have adopted plant-specific programs that are intended to make the plants Y2K ready by July 1, 1999. These programs are patterned on industry guidelines (NEI/NUSMG 97–07, "Nuclear Utilities Year 2000 Readiness") that have been found acceptable by NRC. GL 98–01 also requests a written response, no later than July 1, 1999, confirming that these facilities are Y2K ready, including contingency planning. Licensees who are not Y2K ready by July 1, 1999, must provide a status report and schedule for the remaining work to ensure timely Y2K readiness.

NRC considers the guidance in NEI/ NUSMG 98–07, when properly implemented, as an acceptable approach for licensees to mitigate and manage Y2K-induced events that could occur on Y2K-critical dates.

As part of its oversight of licensee Y2K program activities, NRC staff audited the contingency planning effort of six licensee facilities. These audits were completed during June 1999. These audits focused on the licensee's approach to addressing both internal and external Y2K risks to safe plant operation, based on the guidance in NEI/NUSMG 98–07. The audits at these facilities examined in detail back-up measures the utilities have in place to deal with possible Y2K problems, either on site or off site, including problems with the loss of emergency plan equipment and services (pagers, radios, sirens, and meteorology), the loss of essential services (telephone, microwave, water, satellites, networks, security, police), and the failure of the offsite emergency responders to perform their task effectively.

Additionally, NRC regional staff reviewed Y2K activities at all operating nuclear power plants to verify the status of licensee efforts to ensure that all plants will be able to function safely on January 1, 2000, and beyond. The reviews: (1) verify that all NRC licensees have implemented Y2K program activities; (2) evaluate the progress they have made to ensure that they are on schedule to achieve Y2K readiness; and (3) assess their contingency plans for addressing Y2K-related issues. The regional staff is using guidance prepared by the NRC Headquarters staff that is based on NRC GL 98–01, NEI/NUSMG 97–07, and NEI/NUSMG 98–07. These reviews were completed by July 1999.

The offsite components of emergency preparedness and response, which are the responsibility of States, counties, and municipalities, are already utilized by those governmental entities to address a wide range of events (e.g., grid failures, tornadoes, floods, hurricanes, snowstorms, industrial accidents). These events often involve widespread loss of normal capabilities and services (e.g., loss of electricity and telephone service, blocking of roads) coupled with the need for a multi-capability response. NRC is also working closely with the Federal Emergency Management Agency (FEMA) on its plans to conduct Y2K workshops for the State and local radiological emergency preparedness community. NRC and nuclear facilities licensees will participate in these workshops. NRC is an active member of

[2] NEI/NUSMG 98–07 was preceded by NEI/ NUSMG 97–07, "Nuclear Utility Year 2000 Readiness," dated October 1997, which presented a strategy for developing and implementing a nuclear utility Y2K program.

the Emergency Services Sector Working Group for Y2K, which is headed by FEMA. In addition, to facilitate Agreement State efforts to address the Y2K issue, a link to State Government Year 2000 Web sites has been provided by the NRC. NRC will make every effort to share with the States any Y2K issue that may also affect Agreement States or Agreement State licensees.

NIRS has not explained why the approach currently being pursued by the licensees, the nuclear industry, and NRC does not provide reasonable assurance of adequate emergency response capabilities during the transition from 1999 to 2000.

In the case of research and training/test reactors, licensees of these facilities also have established programs to evaluate and correct Y2K deficiencies. Many research reactors will be shut down on January 1, 2000, as the institutions operating them (e.g., universities and laboratories) will be closed for the holiday. Further, these reactors often have passive safety features and low power levels, which ensure minimal potential offsite consequences. In addition, NRC staff concluded that any research reactor in operation on January 1, 2000, could be readily shut down manually using emergency procedures and existing shutdown systems, even if their operational systems should experience a Y2K problem.

Conclusion

Plant-specific industry planning for Y2K contingencies, which is built upon existing emergency response plans and procedures required by the current emergency preparedness regulations, provides a reasonable assurance that adequate protection measures will be taken in the event of radiological emergency during Y2K critical dates. Imposing a new prescriptive rule as proposed in the petition in an area in which the industry action is already exceeding the actions that address the petitioner's general issues would be counterproductive to the ongoing Y2K readiness efforts of the licensees. Therefore, the additional full-scale emergency planning exercise requested by the NIRS is not necessary to ensure emergency response capabilities to provide reasonable assurance of adequate protection to public health and safety despite the occurrence of Y2K problems.

For these reasons, the Commission denies the petition.

Dated at Rockville, Maryland, this 17th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 99–21751 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

[Docket No. PRM–50–67]

Nuclear Information and Resource Service; Petition for Rulemaking Denial

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–50–67) from the Nuclear Information and Resource Service (NIRS). The petitioner requested that the NRC amend its regulations to require that nuclear facilities ensure the availability of backup power sources to power safety systems of reactors and other nuclear facilities in the event of a date-sensitive, computer-related incident resulting from a Year 2000 (Y2K) issue. The petitioner requested that NRC take this action to ensure that reliable backup sources of power are available in the event of a Y2K incident. The Commission agrees that maintaining reliable emergency power is important and has considered the petitioners request as part of its review of existing regulatory requirements and licensee actions to assure reliable emergency power during the Y2K transition. Based on this review, the Commission has determined that existing regulatory requirements, actions taken by the licensees to implement a systematic and structured Y2K readiness program adequately address Y2K issues, and NRC's oversight of the licensees' implementation of these programs provide reasonable assurance of adequate protection to public health and safety. Because the Commission has concluded that existing programs already address the petitioner's concern regarding availability of emergency power, the petition is denied.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letters to the petitioners are available for public inspection or copying in NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC, as well as on NRC's rulemaking web site at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Matthew Chiramal, Office of Nuclear Reactor Regulation, US Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2845, E-mail address mxc@nrc.gov, or Gary W. Purdy, Office of Nuclear Material Safety and Safeguards, US Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7897, E-mail address gwp1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

NRC received three related petitions for rulemaking (PRM–50–65, PRM–50–66, PRM–50–67), each dated December 10, 1998, submitted by the NIRS concerning various aspects of Y2K issues and nuclear safety. This petition (PRM–50–67) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR parts 50 and 70 to provide reliable sources of backup power. The first petition (PRM–50–65) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR parts 30, 40, 50, and 70 to be Y2K compliant. The second petition (PRM–50–66) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR part 50 to develop and implement adequate contingency and emergency plans to address potential system failures. Because of the nature of these petitions and the date-specific issues they address, the petitioner requested that the petitions be addressed on an expedited schedule.

On January 25, 1999, NRC published a notice of receipt of a petition for rulemaking in the **Federal Register** (64 FR 3789). It was available on NRC's rulemaking website and in the NRC Public Document Room. The notice of receipt of a petition for rulemaking invited interested persons to submit comments by February 24, 1999.

The Petition

The petitioner requested that NRC adopt the following text as a rule:

The Nuclear Regulatory Commission recognizes that date-sensitive computer programs, embedded chips, and other electronic systems that perform a major role in distributing, allocating, and ensuring electric power throughout the United States may be prone to failure beginning on January 1, 2000. Loss of all alternating current electricity from both the offsite power grid and onsite emergency generators (commonly known as "station blackout") long has been identified by NRC as among the most prominent contributors to risk for atomic reactors.

(1) For these reasons, NRC requires of part 50 and 70 licensees as of December 1, 1999:

(a) that all emergency diesel generators that provide backup power to nuclear licensees must be operational and remain operational; (b) that licensees that cannot demonstrate full operational capabilities of all emergency diesel generators must close until such time that full operational capabilities of emergency diesel generators are attained; (c) that all licensees must have a 60-day supply of fuel for emergency diesel generators.

(2) Further, to ensure adequate protection of public health and safety, NRC requires that all licensees under these sections must provide alternate means of backup power sufficient to assure safety. These may include, but are not limited to: solar power panels, wind turbines, hydroelectric power, biomass power, and other means of generating electricity. These additional backup systems must provide electricity directly to the licensee rather than to the broader electrical grid.

(3) Irradiated fuel pools are to be immediately classified as Class 1–E; backup power systems must be sufficient to provide cooling for such pools. Licensees which cannot demonstrate compliance with sections (1) and (2) must cease operations as of December 1, 1999, until compliance with these sections is attained.

The petitioner acknowledged that NRC has recognized the potential safety and environmental problems that could result if date-sensitive electronic systems fail to operate or provide false information. The petitioner asserted that NRC has required its licensees of reactor and major fuel cycle facilities to report by July 1, 1999, on their programs to ensure compliance with Y2K issues.

The petitioner discussed the "availability of electricity to power atomic reactor and other nuclear facility safety systems." The petitioner explained that electricity is required to operate atomic reactor safety and cooling systems and that this electricity is provided by offsite sources (overall an electrical grid). The petitioner commented that NRC has long recognized that the loss of all alternating current from both onsite and offsite systems, known generally as "station blackout," is the most important contributor to risk at most atomic reactors. The petitioner correctly noted that NRC has required licensees to have backup sources of onsite emergency power, normally multiple emergency diesel generators, capable of supplying the electricity necessary to operate essential safety systems.

The petitioner asserted that the emergency diesel generators (EDGs) used at atomic reactors have proven unreliable and are often out of service. The petitioner claimed that the unprecedented condition posed by the Y2K problem, coupled with the demonstrated and ongoing failures of EDGs, constitutes reasonable doubt that EDGs can be relied on. Therefore, the petitioner believes that NRC should adopt regulations that require that licensees have all EDGs operational during the Y2K transition, that they have a 60-day supply of fuel as of December 1, 1999, and that licensed facilities that cannot meet these requirements be closed.

The petitioner discussed the likelihood and the potential consequences of a failure of all or a portion of the electric power grid in the United States. The petitioner recognized that the failure of all or a portion of the electrical grid as a result of Y2K issues is well beyond the scope of NRC's authority. However, the petitioner stated that the extended failure of all or a portion of the electrical grid would place severe stress on the current EDG system of backup power supply and that the failure of EDGs at one or more reactor sites could result in extended station blackouts and nuclear catastrophes. The petitioner asserted that this possibility is well within the range of probabilities for which NRC routinely requires action by its licensees. The petitioner further asserted that reliance on unreliable EDGs is insufficient under these conditions. Therefore, the petitioner believes that it is essential that NRC take the regulatory action suggested in this petition on an expedited basis.

Public Comments on the Petition

In response to the petition, NRC received 73 comment letters, which included 1 letter signed by 25 citizens of the State of Michigan, 3 letters from nuclear associated industries, 10 letters from utilities, 14 letters from private organizations, and 45 letters from private citizens.

Fifty-six letters supported the petition, of which 41 were from private citizens, 14 were from private organizations, including 1 from the NIRS and 1 signed by 25 individuals. The comments supporting the petition addressed the concern that diesel generators are unreliable and that a reliable electric power grid is needed.

In some of the letters supporting the petition, the authors included the following additional comments that provide information or requested action that was not contained in the petition. These comments noted that—

1. Y2K may increase the possibility of local, regional or widespread blackouts. Losing all electric power to the station is called station blackout. EDGs, each capable of powering the entire plant, compensate for the loss of off-site electric power. Reliability of diesel generators is considerably lower than required and, moreover, one of two diesel generators is often out of service. Therefore, for Y2K, an additional source of backup power needs to be provided, and both EDGs should be operable with sufficient fuel on site to compensate for fuel delivery problems.

2. In order to ensure that sufficient electric power is available during an extended loss of offsite power to safely shut down a nuclear plant and cool the spent fuel pool, enough diesel fuel should be available at the site for periods extending from 60 days to 160 days to whatever the time period that offsite power is not available.

3. An additional power source or method should be available during power failure to provide makeup water to the spent fuel pool.

4. On at least one occasion, a nuclear power plant licensee falsified data relative to the reliability of EDGs. The concern is that other nuclear utilities may not provide reliable data for their EDGs to NRC. These comments are addressed specifically in the discussion of "Reasons for Denial."

Seventeen letters opposed the petition, including 4 from private citizens, 3 from nuclear associated industries, and 10 from utilities. Comments opposing the petition stated that onsite emergency electric power generators are already required to be maintained in a state of readiness and validated by periodic testing, fuel supplies are maintained at a level adequate to facilitate appropriate response/recovery actions, and the current regulations and license conditions are adequate to address the issue. One commenter used a specific facility as an example to demonstrate that in the highly unlikely event of a total loss of electrical power (meaning the loss of the electric grid and backup power) the conditions at that facility would not threaten public health and safety. Any potential adverse impacts would be limited to work areas and equipment within the facility, and there would be no catastrophic or significant loss of control or containment of nuclear material. That commenter indicated that the provision of a tertiary (meaning a secondary backup) source of electric power to its fuel facility, which would be independent of the broader electric grid, as would be required under PRM–50–67, is an unreasonable requirement that would force shutdown of the facility on December 1, 1999, in the absence of any significant credible safety risk.

Reasons for Denial

NRC is denying the petition because the Commission has determined that

current NRC regulations and license conditions governing power systems at part 50 and 70 facilities provide reasonable assurance of adequate protection to public health and safety, and licensees are taking appropriate actions to provide reasonable assurance that Y2K problems will not adversely affect the functioning of these power systems. The NRC is reviewing the licensees' implementation of these Y2K activities and will have sufficient time to take appropriate regulatory action if licensees' Y2K activities and programs are not properly implemented in a timely fashion. NIRS does not explain why the licensees' Y2K activities and programs, and NRC's oversight of the licensees' implementation of these activities and programs, are inadequate such that the rule proposed by NIRS is necessary to provide reasonable assurance of adequate protection from Y2K-induced unavailability of onsite power systems.

NIRS' proposed rule contained three separate requirements for Part 50 and Part 70 licensees: (1) Operational demonstration of EDGs and provision of a 60-day diesel fuel supply; (2) alternate means of backup power; and (3) classification of fuel pools as Class 1–E. Facilities that cannot demonstrate compliance with these requirements by December 1, 1999, would be required to shut down until they could demonstrate compliance. The proposed requirements are addressed below for part 50 power reactors, part 50 decommissioning reactors, part 50 non-power reactors, and part 70 licensees in Sections I, II, III, and IV, respectively.

I. Part 50 Nuclear Power Plants

A. Diesel Generator Operational Capability and Sixty-Day Fuel Supply

Nuclear power plants must be protected against loss of offsite power (LOOP) by providing an onsite backup power system by either 10 CFR part 50, Appendix A, General Design Criteria (GDCs) 17 and 18, or equivalent requirements in the plant's licensing basis. Most licensees rely upon diesel generators to provide onsite backup power, although there is at least one licensee that relies upon hydroelectric power. All licensees have committed to provide an onsite supply of fuel to operate diesel generators; most commitments are for a 7-day supply. In addition, nuclear power plants are required by 10 CFR 50.63 to have the capability to withstand loss of all ac power (generally referred to as "station blackout" [SBO]) for an established period of time. As indicated in Section I.A.2 there is no reason to believe that Y2K would significantly affect the probability or duration of a LOOP and/or a SBO from that otherwise assessed in a licensee's coping analysis required by 10 CFR 50.63. To demonstrate that their plants can cope with SBO, some licensees rely upon an alternate ac power source(s) (separate from the backup power system) that utilizes diesel generators or gas turbine generators.

1. EDG Reliability

NIRS claims that EDGs have proven to be unreliable, such that licensees should be required to demonstrate "full operational capability" [1] of EDGs that provide backup power. As previously noted, backup onsite power is usually provided by diesel generators, which supply electric power to the plant safety systems upon a LOOP. NRC regulations require that onsite electric power supplies and the onsite electric distribution system have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure. Furthermore, in accordance with their license conditions, all licensees are required to have backup electricity sources operational to supply safety-related equipment at all times independent of circumstances such as Y2K-induced LOOP. The operation and maintenance of diesel generators and other safety-related equipment necessary for the safe shutdown of the reactor are controlled by the plant technical specifications (TSs). The TSs are intended to ensure that sufficient power will be available to supply safety-related equipment at all times regardless of key Y2K dates. Moreover, the plant TSs require that immediate action be taken to restore inoperable diesel generators to operable status. The plant TSs require the diesel generators to be tested routinely in order to demonstrate their operability and their ability to supply power as needed.

NIRS did not present any information demonstrating that diesel generators are unreliable such that they should not be relied upon to provide backup power upon a LOOP. For each nuclear power plant, selected target diesel generator reliability values were established for plant-specific coping analysis in accordance with the requirements of 10 CFR 50.63, the SBO rule. Availability and reliability values are tracked by each licensee in accordance with the requirements of 10 CFR 50.65, the maintenance rule, and associated industry guidance.

In the resolution of Generic Safety Issue B–56, "Diesel Generator Reliability," one of the options recommended by NRC staff was to revise the SBO rule to include specific requirements for demonstrating diesel generator reliability. However, in SECY–93–044, "Resolution of Generic Safety Issue B–56, Diesel Generator Reliability," dated March 25, 1993, the Commission disapproved the revision to the SBO rule on the basis of the real progress made by the nuclear industry in improving the reliability of the diesel generators. NRC requirements and industry activities have resulted in a very high diesel generator reliability. In 1993, the industry-wide average reliability of diesel generators was in excess of 98 percent. An Idaho National Engineering Laboratory study (INEL–95–0035, "Emergency Diesel Generator Power System Reliability: 1987–1993") of a number of nuclear power EDG reliability concluded that those plants with a 0.950 reliability target goal were actually demonstrating 0.987, and the plants with a 0.975 reliability target goal were actually demonstrating 0.985. The Commission stated that the industry should continue an aggressive program of maintenance as well as root cause analysis that will continue to offer assurance that diesel generator reliability will be maintained at a satisfactory level in the future.

All licensees have implemented a maintenance monitoring program consistent with the maintenance rule, which became effective on July 10, 1996. Licensees are required to monitor the performance of diesel generators against the established goals and to take appropriate corrective actions if the goals are not met. The maintenance rule requires that these goals be evaluated by the licensees at least every refueling cycle, not to exceed 2 years. To evaluate the process established by licensees to set goals and monitor them, and to verify that preventive maintenance has been effective for systems and components under the maintenance rule, NRC staff conducted baseline inspections of all nuclear plants during 1996–1998. At several plants, diesel generators were among the systems and components reviewed to verify that goals were established and monitoring and trending were being performed. For pilot plants, diesel generators continue to be inspected and evaluated using the risk-informed, performance-based inspection process, which is part of the

[1] The NRC assumes that by "capability," NIRS actually means "reliability" because "capability" normally refers to the ability of the emergency power system to power safety related electrical loads at the plant; whereas reliability normally refers to the actual performance of the system in terms of availability, which is what NIRS addresses in its petition.

NRC Oversight Baseline Inspection Program. NRC staff will continue to assess the reliability of diesel generators at nuclear power plants to ensure that the reliability of diesel generators is maintained at levels specified by each licensee when it performed its plant-specific coping analyses for SBO.

Additionally, the scope of licensees' Y2K programs, including contingency planning, covers the onsite power and other emergency power systems at the plant. NRC audits and reviews of licensee Y2K program activities to date have verified licensee consideration of these systems, and no associated Y2K issue relating to onsite power systems have been identified.

The NRC does not believe, on the basis of current information from the North American Electric Reliability Council (NERC),[2] that availability of offsite power from the electrical grid is likely to be significantly affected by Y2K-induced problems. In its most recent reports issued on January 11 and April 30, 1999, NERC states, "Transmission outages are expected to be minimal and outages that may occur are anticipated to be mitigated by reduced energy transfers established as part of the contingency planning process." Both reports indicate that the transition through critical Y2K rollover dates should have a minimal impact on electric systems operations in North America and that widespread, long-term loss of the grid as a result of Y2K-induced events is not a credible scenario. Therefore, there is no reason to believe that Y2K would significantly affect the probability or duration of a LOOP and/or a SBO from that otherwise assessed in the licensee's coping analysis required by 10 CFR 50.63.

As discussed above, the diesel generators and associated onsite power supply systems, being within the scope of licensees' Y2K readiness programs, will be Y2K ready prior to the Y2K transition, and no decrease in reliability of the diesel generators is expected. The information provided by NERC indicates that the likelihood of a LOOP is not expected to increase significantly during Y2K transition. Based on these considerations, plus the ability of the plants to cope with a station blackout, the likelihood of an event that will jeopardize public health and safety is acceptably low.

One of the public comments received by NRC in response to the petition indicated a concern regarding falsification of EDG reliability data by licensees. This particular concern has been investigated and resolved as documented in an NRC memorandum dated December 20, 1993, from the Office of Investigations to the Region II Regional Administrator, "Vogtle Electric Generating Plant: Alleged False Statements Regarding Test Results on Emergency Diesel Generators (Case No. 2–90–020R)." Falsification of EDG failure data by licensees is not considered by NRC as an industry-wide, generic occurrence. Such incidents, when identified, will continue to be treated by NRC on a case-by-case basis and appropriate actions will be taken in response.

2. Sixty-day fuel supply

NIRS' proposed rule would require each nuclear power plant licensee to have a 60-day onsite supply of fuel for diesel generators, as opposed to a 7-day fuel supply to which most licensees have committed. However, NIRS provided no technical basis why offsite power from the grid would not be reestablished within the 7-day period accommodated by existing onsite fuel supplies. Nor did NIRS explain why, should a LOOP continue for longer than 7 days, a licensee would be unable to resupply diesel fuel for a period of 60 days so that a 60-day fuel supply must be maintained onsite. Commenters on the NIRS petition who suggested a requirement for a larger fuel supply (able to accommodate 160 days of operation without resupply) also did not provide any technical bases for their recommendations. As stated previously, the likelihood or duration of a LOOP is not expected to be significantly affected by the Y2K issue.

Furthermore, the NRC licensees are taking appropriate actions to ensure that their plants will be able to cope with Y2K-induced LOOP durations longer than 7 days. As part of each plant's Y2K activities, each licensee is preparing a contingency plan, which includes obtaining diesel fuel and other necessary supplies to cope with Y2K-induced long-term LOOP events. As part of NRC's review of licensees' implementation of their Y2K programs, NRC will confirm that licensee Y2K programs address emergency power sources, arrangements for obtaining critical commodities (e.g., EDG fuel oil) and other considerations for contingency planning identified in Nuclear Energy Institute/Nuclear Utilities Software Management Group (NEI/NUSMG) 98–07, "Nuclear Utility Year 2000 Readiness Contingency Planning," dated August 1998.

The capability of diesel generators and the adequacy of existing fuel supplies have been demonstrated at numerous plants during weather-induced interruptions of the power grid and other cases of LOOP from the grid. An example is the Turkey Point nuclear plant LOOP event during the August 1992 Hurricane Andrew when the diesel generators automatically picked up safety-related loads and maintained the plant for an extended period (over 6 days) during the recovery until site power was restored. NRC considers the current 7-day fuel capacity to be sufficient to operate diesel generators for longer than the time that it takes to replenish the onsite supply from outside sources. Accordingly, a rule requiring licensees to maintain sufficient fuel to operate their diesel generators for a 60-day period or longer is not necessary to provide reasonable assurance of adequate protection against Y2K-induced LOOP events. The regulation requires nuclear power plants to withstand LOOP events regardless of whether the LOOP is due to Y2K or other causes. The petitioner has not demonstrated that Y2K would significantly affect the probability or duration of loss of all alternating current power from that otherwise assumed in the licensee's coping analysis required by 10 CFR 50.63, and the licensees' coping analyses continue to be applicable during the period that NIRS claims would present an increased susceptibility to a LOOP.

B. Additional Alternate Means of Backup Power

NIRS' petition requests NRC to require all licensees to provide an alternate (second) means of backup power, such as solar power panels, wind turbines, hydroelectric power, and biomass power. The petition also requests NRC to require that the alternate backup power system provide electricity directly to the licensee rather than to the broader electrical grid.

1. Need for Additional Backup Power Source

As discussed in Section I.A.1 above, not only must licensees provide a source of backup power upon a LOOP, some licensees have provided an alternate ac power source in order to demonstrate that they are able to cope with a LOOP concurrent with a loss of onsite backup power (an SBO) for a specified duration. Thus, these licensees have three sources of power: (1) Offsite

[2] NERC is an electric industry organization made up of 10 Regional Reliability Councils that account for nearly every bulk electric supply and delivery organization in the interconnections of North America. NERC and its Regional Reliability Councils set operating and engineering standards for the reliability of electric systems in North America. In May 1998, U.S. Department of Energy requested NERC to facilitate the electric industry's Y2K effort.

power from two independent circuits; (2) onsite backup power from independent, redundant power supplies; and (3) alternate ac power. The NRC does not believe that the NIRS' proposal for a fourth source of power ("alternative backup power," in the words of NIRS) is necessary to provide reasonable assurance of adequate protection against Y2K-induced problems.

The petitioner does not explain why Y2K would affect diesel generators as a source of backup and/or alternate ac power, such that a source of power *in addition* to diesel generators is necessary to address SBO. The scope of the licensees' Y2K program covers both the onsite backup and the alternate ac power systems at nuclear power plants. Since 1996, NRC has been working with the nuclear industry and licensees of operating nuclear power plants in order to achieve Y2K readiness at all nuclear power plants. NRC has issued Information Notice (IN) 96-70, "Year 2000 Effect on Computer System Software," on December 24, 1996; Generic Letter (GL) 98–01, "Year 2000 Readiness of Computer Systems at Nuclear Power Plants," on May 11, 1998; and GL 98–01, Supplement 1, "Year 2000 Readiness of Computer Systems at Nuclear Power Plants," on January 14, 1999.

NRC issued IN 96–70 to alert nuclear power plant licensees of the Y2K problem. The information notice described the potential problems that nuclear power plant computer systems and software may encounter during and following the transition into the year 2000 and how the Y2K issue may affect NRC licensees. IN 96–70 encouraged licensees to examine their uses of computer systems and software well before the year 2000 and suggested that licensees consider appropriate actions for examining and evaluating their computer systems for Y2K vulnerabilities.

In GL 98–01, NRC endorsed the guidance in the industry document issued by the NEI/NUSMG 97–07, "Nuclear Utility Year 2000 Readiness," when properly augmented in the area of risk management, contingency planning, and remediation of embedded systems, as one possible approach in implementing a plant-specific Y2K readiness program. In August 1998, NEI issued an industry document, NEI/NUSMG 98–07, which provided additional guidance in the area of internal and external risk management and contingency planning. External events that should be considered for facility-specific contingency planning include electric grid/transmission/distribution system events (e.g., a LOOP, grid instability and voltage fluctuations, load fluctuations and loss of grid control systems), loss of emergency plan equipment and services, loss of essential services, and depletion of consumables. The NRC considers the guidance in NEI/NUSMG 98–07, when properly implemented, as an acceptable approach to mitigate and manage Y2K-induced events that could occur on Y2K-critical dates.

In GL 98–01, NRC requested that all operating nuclear power plant licensees submit written responses regarding their facility-specific Y2K readiness programs in order to obtain confirmation that licensees are addressing the Y2K problem effectively. All licensees have responded to GL 98–01, stating that they have adopted plant-specific programs that are intended to make the plants Y2K ready by July 1, 1999. GL 98–01 also requests a written response, no later than July 1, 1999, confirming that these facilities are Y2K ready, including contingency planning. Licensees who are not Y2K ready by July 1, 1999, must provide a status report and schedule for the remaining work to ensure timely Y2K readiness.

As part of its oversight of licensee Y2K activities, the NRC staff conducted sample audits of 12 plant-specific Y2K readiness programs. The objectives of the audits were as follows:

1. To assess the effectiveness of licensee programs for achieving Y2K readiness and in addressing compliance with the terms and conditions of their license and NRC regulations and continued safe operation.

2. To evaluate program implementation activities to ensure that licensees are on schedule to achieve Y2K readiness in accordance with GL 98–01 guidelines.

3. To assess the licensee contingency planning for addressing risks associated with events resulting from Y2K problems.

NRC staff determined that this approach was an appropriate means of oversight of licensee Y2K readiness efforts because: (1) All licensees had committed to the nuclear power industry Y2K readiness guidance (NEI/NUSMG 97–07) in their first response to NRC GL 98–01; and (2) the audit would verify that licensees were effectively implementing the guidelines. The sample of 12 licensees included large utilities such as Commonwealth Edison and Tennessee Valley Authority, as well as small single-unit licensees such as North Atlantic Energy (Seabrook) and Wolf Creek Nuclear Operating Corporation. NRC staff selected a variety of types of plants of different ages and locations in this sample in order to obtain the necessary assurance that nuclear power industry Y2K readiness programs are being effectively implemented and that licensees are on schedule to meet the readiness target date of July 1, 1999, established in GL 98–01.

In late January 1999, NRC staff completed the 12 audits. On the basis of the audit observations, NRC staff has concluded that licensees are effectively addressing Y2K issues and are undertaking the actions necessary to achieve Y2K readiness in accordance with the GL 98–01 target date, although some plants will have some remediation, testing, and final certification scheduled for the fall 1999 outage. NRC staff did not identify any issues that would prevent these licensees from achieving readiness.

The NRC staff is not aware of any Y2K problems in nuclear power plant systems that directly affect actuation of safety functions, including the emergency onsite power systems. Moreover, NRC audit results to date have not identified any associated residual Y2K problems with the emergency onsite power system and have confirmed the licensees' consideration of these systems. Also, the audits did not identify any Y2K problem in safety-related activation systems.

Additionally, the NRC's regional staff reviewed Y2K activities at all operating nuclear power plants to verify the status of licensee efforts to ensure that all plants will be able to function safely on January 1, 2000, and beyond. These reviews: (1) Verified that all NRC licensees have implemented Y2K program activities; (2) evaluated the progress made to ensure that the licensees are on schedule to achieve Y2K readiness; and (3) assessed licensees' contingency plans for addressing Y2K-related issues. The reviews were completed by July 1999.

The NRC staff audited the contingency planning efforts of six licensee facilities. The audits at these facilities examined in detail backup measures the utilities have in place to deal with possible Y2K problems, either on site or off site, that might affect plant operations. The audits were conducted in May and June 1999.

The reviews and audits will allow NRC staff to verify the progress of all licensees and determine whether any regulatory action is needed. Information from the reviews will be used in conjunction with the status reports that NRC has required its nuclear power plant licensees to provide by July 1, 1999. By July 1, 1999, all licensees responded to GL 98–01, Supplement 1.

The responses indicated that 68 plants are Y2K ready and 35 plants need to complete work on computer systems or devices after July 1, 1999.

NIRS presents no information or argument why these actions by the licensees, the nuclear industry, and NRC are not sufficient to ensure that onsite back up and alternate ac power systems will not be adversely affected by Y2K-induced problems.

2. Specific Backup Power Sources Proposed by NIRS

The petitioner's proposed alternative backup power sources, such as solar and wind, are not reliable backup power sources because of their undependability under unpredictable weather conditions or because they are limited by the amount of power they can generate. Additional comments received by the NRC in response to the petition also suggested the requirement for alternate power. The petitioner does not provide sufficient technical information to demonstrate that these additional alternative backup power sources would add more reliability than current backup power sources. Therefore, most of the sources of alternative backup power that are included in NIRS' proposed rule would not constitute an acceptable alternative source of backup power with the same level of availability and capability as diesel generators.

C. Spent Fuel Pool Class 1E Classification and Backup Power

The proposed rule would require all part 50 licensees to immediately classify irradiated (spent) fuel pools as Class 1–E and provide sufficient backup power to provide cooling to these pools. Because Class 1–E is an electric system classification, the NRC assumes that the petitioner intends the rule to require that the backup power supply for spent fuel pool cooling systems be classified as Class 1–E.

The petitioner does not explain why classification of the electric power system for spent fuel pool cooling systems as Class 1–E is necessary to protect spent fuel pools against a Y2K-induced LOOP. The Class 1–E classification addresses design and quality assurance (QA) requirements for manufacture and installation of electrical system components. Most of these systems are based upon analog controls and, therefore, are not subject to Y2K problems. Furthermore, simple reclassification of the electrical power system by itself would not appear to have any direct effect on minimizing Y2K-induced loss of power necessary for spent fuel cooling. Rather, an evaluation of the power system for Y2K susceptibility is necessary, which is what licensees have committed to implement. Thus, it is unclear how the requested requirements in the NIRS petition would provide assurance that Y2K problems will not prevent electrical power systems from performing their necessary safety functions. The NRC concludes that a rule change is not necessary since licensees are already directly addressing spent fuel pool cooling as part of their Y2K programs.

Furthermore, the NRC does not agree that a backup source of electrical power for spent fuel cooling is necessary at nuclear power plants in order to provide reasonable assurance of adequate protection. At most operating nuclear power plants, the emergency onsite power system can directly supply electric power to its spent fuel pool cooling systems. At those plants at which the spent fuel cooling system is not directly connected to the emergency onsite power system, the capability exists of connecting the cooling system to the emergency onsite power system. Requiring a backup (tertiary) source of electrical power is not justified in view of the length of time between loss of spent fuel cooling and the point at which there is a significant threat to integrity of the spent fuel rods. A licensee is required to keep the spent fuel pool filled to a level more than 23 feet above the top of the fuel rods and, generally, the water temperature in the pool is to be maintained below 140 °f. For a typical pool with a capacity of about 400,000 gallons and a worst case heat load causing 50 gpm of water loss as a result of evaporation, it would take about 3 days for the pool level to drop to the top of the fuel racks. This estimate does not include the heat-up time of 3 to 4 hours for the pool water to increase from 140 °f to 212 °f. This scenario assumes a total loss of all ac electric power and that no corrective actions are taken for 3 days in response to the decreasing water level in the spent fuel pool. For a typical heat load (non-refueling), the time to uncovering of the spent fuel pool would be around 2 weeks, again assuming that no make-up water is added to the pool. Upon loss of water shielding, the radiation levels above the pool would increase. Assuming LOOP and failure of onsite emergency power sources, the only action necessary would be to provide make-up water to the spent fuel pool. The existing plant operating/emergency procedures provide for initiation of make-up water to the pool upon detection of low level. At many plants, the make-up water supply is provided by a plant safety system. Upon loss of all ac power, make-up water from any source, such as fire hoses supplied by diesel-driven fire pumps, can be used to maintain the required water level in the pool. In light of the substantial period of time available for a licensee to take mitigative actions upon loss of spent fuel pool electrical power, the NRC concludes that providing an additional backup source of power is not warranted at any operating nuclear power plant.

II. Part 50 Decommissioning Nuclear Power Plants

There are 21 permanently shutdown nuclear power plants which have been shut down for more than a year. Six of these facilities have removed all spent fuel from the site. Therefore, there are only 15 decommissioning power plants to which the proposed requirements in the petition would potentially apply.

Spent fuel pool cooling and support systems may be configured differently for decommissioning plants than for operating reactors due to the reduced need for decay heat removal at decommissioning plants. As decay heat loads drop, utilities are able under 10 CFR 50.59 to remove equipment from service once it no longer is needed to provide its safety function. At some plants there is no need for forced circulation to remove heat from the pool as adequate heat loss to ambient keeps the pool at an acceptable temperature. After a period of decay in the spent fuel pool, the heat load from spent fuel is significantly reduced as short-lived fission products decay. Consequently, the potential for boiling is reduced and the time available for the licensee to take mitigative action is greater. With the exception of Zion and Big Rock Point, more than three years has elapsed since any fuel was irradiated in the reactor at any of the nuclear power plants currently undergoing decommissioning.

The reasons discussed in Section I.C above regarding why electrical systems need not be classified Class 1-E for spent fuel pools at operating nuclear power plants also apply equally to decommissioning nuclear power plants. As previously noted, requiring a backup source of electrical power is not justified in view of the length of time between loss of spent fuel cooling and the point where there is a significant threat to integrity of the spent fuel rods. Upon loss of all ac power, make-up water from any source, such as fire hoses supplied by diesel-driven fire pumps, can be used to maintain the required water level in the pool.

In view of the long time period available for the licensee to respond to loss of power to the spent fuel pool cooling system and the relative simplicity of mitigative actions, the requirements proposed by NIRS with respect to spent fuel pool electrical system reclassification and the provision of alternative power are not justified.

III. Part 50 Non-Power Reactor Licensees

Non-power reactors operate at power levels ranging from 250 KWt to 2 MWt, and they operate at low temperatures. Any non-power reactor in operation on January 1, 2000, can be readily shut down manually using emergency procedures and existing shutdown systems. These reactors have passive safety features and generally do not require power to shut down and dissipate decay heat. Accordingly, NRC regulations do not currently require part 50 non-power reactors to provide a backup power source.

NIRS did not present any information or rationale why part 50 non-power reactors must provide an "alternate" source of backup power to address Y2K losses of power. In particular, NIRS did not address the fact that these facilities are not required to have a backup power source because power is not required to shut down and maintain these facilities in a safe-shutdown condition. In the absence of any rationale in support of the proposed requirement, the Commission concludes that there is no basis for adopting the proposed requirement for part 50 non-power reactor licensees.

IV. Part 70 Licensees

To alert major part 70 licensees of the Y2K problem, NRC issued Information Notice (IN) 96–70 in December 1996, and IN 98–30 in August 1998. In IN 96–70, NRC staff described the potential Y2K problems, encouraged licensees to examine their uses of computer systems and software well before the year 2000, and suggested that licensees consider appropriate actions to examine and evaluate their computer systems for Y2K vulnerabilities. In IN 98–30, NRC staff provided definitions of "Y2K ready" and "Y2K compliant," encouraged licensees to contact vendors and test their systems for Y2K problems, and described elements of a Y2K readiness program.

In order to gather Y2K information regarding materials and major fuel cycle facilities, NRC formed a Y2K Team within the Office of Nuclear Material Safety and Safeguards (NMSS) in 1997. From September through December 1997, this NMSS Y2K Team visited a cross-section of materials licensees and fuel cycle facilities and conducted Y2K interviews. Each licensee or facility visited by the team indicated that it was aware of the Y2K issue and was in various stages of implementing its Y2K readiness program.

On June 22, 1998, the NRC staff issued Generic Letter (GL) 98–03, "NMSS Licensees and Certificate Holders' Year 2000 Readiness Programs," requested major part 70 licensees to inform NRC of the status of their Y2K readiness programs. In GL 98–03, the NRC staff requested all major part 70 licensees to submit by September 20, 1998, written responses regarding their facility-specific Y2K readiness program in order to confirm that they were addressing the Y2K problem effectively. All licensees responded to GL 98–03 by stating that they had adopted a facility-specific Y2K readiness program, and the scope of the program included identifying and, where appropriate, remediating embedded systems, and provided for risk management and the development of contingency plans. GL 98–03 also requested a written response, no later than December 31, 1998, which confirmed that these facilities were Y2K ready or provided a status report of work remaining to be done to become Y2K ready, including completion schedules. All licensees provided a second response to GL 98–03, which provided reports of work to be done, including completion schedules. Furthermore, following the second response, NRC requested a third written response, no later than July 1, 1999, which would confirm that these facilities were Y2K ready or would provide an updated status report.

Between September 1997 and October 1998, the major fuel cycle facilities were also asked Y2K questions during other inspections. On the basis of these Y2K inspections, the licensees were aware of the Y2K problem and were adequately addressing Y2K issues. There have been no identified risk-significant Y2K concerns for major part 70 licensees.

NIRS presents no information or argument why these above-mentioned actions by the licensees and NRC are not sufficient to address Y2K problems and provide reasonable assurance of adequate protection during the transition from 1999 to 2000.

EDG Reliability and Fuel Supply

The requirements proposed in the NIRS petition would require that: (1) All EDGs that provide backup power be operational and (2) licensees have a 60-day supply of fuel for EDGs or the facility would be shut down. The petitioner indicated these requirements are necessary to protect public health and safety. However, there are no part 70 licensees required to have EDGs in order to provide backup power to protect public health and safety. In the event of the loss of electric power in part 70 facilities, processing stops and there is no need for electric power to maintain a safe condition. There are some part 70 licensees who have independent power sources in order to meet physical protection (PP) requirements. These licensees are also required to have contingency plans for PP (e.g., augmented guard force) in the event of loss of independent power. Based on the above discussion, the 60-day fuel supply requirement is also not needed for part 70 licensees to provide reasonable assurance of adequate protection to public health and safety.

The petitioner does not provide sufficient technical information to demonstrate that part 70 licensees must shut down if they do not have EDGs providing backup power or must have a 60-day fuel supply for EDGs.

Additional Alternate Means of Backup Power

NIRS asserted that NRC must require licensees to provide alternate means of backup power (e.g., solar power panels, wind turbines, hydroelectric power, biomass power). As stated above, it is not necessary for part 70 licensees to have backup power in order to shutdown to a safe condition. Also, part 70 licensees who are required to have independent power sources to meet PP requirements have contingency plans to meet the loss of the back-up power. Further, the petitioner does not provide sufficient technical information to demonstrate that these alternative back-up power sources are needed to to provide reasonable assurance of adequate protection to public health and safety.

Back-up Power Supply for Spent Fuel Pool Cooling System

The proposed rule in the NIRS petition requests NRC to require that all licensees immediately classify irradiated fuel pools as Class 1–E, and provide sufficient back-up power to provide cooling to these pools. Because Class 1–E is an electric system classification, the NRC staff assumes that the petitioner intends the rule to apply to the back-up power supply for spent fuel pool cooling systems. Although some part 70 licensees have irradiated fuel at their facilities, these facilities do not store large quantities of irradiated fuel. The irradiated fuel is

used for research and development or educational purposes. If the irradiated fuel is stored in a pool, the heat generated from the fuel would be minimal and would not require a pool cooling system.

The petitioner provides no technical justification to support the proposal that spent fuel pools be immediately classified as Class 1–E. The regulatory action requested by NIRS is not required for part 70 licensees.

Conclusion

Existing NRC requirements, licensee commitments, and licensee activities and programs are sufficient to cope with losses of power, including those losses of offsite power that could be caused by Y2K problems. NIRS has not presented any information either that existing requirements and licensee commitments are inadequate to address losses of power due to Y2K problems, such that the requirements proposed in NIRS' petition are necessary to provide reasonable assurance of adequate protection to public health and safety. Accordingly, the Commission denies the petition.

Dated at Rockville, Maryland, this 17th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 99–21752 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 37

List of Approved Spent Fuel Storage Casks: (NAC–MPC) Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the NAC International Multi-Purpose Canister (NAC–MPC) cask system to the List of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the NAC–MPC cask system under a general license.

DATES: The comment period expires November 8, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires, "for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, "(t)he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing on July 18, 1990, a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181). This rule also established a new subpart L within 10 CFR part 72 entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This proposed rule would add the NAC International Multi-Purpose Canister (NAC–MPC) cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, NAC International (NAC) submitted an application for NRC approval with the Safety Analysis Report (SAR): "Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC), Revision 2." The NRC evaluated the NAC submittal and issued a preliminary Safety Evaluation Report (SER) on the NAC SAR and proposed Certificate of Compliance (CoC) for the NAC–MPC cask system on August 9, 1999.

The NRC is proposing to approve the NAC–MPC cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR part 72; thus, adequate protection of the public health and safety would be ensured. This cask system is being proposed for listing under 10 CFR 72.214, "List of approved spent fuel storage casks," to allow holders of power reactor operating licenses to store spent fuel in this cask system under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask system's CoC is renewed. The certificate contains conditions for use which are specific for this cask system and addresses issues such as operating procedures, training exercises, and spent fuel specification.

The proposed CoC for the NAC–MPC cask system and the underlying preliminary SER, dated August 9, 1999, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed CoC and preliminary SER may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, email spt@nrc.gov.

Discussion of Proposed Amendments by Section

Section 72.214 List of approved spent fuel storage casks.

Certificate Number 1025 would be added indicating that:

(1) The title of the SAR submitted by NAC International is "Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC System)";

(2) The certificate expiration date would be 20 years after final rule effective date; and

(3) The model number affected is NAC–MPC.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not have significant environmental impacts. The proposed rule would add the NAC–MPC cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6234, email spt@nrc.gov.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the NAC–MPC cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L. Subsequently, additional casks have been added to the listing in 10 CFR 72.214.

The alternative to this proposed action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost the NRC more time and money for site-specific reviews. Using site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems and is consistent with previous Commission actions. Further, the proposed rule will have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. However, the newer cask design may have a market advantage over the existing designs because power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks. This proposed rule would have no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives,

the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and cask vendors. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025
SAR Submitted by: NAC International
SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC System)
Docket Number: 72–1025
Certification Expiration Date: [insert 20 years after the effective date of the final rule]
Model Number: NAC–MPC

* * * * *

Dated at Rockville, Maryland, this 9th day of August, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–21799 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 30

List of Approved Spent Fuel Storage Casks: (TN–68) Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the Transnuclear TN–68 cask system to the list of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the Transnuclear TN–68 cask system under a general license.

DATES: The comment period expires November 8, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires, "for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved

casks under a general license, publishing on July 18, 1990, a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181). This rule also established a new Subpart L within 10 CFR Part 72 entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This proposed rule would add the Transnuclear TN–68 cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of subpart L, Transnuclear, Inc., submitted an application for NRC approval with the Safety Analysis Report (SAR): "Final Safety Analysis Report for the TN–68 Dry Storage Cask," dated January 23, 1998. The NRC evaluated the Transnuclear, Inc., submittal and issued a preliminary Safety Evaluation Report (SER) on the Transnuclear, Inc., SAR and proposed Certificate of Compliance (CoC) for the Transnuclear TN–68 cask system on August 9, 1999.

The NRC is proposing to approve the Transnuclear TN–68 cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR part 72; thus, adequate protection of the public health and safety would be ensured. This cask system is being proposed for listing under 10 CFR 72.214, "List of approved spent fuel storage casks," to allow holders of power reactor operating licenses to store spent fuel in this cask system under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask system's CoC is renewed. The certificate contains conditions for use which are specific for this cask system and addresses issues such as operating procedures, training exercises, and spent fuel specification.

The proposed CoC for the Transnuclear TN–68 cask system and the underlying preliminary SER, dated August 9, 1999, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed CoC and preliminary SER may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, email spt@nrc.gov.

Discussion of Proposed Amendments by Section

Section 72.214 List of approved spent fuel storage casks.

Certificate Number 1027 would be added indicating that:

(1) The title of the SAR submitted by Transnuclear, Inc., is "Final Safety Analysis Report for the TN–68 Dry Storage Cask";

(2) The certificate expiration date would be 20 years after final rule effective date; and

(3) The model number affected is TN–68.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not have significant environmental impacts. The proposed rule would add the Transnuclear TN–68 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6234, email spt@nrc.gov.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the Transnuclear TN–68 cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the

cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L. Subsequently, additional casks have been added to the listing in 10 CFR 72.214.

The alternative to this proposed action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost the NRC more time and money for site-specific reviews. Using site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems and is consistent with previous Commission actions. Further, the proposed rule will have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. However, the newer cask design may have a market advantage over the existing designs because power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks. This proposed rule would have no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and cask vendors. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d—48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1027 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1027
SAR Submitted by: Transnuclear, Inc.
SAR Title: Final Safety Analysis Report for the TN–68 Dry Storage Cask
Docket Number: 72–1027
Certification Expiration Date: [insert 20 years after the effective date of the final rule]
Model Number: TN–68

* * * * *

Dated at Rockville, Maryland, this 9th day of August, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–21798 Filed 8–20–99; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 18

List of Approved Spent Fuel Storage Casks: (TN–32) Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the Transnuclear TN–32 cask system to the list of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the Transnuclear TN–32 cask system under a general license.

DATES: The comment period expires November 8, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires, "for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing on July 18, 1990, a final rule in 10 CFR Part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181). This rule also established a new Subpart L within 10 CFR Part 72 entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This proposed rule would add the Transnuclear TN–32 cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, Transnuclear, Inc., submitted an application for NRC approval with their Safety Analysis Report (SAR): "TN–32 Dry Storage Cask Topical Safety Analysis Report (TSAR), Revision 10," dated May 8, 1998. The NRC evaluated the Transnuclear, Inc., submittal and issued a preliminary Safety Evaluation Report (SER) on the Transnuclear, Inc., SAR and a proposed Certificate of Compliance (CoC) for the Transnuclear TN–32 cask system on August 9, 1999.

The NRC is proposing to approve the Transnuclear TN–32 cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of the public health and safety would be ensured. This cask system is being proposed for listing under 10 CFR 72.214, "List of approved spent fuel storage casks," to allow holders of power reactor operating licenses to store spent fuel in this cask system under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask system's CoC is renewed. The certificate contains conditions for use which are specific for this cask system and addresses issues such as operating procedures, training exercises, and spent fuel specification.

The proposed CoC for the Transnuclear TN–32 cask system and the underlying preliminary SER, dated August 9, 1999, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed CoC and preliminary SER may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, e-mail spt@nrc.gov.

Discussion of Proposed Amendments by Section

§ 72.214 List of Approved Spent Fuel Storage Casks

Certificate Number 1021 would be added indicating that:

(1) The title of the SAR submitted by Transnuclear, Inc., is "Final Safety Analysis Report for the TN–32 Dry Storage Cask";

(2) The certificate expiration date would be 20 years after final rule effective date; and

(3) The model numbers affected are TN–32, TN–32A, and TN–32B.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not have significant environmental impacts. The proposed rule would add the Transnuclear TN–32 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel,

Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6234, email spt@nrc.gov.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the Transnuclear TN–32 cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR Part 72, Subpart L. Subsequently, additional casks have been added to the listing in 10 CFR 72.214.

The alternative to this proposed action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost the NRC more time and money for site-specific reviews. Using site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems and is consistent with previous Commission actions. Further, the proposed rule will have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. However, the newer cask design may have a market advantage over the existing designs because power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks. This proposed rule would have no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and cask vendors. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2238, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1021 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1021.
SAR Submitted by: Transnuclear, Inc.
SAR Title: Final Safety Analysis Report for the TN–32 Dry Storage Cask.
Docket Number: 72–1021.
Certification Expiration Date: [insert 20 years after the effective date of the final rule] Model Numbers: TN–32, TN–32A, TN–32B

* * * * *

Dated at Rockville, Maryland, this 9th day of August, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–21800 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–19–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require repetitive inspections to detect chafing on the fuel manifold drain hose and the adjacent access panel; and corrective actions, if necessary; and installation of a protective spiral wrap on the fuel manifold drain hose. This proposal also would provide for an optional terminating action for the repetitive inspections. This proposal is prompted by reports of chafing between the fuel manifold drain hose and the access panel due to contact between the two components over time. The actions specified by the proposed AD are intended to prevent chafing within the engine nacelle, which could result in flammable fluid leaking into a zone that contains ignition sources.

DATES: Comments must be received by September 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that it has received reports indicating that chafing was found between the fuel manifold drain hose and an access

panel. Over time, this chafing can result in damage to the access panel which would compromise the sealing of a designated fire zone and damage the drain hose, which could result in fuel leaking into a designated fire zone. The chafing has been attributed to the design of the fuel manifold drain hose; its routing allows for contact with the access panel. This condition, if not corrected, could result in flammable fluid leaking into a zone that contains ignition sources.

Explanation of Relevant Service Information

British Aerospace has issued Alert Service Bulletin ATP–A71–14, dated November 4, 1998, which describes procedures for repetitive inspections to detect chafing on the fuel manifold drain hose and the adjacent access panel; and corrective actions, if necessary. The corrective actions involve replacement of the fuel manifold drain hose with the same hose design and repair of the access panel. The service bulletin also describes procedures for installation of a protective spiral binding on the drain hose. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

British Aerospace also has issued Service Bulletin ATP–71–15, dated December 11, 1998, which describes procedures for replacement of the fuel manifold drain hose with a new, improved hose. This optional replacement would eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Alert Service Bulletin ATP–71–14 described previously. The proposed AD also would provide for an optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the CAA, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect chafing before it represents a hazard to the airplane.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection on the fuel manifold drain hose and access panel, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the proposed installation of the spiral wrap on the fuel manifold drain hose, at an average labor rate of $60 per work hour. Required parts would cost approximately $10 per airplane. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $700, or $70 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating option rather than continue the repetitive inspections, it would take approximately 7 work hours per airplane to accomplish the optional terminating action, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,600 (pre-modification 35215A) or $2,400 (post-modification 35215A) per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $2,020 (pre-modification 35215A) or $2,820 (post-modification 35215A) per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft
[Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–19–AD.

Applicability: BAe Model ATP airplanes, except those airplanes on which British

Aerospace Modification 10455A or 10455B (reference British Aerospace Service Bulletin ATP–71–15, dated December 11, 1998) has been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing within the engine nacelle, which could result in flammable fluid leaking into a zone that contains ignition sources, accomplish the following:

Repetitive Inspections and Corrective Actions

(a) Prior to the accumulation of 3,000 total flight hours, or within 1 month after the effective date of this AD, whichever occurs later, perform the actions required in paragraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with British Aerospace Alert Service Bulletin ATP–A71–14, dated November 4, 1998. Thereafter, repeat the inspections required by paragraphs (a)(1) and (a)(2) of this AD at intervals not to exceed 1,500 flight hours, until accomplishment of the actions specified in paragraph (b) of this AD.

(1) Perform an inspection of the access panel, part number (P/N) JD713J0037–000, to detect chafe damage. If any chafe damage is detected, repair the access panel in accordance with the service bulletin at the time specified in paragraph (a)(1)(i), (a)(1)(ii), or (a)(1)(iii), of this AD, as applicable.

(i) If the damage has reduced the skin thickness by 10 percent or less: Repair within 600 flight hours.

(ii) If the damage has reduced the thickness of the skin by more than 10 percent, but less than 20 percent: Repair within 100 flight hours.

(iii) If the damage has reduced the thickness of the skin by more than 20 percent: Repair prior to further flight.

(2) Perform an inspection of the fuel manifold drain hose, P/N JD007J0983–000 (C37351), to detect chafe damage. If any chafe damage is detected, either replace the fuel manifold drain hose with a new fuel manifold drain hose, P/N JD007J0983–000, in accordance with the service bulletin at the time specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, as applicable; or accomplish the replacement specified in paragraph (b) of this AD. Replacement of the fuel manifold drain in accordance with paragraph (b) of this AD constitutes terminating action for the repetitive inspections required by this AD.

(i) If there are signs of worn or polished strands in the outer braid, but no strand is broken: Replace within 1,500 flight hours.

(ii) If five or less strands are broken: Replace within 300 flight hours.

(iii) If more than five strands are broken or any sign of fuel leakage exists: Replace prior to further flight.

(3) Install a protective spiral binding, P/N EFWRAP–125, on the fuel manifold drain hose.

Optional Terminating Action

(b) Replacement of the fuel manifold drain hose, P/N JD007J0983–000 (C37351), with a new, improved drain hose, P/N JD007J2377–000 (C44311), in accordance with British Aerospace Service Bulletin ATP–71–15, dated December 11, 1998, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21845 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require a modification of the reverse thrust lever assemblies and replacement of the spring bumper assemblies of the thrust reverser sleeves with new assemblies. This proposal is prompted by an FAA review of the thrust reverser system on all transport category airplanes including the Boeing Model 757 series airplane. The actions specified by the proposed AD are intended to prevent operation with an energized sync lock or malfunctioning sleeve locking devices, which could result in the deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by October 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1547; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–101–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Following a 1991 accident caused by deployment of a thrust reverser in flight on a Boeing Model 767 series airplane, the FAA initiated a special certification review of all transport category thrust reverser systems and airplane controllability in the event of deployment of a thrust reverser in flight. As a result of that review, Boeing developed, for certain Boeing airplane models, an additional thrust reverser locking system and conducted a safety assessment to determine the probability of deployment of a thrust reverser in flight. The safety assessment evaluates every possible combination of failures for the thrust reverser system that could result in deployment of a thrust reverser in flight, and considers the probability and detectability of each failure. The safety assessment for the Model 757 series airplane identified two failure conditions that, because they are latent failures, would significantly affect the reliability of the thrust reverser locking system and, in combination with other failures in the thrust reverser system, could result in deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane. The two failure conditions are described below.

- Failure of the reverse thrust switch actuator causes the switch to remain in a powered position. The failure causes the thrust reverser sync lock to remain energized while the airplane is operated on the ground, during the takeoff roll, and possibly during the first two minutes of flight. This failure would not prevent normal operation of the thrust reverser; however, it would not be detected until the next sync lock integrity test was conducted.
- The spring bumper assembly pushes on the thrust reverser translating sleeve causing adequate sleeve movement, if the sleeve is unlocked, to activate the auto-restow system in flight or provide a visual indication of an unlocked sleeve during the ground walk-around inspection. If the spring bumper assembly fails, it is likely that a malfunctioning sleeve locking device would not be detected for several flight cycles.

Should either of these failure conditions occur but remain undetected for an extended period, in the event of other failures in the thrust reverser system, the thrust reverser locking systems may not prevent deployment of a thrust reverser in flight.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757–76–0009, Revision 1, dated December 3, 1998, which describes procedures for a modification of the reverse thrust lever assemblies. This modification improves the reliability of the reverse thrust switch and changes the failed state of the switch, such that failure of the reverse thrust switch actuator does not result in latching of the relay and consequent energizing of the sync lock or opening of the isolation valve.

The FAA has also reviewed and approved Boeing Service Bulletin 757–78–0012, dated August 31, 1989, which describes procedures for replacement of the spring bumper assembly of the thrust reverser sleeve with a new spring bumper assembly with an improved service life. Such replacement ensures that a malfunctioning sleeve locking device will be detected within one flight cycle.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Explanation of Applicability

Certain airplanes listed in Boeing Service Bulletin 757–76–0009, Revision 1, may not need to be modified in accordance with that service bulletin. Certain Model 757 series airplanes powered by Pratt and Whitney Model PW2000 engines that are affected by Boeing Service Bulletin 757–76–0009, Revision 1, were delivered with reverse thrust switches that open the thrust reverser hydraulic isolation valves. On these airplanes, failure of the reverse thrust switch actuator causes the hydraulic isolation valve to remain open while the airplane is on the ground and during the takeoff roll. Such a failure would be detected through various engine indicating and crew alerting system (EICAS) messages within one flight. Therefore, because the failure would not go undetected for an extended period, the reliability of the thrust reverser locking system is not significantly affected, no unsafe condition exists, and these airplanes are not subject to the modification described in Boeing Service Bulletin 757–76–0009, Revision 1.

Certain other Model 757 series airplanes powered by Pratt and Whitney Model PW2000 engines that are affected by Boeing Service Bulletin 757–76–0009, Revision 1, have a redesigned switch function arrangement on which the reverse thrust switches energize the sync locks. (This redesign transfers control of the hydraulic isolation valve from the reverse thrust switches to the autothrottle switchpack switches.) On these airplanes, failure of the reverse thrust switch actuator causes the reverse thrust switch to remain in a powered position, which results in the thrust reverser sync lock remaining energized while the airplane is on the ground. Because there is no indication of such a failure, except from the sync lock integrity test, these airplanes would therefore be subject to the unsafe condition described previously.

The FAA knows of operators of Boeing Model 757 series airplanes powered by Pratt and Whitney Model PW2000 engines that have incorporated the redesigned switch function arrangement. However, the FAA cannot define the extent of incorporation of this modification in the affected fleet; therefore, this proposed AD is applicable to all airplanes listed in Boeing Service Bulletin 757–76–0009, Revision 1 (in addition to those listed in Boeing Service Bulletin 757–78–0012). If an operator of Boeing Model 757 series airplanes powered by Pratt and Whitney Model PW2000 engines can determine that the reverse thrust switches, as defined in Boeing Service Bulletin 757–76–0009, Revision 1, open the thrust reverser hydraulic isolation valves, that operator may request an alternative method of compliance in

accordance with paragraph (c) of this proposed AD.

Cost Impact

There are approximately 308 airplanes of the affected design in the worldwide fleet.

The FAA estimates that the proposed modification of the reverse thrust lever assemblies would be required to be accomplished on 169 U.S. registered airplanes. It would take approximately 8 work hours per airplane to accomplish the proposed modification at an average labor rate of $60 per work hour. Required parts would cost approximately $29 per airplane. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $86,021, or $509 per airplane.

The FAA estimates that the proposed replacement of the spring bumper assemblies would be required to be accomplished on 92 U.S. registered airplanes. It would take approximately 10 work hours per airplane to accomplish the proposed replacement at an average labor rate of $60 per work hour. Required parts would cost approximately $5,178 per airplane. Based on these figures, the cost impact of this proposed replacement on U.S. operators is estimated to be $531,576, or $5,778 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–101–AD.

Applicability: Model 757 series airplanes, as listed in Boeing Service Bulletin 757–76–0009, Revision 1, dated December 3, 1998, or Boeing Service Bulletin 757–78–0012, dated August 31, 1989; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent operation with an energized sync lock or malfunctioning sleeve locking devices, which could result in deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 757–76–0009, Revision 1, dated December 3, 1998: Within 2 years after the effective date of the AD, replace the reverse thrust switches and actuators with improved switches and actuators, and modify the reverse lever links and thrust control levers in accordance with the service bulletin.

Note 2: Modifications accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 757–76–0009, dated November 8, 1990, are considered acceptable for compliance with the applicable action specified in this amendment.

(b) For airplanes listed in Boeing Service Bulletin 757–78–0012, dated August 31, 1989: Within 2 years after the effective date of the AD, replace the spring bumper assemblies of the thrust reverser sleeve with improved assemblies in accordance with the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21846 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–78–AD]

Airworthiness Directives; Eurocopter France Model AS 332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, and L1 helicopters. This proposal would require a one-time inspection of the length of the main gearbox epicyclic module upper casing bearing attachment bolts (attachment bolts), and if they exceed a certain length, replacing the epicyclic module to preclude a potential interference between the attachment bolts and the 2nd stage

planet gear cage web. This proposal is prompted by a report of interference between the attachment bolts and the second stage planet gear cage web of the epicyclic module in the main gearbox. The actions specified by the proposed AD are intended to prevent failure of the second stage planet gear of the main gearbox, loss of main rotor drive and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before October 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–78–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–78–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–78–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Générale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, L, and L1 helicopters. The DGAC advises that some attachments bolts may be too long and could interfere with the 2nd stage planet gear cage web.

Eurocopter France has issued Eurocopter Service Bulletin (SB) No. 01.41, dated November 1995 (95–11), applicable to Model AS 332 helicopters, which specifies inspecting the attachment bolts for length, and replacing the epicyclic module before further flight if any attachment bolts are found that exceed 53mm (2.087 inches) in length. The DGAC classified this SB as mandatory and issued AD 93–131–051(B)R1, dated January 18, 1995, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, and L1 helicopters of the same type design registered in the United States, the proposed AD would require a one-time inspection of the length of the attachment bolts, and if any exceed 53mm in length, replacing the epicyclic module.

The FAA estimates that 1 helicopter of U.S. registry would be affected by this proposed AD, and that it would require approximately 8 work hours per helicopter to accomplish the proposed actions at an average labor rate of $60 per work hour. Required parts would cost $365,235 to replace the epicyclic module, if necessary. The cost of the attachment bolts would be $11. Based on these figures, the total cost impact of this AD, including parts and labor, would be $491, assuming the bolts are the correct length and the epicyclic module does not have to be replaced.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 98–SW–78–AD.

Applicability: Model AS 332C, L, and L1 helicopters, with epicyclic modules, part number 332A32–2007–00 or –01, with serial numbers with the prefix of "M", from 100 through 689 or 3000 through 3048, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in paragraph DD of Eurocopter Service Bulletin No. 01.41, dated November 1995 (95–11) (SB), unless accomplished previously.

To prevent failure of the second stage planet gear of the main gearbox, loss of main rotor drive and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect each main gearbox epicyclic module upper casing bearing attachment bolt (attachment bolt) in accordance with paragraph CC of the SB.

(b) If any attachment bolt length is greater than 53mm (2.086 inches), remove the epicyclic module and replace the epicyclic module with an airworthy epicyclic module before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 93–131–051(B)R1, dated January 18, 1998.

Issued in Fort Worth, Texas, on August 17, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–21847 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 357

[Docket No. RM99–10–000]

Revision of FERC Form No. 6: Annual Report of Oil Pipeline Companies; Notice of Revised Dates for the Technical Conference, Notification of Attendance and Written Comments

August 17, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Revised Dates for the Technical Conference, Notifying the Commission of Persons Who Wish to Attend the Conference, and Filing Written Comments on Revisions to FERC Form No. 6: Annual Report of Oil Pipeline Companies (FERC Form No. 6).

SUMMARY: On July 30, 1999, the Federal Energy Regulatory Commission (Commission) issued a Notice of Technical Conference to solicit comments and discuss potential changes to the FERC Form No. 6 to better meet current and future regulatory requirements and industry needs. Based on industry recommendations, the technical conference is being rescheduled for Tuesday, September 21, 1999, at 9:00 A.M., in Rooms 3M–2A and 3M–2B. Additionally, the dates for notifying the Commission of persons who wish to attend the conference and for filing written comments are extended to Wednesday, September 1, 1999. Refer to the Notice of Technical Conference the Commission issued on July 30, 1999, for details about the conference and the requirements for notifying the Commission of persons who wish to attend the conference and for filing written comments.

DATES: The technical conference will be held on Tuesday, September 21, 1999.

Notification of persons who wish to attend the conference must be filed on or before Wednesday, September 1, 1999.

Written comments must be filed on or before Wednesday, September 1, 1999.

ADDRESSES: The technical conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

Submit written comments to:

Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426

Persons who wish to attend the conference must notify:

Michael Oliva, (202) 219–2597, FAX: (202) 219–0125, E-Mail: *michael.oliva@ferc.fed.us*

or

Donna Culbertson, (202) 219–1102, FAX: (202) 219–0125, E-Mail: *donna.culbertson@ferc.fed.us*

FOR FURTHER INFORMATION CONTACT:

Donna Culbertson (Technical Issues), Office of Finance, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 219–1102

Andy Lyon (Legal Issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0637

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994 to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy

contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

On July 30, 1999, the Federal Energy Regulatory Commission (Commission) issued a Notice of Technical Conference to solicit comments and discuss potential changes to FERC Form No. 6 to better meet current and future regulatory requirements and industry needs. Based on industry recommendations, the technical conference is being rescheduled for Tuesday, September 21, 1999, at 9:00 A.M., in Rooms 3M–2A and 3M–2B at the offices of the Federal Energy Regulatory Commission at 888 First Street, N.E., Washington, D.C. Additionally, the dates for notifying the Commission of persons who wish to attend the conference and for filing written comments are extended to Wednesday, September 1, 1999. Refer to the Notice of Technical Conference the Commission issued on July 30, 1999, for details about the conference and the requirements for notifying the Commission of persons who wish to attend the conference and for filing written comments.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21757 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98P–0683]

Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this document as a reproposal of one provision of its proposed rule of November 10, 1998, entitled "Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease." In that proposal, FDA tentatively indicated its intention to use a specific analytical method to measure soy protein for assessing compliance. Comments on that proposal argued that that method is inadequate for many products. FDA is therefore proposing an alternative procedure that will rely on measurement of total protein and require manufacturers, in certain circumstances, to maintain records that document the amount of soy protein in products and to make those records available to appropriate regulatory officials for inspection and copying upon request.

DATES: Written comments by September 22, 1999. See section VI of this document for the effective date of any final rule that may issue based upon this proposal.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Susan M. Pilch, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4500.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments was that they provided procedures whereby FDA is to regulate health claims on food labels and in food labeling.

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA issued a final rule that implemented the health claim provisions of the act. In that final rule, FDA adopted § 101.14 (21 CFR 101.14), which sets out the rules for the authorization and use of health claims. Additionally, FDA established in § 101.70 (21 CFR 101.70) a process for petitioning the agency to authorize health claims about a substance-disease relationship (§ 101.70(a)) and sets out the types of information that any such petition must include (§ 101.70(f)).

In the **Federal Register** of November 10, 1998 (63 FR 62977), FDA proposed adding § 101.82 to authorize the use, on food labels and in food labeling, of health claims on the association between soy protein and reduced risk of coronary heart disease (CHD) (the soy protein proposed rule). FDA proposed this action in response to a petition filed by Protein Technologies International, Inc. (the petitioner) (Refs. 1 and 2). In the soy protein proposed rule, the agency presented the rationale for a health claim on this substance-disease relationship as provided for under the standard in section 403(r)(3)(B)(i) of the act (21 U.S.C. 343(r)(3)(B)(i)) and § 101.14(c) of FDA's regulations. The agency tentatively concluded that, based on the totality of publicly available scientific evidence, soy protein included in a diet low in saturated fat and cholesterol may reduce the risk of CHD. The soy protein proposed rule included qualifying criteria for the purpose of identifying soy protein-containing foods eligible to bear the proposed health claim and a proposed method for assessing compliance with the qualifying criteria.

The petitioner requested that measurement of total soy isoflavones be used as a marker for the content of soy protein in foods and as an indicator of the effectiveness of soy protein products in reducing blood cholesterol levels. As discussed in section III.C.5 of the soy protein proposed rule (63 FR 62977 at 62987 to 62988), FDA found that the petitioner's conclusions regarding the significance of soy isoflavones with respect to the observed cholesterol-lowering effects of soy protein were not supported by the available studies. Thus, in section V.C. of the soy protein proposed rule (63 FR 62977 at 62992), FDA found the petitioner's proposed methodology to assess isoflavones was not suitable for assessing whether foods contain sufficient soy protein to be eligible to bear the health claim. Accordingly, in § 101.82(c)(2)(ii)(B), FDA proposed to measure soy protein for compliance purposes using the Association of Official Analytical Chemists International (AOAC) official method of analysis No. 988.10. This AOAC method is an enzyme-linked immunosorbent assay (ELISA) that can detect soy protein in raw and heat-processed meat products. With this assay, samples are compared to standard commercial soy protein and appropriate blanks. The sample extraction procedure, which involves preparation of an acetone powder, has been shown to be appropriate for a complex food matrix (meat). FDA tentatively concluded that this assay also should be suitable for other food matrices and requested comments on the suitability of this method for assuring that foods bearing the health claim contain qualifying levels of soy protein.

II. Assessing Qualifying Amounts of Soy Protein in Foods

In response to the soy protein proposed rule, the agency received approximately 130 letters, each containing one or more comments, from consumers, consumer organizations,

professional organizations, government agencies, industry, trade associations, health care professionals, and research scientists.

Several of the submissions included comments about the analytical method that FDA had proposed to assess the qualifying levels of soy protein. All of these comments disagreed with the proposed approach to assessing compliance, and some suggested alternative approaches. The agency is addressing only the comments about the analytical method and compliance assessment in this document.

A. Comments on the Proposed Analytical Method

All of the comments on the proposed analytical method disagreed with the use of AOAC official method of analysis No. 988.10 and concluded that this ELISA method was unlikely to produce a reliable measure of the soy protein content of foods in all cases. Several comments noted that the method was designed and validated (Refs. 3 and 4) for the detection of soy protein in raw and cooked meat products. They also noted that numerous factors affect the quantitative results obtained and reported that published and unpublished data indicated that the assay can usually only be considered semi-quantitative.

The comments pointed out several problems with the assay including:

(1) Different soy protein sources and methods of processing (defatted flours, isolates, concentrates, products subject to hydrolysis or extrusion) can yield different response factors to the immunoassay (Refs. 4 through 7).

(2) Heating the sample can induce loss of response (Ref. 5).

(3) Only a small number of matrices have been tested for interference with soy protein quantitation. Although most of these were relatively low (Refs. 4 and 5), other vegetable and cereal sources of protein have the potential for considerable interference and need to be tested.

(4) The collaborative study of the method in meat products containing few or none of the potential interferents indicated a between-laboratory variability of approximately 30 percent (Ref. 6).

One comment noted that the need to have available a sample of the specific soy protein ingredient used in the product for calibration (Ref. 7) in order to have a quantitative method posed difficulties in the practical use of the assay. Because many foods contain more than one soy protein ingredient that may be processed differently, use of the assay would require manufacturers to maintain samples and product specification sheets for possible later analysis. Another comment noted the expense of validating the method for each soy protein source and each product produced.

The agency is persuaded by these comments that AOAC official method of analysis No. 988.10 is not an appropriate method for the quantitation of soy protein in many of the products that may be eligible to bear the health claim. Therefore, FDA will not be adopting its use to assess compliance in the final rule.

B. Alternatives for Assessing Compliance

Some comments urged that FDA consider use of other validated ELISA methods. One published variation on the ELISA procedure (Ref. 8), like the method that FDA had initially proposed, has been validated only in meat products. Other ELISA assay techniques described in a comment were reported to be proprietary. Without validation data on such procedures, FDA is not proposing their use.

Several of the comments urged FDA to work collaboratively with other interested parties to develop an analytical method to quantify soy protein in various foods. FDA agrees that having a reliable, accurate analytical method is the ideal means to verify compliance. The agency intends to pursue development of an analytical method for soy protein and would be open to a collaborative effort with industry similar to that undertaken to develop a methodology to measure folate. However, FDA's resources are limited. Moreover, the complicated nature of the analytical problem may take several years to solve. (The agency notes that it took FDA and the industry over 10 years to develop a highly specific antibody for use in the analysis of free folic acid, a task that was relatively simple compared to developing a methodology to measure soy protein in all foods.) Development of a universally applicable analytical method, or multiple methods applicable to different foods or soy protein sources, to measure soy protein in foods is not likely to provide a timely, practical method to assess compliance. Accordingly, the agency is not prepared to authorize use of a soy protein health claim based on use of analytical methodology that does not now exist. Should, however, suitable analytical methodology for soy protein be developed and validated, the agency would propose to amend its regulation to provide for use of such method or methods for compliance verification.

Several comments suggested alternative approaches to measure soy protein. These alternatives involved either calculations based on manufacturers' records or a combination of analysis of total protein content and calculations based on manufacturers' records. One comment noted that some of the soy-based foods that may be eligible to bear the health claim are products whose protein content is derived solely from whole soybeans or from soy protein ingredients such as soy flour, concentrates, or isolates. For such products, the amount of soy protein present is represented by the total protein content, for which an appropriate AOAC method as specified in § 101.9(c)(7) (21 CFR 101.9(c)(7)) is available. For other products that contain protein sources other than soy, the soy protein content would represent a calculable fraction of the total protein content. This comment noted that, based on the known amount of protein per gram of a soy ingredient (soy flour, concentrate, or isolate), one can calculate the quantity of soy protein in a final food product based on the known ratio of added soy products multiplied by the measured protein content. Another comment suggested that an alternative approach could consist of measurement of total protein content followed by calculation, through recipes, of soy protein content based on the ratio of soy protein to total protein in the food. The ratio of soy protein ingredients to total protein ingredients could be determined by reference to nutrient data bases, recipes, purchase orders for ingredients, or other reasonable bases. This comment further noted that the methodology and records that provide appropriate documentation for the calculations required should be available at the food manufacturer's facility or other site for review by FDA investigators. One comment endorsed the outlined approach of employing appropriate record keeping under FDA inspection for assessing compliance. Another comment recommended the use of manufacturing records for tracking both the presence and amount of soy protein in products bearing the soy protein health claim. It further suggested use of such records would provide an accurate and practical method to determine the quantity of soy protein in a food. One comment supported a procedure whereby manufacturers would monitor the level of soy protein addition via batch recordkeeping that the agency would be able to inspect. Another comment recommended that those companies making the claim be responsible for

tracking systems based on formulations and usage.

These comments have persuaded the agency that it should propose an alternative approach for quantifying soy protein in foods until such time as a suitable analytical method for soy protein is available. The agency is persuaded that a procedure employing measurement of total protein and, for some products, calculation of the soy protein content based on information contained in manufacturers' records is an accurate and practical method for assuring that products bearing the proposed health claim meet the requirement for the qualifying level of soy protein. FDA is, therefore, revising proposed § 101.82(c)(2)(ii)(B) to provide for this alternative approach for compliance assessment. Under this proposed approach, FDA will measure total protein in a product by an appropriate method of analysis as given in the "Official Methods of Analysis of the AOAC International," as described at § 101.9(c)(7). If the protein content per reference amount customarily consumed (RACC) fails to meet the qualifying level of soy protein for eligibility to bear the health claim, the product would not be in compliance with § 101.82 and would be misbranded under section 403(a) of the act. If the protein content per RACC equals or exceeds the qualifying level of soy protein and the food contains no sources of protein other than soy, the product would be in compliance with § 101.82. If the protein content per RACC equals or exceeds the qualifying level of soy protein and the food contains a source or sources of protein in addition to soy, then FDA will require that it have access to manufacturers' records to calculate the contribution of soy protein to the total protein content as the means to establish compliance.

C. FDA Inspection of Records

FDA is proposing a method to assess compliance for products that bear the proposed soy protein health claim that would require records inspection in some instances.

When Congress enacted the 1990 amendments, it sought to ensure that the rules pertaining to health and nutrient content claims would be enforceable (see H. Rept. 538, 101st Cong., 2d sess. 8, 9 (1990)). Health and nutrient content claims are intended to make the consumer aware of the nutritional attributes of the labeled food. Because these claims are meant to help consumers maintain healthful dietary practices, it is of the utmost importance that they accurately reflect the nutritional composition of the labeled food. (See 136 Congressional Record, H 12953, October 26, 1990, statement of house floor managers: "There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims.")

Under section 701(a) of the act (21 U.S.C. 371(a)), the agency may issue regulations for the efficient enforcement of the act. Courts have recognized that FDA may impose recordkeeping requirements where they effectuate the act's goals. (See *Toilet Goods Association* v. *Gardner*, 387 U.S. 158, 163–64 (1967); and *National Confectioners Association* v. *Califano*, 569 F.2d 690, 693 & n.9 (D.C. Cir. 1978).) The agency has required that records be maintained and made available for inspection by FDA employees in a number of situations. (See, e.g., 21 CFR 108.25(g) and 114.100 (acidified foods); 108.35(h) and 113.100 (thermal processing of low-acid foods); 129.80(h) (bottled drinking water); 172.320 (amino acids); 176.170 (components of paper and paperboard in contact with aqueous and fatty foods); and 179.25(e) (food irradiation).)

In addition, on a number of occasions, FDA has determined that adequate enforcement of labeling rules would be possible only if the agency can review the information that a manufacturer has developed to support the statements on its food labels. For example, in the final rule on serving sizes (58 FR 2229 at 2271, January 6, 1993), FDA provided that manufacturers of aerated foods could substitute a volume-based measure for a weight-based reference amount as the basis for determining a product's serving size. Under the regulation (§ 101.12(e)(21 CFR 101.12 (e)), manufacturers who choose this approach must make available to the agency upon request certain information, including a detailed protocol and records of all data used to arrive at the density-adjusted reference amount (58 FR 2272). In the nutrient content claims final rule (§ 101.13(j)(1)(ii)(A)), FDA also imposed a records requirement on firms that use a broad-based reference nutrient value for claims such as "light" (58 FR 2302 at 2365, January 6, 1993). In the **Federal Register** of February 2, 1996 (63 FR 3885), FDA proposed to extend record inspection requirements, in certain circumstances, to records that support the use of certain health claims and nutrient content claims. In that proposed rule, the agency specifically identified concerns about claims that are based on information about a food that is available only to the food manufacturer and without which the agency would be unable to evaluate the truthfulness of the claim (63 FR 3885 at 3887). In that proposed rule, the agency also discussed in detail its legal authority to issue regulations for the efficient enforcement of the act, including regulations that require that access to certain records be provided to the agency (63 FR 3885 at 3888 to 3889).

In the absence of an accurate and reliable analytical method for the quantitation of soy protein, when soy is not the only source of protein in a food, only the manufacturer will have the information required to determine the amount of soy protein per RACC. Therefore, FDA has tentatively concluded that the proposed requirements, which would cover only the proposed soy protein health claim, are necessary for the efficient enforcement of the act. Ensuring the accuracy of claims was an overriding concern of Congress in passing the 1990 amendments. Congress envisioned that, under the act as amended, "only truthful claims may be made on foods" (136 Congressional Record H 12953, October 26, 1990, statement of Representative Waxman).

A manufacturer who places a health or nutrient content claim in food labeling must have knowledge that the food qualifies to bear the claim. Congress expected that manufacturers would have to ascertain the nutritional attributes of their food products, through laboratory analysis or otherwise, in order to label those products properly. FDA has stated previously that a food manufacturer is responsible for the accuracy of its food labels (58 FR 2079 at 2163 and 2165). Indeed, a claim in food labeling that calls the consumer's attention to the food's nutritional characteristics is a representation that the manufacturer has evidence that the food meets the requirements for the claim. Thus, making a claim without such a basis would be misleading, in violation of section 403(a) of the act.

FDA, therefore, proposes to require that, in some cases, manufacturers who choose to place a soy protein health claim on the food label or in labeling may do so only if they maintain the information on which the claim is based and make it available for inspection and copying to appropriate regulatory officials upon request. Failure to meet the requirements by maintaining appropriate records and complying with an agency request to examine those records will be a violation of section 403(r) of the act, misbranding the food bearing the claim.

Compliance with the proposed regulation should not entail the creation

of any new information or the compilation of any special records. Rather, the proposed recordkeeping requirement would obligate manufacturers to keep and provide FDA with information that they should already possess. Adequate records may consist of results of appropriate combinations of direct product analyses, data base values, recipe calculations, and purchase orders.

The agency anticipates that manufacturers may have concerns about the confidentiality of the information inspected by the agency under this proposal. Manufacturers should be assured that FDA does not and would not release information that would provide a competitive advantage to another manufacturer (§ 20.61 (21 CFR 20.61)). For example, if a company's records that support the validity of the use of the soy protein health claim in a food's labeling contain confidential information describing product formulation, manufacturing processes, or unique testing methods, the agency would protect this information from public disclosure (§ 20.61). (See also 5 U.S.C. 552(b)(4), 18 U.S.C. 1905, and 45 CFR 5.65.)

The agency notes that, if it does not proceed with this proposal to require access to records to verify the amount of soy protein in foods whose labeling bears a soy protein health claim, it is prepared to authorize use of the claim only on foods whose sole source of protein is from soy. However FDA ultimately proceeds, the agency would propose to amend its regulation to provide for compliance verification based on one or more validated analytical methodologies that are effective in all foods, should such a methodology or methodologies be developed.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

In the analysis of the soy protein proposed rule, FDA examined the rule's effects under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). The agency found that the soy protein proposed rule was not a significant regulatory action under the Executive Order, and that it would not have a significant economic impact on a substantial number of small entities. This proposed modification of the method of assessing compliance does not change those conclusions.

In the following analysis, the agency discusses the benefits and costs associated with the proposed modification and three regulatory alternatives. The four options considered are:

1. Take no action (do not modify proposed method of assessing compliance in the soy protein proposed rule).
2. Modify proposed method of assessing compliance in the soy protein proposed rule as proposed in this document.
3. Use manufacturing records for all products as the method of assessing compliance.
4. Authorize use of the soy protein health claim only on foods whose sole source of protein is from soy.

A. Option One: Take no action (do not modify method of assessing compliance in the soy protein proposed rule)

Taking no action would not affect the actual costs or benefits of the soy protein proposed rule.

B. Option Two: Modify proposed method of assessing compliance in the soy protein proposed rule as proposed in this document

The specification of the method that FDA will use to determine the level of soy protein in products does not lead to additional compliance costs. Use of the proposed soy protein health claim is voluntary; manufacturers choosing to make the claim must determine the level of soy protein in their products, but need not use the same method that FDA proposes to use.

As discussed in section II.B. of this document, some comments on the soy protein proposed rule suggested alternative methods that FDA could use to determine the level of soy protein in products bearing the proposed claim. Having considered these comments, FDA is proposing to modify proposed § 101.82(c)(2)(ii)(B) to provide that FDA will establish the level of soy protein by analyzing the total protein content of a product by an appropriate method of analysis as given in the "Official Methods of Analysis of the AOAC International" as described in § 101.9(c)(7). If the product contains sources of protein in addition to soy, the agency will establish the level by using manufacturers' records to calculate the contribution of soy protein to the total protein content.

1. Costs

The proposed modification may reduce the cost to FDA of determining the level of soy protein in some products. This cost is a social cost in the sense that FDA operating funds are derived from public tax revenues. Because this cost is not a compliance cost, reducing it will not affect the compliance costs of the rule but it may increase the net benefits—the costs of implementing a voluntary program must be subtracted from the benefits of that program in order to arrive at net benefits.

As discussed in section II.A. of this document, some of the comments on the method of compliance in the soy protein proposed rule indicated that its use would be costly for some manufacturers. This proposed modification will reduce these distributive effects of the soy protein proposed rule, and so eliminate the equity issue raised in those comments.

2. Benefits

As discussed in section II.A. of this document, some of the comments on the soy protein proposed rule argued that the method for assessing compliance set forth in that proposal is not appropriate for the quantitation of soy protein in many of the products that may be eligible to bear the health claim. Use of that method would therefore reduce the information value of the health claim. This proposed modification would increase the information value of the health claim by increasing the accuracy of the statement concerning the level of soy protein in particular products.

The proposed modification might also reduce the benefits of the soy protein proposed rule if the requirement that FDA have access to records under the modified method were to discourage use of the proposed health claim and reduce the number of products bearing the claim. In some comments, firms indicated that the agency should use records to assess compliance, so the agency believes that many firms would still be prepared to use the claim on their food products. Most firms probably already keep the relevant records for business purposes, including: (1) Product recipes and formulations in order to make consistent products, (2) nutrient analyses or databases in order to comply with the required Nutrition Facts panel, and (3) purchase orders for normal business purposes. Therefore, the agency does not believe that the proposed modification will significantly reduce the benefits of the proposed health claim. FDA requests comments on whether, and the extent to which, the proposed modification would discourage use of the claim.

C. Option Three: Use manufacturing records for all products as the method of assessing compliance

As discussed in section II.B. of this document, FDA believes that there is no validated analytical method currently available that the agency could use instead of the analytical method proposed in the soy protein proposed rule. However, some comments on the soy protein proposed rule recommended that FDA use manufacturing records for all products, not merely for those products that contain protein from sources other than soy.

1. Costs

Using manufacturing records in all cases would generate higher costs for FDA than using the proposed modified method for products that have only one source of protein. It would cost more to use manufacturing records to determine the level of soy protein in products whose only source of protein is soy than it would cost to determine the level of soy protein in those products by using only an appropriate analytical method.

2. Benefits

Using manufacturing records in all cases may reduce the benefits of the soy protein proposed rule more than the proposed modified method, if more manufacturers would be discouraged from using the claim because they would be required to provide FDA with access to their records.

D. Option 4: Authorize use of the soy protein health claim only on foods whose sole source of protein is from soy

As stated in section II.C. of this document, if FDA does not proceed with the proposed modified method to verify the amount of soy protein in some foods using records, it is prepared instead to authorize use of the claim only on foods whose sole source of protein is from soy. Under this option, fewer products would be able to make claims under the soy protein proposed rule. The costs and benefits of the rule would therefore be less than under the modification proposed in this rule.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. A description of these requirements is given below with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Title: Record Retention Requirements for the Soy Protein/CHD Health Claim

Description: Section 403(r) of the act requires that food bearing a health claim authorized by regulation on a petition to the agency be labeled in compliance with that regulation issued by FDA. In the soy protein proposed rule (63 FR 62977 at 62994), FDA stated its tentative conclusion that the labeling requirements proposed for soy protein are not subject to review by OMB because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the proposed food labeling health claim on the association between soy protein and reduced risk of CHD would be a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)). The regulation set forth in this proposed rule would authorize the use in food labeling of a health claim about the relationship between soy protein and CHD. This proposal would also require that a manufacturer of a product bearing the proposed soy protein health claim whose product contains non-soy sources of protein retain all the records that permit the calculation of the ratio of soy protein to other sources of protein in the food. The manufacturer of such a food product would be required to make those records available for review and copying by appropriate regulatory officials upon request and during site visits.

Description of Respondents: Businesses or others for-profit.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.82(c)(2)(ii)(B)	25	1	25	1	25

[1] There are no capital costs or operation and maintenance costs associated with this collection of information.

FDA believes that the records that a manufacturer would retain would be records that a prudent business would obtain and retain as a normal part of doing business. The requirements contained in this proposal would require only a minimal burden, no more than one hour per response, from respondents.

In compliance with 44 U.S.C. 3507(d), the agency has submitted the information collection requirements of the proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by September 22, 1999 to the Office of Information and Regulatory Affairs, OMB (address above), ATTN: Desk Officer for FDA.

VI. Proposed Effective Date

FDA is proposing to make these regulations effective upon publication in the **Federal Register** of a final rule based upon this proposal.

VII. Comments

Interested persons may, on or before September 22, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This proposed rule is not a "technical regulation" as defined in 19 U.S.C. 2576b(7) because it is not mandatory that a soy protein health claim be placed on the label or in the labeling of qualifying foods. Therefore, the

requirement for a 75-day comment period for a proposed technical regulation found in Executive Order 12889, "Implementation of the North American Free Trade Agreement," does not apply to this proposed rule. In addition, this proposal addresses only the narrow issue of the method FDA will use to verify that foods bearing a soy protein health claim contain the required amount of soy protein. Moreover, under section 403(r)(4)(A)(i) of the act, if the agency issues a proposed regulation on a health claim petition, the agency is to complete the rulemaking within 540 days of the date the agency receives the petition (see also § 101.70(j)(4)(ii)). Therefore, FDA finds that there is good cause under 21 CFR 10.40(b)(2) to provide 30 days, rather than 60 days, for public comment on this proposed rule.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Protein Technologies International, Inc., "Health Claim Petition," May 4, 1998 [CP1, vol. 1–3]
2. Protein Technologies International, Inc., "Addendum to Health Claim Petition," August 10, 1998 [CP1, vol. 4]
3. Crimes, A. A., F. J. Bailey, and C. H. S. Hitchcock, "Determination of Foreign Proteins in Meat Products," *Analytical Proceedings*, 18:164–166, 1981.
4. Hitchcock, C. H. S., F. J. Bailey, A. A. Crimes, D. A. G. Dean, and P. J. Davis, "Determination of Soya Proteins in Food Using an Enzyme-linked Immunosorbent Assay Procedure," *Journal of the Science of Food and Agriculture*, 32:157–165, 1981.
5. Griffith, N. M., M. J. Billington, A. A. Crimes, and C. H. S. Hitchcock, "An Assessment of Commercially Available Reagents for an Enzyme-linked Immunosorbent Assay (ELIZA) of Soy Protein in Meat Products," *Journal of the Science of Food and Agriculture*, 35:1255–1260, 1984.
6. Olsman, W. J., S. Dobbelaero, and C. H. S. Hitchcock, "The Performance of an SDS–PAGE and ELISA Method for the Quantitative Analysis of Soya Protein in Meat Products, an International Collaborative Study," *Journal of the Science of Food and Agriculture*, 36:499–507, 1985.
7. McNeal, F. E., "Semiquantitative Enzyme-linked Immunosorbent Assay of Soy Protein in Meat Products: Summary of Collaborative Study," *Journal of the Association of Official Analytical Chemists*, 71(2):443, 1988.
8. Yasumoto, K, M. Sudo, and T. Suzuki, "Quantitation of Soya Protein by Enzyme-linked Immunosorbent Assay of its Characteristic Protein," *Journal of the Science of Food and Agriculture*, 50:377–389, 1990.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. In § 101.82, as proposed to be added at 63 FR 62977 at 62997, November 10, 1998, revise paragraph (c)(2)(ii)(B) to read as follows:

§ 101.82 Health claims: Soy protein and risk of coronary heart disease (CHD).

* * * * *

(c) * * *
(2) * * *
(ii) * * *

(B) FDA will assess qualifying levels of soy protein in the following fashion: FDA will measure total protein content by the appropriate method of analysis given in the "Official Methods of Analysis of the AOAC International," as described at 21 CFR 101.9(c)(7). Interested persons can obtain copies of the "Official Methods of Analysis of the AOAC International" from the Association of Official Analytical Chemists, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may examine copies at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. For products that contain no sources of protein other than soy, FDA will consider the amount of soy protein as equivalent to the total protein content. For products that contain a source or sources of protein in addition to soy, FDA will, using the measurement of total protein content, calculate the soy protein content based on the ratio of soy protein ingredients to total protein ingredients in the product. FDA will base its calculation of the ratio of soy protein ingredients to total protein ingredients on manufacturers' information such as nutrient data bases or analyses, recipes or formulations, purchase orders for ingredients, or other reasonable bases. Manufacturers must maintain records that permit such calculations for as long as the products are marketed. Manufacturers must make these records available for authorized inspection and copying by appropriate regulatory officials and manufacturers must submit these records to those regulatory officials upon request.

* * * * *

Dated: August 16, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21852 Filed 8–19–99; 10:15 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA118–4080b; FRL–6425–9]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Pennsylvania; Large Municipal Waste Combustors (MWCs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to conditionally approve the municipal waste combustor (MWC) 111(d)/129 plan submitted by the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, on April 27, 1998, and amended on September 8, 1998. In the final rules section of the **Federal Register**, EPA is conditionally approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by September 22, 1999.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401–7642.

Dated: August 4, 1999.

W. Michael McCabe,

Regional Administrator, EPA.

[FR Doc. 99–21659 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980713190–9190–01; I.D. 041598B]

RIN 0648–AH63

Fisheries of the Northeastern United States; Amendment 1 to the Fishery Management Plan for the Atlantic Bluefish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 1 (Amendment 1) to the Fishery Management Plan for the Atlantic Bluefish Fishery (FMP). This proposed rule would: Implement permit and reporting requirements for commercial bluefish vessels, dealers, and party/charter boats; implement permit requirements for bluefish vessel operators; define a Bluefish Monitoring Committee (Committee) that would annually recommend the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) the total allowable level of landings (TAL) and other restrictions necessary to achieve the target fishing mortality rates (F) specified in the FMP; establish a framework adjustment process; establish a 9-year stock rebuilding schedule; establish a commercial quota with allocations to states; and establish a recreational harvest limit. Amendment 1 also addresses the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA). Two primary examples of these requirements are establishing a rebuilding plan to rebuild the bluefish stock from an overfished condition and describing and identifying essential fish habitat (EFH) for bluefish. The purpose of this rule is to control fishing mortality of bluefish and rebuild the stock.

DATES: Comments must be received on or before October 7, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Bluefish Plan Proposed Regulations."

Comments on the collection-of-information requirements that would be established by this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer) and to NMFS (See **ADDRESSES**).

Copies of Amendment 1, its Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) and the Final Environmental Impact Statement (FEIS) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9104.

SUPPLEMENTARY INFORMATION:

Background

The FMP was adopted by the Council and the Commission in October 1989 and approved by NMFS in March 1990. In 1996, the Council and the Commission began development of Amendment 1 to address the need to broaden the suite of management measures that could be used to reduce bluefish fishing mortality.

The enactment of the SFA in October 1996 further prompted the Council to take action to end overfishing on the bluefish stocks. The 23rd Northeast Stock Assessment Workshop, held in 1997, concluded that the Atlantic bluefish stock was at a low level of abundance and was overexploited. NMFS declared the bluefish stock to be overfished in its 1997 and 1998 Reports to Congress on the Status of Fisheries in the United States.

NMFS published a notice of availability for Amendment 1 in the **Federal Register** on April 30, 1999. The public comment period ended June 29, 1999. All comments received through June 29, 1999, were considered in the approval/disapproval decision on Amendment 1. Amendment 1 was partially approved by NMFS on behalf of the Secretary of Commerce on July 29, 1999. NMFS disapproved the *de minimis* provision related to state allocations of the commercial quota, the description and analysis of fishing communities, and the portion of the EFH section assessing the effects of fishing gear on bluefish EFH. Copies of Amendment 1 are available from the Council upon request (see **ADDRESSES**).

Overfishing Definition and Rebuilding Schedule

Amendment 1 revises the definitions of overfishing and overfished in the FMP to include an F and biomass (B) component, respectively. Overfishing is defined as occurring when F is greater than the maximum F threshold, specified as F_{msy} = 0.4; and the bluefish stock will be considered overfished when biomass is less than the minimum biomass threshold, specified as $1/2B_{msy}$ = 118.5 million (mil) lb (53,750 mt). The long-term F target would be 90 percent of F_{msy} and the long-term B target would be B_{msy}. The Council plans in Amendment 1 to rebuild the bluefish stock to B_{msy} over a 9-year period. In the first 2 years of rebuilding, F would remain at the current level, F=0.51, in years 3 through 5 it would be reduced to F=0.41, and in years 6 through 9 it would be reduced to F=0.31. Once rebuilding is achieved, F will be set at F=0.36, and continue to be that value as long as the stock is not overfished.

Annual Adjustment Process and Committee

This rule would define the composition of a Bluefish Monitoring Committee as staff representatives from the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and the Commission. The Committee would review annually the best available data and recommend to the Council and the Commission commercial (annual quota, minimum fish size, and minimum mesh size) and recreational (possession and size limits, and seasonal closures) measures designed to assure that the target F for bluefish for that given year is not exceeded.

EFH for Bluefish

Section 2.2.2.2 of Amendment 1 describes and identifies EFH for bluefish with large areas of oceanic waters identified as EFH for eggs and larvae, and major estuaries from Maine through Florida identified as EFH for juveniles (generally North Atlantic estuaries from June through October, Mid-Atlantic estuaries from May through October, and South Atlantic estuaries from March through December). For adults, EFH in estuaries is similar to that of juveniles on a seasonal basis, and over a wide area of the continental shelf throughout the

year. The amendment does not identify any habitat areas of particular concern for bluefish. While bluefish are pelagic and wide ranging, there is some linkage between juvenile bluefish and submerged aquatic vegetation (SAV). Certain estuarine fishing gear effects SAV and bluefish EFH. The effects of this gear are not analyzed by Amendment 1; therefore, NMFS has disapproved this portion of the amendment.

Recreational Harvest Limit and Commercial Quotas

This proposed rule would establish a procedure to specify a TAL divided between the recreational and commercial fisheries. The TAL would be set annually, based on the F values specified in the rebuilding schedule, and a target F=0.36, once rebuilding is achieved. The recreational fishery would have a harvest limit of 83 percent of the TAL, and the commercial fishery would have a quota of 17 percent of the TAL. These percentages of the TAL are based on the average catch composition of the two fisheries from 1981 through 1989. The commercial quota would be distributed to the states based on their percentage share of commercial landings during this time period as designated in Table 48 of Amendment 1 (See also § 648.160(e)(1) of this rule). Amendment 1 provides a procedure where the commercial TAL could be set higher than 17 percent, up to 10.5 mil lb (4.8 mil kg) (the average commercial landings for the period 1991–1996), if the recreational fishery is not likely to land its annual allocation, based on a projection of the most recently available recreational landings data, and provided that the combination of the projected recreational landings and commercial quota does not exceed the TAL. The Council provided this procedure to ensure that commercial landings would not be unduly constrained under low allowable harvest levels and proportionally low recreational landings.

1999 Allocations for the Commercial Fishery

States participating in the bluefish fishery have already taken action for 1999 in accordance with the rebuilding schedule of Amendment 1 through the Commission and their own existing administrative programs for managing quotas in the commercial fishery for bluefish. The TAL for the bluefish fishery for 1999 is 36.84 mil lb (16.71 mil kg), with 5.93 mil lb (2.69 mil kg) (17 percent) going to the commercial fishery, and 30.91 mil lb (14.02 mil kg) (83 percent) going to the recreational fishery. There are not enough data for the 1999 recreational fishery at this time to warrant increasing the allocation to the commercial fishery above 17 percent (as discussed in the aforementioned procedure for increasing an annual commercial TAL above 17 percent up to 10.5 mil lb (4.8 mil kg)). The proposed state-by-state allocation of the commercial quota for 1999, based on the percentage share, is as follows:

State	Pounds	Kilograms
Maine	39,802	18,054
New Hampshire	24,675	11,193
Massachusetts	399,876	181,384
Rhode Island	405,316	183,851
Connecticut	75,390	34,197
New York	618,275	280,450
New Jersey	882,078	400,110
Delaware	111,817	50,720
Maryland	178,712	81,064
Virginia	707,240	320,804
North Carolina	1,908,731	865,800
South Carolina	2,095	950
Georgia	566	257
Florida	598,900	271,661
Totals	5,953,473	2,700,495

Framework Adjustment Process

In addition to the annual review and modifications to management measures associated with the Committee process, under Amendment 1 and the proposed rule, the Council could add or modify management measures through a streamlined public review process called a framework adjustment. As such, management measures that have been identified in the plan could be implemented or adjusted at any time during the year following consideration of the measures and associated analyses during at least two Council meetings. The recommended management measures then could be implemented through a final rule without first publishing a proposed rule. The framework process would allow the Council to consider gear restrictions, minimum and maximum fish size, permitting restrictions, changes in the recreational possession limit, recreational and commercial seasons, closed areas to address overfishing if it is deemed necessary in the future, description and identification of essential fish habitat (EFH) and fishing gear management measures that impact EFH, and description and identification of habitat areas of particular concern.

Permit and Reporting Requirements

This rule proposes to add bluefish permit and reporting requirements that mirror similar requirements for other Northeast fisheries. These measures include new permitting requirements for Federal commercial bluefish vessels, bluefish charter and party boats, bluefish dealers, and bluefish vessel operators, and new reporting requirements for bluefish dealers and owners or operators of commercial bluefish vessels and bluefish charter and party boats. In addition to logbook reporting, dealers would be required to participate in the Northeast Interactive Voice Reporting (IVR) system to assure timely reports for purposes of quota monitoring.

Implementation of a commercial bluefish vessel permitting system represents a modification of the present system where individuals, and not vessels, are issued a permit to sell bluefish. Under the current bluefish regulations, any person selling a bluefish harvested from the exclusive economic zone is identified as a commercial fisherman and must have a commercial fishing permit issued by a state or by NMFS that allows the sale of bluefish (i.e., the individual is licensed). The new management measure would allow the sale of bluefish harvested in Federal waters only from vessels issued a Federal permit. The Council believes that the bulk of the bluefish that enters the market is harvested by commercial vessels. However, at Council and committee meetings, it has been noted that certain individuals, such as those who fished from a vessel they did not own or operate and then sold their catch, would be affected by the changeover to a vessel permit. The individuals would be subject to the recreational possession limit and would no longer be able to sell bluefish.

Management Measure Returned to the Council

Pursuant to section 304(b)(1)(B) of the Magnuson-Stevens Act, NMFS returned to the Council the *de minimus* provision contained in Amendment 1 and disapproved the provision on July 29, 1999. NMFS determined that this measure is inconsistent with national standard 1 of the Magnuson-Stevens Act, which requires that management measures prevent overfishing. This provision lacks any clear obligation on the part of the *de minimus* state to close its commercial bluefish fishery once its quota is harvested and could result in overfishing of the bluefish stock. If *de minimus* status does not, at the very least, require a state to impose landing constraints, the provision may encourage owners of vessels that have not traditionally landed in that state to land amounts of bluefish much greater than they could land in their home port states. This could result in the state's *de minimus* quota being rapidly exceeded

and compound the overfishing situation if a *de minimus* state is not required to close its fishery when its *de minimus* quota is harvested. NMFS described its determination on this measure in a letter that it sent to the Council. As indicated in section 304(b)(2) of the Magnuson-Stevens Act, the Council may revise this measure and submit it to the Secretary of Commerce for reevaluation under section 304(b)(1) of the Magnuson-Stevens Act.

Classification

NMFS determined on July 29, 1999, that the amendment that this rule would implement is consistent with the Magnuson-Stevens Act and other applicable laws, with the exception of the *de minimus* provision, the fishing communities section, and the portion of the EFH section dealing with the effect of fishing gear on bluefish EFH. NMFS, in making that determination, took into account the data, views, and comments received on Amendment 1 through June 29, 1999.

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. Reasons why the action is considered, as well as the objectives and legal basis of the rule are described in the preamble to this rule and are not repeated here. The analyses of the impacts on small entities attributable to the preferred and other alternative management measures found in Amendment 1 are discussed below. Since the final rule implementing Amendment 1 would not become effective until the fall of 1999, this summary discusses impacts to small entities in the year 2000, the projected first full year under the amendment. An assumption of constant prices is applied throughout the summary. It is also assumed that the 2000 fishery will be similar to 1997 in terms of commercial and recreational landings.

Impact of the Commercial Vessel Permit

NMFS recently completed an analysis of NMFS bluefish operator permit holder files. In the full permit year of 1998, there were 1,126 Federal bluefish permits issued to individuals. The Federal individual bluefish permit file was merged with the vessel owner database for Federal permits by permit holder name to identify the number of Federal bluefish individual permits associated with vessel ownership. It is estimated that 190 permits held by individuals are associated with vessel ownership. As such, these individuals would be allowed to continue to sell bluefish caught from their vessels, as long as they obtain a bluefish vessel permit. Over 32 percent (305) of the individuals with no vessel status (936) claimed that 5-percent or more of their annual income is derived from the sale of bluefish. Therefore, the Council concluded that the proposed action could result in a significant economic impact (result in a 5 percent or more revenue loss) for a substantial (20 percent or more) number of small entities (participants). It is unclear how many of these individuals would make the required capital investment necessary to purchase a vessel, which would allow them to apply for a bluefish vessel permit. NMFS seeks public comment on this issue.

Also, it is possible that some of these individuals took party and charter recreational trips with the sole purpose of landing bluefish to be sold commercially. There is no indication that the implementation of this measure would lead to any substantive decline in the demand for party and charter boat trips. Anglers that fish from party and charter boats fish for multiple species, and only a few anglers would take recreational trips to target solely bluefish to be sold commercially.

The Council, in Amendment 1, acknowledges that since there have been no mandatory reporting requirements in the past for this fishery, it is not possible to determine the number of individuals holding bluefish permits who actually land and sell bluefish. The individual permit holders affected by this rule may include individuals who exceeded the bag limit to stock their freezers or feed the poor in their communities, for example. In addition, crew members of party boats have supplemented their wages by selling bluefish under the individual permit. Since arrangements between owner/operators and their crew differ individually and by region, it is difficult to ascertain the number of crew likely to be affected.

The Council assumed that individuals who were not registered as owners of federally permitted vessels did not own a vessel and would not qualify for a vessel permit under Amendment 1. However, many of these individuals probably own vessels that are used for recreational fishing only. This is especially significant, given that the majority of the individuals who currently hold individual commercial permits reside in New Jersey, a state that does not issue its own commercial permit, but relies on the Federal individual commercial permit. Since New Jersey does not regulate commercial vessels harvesting bluefish through permits, owners of recreational boats would need only to obtain a Federal individual commercial permit to land and retain more than the bag limit. Therefore, the Council's assumption regarding the percentage of income claimed and the assumption that those who do not own a federally permitted vessel do not, indeed, own a vessel, likely underestimates the number of individuals who would qualify for Federal commercial vessel permits if this proposed rule is implemented. Notwithstanding the above discussion, it is likely that some portion of the number of individual permit holders, although immeasurable, may be vulnerable to economic impacts as a result of this action. The Council notes that negative economic impacts on small entities would be mitigated by potential increases in harvest associated with a rebuilt bluefish stock.

The Council also considered the status quo alternative of continuing the issuance of permits to individuals. Although this would mitigate the economic impacts of the proposed vessel permitting scheme, the Council notes that under individual permitting, the monitoring of the quota system could potentially be undermined, because it may be difficult to contact individuals with timely notifications or obtain information required for quota reports. Implementation and enforcement of commercial closures and commercial minimum fish sizes that are essential to managing the fishery would be compromised by the continued permitting of individuals. Furthermore, harvesting capacity or fishing power could not be evaluated under a regime of individual permits.

Impacts of Quota Allocation

The Council considered, but rejected, several time periods other than 1981–1989, upon which to base allocation of the total annual quota between the commercial and recreational sectors, and state-by-state allocations of the commercial quotas. Other time periods considered were 1981–1993 and 1985–1989.

The Council chose the time period 1981–1989 for the preferred alternative because it reflects the composition of the overall fishery in a period of relatively high stock abundance and stability. Furthermore, the Council believed that basing the allocation on proportional catch after 1989 would be biased, since restrictions of 10 fish per individual angler were introduced by the FMP in 1990, while no restrictions were placed on the commercial fishery, e.g., there are no trip limits, minimum fish size, or minimum mesh size.

In 1997, commercial landings accounted for 39 percent of total landings. The commercial allocation (17 percent) under the preferred alternative would represent a substantial reduction relative to the 1997 landings. The Council, recognizing this disparity, decided to allow the commercial quota to be increased up to 10.5 mil lb (4.76 mil kg), the average commercial landings for the period 1990–1997, under the following condition—if 17 percent of the TAL (the commercial sector) for a given year is initially calculated to be less than 10.5 mil lb (4.76 mil kg), then the quota could be increased from the level associated with 17 percent of the TAL up to 10.5 mil lb (4.76 mil kg).

The overall quota for 2000, per the preferred rebuilding schedule, would be 43.08 mil lb (19.54 mil kg), resulting in allocations of 7.32 mil lb (3.32 mil kg) for the commercial fishery and 35.80 mil lb (16.23 mil kg) for the recreational fishery. Using 1997 data (9.305 mil lb (4.21 mil kg)) for comparison, commercial vessels in the 2000 fishery could expect to experience increased revenues, at least in the short term, since it is assumed that the commercial fishery would be able to harvest 10.5 mil lb (4.76 mil kg). This is based on the underlying assumption that the recreational fishery would not be projected to take more than 32.62 mil lb (14.80 mil kg), given that landings for the recreational fishery have been declining since 1991 and were only 14.9 mil lb (6.76 mil kg) in 1997.

In the absence of an unpredicted surge in recreational landings in 1999, 10.5 mil lb (4.76 mil kg) would be allocated to the commercial fishery (7.32 mil lb (3.32 mil kg) specified, plus 3.18 mil lb (1.44 mil kg) from the projected surplus recreational allocation). It should be noted that in the event recreational landings are projected to be more than 35.80 mil lb (16.23 mil kg), the 2000 commercial quota would be 7.32 mil lb (3.32 mil kg), and commercial bluefish fishermen would face economic impacts associated with a 21-percent reduction of commercial landings from 9.3 mil lb. (4.21 mil kg) in 1997.

Using the 1981–93 and 1985–89 periods for analyses would yield the same result as above, if the assumption that the commercial sector would be able to harvest 10.5 mil lb (4.76 mil kg) remains valid. The 1981–93 period would result in a 19/81 percent commercial/recreational split, while the 1985–89 period would result in an 18/82 percent split.

Impacts to individual state quotas from any of the three alternative quota allocations would also be positive, assuming that the commercial allocation for the 2000 fishery is specified at 10.5 mil lb (4.76 mil kg). The difference in revenues going to the various states from the distribution of quota is negligible when the preferred period is compared to the two alternative periods. This falls within a range of 0.003 to 2.300 percent.

There would be no substantial short-term economic impact on businesses that service the recreational fishery (e.g., marina, bait shops) from the recreational quota. The recreational fishery could take up to 35.80 mil lb (16.23 mil kg) in 2000, while estimated harvest in 1997 was only 14.9 mil lb (6.76 mil kg) in 1997, leaving a projected surplus of 20.9 mil lb (9.48 mil kg).

Impact of Permitting and Reporting Requirements

The alternatives concerning vessel and dealer permitting and reporting would have no effect on revenues and would represent a-minute portion of the cost of doing business. The Council estimated that 249 new vessel applicants would each spend $7.50 to apply for a permit and $20.00 per year for reporting requirements. No special knowledge is required to fill out the permit application.

Impact of a Commercial Minimum Fish Size

With the exception of the pound net fishery and long haul seine fishery in North Carolina, the preferred alternative of a 12-inch (30.48 cm) minimum fish size would not have a significant impact on revenues. Data suggest that from 1987–1996 only 1 percent of all fish taken by all gear types in the commercial fishery were less than 12 inches (30.48 cm). There could be significant losses in revenue to the pound net fishery and the long haul seine fishery in North Carolina where 64.2 and 53.7 percent of the total bluefish catch, respectively, may be lost due to this minimum fish size restriction. However, the reduction in gross revenue is not expected to be significant for these gear types in terms of their gross revenue from all fishing activities. Although the effect of other minimum fish sizes is not known, it can be construed that the greater the minimum fish size, the larger the impact.

Impact of the Recreational Minimum Size Limit

The recreational minimum size limit of 12 inches may effect revenues earned by party/charter boats. The decrease in revenues would be attributable to anglers' perception of the fishing experience in regard to keeping or releasing small fish and how this relates to demand for party/charter boat trips. The greatest impact would be in Rhode Island, Connecticut, and New York, where the minimum size limit would impact established "snapper" fisheries. As alternative sizes increase, the economic effect would be diminished. However, with limited data, it is not possible to project at what size the negative impact would dissipate.

Impacts of Rebuilding Strategies

The Council predicts that the preferred and other alternative rebuilding strategies will have positive long-run economic impacts. In the short term, the impact on revenues for the 2000 fishery for all alternative rebuilding strategies depends on the ability to transfer quota from the recreational to the commercial fishery. Since the Council has decided to retain a quota of 5.95 mil lb for the commercial fishery in 1999, any transfers above the levels discussed in the previous section on quota allocation would have a positive economic impact on the commercial fishery in the year 2000.

The Council prepared a FEIS for Amendment 1. A notice of availability for the FEIS was published in the **Federal Register** on June 25, 1999 (64 FR 34235). A copy of the FEIS may be obtained from the Council (see **ADDRESSES**).

This rule has been determined to be significant for the purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have been submitted to the Office of Management and Budget for approval. The public reporting burden for vessel logbooks is estimated to average 12 minutes per response. The reporting burden for dealer reports is estimated to average 4 minutes for the IVR system and estimated to average 2 minutes for completing NOAA Form 30–80. The reporting burden for new requirements is estimated to be 30 minutes for vessel and charter/party vessel permit applications, 12 minutes for dealer permit applications, 45 minutes for vessel identification, 2 minutes for completing the employment

section of the Processed Products Report, and 60 minutes for states to apply for a transfer of commercial bluefish quota. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Please send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 16, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for "Bluefish Committee" is removed and a new definition for "Bluefish Monitoring Committee" is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Bluefish Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, and South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and the Commission. The Mid-Atlantic Fishery Management Council's Executive Director or a designee chairs the committee.

* * * * *

3. In § 648.4, the section heading and paragraphs (a)(8), (b) and (c)(2)(i) are revised, and paragraph (c)(3) is removed, to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(8) *Atlantic bluefish vessels*—(i) *Commercial.* Any vessel of the United States including party and charter boats not carrying passengers for hire, that fishes for, possesses, or lands Atlantic bluefish in or from the EEZ in excess of the recreational possession limit specified at § 648.164 must have been issued and carry on board a valid commercial bluefish vessel permit.

(ii) *Party and charter vessels.* Any party or charter boat must have been issued and carry on board a valid party or charter boat a permit to fish for bluefish if it is carrying passengers for hire. Such vessel must observe the possession limits established pursuant to § 648.164, and the prohibitions on sale specified in § 648.14(w).

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, black sea bass moratorium or bluefish commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters. If the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

(c) * * *

(2) * * * (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following and any thing else required by the Regional Administrator: Vessel name; owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable); home port and principal port of landing; length overall; GRT; NT; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish hold

capacity; type of fishing gear used by the vessel; number of crew; number of party or charter passengers licensed to be carried (if applicable); permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, the names of all owners having a 25-percent interest or more; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

* * * * *

4. In § 648.5, the first sentence of paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board, a valid operator's permit. * * *

* * * * *

5. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, or bluefish dealers and surf clam and ocean quahog processors must have been issued under this section, and have in their possession a valid permit for these species.

* * * * *

6. In § 648.7, the first sentence of paragraphs (a)(1)(i) and (a)(3)(i) and the heading and first sentence of paragraph (b)(1)(i) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, or bluefish dealers must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, which ever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. * * *

* * * * *

(3) * * *

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid, butterfish, and bluefish dealers must complete the "Employment Data" section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. * * *

* * * * *

(b) * * *

(1) * * *

(i) *Owners or operators of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid, butterfish, or bluefish permit.* The owner or operator of any vessel issued a permit for summer flounder, scup, black sea bass, Atlantic sea scallops, NE multispecies, Atlantic mackerel, squid, butterfish, or bluefish must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. * * *

* * * * *

7. In § 648.11, the first sentence of paragraph (a) and paragraph (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, or NE multispecies, or monkfish, or Atlantic mackerel, squid, butterfish, or scup, or black sea bass, or bluefish, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. * * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, or a bluefish permit, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or other specimens taken by vessel.

* * * * *

8. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies), G (summer flounder), H (scup), I (black sea bass), or J (bluefish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the Council regarding such exemptions for the Atlantic mackerel, squid, and butterfish, the summer flounder, the scup, the black sea bass, and the bluefish fisheries.

* * * * *

9. In § 648.14, paragraphs (w)(1) through (w)(5) are revised and paragraphs (w)(6), (w)(7), and (x)(8) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(w) * * *

(1) Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except for transport on land, Atlantic bluefish taken from a fishing vessel unless issued, and in possession of, a valid Atlantic bluefish fishery dealer permit issued under § 648.6(a).

(3) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, Atlantic bluefish, unless the dealer or transferee has a dealer permit issued under § 648.6(a).

(4) Land Atlantic bluefish for sale in a state after the effective date of the notification in the **Federal Register**, pursuant to § 648.161(b), which notifies permit holders that the commercial quota is no longer available in that state.

(5) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to an Atlantic bluefish permit issued under § 648.4(a)(8).

(6) Land Atlantic bluefish for sale after the effective date of the notification in the **Federal Register** pursuant to § 648.161(a), which notifies permit holders that the Atlantic bluefish fishery is closed.

(7) Sell or transfer bluefish harvested in or from the EEZ unless the vessel has been issued a valid commercial permit pursuant to § 648.4(a)(8)(i).

(x) * * *

(8) All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8) are deemed to have been harvested from the EEZ.

10. Subpart J is revised to read as follows:

Subpart J—Management Measures for the Atlantic Bluefish Fishery

Sec.
648.160 Catch quotas and other restrictions.
648.161 Closures.
648.162 Minimum fish sizes.
648.163 Gear restrictions.
648.164 Possession restrictions.
648.165 Framework specifications.

Subpart J—Management Measures for the Atlantic Bluefish Fishery

§ 648.160 Catch quotas and other restrictions.

The fishing year is from January 1 through December 31.

(a) *Annual review.* The Bluefish Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to recommend the total allowable level of landings (TAL) and other restrictions necessary to achieve a target fishing mortality rate (F) of 0.51 in 1999 and 2000; a target F of 0.41 in 2001, 2002, and 2003; a target F of 0.31 in 2004, 2005, 2006, and 2007; and a target F of 0.36 thereafter: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) *Recommended measures.* Based on the annual review, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the Council and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

(1) A TAL set from a range of zero to the maximum allowed to achieve the specified F.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of zero to 20 bluefish to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls and gill nets.

(c) *Allocation of the TAL*—(1) *Recreational harvest limit.* The recreational fishery shall be allocated 83 percent of the TAL as a harvest limit.

(2) *Commercial quota.* The commercial fishery shall be allocated 17 percent of the TAL as a quota. If 17 percent of the TAL is less than 10.5 mil lb (4.8 mil kg), and the recreational fishery is not projected to land 83 percent of the TAL for the upcoming year, the commercial fishery may be allocated up to 10.5 mil lb (4.8 mil kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL.

(d) *Annual fishing measures.* The Council's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the Council measures necessary to assure that the applicable specified F will not be exceeded. The Council shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to assure that the applicable specified F will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** on or about October 15 to implement a coastwise commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the **Federal Register** on or about February 15 to implement additional management measures for the recreational fishery, if received from the Council by January 1, if he/she determines that such measures are necessary to assure that the applicable specified F will not be exceeded. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register**.

(e) *Distribution of annual quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Percentage
ME	0.6685
NH	0.4145
MA	6.7167
RI	6.8081
CT	1.2663
NY	10.3851
NJ	14.8162
DE	1.8782
MD	3.0018
VA	11.8795
NC	32.0608
SC	0.0352
GA	0.0095
FL	10.0597
Total	100.0000

Note: The "Total" does not actually add up to 100.0000 because of rounding error.

(2) All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more other states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state

officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective when the notice of approval of the transfer or combination has been published in the **Federal Register**.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been published in the **Federal Register**.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (e)(1) of this section.

(g) Based upon any changes in the landings data available from the states for the base years 1981–89, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (e)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the changes in allocation.

§ 648.161 Closures.

(a) *EEZ closure.* The Regional Administrator shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

§ 648.162 Minimum fish sizes.

If the Council determines through its annual review or framework adjustment process that minimum fish sizes are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objective, such measures will be enacted through the procedure specified in § 648.160(d) or § 648.165.

§ 648.163 Gear restrictions.

If the Council determines through its annual review or framework adjustment process that gear restrictions are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.160(d) or § 648.165.

§ 648.164 Possession restrictions.

(a) No person shall possess more than 10 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

§ 648.165 Framework specifications.

(a) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational season, closed areas, commercial season, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends

that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the Council's recommendation to NMFS includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, then the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, then the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, then the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[FR Doc. 99–21591 Filed 8–20–99; 8:45 am]
BILLING CODE 3510–22–P

Notic

This section
contains doc
proposed rul
public. Notice
committee m
rulings, deleg
petitions and
statements o
examples of
section.

DEPARTME

Agriculture

Governmen
Available fo

AGENCY: Ag
USDA.

ACTION: Not
Inventions

SUMMARY: T
are owned b
represented
Agriculture
licensing in
207 and 37
expeditious
results of fe
developmen
on selected
coverage for
also be avail

FOR FURTHE
Technical a
these invent
writing to Ja
USDA Fores
Pinchot Driv
53705–2398
or fax: 608–
may be obta
of Patents, U
Office, Wash

SUPPLEMENT
inventions a
U.S. Patent
5,786,188,
Preparat
5,834,301,
Color Fi
5,852,909,
Reinforc
5,853,982,
Strains
Nuclear
5,921,388,
Shelter"
Patent Appli
09/246,27
for the M

Notices

Federal Register
Vol. 64, No. 162
Monday, August 23, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Government Owned Inventions Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to Janet I. Stockhausen of the USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398; telephone: 608–231–9502 or fax: 608–231–9508. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

U.S. Patent Nos.

5,786,188, "Fungal Inoculum Preparation"

5,834,301, "Method of Removing Color From Kraft Wood Pulps"

5,852,909, "Localized Notch Reinforcement for Wooden Beams"

5,853,982, "Method of Isolating Strains of the *Lymantria dispar* Nuclear Polyhedrosis Virus"

5,921,388, "Quick Deployment Fire Shelter"

Patent Application Serial No.

09/246,272, "Apparatus and Method for the Measurement of Forest Duff Moisture Content"

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 99–21838 Filed 8–20–99; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Tobacco Production and Marketing Information

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of intent to release records and opportunity to opt out of the release.

SUMMARY: This notice announces the intention of the Secretary of Agriculture, pursuant to new legislation, to release certain tobacco production and marketing records to State organizations engaged in distributing certain private funds to tobacco producers and provides notice of the method in which interested parties can opt out of that release.

EFFECTIVE DATE: August 19, 1999.

ADDRESSES: Notices should be mailed to Charles Hatcher, Farm Service Agency (FSA), Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Misty L. Jones, telephone (202) 720-0200.

SUPPLEMENTARY INFORMATION: Tobacco growers are required to file various records with the Department of Agriculture in connection with the operation of the marketing quota program for tobacco operated by USDA under the Agricultural Adjustment Act of 1938 (1938 Act). Those records are normally required to be kept confidential. Recently, however, some tobacco companies have created a $5.15 billion national trust which would distribute funds to persons interested in growing cigarette tobacco under rules that will be developed by State trusts created for that purpose. This $5.15 billion distribution is sometimes referred to as the "Phase II" settlement to distinguish it from the larger "Phase I" settlement in which tobacco companies have agreed to pay a large sum of money to State governments. Some of the Phase I money, in some States may also go to tobacco producers. The rules for the distribution of monies under both Phase I and Phase II will be up to State organizations and not the Federal Government.

In order to efficiently make the monies available to interested parties, some States have sought production data collected by USDA under the 1938 Act. As a result, new legislation was recently enacted which would allow otherwise confidential information to be made available to the States.

Specifically, the new legislation (Pub. L. 106–47) provides that notwithstanding any other provision of law, the Secretary of Agriculture may, subject to certain conditions, release any and all marketing information submitted by persons relating to the production and marketing of tobacco. The information may only be released to State trusts or similar organizations engaged in the distribution of national trust funds to tobacco producers and other persons with interests associated with the production of tobacco. The law provides that the information may be released only to the extent that such release is in the interest of tobacco producers, as determined by the Secretary of Agriculture. The new legislation also provides that, in advance of making a release of information, the Secretary of Agriculture shall, to the maximum extent practicable, allow, by announcement, a period of at least 15 days for parties whose consent would otherwise be required by law to effectuate such release, to elect to be exempt from such release. In addition, the new law provides that a person who obtains information under such a release shall not use the records for any other purpose not authorized by the new law; a person who knowingly violates this condition on the release of the records is subject to a fine of up to $10,000 and imprisonment for up to 1 year, or both. Finally, the new law provides that the release allowed by the new law shall not apply to records submitted by cigarette manufacturers with respect to the production of cigarettes, or which were submitted as expected purchase intentions in connection with the establishment of national tobacco quotas, or which aggregate the purchase of particular buyers of tobacco.

Requests have already been made for producer records by State trusts which are preparing to make the multi-billion dollar "Phase II" distribution to farmers. Because these funds could provide much needed help to farmers, the Secretary intends to provide the records to the requesting organizations, consistent with the new law, except in the case of those parties who wish to opt out of the release. Those who do wish to opt out of the release should send notice in writing of that election to Charles Hatcher, FSA, Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514. Such notice must be received by September 7, 1999.

As the release only affects farm records, warehouses and buyers of tobacco need not file any exemption elections. With respect to producers and other parties involved in the growing of tobacco, those producers should be advised that a request for an exemption from the disclosure could result in a delay in receiving a distribution from the State trust, or, depending on the eligibility criteria created by the State organizations, an ineligibility to share in the distribution. It is therefore not expected that there will be many exemption requests filed. Accordingly, it appears that the record collections can be made at one location for re-routing to the national record center for processing.

Signed at Washington, DC, on August 18, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–21870 Filed 8–19–99; 9:43 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing that nominations are being sought for persons to serve on GIPSA's Grain Inspection Advisory Committee.

SUPPLEMENTARY INFORMATION: Under authority of section 20 of the United States Grain Standards Act (Act), Pub. L. 97–35, the Secretary of Agriculture established the Grain Inspection Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to the Administrator on implementation of the Act. Section 14 of the United States Grain Standards Act Amendments of 1993, Pub. L. 103–156, extended the authority for the Advisory Committee through September 30, 2000.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, and exporters, including scientists with expertise in research related to the policies in section 2 of the Act. Members of the Committee serve without compensation. They are reimbursed for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service, as authorized under section 5703 of title 5, United States Code. Alternatively, travel expenses may be paid by Committee members.

Nominations are being sought for persons to serve on the Advisory Committee to replace the five members whose terms expire in March 2000. Nominations are also being sought for three alternate members to replace the alternates whose terms expire in March 2000 as well as to bring the total number of alternates back up to fifteen.

Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact GIPSA, by telephone (202–720–0219), fax (202–205–9237), or electronic mail (mplaus@gipsadc.usda.gov) and request Form AD–755, which must be completed and submitted to GIPSA by fax or at the following address: GIPSA, 1400 Independence Ave., SW, Stop 3601, Washington, DC 20250–3601. Form AD–755 must be received not later than October 22, 1999.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

Dated: August 16, 1999.

James R. Baker,

Administrator.

[FR Doc. 99–21742 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oklahoma

AGENCY: Natural Resources Conservation Service (NRCS) in Oklahoma, U.S. Department of Agriculture.

ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Oklahoma for review and comment.

SUMMARY: It is the intention of NRCS in Oklahoma to issue revised conservation practice standards in Section IV of the FOTG. The revised standards are Contour Buffer Strips (Code 332), Cross Wind Trap Strips (Code 589C), Field Border (Code 386), Filter Strip (Code 393), Residue Management, Mulch Till (Code 329B), Residue Management, No Till and Strip Till (Code 329A), Pasture and Hayland Planting (Code 512), and Conservation Crop Rotation(Code 328). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received until September 22, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Keith Vaughan, ASTC (Ecological Sciences), Natural Resources Conservation Service (NRCS), 100 USDA, Suite 206, Stillwater, OK 74074–2655. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to Keith.Vaughan@ok.usda.gov. Telephone 405–742–1240.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oklahoma will receive comments relative to the proposed change. Following that period, a determination will be made by the NRCS in Oklahoma regarding

disposition of those comments and a final determination of change will be made.

Dated: August 13, 1999.

Ronnie L. Clark,

State Conservationist, Stillwater, Oklahoma.

[FR Doc. 99-21848 Filed 8-20-99; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-096]

Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a domestic interested party, the Department of Commerce is conducting an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France for the period January 1, 1998, through December 31, 1998.

We have preliminarily determined a dumping margin in this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on subject merchandise manufactured or exported by Rhone-Poulenc, S.A.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Stacey King or Mark Ross, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-1757/4784.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On January 14, 1999, the Department published a notice of "Opportunity to Request Administrative Review" (64 FR 2470) with respect to the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. The petitioner, PQ Corporation, requested a review of Rhone-Poulenc, S.A. on January 21, 1999. In response to PQ Corporation's request, the Department published a notice of initiation of an administrative review on February 22, 1999 (63 FR 20378), in accordance with 19 CFR 351.213(b).

Scope of Review

Imports covered by the review are shipments of ASM, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under HarmonizedTariff Schedules (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Review

The period of review is from January 1, 1998, through December 31, 1998.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in determining dumping margins.

The Department sent Rhone-Poulenc a questionnaire on March 1, 1999, with a deadline of April 7, 1999, for providing information necessary to conduct a review of any shipments that the firm may have made to the United States during the period of review. Rhone-Poulenc did not respond to our original questionnaire or to a follow-up letter that we sent to the company. Because Rhone-Poulenc has withheld information we requested and has, in fact, made no effort to participate in this proceeding, we must, pursuant to sections 776(a)(2)(A) and (D) of the Act, use facts otherwise available to determine its dumping margins.

Based on the lack of any response from Rhone-Poulenc, we find that the company has failed to cooperate by not acting to the best of its ability to comply with a request for information. Therefore, pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of Rhone-Poulenc in selecting from among the facts otherwise available. This section also provides that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation segment of the proceeding, a previous review under section 751 of the Act or a determination under section 753 of the Act, or any other information placed on the record. In addition, the Statement of Administrative Action accompanying the URAA, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." SAA at 870. In employing adverse inferences, the Department is instructed to consider "the extent to which a party may benefit from its own lack of cooperation." *Id.* Because we find that Rhone-Poulenc failed to cooperate by not complying with our request for information and in order to ensure that it does not benefit from its lack of cooperation, we are employing an adverse inference in selecting from the facts available.

The Department's practice when selecting an adverse rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department will also consider the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See *Roller Chain Other Than Bicycle, From Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review*, 62 FR 69472, 69477 (November 10, 1997), and *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review*, 62 FR 53808, 53820-21 (October 16, 1997).

In order to ensure that the rate is sufficiently adverse so as to induce Rhone-Poulenc's cooperation, we have assigned this company as adverse facts available a rate of 60.0 percent, the margin calculated in the original less-than-fair-value (LTFV) investigation using information provided by Rhone-Poulenc, S.A. (see *Anhydrous Sodium Metasilicate from France; Final Determination of Sales at Less Than Fair Value*, 45 FR 77498 (November 24, 1980)).

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding, such as that used here, constitutes secondary information. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. In an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), where the Department disregarded the highest dumping margin as adverse BIA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). There is no evidence of circumstances indicating that the margin used as facts available in this review is not appropriate. Therefore, the requirements of section 776(c) of the Act are satisfied.

Preliminary Results of the Review

As a result of this review, the Department preliminarily determines that a margin of 60 percent exists for Rhone Poulenc for the period January 1, 1998, through December 31, 1998.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The rate will be assessed uniformly on all entries of Rhone-Poulenc merchandise made during the period of review. The Department will issue appraisement instructions for Rhone-Poulenc merchandise directly to the Customs Service.

Furthermore, the following deposit rates will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Rhone-Poulenc, S.A., will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 60.0 percent, the "all others" rate established in the LTFV investigation (45 FR 77498, November 24, 1980). This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21841 Filed 8–20–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin-Madison; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–010. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Diagnostic Neutral Beam System. *Manufacturer:* Budker Institute of Nuclear Physics, Russia, CIS. *Intended Use:* See notice at 64 FR 31541, June 11, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) high neutral beam current (3 to 5A), (2) low beam divergence (0.8 degree) and (3) duration of 3 ms for fluctuation and confinement studies with plasma. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–21842 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Southern California; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–015. *Applicant:* University of Southern California, Los Angeles, CA 90089–1340. *Instrument:* Automated Microscope Workstation, Series 200. *Manufacturer:* Singer Instruments, United Kingdom. *Intended Use:* See notice at 64 FR 35630, July 1, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a stage-mounted micromanipulator and a manually driven detenting stage designed specifically for genetic experiments in yeast cells. The National Institutes of Health advises in its memorandum of July 14, 1999 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–21843 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Environmental Impact Statement (EIS) on the Proposed MFS Globenet, Inc. Monterey Bay Fiber Optic Cable Installation Project Within the Monterey Bay National Marine Sanctuary (MBNMS)

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of intent; request for comments.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the authorization of the proposed installation of a fiber optic cable through Monterey Bay, California within the MBNMS. The action to be evaluated by this EIS is the proposal to install a submarine fiber optic telecommunications cable from New Zealand to Hawaii to California, with a focus on that part of the ocean route within the boundaries of the MBNMS and the terrestrial route within Santa Cruz and Monterey counties.

The EIS will be prepared in cooperation with the County of Santa Cruz, which issued a Notice of Preparation on March 29, 1999, regarding its intent to prepare an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA). The EIS prepared under this notice will be combined with the EIR and a joint EIR/EIS will be published.

DATES: Written comments on the intent to prepare an EIS and the scope of the EIS will be accepted on or before September 22, 1999. A public scoping meeting to inform interested parties of the proposed action and to receive public comments on the scope of the EIS is scheduled as follows:

September 1, 1999, 7:00–9:00 p.m.

Moss Landing Chamber of Commerce, 8045 Moss Landing Road, Moss Landing, California

ADDRESSES: Written comments on the scope of the EIS, suggested alternatives and potential impacts should be sent to William Douros, Responsible Program Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Comments may be submitted by FAX at (831) 647–4250. Comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: William Douros, Responsible Program Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940.

SUPPLEMENTARY INFORMATION:

I. Proposed Action

The proposed action would involve the authorization of installation of approximately 58.5 miles of submarine cable within the boundaries of the Monterey Bay National Marine Sanctuary as part of a larger project for a cable that would link New Zealand to Hawaii and the continental United States. Sanctuary regulations at 15 CFR Part 922, Subpart M, require authorization by the Sanctuary for installation and continued operation of the proposed cable within the MBNMS. The applicant (MFS Globenet, Inc. and Worldcom Network Services, Inc.) anticipates the cable would operate for a minimum of 25 years. The scope of the EIS will address the offshore area from shore to the seaward boundary of the MBNMS.

The seaward component of the project includes the seaward portions of two directionally bored conduits (approximately 950 meters out to sea to a water depth of 15 meters) and one two-inch wide submarine cable extending westward from one of the conduits to deep ocean. The offshore cable would extend along the submarine ridge ("Smooth Ridge") to the western boundary of the MBNMS (and then onward to New Zealand via Hawaii).

The applicant proposes to bury the cable to a depth of one meter out to a water depth of 2,000 meters, where feasible and where sensitive areas are not prohibitive. In general, the cable would be laid directly onto the ocean floor at ocean depths greater than 2,000 meters, where the potential for conflict with other marine uses is likely to be minimal.

Two cable burial methods are proposed. Where feasible, an underwater plow deployed from the cable ship would cut a narrow trench

for the cable and bury the cable. In sensitive areas or areas where the plow cannot operate safely, the cable would be laid directly on the sea floor and buried using a post lay jetting system in which a remotely operated vehicle with high-volume, low-pressure water jets would jet the cable into the sediment. This system would liquefy the substrate directly beneath the cable, causing the cable to sink into the substrate.

The applicant proposes to land the cable onshore in Santa Cruz County at the Monterey Bay Academy approximately two miles south of La Selva Beach. A cable landing facility would be located at the Monterey Bay Academy and the cable would continue onshore buried for 8.7 miles to a cable equipment building to be located within the unincorporated community of Pajaro. The cable would be connected to the existing network facilities at the cable termination station.

II. Alternatives

Pursuant to National Environmental Policy Act (NEPA) requirements, the EIR/EIS will evaluate the No Action Alternative and alternative routes for placement and landing of the fiber optic cable. Six preliminary alternatives to the proposed action have been developed based on initial discussions with state and local agencies, as well as the local commercial fishing industry.

Additional alternatives to the proposed action may be developed as part of the public scoping phase for inclusion in the Draft EIR/EIS. The possible alternatives include:

No Action Alternative—Under the No Action Alternative, MFS Globenet would not construct the proposed fiber optic cable.

Alternative 1 Route—This alternative route follows along the northern edge of Soquel and Cabrillo canyons to minimize potential conflicts with commercial fishing. A re-route of the transition between inner shelf and smooth ridge between 120–400 meter depth contours also minimizes impacts to hard-bottom benthic habitat. The route would traverse approximately 62.4 miles of the MBNMS. The onshore landing area would be the same as the proposed action.

Alternative 2 Route—The cable would be routed up the length of Monterey Canyon and through Soquel Canyon for a distance of 75.5 miles across the MBNMS. This alternative is intended to reduce potential impacts to commercial trawl fishing. The onshore landing area would be the same as the proposed action.

Alternative 3 Route—This alternative considers a combined landing at a beach proposed by another cable project proponent. Fiber optic cables would generally follow the proposed action route, but would land at La Selva Beach instead of Monterey Bay Academy.

Alternative 4 Route—The cable would generally follow the ridge of Año Nuevo Canyon and would traverse approximately 47.3 miles of the MBNMS. The landing site would be located at Davenport Beach, just south of El Jarro Point. This alternative reduces linear encroachment into MBNMS and reduces encroachment onto the continental shelf.

Alternative 5 Route—The offshore segment of the cable would be routed across a narrower section of the MBNMS (compared to the proposed action) and along the northern rim of Ascension Canyon to Davenport Beach, just south of El Jarro Point (same landing as Alternative 4). The route would traverse approximately 35.8 miles of the MBNMS. This alternative would reduce linear encroachment into the Sanctuary.

Alternative 6 Route—The cable would be constructed outside the boundaries of the MBNMS to avoid impacts to Sanctuary resources. The nearshore cable route and landing site would be consolidated with the applicant's other proposed cable landings in Morro Bay, California.

III. Summary of Environmental Issues

The installation, maintenance, and eventual decommissioning and removal of the cable pose potentially significant impacts upon Sanctuary resources and qualities. The EIR/EIS will address onshore and offshore environmental effects of cable construction, operation, maintenance and repair, and removal. Potential onshore impacts have been identified in the separate Notice of Preparation, issued by the County of Santa Cruz, as the EIR lead agency. Specific offshore environmental issues that have been identified for analysis in the EIR/EIS include:

- Effects on commercial and recreational fisheries and fisheries operations, including construction interference with fishing activities, potential loss of catch, and potential accidents (e.g., fishing net entanglement);
- Trenching effects (e.g., sediment plume, benthic disruption, and siltation) on the water column, marine water quality, and flora and fauna;
- Effects on kelp beds, benthic communities, rocky hard-bottom communities, plankton, fish, marine birds, marine mammals, and marine turtles from construction disturbances and/or release of contaminants, including boats anchoring, increased turbidity, sediment contamination, boat and construction-related noise, and introduction of exotic species from foreign vessels;
- Potential for bentonite spills and spill effects on water quality and aquatic habitats and species;
- Potential entanglements by cetaceans (whales) including sperm whales where the cable is exposed and gray whales that feed on the ocean bottom;
- "Strumming" (lateral movement of the cable along the seafloor due to ocean currents) impacts on the marine environment;
- Geologic hazards and physical effects on the cable (e.g., submarine landslides and erosion);
- Electromagnetic field effects on marine species;
- Impacts on submerged cultural resources;
- Direct or indirect effects on sensitive species and habitats;
- Cable installation vessel interference with commercial and recreational vessel navigation; and
- Short-term air quality effects from construction equipment, vehicle, and vessel emissions.

IV. Future Public Involvement

Additional opportunities for public review will be provided when the Draft EIR/EIS is completed. A notice of availability of the Draft EIR/EIS will be published in the **Federal Register**. In addition, release of the Draft EIR/EIS for public comment and public meetings on the Draft EIR/EIS will be announced in the local news media, as the dates are established. According to the current schedule, which is subject to change, the Draft EIR/EIS is expected to be released in December 1999.

V. Special Accommodations

The public scoping meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Scott Kathey at the Monterey Bay National Marine Sanctuary, (831) 647–4251, at least five days prior to the meeting date.

Authority: 16 U.S.C. Section 1431 *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 17, 1999.

Ted Lillestolen,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 99–21774 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

At the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current guaranteed access levels for textile products in certain categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 25, 1999, you are directed to increase the guaranteed access levels for the categories listed below for the period beginning on January 1, 1999 and extending through December 31, 1999.

Category	Guaranteed access level
338/638	7,150,000 dozen.
339/639	4,150,000 dozen.
347/348/647/648	9,050,000 dozen.
433	121,000 dozen.
633	120,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–21780 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 339/639 and 347/348/647/648 are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 25, 1999, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
339/639	1,352,001 dozen.
347/348/647/648	2,672,369 dozen of which not more than 1,238,434 dozen shall be in Categories 647/648.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–21781 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryforward and special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 68247, published on December 10, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 26, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
334/634	148,470 dozen.
338/339	4,479,198 dozen.
340/640	2,405,744 dozen.
342/642	1,286,807 dozen.
345	195,761 dozen.
347/348	752,408 dozen.
351/651	328,512 dozen.
641	1,616,361 dozen.
647/648	701,252 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–21778 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Korea

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 638/639 and 647/648 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 56005, published on October 20, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period January 1, 1999 through December 31, 1999.

Effective on August 26, 1999, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
638/639	5,286,041 dozen.
647/648	1,341,828 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–21779 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Mauritius

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60306, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 1, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	612,629 dozen.
347/348	1,158,004 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–21762 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. A portion of the meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: September 22, 1999.

ADDRESSES: Room 806, RAND, Suite 800, 1333 H Street, NW, Washington, DC 20005.

Proposed Schedule and Agenda: Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet in closed session from 9:30 a.m. until 4:45 p.m. and from 5 p.m. until 5:30 p.m. on September 22, 1999. The meeting will be open for public from 4:45 p.m. until 5 p.m. This meeting will include classified briefings on the threat of domestic WMD terrorist attacks and on response capabilities. Time will be allocated as noted above for public comments by individuals or organizations.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its web site at http://www.rand.org/organization/nsrd/terrpanel; it can also be reached at (202) 296–5000 extension 5282. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Priscilla Schlegel, RAND, 1333 H Street, NW, Washington, DC 20005. Public seating for this meeting is limited, and is available on a first-come, first served basis.

Dated: August 17, 1999.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21738 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: On July 19, 1999, the Defense Intelligence Agency published an announcement (64 FR 38657) for a closed meeting on July 29, 1999. This meeting was cancelled due to the unavailability of key participants.

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd., Arlington, VA 22201–5300.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930.

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21737 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, September 16, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research

Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21732 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY Department Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, October 7, 1999.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Timothy Doyle, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate the industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21733 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 17, 1999.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21734 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, September 22, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency

(ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments proposed to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1944)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 17, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21735 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Presidential Panel on Military Operations on Vieques

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice.

SUMMARY: The Panel will meet in closed session on August 20, 1999. The Panel was chartered by the Secretary of Defense on June 25, 1999 to provide advise and recommendations to him regarding the need for the continuation of military operations on the island of Vieques, Puerto Rico and the extent to which alternative sites or methods are available that would fulfill national security requirements.

The Panel will meet in closed session on August 20, 1999 to review and discuss information received from various sources concerning the Navy's involvement in Vieques, some of which is classified or raises issues concerning classified national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II, (1982)), it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1) (1998), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public. Because of the short timeframe of the panel's review, and the accelerated pace of the meeting schedule, this announcement must be made less than 15 days before the meeting will take place.

DATES: August 20, 1999, 8:30 a.m. to 5 p.m.

ADDRESSES: 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Dr. Hector Nevarez, the Designated Federal Officer, 1401 Wilson Boulevard, Suite 400, Arlington, VA 22209, phone (703) 696–9456, fax (703) 696–9482, or via Email at *Hector.Nevarez@osd.pentagon.mil.*

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21736 Filed 8–20–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army proposes to alter a record system of records in its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a category of records and three routine uses to the existing system of records.

DATES: The action will be effective without further notice on September 22, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC–PDR–P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Army's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 3, 1999, to the House Committee on Government Reform, the Senate Committee on Government Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130. "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0190–47 DAMO

SYSTEM NAME:

Correctional Reporting System (CRS) *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Army Regional Correctional Facilities and U.S. Army Correctional Activity, Fort Riley, KS; U.S. Disciplinary Barracks, Fort Leavenworth, KS.

The Army Clemency Board Office, Assistant Secretary of the Army, Manpower and Reserve Affairs, Washington, DC 20310–0110 (for decisions on clemency recommendations, parole actions, and restoration to duty)."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to end of entry "Names, addresses, and telephone numbers of victims/witnesses."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry "Victim's Rights and Restitution Act of 1990 as implemented by DoD Directive 1030.1 and DoD Instruction 1030.2; and Army Regulation 190–47, The Army Corrections System."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add three paragraphs to entry "To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2)

information about the individual for inclusion in a state operated sex offender registry.

To the Bureau of Prisons for purpose of providing notification that the military transferee has been convicted of a sexually violent offense or an offense against a victim who is a minor.

To victims and witnesses of crime for the purpose of notifying them of date of parole or clemency hearing and other release related activities."

* * * * *

A0190—47 DAMO

SYSTEM NAME:

Correctional Reporting System (CRS).

SYSTEM LOCATION:

Army Regional Correctional Facilities and U.S. Army Correctional Activity, Fort Riley, KS; U.S. Disciplinary barracks, Fort Leavenworth, KS.

The Army Clemency Board Office, Assistant Secretary of the Army, Manpower and Reserve Affairs, Washington, DC 20310–0110 (for decisions on clemency recommendations, parole actions, and restoration to duty).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any military member confined at an Army confinement or correctional facility as a result of, or pending, trial by courts-martial.

CATEGORIES OR RECORDS IN THE SYSTEM:

Documents related to the administration of individual military prisoners; courts-martial orders, release/confinement orders, medical examiner's reports, requests and receipts for health and comfort supplies, reports and recommendations relating to disciplinary actions, clothing and equipment issue records; forms authorizing correspondence by prisoner, mail records; personal history records; individual prisoner utilization records; requests for interview; fingerprint cards, military police reports; prisoner identification records; parolee agreements; inspections; documents regarding custodianship of personal funds and property of prisoners; former commanding officer's report; parents' report; spouse's report' classification recommendations; request to transfer prisoner; social history; clemency actions; psychologist's report; psychiatric and sociologic reports; certificate of parole; certificate of release from parole; assignment progress reports; and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 951, NOTE; Victim's Rights and Restitution Act of 1990 as implemented by DoD Directive 1030.1 and DoD Instruction 1030.2; and Army Regulation 190–47, The Army Corrections System; and E.O. 9397 (SSN).

PURPOSE(S):

Correctional treatment records are used to determine prisoner's custody classifications, work assignments, educational needs, adjustment to confinement, areas of particular concern, and, as the basis for clemency, parole and restoration to duty considerations.

Automated records provide pertinent information required for proper management of confinement facility population, demographic studies, status of discipline and responsiveness of personnel procedures, as well as confinement utilization factors such as population turnover, recidivism, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to local, state, and federal law enforcement and investigation agencies for investigation and possible criminal prosecution, civil court actions or regulatory orders.

To confinement/correctional agencies for use in the administration of correctional programs including custody classification, employment, training and educational assignments, treatment programs, clemency, restoration to duty or parole actions, verification of offender's criminal records, employment records, and social histories.

To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2) information about the individual for inclusion in a state operated sex offender registry.

To the Bureau of Prisons for purpose of providing notification that the military transferee has been convicted of a sexually violent offense or an offense against a victim who is a minor.

To victims and witnesses of crime for the purpose of notifying them of date of parole or clemency hearing and other release related activities.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and computerized data base.

RETRIEVABILITY:

By prisoner's surname and/or Social Security Number/register number.

SAFEGUARDS:

All records are maintained in areas accessible only to designated personnel having official need therefor. Automated data base and output are managed through comprehensive procedures and policies prescribed in system functional users manuals.

Regional Data Centers are contractor-operated. Contractor personnel are security screened; employees receive a security briefing and participate in an on-going security education program under the Regional Data Security Officer. Regional Data Centers are connected through a communications network to 44 distributed data processing centers at Army installations. Technical, physical, and administrative safeguards required by Army Regulation 380–19, Information Systems Security, are met at installation data processing centers and information is secured in locked rooms with limited/controlled access. Data are available only to installation personnel responsible for system operation and maintenance. Terminals not in data processing centers are under the supervision of a terminal area security officer at each remote location protecting them from unauthorized use. Access to information is controlled further by a system of assigned passwords for authorized users of terminals.

RETENTION AND DISPOSAL:

Individual correctional treatment records for prisoners in the U.S. Army Correctional Activity (USACA) or U.S. Disciplinary Barracks (USDB) are retained for 90 days following expiration of sentence/completion of parole/maximum release date, following which they are retired to the national Personnel Records Center for 25 years; destruction is by shredding. Similar records for prisoners in local Army confinement and correctional facilities are destroyed 4 years following release of prisoner from confinement.

Note: Transfer of a prisoner from one facility to another is not construed as released from confinement. When a prisoner is transferred to another facility, his/her file is transferred with him/her.

Information on tape/disc is erased after 3 years.

Army Clemency Board case files are returned on completion of Board action to USACA or USDB, as appropriate, where they are retained for 90 days after prisoner's release from confinement or return to duty, following which they are retired to the National Personnel Records Center and maintained for 25 years before being destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0580.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the confinement/correctional facility, or to the Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440.

Individual should provide the full name, Social Security Number, present address, and dates of confinement and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the confinement/correctional facility where a prisoner, or to the Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440

Individual should provide the full name, Social Security Number, present address, and dates of confinement and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual witnesses; victims; Military Police/U.S. Army Criminal Investigation Command personnel and/or reports; informants; various Federal, state and local investigative and law enforcement agencies; foreign governments; and other individual or organization that may supply pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 99–21740 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Richland Operations Office; Competitive Financial Assistance Solicitation

AGENCY: Richland Operations Office, U.S. Department of Energy.

ACTION: Notice of competitive financial assistance solicitation.

SUMMARY: The U.S. Department of Energy, Richland Operations Office, announces that it intends to issue a solicitation for a competitive financial assistance award. The proposed award will be for a cooperative agreement instrument, for a minimum three (3) year project period. The initial budget for FY 2000 is estimated at $50,000. The complete solicitation, including application address and due date, is available on the internet via the following address: *www.hanford.gov/procure/solicit.htm.*

FOR FURTHER INFORMATION CONTACT: Melanie P. Fletcher, U. S. Department of Energy, Richland Operations Office, FAX: (509) 376–5378, E:MAIL: melanie__p__fletcher@rl.gov

SUPPLEMENTARY INFORMATION: Solicitation Number: DE–RP06–99RL13996.

Scope of Project: The recipient of the proposed financial assistance instrument will provide the administrative resources to work cooperatively with the U.S. Department of Energy, Richland Operations Office in the placement of students, graduates and faculty members in promoting the following objectives:

(1) professional development and advanced training opportunities for students, graduates, and faculty members; and development (R&D mission in the U.S.).

(2) enhancement of academic/laboratory interface by promoting and facilitating R&D and technology transfer collaborations and other interactive endeavors;

(3) encouraging students to pursue educational and training experiences in science, mathematics, and engineering disciplines and to ultimately select careers in, or in support of areas vital to long-range research and development (R&D mission in the United States).

Sally A. Sieracki,

Acting Division Director, Procurement Services Division, Richland Operations Office.

[FR Doc. 99–21804 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB). Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, September 11, 1999, 8:30 a.m.–12:00 p.m. (Public Comment session 11:30 a.m.–11:45 a.m.)

ADDRESSES: Fernald Environmental Management Project, Large Laboratory Conference Room, 7400 Willey Road, Hamilton, OH 45219.

FOR FURTHER INFORMATION CONTACT: Gewn Doddy, Phoenix Environmental, MS 76, P.O. Box 538704, Cincinnati, Ohio 42553–8704, at (513) 648–6478.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Saturday, September 11, 1999:

8:30 a.m.—Call to order
8:30–8:45 a.m.—Chairs Remarks and Announcements
8:45–9:45 a.m.—Rebid of Fernald Contract
9:45–10:00 a.m.—Update on SSAB Transportation Workshop
10:00–10:15 a.m.—Break
10:15–10:30 a.m.—Silos
10:30–11:15 a.m.—Stewardship Seminar
11:15–11:30 a.m.—DOE Response to Cattle Grazing
11:30–11:45 a.m.—Public Comment
11:45–12:00 a.m.—Wrap Up
12:00 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, September 11, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Jim Bierer, Chair, Fernald Citizens' Advisory Board, C/O Phoenix Environmental Corporation, MS 76, Post Office Box 538704, Cincinnati, Ohio 45253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on August 18, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21805 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 2, 1999, 6:30 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, (Front Range Community College), 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Update on projects and issues being tracked by the Colorado Department of Public Health and Environment.
2. Review and approve recommendation on Industrial Area Characterization Strategy.
3. Discuss and prepare the Board's draft year 2000 Work Plan.
4. Final approval of Board's Vision document.
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC, on August 18, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21806 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 1, 1999: 6:00 p.m.–9:00 p.m.

ADDRESSES: DOE Nevada Operations Office, 232 Energy Way, North Las Vegas, NV 89030.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Briefing on Yucca Mountain Draft Environmental Impact Statement
2. Nevada Test Site Stewardship Issues
3. Public Comment

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved. This

notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on August 18, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21807 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Kirtland Area Office (Sandia).

DATES: Wednesday, September 15, 1999: 5:30 p.m.–9:00 p.m. (MST).

ADDRESSES: Barelas Community Center, 714 7th Street, SW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, (505) 845–4094.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

5:30–6:30 p.m.—DOE Update
6:30–6:40 p.m.—Break
6:40–7:00 p.m.—Check In/ Minutes/ Agenda approval
7:00–7:10 p.m.—Honor Outgoing Executive Committee Members
7:10–7:30 p.m.—Scott's Corrective Action Management Unit Modification Recommendation
7:30–7:45 p.m.—Public Comment
7:45–8:00 p.m.—Break
8:00–8:15 p.m.—Budget
8:15–8:45 p.m.—Membership
8:45–8:50 p.m.—Work Plan
8:50–9:00 p.m.—Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on August 18, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21808 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

August 17, 1999.

Take notice that on August 13, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP99–601–000 a request pursuant to Sections 157.205, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon and transfer by sale to SEMCO Energy Gas Company (SEMCO), certain delivery point facilities located in China Township, St. Clair County, Michigan (the China Township facilities), under the blanket certificate issued in Docket No. CP90–2053–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

On January 19, 1999, Great Lakes filed an application before the Commission in Docket No. CP99–162–000, pursuant to the Commission's blanket certificate prior notice procedures, to construct and operate a tap, a meter station, approximately 1.6 miles of 16-inch pipe (to connect the tap and meter station), and appurtenant facilities to establish a delivery point (the China Township Delivery point) for service to The Detroit Edison Company (Detroit Edison), a new end-use shipper on its system, in St. Clair County, Michigan. The China Township facilities were constructed to serve Detroit Edison's electric generating facilities. Public notice of Great Lakes' application was made on January 28, 1999. No protests to Great Lakes' application were filed in Docket No. CP99–162–000. Great Lakes received authorization to proceed with the project to serve Detroit Edison on March 16, 1999.

The China Township facilities were placed into service on May 16, 1999. Subsequent to receipt of the authorization to commence the construction of facilities to serve Detroit Edison, Great Lakes agreed to sell the facilities to SEMCO. Detroit Edison, which is the only end-user served by the subject facilities, has consented to Great Lakes' abandonment and sale of the China Township facilities. According to Great Lakes, SEMCO will transport natural gas supplies to Detroit Edison under a special transportation service agreement to be approved by the Michigan Public Service Commission (MSPC). Additionally, Great Lakes states that the abandonment and transfer by sale will become effective no later than the first day of the second month following receipt of authorizations of the Commission and Michigan Public Service Commission. Therefore, Great Lakes contends that the proposed abandonment and sale of the facilities would not result in any disruption or abandonment of service to Detroit Edison, nor will it disadvantage any of Great Lakes' existing customers. Additionally, Great Lakes asserts that upon acquisition, the facilities will not be operated as jurisdictional interstate transmission facilities, but will become part of SEMCO's intrastate distribution system, which is regulated by MSPC.

Great Lakes states that is presently completing, or, will complete prior to its abandonment and final sale of the China Township facilities, restoration steps in accordance with the FERC Plan and Procedures required at the China Township facilities location. Great Lakes alleges that it will retain ownership of the tap assembly, and certain computer and related equipment, including the temperature and pressure transmitters located at the meter station.

Any questions regarding this application should be directed to Marc M. Mozham, Vice President, Market Services and Development for Great Lakes, One Woodward Avenue, Suite 1600, Detroit, Michigan 48226 at (313) 596–4582, or Ms. M. Catharine Davis, Senior Attorney for Great Lakes, One Woodward Avenue, Suite 1600, Detroit, Michigan 48226 at (313) 596–4593.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21759 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–297–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 17, 1999.

Take notice that on August 13, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for the following revised tariff sheets for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1:

Sixth Revised Sheet No. 301
Sixth Revised Sheet No. 319
Sixth Revised Sheet No. 319A
First Revised Sheet No. 320
First Revised Sheet No. 368
First Revised Sheet No. 369
Fourth Revised Sheet No. 406
Third Revised Sheet No. 406A

Tennessee requests that the attached tariff sheets be made effective September 12, 1999.

Tennessee states that the attached tariff sheets are submitted in compliance with the Commission's Letter Order in the above-referenced docket. Tennessee Gas Pipeline Company, 88 FERC ¶ 61,073 (1999). Tennessee further states that the revised tariff sheets eliminate the Account No. 191 cost recovery tariff provisions from Tennessee's tariff in light of the Letter Order's acceptance of Tennessee's final Account No. 191 Reconciliation Report which reflected the final reconciliation and termination of Tennessee's Account No. 191.)

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21760 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AC99–33–00 and EL99–33–002]

Tucson Electric Power Company; Notice of Filing

August 17, 1999.

Take notice that on July 30, 1999, Tucson Electric Power Company filed a Refund Report in compliance with the order issued by the Federal Energy Regulatory Commission (Commission) on June 1, 1999 in the above-referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 31, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21758 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–451–001]

Williams Gas Pipelines Central, Inc.; Notice of Revised Refund Report

August 17, 1999.

Take notice that on August 12, 1999, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a revised interruptible excess refund report for the month of October 1993.

Williams states that it filed its interruptible excess refund report on July 29, 1999. Williams has noted that Schedule 3 included with the July 29 filing contained errors in the calculation of interest during certain quarters. Accordingly, Williams has filed a revised Schedule 3 showing the corrected interest calculation and a revised Schedule 2 showing the allocation by customer of the revised refund amount.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21761 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2916–036]

East Bay Municipal Utility District; Notice of Availability of Final Environmental Assessment

August 17, 1999.

A final environmental assessment (FEA) is available for public review. The FEA is for an application for the Lower Mokelumne River Project (FERC No. 2916) to amend the license to remove Mine Run Dam. the Mine Run Dam was previously used to control acid mine drainage from the abandoned Penn Mine; no hydroelectric facilities are associated with Mine Run Dam. The project is located on the Mokelumne River, in Amador, Calaveras, and San Joaquin Counties, California. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA are available for review in the Commission's Public Reference Branch, Room 2A, 888 First Street, NE., Washington, DC 20426 or by calling (202) 208–1371. The FEA may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance. For further information, please contact John K. Novak at (202) 219–2828.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21762 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

August 17, 1999.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–11730–000.

c. *Dated Filed:* April 21, 1999.

d. *Applicant:* Black River Limited Partnership.

e. *Name of Project:* Alverno Hydroelectric Project.

f. *Location:* On the Black River in the Townships of Aloha, Benton, and Grant, in Cheboygan County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Frank O. Christie, President, Franklyn Hydro, Inc., 8 East Main Street, Malone, New York 12953, (518) 483–1961.

i. *FERC Contact:* Any questions on this notice should be addressed to John Costello, E-mail address john.costello@ferc.fed.us or telephone at (202) 219–2914.

j. *Deadline for filing scoping comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official serve list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of Project:* The constructed project consists of a 360-foot-long earth filled dam with a power plant located on the right riverbank and a gated spillway near the left bank. The project impoundment extends approximately 2.5 miles upstream. The powerhouse contains 2 horizontal turbine/generator sets.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at the Cheboygan Public Library, 107 South Ball Street, Cheboygan, Michigan.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Tuesday, September 21, 1999, 1:00 PM, Benton Town Hall, corner of North Black River Road, and Orchard Beach Road, (Alverno Corner)

Evening Meeting

Tuesday, September 21, 1999, 7:00 PM, Benton Town Hall, corner of North Black River Road, and Orchard Beach Road, (Alverno Corner)

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Tuesday, September 21, 1999. We will meet at the project's powerhouse at 10:30 AM. If you would like to attend, please call Frank Christie, Black River Limited Partnership, at (518) 483–1961, no later than September 17, 1999.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21763 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00278; FRL–6096–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held September 14–16, 1999, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity, and the development of Acute Exposure Guideline Levels (AEGLs) for, the following chemicals: Bromine, furan, hydrogen sulfide, Otto Fuel (propylene glycol dinitrate major component), and 1,1,1-trichloroethane. There will also be a discussion of the review and comment by the National Academy of Sciences/National Research Council Subcommittee on AEGLs regarding certain Interim AEGL values previously published in the October 30, 1997, **Federal Register** notice (62 FR 58839–58851) (FRL–5737–3). These chemicals include 1,2-dichloroethylene, ethylene oxide, and phosphine.

DATES: Meetings of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on September 14, 1999; from 8:30 a.m. to 5 p.m. on September 15, 1999; and from 8:30 a.m. to 1 p.m. on September 16, 1999.

ADDRESSES: The meeting will be held at the Green Room on the third floor of the Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00278. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed in the "FOR FURTHER INFORMATION CONTACT" section.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for December 6–8, 1999. The location of this meeting

and chemicals to be discussed will be published in a future **Federal Register** notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: August 17, 1999.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–21834 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6426–3]

National Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. 103–182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on Wednesday, September 8, 1999 from 8:30 a.m. until 5:30 p.m.

ADDRESSES: The Sheraton Seattle Hotel & Towers, 1400 Sixth Avenue, Seattle, Washington. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Joyce, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 260–6889.

Dated: August 8, 1999.

Mark Joyce,

Designated Federal Officer, National Advisory Committee.

[FR Doc. 99–21827 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6426–2]

Governmental Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Governmental Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from state, local and tribal governments.

DATES: The Committee will meet on Wednesday, September 8, 1999 from 8:30 a.m. until 5:30 p.m.

ADDRESSES: The Sheraton Seattle Hotel & Towers, 1400 Sixth Avenue, Seattle, Washington. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Joyce, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 260–6889.

Dated: August 8, 1999.

Mark Joyce,

Designated Federal Officer, Governmental Advisory Committee.

[FR Doc. 99–21828 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6426–7]

Proposed CERCLA Administrative Cost Recovery Settlement; Milan Krstich

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Superior Polishing site in Warren, Macomb County, Michigan with the following settling party: Milan Krstich. The settlement requires the settling party to pay $60,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before September 22, 1999.

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed

settlement may be obtained from Alan Walts, Assistant Regional Counsel, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604, phone (312) 353–8894. Comments should reference the Superior Polishing Site, Warren, Macomb County, Michigan and EPA Docket No. V–W–C–559 and should be addressed to Alan Walts, Assistant Regional Counsel, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604, phone (312) 353–8894.

FOR FURTHER INFORMATION CONTACT: Alan Walts, Assistant Regional Counsel, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604, phone (312) 353–8894.

Dated: August 4, 1999.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–21829 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

August 13, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0855.

Expiration Date: 01/31/2000.

Title: Telecommunications Reporting Worksheet and Associated Requirements—CC Docket No. 98–171.

Form No.: FCC Forms 499–A and 499–S.

Respondents: Business or other for-profit.

Estimated Annual Burden: 5500 respondents; 7.27 hours per response (avg.); 40,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $9,000,000.

Frequency of Response: Annually; Semi-annually; On occasion; Third Party Disclosure; Recordkeeping.

Description: In a Report and Order issued in CC Docket No. 98–171, released July 14, 1999, the Commission simplified and consolidated four Commission reporting requirements so that carriers need only file one worksheet to satisfy the contributor reporting requirements associated with: the universal service support mechanisms; telecommunications relay services; cost recovery mechanism for numbering administration; and cost recovery mechanism for shared costs of long-term number portability. Reporting Requirement: All contributors to the Federal telecommunications relay service, numbering administration, long-term portability, and universal service support mechanisms (except certain non-common carrier telecommunications service providers meeting the universal service de minimis exemption) must file the April version of the Telecommunications Reporting Worksheet, FCC Form 499–A on April 1 of each year. (No. of respondents: 3500; hours per response: 8 hours; total annual burden: 28,000 hours). All contributors to the universal service support mechanisms, except those that fall within the Commission's de minimis exemption, must file a streamlined version of the Telecommunications Reporting Worksheet (FCC Form 499–S) on September 1 of each year. The first filing of the FCC Form 499–S is due September 1, 1999. (No. of respondents: 2000; hours per response: 5.5 hours; total annual burden: 11,000 hours). The forms (i.e., FCC Form 499–A and 499–S) and instructions may be downloaded from the Commission's Forms Web Page (www.fcc.gov/formpage.html). Copies also may be obtained by calling the fax-on-demand line at (202) 481–2830. The retrieval number for the FCC 499–A form is 004992; the retrieval number for the FCC 499–S form is 004991. Copies of the forms may also obtained from USAC at (973) 560–4400. Recordkeeping Requirements: Small common carriers and small pay telephone providers must complete the table contained in Figure 2 of FCC Form 499 to determine whether they meet the de minimis standard and need not file the form on September 1. Small shared tenant service providers and small private carriers should complete the table in Figure 2 to determine whether they meet the de minimis standard and need not file the worksheet on either September 1 or April 1. Telecommunications providers that do not file because they are de minimis should retain figure 2 and documentation of their contribution base revenues for 3 calendar years after the date each worksheet is due. Carriers that provide carriers' carrier services must have documented procedures to ensure that it reports as revenues from resellers only revenues from entities that reasonably would be expected to contribute to support universal service. These procedures include, but are not limited to, maintaining the following information on resellers: Legal name; address; name of a contact person; and phone number of the contact person. (No. of respondents: 2000; annual burden per respondent: .25 hours; total annual burden: 500 hours). Third Party Disclosure: If a reseller qualified for the de minimis exemption, it must notify its underlying carriers that it is not contributing directly to universal service. (Number of respondents: 2000; annual burden per respondent: .25 hours; total annual burden: 500 hours). The information will be used by the Commission and the administrators to calculate contributions to the universal service support mechanisms, the telecommunications relay services support mechanism, the cost recovery for numbering administration, and the cost recovery for the shared costs of long-term local number portability. Without this collection, the information requested in the Worksheet would not be otherwise available. The Commission could not determine contributions to the above-mentioned, Congressionally-mandated support and cost recovery mechanisms and, therefore, could not fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. In addition, the information collection will be used by carriers to satisfy their obligation under section 413 of the Act of file information concerning their designated agent for service of process. Obligation to comply: Mandatory.

OMB Control No.: 3060–0894.

Expiration Date: 08/31/2002.

Title: Notification to High Cost Subscribers and Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262 (Proposals).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 81 respondents; 15.2 hours per response (avg.); 1233 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Monthly; Annually.

Description: The Commission will adopt a framework to be used in estimating costs and computing federal support to enable reasonable comparability of rates for non-rural

carriers. In a Further Notice of Proposed Rulemaking (FNPRM) issued in CC Docket Nos. 96–45 and 96–262, released May 28, 1999, the Commission provided an additional opportunity for interested parties to comment on specific universal service support implementation issues now that they are able to work with the cost model. Although the Commission has the responsibility to ensure that support is sufficient to enable reasonable comparability of rates, the states possess jurisdiction over specific rate levels. In the FNPRM, the Commission tentatively concluded that making support available as part of the state rate-setting process would empower state regulators to achieve reasonable comparability of rates within their states. The Commission proposed that carriers should be required to notify high-cost subscribers that their lines have been identified as high-cost lines and that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. In addition, the Joint Board recommended that the Commission require carriers to certify that they will apply federal high-cost support in accordance with the statute. The Joint Board also recommended that the Commission should not require states to provide any certification as a "condition" for carriers in the state to receive high cost support, but the Commission should instead permit states to certify that, in order to receive federal universal service support, a carrier must use such funds in a manner consistent with 47 USC Section 254. Because some states may lack either the authority or the desire to impose conditions on the use of high-cost support, the Commission tentatively concluded that such state oversight, while valuable and potentially sufficient, may not in every case ensure that section 254(e)'s goals are met. Therefore, the Commission proposed to condition the receipt of federal universal service high-cost support on any state action, including adjustments to local rate schedules reflecting federal support. The Commission believes that denying support to states that lack the regulatory authority to ensure that federal funds are used appropriately would penalize those states and would not be consistent with section 254's mandates. The Commission proposed that even states that lack this authority should be able to certify to the Commission that a carrier within the state had accounted for its receipt of federal support in its rates or otherwise used the support for the "provision, maintenance, and upgrading of facilities and services for which the support is intended" in accordance with section 254(e). Proposed Information Collections: a. Each non-rural company that receives high cost support should notify high-cost subscribers that their lines have been identified as high-cost lines and that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. (Note: in the FNPRM, the Commission seeks comment on this issue therefore the frequency of responses may decrease if the notification only occurs annually instead of monthly). (No. of respondents: 30; hours per response: 36 hours; total annual burden: 1,080 hours). b. Each state commission must file a letter with the Commission certifying that a carrier within the state had accounted for its receipt of federal support in its rates or otherwise used the support for the "provision, maintenance, and upgrading of facilities and services for which the support is intended" in accordance with section 254(e). (No. of respondents: 51; hours per response: 3 hours; total annual burden: 153 hours). If adopted, the information will be used to show that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. Further, the collection of information will be used to verify that the carriers have accounted for its receipt of federal support in its rates or otherwise used the support for the "provision, maintenance, and upgrading of facilities and services for which the support is intended" in accordance with section 254(e). Obligation to respond: Mandatory.

OMB Control No.: 3060-0895.

Expiration Date: 08/31/2002.

Title: Numbering Resource Optimization—CC Docket No. 99–200 (Proposed Rule).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 3,000 respondents; 52 hours per response (avg.); 156,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Quarterly.

Description: In a Notice of Proposed Rulemaking (Notice) issued in CC Docket No. 99–200, released June 2, 1999, the Commission examined a variety of measures intended to increase the efficiency with which telecommunications carriers use telephone numbering resources in order to slow the rate of number exhaust in this country. The Notice sought public comment on how best to create national standards for numbering resource optimization. Specifically, the Notice examined the existing mechanisms for the administration and allocation of numbering resources, which are governed by industry-developed Central Office Code Guidelines. The guidelines have not been effective in constraining the ability of carriers to obtain and carry excessively large inventories of numbering resources for which they have no immediate need. The Notice sought comment on measures that would tie the allocation of new numbering resources to a showing of need by the carrier, increase carrier accountability for number utilization through enhanced data reporting and audit requirements, and speed the return of unused numbering resources. The Notice specifically sought comment on the possibility of requiring carriers to meet number utilization thresholds before they can obtain additional numbering resources. These measures would not require implementation of new systems or technologies, and could likely be implemented in a relatively short time period at minimal cost. The Notice proposed certain verification measures designed to prevent carriers from obtaining numbering resources that they do not need in the near term. Proposed Information Collections: a. Quarterly Reporting: The Commission proposes to collect utilization and forecast data information from all telecommunications carriers that use numbering resources. The Notice tentatively concludes that carriers should report utilization and forecast data on a quarterly basis and that the Commission should mandate that all users of numbering resources must supply utilization and forecast data to the NANPA. (No. of respondents: 3,000; hours per response 48 hours; total annual burden: 144,000 hours). b. Initial Codes: With respect to an applicant's ability to obtain initial codes, the Notice sought comment on what type of showing would be appropriate. The Notice sought comment on whether applicants should be required to make a particular showing regarding the equipment they intend to use to provide service, the state of readiness of their network or switches, or their progress with their business plans, prior to obtaining initial codes, or whether any other type of showing should be required. The Notice sought comment on whether applicants should be required to submit evidence of their license/certificate with their

applications for initial codes, or conversely, whether the NANPA should be required to check the status of an applicant's license or certification with the relevant state commission prior to issuing the requested initial code. (No. of respondents: 3,000; hours per response: 1 hour; total annual burden: 3,000 hours). c. Growth Codes: Applicants for NXX codes currently are required to complete a Months-to-Exhaust Worksheet prior to applying for growth codes. The Notice sought comment on whether requiring applicants to submit the Months-to-Exhaust Worksheet with an application for growth codes would be an adequate demonstration of need for additional numbering resources. Alternatively, the Notice sought comment on whether carriers should be required to demonstrate that they have achieved a specified level of numbering utilization (or fill rate) in the area in question before they may receive additional numbering resources. (No. of respondents: 3,000; hours per response: 3 hours; total annual burden: 9,000 hours). If adopted, all of the proposed collections will be used to prevent the premature exhaustion of numbering resources. Obligation to comply: Mandatory.

OMB Control No.: 3060–0793.

Expiration Date: 08/31/2002.

Title: Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 260 respondents; .58 hours per response (avg.); 155 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually.

Description: In a Further Notice of Proposed Rulemaking (FNPRM) issued in CC Docket Nos. 96–45 and 97–60, released May 28, 1999, the Commission proposed to change the way in which local exchange carriers file rural certification letters. The Commission proposed that carriers who serve under 100,000 access lines should not have to file the annual rural certification letter unless their status has changed since their last filing. In addition, the Commission proposes that once it has clarified the meaning of "local exchange operating entity" and "communities of more than 50,000" in section 153(37), it should require carriers with more than 100,000 access lines that seek rural status to file certifications for the period beginning January 1, 2000, consistent with the Commission's interpretation of the "rural telephone company" definition. (No. of respondents: 5; hours per response: 1 hour; total annual burden: 5 hours). For carriers with more than 100,000 access lines, that seek rural status, the Commission sought comment on whether it should require these carriers to re-certify each year (after the filing of January 1, 2000) or, in the alternative, whether they should be required to re-certify only if their status has changed. (No. of respondents: 20; hours per response: 1 hour; total annual burden: 20 hours). Note that the FNPRM does not propose to modify several collections of information previously approved by OMB under this control number. Submission of eligibility criteria: States must designate common carriers as eligible telecommunications carriers for service areas designated by the state commission in accordance collection with 47 U.S.C. Section 214(e). (No. of respondents: 25; hours per response: 1; total annual burden: 25 hours). Notification of change in status as rural telephone company. If a local exchange carrier's status as a rural telephone company changes so that it becomes ineligible for certification as a rural carrier, that carrier must inform the Commission and the Administrator within one month of the change. (No. of respondents: 210; hours per response: .5 total annual burden: 105 hours.) If the proposed collections are adopted, the information will be used to determine which rural and non-rural LECs will receive universal service support. All the requirements are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to verify that particular carriers and other respondents are eligible to receive universal service support. Obligation to comply: Required to obtain or retain benefits.

OMB Control No.: 3060–0814.

Expiration Date: 09/30/2001.

Title: Section 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 192 respondents; 21.55 hours per response (avg.); 4138 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Annually.

Description: Pursuant to 47 CFR 54.301(a) through (e), each incumbent local exchange carrier that is not a member of the NECA common line tariff, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account in section 54.301(b). (No. of respondents: 172; hours per response: 24; total annual burden: 4128 hours.) Pursuant to 47 CFR 54.301(f)–(e), each incumbent local exchange carrier that is not a member of the NECA common line tariff, that is an average schedule company, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with their total number of access lines, total number of central offices, and projected access minutes. This information is necessary so that the universal service administrator may comply with section 54.301(f) of the Commission's rules. Section 54.301(f) provides that, consistent with the Commission's treatment of average schedule companies, the universal service administrator should develop "a formula that simulates the disbursements that would be received pursuant to this section by a company that is representative of average schedule companies." 47 CFR 54.301(f). (No. of respondents: 20; hours per response: .5 hours; total annual burden: 10 hours.) The universal service administrator, USAC, has developed a form to collect the information specified in the Commission's rules. This data request is necessary to calculate the average unseparated local switching revenue requirement. This revenue requirement calculation is necessary to calculate the amount of local switching support that carriers will receive. Obligation to Comply: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21809 Filed 8–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Donald E. Kuehl, Watertown, Wisconsin; to acquire voting shares of Community Investment Bancorporation, Inc., Watertown, Wisconsin, and thereby indirectly acquire voting shares of Lebanon State Bank, Lebanon, Wisconsin.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Sherwood Partners, Ltd.; Monroe Partners, Ltd.; Dennis S. Hudson, Jr.; Anne P. Hudson; Dennis S. Hudson, III; Dana L. Houck; Ronald Houck, Jr.; Ronald Houck, III; Suzanne H. Benfield Franklin; Andrew B. Hudson; Dale M. Hudson; Mary T. Hudson; Dale M. Hudson, Jr.; Jane H. Eaker; and Stephanie H. Forsberg, all of Stuart, Florida; to retain voting shares of Seacoast Banking Corporation of Florida, Stuart, Florida, and thereby indirectly retain voting shares of First National Bank and Trust Company of the Treasure Coast, Stuart, Florida.

Board of Governors of the Federal Reserve System, August 17, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21725 Filed 8–20–99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The Royal Bank of Scotland Group plc, and The Royal Bank of Scotland plc, both of Edinburgh, Scotland, and Citizens Financial Group, Inc., Providence, Rhode Island; to acquire 100 percent of the voting shares of UST Corp., USTrust and United States Trust Company, all of Boston, Massachusetts.

In connection with this application Applicants have also applied to acquire Cambridge Trade Finance Corporation, Boston, Massachusetts, and thereby engage in short term financing of international transactions involving import and export of goods, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 17, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21726 Filed 8–20–99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

A De Novo Corporation To Do Business Under Section 25A of the Federal Reserve Act; Correction

This notice corrects a notice (FR Doc. 99-21328) published on page 44735 of the issue for Tuesday, August 17, 1999.

Under the Federal Reserve Bank of New York heading, the entry for CLS Services, Ltd., London, England, is revised to read as follows:

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25A of the Federal Reserve Act (Edge Corporation) 12 U.S.C. § 611 *et seq.* The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.4).

The application may by inspected at the Federal Reserve Bank of New York or at the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Comments regarding the application must be received by the Reserve Bank indicated or at the offices of the Board of Governors not later than September 16, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. CLS Services, Ltd., London, England; to establish CLS Bank International, New York, New York, as an Edge Corporation, pursuant to § 25A of the Federal Reserve Act, and a wholly owned subsidiary of CLS Services Ltd., London, England, which will offer a continuous linked settlement service intended to reduce settlement risk associated with foreign exchange trading, pursuant to § 25A of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, August 17, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21724 Filed 8–20–99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

[Authority: Section 18, Pub. L. 106–37; Docket No. 1039]

Designation of Board's Liaison Under the Y2K Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has appointed Howard Amer, Assistant Director, Division of Banking Supervision and Regulation, to act as the Board's liaison for purposes of section 18 of the Y2K Act, Pub. L. 106–37. Mr. Amer has directed the efforts of the Board's Division of Banking Supervision and Regulation with regard to the Y2K readiness of Federal Reserve supervised financial institutions. Mr. Amer will act as the liaison between the Board and small business concerns regulated or supervised by the Board with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations. A small business concern as defined by section 18 (a)(3) of the Y2K Act means an unincorporated business, a partnership, corporation, association, or organization, with fewer than 50 full-time employees.

DATES: Mr. Amer's appointment is effective August 19, 1999.

ADDRESSES: Mr. Amer's address is: 1. Howard Amer, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Street NW, Washington DC 20551.

2. Mr. Amer's phone number is 202–452–2958.

FOR FURTHER INFORMATION CONTACT: Alicia S. Foster, Senior Attorney (202–452–5289) or Richard M. Ashton, Associate General Counsel (202–452–3750). For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, 20th and C Street NW, Washington, DC 20551.

Board of Governors of the Federal Reserve System, August 17, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21821 Filed 8–20–99; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT PRINTING OFFICE

GPO Access; Meeting and Demonstration

The United States Government Printing Office (GPO) will conduct public demonstrations of its award winning free online service, GPO Access. These demonstrations are being held in order to increase public awareness of GPO Access as well as to provide an update on some new features and recent additions to the online service.

Some of the recent additions and enhancements to GPO Access include, online product ordering, site search, browseable CFR's, daily **Federal Register** Table of Contents, Congressional Bills Catalogs, etc. Visit GPO Access directly at http://www.access.gpo.gov/su_docs.

The demonstrations will be held at the United States Government Printing Office, Carl Hayden Room, 8th Floor, 732 North Capitol Street NW., Washington, DC, on Thursday, September 30th, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. There is no charge to attend. GPO is accessible via (Metro) Red Line at Union Station.

If you are interested in seeing what is available on GPO Access, you may reserve a seat for the demonstrations by contacting Robert Frierson, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at rfrierson@gpo.gov; by telephone: 202–512–1003; or by fax: 202–512–1262. Seating reservations will be accepted through Monday, September 27, 1999, or until filled.

Michael F. DiMario,

Public Printer.

[FR Doc. 99–21822 Filed 8–20–99; 8:45 am]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–17–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. The Tri-State Mining District: Lead Exposure and Immunotoxic Effects Study in the Tri-State District—New—The Agency for Toxic Substance and Disease Registry (ATSDR)—The proposed study evaluates associations between immune system dysfunction/damage and exposure to lead among children in the Tri-State Mining District. This district encompasses several contaminated areas including three Superfund sites: The Oronogo-Duenweg Mining Belt site in Jasper County, Missouri; the Cherokee County Site in Kansas; and the Tar Creek, Ottawa County Site in Oklahoma.

The proposed study consists of two repeated in-person interviews and biological testing for blood lead and immune function among participants of the ongoing lead screening programs in the Tri-State Mining district. Approximately 50 children identified as having blood lead >10 micrograms per deciliter and 50 children with blood lead levels <5 micrograms per deciliter will constitute the study and comparison groups respectively. Blood specimens will be obtained to measure lead, complete blood count, EP, ZPP, antibody titers, and the CDC/ATSDR recommended immune panel. A second blood drawn a month later will examine intra-personal immune tests stability and will help evaluate the relationship between immune results and recent illness. Parents will be interviewed using a children's health questionnaire that solicits information on demographics, the medical history of each child and the occurrences of recent illness. Statistical analyses will compare health outcome measures (symptoms, illness, change in immune parameters) to blood lead levels. Other than their time, there will be no cost to the respondents. The length of clearance requested is for 1 year. Total annual burden hours are 125.

Form name	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs)
Verification	500	1	0.5

Form name	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs)
Pediatric Immune Questionnaire	100	2	0.5

Dated: August 17, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21776 Filed 8–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meetings.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m–5 p.m., September 22, 1999. 8:30 a.m.–3:30 p.m., September 23, 1999.

Place: CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 85 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include an update on CLIA implementation; presentations of data and discussion of laboratory workforce issues, including potential shortages of qualified laboratory personnel and the education/skill levels of current personnel.

The Committee solicits oral and written testimony on the laboratory workforce issues of potential shortages of qualified laboratory personnel and the education/skill levels of current personnel. Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, September 16, 1999. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, September 16, 1999.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, M/S G–25, Atlanta, Georgia 30341–3724, telephone 770/488–8076, FAX 770/488–8282.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–21775 Filed 8–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Prevalence of STDs and TB Infection in Persons Entering Corrections Facilities.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Prevalence of STDs and TB Infection in Persons Entering Corrections Facilities, Program Announcement # 99000–D.

Time and Date: 8:30 a.m.–9 a.m., September 2, 1999 (Open); 9 a.m.–4:30 p.m., September 2, 1999 (Closed).

Place: National Center for HIV, STD, and TB Prevention, CDC, Corporate Square, Building 10, Conference Room 1304, Atlanta, Ga. 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to P.L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99000–D. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact person for more information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21769 Filed 8–18–99; 12:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors Among Men Who Have Sex With Men

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in

STD Prevalence, Tuberculosis, and HIV Risk Behaviors among Men Who have Sex with Men, Program Announcement # 99000–E.

Time and Date: 8:30 a.m.–9 a.m., September 1, 1999 (Open); 9 a.m.–4:30 p.m., September 1, 1999 (Closed).

Place: National Center for HIV, STD, and TB Prevention, CDC, Corporate Square, Building 12, Conference Room 1306, Atlanta, Ga. 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement # 99000–E. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact person for more information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21770 Filed 8–18–99; 12:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for an Evaluation Research Study in the Area of Aggression and Interpersonal Youth Violence

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for an Evaluation Research Study in the Area of Aggression and Interpersonal Youth Violence, Program Announcement # 99067.

Time and Date: 8 a.m.–8:30 a.m., August 31, 1999 (Open); 8:30 a.m.–5 p.m., August 31, 1999 (Closed).

Place: Atlanta Airport Hilton and Towers, Grand Salons A, B, and C, 1031 Virginia Avenue, Hapeville, GA 30354.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement # 99067. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact Person for More Information: James Belloni, Office of the Director, National Center for Injury Prevention and Control, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4538, e-mail jsb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 17, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21771 Filed 8–18–99; 12:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreement for a Coordinated Community Response to Prevent Intimate Partner Violence

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreement for a Coordinated Community Response to Prevent Intimate Partner Violence, Program Announcement # 99133.

Times and Dates: 8:30 a.m.–9 a.m., August 26, 1999 (Open); 9 a.m.–5 p.m., August 26, 1999 (Closed); 8:30 a.m.–5 p.m., August 27, 1999 (Closed).

Place: National Center for Injury Prevention and Control, Conference Room 2052, 2945 Flowers Road South, Atlanta, Ga. 30341.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement # 99133. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact Person for More Information: James Belloni, Office of the Director, National Center for Injury Prevention and Control, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4538, e-mail jsb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 17, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21772 Filed 8–18–99; 12:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project Title: Online Interstate Referral Guide (IRG).

OMB No.: New.

Description: The IRG is an essential reference maintained by the federal Office of Child Support Enforcement (OCSE) that provides State IV–D agencies with the information needed to process interstate cases. The online version of the IRG will provide States with an effective and efficient way of viewing and updating State profile, address, and FIPS code information by consolidating data available through numerous discrete sources into a single centralized, automated repository.

Respondents: Federal, State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Online IRG	54	18	.3	292

Estimated Total Annual Burden Hours: 292.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 17, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–21747 Filed 8–20–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2532]

Determination That Astemizole 10-Milligram Tablets Were Withdrawn From Sale for Safety Reasons

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that astemizole 10-milligram (mg) tablets (Hismanal) were withdrawn from sale for safety reasons. The agency will not accept or approve abbreviated new drug applications (ANDA's) for astemizole 10-mg tablets.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of approved innovator drug products under an ANDA procedure. ANDA sponsors generally must show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's are not required to repeat the extensive clinical testing necessary to gain approval of an NDA. The only data from investigations required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). FDA may not approve an ANDA that does not refer to a listed drug (21 CFR 314.92(a)).

Astemizole 10-mg tablets (Hismanal) are the subject of approved NDA 19–402, currently held by Janssen Pharmaceutica (Janssen). In 1988, FDA approved the NDA for Hismanal tablets for the relief of symptoms associated with seasonal allergic rhinitis and chronic idiopathic urticaria. On June 18, 1999, Janssen withdrew Hismanal tablets from sale in the United States. The agency's review of the withdrawal of astemizole 10-mg tablets (Hismanal) from the market has considered the sponsor's explanation of the basis for the withdrawal of the product and information available to the agency regarding Hismanal. The current evidence supports the conclusion under § 314.161 (21 CFR 314.161) that astemizole 10-mg tablets (Hismanal) were withdrawn from the market for safety reasons.

The agency has determined, under § 314.161, that astemizole 10-mg tablets (Hismanal) were withdrawn from the market for safety reasons. Accordingly, the agency will remove astemizole 10-mg tablets (Hismanal) from the "Orange Book" (§ 314.162). FDA will not accept or approve ANDA's that refer to this drug product.

Dated: August 13, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21813 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2670]

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Dates and Time: The meeting will be held on November 2 and 3, 1999, from 8:30 a.m. to 5 p.m. Interested persons and organizations may submit written comments by September 30, 1999, to the Dockets Management Branch (address below).

Location and Addresses: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Contact Person: Rhonda W. Stover or John B. Schupp, Center for Drug Evaluation and Research, (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: Presentations and committee discussions will address issues related to testing for development of resistant human immunodeficiency virus (HIV–1), with an emphasis on its potential role in antiretroviral drug development. The primary objectives of these deliberations are to obtain advisory committee recommendations on the amount and type of resistance data needed to support both preclinical and clinical development of antiretroviral drugs and product labeling. This 2-day meeting will explore the following scientific issues: (1) Performance characteristics of genotypic and phenotypic assays, (2) definitions of antiviral drug resistance, (3) relationships between the development of mutations or reduced susceptibility and treatment outcome, and (4) available evidence supporting the clinical utility of testing for the development of antiviral drug resistance. In order to prepare presentations and discussions for the meeting, the agency is requesting interested persons to submit in writing the following types of relevant data, information, and views:

- Pre-clinical and/or clinical trial data on the relationship between the development of HIV mutations and changes in susceptibility to antiviral therapies.
- Prospective or retrospective clinical trial data on the relationship between genotype and/or phenotype and treatment outcome.
- Proposals for incorporating HIV resistance testing in clinical trial design.
- Proposals for utilizing information derived from HIV resistance testing to support product labeling.

These submissions should contain the following docket number, 99N–2670, and should be made to the Dockets Management Branch address provided previously in this document.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 27, 1999. Oral presentation from the public will be scheduled between approximately 1 p.m. and 2 p.m. on November 3, 1999. Time allotted for each presentation may be limited. Written submissions may be made to the contact person by October 27, 1999. Those desiring to make formal oral presentations should notify the contact person before October 27, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 13, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–21729 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 16 and 17, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, Kennedy Grand Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 16, 1999, the committee will discuss: (1) New drug application (NDA) 21–053, UFT® (tegafur and uracil) Capsules, Bristol-Myers Squibb Co., indicated, with leucovorin calcium tablets, for the first-line treatment of metastatic colorectal cancer; and (2) NDA 50–772, Evacet™ (doxorubicin HCl liposome injection), The Liposome Co., Inc., indicated for the first-line treatment of metastatic breast cancer in combination with cyclophosphamide. On September 17, 1999, the committee will discuss: (1) NDA 20–262/S–033, TAXOL® (paclitaxel) Injection, Bristol-Myers Squibb Co., indicated for the adjuvant treatment of node-positive breast cancer administered sequentially to standard combination therapy; and (2) biologics license application (BLA) 97–1001, Roferon®-A, Hoffman-La Roche Inc., indicated for use as adjuvant treatment of surgically resected malignant melanoma without clinical evidence of nodal disease, American Joint Committee on Cancer stage II (Breslow thickness>1.5 millimeter, N0). In addition, FDA will provide an update on the preliminary results of EST 1690 (ECOG intergroup study of INTRON A for the adjuvant treatment of melanoma) for discussion by the committee.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 1999. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., and between approximately 1:15 p.m. and 1:30 p.m. on September 16, 1999, and between approximately 8:15 a.m. and 8:45 a.m., and between approximately 1:15 p.m. and 1:30 p.m. on September 17, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 8, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session will be conducted for interested persons who have submitted their

request to speak by September 8, 1999, to address issues specific to the submission or topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 13, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–21812 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Applicant: Missouri Department of Conservation, Jefferson City, Missouri.

The applicant requests a permit to take (collect) endangered *Cambarus aculabrum* (cave crayfish, no common name) in the State of Missouri. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: US Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: August 17, 1999.

T.J. Miller,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–21844 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ballast Water Effectiveness and Adequacy Criteria; Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the second meeting of the Ballast Water Effectiveness and Adequacy Criteria Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Committee will meet from 1:00 p.m. to 4:30 p.m., on Thursday, September 9, 1999.

ADDRESSES: The meeting will be held at the National Oceanic and Atmospheric Administration (NOAA) complex, SSMC–IV, Room 1–W–611 (first floor), 1305 East West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon__gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 1), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ballast Water Program Effectiveness and Adequacy Criteria Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Committee was established in 1997 to establish and periodically resolve criteria for assessing the effectiveness and adequacy of the national ballast water management program in reducing the introduction and spread of nonindigenous species. The ANS Task Force is required to develop criteria for determining the adequacy and effectiveness of the voluntary ballast water management guidelines and subsequent regulations promulgated by the U.S. Coast Guard. The focus of this meeting will be to: review the Committee's overall responsibilities; establish objectives and goals for the requirements for which criteria are sought; discuss the process for developing the criteria; and set a preliminary time-frame for developing the criteria.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: August 18, 1999.

Rowan Gould,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 99–21810 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–040–1220–00]

Closure for Shay Line Trestle, Order ID–060–18

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Challis Resource Area, Idaho, Interior.

ACTION: Notice of Closure for Shay Line Trestle, Order ID–060–18.

SUMMARY: By order, the historic Shay Line railroad trestle, located on Bureau of Land Management (BLM) administered land, is temporarily closed to all use. This action affects only the historic Shay Line trestle located in T. 6 N., R. 24 E., Sec. 6, NW¼NW¼ Custer County, Idaho. This closure will remain in effect until the structural safety of the trestle can be more completely investigated and a determination made on whether it can be restored to a safe condition or be closed permanently. The purpose of temporarily closing the trestle is for public safety. A preliminary inspection by a professional engineer has disclosed potential problems which require further investigation to determine if the trestle can be restored.

The authority for establishing this closure is Title 43, Code of Federal Regulations, § 8364.1.

This closure is effective August 23, 1999.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed one year.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Challis Area Manager, Rt. 2 Box 610, Salmon, Idaho 83467. Telephone (208) 756–5400.

Dated: August 10, 1999.

Renee Snyder,

Area Manager.

[FR Doc. 99–21553 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary closure of selected public lands in Clark County, Nevada, during the operation of the 1999 SCORE INTERNATIONAL "LAS VEGAS PRIMM 300" Desert Race.

SUMMARY: The Field Office Manager of the Las Vegas Field Office announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 1999 SCORE INTERNATIONAL "LAS VEGAS PRIMM 300" Desert Race and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–95–F–237).

DATES: From 6:00 a.m. September 10, 1999 through 12:01 a.m. September 12, 1999 Pacific Standard Time.

Closure Area: As described below, an area within T. 23 S. to T. 27 S. R. 59 E. to R. 61 E.

1. The closure is a triangular shaped area bound by Interstate I–15 (between Sloan and State line) on the west; the crest of the McCullough Mountains on the east; and the California/Nevada State line on the south. Exceptions to the closure are: State Route 161, Old Las Vegas Blvd.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure, unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 25 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340 subpart 8341; 43 CFR 8360, subpart 8364.1 and 43 CFR 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf Recreation Manager or Ron Crayton or Ken Burger, BLM Rangers, BLM Las Vegas Field Office, 4765 Vegas Dr., Las Vegas, Nevada 89108, (702) 647–5000.

Dated: August 5, 1999.

Michael F. Dwyer,

Las Vegas Field Office Manager.

[FR Doc. 99–21744 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01]

Notice of Opening of Public Lands; Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of the Wedekind Mining District near Sparks, Nevada are now opened to the public. This Notice is based on completion of site remediation, removal of fencing and site reclamation.

EFFECTIVE DATE: The effective date of this Notice is September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hufnagle, Realty Specialist, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6000.

SUPPLEMENTARY INFORMATION: On October 1, 1993, the site was closed for public safety due to soil contamination by TNT and DNT.

The public lands affected by this Notice lie within the area described as follows:

Mount Diablo Meridian

T. 20 N., R. 20 E.,
Sec. 28, SW¼SE¼.

A map of the subject lands is available in the Carson City Field Office.

Dated this 11th day of August, 1999.

Karl Kipping,

Associate Manager, Carson City Field Office.

[FR Doc. 99–21745 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1210–00; GP9–0288, OR–37654]

Notice of Reality Action; Bureau of Motion Recreation and Public Purposes (R&PP) Act Classification; R&PP Act Patent; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands south of Vale, Malheur County, Oregon have been examined and found suitable for conveyance to the Snake River Sportsmen, Inc., under the provisions of the Recreation and Public Purposes Act of 1926, as amended (43 U.S.C. 869 *et seq.*). The lands were leased in 1986 for the development of a shooting range complex. The Snake River Sportsmen, Inc. propose to continue to use the lands for a shooting range complex.

Willamette Meridian, Oregon

T. 19 S., R. 45 E.,
Sec. 4, lots 5 and 8, SW¼NW¼, W½SW¼; 161.86
Sec. 5, SE¼NE¼; 200.00
Sec. 6, NE¼NE¼; 40.00
Sec. 9, NW¼NW¼; 40.00

The lands described above contain 441.86 acres more or less.

These lands are not needed for Federal purposes. The conveyance is in conformance with current BLM and local land use planning and would be in the public interest. The patent, when issued, will be subject to the following terms, covenants, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for water pipeline and road purposes reserved to the BLM under Right-of-Way Reservation OR–54692.

5. Those rights for electric powerline purposes granted to Idaho Power Company under Right-of-Way OR–48516.

Provided, that title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, the lands have not been used for the purpose for which the lands were conveyed for a 5-year period, or the patentee has failed to follow the approved development plan or management plan.

The following public lands south of Vale, Malheur County, Oregon have been examined and found suitable for classification and opening under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

Willamette Meridian, Oregon

T. 19 S., R. 45 E.,
Sec. 4, SE¼SW¼.

The lands described above contain 40.00 acres more or less.

This action is a motion by the Bureau of Land Management to add the subject lands to other public lands currently under lease and identified for conveyance to the Snake River Sportsmen, Inc. These lands are not needed for federal purposes. The classification and conveyance of these lands would be in the public interest, and would conform with existing BLM and local land use plans. The patent, when issued, will be subject to the same terms, covenants, conditions and reservations, where applicable, as described above.

Detailed information concerning this action is available for review at the office of the Vale District, Bureau of Land Management (BLM), 100 Oregon Street, Vale, Oregon 97918.

Application Comments

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, the proposed classification of the lands or any other factor to the District Manager, Vale District Office, 100 Oregon Street, Vale, Oregon 97918. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice. Upon the effective date of classification, an application filed under the Recreation and Public Purposes Act for these lands will be accepted.

Steven C. Egeline,

Acting District Manager.

[FR Doc. 99–21835 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–50427, Group 22, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat of the dependent resurvey of a portion of the north boundary, and the survey of a portion of the Rend Lake Acquisition, Boundary, Township 5 South, Range 3 East, 3rd Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 13, 1999.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia, 22153, prior to 7:30 a.m., September 13, 1999.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: July 30, 1999.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 99–21624 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–50428, Group 18, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat of the dependent resurvey of a portion of the subdivisional lines, and the survey of a portion of the subdivision of sections 23 and 26 and a portion of the Rend Lake Acquisition Boundary, Township 4 South, Range 2 East, 3rd Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 13, 1999.

The survey was requested by the U.S. Army Corps of Engineers

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 13, 1999.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 30, 1999.
Stephen G. Kopach,
Chief Cadastral Surveyor.
[FR Doc. 99–21625 Filed 8–20–99; 8:45 am]
BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–990–1420–00] ES–50425, Group 28, Missouri

Notice of Filing of Plat of Survey; Missouri

The plat of the dependent resurvey of a portion of the subdivisional lines, the survey of a portion of the subdivision of section 18 and a portion of the Wappapello Lake acquisition boundary, in Township 28 North, Range 6 East of the 5th Principal Meridian, Missouri, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 13, 1999.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey may be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia, 22153, prior to 7:30 a.m., September 13, 1999.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: July 30, 1999.
Stephen G. Kopach,
Chief Cadastral Surveyor.
[FR Doc. 99–21623 Filed 8–20–99; 8:45 am]
BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00; GP9–0287]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 9 S., R. 2 E., accepted July 1, 1999
T. 3 N., R. 3 W., accepted July 1, 1999
T. 20 S., R. 6 W., accepted July 1, 1999
T. 39 S., R. 2 W., accepted July 8, 1999
T. 31 S., R. 7½ W., accepted July 29, 1999
T. 27 S., R. 14 E., accepted July 29, 1999

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: August 11, 1999.
Robert D. DeViney, Jr.,
Branch of Realty and Records Services.
[FR Doc. 99–21746 Filed 8–20–99; 8:45 am]
BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Comprehensive Management and Use Plan for the California and Pony Express National Historic Trails, Management and Use Plan Update for the Oregon and Mormon Pioneer National Historic Trails/Final Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.
ACTION: Notice of Availability of Final Environmental Impact Statement for Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a final environmental impact statement and comprehensive management and use plan (FEIS/CMP) for the Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/CMP.

ADDRESSES: Public reading copies of the FEIS/CMP will be available for review at the Long Distance Trails Office, 324 S. State St., Suite 250, Salt Lake City, UT 84145 (801) 539–4095.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, (303) 9699–2851 [or (303) 969–2832].

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Street NW, Washington, D.C. 20240, (202) 208–6843.

SUPPLEMENTARY INFORMATION: This Final Environmental Impact Statement for the Comprehensive Management and Use Plan presents a proposal and an alternative for guiding the future management of the four national historic trails. The plan serves as a coordinating document that provides broad-based policies, guidelines, and standards for administering the four trails in such a manner, as to ensure the protection of trail resources, their interpretation and continued use. Both alternatives aim to balance resource preservation and use. Alternative 1 (current conditions) reflects the wide variability in the administration and management, resource protection strategies, and interpretation, visitor experience and visitor use that exists today. Alternative 2 (the proposal) focuses on enhancing resource protection and visitor use. It calls for an improved visitor experience through integrated development and programming and a comprehensive strategy for resource protection, including an ambitious program to inventory and monitor resources that would bring together, in one location, information currently dispersed.

FOR FURTHER INFORMATION CONTACT: Superintendent Long Distance Trails Office at the above address and phone number.

Dated: August 6, 1999.
Jere L. Krakow,
Superintendent, Long Distance Trails Office, National Park Service.
[FR Doc. 99–21802 Filed 8–20–99; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Comprehensive Management Plan for the Merced Wild and Scenic River, Yosemite National Park, Mariposa and Madera Counties, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91–190) and Council on Environmental Quality regulations (40 CFR 1508.22), the National Park Service intends to prepare an Environmental Impact Statement for a Comprehensive Management Plan that encompasses protection and enhancement of the values for which the Merced River was designated as a Wild and Scenic River. During the ensuing conservation planning-impact analysis process, management alternatives will be developed which will address resource protection, development of lands or facilities, user capacities, and various stewardship practices necessary or desirable to achieve the purposes of the Wild and Scenic Rivers Act of 1968, as amended. The Merced River planning process will be conducted in consultation with affected federal agencies, State and local governments, tribal groups, and interested organizations and individuals.

Background

The National Park Service has previously completed the tasks of establishing detailed boundaries, classifying segments of the Merced River as either wild, scenic, or recreational (as required by 16 USC 1274(b)), and identifying the outstandingly remarkable values (ORV) for each river segment. These factors were presented for public review and comment in the 1996 Draft Yosemite Valley Housing Plan (Addendum/ Supplement to the Final Environmental Impact Statement for the General Management Plan). The Merced River planning process will incorporate that information (and germane comments) into the preparation of the Environmental Impact Statement for the Merced River Comprehensive Management Plan (MCMP/EIS).

Scoping Results

The MCMP/EIS is being prepared by the NPS pursuant to the Wild and Scenic Rivers Act, as amended (16 USC 1274(d)). The NPS has completed the scoping phase through a concerted public involvement effort, including the following activities. An invitation letter initiating scoping and announcing four public meetings was mailed to over 8,500 individuals, organizations, agencies, and other entities during the week of June 7, 1999. On June 11, 1999 the NPS formally noticed the MCMP scoping period in the **Federal Register** (V64–N112–P31605), accepting comments through July 14, 1999. Altogether six public meetings were held in San Francisco (June 22), Modesto (June 23), Mariposa (June 24), Yosemite Valley (June 28), Wawona (July 7), and El Portal (July 12). In addition to direct mailing and the internet, all meetings were publicized via news releases sent to over 110 media contacts on June 3 and July 1, 1999. In deference to public interest, the NPS on July 13, 1999 via direct mailing and news release issued a two-week extension of the scoping period through July 30, 1999. Formal notice of the extension appeared in the **Federal Register** on July 23, 1999 (V64–N141–P40037).

Results of Scoping and Future Information

As a result of the scoping effort which elicited over 330 responses, it has been determined that an Environmental Impact Statement (not an Environmental Assessment) will be prepared. All comments received during June 11–July 30 in response to the scoping and extension notices have been duly considered, and will remain in the administrative record throughout this conservation planning-impact analysis process. In addition to the considerations mentioned above, as a direct result of the public responses received the following issues will be considered: recreational use; commercial use; access for persons with disabilities; riparian habitat protection; private property in Wawona; the river boundaries; development in Yosemite Valley within the corridor; and air, water, and noise pollution.

Updated information about various aspects of the Merced River planning process will be periodically distributed via newsletters, mailings, the Yosemite National Park Webpage (http://www.nps.gov/yose/planning), and regional and local news media. To request placement on MCMP/EIS mailing list, please leave your name and address on the voice mail telephone at (209) 372–0261—interested individuals, organizations, and agencies may also respond to: Superintendent, Attn: CMP/EIS, P.O. Box 577, Yosemite National Park, CA 95389.

Decision Process

On July 12, 1999 a federal judge ordered the NPS to complete a Comprehensive Management Plan for the Merced Wild and Scenic River within twelve (12) months. This ruling stemmed from a lawsuit brought by plaintiffs opposing the ongoing reconstruction of State Highway 140 (El Portal Road) along the first seven miles of the highway situated within the park. Consequently the MCMP/EIS effort will proceed on the following compressed time schedule:

The Draft CMP/EIS is anticipated to be available for public review and comment during January and February 2000. Availability of the Draft document for review and written comment will be announced by formal Notice in the **Federal Register**, through local and regional news media, Yosemite's Webpage, and direct mailing. Comments on the Draft CMP/EIS will be fully considered, and incorporated into a Final CMP/EIS as appropriate. At this time it is anticipated that the Final CMP/EIS will be completed during early June 2000. Subsequently, notice of an approved Record of Decision will be published in the **Federal Register** not sooner than thirty (30) days after the Final CMP/EIS is distributed. This is expected to occur by mid-July of 2000. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Yosemite National Park.

Dated: August 13, 1999.

Martha K. Leicester,

Acting Regional Director, Pacific West.

[FR Doc. 99–21801 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Service, Mojave National Preserve Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mojave National Preserve Advisory Commission will be held September 28–29, 1999; assemble at 1:00 P.M. at the Needles Women's Club, Needles, California.

The agenda: Interpretative Plan Overview and Scoping Session.

The Advisory Commission was established by Pub. L. #103–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are:
Micheal Attaway, Irene Ausmus, Rob Blair, Peter Burk, Dennis Casebier, Donna Davis, Kathy Davis, Gerald Freeman, Willis Herron, Elden Hughes, Claudia Luke, Clay Overson, Norbert Riedy, Mal Wessel.

This meeting is open to the public.

Mary Martin,
Superintendent, Mojave National Preserve.
[FR Doc. 99–21803 Filed 8–20–99; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2014–99]

Immigration and Naturalization Service User Fee Advisory Committee: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and time: Tuesday, November 16, 1999, at 1 pm.

Place: Immigration and Naturalization Service Headquarters, 425 I Street NW., Washington, DC 20536, Shaughnessy Conference Room—6th Floor.

Status: Open. 20th meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act, 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspection services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda:

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street NW., Washington, DC 20536.

Telephone: (202) 616–7498
Fax: (202) 514–8345
E-mail:
charles.d.montgomery@usdoj.gov

Dated: August 16, 1999.

Doris Meissner,
Commissioner, Immigration and Naturalization Service.
[FR Doc. 99–21748 Filed 8–20–99; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2013–99]

Announcement of District Advisory Council on Immigration Matters Seventh Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service), has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction, and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

DATES AND TIMES: The Seventh meeting of the DACOIM is scheduled for September 23, 1999, at 1 p.m.

ADDRESSES: The meeting will be held at the Jacob Javitts Federal Building, 26 Federal Plaza, Room 537, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736.

SUPPLEMENTARY INFORMATION: Meetings will be held tri-annually on the fourth Thursday during the months of January, May, and September 1999.

Summary of Agenda

The purpose of the meeting will be to conduct general business, review subcommittee reports, and facilitate public participation. The DACOIM will be chaired by Charles Troy, Assistant District Director for Management, New York District, Immigration and Naturalization Service.

Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting for consideration by the DACOIM. Written statements should be sent to Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736. Only written statements received by 5 p.m. on September 21, 1999, will be considered for presentation at the meeting. Minutes of the meeting will be available upon request.

Dated: August 16, 1999.

Doris Meissner,
Commissioner, Immigration and Naturalization Service.
[FR Doc. 99–21749 Filed 8–20–99; 8:45 am]
BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request.

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: 10 CFR 9, Public Records.
3. The form number if applicable: N/A.
4. How often the collection is required: On occasion.
5. Who will be required to report: Individuals requesting access to records under the Freedom of Information or Privacy Acts, or to records that are already publicly available in the NRC Public Document Room.
6. An estimate of the number of responses: 13,656.
7. The estimated number of annual respondents: 13,656.
8. An estimate of the total number of hours needed annually to complete the requirement or request: 3,459.
9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not Applicable.
10. Abstract: 10 CFR Part 9 establishes information collection requirements for individuals making requests for records under the Freedom of Information (FOIA) or Privacy Acts (PA). It also contains requests to waive or reduce fees for searching for and reproducing records in response to FOIA requests; and requests for expedited processing of requests. The information required from the public is necessary to identify the records they are requesting; to justify requests for waivers or reductions in searching or copying fees; or to justify expedited processing.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 22, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–0043), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 16th day of August 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21796 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; Notice of Withdrawal of Application for Approval of Indirect Transfer of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Boston Edison Company (BECo) to withdraw its February 3, 1999, application, as supplemented on May 27, 1999, by BECo for approval of the indirect transfer of the Facility Operating License for the Pilgrim Nuclear Power Station (Pilgrim).

The application was seeking approval of the indirect transfer of the Facility Operating License for Pilgrim held by BECo. The indirect transfer would have resulted from the planned formation of a new holding company, NSTAR, of which Commonwealth Energy System and BEC Energy, the parent company of BECo, are to become wholly owned subsidiaries. The approval is no longer needed since BECo sold its interest in Pilgrim to Entergy Nuclear Generation Company on July 13, 1999, and no longer holds the license for Pilgrim.

The Commission had previously issued a Notice of Consideration of Approval of Application Regarding Proposed Corporate Merger and Opportunity for Hearing published in the **Federal Register** on June 17, 1999 (64 FR 32556). However, by letter dated July 20, 1999, the applicant, through counsel, withdrew the application.

For further details with respect to this action, see the application dated February 3, 1999, as supplemented May 27, 1999, and the applicant's letter dated July 20, 1999, which withdrew the application for approval of the indirect transfer. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 132 South Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 17th day of August 1999.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21793 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (ComEd or the licensee) for the Zion Nuclear Power Station (ZNPS) Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would exempt the ZNPS, because of its permanently shutdown and defueled status, from certain requirements of 10 CFR 50.47(b) regarding onsite and offsite emergency response plans and 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway emergency planning zones.

The proposed action is in accordance with the licensee's application for exemption dated April 13, 1999, as

supplemented by letters dated July 8 and July 19, 1999.

The Need for the Proposed Action

ZNPS was shut down permanently in February 1997. ComEd certified the permanent shutdown on February 13, 1998, and on March 9, 1998, certified that all fuel had been removed from the reactor vessels. In accordance with 10 CFR 50.82(a)(2), upon docketing of the certifications, the facility operating license no longer authorizes ComEd to operate the reactor or to load fuel into the reactor vessel. In this permanently shutdown condition, the facility poses a reduced risk to public health and safety. Because of this reduced risk, certain requirements of 10 CFR 50.47 are no longer required. An exemption is required from portions of 10 CFR 50.47(b) and (c)(2) to allow the licensee to implement a revised defueled station emergency plan (DSEP) that is appropriate for the permanently shutdown and defueled reactor facility.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the granting of the exemption will not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Zion Nuclear Power Station, Units 1 and 2, dated December 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on August 4, 1999, the staff consulted with the Illinois State official, Mr. Gary Wright, of the Illinois Department of Nuclear Safety (IDNS) regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 13, 1999, as supplemented by letters dated July 8 and July 19, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 13th day of August 1999.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21794 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–3073]

Finding of No Significant Impact Related to Amendment of Materials License No. SNM–1999, Kerr-McGee Corp., Cushing Refinery Site Cushing, Oklahoma

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Materials License No. SNM–1999, held by the Kerr-McGee Corporation (Kerr-McGee or the licensee), to authorize remediation of its Cushing Refinery Site (Cushing site) located in Cushing, Oklahoma.

Summary of Environmental Assessment

Background

Kerr-McGee has environmental responsibility for a former refinery site near the city of Cushing, Oklahoma. The refinery opened around 1912 and was purchased by Kerr-McGee in 1956. During the early 1960s, in addition to petroleum processing, Kerr-McGee processed uranium fuel and thorium metal in several buildings onsite under licenses issued by the Atomic Energy Commission (AEC). The uranium fuel and thorium processing area was decommissioned, the property and facilities were released for unrestricted use, and the license was terminated by the AEC. Kerr-McGee continued to operate the refinery until 1972, at which time it was torn down. In May 1990, Kerr-McGee entered into a Consent Order with the Oklahoma State Department of Health (now referred to as the Oklahoma Department of Environmental Quality) (DEQ), addressing the investigation and remediation of the Cushing refinery site. The DEQ Consent Order divided the site work into radiological and non-radiological remediation efforts. The non-radiological remediation is being performed in a manner similar to the Federal Superfund Remedial Investigation/Feasibility Study (RI/FS) process. On April 6, 1993, NRC issued Materials License SNM–1999 to the Kerr-McGee Corporation, for the radiological decommissioning of its Cushing site. This license authorized the licensee to possess radioactive contaminated soil, sludge, sediment, trash, building rubble, and any other contaminated material, at its Cushing site.

Proposed Action

The licensee has proposed to remediate its Cushing Refinery site. The purpose of this remediation effort is to remove radioactive contamination to levels such that the site can be released for unrestricted use. Kerr-McGee has performed a radiological characterization survey of the site. Those areas found to contain radioactive contamination were designated as radioactive material areas (RMAs). In this action, Kerr-McGee is proposing to collect the radioactive contaminated material that exceeds NRC's Branch Technical Position (BTP) [1] Disposal Option 1 (Option 1), package this

[1] Disposal or Onsite Storage of Thorium or Uranium Waste from Past Operations (46 FR 52061, October 23, 1981).

material, and ship this material to the Envirocare Low-Level Radioactive Waste Disposal Site in Clive, Utah, for disposal. The licensee will perform a final survey of the site to determine if the site has been remediated in accordance with the approved Cushing site decommissioning plan and the criteria for unrestricted release of the site have been achieved. The results of this final site survey will be submitted to the NRC for its review. Based on the results provided in this final survey report and NRC confirmatory survey findings, the NRC will terminate Materials License SNM–1999.

The Need for Proposed Action

The proposed action is necessary to remove the contamination that exists at the Cushing site. This action will facilitate remediation of this site to a condition suitable for unrestricted release and is one of the actions necessary for termination of Kerr-McGee's Cushing site Materials License SNM–1999.

Alternative to Proposed Action

An alternative to the proposed action is a no-action alternative. The no-action alternative would mean that the Cushing site would not be remediated at this time. This conflicts with NRC's requirement, in Title 10 of the Code of Federal Regulations (CFR) 70.38, of timely remediation at sites that have ceased operations. Although there is no immediate threat to the public health and safety from this site as long as the licensee maintains appropriate controls over the radioactive material, not undertaking remediation, at this time, does not resolve the regulatory and potential long-term health and safety problems involved in storing this waste. No action now would delay remediation until some time in the future, when costs could be much higher than they are today. It is even possible that no disposal option will be available in the future if the current low-level radioactive waste disposal facilities are closed and no new ones are opened. Therefore, the no-action alternative is not acceptable.

Environmental Impacts of Proposed Action

Radiological impacts on members of the public may result from inhalation and ingestion of releases of radioactivity in air and in water during the remediation operations, direct exposure to radiation from radioactive material at the site during remediation operations, and transport for disposal. Decommissioning workers may receive doses primarily by ingestion, inhalation, and direct exposure during the remediation activities. In addition to impacts from routine operations, the potential radiological consequences of accidents were considered.

NRC staff considered the potential impacts of the proposed Cushing site remediation activities on the local ground-water supply. The licensee stated that the regional ground-water aquifer is isolated from the uppermost water-bearing zone by a low permeability strata. Further, the licensee's ground-water monitoring program thus far has not detected radioactive contamination of the shallow ground-water. Additionally, DEQ stated the following: (1) The shallow ground-water unit yields low quantities of poor quality water; (2) it is highly unlikely that future residential or commercial drinking water wells will be established from the shallow ground-water at this site; and (3) no known drinking water wells are screened in the shallow ground-water within 1.6 km (1 mile) radius of the site. Also, DEQ stated that the shallow ground-water should not be considered a viable drinking water source for the area, and that DEQ would consider water quality standards other than maximum contamination levels, as set by the U.S. Environmental Protection Agency (EPA), as appropriate for the shallow ground-water at this site. Further, based on EPA guidance, the shallow ground-water would be classified as a "Class III—Groundwater Not a Potential Source of Drinking Water and of Limited Beneficial Use." NRC staff has determined that removing radioactive contamination from the Cushing site would not cause ground-water contamination. Although, the removal of radioactive contamination from the Cushing site would reduce the potential of future contamination of the local ground-water supply.

The licensee has evaluated the potential for exposure to both a member of the public and a radiation worker that would result from remediation of the Cushing site and from a remediation of the largest area that requires remediation, respectively. The results of the licensee's analyses indicate that the upper bound doses resulting from remediation activities would be: (1) 0.18 milli-sievert (mSv) [18 milli-roentgen-equivalent-man (mrem)] total effective dose equivalent (TEDE) for a member of the public; and (2) 1.4 mSv (140 mrem) TEDE, to a radiation worker. Thus, the radiological consequences of remediating the Cushing site are insignificant for both members of the public and radiation workers. The results are well within the regulatory limits as specified in 10 CFR part 20.

The licensee also evaluated the potential for exposure from conditions that would result from several postulated accident scenarios. The licensee considered accident scenarios for both onsite and offsite accidents. The licensee found that the worst-case credible accidents were the result of contaminated wastes being spilled. The offsite worst-case credible accident was a single intermodal container holding 12.6 cubic meters (m^3) (450 cubic feet (ft^3)) of contaminated waste soil being spilled in transit. The resulting dose to the worker cleaning up the spilled material was 0.35 mSv (35 mrem) TEDE and for a member of the public the resulting dose was 0.0015 mSv (0.15 mrem). The onsite worst-case credible accident was a single container holding 0.2 m^3 (7.5 ft^3) of contaminated waste soil being spilled. The resulting dose to the worker cleaning up the spilled material was 0.11 mSv (11 mrem) TEDE.

The results of the licensee's analyses were considered estimates of upper bound doses resulting from worst-case, but credible, potential accidents. The results indicate that the radiological consequences of the potential accidents involving radioactive waste spillage are insignificant for both a member of the public and a radiation worker cleaning up the spilled waste and would result in doses to that are well within the regulatory limits as specified in 10 CFR part 20.

Further, the low-level waste disposal facility, Envirocare, is eligible to receive Cushing waste. The Envirocare facility is regulated under State of Utah rules for land disposal of radioactive wastes. Disposal at the Envirocare facility will provide for long-term institutional control and minimize the potential for human intrusion and other environmental impacts. Waste will be packaged and shipped in accordance with NRC and Department of Transportation requirements. Therefore, NRC staff believes that disposing of the Cushing site radiologically contaminated wastes at the Envirocare facility will not cause any significant impacts on the human environment and is acceptable.

The NRC staff also considered nonradiological impacts and concluded that all such impacts are negligible.

Further, the conclusion in the staff's Environmental Assessment was that the remediation of the Cushing site represented an insignificant risk to the public health and safety and the human environment. Therefore, NRC concluded that there are no environmental justice issues related to the remediation of the Cushing site.

Conclusions

Based on NRC staff's evaluation of the licensee's Cushing site decommissioning plan, NRC staff has determined that the proposed plan complies with NRC's public and occupational dose and effluent limits, and that authorizing the proposed activities by license amendment would not be a major Federal action significantly affecting the quality of the human environment. NRC staff concludes that a finding of no significant impact is justified and appropriate, and that an environmental impact statement is not required. In accordance with the requirements of subpart L of 10 CFR part 2, an Opportunity for a Hearing was offered.[2]

Alternative Use of Resources

The activities leading to the proposed action would result in the irreversible use of energy resources in the conduct of the proposed Cushing site remediation. In addition, a portion of the Envirocare facility will be irreversibly committed for the disposal of Cushing site waste. There is no reasonable alternative to these resource uses, and the proposed action does not involve any unreviewed conflicts concerning use of available resources.

Agencies and Persons Consulted, and Sources Used

The Environmental Assessment on which the finding of no significant impact is based was prepared by the NRC staff in the Office of Nuclear Material Safety and Safeguards, Rockville, MD. NRC staff provided a draft of its Environmental Assessment to DEQ for review. DEQ in its letter Dated July 12, 1999, stated that they had no comments.

Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared an environmental assessment related to the issuance of a license amendment to Materials License SNM–1999, authorizing remediation of the Cushing Refinery Site. On the basis of this environmental assessment, NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment and does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

Further Information

For further details with respect to this action, the Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at NRC's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 12th day of August 1999.

For the U.S. Nuclear Regulatory Commission,

Larry W. Camper,

Chief Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–21730 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

[2] 60FR 46318 (September 6, 1995).

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Co.; Peach Bottom Atomic Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DRP–44 and DRP–56, issued to PECO Energy Company (the licensee), for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would correct existing editorial and typographical errors in the Technical Specification (TSs). Each proposed change has been verified to meet the intent of what was originally proposed by PECO Energy and approved by the NRC in previously processed amendments to the TSs. These changes are purely administrative and do not impact the operation of the facility. The proposed changes are summarized below.

1. Correct the labels for the Site Boundary and Exclusion Area Boundary on the Unit 2 and Unit 3 TS Figures 4.1–1 by reversing the labels.

2. Correct the note by replacing the word "on" with the word "or" in the Unit 3 TS Surveillance Requirement (SR) 3.3.1.2.5.

3. Correct the note above TS SR 3.8.4.1 by replacing "SR 3.8.1.9" with "SR 3.8.4.9" in the Unit 3 TS Section 3.8.4.

The proposed action is in accordance with the licensee's application for amendment dated February 12, 1999, as supplemented by letter dated July 8, 1999.

The Need for the Proposed Action

When PBAPS Units 2 and 3, were converted to the Standard TSs under Amendments 210 and 214 respectively, Figure 4.1–1 of the TSs incorrectly reversed the depiction of the Site Boundary and the Exclusion Area Boundary. This mistake occurred during the licensee's conversion of the old TS Figure 3.8.1, "Gaseous and Liquid Effluent Release Points," to the new TS Figure 4.1–1, "Site and Exclusion Area Boundaries." To correct this error, the proposed TS Amendment is required to reflect that there is no change in the Exclusion Area or Site Boundaries and to correctly show that the Site Boundary resides outside of the Exclusion Area and outlines the area owned by the licensee related to PBABS Units 2 and 3.

In PBAPS Unit 3 TS Surveillance Requirement SR 3.3.1.2.5, there is a note that reads, "Not required to be performed until 12 hours after WRNMs indicate 125E–5% power on below." There is a typographical error in the note in that the note should read "* * * power or below."

In TS SR 3.8.4.1, there is a note that reads, "SR through SR 3.8.4.8 are applicable only to the Unit 3 DC electrical power subsystems. SR 3.8.1.9 is applicable only to the Unit 2 DC electrical power subsystems." There is a typographical error in that SR 3.8.1.9 should read SR 3.8.4.9 which is being corrected by the licensee's amendment application.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the modifications to the Technical Specifications are administrative in nature.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant

environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Peach Bottom Atomic Power Station, Units 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on May 14, 1999, the staff consulted with the Pennsylvania State official, Mr. David Ney of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 12, 1999, as supplemented by letter dated July 8, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17150.

Dated at Rockville, MD, this 12th day of August 1999.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley, Sr.,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21731 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Laboratory Testing of Nuclear-Grade Activated Charcoal (ERRATA); Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the errata for a typographical error that was found in Generic Letter (GL) 99–02. GL 99–02 addresses the laboratory testing of nuclear-grade activated charcoal that is used in the safety-related air-cleaning units of engineered safety feature ventilation systems of nuclear power plants to reduce the potential onsite and offsite consequences of a radiological accident by adsorbing iodine.

The typographical error makes the sentence in which it appears technically incorrect. This sentence appears in two places, namely, in Requested Actions 2 and 3, on page 7 of the generic letter. The affected sentence reads "If the system has a face velocity greater than *10* percent of 0.203 m/s (40 ft/min), then the revised TS [technical specification] should specify the face velocity." This sentence should read "If the system has a face velocity greater than *110* percent of 0.203 m/s (40 ft/min), then the revised TS should specify the face velocity."

DATES: The errata was issued on August 23, 1999.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: John P. Segala, at 301–415–1858.

SUPPLEMENTARY INFORMATION: The errata is available in the NRC Public Document Room under accession number 9908060152.

Dated at Rockville, Maryland, this 17th day of August 1999.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21797 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1080 (which should be mentioned in all correspondence concerning this draft guide), is a proposed Revision 3 of Regulatory Guide 1.149 and is titled "Nuclear Power Plant Simulation Facilities for Use in Operator Training and License Examinations." This proposed revision is being developed to update the NRC's guidance on the certification of a simulation facility consisting solely of a plant-referenced simulator.

The draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by October 20, 1999.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*. For information about the draft guide and the related documents, contact Mr. F. Collins, (301) 415–3173; e-mail JFC1@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and

Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 5th day of August 1999.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 99–21795 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Postal Service Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, August 30, 1999; 8:30 a.m., Tuesday, August 31, 1999.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: August 30 (Closed); August 31 (Open).

MATTERS TO BE CONSIDERED:

Monday, August 30–1:00 p.m. (Closed)

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–4, Bulk Parcel Return Service (BPRS).
2. Filing with the Postal Rate Commission for an Experimental Periodical Ride-Along Rate.
3. Rate Case Briefing.
4. Financial Performance.
5. Annual Performance Plan—Government Performance and Results Act.
6. Personnel Matters.

Tuesday, August 31—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 2–3, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Postal Rate Commission FY 2000 Budget.
4. Capital Investments.
   a. Brooklyn, New York, General Post Office Lease.
   b. Bronx, New York, P&DC Exterior Renovations.
   c. Los Angeles, California, Bulk Mail Center Expansion.
5. Tentative Agenda for the October 4–5, 1999, meeting in Kansas City, Missouri.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–21923 Filed 8–19–99; 1:50 p.m.]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension

Rule 11Ac1–1 SEC File No. 270–404 OMB Control No. 3235–0461

Rule 12d2–1 SEC File No. 270–98 OMB Control No. 3235–0081

Rule 12d2–2 SEC File No. 270–86 OMB Control No. 3235–0080

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 11Ac1–1, Dissemination of Quotations, contains two related collections of information necessary to disseminate market makers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1–1(c), 17 CFR 240.11Ac1–1(c). This reporting requirement obligated each "responsible broker or dealer," as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1–1(b), 17 CFR 240.11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[1] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,000 total annual responses pursuant to Rule 11Ac1–1, resulting in an annual aggregate burden of approximately 205,356 hours.

Rule 11Ac1–1 does not impose a retention period for any recordkeeping requirements. Compliance with the rule is mandatory and the information collected is made available to the public. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Rule 12d2–1 provides the procedures by which a national securities exchange may suspend from trading a security that is listed and registered on the exchange. Under Rule 12d2–1, an exchange is permitted to suspend from trading a listed security in accordance with its rules, and must promptly notify the Commission of any such suspension, along with the effective date and the reasons for the suspension.

Any such suspension may be continued until such time as the Commission may determine that the suspension is designed to evade the provisions of Section 12(d) of the Act and Rule 12d2–1 thereunder.[2] During the continuance of such suspension under Rule 12d2–1, the exchange is required to notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under Rule 12d2–1, the exchange must notify the Commission promptly of the effective date of such restoration.

Notices of suspension of trading serve a number of purposes. First, they inform the Commission that an exchange has suspended from trading a listed security or reintroduced into trading a previously suspended security. They also provide the Commission with information necessary for it to verify that the suspension has been effected in accordance with the rules of the exchange, and to determine whether the

[1] A third requirement under Rule 11Ac1–1, as amended at 17 CFR 250.11Ac1–1(c)(5), gives electronic communications networks ("ECNs") the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

[2] Rule 12d2–2 prescribes the circumstances under which a security may be delisted, and sets forth the procedures for taking such action.

exchange has evaded the requirements of Section 12(d) of the Act and Rule 12d2–2 thereunder by improperly employing a trading suspension. Without Rule 12d2–1, the Commission would be unable to fulfill these statutory responsibilities.

There are eight national securities exchanges which are subject to Rule 12d2–1. The burden of complying with the rule is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange and American Stock Exchange than on the other six exchanges.[3] However, for purposes of estimating the overall burden, the staff has assumed that the number of responses would be evenly distributed among the exchanges. The Commission estimates a total annual burden of 48 hours to comply with Rule 12d2–1. This estimate is based on eight respondents with 12 responses per year for a total of 96 responses requiring on average one-half hour per response.

Based on information acquired in an informal survey of the exchanges and the staff's experience in administering related rules, the Commission staff estimates that the respondents' cost of compliance with Rule 12d2–1 may range from less than $25 to as much as $100 per response. The staff has computed the average related cost per response to be approximately $29, representing one-half reporting hour. The estimated total annual related cost of responding to the requirements of Rule 12d2–1 is approximately $2.748, *i.e.*, eight exchanges filing 12 responses at $29 each.

Compliance with Rule 12d2–1 is mandatory. There are no recordkeeping requirements associated with Rule 12d2–1. Information received in response to Rule 12d2–1 shall not be kept confidential; the information collected is public information.

Rule 12d2–2, Removal from Listing and Registration, (17 CFR 240.12d2–2, and Form 25, 17 CFR 249.25, were adopted in 1935 and 1952, respectively, pursuant to Section 12 and 23 of the Act. Rule 12d2–2 sets forth the conditions and procedures under which a security may be delisted. Rule 12d2–2 also requires, under certain circumstances, that an exchange file with the Commission a Form 25 to remove a security from listing and registration on the exchange and to serve as notification of such delisting. Form 25 provides the Commission with the name of the affected security and issuer, the effective date of the delisting, and the date and type of event predicating the delisting.

Delisting notices and applications for delisting serve a number of purposes. First, the reports and notices required under paragraphs (a) and (b) of Rule 12d2–2 (which do not require Commission action) inform the Commission that a security previously traded on an exchange is no longer traded there. In addition, the applications for delisting required under paragraphs (c) and (d) of the Rule (which require Commission approval) provide the Commission with the information necessary for it to determine that a delisting has been promulgated in accordance with the rules of the exchange, and to determine whether the delisting is subject to any terms or conditions necessary for the protection of investors. Further, notice of a delisting application submitted by an issuer pursuant to subparagraph (d) of Rule 12d2–2 is made available to members of the public who may wish to comment or submit information to the Commission regarding such application. Without Rule 12d2–2 and Form 25, as applicable, the Commission would be unable to fulfill these statutory responsibilities.

There are eight national securities exchanges which are subject to Rule 12d2–2 and Form 25. Additionally, any issuer whose security is listed on a national securities exchange which seeks to remove such security from listing and registration on that exchange would be subject to the requirements of subparagraph (d) of Rule 12d2–2. Since the reporting hour burdens incurred in responding to the various requirements of Rule 12d2–2 and Form 25 are not uniform (it generally takes an exchange less time to complete Form 25, when required by subparagraph (a) of Rule 12d2–2, than it does to prepare an application under subparagraph (c) thereof, for example), the Commission staff has, for purposes of its estimation of overall burden, averaged the various reporting burdens and then weighted reporting hours by respondent group, ascribing proportionately smaller burdens (and related costs) to the exchanges, which prepare and file both Forms 25 and applications under Rule 12d2–2 in the routine course of business, while ascribing greater individual burdens (and related costs) to affected issuers, who are subject only to the application requirements of subparagraph (d) of Rule 12d2–2 (and not Form 25), though issuers becoming so subject would likely only be obligated to respond once.[4] Finally, although the burdens of complying with Rule 12d2–2 and Form 25 are not evenly distributed among the exchanges, since there are many more securities listed on the New York Stock Exchange and the American Stock Exchange than on the other national securities exchanges, the staff has assumed, solely for the purpose of making these estimates, that the number of responses would be evenly distributed among the exchanges.

Based on information acquired in an informal survey of the exchanges and issuers obligated to respond, and based further on the staff's experience in administering related rules, the Commission staff estimates that in complying with Rule 12d2–2 and Form 25 all exchanges would incur an aggregate reporting hour burden of 350 hours. The Commission estimates the costs associated with these burden hours to be $20,300 in the aggregate. For issuers obligated to respond to Rule 12d2–2, the staff estimates it receives approximately 50 responses annually from issuers wishing to remove their securities from listing and registration on exchanges. Assuming an average of two reporting hours per response, the Commission estimates an aggregate annual reporting hour burden for these issuers of 100 burden hours, and a related aggregate cost of approximately $8,300.

Compliance with Rule 12d2–2 and the filing of Form 25 are mandatory. There are no recordkeeping requirements associated with Rule 12d2–2 or with Form 25. Information received in response to Rule 12d2–2 and Form 25 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive

[3] In fact, some exchanges do not file any trading suspension reports in a given year.

[4] An issuer is only obliged to file an application under Rule 12d2–2 when it is voluntarily seeking to withdraw its securities from listing and registration on an exchange. The most common situation in which this occurs is when an issuer has listed its securities on multiple exchanges and then, in an effort to reduce costs and/or market fragmentation attributable to such multiple listing, elects to confine listing of securities to the exchange it deems to be the primary marketplace.

Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 13, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21756 Filed 8–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 23, 1999.

A closed meeting will be held on Wednesday, August 25, 1999 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters will be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, August 25, 1999, at 11:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.
Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: August 18, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21905 Filed 8–19–99; 1:08 pm]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3204]

State of Georgia

Chatham County and the contiguous counties of Bryan and Effingham in the State of Georgia, and Jasper County in the State of South Carolina constitute a disaster area as a result of damages caused by severe storms, heavy rain, and flooding that occurred on June 29, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on Oct. 14, 1999 and for economic injury until the close of business on May 15, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 320406 for Georgia and 320506 for South Carolina. For economic injury the numbers are 9D6300 for Georgia and 9D6400 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 8, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–21814 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3199]

State of Iowa; (Amendment #3)

In accordance with notices from the Federal Emergency Management Agency dated August 10 and 13, 1999, the above-numbered Declaration is hereby amended to include Harrison and Mills Counties in the State of Iowa as a disaster area due to damages caused by severe storms and flooding beginning on July 2, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Fremont and Page Counties in Iowa, and Burt and Cass Counties in Nebraska.

Any counties contiguous to the above-named counties and not listed herein have been previously declared.

This declaration is further amended to establish the incident period for this disaster as beginning on July 2, 1999 and continuing through August 10, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 19, 1999, and for economic injury the deadline is April 24, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 16, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–21816 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3199]

State of Iowa; (Amendment #2)

In accordance with a notice from the Federal Emergency Management Agency dated August 9, 1999, the above-numbered Declaration is hereby amended to include Linn, Pottawattamie, and Story Counties in the State of Iowa as a disaster area due to damages caused by severe storms and flooding beginning on July 2, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Boone, Cass, Hamilton, Harrison, Iowa, Jasper, Johnson, Marshall, Mills, Montgomery, Polk, and Shelby Counties in Iowa, and Douglas, Sarpy, and Washington Counties in Nebraska.

Any counties contiguous to the above-named counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 19, 1999, and for economic injury the deadline is April 24, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 12, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–21819 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203]

State of Minnesota; (Amendment #3)

In accordance with a notice from the Federal Emergency Management Agency dated August 12, 1999, the above-numbered Declaration is hereby amended to include Cass County, Minnesota as a disaster area due to damages caused by severe storms, winds, and flooding beginning on July 4, 1999 and continuing through August 2, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Crow Wing, Hubbard, Morrison, Todd, and Wadena in the State of Minnesota may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 25, 1999 and for economic injury the deadline is April 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 16, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–21815 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203]

State of Minnesota; (Amendment #2)

In accordance with a notice from the Federal Emergency Management Agency dated August 5, 1999, the above-numbered Declaration is hereby amended to include Lake County, Minnesota as a disaster area due to damages caused by severe storms, winds, and flooding beginning on July 4, 1999 and continuing through August 2, 1999.

All counties contiguous to the above-named county have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 25, 1999 and for economic injury the deadline is April 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 11, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–21818 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9D68]

State of New Hampshire (And Contiguous Counties in Massachusetts and Maine)

Rockingham County and the contiguous counties of Hillsborough, Merrimack, and Strafford in New Hampshire, Essex County, Massachusetts, and York County, Maine constitute an economic injury disaster loan area as a result of a fire that occurred on June 16, 1999 in the City of Hampton, New Hampshire. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 15, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The economic injury number for Massachusetts is 9D69 and for Maine the number is 9D70.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 13, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–21817 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice No. 3111]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State [(703) 875–6644].

SUPPLEMENTARY INFORMATION:

Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: August 10, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls.

United States Department of State

Washington, D.C. 20520

August 5, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the amendment of a manufacturing license agreement with Turkey for the production of the Day and Night Thermal Sight Systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 125–98

United States Department of State

Washington, D.C. 20520

August 4, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing Licensing Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the production, sale and maintenance of F–4E aircraft for use by the Japanese Air Self Defense Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 4–99

United States Department of State

Washington, D.C. 20520

August 5, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Australia, Canada, Denmark, Germany, Greece, The Netherlands, Norway, Spain, and Turkey for the export of defense articles and defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data and defense articles to support the international cooperative development and production of the Evolved SeaSparrow Missile (ESSM).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 17–99

United States Department of State

Washington, D.C. 20520

August 5, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Greece for the export of defense articles and defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data and assistance for the manufacture of parts for the Hellenic HAWK Missile System Phase III and Launcher Mobility Upgrade program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 18–99

United States Department of State

Washington, DC 20520

August 5, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical assistance for delivery of 350 BLU–109/B/B Bombs, including FMU–143 Fuzes to the Greek Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 27–99

United States Department of State

Washington, DC 20520

August 5, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36 (c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves supporting WAH–64 Aircraft Aircrew and Maintenance Training, Services and Equipment in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 43–99

United States Department of State

Washington, DC 20520

August 4, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36 (c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the manufacture of T–45 aircraft, its derivatives, and associated training systems, in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 45–99

United States Department of State

Washington, DC 20520

August 4, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, engineering information, defense services and defense articles to the United Kingdom and Germany, for the manufacture of various hydraulic products and controls for military aircraft, marine and defense system applications.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though

unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 50–99

United States Department of State

Washington, DC 20520

August 5, 1999.

The Honorable Benjamin A. Gilman,

Chairman, Committee on International Relations, House of Representatives.

Dear Mr. Chairman: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing and Technical Assistance Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the support and co-production of the Harpoon Weapon System in the Netherlands.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 52–99

United States Department of State

Washington, DC 20520

August 5, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the upgrade of fifty RGM–84D Harpoon Missiles for the Royal Danish Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 72–99

United States Department of State

Washington, D.C. 20520

August 4, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached notification involves the export of two Echostar commercial communications satellites to French Guiana for launch into outer space.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 73–99

United States Department of State

Washington, D.C. 20520

August 4, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of two remote sensing satellite and technical data to Russia for subsequent integration with a Russian space launch vehicles and launch from Plesetsk, Russia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 79–99

United States Department of State

Washington, D.C. 20520

August 4, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of Multiple Launch Rocket System (MLRS) launchers, spare parts, and practice rockets for use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 84–99

United States Department of State

Washington, D.C. 20520

August 4, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in France of satellite transponders and antennas for return to the United States for use in commercial communication satellites.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 86–99

United States Department of State

Washington, D.C. 20520

August 4, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) & (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the Republic of Korea.

The transaction described in the attached certification involves the manufacture of the ALR–85(V) I Radar Warning Receiver System for use on Republic of Korea Air Force F–4 and F–5 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 89–99

United States Department of State

Washington, D.C. 20520

August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of production support, test, qualification and final integration of 300 GEC-Marconi Guided Munitions (GMGM) with the United Kingdom for use by the UAE Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs

Enclosure: Transmittal No. DTC 90–99

United States Department of State

Washington, D.C. 20520

August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the amendment of a Manufacturing License Agreement with Japan for the manufacture of the 7M Sparrow Missile (air-to-air) system pursuant to the "Memorandum of Understanding" between the United States and the Government of Japan for end use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 91–99

United States Department of State

Washington, D.C. 20520

August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance for the manufacture in Japan of APG–66J Fire Control Radar for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 94–99

United States Department of State

Washington, D.C. 20520

August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement with Japan.

The transaction described in the attached certification involves the manufacture, assembly, operation, sale, maintenance, repair and modification of the CH–47 Model 414–100 Helicopter Series, for use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 96–99

United States Department of State

Washington, D.C. 20520

August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves follow-on technical assistance agreements with Russia beyond those addressed in DTC 39–98, dated March 19, 1998, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and lauch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 98–99

[FR Doc. 99–21840 Filed 8–20–99; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending August 13, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6083.
Date Filed: August 9, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME-AFR 0035 dated 10 August 1999
Mail Vote 023—TC2 from Middle East to Libya Resolution 010w
Intended effective date: 12 August 1999.

Docket Number: OST–99–6084.
Date Filed: August 9, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR-AFR 0086 dated 10 August
Mail Vote 022—TC2 from Europe to Libya
Resolution 010v
Intended effective date: 15 August 1999.

Docket Number: OST–99–6087.
Date Filed: August 10, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME 0068 dated 7 July 1999
PTC2 ME 0072 dated 3 August 1999
Mail Vote 021—Within Middle East Resolutions r1–r15
Minutes—PTC2 ME 0069 dated 9 July 1999
Tables—PTC2 ME Fares 0027 dated 3 August 1999
Intended effective date: 1 January 2000.

Docket Number: OST–99–6090.
Date Filed: August 11, 1999.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 027—TC12 Canada-Europe Special Passenger
Amending Resolution 010a circulated by message TE664 dated 11 August 1999
Intended effective date: 20 August 1999.

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 99–21836 Filed 8–20–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 13, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6085.
Date Filed: August 9, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 6, 1999.
Description: Application of American Airlines, Inc. pursuant to 49 U.S.C. Section 41108 and Subpart Q, applies for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail between a point or points in the United States, directly and via intermediate points, and a point or points in Italy, and beyond.

Docket Number: OST–99–6108.
Date Filed: August 13, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 10, 1999.
Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Sections 41102 and 41108, and Subpart Q, applies for a new or amended Certificate of Public Convenience and Necessity authorizing Delta to provide scheduled foreign air transportation of persons, property and mail between Atlanta, Georgia and Buenos Aires, Argentina, and for allocation of seven (7) U.S.-Argentina frequencies.

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 99–21837 Filed 8–20–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6091]

Collection of Information by Agency Under Review by Office of Management and Budget

AGENCY: Coast Guard, DOT.
ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, the Coast Guard intends to request the approval of the Office of Management and Budget (OMB) for the renewal of twelve Information Collection Requests (ICRs). These ICRs comprise: 1. Application for Tonnage Measurement of Vessels, 2. Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels, 3. Records Relating to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities, 4. Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions, 5. Ships Carrying Bulk Hazardous Liquids, 6. Barges Carrying Bulk Hazardous Materials, 7. Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent, 8. Oil and Hazardous Materials Transfer Procedures and Waste Management Plans, 9. Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F, 10. National Response Resource Inventory, 11. Identification Markings on Lifesaving, Fire Protection, and Emergency Equipment, and 12. Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before October 22, 1999.

ADDRESSES: You may mail comments to the Docket Management Facility [USCG–1999–6091], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this Request. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G-SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. With

questions on the docket, ask Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG–1999–6091] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Application for Tonnage Measurement of Vessels.
OMB Control Number: 2115–0086.
Summary: The information for this collection is used to determine a vessel's tonnage. Tonnage in turn is used as a basis for licensing, inspection, safety requirements, and operating fees.
Need: 46 U.S.C. 14104 requires that before a vessel is documented or recorded under laws of the United States, or where the application of law of the United States to a vessel is determined by its tonnage, the vessel must be measured for tonnage.
Respondents: Vessel owners.
Frequency: On occasion.
Burden: The estimated burden is 27,600 hours annually.

2. *Title:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.
OMB Control Number: 2115–0549.
Summary: The collection of information requires passenger vessels to have posted two placards, which contain safety and operating instructions on the use of cooking appliances that use liquefied gas or compressed natural gas.
Need: 46 U.S.C. 3306(a)(6) authorizes the Coast Guard to prescribe regulations for the use of vessel stores and other supplies of a dangerous nature. These regulations cover both uninspected and inspected passenger vessels.
Respondents: Owners and operators of passenger vessels.
Frequency: On occasion.
Burden: The estimated burden is 2,362 hours annually.

3. *Title:* Records Relating to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities.
OMB Control Number: 2115–0143.
Summary: Vessels and units engaged in activities on the OCS (exploration and exploitation of offshore resources such as gas and oil) must be manned and crewed by U.S. citizens or permanent resident aliens [43 U.S.C. 1356]. 33 CFR 141.35 requires employers to maintain records demonstrating compliance.
Need: This information is needed to ensure compliance with the statutory mandates to man or crew OCS facilities with U.S. citizens or permanent resident aliens.
Respondents: Operators of vessels and units engaged in activities on the OCS.
Frequency: On occasion.
Burden: The estimated burden is 412 hours annually.

4. *Title:* Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions.
OMB Control Number: 2115–0096.
Summary: This ICR requirement will minimize the number and impact of pollution discharges and accidents occurring during transfer of oil or hazardous materials. It will also help to evaluate proposed alternatives and requests for exemptions.
Need: This ICR is needed to (1) prevent or mitigate the results of an accidental release of bulk liquid hazardous materials being transferred at waterfront facilities; (2) ensure that facilities and vessels that use vapor-control systems are in compliance with the safety standards developed by the Coast Guard; (3) provide equipment and operational requirements for facilities and vessels that transfer oil or hazardous materials in bulk to or from any vessel with a capacity of 250 or more barrels; and (4) provide procedures for vessel or facility operators who request exemption or partial exemption from the requirements of the pollution-prevention regulations.
Respondents: Operators of facilities handling and vessels carrying bulk oil and hazardous materials.
Frequency: On occasion.
Burden: The estimated burden is 1,840 hours annually.

5. *Title:* Ships Carrying Bulk Hazardous Liquids.
OMB Control Number: 2115–0089.
Summary: The information in this report is required to ensure compliance with U.S. regulations governing ships carrying bulk hazardous liquids.
Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe regulations for protection against hazards to life, property, and the marine environment. 46 CFR part 153 prescribes regulations for the safe transport by vessel of bulk hazardous liquids.
Respondents: Operators of chemical tank vessels.
Frequency: On occasion.
Burden: The estimated burden is 471 hours annually.

6. *Title:* Barges Carrying Bulk Hazardous Materials.
OMB Control Number: 2115–0541.
Summary: This ICR ensures the safe shipment of bulk hazardous liquids in barges. The reporting and recordkeeping requirements are necessary to ensure that barges meet safety standards and to ensure that crewmembers have the information necessary to operate barges safely.
Need: 46 U.S.C. 3703 directs the Coast Guard to prescribe regulations for the carriage of, among other things, cargoes of bulk liquid hazardous materials. 46 CFR part 151 prescribes the regulations for barges carrying cargoes of bulk liquid hazardous materials.
Respondents: Opertors of tank barges.
Frequency: On occasion.
Burden: The estimated burden is 11,724 hours annually.

7. *Title:* Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent.
OMB Control Number: 2115–0077.
Summary: Each waterfront facility that intends to transfer oil or hazardous materials in bulk to or from vessels must notify the Coast Guard Captain of the Port by submitting a letter of intent to operate. This letter identifies the owner and operator of the facility for purposes of enforcement and contact.
Need: 33 U.S.C. 1321 authorizes the Coast Guard to prescribe pollution-prevention regulations. 33 CFR 154.110 prescribes the regulations on letters of intent.
Respondents: Facility operators.
Frequency: On occasion.
Burden: The estimated burden is 460 hours annually.

8. *Title:* Oil and Hazardous Materials Transfer Procedures and Waste Management Plans.
OMB Control Number: 2115–0120.
Summary: This rule requires vessels with a capacity of 250 barrels or more of oil or hazardous materials to develop and maintain procedures which provide basic safety information for operating transfer systems. It also requires oceangoing ships of 40 feet or more in length, engaged in commerce or equipped with galleys or berths, to develop and maintain waste-management plans for the handling and disposal of ship-generated garbage.
Need: 33 U.S.C. 1221 and 1903 authorize the Coast Guard to prescribe

regulations to prevent pollution. 33 CFR part 155 prescribes such regulations including those related to transfer procedures, and 33 CFR part 151 prescribes such regulations including those related to waste-management plans.

Respondents: Owners and operators, of vessels and facilities.

Frequency: Annually.

Burden: The estimated burden is 14,302 hours annually.

9. Title: Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F.

OMB Control Number: 2115–0142.

Summary: This collection of information requires owners and builders of commercial vessels to submit to the U.S. Coast Guard, for review and approval, plans for marine-engineering systems to ensure that the vessels will meet regulatory standards.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe vessel-safety regulations including those related to marine-engineering systems. 46 CFR Subchapter F prescribes those requirements.

Respondents: Owners and builders of commercial vessels.

Frequency: On occasion.

Burden: The estimated burden is 3,433 hours annually.

10. Title: National Response Resource Inventory.

OMB Control Number: 2115–0606.

SUMMARY: The information in this collection should improve the effectiveness of deploying response equipment in the event of an oil spill. It may also serve in the development of contingency plans.

Need: Section 4202 of the Oil Pollution Act of 1990 (Pub. L. 101–380) required the Coast Guard to compile and maintain a comprehensive list of oil-spill-removal equipment. This collection helps fulfill that requirement.

Respondents: Oil-spill-removal organizations.

Frequency: On occasion.

11. Title: Identification Markings on Lifesaving, Fire Protection, and Emergency Equipment.

OMB Control Number: 2115–0577.

SUMMARY: Lifesaving, fire protection, and emergency equipment must be identified by its manufacturer, model number, capacity, approval number, and other information concerning its performance. Markings help the vessel owner and Coast Guard to determine compliance with regulations.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe regulations for lifesaving, firefighting, and emergency equipment for use on inspected vessels. 46 CFR Subchapter Q prescribes equipment manufacturers' marking requirements, and other subchapters in title 46 prescribe vessel owners' and operators' marking requirements.

Respondents: Safety-equipment manufacturers and owners and operators, of vessels.

Frequency: On occasion.

Burden: The estimated burden is 4,012 hours annually.

12. Title: Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

OMB Control Number: 2115–0603.

Summary: The Oil Pollution Act of 1990 requires the issuance of regulations for the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old. This collection of information helps to verify the structural integrity of older tank vessels.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe regulations related to tank vessels, including design, construction, alteration, repair, and maintenance. 46 CFR 31.10–21a prescribes the regulations related to periodic gauging and engineering analyses of certain tank vessels over 30 years old.

Respondents: Owners and operators of certain tank vessels.

Frequency: Every 5 years.

Burden: The estimated burden is 18,502 hours annually.

Dated: August 13, 1999.

G. N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 99–21790 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–28]

Petitions for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 13, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 18, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29592.

Petitioner: Continental Airlines, Inc. and Continental Micronesia Airlines, Inc.

Section of the FAR Affected: 14 CFR 121.577(a)

Description of Relief Sought: To permit Continental to move an airplane on the surface before takeoff or after landing when beverages or other containers provided by Continental to passengers are retained at the passenger's seat.

Docket No.: 29603.

Petitioner: Mr. James A. Atkins.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To permit Mr. James A. Atkins and pilots employed by him to perform certain preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operating under 14 CFR part 135 without holding a mechanic certificate.

Docket No.: 29615.
Petitioner: T-Bird Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.299(a).
Description of Relief Sought/ Disposition: To permit T-Bird pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a pilot-in-command line check in an aircraft.

Dispositions of Petitions

Docket No.: 25974.
Petitioner: Air Transport Association of America.
Section of the FAR Affected: 14 CFR 91.203.
Description of Relief Sought/ Disposition: To permit ATA-member airlines to operate certain U.S.-registered aircraft on a temporary basis following the incidental loss or mutilation of a Certificate of Airworthiness, aircraft registration certificate, or both.
Grant, 07/30/99, Exemption No. 5318F.

Docket No.: 26474.
Petitioner: Deere & Company.
Section of the FAR Affected: 14 CFR 21.197(a)(1).
Description of Relief Sought/ Disposition: To permit Deere to operate its Cessna Model CE–650 aircraft (registration Nos. N400JD, N600JD and N900JD, Serial Nos. 650–0035, 650–0236 and 650–0213, respectively) without obtaining a special flight permit when the flaps fail in the up position.
Grant, 7/26/99, Exemption No. 6581C.

Docket No.: 27230.
Petitioner: ERA Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit ERA Aviation to operate certain helicopters under the provisions of part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft.
Grant, 7/30/99, Exemption No. 5718C.

Docket No.: 28552.
Petitioner: World Freefall Convention.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To permit WWFC to allow nonstudent, foreign nationals to participate in WFFC-sponsored parachute jumping events held at WFFC's facilities without complying with the parachute equipment and packing requirements of § 105.43(a).
Grant, 7/29/99, Exemption No. 6930.

Docket No.: 29218.
Petitioner: Cessna Aircraft Company.
Section of the FAR Affected: 14 CFR 91.409(b).
Description of Relief Sought/ Disposition: To permit owners and operators of C–172R aircraft an exemption from 14 CFR § 91.409(b) to the extent necessary to use Cessna's PhaseCard IP in lieu of the 100-hour inspection required by that section.
Grant, 6/11/99, Exemption No. 6901.

Docket No.: 29386.
Petitioner: Mr. Archie D. Van Beek.
Section of the FAR Affected: 14 CFR 45.29(b)(1).
Description of Relief Sought/ Disposition: To permit Mr. Van Beek to operate his Maule M–5 (Registration No. 913VB, Serial No. 5001C) airplane displaying 3-inch-high nationality and registration markings instead of the 12-inch-high markings required by the regulations.
Denial, 7/26/99, Exemption No. 6931.

Docket No.: 29419.
Petitioner: Aviation Component Service Center General Electric Engine Services, Inc.
Section of the FAR Affected: 14 CFR 43.9(a)(4), 43.11(a)(3), appendix B to part 43, and 145.57(a).
Description of Relief Sought/ Disposition: To permit ACSC to use computer-generated electronic signatures in lieu of physical signatures to satisfy the requirements of FAA Form 8130–3, Airworthiness Approval Tag, when the form is used to satisfy approval for return-to-service signature requirements.
Grant, 7/21/99, Exemption No. 6926.

Docket No.: 29479.
Petitioner: Skydive U, Inc.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To permit Skydive U to allow nonstudent foreign nationals to participate in Skydive U-sponsored parachute jumping events held at Skydive U's facilities without complying with the parachute equipment and packing requirements of § 105.43(a).
Grant, 7/22/99, Exemption No. 6928.

Docket No.: 29492.
Petitioner: Lynden Air Cargo.
Section of the FAR Affected: 14 CFR 121.344.
Description of Relief Sought/ Disposition: To permit Lynden Air Cargo to operate its four L382G Hercules aircraft (Registration Nos. N401LC, N402LC, N403LC, and N404LC; Serial Nos. 4606, 4698, 4590, and 4763, respectively) under part 121 without an approved DFDR.
Grant, 7/15/99, Exemption No. 6921.

[FR Doc. 99–21784 Filed 8–20–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee on Tuesday, September 14, and Wednesday, September 15. The meeting will be held at the Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia.

On Tuesday, September 14 the meeting will begin at 9:00 a.m. and end at 5:00 p.m.

On Wednesday, September 15 the meeting will begin at 8:30 a.m. and end at 12:00 noon.

The meeting agenda will include receiving guidance from the Committee for FAA's fiscal year 2002 research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7358.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on August 9, 1999.

Hugh M. McLaurin,
Program Director, Research Division.

[FR Doc. 99–21785 Filed 8–20–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance; Petition for Exemption for Technological Improvements

In accordance with Title 49 Code of Federal Regulations (CFR) Sections 211.9 and 211.41, and 49 U.S.C. 20306, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of

the Federal railroad safety regulations and a request for exemption of certain statutory provisions. The individual petition is described below, including the party seeking relief, the regulatory and statutory provisions involved, the nature of the relief being sought and the petitioner's arguments in favor of relief.

New Jersey Transit Corporation; FRA Waiver Petition No. FRA–1999–6135

New Jersey Transit Corporation (NJ Transit) seeks a permanent waiver of compliance from certain CFR parts of Title 49, specifically: part 221, Rear End Marking Device—Passenger, Commuter and Freight Trains; part 223, Safety Gazing Standards—Locomotives, Passenger Cars and Cabooses; part 229, Railroad Locomotive Safety Standards; part 231 Railroad Safety Appliance Standards; part 238, Passenger Equipment Safety Standards; and part 239, Passenger Train Emergency Preparedness.

NJ Transit seeks approval of shared use and waiver of certain FRA regulations involving light rail passenger operations on the planned Southern New Jersey Light Rail Transit (SNJLRT) system. SNJLRT is a regional light rail transit system that will link the cities of Camden, NJ and Trenton, NJ, and provide local service along with bus, transit, and intra and intercity rail transfer connections to an area previously without light rail service. The SNJLRT project will cover 34 miles using a combination of street running alignment and existing railroad right-of-way to assist in meeting Southern New Jersey's mobility and congestion needs.

A portion of the SNJLRT will run over the existing Consolidated Rail Corporation (Conrail) Bordentown Secondary track, between MP 1.07 (Camden) and MP 33.1 (Trenton). The purpose of the waiver is for SNJLRT operations over this "Shared Trackage" because of its connection with the general railroad system of transportation. Conrail and NJ Transit have agreed that transit operations will have exclusive use of the Shared Trackage during the passenger period.

In each section entitled "justification," FRA merely sets out NJ Transit's justifications which are included in its petition. In doing so, NJ Transit references the proposed Joint Policy Statement on Shared Used of the General Railroad System issued by FRA and the Federal Transit Administration (FTA) (64 FR 28238; May 25, 1999) ("Policy Statement"). The proposed policy statement suggests that regulation of light rail service on the general rail system, under conditions of temporal separation from conventional rail movements, be handled through application of complementary strategies. FRA regulations would generally be employed to address hazards common to light rail and conventional operations for which consistent handling is necessary, while other hazards would be handled under FTA's program of State Safety Oversight (49 CFR Part 659). See proposed Policy Statement for details. Since FRA has not yet concluded its investigation of the planned SNJLRT system, the agency takes no position at this time on the merits of NJ Transit's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a non-voting liaison to FRA's Safety Board, and that person will participate in the board's consideration of NJ Transits's waiver petition.

Part 221—Rear End Marking Device—Passenger, Commuter and Freight Trains

Section 221.13(a) requires each train that occupies or operates on main line track be equipped with a display on the trailing end of the rear car of that train, and continuously illuminated or flashing a marking device as prescribed in that subpart. Section 221.14(a) requires that passenger, commuter and freight trains be equipped with at least one such compliant marking device, which has been approved by FRA in accordance with the procedures included in Appendix A of part 221, and which has specific intensity, beam arc width, color and flash rate characteristics. The requirements are intended to reduce the likelihood of rear-end collisions attributable to the inconspicuity of the rear-end of a leading train.

Justification. NJ Transit requests a waiver from this requirement because the SNJLRT vehicle will be equipped with marking devices such as headlights, brake, tail, turn signal, clearance and marker lights, and reflectors similar to those required for highway vehicles as contained in NJDOT regulations. The NJDOT regulations adopt and incorporate by reference the Federal Highway Administration's ("FHWA") Federal Motor Carrier Safety Regulations found at 49 CFR part 393.

The external illumination consists of a set of front headlights, turn signals, tail and brake lights, reflectors, clearance, and marker lights at each end of the bi-directional SNJLRT vehicles. One headlight is mounted next to each brake light, with the headlights capable of being switched from low to high beam. Turn signal lights are visible from both the front and sides of the vehicle. The mounting height and candela value of the lights provided is consistent with FHWA requirements for commercial motor vehicles contained in 49 CFR part 393. The SNJLRT vehicle exterior lighting was designed to match state highway vehicle requirements instead of FRA regulations because the SNJLRT vehicles will operate in two different environments: in streets running mixed with motor vehicle traffic and in a conventional railroad corridor. FRA-compliant rail car marker devices might not provide sufficient information to motor vehicle drivers and, therefore might be inappropriate for the in-street portion of the SNJLRT system. The SNJLRT specifications on the other hand, will provide a higher level of safety for in-street operations.

NJ Transit believes that safety on the conventional railroad corridor will not be compromised by the use of the SNJLRT marking devices. The SNJLRT vehicle will have tail and brake light and clearance lights to define the end contour of the vehicle, substantially similar to the marking devices required by FRA regulations. Any variation in illumination levels between SNJLRT vehicles and Conrail trains is not material because of the temporal separation of the operations.

Section 223.9(c)—Glazing Requirements

Section 223.9(c) requires that passenger cars, including self-propelled passenger cars built or rebuilt after June 30, 1980, be equipped with FRA certified glazing in all windows. This requirement is intended to reduce the likelihood of injury to passengers and/or employees from breakage and shattering of windows (including windshields).

Justification. NJ Transit requests a waiver of this requirement for windows other than cab windshields because those windows will conform to the side impact requirements of ANSI Z26. 1, Table 1, item 1, "American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways." This glazing is break-resistant in normal usage, but can be broken with a standard rescue tool, such as a pry bar (a pry bar will be located near side windows in each SNJLRT vehicle) in an emergency. Upon breaking, the glass "crumbles" into pebble-like pieces, posing no significant hazard to passengers, employees or rescue personnel. The use of such safety glass windows is standard throughout the rail transit industry for (among other applications) in-street light rail operations, where it has proved both durable and safe. In addition, the risk

associated with vandalism (such as by rocks thrown against the windows) is addressed from an operations standpoint in the System Safety Program Plan (SSPP).

Section 223.9(d)—Emergency Exit Window Markings

Section 223.9(d) requires that each emergency window be conspicuously and legibly marked with luminescent material on the inside of each car and that clear and legible operating instructions be posted at or near each such window. This section also requires that each window intended for access by emergency responders for extrication of passengers be marked with a retroreflective, unique and easily recognizable symbol or other clear marking and that clear and understandable window-access instructions be posted at each such window or at the end of each car. These requirements are intended to distinguish emergency windows from other windows and provide information on the operation of the emergency windows.

Justification. NJ Transit requests a waiver from these requirements because all side windows on the SNJLRT vehicles are suitable for use in the event of an emergency and therefore, it would make no sense and could prove to be a confusion hazard to mark any particular side windows as designated "emergency windows." All side windows are made of safety glass and are fitted into the sidewalls by large, specialized rubber sections. All of these windows can be broken with standard rescue tools and can function as emergency windows if necessary. Pry bars, which can be used to break windows if necessary, will be located near side windows inside each SNJLRT vehicle. Instructions meeting FRA requirements and clearly indicating that the pry bar can be used to break any side window will be posted adjacent to each pry bar. Thus, identification of some windows as "emergency windows" and the posting of special operating instructions is not appropriate in this instance and is not necessary for safe emergency egress from the SNJLRT vehicle. Enforcing the marking requirements would not serve the intended safety purpose.

Section 223.15(c)—Emergency Window Requirements

Section 223.15(c) requires each passenger train car to be equipped with at least four emergency windows designed to permit rapid and easy removal during an emergency. This requirement is intended to enhance safety by providing emergency egress, in addition to egress through vehicle doorways.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicles will not be manufactured with designated emergency windows. The vehicles, however, are designed to permit equivalent or superior emergency exit options. Each vehicle has 10 windows on each side, all of which are made of safety glass and are fitted into the sidewalls by large, specialized rubber sections. All of these windows are large (approximately 42 by 36 inches) when compared with conventional commuter rail cars, can be broken with standard rescue tools, and can function as emergency windows if necessary.

Furthermore, the SNJLRT vehicle doorways provide greater access/egress capability than is found on conventional commuter rail cars. Each vehicle has two sets of double doors on each side of the vehicle. The minimum clearance height of each doorway is 76 inches and the flow lane width of each doorway is at least 24 inches (48 inches in total for each set of double doors). The vehicle is designed such that the egress time of an AW2 load shall not exceed 120 seconds, calculating egress by assuring a flow rate of 2 seconds per passenger per flow lane. The doors are releaseable through an emergency release lever located on the inside of each doorway and for at least one doorway per side on the outside of the vehicle. This will enable a closed and interlocked door to be lock-released without power supply. Activation of the emergency release levers shall allow the door leaves to be manually operated. The interior door release levers shall be clearly marked and in a location accessible to all passengers, compliant with American with Disabilities Act (ADA) and FRA marking requirements. These release lever features will enable quick and easy opening of the doors by passengers, equivalent to FRA emergency exit window requirements.

The doorways are designed to provide the main means of emergency access/egress, and because the large windows can function as additional emergency access/egress points, there is very little risk of passengers becoming trapped or rescue personnel being unable to reach passengers. In addition, the SSPP will contain detailed emergency response plan requirements which will include passenger evacuation and crowd control planning.

Section 229.125—Headlights and Auxiliary Lights

Sections 229.125(a) and (d) require locomotives to have headlights of specified candela brightness, and auxiliary lights of specified brightness and placement on the vehicle. The purpose of these requirements is to reduce the risk of collisions attributable to inconspicuity of the train, particularly in low light level situations.

Justification. NJT requests a waiver from these requirements because the SNJLRT vehicles will have lights similar to those required by state law applicable to commercial motor vehicles. The SNJLRT vehicles will be equipped with two headlights on the leading cab of the train capable of illuminating a person 500 feet away. In addition, each vehicle will have an auxiliary light on the front of the car that will form a triangular pattern with the headlights to present a distinctive profile to motor vehicle drivers approaching grade crossings.

The use of lighting similar to motor vehicle lighting is desirable because the SNJLRT vehicle operates in two distinctly different environments. One portion is on mainline railroad track and the other is street-running mixing with highway traffic. NJ Transit believes that while the SNJLRT lighting arrangement will provide for sufficient light to provide safety along the railroad right-of-way, the FRA lighting requirements may not be appropriate for the street-running portions of the route. However, since the front of the vehicle will have headlights and auxiliary lighting to define the end contour of the vehicle, the conspicuity of the train will be assured in both the Shared Trackage and street-running portions of the route and any effect of variations in illumination levels will be minor.

Section 231.14—Passenger Cars Without End Platforms

Section 231.14 specifies the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (e.g., hand brakes, ladders, handholds, steps), directly implementing a number of statutory requirements found in 49 U.S.C. 20301–05.

The statutory provisions contains specific standards for automatic couplers, sill steps, hand brakes, and secure ladders and running boards. Where ladders are required, compliant handholds or grab irons for the roof of the vehicle at the top of each ladder are mandated. Compliant grab irons or handholds also are required for the ends and sides of the vehicles, in addition to standard height drawbars. In addition, the statute requires trains to be equipped with a sufficient number of vehicles with power or train brakes so that the engineer may control the train's speed without the use of a common

hand brake. At least 50 percent of the vehicles in the train must be equipped with power or train brakes, and the engineer must use the power or train brakes on those vehicles and all other vehicles equipped with such brakes that are associated with the equipped vehicles in the train.

Aside from the statutory-based requirements, the regulations provide additional and parallel specifications for hand brakes, sill steps, side handholds, end handholds, end handrails, side-door steps and uncoupling levers. More specifically, each passenger vehicle must be equipped with an efficient hand brake that operates in conjunction with the power brake on the train. The hand brake must be located so that it can be safely operated while the passenger vehicle is in motion. Passenger cars must have four sill steps and side-door steps, and prescribed tread length, dimensions, material, location and attachment devices for sill steps and side-door steps. In addition, there are requirements for the number, composite material, dimensions, location and other characteristics for side and end handholds and end handrails. Finally, this section requires the presence of uncoupling attachments that can be operated by a person standing on the ground. These very detailed regulations are intended to ensure that sufficient safety appliances are available and that they will function safely and securely as intended.

Justification. As noted above, some of the requirements in § 231.14 are required by statute and, therefore, are not subject to waiver under FRA's regulatory waiver provisions. FRA does, however, have the statutory authority to provide exemptions from these statutory requirements pursuant to 49 U.S.C. 20306. Consequently, NJ Transit requests exemption from and/or waiver of these requirements, as appropriate, because the SNJLRT vehicles will be equipped with their own array of safety devices, resulting in equivalent safety.

The SNJLRT vehicle has a number of features that provide an equivalent or superior level of safety as compared to a conventional hand brake. Each SNJLRT vehicle will be equipped with a parking brake located in each of the two control stands in each vehicle.

The brake is capable of holding the vehicle on a gradient of six percent at an AW1 (60 tons) load. The SNJLRT vehicles will be operated by a one-person crew. The SNJLRT train will be either one or two vehicles. The train will be operated from the control stand in the lead cab, on trains consisting of two cars, and from the front of the single vehicle in the case of a one vehicle train. During normal operating conditions, the operator will make all service and parking brake applications. In the event of an emergency, the SNJLRT vehicle will have several features which would permit passengers to activate the braking system. First, an emergency release device located on each passenger door pillar causes an irrevocable application of the service brakes in the event of any application. Second, the four doors (two on each side of each vehicle) are interlocked with the propulsion system to ensure that the SNJLRT vehicle does not move while any doors are open, and the opening of the doors while the SNJLRT vehicle is in motion will cause an irrevocable application of the service brake. The braking characteristics of the SNJLRT vehicle will result in a shorter full service brake activation time and easier brake application than would be achieved by the presence of a traditional hand brake. Thus, the safety purpose of the hand brake requirement is achieved, but in a manner that provides an equivalent or superior level of safety.

Sill steps and side-door steps are not necessary for safety on the SNJLRT vehicle, because it is a low floor vehicle designed for level boarding. The door threshold is 22.4 inches above the top of the rail. This configuration of the doors renders sill steps and side-door steps unnecessary. Compliance with the sill step and side-door step requirements would not enhance the safety of the vehicle.

Handholds and handrails are typically intended for use by conductors and crew members performing service and yard duties. However, SNJLRT operations will not involve any service and yard duties from positions outside and adjacent to the vehicle or near vehicle doors. Yard moves will be controlled from the cab stand by the on-board operator and switches will be thrown remotely or through local controls initiated by the on-board operator. Therefore, since there is no need for personnel to mount or dismount the vehicle using external appliances of any kind, there is no need for handholds or handrails on SNJLRT vehicles. NJ Transit has reservations about installing external handholds and handrails because of the street-running characteristics of part of the SNJLRT service.

External handholds or handrails would give pedestrians the opportunity to grab onto something on the outside of the vehicle with the intention to get a ride. This is unsafe and the SNJLRT vehicle will be designed to minimize the opportunity for this practice. In sum, there is no practical need for handholds or handrails, and their presence might constitute a safety hazard in the street-running operating environment.

The SNJLRT vehicle will be equipped with a fully automatic electric coupler controlled from the operator's position in the cab and a mechanical coupler at each end. The coupler and associated draft gear system will have a centering device that retains the unconnected coupler head within its gathering range. The couplers are central buffer couplings with electrical and pneumatic coupling. The operator will initiate uncoupling from the cab stand and no external crew is required to assist in this operation. NJ Transit believes that performing all coupling/uncoupling from inside the vehicle will enhance safety. This elimination of the need for frequent coupling/uncoupling of vehicles, combined with the ability for such activity to take place without crew members in close proximity to the coupler mechanisms, eliminates the need for specially placed uncoupling levers and any hazard associated with manual coupling.

The SNJLRT vehicles will use dynamic brakes. The dynamic brakes will be supplemented by friction brakes and track brakes. NJ Transit will require regular inspections, testing, maintenance and operation of the brake equipment on the SNJLRT vehicle as required by Section 5 of the NJDOT SSPP. Specific operational procedures and inspection testing and maintenance intervals and protocols will be set forth in the SSPP. Therefore, the SNJLRT vehicle brake system will be equivalent to a standard air brake system and thus provide an equivalent level of safety.

NJ Transit is aware that it may obtain exemption from the statutory safety appliance requirements mentioned above only if application of such requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." 49 U.S.C. 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that "other types of railroad equipment might similarly benefit." S. Rep. 96–614 at 8 (1980), reprinted in 1980 U.S.C.C.A.N. 1156, 1164.

FRA has recognized the potential public benefits of temporally separated transit use on segments of the general railroad system. Light rail transit systems "promote more livable communities by serving those who live

and work in urban areas without adding congestion to the nation's overcrowded highways." Policy Statement at 28238. They "take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right-of-way, would be prohibitively expensive." Id. There have been many technological advances in types of equipment used for passenger rail operations, such as the use of light rail transit vehicles that will be used for the SNJLRT System. Light rail transit equipment is energy-efficient for passenger rail operations because it is lighter than conventional passenger equipment. Light rail vehicles are able to quickly accelerate or decelerate, which makes them more suitable than other equipment types in systems with closely-configured stations.

With regard to the regulatory requirements of § 231.14, as discussed above, the SNJLRT vehicles will be equipped with safety appliances that are more appropriate for light rail transit vehicles, thus achieving an equivalent or superior level of safety in the SNJLRT operating environment.

Section 238.113—Emergency Window Exits

Section 238.113 requires passenger cars to have a minimum of four emergency exit windows, either in a staggered configuration or with one located at each end at each side of the car. Each window must have a minimum unobstructed opening with dimensions of 26 inches horizontally and 24 inches vertically. Each emergency exit window must be easily operable without requiring the use of a tool or other implement. This requirement is intended to provide for sufficient, easily accessible avenues of egress from passenger cars in the case of emergency.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicles do not come equipped with emergency exit windows. The cars, however, are designed to permit sufficient equivalent egress so that passengers will not become trapped in the cars in the case of emergency.

Section 238.115(b)—Emergency Lighting

Section 238.115(b)(4) requires passenger cars to provide battery-powered emergency lighting with a 90-minute back-up power system capable of operating without a loss of more than 40% minimum illumination levels in all equipment orientations within 450 of the upright and vertical position, and capable of operating after the initial shock of a collision or derailment resulting from prescribed individually applied accelerations. The purpose of these requirements is to ensure that in an emergency situation, sufficient lighting will remain available to aid passengers, crew members, and rescue personnel to access and leave the train safely.

Justification. NJ Transit requests a waiver of these requirements because power for the emergency lighting is provided by a battery with sufficient capacity to sustain emergency loads, including the above lighting, and radio and public address systems, for a period of at least one hour. Additionally, the battery will have sufficient capacity to sustain power to door controls, propulsion and brake controls, coupler control and the horn and bell for a period of at least one hour. The battery is located in the central power unit, removed from the front of the vehicle where direct collisions may occur. The battery is designed for transit use which requires a rugged design capable of withstanding reasonable shock and vibration. The batteries mountings are designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction and 3.0 g in the vertical direction.

The SNJLRT vehicles will operate in an urban/suburban region and the route is at-grade, with many points of easy access for emergency rescue units from adjacent streets. In most locations, emergency responders can reach the SNJLRT system within 15 minutes. Even on the most remote section of the system, a three-mile stretch along Duck Island, emergency responders could reach the system within sixty minutes. Additionally, the headway between SNJLRT vehicles is no more than thirty minutes and each vehicle has the capability of acting as a rescue car by coupling with a failed unit and moving it to the next stop for detrainment of passengers. The rescuing car can supply sufficient electrical power to the failed vehicle for the emergency lighting and other functions. In the event that the last scheduled vehicle of the day lost power, the previous vehicle would be returned to recover the failed vehicle.

Section 238.203—Static End Strength

Section 238.203 provides for the overall compressive strength of rail passenger cars, requiring them to have a minimum static end strength of 800,000 pounds on a line of draft at the ends of occupied volumes without permanent deformation of the car body structure. This section is intended to prevent sudden, brittle-type failure of the main structure of a passenger car, thereby providing protection of occupants in the case of a crash.

Justification. NJ Transit requests a waiver from this requirement because the SNJLRT vehicle will be designed to attain a sufficient level of safety in the SNJLRT operating environment. The strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Conrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles and similar objects. Relevant aspects of these design standards are described below.

As noted above, the SNJLRT collision avoidance system is at the heart of the SNJLRT safety design. Marked by complementary elements such as operating rules and procedures, train control technology and the SNJLRT signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving SNJLRT vehicles. All signals capable of displaying "stop" aspect will incorporate a trip-stop which will initiate a penalty brake application if a SNJLRT vehicle passes a "stop" signal aspect. Moreover, the SNJLRT vehicle's rapid deceleration design features will work to further reduce the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that do occur.

Above and beyond the crash avoidance features of the SNJLRT System, the SNJLRT vehicles are designed to prevent sudden, brittle-type failure of the main structure of a passenger car. The vehicle design accommodates the actual progression of a failure induced by a sudden collision phenomenon; from the elastic limit, through the plastic limit, to a brittle failure. NJ Transit requires the SNJLRT vehicles to be manufactured to comply with the standards as summarized below:

1. The passenger compartment will be capable of sustaining, without any permanent deformation, at least 1.5 AWO longitudinal loads (approximately 171,000 pounds) applied uniformly at the ends of the passenger compartment, with a uniformly distributed AW4 vertical load (approximately 165,375 pounds).

2. With the vehicle uniformly loaded to AW4, the end sill structure will be capable of: sustaining loads up to the peak collapse load of the crush zone without permanent deformation; sustaining the reaction loads generated from the loads specified for collision posts, corner posts and anti-climbers without permanent deformation; and

distributing the collision loads incurred during scenarios specified for crashworthiness, such that the collapse of the energy absorption elements in the crush zones is the primary failure mode.

3. Vehicles will be capable of withstanding collisions with other SNJLRT vehicles, motor vehicles, or overtravel buffers without unnecessary risk of injury to passengers or excessive damage to SNJLRT cars and/or track equipment. In a collision, no passenger compartment shell will rupture or suffer any opening through which passengers' limbs may protrude; no compartments within the engine compartment will become dislodged and penetrate into the passenger compartment; high voltage devices and associated connecting cables will remain contained and will not create electrical shock hazards to personnel; and electrical and diesel systems will not create a fire hazard.

To achieve the objective of crashworthiness, a crash energy management approach was used as the basis of the SNJLRT vehicle structural design. Further, as it is expected that during peak hours that some passengers will stand, it was deemed important to minimize the deceleration of passengers in the event of a frontal collision. In a collision between a SNJLRT vehicle moving at speed V and a stationary SNJLRT vehicle (i) both consists on level tangent track and unbraked, (ii) couplers fully engaged, (iii) either SNJLRT vehicle either one or two vehicles (i.e. the normal consist for comprising cars normally used in revenue service), and (iv) any SNJLRT vehicle having a weight of AWO (114,600 pounds):

VELOCITY CRASH ENERGY MANAGEMENT

V≤5	No damage to any SNJLRT car or equipment, and the maximum longitudinal acceleration measured in any passenger compartment will not exceed 1.0g.
5<V≥15	Damage confirmed to the expendable energy absorption devices and sacrificial structural members at the ends of the SNJLRT cars, which will be repairable. The primary structure enclosing the passenger compartment(s) will remain intact, with no permanent deformation of any of its members. The maximum longitudinal acceleration measured in any passenger compartment will not exceed 2g.

In addition to the above, the SNJLRT cars have an aggressive emergency deceleration rate of an average of 4.5 mph/sec through all entry speeds. In an impending collision scenario this emergency brake rate capability has the potential to reduce speeds prior to impact.

Section 238.205(a)—Anti-climbing Mechanism

Section 238.205(a) requires locomotives (as defined in § 238.5) to have forward and rear end anti-climbing mechanisms capable of resisting an upward or downward vertical force of 200,000 pounds without failure. These requirements are intended to prevent override or telescoping of one passenger train unit into another in the event of high compressive forces-caused by a derailment or collision.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicle will be designed so that: with only two ribs of the anticlimbing mechanism engaged, and a vertical load of + 40,000 pounds combined with a longitudinal compressive load of AWO applied at the carbody centerline, there will be no permanent deformation of the carbody structure. In addition, crush elements within the couplers are able to absorb a certain amount of energy in recoverable energy absorption elements. When this occurs, the coupler moves back until the anti-climbers of the colliding vehicles touch and the loads are taken by the carbodies directly. Anti-climbers are fitted to the front end of the cars to avoid telescoping.

While individual structural elements will not conform to the requirement of § 238.205(a), the assembled carbody uses "crush zones" and other techniques to protect passengers in the event of collisions. Specifically the SNJLRT vehicle is designed using advanced computer methods to incorporate modern energy absorbing and dissipation methods to dissipate energy and transfer loads and protect the passenger compartment. The anti-climbers and energy absorption mechanisms are designed to limit the potential for override and underride and prevent telescoping. The SNJLRT vehicle design will achieve the uniformity of end structure deformation essential to this objective. Moreover, because the strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of SNJLRT vehicle/Conrail train collisions, there is no need for the SNJLRT vehicles to meet the more stringent requirements applicable to conventional railroad equipment.

Section 238.207—Link Between Coupling Mechanism and Car Body

Section 238.207 requires the link between the car coupling mechanism and the car body to be designed to resist a vertical downward thrust from the coupler shank of 100,000 pounds for any normal horizontal position of the coupler, without permanent deformation. The purpose of this requirement is to avoid a premature failure of the draft system so that the anticlimbing mechanism will have an opportunity to engage.

Justification. NJ Transit requests a waiver from this requirement because the SNJLRT vehicle has its own design features to accomplish the purpose of the requirement. As noted above, the strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Conrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles and similar objects. Relevant aspects of these design standards are described below.

The SNJLRT vehicle will be designed so that the carbody structure supporting the coupler will sustain, without permanent deformation, a load that is equal to 110 percent of the coupler release load (if applicable) or failure load applied at the coupler brackets, with a uniformly distributed AW4 (165,375 pounds) vertical load. In addition, the method of attaching the coupler to the coupler anchor bracket(s) will allow the coupler to become fully released from the coupler anchor bracket(s) once the coupler has absorbed its maximum design energy. The coupler will be contained and prevented from coming in contact with the track or from protruding into the passenger compartment. The coupler and draft gear will withstand an operating consist with an AW3 (154,350 pounds) passenger load, pushing or pulling an unpowered consist with an AW3 passenger load, over all grades and curves on SNJLRT Line, without damage to the coupler.

The intent of the SNJLRT vehicle design is to prevent the coupler shank from contributing to potential damage during a frontal collision. The approach taken is to release the coupler from mechanical connection to the carbody once it has absorbed its maximum design energy. When this occurs the coupler assembly is separated from the coupler anchorage on the car structure. The coupler is retained to prevent it from coming into contact with the track or from protruding into the passenger compartment. This feature is provided to reduce the risk of derailment and penetration of the occupied space.

Section 238.209—Forward-Facing End Structure of Locomotives

Section 238.209 requires the skin of the forward-facing end of each locomotive to be: equivalent to a ½ inch steel plate with a 25,000 pounds per square inch yield strength; designed to inhibit the entry of fluids into the occupied cab area of the locomotive; and affixed to the collision posts or other main vertical structural members so as to add to the strength of the end structure. These requirements are intended to provide protection to persons in the occupied area of the locomotive cab.

Justification. NJ Transit requests a waiver of the requirements in this section because the SNJLRT vehicle will be designed to attain a sufficient level of safety in the SNJLRT operating environment. As noted above, the strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Conrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles, and similar objects. Relevant aspects of these design standards are described below.

As noted above, the SNJLRT collision avoidance system is at the heart of the SNJLRT safety design. Marked by complementary elements such as operating rules and procedures, train control technology, and the SNJLRT signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving SNJLRT vehicles. Moreover, the SNJLRT vehicle's rapid deceleration design features have the potential to mitigate the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that may occur.

In addition, the SNJLRT system provides improved grade crossing protection for the operator, passenger and vehicle through the use of the crossing warning indicators which alert the operator to the gate function and status. These indicators are comprised of lunar white aspects, visible to the vehicle operator from at least a normal service braking distance from the crossing. A flashing indication shall be given at any time when the gates are operating and between fully down and up positions. When the gates are fully down the indication shall be steady. The operator can respond accordingly if a malfunction is observed.

With respect to the specific design of the forward-facing end structure, the SNJLRT vehicle is similar to a push-pull cab configuration. The operator's cab floor height is 44" and the vehicle provides 171,000 pounds of buff strength.

Section 238.211—Collision Posts

Section 238.211 requires locomotives to have two full-height collision posts at each end where coupling and uncoupling are expected. Each collision post must have an ultimate longitudinal shear strength of not less than 500,000 pounds at a point even with the top of the underframe member to which it is attached and a longitudinal shear strength of not less than 200,000 pounds exerted at 30 inches above the joint of the post of the underframe. Alternatively, cars may be constructed with an end structure that can withstand the sum of forces that each collision post is required to withstand. This requirement is intended to provide for protection against crushing of occupied areas of passenger cars in the event of a collision or derailment.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicle will have collision posts, or a structural equivalent, protecting at least the area between the underframe and the bottom of the windshield. NJ Transit believes the SNJLRT vehicle design will provide an adequate measure of safety. The strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Contrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles and similar objects. Relevant aspects of these design standards are described below.

As noted above, the SNJLRT collision avoidance system is at the heart of the SNJLRT safety design. Marked by complementary elements such as operating rules and procedures, train control technology, and the SNJLRT signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving SNJLRT vehicles. Moreover, the SNJLRT vehicle's rapid deceleration design features will work to further reduce the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that do occur.

In order to preclude sudden catastrophic failure or telescoping of SNJLRT cars, all connections which attach collision posts, corner posts and structural shelf to each other and/or the underframe structure and roof structure, will be made in such a manner to develop the full strength of the load bearing members in shear. The ultimate shear strength of the collision posts will be not less than a compression load of AWO (114,660 lbs) applied at the top of the underframe, and at any angle up to ± 15° from the longitudinal axis. A compression load of 0.5 AWO (57,330 lbs) similarly applied 15 inches above the top of the underframe will cause no yielding of the collision posts. MI underfloor, roof mounted and engine compartment equipment weighing more than 200 pounds will be designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction, and 3.0 g in the vertical direction. These loads applied separately will not result in stresses that exceed 90 percent of the yield or buckling strength of the material.

These design requirements provide for the same type of protection of the occupant space as the FRA collision posts requirements, but do so in a way consistent with the design of the SNJLRT vehicle. As noted elsewhere herein, the SNJLRT vehicle is designed using advanced computer methods to incorporate modern energy absorbing and dissipation methods as part of an overall protection system designed to dissipate energy and transfer loads from impacts to protect the passenger compartment. As part of this system, the SNJLRT collision posts provide protection for the occupied volume of the vehicle shell during a collision. Thus, the SNJLRT vehicle effectively isolates passengers and crew from the hazards of penetration.

NJ Transit also notes that a portion of the SNJLRT system alignment consists of street running. To operate safely in this environment the operator requires good visibility to monitor road and pedestrian traffic around the vehicle. Conventional collision post designs may result in visual obstructions for the operator. This improved visibility is

also beneficial when operating on the mainline railroad portion of the route.

Section 238.213—Corner Posts

Section 238.213 requires two full-height corner posts at the end of each vehicle capable of resisting, without failure, a load of 150,000 pounds at the point of attachment to the underframe and a load of 20,000 pounds at the point of attachment to the roof structure. Each corner post must be able to resist a horizontal load of 30,000 pounds applied 18 inches above the top of the floor without permanent deformation. These requirements serve to provide protection to occupant compartments from side-swipe type collisions.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicle will be designed to attain a sufficient level of safety in the SNJLRT operating environment. As noted above, the strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Contrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles, and similar objects. Relevant aspects of these design standards are described below.

As noted above, the SNJLRT collision avoidance system is at the heart of the SNJLRT safety design. Marked by complementary elements such as operating rules and procedures, train control technology and the SNJLRT signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving SNJLRT vehicles. Moreover, the SNJLRT vehicle's rapid deceleration design features will work to further reduce the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that do occur.

The SNJLRT vehicle corner posts will have an ultimate shear strength not less than a compression load of 0.5 AWO (57,330 lbs) applied at the top of the underframe; compression load of 0.3 AWO (3,500 lbs) applied 15 inches above the top of the underframe, or at the level of the structural shelf (whichever is higher), and which when applied in any direction, will cause no yielding of the corner posts. Also, any underfloor, roof mounted, and engine compartment equipment weighing more than 200 pounds will be designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction, and 3.0 g in the vertical direction, and when these loads are applied separately they will not result in stresses that exceed 90 percent of the yield or buckling strength of the material.

Here too, while individual structural elements of the SNJLRT vehicle may not conform to the specific requirements, the assembled carbody uses "crush zones" and other energy absorption and dissipation techniques to protect passengers in the event of collisions. As part of this system, the corner posts extend from the underframe to the roof structure and may be combined with the collision posts and underframe to become part of the end structure. This design effectively isolates passengers and crew from the hazards of penetration, thereby providing protection for the occupied volume of the vehicle shell during a collision.

As noted above, a portion of the SNJLRT system alignment is in streets. To operate safely in this environment, the vehicle operator requires good visibility to monitor road and pedestrian traffic around the vehicle. Conventional corner post designs might result in visual obstructions for the operator. The superior visibility of the SNJLRT vehicle is also beneficial when operating on the railroad corridor portion of the route.

Section 238.215—Rollover Strength

Section 238.215 sets forth the structural requirements intended to prevent significant deformation of the occupant compartments of passenger cars, in the event the car rolls onto its side or roof. Under this section, a passenger car must be able to support twice the dead weight of the vehicle while the vehicle is resting on its roof or side.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT is designed such that the roof will have sufficient strength to support, without permanent deformation, concentrated loads of 250 pounds per person as applied by a person walking on the roof, with a maximum of three persons there at any given time. As noted above, the underfloor, roof mounted and engine compartment equipment weighing greater than 200 pounds will be designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction, and 3.0 g in the vertical direction and, when these loads are applied separately, they will not result in stresses that exceed 90 percent of the yield or buckling strength of the material. With a compression load of 40,000 pounds applied to the side wall at the side sill, and distributed along 8 feet, and a compression load of 10,000 pounds applied to the side wall at the belt rail, there will be no yielding or buckling of the carbody structure.

The features specified above are designed to enhance crashworthiness and protect the occupied volume. The SNJLRT vehicle incorporates a lightweight low floor design, which lowers the center of gravity as well as the load conditions in rollover circumstances. The lower center of gravity makes the SNJLRT vehicle less prone to rollover than a standard commuter rail car. Moreover, in the unlikely event of a rollover, the lighter weight of the SNJLRT car means that the roof does not have to support as much weight as would a standard commuter rail car. In addition, the bulk of the equipment, including the propulsion system and powered truck, is located in the articulated center segment of the vehicle and poses no direct hazard to passengers in the event of a rollover.

In the unlikely event that a derailment leading to a rollover occurs, the SNJLRT vehicle specifications provide for structural protection of the occupant compartments and, in conjunction with the other safety design features of the vehicles, will provide an equivalent measure of safety.

Section 238.217—Side Structure

Section 238.217 sets strength requirements for side posts and corner braces. This section also requires that outside sheathing of mild, open-hearth steel, when used flat and without reinforcement in certain side frames, be no less than ⅛-inch nominal thickness. When sheathing used for truss construction serves no load-carrying function, the minimum thickness is 40 percent of ⅛-inch nominal thickness. These specifications are intended to provide for additional structural protection, so that a car will derail before it collapses into the occupant compartments.

Justification. NJ Transit requests a waiver of these requirements because the SNJLRT vehicle is designed so that with a compression load of 40,000 pounds applied to the side wall at the side sill, and distributed along 8 feet, and a compression load of 10,000 pounds applied to the side wall at the belt rail, there will be no yielding or buckling of the carbody structure. The approach used in designing the SNJLRT aluminum carbody vehicle involved minimizing weight while providing maximum protection for passengers, consistent with the service requirements. The floor level and design of the SNJLRT vehicle likely will prove superior to the typical low floor light rail vehicle in side impact collisions at

grade crossings. The low floor portion of the car is 22" above top of rail, which is higher than a typical low floor vehicle. This affords better protection for the rail passenger should a highway vehicle strike it. The vehicle also has a well-lit interior and external indicator and marker lights, and will therefore be more conspicuous than a regular commuter or freight train.

Additionally, the relatively short train length [typically 102.5 feet (one car), with a maximum of 205 feet (two cars)] ensures that the vehicle will not obstruct a grade crossing for an extended time period. This, in conjunction with constant warning time crossing protection, will encourage observation of grade crossing warnings.

Section 238.221—Glazing

Section 238.221 reiterates the safety glazing standards of 49 CFR part 223 and establishes standards for glazing securement components. The new requirements for glazing securement are designed to ensure that the glazing frame be capable of holding the glazing in place against all forces which it is required to resist under part 223, and forces created by air pressure differences caused when two trains pass at their authorized maximum speeds in opposite directions at the minimum track separation for two adjacent tracks. Glazing forced from the window opening is a potential hazard. Proper securement of glazing assists in retaining persons within the vehicle in the event of a collision or derailment.

Justification. SNJLRT vehicles will meet the window securement requirements so no waiver is sought relative to that requirement. NJ Transit has already stated a basis for a waiver request for the remaining provisions as noted under part 223.

Section 238.223—Fuel Tanks

This section provides for the structural requirements applicable to external and internal fuel tanks. External fuel tanks must comply with Association of American Railroads (AAR) recommended practice 506, Performance Requirements for Diesel Electric Locomotive Fuel Tanks, or an industry standard providing at least equivalent safety. Internal fuel tanks must be positioned to reduce the likelihood of accidental penetration from roadway debris or collision. The vent system and spill protection systems must be designed to prevent them from becoming a path for fuel loss for any tank orientation due to a locomotive overturning. The bulkheads and skin must have a minimum steel plate ⅜ of an inch thick with a 25,000 pound yield strength, or be made with a material with an equivalent strength. These requirements are designed to keep the fuel tank from being punctured and from being a conduit for fuel spillage if a locomotive tips over.

Justification. NJ Transit requests a waiver of these requirements because the SNJLRT vehicle will have an internal fuel tank and filler pipes that will be protected from the passenger compartment by fire barrier material, and which will be properly insulated to prevent fire danger. The fuel tank will be constructed and located in a manner that will permit filling and draining from the outside of the vehicle only. Filler pipes will be equipped to complement filler hoses fitted with dry-break mechanical interlocks. The SNJLRT vehicle will be equipped with a safety cut-off device directly on the fuel line to the diesel engine which meets the requirements stated within the FRA locomotive safety standards, 49 CFR 229.93, Internal Combustion Equipment, Safety Cut-off Device. The fuel tanks, engine and propulsion equipment are located in the drive unit positioned in the center of the articulated vehicle. The main fuel tank is located above the floor, and two additional fuel tanks are located within the side frame under the floor. The fuel tank was designed in accordance with UC Standard 627, and will comply with the requirements of FHWA motor carrier safety standards for fuel systems, 49 CFR 393.67. Refueling is done without pressure and there are level sensors to protect against overspilling.

The fuel tank design ensures that the passenger compartment is isolated from the fuel tanks and engine. The central placement of the drive unit provides significant protection for fuel storage and piping system. The fuel tanks are located above the floor line or between the side frame rails. The drive unit structure protects fuel storage and piping.

During a derailment the carbody structure is more likely to come into contact with the rails than the fuel tanks. Therefore it is unnecessary to supply the heavy bulkhead ends required by the AAR recommended practice 506. In addition, as part of the final design process, the SNJLRT Contractor will complete a full safety review of the fuel tanks and systems to demonstrate that the design is safe and meets appropriate sections of FHWA motor carrier fuel tank standards set forth at 49 CFR part 393. This design meets FRA safety objectives, but in a manner more appropriate to the SNJLRT vehicle and its operation.

Section 238.233—Interior Fittings and Surfaces

Section 238.233 requires each seat in a passenger car to be securely fastened to the carbody so as to withstand individually applied acceleration of 4g acting in the vertical and in the lateral direction on the deadweight of the seat (or seats if a tandem unit). Seat attachments must have an ultimate strength capable of resisting a longitudinal inertial force of 8g acting on the mass of the seat plus the impact force of the mass of an unrestrained 95th percentile male occupant striking the seat from behind when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds. This section also requires overhead racks to provide longitudinal and lateral restraint for stowed articles and be attached to the car body with sufficient strength to resist loads due to a longitudinal force of 8g, a vertical force of 4g and a lateral force of 4g. Other interior fittings must meet the same strength requirements. In addition, to the extent possible, all interior fittings in the passenger car are to be recessed or flush-mounted, and sharp edges and corners in the locomotive cab or passenger car will be either avoided or padded. Floor mounted seats provided for a crew member assigned to occupy the cab of a locomotive must be capable of withstanding the same load limits as required for overhead storage racks, with the mass being that of the seat and a 95th-percentile male crew member. These requirements are designed to reduce the likelihood and severity of injury to train occupants caused by the dislodging of seats or other interior items, or by occupants striking interior items in the event of an accident.

Justification. NJ Transit requests a waiver of these requirements because the seats and interior fittings of the vehicle have been designed for the SNJLRT operating environment. The vehicle is designed such that the passenger seat will consist of a cantilevered supporting structure, shell and cushion inserts for the seat and back. The vehicle seats are cantilevered from the side of the car, which permits placement of luggage beneath the seats. Aspects of this regulation are more appropriate to an intercity vehicle where luggage accompanies most passengers. This vehicle is used in local service where luggage is typically limited to small carry-on items such as purses, attache cases, etc. There is adequate space beneath the cantilevered seats to permit stowage of larger pieces

of luggage, which limits the use of the overhead racks.

The vehicle interior will provide recess or flush-mounted fittings, and readily accessible stanchions and grab rails for passenger safety and comfort. Stanchions and grab rails will be sized and located to provide optimum arrangement for all passengers. They will be of a color distinguishable by the partially sighted. Windscreens will be provided adjacent to each doorway, with at least the upper half transparent, and will incorporate a stanchion extending from the windscreen to the SNJLRT car ceiling. This vehicle also provides more floor space for passenger circulation than an intercity or commuter rail car due to its service characteristics.

It is also important to note that the proposed seat attachment strength requirements are a function of the proposed 800,000 pound compression strength requirement. Because the SNJLRT vehicles, however, have different compression strength values, it is not necessary for the SNJLRT car to meet the proposed 8g/4g force resistance requirements. In the SNJLRT vehicles, the provision of crashworthiness features will prevent acceleration in the passenger compartment from reaching such levels. Rather, the limit for collisions up to 15 mph is 2g. Moreover, the high emergency brake rate will mean that most collisions will be at a lower speed than would be the case with conventional commuter rail cars.

Section 238.235—Doors

Section 238.235 provides that each passenger must have a minimum of two exterior side doors, with each door providing a minimum clear opening of 30 inches horizontally and 74 inches vertically. This section also provides for the availability of override devices enabling the opening of doors without power from both the inside and outside of the cars without the use of a tool or other implements.

Justification. NJ Transit requests a waiver of these requirements because the SNJLRT vehicle is designed with an emergency release lever on the inside of each doorway and for at least one doorway per side on the outside of the vehicle. This will enable a closed and interlocked door to be lock-released without power supply. Activation of the emergency release levers will allow the door levers to be manually moved. The interior emergency door release levers will be clearly marked and will be in a location accessible to all passengers, consistent with ADA requirements.

The SNJLRT vehicle will have doorways on both sides to permit egress time of an AW2 load in less than 120 seconds. The passenger doorways are two-panel sliding plug type and flush with carbody in the closed position. They are opened and closed pneumatically and provide direct access from the platform to the car interior. There is no vestibule with secondary door access through a partition to the passenger compartment. The clear opening is 52.38 inches. The car has two doors per side in the low floor area. This door configuration permits evacuation of an AW2 (67 Tons—180 Passengers) car from either side in 100 seconds. Also, with regard to access, all windows can be safely shattered to provide additional access/egress locations.

Section 238.237—Automated Monitoring

Section 238.237 requires that controlling locomotives have working alerters. The alerter timing must be set by the operating railroad taking into consideration maximum train speed and signal system capabilities. Under this section, the working alerter must initiate a penalty brake application if the train operator does not respond to the alerter. If the alerter fails en route a second qualified person will be stationed in the cab or the operator will be in constant communication with a second crew member until the train reaches the next terminal. These requirements are intended to prevent a train collision or derailment due to the inattention or incapacity of the train operator, that would result in loss of control of the train.

Justification. NJ Transit requests a waiver from these requirements because the SNJLRT vehicle is equipped with its own controller and audible alerter features to provide an equivalent level of safety. If a vehicle operator fails to respond to an alerter approximately every 30 seconds, the vehicle goes into an immediate penalty brake application. A keyed control switch will be provided, which is interlocked such that only the master controller at the front end of the lead SNJLRT car of a consist is operable. The braking demand of the master controller and braking handle always has priority over the motoring demand. The drive control unit controls and supervises the protective functions of the propulsion converter.

In addition to the master controller, redundant safety systems are provided. For example, the vehicle is also controlled by enforce-stop devices which initiate a brake application if the vehicle fails to respond to signal commands. Also, an emergency stop push-button will be provided such that, when pushed, it will activate the emergency brakes. It will be possible to activate the emergency stop push-button from any console in a consist. Finally, the SNJLRT service route involves frequent station stops in signaled territory under control of a dispatcher.

Section 238.301—Inspection, Testing and Maintenance

Subpart D of part 238, §§ 238.301 through 238.319, contains requirements pertaining to the inspection, testing, and maintenance of the passenger equipment and systems required for Tier 1 passenger equipment. These requirements are designed to ensure that passenger rail operations are conducted only on vehicles whose components and systems are in good working order, thereby reducing both the chances of an equipment-related accident and the severity of damage or injury in the case of an accident.

NJ Transit anticipates being in compliance with the requirements of subpart D. However, NJ Transit requests a waiver of any requirements that correlate to the subpart B or C standards from which NJ Transit has sought waivers to depart. SNJLRT equipment will be subject to a detailed program of inspection, testing and maintenance, as required by the NJDOT SSPS and the SNJLRT SSPP. Specifically, § 5.1.5. of the NJDOT SSPS requires the SSPP to provide for periodic and as needed maintenance, inspection, and testing of equipment and facilities, as well as training and certification of employees in safety-sensitive positions. The SNJLRT SSPP will address these issues in detail, setting forth specific inspection maintenance and testing schedules and protocols for all major equipment, components, and systems.

Part 239—FRA Requirement and Purpose

Part 239 contains standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. It is intended that by providing sufficient emergency egress capability and information to passengers and by having emergency preparedness plans calling for coordination with local emergency response officials, the risk of death or injury to passengers, employees and others in the case of accidents or other incidents, will be lessened. This rule was adopted as a result of several serious crashes involving commuter trains.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT system will be operated in accordance with the emergency

preparedness specifications of the SNJLRT SSPP, under the oversight of the NJDOT's State Safety Oversight Program. The SSPP sets forth procedures and requirements dealing with emergency situations tailored to the SNJLRT system, but which also draw on the experience of emergency preparedness standards from other rail transit systems whose operations and equipment more closely resemble the SNJLRT system than FRA-regulated commuter rail systems. Section 5.1.4.1 of the NJDOT SSPS requires NJ Transit to adopt an emergency response plan and procedures which must include a means to communicate and coordinate with external emergency response agencies, and provide for emergency simulations and drills, and training. Section 9 of the SSPS, Security, requires the SSPP to contain Emergency Operating Procedures to deal with a variety of emergency situations, including accidents, natural disasters, and sabotage or other criminal activities. The SNJLRT SSPP will contain a detailed emergency response plan which will provide for contingency planning for passenger evacuation and crowd control coordination and training and simulation drilling with outside emergency response providers. The emergency response plan will also specify required emergency equipment.

In addition to emergency response planning required by §§ 5 and 9 of the SSPS, the SSPS requires NJ Transit to engage in a process by which hazards occurring in operations, maintenance, and engineering are identified and categorized according to severity and likelihood. Resolutions to reduce hazards to the lowest level practicable must then be considered. See SSPS, § 7, Exhibit C. This process will help the SNJLRT contractor to develop the emergency response plan, including the design, in advance, of processes for handling exceptions to established procedures where situations require them. A hazard resolution matrix will be included in the SSPP.

In addition, the Safety Committee will address emergency preparedness issues and provide coordination between NJ Transit, the SNJLRT Contractor, Conrail and local emergency response agencies. The NJDOT, as part of its oversight activities, will be responsible for investigation of accidents and other emergency situations.

These emergency preparedness standards will provide a level of safety equivalent to the FRA requirements in a manner more appropriate to the SNJLRT operating environment.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with either the request for a waiver of certain regulatory provisions or the request for an exemption of certain statutory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA 1999–5987) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, D.C. on August 10, 1999.

Michael Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 99–21777 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 22, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 17, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12316–N	RSPA–1999–6014	The Dow Chemical Co., Channahon, IL.	49 CFR 177.834(i)(3)	To extend the 25 feet attendance requirement for loading of cargo tanks containing various classes of hazardous materials. (mode 1)
12317–N	RSPA–1999–6016	Archimica, Gainesville, FL	49 CFR 173.243(c)	To authorize the transportation in commerce of Class 3 material in DOT–57 portable tanks not presently authorized. (modes 1, 3)
12319–N	RSPA–1999–6015	BFI, Atlanta, GA	49 CFR 178.503(a)(9)(ii)	To authorize the transportation in commerce of 1H2 containers that have not been properly marked and labelled for reuse in transporting regulated medical waste. (mode 1)
12324–N	RSPA–1999–6051	STC Technologies, Inc., Bethelem, PA.	49 CFR 171.11(d)(14), 171.12(b)(17), 173.301(e) & (f), 173.304(a)(1) & (a)(3).	To authorize the one-time transportation in commerce of a specially designed device containing small quantities of Division 2.1 gases. (modes 1, 2, 3, 4)
12325–N	RSPA–1999–6099	Lifeline Technologies, Inc., Sharon Hill, PA.	49 CFR 174.67	To authorize an alternative monitoring system during unloading of various hazardous materials without the physical presence of an unloader. (mode 2)
12327–N	RSPA–1999–6100	International Federation of Inspection Agencies, Houston, TX.	49 CFR 176.3(a)(1)(i), 176.3(b)(4).	To authorize the transportation in commerce of Packing Group 1 material in non-bulk glass containers. (mode 1)

[FR Doc. 99–21787 Filed 8–20–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before September 7, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 17, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
7277–M		Structural Composites Industries Pomona, CA.[1]	7277
9649–M		Department of Defense (MTMC) Falls Church, VA.[2]	9649
10180–M		Fireboy-Xintex Grand Rapids, MI.[3]	10180
10672–M		Burlington Packaging, Inc. Brooklyn, NY.[4]	10672
10945–M		Structural Composites Industries Pomona, CA.[5]	10945
11215–M		Orbital Sciences Corporation Dulles, VA.[6]	11215
11436–M		B&R Specialties, Inc. Staatsburg, NY.[7]	11436
11827–M		NRS America, Inc. White Plains, NY.[8]	11827
11856–M	RSPA–1997–2530	Olin Corporation/Motorola Corporation Norwalk, CT/Chandler, AZ.[9]	11856
11942–M	RSPA–1997–2898	Nildor Chemical Company Long Beach, CA.[10]	11942
11990–M	RSPA–1997–3096	Taylor-Wharton Coyne Huntsville, AL.[11]	11990
12310–M	RSPA–1999–5961	Five Star Waste, Inc. Lake Worth, FL.[12]	12310

[1] To modify the exemption to authorize cargo vessel as an additional mode of transportation for the transportation of Division 2.1 materials in non-DOT specification fiber reinforced plastic composite cylinders.

[2] To modify the exemption to include Competent Authority Approval language for international shipping purposes of limited quantity Class 7 materials.

[3] To modify the exemption to authorize an additional Division 2.2 material in DOT Specification 39 cylinders.

[4] To modify the exemption to allow for polyethylene bottles, not exceeding 32 ounces in capacity, in multiple or individual containers for shipment of liquid and solid hazardous materials.

[5] To modify the exemption to authorize cargo vessel as an additional mode of transportation for the transportation of Division 2.1 materials in non-DOT specification fiber reinforced plastic full composite cylinders.

[6] To modify the exemption to include new operations origination points and flight path changes for the transportation of certain hazardous materials contained in a rocket configuration secured beneath a L–1011 aircraft.

[7] To modify the exemption to authorize less than 3 mil. red bags so long as it meet tear-resistance and impact resistance tests for use in the transportation of regulated medical waste.

[8] To modify the exemption to add Intermediate Bulk Containers (IBCs) as authorized packaging for the transportation of various classes of hazardous materials.

[9] To modify the exemption to allow for the addition of a satellite launch "separation system" device classed as Division 1.4C.

[10] To modify the exemption to authorize an additional Division 6.1, Hazard Zone B liquid PIH material in DOT specification 4BW cylinders.

[11] To modify the exemption to allow for design changes of non-DOT specification cylinders for the transportation of certain Division 2.1, 2.2 and Class 3 materials.

[12] To reissue the exemption originally issued on an emergency basis for the transportation of regulated medical waste in non-DOT specification containers.

[FR Doc. 99–21788 Filed 8–20–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 18, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 22, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0156.
Form Number: ATF F 2987 (5210.8).
Type of Review: Extension.
Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars or Cigarettes.

Description: ATF F 5210.8 is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the United States. The form identifies the taxpayer, cigars or cigarettes by tax class a certification by a U.S. Customs official as to the amount of shipment, and that the shipment has been released to the United States.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 150 hours.

OMB Number: 1512–0167.
Form Number: ATF F 3072 (5210.14).
Type of Review: Extension.
Title: Transportation in Bond and Notice of Puerto Rican Tobacco Products, Cigarette Papers and Tubes.

Description: ATF F 3072 (5210.14) is used to document the shipment of taxable products brought into the United States in bond from Puerto Rico. The form documents certification by ATF to account for the tax liability as well as any adjustments assessed to the bonded licensee. The form also describes the shipment and identification of licensee who receives the products.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1512–0199.
Form Number: ATF F 5110.30.
Type of Review: Extension.
Title: Drawback on Distilled Spirits Exported.

Description: ATF F 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the United States (US). The form describes the claimant, spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1512–0214.

Form Number: ATF F 5110.74.

Type of Review: Extension.

Title: Application and Permit Under U.S.C. 5181—Alcohol Fuel Producer.

Description: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration where required. The form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production and amount of spirits to be produced.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 734.

Estimated Burden Hours Per Respondent: 1 hour, 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,321 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–21764 Filed 8–20–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–9; OTS Nos. H–3478 and 14863]

IGA Federal Savings, Feasterville, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on August 12, 1998, the Director, Office of Examination & Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of IGA Federal Savings, Feasterville, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: August 12, 1999.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 99–21839 Filed 8–20–99; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition Determinations

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Adriaen de Vries, Imperial Sculptor" imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at The J. Paul Getty Museum, Los Angeles, California, from on or about October 12, 1999 to on or about January 9, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jacqueline H. Caldwell, Assistant General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: August 18, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–21791 Filed 8–20–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 64, No. 162
Monday, August 23, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 91N–0281]

RIN 0910–AZ17

General and Plastic Surgery Devices; Effective Date of Requirement for Premarket Approval of the Silicone Inflatable Breast Prosthesis

Correction

In rule document 99–21508, beginning on page 45155, in the issue of Thursday, August 19, 1999, make the following correction:

On page 45156, in the first column, in the **EFFECTIVE DATE:** section, "August 18, 1999" should read "August 19, 1999".

[FR Doc. C9–21508 Filed 8–20–99; 8:45 am]
BILLING CODE 1505–01–D

, make the

st column, in
, "August 18,
19, 1999".
-99; 8:45 am]

federal register

Monday
August 23, 1999

Part II

Environmental Protection Agency

40 CFR Part 130
Proposed Revisions to the Water Quality Planning and Management Regulation; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 130

[FRL–6424–2]

RIN 2040–AD36

Proposed Revisions to the Water Quality Planning and Management Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today's action revises, clarifies and strengthens the Environmental Protection Agency's (EPA) current regulatory requirements for establishing Total Maximum Daily Loads (TMDLs) under the Clean Water Act (CWA). Today's proposed rule will provide States, Territories and authorized Tribes with the necessary information to identify impaired waters and to establish TMDLs to restore water quality. Today's proposed rule clarifies and strengthens how TMDLs are established so they can more effectively contribute to improving the nation's water quality. Through this proposal, State, Territorial and authorized Tribes can tailor their water quality programs to address the characteristics, problems, risks, and implementation tools available in individual watersheds, with meaningful involvement of stakeholders in the local community. Also in today's **Federal Register**, EPA is proposing a companion rule amending NPDES and water quality standards regulations to better support establishment of TMDLs.

DATES: Comments on this proposal must be submitted on or before October 22, 1999. Comments provided electronically will be considered timely if they are submitted by 11:59 P.M. (Eastern time) October 22, 1999.

ADDRESSES: Send written comments on the proposed rule to the Comment Clerk for the TMDL Program Rule, Water Docket (W–98–31), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

For information on Filing comments, see "Additional Comment Information" in **SUPPLEMENTARY INFORMATION.**

A copy of the supporting documents cited in this proposal is available for review at EPA's Water Docket; Room EB–57 (East Tower Basement), 401 M Street, SW, Washington, DC 20460. For access to docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. An electronic version of this proposal will be available via the Internet at: <http://www.epa.gov/OWOW/tmdl/index.html>.

FOR FURTHER INFORMATION CONTACT: Hazel Groman, U.S. EPA, Office of Wetlands, Oceans and Watersheds (4503F), 401 M St., S.W., Washington, D.C. 20640, (202) 401–4078.

SUPPLEMENTARY INFORMATION:

Authority: Clean Water Act Sections 106, 205(g), 205(j), 208, 303, and 305.

Additional Comment Information

EPA requests that commenters submit any references cited in their comments. EPA also requests that commenters submit an original and 3 copies of their written comments and enclosures. Commenters that want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form on encryption. Electronic comments must be identified by the docket number W–98–31, and may be filed online at many Federal depository Libraries. No confidential business information (CBI) should be sent via e-mail.

ENTITIES POTENTIALLY REGULATED BY THE PROPOSED RULE

Category	NAICS Codes	SIC Codes	Examples of potentially regulated entities
State, Local, Tribal Government	N/A	N/A	States, Territories, and authorized Tribes.
Federal Government	N/A	N/A	EPA.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 130.20 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

A. Background

1. What Are the Current Statutory and Regulatory Requirements for Identifying Waterbodies That Require TMDLs and Establishing TMDLs?

The CWA includes a number of programs aimed at restoring and maintaining water quality. These include national technology-based effluent limitation guidelines; national water quality criteria guidance; State, Territorial and authorized Tribal water quality standards; State, Territorial and authorized Tribal nonpoint source management programs; funding provisions for municipal wastewater treatment facilities; State, Territorial and authorized Tribal water quality monitoring programs; and the National Pollutant Discharge Elimination System (NPDES) permit program for point sources. These programs have produced significant and widespread improvements in water quality over the last quarter-century, but many waterbodies remain impaired by one or more pollutants. For example, the National Water Quality Inventory Report to Congress for 1996 indicates that of the 19 percent of the Nation's rivers and streams that have been assessed, 35 percent of these do not fully support water quality standards or uses and 8 percent of these are threatened. Of the 72 percent of estuary waters assessed, 38 percent are not fully supporting water quality standards or uses and 4 percent are threatened. Of the 40 percent of lakes, ponds, and reservoirs assessed (not including the Great Lakes), 39 percent are not fully supporting water quality standards or uses and 10 percent are threatened.

The goal of establishing TMDLs is to assure that water quality standards are attained and maintained. Section 303(d) of the CWA requires States, Territories and authorized Tribes to identify and establish a priority ranking for waters

for which existing pollution controls are not stringent enough to attain and maintain State, Territorial and authorized Tribal water quality-standards, establish TMDLs for those waters, and submit, from time to time, the list of waters and TMDLs to EPA. Section 303(d) requires EPA to review and approve or disapprove lists and TMDLs within 30 days of the time they are submitted. If EPA disapproves a list or a TMDL, EPA must establish the list or TMDL for the State, Territory or authorized Tribe.

EPA issued regulations governing identification of impaired waters and establishment of TMDLs, at 40 CFR 130.7, in 1985 and revised them in 1992. The current regulations provide that:

- State, Territorial and authorized Tribal lists must include those waters for which more stringent effluent limitations or other pollution controls (e.g., best management practices) required by local, State, or Federal authority are not stringent enough to attain and maintain applicable water quality standards;
- State, Territorial and authorized Tribal lists must be submitted to EPA every two years, on April 1 of every even-numbered year;
- The priority ranking for listed waters must include an identification of the pollutant or pollutants causing or expected to cause the impairment and an identification of the waterbodies targeted for TMDL development in the next two years;
- States, Territories and authorized Tribes, in developing lists, must assemble and evaluate all existing and readily available water quality-related data and information;
- States, Territories and authorized Tribes must submit, with each list, the methodology used to develop the list and provide EPA with a rationale for any decision not to use any existing and readily available water quality-related data and information; and
- TMDLs must be established at levels necessary to implement applicable water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

Existing regulations define a TMDL as a quantitative assessment of a water quality problem. The TMDL specifies the amount of a particular pollutant that may be present in a waterbody, allocates allowable pollutant loads among sources, and provides the basis for attaining or maintaining water quality standards. TMDLs are established for waterbody and pollutant combinations for waterbodies impaired by point sources, nonpoint sources, or a combination of both point and nonpoint sources.

Indian Tribes may be authorized to establish TMDLs for waterbodies within their jurisdiction. To date, however, no Tribe has sought or received CWA authority to establish TMDLs.

2. What Was the TMDL Federal Advisory Committee Act (FACA) Committee and What Did It Do?

In November 1996, EPA established a Federal Advisory Committee Act Committee (FACA Committee) to provide recommendations on improving regulations and guidance for identifying impaired waterbodies and establishing TMDLs. EPA charged the FACA Committee, a subgroup of the National Advisory Council for Environmental Policy and Technology, with recommending ways to improve the effectiveness and efficiency of State, Territorial, Tribal and EPA efforts to identify waterbodies for which TMDLs must be established and the way in which TMDLs are established. EPA asked the FACA Committee to provide advice on new policy and regulatory directions for TMDLs, including their role in watershed protection, the identification of impaired and threatened waterbodies, the pace of TMDL establishment, the science and tools needed to support the establishment of TMDLs and the roles and responsibilities of States, Territories, Tribes and EPA in establishing TMDLs.

The 20 FACA Committee members were a geographically balanced and highly motivated group of individuals with diverse interests in, knowledge of, and broad perspectives on TMDLs. Members included State and local officials, a Tribal consortium representative, farmers, a forestry representative, environmental advocacy group representatives, industry representatives, a law professor, the executive director of a watershed management council, and an environmental consultant. Members came from both the public and private sectors, and each brought to the committee diverse professional expertise, including law, science, public policy, management, public advocacy, and engineering. Representatives of the United States Department of Agriculture's Natural Resources Conservation Service and Forest Service, and EPA's Office of Water served as *ex officio* members of the FACA Committee.

The FACA Committee completed its deliberations in May 1998 and submitted its final report to EPA on July 28, 1998. The FACA Committee's final report includes over one hundred and sixty recommendations for improving government efforts to identify impaired waters and establish TMDLs.

B. Summary of the Proposed Rule

1. What Is the Purpose of Today's Proposed Rule?

The purpose of today's proposed rule is to clarify and strengthen how TMDLs are established so they can more effectively contribute to improving the nation's water quality. Through this proposal, EPA intends to provide clear regulatory requirements that are consistent with State, Territorial and authorized Tribal water quality programs, in particular State, Territorial and authorized Tribal watershed approaches to water quality management. Under these approaches, water quality programs can be tailored to the characteristics, problems, risks, and implementation tools available in individual watersheds, with meaningful involvement stakeholders in the local community.

In developing the proposal, EPA has carefully examined the recommendations of the FACA Committee, as well as recommendations proposed to EPA by interested stakeholders, including State and local governments, other Federal agencies, environmental advocacy organizations, industry, agriculture, and citizens. This proposal also reflects the lessons learned by EPA and the States since 1992, when this regulation was last revised.

Pursuant to section 518(e) of the CWA, EPA is authorized to treat an Indian Tribe in the same manner as a State for purposes of establishing lists of impaired waters and TMDLs. Section 130.6(d) of EPA's water quality planning and management regulations provides that a federally-recognized Indian Tribe is eligible for treatment as a State for purposes of that rule if (1) The Tribe has a governing body capable of carrying out substantial governmental duties and powers; (2) the functions to be exercised by the Tribe pertain to the management and protection of water resources which are held by a Tribe, by the United States in trust for Indians, by a member of a Tribe if such property is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and (3) the Tribe is reasonably expected to be capable of carrying out the functions to be exercised consistent with the terms and purposes of the CWA and applicable regulations.

Today, EPA is clarifying that it interprets § 130.6(e) as implementing section 518(e) for purposes of allowing Indian Tribes to apply to EPA for authority to establish lists of impaired waters and TMDLs pursuant to section 303(d) of the CWA. Accordingly, if a

federally-recognized Indian Tribe can demonstrate to EPA that it meets the test contained in § 130.6(d) for purposes on the TMDL program, EPA will authorize it to establish lists of impaired waters and TMDLs for reservation surface waters over which the Tribe has jurisdiction.

EPA interprets the term "reservation" in § 130.6(d)(3) in light of Supreme Court case law, including *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S.Ct. 905, 910 (1991), in which the Supreme Court held that a "reservation" includes trust lands that have been validly set apart for the use of a Tribe even though the land has not been formally designated as a reservation. See 56 FR 63881.

In applying to EPA for authority to establish lists of impaired waters and TMDLs, Tribes are to follow the application requirements contained in § 131.8(b) of EPA's water quality standards regulations. In reviewing such applications, EPA will follow the procedures contained in § 131.8(c). In the final rule, EPA is considering revising language in § 131.8(b) and (c) to clarify that they apply to treating Tribes in the same manner as States for § 303(d) lists and TMDLs, as well as water quality standards. (See revised § 131.8(b) and (c) in docket.) EPA requests comments on this approach.

Under today's proposed rule, in order to be treated in the same manner as a State, an Indian Tribe would need adequate authority over the waters for which it seeks to establish lists and TMDLs. The jurisdiction of Indian Tribes generally extends "over both their members and their territory." *United States* v. *Mazurie*, 419 U.S. 544, 577 (1975). However, Indian reservations may include lands owned in fee by nonmembers. "Fee lands" are privately owned by nonmembers and title to the lands can be transferred without restrictions. The Supreme Court, in *Montana* v. *U.S.*, 450 U.S. 544, 565–66 (1981), noted that tribes may have authority over nonmember activities on reservation fee lands in certain circumstances, including when the nonmember conducts "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Indian tribes."

EPA addressed the *Montana* test in the 1991 preamble to the Agency's final rule regarding tribal water quality standards programs under the CWA. In that 1991 preamble, in view of some judicial uncertainty at that time regarding the degree of impacts necessary to satisfy the *Montana* test, EPA established an "operating rule" that requires tribes seeking eligibility to set water quality standards governing activities of nonmembers on fee lands to show that the effects are "serious and substantial." 56 FR 64878. EPA noted that "[t]he choice of an Agency operating rule containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard *per se*." Since 1991, however, the Supreme Court has reaffirmed *Montana's* impacts test verbatim without addressing the need for "serious" or "substantial" impacts. *E.g. Strate* v. *A–1 Contractors*, 117 S.Ct 1404 (1997); *South Dakota* v. *Bourland*, 508 U.S. 679 (1993). While not required to do so, as a matter of policy EPA will continue to look to see whether serious and substantial impacts exist when evaluating tribal authority under the *Montana* test.

In *Strate*, 117 S.Ct. At 1414, the Supreme Court made clear that *Montana* remains the controlling standard for evaluating tribal authority over nonmember activities in fee lands. The Court emphasized in *Strate* that the purpose of *Montana's* impacts test is to insure that Tribes retain their powers of self-government. EPA believes that protecting the public through environmental protection programs from serious and substantial effects on health and welfare is a core governmental function whose exercise is critical to self-government. See 56 FR 64879.

Whether an Indian Tribe has jurisdiction over activities of nonmembers on fee lands will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances. The Agency believes, however, that the activities covered by the TMDL program generally have the potential for direct impacts on human health and welfare that are serious and substantial. See 56 FR 64878. EPA's approach to evaluating tribal jurisdiction on fee lands was recently upheld by the Ninth Circuit Court of Appeals in *Montana* v. *EPA*, 137 F 3d 1135 (9th Circuit), cert. Denied, 119 S.Ct. 275 (1998).

The process that the Agency will use for Indian Tribes seeking to demonstrate their authority over nonmembers on the fee lands for the TMDL program includes a submission of a statement under § 131.8(b) explaining the legal basis for the applicant Indian Tribe's authority. The Indian Tribe must explicitly assert and demonstrate jurisdiction, i.e., show that activities covered by the TMDL program conducted by nonmembers on fee lands could lead to water quality impairments that have impacts on the health, welfare, economic security or political integrity of the Indian Tribe and its members that are serious and substantial. However, EPA will also rely on its generalized findings regarding the relationship of activities regulated under water quality programs and impacts to Tribal health, welfare, economic security or political integrity. See 56 FR at 64878 and 64879.

Under § 131.8(c)(2)(ii), appropriate governmental entities (i.e., States, Tribes and other Federal entities located contiguous to the reservation of the Tribe that is applying for treatment in the same manner as a State) will be provided notification of and an opportunity to comment on the Indian Tribe's jurisdictional assertions prior to EPA's action on the Indian Tribe's application. EPA will seek to make its notification sufficiently prominent to inform local governmental entities, industry and the general public, and will advise interested parties to direct comments on tribal jurisdiction to appropriate governmental entities.

The Agency recognizes that jurisdictional disputes between Indian Tribes and States can be complex and difficult and that it may, in some circumstances, be most effective to address such disputes by attempting to work with the parties in a mediative fashion. However, EPA's ultimate responsibility is protection of human health and the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection.

2. What Are the Key Changes the Proposed Rule Makes to Existing Regulatory Requirements?

Below is a summary of the key changes to the existing regulatory requirements that are being proposed today:

- Revised definitions of TMDL, wasteload allocation, and load allocation;
- Definitions of impaired waterbody, threatened waterbody, pollution, pollutant, reasonable assurance and waterbody that clarify EPA's existing interpretation of these terms;
- A new requirement for a more comprehensive list and a new format for the list;
- A new requirement that States, Territories and authorized Tribes establish and submit schedules for establishing TMDLs for all waterbodies impaired or threatened by pollutants;
- A new requirement that the listing methodologies developed by States, Territories and authorized Tribes be more

specific, subject to public review, and submitted to EPA on January 31 of every [second], [fourth] or [fifth] year;

- A possible change in the listing cycle so that States, Territories and authorized Tribes submit lists to EPA on October 1 of every [second], [fourth] or [fifth] year beginning in the year 2000;
- Clarification that TMDLs include 10 specific elements;
- A new requirement for an implementation plan as a required element of a TMDL; and
- New public participation requirements.

Today's proposed rule language encompasses all of 40 CFR part 130 even though EPA is not proposing to revise most of the existing sections in this Part. EPA is, however, proposing to reformat the part to include subparts and to extensively renumber the sections in part 130, in addition to the substantive revisions discussed in detail below. EPA is also proposing to delete § 130.3, which sets out the same definition of "water quality standard" that is found in the water quality standards regulations at 40 CFR part 131 and, as a result, is duplicative and unnecessary. Today's proposal also would delete § 130.10(d), which is obsolete and no longer relevant since it provided for a one-time deadline of February 4, 1989, for State submission of certain water quality information. In light of the extent of these formatting and numbering changes, EPA is publishing all of 40 CFR part 130 to show how the changes proposed today relate to the existing sections of the current regulation. The following table of contents for part 130 identifies each of the sections in the proposed rule and highlights the proposed changes.

40 CFR Part 130 as Revised and Reorganized by Today's Proposal

Subpart A: Summary, Purpose, and Definitions

130.0 Program summary and purpose (unchanged)
130.1 Applicability (unchanged)
130.2 Definitions (amended in part)
130.3 Deleted

Subpart B: Water Quality Monitoring and Reporting

130.10 Water quality monitoring (formerly § 130.4, unchanged)
130.11 Water quality report (formerly § 130.8; unchanged)

Subpart C: Identifying Impaired and Threatened Waterbodies and Establishing Total Maximum Daily Loads (TMDLs) (formerly § 130.7; amended; see below)

130.20 Who must comply with subpart C of this rule?
130.21 What is the purpose of this subpart?
130.22 What data and information must you assemble to identify and list impaired or threatened waterbodies?
130.23 How do you document your approach for considering and evaluating all existing and readily available data and information to develop your list and priority rankings?
130.24 When must your methodology be submitted to EPA?
130.25 What is the scope of your list of impaired or threatened waterbodies?
130.26 How do you apply your water quality standards antidegradation policy to the listing of impaired and threatened waterbodies?
130.27 How must you format your list of impaired or threatened waterbodies?
130.28 How do you prioritize the waterbodies on Part 1 of your list?
130.29 When can you remove a waterbody from your list?
130.30 When must you submit your list of impaired or threatened waterbodies and priority rankings to EPA and what will EPA do with it?
130.31 What must your schedule for submitting TMDLs to EPA contain and when must you submit it to EPA?
130.32 Must you establish TMDLs?
130.33 What are the minimum elements of a TMDL submitted to EPA?
130.34 How are TMDLs expressed?
130.35 What actions must EPA take on TMDLs that are submitted for review?
130.36 Can EPA establish a TMDL if you fail to do so?
130.37 What public participation requirements apply to the list, priority rankings, schedule, and TMDLs?
130.38 What is the effect of the proposed rule on transitional TMDLs?

Subpart D: Water Quality Planning and Implementation

130.50 Continuing planning process (formerly § 130.5; amended, see below)
130.51 Water quality management plans (formerly § 130.6; amended, see below)

Subpart E: Miscellaneous Provisions

130.60 Designation and De-Designations (formerly § 130.9; unchanged)
130.61 State submittal to EPA (formerly § 130.10; removed section, otherwise unchanged)
130.62 Program management (formerly § 130.11; unchanged)
130.63 Coordination with other programs (formerly § 130.12; unchanged)
130.64 Processing application for Indian Tribes (formerly § 130.15; unchanged)
130.65 Petitions to EPA to establish TMDLs (new section)

3. What Definitions Are Being Added or Revised by this Proposal?

Existing requirements. The existing regulations contain definitions of "TMDL," "wasteload allocation," and "load allocation."

Proposed rule. Today's action proposes revisions to the definitions of "TMDL", "wasteload allocation," and "load allocation" that clarify and add to the required elements of TMDLs and the ways in which TMDLs can be expressed. Today's action also proposes adding definitions for the terms "pollution," "pollutant," "impaired waterbody," "threatened waterbody," "thermal discharge," "reasonable assurance" and "waterbody."

Today's proposal significantly revises the text of the regulatory definition of "TMDL." The proposed revisions are intended primarily to define what a TMDL is and the elements it must contain. Instead of describing a TMDL as the sum of wasteload allocations and load allocations, as in the current regulations, EPA proposes to define a TMDL as a written analysis of an impaired waterbody established to ensure that water quality standards will be attained and maintained throughout the waterbody in the event of reasonably foreseeable increases in pollutant loads. The proposed revision to the definition of "TMDL" also includes a statement describing the 10 basic elements of a TMDL required for approval by EPA, as contained in proposed 40 CFR 130.33(b) and discussed in section 5.a. of this preamble.

EPA is proposing to revise the definition of a TMDL for a number of reasons. Current regulatory requirements have engendered different interpretations. States, Territories and authorized Tribes need greater certainty in establishing TMDLs and submitting them to EPA for approval. EPA requires a more precise definition to promote consistency in reviewing and approving TMDLs nationally. Other stakeholders need a clear understanding of what the minimum regulatory requirements are for TMDLs.

EPA is also proposing to revise the definition of a TMDL to clarify that TMDLs are established for pollutant(s) and that a TMDL sets the amount of pollutant(s) that may be present in a waterbody and still assure that the water quality standards are attained or maintained. Although States, Territories and authorized Tribes have the flexibility to develop a TMDL for a single pollutant in a listed waterbody and develop TMDLs for other pollutants on that waterbody at a later date, EPA encourages States, Territories and authorized Tribes to develop TMDLs for all pollutants impairing a listed waterbody at the same time. In addition, EPA is revising the definition to clarify the ways in which TMDLs can be expressed to meet the requirements of the CWA.

In addition, EPA is proposing to include in the definition of "TMDL" a statement of the statutory requirement that a TMDL be established with seasonal variations. EPA interprets this

statutory language as requiring that TMDLs be established to implement water quality standards in any season. While there may be other ways a TMDL can be established "with" seasonal variation, the proposed interpretation is consistent with the statutory directive that TMDLs "be established at a level necessary to implement the applicable water quality standards with seasonal variation." The most straightforward interpretation of this language is that Congress intended for TMDLs to be established at levels that describe the maximum allowable loading in different seasons of the year, to implement standards year-round. This may require that, for some pollutants, different TMDLs are established for different levels of instream flow, based on variations in flow over the course of the year.

TMDLs may be established on a watershed basis. TMDLs established on a watershed basis must, like all TMDLs, be established for each pollutant identified as causing or expected to cause an exceedance of water quality standards and assure that water quality standards are attained and maintained throughout the watershed. Certain pollutants, e.g. nutrients, might be best addressed by allocating pollutant loads on a watershed, rather than on a segment-specific, basis. In such cases, TMDLs established for a watershed would be more likely to result in effective control measures than segment-by-segment TMDLs.

Finally, EPA proposes to amend the definition of "TMDL" to clarify that TMDLs must be established to ensure that water quality standards will be attained and maintained in the event of reasonably foreseeable increases in pollutant loads. This proposed revision is intended to address waters that are currently impaired or threatened and are expected to experience increased pollutant discharges. Since the CWA requires TMDLs to be established at levels "necessary to implement" standards, States, Territories and authorized Tribes need to address anticipated increases in pollutant loadings that could result in (or exacerbate) the current failure to attain and maintain water quality standards. While there may be situations where load increases cannot reasonably be anticipated, generally it should be possible to establish TMDLs in such a manner as to anticipate increases in pollutant loadings over time. For this reason, EPA is proposing to clarify the current definition of "TMDL" by explicitly stating that TMDLs must assure attainment and maintenance of applicable standards in the event of reasonably foreseeable load increases.

EPA is proposing clarifying revisions to the current definition of "load allocation." These proposed revisions explicitly include atmospheric deposition as a nonpoint source of pollutants, codifying EPA's current interpretation. EPA's authority to require load allocations for atmospheric deposition is discussed in greater detail in section 4.b. of this preamble. Today's proposed § 130.33(b)(6) also clarifies that load allocations may, if possible, contain allocations to categories, subcategories, or individual sources while emphasizing EPA's intent to require establishment of TMDLs where sufficient information is not available to allocate loads to individual nonpoint sources.

EPA is proposing to allow some wasteload allocations to contain an allocation to a single point source or to a group of point sources. Current regulations require a wasteload allocation for each existing or future point source. EPA is proposing at § 130.33(b)(5) to allow allocations to categories or subcategories of point sources that are subject to a general permit (including storm water, combined sewer overflows, abandoned mines, and combined animal feeding operations), and to categories and subcategories of sources where the pollutant load does not need to be reduced in order to meet water quality standards. Wasteload allocations for individual point sources would still be required for each industrial and municipal point source permitted under CWA section 402. It is appropriate to allocate to the aggregate of sources covered by a general permit since the number and identity of sources discharging under a general permit generally will not be known. Since the CWA does not contain the terms "load allocation" and "wasteload allocation," EPA has discretion to interpret these terms, created in the regulations to implement the TMDLs, in a reasonable manner.

EPA is proposing to amend the current regulations by adding definitions of the terms "impaired waterbody" and "threatened waterbody." The proposed definitions of these terms are derived from the definitions in EPA's guidance (*Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports and Electronic Updates*, EPA–841–B–002A, September 1997) on section 305(b) reports. The addition of these definitions clarifies States', Territories' and authorized Tribes' listing and TMDL establishment obligations by clarifying the kinds of waterbodies that must be included on section 303(d) lists and the kinds of waterbodies for which TMDLs must be established. EPA's rationale for the types of waterbodies for which TMDLs must be established is discussed in greater detail in section 4.b. of this preamble.

EPA is also proposing a definition of the term "reasonable assurance." EPA proposes to define "reasonable assurance" in § 130.2(p) as a demonstration that wasteload allocations and/or load allocations in a TMDL will be implemented. EPA proposes that each TMDL contain reasonable assurance that allocations contained in TMDLs will in fact be implemented to attain and maintain water quality standards. EPA's incorporation of this term in § 130.33(b)(10)(iii) dealing with TMDL implementation plans emphasizes EPA's view that implementation of the allocations in TMDLs is critical to the ultimate attainment of standards in waterbodies across the country. The proposed regulations provide that reasonable assurance for point sources is demonstrated by procedures that ensure that enforceable NPDES permits will be issued to implement applicable wasteload allocations for point sources. For nonpoint sources, reasonable assurance means that nonpoint source controls will be implemented to achieve applicable load allocations. For nonpoint sources reasonable assurance would need to be specific to the pollutant of concern, expeditiously implemented and supported by reliable delivery mechanisms and adequate funding.

EPA also proposes to add to the regulations the CWA's definitions of "pollutant" and "pollution." This decision is explained in greater detail in section 4.b. of this preamble. This amendment is intended to clarify that the statutory definitions apply to these terms as used in the TMDL regulations. Similarly, EPA is proposing a definition of "thermal discharge" to clarify the meaning of that term for the purposes of TMDLs..

EPA is proposing to clarify that the definition of pollutant encompasses drinking water contaminants that are regulated under section 1412 of the Safe Drinking Water Act (SDWA) and that may be discharged to waters of the U.S. that are the source waters of one or more public water systems. This clarification is consistent with both the language and the intent of the CWA. First, drinking water contaminants that meet the criteria of this clarification fall within the meaning of one or more of the terms

used to define pollutant. Second, "public water supplies" is listed under section 303(c)(2)(A) of the CWA as a potential beneficial use to be protected by water quality standards.

To elaborate, all microbial contaminants that may be discharged to waters of the US (e.g., bacteria, viruses and other organisms) fall under the term "biological materials"; chemical contaminants that may be discharged to waters of the US (e.g., industrial solvents, pesticides) fall under the term "chemical wastes"; and all radio nuclides that may be discharged to waters of the U.S. fall under the term "radioactive materials". Drinking water contaminants regulated in the future that meet this criteria will also fall under one or more of these terms.

Under the SDWA, pollutants are referred to as "contaminants" and, pursuant to section 1412, EPA is required to "promulgate a national primary drinking water regulation for a contaminant * * * if the Administrator determines that: (i) The contaminant may have an adverse effect on the health of persons; (ii) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and (iii) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems."

Finally, EPA is proposing a definition of the term "waterbody" that codifies EPA's interpretation of the term for the purposes of TMDLs. The proposed definition includes a broad range of waterbodies, geographically defined so that members of the public can easily locate waterbodies included on States', Territories' and authorized Tribes' section 303(d) lists. Section 303(d) distinguishes between waterbodies impaired by pollution and pollutants generally and waterbodies affected by "thermal discharges." For waterbodies impaired by pollution and pollutants generally, listing and/or TMDL decisions are based on whether the water is or is not attaining or maintaining water quality standards.

Waterbodies affected by "thermal discharges," are subject to different listing criteria and requirements for establishing TMDLs. Under section 303(d)(1)(B), each State shall identify those waterbodies for which controls on thermal discharges under section 301 are not stringent enough to assure "protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife." Similarly, under section 303(d)(1)(D), States shall estimate for such waterbodies "the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife."

This distinction between "pollution" and "pollutants" generally and "thermal discharges" has its origins in section 316 of the CWA. Section 316 provides that the "balanced, indigenous population" standard ("BIP") may be applied to determine the thermal component of an effluent limit for any point source subject to the provisions of sections 301 or 306 in lieu of more stringent effluent limitations. The drafters of section 316 believed that thermal discharges from point sources should be treated in a different manner than other pollutants. [CWA Leg. His. at 227–28]. Congress believed that steam-electric generating plants were the major sources of thermal discharges subject to CWA regulation. [CWA Leg. His. at 263]. It believed that thermal discharge limits for such facilities should be set on a case-by-case basis, taking into account the nature, physical characteristics, and dissipative capabilities of the receiving water. [*Id.*].

This distinction was carried over into section 303(d). It is important to note, however, that the more flexible "BIP" standard only applies to listing and TMDL actions related to thermal discharges from point sources. It does not apply to listing and TMDL decisions related to heat excesses in waterbodies resulting from other causes, such as solar radiation, channel and habitat modification and lack of stream flow. Where heat build up is a result of those (and other non-point source discharge) causes, decisions to list and establish TMDLs related to heat must be based on the applicable water quality standard for heat. In other words, whereas listing and TMDL decisions for "thermal discharges" from point sources are regulated under CWA sections 303(d)(1)(B) and 303(d)(1)(D), such decisions for water bodies impaired by heat from other causes are regulated under CWA sections 303(d)(1)(A) and 303(d)(1)(C).

This is a reasonable interpretation of the statute. Given the express language of sections 303(d)(1)(B) and (D), it is clear that Congress wanted lists and total maximum daily thermal loads to address the problems presented by discharges of heat from point sources, i.e., thermal discharges, albeit using a different standard ("BIP") than for other pollutants covered by sections 303(d)(1)(A) and (C). Because Congress included "heat" in the definition of "pollutant," EPA also reads section 303(d) as covering all forms of heat-impaired waterbodies and not just those affected by thermal discharges. Congress's express reference to "thermal discharges" was not intended to limit the section's applicability to impairments caused by point sources. Instead, Congress merely wanted to ensure that point source thermal discharges were given the same treatment under section 303(d) as under section 316. Where water quality standards for temperature are not being attained due to other causes, e.g., sediment runoff, habitat degradation, flow diversion, sections 303(d)(1)(A) and (C) would apply.

Comments sought. EPA solicits comment on any or all aspects of the proposed revisions to the existing definitions and the addition of new definitions.

4. What Are the Proposed Rule's Requirements for Identifying and Listing Impaired or Threatened Waterbodies?

a. Assembling the Data and Documenting the Approach for Considering and Evaluating Existing and Readily Available Data and Information

Existing requirements. Existing regulations require States, Territories and authorized Tribes to assemble and evaluate "all existing and readily available water quality-related data and information" when developing their lists. Existing regulations specify that "all existing and readily available water quality-related data and information" includes, but is not limited to, data and information about: waterbodies identified in: (1) The States', Territories' and authorized Tribes' most recent approved section 303(d) list; (2) States', Territories', and authorized Tribes' most recent CWA section 305(b) report as "partially meeting" or "not meeting" designated uses or as "threatened"; (3) section 319 nonpoint source assessments; (4) drinking water source assessments under section 1453 of the Safe Drinking Water Act; (5) dilution calculations or predictive models which indicate nonattainment of water quality standards; and (6) data and information reported by local, State, or Federal agencies, e.g. National Water Quality Assessment, (NAWQA), National Stream Quality Accounting Network (NASQAN), members of the public, or academic institutions.

In addition, existing regulations require States, Territories and authorized Tribes to submit to EPA a description of the methodology used to develop the list, a description of the data and information used to list

waterbodies, a rationale for any decision to not use any existing and readily available data and information, and any other reasonable information requested by the Regional Administrator, including "good cause" for not including a waterbody or waterbodies on the list.

Proposed rule. EPA recognizes, as did the FACA Committee, that well-designed monitoring programs are vital elements in States', Territories', and authorized Tribes' efforts to characterize, identify, and ensure the protection and restoration of impaired and threatened waterbodies. Because monitoring is expensive and time-consuming, however, it is generally the case that only a small percentage of each States', Territories', and authorized Tribes' waterbodies are actually being monitored to identify impairments or threats, and States, Territories, and authorized Tribes must strive continually to expand the scope of their monitoring programs by carefully focusing resources to achieve the greatest positive influence on water quality.

In today's proposal, at § 130.22, EPA is retaining the requirement that States, Territories, and authorized Tribes assemble and consider all existing and readily available data and information to identify impairments and threats to impairment and develop their lists. The sources of existing and readily available data and information specified in the proposed regulation constitute the basic sources and types of information States, Territories and authorized Tribes need to consider in order to determine which waterbodies are impaired and threatened. In addition, these sources of data and information are required to be developed and collected by both the CWA and the SDWA and are generally available to States, Territories, authorized Tribes and stakeholders.

In developing today's proposal, EPA considered the proper role of "monitored data" and "evaluated data and information." Monitored data refers to direct measurements of water quality, including sediment, bioassessments and some fish tissue analyses. Evaluated data and/or information provides an indirect appraisal of water quality through such sources as information on historical adjacent land uses, aquatic and riparian health and habitat, location of sources, results from predictive modeling using input variables and some surveys of fish and wildlife. The FACA Committee recognized the differences in available data and information. Although the committee preferred basing listing decisions on monitored data, it also recognized the reality of needing to use evaluated information. Today's proposal therefore reflects the need for States, Territories, and authorized Tribes to consider and evaluate both monitored and evaluated data and information. EPA agrees with the FACA Committee's recommendation that the best available data and information for each waterbody being considered for listing should be used. It is appropriate to use both monitored and evaluated data.

EPA is proposing at § 130.22(b)(4) to include the results of source water assessments conducted under section 1453 of the SDWA as "existing and readily available data" which States, Territories, and authorized Tribes must consider in deciding whether to list a waterbody as impaired or threatened. Under the Source Water Assessment Program (section 1453, SDWA), States must "delineate the boundaries of the assessment areas from which one or more public water systems . . . receive supplies of drinking water" and, within each delineated area, "identify the origins of contaminants" for which safety standards have been established to "determine the susceptibility of the public water systems to such contaminants." These delineated areas will include one or more stream segments, or waterbodies, upstream of each intake. The assessments will identify each pollutant (contaminant), and the origins thereof, to which a public water system has some degree of susceptibility.

A "national primary drinking water regulation" (NPDWR) is the SDWA's term for a drinking water safety standard. Safety standards are typically established as "maximum contaminant levels" (MCLs) and expressed as concentrations e.g., milligrams per liter (mg/l). Safety standards are sometimes established as "action levels", or a similar term, but are also expressed as concentrations. Therefore, drinking water safety standards provide reference points (a) Against which States can compare water quality monitoring data, or (b) that States can use to add or revise water quality criteria to support public water supply use, in the absence of more stringent criteria that support more sensitive ecological uses.

Source water assessments will need to incorporate data from compliance monitoring and ambient water quality monitoring to support use of the assessment results as a basis for listing a waterbody as impaired or threatened. In some cases, this is easily accomplished *e.g.*, where compliance monitoring for chemical contaminants is required at the intake or where compliance monitoring data is unaffected by intervening treatment that is not designed to address the contaminant at issue. In other cases, where intervening treatment is affecting the monitoring results, it may be possible to estimate (back calculate) the ambient water values from the compliance monitoring results.

If the listing is based on a designated use but the State has not adopted a water quality criterion for the pollutant(s) of concern, either in support of public water supply use or in support of a more stringent use (*e.g.*, aquatic habitat), the State should use a reference point sufficiently below the drinking water safety standard (maximum contaminant level or MCL) to prevent excursions above the safety standard at the source water intake as its starting point for developing a TMDL.

Today's proposal, at § 130.23, also retains the requirement that States, Territories, and authorized Tribes submit to EPA a methodology documenting their approach for considering and evaluating the data and information used to develop the list and priority rankings. Today's proposal requires States, Territories, and authorized Tribes to explain to EPA and to the public how they will consider and evaluate chemical, physical, biological and radiological data and information and describe the data thresholds they will use to define waterbodies that are impaired or threatened and are required to be listed.

EPA is also requiring that the methodology used to compile the section 303(d) list must contain a description of the method and factors used to assign a priority ranking to the waterbodies on a list, *i.e.*, how States, Territories and authorized Tribes consider the severity of the impairment or threat of impairment and the uses to be made of the waterbody and any other factors in assigning priority rankings to listed waterbodies (see section 4.d, below). Moreover, States, Territories and authorized Tribes must provide for public notice and comment on a draft version of the methodology and submit the final methodology, along with a summary of the public comments, to EPA on January 31 of every listing year, which is eight months before the October 1 list submission deadline. The proposed rule provides that EPA will review the listing methodology and may provide comments to the State, Territory or authorized Tribe. EPA recognizes that final regulations may be promulgated after January 31, 2000. In this event, EPA may decide in the final regulations to specify an alternative date, most likely in year 2000, for States, Territories, and authorized Tribes to

submit their methodology to EPA. EPA solicits comment on when to require submittal of the listing methodology, in the event that the regulations are promulgated after January 31, 2000.

These additional requirements are aimed at providing EPA and the public with a comprehensive description of each State's, Territory's and authorized Tribe's approach for listing waterbodies. It is critical that the public have an opportunity to understand and participate in the States', Territories' and authorized Tribes' listing process. These requirements are also intended to help ensure that States, Territories and authorized Tribes consistently use reliable and credible data and information. While EPA does not expect every State, Territory and authorized Tribe to use exactly the same information and have exactly the same minimum data requirements for identifying and listing impaired and threatened waterbodies, EPA does expect each State, Territory and authorized Tribe to document and follow a deliberate, logical, and consistent approach for making listing decisions.

EPA will consider the methodology when it reviews and approves or disapproves the section 303(d) list. EPA's comments on the methodology will address whether the methodology will result in the identification of all impaired or threatened waterbodies. When EPA reviews the State's, Territory's or authorized Tribe's list, EPA will review how the State, Territory or authorized Tribe responded to comments raised during EPA's review of the methodology. EPA may cite any unremedied deficiencies it raised in comments to the State, Territory or authorized Tribe as a factor in a decision to disapprove all or part of the State's, Territory's or authorized Tribe's list.

Today's proposal therefore requires that States, Territories and authorized Tribes document their methods for determining impairment and develop appropriate decision rules based on whether they are considering and evaluating physical/chemical, biological, radiological, or aquatic and riparian habitat data and information. The methodology may, for example, explain how many exceedances of a numeric chemical criteria constitute an impairment or threat. Similarly, the methodology may explain how information on riparian condition and streambank stability might be used to determine whether a waterbody is impaired or threatened.

Today's proposal recommends a closer relationship between the section 303(d) and section 305(b) processes by requiring the section 303(d) listing methodology to describe how section 305(b) information will be used to determine which waterbodies should be included on the section 303(d) list. EPA recommends that States, Territories and authorized Tribes use the section 305(b) guidelines for defining waters that are impaired or threatened when developing this part of the section 303(d) listing methodology. While these section 305(b) decision rules represent a solid starting point for State, Territorial and authorized Tribal section 303(d) listing methodologies, EPA encourages State, Territorial and authorized Tribal listing methodologies for section 303(d) to be more specific, if necessary, to determine which waterbodies are impaired or threatened. EPA also encourages consistency between water quality reported in the section 305(b) report and the section 303(d) list of impaired and threatened waterbodies, particularly in regard to waterbodies that are impaired for purposes of section 303(d) and not supporting or partially supporting uses as reported under section 305(b).

Today's proposal eliminates the existing regulatory provisions that States, Territories and authorized Tribes provide EPA with a rationale for any decision not to use any existing and readily available data and information, and that, upon request by the EPA Regional Administrator, States, Territories or authorized Tribes may demonstrate "good cause" for not including a waterbody or waterbodies on the list. These provisions are redundant and unnecessary in light of the more specific requirements in today's proposal for States, Territories and authorized Tribes to provide EPA and the public with a more detailed methodology for developing their lists.

EPA also agrees with the concern expressed by some States, Territories, or authorized Tribes that listing decisions and TMDL calculations be based on high-quality data that meets State procedures for data quality and will, if necessary, stand up to legal challenge. EPA intends for the methodology required by today's proposal to support, not undermine, State procedures for assuring data quality and use of appropriate analytic methods. Further, EPA intends that the proposed requirement in § 130.22 for States, Territories, and authorized Tribes to consider all existing and readily available information and document their approach for doing so be consistent with the State, Territorial, or authorized Tribal data quality control procedures and methodologies documented in accordance with proposed § 130.23. Accordingly, data which does not meet data requirements established in the methodology required by today's proposal need not be used for listing; likewise, data that does meet data requirements in the methodology must be used. EPA requests comment on the requirements in § 130.22 and § 130.23.

Today's proposal also recommends that, where the waterbody is designated for drinking water use, the TMDL methodology should address information developed for source water assessments under the SDWA. The types of information developed for source water assessments that will be important in determining impairment of waterbodies and needed corrective actions are the information that States, Territories and eligible Tribes use to delineate source water areas, identify the origin of contaminants, and determine public water system susceptibility.

Exceedance of a narrative criterion is a basis for placing a waterbody on the section 303(d) list. EPA recognizes that to establish a TMDL where a narrative criterion has been exceeded, it is necessary to quantify how the narrative criterion should be interpreted for specific pollutant loads. EPA's Water Quality Standards Regulation Advance Notice of Proposed Rulemaking (ANPRM) describes current requirements for States and authorized Tribes to identify the procedures they intend to use to interpret and implement narrative criteria as they pertain to point source discharges of toxics (63 FR 36742 at 36765, July 7, 1998). The ANPRM emphasizes the need for clear procedures for interpreting and implementing narrative criteria and requests comment on whether the current identification requirements should be expanded to include interpretation of narratives as they pertain to nonpoint sources and pollutants in addition to toxics (see ANPRM at 36765, questions 6 and 7). EPA's current thinking is that such interpretation and implementation procedures are necessary and, if required, should be required by amending the water quality standards regulation as contemplated in the ANPRM discussion cited here.

The methodology proposed today requires, at § 130.23(d)(2), a process for resolving disagreements with other jurisdictions. States, Territories and authorized Tribes often have different water quality standards for boundary waterbodies. Establishing TMDLs for boundary waterbodies requires agreement on how to determine when a

waterbody is impaired or threatened and for what pollutant load the TMDL must be established. Having dispute resolution mechanisms in place will eliminate many potential disagreements and conflicts.

Finally, the proposal requires, at § 130.23(e), that the methodology specify exactly what conditions must exist before the waterbody is removed from the list of impaired and threatened waterbodies.

Other options considered. In developing today's proposal, EPA considered several other options. One option considered was to retain all existing regulatory requirements. EPA also considered developing, and requiring all States, Territories and authorized Tribes to follow, a single national listing methodology and criteria to develop their lists. EPA also considered two default listing approaches. First, EPA considered streamlining the listing process by requiring that, absent data and information indicating attainment of water quality standards, waterbodies must be included on State, Territorial and Tribal lists. Alternatively, EPA considered streamlining the listing process by requiring that waterbodies not be included on State, Territorial and authorized Tribal lists unless data and information demonstrated non-attainment of water quality standards.

Comments sought. EPA seeks comments on whether the TMDL regulations should retain the requirement that States, Territories and authorized Tribal lists consider and evaluate existing and readily available data and information in developing their lists of impaired and threatened waterbodies. EPA would also like comments on whether the regulation should more specifically define national minimum criteria or thresholds that define waterbodies that are impaired or threatened (e.g., existing criteria used for development of 305(b) reports). EPA is also seeking comment on the proposal to require States to provide more details on their listing methodologies and eliminate the current provision that, upon request by the EPA Regional Administrator, States, Territories and authorized Tribes may demonstrate "good cause" for not including a waterbody or waterbodies on the list. EPA solicits comments on any aspects of the proposal, including the options considered.

b. Scope of the list

Existing requirements. Existing regulations (40 CFR 130.7(b)(1)) require that State, Territorial and authorized Tribal lists include waterbodies for which pollution control requirements required by local, State, or Federal authority, including technology-based or more stringent point source effluent limitations or nonpoint source best management practices, are not stringent enough to implement water quality standards. In addition, existing regulations require States, Territories and authorized Tribes to identify the pollutants causing or expected to cause violations of water quality standards. EPA guidance on the scope of the list has been incomplete. Successive guidance documents, starting with the guidance issued in April 1991 (*Guidance for Water Quality-based Decisions: The TMDL Process*, EPA 440/4–91–001, April 1991), did not specifically address whether the definition of pollution contained in section 502(19) ("the man made or man-induced alteration of the chemical, physical biological or radiological integrity of water"), or the definition of pollutant in section 502(6) ("the term pollutant means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water * * *") of the CWA, was the proper basis of determining impairment and listing waterbodies on the section 303(d) list. The result was that some States, Territories and authorized Tribes used the broader definition of pollution while others used the narrower definition of pollutant to identify and list impaired waterbodies. EPA approved lists which identified impaired waterbodies on the basis of both definitions. In August, 1997 EPA issued guidance (*New Policies for Establishing and Implementing Total Maximum Daily Loads*, Robert Perciasepe, Assistant Administrator for Water, August 8, 1997), to clarify the listing requirements for the lists due in April, 1998. The best reading of this guidance and the *National Clarifying Guidance for 1998 State and Territory Section 303(d) Listing Decisions*, Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds, August 27, 1998) issued for the lists due in April, 1998, is that waterbodies are required to be listed and scheduled for establishment of TMDLs only if a pollutant was identified as the source of the impairment and that TMDLs are required only where the impairment or threat is directly attributable to a pollutant, such as nitrogen, copper or excessive sediment. *Proposed rule.* Today's proposal at § 130.25 clarifies that States, Territories and authorized Tribes must list waterbodies impaired or threatened by point sources only, a combination of point and nonpoint sources, and nonpoint sources only, including atmospheric deposition. The proposal also clarifies that waterbodies must be listed regardless of whether the impairment or threat is caused by individual pollutants, multiple pollutants or pollution from any source, including atmospheric deposition.

Listing Requirement: Point/Nonpoint Sources. Although some have argued to the contrary, section 303(d) provides ample authority to list waterbodies impaired by nonpoint sources of pollution and establish TMDLs for waterbodies impaired by nonpoint sources of pollutants. Looking first at the words of section 303(d), there is no express exclusion of nonpoint source impacted waterbodies from the statute's requirements. Section 303(d)(1)(A) requires identification of "those waterbodies * * * for which effluent limitations required by section [301(b)(1) (A) and (B)] * * * are not stringent enough to implement any water quality standard. * * *" Nowhere does the section say that nonpoint source impacted waterbodies need not be listed. While it is true that the effluent limitations required by section 301 apply only to point sources, this fact does not necessarily restrict the scope of section 303(d) to point source-only waterbodies.

In general, there are three categories of waterbodies that a State, Territory or authorized Tribe needs to consider for inclusion on its section 303(d) list. First, there are waterbodies impacted solely as a result of point sources. Second, there are waterbodies impacted by both point and nonpoint sources ("blended waterbodies"). Third, there are waterbodies impacted only by nonpoint sources. It is reasonable to read the language of section 303(d)(1)(A) to encompass all three categories of waterbodies.

Waterbodies in the first two categories (point source-only impacts and blended waterbodies) satisfy the section 303(d) listing criteria if those waterbodies do not meet standards (or are threatened) despite the existence of section 301 effluent limits on those waterbodies' point sources. Because those waterbodies do not meet standards (or are threatened), and because they have point source discharges feeding into them, it necessarily follows that existing section 301 limitations on those dischargers (if any) are not stringent enough to implement applicable water quality standards.

Waterbodies in the third category (i.e., those without point source dischargers on them) can also meet section 303(d)(1)(A)'s listing criteria. The first step would be a determination that such waterbodies are not meeting standards. If such a determination is made, it follows that such waterbodies must be listed. By definition such waterbodies have no point source dischargers on them, and, therefore, section 301-required effluent limits can never be stringent enough to implement applicable water quality standards. Therefore, such waterbodies meet the statutory criteria for listing found in section 303(d)(1)(A). Accordingly, it is reasonable for EPA to read the listing requirement language of section 303(d)(1)(A) as extending to nonpoint source-only impacted waterbodies.

The same is true of section 303(d)(1)(C) dealing with TMDLs. That section provides that each State shall establish for the waterbodies identified on a State's list TMDLs "for those pollutants which the Administrator identifies under section [304] * * * as suitable for such calculation." Section 304(a)(2)(D) required EPA to publish "for the purposes of section [303] * * * the identification of *pollutants* suitable for maximum daily load measurement correlated with the achievement of water quality objectives." (Emphasis added). EPA identified such pollutants in December 1978. At that time it said "[a]ll pollutants, under the proper technical conditions, are suitable for the calculation of total maximum loads". 43 FR 60665 (Dec. 28, 1978).

As with section 303(d)(1)(A), there is no express exclusion of nonpoint source waterbodies from the TMDL requirements of section 303(d)(1)(C). Assuming that section 303(d)(1)(A) lists cover nonpoint source waterbodies, TMDLs must also be established for pollutants in those waterbodies because—by its very terms—the reach of section 303(d)(1)(C) is coextensive with that of 303(d)(1)(A) ("shall establish for the waterbodies identified in paragraph (1)(A)").

EPA's belief that section 303(d) applies to nonpoint sources is also consistent with the Clean Water Act's definition of pollutant. An examination of the Act "as a whole" supports an interpretation that Congress did not intend to limit the term "pollutant" to point sources. The relevant provisions of section 502(6) define the term "pollutant" as follows:

> The term *pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Section 319, a section that exclusively addresses nonpoint sources, provides clear evidence that Congress did not intend to limit the use of the term "pollutant" to point sources. The very first element of a state's section 319 plan is an "identification of the best management practices and measures which will be undertaken to reduce *pollutant* loadings resulting from each category, subcategory, or particular nonpoint source. * * *" section 319(b)(2)(A)(emphasis added). In addition, every year each State must report to EPA any "reductions in nonpoint source *pollutant* loading and improvements in water quality. * * *" section 319(h)(11)(emphasis added). Finally, in its report to Congress, EPA must also identify "the progress made in reducing *pollutant* loads and improving water quality * * *" as a result of nonpoint source focused activities carried out under section 319. section 319(m)(2)(D) (emphasis added).

In drafting section 319, it is clear that Congress understood that nonpoint sources could cause *pollutant* loadings to waterbodies. Indeed, it asked the States to identify measures to reduce those nonpoint pollutant loadings and required annual reports of any reductions. In the face of these directives, it is not reasonable to think that Congress somehow understood the section 502 definition of "pollutant" to apply narrowly to only point sources.

Other sections of the CWA also indicate that Congress felt quite comfortable with the idea that "pollutants" can come from nonpoint sources. *See* Section 320(b)(3) (estuary management conference shall "develop the relationship between the inplace loads and point and nonpoint loadings of *pollutants* to the estuarine zone * * *") (emphasis added); section 105(d)(1)(EPA shall develop "waste management methods applicable to point and nonpoint sources of *pollutants* to eliminate the discharge of pollutants, including, but not limited to, elimination of runoff of pollutants and the effects of pollutants from inplace and accumulated sources") (emphasis added); section 107(a) (in context of mine remediation projects, linking "acid" and "sediment" impacts to "other *pollutants*" without specifying that they must originate from point sources) (emphasis added); section 117(a)(4) (Chesapeake Bay Office shall determine "impact of *pollutant* loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants" on Bay without specifying that such pollutants must originate from point sources) (emphasis added); section 119(c)(2)(F) (Long Island Sound Office shall study atmospheric deposition of acidic and other *pollutants* into Long Island Sound" without specifying that such pollutants must originate from point sources) (emphasis added).

Pollutant/Pollution. Today's proposed rule requires States, Territories and authorized Tribes to list all waterbodies impaired or threatened by pollutants, as defined in 40 CFR 130.2(d), and pollution, as defined in 40 CFR 130.2(c). Section 303(d)(1)(A) requires that States, Territories and authorized Tribes identify all waterbodies for which certain specified effluent limits are not stringent enough to implement water quality standards. The focus of the section is on whether or not the water is meeting standards following application of effluent limits. There is no indication that, to be listed, the water must be impaired by a pollutant as opposed to some other form of pollution. Indeed, the section expressly states that, when assigning a priority ranking to listed waterbodies, the State, Territory or authorized Tribe must account for the severity of the waterbody's "pollution." EPA interprets this to mean that a waterbody can be listed if it is impaired or threatened by either pollution or a pollutant.

EPA's interpretation is consistent with the broad goal articulated in section 101(a) of the CWA "to restore and maintain the chemical, physical, and biological integrity of the nation's waterbodies." This consistency is evidenced by the fact that the above-stated goal is mirrored in the Act's definition of "pollution" in section 502(19), which is incorporated into the regulations at 40 CFR 130.2(c): "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." Accordingly, EPA interprets the statute to allow it to require that waterbodies be listed when any such alteration of their chemical, physical, biological, and radiological integrity causes them to be impaired or threatened. Such alteration can be caused by "pollutants," as that term is defined in section 502(6) of the CWA, or any broader causes of impairment from pollution, such as low flow or degraded aquatic or riparian habitat.

Although the FACA Committee was not able to reach consensus on this issue, the committee noted on page 5 of its report that the TMDLs "establish the CWA's primary mechanism for addressing water quality impairments" and, of all CWA provisions, only the

TMDL provisions "focus broadly on waterbodies that do not meet water quality standards, including beneficial uses." The FACA Committee also recognized that "all stakeholders, including the general public, have a right to know about the health of their waterbodies and, especially, about waterbodies that are impaired and require corrective action." It is appropriate to have the section 303(d) list serve as a comprehensive accounting of waterbodies impaired or threatened by pollution and pollutants.

While EPA interprets section 303(d) to require identification of all waters not meeting water quality standards, whether caused by pollutants or pollution, EPA interprets section 303(d) to require that TMDLs only be established where a waterbody is impaired or threatened by a "pollutant". (See 130.32(a)). The term pollutant is defined in section 502(6) of the CWA and in the proposed 40 CFR 130.2(d) as follows:

"The term *pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." [Omitted here are certain statutory exclusions.]

Section 303(d)(1)(C) expressly provides that, for listed waterbodies, States shall establish TMDLs "for those pollutants which EPA has identified as suitable for such calculation". Section 304(a)(2)(D) required EPA to publish "for the purposes of section [303] * * * the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives." EPA identified such pollutants in December 1978. At that time, EPA said that "[a]ll pollutants, under the proper technical conditions, are suitable for the calculation of total maximum loads". 43 FR 60665 (Dec. 28, 1978). The clear reference to "pollutants" in section 303(d)(1)(C), as well as in sections 303(d)(3) and 304(a)(2)(D), supports the conclusion that EPA is authorized to require that TMDLs be established only for pollutants as defined in section 502(6), and not for pollution.

EPA acknowledges an argument could be made that, while Congress was not as specific about its use of the word "pollutant" in section 303(d)(1)(A) dealing with listing as it was in section 303(d)(1)(C) dealing with TMDLs, the scope of a State's list should be the same as its obligation to do TMDLs. By that logic, only waterbodies impaired or threatened by pollutants would be included on a State's list. EPA disagrees with this position, not only because it believes its own interpretation of section 303(d) is more reasonable, but also because it sees great value in listing waterbodies impaired or threatened by both pollutants and pollution.

Threatened Waters. Today's proposal at § 130.25 retains the existing regulatory requirement that States, Territories and authorized Tribes list impaired and threatened waterbodies. To further clarify the scope of this requirement, EPA is also proposing at § 130.2(n) to define a threatened waterbody as one that currently meets water quality standards, but for which adverse declining trends indicate that standards will be exceeded by the next listing cycle.

The FACA Committee spent considerable time addressing this issue, both in terms of whether threatened waterbodies should be listed and, if so, how to define "threatened waterbodies." They did not reach consensus on whether the TMDL regulations should require States to list threatened waterbodies. The FACA Committee recommended that "threatened waterbodies be put on a discrete list for focused attention, with the goal of keeping them from becoming impaired." The Committee did not recommend that TMDLs be required for threatened waterbodies. The Committee did recommend that a watershed-based loadings analysis be performed for threatened waterbodies as soon as possible, consistent with the State's priority list, but at a minimum, before new or modified permits that allow increased discharges to a threatened waterbody or other actions that would contribute to increased pollution to a threatened waterbody over which the State has approval authority, are issued. The loadings analysis would not necessarily include all of the components of a TMDL for impaired waterbodies, but would have to provide for restoration so that the waterbody is no longer threatened.

EPA interprets section 303(d)(1)(A) to provide authority for EPA to require that states list threatened, as well as impaired, waterbodies. Pursuant to that section, each state must identify those waterbodies for which effluent limitations required by section 301(b)(1)(A) and (B) "are not stringent enough to implement any water quality standard applicable to such waterbodies." In the case of "threatened waterbodies", data showing a declining trend in water quality may indicate that, although the waterbody currently attains water quality standards, it is not likely to do so by the time of the next listing cycle. That being the case, the State may determine that currently applicable effluent limitations are not stringent enough to implement water quality standards. If they were stringent enough, there would not be a declining water quality trend foreshadowing nonattainment before the next listing cycle. Rather than ignore such declining water quality data, the CWA gives EPA the authority to require that threatened waters be listed.

EPA's decision to propose that the list include threatened waterbodies is consistent with one of the CWA's fundamental goals—to protect water quality from deterioration. In addition, the inclusion of threatened waterbodies on State, Territorial and authorized Tribal lists reflects EPA's view that it is more desirable, both environmentally and economically, to protect waterbodies from possible impairment than to wait until they are impaired and then need to be restored. Through today's proposed comprehensive listing process, States, Territories and authorized Tribes can become aware of the threatened status of a particular waterbody and then initiate actions to prevent the waterbody from becoming impaired. EPA is specifying, consistent with the FACA recommendations, a definition of threatened waterbodies as likely to exceed water quality standards within the next two years when the determination that a waterbody is threatened is based on data that show a significant declining trend or knowledge of specific changes that would adversely impact water quality. In determining whether to list threatened waterbodies, states should consider information on known sources that have either recently been added or removed or are expected to be added or removed in order to determine if an apparent declining trend is likely to continue, or if a waterbody is likely to be impaired by the next listing cycle despite the absence of a trend.

Atmospheric Deposition. The FACA Committee was not able to reach consensus on how the TMDLs should address waterbodies impaired or threatened by atmospheric deposition. Consistent with EPA's view that the section 303(d) listing requirement applies to all sources of impairment and threat, today's proposal at § 130.25(b)(2) codifies existing EPA policy that States must list waterbodies impaired or threatened by atmospheric deposition. EPA recognizes that data, analytical approaches and models to establish TMDLs for pollutants originating from air deposition may not be immediately available, especially for pollutants subject to long range transport in the

atmosphere. EPA recommends that where additional time is needed to develop data, analysis, or models for air deposition of pollutants significantly contributing to a water quality impairment, States, Territories and authorized Tribes assign these waterbodies a low priority for establishment of TMDLs.

Relationship to Antidegradation Requirements in Water Quality Standards. Today's proposal (§ 130.26) also clarifies how State, Territorial and authorized Tribal antidegradation policies affect the identification and listing of impaired and threatened waterbodies under section 303(d). Antidegradation policies and associated implementation procedures are an essential part of State, Territorial and authorized Tribal water quality standards programs and are required under 40 CFR 131. Antidegradation policies help ensure that water quality necessary to support existing uses (Tier 1) and water quality which is better than needed to support protection and propagation of fish, shellfish and wildlife and recreation in and on the water (Tier 2) is maintained unless through a public process, a decision has been made to allow some decline in water quality. Antidegradation policies also identify and protect waterbodies of exceptional recreational and ecological significance. (Tier 3)

The purpose of section 303(d) is to identify impaired and threatened waterbodies while the purpose of antidegradation policies is to prevent deterioration of existing levels of good water quality. There is a relationship, however, between section 303(d) listing requirements and antidegradation policies.

Tier 3 waterbodies are waterbodies of exceptional recreational or ecological significance. Generally, when a State, Territory or authorized Tribe has identified waterbodies as Tier 3, no decline in water quality is allowed. Today's proposal requires that decline in water quality for Tier 3 waterbodies represents an impairment for the purpose of section 303(d). These waterbodies must be identified and listed.

Tier 2 waterbodies are waterbodies for which existing water quality is better than necessary to support propagation of fish, shellfish, wildlife and recreation. Since existing water quality is better than required, these waterbodies do not need to be listed as impaired under section 303(d). Any decline in existing water quality is not authorized unless an antidegradation analysis is completed as required in 40 CFR 131. Tier 2 waterbodies may, however, be threatened and must be listed when adverse trend data and information indicate that a designated use will not be maintained by the time of the next listing cycle.

All waterbodies are subject to Tier 1 protection. Generally, Tier 1 waterbodies do not exceed section 101(a)(2) goals or do not have additional assimilative capacity to receive additional amounts of a pollutant without exceeding the existing use. Tier 1 waterbodies are impaired and must be listed if the designated use is not being attained. In some cases, Tier 1 waterbodies may be listed if existing uses have been identified pursuant to 40 CFR 131.3. An existing use is a use that has actually occurred since November 28, 1975 (when the water quality standards regulation was published) or where water quality is suitable to allow such a use to occur. States, Territories and authorized Tribes must incorporate existing uses into their designated uses pursuant to 40 CFR 131.10(i). The water quality standards regulation provides, however, that a demonstration of an existing use different than a designated use may be made to the State, Territory or authorized Tribe. In the case that such a demonstration is made by a member of the public, a waterbody must be listed if the existing use is more protective than the designated use. EPA expects that most Tier 1 waterbodies identified as impaired and listed on the section 303(d) list will be listed on the basis of designated uses.

Options considered. In developing today's proposal, EPA considered other options for defining the scope of the list. EPA considered whether to limit the list to impaired waterbodies and not require States, Territories and authorized Tribes to also list threatened waterbodies. EPA recognized that this option might allow States, Territories and authorized Tribes to focus the limited resources for TMDLs more effectively on addressing existing impairments. EPA did not propose this option because EPA believes it is inconsistent with the goals of the CWA and a list that serves as a comprehensive public accounting of impaired and threatened waterbodies. EPA also considered whether to allow States, Territories and authorized Tribes not to list waterbodies impaired or threatened by nonpoint sources only, as well as waterbodies impaired or threatened by atmospheric deposition. EPA did not propose these options because they are inconsistent with EPA's interpretation of section 303(d) and the goals of the CWA. Finally, when deciding on the proper scope of the list, EPA considered whether to require States, Territories and authorized Tribes to establish TMDLs for all waterbodies impaired or threatened by either pollutants or pollution. Based on EPA's interpretation that section 303(d) requires TMDLs to be established only where a waterbody is impaired or threatened by pollutants, today's action does not propose that TMDLs be established for waterbodies impaired or threatened by pollution.

Comments sought. EPA solicits comments on any or all aspects of the proposal, including options considered. EPA solicits comments on the proposed requirement that States, Territories and authorized Tribes must list waterbodies impaired or threatened by pollution and by pollutants. EPA also seeks comment on today's proposal to retain the existing regulatory requirement to list threatened bodies. In addition, EPA seeks comment on today's proposal to codify existing EPA guidance to require States, Territories and authorized Tribes to list waterbodies ifnpaired or threatened by an unknown pollutant and by all sources, including nonpoint sources only and atmospheric deposition. EPA seeks comment on today's clarification that TMDLs must be established only for waterbodies impaired or threatened by pollutants. Finally, EPA seeks comments on the listing requirements for impaired and threatened waterbodies stemming from State, Territorial, and authorized Tribes' antidegradation policies.

c. Required Components of the List

Existing requirements. The existing regulations (at 40 CFR 130.7(b)) require that the list developed under section 303(d) of the CWA consist of "water quality-limited segments still requiring TMDLs," but recognize that certain waterbodies, while impaired or threatened, do not require TMDLs and therefore need not be included on the list. The existing regulations (at 40 CFR 130.7(b)(1)) identify such waterbodies as those that are expected to attain or are already attaining water quality standards following the application of best practicable control technology for point sources and secondary treatment for publicly owned treatment works, more stringent effluent limitations required by either Federal, State or local authorities, or other required pollution controls (such as best management practices).

Existing regulations do not address the question of when States, Territories and authorized Tribes can remove previously listed waterbodies from their lists. Current guidance (*Guidance for 1994 Section 303(d) Lists,* Geoffrey H. Grubbs, Director, Assessment and Watershed Protection Division,

November 26, 1993 and *National Clarifying Guidance for 1998 State and Territory Section 303(d) Listing Decisions*, Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds, August 27, 1997) addresses the issue by identifying two circumstances that would justify removing previously listed waterbodies. These circumstances are: (1) if water quality standards are being attained or are expected to be attained within two years, or (2) if, upon re-examination, the original basis for listing the waterbodies is determined to be inaccurate. In addition, current guidance (*Guidance for 1994 Section 303(d) Lists*, Geoffrey H. Grubbs, Director, Assessment and Watershed Protection Division, November 26, 1993) gives States, Territories and authorized Tribes the option of removing previously listed waterbodies after EPA approves a State-established TMDL.

Proposed rule. Today's proposal (at 40 CFR 130.27) eliminates the term "water quality-limited segments still requiring TMDLs" from the regulations and broadens the scope of the list. Today's proposal requires States, Territories and authorized Tribes to list *all* impaired or threatened waterbodies, regardless of whether the waterbody is expected to attain water quality standards following the application of technology-based controls required by section 301 and 306 of the CWA, more stringent effluent limitations, or other required pollution controls. As already discussed, this includes waterbodies impaired or threatened by individual pollutants, multiple pollutants and pollution from all sources, waterbodies impaired or threatened by unknown pollutants or pollution and waterbodies impaired or threatened by atmospheric deposition. The proposal also clarifies that States, Territories and authorized Tribes must list waterbodies impaired or threatened by point sources, a combination of point and nonpoint sources only.

Today's proposal at § 130.27 establishes a specific format for States, Territories, and authorized Tribes follow which organizes the types of waterbodies included on the list and clearly identifies which waterbodies require the establishment of TMDLs. The proposed rule requires that State, Territorial and authorized Tribal lists consist of four parts:

- Part 1—Waterbodies impaired or threatened by one or more pollutants or unknown cause as defined by 40 CFR 130.2(d). A TMDL is required for waterbodies on this part of the list.
- Part 2—Waterbodies impaired or threatened by pollution as defined by 40 CFR 130.2(c) but not impaired by one or more pollutants. A TMDL is not required for waterbodies on this part of the list.
- Part 3—Waterbodies for which EPA has approved or established a TMDL and water quality standards have not yet been attained.
- Part 4—Waterbodies that are impaired, for which implementation of best practicable control technology for point sources and secondary treatment for publicly owned treatment works or controls enforceable by State, Territorial, authorized Tribal or Federal law or regulation are expected to result in attainment of water quality standards by the next listing cycle. A TMDL is not required for waterbodies on this part of the list. If a waterbody on Part 4 does not attain water quality standards by the time the next list is due to EPA, it must be included on Part 1 of the list.

Today's proposal is meant to ensure that all impaired and threatened waterbodies are identified and placed on the list. EPA does not expect States, Territories, and authorized Tribes to list waterbodies for which there is no existing and readily available data and information that indicates the existence of an impairment or threat. EPA does expect, however, the State, Territory, or authorized Tribe to list impaired or threatened waterbodies if such data demonstrates impairment or threat and believes a pollutant or pollution is the cause of the impairment or threat. If the State, Territory, or authorized Tribe believes a pollutant is the cause of the impairment or threat, but does not know the specific identity of the pollutant, the waterbody must be included on Part 1 of the list and scheduled for the establishment of a TMDL. EPA expects that the pollutant causing the impairment will be identified as part of establishing the TMDL. EPA anticipates, in some cases, that new and additional data and information may need to be generated to identify the cause of the impairment. If the cause of the impairment or threat is identified as pollution, no TMDL is required and the waterbody should be placed on Part 2 of the list.

This requirement to list where the exact pollutant is unknown is especially important with regard to waterbodies identified as impaired or threatened on the basis of biological data or screening methods. Unlike impairments or threats attributed to physical or chemical data and information, in which the pollutant or pollution is intrinsically known or evident, impairments or threats identified by the use of biological data or screening methods may not be as easily traced back to the underlying cause. A chemical pollutant, for example, that exceeds in-stream criteria is generally identifiable. The pollutant or pollution causing biological impairment, on the other hand, may not be readily apparent. A bioassessment of a stream may indicate unhealthy aquatic populations which fail to attain or maintain the designated use. The bioassessment, however, generally does not indicate the pollutant causing the impairment. EPA stresses that the first step in establishing a TMDL for these kinds of impairments is identifying the cause of the impairment and the pollutant for which the TMDL must be established. Requiring waterbodies which are impaired or threatened but for which the cause of the impairment or threat is unknown to be listed on part 1 of the list will provide an incentive for States, Territories and authorized Tribes to expeditiously identify the pollutant causing the impairment or threat at the time when that waterbody is placed on the list. If the cause of the impairment is determined to be pollution, no TMDL is required and the waterbody should be placed on part 2 of the list. This approach is consistent with EPA's evolving approach for the use of biological assessments and criteria.

Today's proposal at § 130.29 adopts the FACA Committee's recommendations that waterbodies remain listed until water quality standards are attained, and that a previously listed impaired waterbody may be removed from the list only when new data or information indicate that the waterbody has attained water quality standards or that the waterbody was incorrectly listed. Similarly, the proposed rule specifies that a previously listed threatened waterbody may be removed from the list when new data or information indicate that the waterbody is no longer threatened or that the waterbody was incorrectly listed. EPA adopted these FACA Committee recommendations because it believes that the section 303(d) list of impaired and threatened waterbodies is a comprehensive accounting of where the water quality problems in any State, Territory or authorized Tribe are. Retaining waterbodies on the list until water quality standards are attained provides a way to measure progress for program managers and other stakeholders.

EPA proposes that additional waterbodies be included on Part 4 of the list. These waterbodies are waterbodies for which implementation of best practicable control technology for point sources, secondary treatment for publicly owned treatment works, or controls enforceable by State or Federal law or regulation are expected to result in attainment of water quality standards by the next listing cycle. Some examples of enforceable controls which may achieve water quality standards are state

regulations or local ordinances requiring erosion control, state laws requiring manure management practices, NPDES controls for point sources based on best available technology, and Habitat Conservation Plans adopted under the Endangered Species Act (ESA). EPA believes that it is appropriate to provide time to allow controls such as these to attain water quality standards, especially in light of the large numbers of TMDLs that need to be established nationally.

Section 303(d)(1)(C) provides that each State, Territory or authorized Tribe shall establish TMDLs for waterbodies identified on the § 303(d) list "for pollutants which the Administrator identifies * * * as suitable for such calculation." Section 304(a)(2)(D) required EPA to publish "for purposes of section [303] * * * the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives." EPA identified such pollutants in December, 1978. At that time it said, "all pollutants, under proper technical conditions, are suitable for calculation of total maximum daily loads." (43 FR, 60665, Dec. 28, 1978)

The current proposal does not change the determination that all pollutants, under proper technical conditions, are suitable for calculation of TMDLs. The proper technical conditions for TMDL calculations are that data, analyses, or models are available or can reasonably be developed to establish a TMDL consistent with the requirements proposed today. Since EPA considers all pollutants suitable for calculation in nearly all situations, today's proposed rule does not enumerate or identify specific situations in which data, analyses or models are not available to establish TMDLs. EPA could, however, identify and describe situations, either in the final rule or in guidance, for which the proper technical conditions are not available to establish TMDLs. One example of a situation that EPA might identify is waters impaired primarily by air deposition of pollutants. If EPA were to identify specific situations where the proper technical conditions for TMDLs are not available, EPA could also specify that these waters could be included as a separate part of the list to be reviewed at each review cycle by the State and approved by EPA. EPA asks for comment on the advisability of identifying specific situations where the proper technical conditions for establishment of a TMDL are not met, and what those specific situations might be.

Other options considered. In developing today's proposal, EPA considered other ways to format the list. The options EPA considered focused on whether or not to divide the list into a number of different parts or segments. EPA decided to create a segmented list as a way to improve and better organize State and EPA management of the section 303(d) list and to provide important information to the general public and other stakeholders about the status of the listed waterbodies and the reasons for listing them. EPA also considered various options when deciding the appropriate categories for segmenting the list. One option EPA considered was whether to include a category for waterbodies for which there is some evidence of threat or impairment, but which would not be immediately scheduled for establishment of TMDLs. Waters could have been placed in this category if the State, Territory or authorized Tribe committed to collect additional data and information or conduct additional monitoring necessary to support establishment of TMDLs. EPA did not propose this option because it concluded that there was no need to delay scheduling waterbodies for TMDL establishment based on less than conclusive evidence of impairment or threat since any additional needed data or information could be obtained during the period between listing and State, Territorial and authorized Tribal establishment of the TMDL.

EPA also considered whether to continue the current regulatory requirement that gives States, Territories and authorized Tribes the option not to list waterbodies that fail to meet water quality standards, but for which other pollution control requirements or actions are planned or are being implemented that are expected to provide for standards attainment. The FACA Committee did not reach consensus on this issue. EPA did not propose this option because it is inconsistent with its view that the section 303(d) list should serve as a comprehensive public accounting of all waterbodies impaired or threatened by pollution and pollutants, irrespective of the tool or mechanism being used to achieve standards.

EPA also concluded that allowing waterbodies to be removed from State, Territorial or authorized Tribal lists once a TMDL has been approved by EPA is inconsistent with our belief that State, Territorial and authorized Tribal lists provide for a comprehensive public accounting of all waterbodies that are not attaining or are not expected to attain water quality standards. In addition, EPA agreed with the FACA Committee that requiring waterbodies to remain listed until they attain standards could serve as an incentive to establish and implement the TMDL, resulting in the restoration of impaired waterbodies.

Comments sought. EPA seeks comments on today's proposal to create a new format for the list of impaired and threatened waterbodies and to broaden the scope of the list to include waterbodies that are expected to attain standards after the application of technology-based controls required by sections 301 and 306 of the Act, more stringent effluent limitations, or other required pollution controls. EPA also seeks comment on our proposed criteria for removing waterbodies from the list. EPA solicits comments on any or all aspects of the proposal, including the options considered. EPA also asks for comment on the advisability of identifying specific situations where the proper technical conditions for establishment of a TMDL are not met, and what those specific situations might be.

d. Assigning Priorities to Listed Waterbodies

Existing requirements. Section 303(d) of the CWA and EPA's existing regulations require that States, Territories and authorized Tribes assign a priority ranking to each listed waterbody. Existing regulations specify that the priority ranking must include an identification of the pollutant(s) causing or expected to cause each waterbody's impairment and an identification of the waterbodies targeted for TMDL development in the next two years. Section 303(d) requires States, Territories and authorized Tribes to determine priority rankings by taking into account the severity of the pollution and the uses to be made of the waterbody. The statute does not explain how these factors should be taken into account and the current regulation does not expand on the statutory language. EPA guidance (*Guidance for Water Quality-based Decisions: The TMDL Process*, EPA 440/4–91–001, April 1991) acknowledges discretion in developing and assigning priority rankings and suggests a number of factors that States, Territories and authorized Tribes may consider, based on our belief that the statutory factors are not exclusive. These factors include immediate programmatic needs, vulnerability of particular waterbodies as aquatic habitats, recreational, economic and aesthetic importance of particular waterbodies, degree of public interest and support and State, Territorial

authorized Tribal, or national policies and priorities.

Proposed rule. Today's proposal at § 130.28 affirms the existing statutory and regulatory requirement that States, Territories and authorized Tribes assign a priority ranking to each listed waterbody. It also includes a new requirement that States, Territories and authorized Tribes assign either a "high," "medium," or "low" priority to each listed waterbody and pollutant combination on Part 1 of the list. States, Territories and authorized Tribes must assign a "high" priority to impaired waterbodies with water quality standards designated uses as public drinking water supplies where the impairment is contributing to a violation of an MCL, and for waterbodies in which species listed as endangered or threatened under section 4 of the ESA unless the State, Territory, or authorized Tribe shows that the impairment does not affect the listed species. Today's proposal maintains the existing regulations' requirement that the pollutant, pollutants, and/or pollution causing or expected to cause impairment be identified for each listed waterbody. Identification of each pollutant or type of pollution that causes or contributes to impairment of a waterbody is a critical part of the listing process because it sets the stage for TMDL development and helps the State, Territory and authorized Tribe determine appropriate priorities and schedules. Today's proposal, however, eliminates the current requirement that the priority ranking include an identification of the waterbodies targeted for TMDL development in the next two years. This is because EPA is proposing (at 40 CFR 130.31) a requirement that States, Territories and authorized Tribes develop a comprehensive schedule for establishing TMDLs for all waterbodies and pollutants on Part 1 of the list. A separate requirement to identify the waterbodies for which TMDLs will be developed over the next two years is unnecessary.

The priority ranking of impaired waterbodies and identification of the pollutant(s) or pollution causing or expected to cause each waterbody's impairment are important elements of each State list. The CWA provides States, Territories and authorized Tribes broad discretion in deciding how to rank their listed waterbodies. Adding a requirement that States must assign waterbodies a priority ranking of either "high," "medium," or "low" will enhance national consistency and help States and the public understand the relative significance of establishing TMDLs on specific waterbodies. EPA is proposing that all impaired and threatened waterbodies and pollutant combinations for which the impairment contributes to a violation of an MCL in waters where the designated use is public drinking water supply or in which a threatened or endangered species is present, be assigned a high-priority ranking by States, Territories and authorized Tribes. However, if a State, Territory or authorized Tribe shows that the impairment does not affect threatened or endangered species, it is not required to assign a high priority to that waterbody.

As noted earlier in section 4.a. of this preamble, States, Territories and authorized Tribes are required to provide EPA with a methodology illustrating how they considered the severity of the impairment and the use of the waterbody in identifying impaired and threatened waterbodies. Today's proposal requires the same type of illustration regarding the setting of priorities.

Finally, today's proposal provides, at §§ 130.28(d) and (e), that States, Territories and authorized Tribes may consider additional factors such as efficiencies gained by establishing TMDLs for all pollutants that cause or contribute to impairment of a listed waterbody; establishing TMDLs for single or multiple pollutants in multiple waterbodies on a watershed scale; the vulnerability of particular waterbodies; the value of particular waterbodies; the recreational, economic and aesthetic importance of particular waterbodies; the cost and complexity of establishing and implementing TMDLs; degree of public interest and support; and State, Territorial or authorized Tribal policies in setting priorities. All of the above factors are important and they should be considered when setting priorities. Consideration of these factors will help States, Territories, authorized Tribes and stakeholders set priorities efficiently and in recognition of larger environmental and community needs.

Section 130.32(b) provides that States, Territories and authorized Tribes must establish TMDLs in accordance with the priority rankings established in accordance with § 130.28. EPA does not, however, intend to disapprove an otherwise approvable TMDL simply because it was not developed in accordance with a State's, Territory's or authorized Tribe's schedule or the priority ranking assigned to the waterbody on the section 303(d) list. EPA does not believe disapproving such a TMDL is required by section 303(d) or consistent with the goal of implementing TMDLs which conform with applicable water quality standards. EPA may, however, consider the extent to which a State, Territory or authorized Tribe is developing TMDLs that are not in accordance with its priority rankings and schedule when making a decision under § 130.36(a) to step in and establish TMDLs. For example, if a State, Territory or authorized Tribe is ignoring its high priority waters and submitting too many low or medium priority TMDLs, EPA may decide to establish some high priority TMDLs itself.

Other options considered. In developing today's proposal, EPA considered other options for addressing the statutory requirement for priority ranking. EPA considered proposing a more prescriptive approach than the existing regulations and specifying factors that States, Territories or authorized Tribes would have to consider when determining whether to rank a particular waterbody as high, medium or low. The factors considered include the type and individual characteristics of the pollutant, e.g., toxic chemical, sediment; the use of the waterbody, e.g., drinking water, cold water sport fishery; the degree of impairment, e.g., numeric rankings; the difficulty and/or time involved in establishing the TMDL, e.g., most difficult TMDLs established first or in the alternative ranked lower to allow more time for the technical work necessary to establish a TMDL; or the amount of time expected to attain or maintain water quality standards. EPA also considered deferring entirely to State discretion on deciding how to rank waterbodies and not even requiring a basic high, medium or low ranking. In selecting the approach proposed today, EPA also considered the FACA Committee's recommendations to address this issue in guidance and balanced the importance of national consistency with the need for State latitude in setting priorities. EPA has determined that it is appropriate to require States to assign rankings of high, medium or low priority to each listed waterbody. EPA also considered not specifically requiring that waterbodies with designated uses as public water supplies in which there is a violation of an MCL or in which a threatened and endangered species is present be designated "high" priority. EPA proposes to address these waters specifically because it is important that these waterbodies be scheduled for TMDL establishment as soon as possible and EPA wanted to make sure that human health and endangered and threatened species concerns were

appropriately considered by all the States, Territories and authorized Tribes. EPA also considered the option of making human health and species concerns one (but not a determinative) factor in deciding whether to rank a waterbody in the "high" category.

EPA also considered whether to retain the current regulatory requirement that States, Territories and authorized Tribes identify the waterbodies targeted for TMDL establishment over the next two years in lieu of a new requirement that States, Territories and authorized Tribes develop a comprehensive schedule for establishing TMDLs for all waterbody and pollutant combinations on Part 1 of the list. However, as explained in section 4.e, below, EPA agreed with the FACA Committee's recommendation for a regulatory requirement that States, Territories and authorized Tribes develop overall schedules for TMDL establishment and today proposes to delete the targeting requirement.

EPA also considered providing different TMDL priority ranking requirements for impairments or threats resulting from "extremely difficult to solve" problems. An example impairment of this type is contaminated sediments which often result from the legacy of past introduction of pollutants. In many cases, the pollutant causing the impairment or threat is no longer being discharged. Allocations and cleanup may be difficult and require additional time to establish TMDLs or attain or maintain water quality standards. EPA did not propose that extremely difficult to solve problems be treated any differently because waterbodies with these types of impairments may require action sooner, rather than later, particularly when they meet the high priority requirements established by the proposal.

Comments sought. EPA seeks comment on today's proposal to require States, Territories and authorized Tribes to assign a high, medium, or low priority to each listed waterbody and delete the current targeting requirement. EPA seeks comments on requiring that impaired waterbodies with designated uses as public drinking water supplies and for which there is a violation of an MCL due to the impairment be ranked as high-priority for establishment of TMDLs. EPA also seeks comments on requiring that impaired waterbodies with endangered and threatened species present be ranked as high-priority for establishment of TMDLs, unless a State, Territory or authorized Tribe shows that the impairment does not affect the species. EPA seeks comment on what types of impairments, if any, should be considered difficult to solve and whether these types of impairments should be treated differently as priorities for establishing TMDLs are set. It also seeks comments on the other options considered and any alternatives for ensuring that human health and aquatic species concerns be given appropriate weight in making listing decisions. EPA also seeks comment on whether to allow the States, Territories and authorized Tribes to consider factors in addition to the statutory factors in establishing priority rankings. EPA solicits comments on any or all aspects of the proposal, including the options considered. After considering all comments received and any additional information that may become available, EPA may include any of the options discussed here in the final rule.

e. Establishing a Schedule for TMDL Development

Existing requirements. Existing statutory and regulatory requirements do not call for States to develop or submit to EPA a schedule for developing TMDLs for all listed waterbodies. Current regulations simply require that States identify, within their priority rankings, those waterbodies for which TMDLs will be targeted for development over the next two years.

The FACA Committee strongly endorsed a regulatory requirement that States, Territories and authorized Tribes establish TMDLs according to an expeditious schedule. One of the reasons for the committee's recommendation is the historically low numbers of TMDLs established by States, Territories and authorized Tribes. In reaching agreements with some of the plaintiffs in recent litigation over TMDLs, EPA has recognized the importance of timely TMDL establishment and has committed to ensuring the establishment of TMDLs for all listed waterbodies within time frames similar to that recommended by the FACA Committee.

In August 1997, EPA's Assistant Administrator for Water issued a policy memorandum specifically asking States, Territories and authorized Tribes to develop 8–13 year schedules for establishing TMDLs for all listed waterbodies, beginning with the lists submitted to EPA in 1998. The August 1997 policy memorandum also described several factors that States should consider in developing their schedules. These factors, echoed in part by the FACA Committee's recommendations, include: the number of waterbodies on a list, including the length of river miles and number of lake acres impaired or threatened; the number and complexity of TMDLs to be established; the availability of data or models; and the relative significance of the environmental harm or threat. The FACA Committee recommended that EPA regulations require States, Territories and authorized Tribes to develop expeditious schedules of not more than 8–15 years for establishing TMDLs for listed waterbodies.

Proposed rule. Today's proposal, at § 130.31, eliminates the current regulatory requirement that States, Territories and authorized Tribes, in their priority rankings, identify those waterbodies for which TMDLs will be established over the next two years. EPA is today affirming its August 1997 policy direction and the FACA Committee's recommendation and is requiring that States develop comprehensive schedules for establishing TMDLs for all waterbodies included on Part 1 of the list (as described in section 4.c, above). Today's proposal requires that such schedules be as expeditious as practicable, provide for a reasonable pace of establishing TMDLs over the life of the schedule and not extend beyond 15 years. In addition, today's proposal recommends that TMDLs for high priority waterbody and pollutant combinations on Part 1 of the list should be scheduled for establishment before medium and low priority waterbodies. Setting an overall time requirement for TMDL establishment, as well as requiring a reasonable pace of TMDL establishment over the duration of the schedule, will encourage timely, concerted action by States, Territories and authorized Tribes leading to increased numbers of approved TMDLs.

The proposed requirement to establish a schedule for TMDL development is consistent with the language of section 303(d), which requires States to submit TMDLs for listed waterbodies beginning 180 days after the Administrator identifies the pollutants suitable for TMDL calculation, and "from time to time" thereafter. The Act does not define "from time to time," and therefore EPA today proposes to define that term to mean submission of TMDLs at a reasonable pace over no more than the next fifteen years. In addition, EPA proposes that State, Territorial and authorized Tribal schedules should provide for establishment of high-priority TMDLs before TMDLs are established for medium and low-priority waterbodies. It is reasonable to expect States, Territories and authorized Tribes to establish TMDLs for high priority waterbodies on Part 1 of their lists before establishing TMDLs for lower priority waterbodies. While the number

of such waterbodies will differ from State to State, as will complexity of TMDL development and resource availability, the proposed provision should allow sufficient time for even those States with a relatively large number of high-priority waterbodies on Part 1 of their lists to establish TMDLs for waterbodies consistent with the requirements of section 303(d) that priority rankings take into account the uses to be made of waterbodies and the severity of the impairment when setting priorities for establishing TMDLs.

Today's proposal recognizes the statutory requirement that States, Territories and authorized Tribes assign a priority ranking to each listed waterbody. EPA recognizes that there are a number of ways that States, Territories and authorized Tribes may schedule TMDLs for establishment and implementation. These include focusing on waterbodies concurrently that are impaired by a particular pollutant or category or subcategory of sources or that share common ecosystem characteristics. EPA intends the prioritization and scheduling provisions in today's proposal to be flexible enough to accommodate such considerations.

EPA also recognizes and supports the watershed approach, under which States, Territories, and authorized Tribes may choose to establish all TMDLs in the same watershed at the same time. EPA strongly supports the watershed approach, but wants to ensure that States, Territories, and authorized Tribes do not depart too far from their priority rankings. EPA invites comment on the best way to integrate the statutory requirement for priority rankings with the watershed approach.

EPA recommends that States, Territories and authorized Tribes adopt a goal to establish TMDLs for all high-priority waterbodies within five years. EPA considered the FACA Committee recommendation that all high-priority TMDLs be required to be established within five years. Today's proposal, however, reflects that many States, Territories and authorized Tribes will have more high-priority waterbodies than can reasonably be expected to be established within five years based on available resources. EPA also understands that it may not make sense for States, Territories and authorized Tribes to individually schedule every TMDL, especially those with medium or low priority. States, Territories and authorized Tribes may schedule groups of TMDLs, on a watershed or some other appropriate basis, for TMDLs to be established in later years of the schedule.

Other Options Considered. In developing today's proposal, EPA considered several options. For example, EPA considered maintaining the current regulatory requirement that States, Territories and authorized Tribes identify only those waterbodies for which TMDLs will be developed over the next two years, and not requiring States to develop an overall schedule for TMDL establishment. EPA did not propose this option, even though it is often difficult to estimate the amount of time needed to develop TMDLs, especially when lists may include hundreds of impaired or threatened waterbodies. It is desirable for States, Territories and authorized Tribes to plan, on a long-term basis, for the establishment of all needed TMDLs. Moreover, many States, Territories and authorized Tribes have adopted, or are moving toward adopting, a rotating basin or watershed approach to water quality management. Under such an approach, States, Territories and authorized Tribes generally work sequentially through each of their basins on a five year cycle. They may collect data in a basin in the first year, analyze the data in the second year to assess the water quality in the basin, establish TMDLs and other management strategies in the third year, implement TMDLs and management strategies in the fourth year, and monitor for progress in the fifth year. Developing an overall schedule for TMDL establishment allows States, Territories and authorized Tribes to ensure compatibility between their rotating basin approaches and TMDL establishment.

Comments sought. EPA seeks comments on the proposed approach to require States, Territories and authorized Tribes to develop schedules for the establishment of TMDLs for all waterbodies on Part 1 of the list. EPA also seeks comments on the proposed requirement that States, Territories and authorized Tribes should schedule all high priority TMDLs for establishment before establishing TMDLs for medium and low-priority waterbodies. EPA solicits comments on any or all aspects of the proposal, including the options considered and may adopt any of the options discussed here in the final rule.

f. Submission of Lists, Priority Rankings, Listing Methodologies, and Schedules to EPA

Existing requirements. The statute and existing regulations require States to submit their lists to EPA for review and approval. Section 303(d) provides EPA with 30 days from the date of a State's submittal to either approve or disapprove the list. If EPA disapproves the list, EPA has an additional 30 days to establish the list. Existing regulations specify that the lists submitted by States to EPA for review must include the identification of the pollutant or pollutants causing or expected to cause the impairment or threat, the priority ranking of listed waterbodies, and the waterbodies identified for TMDL development over the next two years. Existing regulations also require States, Territories and authorized Tribes to submit to EPA their listing methodology; existing regulations do not, however, provide for EPA review and approval or disapproval of the methodology. Under the existing regulations, State, Territorial and authorized Tribal lists are to be submitted to EPA every two years, on April 1 of every even-numbered year.

Proposed rule. Today's proposal at 40 CFR 130.27(b) maintains the existing regulatory requirement that State, Territorial and authorized Tribal waterbody lists identify the pollutant(s) and/or pollution causing or expected to cause the impairment or threat, and the priority rankings of waterbody/pollutant combinations. Lists of impaired and threatened waterbodies must be submitted to EPA for review and approval or disapproval. As required by the statute, EPA will have 30 days to review and approve or disapprove each list. Today's proposal, at § 130.30(e), provides that EPA may establish a list of impaired and threatened waterbodies, including pollutant/pollution combinations and priority rankings, if a State, Territory or authorized Tribe asks EPA to do so, or if EPA determines that a State, Territory or authorized Tribe has not or is not likely to establish such list consistent with the schedule specified in § 130.30(a). As discussed later in this preamble, EPA believes it has authority under section 303(d) of the Clean Water Act to establish TMDLs if asked to do so, or if it determines that States, Territories, or authorized Tribes have not or are not likely to establish such TMDLs consistent with their schedules. EPA believes that the same rationale articulated later in the preamble in support of its authority, under certain circumstances, to establish TMDLs also applies to establishment of lists of impaired waters.

EPA anticipates exercising its discretionary authority to establish lists of impaired waterbodies on a case-by-case basis taking into account a variety of factors, including whether the State, Territory or authorized Tribe intends to submit a list at all, how late the State's, Territory's or authorized Tribe's list will be, any explanations offered by the

State, Territory or authorized Tribe for missing the submission deadline, and whether EPA has reason to believe the State's, Territory's, or authorized Tribe's list will be seriously flawed when it is submitted. For example, EPA does not expect that it will automatically decide to establish a list for a State, Territory or authorized Tribe just because the State, Territory or authorized Tribe may have missed the list-submittal deadline contained in § 130.30(a). However, if the State, Territory or authorized Tribe misses its § 130.30(a) deadline and, following inquiry from EPA, is not able to provide assurances that its list of impaired waters will be submitted for review within a reasonable period of time, EPA may determine to exercise its discretionary authority to establish the list itself. If, on the other hand, EPA concludes that the State, Territory, or authorized Tribe is making a "good faith" effort to complete list and submit it to EPA for review, EPA may decide not to establish a list of impaired waters for the State, Territory or authorized Tribe. EPA invites comment on its proposal to expressly assert in regulations its discretionary authority to establish lists of impaired waters and on the factors EPA should consider in exercising that authority.

EPA is clarifying by the use of the term "order" that its listing actions are informal adjudications and not rulemaking actions under the Administrative Procedure Act. Today's rule, at § 130.30(d), also requires EPA to notify the public in the **Federal Register** and in a newspaper of general circulation of its actions and request public comment for at least 30 days. EPA will send any portion of the list that it has modified to the State for incorporation into its water quality management plan.

Today's proposal, at § 130.24, also maintains the existing regulatory requirement that States, Territories and authorized Tribes must submit their listing methodologies to EPA . Under today's proposal States, Territories and authorized Tribes must submit their methodologies to EPA nine months prior to the deadline for submission of the list. As in the existing regulations, the proposal provides that EPA will review and may provide the State, Territory and authorized Tribe with comments on the methodology. EPA will not take any approval or disapproval action on the State, Territorial or authorized Tribal methodology.

EPA is not proposing at this time to approve or disapprove individual listing methodologies. EPA does recognize that the integrity of State, Territorial and authorized Tribal lists is strongly related to an explicit and deliberate approach to identifying impaired and threatened waterbodies. Requiring States, Territories and authorized Tribes to provide EPA and the public with the listing methodology prior to submission of the list will lead to more consistent, better defined listing decisions. In addition, submission of State listing methodologies to EPA prior to submission of the list will provide EPA and States, Territories and authorized Tribes with an opportunity to discuss exactly how impaired and threatened waterbodies are identified. These discussions will substantially reduce questions and comments at the time the section 303(d) list is submitted to EPA for action. EPA recognizes that the methodologies submitted nine months prior to the lists may be revised in response to feedback from the public or EPA, or issues and concerns that may arise as the methodologies are actually used to develop the lists. EPA is not proposing to approve or disapprove State, Territorial or authorized Tribal listing methodologies because it has adequate authority in its review of the list of impaired or threatened waterbodies to assure that the methodologies used by States, Territories and authorized Tribes appropriately identify waterbodies required to be listed under section 303(d).

Today's proposal, at § 130.31(b), adds a new requirement that States, Territories and authorized Tribes submit schedules for establishing TMDLs for all waterbodies listed on Part 1 of the list to EPA for review. EPA is proposing that States, Territories and authorized Tribes submit schedules for establishing TMDLs with every list of impaired and threatened waterbodies submitted to EPA. Although schedules will be submitted with lists, schedules are not part of the lists and EPA will not develop a schedule if a State develops an inadequate one or fails to submit one. While EPA does not propose to approve or disapprove the schedules, EPA will consider the schedules in evaluating the identification of waterbodies and priority ranking. Approving or disapproving schedules is not required because EPA reviews the priorities for establishing TMDLs in approving or disapproving the State, Territorial and authorized Tribal list and EPA retains ultimate authority to establish TMDLs if States, Territories and authorized Tribes fail to do so. If a State, Territory or authorized Tribe submits a schedule for Part 1 waterbodies that EPA concludes is inadequate (e.g., because it extends beyond fifteen years), EPA would provide comments to the State, Territory and authorized Tribe in its action on the list, and would expect the State, Territory or authorized Tribe to address EPA's comments. Finally, shifting the date of list submission from April 1 to October 1 will ease the difficulties that States, Territories and authorized Tribes may have in completing both section 305(b) reports and section 303(d) lists and submitting them to EPA on time; both are currently due to EPA on April 1 of every even-numbered year.

Options considered. Today's proposal requests comments on the existing regulatory requirement that State, Territorial and authorized Tribal lists be submitted every two years. The FACA endorsed the two-year listing cycle, but EPA has received many suggestions from States, Territories and authorized Tribes suggesting that lists be submitted at four or five year intervals. EPA is considering retaining the two-year listing interval, adopting a four-year or five-year listing cycle interval, or requiring that States, Territories and authorized Tribes submit their first list under the revised regulation no later than October 1, 2000, with subsequent list submittals occurring at longer intervals, e.g., every four years or every five years.

The existing two year listing cycle provides frequent intervals for States, Territories and authorized Tribes, EPA and stakeholders to identify impaired and threatened waterbodies and document progress in attaining water quality standards. The two-year listing requirement is also consistent with the section 305(b) reporting cycle. Such a short listing cycle, however, may over emphasize the listing of waterbodies as opposed to establishing and implementing TMDLs. A two-year listing cycle may also be inefficient because States, Territories and authorized Tribes generally do not find significant changes in water quality over such a short period of time.

A four-year listing cycle is also being considered. This interval would promote greater emphasis on establishing and implementing TMDLs, as opposed to listing impaired and threatened waterbodies. It would also allow for periodic coordination between section 303(d) lists and section 305(b) reports. A four-year listing cycle would not, however, provide for as frequent updates in progress towards attainment of water quality standards for States, Territories and authorized Tribes, EPA and stakeholders.

A five-year listing cycle is also being considered. A five-year cycle would allow States, Territories and authorized

Tribes to focus more time and resources on establishing and implementing TMDLs and is compatible with State, Territorial and authorized Tribal rotating basin and watershed approaches. It would also allow for a complete NPDES permitting cycle between each list.

Comments sought. EPA solicits specific comments on the cycle on which States, Territories and authorized Tribes should submit lists to EPA. EPA also solicits comments on whether EPA should approve or disapprove State, Territories and authorized Tribal schedules and whether schedules should be included as part of lists of impaired and threatened waters. EPA solicits comment on any or all aspects of the proposal, including the options considered.

g. Proposal To Change List Submission Deadline to October 1, 2000 in the Existing TMDL Regulations

Proposed rule. In addition to the comprehensive revision of the Part 130 regulations being proposed today, EPA also is proposing to amend the existing regulations to change the current April 1 deadline to October 1 for submission by the States, Territories, and authorized Tribes of their lists of impaired waters. If after consideration of public comments, EPA decides to promulgate this proposal, EPA intends that it would promulgate this amendment as a separate action as soon as possible after the close of the comment period.

The existing regulations at 40 CFR 130.7(d)(1) require States, Territories, and authorized Tribes to submit their lists on April 1 of every even-numbered year. EPA believes it makes sense to delay this requirement until October 1. EPA prefers that the next lists submitted should be based on the new requirements being proposed today. It is unlikely that EPA will promulgate these comprehensive revisions well in advance of the current April 1 deadline for submission of lists. To avoid the States, Territories, and authorized Tribes developing lists under the existing regulations to meet the April 1 deadline, EPA proposes to move that deadline to October 1. EPA expects to promulgate the comprehensive revisions well in advance of October 1. In that event, States, Territories, and authorized Tribes will develop their lists pursuant to the new regulations. In the event the new regulations are delayed, States, Territories, and authorized Tribes would be required to submit lists by October 1, 2000 pursuant to the existing regulations.

Comments sought. EPA requests comment on this separate proposal to amend the April 1 deadline in 40 CFR section 130.7(d)(1) to be October 1. EPA also requests comment on its proposal to promulgate this amendment as a separate action as soon as possible after the close of the public comment period. If you provide comments to EPA on this separate proposal, EPA requests that you highlight those comments for EPA's consideration immediately upon the close of the public comment period.

5. What Are the Proposed Rule's Requirements for TMDL Establishment and EPA Review of TMDLs Submitted by States, Territories and Authorized Tribes?

a. Minimum Elements of a TMDL Submitted to EPA

Existing requirements. Pollutant loads may be transported into a waterbody directly through effluent discharge, bank and bar erosion (in streams, rivers, estuaries, and lakes), re-circulation (e.g., nutrients in lakes, estuaries, and wetlands; contaminated sediments), solar heating, atmospheric deposition, and groundwater flows; or indirectly by overland flow caused by snowmelt or precipitation. A TMDL is established to attain or maintain the water quality standard for a specific pollutant that has been identified as the cause of an impairment or threat to a waterbody. Consistent with this goal, the existing TMDL regulations require States, Territories and authorized Tribes to establish TMDLs at levels necessary to meet water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between pollutant loads and water quality. The existing regulations define loading capacity as the greatest amount of loading that a waterbody can receive without exceeding water quality standards and a TMDL as the sum of the individual waste load allocations for existing and future point sources and the load allocations for existing and future nonpoint sources and for natural background. The existing regulations also explain that TMDLs can be expressed, as either mass per time, toxicity, or other appropriate measures that relate to a State's, Territory's and authorized Tribe's water quality standard. The technical approach used to develop TMDLs varies according to the pollutant of concern, the type of waterbody, and the type and number of pollutant sources.

The ultimate goal of establishing TMDLs is to implement allocations that will result in the attainment and maintenance of water quality standards. Without implementation, a TMDL merely provides estimates of the pollutant load reductions necessary to attain water quality standards. Section 303(d) does not establish any new or additional implementation authorities beyond those that currently exist under the CWA or in State, Territory, local, Tribal or other Federal laws. TMDL regulations currently do not require States, Territories and authorized Tribes to develop implementation plans for TMDLs. Wasteload allocations are implemented through effluent limits in NPDES permits. Load allocations are implemented through a variety of State, local, Tribal, and Federal programs, as well as voluntary action by committed citizens.

Currently, EPA approval of TMDLs for waterbodies impaired from a combination of point and nonpoint sources requires that the wasteload allocation for the point source is determined on the basis of existing or planned reductions in loadings from nonpoint sources. EPA thus believes it is appropriate to require reasonable assurance that the load allocations will be implemented.

Proposed rule. The FACA Committee described a TMDL as an "action oriented analysis of how to attain water quality standards" that is crucial to the ultimate success of TMDLs. Today's proposal, at § 130.33 and § 130.34, establishes the minimum elements that States, Territories, and authorized Tribes must include in any TMDL submitted to EPA and the acceptable ways in which a TMDL can be expressed. It clarifies that a TMDL must be calculated to ensure that water quality standards will be attained and maintained throughout the waterbody in the event of reasonably foreseeable increases in pollutant loads. In today's proposal, TMDLs continue to provide for tradeoffs between alternative point and nonpoint source control options so that cost effectiveness, technical effectiveness, and the social and economic benefits of different allocations can be considered by decision-makers.

The technical approach used to establish individual TMDLs may vary according to the pollutant of concern, the type of waterbody and the type and number of pollutant sources. Today's proposal, at § 130.33, maintains the existing requirement that all TMDLs must consider the total pollutant load to a waterbody from point, nonpoint, and background sources. Today's proposal, at § 130.34, also clarifies that all TMDLs must contain an expression of the

pollutant load or load reduction necessary to assure that the waterbody will attain and maintain water quality standards, including aquatic or riparian habitat, biological, channel, geomorphological, or other appropriate conditions that represent attainment or maintenance of the water quality standard.

For example, a spawning use may be impaired because excessive sediment (i.e., clean sediment) is clogging the interstitial spaces of the stream bottom. These spaces normally provide habitat for the insects that are a food source for fish and dissolved oxygen needed by young fish to survive. While the ultimate water quality goal for this problem may be to increase successful spawning by 20 percent, the TMDL analysis and pollutant load allocation will be based on decreasing the pollutant load of clean sediment in the stream system and must be expressed in those terms. This example fits within the approach set out in § 130.34(3) for expressing TMDLs.

It is important that a TMDL be expressed in terms that are appropriate to the characteristics of the waterbody and pollutant combination. Today's proposal, at § 130.34, allows States, Territories and authorized Tribes to use one of four approaches when expressing a TMDL: sources. A "daily" load allocation would not provide the allocation of phosphorus necessary to attain or maintain water quality standards because, while it might cover current loads, it would not account for the amount of the pollutant stored in the lake or reservoir. In addition, allocations expressed in terms of daily loads might not account accurately for the different loadings and effect of the pollutant on water quality in the lake resulting from different seasons and climatic events. For a pollutant like phosphorus, the average annual load is the best indicator of actual conditions in the lake and best way to express the allocations established in any TMDL.

Similarly, waterbodies may be impaired by loadings of fine sediment delivered to the waterbody from hillslope or bank erosion. Allocations established as part of a TMDL for fine sediment would need to address the variability of sediment loadings due to flows related to rainfall or snowmelt, the natural background sediment loads carried by the waterbody, channel characteristics and aquatic life needs. A daily load of sediment would not necessarily be an accurate representation of the natural background load, the variability in loadings over time and season, or the amount of pollutant load reduction needed to maintain sediment loads within the natural limits and requirements of the waterbody to attain or maintain water quality standards. A seasonal or annual in-stream sediment allocation would be a more accurate and technically correct expression of the amount of sediment in the waterbody over time that would attain or maintain water quality standards.

Temperature is another example of a pollutant where other than daily loads may be the most appropriate expression of an allocation established as part of a TMDL. Temperature varies as a result of climate and season. Aquatic life require a range of temperatures to spawn, grow and maintain viable populations. A daily load of heat and the resultant temperature in the waterbody is not as important as maintaining the range required by the aquatic life through different seasons and climatological events. Therefore, an allocation of pollutants causing changes in temperature is often better expressed as seasonal or monthly averages keyed to preservation of the needed temperature ranges throughout the seasons.

EPA recognizes that some non-attainment of water quality standards is due in part, or entirely, to extremely difficult to solve problems. These include circumstances where attainment of water quality standards is technically or practically difficult or costly. The FACA recommended, and EPA concurs, that it is feasible to establish a TMDL for these difficult to solve problems. Both EPA and the FACA recognized, however, that some of the processes necessary to attain water quality standards are likely to take a long time to show progress in attaining water quality standards. EPA recognizes that implementation plans for these types of TMDLs may allow a relatively longer timeframe for water quality standards attainment.

The FACA Committee recommended that EPA clarify the minimum elements of an approvable TMDL for States, Territories and authorized Tribes and other stakeholders. The FACA Committee recommended that the "TMDL development/implementation planning process" be composed of seven components: (1) Target identification; (2) identification of needed pollutant reduction; (3) source identification; (4) allocation of pollutant loads; (5) implementation plan; (6) monitoring and evaluation; and (7) procedures for any needed revision based on evaluation. The FACA Committee did not reach consensus on whether the implementation plan is a required component of the TMDL under section 303(d) or whether the plan should be submitted separately from the TMDL under section 303(e).

Today's proposal endorses the FACA Committee's recommendation for regulatory clarification of the minimum elements of an approvable TMDL. The minimum elements are discussed below.

Waterbody Name and Geographic Location. Identification of the name and geographic location of the impaired or threatened waterbody. It is important to identify not only the name and location of the waterbody for which the TMDL is being established, but also the names and geographic locations of the waterbodies upstream of the waterbody that contribute significant amounts of the pollutant of concern. The geographic location of the waterbody must be identified using a nationally recognized georeferencing system. EPA will provide guidance and technical support necessary to ensure standardized georeferencing.

Identify the Pollutant Load. Identification of the pollutant load that may be present in a waterbody and still assure attainment and maintenance of water quality standards. After identifying the waterbody name and location, the next step in establishing a TMDL is to quantify the pollutant load for the pollutant or pollutants that have been identified as causing the waterbody impairment. For most or many pollutants, numeric water quality standards are available. When no numeric water quality standard is available, the pollutant load must still be quantified. The numeric pollutant load selected depends on consideration of the type of waterbody, its location, and how seasonal variations impact water quality.

Identify the Deviation from the Pollutant Load. Identification of the amount or degree by which the current pollutant load deviates from the pollutant load representing attainment or maintenance of water quality standards. Once the pollutant load has been identified, the degree to which conditions deviate from that load can be calculated, resulting in a determination of how much the existing pollutant load must be reduced to meet the required pollutant load. In some situations, the baseline load may not be quantifiable in which case the required load reduction may be based on the degree to which water quality deviates from the water quality standards and expressed in terms of a percentage reduction rather than an absolute mass-per-time reduction. Further, the allocations of the TMDL may be expressed in terms of a percentage reduction on a source-by-source basis rather than an absolute

mass-per-time load allocation to each source.

Source Categories, Source subcategories or Individual Sources. Identification of the source categories, source subcategories, or individual sources of the pollutant for which the wasteload allocations and load allocations are being established. The source assessment identifies (i.e., lists) and characterizes pollutant source(s) or category(ies) of sources that cause the waterbody impairment. The character of each pollutant source, its temporal loading and variability and location with respect to the waterbody are important. The factors to identify when conducting a source assessment include the source type (e.g., point, nonpoint, background, atmospheric); relative location and magnitude of each load; transport mechanisms (e.g., runoff vs. infiltration); and time scale of loading to the waterbody (i.e., duration and frequency of loading to receiving waterbodies).

Wasteload Allocation and Load Allocation. Waste load allocations for pollutants from point sources and load allocations for pollutants from nonpoint sources, including atmospheric deposition and natural background. Allocations are central to the TMDL process and TMDLs must clearly specify an allowable load for each source. TMDLs must include a wasteload allocation for each point source permitted under section 402 of the Clean Water Act discharging the pollutant for which the TMDL is being established. In two circumstances, however, pollutant waste loads may be allocated to a category or subcategory of sources or considered part of background loads. The first is when the discharge is subject to a general permit. As explained above, it is appropriate to allocate to the aggregate of sources covered by a general permit since the number and identity of sources discharging under a general permit generally will not be known. The second circumstance is when the State, Territory or authorized Tribe determines that certain pollutant loads relating to specific individual point sources do not need to be reduced in order for the waterbody to attain or maintain standards. In the case of nonpoint sources, allocation of pollutant loads to categories or subcategories of sources may be appropriate, especially if measures to reduce these loads are implemented for a whole category at once.

Margin of Safety (MOS). A margin of safety, expressed as unallocated assimilative capacity or conservative analytical assumptions used in calculating the TMDL. Each TMDL must include a MOS sufficient to account for technical uncertainties in establishing TMDLs and describe the manner in which the MOS is determined and incorporated into the TMDL. If a portion of the loading capacity is left unallocated to provide an MOS, the amount left unallocated must be identified and the basis for it described. If conservative modeling assumptions are relied on to provide an MOS, the specific assumptions providing the MOS must be identified. In either case, the basis for believing that the MOS is sufficient to attain and maintain water quality standards must be explained.

Seasonal Variations. TMDLs must account for seasonal variations and critical conditions concerning receiving water flow (e.g., low flow during drought periods), receiving water conditions (e.g. temperature), beneficial use impacts (e.g., key aquatic life stages), pollutant loadings (e.g., high flow nonpoint source runoff), and other environmental factors that affect the relationship between pollutant loading and water quality impacts. This ensures that the TMDL protects the receiving water when it is most sensitive to the pollutant.

Allowance for Future Loading. States, Territories and authorized Tribes must include an allowance for future loading in their TMDL that account for reasonably foreseeable increases in pollutant loads and carefully document their decision-making process. This allowance should be based on existing and readily available data at the time the TMDL is established. States, Territories, and authorized Tribes may choose to completely allocate the pollutant loading for a waterbody and thus leave no loading for future growth. EPA encourages State and local governments to adopt "Smart Growth" policies and requirements. Where adoption and/or implementation of "Smart Growth" policies and requirements will reduce future loadings, the allowance for future loadings may be reduced accordingly.

Implementation Plan. Today's proposal would revise the current regulations by requiring States, Territories, and authorized Tribes to submit a plan to implement the load allocations and waste load allocations of a TMDL, or group of TMDLs, as a component of a TMDL. Today's proposal reflects the FACA recommendation that TMDLs include implementation plans and proposes to substantially adopt the FACA's recommended minimum elements of an implementation plan. EPA is proposing that the implementation plan itself would be required to contain eight minimum elements: (a) implementation actions; (b) time line; (c) reasonable assurance; (d) legal or regulatory controls; (e) time required to attain water quality standards; (f) monitoring plan; (g) milestones for attaining water quality standards; and (h) TMDL revision procedures.

The proposal requires States, Territories and authorized Tribes to submit implementation plans that show how each TMDL is to be implemented. While States, Territories and authorized Tribes may submit an individual implementation plan with each TMDL, EPA believes that it is more effective for one implementation plan to describe how a number of TMDLs will be implemented. One implementation plan may, for example, show how all the TMDLs for a pollutant within an entire watershed will be implemented or how implementation of TMDLs for different pollutants within a particular basin will be implemented. EPA believes that this approach provides States, Territories and authorized Tribes with the flexibility to consider the complexity of water quality problems, effectively implement solutions and take advantage of existing implementation mechanisms such as management programs approved under section 319 or rotating basin approaches.

EPA has authority to require an implementation plan as an element of an approvable TMDL under section 303(d). Section 303(d) requires that TMDLs "be established at a level necessary to implement the applicable water quality standards." (33 U.S.C. § 1313(d)(1)(C)). EPA is charged with approving or disapproving the TMDLs submitted by States, Territories or authorized Tribes, 33 U.S.C. § 1313(d)(2), but aside from explicitly requiring that a TMDL be established "with seasonal variation" and "a margin of safety," Congress did not clearly establish the individual elements of a TMDL necessary to enable EPA to determine whether a specific TMDL is approvable as established at the necessary level. EPA has inherent power to establish regulations to fill this gap. *Morton* v. *Ruiz*, 415 U.S. 199, 231 (1974) ("The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress."). EPA has previously determined that there are elements, such as a separate determination of the proper allocations for point sources (WLAs) and nonpoint sources (LAs), which are necessary for EPA to determine whether statutory

goals are met by the TMDLs established by States, Territories and authorized Tribes.

Today EPA is proposing that one additional appropriate way to enable EPA to determine properly whether or not a TMDL is established at the level necessary to implement the applicable water quality standards is to require that an implementation plan be a component of a TMDL submittal. In determining whether EPA is properly construing the CWA, the first step is to determine "whether Congress has directly spoken to the precise question at issue." *Chevron* v. *Natural Resources Defense Council*, 467 U.S. 837, 842 (1984). EPA has found that section 303(d) and its sparse legislative history are silent or ambiguous on the specific question of whether or not an implementation plan should be part of a TMDL. Therefore, the question is simply whether EPA's construction of the statute is permissible. *Id.* at 842–843. Given the statute's requirement that TMDLs, whether established by a State, Territory, or authorized Tribe, or by the Administrator, "be established at a level necessary to implement the applicable water quality standards," section 303(d)(1)(C); section 303(d)(2), EPA's decision that one way to determine whether TMDLs are so established is to review the State, Territorial, or authorized Tribal plan to implement the TMDLs to see if it is a reasonable one. A plan which, among other things, demonstrates that the State, Territory, or authorized Tribe has selected specific implementation actions for sources, calculates the time which it should take for those actions to result in achievement of water quality standards, and establishes a monitoring plan to determine whether standards are in fact being achieved is, in EPA's judgment, an appropriate requirement to enable EPA to approve TMDL submittals. Moreover, Congress' concern that the establishment of TMDLs not be a paper exercise is manifest in its requirement that they be tied to the implementation of water quality standards and the requirement that approved TMDLs be incorporated into the State, Territorial, or authorized Tribal plan for its navigable waterbodies under section 303(e).

A consequence of today's proposal to require an implementation plan as one of the minimum elements of a TMDL is that the plan itself, like the other elements, is subject to EPA approval or disapproval. In evaluating an implementation plan, EPA would assess whether the State's, Territory's, or authorized Tribe's implementation plan contains each of the components required by the regulation and discussed in more detail below. If EPA disapproves a TMDL because it determines that the implementation plan is inadequate, pursuant to the statute, EPA would have 30 days to establish a TMDL, including an implementation plan.

EPA's proposal to require an implementation plan under section 303(d) does not directly result in a more enforceable TMDL. EPA's existing point source regulations require that permit effluent limits "are consistent with the assumptions and requirements of any available wasteload allocation for the discharge." 40 CFR 122.44(d)(1)(vii)(B). Section 303(d) does not provide any additional CWA authorities to implement nonpoint source controls, therefore, the implementation plan will provide a program to deal with nonpoint source contributions to impaired waterbodies using existing Federal, State and local authorities and voluntary action to implement the allocations contained in TMDLs.

Each TMDL implementation plan must contain the following components:

Implementation actions. A description of the control actions and/or management measures required to implement the allocations contained in the TMDL, along with a description of the effectiveness of these actions and/or measures in achieving the required pollutant loads or reductions. These actions may vary depending on the pollutant for which the TMDL is being established, the complexity of the water quality problem and the controls required. For point sources, a list of NPDES permits and a schedule for revising the permits to be consistent with the TMDL is required.

For nonpoint sources, a description of best management practices or other management measures is required. EPA expects that section 319 management programs will be the basis for this description. EPA expects that the implementation plan would contain a description of what best management practices and/or controls will be used and identify the source categories, subcategories or individual source of the pollutant for which the TMDL is being established. The implementation plan may deal with sources on a watershed basis as long as the scale of the implementation plan is consistent with the geographic scale for which the TMDL allocations are being established.

EPA expects that the implementation plan would also describe what actions will be implemented by source category, subcategory or individual sources. The description of the actions should include an analysis of the anticipated or past effectiveness of the best management practices and/or controls that are expected to meet the wasteload and load allocations. The implementation plan should describe where the best management practices and/or controls will be implemented. This description should tie the implementation activity to the pollutant and geographic scale of the TMDL.

Timeline. The implementation schedule must contain a description of when the activities necessary to implement the TMDL will occur. It must include a schedule for revising NPDES permits to be consistent with the TMDL. The schedule must also include when best management practices and/or controls will be implemented for source categories, subcategories and individual sources. Interim milestones to judge progress are also required. The timeline should tie the implementation activity to the pollutant, the description of implementation actions and the geographic scale of the TMDL.

Reasonable assurance. The implementation plan must contain reasonable assurance that the implementation activities will occur. Reasonable assurance means a high degree of confidence that wasteload allocations and/or load allocations in TMDLs will be implemented by Federal, State or local authorities and/or voluntary action. For point sources, reasonable assurance means that NPDES permits (including coverage under applicable general NPDES permits) will be consistent with any applicable wasteload allocation contained in the TMDL. For nonpoint sources, reasonable assurance means that nonpoint source controls are specific to the pollutant of concern, implemented according to an expeditious schedule and supported by reliable delivery mechanisms and adequate funding. Examples of reasonable assurance include State, Territorial or authorized Tribal regulations or local ordinances, performance bonds, memoranda of understanding, contracts or similar agreements.

Voluntary and incentive-based actions may also be acceptable measures of reasonable assurance. Like all other forms of reasonable assurance for nonpoint sources, voluntary and incentive-based actions must be specific to the pollutant of concern, implemented according to an expeditious schedule, and be supported by adequate funding. Examples of voluntary and incentive-based programs include State, Territorial, or authorized Tribal programs to audit the implementation of agricultural or forestry best management practices,

memorandums of understanding between States, Territories, or authorized Tribes and organizations representing categories of sources or State-approved programs for categories or subcategories of sources to ensure effectiveness of best management practices. Voluntary participation by landowners in agricultural or forestry water quality protection or conservation programs, for example, installation or maintenance of riparian buffers or implementation of activities to participate in watershed-based effluent trades, is acceptable during establishment of the initial TMDL, subject to the conditions established in the regulation. However, if monitoring shows that voluntary measures are not resulting in the progress towards attainment and maintenance of water quality standards envisioned when the TMDL was approved, the State, Territory, or authorized Tribe may need to establish a regulatory approach.

EPA is aware that some States, Territories, or authorized Tribes are concerned that the proposed definition of "reasonable assurance" would require adequate funding for implementation measures addressing nonpoint sources at the time that the implementation plan is developed. While States, Territories, or authorized Tribes may have difficulty in completely identifying funding sources for all such measures, EPA intends that States could describe, based on best information available at the time, how adequate funding will be secured. In particular, currently available funding sources should be identified specifically. EPA requests comment on this particular provision of the reasonable assurance component of the implementation plan.

Section 303(d)(1)(C) of the CWA provides EPA with authority to require that reasonable assurance be included as one of the elements of a TMDL's implementation plan. Section 303(d)(1)(C) provides that TMDLs must be established at a level necessary to implement the applicable water quality standards. Section 130.33(b)(10)(iii) of today's proposal would require that each implementation plan contain a discussion of the State's, Territories' or authorized Tribe's reasonable assurance that wasteload allocations and load allocations will be implemented. Since TMDLs must be established at a level to implement standards, it is reasonable for EPA to require that the TMDL itself contain an explanation of how that implementation will occur. Providing such an explanation will allow the public to assess the adequacy of the TMDL when it is offered by the State, Territory or authorized Tribe for comment. It will also allow EPA an opportunity during its review of the TMDL to better determine whether the TMDL will, in fact, achieve its goal of bringing the waterbody into compliance with applicable water quality standards.

If EPA disapproves a TMDL submitted by a State, Territory or authorized Tribe, EPA may take a number of actions designed to provide reasonable assurance that implementation will occur to the same extent that a State would provide such assurance.

In the case of discharges from point sources, if EPA actions become necessary, a combination of existing and proposed NPDES permit authorities may be used to provide reasonable assurance. For example, in those States where EPA retains authority to issue NPDES permits, EPA currently has authority to issue NPDES permits to limit pollutant discharges as needed to implement TMDLs (i.e., accomplish wasteload reductions assigned to point sources in wasteload allocations). In those States where EPA has delegated authority to issue NPDES permits, current regulations give EPA clear authority to revise permit conditions in a State-issued permit as needed to implement TMDLs and otherwise comply with the Act.

Elsewhere in today's **Federal Register**, EPA is proposing changes to the NPDES permit program regulations at 40 CFR parts 122 and 123. These proposed changes would further clarify EPA's authorities which may be used to provide reasonable assurance for point sources.

For some impaired waters, attainment of water quality standards may require that pollutants from nonpoint sources be reduced. EPA has strong and diverse authorities to implement controls over nonpoint sources in the event that EPA were to disapprove a TMDL submitted by a State and to develop a TMDL for the impaired water.

For example, section 504 of the CWA provides the EPA Administrator with authority to address cases where a source or combination of sources is presenting an imminent and substantial endangerment to the health of persons, such as immediate health threats, or to the welfare of persons, such as the inability to market locally-harvested shellfish contaminated by water pollution. In these cases, the Administrator may bring suit under the authority of section 504 to restrain any person to stop the discharge of pollutants or to take any action as may be necessary. Where a waterbody is identified as impaired under section 303(d), strong evidence may exist that the impairment may present an imminent and substantial threat to the health or welfare of persons. This authority can support implementation of nonpoint pollution controls for impaired waters on a case-by-case basis.

In addition, EPA has authority to direct the way that States, Territories, and authorized Tribes use funding provided under section 319 of the CWA to implement nonpoint pollution controls. This authority is expressed in section 319(h)(1) of the CWA, which provides the EPA Administrator with clear authority to put terms and conditions on grants to States "as the Administrator consider appropriate." Where EPA develops a TMDL and decides that additional resources will be necessary to provide reasonable assurance that the TMDL will be implemented, EPA may use this authority to direct that an appropriate amount of a State's, Territory's, or authorized Tribe's section 319 funding be devoted to implementing the EPA-developed TMDL. A number of authorized Tribes and all States and Territories receive grants under section 319; in 1999, the value of these grants is $200 million.

Taken together, these existing and proposed authorities for point and nonpoint sources will enable EPA to implement TMDLs in those cases where EPA establishes the TMDL in lieu of the State, Territory, or authorized Tribe.

Legal or regulatory controls. The implementation plan must contain a description of the legal authorities under which implementation will occur. These authorities include, for example, NPDES, section 401 certification, Federal Land Policy and Management programs, legal requirements associated with financial assistance agreements under the Farm Bills enacted by Congress and a broad variety of enforceable State, Territorial, and authorized Tribal laws to control nonpoint source pollution. The *Almanac of Enforceable State Laws to Control Nonpoint Source Pollution* (Environmental Law Institute, 1998) provides information on the laws in each State.

Time required to attain water quality standards. The implementation plan must contain an estimate of the time required to attain water quality standards. The estimates of time required to attain water quality standards must be specific to the source category, subcategory or individual source and tied to the pollutant for which the TMDL is being established. It must also be consistent with the geographic scale of the TMDL, including the implementation actions. As noted

above, EPA recognizes that for some extremely difficult to solve problems, implementation plans may allow relatively longer timeframes for attainment of water quality standards.

Monitoring plan. The implementation plan must contain a monitoring or modeling plan designed to determine the effectiveness of the implementation actions and to help determine whether allocations are met. The monitoring or modeling plan must be designed to describe whether allocations are sufficient to attain water quality standards and how it will be determined whether implementation actions, including interim milestones, are occurring as planned. The monitoring plan must also contain an approach for assessing the effectiveness of best management practices and control actions for nonpoint sources.

Milestones for attaining water quality standards. The monitoring plan must contain a description of milestones that will be used to measure progress in attaining water quality standards. The milestones must reflect the pollutant for which the TMDL is being established and be consistent with the geographic scale of the TMDL, including the implementation actions. The monitoring plan must contain incremental, measurable milestones consistent with the specific implementation action and the time frames for implementing those actions.

TMDL revision. The monitoring plan must contain a description of when TMDLs must be revised. EPA expects that the monitoring plan would describe when failure to meet specific milestones for implementing actions or interim milestones for attaining water quality standards will trigger a revision of the TMDL.

Endangered and Threatened Species Considerations. Today's proposal at § 130.33(d) provides that TMDLs shall not be likely to jeopardize the continued existence of an endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of its designated critical habitat. This provision reflects EPA's desire for expressly integrating the water quality objectives of the CWA and the species protection goals of the ESA. For example, EPA has recently developed a draft Memorandum of Agreement with the Fish and Wildlife Service and National Marine Fisheries Services describing how EPA will integrate species protection goals into our water quality standards and NPDES permitting programs. See 63 FR 2442 (January 15, 1999). EPA believes that consideration of the needs of endangered and threatened species is also consistent with the goals of the TMDL program as well. For example, § 130.28 of the proposed rule provides that waterbodies where federally listed species are present must be designated as "high" priority for the development of TMDLs, unless the State, Territory, or authorized Tribe shows information that the impairment does not affect the threatened or endangered species. Similarly, EPA believes that the prohibition against "jeopardy" contained in the proposed section recognizes that endangered and threatened species are an important component of the aquatic ecosystem. EPA believes it is very unlikely that any TMDL would have such a deleterious effect on any listed species, since TMDLs identify the reductions needed to meet water quality standards, and these reductions will obviously benefit listed species. Moreover, one important objective of the draft MOA recently published in the **Federal Register** is to ensure that water quality standards are protective of endangered and threatened species. However, the proposal makes clear that TMDLs must not be likely to jeopardize the continued existence of such species. This requirement is consistent with CWA authorities, which are fundamentally designed to achieve the goal of "restoring and maintaining the biological integrity" of the nation's waters. *See* CWA § 101(a).

Other options considered. In developing today's proposal, EPA considered several options. For example, EPA considered maintaining the current regulatory language, which does not require certain minimum elements for TMDLs. EPA rejected this option, agreeing with the FACA Committee that the regulation should more clearly state the required elements of TMDLs. This provides the States, Territories and authorized Tribes and EPA with increased certainty for TMDL development and approval.

EPA considered a number of options relating to implementation requirements. EPA considered maintaining the current regulatory language which does not specifically require an implementation plan to be submitted as an approvable element of a TMDL. EPA did not propose this option because it determined that it will be better able to evaluate a TMDL's consistency with the statutory requirements if an implementation plan is an element of a TMDL. In addition, EPA realizes that in order for TMDLs to result in water quality improvement they must be implemented. The requirement that an implementation plan be developed as part of a TMDL will ensure the establishment of successful TMDLs, that States, Territories and authorized Tribes will plan for implementing TMDLs, and will provide all stakeholders with information to help them assist in the establishment of TMDLs that help attain and maintain water quality standards.

EPA also considered requiring the submission of an implementation plan pursuant to section 303(d) concurrent with a TMDL, but not as an element of the TMDL. Requiring submission of an implementation plan separate from the TMDL is also a reasonable means for EPA to ensure that TMDLs are "established at a level necessary to implement the applicable water quality standards" (section 303(d)(1)(C)). Under this option, EPA would not approve or disapprove the implementation plan, but would consider the plan when reviewing the allocations established in the TMDL. A State's, Territory's or authorized Tribe's failure to submit an implementation plan could create uncertainty as to whether the TMDL was established at the statutorily-required level, and that could result in EPA disapproval of the TMDL. Under this option, when EPA disapproves a State, Territory or authorized Tribal-submitted TMDL and establishes a TMDL in its place, EPA would not be required to develop an implementation plan because the plan would not be one of the required minimum elements of a TMDL. However, EPA could develop an implementation plan if it chose, and could also utilize any or all of its existing authorities to ensure that both the wasteload and load allocations established by the TMDL are implemented. EPA did not propose this option because it believes that States, Territories and authorized Tribes will develop more successful implementation plans if the failure to submit a plan or an adequate plan means that the TMDL will be disapproved and EPA will establish a TMDL, including an implementation plan, it its place.

EPA also considered requiring the submission of implementation plans as updates to water quality management plans developed pursuant to sections 208 and 303(e) of the CWA. Under section 303(e), the Administrator shall approve any continuing planning process "which will result in plans for navigable waters within such State, which include, but are not limited to the following" including TMDLs and implementation plans for new water quality standards. EPA reads this language to authorize EPA to require submission of implementation plans for TMDLs. Under this option, the

implementation plan would not be submitted as an element of the TMDL, but as an element of the water quality management plan under the existing regulatory requirement at 40 CFR 130.6, subject to State certification and EPA approval. Water quality management plans are used to direct implementation and TMDLs themselves are required to be incorporated into current plans. This option would revise 40 CFR 130.6 to require an implementation plan for each TMDL as an element of the water quality management plan. Like all other updates to water quality management plans, an implementation plan would be submitted to EPA for approval after the Governor certifies that the plan update is consistent with all other parts of the plan. Under this option, EPA could conditionally or partially approve the implementation plan, but would not disapprove the plan or establish a substitute plan. As part of this option, EPA considered whether to require submission of implementation plans with the TMDL or at some later date, e.g., one year after the submittal of the TMDL. If EPA selected this option, it would also consider whether to require that implementation plans be submitted at the same time as the TMDL is submitted. Simultaneous submission would enable EPA to use the plan to assess the TMDL. EPA did not, however, propose this option because it concluded that requiring an implementation plan as an element of the TMDL under section 303(d) would most effectively link the assessment of water quality with necessary control actions and/or management measures. EPA also considered whether to revise the regulations consistent with the recommendations of the FACA Committee, to clarify that TMDLs may be expressed in a variety of ways, e.g., as other than daily loads, or using surrogate measures. In choosing to make these revisions, EPA relied upon the experiences of States, Territories and authorized Tribes and EPA in establishing TMDLs for pollutants often generated by nonpoint sources, such as clean sediments and nutrients. It is not always technically appropriate for such TMDLs to be expressed in terms of daily loads.

Comments sought. EPA solicits comments on the required minimum elements of TMDLs and whether any of the proposed required elements should be deleted or whether there are other elements that should be included. EPA also solicits comments on the proposal's requirement that States, Territories and authorized Tribes be required to submit implementation plans and whether implementation plans should be required as an element of a TMDL, as a required submission accompanying the TMDL, or as an update to a water quality management plan submitted at the same time as the TMDL. EPA may choose to adopt any of these options for the final rule.

b. Submission to EPA and EPA Actions

Existing requirements. Section 303(d) of the CWA requires that States, Territories and authorized Tribes submit TMDLs, "from time to time," to EPA for review and approval. Under the statute, EPA has 30 days to approve or disapprove a TMDL. If EPA approves a TMDL, the submitting State, Territory or authorized Tribe must incorporate it into its water quality management plan required under section 303(e) of the CWA. If EPA disapproves a TMDL, it then has an additional 30 days to establish the TMDL. Existing regulations echo these statutory requirements.

Proposed rule. Today's proposal, at § 130.35, reflects the current regulatory submission and approval requirements for TMDLs. EPA is proposing several fairly minor changes to clarify how the TMDL approval process will work. Today's proposal provides that a complete TMDL submission is a TMDL that includes all of the minimum elements. EPA intends to begin its 30-day review only after EPA has received a submission with all minimum elements. The proposal also requires that when EPA establishes a TMDL, it must send it to the State, Territory, or authorized Tribe for incorporation into the water quality management plan. Finally, the proposed rule provides that when EPA establishes a TMDL, it will consider public comment on the TMDL for at least 30 days following the TMDL's establishment.

Other options considered. In developing today's proposal, EPA considered whether to revise the regulations to address how States, Territories and authorized Tribes and EPA must deal with TMDL establishment and approval decisions in the face of uncertainty. As explained below, EPA ultimately determined that this issue is best addressed in programmatic guidance and not in regulations.

The best science, coupled with rigorous and accurate data, is the best foundation upon which to establish TMDLs. TMDL development, however, can be inhibited by many factors, including inadequate data collection, incompatible data from different sources, improper analytical techniques, and inadequate or inappropriate models. As a result, many TMDLs will be developed where the data and predictive tools available do less than a perfect job of characterizing the problem and calculating allocations with a high level of certainty.

One option EPA considered was whether it would be appropriate to revise the regulations to require that TMDLs be established only on data and analyses which met very strict quality and analytical standards. EPA concluded that this approach is impractical and would significantly decrease the numbers of TMDLs that could be established. In addition, TMDL establishment is generally an iterative process; therefore, even if a TMDL is developed with less than the highest quality data and analyses, there will be opportunities in the future to re-examine the TMDL and progress made toward attaining water quality standards.

EPA also considered whether to revise the regulations to incorporate the FACA Committee's recommendation that States, Territories and authorized Tribes and EPA use a "hierarchy approach" to address TMDL establishment and approval in the face of uncertainty. This approach dictates that the highest level of quantitative rigor currently available always be used when establishing TMDLs. Where the desired level of quantitative rigor is not possible for certain TMDL elements, the FACA Committee recommended that the "principle of inverse proportionality" be applied. Relatively less quantitative rigor and certainty in certain TMDL elements is compensated for by a relatively greater degree of quantitative rigor and certainty in other TMDL elements.

EPA recognizes the benefits of applying the FACA Committee's hierarchy approach and principle of inverse proportionality to deal with the uncertainties associated with TMDL establishment and approval. However, EPA determined that the question of how to address uncertainty when establishing and reviewing TMDLs is best addressed in guidance and is therefore incorporating the hierarchy approach and the principle of inverse proportionality in the draft TMDL guidance available with today's proposal. The hierarchy approach, as explained in guidance, is one of the ways to establish TMDLs when information for certain TMDL elements is not of the highest possible quantitative rigor. In addition, other approaches to establishing TMDLs when the highest possible quantitative rigor is not available may be used by States, Territories and authorized Tribes and, therefore, EPA does not propose use of

the hierarchy approach as a regulatory requirement.

Comments sought. EPA solicits comment on any or all aspects of the proposal, including the options discussed.

c. EPA Establishment of TMDLs

Section 501(a) provides that "[t]he Administrator [of EPA] is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter." Accordingly, EPA is proposing in § 130.36 expressly to codify its ability to establish TMDLs if the State so requests or if EPA determines that a State, Territory or authorized Tribe is not likely to establish TMDLs consistent with their schedules, or, if EPA determines it should establish TMDLs for interstate or boundary waterbodies.

It may be necessary for EPA to establish TMDLs in a number of situations. These include when interstate or international issues and coordination needs require EPA to assume a leadership role. Such interstate issues might involve TMDLs for large rivers, large watersheds or where complex technical questions require EPA to act as a catalyst in the establishment of a TMDL. For example, in complex water systems like the Chesapeake Bay where the impaired portions of the Bay are the responsibility of two states but also involve pollutant loadings from another state and the District of Columbia, where there is a cooperative agreement for protection of the Bay, plus three other states in the watershed, who are not part of an established agreement, EPA may provide an important role in bringing all jurisdictions into the planning process and ensuring that adequate authority and public process is covered for all states where wasteload allocations and load allocations are necessary. In situations like this EPA may work with both the Chesapeake Bay consortium that involves many diverse stakeholders and officials from the other states to ensure that all interested parties are represented in determining the loading allocations. Jurisdictional issues such as those faced on boundary waterbodies, may also cause EPA to initiate establishment of a TMDL.

EPA is also considering imposing a requirement that States, Territories and authorized Tribes consult with each other before listing as impaired a waterbody which forms part of the boundary between them and before they begin developing a TMDL for such waterbody. Such a consultation requirement would insure that, before interstate and boundary waterbodies are listed or given TMDLs, the neighboring governmental entities with jurisdiction over those waterbodies will have had an opportunity to share information about the waterbody's condition and the appropriateness of any planned action under section 303(d) for that waterbody.

EPA is also considering imposing a requirement that neighboring States, Territories and authorized Tribes with jurisdiction over a listed waterbody must jointly develop any TMDL for that waterbody. This cooperative exercise would be in lieu of EPA exercising its discretionary authority to develop the TMDL itself. Such a requirement would insure that neighboring States, Territories and authorized Tribes work with each other and all affected stakeholders in developing the TMDL.

EPA requests comment on these and any other ideas for listing or doing TMDLs for interstate waterbodies, including how best to develop TMDLs that account for equitable upstream/downstream State, Territory and authorized Tribe allocations and that account for loadings to downstream waterbodies like the Chesapeake Bay from far away upstream sources.

International waters pose especial difficulties. When establishing TMDLs for waterbodies that share an international border or flow from another country, the load reductions needed to meet water quality standards may not be achievable if those reductions are allocated only to U.S. sources. Should TMDLs for such waters allocate reductions to sources both within and outside the United States or in the alternative, should such TMDLs assume the status quo in terms of loads from outside the United States and allocate reductions only within the United States? EPA requests comments on either or any other approach.

EPA may also decide to exercise its authority if it determines that a State, Territory, or authorized Tribe has not or is not likely to meet its schedule for establishing TMDLs. EPA may decide, after first working with the State, Territory or authorized Tribe, that it should step in to establish TMDLs so that the overall pace of establishing TMDLs in the State, Territory or authorized Tribe remains expeditious. EPA anticipates that the decision to step in and establish TMDLs will be rare and based on case specific decisions. Finally, EPA may exercise its authority upon the request of the State, Territory or authorized Tribe.

EPA recognizes that its authority to establish TMDLs is not expressly stated in section 303(d). However, such authority is clearly implied in the CWA, is a reasonable interpretation of the Act, and is necessary to accomplish the purposes of the Act.

Section 303(d)(1)(C) places a clear mandate on the states to establish TMDLs for listed waterbodies. Section 303(d)(2) says that, if a state submits a TMDL and if EPA disapproves it, EPA shall establish a replacement TMDL within 30 days of the disapproval. Section 303(d) does not expressly say what must or may happen if states do not submit TMDLs to EPA for approval.

Courts, in finding that EPA has a mandatory duty to do TMDLs where a state has failed to do them, believed such a duty was necessary so that the Congressional scheme contemplated by Congress in section 303(d) is not frustrated by state failures to act. *See Scott* v. *City of Hammond*, 741 F.2d 992 (7th Cir. 1984)). As the *Scott* court said: " We think it unlikely that an important aspect of the federal scheme of water pollution control could be frustrated by the states refusal to act." 741 F.2d at 997.

Consistent with this case law EPA clearly has authority to promulgate regulations specifying when it will establish TMDLs. In the face of Congress' obvious desire that states do TMDLs in the first instance and that EPA does them if it disapproves a submission, Congress would not have left EPA powerless to establish TMDLs in the face of state inaction. Such a result would frustrate the purposes of the statute. *See E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112, 132 (1977) (the Supreme Court stating that it "'[could not] * * * conclude that Congress ha[d] given authority inadequate to achieve with reasonable effectiveness the purposes for which it has acted'" in the Clean Water Act)(quoting *Permian Basin Area Rate Cases*, 390 U.S. 747, 777 (1968)).

In *Dioxin/Organochlorine Center* v. *Clarke*, the Ninth Circuit affirmed a TMDL which EPA had established for dioxin in the Columbia River 57 F.3d 1517 (9th Cir. 1995). After consultation and involvement in the development of the draft TMDL, the States of Oregon, Washington and Idaho asked EPA to issue the proposed and final TMDLs as a federal action under the authority of section 303(d)(2). EPA proposed and established the dioxin TMDL, which the court upheld. Although the question of EPA's authority to do the TMDL absent a prior state submission and disapproval was not squarely before the court, the Ninth Circuit had no trouble concluding that EPA had sufficient authority pursuant to section 303(d) to establish the TMDL. 57 F.3d at 1527, 1528 n.14. For all these reasons, section 303(d)

gives EPA authority to establish TMDLs when States fail to do so.

6. What are the Proposed Rule's Requirements for Public Participation and Coordination with Federal Agencies?

Existing requirements. EPA's existing regulations do not include any States, Territories and authorized Tribes public participation requirements, except that 40 CFR 130.7 (c)(1)(ii) requires "that calculations to establish TMDLs shall be subject to public review as defined in the State CPP." EPA's existing regulations, however, do include a requirement that when EPA disapproves and establishes either a list or a TMDL, EPA must seek public comment on the list or TMDL. Historically, EPA's policy has been that there should be full and meaningful public participation at the States, Territories and authorized Tribes level in both the listing and TMDL development processes. As such, EPA has encouraged States, Territories and authorized Tribes to carry out public participation consistent with their own public participation requirements.

Proposed rule. Communicating with the public and promoting public input into the listing and TMDL development processes is key to establishment of successful, robust TMDLs. For progress to be made in improving the water quality of our Nation's waterbodies, the public must be aware of water quality impairments and support actions to eliminate impairments. Today's proposal, at § 130.37, therefore requires that States, Territories and authorized Tribes provide the public with at least 30 days to review and comment on all aspects of the list (including the priority ranking and identification of the pollutant(s) and/or pollution causing or expected to cause each waterbody's impairment), the schedule of TMDLs, and TMDLs themselves prior to their submission to EPA. Today's proposal also requires that, at the time States, Territories, and authorized Tribes submit their list, schedule or TMDLs to EPA, they provide EPA with a written summary of any public comments received during the public comment period on the list, schedule and TMDLs, and their response to such comments.

Today's proposal, at § 130.23(a), also includes a requirement that States, Territories and authorized Tribes provide public notice and comment on their listing methodologies, and provide EPA with a summary of comments received and their response thereto when the final methodology is provided to EPA.

Today's proposal includes a requirement that at the time States provide the public the opportunity to review and comment on their lists of impaired or threatened waterbodies, priority rankings, schedules, and TMDLs, they must provide a copy of each of these documents to EPA. The proposed rule also would require that States consider any comments provided by EPA on these documents; EPA will consider how the States address its comments in its final decision approving or disapproving lists, rankings and TMDLs. By giving EPA an opportunity to review and provide the State with comments at an early stage in the process, this proposed provision will facilitate development of lists, rankings, schedules and TMDLs that reflect EPA's input. It is desirable, whenever possible, for EPA to provide its technical and other expertise at the time in the process where it can be reflected in final decisions made by States. The process will improve the likelihood that lists, rankings, and TMDLs ultimately submitted to EPA will be approved.

The proposed rule also included several provisions designed to facilitate consideration of endangered and threatened species when developing lists, rankings, schedules and TMDLs. These proposed provisions reflect EPA's desire for expressly integrating the water quality objectives of the CWA with the species conservation objectives of the Endangered Species Act (ESA). Consideration of the needs of endangered and threatened species is also consistent with the requirements and the objectives of the TMDL program. The proposed rule encourages States to establish processes with both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that will provide for the early identification and resolution of threatened and endangered species as they relate to lists of impaired or threatened waterbodies, priority rankings, schedules, and TMDLs. In addition, under the proposed rule, at the time of public notice the States will send the U.S. Fish and Wildlife Services and the National Marine Fisheries Service, where appropriate (e.g., coastal areas) copies of lists and priority ranking, unless the States request EPA to do so; EPA will request the wildlife agencies to provide comments to the States and provide EPA copies of these comments. Under today's proposal States would be required to consider any comments received from the wildlife agencies prior to the submission of their lists of impaired or threatened waterbodies, priority rankings, schedules, and TMDLs. EPA will consider the comments of the wildlife agencies, and the manner in which they were addressed by the State, when taking action on lists, rankings and TMDLs submitted by States.

These proposed provisions will ensure timely input from the wildlife agencies early in the process rather than later. EPA would like to facilitate the development of working relationships between States and the Services so that the States will have the benefits of the Services' expertise, and the early involvement of the Services will help to integrate the species protection objectives of the ESA and the CWA into the TMDL program.

Other options considered. In developing today's proposal, EPA considered maintaining the status quo, i.e., not including in the regulations any specific public participation requirements. EPA rejected this option, however, because EPA believes that public participation in the listing and TMDL development processes is critical to the development of sound lists and TMDLs. In addition, providing the States, Territories and authorized Tribes with clear-cut public participation requirements eliminates any current confusion that may exist regarding EPA's expectations for States, Territories and authorized Tribes public participation on lists and TMDLs.

In developing today's proposal, EPA considered maintaining the current regulatory language that does not require copies of list, priority rankings, schedules, and TMDLs to be sent to EPA, Fish and Wildlife Service, and National Marine Fisheries at the time of public notice. EPA rejected this option because it does not provide an opportunity for meaningful input by EPA or other Federal agencies prior to the States', Territories' and authorized Tribes' submissions to EPA. EPA also considered a requirement that the States, Territories and authorized Tribes send advance copies only to EPA, not to Fish and Wildlife Service and National Marine Fisheries Service. EPA rejected this approach because the wildlife agencies would not receive these documents as early in the process if EPA, rather than the States, Territories and authorized Tribes, were to transmit these to the Service. However, if States, Territories and authorized Tribes wish, they can provide these documents only to EPA and EPA will forward them to the Services.

Comments sought. EPA solicits comment on any or all aspects of the public participation requirements in the proposal, including the options discussed.

7. What is the Effect of the Proposed Rule on Transitional TMDLs and Schedules?

Between the date of this proposal and the publication of a final rule in the **Federal Register** amending the current requirements for TMDLs, States, Territories and authorized Tribes (and in some instances EPA) will be establishing TMDLs pursuant to schedules submitted along with their 1998 section 303(d) lists or schedules incorporated into consent decrees or settlement agreements concluding TMDL lawsuits. Until these proposed amendments become final (and some aspects of this proposal may change as a result of public comments received over the next few months), the current regulations at § 130.7 establish the minimum requirements for approvable TMDLs. Given the likelihood that the current TMDL requirements will change significantly when the proposed amendments become final, there is a need to consider how these new regulations will apply and whether their effective date should be extended.

EPA is anxious that any new requirements be effective and implemented as soon as possible. Accordingly, EPA currently intends to have these revisions be effective 30 days after publication of the final rules in the **Federal Register**, as generally contemplated by the Administrative Procedure Act. However, recognizing the need for orderly administration of this program, EPA is proposing at § 130.38(a) that it will approve any TMDL submitted to it for review within 12 months of the final rule's effective date if it meets either the requirements in current § 130.7 or the new requirements proposed in §§ 130.32, 130.33 and 130.34. In recognition of the fact that EPA may establish TMDLs during this transition period, EPA is also proposing at § 130.38(b) that it may establish TMDLs within 12 months of the rule's effective date either according to the pre-amendment requirements in § 130.7 or the post amendment requirements in §§ 130.32, 130.33 and 130.34. EPA believes that this approach will afford States, Territories, authorized Tribes and EPA the certainty of knowing that, should they begin to establish TMDLs in the next year or so modeled on the requirements in the current rules, those TMDLs will not be determined to be inadequate as a result of the final adoption of these proposed amendments.

In addition to the issue of which criteria apply to TMDLs established during the period of transition between the new and old regulations, EPA is concerned about the impact of the proposed new TMDL requirements on commitments it has made to guarantee establishment of TMDLs under consent decrees and settlement agreements. During the past three years, EPA has entered into consent decrees and settlement agreements concluding 15 lawsuits alleging, among other things, that EPA should have established TMDLs in 13 different States. Those States are: Alabama, Arizona, California, Delaware, Florida, Georgia, Kansas, Mississippi, New Mexico, Pennsylvania, Virginia, Washington and West Virginia. Typically, these consent decrees or settlement agreements contains schedules according to which the States expect to establish TMDLs for all waterbodies identified on their section 303(d) lists and commitments by EPA to establish those TMDLs by certain dates if the State fails to meet its schedule. The schedules for establishing TMDLs in these consent decrees range from approximately four and one-half years to 12 years in length. The number of waterbodies and potential TMDLs covered under each consent decree also varies. Some consent decrees, like California (Newport Bay), address only a small number of impaired waterbodies. Others, like the Kansas consent decree, require the establishment of TMDLs for over 1000 waterbodies statewide.

Each of the settlements and accompanying TMDL schedules was negotiated by EPA in the context of what current regulations at 40 CFR 130.7 require an approvable TMDL to look like. Accordingly, when deciding on appropriate schedules to incorporate into these settlements, EPA considered how long it might reasonably take a State (or EPA) to establish the necessary TMDLs based on current requirements. The schedules that were negotiated with the plaintiffs and incorporated into the various settlements were aggressive even by these standards.

Today's proposal includes a number of changes to the current TMDL requirements which, while making for more effective TMDLs, may increase the time it takes to establish a TMDL. Most significantly, today's proposal at § 130.33(b)(10) would require that each TMDL include an implementation plan containing eight specific elements. While EPA always expected reasonable assurances that the TMDL's wasteload and load allocations would be implemented, the proposed regulations are more specific. Implementation plans must also include a description of the control actions and/or management measures which will be implemented and a monitoring/modeling plan designed to determine the effectiveness of these actions and measures. The proposal at § 130.37(a) also adds an express requirement that States, Territories and authorized Tribes provide the public with no less than 30 days to review and comment on any TMDLs before they are submitted to EPA. When submitted to EPA for review, TMDLs must also be accompanied by a summary of all the comments received and responses to those comments.

EPA recognizes that the new regulations may add time to the process, especially for near-term deadlines where States may not have enough time to adjust their processes. Accordingly, EPA requests comment on whether any new TMDL requirements contained in today's proposal may affect the ability of States to perform their obligations as contemplated under the various TMDL consent decrees and settlement agreements. To the extent these new provisions are promulgated and will require more time for establishment of TMDLs, EPA has at least two options it might consider. First, it might further phase in some of the requirements (for example, the requirement that all TMDLs have an implementation plan) so that States' near-term consent decree schedules can be met. Second, EPA might on a case-by case basis seek to modify court ordered TMDL schedules as appropriate to accommodate whatever additional workload is required by these new requirements. EPA invites comment on the extent to which any new TMDL requirements are likely to render any of the existing court-ordered TMDL schedules unrealistic, as well as the wisdom and necessity of pursuing either of the above-mentioned options. EPA also invites comment on whether it is appropriate to allow EPA to approve TMDLs submitted for review within 12 months of the final rule's effective date if those TMDLs meet either the pre-amendment requirements in § 130.7 or the post-amendment requirements being proposed today, and if not, what an appropriate timeframe would be. Similarly, EPA invites comment on whether it is appropriate to allow EPA to establish TMDLs within 12 months of the final rule's effective date either according to the pre-amendment requirements in § 130.7 or the post-amendment requirements being proposed today, and if not, what an appropriate timeframe would be. EPA is also considering whether it should establish a longer or shorter transitional period of time and specifically requests

comment on this issue and suggestions of alternative transition periods.

8. What Changes Does the Proposed Rule Make to the Continuing Planning Process and Water Quality Management Plan Requirements?

Existing requirements. EPA's existing TMDL regulations do not require States, Territories and authorized Tribes to develop implementation plans for TMDLs and do not include any requirements for States, Territories and authorized Tribes submission of implementation plans for TMDLs. EPA's regulations at 40 CFR 130.6, however, require States, Territories and authorized Tribes to update their water quality management plans, which are used to direct implementation of States', Territories' and authorized Tribes' water quality programs and which must include certain elements, including TMDLs and implementation measures.

Proposed rule. Today's proposal, at § 130.50 and § 130.51, makes several minor changes to the continuing planning process and water quality management plan requirements currently found at 40 CFR 130.5 and 130.6, respectively. It revises the existing continuing planning process regulations to clarify that States, Territories and authorized Tribes have discretion to go beyond the mandatory plan elements set out in the regulation and also include other processes, such as watershed-based planning and implementation. The proposal also makes clear that a CPP need not be a single document. This reflects the current practice that the CPP may be a compendium of many different State, Territorial and authorized Tribal planning documents. Today's proposal also revises the current regulatory requirements for water quality management plans at 40 CFR 130.6 to clarify that updates to water quality management plans should incorporate approved TMDLs and generally have a watershed basis. Under 40 CFR 130.6, States, Territories and authorized Tribes should update their water quality management plans as needed to reflect, among other things, changing water quality conditions and the results of implementation actions. If a State's, Territory's, or authorized Tribe's water quality management plan needs to be updated, EPA can, under 40 CFR 130.6, require the State, Territory or authorized Tribe to update their plan.

Other options considered. EPA considered not proposing any changes to the existing regulatory requirements for water quality management plans and CPPs.

Comments sought. EPA seeks comments on its proposed changes to the continuing planning process and water quality management regulatory requirements. EPA also seeks comments on whether other changes are needed to these requirements.

9. How Can the Public Petition EPA to Establish TMDLs?

This regulation is proposed under authority granted to EPA under CWA sections 501(a) and 303(d), 33 U.S.C. §§ 1361(a), 1313(d).

The purpose of § 130.65 is to formalize a petition process for the public to request that EPA step in and perform duties imposed on States, Territories and authorized Tribes by section 303(d). Although this petition process has been available to the public since section 303(d) was enacted, it has seldom been utilized in the context of section 303(d). This new section should increase public awareness of this procedure for requesting Agency action. See, APA § 555(b), 5 U.S.C. § 555(b).

EPA is proposing to codify a specific petition process for section 303(d) for several reasons. First, EPA recognizes that numerous citizen groups and individuals are very interested in promoting the expeditious development of meaningful TMDLs throughout the Nation. EPA is also aware that many of these groups and individuals have been dissatisfied both with the pace at which States have been establishing TMDLs and, to some extent, with the nature and degree of EPA oversight of State progress in establishing TMDLs. Although these citizens at all times have possessed the right to petition EPA to intervene more actively in a State's TMDL development process, EPA interprets the lawsuits that citizens have filed against EPA within the last five years to be an indication either that the public is unaware that it can take its grievances directly to EPA for consideration, or that it has concluded that taking such grievances directly to EPA would be futile. By proposing this petition process, EPA hopes to make it very clear to the public that EPA recognizes the important role that the public serves in helping the States and EPA to implement section 303(d). Second, presenting grievances in the first instance to EPA rather than to the courts will allow EPA, by applying its expertise to the facts the citizens present, to respond more directly to citizens' concerns in the context of its national policy objectives. EPA's discretionary authority to oversee the State, Territorial and authorized Tribal implementation of section 303(d) is not unfettered; the petition process thus would provide a mechanism whereby citizens can assure that EPA exercises that discretion wisely. Third, the petition process—and the resulting administrative record—will promote more efficient judicial review of EPA's decision whether and, possibly, how to intervene in any particular State.

When Congress directed EPA to approve or disapprove State, Territories or authorized Tribes section 303(d) lists and TMDL submissions and to establish its own lists or TMDLs in the event EPA disapproves the submission, Congress imposed very specific duties on EPA under section 303(d). However, EPA does not believe that its role under section 303(d) is limited to those narrow, although important, duties. Section 303(d) reasonably can also be interpreted to vest in EPA more general oversight authority to ensure the States' timely and meaningful implementation of section 303(d).

EPA, on its own initiative, can and does exercise that oversight authority. For example, over the past decade, EPA has modified its regulations and issued numerous guidance documents to emphasize the importance of the section 303(d) listing process. As a consequence, States'', Territories' and authorized Tribes' section 303(d) lists have become more comprehensive and, accordingly, more useful in water quality decision making. EPA has also provided considerable technical and financial assistance to invigorate TMDL development, e.g., by providing technical support in establishing TMDLs, completing and supporting analyses necessary to establish TMDLs and developing computer models for use in establishing TMDLs. EPA has also worked with States, Territories and authorized Tribes to develop long-term schedules providing for the establishment of TMDLs on all listed waters.

EPA recognizes, however, that members of the public would like to influence how EPA exercises its discretionary authority to oversee the TMDLs, specifically with respect to particular States, Territories and authorized Tribes. The proposed petition process is the best way to accomplish this. (Indeed, although the petition regulation is merely proposed, not codified, EPA notes that citizens are free to exercise their petition rights at any time.) First, the petition process allows EPA to apply the statutory scheme to particular factual situations raised by the petitioners. It allows EPA to consider the facts presented by the petitioners, to make its own findings of facts, to apply its expertise, and, finally, to exercise the discretion granted it by

Congress to determine if, when, and how to intervene to reinforce a State's, Territory's or authorized Tribe's implementation of section 303(d). In response to a petition, EPA will also need to explain the bases for its decisions, which in turn can stimulate further policy debate. Second, the petition process allows EPA to consider the petitioner's request in light of its overall national policy goals, statutory obligations, and resource constraints. Because EPA is charged with implementing numerous other environmental statutes in addition to the CWA, the petition process allows EPA to balance all of its responsibilities and objectives in a way that ensures that it is carrying out its overall mission in the most timely and effective manner possible. Third, the petition process does not prevent citizens from seeking redress in federal court. To the contrary, the petition process will facilitate judicial review of EPA's oversight of the State, Territorial or authorized Tribal TMDLs. In response to citizens' petitions, EPA will assemble and analyze relevant facts, reach a decision, and explain the basis for that decision. If a citizen is dissatisfied with the resulting decision and files suit, a reviewing court would have an administrative record against which to evaluate the reasonableness of EPA's decision. In EPA's view, the petition process allows the administrative process to proceed, with the results of the process subject to judicial review only at the conclusion of the process. This not only honors the separate roles and responsibilities of the administrative and judicial processes, but it also assures that EPA, in the first instance, has an adequate opportunity to exercise the discretionary authority Congress conferred upon it.

Section 130.65(b) clarifies that this petition procedure is not intended to be used to prompt EPA to establish a TMDL for a particular waterbody, or for moving a particular waterbody to a different part of a the schedule. Efforts to alter State, Territorial or authorized Tribal priorities are more suitably directed to that State, Territory or authorized Tribe. The best time to convey comments on State, Territory or authorized Tribal priorities is likely to be when the section 303(d) list of waters needing TMDLs and the schedule for establishing TMDLs is published for public comment. EPA hopes to reserve what limited resources it has for intervening with support in those instances where the shortcomings, or perceived shortcomings, of State, Territorial or authorized Tribal efforts are substantial.

It is EPA's goal to answer petitions filed under 40 CFR 130.65(c) within four months of receipt. See 40 CFR 130.65(e). In accordance with APA section 555(b), "within a reasonable time, each agency shall proceed to conclude a matter presented to it." Although EPA cannot guarantee that each petition will be answered within four months, it commits to making reasonable efforts to meet that deadline.

Section 130.65(d) is not intended to delineate an exhaustive list of elements a petition must contain. Nor is 40 CFR 130.65(f) intended to contain a comprehensive list of factors EPA will consider in evaluating whether to step in and take primary responsibility for conducting activities that States, Territories or authorized Tribes are directed to perform under section 303(d). EPA will consider any and all relevant information submitted with a petition under 40 CFR 130.65.

10. What Changes Does the Proposed Rule Make to the Water Quality Standards and State Submission Requirements?

Existing requirements. EPA's regulations at § 130.3 provide a definition of "water quality standard" that replicates the definition found in the water quality standards regulations at 40 CFR Part 131. EPA's regulations at § 130.10(d) describe requirements that EPA promulgated in 1989 to implement CWA section 304(l). Section 304(l) required States, Territories, and authorized Tribes to submit certain water quality information about waters by February 4, 1989.

Proposed rule. EPA is proposing to delete both § 130.3 and § 130.10(d). Section 130.3 merely duplicates the same definition of "water quality standard" found in the water quality standards regulations at 40 CFR Part 131. As a result, the existing language at § 130.3 is duplicative and unnecessary. Section § 130.10(d) required a one-time information submittal by States, Territories, and authorized Tribes. This requirement has not been used since all the States and Territories submitted this information, and CWA section 304(l) requires only one submittal. Therefore, that the requirement to submit this information is now obsolete.

Comments sought. EPA seeks comments on its proposed deletions to the existing water quality standards definition and the CWA section 304(l) parts of the state submittal requirements.

Regulatory Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires Federal agencies to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the regulatory action on small entities for any rule for which a notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C. section 551 *et seq.*) or any other statute. However, under section 605(b) of the RFA, if the Administrator for EPA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an IRFA. The Administrator is today certifying, pursuant to section 605(b) of the RFA, that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, EPA did not prepare an initial regulatory flexibility analysis.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rule's requirements.* See *United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Mid-Tex Electric Co-op., Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985); *Motor & Equipment Manufacturers Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998). Today's rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule.*" *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court). EPA is therefore certifying that today's rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA, for the following reasons.

First, section 303(d) of the CWA directs States, Territories and authorized Tribes (and EPA, if it disapproves the State's, Territory's or authorized Tribe's efforts) to establish lists of impaired waterbodies and TMDLs for those waterbodies. Tribes may apply for authority to establish lists and TMDLs in Indian Country. The proposed regulations establish requirements for EPA, States, Territories and authorized Tribes to follow when establishing TMDLs and lists of

impaired waterbodies under section 303(d) of the CWA. The regulations apply only to those three categories of entities and do not impose TMDL or listing requirements upon any small entities.

Second, the impact (if any) on small entities of any TMDLs or lists that might be established or approved by EPA, States, Territories and authorized Tribes pursuant to these proposed regulations is indirect and highly speculative. First, no impact flows directly from these proposed regulations. Only the listing or TMDL action itself taken by EPA, States, Territories and authorized Tribes pursuant to these regulations would have any possible impact. Second, any economic impact on small entities will result, if at all, only as a consequence of future State, territorial, tribal or EPA actions. The CWA and these proposed regulations afford the States, Territories, authorized Tribes and EPA considerable discretion in deciding which waterbodies to list, how to prioritize such waterbodies, how to schedule the waterbodies for TMDL development, and how to calculate and apportion TMDLs and their component load and wasteload allocations. The extent to which future listing or TMDL approval decisions may have any impact on small entities is impossible to predict given the uncertainties inherent in a process involving the exercise of discretion over so many variables. While a State's, Territory's or authorized Tribe's implementation of today's rule *may* ultimately result in the listing of a water or development of a TMDL that *may* have an impact on point or nonpoint source dischargers, EPA's action today does not apply to any discharger, including small entities.

Third, the uncertainty regarding what (if any) impact these proposed regulations may have on small entities is increased by the fact that TMDLs are not self-implementing. Assuming a TMDL is established by a State, Territory, authorized Tribe, or EPA for a listed water, the TMDL's wasteload allocations (for point sources) and the load allocations (for nonpoint sources) are not directly enforceable under the CWA. Under EPA's NPDES permitting rules, effluent limits in point source permits must be "consistent with" (but not necessarily identical to) wasteload allocations in approved TMDLs. However, the TMDLs themselves (and their wasteload allocations) are not independently enforceable. With respect to nonpoint sources, the load allocations in a TMDL are only "enforceable" to the extent they are made so by State, Territorial, or authorized Tribal laws and regulations. There are no Federal requirements that such load allocations actually be met by small (or any other) entities. Given the compounding uncertainties regarding (1) Whether any particular waterbody will be listed, (2) if it is, when a TMDL will be established, (3) what the TMDL's allocations will be, (4) which entities will be assigned those allocations, and (5) whether, and in what form, those allocations will be implemented, it is impossible to say whether or to what extent these proposed regulations (and any resulting TMDL or listing actions) will impact small entities.

Finally, even assuming that future listing or TMDL actions may ultimately have some discernable effect on small entities, such impacts would actually flow from requirements already established by section 303(d) of the CWA and the States, Territories' and authorized Tribes' water quality standards and not these proposed regulatory amendments. Section 303(d) requires that States, Territories and authorized Tribes (or, under certain circumstances, EPA) list waterbodies and establish TMDLs with reference to criteria contained in State, Territorial or authorized Tribal water quality standards. Independent of today's proposed amendments, States, Territories and authorized Tribes (and, under certain circumstances, EPA) already have an obligation to list waterbodies and establish TMDLs necessary to implement the State, Territorial, and authorized Tribal water quality standards. Today's proposals merely amend EPA's existing regulations implementing those statutory requirements. Any impacts should be seen as resulting from the independent statutory obligation to establish TMDLs that implement the State, Territorial and authorized Tribal water quality standards, and not from these proposed regulatory requirements.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestion or recommendations will be documented in the public record.

Under the regulatory review provisions of Executive Order 12866 EPA evaluates the benefits and costs of proposed new rules. In the case of an existing program, like the TMDL program, this assessment focuses on the benefits and costs associated with the change in regulatory requirements. Accordingly, EPA has prepared an analysis of the direct costs that the new requirements of this proposed rule will impose on States, Territories and authorized Tribes that must list, and develop TMDLs for, impaired waters. This analysis, entitled "Analysis of the Incremental Costs of Proposed Revisions to the TMDL Program Regulations" is available in the docket for the rulemaking.

However, EPA recognizes that the TMDL program is of interest to a wide range of stakeholders, and expects that stakeholders will have an interest in understanding the costs and benefits resulting from implementation of the TMDL program as well as the direct costs of developing TMDLs to States, Territories, and authorized Tribes under this proposed rule. In anticipation of the interest of diverse stakeholders, EPA has begun work to gather information about the costs and benefits that can be expected to result from implementation of the TMDL program. A key part of this assessment is to better understand the costs and benefits of the existing TMDL program, as well as the incremental costs and benefits that will result from the changes to the TMDL program.

As part of this effort, EPA is gathering information concerning the costs that pollution sources may incur in implementing the pollution controls called for in TMDLs developed under the new rule. These costs, however, are difficult to estimate. A TMDL is developed on a specific water body and is the product of a locally-based decision-making process. The allocation decisions made at the local level may

produce water quality benefits at a lower cost than projected by EPA cost models. Also, many of the actions identified in TMDLs as needed to meet water quality goals may to be required under other provisions of the Clean Water Act or other Federal or State laws. It may be difficult in some cases to distinguish actions undertaken to comply with other statutory provisions from those undertaken to implement TMDLs. In such cases, it is appropriate to consider alternative assumptions about the costs and benefits that would occur anyway and those that would result from implementing TMDLs.

EPA is also gathering information on the water quality, environmental, public health and economic benefits of the TMDL program and the restoration of the health of the Nation's polluted waters. While the estimation of benefits is traditionally difficult, EPA is working to develop improved models for describing benefits in both qualitative and quantitative terms. As noted above, because the TMDL program is related to other provisions of the Clean Water Act, and other Federal and State laws, attributing benefits to the TMDL program requires a certain amount of judgment and may require consideration of alternative assumptions or "baselines".

EPA is working to develop this information and analysis expeditiously. As this work evolves and its quality is sufficient to meaningfully inform the public, EPA will make it available for public review and comment. EPA hopes to be able to provide results from this work prior to the final promulgation of the TMDL rule.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Territory, authorized Tribal or local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government EPA plan. The plan must provide for notifying potentially affected small governments, enabling officials of the affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The costs for States, Territories and authorized Tribes to implement the requirements in today's proposal are not expected to exceed $25 million in any one year. In addition, since today's proposal does not impose any requirements on the private sector, the private sector will incur no costs. Thus, today's proposal is not subject to the requirements of section 202 and 205 of UMRA.

As explained in the Regulatory Flexibility Act section of the preamble, this proposed rule establishes no requirements applicable to small entities and, thus, this proposed rule will not significantly affect small entities. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments including Tribal governments. As explained earlier in this preamble, the Clean Water Act authorizes EPA to treat an Indian Tribe in the same manner as a State for purposes of establishing lists of waters and TMDLs, and EPA today is clarifying the test an Indian Tribe must meet to be authorized to establish lists of impaired waters and TMDLs in Indian country. Currently, there are no Tribes authorized to establish TMDLs under section 303(d) and, as a result, today's proposal will not significantly or uniquely affect Tribal governments. However, as Tribes continue to build their Clean Water Act capacity and obtain water quality standards program approval, some Tribes are likely to seek approval to establish TMDLs. Moreover, whether or not Tribes choose to do so, they have a strong interest in protecting water quality on Tribal lands. Thus, even though today's proposal will not significantly or uniquely affect Tribal governments, Tribes may in the future be subject to the requirements in today's proposal. Recognizing the need to consider the views and concerns of Tribal governments in any comprehensive evaluation of how TMDLs are established, EPA determined it was appropriate to include a Tribal representative on the TMDL FACA Committee. The committee's final report addresses Tribal issues, recommending that EPA increase efforts to educate Tribes about water quality programs, including TMDLs, and ensure that EPA and State water quality staff respect the government-to-government relationship with Tribes in all TMDL activities.

D. Paperwork Reduction Act

Today's action adds new information requirements in 40 CFR part 130. The information collection request for these new provisions are currently under development. EPA expects to publish a proposed Information Collection Request (ICR) for these requirements in the **Federal Register** for comment at the time the ICR is submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* after public comment. EPA expects to publish this notice within 30 days of the publication of this proposal. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Executive Orders on Federalism

Under Executive Order 12875, "Enhancing the Intergovernmental Partnership," EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

EPA has concluded that this proposed rule will create a mandate on State governments and authorized Tribes and that the Federal government will not provide all of the funding necessary to pay the direct costs incurred by the State governments and authorized Tribes in complying with the mandate. However, EPA has substantially increased funding for States, Territories, and authorized Tribes through the State-matched CWA section 106 and 319 grant programs. In developing this proposed rule, EPA consulted with State, local, and tribal governments to enable them to provide meaningful and timely input in the development of this rule.

Before beginning to develop today's proposal, EPA convened a Federal Advisory Committee to make recommendations for improving the efficiency and effectiveness of TMDLs. The TMDL FACA Committee was comprised of 20 members, including four senior level state officials, an elected local official, and a Tribal consortium representative. Over a period of one and one-half years, the TMDL FACA Committee held six meetings at locations throughout the country. These meetings were open to the general public, as well as representatives of State, local, and Tribal governments, and all included public comment sessions. The TMDL FACA Committee focused its deliberations on four broad issue areas: identification and listing of waterbodies; development and approval of TMDLs; EPA management and oversight; and science and tools. On July 28, 1998, the TMDL FACA Committee submitted its final report to EPA containing more than 100 consensus recommendations for changes and improvements to TMDLs. As explained throughout this preamble, EPA carefully reviewed the TMDL FACA Committee's consensus recommendations and incorporated, in whole or in part, most of those recommendations in this proposal.

Following completion of the FACA Committee process, EPA continued to meet with State and local government officials to seek their views on needed changes to the Water Quality Planning and Management (TMDL) regulations. While expressing support for many of the proposed changes being considered by EPA, State officials and their representatives also expressed some general concerns about the capacity of State governments to carry out the new requirements proposed today. In particular, States were concerned about the capacity of the state governments to carry out any new requirements beyond those in the current regulations. Local government officials expressed concerns in particular about any TMDL allocation approaches that could in their view, result in municipal point sources having to bear an inequitable share of the pollutant load reductions need to attain water quality standards. In developing today's proposal, EPA considered the concerns of State, local and tribal governments and determined the need to revise the TMDL regulations to provide States, Territories and Tribes with clear, consistent, and balanced direction for listing waters and developing TMDLs and thereby improve the effectiveness, efficiency and pace of TMDL establishment and water quality improvement.

Finally, while there is a new executive order on federalism (Executive Order 13132), it will not go into effect for ninety days. In the interim, under the current Executive Order 12612 on federalism, this rule does not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government. The proposed regulations will not have a substantial direct effect on the relationship between the national government and the States or upon the distribution of power and responsibilities among the various levels of government because the proposed regulations reflect the statutory scheme that places primary responsibility with the States while EPA retains oversight authority. States continue to have primary responsibility for identifying impaired waters, setting priorities, and developing TMDLs. EPA's role continues to be one of reviewing state actions and exercising its authority to identify waters and develop TMDLs only in the face of inadequate state action.

The proposed regulations also should not have a substantial direct effect upon States because the provisions in the proposed regulations include many requirements and recommendations currently contained in EPA's existing regulations and guidance. While the proposed regulations provide additional detail that EPA believes is necessary to ensure consistency and effective implementation of the program, the statutory and current regulatory framework is not altered. Even the new provision for States to include implementation plans as a component of TMDLs reflects EPA's existing guidance and expectation that States would develop implementation plans as part of the TMDL process although not as a required component of the TMDL. Accordingly, these provisions should not have a substantial direct effect on States or on intergovernmental relationships or responsibilities.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

As explained above in the discussion of UMRA requirements, today's rule proposal does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them since currently there are no Tribes authorized to establish TMDLs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's proposal.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not "economically significant" and it does not establish an environmental standard intended to mitigate health or safety risks. Today's proposal is a procedural rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 130

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: August 12, 1999.

Carol Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by revising part 130 as follows:

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

Subpart A—Summary, Purpose and Definitions

Sec.
130.0 Program summary and purpose.
130.1 Applicability.
130.2 Definitions.

Subpart B—Water Quality Monitoring and Reporting

130.10 Water quality monitoring.
130.11 Water quality report.

Subpart C—Identifying Impaired and Threatened Waterbodies and Establishing Total Maximum Daily Loads (TMDLs)

What This Subpart Covers

130.20 Who must comply with subpart C of this rule?
130.21 What is the purpose of this subpart?

Identifying and Listing Impaired or Threatened Waterbodies, Documenting Your Approach for Making Listing Decisions, and Establishing a Schedule for TMDL Development

130.22 What data and information must you assemble to identify and list impaired or threatened waterbodies?
130.23 How do you document your approach for considering and evaluating all existing and readily available data and information to develop your list and priority rankings?
130.24 When must your methodology be submitted to EPA?
130.25 What is the scope of your list of impaired or threatened waterbodies?
130.26 How do you apply your water quality standards antidegradation policy to the listing of impaired and threatened waterbodies?
130.27 How must you format your list of impaired or threatened waterbodies?
130.28 How do you prioritize the waterbodies on Part 1 of your list?
130.29 When can you remove a waterbody from your list?
130.30 When must you submit your list of impaired or threatened waterbodies and priority rankings to EPA and what will EPA do with it?
130.31 What must your schedule for submitting TMDLs to EPA contain and when must you submit it to EPA?

Establishment and Review of TMDLs

130.32 Must you establish TMDLs?
130.33 What are the minimum elements of a TMDL submitted to EPA?
130.34 How are TMDLs expressed?
130.35 What actions must EPA take on TMDLs that are submitted for review?
130.36 Can EPA establish a TMDL if you fail to do so?

Public Participation

130.37 What public participation requirements apply to the list, priority rankings, schedule, and TMDLs?

Transitional TMDLs

130.38 What is the effect of the proposed rule on transitional TMDLs?

Subpart D—Water Quality Planning and Implementation

130.50 Continuing planning process.
130.51 Water quality management plans.

Subpart E—Miscellaneous Provisions

130.60 Designation and de-designation.
130.61 State submittal to EPA.
130.62 Program management.
130.63 Coordination with other programs.
130.64 Processing application for Indian Tribes.
130.65 Petitions to EPA to undertake actions under section 303(d).

Authority: 33 U.S.C. 1251 *et seq.*

Subpart A—Summary, Purpose and Definitions

§ 130.0 Program summary and purpose.

(a) This subpart establishes policies and program requirements for water quality planning, management and implementation under sections 106, 205(j), non-construction management 205(g), 208, 303 and 305 of the Clean Water Act. The Water Quality Management (WQM) process described in the Act and in this regulation provides the authority for a consistent national approach for maintaining, improving and protecting water quality while allowing States to implement the most effective individual programs. The process is implemented jointly by EPA, the States, interstate agencies, and areawide, local and regional planning organizations. This regulation explains the requirements of the Act, describes the relationships between the several components of the WQM process and outlines the roles of the major participants in the process. The components of the WQM process are discussed below.

(b) Water quality standards (WQS) are the State's goals for individual waterbodies and provide the legal basis for control decisions under the Act. Water quality monitoring activities provide the chemical, physical and biological data needed to determine the present quality of a State's waters and to identify the sources of pollutants in those waters. The primary assessment of the quality of a State's water is contained in its biennial Report to Congress required by section 305(b) of the Act.

(c) This report and other assessments of water quality are used in the State's WQM plans to identify priority water

quality problems. These plans also contain the results of the State's analyses and management decisions which are necessary to control specific sources of pollution. The plans recommend control measures and designated management agencies (DMAs) to attain the goals established in the State's water quality standards.

(d) These control measures are implemented by issuing permits, building publicly-owned treatment works (POTWs), instituting best management practices for nonpoint sources of pollution and other means. After control measures are in place, the State evaluates the extent of the resulting improvements in water quality, conducts additional data gathering and planning to determine needed modifications in control measures and again institutes control measures.

(e) This process is a dynamic one, in which requirements and emphases vary over time. At present, States have completed WQM plans which are generally comprehensive in geographic and programmatic scope. Technology based controls are being implemented for most point sources of pollution. However, WQS have not been attained in many water bodies and are threatened in others.

(f) Present continuing planning requirements serve to identify these critical water bodies, develop plans for achieving higher levels of abatement and specify additional control measures. Consequently, this regulation reflects a programmatic emphasis on concentrating planning and abatement activities on priority water quality issues and geographic areas. EPA will focus its grant funds on activities designed to address these priorities. Annual work programs negotiated between EPA and State and interstate agencies will reflect this emphasis.

§ 130.1 Applicability.

(a) This subpart and § 130.51(a) of subpart D applies to all State, eligible Indian Tribe, interstate, areawide and regional and local CWA water quality planning and management activities undertaken on or after February 11, 1985 including all updates and continuing certifications for approved Water Quality Management (WQM) plans developed under sections 208 and 303 of the Act.

(b) Planning and management activities undertaken prior to February 11, 1985 are governed by the requirements of the regulations in effect at the time of the last grant award.

§ 130.2 Definitions.

(a) *The Act.* The Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(b) *Indian Tribe.* Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

(c) *Pollution.* The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water. (See Clean Water Act section 502(19).)

(d) *Pollutant.* Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. This term does not mean : "sewage from vessels" within the meaning of section 312 of the Clean Water Act; or water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that such injection or disposal will not result in the degradation of ground or surface water resources. (See Clean Water Act section 502(6).) This definition encompasses drinking water contaminants that are regulated under section 1412 of the Safe Drinking Water Act and may be discharged to waters of the U. S. that are source waters of one or more public water systems. For public water systems served by surface water, source water is any water reaching the intake.

(e) *Load or loading.* An amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading of pollutants may be either man-caused or natural (natural background loading).

(f) *Load allocation.* The portions of a TMDL's pollutant load allocated to nonpoint sources of a pollutant, including atmospheric deposition or natural background sources.

(g) *Wasteload allocation.* The portions of a TMDL's pollutant load allocated to a point source of a pollutant.

(h) *Total maximum daily load (TMDL).* TMDLs are written plans and analyses established to ensure that the waterbody will attain and maintain water quality standards (as defined in 40 CFR 131) including consideration of reasonably foreseeable increases in pollutant loads. TMDLs must be established for waterbodies on Part 1 of your list of impaired and threatened waterbodies and must contain the following ten elements:

(1) The name and geographic location of the impaired or threatened waterbody for which the TMDL is being established;

(2) Identification of the pollutant and quantification of the pollutant load that may be present in the waterbody and still allow attainment and maintenance of water quality standards;

(3) Identification of the amount or degree by which the pollutant load in the waterbody deviates from the load representing attainment or maintenance of water quality standards;

(4) Identification of source categories, source subcategories or individual sources of the pollutant for which wasteload and load allocations are being established;

(5) Wasteload allocations for pollutants from point sources;

(6) Load allocations for pollutants from nonpoint sources;

(7) A margin of safety;

(8) Consideration of seasonal variation;

(9) An allowance for future growth which accounts for reasonably foreseeable increases in pollutant loads; and

(10) An implementation plan.

(i) *Water quality management (WQM) plan.* A State or areawide waste treatment management plan developed and updated in accordance with the provisions of sections 205(j), 208 and 303 of the Act and this regulation.

(j) *Areawide agency.* An agency designated under section 208 of the Act, which has responsibilities for WQM planning within a specified area of a State.

(k) *Best Management Practice (BMP).* Methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollutant- or pollution-producing activities to reduce or eliminate the introduction of pollutants into or pollution of receiving waters.

(l) *Designated management agency (DMA).* An agency identified by a WQM plan and designated by the Governor to implement specific control recommendations.

(m) *Impaired waterbody.* Any waterbody of the United States that does not attain water quality standards (as defined in 40 CFR part 131) due to an individual pollutant, multiple pollutants, pollution, or an unknown

cause of impairment. Where a waterbody receives a thermal discharge from one or more point sources, impaired means that the waterbody does not have or maintain a balanced indigenous population of shellfish, fish, and wildlife.

(n) *Threatened waterbody.* Any waterbody of the United States that currently attains water quality standards, but for which existing and readily available data and information on adverse declining trends indicate that water quality standards will likely be exceeded by the time the next list of impaired or threatened waterbodies is required to be submitted to EPA. Where a waterbody is threatened by a thermal discharge, threatened means that the waterbody has a balanced indigenous population of shellfish, fish, and wildlife, but adverse declining trends indicate that a balanced indigenous population of shellfish, fish, and wildlife will not be maintained by the time the next list of impaired or threatened waterbodies is required to be submitted to EPA.

(o) *Thermal discharge.* The discharge of the pollutant heat from a point source.

(p) *Reasonable assurance.* Reasonable assurance means that you demonstrate that each wasteload allocation and load allocation in a TMDL will be implemented. For point sources regulated under section 402 of the Clean Water Act you must demonstrate reasonable assurance by procedures that ensure that enforceable NPDES permits (including coverage to individual sources under a general NPDES permit) will be issued expeditiously to implement applicable wasteload allocations for point sources. For nonpoint sources you must demonstrate reasonable assurance by specific procedures and mechanisms that ensure load allocations for nonpoint sources will be implemented for that waterbody. Specific procedures and mechanisms for nonpoint sources must apply to the pollutant for which the TMDL is being established, must be implemented expeditiously and must be supported by adequate funding. Examples of specific procedures and mechanisms which may provide reasonable assurance for nonpoint sources include State, Territorial, and authorized Tribal regulations, local ordinances, performance bonds, contracts, cost-share agreements, memorandums of understanding, site-specific or watershed-specific voluntary actions, and compliance audits of best management practices.

(q) *Waterbody.* A geographically defined portion of navigable waters, waters of the contiguous zone, and ocean waters under the jurisdiction of the United States, including segments of rivers, streams, lakes, wetlands, coastal waters and ocean waters.

(r) *List of Impaired or Threatened Waterbodies or "List".* The list of impaired or threatened waterbodies that States, Territories and authorized Tribes are required to submit to EPA pursuant to section 303(d) of the CWA and this part 130.

Subpart B—Water Quality Monitoring and Reporting

§ 130.10 Water quality monitoring.

(a) In accordance with section 106(e)(1), States must establish appropriate monitoring methods and procedures (including biological monitoring) necessary to compile and analyze data on the quality of waters of the United States and, to the extent practicable, ground-waters. This requirement need not be met by Indian Tribes. However, any monitoring and/or analysis activities undertaken by a Tribe must be performed in accordance with EPA's quality assurance/quality control guidance (*Policy and Program Requirements to Implement the Mandatory Quality Assurance Program,* EPA Order 5360.1, April 3, 1984 as updated on July 16, 1998; available from: http//ES.epa.gov/ncerqa/qa/qa__docs.html).

(b) The State's water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data. The uses of these data include determining abatement and control priorities; developing and reviewing water quality standards, total maximum daily loads, wasteload allocations and load allocations; assessing compliance with National Pollutant Discharge Elimination System (NPDES) permits by dischargers; reporting information to the public through the section 305(b) report and reviewing site-specific monitoring efforts and source water assessments conducted under the Safe Drinking Water Act.

§ 130.11 Water quality report.

(a) Each State shall prepare and submit biennially to the Regional Administrator a water quality report in accordance with section 305(b) of the Act. The water quality report serves as the primary assessment of State water quality. Based upon the water quality data and problems identified in the 305(b) report, States develop water quality management (WQM) plan elements to help direct all subsequent control activities. Water quality problems identified in the 305(b) report should be analyzed through water quality management planning leading to the development of alternative controls and procedures for problems identified in the latest 305(b) report. States may also use the 305(b) report to describe ground-water quality and to guide development of ground-water plans and programs. Water quality problems identified in the 305(b) report should be emphasized and reflected in the State's WQM plan and annual work program under sections 106 and 205(j) of the Clean Water Act and where the designated use includes public water supply, in the source water assessment conducted under the SDWA.

(b) Each such report shall include but is not limited to the following:

(1) A description of the water quality of all waters of the United States and the extent to which the quality of waters provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water.

(2) An estimate of the extent to which CWA control programs have improved water quality or will improve water quality for the purposes of paragraph (b)(1) of this section, and recommendations for future actions necessary and identifications of waters needing action.

(3) An estimate of the environmental, economic and social costs and benefits needed to achieve the objectives of the CWA and an estimate of the date of such achievement.

(4) A description of the nature and extent of nonpoint source pollution and recommendations of programs needed to control each category of nonpoint sources, including an estimate of implementation costs.

(5) An assessment of the water quality of all publicly owned lakes, including the status and trends of such water quality as specified in section 314(a)(1) of the Clean Water Act.

(c) States may include a description of the nature and extent of ground-water pollution and recommendations of State plans or programs needed to maintain or improve ground-water quality.

(d) In the years in which it is prepared the biennial section 305(b) report satisfies the requirement for the annual water quality report under section 205(j). In years when the 305(b) report is not required, the State may satisfy the annual section 205(j) report requirement by certifying that the most recently submitted section 305(b) report is current or by supplying an update of the

sections of the most recently submitted section 305(b) report which require updating.

Subpart C: Identifying Impaired and Threatened Waterbodies and Establishing Total Maximum Daily Loads (TMDLs)

What This Subpart Covers

§ 130.20 Who must comply with subpart C of this rule?

(a) Subpart C applies to States, Territories, and authorized Tribes. The term "you" in this rule refers to these three governmental entities.

(b) Portions of this subpart apply to the United States Environmental Protection Agency (EPA). When this is the case, the rule specifies EPA's responsibilities and obligations.

§ 130.21 What is the purpose of this subpart?

This rule explains how you must identify and list impaired or threatened waterbodies and establish TMDLs in accordance with section 303(d) of the Clean Water Act. The rule also explains how EPA reviews and approves or disapproves your lists and TMDLs. Specifically, the rule explains how:

(a) You must assemble all existing and readily available data and information;

(b) You must document your methodology for considering and evaluating all existing and readily available data and information to make listing decisions, including priority ranking, and provide the methodology to EPA and the public;

(c) You must identify the impaired and threatened waterbodies to be included on the list and decide which of those waterbodies will have TMDLs established for them;

(d) You must identify the pollutant or pollutants causing the impairment or threat of impairment for all waterbodies on your list that will have TMDLs established for them;

(e) You must assign a priority ranking to all waterbodies on your list that will have TMDLs established for them;

(f) You must establish a schedule for establishing all TMDLs;

(g) EPA must review and approve or disapprove your list of impaired and threatened waterbodies, identification of pollutants, and priority ranking;

(h) You must establish TMDLs and submit them to EPA for review;

(i) EPA must review and approve or disapprove your TMDLs;

(j) You must provide for public notice and comment on your list, priority ranking, schedule, and TMDLs prior to final submission to EPA.

Identifying and Listing Impaired or Threatened Waterbodies, Documenting Your Approach for Making Listing Decisions, and Establishing a Schedule for TMDL Development

§ 130.22 What data and information must you assemble to identify and list impaired or threatened waterbodies?

(a) You must assemble and consider all existing and readily available data and information when you develop your list of impaired or threatened waterbodies.

(b) Existing and readily available data and information, includes but is not limited to, the data and information in the following:

(1) Your most recent EPA approved section 303(d) list;

(2) Your most recent Clean Water Act section 305(b) report;

(3) Clean Water Act section 319 nonpoint source assessments;

(4) Drinking water source water assessments under section 1453 of the Safe Drinking Water Act;

(5) Dilution calculations, trend analyses, or predictive models for determining the physical, chemical or biological integrity of streams, rivers, lakes, and estuaries; and

(6) Data, information, and water quality problems reported from local, State, Territorial, or Federal agencies (especially the U.S. Geologic Survey National Water Quality Assessment (NAWQA) and National Stream Quality Accounting Network (NASQAN)), Tribal governments, members of the public, and academic institutions.

§ 130.23 How do you document your approach for considering and evaluating all existing and readily available data and information to develop your list and priority rankings?

(a) You must develop a methodology that explains how you will consider and evaluate all existing and readily available data and information to determine which waterbodies you will include on your list, and to determine priority rankings for those waterbodies. You must develop a draft methodology, notify the public of the availability of the draft methodology, take comments on the draft methodology for no less than 60 days, and provide a summary of all comments received and your responses when you submit the final methodology to EPA, as required by § 130.24 of this subpart.

(b) The methodology must include the factors you use to consider and evaluate the following types of data and information when you make listing decisions:

(1) Physical/chemical data and information;

(2) Biological data and information;

(3) Aquatic and riparian habitat data and information; and

(4) Waterbody impairment and drinking water susceptibility analyses required under § 130.22(b).

(c) Your methodology must, at a minimum, identify those types of data and information that you will treat as "existing and readily available" and explain how you consider the following factors in making listing and priority ranking decisions:

(1) Data quality and age;

(2) Degree of confidence you have in the information you use to determine whether waterbodies are impaired or threatened; and

(3) Number and degree of exceedances of numeric or narrative criteria and designated uses used to determine whether waterbodies are impaired or threatened.

(d) Your methodology must, at a minimum, also include the following:

(1) A description of the selection factors you will use to include waterbodies on your list;

(2) A process for resolving disagreements with other jurisdictions involving waterbodies crossed by State or authorized Tribal or international boundaries; and

(3) A description of the method and factors you use to assign a priority ranking to the waterbodies on your list.

(e) Your methodology must describe how and for what reasons you will remove previously listed waterbodies from your list.

§ 130.24 When must your methodology be submitted to EPA?

(a) You must submit the final methodology described in § 130.23 to EPA by January 31 of every [second], [fourth], [fifth] year, beginning in the year 2000.

(b) Following submittal, EPA will review your methodology and may, as appropriate, provide you with comments in advance of your list submission.

(c) EPA will not approve or disapprove your methodology, but will consider your methodology in its review and approval or disapproval of your list and priority rankings.

§ 130.25 What is the scope of your list of impaired or threatened waterbodies?

(a) Your list must include all waterbodies that, based on all existing and readily available data and information, are impaired or threatened by individual pollutants, multiple pollutants, or pollution from any source.

(b) Your list must include impaired or threatened waterbodies regardless of whether:

(1) The waterbodies are impaired or threatened by a pollutant which is unknown at the time of the listing;

(2) The waterbodies are impaired or threatened by atmospheric deposition;

(3) The waterbodies are impaired or threatened only by point sources, only by nonpoint sources, or by a combination of point and nonpoint sources.

§ 130.26 How do you apply your water quality standards antidegradation policy to the listing of impaired and threatened waterbodies?

(a) Water quality standards as defined at 40 CFR part 131 include several requirements, including one for a State antidegradation policy. Your list must include waterbodies consistent with your antidegradation policy as follows:

(1) Any Tier 3 waterbody is impaired and must be listed when the level of water quality that existed at the time the waterbody was designated as Tier 3 has declined.

(2) Any Tier 2 waterbody is threatened and must be listed when adverse trend data and information indicates that a designated use will no longer be attained by the time of the next listing cycle.

(3) Any Tier 1 waterbody is impaired and must be listed if it is not maintaining a designated or more protective existing use. Any Tier 1 waterbody is threatened and must be listed when an adverse trend indicates that a designated use or a more protective existing use will no longer be attained at the time of the next listing cycle.

§ 130.27 How must you format your list of impaired or threatened waterbodies?

(a) Your list of impaired and threatened waterbodies must include the following parts:

(1) Part 1—Waterbodies impaired or threatened by one or more pollutant(s) as defined by 40 CFR 130.2(d) or by an unknown cause unless listed in Part 3 or 4 of the list. Where the cause of the impairment or threat is unknown, identification of the pollutant(s) causing the impairment or threat is required as the first step in establishing the TMDL. A TMDL is required for waterbodies on Part 1 of the list impaired by pollutants.

(2) Part 2—Waterbodies impaired or threatened by pollution as defined by 40 CFR 130.2(c) but not impaired or threatened by one or more pollutants. A TMDL is not required for waterbodies on Part 2 of the list.

(3) Part 3—Waterbodies for which EPA has approved or established a TMDL and water quality standards have not yet been attained.

(4) Part 4—Waterbodies that are impaired, for which implementation of best practicable control technology for point sources and secondary treatment for publicly owned treatment works or controls enforceable by State, Territorial or authorized Tribal or Federal law or regulation are expected to result in attainment of water quality standards by the next listing cycle. A TMDL is not required for waterbodies on part 4 of the list. If a waterbody listed on part 4 does not attain water quality standards by the time the next list is required to be submitted to EPA, such waterbody must be included on part 1 of the list unless you can document that the failure to attain water quality standards is due to failure to comply with applicable technology-based requirements.

(b) You must identify the pollutant or pollutants causing the impairment or threat of impairment for each waterbody on Parts 1, 3 and 4 of the list. If the specific pollutant is unknown at the time of listing, you must, to the extent possible, identify the class of pollutants, e.g., metals, pesticides, industrial chemicals, or nutrients. You must identify the type of pollution causing the impairment or threat of impairment for each waterbody on Part 2 of the list. If you do not know whether the cause of impairment is a pollutant or some type of pollution, the waterbody must be included on Part 1 of the list.

(c) You must identify the geographical location of each waterbody on the list, using a nationally recognized georeferencing system as agreed to by you and EPA.

§ 130.28 How do you prioritize the waterbodies on Part 1 of your list?

(a) You must assign a high, medium, or low priority ranking to each waterbody and pollutant combination on Part 1 of the list, taking into account the severity of the impairment or threatened impairment and the designated uses of the waterbody.

(b) You must assign a high priority to waterbody and pollutant combinations on Part 1 of the List if:

(1) The waterbody is designated in water quality standards as a public drinking water supply, used as a source of drinking water and the pollutant for which the waterbody is listed as impaired is contributing to a violation of an MCL; or

(2) species listed as threatened or endangered under section 4 of the Endangered Species Act are present in the waterbody unless the State, Territory or authorized Tribe shows that the impairment does not affect the listed threatened or endangered species.

(3) When identifying your high priority waterbodies, you may also consider the presence of sensitive aquatic species and secondary factors such as the historical, cultural, economic and aesthetic uses of the waterbody.

(c) You must explain how you considered the severity of the impairment or threat of impairment and the designated use to be made of the waterbody in assigning each priority ranking.

(d) You may consider other factors in assigning each priority ranking, including efficiencies gained by developing TMDLs for waterbodies located in the same watershed; the value and vulnerability of particular waterbodies; the recreational, economic, and aesthetic importance of particular waterbodies; TMDL complexity; the degree of public interest and support; State, Territorial and authorized Tribal policies and priorities; or national policies and priorities.

(e) If you consider other factors, you must identify each factor and explain how you used each factor in assigning each priority ranking.

§ 130.29 When can you remove a waterbody from your list?

(a) Once listed, you must keep each impaired waterbody on the list until water quality standards are attained for that waterbody.

(b) You may remove a previously listed impaired waterbody when you develop your next list if new data or information indicates that the waterbody has attained water quality standards.

(c) You must keep each threatened waterbody on the list until the waterbody is no longer threatened.

(d) You may remove a previously listed threatened waterbody from the list if new data or information indicates that the waterbody is no longer threatened.

§ 130.30 When must you submit your list of impaired or threatened waterbodies and priority rankings to EPA and what will EPA do with it?

(a) You must submit your list of impaired and threatened waterbodies as required by §§ 130.25, 130.26, and 130.27, and the priority rankings required by § 130.28, to EPA by October 1 of every [second] [fourth] [fifth] year, beginning in the year 2000.

(b) Within 30 days of receipt, EPA will issue an order approving or disapproving all or a portion of your list and priority ranking.

(c) You must incorporate into your water quality management plan, as

required by § 130.51, those portions of your list and priority ranking that EPA approves.

(d) If EPA disapproves a portion of your list, including your identification of particular waterbodies and pollutant/pollution combinations, or your priority rankings, EPA will, within 30 days, issue an order identifying all waterbodies and pollutant/pollution combinations or priority rankings needed to make the list consistent with this subpart. EPA will publish this order in the **Federal Register** and a general circulation newspaper and request public comment for at least 30 days. If appropriate, EPA will write an order revising the list after the close of the public comment period. EPA will send you a copy of its order identifying additional waterbodies and priority ranking. You must incorporate those waterbodies into your water quality management plan.

(e) EPA may establish a list of impaired and threatened waterbodies, including pollutant/pollution combinations and priority rankings, if you ask EPA to do so, or if EPA determines that you have not or are not likely to establish such list consistent with the schedule specified in paragraph (a) of this section.

§ 130.31 What must your schedule for submitting TMDLs to EPA contain and when must you submit it to EPA?

(a) You must submit a schedule to EPA for establishing TMDLs for all waterbody and pollutant combinations on Part 1 of your list, as described in § 130.27, including waterbodies for which the cause of the impairment or threat was not known at the time of listing.

(1) You must schedule establishment of TMDLs as expeditiously as practicable, but no later than 15 years from the date of the initial listing on Part 1 of your list.

(2) Your schedule for establishment of TMDLs must reasonably pace the workload for TMDL establishment over the entire duration of the schedule.

(3) You should schedule establishment of TMDLs in accordance with the priority rankings required in § 130.28. For example, TMDLs for high-priority waterbodies and pollutant combinations should be established before medium and low-priority waterbody and pollutant combinations. Your schedule may consider other factors including those identified in § 130.28(d).

(b) You must submit your schedule for establishing TMDLs to EPA by October 1 of every [second] [fourth] [fifth] year, beginning in the year 2000, along with your list of impaired and threatened waterbodies and priority rankings.

(c) EPA will not approve or disapprove your schedule, but will consider your schedule in its review of your list and priority ranking.

Establishment and EPA Review of TMDLs

§ 130.32 Must you establish TMDLs?

(a) You must establish a TMDL for all waterbodies and pollutant combinations on Part 1 of your list. You do not need to establish TMDLs for waterbodies on Parts 2, 3, and 4 of your list.

(b) You must establish TMDLs in accordance with the priority rankings established in accordance with § 130.28.

(c) You may establish TMDLs in a different order than the sequence in your most recently submitted schedule as long as you establish TMDLs consistent with the scheduling requirements of § 130.31(a)(1) through (a)(3).

§ 130.33 What are the minimum elements of a TMDL submitted to EPA?

(a) TMDLs are written plans and analyses for achieving water quality standards for waterbodies on Part 1 of your list of impaired and threatened waterbodies. TMDLs provide the opportunity to compare relative contributions from all sources and consider technical and economic trade-offs between point and nonpoint sources.

(b) You must include the following minimum elements in any TMDL submitted to EPA. EPA will not approve a TMDL which does not contain each of these elements.

(1) The name and geographic location, as required by § 130.27(c), of the impaired or threatened waterbody for which the TMDL is being established and the names and geographic locations of the waterbodies upstream of the impaired waterbody that contribute significant amounts of the pollutant for which the TMDL is being established;

(2) Identification of the pollutant for which the TMDL is being established and quantification of the pollutant load that may be present in the waterbody and still ensure attainment and maintenance of water quality standards;

(3) Identification of the amount or degree by which the current pollutant load in the waterbody deviates from the pollutant load needed to attain or maintain water quality standards;

(4) Identification of the source categories, source subcategories, or individual sources of the pollutant for which the wasteload allocations and load allocations are being established consistent with § 130.2(f) and (g);

(5) Wasteload allocations to each industrial and municipal point source permitted under section 402 of the Clean Water Act discharging the pollutant for which the TMDL is being established; wasteload allocations for discharges subject to a general permit, such as storm water, combined sewer overflows, abandoned mines, or combined animal feeding operations, may be allocated to categories of sources, subcategories of sources or individual sources; pollutant loads that do not need to be reduced to attain or maintain water quality standards may be included within a category of sources, subcategory of sources or considered as part of background loads; and supporting technical analyses demonstrating that wasteload allocations when implemented, will attain and maintain water quality standards;

(6) Load allocations, ranging from reasonably accurate estimates to gross allotments, to nonpoint sources of a pollutant, including atmospheric deposition or natural background sources; if possible, a separate load allocation must be allocated to each source of a pollutant, natural background or atmospheric deposition; where this is not possible, load allocations may be allocated to categories of sources or subcategories of sources; pollutant loads that do not need to be reduced for the waterbody to meet water quality standards may be included within a category of sources, subcategory of sources or considered as part of background loads; and supporting technical analyses demonstrating that load allocations, when implemented, will attain and maintain water quality standards;

(7) A margin of safety expressed as unallocated assimilative capacity or conservative analytical assumptions used in establishing the TMDL; e.g., derivation of numeric loads, modeling assumptions, or effectiveness of proposed management actions which ensures attainment and maintenance of water quality standards for the allocated pollutant;

(8) Consideration of seasonal variations and environmental factors that affect the relationship between pollutant loadings and water quality impacts;

(9) An allowance for future growth, if any, which accounts for reasonably foreseeable increases in pollutant loads; and

(10) An implementation plan, which may be developed for one or a group of

TMDLs. Each implementation plan must, at a minimum, include the following:

(i) A description of the control actions and/or management measures which will be implemented to achieve the wasteload allocations and load allocations, and a demonstration that the control actions and/or management measures are expected to achieve the required pollutant loads;

(ii) A timeline, including interim milestones, for implementing the control actions and/or management measures, including when source-specific activities will be undertaken for categories and subcategories of individual sources and a schedule for revising NPDES permits;

(iii) A discussion of your reasonable assurances, as defined at § 130.2(p), that wasteload allocations and load allocations will be implemented;

(iv) A description of the legal authority under which the control actions will be carried out;

(v) An estimate of the time required to attain and maintain water quality standards and discussion of the basis for that estimate;

(vi) A monitoring and/or modeling plan designed to determine the effectiveness of the control actions and/or management measures and whether allocations are being met;

(vii) A description of measurable, incremental milestones for the pollutant for which the TMDL is being established for determining whether the control actions and/or management measures are being implemented and whether water quality standards are being attained; and

(viii) A description of your process for revising TMDLs if the milestones are not being met and projected progress toward attaining water quality standards is not demonstrated.

(c) For waterbodies impaired by thermal discharges from point sources you must estimate the total maximum daily thermal load required to ensure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, taking into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and dissipative capacity of the waterbody for which the TMDL is being established. Estimates must include a calculation of the maximum heat input and a margin of safety that takes into account any lack of knowledge concerning the development of thermal water quality criteria.

(d) A TMDL must not be likely to jeopardize the continued existence of an endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of its designated critical habitat.

§ 130.34 How are TMDLs expressed?

(a) A TMDL must contain an expression of the pollutant load or load reduction necessary to ensure that the waterbody will attain and maintain water quality standards, or, as appropriate, the pollutant load or load reduction required to attain and maintain aquatic or riparian habitat, biological, channel or geomorphological or other conditions that represent attainment and maintenance of water quality standards.

(b) As appropriate to the characteristics of the waterbody and pollutant, the pollutant load may be expressed as daily, monthly, seasonal or annual averages in one or more of the following ways:

(1) The pollutant load that can be present in the waterbody and ensure that it attains and maintains water quality standards;

(2) The reduction from current pollutant loads required to attain and maintain water quality standards;

(3) The pollutant load or reduction of pollutant load required to attain and maintain riparian, biological, channel or geomorphological measures so that water quality standards are attained and maintained; or

(4) The pollutant load or reduction of pollutant load that results from modifying a characteristic of the waterbody, e.g., riparian, biological, channel, geomorphological, or chemical characteristics, so that water quality standards are attained and maintained.

§ 130.35 What actions must EPA take on TMDLs that are submitted for review?

(a) EPA will review each TMDL you submit to determine if it includes all the minimum elements specified in § 130.33(b). A TMDL which does not include all minimum elements will be disapproved.

(b) EPA will review each TMDL you submit to determine if those elements meet the requirements of §§ 130.32, 130.33 and 130.34. EPA will approve the TMDL if it meets those requirements. EPA will issue an order approving or disapproving each TMDL you submit within 30 days after you submit it.

(c) If EPA approves a TMDL you submit, you must incorporate the TMDL into your water quality management plan.

(d) If EPA disapproves a TMDL you submit, EPA will issue an order establishing a new TMDL for that waterbody and pollutant within 30 days of its disapproval.

(1) EPA will publish this order in the **Federal Register** and a general circulation newspaper and request public comment for at least 30 days. If appropriate, EPA will issue an order revising the TMDL after the close of the public comment period.

(2) EPA will send you the final TMDL it establishes. You must incorporate the EPA-established TMDL into your water quality management plan.

§ 130.36 Can EPA establish a TMDL if you fail to do so?

EPA may establish TMDLs for waterbodies and pollutants identified on Part 1 of your list if you ask EPA to do so, or if EPA determines that you have not or are not likely to establish TMDLs consistent with your schedule, or if EPA determines that it should establish TMDLs for interstate or boundary waterbodies.

Public Participation

§ 130.37 What public participation requirements apply to your lists, priority rankings, schedule, and TMDLs?

(a) You must provide the public with no less than 30 days to review and comment on your list of impaired or threatened waterbodies, priority rankings, schedule, and TMDLs prior to submission to EPA.

(b) At the time you make your submission to EPA, you must provide EPA with a summary of all public comments received on your list of impaired or threatened waterbodies, priority rankings, schedule, and TMDLs and your response to all comments, indicating how the comments were considered in your final decision. Your response to each comment must indicate whether you agreed or disagreed with the comment. If you disagreed with the comment, your response must explain why you disagreed and why you believe it was reasonable to act despite the comment.

(c) You must provide for public participation in developing your listing methodology according to the requirements in § 130.23(a).

(d)(1) Prior to your submission to EPA and at the time that you provide the public the opportunity to review and comment on your list of impaired or threatened waterbodies, priority rankings, schedules, and TMDLs, you must provide a copy of each of these documents to EPA, US Fish and Wildlife Services, and to National Marine Fisheries Service where appropriate (e.g., coastal areas), unless you request EPA to provide these documents to the Services, in which case EPA will do so.

(2) You are encouraged to establish processes with both the US Fish and Wildlife and Wildlife Service and the National Marine Fisheries that will provide for the early identification and resolution of threatened and endangered species concerns as they relate to your list of impaired or threatened waterbodies, priority rankings, schedule, and TMDLs. To facilitate consideration of endangered and threatened species in the listing and TMDL process, EPA will ask U.S. Fish and Wildlife and National Fisheries Services, where appropriate, to provide you and EPA with any comments that they may have on your lists, priority rankings, schedule and TMDLs

(3) You must consider any comments from EPA, US Fish and Wildlife Service, or National Marine Fisheries Service and document your consideration in accordance with paragraph (b) of the section.

(4) EPA will review any comments submitted by US Fish Service or National Marine Fisheries and consider how you addressed EPA, US Fish and Wildlife Service, and National Marine Fisheries Service comments prior to EPA's approval or disapproval of your submission.

Transitional TMDLs

§ 130.36 What is the effect of the proposed rule on transitional TMDLs?

(a) EPA will approve any TMDL submitted to it for review within 12 months of the effective date of the final rule if the TMDL meets either the pre-amendment requirements in § 130.7 or the post-amendment requirements in §§ 130.32, 130.33 and 130.34.

(b) EPA may establish TMDLs within 12 months of the effective date of the final rule either according to the pre-amendment requirements in § 130.7 or the post-amendment requirements in §§ 130.32, 130.33 and 130.34.

Subpart D—Water Quality Planning and Implementation

§ 130.50 Continuing planning process

(a) *General.* Each State shall establish and maintain a continuing planning process (CPP) as described under section 303(e)(3)(A)–(H) of the Act. Each State is responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP.

(b) *Content.* The State may determine the format of its CPP as long as the minimum requirements of the CWA and this regulation are met. A State CPP need not be a single document, provided the State identifies in one document, i.e., an index, the other documents, statutes, rules, policies and guidance that comprise its CPP. The following processes must be described in each State CPP and the State may include other processes, including watershed-based planning and implementation, at its discretion.

(1) The process for developing effluent limitations and schedules of compliance at least as stringent as those required by sections 301(b) (1) and (2), 306 and 307, and at least stringent as any requirements contained in applicable water quality standards in effect under authority of section 303 of the Act.

(2) The process for incorporating elements of any applicable areawide waste treatment plans under section 208, and applicable basin plans under section 209 of the Act.

(3) The process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations for pollutants in accordance with section 303(d) of the Act and §§ 130.32–36 of this regulation.

(4) The process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revision.

(5) The process for assuring adequate authority for intergovernmental cooperation in the implementation of the State WQM program.

(6) The process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under section 303(c) of the Act.

(7) The process for assuring adequate controls over the disposition of all residual waste from any water treatment processing.

(8) The process for developing an inventory and ranking, in order of priority of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of the Act.

(9) The process for determining the priority of permit issuance.

(c) *Regional Administrator review.* The Regional Administrator shall review approved State CPPs from time to time to ensure that the planning processes are consistent with the Act and this regulation. The Regional Administrator shall not approve any permit program under Title IV of the Act for any State which does not have an approved continuing planning process.

§ 130.51 Water quality management plans

(a) *Water quality management plans.* You must base continuing water quality planning on initial water quality management plans. Your annual water quality planning should focus on priority issues and geographic areas and have a watershed focus. Water quality planning should be directed at the removal of conditions placed on previously certified and approved water quality management plans and updates to support the implementation of wasteload allocations and load allocations contained in TMDLs.

(b) *Use of WQM plans.* WQM plans are used to direct implementation. WQM plans draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures, including the financial and institutional measures necessary for implementing recommended solutions. State annual work programs shall be based upon the priority issues identified in the State WQM plan.

(c) *WQM plan elements.* Sections 205(j), 208 and 303 of the Act specify water quality planning requirements. The following plan elements shall be included in the WQM plan or referenced as part of the WQM plan if contained in separate documents when they are needed to address water quality problems.

(1) *Total Maximum Daily Loads.* TMDLs in accordance with § 303(d) and (e)(3)(C) of the Act and §§ 130.2 and 130.32–36.

(2) *Effluent limitations.* Effluent limitations including water quality based effluent limitations and schedules of compliance in accordance with section 303(e)(3)(A) of the Act and § 130.50 of this part.

(3) *Municipal and industrial waste treatment.* Identification of anticipated municipal and industrial waste treatment works, including facilities for treatment of stormwater-induced combined sewer overflows; programs to provide necessary financial arrangements for such works; establishment of construction priorities and schedules for initiation and completion of such treatment works including an identification of open space and recreation opportunities from improved water quality in accordance with section 208(b)(2) (A) and (B) of the Act.

(4) *Nonpoint source management and control.* (i) The plan shall describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution where necessary to protect or achieve approved water uses. Economic,

institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and modifying the BMPs as necessary to achieve water quality goals.

(ii) Regulatory programs shall be identified where they are determined to be necessary by the State to attain or maintain an approved water use or where non-regulatory approaches are inappropriate in accomplishing that objective.

(iii) BMPs shall be identified for the nonpoint sources identified in section 208(b)(2)(F)–(K) of the Act and other nonpoint sources as follows:

(A) *Residual waste.* Identification of a process to control the disposition of all residual waste in the area which could affect water quality in accordance with section 208(b)(2)(J) of the Act.

(B) *Land disposal.* Identification of a process to control the disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality in accordance with section 208(b)(2)(K) of the Act.

(C) *Agricultural and silvicultural.* Identification of procedures to control agricultural and silvicultural sources of pollution in accordance with section 208(b)(2)(F) of the Act.

(D) *Mines.* Identification of procedures to control mine-related sources of pollution in accordance with section 208(b)(2)(G) of the Act.

(E) *Construction.* Identification of procedures to control construction related sources of pollution in accordance with section 208(b)(2)(H) of the Act.

(F) *Saltwater intrusion.* Identification of procedures to control saltwater intrusion in accordance with section 208(b)(2)(i) of the Act.

(G) *Urban stormwater.* Identification of BMPs for urban stormwater control to achieve water quality goals and fiscal analysis of the necessary capital and operations and maintenance expenditures in accordance with section 208(b)(2)(A) of the Act.

(iv) The nonpoint source plan elements outlined in § 130.51(c)(4)(iii)(A)–(G) of this regulation shall be the basis of water quality activities implemented through agreements or memoranda of understanding between EPA and other departments, agencies or instrumentalities of the United States in accordance with section 304(k) of the Act.

(5) *Management agencies.* Identification of agencies necessary to carry out the plan and provision for adequate authority for intergovernmental cooperation in accordance with sections 208(b)(2)(D) and 303(e)(3)(E) of the Act. Management agencies must demonstrate the legal, institutional, managerial and financial capability and specific activities necessary to carry out their responsibilities in accordance with section 208(c)(2)(A) through (I) of the Act.

(6) *Implementation measures.* Identification of implementation measures necessary to carry out the plan, including financing, the time needed to carry out the plan, and the economic, social and environmental impact of carrying out the plan in accordance with section 208(b)(2)(E).

(7) *Dredge or fill program.* Identification and development of programs for the control of dredge or fill material in accordance with section 208(b)(4)(B) of the Act.

(8) *Basin plans.* Identification of any relationship to applicable basin plans developed under section 209 of the Act.

(9) *Ground water.* Identification and development of programs for control of ground-water pollution including the provisions of section 208(b)(2)(K) of the Act. States are not required to develop ground-water WQM plan elements beyond the requirements of section 208(b)(2)(K) of the Act, but may develop a ground-water plan element if they determine it is necessary to address a ground-water quality problem. If a State chooses to develop a ground-water plan element, it should describe the essentials of a State program and should include, but is not limited to:

(i) Overall goals, policies and legislative authorities for protection of ground-water.

(ii) Monitoring and resource assessment programs in accordance with section 106(e)(1) of the Act.

(iii) Programs to control sources of contamination of ground-water including Federal programs delegated to the State and additional programs authorized in State statutes.

(iv) Procedures for coordination of ground-water protection programs among State agencies and with local and Federal agencies.

(v) Procedures for program management and administration including provision of program financing, training and technical assistance, public participation, and emergency management.

(d) *Indian Tribes.* An Indian Tribe is eligible for the purposes of this rule and the Clean Water Act assistance programs under 40 CFR part 35, subparts A and H if:

(1) The Indian Tribe has a governing body carrying out substantial governmental duties and powers;

(2) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

(3) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Water Act and applicable regulations.

(e) *Update and certification.* State and/or areawide agency WQM plans shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals. Regional Administrators may require that State WQM plans be updated as needed. State Continuing Planning Processes (CPPs) shall specify the process and schedule used to revise WQM plans. The State shall ensure that State and areawide WQM plans together include all necessary plan elements and that such plans are consistent with one another. The Governor or the Governor's designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan. The certification may be contained in the annual State work program.

(f) *Consistency.* Construction grant and permit decisions must be made in accordance with certified and approved WQM plans as described in §§ 130.63(a) and 130.63(b).

Subpart E—Miscellaneous Provisions

§ 130.60 Designation and de-designation.

(a) *Designation.* Areawide planning agencies may be designated by the Governor in accordance with section 208(a) (2) and (3) of the Act or may self-designate in accordance with section 208(a)(4) of the Act. Such designations shall subject to EPA approval in accordance with section 208(a)(7) of the Act.

(b) *De-designation.* The Governor may modify or withdraw the planning designation of a designated planning agency other than an Indian tribal organization self-designated § 130.51(c)(2) if:

(1) The areawide agency requests such cancellation; or

(2) The areawide agency fails to meet its planning requirements as specified

in grant agreements, contracts or memoranda of understanding; or

(3) The areawide agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries.

(c) *Impact of de-designation.* Once an areawide planning agency's designation has been withdrawn the State agency shall assume direct responsibility for continued water quality planning and oversight of implementation within the area.

(d) *Designated management agencies* (DMA). In accordance with section 208(c)(1) of the Act, management agencies shall be designated by the Governor in consultation with the designated planning agency. EPA shall approve such designations unless the DMA lacks the legal, financial and managerial authority required under section 208(c)(2) of the Act. Designated management agencies shall carry out responsibilities specified in Water Quality Management (WQM) plans. Areawide planning agencies shall monitor DMA activities in their area and recommend necessary plan changes during the WQM plan update. Where there is no designated areawide planning agency, States shall monitor DMA activities and make any necessary changes during the WQM plan update.

§ 130.61 State submittal to EPA.

(a) The following must be submitted regularly by the States to EPA:

(1) The section 305(b) report, in FY 84 and every two years thereafter, and the annual section 205(j) certification or update of the 305(b) water quality report.

(2) The annual State work program(s) under sections 106 and 205(j) of the Act.

(3) Revisions or additions to water quality standards (WQS) (303(c)).

(b) The Act also requires that each State initially submit to EPA and revise as necessary the following:

(1) Continuing planning process (CPP) (303(e));

(2) Identification of water quality-limited waters still requiring TMDLs (section 303(d)), pollutants, and the priority ranking including waters targeted for TMDL development within the next two years as required under § 130.7(b) in accordance with the schedule set for in § 130.7(d)(1).

(3) Total maximum daily loads (TMDLs) (303(d)); and

(4) Water quality management (WQM) plan and certified and approved WQM plan updates (208, 303(e)).

(c) The form and content of required State submittals to EPA may be tailored to reflect the organization and needs of the State, as long as the requirements and purposes of the Act, this part and, where applicable, 40 CFR parts 29, 30, 33 and 35, subparts A and J are met. The need for revision and schedule of submittals shall be agreed to annually with EPA as the States annual work program is developed.

§ 130.62 Program management.

(a) State agencies may apply for grants under sections 106, 205(j) and 205(g) to carry out water quality planning and management activities. Interstate agencies may apply for grants under section 106 to carry out water quality planning and management activities. Local or regional planning organizations may request 106 and 205(j) funds from a State for planning and management activities. Grant administrative requirements for these funds appear in 40 CFR parts 25, 29, 30, 33 and 35, subparts A and J.

(b) Grants under section 106 may be used to fund a wide range of activities, including but not limited to assessments of water quality, revision of water quality standards (WQS), development of alternative approaches to control pollution, implementation and enforcement of control measures and development or implementation of ground water programs. Grants under section 205(j) may be used to fund water quality management (WQM) planning activities but may not be used to fund implementation of control measures (see part 35, subpart A). Section 205(g) funds are used primarily to manage the wastewater treatment works construction grants program pursuant to the provisions of 40 CFR part 35, subpart J. A State may also use part of the 205(g) funds to administer approved permit programs under sections 402 and 404, to administer a statewide waste treatment management program under section 208(b)(4) and to manage waste treatment construction grants for small communities.

(c) Grant work programs for water quality planning and management shall describe geographic and functional priorities for use of grant funds in a manner which will facilitate EPA review of the grant application and subsequent evaluation of work accomplished with the grant funds. A State's 305(b) Report, WQM plan and other water quality assessments shall identify the State's priority water quality problems and areas. The WQM plan shall contain an analysis of alternative control measures and recommendations to control specific problems. Work programs shall specify the activities to be carried out during the period of the grant; the cost of specific activities; the outputs, for example, permits issued, intensive surveys, wasteload allocations, to be produced by each activity; and where applicable, schedules indicating when activities are to be completed.

(d) State work programs under sections 106, 205(j) and 205(g) shall be coordinated in a manner which indicates the funding from these grants dedicated to major functions, such as permitting, enforcement, monitoring, planning and standards, nonpoint source implementation, management of construction grants, operation and maintenance of treatment works, ground-water, emergency response and program management. States shall also describe how the activities funded by these grants are used in a coordinated manner to address the priority water quality problems identified in the State's water quality assessment under section 305(b).

(e) EPA, States, areawide agencies, interstate agencies, local and Regional governments, and designated management agencies (DMAs) are joint participants in the water pollution control program. States may enter into contractual arrangements or intergovernmental agreements with other agencies concerning the performance of water quality planning and management tasks. Such arrangements shall reflect the capabilities of the respective agencies and shall efficiently utilize available funds and funding eligibilities to meet Federal requirements commensurate with State and local priorities. State work programs under section 205(j) shall be developed jointly with local, Regional and other comprehensive planning organizations.

§ 130.63 Coordination with other programs.

(a) Relationship to the National Pollutant Discharge Elimination System (NPDES) program. In accordance with section 208(e) of the Act, no NPDES permit may be issued which is in conflict with an approved Water Quality Management (WQM) plan. Where a State has assumed responsibility for the administration of the permit program under section 402, it shall assure consistency with the WQM plan.

(b) Relationship to the municipal construction grants program. In accordance with sections 205(j), 216 and 303(e)(3)(H) of the Act, each State shall develop a system for setting priorities for funding construction of municipal wastewater treatment facilities under section 201 of the Act. The State, or the agency to which the State has delegated WQM planning functions, shall review

each facility plan in its area for consistency with the approved WQM plan. Under section 208(d) of the Act, after a waste treatment management agency has been designated and a WQM plan approved, section 201 construction grant funds may be awarded only to those agencies for construction of treatment works in conformity with the approved WQM plan.

(c) Relationship to Federal activities—Each department, agency or instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility or engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with all Federal, State, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and extent as any non-governmental entity in accordance with section 313 of the CWA.

§ 130.64 Processing application for Indian Tribes.

The Regional Administrator shall process an application of an Indian Tribe submitted under § 130.51(d) in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

§ 130.65 Petitions to EPA to undertake actions under section 303(d)

(a) *To whom does this section apply?* As used in this section, "you" refers to any person or organization who wants to ask EPA to carry out the actions that States are directed to perform under CWA section 303(d).

(b) *What is the purpose of this section?* (1) This section describes a procedure you should use if you want EPA to carry out the actions that States are directed to perform under CWA section 303(d). Petitioning EPA to undertake activities that States are directed to perform under CWA section 303(d) serves several useful functions. Petitioning EPA to establish TMDLs in the place of a state affords the Agency an opportunity to assemble and analyze the relevant facts, to apply its expertise, exercise the discretion granted to EPA by Congress, and explain the basis for its decision in writing. Petitions will be particularly helpful in instances where the petitioner brings to EPA's attention important facts or analysis the Agency was not aware of or had not conducted on its own.

(2) This petition procedure is intended to be used for requests that EPA intervene to support a State's implementation of CWA section 303(d) based on a substantial failure by the State to establish TMDLs in accordance with the State's schedule. This procedure is not intended to be used to prompt EPA to establish TMDLs for particular waters in cases where you are dissatisfied with the schedule the State has developed for those waters. Rather, if you want a TMDL for a particular waterbody to be established sooner than the State schedule, you should explain to the State why that waterbody warrants earlier attention when the state publishes its section 303(d) list and schedule for public comment.

(c) *What procedures should I follow?* If you want EPA to carry out the actions that States are directed to perform under CWA section 303(d), you should send a petition by certified mail to the EPA Regional Administrator of the Region in which the State is located. See, 40 CFR 1.7.

(d) *What should my petition include?* Your petition should be in writing and it should identify:

(1) The action(s) you want EPA to undertake;

(2) The reasons EPA should perform the action(s);

(3) Any schedule you recommend to EPA for carrying out the desired action(s); and

(4) All information you believe is relevant to your request.

(e) *When will EPA answer my petition?* EPA will answer your petition as quickly as practicable. EPA will notify you and the affected State of its decision in writing.

(f) *How will EPA evaluate my petition?* EPA will consider the information you present in your petition and any other information the Agency obtains from the relevant State regarding its TMDL program. EPA may consider:

(1) The State's schedule for establishing TMDLs;

(2) Progress the State has made in identifying waters needing TMDLs;

(3) Progress the State has made in establishing TMDLs; and

(4) Resources the State has committed for administering its TMDL program.

(g) *What will EPA's decision look like?* EPA may decide to perform any of a variety of actions in response to your petition. For example, EPA could decide to:

(1) Establish TMDLs for a State;

(2) Provide technical or financial assistance;

(3) Work with the State to change its schedule for establishing TMDLs; or

(4) Take other action it determines to be appropriate.

EPA could also decide to deny your petition on the ground that the State is properly implementing section 303(d).

[FR Doc. 99–21416 Filed 8–20–99; 8:45 am]
BILLING CODE 6560–60–P

federal register

Monday
August 23, 1999

Part III

Environmental Protection Agency

40 CFR Part 122 et al.
Revisions to the National Pollutant Discharge Elimination System Program and Federal Antidegradation Policy in Support of Revisions to the Water Quality Planning and Management Regulation; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 131

[OW–FRL–6424–3]

[RIN–2040–AD36]

Revisions to the National Pollutant Discharge Elimination System Program and Federal Antidegradation Policy in Support of Revisions to the Water Quality Planning and Management Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today's action revises, clarifies and strengthens the Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System (NPDES) Program and Water Quality Standards (WQS) Regulation under the Clean Water Act (CWA). Today's proposed rule is intended to achieve two objectives. The first objective is to achieve reasonable further progress toward attaining water quality standards in impaired waterbodies prior to EPA approval or establishment of a Total Maximum Daily Load (TMDL). To achieve this objective, EPA is proposing explicit language describing the Agency's discretionary authority to object to, and reissue, if necessary, State-issued expired and administratively-continued permits authorizing discharges into impaired waterbodies in the absence of an EPA approved or established TMDL. EPA would exercise this authority to ensure that those permits are consistent with water quality standards. Also to achieve this objective, EPA is proposing to require that selected dischargers offset any increase in mass loadings of a pollutant(s) causing the nonattainment of water quality standards in an amount that would result in reasonable further progress toward attainment of water quality standards.

The second objective is to achieve reasonable assurance that an established TMDL will be implemented. To achieve this objective, EPA is proposing explicit language describing EPA's discretionary authority to object to, and reissue, if necessary, State-issued expired and administratively-continued permits authorizing discharges into impaired waterbodies with established and approved TMDLs. EPA would exercise this authority to ensure that those permits are consistent with applicable wasteload allocations in a TMDL. Also to achieve this objective, EPA is proposing explicit language describing the authority of both EPA and States with approved NPDES programs, to designate certain currently unregulated sources as sources that would require an NPDES permit.

DATES: Comments on this proposal must be received, postmarked or delivered by hand on or before October 22, 1999.

ADDRESSES: Send written comments on the proposed rule to W–99–04, NPDES/WQS, Comment Clerk, Water Docket, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments can also be submitted electronically to OW-Docket@epa.gov (see "DOCKET" section below). A copy of the supporting documents cited in this proposal is available for review at EPA's Water Docket; 401 M Street, SW, Mail code: EB57, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kim Kramer, Office of Wastewater Management, 401 M St., SW, Washington, DC 20640, Mail Code 4203, e-mail: Kramer.Kim@epa.gov, telephone: (202) 260–9541 for information regarding the NPDES provisions, or Susan Gilbertson, Office of Science and Technology, 401 M St., SW, Washington, DC 20460, Mail Code 4305, e-mail: Gilbertson.Sue@epa.gov, telephone: (202) 260–7301 for information regarding the water quality standards provisions.

SUPPLEMENTARY INFORMATION:

A. Table of Contents of This Preamble

I. Purposes and Objectives of Today's Proposed Rules
II. Proposed Requirements for New and Significantly Expanding Dischargers Located on Impaired Waters
A. Who Would Be Subject to This Proposal?
1. Which Sources Discharge New Pollutant Loads to a Waterbody?
2. Would Dischargers Who are Currently Discharging but Move Their Outfall(s) to Another Waterbody Be Subject to This Proposal?
3. Will The Proposed Changes to the Definitions of a New Discharger and an Existing Source Affect Their Application Elsewhere in the Regulations?
4. Would Any Existing Dischargers Be Subject to This Proposal?
5. How is EPA Proposing to Define A "Significant Expansion" of an Existing Discharger?
B. What are the Proposed Changes to the Federal Antidegradation Policy?
1. What is the Current Federal Antidegradation Policy?
2. What Were the Recommendations of the TMDL Federal Advisory Committee?
3. What Revisions is EPA Proposing Today?
i. Why is EPA Proposing to Require Dischargers Subject to This Proposal to Achieve Reasonable Further Progress Toward Attaining Water Quality Standards?
a. How Does This Relate to the TMDL FACA Committee's Recommendations?
b. Has This Approach Been Used in Other Statutes?
ii. How is EPA Proposing to Define Reasonable Further Progress?
a. Has Reasonable Further Progress Been Defined Under Other Statutes?
iii. What Offsets Would Affected Dischargers Need to Obtain to Ensure Reasonable Further Progress?
a. Could Offsets be Obtained From Existing Nonpoint Sources?
b. Could the Director Vary the Amount of the Offset?
iv. Would the Reasonable Further Progress Requirements Apply to Affected Dischargers Proposing to Discharge to All Waters of the U.S.?
v. Why is EPA Proposing to Subject Only New Dischargers and Existing Dischargers Undergoing a Significant Expansion to These Requirements?
vi. Would All New Dischargers and Existing Dischargers Undergoing a Significant Expansion Be Subject to These Proposed Requirements?
a. How Would This Proposal Facilitate the Establishment of Trading Markets?
C. How Would EPA Ensure any Needed Changes to the Antidegradation Policies in State, Territorial and Tribal Water Quality Standards?
D. How Would These Changes Be Implemented Through NPDES Permits?
1. Must the New or Significantly Expanding Discharger Obtain an Offset of the Same Pollutant(s) the New or Significantly Expanding Discharger Would Be Required to Offset?
2. From What Geographic Area Would the Pollutant Load Reductions Need to Be Obtained?
3. Could the Pollutant Load Reductions Come From a Source With Existing Requirements to Reduce its Loads?
4. When Would the Pollutant Load Reductions Need to Be Obtained?
5. How Long Would the Pollutant Load Reductions Need to Be Maintained?
6. What Would Be Required When the Source of the Offset is an Existing Point Source?
7. What Would Be Required When the Source of the Offset is an Existing Nonpoint Source?
8. How Would Offsets Be Obtained From Sources Seeking Coverage Under a General Permit?
i. What Options is the Agency Considering?
ii. What If a Notice of Intent Form is Not Required?
iii. Who and Under What Circumstances Would Need to Submit a Supplemental Certification?
iv. How Would Offsets Be Determined for Dischargers Regulated Solely by BMPs?
E. Additional Proposed Modifications to Related NPDES Provisions
1. How is EPA Proposing to Modify the Water Quality-Based Permitting Regulations?

2. How is EPA Proposing to Modify the Regulations Pertaining to the Statement of Basis and Permit Fact Sheet?
III. Proposed Authority to Designate Additional Sources of Pollutants to the NPDES Program
A. How Would Animal Feeding Operations and Aquatic Animal Production Facilities Be Affected by Today's Proposal?
1. How Do These Sources Become Subject to the NPDES Program?
i. Under What Circumstances Are CAFOs Designated on a Case-By-Case Basis?
ii. Under What Circumstances are CAAPFs Designated on a Case-by-Case Basis?
2. Why is EPA Proposing Changes to the CAFO and CAAPFs Jurisdictional Regulations?
i. How Do Animal Feeding Operations Impact Water Quality?
ii. How Do Aquatic Animal Production Facilities Impact Water Quality?
3. What Changes is EPA Proposing to Make to the CAFO and CAAPFs Jurisdictional Regulations?
i. When Would EPA Designate These Sources?
ii. How Will This Proposal Affect States?
iii. Who Would Issue Permits to These Sources Once Designated?
4. How Would EPA Revise Regulatory Text?
B. How Would Silvicultural Activities Be Affected by Today's Proposal?
1. Which Sources Are Currently Excluded From the Definition of a "Point Source?'
2. Are All Discharges From Silvicultural Activities Currently Excluded From the NPDES Program?
3. Which Silvicultural Discharges Would Be Designated Under Today's Proposal as Sources Subject to the NPDES Program?
4. Why is EPA Proposing to Remove the Regulatory Exclusion for These Silvicultural Discharges?
5. When Would Silviculture Sources Be Required to Obtain an NPDES Permit?
6. How Would States Be Affected by This Proposal?
IV. Proposed EPA Authority to Reissue State-Issued Expired and Administratively-Continued NPDES Permits
A. Can EPA Object to State-Issued Expired and Administratively-Continued Permits?
B. How Would EPA Review and Object to a State-Issued Expired and Administratively-Continued Permit?
C. When Would EPA Withdraw its Objection?
D. When Could EPA Invoke This Authority?
E. Will EPA Work With the States Before Invoking This Authority?
F. What If a Permit Has Expired but the Permittee Has Not Submitted a Timely and Complete Application for Renewal to the State?
G. What Authority Supports Today's Proposed Changes?
H. Conclusion
V. Regulatory Assessment Requirements
A. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996
B. Executive Order 12866
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. Executive Orders on Federalism
F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. National Technology Transfer and Advancement Act
I. Executive Order 12898: Environmental Justice

B. Potentially Regulated Entities

Entities discharging pollutants to certain waters of the U.S. could be regulated by this rulemaking if they are subject to National Pollutant Discharge Elimination System (NPDES) program. Potentially regulated entities include:

Category	Examples of potentially regulated entities
State, Territorial or authorized Tribal Governments.	States, territories and authorized Tribes issuing NPDES permits
Federal Government.	EPA
Industry	Industries, including municipal construction sites, discharging pollutants to waters of the U.S.
Municipalities	Owners and operators of publically-owned treatment works, municipal separate storm sewer systems, and municipal construction and industrial activities discharging pollutants to waters of the U.S.

This table is not intended to be exhaustive, but rather provide a guide for readers to identify entities that EPA believes could potentially be affected by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility may be regulated by this proposed action, you should carefully examine the applicability criteria in 40 CFR 122.4, 122.23, 122.24, 122.26, 123.44 and 131.12 of today's proposed rulemaking. If you have any questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Docket

The record for this notice has been established under docket number W–99–04 and includes supporting documentation. EPA requests that commenters submit any references cited in their comments. EPA also requests that commenters submitting written comments include an original and 3 copies of their written comments and enclosures. Commenters that want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Electronic comments are encouraged and may be submitted to the Water Docket (see **ADDRESSES** section above). Electronic comments must be submitted as an ASCII file or a WordPerfect file. Electronic comments must be identified by the docket number (W–99–04). Comments and data will also be accepted on disks in WP8 format or ASCII file format. No confidential business information (CBI) should be sent via e-mail.

For access to docket materials, call EPA's Water Docket at (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment. An electronic version of this proposal will be available via the Internet at: http://www.epa.gov.

I. Purposes and Objectives of Today's Proposed Rules

Today's proposed rule is intended to clarify and strengthen EPA's NPDES and WQS regulations governing discharges into waterbodies that are not attaining water quality standards. Today, EPA is separately proposing revisions to its Total Maximum Daily Load regulations so that TMDLs can more effectively contribute to improving the nation's water quality. Today's proposal complements that effort by ensuring that two objectives are met. The first objective applies in impaired waterbodies prior to the establishment of a TMDL. The purpose of this objective is to achieve reasonable further progress toward attaining water quality standards. The second objective applies in impaired waterbodies after the establishment of a TMDL. The purpose of this objective is to ensure more effective implementation of TMDLs.

To meet the reasonable further progress objective, EPA is adding a new antidegradation requirement and revising the NPDES permitting regulations to implement that requirement. Today's proposal would require all large new dischargers and existing dischargers undergoing a significant expansion proposing to discharge the pollutant(s) of concern into an impaired waterbody, to offset that new or increased discharge. This requirement is in addition to otherwise applicable requirements of the CWA and will ensure that there will be reasonable further progress toward attaining water quality standards despite the addition of the new load from those dischargers. Today's

proposal also establishes a number of requirements, under the NPDES program, to ensure compliance with the antidegradation offset requirement. Those requirements include boundaries on when and where pollutant load reductions would need to be obtained. Therefore, today's proposal will result in reasonable further progress toward attainment of water quality standards. In some cases, such progress may even result in the attainment of water quality standards so that a TMDL is no longer required.

The Agency notes that this requirement is in addition to existing requirements found at 40 CFR 122.44(d)(1)(vii) and 122.4(i). Section 122.44(d) requires dischargers, where necessary, to receive limits that derive from and comply with water quality standards. Section 122.4(i) requires that no permit be issued to a new source or a new discharger if the discharge will cause or contribute to a violation of water quality standards.

Today, EPA is also proposing to explicitly describe a Regional Administrator's authority to trigger existing provisions for reviewing and objecting to State-issued NPDES permits. Under the proposal, the Regional Administrator will have the discretion, under certain circumstances, to trigger these review and objection procedures when a State fails to reissue an expired, State-issued permit that has been administratively continued for more than 90 days. This proposal is designed to address lengthy administrative continuance of permits that authorize discharges into impaired waterbodies and which contain limits that are insufficient to protect applicable water quality standards. By not reissuing these permits, there is a delay in the implementation of needed water quality-based effluent limitations. This provision will serve both purposes of today's proposal. Prior to the establishment of a TMDL, the provision can be used to ensure that more stringent effluent limitations which derive from and comply with water quality standards are implemented. Subsequent to the establishment of a TMDL, this provision will enable the Regional Administrator to ensure that existing dischargers receive permit limits consistent with wasteload allocations in a TMDL.

EPA is today proposing additional revisions to the permitting regulations to ensure that TMDLs are implemented. These revisions include changes to the NPDES jurisdictional regulations regarding designation of point sources for regulation under the NPDES permitting program. EPA is proposing explicit language describing its authority, in States with approved NPDES programs, to designate animal feeding operations (AFOs) and aquatic animal production facilities (AAPFs) as sources subject to NPDES requirements on a case-by-case basis. EPA is also proposing to eliminate the current regulatory exclusion for certain discharges from silvicultural activities. These discharges may also become subject to NPDES requirements on a case-by-case basis. EPA is constraining its discretion to exercise the authority to subject these sources to the NPDES program to those circumstances when EPA establishes a TMDL for a waterbody and determines that designation is necessary to ensure that the wasteload allocations and load allocations under the TMDL are achieved. The proposed rule does not place any constraint on the discretion of State program Directors, in NPDES delegated States, to designate silvicultural activities as point sources. EPA recommends however, that States use this authority only on a limited basis, in circumstances similar to those in which EPA intends to use it (i.e., when there is no other means of providing reasonable assurance that a load allocation or wasteload allocation in a TMDL will be met).

Each of today's proposed revisions is designed to achieve the water quality goals of the Clean Water Act. EPA believes that today's proposal will ensure that those goals are met more quickly and that one of the most important tools for achieving those goals, a TMDL, will be implemented more effectively.

II. Proposed Requirements for New and Significantly Expanding Dischargers Located on Impaired Waters

A. Who Would Be Subject to This Proposal?

EPA is today proposing to establish new requirements for dischargers proposing to add new pollutant loads to an impaired waterbody in the absence of a TMDL. These new requirements are located in 40 CFR 122.4(j) and 131.12(a)(1)(ii). Section 122.4(j) applies to all new dischargers and existing dischargers undergoing a significant expansion proposing to add new pollutant loads to a waterbody. Section 131.12(a)(1)(ii) applies to large new and significantly expanding dischargers proposing to add new pollutant loads to an impaired waterbody for which EPA has not approved or established a TMDL. EPA is also proposing to modify the definitions of a new discharger and an existing source under 40 CFR 122.2 and 122.29.

EPA intends these new requirements to apply only to those dischargers who are proposing to add new loads of pollutants to a waterbody. Because the current definition of a new discharger can be read to include some dischargers who are not adding new loads to a waterbody, EPA is proposing to modify the existing definitions of both a new discharger and an existing source. The definition of a new discharger is currently found at 40 CFR 122.2 and the definition of an existing source is currently found at 40 CFR 122.29. EPA is also proposing to define the term "significant expansion." All of these definitions will be moved to 40 CFR 122.2.

A new discharger, as currently defined in 40 CFR 122.2, means any building, structure, facility, or installation from which there is a discharge of pollutants which commenced after August 13, 1979; which is not a new source; and has never received a finally effective NPDES permit. An existing source, as defined in 40 CFR 122.29, is any source which is not a new source or a new discharger. The plain reading of the current definition of a new discharger would subject certain sources to today's proposed sections (122.4(j) and 131.12(a)(1)(ii), including the proposed offset requirements explained below). Under the current definition, these sources would be subject to today's proposal even though they would not propose to discharge new pollutant loads to a waterbody. Such sources include sources that have been and currently are discharging pollutants that are not now subject to the NPDES program but may in the future become subject to the NPDES program. These sources would be subject to the requirements of the NPDES program once designated.

Designation of sources can be made on a case-by-case basis involving an individual source. For example, an individual medium-sized animal feeding operation (AFO) may be designated as a medium-sized concentrated animal feeding operation (CAFO).[1] Designation can also be made

[1] An example of a source that may be designated as a point source on an individual basis and which at the time of designation, would fall within the current definition of a new discharger, is a medium-sized animal feeding operation (AFO) designated as a medium-sized concentrated animal feeding operation (CAFO). This would be the case where that AFO started discharging pollutants after August 13, 1979. This source is not a new source (there is no applicable NSPS yet) and this source has never received a finally effective NPDES permit. As an AFO, the source is not subject to the NPDES

by category. For example, sources that will become subject to the NPDES program under the Storm Water Phase II rule will be designated on a categorical basis.[2] Although these sources have been discharging before and at the time of designation, they would fall within the current definition of a new discharger. As a result, unless EPA amends the definitions of a new discharger and an existing source for this purpose, these sources would be subject to the proposed requirements of 40 CFR122.4(j) and 131.12(a)(1)(ii). As mentioned above, EPA intends these sections to apply only to sources proposing to discharge new pollutant loads to a waterbody.

1. Which Sources Discharge New Pollutant Loads to a Waterbody?

Sources that are proposing to discharge new pollutant loads to a waterbody are dischargers that have not yet begun discharging but are proposing to discharge. Also discharging new pollutant loads are those dischargers that have been discharging to one waterbody and, for example, propose to move their outfall to another location not within the "same body of water." Existing dischargers that expand or increase their loads, discharge new pollutant loads to a waterbody as well.

For proposed 40 CFR122.4(j) and 131.12(a)(1)(ii) to apply only to dischargers that propose to discharge new pollutant loads to a waterbody, EPA is proposing to modify the definition of a new discharger. In addition, EPA is proposing to delete the current definition of an existing source at 40 CFR 122.29 and replace it with a new term, "existing discharger," which will be defined in 40 CFR 122.2. EPA believes that consolidating these definitions into one section provides greater clarity. The proposed modifications would result in dischargers that fall into two classes, those that are currently discharging to the same body of water (or existing dischargers) and those that are not now discharging but wish to discharge in the future (or new dischargers). For purposes of 40 CFR 122.4(j) and 131.12(a)(1)(ii), however, although dischargers would be classified as either "new dischargers" or "existing dischargers," a new discharger may also be a new source and an existing discharger may also be a new source.[3]

2. Would Dischargers Who Are Currently Discharging but Move Their Outfall(s) to Another Waterbody Be Subject to This Proposal?

Some dischargers move their outfalls from one waterbody to another waterbody. In order to protect impaired waterbodies, EPA believes it is appropriate to subject these dischargers to the new requirements reflected in today's proposal. This is consistent with the Agency's intent to subject sources introducing new pollutant loads to a waterbody to today's new requirements. An outfall would not be subject to today's new requirements if it was moved within the "same body of water" as the existing outfall location. In determining whether the outfall is moved within the "same body of water" as its original location, the permitting authority should consider whether: (1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar at and between both outfall points; (2) there is a direct hydrological connection between outfall points; and (3) water quality characteristics (e.g., temperature, Ph, hardness) are similar at and between both outfall points. Dischargers who move an outfall(s) within the same body of water would remain existing dischargers.

The proposed modifications to the definitions of a new discharger and an existing source will capture these sources as sources that would be subject to proposed 40 CFR 122.4(j) and 131.12(a)(1)(ii).

3. Will the Proposed Changes to the Definitions of a New Discharger and an Existing Source Affect Their Application Elsewhere in the Regulations?

In modifying the definition of a new discharger, deleting the definition of an existing source and proposing a definition for a new term, an existing discharger, EPA does not intend to affect any other existing regulations or effluent guidelines, including EPA's permit decisionmaking regulations. Under 40 CFR 124.16 and 124.60 of EPA's permit decisionmaking procedures, a "new discharger," whose permit is the subject of a pending administrative appeal, is without a permit until the appeal process has concluded and the Agency's action has become final. On the other hand, an existing facility, whose permit is the subject of a pending administrative appeal, is not without a permit until the appeal process has concluded. The uncontested terms of an existing facility's permit take effect pending the conclusion of an administrative appeal. Although today's proposal would change the definitions of a new discharger and an existing source, EPA does not intend to change the application of 40 CFR 124.16 or 124.60 at this time. Accordingly, a discharger who, under the existing definitions, is a "new discharger" and who, under the definitions in today's proposal, would be an "existing discharger," would be treated as a "new discharger" for purposes of 40 CFR 124.16 and 124.60. That is, a discharger who would become an "existing discharger" by virtue of the changes in today's proposal, would still be without a permit pending the conclusion of an administrative appeal of the discharger's permit. EPA believes that this interpretation of 40 CFR 124.16 and 124.60 makes sense because dischargers who become "existing dischargers" by virtue of the changed definitions proposed today would not have been operating under an existing permit (this class of dischargers are those that are discharging and not subject to NPDES regulation (discharging legally without a permit) but are designated as sources subject to NPDES regulation at some point in the future). EPA has long required that those who wish to contest permit terms do so on their own time. 43 FR 37,087 (Aug. 21, 1978). This principle is especially compelling when the Agency has never acted to approve the discharge on any set of terms or conditions.

EPA believes that an amendment to 40 CFR part 124 would clarify how EPA intends the stay provisions in 40 CFR 124.16 and 124.60 to apply to "existing dischargers"; however, EPA has not included revised language in today's proposal because the Agency has,

permit program because AFOs are exempt from permit requirements under 40 CFR 122.3(e). However, if that source is designated as a CAFO (under 40 CFR 122.23) at any time in the future, it would fall within the current definition of a new discharger.

[2] An example of a source which may become subject to the NPDES program as a result of a categorical designation of point sources and which would fall within the current definition of a new discharger is any Storm Water Phase II source that currently is and has been discharging pollutants at any point after August 13, 1979. These sources are not new sources (there is no applicable NSPS) and these sources have never received a finally effective NPDES permit.

[3] The definition of a new source remains unchanged. A new source is a source which began construction after the promulgation of applicable new source performance standards (NSPS). Under this unchanged definition of a new source, existing dischargers and new dischargers (under this proposal) can be new sources subject to NSPS. For example, if a discharger is a new discharger under this proposal and that discharger began construction after the promulgation of applicable NSPS, then that discharger would also be a new source (subject to NSPS). Likewise, if a discharger is an existing discharger under this proposal and that discharger began construction after the promulgation of applicable NSPS, then that discharger would also be a new source (subject to NSPS). If there are no applicable NSPS for either discharger, then neither would be a new source.

elsewhere, proposed changes to 40 CFR 124.16 and 124.60 which have not yet been finalized. 61 FR 65,268 (Dec. 11, 1996)(Amendment to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round 2). EPA proposes to amend 40 CFR 124.16 and 124.60 in a way that more clearly reflects its understanding of their applicability to "existing dischargers" and which will conform to the revisions made to these provisions in the Round 2 NPDES Streamlining Rule once the contours of those revisions have become final. EPA solicits comment on whether or not a new discharger that would become an existing discharger under the definitions in today's proposal should be treated as an existing discharger for purposes of 40 CFR 124.16 and 124.60.

EPA also invites comment on whether the modifications to these definitions will have an effect on their application elsewhere in the NPDES regulations. EPA may amend the respective sections so that these definitional changes do not affect those sections.

4. Would Any Existing Dischargers Be Subject to This Proposal?

EPA has consistently believed that the mere fact that an existing discharger currently discharges does not give them the privilege to discharge any amount of additional loads without consequence. Therefore, EPA is also proposing to subject existing dischargers undergoing a significant expansion to proposed 40 CFR 122.4(j) and 131.12(a)(1)(ii). The term "significant expansion" will be newly defined in 40 CFR 122.2.

5. How Is EPA Proposing To Define What Constitutes a "Significant Expansion" of an Existing Discharger?

EPA is proposing to define the term "significant expansion" to mean a twenty percent or greater increase in loadings above the discharger's current permit limit. Twenty percent is consistent with EPA's "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula," September 19, 1985. There, the Agency stated that an industrial user (IU) is required to notify the Control Authority immediately where the IU's average production and flow rate data have "significantly" changed. The guidance further explains that as a general rule, the average rate is considered to have changed significantly if the change is greater than twenty percent. Where there is a significant change in these rates, it is suggested that the Control Authority reevaluate the limits in the IU's permit. In the preamble to the revision to the General Pretreatment Regulations for Existing and New sources, FR 40562, 40565, October 17, 1988, EPA confirmed the use of twenty percent as the level at which an average rate is considered to have changed significantly. The Agency stated that "for purposes of today's rule, any increase or decrease in production (or flow) rates will generally be deemed significant if the change is equal to or greater than twenty percent of the long term average production (or flow) rate at the facility." Therefore, in order to maintain consistency with its current guidance, EPA is proposing a twenty percent increase in loadings above the discharger's current permit limit as the threshold level which defines a significant expansion.

The Agency believes however, that using an increase in "loadings" rather than "production or flow rates" is more appropriate. Today's proposal is applicable to dischargers proposing to discharge new pollutant loads into a waterbody and there may be cases where an increase in production rates may not result in a corresponding increase in pollutant loads. EPA invites comment on the appropriateness of a twenty percent increase in loadings above the discharger's current permit limit as the threshold level which defines a significant expansion.

EPA is also considering the use of a fifty rather than a twenty percent increase in loadings above the discharger's current permit limit as the threshold level to define a "significant expansion." A threshold level of fifty percent is consistent with other Agency guidance. On December 18, 1984, EPA put out guidance on the "Calculation of Production-Based Effluent Limits" (Memorandum from J. William Jordan to Regional Branch Chiefs). The purpose of the guidance was to clarify the procedure for calculating production-based effluent limitations and to provide guidance on the use of alternate limitations.

Effluent limitations guidelines are often derived from production rates and are set at levels which include some variations in production. However, certain facilities may have large random or cyclic fluctuations in production rates where it would be appropriate to have alternative effluent limitations which are applicable at some increased production rate. The guidance mentioned above suggests that if production rates are expected to change "significantly" during the life of the permit, the permit should include alternate limits. The guidance identifies that it is generally agreed that a ten to twenty percent fluctuation in production is within the range of normal variability and thus, would not need alternate limits. Further, it states that changes in production rates which are substantially higher, "such as fifty percent," would warrant the consideration of alternate limits. EPA seeks comment on whether a fifty percent increase in loadings above the discharger's current permit limits should be used to define a significant expansion.

Other statutes and regulations also establish thresholds over which a source cannot change without incurring different requirements. The Resource Conservation and Recovery Act (RCRA) permit regulations hold that "reconstruction" occurs when capital investment in the changes to the facility exceed fifty percent of the capital cost of a comparable entirely new hazardous waste management facility. 40 CFR 270.72(b). An interim status facility (a facility that is in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit), is treated as having been issued a permit and may make changes short of reconstruction, but cannot make changes amounting to reconstruction until the facility receives a permit.

Under the Clean Air Act, new source review applies to new major sources and modifications to existing major sources. 42 U.S.C. 7411. A modification of an existing major source triggers review if it is a physical or operational change that increases emissions by a "significant" amount. By regulation, EPA has defined "significant" based on the pollutant emitted. 40 CFR 51.165.

EPA invites comment on whether a threshold level other than twenty or fifty percent should trigger the applicability of 40 CFR 122.4(j) and 131.12(a)(1)(ii). One option would be to allow the permitting authority to determine what constitutes a significant expansion on a case-by-case basis, without establishing a specific threshold level.

The Agency notes that where an existing discharger undergoes a "significant expansion," only the expanded portion of the discharge (the new loadings) would be subject to the offset requirements under 40 CFR 131.12(a)(1)(ii). For existing dischargers with a current permitted load, the definition of a significant expansion and the amount for which offsets are required would be based on the increase in the permitted load.

Based on an initial analysis of potentially affected sources, EPA believes that the cost to dischargers of using a threshold of twenty percent to

define a significant expansion would not be significantly greater than the cost of using a threshold of 50 percent. EPA requests comment on this initial conclusion and any supporting data commenters can provide.

EPA also invites comment on how to measure a significant expansion and to calculate the corresponding offset requirements for those dischargers who increase the loadings of a pollutant for which the waterbody is impaired but for which there is no current permitted load (there is no effluent limit for that particular pollutant in the discharger's permit). It is EPA's intent that the offset requirements apply to new pollutant loads and in the case of an existing discharger, "significant" new pollutant loads.

B. What Are the Proposed Changes to the Federal Antidegradation Policy?

EPA is proposing to amend 40 CFR 131.12(a) to require a new discharger, or an existing discharger undergoing a significant expansion, proposing to discharge to a waterbody not attaining water quality standards, the pollutant(s) causing the nonattainment, to achieve reasonable further progress toward attaining water quality standards. This requirement, in addition to otherwise applicable requirements of the CWA, would apply where there is no EPA approved or established Total Maximum Daily Load (TMDL). When EPA has approved or established a TMDL, a new discharger proposing to discharge the pollutant(s) for which the TMDL was established, may discharge only in accordance with that TMDL or a revised, approved TMDL. It would apply only to new dischargers and existing dischargers undergoing a significant expansion that are not a small business or entity as defined in 5 U.S.C. 601(6). Therefore, a new discharger or existing discharger undergoing a significant expansion which is not a small business or entity, would need to comply with a permit limit that derives from and complies with water quality standards and this new requirement for reasonable further progress. With this proposed change, EPA intends to ensure reasonable further progress toward restoring water quality standards in impaired waters prior to the completion of TMDLs. EPA emphasizes that this is an interim approach to attaining water quality standards; these requirements apply only until the TMDL is approved or established by EPA, and the TMDL is implemented with respect to the discharger subject to these requirements.

1. What Is the Current Federal Antidegradation Policy?

Section 303(c) of the CWA establishes the basis for federal water quality standards. EPA regulations implementing section 303(c) are published at 40 CFR part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include: use designations for all waterbodies in the State, water quality criteria sufficient to protect those use designations, and an antidegradation policy. See 40 CFR 131.6. States may also include in their standards, policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are subject to EPA review and approval.

The current federal antidegradation policy performs an essential function in protecting and maintaining water quality. Designated uses establish the water quality goals for the waterbody, water quality criteria define the minimum conditions necessary to achieve those goals and the antidegradation policy specifies the framework to be used in making decisions regarding changes in water quality. The intent of an antidegradation policy is to ensure that in all cases, at a minimum: (1) Water quality necessary to support existing uses is maintained (Tier 1); (2) that where water quality is better than the minimum level necessary to support protection and propagation of fish, shellfish and wildlife, and recreation in and on the water ("fishable/swimmable"), that water quality is also maintained and protected unless, through a public process, some lowering of water quality is deemed to be necessary to allow important economic or social development to occur (Tier 2); and (3) where waterbodies are of exceptional recreational or ecological significance, water quality is maintained and protected (Tier 3). Antidegradation plays a critical role in allowing States and Tribes to maintain and protect the finite public resource of clean water and ensure that decisions to allow reductions in water quality are made in a public manner and serve the public good. States and authorized Tribes are required to adopt antidegradation policies at least as stringent as the federal antidegradation policy.

Section 131.12(a) of the antidegradation policy, contained in the federal water quality standards regulation, requires that existing uses and the water quality necessary to protect them be maintained and protected. This provision, in effect, establishes the floor of water quality for all waters of the U.S., and that all waters of the U.S. are subject to Tier 1 protection. In general, waters that are subject only to Tier 1 antidegradation policies are those waterbodies that do not exceed the CWA section 101(a) goals. These waters either do not have any remaining assimilative capacity to receive additional loads of pollutants without causing the loss of the existing use or the water quality already is degraded below that necessary to maintain an existing use. "Existing uses" are defined at 40 CFR 131.3(e) as those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards. Antidegradation policies are generally implemented for Tier 1 by reviewing and determining whether a discharge would impair an existing use. Tier 1 currently requires that water quality necessary to protect existing uses shall be maintained and protected. In addition, the State or Tribe should ensure that all existing uses are designated in accordance with 40 CFR 131.10(i).

2. What Were the Recommendations of the TMDL Federal Advisory Committee?

The Federal Advisory Committee on the Total Maximum Daily Load Program recommended a number of ways to improve the effectiveness and efficiency of EPA, State, Territorial and Tribal programs under section 303(d) of the CWA. These recommendations address many of the TMDL program's complex technical and policy issues, and include recommendations on several new policy and program directions. In particular, the Committee recognized that there could be a considerable time lag between the initial listing of a waterbody on a section 303(d) list of impaired or threatened waters and the actual completion, approval and implementation of the TMDL. Some on the Committee noted that water quality should not be allowed to further degrade during that time period. The Committee recommended that EPA actively encourage and support stakeholders stabilizing and enhancing water quality before a TMDL is in place (Committee Report at page 17). The Committee noted that the most successful stakeholder efforts would lead to the full restoration of water quality and attainment of water quality standards and ultimately the water's removal from the section 303(d) list before a TMDL is developed. The Committee recommended an optional stabilization plan that would identify mechanisms that might allow for

exceptions from point source discharge restrictions upon demonstration that the optional stabilization plan results in parameter specific net progress in water quality through means other than those restrictions.

EPA believes that further degradation of already impaired waterbodies must be prevented and also recognizes the need for progress toward attaining water quality standards in this interim period. Therefore, EPA believes that by creating a new requirement under the federal antidegradation policy as reflected in today's proposal, not only will further degradation of water quality be prevented, but reasonable further progress towards restoring water quality standards will be achieved.

3. What Revisions Is EPA Proposing Today?

i. Why Is EPA Proposing to Require Dischargers Subject to This Proposal to Achieve Reasonable Further Progress Toward Attaining Water Quality Standards?

Water quality standards serve as the foundation for the water-quality based approach to pollution control and are a fundamental component of watershed protection. Under the Clean Water Act, States, Territories and authorized Tribes adopt water quality standards to protect public health or welfare, enhance the quality of the nation's water and serve the purposes of the Act. A primary objective of the Act is to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." CWA section 101(a). To date, EPA's implementing regulations at 40 CFR 131 have addressed the mandate for restoring the nation's waters through the specification of designated uses. Designated uses are defined as those uses specified for each waterbody or segment, whether or not those uses are being attained. Designated uses focus on the attainable condition of the waterbody, in contrast to existing uses which focus on the past or present condition of the waterbody. It is through the designation of uses that the environmental goals for specific waterbodies are established. States, Territories and authorized Tribes have the flexibility to establish goals for waters that require improvements in water quality, thus establishing a requirement for restoration. Today's proposal supplements the restoration provisions of the current regulations. By establishing the requirement for reasonable further progress as a component of the federal antidegradation policy, EPA believes the objectives of the Act will be advanced.

Prior to today's proposal, Tier 1 of the federal antidegradation policy has been aimed at protecting and maintaining existing uses of waterbodies. EPA believes extending the protection of existing uses to include a provision aimed at promoting reasonable further progress toward restoring water quality in impaired waterbodies is both consistent with the goals of the Act, and is a logical means for meeting those goals.

The Agency's policy choice is supported by the Act's legislative history. The Senate Report states:

> In those waterbodies which are not pristine, it should be the national policy to take those steps which will result in change toward the pristine state in which the physical, chemical and biological integrity of the waterbody can be said to exist. Striving toward, and maintaining the pristine state is an objective which minimizes the burden to man in maintaining a healthy environment, and which will provide for a stable biosphere that is essential to the well-being of human society. S. Rep. No. 92–414, 92d Cong. 1st. Sess. at 76–77 (1971).

Establishing a requirement for reasonable further progress will result in improvements in water quality and progress toward attaining water quality standards, pending the establishment, approval and implementation of the TMDL.

Today, EPA is proposing to require large new and significantly expanding dischargers proposing to discharge to nonattained waterbodies to achieve reasonable further progress toward attaining water quality standards before discharging additional loadings of the pollutant causing the nonattainment. In effect, certain dischargers will be required to show net progress toward improving water quality as a condition of being authorized to discharge to a nonattained waterbody. EPA believes this proposal is consistent with the recommendations of the Federal Advisory Committee on the Total Maximum Daily Load Program, and the approach chosen by the Agency when faced with the need to address a similar problem under the Clean Air Act.

a. How Does This Relate to the TMDL Federal Advisory Committee's Recommendations?

As noted above, the Committee recommended that EPA actively encourage and support stakeholders stabilizing and enhancing water quality before a TMDL is in place. While EPA is not adopting all of the Committee's recommendations, the Agency believes that progress toward the section 101(a) goals of the Act should occur before allowing some new and significantly expanding dischargers to add new loads of the pollutant causing the nonattainment to an impaired waterbody.

b. Has This Approach Been Used in Other Statutes?

Just as the Clean Water Act establishes the goal to "* * * restore and maintain the chemical, physical and biological integrity of the Nation's waters," the Clean Air Act declares its purpose is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." CAA section101(b)(1). Given these similar goals, the actions and reasoning of the Agency and Congress in dealing with areas which are not meeting air quality standards can serve to guide EPA's policy choices when dealing with waterbodies which are not attaining water quality standards.

In 1970, the Clean Air Act required generally, that State programs had to ensure that new sources did not interfere with the attainment of national ambient air quality standards (NAAQS). In 1976, EPA issued an interpretive ruling on the preconstruction review requirements for major new stationary sources proposing to locate in an area that exceeded a NAAQS. Given a standard and an area not in attainment with a standard, the Agency believed that it was reasonable to allow a new addition of the pollutant causing the nonattainment only if the new source ensured that reasonable progress was made toward meeting that standard. 41 FR 55524. Congress agreed that EPA's requirement was reasonable. As a result, Congress clarified in the Clean Air Act Amendments of 1977 that, in general, a new permit to construct and operate a new major stationary source or a major modification to an existing source proposing to emit the pollutant of concern in a nonattainment area may only be issued if reasonable further progress toward attainment of the NAAQS was made and the source met the most stringent emissions limits. CAA section 173.

Given the similar statutory goals and the similar circumstances, EPA again believes it would be reasonable to require new and significantly expanding existing dischargers proposing to discharge additional loads of the pollutant(s) causing the nonattainment of water quality standards to ensure that progress is made toward attainment of the standards in the future. EPA believes that establishing a similar requirement for reasonable further progress as a component of the federal antidegradation policy is the best way to meet the goals of the Clean Water Act

when faced with new and significantly expanding existing dischargers wishing to locate on impaired waterbodies.

EPA invites comments on this proposed change to Tier 1 of the federal antidegradation policy. EPA also invites comment on whether some other approach could serve as an appropriate means to ensure reasonable further progress toward restoring water quality standards in the interim period between listing of waterbodies under CWA section 303(d), and the establishment, approval and implementation of the TMDL.

ii. How is EPA Proposing to Define Reasonable Further Progress?

As stated above, EPA is proposing to require reasonable further progress as a means of achieving the objectives of the Clean Water Act. EPA is also today proposing a definition of reasonable further progress for some new and existing dischargers. EPA believes reasonable further progress is best achieved by offsetting any new loading of the pollutant of concern to an impaired waterbody by reducing loads of the same pollutant from existing sources located on the same waterbody. EPA further believes that an offset of at least one and a half to one is generally appropriate as means of ensuring reasonable further progress. Offsets are not only the most feasible means to achieve reasonable further progress for new and significantly expanding dischargers, they are a logical means to actually achieve such progress. Further, they are a means the Agency has chosen in similar circumstances.

EPA is thus proposing that, in general, pollutant load reductions must be one and a half times the new loads of the pollutant to the waterbody (see discussion below). Under such a requirement, reasonable further progress toward meeting the applicable water quality standard would be achieved because the total load of the pollutant to the waterbody is reduced. An added benefit of requiring offsets as the means for achieving reasonable further progress is that the requirement creates an incentive for pollution prevention. A discharger subject to the requirement can reduce the burden of finding sufficient offsets by reducing the amount of pollutant(s) the discharger is proposing to add to the impaired waterbody.

EPA also believes that this proposed requirement will serve as a catalyst for the establishment of a trading market between large new dischargers and existing dischargers undergoing a significant expansion, and existing point source dischargers or nonpoint sources. (See discussion below). EPA believes that the establishment of a trading market will give dischargers more options to achieve any future permit limits required by TMDLs more efficiently.

a. Has Reasonable Further Progress Been Defined Under Other Statutes?

In 1977, Congress amended the Clean Air Act and adopted the general requirements for a new permit to construct and operate a new major stationary source or a major modification to an existing source proposing to emit the pollutant of concern in a nonattainment area. Such permits may be issued if, by the time the source begins operating, sufficient offsetting emissions reductions have been attained such that the total emissions in the area will be sufficiently less than the emissions from existing sources prior to the application for a new permit so as to represent reasonable further progress. CAA section 173. The term "reasonable further progress" was defined as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may be reasonably required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standards by the applicable date." CAA section 171(1). Congress adopted this new provision "to allow reasonable economic growth to continue in an area while making reasonable further progress to assure attainment of the standards by a fixed date. * * *" 95 Cong. House Report 294 at *211.

EPA believes that the Agency's experiences under the Clean Air Act serve as a useful guide for its policy choices with respect to treatment of new loads of pollutants to impaired waterbodies under the Clean Water Act. EPA's proposals today are, therefore, similarly designed to allow continued growth in areas which are not meeting water quality standards while ensuring that progress toward meeting water quality standards is not halted or reversed.

iii. What Offsets Would Affected Dischargers Need to Obtain to Ensure Reasonable Further Progress?

EPA is proposing to require that large new and significantly expanding dischargers obtain and maintain offsets, i.e., pollutant load reductions, in general, in the amount of one and a half to one. In other words, these dischargers would need to obtain and maintain an offset of least of one and a half times the amount of the new or additional pollutant loadings they are proposing to discharge. The specific requirements for an individual discharger would be dependent upon the type of pollutant for which the waterbody is impaired (which is also the pollutant the discharger is proposing to discharge), the source from which the discharger is proposing to obtain and maintain the offsetting load reductions, and the large new or significantly expanding discharger itself. In addition, EPA is proposing specific permitting requirements to implement this offset requirement. (See discussion below).

In considering the amount by which a proposed discharge should be offset, EPA considered the burdens associated with achieving the necessary pollutant load reductions. Based upon the Agency's analysis of the costs, discussed below in section VI. A, EPA believes that in most cases an offset in the amount of one and a half times the proposed discharge is both reasonable and achievable.

a. Could Offsets Be Obtained From Existing Nonpoint Sources?

EPA believes further that this proposed requirement will result in load reductions from sources that EPA and States authorized to administer the NPDES program can not regulate under the NPDES program. Under today's proposal, large new or significantly expanding dischargers would need to obtain and maintain pollutant load reductions to compensate for their proposed increases in pollutant loads. These reductions would need to be obtained from existing point source discharger(s) or nonpoint sources located on the same waterbody as the discharge from the new discharger or existing discharger undergoing a significant expansion. EPA believes the ability to obtain offsets from nonpoint sources, in addition to point source dischargers, is a crucial element in ensuring reasonable further progress toward restoring water quality pending the completion of a TMDL. Nonpoint sources, in some areas, are significant contributors of pollutants to waters of the United States, and high pollutant levels persist in many waterbodies. Furthermore, in many cases it is more cost effective to obtain significant reductions from non-point sources than to impose more stringent limitations on point sources.

b. Could the Director Vary the Amount of the Offset?

Today's proposal generally requires that the amount of the proposed discharge be offset by pollutant load reductions of one and a half times the increase in mass loadings. The amount of the offset however, could be varied, at the discretion of the Director. The Director may determine that an offset greater than one and a half times the proposed discharge is necessary in order

to ensure reasonable further progress toward restoring water quality standards. The Director may also determine that an offset less than one and a half times, but at least more than, the amount of the proposed discharge will ensure reasonable further progress. Each of these cases is discussed below.

EPA recognizes the potential for a significant amount of uncertainty in both obtaining and maintaining the pollutant load reductions, depending on the source of the reductions. For example, if the discharger enters into an agreement with an existing point source, the discharger would be presumed to have an offset requirement of one and a half times the amount of the proposed discharge. However, when entering into an agreement with a nonpoint source, it may be somewhat more difficult to determine exactly how much reduction will be achieved and whether the reductions would be maintained over time, due to the uncertainties regarding the effects of management practices designed to reduce loads from nonpoint sources. In addition, since nonpoint sources are not subject to an NPDES permit, the permitting authority may have less ability to ensure that offsets are implemented and maintained. EPA notes however that many States have additional authorities beyond those specified in the CWA, to implement load reductions from nonpoint sources.

The location of the offsetting source(s) within the impaired waterbody may also impact the potential for achieving reasonable further progress in attaining water quality standards. If the source(s) of the offsetting pollutant load reductions are located at the margins of the impaired waterbody, the overall impact of the pollutant load reductions in terms of attaining water quality standards is more difficult to determine. In such cases, the Director may require that a greater amount of reductions must be realized and require an offset greater than one and a half to one. Specifically, the final offset may be determined by factors such as how great a pollutant load reduction the offsetting source(s) would actually be able to realize; the likelihood that the offsetting source(s) will be able to maintain the offset; and the location of the offsetting source(s) within the impaired waterbody.

EPA believes allowing the Director the discretion to require an offset greater than one and a half times the amount the discharger is proposing to discharge is appropriate in order to compensate for uncertainties associated with obtaining load reductions from offsetting sources. EPA also believes this discretion is appropriate to account for other factors which may include the type of pollutant and the degree of impairment of the waterbody.

EPA also recognizes that situations may exist where offsets of one and a half times the proposed discharge are difficult to obtain, such that an offset of less than one and a half to one (but greater than one to one) may satisfy the requirement for reasonable further progress. For example, there may only be a few other sources of the pollutant causing the impairment, the other sources may discharge a very limited amount of the pollutant, or it may be very costly to control the discharge. While EPA believes these situations are limited in number, allowing the Director the discretion to require an offset less than one and a half times the proposed discharge but at least more than the amount of the proposed discharge will still ensure reasonable further progress toward restoring water quality standards in the interim.

To assure appropriate implementation of the offset provisions by authorized State permitting authorities, EPA would implement its oversight role though the permit objection provisions of CWA section 402(d) (The Agency proposes changes to the permit objection regulations elsewhere in today's notice. Those changes involve EPA's authority to object to expired and administratively-continued permits). Under CWA section 402(d), EPA may object to the issuance of an NPDES permit by an authorized State if the permit would be outside the guidelines and requirements of the Act. If the issuance of a State NPDES permit to a source required to obtain an offset would not result in reasonable further progress toward attainment of water quality standards, EPA could object to such a permit.

EPA envisions two instances when an objection might be warranted: specifically, when the State Director would propose to issue a permit with an offset less than 1.5 and, as discussed further on in today's notice, when the State Director would waive the offset provision concluding that the offset would result in further degradation of water quality. The 1.5 offset criterion is not absolute and the Director has discretion to require a lesser offset. The exercise of that discretion, however, would still need to ensure reasonable further progress toward attainment of water quality standards. If a lesser offset would not ensure reasonable further progress, today's proposal would maintain the Agency's authority to object to the issuance of the permit.

Today's notice does not propose changes to the regulatory text describing the Regional Administrator's grounds for permit objections because the Agency believes the existing regulations would provide the bases for such objections. If the Agency were to object to a State permit for failure to ensure reasonable further progress, the objection would be based on 40 CFR 123.44(c)(1), (3), (4), (7) and/or (8). Subsection (c)(1) refers to a permit that fails to apply or ensure compliance with any applicable requirement of 40 CFR part 123. Though the 1.5 offset criterion would not be a requirement, today's proposal would require offsets that ensure reasonable further progress. If an offset less than 1.5 would not ensure reasonable further progress, the permit would fail to apply a requirement of 40 CFR part 123 (section 123.25 specifies the NPDES permitting requirements in 40 CFR part 122 that apply to State NPDES programs, including 40 CFR 122.4). Subsection (c)(3) refers to a permit issued using procedures that fail to comply with procedures required by the CWA, implementing regulations, or by the Memorandum of Agreement. If a State did not adequately explain why an offset less than 1.5 would ensure reasonable further progress, the issuance of such a permit would not comply with applicable procedural requirements. Subsection (c)(4) refers to a permit that misinterprets the CWA or any guidelines or regulations or misapplies them to the facts. Issuance of a State permit that would not ensure reasonable further progress would misinterpret the CWA or misapply applicable requirements. Subsection (c)(7) restates the statutory standard that the issuance of the proposed permit could not be outside the requirements of the CWA or implementing regulations. Finally, subsection (c)(8) refers to the effluent limits of a permit that fails to satisfy the requirements of 40 CFR 122.44(d) (section 122.44(d) requires that effluent limits achieve water quality standards). The issuance of any permit to a source required to obtain an offset would not satisfy the requirements of 40 CFR 122.44(d) if the permit would not ensure reasonable further progress toward attainment of water quality standards.

While the Agency believes that changes to regulatory text are unnecessary, EPA invites comment on whether to include an explicit basis for objection in any final rule. The purpose of any explicit regulatory text would be to clarify that the Agency could object to the issuance of a State permit to a source required to obtain an offset if the issuance would not ensure reasonable further progress toward attainment of water quality standards.

EPA also recognizes there may be limited circumstances where requiring

offsets will result in further degradation of water quality, and loss of an existing use. Therefore, EPA is proposing that the Director also have the discretion to not require an offset, if it is determined that any offset would result in further degradation of water quality. Such degradation may occur, for example, when the sole NPDES discharger, with a low volume but high concentration of a pollutant such as phosphorus, discharges to an ephemeral or low flow waterbody which is currently not attaining the water quality criteria for phosphorus and where the only other sources of phosphorus are from irrigation return flows. If the sole discharger negotiates a reduction of irrigation return flows to offset its phosphorus loads, it may result in increased ambient phosphorus concentrations due to the loss of volume in the waterbody, and further degradation of water quality. In circumstances such as these, although limited and infrequent, EPA believes the Director should have the discretion to waive the requirement for any offset in order to prevent further degradation of water quality and the loss of an existing use. For the reasons described earlier, the Agency also proposes to retain authority to object to the issuance of a State permit for a source required to obtain an offset if the State Director inappropriately waived the offset requirement concluding that the offset would result in further degradation of water quality.

Finally, the new provision at 40 CFR 131.12(a) proposes that reasonable further progress for large new dischargers and existing dischargers undergoing a significant expansion means, *at a minimum,* an offset greater than the amount of the proposed discharge. The proposed regulation, therefore, provides the permitting authority with the discretion to require additional measures to attain reasonable further progress. The permitting authority may choose to exercise this discretion depending upon, for example, the severity of the impairment of the waterbody, the type of pollutant, or the distance of the offsets from the new discharge. Such additional measures could include pollution prevention plans or conservation easements which could ensure continued reasonable further progress. EPA invites comment on what measures, in addition to the offset requirement, permitting authorities should consider requiring of large new dischargers and existing dischargers undergoing a significant expansion.

EPA believes an offset requirement of one and half times the amount of the increased loading the discharger is proposing to discharge (with exceptions) is appropriate and invites comment on whether a different amount would be better suited to ensuring reasonable further progress toward restoring water quality standards prior to the approval or establishment by EPA of TMDLs. EPA invites comment on whether there may be reasons, other than uncertainty, why the Director may find it necessary to adjust the offset requirements in amounts greater than one and half times the proposed discharge. EPA also invites comments on whether the Director should have the discretion to allow an offset less than one and half times the proposed discharge, but at least greater than the amount of the proposed discharge and if so, for what reasons. One option would be to require an offset at least equal to the amount of the proposed discharge, but allow the Director the discretion to determine how much progress beyond a one to one offset is necessary to ensure reasonable further progress. Finally, EPA invites comment on whether the Director should have the discretion to waive the requirement for an offset if any offset would result in further degradation of water quality. If not, for what reasons and also, if the concurrence of EPA should be required before the Director makes such a determination.

iv. Would the Reasonable Further Progress Requirements Apply to Affected Dischargers Proposing to Discharge to All Waters of the U.S.?

EPA is establishing a new provision at 40 CFR 131.12(a)(1)(ii) that requires a new discharger or existing discharger undergoing a significant expansion discharging into a waterbody that does not meet water quality standards, and for which EPA has not yet approved or established a TMDL, the pollutant(s) causing the non-attainment to achieve reasonable further progress toward attaining water quality standards. Thus, this provision applies to a new discharger or existing discharger undergoing a significant expansion discharging into any waterbody of the United States that does not attain water quality standards (as defined in 40 CFR 131). Where a waterbody receives a thermal discharge from one or more point sources, impaired means that the waterbody does not have or maintain a balanced indigenous population of shellfish, fish, and wildlife. Exceedance of a narrative criterion in a waterbody means that the waterbody does not attain water quality standards.

v. Why is EPA Proposing to Subject Only New Dischargers and Existing Dischargers Undergoing a Significant Expansion to These Requirements?

EPA is proposing today to establish the offset requirement discussed above only for large new and significantly expanding dischargers of the pollutant of concern into an impaired waterbody. EPA believes that this new requirement is appropriate for these dischargers because it will enable discharges to occur in impaired waterbodies while ensuring that progress toward attaining water quality standards is achieved in those waterbodies. EPA believes that subjecting large new and significantly expanded dischargers to more stringent water quality standards is supported by the same logic which led Congress to establish more stringent technology based requirements for new sources under other provisions of the CWA.

Given that this offset provision would be a requirement only until a TMDL is approved or established by EPA for a waterbody not attaining water quality standards, it makes sense as a practical matter to apply this requirement only to large sources which are adding new loads of the pollutant of concern to the waterbody. Existing dischargers are likely to be in a poorer position to bargain for offsets because they may not have a realistic option to locate on a different waterbody. Furthermore, it might be very disruptive to existing dischargers if they were required to offset their discharge before a TMDL is established only to possibly receive different permit limits and conditions once wasteload allocations and a margin of safety are established in a TMDL. EPA seeks to avoid these disruptions if possible. Finally, new dischargers will be undertaking construction and will be in a better position to modify their design so as to minimize pollution, and thus minimize the amount of their offset.

EPA also believes that subjecting for new and significantly expanding dischargers to these new requirements is consistent with the CWA more generally. In its technology-based provisions, the Act provides a higher standard (best available demonstrated technology under new source performance standards) for new sources than for existing sources (best available technology economically available). Although in this regulation, EPA is addressing new dischargers and significantly expanding dischargers rather than "new sources," EPA believes Congress' rationale for its treatment of new sources applies equally to new dischargers and significantly expanding dischargers. Congress chose to place more stringent technology based requirements on new sources both to

prevent new water quality impairments and because imposing stricter standards on new sources would be the most efficient means of solving existing water quality problems. Here, the Agency is proposing to regulate more stringently two types of dischargers which are adding new loads of a pollutant of concern to ensure reasonable further progress toward attaining of water quality standards.

First, consistent with other provisions in EPA regulations, EPA is proposing to treat new dischargers more stringently than existing dischargers. An example of such treatment is the extent to which variances to water quality standards are available to new dischargers when compared to existing dischargers. See 63 FR 36761. Compliance schedules have also not been available to new dischargers to the same extent that they are available for existing dischargers. 40 CFR 122.47. EPA is proposing to further develop this differential treatment of new dischargers by creating new provisions at 40 CFR 122.4(j) and 131.12(a)(1)(ii). These provisions together will subject new and significantly expanding dischargers proposing to discharge into impaired waterbodies to the new requirements outlined but not existing dischargers under the same or similar circumstances.

Second, EPA also believes that it is appropriate to extend these requirements to significant expansions of existing discharges due to the similar impacts which occur as a result of significant new pollutant loads. EPA believes this is consistent with the general approach of the CWA to prevent new water quality pollution problems. Although these sources are existing sources, their "significant expansions" will have the same or similar effect with respect to creating new water quality impairments as the truly new source. Undertaking a significant expansion may provide certain opportunities for a discharger to achieve efficiencies in solving water pollution problems, similar to the opportunities available to new sources. EPA's proposed definition of "significant expansion" is discussed above (see Section A5).

EPA invites comments on whether the requirement for offsets should apply to both new and significantly expanding dischargers, and reasons why the requirement should apply to one class of discharger versus another.

vi. Would All New Dischargers and Existing Dischargers Undergoing a Significant Expansion Be Subject to These Proposed Requirements?

EPA is proposing today to subject only those new and significantly expanded dischargers not meeting the definition of a small entity under the Regulatory Flexibility Act (see 5 U.S.C. 601(6)) to the offset requirements of this rule. The Regulatory Flexibility Act ("RFA") states that the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act (SBA). This meaning holds unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. 5 U.S.C. 601(3). EPA has not proposed to establish a different definition of the term for this proposed rule.

The SBA defines "small-business concern" as one which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632. Pursuant to the SBA, the Small Business Administration has specified additional detailed definitions or standards by which a business concern may be determined to be a small business concern. Also under the RFA, the term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This meaning holds unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. 5 U.S.C. 601(4). The term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. This meaning also holds unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the **Federal Register**. 5 U.S.C. 601(5). Again, EPA has not proposed alternative definitions for purposes of this rule. Finally, the term "small entity" has the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" defined in the RFA. 5 U.S.C. 601(6).

EPA is proposing to limit the scope of this new provision because it is a new requirement which is needed only in the interim before TMDLs are approved or established by EPA. Also, such narrowed coverage is more likely to ensure development of a successful market for pollutant trading.

In today's proposal, EPA is requiring large (i.e., not meeting the definition of a small entity under the Regulatory Flexibility Act (see 5 U.S.C. 601(6)) new and significantly expanding dischargers to offset any increase in mass loadings. EPA believes this is an important step toward achieving the CWA goal to "* * * restore and maintain the chemical, physical and biological integrity of the Nation's waters." Section 101(a). In exercising its discretion to impose this new requirement on large dischargers, EPA notes that all dischargers will continue to need permit limits that derive from and comply with water quality standards (see 40 CFR 122.44(d)). In evaluating the significant number of the nation's waters on State section 303(d) lists, and the amount of time necessary for States to establish and implement TMDLs, EPA concluded that in the interim period before a TMDL is approved or established by EPA, it is necessary to establish a new requirement in an effort to ensure reasonable further progress toward attaining water quality standards, consistent with the goals of the Act. The requirement is thus, both incremental and interim, and at this time EPA is choosing to impose it only on those dischargers the Agency believes are in the best position to achieve offsets.

a. How Would This Proposal Facilitate the Establishment of Trading Markets?

In developing these revisions to the federal antidegradation policy, EPA considered the most likely approach by which to establish a trading mechanism between new and existing dischargers undergoing a significant expansion, and existing sources of pollutants. In effect, EPA is seeking to establish a market for pollutant trading, in the hopes of creating more effective and efficient mechanisms for restoring water quality. EPA believes that requiring offsets from facilities which are not small entities, as defined by the Regulatory Flexibility Act, will focus the initiation of such a market on those entities which have the greatest likelihood of securing offsets. Large dischargers are more likely to have access to data and information, both environmental and economic, that can be used in identifying, analyzing and allocating offsets. Large dischargers are also more likely to have the resources to devote to negotiating offsets with other entities.

EPA recognizes that establishing the framework for such a market in pollutant trading presents many challenges. Nonetheless, EPA believes that creating the offset requirement would provide a valuable mechanism for ensuring reasonable progress toward attaining water quality standards. EPA believes the expenditure of resources to establish a market in pollutant trading will be compensated for by such factors as reduced overall costs in meeting water quality standards, the ability to locate a new enterprise or expand an existing enterprise, and increased flexibility in designing pollution control systems. Such a market, once established, would also provide other, more efficient opportunities for improving water quality, as States and Tribes implement watershed protection programs. EPA has developed draft guidance on how to conduct watershed-based trading which addresses the benefits and types of trades and how trading can be implemented to attain and maintain water quality standards. Draft Framework for Watershed-based Trading, EPA 800-R–96–001, May, 1996.

Trading in pollutant discharges is not a retreat from the CWA goals. It can be a more efficient, market driven approach to meeting these goals. EPA supports only trades that meet CWA requirements. Through trading, EPA seeks to encourage innovative approaches and the flexibility to implement load reductions in ways that maximize water quality improvements and minimize costs. In allowing offsets as the means to ensure reasonable further progress toward attaining the water quality standard, EPA is seeking to generate environmental benefits in the most cost-effective manner.

EPA invites comments on whether the requirement for offsets as a means of ensuring reasonable further progress should be limited to entities which are not small entities as defined by the Regulatory Flexibility Act. EPA also invites comments on extending this requirement to other entities which may be small entities under SBREFA.

C. How Would EPA Ensure Any Needed Changes to the Antidegradation Policies in State, Territorial and Tribal Water Quality Standards?

With this notice of proposed rulemaking, EPA is initiating development of Federal water quality standards pursuant to section 303(c)(4)(B) of the CWA. EPA intends to promulgate, as the EPA Administrator determines necessary, Federal water quality standards for any State, Territory or Tribe which does not adopt or already have in place water quality standards which include provisions consistent with 40 CFR 131.12(a)(1)(ii) as ultimately promulgated. EPA believes such a Federal promulgation could be necessary to ensure consistent, nationwide application of any final provisions of 40 CFR 131.12(a)(1)(ii) in the period before the establishment of TMDLs for waterbodies that do not meet water quality standards. EPA is today providing notice of the Agency's intent for the Administrator to make a determination whether a Federal promulgation is necessary for any State, Tribe or Territory. EPA will delay this determination to allow States, Territories and Tribes the opportunity to adopt their own water quality standards. Any State, Territory or Tribe which expeditiously acts to adopt standards consistent with the Agency's final promulgation of this section would not be included in the proposed Federal water quality standards. Further, EPA would initiate withdrawal of any Federal promulgation for a State, Territory or Tribe that adopts standards consistent with 40 CFR 131.12(a)(1)(ii).

EPA acknowledges that many States, Territories and Tribes may face difficulties in completing adoption of water quality standards in the time frame envisioned by the Agency. Nonetheless, EPA believes it is important to have this mechanism firmly established in State, Territorial or Tribal water quality standards in order to ensure reasonable further progress toward restoring designated uses in the period of time prior to the completion of TMDLs. This requirement would only apply prior to the establishment and implementation of the TMDL for a waterbody not meeting water quality standards.

D. How Would These Changes Be Implemented Through NPDES Permits?

New dischargers or existing dischargers undergoing a significant expansion are required, under 40 CFR 122.4(i), to have permit limits or conditions that ensure that they will not cause or contribute to a violation of water quality standards. A new discharger or an existing discharger undergoing a significant expansion required to offset their proposed discharge pursuant to 40 CFR 131.12(a)(1)(ii), would also be subject to additional requirements relating to the mechanics of obtaining and maintaining an offset. EPA believes that these additional, new requirements are necessary to ensure that the offsets will in fact be realized. Each of these requirements are specified in a new section 40 CFR122.4(j)(2), and explained in detail below.

1. Must the New or Significantly Expanding Discharger Obtain an Offset of the Same Pollutant(s) the New or Significantly Expanding Discharger Would Be Required To Offset?

Proposed 40 CFR 122.4(j)(2)(i) would require the discharger seeking an offset to obtain the pollutant load reductions from one or more sources of the pollutant(s) for which the waterbody is impaired. This pollutant(s) must also be the same pollutant(s) the new or existing discharger undergoing a significant expansion would be required to offset. For example, the waterbody may be impaired by both copper and lead. If a new discharger wishes to discharge copper (and not lead), the discharger must obtain the requisite amount of pollutant load reductions from a source(s) that is currently discharging copper into the waterbody.

EPA recognizes that there may be circumstances where reasonable further progress toward attaining water quality standards could best be served by allowing the Director the discretion to offset a new or expanded discharge of one pollutant with a load reduction of a different pollutant for which the waterbody is also impaired. EPA, however, is concerned with the technical difficulties of implementing such an option and therefore, is not proposing it. EPA requests comment on the possibility of allowing such discretion and on how the technical difficulty of determining an appropriate offset for a different pollutant could be resolved.

2. From What Geographic Area Would the Pollutant Load Reductions Need To Be Obtained?

Proposed 40 CFR 122.4(j)(2)(ii) would require the discharger to obtain the pollutant load reductions from one or more sources located on the same waterbody as the discharge from the new discharger or existing discharger undergoing a significant expansion. To determine if a source(s) is located on the same waterbody, for purposes of obtaining an offset under 40 CFR 131.12(a)(1)(ii), there would need to be a direct hydrological connection between two sources. For example, there must be a direct hydrologic connection between the outfall of the existing point source where the reductions are realized and the outfall of the proposed discharge.

States should be able to assist in the determination of whether a source is located on the same waterbody. States often identify their waters and assign waterbody identification numbers to specific hydrologic units, often called

segments. States are also required to identify all waterbodies not attaining water quality standards for the purposes of establishing a TMDL. For the purposes of section 303(d) listing, a waterbody pollutant combination will have a unique identifier so that the status of each listed waterbody can be tracked over time. States often delineate these segments based on hydrologic features, such as the presence of a dam, the confluence of two rivers, or gradations of salinity in an estuary. If a source is located on a waterbody with the same identification number, this would be a good indication that it is located on the same waterbody for purposes of obtaining an offset. EPA invites comment on other conditions that would identify whether a source is located on the same waterbody. EPA believes this requirement is reasonable, as is 40 CFR 122.4(j)(2)(i), because it ensures that the results from the offset will be effective in benefitting waterbodies not attaining water quality standards for a particular pollutant(s).

EPA intends the offset to result in reasonable further progress toward attaining water quality standards. The most appropriate hydrologic unit, and therefore geographic area within the same waterbody, depends on site-specific hydrologic conditions such as water chemistry, ecological parameters, and the location, number and types of sources already discharging to that waterbody. An offset can be obtained from a source located downstream from the new or significantly expanding discharger provided that source is discharging to the same body of water. An offset would not be appropriate if obtained outside of the impaired waterbody in which the new or significantly expanded discharger is located. EPA would also like comment on whether sources providing pollutant load reductions for offsets, should be located only upstream of the new or significantly expanding source.

EPA recognizes that air deposition contributes to some of the water quality problems that exist today. EPA is considering whether to allow an offset from an air pollution source emitting the same pollutant the new or significantly expanded discharger is proposing to discharge. EPA would consider this only where the air pollution source directly affects the waterbody in the vicinity of the new or significantly expanded discharge. EPA invites comment on how some of the additional requirements related to obtaining an offset would be met if EPA allowed dischargers to obtain offsets from an air pollution source(s). In particular, EPA invites comment on whether the requirement in 40 CFR 122.4(j)(2)(v) (discussed below) to modify an offsetting source's NPDES permit to reflect the required reductions should be expanded to require permit modifications when offsets are obtained from permitted air pollution sources. 40 CFR 122.4(j)(2)(v) would require the permit regulating the source from which the offset is obtained to be modified to reflect the pollutant load reductions.

3. Could the Pollutant Load Reductions Come From a Source With Existing Requirements To Reduce its Loads?

Proposed 40 CFR 122.4(j)(2)(iii) would require that the pollutant load reductions be the result of pollutant control measures implemented by, or secured and assured by, the new discharger or existing discharger undergoing a significant expansion. To satisfy this requirement, the discharger must obtain the reductions from one or more sources discharging the pollutant(s) of concern to the same waterbody. If the discharger wishes to obtain the reductions from another source in the same waterbody, the pollutant control measures must be the result of an entirely new agreement and/or requirement for the offsetting source. In other words, if the offsetting source, for any reason other than to satisfy the proposed discharger's offset requirements, was already required to construct or install the pollutant control measures, the proposed discharger could not receive credit for the resulting reductions. EPA believes this requirement is reasonable because the load reductions would be a new requirement on the offsetting source intended to result in reasonable further progress toward attaining water quality standards where such progress was not otherwise required.

4. When Would the Pollutant Load Reductions Need To Be Obtained?

Proposed 40 CFR 122.4(j)(2)(iv) would require the discharger to achieve the pollutant load reductions on or before the date the new or significantly expanding discharger begins to discharge. For reductions to be achieved on or before the discharger begins to discharge, the pollutant control measures would have to be in place. The discharger would also need to satisfy any requirements that the Director determined were necessary to demonstrate that the pollutant control measures were in place and the requisite amount of pollutant load reductions are and will continue to be realized. Such requirements might include sampling, either at the discharge point or instream, and reporting the results of those samples both before and after the pollutant control measures were put in place. The results would need to show that the requisite amount of pollutant load reductions are and will continue to be realized. EPA invites comment on other ways the discharger may make this demonstration.

EPA is also proposing to give the Director the discretion to not require that the pollutant load reductions be obtained on or before the date the discharge commences. The Director would have this discretion in circumstances where the Director determines that a different time frame for obtaining and maintaining the offset would best serve the goal of reasonable further progress toward attaining water quality standards. One example of such circumstances is where it is not possible for the new or significantly expanding discharger to demonstrate that the pollutant load reductions are being realized on or before the date the discharge commences. An example of such a case is where the source of the offset involves a reforestation effort. In this instance, it will take time to produce reduction results because of the time required for trees and/or shrubs for example, to grow.

In exchange for not requiring that the offsets be achieved on or before the date the discharge commences, the Director must require that the discharger obtain pollutant load reductions by an amount of at least twice the amount of the new or expanded discharge. The Agency believes this requirement is reasonable because in exchange for the degree of uncertainty involved in whether the pollutant load reductions will in fact be realized, the discharger will be able to discharge prior to obtaining the reductions. In addition, it ensures that the Director's discretion will be exercised in a way that best serves the goal of reasonable further progress toward attaining water quality standards.

Also, to provide assurances that the offsets will be achieved there would need to be an enforceable and defined schedule with milestones identified and sufficiently laid out in the proposed discharger's permit. The use of this discretion would not be permitted in instances where the TMDL is scheduled to be established before the offset is fully realized. EPA invites comment on this aspect of the proposal including whether the Agency should provide for these exceptions to the requirement that the pollutant load reductions be achieved on or before the date the discharge commences.

5. How Long Would the Pollutant Load Reductions Need To Be Maintained?

Reductions would also need to be maintained until the TMDL for the waterbody is approved or established by EPA or until the new or significantly expanding discharger ceases to discharge. Where a TMDL has been approved or established by EPA, the new or significantly expanding discharger would need to maintain the reductions until its permit contained effluent limits or conditions consistent with its WLA in the TMDL. To maintain the reductions, regular monitoring reports would need to be submitted to ensure their continued achievement. Depending on the source(s) from which the discharger is obtaining the reductions (see discussion below under sections D6 and D7), the reports might be submitted by either the discharger or the offsetting source(s). The permitting authority would determine the appropriate number of samples and how often monitoring reports would need to be submitted. The Agency emphasizes that it is not sufficient for the TMDL to be approved or established by EPA; the new or significantly expanding discharger would also need to have limits or conditions in its NPDES permit that reflect its WLA in the TMDL. At that point, the discharger's WLA under the TMDL would supercede the offset requirements.

Also, if the discharger stops discharging prior to the time a TMDL for the waterbody is approved or established, the discharger would no longer be required to maintain the reductions. For example, if a new construction operation is expected to last eight months and the TMDL will not be established for six years, the new discharger (construction operation) need only maintain the reductions for the time in which the discharge from the operation is ongoing (eight months).

EPA believes this requirement is reasonable because the offset is a condition of being permitted to discharge. Therefore, it should be in place on or before the discharger starts to discharge, unless this requirement is modified by the Director under 40 CFR 122.4(j)(2)(iv)(B), and remain in place until the discharger either stops discharging or until the TMDL is established and implemented with respect to that discharger. Again, EPA intends that this requirement be an interim measure and notes that the TMDL process is the appropriate means of determining WLA/LAs that are necessary to attain and maintain water quality standards. EPA does, however, invite comment on requiring the offset to be maintained indefinitely (before and after the TMDL is established). Requiring the offset to be maintained both before and after the TMDL would prevent reintroducing pollutants to a waterbody where they have already been removed, although this issue should be addressed in the development of the TMDL itself.

6. What Would Be Required When the Source of the Offset Is an Existing Point Source?

Proposed 40 CFR 122.4(j)(2)(v) would require that where a discharger obtains pollutant load reductions from an existing point source(s), as defined in the CWA, that existing point source(s)'s NPDES permit would need to be modified to reflect the reductions. The permitting authority would also need to consider the need for any additional monitoring and reporting requirements to ensure that the reductions are being maintained. This modification would need to take place on or before the date the new permit is issued to the proposed discharger. EPA believes this requirement is reasonable because requiring that the permit for the existing point source(s) be modified to reflect the reductions creates a level of accountability. This accountability stems from the reductions being contained as permit limits in an enforceable permit. If the existing point source(s)'s discharge monitoring reports do not show that the reductions are being realized, the point source(s) would not be in compliance with its permit and thus, would be subject to an enforcement action.

The Agency again, notes that because the existing point source(s)'s permit would be modified to reflect the reductions, the offset requirement would be accounted for as a result of that modification. Therefore, it would not be necessary to incorporate the offset requirements in the new or significantly expanding discharger's permit. The Agency recognizes that there may be additional costs and delays associated with modifying the offsetting source's permit to reflect the reductions and therefore, requests comment on suggestions for a streamlined approach to accounting for the offset requirements. In particular, the Agency invites comment on incorporating the offset requirement in the new or significantly expanding discharger's permit rather than the modifying the existing point source(s)'s permit.

Today's proposal would require the existing, offsetting point source(s)'s permit to be modified to reflect the pollutant load reductions on or before the date a permit is issued to the new or significantly expanding discharger. EPA notes that there may be a time period during which the existing offsetting point source(s)'s permit has been modified but the proposed discharger has not yet begun discharging. EPA expects that this time period, if any, would be short-term. However, if there is a significant delay before the new or significantly expanding discharger starts to discharge, one option would be to place alternate effluent limits in the existing discharger's permit. One limit would be applicable before the proposed discharger starts to discharge and the other limit would be applicable after the proposed discharger starts to discharge. EPA invites comment on the idea of placing alternate effluent limits in the permit for the offsetting source.

EPA also recognizes that the source from which the offset is obtained may be discharging at levels less than their current permit limits. In these cases, the baseline used to calculate the appropriate reductions would be the offsetting source's actual and current loads not their current permit limit. It is EPA's intent that the offsets result in corresponding reductions in actual loads despite the existence of a higher permit limit. The offsetting source's permit would then need to be modified to reflect the corresponding reductions in actual loads. This does not necessarily mean that the permit limits would be adjusted to match the new actual load. Sources often target a discharge level below the permitted amount in order to ensure continuous compliance. In fact, EPA believes that well operated sources should do this. It is likely that a source which was discharging below its original permit limits would continue to target a discharge level below any new permit limits designed to implement an offset. The exact permit limits necessary to implement the offset would be determined on a case-by-case basis by the permitting authority.

7. What Would Be Required When the Source of the Offset Is an Existing Nonpoint Source?

Proposed 40 CFR 122.4(j)(2)(vii) would require that where a discharger obtains pollutant load reductions from an existing nonpoint source(s), the discharger's NPDES permit would need to contain any conditions necessary to ensure that the load reductions from the nonpoint source will be realized. These include such things as the offset requirements themselves and any accompanying monitoring and reporting requirements to ensure continued achievement of the pollutant load

reductions (from the nonpoint source(s)). The Director may also wish to establish alternate effluent limits in the permit for the new discharger that would become effective if and when the pollutant load reductions are not maintained. EPA invites comment on whether to require the permitting authority to include alternate effluent limits in the new or significantly expanded discharger's permit.

EPA believes the requirement in proposed 40 CFR 122.4(j)(2)(vi) is reasonable for the same reasons stated above for 40 CFR 122.4(j)(2)(v). Requiring the offset and accompanying monitoring and reporting requirements to be placed in the proposed discharger's permit creates a level of accountability as a result of being contained in an enforceable permit. If the discharger's monitoring reports do not show that the reductions are being realized or if the discharger is not in compliance with an alternate permit limit, the discharger would not be in compliance with its permit and would be subject to an enforcement action. Assuming there is an enforceable contract between the new or significantly expanding discharger and the nonpoint source (the agreement under which the pollutant load reductions will be achieved and maintained), in the event that there is a lack of reported reductions which is at the fault of the nonpoint source, the discharger should have an enforceable remedy against the nonpoint source (*e.g.*, under contract law). Contract law may allow the new or significantly expanding discharger to recover costs or other remedies they negotiated in their agreement (any remedies the new or significantly expanding discharger may have against the nonpoint source would be a product of State contract law, outside of the NPDES permitting context).

8. How Would Offsets Be Obtained From Sources Seeking Coverage Under a General Permit?

Determining whether and in what amount an offset would be required from dischargers seeking coverage under a general permit would necessarily differ from the same determinations for dischargers applying for individual permits. Several issues arise with respect to dischargers seeking coverage under a general permit when the discharge would be to a waterbody not attaining water quality standards. The first issue is whether and how the discharger would know if the receiving water is one that does not meet water quality standards. Most discharges seeking coverage under a general permit are required to submit a notice of intent (NOI) form to claim authorization to discharge. However, there is typically no information requested on the NOI, other than identifying the latitude and longitude of the facility that would help to identify the water quality status of the receiving water. The second issue is whether the discharger and/or permitting authority would know if the discharger's proposed effluent would contain the pollutant(s) causing the impairment. The third issue is if the pollutant(s) of concern is detected, how would the permitting authority obtain the information indicating the amount of that pollutant(s) the discharger is proposing to discharge. An NOI form typically does not request information on the pollutant(s) expected in the discharge. Absent any explicit information requirement for NOI forms, it is unlikely that the discharger or permitting authority could determine whether a discharger would be required to obtain an offset under proposed 40 CFR 131.12(a)(1)(ii). EPA invites comment on how to fill this information need.

i. What Options Is the Agency Considering?

One option that the Agency is considering to fill this information need would be to amend the general permit regulations at 40 CFR 122.28(b)(2)(ii) and 40 CFR 122.28(b)(2)(v) to require the general permit applicant to provide this additional information. Section 122.28(b)(2)(ii) discusses the contents of an NOI. For purposes of notifying the permitting authority about the localized attainment of water quality standards and to determine whether a proposed discharger would be required to obtain an offset, EPA is considering whether the following language should be included in the general permit provision:

"New dischargers or existing dischargers undergoing a significant expansion (as defined in 40 CFR 122.2) but not those that are small entities (as defined in 5 U.S.C. 601(6)) (see discussion under proposed 40 CFR 131.12) must determine whether the receiving water meets water quality standards. Operators that are discharging or proposing to discharge to a waterbody that does not meet water quality standards and for which a TMDL has not been established and approved must certify that the discharge does not add the pollutant(s) for which the waterbody is impaired. Dischargers that do add the pollutant(s) for which the waterbody is impaired and for which a TMDL has not been established or approved must apply for an individual permit and are subject to the requirements in 40 CFR 122.4(j)."

EPA notes that the Director already has authority to require a general permit applicant to apply for and obtain an individual permit under 40 CFR 122.28(b)(3)(i).

To determine whether the receiving water is impaired, the applicant could contact the appropriate State agency or check the State's 303(d) list of waters not attaining water quality standards. The State may have several ways for the public to access the information in the 303(d) list, including access via the World Wide Web.

The supplemental certification could request the applicant to provide information on the expected contents and amount of pollutant(s) in its proposed discharge. This type of information would assist the applicant and the permitting authority in identifying whether the pollutant of concern is in the proposed discharge and if it is, to determine what, if any, offset is required. The contents of this supplemental certification could be similar to the contents of Item V on Form 2D but focused on the pollutant(s) for which the waterbody is impaired. Some new applicants for EPA-issued individual permits use NPDES application Form 2D. EPA Form 3510–2D (9/86). The permit application regulations at 40 CFR 122.21(k)(5) (as reflected at Item V on Form 2D) require each applicant to estimate and report data on the pollutants that the applicant expects to discharge (per outfall). Sampling and analysis are not required for purposes of the application requirement. If data from such analyses are available, however, then that data should be reported. Section 122.21(k)(5) and Parts A–C of the application require the applicant to provide an estimate of the maximum daily and average daily value for certain identified pollutant(s). This estimate is based on the applicant's determination of whether a pollutant will be present in their discharge. The applicant could base this determination on knowledge of the proposed facility's raw materials, maintenance chemicals, intermediate and final products, byproducts, and any analyses, if available, of their effluent or of any similar effluent.

Other sources upon which to base the estimate could include available in-house or contractor's engineering reports and any other studies performed on the proposed facility. Also, if an effluent guideline applies to the facility or similar facilities, then the development document to the effluent guideline may provide additional information. If there is an applicable effluent guideline and the pollutant(s) of concern is not addressed in the guideline, however, this would not be conclusive evidence that the pollutant(s) of concern is not present. If

the applicable effluent guideline does address the pollutant(s) of concern, that recognition should be considered as a rebuttable presumption that the pollutant(s) of concern will, in fact, be present in the discharge.

EPA is also considering another option to fill this information need. This option would require these dischargers to submit a supplemental certification that they have already obtained and are continuing to maintain the requisite offset requirements. However, EPA has concerns about how this would work. In particular, EPA is concerned with how this permit applicant would determine the amount of the pollutant(s) of concern in its proposed discharge and in turn, determine the amount of required offset. When determining the proper offset required in an individual permit, the Director would have discretion to consider a number of variables. For example, if the applicant decides to obtain offsets from a nonpoint source, maintenance of the offset could remain highly uncertain. To compensate, the Director could appropriately require the applicant to obtain and maintain a greater offset (see discussion above in section (B)(3)(iii)(b)). Given discretionary considerations such as these, offset determinations may be difficult to implement for general permittees. EPA requests comments on how such compensation could be implemented, where necessary, for general permit applicants under this option.

EPA is considering a third option for general permittee offsets. This option would allow the general permits themselves to contain alternative sets of requirements depending on whether the discharge would be to a waterbody meeting water quality standards or a waterbody not meeting water quality standards. For permitted discharges to waterbodies not meeting water quality standards, requirements would be more stringent and/or prescriptive than those required for discharges to waterbodies that do meet water quality standards. Some general permits currently provide such differing requirements. For purposes of satisfying an offset requirement, an option might be to establish the more stringent and/or prescriptive requirements for discharges into impaired waterbodies in lieu of an individualized offset. The reductions needed to ensure reasonable further progress toward meeting water quality standards would be "built in" to the general permit. As with the second option discussed above, the permitting authority would not be able to tailor the offset requirements to the specific circumstances and discharge of the individual new or significantly expanding discharger. However, this option could allow the permitting authority to establish conditions in the general permit necessary to ensure that collectively, new and significantly expanding dischargers obtained offsets sufficient to achieve reasonable further progress toward attaining water quality standards. EPA invites comments on whether to allow more stringent and/or prescriptive requirements for discharges into impaired waterbodies in the general permit in lieu of requiring an individual permit.

General permitting also creates complications regarding the requirements in 40 CFR 122.4(j)(2). In particular, the Agency anticipates it would be difficult to implement the specific requirements applicable when offsets are obtained from an existing nonpoint source(s). In these cases, an individual permit would need to include conditions necessary, including the offset requirements and any accompanying monitoring and reporting requirements, to ensure continued achievement of the reductions. EPA invites comment on how this requirement should be addressed in general permits.

EPA requests comment on these three options as well as other possible approaches for satisfying the offset requirements for new or significantly expanding dischargers applying for a general permit and proposing to discharge into impaired waterbodies. In particular, EPA requests information on the burdens these options impose on regulated entities and State permitting authorities. EPA also requests comment on the water quality benefits of the three options and on whether the definition of a significant expansion should be different for general permittees than for individual permittees.

ii. What If a Notice of Intent Form Is Not Required?

General permitting presents additional implementation problems when an NOI form is not required. One option would be to amend 40 CFR 122.28(b)(2)(v), which authorizes the Director to allow certain dischargers to be covered under a general permit without submitting an NOI. This section also identifies some sources for which the Director does not have this discretion. EPA is considering including new dischargers and existing dischargers undergoing a significant expansion (but not those that are "small entities" as defined in 5 U.S.C. 601(6)), in the list of sources for which the Director would not have the discretion to waive the submission of an NOI. EPA invites comment on how this additional concern might be addressed.

iii. Who and Under What Circumstances Would Need To Submit a Supplemental Certification?

EPA recognizes that the language suggested above for an amendment to 40 CFR 122.28(b)(2)(ii) would require only new dischargers and existing dischargers undergoing a significant expansion that are not small entities as defined in 5 U.S.C. 601(6) to provide an additional certification for discharges to a waterbody not attaining water quality standards. Not requiring all new dischargers and existing dischargers undergoing a significant expansion to make this certification is consistent with the proposed requirements at 40 CFR 131.12(a)(1)(ii) because the offset requirement would only apply to those dischargers who are not considered "small entities" (as defined in 5 U.S.C. 601(6)). Dischargers who do not fall within the definition of a small entity would be able to seek coverage under a general permit.

iv. How Would Offsets Be Determined for Dischargers Regulated Solely by BMPs?

Once it is determined that an offset is required, the amount of offset required must be determined as well. This issue is particularly important for applicants seeking coverage under a general permit. This issue involves how to determine the appropriate offset requirements (or offset equivalents) for dischargers regulated solely by best management practices (BMPs). For example, would it be appropriate to require more stringent BMPs, or additional "offsetting" BMPs from other sources in lieu of a pound-for-pound offset? EPA invites comment on how to address this issue as well.

E. Additional Proposed Modifications to Related NPDES Provisions

1. How Is EPA Proposing To Modify the Water Quality-Based Permitting Regulations?

EPA is today proposing to include the phrase "State antidegradation provisions" in its water quality-based permitting regulations at 40 CFR 122.44(d)(1). Section 122.44 contains the requirements for establishing limitations, standards and other permit conditions in NPDES permits necessary to ensure that NPDES permits are protective of water quality standards. Including this phrase is clarifying only and not intended to create a substantive change. Including this phrase in these provisions gives added notice and clarification to EPA's longstanding policy which is well understood by the

States and the public, including regulated entities, that antidegradation policies and implementation procedures are required elements of State water quality standards.

2. How Is EPA Proposing To Modify the Regulations Pertaining to the Statement of Basis and Permit Fact Sheet?

EPA is also proposing to change both 40 CFR 124.56 and 124.7. EPA believes this is necessary in light of the proposed changes to 40 CFR 122.4(j) and 131.12. Section 124.56 lists specific items which must be placed in the fact sheet required by 40 CFR 124.8 of the NPDES regulations. EPA believes it is necessary to include, in the fact sheet, an explanation of how and why any decision was made by the Director with respect to any offsets required under 40 CFR 131.12. These include such things as the amount of the proposed discharge the new or significantly expanding discharger is required to offset as well as any monitoring and reporting requirements. Section 124.7 requires that a statement of basis be prepared in all situations where a fact sheet is not required. The contents of a statement of basis are similar to that of a fact sheet. EPA believes including this information in the fact sheet or in the alternative, the statement of basis, is appropriate for several reasons. The decisions regarding any offset will be dependent upon the specific facts and circumstances of a given scenario and therefore, those facts and circumstances should be made apparent. The public has a right to know how and why these decisions were made. EPA, to facilitate its authority to review permits, needs this information as well. This information is necessary for any appeals brought against the issuance of the permit or conditions therein contained.

III. Proposed Authority To Designate Additional Sources of Pollutants as Subject to the NPDES Program

The NPDES regulations, in several provisions and under certain circumstances, allow the permitting authority and/or EPA to subject certain previously non-designated sources to NPDES program requirements. EPA established these jurisdictional regulations in 1973 when the Agency and the States focused permitting resources primarily on continuous discharges, for example, industrial and municipal sources. Also, in the early stages of CWA implementation, the Agency and the States focused on implementation of technology-based standards. At that time, EPA attempted to limit the scope of the NPDES permitting program to certain types of point sources. The D.C. Circuit rejected that attempt, however, and explained that EPA could not exempt point sources from the NPDES program. *NRDC v. Costle*, 568 F.2d 1369, 1377 (D.C. Cir. 1977). Although the Court rejected this attempt, it did recognize the Agency's discretion to define "point source" and "nonpoint source." The existing NPDES regulations identifying animal production and silvicultural sources represents an early attempt to do so.

Today EPA is proposing certain changes to the NPDES regulations regarding designation of point sources for regulation under the NPDES permitting program. These point sources include discharges from animal production and silvicultural activities. EPA is proposing explicit language describing its authority, in States with approved NPDES programs, to designate animal feeding operations (AFOs) and aquatic animal production facilities (AAPFs) as sources subject to NPDES program requirements on a case-by-case basis. EPA regulations currently provide that "the Director" may, under certain circumstances, designate such facilities as point sources subject to NPDES requirements. The term "Director" is defined as the EPA Regional Administrator or the State Director, as the context requires, or an authorized representative. See 40 CFR 122.2. The definition explains that when there is an approved State program, "Director" normally means the State Director but that in some circumstances, EPA retains the authority to take certain actions even when there is an approved State program. Today's proposal includes explicit language describing EPA's authority, under certain conditions, to designate animal production facilities as sources subject to NPDES permitting. Today's proposal would also modify the regulation that identifies silvicultural point sources.

A. How Would Animal Feeding Operations and Aquatic Animal Production Facilities Be Affected by Today's Proposal?

Some of the sources that would be affected by today's proposal include animal feeding operations (AFOs) and aquatic animal production facilities (AAPFs) located in States authorized to administer the NPDES program. In a 1995 guidance document, entitled "Guide Manual on NPDES Regulations for Concentrated Animal Feeding Operations," EPA stated that in authorized States, only the State Director may designate an AFO as a concentrated animal feeding operation (CAFO). Today, EPA proposes to revise the regulations to state that EPA may, under certain circumstances, designate AFOs as CAFOs and also designate AAPFs as concentrated aquatic animal production facilities(CAAPFs), in NPDES-authorized States. The revised regulations would facilitate EPA's provision of reasonable assurance that EPA-established TMDLs will be implemented where States fail to establish an approvable TMDL.

This proposal applies to aquatic animal production facilities and not aquaculture projects. Although both types of operations produce aquatic livestock, aquatic animal production facilities differ from aquaculture projects. Aquaculture projects confine aquatic stock within jurisdictional waters of the United States. An aquatic animal production facility does not confine aquatic stock in jurisdictional waters of the United States. The aquatic area of confinement (e.g., manmade pond, raceway, etc.) may, however, discharge to jurisdictional waters of the United States. Aquaculture is specifically addressed in the CWA. CWA section 318. The statute does not specifically address aquatic animal production outside of waters of the United States, however, it is addressed in EPA regulations, as discussed above.

1. How Do These Sources Currently Become Subject to the NPDES Program?

Under existing regulations, concentrated animal feeding operations and concentrated aquatic animal production facilities are subject to the NPDES program. One situation in which an animal feeding operation or an aquatic animal production facility is considered "concentrated" and thus subject to NPDES permitting, is when the Director so designates the operation or facility on a case-by-case basis. See 40 CFR 122.23(c) and 122.24(c). Case-by-case designations are based on a determination that the operation or facility is a significant contributor of pollutants to waters of the United States. In designating an operation or facility as a significant contributor of pollutants, the Director essentially finds that the facility's discharges are more like point sources already subject to NPDES regulation than those agricultural nonpoint sources that are not.

i. Under What Circumstances Are CAFOs Designated on a Case-By-Case Basis?

EPA regulations define which AFOs qualify as CAFOs based on various criteria set out in the regulations. These criteria were established for a "basic national standard and practical administrative approach." See 40 FR

54182, 54183 (11/20/75). To supplement this approach, EPA included a designation mechanism in the regulations. Through this mechanism, even where a source did not meet all of the regulatory criteria to become a CAFO, the Director, upon determining that the source is a significant contributor of pollutants to waters of the United States, could exercise its discretion and designate the source as a CAFO to ensure that the source would be regulated. In making this determination, the Director conducts an on-site inspection of the facility and considers the following factors: (1) The size of the animal feeding operation and the amount of wastes reaching waters of the United States; (2) the location of the animal feeding operation relative to waters of the United States; (3) the means of conveyance of animal wastes and process waste waters into waters of the United States; (4) the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and (5) other relevant factors. 40 CFR 122.23(c). One such relevant factor could be the water quality of the receiving water including the degree of nonattainment.

ii. Under What Circumstances Are CAAPFs Designated on a Case-by-Case Basis?

Permitting authorities can also designate any warm or cold water aquatic animal production facility for regulation under the NPDES permitting program on a case-by-case basis. 40 CFR 122.24. The Director, upon determining that the source is a significant contributor of pollutants to waters of the United States, may designate an aquatic animal production facility as a concentrated aquatic animal production facility. To make this determination, the Director conducts an on-site inspection of the facility and considers the following factors: (1) The location and quality of the receiving waters of the United States; (2) the holding, feeding and production capacities of the facility; (3) the quantity and nature of the pollutants reaching waters of the United States; and (4) other relevant factors. 40 CFR 122.24(c).

2. Why is EPA Proposing Changes to the CAFO and CAAPFs Jurisdictional Regulations?

In some areas, pollutant contributions from small unregulated (by NPDES) animal production sources (terrestrial and aquatic) are the primary cause of impairment in some water segments. As indicated in the1996 Report to Congress under CWA section 305(b), agriculture, including both animals and cropland, is the leading source of water quality impairment of rivers and lakes. Based on data collected by the States and Territories, EPA estimated that, of the waters assessed, 25 percent of the impaired river miles, 19 percent of the impaired lake acres, and 10 percent of the impaired estuarine square miles are polluted due to agricultural nonpoint sources of pollutants (EPA,1996). Thirty-eight of the States included specific agricultural sources of pollution in rivers.

i. How do Animal Feeding Operations Impact Water Quality?

Studies show that animal feeding operations, and particularly a concentration of these facilities in a single watershed, can increase nutrient pollution to a river or stream. A study of Herrings Marsh Run in the coastal plain of North Carolina showed that nitrate levels in streams and ground water were highest in areas with the greatest concentration of swine and poultry production. (Hunt, P.G., et al. 1995. Impact of animal waste on water quality in an eastern coastal plain watershed. *IN: Animal Waste and the Land-Water Interface*, Kenneth Steele, Ed., Lewis Publishers, Boca Raton, FL, 589 pp.). Ortho-phosphate levels were affected only slightly by animal waste applications because most of the phosphorus was bound by the soil. (Hunt, et al.,1995).

Results from an Illinois case study indicated that two types of activities at small to medium-sized swine operations contributed to water quality problems. First, many producers had constructed open-front facilities without including manure collection systems to contain feedlot runoff. Second, many producers practiced "misting"and/or used on-site watering systems to cool off animals, which in turn generated conditions that caused uncontrolled pollutant runoff. This case study demonstrated how even small operations contributed significant amounts of pollutants to the receiving waters. (Ackerman and Taylor, 1995, Stream Impacts due to Feedlot Runoff. *IN: Animal Waste and the Land-Water Interface*, Kenneth Steele, Ed., Lewis Publishers, Boca Raton, FL, 589 pp.).

AFOs can also cause catastrophic effects locally. In June 1995, animal waste contained in an eight-acre lagoon in North Carolina burst through its dike, spilling approximately 22 million gallons of animal waste into the New River. The spill reportedly killed fish along a 19-mile downstream area. This was the worst of six reported spills in the State during the summer of 1995. (EPA Office of the Inspector General, March 1997, Animal Waste Disposal Issues, Audit Report No. E1XWF7–13–0085–7100142).

Several case studies have also been performed to document the water quality benefits of installing animal waste management systems. In South Dakota, for example, 9 feedlots were monitored to determine which most negatively impacted water quality through increased loads of nutrients. After installation of animal waste management systems, several feedlots exhibited evidence of improving water quality in streams. (South Dakota Association of Conservation Districts, South Dakota Department of Environment and Natural Resources, and USDA Natural Resources Conservation Service, 1996, Final Report—Animal Waste Management Team). EPA invites commenters to identify and submit additional data to support or refute these conclusions.

ii. How Do Aquatic Animal Production Facilities Impact Water Quality?

Other studies also indicate that aquatic animal production facilities cause significant adverse impacts on water quality. Such impacts include but are not limited to, oxygen depletion in surrounding waters, degradation of benthic (bottom) ecosystems, and increases in the severity of toxic algae blooms. The impact on water quality, however, varies per fish species and production facility. Pond and tank systems, for example, often discharge pulses of highly concentrated waste discharges during cleaning and harvesting. (Bergheim, A., A. Sivertsen, and A.R.Selmer-Olsen. 1982. Estimated Pollution Loading From Norwegian Fish Farms. I. Investigations 1978–1979. Aquaculture 28:347–361). Catfish ponds, for instance, release effluents containing high concentrations of nutrients, often at concentrations exceeding water quality limits set by EPA and state governments. (Tucker, C.S. 1996. The Ecology of Channel Catfish Culture Ponds in Northwest Mississippi. Reviews in Fisheries Science 4(1):1–55). EPA invites commenters to identify and submit additional data to support or refute these conclusions.

3. What Changes Is EPA Proposing To Make to the CAFO and CAAPFs Jurisdictional Regulations?

As stated previously, currently only the "Director" may designate these sources as subject to the NPDES program on a case-by-case basis and "Director" is defined as the EPA Regional Administrator or the State Director, as the context requires. 40 CFR 122.2. EPA foresees the need to make

future designations itself in authorized States in particular circumstances, although the Agency has only done so on occasion. Therefore, EPA is proposing to revise 40 CFR 122.23 and 122.24 to include explicit language describing that the Agency has the authority (under certain circumstances discussed below) to make such designations in instances when the State has not already done so.

i. When Would EPA Designate These Sources?

The proposed regulatory change would limit the exercise of this discretion to the situation when EPA establishes a TMDL for a waterbody in an authorized State and determines that designation is necessary to provide reasonable assurance that the wasteload allocations and load allocations under the TMDL will be achieved. By restricting the exercise of its discretion to this high priority circumstance, the Agency recognizes its own resource limitations, as well as the special role of authorized NPDES States in the federal system.

States must submit each TMDL they establish to EPA for approval. Elsewhere in today's **Federal Register**, EPA proposes regulations to require States to submit a plan to implement the load allocations and wasteload allocations of a TMDL as a component of the TMDL. EPA would evaluate the adequacy of the implementation plan (a required element of a TMDL) in determining whether to approve a TMDL. If EPA disapproves a TMDL based on a determination that the implementation plan is inadequate, EPA would establish the TMDL itself, including an implementation plan.

One of the proposed required elements of the implementation plan is that it contain reasonable assurance that the control actions and/or management measures required to implement the load allocations and the wasteload allocations established by the TMDL will be put in place and the load allocations and wasteload allocations will be met. Thus, EPA may disapprove the TMDL if it determines that the implementation plan lacks reasonable assurances. For example, EPA may determine that the implementation plan lacks reasonable assurances that certain animal feeding operations will achieve and maintain their respective pollutant load allocations. If working with the State to achieve reasonable assurance has failed, EPA would disapprove the TMDL and would be required to establish a TMDL, including an implementation plan. EPA may then determine that some animal feeding operations are significant contributors of pollutants to waters of the United States and that the best way for EPA to provide reasonable assurance that such an animal feeding operation achieves and maintains its assigned pollutant load allocation is through the issuance (and enforcement) of an NPDES permit. Under today's proposal, EPA could then invoke its designation authority and subject the animal feeding operation to the NPDES program. In similar circumstances, EPA could designate an unregulated aquatic animal production facility. The language in today's proposal about the Agency's intention and authority to designate unregulated animal production sources in authorized States—where EPA establishes a TMDL—supports the fulfillment of the CWA goals to attain and maintain water quality standards. The proposal also supports EPA's backstop authority, as specified in CWA section 303(d)(2), to establish TMDLs (including all required elements) for waterbodies for which the State fails to do so.

ii. How Would This Proposal Affect States?

The proposed regulation limits the exercise of this discretionary authority to situations where EPA establishes a TMDL. Many States have opportunities to provide "reasonable assurances" to control nonpoint source pollutants and/or pollution in ways (and based on authorities) that are not available to the federal EPA. When EPA establishes a TMDL, the federal authority to designate otherwise unregulated sources as point sources would provide a federally enforceable "reasonable assurance" that the allocation would be achieved. The Agency stresses that the authority proposed today would be used only in those circumstances where other means of working with the State have failed.

iii. Who Would Issue Permits to These Sources Once Designated?

EPA does not have authority to issue permits to the animal production facilities that the Agency designates for regulation in a State authorized to administer the NPDES program. That authority remains exclusively with the authorized State. CWA section 402(c). Instead, EPA relies on its authority to designate point sources under the CWA in general and the specific authority provided by CWA section 501(a) to support the Agency's authority to designate point sources subject to regulation under the NPDES program, even in States authorized to administer the NPDES permit program. The interpretive authority to define point sources and nonpoint sources was recognized by the D.C. Circuit in *NRDC v. Costle*, 568 F.2d 1369, 1377 (D.C. Cir. 1977). This interpretive authority arises from CWA section 501(a) when EPA interprets the term "point source" at CWA section 502(14).

4. How Would EPA Revise the Regulatory Text?

EPA recognizes that many State agencies have limited resources to implement their NPDES programs and in many cases, a State's inaction in the designation of additional sources is not a result of an authorized State's unwillingness to assert regulatory authority over additional sources, but rather the perceived inability to assure timely issuance of individual permits for these sources in the face of competing priorities. Given increased reliance and success in control of point sources under State NPDES general permits, however, the Agency believes that EPA designation in these jurisdictions and in these instances will expedite the attainment of water quality standards without undue burden on authorized States.

In order to achieve this result, EPA is proposing to modify 40 CFR 122.23(c)(1), (3) and (4) and 40 CFR 122.24(c)(1)–(3) as reflected in proposed regulatory text. These modifications would specify that, in jurisdictions where EPA is not the NPDES permitting authority, EPA could (under certain circumstances) designate an animal feeding operation as a "concentrated animal feeding operation" where the Regional Administrator or his/her delegee makes a determination that the operation is a significant contributor of pollutants to waters of the United States. Similarly, today's proposal would accomplish the same objective for the designation of an aquatic animal production facility as a "concentrated" aquatic animal production facility (i.e., the aquatic form of a concentrated animal feeding operation). These modifications would also specify that EPA would only designate these facilities where pollutants are discharged into waters for which EPA establishes a TMDL to provide reasonable assurance that the wasteload allocations and load allocations under the TMDL will be achieved.

The Agency invites comments on this proposal, including the limitation of the federal designation authority (in authorized States) to discharges to waters for which EPA establishes a TMDL.

B. How Would Silvicultural Activities Be Affected by Today's Proposal?

1. Which Sources Are Currently Excluded From the Definition of a "Point Source?"

EPA is today proposing to modify its current interpretation of the term "point source" with respect to discharges associated with silviculture. The term "point source" is defined in regulations at 40 CFR 122.3 to exclude certain discharges from NPDES requirements. Section 122.3(e) specifically excludes "Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands and forest lands." As a preliminary matter, the Agency notes that, though the regulatory exclusions have existed since the 1970's, Congress did not enact the specific statutory ratification for the agricultural exclusions, for "return flows from irrigated agriculture" and "agricultural storm water" until 1977 and 1987, respectively. Neither of the 1977 nor the 1987 amendments provided any ratification of the silvicultural exclusions.

Since that time, the Agency and the States have begun the implementation of regulatory controls on intermittent "wet weather" sources. In 1987, Congress directed EPA to focus on water quality concerns associated with storm water. One of the types of storm water discharges that the Agency identified as appropriate for regulatory control under the NPDES program was storm water discharges associated with construction activity, including clearing, grading, and excavation activities. See 40 CFR 122.26(b)(14)(x). Storm water discharges resulting from land disturbance have significant potential for water quality impairment due for example, to excessive sediment loads. Sediment adversely affects aquatic ecosystems by reducing light penetration, impeding sight-feeding, smothering benthic organisms, abrading gills and other sensitive structures, reducing habitat by clogging interstitial spaces within a streambed, and reducing the intergravel dissolved oxygen by reducing the permeability of the bed material. (Everest, F.H., Beschta, J.C., Scrivener, K.V., Koski, J.R., Sedell, J.R., and C.J. Cederholm. 1987. Fine Sediment and Salmonid Production: A Paradox *Streamside Management: Forestry and Fishery Interactions*, Contract No. 57, Institute of Forest Resources, University of Washington, Seattle, WA. pp. 98–142).

To date, NPDES regulation of storm water discharges associated with construction activity has protected water quality from the runoff associated with for example, the construction of roads. A gap in regulatory coverage exists, however, in that the existing NPDES regulations categorically exclude silviculutral road construction and maintenance from the definition of "point source." 40 CFR 122.27(b). Therefore, the silviculture regulation excludes discharges from forest roads from the universe of sources that can be regulated under the NPDES permitting program.

2. Are All Discharges From Silivicultural Activities Currently Excluded From the NPDES Program?

Not all discharges from silvicultural activities are currently excluded from the definition of a "point source." EPA regulations at 40 CFR 122.27(b)(1) specify which discharges associated with silvicultural activities are point source discharges, namely, discharges from rock crushing, gravel washing, log sorting and log storage facilities. Discharges from these activities are categorically subject to regulation under the NPDES program. EPA regulations at 40 CFR 122.27(b)(1) also currently identify certain discharges associated with silviculture activities that may be "nonpoint source" discharges, thus, not subject to NPDES permits. These include runoff from nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance. Currently, runoff from these activities is categorically excluded from the NPDES program. Also, as noted in the regulation, some discharges associated with silvicultural activities (such as stream crossing for roads) may involve point source discharges of dredged and fill material. In these cases, a CWA section 404 permit may be required. See 33 CFR 209.120 and part 233.

EPA acknowledges that CWA section 404(f)(1) exempts certain discharges of dredged or fill material from CWA permitting requirements for, among other activities, normal silvicultural activities and the construction or maintenance of forest roads. The CWA section 404(f) exemption for discharges of dredged and fill material applies to permit requirements under both section 404 and section 402, except as provided in section 404(f)(2). Section 402, however, does not regulate discharges of dredged or fill material. EPA has consistently interpreted the apparent inconsistency of including section 402 in the section 404(f) "exemptions" to reflect the intent that discharges of dredged or fill material that are exempt from section 404 permit requirements would not be regulated under section 402 instead. EPA has not interpreted the inclusion of section 402 in section 404(f) to mean that discharges other than dredged or fill material (from the activities listed in section 404(f)) are exempt from permit requirements under section 402. Today's proposal would not address dredged or fill material or otherwise affect the section 404(f) exemption. Today's proposal would apply to discharges of pollutants other than dredged or fill material, for example, from contaminated storm water discharges.

EPA also notes that the section 404(f) exemption for discharges of dredged or fill material associated with the construction or maintenance of forest roads is dependent on case-by-case application of best management practices. Best management practices provide effective mechanisms to address potential adverse impacts to aquatic resources, including degradation of physical, chemical, and biological characteristics.

3. Which Silivicultural Discharges Would Be Designated Under Today's Proposal as Sources Subject to the NPDES Program?

By today's action, the Agency proposes to remove the regulatory gap in coverage with respect to those silvicultural discharges that are currently identified as a discrete category of "non-point sources" excluded from the opportunity for regulation under the NPDES permitting program. The only silvicultural discharges, however, that would be subject to regulation under the NPDES program on a categorical basis are those that are currently regulated as categories today: rock crushing; gravel washing, log sorting, and log storage facilities. For the sources that were categorically excluded previously (nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance), the categorical exclusion from the definition of "point source" would be removed. Instead, on a case-by-case basis, selected sources could be designated for regulation under the NPDES program for storm water discharges under 40 CFR 122.26(a)(v). This case-by-case designation, made by the Director or EPA, would be based upon a determination that the source contributes to a violation of water

quality standards or is a significant contributor of pollutants to waters of the United States. To make this determination the Director could consider the following factors: (1) The location of the discharge with respect to waters of the United States; (2) the size of the discharge; (3) the quantity and nature of the pollutants discharged to waters of the United States; and (4) other relevant factors. 40 CFR 122.26(a)(v).

4. Why Is EPA Proposing To Remove the Regulatory Exclusion for These Silvicultural Discharges?

Silviculture contributes approximately 3 to 9 percent of nonpoint source pollution to the Nation's waters. (Neary, D.G., and J.L. Michaels, 1989, Effect of sulfometuron methyl on ground water and stream quality in coastal plain forest watersheds. Water Resources Bulletin. 25(3):617–623). Twenty-three States have identified silviculture as a problem source contributing to nonpoint source pollution in their 1996 water quality assessments submitted to EPA under CWA section 305(b). (USEPA, 1996, EPA–841–R–97–008 April 1998).

Several types of silvicultural activities that are currently exempt from NPDES regulation may cause significant adverse impacts on water quality. These include, but are not limited to, road construction and maintenance, site preparation, prescribed burning, clearcutting, and harvesting operations. As mentioned above, the construction and maintenance of roads, other than those constructed for silvicultural operations, are currently subject to NPDES requirements. The construction and maintenance of roads related to silvicultural activities, however, is exempt. Studies demonstrate that some such road construction may create significant water quality problems. Results of a study on forest management activities in a small watershed indicated that suspended sediment yields increased almost 8 fold in the first year following road construction, and two-fold following logging in the second year. (B. Anderson and D.F. Potts, 1987, Suspended Sediment and Turbidity Following Road Construction and Logging in Western Montana, Water Resources Bulletin, Vol. 23, No. 4).

Mechanical site preparation by large tractors that shear, disk, drum-chop, or root-rake a site may result in considerable soil disturbance over large areas and has a high potential to deteriorate water quality. (Beasley, R.S. 1979. Intensive site preparation and sediment loss on steep watersheds in the Gulf Coastal plain. Soil Science Society of America Journal. 43(3):412–416). Site preparation techniques that result in the removal of vegetation and litter cover, soil compaction, exposure or disturbance of the mineral soil, and increased stormflows due to decreased infiltration and percolation, all can contribute to increases in stream sediment loads. (Golden, M.S., C.L. Tuttle, J.S. Kush, and J.M. Bradley, 1984, Forestry activities and water quality in Alabama: Effects, recommended practices, and an erosion-classified system. Auburn University, Agricultural Experiment Station. Bulletin 555). Prescribed burning is another method used to prepare sites that may also have effects on water quality as a result of increased erosion and the altering of soil properties. *Id.*

The actual harvesting of timber can also contribute to water quality problems. Results from studies have indicated that clearcutting, which is often a method used for timber harvesting, can have significant effects on the nutrient levels and temperatures of nearby waters. The resulting impacts of a logging operation in the Bull Rull Watershed of Oregon include increased nitrate-nitrogen levels for up to 7 years after the harvest and an increase in annual stream temperatures by 2–3 degrees Celsius for the following 3 years after the harvest. (Harr, R.D., and R.L. Fredriksen. 1988. Water quality after logging small watersheds within the Bull Run Watershed, Oregon. Water Resources Bulletin. 24(5):1103–1111). EPA invites commenters to identify and submit additional data to support or refute these conclusions.

5. When Would Silviculutral Sources Be Required To Obtain an NPDES Permit?

The effect of today's proposed elimination of the categorical silviculture exclusion would be limited. The currently unregulated silvicultural sources would only be required to obtain NPDES permit authorization (1) upon a case-by-case designation by EPA or the authorized State and (2) for the purposes of EPA designation, only for sources that discharge to waters for which EPA establishes a TMDL to ensure that the wasteload allocations and load allocations under the TMDL are achieved. The existing regulations for storm water associated with industrial activity (also known as "Phase I" storm water regulations) issued pursuant to CWA section 402(p)(4)(A), would not apply to the discharges that would become subject to regulation by the revision to 40 CFR 122.27(b). For example, storm water discharges associated with construction and maintenance of forest roads would not be considered "storm water discharges associated with industrial activity" under 40 CFR 122.26(b)(14). The construction of silviculture roads would not be a category of storm water discharge that is automatically subject to NPDES permitting like other kinds of road building. Instead, point source discharges of storm water associated with currently unregulated silviculture would only be designated for regulation on a case-by-case basis pursuant to CWA section 402(p)(2)(E) or 402(p)(6).

As noted above, EPA proposes that any final rule would limit EPA designation of silviculture point sources to discharges to waters for which EPA establishes a TMDL because, as a result of proposals elsewhere in today's rule, these circumstances would provide a considered and focused basis for regulation. The limitation on federal designation would apply both in authorized States, as well as in States where EPA administers the NPDES program. Given the Agency's limited resources, as well as the potentially huge universe of silvicultural sources that could become subject to NPDES permitting, today's rule focuses those limited EPA resources on these priority waterbodies. In States where EPA administers the NPDES program, the Agency does not propose silviculture point source designation authority to the same extent as would be available to authorized States. Unlike authorized States that might designate silviculture point sources outside of the TMDL context, EPA would only designate a source when the Agency establishes a TMDL itself to ensure that the wasteload allocations and load allocations under the TMDL are achieved. In addition, EPA would work with and assist those States (where EPA administers the NPDES program) in development of their nonpoint source control programs (so that the State could provide its own reasonable assurances), rather than federally designating silviculture point sources prior to that State's establishment of its TMDLs. As noted above, EPA does not propose to limit designation by authorized States, who may have other opportunities to assure "reasonable assurances" that nonpoint sources attain load allocations under TMDLs. Additionally, CWA section 510 preserves more expansive designation authority for States.

EPA expects that only in extremely rare circumstances would the Agency need to exercise its authority to establish an NPDES permit requirement for discharges associated with silvicultural activities. Indeed, enhanced implementation of State programs and authorities designed to

protect water quality from silvicultural activities may be strong enough, in the aggregate, to satisfy "reasonable assurance" that silvicultural sources would attain load allocations under TMDLs through State means alone. EPA would only use the proposed new designation authority as a "last resort" because EPA lacks authority to regulate silvicultural sources directly through other means than through the NPDES permitting program. As noted above, States might choose to use the new authority more broadly, but EPA would encourage them to focus their limited regulatory resources in the same limited manner that EPA would use it.

6. How Would States Be Affected by This Proposal?

State capacity to address silvicultural sources is exemplified by the breadth and depth of State programs. A significant number of States have comprehensive forest practice management acts, while most others have at least some sort of backup authority, such as enforceable water quality standards or "bad actor" laws. At least ten States administer regulatory programs that are as comprehensive as EPA anticipates would be imposed if sources were designated under today's proposal for regulation under the NPDES permitting program. (Olafson, PV, Cheng A.S., and R.D. Moulton. 1995. Regulation of Private Forestry Practices by State Governments. University of Minnesota, Minnesota Agricultural Experiment Station. Bulletin 605). Nearly all States have developed and published BMPs for silviculture, about half of the States conduct annual compliance audits to determine landowner use of BMPs, and in most States, the State forestry agency plays a role in the State nonpoint source plan. (Stuart, Gordon W., 1996. The National Association of State Foresters 1996 Progress Report, State Nonpoint Source Pollution Control Programs for Silviculture. National Association of State Foresters).

In general, EPA envisions that permits for silvicultural activities would be based on an approach emphasizing the development of pollution prevention plans and/or specification of best management practices rather than quantitative discharge limits for specific pollutants. EPA would work with States and stakeholders in developing these permits.

EPA invites comments on removing the categorical exemption for runoff from certain sivicultural activities and on its intention to limit federal designation authority to discharges into waters for which EPA establishes a TMDL.

IV. Proposed EPA Authority To Reissue State-Issued Expired and Administratively-Continued NPDES Permits

Under the NPDES program regulations, a Regional Administrator may review and object to State-issued NPDES permits. The procedures by which a Regional Administrator may review and object to these permits are found in 40 CFR 123.44. The existing objection authority, under section 402(d) of the Act, grants EPA 90 days within which to object to a proposed State permit that fails to meet the guidelines and requirements of the Act. If a State fails to respond to an EPA objection within 90 days of objection, exclusive authority to issue the NPDES permit to that discharger passes to EPA.

A. Can EPA Object to State-Issued Expired and Administratively-Continued Permits?

Today's proposal describes a new mechanism by which a Regional Administrator may trigger the existing review and objection procedures in 40 CFR 123.44 for State-issued NPDES permits. EPA is proposing to grant the Regional Administrator the discretion to trigger these procedures when a State fails to revise an expired, State-issued permit that has been administratively-continued for more than 90 days. This authority could be triggered when the expired permit authorizes a discharge to an impaired waterbody where there is a need for a change in the existing permit limits (referred to as an "environmentally-significant permit"). The Agency's NPDES regulations require that an existing permittee submit a new permit application at least 180 days before an existing permit expires. 40 CFR 122.21(d)(2). When a permittee has submitted a timely application for renewal, but the State Director fails to act on the permittees' application before the existing permit expires, State law often provides that the existing permit continues in effect by operation of law. The permit remains in effect by operation of law until the State takes final action on the permittee's application—that is, until the State makes a final decision to grant or deny a new permit. This is often referred to as administrative continuance. These State laws, like the corresponding provisions in 40 CFR 122.6 and the federal Administrative Procedure Act, 5 U.S.C. 558(c), aim to protect a permittee who has submitted a timely application for renewal. State law protects a permittee from losing its authorization to discharge simply because the permit-issuing authority has not issued a new permit before the existing permit expires.

Administrative continuance may provide States the necessary flexibility without significant adverse impacts on the NPDES permitting scheme. However, it may also lead to inappropriate delays in reissuing permits that need revision in order to remain in compliance with applicable requirements. State administrative-continuance laws typically allow an expired permit to remain administratively-continued indefinitely. Therefore, a lengthy administrative continuance of a permit for a discharge into an impaired water can greatly delay the implementation of needed water quality-based effluent limitations, including effluent limitations implementing wasteload allocations established in a TMDL for an impaired waterbody. Under EPA's existing regulations, no mechanism currently exists by which to invoke the Agency's permit veto authority to address this situation. Today's proposal would provide that needed procedural mechanism.

This proposed provision is designed to address a subset of expired and administratively-continued permits. EPA uses the term backlog to describe the larger set of permits that are either expired and administratively-continued or have not yet been issued to first time applicants. Notwithstanding the Agency's own permit backlog, EPA recognizes that many expired permits for discharges into impaired waters have not been reissued and expects to exercise this discretion in very rare instances involving environmentally-significant permits. The Agency intends to use its discretion under the proposed provision as one way to help ensure that these permits will be issued in a timely manner.

B. How Would EPA Review and Object to a State-Issued Expired and Administratively-Continued Permit?

Today's proposal provides that, if the State failed to submit to EPA a draft or proposed permit for a discharge into an impaired waterbody within 90 days following the permit expiration date, the Regional Administrator would be able to treat the expired and administratively-continued permit as equivalent to the State's submission of a draft or proposed permit for EPA review under 40 CFR 123.44. For EPA to trigger this discretionary review mechanism, EPA would give the State and the discharger 90-days notice of its intent to do so. EPA could provide this notice at any time

following the 90-day period after permit expiration. The use of this new mechanism would be discretionary on the part of EPA. Like a veto of a proposed permit under the existing 40 CFR 123.44, this would not constitute final agency action until EPA had completed the permit issuance process under 40 CFR part 124 and issued or denied the permit. *District of Columbia* v. *Schramm*, 631 F.2d 854, 816 (D.C. Cir. 1980); *Mianus River Preservation Comm.* v. *Administrator, EPA*, 541 F.2d 899, 909 n.24 (2nd Cir. 1976) (discretion). *Champion Intl Corp.* v. *U.S. EPA*, 850 F.2d 182, 187 (4th Cir. 1988) (reviewability).

EPA believes that the 90 days provided after permit expiration, plus the 90 days provided after notice by the Agency that it intends to trigger Agency review, plus the 90 days provided for a State to respond to Agency objection would provide enough time for a State to reissue an expired permit. EPA notes that under the proposed mechanism, the Agency would effectively have the authority to extend the period of time for the State to reissue a permit beyond the 270 days effectively provided under the proposed regulation. This would occur by delaying the date upon which the Agency notifies the State of its intent to trigger Agency review. Nonetheless, the Agency invites comment on whether EPA should provide a grace period of longer than 90 days after the permit expires and is administratively-continued before the Agency may provide notice that it intends to trigger Agency review.

C. When Would EPA Withdraw its Objection?

Once the environmentally-significant, administratively-continued permit is subject to review under 40 CFR 123.44 procedures, EPA would be able to comment on, object to, or recommend changes to the permit. If the State, under 40 CFR 123.44(a), submitted a draft or proposed permit for EPA review at any time before exclusive authority to issue the permit passes to EPA under 40 CFR 123.44(h), EPA would withdraw its notice of intent to assume permit authority. At this point, existing rules on EPA objection to State-issued permits would govern. Therefore, EPA may take any appropriate action, including transmission of comments on or possible objection to the new draft or proposed permit submitted by the State. Furthermore, the ability to invoke this authority would continue until the State issues the final permit. In other words, if a State submits a draft or proposed permit that EPA believes resolves all of the concerns under the objection, but fails to issue the final permit, EPA may in fact, invoke this authority again and object to the original (expired and administratively-continued) permit.

D. When Could EPA Invoke This Authority?

Proposed 40 CFR 123.44(k) describes two situations in which EPA would be able to treat an expired and environmentally-significant, administratively-continued permit as the State's submission of a permit for EPA review under 40 CFR 123.44. This authority could be invoked if the discharge is subject to a TMDL, established or approved by EPA, and the expired permit does not incorporate the relevant wasteload allocations established in the TMDL. Second, this authority could be invoked if the permit authorizes a discharge of a pollutant(s) of concern (a pollutant(s) for which the waterbody is impaired) to a waterbody that does not meet water quality standards and for which EPA has not established or approved a TMDL.

EPA is considering providing explicit language describing that this authority is available to the Agency with respect to all expired and administratively continued permits which are not consistent with new CWA provisions. Examples of such permits, other than those covered by today's proposal, would be permits that do not reflect newly-adopted water quality standards and effluent limitations guidelines. EPA invites comment on these and other circumstances in which it would be appropriate for EPA to assert this authority.

E. Would EPA Work With the State Before Invoking This Authority?

The Agency stresses that the new review mechanism proposed today would be used only in those circumstances where other means of working with the State to reissue the permit have failed. The Agency may invoke this authority where leaving the administratively-continued permit in place would frustrate the attainment of water quality standards in impaired waterbodies prior to the establishment of a TMDL. The Agency may also invoke this authority in instances where leaving the administratively-continued permit in place would frustrate the implementation of a TMDL. Leaving the administratively-continued permit in place in both of these instances would be inconsistent with the goals and purposes of the Act. At any time during this process, the State is encouraged to explain to EPA the reasons for its failure to reissue the expired permit. The Agency will carefully consider any such explanation before proceeding with these objection procedures. Similarly, the Agency would not expect to depend heavily upon the proposed mechanism in States whose administrative continuance laws operate for periods of time not much in excess of the 270 days effectively provided for reissuance by this proposal.

F. What If a Permit Has Expired but the Permittee Has Not Submitted a Timely and Complete Application for Renewal to the State?

EPA also notes that proposed 40 CFR 123.44(k) would apply only to those expired, State-issued permits for which a timely and complete application for renewal has been submitted to the State, and for which State law has provided for continuation of the expired permit. The new provision would not apply to unpermitted discharges or discharges of new sources or new dischargers that may or may not have filed a permit application. In these cases, existing authority allows the Agency to institute judicial or administrative actions against these dischargers for discharging without a permit, even if they have submitted an application to the State and the State has not issued the permit.

G. What Authority Supports Today's Proposed Changes?

Section 402(d) of the Act provides EPA with authority to object to and veto a proposed permit that violates the requirements of the Act. As discussed below, neither the Act nor its legislative history expressly speaks to the issue of whether the Agency may object to and veto permits that have effectively changed under administrative continuance. When Congress has not spoken directly to an issue of statutory construction, courts recognize agency discretion to reasonably interpret a statute that the Agency is charged to administer. *Chevron* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). Therefore, the Agency has long held that, based on the congressional purpose underlying CWA section 402(d), the Agency's objection and veto authority exists not only when a permit has been formally proposed and submitted to the Agency for review but also when a State or a court has taken action to change a permit such that it requires new review by the Administrator. Memorandum of July 18, 1973 from Robert V. Zener, Acting Deputy General Counsel, to Dale S. Bryson, Acting Director Enforcement Division, Region V, regarding Extent of EPA Concurrence on NPDES Permits; Memorandum of July 3, 1975 from Robert V. Zener, General Counsel, to

James O. McDonald, Director, Enforcement Division, Region V, regarding US EPA Authority to Review State Permit Modifications. Similarly, the Agency has concluded that administrative continuance of an expired permit in the face of newly established wasteload allocations or an impairment listing may constitute a circumstance where a new review by the Administrator is warranted.

EPA's authority to promulgate the proposed revision to 40 CFR 123.44 is a reasonable interpretation of several statutory provisions. The authority stems primarily from EPA's responsibility to ensure that permits include water quality-based effluent limitations as necessary to meet water quality standards. This is especially important in waters where TMDLs and wasteload allocations have been established to meet applicable water quality standards. Section 303(d) of the Act requires EPA to ensure that a TMDL is established for impaired waters. The wasteload allocations derived from the TMDL indicate the water quality-based effluent limitations that permittees discharging to the impaired water must meet for the waterbody to meet applicable water quality standards. Section 301(b)(1)(C) of the Act directs EPA and the States to include water quality-based effluent limitations in NPDES permits that will enable the waterbody to meet the applicable water quality standards.

Listing a water under CWA section 303(d) and the subsequent establishment of a TMDL, may indicate that new or more stringent water quality-based effluent limitations are necessary for point source discharges to that waterbody. If so, a lengthy administrative continuance of the permit may interfere with the Administrator's responsibility to ensure that permits are consistent with the requirements of the CWA. The Administrator bears a statutory responsibility under CWA section 303(d) to ensure timely establishment of TMDLs and an obligation under CWA section 301(b)(1)(C) to ensure that permits include water quality-based effluent limits as necessary to meet water quality standards. CWA section 501(a) allows the Agency to promulgate a regulation that relies upon EPA's authority in CWA section 402(d), to prevent a State from avoiding or postponing by lengthy administrative-continuance, what otherwise would be required by reissuance. The Agency also bears an obligation under CWA section 402(c)(2) of the Act to ensure that State programs and State-issued permits comply with the requirements of the Act. NPDES permits may not be issued for period exceeding five years (CWA section 401(b)(1)) and should be reviewed and revised in a timely fashion to ensure compliance with the CWA and applicable regulations. It would be difficult for the Agency to fully discharge its duty under CWA section 402(c)(2) to ensure that States not violate the requirements of CWA section 402(b)(1) if the only statutorily-authorized remedy were program withdrawal. Therefore, Congress provided EPA the objection and veto authority found in CWA section 402(d). EPA believes that it must be able to invoke this authority as provided in the proposed 40 CFR 123.44(k) to implement the goals of the CWA and the requirements of CWA section 402(b).

EPA also believes that today's proposal is consistent with the purpose of CWA section 402(d). The Agency's objection and veto authority, under CWA section 402(d), is necessary to correct program and permit inadequacies before they have become so systemic that program withdrawal is justified. The Agency should reserve withdrawal authority for gross inadequacies in a State program. This distinction was recognized by Representative Reuss, then chairman of the House Conservation and Natural Resources Subcommittee, who explained that:

> * * * Federal takeover should not be necessary when EPA finds that only a few of the permit applications are being "improperly" issued. Such total takeover would result in chaos both at the State and Federal level. It should be exercised with great care and only when there is clear evidence that the entire State program has fallen into disrepair.

118 Cong. Rec. 10,240 (1972). Accordingly, he argued that the Agency required the authority in CWA § 402(d) to ensure uniform implementation of the Act's requirements in individual permits:

> The EPA Administrator should not have to veto a State's total program just to get at permits granted improperly to a couple of polluters. So we still need a veto on individual permits to check those that are improperly granted, and this concept is already embodied for interstate waters in section 402 (d) (2) of the House bill.

Id. EPA's interpretation of the veto authority conferred in section 402(d) is consistent with the explanation of the relationship between sections 402(d) and 402(c) as articulated in these floor statements. Without the authority to object to expired permits on impaired waters, EPA's only recourse is program withdrawal. EPA believes this is clearly inconsistent with the intent of CWA section 402(d).

Also, it would make little sense for Congress to have left the Agency without discretion under CWA section 402(d) to address, at the time of permit expiration, the problem of lengthy administrative extension. EPA could have addressed the problem by objecting to and vetoing the permit at the time it was initially proposed had the Agency known then that the permit would be administratively extended for an unreasonable length of time. EPA believes that, instead, the statute can reasonably be read under *Chevron* to allow States to issue 5-year permits and provide for administrative continuance without an initial EPA objection or veto by preserving the Agency's objection and veto authority to ensure that the use of administrative continuance is consistent with the statutory scheme that underlies section 303(d) of the Act.

H. Conclusion

It is important to note that the Agency is not here considering imposing newly formulated water quality-based effluent limitations during the term of the existing permit. Nor would the proposed change interfere with the proper operation of State administrative continuance laws. The Agency would exercise its discretion to veto an administratively-continued permit when the Agency perceives a need to issue a permit that reflects water quality-based effluent limitations necessary for the water to achieve applicable water quality standards. But the permit would remain administratively-continued until the Agency or the State issued a new permit (with the wasteload allocation incorporated). In no instance would a permittee go without authorization to discharge simply for failure of the State to take action on the permittees timely application for renewal. The Agency invites comment on other statutorily-authorized mechanisms by which the Agency might address expired and administratively-continued permits for sources discharging to impaired waterbodies. EPA also requests comment on whether it should limit the exercise of this authority to impaired waters for which a TMDL has not been developed and approved and to waters for which a TMDL has been approved and a change to the administratively-continued permit is necessary to implement a WLA in the approved TMDL.

EPA recognizes that State agencies have limited resources to implement their NPDES programs and often expired, administratively-continued

permits are not a result of State unwillingness to reissue permits. EPA recognizes that a State may be unable to reissue permits because of competing priorities. EPA faces similar resource constraints when it issues permits. The Agency also recognizes the State's role as primary implementers of the NPDES program. The Agency, after carefully weighing these considerations with the risks associated with allowing critical permits to remain unrevised, has concluded that the proposal of this provision is appropriate.

V. Regulatory Assessment Requirements

A. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Administrator certifies that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared a regulatory flexibility analysis.

The first of today's proposed new provisions would amend EPA's water quality standards regulations to require that States adopt and implement antidegradation policies that ensure new and significantly expanding dischargers who are large entities on impaired waterbodies offset their discharges by more than a 1.5:1 ratio. (The proposal would also amend the NPDES regulations to prohibit EPA from issuing an NDPES permit unless the discharger complies with applicable antidegradation requirements that are to include provisions requiring offsets.) Because the provision would require a State (or EPA) to obtain offsets only from large entities, there is no impact on small entities.

The second provision being proposed today would extend EPA's current authority under the NPDES regulations to designate and require NPDES permits for certain presently unpermitted sources. The proposal would authorize EPA under certain conditions to require permits for animal feeding operations (AFO), aquatic animal production facilities (AAPF) or silvicultural activities. The current regulations provide that, where EPA is the permitting authority, EPA may designate an AFO or AAPF as a point source requiring an NPDES permit if the Agency determines it is a significant contributor of pollution to waters of the U.S. The proposed changes would extend this discretionary designation authority to authorize EPA action in States with approved NPDES programs but only in narrow circumstances. EPA could invoke this authority only in those instances where the Agency establishes a TMDL and designation is necessary to satisfy the reasonable assurance standard under that TMDL.

In addition, under the current regulations, most silviculture stormwater sources are exempt from NPDES regulation. Under the proposal, these stormwater sources would continue to be exempt unless and until EPA, or a State with an approved NPDES program, designated them as subject to NPDES regulation. The effect of today's proposed elimination of the categorical silviculture exclusion would be limited. The currently unregulated silvicultural sources would only be required to obtain NPDES permit authorization (1) upon a case-by-case designation by EPA or the authorized State and (2) for the purposes of EPA designation, only for sources that discharge to waters for which EPA establishes a TMDL to ensure that the wasteload allocations and load allocations under the TMDL are achieved. NPDES-authorized States, however, might choose to use the new authority more broadly, but EPA would encourage them to use it in the same limited manner that EPA would use it. In fact, EPA expects that States would exercise this authority infrequently, because many States have additional nonpoint source authorities, unavailable to EPA, to control discharges from these sources. EPA has concluded that this provision would not impose significant new costs on a substantial number of small entities.

EPA assessed the potential costs associated with the permitting of newly designated sources under several different scenarios. The results of this evaluation show that there would not be a significant impact on a substantial number of small entities if this proposal were adopted. As a first step in its evaluation, EPA identified those small entities potentially affected by the proposal. In identifying these small entities, EPA used the definitions of small businesses established by the RFA. Small governmental jurisdictions and small organizations (e.g. nonprofit organizations) are not expected to be affected by the designation provisions. Only businesses in sectors which include silviculture, animal feeding operations and aquatic animal production facilities would potentially be impacted by this limited extension of EPA's (and in the case of silviculture, State) authority to designate point sources.

There would be additional costs to small entities if EPA, following promulgation of the designation provision, were to designate a particular discharger for permitting. As noted previously, this would occur only when a State fails to submit a TMDL or submits a TMDL that EPA finds will not reasonably assure compliance with the load allocations. EPA assumes that States will make every effort to develop effective TMDLs and employ their existing programs and legal authority to ensure compliance. Currently, every State has a nonpoint source control program which in many cases includes legal authority to address those industrial sectors that are the focus of the limited designation authority (AFOs, silviculture activities and aquaculture). EPA also expects further enhancements to State point and nonpoint source control programs as the States develop their TMDLs. In these circumstances, EPA can predict with a high degree of confidence that the occasion on which it may need to exercise its proposed new designation authority will not be great. EPA, however, cannot predict specifically how often this authority may be used, or exactly how often States will use their new designation authority with respect to silviculture.

The analysis of potentially regulated silviculture entities was based on a modified sales test that compared the estimated per acre cost of compliance with per acre sales revenue. The results show that the potential costs of implementing BMPs per acre are less than 1% of sales revenues from one acre of timber. Both compliance cost based on anticipated BMPs and sales per acre were calculated regionally, to account for regional variations in timber practices and timber sales values. This analysis concluded that both logging operations and timber land owners (i.e. nurseries, etc.) are expected to experience costs of much less than 1% of sales in every scenario tested.

While EPA's exercise of the limited new proposed designation authority for silviculture, may at some point in the future, result in the imposition of these

additional costs on dischargers, including small entities, it is the Agency's view that adoption of the provisions giving EPA and the States authority to subject these sources to NPDES permitting requirements does not impose additional costs on dischargers now. Further, because the proposed authority is discretionary, it is not possible to identify which nonpoint source dischargers, if any, would be designated as point sources and required to obtain a permit. No sources would be automatically so designated. Only in the event EPA or a State acted to designate a particular discharger would there be any costs to the discharger.

In analyzing potentially regulated animal feeding operations (AFOs), EPA performed a sales test. The analysis determined that the average potential costs of permit compliance are less than 1% of most small entity sales revenue. However, this analysis was constrained by two factors. First, the sales test relied on revenue data by farm, which resulted in an underestimate of sales revenue from small operations that own more than one farm and also underestimated sales revenue from operations that receive revenue from more than one type of source (sell more than one type of item). Second, EPA used the more complete State 305(b) lists of impaired waterbodies (rather than 303(d) lists) to estimate the number of entities that might be designated under the proposed rule. Because waters listed as impaired under 305(b) may still be attaining water quality standards and thus not require a TMDL, this overestimates the number of entities used in EPA's assessment. AFOs located on waterbodies that do attain standards are not affected by today's proposal. Taking into account these constraints, EPA's best estimate is that very few small entities (less than 100 annually) would experience impacts greater than one percent of sales revenue, and even fewer will experience impacts of greater than three percent of sales revenue as a result of being designated. Therefore, EPA's evaluation shows that there would not be a significant impact on a substantial number of small AFOs.

The analysis of potentially regulated Aquatic Animal Production Facilities (AAPFs) indicates that very few are located on impaired waterbodies. EPA estimates that only two to ten operations could potentially be designated annually. If these entities are designated however, a sales test indicates that a few small entities may experience permit compliance costs of approximately 4% of sales revenue. Since so few AAPFs discharge to impaired waterbodies, EPA's evaluation shows that there would not be a significant impact to a substantial number of small AAPFs.

In the case of animal feeding operations and aquatic projects, the proposed authority merely would backstop existing State authority under the Clean Water Act. Thus, EPA designation authority would not impose any new costs on nonpoint source dischargers potentially subject to designation because any costs to the potentially designated sources that would result if EPA exercised its designation authority are the same costs that would result if the State exercised its designation authority under existing State and Federal laws and regulations. Thus, the costs to animal feeding and aquatic projects would be the same whether the State or EPA designated the source as subject to NPDES.

Moreover, when and how often EPA might exercise the proposed authority is unpredictable for several reasons. First, the proposal would authorize EPA action in only a limited set of circumstances: (1) Where a State has either failed to submit a TMDL (or submitted a deficient TMDL); (2) EPA has established a TMDL for the water body; and (3) EPA determines that the nonpoint source is a significant contributor of pollution and that designation (and permitting) of the source are needed to ensure that load and waste load allocation are met. EPA cannot predict when it may be required to establish TMDLs. However, the Agency's expectations are that States with approved NPDES programs will be submitting approvable TMDLs with load and waste load allocations that will reflect achievement of the TMDLs, and that EPA thus will need to exercise its designation authority infrequently. Because EPA does not know for which water bodies in which States it will need to establish TMDLs, it cannot predict what nonpoint source dischargers it may need to consider for designation under the proposed authority.

These intervening steps between today's proposal and any exercise of EPA's authority (if the rule were promulgated as proposed) underscore EPA's position that adoption of the designation provisions would not impose significant costs on a substantial number of small entities. Promulgation of the proposal is only one step in a series of actions that must occur before any costs are imposed on any particular nonpoint source discharger.

The third provision in the proposal would authorize EPA, in certain circumstances, to object to state-issued permits that have not been reissued following the expiration of their 5-year term. Where water quality standards (or applicable effluent limitations guidelines) change during a permit term, the permittee is generally protected during the permit term against new or more stringent permit conditions necessary to implement the new water quality standards or effluent limitations guidelines, until a new permit is issued. In most cases, permittees submit timely applications for renewal and permitting authorities reissue these permits in a timely manner. In some cases, authorized States may fail to reissue NPDES permits at the end of their 5-year term as is currently required, and the existing permits continue in effect under general principles of administrative law. (Administrative continuance protects the permittee who has submitted a timely application for renewal from being penalized for discharging without a permit.)

This proposal, if promulgated, would authorize EPA to take action to reissue an expired permit in those cases where the State failed to reissue the permit after a specified period. EPA's exercise of this authority is limited to circumstances in which a permit authorizes discharges to impaired waterbodies or the permit does not currently contain limits consistent with an applicable waste load allocation in an EPA approved or established TMDL. While EPA assumes that authorized States will expeditiously reissue permits with the required water quality-based effluent limits, where States fail to reissue such permits, EPA would use this new authority to issue such permits in a timely manner.

This provision also would not impose any additional costs on dischargers, including small entities. Because as a matter of law, the discharger's new permit, when issued, already must include any applicable new or more stringent conditions. Therefore, the effect of the proposed change is, at most, to accelerate the timing of the legally-mandated compliance with the new conditions. Consequently, EPA has concluded that adoption of a proposal to authorize future discretionary action by EPA would not result in the imposition of any new costs on small entities.

For the reasons explained herein, EPA concluded that it could properly certify the proposal. *See e.g., United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule," United

Distribution at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court); *see also Motor & Equip. Mrfrs. Ass'n* v. *Nichols*, 142 F.3d 449, 467 & n.18 (D.C. Cir. 1998) (the RFA imposes no obligation on an agency to conduct a small entity analysis on entities it does not regulate); *American Trucking Association, Inc.* v. *EPA*, 175 F.3d 1027 (D.C. Cir. 1999) (the RFA requires an agency to prepare a small entity impact analysis only of the effects on those entities that are subject to the requirements of a rule or directly regulated by a rule). Additional information supporting EPA's assessment is described in the administrative record supporting the proposal.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The costs to State, local and tribal governments, in the aggregate, or the private sector in any one year to implement the requirements in today's proposal are not expected to exceed $65.2 million in any one year. The total cost to State, local and tribal governments is not expected to exceed $0.96 million in any one year, with a majority of these costs born by State government. The remaining $64.24 million is expected to be born by the private sector. Thus, today's proposed rule is not subject to the requirements of section 202 and 205 of UMRA.

A detailed discussion of the costs and impacts of the proposed rule, and the methodologies used to assess them, are included in the *Analysis of the Incremental Cost of Proposed Revisions to the NPDES Permit and Water Quality Standards Rules* which is available in the docket for this rule-making. While the analysis is based on the best data currently available to the agency, it necessarily includes assumptions where needed to fill data gaps. One such assumption is the percentage of large construction sites that would be required to obtain offsets under the proposed rule. Based on the percentage of waters identified in State 305(b) reports where construction activity contributed to impairment, EPA has estimated that 2–3% of large construction sites would discharge pollutants of concern to impaired waters and thus be required to obtain offsets. EPA requests comment on this assumption and any data that commenters may have that would support their comments. EPA also requests comment more generally on all of the assumptions and methodologies used in the economic analysis.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely impact small governments. As explained in the Regulatory Flexibility Act section of the preamble, this proposed rule establishes no requirements applicable to small governmental entities. Further, regulated entities are not expected to negatively impact small governmental entities. Therefore, this proposed rule will not significantly affect small governmental entities.

In addition, today's proposal will not significantly or uniquely affect Tribal governments. Currently, there are only fifteen Tribes with EPA approved or promulgated water quality standards and there are no Tribes authorized to administer the NPDES program or to establish TMDLs under section 303(d). As a result, this proposal will not significantly or uniquely affect Tribal governments. However, as Tribes continue to build their Clean Water Act capacity and establish water quality programs, more Tribes are likely to adopt water quality standards and seek approval to administer the NPDES program and establish TMDLs. If today's proposed rulemakings were to result in changes to these future Tribal water quality programs, the costs for Tribal governments would be analyzed. Moreover, whether or not Tribes choose to do so, they have a strong interest in protecting water quality on Tribal lands. Thus, even though today's proposal will not significantly or uniquely affect Tribal governments, Tribes may in the future be subject to the requirements in today's proposal. Recognizing the need to consider the views and concerns of Tribal governments in any comprehensive evaluation of how

TMDLs are established, EPA determined it was appropriate to include a Tribal representative on the TMDL FACA Committee. The committee's final report addresses Tribal issues, recommending that EPA increase efforts to educate Tribes about water quality programs, including TMDLs, and ensure that EPA and State water quality staff respect the government-to-government relationship with Tribes in all TMDL activities.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1920.01) and a copy may be obtained from Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

The offset provision will result in either the modification of NPDES permits, the issuance of new NPDES permits, or the issuance of an individual NPDES permit in lieu of coverage under a General Permit. The designation provisions will result in the issuance of NPDES permits (either individually or under a General Permit) to operations that would not have previously have required to obtain them. The NPDES permitting authorities, in the form of NPDES authorized States and Territories or EPA Regions in Non-NPDES authorized States and Territories, intend to use the information collected to set appropriate permit conditions, track discharges, and assess permit compliance. EPA has examined available databases and determined that these databases revealed no duplicate requirements. EPA has concluded that no government information collection activity duplicates the information requested by this and, therefore, it has no other way to obtain the information. Therefore, these responses are mandatory. In addition to the NPDES permitting authorities, EPA's Office of Wastewater Management (Office of Water), OECA, and environmental groups will most likely use the information collected to assess the regulated community's level of compliance and help evaluate the effectiveness of these provisions. Although highly unlikely, permit applications may contain confidential business information. If this is the case, the respondent may request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976. However, CWA section 308(b) specifically states that effluent data may not be treated as confidential.

The total projected burden associated with the information collection requirements of this proposal is estimated to be 71,996 hours annually and to impose an estimated cost of $2,415,320 annually. The annual burden to each private sector respondent for collecting information required by the rule is estimated to be: (1) An average of 23 hours per each construction respondent; (2) an average of 28.6 hours per other storm water respondent; (3) an average of 55 hours per respondent requiring process water offsets; (4) an average of 84 hours per silviculture activity that is designated; (5) an average of 47 hours per animal feeding operation that is designated; and (6) an average of 88 hours per aquatic animal production facility that is designated. The annual burden to NPDES authorized States and Territories is (1) An average of 1,040 hours per general permit issued; (2) an average of 1.5 hours to process and review each storm water NOI; (3) an average of 2 hours to process and review each submitted or updated silviculture or animal feeding operation NOI; and (4) an average of 80 hours to issue an NPDES permit to designated aquatic animal production facility. The Agency's burden is estimated to be 4,646 hours annually. These burden estimates include the time required to review the instructions, search existing data sources, gather and maintain (usually in electronic databases) all necessary data, and complete and review the information required to be collected.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW; Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 23, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by September 22, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Executive Orders on Federalism

Under Executive Order 12875, "Enhancing the Intergovernmental Partnership," EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

EPA has concluded that this proposed rule will create a mandate on State governments and authorized Tribes and that the Federal government will not provide all of the funding necessary to pay the direct costs incurred by the State governments and authorized Tribes in complying with the mandate.

However, EPA has substantially increased funding for States, Territories, and authorized Tribes through the State-matched CWA section 106 and 319 grant programs. In developing this proposed rule, EPA consulted with State, local, and tribal governments to enable them to provide meaningful and timely input in the development of this rule.

Before beginning to develop today's proposal, EPA convened a Federal Advisory Committee to make recommendations for improving the efficiency and effectiveness of TMDLs. The TMDL FACA Committee was comprised of 20 members, including four senior level State officials; an elected local official, and a Tribal consortium representative. Over a period of one and one-half years, the TMDL FACA Committee held six meetings at locations throughout the country. These meetings were open to the general public, as well as representatives of State, local, and Tribal governments, and all included public comment sessions. The TMDL FACA Committee focused its deliberations on four broad issue areas: identification and listing of waterbodies; development and approval of TMDLs; EPA management and oversight; and science and tools. On July 28, 1998, the TMDL FACA Committee submitted its final report to EPA containing more than 100 consensus recommendations for changes and improvements to TMDLs. As explained throughout this preamble, EPA carefully reviewed the TMDL FACA Committee's consensus recommendations and incorporated, in whole or in part, most of those recommendations in this proposal.

Following completion of the FACA Committee process, EPA continued to meet with State and local government officials to seek their views on needed changes to the Water Quality Standards and NPDES regulations. While expressing support for many of the proposed changes being considered by EPA, State officials and their representatives also expressed general concerns about the capacity of State governments to carry out the new requirements proposed today. In particular, States were concerned about writing NPDES permits which satisfy the offset requirements, in the absence of a well established market for pollutant trading. The proposed regulation establishes some explicit requirements for States to use in establishing an offset sufficient to satisfy the offset requirements. States were also concerned about the role of EPA in reissuing State-issued expired and administratively-continued NPDES permits. EPA determined that the exercise of its authority in limited circumstances is necessary to assure reasonable further progress in impaired waterbodies prior to the establishment of a TMDL and to provide reasonable assurance that TMDLs will be implemented. In developing today's proposal, EPA considered the concerns of State and local governments and determined the need to revise the NPDES and Water Quality Standards regulations to provide opportunities for further progress toward meeting water quality standards in impaired waterbodies and to provide reasonable assurance of effective TMDL development. Today's proposal improves the effectiveness, efficiency and pace of water quality improvement and TMDL establishment.

Finally, while there is a new executive order on federalism, it will not go into effect for ninety days. In the interim, under the current E.O. 12612 on federalism, this rule does not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government. The only provisions in this rule that directly affect States are those requiring States to adopt and implement antidegradation policies that ensure new and significantly expanding dischargers who are large entities on impaired waterbodies offset any proposed increases in their discharges by more than a 1.5:1 ratio. These provisions are not substantial in the context of State's overall water quality and permitting program. States already are required to have, and do have, antidegradation policies. This rule simply would require States to add one discrete provision to their existing policies. With respect to the remaining provisions, authorizing EPA to designate certain sources as point sources and to reissue expired permits where the State failed to do so, these provisions authorize EPA to act only where the State has failed to act. Accordingly, these provisions will not have a substantial direct effect on States or on intergovernmental relationships or responsibilities.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with these governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

As explained above in the discussion of UMRA requirements, today's rule proposal does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866.

H. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials

specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the EPA to provide Congress, through OMB, an explanation of the reasons for not using such standards.

This proposed rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and specifically, EPA invites the public to identify any potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalities, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Hazardous substances, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 131

Reporting and recordkeeping requirements, Water pollution control.

Dated: August 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR Parts 122, 123, 124, and 131 as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 122.2 as follows:

a. Adding the definition of "*Existing discharger;*"

b. In the definition of "*New discharger,*" revising the introductory text and paragraphs (a) through (d);

c. Adding the definition of "*Significant expansion.*"

§ 122.2 Definitions.

* * * * *

Existing discharger means any building, structure (including an outfall or a pipeline), facility, or installation:

(a) From which there is a "discharge of pollutants" to "waters of the United States" that has received or been permitted under a finally effective NPDES permit; or

(b) From which pollutants have been and are currently added to waters of the United States that has never received nor been permitted under a finally effective NPDES permit, but only if it becomes subject to NPDES permitting requirements pursuant to a regulatory designation (on an individual or categorical basis).

(c) This term includes those dischargers who move an outfall(s) within the "same body of water." In determining whether an outfall is moved within the "same body of water" as its original location, the permitting authority should consider whether:

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar at and between both outfall points;

(2) There is a direct hydrological connection between outfall points; and

(3) Water quality characteristics (e.g., temperature, pH, hardness) are similar at and between both outfall points.

* * * * *

New discharger means any building, structure (including an outfall or a pipeline), facility, or installation:

(a) From which there is or may be a "discharge of pollutants' to "waters of the United States;"

(b) Which has never received or been permitted under a finally effective NPDES permit; and

(c) Which is not an existing discharger.

(d) This term includes those dischargers who move an outfall(s) to another location not within the same body of water.

* * * * *

Significant expansion means a twenty percent or greater increase in loadings above the discharger's current permit limit.

* * * * *

3. In § 122.4, add new paragraph (j) to read as follows:

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).

* * * * *

(j)(1) To a new discharger or existing discharger undergoing a significant expansion unless the discharger complies with the antidegradation provisions of State water quality standards applicable to such waters, including the antidegradation provisions adopted pursuant to 40 CFR 131.12(a)(1)(ii).

(2) Where a permit is issued subject to paragraph (j)(1) of this section and where the discharger is required to obtain and maintain pollutant load reductions required as offsets to meet antidegradation requirements adopted pursuant to 40 CFR 131.12(a)(1)(ii), the discharger must also comply with each of the following:

(i) The pollutant load reductions must be achieved from a source(s) of the pollutant(s) for which the waterbody is impaired and that the new or existing discharger undergoing a significant expansion is required to offset;

(ii) The pollutant load reductions must be achieved from a source(s) located on the same waterbody as the discharge from the new discharger or existing discharger undergoing a significant expansion;

(iii) The pollutant load reductions must be the result of pollutant control measures implemented by, or secured and assured by, the new discharger or existing discharger undergoing a significant expansion (credit will not be give for reductions already required for some other reason);

(iv)(A) The pollutant load reductions must be achieved on or before the date the discharge commences and remain in place until

(*1*) A TMDL for the waterbody is approved or established by EPA, and the discharger's permit reflects its wasteload allocation under the TMDL; or

(*2*) The discharger ceases to discharge the pollutant(s) causing the impairment;

(B) The Director has the discretion not to require that the pollutant load reductions be achieved on or before the date the discharge commences, but as soon thereafter as possible, in exchange for requiring the discharger to obtain pollutant load reductions by an amount of at least twice the amount of the new or expanded discharge.

(v) Where a discharger obtains pollutant load reductions from an existing point source(s), the NPDES permit(s) for the existing point source(s) must be modified to reflect those reductions on or before the date the permit is issued to the new discharger

or existing discharger undergoing a significant expansion; and

(vi) Where a discharger obtains pollutant load reductions from an existing nonpoint source(s), the discharger's permit must include any conditions, including the offset requirements and any accompanying monitoring and reporting requirements, necessary to ensure continued achievement of the pollutant load reductions from the nonpoint source(s).

(3) An explanation of the development of the requirements for the discharger to meet the criteria of paragraphs (j)(1) and (2) of this section must be included in the fact sheet or statement of basis for the permit required under 40 CFR 124.7 and 124.8.

(4) The terms "new discharger" and "significant expansion" are defined in § 122.2 of this part.

4. Amend § 122.23 to revise paragraphs (c)(1) introductory text and (c)(3) and to add new paragraph (c)(4) to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Case-by-case designation of concentrated animal feeding operations.* (1) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

* * * * *

(3) A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

(4) In States with approved NPDES programs, EPA shall only designate animal feeding operations where pollutants are discharged into waters for which EPA establishes a TMDL to ensure that wasteload allocations and load allocations under the TMDL are achieved.

5. Amend § 122.24 to revise paragraphs (c)(1) and (c)(2) introductory text and to add new paragraph (c)(3) to read as follows:

§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

* * * * *

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

(3) In States with approved NPDES programs, EPA shall only designate aquatic animal production facilities where pollutants are discharged into waters for which EPA establishes a TMDL to ensure that the wasteload allocations and load allocations under the TMDL are achieved.

6. Amend § 122.26 to revise paragraphs (a)(1)(v) and (b)(14)(x) to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) * * *

(1) * * *

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at § 122.2. The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

(A) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2;

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to waters of the United States;

(D) Other relevant factors;

(E) EPA shall only designate discharges from silvicultural activities into waters for which EPA is establishing the TMDL to ensure that the wasteload allocations and load allocations under the TMDL are achieved.

* * * * *

(b) * * *

(14) * * *

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale (This term does not include construction activity associated with silviculture, except rock crushing, gravel washing, log sorting, and log storage facilities);

* * * * *

7. Amend § 122.27 to revise paragraph (b)(1) to read as follows:

122.27 Silvicultural activities (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) *Definitions.* (1) *Silvicultural point source* means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. This term also includes discharges composed entirely of storm water from silvicultural activities that are designated under 40 CFR 122.26(a)(1)(v) as requiring a 402 permit. Some activities (such as stream crossing for roads) may involve point source discharges of dredged and fill material which may require a CWA section 404 permit (See 33 CFR 209.120 and part 233).

* * * * *

8. Amend § 122.29 by revising paragraph (a)(3) to read as follows:

§ 122.29 New sources and new dischargers.

(a) * * *

(3) Existing discharger is defined in § 122.2;

* * * * *

9. Amend § 122.44 to revise paragraph (d) introductory text and paragraph

(d)(1) introductory text to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) *Water quality standards and State requirements:* any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality and State antidegradation provisions.

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 123.44 to add paragraph (k) to read as follows:

§ 123.44 EPA review of and objections to State permits.

* * * * *

(k)(1) Where a State fails to submit a new draft or proposed permit to EPA within 90 days after the expiration of the existing permit, EPA may review the administratively-continued permit, using the procedure described in paragraphs (a)(1) through (h)(3) of this section, if:

(i) The administratively-continued permit allows the discharge of pollutants into a waterbody for which EPA has established or approved a TMDL and the permit is not consistent with an applicable wasteload allocation; or

(ii) The administratively-continued permit allows the discharge of a pollutant(s) of concern into a waterbody that does not meet water quality standards and for which EPA has not established or approved a TMDL.

(2) To review an expired and administratively-continued permit under this subsection, EPA must give the State and the discharger at least 90 days notice of its intent to consider the expired permit as a proposed permit. At any time beginning 90 days after permit expiration, EPA may submit this notice.

(3) If the State submits a draft or proposed permit for EPA review at any time before EPA issues the permit under paragraph (h) of this section, EPA will withdraw its notice of intent to take permit authority under this subsection and will evaluate the draft or proposed permit under this section.

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.* Clean Air Act 42 U.S.C. 7401 *et seq.*

2. Section 124.7 is revised to read as follows:

§ 124.7 Statement of basis.

EPA shall prepare a statement of basis for every draft permit for which a fact sheet under 124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis must also include the reasons for any determinations made, limitations derived or requirements set to satisfy the provisions under § 122.4(j) of this chapter.

3. Amend § 124.56 by revising (b)(1)(ii); (b)(1)(iii) and (b)(1)(iv) and by adding paragraph (b)(1)(v) to read as follows:

§ 124.56 Fact sheets.

* * * * *

(b)(1) * * *

(ii) Limitations on internal waste streams under § 122.45(i) of this chapter;

(iii) Limitations on indicator pollutants under Sec. 125.3(g) of this chapter;

(iv) Limitations set on a case-by-case basis under Sec. 125.3 (c)(2) or (c)(3) of this chapter, or pursuant to Section 405(d)(4) of the CWA; or

(v) Limitations and/or requirements derived to satisfy the provisions under § 122.4(j) of this chapter.

* * * * *

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Amend § 131.12 to redesignate paragraph (a)(1) as paragraph (a)(1)(i) and add new paragraph (a)(1)(ii) to read as follows:

§ 131.12 Antidegradation policy.

(a) * * *

(i) * * *

(ii) In order to authorize a new discharger or an existing discharger undergoing a significant expansion as defined in 40 CFR 122.2, that is not a small entity as defined in 5 U.S.C. 601(6), to discharge into a waterbody that does not attain water quality standards the pollutant(s) causing the nonattainment and for which EPA has not approved or established a Total Maximum Daily Load for a pollutant(s) causing the nonattainment, reasonable further progress shall be made toward attaining the water quality standard. Reasonable further progress for these dischargers means, at a minimum, that any increase in mass loadings of the pollutant(s) causing the nonattainment will be offset by pollutant(s) load reductions of the pollutant(s) causing the nonattainment by a ratio of at least equal to 1.5:1.

(A) The Director may determine that an offset in pollutant load reduction(s) at a ratio of less than 1.5:1, but more than 1:1, is sufficient to achieve reasonable further progress.

(B) Where the Director determines that any offset may result in further degradation of water quality, the Director need not require an offset.

(C) A discharger required to obtain an offset shall comply with the requirements under § 122.4(j)(2) of this chapter.

* * * * *

[FR Doc. 99–21415 Filed 8–20–99; 8:45 am]
BILLING CODE 6560–50–P

VI

OL

64

SS

1
6
2

AG

23

99

MI

federal register

Monday
August 23, 1999

Part IV

Department of Housing and Urban Development

48 CFR Part 2401 et al.
HUD Acquisition Regulation;
Miscellaneous Revisions; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2401, 2402, 2403, 2409, 2413, 2414, 2415, 2416, 2419, 2424, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2439, 2442, 2446, 2451, 2452 and 2453

[Docket No. FR–4115–I–01]

RIN 2535–AA24

HUD Acquisition Regulation; Miscellaneous Revisions

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends the Department of Housing and Urban Development (HUD) Acquisition Regulation (HUDAR) to implement changes made to the Federal Acquisition Regulation since the HUDAR's last issuance, and implement requirements of the Federal Acquisition Reform Act of 1996.

DATES: Effective Date: September 22, 1999.

Comment Due Date: October 22, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address. Facsimile comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Field Operations Division, Office of Procurement and Contracts, Room 5262, 451 Seventh Street, SW., Washington, DC 20410–3000 (voice (202) 708–0294, TDD (202) 708–1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Chief Procurement Officer under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 6, 1998, (63 FR 54722); and the general authorization in FAR 1.301.

The most recent version of the HUDAR was published as a final rule on May 1, 1996 (61 FR 19467). Since then, the FAR has undergone numerous revisions. This interim rule amends the HUDAR to conform to the current FAR numbering, correct FAR citations and references, correct or remove obsolete text, clauses and provisions, and make other changes to comply with current FAR requirements. Please note that the Department is also publishing a proposed rule containing additional revisions to the HUDAR.

Section 2401.103 is revised to reflect Departmental reassignment of responsibility for prescribing the HUD Acquisition Regulation from the Assistant Secretary for Administration to the Chief Procurement Officer.

Section 2401.601 is revised to reflect the change in the designation of the Department's Senior Procurement Executive from the Assistant Secretary for Administration to the Chief Procurement Officer and related changes to the contracting authority of Departmental components.

Section 2401.603–2 is revised to delete obsolete language regarding the appointment of persons other than full-time Contracting Officers and the maintenance of certificates of appointment.

Section 2401.603–3 is revised to delete language redundant to the FAR and obsolete language concerning waivers to the selection criteria. Paragraph (b), which contained a requirement that the appointing official execute a separate statement that a selectee meets the Contracting Officer selection criteria, is deleted. The execution of the SF 1402, Certificate of Appointment, by the selecting official is sufficient evidence of the official's determination that an individual has met the selection criteria.

Section 2402.101 is revised to: change the definition of "Accounting Office" and "Senior Procurement Executive" to reflect changes in HUD's organization; delete definitions for "best value," "lowest-priced technically acceptable proposal" and "source selection official," which are redundant to definitions now in the FAR; and add definitions for "Government technical representative" and "Government technical monitor," HUD's terminology for Contracting Officer's (technical) representative.

Section 2403.101 is amended to correct citations of Federal standards of conduct rules and to redesignate sections to reflect current FAR section numbering.

Section 2403.502 is revised to delete the obsolete revision number and date of the cited Departmental handbook and to eliminate the need to revise this provision when and if the handbook is revised in the future.

Section 2409.500 and 2409.504 are removed. The Department believes that adequate guidance and procedures are contained in FAR 9.5.

Numerous sections in Part 2413 are redesignated and retitled to reflect changes in section numbering and titles in FAR Part 13.

Section 2414.407–4 is revised to reflect changes in FAR section numbering.

A new section 2415.204 is added to designate the cognizant HCA as the responsible official for making exemptions pursuant to FAR 15.204(e).

Section 2415.413 is removed to reflect related changes in FAR Part 15.

Section 2415.506 is redesignated as 2415.606 and revised to reflect current Departmental policy concerning the receipt of unsolicited proposals.

Section 2415.604 is redesignated as 2415.303. A new paragraph (a) is added to implement the Departmental policy that the heads of requiring activities (i.e., program offices) serve as the source selection authorities for selections made using the trade-off approach and that the General Counsel or his/her designee serve as the selection authority for procurements for the performance of legal services by outside counsel.

A new section 2416.505 is added to designate the Departmental and contracting activity task order and delivery order ombudsmen.

Section 2415.613 is removed. Federal Acquisition Circular 97–2 removed the provision at FAR 15.613 permitting the use of alternative source selection procedures previously used by NASA and the Defense Department. Given the authority now contained in FAR 15.306(c)to limit the competitive range, the Department has determined that its alternative selection process is no longer needed.

In section 2419.503, the words "Acquired Property" are replaced with "Real Estate Owned" to reflect a change in Departmental terminology.

Section 2419.708 is revised to add a prescription for the use of a new clause at 2452.219–71.

The clause prescription at section 2424.202–70 and the relevant clause at

2452.224–70 are removed. The clause, which permitted the disclosure of proposals, is contradictory to the prohibition against such disclosure at FAR 24.202.

Numerous revisions are made to Parts 2425 and 2426 to align section numbering with the current FAR.

Section 2428.106–6 is revised to designate the Contracting Officer as the authorized Departmental official to furnish bonding information requested in accordance with FAR 28.106–6.

In section 2432.402, paragraph (c)(1) is revised to designate the HCAs as the Departmental officials authorized to make required determinations and findings with regard to advance payments. This is a change in terminology. The field contracting directors and Director, Office of Procurement and Contracts, currently the authorized officials, are HCAs.

In section 2432.908, the prescription for the use of alternates to the clauses at 2452.232–70 and 2452.232–71 is removed to reflect the Department's standardization contract payment invoicing procedures.

Part 2433 is revised to implement Departmental rules for agency-level protests in accordance with FAR 33.103(d)(4).

Section 2433.101–70 is removed. FAR 33.101 defines "day" for the purposes of this subpart.

Section 2433.102–70 is revised to clarify that HUD's Office of General Counsel has responsibility for handling protests filed with the GAO or other external adjudicating body, but not for agency-level protests made to the Contracting Officer.

Section 2433.103 is revised to establish a ten (10) day limit on requests for reviews of Contracting Officer decisions in agency-level protests. The ten (10) day period begins with the protestor's receipt of the decision. This section further designates the Head of the Contracting Activity as the Departmental official authorized to review the Contracting Officer's protest decision and approve any determination to award, or not suspend, a contract pending resolution of the protest.

Section 2433.103–70 is removed. The Department will use the standard time frame for responses to agency-level protests provided at FAR 33.103(g).

Section 2433.105 is deleted to reflect deletion of this coverage from the FAR.

Section 2437.110 is revised to redesignate paragraphs to reflect the consolidation of clauses at 2452.237–73 and 2452.237–74 into a single clause and the redesignation of paragraph (g). Paragraph (e) is revised to better clarify the applicability of the clause at 2452.237–75.

Section 2437.110, paragraph (g), which prescribes the use of a clause for background investigations of personnel who work on sensitive automated systems, is redesignated as 2439.107(a). As this requirement concerns information technology systems, it is more appropriately located in Part 2439.

A new Section 2442.1502 is added to designate the Chief Procurement Officer as the Departmental official responsible for implementing procedures for evaluating contractor performance in accordance with FAR 42.1502 and 42.1503.

Subpart 2446.6 is removed. The requirement for use of a the form HUD–9519 for property inspections is not appropriately promulgated via the HUDAR. Where applicable for individual contracts, the use of this form may be expressed in the special provisions.

Section 2451.303 is redesignated as 2451.7001 to reflect the deletion of such instruction from the FAR. The section is revised to clarify that contractors under cost reimbursement contracts should make use of all available travel discounts; that the contractor is responsible for providing his/her employees with documentation required by vendors to obtain discounts; and to delete guidance in paragraph (c) which is redundant to FAR Part 31.

In section 2452.216–73, paragraph (b) is revised to clarify the original intent of the clause, i.e., that HUD may unilaterally revise performance evaluation plans (for award fee contracts) prior to the beginning of each contract period within the overall contract term.

A new section 2452.219–71 is added to require contractors to submit one copy of all required subcontracting reports (i.e., SF 294 and SF 295) to the Department's Office of Small and Disadvantaged Business Utilization (OSDBU).

Section 2452.232–70 is revised in accordance with revisions made to section 2432.908 and to comply with the electronic funds payment information requirements in FAR clauses 52.232–33 and 52.232–34.

Section 2452.232–71 is revised to comply with the electronic funds payment information requirements in FAR clauses 52.232–33 and 52.232–34; and to reflect changes in Departmental invoicing procedures.

Section 2452.233–70 is added to implement HUD's rules on internal reviews of HUD Contracting Officers' decisions on agency-level protests.

Section 2452.237–73 is revised to consolidate in it the former clauses at 2452.237–73 and 2452.237–74 regarding the provision of technical guidance to contractors by HUD technical staff. Section 2452.237–74 is removed.

Section 2452.237–75 is revised to clarify HUD's clearance requirements for contractor personnel who work on-site in HUD facilities.

Section 2452.237–76 is redesignated 2452.239–70 in accordance with changes made to section 2437 described above. The clause is also revised to reflect changes in HUD's requirements for background investigations for contractor employees who have access to Departmental information systems.

Section 2452.237–77 is revised to correct the prescriptive reference and to clarify the treatment of costs of salaries and wages of contractor personnel when HUD facilities are closed for administrative leave.

Part 2453 is revised to make miscellaneous corrections in terminology (e.g., changing "HUD Form" to "form HUD-") and remove obsolete forms.

Findings and Certifications

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because this interim rule amends the HUDAR to conform to the current FAR numbering, correct FAR citations and references, correct or remove obsolete text, clauses and provisions, and make other changes to comply with current FAR requirements. In addition, these amendments do not have a significant effect beyond the internal operating procedures of the agency, or a significant cost or administrative impact on contractors or offerors, which would have subjected them to the FAR 1.301(c) requirement that agency acquisition regulations be published for comment in the **Federal Register** in conformance with the procedures of FAR subpart 1.5. The Department invites public comment on the rule, however, to assure that

consideration is given to the full range of views that may be presented in the development of a final rule that will supersede this interim rule.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. Small businesses are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **COMMENTS** sections in the preamble of this interim rule.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(1) of the HUD regulations, the policies and procedures in this document are not subject to the individual compliance requirements of the authorities cited in 24 CFR 50.4, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk to children.

List of Subjects in 24 CFR Parts 2401, 2402, 2403, 2409, 2413, 2414, 2415, 2416, 2419, 2424, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2439, 2442, 2448, 2451, 2452 and 2453

Government procurement, HUD acquisition regulations.

Accordingly, title 48, Chapter 24 of the Code of Federal Regulations, is amended as follows:

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for part 2401 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2401.103 [Amended]

2. In § 2401.103, the words "Assistant Secretary for Administration" are revised to read "Chief Procurement Officer."

2401.105–2 [Amended]

3. In § 2401.105–2(c) all references to "2401.104–2" are revised to read "2401.105–2".

4. In § 2401.601–70, the first sentence is revised to read as follows.

2401.601–70 Senior Procurement Executive.

The Chief Procurement Officer is the Department's Senior Procurement Executive and is responsible for all Departmental procurement policy, regulations, and procedures. * * *

5. Section 2401.601–71 is revised to read as follows:

2401.601–71 Office of Procurement and Contracts.

The Office of Procurement and Contracts, within the Office of the Chief Procurement Officer, including its Field Contracting Operations, is responsible for all Departmental procurement.

2401.601–72 [Removed]

6. Section 2401.601–72 is removed.

2401.601–73 [Removed]

7. Section 2401.601–73 is removed.

8. In § 2401.603–2, the first paragraph and paragraph (d) are revised to read as follows:

2401.603–2 Selection.

In selecting Contracting Officers, the appointing authorities shall consider the experience, education, training, business acumen, judgment, character, reputation and ethics of the individual to be appointed. The appointing authorities shall also consider the size and complexity of contracts the individual will be required to execute and/or administer, and any other limitations on the scope of the authority to be exercised. In the area of experience, education and training, the following shall be required, unless contracting authority is limited to simplified acquisition procedures:

* * * * *

(d) The selection requirements specified in paragraphs (a) through (c) of this section are applicable to all personnel whose primary duties are performed as a Contracting Officer.

9. Section 2401.603–3 is revised to read as follows:

2401.603–3 Appointment.

(a) Appointments to officials not expressly delegated procurement authority by a published departmental delegation of authority shall be made in writing by the Head of the Contracting Activity. The Certificate of Appointment (SF 1402) shall constitute the appointing official's determination that the appointee meets the selection requirements set forth at 2401.603–2.

PART 2402—DEFINITIONS OF WORDS AND TERMS

10. The authority citation for part 2402 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

11. Section 2402.101 is revised to read as follows:

2402.101 Definitions.

Accounting Office means the Office of Accounting Operations within the Office of the Chief Financial Officer and includes that Office's field components.

Chief Procurement Officer means the HUD official having authority for all of the Department's procurement activities.

Department means the Department of Housing and Urban Development, which may also be designated as HUD.

Government Technical Monitor (GTM) means the individual responsible for assisting a Government Technical Representative in the latter's performance of his/her duties.

Government Technical Representative (GTR) means the individual serving as the Contracting Officer's representative responsible for monitoring the technical aspects of a contract, including guidance, oversight, and evaluation of the Contractor's performance and deliverables.

Head of Contracting Activity (HCA) is defined in accordance with the FAR. The following HUD officials are designated HCAs:

(1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement; and

(2) The Directors, Field Contracting Operations, for field procurement.

Legal Counsel means the Office of General Counsel in Headquarters, or the cognizant Assistant General Counsel in the field.

Primary Organization Heads are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Deputy Secretary. The Primary Organization Heads of HUD include the Assistant Secretaries and equivalent Departmental management (e.g., President, GNMA, Inspector General, General Counsel, Chief Procurement Officer, etc.).

Secretary means the Secretary of the Department of Housing and Urban Development, or his or her designee.

Senior Procurement Executive means the Chief Procurement Officer.

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

12. The authority citation for part 2403 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

13. Section 2403.101 is revised to read as follows:

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 5 CFR part 2635 and 5 CFR part 7501.

2403.408–1 [Removed]

14. Section 2403.408–1 is removed.

2403.409 [Redesignated]

15. Section 2403.409 is redesignated as 2403.405.

2403.502–70 [Redesignated]

16. Section 2403.502 is redesignated as 2403.502–70 and revised to read as follows:

2403.502–70 Subcontractor kickbacks.

Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of the Inspector General consistent with the procedures for reporting any violation of law contained in the current HUD Handbook 2000.3, Office of Inspector General Activities.

2403.601 [Redesignated]

17. Section 2403.601 is redesignated as 2403.602.

Part 2409—Contractor Qualifications

18. The authority citation for part 2409 continues to read as follows:

Authority: 40 U.S.C. 486(c); and 42 U.S.C. 3535(d).

19. The title of Subpart 2409.5 is amended to add the words "and Consultant" after the word "Organizational."

2409.500 [Removed]

20. Section 2409.500 is removed.

2409.502 [Removed]

21. Section 2409.502 is removed.

2409.504 [Removed]

22. Section 2409.504 is removed.

2409.701 [Redesignated]

23. Section 2409.701 is redesignated as 2409.7001.

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

24. The authority citation for part 2413 continues to read as follows:

Authority: 40 U.S.C. 486(c); and 42 U.S.C. 3535(d).

2413.106–2 [Removed]

25. Section 2413.106–2 is removed.

2413.402 [Redesignated]

26. Section 2413.402 is redesignated as 2413.305–2 and a new subpart 2413.3 are added to read as follows:

Subpart 2413.3—Simplified Acquisition Methods

2413.403 [Redesignated]

27. Section 2413.403 is redesignated as 2413.305–3, and the FAR reference in the text is revised from "13.403(a)" to read "13.305–3".

2413.505–1 [Redesignated]

28. Section 2413.505–1 is redesignated as 2413.307 and retitled, "Forms."

2413.601 [Redesignated]

29. Section 2413.601 is redesignated as 2413.301 and retitled "Governmentwide commercial purchase card", subpart heading 2413.6 is removed.

PART 2414—SEALED BIDDING

30. The authority citation for part 2414 continues to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

2414.407–4 [Amended]

31. Section 2414.407–4 is amended by deleting "(1) and (2)" from the FAR citation in the text.

PART 2415—CONTRACTING BY NEGOTIATION

32. The authority citation for part 2415 continues to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

33. A new subpart 2415.2 and a new section 2415.204 are added to read as follows:

Subpart 2415.2—Solicitation and Receipt of Proposals and Information

2415.204 Contract format.

(e) The cognizant HCA shall be responsible for making exemptions pursuant to FAR 15.204(e).

2415.407 [Redesignated]

34. Subpart 2415.4 is removed and section 2415.407 is redesignated as 2415.209 and revised to read as follows:

2415.209 Solicitation provisions.

(a) The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.215–70, Proposal Content, in all solicitations for negotiated procurements using the trade-off selection process expected to exceed the simplified acquisition threshold. The Contracting Officer shall adapt paragraph (c) of the provision (i.e., include, delete or further supplement subparagraphs) to address the particular requirements of the immediate solicitation. The provisions may be used in simplified acquisitions when it is necessary to obtain technical and management information in making the award selection. When award selection will be made through the lowest price technically acceptable method, the provision shall be used with its Alternate I. If the proposed contract requires work on or access to sensitive automated systems or applications (see the clause at 48 CFR 2452.239–70), the provision shall be used with its Alternate II.

2415.413 [Removed]

35. Section 2415.413 is removed.

2415.413–1 [Removed]

36. Section 2415.413–1 is removed.

2415.413–2 [Removed]

37. Section 2415.413–2 is removed.

2415.505 and 2415.605 [Redesignated]

38. Section 2415.605 is redesignated as 2415.304 and section 2415.505 is redesignated as 2415.605.

2415.505–70 [Redesignated]

39. Section 2415.505–70 is redesignated as 2415.605–70, and in the first sentence the number "15.5" is revised to read "15.6".

2415.506 [Redesignated]

40. Section 2415.506 is redesignated as 2415.606 and is revised to read as follows:

2415.606 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR subpart 15.6. Proposals, as used in this section shall mean proposals for procurement contracts with the Department and shall not include proposals or applications for assistance, including grants or cooperative agreements.

(b) Unless otherwise specified in a **Federal Register** announcement, unsolicited proposals should be submitted to—

(1) For research—Department of Housing and Urban Development, Office of Policy Development and Research, PD&R Correspondence Unit (Room 8228), 451 7th Street, SW, Washington, DC 20410.

(2) For all others—Department of Housing and Urban Development, Director, Office of Procurement and Contracts (NC), 451 7th Street, SW, Washington, DC 20410.

2415.604 [Redesignated]

41. A new subpart 2415.3 is added and section 2415.604 is redesignated as 2415.303 and revised to read as follows:

Subpart 2415.3—Source Selection

2415.303 Responsibilities.

(a) In accordance with FAR 15.303, the source selection authorities are designated as follows:

(1) The Contracting Officer, for contracts awarded using the "lowest-priced technically-acceptable proposal" process; and,

(2) The head of the office initiating the procurement, or his/her designee, for contracts awarded using the "trade-off" process. The head of the initiating office may also delegate this function to the Contracting Officer.

(3) For procurements for the performance of legal services by outside counsel, using either the "lowest-price technically acceptable" or "tradeoff" approach, the General Counsel or his/her designee.

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). Generally, a TEP will consist of three to five members, with one member serving as the chairperson. For procurements involving technical complexity, the TEP may include advisors and committees to focus on specific technical areas or concerns. For relatively low dollar value and routine acquisitions of equipment, supplies or services, the TEP may consist of one technical representative. The TEP is responsible for documenting the evaluation of all proposals as appropriate to the source selection approach in use and for making the source selection recommendation to the source selection authority.

2415.605 [Redesignated]

42. Newly redesignated section 2415.304 is revised to read as follows:

2415.304 Evaluation factors.

(d)(1) The solicitation shall state the basis for the source selection decision as either "lowest-price technically acceptable" process (LPTA) or "trade-off process" (as defined at FAR subpart 15.1).

(2) When using the trade-off process, each technical evaluation factor and subfactor shall be assigned a numerical weight (except for pass-fail factors) which shall appear in the RFP. When using LPTA, each evaluation factor is applied on a "pass-fail" basis; numerical scores are not assigned. "Pass-fail" evaluation factors define a standard of comparison for solicitation/contract requirements which proposals either completely satisfy or fail to meet.

(3) For procurements for the performance of legal services by outside counsel, using either the "lowest-price technically acceptable" or "tradeoff" approach, the General Counsel or his/her designee.

2415.608 [Redesignated]

43. Section 2415.608 is redesignated as 2415.305; the reference to "FAR 15.608(a)(3)" in paragraph (3) is revised to "FAR 15.305(a)(3)"; the words "best value approach" in paragraph (3) are revised to read "trade-off process"; and paragraph (b) is removed.

2415.610 [Removed]

44. Section 2415.610 is removed.

2415.611 [Redesignated]

45. Section 2415.611 is redesignated as 2415.308 and revised to read as follows:

2415.308 Source selection decision.

After receipt and evaluation of final proposal revisions, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

2415.613 [Removed]

46. Section 2415.613 is removed.

2415.613–70 [Removed]

47. Section 2415.613–70 is removed.

2415.613–71 [Removed]

48. Section 2415.613–71 is removed.

2415.1005 [Redesignated]

49. Section 2415.1005 is redesignated as 2415.507.

PART 2416—TYPES OF CONTRACTS

50. The authority citation for part 2416 continues to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

2416.405 [Redesignated]

51. Section 2416.405 is redesignated as 2416.406.

52. A new subpart 2416.5 and a new section 2416.505 are added to read as follows:

Subpart 2416.5—Indefinite-Delivery Contracts

2416.505 Ordering.

(b)(6) The Departmental competition advocate also serves as the Departmental ombudsman for task and delivery order contracts in accordance with FAR 16.505(b)(6).

(i) Each HCA shall designate a contracting activity ombudsman for task and delivery order contracts.

(ii) The contracting activity ombudsman shall:

(A) Review complaints from contractors concerning task or delivery orders placed by the contracting activity;

(B) Be independent of the contracting officer who awarded or is administering the contract under which a complaint is submitted;

(C) Recommend any corrective action to the cognizant contracting officer; and

(D) Refer to the Departmental ombudsman issues which cannot be resolved.

(iii) Contractors may request that the Departmental Ombudsman review complaints when they disagree with the contracting activity ombudsman's review.

53. Section 2416.603–2 is revised to read as follows:

2416.603–2 Application.

(c) The HCA shall approve additional time periods for definitization of letter contracts authorized by the Contracting Officer pursuant to FAR 16.603–2(c).

PART 2419—SMALL BUSINESS PROGRAMS

54. The authority citation for part 2419 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2419.503 [Amended]

55. In § 2419.503, the words "Acquired Property" are revised to read "Real Estate Owned."

56. In § 2419.708, footnote 3 is removed and a new paragraph (f) is added to read as follows:

2419.708 Solicitation provisions and contract clauses.

* * * * *

(f) The Contracting Officer shall insert the clause at 48 CFR 2452.219–71 in solicitations exceeding $500,000 that are not set aside for small businesses or to be accomplished under the 8(a) program. The Contracting Officer shall insert the clause in all contracts exceeding $500,000 ($1,000,000 for construction) that are not awarded to small businesses or to 8(a) business concerns.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

57. The authority citation for part 2424 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

58. The heading for subpart 2424.1 is revised to read as follows:

Subpart 2424.1—Protection of Individual Privacy

2424.202 [Redesignated]

59. Section 2424.202 is redesignated as 2424.203.

2424.202–70 [Removed]

60. Section 2424.202–70 is removed.

PART 2425—FOREIGN ACQUISITION

61. The authority citation for part 2425 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

2425.402 [Amended]

62. Section 2425.402 is amended by adding the paragraph designation "(a)(1)" to the beginning of the text.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

63. The authority citation for part 2426 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2426.701 [Redesignated]

64. Section 2426.701 is redesignated as 2426.7001.

2426.702 [Redesignated]

65. Section 2426.702 is redesignated as 2426.7002.

PART 2428—BONDS AND INSURANCE

66. The authority citation for part 2428 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

67. Section 2428.106–6 is revised to read as follows:

2428.106–6 Furnishing information.

(c) The Contracting Officer shall furnish the certified copy of the bond and the contract for which it was given to any person who requests them in accordance with FAR 28.106–6.

PART 2432—CONTRACT FINANCING

68. The authority citation for part 2432 continues to read as follows:

Authority: 31 U.S.C. 3901–3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

69. The heading for subpart 2432.4 is revised to read as follows:

Subpart 2432.4—Advance Payments for Non-Commercial Items

70. In § 2432.402 paragraph (e)(1) is revised to read as follows:

2432.402 General.

(e)(1) The determination and findings required by FAR 32.402(c)(1)(iii) shall be made by the HCA.

* * * * *

2432.906 [Amended]

71. Section 2432.906 is amended by adding the paragraph designation "(a)" to the beginning of the text.

72. Section 2432.908 is revised to read as follows:

2432.908 Contract clauses.

(c)(1) The Contracting Officer shall insert a clause substantially the same as provided at 48 CFR 2452.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts except those for commercial services awarded pursuant to FAR part 12.

(2) The Contracting Officer shall insert a clause substantially the same as provided at 48 CFR 2452.232–71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office.

PART 2433—PROTESTS, DISPUTES AND APPEALS

73. The authority citation for part 2433 continues to read as follows:

Authority: 31 U.S.C. 3551–3556; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2433.101–70 [Removed]

74. Section 2433.101–70 is removed.

75. Section 2433.102–70 is revised to read as follows:

2433.102–70 Responsibility.

With the exception of protests filed directly with the Department pursuant to FAR 33.103, the Office of General Counsel has responsibility for handling matters relating to protests against award of contracts by the Department. All written communications from the Department to the GAO or other adjudicating body shall be made by the Office of General Counsel. The Contracting Officer has responsibility for furnishing the Office of General Counsel with all information relating to a protest.

76. Section 2433.103 is revised to read as follows:

2433.103 Protests to the agency.

(d)(2) Appeals of Contracting Officer protest decisions shall include the information required at FAR 33.103(d)(2)(i), (ii), (iii), (iv), (v) and (vi).

(d)(4)(i) Protesters may request an appeal of the Contracting Officer's decision on a protest. Such requests shall be made in writing to the cognizant HCA not later than 10 days after receipt of the Contracting Officer's decision.

(ii) The HCA, in consultation with the Office of General Counsel, shall make all independent reviews of the Contracting Officer's decision requested by protesters in accordance with FAR 33.103(d)(4) and provide the protester with the HCA's decision on the appeal.

(f)(1) A determination by the Contracting Officer to award a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in consultation with the Office of General Counsel.

(f)(3) A determination by the Contracting Officer to not suspend performance of a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in consultation with the Office of General Counsel.

2433.103–70 [Removed]

77. Section 2433.103–70 is removed.

2433.105 [Removed]

78. Section 2433.105 is removed.

79. A new section 2433.106 is added to read as follows:

2433.106 Solicitation provision.

The Contracting Officer shall insert the provision at 2452.233–70, Review of Contracting Officer Protest Decisions, in all solicitations for contracts expected to

exceed the simplified acquisition threshold.

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

80. The authority citation for part 2436 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2436.602–5 [Amended]

81. In § 2436.602–5, the words "small purchase limitation" are revised to read "simplified acquisition threshold."

PART 2437—SERVICE CONTRACTING

82. The authority citation for part 2437 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2437.101 [Removed]

83. Section 2437.101 is removed.

84–85. Section 2437.110 is amended by removing footnote 4; redesignating paragraph (g) as 2439.107(a); removing paragraph (e); redesignating paragraphs (f) and (h) as paragraphs (e) and (f); revising paragraphs (d) and redesignated paragraph (e) to read as follows:

2437.110 Solicitation provisions and contract clauses.

* * * * *

(d) The Contracting Officer shall insert the clause at 48 CFR 2452.237–73, Conduct of Work and Technical Guidance, in all service contracts other than contracts for commercial services awarded pursuant to FAR Part 12.

(e) The Contracting Officer shall insert the clause at 48 CFR 2452.237–75, Clearance of Contractor Personnel, in solicitations and contracts when contractor personnel will be required to work in and/or will have access to HUD facilities on a routine, ongoing basis and/or at all hours, e.g., performing custodial, building operations, maintenance, or security services. The clause shall be inserted in all solicitations and contracts for building/facility management and operations services. The clause may be used for other types of contracts (e.g., information technology services) when suitable as determined by the Contracting Officer.

* * * * *

2437.206 [Removed]

86. Section 2437.205 is removed.

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

87. The authority citation for part 2439 reads as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

88. Newly designated section 2439.107 is revised to read as follows:

2439.107 Contract clauses.

(a) The Contracting Officer shall insert the clause at 48 CFR 2452.239–70, Background Investigations for Sensitive Automated Systems/Applications, in solicitations and contracts that involve work on, or access to, sensitive Departmental automated information systems or applications as they are defined in the clause.

PART 2442—CONTRACT ADMINISTRATION

89. The authority citation for part 2442 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

90. A new subpart 2442.15 and a new section 2442.1502 are added to read as follows:

Subpart 2442.15—Contractor Performance Information

2442.1502 Policy.

The Chief Procurement Officer is responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

PART 2446—QUALITY ASSURANCE

91. The authority citation for part 2446 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2446.6—[Removed]

92. Subpart 2446.6 is removed.

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

93. The authority citation for part 2451 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2451.3—[Redesignated]

94. Subpart 2451.3 is redesignated as subpart 2451.70.

2451.303 [Redesignated]

95. Section 2451.303 is redesignated as 2451.7001 and revised to read as follows:

2451.7001 Contract clause.

The Contracting Officer shall insert the clause at 48 CFR 2452.251–70, Contractor Employee Travel, in cost-reimbursement solicitations and contracts involving contractor travel.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

96. The authority citation for part 2452 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

97–98. In section 2452.215–70, the date and the first paragraph of Alternate I is revised and Alternate II is revised to read as follows:

2452.215–70 Proposal Content.

* * * * *

Alternate I (Oct 1999)

As prescribed in 2415.209(a), if the award selection will be made through the lowest-priced technically acceptable proposal method, substitute paragraph (c) with the following:

* * * * *

Alternate II (Oct 1999)

As prescribed in 2415.209(a), if the proposed contract requires work on, or access to, sensitive automated systems as described in 2452.239–70, add the following subparagraph, numbered sequentially, to paragraph (c):

The offeror shall describe in detail how the offeror will maintain the security of automated systems as required by clause at 48 CFR 2452.239–70 in Section I of this solicitation.

(End of Provision)

99. In § 2452.216–73 paragraph (b) is revised to read as follows:

2452.216–73 Performance evaluation plan.

* * * * *

(b) The Government may unilaterally change the award fee plan prior to the beginning of subsequent evaluation periods. The Contracting Officer will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period.

100. A new section 2452.219–71 is added to read as follows:

2452.219–71 Submission of subcontracting reports.

As prescribed in 2419.708(f) insert the following clause:

Submission of Subcontracting Reports (Oct 1999)

The Contractor shall submit the Standard Form (SF) 294, Subcontracting Report for Individual Contracts and SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, except that, one copy of each form and any attachments shall be submitted to: Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of HUD, 451 Seventh Street, SW, Room 3130 (SS), Washington, DC 20410–1000.

(End of clause)

2452.224–70 [Removed]

101. Section 2452.224–70 is removed.

102. Section 2452.232–70 is revised to read as follows:

2452.232–70 Payment schedule and invoice submission (fixed-price).

As prescribed in 2432.908(a), insert a clause substantially the same as the following in all fixed-price solicitations and contracts:

Payment Schedule and Invoice Submission (Fixed-Price) (Oct 1999)

(a) *General.* The Government shall pay the Contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Part I, Section B of this contract.

(b) *Payment Schedule.* Payment of the contract price will be made upon completion and acceptance of all work unless a partial payment schedule is included below [Contracting Officer insert schedule information]:

Partial payment number	Applicable contract deliverable	Delivery date	Payment amount
1. [ ] 2. [ ] 3. [ ] (Continue as necessary)			

(c) *Submission of Invoices.* Invoices shall be submitted as follows—original to the payment office identified on the award document (e.g., in Block 12 on the SF–26 or Block 25 on the SF–33, or elsewhere in the contract) and one copy each to the Government Technical Representative and Contracting Officer. To constitute a proper invoice, the invoice must include all items required by FAR clause 52.232–25, "Prompt Payment."

To assist the Government in making timely payments, the Contractor is also requested to include on each invoice the appropriation number shown on the contract award document (e.g., in Block 14 on the SF–26 or Block 21 on the SF–33). The Contractor is also requested to clearly indicate on the mailing envelope that an invoice is enclosed.

(d) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by FAR clause 52.232–33, "Mandatory Information for Electronic Funds Transfer Payment," 52.232.34, "Optional Information for Electronic Funds Transfer Payment," or other supplemental information (contracts for commercial services) as applicable.

103. Section 2452.232–71 is revised to read as follows:

2452.232–71 Voucher submission (cost-reimbursement).

As prescribed in 2432.908(b), insert a clause substantially the same as the following in all cost-reimbursement solicitations and contracts:

Voucher Submission (Cost-Reimbursement) (Oct 1999)

(a) The Contractor shall submit, on a monthly basis [Contracting Officer may substitute a different time frame, if appropriate], an original and two (2) copies of each voucher. In addition to the items necessary per FAR 52.232–25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be distributed as follows, except for the final voucher which shall be submitted in all copies to the Contracting Officer—original to the payment office (e.g., in Block 12 on the SF–26 or Block 25 on the SF–33, or elsewhere in the contract) and one copy each to the Government Technical Representative and the Contracting Officer identified on the award document.

To assist the Government in making timely payments, the Contractor is requested to include on each voucher the appropriation number shown on the award document (e.g., Block 14 of the SF–26 or Block 21 of the SF–33). The Contractor is also requested to clearly indicate on the mailing envelope that a payment voucher is enclosed.

(b) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by FAR clause 52.232–33, "Mandatory Information for Electronic Funds Transfer Payment" or 52.232.34, "Optional Information for Electronic Funds Transfer Payment," as applicable.

(End of clause)

104. A new Section 2452.233–70 is added to read as follows:

2452.233–70 Review of Contracting Officer protest decisions.

As prescribed in 2433.106, insert the following provision:

Review of Contracting Officer Protest Decisions (Oct 1999)

(a) In accordance with FAR 33.103 and HUDAR 2433.103, a protester may request an appeal of the Contracting Officer's decision concerning a protest initially made by the protester to the Contracting Officer. Such requests shall be made in writing to the cognizant Head of the Contracting Activity (HCA, see definition at HUDAR subpart 2402.1) within 10 days (see FAR 33.101 for the definition of "days") of the protestor's notification of the Contracting Officer's decision.

(b) The cognizant HCA shall make an independent review of the Contracting Officer's decision and provide the protester with the HCA's decision on the appeal.

(End of clause)

105. Section 2452.237–73 is revised to read as follows:

2452.237–73 Conduct of work and technical guidance.

As prescribed in 2437.110(d), insert the following clause in all contracts for services:

Conduct of Work and Technical Guidance (Oct 1999)

(a) The Government Technical Representative (GTR) for liaison with the Contractor as to the conduct of work is [insert name] or a successor designated by the Contracting Officer. The Contracting Officer will notify the contractor in writing of any change to the current GTR's status or the designation of a successor GTR.

(b) The GTR will provide guidance to the contractor on the technical performance of the contract. Such guidance shall not be of a nature which:

(1) Causes the Contractor to perform work outside the scope of the contract;

(2) Constitutes a change as defined in FAR 52.243–1;

(3) Causes an increase or decrease in the cost of the contract;

(4) Alters the period of performance or delivery dates; or,

(5) Changes any of the other express terms or conditions of the contract.

(c) The GTR will issue technical guidance in writing or, if issued orally, he/she will confirm such direction in writing within five calendar days after oral issuance. The GTR may issue such guidance via telephone facsimile or electronic mail.

(End of clause)

2452.237–74 [Removed]

106. Section 2452.237–74 is removed.

107. Section 2452.237–75 is revised to read as follows:

2452.237–75 Clearance of contractor personnel.

As prescribed in 2437.110(e), insert the following clause in solicitations and contracts.

Clearance of Contractor Personnel (Oct 1999)

(a) General. This contract requires contractor employees to work in, and have access to, a HUD facility. All such employees shall be required to provide background information and obtain a HUD building pass prior to working in the HUD facility.

(b) Background information. (1) For each contractor employee subject to the requirements of this clause, the contractor shall complete and deliver to the Government Technical Representative (GTR) the following forms: Form FD–258,

"Fingerprinting Charts" (original and one copy); and GSA Form 176, "Statement of Personal History" (original and one copy). The GTR will provide the contractor with blank forms upon request.

(2) The contractor shall deliver the forms required by paragraph (b)(1) to the GTR within five (5) calendar days after contract award or not later than five (5) calendar days before a covered employee will begin work at the HUD facility.

(3) The information provided in accordance with paragraph (b)(1) will be used to perform a background check to determine the eligibility of the contractor employees to work in the HUD facility. After completion of such review, the GTR shall notify the contractor in writing of any contractor employees' ineligibility to work in the HUD facility. The contractor shall immediately remove such employees from work on this contract which requires the employees' physical presence in the HUD facility.

(c) *Building passes.* (1) HUD will issue a building pass to each contractor employee determined to be eligible pursuant to the background check in paragraph (b). The Contractor shall provide the GTR with the names and Social Security numbers of all such employees. Contractor employees shall have their building passes on their persons at all times while working on HUD premises and shall present passes for inspection upon request by HUD officials or HUD security personnel.

(2) Building passes shall identify individuals as contractor employees and shall have an expiration date not exceeding the current term of the contract. Passes shall be renewed for each succeeding contract period, if any.

(3) The contractor shall return a contractor employee's pass to the GTR when the employment of any such employee is terminated, or when the employee no longer has a need for access to the HUD facility. Upon expiration of this contract, the contractor shall return to the GTR all building passes issued by HUD and not previously returned. The contractor is responsible for accounting for all passes issued to the contractor's employees.

(d) *Control of access.* HUD shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to HUD facilities. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit for his/her assigned contractual duties, and therefore will no longer be permitted access to the HUD facility. The contractor shall take immediate steps to remove such an employee from working on this contract and provide a suitable replacement.

(e) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (a) of this section are applicable to performance of the subcontract.

(End of clause)

2452.237–76 [Redesignated]

108. Section 2452.237–76 is redesignated as 2452.239–70 and is revised to read as follows:

2452.239–70 Background investigations for sensitive automated systems/applications.

As prescribed in 2439.107(a), insert the following clause:

Background Investigations for Sensitive Automated Systems/Applications (Oct 1999)

(a) *General.* This contract involves work on, or access to, [insert name or other identifier], a HUD information resource that is either a major application system or any general support system. A major application system is a mission critical system, a system or information resource which has high investment cost, or any system which contains Privacy Act-covered data. A general support system is any computer facility or major component thereof, or any network or telecommunications resource. All contractor employees working on this contract in positions which HUD has determined to have sensitive access to the information resource(s) identified above are required to have a background investigation. The investigation shall be commensurate with the risk and security controls involved in managing, using or operating the resources identified above, consistent with 5 CFR part 731. HUD may bar contractor employees from working on this contract for failing to meet or maintain the applicable suitability standards administered by the Department's Personnel Security Branch.

(b) *Citizenship-related requirements.* All contractor employees as described in paragraph (a) shall: (1) be United States (U.S.) citizens living in the U.S.; or (2) owe allegiance to the U.S.

(c) *Background investigation process.* (1) The GTR shall notify the contractor of those contractor employee positions requiring background investigations. For each contractor employee in such a position, the contractor shall submit the following completed forms: Standard Form (SF) 85P, Questionnaire for Public Trust Positions; FD–258, Fingerprint Chart; Fair Credit Reporting Act authorization form; and other information as may be necessary. The contractor shall submit an original and one copy of the SF 85P.

(2) The contractor shall deliver the forms and information required in paragraph (c)(1) to the GTR as soon as practicable once the contractor knows that the employee will be assigned to this contract, and no later than seven (7) calendar days after the employee begins work on this contract.

(3) The investigation process shall consist of a range of personal background inquiries and contacts (written and personal) and verification of the information provided on the security forms described in paragraph (c)(1).

(4) Upon completion of the investigation process, the GTR shall notify the contractor in writing of any contractor employees' ineligibility to work on this contract. The contractor shall immediately remove such employees from work on this contract.

(5) The contractor shall notify the GTR in writing whenever a contractor employee for whom a background investigation package was required and submitted to HUD terminates employment or otherwise is no longer performing work under this contract. The contractor shall provide a copy of the written notice to the Contracting Officer.

(d) *Security breach notification.* The contractor shall immediately notify the GTR and the Contracting Officer of any breach or suspected breach of security or any unauthorized disclosure of the information contained in the automated system specified in this contract.

(e) *Nondisclosure of information.* (1) Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized Government personnel with an established need to know or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD are the sole property of HUD.

(2) The contractor shall require that any employees who may have access to the automated systems identified in paragraph (a) sign a pledge of nondisclosure of information. These pledges shall be signed by the employees before they are permitted to perform work under this contract. The contractor shall maintain the signed pledges for a period of three years after final payment under this contract.

(f) *Security procedures.* The contractor shall establish personnel security procedures that meet, as a minimum, the requirements of HUD Handbook 2400.24. The contractor shall provide a copy of such procedures and any revisions made to them during the period of the contract to the GTR.

(g) *Contractor compliance.* Failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract for default.

(h) *Other clearance requirements.* When any work performed by contractor personnel on-site in a HUD facility meets the criteria set forth in HUDAR 2437.110(e), the contractor shall also comply with the requirements of the clause at 48 CFR 2452.237–75, Clearance of Contractor Personnel.

(i) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (a) of this section are applicable to performance of the subcontract.

(End of clause)

109. Section 2452.237–77 is revised to read as follows:

2452.237–77 Observance of legal holidays and administrative leave.

As prescribed in 2437.110(f), insert the following clause:

Observance of Legal Holidays and Administrative Leave (Oct 1999)

(a)(1) The Department of Housing and Urban Development observes the following days as holidays—

New Year's Day
Martin Luther King's Birthday

Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(2) When any holiday specified in (a)(1) falls on a Saturday, the preceding Friday shall be observed. When any such holiday falls on a Sunday, the following Monday shall be observed. Observances of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(b)(1) HUD may close a HUD facility for all or a portion of a business day as a result of—

(A) Granting administrative leave to non-essential HUD employees (e.g., unanticipated holiday);

(B) Inclement weather;

(C) Failure of Congress to appropriate operational funds;

(D) Or any other reason.

(2) In such cases, contractor personnel not classified as essential, i.e., not performing critical round-the-clock services or tasks, who are not already on duty at the facility shall not report to the facility. Such contractor personnel already present shall be dismissed and shall leave the facility.

(3) The contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled for performance during the period in which HUD employees are dismissed, and shall be guided by any specific instructions of the Contracting Officer or his/her duly authorized representative.

(c) When contractor personnel services are not required or provided due to closure of a HUD facility as described in this clause, the contractor shall be compensated as follows—

(1) For fixed-price contracts, deductions in the contractor's price will be computed as follows—

(A) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(B) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided.

If services are provided for portions of days, appropriate adjustment will be made by the Contracting Officer to ensure that the contractor is compensated for services provided.

(2) For cost-reimbursement, time-and-materials and labor-hour type contracts, HUD shall not reimburse as direct costs, the costs of salaries or wages of contractor personnel for the period during which such personnel are dismissed from, or do not have access to, the facility.

(d) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any "Excusable Delays" clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

(End of clause)

110. Section 2452.251–70 is revised to read as follows:

2452.251–70 Contractor employee travel.

As prescribed in 2451.7001, insert the following clause in all cost-reimbursement solicitations and contracts involving travel:

Contractor Employee Travel (Oct 1999)

(a) To the maximum extent practical, the Contractor shall make use of travel discounts which are available to Federal employees while traveling in the conduct of official Government business. Such discounts may include, but are not limited to, lodging and rental car rates.

(b) The Contractor shall be responsible for obtaining and/or providing to his/her employees written evidence of their status with regard to their performance of Government contract work needed to obtain such discounts.

(End of clause)

Part 2453—Forms

111. The authority citation for part 2453 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

PART 2453—[AMENDED]

112. The words "HUD Form" are replaced with "form HUD-" throughout part 2453.

2453.213 [Removed]

113. Section 2453.213 is removed.

2453.213–70 [Removed]

114. Section 2453.213–70 is removed.

2453.213–71 [Removed]

115. Section 2453.213–71 is removed.

2453.215–70 [Removed]

116. Section 2453.215–70 is removed.

2453.237–70 [Removed]

117. Section 2453.237–70 is removed.

2453.246–70 [Removed]

118. Section 2453.246–70 is removed.

Dated: July 16, 1999.

V. Stephen Carberry,

Chief Procurement Officer.

[FR Doc. 99–21077 Filed 8–20–99; 8:45 am]
BILLING CODE 4210–01–P

OL

64

SS

1
6
2

AG

23

99

MI

federal register

Monday
August 23, 1999

Part V

Department of Housing and Urban Development

48 CFR Part 2403 et al.
HUD Acquisition Regulation; Miscellaneous Revisions; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2403, 2409, 2436, 2439, 2442, 2452 and 2453

[Docket No. FR–4291–P–01]

RIN 2535–AA25

HUD Acquisition Regulation; Miscellaneous Revisions

AGENCY: Office of the Chief Procurement Officer (CPE).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of Housing and Urban Development (HUD) Acquisition Regulation (HUDAR) to implement changes applicable to HUD's procurement activities made in the Federal Acquisition Regulation since the HUDAR's last issuance. It would also implement miscellaneous HUD procurement rules as described in the Supplementary Information below.

DATES: Comment Due Date: October 22, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. Communication should refer to the above docket number and title. Facsimile comments will not be accepted. A copy of each communication submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Frederick Graves, Policy and Field Operations Division, Office of Procurement and Contracts (Seattle Outstation), U.S. Department of Housing and Urban Development, Seattle Federal Office Building, 909 1st Avenue, Seattle, WA 98104–1000, (206) 220–5122, ext. 3450. Hearing or speech-impaired individuals may call (206) 220–5185 (TTY) or 1–800–677–8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Chief Procurement Officer under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 6, 1998 (63 FR 54723); and the general authorization in FAR 1.301.

The most recent version of the HUDAR was published as a final rule on May 1, 1996 (61 FR 19467). This proposed rule amends the HUDAR to reflect HUD's implementation of changes in the FAR and Federal statutes applicable to HUD's procurement activities. Please note that the Department is also publishing, elsewhere in this issue of the **Federal Register**, an interim rule for comment making other changes to the HUDAR.

Section 2403.670 is revised pursuant to section 4301 of the Federal Acquisition Reform Act of 1996, (Public Law 104–106, 110 Stat. 642, approved February 10, 1996) (1996 FAR Act) to delete the requirement for a certification regarding Federal employment by offerors and contractors.

In accordance with Section 4301 of the 1996 FAR Act, the Department is removing, via this proposed rule, two of its three previously existing regulatory certification requirements that are not statutorily based, viz., 2452.203–71, "Certification Regarding Federal Employment" and 2452.209–71, "Organizational Conflicts of Interest Certification." The Chief Procurement Officer has made a determination to retain the certification requirement at Section 2426.703 and the related solicitation provision at 2452.226–70, Certification of Status as a Minority Business Enterprise. The CPE has determined that the Department needs to maintain its capability to provide accurate, timely reporting on its minority contracting activity statistics. This certification is the most efficient means for obtaining the data needed for making such reports.

In section 2439.107 a new paragraph (b) is added to prescribe the use of a computer virus security clause in contracts for information technology.

Section 2442.1106 is revised to replace the Department's current requirement for the use of a specific project planning and monitoring process for certain technical services contracts with a generic requirement for an acceptable planning and monitoring system. The revision allows contractors to develop their own system or use commercially available systems that are acceptable to the contracting officer. This also permits the use of automated planning and monitoring systems to streamline those functions. HUD's current system is not automated.

Section 2452.203–71 is removed to delete the requirement for the non-statutory certification (see comments under 2403.670 above).

Section 2452.209–70 is replaced with a new version of the solicitation provision in which the contracting officer identifies the potential areas for organizational conflicts of interest. This reflects the guidance provided in FAR Subpart 9.5.

Section 2452.209–71 is revised to better conform to the requirements of FAR Subpart 9.5, viz., to place the burden on the contracting officer of describing any potential organizational conflict of interest in the contract. The revised clause also prohibits the contractor's performance under future contracts of work using specifications developed by the contractor under the immediate contract. The contracting officer may also impose additional restrictions via this clause. Section 2452.209–71 is also revised pursuant to section 4301 of the 1996 FAR Act to delete the existing requirement for the submission of an organizational conflict of interest certification by all offerors.

In section 2452.215–70, an Alternate III is added to obtain information required of offerors by the provision at 2452.209–72.

Section 2452.239–71 is added in accordance with 2439.107(b). The clause seeks to prevent the knowing submission by a contractor of information technology containing viruses that the contractor should have detected before such submission.

Section 2452.242–71 is revised to describe in generic terms the Department's requirements for project planning and monitoring systems to be used under contracts exceeding $500,000 for technical or professional services for work of a developmental or advisory nature. This eliminates the requirement for HUD's previous system which was not automated and permits the use of contractors' own automated planning and monitoring systems to streamline those functions. The forms related to the previous system at 2453.242–70 and 2453.242–71 are removed.

Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in the HUDAR,

as described in the table below, have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REPORTING AND RECORDKEEPING BURDEN:

Section reference	Number of parties	Annual freq. of requirement (annum)	Est. avg. time for requirement (hours)	Est. annual burden (hours)
HUDAR:				
2452.209–70	350	1	0.5	175
2452.209–72	5	1	1.0	5
2452.215–70	350	1	120.0	42,000
2452.216–72	2	4	2.0	16
2452.219–70	30	1	0.5	15
2452.219–71	30	4	0.1	12
2452.237–70	30	1	4.0	120
2452.237–75	5	1	5.0	25
2452.239–70	40	1	1.0	40
2452.242–71 (initial plan)	40	1	8.0	320
2452.242–71 (reports)	40	12	8.0	2,880
HUD 770	2	1	0.5	1
Total Reporting and Recordkeeping Burden (Hours)	.....	.....	.....	45,609

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name (HUDAR) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Antoinette Henry, Reports Liaison Officer, Office of the Chief Procurement Officer, Department of Housing & Urban Development, 451—7th Street, SW, Room 5262, Washington, DC 20410.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Small businesses are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the DATES and COMMENTS sections in the preamble of this proposed rule.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Accordingly, a Finding of No Significant Impact is not required.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk to children.

List of Subjects in 48 CFR Parts 2403, 2409, 2436, 2439, 2442, 2452 and 2453.

Government procurement, HUD acquisition regulations.

Accordingly, title 48, chapter 24 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for part 2403 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

2. Section 2403.670 is revised to read as follows:

2403.670 Solicitation provision and contract clause.

Insert the clause at 48 CFR 2452.203–70 in all solicitations and contracts.

PART 2409—CONTRACTOR QUALIFICATIONS

3. The authority citation for part 2409 continues to read as follows:

Authority: 40 U.S.C. 486(c); and 42 U.S.C. 3535(d).

4. Section 2409.507–1 is revised to read as follows:

2409.507–1 Solicitation provisions.

The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.209–70, Potential Organizational Conflicts of Interest, in all solicitations over the simplified acquisition limitation when the Contracting Officer has reason to believe that a potential organizational conflict of interest exists. The Contracting Officer shall describe the nature of the potential conflict in the provision.

5. Section 2409.507–2 is revised to read as follows:

2409.507–2 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.209–71, Limitation on Future Contracts, in all contracts above the simplified acquisition threshold. The Contracting Officer shall describe in the clause the nature of the potential conflict, and the negotiated terms and the duration of the limitation.

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. The authority citation for part 2436 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

7. Paragraph (a)(2) of section 2436.602–2 is revised to read as follows:

2436.602–2 Evaluation boards.

(a) * * *

(2) The cognizant program office head for boards appointed at the field level.

* * * * *

8. Section 2436.602–4 is revised to read as follows:

2436.602–4 Selection authority.

(a) The final selection decision shall be made by the cognizant Primary Organization Head in headquarters, or field program office head.

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

9. The authority citation for part 2439 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

10. In section 2439.107, a new paragraph (b) is added to read as follows:

2439.107 Contract clauses.

* * * * *

(b) The contracting officer shall insert the clause at 48 CFR 2452.239–71, Information Technology Virus Security, in solicitations and contracts under which the contractor will provide information technology hardware, software or data products.

PART 2442—CONTRACT ADMINISTRATION

11. The authority citation for part 2442 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

12. Section 2442.1106 is revised to read as follows:

2442.1106 Reporting requirements.

(a) All contracts for professional or technical services of a developmental or advisory nature exceeding $500,000 shall include a requirement for the use of systematic project planning and progress reporting. The Contracting Officer may require the use of such project planning and reporting systems for contracts below the above threshold.

13. Section 2442.1107 is revised to read as follows:

2442.1107 Contract clause.

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.242–71, Project Management System, in solicitations and contracts for services as described in 2442.1106 expected to exceed $500,000. Use of this clause below the stated threshold is at the discretion of the Contracting Officer.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority citation for part 2452 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2452.203–71 [Removed]

15. Section 2452.203–71 is removed.

16. Section 2452.209–70 is revised to read as follows:

2452.209–70 Potential organizational conflicts of interest.

As prescribed in 2409.507–1, the Contracting Officer may insert a provision substantially the same as follows in solicitations:

Potential Organizational Conflicts of Interest (* 1999)**

(a) The Contracting Officer has determined that the proposed contract contains a potential organizational conflict of interest. Offerors are directed to FAR subpart 9.5 for detailed information concerning organizational conflicts of interest.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) Offerors shall provide a statement which describes concisely all relevant facts concerning any past, present or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to:

(1) Being able to render impartial, technically sound, and objective assistance or advice, or

(2) Being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(d) No award shall be made until any potential conflict of interest has been neutralized or mitigated to the satisfaction of the Contracting Officer.

(e) Refusal to provide the requested information or the willful misrepresentation of any relevant information by an offeror shall disqualify the offeror from further consideration for award of a contract under this solicitation.

(f) If the Contracting Officer determines that a potential conflict can be avoided, effectively mitigated, or otherwise resolved through the inclusion of a special contract clause, the terms of the clause will be subject to negotiation.

(End of provision)

17. Section 2452.209–71 is revised to read as follows:

2452.209–71 Limitation on future contracts.

As prescribed in 2409.507–2, the Contracting Officer may insert a clause substantially the same as follows in solicitations and contracts for services:

Limitation on Future Contracts (** 1999)**

(a) The Contracting Officer has determined that this contract may give rise to potential organizational conflicts of interest as defined at FAR subpart 9.5.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) If the contractor, under the terms of this contract or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under any ensuing HUD contract.

(d) Other restrictions—[*Contracting Officer insert description*]

(e) The restrictions imposed by this clause shall remain in effect until [*Contracting Officer insert period or date*].

(End of clause)

18. A new section 2452.239–71 is added to read as follows:

2452.239–71 Information technology virus security.

As prescribed in 2439.107(b), insert the following clause:

Information Technology Virus Security (**, 1999)**

(a) The contractor hereby agrees to make every reasonable effort to deliver information technology products to HUD free of known computer viruses. The contractor shall be responsible for examining all such products prior to their delivery to HUD using software tools and processes capable of detecting all known viruses.

(b) The contractor shall include the following statement on deliveries of hardware, software, and data products, including diskettes, made under this contract:

[product description, part/catalog number, other identifier, and serial number, if any]

"This product has been scanned for known viruses using [name of virus-screening product, including version number, if any] and is certified to be free of known viruses at the time of delivery."

(c) The Contracting Officer may assess monetary damages against the contractor sufficient to compensate HUD for actual or estimated costs resulting from computer virus damage or malicious destruction of computer information arising from the contractor's failure to take adequate precautions to preclude delivery of virus-containing products in the delivery of hardware, software, or data on diskettes under this contract.

(d) This clause shall not subrogate the rights of the Government under any other clause of this contract.

(End of clause)

19. Section 2452.242–71 is revised to read as follows:

2452.242–71 Project management system.

As prescribed in 2442.1107, insert the following clause:

Project Management System (** 1999)**

(a) Within the time period specified elsewhere in this contract, or as directed by the Contracting Officer, the Contractor shall provide to the GTR and Contracting Officer a project management baseline plan and routine reports showing the Contractor's actual progress against the baseline plan.

(b) The project management system shall consist of two parts:

(1) *Baseline plan.* The baseline plan shall consist of—

(i) A narrative portion that:

(A) Identifies each task and significant activity required for completing the contract work, critical path activities, task dependencies, task milestones, and related deliverables;

(B) Describes the project schedule, including the period of time needed to accomplish each task and activity (see i(B));

(C) Describes staff (e.g., hours per individual), financial, and other resources allocated to each task and significant activity; and

(D) Provides the rationale for project organization and resource allocation.

(ii) A graphic portion showing:

(A) Cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract; and

(B) The planned start and completion dates of all planned and budgeted tasks and activities.

(2) *Progress reports.* Progress reports shall consist of:

(i) A narrative portion that:

(A) Provides a brief, concise summary of technical progress made and the costs incurred for each task during the reporting period; and

(B) Identifies significant problems, or potential problems, their causes, proposed corrective actions, and the net effect on contract completion.

(ii) A graphic portion showing:

(A) The schedule status and degree of completion of the tasks, activities and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan;

(B) The costs incurred during the reporting period, the current total amount of costs incurred through the end date of the reporting period for budgeted work, and the projected costs required to complete the work under the contract.

(c) The formats, forms and/or software to be used for the project management system under this contract shall be [Contracting Officer insert appropriate language—"as prescribed in the schedule;" "a format, forms and/or software designated by the GTR;" or, "the contractor's own format, forms and/or software, subject to the approval of the GTR."]

(End of clause)

PART 2453—FORMS

20. The authority citation for part 2453 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2453.242–70 [Removed]

21. Section 2453.242–70 is removed.

2453.242–71 [Removed]

22. Section 2453.242–71 is removed.

Dated: June 7, 1999.

V. Stephen Carberry,

Chief Procurement Officer.

[FR Doc. 99–21078 Filed 8–20–99; 8:45 am]

BILLING CODE 4210–01–P

OL

64

SS

1
6
2

AG

23

99

MI

federal register

Monday
August 23, 1999

Part VI

Department of Housing and Urban Development

Competition Advocate Designation Under the HUD Acquisition Regulation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4115–N–02]

Notice of Competition Advocate Designation Under the HUD Acquisition Regulation

AGENCY: Office of the Chief Procurement Officer.

ACTION: Notice of competition advocate designation.

SUMMARY: This notice designates the Senior Advisor to the Chief Procurement Officer as the HUD Competition Advocate in accordance with 48 CFR Chapter 24, section 2406.501.

EFFECTIVE DATE: This notice is effective August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Field Operations Division, Office of Procurement and Contracts, Room 5262, 451 Seventh Street, SW., Washington, DC 20410–3000 (voice (202) 708–0294, TTY (202) 708–1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Chief Procurement Officer under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 6, 1998 (63 FR 54723); and the general authorization in FAR 1.301.

In accordance with HUDAR 2406.501, designation of HUD's Competition Advocate shall be made through a notice published in the **Federal Register**. Recently, HUD underwent a Departmental reorganization that included the relocation of all of its procurement activity from the Office of the Assistant Secretary for Administration to the Office of the Chief Procurement Officer. Therefore, the purpose of this notice is to redesignate the Departmental Competition Advocate to a position within the Office of the Chief Procurement Officer. Accordingly, the Chief Procurement Officer designates the Senior Advisor to the Chief Procurement Officer as the HUD Competition Advocate.

Dated: July 16, 1999.

V. Stephen Carberry,

Chief Procurement Officer.

[FR Doc. 99–21076 Filed 8–20–99; 8:45 am]

BILLING CODE 4210–01–P

Reader Aids

Federal Register

Vol. 64, No. 162

Monday, August 23, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998 2
41999–42264 3
42265–42578 4
42579–42822 5
42823–43042 6
43043–43254 9
43255–43598 10
43599–43896 11
43897–44100 12
44101–44396 13
44397–44642 16
44643–44816 17
44817–45148 18
45149–45406 19
45407–45858 20
45859–46110 23

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265
Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12924 (See Notice of Aug. 10, 1999) 44101
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895
13134 44639
Administrative Orders:
Notice of Aug. 10, 1999 44101

7 CFR

11 43043
301 45859
319 45860
610 41999
906 45407
966 45409
989 43897
1220 45413
1230 44643
1728 42005
Proposed Rules:
6 42288
354 43103
505 44634
915 45461
931 42858
932 42619
944 45461
981 43298
984 45208
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 ..... 43043, 45419
116 43043
124 43043
318 44644
319 44644
390 43902
Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823
76 44645
Proposed Rules:
30 45900
35 45907
40 45900
50 ..... 44137, 44860, 45900, 45908, 45911
70 ..... 45900, 45911
72 ..... 45918, 45920, 45923
709 45062
710 ..... 44433, 45062
711 45062

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 ..... 41770, 45589
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
905 44103
Proposed Rules:
202 44582
361 ..... 42861, 42862
702 44663
747 44663
935 44444

13 CFR

120 44109
Proposed Rules:
120 43636

14 CFR

4 43599
25 44817
27 ..... 43016, 45092
29 ..... 43016, 45336
39 ..... 41775, 41776, 41778,

42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905, 44110, 44112, 44650, 45868, 45870
71 .....41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907, 44114, 44116, 44117, 44268, 44397, 44398, 44399, 44400, 44578, 44819, 44821, 44823, 45149, 45421, 45423, 45425, 45426, 45433, 45435, 45436
71 44825
91 44814
97 .....44117, 44119
254 41781
382 41781
Proposed Rules:
25 .....43570, 43943, 43946, 45589
39 .....41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667, 45211, 45466, 45468, 45470, 45472, 45474, 45476, 45477, 45481, 45483, 45485, 45487, 45925, 45827, 45929
65 42810
66 42810
71 .....42300, 42301, 44139, 44140, 44141, 44142, 44144, 44865
93 44145
107 43321
108 43322
119 45090
121 45090
129 45090
135 45090
147 42810
183 45090

15 CFR

734 42009
738 42009
740 42009
742 42009
902 42826

16 CFR

2 43599
5 42594
Proposed Rules:
1212 42302

17 CFR

9 43254
10 43071
211 45150
12 43071
200 42594
240 .....42031, 42594
249 42594
Proposed Rules:
4 41843
275 43556

18 CFR

3 44400
341 44400
342 44400
346 44400
357 44400
362 44400
381 44652
385 44400
Proposed Rules:
101 42304
343 43600
357 .....42623, 45931
385 .....42307, 43600

19 CFR

4 43262
10 43262
12 43262
24 .....42031, 43262
102 43262
112 43262
113 43262
118 43262
122 43262
133 43262
141 43262
143 43262
144 43262
148 43262
151 43608
162 43262
173 43262
174 .....43262, 43608
178 43608
181 43262
Proposed Rules:
12 41851
113 .....41851, 42872
141 41851

20 CFR

Proposed Rules:
375 44670
404 42310
416 42310

21 CFR

101 42277
172 .....43072, 43908, 44121
173 44122
175 45872
178 .....44406, 44407, 45873
310 44653
510 42596
520 42596
522 .....42596, 42830
524 42831
558 .....42596, 43909
606 45366
640 45366
878 .....45155, 46011
1308 42432
1312 42432
Proposed Rules:
101 .....42315, 45932
207 43114
310 44671
314 .....42625, 42873
344 44671
600 45383
606 .....45355, 45375
607 .....43114, 45340
610 45340
630 45355
640 .....45340, 45375
660 45340
807 43114
870 43114
888 43114
890 43114

22 CFR

41 .....42032, 45162
514 44123

24 CFR

108 44094
982 43613
Proposed Rules:
990 43641

26 CFR

1 .....41783, 43072, 43267, 43613, 43910, 45874
31 42831
301 41783
602 .....41783, 43072, 43613
801 42834
Proposed Rules:
1 .....43117, 43323, 43462, 43969
301 43324
602 43462

28 CFR

505 43880

29 CFR

1610 45164
2570 42246
2575 42246
4044 44128
Proposed Rules:
1910 45098
2520 .....42792, 42797
2560 .....42792, 42797
2570 42797

30 CFR

26 43280
29 43280
57 43280
70 43283
71 43283
75 .....43280, 43286, 45165
90 43283
202 43506
206 .....43288, 43506
250 42597
914 43911
943 43913
Proposed Rules:
206 45213
913 44674
914 44448
935 42887
936 43327
946 45489

31 CFR

103 45438
538 41784
550 41784
560 41784
590 43924
Proposed Rules
375 42626

32 CFR

199 45453
505 45877
Proposed Rules:
230 43856
231 43858
231a 43856

33 CFR

100 .....42278, 42598, 43289
110 42279
117 .....42033, 42599, 44129, 44131, 44826
160 41794
165 .....43290, 43291, 44658, 45878, 45879
Proposed Rules:
100 41853
117 .....44145, 44147, 44148, 44149, 44151

34 CFR

611 42837
Proposed Rules:
668 .....42206, 43024, 43582
673 42206
674 42206
675 42206
676 42206
682 .....42176, 43024, 43428
685 43428
690 42206

36 CFR

Proposed Rules:
13 41854
1191 42056

37 CFR

Proposed Rules:
201 42316

38 CFR

17 44659
21 44660

39 CFR

20 43292
Proposed Rules:
111 44681

40 CFR

9 .....42432, 43426, 43936
52 .....42600, 43083, 44131, 44134, 44408, 44411, 44415, 44417, 45170, 45175, 45178, 45182, 45454
58 42530
62 .....43091, 44420, 45184, 45880
63 .....42764, 45187
86 43936
122 .....42432, 43426
123 .....42432, 43426
124 .....42432, 43426
180 .....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846, 44826, 44829, 45885, 45888
186 41818
261 42033
271 .....41823, 42602, 44836
300 44135
403 42552
501 .....42432, 43426
503 42552
745 42849
Proposed Rules:
51 45491
52 .....42629, 42888, 42891,

42892, 44152, 44450, 44451, 44452, 45215, 45216, 45217
55 45217
62 ..... 43123, 45222, 45937
63 ..... 45116, 45221
97 ..... 43124, 44452
122 46058
123 46058
124 46058
130 46012
131 46058
147 43329
259 45632
261 ..... 42317, 44866, 45632
266 45632
270 45632
271 ..... 42630, 43331, 44876
281 43336
300 ..... 41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458, 45222, 45224
372 42222
441 45072

41 CFR

301 43254
303–70 45890

Proposed Rules:

51-2 41882
51-5 41882

42 CFR

413 ..... 42610, 44841
498 43295
1001 42174

Proposed Rules:

Ch. IV 43338

44 CFR

61 41825
64 ..... 42852, 44421
206 41827

Proposed Rules:

61 42632
62 42633

45 CFR

144 45786
146 45786
148 45786
150 45786
801 42039

46 CFR

10 ..... 42812, 44786
12 ..... 42812, 44786

Proposed Rules:

298 44152
535 42057

47 CFR

0 43618
1 ..... 42854, 45891
5 43094
43 43618
62 43937
63 ..... 43095, 43618
64 ..... 43618, 44423
69 45196
73 ..... 41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095, 44856, 45893
76 ..... 42617, 42855
90 43094
101 45891

Proposed Rules:

Ch. 1 ..... 41883, 42635
20 44682
1 ..... 41884, 41887
2 ..... 41891, 43643
15 41897
32 44877
43 44877
51 41897
64 44877
68 41897
73 ..... 41899, 43132, 45500
76 41887
78 41899
95 41891

48 CFR

202 43098
204 ..... 43098, 45196, 45197
212 43098
213 43098
217 43096
219 45197
252 ..... 43098, 45196
253 ..... 43098, 45197
413 45894
453 45894
601 43618
602 43618
603 43618
604 43618
605 43618
606 43618
608 43618
609 43618
610 43618
611 43618
613 43618
614 43618
615 43618
616 43618
617 43618
619 43618
622 43618
623 43618
625 43618
626 43618
628 43618
629 43618
630 43618
631 43618
632 43618
633 43618
634 43618
636 43618
637 43618
639 43618
641 43618
642 43618
643 43618
644 43618
645 43618
646 43618
647 43618
649 43618
652 43618
653 43618
701 42040
702 42040
703 42040
705 42040
706 42040
709 42040
714 42040
716 42040
719 42040
726 42040
732 42040
733 42040
734 42040
749 42040
750 42040
752 42040
2401 46092
2402 46092
2403 46092
2409 46092
2413 46092
2414 46092
2415 46092
2416 46092
2419 46092
2424 46092
2425 46092
2426 46092
2428 46092
2432 46092
2433 46092
2436 46092
2437 46092
2439 46092
2442 46092
2446 46092
2451 46092
2452 46092
2453 46092
5416 41834

Proposed Rules:

17 44100
536 44683
2403 46104
2409 46104
2436 46104
2439 46104
2442 46104
2452 46104
2453 46104
9903 45700

49 CFR

171 ..... 45388, 45457
172 ..... 44426, 44578, 45388
173 44426
175 45388
396 45207
571 45895

Proposed Rules:

190 43972
385 44460
390 44460
571 42330
575 44164

50 CFR

17 41835
20 45400
300 44428
600 42286
622 ..... 43941, 45457
635 ..... 42855, 43101
648 ..... 42042, 42045, 44661
660 ..... 42286, 42856
679 ..... 41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942, 44431, 44432, 44858, 44859, 45459, 45460

Proposed Rules:

17 ..... 41903, 42058, 42250, 43132, 44171, 44470, 44883
20 44384
32 43834
36 43834
226 44683
600 ..... 42335, 43137, 45501
622 ..... 41905, 42068, 44884
635 44885
648 ..... 42071, 43137, 43138, 45938
649 45501
660 44475
679 42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 23, 1999

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Gypsy moth; published 8-23-99
DEFENSE DEPARTMENT
Army Department
Privacy Act; implementation; published 8-23-99
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 7-23-99
Air quality planning purposes; designation of areas:
California; published 7-22-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Buprofezin; published 8-23-99
Carfentrazone-ethyl; published 8-23-99
Practice and procedure:
Civil penalties administrative assessment, compliance or corrective action orders issuance, and permits revocation, termination, or suspension; published 7-23-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; published 7-22-99
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Domestic telecommunications; deregulated entry requirements and streamlined exit requirements; published 7-23-99
Paging systems development; geographic area licensing and competitive bidding procedures; published 6-24-99
Radio stations; table of assignments:
Colorado; published 7-19-99
Idaho; published 7-19-99
Illinois; published 7-19-99
Kansas; published 7-19-99
Mississippi; published 7-19-99
GENERAL SERVICES ADMINISTRATION
Federal Travel:
Payment of expenses in connection with death of employees or immediate family members; published 8-23-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adhesive coatings and components—
Fatty acids, etc., used as comonomer in polymers; published 8-23-99
Adjuvants, production aids, and sanitizers—
Naphthalene sulfonic acid-formaldehyde condensate; published 8-23-99
NUCLEAR REGULATORY COMMISSION
Independent storage of spent nuclear fuel and high-level radioactive waste; licensing requirements; published 6-22-99
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
South Carolina; published 7-20-99
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness standards:
Special conditions—
Raytheon Model 390 airplane; published 7-23-99
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Taxpayer Relief Act—
Capital gains; installment sales of depreciable real property; unrecaptured section 1250 gain; published 8-23-99
TREASURY DEPARTMENT
United States Mint
Exchange of paper currency and coin:
Melting discontinuance and substitution of mechanical means to destroy mutilated coins; published 7-23-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Prunes (dried) produced in California; comments due by 8-30-99; published 7-29-99
AGRICULTURE DEPARTMENT
Cooperative State Research, Education, and Extension Service
Grants:
Land-grant institutions (1890 and 1862); agricultural research and extension activities; matching funds requirements for formula funds; comments due by 9-3-99; published 8-4-99
AGRICULTURE DEPARTMENT
Food and Nutrition Service
Food stamp program:
Retail food store definition and program authorization guidance; comments due by 8-30-99; published 6-30-99
AGRICULTURE DEPARTMENT
Operations Office
Donation of excess research equipment; priorities and administrative guidelines; comments due by 8-30-99; published 7-29-99
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; comments due by 9-2-99; published 8-3-99
Spiny dogfish; comments due by 8-30-99; published 6-29-99
ENERGY DEPARTMENT
Assistance to foreign atomic energy activities:
Miscellaneous amendments; comments due by 8-31-99; published 7-2-99
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Meetings:
Annual report of oil pipeline companies; technical conference; comments due by 9-1-99; published 8-23-99
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Washington; comments due by 8-30-99; published 7-30-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 9-1-99; published 8-2-99
National priorities list update; comments due by 9-3-99; published 8-4-99
FEDERAL TRADE COMMISSION
Industry guides:
Jewelry, precious metals, and pewter industries; comments due by 8-31-99; published 7-9-99
GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Historic preference, for use in acquisition of leasehold interests in real property; comments due by 8-30-99; published 6-30-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Mammography quality standards; comments due by 8-31-99; published 6-17-99
HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid:
Hospital participation conditions; patients' rights; comments due by 8-31-99; published 7-2-99
HEALTH AND HUMAN SERVICES DEPARTMENT
National Institutes of Health
Fellowships, internships, training:
National Research Service Awards; comments due

by 8-30-99; published 6-30-99
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
HUD-owned properties:
HUD-acquired single family property disposition—
Officer Next Door Sales Program; comments due by 8-31-99; published 7-2-99
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Federal claims collection; comments due by 8-30-99; published 6-30-99
INTERIOR DEPARTMENT
National Park Service
Concession contracts; solicitation, award, and administration; comments due by 8-30-99; published 6-30-99
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright office and procedures:
Subscription digital transmissions; notice and recordkeeping; comments due by 9-3-99; published 8-4-99
MERIT SYSTEMS PROTECTION BOARD
Freedom of Information Act; implementation; comments due by 8-31-99; published 7-2-99
Privacy Act; implementation; comments due by 8-31-99; published 7-2-99
NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Undercapitalized federally-insured credit unions; prompt corrective action system
Correction; comments due by 8-31-99; published 8-17-99
PERSONNEL MANAGEMENT OFFICE
Voting rights program; comments due by 9-2-99; published 8-3-99
SECURITIES AND EXCHANGE COMMISSION
Securities:
Portugal; securities exemption for purposes of trading futures contracts; comments due by 8-30-99; published 7-29-99
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; comments due by 8-31-99; published 7-6-99
Oregon; comments due by 8-30-99; published 6-29-99
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 9-3-99; published 8-4-99
Boeing; comments due by 8-30-99; published 6-29-99
Eurocopter Deutschland; comments due by 8-30-99; published 7-1-99
Eurocopter France; comments due by 8-30-99; published 6-29-99
Fokker; comments due by 8-31-99; published 8-6-99
Lockheed; comments due by 8-30-99; published 7-14-99
McDonnell Douglas; comments due by 8-30-99; published 7-14-99
Overland Aviation Services; comments due by 9-3-99; published 7-12-99
Precise Flight, Inc.; comments due by 8-30-99; published 7-7-99
Short Brothers; comments due by 9-3-99; published 8-4-99
Stemme GmbH & Co. KG; comments due by 8-30-99; published 7-21-99
Class E airspace; comments due by 8-30-99; published 7-13-99
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Inspection, repair, and maintenance—
Intermodal container chassis and trailers; comments due by 8-30-99; published 5-5-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48

To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49

Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51

Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2466/P.L. 106–52

Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512–1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2250.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-034-00001-1)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869-038-00002-4)	20.00	[1] Jan. 1, 1999
4	(869-034-00003-7)	7.00	[5] Jan. 1, 1999
5 Parts:			
1-699	(869-038-00004-1)	37.00	Jan. 1, 1999
700-1199	(869-038-00005-9)	27.00	Jan. 1, 1999
1200-End, 6 (6 Reserved)	(869-038-00006-7)	44.00	Jan. 1, 1999
7 Parts:			
1-26	(869-038-00007-5)	25.00	Jan. 1, 1999
27-52	(869-038-00008-3)	32.00	Jan. 1, 1999
53-209	(869-038-00009-1)	20.00	Jan. 1, 1999
210-299	(869-038-00010-5)	47.00	Jan. 1, 1999
300-399	(869-038-00011-3)	25.00	Jan. 1, 1999
400-699	(869-038-00012-1)	37.00	Jan. 1, 1999
700-899	(869-038-00013-0)	32.00	Jan. 1, 1999
900-999	(869-038-00014-8)	41.00	Jan. 1, 1999
1000-1199	(869-038-00015-6)	46.00	Jan. 1, 1999
1200-1599	(869-038-00016-4)	34.00	Jan. 1, 1999
1600-1899	(869-038-00017-2)	55.00	Jan. 1, 1999
1900-1939	(869-038-00018-1)	19.00	Jan. 1, 1999
1940-1949	(869-038-00019-9)	34.00	Jan. 1, 1999
1950-1999	(869-038-00020-2)	41.00	Jan. 1, 1999
2000-End	(869-038-00021-1)	27.00	Jan. 1, 1999
8	(869-038-00022-9)	36.00	Jan. 1, 1999
9 Parts:			
1-199	(869-038-00023-7)	42.00	Jan. 1, 1999
200-End	(869-038-00024-5)	37.00	Jan. 1, 1999
10 Parts:			
1-50	(869-038-00025-3)	42.00	Jan. 1, 1999
51-199	(869-038-00026-1)	34.00	Jan. 1, 1999
200-499	(869-038-00027-0)	33.00	Jan. 1, 1999
500-End	(869-038-00028-8)	43.00	Jan. 1, 1999
11	(869-038-0002-6)	20.00	Jan. 1, 1999
12 Parts:			
1-199	(869-038-00030-0)	17.00	Jan. 1, 1999
200-219	(869-038-00031-8)	20.00	Jan. 1, 1999
220-299	(869-038-00032-6)	40.00	Jan. 1, 1999
300-499	(869-038-00033-4)	25.00	Jan. 1, 1999
500-599	(869-038-00034-2)	24.00	Jan. 1, 1999
600-End	(869-038-00035-1)	45.00	Jan. 1, 1999
13	(869-038-00036-9)	25.00	Jan. 1, 1999
14 Parts:			
1-59	(869-038-00037-7)	50.00	Jan. 1, 1999
60-139	(869-038-00038-5)	42.00	Jan. 1, 1999
140-199	(869-038-00039-3)	17.00	Jan. 1, 1999
200-1199	(869-038-00040-7)	28.00	Jan. 1, 1999
1200-End	(869-038-00041-5)	24.00	Jan. 1, 1999
15 Parts:			
0-299	(869-038-00042-3)	25.00	Jan. 1, 1999
300-799	(869-038-00043-1)	36.00	Jan. 1, 1999
800-End	(869-038-00044-0)	24.00	Jan. 1, 1999
16 Parts:			
0-999	(869-038-00045-8)	32.00	Jan. 1, 1999
1000-End	(869-038-00046-6)	37.00	Jan. 1, 1999
17 Parts:			
1-199	(869-038-00048-2)	29.00	Apr. 1, 1999
200-239	(869-038-00049-1)	34.00	Apr. 1, 1999
240-End	(869-038-00050-4)	44.00	Apr. 1, 1999
18 Parts:			
1-399	(869-038-00051-2)	48.00	Apr. 1, 1999
400-End	(869-038-00052-1)	14.00	Apr. 1, 1999
19 Parts:			
1-140	(869-038-00053-9)	37.00	Apr. 1, 1999
141-199	(869-038-00054-7)	36.00	Apr. 1, 1999
200-End	(869-038-00055-5)	18.00	Apr. 1, 1999
20 Parts:			
1-399	(869-038-00056-3)	30.00	Apr. 1, 1999
400-499	(869-038-00057-1)	51.00	Apr. 1, 1999
500-End	(869-038-00058-0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1-99	(869-038-00059-8)	24.00	Apr. 1, 1999
100-169	(869-038-00060-1)	28.00	Apr. 1, 1999
170-199	(869-038-00061-0)	29.00	Apr. 1, 1999
200-299	(869-038-00062-8)	11.00	Apr. 1, 1999
300-499	(869-038-00063-6)	50.00	Apr. 1, 1999
500-599	(869-038-00064-4)	28.00	Apr. 1, 1999
600-799	(869-038-00065-2)	9.00	Apr. 1, 1999
800-1299	(869-038-00066-8)	35.00	Apr. 1, 1999
1300-End	(869-038-00067-9)	14.00	Apr. 1, 1999
22 Parts:			
1-299	(869-038-00068-7)	44.00	Apr. 1, 1999
300-End	(869-038-00069-5)	32.00	Apr. 1, 1999
23	(869-038-00070-9)	27.00	Apr. 1, 1999
24 Parts:			
0-199	(869-038-00071-7)	34.00	Apr. 1, 1999
*200-499	(869-038-00072-5)	32.00	Apr. 1, 1999
500-699	(869-038-00073-3)	18.00	Apr. 1, 1999
700-1699	(869-038-00074-1)	40.00	Apr. 1, 1999
1700-End	(869-038-00075-0)	18.00	Apr. 1, 1999
25	(869-038-00076-8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1-1.60	(869-038-00077-6)	27.00	Apr. 1, 1999
§§ 1.61-1.169	(869-038-00078-4)	50.00	Apr. 1, 1999
§§ 1.170-1.300	(869-038-00079-2)	34.00	Apr. 1, 1999
§§ 1.301-1.400	(869-038-00080-6)	25.00	Apr. 1, 1999
§§ 1.401-1.440	(869-038-00081-4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501-1.640	(869-038-00083-1)	27.00	[7] Apr. 1, 1999
§§ 1.641-1.850	(869-038-00084-9)	35.00	Apr. 1, 1999
§§ 1.851-1.907	(869-038-00085-7)	40.00	Apr. 1, 1999
§§ 1.908-1.1000	(869-038-00086-5)	38.00	Apr. 1, 1999
§§ 1.1001-1.1400	(869-038-00087-3)	40.00	Apr. 1, 1999
§§ 1.1401-End	(869-038-00088-1)	55.00	Apr. 1, 1999
2-29	(869-038-00089-0)	39.00	Apr. 1, 1999
30-39	(869-038-00090-3)	28.00	Apr. 1, 1999
40-49	(869-038-00091-1)	17.00	Apr. 1, 1999
50-299	(869-038-00092-0)	21.00	Apr. 1, 1999
300-499	(869-038-00093-8)	37.00	Apr. 1, 1999
500-599	(869-038-00094-6)	11.00	Apr. 1, 1999
600-End	(869-038-00095-4)	11.00	Apr. 1, 1999
27 Parts:			
1-199	(869-038-00096-2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
*200-End	(869-038-00097-1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869-034-00098-3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0-99	(869-034-00100-9)	26.00	July 1, 1998
*100-499	(869-038-00101-2)	13.00	July 1, 1999
500-899	(869-034-00102-1)	40.00	[6] July 1, 1999
900-1899	(869-034-00103-3)	20.00	July 1, 1998
1900-1910 (§§ 1900 to 1910.999)	(869-034-00104-1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869-034-00105-0)	27.00	July 1, 1998
1911-1925	(869-034-00106-8)	17.00	July 1, 1998
1926	(869-034-00107-6)	30.00	July 1, 1998
1927-End	(869-034-00108-4)	41.00	July 1, 1998
30 Parts:			
1-199	(869-034-00109-2)	33.00	July 1, 1998
200-699	(869-034-00110-6)	29.00	July 1, 1998
700-End	(869-034-00111-4)	33.00	July 1, 1998
31 Parts:			
*0-199	(869-038-00112-8)	21.00	July 1, 1999
200-End	(869-034-00113-1)	46.00	July 1, 1998
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-034-00114-9)	47.00	July 1, 1998
191-399	(869-034-00115-7)	51.00	July 1, 1998
400-629	(869-034-00116-5)	33.00	July 1, 1998
630-699	(869-034-00117-3)	22.00	[4] July 1, 1998
700-799	(869-034-00118-1)	26.00	July 1, 1998
800-End	(869-034-00119-0)	27.00	July 1, 1998
33 Parts:			
1-124	(869-034-00120-3)	29.00	July 1, 1998
125-199	(869-034-00121-1)	38.00	July 1, 1998
200-End	(869-034-00122-0)	30.00	July 1, 1998
34 Parts:			
1-299	(869-034-00123-8)	27.00	July 1, 1998
300-399	(869-034-00124-6)	25.00	July 1, 1998
400-End	(869-034-00125-4)	44.00	July 1, 1998
35	(869-034-00126-2)	14.00	July 1, 1998
36 Parts			
1-199	(869-034-00127-1)	20.00	July 1, 1998
200-299	(869-034-00128-9)	21.00	July 1, 1998
300-End	(869-034-00129-7)	35.00	July 1, 1998
37	(869-034-00130-1)	27.00	July 1, 1998
38 Parts:			
0-17	(869-034-00131-9)	34.00	July 1, 1998
18-End	(869-034-00132-7)	39.00	July 1, 1998
39	(869-034-00133-5)	23.00	July 1, 1998
40 Parts:			
1-49	(869-034-00134-3)	31.00	July 1, 1998
50-51	(869-034-00135-1)	24.00	July 1, 1998
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998
52 (52.1019-End)	(869-034-00137-8)	33.00	July 1, 1998
53-59	(869-034-00138-6)	17.00	July 1, 1998
60	(869-034-00139-4)	53.00	July 1, 1998
61-62	(869-034-00140-8)	18.00	July 1, 1998
63	(869-034-00141-6)	57.00	July 1, 1998
64-71	(869-034-00142-4)	11.00	July 1, 1998
72-80	(869-034-00143-2)	36.00	July 1, 1998
81-85	(869-034-00144-1)	31.00	July 1, 1998
86	(869-034-00144-9)	53.00	July 1, 1998
87-135	(869-034-00146-7)	47.00	July 1, 1998
136-149	(869-034-00147-5)	37.00	July 1, 1998
150-189	(869-034-00148-3)	34.00	July 1, 1998
190-259	(869-034-00149-1)	23.00	July 1, 1998
260-265	(869-034-00150-9)	29.00	July 1, 1998
266-299	(869-034-00151-3)	33.00	July 1, 1998
300-399	(869-034-00152-1)	26.00	July 1, 1998
400-424	(869-034-00153-0)	33.00	July 1, 1998
425-699	(869-034-00154-8)	42.00	July 1, 1998
700-789	(869-034-00155-6)	41.00	July 1, 1998
790-End	(869-034-00156-4)	22.00	July 1, 1998
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-034-00157-2)	13.00	July 1, 1998
101	(869-034-00158-1)	37.00	July 1, 1998
102-200	(869-034-00158-9)	15.00	July 1, 1998
201-End	(869-034-00160-2)	13.00	July 1, 1998
42 Parts:			
1-399	(869-034-00161-1)	34.00	Oct. 1, 1998
400-429	(869-034-00162-9)	41.00	Oct. 1, 1998
430-End	(869-034-00163-7)	51.00	Oct. 1, 1998
43 Parts:			
1-999	(869-034-00164-5)	30.00	Oct. 1, 1998
1000-end	(869-034-00165-3)	48.00	Oct. 1, 1998
44	(869-034-00166-1)	48.00	Oct. 1, 1998
45 Parts:			
1-199	(869-034-00167-0)	30.00	Oct. 1, 1998
200-499	(869-034-00168-8)	18.00	Oct. 1, 1998
500-1199	(869-034-00169-6)	29.00	Oct. 1, 1998
1200-End	(869-034-00170-0)	39.00	Oct. 1, 1998
46 Parts:			
1-40	(869-034-00171-8)	26.00	Oct. 1, 1998
41-69	(869-034-00172-6)	21.00	Oct. 1, 1998
70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
90-139	(869-034-00174-2)	26.00	Oct. 1, 1998
140-155	(869-034-00175-1)	14.00	Oct. 1, 1998
156-165	(869-034-00176-9)	19.00	Oct. 1, 1998
166-199	(869-034-00177-7)	25.00	Oct. 1, 1998
200-499	(869-034-00178-5)	22.00	Oct. 1, 1998
500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
47 Parts:			
0-19	(869-034-00180-7)	36.00	Oct. 1, 1998
20-39	(869-034-00181-5)	27.00	Oct. 1, 1998
40-69	(869-034-00182-3)	24.00	Oct. 1, 1998
70-79	(869-034-00183-1)	37.00	Oct. 1, 1998
80-End	(869-034-00184-0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1-51)	(869-034-00185-8)	51.00	Oct. 1, 1998
1 (Parts 52-99)	(869-034-00186-6)	29.00	Oct. 1, 1998
2 (Parts 201-299)	(869-034-00187-4)	34.00	Oct. 1, 1998
3-6	(869-034-00188-2)	29.00	Oct. 1, 1998
7-14	(869-034-00189-1)	32.00	Oct. 1, 1998
15-28	(869-034-00190-4)	33.00	Oct. 1, 1998
29-End	(869-034-00191-2)	24.00	Oct. 1, 1998
49 Parts:			
1-99	(869-034-00192-1)	31.00	Oct. 1, 1998
100-185	(869-034-00193-9)	50.00	Oct. 1, 1998
186-199	(869-034-00194-7)	11.00	Oct. 1, 1998
200-399	(869-034-00195-5)	46.00	Oct. 1, 1998
400-999	(869-034-00196-3)	54.00	Oct. 1, 1998
1000-1199	(869-034-00197-1)	17.00	Oct. 1, 1998
1200-End	(869-034-00198-0)	13.00	Oct. 1, 1998
50 Parts:			
1-199	(869-034-00199-8)	42.00	Oct. 1, 1998
200-599	(869-034-00200-5)	22.00	Oct. 1, 1998
600-End	(869-034-00201-3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-038-00047-4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

Would
to kn
if any chang
Code of Fe
documents
Federal Reg
Federal Reg
may wish to
(List of CFR
Federal Reg

LSA • List of
The LSA
is designe
Federal R
actions p
The LSA i
Entries in
such as r
$27 per y

Federal Regi
The index
daily Fede
cumulativ
primarily
agencies.
as cross-r
$25 per y

A finding ai
Federal Reg
in the Feder

Order Processing Co
* 5421
☐ YES,
I
F

The total cost
International

Company or per
Additional addre
Street address
City, State, ZIP c
Daytime phone i
Purchase order n
May we make yo

Would you like to know...

If any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

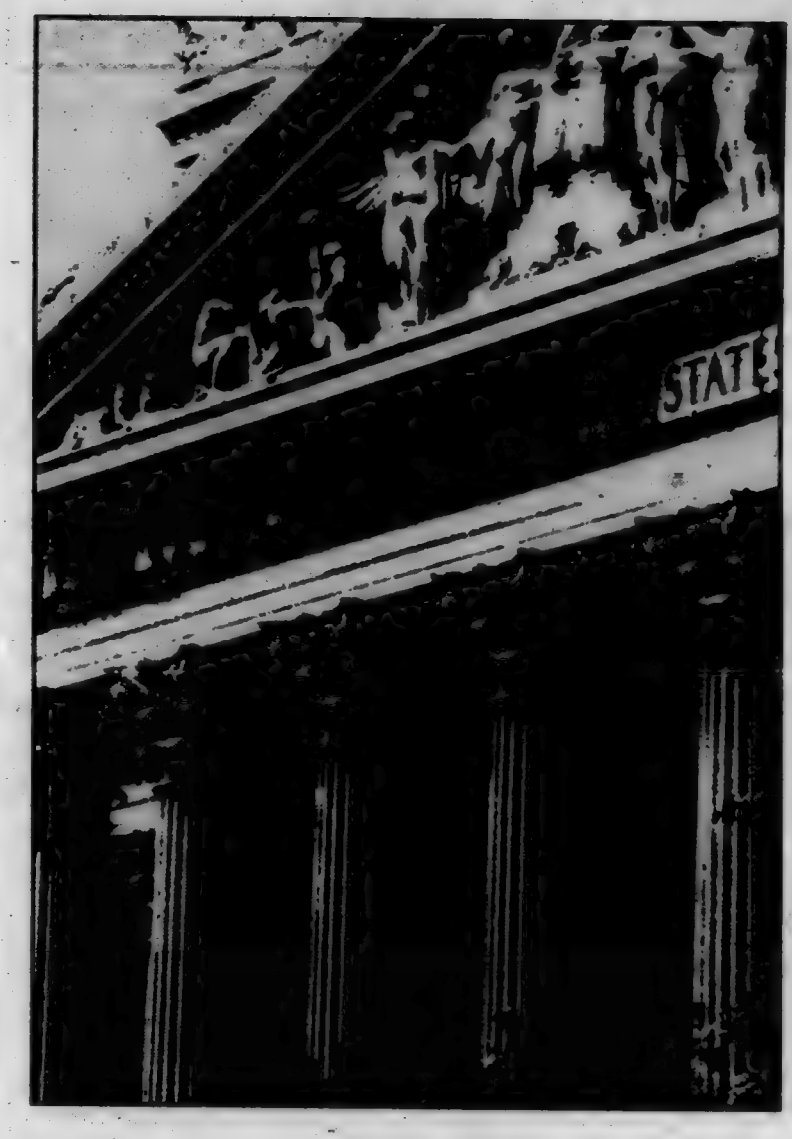

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscriptions for one year:

____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
____ **Federal Register Index** (FRUS) $25 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFR SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

106th Congress, 1st Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 1st Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 1st Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/98

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

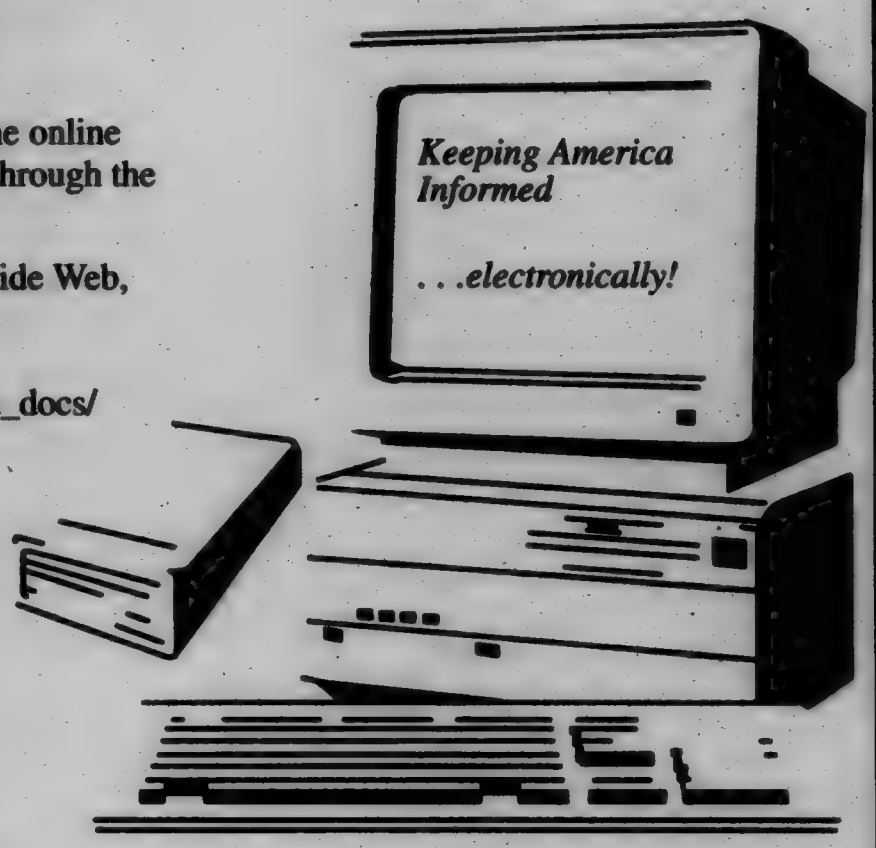

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

Printed on recycled paper

VOL
64
ISS
1
6
3
AG
24
1999
UMI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

8-24-99
Vol. 64
N

United State
Government
Printing Offic
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 204

OFFICIAL BUSINES
Penalty for private us

8-24-99
Vol. 64 No. 163

federal register

Tuesday
August 24, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

8-24-99
Vol. 64 No
Pages 46111-

8–24–99
Vol. 64 No. 163
Pages 46111–46256

federal register

Tuesday
August 24, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Conten

Air Force Dep
NOTICES
Privacy Act:
Systems of re

Army Departm
NOTICES
Privacy Act:
Systems of re

Arts and Hum
See National Fe

Children and F
NOTICES
Agency informa
Submission f
46204

Commerce Dep
See Foreign-Tra
See Internation
See National Oc
NOTICES
Agency informa
Submission f

Committee for
NOTICES
Cotton, wool, a
Fiji, 46184

Defense Depar
See Air Force D
See Army Depa
RULES
Civilian health
(CHAMPUS
Eligibility req
NOTICES
Agency informa
Submission fo
46185

Education Dep
RULES
Postsecondary e
William D. Fo
46255
NOTICES
Agency informa
Submission fo
46188

Energy Departm
See Energy Effic
See Federal Ene

Energy Efficien
RULES
Energy conserva
State Energy P
request, 4

Contents

Federal Register

Vol. 64, No. 163

Tuesday, August 24, 1999

Air Force Department
NOTICES
Privacy Act:
Systems of records, 46185–46186

Army Department
NOTICES
Privacy Act:
Systems of records, 46186–46187

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46203–46204

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46180

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Fiji, 46184

Defense Department
See Air Force Department
See Army Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Eligibility requirements; revisions, 46133–46141
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46184–46185

Education Department
RULES
Postsecondary education:
William D. Ford Federal Direct Loan Program, 46251–46255
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46187–46188

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
RULES
Energy conservation:
State Energy Program; Special Projects funding; comment request, 46111–46114

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
South Carolina, 46148–46151
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
South Carolina, 46165–46166
Grants and other Federal assistance:
Technical Assistance Program, 46233–46249
Hazardous waste:
Identification and listing—
Exclusions, 46166–46178
State underground storage tank program approvals—
North Carolina; correction, 46178
NOTICES
Meetings:
Science Advisory Board, 46189–46191
Pesticide, food, and feed additive petitions:
Centre Internationale d'Etudes du Lindane et al., 46191–46197

Federal Aviation Administration
RULES
Air carrier certification and operations:
Digital flight data recorder requirements for Airbus airplanes; comment request, 46117–46122
Airworthiness standards:
Rotorcraft; normal and transport category—
Critical parts regulations; harmonization, 46229–46232
Class B and Class D airspace; correction, 46228
Class D airspace, 46114–46115
Class E airspace, 46115–46117
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ; special flight rules in vicinity—
Commercial air tour limitation; correction, 46155
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46223

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46197–46198
Submission for OMB review; comment request, 46198–46200
Rulemaking proceedings; petitions filed, granted, denied, etc., 46200

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Iowa, 46200
Minnesota, 46200

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Electric Clearinghouse, Inc., et al., 46188–46189

El Paso Natural Gas Co., 46188
Natural Gas Pipeline Co. of America, 46189
Northwest Pipeline Corp., 46189

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Henry County et al., OH, 46223–46224

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 46200–46201
Formations, acquisitions, and mergers; correction, 46200
Permissible nonbanking activities, 46201
Meetings; Sunshine Act, 46201

Federal Trade Commission
NOTICES
Prohibited trade practices:
Pools By Ike, Inc., et al., 46201–46203

Federal Transit Administration
NOTICES
Grant and cooperative agreement awards:
Over-the-Road Bus Accessibility Program; project selections, 46224–46225

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
1,3-propanediamine, etc.; correction, 46132–46133
Paper and paperboard components—
Polyethylene glycol monoisotridecyl ether sulfate, sodium salt, 46130–46132
Tetrakis(hydroxymethyl)phosphonium sulfate, 46129–46130
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46204–46205
Meetings:
Microbiological safety of drug residues in food; workshop, 46205

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California, 46180–46181
Texas, 46181
Virginia, 46181

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Meetings:
Competitive Pricing Advisory Committee, 46205–46206

Hearings and Appeals Office, Interior Department
RULES
Hearings and appeals procedures:
Indian affairs—
Indian trust estates; summary distributions authority, 46151–46153

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46211

Interior Department
See Hearings and Appeals Office, Interior Department
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Controlled corporations; recognition of gain on certain distributions of stock or securities in connection with an acquisition, 46155–46165

International Trade Administration
NOTICES
Antidumping:
Freshwater crawfish tail meat from—
China, 46181–46182
Pure magnesium from—
Ukraine, 46182–46183

International Trade Commission
NOTICES
Meetings; Sunshine Act, 46214

Justice Department
See National Institute of Justice

Labor Department
See Occupational Safety and Health Administration

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 46215

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Italjet S.p.A, 46225
Lotus Cars Ltd., 46225–46226

National Institute for Literacy
NOTICES
Meetings:
Advisory Board, 46215–46216

National Institute of Justice
NOTICES
Proposed collection; comment request:
Submission for OMB review; comment request, 46214

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 46206–46207
Meetings:
National Cancer Institute, 46207–46208

National Institute of Environmental Health Sciences, 46209
National Institute of Mental Health, 46208–46209
National Institute on Alcohol Abuse and Alcoholism, 46208
National Institute on Deafness and Other Communication Disorders, 46208
Scientific Review Center, 46209–46210

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska fisheries of Exclusive Economic Zone—
Pacific halibut, 46153–46154
Pollock-catching vessels, 46153
NOTICES
Permits:
Exempted fishing; correction, 46183
Marine mammals, 46184

National Park Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46211–46212
Environmental statements; notice of intent:
Capulin Volcano National Monument, NM, 46212–46213
National Register of Historic Places:
Pending nominations, 46213–46214

National Transportation Safety Board
NOTICES
Meetings:
Aviation maintenance repair facilities; public forum, 46216

Occupational Safety and Health Administration
NOTICES
Meetings:
Occupational Safety and Health Federal Advisory Council, 46214–46215

Postal Service
RULES
International Mail Manual:
Global Package Link service—
Argentina, 46141–46147

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
PROPOSED RULES
Occupational safety and health:
Respiratory devices used to protect workers in hazardous environments; approval, 46178–46179

Railroad Retirement Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46216

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 46218–46222
New York Stock Exchange, Inc.; correction, 46228
Applications, hearings, determinations, etc.:
Norwest Advantage Funds et al., 46216–46218

Social Security Administration
RULES
Social security benefits:
Federal old age, survivors, and disability insurance—
Endocrine system and obesity impairments; revised medical criteria for determining disability, 46122–46129

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
SAMHSA special emphasis panels, 46210

Surface Transportation Board
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 46227

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46222–46223

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 46229–46232

Part III
Environmental Protection Agency, 46233–46249

Part IV
Department of Education, 46251–46255

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR
420.....46111

14 CFR
27.....46230
29.....46230
71 (5 documents).....46114, 46115, 46116, 46228
121.....46117
125.....46117

Proposed Rules:
93.....46155

20 CFR
404.....46122

21 CFR
176 (2 documents).....46129, 46130
178.....46132

26 CFR

Proposed Rules:
1.....46155

32 CFR
199.....46133

34 CFR
685.....46252

39 CFR
20.....46141

40 CFR
62.....46148

Proposed Rules:
35.....46234
62.....46165
261.....46166
281.....46178

42 CFR

Proposed Rules:
84.....46178

43 CFR
4.....46151

50 CFR
679 (2 documents).....46153

Rules and Regulations

Federal Register
Vol. 64, No. 163
Tuesday, August 24, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 420

[Docket No. EE–RM–96–402]

RIN 1904–AB01

State Energy Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: Today the Department of Energy (DOE or Department) is publishing an interim final rule revising the regulations for its State Energy Program. This rule provides for the possibility of certain activities being funded under the Special Projects part of the program that are not permitted under the formula grant part of the program. The rule also provides for the specification of any Special Projects funding limitations by the sector specific program offices providing the Special Projects funding, and clarifies the applicability of Subpart B to the formula grant part of the program and of Subpart C to the Special Projects part of the program.

DATES: This rule becomes effective August 24, 1999. Written comments on the interim final rule must be received by DOE no later than September 23, 1999, to ensure consideration.

ADDRESSES: Written comments (six copies and, if possible, a computer disk) are to be submitted to: Thomas P. Stapp, U.S. Department of Energy, Office of Building Technology, State and Community Programs, EE–44, Docket Number EE–RM–96–402, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–2096.

Copies of the comments, as well as other parts of the record, will be available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday except Federal holidays, at the following address: DOE Freedom of Information Reading Room, Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142.

For more information concerning public participation in this rulemaking proceeding, see Section IV, "Opportunity for Public Comment."

FOR FURTHER INFORMATION CONTACT: Thomas P. Stapp, Office of Building Technology, State and Community Programs, Department of Energy, Mail Stop 5E–080, EE–44, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–2096.

SUPPLEMENTARY INFORMATION:

I. Introduction and Description of the Program
II. Rationale for Interim Final Rulemaking
III. The Revisions to the Rule
IV. Opportunity for Public Comment
V. Review Under Executive Order 12612
VI. Review Under Executive Order 12866
VII. Review Under Executive Order 12988
VIII. Review Under the Paperwork Reduction Act
IX. Review Under the National Environmental Policy Act
X. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
XI. Review Under the Unfunded Mandate Reform Act of 1995
XII. Review Under the Regulatory Flexibility Act
XIII. The Catalog of Federal Domestic Assistance

I. Introduction and Description of the Program

On July 8, 1996, the Department published in the **Federal Register** an interim final rule consolidating the State Energy Conservation Program (SECP) and the Institutional Conservation Program (ICP) under the name "State Energy Program" (SEP or program). 61 FR 35890. On May 14, 1997, the Department published in the **Federal Register** a final rule for the program, incorporating revisions to the interim final rule resulting from comments received. 62 FR 26726. The program provides formula grants to States for a wide variety of energy efficiency and renewable energy initiatives, and, in years when funding is available, may also offer financial assistance for a number of State-oriented competitively awarded Special Projects activities with funding contributed by the Office of Energy Efficiency and Renewable Energy's sector specific program offices. Special Projects have been funded in every fiscal year since SEP was established in 1996. DOE expects the Special Projects part of SEP to continue in future years.

Among the goals of the SEP Special Projects activities are to assist States to: accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and under utilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

When the SEP rule was revised in 1996 to provide for the incorporation of the Special Projects activities, DOE envisioned that States would receive the funding by means of amendments to their SEP formula grants. While the Special Projects requirements are primarily covered under subpart C of the rule, the expenditure prohibitions and limitations specified under § 420.18 of subpart B continued to be worded so that the section was deemed to apply to both the formula grants and the Special Projects amendments to those grants. For the first two years of Special Projects (fiscal years 1996 and 1997), when Special Projects funding was provided via the State SEP grant, that was necessary.

However, starting in fiscal year 1998, Special Projects funding has been provided to States by means of individual grants for each project, separate from the SEP formula grants. DOE therefore believes that the application of the formula grant expenditure prohibitions and limitations to the Special Projects is no longer necessary, and it reduces their potential flexibility. Interest has been expressed in using Special Projects funding for end-use sector specific infrastructure improvements and research and development projects, both of which are precluded or limited under § 420.18. DOE believes the Special Projects should no longer be limited by § 420.18 so that the Special Projects funding approach will be of maximum

benefit to the end-use sectors providing the funding.

Therefore, Special Projects funding will henceforth be required to meet only the limitations and prohibitions that apply to all Federal financial assistance under 10 CFR part 600 and any that may apply to the particular sources of funding used by the respective end-use sectors, as specified under the annual Special Projects solicitation/guidance. To dissociate the Special Projects from the prohibitions under 420.18, DOE is revising the wording of that section so that it applies only to subpart B of the rule, covering the SEP formula grants. DOE is making similar technical revisions to other sections of the rule to achieve consistency in the applicability of the various subparts of the rule.

In addition, technical revisions are being made to change the designations of Regional Support Offices to Regional Offices, and Regional Support Office Directors to Regional Office Directors to conform to the official changes made in these designations as of April 25, 1999.

II. Rationale for Interim Final Rulemaking

In ordinary circumstances, DOE provides an opportunity for public comment prior to making significant final changes in the rules for financial assistance programs. Similarly, DOE ordinarily provides for an effective date 30 days or more following the date of publication so that affected entities have an opportunity to learn of changes and prepare to comply. However, the 1999 Special Projects process is now underway, and DOE would like to maximize the range of projects being considered for funding by removing the formula grant prohibitions and limitations from the Special Projects at this time. Removing these special prohibitions and limitations will provide immediate flexibility and will reduce burdens on State governments consistent with government-wide uniform administrative requirements applicable to grants to States under 10 CFR part 600. There is no reason to anticipate State objections would be forthcoming if DOE were to propose removal for public comment. Moreover, it is unlikely that any member of the public could persuasively object to this regulatory change. On the basis of the foregoing, DOE has decided to waive prior notice and opportunity for public comment because issuance of a Notice of Proposed Rulemaking is impracticable and contrary to the public interest. For the same reasons, DOE is making today's interim final rule effective immediately.

III. The Revisions to the Rule

Part 420 (throughout)

The designations of Regional Support Office and Regional Support Office Director are changed to Regional Office and Regional Office Director, respectively, throughout the rule to conform to the official redesignations made effective on April 25, 1999.

Section 420.12 State Matching Contribution

To clarify that this section applies only to the SEP formula grants, the wording of paragraph (c) is changed so that the reference to "this part" becomes "this subpart." Whereas "this part" refers to the entire 10 CFR part 420, "this subpart," in this context, refers only to subpart B of 10 CFR part 420, covering the SEP formula grants. Cost sharing requirements for Special Projects grants are covered under subpart C.

Section 420.13 Annual State Applications and Amendments to State Plans

To make the wording consistent with changes being made elsewhere in the rule, the wording of paragraphs (a), (b)(3) and (b)(7) is changed so that the references to "subpart B of this part" become "this subpart." To clarify that this section applies only to the SEP formula grants, the wording of paragraph (b)(7) is changed so that the reference to "this part" becomes "this subpart," as further explained under 420.12 above. The applications referred to under 420.13 are for the SEP formula grants. Applications for Special Projects grants are covered under subpart C.

Section 420.14 Review and Approval of Annual State Applications and Amendments to State Plans

To make the wording consistent with changes being made elsewhere in the rule, the wording of paragraph (a) is changed so that the reference to "subpart B of this part" becomes "this subpart." To clarify that this section applies only to the SEP formula grants, the wording of paragraphs (a), (b)(1)(i), (b)(2), and (b)(3) is changed so that the references to "this part" become "subparts A and B of this part." Whereas "this part" refers to the entire 10 CFR part 420, the applications and State plans covered under 420.14 need only meet the requirements of subparts A and B. Subpart C covers applications for Special Projects.

Section 420.17 Optional Elements of State Energy Program Plans

To clarify that the services referenced under paragraph (b)(3) of this section are established under the SEP formula grants, the wording of that paragraph is changed so that the reference to "this part" becomes "this subpart," referring to subpart B covering the formula grants.

Section 420.18 Expenditure Prohibitions and Limitations

To restrict the prohibitions and limitations specified under this section to the formula grants part of SEP, the wording of paragraph (a) is changed so that the reference to "this part" becomes "this subpart" as further explained under the revision to 420.12 above. Expenditure limitations that might apply to Special Projects grants are covered under new § 420.38 under Subpart C. In addition, the references in paragraphs (b), (d) and (e) to "this part" are changed to "this subpart" to clarify that the activities referred to are those undertaken pursuant to the SEP formula grants covered by subpart B. To clarify that the activities referred to under paragraphs (e)(3), (e)(5) and (f) are those introduced under paragraph (e), the wording of those paragraphs is changed so that the references to "this paragraph" become "paragraph (e) of this section."

Section 420.19 Administrative Review

To clarify that the administrative review referred to under this section applies only to the formula grants, wording is added to paragraph (e) specifying that it refers to applications for financial assistance "under this subpart." Paragraph (i) is changed so that reference to "this part" becomes "this subpart" to make clear that the State plans referred to are those for the SEP formula grants covered under subpart B.

Section 420.33 Application Requirements

To clarify that the applications referred to under this section are for SEP Special Projects grants, the wording of paragraph (d) is changed so that the reference to "this part" becomes "this subpart", referring to subpart C which covers Special Projects grants.

Section 420.35 Application Evaluation

To clarify that the information in Special Projects applications must meet the requirements under subpart C of the rule, the wording in paragraph (a) is changed so that the reference to "this part" becomes "this subpart."

New Section 420.38 Special Projects Expenditure Prohibitions and Limitations

This section is being added to provide that expenditure prohibitions and limitations for Special Projects will be any general prohibitions and limitations under 10 CFR part 600 together with any specific prohibitions and limitations that may be required by the respective end-use sectors providing Special Projects funding, as specified each year by category in the Special Projects solicitation/guidance.

IV. Opportunity for Public Comment

Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice.

Comments (6 copies and, if possible, a computer disk) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "State Energy Program, Interim Final Rule, Docket Number EE–RM–96–402." In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance by calling (202) 586–2096.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim as set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

V. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, legislation and any other policy action be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policy-makers in promulgating or implementing the regulation.

Today's regulatory amendments will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

VI. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

VII. Review Under Executive Order 12988

Section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of section 3(a) and (b) of Executive Order 12988.

VIII. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed on the public by today's rules.

IX. Review Under the National Environmental Policy Act

A programmatic environmental assessment has been prepared covering the grant program under the interim final regulations published today which was sent to the States for comment on March 27, 1996. No comments were received by the end of the 14-day comment period. This programmatic environmental assessment resulted in a finding of no significant impact (FONSI). A FONSI was issued on June 7, 1996. The documents relating to this programmatic environmental assessment are available in the DOE Freedom of Information Reading Room, United States Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142.

X. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

The interim final regulations published today are subject to the Congressional notification requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Act), 5 U.S.C. 801. DOE will report to Congress on the promulgation of the interim final regulations prior to the effective date set forth at the beginning of this notice.

XI. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) places a variety of review and consultative obligations on Federal agencies proposing regulatory actions for Federal intergovernmental mandates. Today's rule does not involve such a mandate because the Unfunded Mandates Reform Act excludes from the definition of "Federal intergovernmental mandate" provisions in a regulation that would impose conditions incident to a financial assistance program (not involving an entitlement) or a duty arising from participation in a voluntary Federal program 2 U.S.C. 658(5). This program is a standard non-entitlement financial assistance program and States are not obligated to participate in it.

XII. Review Under the Regulatory Flexibility Act

There is no need to prepare a final regulatory flexibility analysis of today's interim final regulations under the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*, because they are not subject to a legal requirement for a general notice of proposed rulemaking.

XIII. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State Energy Program is 81.041. The Catalog of Federal Domestic Assistance number for the State Energy Program Special Projects is 81.119.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs—energy, Reporting and recordkeeping requirements, Technical Assistance, Incorporation by reference.

Issued in Washington, DC, on July 20, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of

Federal Regulations is amended as follows:

PART 420—[AMENDED]

1. The authority citation for part 420 continues to read as follows:

Authority: Title III, part D, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

PART 420—[AMENDED]

2. In part 420, revise all references to "Regional Support Office" to read "Regional Office."

3. In part 420, revise all references to "Regional Support Office Director" to read "Regional Office Director."

§§ 420.12, 420.13, 420.17, 420.18, 420.19, 420.33, and 420.35 [Amended]

4. In subpart B, revise all references to "this part" to read "this subpart" in the following sections:

a. § 420.12(c).
b. § 420.13(b)(7) (second occurrence).
c. § 420.17(b)(3).
d. § 420.18(a).
e. § 420.18(b).
f. § 420.18(d) (two occurrences).
g. § 420.18(e).
h. § 420.19(i).

5. In subpart C, revise the references to "this part" to read "this subpart" in the following sections:

a. § 420.33(d).
b. § 420.35(a).

§§ 420.13, 420.14 [Amended]

6. Revise all references to "subpart B of this part" to read "this subpart" in the following sections:.

a. § 420.13(a).
b. § 420.13(b)(3).
c. § 420.13(b)(7).
d. § 420.14(a).

§ 420.14 [Amended]

7. In section 420.14, revise all references to "this part" to read "subparts A and B of this part" in the following sections:

a. § 420.14(a).
b. § 420.14(b)(1)(i).
c. § 420.14(b)(2).
d. § 420.14(b)(3).

§ 420.18 [Amended]

8. In section 420.18, revise the words "this paragraph" to read "paragraph (e) of this section" in the following sections:

a. § 420.18(e)(3).
b. § 420.18(e)(5).
c. § 420.18(f).

§ 420.19 [Amended]

9. In 420.19, add the words "under this subpart" after the words "financial assistance" in the following paragraph:

§ 420.19(e).

10. A new section 420.38 is added under subpart C, to read as follows:

§ 420.38 Special projects expenditure prohibitions and limitations.

(a) Expenditures under the special projects are subject to 10 CFR part 600 and to any prohibitions and limitations required by the DOE programs that are providing the special projects funding.

(b) DOE must state any expenditure prohibitions or limitations specific to a particular category of special projects in the annual SEP special projects solicitation/guidance.

[FR Doc. 99–21896 Filed 8–23–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–10]

Establishment of Class D Airspace; Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi Airport Authority has installed a control tower at the Tupelo Municipal—C.D. Lemons Airport. As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,800 feet MSL within 4.1-mile radius of the Tupelo Municipal—C.D. Lemons Airport. Control tower hours of operation are scheduled for 0600—2200, daily.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Tupelo, MS, (64 FR 37713). This action provides adequate Class D airspace for IFR operations at Tupelo Municipal—C.D. Lemons Airport. Designations for Class D airspace extending upward from the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class D designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal was received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi, has installed a control tower at the Tupelo Municipal—C.D. Lemons Airport. As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the Tupelo Municipal—C.D. Lemons Airport. Control tower hours of operation are scheduled for 0600–2200, daily.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS, AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO MS D Tupelo, MS [New]

Tupelo Municipal—C.D. Lemons Airport, MS
(Lat. 34°16′00″N, long 88°46′11″W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of Tupelo Municipal—C.D. Lemons Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in College Park, Georgia, on August 17, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–21927 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–11]

Amendment of Class E Airspace; Fort Rucker, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Fort Rucker, AL. A Global Positioning System (GPS) Runway (RWY) 22 Standard Instrument Approach Procedure (SIAP) has been developed for Florida Municipal Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Florala Municipal Airport.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Fort Rucker, AL (64 FR 37717). This action provides adequate Class E airspace for IFR operations at Florala Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Fort Rucker, AL. A GPS RWY 22 SIAP has been developed for Florala Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Florala Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO AL E5 Fort Rucker, AL [Revised]

Fort Rucker, Cairns AAF, AL
(Lat. 31°16′37″N, long. 85°42′36″W)
Andalusia—Opp Airport, Andalusia, AL
(Lat. 31°18′32″N, long. 86°23′38″W)
Florala Municipal Airport, AL
(Lat. 31°02′38″N, long. 86°18′37″W)

That airspace extending upward from 700 feet or more above the surface within the area bounded by a line beginning at lat. 31°38′01″N, long. 86°23′30″W; to 31°45′01″N, long. 85°38′00″W; to lat. 31°17′01″N, long. 85°26′00″W; to lat. 31°04′01″N, long. 85°52′00″W; to lat. 31°03′02″N, long. 86°11′04″W; to and clockwise along the arc of a 6.5-mile radius circle of Florala Municipal Airport to lat. 31°02′14″N, long. 86°26′10″W; to the point of beginning and within a 7-mile radius of Andalusia—Opp Airport.

* * * * *

Issued in College Park, Georgia, on August 17, 1999.

Wade T. Caprenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–21926 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–16]

Removal of Class E Airspace; Arlington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Millington, TN, by revoking the airspace for the Arlington Municipal Airport. The City of Arlington, TN, has closed the Arlington Municipal Airport. Therefore, the Class E5 airspace for the Arlington Municipal Airport must be revoked. This airspace is part of the Millington, TN, Class E5 airspace area.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20626, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The Arlington Municipal Airport is within the Millington, TN, Class E5 airspace area. The City of Arlington, TN, has elected to close the Arlington Municipal Airport. Therefore, the Class E5 airspace must be revoked. This rule will become effective on the date specified in the "DATE" section. Since this action removes the Class E5 airspace, and as a result, eliminates the impact of Class E5 airspace on users of the airspace in the vicinity of the Arlington Municipal Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E5 airspace at Arlington, TN.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Millington, TN [Revised]

Memphis NAS/Millington Municipal Airport, TN
(Lat. 35°21′20″N, long. 89°40′22″W)
Charles W. Baker
(Lat. 35°16′44″N, long. 89°55′53″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Memphis NAS/Millington Municipal Airport and within a 6.3-mile radius of Charles W. Baker Airport; excluding that airspace within the Memphis, TN, Class E airspace area.

* * * * *

Issued in College Park Georgia, on August 17, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–21925 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–13]

Establishment of Class E Airspace; Pikeville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Pikeville, KY. A Global Positioning System (GPS) Runway (RWY) 8 Standard Instrument Approach Procedure (SIAP) and a GPS RWY 26 SIAP have been developed for Pike County—Hatcher Field Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Pike County—Hatcher Field Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On July 16, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Pikeville, KY (64 FR 38386). This action provides adequate Class E airspace for IFR operations at Pike County—Hatcher Field Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal was received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Pikeville, KY. A GPS RWY 8 SIAP and a GPS RWY 26 SIAP have been developed for Pike County—Hatcher Field Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Pike County—Hatcher Field Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Pikeville, KY [New]

Pike County—Hatcher Field Airport
(Lat. 37°33′44″ N, long. 81°33′56″ W)
Prestonburg, Big Sandy Regional Airport, KY
(Lat. 37°45′04″ N, long. 82°38′13″ W)

That airspace extending upward from 700 feet or more above the surface within a 6.7-mile radius of Pike County—Hatcher Field Airport, excluding that airspace within the Prestonburg, KY, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on August 17, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–21924 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125

[Docket No. FAA–1999–6140; Amdt. Nos. 121–271 & 125–32]

RIN 2120–AG88

Revisions to Digital Flight Data Recorder Requirements for Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the flight data recorder regulations by adding language to allow certain Airbus airplanes to record certain data parameters using resolution and sampling requirements that differ slightly from the current regulation. This amendment is necessary because the Airbus airplanes are unable to record certain flight parameters under the existing criteria without undergoing unintended and expensive retrofit.

DATES: This final rule is effective August 17, 1999. Comments must be submitted on or before September 17, 1999.

ADDRESSES: Comments on this final rule should be mailed or delivered, in duplicate to: US Department of Transportation Dockets, Docket No. FAA–1999–6140, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Air Carrier Operations Branch (AFS–201), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–6140. The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm, or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking or Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–651–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following internet address: 9–AWA–SBREFA@faa.gov.

Background

Statement of the Problem

After the amendments to the DFDR requirements become effective on August 18, 1997 (62 FR 38362), the FAA began receiving telephone inquiries, requests for meetings, and petitions for exemption from Airbus Industries (Airbus) concerning the economic impact of the amendments on certain Airbus airplanes. Airbus claimed that in order to comply with the new DFDR recording requirements of 14 CFR Appendix M, its A300 B2/B4 series, A318/A319/A320/A321 series, and its A330/A340 series airplanes would have to undergo major equipment retrofits. During the rulemaking, the FAA had stated that the rule was being tailored to avoid major equipment retrofits.

The digital flight data recorders (DFDRs) in the affected Airbus airplanes already record the required parameters, but some of the resolution and sampling intervals for certain parameters differ slightly from those required by Appendix M. Airbus noted this difference in its comment to the NPRM, but the comment was not fully addressed in the preamble to the final rule, issued in August 1997.

History of Amendments to DFDR Requirements

On February 22, 1995, the NTSB recommended that the FAA require upgrades of the flight data recorders installed on certain airplanes to record certain additional parameters not required by the current regulations. Two of the recommendations made by the NTSB affected the subject Airbus airplanes:

Recommendation No. A–95–26. Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that Boeing 727 airplanes, Lockhead L–1011 airplanes, and all transport category airplanes operated under 14 CFR parts 121, 125, or 135 whose type certificates apply to airplanes still in production, be equipped to record on a flight data recorder system, as a minimum, the parameters listed in "Proposed Minimum FDR Parameter Requirements for Airplanes in Service" plus any other parameters required by current regulations applicable to each individual airplane. Specify that the airplanes be so equipped by January 1, 1998, or by the later date when they meet Stage 3 noise requirements but, regardless of Stage 3 compliance status, no later than December 31, 1999. (Classified as Class II, Priority Action)

Recommendation No. A–95–27. Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that all airplanes operated under 14 CFR parts 121, 125, or 135, having 10 or more seats, and for which an original airworthiness certificate is received after December 31, 1996, record the parameters listed in "Proposed FDA Enhancements for Newly Manufactured Airplanes" on a flight data recorder having at least a 25-hour recording capacity. (Classified as Class II, Priority Action)

Notice of Proposed Rulemaking

On July 16, 1996, the FAA published a notice for proposed rulemaking (NPRM) (Notice No. 96–7, 61 FR 37143) addressing revisions to DFDR rules. The proposals were based on the NTSB recommendations, information obtained through the public hearing, and the efforts of the ARAC working group.

As part of its comment to the proposed rule, Airbus stated that there were current recorder systems that record the required parameters at sampling rates or resolutions that differ from the proposed appendix M. Airbus suggested that the rates and resolutions be changed since meeting them would impose significant retrofit costs on operators of Airbus airplanes. It was not until Airbus petitioned for exemption from the Appendix M requirements that the FAA's attention was focused on the insufficient response to the Airbus comment, the significant number of Airbus airplanes involved, and the minor variations that would be required from Appendix M requirements. As stated previously, it was never the intention of the FAA to require operators of any airplanes to incur significant equipment retrofit costs in order to comply with the requirements for DFDR upgrades.

The FAA believes that had it fully understood the overall impact the final rule would place on operators of Airbus airplanes, it would have made specific provisions to reduce or eliminate that impact in the final rule.

Petitions for Exemption

On April 9, 1998, Airbus petitioned the FAA for permanent exemptions from part 121, appendix M. Airbus requested that the A319/320/321 series aircraft be exempted from the appendix M resolution requirements and be allowed to record these alternatives for the following parameters:

Parameter	Current resolution	Record resolution
(12B) pitch control input position	0.088°	0.064°
(13b) lateral control input position	0.088°	0.080°
(14a) rudder pedal position	0.088°	0.050°
(19) pitch trim surface position	0.088°	0.084°

Airbus requested that the A330/340 series aircraft be exempted from the Appendix M resolution requirements and be allowed to record these alternatives for the following parameters:

Parameter	Current resolution	Required resolution
(7) roll attitude	0.703°	0.500°
(12B) pitch control input position	0.703°	0.064°
(13B) lateral control input position	0.703°	0.80°
(14a) ruder pedal position	0.703°	0.120°
(15) left & right elevator position	0.352°	0.090°
(16) aileron & spoiler position: right inboard and outboard aileron left inboard and outboard ailron right and left spoiler no. 2 to 6	0.352°	0.100°
	0.352°	0.100°
	0.703°	0.100°
(17) rudder position	0.176°	0.120°
(19) pitch trim surface position	0.088°	0.051°
(20) flap position	0.250°	0.165°
(21) slat position	0.250°	0.120°
(24) outside air temperature	0.5°	0.3°

Airbus also requested that the A330/340 series aircraft be exempted from the appendix M resolution requirements and be allowed to record these alternatives for the following parameters:

Parameter Interval in seconds—	Current sampling	Required Sampling
(14) rudder pedal position	1	0.5
(17) rudder position	1	0.5

Airbus industries stated that current Airbus A319, 320, 321, 330, and 340 series airplanes are equipped with a digital flight data recording system (DFDRS) that records all mandatory parameters, numbers 1 through 34.

The FAA has determined that it would not be appropriate to grant an exemption to Airbus on behalf of the operators of its aircraft. Even if exemptions were granted to individual operators, they would have to be permanent. The FA has determined that, under such circumstances, a change to the rule language of appendix M is the only appropriate means to account for the differences in Airbus DFDR equipment. Accordingly, the FAA is amending part 121 appendix M, and part 125 appendix E to indicate that certain Airbus airplanes already in services may record the indicated parameters using the rates and resolutions listed. The FAA consulted with the NTSB concerning this variation, and the NTSB indicated that the proposed change would not significantly affect its ability to investigate accident or incidents.

The FAA has determined that these changes will not adversely affect the safety of the aircraft, hinder the investigation of accidents or incidents by the NTSB, nor compromise the intent of the DFDR rules. This amendment will revise the resolution recording requirements of parameters 7, 12(b), 13)b), 14(a), 15, 16, 17, 19, 20, 21and 24, and the sampling interval for parameters 14(a) and 17. The FAA has determined that these changes can be accommodated by footnotes in appendix M to part 121 and appendix E to part 125.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedure Act (APA) 5 U.S.C. 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest. This final rule amends the flight data recorder regulations by adding language to the appendices of parts 121 and 125 to allow certain Airbus airplanes to record certain data parameters using resolution and sampling requirements that differ slightly from the current regulation. As a result, the FAA has determined that notice and public comment are unnecessary because the change effectuates the original intent of the regulation, is not controversial, and is unlikely to result in adverse comments since it affects only operations of Airbus airplanes.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effects of regulatory changes on international trade.

The FAA has determined that there are no costs associated with this final rule; the rule imposes no costs upon operators of Airbus airplanes. Instead, this rule change relieves operators of Airbus airplanes from a regulatory burden that was inadvertently imposed on them in the adoption of the 1997 regulations, and would have an impact beginning August 18, 1999. This change effectuates the original intent of the 1997 regulations.

The FAA has determined this rule is not "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that there are no costs associated with this final rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The revised rule will have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this final rule.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aviation safety, Reporting and recordkeeping requirements, Transportation

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements

The Amendment

Accordingly, the Federal Aviation Administration amends parts 121 and 125 of Chapter I of Title 14 of the Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. In appendix M, the heading of the appendix, and item numbers 1, 7, 12b, 13b, 14a, 15, 16, 17, 19, 20, 21, 23, and 24 are revised and the introductory text is republished to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data renorded must be correlated in time to within one second.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
1. Time or Relative Times Counts.[1]					

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
* * *	*	*	*		*
7. Roll Attitude.[2]					
* * *	*	*	*		*
12b. Pitch Control(s) position (fly-by-wire systems).[3]					
* * *	*	*	*		*
13b. Lateral Control position(s) (fly-by-wire).[4]					
* * *	*	*	*		*
14a. Yaw Control position(s) (non-fly-by-wire).[5]					
15. Pitch Control Surface(s) Position.[6]					
16. Lateral Control Surface(2) Position.[7]					
17. Yaw Control Surface(s) Position.[8]					
* * *	*	*	*		*
19. Pitch Trim Surface Position.[9]					
20. Trailing Edge Flap or Cockpit Control Selection.[10]					
21. Leading Edge Flap or Cockpit Control Selection.[11]					
* * *	*	*	*		*
23. Ground Spoiler Position or Speed Brake Selection.[12]					
24. Outside Air Temperature or Total Air Temperature.[13]					

[1] For A300 B2/B4 airplanes, resolution=6 seconds.
[2] For A330/A340 series airplanes, resolution=0.703°.
[3] For A318/A319/A320/A321 series airplanes, resolution=0.275% (0.088°>0.064°).
For A330/A340 series airplanes, resolution=2.20%(0.703°>0.064°).
[4] For A318/A319/A320/A321 series airplanes, resolution=0.22% (0.088°>0.080°).
For A330/A340 series airplanes, resolution=1.76% (0.703°>0.080°).
[5] For A318/A319/A320/A321 series airplanes, resolution=0.21% (0.088°>0.084°).
For A330/A340 series airplanes, resolution=1.18% (0.703°>0.120°).
[6] For A330/A340 series airplanes, resolution=0.783% (0.352°>0.090°).
[7] For A330/A340 series airplanes, aileron resolution=0.704% (0.352°>0.100°).
For A330/A340 series airplanes, spoiler resolution=1.406% (0.703°>0.100°).
[8] For A330/A340 series airplanes, resolution=0.30% (0.176°>0.12°).
For A330/A340 series airplanes, seconds per sampling interval=1.
[9] For all Airbus airplanes, resolution=0.518% (0.088°>0.051°).
[10] For A330/A340 series airplanes, resolution=1.05% (0.250°>0.120°).
[11] For A330/A340 series airplanes, resolution=1.05% (0250°>0.120°).
For A300 B2/B4 series airplanes, resolution=0.92% (0.230°>0.125°).
[12] For A300–600/A310 series airplanes, speed brake resolution=0.224% (0.112°>0.100°).
For A330/A340 series airplanes, spoiler resolution=1.406% (0.703°>0.100°).
[13] For A330/A340 series airplanes, resolution=0.5°C.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

3. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

4. In Appendix E, the heading of the Appendix, and item numbers 1, 7, 12b, 13b, 14a, 15, 16, 17, 19, 20, 21, 23, and 24 are revised and the introductory text is republished to read as follows:

Appendix E to Part 125—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

[RIN # 2120–AG88 Revisions to Digital Flight Data Recorder Requirements for Airbus, Airplanes]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
1. Time or Relative Times Counts.[1]					
* * *	*	*	*		*
7. Roll Attitude.[2]					
* * *	*	*	*		*
12b. Pitch Control(s) Position (fly-by-wire systems).[3]					
* * *	*	*	*		*
13b. Lateral Control position(s) (fly-by-wire).[4]					
* * *	*	*	*		*
14a. Yaw Control position(s) (non-fly-by-wire).[5]					

[RIN # 2120–AG88 Revisions to Digital Flight Data Recorder Requirements for Airbus, Airplanes]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
* * *	*	*		*	*
15. Pitch Control Surface(s) Position.[6]					
* * *	*	*		*	*
16. Lateral Control Surface(s) Position.[7]					
* * *	*	*		*	*
17. Yaw Control Surface(s) Position.[8]					
* * *	*	*		*	*
19. Pitch Trim Surface Position.[9]					
* * *	*	*		*	*
20. Trailing Edge Flap or Cockpit Control Selection.[10]					
* * *	*	*		*	*
23. Ground Spoiler Position or Speed Brake Selection.[12]					
* * *	*	*		*	*
24. Outside Air Temperature or Total Air Temperature.[13]					

[1] For A300 B2/B4 airplanes, resolution = 6 seconds.
[2] For A330/A340 series airplanes, resolution = 0.703°.
[3] For A318/A319/A320/A321 series airplanes, resolution = 0.275% (0.088°>0.064°)
For A330/A340 series airplanes, resolution = 2.20% (0.703°>0.064°)
[4] For A318/A319/A320/A321 series airplanes, resolution = 0.22% (0.088°>0.080°)
For A330/A340 series airplanes, resolution = 1.76% (0.703°>0.080°)
[5] For A318/A319/A320/A321 series airplanes, resolution = 0.21% (0.088°>0.084°)
For A330/A340 series airplanes, resolution = 1.18% (0.703°>0.120°)
[6] For A330/A340 series airplanes, resolution = 0.783% (0.352°>0.090°)
[7] For A330/A340/A320/A321 series airplanes, aileron resolution = 0.704% (0.352°>0.100°)
For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°)
[8] For A330/A340 series airplanes, resolution = 0.30% (0.176°>0.12°)
For A330/A340 series airplanes, seconds per sampling interval = 1
[9] For all Airbus airplanes, resolution = 0.518% (0.088°>0.051°)
[10] For A330/A340 series airplanes, resolution = 1.05% (0.250°>0.120°)
[11] For A330/A340 series airplanes, resolution = 1.05% (0.250°>0.120°)
For A300 B2/B4 series airplanes, resolution = 0.92% (0.230°>0.125°)
[12] For A300–600/A310 series airplanes, speed brake resolution = 0.224% (0.112°>0.100°)
For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°)
[13] For A330/A340 series airplanes, resolution = 0.5°C.

Issued in Washington, DC on August 17, 1999.

Jane F. Garvey,
Administrator.

[FR Doc. 99–21783 Filed 8–23–99; 8:45 am]
BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960–AE65

Revised Medical Criteria for Determination of Disability, Endocrine System and Related Criteria

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are deleting listing 9.09, "Obesity," from appendix 1, subpart P of part 404, the "Listing of Impairments" (the listings). Although many individuals with obesity are appropriately found "disabled" within the meaning of the Social Security Act (the Act), we have determined that the criteria in listing 9.09 were not appropriate indicators of listing-level severity because they did not represent a degree of functional limitation that would prevent an individual from engaging in any gainful activity. However, in response to public comments, we are adding guidance about evaluating claims for benefits involving obesity to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings.

DATES: These regulations will be effective on October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–5121 or TTY (410) 966–5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Title II of the Act provides for the payment of disability insurance benefits to workers insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance benefits for persons who become disabled before age 22 and widow's and widower's insurance benefits based on disability for widows, widowers, and surviving divorced spouses of insured individuals. In addition, title XVI of the Act provides for supplemental security income (SSI) payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults under both the title II and title XVI programs and for persons claiming child's insurance benefits based on disability under the title II program, "disability" means that an impairment(s) results in an inability to engage in any substantial gainful activity. (For an individual under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) results in "marked and severe functional limitations.") Under both title II and title XVI, disability must be the result of any medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

To determine whether an individual (except for an individual under age 18 claiming SSI benefits based on disability) is disabled based upon this statutory definition, our longstanding regulations at §§ 404.1520 and 416.920 provide for a five-step sequential evaluation process, as follows:

1. Is the individual engaging in substantial gainful activity? If the individual is working and the work is substantial gainful activity, we find that he or she is not disabled. Otherwise, we proceed to step 2 of the sequence.

2. Does the individual have an impairment or combination of impairments that is severe? If the individual does not have a severe impairment or combination of impairments, we find that he or she is not disabled. If the individual has a severe impairment or combination of impairments, we proceed to step 3 of the sequence.

3. Does the individual's impairment(s) meet or equal in severity the criteria of a listed impairment in appendix 1 of subpart P of part 404? Sections 404.1525(a) and 416.925(a) of our regulations explain that the listings describe, for each of the major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity. If an individual has an impairment(s) that meets or is equal in severity to the criteria of a listed impairment, we find that he or she is disabled. If not, we proceed to step 4 of the sequence.

4. Does the individual's impairment(s) prevent him or her from doing his or her past relevant work, considering his or her residual functional capacity? If not, we find that he or she is not disabled. If so, we proceed to step 5 of the sequence.

5. Does the individual's impairment(s) prevent him or her from performing other work that exists in significant numbers in the national economy, considering his or her residual functional capacity together with the "vocational factors" of age, education, and work experience? If so, we find that the individual is disabled. If not, we find that he or she is not disabled.

Section 416.924 of our regulations provides a separate sequential evaluation process for individuals under age 18 who claim eligibility for SSI based on disability. As in the sequential evaluation process for adults, we determine at step 3 of this process whether the child's impairment(s) meets or medically equals the requirements of any listing. At this step, we also consider whether the child's impairment(s) "functionally" equals the requirements of any listing that includes disabling functional limitations among its criteria.

Although the listings are contained only in part 404, we incorporate them by reference in § 416.925 of subpart I of part 416. The listings are divided into part A and part B. We apply the criteria in part A in evaluating impairments of persons age 18 or over. We may also apply the criteria in part A in evaluating impairments in persons under age 18 if the disease processes have a similar effect on adults and children. Part B contains additional criteria that we only use to evaluate impairments of children under age 18 when the criteria in part A do not give appropriate consideration to the particular effects of the disease processes in childhood. In evaluating disability for a person under age 18, we first use the criteria in part B. If the criteria in part B do not apply, we will use the criteria in part A (see §§ 404.1525 and 416.925).

When we revised and published the listing on obesity and several other listings in the **Federal Register** on December 6, 1985 (50 FR 50068), we indicated that medical advances in disability evaluation and treatment, and program experience, would require that we periodically review and update the medical criteria in the listings. Accordingly, we published expiration dates ranging from 3 to 8 years for the listings in each of the body systems. These dates appeared in our regulations in the introductory statement before part A of the listings. We subsequently extended these dates in final rules published in the **Federal Register** on December 6, 1993 (58 FR 64121) and again on June 5, 1997 (62 FR 30746). Most recently, we published final rules on June 3, 1999 (64 FR 29786), extending the expiration date of these listings to July 2, 2001, for both part A, including the listings for the endocrine system and obesity (9.00), and part B. (There was no listing for obesity in part B.)

On March 11, 1998, we proposed to delete listing 9.09, "Obesity," and related provisions in the listings, and to rename the section "Endocrine System" (63 FR 11854). We are now adopting the proposed rules as final rules, with the changes discussed below. These changes will not affect the current expiration date for the endocrine system listings.

In these final rules, we are removing listing 9.09 because our experience adjudicating cases under this listing indicates that the criteria in the listing were not appropriate indicators of listing-level severity. In our experience, the criteria in listing 9.09 did not represent a degree of functional limitation that would prevent an individual from engaging in any gainful activity. However, even though we have deleted listing 9.09, we are making some changes to the listings in response to public comments to ensure that obesity is still addressed in our listings.

A number of public commenters, including professional medical and advocacy organizations, submitted medical literature to us in support of their view that we should not delete listing 9.09. We carefully reviewed these comments and the medical literature cited to us. We also considered whether we should revise the obesity listing by clarifying the severity criteria related to the affected body systems in listing 9.09 (i.e., the musculoskeletal, respiratory and cardiovascular systems), or by making other changes in the listings suggested by the commenters. However, we concluded that, because of the widely varying effects obesity and related impairments may have on an individual's functioning, the only way we could be confident that individuals would be disabled under the listings would be to require the other impairments to meet or equal the severity of their respective listings. We also considered whether to raise the weights in the tables to the extent that the level of obesity would ensure that the individuals would be disabled based on weight alone. We chose not to revise the listing in this way because we would have had to raise the weights in the tables to such high levels that we would rarely use the listing.

In response to various concerns about the potential effects of removing all reference to obesity from the listings, we are adding guidance about the evaluation of claims for benefits involving obesity to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings. Our purpose in making these changes is to ensure that adjudicators understand that we consider obesity to be a medically determinable impairment that can be the basis for a finding of disability, and that obesity in combination with other impairments must be considered when evaluating disability at the listings step and other steps of the sequential evaluation process. We are making this change to clarify our intent.

We also want to make clear that we are deleting listing 9.09 because we have determined that the listing is no longer an appropriate rule and because we were unable to propose a reliable alternative. However, we will continue to consider whether we can make improvements in our evaluation of claims filed by individuals with obesity. We intend to obtain information from

the medical community and other interested parties regarding our adjudication of claims of individuals with obesity. We also intend to provide guidance to our adjudicators about the evaluation of claims involving obesity in a Social Security Ruling. Social Security Rulings make available to the public our policy interpretations and provide uniform, binding guidance for all components of the SSA and the State agencies that make disability determinations for us.

The following is a detailed summary of the revisions, together with our reasons for the changes.

Regulatory Provisions

Revisions to Part A of Appendix 1

Table of Contents

We are deleting "and Obesity" from section 9.00 to reflect the deletion of listing 9.09.

1.00 Musculoskeletal System

3.00 Respiratory System

4.00 Cardiovascular System

We are adding new paragraphs 1.00F., 3.00I., and 4.00F. to the prefaces to the listings for the body systems named above. The paragraphs state clearly that we consider obesity to be a medically determinable impairment and remind adjudicators to consider its effects when evaluating disability. The provisions also remind adjudicators that the combined effects of obesity with other impairments can be greater than the effects of each of the impairments considered separately. They also instruct adjudicators to consider the effects of obesity not only under the listings but also when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity.

9.00 Endocrine System

We are deleting "and Obesity" from the heading of this section of the listings to reflect the deletion of listing 9.09. We are also deleting the second and third paragraphs from the preface of 9.00 because they discussed aspects of the evaluation of obesity in connection with listing 9.09.

9.01 Category of Impairments, Endocrine System

We are deleting "and Obesity" from the heading of this listing to reflect the deletion of listing 9.09.

9.09 Obesity

We are deleting listing 9.09. In our experience, its criteria were not appropriate indicators of listing-level severity because they did not represent a degree of functional limitation that would prevent an individual from engaging in any gainful activity. For example, listing 9.09A required a "[h]istory of pain and limitation of motion in any weight-bearing joint or the lumbosacral spine (on physical examination) associated with findings on medically acceptable imaging techniques of arthritis in the affected joint or lumbosacral spine." While such findings certainly could be a cause of disability depending on their impact on a particular individual's functioning, the listing was not specific. It did not indicate any degree of pain, nor did it require current pain—only a history of pain—and did not indicate a degree of limitation of motion. Thus, the listing could have been satisfied with only minimal additional findings over and above the specified weight levels, even though many individuals with those findings in conjunction with the specified weight levels were not precluded from performing any gainful activity.

The same holds true for the other criteria in listing 9.09. Although the findings in listings 9.09B through 9.09E could be disabling in a given individual, in our experience the findings contained in these listings were not consistently so severe that they would warrant a presumption that an individual is incapable of performing any gainful activity. Indeed, only listings 9.09B and 9.09E specified laboratory values, but those findings might or might not have prevented an individual from performing any gainful activity.

Individuals with the kinds of additional impairments previously listed in 9.09 will still have their cases evaluated as appropriate under the listings for the affected body systems, and can still be found to have impairments that meet the requirements of those other listings. They may also be found to have impairments that equal the severity of other listings, considering the combined effect of obesity and the other impairments. Individuals whose impairments related to, or in combination with, obesity are not of listing-level severity will have their cases evaluated based on their residual functional capacity, and may be found disabled at step 5 of the sequential evaluation process.

Other Revisions

Introductory Text

We are deleting "and Obesity" from item 10 of the introductory text that precedes part A of the listings. We are also revising item 10 of the introductory text to read "Endocrine System (9.00 and 109.00): July 7, 1999."

3.00 Respiratory System

We are deleting the last sentence of 3.00H, which referred to the obesity listing. We are also deleting the reference to listing 9.09 in listing 3.10, *Sleep-related breathing disorders.*

Public Comments

When we published the Notice of Proposed Rulemaking (NPRM) on March 11, 1998 (63 FR 11854), we provided the public with a 60-day comment period. On June 10, 1998, we extended the comment period until July 13, 1998 (63 FR 31680).

We received comments from just over 500 individuals and organizations. Almost 300 of the comment letters were form letters that included comments on subjects unrelated to the deletion of listing 9.09; we have forwarded the comments on the unrelated issues to the appropriate components within SSA and do not address them below. The other comment letters included detailed comments submitted on behalf of advocacy organizations representing individuals with obesity, medical researchers and medical advocates for individuals with disability, and legal advocates for individuals with obesity. We also received comments from some State agencies that make disability determinations for us, organizations representing disability adjudicators at the State level, several legal services organizations, individual disability beneficiaries and their families, attorneys, non-attorney representatives, and SSA employees.

When we proposed these rules, we stated that we intended to delete the obesity listing because "[c]urrent medical and vocational research demonstrates that, while many individuals with obesity are disabled, obesity, in and of itself, is not necessarily determinative of an individual's inability to engage in any gainful activity" (63 FR 11854). A number of the comments (discussed more fully below) indicated that there may have been some misunderstanding about why we were proposing to remove the listing. Therefore, in addition to responding to the specific comments, we want to provide a fuller explanation of why we are making the change.

Some commenters believed that we claimed that we had conducted extensive research, that this research was the sole basis for our proposal, but that we were not making this research available to the public. This was not the

case, and it was not what we meant in the NPRM.

We proposed to delete listing 9.09 primarily because our program and adjudicative experience helped to convince us that the listing was difficult to administer, subject to misinterpretation, and required findings of disability in some cases in which the claimants were clearly not "disabled" as defined in the Act. Some of the criteria, such as the criteria in listings 9.09A and D, were vague and overly subjective. Some, such as the criteria in listings 9.09A and C, did not necessarily relate to current impairment status. These concerns were echoed by some of the comments from our adjudicators, who also noted that the listing was problematic.

Over the years, we had received many questions from adjudicators and others about the meaning of the criteria and how to apply them. We also had extensive experience reviewing individual claims that adjudicators referred to us for advice and for resolution of questions about the correct interpretation of the criteria. This experience convinced us that listing 9.09 was no longer appropriate.

In addition, before we published the NPRM, we reviewed a small group of cases in which individuals were found disabled based on a finding that their impairments met or equaled listing 9.09. Although our reviews did not constitute a statistically valid study, they did provide further confirmation of our program and adjudicative experience. We found that, in the majority of the cases we studied, the determinations would not have been affected by the deletion of listing 9.09; i.e., we would have found the individuals disabled. The majority of individuals had impairments that met or equaled other listings, or that we would have found disabling at step 5 of the sequential evaluation process; most of these individuals had impairments that met or equaled other listings. However, consistent with our experience, we also found that, in a significant number of the cases, we would not have found the individuals disabled under other listings or at step 5 of the sequential evaluation process.

We also reviewed medical literature to see if any generally accepted research showed a correlation between obesity and loss of functional capacity for work that might support retention of the listing without change or serve as a basis for an alternative proposal. There is significant medical literature correlating obesity with a variety of health risks. A number of commenters cited such literature to us; one comment letter cited many such sources. However, we reviewed the cited sources and determined that they did not provide support for the retention of listing 9.09 because they did not demonstrate a significant correlation between obesity and current loss of functional ability for work. Although the sources did show that the risk for having another impairment goes up significantly if an individual is severely obese, they did not provide a basis for concluding that a given individual will currently be unable to engage in any gainful activity.

For all the foregoing reasons, we have decided that we must delete listing 9.09 and that it is most appropriate to evaluate disability under the listings for the other impairments an individual with severe obesity might have. We also concluded that we should instruct our adjudicators that the combined effects of obesity with other impairments may be greater than the effects of each of the impairments considered separately, and that such evaluations should be made on an individualized, case-by-case basis.

Summaries of the significant comments and our responses follow. Because some of the comments were quite detailed, we had to condense, summarize, or paraphrase them. We have, however, tried to summarize the commenters' views accurately and have responded to all of the significant issues raised by the commenters that are within the scope of the proposed rules. As we discuss below in responding to the comments, we have made revisions and additions in the final rules to clarify our intent.

Comment: A number of commenters said that deleting listing 9.09 will result in longer, more costly, and less consistent determinations and decisions, and will also result in increased case backlogs. They said that the listing saved administrative resources by using objective medical criteria to avoid a more costly case-by-case inquiry into an individual's functional ability.

Response: Although some individual cases will require more development and analysis than they would have under listing 9.09, in our cost/benefit analysis, we estimate that, overall, there will be slight administrative savings from these final rules when all future actions are considered. For example, even though some cases will require more initial development than under listing 9.09, there will be fewer continuing disability reviews because we anticipate there will be fewer people whose claims will be allowed than under the prior rules. Moreover, obesity is the primary impairment in just under 3 percent of all disability claims filed each year under titles II and XVI. Also, as we have already noted, there will be no effect on many cases because many of the individuals with severe obesity who file applications each year and who would have met listing 9.09 will be found to have impairments that meet or equal other listings based on the medical and other evidence we obtain in our routine development of all cases.

With regard to the second part of the comment, and as we have noted earlier in this preamble, we do not agree that listing 9.09 was objective or accurate as a measure of listing-level impairment severity in a significant number of cases.

Comment: Many commenters thought that deletion of listing 9.09 would result in the denial of benefits to disabled individuals. Many of the commenters believed that without listing 9.09, adjudicators would overlook or improperly evaluate a claimant's obesity. Some stated that obesity is a disease that can affect an individual's ability to stand, sit, walk, climb, etc., and should be treated as such. They said that for SSA to eliminate this impairment from the listings would be to ignore a genuine medical impairment that causes significant functional limitations.

Some commenters thought that removing any reference to obesity from our listings would send an implicit message to our adjudicators that we do not want them to consider obesity. Several commenters expressed concern that adjudicator "bias" would play a part in case evaluation in the absence of the obesity listing.

Many commenters also indicated that listing 9.09 did not consider obesity alone. They thought that adjudicators would not adequately consider obesity, either under the listings for other body systems, which do not provide criteria that specifically take into account the effects of obesity, or in the assessment of an individual's residual functional capacity.

Most of these commenters urged us to retain some reference to obesity and its potentially disabling manifestations in our rules.

Response: We made revisions in these final rules in response to the comments. Our proposal to delete listing 9.09 neither stated nor implied that we would no longer consider obesity to be a medically determinable impairment, nor did it state or imply that obesity could not be disabling by itself or in combination with other impairments. We agree, however, that our rules should retain some reference to obesity and its potentially disabling manifestations.

Obesity is a medically determinable impairment, and we expect our adjudicators to consider it when evaluating impairment severity. Adjudicators must also incorporate any functional limitations resulting from obesity into the assessment of disability. We are confident that our adjudicators will continue to do so, even in the absence of listing 9.09. We also have a quality assurance review process that helps us ensure that decisions are supported by the evidence and that multiple impairments, including obesity, are properly considered.

Nevertheless, we agree with the commenters that there could have been a potential for misinterpretation of our intent if we simply deleted references to obesity in the listings without anything more. Therefore, in response to the comments, we have added paragraphs to the prefaces of the musculoskeletal, respiratory, and cardiovascular body systems (the same body systems that were referenced in listings 9.09 A through E), to indicate that we consider obesity to be a medically determinable impairment, that obesity is often associated with disturbances of these body systems, and that disturbances of these body systems can be a major cause of disability in individuals with obesity. We also provide that the combined effects of obesity with impairments in these body systems can be greater than the effects of each of the impairments considered separately. Finally, we provide that, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity. In addition, as noted above, we intend to provide additional guidance to our adjudicators about the evaluation of claims involving obesity in a Social Security Ruling.

Comment: Many commenters stated that listing 9.09 was a carefully drafted regulation that recognized the impact of obesity on certain musculoskeletal, respiratory, and cardiovascular disorders. They said the listing correctly reflected that severe obesity, in conjunction with any of the conditions set forth in listings 9.09 A through E, would result in functional limitations so severe that the individual would not be able to meet the performance or attendance requirements of any employer. They asked that we keep the listing without change.

Response: The listing criteria for obesity we first promulgated on March 27, 1979 (44 FR 18170), represented our attempt to devise criteria that would "take into account the contributing complication of obesity . . ." (44 FR 18175). However, for the reasons previously discussed, we believe that the listing did not easily or accurately distinguish between individuals who could be presumed to be unable to engage in any gainful activity and those for whom such a presumption was inappropriate.

Comment: Many commenters urged us to revise, rather than delete, the obesity listing, and some offered to assist us in developing new listing criteria. Some recommended specific revisions to the current listing, such as revising the requirements in sections A through E of the listing or converting the listing to a "reference" listing; that is, one that merely cross-refers to other listings. Others suggested that we incorporate specific criteria for obesity in appropriate listings in other body systems (e.g., musculoskeletal, respiratory, cardiovascular, mental) so that adjudicators would not overlook it in determining the severity of an individual's impairments.

Response: We added paragraphs to the prefaces to other body system listings that we believe address the concerns of many of the commenters who encouraged us, in one way or another, to retain reference to obesity in the listings. However, we did not adopt the commenters' suggestions for alternative criteria based either on a specific level of obesity alone or on a level of obesity in conjunction with another impairment that is itself of less than listing-level severity. None of the alternative criteria proposed by commenters appeared to describe a level of impairment severity that would allow us reasonably to conclude that an individual who met the alternative criteria would be unable to perform any gainful activity.

Comment: Several commenters were concerned that the proposal to eliminate listing 9.09 was based on assumptions concerning functional capacity. They said that functional capacity has never been a consideration in determining whether an adult claimant meets the listings.

Response: Functioning is an explicit criterion in many of our listings. Moreover, even though we do not assess functional limitations in some listings, §§ 404.1525 and 416.925 of our regulations provide that the listings describe impairments that are considered severe enough to prevent a person from doing any gainful activity.

Comment: A few commenters objected to our statement that some individuals who met listing 9.09 might be able to perform substantial gainful activity. They did not believe that the listing differed from any of the other listings in that regard, pointing out that individuals with impairments that would meet listings often work. They contended that individuals with the level of obesity and the additional impairment required by the listing were as disabled as anyone who met or equaled any other listing.

Response: Our listings are intended to readily identify individuals who would ultimately be found disabled if they were not already working, and if we considered their residual functional capacity, age, education, and work experience. We know that there are individuals who work despite impairments of the severity reflected in our listings, but we believe that in general the listings are a useful tool for identifying many people who should qualify under our rules. However, based on our program and adjudicative experience, we do not agree with the commenters that listing 9.09 was as accurate an indicator of disability as other listings.

Comment: Some commenters indicated confusion about our statement in the NPRM that obesity in and of itself is not necessarily determinative of an individual's inability to engage in any gainful activity, and other, similar statements. The commenters pointed out that listing 9.09 did not consider obesity in and of itself; rather, it provided criteria for obesity associated with other impairments.

Response: We agree that listing 9.09 did not consider obesity alone. We intended this statement only to help explain why we did not propose other alternatives to deleting listing 9.09, including a listing for obesity alone.

Comment: Several commenters questioned whether we were targeting impairments with a "volitional" aspect for removal from the listings, citing the removal of drug addiction and alcoholism as a basis for disability.

Response: We are not targeting specific kinds of impairments for review or exclusion from the listings, nor do we believe that obesity and other medical impairments are "volitional." In December 1985, when we last published final rules containing comprehensive revisions to the listings, we stated that medical advancements in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. These final rules are consistent with our longstanding responsibility to monitor the effectiveness of the listings, so that we can ensure they remain an appropriate and efficient tool to evaluate claims for disability.

The changes to our rules on the evaluation of drug addiction and alcoholism were required by law.

Comment: We received a number of comments on the many causes of obesity and the general ineffectiveness of current treatments. Many commenters cited the increased risk for developing musculoskeletal, respiratory, and cardiovascular problems, and for premature death. They pointed out that when we published revised listings in 1985, we explained that medical advances in treatment and program experience would require periodic evaluation and revision of the listings. They asked what advances in medicine or program experience justified eliminating the obesity listing.

Response: We do not dispute the commenters' statements about the causes of obesity and the general ineffectiveness of current treatments. As noted previously, the changes we are making are not the result of advances in medical evaluation or treatment but the result of program and adjudicative experience.

We also do not dispute the comments that individuals with severe obesity have increased morbidity and mortality risks. However, under the Act and our regulations we must consider whether an individual is currently disabled. We do not consider whether an individual is at risk for disability sometime in the future. The changes we are making in these final rules will enable us to assess disability based on the actual effects (as opposed to potential future effects) of the impairment.

Comment: Some commenters were concerned that many individuals would lose their benefits and have no means of assistance if we were to delete listing 9.09. One commenter recommended that we review all prior allowances based on listing 9.09 under the new rules.

Response: No individual will be removed from the rolls solely because we have deleted listing 9.09, as some commenters suggested. We will not review prior allowances based on listing 9.09 under the new rules.

These final rules have only a prospective effect. Unless otherwise required to do so (for example, by statute), we do not readjudicate previously decided cases when we revise our listings.

We do conduct periodic "continuing disability reviews" of individuals on our rolls to determine whether they are still disabled. However, when we conduct continuing disability reviews, we do not find that disability has ended based on a change in a listing. In most cases, we must show that an individual's impairment(s) has medically improved and that any medical improvement is "related to the ability to work." If an individual's impairment(s) has not medically improved, we will generally find that the individual is still disabled. Even if the impairment(s) has medically improved, our regulations provide that the improvement is not "related to the ability to work," if the impairment(s) continues to meet or equal the "same listing section used to make our most recent favorable decision." This is true even if, as in these final rules, we have deleted the listing section that we used to make the most recent favorable decision. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A) of our regulations. (A similar provision for continuing disability reviews for children eligible for SSI based on disability appears in § 416.994a(b)(2)). In a case where we find that medical improvement is not related to the ability to work (or the impairment still meets or equals the prior listing, in the case of an individual under age 18), we will find that disability continues, unless an exception to medical improvement applies.

Comment: Some commenters supported our proposal, but had questions about how claims for benefits involving obesity would be adjudicated after the deletion.

Response: We believe that the new paragraphs we have added to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings in the final rules provide guidance for our adjudicators in the proper handling of claims involving obesity. In addition, as we have noted above, we intend to provide additional guidance to our adjudicators regarding the evaluation of claims involving obesity, by issuing a Social Security Ruling.

Comment: Several commenters stated that the proposed change would have a disproportionate impact on particular groups of individuals, such as women, minorities and individuals at lower socioeconomic levels. They thought the proposed rule discriminatory. Some commenters thought the rules reflected societal prejudice against individuals with obesity. Some said, without explanation, that deleting the obesity listing would violate the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, or the Rehabilitation Act of 1973, 29 U.S.C. 794.

Response: SSA is committed to providing fair treatment for all individuals who seek or receive benefits. The deletion of listing 9.09 means only that individuals with severe impairments who seek benefits based in whole or in part on obesity will have their claims evaluated in accordance with the appropriate body system in the listings, or at later steps of the sequential evaluation process, as we explained in the proposed rules (63 FR 11854, 11855) and above. Our actions in these final rules in no way violate the ADA or the Rehabilitation Act; they are intended to help us ensure that only those individuals who meet the statutory definition of disability are found disabled.

These final rules do not discriminate against any individual or group of individuals based on their impairments. Rather, they ensure that our listings remain an efficient and legally appropriate method for determining that individuals who meet the statutory definition of disability are found disabled, and that individuals who do not meet the statutory definition are not inappropriately found disabled. In our experience, listing 9.09 did not always meet that goal. Consequently, we believe that the best course of action is to delete the listing.

This does not mean that these final rules reflect prejudice against individuals with obesity, or that they are intended to result in discriminatory treatment of any individuals. However, to ensure that adjudicators understand our intent, we have added guidance to the musculoskeletal, respiratory, and cardiovascular body system listings as described above. We believe the changes we have made to the listings will ensure that disability claims based on obesity are evaluated appropriately.

Comment: One commenter said that the proposed rule violated the Administrative Procedure Act (APA) because the agency did not disclose any scientific and technical studies or data in the NPRM. This commenter asserted that the APA requires the agency to disclose scientific material that the agency believes supports its rule to interested parties for comment. Another commenter expressed similar views and asserted that the NPRM violated the APA because the commenter believed it relied on inadequate data.

Response: In the Supplementary Information section of the preamble to the NPRM, we noted that "[c]urrent medical and vocational research demonstrates that the listing is not necessarily reflective of an inability to engage in any gainful activity or even of an inability to engage in substantial gainful activity" (63 FR 11854, 11855). We made a similar comment in the Summary section of the preamble of the NPRM (63 FR 11854). We also noted that we were proposing to remove

listing 9.09 "to recognize that there is no generally accepted current medical and vocational knowledge which establishes that even massive obesity, per se, has a defined adverse effect on an individual's ability to work; i.e., even long-term, massive obesity at the level specified in the listing does not necessarily cause limitations that would prevent an individual from engaging in any gainful activity" (63 FR 11855).

We regret that these statements may have caused some confusion. As we discussed earlier in this preamble, we did not mean to imply that we were relying on any specific research to justify our decision to propose the removal of listing 9.09. Rather, we intended these statements to mean only that there is no generally accepted current medical and vocational knowledge which establishes that even massive obesity, per se, has a defined adverse effect on an individual's ability to work.

In response to these statements in the preamble to the proposed rule, a number of commenters provided us with citations to medical research and other medical literature (e.g., medical manuals and textbooks). The commenters believed the research they cited supported their position that obesity has a specific adverse impact on an individual's functional abilities, such that it results in disability. We have reviewed the medical research and other documents that have been brought to our attention by the commenters, and believe that they are consistent with our experience in adjudicating cases under listing 9.09 or otherwise did not provide a basis for retaining the listing. None of the sources that have been brought to our attention by the commenters, or that we reviewed in the course of developing these final rules, support the conclusion that obesity at the level specified in listing 9.09, taken in conjunction with the findings related to any associated musculoskeletal, respiratory, or cardiovascular impairments set out in listings 9.09A through E, would necessarily have such an adverse impact on an individual's functional abilities that it should be considered to preclude the performance of any gainful activity, in the absence of a case-by-case determination of the effects of the obesity and associated impairments on a particular individual.

We believe our actions in proposing the deletion of listing 9.09 are fully consistent with the APA and have provided the public with a meaningful opportunity to comment on the proposed rule. In fact, we extended the comment period to provide additional time for comment. Moreover, the supplemental data contained in the studies that were brought to our attention by various commenters did not provide a basis for changing the proposal. We do not believe, therefore, that the APA requires us to withdraw the proposed rule and initiate additional rulemaking, as some commenters suggested.

Comment: Some commenters said that SSA used an unfair and cursory approach in proposing to delete the obesity listing and that we could use the same approach and rationale to delete any listing. They said that SSA's professional image and reputation for commitment to individual equity and due process would be threatened if we proceeded with the proposed deletion.

Response: We have long recognized that medical advances in disability evaluation and treatment and program experience require that we periodically review and update the medical criteria in the listings. On an ongoing basis, we review medical literature and our program and adjudicative experience to monitor the medical criteria in the listings. We do not recommend changes without careful consideration. We do not believe our approach in this case was unfair or cursory.

Accordingly, for the reasons set out above, we are publishing the proposed rules as final rules with the revisions noted.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final regulations meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Therefore, we prepared and submitted to OMB an assessment of the potential costs and benefits of this regulatory action. This assessment also contains an analysis of alternative policies we considered and chose not to adopt. It is available for review by members of the public by contacting the person shown above.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: April 7, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—Listing of Impairments

2. Item 10 of the introductory text before Part A of appendix 1 is revised to read as follows:

* * * * *

10. Endocrine System (9.00 and 109.00): July 2, 2001.

* * * * *

3. The Table of Contents for Part A of appendix 1 is amended by removing "and Obesity" from section 9.00.

4. Listing 1.00 in part A of appendix 1 is amended by adding new paragraph F. to read as follows:

1.00 Musculoskeletal System

* * * * *

F. *Effects of obesity.* Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with musculoskeletal impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must

consider any additional and cumulative effects of obesity.

5. Listing 3.00 in part A of appendix 1 is amended by removing the last sentence of paragraph H and adding new paragraph I. to read as follows:

3.00 Respiratory System

* * * * *

I. *Effects of obesity.* Obesity is a medically determinable impairment that is often associated with disturbance of the respiratory system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with respiratory impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity.

6. Listing 3.10 in Part A of appendix 1 is revised to read as follows:

3.10 *Sleep-related breathing disorders.* Evaluate under 3.09 (chronic cor pulmonale) or 12.02 (organic mental disorders).

7. Listing 4.00 in Part A of appendix 1 is amended by adding new paragraph F. to read as follows:

4.00 Cardiovascular System

* * * * *

F. *Effects of obesity.* Obesity is a medically determinable impairment that is often associated with disturbance of the cardiovascular system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with cardiovascular impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity.

8. Listing 9.00 in part A of appendix 1 is amended by removing "AND OBESITY" from the title and removing the last two paragraphs from the preface.

9. Listing 9.01 in part A of appendix 1 is amended by removing "and Obesity" from the title.

10. Listing 9.09 in part A of appendix 1 is removed.

[FR Doc. 99–21935 Filed 8–23–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 96F–0145]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tetrakis(hydroxymethyl)phosphonium sulfate (CAS Reg. No. 55566–30–8) as a slimicide for use in the manufacture of paper and paperboard that contact food. This action responds to a petition filed by Albright & Wilson, Ltd.

DATES: This regulation is effective August 24, 1999; submit written objections and requests for a hearing by September 23, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION:

In a notice published in the **Federal Register** of May 20, 1996 (61 FR 25228), FDA announced that a food additive petition (FAP 5B4472) had been filed by Albright & Wilson, Ltd., c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814. The petition proposed to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of tetrakis(hydroxymethyl)phosphonium sulfate as a slimicide in the manufacture of paper and paperboard intended to contact food. Albright and Wilson, Ltd. is currently represented by Lewis & Harrison, 122 C St. NW., suite 740, Washington, DC 20001. (Formerly represented by Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814.)

When the petition was filed on May 20, 1996, it contained an environmental assessment (EA). In the notice of filing, the agency announced that it was placing the EA on display at the Dockets Management Branch for public review and comment (61 FR 25228). No comments were received. On July 29, 1997 (62 FR 40569), FDA published revised regulations under part 25 (21 CFR part 25), which became effective on August 28, 1997. On January 7, 1999, the petitioner submitted a claim of categorical exclusion under new § 25.32(q), in accordance with the procedures in § 25.15(a) and (d). Because the agency had not completed its review of the earlier submitted EA, the agency reviewed the claim of categorical exclusion under § 25.32(q) for the final rule and has determined that this action is a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an EA nor an environmental impact statement is required.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of tetrakis(hydroxymethyl)phosphonium sulfate as a slimicide in the manufacture of paper and paperboard that contact food is safe; (2) the additive will achieve its intended technical effect; and therefore,(3) the regulation in § 176.300(c) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 23, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for

which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.300 is amended by alphabetically adding an entry to the table in paragraph (c) to read as follows:

§ 176.300 Slimicides.

* * * * *

(c) * * *

List of Substances	Limitations
* * * * * * *	
Tetrakis(hydroxymethyl)phosphonium sulfate (CAS Reg. No. 55566–30–8)	Maximum use level of 84 mg/kg in the pulp slurry. The additive may also be added to water, which when introduced into the pulp slurry, results in a concentration in the pulp slurry not to exceed 84 mg/kg.
* * * * * * *	

* * * * *

Dated: August 12, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21851 Filed 8–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 98F–0871]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyethylene glycol monoisotridecyl ether sulfate, sodium salt as a component of coatings on paper and paperboard intended for use in contact with dry food. This action is in response to a petition filed by Servo Deldon BV.

DATES: This regulation is effective August 24, 1999; submit written objections and requests for a hearing by September 23, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 13, 1998, (63 FR 54717), FDA announced that a food additive petition (FAP 8B4630) had been filed by Servo Deldon BV, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to provide for the safe use of polyethylene glycol monoisotridecyl ether sulfate, sodium salt as a component of coatings on paper and paperboard intended for use in contact with dry food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as a " reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, polyethylene glycol monoisotridecyl ether sulfate, sodium salt as a surfactant in coatings for paper and paperboard in contact with dry foods, will result in exposure to no greater than 50 parts per billion (ppb) of the additive in the daily diet (3 kilogram (kg)) or an estimated daily intake (EDI) of 0.15 milligrams per person per day (mg/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 1,4-dioxane and ethylene oxide, the carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of the exposure to the impurities from the petitioned use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. 1,4–Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive as a surfactant in coatings for paper and paperboard in contact with dry foods to be no more than 0.2 ppb of the daily diet (3 kg) or 0.6 micrograms per person per day (µg/p/d) (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused a significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats. Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 0.6 µg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 2.1×10^{-8} (or 2.1 in 100 million) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

B. Ethylene Oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive as a surfactant in coatings for paper and paperboard in contact with dry foods to be no more than 3.9 parts per trillion in the daily diet (3 kg) or 12 nanograms per person per day (ng/p/d) (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to ethylene oxide resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach in female rats. Based on the agency's estimate that exposure to ethylene oxide will not exceed 12 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 2.24×10^{-6} (or 2.24 in 100 million)) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect the impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to 1,4-dioxane and ethylene oxide is very low, 2.1 in 100 million and 2.24 in 100 million, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive in adhesives is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 176.180 should be amended as set forth below in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed previously. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4630 (October 13, 1998, 63 FR 54717). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 23, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any

particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memoranda, dated January 13, 1999, and March 8, 1999, from the Chemistry Review Team, FDA, to the file concerning FAP 8B4630 (MATS No. 1011), Servo Delden BV, concerning the use of polyethylene glycol monoisotridecyl ether sulfate sodium salt as a surfactant in coatings in food-contact paper and paperboard.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by F. Homburger and J. K. Marquis, published by S. Karger, New York, NY, pp. 24–33, 1985.

3. "Bioassay of 1,4–Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

4. Memorandum, dated January 25, 1999, from the Indirect Additives Branch, FDA, to the Executive Secretary, Quantitative Risk Assessment Committee, FDA, concerning estimation of upper-bound lifetime risk from ethylene oxide and 1,4-dioxane in polyethylene glycol monoisotridecyl ether sulfate, sodium salt (PGMES): food additive petition No. 8B4630 (Servo Delden BV).

5. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46: pp. 924–933, 1982.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.180 is amended in the table in paragraph (b)(2) by alphabetically adding an entry under the headings "Lists of Substances" and "Limitations" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry food.

* * * * *

(b) * * *

(2) * * *

List of Substances	Limitations
* * * * * * *	
Polyethylene glycol monoisotridecyl ether sulfate, sodium salt (CAS Reg. No. 150413–26–6).	For use only as a surfactant at levels not to exceed 3 percent in latex formulations used in pigment binders for paper and paperboard.
* * * * * * *	

Dated: August 5, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21850 Filed 8–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 91F–0399]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of May 14, 1999 (64 FR 26281). The document amended the food additive regulations to provide for the safe use of 1,3-propanediamine, N,N″-1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine as a light stabilizer for polypropylene and polyethylene. The document was published with an error. This document corrects that error.

DATES: Effective on May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 14, 1999 (64 FR 26281), FDA amended the food additive regulations to provide for the safe use of 1,3-propanediamine, N,N″-1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine as a light stabilizer for polyethylene and polypropylene complying with 21 CFR 177.1520. It has been recently called to the attention of the agency that the Chemical Abstract Services (CAS) Registry has a slightly different nomenclature for the additive 1,3-propanediamine, N,N″-1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine (CAS Reg. No. 136504–96–6). The preferred nomenclature for the additive is 1,3-propanediamine, N,N″-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine. Therefore, the agency is amending 21 CFR 178.2010 to correct the nomenclature of the additive.

In FR Doc. 99–12177, appearing on page 26281, in the Federal Register of Friday, May 14, 1999, the following correction is made:

§ 178.2010 [Corrected]

1. On page 26282, in the table in paragraph (b), under the heading "Substances" "1,3-propanediamine, N,N″-1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine (CAS Reg. No. 136504–96–

6)" is corrected to read "1,3-propanediamine, N,N"-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine (CAS Reg. No. 136504–96–6)".

Dated: August 10, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21849 Filed 8–23–99; 8:45 am]

BILLING CODE 6160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN–0720–AA51

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revisions to the Eligibility Requirements

AGENCY: Office of the Secretary, DoD.

ACTION: Final Rule.

SUMMARY: This final rule revises the comprehensive CHAMPUS regulation pertaining to basic CHAMPUS benefits in accordance with several statutory changes. This final rule: sets forth the requirements for reinstatement of CHAMPUS eligibility for beneficiaries under age 65 who would otherwise have lost eligibility for CHAMPUS due to eligibility for Medicare as a result of disability or end-stage renal disease (ESRD); establishes new classes of CHAMPUS eligibles; establishes the Transitional Assistance Management Program which provides transitional health care for members (and their dependents) who served on active duty in support of a contingency operation and for members (and their dependents) who are involuntarily separated from active duty; allows former spouses who buy a conversion health policy to keep CHAMPUS eligibility for twenty-four (24) months for preexisting conditions that are not covered by the conversion policy; and makes minor technical revisions to the double coverage provisions. In order to expedite compliance with the statutory requirements, all of these provisions have been implemented under interim instructions. This final rule also adds a new category of eligible beneficiary under the Continued Health Care Benefit Program.

DATES: This final rule is effective September 23, 1999.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3572.

SUPPLEMENTARY INFORMATION:

The following specific paragraphs of § 199.3 have eligibility dates as follows:

Paragraph	Eligibility Date
(b)(2)(ii)(H)(*2*)	October 23, 1992.
(b)(2)(ii)(H)(*3*)	November 14, 1986.
(b)(2)(ii)(H)(*4*) (pertaining to placement by a court).	July 1, 1994.
(b)(2)(ii)(H)(*4*) (pertaining to placement by a recognized placement agency).	October 5, 1994.
(b)(2)(iii)(A)(*1*)	November 14, 1986.
(b)(2)(iii)(A)(*2*)	October 23, 1992.
(e)(1)(i)	April 6, 1991.
§ 199.3(e)(1)(ii)	October 1, 1990.
(e)(1)(iii)	October 1, 1990.
(f)(3)(viii)	October 1, 1991.
(f)(3)(ix)	October 1, 1991.

I. Summary of Final Rule Provisions

This final rule adds or revises a number of eligibility provisions. Following is a brief summary of the classes of beneficiaries affected by this final rule. Generally, each class is eligible for CHAMPUS as a result of the change, and we have included the other salient points regarding each, but the reader should refer to the proposed rule that was published on December 23, 1997, for a detailed discussion regarding the specific conditions and requirements for each class.

CHAMPUS/Medicare dual eligibles

—Must be under age 65, eligible for Medicare due to disability or end-stage renal disease, and enrolled in Medicare Part B
—Applies to all categories of CHAMPUS beneficiaries except dependents of active-duty members
—Effective October 1, 1991

Dependents of a person who dies of an injury, illness, or disease incurred on the way to or from training with a duration of 30 days or less

—Retiree cost-sharing
—Effective November 14, 1986

Victims of abuse

—By a member who was discharged or dismissed as a result of a court-martial conviction for the abuse
—Eligibility limited to one year from member's separation
—Coverage limited to treatment of conditions resulting from abuse
—Effective November 14, 1986 through October 16, 1998
—Effective October 17, 1998, covered services need not be related to the abuse and eligibility coincides with the period that the abused dependent is in receipt of transitional compensation under section 1059 of title 10 U.S.C.
—By a member or former member who loses eligibility to retired pay as a result of the abuse
—Effective October 23, 1992

Students who become incapable of self-support

—Must be full-time student
—The incapacitating condition must occur between the ages of 21 and 23
—Effective October 23, 1992

Dependents of an active duty member who dies while on active duty

—These individuals have always been eligible for CHAMPUS with retiree cost-sharing
—The most recent change provides that all care is to be cost-shared as active duty
—Special cost-sharing is limited to one year
—Effective October 1, 1993
—For dependents of active-duty members who die while on active duty between January 1, 1993, and October 1, 1993, only care for pre-existing conditions is to be cost-shared as active duty.

Dependents placed in the custody of a member or former member by a court or a recognized placement agency.

—Effective July 1, 1994, if placed by a court
—Effective October 5, 1994, if placed by a recognized placement agency
—This category of beneficiary is also added to the Continued Health Care Benefit Program effective October 5, 1994.

Transitional Assistance Management Program (TAMP)

—Claims for all individuals eligible under TAMP are cost-shared as active-duty dependents
—Members released from active duty in connection with contingency operations
—Eligible up to thirty (30) days
—Effective April 6, 1991
—Members involuntarily separated with less than six (6) years of service
—Eligible up to sixty (60) days
—Effective October 1, 1990
—Members involuntarily separated with six (6) or more years of service
—Eligible up to 120 days
—Effective October 1, 1990

The minor technical revisions to the double coverage provisions in section 199.8 and the addition of a new category of eligible beneficiary under the Continued Health Care Benefit Program contained in section 199.20 are unchanged from the proposed rule. The reader should refer to the proposed rule for a discussion of these provisions.

II. Public Comments

We provided a 60-day comment period on the proposed rule. We received no public comments, but we received a comment from another federal agency with which we are required to coordinate rules. Below we provide a summary of the comment and our response.

Comment—The commenter indicated that the language in paragraphs (f)(3)(viii) and (g)(1) does not accurately reflect the Medicare eligibility provisions for persons with end-stage renal disease (ESRD).

Response—A description of the Medicare eligibility requirements for persons with ESRD is not necessary to this rule, since those requirements are set forth in 42 CFR 406.13. We have deleted the language from the final rule.

III. Changes In the Final Rule

We have made four changes in the final rule to correct errors we discovered in the proposed rule.

The first involves a mathematical error in the supplementary information of the proposed rule. In Section II.D. we provided examples of coordination of benefits calculations for certain Medicare beneficiaries whose CHAMPUS eligibility has been reinstated. In Example 1, Step 4, the result is $3,938.45 and not $4,043.95 as was published in the proposed rule. This does not affect the final result of these calculations, but it is important to ensure the steps are accurate.

The second involves paragraph (b)(2)(ii)(H)(*2*). In the proposed rule this paragraph included the words "has not attained the age of 21". The basic requirement that a child be under 21 is contained elsewhere and this paragraph allows an exception to that requirement. Therefore, we have deleted the words "has not attained the age of 21".

The third involves paragraph (c)(5)(v). In the past, an incapacitated individual age 21 or older (age 23 or older if a student) could be adopted and gain CHAMPUS eligibility. The statute has been revised to restrict adoptions only to individuals that meet the requirements of a dependent at the time of adoption. As a result, we have deleted paragraph (c)(5)(v).

The fourth involves paragraph (c)(7). We have added additional material to this paragraph to distinguish the different beginning eligibility dates for children who are victims of abuse by a person who is discharged from a Uniformed Service as a result of committing the abuse as opposed to a person who has eligibility to receive retired pay on the basis of years of service terminated as a result of committing the abuse.

We have also made changes to paragraphs (b)(2)(iii)(A)(*1*), (c)(3)(i), and (c)(7) to include the provisions of Section 732 of the National Defense Authorization Act for FY 1999 (Pub. L. 105–261). This statutory change removed the limitation on the extent of services available to certain victims of abuse (i.e., the services must be related to the abuse) so that they are entitled to all benefits available under the Program. It also replaced the one year limitation on services available to them with the period that the abused dependent is in receipt of transitional compensation under section 1059 of title 10 U.S.C.

IV. Regulatory Procedures.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This final rule is not a significant regulatory action under Executive Order 12866. The changes set forth in this final rule are minor revisions to the existing regulation. Since this final rule does not impose information collection requirements, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by adding new definitions *abused dependent, deceased reservist, former member, member, reservist,* and *spouse,* in alphabetical order, and by revising the definitions for *child, deceased service member, Defense Enrollment Eligibility Reporting System (DEERS), dependent, sponsor, widow* or *widower* to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Abused dependent. An eligible spouse or child, who meets the criteria in § 199.3 of this part, of a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense, *or* of a member or former member who has had their entitlement to receive retired pay terminated because of misconduct involving physical or emotional abuse.

* * * * *

Child. An unmarried child of a member or former member, who meets the criteria (including age requirements) in § 199.3 of this part.

* * * * *

Deceased member. A person who, at the time of his or her death, was an active duty member of a Uniformed Service under a call or order that did not specify a period of 30 days or less.

* * * * *

Deceased reservist. A reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training and dies as a result of that specific injury, illness or disease.

* * * * *

Deceased retiree. A person who, at the time of his or her death, was entitled to retired or retainer pay or equivalent pay based on duty in a Uniformed Service. For purposes of this part, it also includes a person who died before attaining age 60 and at the time of his or her death would have been eligible for retired pay as a reservist but for the fact that he or she was not 60 years of age, and had elected to participate in the Survivor Benefit Plan established under 10 U.S.C. chapter 73.

* * * * *

Defense Enrollment Eligibility Reporting System (DEERS). An automated system maintained by the Department of Defense for the purpose of:

(1) Enrolling members, former members and their dependents, and

(2) Verifying members', former members' and their dependents' eligibility for health care benefits in the direct care facilities and for CHAMPUS.

* * * * *

Dependent. Individuals whose relationship to the sponsor (including NATO members who are stationed in or passing through the United States on official business when authorized) leads to entitlement to benefits under this part. (See § 199.3 of this part for specific categories of dependents).

* * * * *

Former member. A retiree, deceased member, deceased retiree, or deceased reservist in certain circumstances (see section 199.3 for additional information related to certain deceased reservists' dependents' eligibility). Under conditions specified under § 199.3 of this part, former member may also include a member of the Uniformed Services who has been discharged from active duty (or, in some cases, full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions and qualifies for CHAMPUS benefits under the Transitional Assistance Management Program or the Continued Health Care Benefit Program.

* * * * *

Member. A person on active duty in a Uniformed Service under a call or order that does not specify a period of 30 days or less. (*For CHAMPUS cost-sharing purposes only,* a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense is considered a member).

* * * * *

Reservist. A person who is under an active duty call or order to one of the Uniformed Services for a period of 30 days or less or is on inactive training.

* * * * *

Sponsor. A member or former member of a Uniformed Service upon whose status his or her dependents' eligibility for CHAMPUS is based. A sponsor also includes a person who, while a member of the Uniformed Services and after becoming eligible to be retired on the basis of years of service, has his or her eligibility to receive retired pay terminated as a result of misconduct involving abuse of a spouse or dependent child. It also includes NATO members who are stationed in or passing through the United States on official business when authorized. It also includes individuals eligible for CHAMPUS under the Transitional Assistance Management Program.

* * * * *

Spouse. A lawful husband or wife, who meets the criteria in § 199.3 of this part, regardless of whether or not dependent upon the member or former member for his or her own support.

* * * * *

Widow or Widower. A person who was a spouse at the time of death of a member or former member and who has not remarried.

* * * * *

3. Section 199.3 is revised to read as follows:

§ 199.3 Eligibility.

(a) *General.*—This section sets forth those persons who, by the provisions of 10 U.S.C. chapter 55, and the NATO Status of Forces Agreement, are eligible for CHAMPUS benefits. A determination that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Before any CHAMPUS benefits may be extended, additional requirements, as set forth in other sections of this part, must be met. Additionally, the use of CHAMPUS may be denied if a Uniformed Service medical treatment facility capable of providing the needed care is available. CHAMPUS relies primarily on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification.

(b) *CHAMPUS eligibles*—(1) *Retiree.* A member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniformed Service.

(2) *Dependent.* Individuals whose relationship to the sponsor leads to entitlement to benefits. CHAMPUS eligible dependents include the following:

(i) *Spouse.* A lawful husband or wife of a member or former member. The spouse of a deceased member or retiree must not be remarried. A former spouse also may qualify for benefits as a dependent spouse. A former spouse is a spouse who was married to a military member, or former member, but whose marriage has been terminated by a final decree of divorce, dissolution or annulment. To be eligible for CHAMPUS benefits, a former spouse must meet the criteria described in paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section *and* must qualify under the group defined in paragraph (b)(2)(i)(F)(*1*) or (b)(2)(i)(F)(*2*) of this section.

(A) Must be unremarried; and

(B) Must not be covered by an employer-sponsored health plan; and

(C) Must have been married to a member or former member who performed at least 20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay; and

(D) Must not be eligible for Part A of Title XVIII of the Social Security Act (Medicare) except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section; and

(E) Must not be the dependent of a NATO member; *and*

(F) Must meet the requirements of paragraph (b)(2)(i)(F)(*1*) or (b)(2)(i)(F)(*2*) of this section:

(*1*) The former spouse must have been married to the same member or former member for at least 20 years, at least 20 of which were creditable in determining the member's or former member's eligibility for retired or retainer pay. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section.

(*i*) If the date of the final decree of divorce, dissolution, or annulment was before February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care received on or after January 1, 1985.

(*ii*) If the date of the final decree of the divorce, dissolution, or annulment was on or after February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care which is received on or after the date of the divorce, dissolution, or annulment.

(*2*) The former spouse must have been married to the same member or former member for at least 20 years, and at least 15, but less than 20 of those married years were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(*i*) If the date of the final decree of divorce, dissolution, or annulment is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985, or the date of the divorce, dissolution, or annulment, whichever is later. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section.

(*ii*) If the date of the final decree of divorce, dissolution or annulment is on or after April 1, 1985, but before September 29, 1988, the former spouse is eligible only for care received from the date of the decree of divorce, dissolution, or annulment until December 31, 1988, or for two years from the date of the divorce, dissolution, or annulment, whichever is later.

(*iii*) If the date of the final decree of divorce, dissolution, or annulment is on or after September 29, 1988, the former spouse is eligible only for care received within the 365 days (366 days in the case of a leap year) immediately following the date of the divorce, dissolution, or annulment.

(ii) *Child.* A dependent child is an unmarried child of a member or former member who has not reached his or her twenty-first (21st) birthday, except an incapacitated adopted child meeting the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section, and who bears one of the following relationships to a member or former member of one of the Uniformed Services:

(A) A legitimate child; or

(B) An adopted child whose adoption has been legally completed on or before the child's twenty-first (21st) birthday; or

(C) A legitimate stepchild; or

(D) An illegitimate child of a *member or former member* whose paternity/maternity *has been* determined judicially, and the member or former member directed to support the child; or

(E) An illegitimate child of a *member or former member* whose paternity/maternity *has not been* determined judicially, who resides with or in the home provided by the member or former member, and is or continues to be dependent upon the member or former member for over one-half of his or her support, or who was so dependent on the former member at the time of the former member's death; or

(F) An illegitimate child of a *spouse of a member* who resides with or in a home provided by the member and is, and continues to be dependent upon the member for over one-half of his or her support; or

(G) An illegitimate child of a *spouse of a former member* who resides with or in a home provided by a former member or the former member's spouse at the time of death of the former member, and is, or continues to be, or was, dependent upon the former member for more than one-half of his or her support at the time of death; or

(H) An individual who falls into one of the following classes:

(*1*) *A student.* A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married, has passed his or her 21st birthday but has not passed his or her 23rd birthday, is dependent upon the member or former member for over 50 percent of his or her support or was dependent upon the member or former member for over 50 percent of his or her support on the date of the member's or former member's death, and is pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C. chapters 34 and 35.

Note: Courses of education offered by institutions listed in the "Education Directory," "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to 38 U.S.C. chapters 34 and 35, a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(*2*) *An incapacitated child.* A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married and is incapable of self-support because of a mental or physical disability that:

(*i*) Existed before the child's twenty-first (21st) birthday; or

(*ii*) Occurred between the ages of 21 and 23 while the child was enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education (see NOTE to paragraph (b)(2)(ii)(H)(*2*)(*iii*) of this section), and is or was at the time of the member's or former member's death dependent on the member or former member for over one-half of his or her support; and

(*iii*) The incapacity is continuous. (If the incapacity significantly improves or ceases at any time, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity, unless the incapacity recurs and the beneficiary is under age 21, or is under age 23 and is enrolled as a full-time student under paragraph (b)(2)(ii)(H)(*2*)(*ii*) of this section. If the child was not incapacitated after that date, no CHAMPUS eligibility exists on the basis of the incapacity. However, incapacitated children who marry and who subsequently become unmarried through divorce, annulment, or death of spouse, may be reinstated as long as they still meet all other requirements).

Note: An institution of higher learning is a college, university, or similar institution, including a technical or business school, offering post-secondary level academic instruction that leads to an associate or higher degree, if the school is empowered by the appropriate State education authority under State law to grant an associate, or higher, degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. The term also shall include a hospital offering educational programs at the post-secondary level regardless of whether the hospital grants a post-secondary degree. The term also shall include an educational institution that is not located in a State, that offers a course leading to a standard college degree, or the equivalent, and that is recognized as such by the Secretary of Education (or comparable official) of the country, or other jurisdiction, in which the institution is located (38 U.S.C. chapter 34, section 1661, and chapter 35, section 1701.

Courses of education offered by institutions listed in the "Education Directory," "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to chapters 34 and 35 of 38 U.S.C., a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(*3*) *A child of a deceased reservist.* A child, who is determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, of a reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training, and the reservist dies as a result of that specific injury, illness or disease.

(*4*) *A child placed in legal custody of a member or former member.* A child who is placed in legal custody of a member or former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child.

(iii) *Abused dependents.*—(A) *Categories of abused dependents.* An abused dependent may be either a spouse or a child. Eligibility for either class of abused dependent results from being either:

(*1*) The spouse (including a former spouse) or child of a member who has received a dishonorable or bad-conduct discharge, or dismissal from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse of the spouse or child, or was administratively discharged as a result of such an offense. Until October 17, 1998, Medical benefits are limited to care related to the physical or emotional abuse and for a period of 12 months following the member's separation from the Uniformed Service. On or after October 17, 1998, medical benefits can include all under the Basic Program and under the Program for Persons with Disabilities for the period that the spouse or child is in receipt of

transitional compensation under section 1059 of title 10 U.S.C.

(*2*) The spouse (including a former spouse) or child of a member or former member who while a member and as a result of misconduct involving abuse of the spouse or child has eligibility to receive retired pay on the basis of years of service terminated.

(B) *Requirements for categories of abused dependents.*—(*1*) *Abused spouse.* As long as the spouse is receiving payments from the DoD Military Retirement Fund under court order, the spouse is eligible for health care under the same conditions as any spouse of a retired member. The abused spouse must:

(*i*) Under paragraph (b)(2)(iii)(A)(*1*) of this section, be a lawful husband or wife or a former spouse of the member; or

(*ii*) Under paragraph (b)(2)(iii)(A)(*2*) of this section, be a lawful husband or wife or a former spouse of the member or former member, and the spouse is receiving payments from the Department of Defense Military Retirement Fund under 10 U.S.C. 1408(h) pursuant to a court order; and

(*A*) Be a victim of the abuse; and

(*B*) Have been married to the member or former member at the time of the abuse; or

(*C*) Be the natural or adoptive parent of a dependent child of the member or former member who was the victim of the abuse.

(*2*) *Abused child.* The abused child must:

(*i*) Under paragraph (b)(2)(iii)(A)(*1*) of this section, be a dependent child of the member or former member.

(*ii*) Under paragraph (b)(2)(iii)(A)(*2*) of this section,

(*A*) Have been a member of the household where the abuse occurred; and

(*B*) Be an unmarried legitimate child, including an adopted child or stepchild of the member or former member; and

(*C*) Be under the age of 18; or

(*D*) Be incapable of self support because of a mental or physical incapacity that existed before becoming 18 years of age and be dependent on the member or former member for over one-half of his or her support; or

(*E*) If enrolled in a full-time course of study in an institution of higher learning recognized by the Secretary of Defense (for the purposed of 10 U.S.C. 1408(h)), be under 23 years of age and be dependent on the member or former member for over one-half of his or her support.

(*F*) The dependent child is eligible for health care, regardless of whether any court order exists, under the same conditions as any dependent of a retired member.

(3) *TAMP eligibles.* A former member, including his or her dependents, who is eligible under the provisions of the Transitional Assistance Management Program as described in paragraph (e) of this § 199.3.

(c) *Beginning dates of eligibility.* (1) Beginning dates of eligibility depend on the class to which the individual belongs and the date the individual became a member of the class. Those who join after the class became eligible attain individual eligibility on the date they join.

(2) Beginning dates of eligibility for each class of spouse *(excluding spouses who are victims of abuse and eligible spouses of certain deceased reservists)* are as follows:

(i) A spouse of a member for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956;

(B) Outpatient medical benefits under the Basic Program, October 1, 1966;

(C) Inpatient medical benefits under the Basic Program *and* benefits under the Program for Persons with Disabilities, January 1, 1967;

(ii) A spouse of a former member:

(A) For medical benefits under the Basic Program, January 1, 1967.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(iii) A former spouse:

(A) For medical benefits under the Basic Program, dates of beginning eligibility are as indicated for each category of eligible former spouse identified within paragraph (b)(2)(i) of this section.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(3) Beginning dates of eligibility for spouses who are victims of abuse *(excluding spouses who are victims of abuse of certain deceased reservists)* are as follows:

(i) An abused spouse meeting the requirements of paragraph (b)(2)(iii)(A)(*1*) of this section, including an eligible former spouse:

(A) For medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(B) For all medical and dental benefits under the Basic Program for the period that the spouse is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(C) For medical and dental care for problems associated with the physical or emotional abuse under the Program for Persons with Disabilities for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(D) For all medical and dental benefits described in section 199.5 for the period that the spouse is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(ii) An abused spouse meeting the requirements of paragraphs (b)(2)(iii)(A)(*2*) of this section, including an eligible former spouse:

(A) For all benefits under the CHAMPUS Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(4) Beginning dates of eligibility for spouses of certain deceased reservists, *including spouses who are victims of abuse of certain deceased reservists*, are as follows:

(i) A spouse meeting the requirements of paragraph (b)(2)(i) of this section, including an eligible former spouse:

(A) For benefits under the Basic Program, November 14, 1986.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(ii) An abused spouse of certain deceased reservists, meeting the requirements of paragraphs (b)(2)(iii) of this section, including an eligible former spouse, *for the limited benefits and period of eligibility* described in paragraphs (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, November 14, 1986.

(B) For benefits under the Program for Persons with Disabilities, November 14, 1986.

(iii) An abused spouse of certain deceased reservists, including an eligible former spouse, meeting the requirements of paragraphs (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(5) Beginning dates of eligibility for each class of dependent children, *(excluding dependent children of certain deceased reservists, abused children and incapacitated children whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning)*, are as follows:

(i) Legitimate child, adopted child, or legitimate stepchild of a *member*, for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956;

(B) Outpatient medical benefits under the Basic Program, October 1, 1966;

(C) Inpatient medical benefits under the Basic Program *and* benefits under the Program for Persons with Disabilities, January 1, 1967;

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION

(ii) Legitimate child, adopted child or legitimate stepchild of *former members*:

(A) For medical benefits under the Basic Program, January 1, 1967.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(iii) Illegitimate child of a male or female *member or former member* whose paternity/maternity has been determined judicially and the member or former member has been directed to support the child, for:

(A) All benefits for which otherwise entitled, August 31, 1972.

(B) Program for Persons with Disabilities benefits limited to dependent children of *members* only, August 31, 1972.

(iv) Illegitimate child of:

(A) A male member or former member whose paternity *has not been* determined judicially:

(B) A female member or former member who resides with, or in a home provided by the member or former member, or who was residing in a home provided by the member or former member at the time of the member's or former member's death, and who is or continues to be dependent on the member for over one-half of his or her support, or was so dependent on the member or former member at the time of death;

(C) A spouse of a member or former member who resides with or in a home provided by the member or former member, or the parent who is the spouse of the member or former member or was the spouse of a member or former member at the time of death, and who is and continues to be dependent upon the member or former member for over one-half of his or her support, or was so dependent on the member or former member at the time of death; for:

(*1*) All benefits for which otherwise eligible, January 1, 1969.

(*2*) Program for Persons with Disabilities limited to dependent children of *members* only, January 1, 1969.

(*6*) Beginning dates of eligibility for children of certain deceased reservists who meet the requirements of paragraph (b)(2)(ii)(H)(*3*) of this section, *excluding incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(2)* of this section, for:

(i) Benefits under the Basic program, November 14, 1986.

(ii) Not eligible for benefits under the Program for Persons with Disabilities.

(*7*) Beginning dates of eligibility for children who are victims of abuse, *including incapacitated children* who meet the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section are as follows:

(i) An abused child meeting the requirements of paragraph (b)(2)(iii)(A)(*1*) of this section:

(A) Medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(B) For all medical and dental benefits under the Basic Program for the period that the child is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(C) Medical and dental care for problems associated with the physical or emotional abuse under the Program for Persons with Disabilities for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(D) For all medical and dental benefits described in section 199.5 for the period that the child is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(ii) An abused child meeting the requirements of paragraphs (b)(2)(iii)(A)(*2*) of this section:

(A) For all benefits under the CHAMPUS Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(*8*) Beginning dates of eligibility for incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section, whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education, and, are or were at the time of the member's or former member's death, dependent on the member or former member for over one-half of their support, for:

(i) All benefits for which otherwise entitled, October 23, 1992.

(ii) Program for Persons with Disabilities benefits limited to children of *members* only, October 23, 1992.

(*9*) Beginning dates of eligibility for a child who meets the requirements of paragraph (b)(2)(ii)(H)(*4*) and:

(i) Has been placed in custody by a court:

(A) All benefits for which entitled, July 1, 1994.

(B) Program for Persons with Disabilities benefits limited to children of *members* only, July 1, 1994.

(ii) Has been placed in custody by a recognized adoption agency:

(A) All benefits for which entitled, October 5, 1994.

(B) Program for Persons with Disabilities benefits limited to children of *members* only, October 5, 1994.

(*10*) Beginning dates of eligibility for a retiree for:

(i) Medical benefits under the Basic Program January 1, 1967.

(ii) Retirees and their dependents are not eligible for benefits under the Program for Persons with Disabilities.

(d) *Dual eligibility.* Dual eligibility occurs when a person is entitled to benefits from two sources. For example, when an active duty member is also the dependent of another active duty member, a retiree, or a deceased active duty member or retiree, dual eligibility, that is, entitlement to direct care from the Uniformed Services medical care system and CHAMPUS is the result. Since the active duty status is primary, and it is the intent that all medical care be provided an active duty member through the Uniformed Services medical care system, CHAMPUS eligibility is terminated as of 12:01 a.m. on the day following the day the dual eligibility begins. However, any dependent children in a marriage of two active duty persons or of an active duty member and a retiree, are CHAMPUS eligible in the same manner as dependent children of a marriage involving only one CHAMPUS sponsor. Should a spouse or dependent who has dual eligibility leave active duty status, that person's CHAMPUS eligibility is reinstated as of 12:01 a.m. of the day active duty ends, if he or she otherwise is eligible as a dependent of a CHAMPUS sponsor.

Note: No CHAMPUS eligibility arises as the result of the marriage of two active duty members.

(e) *Eligibility Under the Transitional Assistance Management Program (TAMP).* Transitional health care benefits under CHAMPUS are authorized for the applicable time period described, for:

(1) Up to thirty (30) days or until again covered by an employer-sponsored health plan, whichever occurs earlier, following release from active duty for:

(i) Activated Guard/Reserve and their dependents,

(ii) Involuntary stop-loss and their dependents,

(iii) Voluntary stop-loss and their dependents, and

(iv) Members who accepted Voluntary Separation Incentives (VSI).

(2) Sixty (60) days for regular DoD military and their dependents when the sponsor is involuntarily separated with less than six years of active service. Involuntary separation must occur

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

during the five-year period beginning October 1, 1990.

(3) One hundred twenty (120) days for regular military and their dependents when the sponsor is involuntarily separated with six or more years of active service. Involuntary separation must occur during the five year period beginning October 1, 1990. Each branch of service will determine eligibility, including dates, for its members and their dependents and provide data to DEERS.

(f) *Changes in status which result in termination of CHAMPUS eligibility.* Changes in status which result in a loss of CHAMPUS eligibility as of 12:01 a.m. of the day following the day the event occurred, unless otherwise indicated, are as follows:

(1) *Changes in the status of a member.* (i) When an active duty member's period of active duty ends, excluding retirement or death.

(ii) When an active duty member is placed on desertion status (eligibility is reinstated when the active duty member is removed from desertion status and returned to military control).

Note: A member serving a sentence of confinement in conjunction with a sentence of punitive discharge is still considered on active duty until such time as the discharge is executed.

(2) *Changes in the status of a retiree.* (i) When a retiree ceases to be entitled to retired, retainer, or equivalent pay for any reason, the retiree's dependents lose their eligibility unless the dependent is otherwise eligible (e.g., some former spouses, some dependents who are victims of abuse and some incapacitated children as outlined in paragraph (b)(2)(ii)(H)(*2*) of this section).

(ii) A retiree also loses eligibility when no longer entitled to retired, retainer, or equivalent pay.

Note: A retiree who waives his or her retired, retainer or equivalent pay is still considered a retiree for the purposes of CHAMPUS eligibility.

(3) *Changes in the status of a dependent.* (i) Divorce, except for certain classes of former spouses as provided in paragraph (b)(2)(i) of this section and the member or former member's *own* children (i.e., legitimate, adopted, and judicially determined illegitimate children).

Note: An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the divorce becomes final.

(ii) Annulment, except for certain classes of former spouse as provided in paragraph (b)(2)(i) of this section and the member or former member's *own* children (i.e., legitimate, adopted, and judicially determined illegitimate children).

Note: An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the annulment becomes final.

(iii) Adoption, except for adoptions occurring after the death of a member or former member.

(iv) Marriage of a child, except when the marriage is terminated by death, divorce, or annulment before the child is 21 or 23 if an incapacitated child as provided in paragraph (b)(2)(ii)(H)(*2*) of this section.

(v) Marriage of a widow or widower, except for the child of the widow or widower who was the stepchild of the deceased member or former member at the time of death. The stepchild continues CHAMPUS eligibility as other classes of dependent children.

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not available).

(vii) Attainment of age 65, except for dependents of active duty member's and beneficiaries not eligible for Part A Medicare. CHAMPUS eligibility is lost at 12:01 a.m. on the last day of the month preceding the month of attainment of age 65.

Note: If the person is not eligible for Part A of Medicare, he or she must file a Social Security Administration "Notice of Disallowance" certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued. Individuals who lose their CHAMPUS eligibility because they have reached the age limitation or were eligible for Part A, Medicare cannot be reinstated under CHAMPUS. Additionally, individuals entitled only to supplementary medical insurance (Part B) of Medicare, but not Part A, or Part A through the Premium HI provisions (provided for under the 1972 Amendments to the Social Security Act retain eligibility under CHAMPUS (refer to section 199.8 of this part for additional information when a double coverage situation is involved).

(viii) End stage renal disease. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a person because of chronic renal disease unless the following conditions have been met. CHAMPUS eligibility will continue if:

(A) The individual is under 65 years old;

(B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426–1(a);

(C) The individual is enrolled in Part B of Medicare; and

(D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Enrollment Eligibility Reporting System (DEERS).

(ix) Individuals with certain disabilities. Each case relating to Medicare eligibility resulting from being disabled requires individual investigation. All beneficiaries except dependents of active duty members lose their CHAMPUS eligibility when Medicare coverage becomes available to a disabled person unless the following conditions have been met. CHAMPUS eligibility will continue if:

(A) The individual is under 65 years old;

(B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426(b)(2);

(C) The individual is enrolled in Part B of Medicare; and

(D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Enrollment Eligibility Reporting System (DEERS).

(x) Disabled students, that is children age 21 or 22, who are pursuing a full-time course of higher education and who, either during the school year or between semesters, suffer a disabling illness or injury with resultant inability to resume attendance at the institution remain eligible for CHAMPUS medical benefits for 6 months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, CHAMPUS benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in a full time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status *does not* have eligibility and *may not* qualify for eligibility under the requirements related to mental or physical incapacity as described in paragraph (b)(2)(ii)(H)(*2*) of this section.

(g) *Reinstatement of CHAMPUS eligibility.* Circumstances which result in reinstatement of CHAMPUS eligibility are as follows:

(1) *End Stage renal disease.* Unless CHAMPUS eligibility has been

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

continued under paragraph (f)(3)(viii) of the section, when Medicare eligibility ceases for end-stage renal disease patients, CHAMPUS eligibility resumes if the person is otherwise still eligible. He or she is required to take action to be reinstated as a CHAMPUS beneficiary and to obtain a new identification card.

(2) *Disability.* Some disabilities are permanent, others temporary. Each case must be reviewed individually. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(ix) of this section, when disability ends and Medicare eligibility ceases, CHAMPUS eligibility resumes if the person is otherwise still eligible. Again, he or she is required to take action to obtain a new CHAMPUS identification card.

(h) *Determination of eligibility status.* Determination of an individual's eligibility as a CHAMPUS beneficiary is the primary responsibility of the Uniformed Service in which the member or former member is, or was, a member, or in the case of dependents of a NATO military member, the Service that sponsers the NATO member. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the results of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(i) *Procedures for determination of eligibility.* Procedures for the determination of eligibility are prescribed within the Department of Defense Instruction 1000.13 available at local military facilities personnel offices.

(j) *CHAMPUS procedures for verification of eligibility.* (1) Eligibility for CHAMPUS benefits will be verified through the Defense Enrollment Eligibility Reporting System (DEERS) maintained by the Uniformed Services, except for abused dependents as set forth in paragraph (b)(2)(iii) of this section. It is the responsibility of the CHAMPUS beneficiary, or parent, or legal representative, when appropriate, to provide the necessary evidence required for entry into the DEERS file to establish CHAMPUS eligibility and to ensure that all changes in status that may affect eligibility be reported immediately to the appropriate Uniformed Service for action.

(2) Ineligibility for CHAMPUS benefits may be presumed in the absence of prescribed eligibility evidence in the DEERS file.

(3) The Director, OCHAMPUS, shall issue guidelines as necessary to implement the provisions of this section.

4. Section 199.4 is amended by revising paragraphs (e)(5)(iii)(B), (f)(1), (f)(2), introductory text, (f)(2)(ii), introductory text, (f)(2)(iii), (f)(2)(iv), (f)(3), introductory text, (f)(3)(i), (f)(3)(iii), (f)(4), introductory text and (f)(4)(ii) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) In most instances, for costs related to kidney transplants, Medicare (not CHAMPUS) benefits will be applicable. If a CHAMPUS beneficiary participates as a kidney donor for a Medicare beneficiary, Medicare will pay for expenses in connection with the kidney transplant to include all reasonable preparatory, operation and postoperation recovery expenses associated with the donation (postoperative recovery expenses are limited to the actual period of recovery). (See section 199.3 of this part for additional information on end stage renal disease.)

* * * * *

(f) * * *

(1) *General.* As stated in the introductory paragraph to this section, the Basic Program is essentially a supplemental program to the Uniformed Services direct medical care system. To encourage use of the Uniformed Services direct medical care system wherever its facilities are available and appropriate, the Basic Program benefits are designed so that it is to the financial advantage of a CHAMPUS beneficiary or sponsor to use the direct medical care system. When medical care is received from civilian sources, a CHAMPUS beneficiary is responsible for payment of certain deductible and cost-sharing amounts in connection with otherwise covered services and supplies. By statute, this joint financial responsibility between the beneficiary or sponsor and CHAMPUS is more favorable for dependents of members than for other classes of beneficiaries.

(2) *Dependents of members of the Uniformed Services.* CHAMPUS beneficiary or sponsor liability set forth for dependents of members is as follows:

(i) * * *

(ii) *Inpatient cost-sharing.* Dependents of members of the Uniformed Services are responsible for the payment of the first $25 of the allowable institutional costs incurred with each covered inpatient admission to a hospital or other authorized institutional provider (refer to § 199.6 of the part), or the amount the beneficiary or sponsor would have been charged had the inpatient care been provided in a Uniformed Service hospital, whichever is greater.

* * * * *

(iii) *Outpatient cost-sharing.* Dependents of members of the Uniformed Services are responsible for payment of 20 percent of the CHAMPUS-determined allowable cost or charge beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

* * * * *

(iv) *Ambulatory surgery.* Notwithstanding the above provisions pertaining to outpatient cost-sharing, dependents of members of the Uniformed Services are responsible for payment of $25 for surgical care that is authorized and received while in an outpatient status and that has been designated in guidelines issued by the Director, OCHAMPUS, or a designee.

* * * * *

(3) *Former members and dependents of former members.* CHAMPUS beneficiary liability set forth for former members and dependents of former members is as follows:

(i) *Annual fiscal year deductible for outpatient services or supplies.* The annual fiscal year deductible for otherwise covered outpatient services or supplies provided former members and dependents of former members is the same as the annual fiscal year outpatient deductible applicable to dependents of active duty members of rank E–5 or above (refer to paragraph (f)(2)(i)(A) or (B) of this section).

(ii) * * *

(iii) *Outpatient cost-sharing.* Former members and dependents of former members are responsible for payment of 25 percent of the CHAMPUS-determined allowable costs or charges beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

* * * * *

(4) *Former spouses.* CHAMPUS beneficiary liability for former spouses eligible under the provisions set forth in § 199.3 of this part is as follows:

(i) * * *

(ii) *Inpatient cost-sharing.* Eligible former spouses are responsible for

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

payment of cost-sharing amounts the same as those required for former members and dependents of former members.

* * * * *

6. Section 199.8 is amended by revising paragraphs (a) and (d)(1) to read as follows.

§ 199.8 Double coverage.

* * * * *

(a) *Introduction.* (1) In enacting CHAMPUS legislation, Congress clearly has intended that CHAMPUS be the secondary payer to all health benefit and insurance plans. 10 U.S.C. 1079(j)(1) specifically provides:

"A benefit may not be paid under a plan (CHAMPUS) covered by this section in the case of a person enrolled in or covered by any other insurance, medical service, or health plan to the extent that the benefit also is a benefit under the other plan, except in the case of a plan (Medicaid) administered under title 19 of the Social Security Act (42 U.S.C. 1396, *et seq.*)."

(2) The above provision is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(d). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges.

* * * * *

(d) * * *

(1) *CHAMPUS and Medicare.* Under certain circumstances a CHAMPUS beneficiary can also be eligible for Medicare. In any double coverage situation involving Medicare, Medicare is always the primary payer. When Part A, "Hospital Insurance," of Medicare is involved, the Medicare "lifetime reserve" benefit must be used before CHAMPUS benefits may be used. The procedures to be followed for these circumstances are as follows.

(i) *Dependents of active duty members.* For dependents of active duty members, payment will be determined in accordance with paragraph (c) of this section.

(ii) *Medicare end stage renal disease beneficiaries.* In any case involving a Medicare end stage renal disease beneficiary as provided in paragraph (f)(3)(viii) of § 199.3, CHAMPUS secondary payments will be determined in accordance with paragraph (c) of this sectioin.

(iii) *Medicare disabled beneficiaries.* In any case involving a Medicare disabled beneficiary as provided in paragraph (f)(3)(ix) of § 199.3, CHAMPUS payment is determined in accordance with paragraph (c) of this section.

* * * * *

7. Section 199.20 is amended by adding paragraph (d)(1)(iv) to read as follows.

§ 199.20 Continued Health Care Benefit Program (CHCBP).

* * * * *

(d) * * *

(1) * * *

(iv) An unmarried person who:

(A) Is placed in the legal custody of a member or former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child; and

(B) Either:

(*1*) Has not attained the age of 21 if not in school or age 23 if enrolled in a full time course of study at an institution of higher learning; or

(*2*) Is incapable of self-support because of a mental or physical incapacity which occurred while the person was considered a dependent of the member or former member; and

(C) Is dependent on the member or former member for over one-half of the person's support; and

(D) Resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation; and

(E) Is not a dependent of a member or former member as described in § 199.3(b)(2).

* * * * *

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21741 Filed 8–23–99; 8:45 am]

BILLING CODE 5001–10–P

POSTAL SERVICE

39 CFR Part 20

Global Package Link Rate Adjustments and Introduction of Service to Argentina

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service published an interim rule and request for comments concerning adjusting the rates for Global Package Link and introducing a new structure for volume discounts in the **Federal Register** (63 FR 66043) on December 1, 1998. In addition, service to Argentina was initiated. The Postal Service hereby gives notice that it is adopting the interim rule.

EFFECTIVE DATE: August 24, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: Global Package Link (GPL) is an international mail service designed for companies sending merchandise packages to other countries. To use GPL, a customer is required to mail at least 10,000 packages per year using the service and agree to link its information systems with the Postal Service so that certain information about the contents of the customer's packages can be extracted for customs clearance and other purposes.

The Postal Service announced new rates and a new discount structure for GPL in the **Federal Register** (63 FR 66043) on December 1, 1998. The increased rates were the result of declining economic conditions in Japan and other countries and rising costs, including implementation of harmonization for all items to Japan. Overall, the base rates were increased approximately 9 percent. See Appendix 1 for specific rates to each GPL country.

Currently, GPL provides a volume discount within each country beginning at 100,000 packages. The new discount structure is based on a mailer's worldwide volume and discounts are available when volume reaches more than 25,000 packages per postal fiscal year. Discounts increase with volume on the basis of the following schedule:

Number of packages	Discount (percent)
25,001 to 50,000	1
50,001 to 75,000	2
75,001 to 100,000	3
100,001 and over	4

Each year's discounts are calculated on the previous postal fiscal year's volume and apply to mailings made during the next calendar year. For example, a mailer who mails 55,000 packages during postal fiscal year 1998 (September 13, 1997, through September 11, 1998) will receive a discount from the base rate for all GPL mailings made during calendar year 1999 (January 1, 1999, through December 31, 1999). Postal fiscal year 1998 will be used for discounts applied in calendar year 1999.

The Postal Service also introduced GPL service to Argentina. Two levels of service, Premium and Standard, are offered. The maximum weight of parcels to Argentina is 44 pounds with a

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

maximum size of 42 inches in length and a maximum length and girth combined of 79 inches. Rates are shown in Appendix 1. Packages sent in Premium service are insured at no additional charge, subject to the provisions of *Domestic Mail Manual* (DMM) S010 and S500. No insurance is available for packages sent to Argentina as Standard service.

The Postal Service requested comment on or before December 31, 1998. The Postal Service did not receive any written comments on the interim rule. Accordingly, the Postal Service adopts, without change, the interim rule.

The Postal Service adopts the following amendments to Subchapter 620, Global Package Link, and the appropriate Individual Country Listings, International Mail Manual, which are incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate program changes to Subchapter 620 Global Package Link as follows:

620 Global Package Link

621 Description

* * * * *

621.3 Availability

Global Package Link service is available only to Argentina, Brazil, Canada, Chile, China, France, Germany, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom.

* * * * *

623 General

* * * * *

623.3 Size and Weight Limits

623.31 Weight

The weight limits for Global Package Link service are 70 pounds for Chile, China, and Germany; 66 pounds for Brazil, Canada, France, Singapore, and the United Kingdom; 64 pounds for Mexico; 44 pounds for Argentina and Hong Kong; and 44 pounds for Japan with Premium service. * * *

623.32 Size

The maximum length of GPL packages is 60 inches. The maximum length and girth combined is 108 inches.

Exceptions: Maximum size for Germany is length 47 inches, height 23 inches, width 23 inches; for Japan Standard packages weighing less than 1 pound, the maximum length is 24 inches with a combined maximum length, depth, and height of 36 inches. The maximum size for packages to Argentina is 42 inches in length and 79 inches length and girth combined.

* * * * *

623.4 Postage

* * * * *

623.44 Base Rates

The Postal Service will charge the base rates, in 1-pound increments, unless the mailer qualifies for the discounts in 623.441 by mailing more than 25,000 packages in a postal fiscal year. The discounts apply to mailings made during the following calendar year.

623.441 Discounts

Number of packages	Discount
25,001 to 50,000	1%
50,001 to 75,000	2%
75,001 to 100,000	3%
100,001 and over	4%

* * * * *

626 Services Available

626.1 Delivery Options

* * * * *

626.12 Standard Service

Standard service is available to Argentina, Canada, France, Japan, Singapore, and the United Kingdom. * * *

* * * * *

626.4 Customs

* * * * *

626.43 Payment of Customs Duty

626.431 All Countries Except China, Japan, Hong Kong, and Singapore

For all countries except China, Japan, Hong Kong, and Singapore, the Postal Service will arrange payment of customs duty on behalf of the recipient at the time the merchandise enters the country of destination. Any banking costs or foreign exchange fees applicable to the customs payments will be charged back to the mailer. The Postal Service will notify the mailer electronically of the amount of duty and fees paid, and the mailer will reimburse the Postal Service in a manner and within a time agreed between the mailer and the Postal Service. Because of the need to have funds available for customers at the time of clearance in Argentina, Brazil, Chile, and Mexico, mailers must make an advance deposit prior to the first mailing to cover anticipated duties and taxes in addition to postage. * * *

Appendix 1.—Global Package Link Rates

STANDARD SERVICE RATES—CANADA

Weight not to exceed (pounds)	Premium	U.S. Origin Zone A: Buffalo, New York, Chicago. Canadian Entry: Toronto			U.S. Origin Zone B: Miami, Dallas. Canadian Entry: Toronto*		
		Local	Regional	National	Local	Regional	National
1	$10.00	$5.50	$7.25	$7.50	$6.25	$7.75	$8.0
2	11.00	6.00	8.25	8.75	7.25	9.50	10.0
3	12.50	6.50	9.25	10.00	8.25	11.00	11.7
4	14.25	7.00	10.00	11.25	9.25	12.25	13.5
5	15.75	7.50	10.75	12.50	10.25	13.75	15.5
6	17.50	8.00	11.75	13.75	11.50	15.25	17.2
7	19.00	8.50	12.50	15.00	12.50	16.50	19.2
8	20.75	9.00	13.25	16.25	13.50	18.00	21.0
9	22.25	9.50	14.25	17.50	14.75	19.50	22.7
10	24.00	10.00	15.00	18.75	15.75	20.75	24.7
11	25.50	10.50	15.50	19.25	16.75	21.75	25.7
12	27.00	11.00	16.25	20.50	17.75	23.25	27.5
13	28.75	11.50	17.25	21.75	19.00	24.75	29.2
14	30.25	12.00	18.00	23.00	20.00	26.00	31.2
15	32.00	12.50	18.75	24.25	21.25	27.50	33.0
16	33.50	13.00	19.75	25.50	22.25	29.00	34.7

THE PAPER AND INK USED IN THE OR
PUBLICATION MAY AFFECT THE QUA
THE MICROFORM EDITION

THE MICROFORM EDITION

STANDARD SERVICE RATES—CANADA—Continued

Weight not to exceed (pounds)	Premium	U.S. Origin Zone A: Buffalo, New York, Chicago. Canadian Entry: Toronto			U.S. Origin Zone B: Miami, Dallas. Canadian Entry: Toronto*		
		Local	Regional	National	Local	Regional	National
17	35.25	13.50	20.50	26.75	23.25	30.25	36.75
18	36.75	14.00	21.25	28.00	24.50	31.75	38.50
19	38.50	14.50	22.25	29.50	25.50	33.25	40.25
20	40.00	15.00	23.00	30.75	26.50	34.50	42.25
21	41.50	15.50	24.00	32.00	27.75	36.00	44.00
22	43.00	16.00	24.25	32.25	28.75	37.00	45.00
23	44.75	16.50	25.25	33.50	29.75	38.50	46.75
24	46.25	17.00	26.00	34.75	30.75	39.75	48.75
25	48.00	17.50	26.75	36.00	32.00	41.25	50.50
26	49.50	18.00	27.75	37.25	33.00	42.75	52.25
27	50.75	18.50	28.50	38.50	34.00	44.00	54.25
28	52.75	19.00	29.25	40.00	35.25	45.50	56.00
29	54.50	19.50	30.25	41.25	36.25	47.00	57.75
30	56.00	20.00	31.00	42.50	37.50	48.25	59.75
31	57.25	20.50	31.75	43.75	38.50	49.75	61.50
32	58.75	21.25	32.75	45.00	39.50	51.25	63.25
33	60.50	21.50	33.00	45.25	40.50	52.25	64.25
34	62.00	22.00	34.00	46.50	41.75	53.50	66.25
35	63.75	22.50	34.75	47.75	42.75	55.00	68.00
36	65.25	23.00	35.75	49.00	43.75	56.50	69.75
37	67.00	23.50	36.50	50.50	45.00	57.75	71.75
38	68.50	24.00	37.25	51.75	46.00	59.25	73.50
39	70.00	24.75	38.25	53.00	47.00	60.75	75.25
40	71.75	25.25	39.00	54.25	48.25	62.00	77.25
41	72.75	25.75	39.75	55.50	49.25	63.50	79.00
42	74.50	26.25	40.75	56.75	50.25	65.00	80.75
43	76.00	26.75	41.50	58.00	51.50	66.25	82.75
44	77.50	27.00	42.00	58.25	52.50	67.25	83.75
45	79.25	27.50	42.75	59.50	53.50	68.75	85.50
46	80.25	28.25	43.75	61.00	54.75	70.00	87.50
47	81.75	28.75	44.50	62.25	55.75	71.50	89.25
48	83.25	29.25	45.25	63.50	56.75	73.00	91.00
49	84.75	29.75	46.25	64.75	58.00	74.25	93.00
50	86.50	30.25	47.00	66.00	59.00	75.75	94.75
51	88.00	30.75	47.75	67.25	60.00	77.25	96.50
52	89.75	31.25	48.75	68.50	61.25	78.50	98.50
53	91.25	31.75	49.50	69.75	62.25	80.00	100.25
54	92.75	32.25	50.00	70.25	63.25	81.00	101.25
55	94.50	32.75	50.75	71.50	64.25	82.50	103.00
56	95.25	33.25	51.50	72.75	65.50	83.75	105.00
57	97.00	33.75	52.50	74.00	66.50	85.25	106.75
58	98.50	34.25	53.25	75.25	67.50	86.75	108.50
59	100.00	34.75	54.25	76.50	68.75	88.00	110.50
60	101.75	35.25	55.00	77.75	69.75	89.50	112.25
61	103.25	35.75	55.75	79.00	71.00	91.00	114.00
62	104.75	36.25	56.75	80.25	72.00	92.25	116.00
63	105.50	36.75	57.50	81.50	73.00	93.75	117.75
64	107.25	37.25	58.25	82.75	74.25	95.25	119.50
65	108.75	37.75	58.75	83.25	75.25	96.25	120.50
66	110.25	38.25	59.50	84.50	76.25	97.50	122.50

*By special arrangement, Dallas origin mail may be entered in Vancouver. This mail will be charged Origin Zone C rates.

Weight not to exceed (pounds)	Schedule C U.S. Origins: Seattle. Canadian Entry: Vancouver			Schedule D U.S. Origins: San Francisco. Canadian Entry: Vancouver			Returns
	Local	Regional	National	Local	Regional	National	
1	$7.50	$9.00	$11.50	$8.00	$9.50	$12.00	$7.00
2	8.00	9.25	11.75	9.00	10.50	13.00	7.75
3	8.25	9.75	12.25	10.00	11.50	14.00	8.50
4	8.75	10.25	12.75	11.00	12.50	15.00	9.25
5	9.25	10.50	13.00	12.00	13.50	16.00	10.00
6	9.50	11.00	13.50	13.00	14.50	17.00	10.75
7	10.00	11.25	13.75	14.00	15.50	18.00	11.50
8	10.25	11.75	14.25	15.00	16.50	19.00	12.25
9	10.75	12.25	14.75	16.00	17.25	19.75	13.00
10	11.25	12.50	15.00	17.00	18.25	20.75	13.50

PAPER AND INK USED IN THE ORIGINAL
ICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION

THE PAPER AND INK USED IN THE ORIG
PUBLICATION MAY AFFECT THE QUA
THE MICROFORM EDITION

Weight not to exceed (pounds)	Schedule C U.S. Origins: Seattle. Canadian Entry: Vancouver			Schedule D U.S. Origins: San Francisco. Canadian Entry: Vancouver			Returns
	Local	Regional	National	Local	Regional	National	
11	11.75	13.00	15.50	18.00	19.50	22.00	14.25
12	12.25	13.75	16.25	19.00	20.50	23.00	15.00
13	12.75	14.25	16.75	20.25	21.75	24.25	15.75
14	13.00	14.75	17.25	21.25	22.75	25.25	16.50
15	13.50	15.25	17.75	22.25	24.00	26.50	17.25
16	14.00	16.00	18.25	23.25	25.00	27.50	18.00
17	14.50	16.50	19.00	24.50	26.25	28.75	18.75
18	15.00	17.00	19.50	25.50	27.25	29.75	19.50
19	15.50	17.50	20.00	26.50	28.50	31.00	20.25
20	16.00	18.00	20.50	27.50	29.75	32.25	21.00
21	16.50	18.75	21.25	28.75	30.75	33.25	21.50
22	17.00	19.25	21.75	29.75	32.00	34.50	22.25
23	17.50	19.75	22.25	30.75	33.00	35.50	23.00
24	18.00	20.25	22.75	31.75	34.25	36.75	23.75
25	18.50	20.75	23.25	33.00	35.25	37.75	24.50
26	19.00	21.50	24.00	34.00	36.50	39.00	25.25
27	19.50	22.00	24.50	35.00	37.50	40.00	26.00
28	20.00	22.50	25.00	36.00	38.75	41.25	26.75
29	20.50	23.00	25.50	37.25	39.75	42.25	27.50
30	21.00	23.50	26.00	38.25	41.00	43.50	28.25
31	21.50	24.25	26.75	39.25	42.00	44.50	29.00
32	22.00	24.75	27.25	40.25	43.25	45.75	29.50
33	22.25	25.25	27.75	41.50	44.25	46.75	30.25
34	22.75	25.75	28.25	42.50	45.50	48.00	31.00
35	23.25	26.25	28.75	43.50	46.50	49.00	31.75
36	23.75	27.00	29.50	44.50	47.75	50.25	32.50
37	24.25	27.50	30.00	45.75	48.75	51.25	33.25
38	24.75	28.00	30.50	46.75	50.00	52.50	34.00
39	25.25	28.50	31.00	47.75	51.00	53.50	34.75
40	25.75	29.00	31.50	49.00	52.25	54.75	35.50
41	26.25	29.75	32.25	50.00	53.25	55.75	36.25
42	26.75	30.25	32.75	51.00	54.50	57.00	37.00
43	27.25	30.75	33.25	52.00	55.50	58.00	37.75
44	27.75	31.25	33.75	53.25	56.75	59.25	38.25
45	28.25	31.75	34.25	54.25	57.75	60.25	39.00
46	28.75	32.50	35.00	55.25	59.00	61.50	39.75
47	29.25	33.00	35.50	56.25	60.00	62.50	40.50
48	29.75	33.50	36.00	57.50	61.25	63.75	41.25
49	30.25	34.00	36.50	58.50	62.25	64.75	42.00
50	30.75	34.50	37.00	59.50	63.50	66.00	42.75
51	31.25	35.25	37.75	60.50	64.50	67.00	43.50
52	31.50	35.75	38.25	61.75	65.75	68.25	44.25
53	32.00	36.25	38.75	62.75	66.75	69.25	45.00
54	32.50	36.75	39.25	63.75	68.00	70.50	45.75
55	33.00	37.25	39.75	64.75	69.00	71.50	46.25
56	33.50	38.00	40.50	66.00	70.25	72.75	47.00
57	34.00	38.50	41.00	67.00	71.25	73.75	47.75
58	34.50	39.00	41.50	68.00	72.50	75.00	48.50
59	35.00	39.50	42.00	69.00	73.50	76.00	49.25
60	35.50	40.00	42.50	70.25	74.75	77.25	50.00
61	36.00	40.75	43.25	71.25	75.75	78.25	50.75
62	36.50	41.25	43.75	72.25	77.00	79.50	51.50
63	37.00	41.75	44.25	73.25	78.00	80.50	52.25
64	37.50	42.25	44.75	74.50	79.25	81.75	53.00
65	38.00	42.75	45.25	75.50	80.50	83.00	53.75
66	38.50	43.50	46.00	76.50	81.50	84.00	54.25

Weight not over (lb.)	Argentina	France	Japan	Singapore	Mexico	UK	UK economy rate
1	$8.50	$7.25	$6.00	$11.50	$5.50	$12.2	$10.75
2	11.25	9.50	9.25	15.25	6.50	13.50	12.25
3	13.50	11.75	14.25	18.50	7.75	15.00	13.50
4	15.50	14.00	18.00	22.25	8.75	16.50	15.00
5	17.75	16.00	24.00	26.75	9.75	17.75	16.25
6	19.75	18.25	27.25	30.50	11.50	19.25	17.50
7	22.50	20.50	.....	34.25	12.50	20.50	19.00
8	24.75	22.50	.....	38.25	13.75	22.00	20.25
9	26.75	24.75	.....	42.00	14.75	23.50	21.75
10	29.00	27.00	.....	45.75	15.75	24.75	23.00

THE PAPER AND INK USED IN THE ORIG
PUBLICATION MAY AFFECT THE QUAL
THE MICROFORM EDITION

LICATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION

	Weight not over (lb.)	Argentina	France	Japan	Singapore	Mexico	UK	UK economy rate
11		32.25	29.25		49.50	17.00	26.25	24.25
12		34.50	31.25		53.50	18.00	27.50	25.75
13		36.50	33.50		57.25	19.00	29.00	27.00
14		38.75	35.75		61.50	20.25	30.50	28.50
15		41.75	38.00		65.50	21.25	31.75	29.75
16		44.00	40.00		69.25	22.25	33.25	31.00
17		46.25	42.25		73.00	23.50	34.75	32.50
18		48.75	44.50		76.75	24.50	36.00	33.75
19		51.00	46.50		80.75	25.50	37.50	35.25
20		53.75	48.75		85.00	26.75	38.75	36.50
21		56.00	51.00		88.25	27.25	40.25	37.75
22		59.00	53.25		92.00	28.25	41.75	39.25
23		61.50	55.25		98.75	29.50	43.00	40.50
24		63.75	57.50		102.50	30.50	44.50	42.00
25		66.25	59.75		105.75	31.50	45.75	43.25
26		68.50	61.75		109.50	32.75	47.25	44.50
27		71.00	64.00		113.25	33.75	48.75	46.00
28		73.25	66.25		117.25	35.00	50.00	47.25
29		75.75	68.50		120.50	35.50	51.50	48.75
30		78.25	70.50		124.25	36.50	52.75	50.00
31		80.50	72.75		128.00	37.50	54.25	51.50
32		83.00	75.00		132.00	38.75	55.75	52.75
33		85.25	77.00		135.25	39.75	57.00	54.00
34		87.75	79.25		141.75	40.25	58.50	55.50
35		91.25	81.50		145.50	41.50	60.00	56.75
36		93.50	83.75		149.25	42.50	61.25	58.25
37		96.00	85.75		152.50	43.50	62.75	59.50
38		98.50	88.00		156.50	44.25	64.00	60.75
39		100.75	90.25		160.25	45.25	65.50	62.25
40		103.25	92.50		164.00	46.25	67.00	63.50
41		105.50	94.50		167.25	47.50	68.25	65.00
42		108.00	96.75		171.25	48.00	69.75	66.25
43		110.50	99.00		175.00	49.00	71.00	67.50
44		112.75	101.00		178.25	50.25	72.50	69.00
45			103.25		184.75	50.75	74.00	70.25
46			105.50		188.50	51.75	75.25	71.75
47			107.75		192.50	52.75	76.75	73.00
48			109.75		195.75	53.50	78.25	74.25
49			112.00		199.50	54.50	79.50	75.75
50			114.25		203.25	55.00	81.00	77.00
51			116.25		207.00	56.25	82.25	78.50
52			118.50		210.25	57.25	83.75	79.75
53			120.75		214.25	57.75	85.25	81.00
54			123.00		218.00	58.75	86.50	82.50
55			125.00		221.75	59.50	88.00	83.75
56					227.75	60.50	89.25	85.25
57					231.75	61.00	90.75	86.50
58					235.50	62.25	92.25	87.75
59					239.25	62.75	93.50	89.25
60					242.50	63.75	95.00	90.50
61					246.25	64.25	96.25	92.00
62					250.25	65.50	97.75	93.25
63					254.00	66.00	99.25	94.50
64					257.25	67.00	100.50	96.00
65					261.00		102.00	97.25
66					264.75		103.50	98.75

Premium Service Rates

	Weight not over (lbs.)	Argentina	Brazil	Canada	Chile	China
1		$11.00	$13.50	$10.00	$10.50	$14.00
2		14.50	15.50	11.00	12.75	17.00
3		17.50	18.50	12.50	15.25	20.00
4		20.25	20.50	14.25	17.50	23.00
5		23.25	23.50	15.75	20.00	29.25
6		26.00	25.50	17.50	22.00	32.25
7		29.25	28.50	19.00	24.50	35.25
8		32.00	30.50	20.75	26.75	38.25
9		34.75	33.50	22.25	29.25	41.50
10		37.25	35.50	24.00	31.50	44.50
11		41.25	37.50	25.50	33.75	47.50

APER AND INK USED IN THE ORIGINAL
CATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.

THE PAPER AND INK USED IN THE ORIG
PUBLICATION MAY AFFECT THE QUAL
THE MICROFORM EDITION.

PREMIUM SERVICE RATES—Continued

Weight not over (lbs.)	Argentina	Brazil	Canada	Chile	China
12	43.50	40.50	27.00	36.00	50.50
13	46.50	42.50	28.75	38.25	53.50
14	49.50	45.50	30.25	40.75	56.50
15	52.50	47.50	32.00	43.00	59.75
16	55.25	50.50	33.50	45.50	62.75
17	58.25	52.50	35.25	47.75	65.75
18	61.25	54.75	36.75	50.00	68.75
19	64.25	56.75	38.50	52.25	72.00
20	67.25	59.50	40.00	54.75	75.00
21	70.25	61.50	41.50	57.00	78.00
22	73.75	63.75	43.00	59.25	81.00
23	76.25	66.50	44.75	61.50	84.00
24	78.75	68.50	46.25	63.75	87.00
25	81.75	71.50	48.00	66.25	90.25
26	84.50	73.50	49.50	68.50	93.25
27	87.50	76.50	50.75	71.00	96.25
28	90.50	78.50	52.75	73.25	99.25
29	93.25	81.25	54.50	75.50	102.25
30	96.25	83.25	56.00	77.75	105.25
31	99.25	86.25	57.25	80.25	108.50
32	102.25	88.25	58.75	82.50	111.50
33	105.00	90.25	60.50	84.75	114.50
34	108.00	93.25	62.00	87.25	117.50
35	112.00	95.25	63.75	89.25	120.50
36	114.50	98.00	65.25	91.75	123.50
37	117.00	100.25	67.00	94.00	126.75
38	120.00	103.00	68.50	96.50	129.75
39	122.75	105.00	70.00	98.75	132.75
40	125.75	108.00	71.75	101.00	135.75
41	128.75	110.00	72.75	103.25	138.75
42	131.50	113.00	74.50	105.75	141.75
43	134.50	115.00	76.00	108.00	145.00
44	137.50	117.00	77.50	110.25	148.00
45	.....	119.75	79.25	112.75	151.00
46	.....	121.75	80.25	114.75	154.00
47	.....	124.75	81.75	117.25	157.00
48	.....	126.75	83.25	119.50	160.00
49	.....	129.75	84.75	122.00	163.25
50	.....	131.75	86.50	124.25	166.25
51	.....	134.50	88.00	126.50	169.25
52	.....	136.75	89.75	128.75	172.25
53	.....	139.50	91.25	131.25	175.25
54	.....	141.50	92.75	133.50	178.50
55	.....	143.50	94.50	135.75	181.50
56	.....	146.50	95.25	138.25	184.50
57	.....	148.50	97.00	140.50	187.50
58	.....	151.50	98.50	142.75	190.50
59	.....	153.50	100.00	145.00	193.50
60	.....	156.25	101.75	147.50	196.75
61	.....	158.25	103.25	149.75	199.75
62	.....	161.25	104.75	152.25	202.75
63	.....	163.25	105.50	154.25	205.75
64	.....	166.25	107.25	156.75	208.75
65	.....	168.25	108.75	159.00	211.75
66	.....	170.25	110.25	161.25	215.00
67	.....	.....	.....	163.75	218.00
68	.....	.....	.....	166.00	221.00
69	.....	.....	.....	168.25	224.00
70	.....	.....	.....	170.50	227.00

Weight not over (lbs.)	Germany	Hong Kong	Japan	Mexico	Singapore	UK
1	$11.75	$17.00	$15.75	$8.25	$14.75	$15.00
2	13.50	20.50	18.00	9.75	18.50	16.50
3	15.25	24.00	20.75	11.50	22.25	18.00
4	17.00	27.50	23.50	13.00	26.25	19.50
5	18.75	31.00	26.25	14.75	31.00	21.00
6	20.50	34.50	29.50	16.25	35.00	22.50
7	22.25	38.00	32.25	17.50	39.25	23.75
8	24.00	41.50	35.00	19.00	43.00	25.75
9	25.75	45.00	37.50	20.75	48.00	27.25

Stanley F. Mi
Chief Counsel
[FR Doc. 99-2
BILLING CODE 7

IGATION MAY AFFECT THE QUALITY OF
THE MICROFORM EDITION.

Weight not over (lbs.)	Germany	Hong Kong	Japan	Mexico	Singapore	UK
10	27.50	48.50	40.25	22.25	51.75	29.00
11	29.25	52.00	43.00	24.00	55.50	30.50
12	31.00	55.50	45.75	25.00	60.00	32.00
13	32.75	59.25	48.50	26.75	64.25	33.75
14	34.50	62.50	51.25	28.25	68.75	35.25
15	36.25	66.25	54.00	29.50	72.50	37.00
16	38.00	69.75	56.75	31.00	76.75	38.50
17	39.75	73.25	59.50	32.75	81.25	40.25
18	41.50	76.75	62.25	33.75	85.50	42.25
19	43.25	80.25	64.75	35.50	89.50	44.25
20	45.00	83.75	67.50	36.50	93.75	45.75
21	46.75	87.25	70.25	38.25	98.00	47.50
22	48.50	90.75	73.00	39.25	102.00	49.00
23	50.25	94.25	75.75	41.00	110.75	50.50
24	52.00	97.75	78.50	42.00	115.00	52.00
25	53.75	101.25	81.25	43.50	118.75	53.50
26	55.75	104.75	84.00	44.75	122.75	55.25
27	57.50	108.25	86.75	46.25	127.00	58.25
28	59.25	111.75	89.50	47.50	130.75	59.75
29	61.00	115.25	92.00	48.50	134.50	61.50
30	62.75	118.75	94.75	50.25	138.50	63.00
31	64.50	122.25	97.50	51.25	142.75	64.75
32	66.25	126.00	100.25	52.25	146.50	66.25
33	68.00	129.50	103.00	53.50	150.50	67.75
34	69.75	133.00	105.75	55.00	159.75	69.50
35	71.50	136.50	108.50	56.25	163.50	71.00
36	73.25	140.00	111.25	57.25	167.25	72.75
37	75.00	143.50	114.00	58.25	171.75	74.25
38	76.75	147.00	116.75	59.50	175.50	75.75
39	78.50	150.50	119.25	60.50	179.25	79.00
40	80.25	154.00	122.00	61.50	183.75	80.50
41	82.00	157.50	124.75	63.25	187.50	82.25
42	83.75	161.00	127.50	64.25	191.25	83.75
43	85.50	164.50	130.25	65.50	195.00	85.50
44	87.25	168.00	133.00	66.50	199.50	87.25
45	89.00	.....	.....	67.50	208.25	88.75
46	90.75	.....	.....	68.25	212.00	90.50
47	92.50	.....	.....	69.25	216.25	92.00
48	94.25	.....	.....	70.25	220.25	93.75
49	96.00	.....	.....	71.50	224.00	95.25
50	97.75	.....	.....	72.50	228.25	97.00
51	99.50	.....	.....	73.50	232.25	98.50
52	101.25	.....	.....	74.75	236.00	100.25
53	103.00	.....	.....	75.25	239.75	101.75
54	104.75	.....	.....	76.25	244.25	103.50
55	106.50	.....	.....	77.50	248.00	105.00
56	108.25	.....	.....	78.50	256.75	106.75
57	110.00	.....	.....	79.00	261.00	108.25
58	111.75	.....	.....	80.00	264.75	110.00
59	113.50	.....	.....	81.25	268.75	111.50
60	115.25	.....	.....	81.75	273.00	113.25
61	117.25	.....	.....	82.75	276.75	114.75
62	119.00	.....	.....	83.50	280.75	116.50
63	120.75	.....	.....	84.50	284.50	118.25
64	122.50	.....	.....	85.50	288.75	119.75
65	124.25	.....	.....	.....	292.75	121.50
66	126.00	.....	.....	.....	296.50	123.00
67	127.75	.....	.....	.....	.....	.....
68	129.50	.....	.....	.....	.....	.....
69	131.25	.....	.....	.....	.....	.....
70	133.00	.....	.....	.....	.....	.....

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–21956 Filed 8–23–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC–36–1–9932a; FRL–6426–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the South Carolina Department of Health and Environmental Control (DHEC) for the State of South Carolina on April 12, 1999, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills. *See* 40 CFR part 60, subpart Cc.

DATES: This final rule is effective on October 25, 1999 unless significant, material, and adverse comments are received by September 23, 1999. If adverse comments are received, timely notice of withdrawal will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Gregory Crawford, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; and at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at (404) 562–9046 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (Act), EPA has established procedures whereby States submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a State, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (*See* 61 FR 9905–9944.) The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG (by December 12, 1996).

EPA was involved in litigation over the requirements of the MSW landfill EG and NSPS beginning in the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et al.*, No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. *See* 62 FR 60898. It is important to note that the settlement did not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA amended 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. *See* 63 FR 32743–32753, 32783–32784. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. The State of South Carolina has amended their rules for MSW landfills in Regulation 61–62.60 (effective dates of February 26, 1999), to reflect the June 16, 1998, amendments to subparts Cc and WWW. Accordingly, the MSW landfill EG published on March 12, 1996, and amended on June 16, 1998, was used as the basis by EPA for review of this section 111(d) Plan submittal.

This action approves the section 111(d) Plan submitted by the South Carolina DHEC for the State of South Carolina to implement and enforce Subpart Cc.

II. Discussion

The South Carolina DHEC submitted to EPA on April 12, 1999, and in supplemental information submitted on July 14, 1999, the following in their section 111(d) Plan for implementing and enforcing the emission guidelines for existing MSW landfills in the State of South Carolina: Legal Authority; Enforceable Mechanisms; MSW Landfill Source and Emission Inventory; Emission Limits; Review and Approval Process for Collection and Control System Design Plans; Compliance Schedules; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration That the Public Had Adequate Notice and Public Hearing Record; Submittal of Progress Reports to EPA; and applicable State of South Carolina statutes and rules of the South Carolina DHEC.

The approval of the South Carolina State Plan is based on finding that: (1) the South Carolina DHEC provided adequate public notice of public hearings for the proposed rulemaking which allows the South Carolina DHEC to implement and enforce the EG for MSW landfills; and (2) the South Carolina DHEC also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek

injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In the Plan submittal, the South Carolina DHEC cites the following references for the legal authority: State of South Carolina's Attorney General's Opinion Regarding State Authority to Operate the Title V Operating Permit Program; the South Carolina Pollution Control Act (South Carolina Code Sections 48–1–10 through 48–1–350); and Regulation 61–62.60 of the South Carolina DHEC Air Pollution Control Regulations and Standards. On the basis of the Attorney General's Opinion, the statutes, and rules of the State of South Carolina, the State Plan is approved as being at least as protective as the Federal requirements for existing MSW landfills.

In the Plan submittal, the South Carolina DHEC cites the enforceable mechanisms for implementing the EG for existing MSW landfills. The enforceable mechanisms are the state regulations adopted by the State of South Carolina in Regulation 61–62.60, "South Carolina Designated Facility Plan and New Source Performance Standards." The State's regulations meet the Federal requirements for an enforceable mechanism and are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In the Plan submittal, the South Carolina DHEC cites all emission limitations for the major pollutant categories related to the designated sites and facilities. These limitations in Reguation 61–62.60 are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In the Plan submittal and the supplemental information, the South Carolina DHEC submitted a source and emission inventory of all designated pollutants for each MSW landfill in the State of South Carolina. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing MSW landfills.

The Plan submittal and the supplemental information describes the process the South Carolina DHEC will utilize for the review of site-specific design plans for gas collection and control systems. The process outlined in the Plan meets the Federal requirements contained in Subpart Cc for existing MSW landfills.

In the Plan submittal and the supplemental information, the South Carolina DHEC cites the compliance schedules and increments of progress adopted in Regulation 61–62.60 for each existing MSW landfill to be in compliance within 30 months of the approval date of the State Plan. These compliance times for affected MSW landfills address the required compliance time lines of the EG. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The South Carolina State Plan submittal includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities. The South Carolina DHEC also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. The South Carolina DHEC submitted regulations to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance in the Plan submittal. These South Carolina rules have been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The Plan submittal and the supplemental information outlines how the South Carolina DHEC will provide progress reports of Plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for Plan reporting.

Consequently, EPA finds that the South Carolina State Plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The South Carolina DHEC did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this Plan as it relates to those sources.

III. Final Action

Based on the rationale discussed above, EPA is approving the State of South Carolina section 111(d) Plan, as submitted on April 12, 1999, for the control of landfill gas from existing MSW landfills, except for those existing MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to the South Carolina State Plan or associated regulations will not be considered part of the applicable plan until submitted by the South Carolina DHEC in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the revision should significant, material, and adverse comments be filed. This action will be effective October 25, 1999 unless by September 23, 1999, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 25, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any section 111(d) plan. Each request for revision to the section 111(d) plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to

provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding South Carolina's audit privilege and penalty immunity law or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of South Carolina's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a

"major rule" as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: August 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart PP—South Carolina

2. Part 62.10100 is amended by adding paragraphs (b)(4) and (c)(4) to read as follows:

§ 62.10100 Identification of plan.

* * * * *

(b) * * *

(4) South Carolina Implementation Plan for Existing Municipal Solid Waste Landfills, submitted on April 12, 1999, by the South Carolina Department of Health and Environmental Control.

(c) * * *

(4) Existing municipal solid waste landfills.

Subpart PP—[Amended]

3. Subpart PP is amended by adding a new § 62.10160 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10160 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 99–21823 Filed 8–23–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA70

Indian Affairs Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule and request for comments.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its regulations concerning certain hearings and appeals procedures. The regulations govern who has the authority to make summary distributions in Indian trust estates, and when this authority can be exercised. Under the existing regulation, Bureau of Indian Affairs (BIA) Superintendents can make distribution determinations whenever an Indian dies intestate leaving only trust personal property or cash valued at less than $1,000. The jurisdictional amount of $1,000 was established in 1971. This rule clarifies the BIA Superintendents' authority to make summary distributions, and increases, from $1,000 to $5,000, the amount of trust personal property or cash which the BIA Superintendent has jurisdiction to distribute. In addition, this rule clarifies that a party has the right to appeal the distribution decision of the BIA Superintendent.

DATES: Final rule is effective on August 24, 1999. OHA must receive comments on or before September 23, 1999.

ADDRESSES: Comments should be mailed to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., 11th Floor, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Charles E. Breece, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd, 11th Floor, Arlington, Virginia 22203. Telephone: (703) 235–3810.

SUPPLEMENTARY INFORMATION: Under 25 U.S.C. 372, the Secretary of the Interior may establish regulations to implement his authority to make heirship determinations in Indian trust estates. Under this authority, the OHA's regulations at 43 CFR 4.271 set forth the rules and procedures governing the summary distribution of trust estates, which is invoked when an Indian dies intestate leaving only trust personal property or cash. Under the current regulations, a Superintendent can assemble the heirs, hold an informal hearing and make a summary distribution of the estate when the cash or trust personal property is valued at less than $1,000 and no real property interests are involved. The regulation also allows the Superintendent or the administrative law judge to dispose of claims of creditors during the summary distribution process. The current language is unclear about when an administrative law judge can be substituted for a Superintendent to make distribution determinations in these estates. OHA is amending the current regulation at 43 CFR 4.271 to clarify that, absent exceptional circumstances, the BIA Superintendent will assemble heirs, hold informal hearings, make distribution determinations and dispose of claims of creditors. The BIA Superintendent will request that an administrative law judge assume jurisdiction only in cases involving exceptional circumstances, real property or wills. The general authority of administrative law judges is set forth at 43 CFR 4.202.

The threshold amount of cash and trust personal property in Indian estates appropriate for summary disposition by a Superintendent must be adjusted to account for inflation and other economic changes. The current $1,000 amount was established in December 1971 and is no longer appropriate. OHA is amending the regulation to increase the amount of trust personal property or cash which the BIA Superintendent has jurisdiction to distribute from $1,000 to $5,000, not including any interest which may have accrued after the death of decedent. This action is intended to further the original purpose of the rules for summary distribution.

The current regulations at 43 CFR 4.320 are unclear about an interested party's right to appeal a Superintendent's decision under 43 CFR 4.271. Under 43 CFR 4.1(b)(2)(ii), the Interior Board of Indian Appeals (IBIA) has jurisdiction to exercise the review authority of the Secretary and decide

matters referred to it by the Secretary, the Director of the OHA and the Assistant Secretary for Indian Affairs. In 1994, the Assistant Secretary for Indian Affairs issued a blanket referral to IBIA of all decisions made under § 4.271, until such time as § 4.320 is amended to clarify the right of appeal. OHA is now amending 43 CFR 4.320 to provide interested parties the right to appeal from a Superintendent's decision.

These amendments promote administrative efficiency and the timely and prompt determination of heirs in Indian estates involving only cash or personal trust property.

Determination To Issue a Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because this action relates to agency management and prior notice is not required by statute. This amendment clarifies OHA's rules of practice and procedure and updates the threshold value of estates appropriate for summary distribution, in order to reflect the changes in property values over the 28 years since the existing amount was established in 1971. These amendments do not substantively alter the original purpose of the summary distribution provisions. In addition, it is in the public interest and in the interest of Indian beneficiaries and heirs not to delay implementation of these changes pending notice and comment, particularly when no adverse comments are anticipated. However, OHA invites and will consider public comments submitted in response to this final rule. If significant adverse comments are received, OHA will amend the rule as appropriate.

Determination To Make Rule Effective Immediately

Because these amendments do not impact the substance of the regulations and in the interest of avoiding delays in the summary distribution of the estates at issue, OHA has determined it appropriate to waive the requirement of publication 30 days in advance of the effective date found at 5 U.S.C. 553(d). Accordingly, this amendment is issued as a final rule effective on the date of publication in the **Federal Register** for good cause shown under 5 U.S.C. 553(d)(3). The Department further concludes that this rule should be effective immediately, because it relieves a restriction on the efficient summary distribution of Indian trust estates. With the passage of time, the $1,000 threshold amount has become an unreasonable restriction on the use of the summary distribution provisions, due to inflation and the change in personal property values since the promulgation of the existing regulations in 1971. It is in the public interest and in the interest of Indian beneficiaries and their heirs not to delay implementation of these procedural amendments.

Executive Order 12866

This rule is not a significant rule as defined in Executive Order 12866, and therefore, is not subject to review by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This rule does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act because the rule relates to agency procedure. 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

This rule contains no information collection or record keeping requirements subject to approval by the OMB under 44 U.S.C. 3501, *et seq.*

Unfunded Mandates Reform Act of 1995

This rule will not impose an unfunded mandate of $100 million or more in any given year on local, tribal, and State governments in the aggregate, or on the private sector in accordance with the unfunded Mandates Reform Act. 2 U.S.C. 1501, *et seq.*

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

Federalism

In accordance with Executive Order 12630, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Drafting/Information. The primary author of this rule is Charles E. Breece, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Claims, Indians, Public Lands.

For the reasons set forth in the preamble, the Department amends Subpart D, Part 4 of Title 43 of the Code of Federal Regulations as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: R.S. 2478, *as amended*, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.271 is revised to read as follows:

§ 4.271 Summary distribution.

When an Indian dies intestate leaving only trust personal property or cash of a value of less than $5,000, not including any interest that may have accrued after the death of the decedent, the Bureau of Indian Affairs Superintendent will assemble the apparent heirs and hold an informal hearing to determine the proper distribution of the estate, unless it appears that the decedent left a last will and testament intending to devise his estate, and/or the decedent died possessed of an interest in trust or restricted real property. A memorandum covering the hearing will be retained in the agency files showing the date of the decedent's death, the date of the hearing, the persons notified and attending the hearing, the amount on hand, and its disposition. In the disposition of such funds, the Superintendent will dispose of creditors' claims as provided in § 4.250 and § 4.251. The Superintendent will credit the balance, if any, to the legal heirs. When requested by the BIA Superintendent, an administrative law judge may assume jurisdiction to dispose of creditors' claims or to make distribution determinations if the administrative law judge finds that exceptional circumstances exist. A party in interest may appeal a distribution determination in accordance with 43 CFR 4.320.

3. Section 4.320 is amended by revising the introductory text to read as follows:

§ 4.320 Who may appeal.

A party in interest has a right to appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate, and also from a summary distribution order made by a Bureau of Indian Affairs Superintendent or an administrative law judge pursuant to § 4.271.

* * * * *

Dated: August 17, 1999.

John Berry,

Assistant Secretary, Policy, Management and Budget.

[FR Doc. 99–21893 Filed 8–23–99; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 081899A]

Fisheries of the Exclusive Economic Zone Off Alaska; Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the critical habitat/catcher vessel operational area (CH/CVOA) of the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the B season limit of pollock total allowable catch (TAC) specified for the inshore component within the CH/CVOA will be reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 19, 1999, until 1200 hrs, A.l.t., September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(C)(1) and the revised emergency interim rule (64 FR 39087, July 21, 1999), the B season limit of pollock TAC specified for harvest within the CH/CVOA and processing by the inshore component is 56,648 metric tons (mt).

In accordance with § 679.22(a)(11)(iv)(A) the Administrator, Alaska Region, NMFS, has determined that the B season limit of pollock TAC specified for harvest within the CH/CVOA and processing by the inshore component will be reached.

Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component within the CH/CVOA conservation zone, as defined at § 679.22(a)(11)(iv)(B).

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the B season limit of pollock TAC specified for harvest within the CH/CVOA and processing by the inshore component. A delay in the effective date is impracticable and contrary to the public interest. Further delay would result in noncompliance with reasonable and prudent management measures implemented to promote the recovery of the endangered Steller sea lion. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21915 Filed 8–19–99; 3:33 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 072199B]

Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Bycatch Mortality Allowance in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reapportionment of Pacific halibut bycatch mortality allowance specified for the nontrawl fishery categories.

SUMMARY: NMFS issues this final rule that reapportions the 1999 halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery category to the other nontrawl fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of species constrained by the other nontrawl halibut bycatch mortality allowance, in particular Greenland turbot, while not further restricting the hook-and-line Pacific cod fishery. This action is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Islands Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP are at subpart H of 50 CFR part 600 and 50 CFR part 679.

The BSAI halibut prohibited species catch (PSC) limit for nontrawl gear is an amount of halibut equivalent to 900 mt of halibut mortality (§ 679.21(e)(2)(i)). The apportionment of the nontrawl halibut PSC limit to bycatch allowances for the Pacific cod hook-and-line and other nontrawl fisheries was established by the Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) as 748 mt and 84 mt respectively.

A proposed rule for this action was published in the **Federal Register** on July 29, 1999 (64 FR 41068), requesting comments through August 12, 1999. One letter of comment was received during the comment period from a hook-and-line industry representative supporting the reapportionment. Based on this comment, and in order to provide greater opportunity to harvest the BSAI Greenland turbot total allowable catch (TAC) while not jeopardizing the opportunity to harvest the amount of the Pacific cod TAC allocated to hook-and line vessels, NMFS increases the halibut bycatch mortality allowance specified for the other nontrawl fishery category by 150

mt and reduces the halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery by the same amount.

The halibut bycatch mortality specifications for the 1999 BSAI nontrawl fisheries are listed in Table 7 of the Final 1999 Harvest Specifications for Groundfish (64 FR 12103, March 11, 1999). To accommodate the final action, the 1999 BSAI final harvest specifications are amended by adding the following Table 7A.

Table 7A. 1999 BSAI prohibited species bycatch allowances for the BSAI non-trawl fisheries

Non-trawl fisheries	Halibut mortality (mt)BSAI
Pacific cod - Total	598.
Jan. 1 - April 30	457.
May 1 - Sept. 14	0.
Sept. 15 - Dec. 31	141.
Other non-trawl --	
Total	234.
May 1 - Aug. 31[1]	42.
Sept.1 - Dec.31	192.
Groundfish pot & jig	Exempt.
Sablefish hook-and-line	Exempt.

[1] Consistent with § 679.21(e)(5)(iv)(A), any portion of the first seasonal allowance of the Pacific cod halibut bycatch mortality allowance that is not harvested by the end of the first season will become available on September 15, the beginning of the third season.

Classification

This action is authorized under 50 CFR 679.21(e)(4) and is exempt from OMB review under E.O. 12866.

NMFS prepared an environmental assessment (EA) and final regulatory flexibility assessment (FRFA) for the 1999 harvest specifications (See **ADDRESSES**). The reapportionment of the BSAI nontrawl halibut PSC limit is intended to provide fuller opportunity to conduct the fishing activities considered in the EA/FRFA and is fully within the scope of these analyses.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: August 18, 1999.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21947 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 163
Tuesday, August 24, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–99–5927; Notice No. 99–12]

RIN 2120–AG73

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to a notice of proposed rulemaking published in the **Federal Register** on July 9, 1999 (64 FR 37304). That document proposed a commercial air tour limitation in the Grand Canyon National Park Special Flight Rules Area. This correction adds the docket number reference to the **ADDRESSES** section of the NPRM. Additionally, the correction removes Las Vegas Airlines, Inc. from the list of certificate holders that are currently in business and adds them to the list of certificate holders that will receive allocations only if they notify the FAA by the comment date that they intend to conduct air tour operations in the Grand Canyon and are certificated to do so.

FOR FURTHER INFORMATION CONTACT: Alberta Brown; Telephone 202–267–8321.

Correction

In the proposed rule published on July 9, 1999, beginning on page 37304, FR Doc. 99–17319, make the following corrections:

1. On page 37304, column 1, in the **ADDRESSES** section, line 5, remove "[ ]" and add in its place, "FAA–99–5927".

2. On page 37309, column 1, under the heading, "2. Certificate Holders Receiving Allocations", beginning on line 21, remove "Las Vegas Airlines, Inc.;".

3. On page 37309, under the heading "2. Certificate Holders Receiving Allocations" in Column 3, after line 8, add "**Las Vegas Airlines, Inc.".

Issued in Washington, DC on August 13, 1999.

Michael Chase,

Acting Assistant Chief Counsel.

[FR Doc. 99–21648 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116733–98]

RIN 1545–AW79

Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. Changes to the applicable law were made by the Taxpayer Relief Act of 1997. These proposed regulations affect corporations and are necessary to provide them with guidance needed to comply with these changes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by January 5, 2000. Outlines of topics to be discussed at the public hearing scheduled for January 26, 2000, at 10 a.m. must be received by January 5, 2000.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–116733–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–116733–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brendan O'Hara, (202) 622–7530; concerning submissions of comments, delivering comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. State of the Law Before Section 355(e)

Section 355 generally provides that, if a corporation distributes to its shareholders stock of a corporation which it controls immediately before the distribution and certain other conditions are met, neither the distributing corporation nor its shareholders recognize gain or loss. A number of the conditions for tax free treatment (for example, the continuity of interest requirement of § 1.355–2(c), the "no device" requirement of section 355(a)(1)(B), the five-year active business requirement of section 355(b), and the limitation on disqualified stock under section 355(d)) operate to limit the circumstances in which the distributing or controlled corporation can undergo changes of control in conjunction with a distribution that qualifies for corporate and shareholder-level nonrecognition under section 355. Nevertheless, prior to the enactment of section 355(e), it was possible for such changes to occur, for example, in the context of tax free reorganizations, while qualifying for tax free treatment under section 355. *See, e.g., Commissioner* v. *Mary Archer W. Morris Trust*, 367 F.2d 794 (4th Cir. 1966).

B. Legislative Proposals Leading to Section 355(e)

As part of its Fiscal Year 1997 Budget, the Administration proposed a provision that would require a distributing corporation to recognize gain on the distribution of a controlled

corporation's stock unless the direct and indirect shareholders of the distributing corporation, as a group, controlled at least 50 percent of the vote and value of both corporations at all times during the 4-year period beginning 2 years before the distribution. *See* Department of the Treasury, *General Explanation of the Administration's Revenue Proposals*, p. 86 (March 1996) (hereinafter referred to as the "Administration Proposal"). Under the Administration Proposal, the retained 50-percent interest must consist of "permissible stock," which includes, in addition to stock retained over the 4-year period, stock of the distributing or controlled corporation "received by the shareholder in a transaction which is unrelated to the distribution * * *." Revenue Proposals Contained in President Clinton's Budget Plan as Released on Mar. 19, 1996, § 9522, [1996] 83 Stand. Fed. Tax Rep. (CCH) No. 15A.

The Administration Proposal described an unrelated transaction as, "[a] transaction that is not pursuant to a common plan or arrangement that includes the distribution," and cited a hostile acquisition of the distributing or controlled corporation commencing after the distribution as an example of an unrelated transaction. The Administration Proposal contrasted this with a friendly acquisition, which generally would be considered related to the distribution if the acquisition was pursuant to an arrangement negotiated prior to the distribution, even if the acquisition was subject to various conditions at the time of the distribution.

On April 17, 1997, House Ways and Means Committee Chairman Archer and Senate Finance Committee Chairman Roth and Ranking Member Moynihan introduced identical bills (H.R. 1365, 105th Cong. (1997) and S. 612, 105th Cong. (1997), hereinafter referred to as the "Bills") that provided for a new section 355(e) that is similar to the enacted version. The Bills were concerned with a "plan (or series of related transactions) pursuant to which a person acquires stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation * * *." S. 612, 105th Cong. (1997). The introductory statement to the legislation contained a reference to acquisitions "pursuant to a plan or arrangement in existence on the date of distribution * * *." The statement further explained: "Whether a corporation is acquired would be determined under rules similar to those of present-law section 355(d), except that acquisitions would not be restricted to purchase transactions. Thus an acquisition would occur if a person—or persons acting in concert—* * * acquired * * * stock * * * pursuant to a plan or arrangement." *See* 143 Cong. Rec. E703 (Apr. 17, 1997) (introductory statement of Chairman Archer); 143 Cong. Rec. S3360 (Apr. 17, 1997) (introductory statement of Chairman Roth).

C. Enactment of Section 355(e)

Section 355(e) was enacted in 1997. Public Law 105–34, section 1012(a) (1997). The committee reports state that section 355 was intended to permit the tax free division of existing business arrangements among existing shareholders. The reports state that "[i]n cases in which it is intended that new shareholders will acquire ownership of a business in connection with a spin off, the transaction more closely resembles a corporate level disposition of the portion of the business that is acquired" and provide that gain is recognized "if, pursuant to a plan or arrangement in existence on the date of distribution, either the controlled or distributing corporation is acquired * * *." H.R. Rep. No. 105–148, at 462 (1997); *see also* S. Rep. No. 105–33, at 139–40 (1997) (slight variation in language). The Conference Report adds, "[a]s under the House bill and Senate amendment, a public offering of sufficient size can result in an acquisition that causes gain recognition under the provision." H.R. Conf. Rep. No. 105–220, at 533 (1997).

The statute as enacted contained two important changes from the Administration Proposal and Bills relevant to determining whether an acquisition is part of a plan (or series of related transactions) that includes the distribution. In the Bills, proposed sections 355(e)(2)(A)(ii) and (4)(C)(i) provided that a "person," as modified by section 355(d)(7), must acquire 50 percent or more of the distributing or controlled corporation. The term "plan or arrangement" used in section 355(d)(7)(B) treats two or more persons acting "pursuant to a plan or arrangement" with regard to a stock acquisition as one person. However, when section 355(e) was enacted, the reference in section 355(e)(2)(A)(ii) to acquisitions by a "person" was changed to "1 or more persons." In addition, the reference to section 355(d)(7)(B) (treating two or more persons acting "pursuant to a plan or arrangement" as one person) was deleted from section 355(e)(4)(C)(i). The effect of these two changes is to remove the requirement that 50 percent or more of the stock of the distributing or controlled corporation must be acquired by acquirors acting in concert for section 355(e) to apply.

In addition, the reference in the Conference Report to public offerings as transactions that could cause gain to be recognized under section 355(e) indicates Congress did not believe negotiations between the distributing corporation and an acquiror were necessary in order for an acquisition to be pursuant to a plan that included the distribution. Thus, to determine whether a plan of acquisition exists, one must look at all parties to the transaction, including the distributing and controlled corporations and their shareholders, not just the potential acquirors.

As enacted, section 355(e)(1) provides that the stock of a controlled corporation will not be qualified property under section 355(c)(2) or section 361(c)(2) if, under section 355(e)(2)(A), the stock is distributed as "part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation." Thus, if section 355(e)(1) applies to a distribution, the distributing corporation is taxed on the amount by which the distributed stock's fair market value exceeds its basis. Distributee shareholders receive the controlled corporation stock tax free, but do not increase their bases to reflect the corporate level gain recognized by the distributing corporation on the distribution.

Explanation of Provisions

The proposed regulations under section 355(e) provide guidance concerning the interpretation of the phrase "plan (or series of related transactions)." The proposed regulations also address the determination of the distributing corporation's gain when multiple controlled corporations are distributed and the distributions are part of a plan (or series of related transactions) pursuant to which a 50-percent or greater interest in one or more, but not all, of the distributed controlled corporations is acquired. The Department of the Treasury and the IRS plan to issue regulations addressing other issues arising under section 355(e), including aggregation and attribution rules (including provisions for public trading) and the administration of the statute of limitations provision of section 355(e)(4)(E). Comments concerning the proposed regulations and additional

issues that should be addressed in regulations are welcome.

A. Plan or Series of Related Transactions

Whether two transactions are part of the same "plan (or series of related transactions)" under section 355(e)(2)(A) is a subjective test, depending ultimately on the intentions and expectations of the relevant parties. As discussed above, indications are that Congress intended "plan (or series of related transactions)" to be interpreted broadly. Unlike the Administration Proposal and the Bills, which utilized the section 355(d) concept of "a person" (with aggregation) as the reference for relevant acquirors, the statute, as enacted, expanded the universe of transactions to which section 355(e) potentially applies by providing that the relevant acquirors could be "1 or more persons." Also, the guidance in the Conference Report that public offerings of a sufficient size could trigger section 355(e) suggests that there does not necessarily have to be an identified acquiror on the date of the distribution for section 355(e) to apply, nor is the intent of the acquiror at the time of the distribution necessarily relevant in determining whether there is a plan.

The proposed regulations rely on a variety of factors to determine the existence of a plan (or series of related transactions) (hereinafter referred to as a "plan"). These factors include the business purpose or purposes for the distribution; the intentions of the parties; the existence of agreements, understandings, arrangements, or substantial negotiations; the timing of the transactions; the likelihood of an acquisition; and the causal connection between the distribution and the acquisition.

Congress specified one factor, temporal proximity, as affecting the determination of whether a plan exists. Specifically, section 355(e)(2)(B) provides a presumption that a plan exists if "1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation during the 4-year period beginning on the date which is 2 years before the date of the distribution." Accordingly, the proposed regulations provide that distributions within 2 years of an acquisition of the distributing corporation or a controlled corporation are presumed to be part of a plan. The proposed regulations outline the elements the distributing corporation must establish to rebut the statutory presumption.

1. Acquisitions On or After a Distribution

General Rebuttal

In the case of an acquisition occurring within 2 years after a distribution, the proposed regulations allow the distributing corporation to rebut the presumption by establishing by clear and convincing evidence that (i) the distribution was motivated in whole or substantial part by a corporate business purpose (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired) and (ii) the acquisition occurred more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition at the time of the distribution or within 6 months thereafter. Decreasing "the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired" generally refers to transactions in which one business, a perceived takeover target, is separated from another via a stock distribution in an attempt to spare the other business from acquisition. Distributions intended to "decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired" are often difficult to differentiate from those intended to "facilitate an acquisition." Both relate to a perceived possibility of acquisition and should receive similar treatment.

In this general rebuttal, the proposed regulations rely on corporate business purpose as a key factor indicating whether a distribution and an acquisition are part of a plan. Corporate business purpose is an important concept in the overall administration of section 355. The existence of a nonacquisition related corporate business purpose that prompted, in whole or substantial part, the distributing corporation to make the stock distribution suggests there is not a significant causal connection between the distribution and acquisition. The intent of the distributing corporation, the controlled corporation, or the controlling shareholders of either the distributing or controlled corporation to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired is relevant in determining the extent to which the distribution was motivated in whole or substantial part by another corporate business purpose within the meaning of § 1.355–2. Analyzing whether there is another substantial corporate business purpose for the distribution in light of an acquisition-related purpose is similar to analyzing whether there is a corporate business purpose for a distribution in light of the potential avoidance of federal taxes. See § 1.355–2(b)(1) and (5), *Example 8*. Thus, another business purpose must be real and substantial even in light of the acquisition business purpose.

The reliance on business purpose in the general rebuttal is consistent with the suggestions of many commentators writing about section 355(e), who identified corporate business purpose as an important factor in determining whether an acquisition and distribution are part of a plan.

Alternative Rebuttal

Reliance on a substantial nonacquisition business purpose as proof of no "plan" is appropriate when the distribution and acquisition are separated by a sufficient amount of time. Thus, the general rebuttal is not satisfied in certain cases, including where an acquisition occurs within 6 months after a distribution or where a distribution was not substantially motivated by a corporate business purpose other than an intention to facilitate (or decrease the likelihood of) an acquisition. These acquisitions occur in circumstances more likely to indicate the existence of a plan at the time of the distribution. Thus, these acquisitions are subject to heightened scrutiny and will be considered part of a plan unless taxpayers satisfy a more stringent alternative rebuttal.

Unlike the general rebuttal, a nonacquisition business purpose alone is not sufficient under the alternative rebuttal. Rather, taxpayers must satisfy all prongs of a three-prong test.

The first prong of the alternative rebuttal may be satisfied in either of two ways. The distributing corporation must establish by clear and convincing evidence either that (i) at the time of the distribution, the distributing corporation, the controlled corporation, and their controlling shareholders did not intend that one or more persons would acquire a 50-percent or greater interest in the distributing or any controlled corporation during the statutory presumption period (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) or (ii) the distribution was not motivated in whole or substantial part by an intention to

facilitate an acquisition of an interest in the distributing or controlled corporation. Clause (i) may be satisfied even in situations where one or more of the relevant parties intend that the distribution will facilitate an acquisition or acquisitions, so long as the parties do not intend that there be a 50-percent or greater change in ownership during the statutory presumption period. Alternatively, clause (ii) may be satisfied where the parties intend a 50-percent or greater change in ownership during the presumption period, provided that the parties do not intend that the distribution will facilitate any part of the acquisitions.

Under the second prong of the alternative rebuttal, the distributing corporation must establish by clear and convincing evidence that, at the time of the distribution, neither the distributing corporation, the controlled corporation, nor their controlling shareholders reasonably would have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in the distributing corporation or the controlled corporation within 2 years after the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests if the distribution had not occurred.

This prong of the alternative rebuttal (hereinafter referred to as the "reasonable anticipation" test) incorporates two important concepts. First, it identifies reasonably anticipated acquisitions of the distributing or controlled corporation that would not have occurred but for the distribution and, because a causal connection exists between the two transactions, treats them as part of a plan. Second, it reflects the idea that reasonable anticipation, not just the presence of negotiations, is important in determining whether a plan exists. Considering reasonable anticipation of certain acquisitions is consistent with the legislative history. Though descriptions of the Administration Proposal included references to negotiations and distinctions between hostile and friendly acquisitions, the focus of section 355(e), as enacted, is whether a relationship exists between the distribution and the fact that persons other than the existing shareholders became owners of the distributing or controlled corporation.

A reasonable anticipation standard is necessary to implement section 355(e). Otherwise, a distributing corporation could attempt to avoid section 355(e) by distributing a controlled corporation under circumstances that virtually assure an acquisition of the distributing or controlled corporation, but arguing that, despite the imminence of the acquisition, effectuating the acquisition was not a motive for the distribution. A part of planning any transaction includes attempting to foresee actions others might take in response. Consistent with this business practice, it is appropriate, especially for acquisitions subject to heightened scrutiny, to require the distributing corporation to take into account the reasonably anticipated, likely actions of others to demonstrate that a distribution and acquisition are not part of a plan.

The second prong of the alternative rebuttal is not satisfied if, at the time of the distribution, the relevant parties would reasonably anticipate that the distribution would give rise to all of an acquisition of a 50 percent interest in the distributing or controlled corporation. (The rebuttal is satisfied if the distributing corporation establishes by clear and convincing evidence that the relevant parties would not reasonably anticipate an acquisition of a 50 percent or greater interest by persons who would not acquire such interests absent the distribution.) This standard is to be contrasted with the first prong of the rebuttal, which is not satisfied if one or more of the relevant parties intended that there be a 50 percent or greater acquisition of distributing or controlled during the applicable time period, and the distribution is intended to facilitate all or any part of that acquisition. Because some acquisitions might be reasonably anticipated to occur without regard to whether the distribution takes place, the Department of the Treasury and the IRS believe that the distribution must be directly linked to all 50 percent of the acquisition to fail the "reasonable anticipation" test. However, a different result is called for where the relevant parties intend a 50 percent acquisition. In that case, it would appear that the aggregation of the various acquisitions comprising the 50 percent acquisition are themselves part of a single plan, so a distribution intended to facilitate only some of those acquisitions would be part of a plan also involving those other acquisitions not directly facilitated by the acquisition.

In developing the reasonable anticipation test, the Department of the Treasury and the IRS rejected suggestions by some commentators that serious negotiations or agreement with an acquiror need to have taken place at the time of distribution for a plan to exist. Requiring mutual agreement or negotiation is inappropriate because Congress intended the statute to apply in situations beyond those in which a distribution is made prior to and as part of an acquisition by a specifically identified acquiror. Section 355(e)(2)(B) makes clear that the section is intended to apply to acquisitions before and after a distribution. The legislative history also clarifies that a public offering after a distribution can trigger section 355(e) even though presumably no public buyer would have been negotiated with or even identified at the time of the distribution. Because Congress intended distributions designed to facilitate public offerings to be covered, other transactions that are economically similar also should be covered. These transactions include a private placement of the distributing or controlled corporation's stock or an auction of such stock by an investment banker. Like public offerings, these transactions do not necessarily involve predistribution negotiations or agreements regarding subsequent acquisitions and yet may still be part of the distributing or controlled corporation's plan.

Thus, we believe that section 355(e) was intended to apply to a range of transactions, not limited to those in which a mutual agreement or negotiations relating to the acquisition occurred prior to the distribution. To require negotiations or agreements to be present prior to a distribution either would inappropriately exclude certain transactions from the coverage of the statute or would create a higher threshold for the existence of a plan in certain acquisitions than in other acquisitions.

The third prong of the alternative rebuttal reiterates a requirement in the general rebuttal. The distributing corporation must establish by clear and convincing evidence that the distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired.

For purposes of applying the alternative rebuttal, the consequences of the application of section 355(e), directly or by indemnity, are disregarded in determining the intentions, motivations, and reasonable anticipations of the relevant parties. To do otherwise might give rise to a circularity in the application of the rules. If the consequences of the application of section 355(e) were relevant in determining such intentions, motivations, and reasonable anticipations, the distributing corporation could argue that objective evidence indicated that it would satisfy

the alternative rebuttal, since arguably it would not be reasonable for an acquiror to act in a manner that would cause liability for tax under section 355(e). Conversely, the IRS could argue that the presence of an indemnity agreement indicated that the parties anticipated liability for tax under section 355(e).

Acquisitions More Than 2 Years After a Distribution

To prevent taxpayers from attempting to avoid the presumption period by delaying a planned acquisition beyond 2 years from the date of distribution, the proposed regulations provide that an acquisition occurring more than 2 years after the distribution is presumed part of a plan if there was an agreement, understanding, or arrangement concerning the acquisition at the time of the distribution or within 2 years thereafter. The distributing corporation may rebut the presumption using the general or alternative rebuttal discussed above. To provide certainty for transactions that, because of their separation in time, are unlikely to be part of a plan, the proposed regulations provide that, if there was no agreement, understanding, or arrangement concerning the acquisition at the time of the distribution or within 2 years thereafter, a distribution and an acquisition occurring more than 2 years afterwards are not part of a plan.

2. Acquisitions Before a Distribution

Acquisitions Within 2 Years Before a Distribution

Section 355(e) also applies to transactions in which an acquisition of the distributing or controlled corporation's stock precedes a distribution of the controlled corporation. When the transactions being tested as part of a plan occur in this order, the most reliable indicators that a plan exists are an intent to make the distribution at the time of the acquisition and a causal connection between the acquisition and the distribution. In particular, if a person becomes a controlling shareholder by acquisition, that person's intention becomes the single best indicator of whether a later distribution was part of a plan. The proposed regulations allow a distributing corporation to rebut the presumption by establishing by clear and convincing evidence that, at the time of the acquisition, the distributing corporation and its controlling shareholders (determined immediately after the acquisition) did not intend to effectuate a distribution. Alternatively, the distributing corporation can rebut the presumption by establishing by clear and convincing evidence that the distribution would have occurred at approximately the same time and under substantially the same terms regardless of the acquisition (and, in the case of an issuance of stock, all acquisitions that are part of such issuance), unless a person acquiring an interest becomes a controlling shareholder by reason of the acquisition or at any point thereafter and before the end of the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter).

Acquisitions More Than 2 Years Before a Distribution

If an acquisition of an interest in the distributing corporation or the controlled corporation occurs more than 2 years before a distribution, the presumption shifts in favor of the taxpayer. The acquisition and the distribution are presumed not to be part of a plan unless the Commissioner can establish by clear and convincing evidence that, at the time of the acquisition, (i) the distributing corporation or its controlling shareholders intended to effectuate the distribution and (ii) that the distribution would not have occurred at approximately the same time and under substantially the same terms regardless of that acquisition (and, in the case of an issuance of stock, all acquisitions that are part of such issuance) or that a person acquiring an interest in that acquisition becomes a controlling shareholder by reason of that acquisition or at any point thereafter and before the end of the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within six months thereafter). Because the passage of time makes it less likely that an acquisition and distribution are part of a plan, after two years the proposed regulations shift the burden of proof to the IRS to prove the existence of a plan. However, the proposed regulations do not allow a taxpayer to avoid section 355(e) by delaying the distribution when the distribution clearly was intended at the time of the acquisition.

3. Agreement, Understanding, Arrangement, or Substantial Negotiations

The proposed regulations do not define with precision the terms *agreement, understanding, arrangement, or substantial negotiations.* A binding contract is clearly included as an agreement, but, depending on all relevant facts and circumstances, parties can have an agreement, understanding, or arrangement even though they have not reached agreement on all terms. Under certain circumstances, such as in public offerings or auctions of the distributing or controlled corporation's stock by an investment banker, an agreement, understanding, arrangement, or substantial negotiations can take place regarding an acquisition even if the acquiror has not been specifically identified. The Department of the Treasury and the IRS are particularly interested in receiving comments regarding transactions that involve an investment banker and when contacts by the distributing corporation or the controlled corporation with an investment banker or contacts with potential acquirors by an investment banker on behalf of the distributing corporation or the controlled corporation should or should not be considered an agreement, understanding, arrangement, or substantial negotiations.

4. Options

The proposed regulations also treat certain options as agreements. If stock of the distributing or controlled corporation is acquired pursuant to an option, the option is treated as an agreement unless the distributing corporation establishes by clear and convincing evidence that, on the later of the date of distribution or issuance, the option was not more likely than not to be exercised. Generally, call options, warrants, convertible obligations, the conversion feature of convertible stock, put options, redemption agreements, restricted stock, and any other instruments that provide for the right or possibility to issue, redeem, or transfer stock, cash settlement options, and other similar interests are treated as options. An option on an option is treated as an option under the proposed regulations. If there is an agreement, understanding, or arrangement to issue an option before the end of the 6 month period beginning on the date of the distribution, the option will be treated as issued on the date of the agreement, understanding, or arrangement. If an agreement, understanding, or arrangement to issue an option is reached, or an option is issued, more than 6 months but not more than 2 years after the distribution, and there were substantial negotiations regarding the issuance of the option or the acquisition of the stock underlying the option before the end of the 6 month period beginning on the date of the distribution, the option will be treated as issued 6 months after the

distribution. If there is an agreement, understanding, or an arrangement to issue an option more than 6 months but not more than 2 years after the distribution, and there were no substantial negotiations regarding the issuance of the option or the acquisition of the stock underlying the option before the end of the 6 month period beginning on the date of the distribution, the option will be treated as issued on the date of the agreement, understanding, or arrangement. The proposed regulations exempt certain options from treatment as options unless they are issued, transferred, or listed with a principal purpose of avoiding the application of section 355(e) or the proposed regulations. The enumerated exceptions cover certain commercially customary options unlikely to be used to avoid section 355(e) or the proposed regulations.

5. Aggregating Acquisitions That are Pursuant to a Plan

Under the proposed regulations, each acquisition of stock of a distributing or controlled corporation must be tested to determine whether the acquisition is pursuant to a plan involving a distribution. Each acquisition of stock of a corporation acquired pursuant to a plan involving a distribution is aggregated with all acquisitions of stock of that corporation acquired pursuant to a plan involving that distribution to determine whether an acquisition of a 50-percent or greater interest as proscribed in section 355(e)(2)(A)(ii) has occurred.

B. Any Controlled Corporation

Section 355(e)(2)(A)(ii) provides that section 355(e)(1), which causes the distributing corporation to recognize its gain in the controlled corporation stock as if the distributing corporation had sold the stock for its fair market value, applies to any distribution to which section 355 applies and "which is part of a plan * * * pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation *or any controlled corporation*" (emphasis added). A question has arisen concerning the measure of gain to the distributing corporation if, pursuant to a plan, the stock of more than one controlled corporation is distributed and stock representing a 50-percent or greater interest is acquired in some, but not all, of the distributed controlled corporations. The proposed regulations clarify that under those circumstances, the distributing corporation only recognizes gain on the stock of the distributed controlled corporations that were subject to 50-percent or greater acquisitions. If the distributing corporation is the acquired corporation, it must recognize gain on all of the distributed controlled corporations.

Proposed Effective Date

The regulations in this section are proposed to apply to distributions occurring after the regulations in this section are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) and comments sent via the Internet that are submitted timely to the IRS. The IRS and the Department of the Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 26, 2000, beginning at 10 a.m. in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by January 5, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these proposed regulations is Brendan O'Hara, Office of the Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.355–7 also issued under 26 U.S.C. 355(e)(5). * * *

Par. 2. Section 1.355–0 is amended by revising the section heading and adding introductory text and an entry for § 1.355–7 to read as follows:

§ 1.355–0 Outline of sections.

In order to facilitate the use of §§ 1.355–1 through 1.355–7, this section lists the major paragraphs in those sections as follows:

* * * * *

§ 1.355–7 Recognition of gain on certain distributions of stock or securities in connection with an acquisition.

(a) Plan or series of related transactions.
(1) In general.
(2) Distributions within 2 years of an acquisition.
(i) Presumption.
(ii) Rebuttal for acquisitions after a distribution.
(iii) Alternative rebuttal for acquisitions on or after a distribution.
(iv) Operating rules for paragraph (a)(2)(iii) of this section.

(v) Rebuttals for acquisitions before a distribution.
(A) General rebuttal.
(B) Alternative rebuttal.
(3) Distributions more than 2 years from an acquisition.
(i) Acquisitions after a distribution.
(ii) Acquisitions before a distribution.
(4) Controlling shareholder.
(5) Agreement, understanding, or arrangement.
(6) Multiple acquisitions.
(7) Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests.
(i) Treatment of options.
(A) General rule.
(B) Agreement, understanding, arrangement, or substantial negotiations to issue an option.
(ii) Instruments treated as options.
(iii) Instruments generally not treated as options.
(A) Escrow, pledge, or other security agreements.
(B) Compensatory options.
(C) Options exercisable only upon death, disability, mental incompetency, or retirement.
(D) Rights of first refusal.
(E) Other enumerated instruments.
(8) Examples.
(b) Multiple controlled corporations.
(c) Valuation.
(d) Effective date.

Par. 3. Section 1.355–7 is added to read as follows:

§ 1.355–7 Recognition of gain on certain distributions of stock or securities in connection with an acquisition.

(a) *Plan or series of related transactions*—(1) *In general.* (i) Except as provided in section 355(e) and this section, section 355(e) applies to any distribution—

(A) To which section 355 (or so much of section 356 as relates to section 355) applies; and

(B) Which is part of a plan (or series of related transactions) pursuant to which one or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.

(ii) For purposes of this section, a controlled corporation is a corporation the stock of which is distributed in a distribution to which section 355 applies.

(iii) The existence of a plan (or series of related transactions) does not depend on whether or not more than one person acts in concert.

(2) *Distributions within 2 years of an acquisition*—(i) *Presumption.* If a distribution occurs within 2 years of an acquisition by one or more persons of an interest in the distributing corporation or any controlled corporation, the distribution and that acquisition are presumed to be part of a plan (or series of related transactions).

(ii) *Rebuttal for acquisitions after a distribution.* (A) In the case of an acquisition occurring after a distribution, the distributing corporation may rebut the presumption of paragraph (a)(2)(i) of this section by establishing by clear and convincing evidence that—

(*1*) The distribution was motivated in whole or substantial part by a corporate business purpose within the meaning of § 1.355–2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired); and

(*2*) The acquisition occurred more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition at the time of the distribution or within 6 months thereafter.

(B) The intent of the distributing corporation, the controlled corporation, or the controlling shareholders of either the distributing or controlled corporation to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired is relevant in determining the extent to which the distribution was motivated by a corporate business purpose within the meaning of § 1.355–2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired).

(iii) *Alternative rebuttal for acquisitions on or after a distribution.* In the case of an acquisition occurring on or after a distribution, the distributing corporation also may rebut the presumption of paragraph (a)(2)(i) of this section by establishing by clear and convincing evidence that—

(A)(*1*) At the time of the distribution, the distributing corporation, the controlled corporation, and their controlling shareholders did not intend that one or more persons would acquire a 50-percent or greater interest in the distributing or any controlled corporation during the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter); or

(*2*) The distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in the distributing or controlled corporation; and

(B) At the time of the distribution, neither the distributing corporation, the controlled corporation, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in the distributing corporation or the controlled corporation within 2 years after the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests if the distribution had not occurred; and

(C) The distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired.

(iv) *Operating rules for paragraph (a)(2)(iii) of this section.* (A) For purposes of paragraph (a)(2)(iii)(A)(*1*) of this section, if an acquisition by one or more persons of an interest in the distributing corporation or any controlled corporation before the distribution is part of a plan (or series of related transactions) involving the distribution, the distributing corporation, the controlled corporation, and their controlling shareholders must include the amount of stock acquired in that acquisition as an amount they intended at the time of the distribution to be acquired during the 2-year period beginning on the date of the distribution.

(B) For purposes of paragraph (a)(2)(iii)(B) of this section, persons who more likely than not would have acquired interests in the distributing corporation if the distribution had not occurred are also treated as persons who more likely than not would have acquired proportionate interests in the controlled corporation if the distribution had not occurred. No other persons are treated as persons who would have acquired interests in the controlled corporation if the distribution had not occurred.

(C) For purposes of paragraph (a)(2)(iii)(B) of this section, if an acquisition by one or more persons of an interest in the distributing corporation or any controlled corporation before the distribution is part of a plan (or series of related transactions) involving the distribution, the distributing corporation, the controlled corporation, and their controlling shareholders must treat the amount of stock acquired in

that acquisition as an amount they would reasonably have anticipated was more likely than not to be acquired within 2 years after the distribution that would not have been acquired if the distribution had not occurred.

(D) For purposes of determining the intentions, motivations, and reasonable anticipations of the relevant parties under paragraph (a)(2)(iii) of this section, the consequences of the application of section 355(e), directly or by indemnity, are disregarded.

(v) *Rebuttals for acquisitions before a distribution*—(A) *General rebuttal.* In the case of an acquisition occurring before a distribution, the distributing corporation may rebut the presumption of paragraph (a)(2)(i) of this section by establishing by clear and convincing evidence that, at the time of the acquisition, the distributing corporation and its controlling shareholders (determined immediately after the acquisition) did not intend to effectuate a distribution.

(B) *Alternative rebuttal.* In the case of an acquisition occurring before a distribution, the distributing corporation may rebut the presumption of paragraph (a)(2)(i) of this section by establishing by clear and convincing evidence that the distribution would have occurred at approximately the same time and under substantially the same terms regardless of that acquisition (and, in the case of an issuance of stock, all acquisitions that are part of such issuance), provided no person acquiring an interest in that acquisition becomes a controlling shareholder by reason of that acquisition or at any point thereafter and before the end of the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter).

(3) *Distributions more than 2 years from an acquisition*—(i) *Acquisitions after a distribution.* (A) If an acquisition by one or more persons of an interest in the distributing corporation or any controlled corporation occurs more than 2 years after a distribution, the distribution and that acquisition are presumed part of a plan (or series of related transactions) only if there was an agreement, understanding, or arrangement concerning the acquisition at the time of the distribution or within 2 years thereafter. The distributing corporation may rebut the presumption under paragraph (a)(2)(ii) or (a)(2)(iii) of this section.

(B) If an acquisition by one or more persons of an interest in the distributing corporation or any controlled corporation occurs more than 2 years after a distribution, and there was no agreement, understanding, or arrangement concerning the acquisition at the time of the distribution or within 2 years thereafter, the acquisition and the distribution are not part of a plan (or series of related transactions).

(ii) *Acquisitions before a distribution.* If an acquisition by one or more persons of an interest in the distributing corporation or the controlled corporation occurs more than 2 years before a distribution, the acquisition and the distribution are not part of a plan (or series of related transactions) unless the Commissioner can establish by clear and convincing evidence that—

(A) At the time of the acquisition, the distributing corporation or its controlling shareholders (determined immediately after the acquisition) intended to effectuate the distribution; and

(B)(*1*) The distribution would not have occurred at approximately the same time and under substantially the same terms regardless of that acquisition (and, in the case of an issuance of stock, all acquisitions that are part of such issuance); or

(*2*) A person acquiring an interest in that acquisition becomes a controlling shareholder by reason of that acquisition or at any point thereafter and before the end of the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter).

(4) *Controlling shareholder.* For purposes of paragraphs (a) (2) and (3) of this section, a controlling shareholder is any person who, directly or indirectly, or together with related persons (as described in sections 267(b) and 707(b)), possesses voting power in the distributing or controlled corporation representing a meaningful voice in the governance of the corporation. A controlling shareholder of a publicly traded corporation is any person who, directly or indirectly, or together with related persons (as described in sections 267(b) and 707(b)), owns 5 percent or more of any class of stock of the distributing or controlled corporation and who actively participates in the management or operation of the corporation. If a distribution precedes an acquisition, the controlled corporation's controlling shareholders immediately after the distribution are considered the controlled corporation's controlling shareholders at the time of the distribution.

(5) *Agreement, understanding, or arrangement.* For purposes of this section, the parties do not necessarily have to have entered into a binding contract or have reached agreement on all terms to have an "agreement, understanding, or arrangement."

(6) *Multiple acquisitions.* Each acquisition of stock of a corporation acquired pursuant to a plan (or series of related transactions) involving a distribution will be aggregated with all acquisitions of stock of that corporation acquired pursuant to a plan (or series of related transactions) involving that distribution to determine whether an acquisition described in section 355(e)(2)(A)(ii) occurred. The appropriate presumption and rules for rebuttal will be applied to each acquisition depending on when the acquisition occurred.

(7) *Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests*—(i) *Treatment of options*—(A) *General rule.* For purposes of this section, if stock of the distributing or controlled corporation is acquired pursuant to an option, the option will be treated as an agreement on the date of issuance unless the distributing corporation establishes by clear and convincing evidence that, on the later of the date of distribution or date of issuance, the option was not more likely than not to be exercised. The determination of whether an option was more likely than not to be exercised is based on all the facts and circumstances. In applying the previous sentence, the fair market value of stock underlying an option is determined by taking into account control premiums and minority and blockage discounts.

(B) *Agreement, understanding, arrangement, or substantial negotiations to issue an option.* If there is an agreement, understanding, or arrangement to issue an option before the end of the 6-month period beginning on the date of the distribution, the option will be treated as issued on the date of the agreement, understanding, or arrangement. If an agreement, understanding, or arrangement to issue an option is reached, or an option is issued, more than 6 months but not more than 2 years after the distribution, and there were substantial negotiations regarding the issuance of the option or the acquisition of the stock underlying the option before the end of the 6-month period beginning on the date of the distribution, the option will be treated as issued 6 months after the distribution. If there is an agreement, understanding, or an arrangement to issue an option more than 6 months but not more than 2 years after the distribution, and there were no

substantial negotiations regarding the issuance of the option or the acquisition of the stock underlying the option before the end of the 6 month period beginning on the date of the distribution, the option will be treated as issued on the date of the agreement, understanding, or arrangement.

(ii) *Instruments treated as options.* For purposes of this paragraph (a)(7), except to the extent provided in paragraph (a)(7)(iii) of this section, call options, warrants, convertible obligations, the conversion feature of convertible stock, put options, redemption agreements (including rights to cause the redemption of stock), restricted stock, any other instruments that provide for the right or possibility to issue, redeem, or transfer stock (including an option on an option), cash settlement options, or any other similar interests are treated as options.

(iii) *Instruments generally not treated as options.* For purposes of this paragraph (a)(7), the following are not treated as options unless issued, transferred (directly or indirectly), or listed with a principal purpose of avoiding the application of section 355(e) or this section:

(A) *Escrow, pledge, or other security agreements.* An option that is part of a security arrangement in a typical lending transaction (including a purchase money loan), if the arrangement is subject to customary commercial conditions. For this purpose, a security arrangement includes, for example, an agreement for holding stock in escrow or under a pledge or other security agreement, or an option to acquire stock contingent upon a default under a loan.

(B) *Compensatory options.* An option to acquire stock in the distributing or controlled corporation with customary terms and conditions provided to an employee or director in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed) and that immediately after the distribution and within 6 months thereafter—

(*1*) Is nontransferable within the meaning of § 1.83–3(d); and

(*2*) Does not have a readily ascertainable fair market value as defined in § 1.83–7(b).

(C) *Options exercisable only upon death, disability, mental incompetency, or retirement.* Any option entered into between stockholders of a corporation (or a stockholder and the corporation) that is exercisable only upon the death, disability, or mental incompetency of the stockholder, or, in the case of stock acquired in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed), the stockholder's retirement.

(D) *Rights of first refusal.* A bona fide right of first refusal regarding the corporation's stock with customary terms, entered into between stockholders of a corporation (or between the corporation and a stockholder).

(E) *Other enumerated instruments.* Any other instruments specified in regulations, a revenue ruling, or a revenue procedure. See § 601.601(d)(2) of this chapter.

(8) *Examples.* The following examples illustrate this paragraph (a). Throughout these examples, assume that the distributing corporation (D) owns all of the stock of the controlled corporation (C). Assume further that D distributes the stock of C in a distribution to which section 355 applies and to which section 355(d) does not apply. For purposes of these examples, unless otherwise stated, assume that all transactions described are respected under applicable general tax principles. No inference should be drawn from any example concerning whether any requirements of section 355 other than those of section 355(e) are satisfied. The examples are as follows:

Example 1. To facilitate a stock offering by D of 50 percent of its stock, D distributes C pro rata to its shareholders. D issues new shares amounting to 50 percent of its stock to the public in a public offering within 6 months of the distribution. Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Because the acquisition occurred within 6 months after the distribution, D must rely on the rules of paragraph (a)(2)(iii) of this section to rebut the presumption. D will not be able to rebut the presumption because D cannot establish either that D did not intend that one or more persons would acquire a 50-percent or greater interest in D during the relevant period under paragraph (a)(2)(iii)(A)(*1*) of this section or that the distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in D under paragraph (a)(2)(iii)(A)(*2*) of this section. Because the presumption of paragraph (a)(2)(i) of this section cannot be rebutted regarding the acquisition of a 50-percent or greater interest in D, section 355(e) applies to the distribution of C.

Example 2. (i) X corporation announces an intention to acquire D, principally to acquire C's business. Due to market conditions, X's available capital, and X's success in acquiring other corporations, D would reasonably anticipate that an acquisition of a 50-percent or greater interest in D is more likely than not to occur within 2 years. To lower its financing costs and, in substantial part, to deter the acquisition of D (by separating it from the more attractive C), D distributes C pro rata to the D shareholders. X acquires C within 6 months of the distribution.

(ii) Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Because the acquisition occurred within 6 months after the distribution, D must rely on the rules of paragraph (a)(2)(iii) of this section to rebut the presumption. Under paragraph (a)(2)(iii)(A)(*2*) of this section, D will be able to establish that the distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in D or C. Under paragraph (a)(2)(iv)(B) of this section, for purposes of paragraph (a)(2)(iii)(B) of this section, persons who more likely than not would have acquired interests in D if the distribution had not occurred are also treated as persons who more likely than not would have acquired proportionate interests in C if the distribution had not occurred. Therefore, under paragraph (a)(2)(iii)(B) of this section, D will be able to establish that, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D or C within 2 years after the distribution who would not have acquired such interests if the distribution had not occurred.

(iii) Under paragraph (a)(2)(iii)(C) of this section, D will not be able to establish that the distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of D's business by separating it from the C business that was likely to be acquired. Because the presumption of paragraph (a)(2)(i) of this section cannot be rebutted regarding the acquisition by X of a 50-percent or greater interest in C, section 355(e) applies to the distribution of C.

Example 3. The facts are the same as *Example 2* except the acquisition takes place 1 year after the distribution. The parties had not reached an agreement, understanding, or arrangement concerning, and had not substantially negotiated, the acquisition of C stock within 6 months after the distribution. Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Under paragraph (a)(2)(ii)(B) of this section, D's intent to deter an acquisition of D is a factor tending to disprove that the distribution was motivated in substantial part by the desire to lower its financing costs. If D can establish by clear and convincing evidence that the distribution was nonetheless motivated in substantial part by the need to lower its financing costs, D can rebut the presumption using paragraph (a)(2)(ii) of this section. D will not be able to rebut the presumption by using the

alternative rebuttal under paragraph (a)(2)(iii) of this section for the same reason as in *Example 2*.

Example 4. D is a widely held, publicly traded corporation. D distributes C pro rata to D's shareholders. By contract, C agrees to indemnify D for any imposition of tax under section 355(e). The distribution is motivated solely by a corporate business purpose within the meaning of § 1.355–2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired). At the time of the distribution, although D has not been approached by any potential acquirors of C, D would reasonably anticipate that, under current market conditions, if C is separated from D, an acquisition of a 50-percent or greater interest in C is more likely than not to occur within 2 years by persons who would not have acquired a proportionate interest in D if the distribution of C had not occurred. C is acquired within 6 months after the distribution. Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Because the acquisition occurred within 6 months after the distribution, D must rely on the rules of paragraph (a)(2)(iii) of this section to rebut the presumption. D will be able to establish that the distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in D or C under paragraph (a)(2)(iii)(A)(*2*) of this section. However, D will not be able to establish the requirements of paragraph (a)(2)(iii)(B) of this section. Under paragraph (a)(2)(iv)(B) of this section, for purposes of paragraph (a)(2)(iii)(B) of this section, only persons who more likely than not would have acquired interests in D if the distribution had not occurred are treated as persons who more likely than not would have acquired proportionate interests in C if the distribution had not occurred. Therefore, under paragraph (a)(2)(iii)(B) of this section, D will not be able to establish that, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D or C within 2 years after the distribution who would not have acquired such interests if the distribution had not occurred. Under paragraph (a)(2)(iv)(D) of this section, the consequences of the indemnity agreement are disregarded for purposes of applying paragraph (a)(2)(iii)(B) of this section. Because the presumption of paragraph (a)(2)(i) of this section cannot be rebutted regarding the acquisition of a 50-percent or greater interest in C, section 355(e) applies to the distribution of C.

Example 5. (i) D believes it would be a more attractive acquisition candidate if it did not own C. To achieve significant nontax cost savings and, in substantial part, to maximize the possibility of D's acquisition, D distributes C pro rata. At the time of the distribution, D has not, directly or indirectly, solicited or received any indication of interest from potential acquirors. At the end of 6 months after the distribution, no agreement, arrangement, understanding, or substantial negotiations regarding the acquisition of D have taken place. Seven months after the distribution, D engages an investment banker to conduct an auction of D. One of the bidders acquires D 1 year after the distribution. Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Because there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition at the time of the distribution or within 6 months thereafter, D can use the rebuttal under paragraph (a)(2)(ii) of this section if D can establish that the distribution was motivated in whole or substantial part by the corporate business purpose of achieving significant nontax cost savings. Under paragraph (a)(2)(ii)(B) of this section, D's intent to facilitate an acquisition of D is a factor tending to disprove that the distribution was motivated in substantial part by the desire to achieve nontax cost savings. If D can establish by clear and convincing evidence that the distribution was nonetheless motivated in substantial part by the need to achieve nontax cost savings for D and C, D can rebut the presumption using paragraph (a)(2)(ii) of this section.

(ii) D cannot rebut the presumption using the rules of paragraph (a)(2)(iii) of this section because D cannot establish either that D did not intend that one or more persons would acquire a 50-percent or greater interest in D during the relevant period under paragraph (a)(2)(iii)(A)(*1*) of this section or that the distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in D under paragraph (a)(2)(iii)(A)(*2*) of this section.

Example 6. D announces that it will distribute C pro rata to D's shareholders. The distribution is motivated solely by a corporate business purpose within the meaning of § 1.355–2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired). After the announcement but before the distribution, D acquires X, a widely held corporation. The X shareholders receive D stock in exchange for their X stock. No person who acquired D stock in the X acquisition became a controlling shareholder of D, as defined in paragraph (a)(4) of this section, within the time period described in paragraph (a)(2)(v)(B) of this section. Under paragraph (a)(2)(i) of this section, the distribution and the acquisition of D stock by the X shareholders are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. If D can establish by clear and convincing evidence that the distribution of C would have occurred at approximately the same time and under substantially the same terms regardless of the acquisition of X, D may rebut the presumption under paragraph (a)(2)(v)(B) of this section.

Example 7. (i) D engages in business 1. C engages in business 2. D is interested in expanding business 1 through acquisitions, but D's ownership of C has been an impediment to acquisitions using D stock. On the advice of its investment banker, D plans to distribute its C stock to its shareholders solely to facilitate acquisitions by D. D has no specific goals regarding how much D stock will be acquired after the distribution. D and its investment banker have identified X and Y as potential acquisition targets. After D decides to distribute its C stock, but before the distribution date, D negotiates with and acquires X, but has no contact with Y. A, X's sole shareholder, receives 30 percent of D's stock, becoming a controlling shareholder of D within the meaning of paragraph (a)(4) of this section. One year after the distribution, D acquires Y. Y's shareholders receive 19 percent of D's stock. After the distribution, D and its investment banker identify Z as another desirable target. Eighteen months after the distribution, D acquires Z. Z's shareholders receive 17 percent of D's stock.

(ii) Under paragraph (a)(2)(i) of this section, the distribution and each acquisition are presumed to be part of a plan (or series of related transactions) because each acquisition occurred within 2 years of the distribution. In addition, under paragraph (a)(6) of this section, all acquisitions for which the presumption is not rebutted are aggregated to determine whether an acquisition described in section 355(e)(2)(A)(ii) has occurred.

(iii) Regarding the acquisition of X, D will not be able to rebut the presumption under paragraph (a)(2)(v)(A) of this section because D cannot establish that at the time A acquired D stock, D did not intend to effectuate a distribution. In addition, D cannot rebut the presumption under paragraph (a)(2)(v)(B) of this section because that paragraph does not apply to an acquisition in which a person becomes a controlling shareholder.

(iv) Regarding the acquisitions of Y and Z, D will not be able to rebut the presumption under paragraph (a)(2)(ii)(A) of this section because D cannot establish that the distribution was motivated in whole or substantial part by a corporate business purpose within the meaning of § 1.355–2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired).

(v) To rebut the presumption with regard to each acquisition of Y and Z using the alternative rebuttal of paragraph (a)(2)(iii) of this section, D must establish three facts. First, under paragraph (a)(2)(iii)(A)(*1*) of this section, D must establish that, at the time of the distribution, D and its controlling shareholders did not intend that one or more persons would acquire a 50-percent or greater interest in D or C during the presumption period described in that paragraph. For that purpose, the interests intended to be acquired in D or C will include A's acquisition of D stock under paragraph (a)(2)(iv)(A) of this section. Second, under paragraph (a)(2)(iii)(B) of this section, D must establish that, at the time of the distribution, neither D, C, nor their controlling

shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D or C within 2 years after the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests if the distribution had not occurred. Under paragraph (a)(2)(iv)(C) of this section, D, C, and their controlling shareholders must treat the amount of D stock acquired by A as an amount they would reasonably have anticipated was more likely than not to be acquired within 2 years after the distribution that would not have been acquired if the distribution had not occurred. Third, under paragraph (a)(2)(iii)(C) of this section, D will be able to establish that the distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired.

Example 8. D plans to distribute C pro rata to its shareholders. The distribution is substantially motivated by a corporate business purpose within the meaning of § 1.355–2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired). After the announcement date, D's investment banker informs D's management that there is a lot of interest in new investment in D now that it will no longer own C. At the time of the distribution, D would reasonably anticipate that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D within 2 years (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not acquire such interests absent the distribution. Three months after the distribution, D issues an option to X to purchase 50 percent of the D stock. At the time of issuance, the facts and circumstances indicate that the option is more likely than not to be exercised. Two years after issuance, X exercises the option and purchases 50 percent of the D stock. Under paragraph (a)(7)(i)(A) of this section, the option is treated as an agreement on the date it is issued. Under paragraph (a)(3)(i)(A) of this section, the distribution and the acquisition are presumed to be part of a plan (or series of related transactions) because there was an agreement concerning the acquisition within 2 years of the distribution. D will not be able to rebut the presumption using the rebuttals of paragraphs (a)(2)(ii) or (a)(2)(iii) of this section. The rebuttal of paragraph (a)(2)(ii) of this section is unavailable because there was an agreement concerning the acquisition within 6 months of the distribution. The rebuttal of paragraph (a)(2)(iii) of this section is unavailable because D cannot establish that, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D within 2 years (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests absent the distribution. Because the presumption relating to the acquisition of a 50-percent interest in D cannot be rebutted, section 355(e) applies to the distribution of C.

Example 9. (i) D distributes C pro rata to its shareholders solely to facilitate a stock offering by C. To take advantage of favorable market conditions, C issues new shares amounting to 20 percent of its stock in a public offering followed 1 month later by the distribution. The public offering documents disclosed the intended distribution of C. Neither D, C, nor their controlling shareholders intended any further transactions involving D or C stock. In addition, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably anticipate that it was more likely than not that one or more persons would acquire a 50-percent interest in D or C within 2 years (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests absent the distribution. Two months after the distribution, C is approached unexpectedly regarding an opportunity to acquire X. Five months after the distribution, C acquires X in exchange for 40 percent of the C stock. Under paragraph (a)(2)(i) of this section, the distribution and each acquisition are presumed to be part of a plan (or series of related transactions) because each acquisition occurred within 2 years of the distribution.

(ii) Regarding the public offering, D cannot rebut the presumption using paragraph (a)(2)(v) of this section. At the time of the acquisition, D and its controlling shareholders intended to effectuate the distribution. Also, the distribution would not have occurred at approximately the same time and under substantially the same terms regardless of the public offering.

(iii) Regarding C's acquisition of X, D will not be able to rebut the presumption using paragraph (a)(2)(ii) of this section because the acquisition occurred within 6 months after the distribution. However, D will be able to rebut the presumption regarding the acquisition of X using paragraph (a)(2)(iii) of this section. Neither D, C, nor their controlling shareholders intended that one or more persons would acquire a 50-percent or greater interest in D or C during the relevant period under paragraph (a)(2)(iii)(A)(*1*) of this section. Under paragraph (a)(2)(iii)(B) of this section, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in C within 2 years who would not have acquired such interests if the distribution had not occurred. Under paragraph (a)(2)(iii)(C) of this section, the distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired. Because only the 20-percent acquisition by public offering is part of a plan (or series of related transactions) involving the distribution, section 355(e) does not apply.

(b) *Multiple controlled corporations.* Only the stock or securities of a controlled corporation in which one or more persons acquire directly or indirectly stock representing a 50-percent or greater interest as part of a plan (or series of related transactions) involving the distribution of that corporation will be treated as not qualified property under section 355(e)(1) if—

(1) The stock or securities of more than one controlled corporation are distributed in distributions to which section 355 applies; and

(2) One or more persons do not acquire, directly or indirectly, stock representing a 50-percent or greater interest in the distributing corporation pursuant to a plan (or series of related transactions) involving any of those distributions.

(c) *Valuation.* Except as provided in paragraph (a)(7)(i)(A) of this section, for purposes of section 355(e) and this section, all shares of stock within a single class are considered to have the same value. Thus, control premiums and minority and blockage discounts within a single class are not taken into account.

(d) *Effective date.* The regulations in this section apply to distributions occurring after the regulations in this section are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–21876 Filed 8–19–99; 1:37 pm]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC–36–9932b; FRL–6426–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d) Plan submitted by the South Carolina Department of Health and Environmental Control (DHEC) for the State of South Carolina on April 12, 1999, for implementing and enforcing the Emissions Guidelines applicable to

existing Municipal Solid Waste Landfills. The Plan was submitted by the South Carolina DHEC to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the South Carolina State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by September 23, 1999.

ADDRESSES: Written comments should be addressed to Gregory Crawford at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at (404) 562–9046 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register** and incorporated by reference herein.

Dated: August 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–21824 Filed 8–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6426–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Chaparral Steel Midlothian, L.P. (Chaparral) to exclude (or delist) certain solid wastes generated by its Midlothian, Texas, facility from the lists of hazardous wastes.

Any person may petition the Administrator to modify or revoke any provision of the solid waste regulations. Generators are specifically provided the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Chaparral's petitioned waste is nonhazardous with respect to the original listing criteria and that the waste process Chaparral uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until October 8, 1999. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

ADDRESSES: Please send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resources Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711–3087. Identify your comments at the top with this regulatory docket number: "F–99–TXDEL–CHAPARRAL."

You should address requests for a hearing to the Acting Director, Robert Hannesschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Your requests for a hearing must reach EPA by September 8, 1999. The request must contain the information prescribed in section 260.20(d).

FOR FURTHER INFORMATION CONTACT: William Gallagher at (214) 665–6775.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information
- A. What action is EPA proposing?
- B. Why is EPA proposing to approve this delisting?
- C. How will Chaparral manage the waste if it is delisted?
- D. When would the proposed exclusion be finalized?
- E. How would this action affect states?

II. Background
- A. What is the history of the delisting program?
- B. What is a delisting petition, and what does it require of a petitioner?
- C. What factors must EPA consider in deciding whether to grant a delisting petition?

III. EPA's Evaluation of the Waste Information and Data
- A. What wastes did Chaparral petition EPA to delist?
- B. What information and analysis did Chaparral submit to support this petition?
- C. Who is Chaparral and what process do they use to generate the petition waste?
- D. How did Chaparral sample and analyze the data in this petition?
- E. What were the results of Chaparral's analysis?
- F. How did EPA evaluate the risk of delisting this waste?
- G. What did EPA conclude about Chaparral's analysis?
- H. What other factors did EPA consider in its evaluation?
- I. What is EPA's final evaluation of this delisting petition?

IV. Next Steps
- A. With what conditions must the petitioner comply?
- B. What happens if Chaparral violates the terms and conditions?

V. Public Comments
- A. How may I as an interested party submit comments?
- B. How may I review the docket or obtain copies of the proposed exclusions?

I. Overview Information

A. What Action is EPA Proposing?

The EPA is proposing:

(1) To grant Chaparral's petition to have their Landfill No. 3 leachate, baghouse storm water, and other

wastewater that may have been in contact with the K061 waste excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency uses this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

B. Why is EPA Proposing to Approve This Delisting?

Chaparral petitioned the Agency to exclude, or delist, the landfill leachate, baghouse storm water, and other wastewaters that may have potentially come in contact with K061 waste because they do not believe that the petitioned waste meets the criteria for which EPA listed it. Chaparral also believes no additional constituents or factors could cause the wastes to be hazardous.

Based on our review, described below, EPA has determined that the waste is nonhazardous with respect to the original listing criteria. (If our review had found that the waste remained hazardous based on the factors for which EPA listed the waste, we would have proposed to deny the petition.)

In reviewing this petition, we considered the original listing criteria and the additional factors required by RCRA section 3001(f), 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3).

We also evaluated the waste for other factors or criteria to assess whether these additional factors could cause the waste to be hazardous. These factors included: (1) whether the waste is considered acutely toxic, (2) the toxicity of the constituents, (3) the concentration of the constituents in the waste, (4) the waste constituent's tendency to migrate and to bioaccumulate, (5) its persistence in the environment once released from the waste, (6) plausible and specific types of management of the petitioned waste, (7) the quantity of waste produced, and (8) waste variability.

The EPA believes that the petitioned waste does not meet the criteria for which it listed the waste and does meet the criteria for delisting. The EPA's proposed decision to delist waste from Chaparral's facility is based on the description of the proposed treatment system and analytical data from the Midlothian facility submitted to support today's rule.

C. How Will Chaparral Manage the Waste if it is Delisted?

The facility would like to manage the waste in their onsite cooling system of which cooling ponds are a part. The wastewater would be substituted for some of the well water presently used for cooling purposes which would help conserve that natural resource. In this case, the requested change in waste management is subject to delisting by EPA and subsequent waste management practices in accordance with TNRCC rules and regulations.

D. When Would the Proposed Delisting Exclusion be Finalized?

The Hazardous and Solid Waste Act specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

This rule, if finalized, will become effective immediately upon final publication. Section 3010(b) at 42 United States Code Annotated 6930(b) of RCRA allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect states?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Chaparral transports the petitioned waste to or manages the waste in any State with delisting authorization, Chaparral must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is the history of the delisting program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, sections 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because they do not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for the listed wastes. The criteria for which EPA lists a waste are in part 261 and in the background documents for the listed wastes.

In addition, under section 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See part 261 and the background documents for the listed wastes.

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in section 260.22(a), in 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous. *See* 3010(b) of the Solid Waste Disposal Act.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. *See Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. *See* (57 *FR* 7628) These rules became final on October 30, 1992. *See* (57 *FR* 49278) Consult these references for more information about mixtures derived from wastes.

III. EPA's Evaluation of the Waste Information and Data

A. What wastes did Chaparral petition EPA to delist?

On February 23, 1999, Chaparral Steel petitioned EPA for a conditional exclusion for 500,000 gallons (about 2,500 cubic yards) per year of leachate from its Landfill No. 3 single RCRA landfill unit containing electric arc furnace dust. The furnace dust is captured in the baghouse during the steelmaking process and is a listed hazardous waste classified as K061. The petitioned wastes are largely leachate generated in the landfill's leachate collection system and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump. These liquid wastes are presently pumped to an onsite storage tank. The resulting waste is also listed under § 261.3(c)(2)(i) (the "derived from" rule), as EPA Hazardous Waste No. K061. The listed constituents of concern for this waste code are hexavalent chromium, lead, and cadmium.

B. What information and analysis did Chaparral submit to support this petition?

To support its petition, Chaparral submitted:

(1) historical analytical data for the Electric Arc Furnace Dust (K061), and leachate analytical data from their Landfill No. 3 containing the Electric Arc Furnace Dust, and analytical data for the liquid from the K061 waste water storage tank;

(2) analytical results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, metals (including hexavalent chromium), pesticides, herbicides, polychlorinated biphenyls, furans, and dioxins;

(3) analytical results of the constituent list derived from appendix IX for identified constituents;

(4) analytical results for reactive sulfide;

(5) analytical results for reactive cyanide;

(6) test results for corrosivity by pH;

(7) analytical results of samples from bench tests of treated leachate/K061 wastewater; and

(8) test results for oil and grease.

C. Who is Chaparral and what process do they use to generate the petitioned waste?

Chaparral Steel operates a steel plant which manufactures primary steel from scrap steel utilizing an electric arc furnace process with continuous casting of billets, and then rolling to finished goods. Electric arc furnace dust, which is captured in the baghouse during the steelmaking process, is a listed hazardous waste (K061). In the past, K061 was landfilled on-site. The on-site landfills have been closed. The baghouse K061 wastes are currently shipped off-site for metals recovery or are reused on site by reintroduction to the electric arc furnace.

Leachate from Landfill No. 3 which also bears the K061 waste classification, is collected from the landfill's leachate collection system and stored in an on-site tank. Small amounts of water from various locations within the facility including storm water from the palletizer sump and storm water from the baghouse floor (which is potentially mixed with electric arc furnace dust and therefore would also be designated as K061) is also placed in the tank occasionally. Also minor amounts of water that has potentially contacted K061 is occasionally added to the tank. However, the amounts of storm water and other potentially contaminated wastewaters are very minor as compared to the leachate. The contents of the leachate tank are presently transported to an offsite injection facility for disposal.

D. How did Chaparral sample and analyze the data in this petition?

Chaparral developed a list of constituents of concern from prior analytical data and by analyzing the first sample for the entire appendix IX list of hazardous constituents found in 40 CFR part 264. More specifically, Chaparral analyzed one treated and one raw leachate composite sample for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, metals, herbicides, pesticides, PCBs, and furans from appendix IX. These two samples were analyzed for the comprehensive list in order to confirm that there were no other constituents of concern in the petitioned waste.

Chaparral collected four composite samples from the storage tank over a twenty-five week period. They collected these samples in this manner to ensure that the samples represented the potential time and space variability of the petitioned waste. All samples were analyzed for constituents of concern and were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for reactive constituent concentrations of cyanide and sulfide. These samples were not analyzed for TCLP

concentrations (i.e., mass of a particular constituent per unit volume of extract) since the leachate is a liquid and the total analysis concentration is considered to be the TCLP concentration.

Chaparral used these methods	To quantify
SW–846 Method 8260, and 8270.	The total constituent concentrations of 40 CFR, part § 264 Appendix IX Volatiles and Appendix IX Semivolatiles including PCBs, Pesticides, and Herbicides.
SW–846 Methods 6010, 7041, and 7740, and 7196.	Appendix IX Metals.
SW–846 Methods 7470.	Mercury.
9071	Total oil and grease.
9045	pH
9030	Reactive Sulfide.
9010	Reactive Cyanide.
1010	Ignitability.

E. What were the results of Chaparral's analysis?

Tables 1 and 2 present the maximum total constituent leachate concentrations for the raw waste and for the treated waste samples from bench test studies. The bench test study simulated a typical wastewater treatment process. If the raw (untreated) waste does not meet delisting criteria, then Chaparral intends to treat the waste in a wastewater treatment plant to meet the delisting criteria.

The wastewater treatment process would add a coagulant such as ferric chloride to precipitate the metal constituents and then add a cationic polymer to flocculate the metal constituents. A filter unit would remove the precipitated metal constituents which would yield a wastewater with concentrations of constituents of concern well below the delisting criteria concentrations.

Chaparral calculated, based on historical information and the worst case scenario, the maximum petitioned waste to be excluded on a yearly basis will be 500,000 gallons (or about 2500 cubic yards) of petitioned waste. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted Chaparrals' certified estimates. The EPA does not generally verify submitted test data before proposing delisting decisions. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

TABLE 1.—MAXIMUM ORGANIC TOTAL CONSTITUENT CONCENTRATIONS [1] For Raw Leachate/K061 Wastewater and Treated Leachate/K061 Wastewater from the Storage Tank

Constituents	Total Constituent Analyses for Raw Leachate [1] (mg/l)	Total Constituent Analyses for Treated Leachate [1] (mg/l)
1,2-Dichloroethane	0.004	<0.005
2-Butanone	0.003	0.005
4-Methyl-2-pentanone	0.006	0.005
Acetone	0.08	0.1
Carbon Disulfide	0.003	0.005
Chloromethane	<0.01	0.001
Ethylbenzene	0.004	<0.005
Methyl Iodide	<0.01	0.002
Methylene Chloride	0.001	<0.005
Toluene	0.001	0.004
Xylene	0.03	0.006

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

F. How did EPA evaluate the risk of delisting this waste?

Chaparral Steel's petition requests a conditional delisting for listed hazardous wastes. In making the initial delisting determination, EPA evaluated the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(1), 261.11(a)(2) and 261.11(a)(3). Based on this review, EPA has determined that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition.) The EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The EPA considered whether the wastes are acutely toxic, the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and waste variability.

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water and air) for hazardous constituents present in the petitioned wastes. The EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for Chaparral's petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, EPA used a particular fate and transport model, EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous

constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the disposal of Chaparral's petitioned wastes on human health and the environment. You can find a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting in 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197 (December 30, 1991) and the RCRA public docket. This model includes both unsaturated and saturated zone transport modules. It uses the reasonable worse-case contaminant levels in ground water at a compliance point (that is, a receptor well serving as a drinking-water supply.)

Specifically, EPA used the maximum estimated waste volumes and the maximum reported concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from a theoretical disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the current Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act or health-based levels derived from verified Reference Doses. The values used for lead and copper are action levels for treatment of a water supply in lieu of an MCL (40 CFR 141.80).

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and gives a high degree of confidence that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. In most cases, because a delisted waste is no longer subject to hazardous waste control (unless conditionally delisted), EPA is generally unable to predict, and does not presently control, how a waste will be managed after delisting. Therefore, EPA normally believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. If however, conditions contained in a delisting indicate that it is necessary to consider site specific factors or otherwise indicate that the model is inappropriate, EPA may consider these factors in applying the model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. The evaluation of the information submitted indicated that the waste is managed in a tank with secondary containment. Therefore ground water data is not applicable to this petition.

From the evaluation of Chaparral's delisting petition, one of the constituents evaluated, lead, is being proposed as a verification testing condition. Proposed maximum allowable leachable concentrations for this constituent was derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a surface impoundment management scenario and by comparing results with the Land Disposal Restrictions (LDRs) maximum allowable concentration. The lowest of these two concentrations (i.e., delisting levels) are part of the verification testing conditions of the proposed exclusion. Therefore, delisting levels are less than LDR concentrations and thus the LDRs are met. Details of the evaluation of lead and other constituents of concern is explained in more detail later in this section.

Chaparral's exclusion (if granted) would be contingent upon the facility conducting sampling and analysis of the waste to insure that the delisting conditions are met (i.e., wastes meet EPA's verification testing conditions).

The EPA's proposed decision is based on the information submitted in support of today's rule, i.e., historical data from the Landfill No. 3 leachate, analytical data from recent samples from the leachate storage tank containing leachate and K061 wastewaters, and analytical data from bench tests of the leachate/K061 wastewaters after treatment in a simulated wastewater treatment system.

Finally, RCRA (7004(b)(1)) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

The EPA's evaluation of the raw leachate using a Dilution Attenuation Factor of 68, a maximum waste volume annually of 2500 cubic yards (or 500,000 gallons per calender year), and the maximum reported constituent concentrations (see Tables 1 and 2), yielded compliance point concentrations (see Tables 3 and 4) that are below the current health-based levels except for the constituent lead which is discussed below.

In Table 3, the calculated compliance point concentrations derived from the maximum reported leachate concentrations (see Table 1) of the organic constituents detected in the waste are compared with the levels of concern. The organic constituents are believed to be artifacts from sampling or analysis errors because: (1) the arc furnace process should have destroyed the organic chemicals, (2) the organic constituents are not detected consistently, (3) most detections are near the detection limits, and (4) several of the compounds are common laboratory contaminants. However, in spite of this reasoning, EPA completed the evaluation conservatively using the highest concentration found for each organic constituent in the petitioned waste. As shown in Table 3, the maximum reported leachate concentrations of 1,2-dichloroethane, 2-butanone, 4-methyl-2-pentanone, acetone, carbon disulfide, ethylbenzene, methylene chloride, toluene, and xylene yielded compliance point concentrations below the health-based levels used in delisting decision-making. It should also be noted that the concentrations of the organic constituents found in the raw leachate are below LDR concentration values and therefore the LDRs are met. *See* Table 1.

The EPA also evaluated the mobility of the two remaining organic constituents cloromethane and methyl iodide which were not detected in the leachate but were found in the treated leachate at concentrations of 0.001 and 0.002 mg/l yielding compliance concentrations of 0.00001 and 0.00003 mg/l, in respective order. These concentrations are well below the levels of concern of 0.007 and 0.03 mg/l, respectively. The 0.001 and 0.002 mg/l values are below the LDR concentration values and therefore the LDRs are met.

In Table 4, the calculated compliance point concentrations derived from the maximum reported leachate/K061 wastewater concentrations of the inorganic constituents (see Table 2) detected in the petitioned raw waste are compared with the levels of regulatory concern. The maximum reported or calculated concentrations of arsenic, barium, cadmium, total chromium, copper, mercury, nickel, vanadium, and zinc yielded compliance point concentrations below Levels of Concern.

The EPA did not evaluate the mobility of the constituents beryllium, hexavalent chromium, cobalt, selenium, silver, thallium and cyanide from Chaparral's petitioned waste because

these constituents were not detected in the leachate using the appropriate analytical test methods. See Table 2. The EPA believes that it is inappropriate to evaluate nondetectable concentrations of a constituent of concern in its delisting modeling efforts if the nondetectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), EPA, for delisting purposes, assumes that the constituent is not present and therefore does not present a threat to human health or the environment. In the delisting program EPA believes it is inappropriate to evaluate constituents undetected in the waste samples.

The maximum reported raw leachate concentration for a single sample of lead (2.0 mg/l) yielded a calculated compliance point concentration (0.029 mg/l) slightly above the health-based level (0.015 mg/l) used in the delisting decision-making process.

The lead value (0.029 mg/l) represents the calculated leachate concentrations of lead at a theoretical downgradient ground water monitoring well using the EPACML model and a concentration value of 2.0 mg/l from one raw waste sample. This value was the highest concentration identified for the four analysis completed for lead. The four concentration values for lead as identified in the raw waste were 2.0, 1.3, 0.5 and 0.55 mg/l and the values for the treated waste were 0.081, 0.06, 0.026, and <0.0011 mg/l. Two of the raw waste lead values (0.5 and 0.55 mg/l) and all of the treated samples yield calculated compliance point concentrations below the concentration of concern. For this reason, verification testing for one waste constituent, lead, will be a condition of the delisting.

Lead was the only constituent that did not consistently have calculated compliance point concentrations below the concentrations of concern. As shown in Tables 3 and 4, all other constituents were always below the concentrations of concern at the calculated compliance point. It should also be noted that the concentration values as measured in the raw waste for all other constituents of concern were below the LDR concentration values. Therefore, with the exception of the constituent lead, the petitioned waste meets LDR concentration values even before the compliance point concentrations are calculated. Seven years of historical leachate data also supported the decision that lead was the only Constituent of Concern which should require verification testing.

TABLE 2.—MAXIMUM INORGANIC TOTAL CONSTITUENT CONCENTRATIONS FOR RAW LEACHATE/K061 WASTEWATER AND TREATED LEACHATE/K061 WASTEWATER FROM THE K061 STORAGE TANK

Constituents	Total Constituent Analyses for Raw Leachate [1] (mg/l)	Total Constituent Analyses for Treated Leachate [1] (mg/l)
Antimony	<0.0066	0.008
Arsenic	0.081	0.068
Barium	0.26	0.007
Beryllium	<0.0017	<0.0017
Cadmium	0.019	0.0020
Chromium (Total)	0.17	0.013
Chromium (Hexavalent)	<0.1	<0.02
Cobalt	<0.0016	<0.0016
Copper	0.096	0.029
Lead	2	0.081
Mercury	0.00031	0.00016
Nickel	0.019	0.014
Selenium	<0.01	0.044
Silver	<0.0012	<0.0012
Thallium	<0.0096	<0.0096
Tin	0.025	0.017
Vanadium	0.042	0.038
Zinc	5.6	0.08
Sulfide (Total)	1.3	<1.0
Cyanide (Total)	<0.0018	<0.0018

< Denotes that the constituent was not detected at the noted detection limit.

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 3.—EPACML: CALCULATED COMPLIANCE POINT ORGANIC CONCENTRATIONS FOR RAW LEACHATE AND K061 WASTEWATER FROM THE K061 STORAGE TANK.

Organic Constituents	Compliance Point Concentrations [1] (mg/1)	Levels of Concern [2] (mg/1)
1,2-Dichloroethane	0.00006	0.005
2-Butanone	0.00004	20.
4-Methyl-2-pentanone	0.0001	2.
Acetone	0.001	4.
Carbon Disulfide	0.00004	4.
Ethylbenzene	0.00006	70.
Methylene Chloride	0.00001	0.005
Toluene	0.00001	1.

TABLE 3.—EPACML: CALCULATED COMPLIANCE POINT ORGANIC CONCENTRATIONS FOR RAW LEACHATE AND K061 WASTEWATER FROM THE K061 STORAGE TANK.—Continued

Organic Constituents	Compliance Point Concentrations [1] (mg/l)	Levels of Concern [2] (mg/l)
Xylene	0.0004	10.

<Denotes that the constituent was not detected at the detection limit specified in the table.
[1] Using the maximum leachate level from Table 1 and based on a DAF of 68 calculated using the EPACML for a yearly volume of 2500 cu. yards (or 500,000 gal.).
[2] See Docket Report on Health-Based Levels and Solubilities Used in the evaluation of Delisting Petitions, December 1994 located in the RCRA public docket for today's document.

TABLE 4.—EPACML: CALCULATED COMPLIANCE POINT INORGANIC CONCENTRATIONS FOR RAW LEACHATE/K061 WASTEWATER FROM THE K061 STORAGE TANK.

Inorganic Constituents	Compliance Point Concentrations [1] (mg/l)	Levels of Concern [2] (mg/1) [1]
Arsenic	0.0012	0.05
Barium	0.0038	2.
Cadmium	0.00028	0.005
Chromium (Total)	0.0025	0.1
Copper	0.0014	1.3
Lead	0.03	0.015
Mercury	0.000005	0.002
Nickel	0.00028	0.1
Tin	0.00037	21.
Vanadium	0.00062	0.3
Zinc	0.082	5.

[1] Using the maximum concentration level from Table 2 and based on a DAF of 68 calculated using the EPACML for yearly volume of 2500 cu. yards (or 500,000 gal.).
[2] See *Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions*, December 1994 located in the RCRA public docket for today's document.

G. What did EPA conclude about Chaparral's analysis?

The EPA concluded, after reviewing Chaparral Steel's processes and analytical data that:

(1) no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in Chaparral's wastes, and

(2) the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* §§ 261.21, 261.22, and 261.23, respectively.

H. What other factors did EPA consider in its evaluation?

During the evaluation of Chaparral's petition, EPA also considered the potential impact of the petitioned wastes via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned wastes is unlikely as the constituents of concern are not volatile organics which would readily transfer to the ambient air; no appreciable air releases are likely from the petitioned wastes under any likely disposal conditions. Nor does EPA believe that the petitioned waste presents a threat to surface water. Calculations indicate that the concentrations of the constituents of concern would be below drinking water criteria and surface water criteria before reaching the nearest surface water. *See* docket.

I. What is EPA's final evaluation of this delisting petition?

The descriptions of the Chaparral Steel's process and analytical characterization, in conjunction with the proposed verification testing requirement (as discussed later in this document), provide a reasonable basis to grant Chaparral Steel's petition for a conditional exclusion of the petitioned waste. The EPA believes the data submitted in support of the petition show Chaparral Steel's proposed wastewater treatment process can render the raw leachate wastes non-hazardous if the raw leachate does not meet delisting conditions. Treatment is an option if the untreated waste does not meet the delisting criteria. The EPA has reviewed the sampling procedures used by Chaparral Steel and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the petitioned waste. The data submitted in support of the petition show that constituents, with the exception of lead in two samples, in Chaparral Steel's raw leachate waste are presently below health-based levels used in the delisting decision-making. The EPA believes that the facility's information has successfully shown that the petitioned waste is non-hazardous or can be rendered non-hazardous through treatment. The EPA, therefore, proposes to grant a conditional exclusion to Chaparral Steel Midlothian, L.P., located in Midlothian, Texas, for the leachate from their Landfill No. 3, the storm water from their baghouse, and other wastewater that may have come in contact with K061. The EPA's decision to conditionally exclude this waste is based on the historical analytical data associated with the petitioned waste and characterization of the raw and treated waste. If the proposed rule is finalized, the petitioned wastes will no longer be subject to regulation under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, Chaparral, must comply with the requirements in 40 CFR part 261, appendix IX, Table 2. The text below gives the rational and details of those requirements.

(1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calender year of raw leachate from Landfill No.3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (parts per million). Constituents must be measured in the waste by the method specified in SW–846.

This paragraph provides the level of lead for which Chaparral Steel must test the raw leachate, baghouse storm water, and other K061 wastewaters combined in the storage tank. This is the level below which this waste would be considered non-hazardous and for which the Agency is proposing to grant an annual conditional exclusion. The EPA selected the lead constituent specified after reviewing information about the composition of the waste, descriptions of Chaparral's treatment process, previous test data provided for the waste, the respective health-based levels used in delisting decision-making, and LDR levels. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAF of 68. See, previous discussions in Section III.F, i.e., MAL = HBL × DAF or 1.02 mg/l=0.015 mg/l × 68. The EPA selected the more conservative concentration level in considering the calculated health-based value of 1.02 mg/l and the technology based LDR value of 0.69 mg/l. This delisting level corresponds to the allowable levels measured in the waste.

(2) *Waste Holding and Handling:* Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or returned to the original storage tank. Treatment is designated as precipitation, flocculation, and filtering in a wastewater treatment system to remove metals from the wastewater. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA.

The purpose of this paragraph is to ensure that any waste located in the storage tank which might contain hazardous levels of lead are managed and disposed of in accordance with subtitle C of RCRA. Holding the leachate waste from Landfill No. 3, the storm water from the baghouse area, and other K061 wastewaters until characterization is complete will protect against improper handling of hazardous material. If EPA determines that the data collected under this condition do not support the data provided for the petition or Chaparral Steel is not meeting the terms of its exclusion, the exclusion will not cover the petitioned wastes.

(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2).

If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B).

(A) Initial Verification Testing: Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/wastewater storage tank must be analyzed for the constituent lead as listed in Condition (1). Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treatment batches within 90 days of the eighth treatment batch.

(B) Subsequent Verification Testing: Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze representative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As stated in Condition (3) Chaparral must continue to test all untreated batches to determine if delisting criteria are met before managing the wastewater from the K061 tank as nonhazardous.

(4) *Changes in Operating Conditions:* If Chaparral Steel significantly changes the treatment process established under Condition (3) (*e.g.*, use of new treatment agents), Chaparral Steel must notify the Agency in writing. After written approval by EPA, Chaparral Steel may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1).

(5) *Data Submittals:* Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and Comprehensive Environmental Response, Compensation, and Liability Act obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that Chaparral Steel's facility is properly managing the waste, all analytical data obtained through Condition (3), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Texas.

If made final, the proposed conditional exclusion will apply to 2500 cubic yards (500,000 gallons) per calender year of petitioned waste. Although management of the wastes covered by this petition would not be subject to subtitle C jurisdiction upon final promulgation of an exclusion, Chaparral must ensure that the onsite management of the delisted waste is in accordance with TNRCC rules and regulations or the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) *Reopener Language*

(A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.

(B) If Chaparral fails to submit or maintain the data requested in paragraphs (5), or (6)(A) or if any information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information.

(D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.

The purpose of paragraph (6) is to require Chaparral Steel to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This paragraph will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency from any source which indicates that information which EPA's decision was based was incorrect or circumstances have changed such that information is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires Chaparral to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, it can act on it as appropriate. The language is similar to these provisions found in RCRA regulations governing no-migration petitions located at section 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978), *et seq.*, to reopen a delisting decision if new information is received that calls into question the assumptions underlying the delisting and believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. See, e.g., Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste did not leach in the actual disposal site as it had been modeled thus leading the Agency to repeal the delisting. In the meantime, in the event that an immediate threat to human health and the environment presents itself, EPA will continue to address such situations on a case-by-case basis and where necessary, will make a good cause finding to justify emergency rulemaking. See APA section 553(b).

(7) *Notification Requirements:* Chaparral Steel must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 90 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

B. What happens if Chaparral violates the terms and conditions?

If Chaparral violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will continue to evaluate these events on a case-by-case basis. The Agency expects Chaparral to conduct the appropriate waste analysis and comply with the criteria explained above in terms and conditions of the exclusion.

V. Public Comments

A. How may I as an interested party submit comments?

The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

Please send three copies of your comments: Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send the third copy to the Texas Natural Resource Conservation Commission (TNRCC), 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: F–99–TXDEL–CHAPARRAL.

You should address requests for a hearing to the Acting Director, Robert E. Hannesschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order (E.O.) 12866, EPA must conduct an "assessment" of the potential costs and benefits for all "significant" regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's proposed rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of E.O. 12866.

VII. Children's Health Protection

Under E.O. 13045, for all "significant" regulatory actions as defined by E.O. 12866, EPA must provide a evaluation of the environmental health or safety affect of a proposed rule on children and an explanation of why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposal is not a significant regulatory action and is exempt from E.O. 13045.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

X. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XI. Intergovernmental Partnership

Under E.O. 12875, EPA may not promulgate any regulation which creates an unfunded mandate upon State, local or tribal governments. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments (see Section X. UMRA above) and accordingly, this action is exempt from the requirements of E.O. 12875.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: August 6, 1999.

Robert Hannesschlager,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to part 261—Wastes Excluded Under sections 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Chaparral Steel Midlothian, L.P.	Midlothian, Texas	Leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters which have been pumped to tank storage (at a maximum generation of 2500 cubic yards or 500,000 gallons per calender year) (EPA Hazardous Waste No. K061) generated at Chaparral Steel Midlothian, L.P., Midlothian, Texas, and is managed as nonhazardous solid waste after [publication date of final rule]. Chaparral Steel must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calender year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/1 (ppm). Constituents must be measured in the waste by the method specified in SW–846. (2) *Waste Holding and Handling:* Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or returned to the original storage tank. Treatment is designated as precipitation, flocculation, and filtering in a wastewater treatment system to remove metals from the wastewater. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA. (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2). If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B). (A) Initial Verification Testing: Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/wastewater storage tank must be analyzed for the constituent lead as listed in Condition (1), Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treatment batches within 90 days of the eighth treatment batch. (B) Subsequent Verification Testing: Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze representative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As stated in Condition (3) Chaparral must continue to test all batches of untreated waste to determine if delisting criteria are met before managing the wastewater from the K061 tank as nonhazardous. (4) *Changes in Operating Conditions:* If Chaparral Steel significantly changes the treatment process established under Condition (3) (e.g., use of new treatment agents), Chaparral Steel must notify the Agency in writing. After written approval by EPA, Chaparral Steel may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraphs (5), or (6)(A) and any other information received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* Chaparral Steel must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

[FR Doc. 99–21941 Filed 8–23–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL 6427–3]

North Carolina; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination on application of State of North Carolina for final approval, public hearing and public comment period—correction.

SUMMARY: The State of North Carolina has applied for approval of its underground storage tank program for petroleum and hazardous substances under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) reviewed the North Carolina application and has made the tentative decision that the North Carolina underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. The **Federal Register** document announcing EPA's tentative decision and requesting public comment was published in August 10, 1999 (64 FR 43336–43338). In that **Federal Register** document the date for EPA to determine if there is sufficient interest to hold a public hearing, and for the public to contact EPA to find out if a public hearing would be held, was incorrectly listed. The correct information should read: EPA will determine by September 10, 1999, whether there is sufficient interest to hold the public hearing. Anyone who wishes to learn whether or not the public hearing on the State's application has been canceled should telephone the contact listed under the heading **FOR FURTHER FURTHER INFORMATION CONTACT.**

DATES: Written comments on the North Carolina program approval application, as well as requests to present oral testimony, must be received by the close of business September 9, 1999. A public hearing is scheduled for September 13, 1999, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by September 9, 1999. EPA will determine by September 10, 1999, whether there is significant interest to hold the public hearing. The State of North Carolina will participate in the public hearing held by EPA on this subject.

ADDRESSES: Written comments should be sent to Mr. John K. Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303, telephone (404) 562–9277. Copies of the North Carolina approval application are available for inspection and copying during the hours of 9:00 am to 5:00 pm at the following addresses: North Carolina Department of Environment and Natural Resources, Underground Storage Tank Section, 2728 Capital Boulevard, Parker-Lincoln Building, Raleigh, North Carolina 27604, Phone: (919) 733–8486; U.S. EPA Docket Clerk, Office of Underground Storage Tanks, 1235 Jefferson Davis Highway-1rst Floor, Arlington, Virginia 22202, Phone: (703) 603–9231; and, U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 15th Floor, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Phone: (404) 562–9277.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of North Carolina's application for program approval on September 13, 1999, at 7:00 pm at the North Carolina Department of Environment and Natural Resources Archedale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, North Carolina 27604–1148. Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone the following contacts on or after September 10, 1999: Mr. John K. Mason, Chief, Underground Storage Tank Section, US EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Phone: (404) 562–9277; or Mr. Burrie Boshoff, Chief, Underground Storage Tank Section, North Carolina Department of Environment and Natural Resources, Post Office Box 29578, Raleigh, North Carolina 27626–0578, Phone: (919) 733–8486.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303, phone: (404) 562–9277.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This document is issued under the authority of section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administsrator, Region 4.

[FR Doc. 99–21940 Filed 8–23–99; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 84

National Institute for Occupational Safety and Health; Approval of Respiratory Devices Used to Protect Workers in Hazardous Environments

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of priorities for rulemaking.

SUMMARY: NIOSH is announcing a change in priority order and projected dates for publication of proposed rule amendments (modules) for respiratory devices used to protect workers in hazardous environments. The priority order of the planned modules is provided to help the respirator community plan for potential changes.

FOR FURTHER INFORMATION CONTACT: Roland Berry Ann, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone (304) 285–5907.

Availability and access of copies: Additional copies of this notice can be obtained by calling the NIOSH toll-free information number (1–800–35–NIOSH, option 5, 9 a.m.–4 p.m. ET); the electronic bulletin board of the Government Printing Office, (202) 512–1387; and the NIOSH Home Page on the World-Wide Web (http://www.cdc.gov/niosh/homepage.html).

SUPPLEMENTARY INFORMATION: NIOSH is currently in the process of developing modules to be proposed in the priority order below:

1. Administrative/Quality Assurance Module

Areas for potential modification in this module are: Upgrade of Quality Assurance requirements; Ability to use private sector quality auditors and private sector testing laboratories in the approval program; Revised approval label requirements; Validated approval fit tests; Updated and restructured fee schedule; and Fee retention in the Respirator program.

2. Self Contained Self Rescuer (SCSR)

Areas for potential modification in this module are: Metabolic simulator performance tests; Environmental tests (shock, vibration, temperature); Hypoxia tests; Reliability assessment; and Minimum performance requirements.

3. Powered Air Purifying Respirator (PAPR)

Areas for potential modification in this module are: Establishment of N, R, and P series filters; Use of active low flow or low pressure warning devices; Addition of new duration ratings; and Development of new types, such as pressure-demand PAPRs.

I. Background

On May 16, 1996, NIOSH published a document in the **Federal Register** (61 FR 24740) to request public comments on what the agency's priorities should be in the area of respirator certification. NIOSH sought public comments on issues of privatization and fees related to possible changes in its administration of respirator approval, and comments on establishing priorities for future rulemaking. NIOSH held three public meetings in June 1996 to discuss these issues. All comments provided in response to the notice were considered in developing rulemaking priorities.

NIOSH published a Notice for priority rulemaking in the **Federal Register** on October 17, 1997 (62 FR 53998) based on the comments received in response to its May 16, 1996 request. That Notice listed four technical and three Administrative/Quality Assurance topic areas for priority rulemaking. In establishing the priorities for rulemaking, NIOSH acknowledged that those priorities may change to respond to emerging hazards and developing technologies or unforeseen delays encountered with research efforts. As established with that Notice, the NIOSH Docket remains open for additional public input on priority needs and module content.

Since that time, NIOSH has reconsidered those priorities due to recent serious field problems with deployed Self Contained Self Rescuers (SCSRs). Investigation of the problems with these respirators has revealed reliability issues resulting in product recalls and withdrawal of one product approval. NIOSH considers these recent experiences and the resultant concerns raised about the use of SCSRs to represent an emerging hazard requiring immediate attention. As a result, NIOSH has reevaluated its previously-published regulatory priority assessment to include an SCSR module as a priority. The Institute has formed a committee to review SCSR issues to be addressed in a module. Except for the addition of the SCSR module as the highest priority in the technical area, the originally prioritized topic areas remain unchanged.

To aid stakeholders in the respirator community in planning for possible regulatory changes, the schedule below provides general guidance for anticipating regulatory announcements.

PROJECTED 42 CFR PART 84 MODULE SCHEDULES

Module	Publication of NPRM	Publication of final rule
Administrative/QA ..	10/2000	06/2002
SCSR	12/2001	06/2003
PAPR	12/2001	09/2003

II. Continued Comments

As stated previously, the NIOSH docket remains open for receipt of additional comments and information on content for the modules announced in this notice. Comments for the need to re-prioritize other module topics also are welcome. NIOSH will periodically review the information in the docket to assist in determining if a priority reassessment is needed. Comments should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8450, fax (513) 533–8285. Comments may also be submitted by e-mail to: NIOCINDOCKET@CDC.GOV. E-mail attachments should be formatted as WordPerfect 4.2, 5.0, 5.1/5.2, 6.0/7.0/8.0, or ASCII files.

Dated: August 18, 1999.

Bryan Hardin,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 99–21890 Filed 8–23–99; 8:45 am]

BILLING CODE 4163–19–P

Notices

Federal Register
Vol. 64, No. 163
Tuesday, August 24, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Customer Satisfaction Data Collection.

Agency Form Number: None.

OMB Approval Number: None.

Burden Hours: 6,267.

Number of Respondents: Approximately 50,000.

Average Hours Per Response: Varies depending on survey.

Needs and Uses: NIST is requesting a generic clearance of various customer satisfaction surveys in the areas of Measurement and Standards Laboratories, Advanced Technology Program, Manufacturing Extension Partnership and the Baldrige National Quality Program. The surveys are designed to determine the kind and quality of products, services, and information key customers want and expect, satisfaction with and awareness of existing products, services, and information.

Affected Public: Businesses or other for-profit institutions, not-for-profit institutions, Federal, state, local or tribal government.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Virginia Huth, 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at Lengelme@doc.gov).

Written comments and recommendation for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20530.

Dated: August 19, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21897 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Firearms Convention.

Agency Form Number: BXA–748P.

OMB Approval Number: 0694–0114.

Type of Request: Renewal of an existing collection of information.

Burden: 176 hours.

Average Time Per Response: Ranges between 5 to 90 minutes per response.

Number of Respondents: 833 respondents.

Needs and Uses: BXA maintains a licensing system for the export of firearms to all Organization of American States' (OAS) members. The BXA regulations are based on the model regulation established by OAS for the purpose of controlling international movement of firearms. The purpose of the requirements is to combat illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials in North and South America. To support the license application, an "import certificate" or its equivalent must be obtained covering the quantities and types of items that the license applicant intends to export. The information is used in making a decision on the license application.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: August 16, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21898 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1045]

Grant of Authority; Establishment of a Foreign-Trade Zone, Santa Maria, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ". . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Santa Maria Public Airport District (the Grantee), has made application to the Board (FTZ Docket 34–98, filed 06/30/98), requesting the establishment of a foreign-trade zone at sites in the Santa Maria, California area, adjacent to the Port San Luis Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 36875, 7/8/98); and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 237, at the sites described in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Foreign-Trade Zones Board.

Signed at Washington, DC, this 4th day of August, 1999.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–21949 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1049]

Expansion of Foreign-Trade Zone 171, Liberty County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Liberty County Economic Development Corporation, grantee of Foreign-Trade Zone 171, submitted an application to the Board for authority to expand FTZ 171 to include a new site at the Sjolander Plastics Storage Railyard facility (Site 5), in Dayton, Texas, within the Houston, Texas, Customs port of entry (FTZ Docket 43–98; filed 9/9/98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 52241, 9/30/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 171 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of August, 1999.

Robert LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–21951 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1047]

Grant of Authority; Establishment of a Foreign-Trade Zone Dublin (Pulaski County), Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ". . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the New River Valley Economic Development Alliance, Inc. (the Grantee), a Virginia not-for-profit corporation, has made application to the Board (FTZ Docket 74–97, filed 10/8/97), requesting the establishment of a foreign-trade zone in the Dublin (Pulaski County), Virginia area, at the New River Valley Airport, a Customs user fee airport; and,

Whereas, notice inviting public comment has been given in the **Federal Register** (62 FR 53807, 10/16/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 238, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of August 1999.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–21950 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Postponement of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of new shipper antidumping duty review.

EFFECTIVE DATE: August 24, 1999.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Andrew Nulman, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4236 or (202) 482–4052, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (1998).

Background

On September 30, 1998, the Department of Commerce (the Department) received a request from Yancheng Baolong Biochemical Products Co., Ltd. (YBBP) for a new shipper review of the antidumping order on freshwater crawfish tail meat from the People's Republic of China (PRC). *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review,* 63 FR 59762 (published November 5, 1998). The Department extended the deadline for completion of this new

shipper review on July 16, 1999. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limits for Preliminary Results of New Shipper Antidumping Administrative Review*, 64 FR 38408 (July 16, 1999).

On September 16, 1998, in accordance with 19 CFR 351.213(b)(1), the Department received a request from respondent, Ningbo Nanlian Frozen Foods Company, Ltd., and on September 30, 1998, the Department received a request from petitioner, the Crawfish Processors Alliance ("CPA") and the Louisiana Department of Agriculture and Forestry ("LDAF"), to conduct an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. That administrative review covers the period of March 26, 1997 through August 31, 1998 (63 FR 58010, published October 29, 1998).

Due to extraordinarily complicated issues, the Department extended the deadline for completion of the administrative review on March 18, 1999. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review*, 64 FR 13398 (March 18, 1999). The Department published a second extension notice on July 16, 1999, which extended the deadline of preliminary results of the administrative review until September 30, 1999. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 64 FR 38409 (July 16, 1999).

Postponement of New Shipper Review

On August 6, 1999, we received a request from YBBP to conduct the current new shipper review concurrently with the antidumping administrative review, in accordance with 19 CFR 351.214(j)(3). Therefore, pursuant to respondents' request and the Department's regulations, we are conducting these reviews concurrently. As a result, the date of preliminary antidumping duty resuls in this new shipper review is September 30, 1999.

This notice is published in accordance with Section 751(a)(2)(B) of the Act and 19 CFR 351.214(j)(3).

Dated: August 16, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–21948 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–806]

Pure Magnesium From Ukraine: Notice of Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping duty order on pure magnesium from Ukraine following court litigation concluding that the U.S. industry was not being materially injured, or being threatened with material injury, by reason of imports of the subject merchandise.

EFFECTIVE DATE: August 24, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brian Ledgerwood, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–3836, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department of Commerce's ("the Department's") regulations at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of these orders. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2 mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section

XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The product subject to this order is classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Background

On March 30, 1995, the Department published notice of its final affirmative less-than-fair-value determination covering imports of pure magnesium from Ukraine (*see Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Ukraine*, 60 FR 16432). On May 8, 1995, the International Trade Commission ("ITC") made its final affirmative determination that a U.S. industry was being materially injured by reason of imports of pure magnesium from Ukraine as well as China and Russia (*see Magnesium from China, Russia, and Ukraine*, 60 FR 26456, May 17, 1995). On May 12, 1995, the Department published an antidumping order covering imports of pure magnesium from China, Russia and Ukraine (*see Antidumping Duty Orders; Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine*, 60 FR 25691).

Following publication of the antidumping duty order, Gerald Metals, Inc. ("Gerald Metals") filed a lawsuit with the U.S. Court of International Trade ("CIT") challenging the ITC's final affirmative determination of material injury with regard to the Ukrainian imports. In its first decision, the CIT affirmed the ITC's final affirmative determination of material injury with regard to the Ukrainian imports. However, the U.S. Court of Appeals for the Federal Circuit ("Federal Court") subsequently directed the CIT to vacate its decision affirming the ITC's final affirmative determination of material injury with regard to the Ukrainian imports and to remand the case to the ITC. *See Gerald Metals, Inc.* v. *United States*, 132 F.3d 716 (Fed. Cir. 1997). On remand, the ITC determined that the U.S. industry was not being materially injured by reason of the Ukrainian imports and that there was no threat of material injury. The issue of material retardation of the establishment of a U.S. industry was not raised before the ITC. The CIT affirmed the ITC's remand determination on October 20, 1998. *See Gerald Metals, Inc.* v. *United States*, Court No. 95–06–00782, Slip Op. 98–148 (CIT).

In the *Notice of Court Decision and Suspension of Liquidation* (63 FR 67854, December 9, 1998) issued following the CIT's decision affirming the ITC's remand determination, the Department indicated that it would continue to order the suspension of liquidation of imports of pure magnesium from Ukraine until there is a "conclusive" decision in this case and that, if the case was not appealed, or if it was affirmed on appeal, the Department would revoke the antidumping order covering imports of pure magnesium from Ukraine.

Magnesium Corporation of America, International Union of Operating Engineers, Local 564, and United Steelworkers of America, Local 8319 ("appellant") later appealed the CIT's decision regarding the Ukrainian imports to the Federal Circuit. On April 16, 1999, however, the Federal Circuit dismissed this appeal because the appellant failed to file its brief within the specified deadline. *See Gerald Metals, Inc.* v. *United States*, Court No. 99–1166, Order issued April 16, 1999 (Fed. Cir.).

As a result, the CIT's decision affirming the ITC's remand determination is now the "conclusive" decision in this case.

Revocation of Antidumping Duty Order

Because the ITC found no material injury or threat of material injury in its remand determination, and the CIT's decision affirming the ITC's remand determination is now the conclusive decision in this case, the Department is revoking the antidumping duty order on pure magnesium from Ukraine. This revocation applies to all entries of pure magnesium from the Ukraine entered, or withdrawn from warehouse, for consumption on or after October 30, 1998, which was ten days after the final CIT decision not in harmony with the original agency determination. The Department will instruct the Customs Service to proceed with liquidation of all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 30, 1998, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 351.222.

Dated: August 17, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–21953 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073099B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Exempted Fishing Permit; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an exempted fishing permit; correction.

SUMMARY: This document corrects the notification of issuance of exempted fishing permit (EFP) 99–03 to Groundfish Forum, Inc. This EFP authorizes Groundfish Forum to conduct an experiment in the Bering Sea and Aleutian Islands management area that would test the accuracy of at-sea observer basket sampling practices, the design and use of automated species composition sampling, and the effect of fish stratification in trawls on size composition sampling. This notification was published in the **Federal Register** on August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The announcement of the issuance of EFP 99–03 in the **Federal Register** on August 12, 1999 (64 FR 43986), contained an oversight. When the Groundfish Forum requested that fishing under the EFP take place in Bycatch Zone 2 (areas 513, 517, and 521), it thought that Statistical Area 519 was included in Zone 2. To correct this error, this document adds Statistical Area 519.

Need for Correction

In FR Doc. 99–20902, published August 12, 1999 (64 FR 43986), on page 43986, in the second column, second line from the bottom, after "Bycatch Zone 2" add "and Statistical Area 519."

Authority: 15 U.S.C. 1801 *et seq.*

Dated: August 19, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21946 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060499D]

Marine Mammals; File No. 368D

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450, has been issued an amendment to scientific research Permit No. 938.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 29, 1999, notice was published in the **Federal Register** (63 FR 14886) that an amendment of Permit No. 938, issued (60 FR 7753), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The amendment authorizes the Holder to place implantable and surface VHF tags and TDRs on up to 20 killer whales (*Orcinus orca*) off the California coast.

Dated: August 16, 1999.

Gene Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–21945 Filed 8–23–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Restraint Limit and Sublimit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

August 18, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and sublimit.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339/638/639 and sublimit for Categories 338–S/339–S/638–S/639–S are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 54451, published on October 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 18, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 2, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 25, 1999, you are directed to increase the limit and sublimit for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339/638/639	1,485,947 dozen of which not more than 1,174,295 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–0000 Filed 0–00–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Analysis of Recruitment Incentives; OMB Number 0703–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 5,000.

Responses per Respondent: 1.

Annual Responses: 5,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 2,500.

Needs and Uses: This collection of information will be a survey administered to potential recruits and used by the Navy Recruiting Command to compare different recruiting incentives in order to allocate increases in funding for enlistment bonuses and college incentives. Individuals are high school seniors or students attending community college.

Affected Public: Individuals or Households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 18, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21861 Filed 8–23–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on September 23, 1999 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF DP B

SYSTEM NAME:

Substance Abuse Reorientation and Treatment Case Files (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'F044 AF SG B'.

SYSTEM NAME:

Delete entry and replace with 'Alcohol and Drug Abuse Prevention and Treatment Program.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'As a minimum, the file contains federal information, evaluative materials, diagnostic assessment, treatment plan, counseling case notes, treatment summary, and automated data base, documenting entry and partipation in the Air Force ADAPT Program, to include: date and means of identification and substance of abuse.'

* * * * *

SAFEGUARDS:

Add to entry 'Those in computer storage devices are protected by computer system software.'

* * * * *

F044 AF SG B

SYSTEM NAME:

Alcohol and Drug Abuse Prevention and Treatment Program.

SYSTEM LOCATION:

At servicing Air Force installation Alcohol and Drug Abuse Prevention and Treatment Program (ADAPT) office. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel and dependents, Air Force civilian employees, and Air Force Reserve personnel, who are enrolled in the Alcohol and Drug Abuse Prevention and Treatment Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

As a minimum, the file contains referral information, evaluative materials, diagnostic assessment, treatment plan, counseling case notes, treatment summary, and automated data base, documenting entry and participation in the Air Force ADAPT Program, to include date and means of identification and substance of abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–2, Confidentiality of Patient Records; Air Force Instruction 44–121, Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program; Air Force Instruction 36–810, Substance Abuse Prevention and Control; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used to process members in the ADAPT Program; to develop a treatment plan; to assist medical providers in decisions for program disposition; to document progress for individuals enrolled in the ADAPT program; and to prepare recurring reports.

Disclosure within the Air Force is limited to those individuals who need the records in connection with programs relating to abuse treatment, rehabilitation, research, health, and assignment to duty. Only persons authorized by 42 U.S.C. 290dd–2 may review, handle or have access to the file.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans' claims and in providing medical care to Air Force members.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection

with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. The results of a drug test of civilian employees may be disclosed only as expressly authorized under 5 U.S.C. 7301. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The Air Force's 'Blanket Routine Uses' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and computer and on computer output products.

RETRIEVABILITY:

Retrieved by name, by Social Security Number, by other identification number or system identifier.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Recorded are stored and secured in lockable receptacles and are controlled by personnel screening. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

For single diagnosis (substance abuse/dependence only) alcohol and drug abuse case files maintained at outpatient ADAPT clinics, case files are destroyed 3 years after completion of rehabilitation/last contact. Records of psychiatric treatment, including multi-diagnosis/substance abuse cases (substance abuse and psychiatric treatment), of military personnel will be retired to National Personnel Records Center, Military Personnel Records, 2 years after year of last treatment. Psychiatric treatment records, including multi-diagnosis substance abuse cases (substance abuse and psychiatric treatment), of non-military personnel will be retired to the NPRC, Civilian Personnel Records 2 years after year of last treatment. (Exception: All 1982 and 1983 drug case files will be maintained until 30 Sep. 99 in accordance with current guidance).

SYSTEM MANAGER(S) AND ADDRESS:

Air Force Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program Manager, Air Force Medical Operations Agency, (AFMOA/SGOC), 110 Luke Avenue, Room 405, Bolling Air Force Base, DC 20332–7050; and ADAPT Program Managers in the office of the command surgeon at major command headquarters; and ADAPT Program Managers at Air Force installations. Official mailing addresses are published as appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether this system of records contains information on themselves should address inquires to the ADAPT Program Manager at the servicing Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests to determine existence of a file should include full name, grade, and unit of assignment. Personal visit proof of identify requires full name and possession of Department of Defense Armed Forces Identification Card; or driver's license and personal recognition of ADAPT staff member.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address requests to the ADAPT Program Manager servicing AF installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions, personnel records, individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–21863 Filed 8–23–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 23, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0060–20 DAMO

SYSTEM NAME:

Ration Control/Blackmarket Monitoring Files (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0060–20 USFK'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Forces Korea/Eighth U.S. Army, ATTN: J1 Data Management, APO AP 96205–0010. Beer sale control logs are maintained by Office of Provost Marshal, U.S. Forces Korea/Eighth U.S. Army.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All members of the U.S. Army in the Republic of Korea, their dependents, civilian employees, U.S. Embassy personnel, contract personnel, technical representatives, and individuals who are assigned to or under the judicial or administrative control of the U.S. Army; who make purchases of controlled items from authorized resale activities in Korea; Those authorized duty-free privileges at Class VI stores, commissaries, retail outlets, shoppettes, car care centers, and gas stations located on U.S. facilities and installations within the Republic of Korea.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to end of entry ', and beer sale control logs.'

* * * * *

PURPOSE(S):

Add to end of entry ', and Status of Forces Agreement with the Republic of Korea.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Destroy when no longer needed for current operations or when no longer needed to meet host country laws and regulations.'

* * * * *

A0060–20 USFK

SYSTEM NAME:

Ration Control/Blackmarket Monitoring Files

SYSTEM LOCATION:

U.S. Forces Korea/Eighth U.S. Army, ATTN: J1 Data Management APO AP 96205–0010. Beer sale control logs are maintained by Office of Provost Marshal, U.S. Forces Korea/Eighth U.S. Army.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the U.S. Army in the Republic of Korea, their dependents, civilian employees, U.S. Embassy personnel, contract personnel, technical representatives, and individuals who are assigned to or under the judicial or administrative control of the U.S. Army; who make purchases of controlled items from authorized resale activities in Korea; those authorized duty-free privileges at Class VI stores, commissaries, retail outlets, shoppettes, car care centers, and gas stations located on U.S. facilities and installations within the Republic of Korea.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, passport number, citizenship, service component, dependency status, local address; sales slips and control sheets used in sale of controlled items by U.S. Forces; over spending/over purchase printouts produced by central computer facilities, and beer sale control logs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army, Status of Forces Agreement between the United States of America and the Republic of Korea; and E.O. 9397 (SSN).

PURPOSE(S)

To assist commanders and U.S. Armed Forces investigative agents in monitoring purchases of controlled items; to produce ration control plates for authorized users; to maintain record of selected controlled item purchases at retail facilities and suspected violators of the system; and to comply with Joint Service black-market monitoring control policy, and Status of Forces Agreement with the Republic of Korea.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

An addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To provide information to the host country, required by the Status of Forces Agreement between the United States of America and the host country.

The 'Blanket Routine Uses' set forth at the beginning of the Army compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic tapes, microfiche, and floppy diskettes.

RETRIEVABILITY:

By name and/or Social Security Number.

SAFEGUARDS:

Records are accessed only by authorized personnel having official need therefor. During off duty hours, the facility housing the records is secured by sound activated alarm.

RETENTION AND DISPOSAL:

Destroy when no longer needed for current operations or when no longer needed to meet host country laws and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Forces, Korea, ATTN: FKJ1–DM, Unit 15237, APO AP 96205–0010 and Provost Marshal, U.S. Forces, Korea, Unit 15237, APO AP 96205–0010.

NOTIFICATION PROCEDURE:

Individual's seeking access to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Forces, Korea. ATTN: FKJ1–DM, Unit 15237, APO AP 96205–0010.

Individual's should provide their full name, Social Security Number, address, details concerning the expulsion or embar action, and signature.

RECORD ACCESS PROCEDURES:

Individual's seeking access to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Forces, Korea ATTN: FKJ1–DM, Unit 15237, APO AP 96205–0010.

Individual's should provide their full name, Social Security Number, address, details concerning the expulsion or embar action, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21, 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individual's application for ration control privileges, recorded sales at retail outlets, and orders made through exchange catalog sales at U.S. facilities and installations within the Republic of Korea.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–21862 Filed 8–23–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 23, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 18, 1999.

William E. Burrow,

Team Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Grants Under the Developing Hispanic-Serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 100

Burden Hours: 850

Abstract: This information is required of institutions of higher education designated eligible to apply for grants as Hispanic-Serving Institutions under Title V, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities, and to determine the dollar share of the Congressional appropriation.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan Program: Repayment Plan.

Frequency: On Occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden:

Responses: 2,650,000

Burden Hours: 874,500

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to select a repayment plan for their loan(s).

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–21875 Filed 8–23–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–036]

El Paso Natural Gas Company; Notice of Compliance Filing

August 18, 1999.

Take notice that on August 13, 1999, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) a Letter Agreement between El Paso and Dynegy Marketing and Trade, formerly Natural Gas Clearinghouse.

El Paso states that the Letter Agreement is being filed to comply with the Commission's order issued July 29, 1999 at Docket No. RP97–287–019, *et al.*, and is proposed to become effective on June 11, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21872 Filed 8–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3322–000]

Electric Clearinghouse, Inc., Illinois Power Company; Notice of Filing

August 18, 1999.

Take notice that on August 12, 1999, Electric Clearinghouse, Inc. (ECI) and Illinois Power Company (Illinois Power), tendered for filing an amendment to its June 21, 1999, filing in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 27, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21874 Filed 8–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–145–003]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

August 18, 1999.

Take notice that on August 13, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing its Activity Report for Rate Schedule PALS Service for the period July 1, 1998 through June, 1999.

Natural states that it has submitted this filing in compliance with Ordering Paragraph (B) of the Federal Energy Regulatory Commission's order issued June 30, 1998 in Docket No. RP98–145–001, which authorized Natural to provide Rate Schedule PALS service effective July 1, 1999.

Natural states that copies of the filing have been mailed to all parties set out on the official service list in Docket No. RP98–145.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21873 Filed 8–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP93–5–034 and RP93–96–013]

Northwest Pipeline Corporation; Notice of Compliance Filing

August 18, 1999.

Take notice that on August 13, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing a group of pro forma tariff sheets, workpapers and other materials applicable to the period from April 1, 1993 through October 31, 1994 during which Northwest's rates as established in Docket Nos. RP93–5 and RP93–96 were applicable.

Northwest states that the purpose of this filing is to comply with the Commission's July 14, 1999 Order on Remand and Setting Issue for Hearing Before An ALJ in Docket Nos. RP93–5–031 and RP93–96–006. Northwest states that it has submitted (1) A recalculation of its rates in this proceeding to give a two-thirds weight to the IBES five-year projections and a one-third weight to the long-term growth factor in the DCF analysis; (2) a plan to impose surcharges to recover the excess refunds made for the April 1, 1993 through October 31, 1994 period, together with interest; and (3) pro forma tariff sheets that set forth the appropriate surcharges.

Northwest states that a copy of this filing has been served upon each person designated on the official service lists compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21871 Filed 8–23–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board

[FRL–6427–7]

Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that several Committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating US Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) will meet on Thursday and Friday, September 23 and 24, 1999 in Room 6013 at the US Environmental Protection Agency (US EPA), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, North Lobby, Washington, DC 20004 (Federal Triangle Metro Stop). The meeting will begin at 8:30 am and end no later than 5:30 pm each day.

Purpose of the Meeting: The purpose of this meeting is to be: briefed on the planning for the EPA's FY 2001 Science & Technology Budget submission; to be briefed on the Agency's Science Strategic Plan; to plan the upcoming joint RSAC/ORD Board of Scientific Counselors (BOSC) review of the Science To Achieve Results (STAR) Program; and to conduct a peer review of the Agency's peer review process.

Proposed Charge Questions: Committee will offer its advice on: How is the peer review process working? What works best? What needs improvement?

For Further Information Concerning the Meeting: Members of the public desiring additional information about the meeting should contact Dr. John R. Fowle III, Designated Federal Officer (DFO), Research Strategies Advisory Committee, Science Advisory Board (1400A), US EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 564–4547; fax at (202) 501–0323; or via e-mail at <fowle.jack@epa.gov>. A copy of the draft agenda and copies of the background material will be available approximately two weeks prior to the meeting on the SAB website (www.epa.gov/sab) or from Ms. Betty Fortune at the address and fax noted above or by phone at (202) 564–4533.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Dr. Fowle in writing (by email, by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, September 16, 1999 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

2. Executive Committee (EC)

The Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public teleconference meeting on Thursday, September 30, 1999, between the hours of 11 am and 1 pm, Eastern Time.

The meeting will be coordinated through a conference call connection in Room 6013 at the US Environmental Protection Agency (US EPA), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, North Lobby, Washington, DC 20004 (Federal Triangle Metro Stop). The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 564–4633, or via e-mail at: <tillery.priscilla@epa.gov> by September 23, 1999.

During this meeting the Executive Committee plans to review draft reports from its Committees. Anticipated drafts include: a) Environmental Economics Advisory Committee's (EEAC) "Review of the Economic Analysis Guidelines"; b) Environmental Processes and Effects Committee's (EPEC) "Advisory on the Eco Soils Screening Level"; and c) Environmental Engineering Committee's (EEC) "Review of the Utility of Proactive Technical Advice: The EEC' Experience." Please check with Ms. Tillery-Gadson prior to the meeting to confirm any changes in the planned review schedule.

For Further Information: Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer (DFO) for the Executive Committee, Science Advisory Board (1400A), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; and via e-mail at: <barnes.don@epa.gov>. Copies of the draft reports are available from the same source, or from the SAB Website (http://www.epa.gov/sab) at least one week prior to the meeting.

3. Advisory Council on Clean Air Compliance Analysis

The Advisory Council on Clean Air Compliance Analysis of the Science Advisory Board (SAB) will hold a public teleconference on Friday, October 1, 1999 from 11 am–1:00 pm, Eastern time. The meeting will be coordinated through a conference call connection in room 6013 at the US Environmental Protection Agency (US EPA), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, North Lobby, Washington, DC 20004 (Federal Triangle Metro Stop). The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun (see below).

At this public teleconference the Council will complete its review of the draft The Benefits and Costs of the Clean Air Act, 1990 to 2010; EPA Report to Congress (U.S. EPA, Office of Air and Radiation and Office of Policy, August 1999), prepared by the Agency as part of implementing section 812 of the Clean Air Act Amendments (CAAA) of 1990. It will also review a draft Letter Advisory developed by the Health and Ecological Effects Subcommittee (HEES) of the Council after its public meeting on June 28 and 29, 1999. The draft is entitled The Clean Air Act Amendments (CAAA) Section 812 Prospective Study of Costs and Benefits (1999): Advisory by the Health and Ecological Effects Subcommittee on Initial Assessments of Health and Ecological Effects; Part 2. The draft Letter Advisory will be posted on the SAB website at http://www.epa.gov/sab.

The public can find background on the Prospective Study and previous meetings this year of the Council and its subcommittees in the **Federal Register** [See 64 FR, 15160, March 30, 1999; 64 FR 30516–30517, June 8, 1999; 64 FR 31572–31575, June 11, 1999]. For further information concerning the teleconference described in this section, please contact the individuals listed below.

For Further Information: (a) Contacting Program Office Staff and Obtaining Review Materials—To obtain copies of the final draft CAA section 812 Prospective Study, please contact Ms. Catrice Jefferson, Office Manager, Office of Policy Analysis and Review (OPAR), (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–5580; FAX (202) 260–9766, or via e-mail at <jefferson.catrice@epa.gov>. To discuss technical aspects of the final draft document, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or via e-mail at: <democker.jim@epa.gov>.

(b) *Contacting SAB Staff and Obtaining Meeting Information*—To obtain copies of the meeting agenda, the draft Letter Advisory, or Council roster, please contact Ms. Diana L. Pozun, Management Assistant to the Council, Science Advisory Board (1400A), US Environmental Protection Agency, Washington DC 20460; at Tel. (202) 564–4544; FAX (202) 501–0582; or via e-mail: <pozun.diana@epa.gov>. To discuss technical or logistical aspects of the Council review process, please contact Dr. Angela Nugent at Tel. (202) 564–4562; or via e-mail: <nugent.angela@epa.gov>), Designated Federal Officer (DFO) to the Council, Science Advisory Board (1400A), US Environmental Protection Agency, Washington DC 20460. To obtain information concerning the teleconference and how to participate in the Conference Room location or to call in, please contact Ms. Pozun.

(c) *Providing Public Comments to the SAB*—To request time to provide brief oral comments at the meeting, please contact Ms. Diana L. Pozun *in writing* by mail, FAX or E-Mail at the addresses given above no later than 12 noon by Thursday, September 24, 1999. Please be sure to provide a summary of the issue you intend to present, your name and address (incl. phone, fax and e-

mail) and the organization (if any) you will represent. Written comments should be submitted to Ms. Pozun at the above address prior to the meeting date.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in *The Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0323.

Meeting Access: Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 18, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–21942 Filed 8–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–868; FRL–6069–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–868, must be received on or before September 23, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Kathryn Boyle	Rm. Q616, CM #2, 703–305–6304, e-mail:boyle.kathryn@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22)	Rm. 229, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–868] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required

by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Centre Internationale d'Etudes du Lindane (C.I.E.L.) and its member company Inquinosa S.A.

PP 9F5057

EPA has received a pesticide petition (9F5057) from Centre Internationale d'Etudes du indane (C.I.E.L.) and its member company Inquinosa S.A., c/o Charles A. O'Conner III, Esq., McKenna & Cuneo, L.L.P., 1900 K Street, NW., Washington, DC 20006-1108, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of lindane in or on the raw agricultural commodities (RAC) broccoli, brussels sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, spinach, and Swiss chard at 0.05 parts per million (ppm), corn (grain) at 0.01 ppm, and corn (forage and fodder) and radish at 0.1 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Use of lindane as a seed treatment results in uptake of lindane and extensive metabolism within the plant. The primary residue in RAC was parent lindane. Lindane metabolizes in plants through the same processes found in mammalian animals, i.e. dehydrogenation, dehydrochlorination, hydroxylation, and conjugation. Thus, the terminal metabolites for plants and animals are the same chorophenols, chlorobenzenes, etc. and conjugates of these classes of compounds.

2. *Analytical method.* A multi-residue method is currently being used by the United States food and drug administration (FDA) to determine lindane residues in raw and processed agricultural commodities, in order to monitor for tolerance compliance. The pesticide analytical manual (PAM) method for non-fatty foods by GLC, PAM 212.1, has also been validated for determination of lindane residues.

3. *Magnitude of residues.* Lindane residues were determined in mustard, radish, field corn, sweet corn, and spinach, using radio-labeled lindane applied as a seed treatment. Residues of parent lindane were: Radish roots; 0.030 ppm; mustard leaves, 0.017 ppm; field corn foliage, 0.008 ppm; sweet corn foliage 0.012 ppm; field corn grain, < 0.01 ppm; sweet corn grain, < 0.01 ppm; and spinach, < 0.02 ppm. Residues in animal tissues, milk, and eggs will be negligible, based on transfer factors determined in animal feeding studies, the low residue levels in animal feed items, and the limited market share.

B. Toxicological Profile

1. *Acute toxicity*—i. A rat acute oral study with an LD_{50}s of 88 to 150 milligram kilogram (mgkg) (Toxicity Category II).

ii. A rabbit acute dermal study with an LD_{50} of 500 to 1,000 mg/kg (Toxicity Category II).

iii. A primary eye irritation study in the rabbit showing moderate eye irritation, (EPA Category II).

iv. A primary dermal irritation study in the rabbit showing moderate irritation, (EPA Category II).

2. *Genotoxicty.* Lindane has been subject to a large number of gentoxicity assays using many different test systems. *In vitro* Ames/*Salmonella* mutagenicity assays were negative for mutagenic potential. Other point mutations assays in bacteria were also negative. The induction of chromosomal aberrations was not observed *in vivo* assays and *in vitro* assays were either negative or equivocal. Sister chromatid exchange and micronucleus assays were negative. Dominant lethal assays gave variable results.

3. *Reproductive and developmental toxicity.* Lindane is not considered to be a reproductive or a developmental toxin. In a 2-generation reproduction study, the no-observed adverse effect level (NOAEL) for reproductive and developmental toxicity was 20 ppm. In a developmental toxicity study, the rat maternal NOAEL and the developmental NOAEL were 5 mg/kg/day. The developmental NOAEL for the rabbit was 10 mg/kg/day while the maternal NOAEL was less than 5 mg/kg/day based on reduced food consumption, reduced weight gain, slight tachypnea and lethargy.

4. *Subchronic toxicity.* Ninety–day feeding studies were conducted in mice and rats with lindane. The NOAEL for the mouse study was greater than 10 ppm highest dose tested (HDT), for the rat study, the NOAEL was 10 ppm (0.75 mg/kg/day). Renal effects observed were related to a_{2u}-globulin and are not relevant to human safety. Hepatocellular hypertrophy and neurotoxicity were observed at the higher dose levels. A 14 week inhalation study in mice had a NOAEL 0.3 mg/cubic meter. In a 90-day inhalation study in rats, the NOAEL was 0.6 mg/cubic meter. Ninety-day dermal toxicity studies have been conducted in rats and rabbits. In both species, the NOAELs were 10 milligrams per kilograms bodyweight per day (mg/kg bw/day).

5. *Chronic toxicity.* A 2-year feeding study was conducted in dogs with lindane. The NOAEL was for this study 50 ppm. In a 2-year feeding study in rats, hepatocellular hypertrophy and renal effects related to a_{2u}-globulin were observed above the NOAEL of 0.7 (males) and 0.8 (females) mg/kg bw/day. Carcinogenicity - Lindane is not carcinogenic to rats. A 2-year combined chronic toxicity/oncogenicity study in the rat was negative for carcinogenicity and had a chronic toxicity NOAEL of 10 ppm (0.47 mg/kg bw/day) based on a slight increase in mortality and effects on the liver. A total of 8 mouse oncogenicity studies have been conducted in several strains of mice. The results of these studies have been variable and none of the studies are considered by the Agency to be adequate for a cancer risk assessment. A ninth study is in progress.

6. *Animal metabolism.* The metabolism of lindane has been thoroughly investigated. Lindane does not appear to bioaccumulate in tissues. Lindane is rapidly absorbed and metabolized. The metabolism of lindane occurs via several different pathways. Major routes of metabolism include stepwise elimination of chlorines and conjuations with sulfates and glucuronides. Another pathway is via the formation of mercapurates.

7. *Metabolite toxicology.* Dietary residues are comprised of lindane and a variety of metabolites. The dietary residues are qualitatively the same as those formed in the rat and have thus been bioassayed in the available toxicity studies. These metabolites are not considered to present a significant toxicological risk.

8. *Endocrine disruption.* There was no evidence that exposure to lindane had any effect on reproduction, fertility or mating indices, development or maturation of embryos, or development, growth and survival of offspring in the battery of short-term, chronic,

reproductive and, developmental mammalian, avian and aquatic studies conducted. There were no gross or microscopic pathologic effects in endocrine organs or endocrine-sensitive tissues, or in any reproductive organs, tissues or endpoints that were considered related to exposure to lindane. There is negligible risk of endocrine disruption in humans or wildlife as a result of these proposed uses.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Estimates of dietary exposure to residues of lindane from the proposed uses are extremely low. A reference dose (RfD) of 0.0047 was established by EPA based upon a 100-fold uncertainty factor and the NOAEL in the chronic rat study. Maximum dietary residues from the requested uses result in an exposure that is less than 2% of the reference dose (RfD) for children 1-6 years, the most sensitive sub-population.

ii. *Drinking water.* Given the use pattern (seed treatment) strong soil binding characteristics and low soil mobility of lindane, the risk of significant ground and surface water contamination and exposure via drinking water is considered to be negligible.

2. *Non-dietary exposure.* There are no currently registered pesticidal uses of lindane that would result in non-dietary exposure.

D. Cumulative Effects

Lindane falls into the common category of chlorinated hydrocarbon insecticides however, there is no information to suggest that lindane has a common mechanism of mammalian toxicity with any other pesticide. It is not appropriate to combine exposures in this case.

E. Safety Determination

1. *U.S. population.* As presented above, the exposure of the U.S. general population to lindane is low, and the risks, based on comparisons to the reference dose, are negligible. Margins of safety are very large.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of lindane, CIEL considered data from developmental toxicity studies in the rat, and rabbit and a 2-generation reproduction study in rats. No developmental or reproductive effects were observed up in the absence of parental toxicity in any of the three studies. Using the same conservative assumptions that were made previously for the dietary exposure analysis for the U.S. general population, the percent of the RfD utilized by pre-adult sub-populations is less than 2%. CIEL concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to lindane residues.

F. International Tolerances

International maximum residue levels (MRLs) have been established for aproximately 30 commodities. The MRL values for commodities represented in this petition include; 2 ppm on head lettuce and spinach, 1 ppm on kohlrabi and radish, and 0.5 ppm on brussels sprouts, cabbage, cauliflower, and cereal grain.

2. K-I Chemical U.S.A. Inc.

PP 8F4941

EPA has received a pesticide petition (8F4941) from K-I Chemical U.S.A. Inc., Westchester Financial Center, 11 Martine Avenue, 9th Floor, White Plains, NY, 10606 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of prohexadione calcium (cyclohexanecarboxylic acid, 3, 5-dioxo-4-(1-oxopropyl)-, ion(1-), calcium, calcium salt) in or on the raw agricultural commodity peanut nutmeat at 1.0, peanut hay at 0.6, pome fruit at 3.0, and cattle meat byproduct (kidney) at 0.1 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

In the **Federal Register** of August 5, 1998 (63 FR 41828) (FRL-5799-6) EPA issued a notice of filing of pesticide petition 8F4941 from K-I Chemical U.S.A. Inc. at the above address proposing to amend 40 CFR part 180 by establishing tolerances for residues of prohexadione calcium in or on the raw agricultural commodities (RAC) peanut nutmeat and hay at 0.8 and 0.4 ppm respectively. EPA has received an amendment to PP 8F4941 from K-I Chemical U.S.A. Inc., proposing to amend the earlier petition by increasing the tolerances for residues on peanut nutmeat and hay, and by proposing to amend 40 CFR part 180 by establishing tolerances on pome fruit and cattle meat byproducts. This notice contains information submitted in addition to that contained in the August 5, 1998 notice.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism in plants (peanuts and apples) and animals (goats and poultry) is adequately understood.

2. *Analytical method.* The proposed analytical method involves homogenization, extraction, filtration, partition and cleanup, methylation and analysis by a gas chromatography system with a mass selective detector. The limit of quantitation (LOQ) is 0.05 ppm.

3. *Magnitude of residues.* Twelve peanut trials were conducted with prohexadione calcium in the principle peanut growing regions of the country (NC, SC, GA, AL, FL, OK, TX). Prohexadione calcium was applied to peanuts three times at the rate of 0.125 lbs active ingredient acre (ai/A). Peanut hay and nutmeat were analyzed for residues of prohexadione (free acid). Prohexadione residues in the nutmeat ranged from < 0.05 to 0.30 ppm. Residues in hay ranged from < 0.05 to 0.26 ppm. The residue values in this study were reported as prohexadione free acid. The highest residue values for peanut nutmeat and hay were converted to prohexadione calcium equivalents for the tolerance expression. Therefore, the proposed tolerance for prohexadione calcium in/on peanut nutmeat is 1.0 ppm based on the conversion of the highest peanut nutmeat raw agricultural commodities (RAC) ppm for prohexadione (0.795 ppm) to prohexadione calcium equivalents (0.895 ppm). The proposed tolerance for prohexadione calcium in/on peanut hay is 0.6 ppm and it is based on the conversion the highest peanut hay RAC ppm for prohexadione (0.457 ppm) to prohexadione calcium equivalents (0.539 ppm).

A study was conducted to determine the level of prohexadione calcium derived residues in or on processed commodities. Peanut samples treated at an exaggerated rate were processed into peanut meal and refined oil. Peanut nutmeat and processed commodities were analyzed for prohexadione. Residues in the meal were less than in the nuts, and no residues were detected in the refined oil. Therefore, there was no concentration of prohexadione residues in processed commodities.

Twenty apple trials were conducted with prohexadione calcium in the principle apple growing regions of the country (NY, PA, NC, VA, MI, WI, CO, UT, CA, WA, ID, and OR) in order to determine the magnitude of prohexadione residues in/on apples.

Apple trees received two foliar applications of prohexadione calcium with a 21 day interval between each application and the second application was made 45 days prior to harvest (45 day PHI). The target rate for each application was 0.85 lbs a.i./A and a maximum seasonal application rate of 1.7 lbs a.i./A. Prohexadione residues in apples ranged from < 0.05 ppm to 2.23 ppm. The residue values in this study were reported as prohexadione free acid. The highest apple RAC ppm for prohexadione (2.23 ppm) when converted to prohexadione calcium equivalents is 2.63 ppm.

Apple samples treated with prohexadione calcium at an exaggerated rate were processed according to commercial practices into washed apples, wet pomace, and fresh juice. Samples of unwashed apples, washed apples, wet pomace, and juice were analyzed for residues of prohexadione. Residues of prohexadione in the washed apples, pomace and juice were less than in the unwashed whole fruit. Therefore, there is no concentration of prohexadione residues in the processed commodities and separate tolerances for processed fractions are not necessary.

Eight pear trials were conducted with prohexadione calcium in the principle pear growing regions of the United States (NY, CA, WA, ID, and OR) to determine the magnitude of prohexadione calcium residues in/on pear raw agricultural commodity. Pear trees received one foliar application of prohexadione calcium at an application rate of 1.7 lbs a.i./A. Pears were harvested 45 days after the application (45 day PHI). Prohexadione calcium residues in pears ranged from 0.220 ppm to 0.985 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Based on available acute toxicity data prohexadione calcium does not pose any acute toxicity risks. The acute toxicity studies place technical prohexadione calcium and its formulated end-use products in acute toxicity category III for acute dermal; and in acute toxicity category IV for acute oral, acute inhalation, eye irritation, and skin irritation and the technical material is not a skin sensitizer.

2. *Genotoxicty.* Ames Test (1 Study; point mutation): Negative; *In Vitro* V79 Cells CH/HGPRT Locus Mammalian Cell Mutation Assay (1 Study; point mutation): Negative; *In Vitro* CHO Cytogenetic Assay (1 Study; Chromosome Damage): Negative; *In Vivo* Mouse Micronucleus (1 Study; Chromosome Damage): Negative; *In Vivo* Rat Bone Marrow Cytogenetic Assay (1 Study; Chromosomal Damage): Negative; Rec Assay (1 Study; DNA damage and repair): Negative; *In Vitro Rat Hepatocyte (1 Study; DNA damage and repair): Negative.*

Prohexadione calcium has been tested in a total of 7 genetic toxicology assays consisting of *in vitro* and *in vivo* studies. Based on the results described above, it can be stated in summary that prohexadione calcium did not show any mutagenic activity when tested under the conditions of the studies mentioned above. Therefore, prohexadione calcium does not pose a mutagenic hazard to humans.

3. *Reproductive and developmental toxicity.* The reproductive and developmental toxicity of prohexadione calcium was investigated in a 2-generation rat reproduction study as well as in rat and rabbit teratology studies. The 2-generation rat reproduction study was conducted at dose levels of 0, 500, 5,000, and 50,000 ppm. There were no adverse effects on reproduction parameters seen even at the dose level of 50,000 ppm (5164 milligram kilogram bodyweight (mg/kg bw) for males and 5,600 mg/kg bw for females). The no-observed adverse effect level (NOAEL) for parental systemic toxicity was 500 ppm (48 mg/kg bw for males and 51 mg/kg bw for females) and the NOAEL for developmental toxicity was 5,000 ppm (270 mg/kg bw for females). Stomach lesions were observed at 5,000 ppm. Two mid-dose males and two males and one female of the high-dose from the Fo died. Body weight and food consumption changes and slight transient reduction in offspring growth were noted at 50,000 ppm. No impairment of reproductive function was observed at any of the dose levels tested.

Prohexadione calcium had no teratogenic potential at dose levels as high as 1,000 mg/kg bw in the rat and 350 mg/kg bw in the rabbit. The NOAEL for maternal toxicity in the teratogenicity studies is 100 mg/kg bw (rabbit) and 1000 mg/kg bw (rat), and the NOAEL for fetotoxicity in the teratogenicity studies is 350 mg/kg bw (rabbit) and 1,000 mg/kg bw (rat). The reproductive and developmental studies are summarized below.

A developmental study was conducted via oral gavage in rats at dose levels of 0, 100, 300, and 1,000 highest dose tested (HDT) mg/kg bw. The NOAEL for developmental and maternal toxicity was 1,000 mg/kg bw, the HDT. This was based on the fact that there were no signs of maternal toxicity, fetotoxicity or teratogenic effects.

A developmental study was conducted via oral gavage in rabbits at dose levels of 0, 40, 200, and 750 HDT mg/kg bw. The NOAEL for development toxicity was 40 mg/kg bw and the NOAEL for maternal toxicity was 40 mg/kg bw based on the following findings. Toxicity in the form of maternal mortality with values 16/20 and 4/20 was excessive in the mid- and high-dose group, respectively. Fetal deaths also occurred. Dose levels believed to exceed maximum tolerance dose (MTD); NOAELs for maternal and developmental effects are not considered reliable and useful for risk characterization. No teratogenic effects were noted in this study.

An additional teratology study in the same strain of rabbits was conducted at dose levels of 0, 30, 75, and 150 mg/kg bw. The NOAEL for development toxicity was 150 mg/kg bw and the NOAEL for maternal toxicity was 30 mg/kg bw based on the following findings. One low-, two mid-, and three high-dose animals died prior to day 29, however, at the high dose group one died of gavage error and another pneumonia, and the reason for the other deaths could not be determined. No teratogenic or fetoxtoxic effects were noted in this study.

An oral range-finding gavage teratology study in the same strain of rabbits (5 animals/dose level) was conducted in another independent laboratory. The dose levels selected were 0, 20, 100, 250, 500, and 1,000 mg/kg bw. This range finding study was conducted with a limited number of animals and a limited scope of examination. Based on these results the dose levels selected for the main study at this independent laboratory were 0, 30, 100, and 350 mg/kg bw. The NOAEL for development toxicity was 350 mg/kg bw and the NOAEL for maternal toxicity was 100 mg/kg bw based on the following findings. At the 350 mg/kg bw dose group transient bw decreases and two abortions were observed. No teratogenic or fetotoxic effects were noted in this study.

Conclusions from teratology studies. More than one definitive rabbit teratology study was conducted because issues associated with exceeding the MTD in the first study and spurious deaths, apparently not compound-related, in the second study confounded the determination of a NOAEL for maternal toxicity. There were no signs of teratogenic or fetotoxic effects in any study other than the first definitive study in which maternal deaths above the MTD apparently occurred. It is BASF's and K-1 Chemicals' opinion based on a thorough review of the teratology studies that the following overall NOAELs can be derived for the

teratology studies: - NOAEL maternal toxicity: 100 mg/kg bw (rabbit) and, 1,000 mg/kg bw (rat). - NOAEL prenatal toxicity: 350 mg/kg bw (rabbit) and, 1,000 mg/kg bw (rat).

The overall NOAEL of 100 mg/kg bw for maternal toxicity in rabbits is based on the last rabbit study, and is based on reduction of bw gain and food intake at dose levels of 250 mg/kg bw onwards. The NOAEL of 350 mg/kg bw for fetotoxic effects in the rabbit is also based on a reduction in bw gain. Based on the overall study results, it is concluded that there are no developmental effects of concern.

Based on preliminary discussions with EPA concerning the rabbit teratology studies, EPA concluded that the definitive NOAEL for maternal toxicity considering all of the studies ranges from 30 to 100 mg/kg bw. Agency scientists further stated that they needed to review the studies in detail to ultimately determine the definitive NOAEL for maternal toxicity. This uncertainty associated with maternal toxicity in the rabbit teratology studies does not impact risk considerations since the risk assessment is based on a lower NOAEL (20 mg/kg bw) in the chronic dog study.

4. *Subchronic toxicity.* The subchronic toxicity of prohexadione calcium was investigated in 90-day feeding studies with rats, mice, and dogs. In all these studies, prohexadione calcium displayed low toxicity. Prohexadione calcium showed no signs of neurotoxicity in a 90-day neurotoxicity rat study. Additionally, the results seen in four week feeding range-finding studies for rats and dogs were similar to the findings observed in the 90-day studies in the same animals.

5. *Chronic toxicity.* Based on review of the available data, the reference dose (RfD) for prohexadione calcium will be based on a 1-year feeding study in dogs with a threshold NOAEL of 20 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.2 mg/kg/day. The following are summaries of studies submitted to EPA. Prohexadione calcium was administered to Beagle dogs at dietary concentrations of 0, 20, 200, and 1,000 mg/kg bw for 12 months. Slight changes were observed for hematological and clinical chemical parameters and dilated basophilic renal tubules (without histopathological concurrence) at dose levels greater than 200 mg/kg bw. The NOAEL was 20 mg/kg bw for the males and female dogs.

The 24-month Fisher 344 rat chronic/carcinogenic feeding study was conducted at dose levels of 0, 400, 2,000, 10,000, and 20,000 ppm with 80 male and 80 female animals per dose group. After 26, 52, and 78 weeks, 10 animals were sacrificed (satellite groups). The remaining animals were autopsied after 104 weeks of diet administration. The NOAEL for chronic toxicity was 2,000 ppm for males (93.9 mg/kg bw) and, 2,000 ppm for females (114 mg/kg bw). The following effects were observed in the 10,000, and 20,000 ppm groups: (1) Decreased bws were observed in both male and female rats at the 20,000 ppm dose level; (2) clinical chemical effects (i.e., lower potassium, bilirubin, and glucose levels) were observed in male and female rats at the 20,000 ppm dose level, in the 10,000 ppm dose level, reduced glucose levels were only seen in the males, and increased albumin/globulin ratios, sodium, chloride and calcium levels were observed only in the females; (3) increased urine volumes and lower specific gravity were observed in the mid-high and high-dose groups for both male and female rats; (4) minor changes in organ weights were noted for animals of the high dose group only, which consisted of increased relative liver, adrenal and kidney weights, the latter also absolute in females only, at week 26; at the end of the study decreased liver weights and increased relative brain and testis weights were noted and these changes were considered to be associated with the decreased bws; (5) macroscopic findings revealed an increase of pituitary nodules in the high dose group for both male and female rats which was not confirmed histopathologically and submucosal ectopic tissue in the glandular stomach was found in both male and female rats in the highest dose levels that was confirmed by histopathology which showed an increase of squamous cell hyperplasia in males and of basal cell hyperplasia in the forestomach; (6) a higher incidence of cellular hyperplasia was observed in the thyroid in the mid-high and high dose levels for male and female rats; and (7) no increased incidence of neoplasms occurred at any dose levels tested in this study.

In the 24-month B6C3F1 mouse feeding study, conducted at dose levels of 0, 400, 2,000, 20,000, and 40,000 ppm with interim sacrifices at 52 and 78 weeks, prohexadione calcium was negative for oncogenicity. The NOAEL for chronic toxicity was 2,000 ppm for males (279 mg/kg bw) and 2,000 ppm for females (351 mg/kg bw). The following effects were observed in the 20,000 and 40,000 ppm groups: (1) Statistically significant decreases in body weights were observed in male mice at the 20,000 ppm dose level and in female mice at the 40,000 ppm dose level; (2) a variety of changes in hematological parameters were noted in the respective investigations at weeks 52, 78, and 104, however, most of the changes were not dose related or consistent over time; (3) increased absolute and/or relative heart, brain, testes, liver, ovary, and kidney weights were observed in the mid-high and highest dose groups with a slight progression of severity to the highest dose group; (4) a higher incidence of splenomegaly was observed only in the male mice of the highest dose group; (5) histopathological examinations revealed an ectopic proliferation of the mucosal and glandular epithelium in the submucosal layer of the glandular stomach in male and female mice in the highest dose group tested, these changes were assessed to represent heteroplastic, ectopic proliferative changes accompanied by lumen dilatation and cytological degeneration; (6) a higher incidence of hyperkeratosis of the forestomach was observed in both male and female mice and hyperplasia of the squamous epithelium of the forestomach of female male mice was observed in the highest dose group tested; (7) vacuolic changes in the exocrine pancreas of the high dose female were observed; and (8) no increased incidence of neoplasms occurred at any dose levels tested in this study.

6. *Endocrine disruption.* No specific tests have been conducted with prohexadione calcium to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there were no significant findings in other relevant toxicity studies (i.e., subchronic and chronic toxicity, teratology and multi-generation reproductive studies) which would suggest that prohexadione calcium produces endocrine related effects.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* For purposes of assessing the potential dietary exposure, K-I Chemical has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the proposed tolerances for prohexadione calcium in/on peanut nutmeat at 1.0 ppm and apples (pome fruit) at 3.0 ppm. A maximum residue level of 1.0 ppm was used for pears. The TMRC is a "worse case" estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are always found at the tolerance levels. The TMRC from the proposed use of

prohexadione calcium on peanuts, pears and apples is 0.002570 mg/kg bw/day and utilizes 1.3% of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, non-nursing infants (< 1 year old), is 0.025758 mg/kg bw/day and utilizes 12.9% of the RfD.

Dietary exposure to residues of prohexadione calcium in or on food will be limited to residues on peanuts, apples and pears. Apple pomace, peanut meal and hay are fed to animals; thus exposure of humans to residues in feed items might result if such residues carry through to meat, milk, poultry, or eggs. However, K-I Chemical has concluded that there is no reasonable expectation that measurable residues of prohexadione calcium will occur in meat, milk, poultry, or eggs from this use but residues can be expected to be slightly above the limit of quantitation for cow kidney. Therefore, K-I Chemical is proposing a tolerance in/on cattle meat byproduct (kidney) at 0.1 ppm. There are no currently registered uses for prohexadione calcium on food or feed crops in the U.S. and thus, there are no established U.S. tolerances.

The following table summarizes the mean dietary exposures and the percents of RfD occupied by these exposures.

SUMMARY OF CHRONIC DIETARY EXPOSURE TO PROHEXADIONE CALCIUM

Group	DRES (Dietary Risk Evaluation System)	
	mg/kg bw/day	% RfD
U.S. Population	2.6	1.3
Nursing Infants (< 1 Year Old)	19.3	9.7
Non-Nursing Infants (< 1 Year Old)	25.8	12.9
Children 1-6 Years Old	8.7	4.4
Children 7-12 Years Old	3.5	1.8

ii. *Drinking water.* Based on studies submitted to EPA for assessment of environmental risk, K-I Chemical does not anticipate exposure to residues of prohexadione calcium in drinking water. There is no established Maximum Concentration Level (MCL) or Health Advisory Level (HAL) for prohexadione calcium under the Safe Drinking Water Act (SDWA).

2. *Non-dietary exposure.* K-I Chemical has not estimated non-occupational exposure to prohexadione calcium since the only pending registration is limited to commercial crop production. Prohexadione calcium products are not labeled for any residential uses, therefore eliminating the potential for residential exposure. Thus, potential for non-occupational exposure of the general population to prohexadione calcium is not present.

D. Cumulative Effects

K-I Chemical is aware of only one other registered compound, trinexapac-ethyl [4-(cyclopropyl-a-hydroxymethylene)-3,5-dioxo-cyclohexanecarboxylic acid ethylester], that has a structure similar to prohexadione calcium. However, K-I Chemical has no information that would indicate that the two compounds have a common mechanism of toxicity. Furthermore, trinexapac is registered for use only on turf. Therefore, even if the compounds were considered similar there would be no cumulative dietary exposure issue because of the differences in use patterns. In summary, dietary exposure to prohexadione calcium should not result in cumulative toxicity with other known chemical compounds.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and the reliability of the toxicity data, K-I Chemical has estimated that aggregate exposure to prohexadione calcium will utilize 1.3% of the RfD for the U.S. population. K-I Chemical concludes that there is a reasonable certainty that no harm will result from the aggregate exposure to residues of prohexadione calcium, including anticipated dietary exposure and non-occupational exposures.

2. *Infants and children*—i. *Developmental toxicity in the rat.* A developmental study was conducted via oral gavage in rats with dosages of 0, 100, 300, and 1,000 HDT mg/kg/day with a NOAEL of 1,000 mg/kg/day the HDT for developmental and maternal toxicity based on the fact that no effects were observed for any test parameter measured in this study. Therefore, these NOAEL values are significantly higher than the NOAEL from the 1-year feeding study in dogs used to establish the RfD.

ii. *Developmental toxicity in the rabbit.* A series of developmental studies were conducted via oral gavage in rabbits with dosages ranging from 0 to 750 mg/kg/day with a development toxicity NOAEL of 350 mg/kg/day and a maternal toxicity NOAEL of 100 mg/kg/day based on bw gain reductions. These NOAEL values are higher than the NOAEL from the 1-year feeding study in dogs used to establish the RfD.

iii. *Reproductive toxicity.* A 2-generation reproduction study with rats fed dosages of 0, 500, 5,000, and 50,000 mg/kg/day resulted in a reproductive NOAEL of 50,000 ppm (5,300 mg/kg bw/day), a developmental NOAEL of 5,000 ppm (270 mg/kg bw/day), and a maternal toxicity NOAEL of 500 ppm (50 mg/kg bw/day). The developmental NOAEL was based on a slight, transient reduction in offspring growth. The maternal NOAEL is similar and the reproductive NOAEL is significantly higher (above the limit dose of 1,000 mg/kg/day) than the NOAEL from the 1-year feeding study in dogs used to establish the RfD.

3. *Reference dose.* Since developmental and reproductive toxicity occurs at levels above the levels shown to exhibit parental toxicity and since these levels are significantly higher than those used to calculate the RfD, K-I Chemical believes the RfD of 0.20 mg/kg/day (20 mg/kg/day and an Uncertainty Factor of 100) is an appropriate measure of safety for infants and children.

Dietary exposure of the most highly exposed subgroup in the population, non-nursing infants (< 1 year old) is 0.025758 mg/kg bw/day. This accounts for 12.9% of the RfD. There are no residential uses of prohexadione calcium and contamination of drinking water is extremely unlikely. In addition, there were no significant findings in relevant toxicity studies (i.e., subchronic and chronic toxicity, teratology and multi-generation reproductive studies) which would suggest that prohexadione calcium produces endocrine related effects. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, K-I Chemical concludes that there is a

reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of prohexadione calcium, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

A maximum residue level (MRL) has not been established for prohexadione calcium in peanuts, apples or pears by the Codex Alimentarius Commission.

[FR Doc. 99–21944 Filed 8–23–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 18, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 25, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form Number: FCC 601.

Type of Review: Revision of an existing collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 240,320.

Estimated Time Per Response: 1.25 hours.

Total Annual Burden: 210,280 hours.

Needs and Uses: FCC 601 is used as the general application (long form) for market based licensing and site-by-site licensing in the Wireless Telecommunications Radio Services. The purpose of this revision is to make the necessary changes to convert the Private Operational and Fixed Microwave Services to ULS. We sought emergency clearance and received approval on these changes and are now seeking a 3 year clearance. The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

Respondent costs are estimated to be $48,364,000, which includes application filing fees.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21900 Filed 8–23–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 17, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 25, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0855

Title: Telecommunications Reporting Worksheet and Associated Requirements—CC Docket No. 98–171

Form Number: FCC Forms 499–A and FCC 499–S

Type of Review: Extension.

Respondents: Business or other for-profit entities.

Number of Respondents: 5500 respondents

Estimated Time Per Response: 7.27 hours per response (avg.)

Total Annual Burden: 40,000 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $9,200.00.

Frequency of Response: Annually, Semi-Annually, On occasion, Third party disclosure.

Needs and Uses: In a Report and Order issued in CC Docket No. 98–171, released July 14, 1999, the Commission simplified and consolidated four Commission reporting requirements so that carriers need only file one worksheet to satisfy the contributor reporting requirements associated with: the universal service support

mechanisms; telecommunications relay services; cost recovery mechanism for numbering administration; and cost recovery mechanism for shared costs of long-term number portability. Reporting Requirement: All contributors to the Federal telecommunications relay service, numbering administration, long-term portability, and universal service support mechanisms (except certain non-common carrier telecommunications service providers meeting the universal service de minimis exemption) must file the April version of the Telecommunications Reporting Worksheet, FCC Form 499–A on April 1 of each year. (No. of respondents: 3500; hours per response: 8 hours; total annual burden: 28,000 hours). All contributors to the universal service support mechanisms, except those that fall within the Commission's de minimis exemption, must file a streamlined version of the Telecommunications Reporting Worksheet (FCC Form 499–S) on September 1 of each year. (No. of respondents: 2000; hours per response: 5.5 hours; total annual burden: 11,000 hours). Recordkeeping Requirements: Small common carriers and small pay telephone providers must complete the table contained in Figure 2 of FCC Form 499 to determine whether they meet the de minimis standard and need not file the form on September 1. Small shared tenant service providers and small private carriers should complete the table in Figure 2 to determine whether they meet the de minimis standard and need not file the worksheet on either September 1 or April 1. Telecommunications providers that do not file because they are de minimis should retain figure 2 and documentation of their contribution base revenues for 3 calendar years after the date each worksheet is due. Carriers that provide carriers' carrier services must have documented procedures to ensure that it reports as revenues from resellers only revenues from entities that reasonably would be expected to contribute to support universal service. These procedures include, but are not limited to, maintaining the following information on resellers: Legal name; address; name of a contact person; and phone number of the contact person. (No. of respondents: 2000; annual burden per respondent: .25 hours; total annual burden: 500 hours). Third Party Disclosure: If a reseller qualified for the de minimis exemption, it must notify its underlying carriers that it is not contributing directly to universal service. (Number of respondents: 2000; annual burden per respondent: .25 hours; total annual burden: 500 hours). The information will be used by the Commission and the administrators to calculate contributions to the universal service support mechanisms, the telecommunications relay services support mechanism, the cost recovery for numbering administration, and the cost recovery for the shared costs of long-term local number portability. The information collection will be used by carriers to satisfy their obligation under section 413 of the Act of file information concerning their designated agent for service of process. In addition to requests for comment on the areas identified above, interested parties are also asked to comment on the Commission's request not to print the OMB expiration date on the forms and instructions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21903 Filed 8–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval.

August 12, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 23, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0126.

Title: Application for Antenna Structure Registration and Antenna Structure.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 13,956.

Estimated Time per Response: 0.017 hours to 0.5 hours.

Total Annual Burden: 14,507.

Total Annual Cost: None.

Needs and Uses: Section 73.1820 requires that each licensee of an AM, FM or TV broadcast station maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and entry of each test of the Emergency Alert System (EAS) for commercial stations.

The data are used by FCC staff in field investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations. It is also used to verify that the EAS is operating properly.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21901 Filed 8–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 16, 1999

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 23, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0636

Title: Equipment Authorization—Declaration of Compliance, Amendment of Parts 2 and 15.

Form Number: N/A.

Type of Review: Reinstatement without change of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,000.

Estimate Time Per Response: 19 hours (avg.).

Frequency of Response: Recordkeeping; Single reporting requirement.

Total Annual Burden: 76,000 hours.

Total Annual Costs: $1,200,000.

Needs and Uses: The new equipment authorization procedure requires that a manufacturer or equipment supplier test a product to ensure compliance with technical standards for limiting radio frequency emissions and include a declaration of compliance (DoC) with the standards in the literature furnished with the equipment. This statement of compliance and supporting technical data would be made available to the FCC by the responsible party, at the request of the FCC. Further, the FCC will permit personal computers to be authorized based on tests and approval of their individual components, without further testing of the completed assembly. Testing and documentation of compliance aids in controlling potential interference to radio communications. The data may be used for investigating complaints of harmful interference; to determine that the equipment marketed complies with the applicable Commission Rules; and to insure that the operation of the equipment is consistent with the initially documented test results.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21902 Filed 8–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

August 12, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 23, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0621.

Title: Rules and Requirements for Broadband PCS Licenses.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,000.

Estimate Time Per Response: 4.7 hrs. (avg.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 14,044 hours.

Total Annual Costs: None.

Needs and Uses: The information requested provides the FCC with the data to determine the legal, technical, and other qualifications of applicants to obtain a broadband Personal Communications Service license. The information is also used to determine whether grant of an application will serve the public interest, convenience, and necessity. The staff uses the information to ensure that licensees who acquire their licenses through competitive bidding are not unjustly enriched by premature transfer of their licenses.

This revision reflects an amendment to our construction rules to include 15

MHz C Block licenses resulting from a disaggregation. Our current construction rules address only 10 MHz and 30 MHz blocks. This revision does not affect the number of respondents or the total burden hours. Statutory authority for this collection of information is contained in 47 U.S.C. 309(j), as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21904 Filed 8–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2353]

Petitions For Reconsideration of Action in Rulemaking Proceeding

August 19, 1999.

Petitions For Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 8, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision of the Commission's Rules to Ensure Capatibility with Enhanced 911 Emergency Calling System (CC Docket No. 94–102, RM–8143).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21899 Filed 8–23–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1282–DR]

Iowa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1282–DR), dated July 22, 1999, and related determinations.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1999:

Buchanan and Jones Counties for Public Assistance (already designated for Individual Assistance).

Story County for Public Assistance and Individual Assistance.

Linn and Pottawattamie Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–21931 Filed 8–23–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1283–DR]

Minnesota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1283–DR), dated July 28, 1999, and related determinations.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 28, 1999:

Cass County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–21932 Filed 8–23–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-20819) published on page 44017 of the issue for Thursday, August 12, 1999. Under the Federal Reserve Bank of New York heading, the entry for Popular, Inc., Popular International Bank Inc., both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mount Laurel, Pennsylvania is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Popular, Inc., and Popular International Bank Inc., both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mount Laurel, New Jersey; to acquire 100 percent of the voting shares of Aurora National Bank, Aurora, Illinois.

Comments on this application must be received by September 7, 1999.

Board of Governors of the Federal Reserve System, August 18, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99-21857 Filed 8-23-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Traders Bankshares, Inc., Spencer, West Virginia; to acquire 4.8 percent of the voting shares, and thereby control 8.16 percent of the voting shares of Rock Branch Community Bank, Inc., Nitro, West Virginia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Capitol Bancorp, Ltd., Lansing, Michigan; Sun Community Bancorp Limited, Phoenix, Arizona; and Nevada Community Bancorp Limited, Las Vegas, Nevada; to acquire 51 percent of the voting shares of Red Rock Community Bank, Las Vegas, Nevada (in organization).

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. DFC Acquisition Corporation Number Two, and Dickinson Financial Corporation, both of Kansas City, Missouri; to acquire 100 percent of the voting shares of Armed Forces Bank of California, N.A., San Diego, California.

2. Gideon Enterprises, L.P., Topeka, Kansas; to become a bank holding company by acquiring 95.66 percent of the voting shares of Silver Lake Bank, Topeka, Kansas.

Board of Governors of the Federal Reserve System, August 18, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21858 Filed 8–23–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First Schaumburg Bancorporation, Inc., Schaumburg, Illinois; to engage *de novo* through its subsidiary, Heritage Mortgage Services of Florida, Inc., Naples, Florida, in originating mortgage loans for ultimate sale in the secondary market, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99-21856 Filed 8-23-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, August 30, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 20, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22092 Filed 8–20–99; 3:46 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 991 0038]

Pools By Ike, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 25, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Thomas Dahdouh or David Newman, Federal Trade Commission, Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 356–5294 or 356–5280.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 18, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Order") from fourteen swimming pool contractors in Bakersfield, California, a city of 224,000 people in Kern County in the Central Valley of California. As alleged in the Commission's proposed complaint, these swimming pool contractors were part of an unlawful price-fixing and group boycott combination that began in the Spring of 1998. The proposed Order is designed to prevent the recurrence of these anticompetitive practices engaged in by these swimming pool contractors.

The Proposed Complaint

The proposed complaint alleges that, in the Spring of 1998, fourteen swimming pool contractors formed an informal group, known as the Southern Valley Pool Association (the "Association"). The complaint alleges that, through the Association meetings and other communications, some of these swimming pool contractors agreed to increase prices substantially to homeowners for swimming pool construction. The proposed complaint also alleges that, as a result of this combination, some of these contractors thereafter significantly increased their prices to homeowners.

The proposed complaint also alleges that some of these swimming pool contractors engaged in a group boycott designed to prevent homeowners from escaping this collective price increase by turning to alternative means for the construction of swimming pools. According to the Commission's proposed complaint, homeowners usually hire a swimming pool contractor to handle all aspects of constructing a swimming pool. Some homeowners, however, may choose to enter into an arrangement, known in the industry as an "owner-builder" arrangement, by which they hire subcontractors directly or use swimming pool contractors as consultants only in arranging for subcontractors. In this way, homeowners who act as owner-builders are able to save substantial amounts of money.[1] Similarly, home construction developers and contractors may hire swimming pool contractors to handle all aspects of constructing a swimming pool, or they may hire subcontractors directly for that purpose.

According to the Commission's proposed complaint, owner-builders were viewed as a major threat to the success of the collective efforts by some swimming pool contractors to raise prices to homeowners. Homeowners acting as owner-builders could work directly with subcontractors or use pool contractors only as consultants and thereby defeat the price increase. Similarly, home construction developers and contractors could also work directly with subcontractors (rather than with pool contractors) and similarly defeat the price increase. To effectuate this group boycott, the proposed complaint alleges that, beginning in early April 1998, a series of meetings was held, with some of respondents and all or nearly all of each trade of subcontractors in attendance. At these meetings, some respondents:

- instructed the subcontractors to raise their prices to owner-builders by 50 percent and to home construction developers and contractors by 25 percent, substantial price hikes that were designed to eliminate or reduce the savings homeowners and home construction developers and contractors would normally realize by bypassing pool contractors and dealing directly with subcontractors;
- warned the subcontractors that the respondents would stop subcontracting with them if the subcontractors did not increase their prices to owner-builders and home construction developers and contractors as set forth above; and
- offered the subcontractors a quid pro quo whereby, if the subcontractors agreed to increase prices to owner-builders and home construction developers and contractors as set forth above, respondents would agree to a specified increase (the amount of which varied depending on the particular subcontracting work being done) in the price subcontractors charged respondents for subcontractor services.

As a direct result of these meetings, according to the proposed complaint, most of the subcontractors raised their prices to pool contractors by the specified amounts on or about May 15, 1998. Also as a direct result of these meetings, some subcontractors began charging or sought to charge owner-builders and home construction developers and contractors substantially higher prices than they charged swimming pool contractors. Other subcontractors stopped doing owner-builder jobs altogether, because they were fearful of losing their work with respondents.

According to the proposed complaint, the effects of these collective actions are to increase prices for swimming pool construction services and swimming pool subcontracting services and to interfere with consumers' choice in deciding to build their swimming pool in an owner-builder arrangement or through home construction developers or contractors.

The Proposed Order

The proposed Order contains provisions designed to remedy the violations charged and to prevent the proposed respondents from engaging in similar acts and practices in the future.

Paragraph II of the proposed Order would prohibit the proposed

[1] In owner-builder arrangements, liability in the event of an accident or injury during construction falls on the homeowner, rather than on the pool contractor.

respondents from (1) entering into any agreement, express or implied, relating to the price for swimming pool contracting or subcontracting services and (2) requesting, proposing, threatening, urging, recommending, advocating, or attempting to persuade in any way anyone else to alter in any way their price and terms for such services. Paragraphs II.A.(1) and B.(1) These provisions will prevent future efforts, whether by agreement or through requests to others, to raise prices and alter terms for both swimming pool contracting and subcontracting services.

Paragraph II would also prohibit the proposed respondents from entering into any agreement to refuse to deal with owner-builders or home construction contractors or developers. Paragraph II.A.(2). It would bar them as well from requesting, proposing, threatening, urging, recommending, advocating, or attempting to persuade in any way any swimming pool contractor or subcontractor to refuse categorically to deal with owner-builders, home construction contractors or developers, or swimming pool contractors who act or wish to act as consultants for owner-builders. Paragraphs II.B.(2) and (3). Finally, Paragraph II would prohibit respondents from requesting, proposing, threatening, urging, recommending, advocating, or attempting to persuade in any way any subcontractor with respect to the terms of that subcontractor's dealings with owner-builders, home construction contractors or developers, or swimming pool contractors who act or wish to act as consultants for owner-builders. Paragraph II.B.(4).

Together, these provisions will bar respondents, collectively as well as individually, from seeking (1) to stop any subcontractor from working for owner-builders, home contractors or developers, and swimming contractors who act or desire to act as consultants for owner-builders; (2) to change the prices and terms subcontractors charge those homeowners and contractors; and (3) to stop other swimming pool contractors from working for those homeowners and contractors. These provisions, by barring individual efforts as well as collective ones, fence in respondents from engaging in conduct similar or dangerously close to the unlawful activity they engaged in earlier.

A proviso to Paragraph II makes it clear that nothing in this Paragraph prohibits any respondents from discussing and/or entering into a specific proposed or actual business transaction or project in which those involved are or would be in a contractor/subcontractor or other joint or cooperative working relationship.

Paragraph III of the Order requires respondents, for a period of five years, to tape record all meetings and maintain copies of those tape recordings and all materials distributed at the meetings. This provision should have a prophylactic effect in ensuring that the respondents do not seek to engage in such anticompetitive conduct again.

The proposed Order also requires that, should the respondents turn the Association into a more formal organization, they must incorporate Paragraph II of this Order by reference in the by-laws of such organization and distribute a copy of the by-laws to each of the members of the organization. Paragraph IV. Finally, the Order contains reporting requirements (Paragraphs V. and VI.) and provisions guaranteeing Commission staff access should the need arise (Paragraph VII.).

Opportunity for Public Comment

The proposed consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The purpose of this analysis is to invite public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the agreement and proposed Order or to modify their terms in any way.

By direction of Commission.

[FR Doc. 99–21919 Filed 8–23–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Fellows Program.

OMB No.: 0970–0140.

Description: Public Law 103–252, the Human Services Amendments of 1994, amended the Head Start Act (the Act) to authorize the creation of a Head Start Fellows Program to support the professional development of individuals working in the fields of child development and family services. The Act was most recently reauthorized through fiscal year 2003, by the Coats Human Services Amendments of 1998, Public Law 105–285.

Head Start Fellowships are awarded on a competitive basis to individuals (other than Federal employees) selected from among applicants who are working, on the date of application, in local Head Start programs or otherwise working in the fields of child development and children and family services. The information collected from the applications is used to ensure that individuals selected to be Head Start Fellows have the appropriate experience/skills, and that the training developed for them and the work assigned to them will enhance their ability to make significant contributions to the fields of child development and family services. The information collected is used by program staff and policy makers at the Federal level to make judgements on the progress and needs of the program.

Respondents: Individuals or Households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Fellows Program	200	1	2	400

Estimated Total Annual Burden Hours: 400.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW.; Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Attn: ACF Desk Officer.

Dated: August 18, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–218860 Filed 8–23–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Adoption and Foster Care Analysis and Reporting System for Title IV–B and Title IV–E.

OMB No.: 0980–0267.

Description: Section 479 of title IV–E of the Social Security Act directs States to establish and implement an adoption and foster care reporting system. The purpose of the data collected is to inform State/Federal policy decisions, program management, and to respond to Congressional and Department inquiries. Specifically, the data is used for short/long-term budget projections, trend analysis, and to target areas for improved technical assistance. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates:

Instrument	Number of respondents		Average burden hours per response	Total burden hours
Adoption and Foster Care Analysis and Reporting Systems	51	2	3,251	331,.602

Estimated Total Annual Burden Hours: 331,602.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW; Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect is OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, D.C. 20503, Attn: ACF Desk Officer.

Dated: August 18, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–21894 Filed 8–23–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1392]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Enforcement Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 23, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

State Enforcement Notification—21 CFR 100.2(d) (OMB Control Number 0910–0275)—Extension

Section 310(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2(d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

In the **Federal Register** of June 8, 1999 (64 FR 30525), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.2(d)	1	1	1	10	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.2(d) is insignificant because enforcement notifications are seldom submitted by States requesting the agency take enforcement action under the act against a particular food. Over the last 3 years, FDA has not received any enforcement notifications. Since the enactment of section 403A(b) of the act (21 U.S.C. 343–1(b)) as part of the Nutrition Labeling and Education Act of 1990, FDA has received only a few enforcement notifications.

Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future obligation of a State to notify FDA of an enforcement action under the provisions of section 310(b) of the act.

Dated: August 18, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–21853 Filed 8–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiological Safety of Drug Residues in Food; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop.

The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM) will sponsor a workshop entitled "Microbiological Safety of Drug Residues in Food." The workshop will discuss the use of model systems to establish acceptable daily intakes (ADI's) for antimicrobial drug residues in food. The workshop will focus on human consumption of new animal drug residues in food and their direct effects on human intestinal microflora.

The document entitled "A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food–Producing Animals" (the "framework" document) will not be discussed at this workshop. Information about workshops on the framework document will be announced in a future **Federal Register** notice, CVM update(s), and on CVM's Internet home page, at "http://www.fda.gov/cvm/fda/mappgs/antitoc.html".

Date and Time: The workshop will be held on Monday and Tuesday, September 20 to 21, 1999, from 8 a.m to 6 p.m. on Monday and from 8 a.m. to 2 p.m. on Tuesday.

Location: The workshop will be held at The DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD, 20852, 301–468–1100.

Contact: Lynda W. Cowatch, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5281.

Registration: The registration for the workshop is free. However, registration is required. For additional information and a registration form, please contact Lynda W. Cowatch at the above address. A registration form is also available on the CVM home page at "http://www.fda.gov/cvm/fda/mappqs/registration.html".

If you need special accommodations for a disability, please contact the DoubleTree Hotel at least 7 days in advance.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 30, 1996 (61 FR 3043), CVM published a notice of availability of a guidance document entitled "Microbiological Testing of Antimicrobial Drug Residues in Food." This guidance document defines when antimicrobial drugs would be exempt from additional microbiological testing and when additional testing may be necessary to establish the safety of antimicrobial drug residues in food. The document also establishes 1.5 milligrams/person/day as the ADI of microbiologically active residues that would be allowed in food without additional microbiological testing. CVM also expressed the intention of validating model systems that could be used to evaluate the effect of low levels of antimicrobial drugs on the human intestinal microflora.

In 1995 and 1996, CVM initiated research to validate an in vitro and an in vivo model system that could be used to set ADI's for antimicrobial drug residues in food based on perturbations of the human intestinal microflora. The results of this research will be presented at the September workshop. In addition, other methods for determining ADI's for antimicrobial residues used internationally and in Europe will be presented and discussed.

Based on the information presented and discussed at the workshop, CVM intends to reevaluate its guidance document for testing microbiological effects of antimicrobial residues on the human intestinal microflora.

Dated: August 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21854 Filed 8–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1076–N]

Medicare Program; September 16, 1999, Meeting of the Competitive Pricing Advisory Committee

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee (the CPAC) on September 16, 1999. The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to create the CPAC to make recommendations on demonstration area designation and appropriate research designs for the project. The CPAC meetings are open to the public.

DATES: The CPAC is scheduled to meet on September 16, 1999, from 9 a.m. until 4 p.m., e.d.s.t.

ADDRESSES: The meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard, C4–14–17, Baltimore, MD 21244–1850, (410) 786–6451.

SUPPLEMENTARY INFORMATION:

Section 4011 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to meet periodically and make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research designs for implementing the project. The CPAC has previously met on May 7, 1998, June 24 and 25, 1998, September 23 and 24, 1998, October 28, 1998, January 6, 1999, May 13, 1999, and July 22, 1999.

The CPAC consists of 15 individuals who are independent actuaries, experts in competitive pricing and the administration of the Federal Employees Health Benefit Program, and representatives of health plans, insurers, employers, unions, and beneficiaries. The CPAC members are: James Cubbin, Executive Director, General Motors Health Care Initiative; Robert Berenson, M.D., Director, Center for Health Plans and Providers, Health Care Financing Administration; John Bertko, Actuary Principal, Reden & Anders, Ltd.; Dave Durenberger, Vice President, Public Policy Partners; Gary Goldstein, M.D., former CEO, The Oschner Clinic; Samuel Havens, Healthcare Consultant and Chairman of Health Scope/United; Margaret Jordan, President and CEO, The Margaret Jordan Group; Chip Kahn, President, The Health Insurance Association of America; Cleve Killingsworth, President, Health Alliance Plan; Nancy Kichak, Director, Office of Actuaries, Office of Personnel Management; Len Nichols, Principal Research Associate, The Urban Institute; Robert Reischauer, Senior Fellow, The Brookings Institution; John Rother, Director, Legislation and Public Policy, American Association of Retired Persons; Andrew Stern, President, Service Employees International Union, AFL–CIO; and Jay Wolfson, Director, Florida Health Information Center, University of South Florida. The chairperson of the CPAC is James Cubbin and the co-chairperson is Robert Berenson, M.D. In accordance with section 4012(a)(5) of the BBA, the CPAC will terminate on December 31, 2004.

The agenda for the September 16, 1999, meeting will include the following:

- A review of the competitive pricing demonstration design.
- A discussion on how to minimize disruption for beneficiaries in the demonstration sites.
- A discussion on the process for review of plan bids.
- A revision of the implementation timeline for the Kansas City, MO Metropolitan Area and Maricopa County, AZ demonstration sites.

Individuals or organizations that wish to make 5-minute oral presentations on the CPAC agenda issues should contact Sharon Arnold, CPAC Executive Director, by 12 noon, September 9, 1999, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12 noon, September 9, 1999. Anyone who is not scheduled to speak may submit written comments to the Executive Director, by 12 noon, September 13, 1999.

This meeting is open to the public, but attendance is limited to the space available.

(Sec. 4012 of the Balanced Budget Act of 1997, Pub. L. 105–33 (42 U.S.C. 1395w–23 note) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 18, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–21859 Filed 8–23–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Richard U. Rodriguez, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 287; fax: 301/402–0220; e-mail: rr154z@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Peptides and Their Utility in Modulation of Behavior of Cells Expressing α3β1 Integrins

David D. Roberts, Henry C. Krutzsch (NCI)

DHHS Reference No. E–169–99/0 filed 15 Jul 1999

The present invention relates generally to peptides that bind to or are recognized by α3β1 integrins and in particular, to pharmaceutical compositions containing and methods of using said peptides to inhibit or promote various functions of cells that express α3β1 integrins.

Integrins are transmembrane α, β1-heterodimer receptors expressed on a wide variety of cells which are involved in extracellular matrix (ECM) interactions. Experimental data has shown that the ECM can affect gene expression and that this altered gene expression can change the composition of the ECM. A bi-directional exchange of information between cells and their surrounding matrix is therefore taking place and because of this communication, integrins can control cell growth, motility, differentiation and survival. Defects in the regulation of these processes can result in many disease states, such as inheritable developmental disorders, defective wound repair, hemotological disorders, cardiovascular diseases, immunological disorders, neurodegenerative diseases and cancer initiation, invasion and metastasis. The disclosed peptides have been shown to inhibit angiogenesis, cell adhesion and proliferation and wound repair when administered in a soluble

form; however, when the same peptides are immobilized on a substratum, they promote adhesion and proliferation of endothelial cells. Thus by controlling the conditions, these peptides can be used to generate specific responses. Specific applications for the peptides include the treatment of angiogenesis-mediated diseases, production of vascular grafts and artificial blood vessels.

Redox-Stable, Non-Phosphorylated Cyclic Peptide Inhibitors of SH2 Domain Binding to Target Protein, Conjugates Thereof, Compositions and Methods of Synthesis and Use Serial No. 60/137,187 filed 02 Jun 1999

Peter Roller, Ya-Qiu Long, Feng-Di Lung, Charles R. King (NCI)

The present invention is predicated on the surprising and unexpected discovery of non-phoshorylated cyclic peptide inhibitors of binding SH2 domains in proteins comprising SH2 domains to target proteins which not only are redox-stable *in vivo* but have unprecedented specific binding affinities.

Src homology–2 (SH2) domains selectively bind to phosphotyrosyl (pTyr)-containing regions of target proteins. SH2 binding can modulate: c-src activity; substrate specificity for c-abl proto-oncoproteins; and the transduction of signals initiated by growth factor receptors and cellular attach systems. The SH2 domain of growth factor receptor-bound protein (Grb2) is a specific example which contains one SH2 domain and two src homology–3 (SH3) domains. The prevention of Grb2-mediated multi-protein assemblies is considered a promising therapeutic target for the development of antiproliferative agents directed to cells that over-express growth factor receptors. Previously identified SH2-inhibitors have detectable activity, but their binding affinities are substantially lower than natural ligands. A need therefore exists for more efficient and stable inhibitors, and the technology herein disclosed provides for such inhibitors. Additionally, the technology offers the possibility of conjugates comprising a compound (SH2 inhibitor) and a carrier agent, i.e., signal peptides, antennapedia peptides, or lipofectin. Suitable targets would preferably include, but not necessarily be limited to: growth factor receptors, such as EGFR; morphology determining proxies, such as FAK; a cellular attachment protein; a proto-oncoprotein; an oncoprotein, such as BCR-abl; or a mitogen-activated protein (MAP). In one application of this method, inhibition of the binding of a target protein by an SH2 domain in a protein comprising an SH2 domain prevents cancer, in particular, breast cancer. Administration of the SH2-inhibitor/SH2-conjugate can be accompanied by an anti-cancer agent such as a chemotherapeutic agent, a cytotoxic agent or its prodrug, radiation and/or a radioactive isotope.

Phenylalanine Derivatives

T. Burke *et al.* (NCI)
Serial No. 60/126,047 filed 23 Mar 1999

The present invention relates to novel phenylalanine derivatives, compositions and methods of using said derivatives to inhibit SH2 domain binding with a phosphoprotein. Additionally, the invention provides precursors suitable for preparing these phenylalanine derivatives.

The therapy and prophylaxis of proliferative diseases such as cancer, autoimmune disorders and hyperproliferative skin disorders can involve signal transduction. These signal-pathways are critical to normal cellular homeostasis and are necessary processes for relaying extracellular messages from various sources, e.g., growth factors, hormones or neurotransmitters, via receptors to the interior of the cell. Protein-tyrosine kinases are integral participants of many of these pathways, and they are responsible for the phosphorylation of specific tyrosine residues to form tyrosine phosphorylated residues. These pathways can involve complex networks which contain proteins with specific amino acid sequences called "Src-homology 2" (SH2) domains. Malfunctions in these protein-tyrosine phosphorylations through tyrosine kinase overexpression or deregulation, can manifest a variety of oncogenic and proliferative disorders. SH2 domain containing proteins that play roles in cellular signaling and transformation include, but are not limited to: Src, Lck, Ras GTPase-activating protein, Phospholipase C, PI–3 kinase, Grb2, BCR Abl and Tyk2. Central to the binding of SH2 domains with phosphotyrosine (pTyr)-containing ligands is the interaction of a doubly ionized pTyr phosphate with two highly conserved arginine residues. These interactions are critical, and binding is usually lost by removal of the phosphate group. While the pTyr-pharmacophore therefore plays a dominant role in SH2 domain-ligand interactions, pTyr residues are not suitable components of inhibitors intended for *in vivo* application, due to the enzymatic lability of the phosphate ester bond and the poor cellular penetration of the doubly ionized phosphate species. Therefore, a need exists for non phosphate containing compounds that can mimic the structural interactions of phosphotyrosyl residues within SH2 domain pTyr-binding sites, and in so doing disrupt the interactions between SH2 domains of proteins, e.g., Grb2, and proteins with phosphorylated moieties. The disclosed invention provides viable candidates for these compounds and could provide for the development of therapeutic agents for the treatment of proliferative diseases or conditions as well as relevant diagnostic or testing procedures.

Dated: August 17, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–21889 Filed 8–23–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and meet special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: September 22, 1999.

Time: 9:00 AM to 4:00 PM.

Agenda: The Changing Face of Public Health—Implications For The National Cancer Program Now And In The Future.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399,

Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21885 Filed 8–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Evaluation of Chemopreventive Agents by In Vitro Techniques.

Date: September 13, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 6130 Executive Boulevard, EPN/F, Rockville, MD 20852, (Telephone Conference Call).

Contract Person: Wilna A. Woods, PHD, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21886 Filed 8–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: October 13–15, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Melissa Stick, PHD, MPH, Scientific Review Administrator, NIH/NIDCD/DEA/SRB, 6120 Executive Blvd (EPS/400), Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–21881 Filed 8–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 15–16, 1999.

Closed: September 16, 1999, 7:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.

Closed: September 16, 1999, 8:30 AM to 9:00 AM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Open: September 16, 1999, 9:00 AM to 3:30 PM.

Agenda: Program Developments and Priorities.

Place: Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: James F. Vaughan, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism; National Institutes of Health, PHS, DHHS; Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–21882 Filed 8–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 16–17, 1999.

Closed: September 16, 1999, 10:30 AM to recess.

Agenda: To revise and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: September 17, 1999, 8:00 AM to adjournment.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Executive Secretary, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21887 Filed 8–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council, Agenda Available: http://www.niehs.nih.gov/dert/c-agenda.htm.

Date: September 13–14, 1999.

Open: September 13, 1999, 8:30 AM to 5:00 PM.

Agenda: Discussion of program policies and issues.

Place: NIEHS-Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC.

Open: September 14, 1999, 9:00 AM to 9:35 AM.

Agenda: Continuation of program policy discussions.

Place: NIEHS-Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC.

Closed: September 14, 1999, 10:10 AM to 2:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIEHS-Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC.

Contact Person: Anne P. Sassaman, PHD, Director, Division of Extramural Research and Training, Executive Secretary, National Institute of Environmental Health Sciences, NIH/PHS, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21888 Filed 8–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for the Scientific Review Special Emphasis Panel.

Date: August 17, 1999.

Time: 4:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 18, 1999.

Time: 12:45 PM to 1:45 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435–1045, corsaroc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 20, 1999.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: Laurie L. Foudin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7818, Bethesda, MD 20892, (301) 435–1779.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 30, 1999.

Time: 10:00 AM to 11:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: J. Terrell Hoffeld, DDS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, th88q@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 30, 1999.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: J. Terrell Hoffeld, DDS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 3, 1999.

Time: 9:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: A. Hameed Khan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–1743.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 7, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita Corman Weinblatt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7778, Bethesda, MD 20892, (301) 435–1124.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21883 Filed 8–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee.

Date: September 22–23, 1999.

Time: 8:30 AM to 1:00 PM.

Agenda: Discussion of activities to evaluate organization and function of the Center for Scientific Review process.

Place: National Institutes of Health, Two Rockledge Center, Conference Room 9104, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Samuel Joseloff, PHD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6160, MSC 7892, Bethesda, MD 20892, (301) 435–1040, joselofs@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21884 Filed 8–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in September 1999.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: September 13–16, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: September 13–16, 1999, 8:30 a.m.–5 p.m.

Panel: Targeted Substance Abuse/HIV, SP 99–003(a).

Contact: Stan Kusnetz, Room 17–89, Parklawn Building, Telephone: 301–443–3042 and FAX: 301–443–3437.

Dated: August 17, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–21906 Filed 8–23–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–4445–N–20, FR–4447–N–03]

Notice of Proposed Information Collection: Comment Request; Application for Approval—FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer Branch Office Notification—Title I/Title II

AGENCY: Office of the Assistant Secretary for Housing, HUD; Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 25, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available information: FHA contact Ron Schwartz, Lender Approval and Recertification Division, telephone number (202) 708–3976 (this is not a toll-free number); Ginnie Mae contact Sonya Suarez, Office of Policy, Planning and Risk Management, telephone number (202) 708–2772 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Form HUD–11701/92001, Application for Approval-FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer; Form HUD–92001–B, Branch Office Notification-Title I/Title II.

OMB Control Number, if applicable: 2502–0005; 2503–0012.

Description of the need for the information and proposed use: This notice requests OMB information collection authorization to update forms and to replace expired forms. HUD's collection of information on Form HUD–11701/92001 is needed to determine if the lender should be approved to participate in the federally insured housing programs or in the Ginnie Mae mortgage-backed securities program. The current application forms for mortgagee approval have expiration dates that must be renewed so that this procedure can continue.

The application forms have been consolidated into two forms, Form HUD–11701/92001 and Form HUD–92001–B. Form HUD–92001–B is used for requests for branch office approval when it is not possible to accomplish this through electronic means. Form HUD–11701/92001 is used for all other requests for approval.

The burden associated with this approval process is the minimum required to achieve program objectives. The information collection frequency is the minimum consistent with program objectives. The frequency cannot change because it applies when a lender requests initial approval.

Agency Form Numbers, if applicable: Form HUD–11701/92001; Form HUD–92001–B.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Form HUD–11701/92001: The estimated number of respondents is 1830 (FHA 1780; Ginnie Mae 50), the total annual responses is about 1830 (FHA 1780; Ginnie Mae 50), and the total annual hours of response are estimated at 2288 (FHA–2225; Ginnie Mae 63).

Form HUD–92001–B: The estimated number of respondents is 2300, the total annual responses is about 2300, and the total annual hours of response are estimated at 575.

Status of the proposed information collection: Reinstatement.

Form HUD–11701/92001 consolidates and replaces Form HUD–11701/92001, Form HUD–92001–C, Form HUD–92001–D, Form 92001–E, Form 92001–L, Form HUD–92001–LD, Form HUD–92001–LE.

Form HUD–92001–B replaces Form HUD–92001–B and Form HUD–92001–LB. Information for certain lenders, which was formerly collected on Form HUD–92001–B, is now collected electronically.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 18, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

George S. Anderson,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 99–21879 Filed 8–23–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on a proposed collection of information. NPS specifically requests comments on: (1) The need for the information being collected, including whether the information has practical utility; (2) the validity and accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

NPS requests comments on a proposed research and collecting permit and reporting system that will consolidate and streamline an existing array of information collection instruments used by applicants to apply to parks for research and collecting permits for natural or social science activities that require permits. NPS will use the information you submit to

determine whether or not to make modifications to the proposed research and collecting permit and reporting system. Once NPS makes any modifications that it may decide to adopt, NPS plans to submit a proposed collection of information package to OMB with a request that OMB approve the package and assign an OMB clearance number to the two collection of information forms that are part of this system.

You may obtain copies of the proposed application form, permit form, reporting form, and related guidance and explanatory material from the NPS website at: *http://www.nature.nps.gov/ResearchPermit/*. You also may obtain copies of the documents and additional information from the source identified below.

DATES: Public comments on the proposed ICR will be accepted on or before October 25, 1999.

SEND COMMENTS TO: John G. Dennis, Natural Resources, National Park Service, 1849 C Street NW., Room 3223–MIB, Washington, DC 20240. Voice: 202–208–5193. Fax. 202–208–4620. Email: *researchcoll@nps.gov.*

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the postal address given here. You may also comment via the Internet to the email address given here. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: NPS Research and Collecting Permit and Reporting System" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the phone number given here. Finally, you may hand-deliver comments to the address given here. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: John G. Dennis, Natural Resources, National Park Service, 1849 C Street NW, Room 3223–MIB, Washington, DC 20240. Voice: 202–208–5193. Fax: 202–208–4620. Email: researchcoll@nps.gov.

TO REQUEST PRINTED COPIES OF THE DOCUMENTS CONTACT: Tim Goddard, National Park Service, 1201 Oak Ridge Dr., Suite 250, Fort Collins, CO 80525. Fax: 970–225–9965. Email: tim_goddard@nps.gov.

SUPPLEMENTARY INFORMATION:

Title: National Park Service Research and Collecting Permit System.

Departmental Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: New clearance.

Description of need: The proposed information collection responds to the statutory requirement that NPS preserve park resources and regulate the use of units of the National Park System. The information proposed to be collected identifies: (1) People who seek to conduct natural or social science research and collecting activities in individual units of the National Park System, (2) what activities they wish to conduct, (3) where they wish to conduct the activities, (4) what kinds of results they expect to obtain from the activities they propose to conduct, and (5) once permitted, the actual results of their permitted activities. NPS will use the collected information for managing the use and preservation of park resources and for reporting the status of permitted research and collecting activities.

Automated data collection: The proposed information collection and status reporting systems will be made available to applicants and the public through the NPS website. NPS proposes to use Internet automation to facilitate the permit application and progress reporting process.

Description of Respondents: Representatives of: academic and other research institutions, Federal, state, or local agencies, research businesses; other scientific parties seeking an NPS research and collecting permit; permittees who submit the annual report of accomplishment that is one of the permit conditions.

Estimated average number of respondents: 3,000 per year.

Estimated average burden hours per response: 1 hour.

Estimated annual reporting burden: 3,000 hours.

Leonard E. Stowe,

Information Collection Clearance Officer, National Park Service, WAPC.

[FR Doc. 99–21909 Filed 8–23–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Capulin Volcano National Monument, NM

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Capulin Volcano National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan (GMP) for Capulin Volcano National Monument. This statement will be approved by the Director, Intermountain Region.

Capulin Volcano National Monument (originally Capulin Mountain National Monument) was established by Presidential Proclamation No. 1340 of August 9, 1916, to protect "a striking example of recent extinct volcanoes * * * of great scientific and especially geologic interest." The general management plan is a comprehensive, long-range plan to define resource conditions and visitor experiences to be achieved in various management units throughout the monument, and to identify the kinds of management, use, and development appropriate to achieving and maintaining these conditions and experiences. The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities.

In cooperation with neighboring landowners; other federal, state, and local units of government; and interested organizations and individuals, attention will also be given to resources outside the boundaries that affect the integrity of Capulin Volcano National Monument. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following major issues:

- How can the monument's natural and cultural resources best be protected

and preserved, while providing for present and future visitor use?

• What kind of visitor experiences and levels of visitor use are most appropriate to the monument's purpose and the significance of its resources?

• What kind of facilities and what management actions are needed to achieve desired resource conditions and visitor experiences?

• How can the monument build positive relationships with nearby communities and landowners, and partnerships with related organizations?

Scoping newsletters have been prepared that detail the issues identified to date. For copies of these newsletters and further information, please contact Margaret Johnston, Superintendent, Capulin Volcano National Monument, P.O. Box 40, Capulin, New Mexico; Telephone: 505–278–2201 extension 210; e-mail: Maggie_Johnston@nps.gov.

Dated: August 13, 1999.

R. Everhart,

Director, Intermountain Region.

[FR Doc. 99–21908 Filed 8–23–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 14, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 8, 1999.

Carol D. Shull,

Keeper of the National Register.

Arizona

Pinal County

Rancho Linda Vista, 1955 W. Linda Vista Rd., Oracle, 99001099

California

San Diego County

Teacher Training School Building—San Diego State Normal School, 4345 Campus Ave., San Diego, 99001142

Georgia

Fulton County

Troy Peerless Laundry Building, 650 Glen Iris Dr., Atlanta, 99001100

Harris County

Sunnyside School—Midway Baptist Church and Midway Cemetery Historic District, 2495 Hopewell Church Rd. at Sunnyside Church Rd., Hamilton vicinity, 99001101

Indiana

Bartholomew County

New Hope Bridge, Cty. Rd. 400 N over Flat Rock River, Columbus, 99001104

Pugh Ford Bridge, Cty. Rd. 900 N over Flat Rock River, Taylorsville, 99001103

Clay County

Clay County Courthouse, Bounded by US 40, Harrison, Jackson, and Alabama Sts., Brazil, 99001109

Delaware County

Kirby Historic District, Roughly bounded by Jackson, Wolfe, Lincoln, and Main Sts., Muncie, 99001110

Meeks Avenue Historic District, 200–331 N. Meeks Ave., Muncie, 99001105

Gibson County

Lyles Consolidated School (Indiana's Public Common and High Schools MPS), Cty. Rd. 100 N, Lyles Station, 99001111

Grant County

Baldwin Addition Historic District, Roughly along Main St., Between 2nd and 4th Sts., Fairmount, 99001108

Lake County

First Unitarian Church of Hobart, 497 Main St., Hobart, 99001112

Whitaker, William, Landscape and House, 472 S. Main, Crown Point, 99001107

Morgan County

Long Schoolhouse (Indiana's Public Common and High Schools MPS), 0.5 NW of jct. of Jordan Rd. and Hinson Rd., Martinsville, 99001106

Porter County

Chesterton Commercial Historic District, 109–193 N. Calumet Rd. and 130–134 N. Calumet Rd., Chesterton, 99001102

Tippecanoe County

Morton School (Indiana's Public Common and High Schools MPS), 222 N. Chauncey Ave., West Lafayette, 99001113

Louisiana

Jefferson Parish

Buchler, Conrad A., House, 236 Sala Ave., Westwego, 99001114

Massachusetts

Bristol County

Al Mac's Diner—Restaurant (Diners of Massachusetts MPS), 135 President Ave., Fall River, 99001119

Assonet Historic District, Roughly bounded by MA 24, a private Ln., Conrail RR Tracks, and High St., Freetown, 99001116

Essex County

Agawan Diner (Diners of Massachusetts MPS), 166 Newburyport Turnpike, Rowley, 99001124

Capitol Diner (Diners of Massachusetts MPS), 431 Union St., Lynn, 99001121

Salem Diner (Diners of Massachusetts MPS), 70 ½ Loring Ave., Salem, 99001118

Hampshire County

Miss Florence Diner (Diners of Massachusetts MPS), 99 Main St., Northampton, 99001123

Middlesex County

Casey's Diner (Diners of Massachusetts MPS), 36 South Ave., Natick, 99001122

Rosebud, The (Diners of Massachusetts MPS), 381 Summer St., Somerville, 99001125

Town Diner (Diners of Massachusetts MPS), 627 Mount Auburn St., Watertown, 99001127

Wilson's Diner (Diners of Massachusetts MPS), 507 Main St., Waltham, 99001126

New York

Columbia County

Jordan, Dr. Abram, House, 137 NY 23, Claverack, 99001135

Kings County

Bay Ridge United Methodist Church, 7002 Fourth St., Brooklyn, 99001132

Bay Ridge United Methodist Church, 7002 Fourth St., Brooklyn, 99001133

Livingston County

Tram Site, Address Restricted, Livonia, 99001130

Nassau County

Springbank (Roslyn Harbor, New York MPS), 440 Bryant Ave., Roslyn Harbor, 99001128

New York County

International House, 500 Riverside Dr., New York, 99001129

Orange County

Tweddle Farmstead, 263 Beaver Dam Rd., Montgomery, 99001134

Otsego County

Glimmerglass Historic District, Otsego Lake and Environs, Cooperstown vicinity, 99001136

Oklahoma

Tulsa County

Owen Park Historic District, Roughly bounded by I–244, Zenith Ave., Edison Ave., and Frisco Ave., Tulsa, 99001137

Tennessee

Humphreys County

Enochs Mill, 3072 Little Blue Creek Rd., McEwen vicinity, 99001138

Texas

Dallas County

Lawerence, Stephen Decatur, Farmstead, 701 E. Kearney St., Mesquite, 99001139

El Paso County

Rio Grande Avenue Historic District, Roughly bounded by Rio Grande, Navada, Kansas, and Campbell Sts., El Paso, 99001140

Wyoming

Carbon County

Rawlins Residential Historic District, Roughly bounded by Eighth St., Walnut St., Wyoming St., and Pine St., Rawlins, 99001141

For PROCEDURAL error the following resource is being removed:

California

San Diego County

Teacher Training School Building—San Diego State Normal School, 4345 Campus Ave., San Diego, 98001193

[FR Doc. 99–21855 Filed 8–23–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

Emergency Notice of Cancellation of Commission Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 20, 1999 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Outstanding action jacket:
   (1) Document No. EC–99–012: Approval of final report in Inv. No. 332–403 (Assessment of the Economic Effects on the United States of China's Accession to the WTO).

On Friday, August 20, 1999, the Commission determined to cancel the Commission meeting which was scheduled to consider the above referenced document. Since the action jacket cleared the Commission, no further action is required. No earlier announcement of this cancellation was possible.

By order of the Commission.

Issued: August 20, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22033 Filed 8–20–99; 3:03 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Justice

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Emergency Review (Reinstatement, without change, of a previously approved collection for which approval has expired); Use of Force in the Arrest of Persons with Impaired Judgement.

The Department of Justice, National Institute of Justice, has submitted that following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by August 31, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulatory Affairs, Attention: Jeff Hill, (202) 395–3176, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Dr. Raymond Downs, (202) 307–0646, Office of Science and Technology, National Institute of Justice, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Reinstatement of collection for which OMB Clearance has expired.

(2) *Title of the Form/Collection:* Use of Force in the Arrest of Persons with Impaired Judgement.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. National Institute of Justice, United States Department of Justice.

(4) *Affected public who will be as or required to respond, as well as brief abstract:*

Primary: State, Local or Tribal Government. *Other:* Federal Government.

Abstract: This survey will conducted in collaboration with policy agencies in several large metropolitan areas of the United States. It will compare the force required to arrest persons with impaired judgement to the force required to arrest persons with intact judgement with regard to types of force used and their effectiveness and the safety to arrestee and arresting officer. Data collected will help determine if modifications are necessary in training of officers in the arrest of persons with impaired judgement or if new methods or technology, are tried to affect these arrests safely to all concerned.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 7,000 respondents at an average of 3 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 350 burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Justice Management Division, Information Management and Security Staff, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: August 19, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–21892 Filed 8–23–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1–5 of Executive Order 12196 of February 26, 1980, and published in the **Federal Register**, February 27, 1980 (45 FR 1279). FACOSH will meet on September 15, 1999 starting at 1:00 p.m., in Room N3437 A and B, of the

Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210. The meeting, which will adjourn at approximately 3:30 p.m., is open to the public.

Agenda items include:

1. Call to Order
2. Vision for FACOSH
3. Federal Worker 2000
4. NPS Agreement
5. VA Evaluation/Partnership
6. VPP
7. 54th Annual Federal Safety and Health Training Conference in Baltimore, Md.
8. Reports from Committees:
   (a) Standing Committees on Federal Occupational Safety and Health
   (b) Federal Accident Reporting System (FARS) Committee
   (c) Annual Federal Safety and Health Training Conference Subcommittee
   (d) Federal Safety and Health Council Awards Committee.
9. New Business
10. Adjournment

Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs, at the address provided below. All such submissions, received by September 10, 1999, will be provided to the members of the Council and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by close of business September 10, 1999. The presentation request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content. Persons who request the opportunity to address the Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson of the Advisory Council. Individuals with disabilities who wish to attend the meeting should contact John E. Plummer at the address indicated below, if special accommodations are needed.

For additional information, please contact John E. Plummer, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3112, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC this 18th day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–21916 Filed 8–23–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 13, 1999.
Time: 8:30 a.m. to 6:00 p.m.
Room: 415.
Program: This meeting will review applications for Regional Humanities Centers Panel I, submitted to the Office of Challenge Grants at the July 16, 1999 deadline.

2. *Date:* September 15, 1999.
Time: 8:30 a.m. to 6:00 p.m.
Room: 415.
Program: This meeting will review applications for Regional Humanities Centers Panel II, submitted to the Office of Challenge Grants at the July 16, 1999 deadline.

3. *Date:* September 17, 1999.
Time: 8:30 a.m. to 6:00 p.m.
Room: 415.
Program: This meeting will review applications for Regional Humanities Centers Panel III, submitted to the Office of Challenge Grants at the July 16, 1999 deadline.

4. *Date:* September 22, 1999.
Time: 8:30 a.m. to 6:00 p.m.
Room: 415.
Program: This meeting will review applications for Regional Humanities Centers Panel IV, submitted to the Office of Challenge Grants at the July 16, 1999 deadline.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 99–21768 Filed 8–23–99; 8:45 am]

BILLING CODE 7536–01–M

NATONAL INSTITUTE FOR LITERACY

Notice of Advisory Board Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: September 10, 1999 from 9 am to 11 pm.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Shelly Coles, Executive Assistant, National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006. Telephone (202) 233–2027, email scoles@NIFL.gov.

SUPPLEMENTARY INFORMATION: The Board is established under the Workforce Investment Act of 1998. Title II of P.L. 105–220, Sec. 242, the National Institute for Literacy. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the

implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships. The Board will meet in Washington, DC on September 10, 1999 from 9 am to 11 am. The meeting of the Board is open to the public. This meeting of the Institute's Advisory Board will focus on current and future Institute programs and activities. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006 from 8:30 am to 5 pm.

Dated: August 18, 1999.

Sharyn M. Abbott,

Acting Director, National Institute for Literacy.

[FR Doc. 99–21912 Filed 8–23–99; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Aviation Maintenance Repair Facilities: A Public Forum

A public forum on aviation maintenance repair facilities sponsored by the National Transportation Safety Board will be held August 30, 1999, at the Sheraton Chicago Hotel and Towers, 301 East North Water Street, Chicago, Illinois. For more information, contact the Office of Research and Engineering Division, telephone (202) 314–6510, fax (202) 314–6597 or Paul Schlamm, Office of Public Affairs, Washington, DC 20594, telephone (202) 314–6100.

Dated: August 18, 1999.

Rhonda N. Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–21869 Filed 8–23–99; 8:45 am]

BILLING CODE 7533–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Employee's Certification; OMB 3220–0140.

Section 2 of the Railroad Retirement Act (RRA), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if any of the employee's previous marriages create an impediment either to the current marriage between the employee and his or her spouse or to the marriage which previously existed between the employee and his or her former spouse.

The requirements relating to obtaining evidence for determining valid marital relationships are prescribed in 20 CFR 219.30 through 219.35.

Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G–346 to obtain the information needed for determining if any of the employee's previous marriages create an impediment to the current marriage. Form G–346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes minor and cosmetic editorial changes to Form G–346. The RRB estimates that 5,400 G–346's are completed annually at an estimated completion time of five minutes per response. Total respondent burden is estimated at 450 hours.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–21880 Filed 8–23–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23950; 812–11640]

Norwest Advantage Funds, et al.; Notice of Application

August 17, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit certain series of Wells Fargo Funds Trust ("WFFT") and Wells Fargo Core Trust ("WFCT") to acquire all of the assets and liabilities of certain series of Norwest Advantage Funds ("NAF") and Core Trust (Delaware) ("Core Trust"), respectively (the "Reorganizations"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: NAF, WFFT, Core Trust, WFCT (each, a "Trust"), Norwest Bank Minnesota, N.A. ("Norwest Bank"), Norwest Investment Management, Inc. ("NIM"), and Wells Fargo Bank, N.A. ("Wells Fargo Bank").

Filing Date: The application was filed on June 3, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 13, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants: c/o Kevin M. Broadwater, Esq., Seward & Kissel LLP, 1200 G Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NAF, a Delaware business trust, is registered under the Act as an open-end management investment company comprised of 39 series. Two of the series, NAF Small Company Growth Fund ("NAF Growth Fund") and NAF International Fund (each an "Acquired Fund"), are involved in the Reorganizations. NAF Growth Fund is a feeder fund in a master/feeder structure and invests all of its assets in the Small Company Growth Portfolio of Core Trust. NAF International Fund is a fund of funds that currently invests all of its assets in the International Portfolio of Core Trust (with the Small Company Growth Portfolio, the "Acquired Portfolios"). Core Trust, a Delaware business trust, is registered under the Act as an open-end management investment company.

2. WFFT, a Delaware business trust, is registered under the Act as an open-end management investment company comprised of 61 series. Two newly-created series, WFFT Small Company Growth Fund ("WFFT Growth Fund") and WFFT International Fund (each an "Acquiring Fund") (the Acquiring Funds together with the Acquired Funds, the "Funds"), are involved in the Reorganizations. WFCT, a Delaware business trust, is registered under the Act as an open-end management investment company comprised of 14 series. WFCT Small Company Growth Portfolio and WFCT International Portfolio (the "Acquiring Portfolios") are two newly-created series of WFCT (Acquiring Portfolios together with the Acquired Portfolios, the "Portfolios").[1]

3. NIM is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act") and is a wholly-owned subsidiary of Norwest Bank. Norwest Bank is a wholly-owned subsidiary of Wells Fargo. NIM curently serves as investment adviser to each series of NAF and Core Trust except the International Portfolio of Core Trust. Schroder Capital Management International Inc. ("Schroder"), an investment adviser registered under the Advisers Act, serves as investment adviser to the International Portfolio of Core Trust. Wells Fargo Bank is a national bank and is a wholly-owned subsidiary of Wells Fargo. Wells Fargo Bank is the investment adviser for each series of WFFT and WFCT, and is exempt from registration under the Advisers Act.

4. Norwest Bank, as trustee for defined benefit plans sponsored by Norwest Bank ("Norwest Pension Plans"), owns more than 5% of the outstanding voting securities of NAF Growth Fund and NAF International Fund and has an indirect beneficial ownership of more than 5% of Small Company Growth Portfolio and International Portfolio of Core Trust.

5. On March 25 and 26, 1999, the boards of trustees ("Boards") of NAF and WFFT, respectively, including a majority of their respective trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), approved a form of Agreement and Plan of Reorganization between NAF and WFFT (the "Agreement"). On April 12 and March 26, 1999, the Boards of Core Trust and WFCT, respectively, including a majority of their respective Independent Trustees, approved a form of Agreement and Plan of Reorganization between Core Trust and WFCT (together with the Agreement, the "Agreements"). Under the Agreements, the Acquiring Funds and Acquiring Portfolios will acquire the assets and assume the liabilities of the Acquired Funds and Acquired Portfolios in exchange for shares of the Acquiring Funds and Acquiring Portfolios having an aggregate net asset value equal to the aggregate net asset value of the Acquired Funds and Acquired Portfolios. Each Acquired Fund and Acquired Portfolio will simultaneously distribute pro rata the Acquiring Fund and Acquiring Portfolio shares received to its shareholders of record, determined as of the close of business on the closing date, which is currently anticipated to be on or about September 18, 1999 ("Closing Date"). The Acquired Funds and Acquired Portfolios will be liquidated following the distribution.

6. Applicants state that the investment objectives and policies of the Acquired Funds and Acquired Portfolios are substantially similar to those of the respective Acquiring Funds and Acquiring Portfolios. The Acquired Funds offer class I, class A, and class B shares, which, will one exception, are the same as the respective classes of the Acquiring Funds. Class I shares are offered without a front-end load, contingent deferred sales load ("CDSL"), or rule 12b–1 fee. Class A shares have a front-end load but no CDSL or rule 12b–1 fee, and class B shares have no front-end load, but have a CDSL and a rule 12b–1 fee.[2] For purposes of calculating the CDSL on class B shares, B shareholders of the Acquired Fund will be deemed to have held class B shares of the Acquiring Fund since the date the shareholders initially purchased the shares of the Acquired Fund. Shareholders of the Acquired Funds and Acquired Portfolios will not incur any sales charges in connection with the Reorganizations. Wells Fargo Bank will pay all of the expenses of the Reorganizations.

7. The Board of each Fund and Portfolio, including the Independent Trustees, has determined that the Reorganization is in the best interests of the shareholders of that Fund or Portfolio and that the interests of shareholders would not be diluted. In assessing the Reorganizations, the Boards considered, among other things, the following factors: (a) the terms and conditions of the Reorganizations; (b) the compatibility of the investment objectives of the Funds and the Portfolios; (c) the expense ratios of the Funds and the Portfolios; (d) the potential economics of scale and operating efficiencies that may result from being in a larger fund family; and (e) the tax-free nature of the Reorganizations.

8. The Reorganizations are subject to a number of conditions precedent, including the following: (a) approval of the Reorganizations by the shareholders of the Acquired Funds; (b) the receipt of an accountant's opinion to the effect that the Reorganizations will be tax-free;

[1] Acquired Funds and Acquired Portfolios and their corresponding Acquiring Funds and Acquiring Portfolios are: NAF Growth Fund and WFFT Growth Fund; NAF International Fund and WFFT International Fund; Small Company Growth Portfolio and WFCT Small Company Growth Portfolio; and International Portfolio and WFCT International Portfolio.

[2] NAF Growth Fund and WFFT Growth Fund only offer class I shares. Class B shares differ in that NAF International Fund class B shares have a 5% CDSL and a 1% rule 12b–1 fee and WFFT International Fund class B shares have a 5% CDSL and a .75% rule 12b–1 fee.

and (c) that applicants obtain any required exemption from the Commission under section 17(a) of the Act. Under the Agreements, a majority of the Boards may terminate the Agreements with respect to the Acquiring Fund or Acquiring Portfolio or Acquired Fund or Acquired Portfolio, as appropriate, at any time before the Reorganizations if (i) the party's conditions precedent are not satisfied or (ii) the Boards determine that the consummation of the applicable Reorganization is not in the best interests of shareholders. Applicants will not make any material changes to the Reorganizations without Commission approval.

9. On April 23, 1999, definitive proxies were filed with the Commission and proxies were mailed to shareholders of the Acquired Funds on June 2, 1999. At a special meeting of shareholders held on August 5, 1999 the shareholders of the Acquired Funds approved the Agreement.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganizations because the Funds and the Portfolios may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that Norwest Bank, NIM, and Wells Fargo are under common control and Norwest Bank may be deemed to have an indirect interest in the assets of the Norwest Plans. Applicants further state that because the Norwest Plans own more than 5% of each of the Acquired Funds and indirectly of the Acquired Portfolios, the Acquired Funds and Acquired Portfolios may be deemed affiliated persons of an affiliated person of the Acquiring Funds and Acquiring Portfolios.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b) of the Act. The Board of each Fund and Portfolio, including the Independent Trustees, has determined that the Reorganization is in the best interests of the shareholders of the Fund or the Portfolio and that the interests of shareholders would not be diluted. Applicants also state that the Reorganizations will be effected based on the relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21864 Filed 8–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41748; File No. SR–CBOE–99–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Making Certain Changes to its Fee Schedule

August 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 1999 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CBOE originally submitted the proposal on June 25, 1999. On August 12, 1999, the CBOE submitted a letter from Stephanie C. Mullins, Attorney, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, amending the filing ("Amendment No. 1"). In Amendment No. 1, the CBOE proposes (1) to make all fee changes listed in this filing retroactive as of July 1, 1999, except for the $.35 paper ticket fee for manual trades by market-makers, (2) to withdraw the $.35 paper ticket fee, (3) to delete the discussions of the paper ticket fee in the filing, and (4) to amend the text of CBOE Rule 2.22(b) to reflect the fee change for registered representatives and registered options principals. On August 16, 1999, the CBOE subsequently amended Amendment No. 1 with a phone call from Stephanie C. Mullins, Attorney, CBOE, to Joseph Corcoran, Attorney, Division, Commission. In the phone call, the CBOE proposes to reinstate the $.35 paper ticket fee for manual trades by market-makers and make it effective as of January 24, 2000, and to amend the discussions of the paper ticket fee to reflect this change. Because of the substantive nature of the Amendments, the Commission deems the filing date to be August 16, 1999, the date of the final amendment.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to make certain fee changes and additions; to reinstate and amend the Exchange's Prospective Fee Reduction Program; and to renew and amend its Customer "Large" Trade Discount Program. The foregoing fee changes are being implemented by the Exchange pursuant to DBOE Rule 2.22 and, unless otherwise noted, will take effect on July 1, 1999.

The Exchange is amending the following fees. (1) The monthly fee to rent an SPX phone position will be increased from $300 to $500. (2) The monthly ABIL Brokerage Billing fee will be changed from .0075% of billed brokerage to $.005 per contract. The minimum monthly fee will be increased from $25 to $50 and the maximum monthly fee will be increased from $100 to $200. (3) The monthly fee for ORS Analysis will be increased from $50 to $100. (4) The monthly fee for the Floor Efficiency Project ("FEP") will be increased from $50 to $100. (5) The subscriber fee for the Exchange Bulletin will be increased from $100 per year to $200 per year for each hard copy and from $50 per year to $100 per year for each electronic copy. Each member receives one free copy. This fee is charged to members for each additional copy and to non-member subscribers. (6) The Registered Representative fee will be increased from $25 to $35 for initial applications; and will be increased from $20 to $30 for annual and transfer applications.

The ABIL Brokerage fee is being changed from a percentage of billed brokerage to a fixed rate. This service fee has been a function of the dollars billed. The ABIL client base is facing increasing competitive pressures to lower their charges. As they do so, they bill less brokerage, and the ABIL service fee shrinks accordingly even though the new discounts require more programming support rather than less. The proposed new service fee for ABIL processing converts this variable cost to a fixed rate, whether the agent bills or not. The increase in the floor and cap levels reflect increased paper and processing expenses. Additionally, the ORS Analysis and FEP Report costs are being increased to cover costs of printing paper copies, and to standardize fees for all monthly reports at $100.

In addition, the CBOE proposes to implement the following new fees. (1) The fee to replace an I.D. Badge will be $15; the fee to replace an Acronym badge will be $15; and the fee for a temporary access badge for members will be $10 (this fee will only apply for the fourth temporary access badge issued in a calendar year; the first three badges are free of charge). The cost for clerks and floor managers currently is $10 for the fourth temporary access badge issued in a calendar year. (2) The following fee will be effective as of January 24, 2000. The Exchange proposes to assess a paper ticket fee of $.35 on all market-maker transactions for a market-maker whose manual trades exceed 15% of the total amount of trades done by the market-maker in any given month. The purpose of this new fee is to encourage market-makers to utilized hand-held terminals for entering orders as opposed to paper tickets, while not penalizing members when occasional system outages occur. (3) The Exchange proposes to institute a program whereby members who fail to change their appointments on a timely basis or meet their in-person trading requirements would be assessed a fee of $250 for any quarter. A letter of warning will be issued first followed by a $250 fee for those that fail to comply. The Exchange believes this will affect fewer than 15 people per calendar quarter.

The Exchange proposes to reinstate and amend its Prospective Fee Reduction Program, subject to the Exchange having a minimum of $10 million in working capital. The program was suspended on March 1, 1999, and the Exchange now proposes to reinstate and renew the program with amendments. The program provides that if at the end of any quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-date basis exceeds one of certain predetermined volume thresholds, the Exchange's marker-maker transaction fees will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. Trading Volume in the fourth quarter of fiscal year 1999 will be used to determine the discount applied in the first quarter of fiscal year 2000. The CBOE proposes that the Program begin on July 1, 1999 at the beginning of the Exchange's 2000 fiscal year, and continue through the end of the Exchange's 2000 fiscal year, terminating June 30, 2000.

Specifically, the CBOE proposes the following: the threshold volume at which a $.01 fee reduction applies will be 850,000 contracts; the threshold volume at which the $.02 fee reduction applies will be 900,000 contracts; the threshold volume at which a $.03 fee reduction applies will be 950,000 contracts; and the threshold volume at which a $.04 fee reduction applies will be 1,000,000 contracts and above.

The Exchange's Index Customer "Larger" Trade Discount Program currently provides for discounts on the transaction fees that CBOE members pay with respect to non-equity public customer orders for 500 or more contracts. Specifically, for any month the Exchange's average contract volume per day exceeds one of certain predetermined volume thresholds, the transaction fees that are assessed by the Exchange in that month with respect to non-equity public customer orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The Program is scheduled to terminate on June 30, 1999 at the end of the Exchange's 1999 fiscal year. The CBOE proposes to amend the Program to provide that the Program will continue during the Exchange's 2000 fiscal year and will terminate on June 30, 2000. In addition to renewing the current fee discount percentages under the Program, CBOE proposes to amend the Program to increase by 100,000 contracts all the threshold levels to which the discount rates apply. For example, the threshold level is being increased from 650,000 to 750,000 contracts at which the 30% discount rate applies.

The proposed amendments are the product of the Exchange's annual budget review. The amendments are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Exchange's Fee Reduction Program and the Exchange's Index Customer "Large" Trade Discount Program will terminate at the end of the Exchange's 2000 fiscal year, the Exchange intends to evaluate these Programs prior to the beginning of the 2001 fiscal year and may renew these Programs in the same or modified form for the 2001 fiscal year.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the proposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[8] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–34 and should be submitted by September 14, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[FR Doc. 99–21865 Filed 8–23–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b-4(f)(2).

[8] In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41746; File No. SR–CBOE–99–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

August 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 3, 1999, the CBOE filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage.*[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the purposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[5]
General Dynamics Corporation (GD)	$0.07	$0.00

[5] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

The fee will be effective as of August 2, 1999.[6] This fee will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)[7] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, notes that General Dynamics options became multiply-listed on August 2, 1999, and proposes that the surcharge take effect on that date. *See* letter from Stephanie Mullins, Attorney, CBOE, to Michael Walinskas, Associate Director, Division of Market Regulation, Commission, dated August 2, 1999 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

[6] *See* Amendment No. 1.

[7] 15 U.S.C. 78f(b)(4).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)[8] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change,[10] the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–41 and should be submitted by September 14, 1999.

[8] 15 U.S.C. 78s(b)(3)(A)(ii)

[9] 17 CFR 240.19b–4(f)(2).

[10] The proposed rule change is deemed filed as of the date Amendment No. 1 was received by the Commission.

[11] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21866 Filed 8–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41747; File No. SR–CBOE–99–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Changes to Option Trading Permit Auction Procedures

August 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on August 2, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend the procedure through which it auctions Options Trading permits ("Permits") from the Permit lease pool. The text of the proposed rule change is available at CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 3.27(a)(3) provides for the creation of a Permit lease pool to be administered by the Exchange. The procedures for the administration of this lease pool were previously filed with and approved by the Commission.[4] Under these procedures, the Exchange conducts and auction every six months during which members and non-members who have qualified for membership may submit bids equal to the monthly rent that the bidder is willing to pay for a month-to-month Permit lease. Upon the close of the bidding period, Permits in the lease pool are awarded to the highest bidders in a number equal to the total number of Permits in the lease pool at that time. Under the existing procedures, the monthly rent to be paid by a lessee is the dollar value of the bid submitted by that lessee. Following each auction, the Exchange continues to accept bids for Permit leases. Should any Permit lessee desire to give up that lessee's Permit prior to the next auction, the Permit is transferred to the highest bidder at a monthly lease price equal to the new lessee's bid for the remainder of the six month auction cycle.

The Exchange proposes to amend the method of the auction to establish a procedure known as a Dutch auction. Under the Dutch auction, bidders will submit bids equal to the monthly rent which they are willing to pay for a six-month lease, and, upon the close of the bidding period, Permits in the lease pool will continue to be awarded to the highest bidders in a number equal to the total number of Permits in the lease pool at that time. under the Dutch auction procedure, however, each successful

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 expands the discussion on the proposed rule change and clarifies the proposed text of the rule change. *See* letter from Christopher R. Hill, Attorney, CBOE, to Heather Traeger, Attorney, Division of Market Regulation, SEC, dated August 2, 1999.

[4] The procedures for the administration of the Permit lease pool were filed with the Commission in SR–CBOE–97–14. SR–CBOE–97–14 provided for the issuance of Permits in connection with the transfer of the options business of the New York Stock Exchange, Inc. to CBOE and defined the rights and obligations associated with Permits. SR–CBOE–97–14 was approved by the Commission in Securities Exchange Act Release No. 38541 (April 23, 1997), 62 FR 23516 (April 30, 1997).

The CBOE later amended the procedures for administering the Permit lease pool in SR–CBOE–97–47, which amended the manner in which the CBOE accesses the fee that it charges when a person submits a bid to receive a Permit. *See* Securities Exchange Act Release No. 39179 (October 1, 1997), 62 FR 52602 (October 8, 1997).

bidder will pay only the price of the lowest successful bid. Following each Dutch auction, the Exchange will continue to accept bids, with a minimum bid established at the price set in the most recent Dutch auction.

The revised Permit Lease Pool Procedures also contain several other amendments, most of which merely set forth existing exchange practices in greater detail for the benefit of members and the public. The following amendments represent changes to existing practices:

- The proposed rule change establishes a minimum qualifying bid level for all bidding which occurs between Dutch auctions. The minimum qualifying bid is set at the lease rate established in the most recent Dutch auction. This change is designed to equalize Permit lease rates and enhance administrative efficiency by encouraging lessees to use the Dutch auction process, rather than attempt to obtain a lower priced lease by bidding between the Dutch auctions.
- The proposed rule change permits a lessee to terminate the lessee's Permit during the ease period, by written notice to the Membership Department, but provides that the termination notice shall be irrevocable.[5] The Membership Department will post notice of the availability of the Permit for at least two business days on the Exchange bulletin board. The Permit will be transferred to the highest bidder whose bid is received by 3:30 p.m. on the first Wednesday after notice of the permit's availability has been posted for at least two business days.
- The proposed rule change also allows Permits to be transferred among nominees of an organization with appropriate notice to the Exchange, as is the case with CBOE memberships.
- The proposed rule change provides that an individual can lease only one Permit from the lease pool at a time. Therefore, an individual who is already a Permit lessee may not submit a Permit bid during the six month lease period (except to bid in the next Dutch auction) unless and until the lessee first terminates the lessee's current lease.[6]
- Finally, the proposed rule change establishes a six month Permit lease instead of the current month-to-month lease, for easier and more efficient administration of the lease process.

2. Statutory Basis

The Exchange believes that the proposed Dutch auction procedure for the Permit lease pool described herein will more effectively equalize the amounts paid for Permits by each successful bidder. As such, the proposed rule changes are consistent with Section 6(b) of the Act,[7] in general, and further the objectives of Section 6(b)(4)[8] in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees, and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–99–24 and should be submitted by September 14, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21867 Filed 8–23–99; 8:45 am]

BILLING CODE 8010–01–M

[5] The Exchange represents that this proposed rule change codifies the Exchange's current procedure. *See* Amendment No. 1.

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension for a currently approved information collection.

DATES: Comments on this notice must be received by October 25, 1999.

ADDRESSES: Comments should be sent to the Executive Secretariat, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Mrs. Roberta Fede, Committee Management Officer, Executive Secretariat, Office of the Secretary, Department of Transportation, at the address listed above. Telephone: (202) 366–9764.

SUPPLEMENTARY INFORMATION:

Title: Advisory Committee Candidate Biographical Information Request, DOT F1120.1.

OMB Control Number: 2105–0009.

Expiration Date: August 31, 1999.

Type of Request: Extension for a currently approved information collection.

Abstract: The collection of information obtained by the Advisory Committee Candidate Biographical Information Request form enables Department officials to review the qualifications of individuals who wish to serve on Department-sponsored

advisory committees and the qualifications of persons who have been recommended to serve. The collection provides uniform data for each individual and enables DOT to comply with the Federal Advisory Committee Act (Pub. L. 92–463) (5 U.S.C. App.) which requires that advisory committee membership be balanced.

A number of DOT'S advisory committees were created by statute and have statutory requirements for education, experience, or expertise. The data collection enables DOT to comply with such membership requirements, by providing information from which officials may determine which individuals meet specific qualification standards for particular advisory committees and for particular positions within a committee. In fact, some statutory committees require very narrow and specific expertise for each position on the committee, which can be ascertained by reviewing the Advisory Committee Candidate Biographical Information Request form.

Finally, the data collection allows officials to retain a file of interested applicants. As vacancies occur on specific advisory committees, the applications and qualifications can be reviewed for possible placement.

In the absence of the data collection, officials would have to contact by telephone or by letter each person who expressed an interest or who was recommended for an advisory committee position to determine his/her interest, education, experience, or expertise. This would be a more time-consuming and costly data collection effort which would have to be repeated if the individual were to be considered at a later time for vacancies on other advisory committees.

Respondents: Individuals who have contacted DOT to indicate an interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

Estimated Number of Respondents per year: 100.

Average Annual Burden per Respondent: 15 minutes.

Estimated Total Burden on Respondents Per Year: 25 hours.

This information collection is available for inspection at the Office of the Executive Secretariat, Room 10205, Office of the Secretary, DOT, at the above address.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, (b) the accuracy of the Department's estimate of the burden of the proposed information collection; and (c) ways to minimize the burden and enhance the quality of the collection.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on August 18, 1999.

Jamie Shell Williams,

Director, Executive Secretariat.

[FR Doc. 99–21920 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999 64 FR 29404–29405.

DATES: Comments must be submitted on or before September 23, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airplane Operator Security, 14 CFR Part 108

Type of Request: Extension of a currently approved collection

OMB Control Number: 2120–0098

Form(s): FAA Form 1650–17

Affected Public: Air Carriers

Abstract: 14 CFR Part 108 requires new air carriers to adopt and carry out a security program and develop necessary implementing documentation. 14 CFR Part 108 also requires air carriers with approved security programs to check radiation leakage on x-ray equipment at least annually and maintain security training records.

Estimated Annual Burden Hours: 7,966 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 18, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–21928 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Henry, Lucas, Wood, and Fulton Counties, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Henry, Lucas, Wood, and Fulton Counties, Ohio.

FOR FURTHER INFORMATION, CONTACT: Dan Dobson, Field Operations Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6853.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to improve transportation in the U.S. 24 corridor, from Napoleon to Toledo, in Henry, Lucas, Wood, and Fulton Counties, Ohio. The existing U.S. 24 facility is 25.3 miles in length within the study area. The study area extends generally from the eastern limits of the city of Napoleon in Henry County eastward through Lucas County to I–475

in the Toledo metropolitan area, and includes the extreme southeastern corner of Fulton County, and that portion of Wood County bounded generally by State Route 582 on the south, I–75 on the east, and I–475 on the north. At the western terminus near Napoleon, U.S. 24 is a four-lane, limited-access, divided highway for the first 0.5 miles, where it tapers to a two-lane section, just east of the TR 10 intersection. The two-lane section continues for the next 22.2 miles, until it crosses Dutch Road, just east of Waterville. There, it widens again to a four-lane, limited-access, divided highway for the last 2.6 miles.

This project is part of the "Fort to Port" corridor, identified in the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) as one of 21 High Priority Corridors on the National Highway System. Further, in its statewide long-range transportation plan, the State of Ohio identified the U.S. 24 corridor, from the Indiana state line to Toledo, as a "macro-corridor," defined as "those corridors of statewide significance upon which rests the economic vitality of Ohio." At the eastern terminus, the city of Toledo is an internationally significant intermodal hub. Efficient connections to the Port of Toledo, the Toledo Express Airport, and the I–75/I–80/I–90 highway system are critical to the economic future of northwestern Ohio and northeastern Indiana.

A feasibility study was previously conducted within the Fort to Port corridor to evaluate the deficiencies of the existing route, create a program and schedule for the plan development process, develop a capital cost estimate for improvement, and summarize the impact of the proposed improvements on the regional economy. The study divided the 81-mile Fort to Port corridor into three planning sections for study. Each planning section is independent of the other two. Based principally on existing and projected traffic volumes, resulting capacity problems, accident rates, and increased truck traffic, the section of U.S. 24 that is the subject of this EIS, from Napoleon to Toledo, was made the first priority for development.

Alternatives will be developed that will address capacity, level of service, and safety deficiencies. It is expected that alternative solutions may consist of different alignments that diverge significantly from the existing corridor in some sections. The alternatives may also include improving and widening the existing roadway.

FHWA, ODOT, and other local agencies invite participation in defining the alternatives to be evaluated in the EIS, and any significant social, economic, or environmental issues related to the alternatives. Information describing the purpose of the project, the proposed alternatives, the areas to be evaluated, the citizen involvement program, and the preliminary project schedule are available on the project's web site (http://www.usrt24.com).

Coordination with concerned federal, state, and local agencies will be conducted at four established concurrence points in ODOT's preliminary development process. The first public meetings will be held June 2 and 3, 1999.

Coordination will be continued throughout the study with federal, state, and local agencies, and with private organizations and citizens who express or are known to have interest in this proposal. The draft EIS will be available for public and agency review and comment prior to the official public hearing. To ensure that the full range of issues relating to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be sent to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 18, 1999.

Mr. Dan Dobson,

Field Operations Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 99–21955 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Announcement of Project Selection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the selection of projects under the Over-the-road Bus (OTRB) Accessibility Program, authorized by Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility final rule, published in a **Federal Register** Notice on September 24, 1998. In the first year of implementation, $2 million was available for providers of intercity fixed-route services.

SUPPLEMENTARY INFORMATION:

Projects Selected for Fiscal Year 1999 Funding

A total of $2.8 million was requested by 20 applicants around the nation. Project selections were made on a competitive basis, with 11 projects selected for funding as follows:

Peter Pan Bus Lines, Springfield, MA	$101,000
Adirondack Transit Lines, Kingston, NY	150,000
Shortline (Hudson Transit Bus), Mahwa, NJ	150,000
Capitol Bus (Capitol Trailways of PA), Harrisburg, PA	102,293
Carl Bieber Tourways, Kutztown, PA	130,000
Frank Martz Coach, Wilkes Barre, PA	54,545
Jefferson Lines, Minneapolis, MN	107,280
Peoria Charter Coach, Peoria, IL	17,250
Greyhound, Dallas, TX	1,056,707
Burlington Trailways, West Burlington, IA	91,000
Northwestern Stage Lines, Spokane, WA	29,925
Total	1,990,000

The nine projects that were not selected for funding in this first year of implementation will be eligible to apply for funding next year. In addition to the $2 million that will be available for intercity fixed-route providers in FY 2000, an additional $1.7 million will be available for providers of other over-the-road bus services, such as commuter, charter and tour.

Eligible project costs may be incurred by awardees prior to final grant approval. The incremental capital cost for adding wheelchair lift equipment to any new vehicles delivered on or after June 9, 1998, the effective date of the Transportation Equity Act for the 21st Century, is eligible for funding under the over-the-road bus accessibility program.

Applicants selected for funding may be contacted by FTA regional offices if any additional information is needed before grants are made. The grant applications will be sent to the U.S. Department of Labor (DOL) for certification under the labor protection

requirements of the Federal Transit Act, Section 5333(b). After referring applications to affected employees represented by a labor organization, DOL will issue a certification to FTA. The terms and conditions of the certification will be incorporated in the FTA grant agreement under the new guidelines replacing these in 29 CFR Part 215. Please see Amendment to Section 5333(b), Guidelines To Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA–21); Final Rule (64 FR 40990, July 28, 1999).

Issued on August 19, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–21922 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–6093; Notice 1]

Italjet S.p.A.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

Italjet S.p.A., an Italian corporation, through Italjet USA ("Italjet") of New York City, NY, has applied for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays.* The basis of the request is that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. Sec. 30113(b)(3)(B)(iv).

We are publishing this notice of receipt of an application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

Italjet has applied on behalf of its Torpedo 125, Formula 125, Millenium 125, and Millenium 150 motor scooters ("scooters"). The scooters are defined as "motorcycles" for purposes of compliance with the Federal motor vehicle safety standards. According to Italjet, its scooters have a peak motor output of 26 hp and a top speed of 60 miles per hour.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, though the left handlebar is permissible for motor driven cycles (Item 11, Table 1). Italjet would like to use the left handlebar as the control for the rear brakes of the scooters, whose peak motor output of 26 hp produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. The gear ratio of the vehicle is fixed, and "there is no need for the rider to shift gears, as on a standard motorcycle." Because of this, the scooters are "equipped with neither a clutch nor a clutch lever, and the left hand of the rider is free to operate a brake lever." Italjet states that it prefers this design, given its focus on European and Asian markets "where rear brake controls for scooters of all horsepower ratings are typically mounted on the left handlebar."

Italjet argues that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. It believes that "the prevalence of the left hand operated design in Europe and Asia is one strong indicator that a vehicle designed in this way can be operated safely." It believes that "vehicle safety might be somewhat enhanced with the left hand brake lever, as the hand (bare or gloved) is generally more capable of sensitive modulation of the braking force than the foot."

Italjet intends to field test a small number of the scooters in the American market in Fall 1999 to assess the design, and without an exemption it would be unable to do so. It wishes to consider whether the United States' scooter market offers sufficient sales potential to justify the creation of a design specifically for the United States that incorporates the right foot brake pedal. Alternatively, it may petition for rulemaking to amend Standard No. 123 to allow the hand-operated brake control on motorcycles with more than 5 hp.

Italjet anticipates sales of not more than 2500 scooters a year while an exemption is in effect. It believes that an exemption would be in the public interest and consistent with the objectives of traffic safety "because it would maintain an acceptable level of safety while accelerating the advancement of an important new class of vehicles for use by consumers and businesses."

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. The Docket Room is open from 10:00 a.m. until 5:00 p.m. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 23, 1999.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on August 13, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–21930 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6092; Notice 1]

Lotus Cars Ltd.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 201

Lotus Cars Ltd. ("Lotus") of Norwich, England, through Lotus Cars USA, Inc., has applied for a temporary exemption from S7, Performance Criterion, of Federal Motor Vehicle Safety Standard No. 201 *Occupant Protection in Interior Impact,* as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

The material below is taken from Lotus's application

Why Lotus Needs a Temporary Exemption

In August 1995, when S7, the new head injury criteria portion of Standard No. 201, was promulgated, Lotus was owned by the Italian owners of Bugatti, a company then in bankruptcy. That year, Lotus was able to produce only 835 cars, selling 152, or 18.2%, in the United States.

This country was the primary market for the Lotus Esprit, which, by then, was an aging design. With the limited resources that it had and the uncertainties of the future, in 1996 Lotus made the decision to invest primarily in an all-new model, the Elise, and to modernize the Esprit, rather than to replace it with an all-new design. Developed on a small budget, the Elise was not designed or intended for the American market. The Esprit was fitted with a new V8 engine meeting current U.S. emissions standards.

At the end of 1996, Lotus was sold to its current owners, a group of Malaysian investors, who reviewed the company's fortunes. The Elise was becoming successful in its markets, while losses in the United States in the previous two years approached $2,000,000, primarily due to the declining appeal of the Esprit. The company's overall sales in 1996 had declined to 751, including sales of 67 Esprits in the U.S. (8.9% of total sales). Nevertheless, the new owners decided to continue in the U.S. market. Sales were marginally better in the U.S. in 1997, 72 Esprits, and vastly improved elsewhere with the great success of the Elise. Lotus sold 2414 cars in 1997 (with the U.S. sales representing only 3% of total sales, approximately the same as in 1998). However, it lost almost 2,000,000 Pounds in its 1996/7 fiscal year.

In early 1997, Lotus decided to terminate production of the Esprit on September 1,1999, and to homologate the Elise for the American market beginning in 2000. This decision allowed it to choose the option for compliance with S7 provided by S6.1.3, Phase-in Schedule #3, of Standard No. 201, to forego compliance with new protective criteria for the period September 1, 1998–September 1, 1999, and to conform 100% of its production thereafter.

But, in addition to the new owners of Lotus, the new year saw the appointment of new CEOs of Lotus and Lotus Cars USA, with the result that a fresh look was taken at the direction of the company, and the plans of early 1997 were abandoned. In due course, new management decided to continue the Esprit in production beyond September 1, 1999, until September 1, 2002, while developing an all-new Esprit, and to remain in the American market without interruption. However, as described below, the company found itself unable to conform the current Esprit to Standard No. 201. In the meantime, the company had turned the corner with the success of the Elise, and had a net profit for its fiscal year 1997/8 of slightly more than 1,000,000 Pounds.

Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 201

When Lotus decided to continue production of the Esprit, it re-engineered the car's front header rail and installed energy-absorbing material. After these modifications, the Esprit's HIC value was reduced from an already-complying 840 to 300.

However, the side rail was not so simple. The small Esprit cockpit precluded any padding from being added at that location, without compromising ingress/egress and visibility. In order to comply with Standard No. 201, the Esprit "greenhouse" would have to be substantially modified. Modification costs could not be recovered for the relatively few cars that would be involved in the 1999–2002 period without raising the retail price to an unacceptable level. Further, Lotus was encountering major problems sourcing design-specific energy absorbing materials without being compelled to buy a 10-year supply; it was therefore forced to consider materials being produced for high-volume users, with attendant problems.

As redevelopment plans progressed in 1998, Lotus determined that a redesign of the "greenhouse" for the 1999–2002 period would cost in excess of $950,000, and require retesting to confirm continued compliance of its airbag system with Standard No. 208. But the company did not have the personnel to deploy to both the redesigned and new Esprit projects, and it has chosen to devote its human resources to the all-new Esprit.

The Elise continues to contribute to the company's newly found financial solidarity, and its cumulative net income for the past three fiscal years is 2,466,000 Pounds, or, $4,068,900 (at an exchange rate of 1.65 to 1). Although a denial of the petition would substantially reduce Lotus's net income but not result in a net loss, the decrease would come primarily at the expense of Lotus Cars USA which Lotus believes could not remain in existence without cars to sell during the period required to develop the new Esprit. Lotus estimates that it would sell 200 Esprits in the U.S. during the period of a 3-year exemption.

Why an Exemption Would be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

After 10 years of sales of the Esprit with its current body shape, Lotus knows of no head injuries suffered by occupants contacting the upper interior of the cockpit. The number of vehicles anticipated to be sold during the exemption period is insignificant in terms of the number of vehicles already on the roads. The Esprit will be in full compliance by the same date that the phase-in ends for all manufacturers and when there will be 100% compliance across the board, September 1, 2002.

If Lotus USA is required to close because of a denial, its 10 employees will be out of work. In addition, a denial is bound to affect Lotus dealers in unknown ways. An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

How You May Comment on Lotus's Application

We invite you to submit comments on the application described above. Your comments should refer to the docket number and the notice number, and be submitted to: Central Docket Management Facility, room Pl–401, 400 Seventh Street, SW, Washington, DC 20590. We ask, but do not require, that you submit your comments in duplicate. We shall consider all comments received before the close of business on the comment closing date indicated below. You may examine comments in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. You may also view them on the internet at web site dms.dot.gov. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below. Comment closing date: September 23, 1999.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: August 13, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–21929 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 576X)]

CSX Transportation, Inc.—Abandonment Exemption—in Guernsey County, OH

On August 4, 1999, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 7.79-mile portion of its Louisville Service Lane, Central Ohio Subdivision, between milepost BP–49.49 near Cambridge and milepost BP–41.70 at the end of the track at Gibson, in Guernsey County, OH. The line traverses U.S. Postal Service Zip Codes 43725, 43750, 43755 and 43778, and includes the station of Gibson.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 12, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 13, 1999. Each trail use request must be accompanied by $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 576X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001, and (2) Charles M. Rosenberger, 500 Water Street-J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before September 13, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 18, 1999.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–21917 Filed 8–23–99; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register
Vol. 64, No. 163
Tuesday, August 24, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41634; File No. SR-NYSE-97-31]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Voluntary Delistings by Listed Companies

Correction

In notice document 99–19102, beginning on page 40633, in the issue of Tuesday, July 27, 1999, make the following correction:

On page 40638, in the first column, the fifth line from the bottom "Coommission." should read "Commission".

[FR Doc. C9–19102 Filed 8–23–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–4]

RIN 2120–AA66

Modification of the Orlando Class B Airspace Area, Orlando, FL; and Modification of the Orlando Sanford Airport Class D Airspace Area, Sanford, FL

Correction

In rule document 99–20022 beginning on page 42585 in the issue of Thursday, August 5, 1999, make the following correction:

§ 71.1 [Corrected]

1. On page 42589, in the second column, in § 71.1, in the first full paragraph, in the second line from the bottom, "81°27′03″W" should read "81°27′30″W".

[FR Doc. C9–20022A Filed 8–23–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
August 24, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29
Harmonization of Critical Parts Rotorcraft Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 29311; Amdt. Nos. 27–38 and 29–45]

RIN 2120–AG60

Harmonization of Critical Parts Rotorcraft Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airworthiness standards for both normal and transport category rotorcraft. This amendment defines critical parts. This document also requires a critical parts list with procedures to control the design, substantiation, manufacture, maintenance, and modification of critical parts. The benefits of the rule will be the formalization of the current critical parts procedures and the harmonization of the Joint Aviation Authorities and the U.S. requirements.

EFFECTIVE DATE: October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Rotorcraft Directorate, Aircraft Certification Service, Regulations Group, FAA, Fort Worth, Texas 76193–0111, telephone number (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http:www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on a mailing list for future Notices of Proposed Rulemaking (NPRM's) and final rules should request from the above office a copy of Advisory Circular No. 11–2A, NPRM Distribution System, which describes the application procedure.

Small Entity Inquiries

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA under "Rulemaking (ARM)" in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following internet address: 9–AWA–SBREFA@faa.gov

Background

By notice in the **Federal Register** (60 FR 4219, January 20, 1995), the ARAC announced the establishment of the Critical Parts Working Group. The FAA tasked ARAC to recommend new or revised requirements for a critical parts list to control the design, substantiation, manufacture, maintenance, and modification of critical parts. ARAC tasked the Critical Parts Working Group. The working group included representatives from the major rotorcraft manufacturers (normal and transport) and representatives from Aerospace Industries Association of America, Inc., Association Europeene des Constructeurs de Material Aerospatial, Transport Canada Aviation, Joint Aviation Authorities (JAA), the FAA Rotorcraft Directorate, and other interested parties. This broad participation is consistent with FAA policy to involve all known interested parties early in the rulemaking process.

The working group presented its findings to the ARAC. The ARAC recommended that the FAA add a critical parts section to the airworthiness standards, 14 CFR parts 27 and 29 (parts 27 and 29). The FAA evaluated the recommendations and made proposals in NPRM No. 98–10 published in the **Federal Register** on August 24, 1998 (63 FR 45129). These airworthiness standards are harmonized and will be adopted by the JAA.

The objective of identifying critical parts is to ensure that critical parts are controlled during design, substantiation, manufacture, and throughout their service life so that the risk of failure in service is minimized by ensuring that the critical parts maintain the critical characteristics on while certification is based. Manufacturers currently have various methods to control critical parts.

In §§ 27.602(a) and 29.602(a), a critical part is defined as a part, the failure of which could have a catastrophic effect upon the rotorcraft, and for which critical characteristics have been identified which must be controlled to ensure the required level of integrity. The word "could" in the definition was intended to mean that this failure assessment must consider the effect of flight regime (i.e., forward flight, hover, etc.). The operational environment need not be considered. The term "catastrophic" was intended to mean the inability to conduct an autorotation to a safe landing, without exceptional piloting skills, assuming a suitable landing surface.

The FAA requested comments on these proposals. The FAA considered comments from the three commenters. The commenters were generally in favor of the rule with the following comments:

Discussion of Comments

One commenter stated that the definition of a critical part is needed but should be placed in 14 CFR part 1 (part 1). The FAA disagrees because NPRM 98–10 did not propose to amend part 1, and the definition is needed to implement the requirements for a critical parts list in parts 27 and 29.

The commenter was concerned about the FAA requiring duplicate records. The critical parts list specified in §§ 27.602(b) and 29.602(b) will not be a duplicate record but will contain procedures for control of the design, substantiation, manufacturing, maintenance, and modification of critical parts.

The same commenter was concerned that proposed §§ 27.602(b) and 29.602(b) and 29.602(b) would require a critical parts list for existing model helicopters. The commenter suggested adding a date to the requirements so that the change would not become retroactive. The FAA does not intend a retroactive requirement but does not agree that a date is necessary. Each type design change will be evaluated for the presence of critical parts, which determines the applicability of §§ 27.602(b) and 29.602(b).

Another commenter was concerned that the proposal would abate the Parts Manufacturer Approval (PMA) process for critical parts. The FAA does not intend to change the PMA process by this requirement. The critical parts list will define critical characteristics and contain control procedures that will be a part of the type design data.

Another commenter agreed with the proposal but stated that the requirement should apply to all characteristics and not be limited to critical characteristics. The commenter recommended revising §§ 27.602(b) and 29.602(b) and adding paragraphs (c), (d), and (e). Following are the commenter's recommended paragraph changes and the FAA's response to each recommendation:

(b) The type design shall minimize critical parts. A critical parts list shall be established for the product. Each critical part drawing shall identify this "critical part" classification of the part.

The FAA does not dictate type design. The manufacturer establishes the type design. The FAA's role is to ensure that the type design conforms to the regulations. Minimizing critical parts may not necessarily ensure safer aircraft.

(c) A critical part's plan and supporting procedures shall be established to assure parts consistently are conforming to all engineering requirements for material, process, and dimensions. The Plan's target numerical "escape" risk of a critical non-conformance shall be specified.

The FAA currently requires that all parts conform to all engineering requirements for material, process, and dimensions. The risk of non-conformance is part of the quality assurance program required by 14 CFR part 21 (part 21).

(d) Records of critical parts production and inspection shall be retained for twenty (20) years minimum.

The FAA's record retention requirements are addressed in the quality assurance program required by part 21.

(e) Existence of the critical parts plan shall not minimize the requirement for all products and parts to conform to all technical requirements including the quality assurance requirements of part 21 of this chapter.

The FAA agrees that the critical parts list does not minimize the requirement for all products and parts to conform to technical requirements. However, this proposal places emphasis on the critical parts. Since the commenter's recommended paragraph changes are addressed in the quality assurance program required by part 21, the FAA will not implement them in this rule.

After due consideration of all the comments, the FAA adopts the amendments as proposed in NPRM 98–10.

Paperwork Reduction Act

The information collection associated with this rule is currently covered under OMB control #2120–0018

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Cost/Benefit Analysis

The FAA estimates that any costs will be negligible. Rotorcraft manufacturers already have many requirements (e.g., §§ 21.31, 21.33, 21.50, 21.139, 21.143, 27.1529, and 29.1529) to ensure the safety of the design manufacture maintenance, inspection, and overhaul of rotorcraft parts. All manufacturers have some procedures in place to identify and control "critical parts," which may be called "flight safety parts," "critical parts," "vital parts," or "identificable parts". This rule will merely formalize these procedures into a critical parts list.

The JAA has indicated that it will amend the Joint Aviation Requirements by adopting the requirements in §§ 27.602 and 29.602. The benefits of the rule will be the formalization of the current critical parts procedures and the harmonization of the JAA and the U.S. requirements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. Because this rule formalizes current practices and will result in no more than negligible costs to rotorcraft manufacturers, the FAA certifies that it will not have a significant impact on a substantial number of small entities and an RFA is not required.

International Trade Impact Assessment

The rule will not constitute a barrier to international trade, including the export of American rotorcraft to foreign countries or the import of foreign rotorcraft into the United States. The JAA will harmonize their requirements with those in this rule. There will be no cost (or cost savings) advantage to persons in either the United States or to JAA member countries.

Federalism Implications

The regulations herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for

inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Parts 27 and 29

Aircraft, Aviation safety, Rotorcraft.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 27 and 29 of Title 14, Code of Federal Regulations as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Add a new § 27.602 to read as follows:

§ 27.602 Critical parts.

(a) *Critical part.* A critical part is a part, the failure of which could have a catastrophic effect upon the rotocraft, and for which critical characteristics have been identified which must be controlled to ensure the required level of integrity.

(b) If the type design includes crtical parts, a critical parts list shall be established. Procedures shall be established to define the critical design characteristics, identify processes that affect those characteristics, and identify the design change and process change controls necessary for showing compliance with the quality assurance requirements of part 21 of this chapter.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

3. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

4. Add a new § 29.602 to read as follows:

§ 29.602 Critical parts.

(a) *Critical part.* A critical part is a part, the failure of which could have a catastrophic effect upon the rotocraft, and for which critical characterists have been identified which must be controlled to ensure the required level of integrity.

(b) If the type design includes critical parts, a critical parts list shall be established. Procedures shall be established to define the critical design characteristics, identify processes that affect those characteristics, and identify the design change and process change controls necessary for showing compliance with the quality assurance requirements of part 21 of this chapter.

Issued in Washington, DC, on August 16, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–21647 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
August 24, 1999

Part III

Environmental Protection Agency

40 CFR Part 35
Technical Assistance Grant Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL–6419–7]

RIN 2050–AE33

Technical Assistance Grant Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to streamline the Technical Assistance Grant (TAG) program under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The proposed changes simplify application and management procedures, and allow advance payments up to $5,000. The intent of these changes is to make grants for technical assistance more readily available to local community groups and to promote effective public participation in the Superfund cleanup process.

DATES: Please submit comments by October 8, 1999.

ADDRESSES: Written comments should be sent to: Lois Gartner, Office of Emergency and Remedial Response, 5204–G, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Inquiries may also be submitted via electronic mail (E-mail) to gartner.lois@epa.gov. The Agency requests that commenters follow the following format: type or print comments in ink, and cite, where possible, the paragraphs in this proposal to which each comment refers. Electronic comments must be submitted as a WP5.1 or WP6.1 file or as an ASCII file avoiding the use of special characters. Comments will also be accepted on disks in the formats above.

FOR FURTHER INFORMATION CONTACT: Lois Gartner, Office of Emergency and Remedial Response, 5204–G, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460 (703) 603–8889 or the RCRA/Superfund Hotline from 8:30am to 7:30pm, Monday through Friday, toll free at (800) 553–7672 or in the Washington area, (703) 412–3323 or TTY (800) 553–7672.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Authority
  B. Background of Rulemaking
II. Explanation of Changes to the Current Regulations
  A. General Changes
  B. Definitions
  C. Eligibility and Responsibility Requirements
  D. Evaluation Criteria
  E. Timing of Award
  F. Ineligible Activities
  G. Eligible Activities
  H. Technical Advisor's Qualifications
  I. Executive Order 12898
  I. Procurement
  J. Sanctions
  K. Method of Payment
  L. Grant Limitations
  M. Waivers
  N. Disputes
  O. Record Retention and Audits
  P. Reports
  Q. Budget Period (Funding Period)
  R. Closing Out Grants
  S. State Administration
III. Existing Grants
IV. Regulatory Analysis
  A. Regulatory Flexibility
  B. Unfunded Mandates Reform Act
  C. National Technology Transfer and Advancement Act
  D. Executive Order 13045
  E. Paperwork Reduction Act
  F. Executive Order 12866
  G. Executive Order 12875
  H. Executive Order 13084
  I. Executive Order 12898

I. Introduction

A. Authority

EPA issues this notice of proposed rulemaking under the authority of section 117(e) of the Comprehensive Environmental, Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. 9617(e). Section 117(e) authorizes the President to make available Technical Assistance Grants of up to $50,000 to groups of individuals which may be affected by a release or threatened release at Superfund sites to obtain assistance in interpreting and disseminating information related to site activities. Section 117(e) requires the President to promulgate rules for issuing these grants before processing any grant applications. Executive Order 12580 subsequently delegated to EPA the authority to implement section 117(e).

B. Background of Rulemaking

In 1992, EPA promulgated a final rule to govern the award and administration of TAGs (57 FR 45311 (Oct. 1, 1992)). The Agency based the requirements codified in the final regulation on its early experience with the TAG program and comments generated by the Agency's interim final rule (IFR) (53 FR 9736 (Mar. 24, 1988)), and amendments to interim final rule (54 FR 49848 (Dec. 1, 1989)). The IFR detailed the specific requirements for obtaining TAGs and enabled EPA to issue grants while it received comments for consideration in development of the final rule. Those comments and practical experience led the Agency to develop a final rule which streamlined the program's application and management procedures reflected in the IFR.

The Agency's experience with the TAG program in the years since it published the final rule has led the Agency to recognize the need to further streamline TAG application and management procedures. In addition, the Agency has drafted the proposed rule in a more readable format to increase accessibility to the program. The Agency publishes this NPRM today to solicit comments for the Agency's consideration in promulgating a revised final rule for TAGs.

II. Explanation of Changes to the Current Regulations

A. General Changes

With this proposed rule, EPA is changing the format of the TAG regulations by presenting them in a question and answer structure. The Agency believes this format will make the regulations easier for applicants and recipients to use. As a result of this new format, EPA proposes to move and renumber many of the current sections and, in some instances, to break up sections to organize the information under more precise headings. Additionally, EPA updated references to other applicable regulations to reflect the changes made to those regulations since the Agency promulgated the current final regulation in October 1992. Specifically, this subpart changes 40 CFR part 30 citations and deletes references to 40 CFR part 33 citations. 40 CFR part 30 is the EPA's general regulation for assistance agreements (for example, grants). It establishes the regulations by which EPA awards, administers and closes out grants and cooperative agreements to non-governmental entities.

B. Definitions

Budget period. To be consistent with terms used in the new 40 CFR part 30, EPA proposes to change the term budget period to funding period. In addition, EPA proposes to modify the definition of funding period by eliminating the requirement that funding periods be a maximum of three years. This modification would allow for the length of funding periods to be tailored to site-specific needs.

Affiliate, Allocable cost, Allowable cost, Cost analysis, Eligible cost, Letter of intent (LOI), National Priorities List (NPL), Outlays, Project period

Reasonable cost, Suspend, and *Operation and maintenance.* EPA proposes to add these definitions to increase reader understanding of terms used throughout this proposed rule.

Advance payment. EPA proposes to add this definition because it reflects a new provision not found in the current final rule.

C. Eligibility and Responsibility Requirements

Under eligibility requirements, EPA proposes to deem organizations that are affiliated with national organizations to be ineligible for a TAG. The basis for this change is that the TAG program is meant to assist communities directly affected by Superfund sites. Therefore, the intended recipients of TAGs are local grassroots organizations that form out of affected communities. By deeming groups associated with national organizations ineligible, EPA intends to exclude any groups with agendas that might include national issues and concerns.

EPA proposes to eliminate the responsibility requirement that organizations that were not incorporated specifically for the purpose of representing affected individuals at the site demonstrate a "substantial" history of involvement at the site. Such organizations would be required to demonstrate a history of involvement at the site, but it would not need to be substantial. Some ways that a group might demonstrate a history of involvement at the site include: members of the group have attended public meetings regarding the site and/or a group has held its own meeting(s) focusing on issues surrounding the site (and has agenda(s) reflecting such a focus). EPA, however, will retain full discretion in making its determination regarding an applicant's history of involvement at a site.

EPA also proposes to modify the responsibility requirements by prohibiting TAG recipients from restricting access to their group by charging membership fees or by using other means to limit participation in a TAG organization. EPA believes TAG groups should be open to all interested individuals as long as the individuals are not participating in the group as representatives of ineligible entities. (Under both the current and proposed rule, if an individual has a significant financial involvement with a PRP, EPA may decide not to allow that individual to participate in the TAG group even if he or she is not participating in the group as a representative of a PRP.) The purpose of the TAG program is to promote meaningful public participation in decisions at a Superfund site by providing communities the means to obtain independent technical assistance in interpreting information about a site. TAG recipients that restrict access to their group undermine the very purpose of the program.

D. Evaluation Criteria

EPA proposes several changes to the application evaluation criteria. First, EPA proposes to eliminate the distinction between sole and multiple applicants because under the current rule and the proposed rule, whether there are one applicant or multiple applicants, every applicant must meet the same evaluation criteria. Another proposed change would eliminate the points for each criterion in the current final rule and make all proposed criteria be of equal weight. Under both the current and proposed rule, applicants are ranked with respect to all evaluation criteria. EPA will select the highest ranking applicant of the applicants meeting all the criteria.

Finally, EPA proposes to eliminate the current requirement that applicants demonstrate the presence of an actual or potential health, economic or recreational threat posed by the site. Removal of this requirement streamlines the application process. The current rule requires the demonstration of these actual or potential threats because, at the time the final rule was written, EPA thought there would be many groups competing for a TAG at one site. By including this requirement in the application, EPA sought to make certain the group receiving the TAG was the one "most directly affected by a site." However, the Agency's experience since the final rule was written is that there is usually only one applicant per site. Because of this trend and because the very basis for sites being proposed or made final on the National Priorities List (NPL) is that the Agency has determined that a potential or actual human health and/or environmental threat exists, asking applicants to repeat what the Agency has already determined is burdensome and redundant. While actual or potential economic or recreational threats are not part of the basis for NPL proposal or listing, the Agency does not believe it is necessary to ask applicants to demonstrate the presence of these threats. The presence of potential or actual human health and/or environmental threats is sufficient. Finally, by making groups affiliated with national organizations ineligible, EPA believes it is making certain that only local organizations made up of affected individuals surrounding a Superfund site will be eligible for TAGs. As with the current rule, this proposed rule considers "affected" to mean "subject to an actual or potential, health, economic or environmental threat."

E. Timing of Award

The proposed rule clarifies that TAGs may be awarded throughout the response action at the site, including the operation and maintenance phase. By including this language, EPA hopes to emphasize to communities that TAG funds are available throughout the Superfund process.

F. Ineligible Activities

EPA proposes to clarify, without modifying, what is meant by "political activity and lobbying" and what is meant by "activities inconsistent with the cost principles stated in Office of Management and Budget (OMB) Circular A–122" by adding examples for each category. TAG recipients frequently require some assistance from EPA in determining whether the federally funded activities they engage in constitute lobbying or are otherwise unallowable under OMB Circular A–122. EPA has decided to include examples of unallowable activities in the TAG regulations to assist recipients in identifying the types of activities that cannot be federally funded rather than merely referring recipients to the OMB circular. EPA, however, does not intend to change in any way the lobbying restrictions or any other provision of OMB Circular A–122.

G. Eligible Activities

EPA has made only editorial changes in the proposed rule regarding eligible activities. First, the proposed rule explicitly states that procuring the services of a grant administrator is an eligible expenditure. While the cost of a grant administrator has always been considered allowable by EPA as a reasonable and necessary expenditure of a TAG grant, the final TAG rule did not specifically identify it as an eligible expenditure. Second, in the proposed rule the provision allowing the use of TAG funds for technical advisor health and safety training is included in the overall discussion of eligible expenses rather than in the section on Ineligible Activities.

H. Technical Advisor's Qualifications

EPA proposes several changes to the provision regarding the technical advisor qualifications. One proposed modification is to detail the type of experience a technical advisor should

have. This experience should include communicating problems and issues associated with hazardous or toxic waste, redevelopment, relocation and health issues to the public. A second proposed modification is to eliminate the other requirements currently contained in § 35.4065(b) that call for a technical advisor to: have experience in making technical presentations and working with affected individual or community groups or other groups of individuals, and demonstrated writing skills. EPA believes these requirements are unnecessary because they are captured in the proposed paragraph § 35.4190(c). Finally, EPA proposes to clarify that the requirements regarding a technical advisor's qualifications do not preclude the hiring of technical advisors with expertise in the fields of relocation, redevelopment and health issues.

Use of TAG funds to hire relocation, redevelopment and health experts are consistent with the statutory intent of the program which is to "obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action" at Superfund facilities. When relocation is seriously being considered as a remedy, residents need to understand a multitude of issues associated with the relocation process as prescribed in the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 as amended, 42 U.S.C. 460 *et seq.* (otherwise referred to as the Uniform Relocation Act or URA). Similarly, the consideration of future land use and its relationship to Superfund site reuse/redevelopment is now an inherent component to the Superfund process. Community plans and preferences regarding future land use(s) are an important part of the successful return of Superfund sites to beneficial use. Issues associated with the health effects of toxic waste are also a common concern held by communities. While health advisors are not permitted to generate any new health data through biomedical testing (for example, blood or urine testing), clinical evaluations, health studies, surveillance, registries and/or public health interventions, they can interpret the health aspects associated with information found in site-related documents.

While EPA believes the use of TAG funds for technical advisors with expertise in relocation issues is an appropriate use of TAG funds, the Agency also believes access to such technical advisors must be limited. Because EPA's preference is to restore property so people can live in their homes, EPA believes relocation technical advisors can only be procured by communities when the Agency is seriously considering permanent relocation (for example, relocation is one of several remedial alternatives being considered in a feasibility study).

For technical advisors with expertise in relocation issues, EPA believes it is important that such experts have demonstrated knowledge, training and experience in relocations, including knowledge of the URA. Furthermore, EPA believes relocation technical advisors should have experience working with developers, brokers and lenders and demonstrated knowledge of appraisals, title searches, and State and local tax laws. All of these areas of expertise are essential if a technical advisor is going to successfully interpret information regarding relocation as a remedy. TAG funds, however, should not be used to pay for appraisals, title searches, real estate agents' or brokers' services.

For redevelopment technical advisors, EPA believes it is important for such advisors to have knowledge, training, and experience in land use planning with an emphasis on economic development, environmental planning or related fields as appropriate. These qualifications are necessary to ensure redevelopment assistance is meaníngful to communities.

Finally, health advisors must have received their public health or related training at accredited schools of medicine, public health, or accredited academic institutions of other related disciplines and be associated with such institutions. These requirements will ensure public health advisors serving communities are appropriately trained and qualified to assist communities on public health issues. Health advisors should possess demonstrated knowledge, training and experience in public health issues as they relate to toxic and hazardous waste.

I. Procurement

The regulations governing procurement under grants at 40 CFR part 33 were repealed since the publication of the last TAG rule. Therefore, references to 40 CFR part 33 have been deleted and replaced by the appropriate provisions in 40 CFR part 30. Additionally, paraphrased versions of the positive efforts required by 40 CFR part 30 with respect to hiring small business enterprises (SBEs), minority business enterprises (MBEs), and women-owned business enterprises (WBEs) have been included. The purpose in including the positive efforts is to heighten the awareness of recipients that they need to make such efforts to contract with SBEs, MBEs and WBEs.

In 1997, in order to ensure consistency with the Supreme Court decision in *Adarand* v. *Pena*, 115 S. Ct. 2097 (1995), EPA issued revised Guidance for the Agency's MBE/WBE program (*see* 62 FR 45645 (Aug. 28, 1997)). This Guidance may be accessed on the Internet at http://www.epa.gov/osdbu. Under this Guidance, "fair share" objectives are negotiated with recipients of EPA financial assistance based on the availability of qualified MBEs and WBEs in the relevant procurement market. In the case of the TAG program, for example, the relevant markets would be supplies, services and equipment. Recipients are not required to negotiate their own MBE/WBE goals (unless they wish to do so). Instead, they may accept the goals of the State Agency which would have jurisdiction over Superfund activities in the relevant state. State Agency goals may be found on the Internet at http://Yosemite.epa.gov/ogd/mbe-wbe.nsf and other information on the EPA Grants page at http://www.epa.gov/ogd/grants.

EPA is in the process of initiating a rulemaking for its MBE/WBE program, in which the public will have an opportunity for notice and comment. To the extent that EPA's final MBE/WBE rulemaking differs from the information found here, the MBE/WBE rulemaking will control.

J. Sanctions

This rule includes a detailed list of the sanctions EPA may impose when grant recipients fail to comply with a term of a grant agreement. These sanctions are the same as those set forth in 40 CFR 30.62 and 30.14 and are included in the TAG rule only as a convenience to the reader. EPA does not intend to change the rights or responsibilities of either the recipient or EPA under the provisions for enforcement or special award conditions in 40 CFR part 30.

K. Method of Payment

EPA proposes to provide TAG recipients, under certain circumstances, the opportunity to receive advance payments. EPA proposes this change because it recognizes that some grant recipients are newly formed entities lacking resources to undertake even basic organizational start up activities. Advance payments would provide such groups with the necessary resources to

establish their organization and implement their grant work plan.

While EPA supports advancing funds to TAG recipients for start up purposes, EPA also believes it is important to set appropriate limits on such advances. Therefore, EPA proposes several limits on cash advances. First, only those recipients who lack the resources to incur expenses in advance of reimbursement would be eligible for cash advances. Second, EPA proposes a $5,000 cap on the amount of money it would advance to a recipient. EPA believes this amount is sufficient to cover reasonable and expected start up expenses for a group. Third, the types of expenditures for which recipients could seek advance payments will be limited to expenditures for opening a bank account, supplies and postage, advance on rent or lease for office space, advertising related to procurement, and rental of other equipment. EPA believes expenditures associated with contracts for technical advisors and other contractors are not appropriate and will not be allowed for advance payments because such expenditures are not necessary to a group's start up functions.

In addition, EPA proposes to require recipients to request in writing the specific activities and/or goods/services for which the group needs the funds. This requirement will ensure EPA has an opportunity to review and authorize the specific use(s) of any advance payments. Finally, advance payments will only be provided on a one-time basis; after an initial advance EPA will reimburse recipients for actual expenses they incur.

L. Grant Limitations

With this rule, EPA proposes to set forth its current interpretation of section 117(e) of CERCLA which provides that "Not more than one grant may be made under this subsection with respect to a single facility, at all stages of remedial action" (CERCLA 117(e)). In the administration of this program, EPA has interpreted this provision to mean that there can be only one TAG recipient at a site at any one time during the Superfund process. This interpretation means that if a TAG to one recipient is terminated, EPA can make a new grant to a new recipient. Accordingly, while there can be only one TAG at a time there can be more than one recipient of a TAG at a single facility. Occasionally, a grant recipient decides not to complete the work for which it received a $50,000 TAG, or a TAG recipient, although eligible to receive an additional $50,000 as a renewal of its original grant, elects not to do so and decides to end its participation at the site.

If, in instances where a TAG is terminated, EPA were to interpret section 117(e) to preclude another community group from receiving a TAG for the site involved, then the affected community of that site would lose the benefit of technical assistance to promote public participation in all stages of the response action as a result of the original grant recipient's actions. EPA does not believe Congress intended such a punitive result, particularly since it would undermine the purpose of section 117 of CERCLA—to promote public participation at Superfund sites. Rather, EPA believes that section 117(e) is only intended to limit to one the number of TAG recipients at any given time at a single site.

Therefore, under § 35.4040 of the proposed rule, EPA will explicitly allow changes in TAG recipients if the original TAG is terminated. Under § 35.4060, a subsequent recipient can only be funded for the amount left by the first recipient of the grant. In the case of a site with characteristics indicating additional funds are necessary due to the nature or the volume of site-related information, the new recipient can receive the amount for which the original recipient was eligible. In either case, the second recipient is not responsible for actions taken by the first recipient, nor is the second recipient responsible for how the first recipient expended the funds it received from EPA.

Finally, EPA proposes to eliminate the 20 percent limit on a TAG recipient's administrative expenses in order to relieve recipients of the obligation to differentiate between programmatic and administrative costs for purposes of the TAG regulations. This elimination will reduce the information collection burden on TAG recipients. As always, under OMB Circular A–122, administrative costs will only be allowable costs of the TAG to the extent they are reasonable and necessary.

Although it proposes to ease this administrative expense cap, EPA believes that continued scrutiny of all grant costs continues to be necessary, including oversight of a recipient's administrative expenses. EPA believes that the enforcement provisions of § 35.4250 ("Under what circumstances would EPA terminate our TAG?") in the proposed regulations provide EPA the opportunity to ensure the identification of abuses and to make certain that recipients expend Federal funds in accordance with the mission of the TAG program. This proposed rule would give EPA and grant recipients the flexibility to negotiate grants without having unnecessary limitations on administrative expenses not required by statute.

M. Waivers

CERCLA section 117(e) provides that technical assistance grants may not exceed $50,000 but this limit can be waived when necessary to carry out the purposes of CERCLA section 117. The current TAG rule provides for a waiver from the $50,000 limit if applicants are affected by multiple sites or "especially complex" sites. The "especially complex" standard is vague and difficult to apply; eliminating it will enlarge the eligible universe of TAG recipients who would benefit from the waiver provision when appropriate. Therefore, under the proposed rule, a waiver will be provided if site characteristics indicate that additional funds are necessary as determined by the presence of any three of nine predetermined criteria. The Agency believes these criteria are the standards by which the Agency can best determine whether a waiver of the $50,000 limit on the amount of the award is necessary to carry out the purposes of the TAG program.

EPA proposes two changes to the section on waivers from this matching share requirement. First, the proposed rule will eliminate the requirement that a group demonstrate an "unusual" financial hardship. Instead, a group will be eligible for a waiver if it demonstrates that providing the match would cause financial hardship. EPA proposes this change because it believes that ordinary financial hardship is sufficient to justify a waiver. Moreover, this change is consistent with the statue which requires only that grant recipients demonstrate financial need for EPA to be able to waive the matching share requirement.

Second, this rule will eliminate the requirement that an applicant for a waiver to the matching share requirement show that it has made a good faith effort at raising the match, including in-kind services, and has failed. The good faith requirement to raise a match is not required by statute and EPA believes eliminating it will make TAGs more available to financially disadvantaged groups. Furthermore, EPA believes, based on its experience in implementation of the TAG program, that most applicants will continue to provide in-kind services, whether or not such services are required to obtain the waiver.

N. Disputes

EPA proposes to require TAG disputants to exhaust their administrative remedies before they may obtain judicial review of an Agency action. Currently, disputants are given the opportunity to seek further administrative review of the disputes decision official's decision and the Regional Administrator's decision, but disputants are not *required* by statute or regulation to seek such review before going to court. When the current TAG rule was finalized, generally courts would have imposed the requirement that disputants seek the highest level of administrative review permitted by the Agency providing judicial review of the dispute. Subsequently, the Supreme Court held in *Darby* v. *Cisneros* that the Administrative Procedure Act "explicitly requires exhaustion of all intra-agency appeals mandated either by statute or by agency rule (and therefore,) it would be inconsistent with the plain language of (the APA) to require litigants to exhaust optional appeals as well." 509 U.S. 137, 147 (1993).

EPA has decided to require disputants to exhaust their administrative remedies before seeking judicial review so as to promote the resolution of TAG grant disputes in a non-adversarial manner at the Agency level and to assure consistency in the application of the TAG regulations across regions. Specifically, EPA will require disputants to seek review of the dispute decision official's determination by the Regional Administrator and review by the Assistant Administrator of the Office of Solid Waste and Emergency Response before seeking judicial review of the dispute.

O. Record Retention and Audits

Substantively, EPA proposes to eliminate the record retention requirement for those TAG recipients who elect to have EPA preserve their financial records. This change reflects a recommendation provided by the General Accounting Office (GAO). However, those recipients who do not send their financial records to EPA would still be required to keep them, as at present. In addition, EPA proposes to remove the reference to OMB Circular A–133, Audits of Institutions of Higher Education, which requires recipients who spend more than $300,000 in one fiscal year to undertake an audit of their finances. EPA proposes removing this reference because it is highly unlikely that TAG recipients would meet this threshold. Finally, EPA proposes to include language informing recipients they must comply with OMB Circular A–122, Cost Principles for Non-Profit Organizations. This requirement is not new to the TAG program, but previously it was not explicitly included in this subpart.

P. Reports

EPA proposes to restructure the reporting requirements by putting the information in a chart format to make it easier for recipients to understand. In addition, EPA proposes to add reporting requirements necessitated by the inclusion of advance payments. EPA also proposes to add information about the reporting requirements regarding positive efforts the recipient has made to procure from small business enterprises, minority-owned business enterprises, and women-owned business enterprises. This requirement is not new; EPA merely proposes to identify it in the report requirements section of the rule so that applicants and recipients are aware of it.

Substantively, EPA proposes to eliminate the requirement that recipients submit draft final reports. EPA believes only a final report is necessary because Federal review of draft reports contributes minimally to the administration of the program. This proposed reporting change, like the previous two, eases the information collection burden for TAG recipients.

Q. Budget Period (Funding Period)

EPA proposes replacing the term "budget period" with the term "funding period." This change in terms makes the TAG rule consistent with those used in 40 CFR part 30. Substantively, EPA proposes eliminating the current three-year funding period and replacing it with a period to be negotiated by the applicant and EPA. The mutually agreed upon period would be documented in the award agreement. EPA makes this proposal because it believes TAG recipients should be allowed flexibility when formulating their budget to synchronize the period of time during which recipients anticipate having a technical advisor involved with the schedule of work at a site.

R. Closing Out Grants

Although 40 CFR 30.70 through 30.73 will continue to govern the close out process and procedures, the proposed regulation includes a summary of those regulations in order to help recipients understand the grant close out process and procedures for TAGs. As with all other instances where EPA summarizes provisions found in other regulations, EPA includes the summary of the grant close out process and procedures only as a convenience to the reader. EPA does not intend to change the rights or responsibilities of either the recipient or EPA under the provisions for closing out grants in 40 CFR part 30.

S. State Administration

EPA proposes to move the regulations governing the administration of the TAG program by States to 40 CFR part 35, subpart O which governs the award of cooperative agreements to States and Indian tribes under section 104(d) of CERCLA. EPA is in the process of revising subpart O at this time. Therefore, this proposed regulation does not include any provisions regarding the State administration of TAGs.

III. Existing Grants

TAG recipients receiving a TAG under previous regulations may request having their grant administered under this regulation once it is final. Groups wishing to do so must seek amendments to their grant from the Award Official. However, any funds spent prior to the finalization of this rule are subject to the previous regulation. Amendments to current grants will apply only to future work.

IV. Regulatory Analysis

A. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because this regulation imposes no new requirements, but rather streamlines and simplifies current requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate,

or by the private sector, of $100 million or more in any one year. This regulation contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excludes from the definition of "Federal intergovernmental mandate" duties that arise from conditions of federal assistance.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

C. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA does not believe that this proposed rule addresses any technical standards subject to NTTAA. Commenters who disagree with this conclusion should indicate how the proposed rule is subject to the Act and identify any potentially applicable voluntary consensus standards.

D. Executive Order 13045

Executive Order 13045 applies to any rule that is determined to be: (1) "Economically significant" as defined under Executive Order 12866; and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

E. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2030–0020. This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record keeping requirements subject to the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, no information request will be submitted to the Office of Management and Budget for review.

F. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined this rule is not a "significant regulatory action" under the terms of Executive Order 12866. As such, this action was not submitted to the Office of Management and Budget (OMB) for review.

G. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian Tribal

governments nor does it impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

I. Executive Order 12898

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

No action from the proposed rule will have a disproportionately high and adverse human health and environmental effects on any segment of the population. In addition, the proposed rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of the Executive Order do not apply.

List of Subjects in 40 CFR Part 35

Environmental protection, Air pollution control, Coastal zone, Grant programs—environmental protection, Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: August 6, 1999.

Carol M. Browner,

Administrator.

Accordingly, as set forth in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 35 as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 4368b, unless otherwise noted.

2. Subpart M is revised to read as follows:

Subpart M—Grants for Technical Assistance

Sec.

35.4000 Authority.

General

35.4005 What is a Technical Assistance Grant?
35.4010 What does this subpart do?
35.4011 What other regulations apply to the award of TAGs?
35.4012 If there appears to be a difference between the requirements in Part 30 and this subpart, which regulations should my group follow?
35.4015 Do certain words in this subpart have specific meaning?

Who is Eligible?

35.4020 Is my community group eligible for a TAG?
35.4025 Is there any way my group can get a TAG if it is currently ineligible?
35.4030 Can I be a part of a TAG group if I belong to an ineligible group?
35.4035 Does EPA use the same eligibility criteria for TAGs at "Federal facility" sites?
35.4040 How many groups can receive a TAG at one Superfund site?

Your Responsibilities as a TAG Recipient

35.4045 What requirements must my group meet as a TAG recipient?
35.4050 Must my group contribute toward the cost of a TAG?
35.4055 What if my group can't come up with the "matching funds"?

How Much Money TAGs Provide

35.4060 How much money can my group receive through a TAG?
35.4065 How can my group get more than $50,000?

What TAGs Can Pay For

35.4070 How can my group spend TAG money?
35.4075 Are there things my group can't spend TAG money for?

How You Get the Money

35.4080 Does my group get a lump sum up front, or does EPA reimburse us for costs we incur?
35.4085 Can my group get an "advance payment" to help us get started?
35.4090 If my group is eligible for an advance payment, how do we get our funds?
35.4095 What can my group pay for with an advance payment?
35.4100 Can my group incur any costs prior to the award of our grant?

How to Apply for a TAG

35.4105 What is the first step for getting a TAG?
35.4106 What information should an LOI include?
35.4110 What does EPA do once it receives the first LOI from a group?
35.4115 After the public notice that EPA has received an LOI, how much time does my group have to form a coalition or submit a separate LOI?
35.4120 How much time do my group or other interested groups have to submit a TAG application to EPA?
35.4125 Does the TAG application process affect the schedule for work at my site?
35.4130 What does my group do next?
35.4135 What else does my group need to do?
35.4140 What must be included in my group's budget?
35.4145 What period of time should my group's budget cover?
35.4150 What must be included in my group's work plan?
35.4155 How does EPA decide whether to award a TAG to our group?
35.4160 What does EPA do if more than one group applies for a TAG at the same site?
35.4165 When does EPA award a TAG?

Managing Your TAG

35.4170 What kinds of reporting does EPA require?
35.4175 What other reporting and record keeping requirements are there?
35.4180 Must my group keep financial records after we finish our TAG?
35.4185 What does my group do with reports our technical advisor prepares for us?

Procuring a Technical Advisor or Other Contractor With TAG Funds

35.4190 How does my group identify a qualified technical advisor?
35.4195 Are there certain people my group cannot select to be our technical advisor, grant administrator, or other contractor under the grant?
35.4200 What restrictions apply to contractors my group procures for our TAG?
35.4205 How does my group procure a technical advisor or any other contractor?
35.4210 Must my group solicit and document bids for our procurements?
35.4215 What if my group can't find an adequate number of potential sources for a technical advisor or other contractor?
35.4220 How does my group ensure a prospective contractor does not have a conflict of interest?
35.4225 What if my group decides a prospective contractor has a conflict of interest?
35.4230 What are my group's contractual responsibilities once we procure a contractor?
35.4235 Are there specific provisions my group's contract(s) must contain?

Requirements for TAG Contractors

35.4240 What provisions must my group's TAG contractor comply with if it subcontracts?

Grant Disputes, Termination, and Enforcement

35.4245 How does my group resolve a disagreement with EPA regarding our TAG?
35.4250 Under what circumstances would EPA terminate my group's TAG?
35.4255 Can my group terminate our TAG?
35.4260 What other steps might EPA take if my group fails to comply with the terms and conditions of our award?

Closing Out a TAG

35.4265 How does my group close out our TAG?

Other Things You Need to Know

35.4270 Definitions.
35.4275 Where can my group get the documents this subpart references (for example, OMB circulars, other subparts)?

Subpart M—Grants for Technical Assistance

Authority: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

General

§ 35.4000 Authority.

The Environmental Protection Agency ("EPA") issues this subpart under section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e).

§ 35.4005 What is a Technical Assistance Grant?

A Technical Assistance Grant (TAG) provides money for your group to obtain technical assistance in interpreting information with regard to a Superfund site. EPA awards TAGs to promote public participation in decision making at eligible sites. A TAG allows your group to procure independent technical advisors to help you interpret and comment on site-related information and decisions. Examples of how a technical advisor can help your group include, but are not limited to:

(a) Reviewing preliminary site assessment/site investigation data;

(b) Participating in public meetings to help interpret information about site conditions, proposed remedies, and the implementation of a remedy; and

(c) Visiting the site vicinity periodically during cleanup, if possible, to observe progress and provide technical updates to your group.

§ 35.4010 What does this subpart do?

This subpart establishes the regulations for TAGs awarded by EPA.

§ 35.4011 What other regulations apply to the award of TAGs?

EPA's general grant regulations for nonprofit organizations at 40 CFR part 30 also apply to TAGs.

§ 35.4012 If there appears to be a difference between the requirements in Part 30 and this subpart, which regulations should my group follow?

You should follow the regulations in 40 CFR part 30, except for the following provisions from which this subpart deviates:

(a) 40 CFR 30.11, Pre-Award Policies;
(b) 40 CFR 30.22 (b) and (c), Payment;
(c) 40 CFR 30.44 (e) (2), Procurement Procedures;
(d) 40 CFR 30.53 (b), Retention and Access Requirements for Records; and
(e) 40 CFR 31.70 (c) and 31.70 (i) as referenced by 40 CFR 30.63, Disputes.

§ 35.4015 Do certain words in this subpart have specific meaning?

Yes, some words in this subpart have specific meanings that are described in § 35.4270, Definitions. The first time these words are used, they are marked with quotation marks, for example, "EPA."

Who Is Eligible?

§ 35.4020 Is my community group eligible for a TAG?

(a) Yes, your community group is eligible for a TAG if:

(1) You are a group of people who may be "affected" by a release or a threatened release at any facility listed on the National Priorities List ("NPL") or proposed for listing under the National Contingency Plan (NCP) where a "response action" under CERCLA has begun;

(2) Your group meets the minimum administrative and management capability requirements found in 40 CFR 30.21 by demonstrating you have or will have reliable procedures for record keeping and financial accountability related to managing your TAG (you must have these procedures in place before your group incurs any expenses); and

(3) Your group is not ineligible according to paragraph (b) of this section.

(b) No, your community group is not eligible for a TAG if your group is:

(1) A "potentially responsible party" (PRP), receives money or services from a PRP, or represents a PRP;

(2) Not incorporated as a nonprofit organization for the specific purpose of representing affected people except as provided in § 35.4045;

(3) "Affiliated" with a national organization;

(4) An academic institution;

(5) A political subdivision (for example, township or municipality); or

(6) Established or presently sustained by ineligible entities that paragraphs (b) (1) through (5) of this section describe, or if any of these ineligible entities are represented in your group.

§ 35.4025 Is there any way my group can get a TAG if it is currently ineligible?

You can make your group eligible by establishing an identity separate from that of the PRP or other ineligible entity by making a reasonable demonstration of independence from the ineligible entity. Such a demonstration requires, at a minimum, a showing that your group has a separate and distinct:

(a) Formal legal identity (for example, your group has different officers); and

(b) Substantive existence (meaning, is not affiliated with an ineligible entity), including its own finances.

(1) In determining whether your group has a different substantive existence from the ineligible entity, you must establish for us that your group:

(i) Is not controlled either directly or indirectly, by the ineligible entity; and

(ii) Does not control, either directly or indirectly, an ineligible entity.

(2) You must also establish for EPA that a third group does not have the power to control both your group and an ineligible entity.

§ 35.4030 Can I be part of a TAG group if I belong to an ineligible group?

You may participate in your capacity as an individual in a group receiving a TAG, but you may not represent the interests of an ineligible entity. However, we may prohibit you from participating in a TAG group if the "award official" determines that you have a significant financial involvement in a PRP.

§ 35.4035 Does EPA use the same eligibility criteria for TAGs at "Federal facility" sites?

Yes, EPA uses the same criteria found in § 35.4020 in evaluating the eligibility of your group or any group of individuals who may be affected by a release or a threatened release at a Federal facility for a TAG under this subpart.

§ 30.4040 How many groups can receive a TAG at one Superfund site?

(a) Only one TAG may be awarded for a site at any one time. However, the recipient of the grant can be changed when:

(1) EPA and the recipient mutually agree to terminate the current TAG or the recipient or EPA unilaterally terminates the TAG; or

(2) The recipient elects not to renew its grant even though it is eligible for additional funding.

(b) In each of the situations described in paragraph (a) of this section the following information applies:

(1) If you are a subsequent recipient of a TAG, you are not responsible for actions taken by the first recipient, nor are you responsible for how the first recipient expended the funds received from EPA; and

(2) The process for changing recipients begins when an interested applicant submits a Letter of Intent ("LOI") to the Agency expressing interest in a TAG as described in § 35.4105. We will then follow the application procedure set forth at §§ 35.4105 through 35.4165.

Your Responsibilities as a TAG Recipient

§ 35.4045 What requirements must my group meet as a TAG recipient?

Your group, including those groups which form out of a coalition agreement, must incorporate as a nonprofit corporation for the purpose of participating in decision making at the Superfund site for which we provide a TAG. However, a group that was previously incorporated as a nonprofit organization and includes all individuals and groups who joined in applying for the TAG is not required to reincorporate for the specific purpose of representing affected individuals at the site, if in EPA's discretionary judgment, the group has a history of involvement at the site. You must also:

(a) At the time of award, demonstrate that your group has incorporated as a nonprofit organization or filed the necessary documents for incorporation with the appropriate State agency;

(b) At the time of your first request for reimbursement or advance payment, submit proof that the State has incorporated your group as a nonprofit organization; and

(c) Not restrict access to your group by charging membership fees or by using other means to limit participation in your organization.

§ 35.4050 Must my group contribute toward the cost of a TAG?

(a) Yes, your group must contribute 20 percent of the total cost of the TAG project unless EPA waives the match under § 35.4055. For example, if your group receives $50,000 in Federal funds, the matching share would be $12,500, which is 20 percent of the total project costs of $62,500 (meaning, $50,000 plus $12,500).

(b) Under 40 CFR 30.23, your group may use "cash" and/or "in-kind contributions" (for example, your board members can count their time toward your matching share) to meet the matching funds requirement. Without specific statutory authority, you may not use Federal funds to meet the required match.

§ 35.4055 What if my group can't come up with the "matching funds"?

(a) EPA may waive all or part of your matching funds requirement if we:

(1) Have not issued the "record of decision" ("ROD") at the last "operable unit" for the site (in other words, if EPA has not already made decisions on the final cleanup actions at the site); and

(2) Determine, based on evidence in the form of documentation provided by your group, that:

(i) Your group needs a waiver because providing the match would be a financial hardship to your group (for example, your local economy is depressed and coming up with in-kind contributions would be difficult); and

(ii) The waiver is necessary to help your community participate in selecting a remedial action at the site.

(b) If your group receives a waiver of the matching funds after your initial award, your grant agreement must be amended.

How Much Money TAGs Provide

§ 35.4060 How much money can my group receive through a TAG?

The following table shows how much money your group can receive through a TAG:

If your group is . . .	Then your initial award will . . .
(a) the first recipient of a TAG at a site or a subsequent recipient at a site where the initial recipient spent the entire award amount.	not exceed $50,000 per site.
(b) a subsequent recipient at a site with remaining funds from an initial $50,000 award.	be the unspent amount remaining from the initial award (for example, if the Agency awarded the first recipient $50,000 but that recipient only spent $27,000, then your group's initial award would be $23,000).

§ 35.4065 How can my group get more than $50,000?

The EPA regional office award official for your grant may waive your group's $50,000 limit and provide up to $100,000 per site under the following circumstances:

(a) Your group is geographically close to more than one eligible site (for example, two or more sites × $50,000 = grant of $100,000) and wishes to receive funding for technical assistance to address multiple eligible sites; or

(b) Your group demonstrates that:

(1) If it received previous TAG funds, you managed those funds effectively; and

(2) Site(s) characteristics indicate additional funds are necessary due to the nature or volume of site-related information. In this case, three of the nine factors below must occur:

(i) A Remedial Investigation/Feasibility Study ("RI/FS") costing more than $2 million is performed;

(ii) Treatability studies or evaluation of new and innovative technologies are required as specified in the Record of Decision;

(iii) EPA reopens the Record of Decision;

(iv) The site public health assessment (or related activities) indicates the need for further health investigations and/or health promotion activities;

(v) EPA designates one or more additional operable units after awarding the TAG;

(vi) A legislative or regulatory change results in new site information after EPA awards the TAG;

(vii) EPA expects a cleanup lasting more than eight years from the beginning of the RI/FS through construction completion;

(viii) Significant public concern exists, where large groups of people in the community require many meetings, copies, etc.; and

(ix) Any other factor that, in EPA's judgment, indicates that the site is unusually complex.

What TAG Can Pay For

§ 35.4070 How can my group spend TAG money?

(a) Your group must use all or most of your funds to procure a technical advisor(s) to help you understand the nature of the environmental and public health hazards at the site, the various stages of health and environmental investigations and activities, cleanup, and "operation and maintenance" of a site, including exposure investigation, health study, surveillance program, health promotion activities (for example, medical monitoring and pediatric health units), remedial investigation, and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, and removal action. This technical assistance should contribute to the public's ability to participate in the decision making process by improving the public's understanding of overall conditions and activities at the site.

(b) Your group may use a portion of your funds to:

(1) Undertake activities that communicate site information to the public through newsletters, public meetings or other similar activities;

(2) Procure a grant administrator to manage your group's grant; and/or

(3) Provide one-time health and safety training for your technical advisor to gain site access to your local Superfund site. To do provide this training, you must:

(i) Obtain written approval from the EPA regional office; and

(ii) Not spend more than $1,000.00 for this training, including travel, lodging and other related costs.

§ 35.4075 Are there things my group can't spend TAG money for?

Your TAG funds cannot be used for the following activities:

(a) Lawsuits or other legal actions;

(b) Attorney fees for services:

(1) Connected to any kind of legal action; or

(2) That could, if such a relationship were allowable, be interpreted as resulting in an attorney/client relationship to which the attorney/client privilege would apply;

(c) The time of your technical advisor to assist an attorney in preparing a legal action or preparing and serving as an expert witness at any legal proceeding;

(d) Political activity and lobbying that is unallowable under Office of Management and Budget (OMB) Circular A–122, Cost Principles for Non-Profit Organizations (this restriction includes activities such as attempting to influence the outcomes of any Federal, State or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, or publicity, or attempting to influence the introduction or passage of Federal or state legislation; your EPA regional office can supply you with a copy of this circular);

(e) Other activities that are unallowable under the cost principles stated in OMB Circular A–122 (such as costs of amusement, diversion, social activities, fund raising and ceremonials);

(f) Tuition or other training expenses for your group's members or your technical advisor except as § 35.4070(b)(3) allows;

(g) Any activities or expenditures for your group's members' travel;

(h) Generation of new primary data such as well drilling and testing, including split sampling;

(i) Reopening or challenging final EPA decisions such as:

(1) Records of Decision; and/or

(2) Disputes with EPA under its dispute resolution procedures set forth in 40 CFR 30.63 (see § 35.4245); and

(j) Generation of new health data through biomedical testing (for example, blood or urine testing), clinical evaluations, health studies, surveillance, registries, and/or public health interventions.

How You Get The Money

§ 35.4080 Does my group get a lump sum up front, or does EPA reimburse us for costs we incur?

(a) EPA pays your group by reimbursing you for "allowable" costs, which are costs that are:

(1) Grant related;

(2) "Allocable';

(3) "Reasonable'; and

(4) Necessary for the operation of the organization or the performance of the award.

(b) You will be reimbursed for the allowable costs up to the amount of the TAG if your group incurred the costs during the approved "project period" of the grant (except for allowable costs of incorporation which may be incurred prior to the project period), and your group is legally required to pay those costs.

§ 35.4085 Can my group get an "advance payment" to help us get started?

Yes, a maximum of $5,000.00 in the form of an advance payment is available if EPA determines that your group lacks the resources to incur expenditures for necessary start up activities in advance of (or prior to) reimbursement by us.

§ 35.4090 If my group is eligible for an advance payment, how do we get our funds?

(a) Your group must submit in writing a request for an advance payment and identify what activities, goods or services your group requires.

(b) Your EPA regional office project officer identified in your award document must approve the items for which your group seeks advance funding.

(c) Upon approval of your request, EPA will advance cash (in the form of a check or electronic funds transfer) to your group, up to $5,000, to cover its estimated need to spend funds for an initial period generally geared to your group's cycle of spending funds.

(d) After the initial advance, EPA reimburses your group for its actual cash disbursements.

§ 35.4095 What can my group pay for with an advance payment?

(a) Advance payments may be used only for the purchase of supplies, postage, the payment of the first deposit to open a bank account, the rental of equipment, the first month's rent of office space, advertisements for technical advisors and other items associated with the start up of your organization specifically requested in your advance payment request and approved by your EPA project officer.

(b) Advance payments must not be used for contracts for technical advisors or other contractors.

(c) Advance payments are not available for the costs of incorporation.

§ 35.4100 Can my group incur any costs prior to the award of our grant?

(a) The only costs you may incur prior to the award of a grant from EPA are costs associated with incorporation but you do so at your own risk.

(b) If you are awarded a TAG, EPA may reimburse you for preaward incorporation costs or allow you to count the costs toward your matching funds requirement if the costs are:

(1) Necessary and reasonable for incorporation; and

(2) Incurred for the sole purpose of complying with this subpart's requirement that your group be incorporated as a nonprofit corporation.

How to Apply for a TAG

§ 35.4105 What is the first step for getting a TAG?

To let EPA know of your group's interest in obtaining a TAG, your group should first submit to its EPA regional office an LOI. (The addresses of EPA's regional offices' TAG Coordinators are listed in § 35.4275.)

§ 35.4105 What information should an LOI include?

The LOI should clearly state that your group intends to apply for a TAG, and should identify:

(a) The name of your group;

(b) The Superfund site(s) for which your group intends to submit an application; and

(c) Provide the name of a contact person in the group and his or her mailing address and telephone number.

§ 35.4110 What does EPA do once it receives the first LOI from a group?

The following table shows what EPA does when it receives the first LOI from a group:

If your site . . .	Then EPA . . .
(a) is not proposed for listing on the NPL or is proposed but no response is underway or scheduled to begin.	will advise you in writing that we are not yet accepting TAG "applications" for your site. EPA may informally notify other interested groups that it has received an LOI.
(b) is listed on the NPL or is proposed for listing on the NPL and a response action is underway.	will publish a notice in your local newspaper to formally notify other interested parties that they may contact the first group that sent the LOI to form a coalition or they may submit a separate LOI.

§ 35.4115 After the public notice that EPA has received an LOI, how much time does my group have to form a coalition or submit a seperate LOI?

Your group has 30 days (from the date the public notice appears in your local newspaper) to submit documentation that you have formed a coalition with the first group and any other groups or to submit a separate LOI.

§ 35.4120 How much time do my group or other interested groups have to submit a TAG application to EPA?

(a) Your group must file your application with your EPA regional office within 60 days from the date the public notice appears in your local newspaper announcing that EPA has received an LOI. EPA will only accept applications from groups that submitted an LOI within 30 days from the date of that public notice.

(b) If your group requires more time to file a TAG application, you may submit a written request asking for an extension. If EPA decides to extend the time period for applications in response to your request, it will notify, in writing, all groups that submitted an LOI of the new deadline for submitting TAG applications.

(c) EPA will not accept other applications or requests for extensions after the final application deadline has passed.

§ 35.4125 Does the TAG application process affect the schedule for work at my site?

No, the schedule for response activities at your site is not affected by the TAG process.

§ 35.4130 What does my group do next?

(a) After you submit an LOI, one of the first steps in applying for your TAG is determining whether your state requires review of your grant application. This review allows your governor to stay informed about the variety of grants awarded within your state. This process is called intergovernmental review. Your EPA regional office can provide you with the contact for your state's intergovernmental review process.

(b) You should call that state contact as early as possible in the application process so that you can allow time for this review process which may take up to 60 days.

(c) EPA cannot process your application package without evidence that you have submitted it to the state for review, if your state requires it.

(d) EPA cannot award a TAG until the state has completed its intergovernmental review.

§ 35.4135 What else does my group need to do?

Once you've determined your state's intergovernmental review requirements, you must prepare a TAG application on EPA SF–424, Application for Federal Assistance, or those forms and instructions provided by EPA that include:

(a) A "budget";

(b) A scope of work;

(c) Assurances, certifications and other preaward paperwork as 40 CFR part 30 requires. Your EPA regional office will provide you with the required forms.

§ 35.4140 What must be included in my group's budget?

Your budget must clearly show how:

(a) You will spend the money and how the spending meets the objectives of the TAG project;

(b) Your group will provide the required cash and/or in-kind contributions; and

(c) Your group derived the figures included in the budget.

§ 35.4145 What period of time should my group's budget cover?

The period of time your group's budget covers (the "funding period" of your grant) will be:

(a) One which best accommodates your needs;

(b) Negotiated between your group and EPA; and

(c) Stated in the "award document."

§ 35.4150 What must be included in my group's work plan?

(a) Your scope of work must clearly explain how your group:

(1) Will organize;

(2) Intends to use personnel you will procure for management/coordination and technical advice; and

(3) Will share and disseminate information to the rest of the affected community.

(b) Your scope of work must also clearly explain your project's milestones and the schedule for meeting those milestones.

(c) Finally, your scope of work must explain how your board of directors, technical advisor(s) and "project manager" will interact with each other.

§ 35.4155 How does EPA decide whether to award a TAG to our group?

Once EPA determines your group meets the eligibility requirements in § 35.4020 the Agency considers whether and how successfully your group meets these criteria, each of which are of equal weight:

(a) Representation of groups and individuals affected by the site;

(b) Your group's plans to use the services of a technical advisor throughout the Superfund response action; and

(c) Your group's ability and plan to inform others in the community of the information provided by the technical advisor.

§ 35.4160 What does EPA do if more than one group applies for a TAG at the same site?

When multiple groups apply, EPA will rank each applicant relative to other applicants using the criteria in § 35.4155.

§ 35.4165 When does EPA award a TAG?

(a) EPA may award TAGs throughout the Superfund process, including during operation and maintenance, but we will not award a TAG before the start of your site's response action if the site is proposed for listing on the NPL.

(b) Based on the availability of funds, EPA may delay awards of grants to qualified applicants.

Managing Your TAG

§ 35.4170 What kinds of reporting does EPA require?

There are several types of reports you need to complete at various points during the life of your group's grant; the number varies based on whether you receive an advance payment:

Type of Report	Required Information	Timing and Frequency
(a) Federal Cash Transactions Report	The amount of funds advanced to you or electronically transferred to your bank account and how you spent those funds..	Semiannually within 15 working days following the end of the semiannual period which ends June 30 and December 31 of each year.
(b) Minority-Owned Business Enterprise/ Women-Owned Business Enterprise (MBE/WBE) Utilization.	Whether your group contracted with a MBE/WBE in the past Federal fiscal year, the value of the contract, if any, and the percentage of total project dollars on MBE/WBEs..	Annually, even if no contracts have been signed.
(c) Progress Report	Full description in chart or narrative format of the progress your group made in relation to your approved schedule, budget and the TAG project milestones, including an explanation of special problems your group encountered..	Quarterly, within 45 days after the end of each calendar quarter.
(d) Financial Status Report	Status of project's funds through identification of project transactions..	Annually, within 90 days after the anniversary date of the start of your TAG project, and within 90 days after the end of your TAG's funding period.
(e) Final Report.	Description of project goals and objectives, activities undertaken to achieve goals and objectives, difficulties encountered, technical advisors' work products and funds spent.	Within 90 days after the end of your project.

§ 35.4175 What other reporting and record keeping requirements are there?

In addition to the report requirements § 35.4170 describes, EPA requires your group to:

(a) Comply with any reporting requirements in the terms and conditions of the "grant agreement";

(b) Keep complete financial records accurately showing how you used the Federal funds and the match, whether it is in the form of cash or in-kind assistance; and

(c) Comply with any reporting and record keeping requirements in OMB Circular A–122 and 40 CFR part 30.

§ 35.4180 Must my group keep financial records after we finish our TAG?

(a) You must keep TAG financial records for ten years from the date of the final Financial Status Report, or until any audit, litigation, cost recovery, and/or disputes initiated before the end of the ten-year retention period are settled, whichever, is longer.

(b) At the ten-year mark, you may dispose of your TAG financial records if you first get written approval from EPA.

(c) If you prefer, you may submit the financial records to EPA for safekeeping when you give us the final Financial Status Report.

§ 35.4185 What does my group do with reports our technical advisor prepares for us?

You must send to EPA a copy of each final written product your advisor prepares for you as part of your TAG. We will send them to the local Superfund site information repository(ies) where all site-related documents are available to the public.

Procuring a Technical Advisor or Other Contractor With TAG Funds

§ 35.4190 How does my group identify a qualified technical advisor?

(a) Your group must select a technical advisor who possesses the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues, relocation issues, redevelopment issues or public health issues as those issues relate to hazardous substance/toxic waste issues, as appropriate (relocation technical advisors may only be hired under certain circumstances, see § 35.4200);

(2) Academic training in a relevant discipline (for example, biochemistry, toxicology, public health, environmental sciences, engineering, environmental law and planning); and

(3) Ability to translate technical information into terms your community can understand.

(b) Your technical advisor for public health issues must have received his or her public health or related training at accredited schools of medicine, public health, or accredited academic institutions of other allied disciplines (for example, toxicology) and must be associated with such institutions.

(c) Your group should select a technical advisor who has experience working on hazardous or toxic waste problems, relocation, redevelopment or public health issues, and communicating those problems and issues to the public.

§ 35.4195 Are there certain people my group cannot select to be our technical advisor, grant administrator, or other contractor under the grant?

Your group may not hire the following people:

(a) The person(s) who wrote the specifications for the "contract" and/or who helped screen or select the contractor;

(b) In the case of a technical advisor, anyone doing work for the Federal or State government or any other entity at the same NPL site for which your group is seeking a technical advisor; and

(c) Anyone who is on the List of Parties Excluded from Federal Procurement or NonProcurement Programs.

§ 35.4200 What restrictions apply to contractors my group procures for our TAG?

When procuring contractors your group:

(a) Cannot award cost-plus-percentage-of-cost contracts;

(b) Must award only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract; and

(c) Can only hire a relocation technical advisor when EPA is seriously considering permanent relocation as part of the site remedy (for example, permanent relocation is one of several remedial alternatives being considered in the feasibility study).

§ 35.4205 How does my group procure a technical advisor or any other contractor?

When procuring contractors your group must also:

(a) Provide opportunity for all qualified contractors to compete for your work (see § 35.4210);

(b) Keep written records of the reasons for all your contracting decisions;

(c) Make sure that all costs are reasonable in a proposed contract;

(d) Inform EPA of any proposed contract over $1,000.00;

(e) Provide EPA the opportunity to review a contract before your group awards or amends it;

(f) Perform a "cost analysis" to evaluate each element of a contractor's cost to determine if it is reasonable, allocable and allowable for all contracts over $25,000; and

(g) Comply with the small business enterprises (SBE), minority-owned business enterprises, women-owned business enterprise requirements in 40 CFR 30.44(b) which outlines steps your group must take to make positive efforts to use small businesses, minority-owned firms and women's business enterprises. These steps generally say:

(1) Make sure to use small businesses, minority-owned firms, and women's businesses as often as possible.

(2) Make information on upcoming opportunities available and plan time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) When procuring firms for larger contracts, consider whether those firms intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of those to handle on its own.

(5) Use the services and help, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(6) If your contractor awards a contract, require the contractor to take the steps in 40 CFR 30.44(b) as summarized in paragraphs (g)(1) through (5) of this section.

§ 35.4210 Must my group solicit and document bids for our procurements?

(a) The steps needed to be taken to procure goods and/or services depends on the amount of the proposed procurement:

If the aggregate amount of the . . .	Then your group . . .
(1) purchase is $1,000 or less	may make the purchase as long as you make sure the price is reasonable; no oral or written bids are necessary.
(2) proposed contract is over $1,000 but less than $25,000	must obtain and document oral or written bids from two or more qualified sources.
(3) proposed contract is $25,000 to $100,000	must: (i) Solicit written bids from three or more sources who are willing and able to do the work; (ii) Provide potential sources in the scope of work to be performed and the criteria your group will use to evaluate the bids; (iii) Objectively evaluate all bids; and (iv) Notify all unsuccessful bidders.
(4) proposed contract is greater than $100,000	must follow the procurement regulations in 40 CFR Part 30 (these regulations outline the standards for your group to use when contracting for services with Federal funds; they also contain provisions on: codes of conduct for the award and administration of contracts; competition; procurement procedures; cost and price analysis; procurement records; contract administration; and contracts generally).

(b) Your group must not divide any procurements into smaller parts to get under any of the dollar limits in paragraph (a) of this section.

§ 35.4215 What if my group can't find an adequate number of potential sources for a technical advisor or other contractor?

In situations where only one adequate bidder can be found, your group may request written authority from the EPA award official to contract with the sole bidder.

§ 35.4220 How does my group ensure a prospective contractor does not have a conflict of interest?

Your group must require any prospective contractor on any contract to provide, with its bid or proposal:

(a) Information on its financial and business relationship with all PRPs at the site, with PRP parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement includes past and anticipated financial and business relationships, and services related to any proposed or pending litigation, with such parties;

(b) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(c) A statement that it will disclose to you immediately any such information discovered after submission of its bid or after award.

§ 35.4225 What if my group decides a prospective contractor has a conflict of interest?

If, after evaluating the information above, your group decides a prospective contractor has a significant conflict of interest that cannot be avoided or otherwise resolved, you must exclude him or her from consideration.

§ 35.4230 What are my group's contractual responsibilities once we procure a contractor?

For contractual responsibilities, your group, not EPA:

(a) Is responsible for resolving all contractual and administrative issues arising out of contracts you enter into under a TAG; you must establish a procedure for resolving such issues with your contractor which complies with the provisions of 40 CFR 30.41. These provisions say your group, not EPA, is responsible for settling all issues related to decisions you make in procuring advisors or other contractors with TAG funds; and

(b) Must ensure your contractor(s) perform(s) in accordance with the terms and conditions of the contract.

§ 35.4235 Are there specific provisions my group's contract(s) must contain?

Your group must include the following provisions in each of its contracts:

(a) Statement of work;

(b) Schedule for performance;

(c) Due dates for deliverables;

(d) Total cost of the contract;

(e) Payment provisions;

(f) The following clauses from 40 CFR part 30, appendix A, which your EPA regional office can provide to you:

(1) Equal Employment Opportunity; and

(2) Suspension and Debarment;

(g) The following clauses from 40 CFR 30.48:

(1) Remedies for breaches of contract (40 CFR 30.48(a));

(2) Termination by the recipient (40 CFR 30.48(b));

(3) Access to records (40 CFR 30.48(d)); and

(h) Provisions that require your contractor(s) to keep the following detailed records as § 35.4180 requires for ten years after the end of the contract:

(1) Acquisitions;

(2) Work progress reports;

(3) Expenditures; and

(4) Commitments indicating their relationship to established costs and schedules.

Requirements for TAG Contractors

§ 35.4240 What provisions must my group's TAG contractor comply with if it subcontracts?

A TAG contractor must comply with the following provisions when awarding subcontracts:

(a) Section 35.4205 (b) pertaining to documentation;

(b) Section 35.4205 (c) and (f) pertaining to cost;

(c) Section 35.4195 (c) pertaining to suspension and debarment;

(d) Section 35.4200 (b) pertaining to responsible contractors;

(e) Section 35.4205 (g) pertaining to disadvantaged business enterprises;

(f) Section 35.4200 (a) pertaining to unallowable contracts;

(g) Section 35.4235 pertaining to contract provisions; and

(h) Cost principles in 48 CFR part 31, the Federal Acquisition Regulation, if the contractor and subcontractors are profit-making organizations.

Grant Disputes, Termination, and Enforcement

§ 35.4245 How does my group resolve a disagreement with EPA regarding our TAG?

The regulations at 40 CFR 30.63 and 31.70 will govern disputes except that, before you may obtain judicial review of the dispute, you must have requested the Regional Administrator to review the dispute decision official's determination under 40 CFR 31.70(c), and, if you still have a dispute, you must have requested the Assistant Administrator for the Office of Solid Waste and Emergency Response to review the Regional Administrator's decision under 40 CFR 31.70(h).

§ 35.4250 Under what circumstances would EPA terminate my group's TAG?

(a) EPA may terminate your grant if your group materially fails to comply with the terms and conditions of the TAG and the requirements of this subpart.

(b) EPA may also terminate your grant with your group's consent in which case you and EPA must agree upon the termination conditions, including the effective date as 40 CFR 30.61 describes.

§ 35.4255 Can my group terminate our TAG?

Yes. Your group may terminate your TAG by sending EPA written notification explaining the reasons for the termination and the effective date.

§ 35.4260 What other steps might EPA take if my group fails to comply with the terms and conditions of our award?

EPA may take one or more of the following actions, under 40 CFR 30.62, depending on the circumstances:

(a) Temporarily withhold advance payments until you correct the deficiency;

(b) Not allow your group to receive reimbursement for all or part of the activity or action not in compliance;

(c) Wholly or partly "suspend" your group's award;

(d) Withhold further awards (meaning, funding) for the project or program;

(e) Take enforcement action;

(f) Place special conditions in your grant agreement; and

(g) Take other remedies that may be legally available.

Closing Out a TAG

§ 35.4265 How does my group close out our TAG?

(a) Within 90 calendar days after the end of the approved project period of the TAG, your group must submit all financial, performance and other reports as required by § 35.4180. Upon request from your group, EPA may approve an extension of this time period.

(b) Unless EPA authorizes an extension, your group must pay all your bills related to the TAG by no later than 90 calendar days after the end of the funding period.

(c) Your group must promptly return any unused cash that EPA advanced or paid; OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, governs unreturned amounts that become delinquent debts.

Other Things You Need To Know

§ 35.4270 Definitions.

Advance payment means a payment made to a recipient before "outlays" are made by the recipient.

Affected means subject to an actual or potential health, economic or environmental threat. Examples of affected parties include people:

(1) Who live in areas near NPL facilities, whose health may be endangered by releases of hazardous substances at the facility; or

(2) Whose economic interests are threatened or harmed.

Affiliated means a relationship between persons or groups where one group, directly or indirectly, controls or has the power to control the other, or, a third group controls or has the power to control both. Factors indicating control include, but are not limited to:

(1) Interlocking management or ownership;

(2) Shared facilities and equipment; and

(3) Common use of employees.

Allocable cost means a cost which is attributable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received: A cost is allocable to a Government award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award;

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received; or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

Allowable cost means those project costs that are: eligible, reasonable, allocable to the project, and necessary to the operation of the organization or the performance of the award as provided in the appropriate Federal cost principles, in most cases OMB Circular A–122 (see 40 CFR 30.27), and approved by EPA in the assistance agreement.

Applicant means any group of people that files an application for a TAG.

Application means a completed formal written request for a TAG that you submit to a State or the EPA on EPA form SF–424, Application for Federal Assistance (Non-construction Programs).

Award document or *grant agreement* is the legal document that transfers money or anything of value to your group to accomplish the purpose of the TAG project. It specifies funding and project periods, EPA's and your group's budget share of "eligible costs," a description of the work to be accomplished, and any additional terms and conditions that may apply to the grant.

Award Official means the EPA official who has the authority to sign grant agreements.

Budget means the financial plan for spending all Federal funds and your group's matching share funds (including in-kind contributions) for a TAG project that your group proposes and EPA approves.

Cash contribution means actual non-Federal dollars, or Federal dollars if expressly authorized by Federal statute, that your group spends for goods, services, or personal property (such as office supplies or professional services) used to satisfy the matching funds requirement.

Contract means a written agreement between your group and another party (other than a public agency) for services or supplies necessary to complete the TAG project. Contracts include contracts and subcontracts for personal and professional services or supplies necessary to complete the TAG project.

Contractor means any party (for example, a technical advisor) to whom your group awards a contract.

Cost analysis is the evaluation of each element of cost to determine whether it is reasonable, allocable, and allowable.

Eligible cost is a cost permitted by statute, program guidance or regulations.

EPA means the Environmental Protection Agency.

Federal facility means a facility that is owned or operated by a department, agency, or instrumentality of the United States.

Funding period (previously called a "budget period") means the length of time specified in a grant agreement during which your group may spend Federal funds. A TAG project period may be comprised of several funding periods.

Grant agreement or *award document* is the legal document that transfers money or anything of value to your group to accomplish the purpose of the TAG project. It specifies funding and project periods, EPA's and your group's budget share of eligible costs, a description of the work to be accomplished, and any additional terms and conditions that may apply to the grant.

In-kind contribution means the value of a non-cash contribution used to meet your group's matching funds requirement in accordance with 40 CFR 30.23. An in-kind contribution may consist of charges for equipment or the value of goods and services necessary to the EPA-funded project.

Letter of intent (LOI) means a letter addressed to your EPA regional office which clearly states your group's intention to apply for a TAG. The letter tells EPA the name of your group, the Superfund site(s) for which your group intends to submit an application, and the name of a contact person in the group including a mailing address and telephone number.

Matching funds means the portion of allowable project cost contributed toward completing the TAG project using non-Federal funds or Federal funds if expressly authorized by Federal statutes. The match may include in-kind as well as cash contributions.

National Priorities List (NPL) means the Federal list of priority hazardous substance sites, nationwide. Sites on the NPL are eligible for long-term cleanup actions financed through the Superfund program.

Operable unit means a discrete action defined by EPA that comprises an incremental step toward completing site cleanup.

Operation and maintenance means the steps taken after site actions are complete to make certain that all actions are effective and working properly.

Outlay means a charge made to the project or program that is an allowable cost in terms of costs incurred or in-kind contributions used.

Potentially responsible party (PRP) means any individual(s) or company(ies) (such as owners, operators, transporters or generators) potentially responsible under sections 106 or 107 of CERCLA (42 U.S.C. 9606 or 42 U.S.C 9607) for the contamination problems at a Superfund site.

Project manager means the person legally authorized to obligate your group to the terms and conditions of EPA's regulations and the grant agreement, and designated by your group to serve as its principal contact with EPA.

Project period means the period established in the TAG award document during which TAG money may be used. The project period may be comprised of more than one funding period.

Reasonable cost means a cost that, in its nature or amount, does not exceed that which would be incurred by a prudent person under the circumstances

prevailing at the time the decision was made to incur the costs.

Recipient means any group that has been awarded a TAG.

Record of decision (ROD) means a public document that explains the cleanup method that will be used at a Superfund site; it is based on technical data gathered and analyses performed during the remedial investigation and feasibility study, as well as public comments and community concerns.

Remedial investigation/feasibility study (RI/FS) means the phase during which EPA conducts risk assessments and numerous studies into the nature and extent of the contamination on site, and analyzes alternative methods for cleaning up a site.

Response action means all activities undertaken by EPA, other Federal agencies, States, or PRPs to address the problems created by hazardous substances at an NPL site.

Start of response action means the point in time when funding is set-aside by either EPA, other Federal agencies, States, or PRPs to begin response activities at a site.

Suspend means an action by EPA that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension.

§ 35.4275 Where can my group get the documents this subpart references (for example, OMB circulars, other subparts)?

EPA Headquarters and the regional offices that follow have the documents this subpart references available if you need them:

(a) TAG Coordinator or Grants Office, U.S. EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203.

(b) TAG Coordinator or Grants Office, U.S. EPA Region II, 290 Broadway, New York, NY 10007–1866.

(c) TAG Coordinator or Grants Office, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19106.

(d) TAG Coordinator or Grants Office, U.S. EPA Region IV, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303.

(e) TAG Coordinator or Grants Office, U.S. EPA Region V, Metcalfe Federal Building, 77 W. Jackson Blvd., Chicago, IL 60604.

(f) TAG Coordinator or Grants Office, U.S. EPA Region VI, Wells Fargo Bank, Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 752020–2733.

(g) TAG Coordinator or Grants Office, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.

(h) TAG Coordinator or Grants Office, U.S. EPA Region VIII, 999 18th Street, Suite #500, Denver, CO 80202–2466.

(i) TAG Coordinator or Grants Office, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

(j) TAG Coordinator or Grants Office, U.S. EPA Region X, 1200 6th Avenue, Seattle, WA 98101.

(k) National TAG Coordinator, U.S. EPA Mail Code: 5204–G, 401 M Street SW, Washington, DC 20460.

[FR Doc. 99–20871 Filed 8–23–99; 8:45 am]
BILLING CODE 6560–50–P

federal register

Tuesday
August 24, 1999

Part IV

Department of Education

34 CFR Part 685
William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC68

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program. These amendments are a result of recently enacted changes to the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998. These final regulations remove references to the phase-in of the Direct Loan Program, update the loan interest rate formulas, and reflect the Secretary's authority to charge reduced loan fees on Direct Subsidized and Direct Unsubsidized Loans.

DATES: These regulations are effective August 24, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 3045, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contract person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These regulations address changes made to the Higher Education Amendments of 1998 (1998 Amendments) (Pub. L. 105–244) that affect the Direct Loan Program. On June 16, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for the Direct Loan Program in the **Federal Register** (64 FR 32358). In the preamble to the NPRM, the Secretary discussed on pages 32359 and 32360 the following proposed changes:

- Amending § 685.202(a) to include the interest rate formulas that apply to Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans that are first disbursed on or after October 1, 1998 and before July 1, 2003, and to Direct Consolidation Loans that are first disbursed on or after July 1, 1998.
- Amending § 685.202(c) to reflect that the Secretary charges a loan fee on a Direct Subsidized or Direct Unsubsidized Loan not to exceed four percent of the principal amount of the loan.
- Amending § 685.211 to allow the Secretary to charge borrowers reduced interest rates to encourage on-time loan repayment.
- Moving the school selection provisions in § 685.401 to § 685.400 and removing § 685.401 from the Direct Loan Program regulations to delete all references to the phase-in of the Direct Loan Program and the transition from the Federal Family Education Loan (FFEL) Program to the Direct Loan Program.

The amendments to §§ 685.202(a), 685.400, and 685.401 reflect statutory changes that became effective on October 1, 1998, in accordance with section 3 of the 1998 Amendments. The amendments to § 685.202(c) reflect the Secretary's interpretative rule with respect to the 1998 Amendments that became effective upon its announcement in the NPRM published on June 16, 1999.

In the preamble to the NPRM, the Secretary discussed amending § 685.211 to allow the Secretary to charge borrowers reduced interest rates to encourage on-time loan repayment. This proposed amendment is not included in these final regulations. Section 455(b)(7) of the HEA includes certain requirements that must be met before final regulations on this subject are published. For example, a report from the Office of Management and Budget (OMB) on the cost neutrality of a proposed repayment incentive must be submitted to Congress not less than 60 days prior to publishing final regulations. At this time, the OMB report has not been submitted to Congress. The Secretary will publish final regulations for the repayment incentive provision once the Department has complied with the applicable statutory requirements.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, several parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Interest Rates (§ 685.202(a)(3)(i)(E) and (ii)(D))

Comments: Commenters representing guaranty agencies, lenders, and servicers in the FFEL Program submitted joint and individual comments in which they requested that the Secretary provide further clarification on the calculation of the interest rate on a Direct Consolidation Loan for which the consolidation application is received by the Secretary on or after February 1, 1999 and before July 1, 2003. The commenters stated that there is confusion as to whether the Direct Consolidation Loan interest rate calculation is the same as the interest rate calculation for consolidation loans made under the FFEL Program. The commenters also repeated the belief they stated during negotiated rulemaking that the repayment period interest rate, rather than the in-school, grace, or deferment period interest rate, always should be used to calculate the weighted average interest rate on consolidation loans made under the Direct Loan and FFEL programs. Further, the commenters believe that Congress intended for the repayment period interest rate to be used in all cases.

Discussion: As provided in section 455(b)(6)(D) of the HEA, the interest rate on a Direct Consolidation Loan for which the consolidation application is received by the Secretary on or after February 1, 1999 and before July 1, 2003 is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, not to exceed 8.25 percent. Section 427A(k)(4) of the HEA establishes the same interest rate formula for consolidation loans made under the FFEL Program for which the consolidation application is received by the lender on or after October 1, 1998 and before July 1, 2003.

The Secretary believes that in both the Direct Loan and FFEL programs, the weighted average interest rate should be calculated based on the interest rates that apply to the loans being consolidated at the time the loan holders complete the verification certificates. An interest rate that is lower than the repayment period rate applies to most subsidized and unsubsidized Direct Loan and FFEL program loans during the in-school, grace, and deferment periods. If, for example, a loan is in a grace period at the time the loan holder completes the verification certificate, the lower grace period interest rate would be used in the calculation of the weighted average interest rate on the consolidation loan.

To do as the commenters have suggested and always use the repayment period interest rate would mean that, in cases in which the loan being consolidated is in an in-school, grace, or deferment period, the weighted average

interest rate would be based on an interest rate that may never apply to the loan and is speculative since it would not be known when that loan would enter repayment. We know of no legal basis to support the commenters' approach and do not agree that this was the intent of Congress.

Change: None.

Loan Fees (§ 685.202(c)(1))

Comments: A number of commenters representing individual schools and associations representing schools supported the Secretary's proposed rule that would reflect the Secretary's authority to charge a loan fee not to exceed four percent on a Direct Subsidized or Direct Unsubsidized Loan. These commenters agreed with the Secretary's interpretation of the statute as discussed in the NPRM.

A number of commenters representing guaranty agencies, lenders, and services in the FFEL Program submitted joint and individual comments in which they questioned the Secretary's legal authority for proposing to amend the regulations to clarify that the Secretary may charge a loan fee not to exceed four percent on a Direct Subsidized or a Direct Unsubsidized Loan. The commenters argued that such a proposal was not consistent with the HEA.

Discussion: The Secretary continues to believe that he has the legal authority to charge a loan fee of less than four percent on the same basis as lenders in the FFEL Program. The Secretary appreciates the support provided by the commenters representing schools.

The loan fee in the Direct Loan Program is the equivalent of the three percent loan origination fee and the one percent insurance premium charged to borrowers in the FFEL Program. Prior to enactment of the 1998 Amendments, the Secretary charged borrowers the full four percent fee. This practice was generally consistent with the practice in the FFEL Program. Some Lenders charged some borrowers less than the full four percent but the HEA did not control this practice and lenders had complete discretion to offer a lower fee to some borrowers and not to others.

The 1998 Amendments made a significant change in the lender's authority to charge a lower loan origination fee to some borrowers and not others.

The 1998 Amendments made a significant change in the lender's authority to charge a lower loan origination fee to some borrowers and not others. The 1998 Amendments modified section 438(c)(2) of the HEA to establish, for the first time, legally binding standards that must be met for a lender to reduce loan origination fees charged to borrowers in the FFEL Program. The HEA now requires lenders to provide reduced loan origination fees to all borrowers or to borrowers who demonstrate a greater financial need. The negotiated rulemaking committee reached consensus on proposed regulations that established national standards governing the reduction of loan fees. The creation of these standards under the HEA make a reduced loan fee a term and condition of the borrower's FFEL loans. A borrower now has a legal basis to insist on equal treatment from the lender on loan fees, including a lower fee, if the lender offers a lower fee to any other borrowers.

Under section 455(a) of the HEA, Direct Loan Program loans made to borrowers under the HEA "shall have the same terms, conditions, and benefits" as FFEL Program loans unless otherwise specified. As discussed above, the 1998 Amendments changed the HEA to modify the terms, conditions, and benefits of FFEL Program loans in regard to the charging of loan fees to borrowers. The Secretary believes that, under section 455(a) of the HEA, Direct Loan borrowers are entitled to a reduction in the loan fee under the same conditions as FFEL Program borrowers. Thus, the Secretary will provide a lower loan fee in the Direct Loan Program under the same conditions that govern a lender's authority to charge a reduced loan fee in the FFEL Program.

Some commenters representing lenders, guaranty agencies, and servicers in the FFEL Program argued that the authority to provide a reduced loan fee does not apply to the Direct Loan Program because section 455(c) of the HEA states that the Secretary "shall" charge a loan fee of four percent. These commenters, however, ignore the fact that their interpretation would cause a conflict between the language in section 455(c) and the requirement in section 455(a) that loans made under the Direct Loan Program "shall" have the same terms, conditions, and benefits as loans made under the FFEL Program. The commenters' interpretation would give borrowers in the FFEL Program a reduced loan fee as a term of their loan, while denying the same opportunity to borrowers in the Direct Loan Program. The Secretary is required to interpret the statute as a whole to give meaning to all statutory provisions. The Secretary's interpretation gives meaning to the requirements in both sections 455(a) and 455(c). The Secretary also notes that nothing in the 1998 Amendments or its legislative history indicates that Congress intended to deny the opportunity for reduced loan fees provided to FFEL Program borrowers to Direct Loan Program borrowers. Accordingly, the Secretary declines to adopt the interpretation proposed by these commenters.

In commenting on the proposed rule, some commenters argued that the interpretation was inconsistent with prior interpretations of the word "shall" by the Secretary in other contexts. The examples provided by these commenters are not inconsistent with the Secretary's proposed rule in this case. In interpreting statutory language the Secretary is required to interpret the statute as a whole. In other circumstances, the Secretary has interpreted the word "shall" as denying any discretion to the Secretary when the rest of the statute does not support any other approach on a particular issue. As noted above, however, in this case, the Secretary believes that the statute as a whole supports the interpretation reflected in these regulations.

The commenters representing lenders, guaranty agencies, and servicers in the FFEL Program also argued that the Secretary should only implement a reduced loan fee in the Direct Loan Program when the HEA is changed to provide for a reduced loan fee in both programs. These comments, however, are based on a misunderstanding of the Secretary's position. The proposed rule simply applies the same new statutory provision governing reduced loan fees to borrowers in the Direct Loan Program that now applies to borrowers in the FFEL Program under section 438(c) (2) of the HEA. Thus, the Secretary's interpretation and proposed rule results in equal treatment of borrowers in both programs. In contrast, failing to apply the new rule to the Direct Loan Program would deny Direct Loan borrowers an opportunity for a reduced loan fee that is now guaranteed by statute in the FFEL Program.

In addition, we note that any statutory reduction in the fee would benefit the lender, not necessarily the borrower. The lender is required to pay the fee in the FFEL Program to the Secretary and may choose to pass the fee on to the borrower as permitted by section 438(b)(2) of the HEA. Competition in the FFEL Program has already led many lenders to offer borrowers reduced loan fees, which in turn reduces the lenders; revenues from those borrowers. Reducing the fee in the statute would simply increase the lender's profits by reducing the fee the lender is required to pay without necessarily reducing fees charged to borrowers.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM on page 32360.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.268 William D. Ford Federal Direct Loan Program.)

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

Dated: August 13, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by amending part 685 as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

2. Section 685.202 is amended by revising paragraphs (a) and (c) (1) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) *Interest*—(1) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans.* (i) *Loans first disbursed before July 1, 1995.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(ii) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.* (A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.5 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(iii) *Loans first disbursed on or after July 1, 1998.* (A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 1.7 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(2) *Interest rate for Direct PLUS Loans.* (i) *Loans first disbursed before July 1, 1998.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(ii) *Loans first disbursed on or after July 1, 1998.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(3) *Interest rate of Direct Consolidation Loans.* (i) *Interest rate for Direct Subsidized Consolidation Loans and Direct Unsubsidized Consolidation Loans.* (A) *Loans first disbursed before July 1, 1995.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(i) of this section.

(B) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(ii) of this section.

(C) *Loans for which the first disbursement is made on or after July 1, 1998 and prior to October 1, 1998, and loans for which the disbursement is*

made on or after October 1, 1998 for which the consolidation application was received by the Secretary before October 1, 1998. The interest rate is the rate established for District Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(iii) of this section.

(D) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(E) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

(ii) *Interest rate for Direct PLUS Consolidation Loans.* (A) *Loans first disbursed before July 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(i) of this section.

(B) *Loans for which the first disbursement is made on or after July 1, 1998 and prior to October 1, 1998, and loans for which the disbursement is made on or after October 1, 1998 for which the consolidation application was received by the Secretary before October 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(ii) of this section.

(C) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(D) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

* * * * *

(c) * * *

(1)(i) Charges a borrower a loan fee not to exceed four percent of the principal amount of the loan on a Direct Subsidized or Direct Unsubsidized Loan; and

(ii) Charges a borrower a loan fee of four percent of the principal amount of the loan on a Direct PLUS Loan.

* * * * *

3. Section 685.400 is amended by adding a new paragraph (d) to read as follows:

§ 685.400 School participation requirements.

* * * * *

(d) The Secretary selects schools to participate in the Direct Loan Program from among those that apply to participate and meet the requirements in paragraphs (a)(1), (b), and (c) of this section.

§ 685.401 [Removed]

4. Section 685.401 is removed and reserved.

[FR Doc. 99–21957 Filed 8–23–99; 8:45 am]
BILLING CODE 4000–01–M

Read

CUSTOME

Federal Reg
General Infor
aids

Laws

Presidential
Executive or
The United S

Other Servic
Electronic an
Privacy Act
Public Laws
TTY for the

ELECTRONI

World Wide

Full text of t
publications:
htt

Federal Regis
Inspection Li
htt

E-mail

PENS (Public
service for no
subscribe, sen
list
with the text
sub

Use listserv@
PENS. We ca

Reference que
Federal Regist
inf

The Federal R
regulations.

FEDERAL R

41765–41998
41999–42264
42265–42578
42579–42822
42823–43042
43043–43254
43255–43598
43599–43896
43897–44100
44101–44396
44397–44642
44643–44816
44817–45148
45149–45406
45407–45858
45859–46110
46111–46256

Reader Aids

Federal Register

Vol. 64, No. 163

Tuesday, August 24, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998	2
41999–42264	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43598	10
43599–43896	11
43897–44100	12
44101–44396	13
44397–44642	16
44643–44816	17
44817–45148	18
45149–45406	19
45407–45858	20
45859–46110	23
46111–46256	24

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12924 (See Notice of Aug. 10, 1999) 44101
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895
13134 44639

Administrative Orders:
Notice of Aug. 10, 1999 44101

7 CFR

11 43043
301 45859
319 45860
610 41999
906 45407
966 45409
989 43897
1220 45413
1230 44643
1728 42005

Proposed Rules:
6 42288
354 43103
505 44634
915 45461
931 42858
932 42619
944 45461
981 43298
984 45208
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 ..... 43043, 45419
116 43043
124 43043
318 44644
319 44644
390 43902

Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823
76 44645
420 46111

Proposed Rules:
30 45900
35 45907
40 45900
50 ..... 44137, 44860, 45900, 45908, 45911
70 ..... 45900, 45911
72 ..... 45918, 45920, 45923
709 45062
710 ..... 44433, 45062
711 45062

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

12 CFR

201 41765
602 ..... 41770, 45589
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
905 44103

Proposed Rules:
202 44582
361 ..... 42861, 42862
702 44663
747 44663
935 44444

13 CFR

120 44109

Proposed Rules:
120 43636

14 CFR

4 43599
25 44817
27 ..... 43016, 45092, 46230
29 ..... 43016, 45336, 46230

39 .....41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905, 44110, 44112, 44650, 45868, 45870
71 .....41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907, 44114, 44116, 44117, 44268, 44397, 44398, 44399, 44400, 44578, 44819, 44821, 44823, 44825, 45149, 45421, 45423, 45425, 45426, 45433, 45435, 45436, 46114, 46115, 46116, 46228
91.....44814
97.....44117, 44119
121.....46117
125.....46117
254.....41781
382.....41781

Proposed Rules:
25 .....43570, 43943, 43946, 45589
39 .....41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667, 45211, 45466, 45468, 45470, 45472, 45474, 45476, 45477, 45481, 45483, 45485, 45487, 45925, 45827, 45929
65.....42810
66.....42810
71 .....42300, 42301, 44139, 44140, 44141, 44142, 44144, 44865
93.....44145, 46155
107.....43321
108.....43322
119.....45090
121.....45090
129.....45090
135.....45090
147.....42810
183.....45090

15 CFR

734.....42009
738.....42009
740.....42009
742.....42009
902.....42826

16 CFR

2.....43599
5.....42594

Proposed Rules:
1212.....42302

17 CFR

9.....43254
10.....43071
211.....45150
12.....43071
200.....42594
240.....42031, 42594
249.....42594

Proposed Rules:
4.....41843
275.....43556

18 CFR

3.....44400
341.....44400
342.....44400
346.....44400
357.....44400
362.....44400
381.....44652
385.....44400

Proposed Rules:
101.....42304
343.....43600
357.....42623, 45931
385.....42307, 43600

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
151.....43608
162.....43262
173.....43262
174.....43262, 43608
178.....43608
181.....43262

Proposed Rules:
12.....41851
113.....41851, 42872
141.....41851

20 CFR

404.....46122

Proposed Rules:
375.....44670
404.....42310
416.....42310

21 CFR

101.....42277
172 .....43072, 43908, 44121
173.....44122
175.....45872
176.....46129, 46130
178 .....44406, 44407, 45873, 46132
310.....44653
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596, 43909
606.....45366
640.....45366
878.....45155, 46011
1308.....42432
1312.....42432

Proposed Rules:
101.....42315, 45932
207.....43114
310.....44671
314.....42625, 42873
344.....44671
600.....45383
606.....45355, 45375
607.....43114, 45340
610.....45340
630.....45355
640.....45340, 45375
660.....45340
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032, 45162
514.....44123

24 CFR

108.....44094
982.....43613

Proposed Rules:
990.....43641

26 CFR

1 .....41783, 43072, 43267, 43613, 43910, 45874
31.....42831
301.....41783
602 .....41783, 43072, 43613
801.....42834

Proposed Rules:
1 .....43117, 43323, 43462, 43969, 46155
301.....43324
602.....43462

28 CFR

505.....43880

29 CFR

1610.....45164
2570.....42246
2575.....42246
4044.....44128

Proposed Rules:
1910.....45098
2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75 .....43280, 43286, 45165
90.....43283
202.....43506
206.....43288, 43506
250.....42597
914.....43911
943.....43913

Proposed Rules:
206.....45213
913.....44674
914.....44448
935.....42887
936.....43327
946.....45489

31 CFR

103.....45438
538.....41784
550.....41784
560.....41784
590.....43924

Proposed Rules
375.....42626

32 CFR

199.....45453, 46133
505.....45877

Proposed Rules:
230.....43856
231.....43858
231a.....43856

33 CFR

100 .....42278, 42598, 43289
110.....42279
117 .....42033, 42599, 44129, 44131, 44826
160.....41794
165 .....43290, 43291, 44656, 45878, 45879

Proposed Rules:
100.....41853
117 .....44145, 44147, 44148, 44149, 44151

34 CFR

611.....42837
685.....46252

Proposed Rules:
668 .....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682 .....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:
13.....41854
1191.....42056

37 CFR

Proposed Rules:
201.....42316

38 CFR

17.....44659
21.....44660

39 CFR

20.....43292, 46141

Proposed Rules:
111.....44681

40 CFR

9 .....42432, 43426, 43936
52 .....42600, 43083, 44131, 44134, 44408, 44411, 44415, 44417, 45170, 45175, 45178, 45182, 45454
58.....42530
62 .....43091, 44420, 45184, 45880, 46148
63.....42764, 45187
86.....43936
122.....42432, 43426
123.....42432, 43426
124.....42432, 43426
180 .....41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846, 44826, 44829, 45885, 45888
186.....41818
261.....42033
271 .....41823, 42602, 44836
300.....44135
403.....42552

501.....
503.....
745.....
Proposed Rules:
35.....
51.....
52 42629
42892, 44152
44452, 4521
55.....
62 43123
63.....
97.....
122.....
123.....
124.....
130.....
131.....
147.....
259.....
261 42317
266.....
270.....
271 42630
281.....
300 41875
43129, 43641
44454, 44456
372.....
441.....

41 CFR

301.....
303–70.....
Proposed Rules:
51-2.....
51-5.....

42 CFR

413.....
498.....
1001.....
Proposed Rules:
Ch. IV.....
84.....

43 CFR

4.....

44 CFR

61.....
64.....
206.....
Proposed Rules:
61.....
62.....

45 CFR

144.....
146.....

501 ..... 42432, 43426
503 42552
745 42849

Proposed Rules:

35 46234
51 45491
52 ..... 42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452, 45215, 45216, 45217
55 45217
62 ..... 43123, 45222, 45937, 46165
63 ..... 45116, 45221
97 ..... 43124, 44452
122 46058
123 46058
124 46058
130 46012
131 46058
147 43329
259 45632
261 ..... 42317, 44866, 45632, 46166
266 45632
270 45632
271 ..... 42630, 43331, 44876
281 ..... 43336, 46178
300 ..... 41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458, 45222, 45224
372 42222
441 45072

41 CFR

301 43254
303–70 45890

Proposed Rules:

51-2 41882
51-5 41882

42 CFR

413 ..... 42610, 44841
498 43295
1001 42174

Proposed Rules:

Ch. IV 43338
84 46178

43 CFR

4 46151

44 CFR

61 41825
64 ..... 42852, 44421
206 41827

Proposed Rules:

61 42632
62 42633

45 CFR

144 45786
146 45786
148 45786
150 45786
801 42039

46 CFR

10 ..... 42812, 44786
12 ..... 42812, 44786

Proposed Rules:

298 44152
535 42057

47 CFR

0 43618
1 ..... 42854, 45891
5 43094
43 43618
62 43937
63 ..... 43095, 43618
64 ..... 43618, 44423
69 45196
73 ..... 41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095, 44856, 45893
76 ..... 42617, 42855
90 43094
101 45891

Proposed Rules:

Ch. 1 ..... 41883, 42635
20 44682
1 ..... 41884, 41887
2 ..... 41891, 43643
15 41897
32 44877
43 44877
51 41897
64 44877
68 41897
73 ..... 41899, 43132, 45500
76 41887
78 41899
95 41891

48 CFR

202 43096
204 ..... 43098, 45196, 45197
212 43098
213 43098
217 43096
219 45197
252 ..... 43098, 45196
253 ..... 43098, 45197
413 45894
453 45894
601 43618
602 43618
603 43618
604 43618
605 43618
606 43618
608 43618
609 43618
610 43618
611 43618
613 43618
614 43618
615 43618
616 43618
617 43618
619 43618
622 43618
623 43618
625 43618
626 43618
628 43618
629 43618
630 43618
631 43618
632 43618
633 43618
634 43618
636 43618
637 43618
639 43618
641 43618
642 43618
643 43618
644 43618
645 43618
646 43618
647 43618
649 43618
652 43618
653 43618
701 42040
702 42040
703 42040
705 42040
706 42040
709 42040
714 42040
716 42040
719 42040
726 42040
732 42040
733 42040
734 42040
749 42040
750 42040
752 42040
2401 46092
2402 46092
2403 46092
2409 46092
2413 46092
2414 46092
2415 46092
2416 46092
2419 46092
2424 46092
2425 46092
2426 46092
2428 46092
2432 46092
2433 46092
2436 46092
2437 46092
2439 46092
2442 46092
2446 46092
2451 46092
2452 46092
2453 46092
5416 41834

Proposed Rules:

17 44100
536 44683
2403 46104
2409 46104
2436 46104
2439 46104
2442 46104
2452 46104
2453 46104
9903 45700

49 CFR

171 ..... 45388, 45457
172 ..... 44426, 44578, 45388
173 44426
175 45388
396 45207
571 45895

Proposed Rules:

190 43972
385 44460
390 44460
571 42330
575 44164

50 CFR

17 41835
20 45400
300 44428
600 42286
622 ..... 43941, 45457
635 ..... 42855, 43101
648 ..... 42042, 42045, 44661
660 ..... 42286, 42856
679 ..... 41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942, 44431, 44432, 44858, 44859, 45459, 45460, 46153

Proposed Rules:

17 ..... 41903, 42058, 42250, 43132, 44171, 44470, 44883
20 44384
32 43834
36 43834
226 44683
600 ..... 42335, 43137, 45501
622 ..... 41905, 42068, 44884
635 44885
648 ..... 42071, 43137, 43138, 45938
649 45501
660 44475
679 42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 24, 1999

EDUCATION DEPARTMENT
Postsecondary education:
William D. Ford Federal Direct Loan Program; published 8-24-99

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Energy conservation:
State Energy Program; Special Projects funding; comment request; published 8-24-99

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Idaho; published 6-25-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Paper and paperboard components—
Polyethylene glycol monoisotridecyl ether sulfate, sodium salt; published 8-24-99
Tetrakis(hydroxymethyl) phosphonium sulfate; published 8-24-99

INTERIOR DEPARTMENT
Hearings and Appeals Office, Interior Department
Hearings and appeals procedures:
Indian affairs—
Indian trust estates; summary distributions authority; published 8-24-99

POSTAL SERVICE
International Mail Manual:
Global Package Link service—
Argentina; published 8-24-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 8-9-99
Bell; published 8-9-99
Boeing; published 8-9-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Prunes (dried) produced in California; comments due by 8-30-99; published 7-29-99

AGRICULTURE DEPARTMENT
Cooperative State Research, Education, and Extension Service
Grants:
Land-grant institutions (1890 and 1862); agricultural research and extension activities; matching funds requirements for formula funds; comments due by 9-3-99; published 8-4-99

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Food stamp program:
Retail food store definition and program authorization guidance; comments due by 8-30-99; published 6-30-99

AGRICULTURE DEPARTMENT
Operations Office
Donation of excess research equipment; priorities and administrative guidelines; comments due by 8-30-99; published 7-29-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; comments due by 9-2-99; published 8-3-99
Spiny dogfish; comments due by 8-30-99; published 6-29-99

ENERGY DEPARTMENT
Assistance to foreign atomic energy activities:
Miscellaneous amendments; comments due by 8-31-99; published 7-2-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Oil pipelines:
Annual report; technical conference; comments due by 9-1-99; published 8-23-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Washington; comments due by 8-30-99; published 7-30-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 9-1-99; published 8-2-99
National priorities list update; comments due by 9-3-99; published 8-4-99

FEDERAL TRADE COMMISSION
Industry guides:
Jewelry, precious metals, and pewter industries; comments due by 8-31-99; published 7-9-99

GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Historic preference, for use in acquisition of leasehold interests in real property; comments due by 8-30-99; published 6-30-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Mammography quality standards; comments due by 8-31-99; published 6-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid:
Hospital participation conditions; patients' rights; comments due by 8-31-99; published 7-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT
National Institutes of Health
Fellowships, internships, training:
National Research Service Awards; comments due by 8-30-99; published 6-30-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
HUD-owned properties:
HUD-acquired single family property disposition—
Officer Next Door Sales Program; comments due by 8-31-99; published 7-2-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Federal claims collection; comments due by 8-30-99; published 6-30-99

INTERIOR DEPARTMENT
National Park Service
Concession contracts; solicitation, award, and administration; comments due by 8-30-99; published 6-30-99

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright office and procedures:
Subscription digital transmissions; notice and recordkeeping; comments due by 9-3-99; published 8-4-99

MERIT SYSTEMS PROTECTION BOARD
Freedom of Information Act; implementation; comments due by 8-31-99; published 7-2-99
Privacy Act; implementation; comments due by 8-31-99; published 7-2-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Undercapitalized federally-insured credit unions; prompt corrective action system
Correction; comments due by 8-31-99; published 8-17-99

PERSONNEL MANAGEMENT OFFICE
Voting rights program; comments due by 9-2-99; published 8-3-99

SECURITIES AND EXCHANGE COMMISSION
Securities:
Portugal; securities exemption for purposes of trading futures contracts; comments due by 8-30-99; published 7-29-99

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; comments due by 8-31-99; published 7-6-99
Oregon; comments due by 8-30-99; published 6-29-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 9-3-99; published 8-4-99

Boeing; comments due by 8-30-99; published 6-29-99

Eurocopter Deutschland; comments due by 8-30-99; published 7-1-99

Eurocopter France; comments due by 8-30-99; published 6-29-99

Fokker; comments due by 8-31-99; published 8-6-99

Lockheed; comments due by 8-30-99; published 7-14-99

McDonnell Douglas; comments due by 8-30-99; published 7-14-99

Overland Aviation Services; comments due by 9-3-99; published 7-12-99

Precise Flight, Inc.; comments due by 8-30-99; published 7-7-99

Short Brothers; comments due by 9-3-99; published 8-4-99

Stemme GmbH & Co. KG; comments due by 8-30-99; published 7-21-99

Class E airspace; comments due by 8-30-99; published 7-13-99

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:

Inspection, repair, and maintenance—

Intermodal container chassis and trailers; comments due by 8-30-99; published 5-5-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Order Now!

The United States Government Manual 1998/1999

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

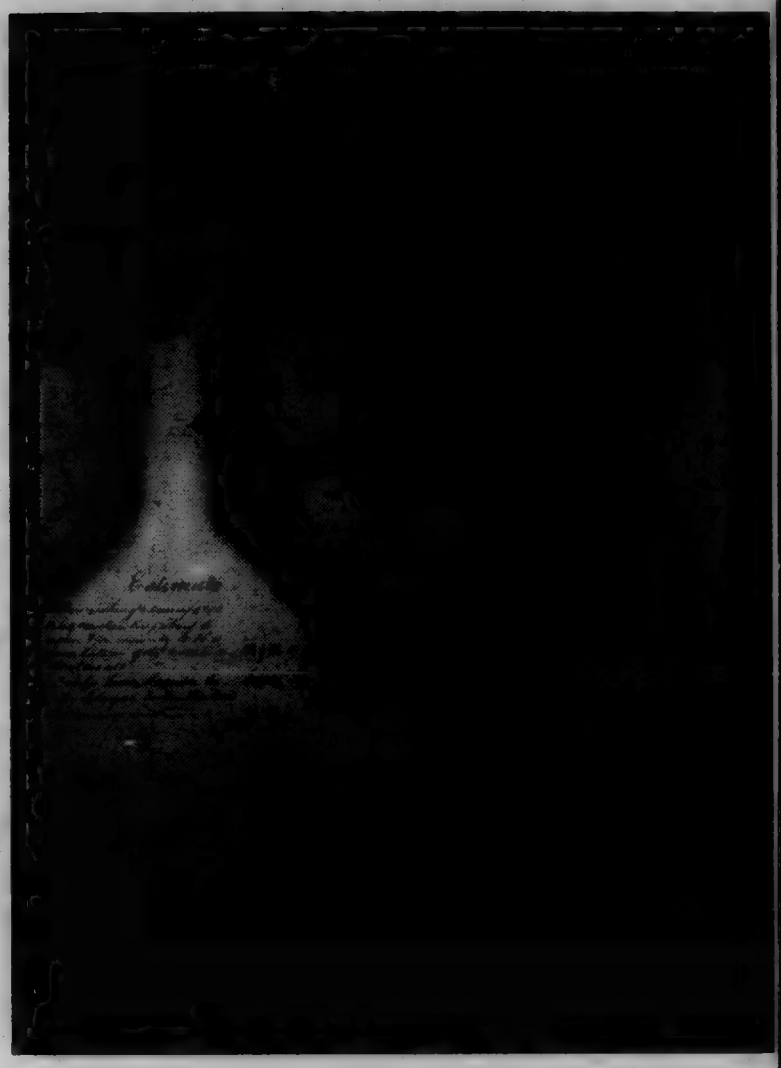

$41 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code:
*** 7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 1998/99,
S/N 069–000–00076–2 at $41 ($50 foreign) each.

Total cost of my order is $ ———— . **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

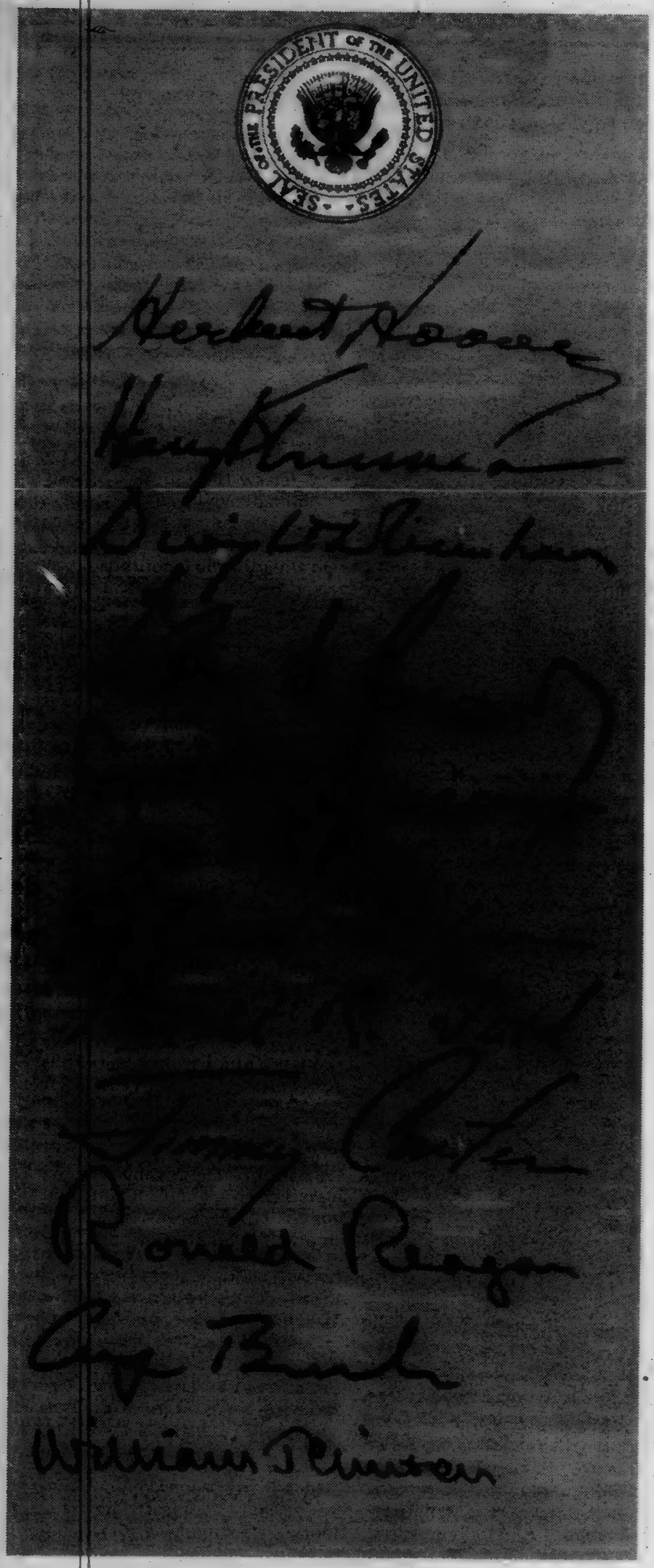

Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**
1996 (Book II)	**$72.00**
1997 (Book I)	**$69.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

(Rev. 3/3/99)

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

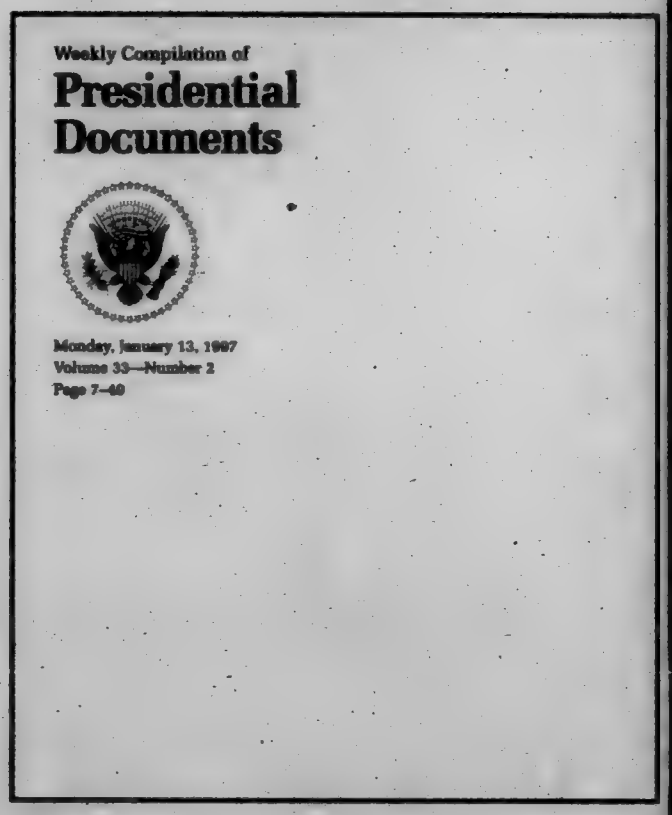

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Subscription** Order Form

Charge your order. It's Easy! MasterCard VISA

Order Processing Code:
*** 5420**

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

dential
House
lexes are

ffice of the
lational
rds

VISA

202) 512–2250
202) 512–1800

ts (PD) so I can

ect to change.

f Documents
-

Thank you for your order!

11/3

5250–7954

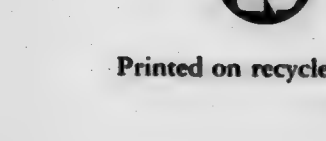

Printed on recycled paper

VOL
64
ISS
1
6
4
AG
25
999
UMI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

8-25-99
Vol. 64 No.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use,

8-25-99
Vol. 64 No. 164

federal register

Wednesday
August 25, 1999

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 99 R
UMI
PERIODICALS CHECK IN
PO BOX 1346
ANN ARBOR MI 48106

-25-99
Vol. 64 No.
Pages 46257-4

25–99
Vol. 64 No. 164
Pages 46257–46558

federal register

Wednesday
August 25, 1999

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 64 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–180
Assistance with public subscriptions 512–180
General online information 202–512–1530; 1–888–293–649
Single copies/back copies:
Paper or fiche 512–180
Assistance with public single copies 512–180
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–524
Assistance with Federal agency subscriptions 523–524

Contents

Federal Register

Vol. 64, No. 164

Wednesday, August 25, 1999

Advisory Commission on Electronic Commerce
See Electronic Commerce Advisory Commission

African Development Foundation
NOTICES
Meetings; Sunshine Act, 46336

Agriculture Department
See Food and Nutrition Service
See Forest Service

Army Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Stevens Institute of Technology, 46362

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46394–46395
Grant and cooperative agreement awards:
Newark, NJ, 46395

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Maryland, 46340
Missouri, 46340

Coast Guard
RULES
Drawbridge operations:
Massachusetts, 46274–46275
New York, 46275–46276
Ports and waterways safety:
Buzzards Bay, MA; sunken fishing vessel CAPE FEAR; safety zone, 46276–46277
Regattas and marine parades:
Mears Point Marina and Red Eyes Dock Bar Fireworks Display, 46272–46273
Patapsco River, MD; fireworks display, 46273–46274
PROPOSED RULES
Drawbridge operations:
Maine, 46322–46325
NOTICES
Meetings:
Chemical Transportation Advisory Committee, 46468

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46340

Commodity Futures Trading Commission
RULES
Organization, functions, and authority delegations:
Headquarters offices; address change and office and personnel title changes; correction, 46270–46271
NOTICES
Contract market proposals:
Chicago Board of Trade et al.; statutory exemptions, 46356–46361
New York Mercantile Exchange—
Mid-Columbia electricity, 46361

Defense Department
See Army Department
RULES
Acquisition regulations:
Taxpayer identification numbers and commercial and government entity codes
Correction, 46474
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46361
Meetings:
Defense Intelligence Agency Science and Technology Advisory Board, 46361–46362

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46362–46363

Electronic Commerce Advisory Commission
NOTICES
Meetings, 46336

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Reemployment assistance and training for eligible workers; innovative methods, 46409–46418

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
JEA Circulating Fluidized Bed Combustor Project, FL, 46363–46364
Grants and cooperative agreements; availability, etc.:
Computational Structural Biology, 46364–46365
Nuclear Physics Outstanding Junior Investigator Program, 46365
Natural gas exportation and importation:
TransCanada PipeLines Ltd., 46365–46366

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado, 46279–46290
Hazardous waste program authorizations:
Louisiana, 46302–46316
North Carolina, 46298–46302

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Desmedipham, 46290–46292
Pyridate, 46292–46298
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado, 46331–46332
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 46325–46331
Hazardous waste:
Identification and listing—
Chlorinated aliphatics production wastes, 46475–46539
Hazardous waste program authorizations:
Louisiana, 46332–46333
North Carolina, 46332
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 46333–46335
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46375–46376
Submission for OMB review; comment request, 46376–46377
Pesticide, food, and feed additive petitions:
Cabot Corp., 46378–46382
Entek Corp. et al., 46382–46389
Pesticide registration, cancellation, etc.:
R.T. Vanderbilt Co., Inc., et al., 46377–46378
Pesticides; experimental use permits, etc.:
American Cyanamid Co. et al., 46389
Reports and guidance documents; availability, etc.:
Concentrated animal feeding operations; guidance manual and example NPDES permit, 46390
Water pollution; discharge of pollutants (NPDES):
Storm water discharges—
Construction activities; general permit, 46391
Water pollution control:
No discharge zone determinations—
Florida, 46390–46391

Executive Office of the President
See Science and Technology Policy Office

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 46259–46262
Class B and Class D airspace; correction, 46262–46263
Class E airspace, 46264–46267

Federal Communications Commission
RULES
Radio stations; table of assignments:
Florida, 46316
Illinois, 46316

Federal Election Commission
PROPOSED RULES
Rulemaking petitions:
Bopp, James, Jr., 46319–46320

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Illinois Power Co. et al., 46368–46369
San Diego Gas & Electric Co. et al., 46369–46374
Environmental statements; availability, etc.:
ANR Pipeline Co., 46374
Hydroelectric applications, 46374–46375
Applications, hearings, determinations, etc.:
Alliance for Cooperative Energy Services Power Marketing LLC, 46366
El Paso Natural Gas Co.; correction, 46474
Metropolitan Chicago Healthcare Council Shared Services, Inc., 46366
Northern Indiana Public Service Co., 46366
Paiute Pipeline Co., 46366–46367
Select Energy, Inc., et al.; correction, 46474
Sithe Mystic LLC et al., 46367–46368
South Georgia Natural Gas Co., 46368
Venice Gathering System, L.L.C.; correction, 46474

Federal Maritime Commission
NOTICES
Agreements filed, etc., 46392
Investigations, hearings, petitions, etc.:
Imex Shipping Inc., 46392

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 46422

Federal Railroad Administration
NOTICES
Meetings:
Small business communication and enforcement policies and procedures; small entity definition, 46468–46470

Federal Trade Commission
RULES
Practice and procedure:
Effective relief provision where parties consent to entry of cease and desist order; consent settlements comment period shortened, 46267–46270
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46392–46394

Fish and Wildlife Service
RULES
Endangered and threatened species:
American peregrine falcon, 46541–46558
NOTICES
Comprehensive conservation plans; availability, etc.:
Little Pend Oreille National Wildlife Refuge, WA, 46404–46405
Endangered and threatened species permit applications, 46405

Food and Drug Administration
RULES
Food additives:
Polymers—
Nylon 6/12 copolymer resins, 46271–46272
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46395–46396
Proposed collection; comment request; correction, 46397
Submission for OMB review; comment request, 46397–46399

Reports and guidance documents; availability, etc.:
Medical devices—
Electro-optical sensors for in vivo detection of cervical cancer and its precursors; industry guidance, 46399–46400
Medicated feeds use for minor species (extra-label); compliance policy guide, 46400

Food and Nutrition Service
PROPOSED RULES
Child nutrition programs:
National school lunch, school breakfast, summer food service, and child and adult care food programs; vegetable protein products requirements modification, 46319
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46336–46337

Forest Service
NOTICES
Environmental statements; notice of intent:
Boise National Forest, ID, 46337–46339
Ocala National Forest, FL, 46339–46340

Geological Survey
NOTICES
Meetings:
National Cooperative Geologic Mapping Program Advisory Committee, 46405

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 46400–46401
Submission for OMB review; comment request, 46401

Health Resources and Services Administration
NOTICES
National vaccine injury compensation program:
Petitions received, 46401–46404

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
NOTICES
Meetings:
Blackstone River Valley National Heritage Corridor Commission, 46404

Internal Revenue Service
PROPOSED RULES
Income taxes:
Tax-exempt bonds issued by State and local governments; arbitrage and related restrictions; definition of investment-type property, 46320–46322

International Trade Administration
NOTICES
Antidumping:
Brass sheet and strip from—
Canada, 46344–46349
Porcelain-on-steel cooking ware from—
China, 46349–46350
Silicomanganese from—
China, 46350
Stainless steel bar from—
India, 46350–46354
Antidumping and countervailing duties:
Cut-to-length carbon-quality steel plate products from—
Various countries, 46341–46343
Cut-to-length carbon steel plate from—
Various countries, 46343–46344

International Trade Commission
NOTICES
Import investigations:
Electrolytic manganese dioxide from—
Greece and Japan, 46407
Mechanical lumbar supports and products containing same, 46408
Synthetic indigo from—
China, 46408–46409

Justice Department
NOTICES
Pollution control; consent judgments:
AlliedSignal Inc. et al., 46409
Material Service Corp., 46409

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming, 46405–46406

Maritime Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46470–46471

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Chevron U.S.A. Inc; Destin Dome 56 Unit development and production plan and right-of-way pipeline application, 46406–46407

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Gulf of Alaska groundfish, 46317
Pacific cod, 46317–46318
NOTICES
Meetings:
New England Fishery Management Council, 46354–46355
Pacific Fishery Management Council, 46355

Nuclear Regulatory Commission
PROPOSED RULES
Special nuclear material; domestic licensing:
Rulemaking activities; meeting, 46319
NOTICES
Environmental statements; availability, etc.:
Portland General Electric, 46422–46424
Meetings; Sunshine Act, 46424
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 46424–46455
Reports and guidance documents; availability, etc.:
Nuclear byproduct material; risk review, 46456

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Chase Manhattan Bank et al., 46419–46422

Personnel Management Office
RULES
Absence and leave:
Restored annual leave; Year 2000 (Y2K) computer conversion efforts, 46257–46259

Postal Service
RULES
International Mail Manual:
Global Direct—Canada Publications Mail, 46277–46279

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration

Science and Technology Policy Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46391–46392

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 46465–46466
Applications, hearings, determinations, etc.:
Equitable Life Assurance Society of U.S. et al, 46456–46462
Van Wagoner Funds, Inc., et al., 46462–46465

Small Business Administration
NOTICES
Disaster loan areas:
Utah, 46466

State Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 46466
Grants and cooperative agreements; availability, etc.:
International collaborative projects in science and technology—
Spain and United States, 46466–46467

Surface Transportation Board
NOTICES
Railroad services abandonment:
Kansas Eastern Railroad, Inc., 46471

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Hearings, etc.—
Nevis Express, 46467–46468

Treasury Department
See Internal Revenue Service
NOTICES
Meetings:
International Financial Institution Advisory Commission, 46471–46472
International Monetary Fund Advisory Committee, 46472

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Drawings of Annibale Carracci, 46472–46473
Gold of the Nomads: Scythian Treasures from Ancient Ukraine, 46473
Masks: Faces of Culture, 46473
Tilman Riemenschneider: Master Sculptor of the Late Middle Ages, 46473

Separate Parts in This Issue

Part II
Environmental Protection Agency, 46475–46539

Part III
Department of Interior, Fish and Wildlife Service, 46541–46558

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS

A cumulative list
Reader Aids sec

5 CFR
630

7 CFR
Proposed Rules:
210
220
225
226

10 CFR
Proposed Rules:
70

11 CFR
Proposed Rules:
114

14 CFR
39
71 (6 documents
46264, 46265

16 CFR
2
3
4

17 CFR
9
171

21 CFR
177

26 CFR
Proposed Rules:
1

33 CFR
100 (2 documen
117 (2 documen
165
Proposed Rules:
117 (2 document

39 CFR
20

40 CFR
52
81
180 (2 document
271 (2 document
Proposed Rules:
52 (2 documents
81
148
261
264
265
268
271 (3 document
300
302

47 CFR
73 (2 documents

48 CFR
204

50 CFR
17
679 (2 document

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
630.....46257

7 CFR
Proposed Rules:
210.....46319
220.....46319
225.....46319
226.....46319

10 CFR
Proposed Rules:
70.....46319

11 CFR
Proposed Rules:
114.....46319

14 CFR
39.....46259
71 (6 documents) 46262, 46264, 46265, 46266, 46267

16 CFR
2.....46267
3.....46267
4.....46267

17 CFR
9.....46270
171.....46270

21 CFR
177.....46271

26 CFR
Proposed Rules:
1.....46320

33 CFR
100 (2 documents) 46272, 46273
117 (2 documents) 46274, 46275
165.....46276
Proposed Rules:
117 (2 documents) 46322, 46323

39 CFR
20.....46277

40 CFR
52.....46279
81.....46279
180 (2 documents) 46290, 46292
271 (2 documents) 46298, 46302
Proposed Rules:
52 (2 documents) 46325, 46331
81.....46331
148.....46476
261.....46476
264.....46476
265.....46476
268.....46476
271 (3 documents) 46332, 46476
300.....46333
302.....46476

47 CFR
73 (2 documents) 46316

48 CFR
204.....46474

50 CFR
17.....46542
679 (2 documents) 46317

OL
64
SS
1
6
4
AG
25
99
MI

Rules

This section c
contains regu
applicability a
are keyed to
Federal Regu
50 titles pursu

The Code of
the Superinte
new books ar
REGISTER is

**OFFICE OF
MANAGEM**

5 CFR Part

RIN 3206–AI7

**Absence an
Annual Lea**

AGENCY: Off
Managemen

ACTION: Fina

SUMMARY: T
Managemen
to aid agenc
in Year 200
conversion e
provide that
forfeited by
to schedule
result of Y2K
efforts will b
scheduled in
eligible for r

EFFECTIVE DA

FOR FURTHER
Sharon Herz
(202) 606–0
payleave@op

SUPPLEMENTA
14, 1999, the
Management
regulations (
provide relie
involved in Y
conversion e
employees w
possible forf
annual leave
on the job un
conversions
and thorough
normal rules
with the adm
scheduling, c
such leave fo
when all ava
should be foc
efforts. There

Rules and Regulations

Federal Register
Vol. 64, No. 164
Wednesday, August 25, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AI71

Absence and Leave; Use of Restored Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to aid agencies and employees involved in Year 2000 (Y2K) computer conversion efforts. The regulations provide that excess annual leave forfeited by employees who are unable to schedule and use their leave as a result of Y2K computer conversion efforts will be deemed to have been scheduled in advance and therefore eligible for restoration.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On June 14, 1999, the Office of Personnel Management (OPM) published proposed regulations (64 FR 31735) that would provide relief to Federal employees involved in Year 2000 (Y2K) computer conversion efforts. Many of these employees would have faced the possible forfeiture of "use or lose" annual leave because they must remain on the job until the Y2K computer conversions have been implemented and thoroughly tested. Under the normal rules, agencies would be faced with the administrative burden of scheduling, canceling, and restoring such leave for these employees at a time when all available attention and energy should be focused on Y2K conversion efforts. Therefore, OPM issued proposed regulations to simplify the procedures for restoring annual leave forfeited as a result of the Y2K exigency. Section 630.310(a) of title 5, Code of Federal Regulations, as added by these final regulations, deems the Y2K computer conversion project an exigency of the public business and establishes January 31, 2000, as the Governmentwide termination date for the Y2K exigency. In addition, under § 630.310(b), annual leave forfeited as a result of the Y2K exigency is deemed to have been scheduled in advance for the purpose of satisfying the requirements in 5 U.S.C. 6304(d) and 5 CFR 630.308.

The 30-day comment period closed on July 14, 1999. During the comment period, OPM received six comments, five from agencies and one from an individual. The agency that initially requested this regulatory action expressed its gratitude to OPM for taking the lead in protecting employees involved in Y2K conversion efforts and its satisfaction with the proposed regulations, which they found well-thought out and comprehensive. The other four agencies that commented also fully supported OPM's proposed regulations.

The individual strongly objected to OPM's proposed regulations, believing that our regulations are not consistent with the statute at 5 U.S.C. 6304(d)(1)(B), which requires that annual leave lost as the result of an exigency of the public business may be restored when it was scheduled in advance. We believe it is necessary to consider the intent of Congress and what has happened since the enactment of the law. In this case, we believe the intent of Congress was to have employees use their annual leave. However, when the statutes outlining procedures for restoration of excess annual leave were enacted, Congress could not have foreseen the consequences of the law in emergency situations, such as the Y2K computer conversion problem.

Obviously, Congress believes there are situations in which this law needs to be more flexible. For example, legislation was enacted in 1993 to consider closure of DOD installations as "an exigency of the public business" and to exempt affected employees from the advance scheduling requirement in 5 U.S.C. 6304(d). Congress has set a precedent for permitting the restoration of annual leave without advance scheduling. While we cannot exempt employees who have been determined to be necessary for Y2K conversion from the statutory requirements, we believe we can provide that any leave lost as a result of the Y2K exigency can, by regulation, be deemed to have been scheduled in advance and therefore eligible for restoration.

The individual questioned the need for the proposed regulations, stating that the Y2K conversion is not sufficient reason to exempt employees from the scheduling requirements. We strongly disagree. OPM recognizes that the Y2K conversion is a major effort that has required and is continuing to require employees to perform not just their regularly scheduled work, but overtime work on nights and weekends as well. Further, we believe forcing employees and agencies to go through the charade of scheduling and canceling annual leave that both parties know cannot be taken places an administrative burden on agencies already dealing with other problems caused by the Y2K conversion.

The commenter feels that employees should have to show they made a "good faith effort" by attempting to schedule annual leave, pointing out that employees who forfeited leave as a result of Government furloughs in 1996 were required to have scheduled leave in advance to qualify for restoration. However, during the furlough period in 1996, employees were prevented from using leave only briefly, at the end of the leave year. The Y2K exigency has prevented and will continue to prevent employees from using leave throughout the 1999 leave year. When there is no possibility that an employee can be away from the workplace, we believe requiring efforts to schedule and cancel leave flies in the face of OPM's commitment to provide agencies with the human resources management tools they need to address Y2K computer conversion problems.

The commenter also objects to the extension of time limits for using previously restored leave because of the preference given to employees in the Y2K situation over those affected by extended exigencies not related to the Y2K conversion effort. Extended exigencies are already recognized as unique situations and have special time limits under 5 CFR 530.309. The Y2K

conversion effort does not qualify for these special time limits because it does not meet the definition of "extended exigency" in 5 CFR 630.309, i.e., an exigency lasting more that 3 years. OPM has the authority to set time limits for using restored annual leave (5 U.S.C. 6304(d)(2)), and there is precedent for extending the time for using previously restored leave. In regulations published on December 7, 1994, OPM provided new time limits for using previously restored leave for employees at Department of Defense installations undergoing closure or realignment. Those employees, like employees involved in Y2K conversion, needed to be at work and also needed to use their previously restored leave or it would have been forfeited with no possibility of further restoration. We believe the situation experienced by employees involved in the Y2K conversion effort is similar enough to the experiences of DOD employees involved in base closure and realignment to justify extending the time limits for using previously restored leave.

Finally, the commenter objects to the budgetary implications of OPM's regulations, saying that the restoration of forfeited leave has cost implications for agencies at a time when many are faced with serious downsizing and budget cuts. Employees earn annual leave as a part of their total compensation. When a work situation prevents an employee from scheduling annual leave, an agency is required to make every effort to help the employee reschedule that leave. If this cannot be done because of circumstances beyond the control of the employee and the agency, and the employee forfeits annual leave in excess of the amount allowable, the employee must be able to have that leave restored for use at a later date. We do not believe the regulations will increase costs for agencies because employees would not have forfeited large amounts of annual leave at the end of leave year 1999. Most, if not all, affected employees would have gone through the conventions of scheduling leave in order to qualify for restoration of forfeited leave. OPM's regulations merely simplify the procedures for restoring forfeited annual leave and reduce the administrative burden on agencies. In addition, denial of restoration of forfeited annual leave should never be based on projected budgetary savings, but rather on failure to meet the requirements of 5 U.S.C. 6304(d)(1).

An agency requested clarification of § 630.310(e), which deals with employees who transfer from positions deemed necessary for Y2K conversion efforts to other positions during the latter portion of leave year 1999. The agency asked whether this section applies to reassignments within an agency, transfers to positions at other agencies, or both. The regulation applies to *any* employee who moves from a position deemed essential to Y2K conversion efforts to a position not deemed essential for those purposes. The agency also asked which agency would then be responsible for exempting the employee from the scheduling requirement. If a transfer involves two agencies, the gaining agency will be responsible for determining whether the employee "was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control" and therefore should be exempt from the scheduling requirements and able to have the forfeited leave restored.

One agency requested that the proposed date of the exigency be changed from January 31, 2000, to March 31, 2000, the end of the first quarter in Y2K. OPM considered several ending dates in drafting the proposed regulations. Lengthening the period of the exigency would have no bearing on the employee's inability to use sufficient annual leave during the 1999 leave year to avoid forfeiture. We realize that there may continue to be computer problems associated with Y2K after January 31, 2000. However, we are confident that employees will have sufficient time in the year 2000 to schedule and use their annual leave to avoid forfeiture. In addition, a change in the ending date of the exigency would have no effect on the time limits for using any restored leave. For these reasons, the termination date of the exigency remains January 31, 2000.

Another agency requested that OPM consider extending the policy established by these final regulations to other situations, as well. Such as extension would require the issuance of further proposed regulations for comment. Since we do not wish to delay the publication of the final Y2K leave restoration regulations, we will consider this suggestion as we continue to review the Federal leave program.

We believe no changes are necessary in the proposed regulations. Therefore, we are adopting as final the proposed rule to provide that excess annual leave forfeited by employees who are unable to schedule and use their leave as a result of Y2K computer conversion efforts will be deemed to have been scheduled in advance and therefore eligible for restoration.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), we find that good cause exists to make this rule effective in less than 30 days in order to give agencies ample time to plan and implement procedures prior to the end of the leave year. An immediate effective date is necessary to provide agencies with an additional human resources management tool to address Y2K computer conversion problems.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

Subpart C—Annual Leave

2. In § 630.308, paragraph (a) is revised to read as follows:

§ 630.308 Scheduling of annual leave.

(a) Except as provided in paragraph (b) of this section and § 630.310, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before

the start of the third biweekly pay period prior to the end of the leave year.

* * * * *

3. A new § 630.310 is added to read as follows:

§ 630.310 Scheduling of annual leave by employees determined necessary for Year 2000 computer conversion efforts.

(a) Year 2000 computer conversion efforts are deemed to be an exigency of the public business for the purpose of restoring annual leave forfeited under 5 U.S.C. 6304. This exigency terminates on January 31, 2000.

(b) For any employee who forfeits annual leave under 5 U.S.C. 6304 at the beginning of leave year 2000 because the agency determined the employee's services were required during the Year 2000 computer conversion exigency, the forfeited annual leave is deemed to have been scheduled in advance for the purpose of 5 U.S.C. 6304(d)(1)(B) and § 630.208.

(c) Annual leave restored under 5 U.S.C. 6304(d) because of the Year 2000 computer conversion exigency must be scheduled and used not later than the end of leave year 2002.

(d) The time limits established under paragraphs (a) and (b) of § 630.308 for using previously restored annual leave do not apply for the period during which an employee's services were determined necessary for the completion of Year 2000 computer conversion efforts. On January 31, 2000, a new time limit will be established under paragraph (c) of this section for all annual leave restored to such an employee.

(e) An employee whose services were determined necessary during the Year 2000 computer conversion exigency for a portion of leave year 1999, but who subsequently moves to a position not involving Year 2000 computer conversion efforts, must make a reasonable effort to comply with the scheduling requirement in § 630.308(a). The head of the agency or his or her designee may exempt such an employee from the advance scheduling requirement in § 630.308(a) if coverage under paragraphs (a) and (b) of this section terminated during leave year 1999 and the employee can demonstrate that he or she was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control.

[FR Doc. 99–22081 Filed 8–24–99; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–179–AD; Amendment 39–11267; AD 99–18–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–700 and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–700 and –800 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to prohibit operation of the airplane under certain conditions; repetitive inspections of the tab mast fitting of the elevator tab assemblies to detect cracking; an elevator tab freeplay check; and corrective actions, if necessary. That AD also provides for optional terminating action for certain repetitive inspections, and requires installing an additional fastener on the elevator tab mast fitting, which terminates the AFM revision and extends certain repetitive inspection intervals. This amendment continues to require certain actions, and revises and adds certain other requirements. This amendment is prompted by a report of a severe vibration incident on a Boeing Model 737–800 series airplane; inspection revealed fracturing of the elevator tab mast fitting and excessive freeplay in the elevator tab. The actions specified in this AD are intended to prevent loss of controllability of the airplane due to excessive freeplay in the elevator tab or a free tab.

DATES: Effective September 9, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory L. Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On June 22, 1999, the FAA issued AD 99–13–51, amendment 39–11213 (64 FR 34976, June 30, 1999), applicable to certain Boeing Model 737–700 and –800 series airplanes, to require revising the Airplane Flight Manual (AFM) to prohibit operation of the airplane under certain conditions; repetitive inspections of the tab mast fitting of the elevator tab assemblies to detect cracking; an elevator tab freeplay check; and corrective actions, if necessary. That AD also provides for optional terminating action for certain repetitive inspections. In addition, that AD requires installing an additional fastener on the elevator tab mast fitting, which terminates the AFM revision and extends certain repetitive inspections. That action was prompted by a report of a severe vibration incident on a Boeing Model 737–800 series airplane; inspection revealed fracturing of the elevator tab mast fitting and excessive freeplay in the elevator tab. The actions required by that AD are intended to prevent reduced controllability of the airplane due to excessive freeplay in the elevator tab or a free tab.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved the following new service information:

- Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999, describes procedures similar to those described in the original issue of that alert service bulletin, as cited in AD 99–13–51. However, Revision 1 adds a close visual inspection (detailed visual inspection) of the elevator tab mast fitting and revises certain part numbers and references due to typographical errors in the original issue of the alert service bulletin.
- Boeing Service Bulletin 737–55–1063, dated July 1, 1999, describes procedures for replacing a cracked elevator tab mast fitting with a new, improved fitting. Such replacement eliminates the need for repetitive

inspections of the elevator tab mast fittings.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 99–13–51 to continue to require revising the AFM to prohibit operation of the airplane under certain conditions; repetitive inspections of the tab mast fitting of the elevator tab assemblies to detect cracking; an elevator tab freeplay check; and corrective actions, if necessary. This AD also continues to provide for optional terminating action only for certain repetitive inspections; and installing an additional fastener on the elevator tab mast fitting, which terminates the AFM revision and extends certain repetitive inspection intervals. This amendment also provides optional terminating action for the requirements of this AD.

It should be noted that, except as otherwise provided for in the AFM emergency procedures, this AD prohibits the deployment of the spoilers at speeds in excess of 310 knots indicated airspeed (IAS) with speed brakes extended. This AD also prohibits the operation of the airplane above FL 390. The FAA recognizes that under emergency circumstances, as specified in the AFM, it might become necessary to deploy spoilers in excess of 310 knots IAS. In that event, this AD requires accomplishment of the high frequency eddy current (HFEC) and detailed visual inspections of the elevator tab mast fittings and of the check of the tabs for freeplay, prior to further flight after landing.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring the currently optional terminating action (replacement of the elevator tab mast fitting with a new, improved fitting). However, the planned compliance time for the replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–179–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11213 (64 FR 34976, June 30, 1999), and by adding a new airworthiness directive (AD), amendment 39–11267, to read as follows:

99–18–01 Boeing: Amendment 39–11267. Docket 99–NM–179–AD. Supersedes AD 99–13–51, Amendment 39–11213.

Applicability: Model 737–700 and –800 series airplanes having line numbers 1 through 190, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of controllability of the airplane due to excessive freeplay in the elevator tab or a free tab, accomplish the following:

Airplane Flight Manual (AFM) Revision Required by AD 99–13–51

(a) Within 24 clock hours after July 6, 1999 (the effective date of AD 99–13–51, amendment 39–11213), revise the Limitations Section of the FAA-approved

AFM to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

"Do not operate the airplane at speeds in excess of 310 knots indicated airspeed (IAS) with speed brakes extended. Do not operate the airplane above FL 390."

Action in Event of Speed Brake Deployment

(b) In the event of deployment of the speed brakes at speeds in excess of 310 knots IAS, prior to further flight after landing, accomplish the requirements of paragraph (c) of this AD.

Inspection and Check Required by AD 99–13–51

(c) Within 10 days after July 6, 1999, perform a high frequency eddy current (HFEC) inspection of the elevator tab mast fitting of the left and right elevator tab assembly to detect cracking, and a one-time elevator tab freeplay check to detect freeplay of the elevator tab, in accordance with Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999, or Revision 1, dated June 11, 1999.

(1) If no cracking is found in the elevator tab mast fitting, repeat the HFEC inspection thereafter at intervals not to exceed 15 days, until accomplishment of the actions required by paragraph (g) of this AD. After the effective date of this AD, only the HFEC and detailed visual inspection required by paragraph (f) of this AD shall be accomplished.

(2) If any cracking is found in the elevator tab mast fitting, prior to further flight, accomplish the requirements of paragraph (h) of this AD.

(3) If any freeplay is found that is outside the limits specified in the alert service bulletin, prior to further flight, perform corrective actions in accordance with the alert service bulletin.

Note 2: Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999, references Boeing Model 737–600/–700/–800 Maintenance Manual (AMM), Subjects 27–09–91, 27–31–00, and 51–21–99; 737 Nondestructive Test (NDT) Manual D6–37239, Part 6, Subject 55–00–00; 737 Structural Repair Manual (SRM) Subject 51–20–81; and Operations Manual Service Bulletin D6–27370-TBC ("Elevator Tab Operational Limitations"), dated June 10, 1999; as additional sources of service information to accomplish certain requirements of this AD.

New AFM Revision

(d) Within 24 clock hours after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following information. This may be accomplished by inserting a copy of this AD into the AFM. Following accomplishment of this AFM revision, remove the AFM revision required by paragraph (a) of this AD from the Limitations Section of the FAA-approved AFM.

"Except as otherwise provided for in the AFM emergency procedures, do not operate the airplane at speeds in excess of 310 knots indicated airspeed (IAS) with speed brakes extended. Do not operate the airplane above FL 390."

Action in Event of Speed Brake Deployment

(e) In the event of deployment of the speed brakes at speeds in excess of 310 knots IAS, prior to further flight after landing, accomplish the requirements of paragraph (f) of this AD.

Inspections and Check

Note 3: Accomplishment of the initial HFEC inspection and check required by paragraph (c) of this AD, prior to the effective date of this AD, in accordance with Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999, is considered acceptable for compliance with the HFEC inspection, detailed visual inspection, and one-time freeplay check required by paragraph (f) of this AD.

(f) Within 10 days after the effective date of this AD, perform an HFEC inspection and a detailed visual inspection of the elevator tab mast fittings of the left and right elevator tab assemblies to detect cracking, and a one-time elevator tab freeplay check to detect freeplay of the elevator tabs, in accordance with Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999. Accomplishment of these actions terminates the inspections and checks required by paragraph (c) of this AD.

(1) If no cracking is found in any elevator tab mast fitting, repeat the HFEC and detailed visual inspections thereafter at intervals not to exceed 15 days, until accomplishment of the actions required by paragraph (g) of this AD.

(2) If any cracking is found in any elevator tab mast fitting, prior to further flight, accomplish the replacement action required by paragraph (h) of this AD.

(3) If any freeplay is found in any elevator tab, which is outside the limits specified in the alert service bulletin, prior to further flight, perform corrective actions in accordance with the alert service bulletin.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Note 5: Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999, references Boeing Model 737–600/–700/–800 Maintenance Manual (AMM), Subjects 27–09–91, 27–31–00, 27–31–34, and 51–21–99; 737 Nondestructive Test (NDT) Manual D6–37239, Part 6, Subject 51–00–00; 737 Structural Repair Manual (SRM) Subjects 51–20–01, 51–20–07, and 51–21–99; and 737–600/–700/–800 Operations Manual Service Bulletin "Elevator Tab Operational Limitations"; as additional sources of service information to accomplish certain requirements of this AD.

Time-Limited Modification

(g) Within 90 days after July 6, 1999, install an additional high-strength fastener on the elevator tab mast fitting in accordance with Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999, or Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999. Accomplishment of this modification constitutes terminating action for the requirements of paragraphs (b), (c), and (e) of this AD. Following accomplishment of the installation, the AFM revision required by paragraphs (a) and (d) of this AD may be removed from the AFM. Following accomplishment of the installation, repeat the HFEC and detailed visual inspection required by paragraph (f) of this AD thereafter at intervals not to exceed 90 days, until accomplishment of paragraph (h) of this AD.

Optional Terminating Action

(h) Replacement of the elevator tab mast fittings with new, improved tab mast fittings, in accordance with Boeing Service Bulletin 737–55–1063, dated July 1, 1999, constitutes terminating action for the requirements of this AD.

Spares

(i) As of the effective date of this AD, no person shall install an elevator tab mast fitting, part number (P/N) 183A8400–1 or 183A8400–2, on any airplane.

Alternative Methods of Compliance

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(k) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(l) Except as provided by paragraphs (a), (b), (e), and (f) of this AD, the actions shall be done in accordance with the following service information, as applicable:

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999, and Boeing Service Bulletin 737–55–1063, dated July 1, 1999, as applicable, was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999, was approved previously by the Director of the **Federal Register** as of July 6, 1999 (64 FR 34976, June 30, 1999).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may

be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(m) This amendment becomes effective on September 9, 1999.

Issued in Renton, Washington, on August 18, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21954 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–4]

RIN 2120–AA66

Modification of the Orlando Class B Airspace Area, Orlando, FL; and Modification of the Orlando Sanford Airport Class D Airspace Area, Sanford, FL; Correction

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the graphic of the Orlando Class B airspace area, Orlando, FL; and the Orlando Sanford Airport Class D airspace area, Sanford, FL, which was published on August 5, 1999. This action is necessary to correct the graphic published in the final rule by deleting the word "Proposed."

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On August 5, 1999, Airspace Docket No. 95–AWA–4, FR Doc. 99–20022, was published modifying the Orlando Class B airspace area, Orlando, FL; and modifying the Orlando Sanford Airport Class D airspace area, Sanford, FL (64 FR 42585). The rule included a graphic depicting the Orlando Class B airspace area as "Proposed." This action deletes the word "Proposed," on the graphic, thereby correcting this error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the graphic for the Orlando Class B airspace area as published in the **Federal Register** on August 5, 1999 (64 FR 42585); FR Doc. 99–20022, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 42590, correct the existing graphic depicting the Orlando proposed Class B airspace area to read as set forth at the end of this document.

Issued in Washington, DC, on August 16, 1999.

Nancy B. Kalinowski,

Deputy Director for Air Traffic Airspace Management.

BILLING CODE 4910–13–P

[FR Doc. 99–217

BILLING CODE 4910

ORLANDO
CLASS B AIRSPACE

NOT TO BE USED FOR NAVIGATION

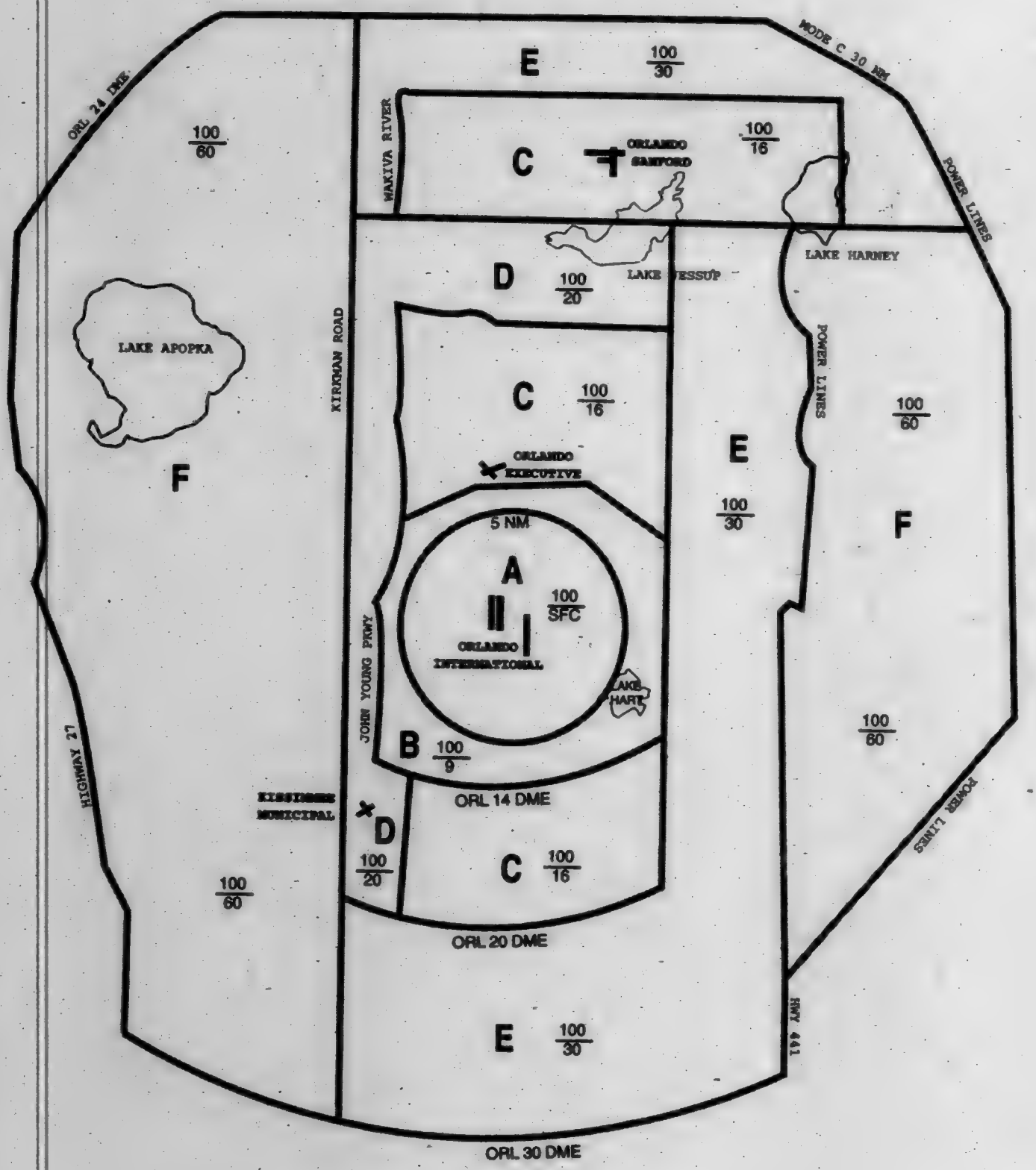

PREPARED BY THE
FEDERAL AVITION ADMINISTRATION
AIR TRAFFIC GRAPHICS (ATX-10)

03439

[FR Doc. 99–21786 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–30]

Modification of Class E Airspace; Mankato, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Mankato, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 270° helicopter point in space approach, has been developed for Immanuel-St. Joseph's Hosptial. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies the existing controlled airspace for Mankato, MN, to the southwest in order to include the point in space approach serving Immanuel-St. Joseph's Hospital.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Mankato, MN (64 FR 25221). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the en route and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Mankato, MN, to accommodate aircraft executing the proposed GPS SIAP 270° helicopter point in space approach for Immanuel-St. Joseph's Hospital by modifying existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Mankato, MN [Revised]

Mankato Municipal Airport, MN

(Lat. 44°13′18″N., long. 093°55′07″W.)

Immanuel-St. Joseph's Hospital, MN

Point In Space Coordinates

(Lat. 44°09′48″N., long. 093°57′40″W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Mankato Municipal Airport and within 2.0 miles each side of the 047° bearing from the airport extending from the 7.0-mile radius to 8.0 miles northeast of the airport, and within a 6.0-mile radius of the point in space serving Immanuel-St. Joseph's Hospital.

* * * * *

Issued in Des Plaines, Illinois on August 9, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22063 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–29]

Modification of Class E Airspace; La Crosse, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at La Crosse, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 330° helicopter point in space approach, has been developed for Saint Francis Medical Center. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies the existing controlled airspace for La Crosse, WI, to the southeast in order to include the point in space approach serving Saint Francis Medical Center.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at La Crosse, WI (64 FR 25220). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of

the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at La Crosse, WI, to accommodate aircraft executing the proposed GPS SIAP 330° helicopter point in space approach for Saint Francis Medical Center by modifying existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 La Crosse, WI [Revised]

La Crosse Municipal Airport, WI
(Lat. 43°52′46″N., long. 091°15′24″W.)
La Crosse VOR/DME
(Lat. 43°52′34″N., long. 091°15′22″W.)
Saint Francis Medical Center, WI
Point In Space Coordinates
(Lat. 43°47′39″N., long. 091°14′00″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of La Crosse Municipal Airport and within 3.2 miles each side of the La Crosse VOR/DME 187° radial extending from the 6.9-mile radius to 12.3 miles south of the airport, and within a 6.0-mile radius of the point in space serving Saint Francis Medical Center.

* * * * *

Issued in Des Plaines, Illinois on August 9, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22064 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–28]

Modification of Class E Airspace; Eau Claire, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Eau Claire, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 065° helicopter point in space approach, has been developed for Luther Hospital Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies the existing controlled airspace for Eau Claire, WI, to the southwest in order to include the point in space approach serving Luther Hospital.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Eau Claire, WI (64 FR 25222). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Eau Claire, WI, to accommodate aircraft executing the proposed GPS SIAP 065° helicopter point in space approach for Luther Hospital by modifying existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have

a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Com., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Eau Claire, WI [Revised]

Chippewa Valley Regional Airport, WI
(Lat. 44° 51′ 55″N., long. 091° 29′ 06″W.)
Eau Claire VORTAC
(Lat. 44° 53′ 52″N., long. 091° 28′ 43″W.)
Luther Hospital, WI
Point In Space Coordinates
(Lat. 44° 48′ 24″N., long. 091° 31′ 51″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Chippewa Valley Regional Airport and within 1.9 miles each side of the southwest localizer course extending from the 6.7-mile radius to 13.2 miles southwest of the airport, and within 3.1 miles each side of the Eau Claire VORTAC 004° radial extending from the 6.7-mile radius to 9.6 miles north of the airport, and within 6.0-mile radius of the point in space serving Luther Hospital.

* * * * *

Issued in Des Plaines, Illinois on August 9, 1999.

Christoper R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22065 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–33]

Modification of Class E Airspace; Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Minneapolis, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 26 has been developed for Anoka County-Blaine Airport (Janes Field). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, ALG–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 25, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Minneapolis, MN (64 FR 28122). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Minneapolis, MN, to accommodate aircraft executing the proposed GPS Rwy 26 SIAP at Anoka County-Blaine Airport (Janes Field) by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. the incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Minneapolis MN [Revised]

Minneapolis-St. Paul International Airport
(Wold-Chamberlain) Airport DME

(Lat. 44° 52′ 29″N., long. 93° 12′ 23″W.)
Minneapolis, Anoka County-Blaine Airport (Janes Field), MN
(Lat. 45° 08′ 42″N., long. 93° 12′ 41″W.)
St. Paul, Lake Elmo Airport, MN
(Lat. 44° 59′ 51″N., long. 92° 51′ 20″W.)
Minneapolis, Airlake Airport, MN
(Lat. 44° 37′ 40″N., long. 93° 13′ 41″W.)
Farmington VOTAC
(Lat. 44° 37′ 51″N., long. 93° 10′ 55″W.)

That airspace extending upward from 700 feet above the surface within a 20.0-mile radius of the Minneapolis-St. Paul International Airport (Wold-Chamberlain) Airport DME antenna, and within a 6.5-mile radius of the Anoka County-Blaine Airport (Janes Field), and within a 6.3-mile radius of Lake Elmo Airport, and within a 6.4-mile radius of the Airlake Airport and within 3.3 miles each side of the 084° bearing from the Farmington VORTAC extending from the 6.4-mile radius to 14.8 miles east of the Airlake Airport.

* * * * *

Issued in Des Plaines, Illinois on August 9, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22066 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–31]

Modification of Class E Airspace; Sheridan, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Sheridan, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 05, and a GPS SIAP to Rwy 23, have been developed for Sheridan Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, May 17, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Sheridan, IN (64 FR 26712). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

The amendment to 14 CFR part 71 modifies Class E airspace at Sheridan, IN, to accommodate aircraft executing the proposed GPS Rwy 05 SIAP, and the GPS Rwy 23 SIAP, at Sheridan Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Sheridan, IN [Revised]

Sheridan Airport, IN
(Lat. 40°10′41″N., long. 86°13′02″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Sheridan Airport, excluding that airspace within the Indianapolis Terry Airport, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on August 9, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22067 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 2, 3 and 4

Rules of Practice Amendments

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rules with request for comments.

SUMMARY: To streamline the process of providing effective relief where parties consent to the entry of a cease and desist order, the FTC is amending its Rules of Practice to shorten the period for public comment on consent settlements from 60 days to 30 days. The amended rules also provide for more effective interim relief in cases involving mergers or acquisitions, by providing that hold-separate or asset-

maintenance orders will be made immediately effective when the Commission accepts the consent agreement or settlement proposal for public comment.

DATES: These rule amendments are effective on August 25, 1999. Agreements that have been executed by any or all respondents before the effective date will not be affected by these amendments without the consent of the parties.

Comments must be received on or before September 24, 1999.

ADDRESSES: Written comment on these rule revisions must be submitted in 20 copies to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Individuals filing comments need not submit multiple copies.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel for Legal Counsel, (202) 326–2476, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission considers it important to solicit public comment on consent agreements. Nonetheless, the current comment period of 60 days unduly delays implementation of consent orders and the benefits to the public of addressing the conduct alleged to be unlawful in the Commission's complaint. Neither the Administrative Procedure Act, 5 U.S.C. 551, nor the FTC Act, 15 U.S.C. 41–58, requires agencies to offer a public comment period on administrative settlements.[1] Accordingly, the Commission has decided to shorten the comment period to 30 days, as it was before 1974. The 30-day comment period will begin on the date the Commission issues a press release announcing that the Commission has accepted the agreement and placed it on the public record for comment. Press releases are ordinarily posted on the Commission's Web site the day they are released. The Commission believes that the shorter period generally will be sufficient to allow thoughtful public comment. The Commission may lengthen or shorten the 30-day comment period in the public interest. The Commission also retains discretion to make an order final after acceptance but before the comment period starts but it contemplates doing so only in exceptional cases where, for example, it believes that the allegedly unlawful conduct to be prohibited threatens substantial and imminent public harm. If, in such cases, the Commission, after the comment period, believes that modifications to the order would be appropriate, it will (absent agreement by respondents to the modifications) initiate a proceeding to reopen and modify the order pursuant to Rule 3.72(b) or issue a new administrative complaint to commence a new administrative proceeding in accordance with Rule 3.11.

With regard to competition cases involving planned mergers and acquisitions, when staff negotiates a hold-separate or asset-maintenance agreement, the Commission will issue the agreement as an immediately effective order when it accepts the consent agreement for comment. Although it is the Commission's view that hold-separate agreements, as currently structured, are immediately enforceable, treating such agreements as final Commission orders will make clear that violations are punishable by civil penalties.[2]

These changes require amending Rules 2.32, 2.34 and 3.25. Technical conforming changes also are being made to Rule 4.9 respecting the Commission's public record. The Commission believes these amendments will improve the protection of consumers and competition by accelerating the effectiveness of Commission consent orders and by increasing incentives to preserve the status quo pending final resolution of planned and allegedly anticompetitive mergers and acquisitions.

These rule revisions relate solely to agency practice and, therefore, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), or to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). The revisions do not involve the collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Although the revisions are effective as stated in the previous section, the Commission welcomes comment on them and will consider further revision as appropriate.

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Consent agreements, Investigations.

16 CFR Part 3

Administrative practice and procedure, Consent agreements.

16 CFR Part 4

Administrative practice and procedure, Public record.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A, of the Code of Federal Regulations as follows:

PART 2—NONADJUDICATIVE PROCEDURES

1. Revise the authority citation for part 2 to read:

Authority: 15 U.S.C. 46.

Subpart C—Consent Order Procedure

2. Revise § 2.32 to read as follows:

§ 2.32 Agreement.

Every agreement in settlement of a Commission complaint shall contain, in addition to an appropriate proposed order, either an admission of the proposed findings of fact and conclusions of law submitted simultaneously by the Commission's staff or an admission of all jurisdictional facts and an express waiver of the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law. Every agreement also shall waive further procedural steps and all rights to seek judicial review or otherwise to challenge or contest the validity of the order. In addition, where appropriate, every agreement in settlement of a Commission complaint challenging the lawfulness of a proposed merger or acquisition shall also contain a hold-separate or asset-maintenance order. The agreement may state that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the complaint. Every agreement shall provide that:

(a) The complaint may be used in construing the terms of the order;

(b) No agreement, understanding, representation, or interpretation not

---

[1] Although public comment periods on consent agreements are not required, the Commission has followed this practice for many years. The Commission's procedure for considering administrative consent orders has existed in one form or another since at least 1939. The procedure did not include a public comment period until 1967, when the Commission promulgated Rule 2.34, providing for a comment period of 30 days. 32 FR 8448–49 (June 13, 1967). In 1974, the Commission extended the comment period from 30 to 60 days. The Commission added a companion provision, Rule 3.25, in 1975 to establish an identical comment procedure for consent agreements in Part 3 matters. 40 FR 15235–36 (April 4, 1975).

[2] The amendment to § 2.34 specifies that any hold-separate or asset-maintenance orders will be accompanied by an administrative complaint, but that the complaint will neither initiate an adjudicatory proceeding nor trigger the application of the prohibitions on ex parte communications in § 4.7.

contained in the order or the aforementioned agreement may be used to vary or to contradict the terms of the order;

(c) The order will have the same force and effect and may be altered, modified or set aside in the same manner provided by statute for Commission orders issued on a litigated or stipulated record;

(d) Except as provided by order of the Commission, any order issued pursuant to the agreement will become final upon service;

(e) The agreement will not become a part of the public record unless and until it is accepted by the Commission; and

(f) If the Commission accepts the agreement, further proceedings will be governed by § 2.34.

3. Revise § 2.34 to read as follows:

§ 2.34 Disposition.

(a) *Acceptance of proposed consent agreement.* The Commission may accept or refuse to accept a proposed consent agreement. Except as otherwise provided in paragraph (c) of this section, acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter.

(b) *Effectiveness of hold-separate or asset-maintenance order.* Following acceptance of a consent agreement, the Commission will, if it deems a hold-separate or asset-maintenance order appropriate, issue a complaint and such an order as agreed to by the parties. Such order will be final upon service. The issuance of a complaint under this paragraph will neither commence an adjudicatory proceeding subject to part 3 of this chapter nor subject the consent agreement proceeding to the prohibitions specified in § 4.7 of this chapter.

(c) *Public comment.* Promptly after its acceptance of the consent agreement, the Commission will place the order contained in the consent agreement, the complaint, and the consent agreement on the public record for a period of 30 days, or such other period as the Commission may specify, for the receipt of comments or views from any interested person. At the same time, the Commission will place on the public record an explanation of the provisions of the order and the relief to be obtained thereby and any other information that it believes may help interested persons understand the order. The Commission also will publish the explanation in the **Federal Register**. The Commission retains the discretion to issue a complaint and a Final Decision and Order, incorporating the order contained in a consent agreement, in appropriate cases before seeking public comment. Unless directed otherwise by the Commission, such Decision and Order will be final upon service.

(d) *Comment on initial compliance report.* If respondents have filed an initial report of compliance pursuant to § 2.33, the Commission will place that report on the public record, except for portions, if any, granted confidential treatment pursuant to § 4.9(c) of this chapter, with the complaint, the order, and the consent agreement.

(e) *Action following comment period.* (1) Following the comment period, on the basis of comments received or otherwise, the Commission may either withdraw its acceptance of the agreement and so notify respondents, in which event it will take such other action as it may consider appropriate, or issue and serve its complaint in such form as the circumstances may require and its decision in disposition of the proceeding.

(2) The Commission, following the comment period, may determine, on the basis of the comments or otherwise, that a Final Decision and Order that was issued in advance of the comment period should be modified. Absent agreement by respondents to the modifications, the Commission may initiate a proceeding to reopen and modify the decision and order in accordance with § 3.72(b) of this chapter or commence a new administrative proceeding by issuing a complaint in accordance with § 3.11 of this chapter.

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

4. Revise the authority citation for part 3 to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Decisions

5. Amend § 3.25 by revising paragraph (f) to read as follows:

§ 3.25 Consent agreement settlements.

* * * * *

(f) After some or all of allegations in a matter have been withdrawn from adjudication, the Commission may accept the proposed consent agreement, reject it and return the matter or affected portions thereof to adjudication for further proceedings or take such other action as it may deem appropriate. If the agreement is accepted, it will be disposed of as provided in § 2.34 of this chapter, except that if, following the public comment period provided for in § 2.34, the Commission decides, based on comments received or otherwise, to withdraw its acceptance of such an agreement, it will so notify the parties and will return to adjudication any portions of the matter previously withdrawn from adjudication for further proceedings or take such other action it considers appropriate.

* * * * *

PART 4—MISCELLANEOUS RULES

6. Revise the authority citation for part 4 to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

7. Amend § 4.9 by revising paragraph (b)(6) to read as follows:

§ 4.9 The public record.

* * * * *

(b) * * *

(6) *Consent Agreements (16 CFR 2.31 through 2.34, 3.25).* (i) Agreements containing orders, after acceptance by the Commission pursuant to §§ 2.34 and 3.25(f) of this chapter;

(ii) Comments and other materials filed or placed on the public record under §§ 2.34 and 3.25(f) concerning proposed consent agreements and related orders; and

(iii) Decisions and orders issued and served under §§ 2.34 and 3.25(f), including separate statements of Commissioners.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Orson Swindle Concerning Amendments to Commission Rules 2.32, 2.34, 3.25, and 4.9

I have voted for the amendments to the Commission's Rules of Practice that would shorten the public comment period on consent agreements and would make hold-separate and asset-maintenance agreements immediately effective. In my judgment, shortening the comment period to 30 days achieves a sensible balance between forestalling violations of Commission orders and affording the public sufficient time to comment on Commission settlements. I also see obvious benefits from issuing hold-separate and asset-maintenance agreements as immediately enforceable orders.

Nevertheless, I would have preferred to subject these rule revisions to advance public comment, rather than—as the Commission has done—issuing them as final rules with a request for comments after the fact. Whatever my judgment (and that of my colleagues) concerning whether the revisions are prudent and in the public interest, I would have thought we would also try to appraise the judgment of the public—those for whom we in government work, and to whom we are ultimately accountable—before issuing a

final rule that halves the comment period on consent agreements.[1]

One might respond to my concern with the argument that since the public comment period itself is for the benefit of the Commission and not of the public, any decision to shorten or eliminate the period should be in the hands of the sole beneficiary of the public comment mechanism—the Commission. To argue thus, however, would be to disregard a core element of our system of government: the public's stake in the decisions reached by government agencies, and our responsibility to take the public's views into account. Although I would not have voted to shorten the comment period to 30 days if I believed that such an action would nullify the public's role, getting public comment beforehand on this very issue would have been valuable.

Instead, the Commission has decided to allow 30 days for public comment after these final rules have been published in the **Federal Register**. I fear that this is not an adequate surrogate for the advance comment that we should have solicited. Once something such as an order or a rule revision is issued "in final," it is often a *fait accompli* that is unlikely to be undone even in the face of inexorable logic.[2] We should have invited public participation before taking these steps.

[FR Doc. 99–22015 Filed 8–24–99; 8:45 am]

BILLING CODE 6750–01–P

[1] The Administrative Procedure Act ("APA") generally requires that agencies engage in notice-and-comment procedures before issuing a final rule, 5 U.S.C. 553(c), but rules of agency procedure or practice are exempt from this requirement. 5 U.S.C. 553(b)(A). Nevertheless, "[a]lthough the APA provides this exemption for rules of agency procedure or practice, agency rulemakers should consider providing notice and an opportunity for comment where possible if the rules will affect the public." Administrative Conference of the United States, *A Guide to Federal Agency Rulemaking* 51 (2d ed. 1991) (emphasis added); see also American Bar Ass'n, Government and Public Sector Lawyers Division and Section of Administrative Law and Regulatory Practice, *A Guide to Federal Agency Rulemaking* 54–55 (3d ed. 1998). Although I do not believe that the Commission must put every change in its procedural rules out for public comment, doing so is warranted here because the proposed change may significantly affect the public.

[2] The courts have recognized that seeking comment after making a rule change is not usually a substitute for obtaining comment before such a change is made: "[A]n agency is not likely to be receptive to suggested changes once the agency "put[s] its credibility on the line in the form of "final" rules. People naturally tend to be more close-minded and defensive once they have made a "final" determination."" Air Transport Ass'n of America v. Dept. of Transp., 900 F.2d 369, 379 (D.C. Cir. 1990) (quoting National Tour Brokers Ass'n v. United States, 591 F.2d 896, 902 (D.C. Cir. 1978)), cert. denied, 498 U.S. 1023 (1991).

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 9 and 171

Review of Exchange disciplinary, Access Denial or Other Adverse Actions; Review of NFA Decisions; Corrections

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rules; technical corrections.

SUMMARY: On October 26, 1995, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** (60 FR 54801) final regulations amending its Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions ("Rules"), to reflect changes in office titles, personnel titles and address. The Commission has determined to make certain technical corrections to the Rules to clarify its delegation of authority.

In addition, the Commission has determined to make a similar technical correction to its Rules relating to Review of NFA Decisions, to clarify its delegation of authority.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Assistant General Counsel, Office of General Counsel, (202) 418–5120.

SUPPLEMENTARY INFORMATION: The Commission recently has undertaken a reexamination of its part 9 and part 171 Rules and has identified those rules that require amendment to effect technical or conforming changes.

I. Rules Being Amended

The following Commission rules are being amended.

A. 17 CFR 9.9

Commission Rule 9.9(b) delegates certain authority to the Deputy General Counsel for Opinions and Review. As adopted, the rule authorizes the Deputy General Counsel for Opinions and Review, or a person under his direction designated by him, to handle particular procedural and technical matters and, in his discretion, to submit any matters otherwise falling within the terms of this rule to the Commission for its consideration. There is no longer a Deputy General Counsel for Opinions and Review. Consequently, references in rule 9.9 to "the Deputy General Counsel for Opinions and Review" have been changed to "the General Counsel.

B. 17 CFR 171.50

Commission rule 171.50 delegates certain authority to the Deputy General Counsel for Opinions. As adopted, the rule authorizes the Deputy General Counsel for Opinions, or a person under his direction designated by him, to perform specific procedural and technical functions and, in his discretion, to submit any matters otherwise falling within the terms of this rule to the Commission for its consideration. There is no longer a Deputy General Counsel for Opinions. Consequently, references in Rule 171.50 to "the Deputy General Counsel for Opinions" have been changed to " the General Counsel."

C. Administrative Procedure Act

The Commission has determined that the Administrative Procedure Act, 5 U.S.C. 553, does not require notice of proposed rulemaking and an opportunity for public participation in connection with these corrections. In this regard, the Commission notes that such notice and opportunity for comment is unnecessary because these technical corrections are related solely to agency organization, procedure and practice and make technical corrections. Accordingly, the Commission finds good cause to make these corrections effective immediately upon publication in the **Federal Register**. 5 U.S.C. 553(b)(B), 553(d)(3).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(4) and 2(a)(11), the Commission corrects Chapter I of title 17 of the Code of Federal Regulations as follows:

List of Subjects in 17 CFR Parts 9 and 171

Administrative practice and procedure, Commodity exchanges, Commodity futures.

PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY, ACCESS DENIAL OR OTHER ADVERSE ACTIONS

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 4a, 6c, 7a, 12a, 16a.

2. Section 9.9 is amended by revising paragraphs (b)(1) introductory text, (b)(3) and (b)(4) to read as follows:

§ 9.9 Waiver of rules; delegation of authority.

* * * * *

(b) *Delegation of authority.* (1) The Commission hereby delegates, until the Commission orders otherwise, to the

General Counsel, or the General Counsel's designee, the authority:

* * * * *

(3) The General Counsel or the General Counsel's designee may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (b)(1) of this section.

(4) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the General Counsel under this section.

PART 171—RULES RELATING TO REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION AND MEMBER RESPONSIBILITY ACTIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 7 U.S.C. 4a, 12a and 21.

2. Section 171.50 is amended by revising the heading and paragraphs (a) introductory text, (c) and (d) to read as follows:

§ 171.50 Delegation to the General Counsel.

(a) The Commission hereby delegates, until it orders otherwise, to the General Counsel or the General Counsel's designee, the authority:

* * * * *

(c) The General Counsel or the General Counsel's designee may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(d) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the General Counsel under this section.

Issued in Washington, D.C. this 19th day of August 1999, by the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–21918 Filed 8–24–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 96F–0176]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of Nylon 6/12 copolymer resins as nonfood-contact layers of laminated films and rigid multilaminate constructions with polypropylene outer layers intended for use in contact with food. This action is in response to a petition filed by Toray Industries (America) Inc.

DATES: The regulation is effective August 25, 1999; written objections and requests for a hearing by September 24, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3167.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 27, 1996 (61 FR 44067), FDA announced that a food additive petition (FAP 6B4505) had been filed by Toray Industries (America) Inc., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in Part 177 Indirect Food Additives: Polymers (21 CFR part 177) to provide for the safe use of Nylon 6/12 copolymers for use as a non-food contact layer of laminated articles intended for use with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive as a non-food contact layer of laminated films and rigid multilaminate constructions where the outer layers are made of polypropylene is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in §§ 177.1390 and 177.1500 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 24, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1390 is amended by revising paragraph (c)(1)(i)(*f*) to read as follows:

§ 177.1390 Laminate structures for use at temperatures of 250 °F and above.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(*f*) Nylon 6/12 resins (CAS Reg. No. 25191–04–2) complying with item 13.3 of the table in § 177.1500(b), for use as nonfood-contact layers of laminated films and in rigid multilaminate constructions with polypropylene outer layers. Laminate structures with authorized food-contact materials yield no more than 0.15 milligrams of *epsilon*-caprolactam and 0.04 milligrams of *omega*-laurolactam per square inch when extracted with 95 percent ethanol at 121 °C (250 °F) for 2 hours.

* * * * *

3. Section 177.1500 is amended in the table in paragraph (b) by adding item "13.3" in numerical order to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(b) * * *

Nylon resins	Specific gravity	Melting point (degrees Fahrenheit)	Solubility in boiling 4.2*N* HCl	Viscosity No. (mL/g)	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
					Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
*	*	*	*	*	*	*	*	*
13.3 Nylon 6/12 resins with residual *epsilon*-caprolactam not to exceed 0.8 percent by weight and residual *omega*-laurolactam not to exceed 0.1 percent by weight. For use only as specified in § 177.1390 of this chapter.	1.13± 0.15	400–420	Dissolves in 1 h.		1.0	1.5	0.5	0.5
*	*	*	*	*	*	*	*	*

* * * * *

Dated: August 9, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21963 Filed 8–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–070]

RIN 2115–AE46

Special Local Regulations for Marine Events; Mears Point Marina and Red Eyes Dock Bar Fireworks Display, Chester River, Kent Narrows, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Mears Point Marina and Red Eyes Dock Bar Fireworks Display, to be held September 5, 1999, over the waters of the Chester River, Kent Narrows, Maryland. These regulations are needed to protect spectator craft and other vessels transiting the event area from the dangers associated with the event. This action is intended to enhance the safety of life and property during the event.

DATES: This temporary final rule is effective from 8:30 p.m. to 9:30 p.m. EDT (Eastern Daylight Time) on September 5, 1999 and September 6, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(B), the Coast Guard finds that good cause exists for not publishing a NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register.** The Coast Guard received confirmation of this request for special local regulations on July 16, 1999. There was not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the effective date of the regulation would be contrary to the public interest, because immediate action is necessary to protect spectators and other vessel traffic from the potential hazards associated with this event.

Background and Purpose

The Mears Point Marina and Red Eyes Dock Bar will sponsor a Labor Day Celebration fireworks display, to be held over the waters of the Chester River, Kent Narrows, Maryland. The event will consist of pyrotechnic displays fired

from a barge positioned north of Kent Narrows, Maryland. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the fireworks display, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Chester River. The temporary special local regulations will be in effect from 8:30 p.m. to 9:30 p.m. EDT on September 5, 1999 and will restrict general navigation in the regulated area during the event. If the event is postponed due to weather conditions, the temporary special local regulations will be effective from 8:30 p.m. to 9:30 p.m. on September 6, 1999. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the fireworks display to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because this temporary final rule will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, the Coast Guard expects the impact of this temporary final rule to be minimal.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a marine event are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35–T05–070 is added to read as follows:

§ 100.35–T05–070 Mears Point Marina and Red Eyes Dock Bar Fireworks Display, Chester River, Kent Narrows, Maryland.

(a) *Definitions*—(1) *Regulated Area.* The waters of the Chester River enclosed within the arc of a circle with a radius of 150 yards and with its center located at latitude 38°58.6′ North, longitude 076°14.3′ West. All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations.* (1) All persons and/or vessels not authorized as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective dates.* This section is effective from 8:30 p.m. to 9:30 p.m. EDT (Eastern Daylight Time) on September 5, 1999. If the event is postponed due to weather conditions, the regulated area is effective from 8:30 p.m. to 9:30 p.m. EDT on September 6, 1999.

Dated: August 13, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 99–22058 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–071]

RIN 2115–AE46

Special Local Regulations for Marine Events; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations at 33 CFR 100.515 during a fireworks display to be held September 11, 1999, on the Patapsco River at Baltimore, Maryland. These special local regulations are

necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated areas for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.515 is effective from 5:30 p.m. EDT (Eastern Daylight Time) to 11 p.m. EDT on September 11, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R.O. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The City of Baltimore will sponsor a fireworks display on September 11, 1999 on the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned with the regulated area. In order ensure the safety of participants and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: August 13, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 99–22057 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–148]

RIN 2115–AE47

Drawbridge Operation Regulations: Danvers River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the operating rules for the Beverly Salem SR1A Bridge, mile 0.0, across the Danvers River between Beverly and Salem, Massachusetts. The Beverly Salem SR1A Bridge has been replaced with a fixed bridge. Notice and public procedure have been omitted from this action because the bridge the regulations formerly governed no longer exists.

DATES: This final rule is effective August 25, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Discussion

The Beverly Salem SR1A Bridge, mile 0.0, across the Danvers River has been replaced with a fixed bridge. The operating regulations listed at 33 CFR 117.595(b) are now unnecessary and will be removed by this action because the bridge they formerly governed no longer exists. Paragraph (a)(1) is also being removed from § 117.595 because it is now listed at § 117.31 of this chapter and paragraph (a)(4) is being removed because it is redundant. The Essex County Kernwood Bridge is no longer owned and operated by Essex County. It is presently owned and operated by the Massachusetts Highway Department. Its locally known as the Kernwood Bridge. Its name will be changed in the regulations to remove Essex County and call it just the Kernwood Bridge.

Good Cause

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because notice and comment are unnecessary. Notice and comment are unnecessary because the bridge governed in § 117.595(b) no longer exists. The other changes to remove § 117.595(a)(1), which is included in § 117.31, and to change the bridge name to Kernwood Bridge are simply administrative changes for clarity.

The Coast Guard, for the reasons just stated, has also determined that good cause exists for this rule to be effective upon publication in the **Federal Register**.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge governed by the regulations no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. *Small entities* include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations has been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.595 is revised to read as follows:

§ 117.595 Danvers River.

(a) The requirements in this paragraph apply to all bridges across the Danvers River:

(1) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high, designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

(2) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(b) The draw of the Massachusetts Bay Transportation Authority (MBTA)/ AMTRAK Bridge, at mile 0.05, between Salem and Beverly, shall open on signal; except that, from midnight to 5 a.m., daily, and on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

(c) The Kernwood Bridge, at mile 1.0, shall open on signal; except that, from May 1 through September 30, midnight to 5 a.m., from October 1 through April 30, 7 p.m. to 5 a.m., and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

Dated: August 11, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–22051 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–080]

RIN 2115–AE47

Drawbridge Operation Regulations: Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the operating rules for the Ponquoque Point Bridge, mile 78.0, across Shinnecock Bay in New York. The Ponquoque Point Bridge has been replaced with a fixed bridge and the operating regulations are no longer necessary. Notice and public procedure have been omitted from this action because the bridge the regulations formerly governed no longer exists.

DATES: This final rule is effective August 25, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Background

The Ponquoque Point Bridge, mile 78.0, across Shinnecock Bay has been replaced with a fixed bridge and the operating regulations are now unnecessary.

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because notice and comment are unnecessary. Notice and comment are unnecessary because the bridge the regulations governed no longer exists.

The Coast Guard, for the reason just stated, has also determined that good cause exists for this rule to be effective upon publication in the **Federal Register**.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge formerly governed by the regulations no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded

from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.799(d) is revised to read as follows:

§ 117.799 Long Island, New York inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(d) The draws of the West Bay Bridge, mile 0.1, across Quantuck Canal, Beach Lane Bridge, mile 1.1, across Quantuck Canal, Quoque Bridge, mile 1.1, across Quoque Canal, and the Smith Point Bridge, mile 6.1, across Narrow Bay, shall open on signal, from October 1 through April 30, from 8 a.m. to 4 p.m., and from May 1 through September 30, from 6 a.m. to 10 p.m. At all other times during these periods, the draws shall open as soon as possible but no more than one hour after a request to open is received.

* * * * *

Dated: August 11, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–22054 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01 99–145]

RIN 2115–AA97

Safety Zone: Salvage of Sunken Fishing Vessel CAPE FEAR, Buzzards Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within a five hundred (500) yard radius of the site of the sunken fishing vessel CAPE FEAR in the entrance to Buzzards Bay, Massachusetts during oil removal and salvage operations. Once the vessel is salvaged and brought to the surface, a temporary moving safety zone extending 1,000 yards ahead and astern, and 500 yards on either side is established around the fishing vessel CAPE FEAR while it is towed into and safely moored in the port of Fairhaven, MA. This safety zone is needed to protect personnel and their resources on-scene during oil pollution abatement and salvage operations, the maritime community from hazards associated with ongoing oil pollution abatement and salvage operations, any spectators or vessels in the vicinity, and to ensure the safe transit and mooring of the fishing vessel CAPE FEAR as it is towed into the port of Fairhaven, Ma. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP), Providence, RI.

EFFECTIVE DATE: This rule is effective from 12 midnight on Saturday, July 31, 1999, until 12 midnight on Tuesday, August 31, 1999.

FOR FURTHER INFORMATION CONTACT: LT David C. Barata, Waterways Management, Coast Guard Marine Safety Office, Providence, RI, at (401) 435–2300.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Due to the date that conclusive information for this event was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of Buzzards Bay to protect personnel and their resources on-scene during oil pollution abatement and the salvage operations, the maritime community from hazards associated with ongoing oil pollution abatement and salvage operations, any spectators or vessels in the vicinity, and to ensure the safe transit and mooring of the fishing vessel CAPE FEAR as it is towed into the port of Fairhaven, Ma.

Background and Purpose

This regulation established a safety zone in all waters within a five hundred (500) yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734) in the entrance to Buzzards Bay at approximate position 41°23′ N, 071°01′ W during oil pollution abatement and salvage operations. After the vessel is salvaged and brought to the surface, a temporary moving safety zone will immediately be established on all waters extending 1,000 yards ahead and astern, and 500 yards on either side of the fishing vessel CAPE FEAR until it is towed into and safety moored in the port of Fairhaven, MA. This safety zone is needed to protect personnel and their resources on-scene during oil pollution abatement and salvage operations, the maritime community from hazards associated with ongoing oil pollution abatement and salvage operations, any spectators or vessels in the vicinity, and to ensure the safe transit and mooring of the fishing vessel CAPE FEAR as it is towed into the port of Fairhaven, MA. The public will be made aware of the change from a stationary to moving safety zone through a Broadcast Notice to Mariners made from U.S. Coast Guard Group Woods Hole. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP), Providence, RI.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves a small area of Buzzards Bay. Although this regulation prevents traffic from transiting in the immediate area of the salvage site and prevents vessels from transiting near the fishing vessel CAPE FEAR as it is towed, the effect of this regulation will not be significant as all vessel traffic may safety pass around this safety zone and extensive maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small

entities. "Small entities" may include (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT D.C. Barata, telephone (401) 435–2300.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate cost of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under Addressee.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–145 to read as follows:

§ 165.T01–145 Safety Zone: Salvage of Sunken Fishing Vessel CAPE FEAR, Buzzards Bay, MA.

(a) *Location.* The following area has been declared a safety zone: All waters within five hundred (500) yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655634) in the entrance to Buzzards Bay at approximate position 41°–23′N, 071°–01′W during oil pollution abatement and salvage operations. After the vessel is salvaged and brought to the surface, a temporary moving safety zone will immediately be established on all waters extending 1,000 yards ahead and astern, and 500 yards on either side of the fishing vessel CAPE FEAR until is towed into and safety moored in the port of Fairhaven, MA.

(b) *Effective date.* This section is effective from 12:00 midnight on Saturday, July 31, 1999, until 12:00 midnight on Tuesday, August 31, 1999.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP Providence.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: July 29, 1999.

Peter A. Popko,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 99–22056 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 20

Global Direct—Canada Publications Mail

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: Global Direct—Canada Publications Mail is an international mail service that is available on the basis of a service agreement between the Postal Service and a qualifying mailer. Under this service, a mailer may enter newspaper and periodical items that meet the applicable eligibility, makeup, and preparation requirements for

Canada Post's domestic Publications Mail. The Postal Service transports the items to Canada for entry into that country's domestic mail system. The mailer is responsible for ensuring that the items meet Canada Post's requirements.

DATES: The interim regulations are effective August 25, 1999. Comments must be received on or before September 24, 1999.

ADDRESSES: Written comments should be sent to the Manager, Pricing, Costing, and Classification, International Business Unit, U.S. Postal Service, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256.

SUPPLEMENTARY INFORMATION: In cooperation with Canada Post Corporation (CPC), the Postal Service is introducing Global Direct—Canada Publications Mail. This international mail service is primarily intended for publishers seeking easier access to the Canadian domestic postal system.

To qualify, a mailer must agree to mail a minimum of 10,000 pieces or 250 pounds of mail per mailing for delivery to Canadian addresses. All mail must conform to the applicable eligibility, makeup, and preparation requirements for Canadian domestic Publications Mail as specified by Canada Post. Specialized software for sorting and address accuracy that is recognized by Canada Post is required. Service is available from six Postal Service facilities.

Ancillary services for local business reply and the return of undeliverable mail are also available. Participating mailers must sign a service agreement with the Postal Service that defines the conditions of mailing under which they will enter Global Direct—Canada Publications Mail.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), interested parties are invited to submit written data, views, or comments regarding this interim rule to the address above.

The Postal Service is adopting the following interim amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended by adding new part 613, Global Direct—Canada Publications Mail, to read as follows:

CHAPTER 6—SPECIAL PROGRAMS

* * * * *

610 Global Direct Service

* * * * *

613 Global Direct-Canada Publications Mail

613.1 Description

Global Direct-Canada Publications Mail is an international mail service that is available on the basis of a service agreement between the Postal Service and a qualifying mailer. Under this service, a mailer must enter newspaper and periodical items that meet the applicable eligibility, makeup, and preparation requirements for Canada Post's domestic Publications Mail. The Postal Service transports the items to Canada for entry into that country's domestic mail system. The mailer is responsible for ensuring that the items meet Canada Post's makeup and preparation requirements.

613.2 Qualifying Mailers and Mailing Locations

613.21 Qualifying Mailers

Qualifying mailers must agree to mail a minimum of 10,000 items or 250, pounds per mailing for delivery to Canadian addresses. All tendered mailpieces must conform to the applicable eligibility, makeup, and preparation requirements for Canadian domestic mail, as specified by Canada Post. Specialized sortation software and address accuracy software that is recognized by Canada Post is required.

613.22 Mailing Locations

Mailings may be deposited only at the following offices as specified in the service agreement:

JOHN F KENNEDY AIRPORT MAIL CENTER, JOHN F KENNEDY INTERNATIONAL AIRPORT, BUILDING 250 JAMAICA NY 11430–9998

NEW JERSEY INTERNATIONAL BULK MAIL CENTER, US POSTAL SERVICE, 80 COUNTY RD, JERSEY CITY NJ 07097–9998

BUFFALO AUXILIARY SERVICE FACILITY, BUFFALO PROCESSING AND DISTRIBUTION CENTER, 1200 WILLIAM ST, BUFFALO NY 14240–9998

DETROIT BULK MAIL CENTER, US POSTAL SERVICE, 17500 OAKWOOD BLVD, ALLEN PARK MI 48101–9755

AMC O'HARE INTERNATIONAL ANNEX, US POSTAL SERVICE, 3333 MOUNT PROSPECT RD, FRANKLIN PARK IL 60131–1347

SEATTLE BULK MAIL CENTER, US POSTAL SERVICE, 34301 9TH AVE S, FEDERAL WAY WA 98003–6721

613.3 Postage

613.31 Rate

The rate of postage is determined by the weight and level of sortation of the items being mailed as specified below:

Letter carrier presort (LCP) first 7.04 oz. (0.44 lbs.)	Rate
Delivery Mode Direct	$0.265
Delivery Facility	0.295
City	0.348
DCF	0.400
FCP	0.453
Residue	0.475
Over 7.04 oz. (.44 lbs.) (200 grams) per additional pound	0.482
National Distribution Guide (NDG) First 3.52 oz. (0.22 lbs.)	0.354
Over 3.52 oz. (0.22 lbs.) (100 grams) per additional pound	0.721

613.32 Canada Post Size Definition

	Minimum	Maximum
Size:		
Per piece	5.5 in. × 3.35 in. × .007 in.	
Per bundle		Length + girth: 78.7 in. Greatest dimension: 23.6 in. Height: 7.8 in.
Per roll		Length + 2 × diameter: 41 in. Greatest dimension: 35.4 in.
Per folded newspaper		14.25 in. × 11 in. × 6.4 in.
Weight:		
Per piece		3 lbs.
Per bundle		55 lbs.

613.33 Postage Payment Method

Postage must be paid through an advance deposit account. Qualifying mailers must have the following information printed on one of the first five or last five pages of each newspaper or periodical issue:

a. The words "Agreement Number 03429792";

b. The Canadian address to which change of address information and the address blocks undeliverable copies should be sent. (The Postal Service will provide this address if the mailer does not have a Canadian return address.)

If the publication is mailed under cover, the information outlined above must be clearly visible on the outside of the envelope or, if clear-wrapped, on the front or back cover of the publication.

613.34 Postage Statement

Mailers must complete the total postage on PS Form 3651, Postage Statement—International Permit Imprint Mail or Bulk Letters to Canada with Permit Imprint or Postage Meter Affixed, and attach a completed worksheet, PS Form 3657–C, Postage Statement—Global Direct—Canada Publications Mail. Both of these forms are provided by the Postal Service at the following web site: www.usps.com. A set of separate postage statements must be prepared for each individual mailing.

613.4 Preparation Requirements

Mailers are responsible for ensuring that newspapers and periodicals tendered under the Global Direct-Canada Publications Mail service comply with Canada Post's domestic mail preparation requirements.

613.5 Ancillary Services

613.51 Business Reply Service

This service provides for the return of Canadian business reply mail through the Postal Service to a specified address in Canada. Detailed specifications for this service are contained in Publication 524, Global Direct Canada Admail Service Guide. The rates for this service are:

a. $0.45 for items weighing not more than 1.06 ounces (30 grams).

b. $0.65 for items weighing more than 1.06 ounces (30 grams) but not more than 1.76 ounces (50 grams).

613.52 Return of Undeliverable Mail

Only the address block of the publication will be returned. The rate for this service is $0.50 per address block returned.

613.6 Service Agreement

Before the first mailing, mailers must complete and submit PS Form 3681, Global Direct Service Agreement, 14 days prior to their planned mailing date. The Global Direct Service Agreement can be found in Publication 524, Global Direct Canada Admail Service Guide, or at the following web site: http://www.usps.com. Concurrent with the establishment of the agreement, instructions are issued to the designated post office of entry regarding the acceptance and verification of the prospective customer's mailpieces.

613.7 Advance Notification

Mailers who are interested in using Global Direct-Canada Publications Mail service must complete a PS Form 3682, Record of Mailing, five days prior to their planned mailing date. The Record of Mailing can be found in Publication 524, Global Direct Canada Admail Service Guide, or at the following web site: http://www.usps.com.

* * * * *

A transmittal letter changing the relevant pages in the International Mail Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–22110 Filed 8–24–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0032a; FRL–6410–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Colorado Springs Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of a Related Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 19, 1998, the Governor of Colorado submitted a request to redesignate the Colorado Springs "moderate" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. In addition, on October 1, 1998, the Governor submitted revisions to Colorado's Regulation No. 13 "Oxygenated Fuels Program". In this action, EPA is approving the Colorado Springs CO redesignation request, the maintenance plan, and the revisions to Regulation No. 13.

DATES: This direct final rule is effective on October 25, 1999 without further notice, unless EPA receives adverse comments by September 24, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and,

United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Colorado Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado, 880246–1530.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean the Environmental Protection Agency.

I. What Is The Purpose of This Action?

In this action, we are approving a change in the legal designation of the Colorado Springs area from nonattainment for CO to attainment, we're approving the maintenance plan that is designed to keep the area in attainment for CO for the next 11 years, and we're also approving changes to the State's Regulation No. 13 for the implementation of the wintertime oxygenated fuels program.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), we designated the Colorado Springs area as nonattainment for CO because the area had been designated as nonattainment before November 15, 1990. We originally designated Colorado Springs as nonattainment for CO under the provisions of the 1977 CAA Amendments (see 41 FR 28002, July 8, 1976). This designation was reaffirmed by the 1990 CAA Amendments and Colorado Springs was classified as a "moderate" CO nonattainment area with a design value of less than or equal to 12.7 parts per million (ppm). See 56 FR 56694, November 6, 1991. Further information regarding this classification and the accompanying requirements are described in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990." See 57 FR 13498, April 16, 1992.

Under the CAA, we can change designations if acceptable data are available and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must decide that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur simultaneously with final approval of the redesignation request. That's why we are also approving the revisions to Regulation No. 13.

II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the Carbon Monoxide (CO) Redesignation Request and Maintenance Plan for Colorado Springs on January 15, 1998. The AQCC adopted the redesignation request and maintenance plan directly after the hearing. This SIP revision became State effective March 30, 1998, and was submitted by the Governor to us on August 19, 1998.

We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's August 19, 1998, submittal became complete on February 19, 1999.

For the Regulation No. 13 revisions, two public hearings were held. On April 17, 1997, the AQCC held a public hearing to consider the changes to Regulation No. 13 that involved shortening of the oxygenated fuels season by one week and reducing the minimum oxygen content in fuels for the first and last weeks of the program. The AQCC adopted these changes directly after the April 17, 1997, public hearing and they became State effective on June 30, 1997.

On January 16, 1998, the AQCC held a public hearing to consider further changes to Regulation No. 13, in response to action by the Colorado General Assembly. The Colorado General Assembly approved the April 17, 1997, AQCC changes to Regulation No. 13; however, the General Assembly changed the implementation time frame from 1998–1999, as contained in the Regulation, to 1997–1998. (State Senate Bill SB(97)236, codified at § 25–7–133.5(2)(n), C.R.S.) The purpose of the January 16, 1998, public hearing was for the AQCC to change Regulation No. 13 to match the implementation time frame of SB(97)236. This change was adopted by the AQCC directly after the January 16, 1998, public hearing and became State effective on March 30, 1998. The Governor submitted both the April 17, 1997, and January 16, 1998, revisions to Regulation No. 13 to us on October 1, 1998.

We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's October 1, 1998, submittal became complete on April 1, 1999.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's redesignation request and maintenance plan and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a). Redesignation Criterion: The Area Must Have Attained the Carbon Monoxide (CO) NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area doesn't have more than one exceedance of the CO standard over a one-year period. 40 CFR 50.8 and 40 CFR part 50, Appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, our interpretation of the CAA and EPA national policy [1] has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must also continue to show attainment through the date that we promulgate the redesignation in the Federal Register.

Colorado's CO redesignation request for the Colorado Springs area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. As presented in Section 2 of the State's maintenance plan, ambient air quality monitoring data for consecutive calendar years 1988 through 1996 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Colorado Springs nonattainment area. Data are also available for calendar years 1997 and 1998 that also show no exceedances of the CO NAAQS. All of these data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, Appendix C) and have been archived by the State in our Aerometric Information and Retrieval System (AIRS) national database. Further information on CO monitoring is presented in Section 2 of the maintenance plan and in the State's Technical Support Document (TSD). We have evaluated the ambient air quality data and have determined that the Colorado Springs area has not violated the CO standard and continues to demonstrate attainment.

The Colorado Springs nonattainment area has quality-assured data showing no violations of the CO NAAQS for 1995 and 1996 which are the years the State used to support the redesignation request. In addition, data from the most recent consecutive two-calendar-year period (i.e., 1997 and 1998) also show no violations. Therefore, the Colorado Springs area has met the first component for redesignation: demonstration of attainment of the CO NAAQS. We note too that the State of Colorado has also committed, in the maintenance plan, to continue the necessary operation of the CO monitors in compliance with all applicable federal regulations and guidelines.

(b). Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

1. CAA Section 110 Requirements

The Colorado Springs CO element of the Colorado SIP was adopted by the AQCC in June of 1982 and was approved by the EPA on December 12, 1983 (48 FR 55284). The 1982 SIP element's emission control plan was based on emission reductions from the Federal Motor Vehicle Control Program (FMVCP), Automobile Inspection and Readjustment Program, Improved Public Transit, Carpool Locator Service, and Traffic Flow Improvements. The anticipated date for attaining the 8-hour CO NAAQS was December 31, 1987.

Through a letter dated May 26, 1988, we notified the Governor of Colorado that the Colorado Springs area did not attain the CO NAAQS by the end of 1987. This letter stated that Colorado was to address deficiencies in the SIP and that the State would also have to address requirements in our forthcoming post-1987 policy for carbon monoxide. To partially address deficiencies in the Colorado Springs SIP element, the State included the Clean Air Campaign in the SIP, although no emissions reductions credits were assigned to this program. We approved the Clean Air Campaign into the SIP (see 54 FR 22893, May 30, 1989) for its underlying benefit to the area.

EPA did not finalize its post-1987 policy for carbon monoxide because the Clean Air Act (CAA) was amended on November 15, 1990. Under section 186 of the CAA, Colorado Springs was designated nonattainment for CO, was classified as "moderate" with a design value of less than 12.7 parts per million (ppm), and was required to attain the CO NAAQS by December 31, 1995. See 56 FR 56694, November 6, 1991. The new CAA requirements for moderate CO areas, such as Colorado Springs, required that the SIP be revised to include a 1990 base year emissions inventory (CAA section 187(a)(1)), corrections to existing motor vehicle inspection and maintenance(I/M) programs (CAA section 187(a)(4)), periodic emission inventories (CAA section 187(a)(5)), and the implementation of an oxygenated fuels program (CAA section 211(m)(1)).

How the State met these requirements and our approvals, are described as follows:

A. 1990 base year emissions inventory (CAA section 187(a)(1)): The Governor submitted a 1990 base year emissions inventory for Colorado Springs on December 31, 1992, with subsequent revisions being submitted on March 23, 1995. We approved this 1990 base year CO emissions inventory on December 23, 1996 (see 61 FR 67466).

B. Corrections to the Colorado Springs basic I/M program (CAA section 187(a)(4)): On January 14, 1994, and June 24, 1994, the Governor submitted revisions to the Colorado basic I/M program portion of its SIP which included the program in Colorado Springs. We approved these basic I/M program revisions on March 19, 1996 (see 61 FR 11149).

C. Periodic emissions inventories (CAA section 187(a)(5)): As the Governor did not submit a complete redesignation request and maintenance plan before September 30, 1995, a periodic emission inventory (for calendar year 1993) was required for Colorado Springs. On September 16, 1997, the Governor submitted a SIP revision for a 1993 periodic emission inventory for Colorado Springs. We

[1] Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment."

approved this revision on July 15, 1998 (see 63 FR 38087).

D. Oxygenated fuels program implementation (CAA section 211(m)): To address the oxygenated fuels requirements of the CAA, the Governor initially submitted a revision to Colorado's Regulation No. 13 on November 27, 1992. We approved this revision on July 24, 1994 (see 59 FR 37698). Regulation 13 was again revised, to shorten the oxygenated fuels program season, and the Governor submitted further revisions to Regulation No. 13 on September 29, 1995, and December 22, 1995. We approved these revisions on March 10, 1997 (see 62 FR 10690).

Based on the above actions by the State and us, EPA has determined that the SIP continues to satisfy the requirements of section 110(a)(2).

2. Part D Requirements

Before the Colorado Springs CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether the area is classified or nonclassifiable for CO.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. Our General Preamble (see 57 FR 13498, April 16, 1992) provides EPA's interpretations of the CAA requirements for moderate CO areas with design values of less than 12.7 ppm.

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due November 15, 1992, for the Colorado Springs nonattainment area. As the Colorado Springs CO redesignation request and maintenance plan were not submitted by the Governor until well after November 15, 1992, (i.e., actually, August 19, 1998), the General Preamble (see 57 FR 13529) provides that the applicable requirements of CAA section 172 were 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), 172(c)(7)(the section 110(a)(2) air quality monitoring requirements)), and contingency measures (CAA section 172(c)(9)). It is also worth noting that we interpreted the requirements of sections 172(c)(1) (reasonable available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), and 172(c)(6)(other measures), as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment", and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4)(identification of certain emissions increases) and 172(c)(8)(equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Colorado Springs nonattainment area. As stated above for CAA section 187(a)(1), the Governor submitted a 1990 base year emissions inventory for Colorado Springs on December 31, 1992, with subsequent revisions being submitted on March 23, 1995. We approved this 1990 base year CO emissions inventory on December 23, 1996 (see 61 FR 67466).

B. Section 172(c)(5) New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Colorado has a fully-approved NSR program (59 FR 42500, August 18, 1994) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (59 FR 42500, August 18, 1994) that will apply after the redesignation to attainment is approved by us.

C. Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements

According to our interpretations presented in the General Preamble (57 FR 13498), CO nonattainment areas are to meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172 (b) and (c) of the CAA. With respect to this requirement, the State indicates in Section 3 of the maintenance plan ("Attainment of the Carbon Monoxide Standard"), that ambient CO monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) for the Colorado Springs area. Air quality data through 1996 are included in Section 3 of the maintenance plan and in the State's TSD. We recently polled the AIRS database and verified that the State has also uploaded additional ambient CO data through 1998. The data in AIRS indicate that the Colorado Springs area has shown, and continues to show, attainment of the CO NAAQS. Information concerning CO monitoring in Colorado is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Our personnel have concurred with Colorado's annual network reviews and have agreed that the Colorado Springs network remains adequate. Finally, in Section 8, D. of the maintenance plan, the State commits to the continued operation of the existing CO monitors, according to all applicable Federal regulations and guidelines, even after the Colorado Springs area is redesignated to attainment for CO.

D. Section 172(c)(9) Contingency Measures

According to our interpretations presented in the General Preamble (see 56 FR 13532), moderate CO nonattainment areas, such as Colorado Springs, were required to submit contingency measures to address the requirements of section 172(c)(9) of the CAA. These contingency measures were to become effective, without further action by the State or us, upon a determination by us that an area had failed to achieve reasonable further progress (RFP) or to attain the CO NAAQS by December 31, 1995. To address this CAA requirement, the Governor submitted contingency measures to EPA on February 18, 1994. We approved this submittal on December 23, 1997 (see 62 FR 67006).

(c). Redesignation Criterion: The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

As noted above, EPA previously approved SIP revisions based on the pre-1990 CAA as well as SIP revisions required under the 1990 amendments to the CAA. On April 8, 1999 (64 FR 17102) we approved a SIP revision that removed a bus acquisition program from the Colorado Springs CO SIP and instead substituted emission reductions from the oxygenated fuels program. The bus acquisition program was not implemented due to a lack of federal funding. In this action, we are approving revisions to Regulation No. 13 and the State's commitment to maintain an adequate monitoring network (contained in the maintenance plan.) Thus, we have fully approved the Colorado Springs CO SIP under section 110(k) of the CAA.

(d). Redesignation Criterion: The Area Must Show That the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for Colorado Springs, that are further described in Sections 5. and 6. of the August 19, 1998, Colorado Springs maintenance plan, were achieved primarily through the Federal Motor Vehicle Control Program (FMVCP), a decentralized basic motor vehicle inspection and maintenance (I/M) program, oxygenated fuels, and traffic flow improvements.

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles ("fleet turnover"), emission reductions are realized for a particular area such as Colorado Springs. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

As stated in Section 5. of the maintenance plan, significant additional emission reductions were realized from Colorado Springs's basic I/M program. Colorado's Regulation No. 11, "Motor Vehicle Emissions Inspection Program", contains a full description of the requirements for Colorado Springs's I/M program. We note that further improvements to the Colorado Springs area's basic I/M program were implemented in January, 1995, to meet the requirements of EPA's November 5, 1992, (57 FR 52950) I/M rule and were approved by us into the SIP on March 19, 1996 (61 FR 11149).

Oxygenated fuels are gasolines that are blended with additives that increase the level of oxygen in the fuel and, consequently, reduce CO tailpipe emissions. Colorado's Regulation 13, "Oxygenated Fuels Program", contains the oxygenated fuels provisions for the Colorado Springs nonattainment area. Regulation 13 requires all Colorado Springs-area gas stations to sell fuels containing a 2.7% minimum oxygen content (by weight) during the wintertime CO high pollution season. The use of oxygenated fuels has significantly reduced CO emissions and contributed to the area's attainment of the CO NAAQS.

Colorado Springs has also implemented traffic flow improvements to alleviate congestion and shorten travel distances. These improvements involved throat widening, channelization, signalization, widening of existing roadways, construction of new roadways, or restriction of access to roadways. The specific traffic flow improvements that were identified for necessary action in the 1982 Colorado Springs SIP revision, involved the construction of the Union Boulevard extension and traffic signalization. These particular improvements have been accomplished and are now part of the permanent transportation infrastructure.

We have evaluated the various State and Federal control measures, the original 1990 base year emission inventory (see 61 FR 67466, December 23, 1996), and the 1993 attainment year emission inventory, and have concluded that the improvement in air quality in the Colorado Springs nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e). Redesignation Criterion: The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental" (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992. In this **Federal Register** action, EPA is approving the maintenance plan for the Colorado Springs nonattainment area because we have determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's August 19, 1998, submittal, is provided as follows:

1. Emissions Inventories—Attainment Year and Projections

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble and the September 4, 1992, policy memorandum referenced above. Under our interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the CO NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. For the Colorado Springs area, the State selected the emissions inventory approach for demonstrating maintenance of the CO NAAQS.

The maintenance plan that the Governor submitted on August 19, 1998, included comprehensive inventories of CO emissions for the Colorado Springs area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 1993 as the year from which to develop the attainment year inventory and included interim-year projections out to 2010. More detailed descriptions of the 1993 attainment year inventory and the projected inventories are documented in the maintenance plan in Section 8 and in the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1993 attainment year and the interim projected years are provided in Table I.–1 below.

TABLE I.—1 SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR COLORADO SPRINGS:

	1993	1997	2002	2005	2010
Point Sources	4.54	4.80	5.20	5.40	5.78
Area Sources	69.49	70.40	71.50	72.20	73.31
Non-Road Mobile Sources	39.44	43.30	48.20	51.20	56.05
On-Road Mobile Sources	264.20	223.90	183.80	175.60	173.22
Total	377.67	342.40	308.70	304.40	308.36

2. Demonstration of Maintenance—Projected Inventories

As we noted above, total CO emissions were projected forward by the State for the years 1997, 2002, 2005, and 2010. The projected inventories show that CO emissions are not estimated to exceed the 1993 attainment level during the time period 1993 through 2010 and, therefore, the Colorado Springs area has satisfactorily demonstrated maintenance.

3. Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Colorado Springs area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in two sections of the maintenance plan. In Section 8 D. the State commits to continue the operation of the CO monitors in the Colorado Springs area and to annually review this monitoring network and make changes as appropriate. Also, in Section 8 E.1., the State commits to prepare a periodic emission inventory of CO emissions every three years after the maintenance plan is approved by EPA. With this action, we are approving these commitments as satisfying relevant requirements. Our approval renders the State's commitments federally enforceable.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. As stated in Section 8 E. of the maintenance plan, the contingency measures for the Colorado Springs area will be initially triggered by an exceedance of the CO NAAQS. Upon an exceedance of the CO NAAQS, the Pike's Peak Area Council of Governments (PPACG) will recommend for adoption appropriate local contingency measures to correct a potential violation of the CO NAAQS (i.e., a second non-overlapping 8-hour average ambient CO measurement that exceeds 9.4 ppm at a single monitoring site during a calendar year is a violation of the 8-hour CO NAAQS). This process will take approximately six months. The Colorado AQCC will review the local contingency measures and if the AQCC concurs, the AQCC may endorse or approve the local measures without adopting State requirements. If, however, the AQCC finds that locally adopted contingency measures are inadequate, the AQCC will adopt State enforceable measures as deemed necessary to prevent additional exceedances or a violation. The maintenance plan further states that contingency measures will be adopted and fully implemented within one year of a CO NAAQS violation. The potential contingency measures that are identified in Section 8.E.3. of the Colorado Springs maintenance plan include increasing the required 2.7 percent minimum oxygen content of gasoline to a level above the actual oxygen content of gasolines at the time of the violation, making improvements to Colorado Springs's I/M program, adopting of a motor vehicle enhanced inspection and maintenance program, establishing a high pollution day episodic woodburning curtailment program, adopting a mandatory Employer-Based Travel Reduction Program, adopting Employee Commute Options, re-implementing a carpool locator service, and adopting other measures that may be considered appropriate. A more complete description of the triggering mechanism and these contingency measures can be found in Section 8 E. of the maintenance plan.

Based on the above, we find that the contingency measures provided in the State's maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Colorado has committed to submit a revised maintenance plan SIP revision eight years after the approval of the redesignation. This provision for revising the maintenance plan is contained in Section 8 F. of the Colorado Springs maintenance plan.

IV. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement

Program are consistent with the emissions budgets in the SIP (40 CFR sections 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above.

Section 8 C. of the Colorado Springs maintenance plan describes an emissions budget for on-road mobile sources for the years 1998 through 2009 as being 264 tons per day (TPD) of CO and for the year 2010 as being 212 TPD of CO. The PPACG and the State derived the 264 TPD number for 1998 through 2009 from the 1993 attainment year inventory value for on-road mobile sources. We cannot approve this 264 TPD value as a budget for conformity purposes because the budget is not consistent with maintenance of the NAAQS.[2] The attainment year's mobile source budget of 264 tons per day does not provide for maintenance of the CO NAAQS when combined with the increasing emissions levels from non-mobile sources during the 1998–2009 period (i.e., use of the 264 ton budget for any year after 1993 would push total emissions over the maintenance plan's attainment year level of 377 tons per day). Thus, we are taking no action on language in section 8 C. of the maintenance plan that purports to establish an emissions budget for 1998 through 2009 of 264 TPD of CO. The effect of this is that PPACG and the State may not use 264 TPD as the budget for conformity purposes.

Our non-action on this budget is unlikely to have any practical consequences for conformity determinations. Because the most recent conformity determination for the PPACG 2020 Transportation Plan demonstrated conformity to the 212 ton per day budget for the years required to be analyzed under Section 93.118(b) of the conformity rule (e.g., 2010 and 2020), we do not believe that our determination that the 264 ton per day budget is unapprovable has any negative consequences for this existing conformity determination. And under Section 93.118(b) of the conformity rule, PPACG is unlikely to ever have to conduct a conformity analysis for any years in the 1998–2009 time frame in the future. However, if such an analysis becomes necessary, it must be conducted in accordance with EPA's conformity rule, in particular 40 CFR 93.118(b)(2)(i).

We are approving the 2010 budget of 212 TPD of CO. This budget is consistent with the maintenance demonstration. The PPACG and the State established the on-road mobile source emissions budget for 2010 and beyond by using the 2010 on-road mobile source emission figures and a portion of the "safety margin." The safety margin is the amount by which the attainment year emissions from all source categories exceed the projected year emissions from all source categories. (Table 5 of the maintenance plan identifies the total 1993 attainment year emissions as 377.69 TPD of CO. Table 6 of the maintenance plan identifies the total 2010 maintenance year emissions as 308.36 TPD of CO.) The total 1993 attainment year emissions exceed the total 2010 maintenance year emissions by 69.33 TPD. Thus, 69.33 TPD constitutes the safety margin in 2010.) The PPACG and the State then used the 2010 on-road mobile sources emissions (173.22 TPD) and 56.2% of the safety margin (38.96 TPD) to arrive at a 2010 on-road mobile sources emissions budget of 212.18 TPD of CO. The State then rounded this budget to 212 TPD of CO. The 2010 budget will apply for 2010 and beyond. See 40 CFR 93.118(b)(2)(ii).

The emissions budget definition in the Colorado Ambient Air Quality Standards regulation (5 CCR 1001–14) conflicts with the language on page 8–14 of the maintenance plan and is internally inconsistent; it inadvertently applies both the invalid 264 TPD budget and the 212 TPD budget to the year 2010. Our interpretation, based on the language of the maintenance plan and our conformity rule, is that the maintenance plan's 212 TPD emission budget applies starting in 2010, superseding the incorrect language in 5 CCR 1001–14.

[2] Pursuant to Section 93.118(e)(4) of the Transportation Conformity Rule (40 CFR Part 93, Subpart A), we previously reviewed the adequacy of the maintenance plan's carbon monoxide emissions budgets for purposes of conformity. In an April 29, 1999 letter, from Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, to Margie Perkins, Director, Air Pollution Control Division, Colorado Department of Public Health and Environment, we determined that the emissions budget for 2010 and beyond (212 tons per day) was adequate for conformity purposes, and determined that the budget of 264 tons per year for the 1998–2009 period was inadequate. Although this action is consistent with our prior adequacy determination, it should be noted that, in taking final action on the maintenance plan, we are not bound by our prior adequacy determination. See 62 FR 43782, August 15, 1997.

V. EPA's Evaluation of the Regulation No. 13 Revisions

Colorado's Regulation No. 13 is entitled "Oxygenated Fuels Program." The purpose of this regulation is to reduce CO emissions from gasoline powered motor vehicles in Colorado's Front Range Area, which includes Colorado Springs, through the wintertime use of oxygenated gasolines. Section 211(m) of the CAA required the State to implement an oxygenated fuels program in the larger of the Consolidated Metropolitan Statistical Areas (CMSA) or Metropolitan Statistical Areas (MSA) in which the nonattainment areas are located. In Colorado these areas are the Colorado Springs MSA, Fort Collins-Loveland MSA, and the Denver-Boulder CMSA. Section 211(m) of the CAA states that the oxygenated fuels program must cover no less than a four month period each year unless EPA approves a shorter period. We can approve a shorter implementation period if a State submits a demonstration that, because of meteorological conditions, a reduced implementation period will still assure that there will be no exceedances of the CO NAAQS outside of this reduced period.

EPA previously approved a revision to Regulation No. 13 that shortened the oxygenated fuels season by the last two weeks in February. See 62 FR 10690, March 10, 1997. The State of Colorado is seeking EPA's approval of further revisions to Regulation No. 13 that would shorten the oxygenated fuels season by an additional week and reduce the required oxygen content of the fuels in two other weeks. Specifically, the revisions are as follows:

(a). The Oxygenated Gasoline Program Period, or "control period", would be reduced by one week. The control period formerly ran from November 1st through February 14th of each year; as amended, the control period would run from November 1st through February 7th of each year.

(b). The fuel oxygenate content requirements were reduced for the week of November 1st through November 7th of each year. The minimum oxygen content for this period became 2.0% by weight for all areas covered by the regulation and there was no maximum blending or 3.1% averaging requirements for the Denver-Boulder area.

(c). The maximum blending and 3.1% averaging requirements were revised so that they no longer apply to Denver-Boulder area for the week of February 1st through February 7th of each year.

To address the CAA section 211(m) requirement and allow a shortening of the oxygenated fuels season, the APCD developed a predictive model for assessing the relative probability of a CO exceedance during any given week of the oxygenated fuels season. The use of this model in 1995 allowed the AQCC to approve the first shortening of the oxygenated fuels program during the last two weeks of February by demonstrating that the shortening would not result in an appreciable increase in the possibility of future CO exceedances for those two weeks.

The APCD model uses a spreadsheet to adjust past monitored CO concentrations and project them into the future. Monitored CO concentrations, representing a twenty-year time period, are used in the spreadsheet database. The highest eight-hour average concentration for each monitored day of the data set are used. These known values are then adjusted by using the latest vehicle emission factor model (currently, MOBILE5) and local transportation traffic projections, in terms of vehicle miles traveled (VMT), to project CO concentrations into the future. After normalizing all data points, a statistical program is used to convert adjusted values to a predicted probability that any given week will have a CO exceedance. The use of twenty years worth of monitored data lets meteorological variability be minimized.

When we approved the first shortening of the oxygenated fuels season, we required the State to demonstrate, based on worst-case meteorology for Denver for the last 20 years (as indicated by daily peak 8-hour CO concentrations), at least a 95% probability that there would be no exceedances of the CO standard during the last two weeks of February as a result of the shortening of the control period. We believe, that to implement the statutory requirement of assuring no exceedances, it is reasonable to require a State to show a very high probability of no exceedances and that 95% is a reasonable threshold for the State's demonstration here. Given the limitations of statistical analysis and the problems associated with proving a negative, we believe that a higher threshold would be inappropriate.

For the 1998/1999 oxygenated fuels season revision, the State evaluated the probability of a carbon monoxide exceedance in the Denver area during the first week of November, 1998, and the first two weeks of February, 1999, based on four different levels of oxygenates in automotive fuels and all other elements of the Denver CO SIP being in place. The analysis was based on the measured daily peak carbon monoxide concentrations at the CAMP monitoring site in downtown Denver during the 20-year study period. The high concentrations at the CAMP site have generally been the highest measured at CO monitoring sites not only in the Denver-Boulder area, but the entire Front Range area. Also, of the Front Range CO monitoring sites, the CAMP site has shown the greatest number of exceedances of the CO NAAQS during the time periods being analyzed. The 20-year period is sufficiently long to provide statistically realistic estimates of worst-case atmospheric dispersion conditions. Carbon monoxide emissions in Denver are expected to decrease for the next several years, and are expected to remain below the 1998/1999 levels at least through 2010. Thus, the calculated probability of a CO NAAQS exceedance is at a maximum in 1998/1999 and will be lower at least through 2010.

In order to normalize the effects of emissions changes over the 20-year study period, measured concentrations were adjusted to reflect estimated changes in CO emissions between the measurement year and 1998/1999. The resulting analysis provided a distribution of concentrations that would have occurred at the CAMP site had the same historical meteorological conditions occurred at 1998/1999 emission rates, at four different levels of oxygenates (including 0%.) The State's analysis showed the following: (1) For the period of November 1st through the 7th of 1998, at a 2% oxygenate level, there's a 2.5% probability of a CO NAAQS exceedance; (2) for the period of February 1st through the 7th, of 1999, at a 2.7% oxygenate level, there's a 0.2% probability of a CO NAAQS exceedance; and (3) for the period of February 8th through the 14th, at a 0.0% oxygenate level, there's a 2.1% probability of a CO NAAQS exceedance.

The State's analysis also showed that for the Colorado Springs and Fort Collins-Loveland areas, the probability of an exceedance in either of those MSA areas is lower than it is for the Denver CMSA area. Compared to the Denver area, these two areas have experienced significantly fewer exceedances of the CO standard and significantly lower "high" concentrations over the relevant time frame. Thus, the probability of an exceedance in the Colorado Springs area and the Fort Collins-Loveland area, with the changes in oxygenate concentration embodied in Regulation No. 13, is less than the probability projected at the CAMP monitor. This probability is expected to further decrease in years after 1998/1999 due to fleet turnover.

The State also reviewed potential impacts of the Regulation No. 13 revisions on the Denver PM_{10} SIP attainment demonstration (APCD/Mobile Sources Program March 24, 1997, Interoffice Memorandum from Barbara MacRae to Kim Livo). Relying on EPA's consideration of the elimination of the oxygenated fuels program for the last two weeks of February (see 61 FR 64649, December 6, 1996), the State concluded that the increment of benefit due to the oxygenated fuels program is 0.46 ug/m^3. When this value is added to the seventh-highest modeled concentration of 148.7 ug/m^3 in the PM_{10} SIP's maintenance year, the resulting value is still below the 24-hour PM_{10} standard of 150 ug/m^3.

The highest modeled values for the first week of November and the second week of February are significantly lower than the 148.7 ug/m^3 value. The State has no modeled value for the first week of February because the State only modeled the 105 worst meteorological days and none of these worst days occurred during the first week of February. Based on the above, the State concluded that the revisions to Regulation No. 13 would be unlikely to jeopardize the PM_{10} SIP. We agree with the State's analysis regarding potential impacts to the Denver PM_{10} SIP, and do not believe that the reductions in oxygen content for the first week of November, and the first week of February, nor the removal of the oxygenated fuels program for the week of February 8th through the 14th, will impact the Denver PM_{10} SIP.

Based on above, we have determined that we can approve the revisions to Regulation No. 13 as meeting the requirements of section 211(m) of the CAA.

The revisions to Regulation No. 13 were adopted by the AQCC directly after a public hearing on April 17, 1997, and became State effective on June 30, 1997.

However, an issue arose after the AQCC's April 17, 1997, approval of these changes to Regulation No. 13.

Colorado State law requires that any revision to the Colorado SIP must first by approved by the Colorado General Assembly prior to being forwarded to the Governor for his approval and submittal to EPA. The Colorado General Assembly modified the AQCC's April 17, 1997, revisions to Regulation No. 13. The Colorado General Assembly changed the first year for implementation of the revised oxygenated fuels program from the wintertime season of 1998–1999 to

1997–1998. Further, the Colorado General Assembly required the AQCC to amend the Regulation No. 13 revisions and incorporate this new (1997–1998) implementation schedule.

To address the Colorado General Assembly requirements, the AQCC held a public hearing on January 16, 1998, and revised Regulation No. 13 so that the initial implementation of the changes to the oxygenated gasoline program, that the AQCC adopted on April 17, 1997, would occur in the wintertime season of 1997–1998. These January 16, 1998, amendments to Regulation No. 13 conformed to the language and requirements of Regulation No. 13 to section 25–7–133.5(2)(n), Colorado Revised Statutes.

EPA was initially concerned about the changes the Colorado General Assembly enacted to move up the implementation date of the revisions to Regulation No. 13, from 1998–1999 to 1997–1998, as the State's demonstration for the revised Regulation did not address this time frame. However, this issue became moot as the necessary State regulatory and legal changes to accomplish this earlier implementation schedule were not State effective until March 30, 1998. Therefore, the shortened control period could not be implemented until the wintertime season of 1998–1999, which was originally analyzed in the State's demonstration.

On October 1, 1998, the Governor submitted to EPA the revisions to Regulation No. 13 that were adopted on April 17, 1997 (effective June 30, 1997), and January 16, 1998 (effective March 30, 1998). It is EPA's understanding that the January 16, 1998, version of Regulation No. 13 replaces the April 17, 1997, version of the Regulation. Thus, although both versions of the regulation are acceptable to us, EPA is only approving the later (January 16, 1998) version of the regulation and is taking no action on the earlier version.

VI. Final Action

In this action, EPA is approving the Colorado Springs carbon monoxide redesignation request, maintenance plan, and the revisions to Regulation No. 13.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 25, 1999 without further notice unless the Agency receives adverse comments by September 24, 1999.

If EPA receives such comments, then we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 25, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

(a) Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

(b) Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on state, local, or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

(c) Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

(d) Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

(e) Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation to attainment is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Therefore, I certify that the approval of the redesignation request will not affect a substantial number of small entities.

(f) Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves a redesignation to attainment and pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

(g) Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

(h) Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law, sections 13–25–126.5, 13–90–107, and 25–1–114.5, Colorado Revised Statutes (Colorado Senate Bill 94–139, effective June 1,1994), or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 21, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Chapter I, title 40, parts 52 and 81 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—COLORADO

2. Section 52.320 is amended by adding paragraph (c)(86) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(86) On October 1, 1998, the Governor of Colorado submitted revisions to Regulation No. 13 "Oxygenated Fuels Program" that shortened the effective time period of the oxygenated fuels program for Denver/Boulder, Colorado Springs, Fort Collins, and Longmont carbon monoxide nonattainment areas and also reduced the required oxygen content during certain periods.

(i) Incorporation by reference.

(A) Regulation No. 13 "Oxygenated Fuels Program", 5 CCR 1001–16, as adopted on January 16, 1998, effective March 30, 1998.

3. Section 52.349 is amended by adding paragraph (c) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(c) Revisions to the Colorado State Implementation Plan, Carbon Monoxide Redesignation Request and Maintenance Plan for Colorado Springs, as adopted by the Colorado Air Quality Control Commission on January 15, 1998, State effective March 30, 1998, and submitted by the Governor on August 19, 1998.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. In § 81.306, the table entitled "Colorado-Carbon Monoxide" is amended by revising the entry for "Colorado Springs Area" to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	* *		
Colorado Springs Area	October 25, 1999.	Attainment.		
Urban Transportation Planing Study Area as defined in 1989. Beginning near the Town of Palmer Lake, at the Northwest corner of the Study Area at a point on the El Paso/Douglas County line, also on the Pike National Forest boundary, then: east along the County line to Elbert Road; south on Elbert Road to Judge Orr Road; east on Judge Orr Road to Ellicott Highway; south on Ellicott Highway to Squirrel Creek Road; west on Squirrel Creek Road to Williams Creek; south along Williams Creek to the confluence of Williams and Fountain Creeks; south along Fountain Creek to the El Paso/Douglas County line; west on the County line to I–25; north on I–25 to Exit 132; west on McGrath to 35th; south on 35th to Specker; northwest on Specker to Titus Blvd.; west on Titus Blvd. to SH–115; south on SH–115 to Rock Creek; northwest along Rock Creek to the Pike National Forest boundary; north along the Forest boundary to Old Stage Road; southwest on Old Stage Road to Gold Camp Road; north on Gold Camp Road to High Drive; north on High Drive to Lower Gold Camp Road; north on Lower Gold Camp Road to the Pike National Forest boundary; west along the Forest boundary, following the boundary north, then east to US–24; northwest on US–24 to the Pikes Peak Toll Road; west on the Toll Road to the El Paso/Teller County line; north along the County line to Crystola Creek; west on Crystola Creek to County Road 282, north on Road 282 to US–24; northeast on US–24 to Trout Creek Road; northwest on Trout Creek Road to Trout Creek; north along Trout Creek to the confluence of Trout and Mule Creeks; north along Mule Creek to Long Gulch; east along Long Gulch to White Gulch; east along White Gulch to Rampart Range Road; southeast on Rampart Range Road to the Pike National Forest Boundary; north along the Forest boundary to the El Paso/Douglas County line, to the point of origin.				
El Paso County (part) Teller County (part)				
* * * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 99–21933 Filed 8–24–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300908; FRL–6096–7]

RIN 2070–AB78

Desmedipham; Extension of Tolerances for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for residues of the herbicide desmedipham in or on red beet roots at 0.2 part per million (ppm) and red beet tops at 15 ppm for an additional 16-month period. These tolerances will expire and are revoked on December 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on garden (red) beets. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective August 25, 1999. Objections and requests for hearings must be received by EPA, on or before October 25, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300908], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300908], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300908]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9362, schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of August 29, 1997 (62 FR 45741) (FRL–5738–5), which announced that on its own initiative under section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of desmedipham in or on red beet roots at 0.2 ppm and red beet tops at 15 ppm, with an expiration date of August 31, 1998. EPA extended this expiration date to August 31, 1999 in a final rule published in the **Federal Register** of September 16, 1998 (63 FR 49469) (FRL–6026–4). EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of desmedipham on red beets for this year's growing season due to the continued non-routine situation facing red beet growers in New York; the voluntary cancellation of diethatyl-ethyl in 1993 has left growers with no registered alternatives which provide adequate or dependable weed control. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of desmedipham on red beets for control of broadleaf weeds in red beets.

EPA assessed the potential risks presented by residues of desmedipham in or on red beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 29, 1997 (62 FR 45741). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 16-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on red beet roots and red beet tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those

procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 25, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300908] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties

on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.353 [Amended]

2. In § 180.353, by amending the table in paragraph (b) by changing the date for the two commodities "red beet roots" and "red beet tops" from "8/31/99" to read "12/31/00".

[FR Doc. 99–21831 Filed 8–24–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300905; FRL–6094–7]

RIN 2070–AB78

Pyridate; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of pyridate (O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate), the metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-4-ol in or on peppermint tops (leaves and stems) and spearmint tops (leaves and stems). This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on peppermint and spearmint. This regulation establishes a maximum permissible level for residues of pyridate in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on December 31, 2001.

DATES: This regulation is effective August 25, 1999. Objections and requests for hearings must be received by EPA on or before October 25, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300905], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300905], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300905]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 284, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463, Madden.Barbara@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a,

is establishing tolerances for combined residues of the herbicide pyridate (O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate, the metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-4-ol, in or on peppermint tops (leaves and stems) and spearmint tops (leaves and stems) at 0.3 part per million (ppm). These tolerances will expire and are revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Pyridate on Peppermint and Spearmint and FFDCA Tolerances

Redroot pigweed and kochia have become serious pest concerns for Idaho, Indiana, Montana, Oregon, Washington and Wisconsin mint growers. The lack of any post-emergence chemical weed control have created an emergency situation. Currently, terbacil is the only herbicide registered for post-emergence weed control in mint, but resistance of pigweed and kochia has been well documented. Not only will the presence of these weeds result in mint yield losses but mint oil quality is adversely effected as well. EPA has authorized under FIFRA section 18 the use of pyridate on peppermint and spearmint for control of redroot pigweed and kochia in Idaho, Indiana, Montana, Oregon, Washington and Wisconsin. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of pyridate in or on peppermint and spearmint. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on peppermint and spearmint after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether pyridate meets EPA's registration requirements for use on peppermint and spearmint or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of pyridate by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Idaho, Indiana, Montana, Oregon, Washington and Wisconsin to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for pyridate, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of pyridate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of pyridate (O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate), the metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-

pyridazine-4-ol on peppermint and spearmint at 0.3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyridate are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* An acute dietary reference dose (acute RfD) of 0.20 milligrams/kilograms/day (mg/kg/day) has been identified. The acute RfD is derived from the systemic no observable adverse effects level (NOAEL) of 20 mg/kg/day based on neurotoxic effects (ataxia and emesis) seen at the lowest observable adverse effects level (LOAEL) of 60 mg/kg/day in the 90–day feeding study in dogs and an uncertainty factor of 100 (10x for interspecies differences and 10x for intraspecies variations). EPA has determined that the 10x factor to account for enhanced susceptibility of infants and children, as required by FFDCA section 408(b)(2)(C), can be removed. The acute Population Adjusted Dose (aPAD) is a modification of the acute RfD to accommodate the FQPA Safety Factor. The aPAD is equal to the acute RfD divided by the FQPA Safety Factor. Therefore, since EPA has determined that the 10x factor to account for enhanced susceptibility of infants and children can be removed, the aPAD and acute RfD are the same (0.20 mg/kg/day).

2. *Short- and intermediate-term toxicity.* For short- and intermediate-term dermal and inhalation exposures, the systemic NOAEL of 20 mg/kg/day from the 90–day feeding study in dogs based on clinical signs of neurotoxicity at the LOAEL of 60 mg/kg/day was identified as the short- and intermediate-term endpoint to be used in risk assessments. Since an oral dose was selected for dermal risk assessments, the Agency has determined that a dermal penetration factor of 20% is appropriate. The same oral dose (20 mg/kg/day) was also selected for inhalation risk assessments. Therefore, for inhalation exposure the following are appropriate: (i) Converting inhalation exposure in mg/Liter (L) to mg/kg/day (route-to-route extrapolation using 100% inhalation absorption); (ii) combining the converted exposure with dermal exposure (using 20% dermal absorption) and (iii) comparing the combined total to the appropriate oral NOAEL chosen for the short- and intermediate-term exposure scenario (NOAEL = 20 mg/kg/day).

3. *Chronic toxicity.* EPA has established the chronic RfD for pyridate at 0.11 mg/kg/day. This chronic RfD is derived from a NOAEL of 10.8 mg/kg/day based on decreased body weight gain in males seen at 67.5 mg/kg/day (LOAEL) in a 2–year feeding study in rats and an uncertainty factor of 100 (10x for interspecies differences and 10x for intraspecies variations). EPA has determined that the 10x factor to account for enhanced susceptibility of infants and children, as required by FFDCA section 408(b)(2)(C), can be removed. The chronic Population Adjusted Dose (cPAD) is a modification of the chronic RfD to accommodate the FQPA Safety Factor. The cPAD is equal to the chronic RfD divided by the FQPA Safety Factor. Therefore since the EPA has determined that the 10x factor to account for enhanced susceptibility of infants and children can be removed, the cPAD and chronic RfD are the same (0.11 mg/kg/day).

For chronic dermal and inhalation exposures, the NOAEL of 10.8 mg/kg/day from a 2–year feeding study in rats based on decreased body weight gain at the LOAEL of 67.5 mg/kg/day, was identified as the chronic endpoint to be used in dermal and inhalation risk assessments. Since an oral dose was selected for dermal risk assessments, the Agency has determined that a dermal penetration rate of 20% is appropriate. The same oral dose (20 mg/kg/day) was also selected for chronic inhalation risk assessments. Therefore, for inhalation exposure the following are appropriate: (i) Converting inhalation exposure in mg/L to mg/kg/day (route-to-route extrapolation using 100% inhalation absorption); (ii) combining the converted exposure with dermal exposure (using 20% dermal absorption); and (iii) comparing the combined total to the appropriate oral NOAEL chosen for the chronic exposure scenario (NOAEL = 10.8 mg/kg/day).

4. *Carcinogenicity.* Pyridate has not been designated a cancer classification by the Agency to date. However, there is no evidence of a tumorigenic response in the 2–year rat feeding study and the mouse carcinogenicity study with pyridate.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.462) for the combined residues of pyridate (O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate, the metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-4-ol, in or on cabbage, corn, and peanuts. Risk assessments were conducted by EPA to assess dietary exposures and risks from pyridate as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. At the 95th percentile exposure level, assuming 100 percent crop treated (PCT) and tolerance level residues for all commodities, less than 1% of the aPAD was utilized for the U.S. Population and children (1–6 years old), the subgroup with the highest exposure. The results of this analysis indicate that the acute dietary risk associated with existing uses and the proposed use of pyridate is below the Agency's level of concern.

ii. *Chronic exposure and risk.* In conducting chronic dietary risk assessments, the following conservative assumptions have been made: (a) all of the crops having pyridate tolerances will contain pyridate residues and (b) those residues will be at the level of the tolerance. This results in an overestimation of human dietary exposure. Thus, in making safety determinations for the peppermint and spearmint tolerances, the Agency is taking into account these conservative exposure assumptions. The combined pyridate tolerances (currently published and the section 18 tolerances established by this action) result in a Theoretical Maximum Residue Contribution (TMRC) that is less than 1% of the RfD for the U.S. population and all population subgroups, including non-nursing infants, the subgroup with the highest exposure. The results of this analysis indicate that the chronic dietary risk associated with existing uses and the proposed use of pyridate is below the Agency's level of concern.

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive

drinking water exposure analysis and risk assessment for pyridate. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on Generic expected environmental concentration (GENEEC) and EPA's Pesticide Root Zone Model (PRZM^3)/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and Screening Concentration in ground water (SCI-GROW), which predicts pesticide concentrations in ground water. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. Based on the GENEEC and SCI-GROW models, the acute drinking water concentration values are estimated to be 97 parts per billion (ppb) for surface water and 4.4 ppb for ground water. The chronic drinking water concentration values are estimated to be 25 ppb for surface water and 4.4 pbb for ground water.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to pyridate they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* Pyridate is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore, EPA expects only dietary and occupational exposure from the use of pyridate.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether pyridate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyridate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyridate has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Using the exposure assumptions of 100 PCT and tolerance level residues for all commodities, at the 95th percentile, less than 1% of the aPAD was utilized for the U.S. Population. The major identifiable subgroup with the highest aggregate exposure is children, 1–6 years old (discussed below). EPA generally has no concern for exposures below 100% of the aPAD. Despite the potential for exposure to pyridate in drinking water, after calculating a DWLOC (7,000 ppb) for the U.S. population and comparing it to conservative model estimates of acute concentrations of pyridate in surface and ground water (97 ppb and 4.4 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to pyridate from food will utilize less than 1% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (discussed below). EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pyridate in drinking water, after calculating a DWLOC (3,800 ppb) for the U.S. population and comparing it to conservative model estimates of concentrations of pyridate in surface and ground water (25 ppb and 4.4 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus other indoor and outdoor non-occupational exposure. Since there are no non-dietary, non-occupational exposures expected from the use of this chemical, no short- and intermediate-term risk assessments were conducted.

4. *Aggregate cancer risk for U.S. population.* Pyridate has not been designated a cancer classification by the Agency to date. However, there is no evidence of a tumorigenic response in the 2–year rat feeding study and the mouse carcinogenicity study with pyridate. Therefore, no aggregate cancer risk assessments were conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyridate residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children —i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of pyridate, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments

either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a prenatal developmental toxicity study in rats, the maternal NOAEL was 165 mg/kg/day and the LOAEL was 400 mg/kg/day based on mortality, significant decreases in mean body weight and food consumption as well as clinical signs (ventral body position, dyspnea, sedation, and loss of reaction to external stimuli). The developmental NOAEL was 165 mg/kg/day and the developmental LOAEL was 400 mg/kg/day, based on increased incidences of missing and/or unossified sternebrae and a dose-related decrease in mean fetal body weight.

In a prenatal developmental toxicity study in rabbits, the maternal NOAEL was 300 mg/kg/day and the LOAEL was 600 mg/kg/day, based on decreased body weight and body weight gain, decreased food consumption, increased incidence of dried feces, and increased abortions. For developmental toxicity, the NOAEL was equal to or greater than 600 mg/kg/day, the highest dose tested. A developmental LOAEL was not established.

iii. *Reproductive toxicity study.* In a 3–generation reproduction study in rats, the parental systemic NOAEL was 10.8 mg/kg/day and the LOAEL was 67.5 mg/kg/day based on depression of maternal body weight gain. The NOAEL for offspring was 10.8 mg/kg/day and the LOAEL was 67.5 mg/kg/day based on decreased pup weight gains (at postnatal day 14 and 21 in the first litters for both generations).

iv. *Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity for pyridate is complete with respect to current data requirements. There are no prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2–generation rat reproductive toxicity study.

v. *Conclusion.* There is a complete toxicity database for pyridate and exposure data are complete or are estimated base on data that reasonably accounts for potential exposures.The Agency concludes that reliable data support use of a 100-fold margin of exposure/uncertainty factor, rather than the standard 1,000-fold margin/factor, to protect infants and children. Therefore, the 10x factor to account for enhanced susceptibility of infants and children, as required by FFDCA section 408(b)(2)(C), can be removed.

2. *Acute risk.* Using the exposure assumptions of 100 PCT and tolerance level residues for all commodities, at the 95th percentile, less than 1% of the aPAD was utilized for children 1–6 years old, the subgroup with the highest aggregate exposure. EPA generally has no concern for exposures below 100% of the aPAD. Despite the potential for exposure to pyridate in drinking water, after calculating a DWLOC (2,000 ppb) children 1–6 years old and comparing it to conservative model estimates of acute concentrations of pyridate in surface and ground water (97 ppb and 4.4 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

3. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to pyridate from food will utilize less than 1% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pyridate in drinking water, after calculating a DWLOC (1,100 ppb) for non-nursing infants, the subgroup with the highest aggregate exposure and comparing it to conservative model estimates of concentrations of pyridate in surface and ground water (25 ppb and 4.4 pbb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* There are no non-dietary, non-occupational exposures expected from the use of pyridate therefore, no short- and intermediate-term risk assessments were conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyridate residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the pyridate residue in plants and ruminants is adequately understood. The total toxic residue consists of pyridate (O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate), its metabolite 6-chloro-3-phenyl-pyridazine-4-ol, and conjugates of that metabolite, all expressed as pyridate.

B. Analytical Enforcement Methodology

A total residue method using ultraviolet detection/high pressure liquid chromatography (UV/HPLC) is available for residue data gathering and enforcement purposes. The method has been adequately validated by recovery data, has passed a successful method trial, and has been forwarded to FDA for publication in PAM-II. The limit of quantitation is 0.03 ppm. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residues of pyridate, its metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of that metabolite all expressed as pyridate are not expected to exceed 0.3 ppm in/on peppermint, tops (leaves and stems) and spearmint, tops (leaves and stems). Secondary residues are not expected in animal commodities as no feed items are associated with this section 18 use.

D. International Residue Limits

There are no CODEX, Mexican, or Canadian MRLs established for pyridate in/on mint. Therefore, no compatibility problems exist for the proposed tolerances.

E. Rotational Crop Restrictions

A confined accumulation in rotational crops study with pyridate has previously been reviewed. Pyridate residues metabolize rapidly in soil. No crop rotation label restrictions are needed.

V. Conclusion

Therefore, the tolerance is established for combined residues of pyridate (O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate), the metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-4-ol in or on peppermint

tops (leaves and stems) and spearmint tops (leaves and stems) at 0.3 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 25, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300905] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of

affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.462, by adding paragraph (b) to read as follows:

§ 180.462 Pyridate; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for the residue of the herbicide pyridate in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. This tolerance will expire and is revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Peppermint, tops (leaves and stems).	0.3 ppm	12/31/01
Spearmint, tops (leaves and stems).	0.3 ppm	12/31/01

* * * * *

[FR Doc. 99–21832 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6427–2]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for Final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). North Carolina's revision consists of provisions promulgated between July 1, 1995 and June 30, 1997. The EPA has reviewed North Carolina's applications and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. EPA is authorizing the state program revision through this immediate final action. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revision should the Agency receive adverse comment. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize North Carolina's hazardous waste program revision will take effect as indicated in the Dates section.

DATES: This Final authorization for North Carolina will become effective without further notice on October 25, 1999, unless EPA receives adverse comment by September 24, 1999. Should EPA receive such comments the Agency will publish a timely withdrawal informing the public that the rule will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW Atlanta, GA, 30303–3104. Copies of the North Carolina program revision applications and the materials which EPA used in evaluating the revision are available for inspection and copying during normal business hours at the following addresses: North Carolina Department of Environment, Health and Natural Resources, P.O. Box

27687, Raleigh, North Carolina 29201, (919) 733–2178; and U.S. EPA Region 4, Atlanta Federal Center, Library, 61 Forsyth Street, SW, Atlanta, Georgia 30303; (404) 347–4216.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar at (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) Parts 124, 260 through 266, 268, 270, 273 and 279.

B. North Carolina

North Carolina initially received final authorization on December 14, 1984, effective December 31, 1984 (49 FR 48694) to implement its base hazardous waste management program. North Carolina most recently received authorization for revisions to its program on October 23, 1998, effective December 22, 1998, (63 FR 56834). On December 28, 1998 and February 23, 1999, North Carolina submitted final complete program revision applications, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed North Carolina's applications, and now makes an immediate final decision, subject to receipt of adverse written comment, that North Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant North Carolina Final Authorization for the program modifications contained in the revision.

North Carolina is today seeking authority to administer the following Federal requirements promulgated between July 1, 1995, through June 30, 1997.

Federal requirement	Federal Register	Analogous State authority [1]
Liquids in Landfills III Checklist 145 ...	60 FR 35703 7/11/95	NCGS § 130A–294(c)(7), NCGS § 130A–294(c)(15), NCGS § 130A–295.03, NCGS § 150B–21.6, 15A NCAC 13A .0109(o), 15A NCAC 13A .0110(n).
RCRA Expanded Public Participation Checklist 148.	12/11/95 60 FR 63417	NCGS § 130A–294(c)(7), NCGS § 130A–294(c)(14), NCGS § 130A–294(c)(15), NCGS § 130A–294(d), NCGS § 130A–294(f), NCGS § 130A–294(g), NCGS § 130A–294(o), NCGS § 150B–21.6, 15A NCAC 13A .0105(b), 15A NCAC 13A .0113(a), 15A NCAC 13A .0113(b), 15A NCAC 13A .0113(f), 15A NCAC 13A .0113(i).
Amendments to the Definition of Solid Waste; Amendment II Checklist 150.	3/26/96 61 FR 13103	NCGS § 130A–294(c)(1), NCGS § 130A–294(c)(15), NCGS § 150B–21.6, 15A NCAC 13A .0106(a).
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners Checklist 151.	4/8/96 61 FR 15566, 4/8/96 61 FR 15660, 4/30/96 61 FR 19117, 6/28/96 61 FR 33680, 7/10/96 61 FR 36419, 8/26/98 61 FR 43924, 2/19/97 62 FR 7502.	NCGS § 130A–294(c)(7), NCGS § 130A–294(c)(15), NCGS § 130A–294(h)(2), NCGS § 150B–21.6, 15A NCAC 13A .0112(a), 15A NCAC 13A .0112(b), 15A NCAC 13A .0112(c), 15A NCAC 13A .0112(e).
Conditionally Exempt Small Quantity Generator Disposal Options under Subtitle D Checklist 153.	7/1/96 61 FR 34252	NCGS § 130A–294(c)(1), NCGS § 130A–294(c)(15), 15A NCAC 13A .0106(a).
Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers Checklist 154.	12/6/94 59 FR 62896, 5/9/95 60 FR 26828, 9/29/95 60 FR 50430, 11/13/95 60 FR 56952, 2/9/96 61 FR 4903, 6/5/96 61 FR 28508, 11/25/96 61 FR 59932.	NCGS § 130A–294(c)(7), NCGS § 130A–294(c)(14), NCGS § 130A–294(c)(15), 15A NCAC 13A .0101(e), 15A NCAC 13A .0106(a), 15A NCAC 13A .0107(c), 15A NCAC 13A .0109(c), 15A NCAC 13A .0109(f), 15A NCAC 13A .0109(j), 15A NCAC 13A .0109(k), 15A NCAC 13A .0109(l)(1), 15A NCAC 13A .0109(u), 15A NCAC 13A .0109(v), 15A NCAC 13A .0109(w), 15A NCAC 13A .0109(x), 15A NCAC 13A .0110(a), 15A NCAC 13A .0110(b), 15A NCAC 13A .0110(e), 15A NCAC 13A .0110(i), 15A NCAC 13A .0110(j), 15A NCAC 13A .0110(k), 15A NCAC 13A .0110(s), 15A NCAC 13A .0110(t), 15A NCAC 13A .0110(u), 15A NCAC 13A .0110(w), 15A NCAC 13A .0113(a), 15A NCAC 13A .0113(b).
Land Disposal restrictions Phase III—Emergency Extension of the KO88 Capacity Variance Checklist 155.	1/14/97 62 FR 1992	NCGS § 130A–294(c)(7), NCGS § 130A–294(c)(15), NCGS § 130A–294(h)(2), 15A NCAC 13A .0112(b).
Land Disposal restrictions Phase IV—Treatment Standards for Wood Preserving Waste, Paperwork Reduction and Streamlining Checklist 157.	5/12/97 62 FR 25998	NCGS § 130A–294(c)(1), NCGS § 130A–294(c)(7), NCGS § 130A–294(c)(15), NCGS § 130A–294(h)(2), 15A NCAC 13A .0106(a), 15A NCAC 13A .0112(a), 15A NCAC 13A .0112(b), 15A NCAC 13A .0112(c), 15A NCAC 13A .0112(e).
Testing and Monitoring Activities Amendment III Checklist 158.	6/13/97 62 FR 32452	NCGS § 130A–294(c)(7), NCGS § 130A–294(c)(11), NCGS § 130A–294(c)(15), 15A NCAC 13A .0101(e), 15A NCAC 13A .0109(v), 15A NCAC 13A .0109(w), 15A NCAC 13A .0109(z), 15A NCAC 13A .0110(s), 15A NCAC 13A .0110(t), 15A NCAC 13A .0111(d), 15A NCAC 13A .0111(e).
Conformance with the Carbamate Vacatur Checklist 159.	6/17/97 62 FR 32974	NCGS § 130A–294(c)(1), NCGS § 130A–294(c)(1)(a), NCGS § 130A–294(c)(7), NCGS § 130A–294(c)(15), NCGS § 130A–294(h)(2), 15A NCAC 13A .0106(d), 15A NCAC 13A .0106(e), 15A NCAC 13A .0112(b), 15A NCAC 13A .0112(c).

[1] The North Carolina provisions are from the North Carolina Administrative Code, August 14, 1998, unless otherwise stated.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

North Carolina is not authorized to operate the federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial program revision and do not anticipate adverse comment. However in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to authorize the revision if we receive adverse comments. This authorization will become effective without further notice on October 25, 1999, unless EPA receives adverse comment by September 24, 1999. Should EPA receive such comments it will publish a timely withdrawal informing the public that the rule will not take effect. We will address all public comments in a subsequent final action based on the proposed rule. EPA may not provide additional opportunity for comment. Any parties interested in commenting must do so at this time.

The public may submit written comments on EPA's immediate final decision until September 24, 1999. Copies of North Carolina's applications for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document. The **ADDRESSES** section also indicates where to send written comments on this action.

C. Decision

I conclude that North Carolina's applications for program revision authorization meet all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants North Carolina Final Authorization to operate its hazardous waste program as revised. North Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of the HSWA. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize North Carolina's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, Subpart II until a later date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the North Carolina program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive

requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. North Carolina is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–21825 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6428–6]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for Final authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization. The EPA reviewed Louisiana's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Louisiana's Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Louisiana final authorization for the program modifications contained in the revision.

DATES: This action is effective on October 25, 1999 without further notice, unless the EPA receives relevant adverse comments by September 24, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the immediate final rule or identify the issues raised, respond to the comments, and affirm that the immediate final rule will take effect as scheduled.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533: or Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (504) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson at (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. What Is Resource Conservation and Recovery Act State Authorization?

RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), provides for authorization of State hazardous waste programs under subtitle C. Under RCRA section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste program. See 40 CFR part 271. In fact, Congress designed RCRA so that the entire subtitle C program would eventually be administered by the States in lieu of the Federal Government. This is because the States are closer to, and more familiar with, the regulated community and therefore are in a better position to administer the programs and respond to local needs effectively.

After receiving authorization, the State administers the program in lieu of the Federal government, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Authorized States are required to revise their programs when EPA promulgates Federal Standards that are more stringent or broader in scope than existing federal standards. States are not required to modify their programs to address Federal changes that are less stringent than the existing Federal program or that reduce the scope of the existing Federal program. These changes are optional and noted as such in the **Federal Register** (FR) document. However, EPA encourages States to adopt optional rules because they provide benefit to environmental protection.

B. Why Are Revisions to State Programs Necessary?

States that receives final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

C. What Is the Effect of This Authorization?

This authorization should have little impact because the State's requirements are already effective. However, upon approval of the revisions, Louisiana will have authority to regulate the Land Disposal Restrictions (LDR). Currently, the LDR waste are administered by EPA. Louisiana will have authority to issue LDR permits and to ensure that all permits issued to hazardous waste LDR facilities protect of human health and the environment.

D. What Is the History of Louisiana's Final Authorization and Its Revisions?

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its base Hazardous Waste Management program. Louisiana received authorization for revisions to its program on January 29, 1990 (54 FR 48889), October 25, 1991 (56 FR 41958), and technical corrections at (56 FR 51762), effective January 23, 1995 and another technical correction was made at (59 FR 55368–55371), (60 FR 18360), March 8, 1995; We authorized the following revisions: (59 FR 66200), October 17, 1995, (60 FR 53707) effective January 2, 1996, March 28, (61 FR 13777–13782) effective June 11, 1996, December 29, 1997, (62 FR 67572–67577) effective March 16, 1998 and October 23, 1998 (63 FR 56830–56891) effective December 22, 1998. On January 21, 1999, Louisiana submitted a final complete program revision application for additional program approval. In this application, Louisiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In 1983, the Louisiana legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 *et seq.*, the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality (LDEQ), which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State. Also, the LDEQ is designated to facilitate communication between the EPA and the State. The State of Louisiana adopted the LDR regulations and they became effective May 1989. Louisiana amended the regulations May 1990, December 1990, July 1991, July 1992, September 1994, March 1995, December 1995, January 1996, May 1997, November 1997, February 1998, April 1998, June 1998, and September 1998.

E. What Revisions Are We Approving With Today's Action?

The State of Louisiana submitted a final complete program revision application, seeking authorization of their revisions in accordance with 40 CFR 271.21. Louisiana's revisions consist of regulations which specifically

govern LDR's. Louisiana requirements appear on the chart included in this document. The EPA is now making a final decision, subject to receipt of written comments that oppose this action, that Louisiana's revision of its hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Louisiana final authorization for the following program revisions:

Federal citation	State analog
1. Land Disposal restrictions (Solvents and Dioxins), [51 FR 40572] November 7, 1986. (Checklist 34).	Louisiana Revised Statutes (LRS) 30: §2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §§105, 105.D.3, 105.D.4.a, 105.H. 105.H.1, 109, as amended June 20, 1998, effective June 20, 1998; 109. Empty Container.1.a, as amended May 20, 1997, effective May 20, 1997, 109 Empty Container.2.b, as amended September 20, 1998, effective September 20, 1998; 110.A, as amended September 20, 1996, effective September 20, 1996; 111, as amended March 20, 1990, effective March 20, 1990; 311.E, as amended September 20, 1994, effective September 20, 1994, 317.C, as amended March 20, 1990, effective March 20, 1990, 319, as amended May 20, 1996, effective May 20, 1996, 501.D, as amended May 20, 1997, effective May 20, 1997, 517.V, as amended May 20, 1997, effective May 20, 1997, 1101.D, as amended April 20, 1998, effective April 20, 1998, 1103.C, as amended September 20, 1998, effective September 20, 1998, 1305.C, as amended September 20, 1998, effective September 20, 1998, 1519.A.1, as amended September 20, 1996, effective September 20, 1996, 1519.B.7, as amended September 20, 1998, effective September 20, 1998, 1519.B.8, as amended September 20, 1996, effective September 20, 1519.B.8.a, 1519.B.b, as amended September 20, 1996, effective September 20, 1996, 1519.B.8.c, 1519.B.8.c.i, as amended September 20, 1998, effective September 20, 1998, 1519.B.8.c.ii, 1519.B.c.ii.(a), 1519.B.8.c.ii(b), 1529.B.12, 1529.B.13, 1529.B.14, 1529.B.15, 1529.B.16, 1529, effective September 20, 1996, 1529.B.6, as amended September 20, 1998, effective September 20, 1998, 2201.C, 2201.D, 2201.G, 2201.G.1, 2201.G.2, as amended May 20, 1997, effective May 20, 1997, 2201.G.4, as amended April 20, 1998, effective April 20, 1998, 2201.G.5, as amended September 20, 1998, effective September 20, 1998, 2201.H, as amended May 20, 1997, effective May 20, 1997, 2203.A.Hallogenated Organic Compounds or HOCs, as amended January 20, 1996, effective January 20, 1996, 2203.A.Hazardous Constituent, 2203.A. Polychlorinated Biphenyls or PCBs, 2203.A.Land Disposal. 2205.A, as amended January 20, 1996, effective January 20, 1996, 2205.A.1, as amended September 20, 1998, effective September 20, 1998, 2205.A.2, 2205.A.3, as amended January 20, 1996, effective January 20, 1996, 2205.B, as amended September 20, 1998, effective September 20, 1998, 2205.C, 2205.D, 2205.E, 2205.F, as amended January 20, 1996, effective January 20, 1996, 2207.A, 2209.A, 2209.A.1, 2209.A.2, 2209.A.3, 2209.B. 2209.C, 2209.C.1, 2209.C.2, 2209.C.3, as amended September 20, 1998, effective September 20, 1998, 2211.A, 2211.B, 2211.B.1, 2211.B.2, 2211.B.3, 2211.C, as amended January 1996, effective January 20, 1996, 2213.A, 2213.A.1, 2213.A.2, 2213.A.3, 2213.B, 2213.B.1, 2213.B.2, 2213.C, 2213.C.1, 2213.C.2, 2213.D, 2213.D.1, 2213.D.2, 2213.D.3, 2213.E, 2213.F, 2213.G, 2213.G.1–2, 2213.G.3, 2215.B, 2215.C, 2215.D, 2215.E, 2215.F, 2215.G, 2215.G.1, 2215.G.2, 2215.G.3, 2215.H, 2215.I, 2223.A, 2223.B, 2223.C, 2227.A, as amended September 20, 1998, effective September 20, 1998, 2227.A.1, 2227.A.2, 2227.B, 2230.I.2.c, 2231.A, 2231.B, 2231.C, 2231.C.1, 2231.D, 2231.E, 2231.F, 2231.G, 2231.H, 2231.1.I, 2231.J, 2231.K, 2237.A, 2237.A.1, 2237.A.2, 2237.A.2.a, as amended January 20, 1996, effective January 20, 1996, 2237.a.2.b.i, 2237.A.2.b.i(a)-(d), 2237.A.2.b.ii-iii, 2237.A.2.c, as amended January 20, 1996, effective January 20, 1996, 2237.A.2.d, as amended September 20, 1998, effective September 20, 1998, 2237.A.3, 2237.A.3.a, 2237.A.3.b, 2237.A.3.b.i, 2237.A.3.b.ii, 2237.A.3.b.iii, 2237.A.3.c, as amended January 20, 1996, effective January 20, 1996, 2237.A.4, as amended September 20, 1998, effective September 20, 1998, 2237.B, 2239.A, 2239.A.1, 2239.A.2, as amended January 20, 1996, 2239.A.3, 2239.A.4, 2239.A.5, 2239.A.6, 2239.A.7, 2239.B, 2239.C, 2239.E, 2239.F, as amended January 20, 1996, 2239.G, as amended September 20, 1998, effective September 20, 1998, 2239.H, 2239.I, 2239.I.1, 2239.1.2, 2239.I.2.a, 2239.I.2.b, 2229.I.2.d, 2239I.2.f, 2239.J, 2241.A, 2241.D.1, 2241.D.2, 2241.D.3, 2241.D.4, 2241.D.5, 2241.E, 2241.E.1, 2241.E.2,

Federal citation	State analog
	2241.E.3, 2241.E.4, 2241.E.5, 2241.F, 2241.F.1, 2241.1.a. 2241.F.b, 2241.F.c, 2241.1.D, 2241.F.1.e, 2241.F.1.f, 2241.F.1.g, 2241.F.1.h, 2241.1.i, 2241.F.2, 2241.F.3, 2241.F.4, 2241.F.5, 2241.F.5.a, 2241.F.5.b, 2241.F.5.c, 2241.G, 2241.H, 2241.H.1, 2241.H.2, 2241.I, 2241.J, 2241.K, as amended January 20, 1996, effective January 20, 1996, 2241.L, 2241.M, 2241.N, 2241.O, 2241.P, 2241.Q, 2245.A, 2245.B, 2245.B.1, 2245.B.2, 2245.B.3, 2245.B.4, 2245.C, 2245.C.1, 2245.C.1.a, 2245.C.1.b, 2245.C.1.c, 2245.C.1.d, 2245.C.2, 2245.D, 2245.D.1, 2245.D.2, 2245.D.3, 2245.D.4, 2245.D.7, 2245.E, 2245.E.1, 2245.E.2, 2245.E.3, 2245.F, 2245.H, 2247.A, 2247.A.1, 2247.A.2, 2247.A.3, 2247.B, 2247.B.1, 2247.B.2, 2247.B.3, 2247.B.4, 2247.C, 2247.C.1, 2247.C.2, 2247.D, 2247.E, 2247.F, 2247.F.1, 2247.F.2, Chapter 22 Table 2, Chapter 22 Table 5, as amended September 20, 1998, effective September 20, 1998, Chapter 39, as amended May 20, 1997, effective May 20, 1997, 3901, 3903, 3911, 3913, as amended October 20, 1994, effective October 20, 1994, 3915, 4105.B, as amended May 20, 1997, effective May 20, 1997, 4115.A, as amended January 20, 1996, effective January 20, 1996, 4139.A.2, 4301.E, as amended September 20, 1998, effective September 20, 1998, 4303.B, 4313.A, as amended March 20, 1995, effective March 20, 1995, 4313.E.6, 4313.E.7, 4313.E.6, as amended September 20, 1998, effective September 20, 1998, 4313.E.7.a, 4313.E.7.b, 4313.E.7.c, 4313.E.7.c.i, 4313.E.7.c.ii, 4313.E.c.ii(a), 4313.E.7.c.ii.(b), as amended March 20, 1995, effective March 20, 1995, 4357.B.10, 4357.B.11, 4357.B.12, 4357.B.13, 4357.B.14, 4357.B.15, 4357.B.16, 4357.B.5, 4901.A.1, as amended September 20, 1998, effective September 20, 1998, 4903.F, as amended September 20, 1996, effective September 20, 1996, and Chapter 49 Appendix B, as amended January 20, 1996, effective January 20, 1996. LAC 33:V.319, which refers to LAC 33:I Chapter 5 is more stringent than 40 CFR 260.1(b)(1) and 40 CFR 260.2(b) Federal equivalent(because the regulations in LAC 33:I Chapter 5 require more specific information than that of the Federal regulations. LAC 33:V.3901, 3903, 3911, 3913 and 3915 are more stringent than 40 CFR 261.5(b), (c),(e),(f)(2), and (g)(2) Federal equivalent(s) because the small quantity generators are regulated more stringent in Louisiana than in the above mentioned Federal citations. LAC 33:V.2239.A.1–4 are more stringent than 40 CFR 268.5(a)(1–4) Federal equivalent because Louisiana additionally requires one compacted clay or other LDEQ approved liner in addition to the Federal requirements. LAC 33:V.2239.C is more stringent than 40 CFR 268.5(c) Federal equivalent because the State citation additionally specifies that failure to segregate waste streams shall not constituent justification for a case-by-case extension for those wastes which are separable and treatable. LAC 33:V.2239.H is more stringent than 40 CFR 268.5(g) Federal equivalent because the State citation has a specific time interval whereas the Federal citation has a discretionary period. LAC 33:V.2241.A is more stringent than Federal equivalent 40 CFR 268.6(a) because there is no exemption granted to the generator for land disposal of waste streams. Pertaining to only the notification section of this citation, LAC 33:V. 2241.I is more stringent than 40 CFR 268.6(f)(2)-(3) Federal equivalent because it requires a 24 hour notice to the administrative authority once it determined that the hazardous constituents have migrated from the unit. LAC 33:V.2241.N is more stringent than 40 CFR 268.6(k) Federal equivalent because the State term of a petition granted is no longer than what is specified under the final operating permit or up to 5 years from the date of approval if the unit is operating under interim status. The EPA allows for 10 years from the above said date. The State requires exemption to be reviewed at least once every 3 years. LAC 33:V.2241.O is more stringent than 40 CFR 268.6(l) Federal equivalent because it requires additional conditions. LAC 33:V.2241.Q is more stringent than 40 CFR 268.6(n) Federal equivalent because Louisiana sets limits at 50ppm, while EPA's limit is 500ppm. Federal citation 40 CFR 268.1(e)(1) was referenced to LAC 33:V. Chapter 39 because small quantity generators are not exempt from land disposal regulations and thus the State is more stringent.

Federal citation	State analog
2. California List Waste Land Disposal Restrictions, [52 FR 25760) July 8, 1987; California List Waste Land Disposal Restrictions (Correction 1), [52 FR 41295] October 27, 1987. Checklists 39, 39.1).	LRS 30:2180 *et seq.*, As amended June 14, 1991, effective June 14, 1991; LHWR §§110.A, as amended September 20, 1996, effective September 20, 1996, 1101.D, as amended April 20, 1998, effective April 20, 1998, 1519.B.8.c, 1519.B.8.c.i, as amended September 20, 1998, effective September 20, 1998, 1519.B.8.c.ii, 1519.B.8.c.ii(a)-(b), 1529.B.12, 13, 14, 15, 16, 17 and 18, as amended September 20, 1996, effective September 20, 1996, 2201.G, as amended May 20, 1997, effective May 20, 1997, 2201.G.4, as amended April 20, 1998, effective April 20, 1998, 2201.G.5, as amended September 20, 1998, effective September 20, 1998, 2201.H, 2201.I. as amended May 20, 1997, effective May 20, 1997, 2201.I.1, as amended June 20, 1998, effective June 20, 1998, 2201.I.2, as amended May 20, 1997, effective May 20, 1997, 2203.A. Hallogenated Organic Compounds or HOCs, 2203.A. Land Disposal, 2203.A Polychlorinated Biphenyls or PCBs, 2205.A, 2205.D, 2205.E, 2205.F, as amended January 20, 1996, effective January 20, 1996, 2207.A, 2209.A, 2209.A.1, 2209.A.2, 2209.A.3, 2209.B, 2209.C, 2209.C.1, 2209.C.2, 2209.C.3, as amended September 20, 1998, effective September 20, 1998, 2211.A, 2211.B, 2211.B.1, 2211.B.2, 2211.B.3, 2211.C, as amended January 20, 1996, effective January 20, 1996, 2213.A, 2213.A.1, 2213.A.2, 2213.A.3, 2213.B, 2213.B.1, 2213.B.2, 2213.C, 2213.C.1, 2213.C.2, 2213.D, 2213.D.1, 2213.D.2, 2213.D.3, 2213.E, 2213.F, 2213.G, 2213.G.1, 2213.G.2, 2215.B, 2215.C, 2215.D, 2215.E, 2215.F, 2215.G, 2215.G.1, 2215.G.2, 2215.G.3, 2215.H, 2215.I, as amended September 20, 1998, effective September 20, 1998, 2223.A, as amended April 20, 1998, effective April 20, 1998, 2223.B, 2223.C, as amended September 20, 1998, effective September 20, 1998, 2227.A.1, 2227.A.2, 2227.B, 2230.I.2.c, 2231.G, 2231.H, 2231.I, 2231.J, 2231.K, 2237.A.2, 2237.A.2.a, 2237.A.2.b.i, 2237.A.2.b.i.(a)(d), 2237.A,2.b.ii-iii, 2237.2.c,2237.A.2.d, as amended September 20, 1998, effective September 20, 1998, 2237.B, 2239.A.2, 2239.I.1, 2239.I.2, 2239.I.2.f, 2241.D.4, 2241.D.5, 2241.F, 2241.F.1, 2241.F.1.a, 2241.F.1.b, 2241.F.1.c, 2241.F.1.d, 2241.F.1.e, 2241.F.1.f, 2241.F.1.g, 2241.F.1.h, 2241.F.1.i, 2241.F.2, 2241.F.3, 2241.F.4, 2241.F.5, 2241.F.5.a-c, 2241.G, 2241.H, 2241.H.1–2, 2241.I, 2241.J, as amended January 20, 1996, effective January 20, 1996, 2241.K, 2241.L-Q, 2245.A-B, 2245.B.2, 2245.C, 2245.C.1.b, 2245.C.2, 2245.D, 2245.D.1–4, 2245.D.7, 2245.E, 2245.E.1–3, 2245.F, 2245.H, 2247.A, 2247.A.1, 2247.A.2, 2247.A.3, 2247.B, 2247.B.1, 2247.B.2, 2247.B.3, 2247.B.4, 2247.C, 2247.C.1, 2247.C.2, 2247.D, as amended September 20, 1998, effective September 20, 1998, 2247.E, as amended May 20, 1997, effective May 20, 1997, 2247.F, as amended September 20, 1998, effective September 20, 1998, 2247.F.1, as amended May 20, 1997, effective May 20, 1997, 2247.F.2, as amended September 20, 1998, effective September 20, 1998, chapter 22.table 5, as amended September 20, 1998, effective September 20, 1998, Chapter 39, as amended May 20, 1997, effective May 20, 1997, 4139.A.2, as amended September 20, 1998, effective September 20, 1998, 4303.B, as amended March 20, 1995, effective March 20, 1995, 4313.E.7.c, 4313.E.7.c.i, 4313.E.c.ii, 4313.E.7.c.ii(a)-(b), as amended March 20, 1995, effective March 20, 1995, 4357.B.10, 4357.B.11, 4357.B.12–16, as amended September 20, 1998, effective September 20, 1998. LAC 33:V.2239.A.2 is more stringent than 40 CFR 268.5(a) Federal equivalent(s) because Louisiana specifically requires written evidence of a good faith effort to manage waste. LAC 33:V.2241.n is more stringent than 40 CFR 268.6(k) Federal equivalent because the State term of a petition granted is no longer that what is specified under the final operating permit or up to 5 years from the date of approval if the

Federal citation	State analog
3. Land Disposal Restrictions for First Third Scheduled Wastes, [53 FR 31138] August 17, 1988, Land Disposal Restrictions (Correction I) [54 FR 8264] February 27, 1989. (Checklist 50, 50.1).	LRS 30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§ 1519.B.8.c, 1519.B.8.c.1, as amended September 20, 1998, effective September 20, 1998, 1519.B.8.c.ii, 1519.B.8.c.ii.(a)-(b), 1529.B.12–18, as amended September 20, 1998, effective September 20, 1998, 2201.G, as amended May 20, 1997, effective May 20, 1997, 2201.G.4, as amended April 20, 1998, effective April 20, 1998, 2201.G.5, as amended September 20, 1998, effective September 20, 1998, 2201.H, 2201.I, as amended May 20, 1997; effective May 20, 1997, 2201.I.1, as amended June 20, 1998, effective June 20, 1998, 2201.I.2, as amended May 20, 1997, effective May 20, 1997, 2205.D, as amended January 20, 1996, effective January 20, 1996, 2209.A, 2209.A.1, 2209.A.2, 2209.B, as amended January 20, 1996, effective January 20, 1996, 2209.A, 2209.A.1, 2209.A.2, 2209.B, 2209.C, 2209.C.1, 2209.C.2, 2209.C.3, as amended September 20, 1998, effective September 20, 1998, 2211.A–B, 2211.B.1–3, 2211.C, as amended January 20, 1996, effective January 20, 1996, 2213B, 2213.B.1–2, 2213.C, 2213.C.2, 2213.D, 2213.E, 2215.B, 2215.C, 2215.D, 2215.E, 2215.F, 2215.G, 2215.G.1, 2215.G.2, 2215.G.3, 2215.H, 2215.I, 2223.A, 2223.C, as amended September 20, 1998, effective September 20, 1998, 2227.A.2, 2231.G, 2231.H, 2231.I, 2231.J, 2231.K, 2237.A.2, as amended January 20, 1996, effective January 20, 1996, 2237.A.2.a, as amended September 20, 1998, effective September 20, 1998, 2237.A.2.b.i, as amended January 20, 1996, effective January 20, 1996, September 20, 1998, 2223.B, as amended September 20, 1998, effective September 1998, 2227.A.1–2, 2227.B, 2230.I.2.c, 2231.G, 2231.H, 2231.I, 2231.J, 2231.K, 2237.A.2, 2237.A.2.a, as amended January 20, 1996, effective January 20, 1996, 2237.A.2.b.-i(a)-(d), 2237.A.2.b.ii–iii, 2237.A.2.c, as amended January 20, 1996, effective January 20, 1996, 2237.A.2.d, as amended September 20, 1998, effective September 20, 1998, 2239.A.2, 2239.I.1, 2239.I.2.f, 2239.I.2, 2241.D.4–5, 2241.F, 2241.F.1, 2241.F.1.a-h, 2241.F.1.i, 2241.F.2–5, 2241.F.5.a-c, 2241.G, 2241.H, 2241.H.1–2, 2241.1, 2241.J, as amended January 20, 1996, effective January 20, 1996, 2241.K, 2241.L, 2241.M, 2241.N, 2241.O, 2241.P, 2241.Q, 2245.A, 2245.B, 2245.B.2, 2245.C, 2245.C, 2245.c.1.B, 2245.C.2, 2245.D, 2245.D.1–4, 2245.D.7, 2245.E, 2245.E.1, 2245.E.2–3, 2245.F, 2245.H, 2247.A, 2247.A.1–3, 2247.B, 2247.B.1–4, 2247.C, 2247.C.1–2, as amended September 20, 1998, effective September 20, 1998, 2247.D, as amended May 20, 1997, effective May 20, 1997, 2247.E, as amended September 20, 1998, effective September 20, 1998, 2247.F, as amended May 20, 1997, effective May 20, 1997, 2247.F.1–2, as amended September 20, 1998, effective September 20, 1998, Chapter 22. Table 5, Chapter 39, as amended May 20, 1997, effective May 20, 1997, 4139.A.2, as amended September 20, 1998, effective September 20, 1998, 4303.B, 4313.E.7.c, 4313.E.7.c.i-ii, 4313.E.7.ii(a)-(b), as amended March 20, 1995, effective March 20, 1995,

Federal citation	State analog
4. Land Disposal Restrictions Amendments to First Third Scheduled Waste (Technical Correction), [54 FR 18836] May 2, 1989. (Checklist 62).	LRS 30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§ 1519.B.8.c, 1519.B.8.c.i, as amended September 20, 1998, effective September 20, 1998, 1519.B.8.c.ii, as amended September 20, 1996, effective September 20, 1996, 1519.B.8.c.ii.(a)-(b), 1529.B.12–18, as amended September 20, 1998, effective September 20, 1998, 2201.G, as amended May 20, 1997, effective May 20, 1997, 2201.G.4, as amended April 20, 1998, effective April 20, 1998, 2201.G.5, as amended September 20, 1998, effective September 20, 1998, 2201.H, 2201.I, as amended May 20, 1997, effective May 20, 1997, 2201.I.1, as amended June 20, 1998, effective June 20, 1998, 2201.I.2, as amended May 20, 1997, effective May 20, 1997, 2205.D, as amended January 20, 1996, effective January 20, 1996, 2209.A, 2209.A.1, 2209.A.2, 2209.B, 2209.C, 2209.C.1, 2209.C.2, 2209.C.3, as amended September 20, 1998, effective September 20, 1998, 2211.A–B, 2211.B.1–3, 2211.C, as amended January 20, 1996, effective January 20, 1996, 2213B, 2213.B.1–2, 2213.C, 2213.C.2, 2213.D, 2213.E, 2215.B, 2215.C, 2215.D, 2215.E, 2215.F, 2215.G, 2215.G.1, 2215.G.2, 2215.G.3, 2215.H, 2215.I, 2223.A, 2223.C, as amended September 20, 1998, effective September 20, 1998, 2227.A.2, 2231.G, 2231.H, 2231.I, 2231.J, 2231.K, 2237.A.2, as amended January 20, 1996, effective January 20, 1996, 2237.A.2.a, as amended September 20, 1998, effective September 20, 1998, 2237.A.2.b.i, as amended January 20, 1996, effective January 20, 1996, 2237.A.2.b.b–i(a)-(d), 2237.A.2.b.ii-iii, 2237.A.2.c, as amended January 20, 1996, effective January 20, 1996, 2237.A.2.d, as amended September 20, 1998, effective September 20, 1998, 2239.I.2, 2241.D.4–5, 2241.F, 2241.F.1, 2241.F.1.a-h, 2241.F.1.i, 2241.F.2–5, 2241.F.5.a-c, 2241.G, 2241.H, 2241.H.1–2, 2241.1, 2241.J, as amended January 20, 1996, effective January 20, 1996, 2241.K, 2241.L 2241.M, 2241.N, 2241.O, 2241.P, 2241.Q, 2245.A, 2245.B, 2245.C–D, 2245.D 2245.D.1–4, 2245.D.7, 2245.E, 2245.E.1, 2245.E.2–3, 2245.F, 2245.H, 2247.A, 2247.A.1–3, 2247.B, 2247.B.1–4, 2247.C, 2247.C.1–2, as amended September 20, 1998, effective September 20, 1998, 2247.D, as amended May 20, 1997, effective May 20, 1997, 2247.E, as amended September 20, 1998, effective September 20, 1998, 2247.F, as amended May 20, 1997, effective May 20, 1997, 2247.F.1–2, as amended September 20, 1998, effective September 20, 1998, Chapter 39, as amended May 20, 1997, effective May 20, 1997, 4139.A.2, as amended September 20, 1998, effective September 20, 1998, 4313.E.7.c, 4313.E.7.c.i-ii, 4313.E.7.ii(a)-(b), as amended March 20, 1995, effective March 20, 1995, 4357.B.10–16, as amended September 20, 1998, effective September 20, 1998.
5. Land Disposal Restrictions For Second Third Scheduled Wastes [54 FR 26594] June 23, 1989. (Checklist 63).	LRS 30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2217.B, 2217.C, 2217.D, 2217.E, 2217.E.1–2, 2217.F, 2217.G, 2217.H, as amended September 20, 1998, effective September 20, 1998, 2227.A.3, as amended January 20, 1996, effective January 20, 1996, 2217.B–E, as amended September 20, 1998, effective September 20, 1998, 2217.E.1–2, 2217.F–H, as amended September 20, 1998, effective September 20, 1998,

Federal citation	State analog
6. Land Disposal Restrictions; Correction to the First Third Scheduled Waste (Correction), [54 FR 36967] September 6, 1989, Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, [55 FR 23935] June 13, 1990. (Checklists 66, 66.1).	LRS 30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§1519.B.8.c, 1519.B.8.c.1, as amended September 20, 1998, effective September 20, 1998, 1519.B.8.c.ii, 1519.B.8.c.ii.(a)–(b), 1529.B.12–18, as amended September 20, 1998, effective September 20, 1998, 2201.G, as amended May 20, 1997, effective May 20, 1997, 2201.G.4, as amended April 20, 1998, effective April 20, 1998, 2201.G.5, as amended September 20, 1998, effective September 20, 1998, 2201.H, 2201.I, as amended May 20, 1997, effective May 20, 1997, 2201.I.1, as amended June 20, 1998, effective June 20, 1998, 2201.I.2, as amended May 20, 1997, effective May 20, 1997, 2205.D, as amended January 20, 1996, effective January 20, 1996, 2209.A, 2209.A.1, 2209.A.2, 2209.B, 2209.C, 2209.C.1, 2209.C.2, 2209.C.3, as amended September 20, 1998, effective September 20, 1998, 2211.A–B, 2211.B.1–3, 2211.C, as amended January 20, 1996, effective January 20, 1996, 2213B, 2213.B.1–2, 2213.C, 2213.C.2, 2213.D, 2213.E, 2215.B, 2215.C, 2215.D, 2215.E, 2215.F, 2215.G, 2215.G.1, 2215.G.2, 2215.G.3, 2215.H, 2215.I, 2223.A, 2223.C, as amended September 20, 1998, effective September 20, 1998, 2227.A.2, 2231.G, 2231.H, 2231.I, 2231.J, 2231.K, 2237.A.2, as amended January 20, 1996, effective January 20, 1996, effective January 20, 1996, 2237.A.2.a, as amended September 20, 1998, effective September 20, 1998, 2237.A.2.b.i, as amended January 20, 1996, effective January 20, 1996, 2237.A.2.b.b-i(a)–(d), 2237.A.2.b.ii–iii, 2237.A.2.c, as amended January 20, 1996, effective January 20, 1996, 2237.A.2.d, as amended September 20, 1998, effective September 20, 1998, 2239.I.2, 2241.D.4–5, 2241.F, 2241.F.1, 2241.F.1.a–h, 2241.F.1.i, 2241.F.2–5, 2241.f.5a–c, 2241.G, 2241.H, 2241.H.1–2, 2241.I, 2241.J, as amended January 20, 1996, effective January 20, 1996 as amended January 20, 1996, effective January 20, 1996, 2241.K, 2241.L, 2241.M, 2241.N, 2241.O, 2241.P, 2241.Q, 2245.A, 2245.B, 2245.C–D, 2245.D.1–4, 2245.D.7, 2245.E, 2245.E.1, 2245.E.2–3, 2245.F, 2245.H, 2247.A, 2247.A.1–3, 2247.B, 2247.B.1–4, 2247.C, 2247.C.1–2, as amended September 20, 1998, effective September 20, 1998, 2247.D, as amended May 20, 1997, effective May 20, 1997, 2247.E, as amended September 20, 1998, effective September 20, 1998, 2247.F, as amended May 20, 1997, effective May 20, 1997, 2247.F.1–2, as amended September 20, 1998, effective September 20, 1998, Chapter 39, as amended May 20, 1997, effective May 20, 1997, 4139.A.2, as amended September 20, 1998, effective September 20, 1998, 4313.E.7.c, 4313.E.7.c.i–ii, 4313.E.7.ii(a)–(b), as amended March 20, 1995, effective March 20, 1995, 4357.B.10–16, as amended September 20, 1998, effective September 20, 1998, as amended September 20, 1998, effective September 20, 1998, 2201.H, 2201.I, as amended May 20, 1997, effective May 20, 1997, 2201.I.1, as amended June 20, 1998, effective June 20, 1998, 2201.I.2, as amended May 20, 1997, 4379.C, 4381.D.4, 4397.B, 4397.B.1–3, 4401.A, 4462.H, as amended March 20, 1995, effective March 20, 1995, 4701.A.1, 4701.A.2–3, 4701.3.a–c, 4701.A.4–5, 4703.A, 4703.A.1–2, 4703.A.2.a–b, 4703.A.3–4, 4703.B, 4703.B.1–2, 4703.B.2.a–b, 4703.B.3, 4703.B.3.a, 4703.B.3.a.i–ii, 4703.B.3.b–c, 4703.B.4, 4703.B.4.a–c, 4703.C, 4703.C.1, 4703.C.1.a–d, 4703.C.2–3, 4703.C.3.a, 4703.C.3.a.i–iv, 4703.C.3.b–c, 4703.C.4, 47.D, 4703.D.1–2, 4703.D.3, 4703.E, 4705, 4705.B, as amended March 20, 1995, effective March 20, 1995.

Federal citation	State analog
7. Land Disposal Restrictions for Third Third Scheduled Waste (HSAA Provisions) [55 FR 22520] June 1, 1990, Land Disposal Restrictions for Third Third Scheduled Waste (Non-HSAA Provisions) [55 FR 22520] June 1, 1990. (Checklist 78H, 78N).	LRS:30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§109.Hazardous Waste.5.a, as amended May 20, 1997, effective May 20, 1997, 322.B.1.b, 1103.B, as amended September 20, 1996, effective September 20, 1996, 1109.E.1.e, 1109.E.7.c, as amended September 20, 1998, effective September 20, 1998, 1519.A.2, as amended September 20, 1996, effective September 20, 1996, 2201.G.4, 2201.G.4.a, 2201.G.4.b, as amended April 20, 1998, effective April 20, 1998, 2203.A, 2203.A.Dris, 2203.A.Hallogenated Organic Compounds or HOCs, 2203.A.Hazardous Constituent, 2203.A.Land Disposal, 2203.A.Nonwastewaters, 2203.A.Polychlorinated Bihenyls or PCBs, as amended September 20, 1996, effective September 20, 1996, 2203.A.Wastewaters, 2207.A, 2207.B., 2215.D, 2219.B, 2219.B, 2219.C.1–2, 2219.D, 2219.E.1, 2219.F, 2219.G, 2219.G.1–4, 2219.H, 2223.A, 2223.C, 2227.A, as amended September 20, 1998, effective September 20, 1998, 2227.A.2–3, 2227.B–C, 2227.C, 2227.C.1–4, 2227.D, as amended January 20, 1996, effective January 20, 1996, 2245.A, 2245.B.2, 2245.C.1.b, 2245.D.2, 2245.E, 2245.E.1–3, 2245.G, 2245.H, 2245.I, 2246.A–B, as amended September 20, 1998, effective September 20, 1998, 2246.C–D, 2246.D.1, 2245.D.1.a, as amended January 20, 1996, effective January 20, 1996, 2246.D.1.b, as amended September 20, 1998, effective September 20, 1998, 2246.D.1.c, 2246.D.2, as amended January 20, 1996, effective January 20, 1996, 2247.B.2, 2247.C, 2247.C.1, 2247.C.3, 2247.E, as amended September 20, 1998, 2247.F, as amended May 20, 1997, effective May 20, 1997, Chapter 22 Table 3, as amended September 20, 1990, effective September 20, 1990, Chapter 22 Table 6, as amended January 20, 1996, effective January 20, 1996, 2311.A, as amended December 20, 1990, effective December 20, 1990, 2511.A, as amended September 20, 1998, effective September 20, 1998, 2511.B.B.1–3, as amended September 20, 1994, effective September 20, 1994, 2519.F, as amended January 20, 1996, effective January 20, 1996, 2715, as amended September 20, 1994, effective September 20, 1994, 2913, as amended September 20, 1994, effective September 20, 1994, effective 20, September 20, 1994, Chapter 39, as amended May 20, 1997, effective May 20, 1997, 4301.E, as amended September 20, 1998, effective September 20, 1998, 4312.B, as amended March 20, 1995, effective March 20, 1995, 4459, 4471, as amended December 20, 1990, effective December 20, 1990, 4491, as amended March 20, 1994, effective March 20, 1994, 4503.A, 4503.B, as amended September 20, 1994, effective September 1994, 4511.F, as amended September 20, 1998, effective September 20, 1998, 4901.B.Table 1, as amended November 20, 1997, effective November 20, 1997, 4901.D.3, as amended September 20, 1998, effective September 20, 1998, 4901.G.Table 6, as amended April 20, 1998, effective April 20, 1998, 4903.B, 4903.C, 4903.D, as amended September 20, 1996, effective September 20, 1996, 4903.F, as amended September 20, 1996, effective September 20, 1996, Chapter 49 Appendix B, as amended January 20, 1996, effective January 20, 1996.

Federal citation	State analog
8. Land Disposal Restriction for Third Scheduled Wastes; Technical Amendment (HSAA), [56 FR 3864] January 31, 1991. (Checklist 83).	LRS:30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§109.Hazardous Waste.5.a, as amended May 20, 1997, effective May 20, 1997, 322.B.1.b, 1103.B, as amended September 20, 1996, effective September 20, 1996, 1109.E.1.e, 1109.E.7.c, as amended September 20, 1998, effective September 20, 1998, 1519.A.2, as amended September 20, 1996, effective September 20, 1996, 2201.G.4, 2201.G.4.a, 2201.G.4.b, as amended April 20, 1998, effective April 20, 1998, 2203.A, 2203.A. Debris, 2203.A.Hallogenated Organic Compounds or HOCs, 2203.A.Hazardous Constituent, 2203.A.Land Disposal, 2303.A.Nonwaster-waters, 2203.A.Polychlorinated Bihenyls or PCBs, as amended September 20, 1996, effective September 20, 1996, 2203.A.Wastewaters, 2207.A, 2207.B., 2215.D, 2219.B, 2219.C.1–2, 2219.D, 2219.E.1, 2219.F, 2219.G, 2219.G.1–4, 2219.H, 2223.A, 2223.C, 2227.A, as amended September 20, 1998, effective September 20, 1996, 2227.A.2–3, 2227.B-C, 2227.C, 2227.C.1–4, 2227.D, as amended January 20, 1996, effective January 20, 1996, 2245.A, 2245.B.2, 2245.C.1.b, 2245.D.2, 2245.E, 2245.E.1–3, 2246.D.1, 2245.D.1.a, as amended January 20, 1996, 2246.d.1.b, as amended September 20, 1998, effective September 20, 1998, 2246.D.1.c, 2246.D.2, as amended January 20, 1996, effective January 20, 1996. 2247.B.2, 2247.C, 2247.C.1, 2247.C.3, 2247.E, as amended September 20, 1998, 2247.F, as amended May 20, 1997, effective May 20, 1997, Chapter 22 Table 9, as amended September 20, 1990, effective September 20, 1990, Chapter 22 Table 6, as amended January 20, 1996, effective January 20, 1996, 2311.A, as amended December 20, 1990, effective December 20, 1990, 2511.A, as amended September 20, 1998, effective September 20, 1998, 2511.B.B.1-3, as amended September 20, 1994, effective September 20, 1994, 2519.F, as amended January 20, 1996, effective January 20, 1996, 2715, as amended September 20, 1994, effective September 20, 1994, 2913, as amended September 20, 1994, effective September 20, 1994, Chapter 39, as amended May 20, 1997, effective May 20, 1997, 4301.E, as amended September 20, 1998, effective September 20, 1998, 4312.B, as amended March 20, 1995, effective March 20, 1995, 4459, 4471, as amended December 20, 1990, effective December 20, 1990, 4491, as amended March 20, 1994, effective March 20, 1994, 4503.A, 4503.B, as amended September 20, 1994, effective September 1994, 4511.F, as amended September 20, 1996, effective September 20, 1996, 4901.B.Table 1, as amended November 20, 1997, effective November 20, 1997, 4901.D.3, as amended September 20, 1998, effective September 20, 1998, 4901.G.Table 6, as amended April 20, 1998, effective April 20, 1998, 4903.B, 4903.C, 4903.D, as amended September 20, 1996, effective September 20, 1996, 4901.D.3, as amended September 20, 1998, effective September 20, 1998, 4901.G.Table 6, as amended April 20, 1998, effective April 20, 1998, 4903.B, 4903.C, 4903.D, as amended September 20, 1996, effective September 20, 1996, 4903.E.2, 4903.F, Chapter 49 Appendix C, as amended September 20, 1996, effective September 20, 1996.
9. Land Disposal Restrictions for Electric Arc Furnace Dust (K061), [56 FR 41164] August 19, 1991. (Checklist 95).	LRS:30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§105.D.1.k, as amended June 20, 1998, effective June 20, 1998, 109.Hazardous Waste.4.b.ii.(c).(I) &ii, as amended May 20, 1997, effective May 20, 1997.

Federal citation	State analog
10. Second Correction to the Third Land Disposal Restrictions, [57 FR 8086], March 6, 1992]. (Checklist 102).	LRS:30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§109.Hazardous Waste.5.a, as amended May 20, 1997, effective May 20, 1997, 322.B.1.b, 322.B.1.c, 1103.B, as amended September 20, 1996, effective September 20, 1996, 1109.E.1.e, 1109.E.7.c, as amended September 20, 1998, effective September 20, 1998, 1519.A.2, as amended September 20, 1996, effective September 20, 1996, 2201.G.4, 2201.G.4.a, 2201.G.4.b, as amended April 20, 1998, effective April 20, 1998, 2203.A, 2203.A.Dris, 2203.A.Hallogenated Organic Compounds or HOCs, 2203.A.Hazardous Constituent, 2203.A.Land Disposal 2203.A.Nonwastewaters, 2203.A.Polychlorinated Bihenyls or PCBs, as amended September 20, 1996, effective September 20, 1996, 2203.A.Wastewaters, 2207.A, 2207.B., 2215.D, 2219.B, 2219.C.1–2, 2219.D, 2219.E.1, 2219.F, 2219.G, 2219.G.1–4, 2219.H, 2223.A, 2223.C, 2227.A, as amended September 20, 1998, effective September 20, 1996, 2227.A.2–3, 2227.B-C, 2227.C, 2227.C.1–4, 2227.D, as amended January 20, 1996, effective January 20, 1996, 2245.A, 2245.B.2, 2245.C.1.b, 2245.D.2, 2245.E, 2245.E.1–3, 2245.G, 2245.H, 2245.I, 2246.A-B, as amended September 20, 1998, effective September 20, 1998, 2246.C-D, 2246.D.1, 2245.D.1.a, as amended January 20, 1996, 2246.d.1.b, as amended September 20, 1998, effective September 20, 1998, 2246.D.1.c, 2246.D.2, as amended January 20, 1996, effective January 20, 1996, 4903.E.2, 4903.F, Chapter 48 Appendix C, as amended September 20, 1996, effective September 20, 1996. LRS:30:2180 *et seq.*, 4903.E.2, 4903.F, Chapter 48 Appendix C, as amended September 20, 1996, effective September 20, 1996.
10. Land Disposal Restrictions, hazardous Waste Debris Case-by-Case Capacity Variance, [57FR 20766], May 15, 1992. (Checklist 103).	LRS 30:2180 *et seq.*, 2219.C.1–2, 2219.D, 2219.E, 2219.E.1–5, 2219.4.E.a-b, 2219.E.b.i-viii, as amended September 20, 1998, effective September 20, 1998.
11. Land Disposal Restrictions, Lead-Bearing hazardous Materials Case-by-Case Variance, [57 Fr 28628], June 26, 1992. (Checklist 106).	LRS 30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§2219.C.1–2, and 2219.I, as amended September 20, 1998, effective September 20, 1998.

Federal citation	State analog
12. Land Disposal Restrictions for Newly Listed Waste and Hazardous Debris, [57 FR 37194], August 18, 1992. (Checklist 109).	LRS 30:2180 *et seq.*, 109.Containment Building, 109.Hazardous Waste.2.c, 109.Hazardous Waste.4.b.ii(c).(i)-(ii), 109.Hazardous Waste.6, 109.Hazardous Waste.6.a-b, 109.Miscellaneous Unit, 109.Pile, as amended May 20, 1997, effective May 20, 1997, 321.C.5.d.ii(b), as amended September 20, 1995, effective September 20, 1995, effective September 20, 1996, 515.A.25, as amended March 20, 1995, effective March 20, 1995, 517.D, 1109.E.1.c, 1109.E.c.ii, 1109.E.1.d, 1109.E.1.d.i, 1109.E.1.e, 1109.E.d.ii, 1705.A, as amended September 20, 1998, effective September 20, 1998, 1801, 1801.A. 1801.A.2, 1801.A.3.a-c, 1801.A.4-5, as amended September 20, 1995, effective September 20, 1995, 1802.A, 1802.A.1–2, 1802.A.2.a-b, 1802.A.3–4, 1802.B, 1802.B.1–2, 1802.B.2.a, 1802.B.2.b, 1802.B.3, 1802.B.3.a, 1802.B.3.a.i-ii, 1802.B.3.b-c, 1802.B.4, 1802.B.4.a-c, 1802.C, 1802.C.1, 1802.C.1.a, 1802.C.1.b, 1802.C.1.c-d, 1802.C.2–3, 1802.C.3.a, 1802.C.a.ii-iv, 1802.C.3.b-c, 1802.C.4, 1802.C.a.i, 1802.D, 1802.D.1, 1802.D.2–3, 1802.E, 1803.A, 1803.A.3, 1803.B, 2203.A.Debris, as amended March 20, 1995, effective March 20, 1995, 2203.A.Hazardous Waste Debris, as amended January 20, 1996, effective January 20, 1996. 2205.A.1, as amended September 20, 1998, effective September 20, 1998, 2205.A.2, as amended January 20, 1996, effective January 20, 1996, 2221.C.1, as amended January 20, 1996, effective January 20, 1996, 2221.C.2, as amended September 20, 1998, effective September 20, 1998, 2221.C.3, as amended September 20, 1998, September 20, 1998, 2221.C.3, as amended January 20, 1996, effective January 20, 1996, 2221.C.4, as amended September 20, 1998, effective September 20, 1998, 2221.C.5, 2221.C.5.a-d, 2221.C.6, 2223.B, as amended January 20, 1996, effective January 20, 1996, 2223.D, as amended September 20, 1996, effective September 20, 1996, 2227.B, as amended January 20, 1996, effective January 20, 1996, 2230.A, 2230.A.1–5, 2230.B, 2230.B.1–3, 2230.C2230.C.1.b, 2230.C.2–5, 2230.D.1, 2230.D.1.a, as amended May 20, 1997, effective May 20, 1997, 2237.C.1, 2237.C.2–3, 2239.I.2.b, 2239.I.2.d, 2239.I.e, as amended January 20, 1996, effective January 20, 1996, 2239.I.2.f, as amended January 20, 1996, effective January 20, 1996, 2245.B.3, 2245.B.4, 2245.B.5, 2245.C, 2245.D.4, 2245.D.6, 2245.D.7, 2245.E, as amended September 20, 1998, effective September 20, 1998, 2246.D, 2246.D.1.a, January 20, 1996, effective January 20, 1996, 2246.D.1.b, as amended September 20, 1998, effective September 20, 1998, 2246.D.1.c, as amended January 20, 1996, effective January 20, 1998, 2246.D.2, 2246.E, 2246.E.1, 2246.E.1.a-c, 2246.E.2, 2246.E.3, 2246.E.3.a-c, as amended January 20, 1996, effective January 20, 1996, 2247.B, 2247.C.1, Chapter 22 Table 2, as amended September 20, 1998, effective September 20, 1998, Chapter 22 Table 8, as amended May 20, 1997, effective May 20, 1997, 3501.C.1, as amended March 20, 1995, effective March 20, 1995, 3501.C.2, as amended September 20, 1998, effective September 20, 1998, 3501.C.3, 3501.C.4, 3507.C, 3511.A.2, 3701.B.1, 3701.B.2, 3701.B.2–4, 3705.A, 4303.B.6, 4377.B.1–4, as amended March 20, 1995, effective March 20, 1995, 4379.C, as amended September 20, 1998, effective September 20, 1998, 4381.D.4, 4397.B, 4397.B.1–3, 4401.A, 4462.H, 4701.A.1, as amended March 20, 1995, effective March 20, 1995, 4701.A.2, 4701.A.3, 4701.A.3.a-c, 4701.A.4–5, as amended September 20, 1995, effective September 20, 1995, 4703.A, 4703.A.1–2, 4703.A.2.a-b, 4703.A.3–4, 4703.B, 4703.B.1–2, 4703.B.2.a-b, 4703.B.3, 4703.B.3.a, 4703.B.3.a.i-ii, 4703.B.3.b-c, 4703.B.4, 4703.B.4.a-c, 4703.C, 4703.C.1, 4703.C.1.a-d, 4703.C.2–3, 4703.c.3.a, 4703.C.3.a.i-iv, 4703.C.3.b-c, 4703.C.4, 4703.D, 4703.D.1–3, 4703.E, 4705.B, as amended March 20, 1995, effective March 20, 1995.
13. Land Disposal Restrictions, Hazardous Soil Case-by-Case Capacity Variance, [57 FR 47772], October 20, 1992. (Checklist 116)..	LRS 30:2180 *et seq.*, 2219.C.1–2, 2219.D, 2219.E, 2219.E.1–5, 2219.4.E.a-b, 2219.E.b.i-viii, as amended September 20, 1998, effective September 20, 1998.
14. Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance, [58 FR 28506] May 14, 1993. Checklist 123)..	LRS 30:2180 *et seq.* as amended June 14, 1991, effective June 14, 1991; 2219.C.1–2, 2219.D, 2219.E, 2219.E.1-5,2219.4.E.a-b, 2219.E.b.i-viii, as amended September 20, 1998, effective September 20, 1998.

Federal citation	State analog
5. Land Disposal Restrictions for Ignitable and Corrosive Characteristic Waste Whose Treatment Standards Were Vacated, [58 FR 29860] May 24, 1993. (Checklist 124)..	LRS 30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§322.B.1.b-d, as amended September 20, 1996, effective September 20, 1996, 1501.C.6, as amended May 20, 1997, effective May 20, 1997, 2201.I.3–4, 2203.A. Underlying Hazardous Constituent, as amended September 20, 1998, effective September 20, 1998, 2221,D.1–2, 2223.B, as amended January 20, 1996, effective January 20, 1996, 2245.A, 2245.B.2, 2246.A, 2247.B.2, as amended September 20, 1998, effective September 20, 1998, 4307, as amended June 20, 1998, effective June 20, 1998.
6. Land Disposal Restrictions Phase III-Decharterized Wastewaters, Carbamate Waste, and Spent Postliners, [61 FR 15566] April 4, 1996. (Checklist 151)..	LRS:30:2180 *et seq.*, as amended June 14, 1991, effective June 14, 1991, LHWR §§2201.G.4, 2201.G.4.a-b, 2201.G.5, 2201.G.5.a-d, as amended April 20, 1998, 2201I.2, as amended May 20, 1997, effective May 20, 1997, 2201.I.3–4, as amended September 20, 1998, effective September 20, 1998, 2203.A.Inorganic Metal Bearing Waste, 2203.A. Underlying Hazardous Constituents, 2203.A.Waste Water, 2207.A-C, 2207.C.1, 2207.C.2–6, as amended April 20, 1998, effective April 20, 1998, 2221.F.1, as amended September 20, 1998, effective September 20, 1998, 221.F.2–3, as amended April 20, 1998, effective April 20, 1998, 2221.F.4, as amended September 20, 1998, effective September 20, 1998, 2221.F.5–6, 2221.F.6.a-d, 2221.F.7, 2223.A, 2223.C, as amended April 20, 1998, effective April 20, 1998, 2223.E, as amended September 20, 1998, effective September 20, 1998, 2231.A, as amended January 20, 1996, effective January 20, 1996, 2235, as amended April 20, 1998, effective April 20, 1998, 2245.A, 2245.B.2, 2245.B.4–5, 2245.C.1.b, 2245.D.2, 2246.A, 2246.D, as amended September 20, 1998, effective September 20, 1998, 2246.D.1.a-b, 2247.B.2, 2247.C.4–5, Chapter 22 Table, 2, 3, and 5, as amended September 20, 1998, effective September 20, 1998, Chapter 22 Table 7, as amended April 20, 1998, effective April 20, 1998. LAC 33:V.2201.G.4 is more stringent than 40 CFR 268.1(c)(3)(ii) Federal equivalent because it clarifies the point of injection by specifically stating "at the well head." LAC 33.V.2231.A is more stringent than 40 CFR 268.44(a) because the State requires the petitioner to bear the burden of proving that the properties of the waste differ significantly from waste analyzed in the treatment standards.

What Decisions Has the EPA Made?

We conclude that Louisiana's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, we grant Louisiana final authorization to operate its hazardous waste program as revised, assuming we receive no adverse comments as discussed above. Upon effective final approval Louisiana will be responsible for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also will have primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

How Do the Revised State Rules Differ From the Federal Rules?

The EPA considers the following State requirements to be more stringent than the Federal: LAC 33:V.319, which refers to LAC 33:I Chapter 5 is more stringent than 40 CFR 260.1(b)(1) and 40 CFR 260.2(b) Federal equivalent (because the regulations in LAC 33:I chapter 5 require more specific information than that of the Federal regulations. LAC 33:V.3901, 3903, 3911, 3913 and 3915 are more stringent than 40 CFR 261.5(b)(c), (e), (f)(2) and (g)(2) Federal equivalents because the small quantity generators are regulated more stringent in Louisiana than in the above mentioned Federal citations. LAC 33:V.2239.A.1–4 are more stringent than the 40 CFR 268.5(a)(1–4) Federal equivalent because Louisiana additionally requires one compacted clay or other LDEQ approved liner in addition to the Federal requirements. LAC 33:V.2239.C is more stringent than the 40 CFR 268.5(c) Federal equivalent because the State citation additionally specifies that failure to segregate waste streams shall not constitute justification for a case-by-case extension for those wastes which are separable and treatable.

The LAC 33:V.2239.H is more stringent than the 40 CFR 268.5(g) Federal equivalent because the State citation has a specific time interval whereas the Federal citation has a discretionary period. LAC 33:V.2241.A is more stringent than Federal equivalent 40 CFR 268.6(a) because there is no exemption granted to the generator for land disposal of waste streams. Pertaining to only the notification section of this citation, LAC 3:V.2241.I is more stringent than the 40 CFR 268.6(f)(2)–(3) Federal equivalent because it requires a 24 hour notice to the administrative authority once it is determined that the hazardous constituents have migrated from the unit. LAC 33:V.2241.N is more stringent than the 40 CFR 268.6(k) Federal equivalent because the State term of a petition granted is no longer than what is specified under the final operating permit or up to 5 years from the date of approval if the unit is operating under interim status. The EPA allows up to a maximum 10 years from the date of approval. The State requires exemption to be reviewed at least once every 3 years.

LAC 33:V.2241.Q is more stringent than the 40 CFR 268.6(n) Federal equivalent because Louisiana sets limits at 50ppm, while EPA's limit is 500ppm.

Federal citation 40 CFR 268.1(e)(1) was referenced to LAC 33V. Chapter 39 because small quantity generators are not exempt from land disposal regulations and thus the State is more stringent. LAC 33:V.2201.G.4 is more stringent than the 40 CFR 268.1(c)(3)(ii) Federal equivalent because Louisiana regulations clarify the point of injection by adding "at the Well head." These requirements are part of Louisiana's authorized program and are federally enforceable. In this authorization of the State of Louisiana's program revisions for LDR, there are no provisions that are broader in scope. Broader in scope requirements are not part of the authorized program and EPA cannot enforce them.

H. Who Handles Permits After This Authorization Takes Effect?

Louisiana will issue permits for all the provisions for which it has authority and will administer the permits it issues.

EPA will continue to administer any RCRA hazardous waste permits or portions of permits which it issued before the effective date of this authorization until they expire or terminate. The EPA will not issue any more permits or portions of permits for the provisions listed in the chart above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which the State is not yet authorized.

I. Why Wasn't There a Proposed Rule Before Today's Notice?

EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and we expect no comments that oppose this action. EPA is providing an opportunity for public comment now. In the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization, that document will serve as a proposal to authorize the changes.

J. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number LA–99–1. We must receive your comments by September 24, 1999. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

K. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this authorization, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second notice may withdraw the immediate final rule or identify the issues raised, respond to the comments, and affirm that the immediate final rule will take effect as scheduled.

L. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on October 25, 1999.

M. Where Can I Review the State's Application?

You can view and copy the State of Louisiana's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (504) 765–0617 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

N. Now Does Today's Action Affect Indian Country in Louisiana?

Louisiana is not authorized to carry out its hazardous waste program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect on Indian country.

O. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart T for this authorization of Louisiana's program changes until a later date.

Regulatory Requirements

Compliance With Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of E.O. 12866.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) The OMB determines is "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 and 205 of the

UMRA, the EPA must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Louisiana's program, and today's action does not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires the EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate hazardous waste treatments, storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by the EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1966), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if any agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

Executive Order 12875 Enhancing Intergovernmental Partnerships

Under E.O. 12875, the EPA may not issue regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, the EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1 (a) of E.O. 12875 do not apply to this rule.

Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, the EPA may not issue a regulation that is not require by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments. If the mandate is unfunded, the EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to E.O. 13084 because it does not significantly or

uniquely affect the communities of Indian governments. The State of Louisiana is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that the EPA implements in the Indian country within the State.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

Authority

This document is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 15, 1999.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 99–22041 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1574; MM Docket No. 98–64; RM–9272, RM–9358]

Radio Broadcasting Services; St. Anne and Beaverville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of STARadio Corporation, allots Channel 293A at St. Anne, Illinois, as the community's first local aural transmission service (RM–9272). *See* 63 FR 27902, May 21, 1998. At the request of Milner Broadcasting Company, we also dismiss its petition for rule making requesting the allotment of Channel 293A at Beaverville, Illinois (RM–9358). Channel 293A can be allotted to St. Anne in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) southeast to avoid short-spacings to the licensed sites of Station WYBA(FM), Channel 292A, Lansing, Illinois, and Station WGCY(FM), Channel 292A, Gibson City, Illinois. The coordinates for Channel 293A at St. Anne are 40–56–20 North Latitude and 87–39–10 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 27, 1999. The window period for filing applications for Channel 293A at St. Anne, Illinois, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–64, adopted August 4, 1999, and released August 13, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73 [AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding St. Anne, Channel 293A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22002 Filed 8–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1603; MM Docket No. 99–72; RM–9323]

Radio Broadcasting Services; Cedar Key, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 261A to Cedar Key, Florida, in response to a petition filed by Jeffrey Mark Tillery. *See* 64 FR 12922, March 16, 1999. The coordinates for Channel 261A at Cedar Key are 29–08–12 NL and 83–02–06 WL. With this action, this proceeding is terminated. A filing window for Channel 261A at Cedar Key will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–72, adopted August 11, 1999, and released August 13, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 261A at Cedar Key.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22003 Filed 8–24–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 081799E]

Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fisheries by Vessels Using Hook-and-Line Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the 1999 Pacific halibut bycatch mortality allowance apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) established the Pacific halibut bycatch mortality allowance for groundfish included in the other hook-and-line fishery, which is defined at § 679.21(d)(4)(iii)(C), for 1999 as 290 metric tons. The other hook-and-line fishery includes all groundfish, except sablefish and demersal shelf rockfish.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS, has determined that the 1999 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for groundfish other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the 1999 Pacific halibut bycatch mortality allowance specified for the groundfish fisheries other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The 1999 bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22079 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 081799D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the 1999 total allowable catch (TAC) of Pacific cod allocated to vessels catching Pacific cod for processing by the inshore component in that area.

DATES: Effective 1200 hrs, Alaska local time, September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels is in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(6)(iii) the 1999 TAC of Pacific cod allocated to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA was established as 38,642 metric tons (mt) by the Final 1998 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) and subsequent reserve release (64 FR 16362, April 5, 1999).

NMFS closed the inshore component fishery for Pacific cod in the Central Regulatory Area to directed fishing under § 679.20(d)(1)(iii) on March 14, 1999 (64 FR 13122, March 17, 1999).

NMFS has determined that as of August 24, 1999, approximately 4,000 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing a portion of the Pacific cod TAC for vessels catching Pacific cod for processing by the inshore component. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22080 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–22–F

Propo

This section c
contains notic
issuance of ru
purpose of th
persons an op
rule making p
rules.

DEPARTME

Food and N

7 CFR Parts

RIN 0584–AC

Modificatio
Products" F
National Sc
School Bre
Food Servic
Adult Care
of Public Co

AGENCY: Foo
USDA.

ACTION: Prop
public comm

SUMMARY: T
Modificatio
Products" R
National Sc
School Brea
Food Servic
Adult Care
in the Feder
38844) on Ju
comments w
postmarked
1999. This a
comment pe
This extensi
additional ti
provisions o
and to devel
which will a
modifying th
"Vegetable P

DATES: To be
comments m
postmarked
1999.

COMMENTS: C
Mr. Robert M
Drive, Alexa
written subm
public inspe
Park Center
during regul
to 5:30 p.m.)

FOR FURTHER
Contact Ms.
Janice Fabin

Proposed Rules

Federal Register
Vol. 64, No. 164
Wednesday, August 25, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, 225, and 226

RIN 0584–AC82

Modification of the "Vegetable Protein Products" Requirements for the National School Lunch Program, School Breakfast Program, Summer Food Service Program and Child and Adult Care Food Program—Extention of Public Comment Period

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The proposed rule entitled Modification of the "Vegetable Protein Products" Requirements for the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program and the Child and Adult Care Food Program was published in the **Federal Register** (64 FR 38839–38844) on July 20, 1999. Public comments were requested to be postmarked on or before September 20, 1999. This action extends the public comment period to November 19, 1999. This extension gives the public additional time to analyze the provisions of the proposed rulemaking and to develop substantive comments which will assist the Department in modifying the requirements regarding "Vegetable Protein Requirements".

DATES: To be assured of consideration, comments must be submitted or postmarked on or before November 19, 1999.

COMMENTS: Comments may be mailed to: Mr. Robert M. Eadie, 3101 Park Center Drive, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Marion Hinners of Ms. Janice Fabina, at the above address or by telephone at (703) 305–2621. Copies of the proposed rule are available at the Food and Nutrition Service Web site, located at www.fns.usda.gov/cnd.

SUPPLEMENTARY INFORMATION:

Background

The Department published the proposed Modification of the "Vegetable Protein Products" Requirements for the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program and the Child and Adult Care Food Program in the **Federal Register** (64 FR 38839–38844) on July 30, 1999. The Department provided a 60-day comment period. Commenters have indicated that the 60-day comment period is not enough to provide a thorough analysis and to develop detailed comments. Furthermore, since the rule was published in July, during summer break for many schools, the comment period would end at the beginning of the new school year, which would not provide school food service personnel adequate opportunity to review the rule and provide their comments.

The Department is eager to ensure that commentors have sufficient time to evaluate the proposal and to develop substantive comments. To achieve this end, the Department will continue to receive comments submitted or postmarked on or before November 19, 1999.

Dated: August 19, 1999.

George A. Braley,

Acting Administrator.

[FR Doc. 99–22088 Filed 8–24–99; 8:45 am]

BILLING CODE 3410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Public Meeting on 10 CFR Part 70 Rulemaking Activities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. This meeting will be held in two parts. During the first part of the meeting, an overview of the proposed revisions to 10 CFR Part 70 and the associated draft Standard Review Plan will be presented. Comments received to date on the proposed rule and the draft Standard Review Plan will be discussed during the second part of the meeting.

This meeting will facilitate public comments by presenting an overview of the proposed rule and Standard Review Plan and discussing areas where the Commission is specifically seeking public comments. It will also provide an opportunity to discuss public comments received to date on the proposed rule and Standard Review Plan.

DATES: This meeting is scheduled for Tuesday and Wednesday, September 14–15, 1999 from 9:00 am to 4:00 pm. This meeting is open to the public.

ADDRESSES: NRC's Licensing Board Hearing Room at Two White Flint North, Room 3B45, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Theodore S. Sherr, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7218, e-mail: *tss@nrc.gov*.

Dated at Rockville, Maryland this 20th Day of August, 1999.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–22031 Filed 8–24–99; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1999–14]

Rulemaking Petition: Voting Records and Voter Guides Notice of availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of availability.

SUMMARY: On July 20, 1999, the Commission received a Petition for Rulemaking from James Bopp, Jr., of the James Madison Center for Free Speech, on behalf of the Iowa Right to Life Committee, Inc. The Petition urges the Commission to repeal its rules

addressing voting records and voter guides that are publicly distributed by corporations and labor organizations, an action it calls necessary to conform these rules with a recent court decision. The Petition is available for inspection in the Commission's Public Records Office and through its FAXLINE service.

DATES: Statements in support of or in opposition to the Petition must be filed on or before September 24, 1999.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Acting Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to voterguides@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Acting Assistant General Counsel, or Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act at 2 U.S.C. 441b prohibits corporations and labor organizations from using general treasury monies to make contributions or expenditures in connection with Federal elections. Such entities may engage in certain nonpartisan activities, however, including, inter alia, the preparation and distribution to the general public of voting records of Members of Congress and voter guides consisting of two or more candidates' positions on campaign issues, as long as certain conditions are met. *See* 11 CFR 114.4(c)(4) (voting records), 114.4(c)(5) (voter guides).

The Petitioner is asking the Commission to repeal its rules at 11 CFR 114.4(c)(4) and 114.4(c)(5), an action it argues is necessary to conform the Commission's regulations to the decision of the United States Court of Appeals for the First Circuit in *Clifton* v. *Federal Election Commission*, 927 F.Supp. 493 (D.Me. 1996), *modified in part and remanded in part*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 118 S.Ct. 1036 (1998). That decision invalidated certain portions of these rules, including the "electioneering message" standard contained in 11 CFR 114.4(c)(5)(ii) (D) and (E).

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, N.W., Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Interested persons may also obtain a copy of the Petition by dialing the Commission's FAXLINE service at (202) 501–3413 and following its instructions, at any time of the day and week. Request document #241.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: August 20, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–21994 Filed 8–24–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113526–98]

RIN 1545–AW44

Arbitrage and Related Restrictions Applicable to Tax-Exempt Bonds Issued by State and Local Governments; Investment-Type Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments. The proposed amendments affect issuers of tax-exempt bonds and provide guidance on the definition of investment-type property to help issuers comply with the arbitrage and related restrictions.

DATES: Written comments must be received by December 23, 1999. Outlines of topics to be discussed at the public hearing scheduled for January 12, 2000, at 10 a.m. must be received by December 15, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–113526–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–113526–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing is in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Barbara Jane League, (202) 622–3980; concerning submissions of comments, the hearing, and/or requests to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 148 of the Internal Revenue Code provides rules addressing the use of proceeds of tax-exempt State and local bonds to acquire higher-yielding investments. On June 18, 1993, final regulations (TD 8476) relating to the arbitrage restrictions and related rules under sections 103, 148, 149, and 150 were published in the **Federal Register** (58 FR 33510). Corrections to these regulations were published in the **Federal Register** on August 23, 1993 (58 FR 44451), May 11, 1994 (59 FR 24350), and July 9, 1999 (64 FR 37037). On May 9, 1997, additional final regulations (TD 8718) relating to the arbitrage restrictions and related rules under sections 103, 148, 149, and 150 were published in the **Federal Register** (62 FR 25502). This document proposes to modify § 1.148–1(e) to clarify which prepayments are investment-type property under section 148(b)(2)(D).

Explanation of Provisions

The current regulations, at § 1.148–1(e)(2), provide that prepayments for property or services give rise to investment-type property if a principal purpose for prepaying is to obtain an investment return from the time that the payment is made until the time that payment otherwise would be made. A prepayment does not give rise to investment-type property if (1) the prepayment is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment, or (2) prepayments on

ubstantially the same terms are made y a substantial percentage of persons who are similarly situated to the issuer ut who are not beneficiaries of tax-xempt financing.

Recently, an issue arose about whether investment-type property ncludes the prepayment of a contract or property or services after the date hat the contract is entered into. In *City f Columbus* v. *Commissioner*, 112 F.3d 201 (D.C. Cir. 1997), the court held that prepayment for property cannot occur fter the property is acquired. The ourt's holding suggests that an issuer ould avoid investment-type property y entering into a contract for property r services and, at a later date, repaying that contract. This result is nconsistent with the intent of section 48. The legislative history indicates hat Congress intended that the arbitrage ules apply broadly. For example, the Conference Report to the Tax Reform Act of 1986 provides that investment roperty includes the acquisition of any roperty held for investment (other than nother tax-exempt bond). H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–47, 1986–3 C.B. (Vol. 4) 747.

This document proposes modifications to the regulations to stablish that prepayments that give rise o investment-type property can occur fter the contract for property or ervices is entered into and to make ther non-substantive, clarifying hanges. It is intended that these egulations address only the potential ssue created by the *City of Columbus* pinion as noted above. Comments are equested on whether the affect of the hanges proposed in this document is roader than intended.

In addition to comments on the roposed regulations, comments are equested on whether additional uidance is needed to clarify other spects of the investment-type property efinition. For example, comments are equested on whether clarification is eeded on which prepayments of an bligation will be treated as a repayment for property or services that ives rise to investment-type property, nd whether a contract under which roperty or services are to be provided ver time and the payments for those roperty or services are to be made over me gives rise to investment-type roperty when the payment schedule oes not match the schedule for the rovision of the property or services.

Finally, Treasury and the IRS have ecome aware of certain transactions nvolving prepayments for the purchase f a commodity. In these transactions, n issuer generally enters into a long-erm contract with a supplier (for example, a natural gas supply company) to supply over a number of years a fixed amount of the commodity to the issuer at a fixed price (the "supply contract"). In return, the issuer makes a single lump-sum prepayment for the commodity to the supplier. The prepayment is financed through the issuance of bonds. The amount of the prepayment is determined in a manner that permits the issuer to obtain an investment return from the prepayment. The issuer also enters into other agreements, including one or more swap agreements, that result in the issuer converting substantially all of the issuer's cost for the commodity under the supply contract into a variable cost that approximates the then current price of the commodity when the issuer takes delivery.

Based on the information received, and viewing the transaction as a whole, it appears that a principal purpose of the prepayment for the supply contract was to earn an investment return. If so, the supply contract is investment-type property unless the requirement of § 1.148–1(e)(2)(i) or (ii) are met. Treasury and the IRS are concerned that the supply contract may be investment-type property and request comments on these transactions.

The regulations, when finalized, will apply to bonds issued after a date of applicability that will be set forth in the final regulations. Treasury and the IRS have not yet determined such date of applicability other than to have made the determination that the date of applicability will not be before this document is August 25, 1999. Treasury and the IRS request comments as to the date of applicability of the final regulations. No inference is intended as to the treatment of bonds issued prior to the date of applicability of the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies, if written) that are submitted timely to the IRS. In particular, the IRS and Department of Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, January 12, 2000, beginning at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by December 23, 1999, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 15, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Rebecca L. Harrigal and Barbara Jane League, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.148–1(e) is amended as follows:

1. Paragraph (e)(1) is revised.
2. Paragraphs (e)(2) introductory text, (e)(2)(i) and (e)(2)(ii) are redesignated as paragraphs (e)(2)(i) introductory text, (e)(2)(i)(A), and (e)(2)(i)(B), respectively.
3. Paragraph (e)(2) heading is revised.
4. Newly designated paragraph (e)(2)(i) introductory text is revised.
5. New paragraph (e)(2)(ii) is added.

The revisions and addition read as follows:

§ 1.148–1 Definitions and elections.

* * * * *

(e) *Investment-type property*—(1) *In general.* Investment-type property includes any property, other than property described in section 148(b)(2)(A), (B), (C) or (E), that is held principally as a passive vehicle for the production of income. For this purpose, production of income includes any benefit based on the time value of money.

(2) *Prepayments.* (i) Except as otherwise provided in this paragraph (e), a prepayment for property or services, including a prepayment of a contract for property or services that is made after the date that the contract is entered into, also gives rise to investment-type property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment does not give rise to investment type property if—

* * * * *

(ii) *Example.* The following example illustrates an application of paragraph (e)(2)(i) of this section:

Example. In 1996, City A entered into a ten-year contract with Company Y. Under the contract, Company Y is to provide services to City A and in return City A will make fixed annual payments to Company Y. In 1998, Company Y and City A agree that City A will prepay its obligation under the contract. To finance the prepayment, City A will issue bonds. The amount of the prepayment is determined in a manner that permits City A to obtain an investment return from the prepayment. A principal purpose for City A agreeing to make the prepayment is to obtain an investment return from the time of the prepayment until the time payment otherwise would be made. The prepayment is not made for a substantial business purpose other than to obtain the investment return and City A had a commercially reasonably alternative to the prepayment. In addition, prepayments on substantially the same terms are not made by a substantial percentage of persons who are similarly situated to City A but who are not beneficiaries of tax-exempt financing. When the prepayment is made, City A will have acquired investment-type property. It does not matter that the prepayment occurred after the date that the contract was entered into.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–21878 Filed 8–24–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–024]

RIN 2115–AE47

Drawbridge Operation Regulations: Kennebunk River, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules governing the Dock Square Drawbridge mile 1.0, across the Kennebunk River between Kennebunk and Kennebunkport, Maine. The bridge owner has asked the Coast Guard to change the regulations to allow the draw to remain closed to vessel traffic because the bridge has not had a request to open since 1985. This proposal is expected to relieve the bridge owner of the requirement to open the bridge and still meet the needs of navigation.

DATES: Comments must reach the Coast Guard on or before October 25, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Ma. 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The District Commander maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at 408 Atlantic Avenue, Boston, Massachusetts room 630, between 7 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–024) and the specific section of this document to which each comment applies, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a public hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background

The Dock Square Drawbridge has a vertical clearance at mean high water of 5 feet and 14 feet at mean low water. The existing regulations listed at 33 CFR 117.527, require the bridge to open on signal from April 15 through October 15; except that, from 5 p.m. to 7 a.m., the draw shall open if notice is given to the drawtender during his shift, from 7 a.m. to 5 p.m. At all other times the draw shall open after 24 hours advance notice is given.

The bridge owner, Maine Department of Transportation, asked the Coast Guard to change the regulations governing the Dock Square Drawbridge to allow the drawbridge to remain closed to vessel traffic because the bridge has not opened since 1985.

Discussion of Proposal

The Coast Guard is proposing to revise the regulations listed at 33 CFR 117.527, governing the Dock Square Drawbridge at mile 1.0, across the Kennebunk River between Kennebunk and Kennebunkport, Maine. The drawbridge has not opened since 1985. The Coast Guard believes as a result of

the lack of requests to open the bridge that it is reasonable to allow the Dock Square Drawbridge to remain closed to vessel traffic.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge has not had a request to open since 1985.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.527 is revised to read as follows:

§ 117.527 Kennebunk River.

The Dock Square drawbridge at mile 1.0, across the Kennebunk River, between Kennebunk and Kennebunkport, Maine, need not open for vessel traffic. The owners of the bridge shall provide and keep in good legible condition, two board gages in accordance with 33 CFR 118.160, of this chapter.

Dated: August 11, 1999.

R.M. Larabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–22052 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–174]

RIN 2115–AE47

Drawbridge Operation Regulations: Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules governing the Route-197 Bridge, mile 27.1, across the Kennebec River between Richmond and Dresden, Maine. The bridge owner asked the Coast Guard to change the regulations to restore the operating regulations that were inadvertently deleted in 1989, from the Code of Federal Regulations. This proposal is expected to relieve the bridge owner of the requirement to crew the bridge at all times and still meet the needs of navigation.

DATES: Comments must reach the Coast Guard on or before October 25, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Ma. 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The District Commander maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at 408 Atlantic Avenue, Boston, Massachusetts room 630, between 7 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–174) and the specific section of this document to which each comment applies, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a public hearing would be beneficial. If it determines that the opportunity for

oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background

The Route-197 Bridge has a vertical clearance at mean high water of 15 feet and at mean low water of 20 feet. The existing regulations require the bridge to open on signal at all times.

The bridge owner, Maine Department of Transportation (MDOT), asked the Coast Guard to change the operating regulations for the Route-197 Bridge to correct an inadvertent removal of the operating regulations in 1989, as docket number (CGD01–89–077). The bridge owner was not aware of the removal and continued to operate the bridge in accordance with the old regulations. The Coast Guard was also unaware of the inadvertent removal until notified by the bridge owner.

This proposal, if adopted, will require the bridge open on signal from June 1 through September 30, 9 a.m. to 5 p.m. From 5 p.m. to 9 a.m., the draw shall open on signal after notice is given to the drawtender at the bridge during the drawtender's duty shift from 9 a.m. to 5 p.m. From October 1 to May 31, the draw shall open on signal after at least a 24 hour advance notice is given to the Maine Department of Transportation Division Office in Rockland, Maine.

Discussion of Proposal

The Coast Guard is proposing to change the operating regulations for the Route-197 Bridge, to require the draw to open on signal, from June 1 through September 30, from 9 a.m. to 5 p.m., and from 5 p.m. to 9 a.m., the draw shall open on signal after notice is given to the drawtender at the bridge during the time the drawtender is on duty, 9 a.m. to 5 p.m. From October 1 through May 31, the draw shall open on signal if at least a 24 hour advance notice is given to the Maine Department of Transportation Division Office in Rockland, Maine.

The bridge opening logs submitted to the Coast Guard by the bridge owner for the Route-197 Bridge from 1996 to 1998 show the number of opening requests as follows: January 0, 0, 0; February 0, 0, 0; March 0, 0, 0; April 0, 0, 0; May 12, 9, 12; June 14, 20, 14; July 18, 20, 20; August 18, 31, 16; September 20, 11, 10; October 0, 13, 9; November 0, 0, 2; December 0, 0, 0, openings respectively. The bridge logs show relatively few requests to open the bridge from June 1 to September 30.

The Coast Guard believes the proposed changes to the regulations are reasonable because the bridge has been operating in accordance with the proposed hours since 1989, and the Coast Guard has determined, based upon the bridge opening data, the fact that the waterway is normally frozen during the winter months, and the lack of complaints, that these operating hours still meet the needs of navigation.

The existing paragraph (b) will be re-designated as (a)(8), and a new paragraph (b) will be added to the existing regulations indicating the operating regulations for the Route-197 Bridge.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge has continued to operate under the old regulations that were inadvertently removed, and the mariners will not be required to change their current operations as a result.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.525 is amended by re-designating paragraph (b) as paragraph (a)(8) and by adding a new paragraph (b) to read as follows:

§ 117.525 Kennebec River.

* * * * *

(b) The draw of the Route-197 bridge, mile 27.1, between Richmond and Dresden shall open on signal from June 1 through September 30, from 9 a.m. to 5 p.m. From 5 p.m. to 9 a.m., the draw shall open on signal after notice is given to the drawtender while the drawtender is on duty between 9 a.m. and 5 p.m. From October 1 through May 31, the draw shall open on signal after at least a twenty-four hour advance notice is given to the Maine Department of Transportation Division Office in Rockland, Maine.

Dated: August 11, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99-22053 Filed 8-24-99; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA160-4093; FRL-6428-4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Post-96 Rate of Progress Plan for the Philadelphia Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision consists of the three percent per year emission reduction rate-of-progress (ROP) plan for the period 1996–1999 in the Pennsylvania portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (the Philadelphia area). This requirement is commonly known as the Post-96 ROP plan. The intended effect of this action is to propose limited approval of this ROP plan required by the Clean Air Act to ensure progress on reducing emissions of ozone precursors.

DATES: Written comments must be received on or before September 24, 1999.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178. Or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has prepared a technical support document (TSD) for this action. The TSD contains details of Pennsylvania's July 31, 1998 submittal and EPA's evaluation of that submittal. Copies of the TSD are available from the EPA Regional office listed in the **ADDRESSES** section of this document.

I. Background

Section 182(b)(1) of the Clean Air Act (the Act) requires all moderate, serious, severe, and extreme ozone nonattainment areas to reduce volatile organic compound (VOC) emission 15% from 1990 levels by 1996. That requirement is known as the 15% plan. Section 182(c)(2)(B) of the Act requires serious, severe, and extreme ozone nonattainment areas to reduce emissions of VOC by 3% per year every year from 1996 until their attainment dates. This requirement, known as the Post-96 rate-of-progress (ROP) plan, was originally due by November 15, 1994. However, in a March 2, 1995 memorandum, EPA Assistant Administrator Mary Nichols outlined an alternative attainment demonstration policy that combines the Post-96 ROP plan with the attainment demonstration requirements found in section 182(c)(2)(A) of the Act. This approach consists of two "phases." Phase I requires the states to submit a plan to meet ROP from 1996 to 1999 (the Post-96 ROP plan), and a set of three enforceable commitments. For Phase II, states are required to submit a ROP plan from 1999 to the area's attainment year (commonly referred to as the Post 99 ROP plan), and a modeled attainment demonstration.

The Philadelphia area is classified as a severe ozone nonattainment area. This is a four-state ozone nonattainment area consisting of portions of Delaware, Maryland, New Jersey, and Pennsylvania. For purposes of the Post 96 ROP plan, the four states have maintained the same agreement they reached regarding the 15% ROP plan for the Philadelphia area, namely that each state would secure a 15% reduction, and now a 9% (3% per year for 1997, 1998 and 1999) reduction from its portion of the area's base year inventory. The Pennsylvania portion of the Philadelphia area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. In a May 31, 1995 letter from James Seif, Secretary of Pennsylvania's Department of Environmental Protection to EPA Region III, Pennsylvania committed to participating in the alternative attainment demonstration approach outlined in the March 2, 1995 memorandum.

On July 31, 1998, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to the Pennsylvania State Implementation Plan (SIP) consisting of the Post-96 plan for the Pennsylvania portion of the Philadelphia severe ozone nonattainment area. EPA received this revision on August 4, 1998. PADEP's July 31, 1998 submittal contains both the 1996 to 1999 ROP reduction, and the additional requirements described in the March 2, 1995 Mary Nichols memorandum. This submittal also includes the 1990 oxides of nitrogen (NO_X) base year inventory for the Philadelphia nonattainment area. In an October 2, 1998 letter, EPA determined that PADEP's submittal is administratively and technically complete. That completeness determination stopped the 18-month sanctions clock that EPA started on May 7, 1997. The sanctions clock had been started for Pennsylvania's failure to submit the enforceable commitments to adopt (1) additional measures needed for attainment and (2) the remainder of the rules to meet ROP requirements pending modeling results from the Ozone Transport Assessment Group (OTAG), as required by the March 2, 1995 Mary Nichols memorandum. PADEP's complete July 31, 1998 SIP submittal remedied that failure. Therefore, the sanctions clock was halted.

This rulemaking only addresses the portion of PADEP's July 31, 1998 submittal related to the 1996 to 1999 ROP plan, i.e. the Post-96 ROP plan. On June 17, 1999 EPA approved the 1990 NO_X base year inventory SIP submittal in a separate rulemaking action (64 FR 32424).

Section 182(c)(2)(C) of the Act allows states to substitute emission reductions of NO_X occurring after 1990 for VOC reductions in the Post-1996 rate of progress plans. VOC and NO_X reduction measures, whether mandatory under the Act or adopted at the state's discretion, must ensure "real, permanent, and enforceable" emissions reductions. Pennsylvania uses both VOC and NO_X emission control measures to meet the 9% reduction required for the Post 96 ROP plan.

II. Base Year Inventory

EPA approved the 1990 base year VOC emissions inventory for Pennsylvania's portion of the Philadelphia area on June 9, 1997 (62 FR 31343). As stated above, EPA approved the 1990 base year NO_X emissions inventory for Pennsylvania's portion of the Philadelphia area on June 17, 1999 (64 FR 32424).

III. Post-1996 ROP Plans

A. Calculation of Needed Reductions

The process for the calculation of the required reductions is set forth in EPA's guidance document entitled "Guidance on the Post-96 Rate of Progress Plans and the Attainment Demonstration," January 1994. The "target level" of emissions represents the maximum amount of emissions that a nonattainment area can have in the given target year, which in this case is 1999. Section 182(c)(2)(C) of the Act allows states to substitute NO_X emission reductions that occur after 1990 for VOC emissions in the Post-1996 Plan. EPA issued guidance on the criteria states can use to substitute NO_X for VOC reductions on December 15, 1993, "NO_X Substitution Guidance" and follow-up guidance on August 5, 1994, "Clarification of Policy for Nitrogen Oxides (NO_X) Substitution." The condition for meeting the ROP requirement is that the sum of all creditable VOC and NO_X emission reductions must equal 3 percent per year averaged over the three year period 1996 to 1999, for a total of 9 percent. If a state wishes to substitute NO_X for VOC emission reductions, then a target level of emissions demonstrating a representative combined 9 percent emission reduction in VOC and NO_X emissions must be developed for the year 1999. Furthermore, growth in both VOC and NO_X emissions must be offset by emission reductions. Therefore, separate emission target levels for 1999 must be calculated for both VOC and NO_X emissions.

To calculate the target level of emissions, the required emission reduction is subtracted from the previous milestone's target level. In this case, the 1999 ROP VOC target level is based on the 1996 VOC target level calculated for the 15% plan. EPA granted approval of Pennsylvania's 15% ROP plan for the Philadelphia area on June 9, 1997 (62 FR 31343). A technical correction to that document was published on January 6, 1998 (63 FR 415). In that plan, the PADEP calculated the 15% ROP target level to be 494.31 tons per day (TPD).

1999 Rate of Progress (ROP) VOC and NO_X Target Level Calculation

Pennsylvania has elected to substitute NO_X for VOC emission reductions in its Post-96 ROP plan for the Philadelphia area. In Pennsylvania's plan, growth in VOC emissions from 1996 to 1999 was offset by VOC emission reductions achieved by 1999. Similarly, growth in NO_X emissions from 1990 to 1999 was offset by NO_X emission reductions achieved in that same time period. Pennsylvania did not calculate separate VOC and NO_X target levels. However, EPA was able to calculate VOC and NO_X target levels using data in Pennsylvania's Post-96 ROP plan. These calculations are shown below.

VOC:	
1. 1990 ROP base year inventory = 1990 base year inventory minus biogenic emissions	732 − 116 = 616 TPD.
2. 1990 adjusted base year inventory = 1990 ROP base year inventory minus 1990 to 1999 Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) reductions.	616 − 39 = 576 TPD.
3. Required reductions = 0.5% × 1990 adjusted base year inventory	0% × 576 = 0 TPD.
4. 1999 ROP target level = 1996 target minus required reduction minus fleet turnover correction	494 − 0 − 6 = 488 TPD.
5. Reductions needed for ROP and to offset growth (rounded to nearest ton) = 1999 uncontrolled emissions minus 1999 target.	625 − 488 = 137 TPD.
NO_X:	
1. 1990 ROP base year inventory (sum of all point, area, and mobile source emissions)	440 TPD.
2. 1990 adjusted base year inventory = 1990 ROP base year inventory minus 1990 to 1999 FMVCP/RVP reductions.	440 − 20 = 420 TPD.
3. Required reduction = 9% × 1990 adjusted base year inventory	9% × 420 = 38 TPD.
4. 1999 ROP target level = 1990 ROP base year inventory minus required reduction minus 1990 to 1999 FMVCP/RVP reductions.	440 − 38 − 20 = 382 TPD.
5. Reductions needed for ROP and to offset growth (rounded to nearest ton) = 1999 uncontrolled emissions minus 1999 target.	455 − 382 = 73 TPD.

B. Growth Projections (1990–1999)

States must include control measures in their Post-1996 ROP plans to offset the emissions growth projected to occur after 1996. Therefore, states must project their emission inventories to estimate emissions growth between 1996 and 1999. EPA's document entitled "Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration" provides guidance to states on how to calculate growth. The projected inventories must reflect expected growth in activity, as well as regulatory actions which will affect emission levels. EPA guidance provides that emission projections for point sources can be based on information obtained directly from facilities and/or permit applications. Area and mobile source emission projections may be developed from information from local planning agencies. In the absence of source-specific data, credible growth factors must be developed from accurate forecasts of economic variables and the activities associated with the variables. Economic variables that may be used as indicators of activity growth are: product output, value added, earnings, and employment. Population can also serve as a surrogate indicator. Economic data and models which provide acceptable growth factors for emission projections include the U.S. Department of Commerce Bureau of Economic Analysis (BEA) forecasts for states and metropolitan statistical areas; the Economic Growth Analysis System (E-GAS), which models economic growth and estimates corresponding increases in emissions-producing activity; and the Emissions Preprocessor System for urban airshed modeling, which produces spatially and temporally-resolved emission inventories for input into urban airshed models.

Growth Factor Methodology

PADEP's Post-96 ROP plan uses growth factors from the BEA projection factor software (BEAFAC) for point sources, most area sources, and non-road mobile emissions sources. PADEP's Post-96 ROP plan assumes linearity of the BEA data, and uses linear interpolation of BEA factors from the years 1988, 1995, and 2000 to generate estimates for 1990 and 1999. BEA data from 1973 and 1979 was excluded, since the economic changes in Pennsylvania in those years creates a nonlinearity in the interpolation. BEA data from 2010 and 2040 was excluded because of PADEP's lack of confidence in its accuracy.

Point Source Emissions Growth Calculation

PADEP summed the emissions for each 2-digit Standard Industrial Classification (SIC), which is industrial source category based, and applied the growth factor to the entire emissions attributable to that 2-digit SIC grouping. For its point source inventory, Pennsylvania matched BEA growth projections for 57 industrial categories to similar two-digit SIC codes used in the inventory. All of the BEA growth projections were increases except for small decreases in nine categories. These are: metal mining, coal mining, oil and gas extraction, tobacco products, apparel, leather and leather products, primary metal industries, electronic and other electrical equipment, and water transportation.

Area Source Growth Emissions Growth Calculation

With the exception of gasoline marketing, growth factors from the BEA's projection factor software, BEAFAC, were used for area sources. For the most part, employment and population factors were utilized. Gasoline marketing growth is determined by growth in vehicle miles traveled (VMT), and is calculated using MOBILE5.

Nonroad Engine Emissions Growth Calculation

Growth factors from the BEA were used for non-road mobile sources.

Section 6.5, Highway Vehicle Emissions Growth Calculation

Vehicle miles traveled (VMT) growth was projected by a travel-demand computer model for the Philadelphia area. The MOBILE5 model was run, and then meshed with the VMT data using Pennsylvania's Post Processor for Air Quality (PPAQ) to determine 1999 projected highway emissions. VMT data for 1990 and 1999 is summarized in the following table.

APPENDIX V.—VMT GROWTH, 1990–1999

County	1990 VMT (miles)	1999 VMT (miles)	Growth as % of 1990 VMT (percent)
Bucks	12,850,048	14,829,484	1.15
Chester	10,147,864	12,712,974	1.25
Delaware	8,279,044	10,201,547	1.23
Montgomery	16,839,969	19,653,334	1.17
Philadelphia	16,485,464	17,352,364	1.05
Total	64,602,389	74,749,703	1.16

Summary of Projected Emissions Growth, 1990–1999 in PADEP's Post-96 ROP Plan

The following tables summarize VOC and NO_x emissions growth, by source sector, from the PADEP's Post-96 ROP plan:

VOC EMISSIONS GROWTH FOR THE PHILADELPHIA AREA, 1990–1999

[1990 base year and 1999 projected uncontrolled emission inventories (tpd)]

	Point	Area	Highway	Nonroad	Total
1990 Emissions	152.75	194.35	187.89	80.56	615.55
Growth	9.75	8.51	−11.03	2.07	9.30
Growth as % of 1990 Emissions	6.4%	4.4%	−5.9%	2.6%	1.5%
1999 Emissions	162.50	202.86	176.86	82.63	624.85

NO_x Emissions Growth for the Philadelphia Area, 1990–1999

[1990 base year and 1999 projected uncontrolled emission inventories (tpd)]

	Point	Area	Highway	Nonroad	Total
1990 Emissions	161.90	47.12	158.32	72.20	439.54
Growth	15.59	−0.11	−1.94	2.17	15.71
Growth as % of 1990 Emissions	9.6%	−0.2%	−1.2%	3.0%	3.6%
1999 Emissions	177.49	47.01	156.38	74.37	455.25

EPA evaluation: The Commonwealth's growth projection methodologies are acceptable, as listed in EPA's inventory preparation guidance and guidance for growth factor estimation.

C. EPA's Evaluation of Control Measures

The purpose of the Post-1996 ROP plan is to demonstrate how the State has reduced emissions 3% per year between the years 1996 and 1999, for a total 9% reduction. In general, reductions toward ROP requirements are creditable provided the control measures occurred after 1990 and are real, permanent, quantifiable and federally enforceable. A short description of each of the control measures selected by Pennsylvania follows.

Reformulated Gasoline (RFG)

This is a federally implemented control measure. Section 211(k) of the CAA requires that, beginning January 1, 1995, only reformulated gasoline be sold or dispensed in ozone nonattainment areas classified as severe or worse. As a severe area, Philadelphia benefits from the emission reductions from this program. PADEP claims a VOC emission

reduction of 22.41 TPD and a NO_X reduction of 0.43 TPD from this measure.

Fully creditable reductions: 22.41 TPD VOC and 0.43 TPD NO_X.

Enhanced I/M

On 1/28/98, EPA granted conditional interim approval of Pennsylvania's enhanced I/M program. PADEP made submittals to satisfy all conditions of this rulemaking. On June 8, 1999, EPA lifted the interim nature of its conditional interim approval (64 FR 30399). On June 17, 1999 (64 FR 32411), EPA converted its conditional approval of Pennsylvania's enhanced I/M program to full approval. The emission reductions from the fully approved enhanced I/M are fully creditable.

Fully creditable reductions: 59.28 TPD VOC, and 32.29 TPD NO_X.

Federal Motor Vehicle Control Program (FMVCP) and Tier I Vehicle Emission Standard (Tier I)

This is a federally implemented control measure. The MOBILE5 model automatically applies FMVCP controls (unless that feature is disabled). PADEP claims a VOC emission reduction of 6.92 TPD and a NO_X reduction of 14.84 TPD from this measure.

Fully creditable reductions: 6.92 TPD VOC, and 14.84 TPD NO_X.

Stage II Vapor Recovery

EPA approved Pennsylvania's Stage II vapor recovery regulation on December 13, 1995 (60 FR 63938). The federally approved Stage II regulation requires the use of vapor recovery nozzles at gas stations through a phased compliance schedule but the last group of stations (pumping less than 100,000 gallons of gasoline per month) were required to comply with this requirement by no later than February 8, 1994 in all moderate and above ozone nonattainment areas. PADEP claimed a 17.71 TPD VOC emission reduction from the implementation of this regulation.

Fully creditable reductions: 17.71 TPD VOC.

OTC NO_X MOU (Phase II)

The 1990 Clean Air Act amendments created the northeast Ozone Transport Region (OTR) in recognition that ozone is a regional problem that requires a regional planning approach. The OTR includes the States of Maine, New Hampshire, Massachusetts, Vermont, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Washington DC, and portions of northern Virginia. The Ozone Transport Commission (OTC) is a planning body composed of representatives of each of the OTR states. On September 27 1994, the OTC initiated a major agreement to cut emissions of NO_X from power plants and other large stationary NO_X sources. The agreement put forth was a Memorandum of Understanding (MOU) that committed states in the OTR to reduce NO_X emissions in three phases. The first phase of NO_X reductions outlined in the MOU was NO_X RACT level of control. The second and third phases are more stringent than RACT. Pennsylvania was a signatory to the OTC NO_X MOU, and has adopted and implemented Phase II controls.

Pennsylvania adopted its OTC NO_X MOU rules, Title 25 Pennsylvania Code Chapters 121 and Chapter 123—Nitrogen Oxides Allowance Requirements, on September 16, 1997. The requirements became effective on November 1, 1997. PADEP submitted the rules to EPA as a SIP revision on December 29, 1997. On January 26, 1999, EPA proposed approval of PADEP's NO_X MOU rule (64 FR 3906). The emission reductions claimed by Pennsylvania for this control measure are not fully approvable as creditable toward ROP requirements until EPA takes final action to fully approve Pennsylvania's NO_X MOU regulation into the SIP. PADEP's claims a 27.37 TPD emission reduction from this measure.

Reductions: 27.37 TPD NO_X.

(not fully approvable as creditable until EPA fully approves PADEP's NO_X MOU rule)

RACT

PADEP claims a 10 TPD VOC emission reduction and a 6 TPD NO_X emission reduction from RACT controls. In severe ozone nonattainment areas, the Act requires RACT controls on all VOC sources for which EPA has issued a control techniques guideline (CTG). RACT controls are also required on all non-CTG sources of VOC and on NO_X sources with the potential to emit (PTE) 25 tons per year (TPY) or greater. In the Philadelphia area, by definition, VOC and NO_X sources with PTE 25 PTE or more are defined as "major sources." Compliance was required by May 31, 1995.

On February 4, 1994, PADEP submitted a revision to its SIP for the control of VOC and NO_X emissions from major sources (Pennsylvania Chapters 129.91 through 129.95). This submittal was amended with a revision on May 3, 1994 correcting and clarifying the presumptive NO_X RACT requirements under Chapter 129.93. The SIP revision consists of new regulations which require sources that have the PTE 25TPY or more of VOC (not already subject to RACT under a category specific SIP regulation developed pursuant to a CTG) or NO_X in the Philadelphia area to comply with RACT by May 31, 1995. While the new regulations contain specific provisions requiring major non-CTG VOC and major NO_X sources to implement RACT, the regulations do not contain specific emission limitations in the form of a specified overall percentage emission reduction requirement or other numerical emission standards. Instead, the regulations contain technology-based or operational "presumptive RACT emission limitations" for certain major NO_X sources. For other major NO_X sources, and all subject major non-CTG VOC sources, the submittal contains a "generic" RACT provision. A generic RACT regulation is one that does not impose specific up-front emission limitations but instead allows for future case-by-case determinations. This regulation allows PADEP to make case-by-case RACT determinations that are then submitted to EPA as revisions to the Pennsylvania SIP. PADEP takes credit for emission reductions from source-specific controls on a number of VOC and NO_X sources in the Philadelphia area.

The following table lists the specifc sources that PADEP takes credit for in the Post-96 ROP plan, and the emission reductions claimed for each source. Note that the NO_X sources listed are not covered by the OTC NO_X MOU.

EMISSION REDUCTIONS CLAIMED FOR VOC AND NO_X

Source	VOC Reductions Claimed (TPD)
Fasson—Division of Avery	6.54
PECO Energy—Cromby	0.03
ICI/NP	0.27
Norwood Industries	2.12

EMISSION REDUCTIONS CLAIMED FOR VOC AND NO_X—Continued

Source	VOC Reductions Claimed (TPD)
Philadelphia Baking	0.12
Nabisco	0.33
Continental Baking	0.41
Total VOC Reduction Claimed	9.82

Source	NO_X Reductions Claimed (TPD)
PECO Energy—Cromby	3.62
Transcontinental Gas Pipeline	0.01
Sun Refining & Marketing	1.99
Philadelphia Baking	0.01
Total NO_X Reduction Claimed	5.63

On February 23, 1998, EPA granted conditional limited approval to PADEP's generic VOC and NO_X RACT regulations. The conditions required to be met in order for EPA to convert its conditional limited approval to limited approval were that Pennsylvania submit all case-by-case RACTs to EPA as SIP revisions within one year of the effective date of EPA's final conditional approval (i.e. by April 22, 1999), and certify either (1) that there are no additional sources to which the RACT requirement is applicable, or (2) demonstrate that the emissions remaining from the sources subject to the RACT requirements are de minimis. On April 22, 1999, Pennsylvania submitted a demonstration to meet the conditions set forth in this notice. Once EPA approves all of PADEP's case-by-case RACT determinations as SIP revisions, EPA will convert its limited approval of Pennsylvania's generic RACT rule to a full approval.

The reductions from RACT are not fully approvable as creditable in the Post 96 ROP plan for the Philadelphia area until EPA approves as SIP revisions those specific case-by-case RACT determinations for which credit is claimed. While Pennsylvania has submitted all of the RACTs listed above, only one of these has been SIP approved. Because the RACT for ICI/NP is the only one approved into the SIP, it is the only source with a fully approvable creditable emission reduction, 0.27 TPY VOC. Emission reductions from the additional sources will become fully approvable as creditable when EPA approves the source-specific SIP revisions. Therefore, the remaining emission reductions that PADEP has claimed (9.82 minus the 0.27 from ICI/NP = 9.55 TPD VOC, and 5.63 TPD NO_X) are not fully approvable as creditable until EPA fully approves each source-specific SIP revision.

PADEP needs 3.42 TPD of the 6.54 TPD VOC emission reduction it claims from one source, Fasson (located in Bucks County) to meet the 1999 ROP target. The credits from the VOC and NO_X RACT sources in PADEP's plan would provide a buffer to ensure that the ROP target is met.

Fully creditable reductions: 0.27 TPD VOC

Additional reductions: 9.55 TPD VOC and 5.63 TPD NO_X

(Not fully approvable as creditable until EPA fully approves the case-by-case SIP revisions)

Autobody Refinishing Coatings

According to EPA's guidance and proposed national autobody refinishing rule, PADEP claimed a 37% reduction from this source category. PADEP used projected 1999 uncontrolled VOC emissions of 18.34 TPD to calculate a 6 TPD emission reduction.

This is a federally implemented control measure. EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," was published on September 11, 1998 (63 FR 48806). This rule will result in a 36% VOC reduction for areas such as Philadelphia that are currently unregulated for this source category.

EPA reviewed the area source emissions data and projections included in the plan, and determined that the 1999 projected uncontrolled VOC emissions for autobody refinish coatings is 17.176 TPD.

Fully creditable reductions: 36% × 17.176 = 6.18 TPD VOC

Consumer Products

PADEP claims a 20% reduction from this control measure, and states that the 1999 uncontrolled VOC emissions from this source category are 33 TPD. This is a federally implemented control measure. The final rule "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819), published on September 11, 1998, results in a 20% reduction. EPA reviewed the area source emissions data and projections that PADEP included in appendix IV, *Area Source Emissions Data* and concluded that PA used the overall consumer & commercial products emission factor, 6.3 pounds per capita annually, to calculate the 1999 projected emissions for this source category. EPA's consumer products rule only covers a subset of that source category, and the proper emission factor is 3.9 pounds per capita annually, as specified in the June 22, 1995 memorandum from John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, entitled "Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act." Therefore, PADEP overestimated the creditable emission reduction by a factor of 1.62 (6.3 ÷ 3.9 = 1.62).

The 1999 projected uncontrolled emission from the entire consumer products source category in the Philadelphia area is 33.205 TPD. Therefore, the 1999 uncontrolled emissions from the sources covered by the consumer products rule is 20.497 TPD (33.205 ÷ 1.62).

Fully creditable reductions: 20% × 20.497 = 4.10 TPD VOC

Architectural and Industrial Coatings

PADEP claims a 15% reduction from this measure, and states that the uncontrolled emissions from this category are approximately 40 TPD, and the resulting emission reduction is 7 TPD. This is a federally implemented control measure. EPA's final rule, "National Volatile Organic Compound

Emission Standards for Architectural Coatings," (63 FR 48848), published on September 11, 1998, results in a 20% reduction. EPA reviewed the area source emissions data and projections that PADEP included in appendix IV, *Area Source Emissions Data*, to determine the 1999 projected uncontrolled VOC emissions for architectural coatings. Uncontrolled emissions from architectural surface coatings, high performance industrial coatings, and other special purpose coatings total 36.325.

Fully creditable reductions: 20% × 36.325 = 7.27 TPD VOC

Treatment, Storage, and Disposal Facilities (TSDFs)

In the plan, PADEP states that the federally-implemented Phase II TSDF standards require 93% control of emissions from this source category. PADEP states that, using an 80% rule effectiveness factor, emission reductions from this control measure equal about 10 TPD. This is a federally implemented control measure. EPA reviewed the area source emissions data and projections that PADEP included in appendix IV, *Area Source Emissions Data*, to determine the 1999 projected uncontrolled VOC emissions for TSDFs to be 12.689 TPD.

EPA promulgated Phase I of the TSDF national rule on June 21, 1990 (55 FR 25454). In a May 6, 1993 policy memo, "Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures," from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch and Susan Wyatt, Chief, Chemicals and Petroleum Branch, to Air Branch Chiefs, Regions I–X, EPA specified that the maximum reduction limit that states could claim for Phase II of the national TSDF regulation is 93% of total TSDF emissions. The Phase II TSDF rule was published in the **Federal Register** on December 6, 1994 (59 FR 62896) and subsequently amended on February 9, 1996 (61 FR 4903) and November 25, 1996 (61 FR 59932). Final compliance with the Phase II requirements is required by no later than December 8, 1997. Using an 80% rule effectiveness factor, creditable emission reductions from this control measure equal 9.44 TPD.

Fully creditable reductions: 93% × 80% x 12.698 = 9.44 TPD VOC.

D. EPA Evaluation of Rate of Progress Plan

EPA's review of this Pennsylvania submittal indicates that the Commonwealth has adopted, submitted and implemented adequate measures to achieve the Act's required 9 percent reduction in ozone precursor emissions between 1996 and 1999 and offset VOC growth with VOC reductions in that same period. As shown in the table below, the emission reductions from the measures in PADEP's Post-96 plan will meet the 9% requirement. When all measures are fully SIP approved, they will result in fully creditable emission reductions of 9% for NO_X and 0% for VOC.

EMISSION REDUCTIONS IN THE PHILADELPHIA POST-96 ROP PLAN (TPD)

Control Measures	VOC		NO_X	
	Fully creditable	Not yet creditable*	Fully creditable	Not yet creditable*
RFG	22.41		0.43	
Enhanced I/M	59.28		32.29	
FMVCP/Tier 1	6.92		14.84	
Stage II	17.71			
NO_X MOU				27.37
RACT & Source-Specific VOC Controls	0.27	9.55		5.63
AIM	7.27			
Autobody Refinishing	6.18			
Consumer Products	4.10			
TSDF Controls	9.44			
Subtotals	133.58	9.55	47.56	33.00
Total Reductions	143.13		80.56	
Required Reductions	137		73	

*These emission reductions will not be fully approvable as creditable until EPA fully approves the related control measures into the Pennsylvania SIP.

EPA cannot propose full approval of the plan until all underlying measures from which emission reductions are credited are fully approved into Pennsylvania's SIP. Therefore, EPA cannot fully approve the Post 96 ROP plan until the OTC NO_X MOU rule and the source specific SIP revision for Fasson in Bucks County are fully approved. EPA is proposing limited approval of the Post-1996 ROP plan for the Pennsylvania portion of the Philadelphia area on the basis that it strengthens the SIP. The limited approval would remain until EPA fully approves the NO_X MOU rule, and the source-specific SIP revision for Fasson needed to meet the target.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing limited approval of the Post-96 ROP plan for the Pennsylvania portion of the Philadelphia severe ozone nonattainment area, submitted by the Commonwealth of Pennsylvania on July 31, 1998.

Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides

the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.* EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that this proposed approval action, proposing limited approval of Pennsylvania's July 31, 1998 Post-96 ROP plan for its portion of the Philadelphia severe ozone nonattainment area, does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: August 12, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–22047 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0032b; FRL–6410–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Colorado Springs Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of a Related Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the Colorado Springs carbon monoxide redesignation request, maintenance plan, and revisions to Colorado's Regulation No. 13 "Oxygenated Fuels Program". The redesignation request and maintenance plan were submitted by the Governor on August 19, 1998. The revisions to Regulation No. 13 were submitted by the Governor on October

1, 1998. In the Final Rules Section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revisions, involving the maintenance plan and the changes to Regulation No. 13, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revisions as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 24, 1999.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Telephone number (303) 312–6479.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules Section of this **Federal Register**.

Dated: July 21, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–21934 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6427–1]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization for the hazardous waste program revisions submitted by North Carolina. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before September 24, 1999.

ADDRESSES: Mail written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–3104; (404) 562–8440. You can examine copies of the materials submitted by North Carolina during normal business hours at the following locations: EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–3104; (404) 562–8190, and North Carolina Department of Environment and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 29201, (919) 733–2178.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–3104; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–21826 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6428–5]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" in this preamble) is proposing to grant final authorization to the State of Louisiana for its hazardous waste program revisions, specifically, revisions needed to meet Resource Conservation and Recovery Act (RCRA) Land Disposal Restrictions, which contains Federal rules promulgated between November 7, 1986 to June 30, 1996. In the "Rules and Regulations" section of this **Federal Register** (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 24, 1999.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444 ; or Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana, 70810, (504) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson at (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: June 15, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–22042 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6427–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Northwest Transformer (Mission/Pole Road) Site from the National Priorities List Update: request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Northwest Transformer (Mission/Pole Road) Site in Whatcom County, Washington, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before September 24, 1999.

ADDRESSES: Comments may be mailed to: Timothy H. Brincefield, Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop ECL–115, Seattle, WA 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for viewing at the NW Transformer (Mission/Pole Road). Site information repositories at the following locations:

Whatcom County Public Library, 5205 Northwest Road, Bellingham, Washington 98226–9092.

United States Environmental Protection Agency, Region 10, Office of Environmental Cleanup—Records Center, 1200 Sixth Avenue, Mail Stop ECL–076, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Timothy H. Brincefield, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop ECL–115, Seattle, Washington 98101, (206) 553–2100.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region 10 announces its intent to delete a site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments to this deletion. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. As described in § 300.425(e)(3)of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA plans to delete the Northwest Transformer (Mission/Pole Road) Site ("Site") located at the intersection of Mission and East Pole Roads in Whatcom County, Washington, from the NPL.

EPA will accept comments on the plan to delete this Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Northwest Transformer (Mission/Pole Road) Site and explains how the Site meets deletion criteria.

II. NPL Deletion Criteria

Section 300.425 (e) of the NCP provides that "releases" (sites) may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of the (Mission/Pole Road) Site, the Remedial Action for Soils achieved State and Federal cleanup levels, and remedial actions objectives and performance standards designed to allow for unrestricted use and unlimited exposure at this Site, however, because of concern about potential migration of PCBs in groundwater that might have been mobilized during the Remedial Action, EPA required at least one five-year review pursuant to Section 121 (c) of SARA. That review has been completed, no contaminants of concern have ever been detected in groundwater off Site or on the perimeter of the Site, and all groundwater wells on Site have met cleanup goals for at least two years of monitoring.

Due to the potential for the Site to be mined for gravel (similar to adjacent properties), and since small quantities of low level Polychlorinated Biphenyl (PCB) contamination is known to remain in soils (between 1 and 3 parts per million remain in a few places at depths below 15 feet), the periodic review also concluded that certain Institutional Controls established in the 1991 Consent Decree between the United States, the Site Owner and the former Owner/Operators, should be

maintained. EPA has confirmed that the required Institutional Controls are in place. EPA will conduct another periodic review within five years to ensure that the Institutional Controls remain in place and are functioning as designed.

All appropriate actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, have been implemented. No further response is appropriate. The Site requires no maintenance, however Institutional Controls have to be maintained.

If new information becomes available that indicates a need for further action, EPA may require additional remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) The March 31, 1994, Preliminary Close Out Report and the July 27, 1999, Final Close Out Report document the achievement of cleanup goals and protectiveness of the Site; (2) The Washington Department Of Ecology (Ecology) has concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) All relevant documents have been made available for public review in the Site information repositories.

Deletion of the Site from the NPL does not itself create, alter or revoke any individual rights or obligations. The NPL is designed primarily for information purposes to assist EPA management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision. The Agency will prepare a Responsiveness Summary if any significant public comments are received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA's Regional Office in Seattle, Washington.

IV. Basis for Intended Site Deletion

The following Site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

A. Site Background

The Northwest Transformer (Mission/Pole Road) Superfund Site was a former transformer manufacturing, service and reclamation facility located on a 1.6 acre property at the intersection of Mission and East Pole Roads, in Whatcom County, just South of Everson Washington.

B. History

The Site was placed on the United States Environmental Protection Agency (EPA) National Priorities List (NPL) in 1984 under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) based upon evidence of the release of PCBs to the environment. In May 1985, EPA initiated an Immediate Removal Action (IRM) at the Site, which included removal of PCB-contaminated soil, debris, and liquids, and installation of groundwater monitoring wells. A Remedial Investigation/Feasibility Study (RI/FS) characterized contamination remaining at the Site and recommended thermal destruction of PCBs in soils contaminated with greater than 10 milligrams per kilogram (mg/kg)/parts per million (ppm) PCBs (HDR 1988a; HDR 1988b). In September 1989, EPA issued a Record of Decision (ROD) for a Remedial Action (RA; EPA 1989). The selected remedy included excavation, consolidation, and treatment via in-situ vitrification (ISV) of approximately 1,200 cubic yards of soil contaminated with greater than 10 ppm (mg/kg) PCBs; placement of a two-foot thick clean soil cover; abandonment of an on-Site well; sampling of on-Site wood structures; and implementation of a groundwater monitoring program (GWMP).

Subsequent to the 1989 ROD, an ISV pilot test demonstrated that, although effective, the ISV technology would cost significantly more than originally anticipated. Furthermore, additional sampling indicated that the volume of soil contaminated by greater than 10 ppm PCBs was significantly less than originally estimated. Based upon these factors, and the lack of availability of a full-scale ISV unit, EPA issued a Proposed Plan to modify the Site remedy. In September 1991, EPA issued an Amended ROD, selecting a remedy which included off-Site incineration of soils contaminated with greater than 50 ppm PCBs, off-Site landfilling of soils contaminated with between 1 ppm and 50 ppm PCBs, demolition of the barn and off-Site disposal of barn debris, placement of a two-foot thick clean soil cover, and possible institutional controls (EPA 1991). Based upon the non-detection of PCBs in groundwater samples collected from both on-Site and off-Site wells immediately prior to the issuance of the Amended ROD, EPA determined that no remedial action for groundwater would be necessary, subject to completion of the GWMP and evaluation of its results.

The RA was completed in 1993–1994 as documented in the December 30, 1994 Remedial Action Completion report and July 27, 1999 Five Year Review and Final Close Out Reports. The Site soil RA activities, including remediation of the localized PCB "hot spot" discovered at depth in the former seepage pit area, were conducted in a manner that achieved the EPA and Washington State Department of Ecology (Ecology) performance standards for a non-conditional Site cleanup, using the 1 ppm PCB cleanup level for soil above the 15-ft compliance depth and the less than 10 ppm PCB cleanup level for soil below the 15-ft compliance depth.

Groundwater monitoring at the Site has been conducted both prior to and during RA activities (Phase 1), and following completion of RA activities (Phase 2). The GWMP included sampling from a total of 27 wells (10 onsite monitoring wells and 17 offsite groundwater supply wells in the vicinity of the Site). No PCBs were detected in any of the offsite groundwater supply wells or any of the 8 groundwater monitoring wells located along the perimeter of the Site. In sampling prior to 1997, PCBs were detected in one shallow on-Site monitoring well (well NWT–7S, located just north/downgradient of the former seepage pit area). PCBs concentrations in groundwater samples collected from well NWT–7S sometimes exceeded the maximum contaminant level (MCL) for PCBs in drinking water of 0.5 micrograms per liter (ug/L). The most recent groundwater sampling data (from the last two sampling events), however, indicates a lowering of the potential risk posed by the residual low-level PCBs remaining at depth near the former seepage pit area, including the attainment of two consecutive groundwater sampling results below the State cleanup level based on the practical quantitation limits (0.25 ug/L as specified in the ROD) and the 0.5 ug/L MCL for onsite wells as set forth by

the plan for the post-RA groundwater monitoring.

C. Characterization of Risk

Prior to cleanup, the environmental pathway of concern was potential direct contact with PCBs in soils. The estimated pre-remediation Site-specific potential cancer risk for soils ranged from 5 in 100,000 (5×10^{-5}) to 2 in 10,000 (2×10^{-4}).

The remedial action for soils was initiated in 1993 and completed in 1994 with removal and off-Site disposal of all contamination in excess of State and Federal standards and Site-specific cleanup goals. Current Site risk from exposure to soils is below 1×10^{-6}, and the surface and shallow soils on Site are safe for unlimited use and unrestricted exposure.

Due to the possibility of deep excavation on Site in the future, the Institutional Controls on soils established in the 1991 Consent Decree between the United States and the Site owners are being maintained with slight modifications. In the event of excavation of soils below 15 feet, some low levels of residual contamination could be encountered (some soils with 1–3 parts per million PCBs remain at depth). Prior to any excavation below 15 feet, Ecology must be notified and proper precautions must be taken to protect worker health and safety and to prevent spread of any residual contamination that could pose a risk to human health or the environment risk.

Though at the time of the ROD no groundwater contamination had been identified, further groundwater monitoring was required to determine if there was any risk from potential ingestion of contaminated groundwater in the event groundwater contamination migrated off Site to downgradient water supply wells, or in the event water supply wells were installed on Site in the area of the old seepage pit. No groundwater contamination has ever been detected in wells off Site or around the perimeter of the Site. During Remedial Design and for a time subsequent to the Remedial Action for soils, groundwater monitoring results from one well in the center of the Site showed evidence of contamination slightly in excess of the Federal MCL and State practical quantitation limit (PQL) for PCBs in groundwater. Analytical data from the last two rounds of monitoring have confirmed that even that one well is below the Federal MCL and State PQL such that no remedial action or further monitoring is necessary. The on-Site wells will be abandoned in accordance with State requirements. To ensure against future exposure to potential contamination, the groundwater Institutional Controls established in the 1991 Consent Decree calling for notification of EPA prior to use of groundwater from the Site are being maintained and augmented by a requirement to test the groundwater for PCBs and provide the results to EPA.

With the implementation and completion of all remedial activities, the Site poses no further threat to human health and the environment. There are no further operation and maintenance activities to be performed at the Site, however Institutional Controls must be maintained.

D. Public Participation

Community input has been sought by EPA Region 10 throughout the cleanup process at the Site. Information repositories were established at the Whatcom County Public Library (originally at the Branch on Kirsch Road in Everson, subsequently moved by the Library to their regional document center in Bellingham) and in the EPA Regional Office in Seattle. Fact sheets were distributed periodically before, during, and after cleanup. Proposed cleanup plans were issued in 1989 (for the original ROD) and 1991 (for the Amended ROD). The draft Five Year review was shared with the Everson City Council and Public Works Department in 1998 and the Final Five Year Review is being issued in August, 1999.

A copy of the Deletion Docket can be reviewed by the public at the Whatcom County Public Library, or the EPA Region 10 Superfund Records Center. The Deletion Docket includes this Notice, the ROD, Amended ROD, Remedial Action Completion Report, Five Year Review, and Final Site Close-Out Report. EPA Region 10 will also announce the availability of the Deletion Docket for public review in a local newspaper and informational fact sheet.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "responsible parties or other persons have implemented all appropriate response actions required." EPA, with the concurrence of Ecology, believes that this criterion for deletion has been met. Groundwater and soil data from the Site confirm that the ROD cleanup goals have been achieved. There is no significant threat to human health or the environment and, therefore, no further remedial action is necessary. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the docket at the information repositories.

Dated: August 18, 1999.

Charles Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–21938 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 64, No. 164
Wednesday, August 25, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMISSION ON ELECTRONIC COMMERCE

Meetings

The Advisory Commission on Electronic Commerce was established by Pub. L. 105–277 to conduct a thorough study of federal, state, local and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities. The Commission is to report its findings and recommendations to the Congress no later than April 21, 2000. Notice is hereby given, that the Advisory Commission on Electronic Commerce will hold a meeting by telephone conference call on Tuesday, September 7, 1999, beginning at 2 p.m. The meetings of the Commission shall be open to the public. The audio from this meeting will be broadcast live on the World Wide Web. Instructions for accessing this broadcast can be found at the Commission Web site: www.ecommercecommission.org. A verbatim transcript of this meeting will be available on the same Web site not later than Wednesday, September 8, 1999.

Oral comments from the public will be excluded at this meeting. Interested persons are invited to provide comments in writing to the Commission. Written comments should be provided in accordance with guidelines published in the **Federal Register** on August 13, 1999 (64 FR 44183).

Records shall be kept of all Commission proceedings and shall be available for public inspection given adequate notice at the Commission's offices at 3401 North Fairfax Dr., Arlington, Virginia 22201–4498.

A listing of the members of the commission and details concerning their appointment were published in the **Federal Register** on June 9, 1999, at 64 FR 30958.

Heather Rosenker,
Executive Director.
[FR Doc. 99–22158 Filed 8–24–99; 8:45 am]
BILLING CODE 6820–60–P

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting

Board of Directors Meeting

TIME: 12:00 noon–3:00 p.m.
PLACE: ADF Headquarters.
DATA: Tuesday, September 21, 1999.
STATUS: Open.

Agenda

12:00 noon p.m.—Chairman's Report
1:30 p.m.—President's Report; New Business
3:00 p.m.—Adjournment

If you have any questions or comments, please direct them to Dick Day, Coordinator, Office of Policy, Planning and Outreach, who can be reached at (202) 673–3916.

William R. Ford,
President.
[FR Doc. 99–22156 Filed 8–23–99; 12:29 pm]
BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request Form FNS–798 and FNS–798A, WIC Financial Management and Participation Report with Addendum

AGENCY: Food and Nutrition Service, USDA.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's (FNS) intention to request approval for revision of a currently approved collection, Form FNS–498, WIC Monthly Financial Management and Participation Report.

The revision will be named Form FNS–798 and FNS–798A, WIC Financial Management and Participation Report with Addendum, and will replace Form FNS–498, WIC Monthly Financial Management and Participation Report and Form FNS–227 and Form FNS–227A, WIC Program Annual Closeout Report with Addendum.

DATES: Comments on this notice must be received by October 25, 1999.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, US Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instructions should be directed to: Patricia N. Daniels, (703) 305–2749.

SUPPLEMENTARY INFORMATION:

Title: WIC Financial Management and Participation Report with Addendum.
OMB Number: 0584–0045.
Expiration Date: 10–31–00.
Type of Request: Revision of a Currently Approved Collection.
Abstract: Section 17(f)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(4)) provides that "State agencies shall submit monthly financial reports and participation data to the Secretary." (See also 7 CFR 246.25(b)(1).) The proposed WIC Financial Management and Participation Report (FNS–798) would replace the WIC Monthly Financial Management and Participation Report (FNS–498) as the form State agencies complete to comply with this requirement. The States and

FNS would continue to use the reported information for program monitoring, funds management, budget projections, monitoring caseload, policy development, and responding to requests from Congress and the interested public.

Additionally, nonentitlement programs such as the WIC Program are required to conduct an annual closeout and reconciliation of grants. Departmental regulations at 7 CFR 3016.23(b) require that "[a] grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269)." WIC Program regulations at 7 CFR 246.17(b)(2) instruct WIC State agencies to "submit to FNS, within 150 days after the end of the fiscal year, final fiscal year closeout reports." The WIC Program Annual Closeout Report (FNS–227) with addendum (FNS–227A) is currently substituted for the SF–269, because a closeout form which maintains the integrity of WIC's two grant components (food and nutrition services and administration) and captures State agencies' decisions to shift WIC grant funds between Federal fiscal years is needed. The final WIC Financial Management and Participation Report (FNS–798) submitted for the year with its addendum (FNS–798A) would replace the WIC Program Annual Closeout Report (FNS–227) with addendum (FNS–227A) as the substitute for the SF–269. The consolidated format is expected to reduce the reporting burden associated with the annual closeout and reconciliation of grants.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Directors or Administrators of WIC State agencies.

Estimated Number of Respondents: 88 respondents.

Estimated Number of Responses per Respondent: Seventeen.

Estimated Total Annual Burden on Respondents: 4637.6 hours.

Dated: August 12, 1999.

Samuel Chambers, Jr.

Administrator, Food and Nutrition Service.

[FR Doc. 99–21989 Filed 8–24–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Supplemental Form for Collecting Taxpayer Identifying Numbers; Notice

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the Agency's proposed information collection of taxpayer identifying numbers. The proposed collection is a new collection of information.

DATES: Written comments must be submitted on or before October 25, 1999.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Mark Porter, Grants Management Division, Food and Nutrition Service, US Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Mark Porter at (703) 305–2847.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Form for Collecting Taxpayer Identifying Numbers.

OMB Number: Not yet assigned.

Expiration Date: 3 years from date of approval.

Type of Request: New collection.

Abstract: Section 3100(y) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), codified at 31 U.S.C. 3325(d), requires Federal agencies to include the taxpayer identifying number (TIN) of all persons or organizations they pay whenever a request for payment is submitted to Federal payment officials. Departmental Regulation 2100–2 requires all individuals and entities doing business with USDA to furnish a TIN. The purpose of the Supplemental Form for Collecting Taxpayer Identifying Numbers is to comply with Federal law by enabling the Agency to legally obtain a TIN from all persons and organizations who are entered into a direct payment relationship with FNS.

Affected Public: Individuals and entities who enter into a direct payment agreement with FNS under any of the various nutrition and nutrition education programs administered by FNS.

Estimated Number of Respondents: 800.

Number of Responses per respondent: 1.

Estimated Total annual responses: 800.

Hours per response: 0.0833.

Total Annual Reporting Hours: 66.6.

Number of record keepers: 8.

Estimated Annual hours per record keeper: 1.0.

Total Annual record keeping hours: 8.

Total annual burden hours: 74.6 (annual reporting hours plus annual record keeping hours).

Dated: August 12, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–21990 Filed 8–24–99; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

Whiskey Campo Resource Management Project, Boise National Forest, Elmore County, ID

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The proposed action for the Whiskey Campo Resource Management Project has changed. (The original notice of intent appeared in the **Federal Register** on January 5, 1998, pp. 200–201.) The fish passage improvement activities in the original Whiskey Campo proposed action are being implemented under Trinity Fish Passage Restoration Project Decision Memo signed July 22, 1999. The Mountain Home Ranger District of the Boise

National Forest will prepare an environmental impact statement (EIS) for the remaining portions of the resource management project in the Whiskey Campo project area, located approximately 5 miles west of Featherville, Idaho, in the middle to upper elevation of the Trinity Creek watershed. The project area encompasses about 12,870 acres of National Forest System land. Approximately 5,500 acres of the project area are located within the Whiskey Jack Inventoried Roadless Area (RARE No. 02009), and about 900 acres of the project area are located within the Rainbow Inventoried Roadless Area (RARE No. 02008). Access is by Forest Development Road (FDR) 172. The project area is located about 130 road miles east of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

Proposed Action

The proposed action is nearly the same as that published in the **Federal Register** January 5, 1998. It does not contain the fish passage restoration activities, which are being implemented under the Trinity Fish Passage Restoration Project Decision Memo. The proposed action also has more specific activity-related numbers than the original.

Timber Stand Management Activities—Approximately 1,890 acres of forested land would be commercially thinned and underburned with low severity prescribed fire. Some salvage harvest of large diameter, beetle-infested Douglas-fir would occur in these stands. On approximately 4,580 acres of forested land, bark beetle infested and severely dwarf mistletoe infected trees would be salvage harvested.

Helicopter yarding would be done on approximately 5,910 acres. Skyline yarding would be done on approximately 180 acres. A combination of tractor and off-road jammer (excavator) yarding would be done on approximately 780 acres. Approximately 2 miles of road would be constructed to access timber stands proposed for treatment. The newly constructed roads would be closed to all motorized use and revegetated following the project. One small culvert on FDR 172N would be replaced. Three helicopter landings would be constructed and revegetated. Ten existing helicopter landings would be used and revegetated.

Aspen Stand Rejuvenation—On approximately 400 acres of aspen stands dispersed throughout the project area, prescribed fire and/or harvest of invading conifer trees would be used to rejuvenate decadent stands or maintain vigorous, young stands. These activities would promote regeneration of aspen suckers and saplings and prevent conversion to conifer stands.

Elk Habitat Improvement—Approximately 3.5 miles of road in the Spring Creek drainage would be decommissioned (closed and removed from the transportation system for future use). Approximately 5.4 miles of road in the Spring Creek drainage would be modified from seasoned to year-long closure. Such closures would bring the elk habitat effectiveness of the Spring Creek drainage into compliance with the Forest Plan.

Fish Habitat Improvements—Approximately 13.7 miles of FDR 172 would be graveled. Graveling of the road surface would help retain the fine sediment particles on the road surface.

Travel Safety Modifications to FDR 172—Approximately 25 "blind" curves and narrow road sections would be modified to improve sight distance and provide sufficient safe passing opportunities.

Preliminary Issues

Two preliminary issues have been identified.

Timber harvest would develop a portion of the Rainbow and Whiskey Jack Inventoried Roadless Areas (IRA's), changing the wilderness attributes on those portions. The developed portion would not be given future consideration for wilderness designation under current Forest Service guidelines.

Constructing roads in inventoried roadless areas is of great concern to some publics. This is based on landscape and/or watershed level concerns of an irreversible or irretrievable nature associated with wildlife refugia, watershed stability, recreational opportunity, and overall ecological concerns that are partially addressed by other issues and effects but not in total. These landscape and watershed level concerns are the impetus behind the Forest Service temporary suspension of roadbuilding in inventoried roadless areas.

Possible Alternatives to the Proposed Action

Three alternatives to the proposed action have been identified. One alternative is the no action alternatives. The issue regarding timber harvest developing inventoried roadless areas generated an alternative that includes the proposed action's activities except that no activities would occur in the inventoried roadless areas except for prescribed fire in the Whiskey Jack Inventoried Roadless Areas. The issue regarding road construction in inventoried roadless areas generated an alternative that includes the proposed action's activities except that no new road construction or ground-based logging systems would be used in the Whiskey Jack or Rainbow Inventoried Roadless Areas.

Decisions To Be Made

The Boise National Forest Supervisor will decide the following: (1) Whether to conduct timber management and harvest activities now or to defer them until a later time; (2) if now, which acres to treat and which logging systems to use; (3) what, if any, acres to treat with prescribed fire; (4) what, if any, road graveling to do; (5) what, if any, road obliteration and/or road closure to do; and (6) what, if any, road reconstruction or construction to do.

Schedule

Draft Environmental Impact Statement (DEIS), September 1999. Final, January 2000.

Public Involvement

Scoping was initiated in January 1998 with a Notice of Intent in the **Federal Register**, a legal notice in The Idaho Statesman, and a letter to individuals, groups, and agencies who have expressed an interest in this type of project. Comments were used to determine relevant issues and analysis needs. The same individuals, groups, and agencies were notified about the decision to revise the Whiskey Campo proposed action, and they received a copy of the Trinity Fish Passage Restoration Project Decision Memo.

Comments

Written comments concerning the revised project and analysis are encouraged and should be postmarked within 30 days following publication of this announcement in the **Federal Register**. Comments received in response to this notice will be released in their entirety if requested pursuant to the Freedom of Information Act. Mail comments to Jane Beaulieu, District Planner, Mountain Home Ranger District, 2180 American Legion Boulevard, Mountain Home, ID 83647. For further information, contact Frank Marsh, Project Leader, at 208–587–7961.

The comment period on the DEIS will be 45 days from the date the

Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS's must structure their participation in the environamental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received on the DEIS will be released in their entirety if requested pursuant to the Freedom of Information Act.

Responsible Official

David D. Rittenhouse, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: August 12, 1999.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 99–21675 Filed 8–24–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

State Road 40 Project, Ocala National Forest, Marion County, Florida

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service and the Florida Department of Transportation (Joint Lead Agencies) are issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project to improve State Road 40 in Marion County, Florida. The agencies invite written comments and suggestions from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

DATES: A draft EIS is expected to be completed in December, 2000. The final EIS is scheduled to be completed in December, 2001.

ADDRESSES: To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. You may request to be placed on the project mailing list or direct questions, comments and suggestions to Ms. Heather Bradshaw-Ells, Project Manager, Florida Department of Transportation, 719 S. Woodland Blvd. DeLand, Florida 32720, telephone (904) 943–5391.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Thorsen, District Ranger, Seminole Ranger District, Ocala National Forest, 40929–SR 19, Umatilla, Florida 32784, telephone (352) 669–3153; Mr. Larry Perry, Florida Department of Environmental Protection, District 3, Apopka, Florida 32714, telephone (407) 884–2000.

SUPPLEMENTARY INFORMATION: The proposed action is to improve State Road 40 from the end of the existing four lanes in Silver Springs, Marion County, Florida to County Road 314A in Marion County, Florida, a distance of 10 miles. Improvements to the corridor are considered necessary to provide for projected traffic demands. The route proposed by the Florida Department of Transportation crosses a portion of the Ocala National Forest in Marion County and involves a distance of 5.6 miles within National Forest Boundaries. The western leg segment (4.4 miles) is located adjacent to the boundaries of Silver River State Park which is managed by the Florida Department of Environmental Protection. The USDA Forest Service and Florida Department of Transportation will be joint lead agencies in preparing the EIS. The Florida Department of Environmental Protection and the United States Coast Guard will be cooperating agencies. The Forest Supervisor for the National Forest in Florida will decide whether or not to permit an additional easement across national forest lands for the portion of the project within national forest boundaries. The Florida Department of Transportation will decide whether or not to improve the highway and if so, the extent of the improvement.

Newsletter describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to organizations and citizens who express interest in this proposal. In addition, public meetings and workshops will be scheduled, and a web site established to provide the opportunity for public input throughout the process. Preliminary issues include the impacts of the project on wildlife, wetlands, vegetative communities, visual resources, public safety, and possible future development of related road projects. Possible other alternatives under consideration include: taking no action, widening to a four lane divided highway or alternative corridors.

The comment period on the draft EIS will be 45 days from the date the Environmental Protect Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts, *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and

respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 18, 1999.

Marsha Kearney,

Forest Supervisor, National Forests in Florida.

[FR Doc. 99–21995 Filed 8–24–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on September 15, 1999, at the Howard County Office of Human Rights, 6751 Columbia Gateway Drive, Columbia, Maryland 21046. The purpose of the meeting is: (1) activity planning for forum series project; (2) monitoring updates on employment and disability issues; (3) status update on "City Services, Public Safety, and the Justice System-Do Korean American Storeowners in Baltimore, Maryland, Get Equal Treatment?" and (4) briefing on civil rights developments in Howard County by invited speakers.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 17, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22018 Filed 8–24–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Amendment of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission on August 24, 1999, was erroneously reported. The day of the meeting is August 26, 1999, convening from 3:00 p.m. and adjourning at 5:00 p.m.

The second notice for the meeting was announced in the **Federal Register** on Wednesday, July 21, 1999, FR Doc. 99–18507, 64 FR, No. 139, p. 39114.

Persons desiring additional information should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414).

Dated at Washington, DC, August 19, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22017 Filed 8–20–99; 1:16 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Manufacturing Extension Partnership Information Reporting.

Agency Form Number: None.

OMB Approval Number: None.

Burden: 4,944 hours.

Average Hours Per Response: Ranges between .03 and 24 hours depending on the requirement. Most respondents will average 68 hours on an annual basis.

Needs and Uses: The Manufacturing Extension Partnership Program purpose is to strengthen the global competitiveness of U.S.-based manufacturing by providing information, decision support, and implementation assistance to smaller manufacturing firms in adopting new, more advanced manufacturing technologies, techniques, and business best practices. The purpose of this proposed comprehensive reporting system will be to obtain information to determine whether the investment in the Centers is providing efficient and effective transfer of technology to smaller manufacturers in the United States.

Affected Public: Not-for-profit institutions, federal government, state, local or tribal government.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482-3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: August 20, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–22037 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–816, A–533–817, A–560–805, A–475–826, A–588–847, A–580–836, C–427–817, C–533–818, C–560–806, C–475–827, C–580–837]

Postponement of Final Antidumping Duty Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and Korea; Postponement of Final Countervailing Duty Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, and Korea; and Amendment of the Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 26, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determinations in the countervailing duty investigations of certain cut-to-length carbon-quality steel plate products from France, India, Indonesia, Italy, and the Republic of Korea (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From France*, 64 FR 40430 (July 26, 1999), India (64 FR 40438), Indonesia (64 FR 40457), Italy (64 FR 40416), and the Republic of Korea (64 FR 40445)). These notices aligned the schedules for the final determinations with the companion antidumping investigations. On July 29, 1999, the Department published in the **Federal Register** its preliminary determinations in the antidumping duty (AD) investigations of certain cut-to-length carbon-quality steel plate products from France, India, Indonesia, Italy, Japan, and the Republic of Korea (see Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From France, 64 FR 41198 (July 29, 1999), India (64 FR 41202) Indonesia (64 FR 41206), Italy (64 FR 41213), Japan (64 FR 41218), and the Republic of Korea (64 FR 41224)). Respondents in each of the AD investigations requested that the Department postpone its final determinations by sixty days. In addition, the respondents in the AD investigations of France, Italy, and Korea alleged that the Department made ministerial errors in its preliminary determinations for those countries. Furthermore, the petitioners alleged that the Department made ministerial errors in its preliminary AD determination for Indonesia.

In response to the respondents' requests, the Department is postponing the final determinations in the above-referenced investigations. Furthermore, after reviewing the ministerial error allegations, the Department is amending its preliminary AD determination with respect to Indonesia only.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: The following individuals of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230: James Terpstra at (202) 482–3965 regarding cases A–427–816, A–533–817, and A–580–836; Wendy Frankel at (202) 482–5849 regarding cases A–475–826, and A–588–847; Irene Darzenta Tzafolias at (202) 482–0922 regarding case A–560–805; Roy Malmrose at (202) 482–5414 regarding case C–427–817; and Richard Herring at (202) 482–4149 regarding cases C–533–818, C–560–806, C–475–827, and C–580–837.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1999).

Scope of the Investigations

The products covered by the scope of these investigations are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000,

7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Postponement of the Final Determinations

In accordance with section 735(a)(2)(A) of the Act, during July and August, 1999, exporters accounting for a significant proportion of the exports of subject merchandise from each of the countries named in the above-referenced AD investigations requested that the Department postpone its final determinations until 135 days after publication of its preliminary determinations. These same exporters also requested that the Department extend provisional antidumping measures from a four-month period to not more than six months pursuant to section 733(d) of the Act. Accordingly, the Department has decided to extend the final determinations in the above-referenced AD investigations because for each investigation (1) the Department's preliminary determination was affirmative for at least one exporter requesting a postponement, (2) the exporters requesting the postponement account for a significant proportion of the exports of subject merchandise from their respective countries, and (3) no compelling reasons exist for the Department to deny the exporters' requests for a postponement. Therefore, the Department has decided to postpone the final determinations until not later than 135 days after publication of the preliminary determinations in the **Federal Register**. The postponed final determinations will be due on December 11, 1999. Suspension of liquidation will be extended accordingly.

In addition, because the countervailing duty investigations of Certain Cut-to-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy and Korea have been aligned with the antidumping duty investigations under section 705(a)(1) of the Act, the time limit for completion of the final determinations in the countervailing duty investigations will be the same date, December 11, 1999, as the final determinations of the concurrent antidumping investigations.

Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From Indonesia

On July 28, 1999, Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation, two of the petitioners, alleged that the Department made certain ministerial errors in calculating the cost of production used in the preliminary AD determination for the Indonesian respondent PT Gunawan Dianjaya Steel (Gunawan)/PT Jaya Pari Steel Corporation (Jaya Pari). None of the respondents in the AD investigation of Indonesia alleged any ministerial errors nor did they comment on petitioners' ministerial error allegation. The Department has reviewed its preliminary calculations for Gunawan/Jaya Pari and agrees that it made certain ministerial errors within the meaning of 19 CFR 351.224(f) (for further detail see the Memorandum Regarding Ministerial Error Allegations from The Team to Louis Apple, Director, Office II, AD/CVD Enforcement I, dated August 9, 1999). In addition, the Department finds these ministerial errors to be significant as defined by 19 CFR 351.224(g). A significant ministerial error is defined as a correction which, singly or in combination with other errors, (1) would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. Therefore, the Department is amending its preliminary AD determination with respect to Gunawan/Jaya Pari in accordance with 19 CFR 351.224(e). Because the Department based the weighted-average margin for all Indonesian manufactures/exporters of the merchandise under investigation, other than PT Krakatau Steel, on Gunawan/Jaya Pari's weighted-average margin, the Department is also amending the "all others" margin. As a result of the correction of these ministerial errors, the Department has determined that the following amended weighted-average dumping margins apply for Indonesia:

Manufacturer/Exporter	Amended weighted-average margin (percent)
Gunawan Dianjaya Steel/PT Jaya Pari Steel Corporation ..	43.59
All Others	43.59

ITC Notification

In accordance with section 733(f) of the Act, the Department has notified the ITC of the amended AD determination. If the final determinations are affirmative, the ITC will determine whether imports of the merchandise under investigation are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of the preliminary determinations or 45 days after the final determinations.

Public Comment

Interested parties may submit case briefs or other written comments for a particular investigation to the Assistant Secretary for Import Administration by no later than seven days after receipt of all verification reports issued in that investigation. Parties may submit rebuttal briefs, limited to issues raised in case briefs, within five days after the deadline for filing case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, the Department will hold a public hearing for each investigation, if requested, in order to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Any hearings will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The date, time, and room number for the hearings is to be determined. Parties should confirm by telephone the date, time, and room number for each hearing 48 hours before the hearing is to begin. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, no later than August 28, 1999. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c).

The Department is publishing this notice of postponement of the final determinations and amendment to the preliminary AD determination for Indonesia pursuant to section 735(a) of the Act and 19 CFR 351.210(g) and 19 CFR 351.224(e).

Dated: August 17, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22082 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–814, A–428–816, A–405–802, C–412–815, C–428–817]

Certain Cut-To-Length Carbon Steel Plate from Finland, Germany and the United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty and countervailing duty reviews, and revocation of orders in part.

SUMMARY: On May 12, 1999, the Department of Commerce (the Department) received a request on behalf of Bethlehem Steel Corporation and U.S. Steel Group—a unit of USX Corporation (Bethlehem & U.S. Steel), petitioners in these cases, for changed circumstances antidumping (AD) and countervailing duty (CVD) reviews and an intent to revoke in part the AD and CVD orders with respect to specific cut-to-length carbon steel plate from Germany and the United Kingdom and the AD order with respect to specific cut-to-length carbon steel plate from Finland. A telephone conversation on May 17, 1999, with counsel on behalf of all other petitioners (Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, AK Steel Corporation, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and WCI Steel Inc.) confirmed petitioners' lack of interest in the continuation of the AD and CVD orders with respect to the subject merchandise defined in the Scope of the Review section below (See Memorandum to the File). Accordingly, on July 7, 1999, the Department published a notice of initiation and preliminary results of changed circumstances reviews and intent to revoke these orders in part (64 FR 36666). We gave interested parties an opportunity to comment on the preliminary results of these changed circumstances reviews. No comments were received.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Decker (AD reviews on Finland and the United Kingdom), James Doyle or Becky Hagen (AD review on Germany), Robert Copyak (CVD reviews on Germany and the United Kingdom), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0196, (202) 482–0159, (202) 482–1102, or (202) 482-2209, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351.

Background

On August 17, 1993, the Department published the CVD orders on certain cut-to-length carbon steel plate from Germany and the United Kingdom (58 FR 43756 and 43748, respectively). On August 19, 1993, the Department published the AD orders on certain cut-to-length carbon steel plate from Finland, Germany and the United Kingdom (58 FR 44165, 44170, and 44168, respectively).

On May 12, 1999, Bethlehem and U.S. Steel, petitioners, requested partial revocation of the AD and CVD orders pursuant to section 751(d)(1) of the Act, with respect to specific carbon steel plate imports from the United Kingdom, Germany and Finland described below.

Accordingly, on July 7, 1999, the Department published a notice of initiation and preliminary results of changed circumstances reviews and intent to revoke these orders in part (64 FR 36666). We gave interested parties an opportunity to comment on the preliminary results of these changed circumstances reviews. No comments were received.

Scope of the Review

The products covered by these AD/CVD orders constitute one "class or kind" of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Merchandise covered by these changed circumstances reviews and partial revocations are shipments of certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2.

Final Results of Changed Circumstances AD and CVD Reviews, and Revocation of Orders in Part

In accordance with section 782(h) of the Act, the Department has determined that substantially all of the domestic producers have no further interest in maintaining these orders with respect to certain cut-to-length carbon steel plate subject to these requests. This lack of interest by domestic producers constitutes sufficient changed circumstances to warrant partial revocation of these orders. Therefore,

the Department is partially revoking these orders on cut-to-length carbon steel plate with respect to the plate described above, in accordance with sections 751(b) and 782(h) of the Act and 19 CFR 351.216(d). This partial revocation applies to all unliquidated entries of carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2 not covered by the final results of an administrative review.

The Department will instruct the U.S. Customs Service to proceed with liquidation, without regard to antidumping or countervailing duties, of all unliquidated entries of cut-to-length carbon steel plate subject to these requests, as described above, in accordance with section 778 of the Act.

These changed circumstances administrative reviews, partial revocations of the antidumping duty and countervailing duty orders and notice are in accordance with sections 751(b) and 782(h) of the Act and sections 351.216, 351.221(c)(3) and 351.222(g)(1)(i) of the Department's regulations.

Dated: August 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–22086 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part.

SUMMARY: In response to a request by the respondent, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on brass sheet and strip (BSS) from Canada. The review covers one manufacturer/exporter of this merchandise to the United States, Wolverine Tube (Canada), Inc. (Wolverine). The period covered is January 1, 1997 through December 31, 1997.

Upon consideration of the data on the record of this review, and of the case briefs and rebuttal briefs submitted by Petitioners' (Hussey Copper, Ltd.; The Miller Company; Olin Corporation; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; International Union, Allied Industrial Workers of America (AFL-CIO); Mechanics Educational Society of America, and United Steelworkers of America (AFL-CIO)) and by Wolverine, we have determined that a dumping margin exists. For the reasons discussed below, we are not revoking the order with respect to BSS from Canada manufactured by Wolverine.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or James Terpstra, Office of Antidumping/Countervailing Duty Enforcement, Office Four, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0651 or 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (1998).

Background

The Department published an antidumping duty order on BSS from Canada on January 12, 1987 (52 FR 1217). On February 8, 1999, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on BSS from Canada (64 FR 6039) (preliminary results).

Immediately prior to the preliminary results, Petitioners raised a number of issues with respect to Wolverine's questionnaire response (Petitioners' letter of January 12, 1999). Some of these issues we were able to consider for purposes of the preliminary results (*see* 64 FR at 6039–41/Further Developments Section). However, in order to address the remaining issues we needed to collect additional information from Wolverine in order to clarify the record. Thus, on February 23, 1999, we issued a supplemental questionnaire to which Wolverine responded on March 25, 1999. On April 12, 1999, Petitioners raised issues with this reported information which necessitated an additional supplemental questionnaire (April 18, 1999), to which Wolverine responded on April 30, 1999. On May 7, 1999, Petitioners raised issues with the information in the April 30, 1999, response. As a result, we sought further clarification in a supplemental questionnaire (May 14, 1999) to which Wolverine responded on June 3, 1999. We gave interested parties an opportunity to comment on our preliminary results. We received written comments from Petitioners and Wolverine. No hearing was requested.

Scope of Review

Imports covered by this review are shipments of BSS, other than leaded and tinned BSS. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.00. Although the HTS item numbers are provided for convenience and customs purposes, the written description of the scope of this order remains dispositive. In our final affirmative determination of circumvention of the antidumping duty order, covering the period September 1, 1990, through September 30, 1991, we determined that brass plate used in the production of BSS falls within the scope of the antidumping duty order on BSS from Canada. *See Brass Sheet and Strip from Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 33610 (June 18, 1993).

Period of Review

The review period (POR) is January 1, 1997 through December 31, 1997. The review involves one manufacturer/exporter, Wolverine.

Normal Value Comparisons

To determine whether sales of subject merchandise from Canada to the United States were made at less than normal value, we compared the Export Price (EP) to the Normal Value (NV), as described in the "Export Price" and "Normal Value" sections of the preliminary results of review notice (*see* preliminary results, 64 FR at 6039). Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Review" section of this notice, above, that were sold in the ordinary course of trade, for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire.

Revocation in Part

Under the Department's regulations, the Department may revoke an order in part if the Secretary concludes that: (1) "one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years"; (2) "[i]t is not likely that those persons will in the future sell the subject merchandise at less than normal value..."; and (3) "the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value." *See* 19 CFR 351.222(b)(2).

Upon review of the three criteria described above, and of the case briefs and rebuttal briefs, and on the basis of all of the evidence on the record, we determine for the final results of this review that the Department's requirements for revocation have not been met.

The Department found that Wolverine's sales reviewed during the eighth (1994) and ninth (1995) administrative reviews under this order were made at not less than NV. However, in the tenth (1996) and in this current eleventh review, we determined that Wolverine's sales were made at less than NV. Therefore, we are not revoking the antidumping duty order with respect Wolverine. *See Comment 1.*

Changes Since the Preliminary Results

Since the preliminary results we have made the following changes in our calculations. We recalculated Wolverine's reported warranty costs on a customer-specific basis (*see Comment 3*). We added home market indirect selling expenses to the COP calculation (*see Comment 7*). We included in the margin calculation a sale made in 1996 but entered in 1998 (*see Comment 8*). We used temper as a matching criterion, as in previous reviews of this product (see *Comment 9*). *See also Analysis Memo* dated August 9, 1999, on file in the Central Records Unit (CRU), located in Room B–099 of the main Commerce Department Building.

In addition, Wolverine, in response to post-preliminary supplemental questionnaires, presented several revisions to its reported information. We have accepted and used the following revisions: 1) recalculated general and administrative (G&A) expenses which accounted for certain one-time personnel related expenses (*see Comment 6*); 2) revised allocation of foreign exchange gains and losses to attribute the proper amounts to the reported cost information (*see Analysis Memo*); 3) recalculated freight expenses (*see Analysis Memo*); 4) recalculated packing expenses (*see Analysis Memo*); 5) revised interest expense which accounts for certain one-time debt-refinancing arrangements (*see Comment 10*); and 6) recalculated credit expenses (*see Analysis Memo*).

Analysis of Comments Received

Comment 1

Wolverine claims that the Department should revoke Wolverine from the antidumping order for the following reasons: 1) the Department found zero or *de minimis* dumping margins in the final results of the administrative reviews of subject merchandise entered during calender years 1994 and 1995, 2) Wolverine timely requested revocation from the order during the administrative review covering entries during calender year 1996, complied with all other prerequisites for requesting revocation, and submitted evidence demonstrating that it was unlikely that the Company would resume dumping if the antidumping order were revoked, 3) the Department's position in litigation with respect to the 1996 review shows that Wolverine has *de facto* achieved *de minimis* or zero dumping margins in the final results of three successive reviews, 4) the Department has issued preliminary results in the 1997 review indicating *de minimis* margins for that review period, and 5) the information regarding likelihood of resumption of dumping submitted in the 1996 review, and used as the basis for its preliminary decision in the instant review remains valid.

Petitioners state that Wolverine's request for revocation should be denied for the following reasons: 1) regardless of the Department's position before the NAFTA Panel with respect to the 1996 review, the margin found in that review remains in effect, 2) correcting the errors in Wolverine's sales and cost database will result in dumping margins above *de minimis* in this review, and 3) dumping is likely to recur in the future.

Department Position

We agree with Petitioners that Wolverine has not met the requirements for revocation in this review. Because the litigation in the 1996 review is not yet complete, the margin found in that review remains in effect. In addition, we have determined that Wolverine was dumping at an above *de minimis* rate during the 1997 POR. Because Wolverine does not meet the requirements of 19 CFR 351.222(b)(2)(i), Wolverine is not entitled to revocation in this review.

Comment 2

Petitioners claim that Wolverine incorrectly reported the width for one of Wolverine's U.S. sales. Petitioners request that the Department correct this error in Wolverine's U.S. sales database before making its final margin analysis. Additionally, Petitioners contend that Wolverine also failed to provide cost data for the product (*i.e.*, control number) sold pursuant to this invoice in its constructed value database.

Department Position

We agree with Petitioners that the width reported for this sale was inaccurate, and have adjusted our calculation accordingly. However, we disagree that the reported cost information is wrong and must be rejected. Wolverine reported the cost for producing the merchandise subject to this sale. That fact that the product code reported on the sales list for this merchandise was incorrect with respect to the width variable does not mean the reported cost for this merchandise is also incorrect. Accordingly, we accepted the reported cost. (*See also Analysis Memo.*)

Comment 3

Petitioners claim that Wolverine's reported U.S. warranty expense is understated and must be corrected to include all relevant costs. Petitioners state that warranty expenses should be

recalculated to include complete delivery costs for the returned goods. According to Petitioners, the Department's supplemental questionnaire directed Wolverine to include in its warranty expense value freight costs and the cost of manufacture associated with restoring merchandise returned under warranty. Petitioners claim that the reported warranty expenses should include the delivery cost of the damaged merchandise, as well as the return freight costs for this merchandise. Petitioners also argue that the fabrication portion of the reported warranty expense is understated because it only includes variable manufacturing costs and excludes fixed manufacturing costs. In addition, Petitioners argue that the Department erred by treating the reported direct warranty expenses as being in Canadian dollars, rather than in U.S. dollars. Finally, Petitioners generally contest the accuracy of the fabrication portion of the reported warranty expenses.

Wolverine asserts that the Department should accept its warranty cost data as submitted, because these costs are accurate and include all appropriate expenses. Specifically, Wolverine states, the freight cost for returned goods, plus the cost of fabricating returned material, is included in its market-specific warranty expense, and fixed manufacturing costs are properly excluded. Moreover, these costs were reported in Canadian dollars, the currency in which the expenses were incurred. According to Wolverine, Petitioners' criticisms regarding the justifications for Wolverine's warranty expense are unfounded. Wolverine rebuts Petitioners' assertion that warranty expenses should be increased by an amount for fixed overhead, arguing that the Department excludes such costs from its "DIFMER" analysis and should exclude them from warranty costs as well. Wolverine also argues that Petitioners' arguments with respect to the factual accuracy of the fabrication portion of its warranty expenses were raised too late in the proceeding and should not be considered.

Department Position

We agree with Petitioners that an adjustment to the margin calculation is needed to properly deal with the cost of re-working the defective merchandise; however, as explained below, this is not an adjustment to warranty costs, for which the fabrication element of warranty expense is already correctly reported. We also agree with Wolverine that the total amount of warranty expense, which includes the freight cost associated with returning defective merchandise and the manufacturing costs associated with re-working such merchandise to make it re-saleable, was accurately reported inclusive of all appropriate costs and expenses, and was reported in Canadian dollars.

We disagree with petitioners' claim that the overall warranty cost is understated because it does not include the cost of the outbound freight to the customer. This expense was properly excluded from the warranty expense. The outbound cost of freight on the transaction associated with the warranty claim was incurred by Wolverine as a freight cost outside of any warranty context, and therefore should continue to be treated as freight cost, not a warranty cost, for that sale. The reference to "freight cost" in the supplemental questionnaire was to the freight costs incurred as a direct result of the product defect associated with the warranty. Since in this case the re-worked brass was not returned after re-working to the customer filing the warranty claim, the only "warranty" freight was the cost of returning the defective product to Wolverine.

With respect to the fabrication element of warranty costs, in other words the cost of re-working the defective product so that it could be re-sold, we do not agree with Wolverine's claim that these expenses (which are now included in the reported warranty expense value) should be excluded from the reported warranty expenses. These expenses are clearly incurred as a direct result of the warranty claim, and thus should be treated as warranty expenses. We do, however, agree with Wolverine that double counting of these expenses must be avoided. Because the manufacturing costs associated with re-working defective merchandise reported for warranty expenses is part of the overall reported cost of production/constructed value (COP/CV) data for the POR, we need to make an adjustment to avoid double counting. Accordingly, we reduced the reported COP/CV to account for any portion of such costs associated with re-working defective merchandise returned under warranty (*see Analysis Memo*).

Regarding petitioners' claim that the fabrication element of Wolverine's overall warranty costs is understated because it includes only labor and variable overhead, with no fixed overhead component, we disagree. In calculating warranty expenses, the Department considers only variable expenses, because the fixed expenses associated with fabrication would, by definition, be incurred irrespective of the warranty claims at issue. In this respect, warranty expenses are similar to technical service expenses: any fixed portion of the cost at issue, *e.g.*, the salary of a technical service representative, would be considered an indirect selling expense. Similarly, any fixed overhead expenses which could be allocated to the cost of reworking the defective merchandise would also be considered indirect expenses. In addition, given the relatively minor amount of these costs, as compared to the overall production expenses, the portion of fixed overhead allocable to warranty expenses would be negligible and would have a *de minimis* effect on the calculations. Accordingly, we made no adjustment to direct warranty expenses for fixed overhead. *See Analysis Memo.*

With respect to the question of whether the warranty expenses reported by Wolverine were stated in U.S. dollar or Canadian dollar values, we agree with Wolverine that the reported values are Canadian dollar values reported in that currency. Wolverine originally indicated that it reported these expenses in U.S. dollars (August 14, 1998 questionnaire response, computer format sheet exhibit C1). Wolverine subsequently realized its oversight, however, and reported that these expenses were both incurred and reported in Canadian dollars (June 3, 1999 questionnaire response, at 2 and Exhibit 8 of Wolverine's December 28, 1998).

Finally, Petitioners attempt, in their case brief, to cast doubts on the overall accuracy of the fabrication cost element of Wolverine's warranty cost data, suggesting that Wolverine has not provided enough support for the Department to be sure of the accuracy of these costs as reported. We agree with Wolverine that these allegations are late, lack substance, and are not supported by the record.

Comment 4

During this review, Wolverine allocated its POR warranty expenses on U.S. and Canadian sales, respectively, over total quantity shipped in each market. During this POR, Wolverine's total U.S. warranty expense arose from a claim associated with a single defective brass coil that was returned. Petitioners argue that, whenever possible, warranty expenses must be allocated on a model-specific basis, or at a minimum, on a customer-specific basis. Thus, Petitioners argue, because it is possible to associate this warranty expense with the single transaction at issue, and because the Department's practice is to seek to allocate direct expenses such as warranties at a transaction-specific or model-specific

level, the Department should allocate this entire warranty expense either to the transaction at issue, or at least to the customer at issue. Wolverine argues that its U.S. warranty expenses should be allocated over total U.S. sales of subject merchandise, as currently reported, because Wolverine sets its prices in consideration of its average likelihood of defects. This is particularly true, Wolverine asserts, because BSS is a mature commodity-like product which is not highly customized, such that the defect rate tends to be generally consistent, even though Wolverine cannot predict on which units individual defects will occur. Wolverine also argues that, if the Department were to reject the basis on which Wolverines has allocated warranty expenses incurred during the POR, it should use the historical 3-year average warranty expense it reported.

Department Position

We disagree with Wolverine that the warranty expense should be allocated over all U.S. sales of the subject merchandise. Once we ascertained the correct total warranty expense we determined that these expenses should be allocated on as a specific a basis as possible, which in this case, for the reasons given below, is on a customer-specific basis.

Where feasible, the Department normally considers actual or historical warranty data on a model-by-model basis. *See, e.g.,* questions B34 and C44 of the questionnaire sent to Wolverine on March 31, 1998. Because certain warranty expenses are direct selling expenses, the Department asks respondents to associate these expenses with the individual sales which gave rise to them, to the extent that the company's record-keeping system permits them to do so. In some instances, the company's record-keeping system does not track direct expenses such as warranties to individual sales; in such cases, the Department normally will accept an allocation of these expenses on as specific a basis as possible, including a customer-specific basis. In this case, Wolverine's records kept in the normal course of business allow it to track warranty expenses on a more specific basis. (*See Analysis Memo.*) In this review, Wolverine changed its practice and allocated warranty expenses over all U.S. sales of subject merchandise. (We also note that Wolverine made no mention of this change in practice in the narrative portion of its questionnaire response, and gave no reason for the change until petitioners challenged the allocation.)

Wolverine argues that, in negotiating sales prices (and including in those prices an element for possible warranty expense) a manufacturer takes into account the "average likelihood" of product defects. Thus, Wolverine argues, the "only logical basis" for allocating warranty expenses is the average warranty expense that it has reported. This would be a more convincing argument had Wolverine chosen to allocate its warranty expenses in this fashion earlier. Furthermore, Wolverine has not argued that it was unforeseen that its warranty expenses could be so concentrated. When a company produces large products, such as coils of brass, it is clear that a single damaged product can result in a significant warranty expense, and this fact would be taken into consideration in setting prices. Despite this fact, Wolverine's earlier warranty-reporting has been more specific.

Companies often track warranty expenses on a customer-specific basis. This is because such expenses frequently tend to be clearly identified with specific customers. It is the individual customer whose warranty claims must be addressed. Producers and sellers have a fundamental need to be familiar with and satisfy their customers' needs in order to obtain repeat business. As a result, companies usually need to keep accurate records to assure that customer complaints, including but not limited to warranty expense claims, are dealt with. This gives rise to the requirement for accurate, customer-specific, record keeping. In addition, warranty expenses may, in fact, vary by customer. This is based not only on the different mix of models sold to individual customers, but also on differences in product applications, delivery conditions (time, distance, and method), product tolerance requirements individual customers specify as acceptable, and inspection practices. Moreover, Wolverine changed its practice with regard to warranty allocation and failed to identify or justify this change. In light of the above factors we continued to allocate warranty expenses on a customer-specific basis as we did in earlier review segments of this proceeding. *See Analysis Memo.*

Finally, we have not followed Wolverine's suggestion that if we do not accept its reported allocation of POR data, we use the historical three year average warranty expense, because we have more accurate POR-based data available. Average historical data are most commonly used in situations in which POR-specific data are not available because the product is one for which warranty claims may only be filed some years after merchandise is sold or in which POR-specific data are for some reason aberrational. Wolverine has not alleged that the warranty claim at issue was aberrational.

Comment 5

Petitioners argue that Wolverine improperly allocated its U.S. freight costs and thus, that Wolverine's U.S. freight costs for a small number of sales for which transaction-specific costs are available should be recalculated on a transaction-specific basis. Petitioners assert that, rather than allocating its freight costs on the most specific basis possible, as required by the Department's regulations, Wolverine diluted the BSS freight costs incurred on subject merchandise by allocating its freight costs, including those incurred on a substantial volume of sales of non-subject merchandise, over all brass sales. The result, Petitioners claim, was a significant reduction in Wolverine's reported U.S. freight expense for subject merchandise.

Wolverine argues that the use of a transaction-specific method for the sales in question would be distortive and that Wolverine's freight costs reported for the POR are based on the same method that the company has used in the past, and that the Department has accepted in prior segments of this proceeding. Wolverine states that its reported cost of freight reflects the average POR freight cost incurred to ship all merchandise to the same customer at the same location. According to Wolverine, this average reflects the delivery terms it negotiates with each customer, which are based on Wolverine's assessment of the delivery costs it will incur on sales of all products to an individual customer. Moreover, Wolverine argues that its freight records are not organized to allow freight costs to be easily attributed to specific invoices.

Department Position

We disagree with Petitioners that the freight costs associated with the particular sales in question should be re-calculated on a transaction-specific basis. To avoid a "cherry-picking" approach to price adjustments, the Department generally prefers to use a transaction-specific expenses or a single allocation methodology to quantify a given expense within a POR. As a consequence, while transaction-specific data may be available for certain transactions, the Department will not use the transaction-specific expenses when only allocated expense data is available for other transactions. Although the Department seeks to

obtain transaction-specific freight costs, the accounting records of respondent companies are frequently not organized in a way that lends itself to such reporting as a general matter. *See, e.g., Brother Industries, Ltd.* v. *United States*, 540 F. Supp. 1341, 1363 (1982); *see also Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From [various countries]; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320, 33340 (June 18, 1998). As a result, allocations of freight costs are common. As noted in this review, and as verified in prior reviews, Wolverine's freight expenses records are not organized in a manner that allows freight costs to be attributed easily to individual transactions. For example, it is common for a given Wolverine freight bill to cover multiple invoices and both subject and non-subject merchandise. Therefore, the Department has in the past determined that it is reasonable for Wolverine to calculate the average freight costs to each customer, and then allocate this amount over all sales to that customer. That is what Wolverine did in this review. Moreover, Commerce also has verified in past reviews that no distortion was introduced by allocating costs to ship both subject and non-subject merchandise to the same customer, and there is no indication on the record of this review of a change in that situation.

Comment 6

Petitioners argue that the Department should correct Wolverine's G&A expense ratio: (1) based on the formula in the Department's questionnaire, and (2) to reflect an "even-handed and consistent treatment" for income and expenses. Petitioners assert that Wolverine improperly excluded certain personnel costs in its calculation of G&A expenses. According to Petitioners, the Department should calculate a revised G&A expense ratio for Wolverine based on the total G&A expenses reported by Wolverine at Attachment 12 of Wolverine's March 25, 1999 questionnaire response, and the total cost of sales shown in Wolverine Tube Inc."s 1997 financial statement.

Wolverine states that it reported G&A expense net of related income items generated at the manufacturing subsidiary, in compliance with the Department's questionnaire requirement. Wolverine contends that, in calculating the G&A ratios, it also added a proportionate amount of G&A expenses incurred at the corporate parent level that were not otherwise reflected in the subsidiary's expenses. According to Wolverine, the Department should use Wolverine's submitted G&A figures in its Final Results.

Department Position

We agree with Wolverine that its G&A expenses were appropriately reported. Contrary to Petitioners' assertion, Wolverine allocated an appropriate portion of its corporate parent's G&A to the production of subject merchandise. This allocation is typical of the kind we accept in antidumping cases where the corporate parent incurs certain G&A expenses on behalf of its subsidiary. *See, e.g., Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia: Final Result of Antidumping Review*, 59 FR 4023, 4027 (January 28, 1994). *See also Analysis Memo*. We note that, based on issues raised by Petitioners, we asked Wolverine to revise its reported G&A expenses to include a portion of certain one-time charges which had not originally been included in the reported costs. Wolverine complied with this request in its March 30, 1999 questionnaire response. We have used the G&A expenses revised in this manner for the final results of this review.

Comment 7

Petitioners claim that the Department should include home market indirect selling expenses in its cost test due to the fact that Wolverine failed to report indirect selling expenses in its sales database and the Department incorrectly excluded indirect selling expenses from its cost test.

Wolverine agrees that the Department should add indirect selling expenses to COP.

Department Position

We agree and have adjusted our calculations accordingly.

Comment 8

Wolverine claims that the Department erroneously excluded from the 1997 POR margin calculation one U.S. sale. This sale involved merchandise that was sold prior to, but entered during, the POR. According to Wolverine, the U.S. sale in question was confirmed in 1996 but the merchandise was shipped in 1997. Wolverine notes that under section 751(a)(2)(A) of the Act, the Department is required to determine the normal value and U.S. price of each entry of subject merchandise made during the POR.

Petitioners did not comment on this issue.

Department Position

We have included this sale in our analysis. The Department's practice with respect to sales prior to importation has been to examine the sales of merchandise which entered the United States during the POR.

Comment 9

Petitioners argue that the Department should continue to reject Wolverine's original and revised temper codes. Petitioners state that temper has not been viewed as an appropriate model match criterion in the BSS proceedings generally, because it is not one of the primary or essential characteristics of C.D.A. 200-series BSS, the subject merchandise.

Wolverine claims that the Department must reject Petitioners' newly submitted factual information with respect to the use of temper as a product matching criterion (*i.e.*, statements regarding whether or not temper is "generally identified in the industry" as representing "commercial reality"). Wolverine states that temper has been used by the Department as a matching criterion in the last 3 completed reviews; therefore, regardless of whether the Department accepts Petitioners' "new factual information," temper should continue to be used as a matching criterion. Finally, Wolverine notes that Petitioners have reviewed this methodology in three prior reviews and have not previously objected to the use of temper as a matching criterion in any of those segments of the proceedings.

Department Position

We agree with Wolverine that temper is an appropriate matching criterion. We did not use Wolverine's submitted temper codes in the preliminary determination because its temper coding categories also involved a different criterion "finish." In response to our supplemental questionnaire, however, Wolverine, has re-coded its products as to temper to resolve this problem. We have used temper as a matching criterion in previous reviews of this order. *See, e.g., Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Preliminary Review; Review of Notice of Intent To Revoke Order in Part*, 63 FR 6519, 6521 (February 9, 1998)((1996 review); *Brass Sheet and Strip from Canada; Results of Antidumping Duty Administrative Review*, 61 FR 1560, 1561 (January 22, 1996)(1993 review). We have found that temper is a measurable physical characteristic, which is recognized in the marketplace, and which results in cost and price differences. Moreover, we

disagree with Petitioners' claim that because temper was not used as a matching criterion in the investigation it cannot be a relevant criterion in this review. The Department may alter its approach over different segments of a proceeding if the facts so warrant. In fact, it is not uncommon for the Department to modify its approach through different segments of a proceeding as it learns more about the product, the industry, and the selling practices within that industry. Finally, we do not agree that Petitioners' assertions and argument with respect to the alleged "commercial reality" concerns as to temper codes rise to the level of "factual information." Thus, they need not be excluded as "new factual information."

Comment 10

Petitioners argue that the Department should revise Wolverine's interest expense ratio to include the costs that Wolverine incurred during the POR to refinance and restructure its debt.

Wolverine states that the Department does not require that all interest expenses incurred by a company in one year be included in COP in the same year for antidumping analysis purposes, and that the Department has allocated exchange gains and losses associated with long-term debt over the remaining term of that debt, and not to the year in which the exchange gain/loss occurred.

Department Position

We agree with Petitioner that Wolverine's interest expense ratio should take these costs into account; however, we also agree with Wolverine that the debt restructuring costs, which were originally excluded from the reported costs, should be amortized over five years, the term of the credit arrangement. Wolverine resubmitted its interest cost incorporating this change and we have accepted it. *See also Analysis Memo.*

Final Results of the Review

As a result of our comparison of EP to NV, we determine that a dumping margin of 0.71 percent exists for Wolverine for the period January 1, 1997 through December 31, 1997. We also determine not to revoke in part the antidumping duty order with respect to imports of subject merchandise from Wolverine.

Cash Deposit Instructions

The following deposit requirements will be effective upon publication this notice of final results of administrative review for all shipments of the subject merchandise from Canada that are entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Wolverine will be the rate stated above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (3) the cash deposit rate for all other manufacturers or exporters will continue to be rate, the "all others" rate established in the LTFV investigation, and (4) for any previously reviewed exporter, the cash deposit rate will be its company-specific rate established for the most recent period. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Assessment Instructions

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all entries subject to this review. For assessment purposes, we have calculated importer-specific *ad valorem* duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined entries during the POR to the total quantity of sales examined corresponding to such sales. The Department will issue appraisement instructions directly to the Customs Service.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–22087 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-On-Steel Cooking Ware From the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("Department") is extending by 120 days the time limit for the preliminary results of the antidumping duty administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China ("PRC") covering the period December 1, 1997, through November 30, 1998, because it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended ("the Act").

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Morris, at (202) 482–1775, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act, as amended, by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (April 1998).

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a

preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations provide that when it is not practicable to complete the review within the specified time period, the Department may extend this time period by 120 days. Because of the complexities in this administrative review, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. *See* Memorandum from Bernard T. Carreau to Robert S. LaRussa, Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Porcelain-On-Steel Cooking Ware from the People's Republic of China, on file in the Central Record Unit, Room B–099, Main Commerce Building.

Accordingly, the Department is extending the deadline for issuing the preliminary results of this review until no later than December 31, 1999. In accordance with section 751(a)(3)(A) of the Act, we plan to issue the final results of this administrative review within 120 days after publication of the preliminary results.

Dated: August 16, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for AD/CVD Enforcement Group II.

[FR Doc. 99–22085 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–826]

Antidumping Administrative Review of Silicomanganese from the People's Republic of China: Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on Silicomanganese from the People's Republic of China. The review covers two manufacturer/exporters of the subject merchandise to the United States for the period December 1, 1997, through November 30, 1998.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or Jim Terpstra, Group II, Office IV, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0065, or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the preliminary results of this review within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the preliminary results until November 1, 1999. *See* 19 CFR 351.213 (g)(2) and the Memorandum from Bernard T. Carreau to Robert S. LaRussa, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: August 16, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–22084 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India; Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of new shipper review of stainless steel bar from India.

SUMMARY: In response to requests from Jyoti Steel Industries, Parekh Bright Bars Pvt. Ltd., and Shah Alloys Ltd., the Department of Commerce is conducting a new shipper review of the antidumping duty order on stainless steel bar from India. This review covers these companies' sales of stainless steel bar to the United States during the period February 1, 1998 through July 31, 1998.

We have preliminarily determined that, during the period of review, Parekh Bright Bars Pvt. Ltd. has made sales of subject merchandise below normal value and that Jyoti Steel Industries and Shah Alloys Ltd. have not made sales of subject merchandise below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Hoffman, James Breeden, or Melani Miller, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4198, (202) 482–1174, or (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (April 1998).

Background

On August 18 and August 31, 1998, the Department received requests from Jyoti Steel Industries ("Jyoti"), Parekh Bright Bars Pvt. Ltd. ("Parekh"), and Shah Alloys Ltd. ("Shah") to conduct a new shipper review of the antidumping duty order on stainless steel bar from India. Our notice initiating the new shipper review of these companies was published in the **Federal Register**, on October 30, 1998 (63 FR 58367). The period covered by this review is February 1, 1998, through July 31, 1998.

Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened

and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Use of Facts Otherwise Available

Parekh failed to respond to the Department's supplemental questionnaire and request for cost information (*i.e.*, Section D of the original questionnaire). Section 776(a)(2)(A) of the Act provides for the use of facts available when an interested party withholds information that has been requested by the Department. As described in more detail below, Parekh has failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available.

In using the facts otherwise available, however, pursuant to section 782(e) of the Act, the Department must determine whether information Parekh already submitted for the record of this review may be used in calculating a dumping margin. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but which does not meet all the applicable requirements established by the Department if—

(1) The information is submitted by the deadline established for its submission,

(2) The information can be verified,

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and

(5) The information can be used without undue difficulties.

Parekh did respond to the Department's original questionnaire and a supplemental questionnaire. However, Parekh failed to respond to a second supplemental questionnaire requesting clarification of deficient information in Parekh's previous responses. Moreover, as explained in the "Normal Value" section of this notice below, the Department has preliminarily determined to base normal value on constructed value ("CV") for all three respondents. Parekh failed to provide requested cost information necessary for the calculation of CV. Therefore, we find the information already on the record so incomplete that it cannot serve as a reliable basis for calculating a dumping margin. Consequently, we are not using any of the information submitted by Parekh for our preliminary results and are relying instead on facts available.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party if it determines that party has failed to cooperate to the best of its ability. On May 18, 1999, the Department issued a second supplemental questionnaire to Parekh. The Department did not receive a response to this questionnaire, nor did it receive a request from Parekh for an extension of time to respond. The Department made several efforts to contact Parekh regarding the status of its questionnaire response, but was unable to reach any of Parekh's personnel. Consistent with section 782(d) of the Act, the Department sent a letter to Parekh on July 16, 1999, advising the company that its lack of cooperation may result in the use of facts otherwise available. Parekh did not respond to this letter. Additionally, in the Department's May 18, 1999, letter to Parekh, the Department informed Parekh that if it chose not to offer evidence demonstrating why a particular market situation does not exist in the home market, it should submit a response to section D of the original questionnaire (*i.e.*, cost information). Parekh did not submit any information concerning the particular market situation, nor did it submit cost information.

The Department finds that by not providing necessary information specifically requested by the Department and discontinuing its participation in this review, Parekh has failed to cooperate to the best of its ability. Therefore, in selecting facts available, the Department determines that an adverse inference is warranted. As adverse facts available, we have preliminarily assigned a margin of 21.02 percent to Parekh's sales of the subject merchandise.

This margin, calculated for sales by Mukand Limited during the investigation, represents the highest weighted-average margin determined for any firm during any segment of this proceeding. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action ("SAA") provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see*, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no

circumstances indicating that this margin is inappropriate as facts available. Therefore, we preliminarily find that the 21.02 percent rate is corroborated.

United States Price

In calculating the price to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and use of constructed export price was not otherwise indicated.

We calculated EP based on the CIF price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions, as appropriate, for foreign inland freight, international freight, marine insurance, and brokerage and handling.

Normal Value

Viability: In order to determine whether Shah, Jyoti, and Parekh made a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value ("NV"), we compared the respondents" volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. We found that each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Even though this result would normally indicate that NV should be based on home market sales, as explained below, information on the record indicates that a "particular market situation" exists in the home market that renders the otherwise viable home market an inappropriate basis for NV.

In a letter dated February 3, 1999, the petitioners stated that the dates of the home market sale reported by Parekh and Shah were outside the period of review. Lacking home market sales in the period of review, the petitioners argued that both Parekh's and Shah's home markets were not viable.

In considering this argument, the Department notes that section 773(a)(1)(A) of the Act states that NV shall be based upon the price at which the foreign like product is first sold in the usual commercial quantities and in the ordinary course of trade "at a time *reasonably corresponding* to the time of the sale used to determine the export price or constructed export price" (emphasis added). Neither the Department's regulations nor the SAA offer any further clarification of the time period the Department should examine in determining market viability.

However, the Department has developed a methodology for determining contemporaneity for purposes of comparing NV with export price or constructed export price. The Department's regulations at 19 CFR 351.414(e)(2) provide that if there are no sales of the foreign like product in the month of the U.S. sale under consideration, the Secretary will select as the contemporaneous month the most recent of the three months prior to the month of the U.S. sale, and if there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sale in which there was a sale of the foreign like product. This methodology commonly is referred to as the 90/60-day contemporaneity window.

Although both Shah and Parekh's home market sales were made outside the period of review, we have preliminarily determined that, since both respondents' home market sales were within the 90/60-day contemporaneity window they would be used for comparison purposes. Because the time of these home market sales "reasonably corresponds" to the time of the sales used to establish EP, we have examined whether these sales constitute a viable home market for the purpose of determining NV.

Particular Market Situation: On March 8, 1999, the petitioners alleged that Shah, Jyoti, and Parekh made home market sales identical to their U.S. sales, after making their U.S. sales, in order to artificially establish zero dumping margins. Consequently, the petitioners alleged that the home market constitutes a fictitious market within meaning of section 773(a)(2), and that the Department should not use the home market sales as the basis for normal value. In the alternative, the petitioners claimed that a particular market situation within the meaning of section 773(a)(1)(C)(iii) exists in the home market because all three respondents made a single sale in the home market that constituted five percent or more of sales to the U.S. market. The petitioners asserted that in light of this particular market situation, the Department was precluded from using respondents' home market sales for calculating normal value. *See* May 18, 1999, Memorandum to Laurie Parkhill, "Home Market Viability, Fictitious Market, and Particular Market Situation Allegations" ("May 18, 1999 Memo") and June 24, 1999, Memorandum to Richard Moreland, "Particular Market Situation" ("June 24, 1999 Memo") for a detailed discussion of these issues.

In considering the petitioners' fictitious market allegation, we have preliminarily determined that evidence on the record does not support a finding that Shah, Jyoti, or Parekh established a fictitious market. It is the Department's practice in proceedings involving fictitious market allegations to require that the petitioners provide some evidence on the record that establishes the occurrence of different movements in prices at which different forms of the foreign like product are sold before pursuing an allegation. *See, e.g., Tubeless Steel Disc Wheels from Brazil; Final Results of Antidumping Duty Administrative Review,* 56 FR 14085 (April 5, 1991) ("* * * before pursing a [fictitious market] allegation, the Department must have sufficient evidence that there have been different movements in the prices at which different forms of the subject merchandise have been sold in the home market."). The petitioners have not provided such evidence and, therefore, we have not pursued an inquiry into the petitioners' fictitious market allegations. *See* May 18, 1999 Memo.

With respect to the petitioners' allegation of a particular market situation, we preliminarily determine that a particular market situation does exist for Shah, Jyoti, and Parekh. According to section 773(a)(1) of the Act, the Department may decline to use home market sales for determining normal value where "the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price." The SAA further discusses particular market situations, stating that a particular market situation may exist where a single sale in the home market constitutes five percent of sales to the United States. SAA at 152.

In the instant review, we find that each respondent had a single sale in the home market which constituted more than five percent of the aggregate volume of its U.S. sales. In addition, we note that the subject merchandise is a commodity-type product that can easily be distinguished from a large capital good, such as a printing press, where one home market sale made during the period of review might be a normal situation. We further note that although we gave the respondents an opportunity to offer information demonstrating why a particular market situation does not exist in the home market, Jyoti and Shah (the two respondents who chose to

submit information)[1] failed to submit information demonstrating why these single, isolated sales in the home market were indicative of actual home market prices of the foreign like product. Accordingly, we preliminarily determine that the respondents' home markets should not be used for purposes of calculating normal value. Moreover, because none of the respondents have made sales to third countries during the POR, we determine that CV is the appropriate basis for normal value. *See* May 18, 1999 Memo and June 24, 1999 Memo for a more detailed analysis.

Constructed Value: In accordance with section 773(e)(1) of the Act, we calculated CV for Shah and Jyoti based on the sum of the respective respondent's cost of materials (net of import duty credits earned on its U.S. sale), labor, overhead, G&A, profit, and U.S. packing costs. (As discussed in the "Facts Available" section above, we could not calculate CV for Parekh because it failed to respond to our request for necessary cost information.) With respect to G&A, we used the amounts reported by Shah and Jyoti in their 1997–1998 audited financial statements, and, in accordance with our normal practice, adjusted these amounts to capture those expenses associated with the production of the subject merchandise.

With respect to amounts for profits, section 773(e)(2)(A) of the Act states that CV should include an amount "incurred and realized by the specific exporter or producer being examined in the investigation or review * * * for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country * * *" In this case, the actual amounts incurred and realized by Shah and Jyoti for profits, in connection with their sales of the foreign like product, are based on Shah and Jyoti's respective single home market sales. However, as discussed above, we have determined that these home market sales are not an appropriate basis for normal value because a particular market situation exists. Accordingly, these sales are not an appropriate basis for calculating CV profit. Therefore, as no other actual profit amounts realized by Shah and Jyoti in connection with sales of the foreign like product are available, we have used an alternative calculation method.

The decision to use an alternative method to determine profit and the selection of the appropriate method depends on the facts of each case. Therefore, the decision to use alternative CV profit data must be made on a case-by-case basis. Based on the facts of the present case, in accordance with section 773(e)(2)(B)(i) of the Act, we calculated the respondents' respective profit based on the respondents' sale of merchandise that is in the same general category of products as the subject merchandise. That is, we calculated profit based on the respondents' respective total sales of all merchandise produced, as reflected in the companies' 1997–1998 audited financial statements.

Preliminary Results of Review

As a result of our comparison of EP and NV, we preliminarily determine the following weighted-average dumping margins:

Manufacturer/Exporter	Period	Margin (percent)
Jyoti	2/1/98–7/31/98	0.00
Parekh	2/1/98–7/31/98	21.02
Shah	2/1/98–7/31/98	0.00

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 2 days after the deadline for filing rebuttal briefs unless the Secretary alters the date. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the deadline for filing case briefs. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in any such comments, within 90 days of issuing these preliminary results.

Upon completion of this new shipper review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made to the total entered value of the examined sales. In order to estimate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirement will be effective upon publication of the final results of this new shipper review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value ("LTFV") investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the "all others" rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

[1] Parekh did not submit any information concerning the particular market situation issue.

occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: August 18, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22083 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061799B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of pubiic meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in September, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between September 7 and September 29, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Danvers, MA and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION: Meeting Dates and Agendas

Tuesday, September 7, 1999, at 9:30 a.m.—Habitat Committee and Advisors Meeting.

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: 978–777–2500.

The committee and advisors will discuss proposed Mid-Atlantic Fishery Management Council Tilefish Fishery Management Plan (FMP) research criteria and objectives for Great South Channel area reserve; review the status of the draft inshore Gulf of Maine habitat area of particular concern and Long Island Sound essential fish habitat framework adjustment.

Wednesday, September 8, 1999, 10:00 a.m.—Whiting Committee meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: 978–777–2500.

The Committee will develop a framework adjustment to the Northeast Multispecies FMP that may include options for a whiting mesh size/possession limit category telephone call-in enrollment system as well as options for allowing the use of net strengtheners with 2.5–inch mesh. The Committee also will begin to review and discuss possible issues to be addressed in an upcoming amendment to the Northeast Multispecies FMP, which would remove whiting, red hake, and offshore hake from the Multispecies FMP and establish a separate FMP for these small mesh species.

Thursday, September 9, 1999, 9:30 a.m.—Groundfish Committee and Groundfish Advisory Panel Joint Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The committee and panel will review and finalize alternatives, and recommend a preferred alternative for a framework adjustment to the Northeast Multispecies FMP to implement mid-season adjustments to the management program for the Gulf of Maine cod fishery that could also carry forward to the 2000–2001 fishing year. The framework action will also modify the Georges Bank cod trip limit adjustment mechanism. The Council held the initial meeting for this framework adjustment on August 10–11, 1999, and identified options for consideration. It will hold the final meeting, to select measures for submission to the Secretary of Commerce, on September 21 –23, 1999.

Thursday, September 9, 1999, 10:00 a.m. — Scallop Advisory Panel Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: 978–777–2500.

The advisory panel will consider management adjustments for the 2000 fishing year, beginning March 1, 2000, based on biological, economic, and other information in the Stock Assessment and Fishery Evaluation (SAFE) report. Adjustments are needed to achieve the FMP objectives including preventing overfishing, rebuilding stock biomass, and producing optimum yield.

Friday, September 10, 1999, 9:30 a.m. — Scallop Committee Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: 978–777–2500.

The Scallop Plan Development Team will present the annual monitoring SAFE report and from this information and advisor recommendations, the committee will develop management alternatives for consideration at the first framework meeting, scheduled for September 21–23, 1999. Adjustments are needed to achieve the FMP objectives including preventing overfishing, rebuilding stock biomass, and producing optimum yield.

Thursday, September 16 and Friday, September 17, 1999, at 8:00 a.m. — Scientific and Statistical Committee Meeting

Location: New England Fishery Management Council Office, 5 Broadway, Saugus, MA 01906; telephone: 781–231–0422.

The Scientific and Statistical Committee will review the 1999 SAFE Report for Atlantic Sea Scallops, including the Scallop Plan Development Team recommendations for the annual adjustment to the Atlantic Sea Scallop FMP. The Committee will report its findings to the Council at the September 21–23, 1999 Council meeting in New Bedford, MA.

Tuesday and Wednesday, September 28–29, 1999, 9:30 a.m.–Scallop Committee Meeting

Location: Radisson Hotel, 2081 Post Road, Warwick, RI 02886; telephone: 401–739–3000.

Following an initial framework meeting where the Council will identify management alternatives for framework action, the committee will define and specify these alternatives for the Final Framework 12 document. After analysis by the plan development team, the alternatives will be considered for approval at a final framework meeting, scheduled on November 16–18, 1999.

Although other issues not contained in this notice may be discussed at these meetings, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during these meetings. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 19, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22050 Filed 8–20–99; 3:19 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081799C]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet September 13–17, 1999. The Council meeting will begin on Monday, September 13, at 9 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 8:30 a.m. on Thursday, September 16 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Doubletree Hotel - Columbia River, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order
1. Opening Remarks, Introductions, Roll Call
2. Approve Agenda
3. Approve April and June Meeting Minutes

B. Strategic Planning for the Groundfish Fishery

C. Coastal Pelagic Species Management
1. Status Report on Implementation of Limited Entry
2. Plan Amendment
3. Annual Management Cycle

D. Pacific Halibut Management
1. Status of 1999 Fisheries
2. Status of Bycatch Estimate and Testing of Bycatch Reduction Devices
3. Proposed Changes to the Catch Sharing Plan and Regulations

E. Habitat Issues

F. Salmon Management
1. Sequence of Events and Status of Fisheries
2. State Reports on Selective Fisheries
3. Status of Plan Amendment 14
4. Test Fishery Protocol

G. Groundfish Management
1. Staff Overview of Groundfish Agenda, Including Priorities and Schedules
2. Status of Federal Regulations, NMFS Activities and Applications for Exempted Fishing Permits
3. Fishery Management Plan Amendment for Stock Rebuilding and Specific Rebuilding Programs for Lingcod, Bocaccio, and Pacific Ocean Perch
4. Preliminary Harvest Levels and Other Specifications for 2000
5. Status Reports
6. Measures Required by the American Fisheries Act
7. Plan Amendment to Address Bycatch
8. Observer Program
9. Proposed Management Measures for 2000
10. Status of Fisheries and Inseason Adjustments
11. Rockfish Allocation
12. Groundfish Priorities and Schedules

H. Marine Reserves - Council Direction to Committee

I. Highly Migratory Species Management
1. Report of the Multilateral High-Level Conference
2. Coordination with Western Pacific and North Pacific Councils
3. Review of Issue Paper and Schedule of Scoping Sessions

J. Administrative and Other Matters
1. Report of the Budget Committee
2. Status of Legislation
3. Report of the Council Chairs' Meeting
4. Appointments to Advisory Groups
5. Draft Agenda for November 1999
6. Election of Officers

Advisory Meetings

The Groundfish Management Team (GMT) will convene on Sunday, September 12, at 11 a.m. and on Monday, September 13, at 8 a.m. to address groundfish issues on the Council agenda. They will continue to meet as necessary through September 17 to address groundfish issues on the Council agenda.

The Scientific and Statistical Committee will convene on Monday, September 13, at 8 a.m., on Tuesday, September 14, at 8 a.m., and on Wednesday, September 15 at 8 a.m. to address scientific issues on the Council agenda.

The Habitat Steering Group (HSG) meets at 9 a.m. on Monday, September 13, to address issues and actions affecting habitat of fish species managed by the Council.

The Groundfish Advisory Subpanel (GAP) will convene on Monday, September 13, at 10 a.m. and will convene at 8 a.m. Tuesday through Thursday to address groundfish management items on the Council.

The GMT/GAP/HSG will meet Monday 3:30 p.m. to 5:30 p.m. to develop a workplan to address fishing gear impacts and essential fish habitat.

The Ad-Hoc Salmon Mortality Committee will meet on Monday, September 13, at 7 a.m. to discuss estimation of hook-and-release mortality for ocean salmon fisheries.

The Ad-Hoc Marine Reserve Committee will meet Tuesday, 6:30 p.m. to continue development of recommendations to the Council.

The Budget Committee meets on Wednesday, September 15 after the Council recesses for that day to review the status of the 1999 Council budget and recommend a budget for 2000.

The Enforcement Consultants meet at 5:30 p.m. on Tuesday, September 14 to address enforcement issues relating to Council agenda items.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John S. Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 19, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22078 Filed 8–24–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Petition of the Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange for Exemption Pursuant to Section 4(c) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption and request for comment.

SUMMARY: The Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange have submitted a joint petition dated June 25, 1999, to the Commodity Futures Trading Commission requesting an exemption, pursuant to Section 4(c) of the Commodity Exchange Act, for all boards of trade that have been designed by the Commission as contract markets from certain statutory requirements concerning the contract market designation process for new contract submissions and the contract market rule review process. The Commission believes that publication of the petition for comment in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act and the Commission's regulations. The full text of the petition is reproduced at the end of this Notice.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the "Petition of the Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange for Exemption Pursuant to Section 4(c) of the Commodity Exchange Act.".

FOR FURTHER INFORMATION CONTACT: Rebecca L. Creed, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone number (202) 418–5430; electronic mail rcreed@ cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated June, 1999, and received June 28, 1999, the Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Mercantile Exchange (collectively referred to as the "Exchanges") submitted a joint petition to the Commodity Futures Trading Commission ("Commission" or "CFTC"), pursuant to Section 4(c) of the Commodity Exchange Act ("Act"),[1] requesting an exemption for all boards of trade that have been designated by the Commission as contract markets from certain statutory requirements. Specifically, the petition requests an exemption from the Act's requirements in three areas: (1) the contract market designation process for new contract submissions, set forth in Sections 5 and 6 of the Act and any related statutory provisions, including Section 2(a)(8)(B)(ii) of the Act; (2) the contract market rule review process, set forth in Section 5a(a)(12) of the Act; and (3) pertinent provisions of the Act that would otherwise prevent the immediate adoption and implementation of trading rules an procedures that are comparable to those of a competing foreign exchange.

The Exchanges' petition was filed in response to the Commission's Order dated June 2, 1999. That Order withdrew the Commission's proposed rules governing the use of automated trading systems in the United States ("U.S.") which provide access to foreign electronic boards of trade.[2] The Order also directed Commission staff "to begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the United States, and to issue responses where appropriate, pursuant to the general guidelines included in the Eurex (DTB) no-action process, or other guidelines established by the Commission, to be reviewed and applied as appropriate on a case-by-case basis." [3] Finally, by the same Order, the Commission determined to "commit to simultaneously initiate processes to address the comparative regulatory levels between U.S. and foreign electronic trading systems so as not to provide one with a competitive advantage."

The Exchanges state that their petition for exemptive relief should be in order to avoid unfair competition from foreign exchanges that have been or will be permitted to place their electronic trading systems in the U.S. pursuant to no-action letters issued by Commission staff.[4] Since these foreign exchanges will not be required to obtain Commission designation as contract markets in order to operate in the U.S., the Exchanges state that they will not be

---

[1] Section 4(c) of the Act states in relevant part:

Unless exempted by the Commission pursuant to subsection (c), it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity;

(2) such contract is executed or consummated by or through a member of such contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery * * *.

Section 4(c) of the Act provides the Commission with the authority "by rule, regulation, or order" after notice and opportunity for hearing to exempt "any agreement, contract, or transaction (or class thereof)" from the requirements of Section 4(a) or from any other provision of the Act, with the exception of the Shad-Johnson Accord provisions of Section 2(a)(1)(B) (stock index futures).

[2] *See* 64 FR 14159 (March 24, 1999) (proposed rules); 64 FR 32829 (June 18, 1999) (announcement of withdrawal of proposed rules).

[3] In February 1996, the Commission's Division of Trading and Markets ("Division") issued a no-action letter to the Deutsche Terminborse ("DTB"), an automated international futures and options exchange headquartered in Frankfurt, Germany. DTB has subsequently changed its name to Eurex Deutschland ("Eurex"). In this no-action letter, the Division agreed, subject to certain conditions, not to recommend enforcement action to the Commission if Eurex placed computer terminals in the U.S. offices of its members for principal trading and, where the Eurex member is also a futures commission merchant ("FCM") registered with the Commission under the Act, for trading on behalf of U.S. customers as well, without Eurex being designated as a U.S. contract market. *See* CFTC Interpretative Letter No. 96–28 [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,669 (Feb. 29, 1996).

Subsequent to receiving the Exchanges' petition for exemptive relief, on July 23, 1999, the Division granted a no-action request submitted by LIFFE Administration and Management (which operates The London International Financial Futures and Options Exchange) to make its electronic trading and order matching system available to its members in the U.S. Similarly, on August 10, 1999, the Division granted the no-action requests submitted on behalf of Eurex, the Sydney Futures Exchange Limited, the New Zealand Futures and Options Exchange Limited, and the ParisBourse SBF SA with respect to the placement of their respective electronic trading and order matching systems in the U.S.

[4] Currently, U.S. customers can access the products offered by foreign exchanges by: (1) communicating through a U.S. registered FCM or introducing broker ("IB") (where the FCM or IB would relay the cutomer's order for execution to a foreign member of the foreign exchange by telephone, facsimile transmission, or other means); (2) communicating with a foreign firm that has received an exemption from registration under Part 30 of the Commission's regulations; or (3) utilizing cross-exchange access programs or other trading links between U.S. contract markets and foreign exchanges (*see e.g.*, the trading of Marche a Terme International de France products through Chicago Mercantile Exchange Globex terminals located in the U.S.).

subject to the same statutory and regulatory requirements as existing U.S. contract markets. The Exchanges state that this no-action process severely hampers their ability to compete with such foreign exchanges.

The Commission wishes to emphasize that it has not made any prior judgment with respect to any element of the Exchanges' petition for exemptive relief and that it will give serious consideration to all of the issues raised by, and the comments received on, the petition. The Commission urges members of the interested public, including U.S. contract markets, market participants, Commission registrants and end-users, as well as other federal government regulators to comment on all aspects of the petition.

II. The Exchanges' Petition for Exemption

A. Contract Market Designation Process for New Contract Submissions

Through their petition, the Exchanges are requesting that all boards of trade designated by the Commission as contract markets be exempt from complying with the contract market designation process for new contract submissions set forth in Sections 5 and 6 of the Act as well as any related statutory provisions, including Section 2(a)(8)(B)(ii) of the Act. The Exchanges state that they need the ability to list new contracts without being subject to the Act's review and approval process in order to remain competitive with foreign exchanges that have been or will be allowed to place electronic trading systems in the U.S. without being designated as contract markets by the Commission.

B. Review of New Rules or Rule Amendments

Through their petition, the Exchanges request that all boards of trade designated by the Commission as contract markets be exempt from complying with the contract market rule review process set forth in Section 5a(a)(12) of the Act.[5] Instead, the Exchanges are proposing that U.S. contract markets be required to provide notice of new rules or rule amendments to the Commission ten days in advance of the effective date. New rules and rule amendments submitted pursuant to this exemptive procedure would not be stayed or delayed unless the Commission determined that the rule was likely to cause fraud, render trading readily susceptible to manipulation, or threaten the financial integrity of the market.

C. Immediate Adoption and Implementation of Contract Market Trading Rules and Procedures That Are Comparable to Those of Competing Foreign Exchanges

Finally, the Exchanges are requesting that all boards of trade designated by the Commission as contract markets be exempt from pertinent provisions of the Act that would otherwise prevent such contract markets from responding immediately to competition from a foreign exchange authorized to operate trading terminals in the U.S. Specifically, under the exemptive relief requested by the Exchanges in their petition, any designated contract market would be able to implement trading rules and procedures comparable to those of the competing foreign exchange, provided that such rules and procedures would only apply to contracts listed by the U.S. contract market that are subject to direct competition from a contract listed by such foreign exchange. Under this procedure, designated contract markets would be able to adopt and implement such trading rules and procedures immediately upon submission to the Commission of the following materials: (1) the text of the rules and procedures being adopted; and (2) a certification that a foreign exchange employs comparable rules and procedures for a contract that directly competes with a contract listed by the U.S. contract market.

III. Request for Comment

The Commission requests comment on all aspects of the Exchanges' petition for exemption, including the issues identified below.

(1) The no-action process by which foreign exchanges are allowed to place their electronic trading terminals in the U.S. permits these exchanges to have limited access to the U.S. markets. For example, when the Division recently granted a no-action request submitted on behalf of LIFFE to make its electronic trading system available in the U.S., the Division imposed certain conditions that, among other things, require LIFFE to adhere to periodic reporting requirements apprising the Commission of the level of its business activity in the U.S. Moreover, if LIFFE wishes to make new contracts or products available in the U.S. through its electronic trading system, LIFFE must request and obtain supplementary no-action relief from the Division. To the extent that LIFFE substantially increases the quantity or modifies the nature of its business activity within the U.S., the Division has the discretion to re-examine the relief granted to LIFFE and, if appropriate, the Commission could require it to become designated as a contract market under Section 5 of the Act. Do the limitations on the degree of access that foreign exchanges will have to the U.S. markets pursuant to no-action positions alter the need for any of the exemptive relief sought by the Exchanges in their petition?

(2) In their petition, the Exchanges specifically request that all boards of trade designated by the Commission as contract markets be exempt from complying with the contract market designation process for new contract submissions set forth in Sections 5 and 6 of the Act as well as any related statutory provisions, including Section 2(a)(8(B)(ii) of the Act. The Commission recently proposed a two-year pilot program to permit the immediate listing of certain new contracts for trading for a specified period of time prior to obtaining Commission approval.[6] Please discuss whether the Commission's proposed rulemaking addresses the Exchange's stated need for relief in this area.

(3) In their petition, the Exchanges specifically request that all boards of trade designated by the Commission as contract markets be exempt from complying with the contract market rule review process set forth in Section 5a(a)(12) of the Act. Alternatively, the Exchanges propose that contract markets be required to provide notice of new rules or rule amendments to the Commission ten days in advance of the effective date and that the review of such proposals not be stayed or delayed unless the Commission determined that the rule was "likely to cause fraud, render trading readily susceptible to manipulation, or threaten the financial integrity of the market."

(a) Is this standard sufficient for the Commission to carry out its statutory obligations?

(b) In additional to fraud, manipulation, and financial integrity issues, are there any other issues which the Commission should address when determining whether to stay or delay the immediate implementation of proposed contract market rules or rule amendments?

(4) Please discuss the impact of any legal uncertainty on contract markets and market users if the Commission were to undertake disapproval of

---

[5] In their petition, the Exchanges indicate they are not requesting relief from those provisions of Section 5a(a)(12) of the Act which related to emergency rules. The Commission presumes that the Exchanges are not seeking an exemption from the contract market rule disapproval provisions of Section 5a(a)(12).

[6] *See* 64 FR 40528 (July 27, 1999).

contract market rules after their implementation.

(5) In their petition, the Exchanges specifically request that all boards of trade designated by the Commission as contract markets be exempt from pertinent provisions of the Act that would otherwise prevent such contract markets from responding immediately to competition from those foreign exchanges authorized to operate trading terminals in the U.S. Specifically, under this area of requested exemptive relief, contract markets would be able to adopt and implement trading rules and procedures comparable to those of competing foreign exchanges immediately upon their submission to the Commission along with certain accompanying certifications when the foreign exchanges are offering contracts in direct competition with those of a U.S. exchange.

(a) Under the proposal, it might be possible for a single U.S. contract to be subject to rules drawn from a number of different competing foreign exchanges. It also might be possible for different contracts trading side-by-side at a particular U.S. contract market to be subject to different sets of rules based upon the rules of competing foreign exchanges. Please discuss the implications of these possibilities, including their impact, if any, upon the ability of the Commission, the contract markets, or Commission registrants to discharge their regulatory responsibilities.

(b) The Exchanges preface their specific requests for exemptive relief with the general request that the "Commission exercise its authority under Section 4(c) of the Act and grant certain exemptions from provisions of the Act except for . . . the provisions that prohibit manipulation." If the Commission were to grant the exemptive relief requested, could the Commission and the contract markets ensure that such comparable trading rules and procedures were not inconsistent with the Act's prohibitions against fraud and manipulation?

(c) Implicit in the Exchanges' petition is the notion that rules established for electronic trading on foreign exchanges could be applied to open outcry markets. Are there any public interest issues raised by applying rules designed for electronic trading systems to open outcry markets?

(6) The Commission's public comment process provides an opportunity to interested parties, both private and governmental, to comment on any issues related to proposed contracts and significant contract market rule changes (*e.g.*, electronic trading systems, alternative execution procedures). Under the Exchanges' petition, proposals in each of the three areas of requested relief would not be subject to a public comment period. Please discuss whether the lack of a public comment process would have any impact on the ability of the Commission to discharge its regulatory responsibilities in these areas.

(7) In their petition, the Exchanges indicate that U.S. contract markets may be disadvantaged by the ability of foreign exchanges to pay for order flow and/or provide inducements for market makers or customers to trade their products. What are the differences between foreign exchange rules related to order flow and liquidity programs and the U.S. contract market rules that the Commission has approved in these areas?[7]

(8) In their petition, the Exchanges state that, in contrast to foreign exchanges, U.S. contract markets are unable to adopt certain trading methodologies that provide guaranteed price and/or execution quantity. In June 1999, the Commission issued an Advisory on Alternative Execution, or Block Trading, Procedures for the Futures Industry,[8] in which it announced its intention to consider contract market proposals to adopt similar alternative execution methodologies. Please discuss whether there are any modifications that could be made to the Commission's Advisory that would further address the Exchanges' concerns in this regard. Please also discuss the extent to which such changes would be consistent with the Commission's responsibilities for ensuring the integrity and economic utility of futures markets and protecting market participants against manipulation, abusive trade practices, and fraud.

(9) In their petition, the Exchange states that U.S. contract markets are not permitted to delay the reporting of transaction information in order to accommodate market participants who desire to withhold relevant information about their transactions until they have been able to act in another market or execute additional transactions. The Exchanges believe that the ability of foreign exchanges to delay the reporting of certain types of transactions, such as block trades, to the general marketplace will enable them to capture market share from U.S. contract markets. Please discuss whether there are any modifications that could be made to the Commission's Block Trading Advisory that would further address the Exchanges' concerns in this regard. Please also discuss the extent to which such change would be consistent with the Commission's responsibilities as described in question 8 above.

(10) In their petition, the Exchanges state that the Commission, in its review of U.S. contract markets' electronic trading systems, requires account identification information to be entered into trading terminals prior to the execution of customer orders. The Exchanges believe that U.S. contract markets may lose market share to competing foreign exchanges that are not subject to such a requirement. The Commission has allowed bunched orders for certain eligible customers to be placed on a contract market without specific customer account identification, either at the time of order placement or at the time of reporting order execution.[9] Please discuss whether there are modifications that could be made to the approach taken by the Commission in this regard that would be responsive to the Exchanges' concerns. Please also discuss the extent to which such changes would be consistent with the Commission's responsibilities as described in question 8 above.

(11) In their petition, the Exchanges state that U.S. contract markets may not launch new products on their electronic trading systems pending the Commission's review and approval of system performance, capacity and security tests. The Exchanges further state that their foreign competitors will not be subject to the same review and approval process. The Commission notes that its review of newly created electronic trading systems has been, and continues to be, based on principles developed by the international regulatory community—specifically the International Organization of Securities Commissions ("IOSCO").[10] Should the Commission's review of electronic trading systems be based on standards

---

[7] *See, e.g.*, Coffee Sugar & Cocoa Exchange Registered Market Maker Program (approved by the Commission on April 30, 1991); Chicago Board of Trade Modified Market Maker Program for the Wilshire Small Cap Index Futures Contract (allowed into effect without prior Commission approval on June 18, 1993); Chicago Mercantile Exchange Principal Market Maker Program (approved by the Commission on April 20, 1995); New York Mercantile Exchange Specialist Market Maker Program (approved by the Commission on July 8, 1998).

[8] *See* FR 31195 (June 10, 1999); 64 FR 34851 (June 29, 1999) (corrections).

[9] *See* 63 FR 45699 (August 27, 1998).

[10] *See* IOSCO, Report of the Technical Committee, *Screen-Based Trading Systems for Derivative Products* (June 1990).

other than or different from those contained in the IOSCO principles?

IV. Conclusion

As noted above, the full text of the Exchanges' petition is reproduced below.

Issued in Washington, DC, on August 19, 1999 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

Chicago Mercantile Exchange

June 25, 1999.

Ms. Jean A. Webb,
Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581

Re: *Petition for Exemption Pursuant to Section 4(c).*

Dear Ms. Webb:

On behalf of the Chicago Board of Trade, Chicago Mercantile Exchange and New York Mercantile Exchange, I am submitting the enclosed petition to the Commission pursuant to Section 4(c) of the Commodity Exchange Act.

Very truly yours,

Carl A. Royal.

Enclosure.

Petition for Exemption Pursuant to Section 4(c) of the Commodity Exchange Act

June 25, 1999

Pursuant to Section 4(c) of the Commodity Exchange Act ("Act"), the Chicago Board of Trade ("CBOT"), Chicago Mercantile Exchange ("CME") and New York Mercantile Exchange ("NYMEX"), designated contract markets with their principal places of business in the United States (the "Exchanges"), respectfully petition the Commodity Futures Trading Commission ("Commission" or "CFTC") for exemptive relief. This petition seeks exemptions necessary to promote responsible innovation and fair competition. This request is made in response to the Commission Order dated June 2, 1999, instructing CFTC staff "to begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the United States. . . ."

Granting this petition is essential to permit the Exchanges to avoid unfair competition in the United States from foreign exchanges that have been and will be permitted to establish trading facilities in this country pursuant to no-action letters issued by CFTC staff. Those foreign exchanges have not sought designation to operate as contract markets in the United States and therefore will not be required to comply with the Commodity Exchange Act.

The Exchanges requested that this petition be processed and approved in an expedited fashion to comply with the terms of the Commission's Order of June 2, 1999, and with Senator Richard Lugar's letter to the Commission dated May 6, 1999. It is essential that the relief afforded to U.S. exchanges be timed so that foreign exchanges are not afforded any unfair competitive advantage. Some of those foreign exchanges are subject to far less regulation than U.S. exchanges and employ trading rules and procedures that are prohibited by the Act. If foreign exchanges receive no-action relief before this petition is granted, the Exchanges will be placed at a severe competitive disadvantage.

I. Relief Sought

The Exchanges seek permission to respond, without delay, to any new contract, contract amendment, advantageous trading practice, or less costly regulatory device offered or likely to be offered by foreign exchanges on U.S. based trading terminals. This principle means that the Exchanges must to be able to list new contracts and amend existing contracts without being delayed by a lengthy CFTC approval process. The Exchanges must be free to offer any trading methodology, including prearranged trades, cross trades, block trades, etc., offered any trading methodology, including prearranged trades, cross trades, block trades, etc., offered by a foreign exchange, and such trades must be accompanied by the same reporting requirements that might make the foreign exchange a more attractive venue. The Exchanges must be free to offer the same order entry procedures employed by such foreign exchanges if those order entry and customer identification procedures make it more attractive to trade on the foreign exchange. The Exchanges must be free to operate and modify their trading systems with no more governmental interference than is imposed on the foreign exchanges.

In order to promote responsible innovation and fair competition, the Exchanges hereby respectfully requests that the Commission exercise its authority under Section 4(c) of the Act and grant certain exemptions from provisions of the Act except for Sections 4(a), 2(a)(1)(B), and the provisions that prohibit manipulation. The Exchanges request that the exemption be granted in the following form:

Pursuant to its powers under Section 4(c)(1) of the Commodity Exchange Act, the Commission hereby determines, consistent with the public interest and in order to promote responsible economic or financial innovation and fair competition, that notwithstanding any other provision of law, rule, regulation or order of the Commission:

Boards of trade that have been designated as contract markets:

1. Shall be exempted, to the extent of the Commission's power under Section 4(c)(1), from complying with the contract market designation process for new contract submissions under sections 5 and 6 of the Act as well as any related regulations or statutory provisions, including section 2(a)(8)(B)(ii) of the Act.

2. Shall be exempted, to the extent of the Commission's power under Section 4(c)(1), from the rule approval provisions of section 5a(a)(12) of the Act and related regulations, except the provisions relating to emergency rules, if the contract market provides notice of new rules or rule changes to the Commission 10 days in advance of the effective date. Rules submitted pursuant to this exemption shall not be stayed or delayed unless the Commission finds that the rule is likely to cause fraud, render trading readily susceptible to manipulation or threaten the financial integrity of the market. The Commission's power to alter or supplement any rule change implemented pursuant to this exemption shall not be diminished.

3. Shall be exempted, to the extent of the Commission's power under section 4(c)(1), to permit such contract market to respond to competition from any foreign exchange authorized to locate trading terminals in the U.S. Any designated contract market may implement trading rules and procedures comparable to those of the competing foreign exchange, provided that such rules and procedures shall apply only to contracts listed by the contract market that are subject to direct competition from contract listed by such foreign exchange. The contract market may adopt and implement such rules and procedures immediately upon its submission to the Commission of (i) the text of the rules and procedures being adopted and (ii) its certification that the foreign exchange employs comparable rules and procedures for trading a contract that competes directly with the contract listed by the contract market.

II. Statutory Background

On October 28, 1992, the Futures Trading Practices Act of 1992 (the "1992 Act") was signed into law. The 1992 Act added new Section 4(c)(1) to the Act and authorized the Commission, by rule, regulation or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirements of Section 4(a) or any other requirement of the Act other than Section 2(a)(1)(B) of the Act. In granting exemptive authority to the CFTC under Section 4(c), the Conferees states: "The Conferees intend that the Commission, in considering fair competition, will implement this provision in a fair and even-handed manner to products and systems sponsored by exchanges and non-exchanges alike."[1]

III. Standards for Exemptive Relief

Section 4(c)(1) of the Act provides that the Commission may exempt any agreement, transaction or contract from any provisions of the Act (except Section 2(a)(1)(B)) if the Commission determines that the exemption would be consistent with the public interest. In this regard, the Conferees stated that the "public interest" under Section 4(c) includes the "national public interests noted in the Act, the prevention of fraud and the preservation of the financial integrity of the markets, as well as the promotion of responsible economic or financial innovation and fair competition." The Conference Report noted that the reference to the purposes of the Act was intended "to underscored [the] expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants."[2]

The Commission was granted authority to: "exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection 9a) of this section [the

---

[1] House Conference Report No. 102–978 to H.R. 707. p. 78.

[2] *Id.*

exchange trading requirement] (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for states periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except section 2a of this title), if the Commission determines that the exemption would be consistent with the public interest."

In plain language, the Commission was authorized to grant a designated contact market an exemption from any provision of the CEA, other than the exchange trading requirements and the Shad/Johnson Accord, if the Commission determined that the "exemption would be consistent with the public interest." The exchange trading requirements set forth in Section 4(a) are:

1. such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a "contact market" for such commodity;

2. such contract is executed or consummated by or through a member of such contract market; and

3. such contract is evidenced by a record which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: Provided, That each contract market member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commissioner or the Department of Justice.

Finally, Section 15 of the Act provides, in pertinent part, that the CFTC must consider the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives, policies, and purposes of the Act in adopting any exemption under Section 4(c) of the Act. As set forth below, approval of the petition is in accordance with the standards enumerated in the Act, while denial of this petition would clearly violate the strictures of Section 15.

IV. The Petition Satisfies the Statutory Standards for Relief

The Commission has apparently decided to permit foreign futures exchanges to operate electronic trading systems in the U.S. without seeking designation as contract markets or an exemption from designation. In consequence, U.S. futures exchanges face a devastating, unfair challenge. U.S. exchanges will be required to compete in the U.S. under the burden of a heavy regulatory handicap that does not apply to foreign exchanges offering U.S. customers clone contracts on identical trading facilities.

The pending no-action letters are sought to immunize foreign exchanges from the same provisions of the Commodity Exchange Act that constrain U.S. exchanges' ability to respond to competition. For example, some foreign exchanges will be able to list new products and change contract terms and conditions without waiting for approval from any regulator. Foreign exchanges could clone and trade the most important contracts traded on U.S. exchanges and capture U.S. exchange business by using competitive devices that are not available to U.S. exchanges. For example, some foreign exchanges could pay for order flow, permit pre-arranged trades, facilitate block trades with delayed price reporting, dispense with strict audit trail rules, and allow large traders to escape reporting requirements.

Open systems allow customers to chose between comparable contracts listed by competing exchanges available for trading on the same terminal. Minor differences between the regulatory environments of the competing exchanges can have enormous impacts on order flow. While every exchange must accept the verdict that will be rendered in a fair competitive environment, no exchange should be forced to compete with severe constraints on its ability to offer equivalent trading practices.

Therefore, the Commission should not admit foreign exchanges without acting to permit U.S. based exchanges to compete on the same regulatory terms with the foreign exchanges. The Commission should immediately exercise its power under Section 4(c) of the Act to permit the U.S. futures exchanges to operate under the same standards and conditions that govern such foreign exchanges admitted into the U.S.

The following issues, which are illustrative of a far longer list, are among those that need to be addressed by exempting U.S. exchanges from the constraints of the Act in order to respond to foreign competition. Eventually, these issues should be resolved by statutory amendment.

1. Pre-approval of Contracts, Contract Amendments and Rules: The competitive impact of permitting foreign exchanges to clone and list U.S. exchange contract inventions while U.S. exchanges are trapped in a lengthy approval process is devastating. The same is true with respect to rules regarding new trading methods or even changes to existing contracts.

2. Payment for Order Flow: Even if a U.S. exchange has a tangibly better trading environment for customers, the lure of payment for order flow and the difficulty of demonstrating actual damages to customers is likely to decide a competitive battle. If U.S. exchanges cannot counter competitive attacks based on such payments, the focus of liquidity is likely to move. Once moved, it cannot easily be recaptured, especially if the foreign exchange has no constraint on its ability to respond.

3. Inducements to Make Markets or Trade: Customer business ordinarily follows liquidity. A short-term program to buy liquidity, if it cannot be matched by the U.S. exchange for regulatory reasons, can change the long-term location of markets without any benefit to customers.

4. Guaranteed Pricing or Execution: U.S. exchanges cannot permit the type of prearrangement involved in guaranteeing price or execution quantity. The philosophy of the Act is to discover accurate prices through open competition. Firms that profit more from arranging such trades than the commission that would be earned through bringing a customer to an open outcry market will divert business to the foreign exchange that permits such practices.

5. Large Trade Reporting, Position Limits: Position limits are controlled by Section 4a of the Act. The statutory limitations do not apply to foreign exchanges that trade contracts that directly impact interstate commerce. The Commission imposed large trader reporting requirements by regulation on contracts traded on designated exchanges. See parts 16, 17 18, 19 and 21. Such limits will not apply to U.S. customers trading on foreign exchange terminals in the U.S. even if the contracts are clones of U.S. exchange contracts. Position limits and reporting requirements have been seen to impact the choice of trading venue by sophisticated customers. Many large sophisticated traders can be expected to transfer their business to foreign exchanges to avoid limits and disclosure.

6. Price Reporting: Many significant customers would rather withhold information about their trades until they have been able to act in another market or execute additional transactions. The Commission has precluded U.S. markets from delaying price reports for such purposes. The Act does not require real time price reports. If a competing foreign exchange, operating on the same terminal as a U.S. exchange, offers to delay reporting of large block trades, it is predictable where such trades will be registered. In fact LIFFE permits block traders to delay price reports.

7. Account Identification: Neither the Act nor the Regulations specifically require that the account identifying number be entered into the trading terminal prior to execution of the customer order. However, the CFTC staff has imposed such a requirement as a condition of approval of U.S. exchange electronic trading systems. Orders are being entered on foreign exchange trading terminals in the U.S. without first entering an account identifier. If the same contract can be traded on two exchanges, and one slows order entry with technical requirements, it is clear which exchange will get the business.

8. System Performance, Capacity and Security: In addition to burdening U.S. exchanges by requiring that new contracts and trading rules be approved in advance, the Commission has precluded U.S. exchanges from launching new products on their electronic trading systems until it has reviewed and approved performance and capacity tests. Foreign competitors will not be equally constrained under the proposed no-action approach.

V. Conclusion

The exemptive relief requested by this petition should be granted immediately. If the Commission grants the pending no-action requests of foreign exchanges to install trading terminals in the U.S. before the Exchanges achieve regulatory parity, the Exchanges would be placed at a severe competitive disadvantage. Granting no-action relief to foreign exchanges while refusing to grant commensurate relief to the U.S.

Exchanges would violate both Section 4(c) and Section 15 of the Act.

[FR Doc. 99–22013 Filed 8–24–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Application of the New York Mercantile Exchange In Mid-Columbia Electricity Futures Contracts Submitted Under 45-Day Fast Track Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in Mid-Columbia electricity futures contracts. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before September 9, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the NYMEX Mid-Columbia electricity futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed designation application was submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposal, absent any contrary action by the Commission, may be deemed approved at the close of business on October 4, 1999, 45 days after receipt of the proposal. In view of the limited review period under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under "What's New & Pending".

Other materials submitted by the NYMEX in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 GFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data views, or arguments on the proposals, or with respect to other materials submitted by the NYMEX should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 19, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–22012 Filed 8–24–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Application for the U.S. Army ROTC 2-Year and 3-Year Scholarship; ROTC Cadet Command Form 166–R; OMB Number 0702–0083.

Type of Request: Reinstatement.

Number of Respondents: 3,870.

Responses per Respondent: 1.

Annual Responses: 3,870.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 1,935.

Needs and Uses: The application is used in the selection process for 2-year and 3-year ROTC scholarships. The ROTC scholarship is an incentive to attract men and women to pursue educational degrees in the academic disciplines required by the Army. The applications are available to students of colleges and universities that host Army ROTC. Completed applications are submitted to Headquarters, Cadet Command for review, screening, and selection of scholarship recipients.

Affected Public: Individuals or Households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building , Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 19, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21969 Filed 8–24–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 8 September 1999 (8 am to 4 pm).

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd, Arlington, VA 22201–5300.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: August 19, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21968 Filed 8–24–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License to Stevens Institute of Technology

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: In compliance with 37 CFR 404 et seq., the Department of the Army hereby gives notice of its intent to grant to Stevens Institute of Technology, an educational institution having its principle place of business at Castle Point on Hudson, Hoboken, NJ 07030, an exclusive license relative to patent applications concerning a jointly developed and jointly owned technology. The specific applications are PCT Application No. PCT/US99/02158 and provisional U.S. Patent Application S/W 60/073403; entitled "Methods and Apparatus for Detecting Lesion-Induced Resonances in Deoxyribonucleic Acid Via Millimeter or Submillimeter Wave Spectroscopy". Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 433. Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–22071 Filed 8–24–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Team Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Team Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 19, 1999.

William E. Burrow,

Team Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: National Assessment of Educational Progress (NAEP) Year 2000 Field Test and Year 2001 Main Assessment of World Geography and U.S. History.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 9,600
Burden Hours: 9,870

Abstract: The Congressionally mandated 2001 National Assessment of Educational Progress will assess world geography knowledge and knowledge of U.S. History among 4th, 8th, and 12th graders. To provide contextual information to interpret the assessment information relevant background characteristics of the students and their schools and teachers are gathered as well. The clearance package provides all of the background questions and supporting information for the field test and the main study. The results of the main study will be used to provide descriptive information about programs and practices in the teaching of history and geography; suggest relationships between characteristics and assessment results; serve as a basis for monitoring change over time.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 202–708–9902. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Annual Performance Reporting Form for OIE Local.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,272

Burden Hours: 171,600

Abstract: This data collection will be conducted annually to obtain program and performance information from OIE local grantees on their project activities. The information collected will assist federal OIE staff in responding to GPRA. Data will primarily be collected through an internet form. Grantees without internet access will complete a paper version of this form.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 202–708–9902. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–21992 Filed 8–24–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Team Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Team Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 20, 1999.

William E. Burrow,

Team Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Combined Application and Combined Announcement for the OERI Visiting Scholars Fellowship Program.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 45.

Burden Hours: 630.

Abstract: The OERI Visiting Scholars Fellowship provides support to scholars, researchers, policymakers, educational practitioners, librarians, and statisticians to engage in the use, collection, and dissemination of information about education and education research to work at OERI in Washington, DC. The information collected in the application will be used to determine who is selected for these fellowships. This program is administered by the National Research Council.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 99–22108 Filed 8–24–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for the Proposed JEA Circulating Fluidized Bed Combustor Project at Jacksonville, Florida

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability for public review and comment of the Draft Environmental Impact Statement (EIS) for the JEA Circulating Fluidized Bed Combustor Project (DOE/EIS–0289), at Jacksonville, Florida. The Draft EIS was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA regulations (40 CFR parts 1500–1508), and the DOE NEPA regulations (10 CFR part 1021). The Draft EIS analyzes the environmental impacts that could result from a proposal under DOE's Clean Coal Technology Program to construct and operate a nearly 300 megawatt-electric, coal-and petroleum coke-fired, circulating fluidized bed combustor and boiler to repower an existing steam turbine at JEA's Northside Generating Station. DOE's proposed action is to provide cost-shared funding of approximately $73.1 million (about 24 percent of the estimated total cost of $309 million) for construction of the combustor and boiler and for a 24-month period of demonstration testing of the technology.

The proposed project would demonstrate technology that is capable of cost-effectively reducing nitrogen oxide, sulfur dioxide, and particulate emissions, while producing power more efficiently and at less cost than conventional coal combustion technologies. Information and experience developed from this project could provide the basis for demonstrating the potential of utility scale, circulating fluidized bed technology as a practical alternative to conventional coal-fired power plant technologies.

DATES: DOE invites the public to comment on the Draft JEA EIS. Comments should be submitted by October 15, 1999 (see **ADDRESSES** section for more details) to ensure

consideration. DOE will consider comments submitted after October 15, 1999, to the extent practicable. A public hearing on the Draft JEA EIS will be held as follows: Florida Community College at Jacksonville, North Campus, Thursday, September 16, 1999, Times: 12 pm to 3 pm (Information Session) and 6 pm to 9 pm (Public Hearing).

The hearing will provide an opportunity for information exchange and discussion among DOE and the public, as well as opportunities for the public to present oral or written comments.

ADDRESSES: Comments may be submitted by mail, fax, telephone, or electronically to: Ms. Lisa Hollingsworth, NEPA Document Manager, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: 304–285–4992; Fax 304–285–4403, leave a message at 1–800–276–9851, lisa.hollingsworth@fetc.doe.gov.

Requests for copies of the Draft JEA EIS or other information regarding this environmental analysis should be addressed to Ms. Hollingsworth at the address above. The Draft EIS will be available under the DOE NEPA Analysis link from the DOE NEPA Web Site at http://tis.eh.doe.gov/nepa/.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed project or the environmental impact statement, please contact Ms. Hollingsworth as directed above. For general information on the Department's NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. Ms. Borgstrom may be contacted by calling 202–586–4600 or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1997, the Department published a Notice of Intent (62 FR 60889) to prepare an environmental impact statement for the proposed JEA Circulating Fluidized Bed Combustor Project, in Duval County, Jacksonville, Florida. The purpose of the Notice of Intent was to inform the public of the proposed scope of the EIS, to solicit public input, and to announce a public scoping meeting that was held on December 3, 1997, in Jacksonville, FL. The Notice invited comments and suggestions on the proposed scope of the environmental impact statement, including environmental issues and alternatives, and invited public participation in the NEPA process. Comments and feedback received during the public scoping process were used in preparing the Draft EIS. The scoping period closed on December 31, 1997.

Alternatives Considered

The Draft EIS evaluates a proposed action and a no-action alternative. DOE's proposed action is to provide JEA with cost-shared funding of approximately $73.1 million (24 percent of the estimated total cost of $309 million) for the construction and operation of a combustor and boiler to repower a steam turbine and generator that have been out of service since 1983 at JEA's Northside Generating Station. In analyzing the proposed action (the preferred alternative), the Draft EIS also evaluates JEA's plans to repower a second, currently operating, steam turbine without cost-shared funding from DOE.

In addition to analyzing the environmental impacts of the proposed action, the Draft EIS analyzes the potential impacts of a No-Action Alternative. Under the No-Action Alternative, the Draft EIS analyzes three scenarios that JEA could pursue in the absence of DOE funding. The scenarios considered are: (1) JEA would construct the proposed project without DOE funding; (2) JEA would construct a new gas-fired combined cycle facility at Northside Generating Station or another location; and (3) JEA would purchase electricity from other utilities to meet JEA's projected demand. The Draft EIS compares the environmental impacts that could be expected to occur from repowering the two steam turbines with new circulating fluidized bed combustors under the proposed action with the impacts that would be likely from each of the three scenarios under the No-Action Alternative.

The Draft EIS focuses on impacts from construction and operation of the proposed project on: Human health, air quality, surface water, groundwater, ecological resources, socioeconomic resources, environmental justice, noise, and traffic. In addition, impacts on land use, floodplains, wetlands, waste management, and cultural resources are considered.

Availability of the Draft EIS

DOE has distributed copies of the Draft EIS to appropriate Members of Congress, State and local government officials in Florida, Federal agencies, and other interested parties. Copies of the document may be obtained by contacting DOE as provided in the section of this notice entitled, **ADDRESSES.** Copies of the Draft EIS are also available for inspection at the locations identified below:

(1) U.S. Department of Energy, Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

(2) U.S. Department of Energy, Federal Energy Technology Center, 3610 Collins Ferry Road, Morgantown, WV 26507–0880.

(3) U.S. Department of Energy, Federal Energy Technology Center, 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940.

(4) Highlands Branch Library, 1826 Dunn Avenue, Jacksonville, FL 32218.

After the public comment period ends on October 15, 1999, DOE will consider all comments received, revise the Draft EIS as appropriate, and issue a Final EIS. DOE will consider the Final EIS, along with other information, such as economic and technical factors, in deciding whether or not to provide funding for the construction and operation of the proposed coal-fired, circulating fluidized bed combustor and boiler.

Issued in Washington, DC, this 19th day of August 1999.

Robert S. Kripowicz,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 99–22007 Filed 8–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Cancellation of Notice 99–19: Computational Structural Biology

AGENCY: Department of Energy (DOE).

ACTION: Cancellation Notice.

The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby cancels its Notice 99–19, Computational Structural Biology as published in FR, Vol. 64, No. 88, page 24628, Friday, May 7, 1999.

The Notice is canceled to enable DOE to prepare a more comprehensive Notice that encompasses aspects of both computational structural biology and experimental structural biology, including current and developing needs in structure determination, instrumentation, automation, and computation. Notice 99–19 represented only one part of the reorganization of DOE's structural biology program.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, SC–73, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9009, fax: (301) 903–0567, E-mail: roland.hirsch@science.doe.gov.

Issued in Washington, DC, on August 18, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–22006 Filed 8–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 99–25: Division of Nuclear Physics Outstanding Junior Investigator Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Division of Nuclear Physics of the Office of Science (SC), U.S. Department of Energy, announces the initiation of an Outstanding Junior Investigator Program in nuclear physics and invites grant applications for support. Applications should be from tenure-track faculty who are currently involved in experimental or theoretical nuclear physics research, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of individual research programs of outstanding scientists early in their careers. The full range of activities currently supported by the Division of Nuclear Physics is eligible for support under this program.

DATES: To permit timely consideration of awards in fiscal year 2000, formal applications submitted in response to this notice should be received by November 16, 1999.

ADDRESSES: Complete formal applications referencing Program Notice 99–25 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 99–25. The above address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional four copies of the application.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis G. Kovar, Division of Nuclear Physics, SC–23 (GTN), U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–3613. Fax: (301) 903–3833. E-Mail: dennis.kovar@science.doe.gov

SUPPLEMENTARY INFORMATION: This is the first year of an Outstanding Junior Investigator Program in Nuclear Physics supported by the Department of Energy's Office of Science. A principal goal of this program is to identify exceptionally talented new nuclear physicists early in their careers and facilitate the development of their research programs. Eligibility for awards under this notice is restricted to non-tenured investigators in academic institutions who are conducting experimental or theoretical nuclear physics research. The program is expected to contribute importantly to the vigor of the U.S. Nuclear Physics program. Applicants should request support under this notice for the normal research project costs required to conduct the proposed research.

The DOE expects to make two to four awards in the first year to meet the objectives of the program. The actual number of awards will be determined by the number of excellent applications and the total amount of funds available for this program. It is anticipated that a total of up to $250,000 will be available for the first year funding of the program, subject to availability of appropriated funds, and that awards would be for three to five year terms. At the end of the initial term, these grants may be renewed, subject to appropriate external peer review at the time of renewal, as long as the recipient's tenure status is unchanged.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, listed in descending order of importance as codified at 10 CFR 605.10 (d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. The latest version of SC's Application Guide is available on the world wide web at: *http://www.er.doe.gov/production/grants/grants.html*

The catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on August 16, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–22005 Filed 8–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 93–34–NG]

TransCanada Pipelines Limited; Order Amending Long-Term Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that on August 19, 1999, it issued DOE/FE Order No. 795–A (Order 795–A) which amends TransCanada PipeLines Limited's (TransCanada) natural gas import and export authorization granted April 30, 1993 by DOE/FE Order No. 795 (1 FE ¶ 70,787). The amendment permits TransCanada to increase the volumes of natural gas it is authorized to import and export from and to Canada from 1,405,000 Mcf per day to 1,717,000 Mcf per day for the remaining authorization term through November 1, 2005. The additional gas will be imported near Noyes, Minnesota, for storage in the United States and subsequent export back to Canada. The gas is transported by the pipeline system of Great Lakes Gas Transmission Limited Partnership across northern Minnesota, Wisconsin, and Michigan to two export points on the international boundary near St. Clair and Sault Ste. Marie, Michigan. The gas will be sold by TransCanada to its customers in eastern Canada. In all other respects the terms and conditions

of the previous authority would remain unchanged.

Order 795–A may be found on the FE web site at http://www.fe.doe.gov, or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities docket room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 19, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 99–22004 Filed 8–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3942–000]

Alliance for Cooperative Energy Services Power Marketing LLC; Notice of Filing

August 19, 1999.

Take notice that on August 2, 1999, Alliance for Cooperative Energy Services Power Marketing LLC tendered for filing a transaction report for quarter ended June 30, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 30, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22011 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3705–000]

Metropolitan Chicago Healthcare Council Shared Services; Inc.; Notice of Filing

August 19, 1999.

Take notice that on August 10, 1999, Metropolitan Chicago Healthcare Council-Shared Services, Inc. (MCHC-Shared Services, Inc.), tendered for filing its amended petition to the Commission for acceptance of MCHC-Shared Services, Inc.'s Rate Schedule FERC Tariff No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission Regulations.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 30, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22008 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3909–000]

Northern Indiana Public Service Company; Notice of Filing

August 19, 1999.

Take notice that on July 30, 1999, Northern Indiana Public Service Company LLC tendered for filing a transaction report for short-term transactions for the second quarter of 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 30, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22010 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–599–000]

Paiute Pipeline Company; Notice of Application

August 19, 1999.

Take notice that on August 11, 1999, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP99–599–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for an order granting a certificate of public convenience and necessity, and permission and approval to abandon facilities. Paiute proposes to replace a segment of deteriorating pipeline on its Carson Lateral and at the same time enhance the capacity on its Carson Lateral to meet the growth requirements of its shippers served by that portion of Paiute's mainline system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Paiute proposes to replace a deteriorated portion of the original 10-inch transmission line on its Carson Lateral. Paiute states that due to the existing and projected load growth in the areas served by the Carson Lateral,

it also proposes to enhance the capacity of its Carson Lateral facilities by replacing the deteriorated segment with 20-inch diameter pipeline and by installing two new loop pipeline segments. Specifically, Paiute proposes to: (1) construct and operate approximately 5.5 miles of 20-inch replacement pipeline between mileposts 31.85 and 37.34 on the Carson Lateral in Lyon County, Nevada; (2) abandon in place approximately 5.5 miles of existing 10.75-inch pipeline between mileposts 31.85 and 37.34 on the Carson Lateral in Lyon County, Nevada; (3) construct and operate approximately 2.3 miles of 20-inch loop pipeline between mileposts 2.95 and 5.25 on the Carson Lateral in Storey and Lyon Counties, Nevada; and (4) construct and operate approximately 1.9 miles of 12.75-inch loop pipeline between mileposts 14.28 and 16.18 on its South Tahoe Lateral in Douglas County, Nevada.

Paiute states that in response to a general open season held early this year, Southwest Gas Corporation-Northern Nevada (Southwest-Northern Nevada) indicated that there had been a significant shift in its forecasted requirements and it requires additional delivery capability from Paiute downstream of the Wadsworth Junction in order to meet its projected winter peak day load profile for northern Nevada. Paiute further states that under the service agreement with Southwest-Northern Nevada, Paiute is not obligated to transport more than 65,350 Dth per day of gas for Southwest-Northern Nevada through the Wadsworth Junction. Southwest-Northern Nevada requested that level to be increased by 10,800 Dth to 76,150 Dth.[1] Paiute also states that Sierra Pacific Power Company wants to have the capability to have transported and delivered to the Fort Churchill Power Plant up to the full contractual maximum daily quantity for that delivery point on a winter peak demand day. Paiute states that in order to maintain such capability and to meet the requirements of its other firm shippers served by the Carson Lateral, Paiute needs to install the proposed facilities.

The estimated cost of the proposed facilities is $5,425,000. The cost to abandon in place the existing 10.75-inch pipeline segment is estimated to be $22,000. Paiute states that it proposes to finance the above-described costs through ongoing regular financing programs and internally generated funds. Paiute requests the Commission to make a determination that the costs of the proposed facilities can be rolled into Paiute's systemwide rates in Paiute's next general rate case under Section 4 of the NGA. Paiute states that the proposed construction satisfies each of the three criteria required by the Policy Statement for rolled-in pricing. Paiute requests authorization no later than March 1, 2000, so that the proposed facilities can be constructed and placed in service by November 1, 2000.

Any questions regarding this application should be directed to Edward C. McMurtrie at (702) 876–7178, Paiute Pipeline Company, P.O. Box 94197, Las Vegas, Nevada 89193–4197.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 9, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining he appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other interenvor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Paiute to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21986 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Paiute states that the proposed facilities will add a nominal quantity of capacity on the Carson Lateral of 10,800 Dth on a design winter peak day. Paiute also states that upon placing the facilities in service, it intends to amend its service agreement with Southwest-Northern Nevada to increase by 10,800 Dth the limit on the quantity of gas that Paiute is obligated to transport for Southwest-Northern Nevada through the Wadsworth Junction.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3890–000]

Sithe Mystic LLC, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC, Sithe Wyman LLC; Notice of Filing

August 19, 1999.

Take notice that on July 30, 1999, Sithe Mystic LLC, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC, and Sithe Wyman LLC tendered for filing a transaction report for the second quarter of 1999.

Any person desiring to be heard or to protest such filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 30, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22009 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–8–001]

South Georgia Natural Gas Company; Notice of Compliance filing

August 19, 1999.

Take notice that on August 13, 1999, South Georgia Natural Gas Company (South Georgia) tendered for filing data analysis in compliance with a Commission Letter Order dated June 30, 1999 which accepted the primary sheets filed and directed South Georgia to report by August 15, 1999.

South Georgia states that they have conducted additional tests at the meter station, with gas flowing at delivery conditions. Based on these tests and analysis of system volume data by delivery point, South Georgia suspects that a strainer installed in April 1998, upstream of the meter, caused a mismeasurement of gas measured on that meter. The strainer design was unlike others on the South Georgia system and was removed in July 1999. Once the strainer was removed, the analysis of system volume data for the month of July appears to confirm the theory that this strainer was the source of the mismeasurement. In order to confirm this hypothesis, South Georgia plans to continue monitoring the monthly volume data at the meter run with the strainer removed. Following completion of further tests, South Georgia proposes to file a report with the Commission within thirty days and no later than December 31, 1999.

South Georgia states that a copy of its filing was served on all of South Georgia's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21988 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–104–000, et al.]

Illinois Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 17, 1999.

Take notice that the following filings have been made with the Commission:

1. Illinois Power Company AmerGen Energy Company, L.L.C.

[Docket Nos. EC99–104–000, ER99–754–001, ER99–4034–000, and EL99–83–000]

Take notice that on August 9, 1999, Illinois Power Company (Illinois Power) and AmerGen Energy Company, L.L.C. (AmerGen), tendered for filing a joint application under Section 203 of the Federal Power Act for authorization for Illinois Power to sell, and AmerGen to purchase, certain assets subject to the jurisdiction of the Federal Energy Regulatory Commission.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. EC99–105–000]

Take notice that on August 10, 1999, Southern California Edison Company (SCE) tendered for filing in accordance with Part 33 of the Federal Energy Regulatory Commission's Regulations (18 CFR 33), an application for authority to sell jurisdictional transmission facilities to the City of Anaheim, California. The transmission facilities primarily consist of metering and metering-related facilities at Lewis Substation. The proposed sale will have no effect on SCE's other jurisdictional facilities or services and is compatible with the public interest.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator Corporation, and the City of Anaheim.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. PP&L Montana, LLC

[Docket No. EG99–184–000]

Take notice that on August 10, 1999, PP&L Montana, LLC, 11250 Random Hills Road, Suite 400, Fairfax, Virginia 22030–6044, filed with the Federal Energy Regulatory Commission, an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations (18 CFR Part 365).

PP&L Montana, LLC, a Delaware limited liability company, proposed to own and operate generating facilities in Montana being acquired from Montana Power Company. PP&L Montana, LLC filed its application for EWG status on July 1, 1999. In its amendment to the application, PP&L Montana, LLC clarified its intent to engage exclusively in the activities permitted for entities holding the status of an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 1935.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

4. PP&L Montana, LLC

[Docket No. EG99–185–000]

Take notice that on August 10, 1999, PP&L Montana, LLC, 11250 Random Hills Road, Suite 400, Fairfax, Virginia 22030–6044, filed with the Federal Energy Regulatory Commission, an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations (18 CFR Part 365).

PP&L Montana, LLC, a Delaware limited liability company, proposed to

own and operate generating facilities in Montana being acquired from Montana Power Company. PP&L Montana, LLC filed its application for EWG status on July 1, 1999. In its amendment to the application, PP&L Montana, LLC clarified its intent to engage exclusively in the activities permitted for entities holding the status of an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 1935.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

5. CU Power Canada Limited Nicole Energy Services, Inc.

[Docket Nos. ER99–3282–001, and ER98–2683–004]

Take notice that on August 10, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. Niagara Mohawk Power Corporation

[Docket No. ER99–4037–000]

Take notice that on August 10, 1999, the above-mentioned public utility filed its quarterly reports for the quarter ending June 30, 1999.

Comment date: August 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER99–4045–000]

Take notice that on, August 10, 1999, Pacific Gas and Electric Company (PG&E) tendered for filing the Small Facilities Authorization Letter No. 2, submitted pursuant to the Procedures for Implementation (Procedures) of Section 3.3 of the 1987 Agreement between PG&E and the City and County of San Francisco (City). This is PG&E's first quarterly filing submitted pursuant to Section 4 of the Procedures, which provides for the quarterly filing of Facilities Authorization Letters.

The Small Facilities Authorization Letter No. 2 streamlines the procedures for filing numerous Facilities, and facilitates payment of PG&E's costs of designing, constructing, procuring, testing, placing in operation, owning, operating and maintaining the customer-specific Facilities required for firm transmission and distribution service requested by City under this Facilities Authorization Letter.

PG&E has requested permission to use automatic rate adjustments whenever the California Public Utilities Commission (CPUC) authorizes a new Electric Rule 2 Cost of Ownership Rate but cap the monthly transmission-level rates, respectively, at 0.58% and 1.19% for customer-financed and PG&E-financed Facilities, and cap the monthly distribution-level rates, respectively, at 0.77% and 1.34% for customer-financed and PG&E-financed facilities.

Copies of this filing have been served upon City and the CPUC.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21983 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2364–003, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

August 18, 1999.

Take notice that the following filings have been made with the Commission:

1. San Diego Gas & Electric Company

[Docket No. ER97–2364–003

Take notice that on August 9, 1999, San Diego Gas & Electric Company (SDG&E), tendered for filing a refund report in compliance with the Commission order, dated March 12, 1999, approving its settlement transmission rates.

Copies of this filing have been served upon all parties in Docket ER98–2364–000, including the California Public Utilities Commission, the California Independent System Operator, California Independent System Operator-registered Scheduling Coordinators, Pacific Gas and Electric Company, and Southern California Edison Company.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Indiana Gas & Electric

[Docket No. ER99–3573–000]

Take notice that on July 15, 1999, Southern Indiana Gas & Electric Company (SIGECO), tendered for filing two (2) Service Agreements for market based rate power sales under its Market Based Rate Tariff with DTE Energy Trading, Inc., and East Kentucky Power Cooperative, Inc.

Copies of the filing were served upon each of the parties to the Service Agreements.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. MidAmerican Energy Company

[Docket No. ER99–3887–000]

Take notice that on August 10, 1999, MidAmerican Energy Company tendered for filing changes to its open access transmission tariff filed on July 30, 1999.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER99–4028–000]

Take notice that August 9, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Network Integration Transmission Service to the New Hampshire Electric Co-op under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the New Hampshire Electric Co-op.

NUSCO requests that the Service Agreement become effective August 1, 1999.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Lighting Company; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange & Rockland Utilities, Inc.; Rochester Gas & Electric Corp.; Power Authority of the State of New York; and New York Power Pool

[Docket Nos. ER97–1523–012, OA97–470–011, and ER97–4234–009]

Take notice that on August 10, 1999, the New York Independent System Operator, Inc. (NYISO), tendered a detailed proposal for an installed capacity auction. The NYISO requests an effective date of September 15, 1999.

A copy of this filing was served upon all persons on the Commission's official service lists in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000 (not consolidated), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

[Docket No. ER98–4510–002]

Take notice that on August 9, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc., and its jurisdictional subsidiaries (O&R), tendered for filing revised tariff sheets amending the Consolidated Edison Operating Companies FERC Electric Tariff Original Volume No. 1 (Joint OATT).

The proposed tariff sheets were filed in compliance with the requirement of the January 27, 1999, order in this proceeding (86 FERC 61,063) that Con Edison and O&R establish rates to apply under the Joint OATT in the event that the New York Independent System Operator (NY ISO) was not operational by the date of the Con Edison and O&R merger.

The revised tariff sheets would become effective on October 8, 1999 if the NY ISO is not operational by that date.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER99–1971–003]

Take notice that on August 11, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Notice to Market Participants, dated August 10, 1999, which specifies that the software required to implement the following elements of Amendment No. 14 to the ISO Tariff will be uploaded to production for Day-Ahead scheduling on Tuesday, August 17, 1999 for Operating Day Wednesday, August 18, 1999: Metered Demand, Use Of Replacement Reserves, Rational Buyer, Regulation Up and Regulation Down, and Effective Price for Uninstructed Deviations.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. North American Electric Reliability Council

[Docket No. ER99–2997–001]

Take notice that on August 9, 1999, the North American Electric Reliability Council tendered for filing a compliance filing in this docket.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Energy, Inc.

[Docket No. ER99–3248–001]

Take notice that on August 9, 1999, Consolidated Edison Energy Massachusetts, Inc. (CEEMI), tendered for filing its compliance filing with respect to Consolidated Edison Energy Massachusetts FERC Electric Tariff No. 1, Market Based Rates Tariff.

CEEMI states that a copy of this filing has been served by mail upon The New York State Public Service Commission.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Power Management Co., LLC

[Docket No. ER99–3275–000]

Take notice that on August 11, 1999, Power Management Co., LLC, tendered for filing an amendment to its July 16, 1999, Petition for Acceptance of Initial Rate Schedule, Waiver and Blanket Authority filed with the Commission in the above-referenced docket.

Comment date: August 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Tucson Electric Power Company

[Docket No. ER99–4029–000]

Take notice that on August 9, 1999, Tucson Electric Power Company (Tucson), tendered for filing an Umbrella Service Agreement between Tucson and Ajo Improvement Company for short-term power sales under Tucson's Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 3.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Delmarva Power & Light Company

[Docket No. ER99–4041–000]

Take notice that on August 10, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Central Vermont Public Service Corporation (CVPS) under Delmarva's market rate sales tariff.

Delmarva requests an effective date of August 10, 1999.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Golden Spread Electric Cooperative, Inc.

[Docket No. ER99–4042–000]

Take notice that on August 10, 1999, Golden Spread Electric Cooperative, Inc. (Golden Spread), tendered for filing proposed changes to its FERC Rate Schedule Nos. 23–33. The purpose of the rate change is to implement a Load Reduction Rider to its existing Rate Schedules between itself and its Member Cooperatives.

Copies of this filing were served upon Golden Spread's eleven Member Cooperatives and the Public Utility Commission of Texas.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. ISO New England, Inc.

[Docket No. ER99–4043–000]

Take notice that on August 10, 1999, ISO New England Inc. (the ISO), tendered an Amendment to the ISO Tariff regarding Working Capital Allocation.

Copies of said filing have been served upon the Participants in the New England Power Pool, non-Participant transmission customers and to the New England State Governors and Regulatory Commissions.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER99–4030–000]

Take notice that on August 9, 1999, the New England Power Pool (NEPOOL), Participants Committee submitted revisions to Market Rule 15. This filing extends the effectiveness of Market Rule 15 and makes limited changes to this NEPOOL Market Rule.

NEPOOL has requested that Market Rule 15, as revised, be allowed to become effective as of August 1, 1999.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Baltimore Gas and Electric Company

[Docket No. ER99–4031–000]

Take notice that on August 9, 1999, Baltimore Gas and Electric Company (BGE), tendered for filing a Service Agreement with Citizens Power Sales, under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services pursuant to the provisions of the Tariff.

BGE requests an effective date of February 18, 1999, for the Service Agreements. BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. The Detroit Edison Company

[Docket No. ER99–4035–000]

Take notice that on August 10, 1999, Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Minnesota Power, Inc., dated as of July 22, 1999.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Power Service Corporation, on behalf of West Penn Power Company (Allegheny Energy)

[Docket Nos. ER99–3492–000; ER99–3568–000; ER99–3581–000; ER99–3582–000; ER99–3583–000; ER99–3584–000; ER99–3646–000; ER99–3671–000; ER99–3675–000; ER99–3715–000; ER99–3716–000; ER99–3717–000; and ER99–3718–000]

Take notice that on August 9, 1999, Allegheny Power Service Corporation on behalf of West Penn Power Company (Allegheny Energy), tendered for filing a request to withdraw Amendments to Supplements to Market Rate and Standard Generation Service Tariffs filed on behalf of West Penn Power Company (Allegheny Energy) in the above-referenced dockets.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4033–000]

Take notice that on August 9, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 31 to add two (2) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of August 6, 1999, to Cargill-Alliant, LLC and Citizens Power Sales.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER99–4036–000]

Take notice that on August 10, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to part 35 of the Federal Energy Regulatory Commission's rules of practice and procedure, 18 CFR 35, service agreements (the Service Agreements) under which NYSEG may provide capacity and/or energy to TransAlta Energy Marketing (U.S.) Inc. (TransAlta), Huntley Power LLC (Huntley), Arthur Kill Power LLC (Arthur Kill), Astoria Gas Turbine Power LLC (Astoria), Dunkirk Power LLC (Dunkirk), and NRG Power Marketing, Inc. (NRG) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreements with TransAlta, Huntley, Arthur Kill, Astoria, Dunkirk, and NRG become effective as of August 11, 1999.

NYSEG has served copies of the filing upon the New York State Public Service Commission, TransAlta, Huntley, Arthur Kill, Astoria, Dunkirk, and NRG.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Avista Corporation

[Docket No. ER99–4038–000]

Take notice that on August 10, 1999, Avista Corporation tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Mutual Netting Agreement allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with City of Santa Clara, d/b/a Silicon Valley Power.

Avista Corporation requests waiver of the prior notice requirement and requests an effective date of July 1, 1999.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison Company

[Docket No. ER99–4039–000]

Take notice that on August 10, 1999, Southern California Edison Company (SCE), tendered for filing Amendment No. 1 to the Edison-Anaheim Interconnection Agreement (Amendment) between SCE and the City of Anaheim, California. The Amendment reflects a change in ownership and responsibility for metering facilities at the Lewis

Substation from SCE to the City of Anaheim.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator Corporation, and the City of Anaheim.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Cleco Utility Group, Inc.

[Docket No. ER99–4040–000]

Take notice that on August 10, 1999, Cleco Utility Group, Inc. (Cleco), tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with the City of Gueydan, Louisiana.

Cleco states that a copy of the filing has been served on the City of Gueydan.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Sandia Resources Corporation

[Docket No. ER99–4044–000]

Take notice that on August 10, 1999, Sandia Resources Corporation (Sandia) petitioned the Commission for acceptance of Sandia Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Sandia intends to engage in wholesale electric power and energy purchases and sales as a marketer. Sandia is not in the business of generating or transmitting electric power. Sandia has no affiliates.

Comment date: August 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Public Service Company of New Mexico

[Docket No. ER99–4046–000]

Take notice that on August 11, 1999, Public Service Company of New Mexico (PNM), tendered for filing Amendment Number Two to the Wholesale Power Purchase Agreement between PNM and Navajo Tribal Utility Authority (NTUA), dated July 13, 1999. The purpose of the Amendment is to conform the Agreement with PNM's Settlement Rates for mandatory ancillary services accepted for filing by the Commission by Letter Order dated April 6, 1999.

PNM requests waiver of the Commission's notice requirements in order that the Amendment be effective retroactive to August 1, 1998.

Copies of this filing have been provided to NTUA, PNM Transmission Development and Contracts, PNM Wholesale Power Marketing, and the New Mexico Public Regulation Commission. PNM's filing is available for inspection at its offices in Albuquerque, New Mexico.

Comment date: August 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Ameren Services Company

[Docket No. ER99–4048–000]

Take notice that on August 11, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and Illinova Energy Partners, Inc. (IEP). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to IEP pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: August 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Ameren Services Company

[Docket No. ER99–4049–000]

Take notice that on August 11, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Illinova Energy Partners, Inc. (IEP). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to IEP pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: August 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Idaho Power Company

[Docket No. ER99–4051–000]

Take notice that on August 11, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and TXU Energy Trading Company.

Comment date: August 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Ameren Services Company

[Docket No. ER99–4052–000]

Take notice that on August 11, 1999, Ameren Services Company (Ameren), tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and The Detroit Edison Company and Southern Minnesota Municipal Power Agency (the parties). Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: August 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Southern Indiana Gas and Electric Company, Indiana Energy, Inc. and Vectren Corporation

[Docket No. EC99–106–000]

Take notice that on August 13, 1999, Southern Indiana Gas and Electric Company (SIGECO), Indiana Energy, Inc. (Indiana Energy) and Vectren Corporation (Vectren) submitted for filing, pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations, an application for approval of the merger of SIGECO's parent, SIGCORP, Inc. with Indiana Energy and into Vectren.

A copy of the filing has been served upon the regulatory agency of the affected state, the Indiana Utility Regulatory Commission.

Comment date: October 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. COSI Astoria, Inc.

[Docket No. EG99–211–000]

Take notice that on August 9, 1999, COSI Astoria, Inc. (Applicant), with its principal office at 111 Market Place, Suite 200, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Facilities consist of three generating stations located in New York City with a combined total summer net capacity of 1,855 MW. Electric energy produced by the Facilities is sold exclusively at wholesale.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

32. North American Energy Services Company

[Docket No. EG99–213–000]

Take notice that on August 12, 1999, North American Energy Services Company, a Washington corporation (Applicant), with its principal executive office at Bellevue, Washington, filed with the Federal Energy Regulatory

Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations (the Application).

Applicant has entered into an agreement with Wartsila NSD Operations, Inc. (Wartsila), a Maryland corporation, under which Applicant assumes Wartsila's obligations to IGC/ERI Pan-Am Thermal Generating Limited (Pan-Am), a stock company organized and existing pursuant to the laws of the Cayman Islands, to operate and maintain an electric power generating facility located at or near Chorrera, Panama (the Project) pursuant to an agreement for operation and maintenance services between Wartsila and Pan-Am. Project facilities include a 96 megawatt fuel oil-fired power generating station, supporting facilities located at the Site and necessary transmission facilities; all of which will be an eligible facility.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

33. California Independent System Operator Corporation

[Docket Nos. ER98–3594–002]

Take notice that on August 13, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a compliance filing in the above-referenced docket which included a number of revisions to the ISO Tariff. The ISO states that this filing was submitted to comply with the Commission's August 2, 1999 Order, 88 FERC ¶ 61,156 (1999), in the above-referenced docket.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. PG Energy PowerPlus; PG&E Energy Services Corporation; West Georgia Generating Company L.P.

[Docket No. ER98–1953–002; Docket No. ER98–1953–003; Docket No. ER95–1614–020; Docket No. ER97–1686–007]

Take notice that on August 13, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

35. Southern Energy California, L.L.C.; UGI Power Supply, Inc.

[Docket No. ER99–1841–001; Docket No. ER96–2715–012; Docket No. ER96–2715–013]

Take notice that on August 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

36. Ameren Services Company

[Docket No. ER99–4047–000]

Take notice that on August 11, 1999, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement ASC and Trigen-St. Louis Energy Corporation (Trigen). ASC asserts that the purpose of the Agreement is to establish Trigen's interconnection with Ameren's transmission system.

Comment date: August 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. International Energy Consultants, Inc.

[Docket No. ER99–3130–000]

Take notice that on August 13, 1999, International Energy Consultants, Inc. filed an amendment to their petition that was filed on June 2, 1999.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. West Georgia Generating Company, L.P.

[Docket No. ER99–4065–000]

Take notice that on August 13, 1999, the above-mentioned affiliated power producer filed its quarterly report for the quarter ending June 30, 1999.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Arizona Public Service Company; Southern Energy Delta, L.L.C.; Southern Energy Potrero, L.L.C.

[Docket No. ER99–4066–000; Docket No. ER99–4075–000; Docket No. ER99–4076–000]

Take notice that on August 12, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. California Independent System Operator Corporation

[Docket Nos. ER99–3301–001]

Take notice that on August 13, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a compliance filing in the above-referenced docket which included a revision to the ISO Tariff. The ISO states that this filing was submitted to comply with the Commission's July 30, 1999 Order, 88 FERC ¶ 61,146 (1999), in the above-referenced docket.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Northeast Utilities Service Company

[Docket No. OA97–237–009]

Take notice that on August 13, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a refund report in compliance with the Commission's order in *Northeast Utilities Service Company*, 88 FERC ¶ 61,006 (1999).

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. Carville Energy LLC

[Docket No. QF98–83–001]

Take notice that on August 12, 1999, Carville Energy LLC located at Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, IL 60062 filed with the Federal Energy Regulatory Commission an application for certification of a facility as a qualifying cogeneration facility pursuant to 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility located at the Carville Energy Center is a gas turbine combined cycle cogeneration facility that uses natural gas as its fuel source. The facility includes two combustion turbine generators, each with a rated capacity of approximately 160,000 kW at ISO conditions, two heat recovery steam generators, and two condensing steam turbine generators, each rated at approximately 85,000 kW. The facility will be located in Iberville Parish, Louisiana.

The Facility will interconnect directly and with the transmission system of Entergy, located in New Orleans, Louisiana, and will sell its useful output at wholesale to various qualified buyers which may include Entergy. Entergy

will provide back-up and maintenance power to the Facility.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21984 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–241–000]

ANR Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Wisconsin Expansion Project

August 19, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by ANR Pipeline Company (ANR) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Wisconsin Expansion Project including:

- about 3.0 miles of 42-inch-diameter pipeline loop at its Michigan Leg South System in Kendall County, Illinois; and
- about 0.11 mile of 16-inch-diameter pipeline from the Weyauwega Compressor Station to ANR's Marinette Junction tap site on its existing 24-inch-diameter mainline in Waupaca County, Wisconsin.

In addition, ANR proposes to install the following facilities:

- two 10,000-horsepower (hp) compressor units at its existing Woodstock Compressor Station in McHenry County, Illinois;
- one 1,500-hp compressor unit at its existing Weyauwega Compressor Station in Waupaca County, Wisconsin;
- one 1,500-hp compressor unit at its existing Janesville Compressor Station in Rock County, Wisconsin;
- one pig launcher on ANR's existing right-of-way at Lisbon Road in Kendall County, and other minor related facilities.

The purpose of the proposed facilities would be to install certain additional loop pipeline and expand the capacity of its facilities in Illinois and Wisconsin to increase its transmission capacity by up to 194 million Decatherms per day of natural gas between the ANR Joliet Hub and its Wisconsin market area.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2–A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP99–241–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 20, 1999.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemarkings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21985 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

August 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* P–11797–000.

c. *Date Filed:* July 29, 1999.

d. *Applicant:* Grande Pointe Power Corporation.

e. *Name of Project:* Three Rivers Hydroelectric Project.

f. *Location:* On the St. Joseph River in the City of Three Rivers, St. Joseph County, Michigan. The project does not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Monroe E. Learn, Grande Pointe Power Corporation, 503 West Michigan Avenue, Three Rivers, MI 54601, (616) 273–8828.

i. *FERC Contact:* Any questions on this notice should be addressed to Mark Pawlowski, E-mail address mark.pawlowski@ferc.fed.us, or telephone 202–219–2795.

j. *Deadline for filing additional study requests:* September 27, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A right earthen embankment 750 feet-long and a left earthen embankment 200 feet-long, separated by a 283 foot-long gated spillway section with a crest elevation of 792.4.0 feet NGVD; (2) a 601-acre reservoir with a normal water surface elevation of 797.0 feet NGVD; (3) a powerhouse containing 3 vertical Francis turbines each connected to generator units for a total installed capacity of 900 kW; and (4) appurtenant facilities. The average annual energy generation is 3,844,920 kWh. Power generated by the project will be sold to a local utility.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21987 Filed 8–24–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6428–1]

Agency Information Collection Activities—Proposed Collection; Comment Request; RCRA Section 3007 Questionnaire of the Paint Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is soliciting comment on the Information Collection Request (ICR) entitled "RCRA section 3007 Questionnaire of the Paint Manufacturing Industry." EPA is currently in the process of making a determination whether certain waste streams generated from the manufacture of paint in the United States should be regulated as listed hazardous waste under the Resource Conservation and Recovery Act (RCRA). This document describes the proposed information collection efforts and their expected burden and cost.

DATES: Comments must be submitted on or before October 25, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–PMIP–FFFFF to RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: <rcradocket@epa.gov>. Comments in electronic format should also be identified by the docket number F–1999–PMIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/id/paint/index.htm
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the "**Federal Register**". EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this effort, contact David J. Carver, Office of Solid Waste, Mailcode 5304W, U.S. Environmental Protection Agency, 401 M Street, S.W. (5304W), Washington, D.C., 20460, (703) 308–8603, by fax (703) 308-0514, by EMAIL at carver.david@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Paint Manufacturing Waste Industry Survey (EPA ICR No. 1925.01).

Abstract: The paint manufacturing waste streams (or residuals) on which

the Agency is obligated to make a hazardous waste listing determination is specified in the December 4, 1994, consent decree, as amended (EDF v. Browner, Civ. No. 89–0598) and includes the following waste streams from the manufacture of paint: (1) Solvent cleaning wastes, (2) water/caustic cleaning wastes, (3) wastewater treatment sludge, (4) emission control dust or sludge, and (5) off-specification production wastes.

This Information Collection Request (ICR) describes the types of information collection necessary for EPA to analyze how solid and hazardous waste is currently managed in the United States Paint Manufacturing Industry. It proposes the following information collection efforts.

- A section 3007 questionnaire pursuant to sections 3001 and 3004 of RCRA.
- Process flow diagram requests for no more than 100 facilities.
- Clarifications and updates to the section 3007 questionnaire and process flow diagram requests.
- Facility site visits which will include sampling and analysis.

If EPA concludes that certain waste streams should be regulated as listed hazardous waste, then the information collected may also be applied to (1) A Land Disposal Restrictions (LDR) and Capacity Analysis, (2) a source reduction and/or recycling analysis, (3) a supporting risk assessment, and (4) an economic analysis.

EPA intends to send a RCRA section 3007 Questionnaire to all U.S. paint facilities that manufacture paint. The section 3007 Questionnaire proposes to collect the following information.

- Corporate/facility data—name, location, EPA hazardous waste generator identification number (if applicable), and facility contact information.
- Residual generation information and residual management practices; and
- Residual characterization information—residual constituents and concentrations;

This information is necessary since the Agency will use waste types, concentrations, and current management practices to support its final listing decision.

If approved by OMB, facilities will be required to respond to the Agency within 30 days of receipt of this questionnaire. A facility is only required to respond to a questionnaire that displays a currently valid OMB control number and expiration date. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

In addition to the RCRA section 3007 questionnaire, this ICR proposes to allow EPA to (1) Clarify and update, when and where appropriate, information received from facilities, (2) request paint manufacturing process descriptions or schematics from no more than 100 facilities, and (3) conduct site visits to no more than 25 facilities which could include sampling and analysis of residual streams under study. EPA will only clarify and update information received from either the RCRA section 3007 Questionnaire or from the Process descriptions. The Agency will always request additional information if the Agency requires more information to understand residual generation, residual characterization, and/or residual management practices.

EPA will send paint manufacturing process description requests to no more than 100 facilities via a RCRA section 3007 letter. These letters will request information such as process flow diagrams. The Agency requires this information to better understand (1) The paint manufacturing processes and (2) the exact points of generation for each identified residual meeting the scope of this listing determination. Finally, EPA proposes to visit no more than 25 paint manufacturing facilities to evaluate paint manufacturing residual generation and management processes. These site visits may include sampling and analysis should the Agency consider it necessary.

Burden Statement: This ICR seeks approval for the Agency to require the following from paint manufacturers: (1) Respond to a section 3007 Questionnaire, (2) provide manufacturing process information in response to section 3007 letters, (3) provide clarifications and updates to the section 3007 questionnaires and letters, and (4) support EPA site visits. For purposes of this analysis, burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal Agency. This burden estimate includes the time required to:

- Review instructions.
- Develop, acquire, install, and utilize technology for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information.
- Adjust the existing ways to comply with any previously applicable instructions and requirements to train personnel to be able to respond to a collection of information.
- Search available data sources.
- Complete and review the collected information.
- Transmit or otherwise disclose the information to the Agency.

The total burden of this ICR on the entire paint manufacturing industry is estimated at 34,450 hours. This estimated total burden is derived from the following: 33,600 burden hours for the 3007 questionnaire, 600 burden hours for the process description requests, and 250 burden hours for the site visits. The total burden is calculated using an estimated industry size of 1200 respondents. The methods and assumptions used to estimate the total burden estimate are located in the supporting statement to this ICR. The supporting statement is located in the RCRA docket for this ICR. Specifically, the average annual burden imposed by the RCRA section 3007 questionnaire is approximately 28 hours per respondent. The facility site trip burden is approximately 10 hours per respondent. EPA estimates that the Agency will be visiting 25 facilities. Also, EPA estimates that the total burden per respondent for responding to an EPA request for process flow diagrams is estimated to be 6 hours/respondent.

Comments: EPA is requesting comments on all aspects of this Information Collection Request. Specifically, EPA requests comments on (1) The RCRA section 3007 Questionnaire (2) the appropriateness of this ICR, (3) the accuracy of the provided burden estimates, and (4) any suggested methods for minimizing respondent burden, including the use of automated collection techniques.

Dated: August 16, 1999,

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–22045 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6427–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Emission Defect Information Reports and Voluntary Emission Recall Reports for On-Highway, Light-Duty Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Emission Defect Information and Voluntary Emission Recall Reports for On-Highway, Light-Duty Motor Vehicles, formerly OMB #2060–0048, expires 11/30/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 24, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1916.01.

SUPPLEMENTARY INFORMATION:

Title: Emission Defect Information and Voluntary Emission Recall Reports for On-Highway, Light-Duty Motor Vehicles (EPA ICR No. 1916.01, previously EPA ICR No. 282.10 and OMB Control No. 2060–0048; which is being split into two collections. This one is only for on-highway, light-duty motor vehicles.) expiring 11/30/99. This is an extension of a currently approved collection.

Abstract: Some manufacturers of motor vehicles are required to submit two different reports under 40 CFR part 85. These reports are only required where certain conditions involving emission defects or voluntary recalls occur.

The "defect information report" (DIR) contains data regarding the class or engine family and number of vehicles on which a defect has been found, and a description of the defect and its effects on vehicle performance and emissions. The Agency uses the DIR to help identify emission-related defects or classes of vehicles which may not comply with federal emissions standards.

The "voluntary emission recall" (VER) report contains data on voluntary recall campaigns conducted by manufacturers, including the procedures used by the manufacturers to conduct voluntary recall campaigns, the identification of vehicles or engines affected by the campaign, and the repair to be completed on recalled vehicles. Progress or quarterly updates of the VER reports track the number of vehicles repaired. The Agency uses the VER report and progress reports to ensure that manufacturers are following acceptable procedures when conducting recalls and to track the progress and effectiveness of voluntary recall campaigns. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 5/21/99 (64 FR 27780); no comments were received.

Burden Statement: The estimated cost to the public of this ICR is 1256 hours and $85,007. A respondent's burden for a defect information report is estimated to be 14 hours per report. The estimated frequency per respondent is expected to average 5.1 responses per year. It is estimated that there will be an average of 12 respondents submitting defect information reports per year.

A respondent's burden for a voluntary emissions recall report and the follow-up progress reports is estimated to be 3.5 hours and 14 hours, respectively. The estimated frequency per respondent is expected to average 3.8 voluntary recall reports per year. It is estimated that there will be an average of 6 respondents submitting voluntary emissions recall reports per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1916.01 in any correspondence.

Ms. Sandy Farmer, United States Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 19, 1999.

Richard T. Westlund,

Acting Division Director, Regulatory Information Division.

[FR Doc. 99–22043 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34193; FRL 6098–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on February 22, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm., 224, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does This Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information of Copies of Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and

various support documents are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPP–34193], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm., 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

II. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

III. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the three pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 22, 2000 to discuss withdrawal of the applications for amendment. This 180-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. (Note: Registration number(s) preceded by * indicate a 30-day comment period).

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
001965–00011	Vancide 89	Soap, wallpaper flour paste	Captan
*002724–00478	Mavrik Aquaflow Insecticide	Fluvalinate	Commercial, residential turf
005905–00529	Barrage HF	Acetic acid	Aquatic uses

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
001965	R.T. Vanderbilt Co., Inc., 30 Winfield Street, Norwalk, CT 06855.
002724	Wellmark International, Regulatory Affairs, 1000 Tower Lane, Suite 245, Bensenville, IL 60106.
005905	Helena Chemical Company, Crescent Center, 6075 Poplar Avenue, Suite 500, Memphis, TN 38119.

IV. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 12, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–21943 Filed 8–24–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–887; FRL–6096–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–887, must be received on or before September 24, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–887 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8380; and e-mail address: gandhi.bipin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing

Categories	NAICS	Examples of potentially affected entities
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–887. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–887 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–887. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 17, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The

summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Cabot Corporation

PP 9E6017

EPA has received a pesticide petition (PP 9E6017) from Cabot Corporation, 75 State Street, Boston, MA 02109 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for dimethyl silicone polymer with silica (TS-720) when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops in or on the raw agricultural commodity after harvest or to animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

No residue chemistry data are presented in the petition as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient.

B. Toxicological Profile

The Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Cabot Corporation believes that TS-720 conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria used to identify a low risk polymer.

1. TS-720 is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. TS-720 contains as an integral part of its composition the atomic elements carbon, silicon, hydrogen and oxygen.

3. TS-720 does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. TS-720 is not designed, nor is it reasonably anticipated to substantially degrade, decompose or depolymerize prior to, during, or after use.

5. TS-720 is not manufactured or imported from monomers and/or reactants that are not included on the Toxic Substances Control Act (TSCA) substance inventory or manufactured under an applicable TSCA section 5 exemption.

6. TS-720 is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000.

7. TS-720 has an minimum-average molecular weight of 1,100,000 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. TS-720 has a minimum-average molecular weight of 1,100,000 daltons. TS-720 meets the requirements for molecular weight distribution of oligomer contents of less than 5% with molecular weights less than 1,000 and less than 2% with molecular weights less than 500. Attached is a description of the molecular weight determination of TS-720.

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-720. No toxicology data are being submitted as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient. Because TS-720 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with toxicity.

C. Aggregate Exposure

1. *Dietary exposure.* TS-720 is not absorbed through the intact gastrointestinal tract and is incapable of eliciting a toxic response.

2. *Drinking water.* TS-720 is not soluble in water and therefore there is no reason to expect human exposure to residues in water.

3. *Non-dietary exposure.* For most uses of TS-720 the primary route of exposure is dermal. TS-720, with a molecular weight significantly greater than 400, is not absorbed through the intact skin.

D. Cumulative Effects

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-720. Because TS-720 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with cumulative effects.

E. Safety Determination

1. *U.S. population.* Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-720. Because TS-720 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with any potential exposure to adults.

2. *Infants and children.* Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-720. Because TS-720 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with exposure to infants and children.

2. Cabot Corporation

PP 9E6018

EPA has received a pesticide petition (PP 9E6018) from Cabot Corporation, proposing, pursuant to section 408(d) of 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for silane, dichloromethyl-, reaction product with silica (TS-610) when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops in or on the raw agricultural commodity after harvest or to animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

No residue chemistry data are presented in the petition as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient.

B. Toxicological Profile

The Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Cabot Corporation believes that TS-610 conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria used to identify a low risk polymer.

1. TS-610 is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. TS-610 contains as an integral part of its composition the atomic elements carbon, silicon, hydrogen and oxygen.

3. TS-610 does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. TS-610 is not designed, nor is it reasonably anticipated to substantially degrade, decompose or depolymerize prior to, during, or after use.

5. TS-610 is not manufactured or imported from monomers and/or reactants that are not included on the TSCA substance inventory or manufactured under an applicable TSCA section 5 exemption.

6. TS-610 is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000.

7. TS-610 has an minimum-average molecular weight of 3,340,000 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. TS-610 has a minimum-average molecular weight of 3,340,000 daltons. TS-610 meets the requirements for molecular weight distribution of oligomer contents of less than 5% with molecular weights less than 1,000 and less than 2% with molecular weights less than 500.

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-610. No toxicology data are being submitted as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient. Because TS-610 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with toxicity.

C. Aggregate Exposure

1. *Dietary exposure.* TS-610 is not absorbed through the intact GI tract and is incapable of eliciting a toxic response.

2. *Drinking water.* TS-610 is not soluble in water and therefore there is no reason to expect human exposure to residues in water.

3. *Non-dietary exposure.* For most uses of TS-610 the primary route of exposure is dermal. TS-610, with a molecular weight significantly greater than 400, is not absorbed through the intact skin.

D. Cumulative Effects

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-610. Because TS-610 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with cumulative effects.

E. Safety Determination

1. *U.S. population.* Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-610. Because TS-610 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with any potential exposure to adults.

2. *Infants and children.* Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-610. Because TS-610 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with exposure to infants and children.

3. Cabot Corporation

PP 9E6019

EPA has received a pesticide petition PP 9E6019 from Cabot Corporation, proposing, pursuant to section 408(d) of 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for hexamethyldisilizane, reaction product with silica (TS-530) when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops in or on the raw agricultural commodity after harvest or to animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

No residue chemistry data are presented in the petition as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient.

B. Toxicological Profile

The Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Cabot Corporation believes that TS-530 conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria used to identify a low risk polymer.

1. TS-530 is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. TS-530 contains as an integral part of its composition the atomic elements carbon, silicon, hydrogen and oxygen.

3. TS-530 does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(iii).

4. TS-530 is not designed, nor is it reasonably anticipated to substantially

degrade, decompose or depolymerize prior to, during, or after use.

5. TS-530 is not manufactured or imported from monomers and/or reactants that are not included on the TSCA substance inventory or manufactured under an applicable TSCA section 5 exemption.

6. TS-530 is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000.

7. TS-530 has an minimum-average molecular weight of 645,000 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. TS-530 has a minimum-average molecular weight of 645,000 daltons. TS-530 meets the requirements for molecular weight distribution of oligomer contents of less than 5% with molecular weights less than 1,000 and less than 2% with molecular weights less than 500. Attached is a description of the molecular weight determination of TS-530.

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-530. No toxicology data are being submitted as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient. Because TS-530 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with toxicity.

C. Aggregate Exposure

1. *Dietary exposure.* TS-530 is not absorbed through the intact GI tract and is incapable of eliciting a toxic response.

2. *Drinking water.* TS-530 is not soluble in water and therefore there is no reason to expect human exposure to residues in water.

3. *Non-dietary exposure.* For most uses of TS-530 the primary route of exposure is dermal. TS-530 with a molecular weight significantly greater than 400 is not absorbed through the intact skin.

D. Cumulative Effects

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-530. Because TS-530 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with cumulative effects.

E. Safety Determination

1. *U.S. population.* Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-530. Because TS-530 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with any potential exposure to adults.

2. *Infants and children.* Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-530. Because TS-530 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with exposure to infants and children.

[FR Doc. 99–22049 Filed 8–24–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–882; FRL–6093–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals In or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–882, must be received on or before September 24, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–882 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5697; and e-mail address: tompkins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–882. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business

information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–882 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–882. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Entek Corporation

PP 9F5095

EPA has received a pesticide petition (PP 9F5095) from Entek Corporation, 6835 Deerpath Road, Suite E, Elkridge, MD 21075 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180 by revising the existing tolerance regulation for glyphosate to allow application of glyphosate (in its acid form) on raw agricultural commodities (RAC). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue in plants is adequately understood and consists of the parent, glyphosate and its metabolite, aminomethylphosphonic acid (AMPA). Only the glyphosate parent is to be regulated in plant and animal commodities since the metabolite AMPA is not of toxicological concern in food.

2. *Analytical method.* Glyphosate food residues can be measured using high pressure liquid chromatography

(HPLC) with fluorometric detection. This method is adequate for enforcement purposes; the methodology has been published in the pesticide analytical manual (PAM), Vol II. The method has a limit of detection (LOD) of 0.05 parts per million (ppm), which allows monitoring of food with residues at or above the tolerance levels.

3. *Magnitude of residues.* Adequate data concerning glyphosate residues on RAC has previously been submitted to the Agency. Accordingly, the available residue data for glyphosate support the proposed revision of the tolerance expression for glyphosate. As noted above, this revision will permit glyphosate residues from the application of glyphosate in the acid form. In addition, any secondary residues occurring in liver, or kidney of cattle, goats, horses, and sheep, and liver and kidney of poultry will be covered by existing tolerances.

B. Toxicological Profile

1. *Acute toxicity.* Glyphosate is practically non-toxic by the oral route of exposure since the acute oral LD_{50} for glyphosate is greater than 5,000 milligrams/kilograms (mg/kg).

2. *Genotoxicty.* Glyphosate was evaluated in the standard battery of mutagenicity screening tests and all assays were negative. The individual genotoxicity studies are: *in vitro* chromosomal aberration (no aberrations in Chinese hamster ovary cells were caused, with or without S9 activation); DNA repair in rat hepatocytes; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames Test with *S. typhimurium*; and the dominant-lethal mutagenicity test in mice.

3. *Reproductive and developmental toxicity.* Developmental toxicity studies were conducted with glyphosate in the rat and mouse. In the rat study, test animals were orally given doses of 0, 300, 1,000 and 3,500 mg/kg/day of glyphosate. The maternal no-observable adverse effect level (NOAEL) is 1,000 mg/kg/day based on clinical signs of toxicity, body weight effects and mortality and the fetal NOAEL is 1,000 mg/kg/day based on reduced body weights and delayed sternebrae maturation at the highest dose tested (HDT), 3,500 mg/kg/day.

In the rabbit study, test animals were orally given doses of 0, 75, 175 and, 350 mg/kg/day of glyphosate. The maternal NOAEL is 175 mg/kg/day based on clinical signs of toxicity and mortality and the fetal NOAEL is 350 mg/kg/day based on no developmental toxicity at any dose tested.

Two studies evaluating the reproductive effects of glyphosate were conducted in the rat. In a 3-generation study, rats were fed dosage levels of 0, 3, 10, and 30 mg/kg/day of glyphosate. The NOAEL for systemic and reproductive/developmental parameters is 30 mg/kg/day based on no-adverse effects noted at any dose level.

In a 2-generation reproduction study, rats were fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day of glyphosate. The NOAEL for systemic and developmental parameters is 500 mg/kg/day based on body weight effects, clinical signs of toxicity in adult animals and decreased pup body weights and a reproductive NOAEL of 1,500 mg/kg/day.

4. *Subchronic toxicity.* Subchronic (90-day) feeding studies were conducted with the rat, mouse, and dog. In the rat study, the test animals were fed dosage levels of 0, 1,000, 5,000, and 20,000 ppm of glyphosate. The NOAEL is 20,000 ppm based on no-effects at the HDT.

In the mouse study, the test animals were fed dosage levels of 0, 5,000, 10,000, and 50,000 ppm of glyphosate. The NOAEL is 10,000 ppm based on body weight effects at the HDT.

In the dog study, the test animals were given glyphosate, via capsule, at doses of 0, 200, 600, and 2,000 mg/kg/day. The NOAEL is 2,000 mg/kg/day based on no-effects at the HDT.

5. *Chronic toxicity/carcinogenicity.* In a 12–month oral study, dogs were given glyphosate, via capsule, at doses of 0, 20, 100, and 500 mg/kg/day. The NOAEL is 500 mg/kg/day based on no-adverse effects at any dose level.

In a 26–month chronic feeding/oncogenicity study, rats were fed glyphosate at dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, and 34 mg/kg/day (females). The NOAEL is 31 mg/kg/day (males) and 34 mg/kg/day (females) based on no carcinogenic or other adverse effects at any dose level.

In a 24–month chronic feeding/oncogenicity study, rats were fed glyphosate at dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 0, 113, 457, and 1,183 mg/kg/day (females). The systemic NOAEL is 362 mg/kg/day based on body weight effects in the female and eye effects in males. There was no carcinogenic response at any dose level.

In a mouse oncogenicity study, mice were fed glyphosate at dosage levels of 0, 150, 750, and 4,500 mg/kg/day with a NOAEL of 750 mg/kg/day based on body weight effects and microscopic liver changes at the HDT. There was no carcinogenic effect at the HDT of 4,500 mg/kg/day.

Glyphosate is classified as a Group E (evidence of non-carcinogenicity for humans). This classification is based on the following findings:

i. There were no treatment related tumor findings in three state-of-the-art long-term bioassays.

ii. Glyphosate was tested up to the limit dose in the rat and up to levels higher than the limit dose in mice.

iii. There is no evidence of genotoxicity for glyphosate.

6. *Animal metabolism.* The nature of the residue in animals is adequately understood and consists of the parent, glyphosate and its metabolite AMPA.

7. *Metabolite toxicology.* Only glyphosate parent is regulated in plant and animal commodities since the metabolite AMPA is not of toxicological concern.

8. *Endocrine disruption.* The toxicity studies required by EPA for the registration of pesticides measure numerous endpoints with sufficient sensitivity to detect potential endocrine modulating activity. No effects have been identified in subchronic, chronic or developmental toxicity studies to indicate any endocrine modulating activity by glyphosate. In addition, negative results were obtained when glyphosate was tested in a dominant-lethal assay. While this assay was designed as a genetic toxicity test, agents that can affect male reproduction function will also cause effects in this assay. More importantly, the multi-generation reproduction study in rodents is a complex study design which measures a broad range of endpoints in the reproductive system and in developing offspring that are sensitive to alterations by chemical agents. Glyphosate has been tested in two separate multi-generation studies and each time the results demonstrated that glyphosate is not a reproductive toxin.

C. Aggregate Exposure

1. *Dietary exposure—Food.* Dietary exposure was estimated using the Theoretical Maximum Residue Contribution (TMRC) from all present tolerances. The TMRC is obtained by multiplying the tolerance level residue for each food commodity by consumption data which estimates the amount of those products eaten by various population subgroups. In conducting this exposure assessment, very conservative assumptions are made: 100% of these crops will contain glyphosate residues and the residues will be at the tolerance level.

2. *Drinking water.* In examining aggregate exposure, the Food Quality Protection Act (FQPA) directs EPA to consider available information concerning exposures from the pesticide residue via drinking water. The lifetime health advisory and maximum contaminant level (MCL) for glyphosate are both 700 parts per billion (ppb) in the EPA Office of Drinking Water's "Drinking Water Health Advisory - Pesticides." The MCL represents the level at which no known or anticipated adverse health effects will occur allowing for an adequate margin of safety and is based on the reference dose (RfD). Environmental fate data for glyphosate shows little potential for the chemical to migrate to drinking water. In addition, glyphosate is not highly mobile and not persistent in soil or water.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative boundary figure for the potential contribution of water-related exposures to the aggregate risk posed by a pesticide.

In developing a boundary figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints RfDs or acute dietary NOAELs and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause glyphosate to exceed the RfD if the change in the tolerance expression being considered in this document is granted. The Agency has therefore concluded that the potential exposures associated with glyphosate in water, even at higher levels the Agency may consider a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the proposed tolerance revision is granted.

3. *Non-dietary exposure.* Glyphosate is registered for use on several non-food sites such as around ornamentals, shade trees, shrubs, walks, driveways, flowerbeds, home lawns, farmstead including building foundations, along and in fences, in dry ditches and canals, along ditch banks, farm roads, shelter belts, forestry, Christmas trees, and industrial sites and other non-crop or industrial areas such as airports, lumber yards, manufacturing sites, utility substations, parking areas, petroleum tank farms and pumping stations. Margins of Exposure (MOEs) are determined for non-dietary exposure based on toxicological endpoints and measured or estimated exposures. Since glyphosate is not a carcinogen, the 21–day dermal study lacked any observable effects at the limit dose; and no adverse effects were observed in developmental toxicity studies in rats up to 1,000 mg/kg/day and rabbits up to 175 mg/kg/day, no toxicological endpoints are applicable. Because available data indicate no evidence of significant toxicity via the dermal or inhalation routes, MOE's were not calculated and risk assessments are not required for non-occupational residential uses.

D. Cumulative Effects

EPA does not have, at this time, available data to determine whether glyphosate has a common mechanism of toxicity with other substances or how to include it in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on common mechanism of toxicity, glyphosate does not produce a toxic metabolite which is common to other substances.

For the purposes of this tolerance action, EPA has assumed that glyphosate does not have a common mechanism of toxicity with other substances. A condition of the registrations associated with these tolerances will be that registrants will provide common mechanism data in a timely manner when and if the Agency asks for it. After EPA develops methodologies for more fully applying common mechanism of toxicity issues to risk assessments, the Agency will develop a process to reexamine those tolerance decisions made earlier.

E. Safety Determination

1. *U.S. population*—i. *Acute dietary exposure.* Based upon available data, glyphosate does not pose any acute dietary risk and an acute dietary risk assessment is not required

ii. *Chronic dietary exposure.* Using the TAS Exposure I software and 1977-78 food consumption data, a chronic dietary exposure estimate has been performed based on 100% of the crops treated and all residues at tolerance levels. Based on this assessment, the total dietary exposure from glyphosate residues is 1.4% of the RfD for the overall U.S. population and 3.1% of the RfD for non-nursing infants, the most highly exposed population subgroup. As noted above, an additional risk assessment for residential uses was not required because there is no evidence of significant toxicity via dermal or inhalation exposure routes. Even though an appropriate bounding figure for consumption of contaminated water has not been determined, the ranges being examined are all below the level that would cause glyphosate to exceed the RfD. Generally, there is no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicology data and the conservative exposure assessment employed, there is a reasonable certainty that no harm will occur from aggregate exposure to glyphosate.

2. *Infants and children.* FFDCA section 408 provides than an additional tenfold MOE (safety) for infants and children in the case of threshold effects may be needed to account for prenatal, and postnatal toxicity and the completeness of the data base unless it is determined that a different MOE (safety) will be safe for infants and children. Reliable data support using the standard MOE (usually 100x for combined interspecies and intraspecies variability), without the additional tenfold MOE, when a complete data base under current guidelines exists and when the nature of the findings from these studies do not raise concerns regarding the adequacy of the standard MOE.

The toxicological data base for evaluating prenatal and postnatal toxicity for glyphosate is considered to be complete at this time. Risk to infants and children for glyphosate was determined by using two developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats. The developmental toxicity studies evaluate the potential for adverse effects on the developing organism resulting from exposure during prenatal development. The reproduction study provides information relating to effects from exposure to the chemical on the reproductive capability of both (mating) parents and on systemic toxicity, in addition to information on prenatal development. The results of these studies indicate that glyphosate does not produce birth defects and is not a reproductive toxin.

In the rabbit, no developmental toxicity was observed at the HDT where significant maternal toxicity occurred (death and clinical signs at 350 mg/kg/day). Because no developmental toxicity was observed at any dose level, the developmental toxicity NOAEL is considered to be 350 mg/kg/day. In the rat developmental toxicity study, severe

maternal (systemic) and developmental toxicity was noted at 3,500 mg/kg/day, the HDT. It is important to note that the HDT in this study was 3.5 times higher than the limit dose currently required by EPA guidelines. The maternal and developmental (pup) NOAEL was 1,000 mg/kg/day. No effects on reproductive parameters were observed.

In the rat 2-generation study, prenatal toxicity was observed at 1,500 mg/kg day as soft stools, decreased food consumption, and body weight gain; therefore, the systemic NOAEL is considered to be 500 mg/kg/day. Developmental (pup) toxicity was only exhibited at 1,500 mg/kg/day as decreased body weight gain of the F1a, F2a, and F2b male, and female pups during the second and third weeks of lactation. Glyphosate did not affect the ability of rats to mate, conceive, carry or deliver normal offspring at any dose level.

The RfD is based on the NOAEL for maternal toxicity in the rabbit developmental toxicity study. No developmental effects were noted in the study; effects were noted only at doses 20-fold higher than the NOAEL used for the RfD. No prenatal or postnatal effects were seen in any study in the absence of maternal toxicity. In the rat reproduction study, developmental effects were noted at doses 5 times higher than the NOAEL used for the RfD. The Agency does not believe the effects seen in these studies are of such concern to require an additional safety factor. Accordingly, the Agency believes the RfD has an adequate margin of protection for infants and children. The dietary exposure from current uses of glyphosate range from 1% of the RfD for nursing infants (less than 1–year old) to 3% for non-nursing infants and children 1 to 6 years old. Therefore, there is reasonable certainty that no harm will occur to infants and children from aggregate exposure to glyphosate.

F. International Tolerances

Codex MRLs have been established for residues of glyphosate in or on several raw agricultural commodities.

2. Novartis Crop Protection, Inc.

PP 4F4336 and PP 5F4469

EPA has received pesticide petitions (PP 4F4336 and PP 5F4469) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.481 by extending time-limited tolerances for residues of prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the RAC cereal grains group (except rice and wild rice) grain at 0.01 ppm; cereal grains group (except rice and wild rice) forage at 0.10 ppm; cereal grains group (except rice and wild rice) fodder at 0.01 ppm; cereal grains group (except rice and wild rice) straw at 0.02 ppm; cereal grains group (except rice and wild rice) hay at 0.20 ppm; milk at 0.01 ppm; and meat, fat, kidney, liver and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm until December 31, 2001. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1 *Plant metabolism.* The metabolism of prosulfuron in corn is well understood. Significant pathways involve oxidation of the phenyl ring to give 5-hydroxy prosulfuron, which is followed by sugar conjugation. Hydrolytic cleavage of the sulfonylurea bridge occurs for both prosulfuron and 5-hydroxy prosulfuron yielding the corresponding sulfonamide and triazine amine moieties. The sulfonamide metabolites are subsequently conjugated with sugars. Demethylation of the triazine amine results in the formation of the corresponding hydroxy triazine, which is further hydrolyzed at the amino group to form the dihydroxy triazine.

2. *Analytical method.* Novartis Crop Protection, Inc has submitted practical analytical methods for the detection and measurement of residue levels of prosulfuron in or on RAC and processed commodities of cereal grains, and for meat, milk and eggs. The LOD for prosulfuron is 0.8 ng injected and the limit of quantitation (LOQ) is 0.01 ppm for crop commodities, processed fractions and milk, and 0.05 ppm for meat and eggs. The method is based on commodity-specific cleanup procedures followed by determination by high performance liquid chromatography with ultraviolet (UV) detection.

3. *Magnitude of residues.* Complete, full geography residue programs, including processing, have been conducted on corn, wheat and grain sorghum. A three-level dairy animal feeding study to determine the transfer of residues of prosulfuron from animal feed commodities to meat and milk has also been conducted.

B. Toxicological Profile

1. *Acute toxicity.* Studies conducted with the technical material of prosulfuron:

i. Rat acute oral toxicity study with a LD_{50} of 949 mg/kg for males and 546 mg/kg for females.

ii. Rabbit acute dermal toxicity study with a $LD_{50} > 2,000$ mg/kg.

iii. Rat acute inhalation toxicity study with a $LC_{50} > 5.4$ milligrams per liter (mg/L).

iv. Rabbit eye irritation study showing slight irritation (Category III).

v. Rabbit dermal irritation study showing no irritation (Category IV).

vi. Guinea pig dermal sensitization study with the Buehler's method showing negative findings Guinea pig dermal sensitization study with the maximization method showing negative findings.

2. *Genotoxicty.* No genotoxic activity is expected of prosulfuron under *in vivo* or physiological conditions. The compound has been tested in a bacterial reverse gene mutation assay with and without metabolic activation using different *S. typhimurium* and *E. coli* stains; in a mammalian gene mutation study using V79 cells; in an *in vitro* mammalian cytogenetic test using Chinese hamster ovary cells with and without metabolic activation; in a micronucleus test in mice; and in a DNA-repair using freshly isolated rat liver hepatocytes. All these tests were negative for mutagenicity.

3. *Reproductive and developmental toxicity.* FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. While the final review of some of additional developmental data has not yet been completed, based on the current toxicological data requirements, the data base on prosulfuron relative to prenatal and postnatal effects for children is considered to be complete.

In assessing the potential for additional sensitivity of infants and children to residues of prosulfuron, Novartis considered data from teratogenicity studies in the rat and the rabbit and a 2-generation reproduction studies in the rat. The teratogenicity studies are designed to evaluate adverse effects on the developing embryo as a result of chemical exposure during the period of organogenesis. Reproduction studies provide information on effects from chemical exposure on the reproductive capability of mating animals and systemic and developmental toxicity from *in-utero* exposure.

In the rat teratology study, prosulfuron was administered at dose levels of 0, 5, 50, 200 and 400 mg/kg during days 6 to 15 of gestation. Evidence of maternal toxicity (decreased body weight gain and reduced food consumption) and developmental toxicity (increased incidence of skeletal variations that was not significantly different from the historical control) was found at the maximum tolerated dose of 400 mg/kg. There was no evidence of teratogenicity at any dose, and the maternal and developmental no observed adverse effect levels (NOAELs) were established at 200 mg/kg.

Prosulfuron was administered to rabbits at dose levels of 0, 1, 10, and 100 mg/kg during days 7 to 19 of pregnancy. Maternal toxicity (decreased body weight gain and reduced food consumption) was observed in the 100 mg/kg dose group. There was no evidence of teratogenicity at any dose.

Since a range-finding rabbit teratology study had seen additional clinical findings and fetotoxicity at maternally toxic doses (≥ 150 mg/kg) but not in the definitive study at up to 100 mg/kg, a second rabbit teratology study was conducted at doses of 0, 20, 100, and 200 mg/kg/day. Maternal toxicity was observed at 200 mg/kg. The developmental NOAEL was 100 mg/kg and the maternal NOAEL was 20 mg/kg in this study. There was no evidence of teratogenicity at any dose.

Prosulfuron was administered to rats at dose levels of 0, 0.67, 13.3, 136, or 278 (males), and 0, 0.76, 15.3, 152, or 311 mg/kg/day (females) throughout two consecutive generations. The reproductive and systemic NOAELs of 13.3 mg/kg/day were based on decreased mean body weights and body weight gain observed at 136 mg/kg/day for both pups and parental animals. No treatment- related effects on reproductive performance (i.e., to produce, deliver or raise litters), litter sizes, viability of pups and necropsy findings in parental animals and offspring were noted up to the highest dose level.

Based on all these teratology and reproduction studies, the lowest NOAEL for developmental toxicity is estimated to be 13.3 mg/kg while the lowest NOAEL in the subchronic and chronic studies is 1.84 mg/kg/day (from the dog chronic study). Therefore, no additional sensitivity for infants and children to prosulfuron is suggested by the data base.

4. *Subchronic toxicity.* The liver was identified as a target organ at high doses in the rat, mouse and dog as indicated by slightly increased liver enzymes and liver weights. No histomorphologic correlates of liver damage was noted in the 90–day studies except in the mouse study where centrilobular hypertrophy was found in males at feeding levels ≥ 1,750 ppm and in females at levels ≥ 3,500 ppm. Effects of prosulfuron on the hematopoietic system (anemia) were noted in the dog at feeding levels ≥ 1,500 ppm and myocardial lesions were found in the 3,000 ppm animals in the 90–day study. Myocardial vacuolative degeneration was observed in male mice fed prosulfuron for 90 days at levels ≥ 3,500 ppm and in females at 7,000 ppm.

In general, NOAELs for target organ effects were established at doses that were much higher than overall study NOAELs, which were based on other indicators of toxicity such body weight gain.

5. *Chronic toxicity.* Prosulfuron was fed to dogs at dosages of 0, 0.33, 1.95, 18.6 or 41.0 mg/kg/day (males) and 0, 0.31, 1.84, 20.2, or 48.8 mg/kg/day (females) for 1–year. The NOAEL was 1.84 mg/kg/day based on hematologic and clinical chemistry effects and incidence of lipofuscin accumulation in the liver at 18.6 mg/kg/day.

In an 18–month mouse carcinogenicity study, prosulfuron was administered at dose levels of 0, 1.71, 81.4, 410 or 832 mg/kg/day (males), and 0, 2.11, 100, 508 or 1,062 mg/kg/day (females). There was no evidence of carcinogenic effects up to 1,062 mg/kg/day, the HDT. The NOAEL was 1.71 mg/kg/day in males, and 100 mg/kg/day in females based on increased incidence/severity of centrilobular hepatocellular hypertrophy. A 2–year chronic feeding/carcinogenicity study in rats fed dosages of 0, 0.4, 7.9, 79.9 or 160.9 (males), and 0, 0.5, 9.2, 95.7 or 205.8 mg/kg/day (females) was conducted. There was uncertain evidence of carcinogenicity with slight increases in the incidence of mammary gland adenocarcinomas in females at 95.7 and 205.8 mg/kg/day, slight increase in incidence of benign testicular interstitial cell tumors at 79.9 and 160.9 mg/kg/day (significant trend only). A systemic NOAEL of 7.9 mg/kg/day was based on decreased body weight and body weight gain, hematopoietic effects (males), and possibly increased serum GGT and decreased liver, kidney and adrenal weights (females) at 79.9 mg/kg/day.

6. *Carcinogenicity.* The HED RfD/Peer Review Committee (PRC) classified this chemical as a Class D oncogen based on the conclusion that there was uncertain evidence of carcinogenicity. No relevant treatment-related oncogenic potential was observed in rats and mice. The slightly increased incidence of testicular interstitial cell tumors in male rats at ≥ 79.9 mg/kg/day and the slightly increased incidence of mammary gland adenocarcinoma in females at ≥ 95.7 mg/kg/day was not significant when the increased survival in these groups was considered. Furthermore, the overall incidence of mammary tumors was essentially identical in all groups including the control. There was no evidence of carcinogenicity in mice and dosages in both studies were sufficient for identifying a cancer risk. In the absence of carcinogenicity, it is appropriate that a RfD approach be used for quantitation of human risks.

7. *Animal metabolism.* Prosulfuron is rapidly absorbed from the gastrointestinal tract of rats and is rapidly excreted. Approximately 90% of the administered dose is excreted during the first 48 hours, predominately via urine. Tissue residues are low. Prosulfuron is metabolized primarily via hydroxylation at side chain and phenyl ring positions and O-demethylation of the triazyl methoxy group. Minor pathways include unsaturation of the trifluoropropyl side chain, hydrolysis of the phenylsulfonylurea bridge and oxidative/hydrolytic cleavage of the triazine ring system.

In the goat, the orally administered prosulfuron is quickly eliminated primarily via the urine as prosulfuron. The metabolism of prosulfuron in the goat follows a similar pathway as observed in the rat although not as extensive. Accordingly, the biotransformation is limited to oxidation of the triazinyl methyl, O-demethylation of the triazinyl methoxy group and hydrolytic cleavage of the sulfonylurea bridge. The majority of the residues were accounted for as prosulfuron, the triazine amine, which results from bridge hydrolysis (CGA-150829) and the triazinyl hydroxymethyl metabolite (CGA-273437). In the hen, metabolism is similar to that observed in the rat and goat. The major residues found in edible tissues and eggs were prosulfuron, and the triazine amine (CGA-150829) and the sulfonamide (CGA-159902) which results from hydrolysis of the sulfonylurea bridge. In conclusion, the major metabolic pathways in the rat, goat, and hen are similar.

7. *Metabolite toxicology.* Metabolic pathways of prosulfuron in plants and animals are comparable and no (detectable) residues are found in or on crops. All relevant plant metabolites are observed in the animals and are thus toxicologically covered. The remaining plant metabolites are toxicologically insignificant. Therefore, no analytical method for metabolite determination is necessary for routine residue monitoring. For enforcement purposes

(e.g., high overdose or application too close to harvest) parent prosulfuron is the appropriate compound for analytical monitoring.

8. *Endocrine disruption.* Prosulfuron does not belong to a class of chemicals known for having significant adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and reproduction study in rats gave no indication that prosulfuron might have any effects on endocrine function related to development and reproduction. The subchronic and chronic studies also showed no evidence of a long-term effect related to the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* Acute and Chronic dietary exposure assessments were conducted for prosulfuron using tolerance values published in 40 CFR part 180.481. In both assessments it was assumed that 100% of all corn and cereal grains were treated with prosulfuron (100% market share). The exposure analyses was conducted using food consumption data from USDA's 1994-96 Continuing Survey of Intake by Individuals (CSFII) and Novigen Sciences, Inc. Dietary Exposure Evaluation Model (DEEMTM). Chronic exposure was compared to a RfD of 0.02 mg/kg based on a NOAEL of 1.84 mg/kg in a dog feeding study and a 100-fold uncertainty factor. This exposure analysis showed that the U.S. population had an exposure of less than 1% of the chronic RfD. The most sensitive sub-population was children (1-6 years old) with a chronic exposure of 2.4%.

Acute exposure was compared to an acute RfD of 0.1 mg/kg, which was based on a NOAEL of 10 mg/kg from an acute neurotoxicity study in the rat and a 100-fold uncertainty factor. The most sensitive sub-population was all infants with an exposure of 2.2% of the acute RfD. The U.S. population showed an exposure of 1.5% of the RfD.

These results show that there is more than a reasonable certainty of no harm, through exposure to prosulfuron residues in the diet.

ii. *Drinking water—estimated surface drinking water concentrations.* The GENEEC estimated surface water concentrations of prosulfuron were 1.86 ppb on the Peak Day-0 and 1.40 ppb on the average 56–day. According to the EPA "OPP's Interim Approach for Addressing Drinking Water Exposure," the average 56–day value is divided by three when correcting for overestimation of the GENEEC model. This resulted in a corrected potential drinking water exposure via surface water of 1.40 ppb / 3 =0.4667 ppb.

These concentrations were not adjusted for the estimated market share, regional soil characteristics or percentage of use area. The Peak Day-0 estimate, 1.86 ppb, was used in the acute exposure analysis and the corrected 56–day drinking water concentration of 0.4667 ppb was used in the chronic exposure analysis.

iii. *Estimated ground water concentrations.* The SCI-GROW estimated ground water concentration for the prosulfuron uses of 0.406585 ppb contributed little to the overall exposure. The estimated concentrations were not adjusted for the estimated market share or percentage of use area.

2. *Drinking water levels of concern—*

i. *Acute exposure.* The estimated ground and surface water concentrations of prosulfuron contributed little to the potential acute human exposure. The acute drinking water levels of concern ($DWLOC_{acute}$) for prosulfuron were based on the acute RfD, a MOE, the 99.9th percentile of the acute dietary exposure for U.S. population subgroups and the body weight - daily water consumption of each respective subgroup. The acute RfD of prosulfuron was 10 mg/kg/day based on the findings from the acute neurotoxicity rat study. The lowest MOE for any pesticide is 100 and this was used as a conservative approach. The dietary exposure estimates for subgroups of the U.S. population included the U.S. population all seasons, all infants (<1–year), nursing infants (< 1–year), non-nursing infants (< 1–year), children (1–6 years) and children (7-12 years). The dietary exposure estimates for all the subgroups were less than 0.0023 mg/kg/bodyweight/day. The calculated $DWLOC_{acute}$ values for these respective subgroups were 3447, 987, 980 and 978 ppb.

The estimated ground water concentration (0.406585 ppb) and the peak day-0 surface water concentration (1.86 ppb) of prosulfuron did not exceed the $DWLOC_{acute}$ values. Therefore, there is reasonable certainty that the residues of prosulfuron in the drinking water would not result in unacceptable levels of acute aggregate human health risk, and that such exposure would not exceed the exposure allowable by the risk cup.

ii. *Chronic exposure.* The estimated ground and surface water concentrations of prosulfuron contributed little to the potential chronic human exposure. The chronic (non-cancer) drinking water levels of concern ($DWLOC_{chronic}$) for prosulfuron were based on the chronic RfD, any estimated residential exposure, the chronic dietary exposure for select U.S. population subgroups and the body weight - daily water consumption of each respective subgroup. The chronic RfD for prosulfuron was 0.02 mg/kg/bwt/day based on the findings of a chronic dog study. There was no estimated residential exposure from the prosulfuron uses. The potential chronic dietary exposure estimates were calculated for the same subgroups selected for the acute exposure analysis. These potential chronic dietary values included 0.00172 mg/kg/bwt/day for the United States all seasons and < 0.0005 for the remaining subgroups (non-nursing infants < 1–year, children 1–6 years, and children 7–12 years). The calculated $DWLOC_{chronic}$ values for the respective subgroups were 694, 198, 195 and 197 ppb.

The GENEEC estimated concentration of prosulfuron in surface water at the average 56–day was 1.40 ppb. According to EPA "OPP's Interim Approach for Addressing Drinking Water Exposure," the average 56–day value is divided by three when correcting for overestimation of the GENEEC model. This resulted in a corrected surface drinking water concentration of 1.40 ppb/3 = 0.4667 ppb.

The estimated ground water concentration (0.406585 ppb) and the corrected average 56–day surface water concentration (0.4667 ppb) of prosulfuron did not exceed the $DWLOC_{chronic}$ values. Therefore, there is reasonable certainty that the residues of prosulfuron in the drinking water would not result in unacceptable levels of chronic aggregate human health risk, and that such exposure would not exceed the exposure allowable by the risk cup.

3. *Non-dietary exposure.* Non-dietary exposure to prosulfuron is considered negligible as the chemical is registered for agricultural use only. For workers handling this chemical, acceptable MOE (in the range of thousands) have been obtained for both acute and chronic scenarios.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by prosulfuron would be cumulative with those of any other types of chemicals. Furthermore, the triazine containing sulfonyl-urea is a new type of herbicide and no compound in this general chemical class currently has a significant market share. Consequently, it is considered appropriate to only

include the potential exposure to prosulfuron in an aggregate risk assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data base for prosulfuron, Novartis has calculated aggregate exposure levels for this chemical. The calculation shows that less than 1% of the RfD will be utilized for the U.S. population based on chronic toxicity endpoints. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to prosulfuron residue.

2. *Infants and children.* No adverse effects on the ability to produce, deliver or rear offspring was observed in a 2-generation study in rats. Likewise, teratogenicity studies in rats and rabbits did not reveal any teratogenic, embryotoxic or fetotoxic potential of prosulfuron. The lowest observed adverse effect level (LOAEL) for developmental toxicity was established in the rat reproduction study at 13.3 mg/kg, which is higher than the chronic NOAEL of 1.84 mg/kg, on which the RfD is based.

Using the same conservative exposure assumptions as employed for the determination in the general population, Novartis has calculated that the percent of the RfD that will be utilized by aggregate exposure to residues of prosulfuron is only 2.4% for children (1–6 years old), the most impacted sub-population. Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to prosulfuron residues.

F. International Tolerances

No Codex MRLs have been established for residues of prosulfuron.

[FR Doc. 99–21548 Filed 8–24–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50861; FRL–6092–5]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

This notice is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUPs

EPA has issued the following EUPs:

241–EUP–141. Extension/Amendment. American Cyanamid Company, P.O. Box 400 Princeton, NJ 08543–0400. This experimental use permit allows the use of 1,600 pounds of the termiticide 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1-pyrrole-3-carbonitrile, chlorfenapyr on 463 sites (structures) to evaluate the control of termites and other wood boring insects. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Washington. The experimental use permit is effective from June 30, 1999 to November 30, 2000. (Ann Sibold; Rm. 220, Crystal Mall #2; telephone: 703–305–6502; e-mail address: sibold.ann@epa.gov)

62719–EUP–44. Issuance. Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, Indiana 46268–1054. This experimental use permit allows the use of 3,379,758 pounds of the soil fumigants 1,3-dichloropropene and chloropicrin from the product InLine on 15,000 acres of soil, treated using drip irrigation systems only, to be planted in cauliflower, cucumbers, eggplant, lettuce, melons, onions, peppers, pineapples, squash, strawberries, and tomatoes to evaluate the control of nematodes, symphylans, and certain soil-borne diseases. The program is authorized only in the States of Alabama, Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Oregon, and Washington. The experimental use permit is effective from June 25, 1999 to June 25, 2002. (Mary L. Waller; Rm. 249, Crystal Mall #2; telephone: (703) 308–9354; e-mail address: waller.mary@epa.gov)

Persons wishing to review these EUPs are referred to the designated contact person. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 10, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–21549 Filed 8–24–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6429–3]

Notice of Availability: Draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft guidance.

SUMMARY: Today's document makes available for public comment the draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations for public review and comment. This draft guidance is being published to meet one EPA's key action items in the recently released U.S. Department of Agriculture (USDA)–Environmental Protection Agency (EPA) Unified National Strategy for Animal Feeding Operations (March 1999). The draft guidance is intended to provide assistance to EPA and State permit writers, who are responsible for issuing NPDES permits to reduce risk to water quality and human health from animal feeding operations.

The Unified National Strategy set forth a range of flexible, common-sense actions that USDA and EPA plan to take over a multi-year period to promote proper management of animal manure and wastewater in order to minimize the water quality and public health impacts of animal feeding operations. In the short-term, EPA is focused on improving implementation of the NPDES permitting program consistent with existing regulations, including today's publication of this draft guidance manual. Over the long-term, EPA plans to revise its regulations to reflect substantial changes in the animal production industry over the past several decades. Throughout this multi-year process, EPA will provide opportunities for interested parties to offer comments on its draft guidance documents and proposed regulations.

A key objective of both the Unified National Strategy and this draft guidance is to accelerate issuance of sound, legally defensible NPDES permits for large CAFOs (e.g. operations with greater than 1,000 animal units) by January of 2000. The draft guidance being made available today is intended to aid EPA and State permitting authorities in meeting this goal. Consistent with the Unified National Strategy, USDA is currently in the process of developing an important companion document that will provide guidance on how to develop sound comprehensive nutrient management plans (CNMPs), which EPA and State permitting authorities will incorporate into NPDES permits as special conditions. USDA's draft guidance is expected to be available for public review and comment later this summer.

EPA believes that comments from a wide range of interested stakeholders is important to produce a final guidance document that will help EPA and State permitting authorities issue NPDES permits that achieve the goal of reducing risk to water quality and human health from animal feeding operations. EPA is interested in receiving comments from reviewers of the draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations, and will carefully consider this input as it prepares a final guidance document for publication later this year.

DATES: Written comments should be submitted by October 25, 1999 to the address below.

ADDRESSES: Address all comments to Gregory Beatty, US EPA, 401 M Street, SW, Mail Code 4203, Washington, DC 20460. Submit electronic comments to *beatty.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: Copies of the draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations may be obtained on the Internet at: *http://www.epa.gov/owm*. If you do not have Internet access, you may obtain a paper copy of the draft guidance by calling the Water Resources Center at (202) 260–7786. The draft guidance is also available in electronic format.

FOR FURTHER INFORMATION CONTACT: Gregory Beatty, (202) 260–6929 or Will Hall (202) 260–1458.

Dated: August 6, 1999.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 99–22157 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6428–2]

City of Key West No Discharge Zone Determination

The Environmental Protection Agency (EPA) Region 4 Regional Administrator concurs with the determinations of the State of Florida that adequate and reasonably available pumpout facilities exist around the waters (out to 600 feet from shore) of the Island of Key West. A petition was received from the State of Florida requesting a determination by the Regional Administrator, EPA, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal of sewage from all vessels are reasonably available for the waters around the City of Key West to qualify as a No Discharge Zone.

This action is taken under section 312 (f)(3) of the Clean Water Act which states:

> After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

EPA's action allows prohibition regarding discharge from vessels to be applied by the State of Florida for the City of Key West. EPA found the following existing facilities available for pumping out vessel holding tanks in the City of Key West. Their address, telephone number, hours of operation and draft are as follows:

A. Galleon Marina; 619 Front Street, Key West, Florida 33040; 305–292–1292; 8 AM–6 PM 7 days/week; 45' draft.

B. Historic Seaport at Key West Bight; 201 William Street, Key West, Florida 33040; 305–293–8309; 7 AM–7 PM (summer) 7 AM-5 PM (winter) 7 days /week; 12' draft.

C. Key West Conch Harbor; 951 Caroline Street, Key West, Florida 33040; 305–294–2933; 6 AM-Sunset 7 days/week; 10' draft.

D. Garrison Bight Marina; Garrison Bight Causeway, Key West, Florida 33040; 305–292–8167; 24 hours/day 7 days/week; 7' draft; mobile pumpout barge operated 8 AM–5 PM Monday through Saturday; 1' draft.

E. Sunset Marina; 5555 College Road, Stock Island, Key West, Florida 33040; 305–296–7101; 7 AM-8 PM daily; 6.5' draft.

Additional pumpout facilities are being installed at several other marinas within city limits. The facilities at A & B Marina are scheduled for completion by September 1, 1999. The Key West Yacht Club is currently seeking permits for a pumpout facility. The Historic Seaport at Key West Bight has budgeted

funds for installation of dockside pumpouts for charterboats within the next fiscal year.

All of the vessel pumpout facilities that are in use within Key West City limits discharge directly into the collection system that delivers waste to the central waste treatment facility for Key West, otherwise known as the Richard Heyman Environmental Protection Facility. The plant achieves a secondary level of waste treatment and currently discharges the treated effluent into nearshore waters off Fort Zachary Taylor State Beach. However, the City is currently retrofitting the plant to achieve a level of advanced wastewater treatment and will be replacing the ocean outfall with deep injection wells. Currently, the City collection system is being rebuilt at a cost of several million dollars. Both the collection system improvements and the replacement of the outfall with deep injection wells will be completed within a few years pursuant to the provisions of a consent judgment with the State of Florida. The City has entered into an agreement with Reef Relief and Last Stand, two environmental organizations, to treat the effluent being injected to a level of advanced wastewater treatment to remove the nutrients prior to injection.

Thus all wastewater collected at the vessel pumpout facilities will be treated to meet existing standards for secondary treatment and will eventually meet the higher standard of advanced wastewater treatment. This action is being taken in consideration of the need to reduce nutrient loading to nearshore waters.

The number of boats with marine sanitation devices (MSD) varies seasonally. According to Key West marina operators, approximately 628 boats with heads is a reasonable average. Therefore, the ratio of boats with MSDs to pumpout facilities is 126 boats per pumpout facility, plus a mobile pumpout service.

Comments concerning this action may be filed on or before September 24, 1999. Such communications should be addressed to Wesley B. Crum, Chief, Coastal and Nonpoint Source Programs Section, USEPA, Region 4, Sam Nunn Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–3104. Telephone 404–562–9352.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

[FR Doc. 99–22044 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6425–2]

Draft Modification of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction of Notice of draft modification of the NPDES general permit reissuance for storm water discharges from construction activities.

SUMMARY: The EPA, Region 4, published in the July 21, 1999 (64 FR 39136) **Federal Register**, a proposed modification of the general permit for the discharge of storm water from construction activities, issued on March 31, 1998. This document corrects a typographical error in the dates section. The deadline for submitting comments to EPA on the proposed modification is September 10, 1999. The proposed modification is not changed by this notice from the proposal in the July 21, 1999 **Federal Register**.

DATES: Comments on the proposed modification must be received or postmarked by September 10, 1999.

ADDRESSES: Notices of Intent (NOIs) submitted in accordance with this permit to receive coverage under this permit must be sent to Storm Water Notice of Intent (4203), 401 M Street, SW., Washington, DC 20460. The complete administrative record is available from the U.S. Environmental Protection Agency, Region 4, Freedom of Information Officer, 61 Forsyth St. SW., Atlanta, GA 30303. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Floyd Wellborn, telephone number (404) 562–9296, or Mr. Mike Mitchell, telephone number (404) 562–9303, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, Surface Water Permits Section, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303.

Public Comment Period

Public comments are being invited only for those specific modifications discussed within the proposed modification of the general permit for the discharge of storm water from construction activities, which was published in the July 21, 1999 **Federal Register**. The public should send their comments to the Surface Water Permits Section, Water Management Division, U.S. EPA, 61 Forsyth Street, SW., Atlanta, GA 30303, postmarked by midnight no later than September 10, 1999. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency requests commenters to type or print in ink any comments. Each comment should cite the page number and, where possible, the section(s) and/or paragraph(s) in the proposed permitting actions to which the comment relates. Commenters should use a separate paragraph for each issue discussed.

State Certification

EPA has requested certification of the proposed permit modification to the State of Florida and Indian Tribes where the proposed actions would be effective. The State of Florida and Tribes will review the proposed actions to ensure that they will not result in violations of water quality criteria. EPA will work with the State and Tribes to obtain their certification in accordance with section 401 of the Clean Water Act. EPA will prepare certifications for Indian lands where there is no approved Tribe or any Tribes which have not established water quality standards.

The Coastal Zone Management Act (CZMA) requires that all Federal licensing and permitting actions be reviewed for consistency with each approved State coastal zone management plan. The Federal Consistency Act requires that all NPDES permits be reviewed for consistency with the Endangered Species Act and the National Historic Preservation Act. EPA has also initiated these reviews.

Dated: August 17, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–22046 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Science and Technology Policy

ACTION: Notice

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected

cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 19, 1999.

FOR FURTHER INFORMATION OR A COPY CONTACT: Duncan T. Moore at the Office for Science and Technology Policy (OSTP), (202) 456–6032.

SUPPLEMENTARY INFORMATION:

Title: Office of Science and Technology Policy Evaluation of Performance as Required Under the Government Performance and Results Act.

Abstract: This notice describes a survey that will be conducted by the President's Committee of Advisors on Science and Technology (PCAST) to evaluate the performance of the Office of Science and Technology Policy (OSTP), as required under the Government Performance Results Act (GPRA).

Respondents/Affected Entities: The public; state and federal government.

Estimated number of respondents: 200.

Estimated Total Annual Burden on Respondents: 100 hours.

Frequency of Collection: Yearly.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following address: Duncan T. Moore, Office of Science and Technology Policy, Old Executive Office Building, Room 423, Washington, DC 20502.

Dated: August 19, 1999.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 99–22014 Filed 8–20–99; 1:16 pm]

BILLING CODE 3170–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011673
Title: Space Charter Agreement Between Kambara Kisen Co., Ltd. and Mariana Express Liens Limited
Parties:
Kambara Kisen Co., Ltd.
Mariana Express Lines Limited
Synopsis: The proposed Agreement would permit the parties to charter space to one another in the trade between Hong Kong, Taiwan, and Southeast Asia and ports on the islands of Guam, Yap, Saipan, and Koror and inland points via all of the above.

Agreement No.: 203–011674
Title: Amazon/Trade Wind Lines' Agreement
Parties:
Amazon Lines Ltd.
Trade Wind Lines Limited
Synopsis: The proposed Agreement permits the parties to establish a vessel sharing, slot charter and sailing arrangement between them, to engage in joint service contract activities and, on a voluntary non-binding basis, to discuss and agree upon tariff rates and conditions.

Agreement No.: 217–011675
Title: DSEN/EMC Slot Charter Agreement
Parties:
DSR-Senator Lines GmbH (DSEN)
Evergreen Marine Corp., (Taiwan) Ltd.
Synopsis: The proposed Agreement permits DSEN to sell and EMC to purchase slots on vessels operated by or on behalf of DSEN in the trade between the U.S. East Coast and the Mediterranean ports of Italy, France and Spain.

Agreement No.: 224–200865–004
Title: Oakland-Hanjin Marine Terminal Use Agreement
Parties:
City of Oakland: Board of Port Commissioners
Hanjin Shipping Company, Ltd.
Synopsis: The proposed amendment extends the term of the agreement through December 31, 2000.

By order of the Federal Maritime Commission.

Dated: August 20, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–22090 Filed 8–24–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 99–17]

Imex Shipping Inc.—Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984; Investigation

Notice is given that the Commission, on August 19, 1999, served an Order of Investigation and Hearing on Imex Shipping Inc. ("Imex"), a tariffed and bonded non-vessel operating common carrier. The Order institutes a formal investigation to determine whether Imex violated sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 46 U.S.C. app. sections 1709 (a)(1) and (b)(1), by receiving rebates from a vessel-operating common carrier in the trade between the United States and South America, and assessing and collecting rates which did not appear in Imex's tariff. Should violations be found, the proceeding will determine whether to impose civil penalties, suspend Imex's tariff, suspend or revoke its license, and issue a cease and desist order. The full text of the Order may be viewed on the Commission's home page at www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Dated: August 20, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–22089 Filed 8–24–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection: Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: On June 1, 1999, the President of the United States requested that the Federal Trade Commission and the Department of Justice conduct a study on the marketing practices of the entertainment industry to determine whether and to what extent the industry markets age-restricted violent material to children. Before gathering this information, the FTC is soliciting public comments on proposed information requests to members of the following industries: (1) Motion picture; (2) recording; and (3) video, personal computer, and coin operated games. The FTC also is soliciting public comments on proposed consumer research. Comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act.

DATES: Comments must be submitted on or before October 25, 1999.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania

Avenue, NW, Washington, DC 20580, or by e-mail to <entstudy@ftc.gov>. The submissions should include the submitter's name, address, telephone number, and , if available, FAX number and e-mail address. All submissions should be captioned "Entertainment Industry Study"-FTC File No. P994511."

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Sally Forman Pitofsky, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Telephone: (202) 326–3318, E-mail <spitofsky@ftc.gov>.

SUPPLEMENTARY INFORMATION: The FTC invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The FTC will submit the proposed information collection requirements to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

A. Survey of the Motion Picture, Recording, and Video Game Industries

1. Description of the Collection of Information and Proposed Use

The FTC proposes to send information requests to approximately 60 to 75 members of the motion picture industry, the recording industry, and the video, personal computer, and coin operated game industry ("industry members") to examine: (1) The voluntary systems used by industry members to rate or designate violent content in movies, recordings, and video or computer games; (2) how industry members market or advertise movies, recordings, and video or computer games with violent content; and (3) whether industry members have policies or procedures to restrict access by children or teenagers under 18 to movies, recordings, and video or computer games having violent content. The information sought will be obtained by interviews and document requests. The information will be sought on a voluntary basis, although the FTC has authority to compel production of this information under Section 6(b) of the FTC Act, 15 U.S.C. 46(b).

2. Estimated Hours Burden

a. Interviews

Staff will conduct initial and follow-up interviews with individual industry members. The interviews will focus on the subject areas (1)—(3) above. The interviews should total no more than 20 hours for each industry member, for a maximum total of approximately 1,500 hours.

b. Document Requests

Staff will also ask each industry member to submit documents relating to the above subject areas. Because the members within each of the industries will necessarily vary in size, we have provided a range of the estimated hours burden. This range is between 225 hours and 450 hours per member depending on the size of each. The total estimated burden of producing such documents per member is based on the following:

Organize document retrieval—25–50 hours
Identify requested information—100–200 hours
Retrieve responsive information—50–100 hours
Copy requested information—50–100 hours

Thus, the cumulative hours burden to produce documents sought will be between: 16,875 (225 hours x 75 members) to 33,750 (450 hours x 75 members)

3. Estimated Cost Burden

a. Interviews

We have assumed that mid-management level personnel will handle the responses to interviews and have applied an average hourly wage of $150/hour for their labor. Thus, the total cost per member for the interviews should not exceed $3,000 or $225,000 for the 75 respondents. Staff further estimates that the capital costs associated with the industry interviews are minimal. The interviews are likely to require no capital expenditures.

b. Document Production

It is not possible to calculate with precision labor costs associated with this document production as they entail varying compensation levels of management, and/or support staff among many companies of different sizes and in different industries. Individuals among some or all of those labor categories may be involved in the information collection process. Nonetheless, we have assumed that mid-management level personnel will handle most of the tasks involved in gathering and producing responsive information, and have applied an average hourly wage of $150/hour for their labor. We also have applied an average hourly wage of $10 for the labor of clerical employees who will copy the responsive materials. Thus, the total labor cost per member should range between $26,750 and $53,500 per member depending on the size of each:

$26,750 (175 hours to assemble and review the production x $150 per hour +50 hours for copying x $10 per hour) to $53,500 (350 hours to assemble and review the production x $150 per hour + 100 hours for copying x $10 per hour).

Accordingly, the total labor costs for the 75 members should range between approximately $2 million and $4 million.

Staff estimates that the capital or other non-labor costs associated with the information requests are minimal. While the information requests may necessitate that industry members store copies of the requested information provided to the Commission, industry members should already have in place the means to do so. Even if an industry member should find it necessary to purchase a storage device—which conceivably might be served by a cardboard box or comparable item—the cost of any such device annualized over its useful life likely would be very minimal. In addition, industry members may have to purchase office supplies such as file folders, computer diskettes, photocopier toner, or paper in order to comply with the Commission's information requests. Staff estimates that each industry member would spend $500 for such costs regarding the information requests, for a total additional non-labor cost burden of $37,500 ($500 x 75 members).

B. Consumer Research

1. Description of the Collection of Information and Proposed Use

The FTC also proposes to conduct focus groups of 150 children between the ages of 13 and 16, and survey 1,000 parents having a child between the ages of 7 and 17 in order to gather specific information on their perceptions of the entertainment rating or labeling systems. This information will be collected on a voluntary basis, and the identities of the consumers will remain confidential. The FTC will contract with a consumer research firm to identify

consumers and conduct the focus groups and the survey. The results will assist the FTC in determining whether and how consumers use the rating or labeling systems of the motion picture, recording, and video, computer, and coin operated game industries.

2. Estimated Hours Burden

The FTC will contract with a survey firm to: (1) Identify and conduct focus groups on 150 children between the ages of 13 and 16; and (2) identify and survey 1,000 parents with children between the ages of 7 and 17. For the focus groups, the contractor will identify respondents either by drawing names from a pre-assembled teen list or by conducting telephone screening within the general population. If telephone screening, the contractor would contact parents and ask whether a child in the household between the ages of 13 and 16 will participate in a focus group. Staff estimates that the screener will be asked of approximately 2,500 respondents in order to obtain a large enough random sample for the focus groups.

For the parental telephone survey, the contractor will first identify respondents using a screening question in its monthly omnibus telephone survey and then ask whether respondents, with a child between the ages of 7 and 17, would participate in the survey. Allowing for non-response, the screener question will be asked of approximately 3,500 respondents, as screening that number will provide a large enough random sample for this survey.

The FTC staff estimates that the screening for the focus groups and the survey will consume no more than two minutes of each respondent's time. Thus, cumulatively, screening should require approximately 200 hours (6,000 total respondents x 2 minutes for each).

The FTC will pretest the parental survey on 24 respondents to ensure that all questions are easily understood. This pretest will take approximately 15 minutes per person. The hours burden imposed by the pretest will be approximately 6 hours (24 respondents x 15 minutes per survey). Participating in the focus groups will take approximately one hour per respondent, with a total burden of 150 hours. Answering the parental survey will impose a burden per respondent of approximately 15 minutes, totaling 250 hours for all respondents to the survey (1,000 respondents x 15 minutes per survey). Thus, total hours burden attributable to the consumer research will approximate 606 hours (200 + 6 + 150 + 250).

3. Estimated Cost Burden

The cost per respondent should be negligible. Participation is voluntary, and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–22016 Filed 8–24–99; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Runaway and Homeless Youth Management Information System (RHYMIS).

OMB No.: 0970–0123.

Description: In the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.) Congress mandated that the Department of Health and Human Services (HHS) report regularly on the status of HHS-funded programs serving runaway and homeless youth. Organizations funded under the Runaway and Homeless Youth program are required by statute (42 U.S.C. 5712, 42 U.S.C. 5714–2) to meet several data collection and reporting requirements, including maintaining client statistical records and submitting annual program reports regarding the profile of the youth and families served and the services provided to them. The RHYMIS data supports these organizations as they carry out a variety of integrated, ongoing responsibilities and projects, including legislative reporting requirements, planning and public policy development for runaway and homeless youth programs, accountability monitoring, program management, research, and evaluation.

Respondents: Not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Program Status	400	185	.1	7,400
Youth Profile	400	185	.8	59,200
Agency Profile	400	1	.1	40
Program Profile	400	3	.5	600
Staff Profile	400	8	.5	1600
Coordinating Agency	400	3	.3	360
Community Education	400	5	.3	600
Promotional/Instructional Material	400	2	.2	160
Data Transfer	400	4	.5	800

Estimated Total Annual Burden Hours: 70,760.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: ACF Desk Officer.

Dated: August 19, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–22026 Filed 8–24–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to City of Newark, New Jersey ACF/ACYF/CB–99–08

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice of award.

SUMMARY: Notice is hereby given that ACYF will award grant funds without competition to the City of Newark, New Jersey. This grant is a sole source award which will support a pilot program entitled Newark KIDS which seeks to assist children affected by domestic violence. This award is made noncompetitively after out review of a proposal by the City for a program which presents a unique opportunity to produce meaningful and useful results in an area of significant interest to ACF.

The Newark KIDS project is expected to assist children affected by domestic violence by helping them to access appropriate resources. The project proposes to test a model of service delivery for children who would not ordinarily be removed from their homes built on intensive case management with well-integrated wrap-around community-based services. The training and treatment components of the model will be coordinated by a local university or university hospital.

The project also includes an evaluation component that will be managed by a university partner. We therefore expect the project to generate findings which will allow us to assess the benefits of the model used, and which will help us to determine whether the Newark KIDS program can serve as a model for possible replication in other locations.

The project period will be for 24 months, beginning September 30, 1999 and ending September 29, 2001. The grantee will be awarded $200,000 for use during the first twelve months of the project period be awarded additional noncompetive continuation funding of up to $200,000 depending on the availability of funds, satisfactory performance by the grantee, and a determination that such continued funding would be in the best interest of the government.

Authority: This award will be made pursuant to the Child Abuse Prevention and Treatment Act, U.S.C. 5106. (CFDA 93.670)

FOR FURTHER INFORMATION CONTACT: Sally Flanzer, Childrens's Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Room 2429, Washington, DC 20447; Telephone: (202) 205–8914.

Dated: August 19, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–22091 Filed 8–24–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2607]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements relating to the manufacture and distribution of hearing aid devices.

DATES: Submit written comments on the collection of information by October 25, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated collection techniques, when appropriate, and other forms of information technology.

Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale—21 CFR 801.420 and 801.421 (OMB Control No. 0910–0171—Extension)

Under section 520(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(e)), the Secretary of the Department of Health and Human Services may, under certain conditions, require by regulation that a device be restricted to sale, distribution, or use only upon authorization of a licensed practitioner or upon other prescribed conditions. Sections 801.420 and 801.421 (21 CFR 801.420 and 801.421) implement this authority for hearing aids, which are restricted devices. The regulations require that the manufacturer or distributor provide to the user data useful in selecting, fitting, and checking the performance of a hearing aid

through distribution of a user instructional brochure. The user instructional brochure must also contain technical data about the device, instructions for its use, maintenance and care, a warning statement, a notice about the medical evaluation requirement, and a statement if the aid is rebuilt or used.

Hearing aid dispensers are required to provide the prospective user, before the sale of a hearing aid, with a copy of the user instructional brochure for the hearing aid model that has been, or may be, selected for the prospective user and to review the contents of the brochure with the buyer. In addition, upon request by an individual who is considering the purchase of a hearing aid, the dispenser is required to provide a copy of the user instructional brochure for that model hearing aid or the name and address or telephone number of the manufacturer or distributor from whom a user instructional brochure for the hearing aid may be obtained. Under conditions of sale of hearing aid devices, manufacturers or distributors shall provide sufficient copies of the user instructional brochure to sellers for distribution to users and prospective users and provide a copy of the user instructional brochure to any health care professional, user, or prospective users who request a copy in writing. The regulations also require that the patient provide a written statement that he or she has undergone a medical evaluation within the previous 6 months before the hearing aid is dispensed, although informed adults may waive the medical evaluation requirement by signing a written statement. Finally, the regulation requires that the dispenser retain for 3 years copies of all physician statements or any waivers of medical evaluations.

The information obtained through this collection of information is used by FDA to ensure that hearing aids are sold and used in a way consistent with the public health.

The information contained in the user instructional brochure is intended not only for the hearing aid user but also for the physician, audiologist, and dispenser. The data is used by these health care professionals to evaluate the suitability of a hearing aid, to permit proper fitting of it, and to facilitate repairs. The data also permits the comparison of the performance characteristics of various hearing aids. Noncompliance could result in a substantial risk to the hearing impaired because the physician, audiologist, or dispenser would not have sufficient data to match the aid to the needs of the user.

The respondents to this collection of information are hearing aid manufacturers, distributors, dispensers, health care professionals, or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.420(c)	40	24	960	102	97,920
801.421(b)	9,900	162	1,600,000	0.30	480,000
801.421(c)	9,900	5	49,700	0.17	8,449
Total					586,369

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
801.421(d)	9,900	62	1,600,000	0.25	400,000
Total					400,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 801.420(c) estimate assumes that 40 hearing aid manufacturers or distributors each will distribute 5 different models of hearing aids. Thus, the 40 hearing aid manufacturers or distributors will provide 5 different user instructional brochures to sellers for distribution to prospective users and users. The completion of each user instructional brochure is estimated to require 102 staff hours.

Section 801.421(b) estimate assumes that 9,900 hearing aid dispensers will have 162 sales annually. For all such sales, the dispenser must provide the prospective user a copy of the user instructional brochure and the opportunity to read and review the contents with him or her orally, or in the predominant method used during the sale. FDA estimates that this exchange will involve .30 staff hours.

Section 801.421(c) estimate assumes that 40 hearing aid manufacturers or distributors and 9,900 dispensers will provide copies of the user instructional brochure to any health care professional, user, or prospective user who requests a copy in writing. It is estimated that five written requests for copies of the brochures will be received by each hearing aid manufacturer or distributor and dispenser annually. It is estimated that each request for a brochure will take .17 staff hours to complete. This effort consists of the hearing aid manufacturer or distributor or hearing aid dispenser locating the appropriate user instructional brochure for the specific model and mailing the brochure to the requester.

Section 801.421(d) recordkeeping estimate assumes that 9,900 hearing aid dispensers will each retain 162 records. Each record documents the dispensing of a hearing aid to a hearing aid user. The recordkeeping entry is estimated to require 0.25 staff hours.

Dated: August 18, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–21964 Filed 8–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2549]

Agency Information Collection Activities: Proposed Collection; Comment Request; Cosmetic Product Voluntary Reporting Program; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 9, 1999 (64 FR 43188). The document announced that a proposed collection of information had been submitted to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995. The document was published with an incorrect docket number. This document corrects that error.

DATES: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In the FR Doc. 99–20359, appearing on page 43188 in the **Federal Register** of Monday, August 9, 1999, the following correction is made:

On page 43188, in the first column, "[Docket No. 99N–0185]" is corrected to read "[Docket No. 99N–2549]".

Dated: August 18, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–21967 Filed 8–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0297]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Draft Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by September 24, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Title: Draft Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

Description: FDA is issuing a draft guidance on the process for formally resolving scientific and procedural disputes in the Center for Drug Evaluation and Research (CDER) and the Center for Biological Evaluation and Research (CBER) that cannot be resolved at the division level. The draft guidance describes procedures for formally appealing such disputes to the office or center level and for submitting information to assist center officials in resolving the issue(s) presented. The draft guidance provides information on how the agency will interpret and apply provisions of the existing regulations regarding internal agency review of decisions (§ 10.75 (21 CFR 10.75)) and dispute resolution during the investigational new drug (IND) process (21 CFR 312.48) and the new drug application (NDA)/abbreviated new drug application (ANDA) process (21 CFR 314.103). In addition, the draft guidance provides information on how the agency will interpret and apply the specific Prescription Drug User Fee Act of 1992 (PDUFA) (Public Law 102–571) goals for major dispute resolution associated with the development and review of PDUFA products.

Existing regulations, which appear primarily in parts 10, 312, and 314 (21 CFR parts 10, 312, and 314), establish procedures for the resolution of scientific and procedural disputes between interested persons and the agency, CDER, and CBER. All agency decisions on such matters are based on information in the administrative file (§ 10.75(d)). In general, the information in an administrative file is collected under existing regulations in parts 312 (OMB Control No. 0910–0001), 314 (OMB Control No. 0910–0014), and part 601 (21 CFR part 601) (OMB Control No. 0910–0315), which specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of drugs and biological products. This information is usually submitted as part of an IND, NDA, or biologics license application (BLA), or as a supplement to an approved application. While FDA already possesses in the administrative file the information that would form the basis of a decision on a matter in dispute resolution, the submission of particular information regarding the request itself and the data and information relied on by the requester in the appeal would facilitate timely resolution of the dispute. The draft guidance describes the following collection of information not expressly specified under existing regulations: The submission of the request for dispute resolution as an amendment to the application for the underlying product, including the submission of supporting information with the request for dispute resolution.

Agency regulations (§ § 312.23(11)(d), 314.50, 314.94, and 601.2) state that information provided to the agency as part of an IND, NDA, ANDA, or BLA is to be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under IND's, and Form FDA 356h must accompany submissions under NDA's, ANDA's, and BLA's. Both forms have valid OMB control numbers as follows: Form FDA 1571, OMB Control No. 0910–0014, expires December 31, 1999; and Form FDA 356h, OMB Control No. 0910–0338, expires April 30, 2000.

In the draft guidance, CDER and CBER ask that a request for formal dispute resolution be submitted as an amendment to the application for the underlying product and that it be submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted as an amendment in this manner for two reasons: To ensure that each request is kept in the administrative file with the entire underlying application and to ensure that pertinent information about the request is entered into the appropriate

tracking data bases. Use of the information in the agency's tracking data bases enables the appropriate agency official to monitor progress on the resolution of the dispute and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined and the draft guidance recommends that the following information should be submitted to the appropriate center with each request for dispute resolution so that the Center may quickly and efficiently respond to the request:

- A brief but comprehensive statement of each issue to be resolved, including a description of the issue, the nature of the issue (i.e., scientific, procedural, or both), possible solutions based on information in the administrative file, whether informal dispute resolution was sought prior to the formal appeal, whether advisory committee review is sought, and the expected outcome;
- A statement identifying the review division/office that issued the original decision on the matter and, if applicable, the last agency official that attempted to formally resolve the matter;
- A list of documents in the administrative file, or additional copies of such documents, that are deemed necessary for resolution of the issue(s); and
- A statement that the previous supervisory level has already had the opportunity to review all of the material relied on for dispute resolution. The information that the agency suggests submitting with a formal request for dispute resolution consists of : (1) Statements describing the issue from the perspective of the person with a dispute, (2) brief statements describing the history of the matter, and (3) documents previously submitted to FDA under an OMB approved collection of information (see previous discussion).

Based on FDA's experience with dispute resolution, the agency expects that most persons seeking formal dispute resolution will have gathered the materials listed previously when identifying the existence of a dispute with the agency. Consequently, FDA anticipates that the collection of information attributed solely to the guidance will be minimal.

Description of Respondents: A sponsor, applicant, or manufacturer of a drug or biologic product regulated by the agency under the act or section 351 of the Public Health Service Act who requests formal resolution of a scientific or procedural dispute.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for requests for dispute resolution. In fiscal year (FY) 1998, 39 sponsors and applicants (respondents) submitted requests for formal dispute resolution to CDER and 12 respondents submitted requests for formal dispute resolution to CBER . Although the procedures for requesting formal dispute resolution that are set forth in the draft guidance were not in place in FY 1998, FDA estimates that the number of respondents who would submit requests for dispute resolution under the guidance would remain the same. The total annual responses are the total number of requests submitted to CDER and CBER in 1 year, including requests for dispute resolution that a single respondent submits more than one time. In FY 1998, CDER received approximately 49 requests and CBER received approximately 15 requests. The agency estimates that the total annual responses will remain the same, averaging to 1.26 responses per respondent. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for formal dispute resolution in accordance with this draft guidance, including the time it takes to gather and copy brief statements describing the issue from the perspective of the person with the dispute, brief statements describing the history of the matter, and supporting information that has already been submitted to the agency. Based on experience, FDA estimates that approximately 8 hours on average would be needed per response. Therefore, FDA estimates that 512 hours will be spent per year by respondents requesting formal dispute resolution under the guidance.

On Friday, March 9, 1999, FDA invited comments on this analysis of information collection burdens. FDA received one comment regarding the agency's estimate of the paperwork burden. The comment stated that FDA's estimate is a relatively accurate accounting of time used in administrative preparation of information for requests for dispute resolution of procedural matters. The comment stated that FDA underestimated the time required for creative writing and editing tasks associated with preparation of paperwork to resolve disputes of a scientific or technical nature.

The agency's estimates are based in part on the expectation that respondents will have already compiled for submission to the agency most of the data and information that is described in the guidance document. The agency anticipates that respondents will have submitted the information as part of the underlying product application. Therefore, the bulk of the paperwork burden is related to administrative tasks (i.e., gathering and copying brief statements describing the issue from the perspective of the person with the dispute and brief statements describing the history of the matter).

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Results for Formal Dispute Resolution	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
CDER	39	1.26	49	8	392
CBER	12	1.25	15	8	120
Total					512

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 18, 1999.
William K. Hubbard,
Senior Associate Commissioner for Policy, Planning and Legislation.
[FR Doc. 99–21965 Filed 8–24–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2211]

Medical Devices; Draft Guidance for Industry on the Electro-Optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Draft Guidance for Industry on the Electro-Optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA." This draft guidance is intended to identify the elements for an investigational device exemption/premarket approval application (IDE/PMA) for any electro-optical sensor in vivo device for the detection of cervical cancer or its precursors. This draft guidance covers electro-optical devices applied to a woman's cervix in an in vivo setting that give a relatively instantaneous reading of test results for the purposes of detection of cervical cancer and its precursors. Many of these systems use complex signal discrimination algorithms and/or neural networks to differentiate abnormal from normal tissue. These new technologies, depending upon design and study results, may ultimately complement, as an adjunct, or replace the PAP smear, or it may serve to improve the results of colposcopy or biopsy. This draft guidance is neither final nor is it in effect at this time.

DATES: Written comments concerning this draft guidance must be submitted by November 23, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Draft Guidance for Industry on the Electro-Optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled, "Draft Guidance for Industry on the Electro-Optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA." This draft guidance is intended to identify the elements for an IDE and/or a PMA application for electro-optical sensors that are used in a clinical in vivo setting for the detection of cervical cancer or its precursors. This draft guidance is the result of several preliminary interactions between FDA and developers of this type of device, as well as input from experts at a meeting of FDA's advisory committee, the Obstetrics and Gynecology Devices Panel, on July 14 and 15, 1997. The draft guidance covers various types of hand-held probes that employ electro-optical sensor technology to optically interrogate the cervix uteri for cancer and its precursors. Many of these systems use complex signal discrimination algorithms and/or neural networks to differentiate abnormal from normal tissue; and, generally, these sensors provide a relatively instantaneous riding of test results. The new technology covered by this guidance document, depending upon design and study results, may complement, as an adjunct, or replace the PAP smear, or it may serve to improve the results of colposcopy or biopsy. These in vivo detection devices apply several different optical phenomena, including autofluorescence and Raman spectroscopy. Some may include bioelectrical phenomena.

This draft guidance document represents the agency's current thinking on the appropriate content of IDE/PMA applications for in vivo devices for the detection of cervical cancer and its precursors. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a level 1 guidance consistent with GGP's.

II. Electronic Access

In order to receive "Draft Guidance for Industry on the Electro-Optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (266) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the "Draft Guidance for Industry on the Electro-Optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh". The "Draft Guidance for Industry on the Electro-Optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA" will be available at "http://www.fda.gov/scripts/cdrh/ctdocs/cfggp/results.cfm".

III. Comments

Interested persons may, on or before November 23, 1999, submit to the Dockets Management Branch (address

above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 28, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–21962 Filed 8–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2638]

Use of Medicated Feeds for Minor Species; Draft Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft compliance policy guide (CPG) entitled "Use of Medicated Feeds for Minor Species." The purpose of the draft CPG is to provide guidance to the field concerning the agency's exercise of regulatory discretion with regard to the extra-label use of medicated feeds for minor species.

DATES: Written comments on the draft CPG may be submitted by November 23, 1999.

ADDRESSES: Submit written requests for single copies of the draft CPG entitled "Use of Medicated Feed for Minor Species" to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft CPG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Judy A. Gushee, Center for Veterinary Medicine (HFV–232), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0150, e-mail "jgushee@bangate.fda.gov".

SUPPLEMENTARY INFORMATION:

I. Background

Prior to 1994, the Federal Food, Drug, and Cosmetic Act (the act) did not permit extra-label use of animal drugs, but FDA exercised regulatory discretion regarding extra-label use of animal drugs provided certain criteria were met. These criteria were published in CPG 7125.06 and were largely incorporated into the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA). AMDUCA amended the act to permit extra-label uses under certain conditions. The AMDUCA regulations are codified in 21 CFR part 530. AMDUCA did not permit extra-label use of medicated feeds. However, there are some minor species that cannot be practically medicated in any other way other than through the use of medicated feeds. Furthermore, minor species such as fish and game birds have very few drugs approved for their use. In such situations, a veterinarian may determine that extra-label use of medicated feeds approved for use in other species can prevent suffering and death in these minor species. Before the implementation of AMDUCA, the agency occasionally exercised regulatory discretion for extra-label use of medicated feeds for minor species based on a medical need as long as the medicated feeds were formulated and labeled in accordance with their approved application. Because AMDUCA did not permit extra-label use of medicated feeds, FDA is providing this guidance to our field personnel when such extra-label use is encountered.

This level 1 draft guidance document is being issued consistent with FDA's good guidance practices (62 FR 9061, February 27, 1997). This draft CPG represents the agency's current thinking with regard to the extra-label use of medicated feeds for minor species. It does not confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Request for Comments

Interested persons may, on or before November 23, 1999, submit to the Dockets Management Branch (address above) written comments on the draft CPG entitled "Use of Medicated Feeds for Minor Species." Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft CPG and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. The agency will review all comments, but in issuing a final CPG, need not specifically address every comment. The agency will make changes to the draft CPG in response to comments, as appropriate.

III. Electronic Access

Copies of the draft CPG may also be downloaded to a personal computer with access to the World Wide Web (www). The Office of Regulatory Affairs (ORA) and CVM home pages include the draft CPG and may be accessed at "http://www.fda.gov/ora" or "http://www.fda.gov/cvm", respectively. The draft CPG will be available on the compliance references or compliance information pages for ORA and CVM, respectively.

Dated: August 18, 1999.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 99–21961 Filed 8–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–30]

Agency Information Collection Activities: Proposed Collection; Comment Request; Notice

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements in the Hospice Care Regulation, 42 CFR 418.22, 418.24, 418.28, 418.30, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96 and 418.100;

Form No.: HCFA–R–30;

Use: These Information Collection Requirements establish standards for hospices who wish to participate in the Medicare program. The regulations establish standards for eligibility, reimbursement standards and procedures, and delineate conditions that hospices must meet to be approved for participation in Medicare.

Frequency: On occasion;

Affected Public: Business or other for-profit and Not-for-profit institutions;

Number of Respondents: 2,275;

Total Annual Responses: 2,275;

Total Annual Hours Requested: 6,042,834.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 16, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–21974 Filed 8–24–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–137]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Internal Revenue Service/Social Security Administration/Health Care Financing Administration Data Match and Supporting Regulations in 42 CFR Section 411.20–411.206;

Form No.: HCFA–R–137 (OMB# 0938–0565);

Use: The purpose of this collection is to save the Medicare program, money. MSP is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare assumes a secondary payer role (private insurance being the primary payer) for covered services provided to a Medicare beneficiary. It is HCFA's responsibility to implement the various Medicare Secondary Payer (MSP) provisions.;

Frequency: Annually;

Affected Public: Federal Government, Business or other for-profit, Not-for-profit institutions, Farms, State, and Local or Tribal Government;

Number of Respondents: 327,947;

Total Annual Responses: 327,947;

Total Annual Hours: 1,096,466.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 10, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–22070 Filed 8–24–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals

who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on January 7, 1999, through June 28, 1999.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Rhonda and Ron Rodriguez on behalf of Michael Rodriguez, Glendale, California, Court of Federal Claims Number 99–0009V
2. Karen Paseka on behalf of Dylan Haynes, Deceased, Houston, Texas, Court of Federal Claims Number 99–0010V
3. Angela Sirls on behalf of Nicholas Johnson, Deceased, Anaheim, California, Court of Federal Claims Number 99–0011V
4. Deborah Shartle on behalf of David Shartle, San Antonio, Texas, Court of Federal Claims Number 99–0020V
5. Monica and William Watt on behalf of Amanda Rose Watt, New York City, New York, Court of Federal Claims Number 99–0025V
6. James Leonard on behalf of Samantha Leonard, Lawrence, Massachusetts, Court of Federal Claims Number 99–0029V
7. Rachel Freedman on behalf of Joshua Rosen, Deceased, Scarsdale, New York, Court of Federal Claims Number 99–0030V
8. Gail Devonshire, Vienna, Virginia, Court of Federal Claims Number 99–0031V
9. James C. Davis, Oakland, California, Court of Federal Claims Number 99–0032V
10. Alva N. Vazquez on behalf of Eric Vazquez-Rueda, Deceased, Chicago, Illinois, Court of Federal Claims Number 99–0036V
11. Lori and James Ross on behalf of Robert Craig Ross, Rochester, New York, Court of Federal Claims Number 99–0039V
12. Leslie Brown on behalf of Lauren Brown, Deceased, Cleveland, Ohio, Court of Federal Claims Number 99–0044V
13. Jean King-Fray on behalf of Jasai Fray, Worcester, Massachusetts, Court of Federal Claims Number 99–0062V
14. Kristen and Robbie Cameron on behalf of Austin Cameron, Norwalk, Ohio, Court of Federal Claims Number 99–0065V
15. Jill Hackett on behalf of Taylor Glover, Andover, Massachusetts, Court of Federal Claims Number 99–0069V
16. Vanessa Martin on behalf of Terrell Martin, Hurst, Texas, Federal Claims Number 99–0077V
17. Gina Monroe on behalf of Christina Monroe, Vienna, Virginia, Court of Federal Claims Number 99–0079V
18. Joanna Wills, Boston, Massachusetts, Court of Federal Claims Number 99–0080V
19. Jodene and David Truax on behalf of Brian Truax, Deceased, Albany, New York, Court of Federal Claims Number 99–0084V
20. Debbie and Jeff Harmon on behalf of Curtis Harmon, Larned, Kansas, Court of Federal Claims Number 99–0090V
21. Shirley Newsome on behalf of Troy Newsome, Boston, Massachusetts, Court of Federal Claims Number 99–0092V
22. Alicia Walton and Chris Lambert on behalf of Cody Chance Lambert, Deceased, Pearl, Mississippi, Court of Federal Claims Number 99–0096V
23. Michelle and Timothy Ceballos on behalf of Ciara Ceballos, Orlando, Florida, Court of Federal Claims Number 99–0097V
24. Frank C. Grasso, Vienna, Virginia, Court of Federal Claims Number 99–0104V
25. Tara-Marie Mahootian, Washington, D.C., Court of Federal Claims Number 99–0105V
26. Robin and Bradley Goffe on behalf of Ty Dean Goffe, Salt Lake City, Utah, Court of Federal Claims Number 99–0108V
27. Stella and Scott Kautz on behalf of Jeffrey Kautz, Vienna, Virginia, Court of Federal Claims Number 99–0109V
28. Pauline Brister, Vienna, Virginia, Court of Federal Claims Number 99–0110V
29. Jeff Snyder, Vienna, Virginia, Court of Federal Claims Number 99–0111V
30. Theresa and Frederick Leber on behalf of Lydia K. Leber, Norwalk,

Ohio, Court of Federal Claims Number 99–0112V
31. Cindy Poehlman on behalf of Marie Poehlman, South Bend, Indiana, Court of Federal Claims Number 99–0116V
32. Catherine and Andrew Goetz, on behalf of Hayden L. Goetz, Durham, North Carolina, Court of Federal Claims Number 99–0127V
33. Jodell Bell on behalf of Anissa Bell, Lackland Air Force Base, Texas, Court of Federal Claims Number 99–0128V
34. Rozena Okyere on behalf of Felicia Okyere, Deceased, Boston, Massachusetts, Court of Federal Claims Number 99–0130V
35. Suzanne and Joseph Vaughn on behalf of Joseph Thomas Vaughn, III, Houston, Texas, Court of Federal Claims Number 99–0146V
36. Helen and William Carey on behalf of Ryan Carey, Flemington, New Jersey, Court of Federal Claims Number 99–0150V
37. Marie and Charles Noe on behalf of Charles Noe, III, Kaufman, Texas, Court of Federal Claims Number 99–0151V
38. Robin Marvin, Greely, Colorado, Court of Federal Claims Number 99–0152V
39. Karen Wynne, Spokane, Washington, Court of Federal Claims Number 99–0153V
40. Whitney Rich Shultz on behalf of Tamarin Shultz, Ocala, Florida, Court of Federal Claims Number 99–0156V
41. Cara B. Briggs, Rigby, Idaho, Court of Federal Claims Number 99–0157V
42. Elizabeth O. Schneider on behalf of John R. Schneider, Cuyahoga Falls, Ohio, Court of Federal Claims Number 99–0160V
43. Patricia Millsaps-Linger on behalf of Veronica Rae Linger, Akron, Ohio, Court of Federal Claims Number 99–0161V
44. Lauren and Blaise Aguirre on behalf of Isabel Aguirre, Brookline, Massachusetts, Court of Federal Claims Number 99–0175V
45. Deborah Bustamante on behalf of Dennen Bustamante, Anaheim, California, Court of Federal Claims Number 99–0178V
46. Linda Graham on behalf of LeGerald Graham, Deceased, Schweinfort, Germany, Court of Federal Claims Number 99–0181V
47. Cheryl Laird on behalf of Mark Andrew Laird, Vienna, Virginia, Court of Federal Claims Number 99–0187V
48. Anita Szpotowicz on behalf of Andrew Szpotowicz, Cleveland, Ohio, Court of Federal Claims Number 99–0192V
49. Jan Malloy on behalf of Laura Malloy, Hazelton, Pennsylvania, Court of Federal Claims Number 99–0193V
50. Lisa A. Lippa, Henderson, Kentucky, Court of Federal Claims Number 99–0202V
51. O. Lisa Persinger, Forsyth, Missouri, Court of Federal Claims Number 99–0204V
52. Marilyn Kirschner on behalf of Lindsay Kirschner, Vienna, Virginia, Court of Federal Claims Number 99–0206V
53. Phyllis Noe, Vienna, Virginia, Court of Federal Claims Number 99–0207V
54. April Oakes on behalf of Cassie Oakes, Vienna, Virginia, Court of Federal Claims Number 99–0208V
55. Roy Pearl on behalf of Traci Pearl, Vienna, Virginia, Court of Federal Claims Number 99–0209V
56. Scott Pearl, Vienna, Virginia, Court of Federal Claims Number 99–0210V
57. Nahla and Babekir Ahmed on behalf of Mohamed Babekir Ahmed, Alexandria, Virginia, Court of Federal Claims Number 99–0211V
58. Kim and Lamar Visarraga on behalf of Monica Marie Visarraga, deceased, Sacramento, California, Court of Federal Claims Number 99–0212V
59. Terry Withers on behalf of Parker Withers, Las Vegas, Nevada, Court of Federal Claims Number 99–0213V
60. Mary and Vernon Johnson on behalf of Hillary Johnson, Worcester, Massachusetts, Court of Federal Claims Number 99–0219V
61. Sherry and Michael Battisti on behalf of Anthony Battisti, Rochester, New York, Court of Federal Claims Number 99–0223V
62. Laurie J. Mabee, White Cloud, Michigan, Court of Federal Claims Number 99–0230V
63. Victoria and Scott Shelton on behalf of Taylor V. Shelton, Vienna, Virginia, Court of Federal Claims Number 99–0234V
64. Elizabeth Hyla, Buffalo, New York, Court of Federal Claims Number 99–0238V
65. Kalena Woolf on behalf of Tala Dawn Woolf, deceased, Texarkana, Texas, Court of Federal Claims Number 99–0259V
66. Tyler Hartman, Fairfield, Ohio, Court of Federal Claims Number 99–0260V
67. Jessie Mae Williams, San Antonio, Texas, Court of Federal Claims Number 99–0261V
68. Annette Nelson on behalf of Trevian Devante Nelson, Baton Rouge, Louisiana, Court of Federal Claims Number 99–0263V
69. George Guzman, Kirkland, Washington, Court of Federal Claims Number 99–0264V
70. Melissa Silva on behalf of Angelo Silva, Ruidoso, New Mexico, Court of Federal Claims Number 99–0270V
71. Serita L. Smith on behalf of Hunter James Smith Camp Pendleton, California, Court of Federal Claims Number 99–0271V
72. Elidia Chuatle on behalf of Argenis Herrera, Bronx, New York, Court of Federal Claims Number 99–0274V
73. Martin Brausewetter, Staten Island, New York, Court of Federal Claims Number 99–0278V
74. Kimberly and Thomas Francis on behalf of Victoria Francis, West Chester, Pennsylvania, Court of Federal Claims Number 99–0286V
75. Kelly and John Sanford on behalf of Arden Christina Sanford, West Palm Beach, Florida, Court of Federal Claims Number 99–0287V
76. Carole E. Rudd on behalf of David A. Rudd, Newburyport, Massachusetts, Court of Federal Claims Number 99–0291V
77. Michelle and John Jenkins on behalf of Jesse Lee Jenkins, Bedford, Indiana, Court of Federal Claims Number 99–0295V
78. Gerald Doffing, Frederic, Wisconsin, Court of Federal Claims Number 99–0304V
79. Michelle Green on behalf of Chelsey Green, Amarillo, Texas, Court of Federal Claims Number 99–0305V
80. Michael Hroncich on behalf of Brianna Nicole Hroncich, deceased, Westfield, New Jersey, Court of Federal Claims Number 99–0306V
81. Patricia Rodriguez, Vienna, Virginia, Court of Federal Claims Number 99–0307V
82. Nicole Hamelin-Garcia, Vienna, Virginia, Court of Federal Claims Number 99–0308V
83. Mike Morrill, Vienna, Virginia, Court of Federal Claims Number 99–0309V
84. Onelia Valdes, Vienna, Virginia, Court of Federal Claims Number 99–0310V
85. Jennifer Garland, Indianapolis, Indiana, Court of Federal Claims Number 99–0313V
86. Cary Vhugen and Ellen Hermanns on behalf of Erik H. Vhugen, Santa Monica, California, Court of Federal Claims Number 99–0314V
87. Dorothy Werderitsh, Indianapolis, Indiana, Court of Federal Claims Number 99–0319V
88. Debra May, Indianapolis, Indiana, Court of Federal Claims Number 99–0320V
89. Betty Fluck, Indianapolis, Indiana, Court of Federal Claims Number 99–0321V
90. Diana and Kerry D. Smith on behalf of Michael Randall Smith, Miami,

Florida, Court of Federal Claims Number 99–0325V
91. Courtney M. Lambert, Aliquippa, Pennsylvania, Court of Federal Claims Number 99–0327V
92. Judy Saari, Vienna, Virginia, Court of Federal Claims Number 99–0328V
93. Monique Kanadanian, Vienna, Virginia, Court of Federal Claims Number 99–0329V
94. Kristen Jennings on behalf of Dylan Jennings, Vienna, Virginia, Court of Federal Claims Number 99–0330V
95. Kim and Kenneth Smith on behalf of Bridget Smith, Edina, Minnesota, Court of Federal Claims Number 99–0331V
96. Laura Lichoff, Columbus, Ohio, Court of Federal Claims Number 99–0332V
97. Kelly and Ruben Lujan on behalf of Dominic A. Lujan, Las Vegas, Nevada, Court of Federal Claims Number 99–0333V
98. Sharon and Robert Tersen on behalf of Gregory Tersen, Fort Myers, Florida, Court of Federal Claims Number 99–0341V
99. Deborah Burns, Fort Worth, Texas, Court of Federal Claims Number 99–0353V
100. Debbie Kaye Hunt, Vienna, Virginia, Court of Federal Claims Number 99–0356
101. Carla and Parke Gramm on behalf of Parke Gramm, Irvington, New Jersey, Court of Federal Claims Number 99–0359V
102. Sue and Stuart Carter on behalf of Corey Carter, Vienna, Virginia, Court of Federal Claims Number 99–0362
103. Tamra and Curtis Poll on behalf of Nathan Curtis Poll, Ogden, Utah, Court of Federal Claims Number 99–0371V
104. Patricia and Brian Strickland on behalf of Justin Brian Strickland, deceased, Laurel, Mississippi, Court of Federal Claims Number 99–0374
105. Linda and Larrie Collura on behalf of Larrie S. Collura, North Brunswick, New Jersey, Court of Federal Claims Number 99–0377V
106. Joanne Griffin, Vienna, Virginia, Court of Federal Claims Number 99–0378V
107. Sharon Durham, Vienna, Virginia, Court of Federal Claims Number 99–0379V
108. Kari Andersen, Vienna, Virginia, Court of Federal Claims Number 99–0380V
109. Pat Gerard, Vienna, Virginia, Court of Federal Claims Number 99–0381V
110. Quinton O. Riggins, Jr., Vienna, Virginia, Court of Federal Claims Number 99–0382V
111. Tammy and Thomas Houston on behalf of Thomas Matthew Houston, Higginsville, Missouri, Court of Federal Claims Number 99–0391V
112. Anna Nicolas on behalf of Nathaniel Nicolas, Rumson, New Jersey, Court of Federal Claims Number 99–0393V
113. Amy and Dennis Ostermeier on behalf of Katelyn Ostermeier, Grand Forks, North Dakota, Court of Federal Claims Number 99–0394V
114. Natalie and David Hay on behalf of Trevor Hay, Orlando, Florida, Court of Federal Claims Number 99–0398V
115. Dorothy and Hugh Benson on behalf of Shekinah Benson, Boston, Massachusetts, Court of Federal Claims Number 99–0399V
116. Rebecca S. Baker, Indianapolis, Indiana, Court of Federal Claims Number 99–0404V
117. Janet and Gregory Brooks on behalf of Kelly Brooks, Henrietta, New York, Court of Federal Claims Number 99–0405V
118. Nathan House, Vienna, Virginia, Court of Federal Claims Number 99–0406V
119. Linda and Joseph Gross on behalf of Jessica Gross, Vienna, Virginia, Court of Federal Claims Number 99–0407V
120. Lori Barillaro, Vienna, Virginia, Court of Federal Claims Number 99–0408V
121. Cheryl and Rick Butcher on behalf of Taylor Butcher, Vienna, Virginia, Court of Federal Claims Number 99–0409V
122. Sue Cruz, Vienna, Virginia, Court of Federal Claims Number 99–0410V
123. Cheryl A. Castagna, Vienna, Virginia, Court of Federal Claims Number 99–0411V
124. Sonya and David Morris on behalf of Taylor Morris, Vienna, Virginia, Court of Federal Claims Number 99–0412V

Dated: August 19, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–22027 Filed 8–24–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 16, 1999.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 PM at the ASA Waters Mansion, 123 Elm Street, Millbury, MA. for the following reasons:

1. Approval of Minutes
2. Approval of FY2000 Commission Budget
3. Executive Director's Report
4. Commission's Chair Report
5. Public Input

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 99–22076 Filed 8–24–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Comprehensive Conservation Plan; WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice informs the public that the comment period for the Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement for Little Pend Oreille National Wildlife Refuge is extended.

DATES: Comments must be received by the new deadline of August 31, 1999, at the address listed below.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Little Pend Oreille National Wildlife Refuge, 1310 Bear Creek Road, Colville, Washington 99114, telephone (509) 684–8384; E-mail: FWS1Public_Comments_LPO@fws.gov; fax number (509) 684–8381.

FOR FURTHER INFORMATION CONTACT: Lisa Langlier, Refuge Manager, (509) 684–8384.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) published in the **Federal Register** of July 7, 1999 (Vol. 64, No. 129, pages 36712–36713), that comments were to be received on or before July 31, 1999. In response to public interest, the Service decided to provide more time for public comments. The new deadline for public comment is now extended to August 31, 1999.

Dated: August 18, 1999.

Thomas Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–21996 Filed 8–24–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–016397.

Applicant: Leroy H. Chaney, Jr., Fort Worth, TX,

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–016395.

Applicant: Clark E. Linders, Manhattan, KS,

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–015907.

Applicant: University of California, Los Angeles, California,

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five-year period.

PRT–016143.

Applicant: International Animal Exchange, Ferndale, MI,

The applicant requests a permit for foreign commerce to purchase 5 captive-born cheetah (*Acinonyc jubatas*) from Hoedspruit Research and Breeding Facility, Waterjkiif Ridge, Republic of South Africa, and sell to Beijing Badaling Wild Animal Park, Beijing, China, for the purpose of conservation education and breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 20, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–22069 Filed 8–24–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

National Cooperative Geologic Mapping Program (NCGMP) Advisory Committee

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 105–36, the NCGMP Advisory Committee will meet in Room 7000B of the Main Interior Building, 1849 C Street, NW, Washington, DC. The Advisory Committee, composed of scientists from Federal Agencies, State Agencies, academic institutions, and private companies, will advise the Director on planning and implementation of the geologic mapping program.

Topics to be reviewed and discussed by the Advisory Committee include the progress of the National Cooperative Geologic Mapping Program towards fulfilling the purposes of the National Geologic Mapping Act of 1992.

- Updates on the Federal, State, and educational components of the NCGMP.
- Reauthorization of the National Geologic Mapping Act by the 106th Congress.
- Strategic Goals.

DATES: September 21–22, 1999, commencing at 9 a.m. on September 21st and adjourning by 5 p.m. on September 22nd.

FOR FURTHER INFORMATION CONTACT: Martha N. Garcia, US Geological Survey, 908 National Center, Reston, Virginia 20192 (703) 648–6960.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geologic Mapping Program Advisory Committee are open to the public.

Dated: August 12, 1999.

Linda C. Gundersen,

Associate Chief Geologist for Operations.

[FR Doc. 99–21975 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–1320–01; WYW139975]

Notice of Competitive Coal Lease Sale; Elk Mountain/Saddleback Hills Tract; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain coal resources in the Elk Mountain/Saddleback Hills Tract, described below, in Carbon County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10 a.m., on Wednesday, September 29, 1999. Sealed bids must be submitted on or before 4 p.m., on Tuesday, September 28, 1999.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107) of the Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Melvin Schlagel, Coal Coordinator, at

307–775–6258 and 307–775–6257, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Ark Land Company, a subsidiary of Arch Coal, Inc. The coal resources to be offered consist of all reserves recoverable by a combination of conventional surface, highwall, and underground mining techniques in the following-described lands located in the east central portion of Carbon County approximately 10 miles southeast of Hanna, Wyoming, and about 3 miles north-northeast of Elk Mountain just north of the Medicine Bow River:

T. 20 N., R. 79 W., 6th P.M., Wyoming
Sec. 6: Lot 6;
T. 21 N., R. 79 W., 6th P.M., Wyoming
Sec. 20: Lots 1–10, NWNW, SWSW;
Sec. 30: Lots 5–20;
Sec. 32: Lots 2–5;
T. 20 N., R. 80 W., 6th P.M., Wyoming
Sec. 4: Lots 5–7;
Sec. 6: Lots 7, 8, 13–16;
Sec. 12: Lots 1 (N2), 2 (N2 & SW), 3;
T. 21 N., R. 80 W., 6th P.M., Wyoming
Sec. 22: Lots 1–16;
Sec. 24: Lots 1–16;
Sec. 26: Lots 1–16;
Sec. 28: Lots 1–12;
Sec. 32: Lots 1–6, 9–11;
Sec. 34: Lots 1–16.
Containing 5,205.565 acres.

There are no coal mining operations in the immediate area of the lease tract that would be able to include the LBA into an existing operation; therefore, development of the coal reserve will require a new mine start. There are no oil and gas wells or Federal oil and gas leases on the LBA tract.

The lease tract contains coal reserves in several seams but only the Johnson Group is considered to be economically recoverable. For mining purposes, the Johnson Group makes up a single seam on the lease tract. This seam averages just under 20 feet thick for the offered Federal coal but varies from about 8 feet thick at the outcrop in the southeast to about 28 feet thick underground in the northern portion of the proposed mine area. No significant splits or riders in this seam are apparent from current drilling information.

The overburden above the Johnson seam increases rapidly from the coal outcrop of the proposed mine area. The average stripping ratio for the LBA is 7.69:1 BCY/ton using a cut-off stripping ratio of 12:1 to define coal reserves recoverable by conventional surface mining techniques.

The LBA tract contains an estimated 65.78 million tons of recoverable coal using a combination of conventional surface, highwall, and underground mining techniques. The overall average quality for the LBA coal is 11,262 BTU/lb, 8.8 percent moisture, 9.2 percent ash, and 0.54 percent sulfur. These quality averages place the LBA coal reserves at or above the coal quality for the nearby Hanna Basin mines.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, September 28, 1999, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the Wyoming State Office at the addresses above. Case file documents, WYW139975, are available for inspection at the Wyoming State Office.

August 16, 1999.

Michael Madrid,

Acting Deputy State Director, Minerals/Lands Authorizations.

[FR Doc. 99–21641 Filed 8–24–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Eastern Gulf of Mexico, Proposed Destin Dome 56 Unit Development and Production Plan and Right-of-Way Pipeline Application

AGENCY: Minerals Management Service (MMS).

ACTION: Notice of availability of the draft Environmental Impact Statement (EIS) and locations and dates of public hearings for Chevron U.S.A. Inc.'s proposed Destin Dome 56 unit development and production plan offshore Florida and right-of-way pipeline application.

The MMS prepared a draft EIS on Chevron U.S.A. Inc.'s proposed natural gas development and production project on their Destin Dome 56 (DD56) Unit. The DD56 Unit is located on the Outer Continental Shelf approximately 26 miles from the Florida coastline near Pensacola. In November 1996, Chevron submitted a Development and Production Plan describing how they intend to produce, develop, and transport natural gas from the DD56 Unit. The MMS based the EIS analyses on estimates of the kinds and amounts of activity onshore and offshore that could result from constructing structures, drilling wells, transporting personnel and equipment offshore, and constructing pipeline facilities to bring the natural gas product to shore.

You may obtain single copies of the draft EIS from the MMS, Gulf of Mexico OCS Region, Attention: Public Information Office (MS–5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF. You may look at copies of the draft EIS in the following libraries:

Auburn University at Montgomery Library, 7300 University Drive, Montgomery, Alabama
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores, Alabama Marine Environmental Science Consortium, Dauphin Island Sea lab Library Dauphin Island, Alabama
Mobile Public Library, 701 Government Street, Mobile, Alabama
Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama
Thomas B. Norton Public Library, 221 West 19th Avenue, Gulf Shores, Alabama
University of Alabama Libraries, 809 University Boulevard, Tuscaloosa Alabama

University of South Alabama, 307 University Boulevard, Mobile, Alabama
Florida A&M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee, Florida
Florida Northwest Regional Library, Headquarters Bay County Public Library, 25 West Government Street, Panama City, Florida
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee, Florida
Fort Walton Beach Public Library, 105 Miracle Strip Parkway, S.W., Fort Walton Beach, Florida Leon County Public Library, 200 West Park Avenue, Tallahassee, Florida
University of Florida Library, University Avenue, Gainesville, Florida
University of Florida, Holland Law Center Library, S.W. 25th Street and 2nd Avenue, Gainesville, Florida
University of West Florida, 1100 University Parkway, Pensacola, Florida
West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida
New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana
Plaquemines Parish Library, 35572 Highway 11, Buras, Louisiana
St. Bernard Parish Library, 1125 East St. Bernard Highway, Chalmette, Louisiana
Eudora Welty Library, Reference Section, 300 North State, Jackson, Mississippi
Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs, Mississippi
Hancock County Library System, 312 Highway 90, Bay St. Louis, Mississippi
Harrison County Library, 14th and 21st Avenues, Gulfport, Mississippi
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula, Mississippi

There will be three public hearings held to receive comments on the draft EIS. The hearings will provide us with information that will help in the evaluation of the potential of the proposed project. Hearings will be held in:

New World Landing, 600 South Palafox Street, Pensacola, Florida, Thursday, September 23, 1999, 3–6 p.m. and 7–10 p.m.
Marriot's Bay Point Resort, 4200 Marriot Drive, Panama City, Florida, Tuesday, September 28, 1999, 6–10 p.m.
Ramada Plaza Hotel, 600 South Beltline Hiway, Mobile, Alabama, Wednesday, September 29, 1999, 6–10 p.m.

If you wish to testify at a hearing, you may register beginning 1 hour prior to the meeting. Speakers will be limited to 5 minutes. Each hearing will recess when all speakers have had an opportunity to testify. If there are no additional speakers, we will adjourn the hearing immediately after the recess. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearing, you may submit written statements until October 19, 1999. Send written statements to the Regional Director (MS–5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Dated: August 18, 1999.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 99–22032 Filed 8–24–99; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–406 and 408 (Review)]

Electrolytic Manganese Dioxide from Greece and Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On August 5, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (64 FR 23675, Mar. 3, 1999) was adequate with respect to both reviews, and that the respondent interested party group response was adequate with respect to Greece[1] but inadequate with respect to Japan. The Commission also found that other circumstances warranted conducting a full review with respect to Japan.[2] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: August 18, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22074 Filed 8–24–99; 8:45 am]

BILLING CODE 7020–02–P

[1] Chairman Bragg and Commissioners Crawford and Hillman dissenting.

[2] Chairman Bragg and Commissioners Crawford and Hillman dissenting.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–415]

Certain Mechanical Lumber Supports and Products Containing Same; Notice of Commission Determination not to Review a Final Initial Determination Finding no Violation of Section 337

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on June 29, 1999, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation. Accordingly, the Commission has terminated the investigation with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation of allegations of unfair acts in violation of section 337 in the importation and sale of certain mechanical lumbar supports on September 29, 1998. 63 FR 51949. The complaint alleged that five respondents had infringed two claims of U.S. Letters Patent 5,518,294 (the '294 patent) held by complainant McCord Winn Textron, Inc. (Textron) of Manchester, New Hampshire. The notice of investigation named the following respondents: Schukra Manufacturing Inc. and Schukra North America, Ltd., both of Canada, Schukra Berndorf GmbH of Austria, Schukra Automobil-Erstausstatungs GmbH, Germany, and Schukra U.S.A. of Plymouth, Michigan. On January 11, 1999, the Commission determined not to review an ID adding Advantage Technologies, Inc. of Plymouth, Michigan as a respondent. An evidentiary hearing was held March 22–26, 1999.

On June 29, 1999, the presiding ALJ issued her final ID, finding no violation of section 337, based on her finding that respondents were not infringing the asserted patent claims. On July 12, 1999, complainant petitioned for review of the claim construction and infringement issues. Also on that date, respondents filed a contingent petition for review of the issues of patent validity and unenforceability to be considered in the event that the Commission reviewed the claim construction and infringement issues. The Commission investigative attorney (IA) did not file a petition for review. On July 19, 1999, complainant, respondents, and the IA filed responses to the petitions for review.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review the ID or ALJ Order No. 41.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42 of the Commission's rules of practice and procedure, 19 CFR § 210.42.

Copies of the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

Issued: August 16, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22072 Filed 8–24–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–851 (Preliminary)]

Synthetic Indigo From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of synthetic indigo, provided for in subheadings 3204.15.10, 3204.15.40, and 3204.15.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 30, 1999, a petition was filed with the Commission and Commerce by Buffalo Color Corporation, Parsippany, NJ, and the United Steelworkers of America, AFL-CIO/CLC, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of synthetic indigo from China. Accordingly, effective June 30, 1999, the Commission instituted antidumping investigation No. 731–TA–851 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 8, 1999 (64 FR 36921). The conference was held in Washington, DC, on July 22, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

the Secretary of Commerce on August 16, 1999. The views of the Commission are contained in USITC Publication 3222 (August, 1999), entitled Synthetic Indigo from China: Investigation No. 731–TA–851 (Preliminary).

Issued: August 18, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22073 Filed 8–24–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR § 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on August 10, 1999, a proposed Consent Decree in *United States* v. *AlliedSignal Inc., et al.*, Civil Action No. 99–3766 WHW, was lodged with the United States District Court for the District of New Jersey. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against defendants relating to the Chemsol, Inc. Superfund Site ("Site") located in Piscataway, New Jersey. The Complaint alleges that each of the defendants is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

Pursuant to the Consent Decree, the settling defendants agree and Settling Federal Agencies agree to reimburse to the United States $3,042,205.55 out of $5,457,205.55 in past response costs. Further, the settling work defendants, as defined in the Decree, agree to implement the remedy selected in the September 18, 1998 Record of Decision ("ROD") for the Site, estimated to cost $17.7 million, and to reimburse the United States for all of its future response costs, as defined in the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AlliedSignal Inc., et al.*, Civil Action No. 99–3766 WHW, D.J. Ref. 90–11–3–06104.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, NJ 07102 and at Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866 and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $29.00 payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–21976 Filed 8–24–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Order Pursuant to the Clean Water Act and the Rivers and Harbors Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Material Service Corporation*, Civil Action No. 95 C 3550, has been lodged with the United States District Court for the Northern District of Illinois on August 10, 1999.

The Consent Decree resolves claims alleged against defendant, Material Service Corporation ("Material Service"), under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Rivers and Harbors Act, 33 U.S.C. § 403, that Material Service destroyed approximately 37 acres of high-quality wetlands and filled in parts of the Des Plaines River without a permit. Material Service has agreed to pay a civil penalty of $500,000 and to pay $7,000,000 to be used for restoration and preservation of degraded wetland areas in the lower Des Plaines and Kankakee River valleys similar to those impacted by the violation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to *United States* v. *Material Service Corporation*, D.J. Ref. 90–5–1–1–05381.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 99–21977 Filed 8–24–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Testing Innovative Methods of Providing Reemployment Assistance and Training to Eligible Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test innovative methods of providing reemployment assistance and training to eligible workers. Through this notice, DOL seeks to identify a national group of vanguard sites committed to implementing Individual Training Accounts (ITAs as described in the WIA) and to the establishment of an Eligible Provider List process that is consistent with the WIA framework and informed by best practice and insight from the field. Awardees under this program will serve as innovative national laboratories for ITA implementation. Awardees will receive intensive technical assistance, test new approaches and practices and participate in a rigorous evaluation. In addition, they will participate in and help structure national DOL activities meant to identify and disseminate lessons learned. The demonstration project will inform ITA development as part of state and workforce system-building more generally.

The program will be funded with the Secretary's National Reserve funds

appropriated for Title III of the Job Training Partnership Act (JTPA) and administered in accordance with 29 CFR Parts 95 and 97 as applicable.

This notice describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, how awardees are to be selected and the technical assistance that will be provided prior to and following selection of awardees. It is anticipated that $6 million will be available for funding projects covered by this solicitation, that 10–12 projects will be selected for funding, and that the maximum grant award will not exceed $500,000 for a period of 18 months from the date of execution.

This notice contains all of the necessary information and forms needed to apply for grant funding. In addition, applicants interested in becoming a demonstration site are encouraged to attend a Bidders' Conference. Information about these conferences will be posted on the Internet (http://www.usworkforce.org) as soon as it is available.

DATES: Applications for grant awards will be accepted commencing August 25, 1999. The closing date for receipt of applications is Monday, November 8, 1999, at 4:00 p.m. (Eastern Time) at the address below. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor; Employment and Training Administration; Division of Federal Assistance; Attention: Marian Floyd, Reference: SGA/DFA 99–017; 200 Constitution Avenue, N.W., Room S–4203; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Fax questions to Marian Floyd, Division of Federal Assistance at (202) 219–8739. This is not a toll-free number. All inquiries sent via fax should include the SGA number (DFA 99–017) and a contact name and phone number. This announcement is also being published on the Internet on the Employment and Training Administration's Home Page at http://doleta.gov. Award notifications will also be published on the Home Page.

SUPPLEMENTARY INFORMATION: This announcement consists of 5 parts. Part I describes the authority, purpose and goals of the demonstration program and identifies demonstration policy. Part II includes the statement of work for the demonstration projects. Part III describes the application process and provides guidelines for use in applying for demonstration grants. There is no separate application package. Part IV describes the selection process including the criteria used to select grantees and the process of application and award. Part V describes the Assurances required of grantees. Part VI describes the monitoring, reporting and evaluation activities that will be required of grantees. The Appendix includes application forms.

Part I. Authority

A. Background

Sections 322 through 324 of the JTPA authorizes the use for demonstration programs of funds reserved under Section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under Section 322 of JTPA (29 U.S.C. 1662a). Demonstration program awardees shall comply with all applicable federal and state laws and regulations in setting up and carrying out their programs.

B. Purpose

On August 7, 1998, President Clinton signed the Workforce Investment Act (WIA), which is comprehensive reform legislation that supersedes the Job Training Partnership Act (JTPA). The WIA reforms the Federal job training system programs and creates a new, comprehensive workforce investment system. The reformed system will be customer-focused, to help Americans access any tools they need to manage their own careers through timely and accurate labor market information and high quality services, and to assist U.S. companies in securing adequate numbers of skilled workers. This new law embodies several key principles, including:

Streamlining services through better integration at the street level through the One-Stop delivery system. Programs and providers will co-locate, coordinate and integrate activities and information, so that the system as a whole is coherent and accessible for individuals and businesses alike.

Empowering individuals in several ways. First, adults eligible for training are given their own financial power to use Individual Training Accounts (ITA's) at qualifying institutions. Institutions wishing to qualify for acceptance of the ITA's will go through a new process to be placed on an Eligible Provider list, and must be required to continually meet standards of performance to remain on the list. Secondly, individuals are further empowered, through this process, with greater levels of key information on the performance outcomes of all training and educations providers in the ITA system. This will come to be known as Consumer Reporting. Third, individuals are empowered through the advice, guidance, and support available through the One-Stop system, and its partners.

Universal access. Any individual will have access to the One-Stop system and to core employment-related services. Information about job vacancies, career options, student financial aid, relevant employment trends, and instruction on how to conduct a job search, write a resume, or interview with an employer is available to any job seeker in the U.S., or anyone who wants to advance his or her career. While training and the use of ITA's are not universal services, all customers will have access to the Consumer Report information gathered on training institutions in the area through the Eligible Provider process.

Increased accountability. The goal of the Act is to increase employment, retention, and earnings of participants, and in doing so, improve the quality of the workforce to sustain economic growth, enhance productivity and competitiveness in the American labor force, and reduce welfare dependency. Consistent with this goal, the Act identifies core indicators of performance that State and local entities managing the workforce development system will have to meet—or face economic sanctions. However, state and local entities exceeding the levels can receive incentive funds. Training providers and their programs will also have to demonstrate successful performance to remain eligible to receive funds under the Act. Participants, with their ITA's, have the opportunity to make training choices based on program outcomes. To survive in the market, training providers must make accountability for performance and customer satisfaction a top priority.

Strong role for local workforce investment boards and the private sector, with local, business-led boards acting as "boards of directors" focusing on long range strategic planning, policy development and oversight of the local workforce investment system. The active involvement of business and labor is critical to understanding what skills are in demand, what jobs are available, what career fields are expanding, and what types of training programs will best meet local employer needs.

Individual Training Accounts, as described in the Workforce Investment Act (WIA), embody several elements believed central to improving the effectiveness and efficiency of publicly-funded reemployment services as well as improving participant satisfaction. Through this notice, DOL seeks to identify a national group of vanguard

sites committed to implementing Individual Training Accounts (ITAs as described in the WIA) and to the establishment of an Eligible Provider List process that is consistent with the WIA framework and informed by best practice and insight from the field. Grantees under this program will serve as innovative national laboratories for ITA implementation. Partners will test new approaches and practices and participate in a rigorous evaluation. In addition, they will participate in and help structure national DOL activities meant to identify and disseminate lessons learned. The demonstration project will inform ITA development as part of state and workforce system-building more generally.

The establishment of the Eligible Provider List, and the use of ITA's to pay training costs has the potential to impact the quality of the workforce and the economic competitiveness of a state. The WIA includes these service elements in an effort to create a more market-oriented workforce development system. The foundation of this system is the Eligible Provider List and the Consumer Reports information which help the participant make an informed choice, based on his or her training needs, occupational interests, and vendor performance.

In such a system, it is hypothesized that training vendors can become more sharply focused on meeting the needs of individual customers. By taking into account the specials needs of various target groups that experience barriers to employment, including displaced homemakers, workers with limited English, individuals with disabilities, and those with basic skills deficits, the training vendors can structure their offerings to ensure that their enrollees are more likely to be successfully placed. Also, by being more responsive to the workforce development needs of employers, the vendors can structure their training so that employers get workers with skills that match their needs. Finally, it is also held that a market-driven ITA/Eligible Provider system can ultimately provide better consumer information, services and training opportunities to customers—and, in doing so, assist them in making successful employment transitions throughout their careers.

The potential for ITAs to support these goals and objectives is supported from demonstration data in the field. Through this demonstration, we seek to build on the lessons learned in previous training voucher demonstrations and the current knowledge base. One recent DOL-funded initiative, the Career Management Account (CMA) Demonstration, provides instructive lessons on the practices and processes of implementing an ITA-type approach for participants in Title III programs. Other demonstrations give lessons on how to structure a customer choice system for adult training. This knowledge base will be used to inform the programs developed by the sites selected to participate in this demonstration program.

The ITA Demonstration seeks to support the design and implementation of the Workforce Investment Act by testing approaches that best fuel the creation of a more market-like environment for adult worker re-training. In addition to this demonstration, the Department of Labor is undertaking a range of related activities including an Evaluation, the Exchange of Technical Assistance and Information, ITA Software Development, and the Expansion of ITA's in Labor-Management Training Partnerships. Information on these activities wil be posted on ETA's website as it becomes available.

C. Demonstration Project Goals

The chief goals of the demonstration include:

- Support of system-building at the state and local levels;
- Rigorous testing of several key models or approaches to the establishment of an Eligible Provider process and the ITA payment system;
- Identification of key components of effective ITA implementation;
- Support for demonstration "learning laboratory" sites in designing and implementing innovative ITA/Eligible Provider processes and systems;
- Development of a learning network and strategy for information sharing, as well as the provision of technical assistance between demonstration "learning laboratory" sites and other WIA implementation sites as the system moves toward full implementation by July 1, 2000.

D. Demonstration Policy

1. Grant Awards

DOL anticipates awarding ten to twelve grants. Successful applicants will receive grants of up to $500,000.

2. Eligible Applicants

Entities eligible to apply to participate in the ITA Demonstration Program include States, PICs/Workforce Investment Boards, and consortiums of PICs or Workforce Investment Boards.

3. Eligible Participants

The demonstration should include and service all persons eligible for WIA training. This demonstration is not for direct client services, however the products will benefit adult and dislocated worker training enrollment.

4. Allowable Activities

In general, grant funds may be used to support the research and development, planning and capacity-building activities involved in implementing the ITA/Eligible Provider system. Following are some examples of how these funds might be used to support implementation:

- development and delivery of inservice training courses that help case managers understand their new role in supporting individual customer decision making and choice;
- development and delivery of orientation sessions to help ensure that customers understand their responsibilities and opportunities within an ITA system;
- development and delivery of orientation sessions on ITAs and the Eligible Provider process for current and potential training providers;
- development of a system to track training provider performance;
- development of an ITA expenditure reporting system to provide individuals with information on the status of their account balances;
- other related costs associated with implementation of ITAs and Eligible Provider systems; and
- travel and other expenses related to participation in networking and dissemination activities offered in conjunction with the Demonstration grant program.

Demonstration funds are not intended to support direct training expenditures, as the demonstration is for building the ITA/Eligible Provider system itself. However, to supplement other funds available for this purpose, an applicant may budget no more than 20% of the total grant costs for training.

5. Coordination

Applicants will be expected to link demonstration project activities with other state and local WIA implementation activities. Evidence of collaboration should be included in the grant application.

6. Period of Performance

The period of performance shall be 18 months from the date of execution by the Government. Delivery of services to participants shall commence within 90 days of execution of a grant.

7. Option to Extend

Depending upon the availability of funds and awardee's performance, there

may be an option for extension of the grant award not to exceed a two program year period.

Part II. Statement of Work

DOL seeks innovative practitioners to collaborate with others in the development and refinement of various models of ITA application and in the establishment and use of a list of eligible training providers as envisioned in the WIA. Applicants should have a strong vision and passion for moving beyond current practices with and conceptions of these activities.

In order for applicants to successfully compete for and participate in the ITA Demonstration Program they must demonstrate their understanding of and commitment to a rigorous implementation of the ITA/Eligible Provider List system envisioned by the WIA.

At a minimum, successful applicants must demonstrate commitment to the implementation of an ITA/Eligible Provider system that:

- Clearly identifies and communicates the ITA/Eligible Provider process and goals to all eligible customers;
- Provides mechanisms for participant control over the use of the ITA account, and control over decision-making relative to individual training choices with the use of the Eligible Provider Listing;
- Provides a process for determining how a customer's training decision is approved;
- Provides an environment of information-sharing and related services to facilitate a market-based approach to training;
- Describes the eventual establishment of a "Consumer Report" on the performance of training providers on the Eligible Training Provider list.

The US DOL anticipates that the demonstration may test more than one design approach to ITA implementation. An overview of the key design elements of the demonstration is provided below. Applicant experience, ideas and proposals can be incorporated into the demonstration design.

A. Common Elements of the Demonstration

The ITA Demonstration Projects will include several common elements. In addition the demonstration will test several variations on how individual training accounts may be implemented across the country. While some of the design elements will constrain the design of the demonstrations to some degree, there are many other elements that are not specified here.

These include, for example, the provider eligibility criteria, payment mechanism, participant enrollment and assessment processes, and role of community-based organizations as service providers. The approach to such issues is left to the discretion of the applicants.

COMMON ELEMENTS OF ITA/ELIGIBLE PROVIDER DEMONSTRATIONS

Element	Approach
What particpants are included?	All Adult Training ITA particpants are included.
Do participants know the amount of the ITA?	Participants are informed of the dollar amount available in their ITA.
What provider information must be collected?	Provider performance data, consistent with WIA requirements, must be collected and disseminated to participants.
How are new providers brought in?	Inclusion of new providers must be allowed easily and quickly; participants allowed to "nominate" new providers.
How are providers paid?	Providers are paid for vouchers on a timely basis, that is, within 30 days.
How do staff learn about ITAs?	Staff receive orientation and training regarding the ITA process and the role they will play in implementation.
How will customer satisfaction be determined?	Sites must agree to administer a common customers satisfaction survey to all participants.
How will staff satisfaction be determined?	Sites must agree to administer a common customers satisfaction survey to all staff.
What triggers the ITA?	Development of an Individual Employment Plan including an assessment process.

B. Variable Elements of the Demonstration

In addition to the Common Elements described above, there are several other elements of the ITA/Eligible Provider design that are at the discretion of the applicant. The US DOL is looking for applicants who are interested in aggressive and creative approaches that fall within the parameters of WIA. Some examples of these considerations are presented below:

VARIABLE ELEMENTS OF ITA/ELIGIBLE PROVIDER DEMONSTRATIONS

Element	Possibilities
How is the dollar amount of ITA determined?	Is the dollar amount of ITA fixed for all participants? Does it vary among individuals based on assessment?
Who approves the ITA?	Is it the counselor, a person other than the counselor, or a committee that must approve the ITA?
What career direction is allowed?	Does the customer have the final authority to choose a career direction so long as credible job opportunities exist? Is career direction limited to demand occupations as defined by WIB?
How is informed customer choice provided?	What is the role of the case manager?
Who has final authority on selection of the training provider?	Within the boundaries of the training plan, does the participant have final authority to select a training provider? Can the counselor reject a customer's selection of a training provider?
What can the ITA pay for?	How may ITA funds be used?

C. Bidders' Conferences

Applicants interested in becoming a demonstration site are strongly encouraged to attend one of two full-day Bidders' Conferences. The purpose of these sessions is to summarize the current knowledge base about ITAs/Eligible Provider system goals, frameworks and implementation processes and to review the goals and objectives of the Demonstration Project. Attendees will learn about the technical assistance services that will be provided to awardees and the expectations for awardee involvement in designing, testing, and evaluating alternative approaches to ITA/Eligible Provider implementation. This session will be offered free of charge to prospective applicants on a space-available basis. Attendees will, however, have to pay for their own travel and lodging. Attendance at this session is strongly encouraged but voluntary. No written summary of the meeting will be distributed and applicants not in attendance will not lose rating points on their proposal.

Part III. Application Process and Guidelines

A. Contents

Applicants must submit four (4) copies of their proposal, with original signatures. The application shall consist of a Technical Proposal that includes both the statement of work and cost data as it relates to the demonstration project plan. The Technical Proposal shall also contain the (SF) 424, "Application for Federal Assistance (Appendix A) and the "Budget Information Form" (Appendix B). All copies of the (SF) 424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the (SF) 424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

The Federal Domestic Assistance Catalog number is 17.246. Applicants should follow the instructions included with the attachments.

Technical Proposal

The technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part II of this solicitation. It is advised that the technical proposal be formated according to the evalution criteria (Part IV). Each application shall also include a Time line outlining project activities, and an Executive Summary not to exceed two pages. A grant application shall be limited to 15 double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. Attachments shall not exceed 5 pages. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. SINCE COST EFFECTIVENESS IS AN INTEGRAL PART OF THE SELECTION CRITERIA, COST DATA SHOULD BE INCLUDED WITH THE TECHNICAL PROPOSAL. Budget categories are administration and program activities, and should be planned in accordance with recent changes in the Department of Labor financial reporting requirements.

B. Hand-Delivered Applications

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However if applications are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

C. Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calender day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 10th of August must have been mailed by the 5th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next-Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service.

D. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Part IV. Review Process and Evaluation Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government, but also considering factors such as urban/rural characteristics of the sites and that several variations of the design are thoroughly tested. It is important that applicants demonstrate that they are positioned to experiment with new designs and share learning that can contribute to the development of successful systems elsewhere. Applicants should demonstrate their interest in and capacity for helping to define the key components of an effective ITA/Eligible Provider List System.

Evaluation Criteria

1. Applicant Qualifications (10 points)

a. Indicate whether the applicant is a workforce investment board (or private industry council), a consortium of multiple boards, or a state.

i. If applicant is a local organization, describe involvement with other locals and the state in development of the proposal.

ii. If applicant is a consortium, indicate which will be the lead organization, and describe any projects previously undertaken together. Also discuss how the consortium will be coordinated and managed.

iii. If applicant is a state, describe involvement of local areas in

development of the proposal and operation of the demonstration.

b. Describe applicant's organization(s), including a brief history, number of staff, size and demographic nature of workforce development area served.

2. Interest and Commitment (20 points)

a. Describe applicant's interest in contributing to the development of innovative approaches to ITA implementation.

b. Explain applicant's interest in treating the development of an ITA/Eligible Provider system as a priority over other workforce development system innovations.

c. Describe applicant's commitment to achieving project objectives in a manner that also supports national objectives.

d. Discuss applicant's commitment to assist the US DOL in building staff capacity throughout the WIA system in these areas.

3. Previous Experience (10 points)

a. Describe applicant's previous experience, if any, with designing and/or implementing ITAs, or any other voucher-type programs, or any type of Consumer Reporting.

b. Discuss applicant's history of peer assistance with learning from program innovations, especially on a regional or national basis.

c. Provide an example of a creative approach the applicant organization(s) has designed to improve the area's workforce development system.

4. Approach (40 points)

a. Describe the objectives of this activity

b. Describe the approach to the demonstration in terms of design and implementation.

c. Describe how the common elements of the demonstration, as outlined in Section II.1 are included in the approach.

d. Describe the applicant's intended approach to the variable elements of the demonstration, as outlined in Section II.2.

e. Describe key considerations in designing an effective ITA/Eligible Provider system and the applicant's approach to dealing with them.

f. Discuss potential roadblocks the applicant may encounter in implementing a newly designed ITA/Eligible Provider system.

g. Present a time line for implementation.

h. Describe how applicant would utilize demonstration funds, if awarded, for system-planning and development activities.

i. Provide evidence of support from state and local partners as appropriate.

5. Cost Effectiveness (20 points)

a. Proposed costs are reasonable in relation to the overall objectives of the project, the activities planned, the time frame of the project, the organizational scope (including the number of individuals and the number of organizations involved), coordination/collaboration with other entities, and in relation to other projects of similar size and scope.

V. Assurances

Successful applicants must give several assurances, including that they will fully participate in a post-award grantee design workshop, agree to participate in the peer learning process, serve as a learning site for future implementors of ITAs and Eligible Provider Lists, and participate in USDOL evaluations as necessary. All applicants must provide the full list of assurances as follows.

- Work in close collaboration with state and local partners in the design development of the ITA/Eligible Provider system
- Participate fully in the program design process
- Provide capacity-building activities for all levels of staff, reaching all partner organizations including contract training providers, such as community based organizations
- Cooperate with US DOL technical assistance providers, including on-site visitations
- Participate in the peer learning process, including serving as a learning site for future implementors of ITAs
- Participate in US DOL evaluations
- Assist the US DOL in building staff capacity throughout the WIA System in these areas.
- Participate in staff training activities planned by DOL–ETA

In addition, the budget shall provide sufficient funds for a total of four persons trips for travel to meetings in Washington, DC and other locations.

Part VI. Monitoring, Reporting and Evaluation

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the requirements for participants who are served, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to additional reviews at the discretion of the Department.

B. Reporting

US DOL will arrange for or provide technical assistance to awardees in establishing appropriate reporting and data collection methods and processes. An effort will be made to accommodate and provide assistance to awardees to be able to complete all reporting electronically.

Applicants selected as grantees will be required to provide the following reports:

1. Monthly and Quarterly progress reports.

2. Standard Form 269, Financial Status Report Form, on a quarterly basis.

3. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department.

C. Evaluation

DOL will arrange for or an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. The RFP # DCS–99–28 describes the Evaluation criteria and is available for review at http://www.wdsc.org/sga/rfp/rfp99–28.htm. Grantees must agree to make records available to evaluation personnel, as specified by the evaluator(s) under the direction of the Department.

Signed at Washington DC, this 18th day of August, 1999.

Laura A. Cesario,

Grant Officer, Division of Federal Assistance.

Appendices

Appendix A: (SF) 424—Application for Federal Assistance.

Appendix B: Budget Information Form.

BILLING CODE 4510-30-P

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 1 7 - 2 4 6

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

		(A)	(B)	(C)
1.	Personnel			
2.	Fringe Benefits (Rate %)			
3.	Travel			
4.	Equipment			
5.	Supplies			
6.	Contractual			
7.	Other			
8.	Total, Direct Cost (Lines 1 through 7)			
9.	Indirect Cost (Rate %)			
10.	Training Cost/Stipends			
11.	TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

		(A)	(B)	(C)
1.	Cash Contribution			
2.	In-Kind Contribution			
3.	TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.

3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs:** Add lines 1 through 7.

9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 99-22034 Filed 8-24-99; 8:45 am]
BILLING CODE 4510-30-C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–34; Exemption Application No. D–10694, et al.]

Grant of Individual Exemptions; The Chase Manhattan Bank (CMB), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Chase Manhattan Bank (CMB); Located in New York, NY

[Prohibited Transaction Exemption 99–34; Exemption Application No. D–10694]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to affiliates of The Chase Manhattan Corporation (CMC), which are engaged in CMC's capital markets line of business (Global Capital Markets), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which CMC, through its Global Investor Services line of Business, as operated through CMB and its affiliates (GIS), acts as directed trustee or custodian, and for which CMC through its Global Securities Lending Division or any other similar division of CMB or a U.S. affiliate of CMC (collectively, GSL) acts as securities lending agent or sub-agent and (2) to the receipt of compensation by GSL in connection with the proposed transactions, provided the general conditions set forth below in Section II are met.

Section II. General Conditions

(a) This exemption applies to loans of securities to Global Capital Markets, as operated through CMB in the United States (Global Capital Markets/U.S. or the U.S. Affiliated Borrower) and in the following foreign countries: the United Kingdom (Global Capital Markets/U.K.), Canada (Global Capital Markets/Canada), Australia (Global Capital Markets/Australia), Japan (Global Capital Markets/Japan)(collectively, the Foreign Affiliated Borrowers). Global Capital Markets will also include other companies or their successors which are affiliated with either CMB or CMC within these countries.[1]

(b) For each Client Plan, neither GIS, Global Capital Markets, GSL, nor any other division or affiliate of CMC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the lending of securities designated by an independent fiduciary of a Client Plan as being available to lend and the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

(c) Before a Client Plan participates in a securities lending program and before any loan of securities to Global Capital Markets is effected, a Client Plan fiduciary which is independent of Global Capital Markets must have—

(1) Authorized and approved a securities lending authorization agreement with GSL, where GSL is acting as the securities lending agent;

(2) Authorized and approved the primary securities lending authorization agreement with the primary lending agent where GSL is lending securities under a sub-agency agreement with the primary lending agent;[2] and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and Global Capital Markets, the specific terms of which are negotiated and entered into by GSL.

(d) Each loan of securities by a Client Plan to Global Capital Markets is at market rates and terms which are at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party.

(e) The Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice whereupon Global Capital Markets delivers securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and Global Capital Markets, whichever is less.

---

[1] Unless otherwise noted, Global Capital Markets will consist collectively of the above referenced entities.

[2] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than GSL, beyond that provided pursuant to Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

(f) The Client Plan receives from Global Capital Markets (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Global Capital Markets, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a U.S. bank, which is a person other than Global Capital Markets or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least 102 percent of the market value of the loaned securities.

(g) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, Global Capital Markets delivers additional collateral on the following day such that the market value of the collateral again equals 102 percent.

(h) The Loan Agreement gives the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral and GSL monitors the level of the collateral daily.

(i) Before entering into a Loan Agreement, Global Capital Markets furnishes GSL the most recently available audited and unaudited statements of the financial condition of the applicable borrower within Global Capital Markets. Such statements are, in turn, provided by GSL to the Client Plan. At the time of the loan, Global Capital Markets gives prompt notice to the Client Plan fiduciary of any material adverse change in the borrower's financial condition since the date of the most recent financial statement furnished to the Client Plan. In the event of any such changes, GSL requests approval of the Client Plan to continue lending to Global Capital Markets before making any such additional loans. No new securities loans will be made until approval is received and each loan constitutes a representation by Global Capital Markets that there has been no such material adverse change.

(j) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to Global Capital Markets if such fee is not greater than the fee the Client Plan would pay an unrelated party in a comparable arm's length transaction.)

(k) All procedures regarding the securities lending activities conform to the applicable provisions of PTEs 81–6 and PTE 82–63 (as amended from time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans).

(l) If Global Capital Markets defaults on the securities loan or enters bankruptcy, the collateral will not be available to Global Capital Markets or its creditors, but will be used to make the Client Plan whole. In this regard,

(1) In the event a Foreign Affiliated Borrower defaults on a loan, CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, CMB will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, the GSL will pay the Client Plan cash equal to—

(i) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus

(ii) All the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus

(iii) Interest from such date to the date of payment.

The lending Client Plans will be indemnified in the United States for any loans to the Foreign Affiliated Borrowers.

(2) In the event the U.S. Affiliated Borrower defaults on a loan, CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, either CMB or the U.S. Affiliated Borrower will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify property under this provision).

(m) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including all interest, dividends and distributions on the loaned securities during the loan period.

(n) Prior to any Client Plan's approval of the lending of its securities to Global Capital Markets, copies of the notice of proposed exemption and the final exemption are provided to the Client Plan.

(o) Each Client Plan receives a monthly report with respect to its securities lending transactions, including but not limited to the information described in Representation 24 of the proposed exemption, so that an independent fiduciary of the Client Plan may monitor the securities lending transactions with Global Capital Markets.

(p) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Global Capital Markets; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset

Regulation, which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(q) With respect to each successive two week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by GSL, in the aggregate, will be to unrelated borrowers.

(r) In addition to the above, all loans involving Foreign Affiliated Borrowers within Global Capital Markets have the following supplemental requirements:

(1) Such Foreign Affiliated Borrower is registered as a bank or broker-dealer with—

(i) The Financial Services Authority or the Securities and Futures Authority, in the case of Global Capital Markets/U.K.;

(ii) The Office of the Superintendent of Financial Institutions (OSFI), or the Ontario Securities Commission and/or the Investment Dealers Association, in the case of Global Capital Markets/Canada;

(iii) The Australian Prudential Regulation Authority (APRA), or the Australian Securities & Investments Commission and/or the Australian Stock Exchange Limited, in the case of Global Capital Markets/Australia; and

(iv) The Ministry of Finance and/or the Tokyo Stock Exchange, in the case of Global Capital Markets/Japan.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit of U.S. banks or any combination thereof, or other collateral permitted under PTE 81–6 (as amended from time to time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(4) All collateral is held in the United States;

(5) The situs of the Loan Agreement is maintained in the United States;

(6) The lending Client Plans are indemnified by CMB in the United States for any transactions covered by this exemption with the Foreign Affiliated Borrower so that the Client Plans do not have to litigate in a foreign jurisdiction nor sue the Foreign Affiliated Borrower to realize on the indemnification; and

(7) Prior to the transaction, each Foreign Affiliated Borrower enters into a written agreement with GSL on behalf of the Client Plan whereby the Foreign Affiliated Borrower consents to service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein.

(s) CMB or Chase Securities Inc. (CSI) maintains, or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of CMB or CSI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than CMB or CSI shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(t)(2) None of the persons described above in paragraphs (t)(1)(ii)–(t)(1)(iv) of this paragraph (t)(1) are authorized to examine the trade secrets of CMB, the U.S. Affiliated Borrowers, or the Foreign Affiliated Borrowers or commercial or financial information which is privileged or confidential.

III. Definitions

For purposes of this exemption,

(a) The terms "CMB" and "CMC" as referred to herein in Sections I and II, refer to The Chase Manhattan Bank and its parent, The Chase Manhattan Corporation.

(b) The term "affiliate" means any entity now or in the future, directly or indirectly, controlling, controlled by, or under common control with CMC or its successors. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) The term "U.S. Affiliated Borrower" means an affiliate of CMC that is a bank supervised by the United States or a State, or a broker-dealer registered under the 1934 Act.

(d) The term "Foreign Affiliated Borrower" means an affiliate of CMC that is a bank or a broker-dealer which is supervised by—

(1) The Financial Services Authority or the Securities and Futures Authority in the United Kingdom;

(2) OSFI, or the Ontario Securities Commission and/or the Investment Dealers Association in Canada;

(3) APRA, or the Australian Securities & Investments Commission and/or the Australian Stock Exchange in Australia; and

(4) The Ministry of Finance and/or the Tokyo Stock Exchange in Japan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption on June 25, 1999 at 64 FR 34281.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

H.H. Borland, Inc. Profit Sharing Plan (the Plan); Located in Downers Grove, IL

[Prohibited Transaction Exemption 99–35; Exemption Application No. D–10707]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of certain improved real property (the Property) by the Plan to Henry H. Borland III and Pat Borland, the Plan trustees (the Trustees) and disqualified persons with respect to the Plan,[3] provided the following conditions are met:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) The Trustees purchase the Property from the Plan for the greater of $200,000 or the fair market value of the Property as of the date of the transaction, as determined by a qualified, independent appraiser;

(c) The Sale is a one-time transaction for cash; and

(d) The Plan pays no fees or commissions in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 25, 1999 at 64 FR 34292.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 20th day of August, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–22025 Filed 8–24–99; 8:45 am]

BILLING CODE 4510–29–P

[3] Since Mr. Borland is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

FEDERAL MINE SAFETY AND HEALTH COMMISSION

Sunshine Act Meeting

August 20, 1999.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 64, No. 127, at 36,049–50, July 2, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Wednesday, July 28, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Open.

CHANGES IN MEETING: The Commission meeting to consider and act upon Hubb Corp., Docket No, KENT 97–302, has been changed to 10:00 a.m., Thursday, September 30, 1999.

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–22155 Filed 8–23–99; 12:27 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric, Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–1 issued to Portland General Electric (PGE), the licensee, for operation of the Trojan Nuclear Plant located in Prescott, Oregon and a concurrent exemption from10 CFR 50.54 and 10 CFR 73.55.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt PGE from the security requirements of 10 CFR 50.54(p) and 10 CFR 73.55 and delete the requirements for a security plan from the 10 CFR part 50 licensed portion of the site after the spent nuclear fuel is transferred to the part 72 licensed Trojan independent spent fuel storage installation (ISFSI).

The proposed action is in accordance with the licensee's application for a license amendment and exemption dated January 29, 1998.

The Need for the Proposed Action

Sections 50.54 and 73.55 of Title 10 of the Code of Federal Regulations require that licensees establish and maintain physical protection and security for activities involving nuclear fuel within the 10 CFR part 50 licensed area of a facility. The proposed action is needed because there will no longer be any nuclear fuel on the 10 CFR part 50 licensed facility to protect against radiological sabotage or diversion after the transfer of the spent nuclear fuel to the Trojan ISFSI. Subpart H of 10 CFR part 72 establishes physical protection and relies on 10 CFR 73.51 to define the

requirements for physical protection of spent nuclear fuel stored under a specific license issued pursuant to 10 CFR part 72. The Trojan ISFSI has an NRC-approved security plan to protect the spent nuclear fuel stored there from radiological sabotage and diversion as promulgated under 10 CFR part 72, subpart H. The proposed action will allow the licensee to conserve resources for decommissioning activities.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that exempting the plant from security requirements will not have any adverse environmental impact. There will be very minor savings of energy and vehicular use associated with the security force no longer performing patrols, checks, and normal security functions.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Trojan Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on July 19, 1999, the staff consulted with the Oregon State official, Adam Bless of the Oregon Office of Energy, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 29, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, Portland, Oregon 92707.

Dated at Rockville, MD, this 16th day of August 1999.

For the Nuclear Regulatory Commission,

Louis L. Wheeler,

Acting Chief, Decommissioning Section, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–22029 Filed 8–24–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric, Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–1 issued to Portland General Electric Company (PGE), the licensee, for operation of the Trojan Nuclear Plant located in Prescott, Oregon and a concurrent exemption from 10 CFR 50.54, 10 CFR 50.47(b) and 10 CFR part 50, appendix E.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt PGE from the emergency plan requirements of 10 CFR 50.54(q), 10 CFR 50.47(b), and 10 CFR part 50, appendix E and delete the requirements for an emergency plan from the 10 CFR part 50 licensed portion of the site after the spent nuclear fuel is transferred to a part 72 licensed independent spent fuel storage installation (ISFSI).

The proposed action is in accordance with the licensee's application for a license amendment and exemption dated August 27, 1998.

The Need for the Proposed Action

The proposed action is needed because the remaining quantities of radioactive material in the part 50 licensed facility will be less than the quantities specified in 10 CFR 30.72, "Schedule C" after the transfer of the spent nuclear fuel to the ISFSI. This represents a reduction of over 99 percent of the radioactivity existing prior to the transfer and the radioactivity remaining in the part 50 licensed plant will be below the amount requiring an emergency plan as designated in 10 CFR 30.72 above. The ISFSI which will receive the radioactive inventory has an NRC-approved emergency plan. The proposed action will allow the licensee to conserve resources for decommissioning activities.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that exempting the plant from emergency plan requirements will not have any adverse environmental impact. There will be very minor savings of energy and vehicular use associated with the reduced effort related to emergency preparedness drills.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application

would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Trojan Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on July 19, 1999, the staff consulted with the Oregon State official, Mr. Adam Bless of the Oregon Office of Energy, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 27, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, Portland, Oregon 92707.

Dated at Rockville, MD, this 16th day of August 1999.

For the Nuclear Regulatory Commission.

Louis L. Wheeler,

Acting Chief, Decommissioning Section, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–22030 Filed 8–24–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of August 23, 30, September 6, 13, *and* October 18, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 23

Tuesday, August 24

2 p.m.—Briefing by Executive Branch (Closed—ex.1)

3:30 p.m.—Briefing on Threat Assessment (Closed—ex. 1)

Wednesday, August 25

9:55 a.m.—Affirmation Session (Public Meeting) (If needed)

Week of August 30—Tentative

Wednesday, September 1

9:25 a.m.—Affirmation Session (Public Meeting) (if needed)

Week of September 6—Tentative

Tuesday, September 7

9:15 a.m.—Affirmation Session (Public Meeting) (if needed)

9:20 a.m.—Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

Week of September 13—Tentative

There are no meetings scheduled for the Week of September 13.

and

Week of October 18—Tentative

Thursday, October 21

9:30 a.m.—Briefing on Part 35—Rule on Medical Use of Byproduct Material (Contact: Cathy Haney, 301–415–6825) (SECY–99–201, *Draft Final Rule—10 CFR Part 35, Medical Use of Byproduct Material,* is available in the NRC Public Document Room or on NRC web site at "www.nrc.gov/NRC/COMMISSION/SECYS/index.html". Download the *zipped version* to obtain all attachments.)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording) (301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: August 20, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–22159 Filed 8–23–99; 12:48 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licensee Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 31, 1999, through August 13, 1999. The last biweekly notice was published on August 11, 1999 (64 FR 43764).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed

determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 24, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public

document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 2, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification 6.2.2.e to require either the Operations Manager or an off-shift Operations superintendent to hold a senior reactor operator (SRO) license. This revision would delete the option which allows the Manager-Operations to have at one time held a Senior Reactor Operator License for a similar unit and replaces it with the requirement for an off-shift Operations superintendent who holds an SRO license to supervise shift work and licensed activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to Technical Specification 6.2.2.e to require the Manager-Operations or an off-shift Operations superintendent to hold an SRO license is administrative in nature and does not directly affect plant operations. The change does not physically alter the facility in any manner and, as such, does not affect the means in which any safety-related system performs its intended safety function.

Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed change is administrative in nature. There is no physical alteration to any plant system, nor is there a change in the method in which any safety related system performs its function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment does not reduce the margin of safety as defined in the Safety Analysis Report or the bases contained in the Technical Specifications. The requirement to have a licensed SRO management position responsible for plant operations is maintained within the proposed amendment. The proposed amendment is consistent with (1) 10 CFR 50.54(l), which requires individuals responsible for directing the licensed activities of licensed operators to hold an SRO license, (2) Revision 1 of NUREG–1431, "Standard Technical Specifications Westinghouse Plants," and Technical Specification Traveler Form (TSTF) 65, Revision 1, and (3) the intent of ANSI/ANS–3.1, "Standard for Selection and Training of Personnel for Nuclear Power Plants," (September 1979 Draft).

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Section Chief: Sheri R. Peterson.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 4, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification 6.9.1.6.2 to incorporate analytical methodology references which are used to determine core operating limits. The analytical methodologies to be referenced are documented in topical reports which have been accepted by the Nuclear Regulatory Commission for referencing in licensing applications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes incorporate additional references to methodologies used to evaluate core operating limits. These methodologies have been approved for use by the NRC. Plant structures, systems, and components will not be operated in a different manner as a result of these proposed changes and no physical modifications to equipment are involved. Adding these references to the Core Operating Limits Report section of Technical Specifications does not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes incorporate additional references to methodologies used to evaluate core operating limits. These methodologies have been approved for use by the NRC. Plant structures, systems, and components will not be operated in a different manner as a result of these proposed changes and no physical modifications to equipment are involved. Adding these references to the Core Operating Limits Report section of Technical Specifications does not create the possibility of a new or different type of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes incorporate additional references to methodologies used to evaluate core operating limits. These methodologies have been approved for use by the NRC. Plant structures, systems, and components will not be operated in a different manner as a result of these proposed changes and no physical modifications to equipment are involved. Adding these references to the Core Operating Limits Report section of Technical Specifications does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: May 20, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.8.A to identify the specific Containment Cooling Service Water (CCSW) equipment required to support operation of the Control Room Emergency Ventilation System (CREVS). The proposed amendment would also

revise TS 3/4.5.C.2 to ensure that the suppression pool water level is adequate to prevent vortexing in the Low Pressure Coolant Injection and Core Spray pump suctions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

The proposed changes to the technical specifications provide clarity in the support system relationship and requirements for the CCSW system support of the CREVS operation. [Neither] [t]he CCSW system nor the CREVS system are assumed to be accident precursors for previously evaluated accident[s]. Therefore, the proposed changes have no effect on the probability or consequences of accidents previously evaluated.

The proposed change to the allowable suppression chamber level does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change revises a Technical Specification acceptance value to [a] more conservative value and serves to ensure operability of equipment important to safety. By ensuring equipment availability, the probability or consequences of an accident previously evaluated are not increased. In addition, the proposed changes have no impact on any initial condition assumptions for accident scenarios. Onsite or offsite dose consequences resulting from an event previously evaluated are not affected by this proposed amendment request.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed changes do not create the possibility of a new or different kind of accident from that previously evaluated. The changes to the CCSW specifications more appropriate[ly] reflect the design requirements and clarify the support role of the CCSW system as it relates the CREVS. Neither the CCSW system nor the CREVS will be operated differently with the proposed change. Therefore new or different failure modes will not be created. Therefore, the possibility of new and different accidents has not been created with the proposed change. The proposed change to the suppression pool allowable level restores margin to the Technical Specifications and ensures equipment operability. The proposed change is conservative with respect to current requirements. The proposed amendment does not involve any plant physical changes that would create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety because:

The proposed change to the CCSW technical specification will not result in a significant reduction in the margin of safety. The proposed change has greater consistency with the current design requirements for CSSW support of CREVS operation. Therefore, the margin of safety has been not been altered. [Therefore, the margin of safety has not been altered. SIC]

The proposed changes for suppression pool level does not involve a significant reduction in a margin of safety. In fact, the proposed changes restore margin and ensure equipment operability. Since the changes maintain the necessary level of system reliability, they do not involve a significant reduction in the margin of safety.

The proposed amendment for Dresden will not reduce the availability of systems required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: July 14, 1999.

Description of amendment request: The proposed amendments would allow the units to operate at an uprated power level of 3489 MWt, an increase of 5 percent rated core thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

A. Evaluation of the Probability of Previously Evaluated Accidents

The proposed power uprate imposes only minor increases in plant operating conditions. No change is made to the reactor operating pressure. Operation at uprated conditions will result in moderate flow increases in those systems associated with the turbine cycle in that steam flow increases by approximately six (6)% and feed flow increases by approximately six (6)%. The increase in flow in the carbon steel piping systems was evaluated for the effect on flow induced erosion and corrosion rates and it was confirmed that power uprate has no significant effect on flow induced erosion or corrosion. The affected systems are currently monitored by the Flow Accelerated Corrosion (FAC) program that addresses erosion and corrosion concerns. Continued monitoring of the systems provides a high level of confidence in the integrity of potentially susceptible high energy piping systems.

Plant systems and components have been verified to be capable of performing their intended design functions at uprated power conditions. Where necessary, some components will be modified prior to implementation of uprated power conditions to accommodate the revised operating conditions. The review has concluded that operation at power uprate conditions will not affect the reliability of plant equipment, and that current Technical Specifications (TS) surveillance requirements ensure adequate monitoring of system operability. Systems continue to be operated in accordance with current design requirements under uprated conditions, therefore no new components or system interactions were identified that could lead to an increase in accident probability. Changes to reactor scram setpoints are such that no significant increase in scram frequency due to operation at uprated conditions will occur.

B. Evaluation of the Consequences of Previously Evaluated Accidents

The radiological consequences due to the Loss of Coolant Accident (LOCA) were calculated and are found to be below the applicable regulatory limits. The results are presented in Table 9–3 of Attachment E [of the July 14, 1999 submittal].

The LOCA radiological consequences have not significantly increased due to power uprate, and radiological consequences continue to meet established regulatory limits.

The radiological evaluations for other non-LOCA Design Basis Accidents (DBAs) were also performed and the dose consequences for these events did not significantly increase. These changes are outlined in Section 9.2 of Attachment E and they demonstrate that LaSalle County Station (LCS), Units 1 and 2 still meets the applicable regulatory limits.

Non-DBA Radiological Doses

All of the other radiological releases discussed in Updated Final Safety Analysis Report (UFSAR) are either unchanged because they are not power-dependent, or increase approximately in linear proportion to the amount of the uprate. The dose consequences for all of the non-LOCA radiological release accident events did not significantly increase, and are bounded by the "LOCA Radiological Consequences"

events discussed above and were shown to meet the current dose acceptance limits. These events are discussed in Section 9.2 of Attachment E.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The configuration, operation and event response of the LCS, Units 1 and 2 systems, structures or components are [unchanged] by operation at uprated power conditions. Analysis of transient events has confirmed that the same transients remain limiting and that no transient event results in a new sequence of events that could lead to a new accident scenario.

An increase in power level will not create a new fission product release path, or result in a new fission product barrier failure mode. The current fission product barriers consisting of the reactor fuel rod cladding, the reactor coolant pressure boundary, and the containment structure remain in place. Fuel rod cladding integrity is ensured by operating within thermal, mechanical, and exposure design limits, and was confirmed for a representative core by performance of transient and accident analysis. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate the compliance with the applicable transient analysis criteria and to establish the cycle specific Minimum Critical Power Ratio (MCPR) safety limit and fuel operating limits. The integrity of the reactor coolant pressure boundary was confirmed by evaluation of the bounding overpressurization event and ensuring that the corresponding pressure remained below the American Society of Mechanical Engineers (AMSE) Boiler and Pressure Vessel (B&PV) Code, Section III, "Rules for Construction of Nuclear Power Plant Components," overpressure protection requirements. Similarly, analysis of the primary containment structure has demonstrated under worst case design basis accident conditions that the containment structure remains below the containment design pressure.

The effect of operation at uprated conditions on plant equipment has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode was identified as a result of operating at uprated conditions. In addition, operation at power uprated conditions does not create any new sequence of events or failure modes that lead to a new type of accident. Plant modifications required to support implementation of power uprated conditions will be made to existing systems rather than by adding new systems of a different design, which might introduce new failure modes or accident sequences.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The power uprate analysis for LCS, Units 1 and 2 assures that the power dependent safety margin will be maintained by meeting the appropriate regulatory criteria as prescribed by the applicable regulations. Similarly, factors of safety specified by application of the regulatory required design rules have been maintained, as have other acceptance criteria used to judge the acceptability of current plant operation.

No change is required in the basic duel deign to achieve the uprated power levels, or to maintain current operating and safety margins. No increase in the allowable peak bundle power is requested as a result of operation at uprated conditions. The abnormal transients have been evaluated for a representative core configuration and confirmed that operation at uprated conditions does not have an adverse effect on the operating limit MCPR. No change to the Safety Limit MCPR results, thus the margin of safety as assured by the safety limit MCPR is maintained. The fuel operating limits related to heat generation rate would still be met at uprated conditions. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate the compliance with the applicable transient analysis criteria and to establish the cycle specific safety limit and fuel operating limits.

The Emergency Core Cooling System (ECCS)–LOCA performance has been evaluated at power uprated conditions using methodologies that have been approved by the NRC for 10CFR50.46, "Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors," analysis. The current ECCS performance requirements were used in the power uprate analysis. The ECCS–LOCA analysis was conducted at 102% of the proposed uprated thermal power in accordance with regulatory guidance. The necessary analysis for operation of General Electric (GE) fuel under uprated conditions and the determination that the peak cladding temperature (PCT) remains below the 10CFR50.46 limit of 2200°F have been performed. However, LCS Unit 2 currently contains a mixed core of GE and Siemens Power Corporation (SPC) fuel. LCS obtained [a] TS amendment that allows operation with SPC fuel, and approved the use of the SPC analytical methodology. The ECCS–LOCA analysis performed to support use of the SPC fuel was conducted at a power level that bounds 102% of the proposed uprated power level and determined that the PCT, for SPC fuel, remains below the 10CFR50.46 limit of 2200°F. The analysis for both GE and SPC fuel types demonstrate all 10CFR50.46 criteria are met. Therefore, there is no reduction in margin with respect to maintaining ECCS performance.

The margin of safety of the reactor coolant pressure boundary is maintained under power uprated conditions. The design pressure of the RPV and reactor pressure coolant pressure boundary remains at 1250 psig. The ASME B&PV Code allowable peak pressure is 1375 psig (i.e., 110% of design value), which is the acceptance limit for pressurization events. The limiting pressurization event is a Main Steam Isolation Valve (MSIV) closure with a failure of valve position scram and this event results in a calculated peak RPV pressure of 1332 psig at the bottom of the RPV. The peak pressure remains below the 1375 psig ASME limit. Therefore, there is no decrease in margin of safety in the reactor coolant pressure boundary.

The margin of safety of the containment structure is maintained under power uprated conditions. The analyses were conducted using a newer NRC-reviewed methodology. The pre-uprated cases were run using the new methodology and the re-baselined cases were compared to the uprated cases. The short-term containment peak pressure analysis re-baseline result was 39.3 psig compared to the original analysis of 39.6 psig. At uprated conditions the peak containment drywell pressure would be 39.9 psig, and is below the design value of 45 psig. The long-term containment suppression pool temperature analysis re-baseline result was 190°F compared to the original analysis result of 200°F. At uprated conditions the analysis concluded that in the event of a LOCA, the calculated peak bulk suppression pool temperature would be 193°F. This is less than the design temperature of the suppression pool of 275°F, and the criteria used to ensure adequate Net Positive Suction Head (NPSH) to the ECCS pumps which is 212°F. Therefore, power uprate does not challenge the structural integrity of the containment structure and ECCS NPSH is assured.

Therefore, operation at power uprated conditions does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: August 6, 1999

Description of amendment request: **The proposed amendments would revise Technical Specification 3/4.6.4, "Vacuum Relief" to remove specific operability requirements related to position indication for the suppression chamber-drywell vacuum breakers. The amendments also reformat the action statements for inoperable vacuum breakers, increase the surveillance**

interval for verifying that the vacuum breakers are closed, and delete the requirement to verify that the manual isolation valves are closed for an inoperable and open vacuum breaker.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not change the hardware configuration of the suppression chamber-drywell vacuum breakers, and the vacuum breakers are not considered an initiator in any accident scenario. The removal of specific indication requirements and the extension of the surveillance interval does not impact the ability of the vacuum breakers to perform their safety function. The vacuum breakers continue to meet their intended design function. The proposed changes do not impact the assumed source term for any analyzed accident. Therefore, no increases in the probability of an accident or consequences will result due to this proposed change.

Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical alterations to the suppression chamber-drywell vacuum breakers, or cause any changes in the method by which the vacuum breakers or the containment vacuum relief system performs their associated design basis functions. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Do the proposed changes involve a significant reduction in a margin of safety?

The proposed changes do not impact the design function assumed for the containment vacuum relief system. The proposed changes do not require the vacuum breakers to operate in a condition not previously assumed in the facility accident analysis. The containment vacuum relief system will continue to operate and provide the protection assumed in the accident analysis. In order to limit bypass, the vacuum breakers are in a normally closed position. These vacuum breakers cannot be permanently placed in the open position. The proposed decrease in the surveillance frequency verifying the closed vacuum breakers will not increase the risk of the vacuum breakers being in the open position, since they will only open in response to a pressure differential or manual cycling. Therefore, the assurance of the operability of the containment vacuum breakers would be the same as provided under current Technical Specifications. The containment response analysis is unchanged, in that the vacuum breakers protect the containment structure, the peak containment pressure remains as calculated, and the vacuum breakers continue to maintain bypass leakage rates as assumed. Therefore this proposed change does not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: July 16, 1999.

Description of amendment request: The proposed change to Technical Specification Section 3/4.7.D is to eliminate the limit for any one main steam line isolation valve (MSIV) leakage of less than or equal to 11.5 standard cubic feet per hour (scfh), and to replace that with an aggregate value of less than or equal to 46 scfh for all four MSIVs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the Technical Specifications, Appendix A, modifies the allowed leakage limit to an aggregate value with no change to the total allowed leakage rate. This change does not affect either the automatic or manual features that would close the MSIVs. There are no physical changes to the plant and plant operations remain unchanged. Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The safety function of the MSIVs is to provide a timely steam line isolation to mitigate the release of radioactive steam and limit reactor inventory loss under certain accident and transient conditions. The MSIVs are designed to automatically close whenever plant conditions warrant main steam line isolation. Changing the leakage limits to include an aggregate value does not affect the isolation function. No new equipment will be installed or utilized, and no new operating conditions will be initiated as a result of this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The total allowed leakage rate for all MSIVs remains unchanged at 46 scfh. Therefore, there will be no change in the types or significant increase in the amounts of any effluents released offsite, and, thus, the radiological analyses remain unchanged and within the guidelines of 10 CFR 100 and General Design Criteria 19. Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 27, 1999.

Description of amendment request: The proposed amendments would add a surveillance requirement to verify the Keowee out-of-tolerance logic trips and blocks closure of the appropriate overhead or underground power path breakers. This logic is being added as part of a modification to provide voltage and frequency protection for the Keowee Hydro Units to protect them from being exposed to out-of-tolerance voltage and frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

This change does not create any conditions or events, which lead to accidents previously, evaluated in the SAR. The Keowee Hydro units are used for mitigation of loss of power scenarios. The proposed changes do not change the current function of the Keowee Hydro Units. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated. The Keowee Hydro units and their role in the Oconee emergency power system currently meet the design/licensing basis requirements for the system. There is no adverse affect on containment integrity and no new release paths are created. The proposed changes do not cause any adverse effects to the Keowee single failure design or adversely affect the Keowee start time of 23 seconds. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated:

The Keowee Hydro units are used for mitigation of loss of power scenarios. No accidents new or different than already evaluated in the SAR are postulated as a result of the proposed change. No setpoints for parameters, which initiate protective or mitigative action, are being changed. Therefore, this proposed amendment does not create the possibility of any new or different kind of accident.

3. Involve a significant reduction in a margin of safety:

The proposed change does not adversely affect any plant safety limits, set points, or design parameters. The change also does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Duke has concluded, based on the above, that there are no significant hazards considerations involved in this amendment request.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Energy Northwest, (formerly known as the Washington Public Power Supply System), Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: July 29, 1999.

Description of amendment request: The proposed amendment would change the applicability of Section 3.4.9 of the Technical Specifications (TS) from "Mode 3 with steam drum pressure less than the RHR [residual heat removal] cut in permissive" to "Mode 3 with steam drum pressure less than 48 psig." Notes associated with TS Surveillance Requirements 3.4.9.1 and 3.5.1.2 would be changed to reflect the proposed 48 psig limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change involves further restrictions on the use of RHR in the shutdown cooling mode of operation during hot shutdown conditions. Chapter 15 of the FSAR [Final Safety Analysis Report] defines the start of hot shutdown as the point when generated power is below one percent rated power. During entry into hot shutdown conditions the RHR system will be aligned in the Low Pressure Coolant Injection (LPCI) mode of operation. Thus, it will be aligned to provide water to the Reactor Pressure Vessel in the event the high pressure systems (HPCS and RCIC) are not able to perform this function. The change being proposed here has no impact on loss of coolant accidents (LOCAs) requiring mitigation using RHR aligned in the LPCI mode of operation.

During the high pressure portion of the hot shutdown condition, intersystem (LOCAs) are a concern. The purpose of the RHR SDC Isolation Reactor Pressure—High (cut-in permissive) at 135 psig is to prevent over-pressurization of portions of the RHR system. This protection is not being modified by this change. The instrumentation that provides this protection will continue to function as designed. This change only impacts the applicability of Technical Specification 3.4.9 and when RHR SDC is required to be operable.

During hot shutdown the reactor is normally cooled down through use of the main steam system and the condenser. Other means of cooling are also available using the reactor water cleanup system or a combination of emergency core cooling system (ECCS) pumps and safety relief valves (SRVs). The RHR system aligned in the SDC mode is used at the end of this cooling process to reach cold shutdown conditions of less than or equal to 200°F. The change being proposed results in the RHR SDC being manually initiated at a lower pressure and temperature. This change will have no significant impact on the capability to cool the reactor.

FSAR Chapter 15, "Accident Analysis," describes two events associated with the RHR system. FSAR section 15.1.6, "Inadvertent Residual Heat Removal Shutdown Cooling Operation," describes the impact of system operation during startup or cool-down when the reactor is near critical. The proposed change involves the point at which RHR is started in the SDC mode with the reactor sub-critical with control rods inserted. Therefore, there will be no change in the probability or consequences of this accident.

FSAR section 15.2.9, "Failure of Residual Heat Removal Shutdown Cooling," describes the failure of the RHR system to function in SDC mode. This evaluation assumes a failure of the SDC mode of operation but does not disable the remaining modes of RHR operation. The alternate shutdown cooling paths involve the use of the SRVs [safety relief valves] to establish a cooling path to the containment suppression pool. This evaluated accident does not result in any fuel failure. The proposed change will not result in any fuel failures. The evaluated accident does result in normal coolant activity being released to the suppression pool through the safety relief valves. The proposed activity will not result in a significant change in the release of this coolant activity.

The proposed change will not cause a significant increase in the probability of a loss of SDC accident. This change proposes a delay in the use of SDC because of temperature limitations. During this time other means of decay heat removal would be used. This will result in a decrease in use of RHR in SDC mode and a decrease in the probability of failure of the system by restricting operation to be within analyzed temperature limits. The proposed change will not involve a significant increase in the consequences of the loss of shutdown cooling accident. The accident evaluated in the FSAR assumes SDC does not operate at any time and alternate means of cooling are evaluated. Section 15.2.9.6 states there is no fuel failure and release is limited to normal primary coolant activity to the suppression pool. The proposed change results in a short delay in the use of SDC because of temperature limitations. The accident described in FSAR section 15.2.9 bounds this condition and, as a result, there will be no increase in accident consequences.

With multiple means of reactor water makeup and heat removal available the restriction in the use of RHR caused by this change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not cause any new inadvertent shutdown cooling startup, loss of water inventory or loss of cooling accidents. New or different inadvertent RHR SDC startup accidents are not possible because this change is only a further restriction on when the system is operated. The LOCA accidents during Mode 3 are

bounded by the LOCAs defined for Modes 1 and 2. No new primary sytem LOCAs can be initiated because of this change. The purpose of the RHR cut-in permissive at 135 psig is to prevent overpressurization of portions of the RHR system that could cause an intersystem LOCA. This change will not result in a new or different kind of intersystem LOCA because this is only a further restriction on RHR SDC operation. The use of RHR in the SDC mode is restricted to operation at a lower pressure and temperature but other systems are available to remove the decay heat. No new or different accidents are created because of this change.

The FSAR section 15.2.9 accident, "Failure of Resident Heat Removal Shutdown Cooling," is bounding for all other accidents which postulate failure of the capability to remove decay heat. No additional accidents resulting in the loss of decay heat removal capability will be caused by this change.

Therefore, the operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment will increase the reliability of the RHR system when operated in shutdown cooling mode by providing assurance that the temperature limits of the piping and pipe supports will not be exceeded. The ability to protect against an intersystem LOCA is unchanged. The ability to remove decay heat from the reactor is not changed by this modification as alternate means of heat removal are available. Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Energy Northwest (formerly known as the Washington Public Power Supply System), Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: July 29, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification Table 3.3.5.1–1, "Emergency Core Cooling System (ECCS) Instrumentation Items 1.a, 2.a, 4.a and 5.a," to change the Reactor Vessel Water Level—Low Low Low, Level 1 allowable value from the current value of −148 inches to a new value of −142.3 inches.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change involves the measurement of water level in the Reactor Pressure Vessel (RPV) used to initiate the ECCS. The accident evaluated for this condition is the spectrum of loss of coolant accidents (LOCA) severe enough to decrease the RPV water inventory by a significant amount.

The additional uncertainty introduced because of harsh environmental effects could not be accommodated between the existing Technical Specification allowable value and the analytical limit. This uncertainty results in a requirement that the ECCS be initiated at a slightly higher water level than previously calculated. Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not create a new or different kind of accident since it only makes a small change in the RPV water level at which the ECCS is initiated. This change is in the conservative direction requiring a greater volume of water in the RPV to accommodate the uncertainty associated with the harsh environment of the water level sensors.

The level indicating switches are located on instrument racks in the Reactor Building. The harsh environment in this building would have no impact on the initial trip needed to initiate the ECCS on loss of RPV level since conditions in the Reactor Building would be benign at the initial stages of the accident. Only if the Level 1 trip was reset and initiated after a significant period of time would the harsh environmental conditions have an impact on the accuracy of the level indicating switches. However, increasing the water level at which the ECCS is initiated results in a more conservative value that adequately includes post-accident harsh environment uncertainties and ensures that the associated analytical limit is met.

Therefore, the operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment increases the allowable value for water level in the RPV. This small increase will result in an increase in the margin of safety. A review of the plant settings for the Level 1 trip indicated that previous settings were within the new allowable value.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Energy Northwest (formerly known as the Washington Public Power Supply System), Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: July 29, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification Surveillance Requirement (SR) 3.5.2.2. This requirement verifies the adequacy of the water supply in the condensate storage tanks (CSTs) which support operation of the high pressure core spray (HPCS) system during Modes 4 and 5. Current Technical Specification SR 3.5.2.2 requires that CST water level be maintained above 13.25 feet in a single tank or above 7.6 feet in each tank if the suppression pool level is below its minimum level. It is proposed that the CST water level be maintained above 14.8 feet in a single tank or above 9.1 feet in each tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

During Modes 4 and 5 HPCS may be required to provide water to the reactor vessel if the water level decreases. The revised condensate storage tank allowable levels increase the operating margins by providing an increased water inventory. The previously evaluated accident involving the loss of decay heat cooling inventory will not have an increase in probability because the inventory of water will be increased with the change being proposed.

The consequences of any accident involving the loss of decay heat cooling inventory will not change as the consequences are unaffected by the increased water inventory.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not create a new or different kind of accident since it only increases the amount of water held in reserve to support reactor vessel inventory loss. The proposed change does not introduce any credible mechanisms for unacceptable radiation release nor does it require physical modification to the plant. The inventory of water in the CSTs will increase to support any loss of water inventory in the reactor vessel during shutdown.

The proposed change modifies the monitored values for CST level. The plant has operated well within the existing allowable values. The increased margin provided by the increased level will assure no new or different kinds of accidents result from the proposed change.

Therefore, the operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment increases the allowable value for water level in the CSTs. This results in an increase in the inventory of water available for cooling and inventory control during reactor shutdown. This will result in an increase in the margin of safety.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Energy Northwest (formerly known as the Washington Public Power Supply System), Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: July 29, 1999.

Description of amendment request: The proposed amendment request would revise Technical Specification Surveillance Requirement (SR) SR 3.8.4.6 of Technical Specification 3.8.4, "DC Sources—Operating," and SR 3.8.5.1 of Technical Specification 3.8.5, "DC Sources—Shutdown." The proposed change to SR 3.8.4.6 would prohibit surveillance testing of Division 1, 2, and 3 125 and 250 volt DC, battery charger capacity during Modes 1, 2, and 3. However, credit could be taken for unplanned events that satisfied the surveillance requirement. The proposed change to SR 3.8.5.1 would include SR 3.8.4.6 as one of the surveillance tests that are not required to be performed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change has no impact on previously analyzed accidents or transients, and has no effect on operation, capacity or surveillance test details of the DC system battery chargers. The change only imposes a mode restriction on performance of specified surveillance testing and allows taking credit for unplanned events that satisfy the surveillance. Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change has no effect on operation, capacity, or surveillance test details of the DC system battery chargers. The change only prohibits performing specified battery charger capacity surveillance testing from being implemented during Mode 1, 2, or 3 and allows taking credit for unplanned events that satisfy the surveillance. The proposed change to SR 3.8.4.6 of Technical Specification 3.8.4 and SR 3.8.5.1 of Technical Specification 3.8.5 are consistent with the wording previously evaluated and approved by the NRC in NUREG–1434 Rev. 1.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change only imposes a mode restriction, prohibiting battery charger capacity surveillance testing from being performed during Modes 1, 2, and 3, allowing credit to be taken for unplanned events that satisfy the surveillance, and allowing such testing to be omitted under certain conditions during Modes 4 and 5 and during movement of irradiated fuel in secondary containment. Performance of this testing would remove a DC electrical power subsystem from service and could present a safety risk were an event to occur if the testing was performed in Modes 1, 2, and 3, or while DC service is required in other operating conditions. Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 20, 1998, as supplemented June 29, 1999.

Description of amendment request: The amendment would incorporate the Technical Specification changes necessary for implementation of the Boiling Water Reactor Owners' Group Reactor Stability Long-Term Solution, Enhanced Option 1–A (E1A). E1A consists of modifications to the plant operating procedures and associated plant components that provide a means for reliably detecting and avoiding reactor instabilities. By letter dated February 25, 1998, the Nuclear Regulatory Commission (NRC) staff recognized E1A as a technically acceptable implementation of a long-term stability solution satisfying the requirements of NRC IE Bulletin 88–07, Supplement 1, and Generic Letter 94–02, "Long Term Solutions and Upgrade of Interim Operating Recommendations for Thermal-Hydraulic Instabilities in Boiling Water Reactors."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments allow the implementation of the Enhanced Option I–A (E1A) long term solution to the neutronic/thermal-hydraulic instability issue. Current Technical Specification (TS) restrictions on power and flow conditions, number of operating recirculation loops and operator actions implemented to reduce the probability of neutronic/thermal-hydraulic instability are eliminated and new stability requirements consistent with NEDO–32339–A, Supplement 4, Revision 1, are imposed. These requirements include restrictions on power and flow conditions and actions associated with the modified Average Power Range Monitor (APRM) flow biased scram and control rod block functions. Required actions include adherence to the boiling boundary limit stability control prior to entry and during operation in the region of the power and flow operating domain which is potentially susceptible to neutronic/thermal-hydraulic instability in the absence of the stability control. In addition, the proposed amendments require operator actions based upon control room indications generated by a new Period Based Detection System (PBDS). The PBDS is designed to provide alarm indication that conditions consistent with a significant degradation in the stability performance of the reactor has occurred and the potential for imminent onset of neutronic/thermal-hydraulic instability may exist. The PBDS also provides analog indication of the highest and second highest successive period confirmation count of all of the Local Power Range Monitors (LPRMs) monitored. This provides the plant operators with continuous indication of reactor stability operating conditions.

The proposed amendments will permit operation in regions of the power and flow operating domain postulated to be susceptible to neutronic/thermal-hydraulic instability. Operation in these regions does not increase the probability of occurrence of initiators and precursors of previously analyzed accidents when neutronic/thermal-hydraulic instability is not possible. The proposed amendments permit the implementation of the features of the E1A solution which prevent neutronic/thermal-hydraulic instability including preemptive reactor scram upon entry into the regions of the power and flow operating domain most susceptible to neutronic/thermal-hydraulic instability. The E1A solution also requires implementation of stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, in the absence of stability control, to neutronic/thermal-hydraulic instability. The E1A solution prevents neutronic/thermal-hydraulic instability during operation in regions of the power and flow operating domain previously excluded from operation and therefore does not significantly increase the probability of a previously analyzed accident.

Operation in the regions of the power and flow operating domain excluded by current TS 3.4.1 and Figure 3.4.1–1 can occur as a result of anticipated operational occurrences. The severity of these transients may increase in the absence of operator actions due to the potential occurrence of neutronic/thermal-hydraulic instability as a result of operation in these regions. The proposed amendments will permit the implementation of the E1A long term solution to the stability issue. Required features of the E1A solution include adherence to a boiling boundary limit stability control prior to selection by the operator of APRM flow biased scram and control rod block function "Setup" setpoints which allow operation in a region of the power and flow operating domain potentially susceptible, in the absence of the stability control, to neutronic/thermal-hydraulic instability. Upon entry, as a result of an anticipated operational occurrence, into the region most susceptible to neutronic/thermal-hydraulic instability, the preemptive reactor scram prevents neutronic/thermal-hydraulic instability. Therefore, the consequences of an accident do not significantly increase while operating with the stability control met.

After exiting the region requiring the stability control to be met, the setpoints can be manually reset to their normal values. Stability controls are required to be in place when setpoints are "Setup". As a backup E1A feature, the APRM flow biased setpoints automatically reset to their normal values above a pre-determined flow condition. This automatic reset to the more conservative setpoints ensures that the preemptive reactor scram will prevent operation as a result of an anticipated operational occurrence into the region most susceptible to neutronic/thermal-hydraulic instability should the operator not select the more conservative setpoints appropriate for operation following exit from the region requiring stability control.

Other required E1A features, including the PBDS, control rod block alarms associated with entry into the region susceptible to neutronic/thermal-hydraulic instabilities in the absence of stability controls, and required operator actions, including manual reactor scram, help ensure prevention of neutronic/thermal-hydraulic instabilities. Therefore, the proposed amendments prevent the occurrence of neutronic/thermal-hydraulic instability as a consequence of an anticipated operational occurrence and do not significantly increase the consequences of any previously analyzed accident.

2. This request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments replace current restrictions on power and flow conditions with alternative restrictions which permit the implementation of the E1A long term stability solution. The current restrictions on the power and flow conditions and operating recirculation loops in the RUN mode do not automatically prevent the entry into regions of the power and flow operating domain most susceptible to neutronic/thermal-hydraulic instability and therefore the possibility of neutronic/thermal-hydraulic instability exists in the absence of operator action. The required features of the E1A solution implement a preemptive scram upon entry into the region most susceptible to neutronic/thermal-hydraulic instability, without operator action. The accessible operating domain allowed by the proposed amendments is a subset of the power and flow operating domain currently allowed. Current initiators and precursors of accidents and anticipated operational occurrences [cannot] occur with new or different initial conditions as a result of this change. Additionally, there are no new event initiators or precursors of accidents and anticipated operational occurrences created by this change. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from that previously evaluated.

Concurrent with the implementation of the proposed amendments, a modified Flow Control Trip Reference (FCTR) card, the E1A FCTR card, and a new Period Based Detection System (PBDS) will be installed as required by the E1A solution. The function of the E1A FCTR card is to aid the operator in the identification of entry into regions of the power and flow operating domain potentially susceptible to neutronic/thermal-hydraulic instability in the absence of stability controls and to initiate a preemptive scram upon entry into the regions most susceptible to neutronic/thermal-hydraulic instability. This is accomplished by altering the existing values of setpoints of the APRM flow biased scram and the control rod block functions generated by the E1A FCTR card. The E1A FCTR card design includes components which may be susceptible to electromagnetic interference or other environmental effects. The plant specific environmental conditions (temperature, humidity, pressure, seismic, and electromagnetic compatibility) have been confirmed to be enveloped by the environmental qualification values for the E1A FCTR cards. Therefore, the potential for spurious scrams or common mode failures induced by environmental effects (e.g., electromagnetic interference) is considered negligible. The installation of the E1A FCTR card will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

The function of the PBDS is to provide the operator with an indication that conditions consistent with a significant degradation in the stability performance of the reactor has occurred and the potential for imminent onset of neutronic/thermal-hydraulic instability may exist. This is accomplished by the installation of a new PBDS card in the Neutron Monitoring System. The PBDS card takes inputs from individual local power range monitors and provides analog indication of the highest and second highest successive period confirmation count, provides a High Decay Ratio (Hi DR) and High-High Decay Ratio (Hi-Hi DR) alarms, and INOP status indication to the operator in the control room. These displays [cannot] create the possibility of a new or different kind of accident from any accident previously evaluated. The PBDS card design includes components which may be susceptible to electromagnetic interference or other environmental effects. However, the plant specific environmental conditions (temperature, humidity, pressure, seismic,

and electromagnetic compatibility) have been confirmed to be enveloped by the PBDS environmental qualification values. Therefore, the installation of the PBDS card will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This request does not involve a significant reduction in a margin to safety.

The proposed amendments permit the implementation of the E1A long term solution to the stability issue. Under certain conditions, existing BWR [boiling water reactor] designs are susceptible to neutronic/thermal-hydraulic instability. General Design Criterion (GDC) 12 of 10 CFR 50, Appendix A, requires thermal-hydraulic instability to be prevented by design or be readily and reliably detected and suppressed. When the design of the reactor system does not prevent the occurrence of neutronic/thermal-hydraulic instability, instability is an anticipated operational occurrence. GDC 10 of 10 CFR 50, Appendix A, requires that specified acceptable fuel design limits not be exceeded during anticipated operational occurrences.

Analyses performed by the BWROG [Boiling Water Reactor Owners' Group] indicate that neutronic/thermal-hydraulic instability induced power oscillations could result in conditions exceeding the Minimum Critical Power Ratio (MCPR) Safety Limit (SL) prior to detection and suppression by the current design of the Neutron Monitoring System and Reactor Protection System.

To ensure compliance with GDC 12 the BWROG developed Interim Corrective Actions (ICAs) to enhance the capability of the operator to readily and reliably detect and suppress neutronic/thermal-hydraulic instability. The BWROG ICAs also provided additional guidance for monitoring local power range monitors beyond the requirements of current TS 3.4.1 to ensure adequate margin to the onset of neutronic/thermal-hydraulic instability. Reliance on operator actions to comply with GDC 12 was accepted on an interim basis by the NRC pending final implementation of a long term solution to the stability issue. Neutronic/thermal-hydraulic instability is prevented by implementation of the E1A solution through the modified design of the Reactor Protection System (APRM [average power range monitor] flow biased scram) and the stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, in the absence of stability control, to neutronic/thermal-hydraulic instability. In addition, significant backup protection features, including the PBDS, control rod block alarms associated with entry into the region susceptible to neutronic/thermal-hydraulic instabilities in the absence of stability controls, and specified operator actions, including manual reactor scram, are required to be implemented. As a result, the margin to the onset of neutronic/thermal-hydraulic instability provided by the existing TS requirements and BWROG ICAs recommendations is not significantly reduced by the implementation of the E1A solution. The E1A solution assures compliance with GDC 12 by the prevention of neutronic/thermal-hydraulic instability and therefore precludes neutronic/thermal-hydraulic instability from becoming a credible consequence of an anticipated operational occurrence. The consequences of anticipated operational occurrences will not increase and the margin to the MCPR SL will not decrease upon implementation of the E1A solution. Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 6, 1999.

Description of amendment request: **The proposed amendments would change those Technical Specifications (TS) required to support Grand Gulf Nuclear Station (GGNS), Cycle 11 operation. The changes would include a change to the minimum critical power ratio safety limit (SLMCPR) that would reflect a decrease of the two recirculation loop SLMCPR limit from 1.11 to 1.09, and the single recirculation loop SLMCPR limit from 1.12 to 1.10. These values were developed with General Electric's cycle-specific SLMCPR methodology in GESTAR–II Amendment 25, which was recently approved by the Nuclear Regulatory Commission in a Safety Evaluation Report dated March 11, 1999.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

I. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The Minimum Critical Power Ratio (MCPR) safety limit is defined in the Bases to Technical Specification 2.1.1 as that limit which "ensures that during normal operation and during Anticipated Operational Occurrences (AOOs), at least 99.9% of the fuel rods in the core do not experience transition boiling." The MCPR safety limit is re-evaluated for each reload and, for GGNS Cycle 11, the analyses have concluded that a two-loop MCPR safety limit of 1.09, based on the application of GE's [General Electric's] NRC-approved cycle-specific MCPR safety limit methodology demonstrates that this acceptance criterion is satisfied. For single-loop operation, a MCPR safety limit of 1.10, based on GE's [NRC-approved cycle-specific MCPR safety limit methodology, also demonstrates that this acceptance criterion is satisfied. Core MCPR operating limits are developed to support the Technical Specification 3.2 requirements and ensure these safety limits are maintained in the event of the worst-case transient. Since the MCPR safety limit will be maintained at all times, operation under the proposed changes will ensure at least 99.9% of the fuel rods in the core do not experience transition boiling. Therefore, these changes to the Minimum Critical Power Ratio (MCPR) safety limit do not affect the probability or consequences of an accident.

GE's NRC-approved GESTAR–II cycle-specific MCPR safety limit methodology has been applied and has no effect on the probability or consequences of any accidents previously evaluated. As previously licensed, one exception to GESTAR is that the mis-oriented and mis-located bundle events will continue to be analyzed as accidents subject to the acceptance criteria in the current licensing basis. The design of the GE11 fuel bundles is such that the bundles are not likely to be mis-oriented or mis-located and the normal administrative controls will be in effect for assuring proper orientation and location. Therefore, the probability of a fuel loading error is not increased. This analysis ensures that postulated dose releases will not exceed a small fraction (10 percent) of 10CFR100 limits. Therefore, the probability or consequences of accidents previously evaluated are unchanged.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The GE11 fuel to be used in Cycle 11 is of a design compatible with fuel present in the core and used in the previous cycle. Therefore, the GE11 fuel will not create the possibility of a new or different kind of accident. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications. The proposed revised MCPR safety limits have been shown to be acceptable for Cycle 11 operation. Compliance with the applicable criterion for incipient boiling transition continues to be ensured. The proposed MCPR safety limits do not result in the creation of any new precursors to an accident.

Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

The MCPR safety limits have been evaluated in accordance with GE's NRC-approved cycle-specific methodology to ensure that during normal operation and during AOOs, at least 99.9% of the fuel rods in the core are not expected to experience transition boiling. One exception to GESTAR is that the mis-oriented and mis-located bundle events will continue to be analyzed as accidents subject to the acceptance criteria in the current licensing basis. This analysis ensures that postulated dose releases for the worst case mis-oriented and mis-located bundle will not exceed a small fraction (10 percent) of 10CFR100 limits. On this basis, the implementation of this GE methodology does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 23, 1999.

Description of amendment request: The requested Technical Specification changes would revise those specifications associated with various engineered safety feature systems, which need no longer be credited following a design-basis fuel handling accident. The proposed changes affect conditions where irradiated fuel is handled in the primary or secondary containment, and also affect certain specifications related to performing core alterations. These changes are based on the revised analysis of the design-basis fuel handling accident for the Grand Gulf Nuclear Station. This requested change is consistent with the changes approved for the Perry Nuclear Power Plant Operating License (Amendment 102), and the industry-proposed change to the Technical Specification NUREGs, TSTF–51.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

A new term to describe irradiated fuel is used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis. Because the equipment affected by the revised operational conditions is not considered an initiator to any previously analyzed accident, inoperability of the equipment cannot increase the probability of any previously evaluated accident. The proposed requirements bound the conditions of the current design basis fuel handling accident analysis which concludes that the radiological consequences are within the acceptance criteria of NUREG 0800, Section 15.7.4 and General Design Criteria 19. Therefore, the proposed changes do not significantly increase the probability or consequences of any previously evaluated accident.

Removing a one time only allowance granted by Amendment 129 to the Operating License that is no longer in affect is an administrative change. Therefore, the proposed change does not significantly increase the probability or consequences of any previously evaluated accident.

Based on the above, neither the proposed changes to the Technical Specifications nor that to the Operating License significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous analyzed.

The new term to describe irradiated fuel is used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previous analyzed.

Removing a one time only allowance granted by Amendment 129 to the Operating License that is no longer in affect is an administrative change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previous analyzed.

Based on the above, neither the proposed changes to the Technical Specifications nor that to the Operating License create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The new term to describe irradiated fuel is used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences are at or below the current GGNS [Grand Gulf Nuclear Station] licensing limit. Safety margins and analytical conservatisms have been evaluated and are well understood. Substantial margins are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed change only eliminates the unnecessary margin from the analysis. The current margin of safety is retained.

Specifically, the margin of safety for the fuel handling accident is the difference between the 10CFR100 limits and the licensing limit defined by NUREG 0800, Section 15.7.4. With respect to the control room personnel doses, the margin of safety is the difference between the 10CFR100 limits and the licensing limit defined by 10CFR50, Appendix A, Criterion 19 (GDC 19). The additional margin between the calculated doses for the postulated events and the corresponding licensing limit provides no useful purpose.

The proposed applicability continues to ensure that the whole-body and thyroid doses at both the control room and the exclusion area and low population zone boundaries are at or below the corresponding licensing limit. The margin of safety is unchanged; therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Removing a one time only allowance granted by Amendment 129 to the Operating License that is no longer in affect is an administrative change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, neither the proposed changes to the Technical Specifications nor that to the Operating License result in a significant reduction in a margin of safety.

Based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 6, 1998.

Description of amendment request: The proposed change modifies the requirement to perform a Moderator Temperature Coefficient (MTC) test near the end of each cycle. This request constitutes a lead-plant submittal, submitted by Waterford 3 on behalf of the Combustion Engineering Owners Group (CEOG). CE NPSD–911, Amendment 1, "Analysis of Moderator Temperature Coefficients in Support of a Change in the Technical Specifications End of Cycle Negative MTC Limit" dated January, 1998 is provided as an Attachment to the application. Specifically, the proposed change modifies Technical Specification (TS) 4.1.1.3.2c by adding a provision that eliminates the need to determine the MTC upon reaching two-thirds of core burnup if the results of the MTC tests required in TS 4.1.1.3.2a and 4.1.1.3.2b are within a specified tolerance. In addition, some editorial changes are proposed and the Bases change is included to support the changes in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Under the proposed change, compliance with the TS Limiting Condition for Operation is achieved through a surveillance program consisting of beginning-of-cycle (BOC) measurements, plant parameter monitoring, and end-of-cycle (EOC) MTC predictions. This change eliminates the performance of the 2/3 Cycle MTC Surveillance when the BOC MTC Surveillances are within a required tolerance of the design value.

The probability and consequences of an accident previously evaluated will not be increased because this change does not modify any assumptions used in the input to the safety analyses. The current safety calculations will remain valid because the allowed range of MTC values will not change.

The Combustion Engineering analysis CE NPSD–911 and CE NPSD–911 Amendment 1, demonstrate that if the startup test program has established that the core is operating as intended, and if the isothermal temperature coefficients measured at zero power during the cycle startup program, and at power prior to 40 EFPD [Effective Full Power Days], fall within the design value of plus or minus 0.16×10^{-4} delta k/k/°F, then the end-of-cycle best estimate prediction will also be within plus or minus 0.16×10^{-4} delta k/k/°F of true MTC.

Removing the footnote that was applicable during Cycle 7 and providing a plus/minus for SR 4.1.1.3.2c is purely an administrative change.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

Plant operation and plant parameter TS limits will remain unchanged. There are no new changes in plant design nor are any new failure modes introduced. CE NPSD–911 analysis determined that if the MTC at the beginning-of-cycle is within plus or minus 0.16×10^{-4} delta k/k/°F of the design value then the MTC at the end-of-cycle will also be within plus or minus 0.16×10^{-4} delta k/k/°F of the design value.

Removing the footnote that was applicable during Cycle 7 and providing a plus/minus for SR 4.1.1.3.2c is purely an administrative change.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety will not be reduced because the range of allowed temperature coefficients will not be changed. The surveillance program consisting of beginning-of-cycle measurements, plant parameter monitoring, and end-of-cycle MTC predictions will ensure that the MTC remains within the range of acceptable values.

Removing the footnote that was applicable during Cycle 7 and providing a plus/minus for SR 4.1.1.3.2c is purely an administrative change.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 26, 1999.

Description of amendment request: The proposed amendment would make the following line-item Technical Specification (TS) improvements:

(1) Relocate TS Section 3/4.3.3.2, Instrumentation—Incore Detectors; TS 3/4.3.3.9, Instrumentation—Waste Gas System Oxygen Monitor; and TS 3/4.4.7, Reactor Coolant System " Chemistry, to the Updated Safety Analysis Report (USAR) Technical Requirements Manual (TRM);

(2) Change to TS 3/4.11.2, Radioactive Effluents—Explosive Gas Mixture, and TS Bases 3/4.11.2, Explosive Gas Mixture, to reflect the above proposed relocation of TS 3/4.3.3.9;

(3) Revise the requirements of TS 3/4.4.6.1, Reactor Coolant System Leakage—Leakage Detection Systems, to require one monitor (gaseous or particulate) of the containment atmosphere radioactivity monitoring systems to be operable, rather than requiring both systems to be operable simultaneously; and

(4) Revise the requirements of TS 3/4.3.3.1, Radiation Monitoring Instrumentation, to be consistent with the above proposed revision to TS 3/4.4.6.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiator, conditions or assumptions are affected by the proposed revisions to Technical Specification (TS) 3/4.3.3.1, Radiation Monitoring Instrumentation, TS 3/4.3.3.2, Instrumentation—Incore Detectors; TS 3/4.3.3.9, Instrumentation—Waste Gas System Oxygen Monitor; TS 3/4.4.7, Reactor Coolant System—Chemistry; TS 3/4.11.2, Radioactive Effluents—Explosive Gas Mixture; and TS 3/4.4.6.1, Reactor Coolant System Leakage—Leakage Detection Systems, and their associated TS Bases.

The requirements of TS 3/4.3.3.2, TS 3/4.3.3.9, and TS 3/4.4.7 are proposed to be relocated from the TS to the DBNPS Updated Safety Analysis Report (USAR) Technical

Requirements Manual (TRM). These requirements would be relocated generally intact to the TRM whereby future changes would be subject to the regulatory controls of 10 CFR 50.59. These relocations are consistent with the NRC guidance provided in Generic Letter (GL) 95–10, "Relocation of Selected Technical Specifications Requirements Related to Instrumentation," or NUREG–1430, Revision 1, "Standard Technical Specifications—Babcock and Wilcox Plants," dated April 1995.

The proposed revision to TS 3/4.11.2, Radioactive Effluents—Explosive Gas Mixture, and its Bases is an administration change to a reference necessitated by the proposed relocation of TS 3/4.3.3.9 to the USAR TRM.

The proposed revision to TS 3/4.3.3.1 and TS 3/4.4.6.1 regarding the number of Reactor Coolant System (RCS) leakage detection monitors required and their allowed outage times is based upon the NRC's guidance of NUREG–1430, Revision 1. This proposed revision affects the TS only and does not reduce the number, diversity, or sensitivity of Reactor Coolant System leakage detection systems inside the containment building or as committed to in the DBNPS USAR.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident condition or assumption is affected by the proposed revisions. As described above, the revisions are consistent with the guidance of NRC GL 95–10 or NUREG–1430, Revision 1. The proposed revisions, as described above, do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed TS revisions. No new accident scenarios, transient precursors, failure mechanisms, or limiting failures are introduced as a result of the proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed revisions do not reduce or adversely affect the capabilities of any plant structures, systems or components. The proposed relocation of TS 3/4.3.3.2, TS 3/4.3.3.9, and TS 3/4.4.7 to the USAR TRM is essentially an administrative change to the location and process by which these requirements are controlled and revised. Future revisions to these requirements relocated to the USAR TRM will be subject to the regulatory controls of 10 CFR 50.59. Therefore, these revisions will not result in a significant reduction in a margin of safety.

The proposed revision to TS 3/4.11.2 and its Bases is administrative and reflects the relocation of TS 3/4.3.3.9 to the USAR TRM. Therefore, this revision will not result in a significant reduction in a margin of safety.

The proposed revisions to TS 3/4.3.3.1 and TS 3/4.4.6.1 affect the number of containment atmosphere radioactivity monitors required by TS to be operable simultaneously. However, redundancy and diversity requirements are maintained in the TS for detecting Reactor Coolant System leakage. Although TS-allowed outage times are proposed to be increased consistent with NUREG–1430, Revision 1 guidance, related compensatory action requirements are also being increased. Furthermore, the DBNPS commitments made for complying with Regulatory Guide 1.45, May, 1973, "Reactor Coolant Pressure Boundary Leakage Detection Systems," are not changed by the proposed revisions. Along with the applicable revised TS requirements, 10 CFR 50, Appendix B, Criterion XVI will require prompt corrective action for inoperable leakage detection systems. Accordingly, these proposed revisions will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 26, 1999.

Description of amendment request: **The proposed amendment would change the Technical Specifications to adopt the performance-based 10 CFR Part 50, Appendix J, Option B approach for Type B and C containment leakage rate testing, and to relocate certain details of the tests into a Containment Leakage Testing Program.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:**

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because accident initiators, conditions, or assumptions are not affected by the proposed changes.

The proposed changes to the Technical Specifications and Bases implement 10 CFR [Part] 50 Appendix J Option B for Type B and C Local Leak Rate Testing, based on the guidance of Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program." Provided that components have performed satisfactorily on a historical basis, this guidance permits the use of extended testing frequencies. These proposed changes do not affect accident initiators, conditions, or assumptions.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not change the source term or total allowable releases. With the exception of the proposed increase in the containment air lock leakage limits, the proposed changes do not affect the total allowable containment leakage rates presently specified in the Technical Specifications. Although the air lock leakage limits are proposed to be increased, the accident analyses are based on the current TS allowable maximum bypass leakage, which is not proposed to be changed. Therefore, increases in leakage limits for individual components, such as the air locks and their door seals, which are constituents of bypass leakage, will have no effect on the radiological consequences described in the accident analyses.

The proposed TS changes relating to implementation of 10 CFR [Part] 50 Appendix J Option B may result in a small, but acceptable increase in post-accident containment leakage, due to the increased probability that due to generally increased intervals between tests, an unacceptable leakage rate could go undetected for a longer length of time. NUREG–1493, "Performance-Based Containment Leak-Test Program," September, 1995, which provided the technical basis for the 10 CFR [Part] 50 Appendix J Option B rulemaking, provides a detailed evaluation of the expected leakage and its consequences and concludes that increased test frequencies are workable without significant risk impacts.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The proposed changes do not affect the methodology used in conducting containment leak rate testing. The proposed changes do not involve a change to the plant design or operation and, therefore, will not introduce any new or different failure modes or initiators.

3. Not involve a significant reduction in a margin of safety.

The proposed changes relating to implementation of 10 CFR [Part] 50, Appendix J, Option B do not significantly affect the allowable containment leakage rates presently specified in the Technical Specifications. The Technical Specifications, under the proposed changes, will continue to ensure containment reliability by periodic testing performed in full compliance with 10 CFR [Part] 50, Appendix J.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 28, 1999.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 3/4.7.5.1, "Ultimate Heat Sink," to allow operation on Modes 1 through 4 with an Ultimate Heat Sink water temperature of less than or equal to 90°F, instead of the current limit of less than or equal to 85°F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are significantly affected by the proposed change. The proposed change would increase the allowable Ultimate Heat Sink (UHS) water temperature, as specified in TS LCO 3.7.5.1.b, from less than or equal to 85°F to less than or equal to 90°F. This water is used by the Service Water System to provide cooling to equipment that is used to mitigate accidents such as a Large Break Loss of Coolant Accident. This increase in Service Water temperature has been evaluated and the proposed change does not result in the operation of equipment important to safety outside their acceptable operating ranges.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not change the source term, containment isolation, or allowable releases. The proposed increase in the Service Water System temperature has been evaluated with respect to the containment and equipment used to mitigate the consequences of accidents previously evaluated. These evaluations have determined that there are no significant increases in consequences.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed 5°F increase in UHS temperature. The proposed change does not result in installed equipment being operated outside their design operating ranges. No new or different equipment failure modes or mechanisms are introduced by the proposed change.

3. Not involve a significant reduction in a margin of safety because the proposed 5°F increase in UHS temperature does not result in significant changes to the initial conditions contributing to accident severity or consequences.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037 .

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: June 17, 1999.

Description of amendment request: The proposed amendment modifies multiple surveillance requirements to support implementation of a 24-month operating cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A. Frequency Extensions

The proposed Technical Specification (TS) changes involve a change in the surveillance testing intervals to facilitate a change in the Perry Nuclear Power Plant (PNPP) operating cycle from 18 months to 24 months. The proposed TS changes do not physically impact the plant, nor do they impact any design or functional requirements of the associated systems. That is, the proposed TS changes do not degrade the performance of, or increase the challenges to, any safety systems assumed to function in the accident analysis. The proposed TS changes do not impact the TS surveillance requirements themselves, or the way in which the surveillances are performed. In addition, the proposed TS changes do not introduce any accident initiators, since no accidents previously evaluated have, as their initiators, anything related to the frequency of surveillance testing. Also, evaluation of the proposed TS changes demonstrated that the availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident are not significantly affected because of other, more frequent testing that is performed, the availability of redundant systems and equipment, or the high reliability of the equipment. Since the impact on the systems is minimal, it is concluded that the overall impact on the plant accident analysis is negligible. Furthermore, a historical review of surveillance test results and associated maintenance records indicated that there was no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

B. Allowable Value Changes

The proposed changes in Allowable Values for the instrumentation include in Table 3.3.8.1–1 Items d and e of the Technical Specifications are the result of application of the Perry Instrument Setpoint Methodology (ISM) using plant specific drift values. Application of this methodology results in Allowable Values which more accurately reflect total instrumentation loop accuracy as well as that of test equipment and calculated drift between surveillances. The proposed changes will not result in any hardware changes. The instrumentation is not assumed to be an initiator of any analyzed event. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to these changes. The role of the instrumentation is in mitigating and thereby limiting the consequences of accidents. The Allowable Values have been developed to ensure that the design and safety analysis limits will be satisfied. The methodology used for the development of the Allowable Values ensures the affected instrumentation remains capable of mitigating design basis events as described in the safety analyses and that the results and radiological consequences described in the safety analyses remain bounding. Additionally, the proposed change does not alter the plant's ability to detect and mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

C. Frequency Reductions to Semiannual

The proposed Technical Specification (TS) changes involve a change in the surveillance testing intervals from 18 months to either 6 months or quarterly. The shorter frequencies are based on PNPP specific results of setpoint drift evaluations. The proposed more restrictive TS changes do not physically impact the plant, nor do they impact any design or functional requirements of the associated systems. That is, the proposed TS changes do not degrade the performance of, or increase the challenges to, any safety systems assumed to function in the accident analysis. The proposed TS changes do not impact the TS surveillance requirements themselves, or the way in which the surveillances are performed. In addition, the proposed TS changes do not introduce any accident initiators, since no accidents previously evaluated have, as their initiators, anything related to the frequency of surveillance testing. The proposed TS frequencies will demonstrate that the equipment and systems required to prevent or mitigate the radiological consequences of an accident are continuing to meet the assumptions of the setpoint evaluation, on a more frequent basis. Since the impact on the systems is minimal, and the assumptions of the safety analyses will be maintained, it is concluded that the overall impact on the plant accident analysis is negligible. Furthermore, a historical review of surveillance test results and associated maintenance records indicated that there was no evidence of any failures that would invalidate the proposed test frequencies. Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

A. Frequency Extensions

The proposed TS changes involve a change in the surveillance testing intervals to facilitate a change in the PNPP operating cycle length. The proposed TS changes do not introduce any failure mechanisms of a different type than those previously evaluated, since there are no physical changes being made to the facility. No new or different equipment is being installed. No installed equipment is being operated in a different manner. As a result, no new failure modes are being introduced. In addition, the surveillance test requirements themselves, and the way surveillance tests are performed, will remain unchanged. Furthermore, a historical review of surveillance test results and associated maintenance records indicated there was no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

B. Allowable Value Changes

The proposed changes are the result of application of the ISM using plant specific drift values and do not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged. The use of the proposed Allowable Values does not impact safe operation of PNPP in that the safety analysis limits will be maintained. The propose Allowable Values involve no system additions or physical modifications to systems in the station. These Allowable Values were revised to ensure the affected instrumentation remains capable of mitigating accidents and transients. Plant equipment will not be operated in a manner different from previous operation, except that setpoints may be changed. Since operational methods remain unchanged and the operating parameters have been evaluated to maintain the station within existing design basis criteria, no different type of failure or accident is created.

C. Frequency Reductions to Semiannual or Quarterly

The proposed TS changes involve a change in the surveillance testing interval due to the application of the ISM and plant specific drift analysis results. Also, the quarterly tests reflect current PNPP calibration practices, since the components are normally calibrated during the Channel Functional Test. The proposed TS changes do not introduce any failure mechanisms of a different type than those previously evaluated, since there are no physical changes being made to the facility. No new or different equipment is being installed. No installed equipment is being operated in a different manner. The proposed change does not impact core reactivity, or the manipulation of fuel bundles. As a result, no new failure modes are being introduced. In addition, the surveillance test requirements themselves, and the way surveillance tests are performed, will remain unchanged. Furthermore, a historical review of surveillance test results and associated maintenance records indicated there was no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment will not involve a significant reduction in a margin of safety.

A. Frequency Extensions

Although the proposed TS changes will result in changes in the interval between surveillance tests, the impact, if any, on system availability is small, based on other, more frequent testing that is performed, or the existence of redundant systems and equipment, or overall system reliability. Evaluations have shown there is no evidence of time dependent failures that would impact the availability of the systems. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

B. Allowable Value Changes

The proposed change does not involve a reduction in a margin of safety. The proposed changes have been developed using a methodology to ensure safety analysis limits are not exceeded. As such, this proposed change does not involve a significant reduction in a margin of safety.

C. Frequency Reductions to Semiannual or Quarterly

The proposed TS changes will result in a shorter interval between surveillance tests to ensure that the assumptions of the safety analysis are maintained. The impact, if any, on system availability is small, as a result of this more frequent testing that is performed. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: August 4, 1999.

Description of amendment request: The amendment would incorporate an additional option into the Required Actions for Technical Specification 3.9.1, "Refueling Equipment Interlocks." The change would provide additional Required Actions when the refueling interlocks are inoperable. The alternative would permit continued refueling activities once control rod withdrawal is blocked and operators verify that all appropriate controls rods are fully inserted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The refueling interlocks are explicitly assumed in the Perry Nuclear Power Plant Updated Safety Analysis Report (USAR) analyses of the control rod removal error and fuel loading error during refueling. This analysis evaluates the probability and consequences of control rod withdrawal during refueling. Criticality and, therefore, subsequent prompt reactivity excursions are prevented during the loading of fuel, provided all required control rods are fully inserted. The refueling interlocks accomplish this by preventing loading fuel into the core with any control rod withdrawn, or by preventing withdrawal of a rod from the core during fuel loading. When the refueling interlocks are inoperable, the current method of preventing fuel loading when a control rod is withdrawn, is to prevent fuel movement. This method is currently required by the Technical Specifications. An alternate method to ensure that fuel is not loaded into a cell with the control rod withdrawn is to prevent control rods from being withdrawn and verify that all control rods required to be inserted are fully inserted. The proposed Technical Specification Required Actions will require that a control rod block be placed in effect, thereby ensuring that control rods are not subsequently inappropriately withdrawn. Additionally, following placing the control rod withdrawal block in effect, the proposed actions will require that all required control rods be verified to be fully inserted. This verification is in addition to the requirements to periodically verify control rod position by other Technical Specification requirements. These proposed actions will ensure that control rods are not withdrawn and cannot be inappropriately withdrawn, because an electrical or hydraulic block to control rod withdrawal is in place. Like the current requirements, the proposed will ensure that unacceptable operations are blocked (e.g., loading fuel into a cell with a control rod withdrawn, except when following the requirements of LCO 3.10.6, "Multiple Control Rod Removal—Refueling," which is unaffected by this change). The proposed additional Required Actions provide an equivalent level of assurance that fuel will not be loaded into a core cell with a control rod withdrawn as do the current Required Action or the Surveillance Requirement. Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change in the Technical Specification requirements does not involve a change in the plant design, or to the status of the reactor core during refueling. The proposed actions will ensure that control rods are not withdrawn and cannot be inappropriately withdrawn, because an electrical or hydraulic block to control rod withdrawal is in place. Although the exact method by which the control rod withdrawal block is inserted is revised, the net effect is equivalent. The requirements will continue to ensure that fuel is not loaded into the core when a control rod is withdrawn, except when following the requirements of LCO 3.10.6, "Multiple Control Rod Removal—Refueling," which is unaffected by this change. Therefore, no new failure modes are introduced, and the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

As discussed in the Bases for the affected Technical Specification requirements, inadvertent criticality is prevented during the loading of fuel provided all required control rods are fully inserted during the fuel insertion. The refueling interlocks function to support the refueling procedures by preventing control rod withdrawal during fuel movement and the inadvertent loading of fuel when a control rod is withdrawn. The proposed change will allow the refueling interlocks to be inoperable and fuel movement to continue only if a control rod withdrawal block is in effect and all required control rods are verified to be fully inserted. These proposed Required Actions provide an equivalent level of protection as the refueling interlocks by preventing a configuration which could lead to an inadvertent criticality event. The refueling procedures will continue to be supported by the proposed Required Actions because control rods cannot be withdrawn and as a result fuel cannot be inadvertently loaded when a control rod is withdrawn, except when following the requirements of LCO 3.10.6, "Multiple Control Rod Removal—Refueling," which is unaffected by this change. Therefore, the proposed changes do not cause a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: February 23, 1999.

Description of amendment request: The proposed license amendment would remove redundant boron concentration monitoring requirements specified for operating Modes 3 through 6 by deleting Technical Specification 3/4.1.2.9, "Reactivity Control Systems—Boron Dilution." These requirements were interim measures intended to apply until a permanent boron dilution alarm system was installed and functional.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve changes to previously evaluated accident initiators. The proposed deletion of the redundant boron concentration verification requirements do not impact the results of existing accident analyses, and will have no adverse impact on any plant system performance. TS 3/4.1.2.9 provides mode and charging pump dependent monitoring requirements for RCS boron concentration that are designed to detect an unplanned boron dilution event in MODES 3 through 6 in the absence of an automatic alarm system, and is based on the time requirements for operator action specified in Section 15.4.6 of the Standard Review Plan (SRP). This specification evolved from interim measures that were proposed by FPL until the boron dilution alarm system (BDAS) could be made completely functional following initial start-up of St. Lucie Unit 2. The BDAS is completely functional and provides redundant control room alarms to alert operators to the occurrence of an unplanned boron dilution event in Modes 3 through 6. The alarm setpoints are based on Chemical and Volume Control System (CVCS) malfunction analyses, and satisfy the same SRP acceptance criteria upon which the monitoring requirements of TS 3/4.1.2.9 were based. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. The amendment will remove requirements from the facility technical specifications that were proposed by FPL as interim measures until the boron dilution alarm system became completely functional. The amendment will not alter the design of St. Lucie plant systems described in the Updated Final Safety Analysis Report (UFSAR), and the plant configuration will continue to remain consistent with assumptions used in the existing accident analyses. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of

ccident from any accident previously valuated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment has been valuated with respect to the applicable afety analyses. The BDAS provides a ontinuous, early warning capability to letect a boron dilution event in Modes 3, 4, and 6, and satisfies the same SRP time equirements for operator action as the nterim TS that is proposed for deletion. BDAS setpoints are determined and/or alidated for each fuel cycle to ensure they emain consistent with the CVCS malfunction analyses of record, and changes hat may become necessary are controlled pursuant to 10 CFR 50.59. The minimum equired Shutdown Margin is not changed by his proposal. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Sheri R. Peterson.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of amendment request: July 27, 1999.

Description of amendment request: The proposed amendments request that Turkey Point Unit 3 Technical Specification (TS) 3/4.8.1, A.C. SOURCES,TS 3/4.4.3, PRESSURIZER, and TS 3/4.5.2, ECCS SUBSYSTEMS—T_{avg} GREATER THAN OR EQUAL TO 350°F, be revised on a one-time basis to extend the Allowed Outage Time (AOT) for an inoperable Emergency Diesel Generator (EDG) from 72 hours to 7 days. The proposed one-time AOT extension will be used to replace the Unit 3 EDG engine radiators prior to the Spring 2000 refueling outage. However, replacement of the radiator is a very labor-intensive evolution that cannot be performed within the existing 72 hour AOT. The proposed AOT extension will allow the radiator replacement activity to be completed successfully in a safe manner. The extended AOT will be applied to one EDG at a time in a sequential manner. When the radiator replacement activity is complete on one engine, it will be returned to service so that work can proceed on the redundant EDG. It should be noted that although the proposed changes apply only to Unit 3, the Unit 4 TSs are administratively affected since the TSs are combined for both units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Emergency Diesel Generators (EDG) are part of the on-site electrical power distribution system. They function as a standby power source in the event that the preferred A.C. power supply, i.e., offsite power, is interrupted. While certain failures in the electrical distribution system can lead to a loss of offsite power which is a design basis event for the plant, the EDGs are not assumed to be an initiating condition of any accident evaluated in the safety analysis report. Therefore, a one-time extension in the EDG Allowed Outage Time (AOT) does not involve a significant increase in the probability of an accident previously evaluated.

The purpose of the proposed license amendment is to permit on-line replacement of the Unit 3 EDG radiators. The radiators are part of the closed-loop diesel engine cooling water system and do not interface with any system or component that contains radioactivity. The EDGs do supply A.C. power to the emergency core cooling and containment heat removal systems during accidents that involve loss of offsite power. However, no changes are predicted for the postulated post-accident releases since adequate EDG capacity will be available under the conditions of the proposed license amendment to accommodate any design basis accident condition. Accordingly, the consequences of accidents previously evaluated in the safety analysis report are not changed by an extended EDG outage.

Probabilistic Safety Assessment (PSA) techniques were used to evaluate the impact of a one-time extension of the EDG AOT from 72 hours to 7 days. The results of these analyses indicate that extending the AOT for the purpose of replacing the engine radiator cores represents an acceptably small impact on Core Damage Probability.

Based on the above, FPL concludes that the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not alter the design, physical configuration, or modes of operation of the plant. Plant configurations that are prohibited by Technical Specifications will not be created by the one-time EDG AOT extension. Therefore, the proposed activity does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed license amendment will extend by 96 hours the requirement to shutdown the plant when a Unit 3 EDG is removed from service for maintenance. The one-time AOT extension will not alter plant equipment, setpoints, or operating practices that provide the existing margins of safety. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Sheri R. Peterson.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: August 27, 1998.

Description of amendment request: The amendment would delete the requirements for an emergency plan from the 10 CFR Part 50 license and technical specifications after the spent nuclear fuel is transferred to a Part 72 licensed independent spent fuel storage installation (ISFSI).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed elimination of the emergency plan requirements from the 10 CFR 50 license is predicated on completion of transfer of the spent nuclear fuel to the proposed 10 CFR 72 ISFSI licensed area and removal of the reactor vessel and internals from the 10 CFR 50 licensed area of the site.

Removal of the potential radiological source terms for accidents previously evaluated effectively eliminates the credibility of the accidents, therefore, elimination of the emergency plan requirements does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is deletion of emergency plan requirements and, as such, has no direct impact on plant equipment or the procedures for operating plant equipment. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Following the removal of the spent nuclear fuel and the reactor vessel and internals from the 10 CFR 50 licensed area, the remaining credible accidents are limited to decommissioning activities. The potential accidents associated with decommissioning activities are presented in the TNP [Trojan Nuclear Plant] Decommissioning Plan and have been shown to have consequences less than the EPA PAGs [Environmental Protection Agency Protective Action Guidelines]. Following the removal of the spent nuclear fuel and the reactor vessel (including the internals) from the 10 CFR 50 site, no credible accidents associated with the remaining decommissioning activities would require pre-planned emergency measures to avoid acute radiation doses. The deletion of the Trojan Nuclear Plant Permanently Defueled Emergency Plan will not result in a reduction in the margin of safety previously analyzed. Therefore, the proposed 10 CFR 50 license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Section Chief: Michael T. Masnik.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: February 19, 1998, as supplemented July 28, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 Technical Specifications (TSs) proposes to revise the Radioactive Effluents Technical Specifications (RETS) in accordance with Generic Letter 89–01 (GL–89–01), to make changes to implement revised 10 CFR Part 20 requirements, and to make administrative changes under 10 CFR 50.36a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

A. The proposed changes involve (1) combining related LCO and surveillance requirements from Sections 2.0 and 3.0, respectively, of the Indian Point 3 (IP3) RETS and relocating this text to the new Radiological Effluent Controls (REC) section of the ODCM, (2) relocating the bases contained in Section 4.0 of the RETS to the ODCM REC, (3) relocating the detailed reporting requirements contained in Section 5.0 of the RETS to the ODCM REC, and (4) updating references to 10 CFR Part 20. Additional changes include formatting both the remaining RETS and the new REG to more closely model Standard Technical Specifications (STS), revising the frequency of the Radioactive Effluent Release Report in accordance with 10 CFR 50.36a, relocating all definitions to Appendix A of the Technical Specifications and adding/deleting definitions as necessary, and adding a new Special Reports section to the ODCM. Most of the changes are (1) consistent with the guidance provided in the generic letter, NUREG–1301, or provisions of 10 CFR; or (2) editorial. Editorial changes include the relocation of text, correction of typographical and punctuation errors, renumbering, reformatting, immaterial wording revisions/deletions/clarifications which do not change intent, and updating references.

B. The proposed revisions to the liquid and gaseous release rate limits, the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302, and the revision to the TS bases for the Liquid Holdup Tank activity will involve no change in the types or amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

The changes of definitions, terminology, paragraph references, and report submittal frequency are necessary to keep IP3 TS consistent with revised federal regulations (i.e., 10 CFR 20 and 10 CFR 50.36(a)). Record retention and reporting requirements will continue to meet NRC regulations. These changes are administrative in nature and do not affect plant hardware or operation.

The changes do not impact the operation, design, configuration, or testing of plant structures, systems or components. As such, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

A. The changes do not impact the operation, design, configuration, or testing of plant structures, systems or components. The changes do not result in a change in type or amount of radiological effluents released. As such, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

A. The changes are being made in accordance with NRC guidance and continue to assure compliance with the applicable regulatory requirements including 10 CFR 20. The changes do not result in a change in the types or amounts of effluents released. The current level of radiological effluent control will be maintained. As such, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Sacramento Municipal Utility District (the District), Docket No. 50–312, Rancho Seco Nuclear Station, Sacramento County, California

Date of amendment request: March 18, 1996 (PA–192).

Description of amendment request: The proposed amendment would update the Rancho Seco cask drop analysis and establish the cask drop event as the design-basis event for plant operation in the permanently defueled mode. The proposed amendment would also make editorial changes to the Permanently Defueled Technical Specifications and Bases by adding the word "heavy" to specification D3.3 and eliminating references to the MP–187 cask in specification D3.3 and D4.3.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The District has reviewed the proposed changes against each of the criteria in 10 CFR 50.92, and, based on the above safety analysis, concludes:

Using the Gantry Crane to handle a fully loaded transfer cask in the Fuel Storage Building will not create a significant increase in the probability or consequences of an accident previously evaluated in the SAR [safety analysis report], because the conservative dose consequence calculated for the updated, design basis cask drop event resulted in an exposure (224 mrem) that is:

1. A very small percentage ([approximately] 0.9%) of the 10 CFR 100 design basis accident dose limit of 25 rem total body;

2. A small percentage ([approximately] 3.6%) of the NUREG–0612 control of heavy loads accident dose limit of 6.25 rem total body;

3. Well within ([approximately] 4.5%) of the old EPA [Environmental Protection Agency] NUREG–0654 plume exposure Protective Action Guidelines of 500 mrem total body dose;

4. Well within the new EPA 1 to 5 rem Total Effective Dose Equivalent (TEDE) Protective Action Guidelines (PAGs) specified in document EPA–400–R–92–001, Table 2–1, May 1992;

5. Less than the maximum hypothetical Rancho Seco Independent Spent Fuel Storage Installation design basis accident (375 mrem total body dose);

6. Less than the original Rancho Seco operating design basis for the Fuel Storage Building FHA [fuel-handling accident] exposure (399 mrem);

7. Less than the original Rancho Seco operating design basis for the Reactor Building FHA exposure (477 mrem); and

8. Much less than the original Rancho Seco operating design basis Maximum Hypothetical Accident exposure (3,600 mrem).

Therefore, the conservatively calculated 224 mrem cask drop design basis accident exposure is (1) relatively small and (2) *not* considered a significant hazard.

Also, the probability of occurrence of the FHA, which is the current design basis accident, is similar to the probability of occurrence of the updated cask drop event. The FHA is assumed to occur because the fuel handling bridge is not single failure proof. Likewise for the cask drop scenario, since the Gantry Crane is not single failure proof, this Safety Analysis Report evaluates the Gantry Crane dropping a loaded spent fuel cask.

This Safety Analysis Report analyzes the dropped cask accident scenario even though the Gantry Crane and fuel handling bridge are:

1. Designed to safely handle their respective loads (i.e., a loaded transfer cask and a spent fuel assembly, respectively; and

2. In compliance with the design and administrative requirements addressed in NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants."

A loaded cask transfer drop is a very unlikely event because of the numerous Gantry Crane safety features described in the above safety Analysis Report. These features described above include:

1. Gantry Crane Administrative Safety Features;

2. Gantry Crane Design Safety Features;

3. General Gantry Crane Control System Design Safety Features;

4. Gantry Crane Radio Control System Design Safety Features;

5. Hoist Design Safety Features; and

6. Trolly and Bridge Design Safety Features.

The updated cask drop accident scenario will not create the possibility of a new or different type of accident than previously evaluated in the SAR, because the DSAR [defueled SAR] currently evaluates a cask drop event. The cask drop scenario evaluated in the above Safety Analysis Report just updates the existing cask drop analysis. The updated cask drop analysis only:

1. Identifies the type of spent fuel cask that Rancho Seco will use;

2. Results in a change to the calculated dose consequence associated with the current, bounding, design basis accident (i.e., the FHA); and

3. Results in a change to the existing Rancho Seco cask drop analysis.

The updated, design basis, cask drop event will not involve a significant reduction in the margin of safety, because the conservatively calculated dose consequence associated with the postulated drop of a spent fuel transfer cask is:

1. Relatively small (i.e., 224 mrem) . compared to the eight accident limits and previously calculated accident doses summarized above;

2. A very unlikely event;

3. Not a significant hazard; and

4. Not a public health and safety concern.

This conclusion is the same for the FHA, which is the current, bounding, Rancho Seco design basis accident.

Also, the Emergency Planning Zone remains unchanged for this updated, cask drop accident scenario. No significant changes to the Rancho Seco Emergency Plan result from this proposed change to the updated, design basis accident at Rancho Seco.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. The staff also reviewed the proposed editorial changes for no significant hazards consideration. The proposed editorial changes do not affect the design or operation of the facility and also satisfy the three standards of 10 CFR 50.92(c). Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Central Library, Government Documents, 828 I Street, Sacramento, California 95814

Attorney for licensee: Dana Appling, Esq., Sacramento Municipal Utility District, P.O. Box 15830, Sacramento, California 95852–1830

NRC Section Chief: Michael T. Masnik

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: March 12, 1998, as supplemented April 24, August 20 and November 20, 1998, and February 3, 1999

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) of each unit to conform with NUREG–1431, Revision 1, "Standard Technical Specifications—Westinghouse Plants." The Commission had previously issued a Notice of Consideration of Issuance of Amendments in the **Federal Register** on May 25, 1999, (64 FR 28218) covering all the proposed changes that were within the scope of NUREG–1431. The following descriptions and no significant hazard analyses cover only those items that are beyond the scope of NUREG–1431. Associated with each change are administrative/editorial changes which would make the new or revised requirements fit into the format of NUREG–1431.

1. The Standard Technical Specification (STS) terms FQW(Z) and FQC(Z) in Limiting Condition for Operation (LCO) 3.2.1 would be deleted and the terms FQ(Z), "steady state" limit and "transient" limit would be used. (Significant Hazards Evaluation A)

2. The STS wording in Required Action 3.2.4.A to "reduce" thermal power would be revised to "limit" thermal power to allow entry into the LCO applicability during startup when QPTR may be in excess of 1.02 due to transient core conditions which are usually self-correcting. (A)

3. The Applicability of LCO 3.2.4 would be revised to be consistent with the Applicability for the AFD LCO to eliminate subtle differences between the two LCO Applications which were previously the same. (M)

4. The Reactor Coolant System Loop Test specified in the TS LCO 3/4.10.4 would not be included. (L–1)

5. A new Action would be added to the Emergency Core Cooling System (ECCS)—Shutdown LCO 3.5.3. The new Action deals with the centrifugal charging subsystem. (L–2)

6. The Reactor Coolant Pump (RCP) seal injection flow requirements of 3.5.5 would be revised. The requirement to verify a single operating point would be changed to require verification of a range of values on an operating curve. (M)

7. The time allowed to reduce the power range neutron flux setpoint in 3.7.1 to within the required limit would be extended and made applicable in Mode 1 only. (L–3 and L–3a)

8. The Actions in 3.7.2 for an inoperable Main Steam Isolation Valve (MSIV) would be revised to take credit for the redundant MSIVs in each steam line. (L–4)

9. An Action would be added to the Service Water (SW) LCO 3.7.8 that accounts for the redundant automatic turbine building isolation valves in each Farley SW train. (L–5)

10. The diesel generator accelerated Test Table 3.8.1–1 would be deleted. (LA)

11. The AC Sources—Shutdown surveillance 3.8.2.1 would be revised to more clearly state the required surveillances. (L–6 and L–6a)

12. The Actions 3.8.4 and 3.8.9 for an inoperable SW intake structure Battery and Distribution System would be revised to more accurately reflect the Farley design. (L–7)

13. The STS footnote to ESFAS Table 3.3.2–1 would be revised to be consistent with the design of the Farley main steam system. (L–8)

14. A new Condition C would be added to LCO 3.3.4 to address actions associated with the source range neutron flux monitor. (M)

15. LCO 3.3.5 would be revised to accommodate the addition of a degraded grid alarm function. (M)

16. The specific title in 5.1.2 for the control room command function would be replaced with a more general description. (L–9)

17. The specific title in 5.3.1 of Health Physics Supervisor would be replaced with a more general description. (A)

18. The inspection frequency specified in 5.5.7 for the RCP flywheel would be revised to be consistent with the NRC-approved WCAP–14535A, "Topical Report on RCP Flywheel Inspection Elimination," November 1996. (L–10)

19. The Health Physics Supervisor title in 5.7.1.c would be replaced with a more general description. (L–11)

20. The Emergency Diesel General (DG) Failure Report in 5.6.7 would be revised to be consistent with the latest Farley commitments for DG failure tracking and reporting. (L–12)

21. A note would be added to Surveillance Requirement (SR) 3.4.1.4 that would not require this surveillance until 7 days after reaching greater than 90% power. (M)

22. SR 3.4.5.2 would require verification that steam generator secondary side water levels are 74% (wide range). (M)

23. LCO 3.4.15 would differ from the STS in several aspects. One aspect would extend the Allowable Outage Time from 7 days to 30 days for an inoperable leakage detection system. (L–13)

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. Each proposed out-of-scope item described above is followed in parenthesis by either an A (for administrative changes), an M (for changes which would be more restrictive), an LA (for requirements that would be removed from the TS), or an L and a number (for changes that would be less restrictive). Following are the no significant hazards analyses corresponding to each of these designations.

[A—Administrative Changes]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes involve reformatting, renumbering, and rewording of the CTS. These changes involve no technical revisions to the CTS and were made to conform with the format and style of the STS. As such, these changes are administrative in nature and do not impact initiators of analyzed events or safety analyses assumptions relative to the mitigation of accidents or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements or eliminate any existing requirements. In addition, the change does not alter assumptions made in the safety analyses and licensing basis. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes are administrative in nature and do not involve any technical changes. As such, these changes do not impact any safety analysis assumptions and no question of safety is involved. Therefore, the changes do not involve a significant reduction in a margin of safety.

[M—More Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes provide more stringent requirements than previously existed in the CTS. These more stringent requirements are not assumed to be initiators of analyzed events and will not alter assumptions relative to mitigation of accident or transient events. The changes are evaluated to ensure no previously analyzed accident has been adversely affected. The more stringent requirements are imposed to ensure process variables, structures, systems and components are maintained consistent with the safety analyses and licensing basis. These changes will not alter assumptions relative to mitigation of an accident or transient event nor will they alter the operation of process variables, structures, systems, or components described in the safety analyses. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes add more restrictive requirements to the TS or make existing requirements more restrictive. The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed changes do impose new or different requirements. However, these changes are consistent with assumptions made in the safety analysis and licensing basis. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes add more restrictive requirements to the TS or make existing requirements more restrictive and have been evaluated to ensure consistency with the safety analysis and licensing basis. As such, these changes do not impact any safety analyses assumptions and no question of safety is involved. Therefore, these changes do not involve a reduction in a margin of safety.

[LA—Removal of Requirements]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes relocate requirements from the CTS to a licensee controlled document. The document containing the relocated requirements will be maintained using the provisions of 10 CFR 50.59. Therefore, the proposed changes will only reduce the level of regulatory control on these requirements. The level of regulatory control has no impact on the probability or the consequences of an accident previously evaluated. Thus, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes relocate requirements from the CTS to a licensee controlled document. The changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any

existing requirements. The changes do not alter assumptions made in the safety analyses and licensing basis. Thus, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes relocate requirements from the CTS to a licensee controlled document for which future changes will be evaluated pursuant to the requirements of 10 CFR 50.59. The proposed changes do not reduce a margin of safety because they have no impact on any safety analysis assumptions. Therefore, these changes do not involve a significant reduction in a margin of safety.

[L–1—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves deleting the CTS 3/4.10.4, Reactor Coolant Loops Test Exception, requirements and does not result in any hardware changes. The proposed change deletes a test exception LCO that is no longer used or required at FNP. The natural circulation test, for which this exception is designed, was only required to be performed at FNP during the initial plant startup test program. The proposed changes do not impact the capability of the plant or any equipment to provide the required safety function as described in the FSAR. In addition, the results of the analyses described in the FSAR remain bounding. Also, the proposed changes do not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves changing the CTS requirements to delete a test exception that is no longer used and does not necessitate a physical alteration of the plant or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change, which deletes CTS 3/4.10.4 does not involve a significant reduction in a margin of safety. The proposed change does not impact any safety analysis assumptions and does not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. Therefore, the proposed change does not impact any margin of safety.

[L–2—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change does not result in any hardware changes. The ECCS components covered by this TS are not assumed to be initiators of any analyzed event. Therefore, this change does not involve a significant increase in the probability of an accident previously evaluated. The change would allow the required ECCS centrifugal charging subsystem to be inoperable for up to 72 hours providing the remaining operable ECCS components can provide the flow equivalent to a single operable train which will ensure 100% of the flow assumed in the safety analyses. Since the ability of the ECCS to perform its safety function is not lost, this change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will only more accurately define the minimum equipment required to be operable to perform the ECCS function while in this Condition. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change, which allows operation to continue for up to 72 hours with components inoperable in the required ECCS centrifugal charging subsystem, is acceptable based on the remaining ECCS components providing 100% of the required ECCS flow, the small probability of an event occurring in 72 hours that would require the ECCS, and the reduced potential for a unit transient resulting from the shutdown required by current TS for an inoperable required ECCS centrifugal charging subsystem. The proposed allowed outage time of 72 hours for this condition is consistent with the time currently allowed for one train of ECCS to be inoperable in Modes 1–3. The exposure of the unit to the small probability of an event requiring ECCS during this time is insignificant and offset by the benefit gained through avoiding unnecessary plant transients. Therefore, this change does not involve a significant reduction in margin of safety.

[L–3—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes extend the time allowed to adjust the Power Range Neutron Flux-High trip setpoints for the case of two or more inoperable MSSVs per SG and/or positive Moderator Temperature Coefficient (MTC) and removes the requirement to adjust the Power Range Neutron Flux-High trip setpoints only one MSSV is inoperable and the MTC is zero or negative and do not result in any hardware or operating procedure changes. The affected trip setpoints, the requirement to reduce them or the time allowed to adjust them are not assumed to be an initiator of any analyzed event. In addition, the affected trip setpoints, the requirement to reduce them and the time allowed to adjust them are not a precursor to any accident analyses. Therefore, the proposed changes do not increase the probability of an accident previously evaluated. The Power Range Neutron Flux-High trip functions to mitigate the consequences of an analyzed event by shutting down the reactor. The proposed changes continue to provide assurance that the setpoints will be properly adjusted to ensure the system functions as assumed in the applicable safety analyses. Therefore, the consequences of an accident are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed changes still ensure the operability of the trip function at the correct setpoint and will facilitate the adjustment of the setpoints such that the probability of error is minimized. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The time allowed to adjust the setpoints of the affected instrumentation is not a specific assumption of any safety analysis. For the case of a single inoperable MSSV with a zero or negative MTC, a reactor power reduction alone is sufficient to limit primary side heat generation such that overpressurization of the secondary side is precluded for any RCS heatup event. Furthermore, for this case there is sufficient total steam flow capacity provided by the turbine and the remaining OPERABLE MSSVs to preclude overpressurization in the event of an increased reactor power due to reactivity insertion, such as in the event of an uncontrolled RCCA bank withdrawal at power. The proposed changes still ensure the setpoints are reduced consistent with the assumptions of the safety analysis for the case of two or more inoperable MSSVs or a positive MTC. The proposed changes also reduce the potential for an inadvertent reactor trip that could result from adjusting the trip setpoints too quickly. As such, any reduction in a margin of safety will be insignificant and will likely be offset by the benefit gained from the reduced potential for an inadvertent plant trip.

[L3a—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change clarifies the Action requirement to reduce the power range neutron flux-high trip setpoint in Modes 2 and 3 and does not result in any hardware or operating procedure changes. The proposed change adds a note to the Action which specifies that the Action is only required in Mode 1. In Modes 2 and 3, other reactor trips (power range low and source range high) provide the required protection consistent with the acceptance criteria of the safety analysis. Therefore, the Action is not required in these Modes. The affected trip

setpoints are not assumed to be an initiator of any analyzed event. In addition, the affected trip setpoints are not a precursor to any accident analyses. Therefore, the proposed change does not increase the probability of an accident previously evaluated. The affected reactor trip functions mitigate the consequences of an analyzed event by shutting down the reactor. The proposed change continues to provide assurance that the required reactor trip functions operate as assumed in the applicable safety analyses. Therefore, the consequences of an accident are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change still ensures the operability of the reactor trip function at the correct setpoint for the correct Mode of operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change does not affect the ability of the MSSVs and reactor trip system to mitigate the applicable transients consistent with the assumptions of the safety analysis. The proposed change continues to ensure the acceptance criteria of the applicable safety analyses are met (primary and secondary system pressures are limited to within the required values). As such, any reduction in a margin of safety will be insignificant and will likely be offset by the benefit gained from the reduced potential for an inadvertent plant trip that could result from an error in adjusting the power range neutron flux-high trip setpoint (unnecessary in Mode 2).

[L–4—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the Actions of the MSIV LCO in order to take credit for the redundant MSIV valves in each steam line. This change does not result in any hardware or operating procedure changes. The MSIVs are not assumed to be an initiator of any analyzed event and function to isolate the steam lines to mitigate analyzed events. As a result, the revision of this TS requirement does not affect the probability of an accident previously evaluated. The proposed change continues to provide adequate assurance that the MSIVs are either capable of performing their intended safety function or that the safety function has been performed (steam line isolated) or that power is reduced. The proposed change continues to limit plant operation when a single failure could prevent the isolation function from being accomplished. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change only affects the Actions of the SWS LCO. The proposed change continues to ensure the turbine building isolation valves are either capable of isolating the SWS system and accommodating a single failure or that the unit is placed in a condition where this isolation function is no longer required. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change continues to ensure the turbine building isolation valves are either capable of isolating the non-essential SWS loads and accommodating a single failure or that the unit is placed in a condition where the isolation function is no longer required. The proposed change continues to limit plant operation when a single failure could prevent the isolation function from being accomplished. Therefore, the proposed change also continues to preserve the assumptions of the applicable safety analyses. As such, the proposed change does not impact the assumptions of the applicable safety analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

[L–5—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the Actions of the SWS LCO in order to take credit for the redundant automatic turbine building isolation valves in each train of SWS. This change does not result in any hardware or operating procedure changes. The turbine building isolation valves are not assumed to be an initiator of any analyzed event and function to isolate the SWS flow to non-essential components. As a result, the revision of this TS requirement does not affect the probability of an accident previously evaluated. The proposed change continues to provide adequate assurance that the turbine building isolation valves are either capable of performing their intended safety function and accommodate a single failure or that the unit is placed in a condition where the function performed by these valves is no longer required. The proposed change continues to limit plant operation when a single failure could prevent the isolation function of these valves from being accomplished. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change only affects the Actions of the MSIV LCO. The proposed change continues to ensure the MSIVs are either capable of isolating the steam lines or that the steam lines are isolated or power reduced. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change continues to ensure the MSIVs are either capable of isolating the steam lines or that the steam lines are isolated or power reduced. The proposed change continues to limit plant operation when a single failure could prevent the isolation function from being accomplished. Therefore, the proposed change also continues to preserve the assumptions of the applicable safety analyses. As such, the proposed change does not impact the assumptions of the applicable safety analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

[L–6—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The elimination of the requirement to meet surveillance tests that verify functions which are not required in the Mode of applicability of this TS will not increase the probability of any accident previously evaluated. The proposed surveillance testing continues to provide adequate assurance of the operability of the required AC Source functions and therefore, does not involve an increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

This change does not involve a significant reduction in a margin of safety since the operability of the required AC Source functions, continues to be determined in the same manner. Elimination of the surveillance test requirements for AC Source functions not required in these Modes does not impact the capability of the AC Sources to perform their safety function in these Modes.

[L6a—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The inclusion of a note consistent with the STS to provide an allowance not to perform certain surveillance tests on the AC Source required operable by the TS will not increase the probability of any accident previously evaluated. The required surveillance testing must still be performed (but not on the AC

ource while it is required operable by the S) and will continue to provide adequate ssurance of the operability of the required C Source functions. Therefore, this change oes not involve an increase in the onsequences of any accident previously valuated.

2. Does the change create the possibility of new or different kind of accident from any ccident previously evaluated?

The proposed change does not introduce a ew mode of plant operation and does not nvolve a physical modification to the plant. herefore, it does not create the possibility of new or different kind of accident from any ccident previously evaluated.

3. Does this change involve a significant eduction in a margin of safety?

This change does not involve a significant eduction in a margin of safety since the perability of the required AC Source unctions, continues to be determined in the ame manner. The allowance not to perform ertain surveillance tests on the AC Source quipment when that equipment serves to neet the TS minimum required power source nsures a stable shutdown power supply to he unit and does not impact the capability of the AC Sources to perform their safety unction in these Modes.

[L–7—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change effectively provides a longer allowed outage time for the Service Water Intake Structure (SWIS) DC distribution and battery systems. The proposed allowed outage time is consistent with the time allowed for a Service Water train to be inoperable. The DC power sources or their associated allowed outage times are not assumed to be initiators of any analyzed event. As such, the proposed change will not increase the probability of any accident previously evaluated. The appropriate required actions consistent with that for the equipment rendered inoperable must still be performed. The proposed actions will continue to provide adequate assurance of plant safety in the same manner as if the affected equipment were inoperable for reasons other than power availability. Therefore, this change does not involve an increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

This change does not involve a significant reduction in a margin of safety since the inoperability of the SWIS distribution and battery systems affect only the Service Water system and the time allowed for restoration of an inoperable Service Water train remains unchanged. The allowance to declare the affected equipment inoperable and take the associated equipment TS actions continues to ensure plant safety by providing the same appropriate remedial measures for the affected equipment as would be applicable if that equipment were inoperable for reasons other than power availability. Therefore, the proposed change does not significantly impact any margin of safety.

[L–8—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves upgrading the ESFAS TS to more closely agree with the FNP design and safety analysis and does not result in any hardware changes. The proposed change revises the applicability for the initiating functions of the main steam line isolation function such that when a main steam line isolation valve is closed and the isolation function is accomplished, the automatic initiation of this function is no longer required operable. The ESFAS is not assumed to be an initiator of any analyzed event. The role of the ESFAS is in mitigating and thereby limiting the consequences of accidents. The proposed change continues to adequately ensure the operability of the ESFAS main steam line isolation function when the lines are unisolated and thereby ensures the protection provided by the function remains operable when required. Therefore, the results of the analyses described in the FSAR remain bounding. Additionally, the proposed changes do not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves upgrading the ESFAS TS to more closely agree with the FNP design and safety analysis and does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety? The proposed change, which upgrades the ESFAS TS to be more consistent with the FNP design and safety analysis does not involve a significant reduction in a margin of safety. The proposed change revises the Mode of applicability for the main steam line isolation ESFAS function. The proposed change continues to adequately ensure the operability of the isolation function when it is required and thereby ensures the protection provided by the function also remains available when required. As such, the results of the analyses described in the FSAR remain bounding and this change does not have a significant impact on any design basis safety analysis.

[L–9—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves changing the CTS administrative controls requirements regarding the Shift Supervisor (SS) responsibility to more closely agree with the STS requirements and does not result in any hardware changes. The requirement to issue annual directives regarding the SS responsibilities is deleted. The title Shift Supervisor is replaced with responsible SRO. In addition, an allowance for an RO (in Modes 5 and 6) to temporarily replace the SS is added. The proposed change also eliminates the specific restriction against the STA temporarily replacing the SS. The proposed changes do not impact the capability of the plant or any equipment to provide the required safety function as described in the FSAR. In addition, the results of the analyses described in the FSAR remain bounding. Additionally, the proposed changes do not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves changing the TS administrative controls regarding the responsibilities of the SS to more closely agree with the STS requirements and eliminates the title Shift Supervisor and does not necessitate a physical alteration of the plant or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes, which revise the TS administrative controls requirements for SS responsibilities to be consistent with the STS requirements and eliminate the title Shift Supervisor do not involve a significant reduction in a margin of safety. The proposed changes do not impact any safety analysis assumptions and do not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. Therefore, the proposed changes do not impact any margin of safety.

[L–10—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change affects only the interval allowed by the TS surveillance to perform RCP flywheel inspections. The time allowed between flywheel inspections is not specifically assumed to be a precursor or initiator of any analyzed event. The studies performed to justify the proposed time interval have shown it to be adequate to detect any flaws or degradation in the RCP flywheel. As such, the proposed change does not affect the probability of any initiating events assumed in the accident analyses. The proposed change will maintain an acceptable

level of safety by continuing to require RCP flywheel inspections at an interval shown to be adequate. Consequently, the proposed change will not have any affect on the consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different types of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change only affects the interval allowed by the TS to inspect each RCP flywheel. The interval remains adequate to detect any degradation. Therefore, the possibility of a new or different kind of accident is not created by the proposed change.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change affects the interval allowed by the TS to inspect RCP flywheels. The proposed interval is based on the findings of WCAP–14535A and the associated NRC SER. The WCAP concludes that continued inspections of RCP flywheels are not necessary and overall plant safety could be increased by eliminating the inspections and reducing man rem dose as well as the potential for flywheel damage during disassembly and reassembly for inspection. The NRC SER requires the inspection of RCP flywheels be retained but the interval increased to once every 10 years. As such, the proposed change continues to conservatively assure the operability of the RCP flywheel while reducing man rem exposure and the potential for damage from disassembly and reassembly. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

[L–11—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves the revision of the term health physics supervisor to health physics supervision for the purpose of specifying the frequency of radiation surveillances in RWPs. The proposed change continues to provide adequate assurance that the radiation surveillances are performed within acceptable frequencies. The proposed change does not impact the capability of the plant or any equipment to provide the required safety function as described in the FSAR, or increase the potential radiation exposure of plant personnel. In addition, the results of the analyses described in the FSAR remain bounding. Additionally, the proposed change does not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves the supervisors who specify the radiation surveillance frequencies in high radiation areas and does not necessitate a physical alteration of the plant or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change, which revises the TS requirements for the personnel who specify the frequencies of radiation surveillances in high radiation areas. The proposed change allows additional supervisory personnel to specify the required frequencies. The proposed change does not impact any safety analysis assumptions and does not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. In addition, the proposed change continues to ensure adequate surveillances are performed in high radiation areas. Therefore, the proposed change does not impact any margin of safety.

[L–12—Less Restrictive]

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves changing the GTS administrative controls requirements regarding the Emergency Diesel Generator (EDG) failure reporting requirement and does not result in any hardware changes. The proposed change potentially reduces the number of reports received by the NRC and revises the content to include valid failures and demands. The proposed change continues to provide adequate information to assess the EDG reliability at FNP. The proposed change does not impact the capability of the plant or any equipment to provide the required safety function as described in the FSAR. In addition, the results of the analyses described in the FSAR remain bounding. Additionally, the proposed change does not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves changing the TS administrative controls regarding the required EDG report to more closely agree with the STS requirements and does not necessitate a physical alteration of the plant or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change, which revises the TS administrative controls requirement for an annual EDG report to be consistent with the STS requirement does not involve a significant reduction in a margin of safety. The proposed change does not impact any safety analysis assumptions and does not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. In addition the proposed change continues to provide sufficient information to assess the reliability of the EDG at FNP. Therefore, the proposed change does not impact any margin of safety.

[L–13—Less Restrictive]

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

The proposed change extends the time allowed to restore an inoperable RCS leakage detection instrument to operable status. The CTS allow 7 days for restoration of the automatic RCS leak detection instrument and the proposed change would allow 30 days for restoration. However, adequate information continues to be furnished to the plant staff to assure that RCS leakage does not go undetected. In addition to the remaining operable automatic RCS leak detection instrument, the TS required actions provide remedial measures that ensure RCS leakage continues to be monitored by diverse means. As such, potential RCS leakage will not go undetected and operation with one required leak detection instrument inoperable continues to be limited by the TS. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce any new equipment into the plant or alter the manner in which existing equipment will be operated. Therefore the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The applicable required actions and remaining operable leakage detection monitor provide adequate information to the plant staff to ensure that RCS leakage does not go undetected. In addition, operation with one required leak detection instrument inoperable continues to be limited by the TS (30 days). As such, potential RCS leakage will not go undetected and operation in the condition where a single failure could cause a loss of automatic leakage detection continues to be limited and therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post

Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: July 29, 1999.

Description of amendment request: The proposed amendments would change the Limiting Condition for Operation 3.1.7, "Standby Liquid Control (SLC) System." The proposed amendments would change "greater than the Region B limits," which could be misleading, to "within the Region B limits."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the Unit 1 and Unit 2 Technical Specifications do not increase the probability or consequences of any previously evaluated accident or transient. These changes are administrative in nature only and are intended to revise a misleading statement in Condition A of Limiting Condition for Operation (LCO) 3.1.7, "Standby Liquid Control (SLC) System." The change ensures the proper condition is entered when expected and the sodium pentaborate solution temperature, concentration, and volume limits are not exceeded without appropriate actions being taken. As currently written, Condition A of LCO 3.1.7 could be entered whenever the sodium pentaborate solution is not within Region A limits, but is greater than Region B limits as depicted in Unit 1 and Unit 2 Technical Specifications Figures 3.1.7–1 and 3.1.7–2. This is incorrect; Condition A should be entered whenever the solution is not within Region A limits, but is within Region B limits. If the solution is not within Region A limits and is greater than Region B limits, both Standby Liquid Control subsystems are inoperable and Condition C should be entered.

Technical Specifications Figure 3.1.7–1 displays the sodium pentaborate solution volume versus concentration requirements; Figure 3.1.7–2 displays the solution concentration versus temperature requirements. Each figure contains three areas: Region A, Region B, and the area not in either Region A or Region B. Region A is the permissible region of continuous operation and is represented by a four- or five-sided area. Region B is the original licensing basis region and is represented by a four-sided area. If the sodium pentaborate solution temperature, concentration, and volume combinations are within Region A, the requirements of 10 CFR 50.62, "Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants," are met, no condition applies, and no actions need be taken. If solution temperature, concentration, and volume combinations are not within Region A, but within Region B, then the original licensing basis is met and operation within this region is acceptable for up to 72 hours (Unit 1 FSAR, section 3.8.4, Revision 6, page 3.8–6; Unit 2 FSAR, section 4.2.3.4.3, Revision 7, page 4.2–98). If solution temperature, concentration, and volume combinations are not within either region, then the ability of the Standby Liquid Control system to shut down the reactor is not assured and only eight hours is acceptable to restore the solution to at least within Region B before the plant must be shut down.

Condition A contains misleading wording which could allow operation outside both Region A and Region B for more than eight hours. Specifically, it could be interpreted that Condition A allows the sodium pentaborate solution temperature, concentration, and volume to be greater than Region B limits for up to 72 hours. Because Region B is demarcated by a four-side area, the terms "within Region B" and "greater than Region B limits" could be interpreted to indicate different, and mutually exclusive, areas of Figures 3.1.7–1 and 3.1.7–2. Indeed, "greater than Region B limits" could be interpreted to refer to most or all of the area neither in Region A nor Region B. For example, 20 weight percent sodium pentaborate solution at 50°F is a point on Figure 3.1.7–2 which is "greater than the Region B limits," yet it is a point at which the solution will precipitate in the storage tank rendering the system incapable of injecting the proper amount of sodium pentaborate into the reactor pressure vessel. Obviously, both Standby Liquid Control subsystems would be inoperable if the solution were at this point and Condition C should be entered to limit severely the time the unit may continue to operate with the solution in this state. However, the wording of Condition A could cause an erroneous interpretation which would inappropriately extend this time from eight to 72 hours.

The proposed changes correct the wording of Condition A to ensure this condition is not entered inappropriately and to ensure the proper condition is entered for those combinations of solution temperature, concentration, and volume not within Region A or Region B. These changes do not increase the probability of any previously evaluated accident or transient because they are administrative in nature and do not alter any plant operation or design features or requirements which could result in systems or components performing closer to their operational or design limits and thereby increasing the possibility of a failure. These changes do not increase the consequences of any previously evaluated accident or transient because they ensure the sodium pentaborate solution limits are not exceeded without appropriate actions being taken thereby ensuring the Standby Liquid Control system is capable of mitigating the consequences of an ATWS event.

2. Do the proposed changes create the possibility of a new or different type of accident from any previously evaluated?

The proposed changes to the Unit 1 and Unit 2 Technical Specifications do not create the possibility of a new or different type of accident from any previously evaluated. The changes are administrative in nature only and are intended to clarify Condition A of LCO 3.1.7. They ensure the proper condition is entered when expected and the sodium pentaborate solution temperature, concentration, and volume limits are not exceeded without appropriate actions being taken. Those limits, the conditions under which the Standby Liquid Control system is required to be operable, and the operation of the system remain unchanged and will continue to be as described, assumed, and analyzed in the Unit 1 and Unit 2 Final Safety Analysis Reports, sections 3.8 and 4.2.3.4, respectively. The only result of the proposed changes is to reduce the time limit for continued unit operation with sodium pentaborate solution temperature, concentration, or volume outside Region A and Region B from 72 hours to eight hours. Consequently, the possibility of a new or different type of accident can not be created by these changes.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The proposed changes to the Unit 1 and Unit 2 Technical Specifications do not involve a reduction in the margin of safety. The changes are administrative in nature only and are intended to clarify Condition A of LCO 3.1.7. They ensure the proper condition is entered when expected and the sodium pentaborate solution temperature, concentration, and volume limits are not exceeded without appropriate actions being taken. Those limits, the conditions under which the Standby Liquid Control system is required to be operable, and the operation of the system remain unchanged by the proposed changes and will continue to be as described, assumed, and analyzed in the Unit 1 and Unit 2 Final Safety Analysis Reports. Therefore, the margin of safety, that is, the ability to bring the reactor to a subcritical condition under its most reactive conditions with the Standby Liquid Control system, as embodied by the sodium pentaborate solution temperature, concentration, and volume limits and the system operability requirements will not be reduced.

In conclusion, this proposed license amendment involves no significant hazards consideration as determined by the standards set forth by the NRC in 10 CFR 50.92(c). Specifically, it has been shown in the preceding paragraphs that the proposed changes:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated,

2. Do not create the possibility of a new or different type of accident from any previously evaluated, and

3. Do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of amendment request: July 28, 1999.

Description of amendment request: The proposed amendment would add to the Technical Specifications (TS), new limiting conditions for operation and surveillance requirements for the Oscillation Power Range Monitor (OPRM) instrumentation installed in response to Generic Letter 94–02.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of BFN [Brown Ferry Nuclear Plant] Unit 3 in accordance with the proposed change to the TS does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is to enable the OPRM Upscale trip function which is contained in the previously installed PRNM [Power Range Neutron Monitoring] equipment. Enabling the OPRM hardware provides the long term stability solution required by Generic Letter 94–02. This hardware incorporates the Option III detect and suppress solution reviewed and approved by the NRC in NEDO–31960, "BWROG Long Term Stability Solutions Licensing Methodology." The OPRM is designed to meet all requirements of GDC 10 and 12 by automatically detecting and suppressing design basis thermal-hydraulic power oscillations prior to violating the fuel MCPR [minimum critical power ratio] Safety Limit. The OPRM system provides this protection in the region of the power-to-flow map where instabilities can occur, including the region where ICAs [Interim Corrective Actions] previously restricted operation because of stability concerns. Thus, the ICA restrictions on plant operations are deleted from the TS, including region avoidance and the requirement for the operator to manually scram the reactor with no recirculation loops operating. Operation at high core powers with low core flows may cause a slight, but not significant, increase in the probability that an instability can occur. This slight increase is acceptable because subsequent to the automatic detection of a design basis instability, the OPRM Upscale trip provides an automatic scram signal to the RPS which is faster protection than the operator initiated manual scram required by the current ICAs. Because of this rapid automatic action, the consequences of an instability event are not increased as a result of the installation of the OPRM system because it eliminates operator actions.

Based on the above discussion, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment permits BFN to enable the OPRM power oscillation detect and suppress function provided in previously installed PRNM hardware, and it simultaneously deletes certain restrictions which preclude operation in regions of the power-to-flow map where oscillations potentially may occur. Enabling the OPRM Upscale trip function does not create any new system hardware interfaces nor create any new system interactions. Potential failures of the OPRM Upscale trip result either in failure to perform a mitigation action or in spurious initiation of a reactor scram. These failures would not create the possibility of a new or different kind of accident. Based on the above discussion, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The OPRM Upscale trip function implements BWROG Stability Option III, which was developed to meet the requirements of GDC 10 and GDC 12 by providing a hardware system that detects the presence of thermal-hydraulic instabilities and automatically initiates the necessary actions to suppress the oscillations prior to violating the MCPR Safety Limit. The NRC has reviewed and accepted the Option III methodology described in Licensing Topical Report NEDO–31960 and concluded this solution will provide the intended protection. Therefore, it is concluded that there will be no reduction in the margin of safety as defined in TS as a result of enabling the OPRM Upscale trip function and simultaneously removing the operating restrictions previously imposed by the ICAs.

Based on the above discussion, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: July 20, 1999.

Description of amendment request: The licensee proposed the following five changes: (1) Figure 2.1–1, average power range monitor (APRM) Flow Reference Scram and APRM Rod Block Settings, the clarifying statement "Setpoints shall be [less than or equal to] values shown on the graph" is proposed to be added; (2) Bases Section 2.1.B, page 16, and Bases Section 3.2 APRM rod block trip discussion, page 77, the current Bases is proposed to be replaced with a more accurate discussion of the function, as identified in the Vermont Yankee Nuclear Power Station (VY) Final Safety Analysis Report (FSAR); (3) Table 3.1.1, Reactor Protection System (Scram) Instrument Requirements, APRM Upscale (Flow Bias) function, it is proposed to add "with a maximum of 120%" to the APRM High Flux (Flow Bias) Trip Function equation; (4) For Table 3.2.5, Control Rod-Block Instrumentation, Rod-Block Monitor (RBM) Upscale (Flow Bias) function, the caveat "with a maximum as defined in the COLR" [Core Operating Limits Report] is added to the Trip Setting equation; (5) For Bases page 77, it is proposed to delete the current paragraph describing the control rod-block systems and replace it with the following: "The trip logic for the nuclear instrumentation control rod block logic is 1 out of n; i.e., any trip on one of the six APRMs, six IRMs [intermediate range monitors] or four SRMs [source range monitors] will result in a rod block. The minimum instrument channel requirements for the IRM may be reduced by one for a short period of time to allow for maintenance, testing, or calibration. The RBM is

credited in the Continuous Rod Withdrawal During Power Range Operation transient for preventing excessive control rod withdrawal before the fuel cladding integrity safety limit [minimum critical power ratio] (MCPR) or the fuel rod mechanical overpower limits are exceeded. The RBM upper limit is clamped to provide protection at greater than 100% rated core flow. The clamped value is cycle specific; therefore, it is located in the Core Operating Limits Report."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changes 1 and 3 are administrative and have no impact on technical content; therefore, they do not increase the probability or consequences of an accident previously evaluated.

Changes 2 and 5 clarify ambiguities in the Bases. The wording is descriptive only and does not change the meaning or intent of the specification. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Change 4 adds the Rod Block Monitor Upscale (Flow Bias) maximum value limitation to the Technical Specifications. Limiting the upscale trip setting at flows in excess of 100% of rated core flow ensures the assumptions of the Continuous Rod Withdrawal During Power Range Operation Transient are met. No other accident or transient analyses are affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Change 4, limiting the maximum value for the Rod Block Monitor Upscale (Flow Bias) function, is a change to plant design, in that it clamps the upscale trip setting at flows in excess of 100% of rated core flow at the 100% core flow value. This change ensures the assumptions of the Continuous Rod Withdrawal During Power Range Operation Transient are met and has no effect on any other accident or transient analyses. Changes 1, 2, 3, and 5 do not involve a change to the plant design.

None of the proposed changes affects any parameters or conditions that could contribute to the initiation of any accident. No new accident modes are created. No safety-related equipment or safety functions, other than the Rod Block Monitor as discussed above, are altered as a result of these changes.

Based on the above VY has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Changes 1 and 3 are administrative and have no impact on technical content. Therefore, they have no effect on margin of safety.

Changes 2 and 5 clarify ambiguities in the Bases, using wording taken directly from the FSAR. The wording is descriptive only and does not change the meaning or intent of the specification. Therefore, these changes do not involve a significant reduction in a margin of safety.

Change 4 adds the Rod Block Monitor Upscale (Flow Bias) maximum value limitation to the Technical Specifications. Limiting the upscale trip setting at flows in excess of 100% of rated core flow ensures the assumptions and, therefore the margin of safety, of the Continuous Rod Withdrawal During Power Range Operation transient are met. No other accident or transient analyses are affected. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notice was previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina

Date of amendment request: July 30, 1999.

Brief Description of amendment: The proposed amendment would revise Required Action A.1 of Technical Specification Limiting Condition for Operation 3.7.8, "Ultimate Heat Sink (UHS)," to allow a Completion Time of 72 hours to restore service water temperature to less than or equal to 95°F prior to entering the required actions for plant shutdown. The amendment request was proposed as a temporary change to be in effect until September 30, 1999.

Date of publication of individual notice in the **Federal Register**: August 10, 1999 (64 FR 43406).

Expiration date of individual notice: August 24, 1999, for comments; September 8, 1999, for hearings.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances

provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: May 23, 1997, as supplemented September 27, 1998, and May 26, 1999.

Brief description of amendments: The amendments revise the Technical Specifications to allow the installation of ABB Combustion Engineering leak tight sleeves in defective steam generator tubes as a tube repair method.

Date of issuance: August 5, 1999.

Effective date: August 5, 1999, to be implemented within 45 days.

Amendment Nos.: Unit 1—120, Unit 2—120, Unit 3—120.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 16, 1999 (64 FR 32285).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: March 14, 1997.

Brief description of amendments: The amendments deleted license conditions which have been satisfied, revise others to delete parts which are no longer applicable or to revise references, and make editorial changes.

Date of issuance: August 10, 1999.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 110.

Facility Operating License Nos. NPF–37 and NPF–66: The amendments revised the Licenses.

Date of initial notice in **Federal Register**: April 22, 1998 (63 FR 19966).

The Commission's related evaluation of the amendments is contained in an Environmental Assessment dated July 7, 1999 (64FR36722), and a Safety Evaluation dated August 10, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: March 30, 1999, as supplemented June 30, 1999.

Brief description of amendments: The amendments revise the Technical Specifications, Section 3/4.6.G, "Leakage Detection Systems," to allow an alternate methodology for quantifying Reactor Coolant System (RCS) leakage when the normal RCS leakage detection system is inoperable.

Date of issuance: August 4, 1999.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 189 & 186.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24194).

The June 30, 1999, submittal provided additional clarifying information that did not change the original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: March 3, 1999, as supplemented May 27, and June 22, 1999.

Brief description of amendments: The amendments change the required qualifications for operations management specified in the technical specifications (TSs) for the Beaver Valley Power Station, Units 1 and 2 (BVPS–1 and BVPS–2). The requirement that the operations manager hold a Senior Reactor Operator (SRO) license at the time of appointment is changed in the TSs to require that the assistant operations managers, one for each unit, hold an SRO license on their assigned unit. The revised TSs require the operations manager to hold, or have held, an SRO license on a pressurized water reactor. Additionally, the Updated Final Safety Analysis Report (UFSAR) for each unit is changed to require the operations manager to "hold, or have held," an SRO license rather than "hold" a license. The revised UFSARs require the same as the TSs; that the assistant operations managers hold an SRO license on the unit to which they are assigned. Finally, the amendments substitute generic personnel titles for plant-specific personnel titles in the BVPS–1 and BVPS–2 TSs. The correlation between generic titles and plant-specific titles is provided in the revised BVPS–2 UFSAR.

Date of issuance: August 10, 1999.

Effective date: Both units, as of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 224 and 100.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19556).

The May 27, and June 22, 1999, letters provided additional information but did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: November 24, 1998, as supplemented June 23, 1999.

Brief description of amendment: The amendment approves the addition of a safety-related diesel-driven emergency feedwater pump (EFP–3) as a functional replacement for the existing motor-driven pump, addition of technical specifications and surveillances for this new pump, and deletion of cycle specific interim technical specifications which would not be required after the addition of the new pump.

Date of issuance: August 11, 1999.

Effective date: As of the date of issuance and shall be implemented prior to commencing cycle 12 operation.

Amendment No.: 182.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 13, 1999 (64 FR 2247).

The supplemental letter dated June 23, 1999, did not change the original proposed no significant hazards consideration determination, or expand the scope of the amendment request as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 1999.

No significant hazards consideration comments received: No

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

No significant hazards consideration comments received: No

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 4, 1998.

Description of amendment request: To revise Technical Specifications Surveillance Requirement 4.5.2b.1 to delete the prescribed method of venting the Emergency Core Cooling System (ECCS) which would allow an alternate method to verify that the ECCS piping is full of water. In addition, the associated Bases are being revised to reflect the intent of the surveillance requirement.

Date of issuance: August 12, 1999.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 61.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4157).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1999.

No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 4, 1999.

Brief description of amendment: The amendment changes the Technical Specifications by extending the allowed outage time for the 32 emergency diesel generator and its fuel oil storage tank.

Date of issuance: August 9, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 190.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 6, 1999 (64 FR 36408).

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 25, 1996, as supplemented April 26, 1996, September 12, 1996, March 17, 1997, September 9, 1997, December 30, 1998, and May 19, 1999.

Brief description of amendment: The amendment extends the allowed outage time for an emergency diesel generator (EDG) system from 7 to 14 days, revises requirements for EDG testing at power, and revises electrical power requirements for cold shutdown and refueling modes.

Date of issuance: July 30, 1999.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 253.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notices in **Federal Register:** March 27, 1996 (61 FR 13532) and June 30, 1999 (64 FR 35208).

The licensee provided additional information on April 26, 1996, September 12, 1996, March 17, 1997, September 9, 1997, and December 30, 1998, that provided clarifying information within the scope of the initial **Federal Register** notice and did not change the staff's original proposed no significant hazards consideration determination. The changes proposed on May 19, 1999, were reflected in the staff's revised proposed finding of no significant hazards consideration, and encompass the additional information provided by the licensee.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: June 19, 1998, (Unit 1) and August 5, 1998, (Unit 2) as supplemented by letter dated November 23, 1998.

Brief description of amendments: The amendments to the Unit 1 and Unit 2 Technical Specifications (TSs) involve the addition of a new section entitled "Oscillation Power Range Monitoring (OPRM) Instrumentation" and revisions to Section 3.4.1 "Recirculation Loops Operating" to remove the specifications related to thermal power stability which are no longer required after the installation of OPRM instrumentation.

Date of issuance: July 30, 1999.

Effective date: Effective as of its date of issuance and is to be implemented within 90 days following startup from the Unit 2 ninth Refueling Inspection Outage, currently scheduled for April 16, 1999.

Amendment Nos.: 184 and 188.

Facility Operating License Nos. NPF–14 and NPF–22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1998 (63 FR 43210) and August 26, 1998 (63 FR 45528).

The November 23, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 30, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendments: April 23, 1999.

Brief description of amendments: The amendment changes Permanently Defueled Technical Specification D3/4.1, "Spent Fuel Pool Level," to replace a specific reference to spent fuel pool (SFP) level alarm switches with a generic reference to SFP level instrumentation.

Date of issuance: August 13, 1999.

Effective date: August 13, 1999, to be implemented within 30 days.

Amendment No.: 126.

Facility Operating License Nos. NPF–37 and NPF–66: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 30, 1999 (64 FR 35210).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Central Library, Government Documents, 828 I Street, Sacramento, California 95814.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 2, 1999, as supplemented by letter dated July 13, 1999.

Brief description of amendments: The amendments allow the use of a "check valve with flow through the valve secured" as an additional means to isolate an affected containment penetration (i.e., a penetration with an inoperable penetration barrier) in Technical Specification 3.6.3, Action b.

Date of issuance: August 3, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–113; Unit 2–101.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 7, 1999 (64 FR 17030).

The July 13, 1999, supplement provided additional clarifying information within the scope of the original notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: March 12, 1997, as supplemented by letters dated March 30, 1999, April 23, 1999, and June 18, 1999.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to extend, from 7 days to 14 days, the Allowable Outage Time applicable to an inoperable emergency diesel generator.

Date of issuance: August 2, 1999.

Effective date: August 2, 1999.

Amendment Nos.: 259 and 218.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the TS.

Date of initial notice in **Federal Register:** June 30, 1999 (64 FR 35211)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1999.

No significant hazards consideration comments received: None.

Local Public Document Room location: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: May 4, 1999, as supplemented by letter dated June 4, 1999.

Brief description of amendments: The amendments correct a number of editorial errors in the Technical Specifications that occurred with the issuance of Amendment No. 64 to Facility Operating License Nos. NPF–87 and NPF–89, regarding the improved Technical Specifications conversion. In addition, Surveillance Requirement (SR) 3.8.4.7 is revised to allow the substitution of a modified performance discharge test, for a service test, for the 125 VDC batteries and SRs 3.8.1.7, 3.8.1.12, 3.8.1.15, and 3.8.1.20 are revised to separate the voltage and frequency acceptance criteria for the diesel generator start surveillances into two sets of criteria; those criteria required to be met within 10 seconds, and those criteria required to be met following achievement of steady state conditions.

Date of issuance: August 3, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–Amendment No. 66; Unit 2–Amendment No. 66.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 2, 1999 (64 FR 29715); and June 30, 1999 (64 FR 35212).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: February 1, 1999, as supplemented on April 19 and April 23, 1999.

Brief description of amendment: The amendment totally replaces the current Technical Specifications Section 6.0, "Administrative Controls." Administrative changes to certain other sections of the Technical Specifications were made to conform to the changes resulting from the re-write of Section 6.0.

The changes represent a comprehensive upgrade of Section 6.0 of the Vermont Yankee Technical Specifications, incorporating improvements in content and format based on industry standards. In accordance with industry practice, some Technical Specifications requirements are being relocated to the recently implemented Vermont Yankee Technical Requirements Manual, Offsite Dose Calculation Manual, or Vermont Yankee Operational Quality Assurance Manual and are being eliminated from the Technical Specification.

Date of Issuance: July 19, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 171.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 19, 1999 (64 FR 27326).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: June 3, 1999, as supplemented by letter dated July 22, 1999.

Brief description of amendment: The amendment updates the operating license to reflect the name change of the licensee from "Washington Public Power Supply System" to "Energy Northwest" and the name change of the facility from "WPPSS Nuclear Project No. 2" to "WNP–2."

Date of issuance: August 2, 1999.

Effective date: August 2, 1999.

Amendment No.: 157.

Facility Operating License No. NPF–21: The amendment revised the operating license.

Date of initial notice in **Federal Register:** June 30, 1999. (64 FR 35214).

The July 22, 1999, supplemental letter provided additional clarifying information, did not significantly expand the scope of the application as originally noticed and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 29, 1999. (TSCR 211), as supplemented June 9 and July 15, 1999.

Brief description of amendments: These amendments reflect changes to Sections 15.6 and 15.7 of the Point Beach Nuclear Plant, Units 1 and 2, Technical Specifications (TSs). The changes are considered administrative in nature and reflect personnel title changes, an increase in minimum operating crew shift staffing, relocation of the Manager's Supervisory Staff composition and functional requirements to owner-controlled documents, and revisions to the procedure review and approval process.

Date of issuance: August 11, 1999.

Effective date: August 11, 1999. The TSs shall be implemented within 90 days. Implementation also includes removal of selected requirements from TS Section 15.6, Administrative Controls, and the relocation of other requirements to licensee-controlled documents as described in the licensee's application dated January 29, 1999, as supplemented June 9 and July 15, 1999, and evaluated in the staff's safety evaluation attached to the amendments. With respect to changes to the final safety analysis report (FSAR), Wisconsin Electric Power Company shall incorporate the revisions into the next FSAR update in accordance with the schedule in 10 CFR 50.71(e).

Amendment Nos.: Unit 1–190; Unit 2–195.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9202).

The June 9 and July 15, 1999, letters provided additional clarifying information within the scope of the original **Federal Register** notice and did not affect the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 10, 1999.

Brief description of amendment: The amendment revised Technical Specification Table 3.3–4, Functional Unit 7.b., Automatic Switchover to Containment Sump (Refueling Water Storage Tank Level—Low-Low) to reflect the results of calculations that were performed for the associated instrumentation setpoints to consider the density variations due to temperature and boric acid concentrations.

Date of issuance: August 9, 1999.

Effective date: August 9, 1999, and shall be implemented within 60 days from issuance of the amendment.

Amendment No.: 126.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 30, 1999 (64 FR 35215).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 11, 1999.

Brief description of amendment: The amendment revises TS 3.7.1.6, Steam Generator Atmospheric Relief Valves, and associated Bases to (1) require four atmospheric relief valves (ARVs) to be operable, (2) eliminate the use of "required" in the action statements, (3) provide action statements to address inoperability of two ARVs and three or more ARVs due to causes other than excessive leakage, and (4) limit the Limiting Condition for Operation 3.0.4 exception to when one ARV is inoperable due to causes other than excessive seat leakage.

Date of issuance: August 12, 1999.

Effective date: August 12, 1999, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 127.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 30, 1999 (64 FR 35215).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 18th day of August 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21914 Filed 8–24–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Availability of Draft NUREGs on Risk Review of Use of Nuclear Byproduct Material

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability and request for comments.

SUMMARY: NRC is announcing the availability of, and requesting comment on, three draft documents: NUREG/CR–6642, "Risk Analysis and Evaluation of Regulatory Options for Nuclear Byproduct Material Systems;" NUREG–1711, "Nuclear Byproduct Material Risk Review: Regulatory and Other Bases for Barriers to Dose;" and NUREG–1712, "Nuclear Byproduct Material Risk Review: Results of Survey of NRC and Agreement State Materials Licensing and Inspection Personnel," all dated July 1999.

NRC recognizes that, in order to accomplish its principal mission in an efficient and cost-effective manner, it has to focus on those regulated activities that pose the greatest risk to the public. The nuclear byproduct material risk review is one of several staff actions to address the issue. The intent is to develop a clearly understood technical basis for determining whether and what risk-informed adjustments can be made to the regulation of nuclear byproduct material. Nuclear byproduct material is defined in section 11.e(1) of the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR), § 30.4. Regulation of this material is addressed in 10 CFR parts 30 through 36 and 39. The three draft documents that are the subject of this notice have been developed as part of the risk review. NUREG/CR–6642 presents a detailed, comparative risk analysis of nuclear byproduct materials, organized into groups of activities or "systems" (e.g., medical diagnostic devices, nuclear pharmacy, pool irradiators); describes the methodology used in the risk analysis; and provides the results of the analyses through the date of publication. NUREG–1711 is a compilation of existing barriers (defined as those physical and/or procedural controls designed to limit worker and public radiation doses) and the currently instituted support for those barriers (e.g., regulations, license conditions, good practices). NUREG–1712 summarizes the responses to a survey of NRC and Agreement State materials licensing and inspection personnel regarding risks associated with the use of nuclear byproduct material.

These documents are for public comment and do not communicate NRC positions on how any particular nuclear byproduct material system may be regulated in the future. The documents are being distributed for comment to encourage public participation in developing accurate information that will be used in assessing risks associated with use of nuclear byproduct material. The documents will be finalized using the public comments received.

DATES: The comment period ends October 25, 1999. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG/CR–6642, draft NUREG–1711, and/or draft NUREG–1712 by writing to the U.S. Nuclear Regulatory Commission, ATTN: Dr. Dennis Serig, Mail Stop TWFN 8–F–5, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to dis@nrc.gov. Single copies of draft NUREG/CR–6642, draft NUREG–1711, and draft NUREG–1712 are also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. NRC requests comments specifically with respect to the clarity and effectiveness of the language used in these documents. These comments should also be sent to the address listed above.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Serig, Mail Stop TWFN 8–F–5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7901; e-mail: *dis@nrc.gov.*

Electronic Access

Draft NUREG/CR–6642 and NUREG–1711 and 1712 are available electronically by visiting NRC's Home Page (*http://www.nrc.gov/nrc/nucmat.html*).

Dated at Rockville, MD, this 6th day of August, 1999.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 99–22028 Filed 8–24–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23953; File No. 812–11602]

The Equitable Life Assurance Society of the United States, et al.

August 19, 1999.

AGENCY: Securities and Exchange Commission (the "Commission" or "Sec").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

Summary of Application: Applicants request an order to permit certain registered unit investment trusts to substitute shares of EQ Advisors Trust, a registered open-end investment company, for shares of The Hudson River Trust, another registered open-end investment company, currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.

Applicants: For purposes of the order requested pursuant to Section 26(b), The Equitable Life Assurance Society of the United States ("Equitable"), Separate Account A of Equitable ("SA A"), Separate Account No. 301 of Equitable ("SA 301"), Separate Account No. 45 of Equitable ("SA 45"), Separate Account No. 49 of Equitable ("SA 49"), Separate Account I of Equitable ("SA I"), and Separate Account FP of Equitable ("SA FP", and together with SA A, SA 301 SA 45, SA 49, and SA I, the "Equitable Accounts") (collectively, the "Section 26 Applicants"). For purposes of the order pursuant to Section 17(b), Equitable, the Equitable Accounts, Separate Account No. 51 of Equitable ("SA 51"), and Separate Account No. 65

of Equitable ("SA 65" and together with Equitable, the Equitable Accounts, and SA 51, the "Section 17 Applicants").

Filing Date: The application was filed on April 30, 1999, and amended and restated on August 12, 1999.

Hearing or Notification Of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 13, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants: c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Mary Joan Hoene, Esq., Vice President and Counsel.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Equitable is a New York stock life insurance company authorized to sell life insurance and annuities in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. Equitable is the depositor and sponsor of SA A, 301, SA 45, SA 49, SA I, SA FP, SA 51 and SA 65, each a segregated asset account of Equitable.

2. Equitable is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), as amended, and a wholly-owned subsidiary of The Equitable Companies Incorporated ("ECI"), a member of the global AXA Group, which is a holding company for an international group of insurance and related financial services companies. Alliance Capital Management L.P. ("Alliance"), an investment adviser registered under the Advisers Act, is a majority-owned publicly traded subsidiary of ECI.

3. Each of SA A, SA 301, SA 45, SA 49, SA I, and SA FP (collectively, the "Equitable Accounts") is registered with the Commission under the 1940 Act as a unit investment trust. The assets of the Equitable Accounts support certain variable annuity contracts or variable life insurance policies (collectively, the "Contracts"). The variable annuity contracts issued by Equitable include flexible premium deferred variable annuity contracts and single premium immediate variable annuity contracts. Some of the variable annuity contracts are issued as group contracts, while the remaining annuity contracts are issued to or on behalf of individuals. The variable life insurance policies issued by Equitable include flexible premium, scheduled premium and single premium individual variable life, second to die and corporate variable life policies.

4. The Hudson River Trust ("HRT") is organized as a Massachusetts business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the Securities Act of 1933 (the "Securities Act") on Form N–1A. HRT is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers shares of 14 separate portfolios ("Current Funds"), all of which would be involved in the proposed substitutions. HRT sells shares to the Equitable Accounts to serve as the investment medium for the Contracts. HRT currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. Each Current Fund is advised by Alliance.

5. EQ Advisors Trust ("EQAT") is organized as a Delaware business trust. It is registered as an open-end management investment company under the 1940 Act and its shares are registered under the 1933 Act on Form N–1A. EQAT is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers 25 separate portfolios of shares. EQAT sells shares to the Equitable Accounts in connection with the Contracts.[1] EQAT currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. In connection with the proposed substitutions, EQAT has filed with the Commission post-effective amendment No. 11 to its registration statement in order to register 14 new portfolios ("New Funds"). EQ Financial Consultants, Inc. ("EQ Financial"), an indirect wholly-owned subsidiary of Equitable, serves as investment manager of each of the current 25 portfolios of EQAT under an investment management agreement between EQAT and EQ Financial.[2] EQ Financial is an investment adviser registered under the Advisers Act and a broker-dealer registered under the Securities Exchange Act of 1934, as amended. Pursuant to the investment management agreement, the investment manager ("Manager") is responsible for the general management and administration of EQAT, including selecting the investment advisers for each of EQAT's portfolios ("Advisers"), monitoring their investment programs and results, reviewing brokerage matters, overseeing compliance issues, and carrying out the directives of the Board of Trustees. Alliance will serve as the Adviser to each of the New Funds. EQAT has received an exemptive order from the Commission ("Multi-Manager Order") that permits EQ Financial, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with EQ Financial, subject to certain conditions, including approval of the Board of Trustees of EQAT, and without the approval of shareholders to: (a) employ a new Adviser or Advisers for any portfolio pursuant to the terms of a new Investment Advisory Agreement, in each case either as a replacement for an existing Adviser or as an additional Adviser; (b) change the terms of any Investment Advisory Agreement; and (c) continue the employment of an existing Adviser on the same contract terms where a contract has been assigned because of a change of control of the Adviser.[3] In

[1] An exemptive order was issued by the Commission granting exemptions from the 1940 Act to permit shares of EQAT to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or annuity contracts ("EQAT Shared Funding Order"). *See* EQ Advisors Trust, Investment Company Act Rel. Nos. 22651 (April 30, 1997) (order) and 22602 (April 4, 1997) (notice).

[2] During 1999, EQ Financial plans to change its name to AXA . dvisors, Inc. On July 12, 1999, the Board of Trustees of EQAT approved a transfer of the Investment Management Agreement between EQAT and EQ Financial to Equitable. That transfer of the Investment Management Agreement is expected to occur prior to October 1, 1999.

[3] *See* EQ Advisors Trust and EQ Financial Consultants, Inc., Investment Company Act Rel.

Continued

such circumstances, Contract owners would receive notice of any such action, including information concerning any new Adviser that normally is provided in proxy materials.

6. Each of the Contracts expressly reserve to the Section 26(b) Applicants the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by the Equitable Accounts. The prospectuses describing the Contracts contain appropriate disclosure of this right.

7. Equitable, on its own behalf and on behalf of the Equitable Accounts, proposes to substitute securities issued by the 14 New Funds for the securities issued by the 14 Current Funds. Specifically, Applicants propose to substitute: (i) Class IA Shares of each New Fund for Class IA Shares of each Current Fund; and (ii) Class IB Shares of each New Fund for Class IB Shares of each Current Fund. The Applicants represent that the substitutions are part of an overall business plan by Equitable to make the Contracts more competitive and attractive to potential customers and Contract owners and to enable Equitable to more efficiently administer and oversee the Contracts. The Section 26 Applicants state that it is their belief that the substitutions will: (1) facilitate Contract owner understanding of the underlying investment options for the Contracts and reduce the potential for Contract owners to be confused by the two separate underlying investment vehicles (*i.e.*, portfolios of HRT and portfolios of EQAT) that are used to fund the Contracts; (2) reduce the administrative burden of maintaining two separate underlying investment companies for the Contracts; and (3) consolidate the underlying investment vehicles in EQAT.

8. The Section 26(b) Applicants represent that EQAT's Manager will serve as Manager of each New Fund and that Alliance will serve as Adviser to each New Fund. The Applicants also state that each New Fund will have investment objectives, investment strategies and anticipated risks that are identical in all material respects to those of the corresponding Current Fund. The investment objectives of each Current Fund and the corresponding New Fund are shown below.

Current portfolio	Investment objective	New portfolio	Investment objective
Alliance Aggressive Stock.	Seeks to achieve long-term growth of capital	Alliance Aggressive Stock.	Seeks to achieve long-term growth of capital.
Alliance Balanced	Seeks to achieve a high return through both appreciation of capital and current income.	Alliance Balanced	Seeks to achieve a high return through both appreciation of capital and current income.
Alliance Common Stock.	Seeks long-term growth of its capital and increase in income.	Alliance Common Stock.	Seeks long-term growth of its capital and increase in income.
Alliance Conservative Investors.	Seeks to achieve a high total return without, in the opinion of the Adviser, undue risk to principal.	Alliance Conservative Investors.	Seeks to achieve a high total return without, in the opinion of the Adviser, undue risk to principal.
Alliance Equity Index	Seeks a total return before expenses that approximates the total return performance of the S&P 500 Index, including reinvestment of dividends, at a risk level consistent with that of the S&P 500 Index.	Alliance Equity Index	Seeks a total return before expenses that approximates the total return performance of the S&P 500 Index, including reinvestment of dividends, at a risk level consistent with that of the S&P 500 Index.
Alliance Global	Seeks long-term growth of capital	Alliance Global	Seeks long-term growth of capital.
Alliance Growth and Income.	Seeks to provide a high total return through a combination of current income and capital appreciation by investing primarily in income-producing common stocks and securities convertible into common stocks.	Alliance Growth and Income.	Seeks to provide a high total return through a combination of current income and capital appreciation by investing primarily in income-producing common stocks and securities convertible into common stocks.
Alliance Growth Investors.	Seeks to achieve the highest total return consistent with the Adviser's determination of reasonable risk.	Alliance Growth Investors.	Seeks to achieve the highest total return consistent with the Adviser's determination of reasonable risk.
Alliance High Yield	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation.	Alliance High Yield	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation.
Alliance Intermediate Government Securities.	Seeks to achieve high current income consistent with relative stability of principal through investment primarily in debt securities issued or guaranteed as a principal and interest by the U.S. Government or its agencies or instrumentalities.	Alliance Intermediate Government Securities.	Seeks to achieve high current income consistent with relative stability of principal through investment primarily in debt securities issued or guaranteed as to principal and interest by the U.S. Government or its agencies or instrumentalities.
Alliance International	Seeks to achieve long-term growth of capital by investing primarily in a diversified portfolio of equity securities selected principally to permit participation in non-U.S. companies with prospects for growth.	Alliance International	Seeks to achieve long-term growth of capital by investing primarily in a diversified portfolio of equity securities selected principally to permit participation in non-U.S. companies with prospects for growth.
Alliance Money Market	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.	Alliance Money Market	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.
Alliance Quality Bond	Seeks to achieve high current income consistent with preservation of capital by investing primarily in investment grade fixed income securities.	Alliance Quality Bond	Seeks to achieve high current income consistent with preservation of capital by investing primarily in investment grade fixed income securities.

Nos. 23128 (April 24, 1998) (order) and 23093 (March 30, 1998) (notice). Before a New Fund may rely on the Multi-Manager Order, the operation of that New Fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved, following the substitutions proposed in the application, by a majority of that New Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order.

Current portfolio	Investment objective	New portfolio	Investment objective
Alliance Small Cap Growth.	Seeks to achieve long-term growth of capital	Alliance Small Cap Growth.	Seeks to achieve long-term growth of capital.

9. The Section 26(b) Applicants state that it is expected that: (i) the management fees (i.e., the total management fees and investment advisory fees paid to the Manager and the Adviser) with respect to each New Fund will be the same as the management fees currently applicable to the corresponding Current Funds; and (ii) there may be a slight increase in the total expense ratios of each of the New Funds as compared to those of the Current Funds. The Applicants also represent that the charts below show: (i) the management fees and total expenses for Class IA and Class IB shares of each of the Current Funds for the year ending December 31, 1998; and (ii) the estimated management fees and total expenses of Class IA and Class IB shares of each of the New Funds following the proposed substitutions. Estimated management fees and total expenses of the Class IA and Class IB shares of each of the New Funds are presented on a pro forma basis and are based upon the audited financial statements of HRT for the year ending December 31, 1998.

CLASS IA SHARES

[Year ending December 31, 1998, pro forma]

Current fund	Advisory fees (as percentage of average daily net assets)	Total expenses (as percentage of average daily net assets)	New fund	Management & advisory fees (as percentage of average daily net assets)	Total expenses (as percentage of average daily net assets
Alliance Aggressive Stock	0.54	0.56	Alliance Aggressive Stock	0.54	0.57
Alliance Balanced	0.41	0.45	Alliance Balanced	0.41	0.46
Alliance Common Stock	0.36	0.39	Alliance Common Stock	0.36	0.40
Alliance Conservative Investors	0.48	0.53	Alliance Conservative Investors	0.48	0.54
Alliance Equity Index	0.31	0.34	Alliance Equity Index	0.31	0.35
Alliance Global	0.64	0.71	Alliance Global	0.64	0.72
Alliance Growth and Income	0.55	0.58	Alliance Growth and Income	0.55	0.59
Alliance Growth Investors	0.51	0.55	Alliance Growth Investors	0.51	0.56
Alliance High Yield	0.60	0.63	Alliance High Yield	0.60	0.64
Alliance Intermediate Government Securities.	0.50	0.55	Alliance Intermediate Government Securities.	0.50	0.56
Alliance International	0.90	1.06	Alliance International	0.90	1.07
Alliance Money Market	0.35	0.37	Alliance Money Market	0.35	0.38
Alliance Quality Bond	0.53	0.57	Alliance Quality Bond	0.53	0.58
Alliance Small Cap Growth	0.90	0.96	Alliance Small Cap Growth	0.90	0.97

CLASS IB SHARES

[Year ending December 31, 1998, Pro Forma]

Current fund	Advisory fees (as percentage of average daily net assets)	12b–1 fees (percent)	Total expenses (as percentage of average daily net assets)	New fund	Management & advisory fees (as percentage of average daily net assets)	12b–1 fees	Total expenses (as percentage of average daily net assets)
Alliance Aggressive stock.	0.54	0.25	0.82	Alliance Aggressive Stock.	0.54	0.25	0.82
Alliance Balanced	0.41	0.25	0.70	Alliance Balanced	0.41	0.25	0.71
Alliance Common Stock.	0.36	0.25	0.64	Alliance Common Stock.	0.36	0.25	0.65
Alliance Conservative Investors.	0.48	0.25	0.78	Alliance Conservative Investors.	0.48	0.25	0.79
Alliance Equity Index.	0.31	0.25	0.59	Alliance Equity Index.	0.31	0.25	0.60
Alliance Global.	0.64	0.25	0.96	Alliance Global.	0.64	0.25	0.97
Alliance Growth and Income.	0.55	0.25	0.83	Alliance Growth and Income.	0.55	0.25	0.84
Alliance Growth Investors.	0.51	0.25	0.80	Alliance Growth Investors.	0.51	0.25	0.81
Alliance High Yield	0.60	0.25	0.88	Alliance High Yield	0.60	0.25	0.89
Alliance Intermediate Government Securities.	0.50	0.25	0.80	Alliance Intermediate Government Securities.	0.50	0.25	0.81
Alliance International.	0.90	0.25	1.31	Alliance International.	0.90	0.25	1.32

CLASS IB SHARES—Continued

[Year ending December 31, 1998, Pro Forma]

Currend fund	Advisory fees (as percentage of average daily net assets)	12b–1 fees (percent)	Total expenses (as percentage of average daily net assets)	New fund	Management & advisory fees (as percentage of average daily net assets)	12b–1 fees	Total expenses (as percentage of average daily net assets)
Alliance Money Market.	0.35	0.25	0.62	Alliance Money Market.	0.35	0.25	0.63
Alliance Quality Bond.	0.53	0.25	0.81	Alliance Quality Bond.	0.53	0.25	0.82
Alliance Small Cap Growth.	0.90	0.25	1.20	Alliance Small Cap Growth.	0.90	0.25	1.21

10. The Section 26 Applicants state that they have filed with the Commission prospectuses or prospectus supplements that describe the proposed substitutions. The Section 26 Applicants have sent the appropriate prospectus or supplement (or other notice, in the case of Contracts no longer actively marketed and for which there are a relatively small number of existing Contract owners ("Inactive Contracts")) [4] containing this disclosure to all existing and new Contract owners and participants. Such disclosure described each of the New Funds, identified each Current Fund that is being replaced, and disclosed the impact of the substitutions on fees and expenses at the underlying fund level. In addition, management and counsel for EQAT have filed with the Commission a post-effective amendment to the current registration statement of EQAT on Form N–1A in order to register the 14 New Funds under the 1940 Act and to register shares in each New Fund under the 1933 Act. Applicants state that on or about August 30, 1999, all existing Contract owners and participants will be sent an additional Contract prospectus or supplement thereto (or other notice in the case of Inactive Contracts) that notifies them of the fact that the application has been noticed. Together with this disclosure, Applicants state that all existing Contract owners and participants also will be sent a prospectus for each of the New Funds into which their Current Funds will be substituted. New purchasers of Contracts will be provided with the Contract prospectuses or supplements containing disclosure that the application has been noticed, as well as a prospectus for each of such New Funds. These Contract prospectuses/supplements and New Fund prospectuses will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements. Confirmation of the substitutions will be sent to affected Contract owners and participants within five days after the substitutions are effected.

11. Applicants state that the substitutions will be effected by redeeming shares of the Current Funds on the date the substitutions will take place ("Substitution Date") at net asset value and using the proceeds to purchase shares of the New Funds at net asset value on the same date. No transfer or similar charges will be imposed and, on the Substitution Date, all Contract values will remain unchanged and fully invested. The Applicants expect that the substitutions will be effected by redeeming the shares of each Current Fund in-kind. Those assets will then be contributed in-kind to the corresponding New Fund to purchase shares of that New Fund. Redemptions and contributions in-kind ("In-Kind Transactions") will reduce the brokerage costs that otherwise would be incurred and will ensure that Contract values remain fully invested. In-kind redemptions and contributions will be done in a manner consistent with the investment objectives, policies and diversification requirements of each corresponding New Fund. The Manager of each New Fund will review the in-kind transactions to assure that the assets are suitable for the New Fund. All assets subject to in-kind redemption and purchase will be valued based on the normal valuation procedures of the redeeming and purchasing Funds, as set forth in the HRT and EQAt registration statements.

12. The significant terms of the substitutions describe above include:

a. The New Funds have investment objectives, investment strategies, and anticipated risks that are identical in all material respects to those of the Current Funds. In this regard, the Section 26 Applicants note that the New Funds will continue to employ the same portfolio managers currently employed by the Current Funds and are intended to mirror the investment options provided by the Current Funds.

b. The fees and expenses of the New Funds will in all cases be substantially similar to those of the Current Funds, assuming that the asset levels of the New Funds do not decrease significantly from the Current Funds' present asset levels. Again, the Section 26 Applicants note in this regard that given the substantial similarity of the Current Funds and the New Funds, Applicants do not expect there to be a reduction in the asset levels of the New Funds as a result of the proposed substitutions.

c. Contract owners and participants may transfer assets from the Current or New Funds to another investment option available under their Contract without the imposition of any fee, charge, or other penalty that might otherwise be imposed from the date of the initial notice through a date at least thirty days following the Substitution Date.

d. The substitutions, in all cases, will be effected at the net asset value of the respective shares of the Current Fund and the corresponding New Fund in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by the Section 26 Applicants, and with no change in the amount of any Contract owner's or participant's Contract value or in the dollar value of his or her investment in such Contract.

e. Contract owners and participants will not incur any fees or charges as a

[4] Applicants state that in reliance on the relief provided in Great-West Life Insurance Company (pub. avail. Oct. 23, 1990) ("Great-West") and in The Equitable Life Assurance Society of the United States (pub. avail. Oct. 4, 1990) ("*The Equitable*"), certain information about Inactive Contracts, the relevant Equitable Account, and the underlying fund are provided to Inactive Contract owners in lieu of filing post-effective amendments to the registration statements relating to those Inactive Contracts or delivering updated prospectuses to those Contract owners.

result of the proposed substitutions, nor will their rights or Equitable's obligations under the Contracts be altered in any way. Equitable will bear all expenses incurred in connection with the proposed substitutions and related filings and notices, including legal, accounting and other fees and expenses. The proposed substitutions will not cause the contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

f. Redemptions in-kind and contributions in-kind will be done in a manner consistent with the investment objectives, polices and diversification requirements of the applicable Current and New Funds, and the Manager will review in-kind transactions to assure that the assets are suitable for the New Fund. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the in-kind transactions.

g. The substitutions will not be counted as new investment selections in determining the limit, if any, on the total number of funds that Contract owners and participants can select during the life of a Contract.

h. The substitutions will not alter in any way the annuity or life benefits, tax benefits or any contractual obligations of the Section 26 Applicants under the Contracts.

i. Contract owners and participants may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

j. Contract owners and participants affected by the substitutions will be sent written confirmation of the substitutions that identify each substitution made on behalf of that Contract owner or participant within five days following the Substitution Date.

k. Before a New Fund may rely on the Multi-Manager Order, the operation of that New Fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved, following the substitutions proposed herein, by a majority of that New Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order.

13. The Section 26(b) Applicants state that they will not complete the substitutions as described in the application unless all of the following conditions are met:

a. The Commission will have issued an order approving the substitutions under Section 26(b) of the 1940 Act.

b. The Commission will have issued an order exempting the in-kind transactions from the provisions of Section 17(a) of the 1940 Act, to the extent necessary to carry out the substitutions as described herein.

c. The amendments to the registration statements for the Contracts describing the substitutions shall have become effective.

d. The amendments to the registration statement for EQAT adding the 14 New Funds shall have become effective.

e. Each Contract owner or participant will have been mailed effective prospectuses with respect to the New Funds and the effective amended/supplemented prospectus for the applicable Contracts (or other notice in the case of Inactive Contracts) [5] at least thirty days prior to the Substitution Date (Applicants state that Contract owners and participants were sent initial disclosure of the proposed substitutions following the initial filing of this application). In addition, in conjunction with this mailing, at least thirty days prior to the Substitution Date, each Contract owner or participant will have been sent a notice that describes the terms of the proposed substitutions and Contract owners' and participants' rights in connection with them.

f. The Section 26 Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the substitution of portfolios as described in the application, and that the transactions can be consummated as described therein under applicable insurance laws and under the various Contracts.

g. The Section 26 Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. Section 26(b) further provides that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The Section 26 Applicants submit that the Contracts expressly reserve to the Applicants the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by the Equitable Accounts, and that appropriate disclosure of this right is contained in the prospectuses describing the Contracts. The Applicants assert that they have reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares where a substitution could benefit the Contract owners.

3. The Section 26 Applicants maintain that the proposed substitutions protect the Contract owners who have allocated Contract value to the Current Funds by: (1) providing an underlying investment option that is substantially similar in all material aspects to the current investment option; and (2) providing such Contract owners with simpler and more focused disclosure documents.

4. The Section 26 Applicants submit that the proposed substitutions meet the standards that the Commission and its staff generally have applied to other substitutions that have been approved. In addition, the Applicants contend that none of the proposed substitutions is the type of substitution that Section 26(b) was designed to prevent. Unlike traditional unit investment trusts, the Contracts provide each Contract owner with the right to exercise his own judgment and transfer Contract values into any other available variable and/or fixed investment options. Additionally, Applicants state that the proposed substitutions will not, in any manner, reduce the number, nature or quality of the available investment options. The Applicants assert that the Contract owners will be offered the opportunity to transfer amounts out of the affected subaccounts without any cost or penalty that may otherwise have been imposed until thirty days after the Substitution Date. For these reasons, the Applicants

[5] The Section 26 Applicants state that they have sent and will continue to send Inactive Contract owners all relevant information about the proposed substitutions in accordance with the terms of Great-West and The Equitable. Applicants state that the substance of the disclosures about the substitutions that they will make to owners of Inactive Contracts will be essentially identical to the disclosures about the substitutions that they make to owners of all other outstanding Contracts. Applicants state that certain of these disclosures already have been delivered and that all such further disclosures will be sent at approximately the same time to owners of Inactive Contracts as to all other owners of outstanding Contracts.

maintain that the proposed substitutions will not result in the type of forced redemptions that Section 26(b) was designed to prevent.

5. The Section 26 Applicants further submit that the proposed substitutions also are unlike the type of substitution that Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners and participants select much more than a particular underlying fund in which to invest. The Contract owners also select the specific type of insurance coverage offered under the Contract, as well as other rights and privileges set forth in the Contract. The Applicants state that, in choosing to buy a Contract, the Contract owner also may have considered Equitable's size, financial condition, and reputation for service, and that none of those considerations and factors will change as a result of the proposed substitutions.

6. The Section 26 Applicants submit that, for all reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

7. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from knowingly purchasing any security or other property from such registered investment company.

8. Section 17(b) of the 1940 Act Authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

9. The Section 17 Applicants submit that each of the Current Funds may be deemed to be an affiliated person of an affiliated person (Equitable or the Equitable Separate Accounts) of the New Funds, and vice versa. In addition, each of the Current Funds and each of the New Funds may be deemed to be under the common control of Equitable or the Equitable Separate Accounts and, therefore, to be affiliated persons of each other. If viewed as such, the proposed In-Kind Transactions may be deemed to contravene Section 17(a) due to the affiliated status of the participants.

10. The Section 17 Applicants maintain that the terms of the proposed substitutions, including the consideration to be paid and received, are reasonable, fair, and do not involve overreaching because: (1) the transactions will not adversely affect or dilute the interests of Contract owners and participants; (2) with respect to those securities for which market quotations are readily available, the transactions will comply with the conditions set forth in Rule 17a–7, other than the requirement relating to cash consideration; and (3) with respect to those securities for which market quotations are not readily available, the transactions will be effected in accordance with each Fund's normal valuation procedures, as set forth in the HRT and EQAT registration statements. The Applicants assert that the In-Kind Transactions will be effected at the respective net asset values of the Current Funds and the New Funds and that, after the proposed In-Kind Transactions, the value of an Equitable Separate Account's investment in the New Funds will equal the value of its investment in the Current Funds before the In-Kind Transactions. The Applicants further maintain that none of the parties will be in a position to "dump" undesirable securities on either the Current or New Funds or to transfer desirable securities to other advisory clients because virtually all of the portfolio securities of each of the Current Funds will be transferred to the corresponding New Fund, and the portfolio securities were selected and retained, or will be selected between the date of the amended and restated application and the Substitution Date, without regard to the proposed In-Kind Transactions.

11. The Section 17 Applicants submit that the proposed redemption of shares of the Current Funds will be consistent with the investment policies of HRT and the Current Funds provided that the shares are redeemed at their net asset value in conformity with Rule 22c–1 under the 1940 Act. The Applicants also submit that the proposed sale of shares of the New Funds for investment securities is consistent with the investment policy of EQAT and will be consistent with the investment policy of each of the New Funds provided that: (1) the shares are sold at their net asset value; and (2) the investment securities are of the type and quality that each of the New Funds could have acquired, respectively, with the proceeds from the sale of its shares had the shares been sold for cash. The Applicants assert that the second of these conditions is met because for the proposed In-Kind Transactions: (1) the New Funds are substantially similar to the Current Funds; (2) the Adviser for the New Funds will be the same as the current investment adviser for the corresponding Current Funds; and (3) the Adviser will have retained or selected each portfolio security for the corresponding Current Fund without regard to the proposed In-Kind Transaction.

12. The Section 17 Applicants assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act and do not present any conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions and related transactions involving the In-Kind Transactions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22022 Filed 8–24–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23954; 812–11588]

Van Wagoner Funds, Inc., et al.; Notice of Application

August 19, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under sections 6(c) and 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act permitting certain joint transactions.

SUMMARY OF APPLICATION: The order would permit applicants to co-invest in the same issuers of securities with each other and certain affiliates.

APPLICANTS: Van Wagoner Funds, Inc. (the "Company") and Van Wagoner Capital Management, Inc. (the "Adviser").

FILING DATES: The application was filed on April 20, 1999, and amended on July 7, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the

requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants: 345 California Street, San Francisco, California 94104.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Nadya B. Roytblat, Assistant Director (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Company, organized as a Maryland corporation, is registered under the Act as an open-end management investment company. The Company currently offers seven series (together with any new series of the Company to be offered in the future, the "Funds").[1] Each Fund's investment objective is capital appreciation, and each Fund may invest up to 15% of its net assets in illiquid securities. Applicants state that substantially all of the illiquid securities held by the Funds are venture capital investments. The Adviser serves as investment adviser to each Fund and is registered under the Investment Advisers Act of 1940. A majority of the board of directors of the Company ("Board") are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors").

2. The Adviser or its affiliates ("Adviser Affiliates") also may serve as investment adviser to other private accounts on a discretionary basis and as general partner and/or investment adviser to other investment vehicles that are exempt from the Act under section 3(c)(1) or 3(c)(7) of the Act. These private accounts and vehicles, along with any similar entity created, advised, sponsored or otherwise organized by the Adviser or Adviser Affiliates, are referred to as "Company Affiliates." When acting as the general partner of a Company Affiliate, the Adviser or Adviser Affiliates may make a capital contribution in connection with the organization of the Company Affiliate and maintain an interest in the gains, losses, income, and expenses of the Company Affiliate. The Adviser or Adviser Affiliate also may be required to make a commitment to co-invest on a principal basis with a Company Affiliate in an amount up to 1% of the Company Affiliate's investment.

3. Applicants state that it may be beneficial for the Funds to be able to co-invest in certain venture capital investments with Company affiliates. Applicants assert that co-investment in portfolio companies by the Funds and Company Affiliates would increase favorable investment opportunities for the Funds, consistent with the Funds' investment objectives, policies, and restrictions. Applicants state that these investment opportunities will not include investments in registered investment companies or entities relying on section 3(c)(1) or 3(c)(7) of the Act. Applicants also state that the co-investments will be treated as illiquid securities for purposes of the 15% limit on the Funds' investment in illiquid securities.[2]

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 under the Act povides that in passing upon applications under section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or les dvantageous than that of other participants.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under sections 6(c) and 17(d) of the Act and rule 17d–1 to permit the Funds to co-invest with other Funds, Company Affiliates, and the Adviser or Adviser Affiliates. Applicants state that the Adviser and Adviser Affiliates will co-invest with the Funds only if and to the extent required to do so by a Company Affiliate. Applicants state that the conditions to the requested order that will govern the co-investments will assure that the investments will be in the best interests of the participating Funds and consistent with the Funds' investment policies, and that the Funds will be participating in the co-investment on a basis that is no less advantageous than that of the other participants.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) To the extent that a Fund is considering new investments, the Adviser will review investment opportunities on behalf of the other Funds and investments being considered on behalf of any Company Affiliate, and, when required by a Company Affiliate, the Adviser or Adviser Affiliate. The Adviser will determine whether an investment being considered on behalf of a Company Affiliate ("Company Affiliate Investment") meets a Fund's investment objectives, policies, and restrictions and is otherwise eligible for investment by any of the Funds.

(b) If the Adviser deems a Company Affiliate Investment eligible for one or more Funds (a "co-investment opportunity"), the Adviser will determine what it considers to be an appropriate amount that each eligible Fund should invest. When the aggregate amount recommended for any Fund and that to be bought by other Funds, a Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, exceeds the amount of the co-investment opportunity, the amount invested by such Fund shall be based on the ratio of the net assets available for investment of that Fund to the aggregate net assets available for investment by any other Fund and the Company Affiliate (including the interest of the Adviser or Adviser

[1] All existing Funds that currently intend to rely on the requested order are named as applicants, and any entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] Applicants note that if a portfolio company subsequently becomes a publicly traded company, its shares held by the Funds may no longer be illiquid securities.

Affiliate, if applicable) seeking to make the investment.

(c) Following the making of the determinations referred to in (a) and (b), the Adviser will distribute written information concerning all co-investment opportunities to the Independent Directors. Such information will include the amount any other Fund, the Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, proposes to invest.

(d) Information regarding the Adviser's preliminary determinations will be reviewed by the Independent Directors. One or more Funds will co-invest with each other and/or with a Company Affiliate and, when required by a Company Affiliate, with the Adviser or Adviser Affiliate, only if a majority of the Independent Directors who have no direct or indirect financial interest in the transaction ("Required Majority") concludes prior to the acquisition of the investment that:

(i) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of applicable Funds and do not involve overreaching of the Company or such shareholders on the part of any person concerned;

(ii) the transaction is consistent with the interest of the shareholders of the applicable Funds and is consistent with the Fund's investment objectives and policies as recited in its registration statement and reports filed under the Act, and its reports to shareholders;

(iii) the investment by the Company Affiliates and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, would not disadvantage a Fund, and that participation by such Fund or Funds would not be on a basis different from or less advantageous than that of the Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate; and

(iv) the proposed investment by applicable Funds will not benefit the Adviser or any affiliate entity thereof, other than the Company Affiliate making the co-investment, provided, however that the Adviser (1) may continue to receive advisory and other fees from the Funds and the Company Affiliates and (2) may participate in any co-investment wherein the Adviser or Adviser Affiliate is required by a Company Affiliate to commit to co-invest in all direct investments with such equity in the amount of up to 1% of the investment of each such entity.

(e) Each of the Funds has the right to decline to participate in the co-investment opportunity or purchase less than its full allocation.

2. No Fund will make an investment for its portfolio if any Company Affiliate or the Adviser or Adviser Affiliate is an existing investor in such issuer, with the exception of a follow-on investment that complies with condition 5 below.

3. For any purchase of securities by one or more Funds in which a Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, is a joint participant, the terms, conditions, price, class of securities, settlement date, and registration rights shall be the same for each of the Funds and the Company Affiliate and the Adviser or Adviser Affiliate, if applicable, and the approval of such transactions, including the determination of the terms of the transaction by the Required Majority, will be made in the same time period.

4. If a Company Affiliate and/or the Adviser or Adviser Affiliate elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by one or more Funds, the Adviser will notify the applicable Funds of the proposed disposition at the earliest practical time and the Company will be given an opportunity to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those available to the Company Affiliate and/or the Adviser or Adviser Affiliate. The Adviser will formulate a recommendation as to participation by such Funds as such a disposition, to the extent that the Required Majority determines that it is in the Fund's best interest. Each of the Funds, the Adviser or Adviser Affiliate and the Company Affiliate will bear its own expenses associated with any such disposition of the portfolio security.

5. If a Company Affiliate desires to make a "follow-on" investment (*i.e.*, additional investment in the same entity) in a portfolio company whose securities are held by any of the Funds or to exercise warrants or other rights to purchase securities of such an issuer, the Adviser will notify the company of the proposed transaction at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by the applicable Fund in a follow-on investment and provide the recommendation to the Required Majority along with notice of the total amount of the follow-on investment. The Required Majority will make its own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment opportunity is not based on the amount of the applicable Fund's, the Company Affiliate's and, if applicable, the Adviser's or Adviser Affiliate's initial investments, the relative amount of investment by the Company Affiliate and, if applicable, the Adviser or Adviser Affiliate and the Company will be based on the ratio of the applicable Fund's remaining funds available for investment to the aggregate of such Fund's and the Company Affiliate's (including the interest of the Adviser or Adviser Affiliate) remaining funds available for investment. The applicable Fund will participate in such investment to the extent that the Required Majority determines that it is in such Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Required Majority will be provided quarterly for its review all information concerning co-investment transactions, including investments made by the Adviser, Adviser Affiliate and Company Affiliates in which a Fund declined to participate, so that the Required Majority may determine whether all investments made during the preceding quarter, including those investments in which the Fund declined to participate, comply with the conditions of the order. In addition, the Required Majority will consider at least annually the continued appropriateness of the standards established for co-investment by a Fund, including whether the use of the standards continues to be in the best interest of the Funds and its shareholders and does not involve overreaching on the part of any person concerned.

7. Other than as provided in condition 1(d)(iv), neither the Adviser nor any Adviser Affiliate nor any director of the Company will participate in a co-investment with the Company unless a separate exemptive order with respect to such co-investment is obtained.

8. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will be involved in the sponsorship of any portfolio company.

9. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will be involved in the structuring of any portfolio company or of any security issued by any portfolio company, except that the Adviser may take part in the negotiation of the terms (such as coupon, final maturity, average life, sinking funds, conversion price, registration, put rights and call protection) and appropriate restrictive covenants governing the securities purchased in a co-investment transaction.

10. Each of the Funds will maintain and perserve all records that are required by section 31 of the Act and any other provisions of the Act and the rules and regulations under the Act applicable to the Funds. The Fund also will maintain the records required by section 57(f)(3) of the Act as if each of the Funds were a business development company and the co-investments and any follow-on investments were approved under section 57(f).

11. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will "make available significant managerial assistance," within the meaning of section 2(a)(47) of the Act, to any portfolio company whose securities were acquired pursuant to the requested order.

12. None of the Adviser, Adviser Affiliates, or Company Affiliates will receive any transaction fees (including, without limitation, monitoring, "topping," breakup, and termination fees) in connection with any investment made pursuant to the requested order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22021 Filed 8–24–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41752; File No. SR–CBOE–99–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

August 17, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage.*[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, on July 30, 1999, the Equity Floor Procedure Committee ("Committee") approved the following fees for the option classes listed in the chart below. The Order Book Official Brokerage Rate (per contract) currently is $.00 for these option classes.[4] The market-maker surcharge for brokerage is proposed to be raised as reflected below.

Option class	Market-Maker surcharge (per contract)
Friede Goldman International, Inc. (FGI)	$0.15
Northwest Airlines Corporation (NAQ)	0.14
Open Market, Inc. (OQM)	0.17
Orbital Sciences Corporation (ORB)	0.11
ONSALE, Inc. (QOL)	0.12
Synovous Financial Corporation (SNV)	0.12
Zebra Technologies Corporation (ZBQ)	0.15

These fees will be effective as of August 2, 1999. All of the fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)[5] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A)(ii)[6] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent

[3] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

[4] As the Order Book Official Brokerage Rate (per contract) for these classes is already $.00, additional funds generated by the surcharge will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40. Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, and Kenneth Rosen, Attorney, and Matthew Boesch, Paralegal, Division of Market Regulation, Commission, on August 16, 1999.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–42 and should be submitted by September 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21979 Filed 8–24–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3206]

State of Utah

As a result of the President's major disaster declaration on August 16, 1999, I find that Salt Lake County, Utah constitutes a disaster area due to damages caused by a tornado, severe thunderstorms, and hail that occurred on August 11, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 14, 1999, and for loans for economic injury until the close of business on May 16, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Utah may be filed until the specified date at the above location: Davis, Morgan, Summit, Tooele, Utah, and Wasatch.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 320612 and for economic injury the number is 9D8000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 18, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–21980 Filed 8–24–99; 8:45 am]

BILLING CODE 8025–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3117]

Information Collection; Comment Request

AGENCY: Department of State.

ACTION: Notice of information collection under emergency review: Department of State intern program statement of interest.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review Notice Request.

Originating Office: PER/REE/REC.

Title of Information Collection: Department of State Intern Program Statement of Interest.

Frequency: Three application periods per year.

Form Number: No number assigned.

Respondents: Sophomore through Graduate level college and university students.

Estimated Number of Respondents: 3,500.

Average Hours Per Response: ½ hour per response.

Total Estimated Burden: 1,750.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by August 20, 1999. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from date of publication in the Federal Register. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Richard M. Esper, Bureau Of Personnel, Recruitment Division, Student Programs, (703) 875–4415, U.S. Department of State, Washington, DC 20520.

Dated: August 13, 1999.

Ruben Torres,

Director, PER/EX.

[FR Doc. 99–22039 Filed 8–24–99; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice: 3116]

Calls for Proposals for Scientific and Technological Collaborative Projects Between the United States and Spain

AGENCY: Bureau of Oceans and International Environmental and Scientific Environmental Affairs.

ACTION: Calls for Proposals for Scientific and Technological Collaborative projects between the United States and Spain.

SUMMARY: This announcement is a third call for collaborative projects under the

Agreement on Scientific and Technological Cooperation for the purposes of encouraging and supporting cooperation between the United States and Spain. Proposals submitted will undergo peer review by both countries and will be approved or disapproved by the Joint Commission.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Shauntia Hart Rodney, Program Officer, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State—Tel # (202) 647–2245, Fax # (202) 647–2746, or The Commission for Cultural Educational and Scientific Exchange between the United States of America and Spain, Paseo Gral. Martinez Campos, 24, 28080 Madrid, 34–91–308–2436, or via E-Mail at *postmaster@comision*.fulbright.es, or *postmaster@comision-fulbright.org*. The Commission maintains a web-site on this and other programs at *http://www.fulbright.es/welcome.html*.

SUPPLIMENTARY INFORMATION:

Authority:

This program is established under the Agreement for Scientific and Technological Cooperation between the Government of the United States and the Government of Spain.

A solicitation for this program began September 1, and will continue until the closing date of December 1, 1999. The Department of State and the Foreign Ministry of Spain announce the third call for collaborative projects under the Agreement on Scientific and Technological Cooperation, which entered into force in 1996. The purpose of the Agreement is to encourage and support scientific and technological cooperation between the United States and Spain. Grants under this project call, that are approved by the Joint Commission on Scientific and Technological Cooperation will assist with the costs for international collaboration between research teams from science agencies and universities of the two countries. Basic research costs must be funded from other sources. Costs supported will normally not exceed $30,000 in the first year; a renewal may be requested under a later project call.

Basic Terms

The funds available to the Joint Commission as described in Article VII (2) of the Agreement, are being used as follows. Approximately twenty-five percent of the funds were used in the first year of the program, or approximately $750,000 for thirty-six grants. In the second call for proposals, approximately 40% of the funds, or about $1,200,000 were used for new proposals and for approved renewals. The remaining funds will be used in the third year.

Costs supported include travel, at government contract rates or tourist class; per diem lodging, meals and incidentals; international mail and messenger service; minimal amounts of equipment (normally no more than $2000 would be approved), and the like. Living costs will be supported up to a maximum of $175 per day, but teams are encouraged to find less expensive options for meals and lodging for stays of more than a few days, to maximize the funds available. Normally travel should be for a minimum of week and a maximum of a month.

The call for proposals is open until December 1, 1999; grants will be decided in April 2000. There will normally be a maximum of twelve months for use of granted funds. A mid-term report after the first six months will be the basis of an application for a renewal if one is desired. Proposals will be subject to peer review in both countries. Proposals will be submitted as a single package in both English and Spanish; U.S. principal investigators should forward their portion of the document to their Spanish counterpart, to facilitate the submission of the package to the Program Secretariat in Madrid.

Collaborative proposals are expected to have secured funding for the basic research, and preferably be already established projects in at least one of the two countries.

Priorities

Emphasis will be given by the Joint Commission in the 1998 awards to the following fields:

1. Life Sciences
1.1 Infectious and degenerative diseases, including diseases of animals
1.2 Biotechnology of plants, plant health, and integrated pest management
1.3 Food biotechnology
1.4 Molecular design in the production of pharmaceuticals
2. Environment
2.1 Biodiversity
2.2 Natural reserves and protected ecosystems
2.3 Conservation of soils and forests and problems of desertification
2.4 Integrated water management; resources, use and reuse
2.5 Combating pollution and treatment of wastes
3. Information and Communication Technology
3.1 Electronic and microelectronic technology
3.2 Advanced communication technology: satellites, mobile units, Internet II
3.3 Informatics
4. Materials Sciences
4.1 Ceramics, metals, polymers, compounds and superconductors
4.2 Advanced production technology for new materials
5. Energy and High Energy Physics
5.1 Alternate energy: Solar and Wind
5.2 Clean technologies for fossil fuels and/or alternatives
5.3 Cooperative research with U.S. High Energy Physics Labs
6. Space, including earth observation from space.

Applicants will indicate on the cover sheet the number of the field under which the project falls. Projects submitted outside these categories should simply be designated as "7. Other Fields."

7. Other

Research Teams

All scientists working in research agencies of the two governments, or in universities of the two countries, are eligible to apply. Each project should have a principal investigator on the U.S. side and on the Spanish side. These should be nationals or residents of the respective countries; teams may include citizens of other countries if this is justified in the research plan. U.S. researchers are reminded that Spain requires a visa for holders of official or diplomatic passports.

Brooke Holmes,

Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs And, Chair, U.S.-Spain S&T Commission.

[FR Doc. 99–22038 Filed 8–24–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Daystar Airways, Ltd. D/B/A Nevis Express for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 99–8–16) Docket OST–99–5062.

SUMMARY: The Department of Transportation is directing all interested

persons to show cause why it should not issue an order finding Daystar Airways, Ltd. d/b/a Nevis Express fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property, and mail between the United States and Nevis and St. Kitts, West Indies, using aircraft with no more than nine passengers seats.

DATES: Persons wishing to file objections should do so no later than September 7, 1999.

ADDRESSES: Objections and answers to objections should be filed in the Docket OST–99–5062 and addressed to the Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: August 19, 1999.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–21999 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6136]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittee on Proper Cargo Names (PCN) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. Both meetings will be open to the public.

DATES: CTAC will meet on Thursday, September 16, 1999, from 9 a.m. to 3:30 p.m. The Subcommittee on PCN will meet on Wednesday, September 15, 1999, from 8:30 a.m. to 3 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 6, 1999. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before September 6, 1999.

ADDRESSES: CTAC will meet at the Greenspoint Marriott Hotel, 255 N. Sam Houston Parkway, Houston, Texas. The Subcommittee on PCN will meet at the American Bureau of Shipping (ABS) Training Academy, ABS Plaza, 16855 Northchase Drive, Houston, Texas. Send written material and requests to make oral presentations to Commander Robert F. Corbin, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Commander Robert F. Corbin, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Chemical Transportation Advisory Committee (CTAC). The agenda includes the following:

(1) Introduction and swearing-in of the new members.

(2) Status report from the Subcommittee on Prevention Through People (PTP).

(3) Final report from the Subcommittee on PCN.

(4) Report on current International Maritime Organization (IMO) activities relating to the chemical transportation industry.

(5) Presentation on the Coast Guard's bulk cargo finding aid.

(6) Presentation on the ABS chemical initiative (navigating the regulatory maze) and the ABS rapid response program.

Subcommittee/Workshop on PCN

The agenda includes the following:

(1) Discussion of proper cargo name usage and applicable regulatory requirements.

(2) Coast Guard cargo classification process.

(3) Demonstration on Coast Guard bulk cargo finding aid.

Procedural

Both meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than September 6, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than September 6, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than September 6, 1999.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 18, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–22055 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA—1999—6086; (Formerly FRA Docket No. SBR 97–1)]

RIN No. 2130–AB15

Notice of Public Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: In this notice, FRA announces a public meeting that will take place on September 28, 1999 in Washington, D. C. The purpose of the meeting is to discuss the definition of "small entity," for purposes of FRA's small business communication and enforcement policies and procedures, in order to determine the scope of the entities subject to those programs. FRA previously published an Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws and invited comment on the definition of "small entity" at that time. FRA received comments from interested parties and plans to discuss those at this meeting.

DATES: *Meeting Date:* The public meeting will be held on September 28, 1999; 10 a.m. in Conference Room 1 of the FRA, 1120 Vermont Ave., NW, Seventh Floor, Washington, DC.

Written Comments: (1) Written comments must be submitted to DOT's Central Docket Management Facility by September 20, 1999. Commenters should reference the docket number and

submit two copies of their comments. Any party that submitted comments to Notice #1 of this proceeding, in former docket number SBR 97–1, need not file comments in this proceeding unless the party has additional or alternate information to submit to FRA.

Notice of Attendance: Any party who wishes to attend or participate in the public hearing should notify the FRA Docket Clerk by September 20, 1999.

ADDRESSES: *Written Comments:* Written comments should be submitted to the DOT's Central Docket Management Facility at Room PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the docket are available for inspection and copying at DOT's Central Docket Management Facility, Plaza level of the Nassif Building at the US Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001 between the hours of 10 a.m. and 5 p.m. Contents of the docket are also available for viewing on the Internet at http://dms.dot.gov.

Registration: Persons wishing to register for the meeting may do so by contacting Ms. Renee Bridgers, FRA Docket Clerk at 202–493–6030 or by writing her at Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW, Washington, DC 20590. Ms. Bridgers may also be contacted by e-mail at RENEE.BRIDGERS@FRA.DOT.GOV. Any party wishing to attend and participate in the public meeting should notify Ms. Bridgers no later than September 20, 1999.

FOR FURTHER INFORMATION PLEASE CONTACT:

(1) *Principal Program Officer:* Edward R. English, Director, Office of Safety Enforcement, 400 Seventh Street, SW, Mail Stop 25, Washington, DC 20590; telephone: 202–493–6244.

(2) *Principal Economist:* Jeffery Horn, Office of Safety Analysis, Planning and Evaluation Division, 400 Seventh Street, SW, Mail Stop 25, Washington, DC 20590; telephone: 202-493–6283.

(3) *Principal Attorney:* Christine Beyer, Office of Chief Counsel, FRA, 400 Seventh Street, SW, Mail Stop 10, Washington, DC 20590; telephone: 202–493–6027.

SUPPLEMENTARY INFORMATION:

I. Background

FRA has broad statutory authority to regulate all areas of railroad safety, and pursuant to that authority, administers comprehensive regulatory and enforcement programs to address the safety of equipment, track and roadbed, and workplace safety in the railroad industry. FRA's implementation of these regulatory and enforcement programs includes consideration of the unique concerns of small entities and seeks to minimize adverse economic burdens on them where possible. Small businesses play a vital role in the economic and operational health of the railroad industry, and consequently, it has been FRA's longstanding policy to devote attention to the special needs of small entities, both in the way the agency communicates and in the agency's enforcement efforts.

The Congress enacted The Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA) to address a variety of issues relating to the federal treatment of small businesses. SBREFA established new requirements for federal agencies to follow with respect to small entities, created new duties for the Small Business Administration (SBA), and amended the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and the Equal Access to Justice Act (5 U.S.C. 501, *et seq.*) SBREFA required federal agencies to institute communication and enforcement polices that would give consideration to the unique concerns of small businesses within their jurisdiction. As a result of SBREFA, FRA formalized its existing communication and enforcement policies by incorporating them into written form, and published the Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws (Interim Policy Statement) on August 11, 1997. 62 FR 43024. The Interim Policy Statement outlines FRA's communication efforts and commitments with respect to small entities, and explains how the agency seeks to accommodate the unique characteristics and limited profit margins of small companies in enforcing the railroad safety standards.

II. Definition of Small Entity in the Railroad Industry

In the Interim Policy Statement, FRA articulated its communication and enforcement policies concerning small entities, and discussed the meaning of the term "small entity" for purposes of the formalized policies. The Interim Policy Statement explained that SBREFA incorporated the definition for "small entity" established by existing law for those businesses to be covered by the federal policies. *See*, 5 U.S.C. 601, 15 U.S.C. 632, 13 CFR part 121. Generally, a small entity is a business concern that is independently owned and operated, and is not dominant in it field of operation. SBA was granted authority to develop size categories through regulation, which clarify the term "small entity" by industry, using number of employees or annual income as criteria. In the SBA regulations, main line railroads with 1500 or fewer employees, and switching or terminal establishments with 500 or fewer employees constitute small entities. However, an agency may establish one or more other definition for this term, in consultation with the SBA and after opportunity for public comment, that are appropriate to the agency's activities. Also, "small governmental jurisdictions" that serve populations of 50,000 or less are small entities. (This is significant for the railroad industry because commuter operations are governmental jurisdictions, and some may fit within this statutory definition for small governmental jurisdictions, or small entities, for purposes of treatment under SBREFA.)

As the Interim Policy Statement noted, the Interstate Commerce Commission (ICC) had developed a size classification system for freight railroads, based on annual operating revenue, long before SBA's regulations establishing size categories were promulgated. (The qualifying criteria for the ICC classifications are set forth in 49 CFR part 1201.) The ICC classification system has been used pervasively by the railroad industry and FRA to identify entities by size, and the Surface Transportation Board (STB), which succeeded the ICC, has not changed these classifications. In consultation with SBA, and as a result of its own judgment concerning railroad safety and appropriate limits on the number and economic status of companies that should take advantage of the benefits provided by SBREFA and the Interim Policy Statement, FRA determined that the ICC size classifications should be used, at least on an interim basis, in the railroad industry. Therefore, the Interim Policy Statement established that "small entity" in the railroad industry would be Class III railroads, shippers and railroad contractors that meet the economic limits set for Class III railroads, and commuter operations that serve population centers of 50,000 or less. The current annual operating revenue benchmark for Class III railroads is $20 million, adjusted by applying the railroad revenue deflator adjustment; this figure may change, based on calculations made by the STB and consistent with economic trends. However, FRA requested comments from the industry concerning this decision, and alternate classifications that would identify small companies in need of special treatment in such a way

that railroad safety would not be compromised and the intent of SBREFA would be met.

In addition to establishing this interim definition for the railroad industry in the Interim Policy Statement, FRA requested comment on a variety of potential definitions: (1) Fifteen employees subject to the hours of service laws, which Congress used as a benchmark for small business exemptions in the hours of service law, 49 U.S.C. 21102(b); (2) a total of at least 400,000 person/hours worked annually, which equates to approximately 200 employees and which FRA has used as a size classification previously; (3) the Class III designation currently in use; (4) the employee delineations established by SBA regulation; (5) any combination of these; and (6) entirely new designations. FRA invited comment on these possible definitions from all interested parties, and asked those submitting comments to provide the rationale for the proposals offered, including economic and employee data, operating concerns, and an explanation of how SBREFA's intent would be met by adoption of a particular definition. In addition, FRA stated that the agency would conduct a public meeting to discuss comments received and adoption of a permanent definition for "small entity."

In response to the Interim Policy Statement, the National Railroad Construction and Maintenance Association, Inc. (NRC) and The American Short Line Railroad Association (now known as The American Short Line and Regional Railroad Association) (ASLRRA) submitted comments to FRA. The comments of these organizations are available for review in the docket of this proceeding. In general terms, the NRC urged FRA to adopt the 400,000/person hours designation, and the ASLRRA urged FRA to expand its definition to include Class II, as well as Class III companies, in its definition of "small entity." Class II railroads are those with annual operating revenues in excess of $20 million and less than $250 million.

FRA will hold a public meeting on September 28 at 10:00 a.m. to discuss these proposals, others FRA has outlined above, and all other appropriate proposals that have not yet been illuminated. FRA also requests comment on methods by which flexibility might be incorporated into the definition to address changing economic trends; sudden changes in employee staffing levels; the development of low cost, innovative equipment improvements; and other future events that could make the definition FRA adopts now obsolete in a very short time. It is important to note that any new definition of "small entity" FRA adopts in this proceeding must be consistent with the principles of railroad safety and the intent of SBREFA. That is to say, a definition based solely on economic considerations would not suffice. FRA's statutory mandate and SBREFA require that the safety and health of the public, railroad employees, and the environment are the predominant concerns where a company's economic fitness is juxtaposed against them. Therefore, FRA asks that commenters and participants in the public meeting address how their respective proposals would meet the statutory requirements involved, if the definition proposed broadly covers a substantial sector of the industry, or includes entities in robust financial condition. Participants should keep in mind that the "small entity" definition FRA ultimately adopts will not necessarily determine the reach of any particular safety rule. This determination will be used in FRA's communication and enforcement policies under SBREFA. FRA may, as it has in the past, choose different criteria to determine the applicability, content, or effective date of any regulatory provision.

Although the public meeting will be transcribed by a court reporter, it will be conducted in an informal manner. Participants who wish to make an opening statement concerning FRA's definition of "small entity" may do so. However, FRA anticipates that all participants and agency representatives will engage in an informal dialogue of questions and answers concerning this subject.

Comments Requested

FRA invites written comments on the definition of "small entity," potential alternate definitions, and supporting rationale for the suggested alternative definitions. Please direct all written comments to the DOT's Central Docket Management Facility, Room PL 401, 400 Seventh Street, SW Washington, DC 20590–0001. Any party that prepared written comments in response to Notice No. 1 in this proceeding in 1997 need not file comments again, unless there is additional or alternate information to share.

Any party wishing to attend the public meeting must notify the FRA Docket Clerk in writing by September 20; any party wishing to attend and participate in the meeting must notify the FRA Docket Clerk in writing by September 20, 1999.

Submitted in Washington, DC, on August 20th, 1999.

Jolene M. Molitoris,

Administrator.

[FR Doc. 99–22000 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on June 8, 1999, [64 FR 30560].

DATES: Comments must be submitted on or before September 24, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, Financial Analyst, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW, Room 8122, Washington, DC 20590, telephone number—202–366–5744. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: "46 CFR Part 298—Title XI Obligation Guarantees".

OMB Control Number: 2133–0018.

Type of Request: Extension of a currently approved information collection.

Affected Public: Individuals interested in obtaining loan guarantees for construction or reconstruction of vessels satisfying criteria under the Merchant Marine Act, 1936.

Form Number(s): MA–163, MA–163A.

Abstract: In accordance with the Merchant Marine Act, 1936, MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. The information collected is necessary for MARAD to evaluate an applicant's project and capabilities, make the

required determinations, and administer any agreements executed upon approval of the loan guarantees.

Annual Estimated Burden Hours: 1750 Hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20502, attention MARAD Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: August 20, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–22068 Filed 8–24–99; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–563 (Sub–No. 1X) and STB Docket No. AB–471 (Sub–No. 2X)]

Kansas Eastern Railroad, Inc.—Abandonment Exemption—in Butler and Greenwood Counties, KS and South Kansas and Oklahoma Railroad, Inc.—Discontinuance of Service Exemption—in Butler and Greenwood Counties, KS

Kansas Eastern Railroad, Inc. (KER) and South Kansas and Oklahoma Railroad, Inc. (SKO) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* for KER to abandon and SKO to discontinue its trackage rights over a rail line between milepost 438.5, at Severy, and milepost 483.0 near Augusta, in Butler and Greenwood Counties, KS.[1] The line traverses United States Postal Service Zip Codes 67010, 67074, 67012, 67122 and 67137.

KER and SKO have certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past two years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 24, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 7, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 14, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Karl Morell, Ball Janik LLP, 1455 F St., N.W., Suite 225, Washington, DC 20005. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

KER and SKO have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 30, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), KER shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by KER's filing of a notice of consummation by August 25, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 19, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–22075 Filed 8–24–99; 8:45 am]

BILLING CODE 4915–00–P

[1] KER acquired the involved rail line from Burlington Northern Railroad Company as part of the transaction authorized in *Kansas Eastern Railroad, Inc.—Acquisition Exemption—Burlington Northern Railroad Company*, Finance Docket No. 33292 (ICC served Dec. 2, 1996).

SKO's trackage rights were the subject of an exemption in *South Kansas and Oklahoma Railroad, Inc.—Trackage Rights Exemption—Kansas Eastern Railroad, Inc.*, Finance Docket No. 33293 (ICC served Dec. 2, 1996).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Departmental Offices; International Financial Institution Advisory Commission

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 603 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the "Commission") shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the

International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation), the World Trade Organization, and the Bank for International Settlements.

DATE: The first meeting of the Advisory Commission will be held on September 9, 1999, beginning at 9:30 a.m. and tentatively ending at 3:30 p.m. in room H 219 in the U.S. Capitol, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Washington, D.C., 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda tentatively includes the following:

- Welcome and introduction by Prof. Allan Meltzer, Chairman of the Committee.
- Presentation of Commission objectives by Dr. Meltzer.
- Discussion and review of preliminary research papers.
- Discussion of future meeting dates and the commissioning of further research papers.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may submit written comments. If you wish to furnish comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the first meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than September 2, 1999.

Dated: August 20, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–22035 Filed 8–24–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Departmental Offices

International Monetary Fund Advisor Committee

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 610 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the Secretary of the Treasury is required to establish an International Monetary Fund Advisory Committee (the "Committee") to advise the Secretary on IMF policy.

DATES: The first meeting of the Committee will be held on September 10, 1999, beginning at 2:30 p.m. in the Cash Room located on the second floor of the main Department of the Treasury building, 1500 Pennsylvania Avenue, NW, Washington, DC.

The duration of the meeting will be approximately two to three hours.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC, 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda tentatively includes the following:

- Background on the establishment of the Committee.
- Discussion on promoting U.S. policy objectives in the IMF.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. If you wish to attend, please FAX your name, birthday, and social security number to the Designated Federal Official no later than 4 P.M., September 9, for clearance into the Treasury building. Members of the public, who have provided such information, must enter the main Treasury building at the entrance on 15th Street between F and G Streets, and must provide a photo ID at the entrance to be admitted into the building.

Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of such comments to the Designated Federal Official. If you wish to have your comments distributed to members of the Committee in advance of the first meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than August 27.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at meetings, contact the Designated Federal Official no later than 24 hours in advance of the meeting time.

Dated: August 19, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–21982 Filed 8–24–99; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "The Drawings of Annibale Carracci"

AGENCY: United States Information Agency (USIA).

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 8325, 22 U.S.C. 2459, Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "The Drawings of Annibale Carracci," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed objects at the National Gallery of Art from September 26, 1999 to January 9, 2000 is in the national interest.

Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or other information, please contact Carol Epstein, Assistant General Counsel,

Office of the General Counsel, 202/619–6981. The address is Room 700, US Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: August 18, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–21970 Filed 8–24–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination: "Gold of the Nomads: Scythian Treasures from Ancient Ukraine"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Gold of the Nomads: Scythian Treasures from Ancient Ukraine" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed objects at the San Antonio Museum of Art, San Antonio, TX, from on or about November 7, 1999, to on or about January 30, 2000, and The Walters Art Gallery in Baltimore, MD, from on or about March 5, 2000, to on or about May 28, 2000, and the Los Angeles County Museum of Art, Los Angeles, CA, from on or about July 2, 2000, to on or about September 24, 2000, and the Brooklyn Museum of Art, Brooklyn, NY, from on or about October 29, 2000, to on or about January 21, 2001, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects and for further information, contact Ms. Neila Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: August 18, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–21972 Filed 8–24–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Masks: Faces of Culture"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Masks: Faces of Culture," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed objects at The Saint Louis Art Museum, Saint Louis, MO, from on or about October 10, 1999, to on or about January 2, 2000, and The Field Museum, Chicago, IL, from on or about February 19, 2000, to on or about May 4, 2000, and The Museum of Fine Arts, Houston, Houston, TX, from on or about June 25, 2000, to on or about October 1, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects and for further information, contact Ms. Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, 202/619–6084. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: August 18, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–21973 Filed 8–24–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Tilman Riemenschneider: Master Sculptor of the Late Middle Ages"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Tilman Riemenschneider: Master Sculptor of the Late Middle Ages," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed objects at the National Gallery of Art from October 3, 1999 to January 9, 2000 and at the Metropolitan Museum of Art, New York, NY from February 7, 2000 to May 14, 2000 is in the national interest.

Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or other information, please contact Paul Manning, Assistant General Counsel, Office of the General Counsel, 202/619–5997. The address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001

Dated: August 18, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–21971 Filed 8–24–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 64, No. 164
Wednesday, August 25, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Part 204

[DFARS Case 98–D027]

Defense Federal Acquisition Regulation Supplement; Taxpayer Identification Numbers and Commercial and Government Entity Codes

Correction

In rule document 99–20283, beginning on page 43098, in the issue of Monday, August 9, 1999, make the following correction(s):

204.603 [Corrected]

1. On page 43099, in the first column, in 204.603(2)(ii), in the third line, after "at", remove "$".

204.902 [Corrected]

2. On the same page, in the second column, in the heading for 204.902, after "General" add a period.

204.7200 [Corrected]

3. On the same page, in the third column, in the heading for 204.7200, after "subpart" add a period.

204.7204 [Corrected]

4. On page 43100, in the second column, in 204.7204(b), in the sixth line, after "North" add a comma.

204.7303 [Corrected]

5. On page 43101, in the first column, in 204.7303(b), in the second line, "determined" should read "determines"; and in the fifth line, "awarded" should read "award".

6. On the same page, in the same column, in 204.7303(b)(1), in the third line, "toward" should read "to award".

[FR Doc. C9–20283 Filed 8–24–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RP95–363–016]

El Paso Natural Gas Company; Notice of Filing

Correction

In notice document 99–21282 appearing on page 44717 in the issue of Tuesday, August 17, 1999, the docket line should appear as set forth above.

[FR Doc. C9–21282 Filed 8–24–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP 99–376–011]

Venice Gathering System, L.L.C.; Notice of Compliance Filing

Correction

In notice document 99–21409 beginning on page 44915 in the issue of Wednesday, August 18, 1999, the docket line should appear as set forth above.

[FR Doc. C9–21409 Filed 8–24–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–14–004; ER99–1751–003–; ER99–2337–001; ER99–3858–000; ER99–3866–000; ER99–3867–000; ER99–3885–000; ER99–3889–000 and ER99–3928–000]

Select Energy, Inc.; Aquila Energy Marketing Corporation; FPL Services, Inc.; Southwestern Public Service Company; Mobile Energy Services Company; Entergy Services, Inc.; Louisville Gas and Electric Company and Kentucky Utilities; Fitchburg Gas and Electric Light Company; Duquesne Light Company; Notice of Filings

Correction

In notice document 99–21281 appearing on page 44718 in the issue of Tuesday, August 17, 1999, the docket line should appear as set forth above.

[FR Doc. C9–21281 Filed 8–24–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Wednesday
August 25, 1999

Part II

Environmental Protection Agency

40 CFR Parts 148, 261, 264, 265, 268, 271, and 302

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 264, 265, 268, 271, and 302

[SWH–FRL–6413–4]

RIN 2050–AD65

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to list three of six wastes from the chlorinated aliphatics industry as hazardous wastes under the Resource Conservation and Recovery Act (RCRA), which directs EPA to determine whether certain wastes from the chlorinated aliphatics industry present a hazard to human health or the environment. The effect of listing these three wastes will be to subject them to stringent management and treatment standards under RCRA and to subject them to emergency notification requirements for releases of hazardous substances to the environment. EPA is proposing a contingent-management listing approach for one of these wastes, and as one of two options for another of these wastes, such that waste generators will have the option of their waste not being listed if it is sent to a specific type of management facility.

DATES: EPA will accept public comments on this proposed rule until November 23, 1999. Comments postmarked after this date will be marked "late" and may not be considered. Any person may request a public hearing on this proposal by filing a request by September 8, 1999.

ADDRESSES: If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing docket number F–1999–CALP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed in the fourth paragraph of **SUPPLEMENTARY INFORMATION**. You also may submit comments electronically by sending electronic mail through the Internet to: rcradocket@epamail.epa.gov. See the beginning of **SUPPLEMENTARY INFORMATION** for instructions on electronic submission.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. See the beginning of **SUPPLEMENTARY INFORMATION** for information on viewing public comments and supporting materials.

Address requests for a hearing to Mr. David Bussard at: Office of Solid Waste, Hazardous Waste Identification Division (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (703) 308–8880.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the rule, contact Ross Elliott of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. [E-mail addresses and telephone numbers: elliott.ross@epamail.epa.gov, (703) 308–8748.]

SUPPLEMENTARY INFORMATION: You should identify comments in electronic format with the docket number F–1999–CALP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters and any form of encryption. If you do not submit comments electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Supporting documents in the docket for this Notice are also available in electronic format on the Internet. Follow these instructions to access these documents.

WWW: http://www.epa.gov/epaoswer/hazwaste/id

FTP: ftp.epa/gov

Login: anonymous

Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

EPA will keep the official record for this action in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. We will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the first paragraph of the **SUPPLEMENTARY INFORMATION** section.

Customer Service

How Can I Influence EPA's Thinking on This Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but we request comments in particular on the items indicated at the end of each section. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and provide a summary of the reasoning you used to arrive at your

conclusions, as well as examples to illustrate your views, where possible.

- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at your estimate.
- Tell us which parts you support, as well as those with which you disagree.
- Offer specific alternatives.
- Reference your comments to specific sections of the proposal, such as the sections or page numbers of the preamble, or the regulatory citations.
- Remember that your comments must be submitted by the deadline in this notice.
- Include the name, date, and docket number with your comments.

Contents of This Proposed Rule

The contents of the preamble to this proposed rule are listed in the following outline:

I. Overview
A. Who Potentially Will Be Affected by This Proposed Rule?
B. Why Does This Rule Read Differently From Other Listing Rules?
C. What Are the Statutory Authorities for This Rule?
II. Background
A. Schedule Suit
B. Existing Chlorinated Aliphatics Listings
III. Today's Action
A. Summary of Today's Action
1. Scope of the Listing Determination
2. Summary of the Proposed Listing Determinations
3. Summary of the Remainder of This Preamble
B. Description of the Industry
C. Overview of EPA's Information Collection Activities
1. Field Investigations and Sampling
2. RCRA Section 3007 Survey
D. What Are the Risks Associated With Management of Wastewaters and Wastewater Treatment Sludges From the Production of Chlorinated Aliphatic Chemicals?
1. What Are the Risks for Potential Human Receptors?
2. What Are the Potential Risks for Ecological Receptors?
3. Did EPA Conduct a Peer Review of the Risk Assessment?
E. Waste-Specific Listing Determination Rationales
1. Chlorinated Aliphatics Wastewaters
2. EDC/VCM Wastewater Treatment Sludges
3. VCM–A Wastewater Treatment Sludges
4. Methyl Chloride Wastewater Treatment Sludges
5. Allyl Chloride Wastewater Treatment Sludges
F. Constituents Proposed for Addition to Appendix VIII to 40 CFR Part 261
IV. Economic Analysis
A. What Is the Purpose of the Economic Analysis?
B. How May the Public Participate in the Economic Analysis?
C. How Are Chlorinated Aliphatic Chemicals Used in the Economy?
D. Where Are CAHCs Manufactured in the United States?
E. Have CAHCs Been Produced Historically in Other Locations in the United States?
F. What Are the Estimated Potential Industry Costs of This Listing?
V. Proposed Treatment Standards Under RCRA's Land Disposal Restrictions
A. What Are EPA's Land Disposal Restrictions (LDRs)?
B. How Does EPA Develop LDR Treatment Standards?
C. What Kind of Treatment Standards Are Proposed?
D. Other LDR-Related Provisions
E. What Standards Are Proposed for K173?
F. What Standards Are Proposed for K174?
G. What Standards Are Proposed for K175?
H. What Other Land Disposal Restrictions Aspects Are There to the Proposal?
I. Is There Treatment Capacity for the Proposed Wastes?
VI. Compliance Dates
A. Notification
B. Interim Status and Permitted Facilities
VII. State Authority
A. Applicability of Rule in Authorized States
B. Effect on State Authorizations
VIII. Designation of Chlorinated Aliphatic Wastes (K173, K174 and K175) Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
A. What Is the Relationship Between RCRA and CERCLA?
B. Is EPA Proposing To Add Chlorinated Aliphatic Wastes to CERCLA?
C. How Does EPA Determine Reportable Quantities?
D. When Do I Need to Report a Release of K173, K174 or K175 Under CERCLA?
E. What if I Know the Concentration of the Constituents in My Waste?
F. How Did EPA Determine the RQs for K173, K174 and K175 and Their Hazardous Constituents?
G. How Do I Report a Release?
H. What Is the Statutory Authority for This Program?
I. How Can I Influence EPA's Thinking on Regulating K173, K174 and K175 Under CERCLA?
IX. Administrative Assessments
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Executive Order 12875: Enhancing the Intergovernmental Partnership
F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 12898: Environmental Justice

I. Overview

A. Who Potentially Will Be Affected by This Proposed Rule?

Beginning January 1, 1999 all documents related to USEPA's regulatory, compliance and enforcement activities including rules, policies, interpretive guidance, and site-specific determinations with broad application, should properly identify the regulated entities, including descriptions that correspond to the applicable SIC codes or NAICS codes (source: 09 October 1998 USEPA memo from Peter D. Robertson, Acting Deputy Administrator of USEPA). Today's action, if finalized, could potentially affect those who handle the wastes that EPA is proposing to add to the Agency's list of hazardous wastes under the RCRA program. This action also may affect entities that may need to respond to releases of these wastes as CERCLA hazardous substances. These potentially-affected entities are described in the Economics Background Document placed in the docket in support of today's proposed rule; a summary is shown in the table below.

SUMMARY OF FACILITIES POTENTIALLY AFFECTED BY THE USEPA'S 1999 CHLORINATED ALIPHATICS MANUFACTURING WASTE LISTING PROPOSAL ACCORDING TO APPLICABLE SIC AND NAICS CODES

Item	Parent company SIC code	Industry sector name	Number of U.S. relevant CAHC mfg. facilities*	Parent company NAICS code equivalent**
1	1311	Mining: Crude petroleum and natural gas	3	211111
2	1400	Mining: Nonmetallic minerals, except fuels	2	212300

SUMMARY OF FACILITIES POTENTIALLY AFFECTED BY THE USEPA'S 1999 CHLORINATED ALIPHATICS MANUFACTURING WASTE LISTING PROPOSAL ACCORDING TO APPLICABLE SIC AND NAICS CODES—Continued

Item	Parent company SIC code	Industry sector name	Number of U.S. relevant CAHC mfg. facilities*	Parent company NAICS code equivalent**
3	2295	Manufacturing: Coated fabrics, not rubberized	1	31332
4	2800	Manufacturing: Chemicals & allied products	3	325000
5	2810	Manufacturing: Chemicals & allied products	1	325000
6	2812	Manufacturing: Alkalies & chlorine manufacture	1	325181
7	2821	Manufacturing: Plastics materials & resins	8	325211
8	2851	Manufacturing: Paints & allied products	1	32551
9	2869	Manufacturing: Industrial organic chemicals, nec	1	32511
10	2911	Manufacturing: Petroleum refining	1	32411
11	3600	Manufacturing: Electronic & other electric equipment	1	335000
		Total Applicable Facilities	23	

*The number of relevant facilities is based on the (a) type of CAHC products manufactured, (b) types of wastes generated, and (c) baseline waste management practices, in relation to the terms and conditions of the proposed listing options. However, all CAHC manufacturing facilities in each industrial sector code may not be affected by the proposed listing options.

**OSW–EMRAD derived the NAICS code equivalents above from the SIC-to-NAICS conversion tables provided by the US Department of Commerce, Bureau of the Census, at the following website: *http://www.census.gov/epcd/www/naicstab.htm*. There is no direct match in the SIC–NAICS conversion tables for SIC codes 1400, 2800, 2810, and 3600, so a generalized six-digit NAICS code is provided above for these four cases.

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding entities likely to be regulated by this action. This table lists those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. To determine whether your facility is regulated by this action, you should examine 40 CFR 260 and 261 carefully in concert with the proposed rules amending RCRA that are found at the end of this **Federal Register** notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled FOR FURTHER INFORMATION CONTACT.

B. Why Does This Rule Read Differently From Other Listing Rules?

Today's proposed listing determination preamble and regulations are written in "readable regulations" format. The authors tried to use active rather than passive voice, plain language, a question-and-answer format, the pronouns "we" for EPA and "you" for the owner/generator, and other techniques to make the information in today's rule easier to read and understand. This new format is part of the Agency's efforts at regulatory reinvention, and it makes today's rule read differently from other listing rules. The Agency believes that this new format will increase readers' abilities to understand the regulations, which should then increase compliance, make enforcement easier, and foster better relationships between EPA and the regulated community.

C. What Are the Statutory Authorities for This Rule?

These regulations are being proposed under the authority of Sections 2002(a), 3001(b), 3001(e)(2) and 3007(a) of the Solid Waste Disposal Act, 42 U.S.C. 6912(a), 6921(b) and (e)(2), and 6927(a) as amended several times, most importantly by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes commonly are referred to as the Resource Conservation and Recovery Act (RCRA), and are codified at Volume 42 of the United States Code (U.S.C.), Sections 6901 to 6992(k) (42 U.S.C. 6901–6992(k)).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a) is the authority under which the CERCLA aspects of this rule are being proposed.

II. Background

A. Schedule Suit

In 1989, the Environmental Defense Fund (EDF) sued the Environmental Protection Agency (EPA), in part for failing to meet the statutory deadlines of Section 3001(e)(2) of RCRA (EDF vs. Browner; Civ. No. 89–0598 D.D.C.). To resolve most of the issues in the case, EDF and EPA entered into a consent decree, which has been amended several times to revise dates. The consent decree sets out deadlines for promulgating certain RCRA rules and for completing certain studies and reports. Paragraph 1. m. of the consent decree obliges EPA to propose a hazardous waste listing determination for wastewaters and wastewater treatment sludges generated from the production of specified chlorinated aliphatic chemicals. The wastewater and wastewater treatment sludges subject to the consent decree are those from the production of chlorinated aliphatics for which other process wastes already have been designated as hazardous waste F024 in 40 CFR 261.31. According to the consent decree, EPA must propose listing determinations by July 30, 1999 and promulgate final listing determinations on or before September 30, 2000. Today EPA is proposing listing determinations for these wastes in accordance with the consent decree.

B. Existing Chlorinated Aliphatics Listings

Today's proposal does not affect the scope of the chlorinated aliphatics process wastes that already have been listed as hazardous in prior EPA rulemakings. These wastes include wastes designated as hazardous waste code F024 as well as a number of other chlorinated aliphatic wastes listed below in Table II–1. EPA is not soliciting comment on these existing hazardous waste listings and does not intend to respond to such comments, if received.

Likewise, EPA is not soliciting comments in today's rule on the applicability of the existing chlorinated aliphatics listings to the provisions of CERCLA. Wastes listed as hazardous

nder RCRA are by definition hazardous ubstances under CERCLA, and are ncluded in the list of hazardous ubstances in 40 CFR 302.4, along with heir corresponding reportable quantities ("RQs"). Hazardous substance RQs are those quantities of the designated chemical or waste that trigger certain reporting requirements if released to the environment. The previously listed hazardous wastes from chlorinated aliphatics production and their corresponding RQs are listed below in Table II–1.

TABLE II–1.—LIST OF CURRENTLY-REGULATED CHLORINATED ALIPHATIC PROCESS WASTES AND CORRESPONDING REPORTABLE QUANTITIES AS CERCLA HAZARDOUS SUBSTANCES

Hazardous substance	RQ pounds (KG)
F024—Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. [This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in 40 CFR 261.31 or 261.32.]	1 (0.454)
F025—Condensed light ends, spent filters and filter aids, and spent dessicant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.	1 (0.454)
K016—Heavy ends or distillation residues from the production of carbon tetrachloride.	1 (0.454)
K018—Heavy ends from the fractionation column in ethyl chloride production.	1 (0.454)
K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	1 (0.454)
K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	1 (0.454)
K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	1 (0.454)
K029—Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	1 (0.454)
K030—Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	1 (0.454)
K095—Distillation bottoms from the production of 1,1,1-trichloroethane.	1 (0.454)
K096—Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	1 (0.454)

III. Today's Action

A. Summary of Today's Action

1. Scope of the Listing Determination

Aliphatic hydrocarbons are compounds composed of the atoms of hydrogen and carbon, where the carbon atoms are linked by covalent bonds in an open-chain (straight and branched) structure, and those cyclic compounds that resemble the open-chain compounds. Aliphatics are distinguished from aromatic hydrocarbons, which are defined as benzene and compounds that resemble benzene in chemical behavior. For an aliphatic to be chlorinated, one or more hydrogen atoms have been chemically replaced with chlorine atoms. The chlorinated aliphatic chemicals, the wastes of which are described in the (existing) F024 listing description, and identified in the consent decree, are those produced by free-radical catalyzed processes with carbon chain lengths ranging from one to five.

EPA performed an initial review and investigation of the waste categories identified in the consent decree, as well as a review of chlorinated aliphatics production processes and the wastewaters and wastewater treatment sludges generated by these processes. The Agency decided, for the purpose of studying chlorinated aliphatic wastes, to divide the wastestreams into several distinct waste groupings. Waste groupings were defined to differentiate between unique residuals, as well as to differentiate between unique management practices (e.g., on-site land treatment) and/or particular constituents (e.g., mercury). The Agency segregated chlorinated aliphatics wastewaters into two groupings, with one group being wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. These wastewaters were evaluated as one group due to the unique nature of this production process, the fact that these wastewaters are treated in a dedicated wastewater treatment system, and the presence of mercury in the wastestream. All other chlorinated aliphatic wastewaters were included in a second group and evaluated collectively. The Agency found that many producers of chlorinated aliphatics manufacture several different chlorinated aliphatic products at a single facility and commingle the wastewaters generated by all processes prior to treatment in a single wastewater treatment system.

The Agency identified four waste groupings for wastewater treatment sludges generated by the chlorinated aliphatics industry. These waste groupings were defined based primarily upon the particular management practices used to manage the wastes, but also based on particular production processes. The Agency identified four waste groups for chlorinated aliphatics wastewater treatment sludges. These waste groups include sludges generated from the treatment of wastewaters from the production of:

- Ethylene dichloride and/or vinyl chloride monomer (EDC/VCM);
- Vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (VCM-A);
- Methyl chloride; and
- allyl chloride.

The scope of today's notice does not include any other process residuals generated by the chlorinated aliphatics industry. In particular, the Agency is not re-evaluating previous listing determinations concerning wastes generated by chlorinated aliphatics production processes.

The Agency also points out that the consent decree specifies that this listing determination "shall include wastewaters and wastewater treatment sludges generated from the production of chlorinated aliphatics specified in the F024 listing" (a listing which is limited to wastes from chlorinated aliphatic production using the "free radical catalyzed process" but does not include wastewaters or wastewater treatment sludges). However, for today's proposed rule the Agency did not restrict its evaluation of wastewaters and wastewater treatment sludges to only those generated from chlorinated aliphatics manufacturers using the free radical catalyzed process. In the rulemaking for the F024 listing (which includes process wastes such as distillation residues, heavy ends, and tars, but not wastewaters and

wastewater treatment sludges) we found that there were distinct differences in the amount and type of chemical constituents present in these production wastes as a direct result of the production process used. For example, the free radical catalyzed reactions tended to produce unwanted organic compounds, as well as the desired chemical product, because this type of reaction is less specific (in terms of desired product) than other types of processes used. As a result, the chemical constituents that were the basis for listing F024 includes many organic compounds that are more prevalent in process wastes (again, tars, heavy ends, etc.) generated from the free radical catalyzed process.

However, in developing the information for today's proposed listing, EPA was concerned that limiting the scope of the investigation to free radical catalyzed processes might not be appropriate because of the different nature of wastewaters and wastewater treatment sludges as compared with the F024 process wastes. Wastewaters may be generated in different ways, including from scrubber waters, cooling waters, as well as reaction media, etc. Ultimately, our primary reason for not restricting our evaluation of wastewaters and wastewater treatment sludges to those generated by free radical catalyzed processes is that our preliminary analysis of these wastes indicated that the constituents of concern (i.e., dioxins, chloroform, arsenic) were not the same as the constituents of concern associated with the previously-listed F024 and F025 wastes. In those previous listing determinations (which did not include wastewaters or wastewater treatment sludges) the Agency was able to distinguish risk levels of concern based upon particular production processes.

In the case of today's proposed listing determination, we were not able to make such a distinction. The primary constituents of concern in the wastes we are proposing to list as hazardous in today's notice are dioxins, whereas dioxins were not a basis for listing the F024 and F025 wastes. Data currently available to the Agency does not support a conclusion that wastewaters and wastewater treatment sludges generated by free radical catalyzed processes have significantly different concentrations of dioxins than other types of production processes used to manufacture chlorinated aliphatics. However, EPA requests comment and data addressing the issue of whether one type of manufacturing process (e.g., free radical catalyzation) versus all other potential processes (e.g., ionic catalyzed processes) would result in different levels of dioxins in the resulting wastestream. The Agency will consider modifying the listing description proposed in today's rulemaking as appropriate to account for distinctions identified in information available to EPA at the time of the final rule.

2. Summary of the Proposed Listing Determinations

In today's notice, EPA is proposing to add three wastes generated by the chlorinated aliphatics industry to the list of hazardous wastes in 40 CFR 261.32. Below are the wastestreams EPA is proposing to list as hazardous with their corresponding proposed EPA Hazardous Waste Numbers.

K173 Wastewaters from the production of chlorinated aliphatic hydrocarbons, except for wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. This listing includes wastewaters from the production of chlorinated aliphatic hydrocarbons that have carbon chain lengths ranging from one to, and including five, with varying amounts and positions of chlorine substitution.

K174 Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (EDC/VCM).

K175 Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.

EPA is proposing to list these wastes because these residuals meet the criteria set out in 40 CFR 261.11(a)(3) for listing a waste as hazardous. EPA assessed and considered these criteria for all six wastestreams through the use of risk assessments and risk modeling, as well as a consideration of other pertinent factors. Today's proposed listing determination follows the elements of the Agency's listing decision policy that was presented in the proposed listing for wastes generated by the dye and pigment industries published in the **Federal Register** on December 22, 1994 (see 59 *FR* 66073). This policy uses a "weight-of-evidence" approach in which calculated risk information is a key factor considered in making a listing determination.

Upon promulgation of these proposed listings, wastes meeting the listing descriptions will become hazardous wastes and need to be managed in accordance with RCRA subtitle C requirements. Residuals from the treatment, storage, or disposal of the wastewater treatment sludges proposed to be listed as hazardous also will be classified as hazardous wastes pursuant to the "derived-from" rule (40 CFR 261.3(c)(2)(i)).[1] Also, with certain limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste (40 CFR 261.3(a)(2)(iv), "the mixture rule").

In today's notice, the Agency is proposing an alternative approach to listing two of the wastes from chlorinated aliphatics processes as hazardous, rather than proposing to list these wastes in accordance with the Agency's traditional listing approach. The Agency is proposing a conditional listing approach for one waste, and as one of two alternative approaches for a second waste, because the Agency has evaluated the ways in which the wastes are likely to be managed and has determined that certain waste management activities would present significant risks but that others would be protective of human health and the environment. Under a contingent management approach, EPA is proposing to list particular wastes as hazardous only if the wastes are managed in a way other than the manner in which the Agency has determined is protective of human health and the environment. In implementing a conditional-listing approach, the Agency is proposing that wastes that fall outside the scope of the listing description (*e.g.*, are destined for the appropriate type of disposal) are non-hazardous when generated. However, if it turns out that the waste actually is not handled in accordance with the conditions of the listing at any point in its management, the generators or other handlers of the waste would be subject to various enforcement actions or, depending on the violations, the waste could become a hazardous waste and may even be considered hazardous from the point of generation. The Agency's proposed conditional-listing approach for wastes generated from chlorinated aliphatics processes is further discussed in section III.E of today's notice.

Today's action also proposes not to list as hazardous the following three wastes:

- Process wastewaters from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process,
- Wastewater treatment sludges from the production of methyl chloride, and

[1] As explained later in this notice, residuals generated from the management of wastewaters proposed to be listed as hazardous (i.e., wastewater treatment sludges) will not be subject to the derived-from rule due to the fact that EPA conducted separate investigations of these residuals and they are the subject of independent listing determinations.

• Wastewater treatment sludges from the production of allyl chloride.

3. Summary of the Remainder of this Preamble

Section III.B. describes the chlorinated aliphatics industry. Section III.C. describes how the information was gathered in support of today's proposed rule. Section III.D. is a description of the risk assessment performed for three of the wastes evaluated in today's rule, including chlorinated aliphatic wastewaters, EDC/VCM sludges, and methyl chloride sludges, and the results of these assessments. Section III.E provides the rationale for the proposed listing decisions for all six wastes analyzed in today's rule. Because full risk analyses were not necessary for VCM-A wastewaters, VCM-A wastewater treatment sludges, or allyl chloride sludges, we discuss our assessment of risks attributable to each of these wastes in the same sections where we describe our listing decisions for the wastes. Section IV contains the economic assessment of the industry and the estimated impact of today's proposed listing determinations. Section V describes the proposed land disposal restriction requirements for those wastes we propose to list as hazardous, along with determinations of whether there is adequate treatment and disposal capacity for these wastes. Sections VI (compliance dates), VII (state authority), VIII (designating CERCLA hazardous substances) and IX (administrative assessments) discuss other analyses required by statute and various executive orders.

B. Description of the Industry

In 1992, when EPA began gathering information about the U.S. chlorinated aliphatics industry, it consisted of 27 facilities owned by 20 corporations. However, as a result of information updates in 1997, we determined that two chlorinated aliphatics facilities had closed and two additional facilities manufacture de minimis quantities of chlorinated aliphatics, lowering the number of facilities affected by today's proposed rulemaking to 23 and corporations to 19.

Chlorinated aliphatics production facilities are located primarily in and around the petroleum/petrochemical industry which generally is located along the Gulf Coast. The majority of facility locations are fully integrated petrochemical processing facilities. A few facilities are co-located with other chemical manufacturing and/or petroleum refining facilities. These integrated facilities often manage wastes generated across different production processes within the same waste management systems. For example, these facilities often combine chlorinated aliphatic wastewaters with non-chlorinated aliphatics wastewaters prior to treatment. The combined wastewater treatment system generates a commingled sludge. In addition, there are facilities that manage chlorinated aliphatics wastewaters in separate or dedicated wastewater treatment systems. For the purpose of this listing determination, the Agency refers to these treatment systems, and resulting sludges, as "dedicated" systems and "dedicated" sludges.

Nearly 10 million metric tons of chlorinated aliphatics were produced in 1996. More than 85 percent of the chlorinated aliphatic products manufactured in 1996 was ethylene dichloride and vinyl chloride monomer (EDC/VCM) manufactured via the "balanced process." This process involves the production of EDC as an intermediate product using direct chlorination and oxyhydrochlorination of ethylene, followed by cracking to produce VCM. Other chlorinated aliphatics production includes chlorinated methanes, methyl chloride, and a variety of other products.

C. Overview of EPA's Information Collection Activities

EPA's investigation of the wastes generated by the chlorinated aliphatics industry can be characterized in terms of two major information collection efforts: field investigations and survey evaluation. The Agency's field investigations included engineering site visits, "familiarization sampling" (sample collection and analysis to gain a preliminary understanding of the nature and concentration of potential constituents of concern), and "record sampling" (sample collection and analysis to provide data to use in assessing the potential risks posed by the wastes). The survey effort included the development, distribution, and assessment of an extensive industry-wide RCRA Section 3007 survey. Each of these efforts is summarized below.

1. Field Investigations and Sampling

EPA initiated its work activities with a series of engineering site visits. The primary purpose of the site visits was to gather information on chlorinated aliphatic manufacturing processes and the generation, management, and characterization of the consent decree wastes. In addition, the field teams identified potential record sampling locations. The Agency conducted site visits at 16 facilities prior to record sampling; site visit facilities were selected based on a goal of obtaining first hand information from a representative sampling of all chlorinated aliphatic manufacturers as well as all relevant manufacturing and waste management processes, including an investigation of dedicated wastewater treatment units.

Concurrently, the Agency initiated the analytical phase of this listing determination with the development of a Quality Assurance Project Plan (QAPjP) for sampling and analysis, followed by collection of 15 familiarization samples from three different manufacturing facilities (collected during the engineering site visits). The purpose of collecting familiarization samples is to assess the effectiveness of the analytical methods identified in the QAPjP for the analysis of the residuals of concern.

Upon successful completion of the familiarization sampling and analysis effort, the Agency initiated record sampling and analysis of the consent decree wastes. The Agency sampled wastewaters and wastewater treatment sludges from twelve facilities. During a four-month period beginning in April of 1997, the Agency collected 52 samples, excluding additional blanks and matrix spike/matrix spike duplicates(MS/MSD) collected for quality assurance purposes. Of these 52 samples, 41 were wastewater samples, and 11 were wastewater treatment sludge samples.

2. RCRA Section 3007 Survey

EPA developed an extensive questionnaire under the authority of Section 3007 of RCRA for distribution to the chlorinated aliphatics manufacturing industry. The purpose of the survey was to gather information about solid and hazardous waste generation and management practices in the U.S. chlorinated aliphatics manufacturing industry necessary to support the listing determination. The questionnaire covered topics such as chlorinated aliphatic product information, facility and unit process flow diagrams, process descriptions, residual generation and residual management profiles.

The Agency distributed the survey in November of 1992 to 57 facilities and/or corporations identified as potential chlorinated aliphatics manufacturers from the most recent information available at the time. Of the 57 surveys distributed, completed surveys were received from 27 facilities. These facilities represent 20 companies that reported that they had manufactured chlorinated aliphatics in 1991. The remaining facilities notified EPA that they had either stopped operations or

did not manufacture chlorinated aliphatic products.

We also conducted an exhaustive engineering review of the submitted surveys for accuracy and completeness. Data from the survey responses was then entered into a data base known as the Chlorinated Aliphatics Industry Studies Data Base (ISDB). We conducted quality assurance reviews of the ISDB to identify any inappropriate entries and missing data links. The exhaustive engineering review of each facility's response resulted in follow-up letters and/or telephone calls to facility representatives seeking clarifications, corrections, and additional data where needed. The responses to these requests for clarification, along with additional information gathered during engineering site visits and familiarization and record sampling activities were entered into the data base.

In 1996 we conducted a review of data collected previously, and re-contacted facility representatives to verify the status of chlorinated aliphatics manufacturing operations. In June of 1997, the Agency sent requests for updated data (for calendar year 1996) regarding consent decree wastes generated to each facility. We processed the data received from this request in the same manner as the original RCRA surveys, and entered the new information into the ISDB. Between 1993 and 1996, two chlorinated aliphatics manufacturers ceased operations, resulting in a universe of 23 chlorinated aliphatics manufacturing facilities owned and operated by 19 different companies. Each of the 23 current manufacturers of chlorinated aliphatics generate at least one wastestream identified in the consent decree. All 23 facilities generate at least one wastewater residual, while 14 facilities reported that they generate wastewater treatment sludges.

D. What Are the Risks Associated With Management of Wastewaters and Wastewater Treatment Sludges From the Production of Chlorinated Aliphatic Chemicals?

As discussed in Section III.A.2. of this preamble, EPA considers the Listing criteria set out in 40 CFR 261.11, as well as any other information relevant to the criteria, in making listing determinations. The criteria provided in 40 CFR 261.11 include eleven factors for determining "substantial present or potential hazard to human health and the environment." Nine of these factors, as described generally below, are directly incorporated into EPA's completion of a risk assessment for the wastestreams of concern:

- Toxicity (§ 261.11(a)(3)(i)) is considered in developing the health benchmarks used in the risk assessment modeling.
- Constituent concentrations and waste quantities (§ § 261.11(a)(3)(ii) and 261.11(a)(3)(viii)) are used to define the initial conditions for the risk evaluation.
- Potential to migrate, persistence, degradation, and bioaccumulation of the hazardous constituents and any degradation products (261.11(a)(3)(iii), 261.11(a)(3)(iv), 261.11(a)(3)(v), and 261.11(a)(3)(vi)) are all considered in the design of the fate and transport models used to determine the concentrations of the contaminants to which individuals are exposed.

We consider two of the remaining factors, plausible mismanagement and other regulatory actions (§ § 261.11(a)(3)(vii) and 261.11(a)(3)(x)) in establishing the waste management scenario(s) modeled in the risk assessment.

EPA conducted analyses of the risks posed by wastewaters and wastewater treatment sludges from the production of chlorinated aliphatic chemicals to assist in the determination of whether the wastes meet the criteria for listing set forth in 40 CFR 261.11(a)(3). This section (III.D.) discusses the human health risk analyses and ecological risk screening analyses EPA conducted to support our proposed listing determinations for chlorinated aliphatics wastewaters (other than VCM-A wastewaters), EDC/VCM wastewater treatment sludges, and methyl chloride wastewater treatment sludges. We consider the risk analyses in developing our listing decisions for each of the wastestreams (described in Sections III.E.1.a. for chlorinated aliphatics wastewaters, III.E.2. for EDC/VCM sludges, and III.E.4. for methyl chloride sludges). The risk analyses we describe in this section (III.D.) are presented in detail in the Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination which is located in the docket for today's proposed rule.

Because full risk analyses were not necessary for VCM-A wastewaters, VCM-A sludges, or allyl chloride sludges, we discuss our assessment of risks attributable to each of these wastes in the same sections where we describe our listing decisions for each of the wastes, that is, Sections III.E.1.b., III.E.3, III.E.5, respectively.

1. What are the Risks for Potential Human Receptors?

a. What was EPA's Approach to Conducting the Human Health Risk Assessment?

EPA's human health risk analyses for chlorinated aliphatics wastewaters and EDC/VCM and methyl chloride sludges provide estimates of the incremental human health risks resulting from exposure to contaminants detected in these wastes. The incremental human health risks are expressed as estimates of excess lifetime cancer risk for individuals ("receptors") who may be exposed to carcinogenic (cancer-causing) contaminants and hazard quotients (HQs) for those contaminants that produce noncancer health effects. Excess lifetime cancer risk is the incremental probability (chance) of an individual developing cancer over a lifetime as a result of exposure to a carcinogen. A hazard quotient is the ratio of an individual's chronic daily dose of a noncarcinogen to an acceptable daily dose for chronic exposures to the noncarcinogen.

EPA used two different methods of analysis to estimate risks. These methods are called "deterministic risk analysis" and "probabilistic risk analysis." A deterministic risk analysis produces a point estimate of risk or hazard for each receptor based on using a single value for each parameter in the analysis. A probabilistic analysis calculates risk or hazard by allowing some of the parameters to have more than one value, consequently producing a distribution of risk or hazard for each receptor. A parameter is any one of a number of inputs or variables (such as waste volume or distance between the waste management unit and the receptor) required for the fate and transport and exposure models and equations that EPA uses to assess risk. (In some cases EPA treats multiple parameters as a single parameter for the purpose of conducting our analyses. We do this to prevent inadvertently combining parameters in our analyses in ways that are unrealistic. For example, EPA treats environmental setting [location] parameters such as climate, depth to groundwater, aquifer type as a single set of parameters. We believe that, for example, allowing the climate from one location to be paired with the depth to groundwater for another location could result in a scenario that would not occur in nature.)

EPA conducts both "central tendency" and "high end" deterministic risk assessments to attempt to quantify the cancer risk or non-cancer hazard for the "average" receptor in the population

(the central tendency risk) and the risk or hazard for individuals in small, but definable "high end" segments of the population (the high end risk). For central tendency deterministic risk analyses, we set all parameters at their central tendency values. For the chlorinated aliphatics risk assessments, the central tendency values generally are either mean (average) or 50th percentile (median) values.

We use high end deterministic risk analysis to predict the risks and hazards for those individuals exposed at the upper range of the distribution of exposures. EPA's Guidance For Risk Characterization (EPA 1995)[2] advises that "conceptually, high end exposure means exposure above about the 90th percentile of the population distribution, but not higher than the individual in the population who has the highest exposure," and recommends that "* * * the assessor should approach estimating high end by identifying the most sensitive variables and using high end values for a subset of these variables, leaving others at their central values." For the chlorinated aliphatics high end deterministic risk analyses, EPA set two parameters at their high end values (generally 90th percentile values), and set all other parameters at their central tendency values. We used a "sensitivity analysis" to identify the two parameters that we set at high end. A sensitivity analysis is an iterative procedure in which an analysis is performed by alternately setting different parameters at high end to identify the parameters that most influence the analysis' outcome. EPA compares the different results generated by the sensitivity analysis and selects the two high end parameters to which the analysis was "most sensitive," that is, the two parameters that are expected to generate the greatest estimate of risk or hazard.

EPA used probabilistic risk assessment to support the results of the deterministic risk analyses and to allow EPA to quantify individual risk at selected percentiles of the risk distribution (for example, 50th percentile, 90th percentile, 95th percentile). EPA conducted probabilistic risk analyses for those combinations of receptor, contaminant, and pathway for which risk or hazard estimated using a deterministic analysis exceeded the following criteria: a cancer risk of 1×10^{-6} or a hazard quotient of 1. In a probabilistic analysis, each parameter may have more than one value. EPA develops "probability density functions" (PDFs), distributions that describe the full range of values that the various input parameters may have. Some of the parameters in the probabilistic analysis are set as constant values because (1) there are insufficient data to develop a PDF; (2) EPA made assumptions to simplify the analysis in cases where such simplifications would improve the efficiency of the analysis without significantly affecting the results; (3) site-specific constants are available; or (4) the analysis has not been shown to be sensitive to the value of the parameter, that is, even if the parameter varies, the resulting risk estimate does not vary significantly. The Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination describes the input parameters used in the probabilistic analysis. In the probabilistic analysis, risk is approximated through repetitive calculation of the fate and transport and exposure equations and models using input parameters randomly selected from the PDFs. The result of the probabilistic analysis is a distribution of the risks or hazards for each of the receptors.

The human health risk assessments that EPA conducted to support the chlorinated aliphatics listing determination included four primary tasks: (1) establishing that there are constituents in the wastes that are of concern to the Agency and that warrant analysis to determine their risk to human health; (2) establishing a scenario under which contaminants are released from a waste management unit and subsequently are transported in the environment to a human receptor; (3) estimating the concentrations of contaminants to which the receptor might be exposed; (4) quantifying the receptor's exposure to contaminants and the contaminants' toxicity to the receptor; and (5) describing the receptor's predicted risk. The following sections discuss how EPA completed each of these tasks for the risk assessments conducted to support the chlorinated aliphatics listing determination.

b. How Did EPA Determine Which Waste Constituents and Waste Volumes Would Be Evaluated in the Risk Assessments?

To support the chlorinated aliphatics listing determination, EPA collected and analyzed samples of wastewaters from the production of chlorinated aliphatic chemicals, wastewater treatment sludges from the production of EDC/VCM, and wastewater treatment sludges from the production of methyl chloride (see Section III.E of today's preamble, as well as the Background Document for Identification and Listing of Chlorinated Aliphatics Production Wastes, for further discussion of EPA's waste characterization efforts). We used the results of these waste analyses to establish the "constituents of potential concern" (COPCs) in the wastes. We derived waste volume information from data provided by facilities in their RCRA Section 3007 questionnaire responses.

EPA collected and analyzed 41 samples of wastewaters generated from the production of chlorinated aliphatic chemicals. EPA collected six of these samples at the influent (or "headworks") of wastewater treatment systems that manage only wastewaters derived from the production of chlorinated aliphatic chemicals. We call these samples "dedicated" chlorinated aliphatics wastewater samples,[3] and we chose to use these samples in our assessment of the risks and hazards attributable to the management of chlorinated aliphatic wastewaters. (The assessment of dedicated sample data allows us to evaluate without question what risks are attributable to the wastes of concern to the Agency.) Because we used analytical data for dedicated chlorinated aliphatics wastewater samples in our analysis, we also used dedicated chlorinated aliphatic wastewater volumes in our analysis. We identified eight wastewater volumes that represent the volumes of dedicated chlorinated aliphatics wastewaters discharged to the headworks of chlorinated aliphatics facility wastewater treatment systems.

EPA collected and analyzed seven samples of nonhazardous EDC/VCM sludge. (Some sludges generated by this industry already are designated as hazardous because they include material derived from wastes that EPA previously listed as hazardous waste.) Four were samples of sludges that were derived from wastewater treatment systems that manage only EDC/VCM process wastewaters. These samples are "dedicated" EDC/VCM sludge samples. Three were samples of sludges that result from the treatment of EDC/VCM process wastewaters combined with wastewaters from non-EDC/VCM processes and sources. EPA chose to use only the dedicated EDC/VCM sample data in our analysis. Because we used

[2] EPA. 1995. Guidance for Risk Characterization. U.S. Environmental Protection Agency Science Policy Council. February.

[3] "Dedicated" chlorinated aliphatic wastewaters are those that are comprised only of chlorinated aliphatics process wastewaters, that is, wastewaters generated from the production of the chlorinated aliphatic chemicals of concern to this listing determination.

analytical data for dedicated EDC/VCM sludge samples in our analysis, we also used "dedicated" EDC/VCM sludge volumes. EPA divided the volume of wastewater attributable to EDC/VCM processes by the total volume of wastewater influent, and applied the resultant ratio to the total sludge volumes to obtain the volume of wastewater treatment sludge attributable to EDC/VCM processes (that is, the "dedicated " EDC/VCM sludge volume).

The methyl chloride sludge, generated by only one facility, results from treatment of the combined wastewaters from the facility's methyl chloride production process and other facility processes and sources. The facility reports that approximately 18 percent of the wastewater that generates the sludge is from the methyl chloride process. The remainder of the wastewater is from other processes. Because the sludge, as generated, is not dedicated, and there is no means to obtain a dedicated sample of the methyl chloride sludge, we conducted our risk assessment using the sample data for the nondedicated methyl chloride sludge sample, and, comparably, the nondedicated (total) methyl chloride sludge volume.

Using the results of the analysis of the waste samples, EPA developed a list of "chemicals of potential concern" (COPCs) for the chlorinated aliphatics wastewaters, EDC/VCM sludges, and methyl chloride sludges. The COPCs are the constituents which were the subject of EPA's risk assessment. EPA developed the COPC lists by taking the complete list of detected constituents in the wastes and eliminating constituents from the list that occurred at concentrations clearly below levels of concern, based on screening analyses developed to maximize risk estimates. For chlorinated aliphatics wastewaters and EDC/VCM sludges, EPA also eliminated constituents when a constituent was detected in only one of the samples and the concentration of the constituent in the one sample was qualified with the "J" qualifier, indicating that the constituent was detected below the quantitation limit and the reported value was estimated. Specifically, the laboratory detected 69 constituents in chlorinated aliphatics wastewater samples of which we eliminated 28; 53 constituents in EDC/VCM sludges of which we eliminated 16; and 19 constituents in methyl chloride sludges of which we eliminated 11.

Six polychlorinated dibenzodioxin ("dioxin") congeners and ten polychlorinated dibenzofuran ("furan") congeners were among the constituents detected in samples of the chlorinated aliphatics wastewaters, EDC/VCM sludges, and methyl chloride sludges and evaluated in the risk assessment. EPA classifies the furan congeners and certain polychlorinated biphenyl (PCB) congeners as "dioxin-like compounds" because of their structural similarity to the dioxins (EPA 1994a[4]). In today's preamble we use the term "dioxins" to represent both the dioxin and furan congeners. Our use of the term "dioxins" does not refer to dioxin-like PCBs because we did not analyze for PCBs in our waste samples from the chlorinated aliphatics industry since we do not expect PCBs to be constituents of the chlorinated aliphatics wastes that are the subject of today's listing determination.

c. What Exposure Scenarios Did EPA Evaluate?

Prior to conducting the risk assessments, EPA had to establish that there is a plausible scenario under which a receptor might be exposed to contaminants in the wastewaters and sludges. Establishing this scenario required that EPA determine:

- How the waste is managed or is likely to be managed;
- How contaminants could be released from the waste management unit;
- How contaminants could be transported in the environment to a point of contact with a receptor; and
- How a receptor could be exposed to the contaminants.

One respondent to EPA's § 3007 questionnaire reported that they discharge a portion of their nonhazardous chlorinated aliphatics wastewaters to nonhazardous underground injection wells. Section III.E.1.a.i. discusses EPA's evaluation of the underground injection waste management scenario. Twenty-three respondents reported that they manage their nonhazardous or exempt chlorinated aliphatics wastewaters in tanks. Because management of wastewaters in tanks is the dominant wastewater management practice in the chlorinated aliphatics industry, EPA chose to evaluate tanks in our risk assessment for chlorinated aliphatics wastewaters. For reasons discussed in III.E.1.a.i., EPA chose to evaluate risks attributable to management of chlorinated aliphatics wastewaters in uncovered aerated biological treatment tanks.

One respondent to EPA's § 3007 questionnaire reported that they manage their EDC/VCM wastewater treatment sludges in an onsite land treatment unit. All other respondents reported that nonhazardous EDC/VCM sludges are managed in landfills. Eight facilities send EDC/VCM sludges to offsite nonhazardous waste landfills, two facilities manage EDC/VCM sludge in onsite nonhazardous industrial waste landfills, and one facility manages their nonhazardous EDC/VCM sludge in an onsite hazardous waste landfill (see section III.E.2.a. in today's preamble for a description of current methods for managing EDC/VCM sludges). For this assessment, EPA evaluated the risks associated with management of EDC/VCM sludges in unlined municipal landfills and in a land treatment unit. Because the only facility that generates methyl chloride sludges manages them in an onsite nonhazardous industrial waste landfill, EPA evaluated this management scenario in our risk assessment for methyl chloride sludges. The Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination provides a complete discussion of the parameters that define the characteristics of the waste management units.

EPA determined that releases from all of the waste management units (tank, land treatment unit, and landfill) could occur through release of vapor emissions to the air. In addition, for the land treatment unit and the landfill, EPA determined that releases could occur through leaching of the waste into the subsurface. We assumed that the chlorinated aliphatics industry's tanks retain sufficient structural integrity to prevent wastewater releases to the subsurface (and therefore to groundwater), and that overflow and spill controls prevent wastewater releases to the ground surface. For the land treatment unit, releases also could occur through release of particulate emissions to the air and runoff and erosion of waste from the unit. EPA assumed that wastewater would entrain any particulate matter such that particulates would not be released from the tanks. EPA did not evaluate particulate emissions from the landfills because the moisture content of the sludges (41 to 74 percent moisture) would prevent generation and release of particulates to the air in the time between placement of the waste in the landfill and application of daily cover or a new day's waste addition. EPA also assumed that runon/runoff controls would prevent releases from the landfills due to erosion and runoff.

EPA also evaluated the mechanisms and pathways by which contaminants

[4] EPA. 1994a. Estimating Exposure to Dioxin-Like Compounds, Volume I: Executive Summary. Review Draft. EPA/600/6–88/005Ca. Office of Research and Development. June.

might be transported to the points where receptors are exposed. The mechanisms and pathways we evaluated are as follows:

- Eroded waste can be transported by runoff and deposited onto the soil and into surface water bodies.
- Leachate can migrate through the unsaturated [5] zone to the saturated [6] zone, where contaminants are transported in groundwater to drinking water wells and to points of discharge to surface water bodies.
- Vapor emissions can remain dispersed in the air, or can be deposited through wet and dry deposition. Specifically, EPA models:
- The concentration of vapor phase contaminants in air,
- The diffusion of vapor phase contaminants into plants,
- The diffusion of vapor phase contaminants into surface water,
- Wet deposition of vapors onto soils and surface water (for example, due to wash-out [scavenging] by precipitation).
- Dry deposition of vapors onto soils (for example, due to density).
- Although we do not evaluate wet and dry deposition of vapors onto plants, we do assume that wet and dry deposition of vapors onto soils increase the contaminant concentrations in the soil and result in additional uptake of contaminants into plants via soil-to-plant uptake.
- Particulate emissions can remain dispersed in the air or be deposited through wet deposition (in precipitation) or dry deposition (particle settling). We assume that particulates may be deposited onto soil and surface water through both wet and dry deposition, and onto plants through dry deposition.

Human receptors indirectly may come into contact with vapors that diffuse into vegetation, particulates that are deposited on vegetation, or contaminants that are taken up by vegetation from the soil through exposure to contaminated home-grown fruits and vegetables, as well as exposure to contaminated beef and dairy products derived from cattle which have ingested contaminated forage, silage, grain, and surface soil. Receptors that ingest fish also indirectly may come into contact with contaminants in air-borne vapors and particulates (through vapor diffusion into surface water, vapor deposition onto surface water, and particulate deposition onto surface water), contaminated groundwater (through groundwater discharge into surface water), and runoff and eroded soil that enter surface water.

EPA determined that the following receptors reasonably represent the types of individuals that could be exposed to contaminants in chlorinated aliphatics wastes, and were the receptors evaluated in our risk analyses:

- an adult resident
- the child of a resident
- a home gardener
- a farmer
- the child of a farmer
- a fisher

The following sections describe briefly EPA's primary assumptions regarding the characteristics and activities of each of the receptor types, and the routes by which each receptor is exposed.

Adult Resident and Child of Resident—We assume that an adult and child reside near the waste management unit. The residential receptors inhale vapors and particulate matter that are dispersed in the ambient air. EPA assumes that household water is supplied to the residential receptors by a domestic groundwater well that is located near their home. The adult resident and child of the resident drink water that comes from the well. We assume that the adult resident inhales vapors that are emitted from the water that they use in their house (for example, during showering), and that the adult resident's skin also is exposed to groundwater when he/she bathes. The residential receptors do not ingest foods that are grown in the vicinity of their home, however they do incidentally ingest surface soil from their yard.

Home Gardener—We assume that the residential receptor may have a home garden. The home gardener grows fruit, exposed vegetables (vegetables with edible parts that are exposed at land surface), and root vegetables. Approximately 23 percent of the exposed vegetables, 11 percent of the root vegetables, and 12 percent of the fruits eaten by the gardener are grown in his/her garden (EPA 1997a, Table 13–71) [7]. The gardener's other characteristics and activities are the same as those of the adult resident.

Fisher—We assume that the residential receptor may be a recreational angler. Approximately 32 percent of the fish eaten by the fisher are from a stream located near the waste management unit (EPA 1997a, Table 13–71). The fisher's other characteristics and activities are the same as those of the adult resident.

Adult Farmer and Child of Farmer—We assume that a farmer raises fruits, exposed vegetables, root vegetables, beef cattle, and dairy cattle in an agricultural field located near the waste management unit. Approximately 42 percent of the exposed vegetables, 17 percent of the root vegetables, 33 percent of the fruits, 49 percent of the beef, and 25 percent of the dairy products eaten by the farmer and the child of the farmer are grown/raised on the farmer's agricultural field (EPA 1997a, Table 13–71). We assume that the farmer incidentally ingests soil from the agricultural field, and that the child of the farmer incidentally ingests soil from his/her yard. The farmer's and child's exposure to groundwater via ingestion, inhalation, and dermal contact are the same as that for the adult resident and child of the resident.

EPA establishes the locations of receptors relative to waste management units based on information obtained from national surveys. Exposure to groundwater occurs through the use of water from drinking water wells, and exposure via nongroundwater pathways occurs through runoff/erosion and releases to air. Therefore, "distance to receptor" for groundwater exposure pathways actually is the distance to the drinking water well that the receptor is using (the "receptor well"). "Distance to receptor" for nongroundwater pathways is the distance to the residence where the receptor is inhaling air or contacting soil, the distance to the garden where the receptor is growing fruits and vegetables, or the distance to the field where the receptor is growing crops or raising livestock. Consequently, EPA uses different databases to establish "distance to receptor," depending on whether we are evaluating a groundwater or a nongroundwater pathway.

For analysis of the nongroundwater pathway (air pathways and erosion/runoff) risks in the deterministic analysis we assume that the receptors live either 75 meters (m) (high end) or 300 m (central tendency) from the waste management unit. The distance of 250 feet (ft) (approximately 75 m) is based on the actual measured distance to the nearest resident for the worst-case facility evaluated in the risk assessment conducted to support the "Hazardous Waste Treatment, Storage, and Disposal Facilities—Organic Air Emissions Standards for Process Vents and Equipment Leaks Final Rule" (55 FR

[5] The unsaturated (vadose) zone is a subsurface zone in which the pore spaces contain both water and air.

[6] The saturated zone is a subsurface zone in which all pore spaces are full of water.

[7] EPA. 1997a. Exposure Factors Handbook, Volumes I, II, and III. Office of Research and Development, Washington, D.C., EPA/600/P–95/002Fa, b, c. August 1997; www.epa.gov/ordntrnt/ord/webpubs/exposure/index.html.

25454), and was used as distance to the nearest resident for that rulemaking. In the same risk assessment, EPA identified the receptor distance of 1000 ft (approximately 300 m) as the median distance in a random sample of distances to the nearest residence. For the probabilistic analysis, we assume the receptors live either 50, 75, 100, 200, 300, 500, or 1000 m from the waste management unit. For air pathway analyses, we always assume that the receptors (including cattle) are located along the centerline of the area most greatly impacted by air releases from the waste management units. However, at distances of a few hundred meters from the waste management unit, the air concentrations within about a 100 meter lateral distance do not vary appreciably.

For deterministic analyses we assume that a receptor well is located 102 m (high end) or 430 m (central tendency) from the waste management unit, and that the receptor well is located on centerline of the contaminant plume (high end) or halfway between the centerline and the edge of the contaminant plume (central tendency). The 102 m distances is the 10th percentile value in the distribution of distances derived from EPA's 1988 survey of Solid Waste (Municipal) Landfill Facilities (DPRA 1993 [8]). The 430 m value is the 50th percentile value in that same distribution. For the Monte Carlo analysis, the distance from the waste management unit to the receptor well is based on the complete distribution of distances to receptor well reported by the survey respondents, and ranges from 0.02 m (the location of the closest reported well was 0 m) to 1604 m (the maximum distance for which EPA requested receptor well information was 1 mile). For the Monte Carlo analysis we assume that the receptor well is located anywhere within the contaminant plume.

The *Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination* provides a complete discussion of the values of additional parameters that define the characteristics of each receptor, such as the amounts of contaminated food and water they ingest, their inhalation rates, and how long they live near the waste management unit.

[8] DPRA. 1993. Parameter Values for Developing Nationwide Regulations with the EPA's Composite Model for Landfills (EPACML). EPA Contract Number 68–WO–0029. July.

d. How Did EPA Predict What Contaminant Concentrations Are at the Points Where Receptors Are Exposed?

EPA conducts contaminant fate and transport modeling and indirect exposure modeling to determine what the concentrations of contaminants will be in the media (for example, groundwater, air, soil, food items) that the receptor comes into contact with. These concentrations are called "exposure point concentrations" (that is, they are the contaminant concentrations at the point where the receptor is exposed to the contaminants). There are a number of computer-based models and sets of equations that EPA uses to predict exposure point concentrations. In the following sections we briefly discuss these models and equations and their application in the risk analyses.

i. Partitioning Model

For the landfill and the land treatment unit, EPA uses a series of "partitioning" equations to determine how much contaminant mass is retained in the waste management unit and how much is released into the environment. These equations are based upon equations presented in a series of articles by Jury et al. (Jury et al. 1983, 1984, and 1990 [9]). EPA used the partitioning equations to estimate the mass of a contaminant that will be lost from the land treatment unit due to volatilization into the air, contaminant leaching into the subsurface, runoff from the land treatment unit, and degradation. For the landfill scenarios, EPA used the partitioning equations to determine how much of the contaminant mass would be lost due to volatilization into the air; EPA assumed that the remainder of the mass would be available to leach into the subsurface. We assumed that volatilization losses could occur prior to the landfill being covered with daily cover or daily waste addition, through the daily cover or daily waste addition, and through the cap that is placed on the landfill after closure. For the landfill, we used toxicity characteristic leaching procedure (TCLP) analytical results (rather than the partitioning equations) as the predictor of leachate concentration. The TCLP is an analytical procedure that "leaches" a waste sample in a way that mimics the leaching of waste in a municipal landfill. Thus, TCLP results are a proxy for the concentrations of contaminants that would be generated in leachate if the waste were placed in a municipal landfill.

[9] Jury, W.A., W.F. Spencer, and W. J. Farmer. 1983. Behavior assessment model for trace organics in soil: i. model description. J. Environ. Qual. 12(4):558–564.

Jury, W.A., W. J. Farmer, and W.F. Spencer. 1984. Behavior assessment model for trace organics in soil: ii. chemical classification and parameter sensitivity. *J. Environ. Qual.* 13(4):567–572.

Jury, W.A., D. Russo, G. Streile, and H.E. Abd. 1990. Evaluation of volatilization by organic chemicals residing below the soil surface. *Water Resources Research.* 26(1):13–20.

ii. Tank Emissions Model

EPA modeled emissions from aerated biological wastewater treatment tanks using the CHEMDAT8 model (EPA 1994b [10]). We used the emissions estimates in conjunction with the air dispersion modeling results (see Section D.1.d.iii) to estimate constituent-specific air concentrations and deposition rates. CHEMDAT8 accounts for most of the competing removal pathways that might limit air emissions, including adsorption, biodegradation, and hydrolysis. Chemicals that sorb to solids or decompose due to either biodegradation or hydrolysis have lower potential for emission to the air. CHEMDAT8 is considered to provide reasonable to slightly high estimates of air emissions.

CHEMDAT8 requires that the user specify parameters relating to tank characteristics, waste characteristics, contaminant physical and chemical properties, and location-specific meteorological conditions (for example, windspeed and temperature). The tank characterization data required by the model include both tank physical parameters (for example, tank dimensions) and tank operating parameters (for example, the number of aerators in the tank). In the absence of site-specific data, we developed tank dimensions based on facility-reported wastewater generation rates, an assumed wastewater depth in the tank of 15 feet, and a retention time in the tank of two days. We selected operating parameters that we believe represent typical operating conditions of an aerated tank. The Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination provides a complete list of the parameters used in the CHEMDAT8 model.

iii. Air Dispersion and Deposition Model

We used EPA's Industrial Source Complex Short Term model (version 3;

[10] EPA. 1994b. CHEMDAT8 User's Guide, EPA–453/C–94–080B. Office of Air Quality Planning and Standards, US Environmental Protection Agency, Research Triangle Park, NC, November. This model is publicly available from EPA's Web page at http://www.epa.gov/ttn/chief/software.html.

ISCST3 [11]) to estimate the dispersion and deposition of vapors emitted from the wastewater treatment tank, the municipal landfill, the onsite industrial landfill, and the land treatment unit. EPA also used ISCST3 to estimate the dispersion and deposition of particulate emissions from the land treatment unit. For the land treatment unit, EPA used equations documented in EPA's "Compilation of Air Pollutant Emission Factors (AP–42)" (EPA 1985) [12] to estimate particulate emissions resulting from wind erosion and tilling activities. Vapor emissions from the landfill and the land treatment unit were estimated using the partitioning models discussed in Section III.D.1.d.i. Vapor emissions from the wastewater treatment tank were estimated using the CHEMDAT8 model discussed in Section III.D.1.d.ii. ISCST3 was used to estimate the air concentration of vapors, wet deposition of vapors, the air concentration of particulates, wet deposition of particulates, and dry deposition of particulates. We calculate dry deposition of vapors using the air concentration of vapors and a contaminant deposition velocity.

iv. Overland Transport Model

The Universal Soil Loss Equation (USLE) is an erosion model originally designed to estimate long-term average soil erosion losses to a nearby surface water body from an agricultural field having uniform slope, soil type, vegetative cover, and erosion-control practices. We used a modified form of the USLE to estimate the mass of soil lost per year per unit area from the land treatment unit and deposited directly onto the adjacent receptor site (agricultural field, residential lot, home garden) and into a nearby stream.

Because the basic USLE equation estimates only soil erosion to surface water bodies, EPA assumes the receptor location is located between the land treatment unit and the surface water body. The area including the land treatment unit, the receptor site, and the intervening area is considered for the purposes of the analysis to be an independent, discrete drainage subbasin that is at steady-state. We estimate the soil erosion load from the subbasin to the surface water body using a distance-based sediment delivery ratio, and consider that the sediment not reaching the surface water body is deposited evenly over the area of the subbasin. Using mass balance equations, EPA estimates contaminant contributions to the surface water body and the receptor soil. "Mass balance equations" are equations that honor the law of conservation of mass, that is, the mass of a contaminant that is present at the beginning of the analysis (for example, the mass of a contaminant in a waste placed in a waste management unit) is equal to the mass of the contaminant present at the end of the analysis. Even though at the end of the analysis the contaminant mass may be partitioned into a number of environmental "compartments" (for example, the waste management unit, the soil, and the surface water body), there is in total no more or no less mass than was present at the start of the analysis.

Contaminated particles are transported from the land treatment unit to receptor sites via air deposition as well as runoff/erosion. We applied mass balance for each area of interest (for example, buffer area between source and receptor site, receptor site, or surrounding area). Consequently, the respective air deposition value for each area of interest is included in the evaluation of the mass balance. We considered that the air deposition over the entire subbasin area is uniform and equal to the air deposition modeled for the receptor site.

v. Groundwater Model

We used EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP; EPA 1996a, 1996b, 1996c, 1997 [13]) to model the subsurface fate and transport of contaminants that leach from the waste management units (the land treatment unit or the landfill) and migrate to a residential drinking water well or discharge from groundwater to surface water.

Precipitation that migrates through the waste management unit generates leachate, which infiltrates the bottom of the waste management unit and migrates into the unsaturated zone. The contaminants dissolved in the leachate subsequently are transported in the aqueous phase through the unsaturated zone to the underlying saturated zone and then downgradient to a receptor (drinking water) well or surface water body located at a specified distance from the boundary of the waste management unit. EPACMTP accounts for the following processes affecting contaminant fate and transport: advection, hydrodynamic dispersion, equilibrium linear or nonlinear sorption by the soil and aquifer solids (both in the unsaturated and saturated zones), and contaminant hydrolysis. In the event that the hydrolysis daughter products are toxic and their chemical properties are known, the model also accounts for the formation and subsequent fate and transport of the daughter products.

The landfill analysis employed two simplifying assumptions. First, we assumed that contaminant leaching from the landfill does not occur until after the landfill closes (that is, after 30 years). EPA made this assumption because of complexities associated with linking the output of the landfill partitioning equations (discussed in Section III.D.1.d.i.) and the groundwater model, EPACMTP. Second, we assumed that there are no contaminant losses due to mechanisms other than leaching after the landfill has been closed (that is, after 30 years). This effectively over-estimates the total mass of volatile contaminants that would leach to groundwater because it does not allow contaminant loss due to volatilization from the landfill to deplete the total contaminant mass available for leaching from the landfill in the years after closure. EPA determined that if volatile constituents caused significant risk via the groundwater pathway, we would have to re-evaluate our methodology for conducting the landfill analysis. This situation did not occur.

vi. Surface Water Model

EPA assumed that fish are exposed to waste constituents in surface water. Specifically, we assumed that fish are exposed to contaminants dissolved in the water column, contaminants sorbed to suspended solids in the water

[11] EPA. 1995. User's Guide for the Industrial Source Complex (ISC3) Dispersion Models (Draft) (Revised). Volume I. EPA–454/B–95–003a. Office of Air Quality Planning and Standards, Emissions, Monitoring and Analysis Division, Research Triangle Park, NC. The ISCST3 model and meteorological preprocessor, PCRAMMET, and related user's guides can be accessed and downloaded through the Internet from the Support Center for Regulatory Air Models (SCRAM) web page (http://www.epa.gov/scram001). The SCRAM is part of EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN).

[12] EPA. 1985. Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume I: Stationary Point and Area Sources. Office of Air Quality Planning and Standards, Emissions Inventory Group, Research Triangle Park, NC. AP–42 can be downloaded through the Internet at http://www.epa.gov/ttn/chief/ap42.html.

[13] EPA. 1996a. EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) Background Document. Office of Solid Waste, Washington, DC.

EPA. 1996b. EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) Background Document for the Finite Source Methodology. Office of Solid Waste, Washington, DC.

EPA. 1996c. EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) Background Document for Metals. Office of Solid Waste, Washington, DC.

EPA. 1997. EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) User's Guide. Office of Solid Waste, Washington, DC.

column, and contaminants associated with the bed sediment in the surface water body. The method used to estimate how management of chlorinated aliphatics wastewaters and wastewater treatment sludges impacts surface water is based on the methodology presented in Addendum to Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions (EPA 1993) [14]. The model accounts for six ways in which contaminants may enter the surface water body: (1) contaminants may be sorbed to eroded soils that enter the surface water body, (2) contaminants may be dissolved in runoff that enters the surface water body, (3) contaminants may be bound to airborne particles that are deposited on the surface water body, (4) vapor phase contaminants in air may be deposited on the surface water body in precipitation (that is, wet deposition of vapor phase contaminants), (5) vapor phase contaminants in air may enter the surface water body through direct diffusion from the air, and (6) contaminants in groundwater may discharge into the surface water body. The model also accounts for processes that remove contaminants from the surface water body. These include: (1) volatilization of contaminants that are dissolved in surface water and (2) burial of contaminants in the sediment at the bottom of the surface water body. The model assumes that the impact to the water body is uniform, which is more realistic for smaller surface water bodies than for larger ones. The model estimates the concentrations of contaminants in the water column and bed sediment. We used the water column or bed sediment concentrations and bioconcentration factors (BCFs), bioaccumulation factors (BAFs), or biota-sediment accumulation factors (BSAFs) to estimate contaminant concentrations in fish tissue.

vii. Indirect Exposure Equations

EPA uses a series of "indirect exposure equations" to quantify the concentrations of contaminants that pass indirectly from contaminated environmental media to the receptor. For example, contaminants that are transported in air may be deposited on plants or onto the soil where they may accumulate in forage, grain, silage or soil that is consumed by beef cattle and dairy cattle. Individuals may then ingest contaminated beef and dairy products. Similarly, contaminants may be transported in groundwater to domestic groundwater wells where the groundwater is extracted and used for showering. The water vapor generated in the shower may be inhaled by the receptor. The indirect exposure equations allow EPA to calculate exposure point concentrations for these pathways and routes of exposure. The indirect exposure equations used by EPA to conduct the chlorinated aliphatic wastewater, EDC/VCM sludge, and methyl chloride sludge risk assessments are presented in the Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination.

e. How Did EPA Quantify Contaminant Exposure and Toxicity?

Exposure is the condition that occurs when a contaminant comes into contact with the outer boundary of the body, such as the skin, mouth and nostrils. Once EPA establishes the concentrations of contaminants at the points of exposure, EPA can estimate the magnitude of each receptor's exposure, or the contaminant dose. Dose is the amount of the contaminant that crosses the outer boundary of the body and is available for absorption at internal exchange boundaries (lungs, gut, skin; EPA 1992 [15]). For example, for exposure to a carcinogen through ingestion of contaminated drinking water, dose is a function of the concentration of the contaminant in drinking water (the exposure point concentration), as well as certain "exposure factors," such as how much drinking water the receptor consumes each day (the intake rate), the number of years the receptor is exposed to contaminated drinking water (the exposure duration), how often the receptor is exposed to contaminated drinking water (the exposure frequency), the body weight of the receptor, and the period of time over which the dose is averaged.

EPA's primary source of exposure factors is the *"Exposure Factors Handbook"* published by EPA in August 1997 (EPA 1997a [15]). For probabilistic risk analyses, EPA used the distributions of exposure factor values provided in the Exposure Factors Handbook to develop PDFs for exposure factors. The one situation where EPA does not develop an expression of dose is the case where we use Reference Concentrations (RfCs) [17] to estimate noncancer hazard for the inhalation exposure route. In this situation, EPA calculates noncancer hazard from concentration of the contaminant in air and the RfC, without considering exposure factors (inhalation rate, body weight) other than those inherent in the RfC.

We express the toxicity of contaminants as health benchmarks. Health benchmarks include cancer slope factors (CSFs, EPA's measure of cancer potency) [18] for oral exposure carcinogenic contaminants; reference doses (RfDs, EPA's acceptable contaminant dose via ingestion) [19] for oral exposure to noncarcinogenic contaminants; inhalation CSFs for inhalation exposure to carcinogenic contaminants; and RfCs for inhalation exposure to noncarcinogenic contaminants. EPA derived inhalation CSFs from Unit Risk Factors (URFs) for inhalation exposure to carcinogens. EPA uses Toxicity Equivalency Factors (TEFs) to express the toxicity of specific dioxin congeners in terms of the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8–TCDD) (see Section III. D.1.g.ii. for an explanation of TEFs). Health benchmark values are available from a number of sources. For the chlorinated aliphatics wastewater, EDC/VCM sludge, and methyl chloride sludge risk assessments, EPA established an order of preference for the sources of health benchmarks. The order of preference is as follows (from most preferred to least preferred): (1) the Integrated Risk Information System (IRIS) online database of verified health benchmarks (http://www.epa.gov/iris/subst/index.html) [20]; (2) the Health Effects Assessment Summary Tables (HEAST;

[14] EPA. 1993. Addendum to Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions. EPA/600/AP–93003. Office of Health and Environmental Assessment, Washington, DC.

[15] 57 FR 22888. Final Guidelines for Exposure Assessment. U.S. Environmental Protection Agency, May 29, 1992.

[16] EPA. 1997a. *Exposure Factors Handbook, Volumes I, II, and III.* Office of Research and Development, Washington, D.C., EPA/600/P–95/002Fa, b, c. August 1997, www.epa.gov/ordntrnt/ord/webpubs/exposure/index.html.

[17] Very simply, an RfC is EPA's acceptable concentration in air for a contaminant that causes non-cancer health effects. An RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious noncancer effects during a lifetime.

[18] A cancer slope factor is the slope of the dose-response curve in the low-dose region. When low-dose linearity cannot be assumed, the slope factor is the slope of the straight line from 0 dose (and 0 excess risk) to the dose at 1% excess risk. An upper bound on this slope is usually used instead of the slope itself. The units of the slope factor usually are expressed as 1/(mg/kg-day).

[19] An RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.

[20] EPA. 1998. Integrated Risk Information System. Online database. (IRIS) Office of Research and Development (ORD). Cincinnati, OH.

EPA 1997b)[21]; (3) EPA's National Center for Environmental Assessment (NCEA) provisional values, and (3) benchmarks developed by the California Environmental Protection Agency (CALEPA)[22]. The specific health benchmarks used in the analysis are presented in Appendix C of the Background Document for the Chlorinated Aliphatics Risk Assessment.

f. What Are the Risks From Exposure to Chlorinated Aliphatics Wastewaters, and EDC/VCM and Methyl Chloride Sludges?

The following sections discuss EPA's estimates of individual and population risk for chlorinated aliphatics wastewaters, EDC/VCM sludges, and methyl chloride sludges.

i. What Are the Individual Risks?

EPA combined estimates of dose and estimates of toxicity (the health benchmarks) to calculate individual incremental lifetime carcinogenic risk estimates and hazard quotients for the potential contaminants of concern in chlorinated aliphatic wastewaters, EDC/VCM sludge, and methyl chloride sludge. Complete results of these calculations are provided in the *Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination*. EPA typically considers a decision to list a waste when carcinogenic risks are $1x10^{-5}$ or greater or when the noncancer HQ is 1 or greater. None of the contaminants generated noncancer hazards with an HQ greater than 1, nor did the sum of the contaminant HQs exceed 1. In summing carcinogenic risk estimates and noncancer hazard quotients, EPA does not sum those risks or hazards that could not occur within the lifetime of an individual. For example, if estimated risks due to nongroundwater pathways occur during the operating or post-closure life of the unit (that is, due to releases to air and runoff/erosion) and risk via the groundwater pathways are not projected to occur for hundreds, or even thousands, of years due to long times required for contaminant migration, then these two pathway risks would not be added together.

The following sections present separately our deterministic and probabilistic estimates of individual risk for:

- Wastewaters from the production of chlorinated aliphatic chemicals,
- Wastewater treatment sludges from the production of EDC/VCM, and
- Wastewater treatment sludges from the production of methyl chloride.

Chlorinated Aliphatic Wastewaters

Table III–1 summarizes the significant (greater than $1x10^{-5}$ risk estimates for chlorinated aliphatic wastewaters managed in onsite aerated biological wastewater treatment tanks. The highest deterministic risk estimate, $2x10^{-5}$, occurs for the farmer. The risk is attributable to the farmer's ingestion of dioxins, which in Table III–1 are expressed as the 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) toxicity equivalent (TEQ). The farmer's high end deterministic risk falls slightly below the 90th percentile probabilistic risk estimate (the 80th percentile risk estimate is $1x10^{-5}$). Table III–2 summarizes our deterministic estimates of risk due to the direct inhalation of chloroform. The high end chloroform risks are $3x10^{-6}$ for the farmer and $2x10^{-6}$ for all other receptors. The chloroform deterministic risk estimates for the adult receptors are roughly equal to the 97.5th percentile probabilistic risk estimates. Although the chloroform risks are not greater than $1x10^{-5}$, they are additive to the risks that EPA estimated for dioxins because they would occur within the same timeframe.

BILLING CODE 6560–50–P

[21] EPA. 1997b. Health Effects Assessment Summary Tables: Annual Update. (HEAST) Office of Emergency and Remedial Response. Washington, D.C. July.

[22] California Environmental Protection Agency (CalEPA). 1997. *Air Toxics Hot Spots Program Risk Assessment Guidelines: Technical Support Document for Determining Cancer Potency Factors.* Draft for Public Comment. Office of Environmental Health Hazard Assessment, Berkeley, CA, www.oehha.org/ra_guidance/.

Table III-1. Summary of Excess Lifetime Dioxin Cancer Risk (expressed as 2,3,7,8-TCDD TEQ) Attributable to Management of Chlorinated Aliphatic Wastewaters in an Aerated Biological Treatment Tank

Table III-1A. Deterministic Risk Results

Receptor	HE	CT	High End Parameters
Farmer	2E-05	4E-07	Exposure Duration and Contaminant Concentration
Child of Farmer	7E-06	3E-07	Contaminant Concentration and Waste Quantity
Home Gardener	2E-08	1E-09	Exposure Duration and Contaminant Concentration
Adult Resident/Fisher	2E-09	1E-11	Contaminant Concentration and Meteorological Location
Child of Resident	7E-09	4E-11	

HE = High End; CT = Central Tendency

Table III-1B. Probabilistic Risk Results

Receptor	Percentile				
	50th	90th	95th	97.5th	100th
Farmer	2E-07	5E-05	1E-04	3E-04	2E-02
Child of Farmer					
Age 1-5	2E-07	4E-05	1E-04	2E-04	8E-03
Age 6-11	2E-07	4E-05	1E-04	2E-04	9E-03
Age 12-18	2E-07	4E-05	1E-04	2E-04	1E-02

Table III-2. Summary of Excess Lifetime Chloroform Cancer Risk Attributable to Management of Chlorinated Aliphatic Wastewaters in an Aerated Biological Treatment Tank

Table III-2-A: Deterministic Results

Receptor	HE	CT	High End Parameters
Farmer	3E-06	8E-08	Exposure Duration and Distance To Receptor
Child of Farmer / Child Resident	2E-06	8E-08	Contaminant concentration and Distance to Receptor
Home Gardener/Fisher/Adult Resident	2E-06	8E-08	

Table III-2B. Probabilistic Results

Receptor	Percentile				
	50th	90th	95th	97.5th	100th
Farmer	3E-08	6E-07	1E-06	2E-06	6E-05
Adult Resident/Home Gardener/Fisher	2E-08	5E-07	1E-06	2E-06	5E-05
Child Resident					
Age 1-5	3E-08	6E-07	1E-06	2E-06	6E-05
Age 6-11	3E-08	6E-07	1E-06	2E-06	5E-05
Age 12-18	2E-08	4E-07	8E-07	1E-06	4E-05
Child of Farmer					
Age 1-5	6E-08	1E-06	2E-06	4E-06	6E-05
Age 6-11	4E-08	8E-07	2E-06	3E-06	5E-05
Age 12-18	3E-08	6E-07	1E-06	2E-06	4E-05

EDC/VCM Sludges

Tables III–3 and III–4 summarize the significant (greater than $1x10^{-5}$) risk estimates for EDC/VCM wastewater treatment sludges managed in an onsite land treatment unit. In all cases, we estimated that the highest risk occurs for the farmer. Table III–3 presents dioxin (expressed as 2,3,7,8–TCDD TEQ) risk estimates for the land treatment unit nongroundwater pathways. The high end deterministic risk estimate for the farmer is $2x10^{-4}$, which also corresponds to the 95th percentile probabilistic risk estimate. Table III–4 presents arsenic risk estimates for the land treatment unit groundwater pathways. The high end deterministic risk estimate for the farmer is $1x10^{-5}$, which falls between the 97.5th percentile probabilistic risk estimate ($6x10^{-6}$) and the 100th percentile probabilistic risk estimate ($5x10^{-5}$). EPA estimates that the groundwater pathway risks in Table III–4 would occur approximately 1500 years in the future, whereas the dioxin nongroundwater pathway risks in Table III–3 would occur during the assumed operating life of land treatment unit.

Table III–5 summarizes the significant risk estimates for EDC/VCM sludges managed in an offsite municipal landfill. The risk estimates presented in Table III–5 are arsenic groundwater pathway risks. The high end deterministic risk estimate for the farmer is $3x10^{-5}$, which falls between the 97.5th percentile ($1x10^{-5}$) and 100th percentile ($3x10^{-4}$) probabilistic risk estimates. We estimate that the arsenic risks attributable to the landfill (presented in Table III–5) would occur thousands of years in the future.

Table III-3. Summary of Excess Lifetime Dioxin (expressed as 2,3,7,8-TCDD TEQ) Cancer Risk Attributable to Management of EDC/VCM Sludge in An Onsite Land Treatment Unit

Table III-3A. Deterministic Risk Results

Receptor	HE	CT	High End Parameters
Farmer	2E-04	4E-06	Exposure Duration and Contaminant Concentration
Child of Farmer	8E-05	3E-06	Contaminant Concentration and Beef Intake
Home Gardener	2E-06	6E-08	Exposure Duration and Contaminant Concentration
Fisher	2E-05	6E-07	
Adult Resident	2E-06	5E-08	
Child of Resident	5E-06	1E-07	Contaminant Concentration and Soil Intake

HE = High End; CT = Central Tendency

Table III-3B. Probabilistic Risk Results

Receptor	Percentile				
	50th	90th	95th	97.5th	100th
Farmer	7E-06	1E-04	2E-04	4E-04	2E-03
Home Gardener	5E-08	2E-06	2E-06	4E-06	2E-05
Resident	3E-08	1E-06	2E-06	2E-06	7E-06
Fisher	2E-07	3E-06	8E-06	2E-05	4E-04
Child of Resident					
Age 1-5	1E-07	2E-06	4E-06	6E-06	1E-04
Age 6-11	5E-08	1E-06	2E-06	2E-06	6E-06
Age 12-18	3E-08	8E-07	1E-06	1E-06	4E-06
Child of Farmer					
Age 1-5	9E-06	1E-04	2E-04	3E-04	1E-03
Age 6-11	7E-06	9E-05	2E-04	2E-04	1E-03
Age 12-18	5E-06	7E-05	1E-04	2E-04	1E-03

Table III-4. Summary of Excess Lifetime Arsenic Cancer Risk Attributable to Management of EDC/VCM Sludge in An Onsite Land Treatment Unit

Table III-4A. Deterministic Risk Results

Receptor	HE	CT	High End Parameters
Farmer	1E-05	8E-07	Leachate concentration and Exposure Duration
Child of Farmer/Child of Resident	3E-06	6E-07	
Adult Resident/Gardener/Fisher	6E-06	7E-07	

HE = High End; CT = Central Tendency

Time for Peak concentration to reach receptor is approximately 1500 years

Table III-4B. Probabilistic Risk Results

Receptor	Percentile				
	50th	90th	95th	97.5th	100th
Farmer	9E-08	2E-06	4E-06	6E-06	5E-05
Adult Resident/Gardener/Fisher	7E-08	1E-06	3E-06	5E-06	3E-05
Child Resident					
Age 1-5	6E-08	1E-06	2E-06	4E-06	5E-05
Age 6-11	5E-08	1E-06	2E-06	3E-06	4E-05
Age 12-18	4E-08	9E-07	2E-06	3E-06	4E-05
Farm Child					
Age 1-5	1E-07	2E-06	4E-06	6E-06	4E-05
Age 6-11	8E-08	2E-06	3E-06	4E-06	2E-05
Age 12-18	6E-08	1E-06	2E-06	4E-06	2E-05

BILLING CODE 6560-

Table III-4. Summary of Excess Lifetime Arsenic Cancer Risk Attributable to Management of EDC/VCM Sludge in An Onsite Land Treatment Unit

Table III-4A. Deterministic Risk Results

Receptor	HE	CT	High End Parameters
Farmer	1E-05	8E-07	Leachate concentration and Exposure Duration
Child of Farmer/Child of Resident	3E-06	6E-07	
Adult Resident/Gardener/Fisher	6E-06	7E-07	

HE = High End; CT = Central Tendency

Time for Peak concentration to reach receptor is approximately 1500 years

Table III-4B. Probabilistic Risk Results

Receptor	Percentile				
	50th	90th	95th	97.5th	100th
Farmer	9E-08	2E-06	4E-06	6E-06	5E-05
Adult Resident/Gardener/Fisher	7E-08	1E-06	3E-06	5E-06	3E-05
Child Resident					
Age 1-5	6E-08	1E-06	2E-06	4E-06	5E-05
Age 6-11	5E-08	1E-06	2E-06	3E-06	4E-05
Age 12-18	4E-08	9E-07	2E-06	3E-06	4E-05
Farm Child					
Age 1-5	1E-07	2E-06	4E-06	6E-06	4E-05
Age 6-11	8E-08	2E-06	3E-06	4E-06	2E-05
Age 12-18	6E-08	1E-06	2E-06	4E-06	2E-05

BILLING CODE 6560-50-C

Methyl Chloride Sludges

EPA conducted a deterministic analysis to estimate nongroundwater (air) pathway risks associated with management of methyl chloride sludges in an onsite landfill. All nongroundwater pathway carcinogenic risks were less than 1×10^{-8}, and all noncancer HQs were less than 0.0001.

For groundwater pathways, EPA performed a screening analysis that maximizes estimates of risk or hazard to human receptors. EPA calculated the carcinogenic risk for an adult who ingests (drinks) 1.4 liters of leachate from the landfill for 350 days per year for 58 years. EPA also calculated the noncancer hazard for a child who ingests 1.4 liters of leachate from the landfill for 350 days per year for 9 years. None of the noncancer HQs was greater than 1. Arsenic was the only carcinogen with risk in excess of 1×10^{-5}. Specifically, an adult's risk due to ingesting leachate from methyl chloride sludges for 58 years was 5×10^{-5} due to arsenic. EPA discusses our evaluation of this risk in Section III.E.4.b.

ii. What are the Population Risks?

EPA expects that the population risks resulting from management of chlorinated aliphatics wastewaters in tanks and EDC/VCM sludges in onsite land treatment units and landfills are not significant. With regard to groundwater pathway risks, EPA believes that the number of domestic drinking water wells (thus the population) potentially affected by groundwater contaminated with arsenic originating from the landfill and the land treatment unit would be very small. Furthermore, we estimate that the arsenic concentrations predicted in receptor (drinking water) wells will result in risks only slightly above 1×10^{-5} for that very small number of people.

For nongroundwater pathways, EPA performed a screening evaluation of population risk for the waste management scenario and pathway that resulted in the greatest individual risk estimate of any pathway evaluated in the chlorinated aliphatics risk assessment. Specifically, EPA evaluated risk associated with ingestion of beef and dairy products contaminated with dioxins derived from the onsite EDC/VCM land treatment unit. As presented previously, under the land treatment unit scenario the farmer's total individual excess lifetime cancer risk from ingestion of beef and dairy was 2×10^{-4} for high end exposures and 3×10^{-6} for central tendency exposures. Although the individual risk estimates for the farmer exposed to dioxins from EDC/VCM sludge managed in a land treatment unit are an order of magnitude greater than those for the farmer exposed to dioxins from chlorinated aliphatics wastewaters managed in tanks, is possible that population risks resulting from releases from chlorinated aliphatics wastewaters would exceed those resulting from releases from EDC/VCM sludges. This might occur because there is only one land treatment unit that is used to manage EDC/VCM sludge, and we expect that there may be many aerated biological wastewater treatment tanks used to manage chlorinated aliphatics wastewaters. Nevertheless, EPA believes that it is reasonable to assume that the population risks for the land treatment unit likely would be greater than those for the wastewater tanks because there would need to be at least 10 wastewater treatment tanks with surrounding cattle populations similar to that of the land treatment unit to produce a population risk estimate equivalent to that of the land treatment unit.

Results of the population risk analysis for the land treatment unit indicate that 2×10^{-4} excess cancer cases would be expected annually in a population of 1,410 individuals ingesting beef produced from cattle raised within 2 kilometers of the land treatment unit over a 40-year operational life for the land treatment unit (dairy cattle are not raised in the county where the land treatment unit is located, thus we did not evaluate ingestion of dairy products in the population risk analysis). The average individual risk to the population consuming beef from within the 2-kilometer radius is 2×10^{-7}. We calculated the population potentially affected by a release from the land treatment unit (1,410 individuals) from the total estimated quantity of contaminated beef and average beef ingestion rates (that is, we calculated how many people would be required to consume all of the contaminated beef assuming typical rates of beef ingestion). It is possible that the contaminated beef would be distributed more widely throughout the population, such that the total number of people ingesting the contaminated beef would be greater than 1,410. However, the population risk estimate would not change because population risk is a function of the number of people who are exposed (that is, consume contaminated beef) and each person's individual risk (which is a function of the amount of contaminated beef a person consumes). Consequently, as the number of people who are exposed increases, the individual risk must decrease proportionally because there is only a finite amount of contaminated beef, and the overall population risk remains the same. The Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination provides a description of the procedure used to estimate population risks.

EPA did not estimate population risks for the other receptors for whom we calculated individual risk estimates (residents, children, gardeners, and fishers). Because the high end risk for the land treatment unit scenario was driven by the ingestion of beef and dairy products, the population risks for non-farmer receptors are expected to be considerably lower than 2×10^{-4}.

Although the population risks attributable to the management of chlorinated aliphatics wastes are expected to be very small, EPA does not believe it is appropriate to allow contamination from waste management activities to cause substantial risk to nearby residents simply because there are few individuals in the immediate vicinity of the waste management units. 40 CFR 261.11 clearly states that wastes are to be listed if they are "capable of posing a substantial present or potential hazard." It does not state that a large number of people must be affected. However, population risk may be a factor that the Agency could consider under 40 CFR 261.11(a)(3)(xi) ("other factors as may be appropriate").

EPA's Guidance for Risk Characterization (EPA 1995) states that when small populations are exposed, population risk estimates may be very small, however, "in such situations, individual risk estimates will usually be a more meaningful parameter for decision-makers." Consequently, EPA's decision to list wastes has been based primarily on the concern over risks to those individual's who are significantly exposed, even if there are relatively few such individuals. EPA, however, requests comment on whether it would be appropriate to give weight to population risk in deciding whether to list these chlorinated aliphatic wastes as hazardous. EPA further invites comment on the effect of this approach on the Agency's goals with respect to environmental justice in rural areas.

g. What Is the Toxicity of COCs Identified by EPA?

The two contaminants for which EPA calculated significant risks are dioxins (expressed as the 2,3,7,8-TCDD TEQ) and arsenic. The following sections discuss the ways that these contaminants affect human health.

i. Arsenic

Arsenic is a naturally occurring element in the earth's crust that usually exists as an inorganic or organic compound, rather than in a free state. Arsenic that exists in compounds with elements such as oxygen, chlorine, and sulfur is referred to as inorganic arsenic; arsenic combined with carbon is referred to as organic arsenic. Organic forms of arsenic are less toxic than inorganic forms.

There is clear evidence that chronic exposure to inorganic arsenic in humans increases the risk of cancer, and EPA classifies inorganic arsenic as a Group A—Known Human Carcinogen. Studies report that inhalation of arsenic results in an increased risk of lung cancer. In addition, ingestion of arsenic has been associated with an increased risk of nonmelanoma skin cancer and bladder, liver, kidney, and lung cancer. No information is available on the risk of cancer in humans from dermal exposure to arsenic (EPA 1998).

ii. Dioxins

2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) belongs to the class of compounds, chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans, that are referred to as dioxins. EPA issued a draft *Health Assessment Document for 2,3,7,8-TCDD and Related Compounds* in 1994. This document is a three-volume series consisting of a complete reassessment of the toxic effects of 2,3,7,8-TCDD (EPA 1994a, b [23]). The document was reviewed by EPA's Science Advisory Board (SAB) but has not yet been issued in final form.

EPA has classified 2,3,7,8-TCDD as a Group B2—Probable Human Carcinogen (EPA 1997b). An increase in lung cancer risks was observed among Japanese males exposed to 2,3,7,8-TCDD as a result of an oil poisoning accident. Human studies have also found an association between 2,3,7,8-TCDD and soft-tissue sarcomas, lymphomas, and stomach carcinomas, although for malignant lymphomas, the increase in risk is not consistent. The increase in risk is of borderline significance for highly exposed groups and is less among groups exposed to lower levels of 2,3,7,8-TCDD (EPA 1994b). In animal tests, TCDD is one of the most potent carcinogens ever evaluated.

Although EPA has not developed an RfD or an RfC for 2,3,7,8-TCDD, noncarcinogenic health effects have been reported for 2,3,7,8-TCDD. The major noncarcinogenic effect from exposure to 2,3,7,8-TCDD is chloracne, a severe acne-like condition that develops within months of first exposure to high levels of 2,3,7,8-TCDD. For many individuals, the condition disappears after discontinuation of exposure, for others it may remain for years. There are limited human data to suggest the doses at which chloracne is likely to occur (EPA 1994a, b). Epidemiological studies report conflicting evidence on the immunotoxicity of 2,3,7,8-TCDD in humans. Some studies suggest evidence of immunotoxicity, such as alterations in lymphocyte populations, cell surface markers, or lymphocyte proliferative response (ATSDR 1997c [24]). However, studies have not reported changes in the immune system directly related to 2,3,7,8-TCDD exposure (EPA 1994a, b). An association has been reported between levels of male reproductive hormones and 2,3,7,8-TCDD exposure. Decreased testosterone levels were detected in several human studies, and animal data are available to support these findings. Other effects noted in human studies include an association between 2,3,7,8-TCDD exposure and the following:

- An increased risk of diabetes and an elevated prevalence of abnormal fasting serum glucose levels
- The induction of cytochrome P–450 1A1, an enzyme involved in biotransformation reactions
- Elevation of gamma glutamyl transferase, a liver enzyme
- A possible increased risk of endometriosis, a disease of the female reproductive system (EPA 1994a, b).

Animal studies report reproductive and developmental effects from exposure to 2,3,7,8-TCDD. These studies suggest that altered development may be among the most sensitive endpoints of 2,3,7,8-TCDD exposure. Developmental toxicity has been reported to occur in several animal species at lower levels than male and female reproductive toxicity effects. 2,3,7,8-TCDD appears to affect a large number of critical developmental effects at specific developmental stages. These changes can lead to increases in fetal mortality, disruption of organ system structure, and irreversible impairment of organ function. Developmental toxicity from 2,3,7,8-TCDD has been seen in fish, birds, and mammals (EPA 1994a, b).

EPA assigned 17 dioxin and furan congeners individual toxicity equivalency factors (TEFs). TEFs are estimates of the toxicity of dioxin-like compounds relative to the toxicity of TCDD, which is assigned a TEF of 1.0. We used the TEFs identified as the I-TEFs (International-TEFs) to conduct the chlorinated aliphatics risk assessment because, until very recently, this is the TEF scheme EPA scientists have recommended and used for the last 10 years (EPA 1989) [25] [26]. Documentation supporting the use of the TEFs has been placed in the rulemaking record.

The I-TEFs are presented in Table III–6. The I-TEFs are based on a limited data base of *in vivo* and *in vitro* toxicity testing (EPA 1989). The World Health Organization (WHO) recently reviewed the I-TEFs (Van den Berg et al. 1998) [27], and determined that three of the I-TEFs, those for 1,2,3,7,8-PeCDD (pentachlorodibenzo-p-dioxin), OCDD (octachlorodibenzo-p-dioxin), and OCDF (octachlorodibenzofuran), required modification (Table III–6). EPA is in the process of adopting these modifications, and consequently reviewed the impact that the revised (WHO-) TEFs would have on the results of the chlorinated aliphatics risk assessment. 1,2,3,7,8-PeCDD was not detected in dedicated chlorinated aliphatic wastewaters, dedicated EDC/VCM sludges, or methyl chloride sludges. Consequently, the difference in the I-TEF and the WHO-TEF for 1,2,3,7,8-PeCDD has no impact on the results of the risk analyses presented in this section. Because of the TEF differences for OCDD and OCDF, however, the decision to use either the I-TEFs or the WHO-TEFs potentially may result in large differences in the calculated TCDD TEQ concentrations for a given chlorinated aliphatics waste sample. Nevertheless, because OCDD and OCDF contribute very little to the actual risk attributable to dioxin compounds, the decision to use either

[23] EPA. 1994a. *Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds. Volume II.* (Draft). Office of Research and Development, Washington, D.C., www.epa.gov/ord/health.

EPA. 1994b. *Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds. Volume III. (Draft).* Office of Research and Development, Washington, D.C., www.epa.gov/ord/health.

[24] ATSDR (Agency for Toxic Substances and Disease Registry). 1997c. *Toxicological Profile for 2,3,7,8-Tetrachlorodibenzo-p-dioxin.* U.S. Public Health Service, U.S. Department of Health and Human Services, Atlanta, GA.

[25] EPA. 1989. Interim Procedures for Estimating Risks Associated with Exposure to Mixtures of Chlorinated Dibenzo-p-Dioxins and Furans (CDDs and CDFs) and 1989 Update. EPA/625/3–89/016. Risk Assessment Forum. March.

[26] Proposed Rule, "Addition of Dioxin and Dioxin-Like Compounds; Modification of Polychlorinated Biphenyls (PCBs) Listing; Toxic Chemical Release Reporting; Community Right-to-Know," 62 FR 24887, (May 7, 1997).

[27] Van den Berg, et al. 1998. Toxic Equivalency Factors (TEFs) for PCBs, PCDDs, PCDFs for Humans and Wildlife. Environmental Health Perspectives, v.106, n.12, pp. 775–792. December.

the I-TEFs or the WHO-TEFs has negligible impact to the overall risk results. The *Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination* provides separate risk results for each of the dioxin congeners detected in the wastewaters and sludges evaluated.

TABLE III–6. TOXICITY EQUIVALENCY FACTORS (TEFS) FOR DIOXIN COMPOUNDS

Compound	I-TEF	WHO-TEF
2,3,7,8-TCDD	1	same
1,2,3,4,5,7,8,9-OCDD	0.001	0.0001
1,2,3,7,8,9-HxCDD	0.1	same
1,2,3,4,6,7,8-HpCDD	0.01	same
1,2,3,4,6,7,8,9-OCDF	0.001	0.0001
1,2,3,4,7,8-HxCDD,	0.1	same
1,2,3,7,8-PeCDD,	0.5	1
2,3,7,8-TCDF	0.1	same
1,2,3,4,7,8,9-HpCDF	0.01	same
2,3,4,7,8-PeCDF	0.5	same
1,2,3,7,8-PeCDF	0.05	same
1,2,3,6,7,8-HxCDF	0.1	same
1,2,3,6,7,8-HxCDD	0.1	same
2,3,4,6,7,8-HxCDF	0.1	same
1,2,3,4,6,7,8-HpCDF	0.01	same
1,2,3,4,7,8-HxCDF	0.1	same
1,2,3,7,8,9-HxCDF	0.1	same

h. What Is the Uncertainty in the Human Health Risk Results?

EPA typically classifies the major areas of uncertainty in risk assessments as parameter uncertainty, scenario uncertainty, and model uncertainty. This section identifies the primary sources of each of these types of uncertainty in the chlorinated aliphatics risk assessment, and qualitatively describes how each may influence the results of the risk assessment.

Many of the parameters that we used to quantify contaminant fate and transport and contaminant exposure and dose either were not measured or could not be measured precisely and/or accurately. Some of the most important and sensitive parameters in our analyses include those that describe waste composition; waste management practices; site characteristics (for example, hydrogeological, topographical, meteorological, and soils data); the physiologic and behavioral exposure characteristics of the receptors; the physical, chemical, and biochemical properties of the contaminants; and toxicological effects. We believe that the primary sources of parameter uncertainty include the following:

- The risk analyses were based on a limited set of waste sample data. It is possible that these data do not represent the true distribution of contaminant concentrations in the waste categories evaluated, resulting in either an overestimation or underestimation of the actual risk to receptors.
- EPA obtained little site-specific information regarding waste management units for the chlorinated aliphatics industry, necessitating that we make a number of assumptions regarding waste management in off-site landfills, the land treatment unit, and wastewater tanks. Many of the facilities reported using offsite nonhazardous landfills to dispose of EDC/VCM sludges. We assumed that these landfills are municipal landfills, and modeled typical municipal landfills based on available data. Our major assumptions about the municipal landfills that have the effect of decreasing our risk estimates are that the landfills have daily covers and run-on/run-off controls. Our major assumptions about the municipal landfills that have the effect of increasing our risk estimates are that the landfills are not lined and have no leachate collection systems. For the land treatment unit, we assumed that no run-on/run-off controls were present to mitigate risk. We assumed that the industry's wastewater treatment tanks are uncovered (which increases our risk estimates), are aerated (which increases our risk estimates), employ biological treatment techniques (which decreases our risk estimates), have structural integrity (which decreases our risk estimates), and have spill and overflow controls (which decreases our risk estimates).
- We typically used regional databases to obtain the parameter values necessary to model contaminant fate and transport. Because the data that we used are not specific to the facilities at which the actual wastes are managed, the data represent our best estimates of actual site conditions. Use of these databases in lieu of site-specific data may result in either overestimates or underestimates of risk.
- Sources of uncertainty in toxicological benchmarks include one or more of the following: extrapolation from laboratory animal data to humans, variability of response within the human population, extrapolation of responses at high experimental doses under controlled conditions to low doses under highly variable environmental conditions, and adequacy of the database (number of studies available, toxic endpoints evaluated, exposure routes evaluated, sample sizes, length of study, etc.). Toxicological benchmarks are designed to be conservative (that is, overestimate risk) because of the uncertainties and challenges associated with condensing toxicity data into a single quantitative expression. Therefore, use of the current toxicological benchmarks most likely overestimated risk for the pathways evaluated.
- EPA estimated the risk of developing cancer from the estimated lifetime average daily dose and the slope of the dose-response curve. A cancer slope factor is derived from either human or animal data and is taken as the upper bound on the slope of the dose-response curve in the low-dose region, generally assumed to be linear, expressed as a lifetime excess cancer risk per unit exposure. However, individuals exposed to carcinogens in the first few years of life may be at increased risk of developing cancer. For this reason, EPA recognizes that significant uncertainties and unknowns exist regarding the estimation of lifetime cancer risks in children. We also note that the analysis of cancer risks in children has not been externally peer reviewed.

We expect that the various sources of parameter uncertainty in our risk assessment counterbalance each other, such that parameter uncertainty will not result in a significant overall increase or decrease in risk.

Scenario uncertainty results from the assumptions we make regarding how receptors become exposed to contaminants. This uncertainty occurs because of the difficulty and general impracticality of making actual measurements of a receptor's exposure. Exposure modeling relies heavily on default assumptions regarding population activity patterns, mobility, dietary habits, body weights, and other factors. Because the risk estimates presented in today's notice are for hypothetical chronic exposures and are designed to provide a realistic range of potential receptor exposure scenarios, we develop predictions of long-term average exposures for each receptor. Although it is possible to study various populations to determine their exposure parameters (for example, age-specific soil ingestion rates or intake rates for food) or to assess past exposures (epidemiological studies) or current exposures, risk assessment is about prediction. Therefore, long-term exposure monitoring in this context is infeasible. The double-high end deterministic approach coupled with the probabilistic approach is designed to provide reasonable estimates of potential long-term exposures for various receptors. The *Exposure Factors Handbook* provides the current state-of-the-science regarding exposure modeling and assumptions and was used in the risk assessment. To the extent that actual exposure scenarios vary from the assumptions we used, risks could be underestimated or overestimated. Although there could be individuals living near a waste disposal site who have higher exposures than those presented, it is more likely that actual exposures for most of these individuals would fall within the predicted range, and, moreover, would be similar to those predicted for the central tendency or 50th percentile.

Models and their mathematical expressions are simplifications of reality that are used to approximate real-world conditions and processes, and their

relationships. Models do not include all parameters or equations necessary to express reality because of the inherent complexity of the natural environment, and the lack of sufficient data to describe the natural environment. Consequently, models are based on numerous assumptions and simplifications, and reflect an incomplete understanding of natural processes. We selected the models used in this risk assessment, described in Section III.D.1.d, based on science, policy, and professional judgment. We selected the wastewater emissions model, the air dispersion and deposition models, the indirect exposure equations, and the groundwater model because they provide the information needed for this analysis and because we generally consider them to be state-of-the-science. Even though the models used in the risk analysis are used widely and have been accepted for numerous applications, they each retain significant sources of uncertainty that as a whole could result in either an overestimation or underestimation of risk.

One of the sources of uncertainty is our assumption that vapor emissions of dioxins from chlorinated aliphatics wastewaters and wastewater treatment sludges do not appreciably sorb to particulate matter in the ambient air in approximately 1.2 minutes, the average the time required for emissions from the waste management units to reach a receptor located 300 meters away (our central tendency distance to receptor). Sorption of dioxins onto particles in air would remove dioxins from the vapor phase, thereby reducing the vapor-phase diffusion of dioxins into plants. As a result, our calculated dioxin concentrations in plants, and in animals consuming plants (particularly grasses), are higher than they would be if we assumed that some fraction of the vapor phase dioxin irreversibly partitions onto particles in the ambient air. However, given the uncertainties regarding rates of dioxin partitioning, magnitude of partitioning, and other factors potentially influencing dioxin sorption onto particles (such as temperature, humidity, and particle size, type and density), we believe our assumption that dioxins remain as vapors during their transport from the waste management unit source to the receptor location is appropriate. Because we understand that our assumption results in increased risk estimates, we are soliciting public comment on this issue. We also charged peer reviewers with providing comment on the issue during the peer review process, discussed in Section III.D.3., below.

2. What Are the Potential Risks to Ecological Receptors?

EPA conducted an ecological risk screening analysis for the tank scenario for chlorinated aliphatics wastewaters, the land treatment unit and landfill waste management scenarios for EDC/VCM sludges, and for the landfill waste management scenario for methyl chloride sludges. The purpose of this analysis was to identify whether there is potential for adverse ecological effects resulting from the management of chlorinated aliphatics wastewaters, EDC/VCM sludges, and methyl chloride sludges. The screening analysis compares the modeled media concentrations to protective media concentrations in the form of a hazard quotient. When the hazard quotient exceeds 1, there is potential for adverse effects. If the hazard quotient is less than 1, we do not expect adverse effects for a particular ecological receptor. The amount by which the hazard quotient exceeds 1 suggests the potential for adverse ecological effects; however, the screening results do not demonstrate actual ecological effects, nor do they indicate whether those effects will have significant implications for ecosystems and their components.

For the screening analysis, EPA applied a methodology designed to evaluate the potential for adverse ecological effects for selected receptors in generalized terrestrial and freshwater aquatic systems. The ecological risk screening analysis focused on a limited set of constituents of concern that were modeled for the human health risk analysis. For the selected ecological receptors, we developed protective contaminant concentrations in soil, sediment, and surface water that are based on conservative assumptions regarding exposure pathways and dietary preferences. The analysis included the following steps: (1) we developed chemical stressor concentration limits (CSCLs) [28]; (2) we compared the CSCLs to exposure point concentrations and calculated hazard quotients; and (3) we characterized key uncertainties and their impact on hazard quotients. We describe the results of this process in detail in the Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination.

Based on the results of the analysis, we do not anticipate significant risk for the ecological receptors evaluated under either the high end or central tendency chlorinated aliphatic wastewater tank, EDC/VCM landfill, or methyl chloride landfill scenarios. However, there is indication of potential significant risk to ecological receptors under both the high end and central tendency EDC/VCM land treatment unit scenarios. These results support our conclusions for the human health risk analyses for EDC/VCM and methyl chloride sludges, that is, that there are risks posed by the management of EDC/VCM sludges in land treatment units, but not by the management of EDC/VCM sludges or methyl chloride sludges in landfills. Although we did not explicitly consider risks to threatened or endangered species, the CSCLs are protective media concentrations based on Agency-wide standards (e.g., Ambient Water Quality Criteria) and no observed adverse effects levels. The protective nature of the CSCLs implies some degree of protection for species already considered to be under stress. The ecological risk screening results are described in detail in the Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination.

3. Did EPA Conduct a Peer Review of the Risk Assessment?

The Agency has submitted the risk assessment to three independent experts for peer review. Their comments have been received and are in the docket for today's proposed rule. Due to the time constraints for proposal of this rule, the Agency has not yet reviewed and addressed those comments. Both the peer review comments and the public comments will be addressed in the final rulemaking.

E. Waste-Specific Listing Determination Rationales

This section presents the rationale for today's proposed listing determinations for each of the identified categories of wastewaters and wastewater treatment sludges from the chlorinated aliphatic industry. EPA considered the listing criteria set out in 40 CFR 261.11, as incorporated into the risk assessments presented in Section III.D. above, as well as any other information relevant to the criteria, in making each of the listing determinations presented in this section. The criteria provided in 40 CFR 261.11 include eleven factors for determining "substantial present or potential hazard to human health and the environment." As previously discussed at the beginning of Section III.D., nine of these factors relate to the risk assessments (constituent toxicity, concentration, waste quantity, migration potential, persistence, degradation

[28] Chemical stressor concentration limits are the containment concentrations in environmental media that are presumed to cause *de minimis* effects to ecological receptors.

potential, bioaccumulation potential, plausible mismanagement, and other regulatory actions). Damage incidents (261.11(a)(3)(ix)) are investigated, and those that can be attributed to the wastes being evaluated are identified and considered in our evaluation.

The following sections presents the rationale for each of the proposed listing determinations for wastes generated by the chlorinated aliphatics industry. Our rationale includes the results of our consideration of each of the factors listed above, the results of our risk assessment and other factors as may be appropriate.

1. Chlorinated Aliphatics Wastewaters

a. Wastewaters From the Production of Chlorinated Aliphatics

As explained previously in Section III.A.1., the Agency segregated wastewaters from the chlorinated aliphatics industry into two waste groupings. Based upon current waste management practices, we grouped all chlorinated aliphatic wastewaters, except for those wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process, into a single waste category for the listing determination investigation. We decided to study these wastewaters collectively because most chlorinated aliphatic manufacturers commingle wastewaters generated by individual processes prior to treating the wastewaters in a common wastewater treatment system.[29] In addition, many process wastewaters generated from the production of chlorinated aliphatic hydrocarbons contain similar constituents of concern.

EPA is proposing to list as hazardous process wastewaters generated from the production of chlorinated aliphatic hydrocarbons (other than those wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process, discussed later in Section III.E.1.b of this preamble). The wastewaters meet the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and are capable of posing a substantial present or potential hazard to human health or the environment when mismanaged. As already described in the risk assessment results in Section III.D.1.f. of this preamble, we identified risks of concern associated with air releases of dioxins from wastewater treatment systems. The results of our risk analysis, which explicitly considers the factors listed in 40 CFR 261.11(a)(3)(i)–(x), shows potential risks of concern for the farmer and child of farmer receptors, where the contaminants of concern are dioxins. The risk assessment results were presented previously in Table III–1 of Section III. D.1.f.

i. What Information Led EPA To Propose To List as Hazardous Process Wastewaters From the Production of Chlorinated Aliphatic Hydrocarbons?

Responses to the 1996 RCRA Section 3007 chlorinated aliphatic industry survey indicated that approximately 11.5 million metric tons of chlorinated aliphatic wastewaters are generated annually. Survey responses and other publicly-available information also indicate that virtually all chlorinated aliphatic manufacturers treat these wastewaters in on-site, tank-based wastewater treatment systems prior to direct discharge of these wastewaters in accordance with facility-specific NPDES permits. Other wastewater management practices identified include discharge off-site to either publicly-or privately-owned treatment works (POTW, PrOTW), and storage and treatment in tanks prior to disposal in on-site underground injection wells. None of the facilities that responded to the questionnaire indicated that chlorinated aliphatic wastewaters currently are managed in surface impoundments.

The Agency evaluated air pathway (vapor emissions) risks associated with the management of chlorinated aliphatics in wastewater treatment tanks. Our analysis of air emissions from the treatment of wastewaters was limited to an evaluation of air emissions from tank-based systems because the results of the RCRA Section 3007 survey showed that the chlorinated aliphatics industry manages wastewaters exclusively in tanks. Surface impoundments currently are not being used by this industry for the treatment of wastewaters, and based upon a review of industry trends, we anticipate that this industry will not use surface impoundments in the future. First, all of our data indicate that surface impoundments are no longer used by the chlorinated aliphatics manufacturers. In the 1992 RCRA 3007 survey responses, 5 facilities indicated they were using surface impoundments in the treatment of wastewater. In the 1997 RCRA 3007 survey update, only two facilities indicated they were using surface impoundments. We contacted the five facilities to confirm whether or not surface impoundments were being used, and learned that all of the impoundments had closed. Second, we do not believe it is likely that established tank-based wastewater treatment systems would be abandoned for surface impoundments-based systems, given that chlorinated aliphatic manufacturers have made the decision to convert to tank-based systems outside of regulations and after having considered other variables (*e.g.*, liability concerns) and weighing all risks and benefits of tank-based systems. Further, impoundment-based systems are land intensive and land is valuable, particularly in industrial areas. Once a facility has reclaimed land previously used for surface impoundments, the facility is likely to then use that land for higher value operations. Therefore, we did not view surface impoundments as a plausible management for wastewaters within this industry.

Given that wastewaters are managed in aerated biological treatment tanks, the emissions pathway of most concern is air emissions. Although such tanks often are open and may facilitate air releases, wastewater treatment tanks do restrict or eliminate the possibility of releases to groundwater via leaching. Tanks used to store and treat wastewaters generally are equipped with overflow and spill controls and are managed in compliance with structural integrity requirements that restrict the physical migration of wastes from the unit into the surrounding soil. However, given that a majority of the tanks used to treat chlorinated aliphatic wastewaters are designed to allow for aeration of the wastewater, these units may not completely control releases due to vapor emissions. Therefore, EPA determined that contaminant transport via air releases from tank-based systems was the most logical source of potential risk from managing these wastewaters.

EPA collected 41 samples of chlorinated aliphatic wastewaters generated at 15 facilities. From the samples and analytical results we selected data for our risk analysis that represent wastewaters at the point where they are commingled prior to treatment. Since it is common for wastewaters to be combined prior to treatment in on-site wastewater treatment facilities, these commingled wastewaters are most representative of the wastewaters that actually are managed in tanks. Further, because the RCRA Section 3007 survey responses indicated that some facilities may commingle chlorinated aliphatic process wastewater with non-chlorinated aliphatic (e.g., petroleum refinery) process wastewater prior to treatment, we conducted our risk assessment using only waste characterization and volume data

[29] See Appendix D to Listing Background Document for the Chlorinated Aliphatic Listing Determination.

representing "dedicated" wastewaters. We used data from these facilities to ensure that the results of our risk assessment would reflect only risks associated with the management of chlorinated aliphatic wastewaters.

We also centered our analysis on an evaluation of chlorinated aliphatic wastewaters not currently defined as hazardous waste, and that are managed in aerated, uncovered biological treatment tanks. While not every facility currently uses biological treatment, this was the predominant practice observed during facility site visits and indicated in the RCRA Section 3007 survey. The risk analysis assumed that biological treatment occurs in aerated, uncovered tanks, because these conditions are typical for biological treatment in tanks and were confirmed to be occurring at some chlorinated aliphatic facilities treating non-hazardous, dedicated chlorinated aliphatic wastewaters. Also, because aeration increases air emissions, this scenario is expected to result in the highest risk estimates (compared with non-aerated and/or covered tanks). Based upon survey response information and follow up inquiries with facility personnel, biological treatment in uncovered, aerated tanks was considered to be a plausible management scenario for wastewaters in the chlorinated aliphatics industry.

The risks associated with vapor emissions of dioxin, as presented previously in Table III-1 in Section III.D.1.f., are significant for two receptors, the farmer and the farmer's child, and for one exposure route, the consumption of beef and dairy products. The high-end cancer risk for the farmer is 2E–05 and the central tendency risk is 4E–07. As explained previously, this risk is attributed to a local farmer's ingestion of dioxin due to his consumption of fruits, vegetables, beef and dairy products, all of which are grown or raised in an agricultural field located near a wastewater treatment unit used to treat chlorinated aliphatic wastewaters, as well as the farmer's incidental ingestion of soil from the agricultural field (see Section III.D.1.c). The high-end cancer risk for the farmer's child is 7E–06 and the central tendency risk is 3E–07. EPA also ran a Monte Carlo risk assessment on the air releases from these tanks. Probabilistic risk assessment results showed a risk of 1E–4 at the 95th percentile for the farmer, and for the child of farmer. This confirms the reasonableness of the deterministic analysis and the fact that regulation would be necessary to reduce the risk from the tank emissions to protect the farmers. At the 50th percentile, the probabilistic risk was 2E–7 for the farmer and the child of farmer.

As described in Section III.D.1.f. of this preamble, the high-end parameters used in the risk assessment for dioxin emissions from wastewater treatment tanks were waste concentration and exposure duration. These results are based upon a concentration of dioxin in wastewaters associated with the highest concentration of dioxin we found for the wastewater samples used in the analysis. Further discussion of the assumptions and parameters used in the risk assessment is provided in Section III.D. of this preamble and in the Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination that is in the docket for today's proposed rule.

Our analyses also showed marginal risks of concern for the farmer, child of farmer, home gardener, adult and child resident, and fisher, from direct inhalation of chloroform. The high-end cancer risk for the farmer from direct inhalation of chloroform is 3E–06. In addition, the high end cancer risk to the child of farmer, child resident, adult resident, home gardener, and the fisher from direct inhalation of chloroform is 2E–06. The central tendency risk from chloroform inhalation for the farmer, child of farmer, child resident, home gardener, fisher and adult resident is 8E–08.

EPA is confident that the constituents of most concern, dioxins and chloroform, were identified. In addition, we are confident that the assumptions and parameter values used in our risk modeling reflect "high-end" or "reasonable worse case" circumstances. Risks are unlikely to be significantly higher than shown by our modeling results. In Section III.D.1.h. of today's preamble, we describe in more detail sources of potential uncertainty in the risk results that may result in under- or over-estimations of risk.

Based on an analysis of the risks associated with current management practices, EPA is proposing to list wastewaters from the production of chlorinated aliphatic hydrocarbons as hazardous waste (EPA Hazardous Waste Number K173.) EPA's proposal to list this waste is consistent with the guidance the Agency has used for determining that a waste is hazardous (see 59 FR 66077), i.e., the risks associated with management of wastewaters in aerated biological treatment tanks due to vapor emissions of dioxins are above the 1E–5 listing benchmark. This guidance also provides that EPA can consider additional factors in cases where risk assessment results indicate a risk level of between 1E–4 and 1E–6, as is the case here. These additional factors include: certainty of waste characterization; certainty in risk assessment methodology; coverage by other regulatory programs; waste volume; evidence of co-occurrence of hazardous constituents; damage cases showing actual impact to human health or the environment; and presence of toxicants of unknown or unquantifiable risk.

With regard to certainty of waste characterization, as explained in Section III.D., the Agency collected and analyzed 41 samples of wastewaters generated from the production of chlorinated aliphatic chemicals, six of which were collected at the influent ("headworks") of the wastewater treatment system. Given that we used these six "dedicated" samples in our risk assessment, we are certain that our analysis evaluated without question the risks attributable to the wastewaters of concern.

With respect to certainty in risk assessment methodology, we note that there is discussion of uncertainty in the risk assessment methodology in section III.D.1.h. of today's preamble. As mentioned in that section, we selected the models we used because we generally consider them to be state-of-the-science, and because they are used widely and have been accepted for numerous applications. However, as mentioned, they each retain significant sources of uncertainty that as a whole could result in either an overestimation or underestimation of risk. Should the Agency determine, based upon public comment or as a result of the peer review of the risk assessment methodology, that the wastewater risk assessment has overestimated the risks such that a decision to list this residual is not warranted, the Agency may ultimately decide against listing this waste.

We considered coverage by other regulatory programs in making our proposed listing determination for chlorinated aliphatic wastewaters. In fact, as discussed further below, our decision to propose to list these wastewaters and to propose technical standards to address air emissions from treatment tanks managing these wastewaters, is directly related to the fact that current regulatory programs do not appear to adequately address the type of air releases from these units that showed risk in our analysis.

Waste volume is part of our risk level calculations. As explained in section III.D., risk is projected based on the volume of waste managed under each modeled waste management scenario.

We note that there is a significant volume of chlorinated aliphatic wastewater generated annually (11.5 million metric tons). Our risk assessment methodology also accounts for the co-occurrence of hazardous constituents in any particular waste. Section III.D.1.b. discusses the number of potential constituents of potential concern identified in each wastestream. A more detailed discussion of the constituents of potential concern detected in each wastestream analyzed is provided in the Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination for this rule, which is available in the docket for today's rule.

With regard to the remaining factor in § 261.11(a)(3), no actual damage incidents have been observed (§ 261.11(a)(3)(ix)). However, the risk levels indicated, large waste volumes, certainty of waste characterization and risk assessment, coverage by other regulatory programs, and accounting for co-occurrence of constituents in the waste, outweigh the lack of observed damages. This is because the potential risks associated with this wastestream would be long term. Such risks are very difficult to directly attribute to any particular cause and can result even in the absence of observable releases. Our failure to observe damages incidents does not mean they have not occurred or that risks are not being imposed upon surrounding populations. RCRA is designed to be a prospectively-protective statute and the Agency need not wait for actual damages to be observed.

As discussed previously, the risk assessment addresses nine of the listing criteria in 40 CFR 261.11. EPA believes the risks resulting from our analysis represent plausible management of these wastes (§ 261.11(a)(3)(vii)) using reasonable assumptions for treatment of wastewaters in tanks. In addition, the risk analysis was developed using actual analytical data. However, the Agency still recognizes that sources of uncertainty could be contributing to an overestimation of risk. The Agency points out that risk modeling results show risks at significant levels only in cases where sensitive input parameters are assumed to represent high-end circumstances.

Finally, the Agency did not model wastewaters that are already defined as hazardous wastes (i.e., wastes mixed with or derived-from other existing listed wastes, or exhibiting a characteristic of hazardous waste), because we assume these wastes are already, and will continue to be, properly handled as hazardous. On-site injection of wastewaters to a permitted UIC well also was not modeled. Although information obtained from the RCRA Section 3007 questionnaire and other publicly available information indicate that some chlorinated aliphatic manufacturing facilities manage wastewaters via underground injection, the majority of these wastewaters currently are managed as hazardous wastes and injected into Class I permitted hazardous waste UIC wells in accordance with approved no-migration petitions. Only one facility manages chlorinated aliphatic wastewaters as non-hazardous waste and injects the wastewaters in a permitted UIC well.

Although we have proposed to list this wastestream, we recognize that our estimates of the risks associated with this wastestream are within the range in which the Agency has stated it may consider other factors in deciding whether to list a waste. EPA invites comment as to whether there are other factors EPA should consider that would further support a final decision to list this waste or that would support a conclusion that EPA should not list this waste. EPA has, for example, asked for comment earlier in section D.1.f.ii. regarding whether to consider population risk.

ii. What is the Scope of Today's Proposed Listing Determination for Chlorinated Aliphatic Wastewaters?

The scope of today's proposed listing includes all wastewaters generated by chlorinated aliphatic production processes, except for wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (VCM–A process). These wastewaters were evaluated separately (see section III.E.1.b.). The listing description for chlorinated aliphatic wastewaters is as follows:

K173 Wastewaters from the production of chlorinated aliphatic hydrocarbons, except wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. This listing includes wastewaters from the production of chlorinated aliphatic hydrocarbons having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.

iii. What Is the Proposed Regulatory Status of Sludges Derived From the Treatment of Wastewaters Covered by the Proposed Listing Determination?

The Agency is proposing to amend the current RCRA regulations so that wastewater treatment sludges generated from the treatment of wastewaters proposed to be listed as hazardous waste K173 will not be classified as hazardous waste as a result of the "derived-from" rule (40 CFR 261.3(c)(2)(i)). The proposed amendment to the derived from rule will exempt sludges derived from the processing or management of proposed K173, as long as the wastes would not otherwise be defined as hazardous waste, absent the proposed K173 listing. As presented elsewhere in today's proposed rule, EPA has studied wastewater treatment sludges from the chlorinated aliphatics industry and made independent hazardous waste listing determinations for several categories of sludges. These independent evaluations of the potential risks associated with wastewater treatment sludges derived from today's proposed K173 wastewaters supercede any presumed risk imparted by application of the derived-from rule in this instance. These risk evaluations logically should take precedent over the application of the derived-from rule, which presumes risk absent any information on toxicity of the treatment residual. The Agency points out, however, that sludges and other residuals generated as a result of managing chlorinated aliphatic wastewaters that carry waste codes other than K173, and residuals that otherwise are listed hazardous wastes (or exhibit a characteristic of hazardous waste) remain hazardous wastes.

EPA is today proposing to add a new paragraph (E) to the derived-from regulations at 40 CFR 261.3(c)(2)(ii) to make clear that wastewater treatment sludges derived-from treating K173 wastewaters will not be hazardous waste via the derived-from rule.

iv. What Comments Is EPA Specifically Requesting on the Proposed Listing of Chlorinated Aliphatic Wastewaters?

The Agency requests comments on the proposed listing of wastewaters from the production of chlorinated aliphatic hydrocarbons, specifically, how would specific areas of potential uncertainty justify a decision to list or not list these wastewaters as hazardous.

v. How Does the Agency Propose To Address the Risks Associated With Chlorinated Aliphatic Wastewaters Affected by the Proposed Listing?

Owners and operators of wastewater treatment units, as defined in 40 CFR 260.10, are not required to obtain a RCRA permit or comply with the management standards of 40 CFR Parts 264 (permitted facilities) and 265 (interim status facilities) when managing hazardous wastes in such

units (40 CFR 264.1(g)(6) and 265.1(c)(10)). Section 260.10 defines a wastewater treatment unit as a device which (1) is a part of a wastewater treatment facility that is subject to regulation under § 402 or § 307(b) of the Clean Water Act; (2) receives and treats or stores an influent wastewater that is a hazardous waste, generates and accumulates a wastewater treatment sludge that is a hazardous waste, or treats or stores a wastewater treatment sludge that is a hazardous waste; and (3) meets the definition of a tank or tank system.

The results of the Agency's risk assessment for chlorinated aliphatic wastewaters shows significant risks due to air emissions of dioxins from uncovered and aerated biological treatment tanks. The Agency's proposed listing determination for these wastewaters alone will not address the risk pathway of concern, due to the regulatory exemption for wastewater treatment units. To address the risks associated with the management of proposed K173 chlorinated aliphatic wastewaters, the Agency is proposing to require that wastewater treatment units used to treat chlorinated aliphatic wastewaters comply with specific requirements in 40 CFR Parts 264 and 265, subpart CC (Air Emission Standards for Tanks, Surface Impoundments, and Containers). The Agency's objective is to require air emission controls for wastewater treatment tanks managing these wastewaters to prevent the release of dioxin vapor emissions to the environment. These proposed requirements would be enforceable requirements of RCRA subtitle C.

By this limited proposal to change the exemption for wastewater treatment tanks that are used to treat chlorinated aliphatic wastewaters, which is based only on a risk assessment of certain kinds of tanks used to treat these specific wastewaters, EPA is not reopening any other aspect of the wastewater treatment unit exemption.

What Type of Requirements is EPA Proposing To Prevent Air Releases From These Tanks?

EPA considered simply requiring that the tanks be "covered" to prevent air releases of dioxins from K173 wastewaters. However, it became apparent that such a simplified approach might not provide adequate guidance to the regulated community on how to ensure they are complying with this type of performance standard. The Agency determined that the existing requirements for controlling air emissions from hazardous waste tanks, in subpart CC of 40 CFR Parts 264 and 265, could be used with some modifications to meet the goal of controlling air emissions from tanks managing proposed K173 wastewaters.

Currently, the 40 CFR 264/265 subpart CC requirements address volatile organic (VO) emissions from hazardous waste managed in tanks, surface impoundments, and containers. Therefore, many of the provisions in subpart CC (*e.g.*, the VO concentration threshold of 500 parts per million by weight for determining applicability of the Subpart CC requirements) are not appropriate for dioxin emissions. However, other provisions (namely, the technical standards for covering tanks and controlling emissions in Sections 264.1084 and 265.1085) are appropriate for controlling air emissions from wastewater treatment tanks managing K173 wastewaters. Therefore, EPA is proposing to amend the subpart CC requirements (described in more detail below) so that specific technical standards already in subpart CC for tank emissions apply to tanks managing K173 wastewaters. (The Agency notes that the standards being proposed today, if finalized, will apply irrespective of the VOC content of the wastewater.) We also recognize that dioxin levels vary among generators, and thus are proposing a trigger level for dioxins below which compliance with subpart CC is not required. This is because our analytical data indicate that there is a range of dioxin levels in the chlorinated aliphatic wastewaters.[30] In particular, two samples contained TCDD TEQ levels that were four orders of magnitude lower than both the maximum and average TCDD TEQ concentrations.

How Did EPA Develop the 2,3,7,8-TCDD TEQ Limit for Wastewaters?

EPA's first step in establishing a concentration limit for dioxins was to determine whether we should set the limit as a 2,3,7,8-TCDD TEQ (TCDD TEQ) concentration, or as a set of individual limits for each of the specific dioxin congeners. We decided to set the limit as a 2,3,7,8 TCDD TEQ concentration. In making this decision, we considered the analytical results from the six dedicated chlorinated aliphatics headworks wastewater samples collected during the record sampling effort (see Section III.D.1.b.). We determined that wastewaters from the production of chlorinated aliphatic chemicals do not carry a distinct congener "fingerprint," that is, certain congeners are not consistently more prevalent in samples of chlorinated aliphatics wastewaters than other congeners. Because the congener composition of chlorinated aliphatic wastewaters is not consistent or distinct, setting limits on a congener-specific basis likely would be overly-restrictive for some facilities. Specifically, the limit set for a given congener would need to be protective in cases where a number of different congeners contribute to the wastewater's dioxin toxicity or risk (thereby requiring that lower limits be set for each congener to ensure that the combined emissions of each congener would not generate unacceptable risk). Such limits might be overly restrictive for those wastewaters with a dioxin composition that is dominated by a much smaller number of congeners. Moreover, setting the dioxin limit as a TCDD TEQ is consistent with the approach we have taken with other regulations, such as the Water Quality Guidance for the Great Lakes System, 40 CFR Part 132, Appendix F.

After considering options for setting the TCDD TEQ limit, we chose to base the TCDD TEQ limit on the lowest TCDD TEQ concentration measured in a dedicated wastewater sample for which a high end deterministic risk estimate is 1×10^{-5}. This concentration is 0.6 ng/L, calculated using the TEFs developed by the World Health Organization; and corresponding to the TCDD TEQ concentration for EPA's sample no. PL–02. (The TCDD TEQ concentration based on the I–TEFs is 0.7 ng/L. See section III.D.1.g.ii. for an explanation of the TEFs). The high end deterministic risk estimate was based on the evaluation of a farmer scenario (see section III.D.1.f.) in which the exposure duration of the farmer was set at its high end value, 48.3 years. For the purpose of establishing the TCDD TEQ limit, we did not set any additional values at high end. We used the "single high end" approach to account for sources of uncertainty in the risk analysis and our understanding that not all of the underlying assumptions of the analysis may be relevant to any one chlorinated aliphatics facility. For example, not all facilities may operate the type of aerated biological treatment tank that was modeled, grazing of cattle may not occur in the vicinity of all facilities on the centerline of the contaminant plume (the farmer's risk primarily is due to the ingestion of contaminated beef and dairy products). For reference, the adult resident's "single high end" risk is 1×10^{-9} when the wastewater concentration

[30] See Appendix B of "Listing Background Document for the Chlorinated Aliphatics Listing Determination."

is 0.6 ng/L (based on meteorological location as a high end parameter).

The 1×10^{-5} risk result for the farmer is based on predicted long-term average exposures assuming a wastewater TCDD TEQ concentration of 0.6 ng/L, as well as certain other environmental and exposure factors. This means that over the long term, the receptor is protected at the 1×10^{-5} level when, on average, the TCDD TEQ concentration in the wastewater is 0.6 ng/L. That is, it is implicit in the analysis that even if there are excursions of the wastewater TCDD TEQ concentration above 0.6 ng/L, an individual is still protected at the 1×10^{-5} risk level if on average the wastewater TCDD TEQ concentration is 0.6 ng/L. Today EPA is proposing to set the TCDD TEQ limit for wastewaters at 1 ng/L. Setting the limit at 1 ng/L accounts for the fact that we believe facilities who comply with the requirement that the TCDD TEQ concentrations of their wastewaters not exceed 1 ng/L will on average maintain wastewater TCDD TEQ concentrations of approximately 0.6 ng/L or below. EPA is proposing that wastewater treatment tanks managing proposed K173 wastewaters, where the TCDD TEQ concentration in the wastewater is greater than or equal to 1 ng/L, comply with specific air emission control regulations, as described in more detail below.

It is important to note that the 1 ng/L trigger level described here for implementing the proposed tank cover requirement is not a concentration below which the wastewater does not meet the K173 listing. This proposed listing follows what can be described as the traditional approach EPA has taken for hazardous waste listings (i.e., if a particular facility's waste meets the listing description, it is listed regardless of the concentration of constituents or waste management practice employed). While we are proposing to list wastewaters following this traditional approach, today's rule does establish a concentration level for wastewaters that reflect the Agency's concern for dioxin managed in tanks within this industry. We seek comment on the alternative of using this level as criteria for the listing itself. The Agency could finalize a concentration based listing based on the 1 ng/L trigger level instead of the traditional listing proposed today. The Agency also seeks comment on whether this concentration-based listing approach should be implemented in the same manner as is described in this notice (i.e., where the 1 ng/L concentration is a trigger for requiring tank covers), or alternatively, whether it would be more appropriate to apply the implementation approaches described in the July 23, 1999 rulemaking for the dyes and pigments industry (placed in the docket for today's rulemaking for convenience).

How Will These Air Emission Controls Be Implemented?

As described below, we are proposing that generators of K173 who manage these wastes in tanks comply with certain air emission control requirements, including covering their tanks, unless the results of testing the wastewater influent to the tank indicate that the dioxin concentrations are below the 1 ng/L trigger level. Our proposed approach consists of the following elements:

- Each wastewater treatment tank managing K173 that is not compliant with 40 CFR sections 264.1084/265.1085 of subpart CC must be assessed to determine whether dioxin levels in the influent to the tank exceed the trigger level.
- For the purposes of this listing, the headworks of the wastewater treatment system is assumed to be at a location directly after steam stripping. If a facility does not utilize steam stripping, the wastewater treatment system headworks is assumed to be the first tank in which wastewaters are combined, accumulated or treated after leaving the chlorinated aliphatics production process.
- Tanks that are fully compliant with sections 264.1084/265.1085 of 40 CFR subpart CC would not be subject to waste analysis, record keeping and notification requirements proposed in today's rule to be added to 40 CFR 265.1080(f)(1)–(5), described below.
- Once the facility has established that TCDD TEQ levels do not exceed the trigger level for a specific tank, the facility can assume that the TCDD TEQ levels for all downstream tanks also are below the trigger level.
- The facility must develop a waste analysis plan prior to sampling and analysis to ensure that the measurements are sufficiently sensitive, accurate and precise to demonstrate compliance, as described further below. We suggest that the waste analysis plan be developed in accordance with Agency guidance.[31]
- The initial assessment must be conducted by the effective date of the rule. If the trigger level is exceeded, compliance with the applicable sections of 40 CFR 264/265 subpart CC must be accomplished within one year of the effective date. Alternatively, the facility may implement process changes to reduce the TCDD TEQ level below the trigger level, and repeat the initial assessment to demonstrate that levels are now below the trigger level, within the same one year time frame.
- If it is determined that the TCDD TEQ concentration measured during the initial assessment is below the trigger level, re-assessment would be required (1) as a result of any process changes that would impact dioxin wastewater levels, and (2) annually.
- If the trigger level is not exceeded, the facility must submit a one-time notification and certification.
- The facility must maintain records on site.

Sampling and Analysis

In designing the sampling program, the facility must consider any expected fluctuations in concentrations over time. The sample design should be described in the waste analysis plan, which must be retained in the facility's files. The sample design must be adequate to determine that the level of TCDD TEQ in the wastewater is above or below the 1 ng/L at a 95 percent upper confidence limit around the mean. This approach is being used in the comparable fuels final rule (June 19, 1998; 63 FR 33782). See also Guidance for Data Quality Assessment—Practical Methods for Data Analysis, EPA QA/G–9, January 1998, EPA/600/R–96/084. Under this approach, EPA is not specifying a specific number of samples, because the number of samples required to demonstrate that the wastewater dioxin concentration is below 1 ng/L at the 95 percent upper confidence limit depends on how close the actual concentration is to the regulatory limit and on the variability of the waste. EPA is proposing that the samples used to demonstrate compliance be grab samples collected within a time period that will accurately account for potential variability in the wastestream, including potential variabilities associated with batch and continuous processes. If properly stored, the holding time for unprocessed aqueous samples of dioxins/furans (which can be found in the Sample Collection, Handling and Preservation section of Method 8290) allows for multiple samples to be collected and be available should additional analysis be required to achieve the data quality objective of determining compliance with the 1 ng/L limit at a 95% upper confidence limit around the mean.

EPA also is proposing an alternative sample design criteria. The alternative approach is to set a maximum

[31] Chapter Nine of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846) addresses the development and implementation of a scientifically credible sampling plan. Chapter One of SW–846 describes the basic elements to be included in a Quality Assurance Project Plan (QAPP), as well as information describing basic quality assurance (QA) and quality control (QC) procedures. Chapter Two of SW–846 aids the analyst in choosing the appropriate methods for samples, based upon sample matrix and the analytes to be determined. Other appropriate sources may also be used, including those issued by recognized national voluntary standards setting organizations, *e.g.*, ASTM, etc., http://www.epa.gov/ncepihom/Catalog/EPASW–846.3.4A.html

quantitation value as an alternative to the use of the 95% upper confidence limit around the mean. Under this approach, the Agency is proposing that the analytical quantitation limits should be sufficient to calculate a meaningful TCDD TEQ for comparison to the 1 ng/L trigger level. Our experience with this matrix is that quantitation at or below 0.05 ng/L should be routinely achievable, therefore we are proposing that the selected analytical method achieve a precision of at least 30 percent relative standard deviation at a calibration level of 0.05 ng/L and a recovery of greater than or equal to 70 percent [32] (we note that if isotope-dilution methods are used, recovery is not an issue, since this method is self-correcting for recovery.) Under this approach, EPA is specifying that a minimum of four grab samples be collected within a 24-hour time period. The Agency notes that although we are considering setting a lower calibration standard for the measurement method as an alternative to the 95 percent upper confidence limit around the mean standard, the regulatory language included with today's proposal reflects only the preferred option.

Generators may not use process knowledge to determine whether or not the 1 ng/L TCDD TEQ trigger level has been exceeded for the first tanks in the wastewater treatment system where constituent concentrations are likely to be highest. However, once the facility has established that the trigger level is not exceeded in the influent to a given tank, the facility may use process knowledge to determine that dioxin levels in wastewaters managed in subsequent downstream tanks also will not exceed the trigger level.

We are proposing that the generator maintain documentation of the: (1) detailed standard operating procedures (SOPs) for the sampling and analysis protocols that were employed; (2) sensitivity and bias of the measurement process; (3) precision of the analytical results for each batch of waste tested; and (4) analytical results.

It is the responsibility of the generator to ensure that the sampling and analysis is unbiased, precise, and representative of the tank influent. To show that a tank is not subject to the specific Subpart CC requirements applicable to K173 wastewaters, a generator must demonstrate that: (1) the maximum TCDD TEQ in the tank influent does not exceed the 1 ng/L trigger level; and (2) the analysis could have detected the presence of the CDD/CDF congeners at or below the trigger level.

We are not requiring the use of SW–846 methods to comply with these requirements. We are proposing to allow the use of alternative methods to those included in SW–846, so long as the selected methods meet the following performance based criteria.

The Agency will consider the analysis adequate to demonstrate that the trigger level of 1 ng/L is not exceeded if an analysis in which TCDD (as a surrogate for all of the CDD/CDF congeners) spiked at the trigger level indicates that the analyte is present at that level within analytical method performance limits (*e.g.*, sensitivity, bias and precision). To determine the performance limits for a method, EPA recommends following the quality control (QC) guidance provided in Chapters One and Two of SW–846, and the additional QC guidance provided in Method 8290.

vi. What Comments Is EPA Specifically Requesting on the Proposed Approach for Controlling Dioxin Air Emissions?

The Agency requests comment on the proposal to add air emission control requirements for tanks used to manage chlorinated aliphatic wastewaters. In addition, the Agency requests comment on whether the technical standards in 264.1084/265.1085 will address the risks associated with vapor emissions from these units. EPA requests comment on the proposed 1 ng/L TCDD TEQ concentration limit in wastewater that triggers application of the air emission control requirements, and on the testing and recordkeeping requirements for implementing this standard. Specifically, EPA is requesting comment on comparing the regulatory limit to a sample mean at the 95% upper confidence limit, versus a maximum sample value with the sensitivity (as demonstrated by the lower calibration standard), precision, and recovery (unless using the isotope-dilution method) described in today's proposal.

In addition, we request comment on whether or not there are other types of standards and/or other factors the Agency should consider in setting standards for wastewater treatment units used to manage chlorinated aliphatic wastewaters. The Agency is not reconsidering or requesting comment on the wastewater treatment unit exemption and does not intend to respond to any comments submitted regarding the exemption.

b. How Is EPA Proposing to Regulate VCM–A Wastewaters?

EPA is proposing not to list as hazardous wastewaters generated from the production of VCM using mercuric chloride catalyst in an acetylene-based process. This wastestream already is defined as hazardous waste due to the fact that it exhibits the toxicity characteristic.

i. What Information Led EPA To Propose Not to List as Hazardous Wastewaters From the VCM–A Process?

EPA knows of only one facility in the United States that operates an acetylene-based VCM production process, which uses mercuric chloride catalysts in the production of VCM. The management of spent mercuric chloride catalyst used in the VCM–A production process results in the generation of a wastewater containing mercuric chloride, as well as vinyl chloride. The wastewater treatment system is operated in a batch process fashion in tanks, and is designed to convert the mercuric chloride present in the process wastewaters to an much less soluble mercuric sulfide. The mercuric sulfide is precipitated during the treatment process, dewatered, and collected for off-site disposal. The remaining wastewaters are discharged directly under an NPDES permit. Due to the fact that this wastewater is managed in a single, dedicated wastewater treatment system associated with a unique production process, and the presence of mercury in relatively high concentrations (which is not found in other chlorinated aliphatic wastewaters), the Agency decided to consider this wastestream separately in our investigation of the wastes generated by the chlorinated aliphatic hydrocarbons manufacturing industry.

According to the RCRA Section 3007 survey response, the facility generates and discharges approximately 22,200 metric tons (5.86 million gallons) of wastewater from the VCM–A process each year. The identified constituents of concern in this wastestream include mercury and vinyl chloride. In addition, dioxins are present in these wastewaters. EPA analyzed one sample of this wastewater in 1996 in support of this listing determination. The analytical results showed the wastewaters contained 8.60 mg/L mercury, and 0.680 mg/L vinyl chloride. The analytical results for the split sample taken by the facility were 6.78 mg/L mercury, and 1.38 mg/L vinyl chloride. The results exceed the toxicity

[32] Recent recovery is from an EPA Memorandum from Barnes Johnson, Director of the Economics, Methods, and Risk Assessment Division, to James Berlow, Director of the Hazardous Waste Minimization and Management Division, regarding the Office of Solid Waste's (OSW) standing policy on the Appropriate Selection and Performance of Analytical Methods for Waste Matrices Considered to be "Difficult-to-Analyze," January 31, 1996.

characteristic regulatory levels of 0.2 mg/L for mercury and 0.2 mg/L for vinyl chloride. Dioxins also were detected in the VCM–A wastewaters, however, the concentration was several orders of magnitude lower than levels found in other wastewaters generated from other chlorinated aliphatic manufacturing processes (i.e., 0.0022 ng/L TEQ/TCDD).

Based upon EPA's one record sample, this wastestream already is identified as a hazardous waste due to the fact that the waste exhibits the toxicity characteristic (TC). The constituents of significant concern in the VCM–A wastewaters (i.e., mercury and vinyl chloride) already are regulated under the TC, therefore, the TC adequately defines this wastestream as hazardous. Further, the facility's dedicated wastewater treatment system was designed-and optimized expressly for the removal of mercury from mercuric chloride catalysts to comply with the Clean Water Act. In addition, given the fact that EPA's record sample was over 40 times above the TC limit for mercury, it is highly probable that these wasetwaters routinely contain levels of mercury which cause this wastestream to be defined as characteristically hazardous waste. As mentioned previously, the criteria in 40 CFR 261.11 (a)(3) for evaluating whether or not a solid waste is a hazardous waste provide that EPA should consider how the waste (and potential risk) is affected by other regulatory programs (i.e., 261.11(a)(3)(x)). In the case of the VCM–A wastewaters, EPA notes that our decision to propose not to list this wastewater as hazardous is based in large part on the fact that the waste already is defined as a hazardous waste because it exhibits the toxicity characteristic. We have, accordingly, determined that there is no regulatory benefit in listing this wastewater as hazardous, particularly when considering that the volume of wastewater generated by the single facility using the acetylene-based VCM production process is relatively small (22,200 metric tons annually) compared to the volumes of wastewaters generated in other chlorinated aliphatic wastewater treatment systems (11.5 million metric tons annually).

In addition, any risks associated with the management and disposal (i.e., direct discharge) of the wastewaters are addressed by other environmental regulations. With respect to the discharge of the wastewater, the facility treats and discharges the wastewater in compliance with the conditions of a NPDES permit. Regarding any air emissions of vinyl chloride from these wastewaters, vinyl chloride is a hazardous air pollutant, therefore the facility is subject to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements specific to vinyl chloride emissions (40 CFR Section 61.65), as well as the Hazardous Organic NESHAP for the synthetic and organic chemical manufacturing industry sector (40 CFR Part 63, subpart G) (59 FR 19468, April 22, 1994). For these reasons, the Agency is proposing not to list VCM–A wastewaters as hazardous waste.

Sludges generated by the wastewater treatment process are disposed of in an off-site hazardous waste (subtitle C) landfill. EPA conducted a separate investigation of these sludges. The results of this investigation and our listing determination for the VCM–A wastewater treatment sludges are summarized in section III.E.3. further below.

2. EDC/VCM Wastewater Treatment Sludges

a. How Is EPA Proposing To Regulate EDC/VCM Wastewater Treatment Sludges?

EPA is proposing to list as hazardous sludges generated from treating wastewaters associated with the manufacture of ethylene dichloride (EDC) and vinyl chloride monomer (VCM). This wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and is capable of posing a substantial present or potential hazard to human health or the environment when managed in land treatment units. The Agency identified risks of concern associated with one management practice, on-site land treatment. In our risk assessment of these wastes, the exposed individuals of concern were the farmer, child of farmer, and the fisher receptors. The contaminants of concern are dioxin and arsenic.

As discussed in section III.D.1 above, our analyses identified health risks from the land treatment of the EDC/VCM wastewater treatment sludges due to airborne releases and subsequent deposition and food chain contamination from dioxin. Surface erosion due to runoff also contributes to risk from dioxin. Marginal risks from arsenic were identified for the land treatment unit groundwater ingestion exposure pathway. We also modeled a landfill management scenario; our risk assessment showed no significant risk from dioxin, and only marginal risk from arsenic associated with the groundwater pathway.

b. What Information Led EPA To Propose To List as Hazardous EDC/VCM Wastewater Treatment Sludges?

The results of the RCRA Section 3007 chlorinated aliphatic industry survey show that approximately 104,606 metric tons of wastewater treatment sludge is generated from the treatment of wastewaters at chlorinated aliphatic plants that manufacture VCM and/or EDC. One facility accounts for 74 percent of the total volume of wastewater treatment sludge generated.[33] Of the total volume of wastewater treatment sludges generated at plants manufacturing EDC/VCM and identified through the survey, 6,757 metric tons (6 percent) currently are already defined as hazardous waste.

EDC/VCM wastewater treatment sludges are generated at 12 facilities. The Agency notes that these sludges are not always generated from treating wastewaters produced exclusively from EDC and/or VCM manufacturing processes. Rather, sludges are sometimes generated in wastewater treatment systems that treat wastewaters from manufacturing processes producing a variety of chlorinated aliphatic and non-chlorinated aliphatic products. Wastewaters from multiple processes are combined prior to wastewater treatment. The Agency points out that the listing determination proposed today for EDC/VCM wastewater treatment sludges affects the total quantity of the sludges generated by a wastewater treatment system that accepts influent from any process manufacturing EDC and/or VCM. EPA has made this clear by including sludges from commingled EDC/VCM wastewater and other wastewater within the scope of the listing, although EPA believes this would have been the correct interpretation of the listing even absent the clarifying language.

The management scenarios selected for risk assessment were chosen based upon the waste management practices known to be practiced by the chlorinated aliphatic industry for non-hazardous sludges. Based on survey results, these practices are:

- On-site land treatment (one facility),
- On-site disposal in a non-hazardous landfill (two facilities),
- On-site co-disposal in a hazardous waste landfill (one facility), and
- Off-site disposal in a subtitle D landfill (7 facilities).

As explained earlier, EPA modeled risks from two management scenarios,

[33] Only one (1) percent of the wastewaters at this facility are generated from the manufacturing of EDC/VCM.

an off-site non-hazardous municipal landfill, and a land treatment unit. The management practices of most concern (landfills and land treatment) were assessed for this waste. Other non-hazardous waste management practices currently are not used by industry and would not serve as an appropriate basis for listing the waste as hazardous. In the case of the management practices employed by this industry, we are confident that the risk estimates from modeling an off-site non-hazardous waste landfill scenario also are representative of the potential risks associated with the management of EDC/VCM wastewater treatment sludges in on-site landfills. This is because information provided in facility responses to the RCRA Section 3007 questionnaire indicate that EDC/VCM wastewater treatment sludges are co-disposed with other industrial non-hazardous wastes in on-site landfills, therefore these units can be treated as off-site landfills (that receive a variety of wastestreams) rather than as monofills (that receive only one type of waste) with regard to the risk modeling approach employed.

Land treatment. The Agency's risk assessment of EDC/VCM wastewater treatment sludge showed risks of concern for the land treatment management scenario. The contaminant of greatest concern is dioxin. The exposure routes of concern are airborne releases and surface erosion from runoff which result in contamination of food products from nearby agricultural operations. The sludges present a hazard due to the fact that land treatment units are not covered and due to the potential absence of runoff controls. Land treatment results in a high-end cancer risk for the farmer of 2E–4 and a central tendency risk of 4E–6. EPA also performed a Monte Carlo analysis, and the results showed a risk for the farmer of 1E–4 at the 90th percentile, and 7E–6 at the 50th percentile. The high-end deterministic risk falls within the risk range for which there is a presumption for listing the waste as hazardous, consistent with guidance the Agency has used for determining that a waste is hazardous (see 59 FR at 66077), *i.e.*, the risks associated with management of EDC/VCM sludge in a land treatment unit are 1E–4 or higher, and well above the 1E–5 listing benchmark. The probabilistic results confirm that the high-end deterministic risk (2E–4) is above the 90th percentile result (1E–4). The 1992 guidance (memorandum from the then Deputy Administrator F. Henry Habicht "Guidance on Risk Characterization for Risk Managers and Risk Assessors") states that "[t]he 'high end' of the risk distribution [generally the area of concern for risk managers] is conceptually above the 90th percentile of the actual (either measured or estimated) distribution. This conceptual range is not meant to precisely define the limits of this descriptor, but should be used by the assessor as a target range for characterizing 'high-end risk'." Therefore, a high-end estimate that falls within the range (above the 90th percentile but still realistically on the distribution) is a reasonable basis for a decision. Therefore, EDC/VCM sludges managed in a land treatment unit pose risks that support a proposed listing determination for these wastes.

As discussed previously, the risk assessment addresses nine of the listing criteria in 40 CFR 261.11. EPA believes the risks resulting from our analysis represent plausible management of EDC/VCM sludges (261.11(a)(3)(vii)) using reasonable assumptions for management in land treatment units. In addition, the risk analysis was developed using actual analytical data.

Of lesser concern, but still within our discretionary risk range, are the potential health effects associated with arsenic in EDC/VCM wastewater treatment sludges that are managed in land treatment units. We found that arsenic presents some risk from potential releases to groundwater from the land treatment unit. For the arsenic groundwater pathway, land treatment results in a high-end cancer risk of 1E–05 and a central tendency risk of 8E–07. However, the predicted time period for the peak arsenic concentration to reach a receptor well is 1,500 years. In addition, our modeled leachate concentrations for arsenic result in predicted receptor well concentrations of 0.5 ppb (high end) and 0.2 ppb (central tendency). By comparison, the average background concentration of arsenic in rain derived from terrestrial air masses is 0.46 ppb.[34] Therefore, EPA does not believe that the risk from arsenic in this waste is significant, as discussed below.

Even though the high-end cancer risk from arsenic is within the general action level risk range (*i.e.*, 1E–04 to 1E–06), the central tendency risk falls outside this range. Another factor that the Agency considered when evaluating the potential risks from arsenic in this wastestream is the significant period of time it is predicted to take for the concentration of arsenic in a receptor well to reach the peak concentration level (i.e., 1,500 years). Given these factors, the Agency concludes that the risk posed from potential releases of arsenic in this wastestream when managed in land treatment units is marginal, and in itself does not warrant listing the waste as hazardous. The Agency therefore is proposing to list EDC/VCM wastewater treatment sludges based solely on the presence of dioxin and the potential risk associated with dioxin when this waste is managed in land treatment units. As outlined in the preamble to the Agency's proposed listing determination for wastes generated by the Dyes and Pigments Industry, listing determinations for wastestreams for which risks are calculated to be 1E–04 or higher are considered to pose a substantial present or potential hazard to human health and the environment and are listed as hazardous.

Landfill. The Agency's risk assessment showed no significant risks associated with dioxin, and only marginal risk associated with potential groundwater releases of arsenic in the off-site landfill scenario. The risk assessment showed a high-end cancer risk from arsenic of 3E–05 and a central tendency risk of 9E–07. However, these risks levels are associated with a peak arsenic concentration in a receptor well that is predicted to occur only after a period of 8,800 years. Predicted high end arsenic concentration at a receptor well is 1.4 ppb and the central tendency arsenic concentration in a receptor well is 0.2 ppb. This level of arsenic contamination is very close to average background exposure levels for arsenic. As mentioned above, the current average background concentration of arsenic in rain derived from terrestrial air masses is 0.46 ppb. Average background exposure to inorganic arsenic is 14 ug/day from food, and 5 to 7 ug/L from water. EPA's modeling results indicate that the disposal of EDC/VCM sludge in an unlined landfill could (over a period of 8,800 years) increase the concentration of arsenic in groundwater in a downgradient well (102 meters from the landfill) by only 1.4 ug/L and would add approximately 2 ug/day of arsenic to the average daily exposure level (about 20 ug/day) for the highly exposed individual. Actual potential level of risk would be lower than those predicted by our modeling efforts, if the sludges are disposed in lined landfills.

Given that the Agency's risk assessment indicates potential risk within our discretionary range

[34] Andreae, M.O. 1980. *Arsenic in Rain and the Atmospheric Mass Balance of Arsenic.* Journal of Geophysical Research. v.85, pp. 4512–4518, as cited in Welch, A.H., M.S. Lico, and J.L. Hughes. 1988. Arsenic in Ground Water of the Western United States. Ground Water, v.26, n.3, pp. 333–347.

associated with a peak arsenic concentration in a receptor well that is predicted to occur only after a period of 8,800 years, and given the absence of significant risk from any other constituents of concern, EPA concludes that EDC/VCM wastewater treatment sludges do not pose a significant risk when managed in landfills.

Based upon the Agency's findings that EDC/VCM wastewater treatment sludges pose significant risks when managed in land treatment units but pose no significant risks when managed in landfills, the Agency is proposing a "contingent management listing" for this waste. EPA is proposing to list EDC/VCM wastewater treatment sludges as hazardous, unless the sludges are managed in landfills. Again, the Agency is proposing this listing determination based upon the fact that our risk assessment results for the land treatment unit scenario indicate a level of risk of 2E–04, well above the 1E–5 risk level the Agency uses as guidance in making listing determinations.

c. Why Is EPA Proposing a Contingent Management Approach as Most Appropriate for EDC/VCM Wastewater Treatment Sludges?

The Agency's analysis of the risks associated with EDC/VCM wastewater treatment sludges shows that one of the current waste management practices (land treatment) results in significant risk while the other primary management practice (disposal in subtitle D landfill) shows little risk. Therefore, the Agency is proposing to list EDC/VCM wastewater treatment sludges as EPA Hazardous Waste Number K174, unless the sludges are managed in a subtitle C or subtitle D landfill. The Agency believes that allowing the waste to continue to be managed under a low risk management scenario (i.e., subtitle D landfilling) outside of the subtitle C system achieves protection of human health and the environment, and that little additional benefit would be gained by requiring that all EDC/VCM wastewater treatment sludges be managed in accordance with RCRA subtitle C management standards. Given the Agency's finding that no significant risks are posed from managing EDC/VCM wastewater treatment sludges in a landfill, the Agency sees no reason to include sludges managed in this manner in the scope of the hazardous waste listing. Additionally (and after consideration of the predicted risk differential between land treatment and landfilling), because only one facility identified in the RCRA Section 3007 Survey employs land treatment for these wastes, this practice is somewhat anomalous compared with land disposal. It does not make sense to apply a traditional listing approach (i.e., list all wastes regardless of management practice) based upon a practice occurring at one facility, especially if a more tailored listing can prevent this risk.

A contingent management listing approach is within EPA's statutory authority. See *Military Toxics Project* v. *EPA*, 146 F.3d 948 (D.C. Cir. 1998). The Agency believes that making a listing determination that is tailored to specific waste management practices is particularly appropriate under these circumstances, where the management practices identified are clear and very easily distinguished (such as the difference between land treatment and land disposal), and the differences in risk presented by these practices are clearly defined. In the case of EDC/VCM wastewater treatment sludges, EPA believes that an opportunity exists to establish a conditional management listing for these sludges that will reduce the risks associated with unsafe waste management practices, while not imposing significant incremental costs upon generators managing the wastes in a manner that does not pose significant risk. While disposal of EDC/VCM wastewater treatment sludges in land treatment units is projected to pose significant risks, the disposal of these sludges in landfills does not result in significant risks. This arises because the constituent of most concern, dioxin/TCDD, is relatively immobile in groundwater. However, risks from this constituent can be significant if the waste is managed in a manner that does not control for airborne releases or surface erosion from runoff, both of which are better controlled at landfills. Therefore, EPA believes a contingent management listing for this waste is a preferable and permissible alternative to simply listing all EDC/VCM wastewater treatment sludges as hazardous wastes.

The Agency's proposed listing description for EDC/VCM wastewater treatment sludges that will define this waste as hazardous unless the waste is managed in a landfill is as follows:

K174 Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer, unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or D landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met.

d. How Will This Contingent Management Listing Be Implemented?

Under this proposed listing, EDC/VCM wastewater treatment sludges will be hazardous wastes if managed by any method except disposal in a landfill. EPA has a clear interest in ensuring that these sludges are in fact disposed in a landfill, or else they would be listed hazardous waste at the point of generation. The Agency also has an interest in making sure that accurate records are kept to facilitate enforcement.

The Agency notes that based on the RCRA Section 3007 questionnaire results (which surveyed the universe of chlorinated aliphatics production facilities in the United States), the predominant management practice used for these wastes is disposal in a landfill, while one facility currently uses a land treatment facility. It is difficult for EPA to foresee a change in this well-established management practice. Therefore the Agency believes it is unlikely that these sludges will be sent to any type of facility other than a landfill, particularly if the approach proposed in today's rule is promulgated. Generators who choose to manage these sludges at non-landfill facilities must define their sludges as listed hazardous waste at the point of generation and manage them accordingly.

The Agency also is restricting the placement of EDC/VCM wastewater treatment sludges on the ground prior to

their being disposed in a landfill (*e.g.*, storage in waste piles, spills). EPA wants to ensure that these wastes, which are clearly capable of presenting unacceptable risk if improperly managed, are managed only in the manner found to be protective of human health and the environment.

Generators, and other parties involved in the management of EDC/VCM wastewater treatment sludges, claiming that their wastes fall outside the scope of the hazardous waste listing must be able to demonstrate that sludges excluded from the listing description are being managed in accordance with all of the conditions for being excluded from the listing. This means that parties claiming the waste falls outside the scope of subtitle C must be able to demonstrate that (1) previously generated and managed waste (which is being claimed as not meeting the K174 listing) was disposed of in a landfill; and (2) waste currently being managed is not being stored, or otherwise managed, on the land (*e.g.*, landfarms, waste piles) as well as demonstrate that the waste will be disposed of in a landfill (*e.g.*, have a contract in place with a landfill owner/operator that specifies intent to manage EDC/VCM sludges at the landfill facility). To further clarify how today's proposed approach would be implemented, below we describe these two distinct situations where a listing determination will be made under this proposed approach.

i. EDC/VCM Sludges Sent Off-Site

Under the proposed contingent management listing for K174, EDC/VCM sludges that already have been shipped from the generator facility to a subtitle C or subtitle D landfill were never a listed hazardous waste. In this instance, should a question arise as to the status of sludges previous shipped off-site, the implementing agency would look to indications such as contracts between the generator and the landfill owner/operator, invoices showing waste was delivered to a specific landfill, and other documents that clearly show the waste was transferred to a subtitle C or subtitle D landfill.

ii. EDC/VCM Sludges at Generator Site

In this situation, determining whether or not an EDC/VCM sludge meets the proposed K174 listing would be done in a prospective manner, not unlike many of the existing regulatory exclusions from the definition of solid waste (where determinations of whether or not a material is a waste are often based upon how the waste will be managed, *i.e.*, recycled. See, for example, requirements at 40 CFR 261.2, Table 1, and 261.4(b)). Under the existing generator requirements in 40 CFR Part 262, generators of solid waste must determine whether the waste is a listed hazardous waste (40 CFR 262.11(b)). Determinations made by generators regarding whether their EDC/VCM sludges are listed (where these sludges have not yet been disposed of off site in an appropriate landfill) will be made by virtue of where the waste will be sent. In situations where the implementing agency is questioning any claims by the generator of the non-listed status of sludges being stored on site, the generator should be able to show that there is an agreement already in place with a transporter and/or landfill indicating that these sludges will be delivered to a landfill. It is the EPA's experience that wastes cannot usually be shipped to a commercial landfill without first establishing a relationship with that landfill, where factors such as the amount of waste, the frequency of shipments, the physical and chemical make up of the waste, etc., are agreed upon before the waste ever arrives at the landfill.

In the case of generators who manage EDC/VCM in on-site landfills, the Agency requests comment on the types of records or documentation that may be used to verify or document that the waste is managed in the on-site landfill and not managed in a land treatment unit.

The Agency notes that it is not our intent to condition the regulatory status of the waste upon a recordkeeping or paperwork requirement. The Agency believes that the ability to demonstrate the commitment to dispose of the waste in a landfill is necessary to ensure the waste falls outside the scope of the listing. We do not believe that any specific recordkeeping requirement (*e.g.*, the completion and retention of a specific form) is necessary to make this demonstration. We believe that documentation of previous landfilling of the waste and a demonstration of a commitment to dispose of currently generated waste in a landfill may be made by several means. EPA is requesting comment on the types of records and/or documentation normally kept by generators and/or disposal facility owner/operators that may be used to make such demonstrations (see section III.E.2.f. below).

EDC/VCM wastewater treatment sludges that are not listed hazardous waste due to contingent management will be considered nonhazardous from their point of generation. As a result, such sludges will not be subject to RCRA subtitle C management requirements for generation, transport, or disposal (including the land disposal restrictions), if the waste *is destined for* disposal in a landfill (and the generator can demonstrate such intention).

Of course, if the waste is not disposed of in such a unit, then the exemption would no longer apply and the waste would have to be managed in compliance with subtitle C management requirements, from the point of generation. In other words, if the Agency finds that the waste is disposed of in a unit other than a subtitle C or D landfill, the Agency may cite the generator of the waste as being out of compliance with all applicable subtitle C management requirements. The Agency also points out that should EDC/VCM wastewater treatment sludges meet the listing description for another hazardous waste listing, or if the wastewater treatment sludges exhibit one or more of the characteristics of hazardous waste, the sludges must be managed as hazardous wastes and are not exempt from regulation under today's listing determination, regardless of how the sludges are managed.

e. What Specific Comments Is EPA Requesting on Implementation of the Contingent Management Listing Approach?

The Agency requests comments on this proposed contingent management listing approach, and may make changes to the implementation approach based on comments received. EPA notes that this contingent management approach necessitates that the Agency have the ability to confirm whether or not wastes claimed to fall outside the scope of the listing description are disposed of in a landfill as required by the proposed listing determination. As a result, some type of documentation or demonstration that the waste actually is disposed of in a landfill (or will be disposed of this way) is appropriate.

EPA is proposing that generators be able to provide documentation that waste previously generated (for which the claim is made that the waste is not K174) was disposed in an on-site landfill or transported to and received by an off-site landfill. In addition, a generator must be able to demonstrate that waste currently present at the generator's facility will be disposed in an on-site or off-site landfill, and that the waste will not be stored, or otherwise managed, on the land prior to disposal in a landfill. Appropriate types of documentation that may fulfill these requirements may include: contracts between a generator and a landfill owner/operator, invoices documenting that the waste was transported to and received by a landfill facility, bills of

lading or other shipping papers that clearly indicate the type and quantity of waste shipped off-site, the date of shipment, the name and address of the landfill receiving the waste, and the date the waste was received by the landfill.

EPA requests comment on the type of records, documentation, and demonstrations that may be adequate for determining compliance with the contingent management listing. EPA requests comment on what type of internal records may be kept by solid waste generators that may demonstrate intended management of the waste and whether such records are adequate for demonstrating compliance with the contingent management conditions for exclusion from the hazardous waste listing. EPA also requests comment on its proposal that waste that does not meet the terms of the conditional listing is hazardous from the point of generation.

3. VCM–A Wastewater Treatment Sludges

a. Is EPA Proposing To Regulate VCM–A Wastewater Treatment Sludges?

Yes, EPA is proposing to list as hazardous wastewater treatment sludge from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (VCM–A). The sludge is generated at one facility as a result of treating water running off an area where spent mercury catalysts are removed from the VCM–A production process. The Agency has concluded that the waste meets the listing criteria in 40 CFR 261.11(a)(3) and is capable of posing a substantial present or potential hazard to human health and the environment if mismanaged. For reasons explained in more detail below, EPA is proposing two alternative approaches for listing this waste as hazardous. The Agency is requesting comment on both proposed approaches.

b. What Information Led EPA To Propose To List as Hazardous VCM–A Wastewater Treatment Sludges?

i. Background

As previously described in today's proposed rule, the manufacture of vinyl chloride monomer in an acetylene-based process using mercuric chloride catalysts generates non-process wastewaters as a result of precipitation runoff in the production area, as well as from using water to remove spent catalyst from the reactors. Because of its high mercuric chloride content, this wastewater is collected and treated in a dedicated non-biological treatment system that uses sodium sulfide to convert the mercuric chloride to mercuric sulfide, which precipitates as a sludge and is dewatered to form a filter cake. This treatment system is operated in a batch-process fashion, and treated effluent is discharged under the facility's NPDES permit. EPA knows of only one facility in the United States that operates an acetylene-based VCM production process. According to the facility's response to the RCRA Section 3007 survey, this waste was sent to a permitted hazardous waste landfill for disposal in 1996. Other information provided by the facility in response to a separate RCRA Section 3007 request from EPA indicates this waste was sent to the same permitted hazardous waste landfill from 1990 to 1994 as well. The facility generates approximately 120 metric tons of VCM–A wastewater treatment sludge per year.

ii. Analytical Results

EPA analyzed one sample of this sludge in 1996 in support of this listing determination. The analytical results showed the sludge contained 9,200 mg/kg total mercury, and 0.26 mg/L in leachate using TCLP. The results for a split sample analyzed by the facility were 17,700 ppm total mercury, and the TCLP result was 0.654 mg/L. These results indicate a very high total mercury concentration (approximately one to two percent of the waste is mercury), and the TCLP results exceed the regulatory level for the mercury toxicity characteristic of 0.2 mg/L. Data generated by EPA in support of a treatability study on this particular waste showed a total mercury concentration (in aliquots of a single sample) ranging from approximately 3,000 to 9,000 mg/kg, and TCLP results were all below the regulatory limit.[35] Other data available to EPA from the facility indicate that approximately 20 percent of the tested samples exceed the regulatory level for mercury.[36]

iii. Assessment of Potential Risk

EPA's quantitative analysis of the potential groundwater risks posed by this waste assumes waste disposal in an unlined landfill. The Agency is making use of previously conducted groundwater modeling and risk analyses for the proposed Hazardous Waste Identification Rule (60 *FR* 66344, December 21, 1995) that resulted in an estimated dilution and attenuation factor (DAF) for mercury of 40. Using this DAF and the mercury leachate concentration of the VCM–A sludge analyzed by EPA (0.26 mg/L), the expected concentration of mercury at a modeled receptor well (after a release to groundwater from an unlined landfill) exceeds the maximum contaminant level (MCL) for mercury (0.002 mg/L) by a factor of three. Using the mercury leachate concentration from the facility's split sample (0.654 mg/L), the mercury MCL would be exceeded at a modeled receptor well by a factor of eight.

EPA is unable to quantitatively assess the potential risk this waste poses when disposed in a subtitle C landfill without prior treatment. However, we qualitatively considered the risk associated with such a management scenario. There is considerable uncertainty about the performance of engineered landfills. In the near term, especially at regulated subtitle C landfills, there are quality assurance controls to reduce the likelihood of significant material, installation, or facility operation errors that could degrade performance of the engineered systems. In addition, such landfills have ground water monitoring and leachate management controls to further reduce the chances of significant ground water risk. However, in the long-term, there is considerable uncertainty as to how well engineered systems will operate and whether there will continue to be long-term care and maintenance after the regulatory post-closure period ends. EPA can only qualitatively consider the potential long-term risk of wastes in subtitle C landfills. However, we considered the above mentioned uncertainties, along with the quantitative estimates of potential risk in unlined landfills, when assessing the potential risks of managing untreated wastes in a subtitle C landfill, such as VCM–A sludges that contain persistent constituents such as mercury.

iv. Rationale for Proposed Hazardous Waste Listing Determination

EPA is proposing two rationales to "list" this waste as hazardous, both of which lead the Agency to conclude we should propose to list this wastestream as hazardous waste. First, EPA believes it is plausible that this waste may be mismanaged and disposed of in an unlined and uncovered landfill and that it is capable of posing a substantial

[35] Paul Bishop, Renee A. Rauche, Linda A. Rieser, Markram T. Suidan, and Jain Zhang; "Stabilization and Testing of Mercury Containing Wastes," Draft, Department of Civil and Environmental Engineering, University of Cincinnati, March 31, 1999. Please note that this is a draft EPA document not yet peer reviewed. Also, data within the report is still undergoing QA/QC review, and the text, data, and conclusions in the report may change before the document is finalized.

[36] Summary of Mercury TCLP Data on VCM–A Sludge from Borden Chemicals and Plastics, EPA July 1999.

hazard if so managed. Second, based upon information EPA has, including information on liner performance and the mobility of mercury under certain pH conditions, EPA believes that even when disposed of in a landfill that is compliant with Subtitle C landfill standards, this waste is likely to leach significant quantities and concentrations of mercury that long-term degradation of the landfill's leachate control systems (especially after post-closure care has ended) would plausibly cause an unacceptable release of mercury into groundwater and has the potential to pose a substantial hazard when this waste is so managed without improved prior treatment. EPA requests comment on the basis for the rationales described above, both for the disposal scenario in an unlined landfill, and the disposal scenario in a landfill compliant with subtitle C landfill standards.

The Agency's analysis of potential risk indicates that disposal of the VCM–A sludge in an unlined landfill may result in risks due to the migration of mercury in groundwater to a receptor well in concentrations that exceed the MCL for this constituent. The Agency notes that the single facility generating this waste reports managing the waste by disposing of it in a subtitle C landfill for certain years. Therefore, a simple conclusion may be to dismiss the potential risk for the groundwater pathway (assuming it continues to go to a subtitle C landfill) due to the presence of a landfill liner and leachate collection. In addition, (as mentioned previously) the mercury in the waste is in the form of mercuric sulfide, which generally is found to be a relatively insoluble form of mercury (indicated by only a relatively small percentage of the total mercury content of the waste leaching under the TCLP). However, data recently collected by the Agency and preliminary results from the analysis of this waste indicate that this waste may not behave in the same manner (in terms of the mobility of mercury in sulfidic form) in all environments. As discussed briefly below (and further in the Land Disposal Restrictions, Section V.F.), available data indicate that although the mercury in the VCM–A sludge remains relatively immobile at pH levels of 6 or lower, higher pH conditions will result in mercury mobilizing to the aqueous phase.[37]

Using data from a collected sample of the VCM–A wastewater treatment sludge, constant pH leaching tests were conducted on the waste sample to determine the effect pH has on the stability of the waste. The preliminary results of the constant pH leaching tests showed that mercury leachate concentrations were lower in samples leached at a pH of 6.0 or lower (e.g., 0.00582 mg/L at pH=6 after 24 hours), compared with concentrations at higher pH conditions. The same sample leached at pH of 10 produced a significantly higher mercury leachate concentration of 1.63 mg/L after 24 hours.[38]

Information obtained by EPA on the pH levels of actual leachate collected from the landfill cell in which the VCM–A wastewater treatment sludge currently is disposed show that the pH is greater than 9.[39] If this pH value is indeed indicative of the disposal environment for this waste, then based upon the pH relationship identified in the preliminary results of constant pH leach tests described above, one would predict that the mercury would be significantly mobilized under the disposal environment actually being used for this waste.

In summary, although the waste is disposed in a subtitle C landfill, the fact that the mercury in the waste may mobilize at pH levels greater than 6 means that the leach test results may under predict concentrations in leachate. In case of significant leachate contamination, the landfill liner may be the only guard against the release of mercury to the environment (due to the fact that the waste is not stable in this landfill disposal scenario). Should the liner fail, mercury present in the leachate would be released to the environment.

EPA acknowledges that a liner/leachate collection system in a subtitle C unit serves to contain and remove waste leachate and provides important environmental protection. However, EPA recognizes that there is inherent uncertainty in such systems, and it believes that the purpose of the RCRA hazardous waste treatment requirements (as expressed by Congress) is to reduce the uncertainty inherent in engineered containment approaches. EPA believes that waste containment systems will tend to degrade with time. Eventually, synthetic liners will degrade and leachate collection systems will cease operation. As put forth in the proposed Liner and Leak Detection Rule (52 FR 20218, May 29, 1987), no liner can be expected to remain impervious forever. Properly installed double liner and leachate collection systems, together with final covers placed at closure, will substantially reduce releases during the operating life and post-closure care period. However, these technologies may not always reduce the longer-term risk for landfills to acceptable levels for persistent, mobile, and highly toxic compounds. This is because the containment system may not prevent leachate release from the landfill indefinitely, for example after the post-closure period, when active maintenance of the cap and leachate collection system may be reduced or may end. The Agency has found that treatment of the waste under the LDR standards of RCRA subtitle C will significantly reduce potential risks from the disposal of this waste over the long term. This is particularly important for a constituent such as mercury, that is persistent and does not degrade. Treatment in accordance with prescribed BDAT can reduce the possibility that leachable mercury is available for release to the environment. Again, a liner/leachate collection system in a subtitle C unit is expected to contain waste leachate and lessen the risk while such a system is intact. However, even assuming a low probability of failure, because the TCLP may be significantly under predicting leachability for this waste in this subtitle C disposal scenario, there may still be a release of mercury that results in an exceedance of the MCL. While there are uncertainties in this assessment, it still illustrates that the mercury concentrations in the receptor well may be close to, and could even be higher than the MCL. Given the well-documented toxicity and persistence of mercury, the potential for greater mobility of mercury from this particular waste in a subtitle C landfill (than predicted by the TCLP), and the uncertainties associated with engineered landfills over the long-term—as reflected in statutory language regarding treatment requirements—EPA believes that the disposal of this waste, untreated, in a subtitle C landfill may not be protective and therefore may warrant listing the waste as hazardous.

In EPA's view, it may violate Congressional intent to allow a waste that the Agency otherwise would list as hazardous (absent the fact that the waste is managed untreated in a Subtitle C landfill) to be disposed in a hazardous waste landfill under conditions that may result in the hazardous constituents

[37] H. Lawrence Clever, Susan A. Johnson, and M. elizabeth Derrick, The Solubility of Mercury and Some Sparingly Soluble Mercury Salts in Water and Aqueous Electrolyte Solutions, J. Phys. Chem. Ref. Data, Vol. 14, No. 3, 1985, page 652.

[38] Paul Bishop, *op. cit.*, p. 14.

[39] E-mail communication to John Austin, U.S. EPA, from Mitch Hahn, Waste Management Corporation, April 14, 1999.

in the waste leaching from the waste (due to the high pH of the landfill environment). Congress clearly expressed its intent that the Agency is not to place excessive reliance or confidence in landfill design and liners for problematic wastes. In the Hazardous and Solid Waste Amendments (HSWA) of 1984, Congress explicitly added as one of the "findings" to RCRA that "land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes" and that "reliance on land disposal should be minimized or eliminated." [40] As a result of this finding, and others, Congress added the land disposal restriction program to RCRA, which significantly restricts land disposal of hazardous wastes and provided in section 3004(m) the mandate that EPA develop treatment standards for "diminishing the toxicity of wastes or substantially reducing the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." In addition, the legislative history to RCRA section 3004(m) states that this section "makes Congressional intent clear that land disposal without prior treatment of these wastes with significant concentrations of highly persistent, bioaccumulative constituents is not protective of human health and the environment." (130 Cong. Rec. S 9178; daily ed. July 25, 1984). Were we to propose a no list determination for this waste based solely upon the fact that this waste currently is disposed in a subtitle C landfill—ignoring the high levels of total mercury in the waste, its potential for leaching (at high pH), and the likely benefits of treatment—we would be bypassing Congressional intent that wastes be treated to reduce toxicity and/or migration of hazardous constituents before final disposal.

EPA views the statute and legislative history as sufficient justification to evaluate in a listing determination all risks of land disposal, including in appropriate cases problems that might be associated with voluntary disposal of untreated wastes in permitted subtitle C facilities. This is particularly true where risks presented by a waste will be high if releases occur, if the waste is highly persistent, and treatment of the waste under subtitle C would significantly reduce these risks. In the case of the VCM–A wastewater treatment sludges, the potential risks presented by the high content of mercury in the waste if a release should occur, warrants the imposition of treatment standards in accordance with Congress's intent. Although the generator currently sends VCM–A wastewater treatment sludges to a lined subtitle C landfill facility, we believe that substantial risks are plausible, given the possibility of eventual landfill degradation or failure. The estimated risks due to migration from an unlined landfill provide an indication of the potential risks that will occur if mercury is released from the lined landfill due to failure of the unit to contain the waste leachate over time.

Absent a hazardous waste listing, the Agency has no mechanism for requiring that the waste be treated prior to disposal to ensure that the mercury in the waste does not leach from the waste to the surrounding environment (and hence provide some protection of human health and the environment in the event of a liner failure). Furthermore, the Agency has little assurance that the waste will continue to be managed in a subtitle C landfill.

Listing a waste as hazardous provides a level of certainty with regard to the management and stewardship of a waste as well. Given the quantity of mercury contained in the VCM–A wastewater treatment sludge and the potential solubility of this large quantity of mercury, the Agency tentatively concludes that it is appropriate that the waste be managed in accordance with the "cradle-to-grave" management system established under RCRA Subtitle C. By listing this waste as hazardous, EPA and the general public are afforded a greater level of certainty with respect to the manner in which the waste must be managed. It will have to be accumulated and stored in closed containers, sent off-site for treatment and disposal within a relatively short time of the time it was generated, transported by a registered hazardous waste transporter and accompanied by a manifest, and treated and disposed at facilities permitted to handle hazardous wastes.

The Agency bases its listing determinations on an evaluation of risks from plausible management practices. For the reasons just described, EPA believes that disposal of untreated VCM–A sludge in a subtitle C landfill represents one plausible management scenario and that this scenario could lead to significant problems. Equally important, the Agency questions whether the current waste management practices are the only practices that will be employed by the facility in the future. That is, the Agency believes other management practices are plausible. First, information available to the Agency documents only that the facility has sent VCM–A wastewater treatment sludges to a subtitle C landfill for disposal for some periods after 1990. Specifically, information provided by the facility in response to a specific RCRA Section 3007 request from EPA indicates this waste was sent to a subtitle C landfill from 1990 to 1994; and according to the facility's response to the RCRA Section 3007 survey, this waste was sent to a permitted hazardous waste landfill for disposal in 1996. In addition, we have no information with regard to the disposal of the waste prior to 1990. The Agency does know that the facility had as many as 800 drums of the mercuric sulfide sludge stored on site in 1985; however the Agency has no information with regard to the ultimate management of the waste.[41] Given the fact that the Agency does not have a complete record of how the VCM–A sludge was managed in the past, the Agency believes that it is reasonable to assume that the VCM–A sludge may be managed in an non-subtitle C landfill in the future.

Therefore, for the purposes of assessing potential risk, the Agency believes a plausible mismanagement scenario can also include an unlined landfill, the scenario in which the Agency's risk analysis indicates a potential for the concentration of mercury at a modeled receptor well to be as much as eight times higher than the MCL for mercury (based upon the TCLP results and a DAF of 40).

Our assessment includes predicted exceedances of the MCL (based upon the record sample EPA collected) assuming disposal in an unlined landfill; and a qualitative consideration of the possible risks when disposed in a subtitle C landfill without better treatment. Although risk analyses provide one of the principal bases for a listing determination, estimates of risk levels do not represent the sole basis for a listing determination. Other factors generally are considered in making a listing decision. In fact, the Agency's listing decision policy uses a "weight-of-evidence" approach in which calculated risk information is a single key factor. Available risk values are assessed with all other data available to determine whether a waste is or is not a hazardous waste (see the discussion of EPA's hazardous waste listing determination policy in the proposed listing for wastes generated by the dye and pigment industries at 59 FR 66073, December 22, 1994). In our decision to propose to list this sludge as hazardous,

[40] RCRA section 1002(b)(7), 42 U.S.C. 6902(b)(7).

[41] "Reclassification Petition" submitted to Louisiana Department of Environmental Quality, Hazardous Waste Division, by Borden Chemical, September, 1987, p. III–2.

the Agency considered several factors, including the extensive documentation on the toxicity of mercury, as well as the other criteria listed in 261.11(a)(3) to arrive at a listing determination, as further summarized below.

Mercury has been identified by several different governmental agencies, including EPA, the Agency for Toxic Substances and Disease Registry (ATSDR), the Food and Drug Administration (FDA), and the Occupational Safety and Health Administration (OSHA), as a significant human toxicant. Each of these Agency's has developed regulations, guidelines, and/or standards to protect people from the serious potential health effects of exposure to mercury. In addition, it also is well documented that mercury is persistent in the environment, does not degrade, and bioaccumulates in wildlife, particularly fish. Agency studies, including the recently published *Mercury Study Report to Congress*[42] have documented the neurotoxicity of mercury and the potential adverse human health and environmental effects that may result from the release of mercury to the environment. In addition, ATSDR has published a toxicological profile for mercury which examines, summarizes and interprets toxicological information and epidemiological evaluations on mercury.[43] Research conducted by both EPA and ATSDR provides documentation of the highly toxic effects of human exposure to mercury. Human consumption of highly-contaminated food can produce overt mercury neurotoxicity. Neurotoxic effects from mercury contamination range from subtle decrements in motor skills and sensory ability at comparatively low doses to tremors, inability to walk, convulsions and death at extremely high exposures. Human consumption of fish or grain contaminated with high levels of mercury can result in permanent damage to the brain, kidneys and developing fetuses. Adverse effects of mercury on fish include death, reduced reproductive success, impaired growth and development and behavioral abnormalities. Exposure to mercury also can cause adverse effects in plants, birds and mammals. The extent and availability of toxicity assessments for mercury is relatively extensive (see EPA's "Mercury Study Report to Congress" and/or EPA's "Action Plan for Mercury")[44]. Certainty with regard to the potential risks to human health and the environment from exposure to mercury is well documented. Mercury presents significant human health threats when released to the environment.

Wastewater treatment sludges from the VCM–A process using mercuric chloride catalyst contain significant levels of total mercury. As mentioned previously, approximately 120 metric tons of the sludge, containing about one percent (or 1 MT) of mercury, is generated per year at a single facility. One metric ton of mercury is approximately 20 times as much mercury as is received typically by a single municipal solid waste landfill from all sources in one year. EPA also notes that in this particular case, we believe the mercury is likely to be significantly leachable at pH levels of a typical hazardous waste landfill. The Agency considers this quantity of potentially leachable mercury generated from a single facility and disposed of off-site to be significant. As outlined in the *Draft EPA Action Plan for Mercury*[45], and EPA's Waste Minimization National Plan[46], it is important to the protection of human health and the environment that all anthropogenic sources of mercury emissions to the environment be minimized. Given the inherent risks associated with mercury, EPA believes it is necessary to ensure, to the greatest extent possible, that wastes containing significant quantities of mercury are safely managed and to guard against potential mismanagement.

Upon consideration of the factors enumerated in 40 CFR 261.11(a)(3) and those summarized in the 1994 Dyes and Pigments Proposed Rule for making a hazardous waste listing determination, EPA made the following conclusions with respect to this waste. In terms of waste characterization, data available on this waste indicate with relative consistency that the waste contains a significant amount of total mercury, regardless of variation in pH and leachable mercury. Furthermore, in this particular case, we believe that the mercury is likely to be more leachable than the TCLP test indicates. It is well documented that mercury is a human toxicant. Mercury is persistent in the environment, does not degrade, and bioaccumulates in wildlife, particularly fish. These conclusions correspond to the listing factors at 40 CFR Sections 261.11(a)(3)(i), (iv), (v), and (vi), respectively.

After considering the listing factors in 261.11(a)(3), and in particular the factors at 261.11(a)(3)(i)–(vi) (which include potential risks to groundwater from unregulated disposal of this waste, the fact that mercury is a human toxicant, is persistent in the environment, does not degrade, bioaccumulates in wildlife, and is present in very high concentrations in this waste), as well as several of the "additional factors" listed in the 1994 Proposed Rule for Wastes Generated by the Dyes and Pigments Industry, and taking into account the Agency's overall goals to reduce releases of mercury to the environment, EPA is proposing to list this waste as hazardous. The proposed listing description is shown below.

K175 Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.

The proposed listing of VCM–A wastewater treatment sludges, which contain substantial amounts of total mercury is, in effect, an extension of the Agency's policy with regard to mercury emissions. The Agency believes that listing these wastewater treatment sludges as hazardous will provide incentive for the facility to find ways to reduce the overall quantity of mercury-containing VCM–A sludges generated. EPA believes there may be opportunities for this type of reduction through improved catalyst handling practices. Improved handling practices may result in a reduction in the amount mercuric chloride released in and around the VCM–A process area where it becomes available for introduction to the wastewater treatment system. In turn, this reduction would result in an overall decrease in the amount of mercury available for potential release to the environment.

Once a waste is listed as a hazardous waste, the waste is prohibited from land disposal unless it is treated in compliance with treatment standards established under the RCRA land disposal restrictions standards program. The mercuric sulfide sludge generated from the VCM–A production process is unique in that this waste contains a very high amount of total mercury, and the

[42] U.S. Environmental Protection Agency (1997), EPA–452–R–97–003–009.

[43] *"Toxicological Profile for Mercury,"* ATSDR, April, 1999; http://www.atsdr.cdc.gov/press/ma990419.html.

[44] "Mercury Study Report to Congress," volumes I–VIII, EPA–452/R–97–003, December 1997; and EPA Action Plan for Mercury (Atttachment 1 to "An Agency-Wide Multi-media Strategy for Priority PBT Pollutants"), http://www.epa.gov/ttnuatw1/112nmerc/mercury.html.

[45] Attachment to *A Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants*, November 16, 1998, EPA 742/D98/001, http://www.epa.gov/opptintr/pbt/pbtstrat.htm.

[46] Waste Minimization National Plan, US EPA, 1994, EPA530–R–94–045, http://www.epa.gov/rgytgrnj/specinit/p2/volprog/wm.htm.

mercury is present in the waste in a relatively insoluble form as measured using the TCLP. However, the preliminary findings of the EPA/ORD study described above suggest that variability in the pH of the waste as generated, and higher pH conditions potentially encountered in the disposal unit where this waste is managed, can affect the stability of the VCM–A sludge when disposed in a subtitle C landfill. The Agency, therefore, is proposing specific LDR treatment standards for this waste to minimize the potential release of mercury to the environment from this waste. A discussion of the proposed BDAT treatment standards for newly listed VCM–A wastes is provided later in this notice.

c. What Alternative Is EPA Considering for a Proposed Listing Determination?

i. Summary of Alternative Listing Option

The alternative listing option EPA is proposing today is to list the VCM–A wastewater treatment sludges as hazardous waste, *unless* the waste is disposed in a subtitle C landfill. In addition, under this alternative option, VCM–A wastewater treatment sludges that exhibit the toxicity characteristic for mercury will be listed as hazardous. In other words, this waste will not meet the proposed K175 listing description, and therefore will not be listed hazardous waste from the point of generation, so long as it is disposed in a subtitle C landfill, and it does not exhibit the TC for mercury.

ii. Rationale for Alternative Listing Option

As described earlier, EPA believes that the VCM–A sludge meets the criteria for being listed as a hazardous waste, principally due to the high concentration of mercury, a highly toxic constituent, in this waste. Available information indicates that the direct disposal of untreated VCM–A sludge in a subtitle C landfill may result in a marked increase in the mobility of mercury, and that, should the liner system ultimately degrade, this mercury can be released to groundwater and potentially reach a receptor well in concentrations at the MCL. Also, the Agency believes that disposal of these wastes in an unlined landfill is a plausible mismanagement scenario, which would result in exceedances of the MCL by up to a factor of eight. The Agency is seeking comment on these tentative conclusions and this proposed listing determination. Should the Agency receive data or other information on the conclusions drawn by the Agency with regard to the management of the waste and the behavior of this waste in the environment, particularly with regard to the potential for the mercury in the waste to leach under conditions of high pH levels, the Agency will consider alternative approaches. For example, if direct disposal of untreated VCM–A sludge in a subtitle C landfill can be shown to be protective without further treatment of this waste, due to the relative insolubility of mercuric sulfide or expected long-term performance of subtitle C systems, EPA will consider a conditional listing of VCM–A. Such an conditional listing would specify that the wastewater treatment sludges are listed only if the waste is not disposed in a subtitle C landfill, or put another way, the sludges would *not* be listed hazardous waste from the point of generation if they *are* disposed in a subtitle C landfill.

As mentioned above, this alternative regulatory approach is based upon the presumption that disposal of untreated VCM–A sludge in a subtitle C landfill is protective. However, the Agency also is concerned that this waste can sometimes fail the TC for mercury (as discussed earlier, approximately 20 percent of the time based upon EPA and facility data). The existing treatment standards that otherwise would apply to this waste if it was characteristically hazardous for mercury include incineration (*i.e.*, D009 high mercury/organic subcategory requires either incineration or mercury recovery), which may not be the most environmentally-sound manner in which to treat the waste prior to disposal. This is discussed in more detail in the LDR portion of today's rule (Section V). Because of this concern, this alternative option is structured in a fashion that allows the treatment standards being proposed today for K175 to apply in lieu of the existing standards for D009 for those VCM–A wastes that exhibit the characteristic for mercury.

EPA requests comment on this proposed alternative listing approach. Also, EPA requests comment on whether it may be more appropriate to simply list the VCM–A wastewater treatment sludge unless it is sent to a subtitle C landfill, and propose alternative LDR treatment standards that would apply to VCM–A wastewater treatment sludges that exhibit the TC for mercury. We note that the Agency presently is revisiting the IMERC standard as part of a comprehensive re-evaluation of the LDR treatment standards for mercury-bearing wastes (see May 28, 1999 ANPRM; 64 *FR* 28958). To the extent time allows, the Agency will consider relevant issues raised in the ANPRM in developing this final listing determination. However, because of the different schedules of these two actions and the consent decree deadline for finalizing today's proposed rule, we will not necessarily be able to consider any comments submitted to the ANPRM in finalizing today's rule.

The Agency's proposed alternative listing description for VCM–A wastewater treatment sludges that will define this waste as hazardous only under certain conditions is as follows:

K175 Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process, *unless:* i) the sludges are disposed in a subtitle C landfill, and ii) the sludges do not fail the toxicity characteristic for mercury in 40 CFR 261.24, and iii) the generator maintains documentation demonstrating that the waste was disposed of in a subtitle C landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in a subtitle C landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (*e.g.*, contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, analytical results or other information showing the waste does not fail the toxicity characteristic for mercury, etc.) that the terms of the exclusion were met.

The Agency requests comment on this alternative listing approach for VCM–A sludge. As already mentioned, EPA might choose this alternative regulatory approach if it decides direct disposal of untreated VCM–A sludge is protective without further treatment of this waste, due to the relative insolubility of mercuric sulfide, and the groundwater protections a lined landfill does provide.

d. What Is the Status of Landfill Leachate From Previously Disposed Wastes?

Leachate derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the "derived-from" rule in 40 CFR 261.3(c)(2). The Agency has been clear in the past that hazardous waste listings apply to wastes disposed

of prior to the effective date of a listing, even if the landfill ceases disposal of the waste when the waste becomes hazardous. See 53 *FR* 31147, August 17, 1988. We also have a well-established interpretation that listings likewise apply to leachate derived from the disposal of listed hazardous wastes, including leachate derived from wastes disposed before a listing effective date which meet the listing description. We are not reopening any of these issues with this proposed rulemaking.

Of course, as set out in detail in the August 1988 notice, this does not mean that landfills holding wastes that are listed now as hazardous become subject to subtitle C regulation. However, previously disposed wastes now meeting a listing description, including residues such as leachate that are derived from such wastes, and that are managed actively do become subject to subtitle C regulation. See 53 *FR* 31149, August 17, 1988. In many, indeed most circumstances, active management of leachate would be exempt from subtitle C regulation because the usual pattern of management is discharge either to POTWs via the sewer system, where leachate mixes with domestic sewage and is excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(1)), or to navigable waters, also excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(2)). In addition, management of leachate in wastewater treatment tanks prior to discharge under the CWA is exempt from RCRA regulation (40 CFR 264.1(g)(6)).

If actively managed, landfill leachate and gas condensate derived from the newly-listed VCM–A waste proposed for listing in today's notice could be classified as K175. In such circumstances, we would be concerned about the potential disruption in current leachate management that could occur, and the possibility of redundant regulation. Recently, this issue was raised to the Agency in the context of the petroleum refinery waste listings. See 63 *FR* 42173, August 6, 1998. A commenter expressed concern that, because some of the commenter's non-hazardous waste landfills received newly-listing petroleum wastes prior to the effective date of the listing decision, the leachate that is collected and managed from these landfills would be classified as hazardous. The commenter argued that this could lead to vastly increased treatment and disposal costs without necessarily any environmental benefit. After examining and seeking comment on this issue, we published a final rule that temporarily defers regulation of landfill leachate and gas condensate derived from certain listed petroleum refining wastes (K169–K172) that were disposed before, but not after, the new listings became effective, provided certain conditions are met. See 64 *FR* 6806, February 11, 1999.

At the time this issue was brought to the Agency's attention in the context of the petroleum refinery waste listings, EPA's Office of Water had recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges—most notably, leachate—from certain types of landfills. See 63 *FR* 6426, February 6, 1998. In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both subtitle C (hazardous waste) and subtitle D (non-hazardous waste) landfills, including treatment technologies and management practices currently in use. EPA proposed effluent limitations (for nine pollutants in the Non-Hazardous Subcategory) for direct dischargers. See 63 *FR* 6463. Most pertinent to finalizing the temporary deferral for the petroleum refining wastes, EPA did not propose pretreatment standards for subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required.

The conditions included in the temporary deferral published on February 11, 1999 are that the leachate is subject to regulation under the Clean Water Act, and the leachate cannot be stored in surface impoundments after February 13, 2001. See 40 CFR 261.4(b)(15). We believed that it was appropriate to temporarily defer the application of the new waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides how to integrate the RCRA and CWA regulations consistent with RCRA Section 1006(b)(1). We believe that the same fact pattern fully discussed in the February 11, 1999 rulemaking applies in this situation as well. As such, we would be concerned about forcing pretreatment of leachate even though pretreatment is neither required by the CWA, nor needed. Therefore, we are proposing to temporarily defer the regulation of landfill leachate and gas condensate derived from the VCM–A wastes, with the same conditions as described in 40 CFR 261.4(b)(15) for petroleum wastes. We believe the issue of whether disruptions can be minimized through integration of CWA and RCRA rules will be more amenable to resolution once the CWA rulemaking is completed.

e. What Specific Comments Is EPA Requesting on the Agency's Proposed Listing of VCM–A Wastewater Treatment Sludges?

The Agency requests comments on the proposed listing of all VCM–A wastewater treatment sludges as well as the proposed conditional listing for this waste. In addition, the Agency requests comment on alternative management practices that may either be in use or may be appropriate for this wastestream, other than the disposal of these sludges in subtitle C landfills.

We also request any available information on whether or not the VCM–A wastes were previously disposed in non-hazardous landfills. Even if we do not receive any information that previously disposed VCM–A wastes will result in generation of hazardous landfill leachate and gas condensate, we may still choose to promulgate the temporary deferral for landfill leachate and gas condensate from this waste. This is because someone may discover this problem later (after the effective date of the listing), so, by having a temporary deferral in place, it would be possible to avoid disruption of ongoing leachate management activities while we further examine this issue and await the CWA final rule.

4. Methyl Chloride Wastewater Treatment Sludges

a. How Is EPA Proposing To Regulate Methyl Chloride Wastewater Treatment Sludges?

EPA is proposing not to list as hazardous sludges from the treatment of wastewaters generated from methyl chloride production processes. This wastestream does not meet the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous. It does not pose a substantial present or potential hazard to human health or the environment. The Agency identified limited risks to consumers of groundwater.

b. What Information Led EPA To Propose Not To List as Hazardous Methyl Chloride Wastewater Treatment Sludges?

EPA identified only one facility that generates sludges from the treatment of wastewaters generated from the production of methyl chloride and does not currently manage the waste as hazardous. The results of the RCRA Section 3007 survey for the chlorinated aliphatics industry show that this facility generates less than 800 metric tons of this sludge each year and disposes of the sludge in an on-site landfill along with other wastes from

the facility. The landfill is lined and has a leachate collection system.

In conducting the risk assessment for this sludge, EPA considered one management scenario, disposal in an on-site landfill. The Agency analyzed potential risks from methyl chloride wastewater treatment sludge by modeling a non-groundwater pathway. The Agency's analysis of potential risks due to volatile emissions from the landfill resulted in negligible risks to individuals in the surrounding area. The Agency also conducted a bounding (i.e., worst case) risk analysis to estimate potential risks to groundwater consumers. This analysis used the leachate concentration measured from a sample of the facility's methyl chloride wastewater treatment sludge, and assumed the direct ingestion of this leachate by an adult for a period of 58 years. This bounding analysis resulted in a risk of 5E–5 for one constituent, arsenic.

The Agency views the arsenic risk results from the bounding analysis as marginal. Assuming a landfill DAF of only 5 (a reasonable assumption for an unlined landfill), the predicted risk becomes 1E–5, which is the typical level identified by EPA as posing sufficient risk to require the waste to be listed as hazardous(see 59 FR 66072, 66077). However, for this particular facility, EPA believes that the actual risk from this waste will be much lower than the risk level predicted by the bounding analysis given that the landfill currently used by the single facility generating this waste is lined with a 24-inch clay liner and has a leachate collection system.

The Agency believes that the management practice of most concern (on-site landfill) was assessed, given that it is the only management practice used by the single facility generating the waste. Given that the landfill is located on site and has significant remaining capacity, the Agency sees no reason to assume that the facility will not continue to manage its wastewater treatment sludges from the production of methyl chloride in this manner.

Based on an analysis of potential risks associated with current management practices, EPA is proposing not to list as hazardous wastewater treatment sludges from the production of methyl chloride. The Agency found no significant risks arising from the on-site landfill management scenario. The only possible concern arises from the marginal risk associated with arsenic, which falls at the risk level generally identified by EPA for listing a waste as hazardous, when assuming a DAF of 5. The Agency believes this assumption is reasonable for an unlined landfill, and likely results in an overestimate of risk for the management practice identified by EPA (i.e., an on-site landfill that operates with a clay liner and leachate collection at a single facility).

The Agency requests comments on the approach taken to determine a no-list proposal for hazardous wastewater treatment sludges from methyl chloride manufacturing.

5. Allyl Chloride Wastewater Treatment Sludges

a. How Is EPA Proposing To Regulate Allyl Chloride Wastewater Treatment Sludges?

EPA is proposing not to list as hazardous sludges generated from treating wastewaters associated with the manufacture of allyl chloride. This wastestream does not meet the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous. It does not pose a substantial present or potential threat to human health or the environment. The Agency has identified no risks of concern associated with the current management of the waste.

b. What Information Led EPA To Propose To Not List as Hazardous Allyl Chloride Wastewater Treatment Sludges?

Wastewater treatment sludges from allyl chloride production are generated at a single facility. The sludges are generated from the facility's centralized wastewater treatment system. This wastewater treatment system is a non-dedicated system in that wastewaters from the facility's multiple production processes are discharged to the single system for combined treatment. Wastewaters from the production of allyl chloride contribute less than two percent to the system's total sludge loading. According to the RCRA Section 3007 survey response, the sludge generated from the facility's wastewater treatment system is incinerated on site in a non-hazardous waste incinerator.

During the investigations undertaken in support of the listing determinations, EPA collected one sample of this sludge. Two duplicate TCLP analyses were performed using the sample collected. The sample also was analyzed for total concentrations of dioxins and furans. The TCLP analyses indicated the presence of no TCLP constituents above regulatory levels. The total arsenic concentration in the waste was 11.7 mg/kg, while the total dioxin (TEQ/TCDD) concentration was 11.79 ng/kg.

The Agency does not anticipate any significant risk from the incineration of allyl chloride wastewater treatment sludge in a non-hazardous waste incinerator, since both the total arsenic level [47] and the total dioxin level [48] detected in the sludge are well within the range of background levels of those constituents in soils.

The Agency did not conduct an analysis of risk associated with other management practices, based upon the fact the waste is generated by a single facility and currently is not managed in a manner other than non-hazardous waste incineration.

Given that wastewater treatment sludges from allyl chloride production are generated by a single facility, that the sludge generated is the product of a facility-wide non-dedicated (*i.e.*, not process-specific) wastewater treatment system, and that no significant risks are posed by the waste attributable to the allyl chloride production process, the Agency is proposing not to list this waste as hazardous.

The Agency requests comments on the approach taken to determine to propose not to list as hazardous wastewater treatment sludges from allyl chloride manufacturing.

F. Constituents Proposed for Addition to Appendix VIII to 40 CFR Part 261

Two of the constituents of concern that are present in the chlorinated aliphatic wastewaters (K173) and the EDC/VCM wastewater treatment sludges (K174) proposed to be listed as hazardous waste do not currently appear on the list of hazardous constituents at 40 CFR part 261, appendix VIII. Therefore, EPA is proposing to add these two constituents, octachlorodibenzo-p-dioxin (OCDD) and octachlorodibenzofuran (OCDF), to appendix VIII. OCDD and OCDF are members of the large family of polychlorinated dioxins and furans. Certain of these compounds, most notably, 2,3,7,8 TCDD, have been shown to be extremely toxic.

As discussed in section III.D of today's proposed rule, the Agency's risk assessment found significant risks associated with the presence of dioxins

---

[47] Alkhatib, Eid, and O'Connor, Timothy, *"Background Levels of Priority Pollutant Metals in Soil, American Environmental Laboratory*, Vol. 10, No. 3, April, 1998.

Hunter, Philip M., "Air-Force Wide Background Concentrations of Inorganics Occurring in Ground Water and Soil," *Proceedings from the Fourteenth Annual Waste Testing and Quality Assurance Symposium*, Pp. 73–77, 1998.

Welch, Alan H., Lico, Michael S., and Hughes, Jennifer L., *"Arsenic in Ground Water of the Western United States," Ground Water*, Vol. 26, No. 3, May/June, 1988.

[48] See Table 4–4 of "Risk Assessment Technical Background Document for the Chlorinated Aliphatics Listing Determination," EPA, June 25, 1999.

in both chlorinated aliphatic wastewaters and EDC/VCM wastewater treatment sludges. In the case of our analysis of risk for both categories of waste, the dioxin/furan concentrations were measured on a TCDD TEQ basis. As previously discussed in today's proposed rule, TCDD TEQ concentrations are calculated by multiplying each 2,3,7,8 congener by the appropriate TEF, and then summing the resultant concentrations to come up with a TCDD TEQ value. OCDD and OCDF are part of this calculation.

Available data indicate that 2,3,7,8-substituted congeners of chlorinated dibenzo-p-dioxin and dibenzofurans have toxic effects similar to 2,3,7,8,-TCDD. Data available from in vivo and in vitro studies reveal a strong structure-activity relationship, in which the 2,3,7,8-substituted congeners are much more biologically active than other congeners. Both OCDD and OCDF are 2,3,7,8-substituted congeners. Available data also show that the relative responses of different PCDDs and PCDFs are generally consistent across a variety of toxicity end points.[49] In regard to OCDD specifically, test animals exhibited initial signs of "dioxin toxicity" in a subchronic study of mice exposed to OCDD at low levels.[50]

EPA also points out that the oral slope factors for OCDD and OCDF (calculated by multiplying the cancer slope factor for 2,3,7,8 TCDD by the TEFs for OCDD and OCDF, which are both 0.0001[51]) are relatively high (15/(mg/kg)/day) compared to the oral slope factor of other hazardous constituents currently listed in appendix VIII to 40 CFR 261 (*e.g.*, arsenic has an oral slope factor of 1.5/(mg/kg)/day).

Therefore, we have concluded that, based upon sufficient evidence to show that OCDD and OCDF are hazardous constituents and based upon the fact that OCDD and OCDF are the only congeners that make up TCDD TEQ that are not currently listed in appendix VIII, OCDD and OCDF should be added to appendix VIII of 40 CFR part 261. The Agency requests comment on its proposal to add OCDD and OCDF to the list of hazardous constituents in appendix VIII to 40 CFR 261.

[48] U.S. Environmental Protection Agency. 1989 Update to the Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs). Washington, D.C.: Risk Assessment Forum, March, 1989. EPA/625/3–89/016.

[50] Couture, L.A., M.R. Elwell, and L.S. Birnbaum. "Dioxin-like Effects Observed in Male Rats Following Exposure to Octachlorodibenzo-p-dioxin (OCDD) during a 13-week Study." Toxicology and Applied Pharmacology, Vol. 93, Pp 31–46, 1988.

[51] Using the toxicity equivalency factor (TEF) developed by the World Health Organization, see section III.D.1.g.ii of today's proposed rule for discussion of TEFs.

IV. Economic Analysis

A. What Is the Purpose of the Economic Analysis?

The primary purpose of the economic analysis presented in the *"Economic Background Document,"* is to estimate potential industry compliance costs associated with this listing proposal. Secondary purposes are to provide descriptive information about the economic (industry) sectors affected, and about the economic activities involving chlorinated aliphatic hydrocarbon chemicals (CAHCs). The Economics, Methods, and Risk Assessment Division (EMRAD) of EPA's Office of Solid Waste (OSW) conducted the economic analysis. The *"Economic Background Document"* is available to the public from the RCRA docket (refer to the introduction to this preamble for instructions on how to obtain a copy). The findings of the economic study are summarized in this section of the preamble. References to statements below pertaining to facts, data, assumptions and other types of information, are identified in the document.

B. How May the Public Participate in the Economic Analysis?

The USEPA encourages the public to provide comments and suggestions about the design, accuracy, representativeness and completeness of the *"Economic Background Document."*

In preparing the *Economic Background Document*, the EPA preferred to the maximum extent possible, to use publicly-available rather than confidential business information (CBI) as information and data sources, to facilitate transparency for public review and comment. However, some information was designated by survey companies as CBI when collected in the 1992 and 1997 Section 3007 surveys administered by EPA (described elsewhere in this preamble). Consequently, the background data and information available to the EPA during development of this listing proposal also consisted of CBI information. In order to minimize reliance on CBI data, and to exhaust available public information sources, EPA consulted many other databases as supplements and substitutes to the RCRA Section 3007 survey, in conducting the economic study.

EPA particularly requests written comments from the public on the information elements listed below pertaining to the economic analysis presented in the "Economic Background Document:"

1. *Study Design:* Suggestions for modifications and improvements to the scope, methodology, and organization of the *Economic Background Document* (e.g., 30-year cost annualization "period-of-analysis" applied).

2. *Facility Universe:* Correct number and locations of CAHC manufacturing and any other types of facilities and entities potentially affected by the RCRA listing proposal.

3. *Affected Wastes:* Correct average annual quantities, types and industrial source (origin) of potentially affected CAHC manufacturing wastes.

4. *Industry Profile:* Characterization of the role, functions and industrial organization associated with the production and use of CAHCs in the US economy.

5. *Baseline Waste Management:* Characterization of baseline (current) waste management practices associated with CAHC manufacturing wastes (both onsite and offsite management practices), including the types and relative waste quantities managed, types of waste management units, costs of waste management ($/ton basis), waste commingling and segregation, etc. In particular, there is uncertainty in the Section 3007 survey data, about the exact number and sizes of wastewater management tanks used by CAHC manufacturing facilities.

6. *Compliance Waste Management:* Adaptation of CAHC manufacturing facilities to the RCRA listing proposal if finalized, such as changes in CAHC manufacturing plant & equipment, facility layout, production processes and methods, business arrangements, CAHC product mixes, etc. What are possible operating consequences to waste management facilities for meeting K175 waste pH and sulfide landfill restrictions?

7. *Facility Process Modifications:* Identification and dollar value of lump-sum capital investment costs required (per industrial operating unit or facility).

8. *Unit Costs:* Overall representativeness of unit costs applied to the universe of CAHC manufacturing facilities for industrial waste management, involving both non-hazardous and hazardous waste handling.

9. *Impact Benchmarks:* The appropriateness of the alternative company financial benchmarks (*e.g.*, annual sales revenues, annual profits, capital expenditures, short-term credit) presented in this study, and of other benchmarks not presented, for purpose of providing measurement references relative to assessing the dollar magnitude of the estimated industry compliance costs.

10. *Supporting Data:* The data applied in the economic study are from sources published over a number of years, and for some key data elements, are more than five years old (*e.g.*, during preparation of this study, the US Bureau of Census' 1997 Survey of Manufacturers data reports were not yet available).

11. *Other Considerations:* Any other comments pertaining to other aspects of the economic study, or to topics which have been omitted or are outside the scope of the

study, if relevant to assessing the economic impact of the listing proposal.

C. How Are Chlorinated Aliphatic Chemicals Used in the Economy?

Chlorinated aliphatic hydrocarbon chemicals (CAHCs) entered into commerce in the US in the early 1920s, and as of 1994, approximately 38 billion pounds of 50 different commercially significant CAHCs were manufactured by 23 chemical plants (facilities) in the United States. The US production of CAHCs has grown an average annual rate of 4.4 percent over the last 30 years.

CAHCs are a group of organic chemicals—most of which are colorless liquids at room temperature—primarily used as intermediate feedstocks for the production of polyvinyl chloride (PVC) plastics; CAHCs are also used directly in liquid form as various types of solvents, as intermediates for the production of other types of chemicals, and in assorted other commercial use categories. As of 1996, three CAHCs—ethylene dichloride, vinyl chloride, methyl chloride—were on the list of top-50 chemicals produced in the United States.

D. Where Are CAHCs Manufactured in the United States?

In conjunction with contacts of industry representatives, EPA identified an initial subset of industrial facilities relevant to the scope of the listing proposal, according to both the (a) types of chemical products manufactured, as well as the (b) types of industrial wastestreams generated from the chemical manufacturing processes. EPA identified a total of 28 facilities in the 1992 Section 3007 industry survey, and a total of 26 facilities in the 1997 follow-up survey, as a result of two facility closures in the interim period. Three of the 26 facilities were discovered to be either "de minimus" producers of CAHCs, or double-counted in the survey, which resulted in a final subset of 23 relevant CAHC manufacturing facilities.

The relevant subset of 23 CAHC manufacturing facilities surveyed in USEPA-OSW's 1997 survey are located in eight states (Kansas, Kentucky, Louisiana, Maryland, Michigan, New York, Tennessee, and Texas), and employ an average of over 700 employees per facility. Total employment for all 23 facilities is about 19,000 employees, and the total employment associated with the 16 parent companies which own these 23 facilities is much larger, estimated at 526,700 employees.

E. Have CAHCs Been Produced Historically in Other Locations in the United States?

In addition to current databases, there are assorted documents which contain historical information about the CAHC production industry in the United States. Historically, CAHCs have been manufactured and/or used as feedstocks and intermediates in chemical production plants in at least 15 states in the US. The historical data on the number and location of CAHC production facilities serves to illustrate the dynamic business activity in this industry sector. As late as 1975, CAHCs were produced in the US by 32 companies in 58 plant locations.

F. What Are the Estimated Potential Industry Costs of This Listing?

There are two associated categories of potential compliance costs for CAHC manufacturers under this listing proposal: (a) process wastewater listing costs, and (b) wastewater treatment sludge listing costs. These costs are incremental to current waste management costs in this industry, in the sense that all CAHC manufacturing facilities are currently regulated under RCRA (*i.e.*, as chlorinated aliphatic manufacturers via the existing RCRA F025 and F026 wastecodes, among others), and some facilities currently manage most or all of their CAHC manufacturing wastes as hazardous. Consequently, this listing proposal will not have a full incremental impact on these facilities, and the marginal impact on their existing operations in relation to current RCRA compliance and hazardous waste handling practices may be less than it otherwise would be if these companies and facilities did not have experience with baseline RCRA waste management practices.

As summarized in Table IV–1 below, EPA estimates the total industry compliance cost—excluding paperwork burden as separately estimated in the Information Collection Request—associated with the two wastestream components of the listing proposal (*i.e.*, sludges and wastewaters), at $2.355 million in average annual cost, for annual waste management in conformance with the terms of the listing proposal. This total cost consists of an estimated $1.320 million in initial capital expenditures (30-year annualized equivalent of $0.046 million), and an estimated $2.309 million in recurring annual costs.

TABLE IV–1.—SUMMARY OF ESTIMATED INDUSTRY COMPLIANCE COSTS FOR THE RCRA LISTING PROPOSAL; WASTEWATER TREATMENT SLUDGES AND WASTEWATERS. AVERAGE ANNUAL EQUIVALENT TOTAL INDUSTRY COST

Item	Type of CAHC facility potentially affected by the proposed RCRA listing options	Initial capital costs ($ lump-sum)	Recurring annual O&M costs ($/year)
A.	SLUDGE LISTING ESTIMATED COSTS:		
A1	Non-landfilled EDC/VCM sludge	$0	$1,333,000
A2	VCM–A process w/mercury catalyst	0	209,000
	Subtotal sludge costs	0	1,542,000
B.	WASTEWATER LISTING ESTIMATED COSTS:		
B1	Tank fixed roof + valve	1,084,600	81,600
B2	Tank roof vent + carbon control	150,900	591,200
B3	Tank "Subpart CC" ancillary costs*	0	23,700
B4	Initial waste testing for dioxins	84,500	0
B5	Annual waste retesting for dioxins	0	70,400
	Subtotal wastewater costs	1,320,000	766,900
C.	SLUDGE + WASTEWATER COSTS (column totals)	1,320,000	2,309,000

TABLE IV–1.—SUMMARY OF ESTIMATED INDUSTRY COMPLIANCE COSTS FOR THE RCRA LISTING PROPOSAL; WASTEWATER TREATMENT SLUDGES AND WASTEWATERS. AVERAGE ANNUAL EQUIVALENT TOTAL INDUSTRY COST—Continued

Item		Type of CAHC facility potentially affected by the proposed RCRA listing options	Initial capital costs ($ lump-sum)	Recurring annual O&M costs ($/year)
		Total annualized equivalent cost		2,355,000

V. Proposed Treatment Standards Under RCRA's Land Disposal Restrictions

A. What Are EPA's Land Disposal Restrictions (LDRs)?

The RCRA statute requires EPA to establish treatment standards for all wastes destined for the land disposal. These are the so called "land disposal restrictions" or LDRs. For any hazardous waste identified or listed after November 8, 1984, EPA must promulgate these LDR treatment standards within six months of the date of identification or final listing (RCRA Section 3004(g)(4), 42 U.S.C. 6924(g)(4)). RCRA also requires EPA to set as these treatment standards "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." (RCRA Section 3004(m)(1), 42 U.S.C. 6924(m)(1)).

Wastes that meet treatment standards established by EPA may be land disposed. Wastes that do not meet these standards are prohibited from land disposal (except in so-called no-migration units). Each waste proposed for listing as hazardous in this rule will be subject to all the land disposal restrictions on the same day their respective listing becomes effective.

B. How Does EPA Develop LDR Treatment Standards?

To establish LDR treatment standards, EPA first identifies the best demonstrated available technology (BDAT) for the hazardous constituents present in the hazardous waste, and then determines what constituent concentrations can be achieved by the technology or technologies identified as BDAT.

EPA typically has established treatment standards based on performance data from the treatment of the waste at issue, if such data are available, and also from the treatment of wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards typically cover both wastewater and nonwastewater waste forms on a constituent-specific basis. The constituents selected for regulation under the LDR program are not necessarily limited to those present in a proposed listing, but also may include those constituents or parameters that will ensure that treatment technologies are operated properly. For listed waste EPA identifies these as "regulated constituents" and they appear individually in the Table at 40 CFR 268.40, along with their respective treatment standards.

EPA may develop and promulgate either technology-specific treatment standards or numerical treatment standards. Should EPA elect to use technology-specific standards, all wastes that meet the listing designations would have to be treated by the technology or technologies specified before disposal. These technologies are also identified in the Table at § 268.40 and are further described in § 268.42. Should EPA elect to use numerical treatment standards, the Agency allows the use of any technology (other than impermissible dilution) to comply with the treatment standards.

After developing the LDR treatment standards, we must also determine if significant treatment capacity is available to treat the expected volumes of wastes. If so, the LDR treatment standards become effective essentially at the same time a listing does. If not, EPA may grant up to a two-year national capacity variance (NCV) during which time the LDR treatment standards are not effective.

For a more detailed overview of the Agency's approach for developing treatment standards for hazardous wastes, see the final rule on solvents and dioxins (51 FR 40572, November 7, 1986) and section III.A.1 of the preamble to the final rule that set land disposal restrictions for the "Third Third" wastes (55 FR 22535, June 1, 1990). EPA also has explained its BDAT procedures in "Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology (EPA/OSW, October 23, 1991)". This document is available in the docket supporting this rulemaking.

C. What Kind of Treatment Standards Are Proposed?

EPA has gathered data on waste characteristics and current management practices for wastes proposed in this action as part of the administrative record for this rule, and has evaluated these data to develop specific treatment standards. An examination of the constituents that are the basis of the proposed listings shows that the Agency has previously developed numerical treatment standards for most of the constituents of concern. After reviewing the available characterization data and the available information on waste management practices for these wastes proposed for listing, EPA has determined that it is technically feasible and justified to apply existing universal treatment standards (UTS) to the regulated hazardous constituents of concern in the wastes proposed to be listed as K173 and K174. For K175, EPA is proposing a metals recovery requirement as the treatment standard, namely roasting and retorting. Although the mercury in K175 would be recovered, other treatment residuals will exist. For these residuals, we are proposing that existing UTS will be applicable.

Available information also shows that these wastes and the treatment residuals can be managed in existing treatment and reclamation units that routinely manage similar or as-difficult-to-treat hazardous wastes that currently are prohibited from land disposal. The BDAT background document provides further information on EPA's rationale for applying UTS to these wastes and the treatment standard of metals recovery to K175. Also see LDR Phase II final rule, 59 FR 47982, September 19, 1994, for a further discussion of UTS.

For proposed K173 and K174, EPA is proposing to regulate specific constituents from each of these hazardous wastes. A list of the proposed regulated hazardous constituents and

the proposed treatment limits can be found in the following preamble section and in the proposed regulatory Table 268.40—Treatment Standards for Hazardous Wastes. If EPA makes a final decision to list the identified wastes, these constituents and standards would apply.

EPA has provided in the BDAT background document a review of thermal and nonthermal technologies that can be used to meet the proposed numerical concentration limits for proposed K173 and K174, assuming the design and operation of these technologies are optimized. Since EPA is proposing numerical concentration limits, the use of other technologies capable of achieving the proposed treatment standards is allowed, except for those treatment or reclamation practices constituting land disposal or impermissible dilution (see 40 CFR 268.3). As noted above, EPA is proposing a specified technology-specific treatment standard for K175. K175 waste would therefore have to be treated by the required technology and the residues thereof or subsequent residues would have to meet numerical UTS concentration limits. [52]

D. Other LDR-Related Provisions

We propose that the provisions in 40 CFR 268.45 would also be applicable for the treatment and disposal of hazardous debris contaminated with proposed K173, K174, and K175. Hazardous debris treated in accordance with the provisions of 40 CFR 268.45 may be allowed for land disposal in a hazardous waste disposal facility. As a result, debris contaminated with proposed K173, K174, and K175 would be required to be treated prior to land disposal, using specific technologies from one or more of the following families of debris treatment technologies: extraction, destruction, or immobilization. Residuals generated from the treatment of debris contaminated with proposed K173, K174, or K175 will have to meet the applicable UTS limits proposed today. See 57 FR 37277, August 18, 1992, for additional information on the applicability, scope, and content of the hazardous debris provisions.

We note that, when the listings proposed today become final, the alternative soil treatment standards in 40 CFR 268.49 would be available for any soils contaminated with the newly listed wastes. Soils that must meet LDRs before land disposal may be treated to the levels in the alternative soil treatment standards as long as the soils will not be used in a manner constituting disposal. Even though EPA is proposing a method of treatment for K175, the waste contains an analyzable hazardous constituent. Consequently, the alternative treatment standards may apply and specify that the analyzable constituent must be at specified levels for soil contaminated with the waste to be disposed. See 268.49(c)(3)(B), promulgated at 63 FR 28751. Such soils can only be land disposed (here, recycled by being placed on the land) if they first meet UTS. See 63 FR 28609–28610 (May 26, 1988).

A facility is not required to use these alternative soil treatment standards and may elect to comply with the traditional LDR treatment standards for process waste. The choice of whether to do so potentially impacts how many constituents must meet LDR treatment standards. If a site chooses to meet the alternative soil treatment standards and their soils are contaminated with a listed waste, then they are required to treat both the regulated hazardous constituents specified in 268.40 and also any underlying hazardous constituents. Potential underlying hazardous constituents are listed in the UTS Table at 268.48. However, if the traditional treatment standards are applied to a soil contaminated with a listed waste, then only the regulated constituents specified in 268.40 must meet the treatment standards. For further discussion of the alternative soil treatment standards, please refer to the final Phase IV LDR rule (63 FR 28556, 28609, May 26, 1998) and the subsequent clarification notice (64 FR 25410–25411, May 11, 1999).

Lastly, because land disposal also includes placement in injection wells (40 CFR 268.2(c)) application of the land disposal restrictions to proposed K173, K174, and K175 requires the modification of injection well requirements found in 40 CFR 148. We propose that K167 and K168 be prohibited from underground injection. See 40 CFR 148. Therefore, wastes proposed to be listed as K173, K174, and K175 may not be underground injected unless they have been treated in compliance with the LDR treatment standards or a no migration petition for these wastes has been approved.

E. What Standards Is EPA Proposing for K173?

EPA is proposing to apply existing Universal Treatment Standards to proposed K173 wastes. We have examined the constituents that comprise the basis of the proposed listing and identified the presence of those other constituents near on in excess of current numerical universal treatment standards. Wastes that exceed these levels require treatment of the constituents to diminish the toxicity of the waste and to reduce the likelihood of migration of the hazardous constituents. Based on this examination, we propose treatment standards for bis(2-chloroethyl)ether, chloroform, pentachlorophenol, phenol, 2,4,6-trichlorophenol, chromium(total), and nickel in addition to tetrachlorodibenzodioxins, pentachlorodibenzodioxins, hexachlorodibenzodioxins, heptachlorodibenzodioxins, tetrachlorodibenzofurans, pentachlorodibenzofurans, hexachlorodibenzofurans, heptachlorodibenzofurans, OCDD, and OCDF in proposed K173.

Existing LDR standards for the wastes that contain chlorinated dibenzo-*para*-dioxins and dibenzofurans are expressed in terms of all tetrachlorodibenzo-*p*-dioxins, pentachlorodibenzo-*p*-dioxins, hexachlorodibenzo-*p*-dioxins, tetrachlorodibenzofurans, pentadibenzofurans, hexachlorodibenzofurans, OCDD, and OCDF. Today's notice proposes treatment standards for five additional dioxin/furan congeners, namely 1,2,3,4,6,7,8-heptachlorodibenzo-*p*-dioxin, 1,2,3,4,6,7,8-heptachlorodibenzofuran, 1,2,3,5,7,8,9-heptachlorodibenzofuran, OCDD, and OCDF. We are doing so because these constituents are present at concentrations that present significant risks should proposed hazardous waste K173 be mismanaged.

For proposed K173 nonwastewaters, we propose that the LDRs for the three new congeners (1,2,3,4,6,7,8-heptachlorodibenzo-*p*-dioxin, 1,2,3,4,6,7,8-heptachlorodibenzofuran, 1,2,3,5,7,8,9-heptachlorodibenzofuran, OCDD, and OCDF) be set at the quantitation limits of method 8280A. These quantitation limits are achievable routinely, and being 3 to 4 times the detection limit of residues from combustion, they are a reasonable approximation of 2.8 times the method detection limit normally used to develop treatment standards from detection limit data to account for

[52] There are two exceptions. Where the treatment technology is not appropriate to the waste, regulations provide a petition process whereby the generator or treatment facility may petition the Administrator for a variance. See 40 CFR 268.44. In addition, persons can petition the Administrator for an alternate treatment method by showing that the alternate method can achieve a measure of performance equivalent to the method specified by rule.

potential treatment variability.[53] Since method 8280A was first developed, the more sensitive high-resolution mass spectrometry method 8290 has been developed. Method 8290 may achieve detection limits orders of magnitude more sensitive than Method 8280A. However, we lack actual treatment performance data for these wastes using method 8290. Further, because of the trace levels of dioxins/furans that method 8290 is capable of detecting, we can not presume that combustion would achieve the much lower non-detectable levels of method 8290. Therefore, we are proposing to base treatment standards for the five congeners cited above on the more widely available method 8280A. We specifically invite data to be submitted on the levels that can be achieved using method 8290.

From past trial burns, we have confidence that incineration has been fully demonstrated for treating dioxin-containing wastes. As explained in 1989 solvents and dioxin rule, Method 8280A failed to detect chlorinated dibenzo-*p*-dioxins and dibenzofurans in residues from trial burns. This has led the Agency to conclude that the residual levels of chlorinated dibenzo-*p*-dioxins and dibenzofurans that remain after treatment would be well below the levels proposed. See 51 FR 1734, January 14, 1986. Therefore, for the three new congeners, we are proposing standards based on these data showing that high temperature thermal treatment achieved destruction of these constituents to levels below the stated quantitation limits of method 8280A.

For proposed K173 wastewaters, we propose that the UTS treatment level of 0.000035 mg/L for pentachlorodibenzofuran be transferred to 1,2,3,4,6,7,8-heptachlorodibenzo-*p*-dioxin, 1,2,3,4,6,7,8-heptachlorodibenzofuran, and 1,2,3,5,7,8,9-heptachlorodibenzofuran. Pentachlorodibenzofuran is a structural homologue of these constituents with similar physical properties, which allows us to assume similar treatment efficiencies. Similarly, we propose that the UTS treatment level of 0.000063 mg/L for tetrachlorodibenzofuran be transferred to OCDD and OCDF. For all other dioxin/furan congeners, we propose to transfer the current, corresponding universal treatment standards.

For the specific numerical standards proposed to be applicable to proposed K173, see the proposed amendments to 40 CFR 268.40 at the end of this preamble. We request comment on the proposed treatment standards for proposed K173.

F. What Standards Is EPA Proposing for K174?

EPA is proposing to apply existing Universal Treatment Standards (UTS) to these wastes. We have examined the constituents that comprise the basis of the proposed listing and identified the presence of those other constituents near on in excess of current numerical universal treatment standards. Waste that exceed these levels require treatment of the constituents to diminish the toxicity of the waste and to reduce the likelihood of migration of the hazardous constituents. Based on this examination, we propose that wastes proposed to be listed as K174 be treated for arsenic, tetrachlorodibenzo-*p*-dioxins, pentachlorodibenzo-*p*-dioxins, hexachlorodibenzo-*p*-dioxins, heptachlorodibenzo-*p*-dioxins, tetrachlorodibenzofurans, pentachlorodibenzofurans, hexachlorodibenzofurans, heptachlorodibenzofurans, OCDD, and OCDF. We are proposing to apply the new numerical standards for the five new congeners (one heptachlorodibenzo-*p*-dioxin, two heptachlorodibenzofurans, OCDD, and OCDF), discussed in the previous section, to proposed hazardous waste K174 because these constituents are also present in proposed K174 wastes at significant concentrations that would present risks should the wastes be mismanaged.

We request comment on the proposed treatment standards for wastes proposed to be listed as K174.

G. What Standards Is EPA Proposing for K175?

Proposed hazardous waste K175 is generated from the treatment of catalyst change-out wastewaters from the chlorination of acetylene on a mercuric chloride catalyst. As with the above wastes, we have examined the constituents that comprise the basis of the proposed listing and identified the presence of mercury as the only constituent that would require treatment to diminish the toxicity of the waste and to reduce the likelihood of migration. Proposed K175 contains in excess of 260 mg/kg mercury and is greater than one percent in organic constituents. This type of waste profile is similar to wastes that are currently deemed to be characteristically hazardous under the D009 waste code. Therefore, in assessing what type of LDR treatment standards are warranted for proposed K175, we look first to the D009 treatment standards.

Current regulations for similar D009 wastes require either retorting or roasting (RMERC) or incineration in units operated in accordance with the technical operation requirements of 40 CFR Part 264, Subpart O and Part 265, Subpart O (IMERC). However, current regulations do not require combustion units to capture and recover mercury from the combustion gases produced. If all the mercury contained in these wastes were combusted without capture and removal, the result would be over one metric ton per year of mercury emissions. Under the upcoming revisions to the hazardous waste combustion regulations, it is not clear that facilities are going to choose to employ air pollution control devices (capture and removal devices) to comply with mercury emission limits. They might instead simply choose to reduce their feed rate, which will not reduce the total amount of mercury emitted over the long term. Given this uncertainty about future compliance strategies by the hazardous waste combustion industry, we are proposing that mercury recovery by retorting or roasting (RMERC) be the required treatment technology for this waste. RMERC requires processing in devices subject to mercury emission controls resulting in mercury capture and removal, and also subject to emission standards such as the National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury. See 40 CFR 268.42. For residues of the RMERC process, we propose to adopt the current standard of 0.20 mg/L TCLP mercury.

The Agency has contacted a treatment vendor of RMERC technology who indicated that treatment of the subject wastes may be difficult, but is possible.[54] We therefore request treatment performance data regarding the use of retorting for these waste.

Absent definitive treatment data, we have considered whether an alternative treatment standard to retorting might be feasible to propose for comment. One alternative is to establish a numerical concentration limit. Under current regulations, mercury wastes that are stabilized are subject to a standard of 0.025 mg/L TCLP mercury. This differs from the initial option of retorting in two key respects. First, use of specific treatment technology would not be required and, second, the treated waste or waste residuals would be subject to a numerical standard about one order of

[53] See Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology, EPA, October 23,1991.

[54] Personal communication with John Boyle, Bethlehem Apparatus Co., Inc.

magnitude more stringent—0.2 mg/L for retorting residuals under the first option vs. 0.025 mg/L for all treatment residuals under this second option.

Without the assurance of treatment that a requirement for retorting would provide, the tighter standard of 0.025 mg/L TCLP is appropriate to propose as a potential treatment standard. This standard would apply to all treatment residuals included in the listing description for proposed hazardous waste K175, regardless of the type of treatment used. In practice, this standard would involve the immobilization of the mercury in the waste before land disposal. If regulations were to be promulgated in this form, the waste could be land disposed if a standard of 0.025 mg/L TCLP mercury was achieved using any technology other than impermissible dilution.

Calculated solubilities of mercury sulfide (metacinnabar) as a function of pH have revealed that above pH 6.0 the presence of sulfide complexes results in significantly increased solubility.[55] Preliminary results from constant pH leaching measurements of the subject waste, as part of an on-going study, have shown similar results.[56] At pH 6.0 the waste tested leached 0.0058 mg/L. However, at pH 10, 1.63 mg/L mercury was solubilized. Current landfill disposal site conditions for this waste are reported to be pH 9.48–9.57.[57] Under these conditions, mercury in the waste would be expected to be mobilized especially if excess sulfides were present. Therefore, controlled treatment and disposal conditions are warranted to avoid mobilization of the mercury in the waste, which could pose a significant threat to human health and the environment. To insure operational stability of the treatment process and proper long-term disposal, EPA proposes two conditions as part of the LDR treatment standards. First, the waste residue generated, if in mercuric sulfide form, must itself be pH 6.0 or below. We therefore propose that mercuric sulfide residues of this waste be treated to attain a pH of less than or equal to 6.0. Second, if proposed K175 wastes are to be co-disposed in a landfill with other wastes, co-disposal will be restricted to wastes with similar pH (i.e., not greater than 6.0). To comply with these requirements disposal facilities would be required to certify and maintain operating records available for inspection of codisposed wastes to demonstrate compliance.

Currently, the wastes proposed to be listed as K175 are landfilled after treatment has converted mercuric chloride in wastewaters to mercuric sulfide. We believe significant opportunities exist for source reduction and waste minimization to reduce or eliminate the generation of this waste. For example, the need to hydroblast spent mercuric chloride catalyst from reactors could be eliminated by internal segmentation of the reactor bed that would allow the segments to be sent intact for mercury recovery. Thus, generation of the waste could be eliminated or significantly reduced. Beyond modifications to the physical plant, the treatment of the wash waters could be modified to incorporate addition of caustic and organic phase separation. This would result in a mercuric oxide sludge more amenable to recovery by retorting prior to sulfide treatment of the resulting brine. As a result of such changes, a smaller volume of mercuric sulfide sludge with reduced organic content would be generated, as would a larger volume of a more easily recoverable mercuric oxide sludge.

We request treatment performance data on the treatment standards proposed and on other alternative treatment technologies that would meet the statutory criteria for all LDR standards "minimizing threats to human health and the environment by reductions in the toxicity or mobility of the wastes through the treatment process. We also request comment on the feasibility of source reduction and waste minimization alternatives described above.

H. What Other Land Disposal Restrictions Aspects Are There to the Proposal?

EPA is proposing to add the numerical standards derived for the 1,2,3,4,6,7,8-heptachlorodibenzo-*p*-dioxin, 1,2,3,4,6,7,8-heptachlorodibenzofuran, 1,2,3,4,7,8,9-heptachlorodibenzofuran, 1,2,3,4,6,7,8,9-octachlorodibenzo-*p*-dioxin (OCDD) and 1,2,3,4,6,7,8,9-octachlorodibenzofuran (OCDF) to the Table of Universal Treatment Standards (UTS) at 40 CFR 268.48. These constituents have been shown to represent significant risks to human health or the environment in the risk assessment accompanying this proposal, and their presence in other wastes should be mitigated to avoid similar risks. If promulgated, all characteristic wastes which have these constituents as underlying hazardous constituents above the UTS thus will require treatment of those constituents before land disposal.

Furthermore, we are proposing that the constituents 1,2,3,4,6,7,8-heptachlorodibenzo-*p*-dioxin; 1,2,3,4,6,7,8-heptachlorodibenzofuran, 1,2,3,4,7,8,9-heptachlorodibenzofuran; OCDD; and OCDF be added to the list of regulated constituents in hazardous waste F039 multisource leachate. F039 applies to multiple listed hazardous waste landfill leachates in leu of the original waste codes, and F039 wastes are subject to all numerical treatment standards applicable to all listed wastes. To maintain regulatory consistency with this regulatory architecture and the implementation benefits of having one waste code for multisource leachate, the treatment standards for F039 are updated each time a new LDR standard is developed for listed wastes. As a result, if today's proposal is ultimately promulgated, all leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted hazardous waste will have to meet UTS for all hazardous constituents above the UTS.

I. Is There Treatment Capacity for the Proposed Wastes?

1. What Is a Capacity Determination?

EPA must determine whether adequate alternative treatment capacity exists nationally to manage the wastes subject to LDR treatment standards. RCRA section 3004 (h)(2). Thus, LDRs are effective when the new listings are effective as well (typically 6 months after the new listings are published in the **Federal Register**), unless EPA grants a national capacity variance from the otherwise-applicable date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "* * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)).

Our capacity analysis methodology focuses on the amount of waste currently disposed on the land, which will require alternative or additional treatment as a result of the LDRs. The quantity of wastes that is not disposed

---

[55] H. Lawrence Clever, Susan A. Johnson, and M. Elizabeth Derrick, The Solubility of Mercury and Some Sparingly Soluble Mercury Salts in Water and Aqueous Electrolyte Solutions, J. Phys. Chem. Ref. Data, Vol. 14, No. 3, 1985, page 652.

[56] Paul Bishop, Renee A. Rauche, Linda A. Rieser, Markram T. Suidan, and Jain Zhang; "Stabilization and Testing of Mercury Containing Wastes," Draft, Department of Civil and Environmental Engineering, University of Cincinnati, March 31, 1999. Please note that this is a draft EPA document not yet peer reviewed. Also, data within the report is still undergoing QA/QC review, and the text, data, and conclusions in the report may change before the document is finalized.

[57] May 14, 1999, landfill parameters, e-mail from Mitch Hahn, Waste Management.

on the land, such as discharges regulated under NPDES, discharges to a POTW, or treatment in a RCRA-exempt tank, is not included in the quantities requiring additional treatment as a result of the LDRs. Also, land-disposed wastes that do not require alternative or additional treatment are excluded from the required capacity estimates (i.e., those that currently are treated to meet the LDR treatment standards). Land-disposed wastes requiring alternative or additional treatment or recovery capacity that is available on site or within the same company also are excluded from the required commercial capacity estimates. The resulting estimates of required commercial capacity then are compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal. If protective alternative capacity does not exist, EPA has the authority to grant a national capacity variance.

In making the estimates described above, the volume of waste requiring treatment depends on the current waste management practices employed by the waste generators before this proposed regulation is promulgated and becomes effective. Data on waste management practices for these wastes were collected during the development of this proposed rule. However, we realize that as the regulatory process proceeds, generators of these wastes may decide to minimize or recycle their wastes or otherwise alter their management practices. Thus, we will monitor changes and update data on current management practices as these changes will affect the volume of wastes ultimately requiring commercial treatment or recovery capacity.

The commercial hazardous waste treatment industry can change rapidly. For example, national commercial treatment capacity changes as new facilities come on line or old facilities go off line, and as new units and new technologies are added at existing facilities. The available capacity at commercial facilities also changes as facilities change their commercial status (e.g., changing from a fully commercial to a limited commercial or "captive"—company owned—facility). Thus, EPA also continues to update and monitor changes in available commercial treatment capacity.

We request data on the annual generation volumes and characteristics of wastes affected by this proposed rule, including proposed hazardous wastes K173, K174, and K175 in wastewater and nonwastewater forms, soil or debris contaminated with these wastes, residuals generated from the treatment or recycling of these wastes, and the current and planned management practices for the wastes, waste mixtures, and treatment residuals.

We also request data on the current treatment or recovery capacity capable of treating these wastes, facility and unit permit status related to treatment of the proposed wastes and any plans that facilities may have to expand or reduce existing capacity, or construct new capacity. Of particular interest to us are waste characteristics, such as pH, total organic carbon content, constituent concentrations, and physical forms that may limit the availability of certain treatment technologies. Also of interest are any analytical difficulties associated with identifying and monitoring the regulated constituents in these wastes.

2. What are the Capacity Analysis Results?

This preamble only provides a brief summary of the capacity analysis performed to support this proposed regulation. For additional and more detailed information, please refer to the "Background Document for Capacity Analysis for Land Disposal Restrictions: Newly Identified Chlorinated Aliphatics Process Wastes (Proposed Rule), July 1999."

For this capacity analysis, we examined data on waste characteristics and management practices gathered for the purpose of the chlorinated aliphatics hazardous waste listing determination. The source for these data is primarily the 1992 RCRA Section 3007 survey and the follow-up survey specific to these wastes conducted in 1997 (see the docket for this proposed regulation for more information on these survey instruments).

The available data sources indicate that proposed K173 wastes are predominantly wastewaters, but may exhibit total suspended solids content greater than 1 percent, such that they would be classified as nonwastewaters with respect to the LDR requirements (40 CFR 268.2). EPA has found that most facilities generating proposed K173 manage these wastes in tank-based systems prior to a permitted discharge to a surface water or POTW. The non-CBI portions of the Section 3007 survey responses, as well as other publicly available information, indicate that certain facilities manage proposed K173 using underground injection with existing approved no-migration determinations. Proposed K173 managed by land disposal units may require alternative treatment if onsite management to meet the LDR standards or alternative onsite management is not available. EPA expects that sufficient offsite treatment capacity is available to manage proposed K173 generated by these facilities. Specifically, EPA estimates that approximately 37 million tons per year of offsite wastewater treatment capacity are available, which is well above the quantity of proposed K173 generated by these facilities. Therefore, sufficient commercial capacity exists to manage proposed K173 from these facilities should the need for treatment of proposed K173 wastes arise.

As discussed in this section earlier, the LDR treatment standards become effective essentially at the same time a listing does unless EPA grants a national capacity variance because of a lack of available treatment capacity (see RCRA section 3004(h)(2)). Also, RCRA allows generators to apply for an extension to the LDR effective date on a case-by-case basis for specific wastes generated at a specific facility for which there is not adequate capacity (RCRA section 3004(h)(3)). For those facilities managing proposed K173 wastes, they may choose to meet treatment standards by onsite or offsite treatment, submit a modified no-migration petition to include newly listed wastes if necessary, or transport their wastes to a commercial Class I hazardous disposal well facility.

Based on EPA's information, the facilities managing proposed K173 wastes by underground injection have existing approved no-migration determinations. If an injection well has received a no-migration determination, it can inject a newly prohibited waste if the waste is similar to wastes included in the initial no-migration petition (63 FR 28626, May 26, 1998). EPA has information showing that the facilities already manage these newly-proposed K173 wastes in their underground injection wells. Further, EPA's sampling and analysis results for wastewater from one of the facilities shows that none of the constituents being proposed for inclusion in 40 CFR 268.40 for proposed K173 (i.e., numerical treatment standards) were present at concentrations greater than the proposed numerical treatment standards. This suggests that for this facility, the newly-proposed treatment standards for proposed K173 might already be met.

Based on the available data presented above, EPA is not proposing a national capacity variance for surface-disposed or underground-injected proposed K173 wastes. However, EPA recognizes that there are uncertainties in the available data such that a facility may require extra time (beyond the effective date) to

comply with the new listing and land disposal restrictions requirements, if finalized. For example, EPA realizes that proposed K173 can be variable in composition and not always exhibit concentrations below the proposed numerical treatment standards. Also, any facility with an approved no-migration determination without the waste already incorporated in the determination may need to submit a modified petition (40 CFR Part 148.20 (f)). Potentially, the modification process for the existing no-migration petition, as well as the permit modification itself, may be time-consuming. There are potential logistical difficulties associated with accessing available treatment capacity for wastewater, as well. For example, if a facility generates high volumes of proposed K173 and cannot manage the waste onsite in a manner compliant with the LDR standards, they may need to make considerable logistical adjustments such as repiping, retooling, and development of transportation networks at the plant in order to ship the wastewater offsite for treatment or disposal. Additionally, although commercial treatment or disposal capacity is available, the logistics of transporting high volumes of wastewater may be problematic, particularly if existing piping, onsite storage, or loading are not in place. Should these difficulties arise such that both onsite and offsite treatment and disposal are not available for facilities currently using underground injection, EPA will consider all available data and information provided during the public comment period and revise its capacity analysis accordingly in making the final capacity determination.

For K174 wastes, the available data sources indicate that there is no quantity of the wastewater form of K174 that will require alternative commercial treatment. There is adequate wastewater treatment capacity available should the need for treatment of the wastewater form of K174 arise. From the available data sources, required alternative treatment capacity for K174 nonwastewater may be as low as 1,900 tons per year if most generators meet the proposed requirements for contingent management listing. If the generators do not manage K174 nonwastewater according to contingent management for the listing designation, the waste generated must meet LDR standards before land disposal, and the total quantity requiring treatment may be up to 106,000 tons per year. As described in the BDAT section above, we are proposing that numerical treatment standards be applied to K174 nonwastewaters. These standards were derived by estimating the concentration level following use of combustion technologies. We estimate that the commercially available sludge and solid combustion capacity is at least 300,000 tons per year and therefore sufficient to treat the proposed K174 hazardous waste that would require treatment. Therefore, EPA is proposing not to grant a capacity variance for K174 nonwastewaters or wastewaters.

For wastes proposed to be listed as K175, the available data sources indicate that there is no quantity of the wastewater form of proposed K175 that will require alternative commercial treatment. There is adequate wastewater treatment capacity available should the need for treatment of the wastewater form of K175 arise. For nonwastewater form of proposed K175, EPA estimates that up to 130 tons per year may require alternative commercial treatment. As described in the BDAT section above, two options are proposed as the treatment standard. In one option, the treatment standard was proposed as a technology standard (RMERC), with residues meeting a concentration level. We have identified at least one facility that operates commercially and that potentially can be used for the treatment of wastes proposed to be listed as K175; there are other treaters which conduct RMERC and the details are discussed in the Capacity Analysis Background Document. We recognize that treatment residuals from these wastes may require additional treatment capacity (e.g., stabilization of the ash following combustion of the wastes) to achieve the UTS for any metal constituents that may be present in the residuals. We estimate that there is several million tons per year of commercial stabilization capacity available. In the second option for nonwastewater form of proposed K175 described in the BDAT section above, the treatment standard would be a numerical standard followed by certain landfill restrictions. EPA expects that commercial treaters can customize their treatment process to immobilize the waste, attain a pH of less than 6.0, and meet the treatment standard. Therefore, sufficient commercial treatment capacity exists for this proposed K175 hazardous waste. EPA is proposing to not grant a national capacity variance from LDR treatment standards for nonwastewater or wastewater forms of proposed K175.

Also, the ultimate volumes of wastes estimated to require alternative or additional commercial treatment may change if the final listing determinations change; should this occur, we will revise the capacity analysis accordingly.

For soil and debris contaminated with these wastes, EPA believes that the vast majority of contaminated soil and debris contaminated with these wastes will be managed on site and therefore will not require substantial commercial treatment capacity. Therefore, we are not proposing to grant a national capacity variance for hazardous soil and debris contaminated with the newly listed wastes covered under this proposal. Based on the 1992 RCRA 3007 Survey questionnaire responses and 1997 updated responses, there are no data showing mixed radioactive wastes associated with the proposed listings. We are not proposing to grant a national capacity variance for mixed radioactive wastes (i.e., radioactive wastes mixed with proposed K173, K174, or K175) or soil and debris contaminated with these mixed radioactive wastes. As discussed in this section earlier, EPA also is not proposing to grant a national capacity variance for proposed K173, K174, or K175 wastes being surface-disposed or underground injected.

EPA requests comments on current and future management practices and the volumes managed for these wastes. Also, we request comments on other commercially-available thermal and non-thermal treatment or recovery capacity that would achieve proposed LDR treatment standards for these wastes and on chemical and physical constraints of treatment technologies for the wastes. Specifically, EPA requests comments on its proposal to not grant a capacity variance for proposed K173 waste. EPA solicits comments on physical and chemical characteristics of proposed K173 wastes, any treatment problems before disposing of proposed K173, the time and necessary procedures required for permit modifications for proposed K173 generators or commercial treatment or disposal facilities, required changes for operating practices, and any specific difficulties in making treatment capacity unavailable that would warrant a variance. For nonwastewater form of proposed K175, we solicit any information regarding the availability of RMERC for treating the wastes, and regarding chemical and physical constraints to meet numerical standards and pH restriction for this waste.

IV. Compliance Dates

A. Notification

Under RCRA Section 3010 any person generating, transporting, or managing a hazardous waste must notify EPA (or an authorized State) of its activities.

Section 3010(a) allows EPA to waive, under certain circumstances, the notification requirements under Section 3010 of RCRA. EPA is proposing to waive the notification requirement as unnecessary for persons already identified within the hazardous waste management universe (i.e., persons who have an EPA identification number under 40 CFR 262.12). EPA is not proposing to waive the notification requirement for waste handlers who have neither notified the Agency that they may manage hazardous wastes nor received an EPA identification number. Such individuals will have to provide notification under Section 3010. Any person who generates, transports, treats, stores, or disposes of these wastes and has not previously received an EPA identification number, must do so within 90 days of the effective date of the final rule.

B. Interim Status and Permitted Facilities

Today's proposed rule is being proposed under the authorities granted to EPA under HSWA. Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate the newly identified wastes listed under HSWA until States are authorized to regulate these wastes. Thus, once this regulation becomes effective as a final rule, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States.

VII. State Authority

A. Applicability of Rule in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings proposed in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the Federal HSWA requirements apply in authorized States until the States revise their program and receive authorization for the revisions.

B. Effect on State Authorizations

Because this proposal (with the exception of the actions proposed under CERCLA authority) will be promulgated pursuant to the HSWA, a State submitting a program modification is able to apply to receive either interim or final authorization under Section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under Section 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 *FR* 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR Part 271) requires that states with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. Once EPA approves the modification, the State requirements become RCRA subtitle C requirements. Because this rule would be promulgated pursuant to HSWA, if the proposal is adopted as a final rule, Table 1 at 40 CFR 271.1 will be amended accordingly. If finalized, EPA will implement this rule in all States, including authorized States, until the States modify their authorized programs to reflect this rule.

VIII. Designation of Chlorinated Aliphatic Wastes (Proposed K173, K174 and K175) Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

A. What Is the Relationship Between RCRA and CERCLA?

CERCLA defines the term "hazardous substance" to include RCRA hazardous wastes. When EPA adds a hazardous waste under RCRA, the Agency also will add the waste to its list of CERCLA hazardous substances. EPA establishes a reportable quantity or RQ for each CERCLA hazardous substance. EPA provides a list of the CERCLA hazardous substances along with their RQs in Table 302.4 at 40 CFR 302.4. If you are the person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount that equals or exceeds its RQ, then you must report that release to the National Response Center (NRC). You also may have to notify State and local authorities.

B. Is EPA Proposing To Add Chlorinated Aliphatic Wastes to CERCLA?

Yes. Today, EPA is proposing to add chlorinated aliphatic wastes (Proposed K173, K174 and K175) to the list of CERCLA hazardous substances. As discussed below, EPA also proposes to adjust the RQs for these wastes.

C. How Does EPA Determine Reportable Quantities?

Under CERCLA, all new hazardous substances automatically have a statutory one-pound RQ. EPA adjusts the RQ of a newly added hazardous substance based on an evaluation of its intrinsic physical, chemical, and toxic properties. These intrinsic properties—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. EPA evaluates the data for a hazardous substance for each primary criterion. To adjust the RQs, EPA ranks each criterion on a scale that corresponds to an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. For each criterion, EPA establishes a tentative RQ. A hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, EPA further evaluates substances for their susceptibility to certain degradative processes. These are secondary adjustment criteria. The

natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades rapidly to a less hazardous form by one or more of the BHP processes, EPA generally raises its RQ (as determined by the primary RQ adjustment criteria) by one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, EPA assigns an RQ to the original substance equal to the RQ for the more hazardous substance.

The standard methodology used to adjust the RQs for RCRA hazardous waste streams differs from the methodology applied to individual hazardous substances. The procedure for assigning RQs to RCRA waste streams is based on the results of an analysis of the hazardous constituents of the waste streams. The constituents of each RCRA hazardous waste stream are identified in 40 CFR Part 261, Appendix VII. EPA first determines an RQ for each hazardous constituent within the waste stream using the methodology described above. The lowest RQ value of these constituents becomes the adjusted RQ for the waste stream. When there are hazardous constituents of a RCRA waste stream that are not CERCLA hazardous substances, the Agency develops an RQ, called a "reference RQ," for these constituents in order to assign an appropriate RQ to the waste stream (see 48 FR 23565, May 25, 1983). In other words, the Agency derives the RQ for waste streams based on the lowest RQ of all of the hazardous constituents, regardless of whether they are CERCLA hazardous substances.

D. When Do I Need To Report a Release of Proposed K173, K174 or K175 Under CERCLA?

Today, EPA is proposing to adjust statutory RQs for the proposed K173, K174 or K175 waste streams to one pound based on their hazardous constituents. EPA is proposing to adjust the RQ at one pound for the proposed K173 and K174 waste streams based on their hazardous constituents, chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs). EPA is proposing to adjust the RQ at one pound for the proposed K175 waste stream based on its hazardous constituent, mercury. However, in determining when to report a release of proposed K173, K174 or K175, EPA is proposing to allow you to apply the mixture rule, codified in 40 CFR 302.6, using the maximum observed concentrations of the hazardous constituents within the respective waste streams.

The mixture rule provides that "discharges of mixtures and solutions are subject to RQ regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ" (44 FR 50767, August 29, 1979). Therefore, if the concentration of a hazardous constituent is known, the amount of release needed to reach its RQ can be calculated. By using the maximum observed concentration that EPA is proposing today, you may apply the mixture rule, even if you don't know the concentration of constituents released. That is, if you are the person in charge, you must immediately report the release as soon as you know that you have released proposed K173, K174 or K175 in an amount that will reach the RQ for the waste stream. This approach is reasonable and conservative because the sampling data presented in the Listing Background Document accurately identify the maximum observed concentrations of the hazardous constituents in the chlorinated aliphatics waste streams. Table VIII–1 below identifies the hazardous constituents for each waste stream, their maximum observed concentrations in parts per million (ppm), and their constituents' RQs or reference RQs.

TABLE VIII–1.—MAXIMUM OBSERVED CONCENTRATION AND CORRESPONDING RQ FOR HAZARDOUS CONSTITUENTS THAT ARE BASIS FOR LISTING PROPOSED K173, K174, AND K175

Waste	Constituent	Max. Concentration (ppm (mg/kg))	RQ (lb)
K173	2,3,7,8–TCDD	0.000000017	1
	1,2,3,7,8–PeCDD	0.00000015	1
	1,2,3,4,7,8–HxCDD	0.00000012	1
	1,2,3,6,7,8–HxCDD	0.00000091	1
	1,2,3,7,8,9–HxCDD	0.00000092	1
	1,2,3,4,6,7,8–HpCDD	0.000044	1
	OCDD	0.00022	1
	2,3,7,8–TCDF	0.00000045	1
	1,2,3,7,8–PeCDF	0.0000012	1
	2,3,4,7,8–PeCDF	0.0000015	1
	1,2,3,4,7,8–HxCDF	0.000042	1
	1,2,3,6,7,8–HxCDF	0.000045	1
	1,2,3,7,8,9–HxCDF	0.000014	1
	2,3,4,6,7,8–HxCDF	0.000027	1
	1,2,3,4,6,7,8–HpCDF	0.0013	1
	1,2,3,4,7,8,9–HpCDF	0.00017	1
	OCDF	0.006	1
	Chloroform	7.1	10
K174	2,3,7,8–TCDD	0.000039	1
	1,2,3,7,8–PeCDD	0.0000108	1
	1,2,3,4,7,8–HxCDD	0.000024	1
	11,2,3,6,7,8–HxCDD	0.000083	1
	1,2,3,7,8,9–HxCDD	0.000062	1
	1,2,3,4,6,7,8–HpCDD	0.00123	1
	OCDD	0.0129	1
	2,3,7,8–TCDF	0.000145	1
	1,2,3,7,8–PeCDF	0.0000777	1
	2,3,4,7,8–PeCDF	0.000127	1
	1,2,3,4,7,8–HxCDF	0.001425	1
	1,2,3,6,7,8–HxCDF	0.000281	1

TABLE VIII–1.—MAXIMUM OBSERVED CONCENTRATION AND CORRESPONDING RQ FOR HAZARDOUS CONSTITUENTS THAT ARE BASIS FOR LISTING PROPOSED K173, K174, AND K175—Continued

Waste	Constituent	Max. Concentration (ppm (mg/kg))	RQ (lb)
	1,2,3,7,8,9–HxCDF	0.00014	1
	2,3,4,6,7,8–HxCDF	0.000648	1
	1,2,3,4,6,7,8–HpCDF	0.0207	1
	1,2,3,4,7,8,9–HpCDF	0.0135	1
	OCDF	0.212	1
K175	Mercury	9200	1

For example, if proposed K173 is released from your facility and you do not know the actual concentrations of its constituents, you may assume that the concentrations are those identified in Table VIII–1. Thus, applying the mixture rule to the assumed maximum concentrations indicated in the table, you would have to release 1,408,450 pounds to reach the RQ for this waste (based on the maximum observed concentration of chloroform). If proposed K174 waste is released from your facility and you do not know the actual concentrations of its constituents, you may apply the mixture rule to the assumed maximum concentrations indicated in the table. You would have to release 4,716,981 pounds of proposed K174 to reach the RQ for this waste (based on the maximum observed concentration of OCDF). If proposed K175 is released from your facility and you do not know the actual concentration of mercury, you may assume that the concentration is 9200 ppm. Applying the mixture rule, you would have to release 108.7 pounds of this waste to reach the RQ.

E. What if I Know the Concentration of the Constituents in My Waste?

If you know the concentration levels of all the hazardous constituents in a particular chlorinated aliphatic waste, you may apply the mixture rule (see 40 CFR 302.6(b)) to the actual concentrations. You would need to report a release of either waste when an RQ or more of any of their respective hazardous constituents is released.

F. How Did EPA Determine the RQs for Proposed K173, K174 and K175 and Their Hazardous Constituents?

The hazardous constituents identified as the basis for listing the proposed K173 and K174 waste streams include chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs). Previously, EPA had established an adjusted RQ of one pound for 2,3,7,8–TCDD (see 54 FR 33426). EPA has not established adjusted RQs for the other CDD and CDF congeners. However, EPA recognizes that a number of these congeners exhibit dioxin-like toxicity and has established "reference RQs" of one pound for these congeners to support the development of the adjusted RQs for the proposed K173 and K174 waste streams.

The adjusted RQ for 2,3,7,8–TCDD was established as one pound based on potential carcinogenicity, considering the weight of evidence that this substance is carcinogenic, and considering its estimated carcinogenic potency. To establish reference RQs for the other CDD and CDF congeners in the waste stream, EPA applied the toxicity equivalency factors (TEFs) established for dioxin-like compounds to the potency factor used as the basis for the adjusted RQ for 2,3,7,8–TCDD. Of the 210 CDD and CDF congeners, only those with chlorine substitutions in, at least, the 2, 3, 7, and 8 positions (a total of 17 CDD and CDF congeners) are considered to have dioxin-like toxicity. Applying the TEFs established for these 17 congeners to the potency factor established for 2,3,7,8–TCDD indicates that all of the congeners fit into RQ Potency Group 1 with a corresponding reference RQ of one pound.[58] Therefore, because each of the hazardous constituents has an RQ or reference RQ of one pound, EPA is proposing to establish an adjusted RQ of one pound for the proposed K173 and K174 waste streams.

The hazardous constituent identified as the basis for proposing to list the K175 waste stream is mercury. Previously, EPA had established an adjusted RQ of one pound for mercury (see 50 FR 13456, April 4, 1985). Because the hazardous constituent used as the basis for listing the K175 waste stream has an RQ of one pound, EPA is proposing to establish an adjusted RQ of one pound for this waste.

G. How Do I Report a Release?

To report a release of proposed K173, K174 or K175 (or any other CERCLA hazardous substance) that equals or exceeds its RQ, you must immediately notify the National Response Center (NRC) as soon as you have knowledge of that release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, DC, metropolitan area, the number is (202) 267–2675.

You also may have to notify State and local authorities. The Emergency Planning and Community Right-to-Know Act (EPCRA) requires that owners and operators of certain facilities report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances (see list in 40 CFR Part 355, Appendix A) to State and local authorities. After the release of an RQ or more of any of those substances, you must report immediately to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

H. What Is the Statutory Authority for This Program?

Section 101(14) of CERCLA defines the term hazardous substance by referring to substances listed under several other environmental statutes, as well as those substances that EPA designates as hazardous under CERCLA Section 102(a). In particular, CERCLA Section 101(14)(C) defines the term hazardous substance to include "any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act." CERCLA Section 102(a) gives EPA authority to establish RQs for CERCLA hazardous substances. CERCLA Section 103(a) requires any person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount equal to or

[58] For an explanation of how potency factors are calculated and potency groups and RQs are established, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, July 27, 1989. This document can be viewed by calling the EPA Superfund Docket Center, 703–603–8917, and requesting document number 102 RQ 273C.

greater than its RQ to report the release immediately to the federal government. EPCRA Section 304 requires owners or operators of certain facilities to report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances to State and local authorities.

I. How Can I Influence EPA's Thinking on Regulating Proposed K173, K174 and K175 Under CERCLA?

In developing this proposal, EPA tried to address the concerns of all our stakeholders. Your comments will help us to improve this proposal. We invite you to provide your views on this proposal and how it may affect you. We also are interested in receiving any comments that you have on the information provided in Table VIII–1, including the hazardous constituents identified for proposed K173, K174 and K175 and the maximum observed concentrations for each constituent.

IX. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866 (September 30, 1993), EPA must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, EPA has determined that this rule is a "significant regulatory action" because of point four (4) above: The rule raises two novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Today's proposed rule, which includes proposed alternative listing approaches for two wastestreams deviates from the Agency's standard or historic listing approach in the following two ways:

- *Targeted wastestream listing:* Historically, the Agency's listing program captured entire quantities of targeted wastestream posing unacceptable risks to human health and the environment. Today's proposed listing approach for two wastestreams (i.e., EDC/VCM wastewater treatment sludges and one alternative option for VCM–A wastewater treatment sludges) proposes listing as hazardous only those quantities of the waste that are managed in a manner that reflects unacceptable risks.
- *Wastewater treatment units:* In addition, today's action proposes to change a long-standing Agency policy of exempting from RCRA regulation the management of hazardous wastes in wastewater treatment units regulated under § 402 or § 307(b) of the Clean Water Act. To address the risks associated with the wastewaters proposed to be listed as hazardous under today's action, the Agency believes that it is necessary to regulate these management units when used to manage chlorinate aliphatic wastewaters, to ensure against hazardous air emissions from this wastestream. (In section III.E.1.a.vi. of today's preamble, EPA is requesting comment on this approach.)

Due to the Agency's decision to propose a deviation from our historical hazardous waste listing approach and to change our long-standing policy regarding the regulation of wastewater treatment units, the Agency is deeming today's action to be "significant" and is submitting these proposed policy changes to OMB for review. Changes made to the Agency's proposed actions in response to OMB suggestions or recommendations are documented in the public record.

Although today's proposed rule is not "economically significant," the Agency prepared an "Economic Background Document" in support of today's rule. The Agency's economic assessment addresses, among other factors, industry compliance costs, industry financial impacts, and potential for small entity impacts. A summary of findings from our economic assessment is presented in Section IV. The complete Economic Background Document is available for public review from the RCRA docket, according to instructions provided in the introduction to this preamble.

B. Regulatory Flexibility Act

Pursuant to the 1980 Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, regulatory flexibility analysis is not required if the head of an agency certifies that the rule will not have a "significant" economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a "significant" economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

EPA has examined this rule's potential effects on small entities as required by the RFA/SBREFA, and has determined that this action will not have a significant economic impact on a substantial number of small entities. This is evidenced by the fact that only one of the potentially affected, parent companies determined to be producers of chlorinated aliphatic products in the U.S., may be classified as a "small business," according to the U.S. Small Business Administration's employee size standards (i.e., less than or equal to 1,000 employees) and according to that company's primary Standard Industrial Classification (SIC) code (SIC 2869).

I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1924.01) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W.; Washington, D.C. 20460, by E-mail at *farmer.sandy@epamail.epa.gov*, or by calling (202) 260–2740. A copy also may be downloaded off the Internet at http://www.epa.gov/icr.

This proposed rule includes new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* In addition to complying with the existing subtitle C recordkeeping and reporting requirements for the newly listed waste streams, EPA is proposing that facilities generating chlorinated aliphatic wastewaters comply with testing requirements. In conjunction with testing requirements, we are proposing that generators maintain documentation of detailed standard operating procedures for the sampling and

analysis protocols that were employed, sensitivity and bias of the measurement process, precision of the results, and the analytical results from testing events. These requirements are being proposed to ensure generators are complying with the proposed technical standards for controlling air emissions of dioxins from wastewater treatment tanks.

EPA also is proposing that generators be able to document their compliance with the conditions provided for exclusion from the scope of the two conditional hazardous waste listings proposed in today's notice. This requirement is necessary to ensure that both EDC/VCM wastewater treatment sludges and VCM–A wastewater treatment sludges are managed in a manner that is safe for human health and the environment. In addition, EPA is requiring disposal facilities that manage VCM–A wastewater treatment sludges to maintain records documenting that these sludges are co-disposed only with other wastes that have a pH level of 6.0 or lower. This requirement is necessary to ensure that the mercury contained in the waste does not leach from the waste after disposal.

The Agency estimated the burden associated with complying with the requirements in this proposed rule. Included in the ICR are the burden estimates for the following requirements for industry respondents: reading the regulations; performing testing and waste analyses; keeping records of testing results; completing and submitting certifications; incorporating testing and waste analysis requirements into permits; keeping records documenting compliance with conditions for exclusion from hazardous waste listings; and keeping records documenting compliance with landfill waste disposal requirements for the disposal of VCM–A wastewater treatment sludges. Included also are the burden estimates for State respondents for applying for State authorization. The Agency determined that all of this information is necessary to ensure compliance with today's proposed rule.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act; 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–0009 (ICR No. 1573, Part B Permit Application, Permit Modifications, and Special Permits); 2050–0120 (ICR No. 1571, General Facility Hazardous Waste Standards); 2050–0028 (ICR No. 261, Notification of Hazardous Waste Activity); 2050–0034 (ICR No. 262, RCRA Hazardous Waste Permit Application and Modification, Part A); 2050–0039 (ICR No. 801, Requirements for Generators, Transporters, and Waste Management Facilities under the Hazardous Waste Manifest System); 2050–0035 (ICR No. 820, Hazardous Waste Generator Standards); and 2050–0024 (ICR No. 976, 1997 Hazardous Waste Report).

EPA estimates that the projected annual hour burden for industry respondents will be 1,088 hours, and cost of $184,186. Total estimates over three years are 3,264 hours and $552,558.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W.; Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W.; Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 25, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by September 24, 1999. The final rule will respond to any OMB and public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis for compliance with the UMRA found that the proposed action imposes less than the $100 million expenditure threshold on the private sector; thus, today's rule is not subject to the requirements of Sections 202 and 205 of UMRA.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of the proposed action. In addition, this proposed rule is required by statute (HSWA). Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The topic of environmental threats to children's health is growing in regulatory importance as scientists, policy makers, and village leaders continue to recognize the extent to which children are particularly vulnerable to environmental hazards. Recent EPA actions have been in the forefront of addressing environmental threats to the health and safety of children. Today's proposed rule further reflects our commitment to mitigating environmental threats to children.

A few significant physiological characteristics are largely responsible for children's increased susceptibility to environmental hazards. First, children eat proportionately more food, drink proportionately more fluids, and breathe more air per pound of body weight than do adults. As a result, children potentially experience greater levels of exposure to environmental threats than do adults. Second, because children's bodies are still in the process of development, their immune systems, neurological systems, and other immature organs can be more easily and considerably affected by environmental hazards.

Today's proposed rule will reduce risks posed by the hazardous constituents found in the listed waste streams by requiring more appropriate and safer management practices. EPA considered risks to children in its risk assessment. The more appropriate and safer management practices proposed in this rule are projected to reduce risks to children potentially exposed to the constituents of concern. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assess results of early life exposure to the proposed hazardous constituents from wastewaters and wastewater treatment sludges from the production of chlorinated aliphatic chemicals.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

Today's proposed rule is intended to reduce risks of hazardous wastes as proposed, and to benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-

income communities versus non-minority or affluent communities.

In making hazardous waste listing determinations, we base our evaluations of potential risk from the generation and management of solid wastes on an analysis of potential individual risk. In conducting risk evaluations, our goal is to estimate potential risk to any population of potentially exposed individuals (e.g., home gardeners, adult farmers, children of farmers, anglers) located in the vicinity of any generator or facility handling a waste. Therefore, we are not putting poor, rural, or minority populations at any disadvantage with regard to our evaluation of risk or with regard to how the Agency makes its proposed hazardous waste listing determinations.

In proposing today to list three wastes as hazardous (i.e., chlorinated aliphatic wastewaters, EDC/VCM wastewater treatment sludges managed in land treatment units, and VCM–A wastewater treatment sludges), all populations potentially exposed to these wastes or potentially exposed to releases of the hazardous constituents in the wastes will benefit from the proposed listing determination. In addition, listing determinations are effected at the national level. The wastes proposed to be listed as hazardous will be hazardous regardless of where they are generated and regardless of where they may be managed. Although the Agency understands that the proposed listing determinations, if finalized, may affect where these wastes are managed in the future (in that hazardous wastes must be managed at subtitle C facilities), the Agency's decision to list these wastes as hazardous is independent of any decisions regarding the location of waste generators and the siting of waste management facilities.

Similarly, in cases where the Agency is proposing not list a solid waste as hazardous because the waste does not meet the criteria for being identified as a hazardous waste, these decisions are based upon an evaluation of potential individual risks located in proximity to any facility handling the waste. In the case of wastewater treatment sludges from the production of allyl chloride and methyl chloride and the case of EDC/VCM wastewater treatment sludges managed in landfills, we believe the potential risk levels associated with the wastes are safe for all populations potentially exposed to the wastes and their constituents.

The Agency is soliciting comment and input from all stakeholders, including members of the environmental justice community and members of the regulated community. We encourage all interested parties to provide comments or further information related to potential environmental justice concerns or impacts, including information and data on facilities that have evaluated potential ecological and human health impacts (taking into account subsistence patterns and sensitive populations) to minority or low-income communities.

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 268

Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Waste management.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: July 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by adding paragraphs (l) and (m) to read as follows:

§ 148.18 Waste-specific prohibitions—newly listed and identified wastes.

* * * * *

(l) Effective [date six months after publication of final rule], the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K173, K174, and K175 are prohibited from underground injection.

(m) The requirements of paragraphs (a) through (l) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268 of this chapter; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. Section 261.3 is amended by adding a paragraph (c)(2)(ii)(F) to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(F) Wastewater treatment sludges derived from the treatment of chlorinated aliphatic wastewaters listed in § 261.32 as EPA Hazardous Waste No. K173. However, this paragraph does not exempt from the definition of hazardous waste any wastewater treatment sludges that are explicity listed (e.g., K174, K175) or that meet any other listing in

subpart D of this part, as a result of the derived-from rule.

* * * * *

5. Section 261.4 is amended by revising paragraph (b)(15) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, and K175 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under Sections 307(b) or 402 of the Clean Water Act.

(v) After February 13, 2001, leachate or gas condensate derived from K169–K172 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After [date 24 months after publication date of the final rule], leachate or gas condensate derived from K175 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph (b)(15)(v) after the emergency ends.

* * * * *

6. In § 261.32, the table is amended by adding in alphanumeric order (by the first column) the following waste streams to the subgroup "Organic Chemicals" to read as follows:

§ 261.32 Hazardous waste from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
Organic Chemicals:		
*	*	*
K173	Wastewaters from the production of chlorinated aliphatic hydrocarbons, except wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. This listing includes wastewaters from the production of chlorinated aliphatic hydrocarbons having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.	(T)
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: they are disposed of in a subtitle C or D landfill licensed or permitted by the state or federal government; they are not otherwise placed on the land prior to final disposal; and the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met.	(T)
K175	*Option 1:* Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.	(T)
	Option 2: Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process, *unless* the sludges are disposed in a subtitle C landfill; and the sludges do not fail the toxicity characteristic for mercury in 40 CFR 261.24; and the generator maintains documentation demonstrating that the waste was disposed of in a subtitle C landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in a subtitle C landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, analytical results or other information showing the waste does not fail the toxicity characteristic for mercury, etc.) that the terms of the exclusion were met.	(T)
*	*	*

7. Appendix VII to Part 261 is amended by adding the following wastestreams in alphanumeric order (by the first column) to read as follows:

Appendix VII to Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
K173	1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8,-HpCDF), 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,6,7,8,9-HpCDF), HxCDDs (All Hexachlorodibenzo-*p*-dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-*p*-dioxins), OCDD (1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin, OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All tetrachlorodi-benzo-*p*-dioxins), TCDFs (All tetrachlorodibenzofurans).
K174	1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8,-HpCDF), 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,6,7,8,9-HpCDF), HxCDDs (All Hexachlorodibenzo-*p*-dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-*p*-dioxins), OCDD (1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin, OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzofuran) PeCDFs (All Pentachlorodibenzofurans), TCDDs (All tetrachlorodi-benzo-*p*-dioxins), TCDFs (All tetrachlorodibenzofurans).
K175	Mercury

8. Appendix VIII to part 261 is amended by adding in alphabetical sequence of common name the following entries:

Appendix VIII to Part 261—Hazardous Constituents

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Octachlorodibenzo-*p*-dioxin (OCDD)	1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin	3268–87–9	
Octachlorodibenzofuran (OCDF)	1,2,3,4,6,7,8,9-Octachlorodibenzofuran	39001–02–0	

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

9. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart A—General

10. Section 264.1 is amended by adding a sentence to the end of paragraph (g)(6) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(6) * * * However, if the owner or operator is managing EPA Hazardous Waste No. K173 (chlorinated aliphatic wastewater) in a tank, the owner/operator must comply with § 264.1080(h).

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

11. Section 264.1080 is amended by adding paragraph (h) to read as follows:

§ 264.1080 Applicability.

* * * * *

(h) Notwithstanding the applicability requirements in paragraph (a) of this section, any tank (including wastewater treatment units as defined in § 260.10 of this chapter) managing EPA Hazardous Waste No. K173, where the dioxin concentration in the influent wastewater to the tank is greater than or equal to 1 ng/L TCDD TEQ at a 95% upper confidence limit around the mean, must comply with the requirements of this paragraph, and with § 264.1084 as appropriate. In order to determine whether the influent concentration of EPA Hazardous Waste No. K173 is greater than or equal to 1 ng/L TCDD TEQ at a 95% upper confidence limit around the mean, the generator or owner/operator must comply with the requirements in 40 CFR 265.1080(h)(1) through (5).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart A—General

13. Section 265.1 is amended by adding a sentence to the end of paragraph (c)(10) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(10) * * * However, if the owner or operator is managing EPA Hazardous Waste No. K173 (chlorinated aliphatic wastewater) in a tank, the owner/operator must comply with § 265.1080(h).

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

14. Section 265.1080 is amended by adding paragraph (h) to read as follows:

§ 265.1080 Applicability

* * * * *

(h) Notwithstanding the applicability requirements in paragraph (a) of this section, any tank (including wastewater treatment units as defined in § 260.10 of this chapter) managing EPA Hazardous Waste No. K173, where the dioxin concentration in the influent wastewater to the tank is equal to or greater than 1 ng/L TCDD TEQ at a 95% upper confidence limit around the mean, must

comply with the requirements of this paragraph, and with § 265.1085 as appropriate. In order to determine whether the influent concentration of EPA Hazardous Waste No. K173 is greater than or equal to 1 ng/L TCDD TEQ at a 95% upper confidence limit around the mean, the generator or owner/operator must comply with the following:

(1) *Waste sampling and analysis plans.* (i) *General.* The generator of K173 shall develop and follow a written waste sampling and analysis plan which describes the procedures for sampling and analysis of the hazardous waste at the influent to each wastewater treatment tank to be excluded from the requirements of this part. The waste sampling and analysis plan shall be developed in accordance with the applicable sections of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846) or other appropriate guidance. The plan shall be followed and retained at the facility claiming an exemption for one or more wastewater treatment tanks.

(ii) At a minimum, the plan must include:

(A) A detailed description of the test method(s) used to test for 2,3,7,8-substituted chlorinated dibenzo-p-dioxin (CDD) and 2,3,7,8-substituted chlorinated dibenzo-p-furan (CDF) congeners;

(B) The sampling method used to obtain representative samples of each wastewater tank influent; and

(C) How the design of the sampling program accounts for any expected fluctuations in concentrations over time, while ensuring that the samples collected are grab samples and that all samples are collected within a timeframe that will allow for the analyses to account for potential variabilities in the wastestream.

(2) *Sampling and analysis.* (i) *General.* For each wastewater treatment tank for which an exemption is claimed, the generator of K173 must:

(A) Test for all 2,3,7,8-substituted CDDs/CDFs; or

(B) Use process knowledge for tanks downstream of a tank that is exempt as a result of testing specified in paragraph (h)(2)(i)(A) of this section.

(ii) The K173 generator may use any reliable analytical method to demonstrate that the TCDD TEQ does not exceed the trigger level. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the waste.

(iii) The generator must ensure that the measurements are sufficiently sensitive, accurate and precise to demonstrate that the maximum TCDD TEQ in any sample analyzed does not exceed the specified trigger level.

(iv) For the tank to be eligible for exemption, a generator must demonstrate that:

(A) The maximum TCDD TEQ in the influent to the tank does not exceed 1 ng/L at the 95% upper confidence limit around the mean;

(B) The TCDD TEQ for each sample shall be determined by multiplying the concentration of any 2,3,7,8-substituted CDD or CDF detected and the appropriate toxicity equivalency factor (TEF), as described below, and summing these products for each sample;

(C) The following toxicity equivalence factors shall be used:

Compound	WHO–TEF
2,3,7,8–TetraCDD	1
1,2,3,7,8–PentaCDD	1
1,2,3,4,7,8–HexaCDD	0.1
1,2,3,7,8,9–HexaCDD	0.1
1,2,3,6,7,8–HexaCDD	0.1
1,2,3,4,6,7,8–HeptaCDD	0.01
1,2,3,4,5,7,8,9–OctaCDD	0.0001
2,3,7,8–TetraCDF	0.1
2,3,4,7,8–PentaCDF	0.5
1,2,3,7,8–PentaCDF	0.05
1,2,3,4,7,8–HexaCDF	0.1
1,2,3,7,8,9–HexaCDF	0.1
1,2,3,6,7,8–HexaCDF	0.1
2,3,4,6,7,8–HexaCDF	0.1
1,2,3,4,7,8,9–HeptaCDF	0.01
1,2,3,4,6,7,8–HeptaCDF	0.01
1,2,3,4,6,7,8,9–OctaCDF	0.0001

(D) The analysis could have detected the presence of the CDD/CDF congeners at or below the trigger level of 1 ng/L at the 95% upper confidence limit around the mean.

(v) In an enforcement action, the burden of proof to establish conformance with the exemption specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with their waste sampling and analysis plan developed under paragraph (h)(1) of this section.

(vii) The influent to exempt wastewater treatment tanks must be re-tested, at a minimum, annually and must be retested after a process change that could change the TCDD TEQ level in the waste.

(3) *Records.* The generator must maintain records of the following information on-site:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA facility ID number of the person claiming the exemption; and

(B) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the tanks covered by the claimed exemption, including dimensions and service in the wastewater treatment system;

(iii) A description and process flow diagram of the wastewater treatment system, clearly identifying the exempt tanks and sampling points;

(iv) The results of all analyses and all detection limits achieved as required under paragraph (h)(2) of this section;

(v) The waste sampling and analysis plan;

(vi) The results of the sampling and analysis, including the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A detailed description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory analytical results demonstrating that the trigger exemption level has not been exceeded at the tank influent, for each exempt tank; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (h)(4) of this section and also provides for the availability of the documentation to the claimant upon request; and

(4) *Records retention.* Records must be maintained for the period of three years. A generator must maintain a current waste sampling and analysis plan during that three year period.

(5) *Notification and certification.* The waste generator must submit a one-time notification and certification to the EPA Region or an authorized State (by mail or delivery service which provides return receipt) within 60 days following the effective date of the final rule or initial use of a wastewater treatment

tank used to manage K173. The notification must include the waste generator's name and address, a representative's name and telephone number, and a description of the wastewater treatment system and the assessed tanks. The certification must be signed by an authorized representative and must state as follows:

I certify under penalty of law that the influent(s) to the tanks identified in this certification do not exceed 1 ng/L TCDD TEQ. I am aware that there are significant penalties for submitting a false, inaccurate, or incomplete certification, including the possibility of fine and imprisonment.

PART 268—LAND DISPOSAL RESTRICTIONS

15. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

16. Section 268.7 is amended by adding paragraph (f) to read as follows:

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

* * * * *

(f) The owner or operator of a facility codisposing wastes with wastes identified as hazardous waste K175 must maintain records available for inspection of the pH of the wastes so codisposed.

Subpart C—Prohibitions on Land Disposal

17. Section 268.33 is revised to read as follows:

§ 268.33 Waste specific prohibitions—chlorinated aliphatic wastes.

(a) Effective [*date 90 days from date of publication of final rule*], the wastes specified in 40 CFR Part 261 as EPA Hazardous Wastes Numbers K173, K174, and K175, and soil and debris contaminated with these wastes are prohibited from land disposal.

(b) Effective [date two years from date of publication of final rule], the following wastes are prohibited from land disposal: soil and debris contaminated with radioactive wastes mixed with EPA Hazardous wastes K173, K174, and K175.

(c) Between [date of publication of final rule] and [Insert date two years from date of publication of final rule], radioactive waste mixed with K173, K174, and K175 wastes and/or soil and debris may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(d) The requirements of paragraphs (a), (b) and (c) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris has met the treatment standards in § 268.40 or the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable Universal Treatment Standard levels of § 268.48, the waste is prohibited from land disposal, and all requirements of this part are applicable, except as otherwise specified.

(f) Disposal of K175 wastes containing mercuric sulfide is restricted to units to which disposal of wastes in excess of pH 6.0 is prohibited.

18. In § 268.40, the Table is amended in the entry for F039 to add constituents in alphabetical order and by adding in alphanumeric order new entries for K173, K174, and K175 to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS[2] No.	Concentration in mg/L,[3] or technology code[4]	Concentration in mg/kg[5] unless noted as "mg/L TCLP", or technology code
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Waste retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028) * * *.	1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin (1,2,3,4,6,7,8-HpCDD).	35822–39–4	0.000035	0.0025
.....		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF).	67562–39–4	0.000035	0.0025
.....		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF).	55673–89–7	0.000035	0.0025

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	CAS [2] No.	Wastewaters: Concentration in mg/L, [3] or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/L TCLP", or technology code
		1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin (OCDD).	3268–87–9	0.000063	0.0025
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF).	39001–02–0	0.000063	0.005
K173	Wastewaters from the production of chlorinated aliphatic hydrocarbons, except wastewaters generated from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. This listing includes wastewaters from the production of chlorinated aliphatic hydrocarbons having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.	Bis(2-chloroethyl)ether	111–44–4	0.033	6.0
		Chloroform	67–66–3	0.046	6.0
		Pentachlorophenol	87–86–5	0.089	7.4
		Phenol	108–95–4	0.039	6.2
		2,4,6-Trichlorophenol	88–06–2	0.035	7.4
		1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin (1,2,3,4,6,7,8-HpCDD).	35822–39–4	0.000035	0.0025
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF).	67562–39–4	0.000035	0.0025
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF).	55673–89–7	0.000035	0.0025
		HxCDDs (All Hexachlorodibenzo-*p*-dioxins)	34465–46–8	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	55684–94–1	0.000063	0.001
		1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin (OCDD).	3268–87–9	0.000063	0.005
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF).	39001–02–0	0.000063	0.005
		PeCDDs (All Pentachlorodibenzo-*p*-dioxins)	36088–22–9	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	30402–15–4	0.000035	0.001
		TCDDs (All tetrachlorodi-benzo-*p*-dioxins)	0.000063	0.001	
		TCDFs (All tetrachlorodibenzofurans)	55722–27–5	0.000063	0.001
		Chromium (Total)	7440–47–3	2.77	0.60 mg/L TCLP
		Nickel	7440–02–0	3.98	11 mg/L TCLP
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer.	1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin (1,2,3,4,6,7,8-HpCDD).	35822–39–4	0.000035	0.0025
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF).	67562–39–4	0.000035	0.0025
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF).	55673–89–7	0.000035	0.0025
		HxCDDs (All Hexachlorodibenzo-*p*-dioxins)	34465–46–8	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	55684–94–1	0.000063	0.001
		1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin (OCDD).	3268–87–9	0.000063	0.005
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF).	39001–02–0	0.000063	0.005

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	CAS [2] No.	Wastewaters: Concentration in mg/L, [3] or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/L TCLP", or technology code
		PeCDDs (All Pentachloro-dibenzo-*p*-dioxins)	36088–22–9	0.000063	0.001
		PeCDFs (All Pentachloro-dibenzofurans)	30402–15–4	0.000035	0.001
		TCDDs (All tetrachlorodi-benzo-*p*-dioxins).	41903–57–5	0.000063	0.001
		TCDFs (All tetrachlorodibenzofurans)	55722–27–5	0.000063	0.001
		Arsenic	7440–36–0	1.4	5.0 mg/L TCLP
K175	K175 (wastewater treatment sludge from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7438–97–6	NA	RMERC
	K175 nonwastewaters that contain less than 260 mg/kg total mercury that are residues from RMERC.	Mercury	7438–97–6	NA	0.20 mg/L TCLP
	Other K175 nonwastewaters that contain less than 260 mg/kg total mercury and are not residues from RMERC.	Mercury	7438–97–6	NA	0.025 mg/L TCLP
		pH		NA	pH <6.0
	All K175 wastewaters	Mercury	7438–97–6	0.15	NA

* Note: NA means not applicable.

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR Part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1-Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

19. In § 268.48(a) the Table is amended by adding in alphabetical order the following entries under the heading organic constituents: (The footnotes are republished without change.)

§ 268.48 Universal treatment standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

Regulated constituent common name	CAS [1] number	Wastewater standard concentration in mg/L [2]	Nonwastewater standard concentration in mg/Kg [3] unless noted as "mg/L TCLP"
1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin (1,2,3,4,6,7,8-HpCDD)	35822–39–4	0.000035	0.0025
1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562–39–4	0.000035	0.0025
1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,6,7,8,9-HpCDF)	55673–89–7	0.000035	0.0025
1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin (OCDD)	3268–87–9	0.000063	0.005
1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001–02–0	0.000063	0.005

* Note: NA means not applicable.
[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemica with its salts and/or esters, the CAS number is given for the parent compound only.
[2] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.
[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentratio were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264, Subpar O, or Part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

20. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

21. Section 271.1(j) is amended by adding the following entries to Table 1 and Table 2 in chronological orde by date to read as follows.

§ 271.1 Purpose and scope.

(j) * * *

* * * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
[insert date of signature of final rule]	Listing of Hazardous Wastes K173, K174, and K175	[insert Federal Register page numbers]	[insert effective date of final rule]
*	*	*	*

TABLE 2.—SELF IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	*	*	*
[effective date of final rule].	Prohibition on land disposal of K173, K174, and K175 wastes, and prohibition on land disposal of radioactive waste mixed with K173, K174, and K175 wastes, including soil and debris.	3004(g)(4)(C) and 3004(m).	[date of publication of final rule], [FR page numbers].
*	*	*	*

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

22. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

23. In § 302.4, Table 302.4 is amended by adding the following new entries in alphanumeric order at the end of the table to read as follows:

§ 302.4 Designation of hazardous substances

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
K173[f]			*1	4	K173	X	1(0.454)
K174[f]			*1	4	K174	X	1(0.454)
K175[f]			*1	4	K175	X	1(0.454)

† Indicates the statutory sources as defined by 1, 2, 3, and 4 below.

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
*1—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

[f] See 40 CFR 302.6(b)(1) for application of the mixture rule to this hazardous waste.

24. Section 302.6 is amended by revising paragraph (b)(1)(iii) introductory text and by adding entries K173, K174, and K175 to the table in paragraph (b)(1)(iii) in numerical order to read as follows:

§ 302.6 Notification requirements.

* * * * * * *

(b) * * *

(1) * * *

(iii) For waste streams K169, K170, K171, K172, K173, K174, and K175, knowledge of the quantity of all of the hazardous constituent(s) may be assumed, based on the following maximum observed constituent concentrations identified by EPA:

Waste	Constituent	Max ppm
*	*	*
K173	2,3,7,8-TCDD	0.000000017
	1,2,3,7,8-PeCDD	0.00000015
	1,2,3,4,7,8-HxCDD	0.00000012
	1,2,3,6,7,8-HxCDD	0.00000091
	1,2,3,7,8,9-HxCDD	0.00000092
	1,2,3,4,6,7,8-HpCDD	0.000044
	OCDD	0.00022
	2,3,7,8-TCDF	0.00000045
	1,2,3,7,8-PeCDF	0.0000012
	2,3,4,7,8-PeCDF	0.0000015
	1,2,3,4,7,8-HxCDF	0.000042
	1,2,3,6,7,8-HxCDF	0.000045
	1,2,3,7,8,9-HxCDF	0.000014
	2,3,4,6,7,8-HxCDF.	0.000027
	1,2,3,4,6,7,8-HpCDF	0.0013
	1,2,3,4,7,8,9-HpCDF	0.00017
	OCDF	0.006
	Chloroform	7.1
K174	2,3,7,8-TCDD	0.000039
	1,2,3,7,8-PeCDD	0.0000108
	1,2,3,4,7,8-HxCDD	0.0000241
	1,2,3,6,7,8-HxCDD	0.000083
	1,2,3,7,8,9-HxCDD	0.000062
	1,2,3,4,6,7,8-HpCDD	0.00123
	OCDD	0.0129
	2,3,7,8-TCDF	0.000145
	1,2,3,7,8-PeCDF	0.0000777
	2,3,4,7,8-PeCDF	0.000127
	1,2,3,4,7,8-HxCDF	0.001425
	1,2,3,6,7,8-HxCDF	0.000281
	1,2,3,7,8,9-HxCDF	0.00014
	2,3,4,6,7,8-HxCDF.	0.000648
	1,2,3,4,6,7,8-HpCDF	0.0207
	1,2,3,4,7,8,9-HpCDF	0.0135
	OCDF	0.212
K175	Mercury	9200

* * * * * * *

[FR Doc. 99–20753 Filed 8–24–99; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
August 25, 1999

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Remove the American Peregrine Falcon From the Federal List of Endangered and Threatened Wildlife, and To Remove the Similarity of Appearance Provision for Free-Flying Peregrines in the Conterminous United States; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF04

Endangered and Threatened Wildlife and Plants; Final Rule To Remove the American Peregrine Falcon From the Federal List of Endangered and Threatened Wildlife, and To Remove the Similarity of Appearance Provision for Free-Flying Peregrines in the Conterminous United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have determined that the American peregrine falcon (*Falco peregrinus anatum*) is no longer an endangered or threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). This determination is based on available data indicating that this subspecies has recovered following restrictions on organochlorine pesticides in the United States and Canada, and following the implementation of successful management activities. This action will remove the American peregrine falcon (*Falco peregrinus anatum*) throughout its range as an endangered species from the Federal List of Endangered and Threatened Wildlife, thereby removing all protections provided by the Act. It also will remove the designation of "endangered due to similarity of appearance" for any free-flying peregrine falcons within the 48 conterminous United States. It will not affect protection provided to this species by the Migratory Bird Treaty Act (MBTA), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), or state laws and regulations, nor will it affect the endangered listing status of the Eurasian peregrine falcon (*Falco peregrinus peregrinus*) under the Act.

EFFECTIVE DATE: August 25, 1999.

ADDRESSES: The administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone (805) 644–1766/facsimile 805/644–3958).

FOR FURTHER INFORMATION CONTACT: Robert Mesta at the above address for further information on the removal of the peregrine falcon from the endangered species list.

SUPPLEMENTARY INFORMATION:

Background

The peregrine falcon (*Falco peregrinus*) is a medium-sized raptor weighing approximately 1,000 grams (36 ounces) and having a wing span of 112 centimeters (44 inches). The adult peregrine falcon has a dark gray back and crown, dark bars or streaks on a pale chest and abdomen, and heavy malar (cheek) stripes on the face. Immature falcons are buff-colored in front and have dark brown backs; adults are white or buff in front and bluish-gray on their backs. Peregrines prey almost entirely on other birds, and occasionally on bats, caught in midair (Hickey and Anderson 1969).

The peregrine falcon has an almost worldwide distribution, with three subspecies recognized in North America (Brown and Amadon 1968). The Peale's falcon (*F. p. pealei*) is a year-round resident of the northwest Pacific coast from northern Washington through British Columbia to the Aleutian Islands. The Arctic peregrine falcon (*F. p. tundrius*) nests in the tundra of Alaska, Canada, and Greenland, and is typically a long-distance migrant, wintering as far south as South America. The American peregrine falcon (*F. p. anatum*) occurs throughout much of North America from the subarctic boreal forests of Alaska and Canada south to Mexico. The American peregrine falcon nests from central Alaska, central Yukon Territory, and northern Alberta and Saskatchewan, east to the Maritimes and south (excluding coastal areas north of the Columbia River in Washington and British Columbia) throughout western Canada and the United States to Baja California, Sonora, and the highlands of central Mexico (48 FR 8799). American peregrine falcons that nest in subarctic areas generally winter in South America, while those that nest at lower latitudes exhibit variable migratory behavior; some are nonmigratory (Yates *et al.* 1988).

Since the early 1970s, efforts to reestablish peregrine falcons in the eastern and midwestern United States have successfully returned this species to areas from which it was extirpated (See "Eastern United States" under "Peregrine Falcon Recovery"). Peregrine falcons are now found nesting in all States within their historical range east of the 100th meridian, except for Rhode Island, West Virginia, and Arkansas.

Peregrine falcons declined precipitously in North America following World War II (Kiff 1988). Research implicated organochlorine pesticides, mainly 1,1,1-trichloro-2,2-bis(p-chlorophenyl)-ethane (DDT), applied in the United States and Canada during this same period, as causing the decline (for a review, see Risebrough and Peakall 1988). Use of these chemicals peaked in the 1950s and early 1960s and continued through the early 1970s. Organochlorines and their metabolites, including DDT and its principal metabolite DDE (1,1-dichloro-2,2-bis(*p*-chlorophenyl)-ethylene), aldrin, dieldrin, and others, are stable, persistent compounds that are stored in the fatty tissues of animals ingesting contaminated food (Fyfe *et al.* 1988).

Organochlorines can affect peregrine falcons either by causing direct mortality or by adversely affecting reproduction. Because mortality in wild birds is difficult to study, the effect of organochlorines on mortality is not as well known as the effects on reproduction. Organochlorines can adversely affect reproduction by causing egg breakage, addling, hatching failure, and abnormal reproductive behavior by the parent birds (Risebrough and Peakall 1988). DDE prevents normal calcium deposition during eggshell formation, resulting in thin-shelled eggs that are susceptible to breakage during incubation. In general, populations laying eggs with shells that averaged more than 17 percent thinner than pre-DDT eggs had such high rates of reproductive failure that the number of peregrine falcon pairs declined (Peakall and Kiff 1988).

During the period of DDT use in North America, eggshell thinning and nesting failures were widespread in peregrine falcons, and in some areas, successful reproduction virtually ceased (Hickey and Anderson 1969). As a result, there was a slow but drastic decline in the number of peregrine falcons in many areas of North America. The degree of exposure to these pesticides varied among regions, and peregrine falcon numbers in more contaminated areas suffered greater declines. Peregrine falcons that nested outside of agricultural and forested areas where DDT was heavily used were affected less, although some of these individuals were still exposed to DDT when wintering in areas of pesticide use. Presumably all peregrine falcon individuals have eaten some migratory prey containing organochlorines (for reviews, see Hickey and Anderson 1969; Kiff 1988; Peakall and Kiff 1988).

Peregrine falcons nesting in the agricultural and forested areas east of the Mississippi River in the United States and in eastern Canada south of the boreal forest were the most heavily contaminated and were essentially

extirpated by the mid-1960s (Berger *et al.* 1969). Peregrine falcons in the Great Plains states east of the Rocky Mountains and south of the boreal forest in Canada and the United States were also extirpated in the DDT-era (Cade 1975; Enderson *et al.* 1995). No active eyries (nests) were found in surveys of 133 formerly used peregrine falcon eyries in the latter part of the 1964 nesting season in the eastern United States and the Maritime Provinces in Canada (Berger *et al.* 1969). By 1975, there were only three peregrine falcon pairs in Alberta, and no other peregrine falcon pairs were found south of latitude 60 degrees North and east of the Rocky Mountains in Canada (Erickson *et al.* 1988).

West of the 100th meridian, peregrine falcons were significantly reduced; only 33 percent of historical nest sites in the Rocky Mountains were still occupied by 1965 (Enderson 1969). The peregrine falcon disappeared as a breeding species from southern California, and major declines also occurred in other parts of the western United States and in much of southern Canada and the Northwest Territories (Kiff 1988). In contrast, peregrine falcons in most areas of the Pacific coast of Alaska remained fairly stable during this period, due to their lower exposure to organochlorine pesticides. The exact degree of local declines in much of western North America remains somewhat speculative due to a lack of accurate pre-pesticide era census data. For example, in the southwestern United States and mainland Mexico, peregrine falcons were not censused until after the beginning of the use of organochlorines (Kiff 1988).

Previous Federal Actions

Population declines due to negative impacts of DDT and its metabolites on peregrine falcon reproduction and survival led us to list two of the three North American subspecies, the Arctic peregrine falcon and the American peregrine falcon, as endangered in 1970 under the Endangered Species Conservation Act of 1969 (Public Law 91–135, 83 Stat. 275). Arctic and American peregrine falcons were included in the United States' list of endangered foreign species on June 2, 1970 (35 FR 8491) under the Endangered Species Conservation Act of 1969, and the native list of endangered species on October 13, 1970 (35 FR 16047). Upon passage of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), the native and foreign species lists were combined into a single list of endangered and threatened species. Both the American and Arctic peregrine falcon subspecies were listed as endangered throughout their respective ranges. The Peale's peregrine falcon was not listed because it was reproducing at near normal levels with only traces of DDT.

On March 1, 1983, we published a proposed rule to (1) reclassify the Arctic peregrine falcon from endangered to threatened; (2) clarify the status of the American peregrine falcon (*Falco peregrinus anatum*) in some areas of its range; and (3) designate all free-flying peregrine falcons in the 48 conterminous United States as endangered under the similarity of appearance provisions of section 4(e) of the Act (48 FR 8796). A final rule was published on March 20, 1984 (49 FR 10520). Pursuant to the similarity of appearance provisions, species that are not considered to be endangered or threatened are treated as such for the purpose of providing protection to a species that is biologically endangered or threatened.

On June 12, 1991, we announced in the **Federal Register** a Notice of Status Review of American and Arctic peregrines (56 FR 26969). The Arctic peregrine was removed as a threatened species from the Federal List of Endangered and Threatened Wildlife on October 5, 1994 (59 FR 50796) but was still regulated under the Act in the lower 48 United States due to the similarity of appearance provision for all *Falco peregrinus* peregrine falcons. The similarity of appearance provision was maintained because the American peregrine falcon was still listed as endangered.

We published an Advanced Notice of a Proposal to Remove the American Peregrine Falcon from the Federal List of Endangered and Threatened Wildlife on June 30, 1995 (60 FR 34406). This was based on data indicating this subspecies was recovered following restrictions on the use of organochlorine pesticides in the United States and Canada and because of successful management activities, including the reintroduction of captive-bred and relocated wild hatchling peregrine falcons. Current data provides additional support for recovery of all North American peregrine falcons, including the American peregrine falcon subspecies. We published a proposed rule to remove the peregrine falcon in North America from the Federal List of Endangered and Threatened Wildlife on August 26, 1998, based on continuing data indicating this species was recovered (63 FR 45446).

The processing of this final rule conforms with our listing priority guidance published on May 8, 1998 (63 FR 25502). This guidance clarifies the order in which we will process rulemakings, giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered status, and delisting or reclassifying actions. The lowest priority actions, processing critical habitat designations, are in Tier 3. Processing of this final rule is a Tier 2 action.

Peregrine Falcon Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for listed species. In some cases, we appoint experts to recovery teams to assist in the writing of recovery plans. Between 1974 and 1975 we formed recovery teams consisting of Service, State, and other experts. In cooperation with us, these recovery teams produced four regional recovery plans: three for the American peregrine falcon (Alaska, Rocky Mountains/Southwest United States, and the Pacific Coast of the United States), and one for the peregrine falcon in the eastern United States. Although no United States recovery plans established recovery criteria for peregrine falcons nesting outside of the United States, the Canadian Wildlife Service published an *Anatum* Peregrine Falcon Recovery Plan (Erickson *et al.* 1988) establishing recovery criteria for American peregrine falcons in Canada. Recovery plans for peregrine falcons called for captive rearing and release of birds in several areas of North America. In the eastern United States, where peregrine falcons were extirpated, the initial recovery objective was to reestablish peregrine falcons through the release of offspring from a variety of wild stocks being held in captivity by falconers. The first experimental releases of captive-produced young occurred in 1974 and 1975 in the United States. Since then, approximately 6,000 falcons were released throughout its historic range in North America. These releases helped to re-establish breeding pairs in areas where the species was extirpated, and accelerated the recovery of the species.

Later, reintroduction was also pursued in eastern Canada using only *F. p. anatum* breeding stock from the boreal regions of the subspecies' range. All peregrine falcons released to augment wild populations in western North America west of the 100th meridian, where small numbers of

American peregrines survived the pesticide era, were derived from western *anatum* stock (Enderson *et al.* 1995).

The most significant factor in the recovery of the peregrine falcon was the restriction placed on the use of organochlorine pesticides. Use of DDT was banned in Canada in 1970 and in the United States in 1972 (37 FR 13369). Restrictions that controlled the use of aldrin and dieldrin were imposed in the United States in 1974 (39 FR 37246). Since implementation of these restrictions, residues of the pesticides have significantly decreased in many regions where they were formerly used. Consequently, reproductive rates in most surviving peregrine falcon populations in North America improved, and numbers began to increase (Kiff 1988; Enderson *et al.* 1995).

In Alaska and northwest Canada, American peregrine falcon populations were locally depressed, but enough individuals survived the pesticide era to allow populations to expand without the need for release of captive-bred falcons. Likewise, in the southwestern United States, very few captive-bred birds were released, and populations recovered naturally following restrictions on the use of organochlorine pesticides. In southwest Canada, the northern Rocky Mountain States, and the Pacific Coast States, however, local populations were greatly depressed or extirpated, and over 3,400 young American peregrine falcons were released to promote recovery in those areas (Enderson *et al.* 1995).

American peregrine falcon population growth was noted in Alaska in the late 1970s (Ambrose *et al.* 1988b), and, by 1980, population growth was found in many other areas (Enderson *et al.* 1995). The rate of increase varied among regions of North America, undoubtedly influenced by variation in patterns of pesticide use, potential differences in the rate of pesticide degradation, and the degree to which local populations had declined. Populations in some portions of the range of American peregrine falcons, such as Alaska, northwest Canada, and southwestern United States, reached densities several years ago that suggested recovery was approaching completion (Ambrose *et al.* 1988b; Mossop 1988; Geoff Holroyd, Canadian Wildlife Service, *in litt.* 1993; Enderson *et al.* 1995). Residual organochlorine pesticide contamination continues to affect eggshells in some areas, such as portions of coastal California (Jarman 1994) and western Texas (Bonnie McKinney, Texas Parks and Wildlife Department, pers. comm. 1997), but these effects are localized. Despite these localized effects and the variation in the rate of increase among regions, local populations throughout North America have increased in size, and positive trends in nearly all areas suggest that an extensive recovery of American peregrine falcons has taken place.

Recovery Status

To aid in assessing peregrine falcon recovery, the current status was compared to specific recovery plan objectives for American peregrine falcons in (1) Alaska, (2) Canada, (3) the Pacific Coast, (4) the Rocky Mountains and the Southwest, and for the peregrine falcon in, and (5) the eastern United States. The current status of the subspecies in Mexico is discussed below, although no recovery plan or recovery objectives are established for Mexico.

Alaska

The Peregrine Falcon Recovery Plan, Alaska Population (Alaska Recovery Plan) (U.S. Fish and Wildlife Service 1982a) includes both Arctic and American peregrine falcons nesting in Alaska. The following discussion relates only to provisions regarding the American peregrine falcon, as the Arctic peregrine falcon was delisted on October 5, 1994 (59 FR 50796).

The Alaska Recovery Plan established recovery objectives based on four measurements for assessing the status of American peregrine falcons including population size, reproductive performance, pesticide residues in eggs, and eggshell thickness. The recovery objectives included:

(1) 28 nesting pairs in 2 specified study areas (16 in upper Yukon and 12 in upper Tanana);

(2) An average of 1.8 young per territorial pair;

(3) Average organochlorine concentration in eggs of less than 5 parts per million (ppm) (wet weight basis DDE); and

(4) Eggshells no more than 10 percent thinner than pre-DDT era eggshells.

The Alaska Recovery Plan suggested that these objectives be maintained in the specified study areas for 5 years before reclassifying from endangered to threatened status, and remain constant or improve for an additional 5 years before delisting.

Surveys were conducted in the upper Yukon and Tanana Rivers, for which historical population data were available, using consistent methodology from 1973 to the present so trends would be discernable. Surveys conducted between 1966 and 1998 along the upper Yukon River demonstrated increases in the number of occupied nesting territories from a low of 11 known pairs in 1973 to 46 pairs in 1998 (Ambrose *et al.* 1988b; Robert Ambrose, U.S. Fish and Wildlife Service, *in litt.* 1997a, 1999). Similarly, along the upper Tanana River, the number of occupied nesting territories increased from 2 in 1975 to 33 in 1998 (R. Ambrose, *in litt.* 1997a; 1999). The recovery objective of 28 occupied nesting territories in the two study areas was first achieved (post-DDT) in 1988, with 23 nesting territories on the Yukon River and 12 on the Tanana River. The number has increased steadily since that time to the current level of 79 occupied nesting territories in 1998, with 46 pairs on the Yukon River and 33 pairs on the Tanana River (R. Ambrose, *in litt.* 1999). Thus, the recovery objective of 28 occupied nesting territories was achieved and surpassed for 10 years. A minimum of 301 breeding pairs of American peregrine falcons currently nest in Alaska.

Productivity measured along the upper Yukon and Tanana Rivers fell to a low of about 1.0 young per territorial pair per year (yg/pr) in the late 1960s, but began to increase in the mid-1970s. By 1982, productivity exceeded the objective of 1.8 yg/pr, and varied between 1.6 and 3.0 yg/pr in the years since. Between 1994 and 1998, productivity averaged 2.0 yg/pr (sample size (N) = 362 nests/pairs). Overall, between 1982 and 1998, the Yukon River study area averaged 1.79 yg/pr, and the Tanana River study area averaged 1.85 yg/pr (R. Ambrose, *in litt.* 1999). It is expected that there are yearly variations in productivity, which most wildlife species experience. However, average productivity for the peregrine falcon was constant or improving, thus meeting the goal of at least 1.8 yg/pr over the last 10 years as recommended by the Alaska Recovery Plan.

Mean concentrations of DDE in peregrine falcon eggs in excess of 15–20 ppm are associated with nesting failure, whereas productivity is usually sufficient to maintain population size if residues average less than this concentration (Peakall *et al.* 1975, as cited in Peakall and Kiff 1988; Newton *et al.* 1989). In Alaska, average DDE residues in American peregrine falcons averaged 12.2 ppm from 1979 through 1984, 5.8 ppm from 1988 through 1991, and 3.5 ppm from 1993 through 1995 (R. Ambrose, *in litt.* 1997b). Current data suggest that the concentrations of less than 5 ppm DDE residue levels in peregrine falcon eggs have improved in the last 10 years (R. Ambrose *in litt.* 1997b). As a result of lowered DDE

concentrations, there was consistent population growth during that time.

In Alaska, eggshells were as much as 20–22 percent thinner than pre-DDT era shells in the mid-1960s (Cade *et al.* 1988). By the early 1980s, shells were about 14 percent thinner than before the DDT era (Ambrose *et al.* 1988a). Eggshells averaged 13.0 percent thinner from 1979 through 1984, 13.1 percent thinner from 1988 through 1991, and 12.1 percent thinner from 1993 through 1995 (R. Ambrose, *in litt.* 1997b). The average thickness of pre-DDT American peregrine falcon eggs from Alaska is not precisely known, so current estimates of thinning could be inaccurate. While average eggshell thinning has not yet reached the level of 10 percent or less of the pre-DDT era, it has improved over the last 10 years. Also, reproduction was sufficient to allow consistent population growth since the late 1970s, and productivity has, on average, exceeded its stated recovery objective for 17 years.

In summary, based on the most current information (1998 survey and early 1990s contamination data), we conclude that goals underlying all four objectives were met or exceeded. On average, the number of pairs occupying nesting territories in the two study areas and productivity exceeded the recovery objectives for the past 17 years. Neither DDE residues in eggs nor eggshell thinning has prevented a dramatic population growth since the late 1970s.

Canada

The 1988 *Anatum* Peregrine Falcon Recovery Plan for Canada (Canadian Recovery Plan) (Erickson *et al.* 1988) categorized the historical range of the American peregrine falcon throughout Canada into three regions, which include the Western Mountains, Interior Plains, and the Eastern Seaboard and Great Lakes. These regions were subdivided into nine zones on the basis of historical population levels, habitat, political boundaries, and restoration needs. The zones are (1) Maritime, (2) Great Lakes, (3) Prairies, (4) Mackenzie River Valley, (5) Northern Mountains, (6) Southern Mountains, (7) Eastern Mackenzie Watershed, (8) Western Canadian Shield, and the (9) Eastern Canadian Shield. Coastal British Columbia was excluded from consideration in the Canadian Recovery Plan because that area is occupied by *F.p. pealei*.

The goal of the Canadian Recovery Plan was to increase the wild American peregrine falcon population in Canada so the subspecies is no longer considered endangered or threatened by the Committee on the Status of Endangered Wildlife in Canada. The proposed objectives were (1) to establish by 1992 a minimum of 10 territorial American peregrine falcon pairs in each of Zones 1 to 6, and (2) to establish by 1997, in each of 5 of these 6 zones, a minimum of 10 pairs naturally fledging 15 (1.5 yg/pr) or more young annually, measured as a 5-year average beginning in 1993. No recovery objectives were established for Zones 7, 8, and 9. The Canadian Recovery Plan did not contain separate objectives for reclassification of the subspecies in Canada from its current endangered status to threatened.

Starting in 1990, the Canadian Wildlife Service has coordinated and published a national range-wide peregrine falcon population survey once every 5 years. The results of the 1995 national population survey were used in the following status summary of the American peregrine falcon in Canada (Ursula Banasch, Canadian Wildlife Service, *in litt.* 1997).

There were 98 known nest sites in Zones 1 and 2 (southern Ontario and Quebec, northern Great Lakes, Bay of Fundy and Labrador), and surveys located 64 pairs. There were 98 known nest sites in Zone 3 (Manitoba, Saskatchewan and Alberta), and surveys located 41 pairs. There were 117 known nest sites in Zone 4 (eastern N.W. Territories), and surveys located 83 pairs. There were 125 known nest sites in Zone 5 (Yukon), and surveys located 113 pairs. There were 50 known nest sites in Zone 6 (Interior British Columbia), and surveys located 18 pairs. The total known number of pairs for all six zones in 1995 was 319, with minimum objectives achieved for every recovery zone.

The only comprehensive range-wide productivity surveys available to us were the national population surveys coordinated by the Canadian Wildlife Service in 1990 and 1995 (U. Banasch, *in litt.* 1997; Holroyd and Banasch 1996). Surveys conducted in the intervening years were not nationally coordinated, and therefore not complete. Thus, we used the combined average annual productivity data collected in the 1990 and 1995 surveys to address this recovery objective.

In Zones 1 and 2, average productivity was 1.7 yg/pr (N=104 nests). In Zone 3, average productivity was 1.5 yg/pr (N=55). In Zone 4, average productivity was 2.0 yg/pr (N=171). In Zone 5, average productivity was 1.8 yg/pr (N=626). No productivity data were available for Zone 6. The 2-year average annual productivity for the Canadian population of American peregrine falcons was 1.8 yg/pr.

Although the Canadian Recovery Plan did not identify recovery objectives for pesticide residue or eggshell thinning levels, 205 eggs and 62 samples from 28 specimens of peregrine falcons were collected in Canada between 1965 and 1987 to assess organochlorine residue concentrations. In all three subspecies (*F.p. anatum, F.p. tundrius, F.p. pealei*), the proportion of specimens having residue concentrations above established critical values (concentration at which egg failure occurs, which varies among organochlorine contaminants) had decreased and was inversely correlated with improvements in the reproductive success of the population (Peakall *et al.* 1990).

In summary, the Canadian Recovery Plan identified two objectives to determine recovery for the American peregrine falcon population in Canada. Based on current available information, both objectives were met. The total number of pairs for all six zones in 1995 was 319, with minimum objectives achieved for every recovery zone. This count exceeds the total recovery objective of 60 pairs by 259 pairs. The average annual productivity data for 1990 and 1995 either met or exceeded objectives in five of the six zones with an average annual productivity of 1.8 yg/pr for the American peregrine falcon population in Canada.

Pacific Coast

To reclassify the American peregrine falcon from endangered to threatened, the Pacific Coast Recovery Plan (Pacific Population Plan) (U.S. Fish and Wildlife Service 1982b) recommended that 122 pairs be established in a specified distribution spanning California, Washington, Oregon, and Nevada. The distribution goals were based on 22 management units distributed throughout the historic range of the Pacific Coast peregrine falcon population. For each management unit, the population must achieve a specified minimum number of active pairs before downlisting can be considered. The Pacific Population Plan also recommended that with attainment of 185 wild, self-sustaining pairs (California 120, Oregon 30, Washington 30, and Nevada 5 pairs) and an average productivity of 1.5 yg/pr for a 5-year period, the subspecies could be considered for delisting. Since this final rule addresses the delisting of the peregrine falcon, only the latter two objectives are discussed in this section. The Pacific Population Plan defined a "self-sustaining" population as one whose natural productivity without human management is equal to or greater than its mortality.

By 1976, no American peregrine falcons were found at 14 historical nest sites in Washington, and Oregon had also lost most of its peregrine falcons. In addition, only 1 or 2 pairs remained on the California coast, with no more than 10 nest sites known to be occupied in the entire State (Cade 1994). A steadily increasing number of American peregrine falcon pairs breeding in Washington, Oregon, and Nevada was indicated by surveys from 1991 through 1998. Known pairs in Washington increased from 17 to 45, in Oregon from 23 to 51, and in Nevada from 3 to 6 (Gary Herron, Nevada Division of Wildlife, pers. comm. 1997; Martin Nugent, Oregon Department of Fish and Wildlife, *in litt.* 1999; David Anderson, Washington Department of Fish and Game, *in litt.* 1997). The number of American peregrine falcons in California increased from an estimated low of 5 to 10 breeding pairs in the early 1970s (Herman 1971), to a minimum of 167 occupied sites in 1998 (Janet Linthicum, Santa Cruz Predatory Bird Research Group, *in litt.* 1999). The increase in California was concurrent with the restriction of DDT and management that included the release of over 750 American peregrine falcons, including captive-reared and relocated wild hatchlings, through 1997 (Walton 1997). Recovery of American peregrine falcons in some areas of California, however, was impeded by continuing elevated DDT levels (Jarman 1994; Walton 1997).

The recovery of the peregrine falcon could be the result of a lower than expected first-year mortality of released birds from the augmentation program, which accelerated the growth of the Pacific population (Brian Walton, Santa Cruz Predatory Bird Research Group, pers. comm. 1997). As a result, intensive human management has essentially ended, and the release of captive-bred American peregrine falcons was suspended in Nevada in 1989, in California in 1992 (although the relocation of wild hatchlings continues), and in Oregon and Washington in 1995. Based on available information, the first recovery objective was met; a minimum known population of 270 pairs exceeds the delisting goal of 185 by 85 pairs. Also, the distribution goals for the Pacific Coast population was met in all four States. Surveys conducted from 1991 through 1998 demonstrate a steadily increasing number of American peregrine falcon pairs, indicating that natural productivity is greater than mortality in this recovery region.

Productivity measured in Washington between 1993 and 1998 ranged from 1.3 to 1.8 yg/pr, with an average of 1.5 yg/pr (N=204) (D. Anderson, *in litt.* 1999). In Oregon, productivity between 1993 and 1998 ranged from 0.8 to 1.9 yg/pr, with an average of 1.3 yg/pr (N=178) (M. Nugent, *in litt.* 1997; David Peterson, U.S. Fish and Wildlife Service, *in litt.* 1999). Between 1993 and 1998, productivity in California ranged from 1.4 to 1.7 yg/pr (N=523), with an average of 1.6 yg/pr (J. Linthicum *in litt.* 1999). No productivity data were available for Nevada.

Productivity, an important measure of population health, can be difficult to determine in wide-ranging species nesting in remote landscapes that are often difficult to access. However, available data indicate that the average productivity from 1993 through 1998 in Washington, Oregon and California was 1.5 yg/pr (D. Anderson, *in litt.* 1999; M. Nugent, *in litt.* 1997; David Peterson, U.S. Fish and Wildlife Service, *in litt.* 1999; J. Linthicum *in litt.* 1999). Therefore, we consider this objective to be met.

The Pacific Population Plan did not identify recovery objectives for pesticide residue or eggshell thinning levels. However, organochlorine residues and eggshell thinning were measured in California starting in the early 1970s. Jarman (1994) reported DDE concentrations in 105 peregrine eggs collected from California from 1987 to 1992, and 11 eggs from Oregon from 1990 through 1993. Data collected in nine study regions in California (Jarman 1994) indicated the highest concentrations of DDE were found in California eggs from the Channel Islands and mid-coast with 21 and 13 ppm, respectively. The southern coast and San Francisco regions had the lowest concentrations of 5.5 and 4.3 ppm, respectively. The DDE concentrations in eggs collected along the coast of California (between San Francisco Bay and 34° N) did not decrease between 1969 and 1992 (Jarman 1994). Eggs from Oregon contained DDE levels of 10 ppm.

Eggshells from coastal California continued to show thinning. In northern and central coastal California, eggshells collected between 1975 and 1995 averaged 17.7 and 19.1 percent thinner than pre-DDT era, respectively (J. Linthicum, *in litt.* 1996). In northern interior California, where 104 of the 186 sites were active at least once from 1975–1993, eggshells averaged 15.6 percent thinner than pre-DDT era shells (J. Linthicum, *in litt.* 1996). Eggshells collected on the Channel Islands off the southern coast of California in 1992–1995 averaged 19.4 percent thinner than those collected in California prior to 1947 (J. Linthicum, *in litt.* 1996). In montane California, the average was 15 percent thinner than normal, and in the southern interior (coastal mountains) the average was 17.9 percent thinner than normal (J. Linthicum, *in litt.* 1996). Urban pairs experienced eggshell thinning averaging 8.7 percent in the San Francisco area and 10.9 percent in the Los Angeles/Orange County area. A summary of 633 clutch mean measurements representing 1,237 samples of one or more eggshells collected between 1975 and 1995 from the historical range of the American peregrine falcon in California averaged 16.1 percent thinner (J. Linthicum, *in litt.* 1996). However, current reproduction indicates an expanding population in most areas despite high organochlorine residue concentrations and associated eggshell thinning in some areas of the Pacific population.

Rocky Mountain/Southwest

The American Peregrine Falcon Rocky Mountain/Southwest Population Recovery Plan (U.S. Fish and Wildlife Service 1984) established three objectives for delisting, including (1) increasing the *Falco peregrinus anatum* population in the Rocky Mountain/Southwest region to a minimum of 183 breeding pairs and the following distribution: Arizona (46), Colorado (31), Idaho (17), Montana (20), Nebraska (1), New Mexico (23), North Dakota (1), South Dakota (1), Texas (8), Utah (21), and Wyoming (14); (2) sustaining a long-term average production of 1.25 yg/pr without manipulation by 1995; and (3) observing eggshell thinning of no more than 10 percent from the pre-DDT era for a 5-year span.

The prairie States of North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma contain little peregrine falcon habitat, and historical data are incomplete. No recovery goals for a specific number of peregrine falcon pairs were set for Kansas or Oklahoma; nesting peregrine falcons are not known from Oklahoma. Currently, South Dakota, Nebraska and Kansas each have one peregrine falcon pair (Mark Martell, The Raptor Center, pers. comm. 1998; Tordoff *et al.* 1997); no peregrine falcon pairs are currently known to occur in North Dakota or Oklahoma.

The Rocky Mountain/Southwest population of the American peregrine falcon has made a profound comeback since the late 1970s when surveys showed no occupied nest sites in Idaho, Montana, or Wyoming and few pairs in Colorado, New Mexico, and the Colorado Plateau, including parts of southern Utah and Arizona (Cade 1994). Surveys conducted from 1991 through 1998 indicated that the number of American peregrine falcon pairs in the

Rocky Mountain/Southwest population is steadily increasing. In 1991, this population supported 367 known pairs; in 1998 the number of pairs increased to 535 (Robert Mesta, U.S. Fish and Wildlife Service, *in litt.* 1999). Surveys conducted from 1992 through 1998 showed that, with the exception of North Dakota, all States within the Rocky Mountain/Southwest population have met or exceeded their specific delisting goals for breeding pairs.

The current minimum known number of peregrine falcon pairs for each State include Arizona 159, Colorado 89, Idaho 17, Montana 18, Nebraska 1, New Mexico 32, North Dakota 0, South Dakota 1, Texas 11, Utah 164, Wyoming 42, and Kansas 1 (Greg Beatty, Arizona Game and Fish Department, *in litt.* 1997; James Enderson, Western Peregrine Falcon Recovery Team, pers. comm. 1999; Dennis Flath, Montana Department of Fish and Parks, *in litt.* 1999; Frank Howe, Utah Division of Wildlife Resources, *in litt.* 1999; Levine *et al.* 1998; McKinney 1994; B. McKinney, pers. comm. 1999; Robert Oakleaf, Wyoming Game and Fish Department, *in litt.* 1999; Sator O. Williams III, New Mexico Department of Game and Fish, *in litt.* 1999). The current Rocky Mountain/Southwest population is 535, which surpasses the objective of 183 by 352 pairs.

In Arizona , productivity from 1989 through 1997 ranged from 0.9 to 1.8 yg/yr, with an average productivity of 1.1 yg/pr (N=294). Recent average productivity (1994–1997) is 0.9 yg/pr (N=194) (Ward and Siemens 1995; G. Beatty, *in litt.* 1997).

In 1973, 1974, and 1975, productivity in Colorado was 0.2 (N=11), 1.9 (N=8), and 0.7 yg/pr (N=8), respectively, reflecting the irregular and generally poor productivity typical of the 1970s (Platt and Enderson 1988). Long term productivity measured in Colorado from 1985 through 1998 ranged from 1.2 to 1.9 yg/pr, with an average of 1.6 yg/pr (N=753) (Gerry Craig, Colorado Division of Wildlife, *in litt.* 1999; J.H. Enderson, pers. comm. 1999). Recent productivity from 1994 through 1998, averaged 1.6 yg/pr (N=395) (G. Craig, *in litt.* 1999).

In Idaho, productivity recorded from 1989 through 1998 ranged from 0 to 2.5 yg/pr, with an average of 1.6 yg/pr for this 10-year period (N=120). Recent productivity from 1994 through 1998 averaged 1.4 yg/pr (N=75) (Levine *et al.* 1998). In Montana, productivity between 1984 and 1998 ranged from 0.3 to 3.0 yg/pr, with an average of 1.7 yg/pr for the 15-year period (N=137). Recent productivity from 1994 through 1998 averaged 1.5 yg/pr (N=91) (D. Flath, *in litt.* 1999). In Nebraska, productivity between 1992 and 1998 for a single pair ranged from 0 to 5.0 yg/pr, with an average of 1.7 yg/pr for the 7-year period (N=7) (Lloyd Kiff, The Peregrine Fund, *in litt.* 1997; Tordoff *et al.* 1998).

For the period 1986 through 1998, New Mexico experienced a 12-year average productivity of 1[illegible] yg/pr (N=278). Recent productivity from 1995 through 1998 averaged 1.4 yg/pr (N=131) (S. Williams, *in litt.* 1997, 1999). In Texas, long term productivity recorded from 1975 through 1998 ranged from 0 to 2.3 yg/pr, with an average of 0.9 yg/pr (N=185) for the 23-year period. Recent productivity from 1994 through 1998 averaged 0.5 yg/pr (N=69) (McKinney 1994; B. McKinney, pers. comm. 1999).

In Utah, between 1985 and 1987, productivity averaged 0.8 yg/pr (N=117). From 1991 through 1996, productivity ranged from 0.9 to 2.0 yg/pr, with an average of 1.3 yg/pr (N=629) for the 6-year period (Bunnell 1994; F. Howe, *in litt.* 1997). In Wyoming, productivity between 1984 and 1998 ranged from 0.9 to 3.0 yg/pr, with an average of 1.7 yg/pr (N=282) for the 15-year period. Recent productivity between 1994 and 1998 averaged 1.8 yg/pr (N=179) (Joe White, Wyoming Game and Fish Department, *in litt.* 1995; R. Oakleaf, *in litt.* 1999).

In Kansas, productivity between 1993 and 1998 ranged from 0 to 3.0 yg/pr, with an average of 1.0 yg/pr (N=6) for the 4-year period (L. Kiff, *in litt.* 1997; Tordoff *et al.* 1998). In 1998, the first pair of peregrine falcons were located in South Dakota; they produced no young.

Although Texas and Arizona have exceeded their goals for number of pairs, current productivity is below the goal of 1.25 yg/pr and below their long term productivity averages by 44 and 18 percent respectively. Heavy metal contamination, particularly mercury, in adults and nestlings may be depressing productivity in Texas (Andrew Sansom, Texas Parks and Wildlife Department, *in litt.* 1995). Residual mercury contamination from mines operated along the Rio Grande River in the early 1900s is the suspected cause (B. McKinney, pers. comm. 1997). The current productivity level in Arizona is not fully understood, but may be a continuation of the variability exhibited in productivity between 1989 and 1995 (Garrison and Spencer 1996; Bruce Taubert, Arizona Game and Fish Department, pers. comm. 1999).

Kansas and South Dakota are two more States that currently have not met the productivity goal of 1.25 yg/pr. Kansas has had only one peregrine falcon pair since 1992, and breeding is sporadic each year.

Average productivity for the 11 States supporting breeding populations is 1.3 yg/pr, exceeding the goal of 1.25 yg/pr goal. Even though Texas, Kansas, South Dakota and Arizona currently have not met the productivity goal, productivity throughout the Rocky Mountain/Southwest region is more than sufficient for recruitment to exceed mortality, so dramatic population growth has resulted.

In Arizona, eggshells collected between 1978 and 1983 averaged 14.2 percent thinner, and 20 eggshell replicates collected from 1989 through 1994 averaged 13 percent thinner, than pre-DDT era eggshells (Ellis *et al.* 1989, Ward and Siemens 1995). In Colorado and New Mexico, shells from 260 eggs laid between 1977 and 1985 averaged 12 percent thinner than pre-DDT eggshells (Enderson *et al.* 1988). In another analysis of eggs from New Mexico, eggshells collected in 1977 averaged 20 percent thinner than pre-DDT eggshells, but in 1985 averaged only 14 percent thinner (Ponton *et al.* 1988). Eggshells collected in Colorado from 1973 through 1997 were as much as 25.1 percent thinner and at least 6.0 percent thinner than pre-DDT eggshells, with an average thinning of 13.5 percent. Only Colorado has achieved the objective for eggshell thickness. Sampling in Colorado in 1990, 1991, 1992, 1993, and 1994 produced measurements of 10.6, 11.7, 8.6, 8.1, and 6.0 percent thinning respectively, with an average annual mean of 9.0 percent thinning for this period (G. Craig, *in litt.* 1995). Although the recovery objective was not met in other States in the region, there is a general trend toward thicker eggshells in measurements taken since the mid-1970s (L. Kiff, pers. comm. 1995).

The Rocky Mountain/Southwest Recovery Plan did not identify a recovery objective for pesticide residue levels. However, organochlorine pesticide residues in American peregrine falcon eggs measured in Colorado and New Mexico between 1973 and 1979 averaged 26 ppm DDE, but the average declined to 15 ppm by 1980–1983 (Enderson *et al.* 1988). The average DDE concentration in 5 eggs collected in Colorado from 1986 through 1989 was 11 ppm (Jarman *et al.* 1993).

In summary, the first recovery objective in the Rocky Mountain/Southwest Recovery Plan was met; the current population of 535 pairs exceeds the goal of 183 pairs by 352 pairs. These pairs are distributed throughout the Rocky Mountain/Southwest States, meeting or exceeding the population goals in 10 of the 13 States in this

region. The second objective of sustaining a long-term average production of 1.25 yg/pr without manipulation by 1995 was met by all Rocky Mountain/Southwest States that have breeding American peregrine falcons except Texas, Kansas, South Dakota, and Arizona. By the mid-1980s the practice of fostering young into active nests was terminated, therefore, the long-term average productivity this recovery region has experienced was accomplished without nest manipulation. The current reproductive level in the 11 States with breeding populations is 1.3 yg/pr, exceeding the second objective of 1.25 yg/pr. Therefore, we consider the intent of this objective met. Based on the degree of recovery achieved, the third objective, that average eggshell thinning be no more than 10 percent from the pre-DDT era average for 5 years, appears to be conservative. The increase in numbers of American peregrine falcons indicates the subspecies has recovered without the necessity of reaching this specific recovery objective.

Eastern United States

The eastern peregrine population has a unique history and complex status under the Act. As stated previously, peregrine falcons were extirpated in the eastern United States and southeastern Canada by the mid-1960s. In 1974, shortly after the passage of the Act, the National Audubon Society sponsored a meeting of experts in peregrine biology, including representatives from the Service, to address the conservation of the species in North America (U.S. Fish and Wildlife Service 1991). This sparked the beginning of an effort to reestablish the peregrine in the eastern United States through the introduction of offspring from parents of multiple subspecies. Peregrine falcons were raised in captivity from parent subspecies then listed as endangered (*Falco peregrinus anatum, F. p. tundrius, F. p. peregrinus*), unlisted subspecies (*F. p. pealei, F. p. brookei, etc.*), and combinations of these subspecies. The first experimental releases of captive-produced young in the eastern States occurred in 1974 and 1975 (Cade 1994). These and future releases, coordinated by the Service, State fish and wildlife agencies, and representatives of The Peregrine Fund, demonstrated that hacking, the practice of retaining and feeding young captive-bred birds in partial captivity until they learn to fly and hunt on their own, was an effective method of introducing captive-bred peregrines to the wild (U.S. Fish and Wildlife Service 1991).

In 1978, we issued a policy statement confirming support for the use of North American peregrines to establish an eastern peregrine falcon population, supported with endangered species funds, and the use of peregrines from other geographic areas for specific research purposes. The policy applied only to peregrine falcons in the east (Keith M. Schreiner, U.S. Fish and Wildlife Service, *in litt.* 1978).

Thus, notwithstanding the similarity of appearance designation, we have continued to fully support the restoration of the eastern peregrine falcon under the 1991 revised Peregrine Falcon Eastern Population Recovery Plan. We have given the eastern peregrine falcon equal consideration with the American peregrine falcon with respect to recovery.

The Peregrine Falcon Eastern Population Recovery Plan (Eastern Plan), first published in 1979, and revised in 1985 and 1991 (U.S. Fish and Wildlife Service 1991), addressed the recovery of the peregrine falcon in the Eastern United States, a population re-established beginning in 1974 and 1975 by releasing captive-bred peregrine falcons of mixed genetic heritage. The recovery plan established two recovery objectives (1) establish a minimum of 20–25 nesting pairs in each of 5 recovery units and sustained them for a minimum of 3 years; and (2) an overall minimum of 175'200 pairs demonstrating successful, sustained nesting. The five recovery units are (1) Mid-Atlantic Coast, (2) Northern New York and New England, (3) Southern Appalachians, (4) Great Lakes, and (5) Southern New England/Central Appalachians.

The first recovery objective is nearly achieved, with three of the five recovery units (Mid-Atlantic Coast, Northern New York and New England, and Great Lakes) surpassing 20 to 25 nesting pairs of peregrine falcons for 3 years. The Mid-Atlantic Coast unit had 65 pairs fledging 110 young in 1998 and averaged 62 pairs and 90 fledglings annually from 1996 through 1998. The Northern New York and New England unit had 50 pairs fledging 70 young in 1998 and averaged 47 pairs and 61 fledglings annually from 1996 through 1998. The Great Lakes unit had 44 pairs fledging 95 young in 1998 and averaged 40 pairs and 74 fledglings from 1996 through 1998. The Southern Appalachians unit had 14 pairs fledging seven young in 1998, and averaged 11 pairs fledging 14 young from 1996 through 1998. The Southern New England and Central Appalachians unit had 20 pairs fledging 26 young in 1998 and averaged 15 pairs fledging 22 young from 1996 through 1998 (L. Kiff, *in litt.* 1997; David Flemming, U.S. Fish and Wildlife Service, *in litt.* 1997; Mike Amaral, U.S. Fish and Wildlife Service, *in litt.* 1999). In 1998, there was a total of 193 pairs counted in the five eastern State recovery units, which was the upper minimum recovery level of the Eastern Plan. The recovery goal, however, was probably met in 1997, because up to 10 percent of territorial pairs in any given year are believed to escape detection and are not counted (Cade *et al.* 1988). Importantly, the number of territorial pairs recorded in the eastern peregrine falcon recovery area has increased an average of 10 per cent annually for the past 7 years (1992–1998). Equally important is that the productivity of these pairs during the same 7-year period has averaged 1.5 yg/pr, thus demonstrating sustained successful nesting.

As of 1998, there were at least 32 nesting peregrine pairs in six midwestern States, which is outside the recovery area delineated in the 1991 Eastern Plan. The birds are nesting successfully in a larger area than was believed likely in 1991. Peregrine falcons now found in midwestern States are the result of captive-reared and released birds, and others that probably came from the peregrine falcons released in the eastern States. However, there appears to be a zone of no nesting in the northeastern Great Plains that separates the western American peregrine falcons from the introduced eastern peregrine falcons (Chuck Kjos, U.S. Fish and Wildlife Service, pers. comm. 1997). There are now more than 225 pairs of peregrine falcons in the midwestern and eastern States where peregrine falcons were extirpated.

Mexico

None of the existing recovery plans written for peregrine falcons in North America established recovery criteria for birds that nest in Mexico. There is very little historical or recent information on peregrine falcons in Mexico to accurately assess their current status in Mexico.

Porter *et al.* (1988) reported 42 known nesting territories on the western side of the Baja California Peninsula. From 1966 through 1971, only three pairs occurred in this region and none were found in 1976 (Porter *et al.* 1988), indicating a substantial decline had occurred by the mid-1970s. Most of these territories apparently were checked since that time, but seven pairs were located between 1985 and 1992 in areas not occupied in previous years (Massey and Palacios 1994).

In 1993, three active American peregrine falcon nests were discovered in Ojo de Liebre (Scammon's Lagoon) on the western side of the Baja California Peninsula in an area without historical nesting records (Castellanos *et al.* 1994). The central west coast of the Baja California Peninsula was an important breeding area with a historical population of about 13 pairs (Banks 1969). Between 1980 and 1994, Castellanos *et al.* (1997) conducted breeding surveys of American peregrine falcons in this area of the coast and found 10 nesting pairs. Castellanos *et al.* (1997) studied the reproductive success of three pairs in 1993 and five pairs in 1994 located at Ojo de Liebre and San Ignacio Lagoons. An average of three eggs, 1.8 nestlings, and 1.6 fledglings were produced per nest. This productivity appears to be within the range of normal productivity for healthy populations (Cade *et al.* 1988). These observations suggest some recent recovery on the west coast of the Baja California Peninsula.

On the western (Gulf of California) side of mainland Mexico, Porter *et al.* (1988) reported 23 historical nest sites. A number of new nest sites were found in this area between 1966 and 1984, increasing the number of known nest sites to 51. Territory occupancy averaged about 82 percent between 1967 and 1971 and 77 percent between 1971 through 1975, indicating that territory occupancy in that area never declined as significantly as on the west side of the Baja California Peninsula. Porter and Jenkins (1988) believed that the number of occupied territories in the Gulf area increased after 1967 following a reduction in DDE residues in prey.

Between 1989 and 1997, Robert Mesta, (*in litt.* 1997) found three pairs of American peregrine falcons, one pair on the Rio Aros and two on the Rio Yaqui, Sonora. Hunt *et al.* (1988) found 14 occupied nesting territories in the highlands of northeast Mexico in 1982. In this area and adjacent west Texas, territory occupancy averaged about 70 percent during 1973–1985.

Most of what is known about productivity and pesticide residues in Mexico comes from the western mainland near the Gulf of California. Porter *et al.* (1988) found that productivity along the Gulf of California between 1965 and 1984 was "somewhat less than normal," and five addled eggs collected between 1976 and 1984 averaged 12.8 ppm DDE with a range of 2.4 to 25.0 ppm (Porter and Jenkins 1988). DDE residues in prey in the Gulf area declined from the 1960s to the 1980s, and this decline correlated with increases in productivity and the number of breeding pairs (Porter and Jenkins 1988). Some prey, however, still contained high pesticide residues, and reproduction appeared to be affected by organochlorine at three of 15 nests examined (Porter and Jenkins 1988).

Hunt *et al.* (1988) found that only five of 14 pairs produced young in northeast Mexico in 1982. Hunt *et al.* (1988) reported significant DDE residues in peregrine falcon prey species in western Texas in the mid 1980s, but prey species in Mexico were not sampled.

In summary, there was little research on the distribution, numbers, and status of American peregrine falcons in Mexico, and most research took place in the Baja California Peninsula and the Gulf of California regions. Numbers on the west coast of the Baja California Peninsula declined significantly (Porter *et al.* 1988), but observations suggest that numbers may have increased in recent years (Massey and Palacios 1994; Castellanos *et al.* 1994; and Castellanos *et al.* 1997). In the Gulf of California area, territory occupancy never was known to drop below 77 percent (Porter *et al.* 1988), and it increased in the 1970s and 1980s (Porter and Jenkins 1988).

No information on population trends for American peregrine falcons in Mexico is available. However, the status of the Mexican population may be similar to that of the population occupying similar habitat in nearby Arizona (G. Hunt, pers. comm. 1997). Exposure to organochlorine-based pesticides by Mexico nesting populations continues to be a concern. In 1997, as part of the North American Agreement for Environmental Cooperation, a parallel agreement to the North American Free Trade Agreement between the United States, Canada, and Mexico, the Commission for Environmental Cooperation (CEC) established a North American Regional Action Plan (NARA) on DDT. Mexico, a member nation of the CEC, proposes a phased reduction of DDT (Philip Johnson, U.S. Fish and Wildlife Service, pers. comm. 1999). Specific goals of this reduction are: (1) Reduce the use of DDT for malaria control in Mexico by 80 percent in 5 years (beginning in 1997); (2) eliminate the illegal use of DDT in agriculture in Mexico; (3) develop a cooperative approach to minimize movement of malaria-infected mosquitos across borders and reduce the illegal importation of DDT; and (4) advance global controls on DDT production, export and use.

Adverse effects of organochlorine pesticides in the environment remains an international concern for peregrine falcons nesting in Mexico, and for peregrine falcons wintering in or migrating through Latin America. By undertaking the steps proposed in the NARA, the United States, Canada, and Mexico are committing to ongoing cooperative activities and yearly reporting on progress made on these initiatives and objectives. Annual reports will be submitted to the North American Working Group for the Sound Management of Chemicals and subsequently disseminated to the Council of the Commission for Environmental Cooperation and the public.

Summary of Peregrine Falcon Recovery

Five regional peregrine falcon recovery plans, four for American peregrine falcons in Canada and the western United States, and one for the eastern United States introduced peregrine falcon population, were written to guide recovery efforts and establish criteria to be used in measuring recovery. These recovery plans included objectives for population size and reproductive performance. Only two of the recovery plans included specific objectives that applied to pesticide residues in eggs and eggshell thinning. The combined breeding population size goal for the four American peregrine falcon recovery plans is 456 pairs. Currently, a minimum of 1,425 pairs occupy the range of the American peregrine falcon in Alaska, Canada, and the western United States. There are 193 peregrine falcon pairs in the five recovery units included in the Eastern Plan, and an additional 32 peregrine falcon pairs occur in midwestern States in areas not included in the Eastern Plan recovery units. In 1998, the total known breeding population of peregrine falcons was 1,650 pairs in the United States and Canada.

Productivity is an important measure of population health, and each of the four American peregrine falcon recovery regions met or exceeded their respective productivity goals, as did the eastern peregrine population.

Other objectives, including those for pesticide residues in eggs and the degree to which eggshells are thinner than pre-pesticide era eggshells, vary among the plans. In the case of eggshell thinning, current measurements obtained in some areas fall short of recovery objectives. Eggshell thinning was originally suggested by recovery teams as an indicator of whether organochlorine contamination was preventing species recovery. Despite the failure of populations in localized areas to meet recovery objectives, overall, populations of American peregrine

falcons have increased considerably. This increase continues to occur even after reintroduction efforts were curtailed. The consistent and geographically widespread trends in increasing population size demonstrate that current levels of reproductive failure, pesticide residues, and eggshell thinning still affecting American peregrine falcons in some areas have not prevented recovery of the subspecies in North America.

Table 1 summarizes the recovery plan goals for each of the regions and Canada, as well as the current recovery status.

TABLE 1.—AMERICAN PEREGRINE FALCON RECOVERY PLAN GOALS AND CURRENT (1998) RECOVERY STATUS.

Recovery plan	Delisting goal	Current status	Comments/degree to which delisting goals are met
Alaska:			
Pairs	28 pairs in study areas.	79 pairs in study areas.	Exceeded goal by 51 pairs in study areas. Approximately 301 pairs known State-wide.
Productivity (young/pair)	1.8 yg/pr	1.9 yg/pr	Exceeded goal.
DDT (parts per million)	less than 5 ppm	3.5 ppm	Exceeded goal.
Eggshell thinning	less than 10 percent.	12.1 percent	Goal not met, but has not prevented recovery; goal probably too conservative.
Canada:			
Pairs	60 pairs (10 each in 6 zones).	319 pairs	Exceeded goal by 259 pairs.
Productivity	1.5 yg/pr	1.8 yg/pr	Exceeded goal.
Pacific Coast:			
Pairs	185 pairs	270 pairs	Exceeded goal by 85 pairs.
Productivity	1.5 yg/pr	1.5 yg/pr	Goal met.
Rocky Mountain/Southwest:			
Pairs	183 pairs	535 pairs	Exceeded goal by 352 pairs.
Productivity	1.25 yg/pr	1.3 yg/pr	Exceeded goal.
Eggshell thinning	less than 10 percent.		Goal measured by only a few States; cannot be assessed.
Eastern/Great Lakes:			
Pairs	175–200 pairs (with no fewer than 20–25 in each of 5 recovery zones).	193 pairs	Exceeded goal in 3 zones; goals in other 2 zones probably were met; an additional 32 peregrine falcon pairs occur in several Midwestern States not included under the Eastern Plan.

Summary of Issues and Recommendations

In the August 26, 1998, proposed rule (63 FR 45446), we requested that all interested parties provide information and comments on the status of and proposal to delist the American peregrine falcon. Announcements of the proposed rule were sent to Federal, State, county, and city-elected officials, Federal and State agencies, interested private citizens, and local area newspapers and radio stations. We provided the governments of Canada and Mexico with the proposed rule, and both countries responded with comments. We held public hearings on December 3, 1998, in Wisconsin and December 8, 1998, in New Hampshire. In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270). We requested three individuals, who possess expertise in peregrine falcon biology, to review the proposed rule by the close of the comment period. All three individuals responded to our request and their comments were incorporated into this final rule.

We considered all comments, including oral testimony at the public hearings. We received a total of 29 oral comments and 893 comment letters from 49 States, and the District of Columbia, Canada, Mexico, Germany, Bali, four Federal agencies, 27 State resource agencies, 305 falconry associations or individual falconers, and 40 conservation organizations. Of the comments received, 633 supported the proposal to delist, 266 opposed the proposal, 11 supported downlisting, and 12 letters duplicated comments from individuals who previously provided oral comments.

Because many respondents offered similar comments, those comments of a similar nature are grouped. These comments, and our responses, are presented below.

Issue 1: In the Midwest, delisting will result in less cooperation by building owners and managers to protect peregrine falcons nesting on their buildings.

Our Response: Currently, 28 States in the midwestern and eastern United States support nesting peregrine falcons. Approximately 87 percent of the midwestern pairs and 33 percent of the eastern pairs are nesting on manmade structures: bridges, buildings and smokestacks (Martell and McNicoll 1999). Currently, there are 117 nests on nest boxes or trays in 19 States and the District of Columbia. Should delisting the peregrine falcon act as a disincentive for owners and managers to protect nesting peregrine falcons on their buildings, the long-term security of this urban population could be threatened (Martell and McNicoll 1999).

Between January and March of 1999, 75 people with information on 95 of the 117 nest sites were asked if delisting would affect their current management strategies. Responses were overwhelmingly in favor of continuing to manage for the presence of nesting pairs for some of the following reasons: pigeon control, good public relations, positive effect on building employees, and good environmental stewardship (Martell and McNicoll 1999). Survey results do not suggest that delisting of the peregrine falcon would result in widespread removal of nest boxes and trays or discouragement of nesting on manmade structures. Furthermore, the survey found the public widely appreciated and accommodated

peregrines at the manmade structures on which they nest (Martell and McNicoll 1999).

Issue 2: Disturbance due to recreational rock climbing poses a threat to nesting peregrine falcons.

Our Response: The increasing popularity of rock climbing throughout North America, particularly in the northeast, is becoming a serious problem for land managers trying to protect nesting peregrine falcons. Unlike the western landscape that provides rock climbers with more and larger cliffs and thus some alternatives to conflicts with nesting peregrine falcons, the smaller and limited cliffs of the northeast present fewer alternatives to peregrine/climber conflicts.

The peregrine falcon will still be protected by the MBTA. Additional protection is provided by other laws such as the National Forest Management Act (16 U.S.C. 1600) and the Federal Land Management and Policy Act (43 U.S.C. 1701). These continued protections are adequate to address this threat. See Factor D under Summary of Factors Affecting the Species.

In addition, we are aware of several very effective raptor management plans that were cooperatively developed by land managers, representatives of the climbing community, and other interested parties (plans that contain effective public education components). Some examples include plans developed by the Prescott National Forest in Arizona, Yosemite National Park in California, Adirondack State Park in New York, Zion National Park in Utah, Smith Rock State Park in Oregon, the Nantahala National Forest in North Carolina, and the Colorado National Monument in Colorado. All of these plans include seasonal rock climbing restrictions to prevent disturbance of raptor nests from rock climbing activities. The development of more of these partnerships is essential to the preservation of the peregrine falcon and the sport of rock climbing. Organizations like the Access Fund which represent the climbing community have continued to express a strong desire to work with both private and public land managers to resolve any conflicts originating from the use of cliffs by climbers.

Issue 3: The Act's section 6 funds currently being used by States to support peregrine falcon monitoring programs will not be available once the peregrine is delisted.

Our Response: We are authorized through the Secretary of the Interior to provide grants to States to assist in monitoring the status of recovered species pursuant to section 4(g) under section 6 of the Act. Existing and future Federal assistance in the form of section 6 funding to States for conservation work will not be affected by the delisting, as long as States continue to identify monitoring peregrine falcons as a high priority.

Issue 4: The data do not support delisting the American peregrine falcon throughout its range in the United States. The Service should consider downlisting the American peregrine falcon to threatened rather than delisting.

Our Response: Recent data show improvements in numbers of breeding pairs of peregrine falcons and productivity (Refer to Table 1, "Recovery Status," and "Summary of Peregrine Falcon Recovery"), and demonstrate that goals set for numbers and productivity for the American peregrine falcon recovery plans were met or exceeded. The combined population size goal for the four American peregrine falcon recovery plans is 456 pairs. Currently, a minimum of 1,425 known pairs occupy sites in Alaska, Canada, and the western United States, and a number of additional pairs have probably gone undetected. Overall average productivity goals in all four American peregrine falcon recovery plans, using productivity as a recovery criterion, were met or exceeded.

Only the Alaska recovery plan set a goal for DDT levels, and only two recovery plans (Alaska and Rocky Mountain/Southwest) specified objectives for eggshell thinning. The Alaska Recovery Plan set a delisting goal of less than 5 ppm DDT and less than 10 percent eggshell thinning. Recent data for American peregrine falcon eggs in Alaska indicate DDT levels at less than 3.5 ppm, exceeding that goal, and eggshell thinning is at 12.1 percent. Measurements for eggshell thinning were not consistently taken in the Rocky Mountain/Southwest States. Colorado has met the recovery plan eggshell thinning goal of less than 10 percent; the average of the annual means for 1990–1994 was 9.0 percent. Data for other States show a general trend toward thicker eggshells since the mid-1970s (refer to Rocky Mountain/Southwest section under Recovery Status).

Three of 5 peregrine falcon recovery units in the eastern United States have met recovery goals, and 193 pairs documented in 1998 indicate the overall recovery goal of 175–200 pairs was met. In addition, another 32 pairs are nesting in areas of the Midwest outside the recovery units specified in the Eastern Plan but nevertheless contribute to overall restoration goals.

We believe that the species has essentially achieved the goals established for recovery and, in many areas, has exceeded the goals. We believe the available information supports full delisting of the species throughout its range, and the species clearly is not in danger of extinction, is not likely to become endangered within the foreseeable future throughout a significant portion of its range, and warrants full delisting.

Issue 5: American peregrine falcons should not be delisted because they are not restored throughout the historical range.

Our Response: We have determined the American peregrine falcon has recovered throughout its historical range. Restoration of the American peregrine falcon within every area throughout its historical range is not required by the Act, is not required for recovery, nor was it a goal of any of the recovery plans. Generally, the goal of a recovery program is to restore the species to a point at which protection under the Act is no longer required. To be recovered, a species must not be endangered with extinction, or be likely to become endangered within the foreseeable future. Although a few, localized areas have not quite met their numerical recovery goals, the overall status of the American peregrine falcon has improved significantly such that it is considered recovered and warrants delisting. As a species recovers in numbers and populations expand, more of the historical range can be re-occupied where appropriate habitat remains.

Issue 6: There are gaps in the scientific knowledge about American peregrine falcon biology. A population viability analysis was not done, and genetic diversity, viable population size, population dynamics, and long-term stability of populations have not been determined.

Our Response: A complete understanding of the biology of a species is not required to determine a species' conservation status under the Act. Population viability analyses are important tools for attempting to quantify threats to a species, particularly those facing loss and fragmentation of habitat, and the consequences of conservation actions, as well as aiding in identifying critical factors for study, management, and monitoring. These analyses are not always essential, however, to determine when a species has achieved recovery, particularly in the case of the American peregrine falcon. It is evident that

recovery of this subspecies was largely achieved by eliminating the use of DDT and by successful management activities, including the reintroduction of captive-bred American peregrine falcons. Recovery goals established for the species were met or exceeded, with few exceptions.

Issue 7: Organochlorine pesticides still persist within the breeding range of the American peregrine falcon and continue to depress natural productivity.

Our Response: We recognize that although the peregrine falcon has made a dramatic recovery throughout its historical range in the United States, the presence of environmental contaminants is still affecting the productivity of certain regional populations. Eggs collected on the eastern shore of Virginia and Maryland had slightly elevated levels of DDE, dieldrin, and mercury, which was associated with reproductive problems (U.S. Fish and Wildlife Service 1994). On the Channel Islands in California, particularly Catalina, populations are still affected by organochlorine residues and eggshell thinning (Jarman 1994). In west Texas, heavy metal contamination, particularly mercury may be depressing productivity (A. Sansom, *in litt.*1995). Residual mercury from mines operated along the Rio Grande River in the early 1900s is the suspected source of this contamination (B. McKinney, pers. comm. 1997). We recognize the possible threat that environmental contaminants pose to the sustained recovery of this species and therefore, will include a contaminant monitoring component in the post-delisting monitoring plan. Refer to Factor E under Summary of Factors Affecting the Species, for an in-depth discussion of contaminants. See also our response to issue 8.

Issue 8: The continued unrestricted use of organochlorine pesticides in Latin America places the American peregrine falcon at risk of contamination while on migration and on its wintering grounds.

Our Response: Comparisons of blood samples collected during fall and spring migration indicate that, although migrant peregrine falcons are known to accumulate pesticides while wintering in Latin America, DDE residues in the blood taken from female peregrine falcons captured during spring migration at Padre Island, Texas decreased between 1978 and 1994 below levels that would affect reproduction (Henny *et al.* 1996). Despite the use of organochlorines in Latin America, the American peregrine falcon has recovered over its historical range, and Arctic peregrine falcons, which also winter in Latin America, were delisted due to their recovery. Refer to Factor E under Summary of Factors Affecting the Species for an in-depth discussion. The North American Working Group for the Sound Management of Chemicals promotes a regional perspective that encourages the active involvement of Central and South American countries in the implementation of the North American Regional Action Plan on DDT, and is facilitating international cooperation on combating malaria in these regions without the continued use of organochlorine pesticides. This effort could eventually eliminate or reduce one source of DDT in Central and South American countries.

Issue 9: The take of American peregrine falcons for falconry after its delisting will create an additional threat to the subspecies.

Our Response: Delisting the American peregrine falcon will not affect the protection given to all migratory bird species, including the peregrine falcon, under the MBTA. The regulations issued pursuant to the MBTA allow for issuance of permits to take raptors for falconry and other purposes provided the taking will not threaten wildlife populations (50 CFR 21.28 and 13.21(b)). Currently we are working with State wildlife agencies to develop biological criteria and two management plans to govern the issuance of permits for take of peregrine falcons to ensure the taking does not negatively impact wild populations, particularly those in need of further restoration. The first management plan will deal with the take of eyas (nestling) peregrines. A second management plan will deal with the take of passage (migrating first-year) peregrines. The management plans will include criteria for harvest, implementation criteria, and procedures for evaluating effects of the harvest. They will pertain to the take of all wild peregrine falcons in the U.S., including the American peregrine falcon, and will apply to all falconry, raptor propagation, and scientific collecting permits. Take will not be permitted under the MBTA until the draft management plans undergo public review, are approved, finalized, and published in the **Federal Register**. Some exceptions may be made on a case-by-case basis for scientific purposes. The effects of take for all purposes will be assessed during the monitoring period following delisting. Refer to Factor D under the Summary of Factors Affecting the Species section and the Effects of This Rule section for further information.

Issue 10: The Canadian Wildlife Service has expressed concern that American peregrine falcons breeding in Canada but migrating to or through the United States will be taken for falconry purposes.

Our Response: Canada's recovery program for American peregrine falcons is still in progress and the Canadian government is concerned that any take of American peregrines migrating from Canada could impact recovery. We are working with the governments of Canada and Greenland in considering the appropriateness of harvest of peregrines migrating through the United States. If take of these passage birds is approved, it would be designed to avoid take of American peregrines originating in Canada and instead target the more abundant Arctic peregrines from northern Alaska, Canada, and Greenland.

Issue 11: The Service cannot consider delisting the American peregrine falcon until all recovery goals in the four existing recovery plans for this subspecies are met or exceeded.

Our Response: Section 4(f) of the Act directs us to develop and implement recovery plans for species of animals or plants listed as endangered or threatened. Recovery is the process by which the decline of an endangered or threatened species is arrested or reversed and threats to its survival are neutralized so that long-term survival in nature can be ensured. The goal of this process is the maintenance of secure, self-sustaining wild populations of species with the minimum investment of resources. One of the main purposes of the recovery plan is to enumerate goals (guidelines) that will help us to determine when recovery for a particular species is achieved. Meeting or exceeding all of the specific recovery goals for a listed species is not required by the Act before delisting can occur.

We determine whether recovery is achieved based on a species' performance relative to the goals set in its recovery plan and the best available scientific information. A species is considered recovered when it is no longer in danger of extinction (i.e., endangered), or likely to become endangered within the foreseeable future throughout all or a significant portion of its range (i.e., threatened). The American peregrine falcon has either met, exceeded, or is very close to meeting the recovery goals set for this subspecies throughout its range. We believe that the intent of all the objectives are met and that the recovery of the subspecies justifies delisting.

Issue 12: The eastern peregrine falcon population has not met the recovery goals set forth in the Eastern Recovery

Plan and, therefore, should remain on the endangered species list.

Our Response: The eastern peregrine falcon population is protected only due to the similarity of appearance to *F. p. anatum*, which has protected individual eastern peregrine falcons from direct take. Thus, their status with respect to recovery has no direct impact on the decision to delist the American peregrine falcon. Nevertheless, we have supported and still fully support the restoration of this population.

Data through 1998 on the status of the eastern peregrine falcon population indicate that the intent of the recovery goals set for this population are met. The recovery plan established 2 recovery objectives including (1) a minimum of 20–25 nesting pairs in each of 5 recovery units which are established and sustained for a minimum of 3 years, and (2) an overall minimum of 175–200 pairs demonstrating successful, sustained nesting. Three of the five recovery units (Mid-Atlantic Coast, Northern New York and New England, and Great Lakes) have surpassed the nesting pair goal for 3 years. The Southern Appalachians and Southern New England/Central Appalachians units may not yet have achieved the goals established for the number of breeding pairs for those areas. However, the overall minimum of 175–200 successful pairs in the eastern region was achieved, and over the past 6 years (1992–1998), the number of territorial pairs has increased an average of 10 percent annually. There are now at least 193 pairs of peregrine falcons in the eastern States where falcons were extirpated, and pairs are successfully nesting throughout a greater range than was anticipated. We believe the intent of the recovery objectives are satisfied and that recovery of the peregrine in the eastern United States is sufficiently established. Refer to the Recovery Status section for additional discussion on this subject.

Issue 13: The status of the American peregrine falcon in Mexico was not adequately addressed.

Our Response: While population status and trends for falcons nesting in Mexico are not well known, American peregrine falcon populations in the United States and Canada, including those migrating to and from Latin America, have met or exceeded their criteria for delisting. Restoration of the American peregrine falcon within every area throughout its historical range is not required by the Act, nor is it required for recovery. Mexico's proposed phased reduction of DDT under the North American Regional Action Plan will make a significant contribution toward increasing peregrine falcon populations in Mexico. Refer to the Mexico section under Recovery Status for additional discussion on this subject.

Issue 14: The Service's delisting proposal is not supported by an adequate scientific review.

Our Response: The proposed rule to remove the peregrine falcon in North America from the Federal List of Endangered and Threatened Wildlife received reviews from a variety of scientific institutions and individual scientists. Two examples are the Ornithological Council and the Raptor Research Foundation. The Ornithological Council consists of nine leading scientific ornithological societies: the American Ornithologists' Union, Association of Field Ornithologists, Consejo Internacional para la Preservaciòn de las Aves, Cooper Ornithological Society, Colonial Waterbird Society, Pacific Seabird Group, Raptor Research Foundation, Society of Caribbean Ornithology, and Wilson Ornithological Society. Together it has a membership of approximately 6,500 ornithologists. One of its primary missions is to provide scientific information about birds to legislators, regulatory agencies, industry decision makers, conservation organizations and others, and to promote the use of scientific information in the making of policies that affect birds.

The task of evaluating the proposed rule on behalf of the Ornithological Council was accepted by a committee of Raptor Research Foundation scientists. The Raptor Research Foundation is a scientific society that represents professional raptor scientists and managers throughout North America and around the world. This committee of raptor scientists reviewed the available data and submitted a report that was endorsed by both the Ornithological Council and the Raptor Research Foundation as their position on the proposed rule. This report underwent peer review and was published in the Wildlife Society Bulletin (Millsap *et al.*, 1998, WSB 26(3); 522–538). While expressing some concern about the status of the eastern peregrine population, the authors concurred with our position that the peregrine falcon warranted delisting range-wide.

Issue 15: Recovery plans used to evaluate the recovery of the peregrine falcon are out of date and need to be revised to reflect more accurate contemporary goals and the Service should not misrepresent the goals in the current plans.

Our Response: As addressed in our response to Issue 11, section 4(f) of the Act directs us to develop and implement recovery plans for species of animals or plants listed as endangered or threatened. Recovery is the process by which the decline of an endangered or threatened species is arrested or reversed and threats to its survival are neutralized so that long-term survival in nature can be ensured. One of the main purposes of the recovery plan is to enumerate goals (guidelines) that will help us to determine when recovery of a particular species is achieved. Meeting or exceeding all of the specific recovery goals for a listed species before it can be delisted is not required by the Act. Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act, establish the procedures for listing, reclassifying, and delisting species. We may list a species if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered or threatened because of (1) extinction, (2) recovery, or (3) the original data for classification of the species were in error. We have determined that substantial peregrine falcon recovery has taken place, and none of the five factors addressed in section 4(a)(1) of the Act is currently negatively affecting the peregrine falcon to the degree that the species is endangered or threatened.

Issue 16: Post-delisting monitoring for at least 5 years is essential.

Our Response: We agree. Section 4(g)(1) of the Act requires the Secretary to implement a system, in cooperation with the States, to monitor for not less than 5 years the status of all species which have recovered to the point that protection of the Act is no longer required (section 4(g)). If it becomes evident during the course of the post-delisting monitoring that the species again requires the protection of the Act, it would be relisted.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act, set forth the procedures for listing, reclassifying, and delisting species on the Federal lists. We may list a species if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the

best scientific and commercial data available substantiate that the species is neither endangered or threatened because of (1) extinction, (2) recovery, or (3) the original data for classification of the species were in error.

After a thorough review of all available information, we have determined that substantial peregrine falcon recovery has taken place since the early 1980s. We determined that none of the five factors addressed in section 4(a)(1) of the Act, and discussed below, is currently affecting the species, including the American peregrine falcon subspecies and introduced peregrine falcon populations, such that the species is no longer endangered (in danger of extinction throughout all or a significant portion of its range) or threatened (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). These factors and their application to the peregrine falcon in North America are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Peregrine falcons occupy a variety of habitat types and nest from the boreal forest region of Alaska and Canada, through much of Canada and the western United States, south to parts of central and western Mexico. Nesting habitat includes cliffs and bluffs in boreal forests, coastal cliffs and islands, urban skyscrapers and other structures, and cliffs and buttes in southwestern deserts. In some breeding areas, such as the southern United States, some or all of the birds remain year-round on their nesting territories. In other breeding areas, particularly in high latitudes, many or all of the individuals are highly migratory; these individuals occupy a number of regions and habitat types throughout the year as they nest, migrate to and from wintering areas, and occupy their wintering ranges. Due to the extensive geographic distribution of the peregrine falcon, the wide variety of habitat types in which the species nests, and the immense area that some of the more migratory individuals occupy during a year, the peregrine falcon occupies an extremely broad array of areas and habitats throughout its range. As a result, the degree to which peregrine falcons were affected by human-caused habitat modification varies widely by region, habitat type, and individual falcons within the population.

As the human population has grown in North America, the rate of habitat alteration has unquestionably increased. Certainly some peregrine falcon habitat was destroyed, such as the many wetlands drained in recent years that were previously used by peregrine falcons for foraging or as migratory staging areas during spring and fall. But peregrine falcons have colonized many cities in North America due to the abundance of nest sites on buildings and the abundance of prey, such as rock doves (*Columba livia*), that thrive in urban areas. Therefore, some forms of habitat modification have negatively affected peregrine falcons while other forms have benefited them. It would be burdensome to estimate the net, overall effect of habitat modification on the species throughout North America.

Although the rate of habitat modification in North America has increased in recent decades, the number of American peregrine falcons occupying the region has increased substantially since the late 1970s or early 1980s. In several parts of their range, including parts of Alaska, the Yukon and Northwest Territories, California, and the southwestern United States, the number of breeding pairs has increased rapidly in recent years, and some local populations now occur at very high densities (R. Ambrose, pers. comm. 1997; G. Holroyd, pers. comm. 1997; Enderson *et al.* 1995). Because these rapid population growth rates and high densities were achieved despite habitat modification in North America, we conclude that habitat modification or destruction was not a limiting factor in peregrine recovery. It does not currently threaten the existence of the American peregrine falcon nor is it likely to in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Delisting the peregrine falcon will not result in overutilization because the delisting will not affect protection provided the peregrine falcon by the MBTA. The take of all migratory birds, including peregrine falcons, is governed by the MBTA's regulations on the taking of migratory birds for educational, scientific, and recreational purposes and requiring harvest be limited to levels that prevent overutilization (See Factor D).

C. Disease or Predation

Peregrine falcons are susceptible to a number of diseases and parasites such as tapeworms, mites, ticks, botulism, fowl pox, and viral encephalitis (U.S. Fish and Wildlife Service 1982b; Trainer (1969) as cited in U.S. Fish and Wildlife Service 1984). However, these organisms are not known to affect the peregrine falcon at the population level.

Mammals and other raptors are known to prey on peregrine falcons, including such species as the great horned owl (*Bubo virginianus*), red-tailed hawk (*Buteo jamaicensis*), raccoon (*Procyon lotor*), and coyote (*Canis latrans*) (U.S. Fish and Wildlife Service 1982b, 1984). For example, great horned owls are natural predators of peregrine falcons (U.S. Fish and Wildlife Service 1991) and are possibly responsible for the slow recovery of peregrine falcons in the two northern recovery areas in the reestablished eastern population (M. Amaral *in litt.* 1995). Great horned owl predation was not documented as a significant cause of the decline in peregrine falcons and has not affected the species' overall recovery.

Golden eagles (*Aquila chrysaetos*) are also known to prey on young peregrine falcons. Barbara Behan (U.S. Fish and Wildlife Service, pers. comm. 1999) witnessed a golden eagle prey on young peregrine falcons at a hack site in Colorado, stooping and footing one of the falcons, and leaving the area with it in its talons. The same eagle, or another, returned numerous times over the next several days, and the other four falcons disappeared in that time, despite efforts by the hack site attendants to scare the eagles away from the site.

Though the peregrine falcon is occasionally preyed upon, this factor is not known to affect the peregrine falcon at the population level.

D. The Inadequacy of Existing Regulatory Mechanisms

Protection from take and commerce for the peregrine falcons under the Endangered Species Act will be removed upon delisting. However, peregrine falcons are still protected by the MBTA. Section 704 of the MBTA states that the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds is allowed and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species.

The MBTA and its implementing regulations (50 CFR Parts 20 and 21) prohibit take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit (50 CFR 21.11). Regulations at 50 CFR 21.28 and 21.30 authorize the issuance of permits to take, possess, transport and engage in

commerce with raptors for falconry and for propagation. Other regulations authorize the issuance of permits for scientific collecting (50 CFR 21.23), special purposes such as rehabilitation or education (50 CFR 21.27), and depredation (50 CFR 21.41). Prior to issuance of these permits, meeting certain criteria is required, including a requirement that the issuance will not threaten a wildlife population (50 CFR 13.21(b)(4)). In cooperation with State wildlife agencies we will develop draft biological criteria for management of take of wild peregrines under the MBTA. The resulting management plans will include biological criteria for take, implementation criteria, and procedures for evaluating the effects of the taking. It will pertain to the take of peregrines in the United States for falconry and other purposes. With limited exceptions, take will not be permitted under MBTA until the draft management plans undergo public review, are approved, finalized, and published in the **Federal Register**. In addition to considering the effect on wild populations, issuance of raptor propagation permits requires that we consider whether suitable captive stock is available and whether wild stock is needed to enhance the genetic variability of captive stock (50 CFR 21.30(c)(4)).

These existing regulatory provisions will adequately protect against excessive take of peregrine falcons. If necessary, protective measures could be expanded by promulgation of a regulation under the MBTA. We have both the legal authority and the obligation to regulate take of peregrines under the MBTA (see additional discussion of the MBTA in the Effects of this Rule section below).

In the absence of habitat protection under the Act, there are no other existing Federal laws that specifically protect the habitat of this species (see "Critical Habitat"). However, loss of habitat was not identified as a threat to the species and was not a factor identified as contributing to the species' listing.

An important regulatory mechanism affecting peregrine falcons is the requirement that pesticides be registered with the Environmental Protection Agency (EPA). Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), the EPA requires environmental testing of all new pesticides. Testing the effects of pesticides on representative wildlife species prior to pesticide registration is specifically required. This protection from effects of pesticides are not altered by delisting the peregrine falcon.

On July 1, 1975, peregrine falcons were included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This treaty was established to prevent international trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required by the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be imported for primarily commercial purposes. Although CITES does not itself regulate take or domestic trade, CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. This protection is not be altered by delisting the peregrine falcon under the Act.

Peregrine falcons are still afforded some protection by land management agencies under laws such as the National Forest Management Act (16 U.S.C. 1600) and the Federal Land Management and Policy Act (43 U.S.C. 1701). National Forest Management Act regulations specify that "fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area." (36 CFR 219.19). Guidelines for each planning area must provide for a diversity of plant and animal communities based on the suitability of a specific land area. United States Forest Service regional foresters are responsible for identifying sensitive species occurring within their Region. Sensitive species are those that may require special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing. The delisting of the peregrine falcon will require Federal land managers to consider the need for designating the peregrine falcon as a sensitive species to ensure that forest management activities do not contribute to a need for relisting. The Federal Land Policy and Management Act requires that public lands be managed to protect the quality of scientific, ecological, and environmental qualities, among others, and to preserve and protect certain lands in their natural condition to provide food and habitat for fish and wildlife.

Federal delisting of the peregrine falcon will not remove the peregrine falcon from State threatened and endangered species lists, or suspend any other legal protections provided by State law. States may have more restrictive laws protecting wildlife, including restrictions on use for falconry, and may retain State threatened or endangered status for the peregrine falcon (see 50 CFR 21.28). Depending on the biological status, States generally list peregrine falcons as endangered, threatened, critically imperiled or as a species of concern. Currently, the peregrine falcon is State-listed in 38 of the 40 States that have nesting pairs. The two States that do not have the species listed—Colorado and Arizona—removed the peregrine falcon from their lists due to its recovery in those States. However, both will continue to regulate take for falconry and other purposes. In many States, falconry is administered cooperatively by the Service and the States.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Egg collecting, shooting, harvest for falconry, habitat destruction, climate change, and the extinction of passenger pigeons were all considered as possible factors causing or contributing to the decline in peregrine falcon populations in North America; however, no evidence supports any of these factors as causing the widespread reproductive failure and population decline that occurred. In contrast, an overwhelming body of evidence has accumulated showing that organochlorine pesticides affected survival and reproductive performance sufficiently to cause the decline. There currently is no question within the scientific community that contamination with organochlorines was the principal cause for the drastic declines and extirpations in peregrine falcon populations that took place in most parts of North America (Kiff 1988).

Although the use of all organochlorine pesticides causing reproductive failure in peregrine falcons was restricted in the United States and Canada in the early 1970s, their use continues in some areas of Latin America. It was shown, by comparing blood samples collected during fall and spring migration, that migrant peregrine falcons accumulate organochlorines while wintering in Latin America (Henny *et al.* 1982). Henny *et al.* (1996) demonstrated that DDE residues in the blood taken from female peregrine falcons captured during spring migration at Padre Island, Texas decreased between 1978 and 1994. In second-year peregrines, residues dropped from 1.43 ppm between 1978 and 1979 to only 0.25 ppm in 1994 and from 0.88 to 0.41 ppm for older peregrines; these levels are well below those that would affect reproduction (Henny *et al.* 1996).

The widespread reproductive failure and population decline of peregrine

falcons in North America coincided with the period of heavy organochlorine use in the United States. Although there was not an immediate lowering of pesticide residues in eggs following restrictions on the use of organochlorines north of Mexico (Enderson *et al.* 1995), residues gradually declined following the restrictions (Ambrose *et al.* 1988b; Enderson *et al.* 1988; Peakall *et al.* 1990), and most surviving populations began to increase in size thereafter. Despite the continued use of organochlorines in Latin America, populations of American peregrine falcons in North America have recovered substantially in recent years. In fact, Arctic peregrine falcons that winter predominantly in Latin America recovered to the point that the subspecies was removed from the Federal List of Threatened and Endangered Wildlife on October 4, 1994 (59 FR 50796).

Additionally, some of the avian prey used during the nesting season by peregrine falcons throughout North America also winter in Latin America. Many of these prey return to their nesting areas with pesticide residues accumulated during the winter (Fyfe *et al.* 1990). Peregrine falcons preying upon these birds during the summer are further exposed to Latin American pesticides. Overall, pesticide use in Latin America does not appear to have adversely affected reproductive success in American peregrine falcon populations in North America.

We recognize that certain populations of American peregrine falcons have recovered to a lesser degree, and that in some of these populations organochlorine residues are still high and reproductive rates remain lower than normal. Populations on the Channel Islands off southern California are still affected by high organochlorine residues and eggshell thinning (Jarman 1994). This is a localized threat, and the result of using offshore islands as DDT disposal areas during the 1940s. Despite the residual effects of organochlorines on the Channel Islands, this population is continuing to increase, although some of the increase could be the result of the release of a significant number of captive-bred young or dispersal from other areas where recovery is greater (B. Walton, pers. comm. 1997). Based on published values in the literature, detected concentrations of DDT in peregrine falcon eggs collected in New Jersey were sufficient to impact reproduction. Productivity and eggshell thinning data, however, did not support a conclusion of reproductive impairment due to DDT contamination (U.S. Fish and Wildlife Service and New Jersey Department of Environmental Protection 1997). Jarman (1994) suggested that these locally higher egg residues result from a local source of DDT or DDE. As a result, the effects are localized, and the observations do not reflect the current status of peregrine falcons as a whole. In recent years, numbers of peregrine falcons have increased significantly throughout their historical range despite the effects of localized organochlorine residues.

Similarly, American peregrine falcons in southwest Canada have not recovered as well as in most other regions of North America. Despite the release of several hundred captive-bred young in the prairie Provinces and western Canada (Holroyd and Banasch 1990), the number of pairs occupying territories is still well below the number of known historical nest sites (G. Holroyd, *in litt.* 1993). In southern Canada, including the prairie region, the proportion of reintroduced young that entered the breeding population was considerably lower than in the United States (Peakall 1990; Enderson *et al.* 1995). The factor or factors causing this lower recruitment rate remain unknown, but survivorship of peregrine falcons released into this area may be lower than in adjacent portions of the subspecies' range. Pesticide residues in American peregrine falcon eggs do not appear to be higher in southwest Canada than in the United States (Peakall *et al.* 1990). Therefore, higher residual organochlorine contamination is apparently not responsible, and the number of pairs occupying this region continues to increase.

Exposure to organochlorine pesticides caused drastic population declines in peregrine falcons. Following restrictions on the use of organochlorines in the United States and Canada, residues in eggs declined and reproduction rates improved. Improved reproduction, combined with the release of thousands of captive-reared young and relocated wild hatchlings, allowed the American peregrine falcon to recover and peregrine falcons to be successfully reestablished in those areas of the historical range from which the species was extirpated. Pesticide residues, reproductive rates, and the rate of recovery have varied among regions within the vast range of this species. In some areas, such as the Channel Islands off the southern coast of California, the lingering effects of DDT have caused reproductive rates to remain low. Local source contamination may even cause continued reproductive problems in the Channel Islands. In southwest Canada, the rate of recovery, or onset of recovery, apparently lagged behind most other areas, but recent trends suggest that historical nest sites will continue to be gradually re-colonized.

The peregrine falcon has recovered throughout its historical range. Although the recovery is slow in a few parts of the historical range, these areas represent a small portion of the species' overall range. Furthermore, evidence collected in recent years shows that a combination of lingering residues of organochlorines in North America and contamination resulting from the continued use of organochlorines in Latin America has not prevented a widespread and substantial recovery of peregrine falcons, as numbers of peregrine falcons continue to increase. We conclude, therefore, that the continued existence of the American peregrine falcon is no longer threatened by exposure to organochlorine pesticides.

In summary, due to the reduction in the effects of pesticides and widespread positive trends in population size, we have determined that the American peregrine falcon has recovered and is no longer endangered with extinction, or likely to become endangered within the foreseeable future throughout all or a significant portion of its range. We considered the alternative of downlisting the species, but recent data show improvements in breeding pair numbers and productivity, demonstrating that the delisting goals set for the American peregrine falcon in recovery plans were met or exceeded. We believe this available information supports the full delisting of the species throughout its range. Therefore, we are removing the peregrine falcon from the Federal List of Endangered and Threatened Wildlife, thus, removing endangered status for the American peregrine falcon throughout its range, and the similarity of appearance provision for all free-flying peregrine falcons within the 48 conterminous United States.

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies conducting formal section 7 consultation on actions which may affect species no longer in need of the protections under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect peregrine falcons.

Effects of This Rule

This final rule will affect the protection afforded to North American peregrine falcons under the Act. It will not affect the status of the Eurasian peregrine falcon (*F. p. peregrinus*), currently listed under the Act as endangered wherever it occurs. The endangered designation under the Act for the American peregrine falcon will be removed and the designation of endangered due to similarity of appearance for all free-flying peregrine falcons found within the 48 conterminous United States, including the Arctic and Peale's peregrine falcons, and the reestablished eastern and midwestern populations, will be removed. Therefore, taking, interstate commerce, import, and export of North American peregrine falcons will no longer be prohibited under the Act. In addition, Federal agencies will no longer be required to consult with the Service under section 7 of the Act in the event activities they authorize, fund or carry out adversely affect peregrine falcons. However, as previously discussed, removal of the protection of the Act will not affect the protection afforded all peregrine falcons under the MBTA.

The take and use of peregrine falcons must comply with appropriate State regulations. State regulations applying to falconry vary among States and are subject to change over time. The applicable State regulations may be more but not less restrictive than Federal regulations.

This rule will not affect the peregrine falcon's Appendix I status under CITES, and CITES permits will still be required to import and export peregrine falcons to and from the United States. CITES permits will not be granted if the export will be detrimental to the survival of the species or if the falcon was not legally acquired.

Critical Habitat

Critical habitat for the American peregrine falcon includes five areas in northern California (50 CFR 17.95). The Act defines critical habitat as "specific areas within the geographical area occupied by the species, at the time it is listed on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection." Since critical habitat can be designated only for species listed as endangered or threatened under the Act, all currently designated American peregrine falcon critical habitat will be removed upon publication of this final rule.

Monitoring

Section 4(g)(1) of the Act requires us to monitor a species for at least 5 years after delisting. A monitoring plan was provided in the proposed delisting rule on August 26, 1998 (63 FR 45446). We are currently developing a revised monitoring plan which will be made available for public review in the **Federal Register** in the near future.

Take for Falconry and Other Purposes

Wild American and Arctic peregrine falcons were unavailable for falconry and raptor propagation in the contiguous United States since these two subspecies of peregrine falcons were listed under the Act in 1970. In Alaska, the Arctic peregrine became available for take in 1994 when it was delisted, but take of this subspecies was still restricted in the contiguous United States pursuant to the similarity of appearance provision of the Act. Take of Peale's peregrines also was restricted in the contiguous United States since 1984 pursuant to the similarity of appearance provisions of the Act.

With this delisting, which removes protection of the Act, regulation and management of peregrine falcons in the United States will fall primarily under the MBTA and State regulations. In anticipation of delisting, we are working with the State wildlife agencies to develop draft biological criteria for management of take of peregrines. These criteria will serve as the basis for discussions with authorities in Canada and Greenland to identify appropriate limits for take of passage birds. We will then prepare environmental assessments on the management of nestlings and passage birds and solicit public comment. The resulting management plans will include biological criteria for harvest, implementation criteria, and procedures for evaluating the harvest. One objective of the plans is to allow a level of take that does not compromise continuing restoration of peregrine falcons in North America. We expect to complete the management plan for nestlings by the Spring of 2000, and the management plan for passage birds by the Fall of 2000. Take of peregrine falcons in the conterminous United States is not permitted under the MBTA until the management plans undergo public review and are finalized, approved, and published in the **Federal Register**. Some permit exceptions may be made for scientific research. In Alaska, take of American peregrine falcons is not permitted but take of Peale's and Arctic peregrines may be authorized.

Executive Order 12866

This rule was not reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We cannot conduct or sponsor, and a person is not required to respond to a collection of information, unless we are in possession of a current OMB Control Number. We intend to collect information from the public during the post-delisting monitoring period. A description of the information that will be collected was provided in the proposed delisting rule. We are revising the monitoring plan that was described in the proposed delisting rule, and will obtain a revised OMB Control Number for, and request public comment on, the revised monitoring plan in the **Federal Register** in the near future.

National Environmental Policy Act

We have determined that an environmental assessment or environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Robert Mesta, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set out in the preamble, we hereby amend part 17, subchapter B of chapter I, Title 50 of the

Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entries for "Falcon, American peregrine, *Falco peregrinus anatum*" and "Falcon, peregrine, *Falco peregrinus*" under "BIRDS" from the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

3. Section 17.95(b) is amended by removing the critical habitat entry for "American Peregrine Falcon."

Dated: August 17, 1999.

Jamie Rappaport Clark,

Director, U. S. Fish and Wildlife Service.

[FR Doc. 99–21959 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–55–P

Reade

CUSTOMER

Federal Regi
General Infor
aids

Laws

Presidential
Executive ord
The United S

Other Service
Electronic an
Privacy Act C
Public Laws
TTY for the d

ELECTRONIC

World Wide W
Full text of th
publications:
htt
Federal Regist
Inspection Lis
htt

E-mail

PENS (Public
service for no
subscribe, sen
list
with the text
sub
Use listserv@v
PENS. We can

Reference que
Federal Regist
info

The Federal R
regulations.

FEDERAL R

41765–41998
41999–42264
42265–42578
42579–42822
42823–43042
43043–43254
43255–43598
43599–43896
43897–44100
44101–44396
44397–44642
44643–44816
44817–45148
45149–45406
45407–45858
45859–46110
46111–46256
46257–46558

Reader Aids

Federal Register

Vol. 64, No. 164

Wednesday, August 25, 1999

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Laws	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (numbers, dates, etc.)	523–6641
TTY for the deaf-and-hard-of-hearing	523–5229

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, AUGUST

41765–41998	2
41999–42264	3
42265–42578	4
42579–42822	5
42823–43042	6
43043–43254	9
43255–43598	10
43599–43896	11
43897–44100	12
44101–44396	13
44397–44642	16
44643–44816	17
44817–45148	18
45149–45406	19
45407–45858	20
45859–46110	23
46111–46256	24
46257–46558	25

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7214) 42265
7202 (See Proc. 7214) 42265
7208 (See Proc. 7214) 42265
7214 42265

Executive Orders:
12372 (Supplemented by EO 13132) 43255
12612 (Revoked by EO 13132) 43255
12866 (Supplemented by EO 13132) 43255
12875 (Revoked by EO 13132) 43255
12924 (See Notice of Aug. 10, 1999) 44101
12988 (Supplemented by EO 13132) 43255
13083 (Revoked by EO 13132) 43255
13095 (Revoked by EO 13132) 43255
13132 43255
13133 43895
13134 44639

Administrative Orders:
Notice of Aug. 10, 1999 44101

5 CFR

630 46257

7 CFR

11 43043
301 45859
319 45860
610 41999
906 45407
966 45409
989 43897
1220 45413
1230 44643
1728 42005

Proposed Rules:
6 42288
210 46319
220 46319
225 46319
226 46319
354 43103
505 44634
915 45461
931 42858
932 42619
944 45461
981 43298
984 45208
1106 42860
3419 42576

8 CFR

217 42006

9 CFR

101 43043
102 43043
105 43043
112 43043
113 ..... 43043, 45419
116 43043
124 43043
318 44644
319 44644
390 43902

Proposed Rules:
145 43301
147 43301

10 CFR

31 42269
50 42823
76 44645
420 46111

Proposed Rules:
30 45900
35 45907
40 45900
50 ..... 44137, 44860, 45900, 45908, 45911
70 ..... 45900, 45911, 46319
72 ..... 45918, 45920, 45923
709 45062
710 ..... 44433, 45062
711 45062

11 CFR

110 42579
9004 42579
9034 42579
9036 42584

Proposed Rules:
114 46319

12 CFR

201 41765
602 ..... 41770, 45589
612 43046
614 ..... 43046, 43049
616 43049
618 ..... 43046, 43049
621 43049
905 44103

Proposed Rules:
202 44582
361 ..... 42861, 42862
702 44663
747 44663
935 44444

13 CFR

120 44109

Proposed Rules:
120.....43636

14 CFR

4.....43599
25.....44817
27 .....43016, 45092, 46230
29 .....43016, 45336, 46230
39 .....41775, 41776, 41778, 42007, 42275, 42824, 43050, 43051, 43053, 43056, 43058, 43060, 43061, 43905, 44110, 44112, 44650, 45868, 45870, 46259
71 .....41780, 42276, 42432, 42585, 42591, 42592, 43063, 43065, 43066, 43068, 43069, 43261, 43599, 43907, 44114, 44116, 44117, 44268, 44397, 44398, 44399, 44400, 44578, 44819, 44821, 44823, 44825, 45149, 45421, 45423, 45425, 45426, 45433, 45435, 45436, 46114, 46115, 46116, 46228, 46262, 46264, 46265, 46366, 46267
91.....44814
97.....44117, 44119
121.....46117
125.....46117
254.....41781
382.....41781

Proposed Rules:
25 .....43570, 43943, 43946, 45589
39 .....41841, 41842, 42289, 42291, 42293, 42295, 42296, 42297, 42619, 42622, 42866, 42868, 42870O, 43314, 43316, 43318, 43638, 43948, 43950, 43953, 43955, 43957, 43959, 43961, 43963, 43966, 44137, 44446, 44663, 44666, 44667, 45211, 45466, 45468, 45470, 45472, 45474, 45476, 45477, 45481, 45483, 45485, 45487, 45925, 45827, 45929
65.....42810
66.....42810
71 .....42300, 42301, 44139, 44140, 44141, 44142, 44144, 44865
93.....44145, 46155
107.....43321
108.....43322
119.....45090
121.....45090
129.....45090
135.....45090
147.....42810
183.....45090

15 CFR

734.....42009
738.....42009
740.....42009
742.....42009
902.....42826

16 CFR

2.....43599, 46267
3.....46267
4.....46267
5.....42594

Proposed Rules:
1212.....42302

17 CFR

9.....43254, 46270
10.....43071
12.....43071
171.....46270
200.....42594
211.....45150
240.....42031, 42594
249.....42594

Proposed Rules:
4.....41843
275.....43556

18 CFR

3.....44400
341.....44400
342.....44400
346.....44400
357.....44400
362.....44400
381.....44652
385.....44400

Proposed Rules:
101.....42304
343.....43600
357.....42623, 45931
385.....42307, 43600

19 CFR

4.....43262
10.....43262
12.....43262
24.....42031, 43262
102.....43262
112.....43262
113.....43262
118.....43262
122.....43262
133.....43262
141.....43262
143.....43262
144.....43262
148.....43262
151.....43606
162.....43262
173.....43262
174.....43262, 43606
178.....43606
181.....43262

Proposed Rules:
12.....41851
113.....41851, 42872
141.....41851

20 CFR

404.....46122

Proposed Rules:
375.....44670
404.....42310
416.....42310

21 CFR

101.....42277
172 .....43072, 43908, 44121
173.....44122
175.....45872
176.....46129, 46130
177.....46271
178 .....44406, 44407, 45873, 46132
310.....44653
510.....42596
520.....42596
522.....42596, 42830
524.....42831
558.....42596, 43909
606.....45366
640.....45366
878.....45155, 46011
1308.....42432
1312.....42432

Proposed Rules:
101.....42315, 45932
207.....43114
310.....44671
314.....42625, 42873
344.....44671
600.....45383
606.....45355, 45375
607.....43114, 45340
610.....45340
630.....45355
640.....45340, 45375
660.....45340
807.....43114
870.....43114
888.....43114
890.....43114

22 CFR

41.....42032, 45162
514.....44123

24 CFR

108.....44094
982.....43613

Proposed Rules:
990.....43641

26 CFR

1 .....41783, 43072, 43267, 43613, 43910, 45874
31.....42831
301.....41783
602 .....41783, 43072, 43613
801.....42834

Proposed Rules:
1 .....43117, 43323, 43462, 43969, 46155, 46320
301.....43324
602.....43462

28 CFR

505.....43880

29 CFR

1610.....45164
2570.....42246
2575.....42246
4044.....44128

Proposed Rules:
1910.....45098
2520.....42792, 42797
2560.....42792, 42797
2570.....42797

30 CFR

26.....43280
29.....43280
57.....43280
70.....43283
71.....43283
75 .....43280, 43286, 45165
90.....43283
202.....43506
206.....43288, 43506
250.....42597
914.....43911
943.....43913

Proposed Rules:
206.....45213
913.....44674
914.....44448
935.....42887
936.....43327
946.....45489

31 CFR

103.....45438
538.....41784
550.....41784
560.....41784
590.....43924

Proposed Rules
375.....42626

32 CFR

199.....45453, 46133
505.....45877

Proposed Rules:
230.....43856
231.....43858
231a.....43856

33 CFR

100 .....42278, 42598, 43289, 46272, 46273
110.....42279
117 .....42033, 42599, 44129, 44131, 44826, 46274, 46275
160.....41794
165 .....43290, 43291, 44658, 45878, 45879, 46276

Proposed Rules:
100.....41853
117 .....44145, 44147, 44148, 44149, 44151, 46322, 46323

34 CFR

611.....42837
685.....46252

Proposed Rules:
668 .....42206, 43024, 43582
673.....42206
674.....42206
675.....42206
676.....42206
682 .....42176, 43024, 43428
685.....43428
690.....42206

36 CFR

Proposed Rules:
13.....41854
1191.....42056

37 CFR

Proposed Rules:
201.....42316

38 CFR

17.....44659
21.....44660

39 CFR

20 .....43292, 46141, 46277

Proposed Rules:
111.....44681

40 CFR

9 .....42432, 43426, 43936
52 .....42600, 43083, 44131, 44134, 44408, 44411, 44415, 44417, 45170, 45175, 45178, 45182, 45454, 46279
58.....42530

62 ..... 43091, 44420, 45184, 45880, 46148
63 ..... 42764, 45187
81 46279
86 43936
122 ..... 42432, 43426
123 ..... 42432, 43426
124 ..... 42432, 43426
180 ..... 41804, 41810, 41812, 41815, 41818, 42280, 42839, 42846, 44826, 44829, 45885, 45888, 46290, 46292
186 41818
261 42033
271 ..... 41823, 42602, 44836, 46298, 46302
300 44135
403 42552
501 ..... 42432, 43426
503 42552
745 42849

Proposed Rules:

35 46234
51 45491
52 ..... 42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452, 45215, 45216, 45217, 46325, 46331
55 45217
62 ..... 43123, 45222, 45937, 46165
63 ..... 45116, 45221
81 46331
97 ..... 43124, 44452
122 46058
123 46058
124 46058
130 46012
131 46058
147 43329
148 46476
259 45632
261 ..... 42317, 44866, 45632, 46166, 46476
264 46476
265 46476
266 45632
268 46476
270 45632
271 ..... 42630, 43331, 44876, 46332, 46476
281 ..... 43336, 46178
300 ..... 41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458, 45222, 45224, 46333
302 46476
372 42222
441 45072

41 CFR

301 43254
303–70 45890

Proposed Rules:

51-2 41882
51-5 41882

42 CFR

413 ..... 42610, 44841
498 43295
1001 42174

Proposed Rules:

Ch. IV 43338
84 46178

43 CFR

4 46151

44 CFR

61 41825
64 ..... 42852, 44421
206 41827

Proposed Rules:

61 42632
62 42633

45 CFR

144 45786
146 45786
148 45786
150 45786
801 42039

46 CFR

10 ..... 42812, 44786
12 ..... 42812, 44786

Proposed Rules:

298 44152
535 42057

47 CFR

0 43618
1 ..... 42854, 45891
5 43094
43 43618
62 43937
63 ..... 43095, 43618
64 ..... 43618, 44423
69 45196
73 ..... 41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095, 44856, 45893, 46316
76 ..... 42617, 42855
90 43094
101 45891

Proposed Rules:

Ch. 1 ..... 41883, 42635
20 44682
1 ..... 41884, 41887
2 ..... 41891, 43643
15 41897
32 44877
43 44877
51 41897
64 44877
68 41897
73 ..... 41899, 43132, 45500
76 41887
78 41899
95 41891

48 CFR

202 43096
204 ..... 43098, 45196, 45197, 46474
212 43098
213 43098
217 43096
219 45197
252 ..... 43098, 45196
253 ..... 43098, 45197
413 45894
453 45894
601 43618
602 43618
603 43618
604 43618
605 43618
606 43618
608 43618
609 43618
610 43618
611 43618
613 43618
614 43618
615 43618
616 43618
617 43618
619 43618
622 43618
623 43618
625 43618
626 43618
628 43618
629 43618
630 43618
631 43618
632 43618
633 43618
634 43618
636 43618
637 43618
639 43618
641 43618
642 43618
643 43618
644 43618
645 43618
646 43618
647 43618
649 43618
652 43618
653 43618
701 42040
702 42040
703 42040
705 42040
706 42040
709 42040
714 42040
716 42040
719 42040
726 42040
732 42040
733 42040
734 42040
749 42040
750 42040
752 42040
2401 46092
2402 46092
2403 46092
2409 46092
2413 46092
2414 46092
2415 46092
2416 46092
2419 46092
2424 46092
2425 46092
2426 46092
2428 46092
2432 46092
2433 46092
2436 46092
2437 46092
2439 46092
2442 46092
2446 46092
2451 46092
2452 46092
2453 46092
5416 41834

Proposed Rules:

17 44100
536 44683
2403 46104
2409 46104
2436 46104
2439 46104
2442 46104
2452 46104
2453 46104
9903 45700

49 CFR

171 ..... 45388, 45457
172 ..... 44426, 44578, 45388
173 44426
175 45388
396 45207
571 45895

Proposed Rules:

190 43972
385 44460
390 44460
571 42330
575 44164

50 CFR

17 ..... 41835, 46542
20 45400
300 44428
600 42286
622 ..... 43941, 45457
635 ..... 42855, 43101
648 ..... 42042, 42045, 44661
660 ..... 42286, 42856
679 ..... 41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942, 44431, 44432, 44858, 44859, 45459, 45460, 46153, 46317

Proposed Rules:

17 ..... 41903, 42056, 42250, 43132, 44171, 44470, 44883
20 44384
32 43834
36 43834
226 44683
600 ..... 42335, 43137, 45501
622 ..... 41905, 42068, 44884
635 44885
648 ..... 42071, 43137, 43138, 45938
649 45501
660 44475
679 42080

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 25, 1999

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Desmedipham; published 8-25-99
- Pyridate; published 8-25-99

FEDERAL TRADE COMMISSION

Practice and procedure:
- Effective relief provision where parties consent to entry of cease and desist order; consent settlements comment period shortened; published 8-25-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
- Polymers—
  - Nylon 6/12 copolymer resins; published 8-25-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:
- Rental voucher and certificate programs (Section 8)—
  - Management assessment program; technical amendment; published 7-26-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- American peregrine falcon; published 8-25-99

PERSONNEL MANAGEMENT OFFICE

Absence and leave:
- Restored annual leave; published 8-25-99

POSTAL SERVICE

International Mail Manual:
- Global direct—Canada publications mail; published 8-25-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Massachusetts; published 8-25-99
- New York; published 8-25-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 7-21-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Prunes (dried) produced in California; comments due by 8-30-99; published 7-29-99

AGRICULTURE DEPARTMENT

Cooperative State Research, Education, and Extension Service

Grants:
- Land-grant institutions (1890 and 1862); agricultural research and extension activities; matching funds requirements for formula funds; comments due by 9-3-99; published 8-4-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food stamp program:
- Retail food store definition and program authorization guidance; comments due by 8-30-99; published 6-30-99

AGRICULTURE DEPARTMENT

Operations Office

Donation of excess research equipment; priorities and administrative guidelines; comments due by 8-30-99; published 7-29-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Northeast multispecies; comments due by 9-2-99; published 8-3-99
  - Spiny dogfish; comments due by 8-30-99; published 6-29-99

ENERGY DEPARTMENT

Assistance to foreign atomic energy activities:
- Miscellaneous amendments; comments due by 8-31-99; published 7-2-99

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Oil pipelines:
- Annual report; technical conference; comments due by 9-1-99; published 8-23-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Washington; comments due by 8-30-99; published 7-30-99

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 9-1-99; published 8-2-99
  - National priorities list update; comments due by 9-3-99; published 8-4-99

FEDERAL TRADE COMMISSION

Industry guides:
- Jewelry, precious metals, and pewter industries; comments due by 8-31-99; published 7-9-99

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:
- Historic preference, for use in acquisition of leasehold interests in real property; comments due by 8-30-99; published 6-30-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:
- Mammography quality standards; comments due by 8-31-99; published 6-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare and Medicaid:
- Hospital participation conditions; patients' rights; comments due by 8-31-99; published 7-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT

National Institutes of Health

Fellowships, internships, training:
- National Research Service Awards; comments due by 8-30-99; published 6-30-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

HUD-owned properties:
- HUD-acquired single family property disposition—
  - Officer Next Door Sales Program; comments due by 8-31-99; published 7-2-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Federal claims collection; comments due by 8-30-99; published 6-30-99

INTERIOR DEPARTMENT

National Park Service

Concession contracts; solicitation, award, and administration; comments due by 8-30-99; published 6-30-99

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright office and procedures:
- Subscription digital transmissions; notice and recordkeeping; comments due by 9-3-99; published 8-4-99

MERIT SYSTEMS PROTECTION BOARD

Freedom of Information Act; implementation; comments due by 8-31-99; published 7-2-99

Privacy Act; implementation; comments due by 8-31-99; published 7-2-99

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
- Undercapitalized federally-insured credit unions; prompt corrective action system
  - Correction; comments due by 8-31-99; published 8-17-99

PERSONNEL MANAGEMENT OFFICE

Voting rights program; comments due by 9-2-99; published 8-3-99

SECURITIES AND EXCHANGE COMMISSION
Securities:
Portugal; securities exemption for purposes of trading futures contracts; comments due by 8-30-99; published 7-29-99
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; comments due by 8-31-99; published 7-6-99
Oregon; comments due by 8-30-99; published 6-29-99
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 9-3-99; published 8-4-99
Boeing; comments due by 8-30-99; published 6-29-99
Eurocopter Deutschland; comments due by 8-30-99; published 7-1-99
Eurocopter France; comments due by 8-30-99; published 6-29-99
Fokker; comments due by 8-31-99; published 8-6-99
Lockheed; comments due by 8-30-99; published 7-14-99
McDonnell Douglas; comments due by 8-30-99; published 7-14-99
Overland Aviation Services; comments due by 9-3-99; published 7-12-99
Precise Flight, Inc.; comments due by 8-30-99; published 7-7-99
Short Brothers; comments due by 9-3-99; published 8-4-99
Stemme GmbH & Co. KG; comments due by 8-30-99; published 7-21-99
Class E airspace; comments due by 8-30-99; published 7-13-99
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Inspection, repair, and maintenance—
Intermodal container chassis and trailers; comments due by 8-30-99; published 5-5-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listserv@www.gsa.gov** with the text message:

SUBSCRIBE PUBLAWS-L
Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

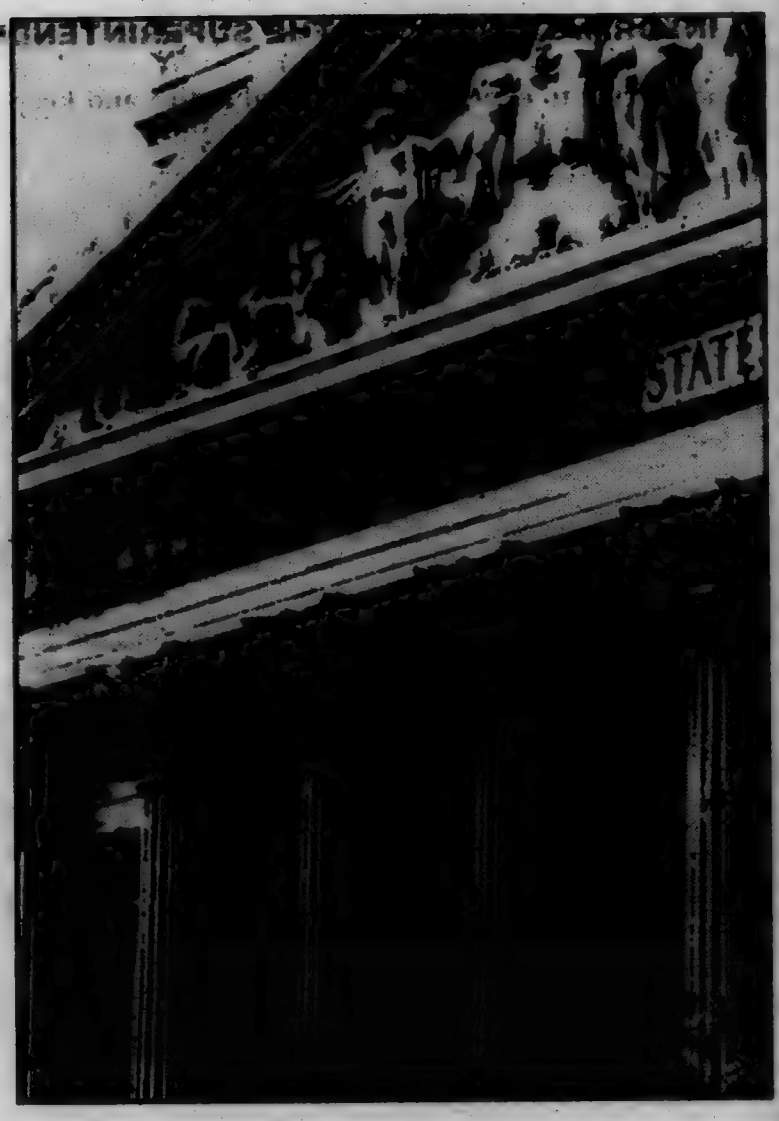

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

☐ **YES**, enter the following indicated subscriptions for one year:

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ **LSA (List of CFR Sections Affected)**, (LCS) for $27 per year.
_____ **Federal Register Index** (FRUS) $25 per year.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days before the shown date.

```
                                        /
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days before the shown date.

```
                                        /
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
* 5468

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR)**; *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**, and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature

11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

106th Congress, 1st Session, 1999

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 1st Session, 1999.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 106th Congress, 1st Session, 1999 for $136 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/98

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 11/3

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www. access. gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

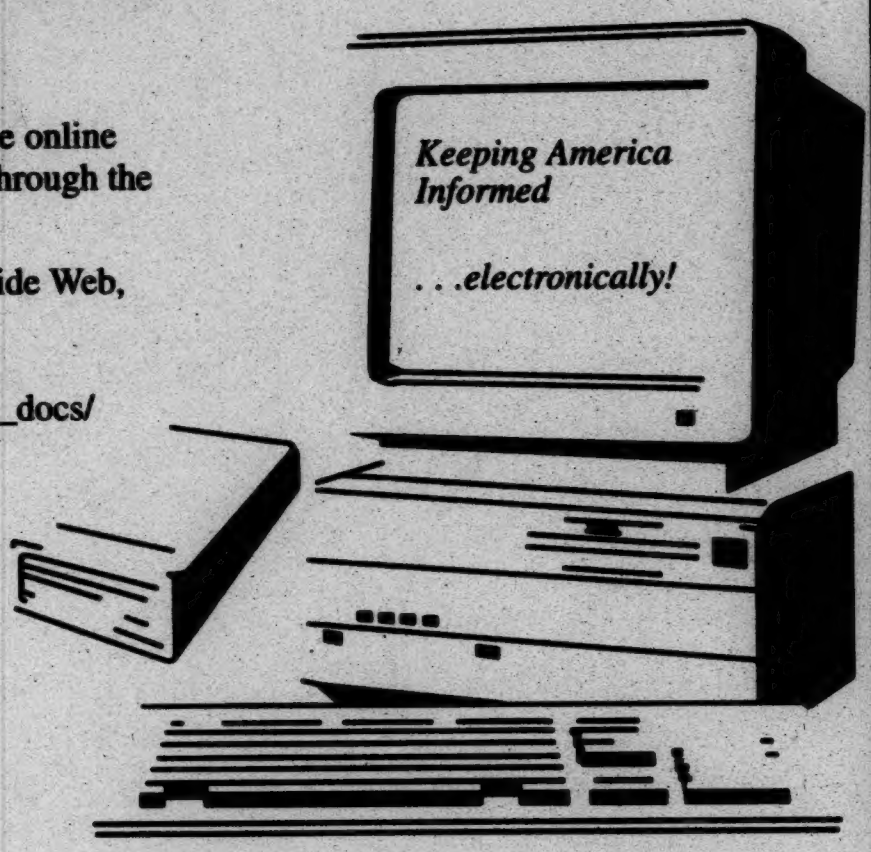

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 11/3)

Printed on recycled paper

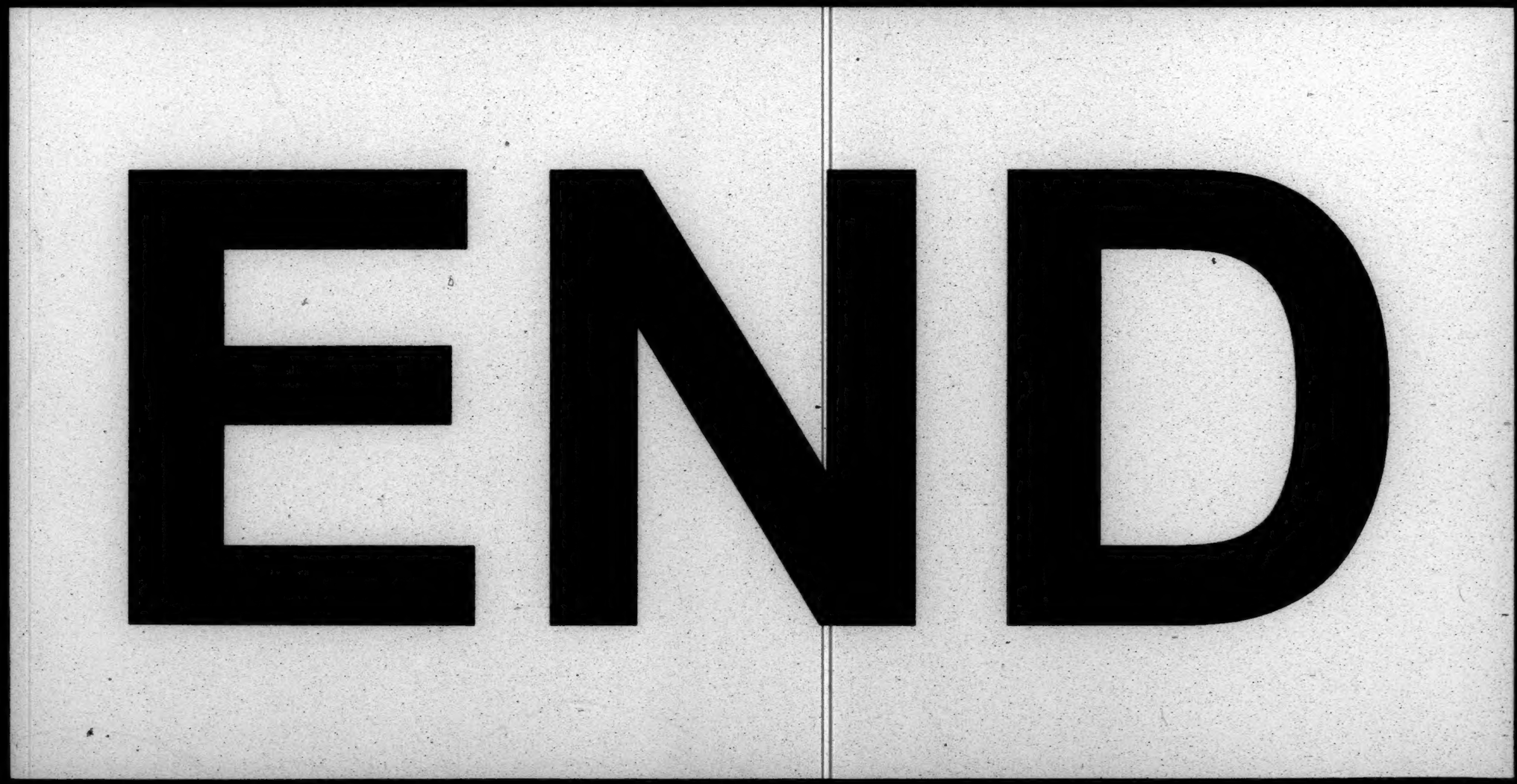
END